

No. _____

In the
Supreme Court of the United States

LAN TU TRINH,

Petitioner,

v.

DAVID FINEMAN,

Respondent.

**On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Third Circuit**

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Petitioner filed a pro se § 1983 action in the district court against a receiver who had been appointed in a state court case in which Petitioner was a party. The district court granted the receiver's 12(b)(6) motion to dismiss, finding that the receiver was entitled to absolute, quasi-judicial immunity. In affirming the district court's dismissal order, the Third Circuit relied on a transcript of a state court hearing that the district court never considered because the transcript was never part of the district court record. In addition, the Third Circuit relied on a state court opinion that was not attached as an exhibit to Petitioner's complaint, and was instead attached as an exhibit to the receiver's motion to dismiss. Based on these two documents from the state-court proceedings, the Third Circuit concluded that the receiver was acting at the court's behest at all relevant times, and that as a result, the receiver was entitled to the same absolute immunity afforded to judges.

1. Did the district court err by granting the receiver's motion to dismiss on immunity grounds under Rule 12(b)(6)?
2. Did the Third Circuit err by basing its affirmance on documents that were not attached to Petitioner's complaint?
3. Was the receiver entitled to the same absolute immunity afforded to judges?

PARTIES TO THE PROCEEDING

Petitioner, Lan Tu Trinh, was the appellant in the United States Court of Appeals for the Third Circuit. Respondent, David Fineman, was the appellee.

STATEMENT OF RELATED PROCEEDINGS

- *Trinh v. Fineman*, No. 20-1727, U.S. Court of Appeals for the Third Circuit. Judgement entered August 16, 2021.
- *Trinh v. Fineman*, Civ. Action No. 19-2305, U.S. District Court for the Eastern District of Pennsylvania. Judgment entered March 2, 2020.
- *Lan Tu Trinh v. Kathleen Lien Trinh & LT International Beauty School*, Case No. 160100581, Philadelphia Court of Common Pleas. Judgment entered July 25, 2019.

TABLE OF CONTENTS

QUESTIONS PRESENTED	i
PARTIES TO THE PROCEEDING.	ii
STATEMENT OF RELATED PROCEEDINGS	ii
TABLE OF AUTHORITIES	v
PETITION FOR WRIT OF CERTIORARI	1
DECISIONS BELOW.	1
BASIS OF JURISDICTION.	1
PROVISIONS INVOLVED	1
STATEMENT OF THE CASE.	2
REASONS FOR GRANTING THE WRIT.	5
I. This Court should exercise its supervisory power, reverse the Third Circuit's opinion, and remind courts that immunity determinations are rarely appropriate in response to motions to dismiss for failure to state a cause of action, and only if the complaint and its exhibits conclusively establish a defendant's entitlement to immunity.	5
II. This Court should review this case to assess whether court-appointed receivers deserve the same immunity afforded to judges.	9
CONCLUSION.	13

APPENDIX

Appendix A	Opinion in the United States Court of Appeals for the Third Circuit (August 16, 2021)	App. 1
Appendix B	Order in the United States District Court for the Eastern District of Pennsylvania (March 2, 2020)	App. 9
Appendix C	Order in the United States District Court for the Eastern District of Pennsylvania (March 2, 2020)	App. 17
Appendix D	Order in the United States Court of Appeals for the Third Circuit (September 23, 2021)	App. 19

TABLE OF AUTHORITIES

CASES

<i>Ashbrook v. Hoffman</i> , 617 F.2d 474 (7th Cir. 1980).	9
<i>Ashcroft v. Iqbal</i> , 556 U.S. 662, 129 S. Ct. 1937, 173 L.Ed.2d 868 (2009).	5
<i>Bell Atlantic Corp. v. Twombly</i> , 550 U.S. 544, 127 S. Ct. 1955, 167 L.Ed.2d 929 (2007).	5
<i>Boullion v. McClanahan</i> , 639 F.2d 213 (5th Cir. 1981).	9
<i>Bradford Audio Corp. v. Pious</i> , 392 F.2d 67 (2d Cir. 1968)	9
<i>Chesser v. Sparks</i> , 248 F.3d 1117 (11th Cir.2001)	6
<i>Davis v. Bayless</i> , 70 F.3d 367 (5th Cir. 1995).	10, 11
<i>Ex parte Virginia</i> , 100 U.S. 339 (1880).	12
<i>Gomez v. Toledo</i> , 446 U.S. 635 (1980).	6
<i>Handy-Clay v. City of Memphis, Tenn.</i> , 695 F.3d 531 (6th Cir.2012)	5

<i>Harlow v. Fitzgerald</i> , 457 U.S. 800, 102 S. Ct. 2727, 73 L.Ed.2d 396 (1982)	6
<i>Hayden v. County of Nassau</i> , 180 F.3d 42 (2d Cir.1999)	6
<i>Jacobs v. City of Chicago</i> , 215 F.3d 758 (7th Cir. 2000).	6
<i>Kermit Contr. v. Banco Credito Y Ahorro Ponceno</i> , 547 F.2d 1 (1st Cir. 1976)	9
<i>Lum v. Bank of America</i> , 361 F.3d 217 (3d Cir. 2004)	8
<i>Moses v. Parwatikar</i> , 813 F.2d 891 (8th Cir. 1987).	9
<i>New Ala. Development Corp. v. Guetschow</i> , 869 F.2d 1298 (9th Cir. 1989).	9
<i>Property Mgmt. and Investment, Inc. v. Lewis</i> , 752 F.2d 599 (11th Cir. 1985).	9
<i>Southern Cross Overseas Agencies, Inc. v. Wah Kwong Shipping Group, Ltd.</i> , 181 F.3d 410 (3d Cir. 1999)	9
<i>T and W Investment Co. v. Kurtz</i> , 588 F.2d 801 (10th Cir. 1978).	9
<i>Trinh v. Fineman</i> , 784 F. App'x 116 (3d Cir. 2019)	2
<i>Vakilian v. Shaw</i> , 335 F.3d 509 (6th Cir.2003)	6

<i>Wesley v. Campbell</i> , 779 F.3d 421 (6th Cir. 2015)	6
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STATUTES

42 U.S.C. § 1983	1
28 U.S.C. § 1254(1)	1

RULES

Fed. R. Civ. P. 12(d)	6
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OTHER AUTHORITIES

Margaret Z. Johns, <i>A Black Robe is Not a Big Tent: The Improper Expansion of Absolute Judicial Immunity to Non-Judges in Civil-Rights Cases</i> , 59 SMU L. Rev. 265	11, 12
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PETITION FOR WRIT OF CERTIORARI

Petitioner, Lan Trinh, respectfully petitions this Court for a writ of certiorari to review the opinion of the Third Circuit Court of Appeals.

DECISIONS BELOW

The district court dismissed Ms. Trinh's complaint with prejudice, ruling that Mr. Fineman was immune from suit. Specifically, the district court found that Mr. Fineman's status as a court-appointed receiver in a state-court proceeding entitled him to judicial immunity. App.12-13. The Third Circuit affirmed in a published opinion. *Trinh v. Fineman*, 9 F.4th 235 (3d Cir. 2021). App. 1-8.

BASIS FOR JURISDICTION

On August 16, 2021, the Third Circuit issued a written opinion affirming the district court's order. App. 1-8. Ms. Trinh timely petitioned for rehearing and rehearing en banc and the Third Circuit denied Ms. Trinh's rehearing request on September 23, 2021. App. 19. This timely petition follows. Jurisdiction lies in this Honorable Court. *See* 28 U.S.C. § 1254(1).

PROVISIONS INVOLVED

1. 42 U.S.C. § 1983.

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any

rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

STATEMENT OF THE CASE

Ms. Trinh filed a pro se complaint in the district court against David Fineman, who had been appointed by the Court of Common Pleas of Philadelphia County as a receiver in a case involving the dissolution of Ms. Trinh's beauty school that she co-owned with her sister, Kathleen Trinh. (D.C. Dkt. 1). The district court sua sponte dismissed the complaint with prejudice for lack of subject matter jurisdiction, explaining that Ms. Trinh had not raised "any claims arising under federal law or [alleged] that the parties are citizens of different states." (D.C. Dkt. 3). Ms. Trinh appealed, and the Third Circuit remanded to allow Ms. Trinh the opportunity to amend her complaint. *Trinh v. Fineman*, 784 F. App'x 116, 117 (3d Cir. 2019).

Ms. Trinh filed an amended complaint and again asserted federal question jurisdiction—this time on the ground that Mr. Fineman, as the receiver, was "abusing his state power" and violated Ms. Trinh's

“business and property rights.” (D.C. Dkt. 10 at p. 3). In addition, Ms. Trinh alleged that Mr. Fineman committed “fraudul[ent] and improper conduct.” (D.C. Dkt. 10 at p. 5). According to Ms. Trinh’s amended complaint, Mr. Fineman used his position as receiver to “steal” Ms. Trinh’s properties. (D.C. Dkt. 10 at p. 6). Specifically, Ms. Trinh alleged that Mr. Fineman misrepresented the initial balance of an escrow account that was set up to hold the liquidated assets of the beauty school, and that Mr. Fineman failed to provide documentation establishing the amount Mr. Fineman claimed was contained in the escrow account. (D.C. Dkt. 10 at p. 6).

Mr. Fineman moved to dismiss. He argued that Ms. Trinh failed to state a cause of action under § 1983 because, *inter alia*, Mr. Fineman was entitled to absolute immunity. (D.C. Dkt. 11-1 at p. 8). Once again, the district court dismissed the complaint with prejudice for failure to state a cause of action under § 1983, finding that Mr. Fineman was immune from suit. App. 9-15. In concluding that Mr. Fineman was entitled to quasi-judicial immunity, the district court relied on an order from the state court proceeding that was attached as an exhibit to Ms. Trinh’s amended complaint. App. 15. According to the district court, because the state court order established that Mr. Fineman was appointed by the court as a receiver and authorized to sell a property and place the proceeds in an escrow account, Ms. Trinh could not state a cause of action. App. 15. The district court did not address Ms. Trinh’s allegations about Mr. Fineman’s misrepresentation of the original escrow amount, or her assertion that Mr. Fineman failed to provide proper

documentation of expenses despite repeated requests from her state-court counsel.

The Third Circuit affirmed. The Court acknowledged that the question of whether a receiver is entitled to absolute immunity was an open question in the Third Circuit. App. 2. The Third Circuit resolved the question by holding that court-appointed receivers are entitled to absolute, quasi-judicial immunity because they are appointed by the court and because their power to act is authorized by the court. App. 6-7. Furthermore, the Court concluded that after reviewing “the record and the briefs on appeal,” Mr. Fineman was entitled to judicial immunity. App. 7. The Third Circuit relied on a transcript of a state court hearing that established “the judge was aware of, and approved of, all of [Mr. Fineman’s] expenditures.” App. 7. The transcript of the state court hearing was not attached as an exhibit to Ms. Trinh’s amended complaint. It was not attached as an exhibit to Mr. Fineman’s motion to dismiss. The transcript is not part of the district court record, and as a result, was never considered by the district court.

Likewise, the Third Circuit relied on a state court opinion that, in the Third Circuit’s view, established that “[t]he fees provided to [Fineman] from the escrow account were reasonable and were approved by the court,” and that “[a]ny expenditures made were pursuant to either the terms of the settlement agreement, to satisfy outstanding legal fees, or pursuant to the winding-down of the business.” App. 7. The state court opinion was not attached as an exhibit to Ms. Trinh’s complaint, and was instead attached as

an exhibit to Mr. Fineman’s motion to dismiss. App. 7. Based on these two documents from the state-court proceedings, the Third Circuit concluded that Mr. Fineman was acting at the court’s behest at all relevant times, and that as a result, he was entitled to the same absolute immunity afforded to judges. App. 8.

REASON FOR GRANTING THE WRIT

- I. **This Court should exercise its supervisory power, reverse the Third Circuit’s opinion, and remind courts that immunity determinations are rarely appropriate in response to motions to dismiss for failure to state a cause of action, and only if the complaint and its exhibits conclusively establish a defendant’s entitlement to immunity.**

To survive dismissal on a Rule 12(b)(6) motion, the plaintiff must “allege [] facts that ‘state a claim to relief that is plausible on its face’ and that, if accepted as true, are sufficient to ‘raise a right to relief above the speculative level.’” *Handy–Clay v. City of Memphis, Tenn.*, 695 F.3d 531, 538 (6th Cir.2012) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 570, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007)). Plaintiffs need not meet a “probability requirement,” although they must show “more than a sheer possibility that a defendant has acted unlawfully.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009)).

“In considering a motion to dismiss for failure to state a claim, a district court must limit itself to the facts stated in the complaint, documents attached to

the complaint as exhibits and documents incorporated by reference in the complaint.” *Hayden v. County of Nassau*, 180 F.3d 42, 54 (2d Cir.1999). Furthermore, Federal Rule of Civil Procedure 12(d) states:

If, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion.

As a result of the narrow inquiry inherent in Rule 12(b)(6) determinations, this Court and the federal courts of appeal are unanimous that it is generally inappropriate for a district court to grant a 12(b)(6) motion to dismiss on immunity grounds. *See, e.g., Gomez v. Toledo*, 446 U.S. 635, 640 (1980) (“Moreover, this Court has never indicated that qualified immunity is relevant to the existence of the plaintiff’s cause of action; instead we have described it as a defense available to the official in question”); *Wesley v. Campbell*, 779 F.3d 421, 433–34 (6th Cir. 2015) (“Although entitlement to immunity is a ‘threshold question to be resolved at the earliest possible point,’ *Vakilian v. Shaw*, 335 F.3d 509, 516 (6th Cir.2003) (citing *Harlow v. Fitzgerald*, 457 U.S. 800, 817, 102 S.Ct. 2727, 73 L.Ed.2d 396 (1982)), that point is usually summary judgment and not dismissal under Rule 12.”); *Jacobs v. City of Chicago*, 215 F.3d 758, 775 (7th Cir. 2000) (Easterbrook, J., concurring) (“Rule 12(b)(6) is a mismatch for immunity and almost always a bad ground of dismissal.”); *Chesser v. Sparks*, 248 F.3d

1117, 1121 (11th Cir.2001) (“[Q]ualified immunity is typically addressed at the summary judgment stage of the case.”).

Here, in concluding that Mr. Fineman was entitled to quasi-judicial immunity, the district court relied on an order from the state court proceeding that was attached as an exhibit to Ms. Trinh’s amended complaint. App. 15. According to the district court, because the state court order established that Mr. Fineman was appointed by the court as a receiver and authorized to sell a property and place the proceeds in an escrow account, Ms. Trinh could not state a cause of action. App. 15. The district court did not, however, address Ms. Trinh’s allegations about Mr. Fineman’s misrepresentation of the original escrow amount, or her assertion that Mr. Fineman failed to provide proper documentation of expenses despite repeated requests from her state-court counsel.

In affirming the district court’s dismissal order, the law required the Third Circuit to determine whether the Ms. Trinh stated a cause of action based on the allegations in her amended complaint and the attached exhibits. Instead, the Third Circuit relied on a transcript of a state court hearing that established “the judge was aware of, and approved of, all of [Mr. Fineman’s] expenditures.” App. 7. The transcript of the state court hearing was not attached as an exhibit to Ms. Trinh’s amended complaint. It was not attached as an exhibit to Mr. Fineman’s motion to dismiss. The transcript is not part of the district court record, and as a result, was never considered by the district court.

In addition, the Third Circuit relied on a state court opinion that, in the Third Circuit's view, established that "[t]he fees provided to [Fineman] from the escrow account were reasonable and were approved by the court," and that "[a]ny expenditures made were pursuant to either the terms of the settlement agreement, to satisfy outstanding legal fees, or pursuant to the winding-down of the business." App. 7. The state court opinion was not attached as an exhibit to Ms. Trinh's complaint, and was instead attached as an exhibit to Mr. Fineman's motion to dismiss. App. 7. Based on these two documents from the state-court proceedings, the Third Circuit concluded that Mr. Fineman was acting at the court's behest at all relevant times, and that as a result, he was entitled to the same absolute immunity afforded to judges. App. 8.

By considering these materials that were not part of Ms. Trinh's amended complaint, the Third Circuit expanded the 12(b)(6) inquiry and converted its review into what amounts to a summary judgment determination made for the first time on appeal. That was error, even under Third Circuit precedent. *See, e.g., Lum v. Bank of Am.*, 361 F.3d 217, 222 (3d Cir. 2004) (The "District Court improperly took judicial notice of Hing Lum's deposition testimony in a prior proceeding that he understands that the term prime rate does not mean the lowest rate available to a bank's most creditworthy customers. While a prior judicial opinion constitutes a public record of which a court may take judicial notice, it may do so on a motion to dismiss only to establish the existence of the opinion, not for the truth of the facts asserted in the opinion. Thus, 'a court that examines a transcript of a prior

proceeding to find facts converts a motion to dismiss into a motion for summary judgment.” (quoting *Southern Cross Overseas Agencies, Inc. v. Wah Kwong Shipping Group, Ltd.*, 181 F.3d 410, 427 n. 7 (3d Cir. 1999)).

This Court should use this case to remind lower courts that they are constrained to the complaint and its exhibits when determining whether a defendant is entitled to sovereign immunity. Review is also warranted to give this Court an opportunity to reiterate that immunity determinations are rarely appropriate in response to Rule 12(b)(6) motions, and instead should be resolved via summary judgment.

II. This Court should review this case to assess whether court-appointed receivers deserve the same immunity afforded to judges.

In addition to the Third Circuit’s decision in this case, many lower courts have concluded that absolute judicial immunity applies to court-appointed receivers in § 1983 cases. *See, e.g., New Ala. Dev. Corp. v. Guetschow*, 869 F.2d 1298, 1303 (9th Cir. 1989); *Moses v. Parwatikar*, 813 F.2d 891, 893 (8th Cir. 1987); *Property Mgmt. & Inv., Inc. v. Lewis*, 752 F.2d 599, 602-03 (11th Cir. 1985); *Boullion v. McClanahan*, 639 F.2d 213 (5th Cir. 1981); *Ashbrook v. Hoffman*, 617 F.2d 474, 476 (7th Cir. 1980); *T & W Inv. Co. v. Kurtz*, 588 F.2d 801, 802 (10th Cir. 1978); *Kermit Contr. v. Banco Credito Y Ahorro Ponceno*, 547 F.2d 1, 2-3 (1st Cir. 1976); *Bradford Audio Corp. v. Pious*, 392 F.2d 67, 72-73 (2d Cir. 1968). But as with the Third Circuit’s decision in this case, these courts have failed to analyze

whether the receivers performed a judicial act subject to the protections of the judicial process.

This analysis reveals that receivers should not typically qualify for absolute immunity. Like Mr. Fineman in this case, receivers traditionally investigate property ownership, run businesses and agencies, and sell assets. None of these activities are normally performed by judges within the expectations of the parties and none are constrained by the protections of the judicial process. The Fifth Circuit's decision in *Davis v. Bayless*, 70 F.3d 367, 369 (5th Cir. 1995), provides an eye-opening example of the erroneous extension of judicial immunity to receivers.

In *Bayless*, a doctor found liable in a malpractice action failed to pay the judgment. The court appointed a receiver to seize assets to satisfy the judgment. Allegedly acting as the agent for the receiver, the attorney for the judgment-creditor searched the home of the doctor's girlfriend and her daughter, rifled through her underwear, and read her personal mail. He left the home with several pairs of her underwear. *Id.* at 372. The receiver and attorney also searched the girlfriend's leased storage unit, seizing her family jewelry and an oil painting. The receiver and lawyer contended that the searches and seizures were authorized by the receiver's appointment to take possession of non-exempt property and by the court's orders authorizing the searches. These women were not parties in the receivership proceeding and received no notice that an order allowing the search of their property had been issued.

The Fifth Circuit held that the receiver, but not the attorney, was entitled to absolute immunity derived from the appointing court's judicial immunity. *Id.* at 373-75. The court found that since the court appointing the receiver and authorizing the search did not act in the "clear absence of all jurisdiction," absolute judicial immunity applied. *Id.* at 374. As a result, the receiver who was acting under the court's authority was entitled to derivative immunity. But it denied this derivative immunity to the creditor's attorney who acted as a private party seeking to satisfy her client's judgment.

In extending immunity to the receiver, the court disregarded the functional approach to judicial immunity that requires a judicial act subject to procedural protections. See Margaret Z. Johns, *A Black Robe is Not a Big Tent: The Improper Expansion of Absolute Judicial Immunity to Non-Judges in Civil-Rights Cases*, 59 SMU L. Rev. 265, 291. Rather, the court held that so long as the judge who appointed the receiver enjoyed judicial immunity, the receiver did as well. But this conclusion ignores the distinct functions they performed. Certainly searching private premises and confiscating personal property are not acts normally performed by a judge, nor are such acts within the expectation of the parties. The conduct does not involve the resolution of disputes and the procedural safeguards of the courtroom are not present at the plaintiff's storage locker and private home, where there is no judge, no counsel, no record, and no appellate review. *Id.* at 291-92.

Rather than extending absolute judicial immunity to court-appointed receivers, the courts should follow the Supreme Court’s admonition that judicial immunity be limited to the core decision-making function. *Id.* at 292. Other functions, albeit essential to the administration of justice, enjoy only qualified immunity. *Id.* Perhaps the most apt example of this limiting principle is this Court’s decision in *Ex parte Virginia*, 100 U.S. 339 (1880). In *Ex parte Virginia*, the Court considered whether a state-court judge enjoyed judicial immunity from criminal liability for racial discrimination in jury selection in violation of a civil-rights act passed shortly after the Civil War along with § 1983. The judge claimed that jury selection was a judicial act and therefore he was immune from liability. Certainly, jury selection is integral to the judicial process and essential to the administration of justice. But the Court rejected this argument, finding that jury selection was not a judicial act. *Id.* at 348. As the Court explained, jury selection could be performed by a private person as well as a judge. The Court drew the analogy to “a sheriff holding an execution, in determining upon what piece of property he will make a levy.” *Id.* This analogy is a close fit to the function of a court-appointed receiver, charged with locating, managing, and selling assets. These are administrative, not judicial functions, and therefore should enjoy only qualified immunity.

The Third Circuit’s analysis in this case reveals that—like most federal appellate decisions extending absolute immunity to receivers—the Third Circuit did not assess the nature of Mr. Fineman’s behavior that Ms. Trinh alleged as the basis for her § 1983 action.

Instead, the Third Circuit simply concluded that because Mr. Fineman was appointed by the court and “was acting in all relevant respects at the court’s request,” he was entitled to the same absolute immunity afforded to judges. App. 8. This Court should review this case to explain that a court-appointed receiver is not entitled to judicial immunity simply because the receiver is court-appointed, and that instead, the judicial immunity question should be resolved based on the nature of the acts committed by the receiver.

CONCLUSION

For the foregoing reasons, this Court should grant Ms. Trinh’s petition and reverse the Third Circuit’s opinion.

Respectfully submitted on this 22nd day of December, 2021,

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