

App. No. 21A 804

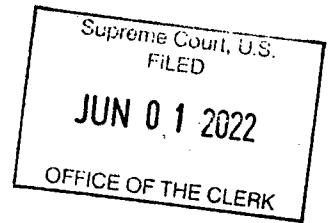
RECEIVED
SUPREME COURT OF THE UNITED STATES

IN THE SUPREME COURT OF THE UNITED STATES

LIN OUYANG,

Petitioner,

v.



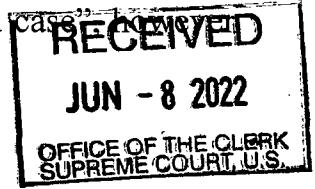
MARK A. BORENSTEIN et al.

Respondents

**APPLICATION TO THE HONORABLE ELENA KAGAN FOR
AN EXTENSION OF TIME TO FILE A PETITION FOR A WRIT
OF CERTIORARI TO THE NINTH CIRCUIT COURT OF
APPEALS**

**TO THE HONORABLE ELENA KAGAN, ASSOCIATE JUSTICE OF THE
SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR
THE NINTH CIRCUIT:**

Pursuant to this Court's Rule 13.5, Petitioner Lin Ouyang ("Petitioner") respectfully requests an extension of time to and including August 15, 2022, within which to file a petition for a writ of certiorari in this case. On March 18, 2022, Court of Appeals for the Ninth Circuit dismissed Petitioner's appeal as frivolous and stated that "No further filing will be entertained in this closed case."



the court of appeals did not order issuance of its mandate forthwith. (See Exhibit A). Petitioner timely filed a motion for reconsideration seeking reversal of the court of appeals' dismissal order. On April 27, 2022, the court of appeals struck the motion for reconsideration refusing to rule it. (See Exhibit B).

It is unsettled whether a court of appeals reached a genuine final judgment under 28 USC §2101 (c) and this Court's Rule 13.3 when a timely filed motion for reconsideration was stricken. Petitioner raised the same question in her petitions for a writ of mandamus, Nos. 21-7634 (US) and 21-7882 (US), which are pending for this Court's ruling. If this Court decides that the court of appeals reached a final judgment when it dismissed an appeal with a statement "No further filing will be entertained", March 18, 2022 in this case, petition for a writ of certiorari would be due on June 16, 2022 absent an extension of time; if this Court decides that the court of appeals reached a final judgment when it struck a timely motion for reconsideration, April 27, 2022 in this case, petition for a writ of certiorari would be due on July 26, 2022 absent an extension of time; if this Court decides that no final judgment is reached when a timely filed motion for reconsideration is stricken, no petition for a writ of certiorari would be due and Petitioner's petition for a writ of certiorari would be treated as a petition for a writ of mandamus. Under any of these possible rulings, this application is filed at least ten days before a possible due date and the length of extension requested is less than or equal to 60 days.

The jurisdiction of this Court will be invoked under 28 U.S.C. §1254(1) or, in the alternative, 28 U.S.C. §1651.

1. Petitioner filed a civil right suit in US District Court for the Central District of California alleging that California's enforcement of judgment law violates judgment debtors' Due Process procedural right under the Fourteenth Amendment because it does not provide judgment debtors a notice of right to claim exempt properties prior to issuance of a turnover order. The lawsuit is against a California Superior Court judge in his official capacity for his role in enforcement of the unconstitutional law. (See Exhibit C).

2. District Court denied Petitioner's request to proceed in forma pauperies and dismissed the complaint finding no constitutional violations. In deciding whether the state statute violates judgment debtors' Due Process procedural right under the Fourteenth Amendment, District Court did not apply the balancing test announced in *Mathews v. Eldridge*, 424 U.S. 319 (1976) and did not follow the well settled principle that that a temporary, nonfinal deprivation of property is a "deprivation" in the terms of the Fourteenth Amendment, see *Fuentes v. Shevin*, 407 U.S. 67, 85 (1972), instead District Court relied on state court decisions that did not follow federal laws in reaching the decisions of no violations. In addition, District Court found that the complaint was frivolous under 28 USC §1915 because Petitioner was aware of those state courts' decisions. District Court also found that state court

judges were not the proper party defendants. (See Exhibit C).

3. Petitioner filed a timely appeal arguing that the dismissal order should be reversed because none of District Court 's grounds of dismissal is correct. The court of appeals dismissed the appeal as frivolous. The court of appeals did not adopt District Court's ground that the state court judges were not the proper party defendants, and the court of appeals did not state whether it agreed that District Court should be submissive to state courts' decisions on a question of federal law nor did the court of appeals state whether it agreed that the complaint was frivolous because Petitioner was aware of the state courts' decisions of no violations. (See Exhibits A & C). The court of appeals did not find that a petition for rehearing, or petition for writ of certiorari from its conclusion "this appeal is frivolous" would be legally frivolous, neither did the court of appeals order issuance of its mandate forthwith. (See Exhibit A). By stating that "No further filing will be entertained in this closed case", the court of appeals expressed its unwellness to adjudicate the matter of rehearing while Petitioner is permitted to file a motion for reconsideration by the published rules of procedure. (See Exhibit A). *Missouri v. Jenkins*, 495 US 33, 48-49 (1990).

4. Petitioner filed a timely motion for reconsideration raising objections that the court of appeals' decision conflicts with this Court's precedents, e.g. *Marbury v. Madison*, 5 US 137 (1803) and *Murphy v. National Collegiate Athletic Ass'n*,

138 S. Ct. 1461 (2018), if the court of appeals adopted the District Court's decision of refusing to overrule the unconstitutional state statute because a state court has upheld it. If the court of appeals did not adopt the District Court's ground of dismissal, the decision of the court of appeals conflicts with this Court's precedent *Boag v. MacDougall*, 454 U. S. 364 (1982). In either case, this Court's review is warranted if the court of appeals refuses to correct the errors. However, the court of appeals did not deny the motion for reconsideration but struck the motion and evaded from answering the questions whether its decision is erroneous and if so, whether it will modify the judgment and alter the parties' rights. As a result, "there is no "judgment" to be reviewed" by this Court. *Hibbs v. Winn*, 542 U.S. 88, 98 (2004). If a court of appeals is permitted not to adjudicate a rehearing proceeding, which is its duty to do, it would impose an added and unnecessary burden of adjudication upon this Court. *United States v. Healy*, 376 US 75, 80 (1964). Petitioner's petition in this case will raise the same question about the finality of a judgment as her petitions in *In Re Lin Ouyang*, No. 21-7634 (US) and *In Re Lin Ouyang*, No. 21-7882 (US), which are to be ruled by this Court. Accordingly, good cause exists in this case for extension of time.

For the foregoing reasons, Petitioner respectfully requests that the time for filing a petition for a writ of certiorari in this case be extended to and including August 15, 2022.

Respectfully submitted,

Lin Ouyang

Lin Ouyang

Petitioner in pro se

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June 1, 2022

EXHIBITS

Exhibit A: Ninth Circuit's dismissal order. (March 18, 2022)

Exhibit B: Ninth Circuit's order striking filings of motion for reconsideration and motion to recall mandate. (April 27, 2022)

Exhibit C: District Court's order denying request to proceed in forma pauperis.
(May 20, 2021)

EXHIBIT A

FILED

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MAR 18 2022

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

LIN OUYANG,

Plaintiff-Appellant,

v.

MARK A. BORENSTEIN, in his official capacity as Judge of Los Angeles Superior Court; DOES, 1 through 10 inclusive,

Defendants-Appellees.

No. 21-55647

D.C. No. 2:21-cv-03773-SVW-ADS
Central District of California,
Los Angeles

ORDER

Before: SILVERMAN, MILLER, and BUMATAY, Circuit Judges.

The district court certified that this appeal is not taken in good faith and has denied appellant leave to proceed on appeal in forma pauperis. *See* 28 U.S.C. § 1915(a). On June 23, 2021, this court ordered appellant to explain in writing why this appeal should not be dismissed as frivolous. *See* 28 U.S.C. § 1915(e)(2) (court shall dismiss case at any time, if court determines it is frivolous or malicious).

Upon a review of the record and the responses to the court's June 23, 2021 order, we conclude this appeal is frivolous. We therefore deny appellant's motion to proceed in forma pauperis (Docket Entry No. 2) and dismiss this appeal as frivolous, pursuant to 28 U.S.C. § 1915(e)(2).

No further filings will be entertained in this closed case.

DISMISSED.

EXHIBIT B

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

APR 27 2022

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

LIN OUYANG,

Plaintiff-Appellant,

v.

MARK A. BORENSTEIN, in his official capacity as Judge of Los Angeles Superior Court; DOES, 1 through 10 inclusive,

Defendants-Appellees.

No. 21-55647

D.C. No. 2:21-cv-03773-SVW-ADS
Central District of California,
Los Angeles

ORDER

Before: SILVERMAN, MILLER, and BUMATAY, Circuit Judges.

Because the court's March 18, 2022 order dismissing this appeal as frivolous stated that no further filings will be entertained, the Clerk is directed to strike the filings submitted at Docket Entry Nos. 8 and 10.

EXHIBIT C

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JS-6

LIN OUYANG, v. MARK A. BORENSTEIN, et al.,	PLAINTIFF(S)	CASE NUMBER
	DEFENDANT(S)	2:21-03773 SVW(ADS)
ORDER RE REQUEST TO PROCEED <i>IN FORMA PAUPERIS</i>		

IT IS ORDERED that the Request to Proceed *In Forma Pauperis* is hereby GRANTED.

Date

United States Magistrate Judge

IT IS RECOMMENDED that the Request to Proceed *In Forma Pauperis* be **DENIED** for the following reason(s):

<input type="checkbox"/> Inadequate showing of indigency	<input type="checkbox"/> District Court lacks jurisdiction
<input checked="" type="checkbox"/> Legally and/or factually patently frivolous	<input type="checkbox"/> Immunity as to _____
<input type="checkbox"/> Other: _____	

Comments:

Please see attached.

May 20, 2021

Date

/s/ Autumn D. Spaeth

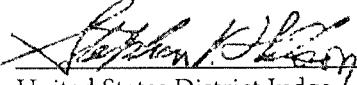
United States Magistrate Judge

IT IS ORDERED that the Request to Proceed *In Forma Pauperis* is hereby:

<input type="checkbox"/> GRANTED
<input checked="" type="checkbox"/> DENIED (see comments above). IT IS FURTHER ORDERED that:
<input type="checkbox"/> Plaintiff SHALL PAY THE FILING FEES IN FULL within 30 days or this case will be dismissed.
<input checked="" type="checkbox"/> This case is hereby DISMISSED immediately.
<input type="checkbox"/> This case is hereby REMANDED to state court.

May 20, 2021

Date


 Stephen H. Wilson
 United States District Judge

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Case No.: 2:21-03773 SVW (ADS) Date: May 20, 2021

Title: *Lin Ouyang v. Mark A. Borenstein, et al.*

ATTACHMENT TO CV-73

On April 30, 2021, pro se Plaintiff Lin Ouyang filed a civil rights Complaint against Judge Mark A. Borenstein of Los Angeles Superior Court. [Dkt. No. 1]. Plaintiff asserts the statutory scheme governing judgment debtor examinations, upheld by Judge Borenstein, denies due process pursuant to the Fourteenth Amendment of the United States Constitution. Plaintiff asserts the provisions regarding exemption of certain types of property from the satisfaction of a monetary judgment (California Code of Civil Procedure §§ 703.140, 704.010 et seq.) violate the Due Process Clause because it does not require that a judgment debtor be informed of the possible exemptions before issuance of a turnover order. See generally [id.]. Plaintiff also claims the statutory scheme is unconstitutional because it does not adequately specify how a judgment debtor may claim an exemption after the order. [Id.]. Plaintiff seeks an injunction requiring the state of California to notify judgment debtors of the right to claim exemptions prior to the issuance of a turnover order and to establish a procedure for claiming exemptions. [Id.]. Plaintiff also seeks a declaration that California's enforcement of judgment law is in violation of the Due Process Clause of the Fourteenth Amendment. [Id.].

Pursuant to 28 U.S.C. § 1915(e)(2), a "court shall dismiss the case at any time if the court determines that . . . the action or appeal — (i) is frivolous or malicious." Plaintiff's complaint is clearly frivolous and must be dismissed. Plaintiff's claim is legally frivolous. A claim is legally frivolous when it lacks an arguable basis in law. Neitzke v. Williams, 490 U.S. 319, 325, 109 S. Ct. 1827, 104 L. Ed. 2d 338 (1989). A claim may accordingly be dismissed as frivolous where it is based on an indisputably meritless legal theory. Neitzke, 490 U.S. at 327.

Plaintiff is well aware that her argument is frivolous. She has already presented this argument to the California Court of Appeals, where her argument was rejected in accord with the reasoning in Imperial Bank v. Pim Electric, Inc., 33 Cal. App. 4th 540, 39 Cal. Rptr. 2d 432 (Cal. App. 1st Dist. March 27, 1995). See Ouyang v. Achem Indus. Am., Nos. B267217, B268195, B269209, B270026, B271357, 2019 Cal. App. Unpub. LEXIS 4427, at *34-35 (June 28, 2019). The Court in Imperial Bank noted the statutory scheme Plaintiff contests mandates that a judgment debtor who is a "natural person"

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Case No.: 2:21-03773 SVW (ADS) Date: May 20, 2021

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must receive a list of the exemptions and be given an opportunity to recover exempt property through a specified motion procedure. 33 Cal. App. 4th at 554. The process at issue requires the levying officer “to serve on the judgment debtor a copy of a writ of execution, a notice of levy, and if the judgment debtor is a natural person, a copy of the form listing exemptions.” Id. (referring to Cal. Code Civ. P. § 700.010). Imperial Bank further describes the process to recover exempt property and determined “appellants and any third parties with interests in the property have ample opportunity to file their claims of exemptions,” and “the statutory framework within which the turnover order was issued safeguards the judgment debtor’s procedural due process rights.” Id. The Court found “no impairment of appellants’ procedural due process rights in the issuance of the turnover order prior to determination of claims of exemption.” Id. at p. 555.

Moreover, judges are “not proper party defendants in § 1983 actions challenging the constitutionality of state statutes.” In re the Justices of the Supreme Court of Puerto Rico, 695 F.2d 17, 22 (1st Cir. 1982). The Ninth Circuit has made clear when a judge acts as an “adjudicator” and applies a state statute, the judge is not a proper defendant in a Section 1983 action challenging the constitutionality of a state law. Wolfe v. Strankman, 392 F.3d 358, 365 (9th Cir. 2004) (citing Grant v. Johnson, 15 F.3d 146, 148 (9th Cir. 1994)); Cunningham v. Coombs, 667 F. App’x 912, 912-13 (9th Cir. 2016) (affirming dismissal of claims against judges because they were not proper parties in a Section 1983 action). Here, Plaintiff is suing a judge solely for his application of California state law. As such, Judge Borenstein is not a proper defendant and the claims against him must be dismissed. See Rupert v. Jones, No. C 10-00721 SI, 2010 U.S. Dist. LEXIS 103108, at *15 (N.D. Cal. Sep. 29, 2010).

It is clear the deficiencies with this Complaint cannot be cured. Moreover, in the course of less than a year, Plaintiff has filed three separate complaints challenging decisions made by state court officials in relation to her various legal entanglements. Plaintiff has also filed numerous plainly frivolous, post-dismissal actions and has been repeatedly denied leave to appeal *in forma pauperis* as she continually files appeals that are not taken in good faith, are frivolous, and do not present a substantial question. Plaintiff does not have a federal cause of action simply because she disagrees with a decision made in state court.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Case No.: 2:21-03773 SVW (ADS) Date: May 20, 2021

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The Court accordingly recommends that the IFP application be denied and the case dismissed without leave to amend.