CASE NO: 22-322

# IN THE SUPREME COURT OF THE UNITED STATES

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ZIA SHAIKH,

*Petitioner*

v.

MADELINE F EINBINDER J.S.C
MARLENE L FORD A.J.S.C
JOHN S. DORAN J.S.C
DEBORAH H. SCHRON J.S.C
FRANCIS HODGSON J.S.C
LISA P. THORTON A.J.S.C

*(All under individual and official capacities)*

*Defendants*

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*ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT*

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## PETITION FOR WRIT OF CERTIORARI

**Zia Shaikh**
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**(Pro Se Petitioner)**

## QUESTIONS PRESENTED FOR REVIEW

## CASE BRIEF

The Petitioner filed in the United States District Court of New Jersey CIVIL CASE NO.: 3:2020-cv-02540 BRM-DEA against the Defendant Judges for the following Constitutional Violations as follows: (1) VIOLATIONS OF 42 USC 1981, 1983,1985,1986 and 1988, against Defendants Einbinder, Ford, Doran, Schron, Hodgson and Thorton (2) Violations of the Fourth, Fourteenth and Eight Amendments to the Constitution of the United States against Defendants Einbinder, Ford, Doran, Schron, Hodgson, and Thorton.

The Defendants in this instant case have performed quasi- judicial acts and are subject to personal liability for their actions and Constitutional Violations. The complaint of the Petitioner involves the tortious acts of various state judges' action as judicial administrators under the color of state law. They have for years been violating the Petitioner's rights protected by the United States Constitution and Federal law. They have illegally kidnaped the Petitioner and are guilty of abuse of Process and malicious prosecution in this case.

The United States District Court dismissed Petitioners Second Amendment Complaint and denied his motion for a preliminary injunction on 1st November 2021. Petitioner Appealed from the order dated 1st November 2021 of the United States District Court of New Jersey in CIVIL CASE NO.: 3:2020-cv-02540 BRM-DEA denying appellants civil complaint and motion for preliminary injunction.

The Appellate court (United States Court of Appeals for the Third Circuit) took on file the said Appeal in Case No: 21- 3115 and merely confirmed the Federal District Court Order without any De Nova Review and through a Non-Speaking order dated 3rd May 2022.

The Petitioner aggrieved by the Third Circuit Court order, prefers the instant WRIT OF CERTIORARI before the Honourable US SUPREME COURT.

**1**. Did the Third Circuit err *in not doing a De Nova Review* of the Federal District Court Dismissal Order when the dismissal was pertaining to 28 USC 28 USC § 1915 (e)(2) (B) (iii)?

**2.** Did the Third Circuit err in blindly confirming the *District Court Screening Procedures pursuant to 28 USC 28 USC § 1915 (e)(2) (B)* when the issue was pertaining to Judicial Immunity of Judges?

**3.** Did the Third Circuit err in sightlessly confirming the District Court Dismissal Order when it merely stated *"relief sought by Shaikh in the district Court does not concern actions by the defendants taken outside of their judicial capacity"* without any analysis or speaking order or doing a De Nova Review of any of the factual violations of Defendants detailed in the Petitioners complaint?

**4.** Did the Third Circuit err in thoughtlessly confirming without any analysis or through a speaking order when it interpreted *Mireles V. Waco 502 U.S.9 ( 1991)* and merely stated *"In Mireles, the Supreme Court held that judges do not have immunity for" nonjudicial actions" or "actions taken in complete absence of all*

*jurisdiction". We agree with the District Court that neither exception applies here and that the defendants were entitled to judicial immunity"?*

5. Did the Third Circuit *intentionally fail in conveniently not speaking or deciding upon* the Appellants following specific statements of issues under Appeal such as:

(1) *Is it a violation of the Fist Amendment right of speech ( right to petition), 42USC 1981 (right to sue, vie evidence, to be parties to suits), the 14th Amendment right (due process) and access to the courts, even if the person has been determined vexatious by a State Court, in particularly as in this case.*

*(a) US Citizens are determined as vexatious by fraud and conspiracy*

*(b) If US citizen's civil cases are not being evaluated properly and thus his or her access to courts are wrongfully denied, restricting their ability to sue*

*(c) If appellate courts have refused to accept US Citizens petitions because he or she has been wrongfully determined as a vexatious litigant*

*(2) Whether the vexatious litigant statutes should be outlawed as unconstitutional, offensive to due process, and fair play, and or a tool that is used by defense attorneys and judges to abuse non-lawyers, violate their rights and win cases for the defense?*

6. Did the Third Circuit *deceptively take the shield of Judicial Immunity in order to illegally save the errant Judicial Defendants from a rightful Pro Se litigant when it conveniently failed to speak or decide* upon the Appellants following specific statement of issues under Appeal such as:

*(1) Whether the NJ Federal District Court manifestly failed to notice and consider the Defendant Judge Frances Hodgson denied the FEE WAIVER order, after granting the same earlier in the day and to legally construe it as an ADMINISTRATIVE ACT, which caused Plaintiff's home to be lost to Sheriff sale/foreclosure on Sep 19. 2019.*

*(2) Whether the NJ Federal District Court, miserably failed to notice and consider that all [CHILD SUPPORT ORDERS] family court orders against the Plaintiff were completely without any jurisdiction, since they directly violate the US Constitutional laws and US Supreme Court Cases as referenced in Plaintiff's Complaint.*

7. Whether the Third Circuit *deliberately failed to note the legality of Motion for Preliminary Injunction filed by the Petitioner against the Bench Warrant* issued against him by Defendant DORAN AND EINBINDER and the legality of *Preliminary Injunction sought by Petitioner to vacate the Vexatious Litigant Order* issued against him by Defendant Ford, when it conveniently stated in its order *"Shaikh argues that he will suffer irreparable harm without a preliminary injunction but does not specify what injunctive relief he is requesting or explain why he is entitled to such relief"* ?

## PARTIES TO PROCEEDING AND RELATED CASES

- SHAIKH v. EINBINDER et al, No: 3:20-CV-02540-ZNQ-TJB, U.S. District Court for the Eastern District of New Jersey. Filed Mar. 09,2020
- SHAIKH v. EINBINDER et al, Amended Complaint(s) No: 3:20-CV-02540-ZNQ-TJB, U.S. District Court for the Eastern District of New Jersey. Judgment entered Nov. 01,2021
- SHAIKH v. EINBINDER et al, No. 21-3115, U.S. Court of Appeals for the Third Circuit. Judgment entered May 03, 2022.

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## APPENDIX OF DOCUMENTS SUBMITTED BY THE PETITIONER

**APPENDIX "A"** **May 03, 2022, ORDER and OPINION** by 3rd circuit Court of Appeals, dismissing the Appeal filed by the Petitioner

**APPENDIX "B"** **Nov' 01, 2021 District court ORDER** of Dismissal of the Petitioner's Complaint by the United States District Court New Jersey in case No: 3:20-CV-02540-ZNQ-TJB.

**APPENDIX "C."** Original Complaint of the Petitioner filed at the United States District Court, New Jersey in case No: 3:20-CV-02540-ZNQ-TJB

**APPENDIX "D"** Amended Complaint(s) of the Petitioner filed at the United States District Court, New Jersey in case No: 3:20-CV-02540-ZNQ-TJB

**APPENDIX "E"** Appeal filed by the Petitioner against the order of the Federal District Court before the Court of Appeals of Third Circuit

## TABLE OF AUTHORITIES

## I. PETITION FOR WRIT OF CERTIORARI

Zia Shaikh petitions the Court for a writ of certiorari to review the judgement of the United States Court of Appeals for the Third Circuit.

## II. OPINIONS BELOW

The Third Circuit's unpublished opinion dismissing the Petitioners Appeal is attached as Appendix. The District Courts order dismissing the Petitioners Second Amendment Complaint and Preliminary Injunction is attached as Appendix.

## III. JURISDICTION

The Third Circuit entered judgment on May, 3, 2022. See Appendix, This petition is timely filed pursuant to Supreme Court rule 13.1. This Court has jurisdiction under 28 USC S.1254(1).

## IV. STATUTORY PROVISIONS INVOLVED

- Provisions of 42 USC 1981, 1983,1985,1986 and 1988
- Provisions of the Fourth, Fourteenth and Eight Amendments to the Constitution of the United States
- Provisions of 28 USC 1915 ( e ) (2)( B) and 28 USC 1915 ( e ) (2)( B) ( iii)

## V. STATEMENT OF FACTS

The Petitioner filed in the United States District Court of New Jersey CIVIL CASE NO.: 3:2020-cv-02540 BRM-DEA against the Defendant Judges for the following Constitutional Violations as follows:

### COUNT ONE VIOLATIONS:

### VIOLATIONS OF 42 USC 1981, 1983,1985,1986 and 1988, against Defendants Einbinder, Ford, Doran, Schron, Hodgson and Thorton:

Section 1983 enables persons whose constitutional rights have been violated to sue the wrongdoer personally for redress. In the typical case, liability will attach if (1) the defendant has acted "under the color" of state law and (2) the defendant's action deprived the plaintiff of some right, privilege, or immunity secured by the Constitution (or federal "laws"). Unconstitutional behaviour of state actors taken in the course of employment can potentially subject them to personal liability under Section 1983. Although private actors, in contrast to governmental actors, ordinarily cannot violate the Constitution because they do not engage in "state action", they sometimes may be liable under S. 1983 when they act in concert with officials or when their acts are otherwise fairly attributable to the government as is the case here.

The Defendants in this instant case have performed quasi- judicial acts and are subject to personal liability for their actions. The Defendants named herein should be required to obtain personal counsel in this claim and should not be permitted to use the office of the New Jersey or the United States attorney general.

This complaint involves the tortious acts of various state judges' action as judicial administrators under the color of state law. They have for years been violating the Plaintiff's rights protected by the United States Constitution and Federal law. They have illegally kidnaped the Petitioner, JAILED PLA' MULTIPLE TIMES; REFUSE TO VACATE AN OUTSTANDING BENCH WARRANT WHILE BEING CHALLENGED FOR SUBJECT MATTER AND INPERSONAM JURISDICTION and are guilty of abuse of Process and malicious prosecution in this case.

The Relevant Count I Violations of all the Defendants have been clearly explained and documented by the Petitioner in his Federal District Court Petition as follows:

- **Madelne E. Einbinder- Pages 4 to 7- Exhibits 1 to 4**
- **Marline E Ford- Pages 9 to 10- Exhibits 5 to 6**
- **John S. Doran- Pages 11 & 12**
- **Deborah H. Schron- Pages 12 & 13- Exhibits 7 to 9**
- **Francis Hodgson- Pages 13 & 14- Exhibits 10 to 11**
- **Lisa P. Thorton- Pages 14 & 15**

**COUNT TWO VIOLATIONS:**

**Violations of the Fourth, Fourteenth and Eight Amendments to the Constitution of the United States against Defendants Einbinder, Ford, Doran, Schron, Hodgson, and Thorton.**

The Fourth Amendment of the US Constitution provides that "the right of the people to be secure in their persons, houses, papers and effects, against

unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause supported by Oath or affirmation.

The Fourteenth Amendment of the United States Constitution states that: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The Relevant Count II Violations of all the Defendants have been clearly explained and documented by the Petitioner in his Federal District Court Petition as follows:

- **Madelne E. Einbinder- Page 16- Paras 59 to 60**
- **Marline E Ford- Pages 16 to 19- Paras 63 to 72**
- **John S. Doran- Page 19- Para 73**
- **Deborah H. Schron- Pages 19 & 20- Para 74**
- **Francis Hodgson- Page 20- Para 75 & 76**
- **Lisa P. Thorton- Pages 20 & 21- Para 77**

The United States District Court dismissed Petitioners Second Amendment Complaint and denied his motion for a preliminary injunction on 1st November 2021. Petitioner Appealed from the order dated 1st November 2021 of the United States District Court of New Jersey in CIVIL CASE NO.: 3:2020-cv-02540 BRM-DEA denying appellants civil complaint and motion for preliminary injunction.

The Appellate court (United States Court of Appeals for the Third Circuit) took on file the said Appeal in Case No: 21- 3115. The violations and constitutional violations of the Defendant Judges were clearly referenced by the Petitioner before the Third Circuit Appellate Court as follows:

- **DEFENDANT JUDGE EINBINDER'S NON-JUDICIAL ACTS** *[ Referenced in Pages 15 to 19 of the Courts of Appeals, Third Circuit in Case No: 21-3115]*
- **DEFENDANT JUDGE MARLENE L. FORD'S NON-JUDICIAL ACTS** *[ Referenced in Pages 19 to 25 of the Courts of Appeals, Third Circuit in Case No: 21-3115]*
- **DEFENDANT JUDGE JOHN S. DORAN'S NON-JUDICIAL ACTS** *[ Referenced in Pages 25 to 27 of the Courts of Appeals, Third Circuit in Case No: 21-3115]*
- **DEFENDANT JUDGE- DEBORAH H. SCHRON'S NON-JUDICIAL ACTS** *[ Referenced in Pages 27 to 29 of the Courts of Appeals, Third Circuit in Case No: 21-3115]*
- **DEFENDANT JUDGE -FRANCES HODGSON'S NON-JUDICIAL ACTS** *[ Referenced in Pages 29 to 30 of the Courts of Appeals, Third Circuit in Case No: 21-3115]*
- **DEFENDANT JUDGE- LISA P. THORTON'S NON-JUDICIAL ACTS** *[Referenced in Pages 30 to 32 of the Courts of Appeals, Third Circuit in Case No: 21-3115]*

In spite of the clear references of the Defendants Violations the Third Circuit Appellate Court merely confirmed the Federal District Court Order without any De Nova Review and through a Non-Speaking order dated 3rd May 2022.

The Petitioner aggrieved by the Third Circuit Court order, prefers the instant WRIT OF CERTIORARI before the Honourable US SUPREME COURT.

## VI. LEGAL ARGUMENTS

### A. VEXATIOUS DISMISSALS UNDER 28 USC 28 USC § 1915 (e)(2) (B) MANDATES DE NOVA REVIEW

Denial of qualified or absolute immunity. Reviewed de novo. *Jones v. Cannon, 174 F.3d 1271, 1281 (11th Cir. 1999).* Questions of sovereign immunity. Reviewed de novo. *Tamiami Partners, Ltd. v. Miccosukee Tribe,* 177 F.3d 1212, 1224 (11th Cir. 1999).See, *e.g., Ruiz v. United States, 160 F.3d 273, 274-75 (5th Cir. 1998) (holding that de novo standard applies to § 1915A dismissals); Liner v. Gourd, 196 F.3d 132, 134 (2d Cir. 1999) (holding that de novo standard applies to § 1915A and § 1997e(c)(2) dismissals). In Peabody v. Ziaket, 194 F.3d 1317, 1999 WL 731360, at *1 (9th Cir. 1999) (unpublished table decision), the court applied de novo review to a dismissal under "§ 1915(e)(2)(B)(i)-(iii)," butcited to a case which concerned review of a dismissal under § 1915(e)(2)(B)(ii). See Peabody, 1999 WL 731360, at *1 (citing Barren v. Harrington, 152 F.3d 1193, 1194 (9th Cir. 1998), cert. denied, 525 U.S. 1154 (1999)).*

The Appellate court must ascertain whether the district court properly dismissed the complaint in compliance with § 1915(e)(2) and § 1915A, we conclude that our determination involves a question of law which requires de novo review. See *United States v. Khalife, 106 F.3d 1300, 1302 (6th Cir. 1997). Thus, as with Rule 12(b)(6) dismissals, dismissals under § 1915(e)(2)(B)(ii), § 1915A(b), or § 1997e(c) for failure to state a claim should be reviewed de novo. The following case hold that a dismissal under § 1915(e)(2)(B)(ii) is reviewed de novo: DeWalt v. Carter, 224 F.3d 607, 611-12 (7t' Cir. 2000); Moore v. Sims, 200 F.3d 1170, 1171 (8th Cir. 2000); Tourscher v. McCullough, 184 F.3d 236, 240 (3d Cir. 1999); Harper v. Showers, 174 F.3d 716, 718 n.3 (5th Cir. 1999); Perkins v. Kansas Dep't of Corrections, 165 F.3d 803, 806 (10th Cir. 1999).*

## B. DE NOVO REVIEW FOR DISMISSAL ON IMMUNITY GROUNDS UNDER 28 USC § 1915(e)(2)(B)(iii)

District court decisions concerning the sovereign immunity of the United States, individual states, and other sovereign entities have long been reviewed de novo as determinations of law. The issue of whether sovereign immunity bars a claim against the United States has been held to be an issue of law requiring de novo review. *See, e.g., Koehler v. United States, 153 F.3d 263, 265 (5th Cir. 1998); United States v. $515,060.42, 152 F.3d 491, 504 (6th Cir. 1998); Research Triangle Inst. v. Board of Governors of Fed. Reserve Sys., 132 F.3d 985, 987 (4th Cir. 1997);*

The issue of whether sovereign immunity bars a claim against the United States has been held to be an issue of law requiring de novo review. *See, e.g., Koehler v.*

*United States, 153 F.3d 263, 265 (5th Cir. 1998); United States v. $515,060.42, 152 F.3d 491, 504 (6th Cir. 1998); Research Triangle Inst. v. Board of Governors of Fed. Reserve Sys., 132 F.3d 985, 987 (4th Cir. 1997); Mesa v. United States, 1323 F.3d 1435, 1437 (11th Cir. 1997); Hodge v. Dalton, 107 F.3d 705, 707 (9th Cir. 1997); United States, 89 F.3d 53, 57 (2d Cir. 1996)(treating sovereign immunity of United States as subject matter jurisdiction issue and stating that when re- viewing Rule 12(b)(1) subject matter jurisdiction decision, factual findings are reviewed for clear error and legal conclusions are reviewed de novo).*

The issue of whether Eleventh Amendment immunity bars a claim also has been held to be an issue of law requiring de novo review. *See, e.g., ANR Pipeline Co. v. Lafaver, 150 F.3d 1178, 1186 (loth Cir. 1998); Ussery v. Louisiana, 150 F.3d 431,434 (1Ith Cir. 1998); Goshtasby v. Board of Trustees of Univ. of Ill., 141 F.3d 761, 764 (7th Cir. 1998); Blanciak v. Allegheny Ludlum Corp., 77 F.3d 690, 694 (3d Cir. 1996).*

Likewise, district court decisions concerning the absolute or qualified immunity of individual defendants are also reviewed de novo. *For opinions finding de novo review appropriate for absolute immunity decisions, see, e.g., Martin v. Hendren, 127 F.3d 720, 721 (8th Cir. 1997)(absolute immunity in general); Roberts v. Kling, 104 F.3d 316, 319 (10th Cir. 1997)(prosecutorial immunity); Moore v. Brewster, 96 F.3d 1240, 1243 (9th Cir. 1996)(judicial immunity); See also Elder v. Holloway, 510 U.S. 510, 516 (1994) ("Whether an asserted federal right was clearly established at a particular time, so that a public official who allegedly violated the right has no qualified immunity from suit, presents a question of law, not one of*

*'legal facts.' . . . That question of law, like the generality of such questions, must be resolved de novo on appeal.").*

Since there is no indication Congress wished to alter this practice, it is recommended that immunity-based dismissals **under § 1915(e)(2)(B)(iii),** § 1915A(b), and § 1997e(c) also be reviewed de novo.

## C. PROCEDURES FOR SCREENING AND DISMISSING CASES PURSUANT TO 28 USC § 1915(e)(2)(B)(iii)

The Standards for Determining Whether an Action is Frivolous or Fails to State a Claim under **28 USC. 1915 (e) (2) (B)**

Frivolous Actions- The same frivolousness test applies to both informapauperis actions and fee-paid actions. [*See Coppedge v. United States, 369 U.S. 438, 446-47 (1962); Pillay v. INS, 45 F.3d 14, 17 (2d Cir. 1995); see also Ellis v. United States, 356 U.S. 674, 675 (1958) ("Unless the issues raised are so frivolous that the appeal would be dismissed in the case of a nonindigent litigant, FED. RULES CRIM. PROC. 39(a), the request of an indigent for leave to appeal in forma pauperis must be allowed.")*

As noted by the Supreme Court in *Coppedge v. United States,* application of the same frivolousness test to both types of actions simply reflects the obligation of the courts to assure to the greatest degree possible, within the statutory framework for [actions] created by Congress, equal treatment for every litigant before the bar.... The point of equating the test for allowing a pauper's [action]to the test for dismissing paid cases, is to assure equality of consideration for all

litigants. [Id. at 446-47. Although the Court was discussing informa pauperis appeals, its language is equally applicable to actions proceeding in forma pauperis in district courts. As noted although Coppedge required equal treatment of in forma pauperis and fee-paid litigants, in Neitzke, the Supreme Court found special treatment for informa pauperis applicants justified since those litigants do not have the same economic incentive as paying litigants to refrain from filing frivolous, malicious or repetitive lawsuits. *See Nietzke, 490 U.S. at 324.* However, Neitzke does not state that different frivolousness tests apply to in forma pauperis and fee-paid litigants and does not prevent a fee-paid litigant's case from being reviewed for possible frivolousness. In fact, the Neitzke decision states that it is intended to further the goal of assuring equality between all litigants, as previously articulated in Coppedge. See id. at 329.

An action may be dismissed as frivolous if "it lacks an arguable basis either in law or in fact." Factual allegations which are "clearly baseless" include those which "describe fantastic or delusional scenarios," those which are "fanciful, and those which "rise to the level of the irrational or the wholly incredible. However, an action may not be dismissed as frivolous simply because the plaintiff's allegations are unlikely or improbable. Moreover, in making a frivolousness determination, the assessment of the plaintiffs' factual allegations "must be weighed in favor of the plaintiff' and must not "serve as a factfinding process for the resolution of disputed facts.

## D. NO JUDICIAL IMMUNITY FOR JUDGES FOR THEIR NON-JUDICIAL, ADMINSTRATIVE, EXCESSIVE AND CLEAR ABSENCE OF JURISDICTION AND COURT SHOULD SEPARATE SUCH ACTS FROM JUDICIAL ACTS AND REFRAIN ANY JUDICIAL IMMUNITY:

A judge, of whatever status in the judicial hierarchy, is immune from suit for damages resulting from any act performed in the judicial role. Supreme Court of *Virginia v. Consumers Union, 446 U.S. 719, 734, 100 S.Ct. 1967, 1976, 64 L.Ed.2d 641, 655 (1980). This immunity extends to Justices of the Peace as well as those who sit on the Supreme Court, Turner v. Raynes, 611 F.2d 92 (5th Cir.) cert. denied, 449 U.S. 900, 101 S.Ct. 269, 66 L.Ed.2d 129 (1980), and shields judges unless they act either in "the clear absence of all jurisdiction over the subject matter" or in a nonjudicial capacity. Bradley v. Fisher, 80 U.S. (13 Wall.) 335, 351, 20 L.Ed. 646, 651 (1872), quoted in Stump v. Sparkman, 435 U.S. 349, 357, 98 S.Ct. 1099, 1105, 55 L.Ed.2d 331, 339 (1978).*

The Stump Court distinguished between *"excess" and "clear absence"* of jurisdiction by quoting the example given by the Bradley Court. Thus, a criminal court judge who convicts a defendant of a non-existent crime acts in excess of jurisdiction and is absolutely immune. *Stump, 435 U.S. at 357 n. 7, 98 S.Ct. at 1105 n. 7, 55 L.Ed.2d at 339 n. 7; Turner v. Raynes, 611 F.2d at 97. But a probate judge who tries and convicts a defendant of a crime acts in the clear absence of*

*jurisdiction and enjoys no immunity. Stump, 435 U.S. at 357 n. 7, 98 S.Ct. at 1105 n. 7, 55 L.Ed.2d at 339.*

When, however, judicial officers act in a "nonjudicial" capacity, they are not immune from liability for that conduct. See, e.g., Gregory v. Thompson, 500 F.2d 59 (9th Cir. 1974). If on occasion their acts involve both judicial and nonjudicial conduct, the unprotected behaviour must be separated from the shielded and judges are liable for the acts that were not judicial. *Crowe v. Lucas, 595 F.2d 985, 990 (5th Cir. 1979). See also Lopez v. Vanderwater, 620 F.2d 1229, 1235 (7th Cir.), cert. denied, 449 U.S. 1028, 101 S.Ct. 601, 66 L.Ed.2d 491 (1980); Harris v. Harvey, 605 F.2d 330, 336 (7th Cir. 1979), cert. denied, 445 U.S. 938, 100 S.Ct. 1331, 63 L.Ed.2d 772 (1980); Krueger v. Miller, 489 F. Supp. 321 (E.D.Tenn. 1978), aff'd mem., 617 F.2d 603 (6th Cir. 1980).*

The Supreme Court in Stump identified two factors relevant to determining whether a given act is judicial. First, the act must be of the sort judges ordinarily perform. *Stump, 435 U.S. at 362, 98 S.Ct. at 1107, 55 L.Ed.2d at 342.* Second, the parties must have been dealing with the judge "in his judicial capacity." Id. The circuit in Blackwell's case has refined those criteria into a four-part test. We inquire, in determining the judicial nature of an act, whether: (1) the act complained of is a normal judicial function; (2) the events occurred in the judge's court or chambers; (3) the controversy centered around a case then pending before the judge, and (4) the confrontation arose directly and immediately out of a visit to the judge in his judicial capacity. *See Harper v. Merckle, 638 F.2d 848, 858 (5th Cir.), cert. denied, 454 U.S. 816, 102 S.Ct. 93, 70 L.Ed.2d 85 (1981); McAlester v. Brown, 469 F.2d 1280, 1282 (5th Cir. 1972).*

### A. No Judicial Immunity for "Non-Judicial Acts"

Thus, Absolute judicial immunity is overcome in only two rather narrow sets of circumstances: first, a judge is not immune from liability for non-judicial actions, i.e., actions not taken in the judge's judicial capacity, and second, a judge is not immune for actions, though judicial in nature, taken in complete absence of all jurisdictions. *Mireles v. Waco*, 502 U.S. at 11-12; *Davis v. Tarrant County, Texas*, 565 F.3d at 221; *Ballard v. Wall*, 413 F.3d at 515.

Examination of the cases cited by the Supreme Court in its opinion in *Mireles* illuminates the narrowness of each such exception to the general rule of absolute judicial immunity. As an example of the first exception, i.e., non-judicial actions, the Supreme Court cited in *Mireles* to its opinion in *Forrester v. White*, 484 U.S. 219 (1988), in which it held that a judge was not immune from liability for allegedly having engaged in illegal discrimination when firing a court employee. *Forrester v. White*, 484 U.S. at 225-29. To help define the parameters of the second exception, i.e., actions taken in complete absence of all jurisdictions, the Supreme Court cited to its opinions in *Bradley v. Fisher*, 13 Wall. 335, 351-52 (1872) (in which it discussed a hypothetical situation in which a judge in a probate court with limited statutory jurisdiction attempted to try parties for public criminal offenses), and *Stump v. Sparkman*, 435 U.S. 349, 357 n.7 (1978) (in which the Supreme Court held a state judge presiding over a court of general jurisdiction absolutely immune from liability for issuing an order permitting a mother to sterilize her somewhat retarded fifteen year old daughter, despite the fact the judge had arguably violated state statutes relating to the sterilization of minors and incompetent persons in so doing).

**B. So, how does a judge establish these two elements?**

**(I) Judicial Act**

Whether an act is judicial (or nonjudicial) is determined by the nature of the act, i.e., whether it is a function normally performed by a judge, as contrasted from other administrative, legislative, or executive acts that simply happen to be done by judges. *Forrester v. White*, 484 U.S. 219, 227, 98 L. Ed. 2d 555, 108 S. Ct. 538 (1988). Nonjudicial acts include other tasks, even though essential to the functioning of courts and required by law to be performed by a judge, such as making personnel decisions regarding court employees and officers. *Twilligear v. Carrell*, 148 S.W.3d 502, 504-505 (Tex. App. Houston 14th Dist. 2004)

**The focus is on the nature of the function performed, not the identity of the actor.** *Delcourt v. Silverman*, 919 S.W.2d 777, 782 (Tex. App. Houston 14th Dist. 1996); *Forrester v. White*, 484 U.S. 219, 230, 108 S. Ct. 538, 545-46, 98 L. Ed. 2d 555 (1988)). Judges have absolute immunity for their judicial acts "unless such acts fall clearly outside the judge's subject-matter jurisdiction." *Spencer v. City of Seagoville*, 700 S.W.2d 953, 957-58 (Tex. App.—Dallas 1985, no writ);

*Thus, in determining whether absolute judicial immunity applies, courts look to a two-part inquiry:* ***First,*** *were the acts "judicial" ones?* ***Second,*** *were those acts "clearly outside" the judge's jurisdiction? Brandt v. West, 892 S.W.2d 56, 66-67 (Tex. App. Houston 1st Dist. 1994).*

**(II) Within Judge's Jurisdiction:**

In determining whether an act was clearly outside a judge's jurisdiction for judicial immunity purposes, the **focus is not on whether the judge's specific act was**

**proper or improper, but on whether the judge had the jurisdiction necessary to perform an act of that kind in the case.** See *Mireles v. Waco*, 502 U.S. 9, 112 S. Ct. 286, 289, 116 L. Ed. 2d 9 (1991) (where judge was alleged to have authorized and ratified police officers' use of excessive force in bringing recalcitrant attorney to judge's courtroom, and thus to have acted in excess of his authority, his alleged actions were still not committed in the absence of jurisdiction where he had jurisdiction to secure attorney's presence before him);

In order to reach this second circumstance, a judge must proceed in an area where it is clear he cannot act. See *Brewer v. Blackwell, 692 F.2d 387, 397 (5th Cir. 1982)* (state court judge making an invalid arrest).

The Stump Court distinguished between "excess" and "clear absence" of jurisdiction by quoting the example given by the Bradley Court. Thus, criminal court judge who convicts a defendant of a non-existent crime acts in excess of jurisdiction and is absolutely immune. *Stump, 435 U.S. at 357*, 98 S.Ct. at 1105, 55 L.Ed.2d at 339; Turner v. Raynes, 611 F.2d at 97. But a probate judge who tries and convicts a defendant of a crime acts in the clear absence of jurisdiction and enjoys no immunity. *Stump, 435 U.S. at 357*, 98 S.Ct. at 1105, 55 L.Ed.2d at 339;

**C. No Judicial Immunity- In "Clear absence of all Jurisdictions"**

Although judges usually are immune from suits for damages based on their judicial conduct, a judge who acts "in the clear absence of all jurisdictions" is not entitled to absolute immunity. *See Stump v. Sparkman,* 435 U.S. 349, 356-57, 98 S.Ct. 1099, 55 L.Ed.2d 331(1978) (quoting Bradley v. Fisher, 80 U.S. (13 Wall.)

335, 351,20 L.Ed. 646 ( 1871); *Mullis v. United States Bankr. Court, 828 F.2d 1385,* 1388 (9th Cir. 1987).

By reference to an illustration from Bradley, Stump further distinguished between an "excess of jurisdiction" and "the clear absence of all jurisdictions over the subject matter." Where there is clearly no jurisdiction over the subject-matter any authority exercised is a usurped authority, and for the exercise of such authority, when the want of jurisdiction is known to the judge, no excuse is permissible.

In *Maestri v. Jutkofsky, 860 F.2d 50 (2d Cir. 1988),* the case relied upon by the district court here to reject the immunity defense, we elaborated on the distinction between a judicial act in excess of jurisdiction and an act in the clear absence of jurisdiction: Maestri considered the immunity defense raised by Joseph Jutkofsky, the Town Justice of the Town of Taghkanic, New York. Justice Jutkofsky issued a warrant for the arrest of plaintiffs Maestri and Zook for their conduct in the Town of Germantown, New York. Maestri and Zook sued Justice Jutkofsky, among others, alleging deprivation of their rights pursuant to *42 U.S.C. Section(s) 1983.* The district court dismissed the suit against Justice Jutkofsky on the ground of judicial immunity. This Court reversed, holding that Justice Jutkofsky acted in the clear absence of all jurisdictions and must have known that he was acting in clear absence of all jurisdictions.

**D. No Judicial Immunity- For Administrative Actions:**

Judicial immunity does not apply to purely administrative acts of a judge, such as employment decisions, but there may be qualified immunity in such circumstances, just as for other public officials. *"In the case before us, we think it*

*clear that Judge White was acting in an* ***administrative capacity*** *when he demoted and discharged Forrester. Those acts – like many others involved in supervising court employees and overseeing the efficient operation of a court – may have been quite important in providing the necessary conditions of a sound adjudicative system. The decisions at issue, however, were not themselves judicial or adjudicative. . .. [A] judge who hires or fires a probation officer cannot meaningfully be distinguished from a district attorney who hires and fires assistant district attorneys, or indeed from any other Executive Branch official who is responsible for making such employment decisions." Forrester v. White,* 484 US 219, 229 (1988).

Judicial immunity, however, does not extend to the administrative or executive functions that judges "may on occasion be assigned by law to perform," even if such acts are essential to the very functioning of the courts. Forrester, 484 U.S. at 227–88. Entitlement to judicial immunity depends upon the "scope" of the challenged conduct carried out in the defendant's "administrative capacity[y]."

**E. Filing fee waiver- Administrative Action**

*In Antoine v. Byers & Anderson, Inc., 508 U.S. 429, 432 (1993),* Defendant Anderson's administrative action to enforce OMVH Rules requiring a filing fee is not protected by judicial immunity. Judges are accorded immunity from liability for monetary damages and injunctive relief when engaged in "judicial acts." *Stump v. Sparkman, 435 U.S. 349, 359 (1978); Justice Network Inc. v. Craighead Cty., 931 F.3d 753, 763–64 (8th Cir. 2019).*

Judicial immunity, however, does not extend to the administrative or executive functions that judges "may on occasion be assigned by law to perform," even if such acts are essential to the very functioning of the courts. *Forrester, 484 U.S. at 227–88.* Entitlement to judicial immunity depends upon the "scope" of the challenged conduct carried out in the defendant's "administrative capacity[y]." *Brown v. Reinhart, 760 F. App'x 175, 179 (4th Cir. 2019).* Immunity from suit is "a fact-intensive inquiry that will turn on the record as it develops at least through discovery." While a judge's duty to maintain order in courtroom proceedings is judicial in nature and protected by judicial immunity, the establishment and oversight of policies and procedures for enforcing OMVH Rules concerning filing fees is not.

The Petitioner argue, however, that the following acts were either nonjudicial or were undertaken in the complete absence of jurisdiction, excess of jurisdiction, administrative acts rendering All Defendant Judges liable for their commission of Judicial Violations, Misconducts, Abuse of Process and Conflict of Interest.

## F. THE JUDICIAL DEFENDANTS ARE NOT ENTITLED TO ELEVENTH AMENDMENT SOVERIGN IMMUNITY AND THEY ALL FALL UNDER THE EXCEPTOIN STANDARDS:

***Eleventh Amendment:*** *The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.*

Courts may open their doors for relief against government wrongs under the doctrine that sovereign immunity does not prevent a suit to restrain individual officials, thereby restraining the government as well. *[ See, e.g. Larson v. Domestic and Foreign Corp., 337 U.S. 682 (1949). It should be noted, however, that as a threshold issue in lawsuits against state employees or entities, courts must look to whether the sovereign is the real party in interest to determine whether state sovereign immunity bars the suit.*]

## G. THE LAW OF TORT ACTIONS AGAINST STATE OFFICIALS

*In Tindal v. Wesley, [ 167 U.S. 204 (1897) ] the Court adopted the rule of United States v. Lee, [ 106 U.S. 196 (1882)]* a tort suit against federal officials, to permit a tort action against state officials to recover real property held by them and claimed by the state and to obtain damages for the period of withholding. The immunity of a state from suit has long been held not to extend to actions against state officials for damages arising out of willful and negligent disregard of state laws *[ Johnson v. Lankford, 245 U.S. 541 (1918); Martin v. Lankford, 245 U.S. 547 (1918)].* The reach of the rule is evident in *Scheuer v. Rhodes, [ 416 U.S. 232 (1974)]* in which the Court held that *plaintiffs were not barred by the Eleventh Amendment or other immunity doctrines from suing the governor and other officials of a state alleging that they deprived plaintiffs of federal rights under color of state law and seeking damages, when it was clear that plaintiffs were seeking to impose individual and personal liability on the officials.* There was no executive

immunity from suit, the Court held; rather, the immunity of state officials is qualified and varies according to the scope of discretion and responsibilities of the particular office and the circumstances existing at the time the challenged action was taken *[ These suits, like suits against local officials and municipal corporations, are typically brought pursuant to 42 U.S.C. § 1983 and typically involve all the decisions respecting liability and immunities thereunder. On the scope of immunity of federal officials, see Article III, Suits Against United States Officials, supr.]*

## H. EXCEPTIONS TO ABSOLUTE JUDICIAL IMMUNITY:

**There are two exceptions to absolute judicial immunity: (1) when the judge's actions are taken outside his role as a judge, i.e., entirely non-judicial conduct, or (2) when the judge's actions are taken in the complete absence of jurisdiction."** [*** ***See also Mireles, 502 U.S. at 11-13; Stein, 520 F.3d at 1195*** ([A]n act taken in excess of a court's jurisdiction is not to be confused with an act taken in the complete absence of all jurisdiction.).] Strand and Allen do not argue that the judge's actions were taken outside his role as a judge. Instead, they only argue that Dawson was acting in complete absence of all jurisdiction. "[T]he necessary inquiry in determining whether a defendant judge is immune from suit is whether at the time he took the challenged action he had jurisdiction over the subject matter before him." [***Stump v. Sparkman, 435 U.S. 349, 98 S. Ct. 1099, 55 L. Ed. 2d 331 (1978).]***

## I. Judicial Liability under Title 42 U.S.C. s. 1983

Title 42 U.S.C. s. 1983 provides that "[e]very person" who acts under color of state law to deprive another of a constitutional right shall be answerable to that person in a suit for damages. The courts have, however, accepted that "[e]very person," means "every person except judges. As a general rule, a judge is not liable for acts done in the exercise of a judicial function, within the limits of his or her jurisdiction, no matter how erroneous, illegal, or malicious those acts may be. The term "jurisdiction," in the context of judicial immunity, means the judicial power to hear and determine a matter, not the manner, method, or correctness of the exercise of that power.

However, **judicial immunity does not automatically attach** to all the types of conduct in which a judge may properly engage, but only to those acts which are of a judicial or quasi-judicial nature. ***The broad doctrine of judicial immunity does not apply to acts which are not judicial, but which are purely ministerial or administrative in nature.*** Thus, when a judge acts ministerial or is required to do a ministerial act, he is responsible for error or misconduct in like manner and to the same extent as all other ministerial officers and may enjoy a qualified good faith immunity from civil action. The test for qualified immunity is an objective one: whether the conduct of a governmental official violates clearly established statutory or constitutional rights of which a reasonable person would have known *[ Harlow v. Fitzgerald, 102 S.Ct. 2727, 2738 (1982)* ("Where an official could be expected to know that certain conduct would violate statutory or

constitutional rights, he should be made to hesitate; and a person who suffers injury caused by such conduct may have a cause of action. But where an official's duties legitimately require action in which clearly established rights are implicated, the public interest may be better served by action taken 'with independence and without fear of consequences.'"). *Harlow at 2739). And see Malley v. Briggs, 106 S.Ct. 1092 (1986).]* This test "focuses on the objective legal reasonableness of an official's act."[ *Harlow, supra* at 2739. *And see Brown v. Clewiston, 644 F.Supp. 1417 (S.D. Fla., 1986)* ("An officer's actual good faith belief in the propriety of his actions is not really relevant after *Harlow*. The only inquiry is whether a reasonable person in the officer's position could have believed his actions were lawful." *Id.* at 1419, footnote 3) ]

***In Forrester v. White, 108 S.Ct. 538 (1988),*** the U.S. Supreme Court considered whether a state court judge had absolute immunity from a suit for damages under 42 U.S.C. s. 1983 for his decision to dismiss a subordinate court employee. The employee, who had been a probation officer, alleged that she was demoted and discharged because of her sex, in violation of the Equal Protection Clause of the Fourteenth Amendment. *The Court concluded that the judge's decisions were not judicial acts for which he should be absolutely immune.* While the Court recognized that it has never articulated a precise and general definition of the class of acts entitled to judicial immunity, it suggested a distinction between judicial acts and the administrative, legislative, or executive functions that judges may occasionally be assigned by law to perform. As the Court noted, ***"[a]dministrative decisions, even though they may be essential to the very functioning of the courts,***

***have not . . . been regarded as judicial acts."[ Forrester v. White, 108 S.Ct. 538, 544 (1988)].***

## J. INJUNCTION AGAINST BENCH WARRANT OF DEFENDANT DORAN AND DEFENDANT EINBINDER

On November 28, 2017 Defendant Doran issued a bench warrant against the Petitioner after an alleged enforcement hearing on the Motion of the Ocean county probation department in case No: FM-15-500-14N at the Superior Court of New Jersey, Chancery Division. The Petitioner states that such illegal warrant was issued by Defendant Doran for EXTORTION of child support and Alimony Moneys from the Petitioner to illegally help out Laura Germadnig and her Attorneys to the tune of USD 105.355.52, when the Defendant court did not have jurisdiction and power as per NJSA 40A:14-152.

On October 15, 2014 Defendant Einbinder conducted EXTORTION by issuing a bench warrant order on collection of a commercial debt for the Plaintiff's arrest and illegal incarceration to illegally enrich her family friend Steven A. Zabarsky; the order reads "A bench warrant shall issue against Zia H. Shaikh , for his continuing failure to abide by the courts orders to pay Steven A. Zabarsky, ESQ for counsel fees in the amount of $35,827.41, Joseph Gunteski CPA in the amount of $10,000 ..."; this is blatant extortion using government resources to show favor to her friends. The opposing counsel, Mr. Zabarsky was the best man at Defendant Einbinder's wedding and even though there was a clear conflict of interest present in the case, the Defendant refused to recuse herself, despite Plaintiff's motion for

same. She continued on with the case which adversely affected the shape of the proceedings which were constantly against the Plaintiff in this instant case. Under duress of the bench warrant and not being able to see his children due to the chaos created by Defendant Einbinder over $50,000 was paid to Steven A. Zabarsky by Plaintiff from his children's college fund account. This act by the Defendant constitutes kidnapping which is clearly defined by 18 U.S. Code § 1201 and further violation of US laws against Extortion 18 U.S. Code 14 § 872; notwithstanding violation of the Plaintiff's due process rights. (See: ORDER and Landi Letter to Judge as EXHIBIT 2- in Federal District Court Petition of the Petitioner).

The New Jersey Supreme Court, in N.J. Dept. of Health v. Roselle, 34 N.J. 331 (1961) eradicated the distinction between civil and criminal contempt and held that all contempt's are essentially one in the same. Therefore, if both civil relief (collection of child support and alimony, which is a commercial debt) and criminal punishments (arrest and imprisonment for debt) are imposed in the same proceeding, the "criminal feature of the order is dominant and fixes its character for review". *Hicks v. Feiock, 485 U.S. 624, 108 S.Ct. 1423, 99 L.Ed.2d (1988); Nye v. United Page 5 of 44 States, 61 S.Ct. 810, 813 (1941).* Civil contempt's or violations of court orders/violations of litigants rights, are civil in name only, entailing what are in reality criminal punishments. *U.S. v. Rylander, 460 U.S. 752, 757 (1983); Uphaus v. Wyman, 360 U.S. 72 (1959).*

The New Jersey Appellate Division held in *Lusardi v. Curtis Point Property Owners Assoc., 138 N.J. Super. 44, 50 (App.Div. 1975)* that there are grave doubts whether a defendant's rights can be adequately protected in a "double-barrelled proceeding" where charges of both contempt and deprivation of private rights are

tried in a common proceeding. New Jersey Constitution, Article I, Paragraph 13: "No person shall be imprisoned for debt in ANY action, or on any judgment founded upon contract, unless in cases of fraud". The Supreme Court of New Jersey stated in *State v. Madewell, 63 N.J. 506, 512 (1973):* "Statutes or ordinances, designed as debt collecting devices under the guise of penal laws, contravene the constitutional prohibition against imprisonment for debt. Thus, the legislature may not circumvent the prohibition by rendering criminal a simple breach of contract, the non-payment of debt, or the failure to use one's own money for a purpose other than for payment of debts. However, statutes against false pretences, frauds, cheats, and the like, are sustained as against the constitutional objection that such statutes impose imprisonment for debt, on the theory that one who violates the act is punished for the crime he has committed, although civilly the acts may also constitute a breach of contract or the non-payment of a debt. (16 C.J.S., Constitutional Law, Section 204(4), p.1011)." [bold, underline and italics added]

Since Petitioner was never charged, tried or convicted of fraud, he cannot be imprisoned for a debt-whether it be a Court-Ordered debt for payment of child support, alimony or any other debt in commerce. Pursuant to the September 1998 amendment to N.J. Court Rule, R. 1:10-3, 2002 Gann Edition, Comment: "The evident purpose of this amendment is to make clear that enforcement by incarceration was never intended to create a so-called debtor's prison."

The Defendant Doran and Einbinder COURT LACKS ALL JURISDICTION ON CHILD SUPPORT ORDERS IN VIOLATION OF 29 CFR 870.10. Title IV-D DOES NOT allow jurisdiction on individuals who ONLY received 1099 income as an

independent worker; alleged arrears are void as Plaintiff formerly as an independent business owner is and was ALWAYS EXCLUDED from any child support payments pursuant 29 CFR 870.10.

In *Keith In re Ricky D. Jones pursuant to 15 U.S.C. § 1673* as incorporated into Ohio Rev. Code § 2329.66(A)(17). Because this court concludes that Ohio's exemption scheme incorporates 15 U.S.C. § 1673 and that this exemption extends to the earnings of independent contractors, the Trustee's objection is overruled and the claimed exemption is allowed. The bench warrant issued November 28,2017 is in direct violation of 22 USC § 7102. This is Abuse or threatened abuse of law or legal process; on the issuance of the outstanding bench warrant.

Def. Doran and Einbinder acted without any judicial authority when she ordered to confiscate Plaintiff's US passport as further ordered. The order demanded Plaintiff to turn over his passport to opposing counsel; only the Federal government has the authority to revoke or confiscate a passport. Superior courts do not have jurisdiction and authority to arrest and imprison litigants for a civil, commercial issue. This is a direct violation of constitutional limitations of the government under search and seizure laws without probable cause, or legal authority, and has violated Federal law.

Defendants Doran and Einbinder knew or should have known about their orders to be without jurisdiction or legal authority; despite being noticed by the Plaintiff and his former attorney. The Defendant has acted without any jurisdiction, her actions are outside the scope of any judicial authority, or immunity, pursuant *Mireles v. Waco, 502 U.S. 9, 12 (1991)*

***Petitioner states that he has a constitutional right to approach the court as a Pro Se litigant for seeking justice and the same cannot be prevented without any legal basis and at any point of time there was no determination of harassment or frivolousness from the Plaintiff side to the Defendants in seeking his long lasting battle at any courts for legal justice towards his lawful remedies. Any intended orders restricting a person's access to the courts must be based on adequate justification supported in the record and narrowly tailored to address the abuse, frivolousness and harassment perceived, and in the present case there is complete absence of any and hence court should grant an injunction against the vexatious Bench Warrant Order as the same is been issued in complete violation to US Constitutional Provisions.***

## K. INJUNCTION AGAINST VEXATIOUS LITIGANT ORDER OF DEFENDANT FORD.

Defendant Judge Ford, in her desperate attempt to shut out the Plaintiff's access to the court system, WITHOUT ANY JURISDICTION, since the underlying case was being appealed at the NJ appellate division; defendant Ford then crafted a new scheme and issued an additional new order dated October 19,2017 in which once again with no basis, labelled Plaintiff a "vexatious litigant", without ever providing any findings of fact or conclusions of law as required by NJ R 1:7-4; any and all filings with the court cited established NJ and US case law demanding available relief, but all such citations were ignored by Defendant Ford. Defendant Ford in her order of October 19,2017 violated the FIRST and FOURTEENTH amendment rights of the Plaintiff when she blocked access to ANY state court

unless it was with her approval. By declaring Plaintiff, a "vexatious litigant", without ever providing any findings of fact or conclusions of law as required by NJ R 1:7-4; this order lacks jurisdiction. The right to access the courts is fundamental to our system of justice. In one sense, such a right has been a traditional and noncontroversial part of our constitutional law; barring unusual circumstances, anyone can bring a lawsuit, or be heard in his or her own defense.

All Writs Act: The Courts have generally recognized that "[t]here is strong precedent establishing the inherent power of federal courts to regulate the activities of abusive litigants by imposing carefully tailored restrictions under the appropriate circumstances. Nonetheless, we also recognize that such pre-filing orders should rarely be filed. *See, e.g., Oliver, 682 F.2d at 445* (an order imposing an injunction "***is an extreme remedy, and should be used only in exigent circumstances");*** *Pavilonis v. King, 626 F.2d 1075, 1079 (1st Cir.)* ("***The use of such measures against a pro se plaintiff should be approached with particular caution."),*** *cert. denied,* 449 U.S. 829, 101 S.Ct. 96, 66 L.Ed.2d 34 (1980); *In re Powell, 851 F.2d 427, 431 (D.C.Cir. 1988) (per curiam)* (***such orders should "remain very much the exception to the general rule of free access to the courts")*** (quoting *Pavilonis,* 626 F.2d at 1079).

In keeping with the exigent nature of injunctions and the caution required in issuing injunctions, the district court should endeavour to create an adequate record for review. ***If a pro se litigant is to be deprived of such a vital constitutional right as access to the courts, he should, at least, be provided with an opportunity to oppose the entry of an order restricting him before it is entered.*** *In re Oliver, 682 F.2d at 446.* Due process requires notice and an

opportunity to be heard and the standard for measuring the adequacy of these procedural protections increases in proportion to the significance of the interest at stake. *Morrissey v. Brewer, 408 U.S. 471, 481, 92 S.Ct. 2593, 2600, 33 L.Ed.2d 484 (1972).*

As the district court noted in its orders, the court has an obligation to protect the "orderly and expeditious administration of justice. *"Urban v. United Nations,* 768 F.2d 1497, 1500 (D.C. Cir. 1985) (per curiam). It is also true that, in acting to protect the "integrity of the courts," the district court judge may use injunctive remedies. *Id.* It is important, ***however, that in fashioning an appropriate remedy, the court take great care not to unduly impair a litigant's constitutional right of access to the courts.***

Moreover, the Courts should create an adequate record for review. *See id.; Moy, 906 F.2d at 470*. An adequate record for review should include a listing of all the cases and motions that led the district court to conclude that a vexatious litigant order was needed. *See Martin-Trigona,* 737 F.2d at 1270-74. At the least, the record needs to show, in some manner, that the litigant's activities were numerous or abusive. *See, e.g. Wood,* 705 F.2d 1515, 1523, 1526 (35 related complaints filed); *Oliver,* 682 F.2d at 444 (over 50 frivolous cases filed); *In re Green,* 669 F.2d 779, 781 (D.C.Cir. 1981) (per curiam) (over 600 complaints filed).

Moreover, ***mere litigiousness alone does not support the issuance of an injunction***. *See Ruderer v. United States,* 462 F.2d 897, 899 (8th Cir.) (per curiam), *cert. denied, 409 U.S. 1031, 93 S.Ct. 540, 34 L.Ed. 2d 482 (1972).* ***Both the number and content of the filings bear on a determination of***

***frivolousness or harassment***. Such a determination must be made with care; like the First Circuit, "[w]e expects that injunctions against litigants will remain very much the exception to the general rule of free access to the courts." Pavilonis, 626 F.2d at 1079. ***An injunction is an extreme sanction and should be imposed in only the most egregious cases.***

***Petitioner states that he has a constitutional right to approach the court as a Pro Se litigant for seeking justice and the same cannot be prevented without any legal basis and at any point of time there was no determination of harassment or frivolousness from the Plaintiff side to the Defendants in seeking his long lasting battle at any courts for legal justice towards his lawful remedies. Any intended orders restricting a person's access to the courts must be based on adequate justification supported in the record and narrowly tailored to address the abuse, frivolousness and harassment perceived, and in the present case there is complete absence of any and hence court should grant an injunction against the vexatious litigant order as there is no application of the All Writs Act 28, USC 1651 to the Present Case.***

## L. REASONS FOR GRANTING THE WRIT

This Court's intervention is necessary for the following reasons:

(1) Deliberate shielding of Defendant Judges by the Federal District Court of New Jersey using the unquestioned tool of "Judicial Immunity" knowingly that the act of the Defendants is "Non-Judicial", "Administrative", "Excessive" and in "Clear absence of Jurisdiction"

(2) Intentional shielding of the Defendant Judges by the Third Circuit Court of Appeals using US Supreme Courts case of *Mireles V. Waco 502 US 9 (1991),* knowingly that the acts of Defendants Judges are clearly exempted as per the said case.

(3) To decide upon whether Federal District Courts or Circuit Courts should mandatorily decide the Question of Immunity for **in forma pauperis litigants** in the Pre- Summons Stage as per 28 USC S.1915 (e) (2) (B) (iii) when the acts to the determination of the Immunity are itself "Questions of fact"

(4) To decide upon the *discrimination aspect involved for in forma pauperis litigants in 28 USC S.1915(e) (2) (B) (iii) and to uphold the Section 4 of the Fourteenth Amendment of the US Constitution regarding "equality of law" and "equal protection of law"* to all US Citizens irrespective of their financial status.

(5) To safeguard the "Right to Access of Courts" for legitimate Pro Se Litigants from the inappropriate misuse of Pre-Filing orders such as " Vexatious Litigant Orders" by the lower courts in the absence of clear guidelines of the US Supreme Court.

## M. PETITIONER WILL SUFFER IRREPARABLE HARM IN THE ABSENCE OF REVERSAL OF THIRD CIRCUIT COURT ORDER AND AN EMERGENT INJUNCTION.

The Constitutional rights must be carefully guarded for once an infringement has occurred it cannot be undone by monetary relief' *Deerfield Med. Ctr. v. City of Deerfield Beach*, 661 F.2d 328, 338 (5th Cir. 1981). This situation is at least as egregious as situations where irreparable injury was recognized. *See, e.g., Doe wood Cty. Bd. of Educ.*, 888 F. Supp. 2d 771, 777 (S.D. W.Va. 2012). In absence of

reversal of the Federal District Court Order and a Preliminary Injunction, Petitioner will suffer irreparable harm, loss and hardship.

## N. THE BALANCE OF HARDSHIP SHARPLY FAVORS PETITIONER

An injunction does no harm to Defendants because the Defendant Judges and the government is not harmed when it is prevented from enforcing unconstitutional and illegal laws. *Joelner v. Village of Wash. Park, Ill.* 378 F.3d 613, 620 (7th Cir. 2004). Thus, the balance of hardship only favors the Petitioner rather than Defendants.

## O. THE PUBLIC INTEREST FAVORS A PRELIMINARY INJUNCTION.

"[T]here is the highest public interest in the due observance of all the constitutional guarantees[.]" *United States v. Raines*, 362 U.S. 17, 27 (1960). It is in the public interest to prevent the Judges and government from "violat[ing] the requirements of state and federal law," *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014)..

## P. CONCLUSION AND PRAYER FOR RELIEF

The Federal and Circuit Court needs guidance how to apply this courts holding in *Mireles v. Waco, 502 US 9 (1991)* in respect to in forma pauperis pro se litigants against Judicial Defendants pursuant to 28 USC S.1915 (e ) (2)( B)(iii). At present there are no clear judicial precedents given across either by Federal District Courts, Circuits Courts or the US Supreme Court in such an unique scenario

where is requires this Supreme Court's intervention to safeguard the legitimate Petitioners interest and other similar legitimate Pro Se Litigants who have been unsuccessfully fighting for their legitimate legal rights and have been suffering irreparable harm under the hands of the irrational lower courts judgements depriving all the Pro Se Plaintiff's Constitutional Rights.

Also prayed for the **GRANT OF CERTIORARI** to **DE NOVA REVIEW** the Third Circuits Judgment dismissing the Petitioner rights in blind conformity with the Federal District Court Orders AND summarily reverse the decision below, holds this case as it considers the variant scope of *Mireles v. Waco, 502 US 9 (1991)* in another case, or grant such other relief as justice requires.

Also prayed for as INTERIM AND EMERGENT RELIEFS:

(1) **EMERGENT GRANT OF INJUNCTION for the VEXATIOUS LITIGANT order of Defendant FORD against the Petitioner and;**

**(2) EMERGENT GRANT OF INJUNCTION for the vexatious BENCH WARRANT order of Defendant DORAN and EINBINDER against the Petitioner**

**Respectfully submitted.**

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