No. 22-5171

ORIGINAL

SUPREME COURT OF THE UNITED STATES

Rebekah Werth and H.C. (minor child),

Petitioners,

v.

City of Stuart Police Department, Officer Matt Cernuto and Lieutenant Richard Shine

Respondents.

On Petition for a Writ of Certiorari to

The United States Court of Appeals

For the Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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I. Questions Presented

This petition stems from a complaint against local law enforcement, in which The City of Stuart Police, et al. refused to respond to the Petitioners' report of the theft of a medical implement, knowingly and maliciously putting a single mother and her child at constant and imminent risk of their lives.

Petitioners filed the complaint *pro se* and *in forma pauperis.*

The U.S. District Court of Southern Florida dismissed the complaint *sua sponte* under 28 U.S.C. § 1915 (e) (2) (B) (i) as "failing to state a claim", with no explanation as to the deficiencies of the pleadings, no invitation to amend, and before the Defendants had been served with the complaint.

The U.S. Court of Appeals, Eleventh Circuit, likewise dismissed the complaint *sua sponte* under 28 U.S.C. § 1915 (e) (2) (B), but differed from the lower court by resorting to subsection (ii) (a "frivolous" complaint) as an excuse to keep Petitioners out of court. Mirroring the attitude of the lower District Court, the Court of Appeals provided no explanation as to the deficiencies of the pleadings, provided no opportunity to amend, and did not serve the Defendants. The court told Petitioners that if they could pay the fees, their complaint would magically become non-"frivolous".

In *Neitzke v. Williams*, 490 U.S. 319 (1989), this Court held that a complaint filed *in forma pauperis* which "fails to state a claim" is NOT automatically "frivolous". This Court further held that dismissing a case *sua sponte* by the merging of these two standards denies indigent plaintiffs the rights afforded by the nation's adversarial system

of justice. This Court's rulings in additional cases cited in this Petition further support and provide definition to the *Neitzke v. Williams* ruling.

It follows then, that the **Questions Presented** *are these:*

1. **Do the *sua sponte* dismissals by the lower courts under the *in forma pauperis* statute 28 U.S.C. § 1915 (e) (2) (B), in which the reviewing court merely substituted the "frivolous" subsection (ii) for the "failure to state a claim" subsection (i), directly conflict with this Court's precedents regarding the merging of the "failure to state a claim" and "frivolous" standards?**
2. **Do *sua sponte* dismissals of *in forma pauperis* and *pro se* complaints bar meaningful access to the justice system to the most vulnerable members of society and defy Congress' alleged intent in enacting the *in forma pauperis* statute, 28 U.S.C. § 1915 (e) (2) (B), to afford indigent individuals equal access to justice?**

II. Introduction

Arguments for barring *in forma pauperis* plaintiffs more easily than paying plaintiffs from the courtroom invariably include the faulty reasoning that *in forma pauperis* plaintiffs file lawsuits simply because they do not suffer economic or time constraints in doing so. For the most vulnerable members of society, impoverished single mothers and their children, nothing could be further from the truth. While a paying litigant might have to refrain from buying a larger house or upgrading to the latest phone model in order to pay court fees, present Petitioners have to sacrifice meals, medicine and other essentials merely to pay for ink, paper and postage in defense of their lives. While a paying litigant might have to meet with his lawyer during lunch breaks or refrain from going out to dinner or attending a social event with his spouse, the inarguably necessarily neglected child of a persecuted single mother receives even less care and attention than otherwise while his mother tries to give herself a self-help legal education and write her own briefs.

This Court addressed the issue of dismissing *in forma pauperis* complaints in *Neitzke v. Williams*, 490 U.S. 319 (1989) and in the other cases cited in this Petition. In present case, the decisions below directly conflict with the precedents set by this Court and with Congress' intent to provide equal access to justice through 28 U.S.C. § 1915 (e) (2) (B).

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Rebekah Werth and H.C. (minor child), in a *pro se* capacity, respectfully petition this court for a writ of certiorari to review the judgement of the Court of Appeals for the Eleventh Circuit.

VII. Opinions Below

Petitioners were unable to locate a reporting number for the *sua sponte* dismissal of the appeal by the Eleventh Circuit, even upon contacting the court. It bears the case number USCA11 Case: 21-12968. On March 8, 2022 the Court of Appeals for the Eleventh Circuit ordered that Plaintiffs do not have a right to equal protection because they are unable to pay court fees, and offered an additional 14 days to come up with fees which would render their lives "non-frivolous". The final dismissal for inability to pay court fees was issued on April 21, 2022. These two orders are attached in the Appendix at 1a – 3a.

Likewise, the *sua sponte* dismissal of Petitioners' case on August 6, 2021 by the U.S. District Court of Southern Florida has no locatable reporting number. It is recorded as case number 2:21-cv-14261-AMC. This order is attached in the Appendix 4a – 6a.

VIII. Jurisdiction

The Court of Appeals for the Eleventh Circuit issued its final denial of Plaintiffs' right to appeal on April 21, 2022. Plaintiffs invoke this Court's jurisdiction under 28 U.S.C. § 2101 (c), having timely filed this petition for a writ of certiorari within ninety days of the dismissal by the Court of Appeals for the Eleventh Circuit.

IX. Constitutional and Statutory Provisions Involved

Fourteenth Amendment 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.

18 U.S.C. § 242 Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person...to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, ... shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section..shall be fined under this title or imprisoned not more than ten years, or both...

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.
28 U.S.C. § 1915 (e) (1) The court may request an attorney to represent any person unable to afford counsel. (2)Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that (A) the allegation of poverty is untrue; or (B) the action or appeal (i) is frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief.

X. Statement of the Case

1. The legal standards

In *Neitzke v. Williams*, 490 U.S. 319 (1989), this Court held "failure to state a claim" and "frivolousness" are neither equivalent nor interchangeable as reasons to dismiss a complaint under the *in forma pauperis* statute, 28 U.S.C. § 1915 (e) (formerly § 1915 (d)).

In *Neitzke v. Williams*, 490 U.S. 319 (1989), Justice Marshall further concluded that dismissing complaints *sua sponte* as "failing to state a claim" and/or "frivolous" under the *in forma pauperis* statute, what is now § 1915 (e) (2) (B), is a perversion of Congress's intent to afford indigent plaintiffs equal access to the justice system. *Livingston v. Adirondack Beverage Company*, 141 F.3d 434 (2d Cir. 1998) rules that *sua sponte* dismissal is improper in a "colorable claim warranting further development of the facts." In *Denton v. Hernandez*, 504 U.S. 25 (1992), this Court held that if the claims are to be dismissed as frivolous, that the litigant be given the opportunity to amend his complaint. In *Tingler v. Marshall*, 716 F.2d 1109 (6th Cir. 1983), the Sixth Circuit ruled that a district court may not dismiss a complaint *sua sponte* without providing the plaintiff the chance to amend the deficiencies in the complaint. The court expressed that it is especially unfair to *pro se* plaintiffs, "who are generally unskilled in the art of pleading." The court held that a district court may not dismiss a complaint before service on the defendant or before advising plaintiff of the deficiencies in the complaint and giving him a chance to amend.

"Failure to state a claim" has been defined as failing to present facts indicating that a violation of law or constitutional rights has occurred or that the plaintiff is entitled to relief. In *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957), this Court held that "a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." As decided in *Sonnier v. State Farm Mutual Auto Ins. Co.*, 509 F.3d 673, 675 (5th Cir. 2007), the court must accept all well-pleaded facts in the complaint as true and view them in the light most favorable to the plaintiff.

"Frivolous" was defined by this Court in *Neitzke v. Williams*, 490 U.S. 319 (1989) as having no arguable basis in legal theory or in fact. In *Nasim v. Warden, Maryland House*

of Correction, 64 F.3d 951 (4th Cir. 1995), the 4th Circuit likewise ruled that an *in forma pauperis* suit can be dismissed as frivolous only if its claims are "delusional" and based on an "indisputably meritless legal theory." In *Livingston v. Adirondack Beverage Company*, 141 F.3d 434 (2d Cir. 1998), the Second Circuit upheld this ruling, that to be frivolous, a claim must lack an arguable basis in law, for example, a legal interest that does not exist. In *Denton v. Hernandez*, 504 U.S. 25 (1992), this Court ruled that a complaint can be dismissed as frivolous only if "the facts alleged rise to the level of the irrational or the wholly incredible, whether or not there are judicially noticeable facts available to contradict them, but a complaint cannot be dismissed simply because the court finds the allegation to be improbable or unlikely."

2. The medical emergency

Plaintiffs, a single mother and child, have been unlawfully denied federally mandated Medicaid. As a result of being deprived of receiving medical care for years, Plaintiff Rebekah Werth had a dental emergency, the treatment for which she had to beg abusive parties for funding. The treatment involved a series of medical procedures, the culmination of which was the placement of a custom-fitted dental crown. Starting with the first visit to the medical practitioner, Sage Dental, Werth began to regularly have episodes of loss of consciousness, along with other serious health problems.

Because Werth has had several dental crowns fitted for her over the course of her life, she was able to recognize that Sage Dental's treatment of her was extremely negligent and was the cause of her medical problems.

Werth was forced to continue the procedures with Sage Dental because she did not have enough money or time to resolve the emergency, given the money and time already squandered in the care of Sage Dental, to initiate what other dentists deemed more

appropriate procedures under another practitioner. Further visits to Sage Dental inflicted further injuries upon Werth.

When the dental laboratory had finally completed making Werth's permanent dental crown, Werth gathered enough money together and made an appointment to have another dental practitioner place the crown.

Sage Dental stole Werth's crown in order to prevent her from obtaining medical care elsewhere.

3. Remedies attempted in the effort to resolve the problem and avoid court proceedings

Immediately after her first visit to the hospital emergency room due to injury caused by Sage Dental, Werth sought counsel from two other dental practitioners. Sage Dental illegally refused to provide both Werth and other practitioners with Werth's medical records. One of the practitioners was kind enough to provide and conduct an examination and take new x-rays free of charge to Werth. Both of the other practitioners agreed that they would not have recommended the course of action that Sage Dental was following, but they would not be willing to testify to that or to assert that Sage Dental had committed malpractice because it would earn them a bad reputation among their colleagues.

Werth began filing detailed complaints with the Florida Department of Health immediately after her first visit to the hospital emergency room caused by Sage Dental's malpractice. The Florida Department of Health refused to investigate her complaint.

Under normal circumstances, Werth would have called the Martin County Sheriff to report the theft of her dental prosthesis. However, Werth and H.C. (minor child of Werth) have been the victims of bullying, intimidation and retaliation by the Martin County

Sheriff for years. Werth could therefore not consider reporting the theft to the Martin County Sheriff as a way to retrieve her stolen property in a timely manner, if at all.

Werth sought remedy through the Martin County Courthouse. Werth filed a replevin for return of the stolen prosthesis and medical records, along with an "Application for Determination of Civil Indigent Status". The Martin County Courthouse blatantly violated Florida statutes by denying "indigent status" to Werth. The Martin County Clerk of Court relied on Werth's complete lack of resources to prevent her from pressing the matter further before being killed.

The Martin County Sheriff has officers posted at the Martin County Courthouse. On one of Werth and H.C.'s futile visits to the Martin County Courthouse, May 26, 2021, Werth told a Martin County Sheriff's officer about her stolen prosthesis. The officer recommended that she report the theft to City of Stuart Police, because Sage Dental is located in the jurisdiction of the City of Stuart Police rather than that of the Martin County Sheriff.

Immediately after this conversation on May 26, 2021, Werth reported the theft of said medical implement to the City of Stuart Police. The police refused to respond to her complaint. Werth complained to the first officer's supervisor, who merely assisted his fellow officer in abusing Werth and H.C.

Werth and H.C. persisted in seeking retrieval of Werth's property through the local courthouse. Werth's replevin case was finally heard, but delayed due to the court's denial of due process to her because of her financial status. The court directly and deliberately inflicted an additional 13 days of torture, extreme physical pain and emotional distress, and daily imminent threat of death to an innocent woman and child.

The court finally ordered Sage Dental to return Werth's stolen property to her on June 30, 2021. This was 36 days after the City of Stuart Police was legally required to act on Plaintiff's report. For these 36 days, the City of Stuart Police directly, knowingly, and maliciously caused Werth to continue to have fainting and falling spells and other serious health problems caused by the theft of her dental prosthesis and the resulting deprivation of medical care. This put both Werth and H.C., an 8-year-old child and for whom Werth is sole guardian and caretaker, at risk of imminent death.

4. The lower courts and how they defied the legal standards

On June 25, 2021, Werth and H.C. filed a complaint against the City of Stuart Police with the U.S. District Court of Southern Florida under the 14th amendment, denial of equal protection under the law, and under 18 U.S.C. § 242 and

42 U.S.C. § 1983with the U.S. District Court of Southern Florida. The court dismissed the case *sua sponte* under U.S.C. 28 U.S.C. § 1915 (e) (2) (B) (i) for "failing to state a claim". This dismissal defies the very definition of "failure to state a claim". The Plaintiffs presented sufficient facts indicating that a violation of law or constitutional rights occurred and that the Plaintiffs are entitled to a legal remedy. On the first page of the dismissal order, the District Court judge verified her understanding that the complaint revolved around Defendants' refusal to respond to a crime against a single mother and illegitimate child, a protected class under the 14th Amendment. The factual content of Plaintiffs' complaint makes it clear that Defendant did indeed deny equal protection under the law to Plaintiffs. The complaint describes Werth's calls for help to Defendants regarding the theft of her medical implement. This firmly establishes a legal duty of care on the part of Defendants to enforce the law with respect to crimes committed against Plaintiffs. In an incident involving a theft and subsequent report to the police,

there is an obvious existence of evidence to back up the claim during court procedures. If the judge did in good faith believe that the complaint "failed to state a claim", *Neitzke v. Williams*, 490 U.S. 319 (1989), *Livingston v. Adirondack Beverage Company*, 141 F.3d 434 (2d Cir. 1998), *Denton v. Hernandez*, 504 U.S. 25 (1992), and *Tingler v. Marshall*, 716 F.2d 1109 (6th Cir. 1983) all hold that she should have provided the Plaintiff with the opportunity to amend the pleadings. The District Court judge declared in the dismissal order that the complaint is "incomprehensible". Instead of abusing § 1915 (e) (2) (b) to quickly dispose of an inconvenient *pro se* case that will not materially enrich the court, deeming the complaint as "incomprehensible" should have spurred the lower court to invoke § 1915 (e) (1). "The court may request an attorney to represent any person unable to afford counsel." *Kilgo v. Ricks*, 983 F.2d 189, 193 (11th Cir. 1993) decided that a court-appointed attorney is warranted if "the pro se litigant needs help in presenting the essential merits of his or her position to the court." If Plaintiffs' complaint was indeed "incomprehensible" in light of obvious existence of sufficient facts, that should signal to the court that Plaintiffs do indeed need help in presenting their case.

Plaintiffs then filed an appeal at the U.S. Court of Appeals, Eleventh Circuit. The Court of Appeals likewise dismissed the case *sua sponte* under U.S.C. 28 U.S.C. § 1915 (e) (2) (B). Notably, this court merely substituted "frivolous" for "failing to state a claim" as an excuse to quickly kick the complaint out of court, flouting the precedent set in *Neitzke v. Williams*, 490 U.S. 319 (1989). Blatantly abusing dismissal under the "frivolous" standard, as defined by the precedents cited herein, the Court of Appeals insomuch stated that law enforcement does not have a duty of care to respond to reports of crime, and it does have the right to deny protection to single mothers and their children. The claim of discrimination against a single woman and her child is certainly a legal interest that does

exist. That law enforcement officers have a legal duty of care under the law and constitution towards every victim of crime, no matter how easy it is to brush them off, is certainly a legal interest that does exist. As Plaintiffs' complaint described the how, when and where their rights were violated, the court cannot declare that the claims are "delusional." Instead, the court simply inserted the word "frivolous" into a dismissal order, without attempting to explain the deficiencies prompting the "frivolous" ruling. If Plaintiffs' pleadings were so lacking that the judge did not understand that the police denied protection, then, again, *Neitzke v. Williams*, 490 U.S. 319 (1989), *Livingston v. Adirondack Beverage Company*, 141 F.3d 434 (2d Cir. 1998), *Denton v. Hernandez*, 504 U.S. 25 (1992), and *Tingler v. Marshall*, 716 F.2d 1109 (6th Cir. 1983) all hold that the Plaintiffs should have been invited to amend the pleadings.

XI. Reasons for Granting the Writ

A. The issue of *sua sponte* dismissals and abuse of *in forma pauperis* statutes in *pro se* and *in forma pauperis* complaints is recurring. This Petition cites several case examples. As Petitioners' unskilled legal research, the majority of which consists of "Googling", has unearthed more examples than can be cited within this Petition, it is safe to conjecture that there are even more.

B. The premature disposal of *in forma pauperis* and *pro se* complaints inherently spawns more complaints, thereby wasting judicial resources rather than conserving them. This can be seen merely by considering the circumstances upon which the present Petition is based.

The medical emergency which led to the necessity of the medical implement, the theft of which is at the root of current Petition, occurred only because Werth and

H.C.'s much earlier legal complaints about the deprivation of federally mandated medical care were too eagerly brushed under the rug by all government agencies and courts. The governmental abuse of Werth and H.C. was easily concealed because of Werth and H.C.'s utter lack of resources.

As related in the Statement of the Case, the theft of the medical implement was likewise ignored by all responsible agencies and courts. Prematurely disposing of Petitioners' complaints by flagrant violation and abuse of state and federal *in forma pauperis* statutes has so far led, solely in the instance of this one theft, to 5 separate legal complaints.

Case 1: The Martin County Courthouse's initial violation of Florida *in forma pauperis* statutes necessitated an additional, and otherwise unnecessary, judicial hearing by a local judge.

Case 2: This, in turn, necessitated Petitioners' filing of a complaint against the Martin County Clerk of Court in the U.S. District Court of Southern Florida. Although at the moment the case is tenuously pending, there are underhanded attempts to frustrate the Plaintiffs which rely on the vulnerability of her *pro se* and *in forma pauperis* situation. For example, more than 3 months after leave to proceed *in forma pauperis* had been officially granted, the U.S. Marshall notified Plaintiffs that the Defendant could not be served because the filing fees had not been paid and *in forma pauperis* status had not been granted. This individual glitch was resolved at Plaintiffs' insistence and with the documentation showing that *in forma pauperis* status had indeed been granted. The court would probably excuse this as an innocent clerical error. However, 6 months later, procedures were again interrupted when an order for dismissal

was issued by Judge Aileen Cannon for failing to pay the fees. Is this just a comedy of errors that coincidentally happens only with details pertaining to *in forma pauperis* complaints?

Cases 3, 4 and 5 involve the current Petition to this Court.

Case 3: As already discussed in this Petition, the U.S. District Court prematurely dismissed the complaint against the City of Stuart Police as "failing to state a claim" under abuse of the federal *in forma pauperis* statute, § 1915 (e) (2) (B). The dismissal was ordered by Judge Aileen Cannon (see "Case 2", above). The court would probably argue that the similar attitude against a *pro se* and *in forma pauperis* plaintiff by the same judge in both cases is purely coincidental.

Case 4: The complaint then followed to the Court of Appeals, where it was likewise improperly dismissed under § 1915 (e) (2) (B).

Case 5: Present Petition to this Court followed.

C. <u>In examining the fundamental legal significance of this issue, it is important to carefully consider the root problem forcing the hand of *pro se* and *in forma pauperis* plaintiffs.</u> Proponents of premature dismissal argue that *pro se* and *in forma pauperis* plaintiffs wantonly waste judicial resources. In reality, in countless cases it is the government agencies at the root of the complaints that are forcing abused individuals into the courtroom. Consider this in Petitioners' situation alone.

1. First, let's review the medical emergency which forms the basis of present Petition. The medical emergency was caused by the deprivation of federally mandated medical care by Florida Department of Children and Families, Temporary Assistance for

Needy Families, Medicaid, U.S. Health & Human Services, and numerous additional government agents. Then, solely related to the theft of her medical prosthesis, the utter refusal of the Florida State Department of Health, the City of Stuart Police and the Martin County Clerk of Court to fulfill their obligations as civil servants forced Petitioners to finally approach the federal courts.

2. In their own home, Petitioners are daily victims of felonies for which local law enforcement shifts responsibility onto the courts.

a.) For example, Petitioners have provided the Martin County Sheriff with photographic evidence of more than 65 instances in which neighbors have intentionally sent their pets to Petitioners' property to go to the bathroom. There is no clear path of entrance or exit from Petitioners' home without wading through pet excrement. It is impossible not to have seen news stories, alone in Martin County, reporting of parents charged with felony child abuse for not cleaning up pet droppings in their living environment, or pet owners charged with a felony for letting their pets live in their own waste matter. Yet upon Petitioners', a single woman's and child's, complaint, the Martin County Sheriff declares that forcing someone to live in a pet latrine is not a crime, but a civil issue.

b.) Another local law enforcement agency, Martin County Code Enforcement, likewise shifts responsibility to the courts. For instance, Petitioners' neighbors place their gas grill next to Petitioners house in violation of federal and local law. They inject grill smoke directly into H.C.'s bedroom window. Martin County Code Enforcement insists that filling someone's house with toxic fumes is not a crime, but a civil issue.

These are just a sampling of the crimes against Petitioners for which law enforcement agencies have nefariously shifted their responsibility onto the court system.

Agencies such as these and the individuals working within their framework will continue to evade their legal obligations for financial gain, to shirk paperwork, and to have the power of life and death over the most vulnerable of victims. They are safe in the knowledge that their victims are voiceless. Only by allowing these victims the right to be heard, regardless of whether they can pay court fees, can the courts hold these agencies individuals accountable and institute penalties to prevent them from shifting their duties onto the courts in the future.

D. The issue of premature dismissal of *pro se* and *in forma pauperis* complaints is of fundamental societal significance because it effectively bars single mothers and their children from justice, forcing them into a life of ever-increasing torture, abuse and poverty until they are eventually murdered.

Section C., above, refers to court conflicts arising from government agencies' and "civil servants'"denial of their legal duties. The general public is under the impression that government agencies provide food, medical and other financial assistance to impoverished single mothers and their children. Indeed, federal and state law does require U.S. Health and Human Services, Temporary Assistance for Needy Families, MediCaid, and their related agencies to provide such assistance. However, at the same time, the genocidal plan promoted by 45 CFR § 270.4 (f) provides those agencies financial incentives to flout those very laws.

> 45 CFR § 270.4 (f) (1)...we will measure the increase in the percent of children in each State who reside in married couple families...For any given subsequent year we will compare a State's performance on this

> measure to its performance in the previous year. (2) We will rank the performance of those States that choose to compete on this measure and will award bonuses to the ten States with the greatest percentage point improvement in this measure.

Families consisting of single mothers and their children is the only societal group of which the federal government advocates outright extermination. If the government put forth such a contest for the extermination of African-Americans, Muslims or homosexuals, any of those groups would invoke money and power to create a tremendous public outcry. However, single mothers and their children have no voice. Many have survived only as long as they have by allowing themselves to be subjected to abuse. They cannot pay for lawyers. They cannot take their children to participate in demonstrations, even if they had the power to organize any. Pro bono legal help, when available at all, is only available to women of certain races. Law enforcement can ignore their cries for help, safe in the knowledge that once they are murdered, no one will know of the crimes they reported. They are illegally deprived of food and medical care by the agencies and politicians making private use of the funds and vying to win the contest put forth by 45 CFR § 270.4 (f). And their last resort for justice, the so-called U.S. justice system, consistently abuses the *in forma pauperis* statute, 28 U.S.C. § 1915 (e) (2) (B) to prevent these impoverished and tortured individuals from accessing the courts.

E. <u>The lower courts' *sua sponte* dismissals were wrong.</u>

As discussed throughout this Petition, the lower courts' actions spurned the previous rulings by several Circuits and by this Court of the cases cited herein

which forbid *sua sponte* dismissals and abuse of the "failure to state a claim" and "frivolous" standards in *pro se* and *in forma pauperis* complaints.

The lower courts *sua sponte* dismissals of Petitioners' *in forma pauperis* and *pro se* complaint conflict with decisions in the Second, Fourth and Sixth Circuits, as discussed earlier in this Petition. In the interest of brevity, Petitioners will refrain from repeating those discussions in this section and ask this Court to review those decisions with reference to this point. Petitioners have found many more cases throughout the circuits indicating how blatantly unjust the lower courts have ruled. Again, in the interest of time constraints of both the Petitioners and this Court, we ask the Court to begin their review with the cases cited herein.

The decisions of the lower courts directly conflict with U.S. Supreme Court precedents.

The lower courts showed direct opposition to the opinion of this Court in *Neitzke v. Williams*, 490 U.S. 319 (1989). The present Petitioners' case before the lower District Court was dismissed *sua sponte* as "failing to state a claim." The appeal to the Eleventh Circuit was likewise dismissed *sua sponte* as "frivolous", without so much as a flick of the wrist to even include a legible judge's name on the dismissal order. As neither of the lower courts gave account of the pleading deficiencies which led to the dismissal, nor did they provide an opportunity to amend the supposed deficiencies, it is apparent that the courts did simply abuse subsections (i), "failure to state a claim" and (ii), "frivolousness", as equivalent and interchangeable excuses to easily rid themselves of the complaint, in blatant conflict with *Neitzke v. Williams, 490 U.S. 319 (1989)*

The lower courts flagrantly flouted this Court's ruling in *Conley v. Gibson*, 355 U.S. 41 (1957) which defines the standard for a "failure to state a claim" dismissal. Petitioners put forth a complaint clearly putting forth facts of the theft of the medical implement and of Defendant's refusal to enforce the law with respect to the crimes reported, thereby denying equal protection under the law to Plaintiffs. The lower courts denied Petitioners the opportunity to present their evidence.

The lower courts defied the U.S. Supreme Court precedent of *Denton v. Hernandez*, 504 U.S. 25 (1992), which ruled that even if claims are to be dismissed as frivolous, the litigant must be given the opportunity to amend the complaint.

Petitioners view it important to consider that the court below cited *Pace v. Evans*, 709 F.2d 1428 (11th Cir. 1983) as a basis for *sua sponte* dismissal of present *in forma pauperis* case. Granted, Petitioners are extremely lacking in their legal education and experience. However, they can read. According to the opinion that Petitioners found published for *Pace v. Evans*, the appeals court explicitly found that the lower court was wrong in dismissing the case *sua sponte* as frivolous. Ironically, that is precisely what the Eleventh Circuit did in present case. Petitioners can only surmise that the lower court hurriedly grasped at any citation that is listed as being even vaguely associated with the topic at hand in order to quickly rid itself of the unwanted complaint. It is important in this regard to also consider that, for 8 months from filing of the appeal, the sole action of the court was to dismiss the complaint without explanation, other than inability to pay the fees, without even bothering to print a legible judge's name on the dismissal order. The

court presumably relies on the sheer desperation of Petitioners' circumstances to prevent them from persisting further in being heard.

XII. Conclusion

The petition for a writ of certiorari should be granted for the foregoing reasons.

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The petition for a writ of certiorari should be granted for the foregoing reasons.

Rebekah Wauth
7/19/2022