22-5287

No. _____

ORIGINAL

IN THE

Supreme Court of the United States

GREGORY EDWIN DUNN,

Petitioner,

— v. —

COUNTY OF SANTA CRUZ,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

GREGORY EDWIN DUNN
Counsel of Record
In Pro Se
5351 Monroe St, Apt 3
Los Angeles, CA 90038
(323) 218-4624
contact@gregdunn.la

QUESTIONS PRESENTED

1. Whether indigence should be deemed a suspect or quasi-suspect class under the Equal Protection Guarantee of the 5th amendment and the Due Process Clause of the 14th amendment?

2. Whether the denial of exercising the 6th amendment right to self-representation through deprivations of Access to the Courts in an effective manner should be a constitutionally-protected enumerated fundamental right and liberty.

    2-1 Whether such deprivations violate 28 U.S.C. 1654?

3. Whether CAND GO-75, PLRA codifications to 28 U.S.C. § 1915 violates the 14th amendment Equal Protection and Due Process clauses, the 5th amendment Equal Protection Guarantee and Due Process clauses, 1st amendment Speech and Petition clauses, Privileges and Immunities clause, and the 6th and 9th amendment rights and privileges of Free Indigent Citizens vis-à-vis Indigent Prisoner-Citizens and Free Non-Indigent Citizens?

    3-1 Whether the 5th amendment ought to have an Equal Privileges & Immunities Guarantee such as in the 14th amendment to

prevent the Federal government from abridging the Privileges and Immunities of U.S. Citizens?

4. Whether during COVID-19, CAND GO-75 violated 28 U.S.C. § 2072(b), the 14th amendment's Due Process and Equal Protection clauses, the 5th amendment's Equal Protection Guarantee and Due Process clauses of Free Indigent Litigants and Citizens in its deprivation of the fundamental Privilege of Access to the Courts vis-à-vis Pro Se Indigent Prisoners and Free Non-Indigent Litigants and Citizens?

   4-1 Whether Local Rules and General Orders should fall within the scope of the Rules Enabling Act's Abrogation Clause, 28 U.S.C. § 2072(b)?

   4-2 Whether CAND Civ-LR 1-5(j) violates Due Process, the 1st amendment Free Speech and Petition clauses, and 28 U.S.C. § 2072(b)?

5. Whether CAND GO-75, PLRA codifications to 28 U.S.C. § 1915, the lack of Summary Judgment Notice for Free Indigent Litigants, and the lower courts' rulings violated the 9th amendment by denying Petitioner's ability to effectively exercise his fundamental liberty to self-representation under the 6th amendment & Privileges and Immunities clause?

6. Whether *Foman Factor 3* should be construed literally for Free Indigent Litigants and Citizens in deciding whether to grant leave to amend?

6-1 Whether in an IFP case dismissed for failure to state a claim, *Foman Factor 3's* application can extend across in and of itself as an applicable *Foman Factor* in a separate, distinct IFP action case dismissed for frivolity?

7. Whether the lack of notice and opportunity to be heard after judgment on appeal deprives Pro Se Indigent Litigants and Citizens Access to the Courts and denies them their right to effective Self-Representation?

7-1 Whether Orders to Show Cause (OSC), deprives access for Pro Se Indigent Litigants right to Access the Courts for actions certified by the district court as frivolous?

8. Whether the applicable standard on appeal determining whether indigent litigants should maintain their IFP status deprives access to the courts and violates equal protection and due process, the 1st amendment's petition clause, and Privileges and Immunities for Indigent Citizens and Litigants whose IFP actions were dismissed for failure to state a claim in the trial court, then invariably dismissed as frivolous on appeal after the trial court certifies it as such?

9. Whether any of the lower courts' rulings constitute summary reversal of judgment or affirmance?

PARTIES TO THE PROCEEDINGS

Gregory Edwin Dunn is the petitioner here and was plaintiff-appellant below. The County of Santa Cruz is the respondent here and were defendant-appellees below.

CORPORATE DISCLOSURE STATEMENT

There are no parent corporations or publicly held companies in this case.

LIST OF ALL PROCEEDINGS

Dunn v. Santa Cruz County,

No.: 5:21-cv-02091-BLF, (Pacer: 5:2021cv02091)

(—COMPLAINT, IFP APP, and PROPOSED SUMMONS [ECF 1], filed and entered by Plaintiff-Petitioner on March 25th, 2021;

—SUMMONS ISSUED [ECF 3], on March 25, 2021;

—SETTING INITIAL CASE MANAGEMENT CONFERENCE & ADR [ECF 4], entered by the court on March 25th, 2021;

—FIRST COMPLAINT SCREENING (CS1) GRANTING IFP STATUS [ECF 5], by the court dismissing action with leave to amend entered April 2nd, 2021;

—FIRST AMENDED COMPLAINT (FAC) [ECF 7], filed and entered by Plaintiff-Petitioner April 2nd, 2021;

—Personal SERVICE of SUMMONS and COMPLAINT effected by Plaintiff's Process Server on May 7th, 2021;

—SUMMONS RETURNED EXECUTED [ECF 11], on May 20th, 2021;

—SCREENING OF FIRST AMENDED COMPLAINT (CS2) [ECF 13], dismissing FAC with prejudice and without leave to amend entered on May 24th, 2021;

—JUDGMENT [ECF 14], filed and entered May 24th, 2021;

—NOTICE OF APPEAL [ECF 16], filed and entered on June 1st, 2021;

—ORDER REVOKING IFP STATUS [ECF 19], filed and entered June 3rd, 2021.

Gregory Dunn v. County of Santa Cruz,

No.: 21-15943, (Pacer: 0:2021cv15943)

(—NOTICE OF APPEAL [ECF 1], filed and entered on June 1st, 2021;

—IFP APP & AFFIDAVIT [ECF 5], entered by Plaintiff on July 1st, 2021;

—CLERK ORDER TO SHOW CAUSE [ECF 6], reflecting that District Court certified that appeal is not taken in good faith pursuant to U.S.C. § 1915(a)(3) and U.S.C. § 1915(e)(2)(B)(i), entered on July 6th, 2021;

—APPELLATE OPENING BRIEF [ECF 10], entered by Plaintiff on August 1st, 2021;

—RESPONSE TO ORDER TO SHOW CAUSE [ECF 11], filed and entered by Plaintiff on August 9th, 2021;

—DISPOSITIVE MOTION [ECF 12], summarily affirming judgment of District Court filed and entered February 17th, 2022;

—MANDATE [ECF 13], issued on March 11th, 2022).

Dunn v. Yolo County (Related Case)

No.: 2:21-cv-00674-KJM-DB, (Pacer: 2:2021cv00764)

(—COMPLAINT [ECF 1], filed April 15th and entered April 16th, 2021;

—SUMMONS ISSUED [ECF 3], on April 16th, 2021;

—SUMMONS RETURNED EXECUTED [ECF 4], filed on May 10th and entered on May 11th, 2021;

—MOTION FOR PERMISSION FOR ELECTRONIC CASE FILING [ECF 5], entered on May 19th, 2021;

—MOTION TO DISMISS [ECF 10], filed by Yolo County and entered June 1st, 2021;

—NOTICE OF VOLUNTARY DISMISSAL [ECF 12], filed by Plaintiff and entered June 15th, 2021.

Dunn v. Los Angeles County

(Outcome-Dispositive Directly Related Case)

No.: 2:21-cv-04349-RGK-GJS, (Pacer: 2:2021cv04349)

(—COMPLAINT AND [ECF 1], filed May 25th, and entered May 26th, 2021;

—IFP APP [ECF 4], filed on May 25th, and entered July 13th, 2021;

—SUMMARY DISPOSITION DISMISSING ACTION AND DENYING IFP STATUS [ECF 5], entered July 16th, 2021).

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

RULES

CONSTITUTIONAL PROVISIONS

STATUTES

OPINIONS AND ORDERS

OTHER

66 UCLA L. Rev. 654 (2019) — *Substance, Procedure, & the Rules Enabling Act* ....

H.R. 6037 — *Fair Access to Legal Counsel Act of 2020s*

Ch. 20, § 17, 1 Stat. 73, 83 — *Judiciary Act of 1789* .....

PETITION FOR A WRIT OF CERTIORARI

Petitioner Gregory Edwin Dunn respectfully petitions for a Writ of Certiorari to review the United States Court of Appeals for the Ninth Circuit's summary affirmance of the United States District Court for the Northern District of California's entry of judgment. In addition, Petitioner Gregory Edwin Dunn respectfully petitions the Court to review the Northern District's judgment dismissing petitioner's pro se *in forma pauperis* Monell claim with prejudice, without leave to amend, and revoking IFP status on appeal.

OPINIONS BELOW

The Northern District Court opinion is unpublished, however is available at 2021 WL 2075547.

JURISDICTION

On February 17, 2022, the Ninth Circuit issued its opinion affirming the district court's *sua sponte* dismissal without leave and with prejudice on May 24th, 2021. This petition for a writ of certiorari was timely filed on May 18th, 2022. This Court on June 3rd, 2022, finding good faith and correctable deficiencies, allowed an amended petition to be filed due August 2nd, 2022. The United States Northern District of California had original jurisdiction under *28 U.S.C. 1331* and *28 U.S.C. 1343* as Plaintiff's claims brought claims for violations of civil rights pursuant to *42 U.S.C. § 1983*. The Court of Appeals for the Ninth Circuit had appellate jurisdiction pursuant to *28 U.S.C. 1291* as it is from final and appealable orders from a district court within the Circuit which the Court of Appeals embraces pursuant to 28 U.S.C. 1294(b). The Jurisdiction in this case in proper under 28 U.S.C. § 1254(1) and under this Court's supervisory power. Because 28 U.S.C. § 2403(a) may apply this case, this petition shall be served on the Solicitor General of the United States. This Court, pursuant to 28 U.S.C. § 2403(a), has not certified to the Attorney General of the United States due the fact that the constitutionality of an Act of Congress has been called into question.

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

Section 1 of the Fourteenth Amendment to the United States Constitution provides:

> 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 First Amendment to the United States Constitution provides:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peacefully to assemble, and to petition the Government for a redress of grievances.

The Fifth Amendment to the United States Constitution provides:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

The Sixth Amendment to the United States Constitution provides:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

The Ninth Amendment to the United States Constitution provides:

> The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

The Judicial Oath, 28 U.S.C. § 453 provides:

> Each justice or judge of the United States shall take the following oath or affirmation before performing the duties of his office: "I, ____ ____, do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as ___ under the Constitution and laws of the United States. So help me God."

The *in forma pauperis* statute, 28 U.S.C. § 1915 provides:

> **(a)**
>
> **(1)** Subject to subsection (b), any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees or security therefor, by a person who submits an affidavit that includes a statement of all assets such prisoner possesses that the person is unable to pay such fees or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that the person is entitled to redress.
>
> **(3)** An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.
>
> **(d)** The officers of the court shall issue and serve all process, and perform all duties in such cases. Witnesses shall attend as in other cases, and the same remedies shall be available as are provided for by law in other cases.
>
> **(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 courts 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.

(g) In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger or serious physical injury.

(h) As used in this section, the term "prisoner" means any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program.

28 U.S.C. § 2071 provides:

(a) The Supreme Court and all courts established by Act of Congress may from time to time prescribe rules for the conduct of their business. Such rules shall be consistent with Acts of Congress and rules of practice and procedure prescribed under section 2072 of this title.

(b) Any rule prescribed by a court, other than the Supreme Court, under subsection (a) shall be prescribed only after giving appropriate public notice and an opportunity for comment. Such rule shall take effect on pending proceedings as the prescribing court may order.

(c)

(1) A rule of a district prescribed under subsection (a) shall remain in effect unless modified or abrogated by the judicial council of the relevant circuit.

(2) Any other rule prescribed by a court other than the Supreme Court under subsection (a) shall remain in effect unless modified or abrogated by the Judicial Conference.

(d) Copies of rules prescribed under subsection (a) by a district court shall be furnished to the judicial council, and copies of all rules prescribed by a court other than the Supreme Court under subsection (a) shall be furnished to the Director of the Administrative Office of the United States Courts and made available to the public.

(e) If the prescribing court determines that there is an immediate need for a rule, such court may proceed under this section without public notice and opportunity for comment, but such court shall promptly thereafter afford such notice and opportunity for comment.

(f) No rule may be prescribed by a district court other than under this section.

The Rules Enabling Act, 28 U.S.C. § 2072 provides:

(a) The Supreme Court shall have the power to prescribe general rules of practice and procedure and rules of evidence for cases in the United States district courts (including proceedings before magistrate judges thereof) and courts of appeals.

(b) Such rules shall not abridge, enlarge or modify any substantive right. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.

(c) Such rules may define when a ruling of a district court is final for the purposes of appeal under section 1291 of this title.

STATEMENT OF THE CASE

Emanating under the Equal Protection Guarantee of the Fifth amendment, this case at its core is about meaningful Access to the Courts for Free Indigent Litigants and Citizens.

This case presents multiple important and recurring legal issues, some of which transcend the deprivation of fundamental liberties of the poor, and the subsequent open constitutional question as to whether the poor are a suspect class. In raising deprivations of the right to Access, Ninth amendment jurisprudence is contended to begin to take shape and form in this Court due to Free Pro Se Indigent Litigants and Citizens denial to effectively exercise their Sixth amendment right to Self-Representation, a right they are forced to elect to exercise due to their indigence.

In Addition, the entrenched issue of the appropriate textual candidate for precluding the Federal government from abridging the Privileges and Immunities of Citizens of the United States is presented, and whether an "Equal Privileges and Immunities Guarantee" would be appropriate given the precedent in *Bolling, Adarand,* and up through *Dobbs.*

Live controversies address the scope and purchase of the 28 U.S.C. §§ 2041-2, the Rules Enabling Act, the constitutionality of PLRA codifications to the *in forma pauperis* (IFP) statute 28 U.S.C. § 1915, and the subsequent precedent and accepted course of judicial proceedings arising from the IFP statute's far-reaching influence relatedly to the Judiciary accepting as valid Acts of Congress but as a consequence the aftereffect denying rudimentary procedural protections to Free Indigent

Litigant and Citizens that are similarly afforded to Prisoners and Free Non-Indigent Litigants.

Additionally at-issue and of great relevant public importance is the what the contours should be for Free Pro Se Indigent Litigants and Citizens' procedural and substantive due process rights during public health emergencies such as COVID-19, and what, if any, the balancing tests in place should be to generally-applied policies of Administrative Agencies to protect the public welfare, and the Court's duty to protect the fundamental liberties of Free Indigent Litigants and Citizens to institute and maintain actions in the courts and to petition the government for redress of grievances.

Lastly, the Ninth Circuit sanctioning the Northern District's stark departure from the accepted and usual course of judicial proceedings and of this Court's precedent, the in-turn Ninth Circuit's affirmance thereof in regard to applicability of *Foman Factors*, are all compelling reasons as to call for an exercise of this Court's supervisory power.

The Right to Access the Courts is a fundamental liberty of the highest order. In the first Slaughter-House case, the particulars of the 14th amendment's Privileges and Immunities Clause was interpreted. Justice Washington, in listing a limited non-exclusive list of "fundamental liberties" afforded to United States Citizens *inter alia* mentions the fundamental liberty to "institute and maintain actions in the courts". While this notion of access dates much further back to the old

Common Laws of England, Justice Washington enumerated this essential right to Access before the IFP statute was enacted in 1892, the Congressional intent being "to ensure that indigent litigants have meaningful access to the federal courts".

Litigants certified as indigent by the respective court may institute and maintain civil actions in Federal court under the *in forma pauperis* (IFP) statute, 28 U.S.C. § 1915. Since its enactment in 1892, the courts began curating a collection of procedural protections to protect the indigent litigant's Right to Access and comport with Due Process, working in tandem to the IFP statute. In the 1980's, frivolous actions brought by prisoners under the IFP statute were at an all-time high, and the burgeoning IFP dockets led the courts to begin curtailing the very same protections to the indigent litigant they had previously afforded. In 1995, Congress, in the same vein of deterring frivolous prisoner litigation, passed the Prisoner Litigation Reform Act (PLRA), which most notably amended the IFP statute in an effort to meet this end. Consequently, PLRA codifications to the IFP statute has had a bleed-through effect, encroaching on the fundamental liberties of Free Indigent Litigants and Citizens and influencing the Judiciary to do the same in-line with accepting as valid Acts of Congress and maintaining the balance of powers. While Congress' intent was narrowly-tailored, its codifications to a statute not solely applicable to prisoners are far-reaching, and inherently infringes upon Free Indigent Litigants and Citizens Right to Access the Courts.

Petitioner originally brought a Monell claim pursuant to 42 U.S.C. § 1983 (§ 1983) in the United States District Court for the Northern District of California

(Northern District) against the County of Santa Cruz for pattern and practice of depriving Petitioner of his possessory and property interests in his personal electronics. Specifically, Petitioner alleged the County Probation Department's unconstitutional misuse of Apple's Enterprise Platform via application of Mobile Device Management (MDM), interfered and restricted his use of his personal electronics by making changes to on-device passcodes and putting Petitioner's devices at-risk for destruction of data.

Seeking mainly equitable relief Petitioner on March 25th, 2021, filed case initiating documents in the U.S. District Court for the Northern District of California (Northern District) together with an application to proceed *in forma pauperis* (IFP) due to Petitioner's indigence, sought injunctive relief and recovery for damages against the County of Santa Cruz for the conduct of its Probation Department of which Petition was under the jurisdiction thereof dating back to 2017 being originally imposed in Yolo County.

The Northern District granted IFP status, issued Summons, and subsequently screened the complaint (CS1) pursuant to 28 U.S.C. § 1915(a), dismissing the action with leave to amend, and provided guidance of curable deficiencies to meet the elements of a facially possible § 1983 *Monell* claim. Petitioner corrected multiple deficiencies by attributing the actions from "an unknown third party" to Santa Cruz County's Probation Department in his Amended Complaint (FAC). Petitioner, being uninitiated to the complexity and nuance of substantive law and procedure in Federal court, opted to use the

Northern District's in-house Pro Se Clinic (CAND Pro Se Clinic), which provided Petitioner legal advice and limited-scope representation. In the span of the next six weeks, Petitioner expressed his intention to serve process on the County of Santa Cruz and sought legal advice from the Northern District's Pro Se Clinic in this regard.

A thorny issue, however, was that the Northern District had adopted a General Order (CAND GO-75) during the onset of the COVID-19 pandemic in 2021 that suspended the statutory and regulatory requirement of Service of Process by U.S. Marshals for Free Indigent Litigants and Citizens, Indigent Prisoner Litigants, and Seamen under 28 U.S.C. §§ 1915-1916, and the Federal Rules of Civil Procedure Rule 4(c)(3) (FRCP 4(c)(3)). As a result, Petitioner was burdened in his ability as a Free Pro Se Indigent Citizen to effectively service process on the County of Santa Cruz.

CAND GO-75 additionally only tolled the 90-day time for service under FRCP 4(m) for actions where the Norther District explicitly ordered the U.S. Marshals to serve process, a separate step taken by courts later in civil proceedings for claims that are meet the requisite criteria for facially plausibility and elements of the ascribed cause of action. CAND's Pro Se Clinic advice was in Petitioner's view, unavailing, with the only articulable advice being to "just waive time"— a predisposition required by statute for Pro Se Indigent Prisoners under 42 U.S.C. § 1997e(g), in where they are they forced to waive time for Service of Process (SOP) against local governments and municipalities in § 1983 *Monell* claims, in the

interest of conserving judicial resources and deterring frivolous prisoner litigation unless or until the claim is facially plausible and potentially meritorious. While CAND GO-75 had no impact in this regard to Waiving Service, whatsoever to Pro Indigent Prisoners, the same cannot be said for Free Indigent Citizens, who are not bound by such requirement, and in the interest of legal strategy and self-representation, may opt to not waive time under FRCP 4(d).

The latter portion of CAND GO-75 tolled time for service in cases *only* where the court ordered the U.S. Marshal service to serve process, again having no effect whatsoever to Pro Se Indigent Prisoners, as the automatic waiver of time under § 1997e(g) already tolled time for service, giving Pro Se Indigent Prisoners additional time for amendment and to reach the elements of a colorable claim. Free Indigent Litigants and Citizens such as Petitioner, however, did not receive the same procedural comfort afforded to prisoners. Critically more important is the fact that if service of process (SOP) had been ordered by U.S. Marshal, the 90-day time for service was *not* tolled, primarily burdening Free Pro Se Indigent Litigants and Citizens bringing § 1983 *Monell* claims. Apart from the suspension of the statutory and regulatory entitlement of SOP by U.S. Marshal, CAND GO-75 in declining to waive time for all Free Indigent Litigants and Citizens proceeding IFP isn't even an effective means to complete service , as the relevant Federal Rules for service on municipalities does not allow for waivers of time to even be entered against such a defendant (*See* FRCP 4(j)(2)(B)). This placed Petitioner as the mercy of the Court's imposition of a General Order, removed his means to effectively exercise the

fundamental liberty to self-representation and to petition the government for redress of grievances under the Sixth and First amendments, respectively. Also of interest, is that in the Ninth Circuit, General Orders are not considered "rules" even when they abridge the substantive rights of its litigants. Furthermore, General Orders in the Northern District are not subject to notice and opportunity for public comment prior to their enactment, and do not require approval of the Judicial Council of the Ninth Circuit or even a quorum in the Ninth Circuit as required by the Northern District's Local Rules, and the respective promulgating authority for General Orders, Northern District's Local Rule 1-5(j) (CAND Civ-LR 1-5(j)). At best, CAND GO-75, mainly burdening Free Pro Se Indigent Litigants in § 1983 *Monell* claims, had uneven impacts to Access to differing groups, primarily between Indigent prisoners and Free Indigent Litigant and Citizens

CAND GO-75 provided a caveat of alternate forms of service not affected by the General Order, but none of the listed alternatives for SOP were feasible and legally sound for Petitioner. CAND GO-75's alternatives for service included SOP by mail, waivers of service under F.R.C.P. 4(d), service by electronic means, and by order of the court for the U.S. Marshals to serve process, none of which Petitioner could effectively use for SOP properly as the County of Santa Cruz never became an e-filer through CM-ECF, SOP by mail for even a civil litigant in the capacity of counsel suffers defeat as improper service, (*See* Constien ["even when service is effected by use of the mail, only a nonparty can place the summons and complaint

in the mail"]& (*Reading,* [finding that Rule 4 does not allow a pro se plaintiff to effectuate service by certified mail himself]).

Undeterred, Petitioner in the interest of maintaining his action despite the barriers due to his indigent status, again sought legal advice from the CAND Pro Se Clinic on the best way to proceed and was not offered any definitive answers other than the generalities of SOP, and as not applied to his case.

Ultimately, through trial and error, Petitioner was able to effect service by use of licensed process server, Direct Legal on May 7th, 2021. Direct Legal would submit the Certificate of Service with the Northern District in the coming weeks, but in the interim, upon discussing the particulars of Petitioner's *Monell* claim, the CAND Pro Se Clinic gave legal advice that similar incidents where Petitioner's probation was originally imposed, could subject Yolo County to "Joinder" and "Section 1985", the conspiracy statute. What ensued was a tangled mess of litigation ultimately leading to filings for motions of consolidation with the Judicial Panel of Multidistrict Litigation (JPML) enjoining Yolo County as a defendant, and a Notice of Potential Tag-Along action for the County of Los Angeles, where interference, and deprivations of possessory and property interests in Petitioner's personal electronics continued and escalated once Petitioner's original action in the Northern District against the County of Santa Cruz commenced 6 weeks prior.

On May 24th, the Northern District Screened the First Amended Complaint (FAC) pursuant to 28 U.S.C. § 1915(a), and Dismissed Petitioner's action with prejudice and without leave to amend for failure to state a claim and futility of

amendment because of repeated error to cure deficiencies (CS2), despite Petitioner correcting several complaint deficiencies from the court-provided guidance in the Screening of the Original Complaint (CS1). The Northern District thereafter entered Judgment, and issued an Order Terminating as Moot all Motions, Dates, and Deadlines.

In one final call with CAND's Pro Se Clinic after dismissal, it was expressed to Petitioner the surprise that the court did not grant leave to amend a second time, but unfortunately failed to mention to Petitioner that he had multiple avenues of contesting the Judgment and even had the option to respond to a Summary Judgment Motion.

At issue is not misapplication, but the Northern District's stark departure usual course of IFP proceedings and from this Court's precedent in multiple procedural areas.

CS2 had an abundance of clear error on its face, to which later on appeal the Ninth Circuit affirmed as Insubstantial for Argument, i.e., harmless error.

Paradoxically, in the Districts Courts second complaint screening (CS2), the court cites *Bell Atl. Corp. v. Twombly,* ["550 U.S. 544, 570 (2007)], makes a reasonable inference that the County of Santa Cruz is liable for the alleged misconduct, departs from *Monell v. Dept. of Social Services,* in that Petitioner's claim required identification of an *individual* employee of the county, not the county *itself* as a "person" subject to suit in a § 1983 *Monell* claim, ["He has not identified any individual employed by Santa Cruz County or described what such individual

did that led Dunn to believe that his current problems with his iPhone are attributable to Santa Cruz County."(CS2)]

It should be additionally noted that the court immediately contradicts itself in (CS2) by stating that ["Dunn's FAC does not cure the defects identified ... [original] screening order" (CS2)] then in its liberally construction of the pleadings under (*Haines)*, used new information presented in the FAC that in fact did cure complaint deficiencies.

REASONS FOR GRANTING THE PETITION

1. THE FUNDAMENTAL LIBERTY OF ACCESS TO THE COURTS EFFECTIVE SELF-REPRESENTATION IN DEEPLY ROOTED IN THE OLD COMMON LAWS OF ENGLAND AND THE JUDICIARY ACT OF 1789

2. BOLLING MET A CONSTITUTIONAL NEED FOR PROTECTION NOT ORIGINALLY CONFERRED TO CITIZENS IN THE PASSAGE OF THE 14TH AMENDMENT'S EQUAL PROTECTION CLAUSE.

3. FREE INDIGENT LITIGANTS AND CITIZENS ARE A DISCRETE INSULAR MINORITIES THAT WARRANT HEIGHTENED REVIEW

4. FREE INDIGENT LITIGANTS AND CITIZENS MEET ALL THE TRADITIONAL INDICIA OF SUSPECTNESS

3. FREE INDIGENT LITIGANTS AND CITIZENS CAN BE DEFINITIVELY DEFINED IN TERMS OF EQUAL PROTECTION

4. THE COURTS CLASSIFY INDIGENCE AFTER APPROVING AN INDIGENT LITIGANT'S AFFIDAVIT TO PROCEED *IN FORMA PAUPERIS.*

5. FREE INDIGENT LITIGANTS AND CITIZENS ARE INFRINGED OF THE RIGHT TO ACCESS THE COURTS AND DEPRIVED PROCEDURAL PROTECTIONS AFFORDED TO INDIGENT PRISONERS

6. 28 U.S.C. § 1915 (e)(2)(B)(ii) IS ARBITRARY, NOT NARROWLY-TAILORED OR LEAST RESTRICTIVE, AND UNREASONING TO FREE INDIGENT LITIGANTS AND CITIZENS.

7. THE STANDARD FOR SUA SPONTE DISMISSALS FOR FAILURE TO STATE A CLAIM IS NOT EQUAL UNDER 28 U.S.C. § 1915(e)(2)(B)(ii).

8. INDIGENT LITIGANTS ARE NOT AFFORDED THE SAME CUSTOMARY PROCEDURAL RIGHT THAT NON-INDIGENT LITIGANTS POSSESS.

8-1 RIGHT TO NEUTRAL AND DETACHED DECISION MAKER: Non-Indigent Litigants Are Customarily Not Dismissed Sua Sponte Until Responsive Pleadings Have Been Filed.

8-2 ADEQUATE NOTICE

8-3 MEANINGFUL OPPORTUNITY TO BE HEARD

9. THE PRIVILEGES AND IMMUNITIES OF ARTICLE IV, § 2, AND THE 14TH AMENDMENT ONLY PROTECT CITIZENS FROM THE STATE AND NOT THE FEDERAL GOVERNMENT

10. INDIGENT LITIGANTS ARE UNREPRESENTED IN THE POLITICAL SYSTEM TO THE EXTENT OF POWERLESSNESS

11. PURPOSEFUL UNEQUAL TREATMENT OF FREE INDIGENT LITIGANTS AND CITIZENS OCCURS DUE TO THE ARBITRARY NATURE OF PLRA CODIFICATIONS TO THE IFP STATUTE

12. PLRA CODIFICATIONS TO THE IFP STATUTE ARE NOT RATIONALLY OR EVEN SUBSTANTIALLY RELATED.

13. NON-INDIGENT LITIGANTS ARE AFFORDED SECOND AMENDED COMPLAINT MUCH MORE FREQUENTLY THAN PRO SE INDIGENT ONES.

CONCLUSION

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

Respectfully Submitted,

Gregory Edwin Dunn
Counsel of Record
In Pro Se
5351 Monroe St, Apt 3
Los Angeles, CA 90038
(323) 218-4624
contact@gregdunn.la

Dated this 2nd of August, 2022