

22-6355

No. \_\_\_\_\_

FILED

DEC 08 2022

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SUPREME COURT, U.S.

ORIGINAL

IN THE  
SUPREME COURT OF THE UNITED STATES

JESS RICHARD SMITH, — PETITIONER  
(Your Name)

vs.

CORY ELLIS, ET. AL., — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

NITH CIRCUIT COURT OF APPEALS, NO. 22-35352  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

JESS RICHARD SMITH  
(Your Name)

COYOTE RIDGE CORRECTION CENTER  
(Address)

POB, 769, H-B-23, Connell, Wa. 98326  
(City, State, Zip Code)

No Number  
(Phone Number)

QUESTION(S) PRESENTED

- 1) Whether the Ninth Circuit's 10-722, ORDER, granting Respondent's motion To Revoke In Forma Pauperis under 28 U.S.C. § 1915(g), Three Strikes provisions, creates a conflict with established Federal Court of Appeals case law regarding "post filing" strikes?
- 2) Whether the Ninth Circuit's Order, granting Respondent's motion To Revoke, was entered in error because the Order, does not state what strike the Court counted, in revoking IFP?

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## OTHER

## LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

(IV)

IN THE  
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☒ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☒ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

The opinion of the \_\_\_\_\_ court appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

## JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 10-7-22.

☒ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: 10-7-22, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. A \_\_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was \_\_\_\_\_.  
A copy of that decision appears at Appendix \_\_\_\_\_.

☐ A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. A \_\_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a);

28 USC § 1292 (a)(1)(b)(c)(1); 28  
USC § 1295 (2); 28 USC § 1291 US Const  
art. III § 2,  
2

# CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution;  
Amendment 1 (Right To Petition);  
Amend. 8 (Excessive Fines);  
Amend 14 (Due Process, Abridged  
Privileges, Equal Protection,  
Procedural Due Process).

## Statutes:

Supreme Court Rule 10 (a)  
Supreme Court. 43 (2)  
28 U.S.C. § 1915 (g)

## STATEMENT OF THE CASE

Petitioner, Jess R. Smith, filed a 42 USCS §1983 Civil Rights Complaint, on May 30<sup>th</sup>, 2018 in the district court. See Appendix C, Civil Court Docket.

After the magistrate recommended dismissal, the district court, deferred ruling on Smith's In forma Pauperis, for purposes of Appeal. See Appendix B (D.C. Order Adopting R & R, p. 5, footnote 2).

In the Ninth Circuit Appellate proceedings, the Respondents, filed a Motion to Revoke Smith's IFF, on appeal, relying on a "post filing" July 11<sup>th</sup>, 2018, 9<sup>th</sup> Circuit order, dismissing a separate appeal. See Motion To Revoke IFF, on Appeal, p. 4, at Appendix D.

This timely Petition follows.

The 9<sup>th</sup> Circuit's Order revoking IFF, conflicts with: Tolbert v. Stevenson, 635 F.3d 646 (4<sup>th</sup> Cir. 2011); Richey v. Dahne, 807 F.3d 1202 (9<sup>th</sup> Cir. 2015); AKers v. Watts, 589 F.Supp. 2d 12 (D.D.C. 2008).

## REASONS FOR GRANTING THE PETITION

1) This honorable Supreme Court, should GRANT review of the 10-7-22, Order, granting Respondent's Motion To Revoke Smith's IFP because the Order, conflicts with the Federal Court of Appeals caselaw, governing the three strikes provisions, in 28 USC § 1915 (g).

In Nicholas v. American Det. Agency, 254 Fed. Appx. 116 (3d Cir. 2007) it was held "that the Dist. Court erred counting three strikes under § 1915 (g) because the dismissals, had not been entered and his appeal of those dismissals, were not completed when he filed the complaint."

Smith's case was filed on MAY 30<sup>th</sup> 2018. The Respondent and the 9<sup>th</sup> Cir. Court of Appeals, relied on a "post strike" entered on July 11<sup>th</sup> 2018. See Appendix D (Mot. To Revoke, p. 4). Supreme Court Rule 10 (a).

The Ninth Circuit's Order, granting revocation of Smith's IFP, neither complies with due process, under caselaw requiring a court relying on the three strikes rule, to cite the case numbers and docket numbers and the dates of the dismissals under §1915 (g). See EVANS V. ILL. Dept. of Corrections, 150 F.3d 810 (7th Cir. 1998).

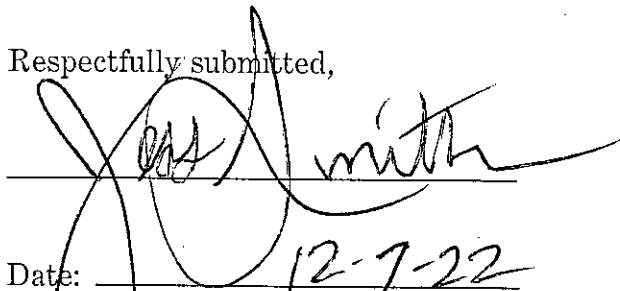
The Court should remand on these procedural grounds.

**CONCLUSION**

To avoid bad precedent, on this Three Civil Strikes, issue; Award Rule 43 (2.) costs and:

The petition for a writ of certiorari should be granted.

Respectfully submitted,

  
\_\_\_\_\_

Date: \_\_\_\_\_

12-7-22  
CRCC PO Box 769  
Connell, WA. 99326