

22-6454

No.

ORIGINAL

In the Supreme Court of the United States

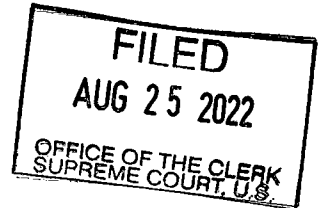
Christine Chang,

Petitioner,

v.

EZERY BEAUCHAMP, Captain and
Commander for California Highway
Patrol; TODD CARDEN, Officer for
California Highway Patrol; CALIFORNIA
HIGHWAY PATROL, A State Entity;
S. MORALES, Sergeant for California
Highway Patrol; T. SWARTS, Officer for
California Highway Patrol; in their
individual and official capacities; and
DOES 1-25,

Respondents.



ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
and
DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA

PETITION FOR A WRIT OF CERTIORARI

Christine Chang
Pro Se Petitioner
300 Hilary Way Apartment 47
Vallejo, California 94591
Telephone No. (707) 373-7248

QUESTIONS PRESENTED

Whether the Ninth Circuit violates Petitioner's Fourteenth Amendment due process rights when it decides in a civil rights action under 42 U.S.C. Section 1983 that the district court has not abused discretion vacates all four motion-to-dismiss hearings, deprives Pro Se Petitioner from argue points/submit evidence/testify issues, and dismisses the case without leave to amend and with prejudice, in conflict with many decisions of this Court, circuit courts including Ninth Circuit, and state supreme courts.

Whether the District Court abuses discretion dismisses all civil rights actions, in Second Amended Complaint (SAC) under 42 U.S.C. Sec. 1983, without leave to amend and with prejudice based on Rule 12(b) (6), in conflict with decisions of this Court, Ninth Circuit, and California Supreme Court, in violation of Petitioner's due process rights of Fourteenth Amendment and freedom-from-unlawful-restraint of Fourth Amendment.

Whether the District Court abuses discretion dismisses all viable state law causes of action, in First Amended Complaint (FAC), without leave to amend and with prejudice based on Cal. Gov. Immunity Code Sec. 821.6, which is waived by the Civil Rights Act 42 U.S.C. Sec. 1983, Cal. Tort Claims Act 911.2, and Cal. Gov. Code Sections 822.2, 815.2(a), 815.3(a) (b) (c), 820.4, and 820.8.

PARTIES TO THE PROCEEDINGS

Christine Chang,

Pro Se Petitioner,

v.

EZERY BEAUCHAMP, Captain and Commander for California Highway Patrol; TODD CARDEN, Officer for California Highway Patrol; CALIFORNIA HIGHWAY PATROL, A State Entity; S. MORALES, Sergeant for California Highway Patrol; T. SWARTS, Officer for California Highway Patrol; in their individual and official capacities; and DOES 1-25,

Respondents.

OPINIONS BELOW

The Order of the Ninth Circuit Court of Appeal dated June 1, 2022 by Circuit Judges Fernandez, Tashima, and Friedland, deny petition for panel rehearing. No further filings will be entertained in this closed case - Appendix A

The decision of the Ninth Circuit Court of Appeals dated February 25, 2022, affirms the District Court's decision for failure to state a claim 12(b) (6), and not abuse discretion dismisses the case without leave to amend.
- Appendix B

The Judgment of the District Court dated January 19, 2021, dismisses the Second Amended Complaint (SAC) with prejudice for failure to state a claim based on 12(b) (6) - Appendix C

The Order of the District Court dated July 31, 2020, dismisses the First Amended Complaint (FAC) without leave to amend, based on Cal. Government Code Section 821.6 immunizes the Respondants. - Appendix D

The tentative ruling by Judge Jenna Whitman in Superior Court of California, Hayward Hall of Justice, dated October 25, 2019. Motion to amend complaint and motion to discovery GRANTED as follows - Appendix E

"Petitioner's unopposed First Amended Complaint (FAC) is filed and Respondents shall respond no later than November 22, 2019. Respondents have been ordered to respond to the FAC no later than November 22, 2019, if answer the FAC, Respondents shall have 15 days to respond to the pending discovery, if demur the FAC, discovery will remain stayed until the court rule on demur."

JURISDICTION

The decision of the Ninth Circuit is entered on February 25, 2022. The Ninth Circuit panel judges deny the petition for rehearing on June 1, 2022. On

August 30, 2022 the court clerk of this Court returned the petition for writ of certiorari for correction, with the corrected form to be resubmitted within 60 days. This Court has jurisdiction under 28 U.S.C. Section 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Constitution Fourteenth Amendment -

All persons born or naturalized in the U.S., and subject to the jurisdiction thereof, are citizens of the U.S. 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 U.S.; 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.

U.S. Constitution Fourth Amendment -

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.

Civil Rights 42 U.S.C. Section 1983 -

To provide private parties a cause of action for abuses of official authority which resulted in the deprivation of constitutional rights, privileges and immunities. Section 1983 prevail when conflict between Civil Rights Act and California Law for tort liability. California may not impair federally created rights.

California Bane Civil Rights Act Section 52.1 -

Rights secured by the Constitution or laws of the U.S. and this State. The act authorize suit against anyone who by threats, intimidation or coercion interferes with the exercise or enjoyment of rights secured by the state or federal constitutions, or laws without regard to whether the victim is a member of a protected class.

California Vehicle Code Section 16000 -

If the car accident resulted in death, injury or property damage exceeding \$1,000, the accident must be reported to the State's Dept. of Motor Vehicle, with other driver's name/address/date of birth/driver license info/license plate number/insurance company/policy number/name and address of any persons complaining of bodily injury after the accident.

STATEMENT

1. The supreme law of the land "Due Process" guarantees under the Fourteenth Amendment to the U.S. Constitution that the government shall not take a person's life, liberty, or property without due process of law. The fundamental fairness of the "Due Process" is paramountly important for a Pro Se Petitioner, affording her the opportunity to argue her cause, testify issue, submit evidence, call witness, and answer judge's questions, in an action constituting a deprivation under color of state authority, for rights guaranteed by the Fourteenth (due process) and Fourth Amendments (unlawful restraint).

Petitioner raises the Due Process violation in "Appellant's Petition for Rehearing" at the Ninth Circuit, case No. 21-15293, doc #18, p. 2-4, p. 8, No.1-5, filed 3/28/2022, that the district court vacates all four motion-to-dismiss-hearings then dismisses the case without leave to amend and with prejudice as follows:

- a. Motion-to-dismiss the FAC filed by Beauchamp, Cal. highway Patrol (CHP), Todd Carden, hearing set for 12/16/2019, doc #5.
- b. Vacating motion-to-dismiss-hearing filed 1/8/2020, doc #18.
- c. Motion-to-dismiss the FAC filed by Beauchamp, CHP, Carden, Swarts, filed 4/3/2020, hearing set for 5/22/2020, doc #30.
- d. Vacating motion-to-dismiss-hearing filed 4/6/2020, doc #31.
- e. Motion-to-dismiss the FAC, hearing set for 6/5/2020, doc #34.
- f. Motion-to-dismiss the FAC as to Morales for insufficient svc of process filed by Beauchamp, CHP, Carden, Swarts, hearing set for 6/5/2020, doc #35.
- g. Vacating motions-to-dismiss-hearing filed 5/28/2020, doc #41.
- h. ORDER granting motions-to-dismiss FAC, filed 8/3/2020, doc #42.
- i. Motion-to-dismiss the SAC for insufficient svc of process filed by Morales, hearing set for 10/30/2020, doc #48.
- j. Motion-to-dismiss the SAC without leave to amend filed by Beauchamp, CHP, Carden, Swarts, hearing set for 10/30/2020, doc #49.

- k. Vacating motions-to-dismiss-hearing FILED 10/26/2020, doc #55.
- l. ORDER granting motion to dismiss filed 1/19/2021, doc #56.
- m. JUDGMENT. Civil case terminated filed 1/19/2021, doc #57.

The Ninth Circuit denies appeal and panel rehearing in disregard of the Fourteenth Amendment "due process rights to be heard and notice", that the District Court abuses discretion vacates all four motion-to-dismiss-hearings, deprives Pro Se Petitioner from argue points/submit evidence/testify issues/call witness/answer judge's questions, and dismisses both FAC and SAC without leave to amend and with prejudice, in a civil rights action under 42 U.S.C. Section 1983 by the state agents acting under color of their authority. The Ninth Circuit's decision is in conflict with many decisions of this Court, circuit courts, and Cal. Supreme Court. (Appendix A and B)

Monroe v. Pape, 365 U.S. 167 (U.S. Supreme Court 1961)
Board of Regents v. Roth, 408 U.S. 564 (U.S. Supreme Court 1972)
Williams v. Horvath, 16 Cal. 3d 835 (Cal. Supreme Court 1976)
Dewitt v. Pail, 366 F. 2d 682 (9th Circuit 1966)
Willis v. Reddin, 418 F. 2d 702 (9th Circuit 1969)
Bivens v. Six Unknown Named Agents of Federal Bureau, 403 U.S. 388 (1971)
Cleveland Board of Education v. Loudermill, 470 U.S. 532 (Supreme Court 1985)
Wilson v. Garcia, 471 U.S. 261 (Supreme Court 1985)
Gonzaga University v. Doe, 536 U.S. 273 (Supreme Court of Washington 2002)
Gomez v. Toledo, 446 U.S. 635 (Supreme Court 1980)
Wilder v. Virginia Hospital Asso., 496 U.S. 498 (Supreme Court 1990)
Owens v. Okure, 488 U.S. 235 (Supreme Court 1989)

2. The District Court's arbitrary and bias Order and Judgment dismisses SAC based on Rule 12(b) (6) fail to state a claim. Appendix C, p.5, paragraph 3:

"Plaintiff also alleges that her due process rights were violated because Officers Swarts and Carden restrained her in her car at the scene of the accident, preventing her from exchanging insurance information with the other driver. Plaintiff does not allege that either officer physically restrained her; rather, her allegations suggest that she felt restrained by the officers' instruction her to remain by her vehicle during the investigation. These allegations are insufficient to establish a violation of a constitutionally protected liberty interest."

At the time of the illegal-and-unjustified-restraint the undisputed facts occur:

On December 16, 2018, Petitioner's car was struck in such force causing it to spinning 360 degree all the way to hitting the metal guardrail dividing the west and east bound of Interstate 80. Petitioner lost conscious, sustained serious bodily injuries and heavy property damages, caused by a reckless driver's front-right-light punched Peitioner's left-rear-door. Instead of collecting evidence and taking photos of the scene and autos, Respondents Todd Carden and T. Swarts held a lengthy conference with the reckless driver at a distance where Petitioner could see but couldn't hear their conversations. The Respondents kept Petitioner restrained in her vehicle preventing freedom of movement for approximately 30 minutes. During their conference Petitioner attempted to examine the auto damages and take photos as evidence, but Respondent Swarts appeared and ordered Petitioner to go back and stay in her car remain restrained to disallow freedom-of-movement against Petitioner's will.

After their lengthy conference, Petitioner, still being restrained in her car, requested permission to exchange driver info and auto insurance because Cal. Dept. of Motor Vehicle (Cal. Vehicle Code Sec. 16000) and insurance company mandatory requirement. Respondent Swarts denied Petitioner's request. Petitioner requested repeatedly but Respondent Swarts denied Petitioner's request persistently with Respondent Carden joined in. The Respondents as the California Highway Patrolmen have the best knowledge of California law and insurance requirements, but disallowed Petitioner from obtaining the required info.

At the time of the auto accident, Petitioner was a disabled senior at 66 year of age, and a victim of a massive auto collision. Respondents Swarts and Carden's illegal-bodily-restraint was completely unjustified, and their disallowing Petitioner from obtaining the other driver's info was against the law. Most disheartently, Petitioner's unfortunate intuition proved to be correct, both Respondents produced fraudulent accident and supplemental reports against Petitioner, whose insurance claims were denied entirely

and unable to recover bodily injuries and property damages to this date.

Petitioner filed rebuttal, complaint and notification to sue because Respondents Beauchamp and Morales continued fraudulent internal-investigation intentionally violating California laws and statutes, Cal. Bane Civil Rights Act Section 52.1, Civil Rights 42 U.S.C. Section 1983, and the Constitutions of United States Fourteenth Amendment "due process" and Fourth Amendment "freedom-from-illegal-restraint".

The District Court abuses discretion dismisses SAC without leave to amend and with prejudice based on Rule 12(b) (6) for fail to state a claim is arbitrary and bias.

Graham v. Connor, 490 U.S. 386 (U.S. Supreme Court 1989), Baker v. McCollan, 443 U.S. 137, 144 (Supreme Court 1979), United States v. Place, 462 U.S. 696, 703 (Supreme Court 1983), Conley v. Gibson, 355 U.S. 41 (Supreme Court 1957), Balis Treri v. Pacifica Police Dept. 901 F. 2d 696 (Ninth Cir. 1990), Phillips v. County of Allegheny, 515 F. 3d 224 (Third Cir. 2008), Venegas v. County of Los Angeles, 32 Cal. 4th 820, 841-843 (2004)

3. The District Court abuses discretion dismisses FAC based on Cal. Government Code Section 821.6 immunizes the Respondents. Appendix D, p. 8-9, paragraph 3:

"The Court finds that Section 821.6 immunizes the officers and, by operation of Section 815.2(b), CHP from liability for Plaintiff's state law claims.....Accordingly, Plaintiff's state law claims for fraud, fraudulent concealment, negligence, and negligent infliction of emotional distress are DISMISSED.....WITHOUT LEAVE TO AMEND."

The District Court applies umbrella immunization 821.6 is arbitrary and bias, in conflict with many decisions of this Court, circuit courts, Cal. Supreme Court, and Cal. Appeal Courts. Specifically in conflict with the state court where this case originally filed, Superior Court of California, Chang v. Beauchamp, No. RG19020405, The Tentative Ruling by Judge Jenna Whitman - Appendix E

"Motion to amend complaint and motion to discovery GRANTED. Petitioner's unopposed First Amended Complaint (FAC) is filed and Respondents shall respond no later than November 22, 2019. Respondents have been ordered to respond to the FAC no later than November 22, 2019, if answer the FAC, Respondents shall have 15 days to respond to the pending discovery, if demur the FAC, discovery will remain stayed until the court rule on demur."

Moreover, the Cal. Gov. Immunity Code Section 821.6 is waived by:

the Fourteenth and Fourth Amendments to the U.S. Constitution, Petitioner respectfully requests a writ of certiorari be granted.

December 28, 2022

Respectfully submitted,

A handwritten signature in cursive script, reading "Christine Chang", is written over a horizontal line.

Christine Chang

Pro Se Petitioner

300 Hilary Way Apartment 47

Vallejo, California 94591

Telephone No. (707) 373-7248

CERTIFICATE OF COMPLIANCE

No.

CHRISTINE CHANG,

Petitioner,

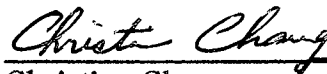
v.

EZERY BEAUCHAMP, Captain and
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MORALES, Sergeant for California
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individual and official capacities; and
DOES 1-25,

Respondents.

As required by the Supreme Court Rule 33.1(h), I certify that the petition for a writ of certiorari contains 1,215 words, excluding the parts of the petition that are exempted by the Supreme Court Rule 33.1(d).

I, Christine Chang, declare under penalty of perjury that the foregoing is true and correct. Executed on December 28, 2022 at Vallejo, California.



Christine Chang
Pro Se Petitioner
300 Hilary Way Apartment 47
Vallejo, CA 94591
(Ninth Circuit case #21-15293)
(District Court #4:19-cv-07068-JSW)