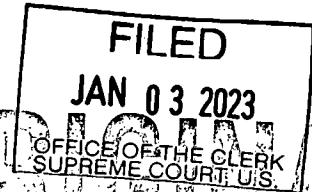


22-6506

No. _____



ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Andrew Simpson — PETITIONER
(Your Name)

vs.

Carl Davis, doing business as Davis Construction -RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals, 8th Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Andrew Simpson
(Your Name)

140 UZ Tucker Rd.
(Address)

Hamburg AR 71646
(City, State, Zip Code)

314-575-7976
(Phone Number)

QUESTION(S) PRESENTED

When acting under 28 USC 1915 Informa paupers, "Do a mental illness, qualify as a "exceptional circumstance" for appointment of council?

Do a mentally ill person have Right to legal Representation?

Can a District Court Terminate a mentally ill person's Attorney, without appointing representation?

LIST OF PARTIES

[] All parties appear in the caption of the case on the cover page.

[x] 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:

Tommy James
in his official capacity as
Area Director of
Monticello, AR Area
office of USDA Rural
Development Agency

Secretary Thomas J. Vilsack,
in his official capacity as
Secretary of Agriculture

Aldabe v. Aldabe, 616 F. 2d 1089, 1093 (9th Cir 1980)

Taylor v. Dickel, 293 F.3d 427, 431 (8th Cir. 2002)

Watson v. Moss, 619 F.2d 775, 776 (8th Cir. 1980)

United States v. 30.64 Acres of Land, 795 F.2d 796, 802 (9th Cir. 1986)

Weygandt v. Look, 718 F.2d 952, 954 (9th Cir. 1983)

(quote d in Wilborn, 789 F.2d at 1330-31)

Childs v. Duckworth, 705 F . 2d 915, 922 (7th Cir. 1983)

Ulmer v. Chancellor, 691 F.2d 209, 213 (5th Cir. 1982)

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	7
CONCLUSION.....	9

INDEX TO APPENDICES

- APPENDIX A:** Court of Appeals Order denying Reconsideration and Judgement (p. 1-2)
- APPENDIX B:** Order of the United States District Court of Western Arkansas dismissing case. (p. 1-12)
- APPENDIX C:** Motions and Order denying Appointment of Council in United States District Court by Magistrate. (p.1-18)
- APPENDIX D:** Motions and Order denying Appointment of Attorney in United States Court of Appeals 8th Circuit. (p. 1-10)
- APPENDIX E:** Original case filed by Mr. Carl Davis and Defendant Andrew Simpson Counterclaim and Crossclaim, filed by Attorney Ron Goodman before termination by Magistrate. (p 1-13)
- APPENDIX F:** Notice of Mental Illness to United States District Court and United States Court of Appeals 8th Circuit, from Medical providers (p. 1-6)
- APPENDIX G:** Notice of Removal from Ashley County Circuit Court to United States District Court Western District of Arkansas-Eldorado by United States District Attorney David Clay Fowlkes and Assistant U. S. Attorney Candice L. Taylor. (p. 1-4)
- APPENDIX H:** Order Granting In Forma Pauperis by United States District Court Western District Arkansas
- APPENDIX I:** Supporting Statute

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

<i>Aldabe v. Aldabe</i> , 616 F. 2d 1089, 1093 (9 th Cir 1980).	5
<i>Taylor v. Dickel</i> , 293 F.3d 427, 431 (8th Cir. 2002).....	4
<i>Watson v. Moss</i> , 619 F.2d 775, 776 (8th Cir. 1980).....	4
<i>United States v. 30.64 Acres of Land</i> , 795 F.2d 796, 802 (9th Cir. 1986)...	5,6
<i>Weygandt v. Look</i> , 718 F.2d 952, 954 (9th Cir. 1983)..... (quoted in <i>Wilborn</i> , 789 F.2d at 1330-31)	5
<i>Childs v. Duckworth</i> , 705 F.2d 915, 922 (7th Cir. 1983).....	6
<i>Ulmer v. Chancellor</i> , 691 F.2d 209, 213 (5th Cir. 1982).....	6

STATUTES AND RULES

28 USC 1915.....	7
Title 45 CFR section 84.....	7
Supreme Court Rule 10(a).....	7
section 504 of the Rehabilitation Act of 1973.....	7
18 U.S.C. § 3006A(g)	5
42 U.S.C. § 2000e-5(f)(1).....	5

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 October 4, 2022.

☐ 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: August 9, 2022, and a copy of the order denying rehearing appears at Appendix A.

☐ 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).

Constitutional and Statutory Provisions Involved

Supreme Court Rule 10(a)

- (a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter... ,or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;

Supreme Court Rule 11

- A petition for a writ of certiorari to review a case pending in a United States court of appeals, before judgment is entered in that court, will be granted only upon a showing that the case is of such imperative public importance as to justify deviation from normal appellate practice and to require immediate determination in this Court.

28 U.S.C. section 1915 Proceedings in forma pauperis

- (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.

Title 45 CFR section 84. PART 84 - NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL

- **§ 84.1 Purpose.** The purpose of this part is to effectuate section 504 of the Rehabilitation Act of 1973, which is designed to eliminate discrimination on the basis of handicap in any program or activity receiving Federal financial assistance

STATEMENT OF THE CASE

I am a 64-year-old black male with a mental illness since 1981. I am seeking my constitution rights granted under the American with Disability Act. I am filing this appeal under duress with a mental illness (Append. G 1-6). The original case was filed in Ashley County Circuit Court, case number 02cv-21-00086-3, on 10/21/21. (Append E p.1-7) I hired Attorney Ron Goodman to represent me in this case. Mr. Goodman filed counterclaim and cross Complaint on my behalf (Append E p.8-11). The Case was transferred to United States District Court by United States Department of Agriculture (Append G p.1-4). Attorney Goodman was terminated by The District court Magistrate Barry A. Bryant. (Append C p.15 par.2)

I filed several motions requesting attorney in the United States District Court because of my disability. (Append C p. 1-18) The United States District Court Western District of Arkansas refused to Grant me a Lawyer.

The 8th Circuit Court of appeal refuse to grant me an Attorney to assist me in my case

There is an existence of a conflict between the decision of 8th circuit United States Court of Appeal, which review is sought in this Court and a decision of another appellate court (9th circuit United States Court of Appeals) on the same issue.

The 8th Circuit has ruled,

"However, this court has previously held that "there is no constitutional or statutory right to effective assistance of counsel in a civil case," and that the proper remedy in such cases is an action for malpractice." *Watson v. Moss*, 619 F.2d 775, 776 (8th Cir. 1980) *Taylor v. Dickel*, 293 F.3d 427, 431 (8th Cir. 2002)

The 9th Circuit has stated:

We recognize that the Eighth Circuit has apparently taken a different approach, allowing mandatory uncompensated appointment of counsel in civil cases under section 1915(d). For example, that court has stated: The district court ruled that it had no power to appoint counsel to represent an

indigent in civil cases. This ruling overlooks the express authority given it in 28 U.S.C. § 1915 to appoint counsel in civil cases. This court and other courts of appeals regularly make these appointments in habeas corpus and civil rights cases; district courts throughout the country do the same. *United States v. 30.64 Acres of Land*, 795 F.2d 796, 802 (9th Cir. 1986)

The 9th Circuit further states:

We reject the Eighth Circuit's approach for several reasons. Most importantly, it does not directly address what we consider the heart of the issue, the use of the word "request" in the statute itself. Moreover, its reference to the widespread practice of appointment in civil cases is overly generous. As discussed elsewhere, *appointment* of counsel in both habeas corpus actions and Title VII civil rights actions is specifically authorized by statute. 18 U.S.C. § 3006A(g); 42 U.S.C. § 2000e-5(f)(1). In light of this, the Eighth Circuit overstated the use of the section 1915(d) power to appoint counsel in civil cases.

The rarity of a successful section 1915(d) motion also contributes to the confusion. A district court will secure counsel for an indigent civil litigant under section 1915(d) only under "exceptional circumstances," *see, e.g., Aldabe v. Aldabe*, 616 F.2d 1089, 1093 (9th Cir. 1980), so grants of such a motion are relatively rare. In addition, the district court is given considerable discretion in determining whether counsel is necessary, so appellate reversal of trial court denials is also rare. As a result, courts at both levels often have little incentive to choose their language carefully in ruling on section 1915(d) motions; it little matters to a litigant who is denied counsel whether the court declines to "appoint" an attorney or merely declines to "request" an attorney to serve.

Determination of "exceptional circumstances" requires a court to look at both "the likelihood of success on the merits [and] the ability of the petitioner to articulate his claims *pro se* in light of the complexity of the legal issues involved." *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983) (quoted in *Wilborn*, 789 F.2d at 1330-31). These factors must be viewed together, and neither is dispositive. *Wilborn*, 789 F.2d at 1331. The Seventh Circuit has set forth more detailed criteria. It lists four factors that a district court should consider, in addition to the viability of the claim, in deciding whether to secure counsel for an indigent litigant: the litigant's

ability to investigate the facts of the case, the likelihood of conflicting testimony requiring skilled cross-examination, the litigant's ability to adequately present the case, and the complexity of the legal and factual issues involved. *Childs v. Duckworth*, 705 F.2d 915, 922 (7th Cir. 1983); accord *Ulmer v. Chancellor*, 691 F.2d 209, 213 (5th Cir. 1982).

United States v. 30.64 Acres of Land, 795 F.2d 796, 800 n.8 (9th Cir. 1986)

REASONS FOR GRANTING THE PETITION

My reason for requesting this Court to grant certiorari is grounded in:
Supreme Court Rule 10(a) and Supreme Court Rule 11;

- (a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter... ,or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;

Supreme Court Rule 11

- A petition for a writ of certiorari to review a case pending in a United States court of appeals, before judgment is entered in that court, will be granted only upon a showing that the case is of such imperative public importance as to justify deviation from normal appellate practice and to require immediate determination in this Court.

28 U.S.C. section 1915 Proceedings in forma pauperis

- (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.

Title 45 CFR section 84. PART 84 - NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL

- **§ 84.1 Purpose.** The purpose of this part is to effectuate section 504 of the Rehabilitation Act of 1973, which is designed to eliminate discrimination on the basis of handicap in any program or activity receiving Federal financial assistance

As stated, the 8th Circuit Court of Appeals has refused to grant me an attorney under 28 U.S.C. section 1915(d) without giving any reasoning.

This denial to Attorney or Representation has denied me and others with mental Disabilities in the 8th Circuit access to the American with Disability Act, specifically section 504 of the Rehabilitation Act of 1973 which is a national law that protects qualified individuals from discrimination based on their disability.

The U.S. District Court magistrate erred when it dismissed my medical practitioner report to the Court as unpersuasive (Append C-p.3 par 4).

The United States District Court of Western Arkansas erred when it dismiss case on 3-15-22 (Append B p.1-12) before responding to review de nova request for Attorney, filed on 3-11-22 (Append D p. 2-8).

The U. S. Court of Appeals 8th Circuit erred when it denied all request for motion for Attorney without reasoning (Append D p.3,10).

The U. S. Court of Appeals 8th Circuit erred when denying Motion for Extension of time to file writ of certiorari (Append D p.16), Judgment had not issued by 8th Circuit Court of Appeals (Append A p.2).



CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Date: _____