No. 22-6967

IN THE SUPREME COURT OF THE UNITED STATES OF AMERICA.

ARNOLDO ANTONIO GARCIA,

Petitioner,

v.

AFOD VALDEZ, as ICE Director, Adelanto Detention Facility, in his individual capacity, "J. I.", an Officer at Adelanto Detention Facility, in his individual capacity,

Respondents.

Case No.: 9th Cir. 21-56017
(U. S. D. C., Cen. Dist. Cal. No. 5:14-cv-02533-MWF(AS) (C. D. Cal. 2021))

PETITION FOR WRIT OF CERTIORARI.

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

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Petitioner in Pro Se

ORIGINAL

QUESTION PRSENTED FOR REVIEW.

Did the Ninth Circuit err in an of issue of nationwide importance, and erroneously dismissed a meritorious Appeal, despite the fact that Petitioner pleaded a meritorious claim under *Bivens v. Six Unknown Agents of the Federal Bureau of Narcotics,* 403 U.S. 388, 29 L. Ed. 2d 619, 91 S. Ct. 199 (1971)?

CORPORATE DISCLOSURE STATEMENT.

None of the Parties is a corporate entity.

STATEMENT OF RELATED CASES.

In order to determine any further issue of recusal, this case is involved with the following cases:

Arnoldo Antonio Garcia v. Afod Valdez, United States District Court, Central District of California, Case No. 5:14-cv-02533-MWF(AS). Petitioner is the Plaintiff in that case.

Arnoldo Antonio Garcia v. Jeh Johnson, United States Court of Appeals for the Ninth Circuit, Case No. 15-55129. Petitioner is the Appellant in that case.

Arnoldo Antonio Garcia v. Afod Valdez, United States Court of Appeals for the Ninth Circuit, Case No. 21-56017. Petitioner is the Appellant in that case.

People of the State of California v. Arnoldo Antonio Garcia, Superior Court of California, County of San Bernardino, Case No. FSB 1200680. Petitioner is the Defendant in that case.

In re Arnoldo Antonio Garcia, Immigration Court and Board of Immigration Appeals No. A073 929 240. Petitioner is the Respondent in that case.

Arnoldo Antonio Garcia v. Merrick Garland, United States Court of Appeals for the Ninth Circuit, Case No. 14-72775. Petitioner is the Appellant in that case, and is represented by Appointed Counsel Daniel G. Adler of Gibson, Dunn, & Crutcher.

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TABLE OF CASES.

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CITATIONS.

The Judgment was granted against Petitioner in the case of *Garcia v. Valdez,* Ninth Circuit No. 21-56017 (2022), December 13, 2022, and is unreported.

STATEMENT OF JURISDICTION.

The District Court had jurisdiction pursuant to 28 U. S. C., §1331. The Ninth Circuit had jurisdiction pursuant to 28 U. S. C., §1291. This Court has jurisdiction pursuant to 28 U. S. C., §1251. Appellant is seeking to review the Judgment entered on December 13, 2022 (9th Cir. Doc. No. 11). The Judgment is unreported.

STATUTORY PROVISIONS.

28 U. S. C., §1915 (Apx. _____).

STATEMENT OF FACTS.

The facts are from the First Amended Complaint, filed on December 16, 2014 (Dist. Ct. Dock. No. 5, 4:4-26):

On or about November 29, 2012, Appellant was misled into pleading Guilty by his Deputy Public Defender in the Superior Court of California, County of San Bernardino, for violating California Health & Safety Code §11351. Appellant was then taken into immigration custody.

On or about July 16, 2013, with a different Deputy Public Defender, Appellant's Motion to Withdraw Plea was granted, but he was not present at the Hearing.

On or about the next day, the Order Withdrawing the Plea was rescinded, because the Superior Court claimed that he was a "fugitive", which wasn't true. It was because every time the Superior Court wanted him present, Appellees refused allow Appellant to be transported from the Adelanto Detention Center to Superior Court for any reason.

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On or after August 2014, Appellant submitted a typed-up Grievance protesting the refusal to transport Appellant to Superior Court. The person in charge of ICE at Adelanto days later rejected the Grievance stating that his Federal Petitions for Review be completed first. How fascist is that? ***However, ICE could had removed Appellant from the United States before he got heard before the Superior Court.***

On or about September 15, 2014, Appellant fled his Habeas Petition under 28 U.S.C., §2241 before the District Court.

On or about November 25, 2014, the District Court denied the Habeas Petition on the grounds that he is not entitled to bond, even though he is, and that the District Court ruled that relief by Habeas Corpus cannot be used to allow Appellant to be transported to Superior Court, but by way of a *Bivens* Action.

STATEMENT OF THE CASE.

On December 10, 2014, Appellant filed his Action in the District Court (Dist. Ct. Dock. No. 1).

On March 18, 2021, the Ninth Circuit reversed the previous Order of Dismissal (Apx. _____).

Later on July 15, 2021, Appellant filed his Third Amended Complaint alleging an action, one Cause of Action, under *Bivens* v. *Six Unknown Agents of the Federal Bureau of Narcotics,* 403 U.S. 388, 29 L. Ed. 2d 619, 91 S. Ct. 199 (1971). Appellant alleged that (a) he made a request to be transported to Superior Court on July 17, 2014, with no response (Dist. Ct. Dock. No. 28, 4:22-26), (b) he made another request on August 6, 2014, with the response from DOE Defendant "WE DO NOT FACILITATE TRANSPORT TO COURT HEARINGS" (Dock. No. 28, 5:1-6), and (c) he made a Grievance with Appellee Valdez on August 8, 2014, which Valdez responded with "You will not be transported untill (sic) your Appeal is denied" (Dist. Ct. Dock. No. 28, 5:7-6:8); Valdez was referring to

Appellant's Petition for Review that is now pending in Mediation, and that Appellant pleaded that the refusal to transport was in violation of Penal Code §1381.5, as well as the First and Fifth Amendments.

On August 12, 2021, the District Court issued its Report and Recommendation (Apx. 3a-_____).

On August 26, 2021, Appellant filed his Objections to the Report and Recommendation (Dist. Ct. Dock. No. 31). Appellant argued that his Constitutional rights were violated where he wasn't allowed to be transported to Superior Court (Dist. Ct. Dock. No. 31, 3:1-9:12), and that the Court's Ruling was in violation of the law of the case doctrine (Dist. Ct. Dock. No. 31, 9:13-10:23).

On August 31, 2021, the District Court adopted the Report and Recommendation (Apx. _____), and ordered Judgment against Appellant (Apx. _____).

The Notice of Appeal was timely filed on September 15, 2021 (Apx, _____).

On October 14, 2021, Appellant filed his Motion in Forma Pauperis (9th Cir. Dock. No. 3).

On October 20, 2021, Appellant filed his Opening Brief (9th Cir. Dock. No. 4). Appellees have yet to file their Brief.

On December 8, 2021, the Ninth Circuit issued its Order to Show Cause why the Appeal should not be dismissed (Apx. ____).

On January 11, 2022, Appellant filed his Motion to Refer the Appeal Back to the Previous Panel that reversed the District Court on the Previous Appeal (9th Cir. Dock. No. 9).

On January 12, 2022, Appellant filed his Response to the Order to Show Cause (9th Cir. Dock. No. 8).

On November 17, 2022, the Ninth Circuit denied the Motion to Refer the Appeal Back to the Previous Panel (Apx. ____).

On December 13, 2022, the Ninth Circuit dismissed the Appeal (Apx. 1a-2a).

ARGUMENT.

I. PETITIONER STATED A CAUSE OF ACTION BELOW UNDER *BIVENS.*

The case of *Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit,* 507 U.S. 163, 168, 113 S.Ct. 1160, 122 L.Ed.2d 517 (1993), as explained by the late Hon. William H. Rehnquist, Chief Justice of the United States, in a unanimous opinion that:

> "***We think that it is impossible to square the 'heightened pleading standard' applied by the Fifth Circuit in this case with the liberal system of 'notice pleading' set up by the Federal Rules.*** Rule 8(a)(2) requires that a complaint include only 'a short and plain statement of the claim showing that the pleader is entitled to relief.' In *Conley v. Gibson,* 355 U.S. 41, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957), we said in effect that the Rule meant what it said:
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> > "'***[T]he Federal Rules of Civil Procedure do not require a claimant to set out in detail the facts upon which he bases his claim.*** To the contrary, all the Rules require is "a short and plain statement of the claim" that will give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests.' Id., at 47, 78 S.Ct., at 103 (footnote omitted).
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> "Rule 9(b) does impose a particularity requirement in two specific instances. It provides that '[i]n all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity.' Thus, the Federal Rules do address in Rule 9(b) the question of the need for greater particularity in pleading certain actions, but do not include among the enumerated actions any

reference to complaints alleging municipal liability under §1983. *Expressio unius est exclusio alterius.*" (Emphasis added.)

Here, ***the Supreme Court has not made any rule changes as to how a Complaint is required to be pleaded.*** The case of *Pacific Coast Federation of Fishermen's Assocs., v. Glaser,* https://cdn.ca9.uscourts.gov/datastore/opinions/2019/12/20/17-17130.pdf, at p. 18 (9th Cir. 2019), also explains that:

> "'Rule 8's liberal notice pleading standard . . . requires that the allegations in the complaint "give the defendant fair notice of what theplaintiff's claim is and the grounds upon which it rests."' *Pickern v. Pier 1 Imports (U.S.), Inc.,* 457 F.3d 963, 968 (9th Cir. 2006) (quoting *Swierkiewicz v. Sorema N.A.,* 534 U.S. 506, 512 (2002)). 'A party need not plead specific legal theories in the complaint, so long as the other side receives notice as to what is at issue in the case.' *Am. Timber & Trading Co. v. First Nat'l Bank of Oregon,* 690 F.2d 781, 786 (9th Cir. 1982). But if 'the complaint does not include thenecessary factual allegations to state a claim, raising such claim in a summary judgment motion is insufficient to present the claim to the district court.' *Navajo Nation v. U.S. Forest Serv.,* 535 F.3d 1058, 1080 (9th Cir. 2008)."

Here, Appellees should have had notice of what the Complaint alleges.

II. PETITIONER'S FEDERAL CONSTITUTIONAL RIGHTS WERE VIOLATED BY APPELLEES' REFUSALS TO TRANSPORT PETITIONER TO HIS SUPERIOR COURT HEARINGS.

Petitioner states a claim under *Bivens* because for nearly five years, and despite his repeated protests, he was denied his constitutional right of meaningful access to the courts. Petitioner had a right to appear before the San Bernardino Superior Court to withdraw his guilty plea, which was the only basis for his detainment by ICE. California law required that he withdraw the plea in person

(Cal. Pen. Code §1018), but Appellees consistently frustrated Petitioner's attempts to travel to the courthouse by refusing to make him available for transportation.

Courts have long recognized "the fundamental constitutional right of access to the courts." *Bounds v. Smith,* 430 U.S. 817, 821–22, 828 (1977) (citing *Ex parte Hull,* 312 U.S. 546 (1941)). Prisoners "have a right, protected by the First Amendment right to petition and the Fourteenth Amendment right to substantive due process, to pursue legal redress for claims that have a reasonable basis in law or fact." *Silva v. Di Vittorio,* 658 F.3d at 1103 (quotation marks omitted).

The right of access to the courts is not limited to convicted prisoners; its protections for civil and pretrial detainees are at least as great as for convicted prisoners. "The right of access helps ensure that the unlawfully detained obtain their freedom, and that the lawfully detained have recourse for violation of fundamental constitutional rights." *Cornett v. Donovan,* 51 F.3d 894, 898 (9th Cir. 1995) (citation omitted) (holding that individuals involuntarily committed to a mental institution have a right of access to the courts); see also *Adegbuji v. Middlesex Cty.,* 169 F. App'x 677, 681 (3d Cir. 2006) (detained immigrant awaiting removal); *Matzker v. Herr,* 748 F.2d 1142, 1151 (7th Cir. 1984) overruled in part on other grounds as recognized by *Salazar v. City of Chicago,* 940 F.2d 233, 240 (7th Cir. 1991) (pretrial detainees); cf. also *City of Revere v. Mass. Gen. Hosp.,* 463 U.S. 239, 244–46 (1983) (due process rights of pretrial detainees are "at least as great as the . . . protections available to a convicted prisoner").

The right of access to the courts cannot be merely theoretical; it must be "adequate, effective, and meaningful." *Bounds,* 430 U.S. at 822.

The right is "fundamental" and requires prison officials "to shoulder affirmative obligations to assure all prisoners meaningful access to the courts." *Id.* at 824, 828. Such obligations include, for example, legal library facilities

necessary for non-lawyer pro se prisoners to complete preliminary research and participate in the adversarial legal process, and the provision of paper, pens, stamps, and notarial services to draft, authenticate, and mail legal documents. *Id.* at 824–26.

The right of access also forbids prison officials from "erect[ing] barriers that impede the right of access of incarcerated persons." *John L. v. Adams,* 969 F.2d 228, 235 (6th Cir. 1992). "[P]risoners have a right under the First and Fourteenth Amendments to litigate claims challenging their sentences or the conditions of their confinement to conclusion without active interference by prison officials." *Silva,* 658 F.3d at 1103; see also *May*, 226 F.3d at 883 ("Those seeking to vindicate their rights in court enjoy a constitutional right of access to the courts that prohibits state actors from impeding one's efforts to pursue legal claims."). Indigent prisoners require assistance to exercise their right of access and are uniquely vulnerable to state actors' attempts to interfere with that right.

The Supreme Court has held that many practices unconstitutionally interfere with the right of meaningful access to the courts. These include, for example, the imposition of court fees that indigent plaintiffs cannot bear (*Boddie v. Connecticut,* 401 U.S. 371 (1971)); a prohibition on inmates assisting each other in preparing petitions for post-conviction relief (*Johnson v. Avery,* 393 U.S. 483 (1969)) or filings in actions vindicating civil rights (*Wolff v. McDonnell,* 418 U.S. 539 (1974)); a failure to provide inmates with an adequate law library (*Bounds,* 430 U.S. 817; *Younger v. Gilmore,* 404 U.S. 15 (1971), aff'g *Gilmore v. Lynch,* 319 F. Supp. 105 (N.D. Cal. 1970)); and methods of preventing a prisoner from filing a habeas petition, such as intercepting or refusing to notarize one (*Ex Parte Hull,* 312 U.S. 546).

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The circuit courts, too, including the Ninth Circuit, have held that a wide range of practices interfere with the constitutional right of meaningful access to the courts. For example, it is unconstitutional to deny a prisoner access to pens for the drafting of legal documents—especially where courts have "clear and explicit" rules that pleadings drafted in pencil will always be rejected. *Allen v. Sakai*, 40 F.3d 1001, 1005–06 (9th Cir. 1994) (also holding that denial of access to photocopying services was unconstitutional). "[I]t should have been apparent to the defendants that a ban on the use of pens would seriously hamper an inmate's access to the courts and therefore constitute a violation of his rights under *Bounds*." *Id.* at 1006. It is also a violation of the Due Process Clause "[w]hen the efforts of a state prisoner to obtain an available state appellate review of his conviction are frustrated by the action of penal officials," such as the confiscation of a state-court transcript and other essential legal papers. *DeWitt v. Pail*, 366 F.2d 682, 685 (9th Cir. 1966). Similarly, in *Silva*, this Court reversed an order dismissing a section 1983 claim that "the Defendants repeatedly transferred [the plaintiff] between different prison facilities in order to hinder his ability to litigate his pending civil lawsuits" and "seized and withheld all of his legal files," as a consequence of which "several of his pending suits were dismissed." 658 F.3d at 1104.

III. APPELLEES' CONDUCT VIOLATED PETITIONER'S CONSTITUTIONAL RIGHT OF ACCESS TO THE COURTS.

The right of access to the courts requires that the plaintiff be provided with the "tools" to "attack [his] sentence[], directly or collaterally." *Lewis v. Casey*, 518 U.S. 343, 354–55 (1996). The basis of Petitioner's conviction and sentence was a guilty plea that he agreed to enter only because his counsel falsely told him that it could not possibly lead to deportation. Petitioner sought to collaterally attack that conviction by withdrawing his plea.

Appellees, acting under color of federal law, denied Petitioner his right of access to the courts when they repeatedly refused to make him available for transportation to his state-court hearing, which was an actual injury to his rights. That refusal destroyed any prospect of success on Petitioner's motion, because he could not secure relief without appearing in court personally. *See* Cal. Pen. Code §1018; *Johnson v. Superior Court*, 121 Cal. App. 3d 115, 118 (Cal. Ct. App. 1981). He explained as much to the Appellees, but to no avail.

Appellees' refusal to make Petitioner available for transportation is little different, analytically, from the refusal to provide pens in *Allen*, the confiscation of papers in *DeWitt*, or the frustrating transfers in *Silva*. The plaintiff in *Allen*, for example, was required to file a notice of appeal in ink, and after prison officials refused to allow him to use a pen, the state court denied his timely notice written in pencil. 40 F.3d at 1005. This Court held that the plaintiff stated a claim of interference with his right of access to the courts by denying him pens. *Id.* At 1005–07. Here, Petitioner filed a timely motion to withdraw his guilty plea, and he has alleged that the only reason it was denied was "because every time the Superior Court wanted him present, Appellees refused to allow Petitioner to be transported from the Adelanto Detention Center to Superior Court for any reason." And in both this case and *Allen*, the rules that the state actors prevented the plaintiffs from satisfying were ironclad. The state court in *Allen* unambiguously required that all pleadings be completed in pen (40 F.3d at 1006), and the State of California unambiguously requires criminal defendants to be present in the courtroom to withdraw their guilty pleas. Cal. Pen. Code § 1018; *Johnson*, 121 Cal. App. 3d at 118.

Because Petitioner could not withdraw his unconstitutional guilty plea without permission to be transported to a hearing, this case is readily distinguishable from this Court's lone case holding that a denial of transport did

not deprive a prisoner of access to the courts, as that case involved a prisoner's attempt to pursue an unrelated civil claim. *See Simmons v. Sacramento Cty. Superior Court*, 318 F.3d 1156 (9th Cir. 2003); *Wantuch v. Davis* (Cal. App. 2 Dist. 1995) 32 Cal.App.4th 786. The prisoner in *Simmons* had filed a civil action over a car accident that had nothing to do with his criminal case, and because that civil action "neither challenged Plaintiff's . . . conviction nor concerned the conditions of his confinement, the Sheriff's failure to transport him for trial" fell "squarely within *Lewis*' described 'incidental (and perfectly constitutional) consequences of . . . incarceration.'" *Simmons,* at 1160. Here, by contrast, Petitioner is a civil detainee who filed an action that *did* challenge his conviction and *did* concern the conditions of his confinement. Thus, whatever the permissible "incidental . . . consequences" of immigration detention may be, Appellees' persistent refusal to make Petitioner available for transportation was a violation of Petitioner's constitutional right of access to the courts. Because California law required his physical presence for any plea-withdrawal hearing, the defendants' conduct deprived Petitioner of a right of *meaningful* access to the courts. *See Bounds*, 430 U.S. at 823 ("[m]eaningful access to the courts is the touchstone") (alterations and quotation marks omitted).

IV. APPELLEES' REFUSAL TO MAKE PETITIONER AVAILABLE FOR TRANSPORT ALSO VIOLATED HIS SUBSTANTIAL DUE PROCESS RIGHTS AS A CIVIL DETAINEE.

The Due Process Clause prohibits imposing restrictions that amount to punishment on individuals detained for purposes other than serving a criminal sentence. *See, e.g., Simmons*, 318 F.3d at 1160. And this court has recently highlighted the due process problems associated with immigration detention, reaffirming that it is "non-punitive and merely preventative" in nature, and that prolonged detainment without adequate procedural protections raises "serious

constitutional concerns." *Rodriguez v. Robbins*, 804 F.3d 1060, 1065–66 (9th Cir. 2015), *cert. granted sub nom. Jennings v. Rodriguez*, 136 S. Ct. 2489 (2016). Courts evaluating the due process rights of civil or pretrial detainees examine "whether punitive intent can be inferred from the nature of the restriction" by looking to "whether an alternative purpose to which the restriction may rationally be connected is assignable for it, and whether the restriction appears excessive in relation to the alternative purpose assigned to it." *Simmons*, 318 F.3d at 1160 (alterations and quotation marks omitted). At least one court has already recognized that this framework may be applied to ICE detainees who were denied access to the courts, and that an access-to-the-courts claim could survive dismissal at the pleadings stage. *Bromfield v. McBurney*, No. C07-5226RBL-KLS, 2008 WL 163663, at *6–7 (W.D. Wash. Jan. 14, 2008).

Petitioner has alleged facts sufficient to permit an inference that preventing him from being present at the very proceedings that could free him from detention was excessive and unjustifiable, given what was at stake. Surely in a society where "liberty is the norm, and detention" for purposes other than criminal punishment "is the carefully limited exception," Petitioner has stated a non-frivolous claim based on a violation of his rights to due process and access to the courts. *Rodriguez*, 804 F.3d at 1074 (quoting *United States v. Salerno*, 481 U.S. 739, 755 (1987)).

Penal Code §1381.5 required the Federal correctional institution to produce the prisoner, in this case, Petitioner, for purposes of having him in the Superior Court. If Petitioner was not transferred under Penal Code §1381.5, the Superior Court could have dismissed his State Action at that time. Furthermore, Courts have long recognized "the fundamental constitutional right of access to the courts." *Bounds v. Smith*, 430 U.S. 817, 821–22, 828 (1977) (citing *Ex parte Hull*, 312 U.S. 546 (1941)). Prisoners "have a right, protected by the First Amendment

right to petition and the Fourteenth Amendment right to substantive due process, to pursue legal redress for claims that have a reasonable basis in law or fact." *Silva*, 658 F.3d at 1103 (quotation marks omitted). As for the statement, "... untill (sic) your Appeal is denied", meant that Appellee Valdez, and the ICE DOE Appellees were never going to release Petitioner to State custody until the Ninth Circuit denied Petitioner's Petition for Review in the case of *Garcia v. Garland,* Case No. 14-72775, which is still pending. Petitioner was improperly denied his right to appear in Superior Court because Appellee Valdez, and the ICE DOE Appellees consistently refused to allow Petitioner to be transported in violation of Petitioner's First and Fifth Amendment rights.

Petitioner's rights were violated, and he has a right under *Bivens* to see redress of his grievances. If the District Court does not understand this again, the Supreme Court would make the District Court understand this again.

V. THE COMPLAINT UPON REMAND SHOULD BE AMENDED TO INCLUDE A CAUSE OF ACTION UNDER GOVERNMENT CODE §7320(C), AND CIVIL CODE §1714.

Government Code §7320(c) states that:

> "(c) If a private detention facility operator, or agent of a private detention facility, or person acting on behalf of a detention facility operator, commits a tortious action which violates subdivision (a), an individual who has been injured by that tortious action may bring a civil action for relief. In civil actions brought pursuant to this section, the court, in its discretion, may award the prevailing plaintiff reasonable attorney's fees and costs, including expert witness fees."

Civil Code §1714(a) states that:

> "(a) Everyone is responsible, not only for the result of his or her willful acts, but also for an injury occasioned to another by his or her want of ordinary care or skill in the management of his or her property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon himself or herself. The

design, distribution, or marketing of firearms and ammunition is not exempt from the duty to use ordinary care and skill that is required by this section. The extent of liability in these cases is defined by the Title on Compensatory Relief."

Since Petitioner was a prisoner at Adelanto Detention Facility, which is privately operated, he is also entitled to damages under State law, and the Complaint should be amended after remand.

VI. DISTRICT COURT CANNOT DEPRIVE PETITIONER OF HIS DAY IN COURT BY VIOLATING THE LAW OF THE CASE, AND THE NINTH CIRCUIT PREVIOUS PANEL SHOULD HAVE BEEN RETAINED TO HEAR THE APPEAL ON THE MERITS.

The case of *Old Person v. Brown,* 312 F.3d 1036, 1039, explains that:

> *"Old Person I* is the law of the case. 'Under the "law of the case" doctrine, a court is ordinarily precluded from reexamining an issue previously decided by the same court, or a higher court, in the same case.' *Richardson v. United States,* **841 F.2d 993**, 996 (9th Cir.1988). The law of the case is a discretionary doctrine, which is
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> > "'...founded upon the sound public policy that litigation must come to an end. An appellate court cannot efficiently perform its duty to provide expeditious justice to all if a question once considered and decided by it were to be litigated anew in the same case upon any and every subsequent appeal. This doctrine also serves to maintain consistency.'"

In the Ninth Circuit Memorandum, that Court ruled that:

> "In its form disposition the district court also dismissed Garcia's complaint as frivolous, malicious, or failing to state a claim upon which relief may be granted. Garcia's complaint was not malicious or frivolous, but it did fail to state a claim. Garcia alleged that ICE did not permit him to leave its custody to attend state court proceedings and as a result Garcia was unable to withdraw his plea in a criminal case. There is a 'fundamental constitutional right of access

> to the courts.' *Bounds v. Smith*, 430 U.S. 817, 828 (1977). The facts Garcia alleged suggest his right to access the courts may have been violated. However, that right arises under the First and Fourteenth Amendments. *See e.g., Silva v. Di Vittorio*, 658 F.3d 1090, 1103 (9th Cir. 2011), *overruled on other grounds as stated by Richey v. Dahne*, 807 F.3d 1202, 1209 n.6 (9th Cir. 2015). Garcia's complaint did not mention the right to access the courts or either relevant constitutional amendment. Instead, Garcia alleged that ICE's actions deprived him 'of his liberty and his freedom from personal harm' under the Fifth and Sixth Amendments. Garcia's complaint thus failed to state a claim even under the liberal construction afforded pro se filings. *See Watison v. Carter*, 668 F.3d 1108, 1112 (9th Cir. 2012)." (Memorandum 2-3)

Petitioner stated that his rights were violated under the First and Fifth Amendments, but the District Court continues to play these obstructionist games. The Ninth Circuit clearly recognized these rights violations, but the District Court is continuing to violate Petitioner's rights because he is Salvadorian, and is still fighting to stay in this Country, even though Nazi ICE Agents were super eager to make sure Petitioner didn't withdraw his guilty plea that got him in ICE custody in the first place.

Because the Magistrate Judge is biased for not following the law of the case, the Report and Recommendation should be rejected, and upon remand, be heard before a new Judge, and require the U. S. Marshal to serve the Summons and Complaint.

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CONCLUSION.

Based on the forgoing, Petitioner requests that the Judgment be reversed.

Dated this 20th day of February, 2023

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