No. 22-723

In the Supreme Court of the United States

JONATHAN VANLOAN,

Petitioner,

v.

NATION OF ISLAM ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

PETITION FOR A WRIT OF CERTIORARI

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JANUARY 28, 2023 * '87 NOTRE DAME LAW SCHOOL
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QUESTIONS PRESENTED

The district judge dismissed Petitioner's case, claiming that his factual allegations are "fantastical", and his case "frivolous", for the purposes of subject matter jurisdiction. The court of appeals affirmed. The problem is, Petitioner's factual allegations are true, and his case alleges some of the most serious violations of 42 U.S.C. § 1983 in recent history– multiple government officials, aiding the Nation of Islam, in its attempts to murder a Christian White man, for private protected speech, the Nation of Islam found offensive.

Two different Circuit courts of appeals, the Third and Ninth, have affirmed dismissal of Petitioner's civil rights cases, on subject matter jurisdiction grounds, as "frivolous", for his "fantastical" factual allegations. The Third Circuit did not apply the correct legal standard of "clearly baseless", *Neitzke v. Williams*, 490 U.S. 319 (1989), and *Denton v. Hernandez*, 504 U.S. 25 (1992), for affirming the dismissal of Petitioner's case. It used the older "categories" standard of *Hagans v. Levine*, 415 U.S. 528 (1974), for "frivolous".

The Questions Presented are:

1. Is the legal standard for dismissal of a plaintiff's 42 U.S.C. § 1983 case, for factual allegations deemed "fantastical" by the court, the "clearly baseless" standard of *Neitzke* and *Denton*? If so, were the dismissal of Petitioner's case, and the affirmation thereof in the Third Circuit, incorrect as a matter of law?

2. Is the "clearly baseless" standard for case dismissals, based on a plaintiff's "fantastical" facts, precise enough in 2023, or, should the Supreme Court adopt a new standard for such dismissals, such as Justice Souter's "little green men" of *Ashcroft v. Iqbal*, 556 U.S. 662, 696 (2009), or a standard like, "facts that allege something not scientifically possible, in the world as we currently know it".

PARTIES TO THE PROCEEDINGS

Petitioner and Plaintiff-Appellant

Petitioner Jonathan VanLoan is an individual and not a corporation.

Respondents and Defendants-Appellees

Respondents are the Nation of Islam, the Cities of Santa Ana and Fountain Valley, California, Providence Health & Services, Inc., Louis Farrakhan, Tony Muhammed, Santa Ana Police Officers Association, Inc., Santa Ana Police Officers, Lysette Murillo, Gil Andres, David Valentin, Jason Viramontes, Kenneth Gominsky, Enrique Esparza, Eric Paulson, Martha Guillen, Norman Sbabo, Mark Perez, Manuel Verdin, David Reyes, Benita Esparza, Leticia Cauble, Vincent Rodriguez, Daniel Garcia, Iupeli Maneafaiga, Ruben Campos, Ernest Villegas, Chelsea Ramirez, Claudia Audelo, Omar Perez, Victor Moyao, Susan Thomas Reed, Michelle Monreal, Sandra Gallegos, Teresa Ruelas, Luis Garcia, Vincent Galaz, Laura Santos, Mary Rodriguez, Vanessa Clarkson, Andrew Herrera, Francisco Juarez, Rick Zavala, Edgar Perez, Melanie Quingaiza, Samuel Rivera, Pedro Luna, Caroline Contreras, Gustavo Rivera, Claudia Smith, Melinda Mendoza, Margo Todd, Cody Mccoy. Miguel Pulido, David Penaloza, Phillip Bacerra, Vicente Sarmiento, Juan Villegas, Jose Solorio are or were Santa Ana City Council Members. Kevin Childe, Ricardo Cendejas and Sherwin Burgos are or were Fountain Valley, California Police Officers. Rodney F. Hochman, M.D., James Pierog, M.D., and Amy Compton Phillips, M.D. are or were executives of Providence Health & Services, Inc. Finally, there are also fifty (50) Doe

Respondents. These organizations, municipal corporations, other entities and individuals were the defendants in the district court and defendants-appellees in the court of appeals.

LIST OF PROCEEDINGS

DIRECT PROCEEDINGS IN THE THIRD CIRCUIT BELOW

United States Court of Appeals for the Third Circuit

No. 21-2699

Jonathan Vanloan, *Appellant,* v. Nation of Islam; Louis Farrakhan; Tony Muhammed; City of Santa Ana California; Lysette Murillo; Gil Andres; David Valentin; Jason Viramontes; Kenneth Gominsky; Enrique Esparza; Eric Paulson; Martha Guillen; Norman Sbabo; Mark Perez; Manuel Verdin; David Reyes; Benita Esparza; Leticia Cauble; Vincent Rodriguez; Daniel Garcia; Iupeli Maneafaiga; Ruben Campos; Ernest Villegas; Chelsea Ramirez; Claudia Audelo; Omar Perez; Victor Moyao; Susan Thomas Reed; Michelle Monreal; Sandra Gallegos; Teresa Ruelas; Luis Garcia; Vincent Galaz; Laura Santos; Mary Rodriguez; Vanessa Clarkson; Andrew Herrera; Francisco Juarez; Rick Zavala; Edgar Perez; Melanie Quingaiza; Samuel Rivera; Pedro Luna; Caroline Contreras; Gustavo Rivera; Claudia Smith; Melinda Mendoza; Margo Todd; Cody Mccoy; Miguel Pulido; David Penaloza; Phillip Bacerra; Vicente Sarmiento; Juan Villegas; Jose Solorio; Santa Ana Police Officers Association, Inc; City of Fountain Valley California; Kevin Childe; Ricardo Cendejas; Sherwin Burgos; Providence Health & Services, Inc; Rodney F. Hochman, M.D.; M.D. James Pierog; M.D. Amy Compton Phillips; Doe Defendants 1-50.

Date of Final Opinion: August 2, 2022

United States District Court
Eastern District of Pennsylvania

No. 20-6112

Jonathan Vanloan, *Plaintiff*, v.
Nation of Islam, et al., *Defendants.*

Date of Final Opinion: August 16, 2021

RELATED PROCEEDINGS IN THE NINTH CIRCUIT
***VANLOAN V. NATION OF ISLAM ET AL.*, NO. 21-55317**

United States Court of Appeals for the Ninth Circuit

No. 21-55317

Jonathan Vanloan, *Plaintiff*, v.
Nation of Islam, et al., *Defendants.*

Date of Final Opinion: March 25, 2021

United States District Court
Central District of California

No. CV 20-127 GW (MRW)

Jonathan Vanloan, *Plaintiff*, v.
The Nation of Islam, et al., *Defendants*

Final Judgment: March 4, 2021

RELATED PROCEEDINGS IN THE NINTH CIRCUIT
***VANLOAN V. NATION OF ISLAM ET AL.*, NO. 18-16813**

United States Court of Appeals for the Ninth Circuit

No. 18-16813

Jonathan Ambrose Vanloan, *Plaintiff-Appellant*, v. Nation of Islam, et al., *Defendants-Appellees.*

Date of Final Opinion: December 13, 2019

United States District Court for the District of Arizona

No. CV-18-00226-TUC-DTF

Jonathan Vanloan, *Plaintiff*, v. The Nation of Islam, et al., *Defendants*

Date of Final Order: August 17, 2018

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OTHER AUTHORITIES

OPINIONS BELOW

This case arises from the Court of Appeals for the Third Circuit, and it is unreported:

VanLoan v. Nation of Islam, et. al., No. 21-2699, (3rd Cir. 2022) (opinion denying re-hearing en banc, issued August 31, 2022);

VanLoan v. Nation of Islam, et. al., No. 21-2699 (3rd Cir. 2022) (order affirming judgment of district court, issued August 2, 2022);

VanLoan v. Nation of Islam, et al., No. 2-20-CV-061112-WB (ED Penn. 2022). (district court memorandum opinion, issued August 16, 2021).

There are no other proceedings in state or federal trial or appellate courts, or in this Court, directly related to this case within the meaning of this Court's Rule 14.1(b)(iii).

JURISDICTION

The Third Circuit entered judgment on August 31, 2022. The Court granted an extension to file this petition through January 28, 2023, which landing on a weekend, rolls to January 30, 2023. Sup. Ct. No. 22A499. Lower courts had jurisdiction under 28 U.S.C. § 1331 and 28 U.S.C. § 1291. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. amend. I, cl. 1

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . .

U.S. Const. amend. I, cl. 2

> Congress shall make no law . . . abridging the freedom of speech . . .

U.S. Const. amend. IV

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. amend. V

> No person shall . . . be deprived of life, liberty, or property, without due process of law . . .

U.S. Const. amend. VII

> In Suits at common law . . . the right of trial by jury shall be preserved . . .

U.S. Const. amend. XIV, § 1

> No State shall . . . deny to any person within its jurisdiction the equal protection of the laws.

Civil Action for Deprivation of Rights Pub. Law 96-170, 42 U.S.C. § 1983, 93 Stat. 1284, (amended 1979 and 1996)

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

STATEMENT OF THE CASE

Jonathan VanLoan v. The Nation of Islam, et al. is a very serious 42 U.S.C. § 1983 case, which alleges an attempt to murder Petitioner, a Christian White man, on November 18, 2019, in the Santa Ana City Jail, by the Santa Ana Jail Police, the Nation of Islam, and others, for private protected speech (cell phone text messages), the Nation of Islam found offensive.

Petitioner called 911 for help early that Monday morning, because he feared for his life on the street. Instead of helping him, Officers Gil Andres and Lysette Murillo took Petitioner to the Santa Ana City Jail, without an arrest warrant and without being charged with a crime, for the sole purpose of murdering him in the Santa Ana City Jail.

The District Judge below dismissed the case as "insubstantial and frivolous" on subject matter jurisdiction grounds, describing Petitioner's factual allegations as "fantastical", App.13a, therefore not worthy of federal court adjudication.

Petitioner's factual allegations are true, and he considers prescient the words of the former Honorable Associate Justice of the U.S. Supreme Court, Sandra Day O'Connor: "Some improbable allegations might properly be disposed of on summary judgment, but to dismiss them as frivolous without any factual development is to disregard the age-old insight that many allegations might be 'strange, but true; for truth is always strange, Stranger than fiction.'" *Denton v. Hernandez*, 504 U.S. 25, 33 (1992) (citing Lord Byron, Don Juan, canto XIV, stanza 101 (T. Steffan, E. Steffan, W. Pratt eds. 1977)).

The Third Circuit affirmed dismissal, saying obliquely that Petitioner's "allegations do not implicate a federal right". App.7a.

To be sure, there may not have been a case quite like Petitioner's, in the federal courts before.

However, anyone who knows anything about the history of the Nation of Islam, would also know that Petitioner's factual allegations are eminently plausible.

Like most Americans, Petitioner knew very little about the Nation of Islam before he got tangled up with them. He knows a lot more now. He does not think that they are all bad. He believes they have done a lot for black youth.

In the United States of America, they have a right to their beliefs.

But they do not, however, have a right to attempt to murder a Christian White man for private protected speech they found offensive.

More importantly, in the context of a 42 U.S.C. § 1983 action, municipal police officers, hospitals, doctors and nurses *absolutely do not have a right* to attempt to murder a Christian White man, for private protected speech the Nation of Islam found offensive.

This is axiomatic.

The Supreme Court should do something to clarify what "fantastical" means, in 2023, in the context of subject matter jurisdiction dismissals based on "fantastical" facts.

District judges do, of course, routinely dismiss cases with facts that are, in fact, "fantastical". Many of those cases involve the CIA or the FBI, and scientifically impossible surveillance technology, like brain implants, etc. *See* Part I.D, *infra.*

But Petitioner's factual allegations in this case (and in his other cases before this one) are not "fantastical" and involve real people, dates, places, and many discrete acts. which deprived him of his U.S. Constitutional rights to life, liberty, speech, religion, due process, etc., under the color of law.

Maybe even thirty years ago, federal judges could be trusted to use their common sense to determine which factual scenarios are "fantastical", but now, with so many federal judges being political ideologues and activists, there may be a "fantastical" conspiracy, lurking around every corner.

These new "political" judges take seriously their duty to dismiss cases, in order to protect defendants who they know, love, and believe in.

In this case, after Petitioner miraculously escaped from the Santa Ana City Jail, thanks apparently to a whistleblower, the very next night, Tuesday, November 19, 2019, the Fountain Valley, California, Police also conspired to, and attempted to, murder Petitioner, *in the sober living house where he was staying.*

He was almost murdered that night too, by poison, and had to be transported to Orange Coast Medical Center in Fountain Valley, where the Emergency Room staff saved him.

Both macabre events were in furtherance of a Conspiracy to Murder Jonathan VanLoan, which began on January 1, 2014, in downtown Los Angeles, the origin of which, Petitioner will now recount.

A. How Petitioner Got in Trouble with the Nation of Islam

On Saturday night, December 14, 2013, at approximately 10:00 PM, a light skinned African American man Petitioner had never met before, Vince Allen, without provocation, physically threatened Petitioner at the apartment of Annette Pike, in the Van Buren apartments, at the intersection of Van Buren Avenue and the Imperial Highway, in South Los Angeles.

In fear, Petitioner fled Ms. Pike's apartment without his luggage, and when he got back to Santa Monica, in anger, he sent some text messages to his then African American girlfriend, Brandy Machelle Thomas, who was still back at Ms. Pike's apartment.

In those text messages, Petitioner called Mr. Allen the "N-word", and said some other *very* unsavory things about him.

After the incident that weekend, Petitioner promptly forgot about it. But two weeks later, on January 1, 2014, in downtown Los Angeles, he observed that a very large number of African American males appeared to know who he was, were very angry with him, and Petitioner did not have a clue why?

That same day, in downtown Los Angeles, there was a serious attempt on Petitioner's life, involving the Los Angeles Police Department, the Los Angeles Fire Department Paramedics, in a L.A.F.D. ambulance, utilizing heart enlargement medicine, to attempt to explode Petitioner's heart.

It is only by the Grace of God that Petitioner survived that first attempt to murder him.

It took a whole month for Petitioner to find out what had happened. Finally, at the end of January 2014, Ms. Pike, via text messages, told him. Her boyfriend, Mr. Allen, was a "high up" member of the Nation of Islam, Mosque # 27, in South Los Angeles. Mr. Allen had gotten ahold of Ms. Thomas' cell phone, with Petitioner's text messages to her. Mr. Allen had taken those messages, interpreted as racist, to Student Minister to Louis Farrakhan Tony Muhammed, at Mosque #27, in South Los Angeles

and the Nation of Islam had made Petitioner a "Person of Interest". (Ms. Pike's exact words).[1]

It took a while before Petitioner was able to deduce what "Person of Interest" means in Black Muslim parlance, but he finally did. It means someone the N.O.I. will kill, if they get the chance.

Since January 1, 2014, the Nation of Islam, aided and abetted by municipal police officers, fire department paramedics, doctors, nurses, hospitals, and many others, have attempted to murder Petitioner in five states–California, New Mexico, Arizona, Florida and his own Commonwealth of Pennsylvania.

Petitioner kept saying to himself, "this will end". But it did not.

B. Petitioner Begins to Fight Back in the Federal Courts

Though there were numerous very dangerous attempts on Petitioner's life during 2014-2016, finally, after a particularly virulent attempt to murder him in the St. Joseph's Hospital Emergency Room in Tucson, Arizona, involving Tucson police officers, fire department paramedics, among others, during May 4-5, 2017, Petitioner knew he had more than enough to file a 42 U.S.C. § 1983 lawsuit.

On April 30, 2018, in the District of Tucson, Petitioner filed his first 42 U.S.C. § 1983 case, for what had happened at St. Joseph's Hospital the previous year.

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[1] Sadly, Ms. Pike passed away on November 24, 2022, in California.

The gift in that case was Plaintiff's first Judge, the Honorable Magistrate Judge G. Thomas Ferraro. Judge Ferraro did not prejudge Petitioner's case on his factual allegations. He allowed the case into discovery.

Just a couple of months later, as Petitioner was generating discovery requests, the (then) Chief Judge of the District of Arizona, Raner Collins, wrested control of the case away from Judge Ferraro, and, *sua sponte*, dismissed it, claiming Petitioner's factual allegations were "fantastical", and his case not worthy of federal court adjudication. App.33a.

The Ninth Circuit Court of Appeals affirmed, stating Petitioner's case was " . . . too frivolous and unsubstantial to invoke subject matter jurisdiction". App.32a.

Since the Tucson case, Petitioner has filed three more federal civil rights cases, for very cruel attempts on his life, all involving uniformed municipal police officers, in Culver City, Santa Ana, and San Diego, California. All three were dismissed, just like the Tucson case, by district judges, on the basis of Petitioner's "fantastical" facts, rendering all his complaints "frivolous".

Petitioner also appealed his Culver City case dismissal to the Ninth Circuit, which again affirmed, as "frivolous". App.21a.

C. Why Petitioner is Bringing This Case to the U.S. Supreme Court

Petitioner filed his Santa Ana case complaint in the Eastern District of Philadelphia (and paid the filing fee) on Monday, November 30, 2020, because:

a. it was pointless to file a third complaint in the Ninth Circuit, b. Petitioner had been harassed and hunted in Chester County, Pennsylvania, a suburb of Philadelphia, by the Nation of Islam during the Summer of 2019, so venue in the Eastern District of Philadelphia was proper, and, c. all defendants were citizens of California, so complete diversity existed, as Petitioner was then, as is now, a citizen of Pennsylvania.

Diversity jurisdiction in the case existed, in addition to federal question jurisdiction, for the purposes of Petitioner's state law claims.

The second reason for filing the case was that there were many witnesses to what happened to Petitioner in the Santa Ana City Jail. The Orange County Sheriff's Department "liberated" Petitioner around 1:00 PM on that Monday (November 18, 2019), thanks, upon information and belief, to a whistleblower, who apparently called a lawyer, who called the Sheriff, who came to Petitioner's rescue.

Also, in the aftermath of what happened to Petitioner in the Santa Ana City Jail, then Santa Ana Jail Police Commander Jason Viramontes, before the City of Santa Ana was represented by counsel, gave Petitioner a complete list of all Santa Ana City Jail Police working in the Jail (two shifts) during the day he was almost murdered there.

That's how Petitioner was able to name so many individual Santa Ana Jail Police defendants in his complaint.

Petitioner got a huge early miracle in the case when the Santa Ana and Fountain Valley defendants failed to object to personal jurisdiction in their motions

to dismiss, thereby waiving the defense. D. Ct. Doc. 31 (April 12, 2021) (Providence Health & Services owns a hospital in the Philadelphia area, so there was no issue with personal jurisdiction over the Providence defendants).

The Eastern District of Pennsylvania court could adjudicate the case over the California defendants.

This Petition to the Supreme Court is very important, and should be granted, because Petitioner's case, alleging very serious violations of 42 U.S.C. § 1983, was improperly dismissed by the Eastern District of Pennsylvania and affirmed by the Third Circuit, as a matter of law.

The ambiguous categories of *Hagans v. Levine*, 415 U.S. 528, 536-537. (1974), are no longer the legal standard for dismissal of cases with allegedly "fantastical" facts, nor should they be. The correct standards are those enunciated primarily in two cases, *Neitzke v. Williams*, 490 U.S. 319 (1989), and *Denton v. Hernandez*, 504 U.S. 25 (1992).

Neitzke held:

> By logical extension, a complaint, containing as it does both factual allegations and legal conclusions, is frivolous where it lacks an arguable basis either in law or in fact. As the Courts of Appeals have recognized, § 1915(d)'s term "frivolous", when applied to a complaint, embraces not only the inarguable legal conclusion, but also the fanciful factual allegation.

Neitzke, 490 U.S. at 325. *Denton* held:

> As we stated in *Neitzke*, a court may

> dismiss a claim as factually frivolous only if the facts alleged are "clearly baseless", 490 U.S., at 327, a category encompassing allegations that are "fanciful", *id.*, at 325, "fantastic", *id.*, at 328, and "delusional", *ibid.* As those words suggest, a finding of factual frivolousness is appropriate when the facts alleged rise to the level of the irrational or the wholly incredible, whether or not there are judicially noticeable facts available to contradict them.

Denton, 504 U.S 32-33.

Neitzke and *Denton are* the standards in the Third (and Ninth) circuits, as will be seen.

Why the District Judge and the Third Circuit Court of Appeals did not apply these standards to Petitioner's case below, in addition to being reversible error, is also deeply disturbing.

What Petitioner has experienced in the federal courts thus far, upon information and belief, is *a conspiracy to kill his cases.*

And that is why Petitioner's final reason for filing his Santa Ana case in the Eastern District of Pennsylvania, is the most painful for him.

Philadelphia is where Thomas Jefferson drafted THE DECLARATION OF INDEPENDENCE, signed on August 2, 1776.

The Constitution of the United States was drafted and signed during the Summer of 1787 at Independence Hall.

Benjamin Franklin, Thomas Jefferson, George Washington and John Adams all lived in Philadelphia.

Petitioner was absolutely certain the federal judges in Philadelphia would not do to him what the federal judges in the Ninth Circuit did. He thought the judges in Philadelphia would apply the law to his facts, which is what judges are supposed to do.

Petitioner was wrong.

The Supreme Court should clarify that the ambiguous categories of *Hagans* no longer apply to "frivolous" case dismissals, based on those cases' allegedly "fantastical" facts.

Maybe it is time to amplify and utilize Justice Souter's "little green men" dissent in *Ashcroft v. Iqbal*: "The sole exception to this rule lies with allegations that are sufficiently fantastic to defy reality as we know it: claims about little green men, or the plaintiff's recent trip to Pluto, or experiences in time travel". 556 U.S. 662, 696 (2009).

A lot has changed in this Country since 1992.

Like perhaps Justice O'Connor's solid confidence in district judges' ability to do the right thing with a Plaintiff's facts: "Although Hernandez urges that we define the "clearly baseless" guidepost with more precision, we are confident that the district courts, who are "all too familiar" with factually frivolous claims, *Neitzke, supra*, at 328, are in the best position to determine which cases fall into this category" *Denton,* 504 U.S. at 33.

The danger is, if the Supreme Court should choose to do nothing, that, in the future, other important civil rights cases, like Petitioner's, will be dismissed

(and dismissal affirmed) by federal judges who no longer believe in the rule of law.

They believe that the law is what they say it is. They no longer believe that truth is objective, but that truth is what they want it to be.

It will do no good for the Supreme Court to find the District Court below had subject matter jurisdiction to hear Petitioner's case, and remand the case for further proceedings on whether he stated claims. The District Judge will simply dismiss and say that Petitioner did not plausibly state claims and the Third Circuit will affirm again, on that basis.

Petitioner will not have the wherewithal to come before this Honorable Tribunal again.

Petitioner stated cognizable legal claims under 42 U.S.C. § 1983 against many, if not all, defendants.

Any residual Fed. R. Civ. P. 12(b)(6) issues regarding particular defendants can be resolved, after discovery, on a motion for summary judgment.

Petitioner sincerely hopes this Court will agree.

REASONS FOR GRANTING THE PETITION

A district judge *must not* dismiss a Plaintiff's case on subject matter jurisdictional grounds because the district judge *says* Plaintiff's facts are "fantastical", just because Plaintiff's facts involve a conspiracy:

> The gravamen of Plaintiff's claim is that the Nation of Islam and a host of unrelated Defendants have hunted him across the

> United States for seven years, all because he used a racial slur in a single text message. The Complaint offers no factual basis for his obviously fantastical conspiracy theory.

App.13a. And again:

> Because Plaintiff's claims are premised solely on a fantastical conspiracy theory, any further amendment to the Complaint would be futile. *See Alston v. Parker*, 363 F.3d 229, 235 (3d Cir. 2004).

App.15a.

Not all conspiracies are "fantastical". Some are real and any *objective* person would be willing to admit the possibility that Petitioner's factual allegations are true, and that his case should be allowed discovery, where the truth of Petitioner's facts could be developed for trial.

His case states some of the most serious violations of 42 U.S.C. § 1983, since the Civil Rights Act of 1871 was enacted.

Any F.R.C.P. 12(b)(6) language the district judge may have used in her dismissal of Plaintiff's state law claims is pure camouflage, a complaint cannot be dismissed for its "fantastical" facts on subject matter jurisdiction grounds, then also dismissed for failure to state a claim, A district judge can't have it both ways. App.15a.

The Supreme Court could and should do something to clarify what "fantastical" means in the context of subject matter jurisdiction dismissals in 2023, so what happened in Petitioner's case, doesn't happen again in the future.

I. The Supreme Court Should Amplify What "Fantastical" Means, in 2023, to Prevent Important Civil Rights Cases, Like Petitioner's, from Getting Dismissed on Subject Matter Jurisdiction Grounds as "Frivolous", as Happened to Petitioner in Two Federal Circuits, the Third and the Ninth. Petitioner's Factual Allegations Are True, not "Clearly Baseless", as Required by *Neitzke v. Williams*, and his Third Circuit Case Plausibly States Serious Violations of 42 U.S.C. § 1983 Against Some, If Not All, Defendants.

A. The District Judge Dismissed Petitioner's Case, on the Basis of his "Fantastical" Factual Allegations, as "Frivolous". The District Judge did not Apply the Correct "Clearly Baseless" Standard of *Neitzke* to Petitioner's Facts, Therefore Dismissal was Improper as a Matter of Law.

In her Memo Opinion, the District Judge's states: "[t]he Supreme Court has authorized courts to dismiss under Rule 12(b)(1) for lack of [subject matter] jurisdiction due to merits-related defects in . . . narrow categories of cases", *Davis v. Wells Fargo*, 824 F.3d 333, 349-50 (3d Cir. 2016)". App.12a.

The judge omits the next sentence of the Opinion, which delineates those "narrow categories": "[A] suit may sometimes be dismissed for want of jurisdiction where the alleged claim under the Constitution or federal statutes clearly appears to be immaterial and made solely for the purpose of obtaining jurisdiction or where such a claim is wholly insubstantial and

frivolous". *Davis*, 824 F.3d at. 350 (citing *Bell v. Hood*, 327 U.S. 678, 682–83 (1946)).

And, of course, the holding in *Bell* had nothing to do with the plaintiffs' facts. The issue was whether plaintiffs had stated a legal claim, giving the Court the power to hear the case: "Thus, the right of the petitioners to recover under their complaint will be sustained if the Constitution and laws of the United States are given one construction and will be defeated if they are given another. For this reason, the District Court has jurisdiction". *Bell*, 327 U.S. at 685.

As regards *Davis*, the Third Circuit Court of Appeals did, in fact, affirm the district judge's 12(b)(6) dismissal of Davis' case, but on Davis' failure to state a cognizable legal claim, nothing to do with Davis' facts: "The United States District Court for the Eastern District of Pennsylvania dismissed Davis's claims against Wells Fargo, pursuant to Federal Rule of Civil Procedure 12(b)(6), on the grounds that claim preclusion and a statute of limitations barred recovery. We will affirm that portion of the District Court's order". *Davis*, 824 F.3d at 338.

The Third Circuit then overruled 12(b)(1) dismissal on standing because the District Court had misconstrued what standing is: "An analysis of standing generally focuses on whether the *plaintiff is the right party* to bring particular claims, not on whether the plaintiff *has sued the right party*. The latter question goes not to standing and jurisdiction but to the merits of the claims themselves. Therefore, the District Court erred in considering the claims against Assurant under Rule 12(b)(1) rather than Rule 12(b)(6)". *Id.* (emphasis, Petitioner's).

The district and circuit courts of appeal are still routinely conflating jurisdiction and merits analysis. That is extremely problematic when a serious case alleging dangerous violations of Constitutional law, under 42 U.S.C. § 1983, like Petitioner's case, is dismissed, using the "frivolous" sleight of hand label.

The U.S. Supreme Court should take this opportunity to correct the problem in one limited category of cases. When a case is dismissed because of a Plaintiff's allegedly "fantastical" facts, it must be because those facts are "clearly baseless", not because of some hazy application of the substantiality doctrine under *Bell*, that renders the case ambiguously "wholly insubstantial" or "frivolous". *Bell*, 327 U.S. at 682-683.

The district judge in the case below states: "Specifically, under the substantiality doctrine, "federal courts are without power to entertain claims otherwise in their jurisdiction if they are so attenuated and unsubstantial as to be absolutely devoid of merit, wholly insubstantial, obviously frivolous, plainly unsubstantial, or no longer open to discussion". App.12a (citing *Hagans,* 415 U.S. at 537).

But, of course, the Supreme Court in *Hagans* reversed the Second Circuit Court of Appeals dismissal of the case for want of subject matter jurisdiction on purely legal grounds: "Judged by this standard, we cannot say that the equal protection issue tendered by the complaint was either frivolous or so insubstantial as to be beyond the jurisdiction of the District Court". *Hagans*, 415 U.S. at 539.

The cloak and dagger tactics of the district judge continues, in her patently obvious desire to get rid of Petitioner's case, by any means necessary, as she

then quotes Note 10 of *Arbaugh v. YH Corp.*: "A claim invoking federal-question jurisdiction under 28 U.S.C. § 1331, *Bell* held, may be dismissed for want of subject-matter jurisdiction if it is not colorable, *i.e.*, if it is "immaterial and made solely for the purpose of obtaining jurisdiction" or is "wholly insubstantial and frivolous". 546 U.S. 500, 513 n.10 (2006).

The last sentence of Note 10 in *Arbaugh* states: "Arbaugh's case surely does not belong in that category" *Id.*

In fact, the holding of *Arbaugh*, as it relates to the 15 person minimum size employer, for the purposes of a Title VII discrimination claim was: "Applying that readily administrable bright line to this case, we hold that the threshold number of employees for application of Title VII is an element of a plaintiff's claim for relief, not a jurisdictional issue". 546 U.S. *at* 516.

And so it goes. The District Judge does, however, in support of jurisdictional dismissal, cite a sole case, that is in the "fantastical facts" ballpark, *Degrazia v. Federal Bureau*, 316 F. App'x 172 (3d Cir. 2009).

The case is, however, both legally and factually distinguishable from Petitioner's case. *Degrazia* was dismissed by the District Court on 12(b)(6) grounds, *Id.* at 173, and Degrazia's complaint *alleged "that, at the age of four, he was the victim of a government-run, Nazi-designed genetic experiment which caused his body to combine with reptile DNA, and that he has since experienced harmful side effects which pose a threat to others". Degrazia*, 316 F. App'x at 172-73 (emphasis, Petitioner's).

The Third Circuit did not use the catch-all provision of the *In Forma Pauperis* statute to dismiss, because Degrazia had paid the case filing fee, though it probably could have, because the statute, in pertinent part states:

> (e)(2) Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court 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.

28 U.S.C. § 1915(e)(2) (1948).

The Third Circuit said: "The District Court liberally construed DeGrazia's *pro se* complaint, but concluded that it is frivolous because it relies on "fantastic or delusional scenarios". *Neitzke*, 490 U.S. at 328. However, the standard for dismissal of a complaint as "frivolous" under the *in forma pauperis* statute, as articulated in *Neitzke*, does not apply to DeGrazia's complaint because he paid the filing fees and did not proceed *in forma pauperis. Degrazia*, 316 F. App'x, at 172-173.

The Third Circuit Court then resorts to the ambiguous categories of *Hagans*: "A federal court may *sua sponte* dismiss a complaint for lack of subject matter jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(1) when the allegations within the complaint "are so attenuated and unsubstantial as to be absolutely devoid of merit, . . . wholly insubstantial, . . . obviously frivolous, . . . plainly unsub-

stantial, . . . or no. longer open to discussion". *Hagans*, 415 U.S. at 536-37 (internal citations and quotation marks omitted). There is no question that DeGrazia's claims met this standard, as they rely on fantastic scenarios lacking any arguable factual basis". *Degrazia*, 316 F. App'x at 173.

It doesn't make any sense to still use *Hagans*, and we shall see that, the Third Circuit, as do many other Circuits, now regularly use the *Neitzke* "clearly baseless" standard for complaint dismissals on "fantastical" facts, regardless of whether the plaintiff was IFP or not. That's the way it should be.

It is both disingenuous and legally incorrect, in 2023, to use the categories of *Hagans* and *Bell* to dismiss Petitioner's case as frivolous, when *Neitzke* provides a more articulate standard, "clearly baseless", to measure when a Plaintiff's facts rise to the level of "fantastical", or not.

The standard for dismissal under *Neitzke* is:

> To this end, the statute accords judges not only the authority to dismiss a claim based on an indisputably meritless legal theory, but also the unusual power to pierce the veil of the complaint's factual allegations and dismiss those claims whose factual contentions are clearly baseless. Examples of the former class are claims against which it is clear that the defendants are immune from suit, *see, e.g., Williams v. Goldsmith*, 701 F.2d 603 (CA7 1983), and claims of infringement of a legal interest which clearly does not exist, like respondent Williams' claim that his transfer within the reformatory violated

> his rights under the Due Process Clause. *Examples of the latter class are claims describing fantastic or delusional scenarios, claims with which federal district judges are all too familiar.*

Neitzke, 490 U.S. at 327-28 (emphasis, Petitioner's).

"Clearly baseless" is more scientific. Any objective, dispassionate, knowledgeable reader of Petitioner's factual allegations would not claim that they are "clearly baseless". Any unbiased person would say they are certainly plausible.

And that is why Petitioner would like the Supreme Court to perhaps further articulate what renders a Plaintiff's facts "clearly baseless" like, for example, facts that are "objectively impossible in the world as we now know it".

Justice Souter, in his dissent in *Ashcroft* took a valiant stab at it:

> Rule 12(b)(6) does not countenance . . . dismissals based on a judge's disbelief of a complaint's factual allegations. The sole exception to this rule lies with allegations that are sufficiently fantastic to defy reality as we know it: claims about little green men, or the plaintiff's recent trip to Pluto, or experiences in time travel. That is not what we have here.

Ashcroft, 556 U.S. at 696.

Litigants, not just *pro se litigants*, but all litigants, in a world that is definitely getting weirder, need a more scientific standard that would dismiss conspiracy

theory cases that objectively have no basis in reality, but also prevent the dismissal of a case like Petitioner's.

The other cases cited by the District Judge in her Opinion have no weight, bearing, or relevance to Petitioner's case, and provide absolutely no legal justification for dismissal of Petitioner's complaint on either 12(b)(1) or 12(b)(6) grounds.

Kehr Packages, Inc. v. Fidelcor, Inc., 926 F.2d 1406 (3d Cir. 1991) is cited for the proposition that Petitioner's case is ""wholly insubstantial and frivolous", his Section 1983 claim must be dismissed for lack of subject matter jurisdiction". App.13a-14a.

However, in *Kehr*, the District Court dismissed, *after discovery*, on subject matter jurisdiction and summary judgment grounds, specifically stating that Plaintiffs had not sufficiently alleged mail fraud that rose to a "pattern" under RICO. 926 F.2d at 1408. (emphasis, Petitioner's).

The Circuit Court affirmed, but on (12)(b)(6) grounds: "In this case, we believe the district court's order should properly have been denominated a dismissal under Rule 12(b)(6), and we will treat it as such". *Kehr*, 926 F.2d at 1409. Further holding, "Plaintiffs may have valid claims of common law fraud or breach of contract, but based on the allegations of the complaint and the proposed amended complaint, which we have assumed throughout are true, they cannot maintain a RICO suit". *Kehr*, 926 F.2d at 1419.

There is nothing "fantastical" about Kehr's facts, neither does the case support dismissal of Petitioner's case, based on his factual allegations.

Next, the District Judge sets out to dismiss Petitioner's state law claims, over which the Court had federal pendent (and diversity) jurisdiction to adjudicate: "Dismissal under Rule 12(b)(6) is proper where "accepting all well-pleaded allegations in the complaint as true, and viewing them in the light most favorable to plaintiff, plaintiff is not entitled to relief". App.14a (citing *Maio v. Aetna, Inc.*, 221 F.3d 472 (3d Cir. 2000)).

Maio was a class action RICO lawsuit against Aetna, Inc. *inter alios. Id.*, 474. Defendants filed F.R.C.P. 12(b)(1), 12(b)(6), and 9(b) motions to dismiss. *Id.*

But it was the Maio's federal RICO claim that the Court dismissed on 12(b)(6) grounds, the Third Circuit affirming: "In the circumstances, appellants cannot establish that they suffered a cognizable "injury to business or property" flowing from appellees' conduct, an essential element of a civil action pursuant to section 1964(c) of RICO". *Maio*, 221 F.3d at 501. However, the Circuit Court affirmed the District Court's dismissal of Maio's state law claims, also for lack of standing, on 12(b)(1) grounds, not 12(b)(6): "The district court then dismissed the state law claims without prejudice "for lack of subject matter jurisdiction". *Maio*, 221 F.3d at 474.

Maio does not support the dismissal of Petitioner's state law claims for failure to state a claim, based on his allegedly "fantastical" facts.

The Opinion continues: "However, "a court need not credit a complaint's bald assertions or legal conclusions when deciding a motion to dismiss, *Morse v.*

Lower Merion Sch. Dist., 132 F.3d 902, 906 (3d Cir. 1997) . . . " App.14a.

However, *Morse* was a state created danger theory case under 42 U.S.C. § 1983. *Morse* was not dismissed because of any "bald assertions or legal conclusions" but because he failed to plead one of the elements of the claim for state created danger: "The district court granted defendants' motion to dismiss under Fed. R. Civ. P. 12(b)(6), finding plaintiff failed to plead one of the elements of the test set forth by this court in *Kneipp v. Tedder*, 95 F.3d 1199 (3d Cir. 1996) and thereby failed to state a claim upon which relief could be granted. Although we analyze the applicable law somewhat differently from the district court, we will affirm". *Morse*, 132 F.3d at 903-904.

The *Morse* language the District Judge uses to support 12(b)(6) dismissal of Petitioner's state law claims is dicta, and there were no state law claims in *Morse*.

The District Judge in Petitioner's case continues: ". . . nor accept as true "unsupported conclusions and unwarranted inferences", App.14a-15a (citing *Schuylkill Energy Res., Inc. v. Pa. Power & Light Co.*, 113 F.3d 405, 417 (3d Cir. 1997)).

The Third Circuit, in *Schuylkill*, an antitrust case, held: "We find that by agreement and by law, SER is PPL's supplier, not PPL's competitor, and that PPL's generation curtailment policy does not create an injury of the type the antitrust laws were intended to prevent. We will affirm". *Schuylkill.* 113 F.3d at 410.

But, as regarding "unsupported conclusions and unwarranted inferences" the district judge is worried

about in Petitioner's case, App 14a-15a., the problem in *Schuylkill* was an internal contradiction in its SER's factual allegations: "While SER alleges in its Amended Complaint that it is PPL's competitor in the retail and wholesale markets, those assertions are belied by both the remaining factual allegations and the law". *Id.* at 417.

Neither the district judge nor the Third Circuit analyzed Petitioner's large quantum of stated complaint facts once, in their Opinions.

The district judge continues: "Even on a motion to dismiss, we are not required to credit mere speculation". App.15a (citing *Zavala v. Wal-Mart Stores Inc.*, 691 F.3d 527, 542 (3d Cir. 2012)).

Zavala was a class action FLSA, civil RICO and false imprisonment case filed by illegal immigrant employees of contractors and subcontractors responsible for cleaning Wal-Mart stores, against Wal-Mart. *Zavala*, 691 F.3d at 530.

The "speculative" part comes in the Third Circuit's analysis of whether Plaintiffs adequately stated the "Transporting Predicate" under federal law ("8 U.S.C. § 1324(a)(1)(A)(i)–(ii)). When done for monetary gain, this is a RICO predicate act. *See* 18 U.S.C. § 1961(1)(F)". *Id.* at 541.

The Court held that they did not:

> Plaintiffs do not demonstrate that Wal-Mart was responsible for the transporting. Plaintiffs do not allege that Wal-Mart employees were ever involved in this transport. Plaintiffs do not allege specific facts demonstrating that Wal-Mart aided and

> abetted transport. Plaintiffs do allege that Wal-Mart managers would sometimes request replacement crews, but they simply assert that the managers knew those crews would be illegal immigrants and that they would be transported across state lines".

Id. at 541- 42.

The factual allegations in Petitioner's case, alleging a Conspiracy to Commit Murder, all occur over just two days, with collusive actions by the Santa Ana City Jail Police, St. Joseph's Hospital in Orange, CA (where he goes for help after he escapes the Jail) the first day, and then the Fountain Valley Police, the very next day.

How can these closely related in time acts be explained away, or how do they not raise the plausible factual interpretation that something terribly wrong is happening to this Plaintiff? It makes no sense to say that there is no "reasonable inference that the defendant[s are] liable for the misconduct alleged", App.15a (citing *Ashcroft*, 556 U.S. at 678).

It's flawed logical reasoning at best, and at worst, well, prevarication (the polite way of saying it).

Finally, the *coup de grace* comes in the final paragraph of the Opinion: "Because Plaintiff's claims are premised solely on a fantastical conspiracy theory, any further amendment to the Complaint would be futile. *See Alston v. Parker*, 363 F.3d 229, 235 (3d Cir. 2004). Accordingly, Plaintiff will not be granted leave to file an amended complaint". App.15a.

In *Alston*, Plaintiff Gary Alston finished his seventeen-year New Jersey prison sentence in

Greystone Park Psychiatric Hospital. While there, he sued Greystone employees with challenges to his sentence and commitment. *Alston*, 363 F.3d at 230.

The Third Circuit Court said: "Before the merits of Alston's claims could be tested, the District Court granted a motion to dismiss for failure to state a claim under Fed. R. Civ. P. 12(b)(6)" *Id.*

The Third Circuit then stated: "The Court concluded that Alston's pleading did not meet the factual specificity requirement for civil rights complaints and dismissed his complaint. Because we hold that the District Court subjected Alston's complaint to a heightened pleading standard no longer applicable in such civil rights cases, we will reverse". *Id.* at 231.

As regards whether Alston should have leave to amend his complaint, the Circuit Court said:

> On remand, the District Court should offer Alston leave to amend pursuant to the above procedures for 12(b)(6) dismissals, unless a curative amendment would be inequitable, futile, or untimely. Neither the District Court nor the Defendants made or advocated such a finding, or even argued that there was bad faith, undue delay, prejudice, or futility".

Id. at 236.

And there you have it. Of the ten cited cases the district judge uses as support for the dismissal of Petitioner's case as "frivolous", not one of them does.

B. The Third Circuit Court of Appeals Affirmed Dismissal of Petitioner's Case, Based on His "Fantastical" Facts, but Did Not Apply the Correct "Clearly Baseless" Standard of *Neitzke*.

In its Opinion affirming dismissal, the Third Circuit said:

> A complaint may be dismissed under Rule 12(b)(1) "only if [the claim raised therein] clearly appears to be immaterial and made solely for the purpose of obtaining jurisdiction or is wholly insubstantial and frivolous". *Gould Elec's. Inc. v. United States*, 220 F.3d 169, 178 (3d Cir. 2000) (internal quotation marks omitted). While VanLoan's complaint purported to rely on 42 U.S.C. § 1983, his allegations do not implicate a federal right. VanLoan's purported § 1983 claim–that, for seven years, over fifty individuals have conspired to murder him for sending a text message with a racial slur–is "wholly insubstantial and frivolous", and the District Court's dismissal of that claim for lack of jurisdiction was proper.

App.7a.

The Third Circuit also conflated jurisdictional and merits analysis. *Gould* had nothing to do with "fantastical" facts. The case was decided on subject matter jurisdiction grounds, but purely for reasons of law:

> We find the District Court properly applied the standards used for analyzing a Rule 12(b)(1) motion to dismiss, but erred in

> determining New York contribution and indemnity law controls the outcome. Rather we hold that Ohio law governs the jurisdictional inquiry and, under Ohio law, the United States would be liable for contribution, but not indemnity. As such, the District Court has subject matter jurisdiction over Gould/APU's FTCA claim for contribution, but not for indemnity".

Gould, 220 F.3d at 174.

The Third Circuit essentially rubber stamped the district judge's dismissal, and for the same vague ambiguous "frivolous" categories of *Hagans* and *Bell.* Petitioner's complaint, which recounts almost being murdered in the Santa Ana City Jail, and being rescued by the Orange County Sheriff's Department, doesn't implicate a federal right? Once again, the Third Circuit is not being truthful, for reasons only known to it. The Third Circuit's affirmation of dismissal is also incorrect as a matter of law.

C. Petitioner's First Two Cases, Tucson, Arizona and Culver City, California, Were Both Dismissed by Federal Judges and Affirmed by the Ninth Circuit Court of Appeals, on the Basis of Petitioner's Alleged "Fantastical" Facts, but the District Judges and the Court of Appeals Also Did Not Apply the Correct "Clearly Baseless" Standard of *Neitzke* to Petitioner's Factual Allegations.

Petitioner filed two prior cases recounting discreet (but related by the same Conspiracy to Commit Murder which originated in Los Angeles, CA in December,

2013) malevolent and macabre attempts on his life in Tucson, AZ and Culver City, CA, during May, 2017 (Tucson) and January, 2018 (Culver City).

The Ninth Circuit cases are discussed here, again, only to show that not just one, but two federal circuits, illegally have dismissed Petitioner's cases, on "fantastical" facts that are not "fantastical", but true.

Both cases were dismissed by the district judges for Petitioner's allegedly "fantastical" facts. App.29a, para. 23-25; App.36, para. 2; App.38a.

Petitioner appealed both those dismissals to the Ninth Circuit Court of Appeals

The Ninth Circuit affirmed both dismissals, without discussing in any detail, why Petitioner's facts were "fantastical", but failed to use the correct legal standard of "clearly baseless" to affirm dismissal. App.21a.; App.33a.

Judge Collins, in his Order dismissing Petitioner's Tucson case, said, in pertinent parts: "The Court may question subject matter jurisdiction at any time, *sua sponte* (quoting cases). . . . Under the substantiality doctrine, "federal courts are without power to entertain claims otherwise within their jurisdiction if they are 'so attenuated and unsubstantial as to be absolutely devoid of merit,' [are] 'wholly insubstantial,' [or are] 'obviously frivolous,'. . . ." (quoting cases), "As explained below, the Court determines that Plaintiff's allegations are so implausible that he fails to state a federal claim". App.35a-App.36a.

And there it is, plain as the nose on your face, mixed (12)(b)(1) and 12(b)(6) analysis, for dismissing Petitioner's complaint.

The Judge continues: "Simply put, the Complaint in this case alleges an implausible conspiracy . . . to murder him . . . The Court is satisfied that Plaintiff's Complaint presents precisely the insubstantial claims that a federal court lacks subject matter jurisdiction over. (quoting cases)". App.36a-37a.

Finally, the Judge says, "The Court is confident that amendment of the Complaint would be futile. Accordingly, the Complaint will be dismissed with prejudice". App.39a.

And so, Judge Collins, *sua sponte*, creates the runaway freight train that, as of yet, Petitioner has not been able to derail, in two federal circuits.

The Ninth Circuit Three Judge Panel of Wallace, Tashiba and Canby, in affirming dismissal, said:

> The district court properly dismissed Petitioner's action because Petitioner's claims are too frivolous and unsubstantial to invoke subject matter jurisdiction . . . . Over the years this Court has repeatedly held that the federal courts are without power to entertain claims otherwise within their jurisdiction if they are so attenuated and unsubstantial as to be absolutely devoid of merit . . . .

App.32a (quoting *Hagans*, 415 U.S. at 536.).

But, again of course, the Supreme Court in *Hagans* held the district court had jurisdiction to hear the case:

> Judged by this standard, we cannot say that the equal protection issue tendered by the complaint was either frivolous or so insubstantial as to be beyond the jurisdiction of the District Court. We are unaware of any

> cases in this Court specifically dealing with this or any similar regulation and settling the matter one way or the other.

Hagans, 415 U.S. at 539.

Hagans does not justify the dismissal of Petitioner's case.

The dismissal of Plaintiff's second case (Culver City), filed in the Central District of California on January 6, 2020, revealed to Plaintiff that his problem with federal judges protecting the defendants in his cases, would not be limited to the District of Arizona. A pattern begins to emerge.

To say that it was an eye opener for him is an understatement. The Culver City Case involved a very close call attempt on his life at Southern California Hospital, where Plaintiff went for help on Friday, January 12, 2018, because he feared for his life on the street.

Instead, the Hospital Emergency Room staff, including charge nurse Mir Nawaz Karim, attempted to murder him using heart enlargement medicine App.42a (picture of bruise the heart enlargement medicine left on Petitioner's right arm).

It is not clear from either Magistrate Judge Michael Wilner's Report and Recommendation, filed on May 7, 2020, or the subsequent dismissal Order by Judge George Wu, filed almost a whole year later on March 4, 2021, whether the dismissal was for lack of subject matter jurisdiction or failure to state a claim, or both.

Wilner's Report says, first, in paragraph 23: "Plaintiff's amended complaint should be dismissed

without leave to amend. Plaintiff makes extraordinary allegations about a vast, multi-party, multi-year, and multi-state conspiracy to kill him. He contends that strangers-physicians, psychologists, police officers, passersby, and government officials–have joined forces with black nationalists to murder him". App.29a.

And then in paragraph 24: "These claims are far too fanciful and bizarre to state a plausible legal claim. On their face, Plaintiff's assertions are patently frivolous. That warrants dismissal of the action under 28 U.S.C. § 1915(e)(2). *Neitzke*, 490 U.S. at 325; *Denton*, 504 U.S. at 33; *Smith*, 2014 WL 2747496; *Mir v. City of Torrance*, No. CV 14-1191 RGK (PJW), 2017 WL 10562688 (C.D. Cal. 2017); *Balik v. Upton*, 2015 WL 5834336 (E.D. Cal. 2015); *Cain*, 2014 WL 3866062". *Id.*

Judge Wilner apparently dismissed Petitioner's complaint on both available grounds under 28 U.S.C. § 1915(e)(2); (e)(2)(B): "the action or appeal is" (i) "frivolous or malicious;", or (e)(2)(B)(ii): "fails to state a claim on which relief may be granted". At least Wilner is over the target for a dismissal on facts Wilner says he does not believe, with *Neitzke*: "As the Courts of Appeals have recognized, § 1915(d)'s term "frivolous", when applied to a complaint, embraces not only the inarguable legal conclusion, but also the fanciful factual allegation". *Neitzke*, 25.

Judge Wilner never explains why Petitioner's factual allegations are "clearly baseless".

That is because Wilner knows they are not. Wilner knows Petitioner's facts are true, that's why he goes to such great lengths to destroy Petitioner's credibility in his Report.

In its Memorandum affirming dismissal in the Ninth Circuit, Circuit Judges Tashima, Silverman and Miller resorted to the old *Hagans* reasoning: "The district Court properly dismissed Petitioner's action because Petitioner's claims are too frivolous and unsubstantial to invoke subject matter jurisdiction". App.21a.

Despite the fact that the Panel references *Neitzke* in its Order, the Panel does not apply the legal standard of "no arguable basis in law or fact" to evaluate Petitioner's complaint facts or affirm dismissal of his case. App.21a.

D. The Circuit Courts of Appeal, Including the Third and Ninth, Have Adopted the *Neitzke* "Clearly Baseless" Standard for Dismissal of Cases with Allegedly "Fantastical" Facts. Petitioner's Factual Allegations Are Not "Clearly Baseless". The "Clearly Baseless" Standard Should Have Been Applied in Petitioner'.

1. Third Circuit

Banks v. Dir. Cent. Intelligence Agency, No. 22-1650, at *1-2 (3d. Cir. Sep. 28, 2022).

> We agree with the District Court that Bank's petition is frivolous. "To be frivolous, a claim must rely on an 'indisputably meritless legal theory' or a 'clearly baseless' or 'fantastic or delusional' factual scenario". *Mitchell v. Horn,* 318 F.3d 523, 530 (3d Cir. 2003) (quoting *Neitzke v. Williams,* 490 U.S. 319, 327-28 (1989)); *see also Denton v. Hernandez,* 504 U.S. 25, 32-33 (1992). *Banks' petition includes*

> *allegations that events in Ukraine are caused by "Telepathic Behavior Modification" and other psychic actions.* We agree that these factual assertions, which form the basis for his request for relief, are clearly removed from reality. (emphasis, Petitioner's).

2. Ninth Circuit

Ozim v. City of San Francisco, No. 21-15099, at *1 (9th Cir. Nov. 19, 2021).

> The district court properly dismissed as frivolous Ozim's action because Ozim's allegation that a member of the San Francisco Board of Supervisors conspired with two assailants to murder Ozim lacked any arguable basis in law or fact. *See Neitzke v. Williams*, 490 U.S. 319, 325 (1989) (concluding that a frivolous claim "lacks an arguable basis either in law or in fact" and that "[the] term 'frivolous' . . . embraces not only the inarguable legal conclusion, but also the fanciful factual allegation").

3. Fifth Circuit

Hooks v. Obama, No. 22-50676, at *1 (5th Cir. Dec. 12, 2022).

> The *in forma pauperis* statute accords judges the power to "dismiss those claims whose factual contentions are clearly baseless", which include those "claims describing fantastic or delusional scenarios". *Denton v. Hernandez*, 504 U.S. 25, 32 (1992) (quoting *Neitzke v. Williams*, 490 U.S. 319, 327-28

(1989)) (analyzing § 1915(d), the predecessor to § 1915(e)(2)(B)).

4. Seventh Circuit

Reid v. Payne, No. 20-2267, at *2 (7th Cir. Mar. 26, 2021).

> *Reid's allegations that prison officials poisoned him with dangerous drugs and broadcast their crimes to other inmates are not plausible, because by drugging him they would have imperiled themselves, others, and him while confessing liability for doing so. Such a scenario is too fantastic to entertain. See Neitzke v. Williams*, 490 U.S. 319, 327-28 (1989) (district courts may dismiss "claims describing fantastic or delusional scenarios").

5. Tenth Circuit

Strege v. Comm'r, SSA, No. 20-1414, at *3-4 (10th Cir. May 19, 2021).

> But the district court can "dismiss a claim based on an indisputably meritless legal theory" and "pierce the veil of the complaint's factual allegations and dismiss those claims whose factual contentions are clearly baseless", such as "claims describing fantastic or delusional scenarios". *Neitzke v. Williams*, 490 U.S. 319, 327-28 (1989) . . . First, the court found that the complaint lacks coherent factual allegations or claims. *Mr. Strege describes a fantastic or delusional scenario of the government swapping babies and putting human hearts in nuclear reactors.*

The nonsensical allegations do not support an arguable claim for relief.

CONCLUSION

Petitioner hopes the Supreme Court agrees with him that the probability of important cases of dangerous violations of 42 U.S.C. § 1983, like Petitioner's case, getting dismissed at the preliminary stage, is increasing, perhaps dramatically.

Tightening, if possible, the legal standard of no "arguable basis in law or fact" and "clearly baseless" of *Neitzke* and *Denton* in "fantastical" facts case dismissals, would certainly help.

Like, for example, "fantastical facts" are "*facts that allege things not scientifically possible in the world as we currently know it*".

If that is not possible, then announcing again that *Neitzke* and *Denton* are the correct legal standards for dismissal of all cases wherein a plaintiff's facts are held to be "fantastical", and that therefore the court does not have jurisdiction to hear the case, would be the next best thing.

They are the standards in most (if not all) circuits, including the Third and the Ninth, where Petitioner's cases were dismissed and affirmed using the old *Hagans* rationale.

District judges may now value their political ideologies or cultural values more than the application of the law to the facts. Some may not even consider

the Constitution of the United States any longer, to have the force of law.

America has never been in this, ultimately very precarious, position before. The Judicial Branch theoretically is the last barricade against political tyranny that exists in our federal system. Reduce it to a collective of activists who want to remake America in their image, and all that is left is Divine Intervention or Civil War.

Both are always possible. What Petitioner hopes is that, if the Supreme Court shines a bright light on the problem of activist federal judges dismissing (and affirming dismissal of) cases, because they don't like the Plaintiff and what he represents, or because they like the Defendants and what they represent, then, at least, the incoming tide of arbitrary "justice" that is no "Justice" at all, might be slowed, at least for a while longer.

That would be a tremendous service to the Citizens of the United States of America. Petitioner hopes the Court will take the opportunity.

"Plato believed that there are truths to be discovered; that knowledge is possible. Moreover, he held that truth is not, as the Sophists thought, relative. Instead, it is objective; it is that which our reason, used rightly, apprehends".[2]

Because Petitioner's factual allegations are true, the federal courts have subject matter jurisdiction to adjudicate his cases, and he has stated very serious

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[2] Lewis Vaughn, LIVING PHILOSOPHY, Chapter 4 Plato the Really Real, https://global.oup.com/us/companion.websites/9780190628703/sr/ch4/summary.

legally cognizable violations of 42 U.S.C. § 1983 against many, if not all, defendants.

It will do no good to remand this case for further proceedings on F.R.C.P. 12(b)(6) grounds, because the Third Circuit will simply find that Petitioner has not plausibly stated claims, and dismiss the case again.

Petitioner will not be able to bring this case before the Supreme Court again.

The problem of federal judges dismissing cases for lack of subject matter jurisdiction, or for failure to state claims, because they can, claiming a plaintiff's facts are "fantastical", though plaintiff's facts are true, in order to protect defendants in those cases, is not going to be an easy problem to solve.

The United States of America is not the country it once was, and its citizens are not the people we once were.

We can throw up our ends and allow the sentiments of Justice O' Connor in *Denton* to stand, that federal judges are still the best arbiters of whether a Plaintiff's facts are truly "fantastical", or not.

But, as we see in Petitioner Jonathan VanLoan's cases, that would be a very big mistake. If federal judges dismissed his cases, without legal justification, because they want to protect the defendants in his cases, they will most assuredly do it again, to some other poor, unsuspecting Plaintiff, who has a completely legitimate civil rights case.

The Supreme Court should grant this Petition, and use this case as a precedent to clarify what the legal standard is, for subject matter and merits

dismissals of cases, in cases with facts the judges deem "fantastical".

The quest for Truth, and for Justice, are still the stated goals of our legal system. Are they?

Who knows, by granting this Petition, what possible evils might be prevented, and what lofty goals might still be achieved?

Petitioner fervently hopes the Supreme Court agrees. The stakes are high, very high indeed.

In closing, Petitioner would like to thank the God of Abraham, Isaac, and Jacob, His Son the Messiah Jesus, and Their precious Holy Spirit, for having mercy on him. They are the Only Reason he is still alive. He does not deserve it.

Respectfully submitted,

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