ORIGINAL

No. 23-1263

FILED
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OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

Supreme Court of the United States

IBRAHIM DONMEZ,

Petitioner,

v.

NEW YORK CITY DEPARTMENT OF CONSUMER AFFAIRS, *et al.*,

Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1) Does the language of 28 U.S.C. § 1915(e)(2)(b)(ii) allow screening or dismissal of non-frivolous non-prisoner complaints before service of process and defendants' answer?

2) Did the District Court incorrectly construe petitioner's amended complaint as a motion to reopen a case or start a new case?

3) Did the District Court and the Court of Appeals repeatedly subject petitioner to intrinsic fraud, extrinsic fraud, judicial usurpation of power and deprivation of due process?

LIST OF PARTIES

1) Ibrahim Donmez, Petitioner
2) NYC Department of Consumer Affairs, Respondent
3) NYC Department of Parks and Recreation, Respondent
4) NYC Police Department, Respondent
5) NYC Office of Administrative Trials and Hearings, Respondent
6) NYS Department of Motor Vehicles, Respondent
7) NYC Parks Department Officer Asha Harris, Respondent
8) NYC Parks Department Officer Henderson, Respondent
9) NYC Police Department Officer Ocelin, Respondent
10) NYC Police Department Officer John Doe, Respondent
11) NYC Parks Department Officer John Doe, Respondent
12) NYC Deputy Counsel Sanford Cohen, Respondent
13) NYS Judge Charlotte Davidson, Respondent
14) The City of New York, Respondent
15) The State of New York, Respondent

RELATED CASES

COLLATERAL ESTOPPEL RELATED

Ibrahim Donmez v. NYC Department of Consumer Affairs, 2013 NY Slip Op 34114(U) New York Supreme Court, Docket No. 401769-2013, Judgment entered December 16, 2013.

Ibrahim Donmez v. NYC Department of Consumer Affairs et al., 2014 NY Slip Op 31726(U) New York Supreme Court, Docket No. 401875-2013, Judgment entered February 14, 2014.

Ibrahim Donmez v. NYC Department of Consumer Affairs, 2014 NY Slip Op 30577(U) New York Supreme Court, Docket No. 401769-2013, Judgment entered March 12, 2014.

Ibrahim Donmez v. NYC Department of Consumer Affairs, 44 Misc.3d 695 (New York Supreme Court 2014), Docket No. 400412-2014, Judgment entered June 6, 2014.

Ibrahim Donmez v. NYC Department of Consumer Affairs, 139 A.D.3d 595 (Appellate Division First Department 2016), Docket No. 401769-2013, Judgment entered May 26, 2016.

Ibrahim Donmez v. NYC Department of Consumer Affairs et al., 139 A.D.3d 596 (Appellate Division First Department 2016), Docket No. 401875-2013, Judgment entered May 26, 2016.

Ibrahim Donmez v. NYC Department of Consumer Affairs, 140 A.D.3d 612 (Appellate Division First Department 2016), Docket No. 400412-2014, Judgment entered June 28, 2016.

Ibrahim Donmez v. NYC Department of Consumer Affairs, 29 N.Y.3d 901(NY Court of Appeals 2017), Docket No. 401769-2013, Judgment entered March 23, 2017.

Ibrahim Donmez v. NYC Department of Consumer Affairs et al., 29 N.Y.3d 968 (NY Court of Appeals 2017), Docket No. 401875-2013, Judgment entered March 23, 2017.

Ibrahim Donmez v. NYC Department of Consumer Affairs, 138 S.Ct. 467 (U.S. Supreme Court 2017), Docket No. 16-9707, Judgment entered November 27, 2017.

Ibrahim Donmez v. NYC Department of Consumer Affairs, U.S. Supreme Court, Docket No. 16-9708, Judgment entered November 27, 2017.

CURRENT CASE

Ibrahim Donmez v. the City of New York et al, U.S. District Court for the Southern District of New York, Docket No. 16-6458, Justice Colleen McMahon, Judgment entered December 19, 2016.

Ibrahim Donmez v. NYC Department of Consumer Affairs et al., U.S. District Court for the Southern District of New York, Docket No. 20-5586, Justice Louis L. Stanton, Judgment entered October 6, 2020.

Ibrahim Donmez v. NYC Department of Consumer Affairs et al., U.S. District Court for the Southern District of New York, Docket No. 20-5586, Justice Louis L. Stanton, Judgment entered November 9, 2020.

Ibrahim Donmez v. NYC Department of Consumer Affairs et al., U.S. District Court for the Southern District of New York, Docket No. 20-5586, Justice Louis L. Stanton, Judgment entered January 8, 2021.

Ibrahim Donmez v. NYC Department of Consumer Affairs et al., U.S. District Court for the Southern District of New York, Docket No. 20-5586, Justice Louis L. Stanton, Judgment entered February 5, 2021.

Ibrahim Donmez v. NYC Department of Consumer Affairs et al., U.S. Court of Appeals for the Second Circuit, Docket No. 20-3830 and 21-91, Judgment entered July 14, 2021.

Ibrahim Donmez v. NYC Department of Consumer Affairs et al., U.S. Court of Appeals for the Second Circuit, Docket No. 20-3830 and 21-91, Judgment entered October 14, 2021.

Ibrahim Donmez v. NYC Department of Consumer Affairs et al., U.S. Supreme Court, Docket No. 21-6829, Judgment entered July 14, 2022.

Ibrahim Donmez v. NYC Department of Consumer Affairs et al., U.S. District Court for the Southern District of New York, Docket No. 20-5586, Justice Laura Taylor Swain, Judgment entered October 20, 2022.

Ibrahim Donmez v. NYC Department of Consumer Affairs et al., U.S. District Court for the Southern District of New York, Docket No. 20-5586, Justice Laura Taylor Swain, Judgment entered April 17, 2023.

Ibrahim Donmez v. NYC Department of Consumer Affairs et al., U.S. Court of Appeals for the Second Circuit, Docket No. 23-727, Judgment entered March 1, 2024.

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OPINIONS BELOW

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District Court Order Dismissing Petitioner's Amended Complaint (April 12, 2023) appears at Appendix B to the petition and is unpublished.

District Court Order (October 18, 2022) appears at Appendix C to the petition and is unpublished.

U.S. Supreme Court Notice Closing the Case (July 19, 2022) appears at Appendix D to the petition and is unpublished.

Court of Appeals Mandate (October 21, 2021) is unpublished.

Court of Appeals En Banc Order (October 14, 2021) is unpublished.

Court of Appeals Order Dismissing Petitioner's Appeal (July 14, 2021) is unpublished.

District Court Dismissing Petitioner's Complaint in its Entirety (February 3, 2021) is unpublished.

District Court Order Denying Petitioner's Three Motions (January 7, 2021) is unpublished.

District Court Order Denying Petitioner's Motion (November 6, 2020) is unpublished.

District Court Order to Amend (October 5, 2020) is unpublished.

District Court Order Dismissing Petitioner's Complaint (December 16, 2016) is unpublished.

JURISDICTION

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

28 U.S. CODE § 1915—PROCEEDINGS IN FORMA PAUPERIS:

(a)

(1) Subject to subsection (b), any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees or security therefor, by a person who submits an affidavit that includes a statement of all assets such prisoner possesses that the person is unable to pay such fees or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that the person is entitled to redress.

(2) A prisoner seeking to bring a civil action or appeal a judgment in a civil action or proceeding without prepayment of fees or security therefor, in addition to

filing the affidavit filed under paragraph (1), shall submit a certified copy of the trust fund account statement (or institutional equivalent) for the prisoner for the 6-month period immediately preceding the filing of the complaint or notice of appeal, obtained from the appropriate official of each prison at which the prisoner is or was confined.

(3) An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.

(b)

(1) Notwithstanding subsection (a), if a prisoner brings a civil action or files an appeal in forma pauperis, the prisoner shall be required to pay the full amount of a filing fee. The court shall assess and, when funds exist, collect, as a partial payment of any court fees required by law, an initial partial filing fee of 20 percent of the greater of—

(A) the average monthly deposits to the prisoner's account; or

(B) the average monthly balance in the prisoner's account for the 6-month period immediately preceding the filing of the complaint or notice of appeal.

(2) After payment of the initial partial filing fee, the prisoner shall be required to make monthly payments of 20 percent of the preceding month's income credited

to the prisoner's account. The agency having custody of the prisoner shall forward payments from the prisoner's account to the clerk of the court each time the amount in the account exceeds $10 until the filing fees are paid.

(3) In no event shall the filing fee collected exceed the amount of fees permitted by statute for the commencement of a civil action or an appeal of a civil action or criminal judgment.

(4) In no event shall a prisoner be prohibited from bringing a civil action or appealing a civil or criminal judgment for the reason that the prisoner has no assets and no means by which to pay the initial partial filing fee.

(c) Upon the filing of an affidavit in accordance with subsections (a) and (b) and the prepayment of any partial filing fee as may be required under subsection (b), the court may direct payment by the United States of the expenses of (1) printing the record on appeal in any civil or criminal case, if such printing is required by the appellate court; (2) preparing a transcript of proceedings before a United States magistrate judge in any civil or criminal case, if such transcript is required by the district court, in the case of proceedings conducted under section 636(b) of this title or under section 3401(b) of title 18, United States Code; and (3) printing the record on appeal if such printing is required by the appellate court, in the case of proceedings conducted pursuant to section 636(c) of this title. Such expenses shall be paid when authorized by the Director of the Administrative Office of the United States Courts.

(d) The officers of the court shall issue and serve all process, and perform all duties in such cases. Witnesses shall attend as in other cases, and the same remedies shall be available as are provided for by law in other cases.

(e)

(1) The court may request an attorney to represent any person unable to afford counsel.

(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.

(f)

(1) Judgment may be rendered for costs at the conclusion of the suit or action as in other proceedings, but the United States shall not be liable for any of the costs thus incurred. If the United States has paid the cost of a stenographic transcript or printed record for

the prevailing party, the same shall be taxed in favor of the United States.

(2)

(A) If the judgment against a prisoner includes the payment of costs under this subsection, the prisoner shall be required to pay the full amount of the costs ordered.

(B) The prisoner shall be required to make payments for costs under this subsection in the same manner as is provided for filing fees under subsection (a) (2).

(C) In no event shall the costs collected exceed the amount of the costs ordered by the court.

(g) In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

(h) As used in this section, the term "prisoner" means any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program.

28 U.S. CODE § 1915A SCREENING:

(a) Screening.—

The court shall review, before docketing, if feasible or, in any event, as soon as practicable after docketing, a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity.

(b) Grounds for Dismissal.—On review, the court shall identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint—

(1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or

(2) seeks monetary relief from a defendant who is immune from such relief.

(c) Definition.—

As used in this section, the term "prisoner" means any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program.

FEDERAL RULES OF APPELLATE PROCEDURE RULE 41

Rule 41. Mandate: Contents; Issuance and Effective Date; Stay

(a) Contents. Unless the court directs that a formal mandate issue, the mandate consists of a certified copy of the judgment, a copy of the court's opinion, if any, and any direction about costs.

(b) When Issued. The court's mandate must issue 7 days after the time to file a petition for rehearing expires, or 7 days after entry of an order denying a timely petition for panel rehearing, petition for rehearing en banc, or motion for stay of mandate, whichever is later. The court may shorten or extend the time by order.

(c) Effective Date. The mandate is effective when issued.

(d) Staying the Mandate Pending a Petition for Certiorari.

(1) Motion to Stay. A party may move to stay the mandate pending the filing of a petition for a writ of certiorari in the Supreme Court. The motion must be served on all parties and must show that the petition would present a substantial question and that there is good cause for a stay.

(2) Duration of Stay; Extensions. The stay must not exceed 90 days, unless:

(A) the period is extended for good cause; or

(B) the party who obtained the stay notifies the circuit clerk in writing within the period of the stay:

(i) that the time for filing a petition has been extended, in which case the stay continues for the extended period; or

(ii) that the petition has been filed, in which case the stay continues until the Supreme Court's final disposition.

(3) Security. The court may require a bond or other security as a condition to granting or continuing a stay of the mandate.

(4) Issuance of Mandate. The court of appeals must issue the mandate immediately on receiving a copy of a Supreme Court order denying the petition, unless extraordinary circumstances exist.

UNITED STATES CONSTITUTION 14TH AMENDMENT § 1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

This is petitioner's 4th petition with this Court.

Petitioner filed his original complaint on June 16, 2020. The District Court repeatedly blocked service of process.

In 2022, after this Court revoked petitioner's forma pauperis status and forced petitioner to comply with its expensive Rule 33.1, petitioner received a quote of $2,000 from the specialty printer. After receiving the $2,000 quote, petitioner had to give up his petition as his income was way below levels stated in the Federal Poverty Guidelines in 2020, 2021 and 2022 because of the pandemic and he could not even pay his own bills.

In 2022, this Court blocked petitioner's meaningful access to courts as stated in *Adkins v. EI DuPont de Nemours & Co.*, 335 U.S. 331 (U.S. Supreme Court 1948)

On September 19, 2022, two months after this Court closed the case, petitioner filed an amended complaint with the District Court and submitted the filing fee.

On October 18, 2022, the District Court returned the filing fee and screened the amended complaint pursuant to the 2nd Circuit's incorrect interpretation of 28 USC § 1915.

The District Court and the 2nd Circuit repeatedly subjected petitioner to intrinsic fraud, extrinsic fraud and deprivation of due process through the weaponization of the incorrect interpretation of 28 USC § 1915.

Petitioner is a green card holder. Petitioner would like to become a United States citizen. Petitioner filed his complaints to vindicate his constitutional rights and to clear the charges in two criminal cases before filing an application for United States citizenship.

The first criminal case was two civil traffic infractions filed in the Criminal Court of the City of New York. That case was also the subject matter of petitioner's 2016 District Court complaint. The Criminal Court of the City of New York dismissed the charges on February 2, 2022.

The second criminal case was a misdemeanor charge filed in New York City's administrative court: Office of Administrative Trials and Hearings. It was filed in 2017. Petitioner did not go to the hearing of this case in the administrative court and filed his complaint in the District Court to challenge the legality and the constitutionality of the proceedings and the filed charges because there were illegal and unconstitutional established state procedures involved in the case. *See Hudson v. Palmer*, 468 U.S. 517 (U.S. Supreme Court 1984)

Petitioner indicated to the 2nd Circuit that the misdemeanor charge would have adverse collateral legal consequences for petitioner's United States citizenship application and futility is not an excuse not to hear the case. Other disabilities or burdens may flow from the judgment improperly obtained from the dismissal of the case as futile. Letting the conviction stand as futile without any trial does not comport with due process. Appellant "was not accorded the trial to which he is entitled under our system of government." *See Fiswick v. United States*, 329 U.S. 211 (U.S. Supreme Court 1946)

2nd Circuit frivolously responded by citing *Pillay v. INS*, 45 F.3d 14 (2nd Circuit 1995) as if a parking infraction that was not afforded due process is the same as six counts of robbery in the first degree and two counts of attempted robbery in the first degree.

REASONS FOR GRANTING THE PETITION

QUESTION I

DOES THE LANGUAGE OF 28 U.S.C. § 1915 (E) (2) (B) (II) ALLOW SCREENING OR DISMISSAL OF NON-FRIVOLOUS NON-PRISONER COMPLAINTS BEFORE SERVICE OF PROCESS AND DEFENDANTS' ANSWER?

INTER-CIRCUIT SPLIT

First Circuit: *See Feeney v. Correctional Medical Services*, Inc., 464 F.3d 158 (1st Circuit 2006)

Second Circuit: *See Whitnum v. Office of the Chief State's Attorney*, No. 20-947-cv (2d Circuit 2021); *see also Cieszkowska v. Gray Line New York*, 295 F.3d 204 (2nd Circuit 2002)

Third Circuit: *See Norman Grayson v. Mayview State Hospital*, 293 F.3d 103 (3d Circuit 2002); *see also In Re Burrell*, No. 16-3215 (3d Circuit 2016)

Fourth Circuit: *See Michau v. Charleston County*, 434 F.3d 725 (4th Circuit 2006); *see also Trazell v. Arlington County*, No. 19-2424 (4th Circuit 2020)

Fifth Circuit: *See Lowe v. Wellcare Health Plans INC.*, No. 09-11062 (5th Circuit 2010); *see also Darlene C. Amrhein v. United States of America*, No. 17-41017 (5th Circuit 2018)

Sixth Circuit: *See In re Prison Litigation Reform Act*, 105 F.3d 1131 (6th Circuit 1997); *see also McGore v. Wrigglesworth*, 114 F.3d 601 (6th Circuit 1997)

Seventh Circuit: *See Coleman v. Labor and Industry Review Commission of State of Wisconsin*, No. 15-3254 (7th Circuit 2017); *see also Luevano v. Wal-Mart Stores, Inc.*, 722 F.3d 1014 (7th Circuit 2013)

Eight Circuit: *See Wilson v. Alma City Court*, 371 F. App'x 708 (8th Circuit 2010)

Tenth Circuit: *See Buchheit v. Green*, 705 F.3d 1157 (10th Circuit 2012)

Eleventh Circuit: *See Mehmood v. Guerra*, No. 18-14212 (11th Circuit 2019); *see also Nurse v. Sheraton Atlanta Hotel*, No. 14-12202 (11th Circuit 2015)

INTRA-CIRCUIT SPLIT

Ninth Circuit: *See Calhoun v. Stahl*, 254 F.3d 845 (9th Circuit 2001); *see also Barren v. Harrington*, 152 F.3d 1193 (9th Circuit 1998) and then compare it with *Dario Olivas v. State of Nevada Ex Rel. Department of Corrections*, 856 F.3d 1281 (9th Circuit 2017)

STANDING

Justice Laura Taylor Swain returned the filing fee that the petitioner submitted for the amended complaint. Justice Laura Taylor Swain, just like Justice Louis L. Stanton, weaponized the incorrect interpretation of the 2nd Circuit to keep the petitioner away from the Court and engage in fraud.

The District Court continued to give preclusive effect to the dismissals issued pursuant to the 2nd Circuit's incorrect interpretation of 28 U.S.C. § 1915.

Appellant has Article III standing for this claim. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555 (U.S. Supreme Court 1992)

PRISON LITIGATION REFORM ACT

This Court should consider what Congress was trying to solve with the Prison Litigation Reform Act. The Court should evaluate the legislative history to determine Congress' primary concern (prisoner litigations) in enacting the amendments to Section 1915 and refuse to adopt an interpretation that would bring about an end completely at variance with the purpose of these amendments. *See Steelworkers v. Weber*, 443 US 193 (U.S. Supreme Court 1979)

This Court should then ask whether the suggested interpretation fits into that purpose. Appellate courts' particular interpretation (including the Second Circuit's) undermines the purpose of PLRA by imposing liability on non-prisoners. *See Freeman v. Quicken Loans*, 566 U.S. 624 (U.S. Supreme Court 2012)

The Prison Litigation Reform Act (PLRA) was enacted in April 1996 to address the large number of prisoner complaints filed in federal courts, not to block non-prisoner plaintiffs' meaningful access to courts.

The purpose of the PLRA, as reflected by its title, is to curtail prisoner litigation. *See* H.R. Rep. No. 104-378, at 166 (1995) (the prison litigation reforms are intended to "discourage frivolous and abusive prison lawsuits").

Courts may consider statutory declarations of purpose as well as the broad functioning of the statutory scheme. Courts may consider statutory declaration of purpose and evaluating "various Titles of the Act" as "the tools through which this goal is to be accomplished". *See United States v. Turkette*, 452 US 576 (U.S. Supreme Court 1981)

PLRA intended to "reduce the quantity and improve the quality of prisoner suits" *See Jones v. Bock*, 127 S.Ct. 910 (U.S. Supreme Court 2007) quoting *Porter v. Nussle*, 534 U.S. 516 (U.S. Supreme Court 2002)

"There was no evidence in the legislative history that Congress intended to change the dismissal procedures for non-prisoner indigent plaintiffs" *See Norman Grayson v. Mayview State Hospital*, 293 F.3d 103 (3d Circuit 2002)

This Court should review the legislative history, including drafting history and committee reports, to determine the purpose of Section 1915, and review the PLRA amendments' purpose in the light of the statutory context. *See Howard Delivery Service, Inc. v. Zurich American Ins. Co.*, 547 US 651 (U.S. Supreme Court 2006)

"The volume of prisoner litigation represents a large burden on the judicial system, which is already overburdened by increases in nonprisoner litigation. Yet prisoners have very little incentive not to file nonmeritorious lawsuits. Unlike other prospective litigants who seek poor person status, prisoners have all the necessities of life supplied, including the materials required to bring their lawsuits. For a prisoner who qualifies for poor person status, there is no cost to bring a suit and, therefore, no incentive to limit suits to cases that have some chance of success." *See* May 25, 1995 Congressional Record – Senate available at http://www.law.umich.edu/facultyhome/margoschlanger/Documents/Resources/Prison_Litigation_Reform_Act_Legislative_History/17_Congressional_Record.pdf

It is obvious that even though Congress complained about non-prisoner litigation, the Prison Litigation Reform Act was intended only for the prisoners.

Committee report, like the Senate Report petitioner stated above, are a particularly reliable source to which this Court can look to ensure Congress' intended meaning. *See Digital Realty Trust, Inc. v. Somers*, 138 S. Ct. 767 (U.S. Supreme Court 2018)

"Section 804 amends 28 U.S.C. 1915 to require the prisoner to list all assets when filing in forma pauperis suits. Section 805 adds a new section 1915A to 28 U.S.C. to require early judicial screening and prompt dismissal of clearly meritless suits against governmental entities or employees." *See* December 1, 1995 House of Representatives Conference Report available at: http://www.law.umich.edu/facultyhome/margoschlanger/

Documents/Resources/Prison_Litigation_Reform_Act_Legislative_History/31_Conference_Report.pdf

"JUDICIAL SCREENING Another provision of the Prison Litigation Reform Act would require judicial screening before docketing, of any civil complaint filed by a prisoner seeking relief from the Government under section 1983 of title 42, a reconstruction-era statute that permits actions against State officials who deprive "any citizen of the United States of the rights, privileges, or immunities guaranteed by the constitution." This provision would allow a Federal judge to immediately dismiss a complaint under section 1983 if either of two conditions is met: First, the complaint does not state a claim upon which relief may be granted. or second, the defendant is immune from suit." *See* May 25, 1995 Congressional Record – Senate available at: http://www.law.umich.edu/facultyhome/margoschlanger/Documents/Resources/Prison_Litigation_Reform_Act_Legislative_History/17_Congressional_Record.pdf

Although reliance on legislative history is unnecessary in light of the statute's unambiguous language in regards to the fact that pre-service judicial screening for failure to state a claim only applies to prisoner cases, this Court can note the support that legislative history provides for petitioner's reading from these records. *See Milavetz, Gallop & Milavetz, PA v. US*, 130 S.Ct. 1324 (U.S. Supreme Court 2010)

PRISONER V. NON-PRISONER

Non-prisoners face significantly greater challenges than prisoners when initiating a lawsuit. *See Johnson v. Daley*, 339 F.3d 582 (7th Circuit 2003)

Eighth Amendment requires prisons to provide humane conditions of confinement and ensures that prisoners receive adequate food, clothing, shelter, and medical care. Non-prisoners "have to choose between necessities like toothbrushes and a lawsuit.", "prisoners need not make this choice." *See Siluk v. Merwin*, 783 F.3d 421 (3d Circuit 2015)

NEITZKE V. WILLIAMS, 490 U.S. 319 (U.S. SUPREME COURT 1989)

Congress has not overruled *Neitzke v. Williams*, 490 U.S. 319 (U.S. Supreme Court 1989) with PLRA for non-prisoner cases.

Congress has overruled *Neitzke v. Williams*, 490 U.S. 319 (U.S. Supreme Court 1989) with PLRA for only prisoner cases with the screening requirements stated only in 28 U.S.C. § 1915A.

Although 28 U.S.C. § 1915, as amended in 1996, does not explicitly authorize pre-answer screening to decide whether a non-prisoner complaint is "frivolous or malicious," such pre-answer screening has long been part of the in forma pauperis process for prisoner and non-prisoner cases alike. *See Neitzke v. Williams*, 490 U.S. 319, 109 S.Ct. 1827, 104 L.Ed.2d 338 (1989) (applying 28 U.S.C. § 1915(d) before the 1996 amendments). It appears that former 28 U.S.C. § 1915(d), which Neitzke interpreted, was redesignated (and amended) as 28 U.S.C. § 1915(e). *See* Historical and Statutory Notes, 28 U.S.C.A. § 1915 (West Supp.1997) (Pub.L.104-134, § 101[(a)] [§ 804(a)(2)], redesignated former subsection (d) as (e)). It is, therefore, impossible to believe that Congress intended to limit the

practice of preanswer "frivolous and malicious" screening to prisoner cases because of the 1996 amendments. 28 U.S.C. § 1915 (e) (2) (b) (i) authorizes pre-answer screening of non-prisoner in forma pauperis complaints for the purpose of deciding whether the complaint is frivolous or malicious. *See Michael Kane v. Lancaster County Department of Corrections*, 960 F.Supp. 219 (District of Nebraska 1997)

Congress did not bark. There is nothing in PLRA's legislative history that mentions or discusses *Neitzke v. Williams*, 490 U.S. 319 (U.S. Supreme Court 1989). Common sense suggests that Congress would have mentioned or discussed the kind of effect that PLRA would have on non-prisoner forma pauperis cases in the way the Second Circuit suggests if the Congress had really intended to change this Court's interpretation. *See Church of Scientology of California v. IRS*, 484 U.S. 9 (U.S. Supreme Court 1987)

No members of Congress expressed the view that the statutory language was intended to overrule *Neitzke v. Williams*, 490 U.S. 319 (U.S. Supreme Court 1989) for non-prisoner cases. *See Zuni Public School District v. Department of Education*, 127 S.Ct. 1534 (U.S. Supreme Court 2007)

Congress does not create discontinuities in legal rights and obligations without some clear statements. "Under established canons of statutory construction, it will not be inferred that Congress, in revising and consolidating the laws, intended to change their effect unless such intention is clearly expressed." *See Finley v. United States*, 490 U.S. 545 (U.S. Supreme Court 1989)

"A party contending that legislative action changed settled law has the burden of showing that the legislature intended such a change." *See Green v. Bock Laundry Machine Co.*, 490 U.S. 504 (U.S. Supreme Court 1989). None of these appellate courts, including the Second Circuit, met the burden of showing that Congress intended to overrule *Neitzke v. Williams*, 490 U.S. 319 (U.S. Supreme Court 1989) for non-prisoner cases.

"In adopting the language used in the earlier act, Congress must be considered to have adopted also the construction given by this Court to such language, and made it a part of the enactment." *See Shapiro v. United States*, 335 U.S. 1 (U.S. Supreme Court 1948)

If a statute uses words or phrases that have already received authoritative construction by the jurisdiction's court of last resort, they are to be understood according to that construction. *See Scalia & Garner*, supra note 532, at 322

TEXT & LAW

Judges use a variety of tools to help them interpret statutes, most frequently relying on five types of interpretive tools: 1) ordinary meaning, 2) statutory context, 3) canons of construction, 4) legislative history, and 5) evidence of the way a statute is implemented. Courts also rely on judicial precedent; that is, if another case has previously interpreted a particular statutory provision, a judge may afford that prior interpretation some significance. Second Circuit and other appellate courts' interpretation only seem to apply the ordinary meaning tool and seem to avoid all other interpretive tools

and they ignore *Neitzke v. Williams*, 490 U.S. 319 (U.S. Supreme Court 1989)

28 U.S.C. § 1915 does not authorize district courts to screen non-prisoner complaints. *See Michael Kane v. Lancaster County Department of Corrections*, 960 F.Supp. 219 (District of Nebraska 1997)

There is no explicit authorization in 28 U.S.C. § 1915 which pertains to prisoners and non-prisoners alike, for the courts to conduct pre-answer screening for any purpose. *See Michael Kane v. Lancaster County Department of Corrections*, 960 F.Supp. 219 (District of Nebraska 1997)

Pre-answer screening for Rule 12 (b) (6) purposes was limited to prisoner cases under 28 U.S.C. § 1915A, to prohibit the district courts from conducting an initial sua sponte review of a non-prisoner in forma pauperis complaint for the purposes of determining whether the complaint satisfies Federal Rules of Civil Procedure 12 (b) (6). Stated simply, sua sponte initial review for Rule 12 (b) (6) purposes is limited to prisoner cases pursuant to 28 U.S.C. § 1915A (a) & (b). *See Michael Kane v. Lancaster County Department of Corrections*, 960 F.Supp. 219 (District of Nebraska 1997)

Limiting pre-answer screening for Rule 12 (b) (6) purposes to prisoner cases would be a sensible construction of the statutes. This is true because the only pre-answer "screening" explicitly required or permitted by either section 1915 or 1915A is for prisoner cases. Compare 28 U.S.C. § 1915 (e) (2) with 28 U.S.C. § 1915A (a) & (b). *See Michael Kane v. Lancaster County Department of Corrections*, 960 F.Supp. 219 (District of Nebraska 1997)

When the court is confronted with a non-prisoner in forma pauperis complaint, District Courts are limited, in terms of sua sponte initial review, to deciding whether the non-prisoner in forma pauperis complaint is frivolous or malicious. If the complaint is frivolous or malicious, the district court should dismiss it out of hand. If, however, the complaint is not frivolous or malicious, the district court should order issuance and service of process. *See Michael Kane v. Lancaster County Department of Corrections*, 960 F.Supp. 219 (District of Nebraska 1997)

The word "screening" is used only in 28 U.S.C. § 1915A, not 28 U.S.C. § 1915. 28 U.S.C. § 1915A (a) compels federal courts to screen only prisoner complaints before service and defendants' answer.

28 U.S.C. § 1915A (a) and 28 U.S.C. § 1915A (b) command the federal court to screen and dismiss only prisoner complaints "before docketing, if feasible or, in any event, as soon as practicable after docketing"

28 U.S.C. § 1915A (b) and 28 U.S.C. § 1915 (e) (2) use the same exact terminology for dismissal. Second Circuit keeps 28 U.S.C. § 1915 (e) (2) in isolation however Second Circuit's isolated interpretation gets nullified by "the remainder of the statutory scheme" in 28 U.S.C. § 1915A (a) and 28 U.S.C. § 1915A (b) making it clear that pre-service dismissal procedures only apply to prisoner cases. *See United Savings Association of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365 (U.S. Supreme Court 1988)

Congress wrote 28 U.S.C. § 1915A (a) and 28 U.S.C. § 1915A (b) to capture the interpretation urged by the

petitioner more clearly. 28 U.S.C. § 1915A (a) and 28 U.S.C. § 1915A (b) show that "Congress knew how to draft" its intent that pre-service dismissal procedures only applied to prisoners. *See Chicago v. Environmental Defense Fund*, 511 US 328 (U.S. Supreme Court 1994)

28 U.S.C. § 1915 (e) (2) does not obligate screening of non-prisoner complaints before 28 U.S.C. § 1915 (d) service and answer from defendants. There is no such language in 28 U.S.C. § 1915.

The word "at any time" in 28 U.S.C. § 1915 should not be interpreted as "at any time before service" because 1) Congress did not write the statue as "any time before service" 2) with 28 U.S.C. § 1915, Congress also commanded that Federal Courts help the non-prisoner pauper plaintiffs with service on the defendants which lead to adversary procedures. *See* 28 U.S.C. § 1915 (d)

Second Circuit's interpretation excludes the time frame after service and defendants' answer and literally inserts the words "before service" to the statue. A court cannot "insert convenient language to yield the court's preferred meaning" *See Borden v. United States*, 141 S. Ct. 1817 (U.S. Supreme Court 2021); *see also Lomax v. Ortiz-Marquez*, 140 S.Ct. 1721 (U.S. Supreme Court 2020)

Congress did not include any word in Section 1915 that might imply dismissal for failure to state a claim before service and defendants' answer. However, such language is included in Section 1915A. Courts generally read as meaningful "the exclusion of language from one statutory provision that is included in other provisions of the same statute." A familiar principle of statutory construction is

that a negative inference may be drawn from the exclusion of language from one statutory provision that is included in other provisions of the same statute. "`[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion'" *See Hamdan v. Rumsfeld*, 548 US 557 (U.S. Supreme Court 2006)

Second Circuit's interpretation disables the functions of 28 U.S.C. § 1915 (d) and 28 U.S.C. § 1915A (a) and U.S.C. § 1915A (b). "[T]he canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme." *See Yates v. US*, 135 S. Ct. 1074 (U.S. Supreme Court 2015)

Courts should "give effect, if possible, to every clause and word of a statute" so that "no clause is rendered 'superfluous, void, or insignificant.'" Second Circuit's interpretation renders 28 U.S.C. § 1915 (d) and 28 U.S.C. § 1915A (a) and U.S.C. § 1915A (b) insignificant, if not wholly superfluous. It is the Court's duty to give effect, if possible, to every clause and word of a statute. *See Duncan v. Walker*, 533 US 167 – Supreme Court 2001

This Court has long held that "`a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause'" is rendered "`superfluous, void, or insignificant.'" *See Young v. United Parcel Service, Inc.*, 135 S. Ct. 1338 (U.S. Supreme Court 2015)

Second Circuit's interpretation gives the words "at any time" an unintended broad meaning and ignores the principle of noscitur a sociis – a word is known

by the company it keeps – to "avoid ascribing to one word a meaning so broad that it is inconsistent with its accompanying words, thus giving unintended breadth to the Acts of Congress. *See Gustafson v. Alloyd Co.*, 513 US 561 (U.S. Supreme Court 1995)

To gather evidence of statutory meaning, the Court should turn to the rest of the statue and read the statue as a whole. The dismissal procedures prescribed in Section 1915 and Section 1915A differ in structure, purpose, and application. *See Holder v. Hall*, 512 US 874 (U.S. Supreme Court 1994)

A pure textualist approach by the 10th Circuit: The language of 28 U.S.C. § 1915 (e) (2) does not impose a duty to screen or review before service of summons. Instead, it requires a court to dismiss a case filed by an IFP litigant at any time the court determines that the action or appeal is frivolous or fails to state a claim on which relief may be granted. *See Buchheit v. Green*, 705 F.3d 1157 (10th Circuit 2012)

Congress' intent that only prisoner complaints can be screened and dismissed for failure to state a claim before 28 U.S.C. § 1915 (d) service can be inferred from the fact that both 28 U.S.C. § 1915A (c) and 28 U.S.C. § 1915 (h) define "prisoner" with the same exact words but the word "screening" was only used in 28 U.S.C. § 1915A (a).

This Court's role in appraising petitioner's reading of § 1915 is not to make policy, but to interpret a statute. Taking this approach, it is evident that the failure-to-state-a-claim standard of 28 U.S.C. § 1915 (e) (2) (b) (ii) and the frivolousness standard of 28 U.S.C. § 1915 (e) (2)

(b) (i) were devised to serve distinctive goals. *See Neitzke v. Williams*, 490 U.S. 319 (U.S. Supreme Court 1989)

Prompt screening may be a good thing and conserve the resources of defendants forced to respond to baseless lawsuits but the language of the present rule also provides needed flexibility, even if it sometimes requires defendants to respond to complaints that may soon be dismissed as without merit. The language simply does not require district courts to screen the merits of every claim that comes before them in an IFP case, and reading in such an extensive duty absent statutory language to that effect should be declined. *See Buchheit v. Green*, 705 F.3d 1157 (10th Circuit 2012)

There is no doubt that frivolous complaints and claims are subject to dismissal pursuant to the inherent authority of the court even when the filing fee has been paid. *See Mallard v. District Court*, 490 U.S. 296 (1989); *see also Fitzgerald v. First East Seventh Street Tenants Corp.*, 221 F.3d 362 (2d Circuit 2000); *see also Neitzke v. Williams*, 490 U.S. 319 (U.S. Supreme Court 1989)

Therefore, sua suponte dismissal of complaints and claims that are frivolous as defined in *Neitzke v. Williams*, 490 U.S. 319 (U.S. Supreme Court 1989) and *Denton v. Hernandez*, 504 U.S. 25 (U.S. Supreme Court 1992) before service of process is permitted.

A non-prisoner pauper's complaint and claims can be dismissed only when a paying litigant's complaint and claims can be dismissed. A non-prisoner pauper litigant deserves the basic minimal procedures which any paying non-prisoner litigant gets in federal court. *See Coppedge v. United States*, 369 U.S. 438 (U.S. Supreme Court 1962)

The hair splitting in *Bell v. Hood*, 327 U.S. 678 (U.S. Supreme Court 1946) is still a good model.

There were no adversary procedures whatsoever in all complaints filed by the petitioner in the district court. It is better to have the adversary procedures in the district court before the case gets to the Court of Appeals. The "adversarial process crystallizes the pertinent issues and facilitates appellate review of a trial court dismissal by creating a more complete record of the case." *See Neitzke v. Williams*, 490 U.S. 319 (U.S. Supreme Court 1989)

By pursuing dismissals before service and defendant's answer, "the district court is cast in the role of a proponent for the defense, rather than an independent entity." *See Porter v. Fox*, 99 F.3d 271 (8th Circuit 1996)

District Courts cannot conduct an initial review of non-prisoner pro se fee-paid complaints under Rule 12 (b) (6) before service of process and responsive pleadings. *See Porter v. Fox*, 99 F.3d 271 (8th Circuit 1996)

A district court may dismiss a non-prisoner pro se complaint under Rule 12 (b) (6) sua sponte but only after service of process but forma pauperis non-prisoner pro se complaints may be dismissed under 28 U.S.C. § 1915 (e) (2) (b) (ii) before service of process. *See Wilson v. Alma City Court*, 371 F. App'x 708 (8th Circuit 2010)

Eight Circuit's rationale in *Wilson v. Alma City Court*, 371 F. App'x 708 (8th Circuit 2010) conflicts with *Neitzke v. Williams*, 490 U.S. 319 (U.S. Supreme Court 1989) as District Courts cannot put indigent non-prisoner pro se plaintiffs on a different "footing with paying" non-prisoner

pro se plaintiffs. *See Neitzke v. Williams*, 490 U.S. 319 (U.S. Supreme Court 1989)

The purpose of service of process stated in 28 U.S.C. § 1915 (d) is that the parties, not the court, would litigate the issues, and that these cases would proceed in the ordinary manner. The Federal Rules of Civil Procedure contemplates a litigant directed process at the initial stages, but the procedures that petitioner repeatedly gets subjected to (with the incorrect interpretation of 28 U.S.C. § 1915) interject review by judicial officers into the process. This judicial intervention places the judicial officers in the role of defense counsels, plaintiff 's counsels, and judges, and deprives petitioner of the "considerable benefits of the adversary proceedings contemplated by the Federal Rules." *See Hake v. Clarke*, 91 F.3d 1129 (8th Circuit 1996) quoting *Neitzke v. Williams*, 490 U.S. 319 (U.S. Supreme Court 1989)

Standards of frivolousness and failure to state a claim should not be conflated. *See Neitzke v. Williams*, 490 U.S. 319 (U.S. Supreme Court 1989) quoting *Haines v.Kerner*, 404 U.S. 519 (U.S. Supreme Court 1972)

28 U.S.C. § 1915 and 28 U.S.C. § 1915A should be interpreted as a whole, not in a piecemeal or isolated manner. *See United States v. Morton*, 467 U.S. 822 (U.S. Supreme Court1984); *see also K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281 (U.S. Supreme Court 1988);

The provisions of a text should be interpreted in a way that renders them compatible, not contradictory. Courts should avoid interpreting a provision in a way that is inconsistent with the overall structure of the statute or

with another provision or with a subsequent amendment to the statute or with another statute enacted by a Congress. Petitioner's reading "accords more coherence" to 28 U.S.C. § 1915 and 28 U.S.C. § 1915A and *Neitzke v. Williams*, 490 U.S. 319 (U.S. Supreme Court 1989). *See Lindh v. Murphy*, 521 U.S. 320 (U.S. Supreme Court 1997)

Statutes should be construed in a manner which will not create a hardship or injustice (see McKinney's Cons Laws of NY, Book 1, Statutes § 146). Meaning and effect must be given to all of the statute's language, and words are not to be rejected as superfluous when it is practicable to give each a distinct and separate meaning (see McKinney's Cons Laws of NY, Book 1, Statutes § 231).

Second Circuit's interpretation of 28 U.S.C. § 1915 (e) (2) that commands the dismissal of non-prisoner forma pauperis complaints and claims for failure to state a claim before service and defendants' answer renders 28 U.S.C. § 1915A (a), 28 U.S.C. § 1915A (b) and 28 U.S.C. § 1915 (d) superfluous and this creates serious conflict with 1) the text of the statues 2) Federal Rules of Civil Procedures, 3) the legislative intent and 4) *Neitzke v. Williams*, 490 U.S. 319 (U.S. Supreme Court 1989)

Petitioner invokes Rule 10 (a) of this Court for his first question as "a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter".

Petitioner also invokes Rule 10 (c) of this Court for his first question as "United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court" and Court of

Appeals "has decided an important federal question in a way that conflicts with" *Neitzke v. Williams*, 490 U.S. 319 (U.S. Supreme Court 1989).

QUESTION II

DID THE DISTRICT COURT INCORRECTLY CONSTRUE PETITIONER'S AMENDED COMPLAINT AS A MOTION TO REOPEN A CASE OR START A NEW CASE?

DUE PROCESS ISSUE WITH THE 2ND CIRCUIT'S CONDUCT

2nd Circuit should have given give fair notice of what conduct was required or proscribed. *See FCC v. Fox Television Stations*, 132 S.Ct. 2307 (U.S. Supreme Court 2012)

On October 21, 2021, 2nd Circuit issued its mandate. The mandate did not include any information that notified the petitioner that the proceedings would have to resume immediately at the District Court. The mandate was just the copy of the July 14, 2021 dated order of the 2nd Circuit with a "Mandate" stamp.

The October 21, 2021 mandate was the first-time petitioner learned about mandate. Petitioner learned from his legal research that a mandate is a procedure notifying the District Court that the Court of Appeals proceeding is over.

On January 6, 2022, petitioner timely filed his petition with this Court.

On January 10, 2022, petitioner filed a notice with the 2nd Circuit stating that he filed a petition with this Court. Petitioner acted in good faith and notified the 2nd Circuit after he filed his petition with this Court.

Petitioner assumed that the filing of the petition and the notice automatically stays the mandate and that is why he notified the 2nd Circuit.

If petitioner knew or was notified that that he had to file a motion to stay the mandate, he would have filed a motion to stay the mandate.

On January 18, 2022, this Court filed a notice with the 2nd Circuit stating that the petitioner filed a petition with this Court.

On July 19, 2022, 2nd Circuit received the notice that this Court closed the case.

On July 19, 2022, petitioner received the notice that this Court closed the case.

2nd Circuit did not take any action from the date it issued its mandate on October 21, 2021 until petitioner filed his amended complaint with the District Court on September 19, 2022.

The last entry on the District Court's docket was the 2nd Circuit's mandate when petitioner filed his amended complaint.

Committee Notes – 2018 Amendment under FRAP Rule 41 states "There are good reasons to require an

affirmative act by the court. Litigants – particularly those not well versed in appellate procedure – may overlook the need to check that the court of appeals has issued its mandate in due course after handing down a decision." 2nd Circuit has not taken any affirmative act despite the fact that both the petitioner and this Court affirmatively notified the 2nd Circuit.

This Court's closing of the case on July 19, 2022 "signals the end of litigation.", not the 2nd Circuit's issuance of the mandate on October 21, 2021. *See Bell v. Thompson*, 545 U.S. 794 (U.S. Supreme Court 2005)

Committee Notes – 2018 Amendment under FRAP Rule 41 states that "the lack of notice" can lead to abuse of discretion and the 2nd Circuit's lack of notice was an abuse of discretion.

DUE PROCESS ISSUE WITH FRAP RULE 41

FRAP Rule 41 does not give fair notice of what conduct is required or proscribed after a mandate is issued. *See FCC v. Fox Television Stations*, 132 S.Ct. 2307 (U.S. Supreme Court 2012)

Petitioner did not know about FRAP Rule 41 until he started working on his second appeal. The District Court did not mention anything about Rule 41 in both orders it issued. The 2nd Circuit did not discuss the Rule 41 either.

Petitioner still does not understand how the language of the Rule 41 requires a litigant to file a stay motion after the mandate is issued. It seems that the rules were written for seasoned attorneys, not ordinary people.

The rule states "A party may move to stay the mandate". It does not say "A party must move to stay the mandate if he wants to stay the District Court proceedings."

The 2018 Committee Notes in the Rule states "order is required for a stay of the mandate." but this statement refers to the time after this Court denies or closes a case and it addresses the duty of Court of Appeals, not the litigant, after a case is finalized at this Court.

In *Bell v. Thompson*, 545 U.S. 794 (U.S. Supreme Court 2005), this Court defined its proceedings as "operation of law" and a stay gets "dissolved" after this Court's proceedings end. Petitioner argues that for a pro se litigant who did not know and was not notified that he had to file a motion to stay the mandate, the mandate gets dissolved after a pro se litigant files a non-frivolous petition with this Court especially considering the way the Rule 41 was written. There is a fair notice doctrine issue in the way the rule was written.

FRAP Rule 41 (d) (4) states that "The court of appeals must issue the mandate immediately on receiving a copy of a Supreme Court order denying the petition". The choice of word for the rule is "must".

FRAP Rule 41 (d) (4) does not state that "The court of appeals must issue the mandate immediately on receiving a copy of a Supreme Court order denying the petition only if the mandate was stayed.".

JURISDICTION

"The filing of a notice of appeal is an event of jurisdictional significance – it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal." *See Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56 (U.S. Supreme Court 1982)

Similarly, petitioner claims the filing of a notice of a petition with this Court is an event of jurisdictional significance and it divested the district court of its control over those aspects of the case involved in the petition. It makes no sense to claim that the District Court retained jurisdiction as soon as the mandate was issued especially considering what petitioner filed his 2022 petition for.

"Once a proper appeal is taken, the district court may generally take action only in aid of the appeal or to correct clerical errors." *See Leonhard v. United States*, 633 F.2d 599 (2d Circuit 1980)

Similarly, petitioner claims once a proper petition is filed, the district court may generally take action only in aid of the petition or to correct clerical errors. The key issue at this point would be whether the petition was properly filed from an appealable order. Petitioner filed a proper petition from appealable orders as his 2022 petition discussed.

Petitioner invokes Rule 10 (c) of this Court for his second question as "United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court" and Court of

Appeals "has decided an important federal question in a way that conflicts with" *Bell v. Thompson*, 545 U.S. 794 (U.S. Supreme Court 2005)

QUESTION III

DID THE DISTRICT COURT AND THE COURT OF APPEALS REPEATEDLY SUBJECT PETITIONER TO INTRINSIC FRAUD, EXTRINSIC FRAUD, JUDICIAL USURPATION OF POWER AND DEPRIVATION OF DUE PROCESS?

JUSTICE COLLEEN MCMAHON

On December 16, 2016, Justice Colleen McMahon subjected appellant's complaint to a sua suponte dismissal filled with factual contentions that are clearly baseless and frivolous law prior to service of process.

On December 16, 2016, Justice Colleen McMahon also reviewed petitioner's ongoing Article 78 proceedings despite the fact that petitioner did not file any claims for his ongoing Article 78 proceedings. After NY State Court of Appeals denied discretionary review, petitioner filed two petitions with this Court. *See* Docket Numbers 16-9707 and 16-9708 .

Justice Colleen McMahon declared that Younger Abstention Doctrine bars the District Court from reviewing petitioner's ongoing Criminal Court case but then she reviewed petitioner's ongoing Article 78 proceedings.

Petitioner did not file an appeal with the 2nd Circuit after Justice Colleen McMahon's dismissal in 2016.

Instead, he availed himself to the proceedings in the Criminal Court. The Criminal Court of the City of New York dismissed the July 14, 2016 charges on February 2, 2022. So, the Criminal Court proceedings that Justice Colleen McMahon declined to review pursuant to Younger Abstention Doctrine lasted 5 years and 6 months and 19 days.

JUSTICE LOUIS L. STANTON

On October 5, 2020, Justice Louis L. Stanton issued his first order without reading petitioner's 2016 complaint and petitioner's original complaint.

On October 5, 2020, Justice Louis L. Stanton, with his first order, filled the case with perjury and subjected petitioner to intrinsic fraud.

Justice Louis L. Stanton issued all of his other orders and dismissals without reading petitioner's original complaint and 2016 complaint.

JUSTICE LAURA TAYLOR SWAIN

On September 19, 2022, petitioner filed his 140 page amended complaint with 43 causes of action against 13 defendants. Petitioner's amended complaint corrected the misnomer issue with the original complaint.

Between September 19, 2022 and October 18, 2022, petitioner called the Court several times and he was told that a clerk, not the judge, was reviewing the amended complaint.

On October 18, 2022, on the same day the case was assigned to her, Justice Laura Taylor Swain issued her first order without reading anything petitioner filed.

On October 18, 2022, Justice Laura Taylor Swain only read the fraud and the perjury filled orders and dismissals of Justice Louis L. Stanton. Justice Laura Taylor Swain built more fraud on the top of the fraud built by Justice Louis L. Stanton.

On October 18, 2022, Justice Laura Taylor Swain, stated that petitioner "may be able to allege additional facts to state a valid claim". There was no need to allege additional facts as her copy paste text frivolously stated. Petitioner stated plausible facts for valid claims in his amended complaint.

On April 12, 2023, Justice Laura Taylor dismissed petitioner's case with a copy paste text. There is no review at all in this order.

At first, petitioner did not understand or know why any of the cases that Justice Laura Taylor Swain cited in her April 12, 2023 had no relevance to petitioner's amended complaint or Rule 60 motion. That is why petitioner filed a FRAP Rule 10 motion with the 2nd Circuit.

Petitioner then demonstrated to the 2nd Circuit that the dismissal order is a copy paste text that Justice Laura Taylor Swain uses when pro se litigants file Rule 60 motions. Petitioner even cited these pro se cases exposing Justice Laura Taylor Swain's fraud.

RES JUDICATA

Both Justice Louis L. Stanton and Justice Laura Taylor Swain declared that Res Judicata applies without reading the facts of the case.

Petitioner's amended complaint is well structured; it has 43 causes of action and 13 defendants. Petitioner requested clarification from Justice Laura Taylor Swain and asked her which claims and which defendants were subject to the res judicata dismissal. Justice Laura Taylor Swain responded with a copy paste text dismissal.

Petitioner still does not know which causes of action and which defendants were dismissed because a lot of the facts, claims and events are connected in petitioner's amended complaint. The issued orders are perjured with vague and fraudulent facts and frivolous law.

In her October 18, 2022 dated order Justice Laura Taylor Swain barred petitioner from filing all claims other than the June 26, 2017 criminal misdemeanor charge because of res judicata. When petitioner mentioned that there were claims from 2019 and 2022, Justice Laura Taylor Swain dismissed the whole case with a copy paste text.

So, in 2016, the District Court refused to review petitioner's criminal court case claims pursuant to Younger Abstention Doctrine and then in 2020 and in 2022, the same District Court claimed that the case was reviewed and is now subject to res judicata after the Criminal Court dismissed the July 14, 2016 charges on February 2, 2022. That was nothing but judicial fraud.

In 2016, Justice Colleen McMahon wrote that petitioner "has not alleged any facts suggesting that the process provided to him was inadequate". Petitioner did not state any facts relevant to his Article 78 proceedings because his cases were still ongoing in the state courts. Petitioner did not file a due process claim in 2016 in the District Court. Petitioner could not have filed any claims from his Article 78 claims in 2016 because the cases were still ongoing. The District Court did not have the legal authority to review petitioner's ongoing Article 78 proceedings in 2016. *See Colorado River Water Conservation District v. United States*, 424 U.S. 800 (1976)

Petitioner's Article 78 proceedings were final when this Court denied the two petitions on November 27, 2017.

Petitioner has been subjected to a lot of parallel criminal and civil proceedings while he was still litigating his Article 78 cases. The harassment and the targeting of the City of New York and its actors continued all the way to 2022.

The legal conversation for petitioner's Article 78 proceedings needs to center around collateral estoppel, not res judicata. Res Judicata "generally does not operate to bar a {S}1983 suit following the resolution of an Article 78 proceeding, since the full measure of relief available in the former action is not available in the latter." *See Colon v. Coughlin*, 58 F.3d 865 (2d Circuit 1995)

Petitioner's legal and constitutional claims were not "actually and necessarily determined" and petitioner was not allowed to have "full and fair opportunity to litigate" in

his Article 78 proceedings. *See Montana v. United States*, 440 U.S. 147 (U.S. Supreme Court 1979)

Petitioner presented plausible facts centering around these claims in his original and amended complaints.

In his second appeal, petitioner submitted the amicus brief of NYC Bar Association arguing that the state courts are powerless to address bias in certiorari type Article 78 proceedings.

Petitioner was deprived of a full and fair opportunity to litigate at the federal court as well.

"The party asserting [collateral estoppel] bears the burden of showing that the identical issue was previously decided, while the party against whom the doctrine is asserted bears the burden of showing the absence of a full and fair opportunity to litigate in the prior proceeding." *See Mohamed Abdelal v. Raymond Kelly*, No. 17-1166 (Second Circuit 2018)

Mohamed Abdelal v. Raymond Kelly, No. 17-1166 (2d Circuit 2018) resembles petitioner's case.

The Appellate Division left a lot of the claims unaddressed that petitioner raised in the Article 78 proceedings at its own discretion and subjected petitioner to a fraudulent process. Petitioner's Article 78 claims that he filed in the District Court are not a second or successive challenge and "reraising a previously unaddressed claim is not abusive by any definition." *See Magwood v. Patterson*, 130 S.Ct. 2788 (U.S Supreme Court 2010)

20 PAGE LIMIT

Both Justice Louis L. Stanton and Justice Laura Taylor Swain forced petitioner to limit complaints to 20 pages.

Petitioner filed objections to the 20 page limit through his motions filed with the District Court and his two appeals filed with the 2nd Circuit. Petitioner was repeatedly subjected to dismissals without any legitimate review on this issue.

Both the District Court and the 2nd Circuit called petitioner's objections frivolous without citing any legitimate law or authority.

Petitioner's original complaint was 339 pages. Petitioner's amended complaint was 140 pages. Petitioner worked full time for more than one month to reduce the number of pages. Petitioner indicated in his Rule 60 motion with Justice Laura Taylor Swain that he could work on reducing the details pursuant to Iqbal and Twombly standards. Petitioner acted in good faith. Then, Justice Laura Taylor Swain subjected petitioner to a copy paste fraud.

Petitioner cited cases where litigants, including the governments and pro se litigants, filed complaints that are hundreds of pages and adversarial process was allowed in these cases.

Petitioner requested clarification on why the number 20 was chosen instead of 5 or 10 or 30 or 50. Petitioner wanted to know the facts or the law that made Justice

Louis L. Stanton and Justice Laura Taylor Swain chose the number 20. The response was a copy paste text dismissal.

As with any exercise of discretion by the court, when it is within the bounds of the discretion conferred, it cannot be questioned. But the definition of those bounds is a question of law, and when a court traverses them, it abuses its discretion. A court "by definition abuses its discretion when it makes an error of law." *See Koon v. United States*, 518 U.S. 81 (U.S. Supreme Court 1996)

To this date, petitioner has not been able to find a single precedent from any circuit court or this Court that allows the limitation on page numbers for complaints.

There is nothing in Federal Rules of Civil Procedures that imposes page limits on complaints.

There is no page limit or exhibit limit on a complaint. The page limitations are applied in a uniform and equal manner to everyone when they are stated either in Federal Rules of Civil Procedure or Federal Rules of Appellate Procedure.

"When a court has no judicial power to do what it purports to do", "its action is not mere error but usurpation of power" *See De Beers Consol. Mines, Ltd. v. United States*, 325 U.S. 212 (U.S. Supreme Court 1945)

Judges cannot place orders in the absence of jurisdiction or legal authority. *See Mireles v. Waco*, 502 U.S. 9 (1991)

It is not possible to plausibly present a decade long systematic and unconstitutional harassment, targeting, fraud and deprivation of due process case with only 20 pages.

The 20 page limit is a denial of meaningful access to courts. The District Court and the 2nd Circuit's systemic official action frustrates the petitioner in preparing and filing suits at the present time. The Courts repeatedly denied an opportunity to litigate. *See Christopher v. Harbury*, 536 U.S. 403 (U.S Supreme Court 2002)

2ND CIRCUIT

2nd Circuit 1) repeatedly and frivolously called petitioner's appeals frivolous even though petitioner presented law and conflict among circuit courts, 2) did not allow petitioner to file a brief in his first appeal, 3) repeatedly ignored the District Court's fraud and usurpation of power and 4) called everything petitioner filed frivolous without any review.

FRAUD

Petitioner, sentence by sentence, cite by cite, demonstrated the factual and the legal fraud with the sua sponte dismissals through motions and complaints. The only responses that petitioner received was one sentence decisions with no review stating that petitioner was writing frivolous stuff. Petitioner filed a FRAP (21) (B) (4) motions for the justices in his second appeal. 2nd Circuit called everything petitioner filed frivolous. The fraud was committed by the District Court and the 2nd Circuit, not the petitioner.

When the District Court engages in usurpation of power and engages in fraud by issuing orders and dismissals without reading complaints and then engages in more fraud by denying Rules 60 motions without any review or a trial of facts, it is the Court of Appeals' duty to engage as the District Court simply does not want to do its job as the Court of Appeals is the supervisor of the District Court. Court of Appeals engaged in extrinsic fraud by staying quiet on the issues and covered up the district court judges' intrinsic and extrinsic fraud.

"Perjury and fabricated evidence are evils that can and should be exposed at trial, and the legal system encourages and expects litigants to root them out as early as possible." *See Great Coastal Express v. International Brotherhood of Teamsters*, 675 F.2d 1349 (Fourth Circuit 1982)

Petitioner tried to root out the perjury and the fabricated evidence of Justice Louis L. Stanton and then he was subjected to extrinsic fraud not just by Justice Louis L. Stanton but also the Court of Appeals as well and then the fraud continued with Justice Laura Taylor Swain. Petitioner was subjected to systematic fraud by the Federal Judiciary after he filed a complaint for the systematic fraud by the State Judiciary.

The judges of these Courts defiled the Courts themselves, disabled the judicial machinery in charge of performing its impartial task of adjudging cases that are presented for adjudication.

Petitioner respectfully requests this Court to stop this fraud. *See Hazel-Atlas Co. v. Hartford Co.*, 322 U.S. 238

(U.S. Supreme Court 1944); *see also Marshall v. Holmes*, 141 U.S. 589 (U.S. Supreme Court 1891); *see also United States v. Throckmorton*, 98 U.S. 61 (U.S. Supreme Court 1878)

JUDICIAL USURPATION OF POWER

The facts of this case are similar to the facts of *La Buy v. Howes Leather Co.*, 352 U.S. 249 (U.S. Supreme Court 1957)

In *La Buy v. Howes Leather Co.*, 352 U.S. 249 (U.S. Supreme Court 1957), the District Court Judge openly stated 1) he could not try the case because it would take long time, 2) he was "confronted with an extremely congested calendar", 3) the cases were very complicated and complex.

Justice Louis L. Stanton and Justice Laura Taylor Swain did not openly state they did not want to review petitioner's case. Instead, they engaged in all these other tactics stated above.

DEPRIVATION OF DUE PROCESS

Both the District Court and the 2nd Circuit repeatedly subjected petitioner to unexpected sua sponte orders and dismissals without notice and opportunity to be heard.

Petitioner was not allowed to present his legal claims in his complaints. Judges became parties instead of neutral arbiter of matters. There was no adversarial system. There was no fair court process.

Petitioner invokes Rule 10 (a) of this Court for his third question as the District Court and the Court of Appeals "has so far departed from the accepted and usual course of judicial proceedings" and petitioner calls "for an exercise of this Court's supervisory power."

CONCLUSION

Accordingly, the petition for a writ of certiorari should be granted.

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Tampa, Florida

Respectfully submitted,

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