No. _____

IN THE SUPREME COURT OF THE UNITED STATES

JUSTIN HOLDER

Petitioner

v.

MARK DUVALL THOMAS

Respondent

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

PETITION FOR A WRIT OF CERTIORARI

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Petitioner

I. QUESTION PRESENTED

A. Did the District Court judge error in law, or abuse his discretion when he *sua sponte* dismissed Petitioner's *pro se* complaint for lack of subject matter jurisdiction, where the complaint sought a declaration that Petitioner's federally protected rights were violated, an injunction to prevent further irreparable harm, and damages; and/or by denying Petitioner's timely request for leave to amend his *pro se* pleadings, to the extent they were inartfully drafted, or otherwise deficient, without providing this *pro se* Petitioner a few sentences to guide him in pleading his meritorious claims, brought under federal statute that expressly protects those specific rights?

B. Can the United States Court of Appeals for the Fourth Circuit Panel improperly disregard the "general rule" that panels are bound by prior precedent decisions directly on point and only an *en banc* decision can overrule a precedent, as it is set forth in *Loudon Leasing Dev. Co. v. Ford Motor Credit Co.,* when it overruled the mandatory Fourth Circuit authorities in *Timmerman v. Brown, Gordon v. Leeke, and Laber v. Harvey,* that are directly on point, and this courts authority in *Foman v. Davis,* and *Erickson v. Pardus,* that are also directly on point?

II. PARTIES TO THE PROCEEDINGS

1. Petitioner, Justin Holder was a Plaintiff in the trial court, and an Appellant in the Appellate Court.

2. Respondent, Mark Duvall Thomas was an unserved Defendant in the trial court, and an unserved Appellee in the Appellate Court.

III. THE PROCEEDINGS BELOW

1. Trial in the United States District Court for the District of Maryland, **1:23-cv-01874-GLR** (*Holder v Thomas*).

2. Direct Appeal in the United States Court of Appeals for the Fourth Circuit, **Appeal No. 23-2134**, (*Holder v Thomas*). (Petition for panel and/or *en banc* rehearing was denied.)

IV. ISSUES PRESERVED

In the United States Court of Appeals for the Fourth Circuit, Petitioner preserved these questions:

1. Did the District Court Judge err or abuse his discretion when he dismissed this Appellant, Justin Holder's Claim that Maryland District Court Judge Mark Duvall Thomas's courtroom practice, pattern, and policy violated Appellant Justin Holder's Federally protected rights to due process and equal protection under the law?

2. Did the trial judge err or abuse his discretion when he denied Appellant, Justin Holder leave to amend his complaint, when amendment would be in good faith, would not prejudice the Defendant, and would not be futile?

3. Did the trial court judge err in law, or abuse his discretion when he *sua sponte* dismissed Justin Holder's meritorious complaint without liberally construing the pleadings, and/or providing Justin Holder a few sentences to guide him with an amendment?

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(a) Citations to Cases

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(b) **Citations to Proceedings Below**

1. United States District Court for the District of Maryland, **1:23-cv-01874-GLR** (*Holder v Thomas*).

2. United States Court of Appeals for the Fourth Circuit, **Appeal No. 23-2134**, (*Holder v Thomas*).

VII. PETITION FOR WRIT OF CERTIORARI

Petitioner, Justin Holder ("Mr. Holder") comes forth and petitions this honorable Court for Writ of Certiorari of the decision of Judge George Levi Russell III, of the United States District Court for the District of Maryland.

VIII. OPINIONS BELOW

The District court judge *sua sponte* dismissed Petitioner's complaint seeking a declaration that the Respondent violated Petitioner's federally protected rights, injunction and damages, finding a lack of subject matter jurisdiction.

Petitioner's timely request, by motion for reconsideration, for leave to amend his meritorious claim, brought under federal statute that expressly protects the Petitioner's federally rights that were allegedly violated, was denied by the trial court.

The panel in the United States Court of Appeals for the Fourth Circuit affirmed the trial court judge's decision(s) in direct contrast of at least three (3) Fourth Circuit mandatory authorities, in an unpublished opinion, and Petitioner's petition for a rehearing by panel and/or *en banc* was denied.

IX. JURISDICTION

Mr. Holder' petition for panel and/or *en banc* rehearing to the United States Court of Appeals for the Fourth Circuit, **Appeal No. 23-2134**, (*Holder v Thomas*), was denied on April 9, 2024. Mr. Holder invokes this Court's jurisdiction under 28 U.S.C. § 1254, having timely filed this petition for a writ of certiorari within ninety days of the United States Court of Appeals for the Fourth Circuit's judgment.

X. STATUTES AND CONSTITUTIONAL PROVISIONS

(a) Statutes

42 U.S. Code § 1983:

> 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.

(b) Constitutional Provisions

4th Amendment

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

5th Amendment

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

14th Amendment - Section 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.

XI. STATEMENT OF THE CASE

On July 16, 2020, and July 31, 2020, Honorable Judge Thomas presided over a hearing and/or trial adjudicating a petition for a peace order filed by the "Morral" Petitioners, within the purview of MD. Courts and Judicial Proceedings Code Ann. § 3-1501 *et seq.,* (the "petition" or the "peace order") wherein Mr. Holder was the respondent to aforesaid petition. *Complaint* ¶3.

Honorable Judge Thomas knew, it was knowable to him, or he remained deliberately indifferent, to the fact that the public road labeled road "1906" on the 1936 Atlas, and named "Harris Lane" by the Town burdened the area where the Morrals claimed Mr. Holder was walking behind their fence in Stonecrest, and the Stonecrest Plat

expressly stated the Morrals could not erect a fence in that area. *Id.* ¶33. In order for the Morrals to succeed in the relief they sought at the peace order trial, the Morrals had the burden to demonstrate that Mr. Holder did not have the legal right to continue to walk behind their fence in Stonecrest, where the Stonecrest Plat expressly stated the Morrals could not erect a fence, and where aforesaid area was expressly burdened by the precise location of the wagon road easement described in the title deed to the Holder property, that Mr. Holder provided to the Morrals, and Honorable Judge Thomas accepted at trial. *Id.* ¶34.

Honorable Judge Thomas acknowledged the fact to be found in favor of Mr. Holder at the peace order trial, stating for the record that the Morrals had brought forth no evidence whatsoever of abandonment of the wagon road, or alternatively the public road, that was described on the title deed for the Holder property. *Id.* ¶36. When asked by Mr. Holder's counsel what evidence of abandonment was before the court, Honorable Judge Thomas exclaimed "Right, there is none!" *Id.* ¶37. Moreover, Honorable Judge Thomas acknowledged throughout the peace order proceeding that his "obvious and known" jurisdiction prevented him from deciding the title to, or interest in real property, (or granting injunctive relief in equity). *Id.* ¶38. Even if the Morrals had put evidence of abandonment of the wagon road in the

record, Honorable Judge Thomas acknowledged his "obvious and known" jurisdiction prohibited him from adjudication of aforementioned evidence in granting Petitioners the relief they sought in their peace order petition. *Id.* ¶40.

Honorable Judge Thomas's jurisdiction was obviously defined under clear Maryland law, Honorable Judge Thomas was, and is, competent in Maryland law, and therefore Honorable Judge Thomas knew the limits of his "obvious and known" jurisdiction. *Id.* ¶41. In fact, Petitioners' counsel, David Pembroke conceded: "My clients are prepared to stipulate that Mr. Holder believes he has a right of way over their property." *Id.* ¶57. Honorable Mark Thomas thereafter said "I'll accept the proposition that he believes he has a right of way there, and that that's the basis for his doing what he's doing." *Id.* ¶58.

Honorable Judge Thomas acknowledged, the Maryland District Court cannot decide title to, or interest in real property, and by accepting the stipulation that Mr. Holder had a "*bona fide* claim of right," and/or "good faith claim" to walk behind the Morral's fence in Stonecrest, where the Stonecrest Plat stated the Morrals could not erect a fence, Honorable Judge Thomas accepted that the Morrals could not meet their burden that Mr. Holder had criminally trespassed, and therefore Honorable

Judge Thomas could not grant the relief the Morrals sought in their peace order petition. *Id.* ¶60. Honorable Judge Thomas clearly knew and understood that under Maryland law he was duty bound to deny the Morrals the relief they sought in their peace order petitions. *Id.* ¶61.

Honorable Judge Thomas did not want to deny the Morrals the relief they sought in their peace order petitions because Honorable Judge Thomas told Mr. Holder that "his sympathies" lie with the Morrals. *Id.* ¶62. No matter where Honorable Judge Thomas's "sympathies" lie, he had no jurisdiction in equity under clear Maryland law, just as he had no jurisdiction to decide the title to, or interest in real property under clear Maryland law. *Id.* ¶63.

Honorable Judge Thomas (and counsel for Morrals and Mr. Holder) repeatedly acknowledged that the Maryland District Court lacked jurisdiction to decide the title matters squarely raised in the Morral's peace order petition. *Id.* ¶69. Honorable Judge Thomas explained "The District Court does not have jurisdiction to decide title cases. They get decided in the Circuit Court," during the July 16, 2020 temporary peace order hearing. *Id.* ¶70. Honorable Judge Thomas acknowledging "I'll accept the proposition that he believes he has a right of way there, and that that's the basis for his doing what he's doing. That doesn't establish that he does, and I

can't decide that he does," during the July 16, 2020 temporary peace order hearing. *Id.* ¶71. Honorable Judge Thomas confirming "Ok, so, there are a lot of issues here and that's why the Circuit Court gets to decide them," during the July 16, 2020 temporary peace order hearing. *Id.* ¶72.

The Morral's counsel, David Pembroke clarifying: "This is a Peace Order case. The Court does not have the authority to establish or disestablish for that matter a right of way," during the July 31, 2020 final peace order trial. *Id.* ¶73. Honorable Judge Thomas explaining "For me to decide whether he's right or he's right, I have to know the title issue..." "I'm denying both of these. I do not believe the burden of proof has been met in either of them because I think they both depend upon the title to the land" during the July 16, 2020 temporary peace order hearing in other related Jeffrey Young cases, which, at the request of Petitioners' counsel, was set together with the Morral's case, and in which the Morrals were present. *Id.* ¶74.

Despite the continuous admonitions and assurances throughout the proceedings that the District Court would not and could not decide the title issue squarely presented in the peace order trial, at the very conclusion of the final peace order trial, Honorable Judge Thomas made explicitly clear

that he was, in fact, determining the title to, or interest in real property:

> If you want me to decide the title issue, I will say it right now. Based on the evidence presented I find that their [Morrals] claim to possession of this property to be superior to the claim of somebody who found a deed from 1874, whenever it was and is using it to put a road across the back of their property.

Id. ¶76. Honorable Judge Thomas's grant of the peace orders hinged upon the Maryland District Court's determination of "the ownership of real property or of an interest in real property," *i.e.,* "that their claim to possession of this property to be superior to the claim of somebody who found a deed from 1874 or whenever..." and that judgment was in complete absence of Honorable Judge Thomas's "obvious and known" jurisdiction to so decide. *Id.* ¶78.

Alternatively, "the District Court does not have equity jurisdiction" to enjoin Mr. Holder from his enjoyment of the rights he presented, the Morrals stipulated to, and Honorable Judge Thomas accepted, in Mr. Holder's defense and/or response to the petition for peace order requested by the Morrals. *Id.* ¶79.

In either case, Honorable Judge Thomas intentionally, willfully and knowingly decided to unlawfully decide the title to, or interest in real property in order to illegally grant the Morrals the relief they sought, because Honorable Judge Thomas's "sympathies" lie with the Morrals, not Mr. Holder. *Id.* ¶80.

Honorable Judge Thomas acted in total absence[1] of his "obvious and known" jurisdiction, defiantly violating Mr. Holder's constitutional right to due process by deciding the title to, or interest in real property, and Honorable Judge Thomas consented to Mr. Holder's suit for damages, waiving any judicial immunity he may have been afforded. *Id.* ¶81. Honorable Judge Thomas made the conscious decision to waive his immunity and assumed the risk of Mr. Holder's suit in damages when he chose to unlawfully decide the title to, or interest in real property, for the benefit of the Morrals, and detriment of Mr. Holder. *Id.* ¶82. Honorable Judge Thomas made the concerted decision to break the law in furtherance of the Morrals interest in obtaining the relief sought in their peace order petition, with no regard or concern

[1] The Complaint uses the term "exceeded," but the well plead facts state Honorable Judge Thomas had absolutely no jurisdiction to decide title to real property, or in equity, and therefore when he "exceeded" he also indisputably "acted in complete absence of" all jurisdiction.

as to how his illegal actions would impact Mr. Holder's property, liberty, right to equal protection under the law, and right to due process. *Id.* ¶83.

When Honorable Judge Thomas defiantly acted in total absence of his "obvious and known" jurisdiction, he denied Mr. Holder his right to procedural and substantive due process in the adjudication of title to, or an interest in real property, seizing Mr. Holder of his liberty and/or "taking" his property. *Id.* ¶90. Honorable Judge Thomas acted with deliberate indifference and/or actual malice when he defiantly acted in total absence of his "obvious and known" jurisdiction and decided the title to, or interest in real property, and failed to provide Mr. Holder an opportunity to be heard in a meaningful way at a meaningful time when so deciding. *Id.* ¶91. Clearly Honorable Judge Thomas had the appropriate training, experience and competency to know and understand he could not decide the title to, or interest in real property because he stated on the record such relief was not within his "obvious and known" jurisdiction. *Id.* ¶94.

Honorable Judge Thomas actually knew of a substantial risk of denying Mr. Holder his right to procedural and substantive due process prior to proceeding with the peace order trial. *Id.* ¶96. Honorable Judge Thomas actually knew of and ignored his "obvious and known" jurisdictional

constraints when he willfully and maliciously disregarded and denied Mr. Holder procedural and substantive due process, and decided the title to, or interest in real property. *Id.* ¶97.

Honorable Judge Thomas, acting "under the color of law" deliberately, "knowingly and willfully" violated Justin Holder's rights in accordance with the Fourteenth Amendment of the United State's Constitution. *Id.* ¶105. Honorable Judge Thomas, acting "under the color of law" deliberately, "knowingly and willfully" violated Justin Holder's rights in accordance with the Fifth Amendment of the United State's Constitution. *Id.* ¶106. Public policy prohibits Honorable Judge Thomas from acting in total absence of his "obvious and known" jurisdiction and denying Mr. Holder his rights in accordance with the Fourth, Fifth and Fourteenth Amendments of the United State's Constitution. *Id.* ¶110. The District court should enter an injunction against Honorable Judge Thomas to prevent irreparable harm, where the benefits of the injunction to Mr. Holder and the public interest in constraining Honorable Mark Thomas to his jurisdiction, outweigh any harm to Honorable Judge Thomas, or his unlawful desire to defiantly act in total absence of his "obvious and known" jurisdiction, and decide the title to, or interest in real property in the future. *Id.* ¶115.

WHEREFORE, the Petitioner prayed that the District Court:

> A. Issue a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202 that declares as a matter of law that judicial defendant Honorable Judge Thomas's policy, practice, and custom of deciding title to, or interest in real property outside of his "obvious and known" jurisdiction has contravened Mr. Holder's right to be heard in a meaningful hearing at a meaningful time by a state official under the color of law, violates the Due Process Clause; and *inter alia*
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> B. Permanently enjoin judicial defendant Honorable Judge Thomas from exceeding his "obvious and known" jurisdiction and from deciding title to, or interest in real property, when sitting as a Judge of the Washington County District Court of Maryland, pursuant to 42 U.S.C. § 1983;

The trial court, with no guidance to Petitioner, *sua sponte* dismissed Mr. Holder's claim for lack of subject matter jurisdiction, and denied Mr. Holder's timely request for leave to amend his complaint.

XII. THE RIGHT TO BE HEARD IN A MEANINGFUL WAY, DUE PROCESS REASONS FOR GRANTING CERTIORARI

The trial court below's decision denied this *pro se* Petitioner access to the docket of the United State's courts when he sought declaratory and/or injunctive relief to protect his constitutional rights. Assuming *arguendo* that Petitioner's claim to damages are barred,[2] Petitioner should still have been granted leave to amend his meritorious claim for declaratory judgement and/or injunction, and correct any pleading deficiencies which may have existed, establishing that subject matter jurisdiction the trial court decided he lacked. *See Foman v. Davis*, 371 U.S. 178, 182 (1962). (This court holds that, absent prejudice, bad faith or futility, *the leave sought should, as the rules require, be "freely given."*)

The Circuit court's bald affirmation of the trial court's decision, in an unpublished opinion, leaves this Petitioner with a decision that he is not to be afforded equal protection under the law, and unlike other citizens, he does not enjoy access to the docket of the United States court to protect his rights. That decision is in direct conflict with the decisions of the

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[2] With proper amendment, Petitioner will allege, and prove, that Respondent acted in total absence of any jurisdiction, foreclosing the defense of judicial immunity. Perhaps this is the outcome the trial judge sought to improperly avoid?

Fourth Circuit, this court, and other state high courts, and with no further explanation in an unreported opinion, provides no sensible basis for its divergent holding. This case is a good vehicle to reinforce the important principle that Federal courts cannot delay the vindication of federal rights by forcing § 1983 plaintiffs to state courts, by way of abstention, or otherwise *sua sponte* dismissing their meritorious claims for relief.[3] Moreover, if the Fourth Circuit intended to change the law, its own "general rules" require that it do so *en banc*, in a published opinion, that overrules its precedent. *See* § XIII *infra*.

Currently, procedural treatment of *pro se* civil litigants is at best highly case-specific, (often times *pro se* litigants are second class litigants), and worse courts can be highly inconsistent in that treatment.[4] There is no doubt that in civil cases, litigants have a statutory right, first embodied in the Judiciary Act of 1789, to represent themselves.[5] Most states also provide, either by constitution or by statute, for a

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[3] It is highly likely that Respondent will move the state court to remove this claim to federal court, once served by Mr. Holder.

[4] *See* Donald H. Zeigler and Michele G. Hermann, The Invisible Litigant: An Inside View of Pro Se Actions in the Federal Courts, 47 N.Y.U.L.Rev. 157, 160 (1972) (since pro se litigants often are unable to comply with procedural rules, exceptions are carved out in practice).

[5] 1 Stat. 73, 92 (1789). Similar language is codified at 28 U.S.C. § 1654 (1982).

right of self representation in state courts.[6] "But even the most intelligent and highly educated layman has small and sometimes no skill in the science of law." *Powell v. Alabama* 287 U.S. 45 (1932).[7] "If that be true of men of intelligence, how much more true is it of the ignorant and illiterate, or those of feeble intellect."[8] Because this court has held that there is no absolute due process right to counsel in civil cases,[9] *pro se* civil litigants face not only the unlikelihood of receiving court-appointed counsel,

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[6] *See* Note, Legal Education for the Pro Se Litigant- A Step Towards a Meaningful Right To Be Heard, 96 Yale L.J. 1641, 1641 n.2 (1987) (listing state statutes and constitutional provisions).

[7] The court was discussing a right to counsel, not the docket.

[8] *Id.* at 69. Other courts have put it in even blunter fashion. *See, e.g., United States v. Dujanovic,* 486 F.2d 182, 186 (9th Cir. 1973) (a pro se litigant ranges "from the misguided or naive who just wants to tell the jury the truth, through the pressured one under the hardships of the accusation of crime and the sophisticated person enamored with his own ability, to the crafty courtroom experienced one who ruthlessly plays for the breaks. All eventually play the part of the proverbial fool.").

[9] *Lassiter v. Department of Social Services,* 452 U.S. 18, 26-27 (1981) (adopting a presumption that there is, absent a potential deprivation of the litigant's physical liberty, no due process right to counsel; moreover, in civil cases, the other elements in the due process decision must be weighed against this presumption when deciding whether to appoint counsel). The "other elements" to which the Court refers in *Lassiter* are the factors incorporated into the due process balancing test in *Mathews v. Eldridge,* 424 U.S. 319, 335 (1976).

but other obstacles as well. The fundamental right of access to the docket, and an opportunity to be heard in a meaningful way, must be protected as sound public policy of this court, and the courts below.

The greater challenge is that trial courts tend erroneously to consider the dismissal issue together with, instead of after, the issue of whether the plaintiff has leave to proceed in *forma pauperis* in the first place under 28 U.S.C. § 1915(a). This creates the possibility that a court may *sua sponte* dismiss a case without opinion on appointment of counsel, which could assist the *pro se* litigant in developing his claim.[10] Alternatively, the preliminary dispositive motions of his adversary may also alert the *pro se* litigant of defective pleadings, if the trial judge did not enter a *sua sponte* dismissal.

Thus, the possibility exists, although at least in theory it is not supposed to happen, that a *pro se* litigant who has a substantive cause of action may

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[10] *See* The Federal Judicial Center's Prisoner Civil Rights Committee, Recommended Procedures for Handling Prisoner Civil Rights Cases in the Federal Courts 7 (1980) ("Recommended Procedures") (high volume of prisoner condition-of-confinement cases and the large number of frivolous complaints makes it difficult to ensure that the meritorious case will be recognized); Wayne T. Westling and Patricia Rasmussen, Prisoners' Access to the Courts: Legal Requirements and Practical Realities, 16 Loy.U.Chi.L.J. 273, 297-98 (1985).

suffer *sua sponte* dismissal under pleading rules through omission of facts to establish subject matter jurisdiction, or ignorance of the rules and/or law.[11]

These possibilities raise the question whether the procedural treatment currently given the *pro se* civil litigant by the federal courts comports with due process or whether more leniency is required to preserve the litigant's meaningful opportunity to be heard, when leave to amend is timely requested.[12] Most *pro se* appearances by civil litigants are not voluntary but rather result because *pro se* litigants cannot afford attorneys to represent them.[13]

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[11] While the Supreme Court has held that pro se pleadings should be viewed with special care, *see Haines v. Kerner*, 404 U.S. 519 (1972), a litigant with counsel may allege crucial facts a pro se litigant would not think to include in his pleadings. Moreover, pleadings drafted by counsel not only may be phrased more artfully, but also may allege viable causes of action which might not occur to the pro se litigant, or for that matter, to the court. *See* Recommended Procedures at 13-14 (cited in note 24); Westling and Rasmussen, 16 Loy.U.Chi.L.J. at 309 (cited in note 10) (a good case can be lost by poor presentation).

[12] *See* Ira P. Robbins and Susan N. Herman, Pro Se Litigation - Litigating Without Counsel: *Faretta* or For Worse, 42 Brooklyn L.Rev. 629, 641 (1976). (issue is not only whether a pro se litigant has claims of which he is unaware, but also whether it is the court's responsibility to help him find them).

[13] Note, 55 Fordham L.Rev. at 1132, n.149; Robbins and Herman, 42 Brooklyn L.Rev. at 663. (cited in note 12).

Is it inequitable for a judge to deny a *pro se* civil litigant assistance of counsel and then refuse to exhibit some sort of leniency toward the *pro se* litigant in these matters?[14] Surely the Ninth Circuit has it right, and a *pro se* litigant is entitled to notice of the complaint's deficiencies and an opportunity to amend prior to dismissal of the action. *See* § XIII *infra*.

The civil litigant who is denied court-appointed counsel and who cannot afford to hire a lawyer must represent himself in order to have his day in court. The "choice" to appear *pro se* may not truly be a choice under such circumstances.[15] Of more import, many *pro se* civil cases, are civil rights cases or *habeas corpus* actions for declaratory and/or injunctive relief which would not generate money judgments.[16] This is especially true in a civil rights

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[14] *Merritt v. Faulkner*, 697 F.2d 761, 769 (7th Cir. 1983) (Posner concurring and dissenting) ("It is unfair to deny a litigant a lawyer and then trip him up on technicalities.").

[15] Jacobsen, 790 F.2d at 1367-68 (Reinhardt dissenting). *See* generally Note, An Extension of the Right of Access: The Pro Se Litigant's Right to Notification of the Requirements of the Summary Judgment Rule, 55 Fordham L.Rev. 1109, 1132-35 (1987).

[16] Note, Pro Se Appeals in the Fifth Circuit: The Gradual Demise of the Notice Exception to Federal Rule of Appellate Procedure 4(a) and An Argument for Its Resurrection, 4 Rev. Litigation 71, 73 (1983).

case against a judicial defendant where the plaintiff seeks declaratory and/or injunctive relief in accordance of 42 USC § 1983, and his counsel could be limited to fees under § 1988(b). Thus, the court cannot do in this instance what Judge Richard Posner would have it do: subject the merits of every case to "the test of the market,"[17] and assume that a civil litigant who cannot retain counsel does not have a meritorious case.[18]

The effects of holding a *pro se* civil litigant to strict compliance with pleading and/or procedural rules are manifold. First, not only will this deter civil litigants from proceeding *pro se*, it also will deter those with meritorious claims who cannot get counsel from suing in the first place. If they do sue, their chances of winning are decreased.[19] The result is to place in jeopardy the one due process right that

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[17] *Merritt v. Faulkner*, 697 F.2d 761, 769-70 (7th Cir. 1983) (Posner concurring and dissenting).

[18] In civil rights cases brought under 42 U.S.C. § 1983, attorney's fees are available to the plaintiff's attorney under 42 U.S.C. § 1988 if the plaintiff prevails on the merits. The vast majority of § 1983 cases are, however, dismissed before trial. Hence, this is not, as Posner suggests, an added incentive for attorneys to take civil pro se cases. *Merritt*, 697 F.2d at 770; Note, 55 Fordham L.Rev. at 1133-35, nn.162, 173-77 (cited in note 13).

[19] *Crisafi v. Holland*, 655 F.2d 1305, 1310 (D.C.Cir. 1981). *See also* note 8 & 9 *supra*.

pro se litigants clearly have: access to the docket, and the right to a meaningful opportunity to be heard.[20]

The one and only special treatment which this court has guaranteed *pro se* litigants, apart from the due process rights afforded all litigants, is the right to have courts liberally construe their *pro se* pleadings. In *Haines v. Kerner*,[21] this court reversed a dismissal for failure to state a claim under 42 U.S.C. § 1983, noting that:

> [A]llegations such as those asserted by petitioner, however inartfully pleaded, are sufficient to call for the opportunity to offer supporting evidence. We cannot say with assurance that under the allegations of the pro se complaint, ***which we hold to less stringent standards than formal pleadings drafted by lawyers***, it appears ***"beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief."***[22]

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[20] *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 437 (1982). *See also Little v. Streater*, 452 U.S. 1, 5-6 (1981).

[21] 404 U.S. 519 (1972).

[22] *Id.* at 520-21 (emphasis added), quoting *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957).

On its face, the *Haines* rule is limited to construction of pleadings. It seems odd, however, to allow a litigant "an opportunity to offer proof"[23] and then to enforce strict compliance with procedure thereafter.[24]

Pro se litigants deserve, of course, the minimum due process rights to which all other litigants are entitled. The most significant of these rights is an opportunity to be heard, "granted at a meaningful time and in a meaningful manner."[25] To this end, the Court has promulgated a "balancing test" requiring the weighing of private and governmental interests in order to determine how much judicial process is due. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

At the heart of the *pro se* civil litigant's constitutionally protected interest is a meaningful opportunity to be heard. This court holds that leave to amend that substantive claim should be "freely given." Obviously, valuation of this interest includes the value of the underlying substantive claim which he may be either prevented or deterred from

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[23] *Haines*, 404 U.S. at 521.

[24] Note, 55 Fordham L.Rev. at 1120-21 (cited in note 13).

[25] *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 437 (1982), quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965). *See also Little v. Streater*, 452 U.S. 1, 5-6 (1981).

bringing. But it also includes the value of this opportunity itself.[26] A meaningful opportunity to be heard is a core due process value. As discussed *supra*, ***if one cannot proceed at all, one clearly has lost more than simply the damages or the injunctive relief sought because the meaningful opportunity to be heard is itself a protected interest.***

In summary, *pro se* litigants in civil cases in federal court are entitled under the due process clause to have their pleadings liberally construed by the courts under the *Haines v. Kerner* standard.[27] Thereafter, the same *EIdridge* factors used to reach this conclusion, the balancing of the values of private interests and procedural reform against the value of the government's interest in preserving the status quo-should be applied on a case-by-case basis to determine what further process is due. Treatment of these other cases will include lenient application of all procedural rules, including leave to amend, whenever it is in the interest of due process to do so; forcing strict compliance with subsequent court procedures is inconsistent with a liberal construction of pleadings at the beginning of an action. It also will include the adoption of general rules-comparable to

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[26] *See Zeigler and Hermann*, 47 N.Y.U.L.Rev. at 205-06 (cited in note 4) (pro se litigants deserve fair and efficient screening of their claims).

[27] 404 U.S. 519 (1972).

the *Haines* standard for review of pleadings-protecting the *pro se* civil litigant whenever the benefit of according such rules outweighs their cost under *Eldridge*. This must also mean that a *pro se* litigant must be afforded leave to amend his claim, when he timely asks to to so, after his claim has been *sua sponte* dismissed. The cost to judicial economy in granting leave is *de minimus*, compared with the loss of the *pro se* litigants right to have his day in court.

In short, the *Faretta* approach, whereby *pro se* status implies no reprieve from procedural requirements, while justified in criminal cases, should not be used to determine (or terminate) the procedural due process rights of civil *pro se* litigants. While, a *pro se* litigant is not free to ignore relevant rules of procedural and substantive law, without prejudice to the other parties, strict standards are unjustifiable. This is especially true in the case of a *sua sponte* dismissal, where the other parties are not even served with the complaint, and the *pro se* litigant has timely requested leave to amend.

In fact this relaxed standard, and liberal leave to amend, is extremely justifiable in civil cases, where many litigants appear *pro se* not because they prefer to do so, but because they cannot afford counsel. Modern procedural due process jurisprudence requires, at the very least, that courts should give the *pro se* civil litigant a liberal

construction of his pleadings, and leave to amend "technical" defects in establishing subject matter jurisdiction. The trial courts may then determine what further process is due, based on the individual facts and circumstances of the case, after the *pro se* litigant has been afforded the opportunity to correct any "technical" pleading defects.[28] In short, in civil cases, there sometimes may be a "license not to comply" with pleading and/or procedure precisely, so long as no prejudice to parties exist, and the *pro se* litigant acts in good faith.

The only sound public policy reasoning to deny a *pro se* litigant leave to amend after a *sua sponte* dismissal is in the case where it can be found that beyond reasonable doubt his amendment would be futile. This practice has even more import when the denial of leave to amend would have adverse statute of limitations consequence on the *pro se* litigant, resulting in foreclosure of the *pro se* litigant's rights.

This court should uphold its decision in *Foman v. Davis* by clearly stating the sound public policy in "freely giving" leave to amend a substantive claim.

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[28] This is especially true in a *sua sponte* dismissal, where the *pro se* litigant does not even have the notice of his opponents dispositive preliminary motions practice to alert him of any defects. He is blindsided by the trial court judge!

XIII. PUBLIC POLICY OR PRIOR PRECEDENT REASONS FOR GRANTING CERTIORARI

The decision by the United States District Court for the District of Maryland is plainly incorrect. It contradicts the bright-line holdings, directly on point to the case at bar, and the long standing mandatory authorities set forth in *Loudon Leasing Dev. Co. v. Ford Motor Credit Co.*, *Timmerman v. Brown, Gordon v. Leeke, and Laber v. Harvey*. It also disregards the express purpose of the 4th, 5th and 14th amendments of the constitution, and overrules this courts long standing authorities in *Foman v. Davis* and *Erickson v. Pardus*.

Furthermore, the trial court's decision in in direct contrast of other United States Courts of Appeals, including *e.g.* the Ninth Circuit in the cases of *Balistreri v. Pacifica Police Dep't, Solis v. County of Los Angeles, Waters v. Young, Garaux v. Pulley, Lucas v. Dep't of Corr., Lopez v. Smith, Schneider v. Cal. Dep't of Corr., McGuckin v. Smith, Sands v. Lewis, Karim-Panahi v. L.A. Police Dep't, Eldridge v. Block,* and *Karim-Panahi.*

Legal and factual matter must have been overlooked by the lower courts because the Fourth Circuit's opinion is inconsistent with the mandatory authority in *Timmerman v. Brown*, 528 F.2d 811, 814 (4th Cir. 1975) (judicial immunity "does not extend to plaintiff's action for injunctive

and declaratory relief under Section 1983, 42 U.S.C." (citations omitted)); *Laber v. Harvey*. 438 F.3d 404, 426-29 (4th Cir. 2006) ("a post-judgment motion to amend is evaluated under the same legal standard as a similar motion filed before judgment was entered— for prejudice, bad faith, or futility."); *Foman v. Davis*, 371 U.S. 178, 182 (1962) (This court has held that, absent prejudice, bad faith or futility, the leave sought should, as the rules require, be 'freely given."); *Stump v. Sparkman* 435 U.S. 349, 356-57 (1978) (Judge subject to liability when he has acted in the "clear absence of all jurisdiction."); *Erickson v. Pardus*, 551 U.S. 89 (2007). (A federal district court is charged with liberally construing a complaint filed by a self-represented litigant to allow the development of a potentially meritorious case.); *Gordon v. Leeke*, 574 F.2d 1147, 1151 (4th Cir. 1978) (same).

The general rule is that panels are bound by prior precedent decisions directly on point and only an *en banc* decision can overrule a precedent ("prior panel precedent rule"). *Loudon Leasing Dev. Co. v. Ford Motor Credit Co.,* 128 F.3d 203, 206 n.1 (4th Cir. 1997).

The panel's opinion not only overrules the Fourth Circuit mandatory authorities, it also overrules this court's decision in *Foman v. Davis* and desperately extends this court's decision in *Stump v. Sparkman.*

The District Court *sua sponte* **dismissed with prejudice** Petitioner's complaint for "lack of subject matter jurisdiction" in Federal court. Because Petitioner is free to refile in state court, no prejudice to Respondent, or bad faith by Petitioner could exist in allowing Petitioner amendment, which *Foman* holds should be "freely given." The record in this case contain factual allegations similar to that of the Plaintiffs in *Timmerman* and *Stump*. Amendment would not be futile because Petitioner brings a claim to protect his federally protected rights in Federal court. The panel's opinion overrules the decision of this court in *Foman,* and the Fourth Circuit's decision in *Timmerman and Labor,* all of which are directly on point as to the case at bar.

Similar to this court's decision in *Erickson v. Pardus,* or the Fourth Circuit's decision in *Gordon v. Leeke,* the Ninth Circuit holds that district court judges have "a duty to ensure that *pro se* litigants do not lose their right to a hearing on the merits of their claim due to ignorance of technical procedural requirements." *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990); *see also Solis v. County of Los Angeles*, 514 F.3d 946, 957 n.12 (9th Cir. 2008); *Waters v. Young*, 100 F.3d 1437, 1441 (9th Cir. 1996); *Garaux v. Pulley*, 739 F.2d 437, 439 (9th Cir. 1984). Indeed, a *pro se* litigant is entitled to notice of the complaint's deficiencies and an opportunity to amend prior to

dismissal of the action." *Lucas v. Dep't of Corr.*, 66 F.3d 245, 248 (9th Cir. 1995) (per curiam); *see also Lopez v. Smith*, 203 F.3d 1122, 1126, 1131 (9th Cir. 2000) (en banc); *Schneider v. Cal. Dep't of Corr.*, 151 F.3d 1194, 1196 (9th Cir. 1998); *McGuckin v. Smith*, 974 F.2d 1050, 1055 (9th Cir. 1992), *overruled on other grounds by WMX Techs., Inc. v. Miller*, 104 F.3d 1133 (9th Cir. 1997); *Sands v. Lewis*, 886 F.2d 1166, 1168, 1171-72 (9th Cir. 1989); *Karim-Panahi v. L.A. Police Dep't*, 839 F.2d 621, 623-24 (9th Cir. 1988); *Eldridge v. Block*, 832 F.2d 1132, 1135-36 (9th Cir. 1987). "While [the] statement of deficiencies need not provide great detail or require district courts to act as legal advisors to *pro se* plaintiffs, district courts must at least draft a few sentences explaining the [complaint's] deficiencies." *Eldridge*, 832 F.2d at 1136; *see also Karim-Panahi*, 839 F.2d at 625.

Since Federal courts do not require petitioner first to seek vindication of his federal rights in a state declaratory judgment action, *see Lake Carriers' Assn.* v. *MacMullan,* 406 U. S. 498, 510 (1972); *Wisconsin* v. *Constantineau,* 400 U. S. 433 (1971), consideration of abstention by this court would be inappropriate unless the well plead facts in the complaint could be shown to present a substantial and immediate possibility of obviating petitioner's federal claim by a decision on state law grounds. *Cf. Askew* v. *Hargrave,* 401 U. S. 476, 478 (1971); *Reetz* v. *Bozanich,* 397 U. S. 82 (1970). The

panel's instant opinion of the appeal at bar, affirms a district court judge who essentially ruled that Petitioner has no jurisdiction in Federal court when a state court judge knowingly and willfully violates his federal protected rights while clothed in the color of state law, and Petitioner can ***never*** state a claim for relief in Federal court. That court is duty bound to provide Petitioner leave to amend his claim, when such leave is timely requested.

The factual record in this case, as demonstrated in the section titled "Statement of the Case," is clear, in that amendment of this self represented Petitioner's meritorious claim seeking redress in accordance of his federally protected rights in the United States District Court is not futile. Indeed, Petitioner has came to the United States District Court seeking injunctive and declaratory relief in accordance of Section 1983, 42 U.S.C for the violation of the Due Process clause when a state court judge acted in absence of all jurisdiction to deprive Petitioner of his liberty and property. Petitioner was *sua sponte* dismissed with prejudice and all leave to amend his meritorious complaint has been denied. The panel's decision is inconsistent with the Fourth Circuit's, and other circuit's, mandatory authorities, and precedent of this court. While rare, this Petition should be granted, and this court's authority should be upheld in accordance with the constitution.

The Due Process Clause provides Petitioner equal protection of the law, and Petitioner sought relief in accordance of his due process right, that more likely than not, will continue to be violated by Respondent. This Court should grant Certiorari to address the important constitutional issue of state court judges acting in total absence of their known jurisdiction with the express purpose of depriving litigants of their federally protected rights. Moreover, since the panel has overturned multiple mandatory authorities in affirming the decision below, Certiorari is particularly appropriate for it will allow this court to address the Due process issues in this case, and modification of prevailing jurisprudence in *Foman*, *Erickson* and *Stump*, as well as the Fourth Circuit Authorities in *Gordon, Harvey, and Timmerman.*

Thus, given the clear conflict between the panel decision, and the decisions of the Fourth Circuit, and this court, certiorari is surely warranted so that this court can address the scope of the protection afforded to Petitioner's federal protected rights to due process, and fully consider, as the panel did not, whether Petitioner should be provided leave to amend his meritorious claim that the Due process Clause was violated in this case.

XIV. PROTECTING PETITIONER'S CLAIM, AND HIS CONSTITUTIONAL RIGHTS REASONS FOR GRANTING CERTIORARI

In the case at bar there is no mention of underlying state action, or prosecution, and Petitioner seeks relief in accordance with a Federal statute, constructed for the express purpose of protecting his constitutional rights from state actors clothed in the color of state law. Indeed, 42 USC § 1983 provides Mr. Holder, by Federal statute, a cause of action for "...deprivation of any rights, privileges, or immunities secured by the Constitution and laws..."; and 28 USC § 1343(a) provides Mr. Holder jurisdiction in Federal court "...[t]o redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States...to secure equitable or other relief under any Act of Congress providing for the protection of civil rights..."

Thus, in liberally construing Mr. Holder's *pro se* complaint, it would seem utterly impossible to foreclose his meritorious claim, as "lacking subject matter jurisdiction," in a federal court to protect Mr. Holder's constitutional rights from state actors clothed in the color of law. Moreover, Mr. Holder timely made a request to Alter or Amend the dismissal with prejudice, to a dismissal with leave to

amend, the Fourth Circuit's mandatory authority in *Labor* says that that motion must be treated as a motion for leave to amend, and this court in *Forman* says that that leave should be "freely granted."

The only reason the trial court should foreclose Mr. Holder's meritorious claim in Federal court, is because it is futile for Mr. Holder to obtain subject matter jurisdiction, which is simple not the case in this instant complaint. Mr. Holder relies on the Fourth Circuit's decision in *Timmerman,* in that he is eligible for injunctive and declaratory relief, even if his damage claims are foreclosed by an extension of *Stump.*

Leave to amend should have been "freely given" to the self represented Petitioner, even by way of motion to alter or amend, and the district court judge was "duty bound" to not only grant the self represented Petitioner that leave, but also provide the self represented Petitioner a "few sentences" to guide him in amending his meritorious claim for relief. Mr. Holder has been polite, respectful, and argues in well accepted law and judicial policy in his briefings and Petitions. Mr. Holder respectfully submits to this court that Respondents practice and procedure is one of vile disregard for litigants due process in his court. This case belongs in the court of the United States, not the state of Maryland. Petitioner respectfully request leave to amend.

XV. CONCLUSION

It is in the public interest of due process and access to the docket to "freely grant" this Petitioner leave to amend his meritorious claim, rather than overruling the longtime precedent of this court in *Foman* and *Erickson*. The fundamental right to be heard at a meaningful time in a meaningful way must include the right to liberal amendment of pleadings that have "technical" defects, but otherwise state a meritorious claim for relief.

Respectfully Submitted,

Justin K. Holder, *Pro Se*
308 West Chapline Street
Sharpsburg, MD 21782
(240) 356 - 2008
Petitioner

XVI. APPENDIX

(1) First Order of the Trial Court of United States District Court for the District of Maryland. APP2

(2) Second Order of the Trial Court of United States District Court for the District of Maryland. APP8

(2) Judgement of the United States Court of Appeals for the Fourth Circuit. APP11

(3) Petition to the United States Court of Appeals for the Fourth Circuit Denied. APP13

(1) First Order of the Trial Court of United States District Court for the District of Maryland.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

Civil Action No. GLR-23-1874

JUSTIN K. HOLDER,

Plaintiff

v.

MARK DUVALL THOMAS,

Defendant

UNSERVED COMPLAINT *SUA SPONTE* DISMISSED ON JULY 27, 2023 BY HONORABLE JUDGE GEORGE LEVI RUSSELL III PRESIDING

ORDER

Plaintiff Justin K. Holder, who lives in Sharpsburg, Maryland, brings this action against Washington County, Maryland District Court Judge Mark Duvall Thomas. (Compl. at 1, ECF No. 1).

Holder appears to assert that Judge Thomas "exceeded his 'known and obvious' jurisdiction" when he ruled on a peace order that inherently required rendering a decision regarding ownership and interest in real property. (Id. at 22). Specifically, Holder explains that a couple (the "Morrals") sought a peace order seeking relief from Holder's alleged trespassing on their property. (Id. at 2). Holder disputed that he was trespassing, stating there was either "a private express easement or a 'right to use' what is now a public road." (Id. at 9). He states that "a Judge in the Maryland District Court can and should be able to decide the issue of a peace order based upon Criminal Trespass because doing so does not require the Court to actually 'decide the ownership of real property or of an interest in real property.'" (Id. at 14). Despite this, Holder maintains that Judge Thomas found the Morrals' "claim to possession of this property to be superior to the claim of somebody who found a deed from 1874 . . . ." (*Id.* at 20 (quoting the peace order hearing transcript)). According to Holder, it was based on this finding that Judge Thomas granted the peace order. Holder alleges that "Judge Thomas's grant of the peace orders hinged upon [his] determination of 'the ownership of real property or of an interest in real property," i.e., that "their claim to possession of this property to be superior to the claim of somebody who found a deed from 1874 or whenever . . ." and that judgment was outside of Honorable Judge

Thomas' "obvious and known jurisdiction to so decide." (Id. at 21).

Although Holder claims Judge Thomas' actions violated his "Fourth, Fifth, and Fourteenth Amendment rights," his challenge of Thomas' jurisdiction in a peace order hearing does not state a Constitutional claim. (Id. at 27). The legal questions presented here, namely, whether Judge Thomas properly granted a peace order under Maryland State law, or whether Judge Thomas made impermissible findings of fact pursuant to Maryland State law, do not present federal questions that this Court is able to address. Under the "well-pleaded complaint" rule, the facts showing the existence of subject matter jurisdiction "must be affirmatively alleged in the complaint." Pinkley, Inc. v. City of Frederick, 191 F.3d 394, 399 (4th Cir. 1999) (citing McNutt v. Gen'l Motors Acceptance Corp., 298 U.S. 178 (1936)). "A court is to presume, therefore, that a case lies outside its limited jurisdiction unless and until jurisdiction has been shown to be proper." United States v. Poole, 531 F.3d 263, 274 (4th Cir. 2008) (citing Kokkonen v. Guardian Life Ins. Co., 511 U.S. 375, 377 (1994)). Moreover, the "burden of establishing subject matter jurisdiction is on . . . the party asserting jurisdiction." Robb Evans & Assocs., LLC v. Holibaugh, 609 F.3d 359, 362 (4th Cir. 2010); accord Hertz v. Friend, 599 U.S. 77, 95, (2010);

McBurney v. Cuccinelli, 616 F.3d 393, 408 (4th Cir. 2010).

Under 28 U.S.C. § 1332(a), a federal district court has original jurisdiction over all civil actions where the amount in controversy exceeds $75,000, exclusive of interest and costs, and is between citizens of different states. The statute "requires complete diversity among parties, meaning that the citizenship of every plaintiff must be different from the citizenship of every defendant." Central West Virginia Energy Co. v. Mountain State Carbon, LLC, 636 F.3d 101, 103 (4th Cir. 2011) (citing Caterpillar, Inc. v. Lewis, 519 U.S. 61, 68 (1996)). Here, the parties are not diverse in citizenship, thus there is no basis for diversity jurisdiction over the state law claims asserted.

Furthermore, the named Defendant is a judge acting in his official capacity. Holder alleges that Judge Thomas "exceeded his 'known and obvious' jurisdiction" when he rendered a decision during a peace order hearing. (Compl. at 22). Accordingly, Holder is seeking to sue a Maryland state judge for decisions made in his capacity as a judge. This cause of action is prohibited by the doctrine of judicial immunity:

> If judges were personally liable for erroneous decisions, the resulting

> avalanche of suits, most of them frivolous but vexatious, would provide powerful incentives for judges to avoid rendering decisions likely to provoke such suits. The resulting timidity would be hard to detect or control, and it would manifestly detract from independent and impartial adjudication. Nor are suits against judges the only available means through which litigants can protect themselves from the consequences of judicial error. Most judicial mistakes or wrongs are open to correction through ordinary mechanisms of review, which are largely free of the harmful side-effects inevitably associated with exposing judges to personal liability.

See Forrester v. White, 484 U.S. 219, 226-27 (1988). Accordingly, for this additional reason, the case cannot proceed against Judge Thomas.

Accordingly, it is this 27th day of July, 2023, by the United States District Court for the District of Maryland hereby:

ORDERED that this case is **DISMISSED** for lack of subject matter jurisdiction;

IT IS FURTHER ORDERED that the Clerk shall **SEND** a copy of this Order to Plaintiff; and

IT IS FURTHER ORDERED that the Clerk shall **CLOSE** this case.

(2) Second Order of the Trial Court of United States District Court for the District of Maryland.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

Civil Action No. GLR-23-1874

JUSTIN K. HOLDER,

Plaintiff

v.

MARK DUVALL THOMAS,

Defendant

UNSERVED COMPLAINT *SUA SPONTE* DISMISSED ON JULY 27, 2023 BY HONORABLE JUDGE GEORGE LEVI RUSSELL III PRESIDING

ORDER

The above-captioned case was dismissed for lack of subject matter jurisdiction and closed on July 27, 2023. (ECF No. 3). Thereafter, on August 20, 2023, 24 days later, Plaintiff Justin K. Holder filed a

Motion to Alter or Amend Judgment. (ECF No. 4). For the reasons that follow, Holder's Motion will be denied.

Federal Rules Civil Procedure 59(e) is captioned "Motion to Alter or Amend a Judgment." It states: "A motion to alter or amend a judgment must be filed no later than 28 days after the entry of the judgment." (emphasis added). Holder's motion was timely filed, so the Court will consider Holder's Motion pursuant to rule 59(e) of the Federal Rules of Civil Procedure.

A Motion for Reconsideration under Federal Rule of Civil Procedure Rule 59(e) may be granted only (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice. Mayfield v. Nat'l Ass'n for Stock Car Auto Racing, Inc., 674 F.3d 369, 378 (4th Cir. 2012). Holder cites no intervening change in controlling law and points to no new evidence, but instead disagrees with the Court's decision and argues that he could amend his original Complaint to cure any jurisdictional defects.

Having reviewed Holder's argument, the Court is unpersuaded that there was clear legal error or manifest injustice in its prior reasoning and thus finds no basis to alter its July 27, 2023, Order.

Accordingly, it is this 27th day of September 2023, by the United States District Court for the District of Maryland, hereby:

ORDERED Holders' Motion for Reconsideration is **DENIED;**

IT IS FURTHER ORDERED that the Clerk shall **CLOSE** this Case; and

IT IS FURTHER ORDERED that the Clerk shall **MAIL** a copy of this Order to the Holder.

(3) Judgement of the United States Court of Appeals for the Fourth Circuit

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 23-2134 (1:23-cv-01874-GLR)

JUSTIN HOLDER

Appellant

v.

MARK DUVALL THOMAS,

Appellee

Submitted: February 22, 2024 and Decided: February 26, 2024 Before NIEMEYER and HEYTENS, Circuit Judges, and KEENAN, Senior Circuit Judge.

JUDGMENT OF THE CIRCUIT PER CURIAM:

Justin Holder appeals the district court's orders dismissing his civil complaint for lack of subject matter jurisdiction and denying reconsideration. We

have reviewed the record and find no reversible error. Accordingly, we affirm the district court's orders. *Holder v. Thomas*, No. 1:23-cv-01874-GLR (D. Md. July 27, 2023; Sept. 27, 2023). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

(4) Petition to the United States Court of Appeals for the Fourth Circuit Denied

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 23-2134 (1:23-cv-01874-GLR)

JUSTIN HOLDER

Appellant

Filed April 9,2024

v.

MARK DUVALL THOMAS,

Appellee

ORDER

The court denies the petition for rehearing and rehearing *en banc*. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing *en banc*.

Entered at the direction of the panel: Judge Niemeyer, Judge Heytens, and Senior Judge Keenan.

NO. _____

JUSTIN HOLDER
Petitioner
v.
MARK DUVALL THOMAS
Respondent

AFFIDAVIT OF SERVICE

1, Justin Holder, of lawful age, being duly sworn, upon my oath state that I did, on the 21st day of June, 2024, send out from Santa Fe, NM 1 package(s) containing 3 copies of the PETITION FOR A WRIT OF CERTIORARI in the above entitled case. All parties required to be served have been served by Priority Mail. Packages were plainly addressed to the following:

Mark Duvall Thomas
36 W. Antietam St.
Hagerstown, MD 21740;

Justin K. Holder, *Pro Se*

To be filed for:
Justin K. Holder, *Pro Se*
308 West Chapline Street
Sharpsburg, MD 21782
(240) 356 - 2008
Petitioner

This document titled "AFFIDAVIT OF SERVICE" was acknowledged before me on June 21, 2024 by **Justin Kyle Holder,** (Affiant) to be their act.

_____(SEAL)
Signature of Notary

STATE OF NEW MEXICO
NOTARY PUBLIC
ELIZABETH MARIE ROMERO-SOVERANES
COMMISSION # 1122288
COMMISSION EXPIRES 09/19/2026

My Commission Expires: 09/19/2026

CERTIFICATE OF COMPLIANCE

No. _____

JUSTIN HOLDER

Petitioner(s),

v.

MARK DUVALL THOMAS,

Respondent(s).

As required by Supreme Court Rule 33.1(h), I certify that the Petition for Writ of Certiorari contains 7811 words, excluding the parts of the Petition for Writ of Certiorari that are exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 21, 2024.

(Signature)

Justin K. Holder

Subscribed and sworn to before me this 21st day of June, 2024

I am authorized under the laws of the State of Maryland to administer oaths.

(Notary)