

NO. 23-5646

In The
Supreme Court of the United States

ABRAHAM K. JAH EL,
Petitioner,

v.

TOWN OF PALM BEACH, ET AL.,
Respondents,

On Petition for Writ of Certiorari to the United States
District Court for the Southern District of Florida and/or
The Circuit Court of Appeals for the Eleventh Circuit

**BRIEF IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI**

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I. COUNTERSTATEMENT OF QUESTION(S) PRESENTED

Petitioner's characterization of the questions presented does not accurately capture the issue decided by the Eleventh Circuit Court of Appeals in the proceedings below, but rather, requests this Court to grant certiorari solely to review the decision of the United States District Court Judge's well-founded decision to dismiss the Petitioner's third amended complaint for failure to state a cause of action. From that decision, Petitioner contends that he was given insufficient time to file an amended complaint and denied a trial by jury. *Pet. at A-1*.

Further, Petitioner's seeks review of a decision of the United States Court of Appeals for the Eleventh Circuit that was not yet rendered at the time of filing the petition. *Pet. at 1*. The Eleventh Circuit dismissed Petitioner's appeal for want of prosecution based upon his failure to properly pay filing and docketing fees and failure to file an appropriate disclosure form on the date the petition was docketed. There is no contention or argument in the petition that this dismissal was inappropriate or in conflict with other decisions.

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IV. STATEMENT OF THE CASE

Respondent disagrees with how Petitioner has chosen to describe the factual background of this matter. Thus, Respondent herewith provides a brief, accurate summary. Petitioner, then known as John Calvin Abraham, was arrested and charged by the Town of Palm Beach police officers on July 4, 2021 with several charges, including possession and concealment of an unlicensed weapon by a convicted felon, resisting arrest with violence and battery on a law enforcement officer. *Ax. A.* The criminal charges went to trial in July 2022 and resulted in a guilty verdict on some of the charges lodged. *Ax. B.* On September 30, 2022, Petitioner was sentenced to three years incarceration in a Florida state prison where he currently resides.

On October 7, 2022, Petitioner filed a notice of appeal of his criminal conviction to the Fourth District Court of Appeals of Florida. *Ax. C.* This appeal, case number 4D2022-2722, remains pending briefing. *Ax. D.* A second appeal to the Fourth District filed by Petitioner over motions for post-conviction relief denied by the trial court for lack of jurisdiction, case number 4D2023-2013, was dismissed by the state appellate court for lack of jurisdiction on October 16, 2023. *Ax. E.*

Petitioner initially filed the underlying civil suit at issue on May 13, 2022, along with a motion for leave to proceed *in forma pauperis*. As noted in the petition, the filing was an attempt to stop the criminal case against him from moving forward to trial in July 2022. *Pet. At 4.* However, pursuant to 28 U.S.C §1915(e)(2), his first complaint was dismissed without prejudice on October 28, 2022, for failure to state a

claim upon which relief may be granted. *Ax. F.* Accordingly, the defendants were not served with the complaint.

Six months later, Petitioner filed second and third amended complaints on May 26, 2023, and June 5, 2023, respectively, simultaneously with motions for leave to proceed *in forma pauperis*. After reviewing the amended complaint last filed, the district court, pursuant to 28 U.S.C. §1915(e)(2), entered an order dismissing the Petitioner's third amended complaint for failing to state a cause of action on June 30, 2023 (docketed on July 5, 2023) without prejudice. *Ax. G.* Significantly, the court noted there were no allegations in the complaint against the City of Palm Beach. *Ax. G at 5.* Again, neither of the amended complaints were served on the defendants.

A notice of appeal was filed by Petitioner on August 14, 2023 with the state circuit court clerk, stating his intent to appeal the U.S. District Court's decision to dismiss his third amended complaint. *Ax. H.* The Eleventh Circuit Court of Appeals responded with instructions to the Petitioner to complete the transcript order form and to pay filing fees of \$505.00. On September 14, 2023, an order of dismissal from the Eleventh Circuit Court of Appeals was issued dismissing Petitioner's appeal for failure to pay filing and docketing fees (or to file a motion for relief to pay in advance the full fees), and failure to comply with the rules on filing Certificates of Interested Persons and Corporate Disclosure Statements. *Ax. I.*

On September 3, 2023, Petitioner signed the instant petition for writ of certiorari and submitted it to the Court. It was docketed on September 14, 2023.

Therein, Petitioner asserted that this Court has jurisdiction under 28 U.S.C. §1254(1) and 28 U.S.C. §1257(a), *Pet. at 2*.

V. ARGUMENT FOR REASONS FOR DENYING CERTIORARI

Jurisdiction of this Court is provided by federal statutes and the United States Constitution. This Court has original jurisdiction over controversies between two states, the federal government and a state or states; and actions against foreign states or officials. *See* 28 U.S.C.A §1251. Since this petition is not brought by a state or involve the actions of a foreign state or high official, it is not applicable.

Certiorari jurisdiction is also provided for review of decisions of a state's highest court relating to the validity of United States treaties or laws or a question of constitutionality of state statutes. *See* 28 U.S.C.A §1257. Although the petition lists an appendix document "D" which purports to be a decision of the Florida Supreme Court, this Respondent has not been provided this document by Petitioner. Moreover, a check of the docket of the Florida Supreme Court does not reveal a case pending or closed with a party named John Abraham or Abraham K. Jah El. In the substantive argument portion of the petition there is no mention of the contents of any such Florida Supreme Court decision. Thus, this statutory jurisdiction basis is also not applicable here.

The petition also seeks jurisdiction based on 28 U.S.C. §1254(1) which provides for discretionary certiorari jurisdiction for review of decisions of the Circuit Courts of Appeals from a judgment or decree of the Circuit Court or upon certification of the appeal by the Circuit Court. *Id.* However, there is no jurisdiction under 28 U.S.C.

§1254(1) since the decision rendered in that appeal in case number 23-12735-H was a dismissal for failure to prosecute by failing to pay the required fees or submit an *in forma pauperis* application and failing to file the appropriate disclosure forms. *Ex. I*. Indeed, there is no argument or contention that such a dismissal was inappropriate or in conflict with other decisions of this Court or other courts of appeal.

Finally, this Court is provided discretionary jurisdiction to hear a direct appeal from a decision of a United States district court that pertains to an injunction that is rendered by a three-judge panel authorized by an Act of Congress. *See* 28 U.S.C. §1253. Although jurisdiction is not sought under this statute in the petition, there would be no jurisdiction under 28 U.S.C. §1253 since the order of dismissal was entered by a single district court judge and does not pertain to any injunction, temporary or permanent. *Id. Ax. G*. As well, there is no contention that there is an Act of Congress requiring the convening of a panel of three judges to decide the dispute. *Zemel v. Rusk*, 381. U.S. 1, 6, 85 S. Ct. 1271, 1274 (1965). A direct appeal from the decision of the district court is not authorized by law under the facts and circumstances provided since there is no compliance with 28 U.S.C. §1253. Although U.S. Sup. Ct. Rule 18 provides for a direct appeal of a decision of a United States district court, it is only for such appeals authorized by law.

VI. CONCLUSION

For all the aforementioned reasons, the petition for writ of certiorari should be dismissed for lack of jurisdiction.

Respectfully submitted,

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