

**IN THE SUPREME COURT
OF THE
UNITED STATES**

JEFF BAOLIANG ZHANG, PH.D.

Petitioner,

v.

COUNTY OF LOS ANGELES, CALIFORNIA

Respondent.

On Review From the United States Court of Appeals
For the Ninth Circuit (Case No. 23-55353)

**BRIEF IN OPPOSITION TO
“PETITION FOR REVIEW”**

HURRELL CANTRALL LLP
Melinda Cantrall, State Bar No. 198717
COUNSEL OF RECORD
mcantrall@hurrellcantrall.com
725 S. Figueroa Street, Suite 3800
Los Angeles, California 90017
(213) 426-2000

Counsel of Record for Respondent County of Los Angeles

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INTRODUCTION

Respondent County of Los Angeles, Defendant in the matter below (“Defendant” or “the County”), submits the following brief in opposition to the “petition for review” filed by *pro se* Petitioner Jeff Baoliang Zhang, Plaintiff in the case below (“Plaintiff” or “Mr. Zhang”). The United States Court of Appeals for the Ninth Circuit (the “Ninth Circuit”) properly affirmed the district court’s order granting the County’s motion to dismiss the underlying action as the case was untimely filed and was barred by the *Rooker-Feldman* and claim preclusion doctrines.

Plaintiff sets forth no proper grounds for review by this Court in his “petition for review.” Plaintiff has not shown a conflict or that the Ninth Circuit has decided an important question of federal law that has not been, but should be, settled by this Court, or that the Ninth Circuit has decided an important federal question in a way that conflicts with relevant decisions of this Court.

Plaintiff has made numerous factual and legal misstatements in his petition. Notably, upon referral from the Ninth Circuit regarding whether Plaintiff’s *in forma pauperis* status should be revoked, the district court ordered Mr. Zhang’s *in forma pauperis* status revoked and deemed the appeal to be frivolous. (2-SER-478.¹) The district court found plaintiff’s claims were

¹ “SER” refers to the Supplemental Excerpts of Record filed before the Ninth

untimely, barred by the Rooker-Feldman doctrine, and barred by claim preclusion. (2-SER-479.) The court stated: “the Court would find Plaintiff’s appeal to be *lacking an arguable basis either in law or fact*. Thus, the Court would discontinue Plaintiff’s in forma pauperis status on appeal.” (2-SER-480 (emphasis added).) Similarly, Plaintiff’s motion to proceed *in forma pauperis* before this Court should likewise be denied.

For the reasons set forth herein, Mr. Zhang’s petition should be denied.

RELATED PROCEEDINGS

Jeff Baoliang Zhang, Ph.D., Petitioner, v. Los Angeles County/Los Angeles Public Defender Officer, Jonathan Petrak, Rourke Stacy; United States Supreme Court Case number 23-5165 (from the California Court of Appeal, Second Appellate District, Case No. B319492); Judgment/Order of Dismissal date of March 15, 2022.

CONSTITUTIONAL AND STATUTORY

PROVISIONS AT ISSUE

Pursuant to 42 U.S.C. § 1983:

Every person who, under color of any statute,

Circuit.

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.

42 U.S.C. § 1983.

STATEMENT OF THE CASE

A. The Underlying Crime and Criminal Conviction.

On December 15, 2011, Mr. Zhang fired gunshots at the Chinese consulate building in Los Angeles because he believed that “Chinese communist agent bandits” were after him for his life. (1-SER-032; 2-SER-302.) He turned himself in to the Brea City Police Department and was thereafter taken into custody by the Los Angeles County Sheriff’s Department. (1-SER-032, 033; 2-SER-302.) He was housed in the County’s Twin Towers Correctional Facility (“TTCF”) from

December 2011 to October 2015, except for two periods of time when he was sent by the court to the Patton State Mental Hospital, from April 2, 2012 to February 10, 2013 and again from May 13, 2013 to January 26, 2014. (1-SER 003, 005; 2-SER-302.) On March 11, 2013, in between his stays at Patton State Mental Hospital, Mr. Zhang alleges that his cellmate attacked him at TTCF. (1-SER-006-007; 2-SER-302.)

Following competency proceedings in July of 2015, Mr. Zhang was deemed capable of standing trial. (1-SER-034; 2-SER-303.) In October of 2015, Mr. Zhang accepted a plea deal in the criminal case under which he was convicted of aggravated assault under California Penal Code §245(b) with an enhancement under California Penal Code §12022.5(a), for using a firearm in the commission of a felony. (1-SER-035, 036, 039; 2-SER-303.) He was sentenced to nine years in prison. (1-SER-035, 036; 2-SER-303.) Mr. Zhang was then transferred to the custody of the State of California Department of Corrections and Rehabilitation in October of 2015. (1-SER-013, 035, 036; 2-SER-303.) At least part of his sentence was served at Atascadero State Hospital. (1-SER-014, 016, 039; 2-SER-233.) He was released from the State's custody on July 6, 2020. (1-SER-016, 036, 048; 2-SER-303.)

**B. History of Mr. Zhang's Claims under the Government
Claims Act and Prior Complaints.**

On July 30, 2013, Mr. Zhang submitted a claim to the County under the

California Government Claims Act, asserting he had been injured by his cellmate on March 11, 2013. (1-SER-010, 024-026.) The County denied the claim in writing on September 16, 2013. (1-SER-010, 028.) The Claim Denial letter sent to Plaintiff clearly stated that he had “only six (6) months from the date this notice was personally delivered or deposited in the mail to file a court action on this claim” and Mr. Zhang admits that he received the Claim Denial letter in 2013. (1-SER-004, 028.) Plaintiff filed an amended claim, which was also denied by the County, in October of 2013. (1-SER-004, 030.)

Despite the clear warning in the denial letter, Mr. Zhang waited almost eight (8) years before filing a Complaint against the County (erroneously sued therein as the Los Angeles County Sheriff’s Department) in July of 2021, in the Los Angeles County Superior Court, case number 21STCV27608. (1-SER-050, 088; 2-SER-303.) After the Superior Court rejected the filing of the original complaint, Mr. Zhang filed a First Amended Complaint (“FAC”) on September 22, 2021. (1-SER-089; 2-SER-303.) In the FAC, Zhang asserted that he was injured by his cellmate at TTCF on March 10, 2013, was denied medical care related to the incident, and that the County blocked his access to his attorney and his mail. (1-SER-089-094; 2-SER-303.)

In the Superior Court case, the County filed a demurrer on October 12, 2021. (1-SER-114; 2-SER-303.) On January 26, 2022, the Superior Court dismissed the first cause of action for intentional tort and willful negligence

without leave to amend, due to Plaintiff's failure to file suit within six months of the denial of the claim, and because the claim was barred by the statute of limitations. (1-SER-114; 2-SER 303.) On January 26, 2022, the Superior Court granted Zhang ten (10) days leave to amend the second cause of action for civil rights violations and the third cause of action for blockage of communications. (1-SER-117, 135; 2-SER 303.)

However, as of February 18, 2022, Plaintiff had not filed an amended complaint; thus, the County filed an ex parte application seeking dismissal of the entire action pursuant to California Code of Civil Procedure section 581 subdivision (f)(2). (1-SER-120; 2-SER 304.) The ex parte motion was granted on February 22, 2022, at a hearing during which Mr. Zhang was physically present. (1-SER-114-120, 131; 2-SER 304.) The Superior Court entered the Order and Judgment of Dismissal on May 18, 2022. (1-SER-120; 2-SER 304.)

Mr. Zhang filed a Notice of Appeal to the Second Appellate District of the California Court of Appeal. (1-SER-124; 2-SER-304.) His appeal was dismissed on July 7, 2022, pursuant to Rule 8.140(b), California Rules of Court for failure to comply with court rules. (1-SER-166; 2-SER-304.) Mr. Zhang's petition for relief from the dismissal was denied by the California Supreme Court on September 21, 2022. (1-SER-168; 2-SER 304.)

C. Procedural History of This Case

After the California Supreme Court denied his petition for review in the

state action, Mr. Zhang filed the underlying federal lawsuit on November 16, 2022, asserting identical claims as were previously dismissed in the state courts. (1-SER-002; 2-SER 304.) In the current Complaint, Mr. Zhang alleges that his claims arise out of his jail time at TTCF from December 2011 to October 2015. (1-SER-005, 006; 2-SER-305-308.) Specifically, Zhang again alleges that he was assaulted by a cellmate on March 11, 2013, and that the County thereafter denied him medical treatment and blocked his access to both his criminal attorney and his mail. (1-SER-003-012; 2-SER-305-308.)

The County filed a Motion to Dismiss and Request for Judicial Notice on December 8, 2022. (1-SER-060, 170; 2-SER-301.) Mr. Zhang failed to file an opposition to the Motion to Dismiss. (2-SER-301, 301.) Instead, on December 16, 2022, he filed documents regarding his “Requests/Demands” that the District Court judge recuse himself, that the case be heard by a three-judge panel, for an extension of the hearing on the Motion to Dismiss, and that the Court appoint him a civil attorney. (1-SER-259, 268; 2-SER-301.) The County filed a response opposing the requests on December 19, 2022. (1-SER-264.)

The Magistrate’s Report and Recommendation in support of dismissing the case was filed on March 9, 2023. (Appendix (“App.”) 3²; 2-SER-300.) The district court accepted the Report and Recommendation to dismiss the case on

² The references to the Appendix are to the pages of the appendix in numerical order.

March 27, 2023. (App. 36; 2-SER-465.) Judgment was entered on behalf of the County on March 27, 2023. (App. 38; 2-SER-467.) Mr. Zhang filed a Notice of Appeal to the Ninth Circuit Court of Appeals on April 13, 2023. (2-SER-468.)

On June 12, 2023, the Ninth Circuit sent a Referral Notice to the district court to determine whether Mr. Zhang's *in forma pauperis* status should continue or whether the appeal was frivolous or taken in bad faith. (2-SER-477.) On June 29, 2023, the district court ordered Mr. Zhang's *in forma pauperis* status revoked and deemed the appeal to be frivolous. (2-SER-478.) The district court found Plaintiff's claims were untimely, barred by claim preclusion, and barred by the Rooker-Feldman doctrine. (2-SER-479.) The court stated: "the Court would find Plaintiff's appeal to be lacking an arguable basis either in law or fact. Thus, the Court would discontinue Plaintiff's *in forma pauperis* status on appeal." (2-SER-480.)

On July 13, 2023, the Ninth Circuit ordered Mr. Zhang to explain in writing why the appeal should not be dismissed as frivolous. On February 23, 2024, upon a review of the record and the responses to the Court's order, and the Opening Brief filed by the Plaintiff on May 24, 2023, the Ninth Circuit concluded the appeal was frivolous. (App. 1.) The Ninth Circuit denied Plaintiff's motion to proceed *in forma pauperis* and dismissed the appeal as frivolous pursuant to 28 U.S.C. § 1915(e)(2). (App. 1)

The mandate was issued on March 18, 2024. Mr. Zhang filed a

“petition for review” to this Court on or about April 16, 2024.

REASONS FOR DENYING THE PETITION

I. PLAINTIFF’S PETITION SHOULD BE DENIED AS THE PETITION SETS FORTH FACTUAL AND LEGAL MISREPRESENTATIONS THAT ARE UNSUPPORTED BY THE RECORD.

Importantly, an appellate court will not consider any claims that are not supported by the record. *N/S Corp. v. Liberty Mut. Ins. Co.*, 127 F.3d 1145, 1146 (9th Cir. 1997). Moreover, *pro se* litigants are required to follow court rules. *See Wilcox v. C.I.R.*, 848 F.2d 1007, 1008 n.2 (9th Cir. 1988) (citations omitted). In *Acosta-Huerta v. Estelle*, 7 F.3d 139 (9th Cir. 1992), the Ninth Circuit found the *pro se* petitioner had abandoned his claims on appeal, stating:

The federal rules require the brief to contain the contentions of the appellant with respect to the issues presented, and the reasons therefore, with citations to the authorities, statutes and parts of the record relied on. Fed. R. App. P. 28(a)(4).

Id. at 143 (citations omitted). Throughout his petition, Plaintiff improperly makes factual representations that are unsupported by the record. In this regard, his petition should be denied.

For example, Mr. Zhang continues to make baseless allegations of collusion between the County and “Chinese Communists.” Of course, there is not

a shred of evidence for this outlandish claim.

Moreover, Mr. Zhang continues to baselessly allege that judges are “lawless,” “corrupt,” and “swindlers” who should have recused themselves. Under Section 28 U.S.C. § 455, judges must disqualify themselves “in any proceeding in which [their] impartiality might reasonably be questioned.” *Id.* § 455(a). The substantive standard for disqualification under Section 455 is “whether a reasonable person with knowledge of all the facts would conclude that the judge’s impartiality might reasonably be questioned.” *United States v. Studley*, 783 F.2d 934, 939 (9th Cir. 1986) (citation omitted). “The ‘reasonable person’ in this context means a ‘well-informed, thoughtful observer,’ as opposed to a ‘hypersensitive or unduly suspicious person.’” *Clemens v. U.S. Dist. Court for Central Dist. Of California*, 428 F.3d 1175 (9th Cir. 2005) (citing *In re Mason*, 916 F.2d 384, 386 (7th Cir. 1990)). Moreover, the alleged bias cannot result from mere disagreement, however vehement, with a judge’s rulings; instead, “the alleged bias must stem from an ‘extrajudicial source.’” *United States v. Hernandez*, 109 F.3d 1450, 1454 (9th Cir. 1997) (quoting *Liteky v. United States*, 510 U.S. 540, 548 (1994)). “[O]pinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible.” *Liteky*, 510 U.S. at 555.

At the core of Mr. Zhang's contentions against District Court Judge Wu is his displeasure with how Judge Wu handled the underlying criminal case. However, no details are provided which would meet the threshold for recusal, and the Plaintiff's allegations are without merit.

As to the civil rights allegations regarding the denial of medical care from the March 13, 2013 incident, Mr. Zhang's claims are time-barred as a matter of law. Claims brought under 42 U.S.C. § 1983 borrow the forum state's statute of limitations. *See Butler v. Nat'l Cmty. Renaissance of Ca.*, 766 F.3d 1191, 1198 (9th Cir. 2014). "Section 1983 does not contain its own statute of limitations . . . Instead, claims brought under § 1983 are subject to the forum state's statute of limitations for personal injury suits." *Flynt v. Shimazu*, 940 F.3d 457, 461 (9th Cir. 2019). In California, a complaint for personal injury must be filed within two years of the date that the cause of action accrues. CAL. C. CIV. PROC. § 335.1. Therefore, the statute of limitations for Plaintiff's claims brought under 42 U.S.C. § 1983 is two years. As Mr. Zhang alleges he was injured on March 11, 2013 and none of his claims accrued within two years of the time he filed the action, his action was plainly time-barred as a matter of law. Plaintiff has not and cannot establish otherwise. Thus, there are no grounds for Supreme Court review.

It should further be noted that while Mr. Zhang asserts that he was denied medical care following the alleged assault by his cellmate, he also admits he was seen by a nurse in the jail clinic, a second nurse, and a neurologist, further

showing the frivolity of his claims as his factual allegations show he was provided with medical care. (Dkt. 1, ¶ 22, 26, 28). *See Horton by Horton v. City of Santa Maria*, 915 F.3d 592, 606 (9th Cir. 2019).

As to the civil rights allegations re blocking his access to his attorney, again, the claims are plainly time-barred. In addition to being untimely, Plaintiff's allegations fail to set forth a cognizable cause of action. Plaintiff concedes that he fired his attorneys and hired new ones, he claims that unnamed Sheriff employees precluded an unnamed attorney from assisting him. He likewise claims that unidentified DOES blocked his phone calls to the ACLU. These bald and vague conclusions are insufficient to establish a viable claim against the County. Rather, it is well-established that a local governmental entity, such as the County, cannot be liable for damages pursuant to 42 U.S.C. § 1983 based solely upon a theory of *respondeat superior*. *Monell v. Dept. of Soc. Serv.* (1978) 436 U.S. 658. Instead, Zhang has the burden of proving that an underlying civil rights violation existed *and* was caused by a permanent and well-settled official policy or custom of the public entity. *City of St. Louis v. Praprotnik* (1988) 485 U.S. 112. Mr. Zhang's meandering and vague complaint failed to sufficiently allege a cause of action against the County.

Additionally, with regard to Plaintiff's vague elder abuse claim, California's Elder Abuse Act is codified in Welfare and Institutions Code sections 15600-15675. "To establish elder abuse, a plaintiff must show defendant was

guilty of ‘recklessness, oppression, fraud, or malice in the commission of [physical, neglectful, or financial elder abuse].’” *Benen v. Superior Court*, 123 Cal.App.4th 113, 119 (2004). Again, Mr. Zhang’s vague and conclusory allegations are insufficient to establish a claim under the Fourteenth Amendment and assert no facts supporting a claim against defendant. *See, Iqbal*, 556 U.S. at 678 (explaining that a complaint must contain “sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face’” (quoting *Twombly*, 550 U.S. at 570)). Moreover, again, the claim was not timely filed.

Furthermore, with regard to Mr. Zhang’s claims of a “double standard,” there is no evidence that his case was dismissed due to him being Asian, born in China, a senior citizen, or a pro se litigant. He cites only to generic literature and nothing specific to this case. The underlying case was not “bogus” as alleged by Plaintiff; the action lacked merit and was also dismissed on procedural grounds. The Complaint plainly suffered from numerous deficiencies which could not be cured by amendment. Dismissal was appropriate as the claims were untimely, barred by the claim preclusion doctrine, barred by the *Rooker-Feldman* doctrine, and the *res judicata* doctrine.

As courts of original jurisdiction ... federal district courts lack jurisdiction to review the final determinations of a state court in judicial proceedings. ... Only the U.S. Supreme Court has jurisdiction to engage in such review.” *Doe & Assocs. Law Offices v. Napolitano*, 252 F.3d 1026, 1029 (9th Cir. 2001), citing

Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923) and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983). This principle is known as the *Rooker-Feldman* doctrine. As the federal claims were identical to the claims in his prior state action, the Plaintiff's federal action impermissibly sought to have the federal court adjudicate and reverse the same issues previously considered by the state Superior and Appellate courts. Thus, the Plaintiff's requested relief is barred by the *Rooker-Feldman* doctrine.

Also, the Plaintiff's claims were barred by res judicata, which describes the preclusive effect of a final judgment on the merits" on further litigation. *Mycogen Corp. v. Monsanto Co.*, 28 Cal.4th 888, 896 (2002). "Under 28 U.S.C. § 1738, federal courts are required to give state court judgments the preclusive effects they would be given by another court of that state." *Brodheim v. Cry*, 584 F.3d 1262, 1268 (9th Cir. 2009) (citations omitted).

Moreover, Zhang never filed a substantive opposition to the Motion to Dismiss, further showing why the granting of the motion was appropriate.

II. THE PLAINTIFF'S REQUEST TO PROCEED *IN FORMA PAUPERIS* SHOULD BE DENIED.

In his motion to proceed *in forma pauperis*, the Plaintiff indicates that he was previously granted leave to proceed *in forma pauperis* by the United States District Court for the Central District of California. However, as set forth above,

on June 12, 2023, the Ninth Circuit sent a Referral Notice to the district court for the purpose of determining whether Mr. Zhang's *in forma pauperis* status should continue or whether the appeal was frivolous or taken in bad faith. (2-SER-477.) On June 29, 2023, the District Court ordered Mr. Zhang's *in forma pauperis* status revoked and deemed the appeal to be frivolous. (2-SER-478.) The district court found plaintiff's claims were untimely, barred by claim preclusion, and barred by the Rooker-Feldman doctrine. (2-SER-479.) The court stated: "the Court would find Plaintiff's appeal to be lacking an arguable basis either in law or fact. Thus, the Court would discontinue Plaintiff's *in forma pauperis* status on appeal." (2-SER-480.)

On July 12, 2023, the Ninth Circuit ordered Mr. Zhang to explain in writing why the appeal should not be dismissed as frivolous. Upon a review of the record and the responses to the Court's order, and the Opening Brief filed by the Plaintiff on May 24, 2023, the Ninth Circuit concluded the appeal was frivolous. The Ninth Circuit denied Plaintiff's motion to proceed *in forma pauperis* and dismissed the appeal as frivolous pursuant to 28 U.S.C. § 1915(e)(2).

CONCLUSION

Based upon the foregoing, Respondent the County respectfully submits the petition should be denied.

DATED: May 16, 2024

HURRELL CANTRALL LLP

By: /s/ Melinda Cantrall
MELINDA CANTRALL
Attorneys for Respondent, County of Los Angeles