No. 24-1195

In The

Supreme Court of the United States

ORIGINAL

IN RE SYMON MANDAWALA,

Petitioner,

On Petition for a Writ of Mandamus to the Ninth Circuit court of Appeals

PETITION FOR A WRIT OF MANDAMUS

SYMON MANDAWALA
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Pro-se Petitioner

QUESTIONS PRESENTED

The district court dismissed this case through a *sua sponte* rule 12(b)6 motion. This decision followed the court's repeated refusal to stamp and sign the summons during my several attempts, citing an internal memo from the judge stating that no summons should be issued. When I requested that this internal memo be filed in the docket during a phone call with the clerk, the district court, acting on its own initiative, ordered the dismissal of the case for failing to state a claim upon which relief could be granted. The court demanded an amendment to the complaint to articulate a cognizable claim. Fourteen days later, the district court officially dismissed the case, and no defendant had been served process by the time the case was dismissed. The court of appeals affirmed the district court's dismissal but provided a different rationale, stating that the complaint improperly sued the former state judge, despite the fact that the complaint clearly identified Era Living LLC corporation, as a defendant.

Whether a district court itself can invoke a motion to dismiss *sua sponte* under Rule 12(b)(6) of the Federal Rules of Civil Procedure in a civil case that is nonfrivolous, no malicious, and not lacking jurisdiction before the defendant has been served with the process?

PARTIES TO THE PROCEEDING

Petitioner Symon Mandawala was the plaintiff in thedistrict court and appellant in the Ninth Circuit.

Respondents ERA LIVING LLC Defendant and appellee in the Ninth Circuit. Never appear because the district court refused to issue the summon and the District court *sou sponte* dismiss the case

Respondent ERA LIVING LLC was defendant in Washington superior court.

RELATED PROCEEDINGS

This case arises from the following proceedings:

- *Mandawala* v. *Era Living LLC et al.*, No. 23-35345, 9th Cir. (July10, 2024) (rehearing en banc rejected);

- *Mandawala* v. *Era Living et al.*, No. 22-cv-01179 W.D. Washington Cir. (April 2, 2024) (*sua sponte* dismissal the court refuse to issue the summon because the complaint did not state cognizable claim for relief)

- *Mandawala* v. *Era Living LLC, et al.*, 19-2-03308-8 SEA (Wash.Superio.Ct August 30, 2019)

There are no other proceedings in state or federal trial or appellate courts, or in this Court, related to this case under Supreme Court Rule 14.1(b)(iii).

TABLE OF CONTENTS

TABLE OF APPENDICES Page

TABLE OF AUTHORITIES

CASES Pages

OTHER AUTHORITIES

PETITION FOR A WRIT OF MANDAMUS

1. (a)28 USC §1691 states: "All writs and process issuing from a court of the United States shall be under the seal of the court and signed by the clerk thereof." (b) Fed.R.Civ.P. 4(b).a summon(s) be signed by the clerk of the court and bear the court's seal issue to Plaintiff for service.

A writ of mandamus is properly granted to correct the "usurpation of judicial power." *Cheney v United State Dist. Ct., 542 U.S. 367, 380-81 (2004).* mandamus an appropriate remedy to review the challenged power of the District Court. see Schlagenhauf v. Holder, 379 U.S. 104, 109-112(1964) Specific to this case, the clerk of the district court in the Western District of Washington, located in Seattle, *refused to issue a summons. The clerk requested that I amend my complaint before they would affix the court seal, sign it, and return it to me. Summon step is necessary for court to establish personal jurisdiction on Era Living LLC, as the plaintiff, to serve the defendant who is a corporation. "[O]ne becomes a party officially, and is required to

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* Western District court of Washington, Seattle docket sheet and entries. Showing the district court clerk refuse to return summon and Mandawala tried to get the sealed and signed summon. Also *see* infra 9a

Defendant
Era Living LLC

Date Filed	#	Docket Text
08/23/2022	1	COMPLAINT, filed by Symon Mandawala against defendant(s) Era Living LLC. (Summons(es) not received to issue.)(Receipt # S-28) (Attachments: # 1 Exhibits A-B, # 2 Civil Cover Sheet)(ST) (Entered: 08/24/2022)

take action in that capacity, only upon service of a summons or other authority-asserting measure stating the time within which the party served must appear and defend."); *Prewitt Enters., Inc. v. Org. of Petroleum Exporting Countries*, 353 F.3d 916, 924-25 (11th Cir. 2003) (citing Murphy Bros. below)"the service of summons is the procedure by which a court having venue and jurisdiction of the subject matter of the suit asserts jurisdiction over the person of the party served *Mississippi Publishing Corp. v. Murphree*, 326 U.S. 438, 444-45, 66 S.Ct. 242, 246, 90 L.Ed. 185 (1946) when a district court refuse to give a summon back to the plaintiff to issue to the defendant. It means the court as already decided its side of favor and any judgement or orders comes from such court is automatically bias against plaintiff. **Because, "[b]efore a federal court may exercise personal jurisdiction over a defendant, the procedural requirement of service of summons must be satisfied." *Omni Capital Int'l, Ltd. v. Rudolf Wolff & Co.*, 484 U.S. 97, 104, 108 S.Ct. 404, 409, , 98 L.Ed.2d 415 (1987); see also *Murphy Bros.Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 350, 119 S.Ct. 1322, 1327, 143 L.Ed.2d 1144 448 (1999) here is me the clerk denying me the right to that procedural requirement

** The district court clerk several times on the phone responded that there is judge's internal memo to the clerk's office to not issue summon.

01/09/2023	6	PRAECIPE TO ISSUE SUMMONS by Plaintiff Symon Mandawala. (SS) (Entered: 01/10/2023)

District court overstepped using Section 1915(e) dismissing non-frivolous or non-Malice by invoking Rule 12(b)6 *sou sponte* motion to dismiss

A writ of mandamus is properly granted to correct the "usurpation of judicial power." *In re Link A Media Devices Corp.*, 662 F.3d 1221, 1222 (Fed. Cir. 2011). Specific to this case, the use "judicial haste" by applying 28 U.S.C 1915 to the premature case that a defendant was not served the process. see Dioguardi *v. Durning*, 139 F.2d 774, 775 (2d Cir. 1944) 28 U.S.C 1915 governs the district court on an indigent litigant. There must be exceptional circumstance the court to exercise section 1915 to the party. Although "[n]o comprehensive definition of exceptional circumstances is practical," *Branch v. Cole, supra*, 686 F.2d at 266 (5th Cir. 1982) It requires the litigant to demonstrate unable to pay court fee(s) by (1) **requesting** the court through motion with supporting Affidavits or (2) by the court itself **consulting** or **consent** with indigent litigant about the case proceed with section 1915. Failure by the district to afford plaintiffs an opportunity to address the court's sua sponte section 1915(e) motion to dismiss is, by itself, grounds for reversal. See *California Diversified Promotions v. Musick*, 505 F.2d 278 (9th Cir. 1974); *Literature, Inc. v. Quinn*, 482 F.2d 372 (1st Cir. 1973); *Dodd v. Spokane County, Washington*, 393 F.2d 330 (9th Cir. 1968).

Dismissal of a case with section 1915

Despite the fact that neither of the two interpretations of section 1915 (e) by different US circuits

are not align with my case, they were used to dismiss my case. This conflict between the interpretations, however, is a matter of concern. The Sixth Circuit and others, assert that 'regardless of the fees paid, the court can dismiss a lawsuit if the plaintiff is incarcerated.' This ruling, as seen in *Floyd v. US postal service.*, 105 F. 3d 274 (6th Cir. 1997), stands in stark contrast to the perspective of the Ninth and others. "Any claim that has a fee paid should be protected from dismissal." This is a point that has been upheld in *Franklin v. Murphy* 745 F.2d 1221 (9th Cir. 1984) and is of utmost importance in this case.

US suprema's court Standard requirement for dismissing a case under section 1915€ is frivolous

(A), Frivolous and Malicious dismissal *Bell v. Hood*, 327 U.S. 678, 66 S.Ct. 773, 90 L.Ed. 939 (1946), the Supreme Court held that a trial court cannot dismiss a complaint for failure to state a claim until it has "assumed (B)jurisdiction over the controversy." In this case, the district court explicitly dismissed the complaint solary *** because "it ment-

*** Still, if it be assumed that the district court did proceed under section 1915(e), for the reasons stated below, and with due regard to the broad discretionary power vested in a district court acting under section 1915(e) to dismiss a forma pauperis proceeding as frivolous, it was error to dismiss this action as frivolous. because the complaint accompanied by state district court docket exhibits showing the state court setting the hearing on July 16, 2019 to the motion to dismiss that was not filed (ghost motion) until July 26, 2019. *see* Infra 13a *-conti*

-ion conspiracy to deprive plaintiff's right to a fair state court proceeding involved now former state judge". Yet ruling was made before any adverse party was joined in the litigation and rested solely on the face of My complaint. It would appear, therefore, that the Court had not assumed jurisdiction within the meaning of *Bell v. Hood ld* Frivolous or malicious. Thus, dismissal of the action was premature.

In dismissing the complaint, the district court did not state that the action is frivolous or malicious, thereby invoking 28 U.S.C. § 1915(e). Instead, the court analyzed the complaint, cited authority and held, in effect, that the complaint does not state a claim upon which relief can be granted. Thus, the court, in practical effect, invoked on its own motion Rule 12(b)(6), Federal Rules of Civil Procedure. This, the court had the right to do if the proper procedural steps were taken and if the determination is correct on the merits. The district court overstepped in both respects. There were two procedural deficiencies: (1) The court did not permit issuance and service of

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- cont. - state court docket entries. *See* also *infra* 31a

7	04/10/2019	NTAPR - Notice of Appearance
8	04/17/2019	FAULTY - Faulty Document Notice
9	04/25/2019	AFSR - Affidavit / Declaration / Certificate O
10	07/16/2019	NTHG - Notice of Hearing
11	07/16/2019	AFSR - Affidavit / Declaration / Certificate O
12	[redacted]	MTDSM[redacted]
13	07/26/2019	DCLR - Declaration

process as required by Rule 4(a), Federal Rules of Civil Procedure; and (2) The court acted upon the complaint without notice to me as plaintiff of the proposed action, and without affording me an opportunity to at least submit a written argument in opposition thereto. See *Armstrong v. Rushing*, 9 Cir., 352 F.2d 836, 837 See also, *Wallen v. Rhay*, 9 Cir., 354 F.2d 241; *Harmon v. Superior Court*, 307 F.2d 796, 798 (9 Cir., 1962)

OPINIONS BELOW

The original opinion of the court of appeals is available as unpublished opinion USCA 23-35345. App. 2a-3a. The denial of rehearingen. Pet. App. 1a. e United States District Court for the Western District of Washington, Pet. App. 15a-24a.

JURISDICTION

There is No State, lower federal court or forum to address the issues discribed in this petition other than this court. all possible avenues were exhusted after the court of Appeals rejecting rehearing en-banc as untimely while mail reciept shows within the time. jurisdiction of this court is invoked under 28 USC §1651.

CONSTITUTIONAL, RULES AND STATUTORY PROVISIONS INVOLVED

The Act 28 USC §1691 All writ and process from a court of the United State shall be under the seal of the court and signed by the clerk thereof. 28 USC §1915 is governs the party proceeding without pay in forma pauperis not where the $405 fee has been paid

STATEMENT OF THE CASE

A. Factual background

I filed an original complaint regarding this cause of

action in the District Court of the Western District of Washington in Seattle on August 23, 2022. I submitted the original complaint along with a money order for $405.00 through USPS mail. Following this, I requested the court's permission to serve a copy of the complaint and summons to Era Living via certified mail with return receipt requested, as this method of service is permitted in Washington state. However, the District Court denied my request to use USPS certified mail with return receipt requested as proof of service. It's important to note that Wash. Sup. Ct. Civ. R. 4(J) states that "the rule does not exclude the use of other forms of process authorized by law." Furthermore, RCW 23.95.450(2) specifically authorizes serving defendants using USPS and other couriers.

I called the district court clerk's office several times to request a summon to return to me for insurance. I even requested in writing and sent more copies of summons for the clerk to stump and sign as required in Fed.R.Cv.P 4(b): "on or after filing a complaint, the plaintiff may present summons to the clerk for signature and seal..... the clerk must sign, seal, and issue it to the plaintiff for service of process to the defendant" Contrast to Fed.R.Cv.P 4b, the clerk on each time I phoned their office, they responded that "the Judge left an internal notice to the clerk not to issue the summon to me." After I demanded that the judge's notice should be docketed, the district court instead dismissed the original complaint, stating that it failed to state the claim for relief upon which the court may grant because my original complaint stated that Era Living conspired

with an individual with judicial immunity to deprive my 14 the amendment constitution rights. The injustice of the conspiracy, which was significantly fueled by an ex-parte meeting to schedule a motion hearing, which had not even been verbally filed in court, was perpetuated by now-retired state judge Laura Inveen, who had judicial immunity. After completing the unopposed Appellant brief, the appeal citation remains blank because the district court clerk refused to provide a copy. On April 2, 2024, the Panel of the Ninth Circuit Court of Appeals upheld the district court's decision to dismiss the case, primarily on the grounds that I had sued the judge. Despite my complaint clearly identifying Era Living as a private entity, the appellate court should have noticed that the summons to Era Living were never returned to me for service. See *infra* 9a The Ninth Circuit referred to the record in the appeals, incorrectly stating that I had sued the judge. It is important to note that this is the same record the district court refused to provide me.

On April 11, 2023, the district court ordered me to amend my original complaint within 14 days while refusing to return the summon copy. The order specified that my amended complaint must present a cognizable claim for relief; otherwise, under § 1915e, the court would dismiss the action. Upon receiving the panel's decision on April 2, 2024, I took immediate action and submitted a petition for rehearing en banc eleven days later, on April 13, 2024. The purpose of this petition was to seek the consensus of all circuit judges on whether the district court in the Ninth Circuit should dismiss a paid private case before the defendant is served.

Although the circuit's response took 100 days a delay that significantly impacted the case—it was important to note that my submission of the petition for rehearing en banc on April 13, 2024, was prompt, occurring within eleven days, rather than over the fourteen allowed.

On the 13th day following the April 11 order, I submitted an amended complaint (dist.dkt 9 see also *Infra*10a) that corrected typographical errors without altering the pleadings or facts. However, while this amended complaint was in transit via USPS, the court, in a move that can only be described as unfair, ordered to dismiss the case on April 27, 2023, claiming that I had yet to file the amended complaint within the 14-day timeframe stipulated in the April 11 order. Upon receiving the panel's decision on April 2, 2024, I took immediate action and submitted a petition for rehearing en banc eleven days later, on April 13, 2024. The purpose of this petition was to seek the consensus of all circuit judges on whether the district court in the Ninth Circuit should dismiss a paid private case before the defendant is served. Although the circuit's response took 100 days—a delay that significantly impacted the case—it was important to note that my submission of the petition for rehearing en banc on April 13, 2024, was prompt, occurring within eleven days, rather than over the fourteen allowed.

REASONS FOR GRANTING THE PETITION

District court clerk refuse to return the signed and seal Summon for issuance demanding unless the complaint is amended

The case was dismissed following a series of events.

I repeatedly requested that the district court clerk mail me a signed and sealed summons. (see Appx 9) However, the clerk's refusal to do so significantly impacted the case, as they stated they would only return the summons if I amended my complaint. Consequently, I was unable to serve the process, (see infra 9a) which led to the dismissal of the case without the defendant's objection. I urge the court to order the district court to return the summons or refund the $405 court fee, as they represent Era Living themselves. Your intervention is crucial in this matter. The court of appeals agreed with the district court that my complaint alleged that Era Living conspired with the state judge to schedule a hearing for the motion to dismiss. See *infra* 11a-31a This scheduling occurred without any formal or verbal motion to dismiss being filed by the defendant beforehand. All of this unfolded because the district court clerk insisted on an amendment to the complaint while refusing to return the signed summons. See infra 9a or dist.dkt 1 and 6

Section 1915(e) Conflict interpretations by different circuit did not apply to my private lawsuit despite used it to dismiss the lawsuit

Despite the fact that neither of the two interpretations of section 1915 (e) by different US circuits align with my case, they were used to dismiss my case. This conflict between the interpretations, however, is a matter of concern.

The Sixth Circuit and others, assert that 'regardless of the fees paid, the court can dismiss a lawsuit if the plaintiff is incarcerated.' This ruling, as seen in *Floyd v. US postal service.*, 105 F. 3d 274 (6th Cir.-

- 1997), stands in stark contrast to the perspective of the Ninth and others. "Any claim that has a fee paid should be protected from dismissal." This is a point that has been upheld in *Franklin v. Murphy* 745 F.2d 1221 (9th Cir. 1984) and is of utmost importance in this case.

It is disheartening to see that the Western District of Washington district court, which falls under your circuit and utilizes Franklin's interpretation, has disregarded this interpretation and dismissed the suit. Additionally, the Ninth Circuit Court of Appeals has overlooked its own interpretation despite the $405 fee evidenced by receipt **#S-28** (see *infra* 9a) in the docket the district court ruled this as *Informa Paupera* in an effort to help Era living. See *Infra* 6a

The District Court Clerk refused to Give Me Copy of Electronic Record in Appeals Court

After the district court dismissed the case, I filed a notice of appeal and requested records from the district court clerk. To my surprise, the clerk redirected me to the Ninth Circuit Court of Appeals clerk for the record, providing only a district court docket sheet.

It's important to note that when I contacted the district court clerk to return the signed summons, the clerk refused, stating that the judge had left a memo instructing them to tell me to amend the complaint; otherwise, I would not receive the summons back. However, the docket sheet did not include any notes or memos from the judge. See *Infra* 9a-10a

The Ninth Circuit Court of Appeals took one hundred days, from April 2, 2024, to July 10, 2024, to inform me that my petition for rehearing en banc, which I submitted on April 13, 2024, was untimely.

After receiving the Ninth Circuit Court of Appeals panel's decision affirming (see *infra* 2a-3a) the district court's refusal to return the summons due to the complaint failing to state a claim upon which relief could be granted, this decision was made on April 2, 2024. see *infra* 2a-3a 4 On April 13, 2024, I mailed my petition for rehearing en banc. See *Infra* 32a attached USPS receipt dated April 13, 2024 to San Fransco.CA) I waited until July 10, 2024, when the court rejected my petition as untimely. See *infra* 1a the 11-day timeline from April 2, 2024, to April 13, 2024, is crucial in determining the timeliness of my petition, and I needed clarification on how it is considered more than 14 days(untimely). Upon thorough review, it became clear that the Ninth Circuit Court's 100-day delay appeared to be a strategic maneuver to consume the 90 days allowed for filing a petition for a writ of certiorari with the Supreme Court. This tactic, resulting in my petition for rehearing en banc being deemed untimely, constitutes a clear violation of Supreme Court Rule 13.3. I have retained the USPS receipts for this case, which serve as irrefutable evidence that my petition was submitted on time. This situation leads me to suspect that Era Living's indirect influence over the court officers' mirrors what occurred when the case was in Washington State court. I am left with a profound sense of injustice and a growing distrust

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the issue of dismissing non frivolous or malice case before the defendant saved the process.

The petition for a writ of Mandamus should be granted

Respectfully submitted

Symon Mandawala

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Pro-se Petitioner

October 4, 2024