No. 24-231

ORIGINAL

In The Supreme Court of the United States

RAKESH DHINGRA,

Petitioner,

v.

CHARLES ESPOSITO, ET AL.,

Respondents.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

The Appeals Court affirmed the dismissal of Petitioner's civil complaint for violations of his US constitutional civil rights. The civil complaint alleged that federal officials had engaged in perjury and fabrication of evidence at the Honorable Armstrong Court's 2002 jury trial – and that they did so after taking an oath for stating the truth, besides their own federal agency oath "as an officer of the United States" to support the Constitution of the United States of America.

The question presented is:

Did the Ninth Circuit Court of Appeals err in affirming the civil district court's dismissal of petitioner's civil complaint without the civil court conducting fact-findings, or providing "intelligent" reasoning for appellate court's review?

PARTIES TO THE PROCEEDING

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Petitioner Rakesh Dhingra. appellant in the Ninth Circuit Court of Appeals, and plaintiff at the federal civil court, Northern District of California.

Respondents, Charles "Chuck" Esposito, FBI Agent, FBI, USA; Ms. Eliina Stephenson (aka, Ms. Eliina N. Keitelman, Ms. Eliina Belenkiy), a federal official; Mr. Brian Stretch, Assistant U.S. Attorney (2001-2002); Mr. Tom C. Sharpe, Detective, Contra Costa County; FBI Director, FBI, USA(2000-2002); Jerome E. Matthews, Assistant Federal Public Defender; Abdul Rafiqui, FBI, USA; Nancy L. May, FBI, USA; Franz P. Corrales, FBI, USA; Razi Shaban, FBI, USA, Simona M. Asinowski, FBI, USA were appellees at the Ninth Circuit and defendants at the federal civil court, northern district of California.

A corporate disclosure statement is not required because Rakesh Dhingra, Petitioner is not a corporation. See Sup. Ct. R. 29.6.

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PETITION FOR WRIT OF CERTIORARI

Rakesh Dhingra, a disabled individual with post-polio syndrome since 1991 due to childhood polio myelitis, by and through his own cognizance, as *pro se*, respectfully petitions this court for a writ of certiorari to review the judgment of the Ninth Circuit Court of Appeals.

CITATION OF OPINIONS

The Civil District Court, Northern District of California dismissed the civil rights complaint of plaintiff, Rakesh Dhingra on September 15, 2022. This opinion and judgment are excerpted in the appendix at App. (4-7).

The Ninth Circuit Court of Appeals affirmed the direct appeal of civil court's dismissal of petitioner's civil complaint on May 08, 2024, and denied appellant's petition for rehearing on June 03, 2024. These opinions are excerpted in the appendix at App. (1-3) and App. (8).

JURISDICTION

Appellant, Rakesh Dhingra's petition for hearing *Enbanc* to the Ninth Circuit Court was denied on June 03, 2024, App. (8). Petitioner, Rakesh Dhingra invokes this Court's jurisdiction under 28 U.S.C. §1254(1), having timely filed this petition for a *writ of certiorari* within ninety days of the Ninth Circuit Court's denial of rehearing on June 03, 2024.

CONSTITUTIONAL PROVISIONS AND STATUTES

United States Constitution, AMENDMENT I

Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press; or the right of people peaceably to assemble, and to petition the Government for a redress of grievances.

Overbreadth Doctrine:

An overbreadth doctrine provides that laws regulating speech can sweep too broadly if it criminalizes both constitutionally protected and constitutionally unprotected speech. An overbroad statute criminalizes too much and needs to be revised to target only conduct that is outside the constitution's parameters.

A statute regulating speech is unconstitutionally vague if a reasonable person cannot distinguish between permissible and impermissible speech.

United States Constitution, AMENDMENT IV

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.

United States Constitution,
AMENDMENT V,
Due Process Clause:

The government must act in accordance with legal rules and not contrary to them. This includes the "procedural due process" doctrine, which concerns the fairness and lawfulness of decision-making methods used by the courts and the executive. For example, Government actors violate due process when they frustrate the fairness of the proceedings, such as when a prosecutor fails to disclose evidence to a criminal defendant that suggests they may be innocent of the crime, or when a judge is biased against a criminal defendant or a party in a civil action.

A fair notice and the opportunity to be heard are due process requirements in a criminal, civil and other proceedings.

United States Constitution,
AMENDMENT VI

The accused should enjoy the right to a speedy trial, by an impartial jury, and to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him and to have effective assistance of counsel for his defense.

United States Constitution,
AMENDMENT XIV,
Equal Protection Clause:

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 withing its jurisdiction the equal protection of the laws.

ARTICLE III, THE JUDICIAL PROCESS

Everyone has the right to life, liberty and security in person.

Article III of the Constitution of the United States guarantees that every person accused of wrongdoing has the right to a fair trial before a competent jury and a jury of one's peers.

Article III provides the right not to be tortured or treated in an inhuman or degrading way is one of the rights protected by the United Nations Universal Declaration of Human Rights or the Civil Rights Act of 1964.

THE INDICTMENT WITHOUT ATTEMPT CLAUSE, STATUTE - 18 U. S. C. §2422(b)

Section 2422(b) without an attempt clause, reads:

"Whoever, using the mail or any facility or means of interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States, knowingly persuades, induces, entices, or coerces any individual who has not attained the age of 18 years, to engage in prostitution or any sexual activity for which any person can be charged with a criminal offense, shall be fined under this title, imprisoned not more than 15 years, or both (2002)".

PROCEEDING IN-FORMA PAUPERIS, STATUTE - 28 U. S. C. §1915(e)(2)(B)(i)

Section 1915(e)(2)(B)(i) reads:

Notwithstanding any filing fee, or portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that the action or appeal is frivolous or malicious.

STATEMENT OF THE CASE

On April 08, 2022, Rakesh Dhingra ("Petitioner") filed a civil rights complaint *in forma pauperis,* in the Northern District of California, pursuant to the October 24, 2021, discovery of the FBI "Cyber Squad" sting operation from the Contra Costa County Sheriff's office records, that stated, App. (10),

> "Dhingra was involved in an FBI Sting in 2000 that occurred on the campus of Los Medanos College and in a park in the city of Pittsburg"

On the merits of this discovery, the civil rights complaint provided a fair notice to federal official-respondents, alleging that prosecutor not only purposely and knowingly failed to disclose this evidence to petitioner, his defense team and the trial court but went further to fabricate evidence at the trial court proceedings and the jury trial.

The complaint alleged several federal officials' falsehood, fabrication, hate, perjury, and obstruction of justice including the US Marshall's change of identity services were used discreetly in the 2001-2002 petitioner's criminal case, and a fundamental absence of commitment to constrain within the rule of law.

I. THE TRIAL COURT PROCEEDINGS

An indictment pursuant to non-attempt, 18 U.S.C. §2422(b). against petitioner was crafted on August 30, 2001, only 12 days before the 9-11 incident of 2001 for the case, *United States v. Dhingra*, 01-cr-40144-SBA (N.D. Cal. 2001), is remarkable.

Without focusing on critical thinking, analyzing, failed to differentiate true information from fabricated ones. On July 01, 2019, the trial court denied the Error *Coram Nobis* petition, *United States v. Dhingra*, 01-cr-40144-SBA (N.D. Cal. 2001), Dkt. 160 at page 7, stating:

> "Petitioner offers *no new evidence* at all, only baseless speculation that the

> FBI conducted a sting operation, and the victim was an adult. This is insufficient to establish error warranting relief." See United States v. Scherer, 673 F.2d 176, 179 (9th Circuit, 2004), the petitioner's purportedly new evidence did not warrant coram nobis relief when he offered no new evidence at all, but only new suspicions".

The trial court shielded the prosecutor's fabrication of "real minor" in the court for prosecution of petitioner under the direct or non-attempt version of section 2422(b). In contrast, the adult decoy of the sting operation, posing as a minor, was truthfully declared in the Court in *U.S. v. Meek,* 366 F.3d 705, 717 (9th Cir. 2004), (a detective – an adult – stood in the shoes of the boy).

The 2019 error *coram nobis* petition alleged that the sting operation or the FBI "Cyber Squad" led by Agent, Esposito was never disclosed, while the federal officials had crafted an unconstitutional indictment. The alleged invalid conviction was contrived through a deception by presenting a perjured testimony of a victim known to be an adult whose identity was changed to a minor for the violation of a direct version of section 2422(b).

This contrivance was for a conviction through the pretense of a trial which in truth was used as a means of depriving petitioner, of the liberty through a deception of the court and jury by presentation of testimony, now discovered to be perjured. "Such a

contrivance... is as inconsistent with the rudimentary demands of justice as is the obtaining of a like result by intimidation", *Mooney v. Holohan*, 294 U.S. 103, 112 (1935).

The complaint alleged that the trial court erred in its ruling because the enticement of an adult, Ms. Eliina, in the FBI "Cyber Squad" sting operation was not a prohibited conduct under the direct or non-attempt version of 18 U.S.C. §2422(b). Therefore, petitioner had alleged a "fundamental error", and an unconstitutional indictment in his Error *Coram Nobis* petition. The petition was denied by trial court with a warning of sanctions for filing further *Coram Nobis* petition, essentially closing any avenue to litigate the criminal matter for setting aside the wrongful conviction. *United States v. Morgan,* 346 U.S. 502, 516 (1954), (The probability of a different result if the facts had been known is a prime requisite to the success of the Error *Coram Nobis* statute, 28 USC §1651(a)).

During the September 16-20, 2002, jury trial in the Honorable Armstrong Trial Court, FBI Agent, Esposito stated that a "real" minor less than 18 years old was enticed. The trial court judge, defense attorney or assistant US Attorney and other county and federal officials had known that Agent, Esposito would never put a "real" minor or a child in harm's way. *United States v. Meek,* 366 F. 3d 705, 719 (9th Cir. 2004) (police preventive measures such as sting operations here would come at the cost of either rarely securing a conviction or putting an actual child in harm's way). The Error Coram Nobis petition alleged that the FBI 301 report described

petitioner's messaging with adults had accumulated more than 900 chat messages that demonstrated his *mens rea*, for adult companionship. The 2002 jury trial testimony of the purported minor or adult FBI decoy, Ms. Eliina stated that petitioner did not show up to meet with her twice. *United States v. Meek*, 366 F.3d 705, 722 (9th Cir. 2004), (The age and purpose clauses insulate from liability persons engaged in constitutionally permissible speech, such as the sexually explicit conversations between two adults, because conversations of that nature would not involve the narrow category of criminal sexual activity with a minor).

Petitioner alleged that his refusals to meet with Ms. Eliina resulted in foreclosing the attempt version of section 2422(b). the civil complaint alleged the trial court ignored exculpatory self-evident chat messages sent by FBI "Cyber Squad" to the petitioner that also proved an adult was the sender of these messages:
A) "You are different from other guys and it's really confusing me",
B) "You won't stand me up again – will you"?
This also ignores the constitutionally protected speech, U.S. CONSTITUTION, AMENDMENT I and the "procedural due process" doctrine, AMENDMENT V, *Hamdi v. Rumsfeld*, 542 U.S. 507, 533 (2004), (due process requires a 'neutral and detached judge in the first instance' (*citation omitted*)), (It is equally important that the right to notice and an opportunity to be heard 'must be granted at a meaningful time and in a meaningful manner').

II. THE CIVIL DISTRICT COURT PROCEEDINGS

On April 08, 2022, petitioner, Rakesh Dhingra, filed the civil rights complaint with demand for jury trial against 10 respondents, after obtaining the October 2021 sting operation discovery from county records. The FBI sting operation at two different locations on two different days during June-July 2000 proved no minor victim was ever enticed. See Indictment, that stated, "On or about and between July 6, 2000, and July 10, 2000, the defendant knowingly persuaded, induced and enticed an individual who had not attained the age of 18 years ...".

The civil complaint alleged that the *modus operandi* of the 2016 FBI "Cyber Squad" sting operation was designed to violate the "attempt" of a criminal enticement statute, 18 U.S.C. §2422(b), because it uses an adult individual on the internet chat messaging. In sharp contrast, the "non-attempt" or direct version of section 2422(b) is valid only for the enticement of a "real" minor or a child victim who is harmed. The non-attempt version of section 2422(b) cannot be used with a sting operation because that would imply "enticement of an adult". *U.S.A. v. Meek*, 366. F.3d. 705, 717 (9th Cir. 2004) n.14 (We agree that the non-obscene inducement of one adult into consensual sexual activity with another individual "known or believed to be an adult" is not within the reach of §2422(b).

The *actus reus* of the alleged perjury and obstruction of justice by the FBI Agent, Esposito, assistant US attorney, Stretch, county detective, Sharpe and Ms. Eliina for the unconstitutional indictment, the non-attempt or direct version of the statute, 18 U.S.C. §2422(b) with fabrication of evidence by depicting the adult, Ms. Eliina under 18 years of age is remarkable for violating the United States constitution. *Hamdi v. Rumsfeld*, 542 U.S. 507, 532 (2004), (The imperative necessity for safeguarding these rights to procedural due process under the gravest of emergencies has existed throughout the constitutional history, for it is then, under the pressing exigencies of crisis, that there is the greatest of temptation to dispense with fundamental constitutional guarantees which, it is feared, will inhibit governmental action).

On August 18, 2022, the civil magistrate judge granted the petitioner's motion to proceed *in forma pauperis.*, and filed a report and recommendation stating that petitioner's civil rights claims were frivolous, justified by citing the Honorable Armstrong Trial Court's July 01, 2019, frivolous ruling, pursuant to *in forma pauperis* statute, 28 USC §1915(e)(2)(B)(i), App. (4) ¶ 1, reassigning the case to the District Court Judge for further case proceedings. *Denton v. Hernandez*, 504 U.S. 25, 32 (1992) (A court may dismiss a claim as factually frivolous only if the facts are "clearly baseless").

Without conducting any fact-findings, the civil court failed to establish the nexus from jury trial testimony of Ms. Eliina, the purported minor, or FBI

"Cyber Squad" adult decoy, who stated that she was waiting at the specific locations to meet with the petitioner. This testimony matched with the 2021 county records of FBI sting operations discovery at the same locations proving Ms. Eliina was the decoy adult of the sting operation, establishing the nexus, and the fabrication of the third element of the statute, 18 U.S.C. §2422(b), "a person under18 years of age", *United States v. Meek*, 366 F.3d 705, 718 (9th Cir. 2004).

The civil court's disregard of the county sheriff's evidence – the sting operation, reinforced the claim that with judicial overreach, federal officials had succeeded in hiding the evidence of adult decoy, in violation of Article III. This also proved that petitioner could not have persuaded or enticed a "real" minor. *United States v. Dhingra*, 371 F.3d 557, 565 (9th Cir. 2004), (Merely engaging in sexually explicit communication does not constitute a §§2422(b) violation).

Despite the civil court's judicial-group-identity fixation with the federal officials and the trial court, it continued to ignore the operational fact that the failed "sting operation did not involve a minor victim", a non-frivolous claim. See *United States. v. Meek*, 366 F. 3d 705, 717 (9th Cir. 2004); App (10). With evidence from two discoveries made almost 15 and 20 years after the trial court's jury trial, the authentic evidence from county records supported *Meek,* that proved not only Agent Esposito's FBI "Cyber Squad" sting operation had failed, but also engaged in the cover-up, a knowingly and purposely hiding of the following facts:

1. FBI "Cyber Squad" led by Agent Esposito. This 2016 discovery was revealed from the short biography of Agent Esposito at Cyber Security Conference, Copenhagen, App. (9).

2. FBI "Cyber Squad" sting operation conducted against petitioner. The 2021 discovery obtained from the records of Contra Costa County Sheriff's office, Martinez, CA has revealed the FBI Sting operation against petitioner occurred at the following locations, App. (10):

    A. Library of Los Medanos College, Pittsburg, CA
    B. Park in Pittsburg, CA.

The civil complaint dismissal failed to recognize that federal officials, used their position of power for lying in the court with no accountability or responsibility of their perjurious actions. The credible evidence from county records of two failed sting operations using an adult decoy, is credible, plausible, and authentic evidence that represents the "changed circumstances" and "change of identity" operation to fabricate the age of Ms. Eliina. *Susan. B. Anthony v. Driehaus,* 573 U.S. 149, 151 (2014), ("To establish Article III standing, a plaintiff must show, *inter alia*, an "injury in fact," which must be "concrete and particularized" and "actual or imminent", not 'conjectural' or 'hypothetical'. *Lujan v. Defenders of Wildlife*, 504 U.S. 555,560 (1992)).

Ignoring the evidence presented, the civil court dismissed petitioner's civil right claims. *See* App. (4-7), App. (8). The alleged error of the most fundamental character from the alleged perjury and false evidence presented in the trial court by respondents, is the falsehood of the age of the victim depicted less than 18 years of age. *McDonough v. Smith,* 139 S. Ct. 2149, 2152 (2019). (The claimed right is an assumed due process right not to be deprived of liberty as a result of a government official's fabrication of evidence). This fabricated evidence was an "error that permeated the entire conduct of the trial from the beginning to end or affected the framework within which the trial proceeded", *Neder v. United States*, 527 U.S. 1,7 (1999).

The civil court erred by ignoring the authentic claim of an adult FBI "Cyber Squad" operative, Ms. Eliina, fabricated as a minor at the trial court to conform to the indictment issued pursuant to the non-attempt version of the statute, 18 USC §2422(b). Therefore, petitioner claimed violations of his civil rights by the federal officials ("Respondents") for malicious prosecution. *Denton v. Hernandez*, 504 U.S. 25, 32 (1992), (For a fact-finding process, the *in forma pauperis* plaintiff's allegations and pleadings must be initially assessed favorably); (A court may dismiss a claim as factually frivolous only if the facts are "clearly baseless").

The civil rights complaint alleged perjury and obstruction of justice conducted in the Honorable Armstrong Northern District Trial Court that had

violated petitioner's civil rights. *Ashcroft v. Iqbal*, 556 U.S. 662, 664 (2009). (Under Federal Rule of Civil Procedure 8(a)(2), a complaint must contain a short and plain statement of the claim showing that the plaintiff is entitled to relief. "[D]etailed factual allegations" are not required, *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007), but the Rule does call for sufficient matter, accepted ss true, to state a claim to relief that is plausible on its face", *id.*, at 570).

A false "bill of goods" was sold to trial court by the federal officials' hiding of the FBI "Cyber Squad" and the sting operation evidence, resulting in a conviction, even as the courts have stated, without explaining, that the FBI sting operation evidence was available before, *See* App. (3) ¶ 2. *Boag v. MacDougall*, 454 U.S. 364, 365 (1982), (Construing petitioner's inartful pleading liberally, as *Haines v. Kerner*, 404 U.S. 519 (1972), instructs the federal courts to do in *pro se* actions, it states a cause of action. See *Wolf v. McDonnell*, 418 U.S. 539, 555-572 (1974). On the basis of the record before us, the high court "cannot find a sufficient ground for affirming the dismissal of the complaint").

The courts have refrained from an "intelligent" ruling - an adult decoy, was an actual recipient of enticement by petitioner and that federal officials had committed perjury. This is "inconsistent with the rudimentary demands of justice as is the obtaining of a like result [wrongful conviction] by intimidation", *Mooney v. Holohan*, 294 U.S. 103, 112 (1935).

III. THE NINTH CIRCUIT COURT PROCEEDINGS

Petitioner's permission to appeal from the dismissal of his civil rights complaint was filed on November 15, 2022, pending 59(e) motion to correct the error of fundamental character. The briefing was stayed by appeals court pending appellant's motion to appoint counsel. Petitioner filed his opening brief on June 5, 2023. Non-appearing respondents reply brief was not required. The Appeals Court affirmed the dismissal, while keeping the errors made at the lower courts intact. *See* App. (4-7).

The appeals court erred in affirming the dismissal, because the 2021 evidence proves an authentic and plausible claim. The discovery had demonstrated petitioner *in forma pauperis* civil rights complaint is neither frivolous nor malicious. *Denton v. Hernandez*, 504 U.S. 25, 32 (1992), (For a fact-finding process, the *in forma pauperis* plaintiff's allegations and pleadings must be initially assessed favorably).

The appeals court stated that the contra costa county evidence of sting operation isn't newly discovered and was previously available. App. (3) ¶ 2. Yet, no federal or state agency had provided this sting operation evidence, which would have dismissed the indictment at 2001 trial court. *United States v. Morgan,* 346 U.S. 502, 516 (1954), (The probability of a different result if the facts had been known is a prime requisite to the success of the Error *Coram Nobis* statute, 28 USC §1651(a)).

The civil court essentially repeated verbatim, the trial court ruling, "petitioner's asserted grounds for relief are rooted in fanciful notions that have no basis in fact or law". *See* App. (5) ¶ 1, referring to the 'fanciful notion' for the FBI sting operation with an adult decoy, Ms. Eliina. The falsehood and fabricated evidence of "real minor" was crafted by the federal officials, who had known that petitioner could never be charged for enticing an adult person, in the non-attempt statute, 18 U.S.C. §2422(b). In other words, the 2021 evidence and discovery clearly demonstrates 2 failed FBI sting operations from refusals to meet. *Erickson v. Pardus*, 551 U.S. 89, 93 (2007, (A plaintiff need only provide a "short and plain statement of the claim" Fed. R. Civ. P. 8(a)(2) that give[s] the defendant fair notice of what the ...claim is and the grounds upon which it rests).

The appeals court erroneously cited an inapposite, prisoner specific 3-strikes rule, 28 U.S.C. §1915(g), for affirming the dismissal of petitioner's civil complaint alleging purposely and knowingly testifying falsehood of the "real" minor at jury trial. *See* App. (3) ¶ 1, citing *O'Neal v. Price*, 531 F.3d 1146, 1153 (9th Cir. 2008).

A rehearing petition filed by petitioner on May 08, 2024, was denied on June 03, 2024, App. (8).

REASONS FOR GRANTING THE WRIT

In dismissing petitioner's rational and credible civil rights complaint, the civil court of the northern district of California has simply followed the trial court's judicial overreach. The courts have sought to keep the 2016 and 2021 discoveries hidden for the last two decades. The perjury and obstruction of justice was meant to craft unconstitutional indictment, by corrupting the non-attempt section 2422(b) and using this narrow statute in a manner that can be construed as overbroad and vague.

The distress of exposing federal official's cover-up, fabrication of evidence, and errors including perjury and obstruction of justice made at the trial court, cannot justify dismissing the civil rights complaint for violating human rights, or petitioner's US constitutional rights, Amendments - I, IV, V and VI, and violating this court's precedence, or the doctrine of *stare decisis.*

This court should grant the writ of certiorari and reverse for the following reasons:

1. The civil rights complaint is a rational, credible, and plausible non-frivolous claim of the abuse of power with knowingly corrupt federal conduct of perjury and obstruction of justice.

2. The Court should also reverse because the district court's civil rights, 28 U.S.C. §1915(e) dismissal is premised on the error of the most fundamental character by the federal officials' fabrication of a minor with judicial overreach.

3. The civil rights complaint avoids collateral attack on the criminal conviction, or isn't *Heck*-barred, from trial court's July 01, 2019, Error *Coram Nobis* ruling - "petitioner could have been convicted using the attempt, 18 U.S.C. §2422(b)", that foreclosed a new *Coram Nobis* petition under the threat of sanctions.

4. This Court should reverse because of the rationale of this Court's 1992 decision, *Denton v. Hernandez*, that allowed an indigent litigant to commence a civil action in federal court without paying the administrative costs of proceeding with the lawsuit, pursuant to the federal *in forma pauperis statute,* codified at 28 U.S.C. §1915(e).

5. This Court should reverse because of the rationale of this Court's 1989 decision, *Neitzke v. Williams*, adopting a standard when determining whether the legal basis of an *in forma pauperis* complaint is frivolous under §1915(e), which requires that a court may dismiss a claim as factually frivolous, only when the facts rise to the level of irrational or wholly incredible.

6. This Court should reverse because the Ninth Circuit erred in affirming the dismissal by ignoring this Court's holding in *Denton v. Hernandez*, 504 U.S. 25, 34 (1992), when the district court did not resolve genuine issues of discovered facts or provided a statement explaining the FBI sting operation discovery that never utilized a "real" minor, example, *Meek*, for an "intelligent appellate review".

I. THE CIVIL RIGHTS COMPLAINT PRESENTS QUESTIONS OF ABUSE OF POWER, CORRUPTION, FABRICATION OF EVIDENCE AND JUDICIAL OVERREACH

The federal agencies at the federal courts manipulated the statute, 18 U.S.C. §2422(b) in an abuse of power, while the dismissal of the civil complaint using the statute, 28 U.S.C. §1915(e) ignored the violations of the United States Constitution. Therefore, this case involves "questions whose resolution have immediate importance far beyond the facts and parties involved", *Boag v. MacDougall*, 454 U.S. 364, 368 (1982).

The attempt case, 18 U.S.C. §2422(b) of *Meek*, in which the adult decoy was truthfully declared was adjudicated in the Honorable Armstrong trial court. The trial court and all federal officials involved had known about FBI Cyber Squad, its "working with the local law enforcement and use of an adult decoy", *United States v. Meek*, 366. F.3d. 705, 709 (9th Cir. 2004).

Despite having the knowledge of FBI "Cyber Squad" in *Meek*, the trial court, in an alleged judicial overreach, had allowed the falsehood – the fabrication of minor and hiding of the FBI "Cyber Squad" for petitioner's non-attempt 18 U.S.C. §2422(b) case from the jurors at the jury trial, September 16-20, 2002. The civil complaint alleged the federal official-respondents, and the local county detective testified that petitioner had enticed a

minor, less than 18 years old for violating the non-attempt statute, 18 U.S.C. §2422(b). The 2021 county records discovery has proved this alleged falsehood, and the non-frivolous civil complaint filed. *U.S.A. v. Meek*, 366. F.3d. 705, 717 (9th Cir. 2004) n.14 (We agree that the non-obscene inducement of one adult into consensual sexual activity with another individual "known or believed to be an adult" is not within the reach of §2422(b).

Meek, an attempt section 2422(b) case, wherein the federal officials had disclosed the adult decoy. The trial court failed to notice that the federal officials could not use the attempt case against petitioner, because their sting operation had failed after petitioner refused to meet with their adult decoy twice; Ms. Eliina waiting to meet petitioner was also a failure, is already on record, see App. (11-13). Therefore, the federal officials resorted to the fabrication. *Boag v. MacDougall*, 454 U.S. 364, 365 (1982), (Construing petitioner's inartful pleading liberally, as *Haines v. Kerner*, 404 U.S. 519 (1972), instructs the federal courts to do in *pro se* actions, it states a cause of action). "[D]etailed factual allegations" are not required, *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007), but the Rule does call for sufficient matter, accepted ss true, to state a claim to relief that is plausible on its face", *id.*, at 570).

Petitioner could not be convicted in a non-attempt or direct case, 18 U.S.C. §2422(b), or the enticement of an "adult" person of the FBI sting operation. Therefore, the federal officials, with support of the trial court's judicial overreach,

knowingly conducted perjury of using "real" minor. For the purposes of denying the error *coram nobis,* the trial court's judicial overreach is demonstrated with the following error in its July 01, 2019, ruling:

"The FBI had no reason to concoct a fictitious minor. Even if the Petitioner had been conversing with an adult posing as a child, he could have been found guilty under §2422(b). *United States v. Dhingra*, cr-40144-SBA, Dkt. 160 at 12 (N.D. Cal. 2001)."

The trial court stopped short of admitting that Ms. Eliina could have been an adult. The above trial court's ruling also assumes that federal official could have committed perjury and obstruction of justice. It further stated,

"In the pretrial interview, petitioner told Agent Esposito that he "suspected 'E', [Ms. Eliina], might be a law enforcement officer". R. T. at 407; see also Decl. ¶ 18. ("At the meeting on July 10, 2000, I determined that [E] was an adult. He also advised trial counsel that he believed 'E' was an adult. *United States v. Dhingra*, cr-40144-SBA, Dkt. 160 at 6 (N.D. Cal.)."

Therefore, as per the above ruling, the trial court had known petitioner's belief of conversing with an adult person. *United States v. Dhingra*, 371 F.3d 557, 565 (9th Cir. 2004), (Merely engaging in sexually explicit communication does not constitute a §§2422(b) violation). *USA v. Jayavarman*, 871 F.3d, 1050, 1059 (9th Cir. 2007), (A "defense of mistake of age is meant to protect a defendant who after diligent investigation had formed a reasonable

belief that he was engaging in lawful and legal activity with an adult).

Heck v. Humphrey, 512 U.S. 477, 484 (1994). Petitioner's previous civil actions against 2 respondents, Agent Esposito, and Ms. Eliina were dismissed due to the *Heck*-bar. The civil court recommended that the current civil complaint is frivolous and should also be dismissed. The report fails to judicially notice that previous "frivolous" ruling was made citing *Heck*. It had previously opined that pursuant to *Heck*, the claims must be dismissed because they "rest on the implied invalidity of plaintiff's criminal conviction" *Id.*

The trial court's July 01, 2019, *Coram Nobis* ruled petitioner could have been convicted in an attempt case of section 2422(b) with an adult posing as minor. The *Coram Nobis* ruling implied that the previous civil rights claims, or the instant civil rights claims do not rest on the implied invalidity of plaintiff's conviction, and therefore, cannot be held frivolous under the *Heck*-bar, *Heck v. Humphrey*, 512 U.S. 477, 484 (1994).

II. PETITIONER'S CIVIL RIGHTS COMPLAINT IS A RATIONAL, CREDIBLE AND PLAUSIBLE, NON-FRIVOLOUS CLAIM

An attempt 18 U.S.C. §2422(b) violation occurs when a defendant entices an adult decoy posing as minor in an FBI sting operation. However,

no violation occurs when the sting operation fails due to refusals to meet with the purported minor for prohibited conduct. The lower courts' failure to stop the conduct of perjury and obstruction of justice when an adult decoy was fabricated a minor in the court to hide FBI's failed sting operation, is judicial overreach or activism, *Alexander v. Sandoval,* 532 U.S. 275, 286 (2001), (The judicial task is to interpret the statute congress has passed); Article III of the United States constitution.

The fabricated minor-victim in the court, Ms. Eliina, has been discovered an adult decoy of the FBI sting operation, after 21 years; thanks to the preserved records in the county sheriff's records. App. (10-13). The court's failure to recognize that twice petitioner proved no guilty mind, or no violation of attempt of statute 18 U.S.C. §2422(b) by refusing to meet, and that the indictment was crafted as the direct violation against an adult for the non-attempt, section 2422(b). *U.S. v. Meek,* 366 F. 3d 705, 718 (9th Cir. 2004). (The statute requires *mens rea*, that is a guilty mind; the guilt arises from the defendant's knowledge of what he intends to do).

Therefore, petitioner has claimed the FBI officials and United States prosecutors violated his civil rights by issuing a false and unconstitutional indictment, pursuant to the non-attempt 18 U.S.C. §2422(b), only made possible by fabricating a "real" minor, and proven by the 2021 discovery of the FBI sting operation. The trial court adjudicated the case, *Meek,* should have known about the alleged perjury and obstruction of justice by federal officials. The Ninth Circuit Court of Appeals did not follow their

own precedence, *USA v. Jayavarman*, 871 F.3d, 1050, 1059 (9th Cir. 2007) (Impossibility of completing the crime because the facts were not as the defendant believed is a legal defense in non-attempt cases). *United States v. Dhingra*, 371 F.3d 557, 565 (9th Cir. 2004), (Merely engaging in sexually explicit communication does not constitute a §§2422(b) violation).

The statute, 28 U.S.C. §1915(e) does not *allow* a civil court judge to ignore previously undiscovered facts presented in a civil lawsuit. The civil court reproduced the erroneous judgment from the trial court without conducting fact-findings from the newer 2021 evidence, *Denton v. Hernandez*, 504 U.S. 25, 32 (1992), (The §1915(e) frivolousness determination, frequently made *sua sponte* before the defendant has even been asked to file an answer, cannot serve as a fact-finding process for the resolution of disputed facts).

The civil court's dismissal is flatly unfaithful to the 28 U.S.C. §1915(e) purpose, pursuant to errors of fact and law. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 547 (2007), (Asking for plausible grounds does not impose a probability requirement at the pleading stage; it simply calls for enough fact to raise a reasonable expectation that discovery will reveal evidence of illegal agreement. The need at the pleading stage for allegations plausibly suggesting agreement reflects Rule 8(a)(2)'s threshold requirement that the 'plain statement' possess enough heft to "show that the pleader is entitled to relief).

The civil court ignored the perjury or non-disclosure of FBI sting operation by federal official-respondents that proves petitioner's alleged claim of perjury and obstruction of justice by federal officials at the trial court had violated petitioner's constitutional rights, U.S. Constitution, Amendment I, IV and V. Petitioner's civil "complaint invests either the action or inaction alleged with a plausible conspiracy suggestion", *Id* at 548.

III. CIVIL COURT'S DISMISSAL AND APPEALS COURT AFFIRMATION IS A MANDATE TO ADOPT THE ERRORS BY TRIAL COURT AND DISREGARD THE EVIDENCE OF THE FBI STING OPERATION

The federal official-respondents have refused to take responsibility and accountability of their illegal actions, even after the evidence obtained from the two authentic discoveries exposed their perjury and obstruction of justice –

1) the existence of FBI "Cyber Squad" (discovered, 2016) and
2) the evidence of two failed FBI Sting operations with Ms. Eliina, as their adult decoy (discovered, 2021).

The Report and Recommendation from the magistrate judge wrote, A (4) ¶ 1:

> "A district judge should dismiss the case. The plaintiff is proceeding in

> forma pauperis, and his claims are "frivolous". 28 U.S.C. §1915(e)(2)(B)(i).

Justifying this recommendation, the magistrate judge wrote, A (4) ¶ 2:

> The Ninth Circuit affirmed Dhingra's conviction, see *United States v. Dhingra*, 371 F. 3d 557, 559 (9th Cir. 2004), and Dhingra's repetitive efforts to overturn his conviction post-appeal have been characterized by this Court as "baseless". *United States v. Dhingra*, cr-40144-SBA, Dkt. 193 at 1 (N.D. Cal.). His civil actions, in which he has indirectly challenged his conviction, have fared no better and have been dismissed as "frivolous".

Dismissing the civil rights complaint, 28 U.S.C. §1915(e)(2)(B)(i) without referring to the 2021 FBI sting discovery, as the "changed circumstances" in this matter, alludes to the trial court's errors of fundamental character in Error *Coram Nobis* petition denial on July 01, 2019, for the purposes of hiding the failure of FBI "Cyber Squad" sting operation twice, that highlights the unconstitutional indictment, and corrupting the non-attempt enticement statute, 18 U.S.C. §2422(b). *Neder v. United States,* 527 U.S. 1, 7 (199), (These errors permeated the entire conduct of the trial from beginning to end or affected the framework within which the trial proceeds).

Henceforth, the alleged fraud committed with perjury and obstruction of justice at the trial court is claimed in the civil rights complaint, *Ashcroft v. Iqbal,* 556 U.S. 662, 682 (2009), (The court must take the allegations as true, no matter how skeptical the court may be).

The conduct of knowingly sexually messaging with the adult decoy of FBI "Cyber Squad" was unconstitutionally declared a prohibited act. There was no reason to fabricate the adult decoy because the attempt clause of section 2422(b) for the indictment was available, see *U.S. v. Meek,* 366 F. 3d 705, 718 (9th Cir. 2004), but for the failure of the sting operation from refusals to meet. *See* trial court's statement, "He also advised trial counsel that he believed 'E' was an adult". The statute, 42 U.S.C. §1983 allows police-misconduct victims to hold wrongdoing officers, their supervisors, and employers accountable. *Skinner v. Switzer*, 562 U.S. 521, 564 (2011), (*Held:* There is federal-court subject matter jurisdiction over Skinner's complaint, and the claim he presses is cognizable under §1983).

"Government misconduct and convicting the innocent, the role of prosecutors, police and other law enforcement, national registry of exonerations, September 1, 2020". This registry lists a total of 2400 cases as of February 27, 2019. In 1296 of those cases, 54%, misconduct by government officials contributed to the defendants' wrongful convictions.

Secondly, the civil rights complaint alleged obstruction of justice by federal respondents changing Ms. Eliina's identity to depict her age as

less than 18 years of age. This is self-evident, from the sting operation discovery. The FBI would never use a "real" child or put them in harm's way. *Ashcroft v. Iqbal,* 556 U.S. 662, 682 (2009), (Under *Twombly*, the relevant question is whether, assuming the factual allegation are true, the plaintiff has stated a ground for relief that is plausible. That is, in Twombly's words, a plaintiff must "allege facts" that, taken as true, are "suggestive of illegal conduct". *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 564 n.8 (2007)).

IV. THE CIVIL COURT FAILED TO PROVIDE AN "INTELLIGENT" STATEMENT TO EXPLAIN THE DISMISSAL

The civil court erred by failing to conduct fact-findings from the 2021 Contra Costa County Sheriff's evidence presented, before ruling for the dismissal of the civil complaint. The erroneous trial court's ruling, July 01, 2019, was solely and wholly reproduced by the civil court for the dismissal of the civil complaint, App. (4-7). *Tolan v. Cotton*, 572 U.S. 650, 652 (2014) (We instead vacate the Fifth Circuit's judgment so that the court can determine whether, when Tolan evidence is properly credited and factual).

A. The civil court erred in its dismissal judgment by failing to explain the FBI sting operation discovery

The civil district court and previously, the trial court, did not conduct any fact-findings or referred to

the 2021 FBI sting operation from the county records, even after it had known this fact, in the case of *Meek*. It also failed to explain petitioner's *mens rea*, i.e., refusal to meet with the purported minor for prohibited sexual conduct, see App. (11-13). "The statute [18 U.S. C. §2422(b)] requires *mens rea*, that is a guilty mind", *U.S. v. Meek,* 366 F. 3d 705, 718 (9th Cir. 2004). (The guilt arises from the defendant's knowledge of what he intends to do). As reported in FBI's 301 report of chat messaging with several adults, petitioner only wanted to meet or have an adult companionship. *Denton v. Hernandez*, 504 U.S. 25, 32-33 (1992), (An *in forma pauperis* complaint may not be dismissed, however, simply because the court finds the plaintiff's allegations unlikely).

The lower courts did not review the 2021 FBI sting operation discovery from county records because this evidence was meant to have been kept a secret during the court proceedings. Therefore, it has been treated a secret for this civil case too. The lower courts were not open to this discovery because it could force them to acknowledge the previous judicial overreach in accepting government fabrication for the 2001-2002 and 2019-2020 trial court rulings. This is "inconsistent with the rudimentary demands of justice as is the obtaining of a like result [wrongful conviction] by intimidation", *Mooney v. Holohan*, 294 U.S. 103, 112 (1935).

Henceforth, the 2016 and 2021 discoveries did not facilitate an "intelligent" appellate review. Even a high school kid could identify the factual

errors made by lower courts, but not this civil court or the appeals court, App. (1-7). *Denton v. Hernandez*, 504 U.S. 25, 34 (1992) (In reviewing a §1915(e) dismissal for abuse of discretion, it would be appropriate for the Court of Appeals to consider, whether the court has provided a statement explaining the dismissal that facilitates "intelligent appellate review"; and "whether the dismissal was with or without prejudice"). The ninth circuit court disregarded the "intelligent appellate review" requirement from this court, *Id.*

The civil court failed to make the following "common sense" or "intelligent" statements in its report and recommendation –

In 2002, a deliberate deception of trial court and jury was conducted with the presentation of testimony known to be perjured for convicting petitioner, of using the internet to solicit sexual activity from an FBI "Cyber Squad" adult decoy, that was not in violation of the direct or non-attempt, 18 U.S.C. §2422(b), App. (9-13), *Id.*

B. The civil court erred in their dismissal judgment with "no ruling" for ineffective assistance of counsel

The appeals court erred by stating the 2021 sting operation evidence was previously available, App. (10), without rationalizing the defense counsel and federal officials' failure to bring the sting operation evidence of July 2000, to the attention of the trial court. The defense counsel failed to call for

evidentiary hearing or inform the court at the pre-trial hearing before the 2002 jury trial, *Strickland v. Washington*, 466 U.S. 668, 586 (1984) (...counsel conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result).

The Federal Public Defender's investigation of prosecution's case and possible defenses are recognized as a core function of defense counsel at the trial court. This function of the Defense Counsel has been constitutionalized as the Sixth Amendment duty to "make reasonable investigations", *Strickland v. Washington*, 466 U.S. 668, 691 (1984).

C. The civil court erred in its dismissal judgment with a speculative statement regarding the petitioner's fourth amendment rights claim

The following speculative and arbitrary statement from the civil court, without any basis or reasoning, is self-evident, App, 5 ¶ 1:

> "Finally, as for Dhingra's allegations that FBI agents moved in next door, rented a room in his house, and placed undercover operatives in his Airbnb guest room in order to rifle through his papers and emails more than a decade after his conviction, *see* Compl. ¶¶ 37-45, ¶¶ 113-26, these allegations, especially in light of Dhingra's litigation history and the remainder of his complaint, are "fanciful".

Without referring to the specific facts and parties that is alleged to have violated petitioner's fourth amendment rights, it is well known that such conduct if proven, violates "the right of a U.S. citizen to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures", *Bivens v. Six unknown named agents of Fed. Bureau of Narcotics*, 403 U.S. 388, 389 (1971).

The Fourth Amendment protection right guarantees to citizens of the United States the absolute right to be free from unreasonable searches and seizures carried out by the virtue of the federal authority. *Bivens v. Six unknown named agents of Fed. Bureau of Narcotics*, 403 U.S. 388, 392 (1971) (where the federally protected rights have been invaded, it has been the rule from the beginning that courts will be alert to adjust their remedies so as to grant the necessary relief, *Bell v. Hood*, 327 U.S. 627, 684 (1946)).

V. SECTION 1915(E)(2)(B)(i) DISMISSAL IS NOT PERMISSIBLE FOR A STATUTE APPLIED WITH VIOLATIONS OF THE UNITED STATES CONSTITUTION

Even beyond the many prudential and judicial concerns outlined above, there are also strong constitutional reasons why the non-attempt version of section 2422(b) and section 1915(e)(2)(B)(i) do not apply to Petitioner's conduct, who has provided a non-frivolous claim of an adult that he had enticed, and for which he was wrongfully convicted.

Henceforth, the errors at lower court pursuant to fabrication of evidence of a minor-victim is not only used in the manner consistent with fraud and corruption of §2422(b) in the court, but also violated the structure of US Constitution, Amendment V, due process, and Amendment I, overbreadth doctrine.

The "overbreadth doctrine", as applied here, holds that the fraudulent government action of fabricating a minor, constituted an overbroad non-attempt, section 2422(b), violating the U.S. Constitution, Amendment I. Using the non-attempt §2422(b) punished the "constitutionally protected activity of sexual speech with an adult", Ms. Eliina, in addition to the activity it is intended to prohibit or punish, that is, sexual speech with an actual minor. *United States v. Booker*, 543 U.S. 220, 314 (2005) (When a litigant claims that a statute is unconstitutional as applied to him, and the statute is in fact unconstitutional as applied, we normally invalidate the statute only as applied to the litigant in question).

The federal officials allegedly crafted an unconstitutionally vague indictment by corrupting the narrow statute, non-attempt section 2422(b) with fabrication of minor, that punished or wrongfully convicted the knowingly intended activity of sexual speech with an actual adult, intended only to punish sexual speech with a "real" minor. Therefore, petitioner's civil rights were infringed, with judicial overreach for supporting the government fabrication or suppressed evidence, *Id.*

It is already established from precedence, that section 1915(e)(2)(B)(i) dismissal is not permissible, for a civil rights violation complaint when the prosecutors fabricate and suppress evidence favorable to petitioner, *Brady v. Maryland*, 373 U.S. 83, 87 (1963) (*Held*: the suppression by the prosecutor of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith of the prosecution).

In Federalist No. 78, Alexander Hamilton argued that the judiciary provides a necessary check on the other branches of government and helps to ensure that they do not act arbitrarily or oppressively. It includes the importance of the judiciary in preventing government overreach and protecting individual rights.

The prosecutors and investigators are required to inform the court that an adult FBI "Cyber Squad" operative was used as a minor. Federal Rule of Criminal Procedure, Rule 12.3, "Duty to disclose and identify a witness of the federal intelligence agency as a source of public authority". The federal officials will not qualify for immunity, because the alleged function of knowingly making false, fabricated, and malicious statements is not within the exercise of federal officials' duties. *Buckley v. Fitzsimmons*, 509 U.S. 259, 268 (1993) (The falsehood and fabrication of evidence made in a federal court is a violation of "clearly established statutory or constitutional rights of which a reasonable person would have known, *Harlow v. Fitzgerald*, 457 U.S. 800, 807 (1982)").

Finally, section 1915(e)(2)(B)(i) cannot be used to deny or dismiss petitioner's rational claims filed *in forma pauperis* against the federal officials-respondents. *Neitzke v. Williams*, 490 U.S. 319, 322-23 (1989) (The frivolousness standard authorizing *sua sponte* dismissal of an in forma pauperis complaint "only if the petitioner cannot make any rational argument in law or fact which would entitle him or her relief (*citation omitted*). Unless there is "indisputably absent any factual or legal basis" for the wrong asserted in the complaint, the trial court, "[i]n a close case" should permit the claim to proceed at least to the point where responsive pleadings are required).

The trial court has suggested that the prior conviction under non-attempt section 2422(b) was unconstitutional, when it held that, "Petitioner could have been convicted under the attempt statute of section 2422(b)", *United States v. Dhingra*, 01-cr-40144-SBA (N.D. Cal. 2001), Dkt. 160 at page 12. Conviction under the both the attempt and non-attempt, section 2422(b) for the same conduct, is also unconstitutional. *Gamble v. United States*, 587 U.S. 678, 679 (2019). (The Double Jeopardy Clause protects individuals from being "twice put in jeopardy" "for the same offence.").

The civil rights complaint alleged the non-attempt violation of section 2422(b) against an adult posing as minor, not under "18 years of age", is unconstitutional. *United States v. Booker*, 543 U.S. 220, 230 (2005) (Constitution gives a criminal defendant the right to demand that a jury find him

guilty of all the elements of the crime with which he is charged).

The fact that prosecutors could fabricate the third element - "less than 18 years of age", for the direct, non-attempt, section 2422(b) to mislead the trial court and the jury, has "shocked the conscience", a standard developed to measure the "cognizable level of executive abuse of power". *District Attorney's Office v. Osbourne*, 557 US 52, 79 (2009) (The touchstone of due process is protection of the individual against arbitrary action of government. When government action is so lacking in justification that it "can properly be characterized as arbitrary, or conscious shocking, in a constitutional sense").

CONCLUSION

For the foregoing reasons, Petitioner, Rakesh Dhingra respectfully requests this Supreme Court of the USA issue a writ of certiorari to review the judgment of the Ninth Circuit Court of Appeals.

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