

No. _____

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

APPENDIX

RAKESH DHINGRA
Petitioner, *Pro Se*
413 Taurus Street,
Mission, TX 78572
Phone: 510-592-4106
rockydh77@gmail.com

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FILED: March 25, 2024

**NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

No. 22-16774
D.C. No. 3:22-cv-02207-CRB

RAKESH DHINGRA,
Plaintiff-Appellant,

v.

CHARLES ESPOSITO, "Chuck"; ELIINA
STEPHENSON, AKA Eliina N. Belenkiy,
AKA Eliina Keitelman; FBI DIRECTOR,
Washington, DC; BRIAN STRETCH,
AUSA; JEROME MATTHEWS, FPD; TOM
C. SHARPE; ABDUL RAFIQI, FBI;
FRANZ P. CORRALES, FBI; NANCY L.
MAY, FBI; RAZI SHABAN, FBI; SIMONA
M. ASINOWSKI, FBI,
Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of California
Charles R. Breyer, District Judge, Presiding

Submitted March 20, 2024**
San Francisco, California

MEMORANDUM*

Before: FRIEDLAND, SANCHEZ, and H.A.
THOMAS, Circuit Judges.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

Plaintiff-Appellant Rakesh Dhingra appeals the district court's order dismissing his case as frivolous. We have jurisdiction under 28 U.S.C. § 1291 based on the district court's entry of final judgment. We affirm.

1. In 2002, a jury convicted Rakesh Dhingra of using the internet to solicit sexual activity from a minor, in violation of 18 U.S.C. § 2422(b). We affirmed Dhingra's conviction two years later. *United States v. Dhingra*, 371 F.3d 557, 559 (9th Cir. 2004). Dhingra then launched "repetitive and baseless" efforts to overturn his conviction post-appeal. See *United States v. Dhingra*, 01-cr-40144-SBA, Dkt. No. 193, at 1 (N.D. Cal. Aug. 27, 2021). He has also filed multiple civil actions indirectly challenging his conviction, which the district court has dismissed as "frivolous." See *Dhingra v. United States*, No. C 16-03803 SBA, 2016 WL 5394117, at *2 (N.D. Cal. Sept. 27, 2016), *aff'd*, 2017 WL 6028628, at *1 (9th Cir. May 17, 2017); *Dhingra v. Belenkiy*, No. C 16-06827 SBA, 2017 WL 995366, at *3 (N.D. Cal. Mar. 15, 2017); *Dhingra v. United States*, No. C 16-03803 SBA, 2019 WL 248907, at *2 (N.D. Cal. Jan. 17, 2019).

2. A "district court must dismiss a [plaintiff's] in forma pauperis case 'at any time' if the court

determines that the action is (i) ‘frivolous or malicious’; (ii) ‘fails to state a claim on which relief may be granted’; or (iii) ‘seeks monetary relief against a defendant who is immune from such relief.’” *O’Neal v. Price*, 531 F.3d 1146, 1153 (9th Cir. 2008) (quoting 28 U.S.C. § 1915(e)(2)(B)); *see also Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (“It is . . . clear that section 1915(e) not only permits but requires a district court to dismiss an in forma pauperis complaint that fails to state a claim.”). We review the district court’s denial of leave to amend for abuse of discretion. *See Yakama Indian Nation v. Washington Dep’t of Revenue*, 176 F.3d 1241, 1246 (9th Cir. 1999).

The district court properly dismissed Dhingra’s present case as “frivolous” under 28 U.S.C. § 1915(e)(2)(B)(i). Dhingra again alleges that “the victim of his crime wasn’t a minor and was a decoy working with an FBI ‘Cyber Squad,’” violating his constitutional rights to due process. Dhingra continues to provide “no evidence to support this fiction.” Further, Dhingra presents no newly discovered or previously unavailable evidence that might warrant further review of his previously rejected constitutional claims. *See Dhingra*, 371 F.3d 557; *Dhingra*, 2016 WL 5394117, *aff’d*, 2017 WL 6028628; *Dhingra*, 2019 WL 248907. The district court did not abuse its discretion in dismissing Dhingra’s frivolous case without leave to amend.

AFFIRMED.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Case No. 22-cv-02207-AGT

RAKESH DHINGRA,
Plaintiff,
v.

CHARLES ESPOSITO, et al.,
Defendants.

REPORT AND RECOMMENDATION

A district judge should dismiss this case. The plaintiff is proceeding *in forma pauperis* and his claims are “frivolous.” 28 U.S.C. § 1915(e)(2)(B)(i).

In 2002, a jury convicted Rakesh Dhingra of using the internet to solicit sexual activity from a minor, in violation of 18 U.S.C. § 2422(b). 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*, 01-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.” *Dhingra v. United States*, No. 16-cv-03803-SBA, Dkt. 6 at 4 (N.D. Cal.), *aff’d*, 2017 WL 6028628, at *1 (9th Cir. May 17, 2017); *Dhingra v. Belenkiy*, 16-cv-06827-SBA (N.D. Cal.), Dkt. 13 at 5; *Dhingra v. United States*, 18-cv-06627-SBA (N.D. Cal.), Dkt. 21 at 5.

This civil action is materially the same as the others. Dhingra recycles a claim he made in each of the cases cited above—that the victim of his crime wasn’t a minor and was a decoy working with an FBI “Cyber Squad.” Compl. ¶ 1. The Court previously held there was “no evidence to support this fiction,” 01-cr-40144-SBA, Dkt. 179 at 4 (emphasis omitted), and that remains the case today. Dhingra also continues to insist that he hasn’t used his culture as a defense. See Compl. ¶¶ 103–07. The Court already held otherwise. See 01-cr-40144-SBA, Dkt. 160 at 9 (“Indeed, alt-hough Petitioner claims he did not use his Indian culture as a defense, he *continues* to invoke his background to explain his conduct.”) (emphasis in original). 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.” *Denton v. Hernandez*, 504 U.S. 25, 33 (1992); cf. *Dhingra*, 01-cr-40144-SBA, Dkt. 179 at 6 (“[Dhingra] continues to misrep-resent the so-called new evidence (as well as this Court’s prior orders), and his asserted grounds for relief are rooted in fanciful notions that have no basis in fact or law.”).

Dhingra’s case should be dismissed. Any party may object to this report and recommenda-tion but must do so within fourteen days of being served with a copy of it. See 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b). The Clerk of the Court is directed to reassign this case to a district judge.

IT IS SO ORDERED.

Dated: August 18, 2022

/s/ Alex G. Tse
United States Magistrate Judge

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

Case No. 22-cv-02207-AGT

RAKESH DHINGRA,
Plaintiff,
v.

CHARLES ESPOSITO, et al.,
Defendants.

**ORDER ADOPTING REPORT AND
RECOMMENDATION AND DISMISSING CASE**

The Court has carefully reviewed the Report and Recommendation filed by Magistrate Judge Alex G. Tse in this matter, see R&R (dkt. 7), as well as the objection (dkt. 10) and letter (dkt. 11) filed by pro se Plaintiff Rakesh Dhingra. The Court finds the R&R correct, well-reasoned, and thorough. As the R&R concludes, the lawsuit is frivolous and seeks to re-litigate arguments that have been rejected repeatedly. See R&R at 1 (citing *United States v. Dhingra*, 01- cr-40144-SBA, Dkt. 193 at 1(N.D. Cal)) ("Dhingra's 'repetitive' efforts to overturn his conviction post-appeal have been characterized by this Court as 'baseless.'").

Accordingly, the Court DISMISSES this case.
IT IS SO ORDERED.

Dated: September 15, 2022

/s/ CHARLES R. BREYER
United States District Judge

FILED: June 3, 2024

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

No. 22-16774

D.C. No. 3:22-cv-02207-CRB
Northern District of California,
San Francisco

RAKESH DHINGRA,
Plaintiff-Appellant,

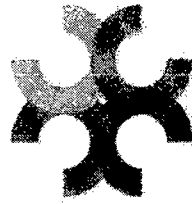
v.

CHARLES ESPOSITO, "Chuck"; et al.,
Defendants-Appellees.

ORDER

Before: FRIEDLAND, SANCHEZ, and H.A.
THOMAS, Circuit Judges. J

udges Friedland, Sanchez, and Thomas voted to deny Appellant's motion for a stay of the mandate, petition for panel rehearing, and petition for rehearing en banc. The full court has been advised of the petition for rehearing en banc, and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35. Accordingly, Appellant's motion for a stay of the mandate, petition for panel rehearing, and petition for rehearing en banc, filed May 8, 2024 (Dkt. 19), are **DENIED**.

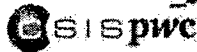


Copenhagen Cybercrime Conference 2014

12.06.2014



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Speakers



Jan Kaastrup
CTO & Partner
CSIS

Jan's interest in IT security began in 1998 when he worked in Denmark's first IT security company. Since then he has gained security experience in both large and medium-sized Danish as well as multinational corporations. On a daily basis, Jan Kaastrup is a partner and CTO of CSIS, specialized in cybercrime and supplier of eCrime intelligence for the financial sector in European countries.



Chuck Esposito
Assistant Legal Attaché
FBI

FBI Supervisory Special Agent Chuck Esposito is an Assistant Legal Attaché assigned to the U.S. Embassy in Copenhagen. Prior to arriving in Copenhagen in August 2013, he was a Unit Chief in the FBI's Cyber Division and prior to that he led a cyber squad in the FBI's San Francisco Field Office. Chuck has a Bachelor's Degree in Computer Science and 30 years of law enforcement experience.

Gmail

Your Online Police Report T21001720 Has Been Rejected

Sun, Oct 24, 2021 at 12:36 PM

Laurie Bailey <lbail@so.cccounty.us>
To: rakeshdh <rakeshdh@gmail.com>

Hello Mr. Dhingra,

I looked over your Coplogic report. It seems that you were 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. The Community College police took a report, which you referenced. If you have a complaint about the incident, you will have to contact the parties involved, namely the FBI and/or the Community College Police. You may also contact the District Attorney's office should you choose. The Contra Costa Sheriff's Office is not involved in this incident in any way.

Sgt. Laurie Bailey

Transcript Excerpt:

ELIINA - DIRECT / STRETCH

1 RETAINED, WHETHER THERE WAS ANY TYPE
OF SEXUAL DISCUSSION IN

2 THOSE?

3 A THERE WASN'T.

4 Q DID YOU HAVE ANY DISCUSSIONS ONLINE
ABOUT GETTI NG TOGETHER

5 WI TH THE PERSON?

6 A .YES.

7 Q OKAY. WAS THERE MORE THAN ONE
MEETING SET UP?

8 A YES.

9 Q OKAY . DO YOU RECALL WHAT THE FIRST
ONE WAS?

10 A AT THE COLLEGE. IN THE STUDY HALL.

11 Q WERE YOU THERE?

12 A YES .

13 Q OKAY. TO YOUR KNOWLEDGE, DO YOU
KNOW IF THE DEFENDANT WAS

14 THERE?

15 A HE WASN' T .

16 Q OKAY. WAS THERE ANOTHER MEETING
SET UP?

17 A YES .

18 Q WHERE WAS THAT TO BE?

19 A IN PITTSBURG.

20 Q OKAY. AND DID YOU MEET HIM THERE?

21 A NO .

22 Q WHEN WAS THAT?

23 A I CAN 'T REMEMBER THE EXACT DATE.

24 Q OKAY . DID YOU GO TO THE PLACE YOU
WERE SUPPOSED TO MEET?

25 A YES. THAT'S WHERE I WAS SPENDING
THE DAY.

ELIINA - CROSS / MATTHEWS

1 Q WOULD YOU PULL UP GOVERNMENT'S
EXHIBIT 3, PLEASE, WHICH IS
2 ALSO IN EVIDENCE. I'M SORRY. RD114.
3 AT SOME POINT DURING THE
CONVERSATION YOU TOLD HIM
4 THAT YOU WANTED TO -- YOU ASKED HIM IF
HE WOULD COME TO
5 LOS MEDANOS COLLEGE THAT EVENING?
6 A YES.
7 Q OKAY. CAN YOU HIGHLIGHT THAT? ALL
RIGHT. AND ROCKY NEVER
8 SHOWED UP TO THAT MEETING, DID HE?
9 A NO.
10 Q OKAY. REBECCA, WOULD YOU PULL UP
GOVERNMENT EXHIBIT 4,
11 PAGE RD118. ALL RIGHT.
12 FIRST, LET'S TAKE A LOOK AT THE VERY
TOP OF THIS
13 INSTANT MESSAGE. IT LOOKS LIKE TIME
STAMP CORRECT? THIS IS
14 ABOUT 1:00 A.M. IN THE MORNING, A
LITTLE BIT AFTER.
15 A YES.
16 Q ANY REASON TO THINK THAT TIME IS
INCORRECT?
17 A NO.
18 Q PARENTS NORMALLY ASLEEP BY 1:00
O'CLOCK?
19 A YES.

20 Q IS THAT WHY YOU WERE CARRYING ON
THESE CONVERSATIONS THAT
21 LATE AT NIGHT SO YOU COULD CONVERSE
FREELY?

22 MR. STRETCH: OBJECTION, YOUR HONOR,
RELEVANCE.

23 THE COURT: RELEVANCE OBJECTION IS
OVERRULED.

24 By MR. MATTHEWS:

25 Q PLEASE ANSWER THE QUESTION.