No. 24-6243 ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES OF AMERICA.

A. K. ANDERSON,

Appellant,

v.

THE HON. MIGUEL CARDONA, as Secretary of Education, SAN BERNARDINO COMMUNITY COLLEGE DISTRICT, a Community College District, STEVEN GORDON, as Director, Department of Motor Vehicles,

Appellees.

Case No.:
(9th Cir. No. 22-55328 (9th Cir. 2024))
(U. S. D. C., C. D. Cal. No. 5:20-cv-1824-VAP(SP) (C. D. Cal. 2021))

PETITION FOR WRIT OF CERTIORARI.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS OF THE NINTH CIRCUIT

A. K. ANDERSON
P. O. Box 1334
San Bernardino, CA., 92402
Appellant in Pro Se

QUESTION PRSENTED FOR REVIEW.

Did the Ninth Circuit conflict with a ruling from the Eighth Circuit as to whether his Appeal with the Department of Education should have proceeded, and also did the Ninth Circuit rule contrary to its own decisions, and the decisions of this Court?

CORPORATE DISCLOSURE STATEMENT.

None of the parties is either a corporation or any other financial entity.

STATEMENT OF RELATED CASES.

In order to determine any further issue of recusal, this case is involved with the following cases:

A. *K. Anderson v. Michael Carmona,* United States District Court, Central District of California Case No. 5:20-cv-1824-VAP(SP). Petitioner is the Plaintiff in that case.

A. *K. Anderson v. Michael Carmona,* United States Court of Appeals for the Ninth Circuit Case No. 22-55328. Petitioner is the Appellant in that case.

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The Judgment was granted against Petitioner in the case of *Anderson v. Cardona,* Ninth Circuit No. 22-55328, on July 8, 2024, and is unreported.

STATEMENT OF JURISDICTION.

The District Court had jurisdiction pursuant to 28 U. S. C., §§1331, 1343, and 1367. The Ninth Circuit has jurisdiction pursuant to 28 U. S. C., §1291. This Court has jurisdiction pursuant to 28 U. S. C., §1257. Petitioner is seeking to review the Judgment, entered on July 8, 2024 (Apx. 1a-5a).

STATUORY PROVISIONS.

United States Constitution. Fourteenth Amendment, §1; 42 U.S.C., §§1983, 1985(3).

STATEMENT OF THE CASE.

On September 1, 2020, Petitioner filed his Complaint (Dock. No. 1).

On March 22, 2021, Appellee Steven Gordon filed his Motion to Dismiss (Dock. No. 25).

On March 29, 2021, Appellee Cardona filed his Motion to Dismiss (Dock. No. 28).

On March 30, 2021, Appellee San Bernardino Community College District filed its Motion to Dismiss (Dock. No. 29).

On July 31, 2018, the District Court dismissed Appellant's Complaint without leave to amend (App. 25a).

The Notice of Appeal was timely filed on August 28, 2018 (Dock. No. 7).

The Ninth Circuit ruled against Petitioner (Apx. 1a-5a).

Petitioner filed a timely Petition for Rehearing En Banc on July 22, 2024 (9th Cir. Dock. No. 42).

The Ninth Circuit denied the Petition for Rehearing En Banc on September 18, 2024 (App. 26a).

REASONS FOR GRANTING THE PETITION.

I. THE DECISION IS IN CONFLICT WITH THE DECISION OF THE EIGHTH CIRCUIT IN THAT PETITIONER'S APA CAUSE OF ACTION AGAINST RESPONDENTS CARMONA AND SAN BERNARDINO COMMUNITY COLLEGE DISTRICT IS TIMELY AND PROPERLY EXHAUSTED.

Petitioner A. K. Anderson filed this Action below in that he did not yet exhaust any remedy to the Department of Education. He did do so, and filed that Cause of Action within the six-year statute of limitations ***of the Denial of the July 1, 2019 Appeal***. Because it was properly exhausted, the Government and District cannot evade with any other excuse to get out of this lawsuit.

The case of *Cobb v. United States Department of Education Office of Civil Rights,*

Civil File No. 05-2439 (MJD/AJB), at ***14-15** (D. Minn. 2006), explains that:

> "Plaintiffs' Complaint alleges several theories of injury. First, Plaintiffs contend that the female hockey players suffered gender discrimination as a result of OCR's failure to investigation and monitor Plaintiffs' complaints. (Compl. ¶ 95.) This is certainly a cognizable injury. The Supreme Court has recognized that the denial of benefits on the basis of gender stigmatizes the disfavored class. In *Heckler v. Mathews,* the Supreme Court held that discrimination, 'by perpetuating "archaic and stereotypic notions" or by stigmatizing members of the disfavored group as "innately inferior" and therefore as less worthy participants in the political community, can cause serious non-economic injuries to those persons who are personally denied equal treatment solely because of their membership in a disfavored group.' *Heckler,* 465 U.S. at 739-40 (citation omitted); *see also Roberts v. United States Jaycees,* 468 U.S. 609, 625 (1984) (finding that stigmatizing injury 'deprives persons of their individual dignity and denies society the benefits of wide participation in political, economic and cultural life.')."

Here, the Government cannot refuse or decline Petitioner's discrimination. Petitioner has sued both the Secretary and the District, and the Motion to Dismiss should be denied on this basis.

II. PETITIONER MAY STILL PROCEED UNDER THE SECOND AND THIRD CAUSES OF ACTION AGAINST THE DOE DEFENDANTS IN THAT THEY UNCONSTITUTIONALLY DEPRIVED PLAINTIFF OF HIS DRIVER'S LICENSE FOR 13 YEARS BASED ON NON-EXISTENT DIAGNOSES OF A "SEIZURE DISORDER".

It is clear that Plaintiff is not suing Defendant Gordon personally for his Department's actions in depriving Plaintiff of his driver's license for the previous 13 years. Plaintiff would request disclosure of the names of persons employed by the DMV who took it upon themselves to deprive Plaintiff of his driver's license. Plaintiff never suffered from epilepsy or any other seizure disorder.

III. ONCE THE DMV GAVE PETITIONER BACK HIS DRIVER'S LICENSE, THE DMV CANNOT SAY HE WAS NOT QUALIFIED TO HOLD A DRIVER'S LICENSE, ESPECIALLY AFTER DEPRIVING HIM OF SUCH BECAUSE OF A NON-EXISTENT DIAGNOSIS.

The DMV gave Petitioner back his driver's license on May 10, 2019, after depriving him of such for 13 years. The DMV based this information on the words of his drunken ex-wife, and malpracticing doctors working on her behalf. ***Petitioner never, ever, had a seizure disorder, PERIOD-END.*** Because of the illegal deprivation of his driver's license, he is entitled to bring his claims to Court.

The case of *Cinquegrani v. Dept. of Motor Vehicles* (Cal. App. 2 Dist. 2008) 163 Cal.App.4th 741, 750, explains that:

> "... A driver's license cannot be suspended without due process of law. (*Bell v. Burson* (1971) 402 U.S. 535, 539 [29 L.Ed.2d 90, 91 S.Ct. 1586].) The DMV must issue licenses to those who are lawfully

> entitled to them. (§12811, subd. (a)(1)(A).) Once a license issues, an administrative decision to suspend or revoke it affects a fundamental right. (*Smith v. Department of Motor Vehicles* (1986) 179 Cal.App.3d 368, 373, fn. 2 [224 Cal.Rptr. 543].)."

Once the DMV reissued Petitioner's Driver's license on May 10, 2019, the DMV cannot use a prior Opinion and state that Petitioner was and maybe still is disqualified when he never was suffering from any seizures of any kind to begin with. Again, ***Petitioner NEVER, ever had a seizure!*** The DMV cannot stick to it's false story that Petitioner had a "seizure", then give him back his license after 13 years.

IV. PETITIONER STATED A CAUSE OF ACTION UNDER 42 U. S. C., §§1983, AND 1985(3).

The case of *Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit,* 507 U.S. 163, 168, 113 S.Ct. 1160, 122 L.Ed.2d 517 (1993), as explained by the late Hon. William H. Rehnquist, Chief Justice of the United States, in a unanimous opinion that:

> "***We think that it is impossible to square the 'heightened pleading standard' applied by the Fifth Circuit in this case with the liberal system of 'notice pleading' set up by the Federal Rules.*** Rule 8(a)(2) requires that a complaint include only 'a short and plain statement of the claim showing that the pleader is entitled to relief.' In *Conley v. Gibson,* 355 U.S. 41, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957), we said in effect that the Rule meant what it said:
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> > "'***[T]he Federal Rules of Civil Procedure do not require a claimant to set out in detail the facts upon which he bases his claim.*** To the contrary, all the Rules require is "a short and plain statement of the claim" that will give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests.' Id., at 47, 78 S.Ct., at 103 (footnote omitted).

> "Rule 9(b) does impose a particularity requirement in two specific instances. It provides that '[i]n all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity.' Thus, the Federal Rules do address in Rule 9(b) the question of the need for greater particularity in pleading certain actions, but do not include among the enumerated actions any reference to complaints alleging municipal liability under § 1983. *Expressio unius est exclusio alterius.*" (Emphasis added.)

Here, the Supreme Court has not made any rule changes as to how a Complaint is required to be pleaded. ***Citation of the case, cited as "Ebner v. Fresh, Inc., 838 F.3d 958, 962–63 (9th Cir. 2016)", does NOT exist in the Federal Reporter, Third Series. If the panel would have "done it's homework", they should have stuck with proper Supreme Court precedent, and liberally construed the Complaint as stating a Cause of Action.*** The case of *Pacific Coast Federation of Fishermen's Assocs., v. Glaser,* https://cdn.ca9.uscourts.gov/datastore/opinions/2019/12/20/17-17130.pdf, at p. 18 (9th Cir. 2019), also explains that:

> "'Rule 8's liberal notice pleading standard . . . requires that the allegations in the complaint "give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests."' *Pickern v. Pier 1 Imports (U.S.), Inc.,* 457 F.3d 963, 968 (9th Cir. 2006) (quoting *Swierkiewicz v. Sorema N.A.,* 534 U.S. 506, 512 (2002)). 'A party need not plead specific legal theories in the complaint, so long as the other side receives notice as to what is at issue in the case.' *Am. Timber & Trading Co. v. First Nat'l Bank of Oregon,* 690 F.2d 781, 786 (9th Cir. 1982). But if 'the complaint does not include the necessary factual allegations to state a claim, raising such claim in a summary judgment motion is insufficient to present the claim to the district court.' *Navajo Nation v. U.S. Forest Serv.,* 535 F.3d 1058, 1080 (9th Cir. 2008)."

Here, Respondent Gordon and his Department has notice of what the Complaint alleges.

V. RESPONDENT GORDON SHOULD FILE HIS ANSWER TO ASSERT QUALIFIED IMMUNITY, EVEN THOUGH HE IS NOT ENTITLED TO IT.

Respondent Gordon and the DMV are not entitled to qualified immunity before accepting the malpracticing doctors' say-so. Petitioner was not given a true evidentiary hearing over the false diagnoses, and if any, they were a sham, since ***Petitioner never, ever, had a seizure disorder, PERIOD-END.***

Modem Supreme Court doctrine on due process and administrative review is typically traced to the case of *Goldberg v. Kelly*, 397 U.S. 254 (1970), which the United States Supreme Court has since decided. The Court in *Goldberg* addressed whether the state could terminate welfare payments without providing the opportunity for an evidentiary hearing before the deprivation. In *Goldberg,* individuals facing termination of welfare payments were provided with informal pre-termination review procedures. However, the pre-termination review did not include many of the traditional procedural safeguards such as the opportunity for personal appearance, oral presentation of evidence, or confrontation and cross-examination of adverse witnesses. Instead, individuals whose payments were terminated were entitled to a post-deprivation "fair hearing."

The Court focused its analysis on whether the Due Process Clause of the Fourteenth Amendment requires a hearing before welfare benefits can be terminated. The Court acknowledged that termination of welfare benefits involved "state action" and characterized welfare payments as "property" that could not be arbitrarily withdrawn by the government. The Court noted that due process analysis requires consideration of the extent to which a person may be "condemned to suffer grievous loss." Given that welfare provides "the means to obtain essential food, clothing, housing, and medical care," the Court viewed the

termination of such benefits as a potential "grievous loss"' that clearly triggers due process protection.

Addressing the question of what process is due, the Court held that a pre-deprivation evidentiary hearing must be provided before benefits can be terminated. At the hearing, the recipient is entitled to most, but not all, of the traditional procedural safeguards of a formal judicial trial. For example, the recipient is entitled to receive timely and adequate notice detailing the reasons for termination; an opportunity to appear personally before the decisionmaker and to present arguments and evidence orally; an opportunity to confront and cross-examine adverse witnesses; the right to retain an attorney at personal expense; a statement by the decisionmaker indicating the reasons for the determination and the evidence relied upon; and review by an impartial decisionmaker who was not involved in making the decision under review. The Court concluded that "[t]he opportunity to be heard must be tailored to the capacities and circumstances of those who are to be heard."

Here, the DMV solely relied on malpracticing doctors who were acting on behalf of Petitioner's drunken ex-wife. Petitioner never had any seizure or seizure disorder to begin with, so how can Respondent Gordon or his predecessors be entitled to "qualified immunity" when they deprived Petitioner of a driver's license for 13 years based on a sham diagnosis, and without a true evidentiary hearing? In this case, it is premature to dismiss the Complaint at this stage for qualified immunity (*Victoria v. City of San Diego,* 326 F. Supp. 3d 1003, 1020 (S.D. Cal. 2018).

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VI. PETITIONER'S CAUSES OF ACTION UNDER CIVIL CODE §51.7, AND 52.1 ARE TIMELY AND PROPERLY EXHAUSTED.

Petitioner A. K. Anderson filed this Action in that he did not yet exhaust any remedy to Respondent Gordon. When Petitioner got back his Driver's License on May 10, 2019, that was the date he stopped suffering damages, and the time to file a claim started under Government Code §911.2(a). If Respondent Gordon or the State of California claimed that the claim was late under Government Code §911.3, they were required to notify Petitioner to go file a Petition to File a Late Claim before the Superior Court or else they waived the issue of timeliness of the claim. (*Phillips v. Desert Hospital Dist.* (1989) 49 Cal. 3d 699, 711).

Here, the State Government cannot refuse or decline Petitioner's claim.

VII. PETITIONER STATED CLAIMS UNDER CIVIL CODE §51.7 AND 52.1.

Petitioner's claims in the Fourth and Fifth Cause of Action are applied under State law that is similar to 42 U.S.C., §1983. The case of *Cornell v. City and County of San Francisco* (Cal. App. 1 Dist. 2017) 17 Cal.App.5th 766, 792, explains that:

> "The model for Section 52.1 is a similarly worded Massachusetts statute, Massachusetts Civil Rights Act of 1979 (Mass. Gen. Laws Ann., ch. 12, §§ 11H, 11I) (MCRA). (*Jones, supra,* 17 Cal.4th at p. 335, 70 Cal.Rptr.2d 844, 949 P.2d 941.) Some courts interpreting and applying the MCRA and Section 52.1 have concluded, without close examination, that these respective statutes are state law analogues to Section 1983. (See *Cameron v. Craig* (9th Cir. 2013) 713 F.3d 1012, 1022 ['[T]he elements of the excessive force claim under § 52.1 are the same as under § 1983.']; *Batchelder v. Allied Stores Corp.* (1985) 393 Mass. 819, 822–823, 473 N.E.2d 1128, 1131 ['the Legislature intended to provide a remedy under [MCRA], coextensive with 42 U.S.C. § 1983..., except that the Federal statute requires State action whereas its State counterpart does not'].) In a broad conceptual sense, that is true, since both Section 52.1 and the MCRA are supplements to Section 1983, providing state

law civil remedies for violation of constitutional and statutory rights protected by federal as well as state law. But the most similar federal civil rights statute to Section 52.1, textually and structurally—similar enough to suggest that it, not Section 1983, was the original template our Legislature drew from—is Section 241. (See Final Report of the Van de Kamp Commission, Chptr. 3, 'Proposed California Civil Rights Act,' at p. 23 & p. 24, fn. 4 ['The Massachusetts Civil Rights Act is patterned after federal civil rights statutes that protect rights guaranteed by federal laws and the Constitution,' citing to Section 241, with no mention of Section 1983].)"

Here, the State's civil rights statutes are modeled after 42 U.S.C., §1983. There is no additional requirements for "violence" and "coercion" when the statutes do not add additional requirements. He is also entitled to Civil Penalties for violations of those sections.

VIII. PETITIONER WAS ENTITLED TO LEAVE TO AMEND HIS COMPLAINT.

The case of *State of Missouri ex rel. Koster v. Becerra,* https://cdn.ca9.uscourts.gov/datastore/opinions/2017/01/17/14-17111.pdf, at pp. 16-17 (9th Cir. 2017), *certiorari denied May 30, 2017,* explains that:

"... 'Denial of leave to amend is reviewed for an abuse of discretion.' *Dougherty v. City of Covina,* 654 F.3d 892, 897 (9th Cir. 2011). 'Dismissal without leave to amend is improper unless it is clear, upon de novo review, that the complaint could not be saved by any amendment.' *Thinket Ink Info Res., Inc. v. Sun Microsystems, Inc.,* 368 F.3d 1053, 1061 (9th Cir. 2004). But a 'district court does not err in denying leave to amend where the amendment would be futile.' Id. (internal quotation marks omitted). An amendment is futile when 'no set of facts can be proved under the amendment to the pleadings that would constitute a valid and sufficient claim or defense.' *Miller v. Rykoff-Sexton, Inc.,* 845 F.2d 209, 214 (9th Cir. 1988)."

The District Court's dismissal of the complaint without leave to amend was an abuse of discretion because the District Court provided no rational justification for its decision not to allow leave to amend.

> "A simple denial of leave to amend without any explanation by the district court is subject to reversal. Of course, the grant or denial of an opportunity to amend is within the discretion of the District Court, but outright refusal to grant the leave without any justifying reason appearing for the denial is not an exercise of discretion; it is merely abuse of that discretion and inconsistent with the spirit of the Federal Rules." *Sharkey v. O'Neal,* 778 F.3d 767, 774 (9th Cir. 2015) (citations omitted).

The Ninth Circuit also stated that:

> "The rule favoring liberality in amendments to pleadings is particularly important for the pro se litigant. Presumably unskilled in the law, the pro se litigant is far more prone to making errors in pleading than the person who benefits from the representation of counsel." *Noll v. Carlson*, 809 F.2d 1446, 1448 (9th Cir. 1987).

See also *Lopez v. Smith*, 203 F.3d 1122, 1131 (9th Cir. 2000) (en banc) (quoting *Noll* approvingly). Thus, "[a] pro se litigant must be given leave to amend his or her complaint unless it is absolutely clear that the deficiencies of the complaint could not be cured by amendment." *Karim-Panahi v. L.A. Police Dep't*, 839 F.2d 621, 623 (9th Cir. 1988) (quoting *Noll,* 809 F.2d at 1448) (internal quotation marks omitted). Furthermore, "[d]ismissal with prejudice and without leave to amend is not appropriate unless it is clear on de novo review that the complaint could not be saved by amendment." *Eminence Capital, LLC v. Aspeon, Inc.,* 316 F.3d 1048, 1052 (9th Cir. 2003) (per curiam).

The case of *Wilhelm v. Rotman,* 680 F.3d 1113, 1121 (9th Cir. 2012), also explains that:

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"Plaintiff filed his complaint pro se. 'We construe pro se complaints liberally and may only dismiss a pro se complaint for failure to state a claim if it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.' *Silva v. Di Vittorio,* 658_F.3d_1090, 1101 (9th Cir. 2011) (internal quotation marks omitted). *Iqbal* did not alter the rule that, 'where the petitioner is *pro se,* particularly in civil rights cases, [courts should] construe the pleadings liberally and . . . afford the petitioner the benefit of any doubt.' *Hebbe v. Pliler,* 627_F.3d_338, 342 (9th Cir.2010) (internal quotation marks omitted)."

Here, Petitioner was not given any chance to amend his Complaint. He is still processing an Administrative Complaint against Appellee San Bernardino Community College District with the Federal Department of Education. If this Court believes that the Complaint below can be further amended, Petitioner would like to request in what detail the Complaint can be further amended. If it appears that more facts need to be decided, dismissal should not be concluded, unless the case below is heard at Trial.

CONCLUSION.

Petitioner requests that the Judgment be reversed with leave to amend.

Dated this 16th day of December, 2024

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