No. ________________

IN THE SUPREME COURT OF THE UNITED STATES

Abubakar Ahmed
Petitioner

v.

Arizona Department of Transp., et al
Respondent

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

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## QUESTIONS PRESENTED

Whether IFP applicant's due process right is violated when a judge vaguely denies IFP status without providing the applicant an opportunity to be heard.

What is the formula to determine who qualifies IFP status?

Which Court should assess appellant filing fee amount, under 28 U.S. Code § 1915, the district Court or the Appellant Court?

Should a petitioner pay an appeal filing fee if the petitioner is appealing a denial of IFP status only pursuant to 339 U.S. 844?

In light of FRAP 24(a)(3) should a petitioner get a refund of the appeal filing fees if determined by the appellant court that the denial of IFP status by district court was abuse of discretion?

## LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

☑ 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:

**STACEY K. STANTON,**
**DETECTIVE JEFF PFAFENBACK,**
**DETECTIVE FLAHERTY DOE**

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Petitioner, Abubakar Ahmed, respectfully asks that a writ of certiorari issue to review the judgment and opinion of The United States Court Of Appeals For The Ninth Circuit, Case NO. 15-17136, filed on 04/21/2017.

## OPINION BELOW

The opinion of The United States Court Of Appeals For The Ninth Circuit, which was unpublished, was issued on April 21, 2017, and is attached as Appendix A. The United States Court Of Appeals For The Ninth Circuit one-page order denying rehearing is attached as Appendix B.

## JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). The decision of The United States Court Of Appeals For The Ninth Circuit for which petitioner seeks review was issued on April 21, 2017. The United States Court Of Appeals For The Ninth Circuit order denying petitioner's timely petition for rehearing was filed on 12/07/2017. This petition is filed within 90 days of The United States Court of Appeals for Ninth Circuit's denying of rehearing and rehearing en banc, under Fed. R. App Proc. 40 and Circuit Rule 40-1, and Fed. R. App. Proc. 35 and Circuit Rule 35-1 to -3.

## CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The Fifth and Fourteenth Amendments to the United States Constitution each contain a **due process clause. Due process** deals with the administration of justice and thus the **due process clause** acts as a safeguard from arbitrary denial of life, liberty, or property by the government outside the sanction of law.

**The Fifth Amendment** says to the federal government that no one shall be "deprived of life, liberty or property without **due process** of law."

- An essential principle of due process is that a deprivation of life, liberty, or property "be preceded by notice and opportunity for hearing appropriate to the nature of the case." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U. S. 306, 313 (1950).
- We have described "the root requirement" of the Due Process Clause as being "that an individual be given an opportunity for a hearing *before* he is deprived of any significant property interest."[7] *Boddie v. Connecticut*, 401 U. S. 371, 379 (1971)

*28. U.S.C. § 1915(a)*

*(1) Subject to subsection (b), any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees or security therefor, by a person who submits an affidavit that includes a statement of all assets such prisoner possesses that the person is unable to pay such fees or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that the person is entitled to redress.*

*28 U.S.C. § 2072*

*(a) The Supreme Court shall have the power to prescribe general rules of practice and procedure and rules of evidence for cases in the United States district courts (including proceedings before magistrate judges thereof) and courts of appeals.*
*(b) Such rules shall not abridge, enlarge or modify any substantive right. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.*
*(c) Such rules may define when a ruling of a district court is final for the purposes of appeal under section 1291 of this title.*

## STATEMENT OF CASE

This case is brought in district court under 42 U.S.C. § 1983 and other federal statutes. Petitioner was Denied IFP Status at district court level [Appendix E] despite petitioner only had an income of $425 for basic living expenses. Petitioner appealed the denial to the ninth circuit Court of appeals pursuant to *Roberts v. United States Dist. Court for Northern Dist. of Cal.*, 339 U.S. 844, 94 L. Ed. 1326, 70 S. Ct. 954 (1950).

The Ninth Circuit ordered the petitioner to pay appeal filing fee of $505 or re-apply for IFP status for appellate court [Appendix F]. Petitioner re-applied for IFP status and was denied IFP status [Appendix G] despite that petitioner has shown an income with debts, hefty expenses and account balance of only $178.00. The ninth

Circuit did not show how it weighed the incomes, debts, expenses and assets. Petitiner filed a motion for clarification [Appendix C]. Pursuant to Cir. R. 27-10. "Motion for clarification (Docket Entry No. [10]) is denied [Appendix D]. Ninth Circuit refused to entertain anything but a payment of $505 docketing fee.

Petitioner paid the $505 fee. The ninth circuit reviewed the denial of IFP status of the district court for abuse of discretion. The ninth circuit found: [Appendix A]

> **"The district court abused its discretion in denying Ahmed's IFP application in light of the $400 filing fee and Ahmed's declaration showing a monthly income of only $425 and no assets... We therefore vacate the district court's dismissal and remand with instructions for the district court to permit Ahmed to either file another IFP application or to pay the filing fee.**

However, the Ninth Circuit Court did not:

1. Provide a formula which the district court can use as guidance to analyze IFP applications.
2. Nor did it order a refund of appeals fees obtained through the abuse of discretion in light of FRAP 24(a)(3).
3. Nor did it order the district court to grant the original IFP status whose denial was appealed pursuant to 339 U.S. 844 and whose denial was found to be abuse of discretion.
4. Instead the appellate Court ordered the district court to subject the petitioner to further IFP applications in which the district court could simply deny again by abusing it's discretion especially without provision of a formula for analysis of the IFP application.

Consequently, petitioner is supposed to be in a vicious circle in which the district abuses its discretion and petitioner have to pay the appellate court $505 fees each time perpetually.

For the forgoing reasons Petitioner filed a motion for rehearing pursuant to Fed. R. App Proc. 40 and Circuit Rule 40-1, and Fed. R. App. Proc. 35 and Circuit Rule 35-1 to -3.

The motion for rehearing was summarily denied without comment[Appendix B]. Pettioner also requested a rehearing en banc because The appellate court's panel decision conflicts with a decision of the United States Supreme Court its own court and other circuit court.

> "The panel has voted to deny the petition for panel rehearing. 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. See Fed. R. App. P. 35. Ahmed's petition for panel rehearing and petition for rehearing en banc (Docket Entry No. [21]) are denied. No further filings will be entertained in this closed case. [10683138] (GB)"

## REASONS FOR GRANTING THE PETITION

This case presents important issues regarding 28 U.S. Code § 1915 over which the federal courts across the country are divided. There are 5 reasons for granting the petition for writ of certiorari.

**REASON #1 COURTS CONFLICTIONS**

Although all the courts subject applicants of IFP to divulge and enumerate their certain expenses, incomes, debts and assets. As to what algorithm the court's use to conclude IFP status approval or disapproval is a mystery.

When you check any any district or circuit appellate court orders (on any case) denying or approving IFP status to ascertain as to how Courts conclude to approve or disapprove IFP applications Courts are just in silent mode. See e.g. any orders regarding IFP from any court.

**REASON #2 NO FORMULA TO DETERMINE IFP STATUS QUALIFICATION**

The Ninth Circuit said "**there is no formula set forth by statute, regulation, or case law to determine when someone is poor enough to earn IFP status." [Escobedo v. Applebees, 787 F.3d 1226, at 1235 (9th Cir. 2015).]**

So because "there is no formula" any court can just do as it wishes and whatever it wishes it's not wrong because "**there is no formula set forth by statute, regulation, or case law to determine when someone is poor enough to earn IFP status."[id]**

In this case petitioner was denied IFP status despite he only had an income of $425 that cover the very basic expenses of life. In the eyes of the district court petitioner was rich enough to pay the fees. Who could say district court is wrong when "**there is no formula set forth by statute, regulation, or case law to determine when someone is poor enough to earn IFP status."**

But in the eyes of the ninth Circuit court that determination was abuse of discretion. How Ninth Circuit concluded that is a mystery especially when it said

**"there is no formula set forth by statute, regulation, or case law to determine when someone is poor enough to earn IFP status."**

Because there is no "formula" in this case district court determined petitioner is rich enough to pay fees. In another case Another court could as well determine a millionaire is poor enough to earn IFP status and only billionaires are not poor. It may be logically wrong to do that but not legally when "**there is no formula set forth by statute, regulation, or case law to determine when someone is poor enough to earn IFP status."**

In other words In the absence of authoritative instruction from the United States Supreme Court the law regarding IFP do not mean anything thus any court may grant cases to proceed without fees to whomever it wishes and it may deny it to whomever it wishes. It's just a matter of the court's wishes. If a court likes you that day you get it and if a court doesn't like you that day you don't get it and both decision are not so wrong. After all "**there is no formula set forth by statute, regulation, or case law to determine when someone is poor enough to earn IFP status."**

In the absence of authoritative instruction from the United States Supreme Court 28 U.S. Code § 1915 is vague for a judge to apply and its vague for an average citizen to know when he or she qualifies IFP status under that law.

**REASON #3 DUE PROCESS VIOLATION UNDER THE VAGUENESS DOCTORINE**

Vagueness doctrine rests on the due process clauses of the Fifth and Fourteenth Amendments of the U.S. Constitution. vagueness doctrine helps prevent arbitrary enforcement of the laws.

Under vagueness doctrine, a statute is void for vagueness if a legislature's delegation of authority to judges and/or administrators is so extensive that it would lead to arbitrary prosecutions. See, e.g. Skilling v. United States, 130 S.Ct. 2896 (2010).

*Federal Communications Commission v. Fox Television Stations, Inc., 567 U.S. 183 (2012).* is a reminder that even non-criminal rules can be unconstitutionally vague. In Fox fines issued by the FCC were invalidated as "unconstitutionally vague" under the Due Process Clause.

As to how courts are applying 28 U.S.C. § 1915 is vague also when they assess fees or partial fees its vague and confusing on how they assess it or who should assess it.

**REASON # 4 CIRCUIT SPLIT: ASSESSMENT OF APPELLATE FEE**

> The ninth circuit does and did assess a full fee of $505 [Appendix F & G] after analyzing the IFP application in this case. The sixth circuit court of appeals where it was interpreting 28 U.S.C. § 1915(a)(1) held as follows: "Assessment Of Fees On Appeal By District Court[:] The statute permits any United States court to make the financial assessment for the commencement of an appeal. *See* 28 U.S.C. § 1915(a)(1). As the district court is best suited to control the assessment procedure and the collection process, the district court should make the financial assessment when a prisoner seeks pauper status on appeal and manage the subsequent collections. Because the date the notice of appeal is filed with the district court controls the date of assessment under § 1915(b)(1), expediency requires that the district court issue the assessment order." *McGore v. Wrigglesworth*, 114 F.3d 601, 612 (6th Cir. 1997).

So this question remains, Who is right here the Sixth Circuit that gives total control of appeal fee assessment and collection to district court or the Ninth Circuit that assess its own fee?

**REASON #5 DENIED IFP AND DISSMISSED WITHOUT A CHANCE TO BE HEARD**

Besides fee assessment and vagueness issue the courts deny IFP status and dismiss the case in its entirety if not fully paid. when a district court rules on an issue without giving a party an opportunity to explain, or without adequate support on the record, it has abused its discretion. *See* *Alexander v. Carson Adult High Sch.*, 9 F.3d 1448, 1450 (9th Cir.1993)

The question also remains whether that applies to IFP cases and if it means the due process right is also violated besides "it has abused its discretion.

The Ninth Circuit Mandate of this case is gone to the district and the district court already dismissed this case for failure to make a payment without a chance for hearing.

## CONCLUSION

The IFP law is a lost sheep wandering everywhere and the only Shepard empowered to recover lost sheep is the US Supreme Court pursuant to The Rules Enabling Act.

For the foregoing reasons, and pursuant to 28 U.S.C. § 1254(1) & 28 U.S.C. § 2072 petitioner requests that this Court grant the petition for certiorari.

Respectfully Submitted this Tuesday, March 6, 2018

Abubakar

ABUBAKAR AHMED
(Plaintiff pro se)