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**In The Supreme Court of the United States**

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Steven E. Walker,

*Petitioner*

vs.

Robb Bonta, Attorney General of The State Of California;  
Merrick Garland, Attorney General of The United States of  
America; And DOES 1-100,

*Respondents.*

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MOTION FOR RECONSIDERATION OF THE COURT'S  
JANUARY 27, 2025, ORDER DENYING LEAVE  
TO PROCEED *IN FORMA PAUPERIS*<sup>1</sup>

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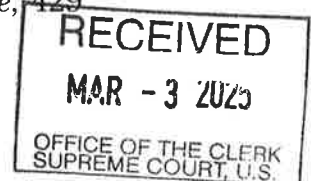
On a Petition for Writ of Certiorari  
to the United States Court of Appeals  
for the Ninth Circuit,  
Case No 23-55525.

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*In Pro Se*

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<sup>1</sup> This *Pro se* motion and attached Appendix must be liberally construed. No technical forms of pleading are required. *Swierkiewicz v Sorema NA*, 534 U.S. 506, 508-514 & n. 1 (2002); *Estelle v Gamble*, 429 U.S. 97, 106 (1976).



## INTRODUCTION

Petitioner Walker is an unrepresented indigent litigant. Mr. Walker submitted to this Court a Petition for a Writ of Certiorari along with a submission for leave to proceed *In Forma Pauperis* (IFP), which were placed on the Docket in accordance with this Court's Rule 39 on November 27, 2024. *See Walker v United States et al.*, Docket No. 24-6046. Accordingly, the Petition and IFP application complied with this Court's Rules. *See* Rules 1.1 & 39.3. Also, Rule 39.4 conditions that when the required documents accompanied by a proof of service are presented to the Clerk, they "will" be placed on the docket *without* payment of a docket fee or any other fee. *Compare* 28 U.S.C. §1915(a)(*any court* of the United States may authorize the *commencement* . . . of any suit, action or proceeding. . . .*without* prepayment of fees. . . ."); *also see* Appendix Attached hereto at pp. 6-11.

This Court however denied Walker leave to proceed *in forma pauperis* on January 27, 2025, after opposing counsel waived their right to respond. *See* Order dated 1/27/2025 (hereafter "Order"). The Order did not explain why leave to proceed *in forma pauperis* was denied, nor that the case was dismissed under 28 U.S.C. §1915(e)(2)(B)(i-ii). Further, had the petition been frivolous, malicious, or failed to state a claim on which relief may be granted under §1915(e)(2)(B)(i-ii), then why would the Court "allow" Walker to "pay the docketing fee required by Rule 38(a), and resubmit the petition in compliance with Rule 33.1 of the Rules of the Court." *See* Order; *but see* Rule 39.8 (Court may only deny leave to proceed *in forma pauperis* if satisfied that a petition is frivolous or malicious).

**I. This Court's Rules Authorize the Commencement of a Proceeding *In Forma Pauperis* under 28 U.S.C. §1915(a) Once the Clerk Places the Required Documents on The Docket Without Payment of a Docket Fee or Any Other Fee Pursuant to Rule 39.4.**

Walker's petition for a writ of certiorari "proceeding" was *commenced* the moment the clerk of the court exercised their "authority" to place on the docket without payment of fees the petition and IFP application which complied with this Court's rules. Rules 1.1 and 39.3-4. It was further *proceeding* when Respondent reacted by submitting a waiver, and Walker submitted a supplemental brief, which were filed and placed on the docket because they complied with the substance of Rule 15. *See* Rule 1.1 & 39.3. This action also originated when the Court's case

analyst sent Petitioner Walker a notice that the “petition for writ of certiorari in the above-entitled case was filed on March 26, 2024 and placed on the docket November 27, 2024 as No. 24-6046. [A form is enclosed for notifying opposing counsel that the case was docketed.” See Notice from Clerks Office. Accordingly, this Court’s rules authorize the *commencement* of an *in forma pauperis* proceeding under 28 U.S.C. §1915(a), upon a petition for writ of certiorari, once the clerk exercises their authority under Rule 39.4. “[S]trict adherence to the procedural requirements specified” in 28 U.S.C. §1915, and Rule 39 “is the best guarantee of evenhanded administration of the law.” *E.g. Baldwin County Welcome Center v. Brown*, 466 U.S. 147, 152 (1984) *citing Mohasco Corp. v Silver*, 447 U.S. 807, 826 (1980); *also see* Appendix Attached hereto at pp. 6-11.

Once begun, leave to proceed *in forma pauperis* may only be denied “if” the Court is convinced the petition is frivolous or malicious. Rule 39.8. Yet, under §1915(e)(2) the Court “shall dismiss the case at any time” when it *determines* that (A) the allegation of poverty is untrue; or (B) the action or appeal—(i) is 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.

The Order denying leave to proceed *in forma pauperis* in this case, after the commencement of this action is an arbitrary cart-before-the-horse “departure from the controlling requirements” of 28 U.S.C. §1915(e)(2) and Rule 39.8. *Cf. Brown, Supra*, 466 U.S. at 153 (Stevens J. dissenting) This motion is properly brought under Rule 21.2(c) and Article III.

**A. Indigent Walker’s *Pro Se* Petition for A Writ of Certiorari is Neither Frivolous, nor Malicious, and Asserts a Colorable Claim for Redress**

Rule 39.8. states that “[I]f satisfied that a petition for a writ of certiorari. . . is frivolous or malicious, the Court *may* deny leave to proceed *in forma pauperis*. ” Although the word “may” when used in a rule or statute implies “some degree of discretion.” That degree of discretion, however, can be defeated by “indications of legislative intent to the contrary” or by obvious inferences from the structure and purpose of the [rule] or controlling statute. *United States v Rogers*, 461 U.S. 677, 706 (1983)

The obvious intent and inference from Rule 39.8 are that *leave to proceed in forma pauperis* may be denied *only* when the Court *is reassured* that a petition for a

writ of certiorari is frivolous or malicious. Where the rule or statute “directs the doing of a thing for the sake of justice or the public good, the word ‘may’ is the same as the word ‘shall.’” *Mason v Fearson*, 50 U.S. 248, 259-60 (1850). Coincidentally, Rule 39.4 in conjunction with §1915(a) is this Court’s “authorization” for the commencement of *in forma pauperis* proceedings without the payment of a fee. This Court’s procedural requirements accordingly afford that once the pleadings are docketed under Rule 39.4 Walker may only be denied *leave* to proceed *in forma pauperis* if the Court is “satisfied” his *current* petition is frivolous or malicious. Rule 39.8.<sup>2</sup> Clearly, the determination under Rule 39.8 cannot be made on an *ad hoc* basis but must be consistent with the requirements set forth in §1915(e)(2)(A)&(B)(i-iii).<sup>3</sup>

Consequently, this Court’s Order which denied Walker *leave* to proceed *in forma pauperis* without any reason, after the commencement of the proceeding, is further without legal justification because had Walker’s Petition been frivolous or malicious to warrant the denial then it would be this Court’s duty to dismiss the case and not “allow” him to pay the docket fee and submit a similar petition complying with Rule 33.1. *See* Order. After all, Walker’s Petition already complied with the

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<sup>2</sup> It is well established this Court has the power to make rules that are “not inconsistent with the statutes or Constitution of the United States.” *Mistretta v United States*, 488 U.S. 361, 386-88 (1989). Yet, rules that affect substantial individual rights and obligations “carries with it the responsibility not only to remain consistent with the governing legislation . . . [Citations omitted] but also to employ procedures that conform to the law.” *Morton v Ruiz*, 415 U.S. 199, 232-33 (1974).

<sup>3</sup> Herein lies the crux of the problem, and the ultimate catch 22 created by 28 U.S.C. §1915(a)&(e)(2), as amended in 1996, for both this indigent *pro se* litigant and the Court. Clearly, Rule 39.4 is consistent with §1915(a) in that (1) this Court is a court of the United States and (2) this Court authorizes the commencement of a proceeding without payment of fees when the documents required are presented to the Clerk, accompanied by proof of service as required by Rule 29, and placed on the docket. Rule 39.4 is therefore harmonized with Congress’ overarching goal in enacting the *in forma pauperis* statute: “to assure equality of consideration for all litigants.” *Neitzke v. Williams*, 490 U.S. 319, 329 (1989). Yet, this Court can no longer deny an indigent petitioner *leave* to proceed *in forma pauperis* if it is satisfied the petition is frivolous or malicious under Rule 39.8. Instead, when such a finding is made it “shall” dismiss the case under §1915(e)(2)(B)(i). *See e.g. Kingdom Tech. Inc. v. U.S.*, 136 S. Ct. 1969, 1977 (2016) (When a statute distinguishes between “may” and “shall” it is generally clear that “shall” imposes a mandatory duty which is impervious to judicial discretion).

substance of this Court's rules, otherwise it would not have been docketed in accordance with the authority granted to the Clerk by Rules 1.1 & 39.3&4. Further, Walker's petition and supplemental brief are not frivolous or malicious because they *are not* "clearly baseless." *Cf. Denton v Hernandez*, 504 U.S. 25, 32-33 (1992) (Initial assessment of the *in forma pauperis* plaintiff's factual allegation must be weighted in favor of the plaintiff); Petition at pp. 8-18.

If it were "clearly" baseless, opposing counsel had *an obligation* under Rule 15.2 to point it out to the Court in their brief in opposition, but instead "waived" their right to respond to the petition. *See* Waiver of right docketed Dec. 27, 2024. Thus, the petition is not frivolous or malicious and is clearly *not* baseless. Nor did the Respondent "challenge the grounds for the motion for leave to proceed *in forma pauperis*." Rule 39.5. Consequently, the undisputed factual allegations in the petition and statement of poverty, and declaration that Walker is entitled to relief, must be "accepted" as true. *Hishon v King & Spalding*, 467 U.S. 69, 73 (1984). Appropriately, under the principles of party presentation, the petition is neither frivolous, nor malicious, because *it does state a compelling claim* for relief and Walker's statement of poverty is true. After all, the *integrity* of this Court's process relies "on the parties to frame the issues for decision" and assigns to itself, "the role of neutral arbiter of matters the parties present." *U.S. v. Sineneng-Smith*, 140 S. Ct. 1575, 1579 (2020). Be it rich party, poor party, all are equal under the law.

This Court's departure from Rule 39.8 ensures that Walker's compelling, colorable, and undisputed Constitutional claims are disregarded because the party presenting those valid questions does not have the money or the attorney to exemplify them. *Id.* 140 S. Ct. 1579 (when cases arise courts normally decide only questions *presented by the parties*.)<sup>4</sup> Allowing Walker to resubmit the same petition under

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<sup>4</sup> Walker's right to defend his Second Amendment rights in this Court—like every represented indigent litigant's case which was granted, vacated and remanded by this Court after *United States v Rahimi*, 604 U.S. 680 (2024) was decided—is a right conservative of all other rights, and "is one of the highest and most essential privileges of citizenship and must be allowed by" all courts of this Nation. Equality of treatment in this respect is not dependent upon the means or the money, nor court decorum, but is "granted and protected by the Constitution." *E.g. Chambers v Baltimore & Ohio R Co.* 207 U.S. 142, 149-51 (1907); *compare* Petition at pp. 5-18; Supplemental Brief at pp. 3-5. Once commenced under Rule 39.4, and §1915(a), *in forma pauperis* proceedings are a "right" that is "vital" to the orderly and fair administration of justice; and can



Rule 33.1 instead of 33.2, by requiring him to pay a docket fee, clearly indicates that the denial for leave to proceed *in forma pauperis* is an *ad hoc* determination outside the Court's limited sphere of discretion established by 28 U.S.C. §1915(e)(2) and Rule 39.8. *In re Amendment to Rule 39, Supra*, 500 U.S. 14 (Rule 39.8 applies only to those cases that the Court determines would be denied in any event). By law, leave to proceed *in forma pauperis* is denied only because the petition is frivolous or malicious. How then does it become less frivolous by allowing the docket fee to be paid and resubmission of that same petition under Rule 33.1? It is clear, Walker is not entitled to his day in court because he does not have "the means and the money, to preserve meaningful access to this Court's resources".... Compare 500 U.S.13-15 with Marshall J Dissenting.<sup>5</sup> See Appendix Attached hereto, pp. 6-11.

### CONCLUSION

Since Walker's petition is neither frivolous nor malicious and does state a colorable claim for redress under the Second Amendment then leave to proceed as a pauper may not arbitrarily be denied under any aspect of the law, as that leave is constitutionally protected once the proceeding commences.

Dated: February 9, 2025.

By   
STEVEN WALKER  
Petitioner in Pro Se

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only be denied if the "filings" are frivolous or malicious. *In re Amendment to Rule 39*, 500 U.S. 13 (1991). Rule 39.8 was created to "ensure meaningful access to this Court's resources, and to ensure the integrity of [its] processes" for those indigent *pro se* litigants who do not abuse the Court's processes when filing non-frivolous petitions. *Ibid*; also see Appendix attached hereto, at pp. 6-11.

<sup>5</sup> Rule 39.8 and §1915(a)&(e), provide explicit standards for those who apply them when denying leave to proceed *in forma pauperis* and dismissing the case. Those standards must be followed or any acts done to the contrary will be invalid. *French v Edwards*, 80 U.S. 506, 511 (1872)(The power of the officer in all such cases is limited by the manner and conditions prescribed).

APPENDIX TO MOTION FOR RECONSIDERATION OF  
JANUARY 27, 2025, ORDER DENYING LEAVE TO PROCEED IN  
FORMA PAUPERIS

DECLARATION OF STEVEN WALKER

I, Steven Walker, herein declare that I am the indigent petitioner in the above-entitled case, No. 24-6046; that I make this declaration under penalty of perjury in accordance with 28 U.S.C. §1746. I also declare that I am over 18 years of age, a natural born citizen of the United States of America, and resident of the State of California. I further declare under penalty of perjury in accordance with 28 U.S.C. §1746, that the undisputed facts and allegations stated in the First Amended Complaint on record in this Court in the accompanying case of *Walker v United States*, No. 24A369, are true and correct and state a plausible claim for redress. That the district court and Ninth Circuit fundamentally erred when *sua sponte* dismissing my case and indefinitely suspending my appeal.

I also declare the following supplemental facts clearly demonstrate the Petition for a Writ of Certiorari in this proceeding is neither frivolous nor malicious, and does in fact state a redressable claim:

1. This Court has consistently granted certiorari petitions by represented parties presenting similar Second Amendment questions, vacated the opinion below, and remanded. *See, e.g., Antonyuk v. James*, 144 S. Ct. 2709 (2024) (concealed carry law); *United States v. Daniels*, 144 S. Ct. 2707 (2024) (18 U.S.C. § 922(g)(3)); *Hoelt v. United States*, No. 24-5406 (18 U.S.C. §§ 922(g)(1), (9)); *Canada v. United States*, No. 24-5391; *Talbot v. United States*, No. 24-5258; *Jones v. United States*, No. 24-5315; *Kirby v. United States*, No. 24-5453; *Lindsey v. United States*, No. 24-5328; *Mayfield v. United States*, No. 24-5488; *Pierre v. United States*, No. 24-37; *Borne v. United States*, No. 23-7293; *Willis v. United States*, No. 23-7776; *Farris v. United*

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**CERTIFICATE OF SERVICE**

I, Steven Walker, hereby certify that all parties listed below and are required to be served, have been served with copies of the Motion to Vacate Order Denying Leave to Proceed *In Forma Pauperis* Under Supreme Court Rule 21.2(c), and Declaration in Support Thereof, by way of first-class mail, postage prepaid, this 10th, day of February, 2025.

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By



STEVEN WALKER