

25-6261

No.

ORIGINAL

Supreme Court, U.S.
FILED

OCT 23 2025

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

Joshua Adam Schulte — PETITIONER
(Your Name)

vs.

United States of America, et al. RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The Second Circuit Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Joshua Adam Schulte #79471054
(Your Name)
U.S. Penitentiary Maximum
P.O. Box 8500
(Address)

Florence, CO 81226-8500
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

This case involves several inseparable interconnected issues regarding a judge's authority to issue sua sponte dismissals, particularly regarding meritorious cases where no notice or opportunity to respond is provided the plaintiff, and the cascading effects thereof.

(1) Whether 100% mandatory PLRA recoupment of monthly deposits, resulting from Bruce v. Samuels, 577 U.S. 82 (2016), is constitutional. Rule 10(c).

(2) Whether a district court may sua sponte dismiss a case for failing to anticipate affirmative defenses in its complaint. R10(a) - conflicts with Jones v. Bock, 549 U.S. 199 (2007).

(3) Whether a district court may sua sponte dismiss a case on res judicata grounds when the issues presented were never previously litigated or were previously dismissed on improper venue grounds. R10(a) - conflicts with Costello v. United States, 365 U.S. 285 (1960).

(4) Whether a court may sua sponte dismiss a case without providing the plaintiff with notice, a hearing, or an opportunity to respond. R10(a) - Circuit split: 9th, 11th - 2nd, 8th, 10th

(5) Whether a poor incarcerated person has a right to access the courts and have his complaints read, taken seriously, and given an equal chance at justice. R10(a) - conflicts with Coppedge v. U.S., 369 U.S. 438 (1962).

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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:

Warden MAAT, Metropolitan Detention Center (MDC);

David William Denton, Jr.;

United States Bureau of Prisons (BOP); United States of America;

Unknown Defendants

RELATED CASES

N/A

1

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

The opinion of the United States district court appears at Appendix C to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

2.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was July 29, 2025.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: September 4, 2025, and a copy of the order denying rehearing appears at Appendix B.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

3.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First, Fifth and Sixth Amendments to the
United States Constitution.

28 U.S.C. § 1915

28 U.S.C. § 1915A

4.

INTRODUCTION

This case presents several interconnected important questions that have divided the Federal Courts of Appeal or contradict precedent; the cynosure is no-notice sua sponte dismissals where a court purports to simultaneously wield the power of both accuser and judge, typically to assist his former advocacy in the U.S. Attorney's Office, and the cascading effects of those dismissals as higher courts merely adopt the findings of its colleagues without performing de novo review or permitting the aggrieved party from being heard—which ultimately undermines justice and erodes confidence in an impartial judiciary as predominantly disadvantaged citizens can no longer seek redress or otherwise access the courts.

Specifically, here a district judge took no action as several civil cases built up before him over three years. Then, without notice or even an answer from the defendants, sua sponte dismissed them

5.

altogether without leave to amend or any opportunity to respond.

Although all complaints clearly stated claims for relief, the court dismissed them on the grounds that one failed to anticipate affirmative defenses, one previously sought redress in the improper venue and was forevermore barred, one raised issues that were filed as a proposed amended complaint of another case that was neither adopted nor adjudicated, and other improper reasons contrary to clearly established law. On appeal, the court did not undertake de novo review or even read the complaints but relied entirely on the district court's decision and dismissed the appeals without consideration.

As this court so aptly stated in Neitzke v. Williams, 490 U.S. 314, 326 (1989): "We recognize the problems in judicial administration..... that meritorious complaints will receive inadequate attention or be difficult to identify amidst the overwhelming number of meritless complaints."

It is an imperative that the court at least read this petition despite the poverty of the petitioner, the "pro se" warning on the case, and the poor-quality hand-written petition - as no court has yet done.

STATEMENT OF THE CASE

A. Complaints

Between 2022 and 2024, Mr. Schulte filed eight civil complaints related to his pretrial confinement in the Eastern District of New York that were sufficiently pled and clearly stated claims for relief based on law and fact:

- (1) A claim under the Religious Freedom Restoration Act ("RFRA"), 42 U.S.C. § 2000bb, et seq., predicated on Tunz v. Tanvir, 592 U.S. 43 (2020).
- (2) A money damages complaint under both the Federal Tort Claims Act ("FTCA") and Bivens v. Six Unknown Fed. Narcotics Agents, 403 U.S. 388 (1971).
- (3) A claim for injunctive relief for illegal confiscation of mail.
- (4/5): Two claims under Fed. R. Crim. P. 41(g) for the return of property and Bivens.
- (6/7/8): Three habeas claims under 28 U.S.C. § 2241 challenging various Special Administrative Measures ("SAMs") provisions instituted directly by the Department of Justice (DOJ) and applied regardless of the prison housing Mr. Schulte.

All claims clearly stated claims for relief yet all were dismissed in a September 4, 2025 Order ("Dismissal Order"), Ex. C.

1. RFRA : 25-752

The 7-page Complaint docketed 1/11/24 as 24-cv-332 enumerates two causes of action under the RFRA predicated on Tanzin. The court took no steps to advance the case, and attempted to abrogate Supreme Court precedent, asserting that the claim was "plainly meritless." Dismissal Order at 8-9 (Ex. C).

2. MDC Monetary Damages: 25-758

The 25-page complaint docketed 11/14/23 as 23-cv-8513 enumerates ten causes of action under the FTCA and Bivens. The complaint is modeled on a similar complaint filed by pro bono counsel in the Southern District of New York, 21-cv-4042 (JMF), which is in the final stages of depositions. The court took no steps to advance the case, and the Bivens claim was not addressed in the Dismissal Order. With respect to presentment under the FTCA, the complaint says: "Mr. Schulte notified the government of all these issues multiple times through administrative remedies, Standard Form 95 submissions...." Dkt. 1 at 14. Even if presentment were deficient, Fed. R. Civ. P. 8 and Jones v. Rock, supra, do not require that complaints anticipate affirmative defenses; nor was leave to amend granted.

3. Book Complaint: 25-751

The 4-page complaint docketed 7/1/23 as 23-CV-5241 enumerates a single count for injunctive relief seeking the return of an unlawfully confiscated book from Mr. Schulte's mail under the First and Fifth Amendments. The complaint and case mimicked Shakur v. Selsky, 391 F.3d 106 (2d Cir. 2004), arguing there was no reasonable penological purpose for the book's confiscation. The court took no steps to advance the case, and the Dismissal Order does not reference this complaint or explain why it was dismissed.

4. The laptop complaints: 25-742 and 25-757

Mr. Schulte first sought Fed. R. Crim. P. 41(g) relief for his illegally seized laptop in the Southern District of New York, which was denied for improper venue as the laptop was seized in the Eastern District. See Fed. R. Crim. P. 41(g) ("[t]he motion must be filed in the district where the property was seized.")

See also U.S. v. Schulte, 17 CR 548 (JMF(SDNY), Dkt. 927 on 8/9/22

("... the warrant was obtained from a different court."); Dkt. 946 on 9/24/22

("... obtained from a different court."); the merits were never reached.

So Mr. Schulte filed a 4/1/22 motion for a return of the laptop in the proper venue, the Eastern District of New York, docketed on 9/23/22 as 22-CV-5841. Mr. Schulte then filed an amended complaint seeking additional 4/1/22 claims of newly seized drives and a traditional Bivens action. See Dkt. 15. Judge Komitee dismissed the entire case for previously raising the issue in the incorrect venue in a 5/23/23 Order, Dkt. 24, without reading or considering the proposed amended complaint, or providing Mr. Schulte an opportunity to respond. Mr. Schulte filed a motion for Reconsideration, Dkt 28, that was "mooted" by the Superseding Dismissal Order, and thus never considered.

As the erroneous dismissal was without prejudice, Mr. Schulte filed the unread or considered proposed amended complaint as a new case docketed on 7/24/23 as 23-CV-5656. See Ex. D. This complaint actually anticipates the affirmative defense of res judicata and argues, as here, its inapplicability to claims dismissed for improper venue and

10.

Claims never adjudicated. Judge Komitee then dismissed both 22-CV-5841 and 23-CV-5656 in his Dismissal Order, superceding his earlier order, and without addressing the reconsideration motion, the new 41(g) drive claims, or the Bivens action — again, which were never even filed as part of the first action since the proposed amended complaint was not read or adopted by the court — stating that "[t]he purported Rule 41(g) claim in Denton is indistinguishable from the claim dismissed in 22-CV-5841, which this court will not revisit." Dismissal Order at 4 n. 3.

5. Habeas Complaints: 25-740, 25-745, 25-748

Mr. Schulte filed three habeas petitions: an 18-page Complaint docketed 2/1/22 as 22-CV-766, a 5-page Complaint docketed 6/24/23 as 23-CV-4855, and a 4-page Complaint docketed 8/3/23 as 23-CV-5988. All challenged various provisions related to SAMs instituted by the DOJ and applicable no matter where Mr. Schulte is incarcerated. Judge Komitee simply ignored all three until Mr. Schulte filed a mandamus petition asking the Second

11.

Circuit to compel Judge Kovtch to advance 22-cv-766. The Dismissal Order did not specifically address any of these complaints, but simply addressed them as moot. As argued in the Summary Reversal Motion, Ex. E, all mootness exemptions applied; furthermore, the courts' practice of specifically neglecting and ignoring challenges to pretrial detention conditions by the judiciary renders it impossible to obtain relief - adding yet another exception: Mootness cannot be a goal to achieve by ignoring cases for years until a prisoner is moved - what justice is this?

Specifically, Mr. Schulte's longanimity in seeking redress for the same issues over the past decade must be noted. Mr. Schulte first filed for relief as part of his criminal docket, which the court denied - directing him to file a separate civil case instead; that separate civil action was dismissed - directing him back to the criminal court. On appeal, the Second Circuit dismissed the appeal without reading or considering the brief due entirely to Mr. Schulte's poverty. This Court

then denied cert. So, Mr. Schulte re-filed in a separate civil case; that case sat for years before a Southern District judge until Mr. Schulte was moved to the Eastern District, then dismissed as moot. Refiling in the Eastern District, the court waited two years then dismissed them as moot. The merits of the challenges have yet to be addressed. Even setting aside the SAMS mootness exemptions, if pretrial detention conditions cannot be challenged as judges can just wait until the case is resolved, prisons can rape the Constitution with impunity - this court cannot allow such legal immunity.

B. The District Court's Dismissal Order

Mr. Schulte's meritorious complaints stated claims for relief; though they built up over three years from 2022 through 2024 as the district court dawdled. On September 4, 2024 Judge Komitee committed clear, reversible error by sua sponte dismissing all of Mr. Schulte's cases without providing him notice, a hearing, an opportunity.

13.

to respond, or leave to amend — purportedly under 28 U.S.C. § 1915(e)(2)(B).

The Dismissal Order fabricated non-existent 42 U.S.C. § 1983 claims to dismiss; falsified a non-existent "national security" Bivens claim to dismiss; dismissed a case without reading or considering a proposed amended complaint; dismissed a case asserting that a claim previously presented in the wrong venue was forevermore barred for consideration on the merits in the correct venue by res judicata in direct contravention of Supreme Court precedent, common law, and the civil rules of procedure; dismissed a FTCA claim that pled presentment stating the contrary in his opinion and notwithstanding Supreme Court precedent that complaints need not anticipate affirmative defenses; he failed to address each claim of all complaints and ignored Second Circuit precedent regarding 28 U.S.C. § 1915. See Sponte dismissals, and providing a plaintiff an opportunity to amend.

The mendacious Dismissal Order contained such egregious and venial errors of both law and fact, and presented such specious arguments that it is impossible to reconcile with the complaints, or attribute any good faith to the resulting sophistry. It is self-evident that Judge Komitee undertook no effort to read or consider the complaints; this combined with his flagrant attempts to deenerate the Constitution, abrogate precedent, and vitiate the law — alone illustrate the obstruction to Mr. Schulte's right to access the courts and petition the government for a redress of grievances — and counsel the court to grant the petition or at least order remand.

Moreover, all dismissed complaints were literally plagiarized from those of successful suits filed by attorneys — the only difference the particular facts and financial status of the filer. The district court clearly raised the standard for pro se submissions above those filed by attorneys to

dissuade and discourage poor plaintiffs from seeking redress, thereby denying them justice.

C. The Second Circuit's Summary Dismissal

Righteously indignant at the judgment, Mr. Schulte filed a single Notice of Appeal that triggered eight separate appeals for each of the dismissed cases. Proceeding IFP, he had to sign five Prisoner Authorization forms, each promising to pay the full \$605 filing fees in ~~monthly~~ installments set at 20% of all monthly deposits into his prison Trust Fund Account; however, he was never notified that due to this court's decision in Bruce v. Samuels, 577 U.S. 82 (2016), the payments stacked, resulting in $20\% \times 5 = 100\%$ mandatory PLRA recoupment of monthly deposits until the \$3,025 is paid in full. At his ~\$100/month deposits, this would take 31 months — that's 31 months of \$100 deposits that results in \$0 of useable funds.

Before realizing this 100% mandatory deduction, Mr. Schulte

filed a motion for summary reversal as the district court's sophistry was so blatant and egregious, his own arguments apodictic, and the harm easily remedied without the need of eight briefs. See 25-740 Dkt. 28, Ex. E.

The government filed no response, yet the Second Circuit refused to read the motion, and not only dismissed it, but declined to conduct a de novo review; instead, the court simply deferred entirely to ~~the~~ the district court and propagated that court's errors with its own sua sponte dismissal of all but one of the appeals (the RFRA complaint). No opinion or reason was given except that they were all frivolous. To add insult to injury the Second Circuit also issued a warning that such frivolous appeals may incur a further penalty of requiring Mr. Schulte to seek permission before filing future appeals.

On reconsideration, Mr. Schulte notified the panel that Judge Lee worked at the Federal Defenders of New York while they represented Mr. Schulte and she consulted on the case—which

constitutes a conflict-of-interest; he also presented the same arguments from his summary reversal motion and those presented here - all to no avail as the panel again did not read it, but merely issued a denial with no reason or opinion. Ex. B.

Upon discovering that his commissary account would be \$0 for the next three years to pay for appeals that were not even read or considered, and that the monthly deposits, although unavailable to him, disqualified him for indigent status, compelling him to pay for soap, toothpaste, and other toiletries; pen, paper, copies, law library printouts, stamps, and legal calls, he promptly filed motions challenging the 100% mandatory PLRA recoupment of monthly deposits. See Ex. F.

It was dismissed without consideration or opinion as "moot" despite the single remaining appeal, five outstanding mandatory 20% each PLRA repayments, and ongoing issue. See Ex. G.

REASONS FOR GRANTING THE PETITION

A. An important question of federal law regarding 100% mandatory PLRA recoupment should be decided by this court

The first question presented was whether 100% mandatory PLRA recoupment of monthly deposits is constitutional. In deciding that 28 U.S.C. § 1915(b) required monthly installment payments to be assessed simultaneously rather than capped at 20% in Bruce v. Samuels, 577 U.S.

82 (2016), this court did not review the constitutionality either of the as-applied circumstance where 100% of a prisoner's income is confiscated or the statute on its face. Due to the circumstances of the instant case, this is clearly an important question of federal law affecting hundreds of thousands of litigants and the perfect vehicle to resolve the question.

Tellingly, the Second Circuit noted that applying the §1915 statute in the manner this court found to be the correct interpretation "could pose a serious Constitutional quandry as to whether an unreasonable burden had been placed on the prisoner's right of meaningful access to the courts."

especially with respect to the collection of filing fees," Whitfield v. Scully,
241 F.3d 264, 277 (2d Cir. 2001) (abrogated by Bruce, *supra*), and therefore
 found that payments must be capped at 20%.

Moreover, every circuit to consider the constitutionality of the statute
 found the provision constitutional contingent on the low filing fee (\$100) and
 capped deduction (20%) — see Nicholas v. Tucker, 114 F.3d 17, 21 (2d Cir. 1997).

("Nicholas does not assert a complete lack of funds.....[he needs only] pay a
 very small share of the large burden."); Hampton v. Hubbs, 106 F.3d 1281, 1285

(6th Cir. 1997) ("Indeed, when time for a payment arises under the act, the
 amount due from a prisoner is based on a fraction of a prisoner's assets.");

Mitchell v. Farcass, 112 F.3d 1483, 1489 (11th Cir. 1997) ("The filing fee is small

enough not to deter a prisoner with a meritorious claim yet large enough to

deter frivolous claims and multiple filings"); Roller v. Gunn, 107 F.3d 227, 233

(4th Cir. 1997) ("a prisoner is required to pay only 20 percent of the previous
 month's income.") — neither of which is true today.

This case is the perfect vehicle considering Mr. Schulte was paying 0% until the single dismissal of eight complaints and single Notice of Appeal which triggered eight appeals—and instantly Mr. Schulte was paying 100%. Mr. Schulte was provided no warning that the filing fees would stack, but if so he would have been compelled to forego meritorious claims to ensure some monthly income remained.

Finally, precedent makes clear that at least this application of the Statute unnecessarily and unreasonably burdens Mr. Schulte's right of meaningful access to the courts, violates the Due Process Clause of the Fifth Amendment, and the Sixth Amendment: Access to the courts is violated by creating insurmountable barriers and unreasonable burdens that deter meritorious claims due entirely to the financial burden (here \$3,025 must be paid in full before Mr. Schulte receives a penny); Due Process is violated as Mr. Schulte's protected property interest in his own funds is entirely deprived; additionally, Mr. Schulte cannot recoup the filing fee costs even if he prevails as §1915(F)(1) precludes the recovery

of taxable costs including the filing fee. This also violates litigant-equality as paying plaintiffs can recover costs, but the poor proceeding IFP cannot. The Sixth Amendment is also implicated as Mr. Schulte cannot afford to pay for paper, pens, stamps, law library prints, or even legal calls — which are not provided to inmates with an income.

Since Mr. Schulte receives deposits, although 100% are confiscated, he does not qualify as indigent and is eligible for free toiletries such as soap and toothpaste; communication necessities such as phone calls, pens, paper, envelopes and stamps; or Sixth Amendment fundamentals such as legal calls, legal mail, and law library prints.

Thus Mr. Schulte is compelled to resolve the ~~Attorney~~ dilemma of either paying down the \$3025 monthly but foregoing the above toiletries, necessities, and communication with family and his attorneys or paying nothing and receiving most above as an indigent, but never freeing himself of the PLRA debt and regaining the ability to purchase commissary — detrimental to prison quality-of-life. See Ex. F, denied motion challenging filing fee provision.

B. The Circuit has sanctioned a departure in direct conflict with Supreme Court precedent and should be reversed.

This court should exercise its supervisory power to correct a manifest injustice perpetrated by the Second Circuit, which has attempted to abrogate at least two precedential cases decided by this court. It is of utmost importance that the court at least consider summary reversal and remand, as the petitioner's civil rights have been violated simply because he is a poor incarcerated man of no importance, no advocate, and is easily relegated to the dregs of society.

1. The Circuit may not abrogate Supreme Court precedent that a court may not sua sponte dismiss a complaint for failing to anticipate affirmative defenses.

The second question presented was answered in Jones v. Bock, 549 U.S. 199 (2007); plaintiffs are not required to anticipate and affirmatively plead any defense. This applies to the screening provisions in 28 U.S.C. § 1915 and § 1915A.

See Id. at 215 ("The argument that screening would be more effective if exhaustion had to be shown in the complaint proves too much; the same

could be said with respect to any affirmative defense."). Furthermore, Courts are constrained by the principle of party presentation; this Court has cautioned that freely permitting departures from this foundational norm and allowing Courts to sua sponte raise affirmative defenses as a matter of course would "erode the principle of party presentation so basic to our system of adjudication." Arizona v. California, 530 U.S. 392, 413 (2000).

Moreover, Fed. R. Civ. P. 8(a) states a claim must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." It's particularly clear that compelling pro se plaintiffs to foresee and attempt every possible affirmative defense is overly burdensome; such a requirement, as evident here, only functions as a barrier to access the courts and file meritorious claims.

Thus the Second Circuit's decision to uphold and dismiss appeals 25-758 for failing to anticipate the affirmative defense of FTCA presentment (despite adequately doing so) and 25-742/25-757 for failing to anticipate the

affirmative defense of res judicata claim-preclusion (despite 25-757

adequately doing so) directly violate Jones, are unconstitutional, and must be reversed.

2. The Circuit may not abrogate Supreme Court precedent that a court may not sua sponte dismiss a complaint for res judicata claim-preclusion when the claims were never previously litigated or were previously dismissed on improper venue grounds

The third question presented was answered centuries ago; in fact, a dismissal for improper venue that never reaches the merits has never been a bar to subsequent filing in the proper court. Fed. R. Civ. P. 41(b) states that "a dismissal under this subdivision (b) and any dismissal not under this rule—except one for lack of jurisdiction, improper venue,....—operates as an adjudication on the merits." See also 18 A. C. Wright and A. Miller, Federal Practice and Procedure § 4436 (3d ed. 2020) ("The basic rule that dismissal for lack of subject-matter jurisdiction does not preclude action... is well settled").

25.

Supreme Court precedent can be found at least as far back as 1866 in Hughes v. United States, 71 U.S. 232, 237 (1866) ("If the first suit was dismissed for.... want of jurisdiction or was disposed of on any ground which did not go to the merits of the action, the judgment rendered will prove no bar to another suit"); Halderman v. United States, 91 U.S. 584, 585-86 (1876) ("there must be at least one decision on a right between the parties before there can be said to be a termination of the controversy, and before a judgment can avail as a bar to a subsequent suit.... There must have been a right adjudicated or released in the first suit to make it a bar, and this fact must appear affirmatively."); and was affirmed at least in Costello v. United States, 365 U.S. 285, 285, 286 (1960) ("At common law dismissal on a ground not going to the merits was not ordinarily a bar to a subsequent action on the same claim.... We do not discern in Rule 41(b) a purpose to change this common-law principle with respect to dismissals in which the merits could not be

reached for failure of the plaintiff to satisfy a precondition.").

This foundational principle is something taught to every first year law student, and its litigation here in the highest court absurd. The facts are undisputed— Mr. Schulte sought Fed. R. Crim. P. 41(g) return of property in the Southern District of New York for a search warrant obtained in the Eastern District; after dismissal for improper venue, Mr. Schulte sought relief in the correct venue— the Eastern District. He then filed a proposed amended complaint adding additional devices from new Eastern District searches and a Bivens claim. The district court erroneously dismissed the case without even considering the proposed amended complaint. That amended complaint is then filed as a new civil case, but dismissed on res judicata grounds despite the newer claims never being litigated.

This court cannot permit this outrageous injustice to stand. Pursuant to its supervisory authority, the court should reverse and remand the unconstitutional dismissals of appeals 25-742 and 25-757.

C. There exists a circuit split over an important question regarding the constitutionality of sua sponte dismissals without notice.

The fourth question presented was whether a court may sua sponte dismiss a case without providing the plaintiff with notice, a hearing, or an opportunity to respond. There can be no question that a split exists amongst the circuits. See Curley v. Perry, 246 F.3d 1278, 1284 (10th Cir. 2001); Topa v. Melendez, 739 Fed. Appx. 516 (11th Cir. 2018) ("The rule that emerges... is that courts exercise their inherent power to dismiss a suit that lacks merit only when the party who brought the case has been given notice and an opportunity to respond."). This court has yet to determine the legality of ~~its~~ sua sponte dismissals themselves, whether pursuant to Fed. R. Civ. P. 12 or the screening provisions under §1915 and §1915A. See Neitzke, 498 U.S. at 324 n. 8 ("We have no occasion to pass judgment, however, on the permissible scope, if any, of sua sponte dismissals under Rule 12(b)(6).").

Moreover, this is clearly an important and recurring question. District courts issue sua sponte dismissals every day, and the overwhelming

Majority of no-notice sua sponte dismissals are raised in cases where the plaintiff proceeds IFP. And this case presents an optimal vehicle for the court to resolve the question presented considering that the district and appellate courts committed clear, reversible errors as a direct result of the incomplete record and haphazard procedures when handling IFP cases. While at first glance, the court may perceive a contretemps that is best remanded to complete and correct the record — that is precisely the point; justice is impossible when one-sided. These no-notice sua sponte dismissals invariably cause these situations, and cannot be eliminated until the court finally resolves this issue.

1. The Principle of Party Presentation and Due Process demands notice before dismissal

Courts are constrained by the Principle of Party Presentation, which is "basic to our adversary system." *Wood v. Milyard*, 566 U.S. at 472. Under that principle, "we rely on the parties to frame the issues for decision and assign to courts the role of neutral arbiter of matters the parties

present." Greenlaw v. United States, 554 U.S. 237, 243 (2008); "[A]s a

general rule, 'our adversary system is designed around the premise that the

parties know what is best for them, and are responsible for advancing the facts

and arguments entitling them to relief." *Id.* at 244 (second alteration in original)

(quoting Castro v. United States, 540 U.S. 375, 386 (2003) (Scalia, J., concurring

in part and concurring in judgment)).

It is self-evident that sua sponte dismissals without notice violate the

Principle of Party Presentation - the judge takes wholly the role of one party

and issues a combined argument and judgment simultaneously with no representation

of the other party whatsoever. This abuse is heightened when the defendant

is the government and the judge a former government attorney who is clearly

biased in favor of his ^{former} ~~former~~ advocacy and colleagues - which accounts for

the highest percentage of no-notice sua sponte dismissals. This clearly violates

Due Process guaranteed by the Fifth Amendment. "The fundamental

requirement of due process is an opportunity to be heard upon such notice.

and proceedings as are adequate to safeguard the right for which the

Constitutional protection is invoked." Anderson National Bank v. Lockett, 321

U.S. 233, 246 (1944). See also Neitzke, 490 U.S. at 329-330:

"Under Rule 12(b)(6), a plaintiff with an arguable claim is ordinarily accorded notice of a pending motion to dismiss for failure to state a claim and an opportunity to amend the complaint before the motion is ruled upon. These procedures alert him to the legal theory underlying the defendant's challenge, and enable him meaningfully to respond by opposing the motion to dismiss on legal grounds or by clarifying his factual allegations so as to conform with the requirements of a valid legal cause of action."

There can be no question that sua sponte dismissal without providing the adverse party an opportunity to be heard violates both the Principle of Party Presentation and Due Process.

Moreover, this fundamental principle dates back at least 2500 years to

Appius Claudius' criminal abuse of the Roman court system circa 450 B.C.,

when Claudius took advantage of his magistracy to sue Virginia into slavery

after failing to seduce her. As stated in *Liber de viris illustribus urbis Romae*,

"facile Victurus cum ipse esset et accusator et iudex." This only serves to

underscore the profound absurdity of a single individual acting as both accuser and judge in any system purporting to establish justice.

2. Sua sponte dismissals with no notice or opportunity to be heard render review impossible as no record exists

"This adversarial process [supra, of providing notice and an opportunity to be heard before dismissal] also crystalizes the pertinent issues and facilitates appellate review of a trial court dismissal by creating a more complete record of the case." *Id.*, supra. How can a higher court provide a check or properly manage lower courts if there is no record from which to review? As here, the only record is the district court's argument and judgment in his Dismissal Order where he takes upon the role of accuser and judge — where no response or counter-argument was permitted.

The reviewing court cannot conduct a review and must remand to permit a response — or, as here, and so often the standard procedure — the error propagates to the reviewing court which abuses its power, accepts its colleague's role as accuser and judge, and issues its own erroneous sua sponte dismissal based entirely upon the lower court's argument where the adverse party is yet again denied its due process right to be heard.

D. The circuit may not abrogate Supreme Court precedent mandating litigant-equality establishing that the poor must have equal access to the courts as the wealthy.

The final question presented was whether a poor incarcerated person has a right to access the courts and have his complaints read, taken seriously, and given an equal chance at justice. Although this may seem intuitive and fundamental, the courts routinely cull IFP complaints from their dockets and deny them justice due to their poverty; the courts treat their institution as a pay to play. This is clearly an important and recurring issue implicating all indigent who proceed IFP, and is inextricably linked with the previous question—as courts utilize no-notice sua sponte dismissals as their chosen instrument to cull IFP complaints and deny them justice—accordingly, this is the perfect vehicle to demonstrate the issue; Mr. Schulte's meritorious complaints were dismissed by the district and appellate courts due entirely to his poverty. The solution, as addressed in the previous question, is to take their oppressive tool and for this court to vouchsafe the poor's rights.

1. Mr. Schulte's eight complaints clearly state claims for relief

To avoid dismissal, a complaint must plead "enough facts to state a claim to relief that is plausible on its face." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007). "The Plausibility standard is not akin to a probability requirement... A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Ashcroft v. Iqbal, 556 U.S. 662, 668 (2009). "[A] well-pleaded complaint may proceed even if it strikes a savvy judge that actual proof of the facts alleged is impossible, and that a recovery is very remote and unlikely." Twombly, Supra at 556 (internal quotation marks omitted).

Notwithstanding the fact that all eight complaints were derived from successful cases filed by paying plaintiffs, they all clearly state claims for relief under the RFRA, FTCA, Bivens, Fed. R. Crim. P. 41a), and 28 U.S.C. § 2241. Judge Komitee committed clear, reversible error by finding failure to state a claim and dismissing all eight cases although they were all sufficiently pled.

2. Mr. Schulte's eight appeals were not frivolous as asserted by the Second Circuit. A complaint is frivolous when it "lacks an arguable basis either in law or in fact." Nietzke v. Williams, 490 U.S. at 325. A claim lacks an arguable basis in law when it is "based on an indisputably meritless legal theory." *Id.* at 327.

The circuit's assertion that Mr. Schulte's appeals were frivolous is even more egregious an error and more absurd an opinion than the district court's — if only because they are tasked with reviewing the lower courts for error.

Despite no record of Mr. Schulte's objections or counter-arguments to the district court's dismissal — due to its no-notice sua sponte nature — he nevertheless filed a motion for summary reversal that very clearly articulated the district court's errors. See Ex. E. Yet the circuit did not even undertake the requisite *de novo* review, but refused to even read the complaints or the motion as it would have done for a paying customer, and dismissed Mr. Schulte's meritorious claims based solely on his poverty and inability for pay to play. The circuit chose to merely endorse and propagate its colleague's errors in lieu of its standard practice.

3. This court must enforce its own Litigant-Equality Principle

"In so holding, we have been impelled by considerations beyond the corners of 28 USC § 1915, considerations that it is our duty to assure to the greatest degree possible, within the statutory framework for appeals created by Congress, equal treatment for every litigant before the bar.... The point of equating the test for allowing a pauper's appeal to the test for dismissing paid cases, is to assure equality of consideration for all litigants. The equation is intended to place the burdens of proof and persuasion in all cases on the same party — in these cases, on the government."

Coppedge v. United States, 369 U.S. 438, 446-47 (1962). Thus this

Court has established an equality test to ensure due process protections

for the poor; this test exists as an infeasible Constitutional bar that no

act of Congress can abrogate or annul. The Coppedge court held that

the ordinary practice of a court must apply equally to the poor as to the

paying customer — thus the Second Circuit cannot summarily dismiss

Mr. Schulte's appeals with neither briefing nor notice unless it is the

ordinary practice of the court to do so for the rich as well.

This test was applied again by the court in Neitzke, which stated

that a poor man's defective complaint

"will in all likelihood be dismissed sua sponte, whereas an identical complaint filed by a paying plaintiff will in all likelihood receive the considerable benefits of the adversary proceedings contemplated by the Federal Rules. Given Congress' goal of putting indigent plaintiffs on a similar footing with paying plaintiffs, petitioners' interpretation cannot reasonably be sustained."

Neitzke, *supra* at 330. Moreover, the Neitzke court emphasized the importance of this equality particularly because indigent plaintiffs must proceed pro se:

"According opportunities for responsive pleadings to indigent litigants commensurate to the opportunities accorded similarly situated paying plaintiffs is all the more important because indigent plaintiffs so often proceed pro se and therefore may be less capable of formulating legally competent initial pleadings."

Id. Accordingly, the Second Circuit's departure of its normal practice with paying customers violated the Litigant-Equality Principle and the Due Process clause of the Fifth Amendment, and is therefore unconstitutional. No-notice sua sponte dismissals, clearly unconstitutional as demonstrated in the previous section, cannot be inequitably applied to poor petitioners proceeding IFP by the court's Litigant-Equality Principle.

CONCLUSION

This case before the court makes clear that there are two justice systems in this country — one for the rich who can afford an attorney, where complaints are taken seriously, given the full attention of the court, and justice is granted — in contrast there is a dark corner for those too poor to pay an attorney, where complaints are not even read, the court cannot be bothered to do its due diligence, and justice is denied. It is this incorrigible dichotomy challenged by this petition.

The court should address questions two and three by summary reversal of appeals 25-758, 25-742, and 25-757, and remand with the instructions that the circuit apply clearly established law; the court should grant certiorari on the three remaining questions to resolve the constitutionality of 100% mandatory PLRA monthly recapture, no-notice sua sponte dismissals, and the justice disparity between the rich and poor.

Dated: October 5, 2025

Respectfully Submitted,
Joshua Schulte, pro se
