

No. **23-53**

Supreme Court, U.S.  
FILED

**JUL 18 2023**

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

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FREDERICK BATES,

*Petitioner,*

v.

CITY OF SAN JOSE, et al.,

*Respondents.*

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**On Petition For Writ Of Certiorari  
To The United States Court Of Appeals  
For The Ninth Circuit**

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**PETITION FOR WRIT OF CERTIORARI**

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FREDERICK BATES  
*Pro Se*  
1235 Muirkirk Ct.  
Folsom, CA 95630  
(408) 510-9174  
mrb10364evr@aol.com

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SUPREME COURT, U.S.

## **QUESTIONS PRESENTED**

The following questions are presented:

Whether the Ninth Circuit's ruling affirming the district court's dismissal of Petitioner's independent action on the basis of collateral estoppel and law of the case conflicts with this Court's precedent that under FRCP 60, res judicata must at times yield to an independent action in order to prevent a grave miscarriage of justice.

Whether the Ninth Circuit's ruling affirming the district court's declaration that Petitioner is a vexatious litigant, and subjecting Petitioner to a pre-filing screening order is arbitrary and capricious, and deprives Petitioner of his constitutional right of access to the courts, due process, equal protection of law, and equal treatment under the law.

## **LIST OF PARTIES TO THE PROCEEDING**

Frederick Bates, Petitioner  
City of San Jose California, Respondent  
Adonna Amoroso, Respondent  
Tuck Younis, Respondent  
Robert Davis, Respondent

## **LIST OF PROCEEDINGS RELATED TO THIS CASE**

### **Bates I**

*Frederick Bates v. City of San Jose*, No. 2005-4-SC-015768 (Cal. Super. Ct. Santa Clara Cty.)

### **Bates II**

*Frederick Bates v. City of San Jose, Robert Davis, Adonna Amoroso, & Tuck Younis*, No. 5:06-cv-5302-RMW (N.D. Cal. filed Aug. 29, 2006)

- Relevant appeal – 9th Cir. No. 08-16757

### **Bates III**

*Frederick Bates v. City of San Jose, Sam Liccardo, Rose Herrera, Charles Jones, Ash Kalra, Raul Peralez, Manh Nguyen, Magdalena Carrasco, Pierluigi Oliverio, Tam Nguyen, Donald Rocha, & Johnny Khamis*, No. 15-cv-5729-EJD (N.D. Cal. Filed Dec. 14, 2015)

- Relevant appeal – 9th Cir. No. 17-16413

**LIST OF PROCEEDINGS  
RELATED TO THE CASE – Continued**

**Bates IV (this case)**

*Frederick Bates v. City of San Jose, Robert Davis,  
Adonna Amoroso, & Tuck Younis*, No. 5:20-cv-7609-  
BLF (N.D. Cal. filed Oct. 29, 2020)

- Relevant appeal – 9th Cir. No. 21-16867

## TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED .....	i
LIST OF PARTIES TO THE PROCEEDING .....	ii
LIST OF PROCEEDINGS RELATED TO THIS CASE .....	ii
TABLE OF AUTHORITIES .....	vii
PETITION FOR WRIT OF CERTIORARI.....	1
OPINIONS BELOW.....	1
JURISDICTION.....	1
CONSTITUTIONAL PROVISIONS AND STAT- UTES RELATED TO THIS CASE.....	2
STATEMENT OF THE CASE.....	5
REASONS FOR GRANTING THE WRIT.....	9
I. Introduction.....	9
II. The Court of Appeals Ruling Conflicts with the Precedent of this Court Holding that Independent Actions are Permitted Under FRCP 60 to Prevent a Grave Mis- carriage of Justice .....	10
A. Petitioner's fraud claims in this case are equivalent to the forged letter re- lied on by a defendant to obtain judg- ment against a plaintiff that this Court found in <i>Beggerly</i> was an injus- tice sufficiently gross to demand a de- parture from the rigid adherence to the doctrine of res judicata to prevent a grave miscarriage of justice .....	10

## TABLE OF CONTENTS – Continued

	Page
B. The Ninth Circuit and district court's disregard for the U.S. Constitution, the full faith and credit act, and this Court's precedent when applying collateral estoppel in Bates II is an injustice that is sufficiently gross to demand a departure from the doctrine of res judicata to prevent a grave miscarriage of justice .....	14
C. Petitioner's claim in this case that the Ninth Circuit deprived him of his constitutional right to an impartial and disinterested tribunal during Petitioner's appeal's hearing in Bates II is an injustice sufficiently gross to demand a departure from the doctrine of res judicata to prevent a grave miscarriage of justice .....	17
III. The Vexatious Litigant Declaration and Pre-filing Screening Order in this Case Violates Petitioner's Constitutional Rights....	20
CONCLUSION.....	24

## TABLE OF CONTENTS – Continued

	Page
APPENDIX	
Appendix A	Memorandum opinion of the United States Court of Appeals for the Ninth Circuit affirming the judgment of the district court. No. 21-16867, filed April 21, 2023 ..... App. 1
Appendix B	Order of the district court: <i>Frederick Bates v. City of San Jose, Robert Davis, Adonna Amoroso, &amp; Tuck Younis</i> , No. 5:20-cv-7609-BLF (N.D. Cal. filed Oct. 29, 2020), Order granting Motion to Dismiss with Prejudice as to Defendant City of San Jose ..... App. 4
Appendix C	Order of the district court: <i>Frederick Bates v. City of San Jose, Robert Davis, Adonna Amoroso, &amp; Tuck Younis</i> , No. 5:20-cv-7609-BLF (N.D. Cal. filed Oct. 29, 2020), Order Granting Individual Defendants' Motion to Dismiss..... App. 27

## TABLE OF AUTHORITIES

	Page
FEDERAL CASES	
<i>BE &amp; K Const. Co. v. NLRB</i> , 536 U.S. 516, 122 S.Ct. 2390, 153 L.Ed.2d 499 (2002) .....	20
<i>Carey v. Phiphus</i> , 435 U.S. 259 (1978).....	18
<i>Clark v. Bear Stearns &amp; Co.</i> , 966 F.2d 1318 (9th Cir. 1992) .....	16
<i>De Long v. Hennessey</i> , 912 F.2d 1144 (9th Cir. 1990) .....	21
<i>Hazel-Atlas Glass Co. v. Hartford-Empire Co.</i> , 322 U.S. 238 (1944) .....	11
<i>In re Green</i> , 669 F.2d 779 (D.C.Cir.1981) .....	23
<i>In re Oliver</i> , 682 F.2d 443 (3d Cir. 1982) .....	23
<i>In re Powell</i> , 851 F.2d 427 (D.C.Cir.1988) .....	21
<i>Joint Anti-Fascist Committee v. McGrath</i> , 341 U.S. 123 (1951) .....	19
<i>Kremer v. Chemical Construction Corp.</i> , 456 U.S. 461 (1982) .....	15
<i>Marrese v. American Academy of Orthopedic Surgeons</i> , 470 U.S. 373 (1985) .....	15, 17
<i>Marshall v. Holmes</i> , 141 U.S. 589 (1891) .....	11
<i>Marshall v. Jerrico, Inc.</i> , 446 U.S. 238 (1980).....	18, 19
<i>Matthews v. Eldridge</i> , 424 U.S. 319 (1976) .....	18
<i>Molski, et al. v. Evergreen Dynasty, et al.</i> , No. 05-56452 (9th Cir. 2008).....	22



## TABLE OF AUTHORITIES – Continued

	Page
<i>Moy v. United States</i> , 906 F.2d 467 (9th Cir. 1990).....	22
<i>Ringgold-Lockhart v. County of Los Angeles</i> , 761 F.3d 1057 (2014) .....	20-22
<i>United States v. Beggerly</i> , 524 U.S. 38 (1998).....	9-11, 14
<i>Wood v. Santa Barbara Chamber of Commerce, Inc.</i> , 705 F.2d 1515 (9th Cir. 1983).....	23
 STATE CASES	
<i>Sanderson v. Niemann</i> , 17 Cal.2d 563 (1941).....	15
 FEDERAL STATUTES	
28 U.S.C. Section 1254(1) .....	1
28 U.S.C. Section 1651(a) .....	4, 9
28 U.S.C. Section 1655.....	4
28 U.S.C. Section 1738 (full faith and credit act) .....	3, 15, 17
Federal Rules of Civil Procedure 60 .....	4, 7, 8, 10,
.....	11, 13, 19, 23
Supreme Court Rule 13.1 .....	1, 9
 STATE STATUTES	
California Penal Code Section 12027.1.....	5, 6, 12

## TABLE OF AUTHORITIES – Continued

	Page
UNITED STATES CONSTITUTION	
Article IV, Section 1 (full faith and credit clause).....	2, 15
First Amendment.....	2, 9, 20, 23
Fifth Amendment .....	2, 9, 18, 23
Fourteenth Amendment .....	3, 23

## **PETITION FOR WRIT OF CERTIORARI**

Frederick Bates petitions the Court for a writ of certiorari to review the decision of the United States Court of Appeals for the Ninth Circuit in this case.



## **OPINIONS BELOW**

The Ninth Circuit's unpublished memorandum opinion is attached as Appendix A. The district court's order granting motion to dismiss with prejudice as to Defendant City of San Jose and declaring Plaintiff a vexatious litigant is attached as Appendix B. The district court's order granting individual Defendants' motion to dismiss is attached as Appendix C.



## **JURISDICTION**

The Ninth Circuit Court of Appeals denied Petitioner's appeal on April 21, 2023. This petition is timely pursuant to Supreme Court Rule 13.1. This Court has jurisdiction under 28 U.S.C. Section 1254(1).



**CONSTITUTIONAL PROVISIONS AND  
STATUTES RELATED TO THIS CASE  
U.S. CONSTITUTION**

**Article IV, Section 1 (full faith and credit clause)**

Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

**First Amendment**

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

**Fifth Amendment**

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

## **Fourteenth Amendment**

### **Section 1**

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

## **STATUTES**

### **United States Code**

#### **28 U.S. Code, Section 1738 – State and Territorial statutes and judicial proceedings; full faith and credit**

The acts of the legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto.

The records and judicial proceedings of any court of such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a

judge of the court that the said attestation is in proper form.

Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

### **28 U.S.C. Section 1651**

- (a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

### **Federal Rules of Civil Procedure**

#### **Rule 60. Relief from a Judgment or Order**

- (d) Other Powers to Grant Relief. This rule does not limit a court's power to:
  - (1) entertain an independent action to relieve a party from judgment, order, or proceeding;
  - (2) grant relief under *28 U.S.C. Section 1655* to a defendant who was not personally notified of the action; or
  - (3) Set aside a judgment for fraud on the court.



### **STATEMENT OF THE CASE**

Petitioner, who is black/African American, retired as a police sergeant from the San Jose Police Department on April 1, 2004, because of a medical disability. Petitioner was initially denied authorization to carry a concealed weapon (CCW) by Respondent Adonna Amoroso, a Deputy Chief of Police, without a due process hearing required by California Penal Code Section 12027.1. Amoroso stated reason for denying Petitioner a CCW permit was that she believed he retired on a psychological disability because of his work restriction to avoid psychological stress. Section 12027.1 prohibits the issuance of a CCW permit to an officer that retires on a psychological disability.

Petitioner's medical records, which were available to Amoroso, make it clear that Petitioner's work restriction to avoid psychological stress was due to his uncontrolled hypertension that caused damage to his heart, and not for psychological reasons. Petitioner's performance appraisals were consistently above standard with several individual rating categories exceptional. Additionally, the reason for Petitioner's medically related work restriction was discussed at his retirement board hearing that was open to the public. Furthermore, San Jose Police Department policy prohibits police administrators from interpreting work restrictions. The policy states that any question or confusion about a work restriction will be cleared by the City's Medical Director. Amoroso stated in a deposition that she was aware of this policy.

In August 2004, Respondent Tuck Younis, a Police Captain, received a letter from Petitioner's doctor explaining that his work restriction was a term of arts used to label his disability. Petitioner's doctor stated that he should have no problem or difficulty carrying a concealed weapon because of his work restriction to avoid psychological stress.

After receiving the letter from Petitioner's doctor, Younis denied him authorization to carry a concealed weapon, without the due process hearing required by Section 12027.1, just as Respondent Amoroso. Younis also told Petitioner's union representative approximately two weeks later that he would not be allowed to appeal the decision by Amoroso denying him authorization to carry a concealed weapon.

Petitioner made another attempt to secure his CCW permit when his attorney sent Respondent Robert Davis, the Chief of Police, a letter in October 2004, demanding Petitioner be issued a CCW permit based on the letter from his doctor explaining that he was a suitable candidate to carry a concealed weapon. Davis refused to issue Petitioner a CCW permit, without a due process hearing just as Respondents Amoroso and Davis. Petitioner was granted a CCW permit in December 2004, after he filed a complaint with the California Department of Fair Employment and Housing.

Petitioner sued the City of San Jose in small claims court (Bates I) in order to recover a \$1,500 retainer he paid an attorney to help him secure a CCW permit. The small claims court entered judgment in



favor of the City, without allowing any testimony, with an implied ruling that it had no authority to grant the compensation Petitioner was seeking. No transcript or record exists for the proceeding.

In August 2006, Petitioner filed a federal lawsuit (Bates II) against Respondents for a violation of his constitutional rights based on the denial of his authorization to carry a concealed weapon without the due process hearing required by law. Respondents filed a motion for summary judgment that was granted by the district court in July 2008. Petitioner appealed to the Ninth Circuit Court of Appeals on July 29, 2008. The district court's judgment was affirmed in a memorandum disposition on November 20, 2009.

Petitioner made attempts to obtain relief from the judgment in Bates II by motions under Rule 60 of the Federal Rules of Civil Procedure. On February 21, 2013, Petitioner filed a Rule 60 motion for relief arguing that Respondents perpetrated fraud on the court, that the district court erred in granting Respondents' summary judgment motion on the basis of collateral estoppel, and that the district court exhibited bias towards Petitioner. Petitioner's motion was denied by the district court, and the judgment was affirmed by the Ninth Circuit Court of Appeals in July 2015.

Petitioner filed a second Rule 60 motion alleging that his attorney had fraudulently entered a stipulation with Respondent City of San Jose to dismiss Respondent Younis from Bates II without Petitioner's consent. The motion was denied and Petitioner appealed to the

Ninth Circuit. The appeal was dismissed by the Ninth Circuit on February 10, 2014.

In December 2015, Petitioner filed a new lawsuit, Bates III, against the City of San Jose and members of the San Jose City Council alleging that the City had failed to open an investigation into Petitioner's discrimination and misconduct complaint against employees of the City Attorney's Office and Police Department. The City was granted its motion to dismiss in June 2016. Petitioner appealed, and the Ninth Circuit summarily dismissed the appeal. Petitioner filed a Rule 60 motion for relief in June 2017, that was also denied by the district court. Petitioner appealed and it was denied by the Ninth Circuit.

On October 29, 2020, Petitioner filed the current case, Bates IV, an independent action in equity for relief from judgment. Petitioner puts forth three grounds for relief: (1) that Petitioner's attorney and Respondents' attorney perpetrated fraud during the litigation of Bates II, and that the district court perpetrated fraud during litigation of Petitioner's Rule 60 motion in Bates II filed in February 2013; (2) that the district court inappropriately applied collateral estoppel in granting Respondents' summary judgment motion in Bates II; and (3) that the courts showed bias against Petitioner and in favor of Respondents. The district court granted Respondent City of San Jose's motion to dismiss and declare Petitioner a vexatious litigant on August 23, 2021. The motion to dismiss by Respondents Adonna Amoroso, Tuck Younis, and Robert Davis were granted by the district court on October 12, 2021.

Petitioner's appeal was filed on November 1, 2021. The Ninth Circuit denied Petitioner's appeal on April 21, 2023, with a memorandum disposition. Petitioner's Petition for Writ of Certiorari is timely under Supreme Court Rule 13.1.

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## REASONS FOR GRANTING THE WRIT

### I. Introduction

This Court should grant review of this case in order to set aside the ruling of the Ninth Circuit because it conflicts with the decision of this Court in *United States v. Beggerly*, 524 U.S. 38 (1998) that permits independent actions to prevent a grave miscarriage of justice. Permitting the judgment to stand in *Bates II* would be a grave miscarriage of justice. This Court should grant review to keep its pledge to guard the neutrality requirement of the Fifth Amendment jealously. This Court should also grant review in order to examine the lower federal courts' use of pre-filing screening orders pursuant to 28 U.S.C. Section 1651(a) to provide guidance on the important issue of what constitutes a vexatious litigant. At present, a coherent, uniform and objective standard on what constitutes a vexatious litigant among the federal Courts of Appeals is lacking. A vexatious litigant declaration deprives a person of their First Amendment right of access to the courts, a right this Court has termed as "one of the most precious of the liberties safeguarded by the Bill of Rights."

**II. The Court of Appeals Ruling Conflicts with the Precedent of this Court Holding that Independent Actions are Permitted Under FRCP 60 to Prevent a Grave Miscarriage of Justice**

**A. Petitioner's fraud claims in this case are equivalent to the forged letter relied on by a defendant to obtain judgment against a plaintiff that this Court found in *Beggerly* was an injustice sufficiently gross to demand a departure from the rigid adherence to the doctrine of res judicata to prevent a grave miscarriage of justice**

In affirming the judgment of the district court in this case, Bates IV, the Ninth Circuit disregards this Court's ruling in *United States v. Beggerly*, 524 U.S. 38 (1998). The Ninth Circuit ruling holds that the district court properly treated Petitioner's independent action in equity as seeking the same post-judgment relief that he sought in Bates II. In Bates II, Petitioner filed a Rule 60 motion seeking relief on the grounds that Respondents perpetrated fraud, the district court inappropriately applied the doctrine of collateral estoppel, and the courts exhibited bias toward Petitioner. The Ninth Circuit ruled that these same allegations by Petitioner in this case, Bates IV, also challenging the judgment in Bates II, are barred by law-of-the-case and collateral estoppel; and that the district court properly dismissed Petitioner's action. The Ninth

Circuit and the district court improperly views Bates II and Bates IV as the same case.

Federal Rules of Civil Procedure 60(d)(1) preserves a court's power to "entertain an independent action to relieve a party from judgment, order, or proceeding." In *Beggerly*, this Court held that independent actions are reserved for those cases of "injustices which, in certain instances, are deemed sufficiently gross to demand a departure" from rigid adherence to the doctrine of res judicata. *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 244 (1944). *Beggerly* undermines the position of the inferior courts in this case that Bates II and Bates IV are identical cases, holding that an independent action is a continuation of the former suit on the question of the jurisdiction of the court. In every other sense, an independent action in equity is a new case that should be available only to prevent a grave miscarriage of justice.

This Court, in *Beggerly*, noted that *Marshall v. Holmes*, 141 U.S. 589 (1891) was such a case that demanded a departure from the rigid adherence to the doctrine of res judicata. In that case, the plaintiff alleged that judgment had been taken against her in the underlying action as a result of a forged document. The Court found that "the judgments in question would not have been rendered against Mrs. Marshall but for the use in evidence of the letter alleged to be forged." Use of the forged letter was found to be sufficient to set aside the judgment in order to prevent a grave miscarriage of justice.

Petitioner makes an allegation in this case that the judgment in Bates II would not have been rendered against him but for an unconscionable scheme between Respondents' attorney and Petitioner's attorney to perpetrate fraud on the district court with the filing of Respondents' motion for summary judgment. The scheme included the false claim that Petitioner was denied a CCW permit only one time by Respondent Adonna Amoroso; and that he was granted authorization to carry a concealed weapon soon after Respondent Tuck Younis received a letter from Petitioner's doctor clarifying that Petitioner was a suitable candidate to carry a concealed weapon. The facts are clear that Petitioner was denied a CCW permit by Respondents Tuck Younis and Robert Davis, without a hearing required by California Penal Section 12027.1, after Younis received the letter from Petitioner's doctor. (Section 12027.1 implicates a constitutionally protected interest, because the hearing requirement places a significant substantive restriction on a law enforcement administrator making a decision regarding the issuance of a CCW permit to a retiring law enforcement officer).

As a part of the fraudulent scheme, Respondents' attorney and Petitioner's attorney entered an agreement to dismiss Respondent Younis by stipulation, without Petitioner's consent, in order to destroy Petitioner's cause of action against Younis, thereby preventing Petitioner from obtaining a judgement against Younis. Subsequently to Younis being dismissed by stipulation, he filed a declaration in support of Respondents' summary judgment motion falsely stating

that Respondent Davis, the Chief of Police, played no role in the denial and later granting of Petitioner's CCW permit. The district court's judgment reflects that the court was improperly influenced by Younis' perjured testimony in his declaration; because Davis was granted qualified immunity.

It is indisputable that Respondent Davis played a role in the matter of Petitioner's CCW permit authorization because he delegated his decision-making authority regarding Petitioner's CCW permit to Respondents Amoroso and Younis. Davis was also sent a letter by Petitioner's attorney demanding that he issue Petitioner a CCW permit after he was denied one by Amoroso and Younis. The evidence is indisputable that Davis denied Petitioner a CCW permit, without a due process hearing, just as Amoroso and Younis.

Petitioner also makes an allegation of fraud against the district court in this case that warrants relief from judgment in Bates II. Petitioner alleges that the district court made several fraudulent docket entries misstating the grounds for his Rule 60 motion, filed in February 2013, as challenging the court costs ("Costs Taxed") awarded to the City of San Jose in Bates II. The docket entries set the stage for a fraudulent hearing that the district court conducted without Petitioner's knowledge on April 26, 2013. According to the transcript, Respondents' attorney was granted an ex parte motion to dismiss [Petitioner's Rule 60 motion]. The civil minutes contradicts the transcript reflecting that the district court would take the matter under submission and enter a written ruling at a later

time. Petitioner's allegations of fraud against the district court are supported by the record.

This Court's opinion in *Beggerly* supports a finding that the fraud by Respondents' attorney, Petitioner's attorney, the district court judge and court staff, who are officers of the court, are injustices sufficiently gross to demand a departure from the rigid adherence to the doctrine of res judicata in order to prevent a grave miscarriage of justice. But for the fraud by Respondents' attorney, Petitioner's attorney, and the district court, judgments would not have been rendered against Petitioner. The Court of Appeals disregarded this Court's precedent and inappropriately applied the doctrines of collateral estoppel and law-of-the-case in affirming the dismissal of Petitioner's independent action in equity, despite his meritorious fraud claims.

**B. The Ninth Circuit and district court's disregard for the U.S. Constitution, the full faith and credit act, and this Court's precedent when applying collateral estoppel in Bates II is an injustice that is sufficiently gross to demand a departure from the doctrine of res judicata to prevent a grave miscarriage of justice**

In its motion for summary judgment in Bates II, Respondent City of San Jose claimed a defense of collateral estoppel. The collateral estoppel defense is based on the judgment in a small claims complaint Petitioner filed against the City in 2005, in the State of California. Judgment was entered against Petitioner



and in favor of the City without any testimony being allowed. The small claims commissioner made an implied finding that the court lacked the authority to grant Petitioner the compensation he was seeking. The issues raised in Petitioner's complaint were not litigated in the small claims proceedings. There is no transcript or record of the proceedings.

When determining the preclusive effect of a state court judgment, 28 U.S.C. Section 1738 (the full faith and credit act) requires a federal court to follow the preclusion law of the state where the judgment was rendered. The full faith and credit act implements the full faith and credit clause of the U.S. Constitution (Article IV, Section 1). This Court in *Kremer v. Chemical Construction Corp.*, 456 U.S. 461 (1982) held that "Section 1738 does not allow federal courts to employ their own rules of res judicata in determining the effect of state judgments, but rather goes beyond the common law and commands a federal court to accept the rules chosen by the State from which the judgment is taken."

In *Marrese v. American Academy of Orthopedic Surgeons*, 470 U.S. 373 (1985) this Court states: "More generally, *Kremer* indicates that Section 1738 requires a federal court to look first to state preclusion law in determining the preclusive effects of a state court judgment."

It is without question, that the collateral estoppel aspect of res judicata does not apply to judgments rendered in the Small Claims Courts in the State of California. In *Sanderson v. Niemann*, 17 Cal.2d 563 (1941),

the Supreme Court of California held that the California statute creating a small claims court emphasizes its informal character; and that the informal characteristics are of the utmost significance in disclosing theoretical grounds for refusing to apply collateral estoppel to judgments of small claims courts.

The judgment of the Ninth Circuit in *Bates II* affirming the district court's order granting the City of San Jose's motion for summary judgment based on the collateral effect of the small claims court judgment also conflicts with the Ninth Circuit's very own precedent and the findings of the court in the appeals' hearing. In the hearing, the Court remarked that it was "dubious" about collateral estoppel, and made findings that there was no litigation in the smalls claim case, and that there was no transcript or a sufficient record of the proceedings.

In *Clark v. Bear Stearns & Co.*, 966 F.2d 1318 (9th Cir. 1992), the Ninth Circuit held that the party asserting preclusion bears the burden of showing with clarity and certainty what was determined by the prior judgment; and that it is not enough that the party introduce the decision of the prior court, rather, the party must introduce a sufficient record of the prior proceeding to enable the trial court to pinpoint the exact issue previously litigated. The Ninth Circuit went further and stated: "Where the record before the district court was inadequate for it to determine whether it should apply the doctrine of collateral estoppel, we will not consider the issue on appeal."

The Ninth Circuit's flagrant disregard for, not only its own precedent, but the precedent of this Court, disregard for the U.S. Constitution and the command of 28 U.S.C. Section 1738, and its findings in the appeals' hearing discrediting the district court's decision on collateral estoppel that conflicts with its memorandum disposition more than meets the requirements for a meritorious independent action. The Ninth Circuit's memorandum disposition does not consider California's preclusion law. In *Marrese*, this Court reversed and remanded because the lower courts did not consider the state preclusion law. This Court's ruling in *Marrese* supports Petitioner's allegation in this case, Bates IV, that the lower courts inappropriately applied collateral estoppel in Bates II; and that but for the clearly erroneous rulings of the courts, judgment would not have been rendered against Petitioner. The Court should grant Petitioner's writ as to this issue.

**C. Petitioner's claim in this case that the Ninth Circuit deprived him of his constitutional right to an impartial and disinterested tribunal during Petitioner's appeal's hearing in Bates II is an injustice sufficiently gross to demand a departure from the doctrine of res judicata to prevent a grave miscarriage of justice**

In the hearing on Petitioner's appeal of the district court's judgment in Bates II that grants Respondents' motion for summary judgment, a judge on the panel

made comments exhibiting bias towards Petitioner and favoritism for Respondents that deprived Petitioner of his due process right to an impartial and disinterested tribunal guaranteed under the Fifth Amendment. The judge stated that it's a cliché to say, "why did you make a federal case of this? He asked for the concealed weapons permit. He's denied. He requested it again. He's granted. Why doesn't he just drop the darn thing?" These comments by the judge clearly shows that he was not impartial and disinterested in the outcome of Petitioner's lawsuit against Respondents. The judge's comments not only violate the Due Process Clause of the Fifth Amendment, but it also disregards this Court's holding in *Marshall v. Jerrico*, 446 U.S. 238 (1980).

In *Marshall v. Jerrico*, this Court held the following: "The Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases. This requirement of neutrality in adjudicative proceedings safeguards the two central concerns of procedural due process, the prevention of unjustified or mistaken deprivations and the promotion of participation and dialogue by affected individuals in the decisionmaking process. See *Carey v. Piphus*, 435 U.S. 247, 259-262, 266-267 (1978). The neutrality requirement helps to guarantee that life, liberty, or property will not be taken on the basis of an erroneous or distorted conception of the facts or the law. See *Mathews v. Eldridge*, 424 U.S. 319, 344 (1976). At the same time, it preserves both the appearance and reality of fairness, "generating the feeling, so important to a

popular government, that justice has been done,” *Joint Anti-Facist Committee v. McGrath*, 341 U.S. 123, 172 (1951) (Frankfurter, J., concurring), by ensuring that no person will be deprived of his interests in the absence of a proceeding in which he may present his case with assurance that the arbiter is not predisposed to find against him.”

The comments of the Court of Appeals’ judge asking why Petitioner made this a federal case, and why Petitioner doesn’t just “drop the darn thing” does not give the appearance or reality of fairness. Petitioner was deprived of a “proceeding in which he may present his case with assurance that the arbiter is not predisposed to find against him.” The Court of Appeals’ lack of neutrality was manifested in its memorandum disposition affirming the judgment of the district court, despite discrediting the district court’s order granting Respondents’ summary judgment motion on the basis of collateral estoppel in the hearing on Petitioner’s appeal.

This flagrant lack of neutrality by the Court of Appeals alone is an injustice that is sufficiently gross to demand a departure from the rigid adherence to the doctrine of *res judicata*, for which, independent actions under Rule 60 are reserved. This Court also commented in *Marshall v. Jerrico* that “The requirement of neutrality has been jealously guarded by this Court.”

### **III. The Vexatious Litigant Declaration and Pre-filing Screening Order in this Case Violates Petitioner's Constitutional Rights**

Courts have consistently recognized that declaring a litigant vexatious, restricting their access to the courts, is an extraordinary remedy that should rarely be used, especially in the case of a pro se litigant. This Court held in *BE & K Const. Co. v. NLRB*, 536 U.S. 403, 415 n. 12, 122 S.Ct. 2390, 153 L.Ed.2d 499 (2002) that the First Amendment right of the people to petition the government for a redress of grievances, which secures the right to access the courts, has been termed one of the most precious of the liberties safeguarded by the Bill of Rights.

The district court in this case, Bates IV, stated that it was mindful that because Petitioner is a pro se litigant, it should tread carefully in considering a pre-filing screening order. Yet, the district court instituted a pre-filing screening order against Petitioner without any objective finding that his litigation was excessive when looking at the differing standards within the Ninth Circuit and among the other federal Courts of Appeals.

The Ninth Circuit and the district court appear to rely on the case of *Ringgold-Lockhart v. County of Los Angeles*, 761 F.3d 1057 (2014) for guidance on the issue of a vexatious litigant. However, the Ninth Circuit, in its memorandum opinion, affirmed the judgment of the district court; even though the district court's judgment does not meet the requirements for issuing a

pre-filing screening order as outlined in *Ringgold-Lockhart v. County of Los Angeles*.

The Court of Appeals simply states in its memorandum opinion that the district court did not abuse its discretion in declaring Petitioner a vexatious litigant and entering a pre-filing review order after providing notice and opportunity to be heard, developing an adequate record for review, making substantive findings as to the frivolous and harassing nature of Petitioner's conduct, and narrowly tailoring the order to prevent abusive litigation.

The procedural requirements identified in *Ringgold-Lockhart v. County of Los Angeles* of notice and opportunity be heard, and developing an adequate record for review seems to be met. However, the substantive findings required by *Ringgold-Lockhart* are non-existent based on its holding that: "[B]efore a district court issues a pre-filing injunction . . . it is incumbent on the court to make 'substantive findings as to the frivolous or harassing nature of the litigant's actions.'" *De Long v. Hennessey*, 912 F.2d 1144, 1148 (9th Cir. 1990) (quoting *In re Powell*, 851 F.2d 427, 431 (D.C.Cir.1988) (per curiam)). To determine whether the litigation is frivolous, district courts must "look at 'both the number and content of the filings as indicia' of the frivolousness of the litigant's claims." *Id.* (quoting same). While we have not established a numerical definition for frivolousness, we have said that "even if [a litigant's] petition is frivolous, the court [must] make a finding that the number of complaints was inordinate." *Id.* Litigiousness alone is not enough, either: "The plaintiff's

claims must not only be numerous, but also be patently without merit.’ *Molski*, 500 F.3d at 1059 (quoting *Moy*, 906 F.2d at 470).”

The Ninth Circuit makes no findings independent of the district court as to the number and content of Petitioner’s filings against the City of San Jose and City officials as indicia of the frivolousness of his claims. The district court found that Petitioner was a vexatious litigant on the basis of four lawsuits he filed against the City of San Jose and several City officials since 2005; a small claims complaint (Bates I) filed in 2005; a federal lawsuit (Bates II) filed in 2006; a federal lawsuit (Bates III) filed in 2015; the current case (Bates IV) filed in 2020; and motions and appeals related to Bates II and Bates III. The district court’s only finding as to the frivolous nature of Petitioner’s filings is that his claims have been repeatedly rejected by the Ninth Circuit and other district court judges. But that is not entirely true. As Petitioner has already argued, the Ninth Circuit’s finding in the hearing on his appeal of the district court’s judgment granting Respondents’ motion for summary judgment in Bates II discredits the district court’s judgment on the issue of collateral estoppel. The Ninth Circuit’s finding proves that Petitioner’s claim as to the issue of collateral estoppel in this case is not ‘wholly fanciful or patently without merit.’

Petitioner’s four lawsuits, related motions and appeals do not come close to what other courts have found inordinate. *Ringgold-Lockhart* found that in *Molski*, 500 F.3d at 1060, the Court held that about 400



similar cases were inordinate; in *Wood v. Santa Barbara Chamber of Commerce, Inc.*, 705 F.2d 1515, 1523, 1526 (9th Cir. 1983), thirty-five actions filed in 30 jurisdictions were inordinate; In *In re Oliver*, 682 F.2d 443, 444 (3d Cir. 1982), more than fifty frivolous cases were inordinate; and in *In re Green*, 669 F.2d 779, 781 (D.C.Cir.1981) (per curiam), between 600 and 700 complaints were inordinate.

As to the requirement that a plaintiff's claims must be patently without merit, Petitioner's claims in this case, as has been argued above, have been thoroughly proven to be meritorious. But for the fraudulent scheme, and the inappropriate application of collateral estoppel by the Court of Appeals and district, judgment would not have been rendered against Petitioner in Respondents' motion for summary judgment in Bates II. But for the blatant bias of the Court of Appeals during his appeal of the judgment in Bates II, and the fraud by the district court relative to Petitioner's Rule 60 motion in Bates II, judgments also would not have been rendered against Petitioner. Therefore, the Court of Appeals ruling affirming the district court's declaration that Petitioner is a vexatious litigant, and imposing a pre-filing screening order unlawfully restricts Petitioner's access to the courts. Petitioner has been deprived of his First Amendment right to petition the government for redress of grievances, his Fifth Amendment right to due process, and his Fourteenth Amendment rights to equal protection of law and equal treatment under the law.



**CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

FREDERICK BATES

*Pro Se*

1235 Muirkirk Ct.

Folsom, CA 95630

(408) 510-9174

mrb10364evr@aol.com

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