

SUPREME COURT OF THE UNITED STATES

GEORGE W. HIGH, SR.,

Plaintiff-Petitioner,

VIRGINIA C. HIGH,

Plaintiff,

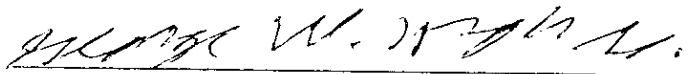
verses

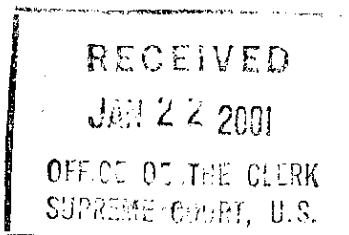
WILLIAM A. MORRISON,
Individually, d.b.a.
Jones, Morrison & Womack, P.C.,
C. MICHAEL ABBOTT,
Individually and P.C.,

Defendants-Respondents.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Eleventh Circuit

Petition for Writ of Certiorari


George W. High, Sr., Pro Se



Reg. No. 43141-019
Jesup Federal Prison Camp
2600 Highway 301 So.
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QUESTIONS PRESENTED FOR REVIEW

- I WHETHER THE APPELLATE COURT ERRED IN AFFIRMING THE DISTRICT COURT'S DISMISSAL OF THE PLAINTIFF'S ALLEGED PRO SE BIVENS CLAIM UNDER 28 U.S.C. § 1915A ?
- II WHETHER THE APPELLATE COURT ERRED WHEN IT FAILED TO APPLY THAT TEST IN BENSON v. O'BRIAN, 179 F.3d 1014, 1016, 1017, WHICH REQUIRES THE COURT TO DETERMINE WHETHER THE PLAINTIFF WAS PROCEEDING IN FORMAS PAUPERIS OR NOT ?
- III WHETHER THE APPELLATE COURT ERRED IN AFFIRMING THE DISTRICT COURT'S SUA SPONTE DISMISSAL OF PLAINTIFF'S ACTION, FOR FAILURE TO STATE A CLAIM UNDER 28 U.S.C. § 1915(e)(2)(B)(ii) ?
- IIII WHETHER THE APPELLATE COURT ERRED IN AFFIRMING THE DISTRICT COURT'S ADDRESSING THE MERITS OF THE PLAINTIFF'S CIVIL RIGHTS SUIT, AND IF THE APPELLATE COURT ALSO ERRED IN RULING ON THE MERITS OF THE SUIT ?

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:

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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 B 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.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was August 18, 2000.

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: October 26, 2000, and a copy of the order denying rehearing appears at Appendix C.

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).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- FIRST AMENDMENT.....Appendix A pg 2, App. B pg 2, App. E, App F
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- FIFTH AMENDMENT.....App. A pg 2, App. B pg 2, App. E, App. F
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- FOURTEENTH ADMENDMENT.... App. A pg 2, App. B pg 2, App. E, App. F
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- 28 U.S.C. § 1331App B pg 2, App. E pg 2, App. F pg 4
- 28 U.S.C. : 1915AApp. A pg 2, App. B pg 2, 5, App. F pg 1,
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- 28 U.S.C. § 1343..... App. E pg 2, App. F pg 2
- 28 U.S.C. § 1985.....App. A pg 2,3, App. B pg 1, pg 3, pg 4 and 5.
App. E pg 2, 3. App. F pg 2, pg 4

STATEMENT OF THE CASE

Plaintiff's GEORGE W. HIGH, SR and VIRGINIA C. HIGH, filed a CIVIL RIGHTS ACTION in the District Court on June 22, 1999, Pursuant to Federal Rules of Civil Procedures and requested monetary damages against Attorney's William A. Morrison, C. Michael Abbott and their respective law firms. Said defendants did conspire among themselves and with others to deny Plaintiff's equal protection and due process of law as guaranteed by the fourteenth admendment of the United States Constitution, and in conjunction with 42 U.S.C. § 1985 (2) and (3), and 28 U.S.C. § 1343 (1) and (2). Said defendants also deprived the plaintiff's of the right of "the effective assistance of counsel" as guaranteed by the sixth admendment of the United States Constitution. Defendants futher deprived plaintiff's of their rights as guaranteed by the first, fifth and thirteenth admendments of the United States Constitution.

On July 30, 1999, the district court issued an order dismissing plaintiff's action pursuant to 28 U.S.C. § 1915A. On August 11, 1999, plaintiff's filed a motion to alter or amend a judgement, pursuant to Rule 59(e), Federal Rules of Civil Procedures. On September 24, 1994, the court issued an order denying same. On October 22, 1999, PLaintiff's filed NOTICE OF APPEAL. On March 27, 2000 plaintiff's filed Appellate Brief in the United Sates Court of Appeals for the Eleventh Circuit. On August 18, 2000, the Appellate Court issued an opinion affirming the district Court's decision. On September 1, 2000, Plaintiff's filed a Petition for Rehearing En Banc, and on October 26, 2000 The Appellate Court denied same. On or about November 3, 2000 PLaintiff's filed MOTION FOR STAY OF MAN-

DATE PENDING APPLICATION FOR CERTIORARI, and on November 29, 2000, the Appellate Court denied the motion.

The named defendants, Morrison and Abbott, were the court appointed attorney's who represented plaintiff's in their criminal trial in 1993, and the district judge that dismissed this action was the presiding judge at that trial (1:92-cr-182-4,5), which is presently on appeal in the Eleventh Circuit Court of Appeals (98-8429-JJ, 99-8169-JJ).

REASONS FOR GRANTING THE PETITION

ISSUE I

THE APPELLATE COURT ERRED IN AFFIRMING THE DISTRICT COURT'S DISMISSAL OF THE PLAINTIFF'S ALLEGED PRO SE BIVENS CLAIM UNDER 28 U.S.C. § 1915A.

[See Appendix F, pages 4,5] Plaintiff's Civil Rights Action filed in the district court on June 22, 1999 (App. E) was premised on 28 U.S.C. § 1331, 28 U.S.C. § 1343 and 42 U.S.C. 1985 as to district court jurisdiction, and the Constitution violations of the First, Fifth, Sixth, Thirteenth and Fourteenth amendments. Plaintiff's action was not submitted pursuant to Bivens, nor is Bivens cited anywhere in the entire complaint submitted to the district court on June 22, 1999. [Appendix G, pages 2,3] ...The district court's order dismissing the High's alleged Bivens claim under § 1915A was fantastical, and a diversionary tactic to spare the named defendants the inconveniences and expenses of answering the complaint, (see also App. F, page 3). However, the appellate court (App. A, page 3) says: The district court also correctly dismissed High's Bivens claim for lack of federal action. In Appellant's Brief (App. F, page 4) High's statement re: 28 U.S.C. § 1915A, clearly states that (a) Screening.--The court shall review before docking, if feasible or, in any event, as soon as practicable after docking, a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a government entity. The district court lacked jurisdiction to dismiss appellants Civil Rights Action under 28 U.S.C. § 1915A because the High's did not seek redress from a governmental entity or officer

or employee. Nevertheless, the court of appeals takes a hardline in its opinion (appendix A, page 3) "Applying these standards after review of the record and giving liberal consideration to High's brief, we find no reversible error." Because the High's were not suing a governmental entity or its officials, their action was fraudulently screened and dismissed under 28 U.S.C. § 1915A [See also Appendix B, page 1]. The United States Court of Appeals has so far departed from the accepted and usual course of judicial proceedings, and has sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power.

ISSUE II

THE APPELLATE COURT ERRED WHEN IT FAILED TO APPLY THAT TEST IN BENSON v. O'BRIAN, 179 F.3d 1014, 1016, 1017, WHICH REQUIRES THE COURT TO DETERMINE WHETHER THE PLAINTIFF WAS PROCEEDING IN FORMAS PAUPERIS OR NOT.

[See Appendix F, pages 3,4] In appellants brief (App. F page 5) Plaintiff filed complaint and paid filing fee of \$150, on June 22, 1999. Also see civil docket 1:99-01616-CV, 6/22/99. Benson v. O'Brian at 1016, ... for the following reasons we hold that § 1915 (e)(2) applies only to in forma pauperis proceedings. Most obviously, § 1915 is titled, "proceedings in forma pauperis." To our knowledge no other part of § 1915 has been applied to action not pursued in formas pauperis. Moreover, § 1915(e) is the product of the PLRA's revision and renumbering of the former § 1915(d), and former 1915(d) clearly applies only to in forma pauperis action.

Benson at 1017, The other circuits that addressed the question agree that § 1915(e)(2) applies only to in forma pauperis actions. See *Bazrowx v. Scott*, 136 F.3d 1053, 1054 (5th Cir.) ("As appellant was not proceeding in forma pauperis, his complaint could not be dismissed pursuant to to § 1915(e)(2).") cert. denied, ---U.S.--119 S. Ct. 156, 142 L.Ed.2d 128 (1998); *Mark v. Bolcum*, 98 F.3d 494, 495 (9th Cir. 1996) ("§1915(e)(2)...applies to prisoner proceeding in forma pauperis"), *Porter v. Fox* 99 F.3d 271, 273 n. 1 (8th Cir.1996)...First if all actions, whether pursued in forma pauperis or not, are to be screened by the district court pursuant to § 1915(e)(2), the specific prisoner complaint screening provision, 1915A, would be rendered largely superfluous. We should, of course, be "hesitant to adopt an interpretation of a congressional enactment which renders superfluous another portion of that same law." *Mackey v. Lenier Collection Agency & Serv., Inc.*, 486 U.S. 825, 837, 108 S. Ct. 2183 100 L.Ed.2d 836 (1988).

The United States Court of Appeals has entered a decision in conflict with the decision of other United States Court of Appeals on the same important matter.

ISSUE III

THE APPELLATE COURT ERRED IN AFFIRMING THE DISTRICT COURT'S SUA SPONTE DISMISSAL OF PLAINTIFF'S ACTION, FOR FAILURE TO STATE A CLAIM UNDER 28 U.S.C. § 1915(e)(2)(b)(ii).

[See Appendix G, pages 5,6 and Appendix F, pages 6,7]. *Mitchell v. Farcess*, 112 F.3d 1483, 1490-91 (11th Cir. 1997). Lay Senior Circuit Judge, concurring: I am pleased to concur in Chief Judge Hatchett's excellent opinion....I write separately, however to note my concern as to the constitutionality of § 1915(e)(2)(B)(ii), which allows sua sponte dismissal of an IFP complaint that fail to state a claim upon which relief may be granted. At 1491...I write my concurring opinion to note my concern with the substance of § 1915(e)(2)(B)(ii), used in this case, which I feel is consti-

tutionally flawed. [See] *Neitzke v. Williams* 490 US 319, 104 L

Ed 2d 338, 109 S Ct 1827 (1989) [490 US 320] Justice Marshall delivered the opinion of the court. [1a] The question presented is whether a complaint filed in forma pauperis which fails to state a claim under Federal Rules of Civil Procedure 12(b)(6) is automatically frivolous within the meaning of 28 USC § 1915(d) [28 USCA § 1915(d)]. The answer we hold, is no. [490 US 322] The Court of Appeals for the seventh circuit affirms in part and reverse in part. *William v. Falkner*, 837 F.2d 304 (1988). In its view the district court had wrongly equated the standard for failure to state a claim under Rule 12(b)(6) with the standard for frivolousness under § 1915(d). The frivolousness standard, authorizing sua sponte dismissal of an in forma pauperis complaint "only if the petitioner cannot make a rational argument in law or fact which would entitle him or her to relief," is a "more lenient" standard than that of Rule 12(b)(6), the court stated. 872 F.2d, at 307. Unless there is "indisputably absent any factual or legal basis" for the wrong asserted in the complaint, the trial court, "[i]n a close case," should permit the claim to proceed at least to the point where responsive pleadings are required. *Ibid.* (citation omitted). [490 US 328] [8] Close question, including claims filed pursuant to 42 USC § 1983 [42 USCA § 1983], have on a number of occasions arisen on motions to dismiss for failure to state a claim, and have been substantial enough to warrant this Court's granting, review, under its certiorari jurisdiction, to resolve them. See, e.g., *Estelle v. Gamble*, 429 US 97, 50 L Ed 2d 251, 97 S Ct 285 (1976); *McDonald v Santa Fe Trail Transportation Co.*, 427 US 273, 49 L Ed 2d 493, 96 S Ct 2574 (1976); *Bivens v. Six Unknown Fed. Narcotics Agents*, 403 US 388, 29 L Ed 2d 619, 9 S Ct 1999 (1971); *Jones v Alfred Myers Co.*, 392 US 409, 20 L Ed 2d 1189, 88 S Ct 2186, 47 Ohio Ops 2d 43 (1968). It can hardly be said that the substantial legal claims raised in these cases were so defective that they should never have been brought at the onset. To term these claims frivolous [490 US 329] is to distort measurably the meaning of frivolousness both in common and legal parlance. Indeed, we recently reviewed the dismissal under Rule 12(b)(6) of a complaint based on 42 USC § 1983 [42 USCA § 1983] and found by a 9-to-0 vote that it had, in fact, stated a cognizable claim—a powerful illustration that a finding of a failure to state a claim does not invariably means that the claim is without merit. See *Bower v Inyo County*, 489 US 593, 103 L Ed 2d 628, 109 S Ct 1373 (1989). [490 US 330] [1d, 10a, 11a] To conflate the standard of frivolousness and failure to state a claim, as petitioner urge, would thus deny indigent plaintiffs the practical protection against unwarranted dismissal generally accorded paying plaintiffs under the Federal Rules.

The Eleventh Circuit Court of Appeals has entered a decision in conflict with their own decision, as well as the decisions of other court of appeals on the same important matter. The court of appeals has rendered a decision in conflict with relevant decisions of this Honorable Court

ISSUE IIII

THE APPELLATE COURT ERRED IN AFFIRMING THE DISTRICT COURT'S ADDRESSING THE MERITS OF THE PLAINTIFF'S CIVIL RIGHTS SUIT, AND THE APPELLATE COURT ALSO ERRED IN RULING ON THE MERITS OF THE SUIT.

[See Appendix B, pages 3,4] Plaintiff sues two attorneys, William A. Morrison and C. Michael Abbott, who represented the plaintiff and his wife in certain criminal proceedings, and their law firm. He names as a plaintiff, in addition to himself, his wife. He has submitted as his complaint a typed, 49-page narrative that details the events that led to the arrest and conviction of plaintiff and his wife, Virginia High. All the events he discusses took place from 1990 to 1994. He describes how IRS agents and various other government actors who investigated the High's allegedly lied and manipulated them and treated them differently because they were African Americans. Plaintiff also assert that there were irregularities with the searches and seizures that led to his arrest and indictment. Plaintiff then claim that Morrison and Abbott, the named defendants, colluded with each other and with others in order to trick the plaintiff and his wife into cooperating with the goverment and pleading guilty. [See Appendix A,

page 2,3] On Appeal, High argue that the district court erred by dismissing sua sponte his claim that his lawyers, Morrison and Abbott, conspired with various government actors and falsely indicted him and his wife with illegally seized evidence and deprived them of various constitutional rights because of their race. He also argues that the district court erred by dismissing his complaint without giving him the opportunity to amend it. (page 3) ...The district court correctly dismissed High's § 1985 claims because they were vague, conclusory, and unsupported by facts. The district court also correctly dismissed High's Bivens claim for lack of federal action. Additionally, because High could not have amended his complaint to state a cause of action, the district court properly dismissed High's suit without giving him leave to file an amended complaint. [See] Benson v. O'Brian, 179 F.3d 1014, 1016 (6th Cir.) In Denton v. Hernandez, 504 U.S. 25, 34 112 S. Ct. 1728, 118 L. Ed2d 340 (1992), The Supreme Court held that a dismissal under former [1915(d)] was "not a dismissal on the merits, but rather an exercise of the court's discretion under the forma pauperis statute, [and thus] the dismissal does not prejudice the filing of a paid complaint making the same allegations."

While the petitioner stands by each and every issue charged in the CIVIL RIGHTS ACTION, it would be inappropriate to argue its merits, because they were not properly before the Eleventh Circuit Court of Appeals, and the district court's sua sponte dismissal of the appellant's action was "unconscionable and unconstitutional." [See Appendix G, bottom of page 7.]

The Eleventh Circuit Court of Appeals has decided an **important**

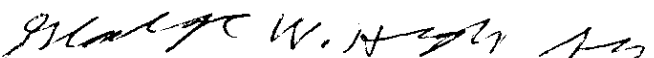
federal question in a way that conflict with relevent decisions of this Court.

CONCLUSION

The plaintiff's Civil Rights Action was dismissed in the district court sua sponte, pursuant to 28 U.S.C. § 1915A. The obvious rational basis for such peremptory action was that in dismissing the action sua sponte prior to issuance of process, the named defendants would be spared the inconveniences and expense of answering the complaint. Thus, Morrison and Abbott was not required to responde to the suit. Depriving one group of this right while retaining it for another stands in stark opposition to established principles of equal access to the courts for all litigants. Judicial mechanisms like appellate review "must be kept free of unreasonable distinction that can only impede open and equal access to the courts."

For the above and forgoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,


George W. High, Sr., Pro Se Litigant

This the 5th day of February 2001.