January 28, 2025

Clerk
Attention: Cert Petition
Supreme Court of the United States
One First Street NE
Washington, D. C. 20543

Good day –

Enclosed please find a resubmitted cert petition clearing deficiencies as noted in your enclosed letter dated January 22, 2025. Resubmitted in forma pauperis related to fifth circuit case 24-10614 as follows:

- One signed original cert petition, in forma pauperis motion, and appendix, together with ten copies of the aforementioned are enclosed.

- Three USPS Priority Mail boxes are being used to complete transmittal of the required number of copies of this in forma pauperis petition. This is box xx of 3 total boxes as indicated by handwriting in upper right margin.

I am indigent as result of involuntary servitude in the continuing pattern of racketeering acts and conspiracy against rights of the primary defendant United States as a dependent of an Army veteran selected based upon religious discrimination by Army and DOJ against him and his dependents as well as members of his family of origin for involuntary servitude in illegal human experiments which originated under President Eisenhower and have continued in violation of federal law through all subsequent presidencies.

Thank you for this opportunity to demonstrate the course of actions of the courts of the United States of America in front of our entire national population and the world - and, in particular, those among us who have and do engage in faithful service to this nation, regardless of the pattern of profound flaws and willful non-compliance of its national government police powers operations with its Constitution, laws, and regulations.

Sincerely,

Dennis Brewer
1210 City Place
Edgewater, NJ 07020
201-887-6541

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

January 22, 2025

Dennis S. Brewer
1210 City Place
Edgewater, NJ 07020

RE: Brewer v. William Burns, Director, Central Intelligence Agency
USCA5 No. 24-10614

Dear Mr. Brewer:

The above-entitled petition for writ of certiorari was postmarked January 15, 2025 and received January 17, 2025. The papers are returned for the following reason(s):

The notarized affidavit or declaration of indigency does not comply with Rule 39. You may use the enclosed form.

The caption of the case must appear as appropriate in this Court (e.g. "Brewer v. William Burns, Director, Central Intelligence Agency") Rule 34.1(c).

You must provide an original and 10 copies of your petition for a writ of certiorari and motion for leave to proceed in forma pauperis. Rule 12.2.

Please correct and resubmit as soon as possible. Unless the petition is submitted to this Office in corrected form within 60 days of the date of this letter, the petition will not be filed. Rule 14.5.

A copy of the corrected petition must be served on opposing counsel.

Sincerely,
Scott S. Harris, Clerk
By:

Susan Frimpong
(202) 479-3039

Enclosures

AFFIDAVIT OR DECLARATION IN SUPPORT OF MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

I, Dennis Sheldon Bauer, am the petitioner in the above-entitled case. In support of my motion to proceed *in forma pauperis*, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor; and I believe I am entitled to redress.

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	**Average monthly amount during the past 12 months**		**Amount expected next month**	
	You	Spouse	You	Spouse
Employment	$	$	$	$
Self-employment	$	$	$	$
Income from real property (such as rental income)	$	$	$	$
Interest and dividends	$	$	$	$
Gifts	$	$	$	$
Alimony	$	$	$	$
Child Support	$	$	$	$
Retirement (such as social security, pensions, annuities, insurance)	$ 2067	$	$ 2113	$
Disability (such as social security, insurance payments)	$	$	$	$
Unemployment payments	$	$	$	$
Public-assistance (such as welfare)	$	$	$	$
Other (specify):	$	$	$	$
Total monthly income:	$ 2067	$	$ 2113	$

2. List your employment history for the past two years, most recent first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
No employment permitted, since Summer 2008 by actions of Executive Branch, including false imprisonment from October 2010 through March 2011.			$ $ $

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
			$
			$
			$

4. How much cash do you and your spouse have? $ 47 as of Jan 15, 2025 as of original submission
Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Type of account (e.g., checking or savings)	Amount you have	Amount your spouse has
Checking	$ 47 as of Jan 15 2025	$
	$	$
	$	$

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

☐ Home
Value _____

☐ Other real estate
Value _____

☐ Motor Vehicle #1
Year, make & model _____
Value _____

☐ Motor Vehicle #2
Year, make & model _____
Value _____

☐ Other assets
Description Personal clothing, kitchen utensils, TV, PC, Phones
Value $ 350 forced liquidation value

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
_____	$_____	$_____
_____	$_____	$_____
_____	$_____	$_____

7. State the persons who rely on you or your spouse for support. For minor children, list initials instead of names (e.g. "J.S." instead of "John Smith").

Name	Relationship	Age
_____	_____	_____
_____	_____	_____
_____	_____	_____

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, or annually to show the monthly rate.

	You	Your spouse
Rent or home-mortgage payment (include lot rented for mobile home) Are real estate taxes included? ☒ Yes ☐ No Is property insurance included? ☒ Yes ☐ No	$ 466	$_____
Utilities (electricity, heating fuel, water, sewer, and telephone)	$ 200	$_____
Home maintenance (repairs and upkeep)	$_____	$_____
Food	$ 250	$_____
Clothing	$ 100	$_____
Laundry and dry-cleaning	$_____	$_____
Medical and dental expenses	$ 150	$_____

	You	Your spouse
Transportation (not including motor vehicle payments)	$ 80	$
Recreation, entertainment, newspapers, magazines, etc.	$ 100	$
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's	$	$
Life	$	$
Health	$	$
Motor Vehicle	$	$
Other: _____	$	$
Taxes (not deducted from wages or included in mortgage payments)		
(specify): _____	$	$
Installment payments		
Motor Vehicle	$	$
Credit card(s)	$ 790	$
Department store(s)	$	$
Other: _____	$	$
Alimony, maintenance, and support paid to others	$	$
Regular expenses for operation of business, profession, or farm (attach detailed statement)	$	$
Other (specify): _____	$	$
Total monthly expenses:	$ 1911	$

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

☐ Yes ☒ No If yes, describe on an attached sheet.

10. Have you paid – or will you be paying – an attorney any money for services in connection with this case, including the completion of this form? ☐ Yes ☒ No

If yes, how much? _____

If yes, state the attorney's name, address, and telephone number:

11. Have you paid—or will you be paying—anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

☐ Yes ☐ No

If yes, how much? Printing & mailing x2 = $250

If yes, state the person's name, address, and telephone number:

Vendors - ink, paper, USPS

12. Provide any other information that will help explain why you cannot pay the costs of this case.

Please see attached original petition replaced at Clerk's specific request.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: Jan 26, 2025

Elena Sheldon

(Signature)

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

January 22, 2025

Dennis S. Brewer
1210 City Place
Edgewater, NJ 07020

RE: Brewer v. William Burns, Director, Central Intelligence Agency
USCA5 No. 24-10614

Dear Mr. Brewer:

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You must provide an original and 10 copies of your petition for a writ of certiorari and motion for leave to proceed in forma pauperis. Rule 12.2.

Please correct and resubmit as soon as possible. Unless the petition is submitted to this Office in corrected form within 60 days of the date of this letter, the petition will not be filed. Rule 14.5.

A copy of the corrected petition must be served on opposing counsel.

Sincerely,
Scott S. Harris, Clerk
By:

Susan Frimpong
(202) 479-3039

Enclosures

No. _____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

Dennis Sheldon Brewer — PETITIONER

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

The petitioner asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed *in forma pauperis*.

Petitioner has previously been granted leave to proceed *in forma pauperis* in the following court(s):

United States District Court for the Fifth Circuit,

United States Circuit Court for the Fifth Circuit.

Signed this 15th day of January, 2025 under penalties of perjury.

_____

(Signature)

AFFIDAVIT OR DECLARATION IN SUPPORT OF MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

I, Dennis Sheldon Brewer, am the petitioner in the above-entitled case. In support of my motion to proceed *in forma pauperis,* I state that because of my poverty I am unable to pay the costs of this case or to give security therefor; and I believe I am entitled to redress.

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	**Average monthly amount during the past 12 months month**	**Amount expected next**

1. Social Security Income net $2,067 per month, self only, no spouse or other family member. As of January 2025, $2,113.
2. Employment history: No employment since 2008, rejected previously despite good faith attempts, not allowed under current circumstances due on-going Defendant wire frauds. .
3. Spouse employment history: No spouse.
4. Current cash on hand in checking account: $47.
5. Assets other than clothing and ordinary household furnishings: None.
6. Amounts owed:
   Credit card accounts Visa and Mastercard totaling $3,633
   Personal loan in the amount of due private party (redacted for privacy): $6,000
7. Dependents: None.
8. Average monthly expenses:

a.	Rent (Section 8 $1,534 rent)	$466
b.	Utilities	$200
c.	Food	$250
d.	Clothing	$100
e.	Medical	$150
f.	Transportation	$80
g.	Entertainment	$100
h.	Credit cards and debt service	$790
i.	Total monthly expenses	$1,911

9. Expected major changes in payments, assets, or liabilities next 12 months: None.
10. Payments to attorneys related to this case: None.
11. Other payments related to preparing and filing this case: Printing and mailing services less than $100.

12. Other information relevant to inability to pay: Forced asset liquidation in 2005 and precluded by Defendants' prejudice of civil and constitutional right to work at all times since that date, except in a captive operation from August 2007 to June 2008. Since that date, due to ongoing interference of Defendant police powers with any and all rights to employment in conjunction with the underlying circumstances created and sustained by Defendant United States and co-conspirator Defendants, all as documented in underlying Complaint NDTX 2:24-cv-0123 Table 2 and related Facts in the Complaint and accompanying exhibits filed therewith and filed in the Appendix to Fifth Circuit Court case number 24019614.

I certify the above under penalties of perjury.

Executed on January 15, 2025

Dennis Sheldon Brewer
1210 City Place
Edgewater, NJ 07020

No. _____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

Dennis Sheldon Brewer v. William Burns, Director, Central Intelligence Agency

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Circuit Court for the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

Dennis Sheldon Brewer

1210 City Place, Edgewater, New Jersey 07020

201-887-6541

QUESTIONS PRESENTED

1. Shall this Court permit the courts of the fifth circuit to openly defy both this Court's mandates and statutes to establish their own circuit specific precedents which effectively override this Court and Congress for:

a. Standing?

The well-established principle of standing is afforded to all who have (i) injury in fact, (ii) can establish causation, and (iii) a statutory means of redress exists, as defined in FDA v. Hippocratic Medicine 602 US____ (2024) issued June 28, 2024, as the fifth circuit was engaged in concurrent, overlapping, and openly defiant actions, wherein a fifth circuit district court disregarded those well-established bedrock principles of standing to dismiss sua sponte on June 6, 2024, one day after docketing, the petitioner's pleading (described at paragraph 11A below, appendix C pages 7-24, appendix H 194-196, paragraph 13-P10D-P10E) and well satisfying these three principles, which dismissal was affirmed on November 11, 2024 under local rule 47.6 by a fifth circuit panel finding no reversible error of law and giving no reason,

b. Congressional intent?

Congress intended to place this indigent petitioner, and others similarly affected, in this case impoverished by acts of the United States as it engages in and perpetuates involuntary servitude, on equal footing with all other litigants in 28 U.S.C. § 1915, but these fifth circuit courts first abused judicial discretion, disregarding this Court's four relevant keystone mandates at paragraph 12A below, then affirmed that abuse of discretion, finding no reversible error of law on November 11, 2024, citing local rule 47.6, providing no opinion as they justified by claiming their affirmance had "no precedential value,"

c. **Reaffirm de jure this defiant de facto fifth circuit precedent**, overriding this Court's mandates?

A fifth circuit panel denied an en banc rehearing petition as "no active judge expressed an interest," thereby reaffirming this newly found precedent on December 30, 2024 and de jure creating this new circuit-wide precedent establishing the district court's arbitrary and fundamental failures to comply with bedrock judicial principles of standing, impartiality, equity, and fair consideration, as proper uses of judicial discretion under fifth circuit local rule 47.6 (paragraph 11C), exploiting the inherent ambiguity of unexplained fifth circuit panel actions to unambiguously establish on December 30, 2024, this fifth circuit precedent in open defiance of this Court's June 28, 2024 mandate in FDA v. Hippocratic Medicine 602 US____ (2024),

d. **Failed timely delivery of notice,** using US mail to notify the petitioner three days after mandate publication to attempt to procedurally evade petitioner's stay motion so he can petition this Court for writ of certiorari?

The fifth circuit then published the mandate on January 7, 2025, and the petitioner received notice by mail, the only means of court communication permitted by the fifth circuit, on January 10, 2025, three days after publication, in the fifth circuit court's second instance of failure to timely and accurately communicate with this petitioner/appellant (Procedural History entries for September 26, November 11-December 5, and January 7-10),

e. **When it elects to do so in its sole discretion, the fifth circuit can de jure by defiant precedent, disregard rights and law to enshrine violations of the religious establishment clause** and 42 U.S.C. §§ 2000bb, bb1-bb-4 in this circuit by the United States Army, Central Intelligence Agency, Justice, Homeland Security, Health and Human Services, among others, in this and other violations of rights and law in the fifth

circuit extinguishing rights and claims of the petitioner, other civilians, and those of thousands to millions who faithfully served the United States, particularly Army and CIA, and have been injured as intelligence or military service veterans, their dependents and descendants, who may be similarly situated to this service member descendant petitioner since childhood and the age of five?

The immediate and prospective practical effects of the fifth circuit's defiant judicial precedent extend to the extinguishment of rights and claims of persons well beyond this petitioner, including persons related to over 100,000 who currently serve in military service, to thousands to millions of others similarly situated, whether impoverished or otherwise harmed by these acts of the United States in this fifth circuit. More than 100,000 current active duty and untold millions of former military personnel, as well as their dependents and descendants, which include members of the petitioner's own extended family who are related to his uncle, a former Army medic who served at Fort Hood, Texas serve in this circuit's jurisdiction, most having no Bivens special relationship with the United States. The fifth circuit's precedent will prospectively extinguish the rights and claims in the fifth circuit arising from Controversies created by illegal acts of the United States as it has and does violate its own Laws and Treaties to engage in illegal acts including, without limitation, (i) human experimentation, in its testing and deploying an internationally prohibited bioweapon, (ii) sustaining involuntary servitude, (iii) racketeering acts against rights and property, among other offenses; against persons adversely selected through discrimination against religious rights protected under the Constitution's establishment clause in the absence of any compelling governmental interest, (iv) in other violations of constitutional and civil rights, and (v) other violations of law.

2. These violations have, do, and will trample upon and fatally negate (a) the petitioner's *First, Third, Fourth, Fifth, Eighth, Ninth, Thirteenth*, and *Fourteenth Amendment* constitutional rights and (b) damage perhaps irretrievably those of others similarly injured in this circuit, and (c) negate the civil remedies readily available in the plain and clear Congressional statutory language and legislative intent expressed in 42 U.S.C. §§ 2000bb, bb-1-bb-4 cause of action for religious discrimination absent compelling governmental interest, 28 U.S.C. § 2679(b)(2) individual liability in governmental acts violating rights, and 18 U.S.C. §§ 1961-1968 civil cause of action for racketeering acts, other federal and state statutes, and long settled caselaw related thereto.

3. The constitutional and statutory rights of the entirety of this class of injured US persons will be severely compromised and extinguished in all practical senses in this fifth circuit if these willful bad faith precedents sustaining arbitrary applications of judicial discretion in the fifth circuit are allowed to persist based upon a single district court's overly broad abuse of discretion in its determination of "frivolous" in its finding against facts and law for decades of illegal acts of government, which acts, violations, and injuries are profoundly similar to those prosecuted by the United States and its allies in United States of America v. Karl Brandt et al. (1947). Broad discretion must not extend to the egregious abuse of discretion, else we have no rule of law.

LIST OF PARTIES

4. This Controversy arises between the courts of the fifth circuit, and the petitioner and others similarly situated. No respondent service is required as parties have not been initially served. The parties are listed in the caption of the relevant action filed by petitioner for this

Court's reference and convenience, may be found in the certificate of interested persons in appendix H pages 173-178, and are not directly relevant to the matter before this Court.

5. Primary defendants are departments and agencies of the United States, including defendants with police powers; state and local police powers agencies in several states; and senior executive and management personnel with direct responsibility for these rights violations under these courts' jurisdiction as defined at 28 U.S.C. § 2679(b)(2) and under state statutes.

6. This petitioner, who brings this matter in forma pauperis pro se as an indigent due to decades of fraudulently concealed willful acts, violations, and injuries by the United States and its co-defendants, is the plaintiff/appellant, whom Congress intended would stand on equal footing with paid litigants under 28 U.S.C. § 1915, but has not been accorded such treatment by these fifth circuit courts, as they defy Congressional intent, and this Court yet again on standing wherein injuries have been sustained, causation established, and specific statutory remedies exist. But this is a Controversy of national import, which extends well beyond this indigent petitioner, as described above in paragraphs 1(e) and 3, see also appendix C, Table of Contents, page 20-21 Plaintiffs relating likely future parties to this injured class, as discussed at length in the underlying complaint paragraphs referenced.

RELATED CASES

Bivens v. Six Unknown Fed. Narcotics Agents, 403 U. S. 388 (1971)

Conley v. Gibson, 355 U.S. 41 (1957)

Denton v. Hernandez, 504 U.S. 25 (1992)

FDA v. Hippocratic Medicine, 602 US____ (2024)

Haines v. Kerner, 404 U.S. 519 (1972)

Loper Bright Enterprises v. Raimondo, 603 US ___ (2024)

Marbury v. Madison, 5 Cranch 137 (1803)

Neitzke v. Williams, 490 U.S. 319 (1989)

TABLE OF CONTENTS

INDEX TO APPENDICES

TABLE OF AUTHORITIES CITED

STATUTES AND RULES

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 orders of the United States court of appeals appear at Appendix A to the petition. The mandate was mailed to petitioner and published three days prior to receipt by the petitioner, delivered by mail, the court required means of communication. A reversal and stay motion was sent by express mail within 24 hours of mandate receipt.
>
> The orders of the United States district court appear at Appendix B to the petition and are reported in the Pacer CM/ECF system of this district court.
>
> The critical relevant opinions of this Court appear at Appendix E to the petition and are reported as indicated in the Table of Authorities above.

JURISDICTION

For cases from federal courts:

> The date on which the United States first circuit court of appeals initially affirmed the district court's per curiam order and judgement order was November 11, 2024.
>
> The date on which the United States first circuit court of appeals denied the petition to rehear en banc its per curiam order affirming the district court's dismissal order was December 30, 2024.
>
> The date on which the appellant received the order refusing the en banc petition by mail, the only means permitted by the first circuit court of appeals for communication, was January 10, 2025, three days after the mandate had been published. A motion for reversal and stay was sent express mail on January 11, 2025.
>
> The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitutional rights - *First, Third, Fourth, Fifth, Eighth, Ninth, Thirteenth*, and *Fourteenth Amendments*

1972 Bioweapon Treaty prohibiting bioweapons and delivery systems

42 U.S.C. §§ 2000bb, bb1-bb4 cause of action for religious discrimination

28 U.S.C. §§ 1915, 1915A court access for indigents

28 U.S.C. § 2679(b)(2) individual liability for government violations of rights

18 U.S.C. §§ 175-178 bioweapons prohibited

18 U.S.C. §§ 1961-1968, 1964 civil cause of action for racketeering

STATEMENT OF THE CASE

7. This petition for writ of certiorari is entered under this Court's Rules 10 (a) and 10(c) to appeal and adjudicate federal fifth circuit court per curiam orders and judgements which do abridge and may extinguish the *First, Third, Fourth, Fifth, Eighth, Ninth, Thirteenth* and *Fourteenth Amendment* rights of petitioner and prospectively thousands to millions of others including active duty service member's family members, veterans, and their descendants similarly situated to the adversely selected through religious discrimination petitioner, and other US persons. The fifth circuit court and the district court have (quoting Rule 10(a)) "so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power." Further, the circuit court has (quoting Rule 10(c)) "decided an important federal question in a way that conflicts with relevant decisions of this Court." The fifth circuit has in fact directly defied this Court as and immediately after it rendered its decision in FDA v. Hippocratic Medicine, 602 US____ (2024).

8. These extreme and substantial deviations as the fifth circuit de jure established these circuit precedents which vary widely (i) from this Court's mandates, (ii) from clear

Congressional intent, and (iii) from the basic rights, fairness, and principles of equity enshrined in the rule of law and our Constitution, are clearly demonstrated in the paragraphs below:

9. Procedural History - District Court Violations of Due Process, Errors of Law Affirmed by Circuit Court

10. Utter Disregard - Fifth Circuit Courts Defy Congress And This Court To Establish Circuit Specific Overriding Precedents

11. Principles Of Standing Trampled - This Court's Concurrent Mandates Defied
12. Equal Footing Trampled - Utter Disregard Of Congressional Intent in 28 U.S.C. § 1915 And This Court's Related Mandates
13. Congressional Intent Trampled - Statutes And Mandates Abridged By Fifth Circuit Actions
14. Petitioner's Rights Trampled - Bad Faith Procedural Dodges Attempt Deprivations Of Rights

15. Utter Disregard - Fifth Circuit Defiance, Lack Of Judicial Discipline Extinguish Petitioner's Fundamental Rights, Adversely Impact Thousands To Millions More

9. Procedural History – District Court Violations of Due Process, Errors of Law Affirmed by Circuit Court

9A. USDC Violated Basic Principles of Standing, Liberal Construction, Mandatory In Forma Pauperis Pro Se Tests

Date	**Act**	**Court, Appellant**
May 31, 2024	Complaint sent by USPS priority mail, 54 claims, 1,324 pages (Table of Contents appendix C pages 7-24)	Appellant, no electronic filing permitted
June 5, 2024.	Complaint received by mail and docketed as 2:24-cv-0123	Northern District of Texas at Amarillo
June 6, 2024	Complaint dismissed *sua sponte,* two page order, one page judgement page order (appendix B page 4)	Northern District of Texas at Amarillo
June 24, 2024	Notice of Appeal mailed	Appellant
July 2, 2024	Notice of Appeal docketed (appendix D page 28)	Northern District of Texas at Amarillo
September 4, 2024	Record on Appeal mailed USPS	Northern District of Texas at Amarillo
September 7, 2024	Record on Appeal received from USPS, 3 day mailing time from Amarillo, TX	Appellant

9B. USCA Affirmed USDC Errors of Law, Cited Local Rule 47.6 To Evade Denton Mandates For "Intelligent Appellate Review"

Date	Act	Court, Appellant
July 12, 2024	Appeal docketed as 24-10614. Mailed filings only, no electronic filing permitted	Fifth Circuit Court of Appeals
September 23, 2024	Sufficient appellant redrafted brief mailed on and dated September 10, 2024 docketed as accepted by Clerk.	Fifth Circuit Court of Appeals
September 26, 2024	In reply to clerk letter dated September 18, received September 25, sent misdated letter carrying forward prior correspondence August 28 date in heading. Mailed to Fifth Circuit clerk, indicated typical USPS mailing times of 7-8 days to receive mail from New Orleans, LA, and noted redrafted appellant brief dated September 10 permitted under court rules, and no further corrections would be made. (appendix C page 25)	Appellant
November 11, 2024	Per curiam order and judgement entered, mailed USPS on November 14 without copy of order enclosed	Fifth Circuit Court of Appeals

9C. USCA Rejected En Banc Petition, Twice Used Procedural Irregularities, Evaded Timely Notice Essential To Filing Of Timely Stay Motion

November 20, 2024	November 11 mailing received with no order enclosed. Called USCA clerk's office to indicate no copy of order received in clerk's November 11 mailing. Clerk read order over phone to appellant.	Appellant
November 21, 2024	En banc petition prepared and mailed to meet immediate court deadline imposed by tight mailing times and late receipt from court, missing order required when filing en banc petition could not be included as was not yet received, as noted therein	Appellant
November 29, 2024	Missing November 11 per curiam order mailed after the fact on November 20 received via US mail by appellant	Fifth Circuit Court of Appeals
December 5, 2024	Revised en banc petition sent via email, as newly permitted for the first time to pro se clerk unit, cured deficiencies by including previously missing order and clearing others noted	Appellant
December 5, 2024	Fifth Circuit Court of Appeals automated message to appellant confirmed receipt and stated: "This email address is for the purpose of submitting documents to be filed in pending cases before the 5th Circuit, not a means of communicating with the court."	Appellant
December 13, 2024	Sufficient en banc rehearing petition accepted	Fifth Circuit Court of Appeals
December 30, 2024	Per curiam order docketed, denied en banc petition, mailed USPS (appendix A page 2)	Fifth Circuit Court of

		Appeals
January 7, 2025	Order, judgement, mandate published affirming mandate	Fifth Circuit Court of Appeals
January 10, 2025	Notice of denial of en banc petition received by USPS late Friday, three days after mandate publication, mailing time included official government holiday delay (appendix A page 2)	Appellant,
January 11, 2025	Motion to reverse and stay sent by express mail to Fifth Circuit	Appellant
January 11, 2025	Petition for writ of certiorari draft started	Appellant

10. Utter Disregard - Fifth Circuit Courts Defy Congress And This Court To Establish Circuit Specific Overriding Precedents

10A. Fifth circuit courts have established de facto, then de jure, precedents which defy Congressional intent and this Court's mandates and rules. This petition directly addresses those wide deviations from this Court's mandates to all inferior courts, and the fifth circuit's contemporaneous defiant circuit precedents, related to standing and equal footing mandates in particular, which adversely impact rights and claims of petitioner and thousands to millions of others in the fifth circuit as described at paragraphs 1(e) and 3 above.

11. Principles Of Standing Trampled - This Court's Concurrent Mandates Defied

11A. The fifth circuit district court at Amarillo utterly disregarded the principles of standing – injury in fact, causation, remedy - and conflated two parallel illegal United States human experiment programs run on civilians, CIA's 1953-1973 MKUltra LSD druggings of civilians, and the CIA/Army bioweapon program at issue here, and simply opted out of reading the complaint as it dismissed sua sponte June 6, 2024, one day after docketing. See appendix C page 7-24 for the Table of Contents in this 1,324 page complaint of meticulously researched and forensically developed content with specific

identifications as a result of breakthroughs beginning in September 2023, which finally began to establish definitive causation; provided a detailed narrative of the underlying illegal conduct and the direct impact on victims; discussed legal immunity, bad faith acts, and related caselaw; identified conflicts of Constitution, law, and treaty; discussed contextual fraudulent concealment of racketeering acts by abuse of state secret privilege; provided 110 specific examples of illegal conduct by the United States and its co-conspirators supported by inline and documentary evidence; called out 54 statutory claims which built on the narrative and 110 specific examples, including novel scientific claims never heard by any court which relate the illegal bioweapon testing and deployment operations to analog beneficial devices in FDA approved testing, and relate bioweapon system delivery components to other analogous devices and systems in daily commercial use; provided a comprehensive schema of carefully researched remedies under law encompassing state and federal statutes across multiple jurisdiction; all argued clearly and as simply as complex facts and law allow.

11B. The district court simply refused to read or consider the complaint placed before it; presumed to know what it said; ignored the principles of standing, as well as law, mandates, and facts; and rendered an opinion without reference to the contents of the complaint – all as meticulously documented in the appellant brief at appendix H paragraph 13 pages 185-202. The court just opted out, and abused an equal footing counterargument crafted by Congress in 28 U.S.C. § 1915, to excuse itself from its constitutional duty to consider this Controversy involving the United States, claiming the entire matter to be frivolous and redundant when it is neither and was not even read in the less than eight working hours from docketing to signed court order, as the Table of

Contents (appendix C pages 7-24) and the forensic history alone will inform any reasonable person. The district court simply ignored the Congressional intent of equal footing in 28 U.S.C. § 1915 and this Court's mandates in Conley, Haines, Neitzke, and Denton, discussed below at paragraph12A4.

11C. The fifth circuit court panel found this fifth circuit district court's practice – ignoring principles of standing, ignoring case narrative and legal arguments, and failing to consider facts in the context of statutory and remedies, to be perfectly acceptable. So good that they need not render any opinion to explain their conclusion – affirmed, with no reversible error of law (appendix a, page 1), as the fifth circuit panel used its local rule 47.6 as the guiding precedent for its decision not to issue an opinion (emphasis added):

> "47.6 Affirmance Without Opinion. The judgment or order may be affirmed or enforced without opinion when the court determines that an opinion would have no precedential value and that any one or more of the following circumstances exists and is dispositive of a matter submitted for decision: (1) that a judgment of the district court is based on findings of fact that are not clearly erroneous; (2) that the evidence in support of a jury verdict is not insufficient; (3) that the order of an administrative agency is supported by substantial evidence on the record as a whole; (4) in the case of a summary judgment, that no genuine issue of material fact has been properly raised by the appellant; and (5) no reversible error of law appears. In such case, the court may, in its discretion, enter either of the following orders: "AFFIRMED. See 5TH CIR. R. 47.6." or "ENFORCED. See 5TH CIR. R. 47.6.""

11D. Using this local rule 47.6, the fifth circuit panel's per curiam order (appendix A page 1) found no precedential value and "no reversible error" as it affirmed the district court's willful refusal to even skim, peruse, read, or consider the complaint. But nothing in federal law supports this holding for in forma pauperis pleadings, at least not since 1957, when this Court found that dismissal is impermissible unless these courts can say:

> "with assurance that under the allegations of the pro se complaint, which we hold to less stringent standards than formal pleadings drafted by lawyers, it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'" *Conley v. Gibson,* 355 U.S. 41, 45-46 (1957).

11E. Since the local rule 46.7 finding cannot be supported when the arguments have not been read, as laid out in the appellant brief (appendix H, pages 181-203 paragraph 8-15), this fifth circuit panel effectively established a novel and unlawful de facto precedent, which moves any and all exercises of judicial discretion, no matter their nature or effect, completely out of the vast legal territory which encompasses a reversible error of law. A district court's discretion, to not even consider an argument before dismissing it, is now a de facto act of proper judicial discretion. This most certainly defies this Court's "no set of facts in support of his claim" Conley mandate above on its face.

11F. By this fifth circuit panel's act and by this circuit's rule, it can use this novel fifth circuit precedent to (i) claim no reversible error of law without ever asserting any reason when this Court's mandates are ignored; (ii) ignore this Court's mandates at will, most particularly Conley above, and Denton, as explained at paragraph 12A4 below; (iii) defy Congressional intent in 28 U.S.C. § 1915 to ignore any well-crafted unpaid complaints with plain and clear facts and arguments of law as it chooses, (iii) ignore well established proper judicial procedure whenever it wishes; (iv) ignore the myiad other Congressional and state statutes and legislative intent claimed in a complaint whenever it is convenient; and (v) simply refuse to explain why it chose Rule 47.6 to defy this Court's long established mandates whenever it acts to extinguish rights and claims.

11G. In citing this local rule 47.6, the fifth circuit directly interferes with appellant rights to pursue further appeals in this circuit, and thereafter pray for the writ for which this petition is written, each and every time this local rule is used to conceal the fifth circuit appeals panel's deliberative process and intent from any and all appellants. The fundamental act of objecting to the ambiguity of an utter lack of legal findings by the circuit court under this local rule 47.6 is itself inherently ambiguous. This reality extinguishes the appellate rights of litigants whenever the circuit court shall so elect, as there is nothing clear and plain to object to, no specific or particular points an appellant can argue since none are given – so the standards of argument to which are litigants are held by courts are completely undercut. It is hard, nay impossible, to form any argument against legal minds which must be read in situ and whose deliberative process is therefore as opaque as the muddy Mississippi River. So, lacking a legal or logical basis to form an argument which argues against nothing, the litigant's petition is much more likely to be disregarded for its ambiguity as it objects to any inherently ambiguous local rule 47.6 no opinion fifth circuit ruling, rendered any time the fifth circuit chooses this route in any matter before it. The fifth circuit can simply walk away from logic, reason, law, and argument whenever it chooses to ignore statute, ignore Congressional intent, ignore due process, ignore this Court's mandates, or simply ignore the appellant for no reason at all, and thereby de facto extinguish the rights and claims of parties by merely citing this local rule 47.6. Or give a party standing where none exists, as in FDA v. Hippocratic Medicine 602 US____ (2024).

11H. These fifth circuit courts' actions, which defy long established statutes, mandates, and principles - while citing no reason, no rationale, nor observing precedent

in doing so – effectively extinguish petitioner's rights, a pattern of de jure circuit precedent. This deviations from the rule of law, broadly applicable to all who come before the fifth circuit appellate courts and certainly known to its district courts, fails to meet the most basic principles of sound jurisprudence under any legal system, and well exceeds the threshold standard for review established in this Court's Rule 10, particularly given the existing pattern of wide deviations from established mandates, illustrated by the contrasts regarding standing, due consideration, and liberal construction between this petitioner's case and FDA v. Hippocratic Medicine, 602 US____ (2024), wherein in this Court found there was no standing – no injury in fact, and no causation – in its June 28, 2024 mandate.

12. Equal Footing Trampled - Utter Disregard Of 28 U.S.C. § 1915 Congressional Intent And This Court's Mandates

12A. Congress adopted 28 U.S.C. § 1915 providing equal footing to indigent plaintiffs in the late 1800s. The modern era mandates which govern equal footing are Conley v. Gibson, 355 U.S. 41 (1957), Haines v. Kerner, 404 U.S. 519 (1972), Neitzke v. Williams, 490 U.S. 319 (1989), and Denton v. Hernandez, 504 U.S. 25 (1992). Excerpted briefly, they speak volumes:

12A1. Conley v. Gibson, 355 U.S. 41, 45-46 (1957):

> **Dismissal is impermissible unless** the court can say "with assurance that under the allegations of the pro se complaint, which we hold to less stringent standards than formal pleadings drafted by lawyers, **it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'"**

12A2. Haines v. Kerner, 404 U.S. 519, 520-521 (1972):

> "allegations such as those asserted by petitioner, however inartfully pleaded, are sufficient to call for the opportunity to offer supporting evidence. We cannot say with assurance that under the allegations of the pro se complaint, which we hold to less stringent standards than formal pleadings drafted by lawyers, it appears "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U. S. 41, 355 U. S. 45-46 (1957). See Dioguardi v. Durning, 139 F.2d 774 (CA2 1944).

12A3. Neitzke v. Williams, 490 U. S. 329, 330 (1989):

"Our conclusion today is consonant with Congress' overarching goal in enacting the in forma pauperis statute: "to assure equality of consideration for all litigants." ….

"Given Congress' goal of putting indigent plaintiffs on a similar footing with paying plaintiffs, petitioners' interpretation cannot reasonably be sustained. 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. See Haines v. Kerner, 404 U. S. 519, 404 U. S. 520(1972). [Footnote 9]."

12A4. Denton v Hernandez, 504 U.S. 25, 32-34 (1992):

"In Neitzke v. Williams, 490 U.S. 319 (1989), we considered the standard to be applied when determining whether the legal basis of an in forma pauperis complaint is frivolous under 1915(d). The issues in this case are the appropriate inquiry for determining when an in forma pauperis litigant's factual allegations justify a 1915(d) dismissal for frivolousness, and the proper standard of appellate review of such a dismissal."

…… at 32-34 (emphasis added):

"As we stated in Neitzke, a court may dismiss a claim as factually frivolous only if the facts alleged are "clearly baseless," 490 U. S., at 327, a category encompassing allegations that are "fanciful," id., at 325, "fantastic," id., at 328, and "delusional," ibid. As those words suggest, a finding of factual frivolousness is appropriate when the facts alleged rise to the level of the irrational or the wholly incredible, whether or not there are judicially noticeable facts available to contradict them. An in forma pauperis complaint may not be dismissed, however, simply because the court finds the plaintiff's allegations unlikely. Some improbable allegations might properly be disposed of on summary judgment, but to dismiss them as frivolous without any factual development is to disregard the age-old insight that many allegations might be "strange, but true; for truth is always strange, Stranger than fiction." Lord Byron, Don Juan, canto XIV, stanza 101 (T. Steffan, E. Steffan, & w. Pratt eds. 1977)

……

"In reviewing a § 1915(d) dismissal for abuse of discretion, it would be appropriate for the Court of Appeals to consider, among other things, whether the plaintiff was proceeding pro se, see Haines v. Kerner, 404 U. S. 519, 520-521

> (1972); whether the court inappropriately resolved genuine issues of disputed fact, see supra, at 32-33; whether the court applied erroneous legal conclusions, see Boag, 454 U. S., at 365, n.; whether the court has provided a statement explaining the dismissal that facilitates "intelligent appellate review," ibid.; and whether the dismissal was with or without prejudice."

12B. The district court's use of the term frivolous – unserious, no sound basis, meaningless, having no weight, comprised of fantasy or delusion - to characterize a pleading was a reversible error of law when:

1. Facts are utterly disregarded as when simply not even read. Facts must be read to be considered, must be liberally construed in their reading under existing caselaw, and must be subjected to adversarial proceedings to determine objectivity under sound judicial procedure. To fail to read facts and the related claims is a procedural error of law.
2. Law which is simply disregarded and given no weight, as in failing to merely acknowledge claims made under causes of action established by Congress when relevant facts are asserted with those claims, and neither facts nor claims nor law have even been read to be considered for threshold validity when liberally construed, is to refuse to recognize cognizable claims, a fundamental error of law.

12C. District court judges enjoy a level of discretion. But discretion without consideration is currently accepted in the fifth circuit as sound jurisprudence, so long as the proper words are used, and the proper citations are made, to form the unqualified opinion on the merits of an action which has not been read to be considered. The incremental application of research, forensic analysis, fact gathering, and evidence need not be considered in reaching this conclusion. That is not how the law is described, but it is how it is practiced by courts in this circuit. It defeats the rule of law and the credibility of these courts.

12D. The circuit panel found this use of discretion utterly acceptable, without saying as much, as they said nothing at all. They held that such conduct – considering neither facts, nor law, nor claims which correlate those facts with law to assert claims - is completely acceptable judicial procedure for threshold determinations by a district court judge. A circuit in which fact finders so exercise their discretion will find no facts at all whenever it is convenient to their interests over the interests of justice.

12E. The circuit panel's reasoning is indecipherable as it elected to simply affirm without legal reasoning or support, citing its local rule 47.6 and offering no opinion, which rule fails to comply with these mandates to liberally construe and to support this Court's own intelligent appellate review. The fifth circuit court failed to even examine the district court order to determine if Denton's five tests for intelligent appellate review had been completed for this Court to review in the event of a further appeal. They were not, see appendix H pages 187-189 paragraph 13-P4A through P4G.

12F. This complete absence of compliance with precedents and the local rule 47.6 dodge of any and all mandates at will, was analyzed and presented to the circuit court a second time in the en banc rehearing petition at appendix A page 2. The panel simply denied the en banc rehearing petition, noting that its own failure to comply with mandates was of no particular interest to any active judge. So, it appears that in their eyes, the law need not furnish a remedy, even when Congress has explicitly so provided, nor even a rational reason for failing to comply, simply by honoring the local rule 47.6 precedent of ignoring mandates and statutes, and of fair consideration of pleadings when convenient. This lack of circuit discipline in granting discretion without review, rationale, or compliance with statutes and mandates is itself a profound

miscarriage of justice, a de jure precedent which is a reversible error of law, and a wide deviation from over a thousand years of jurisprudence and 235 years of American justice.

12G. Upon proper consideration of facts and law in this matter by a federal court, yet to be achieved due to its novel claim (Denton mandates discovery of novel claims brought by indigent plaintiffs), it is intended that the claims of other injured and aggrieved parties may be added through discovery and joined with this pioneer claim. The total number of injured parties who are prospective plaintiffs is not yet known, and this particular fact is no trivial matter in this circuit. It looms large, as the US Army, a principal defendant, has large facilities in this circuit. Well over 100,000 active duty service members work in this circuit at present, and millions more have served in the region covered by the fifth circuit. Both the petitioner's uncle and father served in the Army Medical Corps in Texas and in Washington state respectively in the 1950s and 1970s, and they and their families have sustained injuries in these illegal acts of government as a result of adverse selection based upon religious discrimination with no compelling governmental interest. Thousands to millions of others may be similarly injured given the mass distribution capabilities of the modern era versions of the illegal bioweapon and the known pattern of adverse selection practiced by lawless federal officials, both those named in the complaint and others to be discovered.

13. Congressional Intent Trampled - Statutes And Mandates Abridged By Fifth Circuit Actions

13A. Congressional statutes which are well settled and provide remedies cannot be overlooked by any court claiming it follows the law and makes no reversible error of law. As our founders and this Court have made perfectly clear time and again:

> "[a]ll new laws, though penned with the greatest technical skill, and passed on the fullest and most mature deliberation," would be "more or less obscure and

equivocal, until their meaning" was settled "by a series of particular discussions and adjudications." Federalist No. 37 (J. Madison).

"To avoid an arbitrary discretion in the courts, it is indispensable that they should be bound down by strict rules and precedents, which serve to define and point out their duty in every particular case that comes before them; and it will readily be conceived from the variety of controversies which grow out of the folly and wickedness of mankind, that the records of those precedents must unavoidably swell to a very considerable bulk, and must demand long and laborious study to acquire a competent knowledge of them." Federalist 78 (A. Hamilton).

13B. Loper Bright Enterprises v Raimondo 603 US ___ (2024):

"This Court embraced the Framers' understanding of the judicial function early on. In the foundational decision of Marbury v. Madison, Chief Justice Marshall famously declared that "[i]t is emphatically the province and duty of the judicial department to say what the law is." 1 Cranch 137, 177 (1803). And in the following decades, the Court understood "interpret[ing] the laws, in the last resort," to be a "solemn duty" of the Judiciary. United States v. Dickson, 15 Pet. 141, 162 (1841) (Story, J., for the Court). When the meaning of a statute was at issue, the judicial role was to "interpret the act of Congress, in order to ascertain the rights of the parties." Decatur v. Paulding, 14 Pet. 497, 515 (1840).

13C. Marbury v. Madison 5 Cranch 137 (1803):

"It is also not entirely unworthy of observation, that in declaring what shall be the supreme law of the land, the constitution itself is first mentioned; and not the laws of the United States generally, but those only which shall be made in pursuance of the constitution, have that rank.

"Thus, the particular phraseology of the constitution of the United States confirms and strengthens the principle, supposed to be essential to all written constitutions, that a law repugnant to the constitution is void, and that courts, as well as other departments, are bound by that instrument."

13D. Fifth circuit courts are not excused from their duties to law or facts by their relative position in the court hierarchy – rather, they are explicitly obliged by their relative position in this hierarchy to scrupulously observe laws and mandates, and to find facts, even in the face of personal or philosophical opposition to statutes, mandates, or

facts they may find personally repugnant, or are disfavored by powerful institutions or individuals, including those in other branches of government. Inferior courts may not defer to any arbitrary interpretation which favors any particular interest or interpretation over the plain, clear, and explicit language in the statute, nor manufacture "frivolousness" through discretion as an excuse for failing to merely read and consider facts, claims, and proper application of statutes.

13E. When the underlying statute is well settled law, and even when it is not, where an explicit cause of action has been provided by Congress, and justiciable factual evidence of injury is presented, these courts must permit the legal process to proceed on its normal course consistent with our Founders intent, our Constitution, and this Court's more than 235 years of jurisprudence – Hamilton, Jay, and Marshall made that perfectly clear in their foundational writings as this republic was born and began our noble experiment as a self-government of equals.

13F. Yet the fifth circuit panel affirmed no reversible error of law, citing no reason under local rule 47.6, then reaffirmed its utter lack of interest denying the petition for en banc rehearing. Preserving the rights of aggrieved parties, including this petitioner and others so injured, was never a factor, and they simply never allowed any statute or mandate to get in the way of their so finding under their circuit precedent which violates mandates.

14. Petitioner's Rights Trampled - Bad Faith Procedural Dodges Attempt Deprivations Of Rights

14A. The appeals court disregarded this petitioner's rights by employing bad faith procedural dodges in the court's use of known lengthy mailings times which, combined with further delays during official government holiday closures in bad faith resulted in the no notice

publication of this circuit's mandate and expiry of its seven day filing deadline for stay motions prior to receipt by US mail, the only permitted method of communication for this petitioner with this court, after the per curiam order denied the en banc rehearing petition. The published mandate affirming the district court's order and judgement was completed without notice.

14B. This petition is filed as the circuit court considers this petitioner/appellant's motion to reverse and stay its published mandate. Petitioners rights have been prospectively extinguished in bad faith without notice, a purposeful evasion consistent with the circuit's entire prior pattern of practice. Known mailing times were clearly communicated, and official holiday delays in court communications with the petitioner, were well understood by the court as the pattern in the Procedural History at paragraph 3 above clearly indicates. Specific communication September 26, 2024 to the clerk's office indicated typical lengthy mailing times in the seven to eight day range (appendix C page 25 and the table in the Procedural History section above), comparing very unfavorably with the three day period from Amarillo, Texas which is considerably farther away from this petitioner. The circuit court acted in bad faith to attempt to extinguish the petitioner's rights and claims against these favored institutional defendants and against decades of federal corruption by these departments, agencies, and persons.

15. Utter Disregard - Fifth Circuit Defiance, Lack Of Judicial Discipline Extinguish Petitioner's Fundamental Rights, Adversely Impact Thousands To Millions More

15A. This Court cannot simply look away. Permitting a fifth circuit district court, or any court, to establish a circuit precedent which (i) systematically undermines this Court's mandates and Congressional statutes and intent, as it extinguishes rights and claims of the petitioner, and prospectively extinguishes the rights and claims of thousands to millions of people; that (ii) permits any court in the fifth circuit to consider, deliberate, and use discretion under law without

reading, without rationale or reason, to determine that injuries have not been incurred, that rights and claims are not valid, that claims are frivolous and lacking in weight and meaning; when Congressional statutes and this Court's mandates clearly say these rights and claims are justiciable as in 42 U.S.C. § 2000-bb; when Congress placed indigents on equal footing with paid litigants in 28 U.S.C. § 1915; when 18 U.S.C. § 1964 says racketeering claims are justiciable as civil claims; when other federal and state statutes provide comparable remedies, injuries have been incurred, and causation reasonably established; when the weighty evidence says claims are factual when liberally construed; and the complaint has not even been read by the trier of fact before its sua sponte dismissal, and then have this abuse of discretion affirmed without reason by this circuit under local rule 47.6; supports and sustains purpose of evasion, and is neither reason nor rule of law, which most certainly qualifies in any rational logical definition as a "Controversy" of fundamental import to this Court under the constitution of the United States of America. Else we have no rule of law.

REASONS FOR GRANTING THE PETITION

> "The government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation, if the laws furnish no remedy for the violation of a vested legal right." Marbury v. Madison 5 Cranch 137 at paragraph 61.

16A. Simply put, these fifth circuit courts have arrived at the adverse tipping point contemplated by Chief Justice Marshall, furnishing no remedy for violations of vested legal rights – in ways which can impact millions who have or do live in the fifth circuit. This circuit has simply ceased to comply with more than a thousand years of common law on standing, and willfully disregards statute, mandates, rules, and sound judicial procedure. It has established its own overriding circuit precedents, confesses no interest in considering other statutes, mandates,

or arguments, and has done so in contemporaneous defiance of concurrent mandates of this Court. It cannot enjoy Marshall's "high appellation" in its acts of discrimination against religious and other constitutional rights. and its open defiance of the rule of law.

16B. The fifth circuit panel has simply repeatedly disregarded laws, mandates, rules, and facts, in its search for an exit from a matter in which our Constitution, laws, and proper regulations have been and must be completely ignored in all material respects to evade a blooming national and international scandal, embarrassment, and liability to the United States, which the circuit apparently seeks to protect above the interests of the People. When a particular class of government institutions entitled to no deference for these acts, and when a particular class of people who are current or former officers of these United States have a particular sworn duty to uphold and enforce law, and have not and do not comply with their oaths nor with our Constitution and our laws, are protected from legal consequences, and the mere consideration of the claims of those they injured through deliberate torture, humiliation, and impoverishment in all respects including "their person, papers, houses, and effects," are summarily extinguished without consideration, we have devolved to a mere lawless government of men.

16C. A government of men in which courts - (a) ignore facts, defy law, and violate mandates willfully; (b) refuse basic principles of standing; (c) refuse to construe facts in accordance with rules and mandates; (d) suppress evidence of racketeering acts from official records; (e) assert by their actions that privilege fraudulently abused is de facto and de jure superior to basic constitutional rights; (f) sustain illegal practices and bad faith acts hidden behind fraudulent abuse of privilege and decades of fraudulent concealment used to develop, test, and deploy an illegal bioweapon the US has agreed with the world never to possess; (g) facilitate continuing conduct of illegal experiments on US persons without their knowledge and

consent; (h) sustain predators with police powers while they engage in all manner of racketeering acts; and (i) perpetuate involuntary servitude. These courts protect and defend not law, not precedent, not our Constitution; they protect a feared, oppressive, and tyrannical government of men – one much like the one our founders fought and died to defeat.

16D. Which one of those offenses against our Constitution and laws is sufficient - (i) when Congress has specified remedies for each and every one of them, (ii) when Congress has specified the laws by which jurisprudence is to be conducted to adjudicate them, (iii) when this Court mandates the proper interpretations of laws, rights, facts – and then……

(a) these circuit and district courts act to defy all direction and their core constitutional purpose, for an alternate purpose - to protect certain institutions and persons over all other American persons, families, and enterprises – (b) will not even explain why they insist their defiance is the proper course of action - and (c) use procedural dodges to attempt to extinguish rights and claims without notice or time to respond.

16E. Which one of these offenses is sufficient? Every one of these offenses by this fifth circuit defying the rule of law is present in this matter. And each persists concurrently with this Court's explicit direction and mandate to the contrary. Impacting this petitioner and prospectively thousands to millions of others to extinguish rights and claims.

16F. Federal courts have regrettably had to be publicly humiliated by media into adjudicating acts against powerful institutions in the past – decades of Catholic Church and Boy Scouts of America pedophilia scandals and court suppression of the rights, law, mandates, and facts of horrendous acts against injured children come to mind here. This matter is not so much different.

16G. Public humiliation is not unfamiliar to this petitioner, nor is false imprisonment in a mental institution, offenses this government has documented as occurring in authoritarian countries which it claims as having fungible rules of law - the Soviet Union under Stalin which closed churches to worshippers, and the People's Republic of China in its invasion of the religious rights of Uighurs. These practices bear striking similarities to the conduct experienced – secret invasion and takeover of churches by undercover federal agents and operatives over many years who were then promoted and confirmed to high offices – by this government against this petitioner and his family, and undoubtedly against many others to be discovered one way or the other.

16H. These acts, violations and injuries are laid out in a 1,324 page plainly written pleading, never read by these fifth circuit courts. This pleading meticulously documents injuries in fact, finds specific causation wherever possible despite decades of secrecy, and identifies the specific methods of redress which Congress established in statute and are well documented in other court actions and decisions against other defendants than these particular defendants. All this law, all these precedents, all these rules and mandates are summarized in the Table of Contents (appendix C pages 7-24) – and was simply utterly ignored by the fifth circuit as it attempts to defy this Court's mandates, establish its own circuit precedents, and use a bad faith procedural dodge to evade its constitutional responsibility to act as a court of laws, not to favor certain men and their institutions over the People they are to serve.

16I. Neither the fifth circuit nor this Court can simply look away. Permitting a fifth circuit district court, or any court, to proclaim without reading, without rationale or reason, that such claims are frivolous and lacking in weight and meaning, when Congress' statutes say these claims are justiciable as in 42 U.S.C. 2000-bb, Congress placed indigents on equal footing with

paid litigants in 28 USC 1915, the weighty evidence says these claims are factual when liberally construed, and the complaint had not even been read by the trier of fact before its sua sponte dismissal, is evasion, not reason, an error of law which most certainly qualifies in any rational logical definition of the word as a "Controversy."

16J. As our 249 year old Declaration of Independence states "the consent of the governed" rests upon the legitimacy of their government. The credibility of this United States government rests upon that foundation today as it did in the Founder's own time. That credibility is profoundly shaken by this pattern of durable acts, by this illegal program to secretly test on humans and deploy against them a weapon it has used on its own and other unwitting civilians which it had agreed with the world "never to possess,", by it choices to inflict injuries to religion, to other rights, on its intelligence and military service members, on real ordinary loyal people, on families, and on the private enterprises of those it is sworn by constitution and by personal oath to protect, and has systematically betrayed – by its broad and durable pattern of malign acts of government fraudulently concealed across decades. Broad discretion does not extend to egregious abuse of discretion, else we have no law.

16K. It is time, pray, for this Court to act to preserve the credibility of these fifth circuit courts. By their acts, these fifth circuit courts are demonstrably incapable of reaching that constitutionally mandated threshold to step past their pattern of utterly ignoring and willfully disregarding the rule of law. They have erred egregiously under our Constitution, under the Congressional statutes, intent, and the rules which govern them, under this Court's mandates, in finding no reversible error of law, in using procedural dodges to attempt to extinguish rights and claims in their circuit of an as yet unknown number of US persons. This Court's Rule 10 mandates a specific course of action.

16L. The broad precedential failures and process abuses in this fifth circuit must be reviewed by this Court under its own standards at Rule 10(a):

> " **a United States court of appeals** has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or **has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power**;"

AND at Rule 10(c):

> " a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or **has decided an important federal question in a way that conflicts with relevant decisions of this Court**."

16M. This Court's credibility, our national government's credibility with the people of this country, and with other nations, depend in large part upon our government institutions' ability and willingness to comply with our own Constitution and laws – and with this Court's well settled mandates – even in the face of the personal objections of people and institutions with power who desire other outcomes – a government of men.

16N. As Chief Justice Marshall so clearly stated in 1803, this Court must act, IF it intends to preserve the credibility of an independent judiciary worthy of our democratic republic 249 years after we declared our independence from the tyranny and oppression of powerful institutions which acted in the interests of one person, a king, and his favored few over all others, to establish our experiment in self-government which ended that tyranny. It is well past time for our Article III courts to say again what Chief Justice Marshall said in 1803: "The government of the United States has been emphatically termed a government of laws, and not of men."

The rule of law must prevail over the rule of men.

No further reason is required than this.

CONCLUSION

This petition for a writ of certiorari, pray must be granted, so this Court can:

(i) correct, in its proper supervisory role under Rule 10(a) and 10(c), the egregious errors of the courts of the fifth circuit in (a) willfully disregarding Congressional statutes, intent, and rules; (b) willfully disregarding proper judicial procedure well established over more than 1,000 years of common law and 235 years of Congressionally enacted statutes and precedents; (c) engaging in conduct of deliberate bad faith acts intended to defeat individual rights and extinguish claims properly brought before their circuit; (d) willfully disregarding a broad set of mandates of this Court in establishing its own opaque circuit precedents by operation of Rule 47.6,

(ii) protect the rights of all U.S. persons to access these Article III courts and establish justice in the place of last resort to remedy the wrongs against them of a lawless executive, (a) by biomedical abuse in illegal human experiments, an illegal bioweapon which endangers those persons and the general public, (b) by involuntary servitude and other racketeering acts, when (c) this lawless executive has and does refuse to enforce its own laws in its own operations,

by providing fair and equitable access to these courts in the fifth circuit, incorporating needed measures such that Congressional statutes, this Court's mandates, and fair and sound judicial procedures are consistently observed in this circuit, that appellant rights and claims are protected, for this petitioner, and for the thousands to millions yet unknown who are similarly situated.

And, in so doing, honor Justice Marshall's vision of our "government of laws" - and the vision of our founders - who 249 years ago fought and died for our independence, for the rule of law, and for self-government of, by, and for the People.

These are the profound and compelling reasons for this Court to grant this petition.

Respectfully submitted,

/s/

Date: January 28, 2025

CERTIFICATION OF COMPLIANCE WITH RULE 33.1(g)(i)

This document contains 7,861 words, including direct quotations of Court mandates provided inline for the convenience of the Court, on 33 pages, and therefore meets the 9,000 word limit of Rule 33.1(g)(i) and the 40 page limit for in forma pauperis petitions in the January 2023 Guide For Prospective Indigent Petitioners For Writs Of Certiorari from the clerk's office.

Dated: January 28, 2025

/s/

PROOF OF SERVICE

This case is presented to appeal a *sua sponte* dismissal of an in forma pauperis pro se action in the district and circuit court of the fifth district. No defendant has been served and none need be notified at this time.

I, Dennis Sheldon Brewer, declare under penalty of perjury that the foregoing is true and correct.

Executed on January 28, 2025.

/s/

INDEX TO APPENDICES

NOTE: All page numbers referenced above and in the Petition are in the lower left corner of each page in red 8 point font as below:

Appendix A Page 1

United States Court of Appeals for the Fifth Circuit

No. 24-10614
Summary Calendar

United States Court of Appeals
Fifth Circuit
FILED
November 11, 2024
Lyle W. Cayce
Clerk

DENNIS SHELDON BREWER,

Plaintiff—Appellant,

versus

WILLIAM BURNS, *Director, Central Intelligence Agency*,

Defendant—Appellee.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 2:24-CV-123

Before SMITH, CLEMENT, and WILSON, *Circuit Judges*.

PER CURIAM:*

After reviewing the appellant's brief and the record, we find no reversible error. We AFFIRM. *See* 5TH CIR. R. 47.6.

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
December 30, 2024
Lyle W. Cayce
Clerk

No. 24-10614

DENNIS SHELDON BREWER,

Plaintiff—Appellant,

versus

WILLIAM BURNS, *Director, Central Intelligence Agency*,

Defendant—Appellee.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 2:24-CV-123

ON PETITION FOR REHEARING EN BANC

Before SMITH, CLEMENT, and WILSON, *Circuit Judges*.

PER CURIAM:

Treating the petition for rehearing en banc as a petition for panel rehearing (5TH CIR. R. 40 I.O.P.), the petition for panel rehearing is DENIED. Because no member of the panel or judge in regular active service requested that the court be polled on rehearing en banc (FED. R. APP. P. 40 and 5TH CIR. R. 40), the petition for rehearing en banc is DENIED.

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT
OFFICE OF THE CLERK
F. EDWARD HEBERT BUILDING
600 S. MAESTRI PLACE
NEW ORLEANS, LOUISIANA 70130-3408

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Mr. Dennis Shelton
1210 City Place
Edgewater, NJ 07020

Rcvd
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2/5/10

07020-314310

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

DENNIS SHELDON BREWER, Plaintiff, v. WILLIAM BURNS *et al.*, Defendants.	2:24-CV-123-Z

ORDER

Before the Court are Plaintiff's *pro se* Complaint (ECF No. 3), and Motions for Leave to Proceed *In Forma Pauperis* (ECF No. 4), Motion for Permission for Electronic Case Filing (ECF No. 5), Motion to Appoint Counsel (ECF No. 6), and Motion to Certify Class (ECF No. 7) (collectively, "Motions"), all filed on June 5, 2024. Plaintiff, a resident of Edgewater, New Jersey, sues many federal officials, the New York City Police Department and several of its officials, various domestic and international entities, various individuals in their individual capacities, and an unknown number of John Does. ECF No. 3 at 1–9.

"A complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570) (2007)). A complaint that lacks "an arguable basis either in law or in fact" is frivolous. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989).

This Court cannot exercise subject matter jurisdiction over a frivolous complaint. 28 U.S.C. § 1915(e)(2)(B)(i); *see Hagans v. Lavine*, 415 U.S. 528, 536–37 (1974) ("Over the years this Court has repeatedly held that the federal courts are without power to entertain claims otherwise within their jurisdiction if they are 'so attenuated and unsubstantial as to be absolutely devoid of merit . . . .'")

(quoting *Newburyport Water Co. v. Newburyport*, 193 U.S. 561, 579 (1904)); *see also Tooley v. Napolitano*, 586 F.3d 1006, 1010 (D.C. Cir. 2009) (examining cases dismissed "for patent insubstantiality," including where the plaintiff allegedly "was subjected to a campaign of surveillance and harassment deriving from uncertain origins . . . ."). Courts must dismiss a complaint as frivolous "when the facts alleged rise to the level of the irrational or the wholly incredible." *Denton v. Hernandez*, 504 U.S. 25, 33 (1992).

Plaintiff's Complaint is frivolous. First, *inter alia*, it is a staggering and prolix 595 pages *without attachments*. Second, Plaintiff makes incredible accusations of an "ultrasecret government 'mind control' program [that] ran from 1953 until its public disclosure in 1973" promulgated by an "ultra-secret and illegal bioweapon and bioweapon delivery system." ECF No. 3 at 40. Neither the Court nor Defendants can reasonably be expected to identify Plaintiff's claims, and Defendants cannot be expected to prepare an answer or dispositive motion for such wide-ranging allegations.

For these reasons, and for those addressed in similar actions filed (and dismissed) in the D.C. Circuit, it is **ORDERED** that the Complaint is **DISMISSED WITHOUT PREJUDICE**. *See*, *e.g.*, *Brewer v. Wray*, No. 1:22-cv-00996, 2022 WL 1597610 (D.D.C. May 16, 2022), *aff'd*, No. 22-5158, 2022 WL 4349776 (D.C. Cir. Sept. 20, 2022); *see also Brewer v. Wray*, No. 23-00415, 2023 WL 3608179 (D.D.C. Feb. 28, 2023), *aff'd*, No. 23-5062, 2023 WL 3596439 (D.C. Cir. May 23, 2023).

It is further **ORDERED** that Plaintiff's Motion for Leave to Proceed *In Forma Pauperis* (ECF No. 4) is **GRANTED**, while the remaining Motions are **DENIED**.

SO ORDERED.

June 6, 2024

MATTHEW J. KACSMARYK
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

DENNIS SHELDON BREWER, Plaintiff, v. WILLIAM BURNS *et al.*, Defendants.	2:24-CV-123-Z

JUDGMENT

Before action came on for consideration by the Court, and the issues having been duly considered and a decision duly rendered, it is **ORDERED**, **ADJUDGED**, and **DECREED** that this lawsuit is **DISMISSED WITHOUT PREJUDICE**.

The Court renders judgment accordingly.

June 6, 2024.

MATTHEW J. KACSMARYK
UNITED STATES DISTRICT JUDGE

beginning at page 19 below lists paragraph numbers and uses the RED color page number at the BOTTOM of each page for ease of reference.

B5. Page total number in footer varies from page to page as the document was printed in increments not in a single print session, for the explicit purpose of minimizing the known pattern of document hacking after proofing and before printing, which has occurred in previous printed documents. See also the description of defendant CIA's malign long-term patterns of practice in evidence and document tampering at paragraph 17. The final document contains 1324 printed pages.

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COMPLAINT TABLE OF CONTENTS (continues)

Page total number in footer varies from page to page as the document was printed in increments, not in a single print session. Actual final page total is 1324 pages.

Filed herewith:

Appendix 1: Prior Filings In The District of Columbia, Southern District Of New York

Appendix 2: Abbreviated Timeline: Botched Cover-Up, Threats, and Lethality Attempts

[Intentionally left blank.]

August 28, 2024

Clerk
United States Court of Appeals
Fifth Circuit
600 S. Maestri Place, Suite 115
New Orleans, LA 70130

No. 24-10614 Brewer v. Burns
USDC No. 2:24-CV-123

Good day –

In reply to your letter dated September 18, 2024, a copy of which is enclosed, please note the following:

- Your previous letter dated September 11, 2024 permitted me to file by September 23, 2024. The revision was mailed on September 20, 2024 to reach your office by that deadline- which the USPS website indicates occurred as required.

- Thie September 18, 2024 letter reached me in my mailbox on September 25, 2024 so these items crossed in the mail.

- Material revisions to content were made in the brief dated September 20, 2024 which you received on September 23, 2024.

- I have reviewed your requested modification to return all other content, specifically pages 1 and 2, to original form. I have also reviewed the Federal Rules of Appellate Procedure, particularly rules 12, 28, and 32. I note no requirement to preserve the original content when responding to a correction notice from the Clerk's Office which precludes the revision of any other content in the brief at the same time provided the brief continues to meet the overall FRAP rules for content, form, length, and so forth.

- All modifications comply with the FRAP. It is my intention to submit the brief dated September 20, 2024 to the appellate panel absent any FRAP violation which I cannot identify in the FRAP Rules, including Fifth Circuit specific rules. If there is such a rule, I would greatly appreciate your notice so I may correct as needed to match that citation.

As I am filing pro se and unfamiliar with the processes and procedures of your Court and its written rules, I appreciate the opportunity to clarify my intentions in this matter.

Sincerely,

Dennis Sheldon Brewer
1210 City Place
Edgewater, NJ 07020

Enclosure: September 18, 2024 Clerk letter

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

September 18, 2024

Mr. Dennis Sheldon Brewer
1210 City Place
Edgewater, NJ 07020

No. 24-10614 Brewer v. Burns
USDC No. 2:24-CV-123

Dear Mr. Brewer,

The following pertains to your proposed sufficient brief received on 09/16/2024.

The contents of the brief must be the same as the initial brief filed. Contents of the proposed sufficient brief appear to be different from what was originally filed, specifically pages 1 and 2 of the proposed sufficient brief. All other corrections have been made. Please submit a sufficient brief with the same contents as your initial brief.

Sincerely,

LYLE W. CAYCE, Clerk

Renee McDonough

By: _____
Renee S. McDonough, Deputy Clerk
504-310-7673

CLOSED,JURY,M/IFP

U.S. District Court
Northern District of Texas (Amarillo)
CIVIL DOCKET FOR CASE #: 2:24-cv-00123-Z

Brewer v. Burns et al
Assigned to: Judge Matthew J. Kacsmaryk
Case in other court: USCA5, 24-10614
Cause: 18:1961 Racketeering (RICO) Act

Date Filed: 06/05/2024
Date Terminated: 06/06/2024
Jury Demand: Plaintiff
Nature of Suit: 370 Torts/Pers Prop: Other Fraud
Jurisdiction: U.S. Government Defendant

Plaintiff

Dennis Sheldon Brewer

represented by **Dennis Sheldon Brewer**
1210 City Pl
Edgewater, NJ 07020
201-887-6541
PRO SE

V.

Defendant

William Burns et al

Date Filed	#	Docket Text
06/05/2024	1	New Case Notes: A filing fee has not been paid. No prior sanctions found. (For court use only - links to the national and circuit indexes.) Pursuant to Misc. Order 6, Plaintiff is provided the Notice of Right to Consent to Proceed Before A U.S. Magistrate Judge (No magistrate judge assigned). Clerk to provide copy to plaintiff if not received electronically. (nht) (Entered: 06/05/2024)
06/05/2024	2	Notice and Instruction to Pro Se Party (nht) (Entered: 06/05/2024)
06/05/2024	3	COMPLAINT WITH JURY DEMAND against All Defendants filed by Dennis Sheldon Brewer. Unless exempted, attorneys who are not admitted to practice in the Northern District of Texas must seek admission promptly. Forms, instructions, and exemption information may be found at www.txnd.uscourts.gov, or by clicking here: Attorney Information - Bar Membership. If admission requirements are not satisfied within 21 days, the clerk will notify the presiding judge. (Attachments: # 1 Complaint Cont, # 2 Complaint Cont, # 3 Cover Sheet, # 4 Proposed Summons) (nht) (Entered: 06/05/2024)
06/05/2024	4	MOTION for Leave to Proceed in forma pauperis filed by Dennis Sheldon Brewer (nht) (Entered: 06/05/2024)
06/05/2024	5	MOTION for Permission for Electronic Case Filing filed by Dennis Sheldon Brewer (nht) (Entered: 06/05/2024)
06/05/2024	6	MOTION to Appoint Counsel filed by Dennis Sheldon Brewer (nht) (Entered: 06/05/2024)

06/05/2024	7	MOTION to Certify Class filed by Dennis Sheldon Brewer (nht) (Entered: 06/05/2024)
06/05/2024		***Clerk's Notice of delivery: (see NEF for details) Docket No:1, 2. (Copy of 1st page of Complaint also mailed to Plaintiff) Wed Jun 5 13:16:36 CDT 2024 (crt) (Entered: 06/05/2024)
06/05/2024		**DISREGARD - ENTRY IN WRONG CASE** (Entered: 06/05/2024)
06/06/2024	8	ORDER: For these reasons, and for those addressed in similar actions filed (and dismissed) in the D.C. Circuit, it is ORDERED that the Complaint is DISMISSED WITHOUT PREJUDICE. It is further ORDERED that Plaintiff's Motion for Leave to Proceed In Forma Pauperis (ECF No. 4) is GRANTED, while the remaining Motions are DENIED. (Ordered by Judge Matthew J. Kacsmaryk on 6/6/2024) (nht) (Entered: 06/06/2024)
06/06/2024	9	JUDGMENT: Before action came on for consideration by the Court, and the issues having been duly considered and a decision duly rendered, it is ORDERED, ADJUDGED, and DECREED that this lawsuit is DISMISSED WITHOUT PREJUDICE. The Court renders judgment accordingly. (Ordered by Judge Matthew J. Kacsmaryk on 6/6/2024) (nht) (Entered: 06/06/2024)
06/06/2024		***Clerk's Notice of delivery: (see NEF for details) Docket No:8, 9. Thu Jun 6 15:27:52 CDT 2024 (crt) (Entered: 06/06/2024)
07/02/2024	10	NOTICE OF APPEAL as to 9 Judgment, to the Fifth Circuit by Dennis Sheldon Brewer. T.O. form to appellant electronically at Transcript Order Form or US Mail as appropriate. Copy of NOA to be sent US Mail to parties not electronically noticed. IMPORTANT ACTION REQUIRED: Provide an electronic copy of any exhibit you offered during a hearing or trial that was admitted into evidence to the clerk of the district court within 14 days of the date of this notice. Copies must be transmitted as PDF attachments through ECF by all ECF Users or delivered to the clerk on a CD by all non-ECF Users. See detailed instructions here. (Exception: This requirement does not apply to a pro se prisoner litigant.) Please note that if original exhibits are in your possession, you must maintain them through final disposition of the case. (awc) (Entered: 07/02/2024)
07/02/2024		***Clerk's Notice of delivery: (see NEF for details) Docket No:10. (Transcript Order Form also mailed.) Tue Jul 2 16:42:08 CDT 2024 (crt) (Entered: 07/02/2024)
07/02/2024	11	Brief/Memorandum in Support filed by Dennis Sheldon Brewer re 10 Notice of Appeal. (awc) (Entered: 07/03/2024)
07/02/2024	12	Appendix in Support filed by Dennis Sheldon Brewer re 10 Notice of Appeal, 11 Brief/Memorandum in Support. (awc) (Entered: 07/03/2024)
07/02/2024	13	Appendix in Support filed by Dennis Sheldon Brewer re 10 Notice of Appeal, 11 Brief/Memorandum in Support. (Attachments: # 1 Appendix continued) (awc) (Entered: 07/03/2024)
07/02/2024	14	Appendix in Support filed by Dennis Sheldon Brewer re 10 Notice of Appeal, 11 Brief/Memorandum in Support. (awc) (Entered: 07/03/2024)
07/02/2024	15	Appendix in Support filed by Dennis Sheldon Brewer re 10 Notice of Appeal, 11 Brief/Memorandum in Support. (awc) (Entered: 07/03/2024)
07/02/2024	16	Appendix in Support filed by Dennis Sheldon Brewer re 10 Notice of Appeal, 11 Brief/Memorandum in Support. (Attachments: # 1 Appendix continued) (awc) (Entered: 07/03/2024)
07/12/2024	17	USCA Case Number 24-10614 in USCA5 for 10 Notice of Appeal filed by Dennis Sheldon Brewer. (awc) (Entered: 07/12/2024)

07/16/2024	18	Transcript Order Form: re 10 Notice of Appeal, transcript not requested. Reminder: If the transcript is ordered for an appeal, Appellant must also file a copy of the order form with the appeals court. (cmk) (Entered: 07/16/2024)
07/18/2024	19	Record on Appeal for USCA5 24-10614 (related to 10 appeal): Record consisting of: 1 ECF electronic record on appeal (eROA) is certified. **PLEASE NOTE THE FOLLOWING:** Licensed attorneys must have filed an appearance in the USCA5 case and be registered for electronic filing in the USCA5 to access the paginated eROA in the USCA5 ECF system. (Take these steps immediately if you have not already done so. Once you have filed the notice of appearance and/or USCA5 ECF registration, it may take up to 3 business days for the circuit to notify the district clerk that we may grant you access to the eROA in the USCA5 ECF system.) To access the paginated record, log in to the USCA5 ECF system, and under the Utilities menu, select Electronic Record on Appeal. Pro se litigants may request a copy of the record by contacting the appeals deputy in advance to arrange delivery. (awc) (Entered: 07/18/2024)
07/18/2024		***Clerk's Notice of delivery: (see NEF for details) Docket No:. Thu Jul 18 16:18:12 CDT 2024 (crt) (Entered: 07/18/2024)
09/04/2024	20	Record on Appeal for USCA5 24-10614 (related to 10 appeal): transmitted to Dennis Sheldon Brewer on disk only by mail. Shipped: USPS. (nht) (Entered: 09/04/2024)
01/07/2025	21	Opinion of USCA in accordance with USCA judgment re 10 Notice of Appeal filed by Dennis Sheldon Brewer. After reviewing the appellant's brief and the record, we find no reversible error. We AFFIRM. (Attachments: # 1 USCA5 cover letter) (awc) (Entered: 01/07/2025)
01/07/2025	22	JUDGMENT/MANDATE of USCA as to 10 Notice of Appeal filed by Dennis Sheldon Brewer. IT IS ORDERED and ADJUDGED that the judgment of the District Court is AFFIRMED. Issued as Mandate: 1/7/2025. (awc) (Entered: 01/07/2025)

PACER Service Center

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01/13/2025 13:26:31

PACER Login:	dsbrewer923	**Client Code:**	
Description:	Docket Report	**Search Criteria:**	2:24-cv-00123-Z
Billable Pages:	3	**Cost:**	0.30

General Docket
United States Court of Appeals for the Fifth Circuit

Court of Appeals Docket #: 24-10614
Nature of Suit: 2370 Other Fraud
Brewer v. Burns
Appeal From: Northern District of Texas, Amarillo
Fee Status: In Forma Pauperis

Docketed: 07/10/2024
Termed: 11/11/2024

Case Type Information:
1) United States Civil
2) United States
3)

Originating Court Information:
District: 0539-2 : 2:24-CV-123
Originating Judge: Matthew Joseph Kacsmaryk, U.S. District Judge
Date Filed: 06/05/2024
Date NOA Filed: 07/02/2024
Date Rec'd COA: 07/02/2024

Prior Cases:
None

Current Cases:
None

Panel Assignment: Not available

Dennis Sheldon Brewer
Plaintiff - Appellant

Dennis Sheldon Brewer
Direct: 201-887-6541
[NTC Pro Se]
1210 City Place
Edgewater, NJ 07020

v.

William Burns, Director, Central Intelligence Agency
Defendant - Appellee

Dennis Sheldon Brewer,

Plaintiff - Appellant

v.

William Burns, Director, Central Intelligence Agency,

Defendant - Appellee

07/10/2024	☐ 1 1 pg, 98.34 KB	US CIVIL CASE docketed. NOA filed by Appellant Mr. Dennis Sheldon Brewer [24-10614] (JJF) [Entered: 07/10/2024 09:06 AM]
07/11/2024	☐ 5 4 pg, 82.65 KB	INITIAL CASE CHECK by Attorney Advisor complete. Action: Case OK to Process. [5] Initial AA Check Due satisfied. [24-10614] (JJF) [Entered: 07/11/2024 03:51 PM]
07/11/2024	☐ 6	ELECTRONIC RECORD ON APPEAL REQUESTED from District Court for 2:24-CV-123. Electronic ROA due on 07/26/2024. [24-10614] (JJF) [Entered: 07/11/2024 03:57 PM]
07/15/2024	☐ 7 2 pg, 71.14 KB	TRANSCRIPT ORDER received from Appellant Mr. Dennis Sheldon Brewer advising transcript unnecessary [24-10614] (CAG) [Entered: 07/17/2024 04:02 PM]
07/18/2024	☐ 8	ELECTRONIC RECORD ON APPEAL FILED. Admitted Exhibits on File in District Court? No. Video/Audio Exhibits on File in District Court? No Electronic ROA deadline satisfied. [24-10614] (DDL) [Entered: 07/18/2024 03:58 PM]
07/18/2024	☐ 9 4 pg, 87.68 KB	BRIEFING NOTICE ISSUED A/Pet's Brief Due on 08/27/2024 for Appellant Dennis Sheldon Brewer. [24-10614] (DDL) [Entered: 07/18/2024 03:58 PM]
07/29/2024	☐ 10 9 pg, 230.25 KB	DOCUMENT RECEIVED - NO ACTION TAKEN. No action will be taken at this time on the motion to proceed in forma pauperis received from Appellant Mr. Dennis Sheldon Brewer because appellant is already proceeding in forma pauperis. Also; we are unable to determine if any additional reliefs are requested as they are not clear. If appellant is seeking leave to file electronically, he must submit a separate motion stating clearly his requested relief. [24-10614] (CAG) [Entered: 08/05/2024 02:24 PM]
07/29/2024	☐ 11 42 pg, 1.76 MB	SUFFICIENT APPELLANT'S BRIEF FILED by Mr. Dennis Sheldon Brewer. Brief NOT Sufficient as it requires the Cert of Int Parties but list out the parties (cannot reference the complaint). Additionally the Brief requires record citations and certificate of compliance. Instructions to Attorney: PLEASE READ THE ATTACHED NOTICE FOR INSTRUCTIONS ON HOW TO REMEDY THE DEFAULT. # of Copies Provided: 1. A/Pet's Brief deadline satisfied. Sufficient Brief due on 08/19/2024 for Appellant Dennis Sheldon Brewer. [24-10614] (CAG) [Entered: 08/05/2024 02:40 PM]
07/29/2024	☐ 12 620 pg, 17.13 MB	DOCUMENT RECEIVED - NO ACTION TAKEN. No action will be taken at this time on the Appendix received from Appellant Mr. Dennis Sheldon Brewer because pro se filers do not have to file an appendix or record excerpts [24-10614] (CAG) [Entered: 08/05/2024 02:47 PM]
08/19/2024	☐ 13 1 pg, 50.36 KB	PROPOSED SUFFICIENT BRIEF filed by Appellant Mr. Dennis Sheldon Brewer in 24-10614 [11]. Brief has been deemed insufficient. Additional corrections required: ROA citations in proper format and certificate of compliance must include an exact word count (we cannot accept "no more than"). Sufficient Brief deadline updated to 09/11/2024 for Appellant Dennis Sheldon Brewer. [24-10614] (CAG) [Entered: 08/28/2024 10:36 AM]
08/19/2024	☐ 14 628 pg, 17.33 MB	MOTION filed by Appellant Mr. Dennis Sheldon Brewer for leave to file an Appendix to the brief [14]. [24-10614] (CAG) [Entered: 08/28/2024 03:06 PM]
08/29/2024	☐ 18 1 pg, 48.23 KB	CLERK ORDER denying Motion for leave to file appendix filed by Appellant Mr. Dennis Sheldon Brewer [14] [24-10614] (MFY) [Entered: 08/29/2024 01:37 PM]
09/09/2024	☐ 19 5 pg, 117.38 KB	MOTION filed by Appellant Mr. Dennis Sheldon Brewer to extend time to return sufficient brief until 09/23/2024 [19]. Date of service: 08/28/2024. [24-10614] (RLL) [Entered: 09/11/2024 10:12 AM]
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11/11/2024	☐ 33 3 pg, 164.05 KB	UNPUBLISHED OPINION FILED. [24-10614 Affirmed] Judge: JES , Judge: EBC , Judge: CTW Mandate issue date is 01/03/2025 [24-10614] (MFY) [Entered: 11/11/2024 09:46 AM]
11/11/2024	☐ 35 2 pg, 61.35 KB	JUDGMENT ENTERED AND FILED. [24-10614] (MFY) [Entered: 11/11/2024 09:54 AM]

11/25/2024	☐ 36 25 pg, 3.66 MB	PETITION filed by Appellant Mr. Dennis Sheldon Brewer for rehearing en banc [36] Number of Copies:0. Mandate issue date canceled.. Sufficient Rehearing due on 12/06/2024 for Appellant Dennis Sheldon Brewer. Document is insufficient for the following reasons: INSUFFICIENT FOR: MISSING CERTIFICATE OF INTERESTED PARTIES, TABLE OF CONTENTS, TABLE OF AUTHORITIES, STATEMENT OF ISSUES, STATEMENTS OF FACTS, STATEMENT OF THE COURSE PROCEEDINGS, AND MISSING COPY OF OPINION [24-10614] (RSM) [Entered: 11/26/2024 09:29 AM]
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12/30/2024	☐ 40 2 pg, 151.19 KB	COURT ORDER denying Petition for rehearing en banc filed by Appellant Mr. Dennis Sheldon Brewer [40] Without Poll. Mandate issue date is 01/07/2025. [36]. [24-10614] (MFY) [Entered: 12/30/2024 02:37 PM]
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JUSTIA

Denton v. Hernandez, 504 U.S. 25 (1992)

Overview Opinions Materials

Argued: February 24, 1992 **Decided:** May 4, 1992

Syllabus

OCTOBER TERM, 1991

Syllabus

DENTON, DIRECTOR OF CORRECTIONS OF CALIFORNIA, ET AL. *v.* HERNANDEZ

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

No. 90-1846. Argued February 24, 1992-Decided May 4,1992

Respondent Hernandez, a prisoner proceeding *pro se,* filed five civil rights suits *in forma pauperis* against petitioner California prison officials, alleging, *inter alia,* that he was drugged and homosexually raped 28 times by various inmates and prison officials at different institutions. Finding that the facts alleged appeared to be wholly fanciful, the District Court dismissed the cases under 28 U. S. C. § 1915(d), which allows courts to dismiss an *in forma pauperis* complaint "if satisfied that the action is frivolous." Reviewing the dismissals *de novo,* the Court of Appeals reversed and remanded three of the cases. The court's lead opinion concluded that a court can dismiss a complaint as factually frivolous only if the allegations conflict with judicially noticeable facts and that it was impossible to take judicial notice that none of the alleged rapes occurred; the concurring opinion concluded that Circuit precedent required that Hernandez be given notice that his claims were to be dismissed as frivolous and a chance to amend his complaints. The Court of Appeals adhered to these positions on remand from this Court for consideration of the Court's intervening decision in *Neitzke* v. *Williams,* 490 U. S. 319, which held that an *in forma pauperis* complaint "is frivolous [under § 1915(d)] where it lacks an arguable basis either in law or in fact," *id.,* at 325.

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Opinions

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OCTOBER TERM, 1991

Syllabus

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Held:

1. The Court of Appeals incorrectly limited the power granted the courts to dismiss a frivolous case under § 1915(d). Section 1915(d) gives the courts "the unusual power to pierce the veil of the complaint's factual allegations and dismiss those claims whose factual contentions are clearly baseless." *Id.,* at 327. Thus, the court is not bound, as it usually is when making a determination based solely on the pleadings, to accept without question the truth of the plaintiff's allegations. However, in order to respect the congressional goal of assuring equality of consideration for all litigants, the initial assessment of the *in forma pauperis* plaintiff's factual allegations must be weighted in the plaintiff's favor. A factual frivolousness finding is appropriate when the facts alleged rise to the level of the irrational or the wholly incredible,

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Syllabus

whether or not there are judicially noticeable facts available to contradict them, but a complaint cannot be dismissed simply because the court finds the allegations to be improbable or unlikely. The "clearly baseless" guidepost need not be defined with more precision, since the district courts are in the best position to determine which cases fall into this category, and since the statute's instruction allowing dismissal if a court is "satisfied" that the complaint is frivolous indicates that the frivolousness decision is entrusted to the discretion of the court entertaining the complaint. Pp.31-33.

2. Because the frivolousness determination is a discretionary one, a § 1915(d) dismissal is properly reviewed for an abuse of that discretion. It would be appropriate for a court of appeals to consider, among other things, whether the plaintiff was proceeding *pro se,* whether the district court inappropriately resolved genuine issues of disputed fact, whether the court applied erroneous legal conclusions, whether the court has provided a statement explaining the dismissal that facilitates intelligent appellate review, and whether the dismissal was with or without prejudice. With respect to the last factor, the reviewing court should determine whether the district court abused its discretion by dismissing the complaint with prejudice or without leave to amend if it appears that the allegations could be remedied through more specific pleading, since dismissal under § 1915(d) could have a res judicata effect on frivolousness determinations for future *in forma pauperis* petitions. This Court expresses no opinion on the Court of Appeals' rule that a *pro se* litigant bringing suit *in forma pauperis* is entitled to notice and an opportunity to amend the complaint to overcome any deficiency unless it is clear that no amendment can cure the defect. Pp. 33-35.

929 F.2d 1374, vacated and remanded.

O'CONNOR, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and WHITE, SCALIA, KENNEDY, SOUTER, and THOMAS, JJ., joined. STEVENS, J., filed a dissenting opinion, in which BLACKMUN, J., joined, *post,* p. 35.

James Ching, Supervising Deputy Attorney General of California, argued the cause for petitioners. With him on the briefs were *Daniel E. Lungren,* Attorney General, *George Williamson,* Chief Assistant Attorney General, *Kenneth* C. *Young,* Assistant Attorney General, and *Joan W Cavanagh,* Supervising Deputy Attorney General.

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Richard W Nichols, by appointment of the Court, 502 U. S. 966, argued the cause and filed a brief for respondent. *

JUSTICE O'CONNOR delivered the opinion of the Court. The federal *in forma pauperis* statute, codified at 28 U. S. C. § 1915, allows an indigent litigant to commence a civil or criminal action in federal court without paying the administrative costs of proceeding with the lawsuit. The statute protects against abuses of this privilege by allowing a district court to dismiss the case "if the allegation of poverty is untrue, or if satisfied that the action is frivolous or malicious." § 1915(d). In *Neitzke* v. *Williams,* 490 U. S. 319 (1989), we considered the standard to be applied when determining whether the legal basis of an *in forma pauperis* complaint is frivolous under § 1915(d). The issues in this case are the appropriate inquiry for determining when an *in forma pauperis* litigant's factual allegations justify a § 1915(d) dismissal for frivolousness, and the proper standard of appellate review of such a dismissal.

I

Petitioners are 15 officials at various institutions in the California penal system. Between 1983 and 1985, respondent Mike Hernandez, a state prisoner proceeding *pro se,* named petitioners as defendants in five civil rights suits filed *in forma pauperis.* In relevant part, the complaints in these five suits allege that Hernandez was drugged and homosexually raped a total of 28 times by inmates and prison

*Solicitor General Starr, Assistant Attorney General Mueller, and Deputy Solicitor General Roberts filed a brief for the United States as amicus curiae urging reversal.

Elizabeth Alexander, David C. Fathi, John A. Powell, Steven R. Shapiro, and Matthew Coles filed a brief for the American Civil Liberties Union et al. as amici curiae urging affirmance.

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officials at different institutions. * With few exceptions, the alleged perpetrators are not identified in the complaints, because Hernandez does not claim any direct recollection of the incidents. Rather, he asserts that he found needle marks on different parts of his body, and fecal and semen stains on his clothes, which led him to believe that he had been drugged and raped while he slept.

Hernandez's allegations that he was sexually assaulted on the nights of January 13, 1984, and January 27, 1984, are supported by an affidavit signed by fellow prisoner Armando Esquer (Esquer Affidavit), which states:

> "On January 13, 1984, at approximately 7:30 a.m., I was on my way to the shower, when I saw correctional officer McIntyre, the P-2 Unit Officer, unlock inmate Mike Hernandez's cell door and subsequently saw as two black inmates stepped inside his cell. I did not see Officer McIntyre order these two black inmates out of inmate Mike Hernandez's cell after they stepped inside, even though inmate Mike Hernandez was asleep inside. After about ten minutes, I returned from the shower, and I noticed my friend, Mike Hernandez, was being sexually assaulted by the two black inmates. Officer McIn-

*8ee Amended Complaint in *Hernandez* v. *Ylst,* et al., No. crv 8-830645 (Feb. 9, 1984) (alleging rape by unidentified correctional officers at California 8tate Prison at Folsom on the night of July 29, 1982), Brief for Respondent 2-4; Motion to Amend Complaint in *Hernandez* v. *Denton,* et al., No. crv 8-83-1348 (June 19, 1984) (alleging rape by one or more prisoners at California Medical Facility at Vacaville on the night of July 29, 1983, and one additional episode in December 1982), Brief for Respondent 5; Complaint in *Hernandez* v. *Ylst,* et al., No.

and one additional episode in December 1983), Brief for Respondent 5; Complaint in *Hernandez* v. *Ylst,* et al., No. crv 8-84-1074 (Aug. 20, 1984) (alleging six additional druggings and rapes occurring between August 12 and November 4, 1983), Brief for Respondent 6; Complaint in *Hernandez* v. *Ylst,* et al., No. crv 8-84-1198 (8ept. 17, 1984) (alleging three additional incidents occurring between November 26 and December 12, 1983), Brief for Respondent 6-7; Complaint in *Hernandez* v. *Ylst,* et al., No. crv 8-85-0084 (Jan. 21, 1985) (alleging 16 additional incidents occurring between January 13 and December 10, 1984), Brief for Respondent 7.

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> tyre returned to lock inmate Mike Hernandez's cell door after the two black inmates stepped out. I watch[ed] all this activity from the hallway and my cell door.
>
> "On January 27th, 1984, I was again on my way to the shower, when I noticed the same correctional officer as he unlocked inmate Mike Hernandez's cell door, and also saw as two black inmates stepped inside inmate Mike Hernandez's cell. Then I knew right away that both they and Officer McIntyre were up to no good. After this last incident, I became convinced that Officer McIntyre was deliberately unlocking my friend, Mike Hernandez's cell as he [lay] asleep, so that these two black inmates could sexually assault him in his cell." Exhibit H in No. CIV 8-85-0084, Brief for Respondent 9.

Hernandez also attempted to amend one complaint to include an affidavit signed by fellow inmate Harold Pierce, alleging that on the night of July 29, 1983, he "witnessed inmate Dushane B-71187 and inmate Milliard B-30802 assault and rape inmate Mike Hernandez as he lay ... asleep in bed 206 in the N-2 Unit Dorm." 8ee Exhibit G to Motion to Amend Complaint in *Hernandez* v. *Denton,* et aI., No. CIV 8-831348 (June 19, 1984), Brief for Respondent 6.

The District Court determined that the five cases were related and referred them to a Magistrate, who recommended that the complaints be dismissed as frivolous. The Magistrate reasoned that" 'each complaint, taken separately, is not necessarily frivolous,'" but that" 'a different picture emerges from a reading of all five complaints together.'" *Id.,* at 11. As he explained: "'[Hernandez] alleges that both guards and inmates, at different institutions, subjected him to sexual assaults. Despite the fact that different defendants are allegedly responsible for each assault, the purported *modus operandi* is identical in every case. Moreover, the attacks occurred only sporadically throughout a three year period. The facts thus appear to be "wholly fanciful" and justify this court's dismissal of the actions as frivolous.'"

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Ibid. By order dated May 5, 1986, the District Court adopted the recommendation of the Magistrate and dismissed the complaints.

Hernandez appealed the dismissal of three of the five cases (Nos. CIV S-83-0645, CIV S-83-1348, CIV S-85-0084; see n. 1, *supra).* Reviewing the dismissal *de novo,* the Court of Appeals for the Ninth Circuit reversed and remanded. *Her*nandez v. *Denton,* 861 F.2d 1421 (1988). In relevant part, Judge Schroeder's lead opinion concluded that a district court could dismiss a complaint as factually frivolous only if the allegations conflicted with judicially noticeable facts, that is, facts "'capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.'" *Id.,* at 1426 (quoting Fed. Rule Evid. 201). In this case, Judge Schroeder wrote, the court could not dismiss Hernandez's claims as frivolous because it was impossible to take judicial notice that none of the alleged rapes occurred. 861 F. 2d, at 1426. Judge Wallace concurred on the ground that Circuit precedent required that Hernandez be given notice that his claims were to be dismissed as frivolous and a chance to amend his complaints to remedy the deficiencies. *Id.,* at 1427. Judge Aldisert dissented. He was of the opinion that the allegations were "the hallucinations of a troubled man," *id.,* at 1440, and that no further amendment could save the complaint, *id.,* at 1439-1440.

We granted petitioners' first petition for a writ of certiorari, 493 U. S. 801 (1989), vacated the judgment, and remanded the case to the Court of Appeals for consideration of our intervening decision in *Neitzke* v. *Williams,* 490 U. S. 319 (1989). On remand, the Court of Appeals reaffirmed its earlier decision. 929 F.2d 1374 (1991). Judge Schroeder modified her original opinion to state that judicial notice was just "one useful standard" for determining factual frivolousness under § 1915(d), but adhered to her position that the case could not be dismissed because no judicially noticeable fact could contradict Hernandez's claims of rape. *Id.,* at

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1376. Judge Wallace and Judge Aldisert repeated their earlier views.

We granted the second petition for a writ of certiorari to consider when an *in forma pauperis* claim may be dismissed as factually frivolous under § 1915(d). 502 U. S. 937 (1991). We hold that the Court of Appeals incorrectly limited the power granted the courts to dismiss a frivolous case under § 1915(d), and therefore vacate and remand the case for application of the proper standard.

II

In enacting the federal *in forma pauperis* statute, Congress "intended to guarantee that no citizen shall be denied an opportunity to commence, prosecute, or defend an action, civil or criminal, in any court of the United States, solely because ... poverty makes it impossible ... to payor secure the costs" of litigation. *Adkins* v. *E.* 1. *DuPont de Nemours* & *Co.,* 335 U. S. 331, 342 (1948) (internal quotation marks omitted). At the same time that it sought to lower judicial access barriers to the indigent, however, Congress recognized that "a litigant whose filing fees and court costs are assumed by the public, unlike a paying litigant, lacks an economic incentive to refrain from filing frivolous, malicious, or repetitive lawsuits." *Neitzke, supra,* at 324. In response to this concern, Congress included subsection (d) as part of the statute, which allows the courts to dismiss an *in forma pauperis* complaint "if satisfied that the action is frivolous or malicious."

Neitzke v. *Williams, supra,* provided us with our first occasion to construe the meaning of "frivolous" under § 1915(d). In that case, we held that "a complaint, containing as it does both factual allegations and legal conclusions, is frivolous where it lacks an arguable basis either in law or in fact." *Id.,* at 325. In *Neitzke,* we were concerned with the proper standard for determining frivolousness of legal conclusions, and we determined that a complaint filed *in forma pauperis*

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which fails to state a claim under Federal Rule of Civil Procedure 12(b)(6) may nonetheless have "an arguable basis in law" precluding dismissal under § 1915(d). 490 U. S., at 328329. In so holding, we observed that the *in forma pauperis* statute, unlike Rule 12(b)(6), "accords judges not only the authority to dismiss a claim based on an indisputably meritless legal theory, but also the unusual power to pierce the veil of the complaint's factual allegations and dismiss those claims whose factual contentions are clearly baseless." *Id.,* at 327. "Examples of the latter class," we said, "are claims describing fantastic or delusional scenarios, claims with which federal district judges are all too familiar." *Id.,* at 328.

Petitioners contend that the decision below is inconsistent with the "unusual" dismissal power we recognized in *Neitzke,* and we agree. Contrary to the Ninth Circuit's assumption, our statement in *Neitzke* that § 1915(d) gives courts the authority to "pierce the veil of the complaint's factual allegations" means that a court is not bound, as it usually is when making a determination based solely on the pleadings, to accept without question the truth of the plaintiff's allegations. We therefore reject the notion that a court must accept as "having an arguable basis in fact," *id.,* at 325, all allegations that cannot be rebutted by judicially noticeable facts. At the same time, in order to respect the congressional goal of "assur[ing] equality of consideration for all litigants," *Coppedge* v. *United States,* 369 U. S. 438, 447 (1962), this initial assessment of the *in forma pauperis* plaintiff's factual allegations must be weighted in favor of the plaintiff. In other words, the § 1915(d) frivolousness determination, frequently made *sua sponte* before the defendant has even been asked to file an answer, cannot serve as a factfinding process for the resolution of disputed facts.

As we stated in *Neitzke,* a court may dismiss a claim as factually frivolous only if the facts alleged are "clearly baseless," 490 U. S., at 327, a category encompassing allegations

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that are "fanciful," *id.,* at 325, "fantastic," *id.,* at 328, and "delusional," *ibid.* As those words suggest, a finding of factual frivolousness is appropriate when the facts alleged rise to the level of the irrational or the wholly incredible, whether or not there are judicially noticeable facts available to contradict them. An *in forma pauperis* complaint may not be dismissed, however, simply because the court finds the plaintiff's allegations unlikely. Some

complaint may not be dismissed, however, simply because the court finds the plaintiff's allegations unlikely. Some improbable allegations might properly be disposed of on summary judgment, but to dismiss them as frivolous without any factual development is to disregard the age-old insight that many allegations might be "strange, but true; for truth is always strange, Stranger than fiction." Lord Byron, Don Juan, canto XIV, stanza 101 (T. Steffan, E. Steffan, & w. Pratt eds. 1977).

Although Hernandez urges that we define the "clearly baseless" guidepost with more precision, we are confident that the district courts, who are "all too familiar" with factually frivolous claims, *Neitzke, supra,* at 328, are in the best position to determine which cases fall into this category. Indeed, the statute's instruction that an action may be dismissed if the court is "satisfied" that it is frivolous indicates that frivolousness is a decision entrusted to the discretion of the court entertaining the *in forma pauperis* petition. We therefore decline the invitation to reduce the "clearly baseless" inquiry to a monolithic standard.

Because the frivolousness determination is a discretionary one, we further hold that a § 1915(d) dismissal is properly reviewed for an abuse of that discretion, and that it was error for the Court of Appeals to review the dismissal of Hernandez's claims *de novo*. Cf. *Boag* v. *MacDougall,* 454 U. S. 364, 365, n. (1982) *(per curiam)* (reversing dismissal of an *in forma pauperis* petition when dismissal was based on an erroneous legal conclusion and not exercise of the "broad discretion" granted by § 1915(d)); *Coppedge, supra,* at 446 (district court's certification that *in forma pauperis* appellant is taking appeal in good faith, as required by § 1915(a),

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is "entitled to weight"). In reviewing a § 1915(d) dismissal for abuse of discretion, it would be appropriate for the Court of Appeals to consider, among other things, whether the plaintiff was proceeding *pro se,* see *Haines* v. *Kerner, 404* U. S. 519, 520-521 (1972); whether the court inappropriately resolved genuine issues of disputed fact, see *supra,* at 32-33; whether the court applied erroneous legal conclusions, see *Boag,* 454 U. S., at 365, n.; whether the court has provided a statement explaining the dismissal that facilitates "intelligent appellate review," *ibid.;* and whether the dismissal was with or without prejudice.

With respect to this last factor: Because a § 1915(d) dismissal is not a dismissal on the merits, but rather an exercise of the court's discretion under the *in forma pauperis* statute, the dismissal does not prejudice the filing of a paid complaint making the same allegations. It could, however, have a res judicata effect on frivolousness determinations for future *in* forma pauperis petitions. See, *e. g., Bryant* v. *Civiletti,* 214 U. S. App. D. C. 109, 110-111, 663 F.2d 286, 287-288, n. 1 (1981) (§ 1915(d) dismissal for frivolousness is res judicata); *Warren* v. *McCall,* 709 F.2d 1183, 1186, and n. 7 (CA7 1983) (same); cf. *Rogers* v. *Bruntrager,* 841 F.2d 853, 855 (CA8 1988) (noting that application of res judicata principles after § 1915(d) dismissal can be "somewhat problematical"). Therefore, if it appears that frivolous factual allegations could be remedied through more specific pleading, a court of appeals reviewing a § 1915(d) disposition should consider whether the district court abused its discretion by dismissing the complaint with prejudice or without leave to amend. Because it is not properly before us, we express no opinion on the Ninth Circuit rule, applied below, that a *pro se* litigant bringing suit *in forma pauperis* is entitled to notice and an opportunity to amend the complaint to overcome any deficiency unless it is clear that no amendment can cure the defect. *E. g., Potter* v. *McCall,* 433 F.2d 1087, 1088 (1970); *Noll* v. *Carlson,* 809 F.2d 1446 (1987).

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Accordingly, we vacate the judgment below and remand the case for proceedings consistent with this opinion.

It is so ordered.

JUSTICE STEVENS, with whom JUSTICE BLACKMUN joins, dissenting.

My disagreement with the Court is narrow. I agree with its articulation of the standard to be applied in determining whether an *in forma pauperis* complaint is frivolous under 28 U. S. C. § 1915(d). Moreover, precedent supports the Court's decision to remand the case without expressing any view on the proper application of that standard to the facts of the case. See, *e. g., Rufo* v. *Inmates of Suffolk County Jail,* 502 U. S. 367 (1992). Nevertheless, because I am satisfied that the decision of the Court of Appeals is entirely consistent with the standard announced today, I would affirm its judgment.

Materials

Oral Arguments

Oral Argument - February 24, 1992

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JUSTIA

FDA v. Alliance for Hippocratic Medicine, 602 U.S. ____ (2024)

Overview Opinions Materials

Docket No.	Granted:	Argued:	Decided:
23-235	December 13, 2023	March 26, 2024	June 13, 2024

Justia Summary

In 2000, the Food and Drug Administration (FDA) approved the use of mifepristone tablets, marketed under the brand name Mifeprex, for terminating pregnancies up to seven weeks. The FDA imposed additional restrictions on the drug's use and distribution, including requiring doctors to prescribe or supervise the prescription of Mifeprex and requiring patients to have three in-person visits with the doctor to receive the drug. In 2016, the FDA relaxed some of these restrictions, and in 2021, it announced that it would no longer enforce the initial in-person visit requirement. Four pro-life medical associations and several individual doctors moved for a preliminary injunction that would require the FDA to either rescind approval of mifepristone or rescind the FDA's 2016 and 2021 regulatory actions.

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Annotation

PRIMARY HOLDING

Sincere legal, moral, ideological, and policy objections to elective abortion and to the FDA's relaxed regulation of an abortion drug alone do not establish a justiciable case or controversy in federal court.

Syllabus

SUPREME COURT OF THE UNITED STATES

Syllabus

FOOD AND DRUG ADMINISTRATION et al. *v.* ALLIANCE FOR HIPPOCRATIC MEDICINE et al.

certiorari to the united states court of appeals for the fifth circuit

No. 23–235. Argued March 26, 2024—Decided June 13, 2024[1]

In 2000, the Food and Drug Administration approved a new drug application for mifepristone tablets marketed under the brand name Mifeprex for use in terminating pregnancies up to seven weeks. To help ensure that Mifeprex would be used safely and effectively, FDA placed additional restrictions on the drug's use and distribution, for example requiring doctors to prescribe or to supervise prescription of Mifeprex, and requiring patients to have three in-person visits with the doctor to receive the drug. In 2016, FDA relaxed some of these restrictions: deeming Mifeprex safe to terminate pregnancies up to 10 weeks; allowing healthcare providers, such

as nurse practitioners, to prescribe Mifeprex; and approving a dosing regimen that required just one in-person visit to receive the drug. In 2019, FDA approved an application for generic mifepristone. In 2021, FDA announced that it would no longer enforce the initial in-person visit requirement. Four pro-life medical associations and several individual doctors moved for a preliminary injunction that would require FDA either to rescind approval of mifepristone or to rescind FDA's 2016 and 2021 regulatory actions. Danco Laboratories, which sponsors Mifeprex, intervened to defend FDA's actions.

The District Court agreed with the plaintiffs and in effect enjoined FDA's approval of mifepristone, thereby ordering mifepristone off the market. FDA and Danco appealed and moved to stay the District Court's order pending appeal. As relevant here, this Court ultimately stayed the District Court's order pending the disposition of proceedings in the Fifth Circuit and this Court. On the merits, the Fifth Circuit held that plaintiffs had standing. It concluded that plaintiffs were unlikely to succeed on their challenge to FDA's 2000 and 2019 drug approvals, but were likely to succeed in showing that FDA's 2016 and 2021 actions were unlawful. This Court granted certiorari with respect to the 2016 and 2021 FDA actions.

Held: Plaintiffs lack Article III standing to challenge FDA's actions regarding the regulation of mifepristone. Pp. 5–25.

(a) Article III standing is a "bedrock constitutional requirement that this Court has applied to all manner of important disputes." *United States* v. *Texas*, 599 U.S. 670, 675. Standing is "built on a single basic idea—the idea of separation of powers." *Ibid*. Article III confines the jurisdiction of federal courts to "Cases" and "Controversies." Federal courts do not operate as an open forum for citizens "to press general complaints about the way in which government goes about its business." *Allen* v. *Wright*, 468 U.S. 737, 760. To obtain a judicial determination of what the governing law is, a plaintiff must have a "personal stake" in the dispute. *TransUnion LLC* v. *Ramirez*, 594 U.S. 413, 423.

To establish standing, a plaintiff must demonstrate (i) that she has suffered or likely will suffer an injury in fact, (ii) that the injury likely was caused or will be caused by the defendant, and (iii) that the injury likely would be redressed by the requested judicial relief. See *Summers* v. *Earth Island Institute*, 555 U.S. 488, 493. The two key questions in most standing disputes are injury in fact and causation. By requiring the plaintiff to show an injury in fact, Article III standing screens out plaintiffs who might have only a general legal, moral, ideological, or policy objection to a particular government action. Causation requires the plaintiff to establish that the plaintiff 's injury likely was caused or likely will be caused by the defendant's conduct. Causation is "ordinarily substantially more difficult to establish" when (as here) a plaintiff challenges the government's "unlawful regulation (or lack of regulation) of someone else." *Lujan* v. *Defenders of Wildlife*, 504 U.S. 555, 560–561. That is because unregulated parties often may have more difficulty linking their asserted injuries to the government's regulation (or lack of regulation) of someone else. Pp. 5–12.

(b) Plaintiffs are pro-life, oppose elective abortion, and have sincere legal, moral, ideological, and policy objections to mifepristone being prescribed and used *by others*. Because plaintiffs do not prescribe or use mifepristone, plaintiffs are unregulated parties who seek to challenge FDA's regulation *of others*. Plaintiffs advance several complicated causation theories to connect FDA's actions to the plaintiffs' alleged injuries in fact. None of these theories suffices to establish Article III standing. Pp. 13–24.

(1) Plaintiffs first contend that FDA's relaxed regulation of mifepristone may cause downstream conscience injuries to the individual doctors. Even assuming that FDA's 2016 and 2021 changes to mifepristone's conditions of use cause more pregnant women to require emergency abortions and that some women would likely seek treatment from these plaintiff doctors, the plaintiff doctors have not shown that they could be forced to participate in an abortion or provide abortion-related medical treatment over their conscience objections. Federal conscience laws definitively protect doctors from being required to perform abortions or to provide other treatment that violates their consciences. Federal law protects doctors from repercussions when they have "refused" to participate in an abortion. §300a–7(c)(1). The plaintiffs have not identified any instances where a doctor was required, notwithstanding conscience objections, to perform an abortion or to provide other abortion-related treatment that violated the doctor's conscience since mifepristone's 2000 approval. Further, the Emergency Medical Treatment and Labor Act (or EMTALA) neither overrides federal conscience laws nor requires individual emergency room doctors to participate in emergency abortions. Thus, there is a break in any chain of causation between FDA's relaxed regulation of mifepristone and any asserted conscience injuries to the doctors. Pp. 14–17.

(2) Plaintiffs next assert they have standing because FDA's relaxed regulation of mifepristone may cause downstream economic injuries to the doctors. The doctors cite various monetary and related injuries that they will allegedly suffer as a result of FDA's actions—in particular, diverting resources and time from other patients to treat patients with mifepristone complications; increasing risk of liability suits from treating those patients; and potentially increasing insurance costs. But the causal link between FDA's regulatory actions in 2016 and 2021 and those alleged injuries is too speculative, lacks support in the record, and is otherwise too attenuated to establish standing. Moreover, the law has never permitted doctors to challenge the government's loosening of general public safety requirements simply because more individuals might then show up at emergency rooms or in doctors' offices with follow-on injuries. Citizens and doctors who object to what the law allows others to do may always take their concerns to the Executive and Legislative Branches and seek greater regulatory or legislative restrictions. Pp. 18–21.

(3) Plaintiff medical associations assert their own organizational standing. Under the Court's precedents, organizations may have standing "to sue on their own behalf for injuries they have sustained," *Havens Realty Corp.* v. *Coleman*, 455 U.S. 363, 379, n. 19, but organizations must satisfy the usual standards for injury in fact, causation, and redressability that apply to individuals, *id.*, at 378–379. According to the medical associations, FDA has "impaired" their "ability to provide services and achieve their organizational missions." Brief for Respondents 43. That argument does not work to demonstrate standing. Like an individual, an organization may not establish standing simply based on the "intensity of the litigant's interest" or because of strong opposition to the government's conduct, *Valley Forge Christian College* v. *Americans United for Separation of Church and State, Inc.*, 454 U.S. 464, 486. The plaintiff associations therefore cannot establish standing simply because they object to FDA's actions. The medical associations claim to have standing based on their incurring costs to oppose FDA's actions. They say that FDA has "caused" the associations to conduct their own studies on mifepristone so that the associations can better inform their members and the public about mifepristone's risks. Brief for Respondents 43. They contend that FDA has "forced" the associations to "expend considerable time, energy, and resources" drafting citizen petitions to FDA, as well as engaging in public advocacy and public education, all to the detriment of other spending priorities. *Id.*, at 44. But an organization that has not suffered a concrete injury caused by a defendant's action cannot spend its way into standing simply by expending money to gather information and advocate against the defendant's action. Contrary to what the medical associations contend, the Court's decision in *Havens Realty Corp.* v. *Coleman* does not stand for the expansive theory that standing exists when an organization diverts its resources in response to a defendant's actions. *Havens* was an unusual case, and this Court has been careful not to extend the *Havens* holding beyond its context. So too here.

Finally, it was suggested that plaintiffs must have standing because otherwise it may be that no one would have standing to challenge FDA's 2016 and 2021 actions. That suggestion fails because the Court has long rejected that kind of argument as a basis for standing. The "assumption" that if these plaintiffs lack "standing to sue, no one would have standing, is not a reason to find standing." *Schlesinger* v. *Reservists Comm. to Stop the War*, 418 U.S. 208, 227. Rather, some issues may be left to the political and democratic processes. Pp. 21–24.

78 F. 4th 210, reversed and remanded.

Kavanaugh, J., delivered the opinion for a unanimous Court. Thomas, J., filed a concurring opinion.

Notes

1 Together with No. 23–236, *Danco Laboratories, L.L.C.* v. *Alliance for Hippocratic Medicine*, also on certiorari to the United States Court of Appeals for the Fifth Circuit.

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Opinions

Opinion (Kavanaugh) Concurrence (Thomas)

SUPREME COURT OF THE UNITED STATES

Nos. 23–235 and 23–236

FOOD AND DRUG ADMINISTRATION, et al., PETITIONERS

23–235*v.*

ALLIANCE FOR HIPPOCRATIC MEDICINE, et al.

DANCO LABORATORIES, L.L.C., PETITIONER

23–236*v.*

ALLIANCE FOR HIPPOCRATIC MEDICINE, et al.

on writs of certiorari to the united states court of appeals for the fifth circuit

[June 13, 2024]

Justice Kavanaugh delivered the opinion of the Court.

In 2016 and 2021, the Food and Drug Administration relaxed its regulatory requirements for mifepristone, an abortion drug. Those changes made it easier for doctors to prescribe and pregnant women to obtain mifepristone. Several pro-life doctors and associations sued FDA, arguing that FDA's actions violated the Administrative Procedure Act. But the plaintiffs do not prescribe or use mifepristone. And FDA is not requiring them to do or refrain from doing anything. Rather, the plaintiffs want FDA to make mifepristone more difficult for other doctors to prescribe and for pregnant women to obtain. Under Article III of the Constitution, a plaintiff 's desire to make a drug less available *for others* does not establish standing to sue. Nor do the plaintiffs' other standing theories suffice. Therefore, the plaintiffs lack standing to challenge FDA's actions.

I

A

Under federal law, the U. S. Food and Drug Administration, an agency within the Executive Branch, ensures that drugs on the market are safe and effective. For FDA to approve a new drug, the drug sponsor (usually the drug's manufacturer or potential marketer) must submit an application demonstrating that the drug is safe and effective when used as directed. 21 U. S. C. §355(d). The sponsor's application must generally include proposed labeling that specifies the drug's dosage, how to take the drug, and the specific conditions that the drug may treat. 21 CFR §§201.5, 314.50 (2022).

If FDA determines that additional safety requirements are necessary, FDA may impose extra requirements on prescription and use of the drug. 21 U. S. C. §355–1(f)(3). For example, FDA may require that prescribers undergo specialized training; mandate that the drug be dispensed only in certain settings like hospitals; or direct that doctors monitor patients taking the drug. *Ibid.*

In 2000, FDA approved a new drug application for mifepristone tablets marketed under the brand name Mifeprex. FDA approved Mifeprex for use to terminate pregnancies, but only up to seven weeks of pregnancy. To help ensure that Mifeprex would be used safely and effectively, FDA placed further restrictions on the drug's use and distribution. For example, only doctors could prescribe or supervise prescription of Mifeprex. Doctors and patients also had to follow a strict regimen requiring the patient to appear for three in-person visits with the doctor. And FDA directed prescribing doctors to report incidents of hospitalizations, blood transfusions, or other serious adverse events to the drug sponsor (who, in turn, was required to report the events to FDA).

In 2015, Mifeprex's distributor Danco Laboratories submitted a supplemental new drug application seeking to amend Mifeprex's labeling and to relax some of the restrictions that FDA had imposed. In 2016, FDA approved the proposed changes. FDA deemed Mifeprex safe to terminate pregnancies up to 10 weeks rather than 7 weeks. FDA allowed healthcare providers such as nurse practitioners to prescribe Mifeprex. And FDA approved a dosing regimen that reduced the number of required in-person visits from three to one—a single visit to receive Mifeprex. In addition, FDA changed prescribers' adverse event reporting obligations to require prescribers to report only fatalities—a reporting requirement that was still more stringent than the requirements for most other drugs.

In 2019, FDA approved an application for generic mifepristone. FDA established the same conditions of use for generic mifepristone as for Mifeprex.

In 2021, FDA again relaxed the requirements for Mifeprex and generic mifepristone. Relying on experience gained during the COVID–19 pandemic about pregnant women using mifepristone without an in-person visit to a healthcare provider, FDA announced that it would no longer enforce the initial in-person visit requirement.

B

Because mifepristone is used to terminate pregnancies, FDA's approval and regulation of mifepristone have generated substantial controversy from the start. In 2002, three pro-life associations submitted a joint citizen petition asking FDA to rescind its approval of Mifeprex. FDA denied their petition.

In 2019, two pro-life medical associations filed another petition, this time asking FDA to withdraw its 2016 modifications to mifepristone's conditions of use. FDA denied that petition as well.

This case began in 2022. Four pro-life medical associations, as well as several individual doctors, sued FDA in the U. S. District Court for the Northern District of Texas. Plaintiffs brought claims under the Administrative Procedure Act. They challenged the lawfulness of FDA's 2000 approval of Mifeprex; FDA's 2019 approval of generic mifepristone; and FDA's 2016 and 2021 actions modifying mifepristone's conditions of use. Danco Laboratories, which sponsors Mifeprex, intervened to defend FDA's actions. The plaintiffs moved for a preliminary injunction that would require FDA to rescind approval of mifepristone or, at the very least, to rescind FDA's 2016 and 2021 actions.

The District Court agreed with the plaintiffs and in effect enjoined FDA's approval of mifepristone, thereby ordering mifepristone off the market. 668 F. Supp. 3d 507 (ND Tex. 2023). The court first held that the plaintiffs possessed Article III standing. It then determined that the plaintiffs were likely to succeed on the merits of each of their claims. Finally, the court concluded that the plaintiffs would suffer irreparable harm from FDA's continued approval of mifepristone and that an injunction would serve the public interest.

FDA and Danco promptly appealed and moved to stay the District Court's order pending appeal. The U. S. Court of Appeals for the Fifth Circuit granted the stay motion in part and temporarily reinstated FDA's approval of Mifeprex. 2023 WL 2913725, *21 (Apr. 12, 2023). But the Court of Appeals declined to stay the rest of the District Court's order. The Court of Appeals' partial stay would have left Mifeprex (though not generic mifepristone) on the market, but only under the more stringent requirements imposed when FDA first approved Mifeprex in 2000 —available only up to seven weeks of pregnancy, only when prescribed by doctors, and only with three in-person visits, among other requirements.

FDA and Danco then sought a full stay in this Court. This Court stayed the District Court's order in its entirety pending the disposition of FDA's and Danco's appeals in the Court of Appeals and ultimate resolution by this Court. 598 U. S. ___ (2023). As a result of this Court's stay, Mifeprex and generic mifepristone have remained available as allowed by FDA's relaxed 2016 and 2021 requirements.

A few months later, the Court of Appeals issued its decision on the merits of the District Court's order, affirming in part and vacating in part. 78 F. 4th 210, 222–223 (CA5 2023). The Court of Appeals first concluded that the individual doctors and the pro-life medical associations had standing. The Court of Appeals next concluded that plaintiffs were not likely to succeed on their challenge to FDA's 2000 approval of Mifeprex and 2019 approval of generic mifepristone. So the Court of Appeals vacated the District Court's order as to those agency actions. But the Court of Appeals agreed with the District Court that plaintiffs were likely to succeed in showing that FDA's 2016 and 2021 actions were unlawful.

The Court of Appeals' merits decision did not alter this Court's stay of the District Court's order pending this Court's review. This Court then granted certiorari with respect to the 2016 and 2021 FDA actions held unlawful by

Court's review. This Court then granted certiorari with respect to the 2016 and 2021 FDA actions held unlawful by the Court of Appeals. 601 U. S. ____ (2023).

II

The threshold question is whether the plaintiffs have standing to sue under Article III of the Constitution. Article III standing is a "bedrock constitutional requirement that this Court has applied to all manner of important disputes." *United States* v. *Texas*, 599 U.S. 670, 675 (2023). Standing is "built on a single basic idea—the idea of separation of powers." *Ibid.* (quotation marks omitted). Importantly, separation of powers "was not simply an abstract generalization in the minds of the Framers: it was woven into the document that they drafted in Philadelphia in the summer of 1787." *TransUnion LLC* v. *Ramirez*, 594 U.S. 413, 422–423 (2021) (quotation marks omitted). Therefore, we begin as always with the precise text of the Constitution.

Article III of the Constitution confines the jurisdiction of federal courts to "Cases" and "Controversies." The case or controversy requirement limits the role of the Federal Judiciary in our system of separated powers. As this Court explained to President George Washington in 1793 in response to his request for a legal opinion, federal courts do not issue advisory opinions about the law—even when requested by the President. 13 Papers of George Washington: Presidential Series 392 (C. Patrick ed. 2007). Nor do federal courts operate as an open forum for citizens "to press general complaints about the way in which government goes about its business." *Allen* v. *Wright*, 468 U.S. 737, 760 (1984) (quotation marks omitted); see *California* v. *Texas*, 593 U.S. 659, 673 (2021); *Valley Forge Christian College* v. *Americans United for Separation of Church and State, Inc.*, 454 U.S. 464, 487 (1982); *United States* v. *Richardson*, 418 U.S. 166, 175 (1974); *Ex parte Levitt*, 302 U.S. 633, 634 (1937) (*per curiam*); *Massachusetts* v. *Mellon*, 262 U.S. 447, 487–488 (1923); *Fairchild* v. *Hughes*, 258 U.S. 126, 129–130 (1922).

As Justice Scalia memorably said, Article III requires a plaintiff to first answer a basic question: " 'What's it to you?' " A. Scalia, The Doctrine of Standing as an Essential Element of the Separation of Powers, 17 Suffolk U. L. Rev. 881, 882 (1983). For a plaintiff to get in the federal courthouse door and obtain a judicial determination of what the governing law is, the plaintiff cannot be a mere bystander, but instead must have a "personal stake" in the dispute. *TransUnion*, 594 U. S., at 423. The requirement that the plaintiff possess a personal stake helps ensure that courts decide litigants' legal rights in specific cases, as Article III requires, and that courts do not opine on legal issues in response to citizens who might "roam the country in search of governmental wrongdoing." *Valley Forge*, 454 U. S., at 487; see, *e.g.*, *Schlesinger* v. *Reservists Comm. to Stop the War*, 418 U.S. 208, 227 (1974); *Richardson*, 418 U. S., at 175; *Tyler* v. *Judges of Court of Registration*, 179 U.S. 405, 406 (1900). Standing also "tends to assure that the legal questions presented to the court will be resolved, not in the rarified atmosphere of a debating society, but in a concrete factual context conducive to a realistic appreciation of the consequences of judicial action." *Valley Forge*, 454 U. S., at 472. Moreover, the standing doctrine serves to protect the "autonomy" of those who are most directly affected so that they can decide whether and how to challenge the defendant's action. *Id.*, at 473.

By limiting who can sue, the standing requirement implements "the Framers' concept of the proper—and properly limited—role of the courts in a democratic society." J. Roberts, Article III Limits on Statutory Standing, 42 Duke L. J. 1219, 1220 (1993) (quotation marks omitted). In particular, the standing requirement means that the federal courts decide some contested legal questions later rather than sooner, thereby allowing issues to percolate and potentially be resolved by the political branches in the democratic process. See *Raines* v. *Byrd*, 521 U.S. 811, 829–830 (1997); cf. *Clapper* v. *Amnesty Int'l USA*, 568 U.S. 398, 420–422 (2013). And the standing requirement means that the federal courts may never need to decide some contested legal questions: "Our system of government leaves many crucial decisions to the political processes," where democratic debate can occur and a wide variety of interests and views can be weighed. *Schlesinger*, 418 U. S., at 227; see *Campbell* v. *Clinton*, 203 F.3d 19, 23 (CADC 2000).

A

The fundamentals of standing are well-known and firmly rooted in American constitutional law. To establish standing, as this Court has often stated, a plaintiff must demonstrate (i) that she has suffered or likely will suffer an injury in fact, (ii) that the injury likely was caused or will be caused by the defendant, and (iii) that the injury likely would be redressed by the requested judicial relief. See *Summers* v. *Earth Island Institute*, 555 U.S. 488, 493 (2009); *Lujan* v. *Defenders of Wildlife*, 504 U.S. 555, 560–561 (1992). Those specific standing requirements constitute "an essential and unchanging part of the case-or-controversy requirement of Article III." *Id.*, at 560.

The second and third standing requirements—causation and redressability—are often "flip sides of the same coin." *Sprint Communications Co.* v. *APCC Services, Inc.*, 554 U.S. 269, 288 (2008). If a defendant's action causes an injury, enjoining the action or awarding damages for the action will typically redress that injury. So the two key questions in most standing disputes are injury in fact and causation.[1]

First is injury in fact. An injury in fact must be "concrete," meaning that it must be real and not abstract. See *TransUnion*, 594 U. S., at 424. The injury also must be particularized; the injury must affect "the plaintiff in a personal and individual way" and not be a generalized grievance. *Lujan*, 504 U. S., at 560, n. 1. An injury in fact can be a physical injury, a monetary injury, an injury to one's property, or an injury to one's constitutional rights, to take just a few common examples. Moreover, the injury must be actual or imminent, not speculative—meaning that the injury must have already occurred or be likely to occur soon. *Clapper*, 568 U. S., at 409. And when a plaintiff seeks prospective relief such as an injunction, the plaintiff must establish a sufficient likelihood of future injury. *Id.*, at 401.

By requiring the plaintiff to show an injury in fact, Article III standing screens out plaintiffs who might have only a general legal, moral, ideological, or policy objection to a particular government action. For example, a citizen does not have standing to challenge a government regulation simply because the plaintiff believes that the government is acting illegally. See *Valley Forge*, 454 U. S., at 473, 487. A citizen may not sue based only on an "asserted right to have the Government act in accordance with law." *Allen*, 468 U. S., at 754; *Schlesinger*, 418 U. S., at 225–227. Nor may citizens sue merely because their legal objection is accompanied by a strong moral, ideological, or policy objection to a government action. See *Valley Forge*, 454 U. S., at 473.

The injury in fact requirement prevents the federal courts from becoming a "vehicle for the vindication of the value interests of concerned bystanders." *Allen*, 468 U. S., at 756 (quotation marks omitted). An Article III court is not a legislative assembly, a town square, or a faculty lounge. Article III does not contemplate a system where 330 million citizens can come to federal court whenever they believe that the government is acting contrary to the Constitution or other federal law. See *id.*, at 754. Vindicating "the *public* interest (including the public interest in Government observance of the Constitution and laws) is the function of Congress and the Chief Executive." *Lujan*, 504 U. S., at 576.

In sum, to sue in federal court, a plaintiff must show that he or she has suffered or likely will suffer an injury in fact.

Second is causation. The plaintiff must also establish that the plaintiff 's injury likely was caused or likely will be caused by the defendant's conduct.

Government regulations that require or forbid some action by the plaintiff almost invariably satisfy both the injury in fact and causation requirements. So in those cases, standing is usually easy to establish. See *Lujan*, 504 U. S., at 561–562; see, *e.g.*, *Susan B. Anthony List* v. *Driehaus*, 573 U.S. 149, 162–163 (2014).

By contrast, when (as here) a plaintiff challenges the government's "unlawful regulation (or lack of regulation) of *someone else*," "standing is not precluded, but it is ordinarily substantially more difficult to establish." *Lujan*, 504 U. S., at 562 (quotation marks omitted); see *Summers*, 555 U. S., at 493. That is often because unregulated parties may have more difficulty establishing causation—that is, linking their asserted injuries to the government's regulation (or lack of regulation) of someone else. See *Clapper*, 568 U. S., at 413–414; *Lujan*, 504 U. S., at 562; *Duke Power Co.* v. *Carolina Environmental Study Group, Inc.*, 438 U.S. 59, 74 (1978); *Simon* v. *Eastern Ky. Welfare Rights Organization*, 426 U.S. 26, 41–46 (1976); *Warth* v. *Seldin*, 422 U.S. 490, 504–508 (1975).

When the plaintiff is an unregulated party, causation "ordinarily hinge[s] on the response of the regulated (or regulable) third party to the government action or inaction—and perhaps on the response of others as well." *Lujan*, 504 U. S., at 562. Yet the Court has said that plaintiffs attempting to show causation generally cannot "rely on speculation about the unfettered choices made by independent actors not before the courts." *Clapper*, 568 U. S., at 415, n. 5 (quotation marks omitted); see also *Bennett* v. *Spear*, 520 U.S. 154, 168–169 (1997). Therefore, to thread the causation needle in those circumstances, the plaintiff must show that the " 'third parties will likely react in predictable ways' " that in turn will likely injure the plaintiffs. *California*, 593 U. S., at 675 (quoting *Department of Commerce* v. *New York*, 588 U.S. 752, 768 (2019)).

As this Court has explained, the "line of causation between the illegal conduct and injury"—the "links in the chain of causation," *Allen*, 468 U. S., at 752, 759—must not be too speculative or too attenuated, *Clapper*, 568 U. S., at

410–411. The causation requirement precludes speculative links—that is, where it is not sufficiently predictable how third parties would react to government action or cause downstream injury to plaintiffs. See *Allen*, 468 U. S., at 757–759; *Simon*, 426 U. S., at 41–46. The causation requirement also rules out attenuated links—that is, where the government action is so far removed from its distant (even if predictable) ripple effects that the plaintiffs cannot establish Article III standing. See *Allen*, 468 U. S., at 757–759; cf. *Department of Commerce*, 588 U. S., at 768.

The causation requirement is central to Article III standing. Like the injury in fact requirement, the causation requirement screens out plaintiffs who were not injured by the defendant's action. Without the causation requirement, courts would be "virtually continuing monitors of the wisdom and soundness" of government action. *Allen*, 468 U. S., at 760 (quotation marks omitted).

Determining causation in cases involving suits by unregulated parties against the government is admittedly not a "mechanical exercise." *Id.*, at 751. That is because the causation inquiry can be heavily fact-dependent and a "question of degree," as private petitioner's counsel aptly described it here. Tr. of Oral Arg. 50. Unfortunately, applying the law of standing cannot be made easy, and that is particularly true for causation. Just as causation in tort law can pose line-drawing difficulties, so too can causation in standing law when determining whether an unregulated party has standing.

That said, the "absence of precise definitions" has not left courts entirely "at sea in applying the law of standing." *Allen*, 468 U. S., at 751. Like "most legal notions, the standing concepts have gained considerable definition from developing case law." *Ibid.* As the Court has explained, in "many cases the standing question can be answered chiefly by comparing the allegations of the particular complaint to those made in prior standing cases." *Id.*, at 751–752. Stated otherwise, assessing standing "in a particular case may be facilitated by clarifying principles or even clear rules developed in prior cases." *Id.*, at 752.

Consistent with that understanding of how standing principles can develop and solidify, the Court has identified a variety of familiar circumstances where government regulation of a third-party individual or business may be likely to cause injury in fact to an unregulated plaintiff. For example, when the government regulates (or under-regulates) a business, the regulation (or lack thereof) may cause downstream or upstream economic injuries to others in the chain, such as certain manufacturers, retailers, suppliers, competitors, or customers. *E.g.*, *National Credit Union Admin.* v. *First Nat. Bank & Trust Co.*, 522 U.S. 479, 488, n. 4 (1998); *General Motors Corp.* v. *Tracy*, 519 U.S. 278, 286–287 (1997); *Barlow* v. *Collins*, 397 U.S. 159, 162–164 (1970); *Association of Data Processing Service Organizations, Inc.* v. *Camp*, 397 U.S. 150, 152 (1970). When the government regulates parks, national forests, or bodies of water, for example, the regulation may cause harm to individual users. *E.g.*, *Summers*, 555 U. S., at 494. When the government regulates one property, it may reduce the value of adjacent property. The list goes on. See, *e.g.*, *Department of Commerce*, 588 U. S., at 766–768.

As those cases illustrate, to establish causation, the plaintiff must show a predictable chain of events leading from the government action to the asserted injury—in other words, that the government action has caused or likely will cause injury in fact to the plaintiff.[2]

B

Here, the plaintiff doctors and medical associations are unregulated parties who seek to challenge FDA's regulation *of others*. Specifically, FDA's regulations apply to doctors prescribing mifepristone and to pregnant women taking mifepristone. But the plaintiff doctors and medical associations do not prescribe or use mifepristone. And FDA has not required the plaintiffs to do anything or to refrain from doing anything.

The plaintiffs do not allege the kinds of injuries described above that unregulated parties sometimes can assert to demonstrate causation. Because the plaintiffs do not prescribe, manufacture, sell, or advertise mifepristone or sponsor a competing drug, the plaintiffs suffer no direct monetary injuries from FDA's actions relaxing regulation of mifepristone. Nor do they suffer injuries to their property, or to the value of their property, from FDA's actions. Because the plaintiffs do not use mifepristone, they obviously can suffer no physical injuries from FDA's actions relaxing regulation of mifepristone.

Rather, the plaintiffs say that they are pro-life, oppose elective abortion, and have sincere legal, moral, ideological, and policy objections to mifepristone being prescribed and used *by others*. The plaintiffs appear to recognize that those general legal, moral, ideological, and policy concerns do not suffice on their own to confer Article III standing to sue in federal court. So to try to establish standing, the plaintiffs advance several complicated

causation theories to connect FDA's actions to the plaintiffs' alleged injuries in fact.

The first set of causation theories contends that FDA's relaxed regulation of mifepristone may cause downstream conscience injuries to the individual doctor plaintiffs and the specified members of the plaintiff medical associations, who are also doctors. (We will refer to them collectively as "the doctors.") The second set of causation theories asserts that FDA's relaxed regulation of mifepristone may cause downstream economic injuries to the doctors. The third set of causation theories maintains that FDA's relaxed regulation of mifepristone causes injuries to the medical associations themselves, who assert their own organizational standing. As we will explain, none of the theories suffices to establish Article III standing.

1

We first address the plaintiffs' claim that FDA's relaxed regulation of mifepristone causes conscience injuries to the doctors.

The doctors contend that FDA's 2016 and 2021 actions will cause more pregnant women to suffer complications from mifepristone, and those women in turn will need more emergency abortions by doctors. The plaintiff doctors say that they therefore may be required—against their consciences—to render emergency treatment completing the abortions or providing other abortion-related treatment.

The Government correctly acknowledges that a conscience injury of that kind constitutes a concrete injury in fact for purposes of Article III. See Tr. of Oral Arg. 11–12; *TransUnion*, 594 U. S., at 425; see, *e.g.*, *Holt* v. *Hobbs*, 574 U.S. 352 (2015). So doctors would have standing to challenge a government action that likely would cause them to provide medical treatment against their consciences.

But in this case—even assuming for the sake of argument that FDA's 2016 and 2021 changes to mifepristone's conditions of use cause more pregnant women to require emergency abortions and that some women would likely seek treatment from these plaintiff doctors—the plaintiff doctors have not shown that they could be forced to participate in an abortion or provide abortion-related medical treatment over their conscience objections.

That is because, as the Government explains, federal conscience laws definitively protect doctors from being required to perform abortions or to provide other treatment that violates their consciences. See 42 U. S. C. §300a–7(c)(1); see also H. R. 4366, 118th Cong., 2d Sess., Div. C, Title II, §203 (2024). The Church Amendments, for instance, speak clearly. They allow doctors and other healthcare personnel to "refus[e] to perform or assist" an abortion without punishment or discrimination from their employers. 42 U. S. C. §300a–7(c)(1). And the Church Amendments more broadly provide that doctors shall not be required to provide treatment or assistance that would violate the doctors' religious beliefs or moral convictions. §300a–7(d). Most if not all States have conscience laws to the same effect. See N. Sawicki, Protections From Civil Liability in State Abortion Conscience Laws, 322 JAMA 1918 (2019); see, *e.g.*, Tex. Occ. Code Ann. §103.001 (West 2022).

Moreover, as the Government notes, federal conscience protections encompass "the doctor's beliefs rather than particular procedures," meaning that doctors cannot be required to treat mifepristone complications in any way that would violate the doctors' consciences. Tr. of Oral Arg. 37; see §300a–7(c)(1). As the Government points out, that strong protection for conscience remains true even in a so-called healthcare desert, where other doctors are not readily available. Tr. of Oral Arg. 18.

Not only as a matter of law but also as a matter of fact, the federal conscience laws have protected pro-life doctors ever since FDA approved mifepristone in 2000. The plaintiffs have not identified any instances where a doctor was required, notwithstanding conscience objections, to perform an abortion or to provide other abortion-related treatment that violated the doctor's conscience. Nor is there any evidence in the record here of hospitals overriding or failing to accommodate doctors' conscience objections.

In other words, none of the doctors' declarations says anything like the following: "Here is the treatment I provided, here is how it violated my conscience, and here is why the conscience protections were unavailable to me." Cf. App. 153–154 (Dr. Francis saw a patient suffering complications from an abortion drug obtained from India; no allegation that Dr. Francis helped perform an abortion); *id.*, at 154 (Dr. Francis witnessed another doctor perform an abortion; no allegation that the other doctor raised conscience objections or tried not to participate); *id.,* at 163–164 (doctor's hospital treated women suffering complications from abortion drugs; no allegation that the doctors treating the patients had or raised conscience objections to the treatment they provided); *id.*, at 173–174 (doctor treated a patient suffering from mifepristone complications; no description of

provided); Id., at 173–174 (doctor treated a patient suffering from mifepristone complications; no description of what that treatment involved and no statement that the doctor raised a conscience objection to providing that treatment).

In response to all of that, the doctors still express fear that another federal law, the Emergency Medical Treatment and Labor Act or EMTALA, might be interpreted to override those federal conscience laws and to require individual emergency room doctors to participate in emergency abortions in some circumstances. See 42 U. S. C. §1395dd. But the Government has disclaimed that reading of EMTALA. And we agree with the Government's view of EMTALA on that point. EMTALA does not require doctors to perform abortions or provide abortion-related medical treatment over their conscience objections because EMTALA does not impose obligations on individual doctors. See Brief for United States 23, n. 3. As the Solicitor General succinctly and correctly stated, EMTALA does not "override an individual doctor's conscience objections." Tr. of Oral Arg. 18; see also Tr. of Oral Arg. in *Moyle* v. *United States*, O. T. 2023, No. 23–726 etc., pp. 88–91 (*Moyle* Tr.). We agree with the Solicitor General's representation that federal conscience protections provide "broad coverage" and will "shield a doctor who doesn't want to provide care in violation of those protections." Tr. of Oral Arg. 18, 36.

The doctors say, however, that emergency room doctors summoned to provide emergency treatment may not have time to invoke federal conscience protections. But as the Government correctly explained, doctors need not follow a time-intensive procedure to invoke federal conscience protections. Reply Brief for United States 5. A doctor may simply refuse; federal law protects doctors from repercussions when they have "refused" to participate in an abortion. §300a–7(c)(1); Reply Brief for United States 5. And as the Government states, "[h]ospitals must accommodate doctors in emergency rooms no less than in other contexts." *Ibid.* For that reason, hospitals and doctors typically try to plan ahead for how to deal with a doctor's absence due to conscience objections. Tr. of Oral Arg. 18; *Moyle* Tr. 89–90. And again, nothing in the record since 2000 supports plaintiffs' speculation that doctors will be unable to successfully invoke federal conscience protections in emergency circumstances.

In short, given the broad and comprehensive conscience protections guaranteed by federal law, the plaintiffs have not shown—and cannot show—that FDA's actions will cause them to suffer any conscience injury. Federal law fully protects doctors against being required to provide abortions or other medical treatment against their consciences—and therefore breaks any chain of causation between FDA's relaxed regulation of mifepristone and any asserted conscience injuries to the doctors.[3]

2

In addition to alleging conscience injuries, the doctors cite various monetary and related injuries that they allegedly will suffer as a result of FDA's actions—in particular, diverting resources and time from other patients to treat patients with mifepristone complications; increasing risk of liability suits from treating those patients; and potentially increasing insurance costs.

Those standing allegations suffer from the same problem—a lack of causation. The causal link between FDA's regulatory actions and those alleged injuries is too speculative or otherwise too attenuated to establish standing.

To begin with, the claim that the doctors will incur those injuries as a result of FDA's 2016 and 2021 relaxed regulations lacks record support and is highly speculative. The doctors have not offered evidence tending to suggest that FDA's deregulatory actions have both caused an increase in the number of pregnant women seeking treatment from the plaintiff doctors *and* caused a resulting diversion of the doctors' time and resources from other patients. Moreover, the doctors have not identified any instances in the past where they have been sued or required to pay higher insurance costs because they have treated pregnant women suffering mifepristone complications. Nor have the plaintiffs offered any persuasive evidence or reason to believe that the future will be different.

In any event, and perhaps more to the point, the law has never permitted doctors to challenge the government's loosening of general public safety requirements simply because more individuals might then show up at emergency rooms or in doctors' offices with follow-on injuries. Stated otherwise, there is no Article III doctrine of "doctor standing" that allows doctors to challenge general government safety regulations. Nor will this Court now create such a novel standing doctrine out of whole cloth.

Consider some examples. EPA rolls back emissions standards for power plants—does a doctor have standing to sue because she may need to spend more time treating asthma patients? A local school district starts a middle school football league—does a pediatrician have standing to challenge its constitutionality because she might need

to spend more time treating concussions? A federal agency increases a speed limit from 65 to 80 miles per hour—does an emergency room doctor have standing to sue because he may have to treat more car accident victims? The government repeals certain restrictions on guns—does a surgeon have standing to sue because he might have to operate on more gunshot victims?

The answer is no: The chain of causation is simply too attenuated. Allowing doctors or other healthcare providers to challenge general safety regulations as unlawfully lax would be an unprecedented and limitless approach and would allow doctors to sue in federal court to challenge almost any policy affecting public health.[4]

And in the FDA drug-approval context, virtually all drugs come with complications, risks, and side effects. Some drugs increase the risk of heart attack, some may cause cancer, some may cause birth defects, and some heighten the possibility of stroke. Approval of a new drug may therefore yield more visits to doctors to treat complications or side effects. So the plaintiffs' loose approach to causation would also essentially allow any doctor or healthcare provider to challenge any FDA decision approving a new drug. But doctors have never had standing to challenge FDA's drug approvals simply on the theory that use of the drugs by others may cause more visits to doctors.

And if we were now to invent a new doctrine of doctor standing, there would be no principled way to cabin such a sweeping doctrinal change to doctors or other healthcare providers. Firefighters could sue to object to relaxed building codes that increase fire risks. Police officers could sue to challenge a government decision to legalize certain activities that are associated with increased crime. Teachers in border states could sue to challenge allegedly lax immigration policies that lead to overcrowded classrooms.

We decline to start the Federal Judiciary down that uncharted path. That path would seemingly not end until virtually every citizen had standing to challenge virtually every government action that they do not like—an approach to standing that this Court has consistently rejected as flatly inconsistent with Article III.

We recognize that many citizens, including the plaintiff doctors here, have sincere concerns about and objections to others using mifepristone and obtaining abortions. But citizens and doctors do not have standing to sue simply because *others* are allowed to engage in certain activities—at least without the plaintiffs demonstrating how they would be injured by the government's alleged under-regulation of others. See *Coalition for Mercury-Free Drugs* v. *Sebelius*, 671 F.3d 1275, 1277 (CADC 2012). Citizens and doctors who object to what the law allows others to do may always take their concerns to the Executive and Legislative Branches and seek greater regulatory or legislative restrictions on certain activities.

In sum, the doctors in this case have failed to establish Article III standing. The doctors have not shown that FDA's actions likely will cause them any injury in fact. The asserted causal link is simply too speculative or too attenuated to support Article III standing.[5]

3

That leaves the medical associations' argument that the associations themselves have organizational standing. Under this Court's precedents, organizations may have standing "to sue on their own behalf for injuries they have sustained." *Havens Realty Corp.* v. *Coleman*, 455 U.S. 363, 379, n. 19 (1982). In doing so, however, organizations must satisfy the usual standards for injury in fact, causation, and redressability that apply to individuals. *Id.*, at 378–379.

According to the medical associations, FDA has "impaired" their "ability to provide services and achieve their organizational missions." Brief for Respondents 43. That argument does not work to demonstrate standing.

Like an individual, an organization may not establish standing simply based on the "intensity of the litigant's interest" or because of strong opposition to the government's conduct, *Valley Forge*, 454 U. S., at 486, "no matter how longstanding the interest and no matter how qualified the organization," *Sierra Club* v. *Morton*, 405 U.S. 727, 739 (1972). A plaintiff must show "far more than simply a setback to the organization's abstract social interests." *Havens*, 455 U. S., at 379. The plaintiff associations therefore cannot assert standing simply because they object to FDA's actions.

The medical associations say that they have demonstrated something more here. They claim to have standing not based on their mere disagreement with FDA's policies, but based on their incurring costs to oppose FDA's actions. They say that FDA has "caused" the associations to conduct their own studies on mifepristone so that the associations can better inform their members and the public about mifepristone's risks. Brief for Respondents 43.

They contend that FDA has "forced" the associations to "expend considerable time, energy, and resources" drafting citizen petitions to FDA, as well as engaging in public advocacy and public education. *Id.*, at 44 (quotation marks omitted). And all of that has caused the associations to spend "considerable resources" to the detriment of other spending priorities. *Ibid.*

But an organization that has not suffered a concrete injury caused by a defendant's action cannot spend its way into standing simply by expending money to gather information and advocate against the defendant's action. An organization cannot manufacture its own standing in that way.

The medical associations respond that under *Havens Realty Corp.* v. *Coleman*, standing exists when an organization diverts its resources in response to a defendant's actions. 455 U.S. 363. That is incorrect. Indeed, that theory would mean that all the organizations in America would have standing to challenge almost every federal policy that they dislike, provided they spend a single dollar opposing those policies. *Havens* does not support such an expansive theory of standing.

The relevant question in *Havens* was whether a housing counseling organization, HOME, had standing to bring a claim under the Fair Housing Act against Havens Realty, which owned and operated apartment complexes. *Id.*, at 368, 378. Havens had provided HOME's black employees false information about apartment availability—a practice known as racial steering. *Id.*, at 366, and n. 1, 368. Critically, HOME not only was an issue-advocacy organization, but also operated a housing counseling service. *Id.*, at 368. And when Havens gave HOME's employees false information about apartment availability, HOME sued Havens because Havens "perceptibly impaired HOME's ability to provide counseling and referral services for low- and moderate-income homeseekers." *Id.*, at 379. In other words, Havens's actions directly affected and interfered with HOME's core business activities—not dissimilar to a retailer who sues a manufacturer for selling defective goods to the retailer.

That is not the kind of injury that the medical associations have alleged here. FDA's actions relaxing regulation of mifepristone have not imposed any similar impediment to the medical associations' advocacy businesses.

At most, the medical associations suggest that FDA is not properly collecting and disseminating information about mifepristone, which the associations say in turn makes it more difficult for them to inform the public about safety risks. But the associations have not claimed an informational injury, and in any event the associations have not suggested that federal law requires FDA to disseminate such information upon request by members of the public. Cf. *Federal Election Comm'n* v. *Akins*, 524 U.S. 11 (1998).

Havens was an unusual case, and this Court has been careful not to extend the *Havens* holding beyond its context. So too here.

Finally, it has been suggested that the plaintiffs here must have standing because if these plaintiffs do not have standing, then it may be that no one would have standing to challenge FDA's 2016 and 2021 actions. For starters, it is not clear that no one else would have standing to challenge FDA's relaxed regulation of mifepristone. But even if no one would have standing, this Court has long rejected that kind of "if not us, who?" argument as a basis for standing. See *Clapper*, 568 U. S., at 420–421; *Valley Forge*, 454 U. S., at 489; *Richardson*, 418 U. S., at 179–180. The "assumption" that if these plaintiffs lack "standing to sue, no one would have standing, is not a reason to find standing." *Schlesinger*, 418 U. S., at 227. Rather, some issues may be left to the political and democratic processes: The Framers of the Constitution did not "set up something in the nature of an Athenian democracy or a New England town meeting to oversee the conduct of the National Government by means of lawsuits in federal courts." *Richardson*, 418 U. S., at 179; see *Texas*, 599 U. S., at 685.

* * *

The plaintiffs have sincere legal, moral, ideological, and policy objections to elective abortion and to FDA's relaxed regulation of mifepristone. But under Article III of the Constitution, those kinds of objections alone do not establish a justiciable case or controversy in federal court. Here, the plaintiffs have failed to demonstrate that FDA's relaxed regulatory requirements likely would cause them to suffer an injury in fact. For that reason, the federal courts are the wrong forum for addressing the plaintiffs' concerns about FDA's actions. The plaintiffs may present their concerns and objections to the President and FDA in the regulatory process, or to Congress and the President in the legislative process. And they may also express their views about abortion and mifepristone to fellow citizens, including in the political and electoral processes.

"No principle is more fundamental to the judiciary's proper role in our system of government than the

constitutional limitation of federal-court jurisdiction to actual cases or controversies." *Simon*, 426 U. S., at 37. We reverse the judgment of the U. S. Court of Appeals for the Fifth Circuit and remand the case for further proceedings consistent with this opinion.

It is so ordered.

Notes

1 Redressability can still pose an independent bar in some cases. For example, a plaintiff who suffers injuries caused by the government still may not be able to sue because the case may not be of the kind "traditionally redressable in federal court." *United States* v. *Texas*, 599 U.S. 670, 676 (2023); cf. *California* v. *Texas*, 593 U.S. 659, 671–672 (2021).

2 In cases of alleged future injuries to unregulated parties from government regulation, the causation requirement and the imminence element of the injury in fact requirement can overlap. Both target the same issue: Is it likely that the government's regulation or lack of regulation of someone else will cause a concrete and particularized injury in fact to the unregulated plaintiff?

3 The doctors also suggest that they are distressed by others' use of mifepristone and by emergency abortions. It is not clear that this alleged injury is distinct from the alleged conscience injury. But even if it is, this Court has long made clear that distress at or disagreement with the activities of others is not a basis under Article III for a plaintiff to bring a federal lawsuit challenging the legality of a government regulation allowing those activities. See, *e.g.*, *Valley Forge Christian College* v. *Americans United for Separation of Church and State, Inc.*, 454 U.S. 464, 473, 485–486 (1982); *United States* v. *Richardson,* 418 U.S. 166, 175 (1974); *Sierra Club* v. *Morton*, 405 U.S. 727, 739 (1972).

4 A safety law regulating hospitals or the doctors' medical practices obviously would present a different issue—either such a law would directly regulate doctors, or the causal link at least would be substantially less attenuated.

5 The doctors also suggest that they can sue in a representative capacity to vindicate their patients' injuries or potential future injuries, even if the doctors have not suffered and would not suffer an injury themselves. This Court has repeatedly rejected such arguments. Under this Court's precedents, third-party standing, as some have called it, allows a narrow class of litigants to assert the legal rights of others. See *Hollingsworth* v. *Perry*, 570 U.S. 693, 708 (2013). But "even when we have allowed litigants to assert the interests of others, the litigants themselves still must have suffered an injury in fact, thus giving them a sufficiently concrete interest in the outcome of the issue in dispute." *Ibid.* (quotation marks and alterations omitted). The third-party standing doctrine does not allow doctors to shoehorn themselves into Article III standing simply by showing that their patients have suffered injuries or may suffer future injuries.

JUSTIA

Loper Bright Enterprises v. Raimondo, 603 U.S. ____ (2024)

Overview Opinions Materials

Docket No.	Granted:	Argued:	Decided:
22-451	May 1, 2023	January 17, 2024	June 28, 2024

Justia Summary

The Supreme Court of the United States reviewed two cases involving challenges to a rule promulgated by the National Marine Fisheries Service under the Magnuson-Stevens Act. The rule required certain fishing vessels to carry observers onboard to collect data necessary for fishery conservation and management, with the cost of these observers to be borne by the vessel owners. The petitioners, various fishing businesses, argued that the Act did not authorize the Fisheries Service to impose these costs on them.

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Annotation

PRIMARY HOLDING

Courts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority. Courts may not defer to an agency interpretation of the law simply because a statute is ambiguous.

Syllabus

SUPREME COURT OF THE UNITED STATES

Syllabus

LOPER BRIGHT ENTERPRISES et al. *v.* RAIMONDO, SECRETARY OF COMMERCE, et al.

certiorari to the united states court of appeals for the district of columbia circuit

No. 22–451. Argued January 17, 2024—Decided June 28, 2024[1]*

The Court granted certiorari in these cases limited to the question whether *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837, should be overruled or clarified. Under the *Chevron* doctrine, courts have sometimes been required to defer to "permissible" agency interpretations of the statutes those agencies administer—even when a reviewing court reads the statute differently. *Id.*, at 843. In each case below, the reviewing courts applied *Chevron*'s framework to resolve in favor of the Government challenges by petitioners to a rule promulgated by the National Marine Fisheries Service pursuant to the Magnuson-Stevens Act, 16 U. S. C. §1801 *et seq.*, which incorporates the Administrative Procedure Act (APA), 5 U. S. C. §551 *et seq.*

Held: The Administrative Procedure Act requires courts to exercise their independent judgment in deciding whether an agency has acted within its statutory authority, and courts may not defer to an agency interpretation

of the law simply because a statute is ambiguous; *Chevron* is overruled. Pp. 7–35.

(a) Article III of the Constitution assigns to the Federal Judiciary the responsibility and power to adjudicate "Cases" and "Controversies"—concrete disputes with consequences for the parties involved. The Framers appreciated that the laws judges would necessarily apply in resolving those disputes would not always be clear, but envisioned that the final "interpretation of the laws" would be "the proper and peculiar province of the courts." The Federalist No. 78, p. 525 (A. Hamilton). As Chief Justice Marshall declared in the foundational decision of *Marbury* v. *Madison*, "[i]t is emphatically the province and duty of the judicial department to say what the law is." 1 Cranch 137, 177. In the decades following *Marbury*, when the meaning of a statute was at issue, the judicial role was to "interpret the act of Congress, in order to ascertain the rights of the parties." *Decatur* v. *Paulding*, 14 Pet. 497, 515.

The Court recognized from the outset, though, that exercising independent judgment often included according due respect to Executive Branch interpretations of federal statutes. Such respect was thought especially warranted when an Executive Branch interpretation was issued roughly contemporaneously with enactment of the statute and remained consistent over time. The Court also gave "the most respectful consideration" to Executive Branch interpretations simply because "[t]he officers concerned [were] usually able men, and masters of the subject," who may well have drafted the laws at issue. *United States* v. *Moore*, 95 U.S. 760, 763. "Respect," though, was just that. The views of the Executive Branch could inform the judgment of the Judiciary, but did not supersede it. "[I]n cases where [a court's] own judgment . . . differ[ed] from that of other high functionaries," the court was "not at liberty to surrender, or to waive it." *United States* v. *Dickson*, 15 Pet. 141, 162.

During the "rapid expansion of the administrative process" that took place during the New Deal era, *United States* v. *Morton Salt Co.*, 338 U.S. 632, 644, the Court often treated agency determinations of *fact* as binding on the courts, provided that there was "evidence to support the findings," *St. Joseph Stock Yards Co.* v. *United States*, 298 U.S. 38, 51. But the Court did not extend similar deference to agency resolutions of questions of *law*. "The interpretation of the meaning of statutes, as applied to justiciable controversies," remained "exclusively a judicial function." *United States* v. *American Trucking Assns., Inc.*, 310 U.S. 534, 544. The Court also continued to note that the informed judgment of the Executive Branch could be entitled to "great weight." *Id.*, at 549. "The weight of such a judgment in a particular case," the Court observed, would "depend upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control." *Skidmore* v. *Swift & Co.*, 323 U.S. 134, 140.

Occasionally during this period, the Court applied deferential review after concluding that a particular statute empowered an agency to decide how a broad statutory term applied to specific facts found by the agency. See *Gray* v. *Powell*, 314 U.S. 402; *NLRB* v. *Hearst Publications, Inc.*, 322 U.S. 111. But such deferential review, which the Court was far from consistent in applying, was cabined to factbound determinations. And the Court did not purport to refashion the longstanding judicial approach to questions of law. It instead proclaimed that "[u]ndoubtedly questions of statutory interpretation . . . are for the courts to resolve, giving appropriate weight to the judgment of those whose special duty is to administer the questioned statute." *Id.*, at 130–131. Nothing in the New Deal era or before it thus resembled the deference rule the Court would begin applying decades later to all varieties of agency interpretations of statutes under *Chevron*. Pp. 7–13.

(b) Congress in 1946 enacted the APA "as a check upon administrators whose zeal might otherwise have carried them to excesses not contemplated in legislation creating their offices." *Morton Salt*, 338 U. S., at 644. The APA prescribes procedures for agency action and delineates the basic contours of judicial review of such action. And it codifies for agency cases the unremarkable, yet elemental proposition reflected by judicial practice dating back to *Marbury*: that courts decide legal questions by applying their own judgment. As relevant here, the APA specifies that courts, not agencies, will decide "*all* relevant questions of law" arising on review of agency action, 5 U. S. C. §706 (emphasis added)—even those involving ambiguous laws. It prescribes no deferential standard for courts to employ in answering those legal questions, despite mandating deferential judicial review of agency policymaking and factfinding. See §§706(2)(A), (E). And by directing courts to "interpret constitutional and statutory provisions" without differentiating between the two, §706, it makes clear that agency interpretations of statutes—like agency interpretations of the Constitution—are *not* entitled to deference. The APA's history and the contemporaneous views of various respected commentators underscore the plain meaning of its text.

Courts exercising independent judgment in determining the meaning of statutory provisions, consistent with the APA, may—as they have from the start—seek aid from the interpretations of those responsible for implementing

particular statutes. See *Skidmore*, 323 U. S., at 140. And when the best reading of a statute is that it delegates discretionary authority to an agency, the role of the reviewing court under the APA is, as always, to independently interpret the statute and effectuate the will of Congress subject to constitutional limits. The court fulfills that role by recognizing constitutional delegations, fixing the boundaries of the delegated authority, and ensuring the agency has engaged in " 'reasoned decisionmaking' " within those boundaries. *Michigan* v. *EPA*, 576 U.S. 743, 750 (quoting *Allentown Mack Sales & Service, Inc.* v. *NLRB*, 522 U.S. 359, 374). By doing so, a court upholds the traditional conception of the judicial function that the APA adopts. Pp. 13–18.

(c) The deference that *Chevron* requires of courts reviewing agency action cannot be squared with the APA. Pp. 18–29.

(1) *Chevron*, decided in 1984 by a bare quorum of six Justices, triggered a marked departure from the traditional judicial approach of independently examining each statute to determine its meaning. The question in the case was whether an Environmental Protection Agency (EPA) regulation was consistent with the term "stationary source" as used in the Clean Air Act. 467 U. S., at 840. To answer that question, the Court articulated and employed a now familiar two-step approach broadly applicable to review of agency action. The first step was to discern "whether Congress ha[d] directly spoken to the precise question at issue." *Id.*, at 842. The Court explained that "[i]f the intent of Congress is clear, that is the end of the matter," *ibid.*, and courts were therefore to "reject administrative constructions which are contrary to clear congressional intent," *id.*, at 843, n. 9. But in a case in which "the statute [was] silent or ambiguous with respect to the specific issue" at hand, a reviewing court could not "simply impose its own construction on the statute, as would be necessary in the absence of an administrative interpretation." *Id.*, at 843 (footnote omitted). Instead, at *Chevron*'s second step, a court had to defer to the agency if it had offered "a permissible construction of the statute," *ibid.*, even if not "the reading the court would have reached if the question initially had arisen in a judicial proceeding," *ibid.*, n. 11. Employing this new test, the Court concluded that Congress had not addressed the question at issue with the necessary "level of specificity" and that EPA's interpretation was "entitled to deference." *Id.*, at 865.

Although the Court did not at first treat *Chevron* as the watershed decision it was fated to become, the Court and the courts of appeals were soon routinely invoking its framework as the governing standard in cases involving statutory questions of agency authority. The Court eventually decided that *Chevron* rested on "a presumption that Congress, when it left ambiguity in a statute meant for implementation by an agency, understood that the ambiguity would be resolved, first and foremost, by the agency, and desired the agency (rather than the courts) to possess whatever degree of discretion the ambiguity allows." *Smiley* v. *Citibank (South Dakota), N. A.*, 517 U.S. 735, 740–741. Pp. 18–20.

(2) Neither *Chevron* nor any subsequent decision of the Court attempted to reconcile its framework with the APA. *Chevron* defies the command of the APA that "the reviewing court"—not the agency whose action it reviews—is to "decide *all* relevant questions of law" and "interpret . . . statutory provisions." §706 (emphasis added). It requires a court to *ignore*, not follow, "the reading the court would have reached" had it exercised its independent judgment as required by the APA. *Chevron*, 467 U. S., at 843, n. 11. *Chevron* insists on more than the "respect" historically given to Executive Branch interpretations; it demands that courts mechanically afford *binding* deference to agency interpretations, including those that have been inconsistent over time, see *id.*, at 863, and even when a pre-existing judicial precedent holds that an ambiguous statute means something else, *National Cable & Telecommunications Assn.* v. *Brand X Internet Services*, 545 U.S. 967, 982. That regime is the antithesis of the time honored approach the APA prescribes.

Chevron cannot be reconciled with the APA by presuming that statutory ambiguities are implicit delegations to agencies. That presumption does not approximate reality. A statutory ambiguity does not necessarily reflect a congressional intent that an agency, as opposed to a court, resolve the resulting interpretive question. Many or perhaps most statutory ambiguities may be unintentional. And when courts confront statutory ambiguities in cases that do not involve agency interpretations or delegations of authority, they are not somehow relieved of their obligation to independently interpret the statutes. Instead of declaring a particular party's reading "permissible" in such a case, courts use every tool at their disposal to determine the best reading of the statute and resolve the ambiguity. But in an agency case as in any other, there is a best reading all the same—"the reading the court would have reached" if no agency were involved. *Chevron*, 467 U. S., at 843, n. 11. It therefore makes no sense to speak of a "permissible" interpretation that is not the one the court, after applying all relevant interpretive tools, concludes is best.

Perhaps most fundamentally, *Chevron*'s presumption is misguided because agencies have no special competence in resolving statutory ambiguities. Courts do. The Framers anticipated that courts would often confront statutory ambiguities and expected that courts would resolve them by exercising independent legal judgment. *Chevron* gravely erred in concluding that the inquiry is fundamentally different just because an administrative interpretation is in play. The very point of the traditional tools of statutory construction is to resolve statutory ambiguities. That is no less true when the ambiguity is about the scope of an agency's own power—perhaps the occasion on which abdication in favor of the agency is *least* appropriate. Pp. 21–23.

(3) The Government responds that Congress must generally intend for agencies to resolve statutory ambiguities because agencies have subject matter expertise regarding the statutes they administer; because deferring to agencies purportedly promotes the uniform construction of federal law; and because resolving statutory ambiguities can involve policymaking best left to political actors, rather than courts. See Brief for Respondents in No. 22–1219, pp. 16–19. But none of these considerations justifies *Chevron*'s sweeping presumption of congressional intent.

As the Court recently noted, interpretive issues arising in connection with a regulatory scheme "may fall more naturally into a judge's bailiwick" than an agency's. *Kisor* v. *Wilkie*, 588 U.S. 558, 578. Under *Chevron*'s broad rule of deference, though, ambiguities of all stripes trigger deference, even in cases having little to do with an agency's technical subject matter expertise. And even when an ambiguity happens to implicate a technical matter, it does not follow that Congress has taken the power to authoritatively interpret the statute from the courts and given it to the agency. Congress expects courts to handle technical statutory questions, and courts did so without issue in agency cases before *Chevron*. After all, in an agency case in particular, the reviewing court will go about its task with the agency's "body of experience and informed judgment," among other information, at its disposal. *Skidmore*, 323 U. S., at 140. An agency's interpretation of a statute "cannot bind a court," but may be especially informative "to the extent it rests on factual premises within [the agency's] expertise." *Bureau of Alcohol, Tobacco and Firearms* v. *FLRA*, 464 U.S. 89, 98, n. 8. Delegating ultimate interpretive authority to agencies is simply not necessary to ensure that the resolution of statutory ambiguities is well informed by subject matter expertise.

Nor does a desire for the uniform construction of federal law justify *Chevron*. It is unclear how much the *Chevron* doctrine as a whole actually promotes such uniformity, and in any event, we see no reason to presume that Congress prefers uniformity for uniformity's sake over the correct interpretation of the laws it enacts.

Finally, the view that interpretation of ambiguous statutory provisions amounts to policymaking suited for political actors rather than courts is especially mistaken because it rests on a profound misconception of the judicial role. Resolution of statutory ambiguities involves legal interpretation, and that task does not suddenly become policymaking just because a court has an "agency to fall back on." *Kisor*, 588 U. S., at 575. Courts interpret statutes, no matter the context, based on the traditional tools of statutory construction, not individual policy preferences. To stay out of discretionary policymaking left to the political branches, judges need only fulfill their obligations under the APA to independently identify and respect such delegations of authority, police the outer statutory boundaries of those delegations, and ensure that agencies exercise their discretion consistent with the APA. By forcing courts to instead pretend that ambiguities are necessarily delegations, *Chevron* prevents judges from judging. Pp. 23–26.

(4) Because *Chevron*'s justifying presumption is, as Members of the Court have often recognized, a fiction, the Court has spent the better part of four decades imposing one limitation on *Chevron* after another. Confronted with the byzantine set of preconditions and exceptions that has resulted, some courts have simply bypassed *Chevron* or failed to heed its various steps and nuances. The Court, for its part, has not deferred to an agency interpretation under *Chevron* since 2016. But because *Chevron* remains on the books, litigants must continue to wrestle with it, and lower courts—bound by even the Court's crumbling precedents—understandably continue to apply it. At best, *Chevron* has been a distraction from the question that matters: Does the statute authorize the challenged agency action? And at worst, it has required courts to violate the APA by yielding to an agency the express responsibility, vested in "the reviewing *court*," to "decide all relevant questions of law" and "interpret . . . statutory provisions." §706 (emphasis added). Pp. 26–29.

(d) *Stare decisis*, the doctrine governing judicial adherence to precedent, does not require the Court to persist in the *Chevron* project. The *stare decisis* considerations most relevant here—"the quality of [the precedent's] reasoning, the workability of the rule it established, . . . and reliance on the decision," *Knick* v. *Township of Scott*,

588 U.S. 180, 203 (quoting *Janus* v. *State, County, and Municipal Employees*, 585 U.S. 878, 917)—all weigh in favor of letting *Chevron* go.

Chevron has proved to be fundamentally misguided. It reshaped judicial review of agency action without grappling with the APA, the statute that lays out how such review works. And its flaws were apparent from the start, prompting the Court to revise its foundations and continually limit its application.

Experience has also shown that *Chevron* is unworkable. The defining feature of its framework is the identification of statutory ambiguity, but the concept of ambiguity has always evaded meaningful definition. Such an impressionistic and malleable concept "cannot stand as an every-day test for allocating" interpretive authority between courts and agencies. *Swift & Co.* v. *Wickham*, 382 U.S. 111, 125. The Court has also been forced to clarify the doctrine again and again, only adding to *Chevron*'s unworkability, and the doctrine continues to spawn difficult threshold questions that promise to further complicate the inquiry should *Chevron* be retained. And its continuing import is far from clear, as courts have often declined to engage with the doctrine, saying it makes no difference.

Nor has *Chevron* fostered meaningful reliance. Given the Court's constant tinkering with and eventual turn away from *Chevron*, it is hard to see how anyone could reasonably expect a court to rely on *Chevron* in any particular case or expect it to produce readily foreseeable outcomes. And rather than safeguarding reliance interests, *Chevron* affirmatively destroys them by allowing agencies to change course even when Congress has given them no power to do so.

The only way to "ensure that the law will not merely change erratically, but will develop in a principled and intelligible fashion," *Vasquez* v. *Hillery*, 474 U.S. 254, 265, is for the Court to leave *Chevron* behind. By overruling *Chevron*, though, the Court does not call into question prior cases that relied on the *Chevron* framework. The holdings of those cases that specific agency actions are lawful—including the Clean Air Act holding of *Chevron* itself—are still subject to statutory *stare decisis* despite the Court's change in interpretive methodology. See *CBOCS West, Inc.* v. *Humphries*, 553 U.S. 442, 457. Mere reliance on *Chevron* cannot constitute a " 'special justification' " for overruling such a holding. *Halliburton Co.* v. *Erica P. John Fund, Inc.*, 573 U.S. 258, 266 (quoting *Dickerson* v. *United States*, 530 U.S. 428, 443). Pp. 29–35.

No. 22–451, 45 F. 4th 359 & No. 22–1219, 62 F. 4th 621, vacated and remanded.

Roberts, C. J., delivered the opinion of the Court, in which Thomas, Alito, Gorsuch, Kavanaugh, and Barrett, JJ., joined. Thomas, J., and Gorsuch, J., filed concurring opinions. Kagan, J., filed a dissenting opinion, in which Sotomayor, J., joined, and in which Jackson, J., joined as it applies to No. 22–1219. Jackson, J., took no part in the consideration or decision of the case in No. 22–451.

Notes

1 *Together with No. 22–1219, *Relentless, Inc., et al.* v. *Department of Commerce, et al.*, on certiorari to the United States Court of Appeals for the First Circuit.

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Opinions

Opinion (Roberts) | Concurrence (Thomas) | Concurrence (Gorsuch) | Dissent (Kagan)

SUPREME COURT OF THE UNITED STATES

Nos. 22–451 and 22–1219

LOPER BRIGHT ENTERPRISES, et al., PETITIONERS

22–451*v.*

GINA RAIMONDO, SECRETARY OF COMMERCE, et al.

on writ of certiorari to the united states court of appeals for the district of columbia circuit

RELENTLESS, INC., et al., PETITIONERS

22–1219*v.*

DEPARTMENT OF COMMERCE, et al.

on writ of certiorari to the united states court of appeals for the first circuit

[June 28, 2024]

Chief Justice Roberts delivered the opinion of the Court.

Since our decision in *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), we have sometimes required courts to defer to "permissible" agency interpretations of the statutes those agencies administer—even when a reviewing court reads the statute differently. In these cases we consider whether that doctrine should be overruled.

I

Our *Chevron* doctrine requires courts to use a two-step framework to interpret statutes administered by federal agencies. After determining that a case satisfies the various preconditions we have set for *Chevron* to apply, a reviewing court must first assess "whether Congress has directly spoken to the precise question at issue." *Id.*, at 842. If, and only if, congressional intent is "clear," that is the end of the inquiry. *Ibid.* But if the court determines that "the statute is silent or ambiguous with respect to the specific issue" at hand, the court must, at *Chevron*'s second step, defer to the agency's interpretation if it "is based on a permissible construction of the statute." *Id.*, at 843. The reviewing courts in each of the cases before us applied *Chevron*'s framework to resolve in favor of the Government challenges to the same agency rule.

A

Before 1976, unregulated foreign vessels dominated fishing in the international waters off the U. S. coast, which began just 12 nautical miles offshore. See, *e.g.*, S. Rep. No. 94–459, pp. 2–3 (1975). Recognizing the resultant overfishing and the need for sound management of fishery resources, Congress enacted the Magnuson-Stevens Fishery Conservation and Management Act (MSA). See 90 Stat. 331 (codified as amended at 16 U. S. C. §1801 *et seq.*). The MSA and subsequent amendments extended the jurisdiction of the United States to 200 nautical miles beyond the U. S. territorial sea and claimed "exclusive fishery management authority over all fish" within that area, known as the "exclusive economic zone." §1811(a); see Presidential Proclamation No. 5030, 3 CFR 22 (1983 Comp.); §§101, 102, 90 Stat. 336. The National Marine Fisheries Service (NMFS) administers the MSA under a delegation from the Secretary of Commerce.

The MSA established eight regional fishery management councils composed of representatives from the coastal States, fishery stakeholders, and NMFS. See 16 U. S. C. §§1852(a), (b). The councils develop fishery management plans, which NMFS approves and promulgates as final regulations. See §§1852(h), 1854(a). In service of the

statute's fishery conservation and management goals, see §1851(a), the MSA requires that certain provisions—such as "a mechanism for specifying annual catch limits . . . at a level such that overfishing does not occur," §1853(a)(15)—be included in these plans, see §1853(a). The plans may also include additional discretionary provisions. See §1853(b). For example, plans may "prohibit, limit, condition, or require the use of specified types and quantities of fishing gear, fishing vessels, or equipment," §1853(b)(4); "reserve a portion of the allowable biological catch of the fishery for use in scientific research," §1853(b)(11); and "prescribe such other measures, requirements, or conditions and restrictions as are determined to be necessary and appropriate for the conservation and management of the fishery," §1853(b)(14).

Relevant here, a plan may also require that "one or more observers be carried on board" domestic vessels "for the purpose of collecting data necessary for the conservation and management of the fishery." §1853(b)(8). The MSA specifies three groups that must cover costs associated with observers: (1) foreign fishing vessels operating within the exclusive economic zone (which *must* carry observers), see §§1821(h)(1)(A), (h)(4), (h)(6); (2) vessels participating in certain limited access privilege programs, which impose quotas permitting fishermen to harvest only specific quantities of a fishery's total allowable catch, see §§1802(26), 1853a(c)(1)(H), (e)(2), 1854(d)(2); and (3) vessels within the jurisdiction of the North Pacific Council, where many of the largest and most successful commercial fishing enterprises in the Nation operate, see §1862(a). In the latter two cases, the MSA expressly caps the relevant fees at two or three percent of the value of fish harvested on the vessels. See §§1854(d)(2)(B), 1862(b)(2)(E). And in general, it authorizes the Secretary to impose "sanctions" when "any payment required for observer services provided to or contracted by an owner or operator . . . has not been paid." §1858(g)(1)(D).

The MSA does not contain similar terms addressing whether Atlantic herring fishermen may be required to bear costs associated with any observers a plan may mandate. And at one point, NMFS fully funded the observer coverage the New England Fishery Management Council required in its plan for the Atlantic herring fishery. See 79 Fed. Reg. 8792 (2014). In 2013, however, the council proposed amending its fishery management plans to empower it to require fishermen to pay for observers if federal funding became unavailable. Several years later, NMFS promulgated a rule approving the amendment. See 85 Fed. Reg. 7414 (2020).

With respect to the Atlantic herring fishery, the Rule created an industry funded program that aims to ensure observer coverage on 50 percent of trips undertaken by vessels with certain types of permits. Under that program, vessel representatives must "declare into" a fishery before beginning a trip by notifying NMFS of the trip and announcing the species the vessel intends to harvest. If NMFS determines that an observer is required, but declines to assign a Government-paid one, the vessel must contract with and pay for a Government-certified third-party observer. NMFS estimated that the cost of such an observer would be up to $710 per day, reducing annual returns to the vessel owner by up to 20 percent. See *id.*, at 7417–7418.

B

Petitioners Loper Bright Enterprises, Inc., H&L Axelsson, Inc., Lund Marr Trawlers LLC, and Scombrus One LLC are family businesses that operate in the Atlantic herring fishery. In February 2020, they challenged the Rule under the MSA, 16 U. S. C. §1855(f), which incorporates the Administrative Procedure Act (APA), 5 U. S. C. §551 *et seq*. In relevant part, they argued that the MSA does not authorize NMFS to mandate that they pay for observers required by a fishery management plan. The District Court granted summary judgment to the Government. It concluded that the MSA authorized the Rule, but noted that even if these petitioners' "arguments were enough to raise an ambiguity in the statutory text," deference to the agency's interpretation would be warranted under *Chevron*. 544 F. Supp. 3d 82, 107 (DC 2021); see *id.*, at 103–107.

A divided panel of the D. C. Circuit affirmed. See 45 F. 4th 359 (2022). The majority addressed various provisions of the MSA and concluded that it was not "wholly unambiguous" whether NMFS may require Atlantic herring fishermen to pay for observers. *Id.*, at 366. Because there remained "some question" as to Congress's intent, *id.*, at 369, the court proceeded to *Chevron*'s second step and deferred to the agency's interpretation as a "reasonable" construction of the MSA, 45 F. 4th, at 370. In dissent, Judge Walker concluded that Congress's silence on industry funded observers for the Atlantic herring fishery—coupled with the express provision for such observers in other fisheries and on foreign vessels—unambiguously indicated that NMFS lacked the authority to "require [Atlantic herring] fishermen to pay the wages of at-sea monitors." *Id.*, at 375.

C

Petitioners Relentless Inc., Huntress Inc., and Seafreeze Fleet LLC own two vessels that operate in the Atlantic herring fishery, the F/V *Relentless* and the F/V *Persistence*. [1] Those vessels use small-mesh bottom trawl gear

herring fishery: the F/V *Relentless* and the F/V *Persistence*.[1] These vessels use small-mesh bottom-trawl gear and can freeze fish at sea, so they can catch more species of fish and take longer trips than other vessels (about 10 to 14 days, as opposed to the more typical 2 to 4). As a result, they generally declare into multiple fisheries per trip so they can catch whatever the ocean offers up. If the vessels declare into the Atlantic herring fishery for a particular trip, they must carry an observer for that trip if NMFS selects the trip for coverage, even if they end up harvesting fewer herring than other vessels—or no herring at all.

This set of petitioners, like those in the D. C. Circuit case, filed a suit challenging the Rule as unauthorized by the MSA. The District Court, like the D. C. Circuit, deferred to NMFS's contrary interpretation under *Chevron* and thus granted summary judgment to the Government. See 561 F. Supp. 3d 226, 234–238 (RI 2021).

The First Circuit affirmed. See 62 F. 4th 621 (2023). It relied on a "default norm" that regulated entities must bear compliance costs, as well as the MSA's sanctions provision, Section 1858(g)(1)(D). See *id.*, at 629–631. And it rejected petitioners' argument that the express statutory authorization of three industry funding programs demonstrated that NMFS lacked the broad implicit authority it asserted to impose such a program for the Atlantic herring fishery. See *id.*, at 631–633. The court ultimately concluded that the "[a]gency's interpretation of its authority to require at-sea monitors who are paid for by owners of regulated vessels does not 'exceed[ ] the bounds of the permissible.' " *Id.*, at 633–634 (quoting *Barnhart* v. *Walton*, 535 U.S. 212, 218 (2002); alteration in original). In reaching that conclusion, the First Circuit stated that it was applying *Chevron*'s two-step framework. 62 F. 4th, at 628. But it did not explain which aspects of its analysis were relevant to which of *Chevron*'s two steps. Similarly, it declined to decide whether the result was "a product of *Chevron* step one or step two." *Id.*, at 634.

We granted certiorari in both cases, limited to the question whether *Chevron* should be overruled or clarified. See 601 U. S. ___ (2023); 598 U. S. ___ (2023).[2]

II

A

Article III of the Constitution assigns to the Federal Judiciary the responsibility and power to adjudicate "Cases" and "Controversies"—concrete disputes with consequences for the parties involved. The Framers appreciated that the laws judges would necessarily apply in resolving those disputes would not always be clear. Cognizant of the limits of human language and foresight, they anticipated that "[a]ll new laws, though penned with the greatest technical skill, and passed on the fullest and most mature deliberation," would be "more or less obscure and equivocal, until their meaning" was settled "by a series of particular discussions and adjudications." The Federalist No. 37, p. 236 (J. Cooke ed. 1961) (J. Madison).

The Framers also envisioned that the final "interpretation of the laws" would be "the proper and peculiar province of the courts." *Id.*, No. 78, at 525 (A. Hamilton). Unlike the political branches, the courts would by design exercise "neither Force nor Will, but merely judgment." *Id.*, at 523. To ensure the "steady, upright and impartial administration of the laws," the Framers structured the Constitution to allow judges to exercise that judgment independent of influence from the political branches. *Id.*, at 522; see *id.*, at 522–524; *Stern* v. *Marshall*, 564 U.S. 462, 484 (2011).

This Court embraced the Framers' understanding of the judicial function early on. In the foundational decision of *Marbury* v. *Madison*, Chief Justice Marshall famously declared that "[i]t is emphatically the province and duty of the judicial department to say what the law is." 1 Cranch 137, 177 (1803). And in the following decades, the Court understood "interpret[ing] the laws, in the last resort," to be a "solemn duty" of the Judiciary. *United States* v. *Dickson*, 15 Pet. 141, 162 (1841) (Story, J., for the Court). When the meaning of a statute was at issue, the judicial role was to "interpret the act of Congress, in order to ascertain the rights of the parties." *Decatur* v. *Paulding*, 14 Pet. 497, 515 (1840).

The Court also recognized from the outset, though, that exercising independent judgment often included according due respect to Executive Branch interpretations of federal statutes. For example, in *Edwards' Lessee* v. *Darby*, 12 Wheat. 206 (1827), the Court explained that "[i]n the construction of a doubtful and ambiguous law, the contemporaneous construction of those who were called upon to act under the law, and were appointed to carry its provisions into effect, is entitled to very great respect." *Id.*, at 210; see also *United States* v. *Vowell*, 5 Cranch 368, 372 (1809) (Marshall, C. J., for the Court).

Such respect was thought especially warranted when an Executive Branch interpretation was issued roughly contemporaneously with enactment of the statute and remained consistent over time. See *Dickson*, 15 Pet., at 161; *United States* v. *Alabama Great Southern R. Co.*, 142 U.S. 615, 621 (1892); *National Lead Co.* v. *United States*, 252 U.S. 140, 145–146 (1920). That is because "the longstanding 'practice of the government' "—like any other interpretive aid—"can inform [a court's] determination of 'what the law is.' " *NLRB* v. *Noel Canning*, 573 U.S. 513, 525 (2014) (first quoting *McCulloch* v. *Maryland*, 4 Wheat. 316, 401 (1819); then quoting *Marbury*, 1 Cranch, at 177). The Court also gave "the most respectful consideration" to Executive Branch interpretations simply because "[t]he officers concerned [were] usually able men, and masters of the subject," who were "[n]ot unfrequently . . . the draftsmen of the laws they [were] afterwards called upon to interpret." *United States* v. *Moore*, 95 U.S. 760, 763 (1878); see also *Jacobs* v. *Prichard*, 223 U.S. 200, 214 (1912).

"Respect," though, was just that. The views of the Executive Branch could inform the judgment of the Judiciary, but did not supersede it. Whatever respect an Executive Branch interpretation was due, a judge "certainly would not be bound to adopt the construction given by the head of a department." *Decatur*, 14 Pet., at 515; see also *Burnet* v. *Chicago Portrait Co.*, 285 U.S. 1, 16 (1932). Otherwise, judicial judgment would not be independent at all. As Justice Story put it, "in cases where [a court's] own judgment . . . differ[ed] from that of other high functionaries," the court was "not at liberty to surrender, or to waive it." *Dickson*, 15 Pet., at 162.

B

The New Deal ushered in a "rapid expansion of the administrative process." *United States* v. *Morton Salt Co.*, 338 U.S. 632, 644 (1950). But as new agencies with new powers proliferated, the Court continued to adhere to the traditional understanding that questions of law were for courts to decide, exercising independent judgment.

During this period, the Court often treated agency determinations of *fact* as binding on the courts, provided that there was "evidence to support the findings." *St. Joseph Stock Yards Co.* v. *United States*, 298 U.S. 38, 51 (1936). "When the legislature itself acts within the broad field of legislative discretion," the Court reasoned, "its determinations are conclusive." *Ibid.* Congress could therefore "appoint[ ] an agent to act within that sphere of legislative authority" and "endow the agent with power to make *findings of fact* which are conclusive, provided the requirements of due process which are specially applicable to such an agency are met, as in according a fair hearing and acting upon evidence and not arbitrarily." *Ibid.* (emphasis added).

But the Court did not extend similar deference to agency resolutions of questions of *law*. It instead made clear, repeatedly, that "[t]he interpretation of the meaning of statutes, as applied to justiciable controversies," was "exclusively a judicial function." *United States* v. *American Trucking Assns., Inc.*, 310 U.S. 534, 544 (1940); see also *Social Security Bd.* v. *Nierotko*, 327 U.S. 358, 369 (1946); *Medo Photo Supply Corp.* v. *NLRB*, 321 U.S. 678, 681–682, n. 1 (1944). The Court understood, in the words of Justice Brandeis, that "[t]he supremacy of law demands that there shall be opportunity to have some court decide whether an erroneous rule of law was applied." *St. Joseph Stock Yards*, 298 U. S., at 84 (concurring opinion). It also continued to note, as it long had, that the informed judgment of the Executive Branch—especially in the form of an interpretation issued contemporaneously with the enactment of the statute—could be entitled to "great weight." *American Trucking Assns.*, 310 U. S., at 549.

Perhaps most notably along those lines, in *Skidmore* v. *Swift & Co.*, 323 U.S. 134 (1944), the Court explained that the "interpretations and opinions" of the relevant agency, "made in pursuance of official duty" and "based upon . . . specialized experience," "constitute[d] a body of experience and informed judgment to which courts and litigants [could] properly resort for guidance," even on legal questions. *Id.*, at 139–140. "The weight of such a judgment in a particular case," the Court observed, would "depend upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control." *Id.*, at 140.

On occasion, to be sure, the Court applied deferential review upon concluding that a particular statute empowered an agency to decide how a broad statutory term applied to specific facts found by the agency. For example, in *Gray* v. *Powell*, 314 U.S. 402 (1941), the Court deferred to an administrative conclusion that a coal-burning railroad that had arrangements with several coal mines was not a coal "producer" under the Bituminous Coal Act of 1937. Congress had "specifically" granted the agency the authority to make that determination. *Id.*, at 411. The Court thus reasoned that "[w]here, as here, a determination has been left to an administrative body, this delegation will be respected and the administrative conclusion left untouched" so long as the agency's decision constituted "a sensible exercise of judgment." *Id.*, at 412–413. Similarly, in *NLRB* v. *Hearst Publications, Inc.*, 322

U.S. 111 (1944), the Court deferred to the determination of the National Labor Relations Board that newsboys were "employee[s]" within the meaning of the National Labor Relations Act. The Act had, in the Court's judgment, "assigned primarily" to the Board the task of marking a "definitive limitation around the term 'employee.' " *Id.*, at 130. The Court accordingly viewed its own role as "limited" to assessing whether the Board's determination had a " 'warrant in the record' and a reasonable basis in law." *Id.*, at 131.

Such deferential review, though, was cabined to factbound determinations like those at issue in *Gray* and *Hearst*. Neither *Gray* nor *Hearst* purported to refashion the longstanding judicial approach to questions of law. In *Gray*, after deferring to the agency's determination that a particular entity was not a "producer" of coal, the Court went on to discern, based on its own reading of the text, whether another statutory term—"other disposal" of coal—encompassed a transaction lacking a transfer of title. See 314 U. S., at 416–417. The Court evidently perceived no basis for deference to the agency with respect to that pure legal question. And in *Hearst*, the Court proclaimed that "[u]ndoubtedly questions of statutory interpretation . . . are for the courts to resolve, giving appropriate weight to the judgment of those whose special duty is to administer the questioned statute." 322 U. S., at 130–131. At least with respect to questions it regarded as involving "statutory interpretation," the Court thus did not disturb the traditional rule. It merely thought that a different approach should apply where application of a statutory term was sufficiently intertwined with the agency's factfinding.

In any event, the Court was far from consistent in reviewing deferentially even such factbound statutory determinations. Often the Court simply interpreted and applied the statute before it. See K. Davis, Administrative Law §248, p. 893 (1951) ("The one statement that can be made with confidence about applicability of the doctrine of Gray v. Powell is that sometimes the Supreme Court applies it and sometimes it does not."); B. Schwartz, Gray vs. Powell and the Scope of Review, 54 Mich. L. Rev. 1, 68 (1955) (noting an "embarrassingly large number of Supreme Court decisions that do not adhere to the doctrine of *Gray v. Powell*"). In one illustrative example, the Court rejected the U. S. Price Administrator's determination that a particular warehouse was a "public utility" entitled to an exemption from the Administrator's General Maximum Price Regulation. Despite the striking resemblance of that administrative determination to those that triggered deference in *Gray* and *Hearst*, the Court declined to "accept the Administrator's view in deference to administrative construction." *Davies Warehouse Co.* v. *Bowles*, 321 U.S. 144, 156 (1944). The Administrator's view, the Court explained, had "hardly seasoned or broadened into a settled administrative practice," and thus did not "overweigh the considerations" the Court had "set forth as to the proper construction of the statute." *Ibid.*

Nothing in the New Deal era or before it thus resembled the deference rule the Court would begin applying decades later to all varieties of agency interpretations of statutes. Instead, just five years after *Gray* and two after *Hearst*, Congress codified the opposite rule: the traditional understanding that *courts* must "decide all relevant questions of law." 5 U. S. C. §706.[3]

C

Congress in 1946 enacted the APA "as a check upon administrators whose zeal might otherwise have carried them to excesses not contemplated in legislation creating their offices." *Morton Salt*, 338 U. S., at 644. It was the culmination of a "comprehensive rethinking of the place of administrative agencies in a regime of separate and divided powers." *Bowen* v. *Michigan Academy of Family Physicians*, 476 U.S. 667, 670–671 (1986).

In addition to prescribing procedures for agency action, the APA delineates the basic contours of judicial review of such action. As relevant here, Section 706 directs that "[t]o the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action." 5 U. S. C. §706. It further requires courts to "hold unlawful and set aside agency action, findings, and conclusions found to be . . . not in accordance with law." §706(2)(A).

The APA thus codifies for agency cases the unremarkable, yet elemental proposition reflected by judicial practice dating back to *Marbury*: that courts decide legal questions by applying their own judgment. It specifies that courts, not agencies, will decide "*all* relevant questions of law" arising on review of agency action, §706 (emphasis added)—even those involving ambiguous laws—and set aside any such action inconsistent with the law as they interpret it. And it prescribes no deferential standard for courts to employ in answering those legal questions. That omission is telling, because Section 706 *does* mandate that judicial review of agency policymaking and factfinding be deferential. See §706(2)(A) (agency action to be set aside if "arbitrary, capricious, [or] an abuse of discretion"); §706(2)(E) (agency factfinding in formal proceedings to be set aside if "unsupported by substantial

evidence").

In a statute designed to "serve as the fundamental charter of the administrative state," *Kisor* v. *Wilkie*, 588 U.S. 558, 580 (2019) (plurality opinion) (internal quotation marks omitted), Congress surely would have articulated a similarly deferential standard applicable to questions of law had it intended to depart from the settled pre-APA understanding that deciding such questions was "exclusively a judicial function," *American Trucking Assns.*, 310 U. S., at 544. But nothing in the APA hints at such a dramatic departure. On the contrary, by directing courts to "interpret constitutional and statutory provisions" without differentiating between the two, Section 706 makes clear that agency interpretations of statutes—like agency interpretations of the Constitution—are *not* entitled to deference. Under the APA, it thus "remains the responsibility of the court to decide whether the law means what the agency says." *Perez* v. *Mortgage Bankers Assn.*, 575 U.S. 92, 109 (2015) (Scalia, J., concurring in judgment). [4]

The text of the APA means what it says. And a look at its history if anything only underscores that plain meaning. According to both the House and Senate Reports on the legislation, Section 706 "provide[d] that questions of law are for courts *rather than agencies* to decide in the last analysis." H. R. Rep. No. 1980, 79th Cong., 2d Sess., 44 (1946) (emphasis added); accord, S. Rep. No. 752, 79th Cong., 1st Sess., 28 (1945). Some of the legislation's most prominent supporters articulated the same view. See 92 Cong. Rec. 5654 (1946) (statement of Rep. Walter); P. McCarran, Improving "Administrative Justice": Hearings and Evidence; Scope of Judicial Review, 32 A. B. A. J. 827, 831 (1946). Even the Department of Justice—an agency with every incentive to endorse a view of the APA favorable to the Executive Branch—opined after its enactment that Section 706 merely "restate[d] the present law as to the scope of judicial review." Dept. of Justice, Attorney General's Manual on the Administrative Procedure Act 108 (1947); see also *Kisor*, 588 U. S., at 582 (plurality opinion) (same). That "present law," as we have described, adhered to the traditional conception of the judicial function. See *supra*, at 9–13.

Various respected commentators contemporaneously maintained that the APA required reviewing courts to exercise independent judgment on questions of law. Professor John Dickinson, for example, read the APA to "impose a clear mandate that all [questions of law] shall be decided by the reviewing Court itself, and in the exercise of its own independent judgment." Administrative Procedure Act: Scope and Grounds of Broadened Judicial Review, 33 A. B. A. J. 434, 516 (1947). Professor Bernard Schwartz noted that §706 "would seem . . . to be merely a legislative restatement of the familiar review principle that questions of law are for the reviewing court, at the same time leaving to the courts the task of determining in each case what are questions of law." Mixed Questions of Law and Fact and the Administrative Procedure Act, 19 Ford. L. Rev. 73, 84–85 (1950). And Professor Louis Jaffe, who had served in several agencies at the advent of the New Deal, thought that §706 leaves it up to the reviewing "court" to "decide as a 'question of law' whether there is 'discretion' in the premises"—that is, whether the statute at issue delegates particular discretionary authority to an agency. Judicial Control of Administrative Action 570 (1965).

The APA, in short, incorporates the traditional understanding of the judicial function, under which courts must exercise independent judgment in determining the meaning of statutory provisions. In exercising such judgment, though, courts may—as they have from the start—seek aid from the interpretations of those responsible for implementing particular statutes. Such interpretations "constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance" consistent with the APA. *Skidmore*, 323 U. S., at 140. And interpretations issued contemporaneously with the statute at issue, and which have remained consistent over time, may be especially useful in determining the statute's meaning. See *ibid.*; *American Trucking Assns.*, 310 U. S., at 549.

In a case involving an agency, of course, the statute's meaning may well be that the agency is authorized to exercise a degree of discretion. Congress has often enacted such statutes. For example, some statutes "expressly delegate[ ]" to an agency the authority to give meaning to a particular statutory term. *Batterton* v. *Francis*, 432 U.S. 416, 425 (1977) (emphasis deleted).[5] Others empower an agency to prescribe rules to "fill up the details" of a statutory scheme, *Wayman* v. *Southard*, 10 Wheat. 1, 43 (1825), or to regulate subject to the limits imposed by a term or phrase that "leaves agencies with flexibility," *Michigan* v. *EPA*, 576 U.S. 743, 752 (2015), such as "appropriate" or "reasonable."[6]

When the best reading of a statute is that it delegates discretionary authority to an agency, the role of the reviewing court under the APA is, as always, to independently interpret the statute and effectuate the will of Congress subject to constitutional limits. The court fulfills that role by recognizing constitutional delegations, "fix[ing] the boundaries of [the] delegated authority." H. Monaghan, *Marbury* and the Administrative State, 83

"fix[ing] the boundaries of [the] delegated authority," H. Monaghan, *Marbury* and the Administrative State, 83 Colum. L. Rev. 1, 27 (1983), and ensuring the agency has engaged in " 'reasoned decisionmaking' " within those boundaries, *Michigan*, 576 U. S., at 750 (quoting *Allentown Mack Sales & Service, Inc.* v. *NLRB*, 522 U.S. 359, 374 (1998)); see also *Motor Vehicle Mfrs. Assn. of United States, Inc.* v. *State Farm Mut. Automobile Ins. Co.*, 463 U.S. 29 (1983). By doing so, a court upholds the traditional conception of the judicial function that the APA adopts.

III

The deference that *Chevron* requires of courts reviewing agency action cannot be squared with the APA.

A

In the decades between the enactment of the APA and this Court's decision in *Chevron*, courts generally continued to review agency interpretations of the statutes they administer by independently examining each statute to determine its meaning. Cf. T. Merrill, Judicial Deference to Executive Precedent, 101 Yale L. J. 969, 972–975 (1992). As an early proponent (and later critic) of *Chevron* recounted, courts during this period thus identified delegations of discretionary authority to agencies on a "statute-by-statute basis." A. Scalia, Judicial Deference to Administrative Interpretations of Law, 1989 Duke L. J. 511, 516.

Chevron, decided in 1984 by a bare quorum of six Justices, triggered a marked departure from the traditional approach. The question in the case was whether an EPA regulation "allow[ing] States to treat all of the pollution-emitting devices within the same industrial grouping as though they were encased within a single 'bubble' " was consistent with the term "stationary source" as used in the Clean Air Act. 467 U. S., at 840. To answer that question of statutory interpretation, the Court articulated and employed a now familiar two-step approach broadly applicable to review of agency action.

The first step was to discern "whether Congress ha[d] directly spoken to the precise question at issue." *Id.*, at 842. The Court explained that "[i]f the intent of Congress is clear, that is the end of the matter," *ibid.*, and courts were therefore to "reject administrative constructions which are contrary to clear congressional intent," *id.*, at 843, n. 9. To discern such intent, the Court noted, a reviewing court was to "employ[ ] traditional tools of statutory construction." *Ibid.*

Without mentioning the APA, or acknowledging any doctrinal shift, the Court articulated a second step applicable when "Congress ha[d] not directly addressed the precise question at issue." *Id.*, at 843. In such a case—that is, a case in which "the statute [was] silent or ambiguous with respect to the specific issue" at hand—a reviewing court could not "simply impose its own construction on the statute, as would be necessary in the absence of an administrative interpretation." *Ibid.* (footnote omitted). A court instead had to set aside the traditional interpretive tools and defer to the agency if it had offered "a permissible construction of the statute," *ibid.*, even if not "the reading the court would have reached if the question initially had arisen in a judicial proceeding," *ibid.*, n. 11. That directive was justified, according to the Court, by the understanding that administering statutes "requires the formulation of policy" to fill statutory "gap[s]"; by the long judicial tradition of according "considerable weight" to Executive Branch interpretations; and by a host of other considerations, including the complexity of the regulatory scheme, EPA's "detailed and reasoned" consideration, the policy-laden nature of the judgment supposedly required, and the agency's indirect accountability to the people through the President. *Id.*, at 843, 844, and n. 14, 865.

Employing this new test, the Court concluded that Congress had not addressed the question at issue with the necessary "level of specificity" and that EPA's interpretation was "entitled to deference." *Id.*, at 865. It did not matter *why* Congress, as the Court saw it, had not squarely addressed the question, see *ibid.*, or that "the agency ha[d] from time to time changed its interpretation," *id.*, at 863. The latest EPA interpretation was a permissible reading of the Clean Air Act, so under the Court's new rule, that reading controlled.

Initially, *Chevron* "seemed destined to obscurity." T. Merrill, The Story of *Chevron*: The Making of an Accidental Landmark, 66 Admin. L. Rev. 253, 276 (2014). The Court did not at first treat it as the watershed decision it was fated to become; it was hardly cited in cases involving statutory questions of agency authority. See *ibid.* But within a few years, both this Court and the courts of appeals were routinely invoking its two-step framework as the governing standard in such cases. See *id.*, at 276–277. As the Court did so, it revisited the doctrine's justifications. Eventually, the Court decided that *Chevron* rested on "a presumption that Congress, when it left ambiguity in a statute meant for implementation by an agency, understood that the ambiguity would be resolved, first and

foremost, by the agency, and desired the agency (rather than the courts) to possess whatever degree of discretion the ambiguity allows." *Smiley* v. *Citibank (South Dakota), N. A.*, 517 U.S. 735, 740–741 (1996); see also, *e.g.*, *Cuozzo Speed Technologies, LLC* v. *Lee*, 579 U.S. 261, 276–277 (2016); *Utility Air Regulatory Group* v. *EPA*, 573 U.S. 302, 315 (2014); *National Cable & Telecommunications Assn.* v. *Brand X Internet Services*, 545 U.S. 967, 982 (2005).

B

Neither *Chevron* nor any subsequent decision of this Court attempted to reconcile its framework with the APA. The "law of deference" that this Court has built on the foundation laid in *Chevron* has instead been "[h]eedless of the original design" of the APA. *Perez*, 575 U. S., at 109 (Scalia, J., concurring in judgment).

1

Chevron defies the command of the APA that "the reviewing court"—not the agency whose action it reviews—is to "decide *all* relevant questions of law" and "interpret . . . statutory provisions." §706 (emphasis added). It requires a court to *ignore*, not follow, "the reading the court would have reached" had it exercised its independent judgment as required by the APA. *Chevron*, 467 U. S., at 843, n. 11. And although exercising independent judgment is consistent with the "respect" historically given to Executive Branch interpretations, see, *e.g.*, *Edwards' Lessee*, 12 Wheat., at 210; *Skidmore*, 323 U. S., at 140, *Chevron* insists on much more. It demands that courts mechanically afford *binding* deference to agency interpretations, including those that have been inconsistent over time. See 467 U. S., at 863. Still worse, it forces courts to do so even when a pre-existing judicial precedent holds that the statute means something else—unless the prior court happened to also say that the statute is "unambiguous." *Brand X*, 545 U. S., at 982. That regime is the antithesis of the time honored approach the APA prescribes. In fretting over the prospect of "allow[ing]" a judicial interpretation of a statute "to override an agency's" in a dispute before a court, *ibid.*, *Chevron* turns the statutory scheme for judicial review of agency action upside down.

Chevron cannot be reconciled with the APA, as the Government and the dissent contend, by presuming that statutory ambiguities are implicit delegations to agencies. See Brief for Respondents in No. 22–1219, pp. 13, 37–38; *post*, at 4–15 (opinion of Kagan, J.). Presumptions have their place in statutory interpretation, but only to the extent that they approximate reality. *Chevron*'s presumption does not, because "[a]n ambiguity is simply not a delegation of law-interpreting power. *Chevron* confuses the two." C. Sunstein, Interpreting Statutes in the Regulatory State, 103 Harv. L. Rev. 405, 445 (1989). As *Chevron* itself noted, ambiguities may result from an inability on the part of Congress to squarely answer the question at hand, or from a failure to even "consider the question" with the requisite precision. 467 U. S., at 865. In neither case does an ambiguity necessarily reflect a congressional intent that an agency, as opposed to a court, resolve the resulting interpretive question. And many or perhaps most statutory ambiguities may be unintentional. As the Framers recognized, ambiguities will inevitably follow from "the complexity of objects, . . . the imperfection of the human faculties," and the simple fact that "no language is so copious as to supply words and phrases for every complex idea." The Federalist No. 37, at 236.

Courts, after all, routinely confront statutory ambiguities in cases having nothing to do with *Chevron*—cases that do not involve agency interpretations or delegations of authority. Of course, when faced with a statutory ambiguity in such a case, the ambiguity is not a delegation to anybody, and a court is not somehow relieved of its obligation to independently interpret the statute. Courts in that situation do not throw up their hands because "Congress's instructions have" supposedly "run out," leaving a statutory "gap." *Post*, at 2 (opinion of Kagan, J.). Courts instead understand that such statutes, no matter how impenetrable, do—in fact, must—have a single, best meaning. That is the whole point of having written statutes; "every statute's meaning is fixed at the time of enactment." *Wisconsin Central Ltd.* v. *United States*, 585 U.S. 274, 284 (2018) (emphasis deleted). So instead of declaring a particular party's reading "permissible" in such a case, courts use every tool at their disposal to determine the best reading of the statute and resolve the ambiguity.

In an agency case as in any other, though, even if some judges might (or might not) consider the statute ambiguous, there is a best reading all the same—"the reading the court would have reached" if no agency were involved. *Chevron*, 467 U. S., at 843, n. 11. It therefore makes no sense to speak of a "permissible" interpretation that is not the one the court, after applying all relevant interpretive tools, concludes is best. In the business of statutory interpretation, if it is not the best, it is not permissible.

Perhaps most fundamentally, *Chevron*'s presumption is misguided because agencies have no special competence in resolving statutory ambiguities. Courts do. The Framers, as noted, anticipated that courts would often confront statutory ambiguities and expected that courts would resolve them by exercising independent legal judgment. And even *Chevron* itself reaffirmed that "[t]he judiciary is the final authority on issues of statutory construction" and recognized that "in the absence of an administrative interpretation," it is "necessary" for a court to "impose its own construction on the statute." *Id.*, at 843, and n. 9. *Chevron* gravely erred, though, in concluding that the inquiry is fundamentally different just because an administrative interpretation is in play. The very point of the traditional tools of statutory construction—the tools courts use every day—is to resolve statutory ambiguities. That is no less true when the ambiguity is about the scope of an agency's own power—perhaps the occasion on which abdication in favor of the agency is *least* appropriate.

2

The Government responds that Congress must generally intend for agencies to resolve statutory ambiguities because agencies have subject matter expertise regarding the statutes they administer; because deferring to agencies purportedly promotes the uniform construction of federal law; and because resolving statutory ambiguities can involve policymaking best left to political actors, rather than courts. See Brief for Respondents in No. 22–1219, pp. 16–19. The dissent offers more of the same. See *post*, at 9–14. But none of these considerations justifies *Chevron*'s sweeping presumption of congressional intent.

Beginning with expertise, we recently noted that interpretive issues arising in connection with a regulatory scheme often "may fall more naturally into a judge's bailiwick" than an agency's. *Kisor*, 588 U. S., at 578 (opinion of the Court). We thus observed that "[w]hen the agency has no comparative expertise in resolving a regulatory ambiguity, Congress presumably would not grant it that authority." *Ibid.* *Chevron*'s broad rule of deference, though, demands that courts presume just the opposite. Under that rule, ambiguities of all stripes trigger deference. Indeed, the Government and, seemingly, the dissent continue to defend the proposition that *Chevron* applies even in cases having little to do with an agency's technical subject matter expertise. See Brief for Respondents in No. 22–1219, p. 17; *post*, at 10.

But even when an ambiguity happens to implicate a technical matter, it does not follow that Congress has taken the power to authoritatively interpret the statute from the courts and given it to the agency. Congress expects courts to handle technical statutory questions. "[M]any statutory cases" call upon "courts [to] interpret the mass of technical detail that is the ordinary diet of the law," *Egelhoff* v. *Egelhoff*, 532 U.S. 141, 161 (2001) (Breyer, J., dissenting), and courts did so without issue in agency cases before *Chevron*, see *post*, at 30 (Gorsuch, J., concurring). Courts, after all, do not decide such questions blindly. The parties and *amici* in such cases are steeped in the subject matter, and reviewing courts have the benefit of their perspectives. In an agency case in particular, the court will go about its task with the agency's "body of experience and informed judgment," among other information, at its disposal. *Skidmore*, 323 U. S., at 140. And although an agency's interpretation of a statute "cannot bind a court," it may be especially informative "to the extent it rests on factual premises within [the agency's] expertise." *Bureau of Alcohol, Tobacco and Firearms* v. *FLRA*, 464 U.S. 89, 98, n. 8 (1983). Such expertise has always been one of the factors which may give an Executive Branch interpretation particular "power to persuade, if lacking power to control." *Skidmore*, 323 U. S., at 140; see, *e.g.*, *County of Maui* v. *Hawaii Wildlife Fund*, 590 U.S. 165, 180 (2020); *Moore*, 95 U. S., at 763.

For those reasons, delegating ultimate interpretive authority to agencies is simply not necessary to ensure that the resolution of statutory ambiguities is well informed by subject matter expertise. The better presumption is therefore that Congress expects courts to do their ordinary job of interpreting statutes, with due respect for the views of the Executive Branch. And to the extent that Congress and the Executive Branch may disagree with how the courts have performed that job in a particular case, they are of course always free to act by revising the statute.

Nor does a desire for the uniform construction of federal law justify *Chevron*. Given inconsistencies in how judges apply *Chevron*, see *infra*, at 30–33, it is unclear how much the doctrine as a whole (as opposed to its highly deferential second step) actually promotes such uniformity. In any event, there is little value in imposing a uniform interpretation of a statute if that interpretation is wrong. We see no reason to presume that Congress prefers uniformity for uniformity's sake over the correct interpretation of the laws it enacts.

The view that interpretation of ambiguous statutory provisions amounts to policymaking suited for political actors rather than courts is especially mistaken, for it rests on a profound misconception of the judicial role. It is reasonable to assume that Congress intends to leave policymaking to political actors. But resolution of statutory

ambiguities involves legal interpretation. That task does not suddenly become policymaking just because a court has an "agency to fall back on." *Kisor*, 588 U. S., at 575 (opinion of the Court). Courts interpret statutes, no matter the context, based on the traditional tools of statutory construction, not individual policy preferences. Indeed, the Framers crafted the Constitution to ensure that federal judges could exercise judgment free from the influence of the political branches. See The Federalist, No. 78, at 522–525. They were to construe the law with "[c]lear heads . . . and honest hearts," not with an eye to policy preferences that had not made it into the statute. 1 Works of James Wilson 363 (J. Andrews ed. 1896).

That is not to say that Congress cannot or does not confer discretionary authority on agencies. Congress may do so, subject to constitutional limits, and it often has. But to stay out of discretionary policymaking left to the political branches, judges need only fulfill their obligations under the APA to independently identify and respect such delegations of authority, police the outer statutory boundaries of those delegations, and ensure that agencies exercise their discretion consistent with the APA. By forcing courts to instead pretend that ambiguities are necessarily delegations, *Chevron* does not prevent judges from making policy. It prevents them from judging.

3

In truth, *Chevron*'s justifying presumption is, as Members of this Court have often recognized, a fiction. See *Buffington* v. *McDonough*, 598 U. S. ____, ____ (2022) (Gorsuch, J., dissenting from denial of certiorari) (slip op., at 11); *Cuozzo*, 579 U. S., at 286 (Thomas, J., concurring); Scalia, 1989 Duke L. J., at 517; see also *post*, at 15 (opinion of Kagan, J.). So we have spent the better part of four decades imposing one limitation on *Chevron* after another, pruning its presumption on the understanding that "where it is in doubt that Congress actually intended to delegate particular interpretive authority to an agency, *Chevron* is 'inapplicable.' " *United States* v. *Mead Corp.*, 533 U.S. 218, 230 (2001) (quoting *Christensen* v. *Harris County*, 529 U.S. 576, 597 (2000) (Breyer, J., dissenting)); see also *Adams Fruit Co.* v. *Barrett*, 494 U.S. 638, 649 (1990).

Consider the many refinements we have made in an effort to match *Chevron*'s presumption to reality. We have said that *Chevron* applies only "when it appears that Congress delegated authority to the agency generally to make rules carrying the force of law, and that the agency interpretation claiming deference was promulgated in the exercise of that authority." *Mead*, 533 U. S., at 226–227. In practice, that threshold requirement—sometimes called *Chevron* "step zero"—largely limits *Chevron* to "the fruits of notice-and-comment rulemaking or formal adjudication." 533 U. S., at 230. But even when those processes are used, deference is still not warranted "where the regulation is 'procedurally defective'—that is, where the agency errs by failing to follow the correct procedures in issuing the regulation." *Encino Motorcars, LLC* v. *Navarro*, 579 U.S. 211, 220 (2016) (quoting *Mead*, 533 U. S., at 227).

Even where those procedural hurdles are cleared, substantive ones remain. Most notably, *Chevron* does not apply if the question at issue is one of "deep 'economic and political significance.' " *King* v. *Burwell*, 576 U.S. 473, 486 (2015). We have instead expected Congress to delegate such authority "expressly" if at all, *ibid.*, for "[e]xtraordinary grants of regulatory authority are rarely accomplished through 'modest words,' 'vague terms,' or 'subtle device[s],' " *West Virginia* v. *EPA*, 597 U.S. 697, 723 (2022) (quoting *Whitman* v. *American Trucking Assns., Inc.*, 531 U.S. 457, 468 (2001); alteration in original). Nor have we applied *Chevron* to agency interpretations of judicial review provisions, see *Adams Fruit Co.*, 494 U. S., at 649–650, or to statutory schemes not administered by the agency seeking deference, see *Epic Systems Corp.* v. *Lewis*, 584 U.S. 497, 519–520 (2018). And we have sent mixed signals on whether *Chevron* applies when a statute has criminal applications. Compare *Abramski* v. *United States*, 573 U.S. 169, 191 (2014), with *Babbitt* v. *Sweet Home Chapter, Communities for Great Ore.*, 515 U.S. 687, 704, n. 18 (1995).

Confronted with this byzantine set of preconditions and exceptions, some courts have simply bypassed *Chevron*, saying it makes no difference for one reason or another.[7] And even when they do invoke *Chevron*, courts do not always heed the various steps and nuances of that evolving doctrine. In one of the cases before us today, for example, the First Circuit both skipped "step zero," see 62 F. 4th, at 628, and refused to "classify [its] conclusion as a product of *Chevron* step one or step two"—though it ultimately appears to have deferred under step two, *id.*, at 634.

This Court, for its part, has not deferred to an agency interpretation under *Chevron* since 2016. See *Cuozzo*, 579 U. S., at 280 (most recent occasion). But *Chevron* remains on the books. So litigants must continue to wrestle with it, and lower courts—bound by even our crumbling precedents, see *Agostini* v. *Felton*, 521 U.S. 203, 238 (1997)—understandably continue to apply it.

The experience of the last 40 years has thus done little to rehabilitate *Chevron*. It has only made clear that *Chevron*'s fictional presumption of congressional intent was always unmoored from the APA's demand that courts exercise independent judgment in construing statutes administered by agencies. At best, our intricate *Chevron* doctrine has been nothing more than a distraction from the question that matters: Does the statute authorize the challenged agency action? And at worst, it has required courts to violate the APA by yielding to an agency the express responsibility, vested in "the reviewing *court*," to "decide all relevant questions of law" and "interpret . . . statutory provisions." §706 (emphasis added).

IV

The only question left is whether *stare decisis*, the doctrine governing judicial adherence to precedent, requires us to persist in the *Chevron* project. It does not. *Stare decisis* is not an "inexorable command," *Payne* v. *Tennessee*, 501 U.S. 808, 828 (1991), and the *stare decisis* considerations most relevant here—"the quality of [the precedent's] reasoning, the workability of the rule it established, . . . and reliance on the decision," *Knick* v. *Township of Scott*, 588 U.S. 180, 203 (2019) (quoting *Janus* v. *State, County, and Municipal Employees*, 585 U.S. 878, 917 (2018))—all weigh in favor of letting *Chevron* go.

Chevron has proved to be fundamentally misguided. Despite reshaping judicial review of agency action, neither it nor any case of ours applying it grappled with the APA—the statute that lays out how such review works. Its flaws were nonetheless apparent from the start, prompting this Court to revise its foundations and continually limit its application. It has launched and sustained a cottage industry of scholars attempting to decipher its basis and meaning. And Members of this Court have long questioned its premises. See, *e.g.*, *Pereira* v. *Sessions*, 585 U.S. 198, 219–221 (2018) (Kennedy, J., concurring); *Michigan*, 576 U. S., at 760–764 (Thomas, J., concurring); *Buffington*, 598 U. S. ___ (opinion of Gorsuch, J.); B. Kavanaugh, Fixing Statutory Interpretation, 129 Harv. L. Rev. 2118, 2150–2154 (2016). Even Justice Scalia, an early champion of *Chevron*, came to seriously doubt whether it could be reconciled with the APA. See *Perez*, 575 U. S., at 109–110 (opinion concurring in judgment). For its entire existence, *Chevron* has been a "rule in search of a justification," *Knick*, 588 U. S., at 204, if it was ever coherent enough to be called a rule at all.

Experience has also shown that *Chevron* is unworkable. The defining feature of its framework is the identification of statutory ambiguity, which requires deference at the doctrine's second step. But the concept of ambiguity has always evaded meaningful definition. As Justice Scalia put the dilemma just five years after *Chevron* was decided: "How clear is clear?" 1989 Duke L. J., at 521.

We are no closer to an answer to that question than we were four decades ago. " '[A]mbiguity' is a term that may have different meanings for different judges." *Exxon Mobil Corp.* v. *Allapattah Services, Inc.*, 545 U.S. 546, 572 (2005) (Stevens, J., dissenting). One judge might see ambiguity everywhere; another might never encounter it. Compare L. Silberman, Chevron—The Intersection of Law & Policy, 58 Geo. Wash. L. Rev. 821, 822 (1990), with R. Kethledge, Ambiguities and Agency Cases: Reflections After (Almost) Ten Years on the Bench, 70 Vand. L. Rev. En Banc 315, 323 (2017). A rule of law that is so wholly "in the eye of the beholder," *Exxon Mobil Corp.*, 545 U. S., at 572 (Stevens, J., dissenting), invites different results in like cases and is therefore "arbitrary in practice," *Gulfstream Aerospace Corp.* v. *Mayacamas Corp.*, 485 U.S. 271, 283 (1988). Such an impressionistic and malleable concept "cannot stand as an every-day test for allocating" interpretive authority between courts and agencies. *Swift & Co.* v. *Wickham*, 382 U.S. 111, 125 (1965).

The dissent proves the point. It tells us that a court should reach *Chevron*'s second step when it finds, "at the end of its interpretive work," that "Congress has left an ambiguity or gap." *Post*, at 1–2. (The Government offers a similar test. See Brief for Respondents in No. 22–1219, pp. 7, 10, 14; Tr. of Oral Arg. 113–114, 116.) That is no guide at all. Once more, the basic nature and meaning of a statute does not change when an agency happens to be involved. Nor does it change just because the agency has happened to offer its interpretation through the sort of procedures necessary to obtain deference, or because the other preconditions for *Chevron* happen to be satisfied. The statute still has a best meaning, necessarily discernible by a court deploying its full interpretive toolkit. So for the dissent's test to have any meaning, it must think that in an agency case (unlike in any other), a court should give up on its "interpretive work" before it has identified that best meaning. But how does a court know when to do so? On that point, the dissent leaves a gap of its own. It protests only that some other interpretive tools—all with pedigrees more robust than *Chevron*'s, and all designed to help courts identify the meaning of a text rather than allow the Executive Branch to displace it—also apply to ambiguous texts. See *post*, at 27. That this is all the dissent can come up with, after four decades of judicial experience attempting to identify ambiguity under

Chevron, reveals the futility of the exercise.[8]

Because *Chevron* in its original, two-step form was so indeterminate and sweeping, we have instead been forced to clarify the doctrine again and again. Our attempts to do so have only added to *Chevron*'s unworkability, transforming the original two-step into a dizzying breakdance. See *Adams Fruit Co.*, 494 U. S., at 649–650; *Mead*, 533 U. S., at 226–227; *King*, 576 U. S., at 486; *Encino Motorcars*, 579 U. S., at 220; *Epic Systems*, 584 U. S., at 519–520; on and on. And the doctrine continues to spawn difficult threshold questions that promise to further complicate the inquiry should *Chevron* be retained. See, *e.g.*, *Cargill* v. *Garland*, 57 F. 4th 447, 465–468 (CA5 2023) (plurality opinion) (May the Government waive reliance on *Chevron*? Does *Chevron* apply to agency interpretations of statutes imposing criminal penalties? Does *Chevron* displace the rule of lenity?), aff 'd, 602 U. S. ___ (2024).

Four decades after its inception, *Chevron* has thus become an impediment, rather than an aid, to accomplishing the basic judicial task of "say[ing] what the law is." *Marbury*, 1 Cranch, at 177. And its continuing import is far from clear. Courts have often declined to engage with the doctrine, saying it makes no difference. See n. 7, *supra*. And as noted, we have avoided deferring under *Chevron* since 2016. That trend is nothing new; for decades, we have often declined to invoke *Chevron* even in those cases where it might appear to be applicable. See W. Eskridge & L. Baer, The Continuum of Deference: Supreme Court Treatment of Agency Statutory Interpretations From *Chevron* to *Hamdan*, 96 Geo. L. J. 1083, 1125 (2008). At this point, all that remains of *Chevron* is a decaying husk with bold pretensions.

Nor has *Chevron* been the sort of " 'stable background' rule" that fosters meaningful reliance. *Post*, at 8, n. 1 (opinion of Kagan, J.) (quoting *Morrison* v. *National Australia Bank Ltd.*, 561 U.S. 247, 261 (2010)). Given our constant tinkering with and eventual turn away from *Chevron*, and its inconsistent application by the lower courts, it instead is hard to see how anyone—Congress included—could reasonably expect a court to rely on *Chevron* in any particular case. And even if it were possible to predict accurately when courts will apply *Chevron*, the doctrine "does not provide 'a clear or easily applicable standard, so arguments for reliance based on its clarity are misplaced.' " *Janus*, 585 U. S., at 927 (quoting *South Dakota* v. *Wayfair, Inc.*, 585 U.S. 162, 186 (2018)). To plan on *Chevron* yielding a particular result is to gamble not only that the doctrine will be invoked, but also that it will produce readily foreseeable outcomes and the stability that comes with them. History has proved neither bet to be a winning proposition.

Rather than safeguarding reliance interests, *Chevron* affirmatively destroys them. Under *Chevron*, a statutory ambiguity, no matter why it is there, becomes a license authorizing an agency to change positions as much as it likes, with "[u]nexplained inconsistency" being "at most . . . a reason for holding an interpretation to be . . . arbitrary and capricious." *Brand X*, 545 U. S., at 981. But statutory ambiguity, as we have explained, is not a reliable indicator of actual delegation of discretionary authority to agencies. *Chevron* thus allows agencies to change course even when Congress has given them no power to do so. By its sheer breadth, *Chevron* fosters unwarranted instability in the law, leaving those attempting to plan around agency action in an eternal fog of uncertainty.

Chevron accordingly has undermined the very "rule of law" values that *stare decisis* exists to secure. *Michigan* v. *Bay Mills Indian Community*, 572 U.S. 782, 798 (2014). And it cannot be constrained by admonishing courts to be extra careful, or by tacking on a new batch of conditions. We would need to once again "revis[e] its theoretical basis . . . in order to cure its practical deficiencies." *Montejo* v. *Louisiana*, 556 U.S. 778, 792 (2009). *Stare decisis* does not require us to do so, especially because any refinements we might make would only point courts back to their duties under the APA to "decide all relevant questions of law" and "interpret . . . statutory provisions." §706. Nor is there any reason to wait helplessly for Congress to correct our mistake. The Court has jettisoned many precedents that Congress likewise could have legislatively overruled. See, *e.g.*, *Patterson* v. *McLean Credit Union*, 485 U.S. 617, 618 (1988) (*per curiam*) (collecting cases). And part of "judicial humility," *post*, at 3, 25 (opinion of Kagan, J.,), is admitting and in certain cases correcting our own mistakes, especially when those mistakes are serious, see *post*, at 8–9 (opinion of Gorsuch, J.).

This is one of those cases. *Chevron* was a judicial invention that required judges to disregard their statutory duties. And the only way to "ensure that the law will not merely change erratically, but will develop in a principled and intelligible fashion," *Vasquez* v. *Hillery*, 474 U.S. 254, 265 (1986), is for us to leave *Chevron* behind.

By doing so, however, we do not call into question prior cases that relied on the *Chevron* framework. The holdings of those cases that specific agency actions are lawful—including the Clean Air Act holding of *Chevron* itself—are

still subject to statutory *stare decisis* despite our change in interpretive methodology. See *CBOCS West, Inc.* v. *Humphries*, 553 U.S. 442, 457 (2008). Mere reliance on *Chevron* cannot constitute a " 'special justification' " for overruling such a holding, because to say a precedent relied on *Chevron* is, at best, "just an argument that the precedent was wrongly decided." *Halliburton Co.* v. *Erica P. John Fund, Inc.*, 573 U.S. 258, 266 (2014) (quoting *Dickerson* v. *United States*, 530 U.S. 428, 443 (2000)). That is not enough to justify overruling a statutory precedent.

* * *

The dissent ends by quoting *Chevron*: " 'Judges are not experts in the field.' " *Post*, at 31 (quoting 467 U. S., at 865). That depends, of course, on what the "field" is. If it is legal interpretation, that has been, "emphatically," "the province and duty of the judicial department" for at least 221 years. *Marbury*, 1 Cranch, at 177. The rest of the dissent's selected epigraph is that judges " 'are not part of either political branch.' " *Post*, at 31 (quoting *Chevron*, 467 U. S., at 865). Indeed. Judges have always been expected to apply their "judgment" *independent* of the political branches when interpreting the laws those branches enact. The Federalist No. 78, at 523. And one of those laws, the APA, bars judges from disregarding that responsibility just because an Executive Branch agency views a statute differently.

Chevron is overruled. Courts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority, as the APA requires. Careful attention to the judgment of the Executive Branch may help inform that inquiry. And when a particular statute delegates authority to an agency consistent with constitutional limits, courts must respect the delegation, while ensuring that the agency acts within it. But courts need not and under the APA may not defer to an agency interpretation of the law simply because a statute is ambiguous.

Because the D. C. and First Circuits relied on *Chevron* in deciding whether to uphold the Rule, their judgments are vacated, and the cases are remanded for further proceedings consistent with this opinion.

It is so ordered.

Notes

1 For any landlubbers, "F/V" is simply the designation for a fishing vessel.

2 Both petitions also presented questions regarding the consistency of the Rule with the MSA. See Pet. for Cert. in No. 22–451, p. i; Pet. for Cert. in No. 22–1219, p. ii. We did not grant certiorari with respect to those questions and thus do not reach them.

3 The dissent plucks out *Gray*, *Hearst*, and—to "gild the lily," in its telling—three more 1940s decisions, claiming they reflect the relevant historical tradition of judicial review. *Post*, at 21–22, and n. 6 (opinion of Kagan, J.). But it has no substantial response to the fact that *Gray* and *Hearst* themselves endorsed, implicitly in one case and explicitly in the next, the traditional rule that "questions of statutory interpretation . . . are for the courts to resolve, giving appropriate weight"—not outright deference—"to the judgment of those whose special duty is to administer the questioned statute." *Hearst*, 322 U. S., at 130–131. And it fails to recognize the deep roots that this rule has in our Nation's judicial tradition, to the limited extent it engages with that tradition at all. See *post*, at 20–21, n. 5. Instead, like the Government, it strains to equate the "respect" or "weight" traditionally afforded to Executive Branch interpretations with binding deference. See *ibid.*; Brief for Respondents in No. 22–1219, pp. 21–24. That supposed equivalence is a fiction. The dissent's cases establish that a "*contemporaneous* construction" shared by "not *only* . . . the courts" but also "the departments" could be "controlling," *Schell's Executors* v. *Fauché*, 138 U.S. 562, 572 (1891) (emphasis added), and that courts might "lean in favor" of a "contemporaneous" and "continued" construction of the Executive Branch as strong evidence of a statute's meaning, *United States* v. *Alabama Great Southern R. Co.*, 142 U.S. 615, 621 (1892). They do not establish that Executive Branch interpretations of ambiguous statutes—no matter how inconsistent, late breaking, or flawed—always *bound* the courts. In reality, a judge was never "bound to adopt the construction given by the head of a department." *Decatur* v. *Paulding*, 14 Pet. 497, 515 (1840).

4 The dissent observes that Section 706 does not say expressly that courts are to decide legal questions using "a *de novo* standard of review." *Post*, at 16. That much is true. But statutes can be sensibly understood only "by reviewing text in context." *Pulsifer* v. *United States*, 601 U.S. 124, 133 (2024). Since the start of our Republic, courts have "decide[d] . . . questions of law" and "interpret[ed] constitutional and statutory provisions" by applying their own legal judgment. §706. Setting aside its misplaced reliance on *Gray* and *Hearst*, the dissent does not and could not deny that tradition. But it nonetheless insists that to codify that tradition, Congress needed

to expressly reject a sort of deference the courts had never before applied—and would not apply for several decades to come. It did not. "The notion that some things 'go without saying' applies to legislation just as it does to everyday life." *Bond* v. *United States*, 572 U.S. 844, 857 (2014).

5 See, *e.g.*, 29 U. S. C. §213(a)(15) (exempting from provisions of the Fair Labor Standards Act "any employee employed on a casual basis in domestic service employment to provide companionship services for individuals who (because of age or infirmity) are unable to care for themselves (*as such terms are defined and delimited by regulations of the Secretary*)" (emphasis added)); 42 U. S. C. §5846(a)(2) (requiring notification to Nuclear Regulatory Commission when a facility or activity licensed or regulated pursuant to the Atomic Energy Act "contains a defect which could create a substantial safety hazard, *as defined by regulations which the Commission shall promulgate*" (emphasis added)).

6 See, *e.g.*, 33 U. S. C. §1312(a) (requiring establishment of effluent limitations "[w]henever, in the judgment of the [Environmental Protection Agency (EPA)] Administrator . . . , discharges of pollutants from a point source or group of point sources . . . would interfere with the attainment or maintenance of that water quality . . . which shall assure" various outcomes, such as the "protection of public health" and "public water supplies"); 42 U. S. C. §7412(n)(1)(A) (directing EPA to regulate power plants "if the Administrator finds such regulation is appropriate and necessary").

7 See, *e.g.*, *Guedes* v. *Bureau of Alcohol, Tobacco, Firearms and Explosives*, 45 F. 4th 306, 313–314 (CADC 2022), abrogated by *Garland* v. *Cargill*, 602 U. S. ___ (2024); *County of Amador* v. *United States Dept. of Interior*, 872 F.3d 1012, 1021–1022 (CA9 2017); *Estrada-Rodriguez* v. *Lynch*, 825 F.3d 397, 403–404 (CA8 2016); *Nielsen* v. *AECOM Tech. Corp.*, 762 F.3d 214, 220 (CA2 2014); *Alaska Stock, LLC* v. *Houghton Mifflin Harcourt Publishing Co.*, 747 F.3d 673, 685, n. 52 (CA9 2014); *Jurado-Delgado* v. *Attorney Gen. of U. S.*, 498 Fed. Appx. 107, 117 (CA3 2009); see also D. Brookins, Confusion in the Circuit Courts: How the Circuit Courts Are Solving the *Mead*-Puzzle by Avoiding It Altogether, 85 Geo. Wash. L. Rev. 1484, 1496–1499 (2017) (documenting *Chevron* avoidance by the lower courts); A. Vermeule, Our Schmittian Administrative Law, 122 Harv. L. Rev. 1095, 1127–1129 (2009) (same); L. Bressman, How *Mead* Has Muddled Judicial Review of Agency Action, 58 Vand. L. Rev. 1443, 1464–1466 (2005) (same).

8 Citing an empirical study, the dissent adds that *Chevron* "fosters *agreement* among judges." *Post*, at 28. It is hardly surprising that a study might find as much; *Chevron*'s second step is supposed to be hospitable to agency interpretations. So when judges get there, they tend to agree that the agency wins. That proves nothing about the supposed ease or predictability of identifying ambiguity in the first place.

JUSTIA

Neitzke v. Williams, 490 U.S. 319 (1989)

Overview Opinions Materials

Argued: February 22, 1989 **Decided:** May 1, 1989

Syllabus

U.S. Supreme Court

Neitzke v. Williams, 490 U.S. 319 (1989)

Neitzke v. Williams

No. 87-1882

Argued February 22, 1989

Decided May 1, 1989

490 U.S. 319

Syllabus

A provision in the federal *in forma pauperis* statute, 28 U.S.C. § 1915(d), authorizes courts to dismiss an *in forma pauperis* claim if, *inter alia,* "the action is frivolous or malicious." Respondent Williams, a prison inmate, filed a motion to proceed *in forma pauperis* and a complaint under 42 U.S.C. § 1983 in the District Court, charging that prison officials had violated his Eighth Amendment rights by denying him medical treatment and his Fourteenth Amendment due process rights by transferring him without a hearing to a less desirable cellhouse when he refused to continue working because of his medical condition. The District Court dismissed the complaint *sua sponte* as frivolous under § 1915(d) on the grounds that Williams had failed to state a claim upon which relief could be granted under Federal Rule of Civil Procedure 12(b)(6). The Court of Appeals, holding that the District Court had wrongly equated the standard for failure to state a claim under Rule 12(b)(6) with the more lenient standard for frivolousness under § 1915(d), which permits dismissal only if a petitioner cannot make any rational argument in law or fact entitling him to relief, affirmed the dismissal of the Fourteenth Amendment claim on the ground that a prisoner clearly has no constitutionally protected liberty or property interest in being incarcerated in a particular institution or wing. However, the court reversed the dismissal of the Eighth Amendment claim as to two of the five defendants, declaring itself unable to state with certainty that Williams was unable to make any rational argument to support his claim.

Held: A complaint filed *in forma pauperis* is not automatically frivolous within the meaning of § 1915(d) because it fails to state a claim under Rule 12(b)(6). The two standards were devised to serve distinctive goals, and have separate functions. Under Rule 12(b)(6)'s failure to state a claim standard -- which is designed to streamline litigation by dispensing with needless discovery and factfinding -- a court may dismiss a claim based on a dispositive issue of law without regard to whether it is based on an outlandish legal theory or on a close but ultimately unavailing one, whereas, under § 1915(d)'s frivolousness standard -- which is intended to discourage baseless lawsuits -- dismissal is proper only if the legal theory (as in Williams' Fourteenth Amendment claim) or the factual contentions lack an arguable basis. The considerable common

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ground between the two standards does not mean that one invariably encompasses the other, since, where a complaint raises an arguable question of law which the district court ultimately finds is correctly resolved against the plaintiff, dismissal on Rule 12(b)(6) grounds is appropriate, but dismissal on the basis of frivolousness is not. This conclusion flows from § 1915(d)'s role of replicating the function of screening out inarguable claims from arguably meritorious ones played out in the realm of paid cases by financial considerations. Moreover, it accords with the understanding articulated in other areas of law that not all unsuccessful claims are frivolous. It is also consonant with Congress' goal in enacting the *in forma pauperis* statute of assuring equality of consideration for all litigants. To conflate these standards would deny indigent plaintiffs the practical protections of Rule 12(b)(6) -- notice of a pending motion to dismiss and an opportunity to amend the complaint before the motion is ruled on -- which are not provided when complaints are dismissed *sua sponte* under § 1915(d). Pp. 490 U. S. 324-331.

837 F.2d 304, affirmed.

MARSHALL, J., delivered the opinion for a unanimous Court.

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CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR

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ground between the two standards does not mean that one invariably encompasses the other, since, where a complaint raises an arguable question of law which the district court ultimately finds is correctly resolved against the plaintiff, dismissal on Rule 12(b)(6) grounds is appropriate, but dismissal on the basis of frivolousness is not. This conclusion flows from § 1915(d)'s role of replicating the function of screening out inarguable claims from arguably meritorious ones played out in the realm of paid cases by financial considerations. Moreover, it accords with the understanding articulated in other areas of law that not all unsuccessful claims are frivolous. It is also consonant with Congress' goal in enacting the *in forma pauperis* statute of assuring equality of consideration for all litigants. To conflate these standards would deny indigent plaintiffs the practical protections of Rule 12(b)(6) -- notice of a pending motion to dismiss and an opportunity to amend the complaint before the motion is ruled on -- which are not provided when complaints are dismissed *sua sponte* under § 1915(d). Pp. 490 U. S. 324-331.

837 F.2d 304, affirmed.

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JUSTICE MARSHALL delivered the opinion of the Court.

The question presented is whether a complaint filed *in forma pauperis* which fails to state a claim under Federal Rule of Civil Procedure 12(b)(6) is automatically frivolous within the meaning of 28 U.S.C. § 1915(d). The answer, we hold, is no.

I

On October 27, 1986, respondent Harry Williams, Sr., an inmate in the custody of the Indiana Department of Corrections, filed a complaint under 42 U.S.C. § 1983 in the United States District Court for the Southern District of Indiana, naming five Indiana correctional officials as defendants. App. 38. The complaint alleged that, while at the Indiana State Prison, Williams had been diagnosed by a prison doctor

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as having a small brain tumor which affected his equilibrium. *Id.* at 40. Because of this condition, the doctor placed Williams for one year on "medical idle status." A medical report Williams attached to the complaint stated that "[i]t is very likely that he will have this condition for some time to come." *Id.* at 48.

The complaint further alleged that, when Williams was transferred to the Indiana State Reformatory, he notified the reformatory staff about the tumor and about the doctor's recommendation that he not participate in any prison work program. *Id.* at 41. Despite this notification, reformatory doctors refused to treat the tumor, *id.* at 40-41, and reformatory officials assigned Williams to do garment manufacturing work, *id.* at 42. After Williams' equilibrium problems worsened and he refused to continue working, the reformatory disciplinary board responded by transferring him to a less desirable cellhouse. *Id.* at 42-43.

The complaint charged that, by denying medical treatment, the reformatory officials had violated Williams' rights under the Eighth Amendment, and by transferring him without a hearing, they had violated his rights under the Due Process Clause of the Fourteenth Amendment. *Id.* at 44. The complaint sought money damages and declaratory and injunctive relief. *Id.* at 45-46. Along with the complaint, Williams filed a motion to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915(a), stating that he had no assets, and only prison income. App. 36-37.

The District Court dismissed the complaint *sua sponte* as frivolous under 28 U.S.C. § 1915(d) on the grounds that Williams had failed to state a claim upon which relief could be granted under Federal Rule of Civil Procedure 12(b)(6). Insofar as Williams claimed deficient medical care, his pleadings did not state a claim of "deliberate indifference to [his] serious medical needs," as prisoners' Eighth Amendment claims must under *Estelle v. Gamble,* 429 U. S. 97, 104 (1976), but instead described a constitutionally noncognizable

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instance of medical malpractice. *Williams v. Faulkner,* Cause No. IP 86-1307-C (SD Ind., Jan. 16, 1987), reprinted at App. 67. Insofar as Williams protested his transfer without a hearing, his pleadings failed to state a due process violation, for a prisoner has no constitutionally protected liberty or property interest in being incarcerated in a particular institution or a particular wing. *Id.* at 26. The court gave no other reasons for finding the complaint frivolous. On Williams' ensuing motion to vacate the judgment and amend his pleadings, the District Court reached these same conclusions. *Williams v. Faulkner,* Cause No. IP 86-1307-C (SD Ind., Mar. 11, 1987), *reprinted at* App. 29. [Footnote 1]

The Court of Appeals for the Seventh Circuit affirmed in part and reversed in part. *Williams v. Faulkner,* 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

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make any 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. 837 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).*

Evaluated under this frivolousness standard, the Court of Appeals held, Williams' Eighth Amendment claims against two of the defendants had been wrongly dismissed. Although the complaint failed to allege the level of deliberate indifference necessary to survive a motion to dismiss under Rule 12(b)(6), at this stage of the proceedings, the court stated, "we cannot state with certainty that Williams is unable to make any rational argument in law or fact to support his claim for relief" against these defendants. 837 F.2d at 308. Accordingly, the Court of Appeals reversed and remanded these claims to the District Court. [Footnote 2] The Court of Appeals affirmed the dismissal of Williams' due process claims as frivolous, however. Because the law is clear that prisoners have no constitutionally protected liberty interest in remaining in a particular wing of a prison, the court stated,

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Williams could make no rational argument in law or fact that his transfer violated due process. *Id.* at 308-309.

We granted the petition for a writ of certiorari, 488 U.S. 816 (1988), filed by those defendants against whom Williams' claims still stand to decide whether a complaint that fails to state a claim under Rule 12(b)(6) is necessarily frivolous within the meaning of § 1915(d), a question over which the Courts of Appeals have disagreed. [Footnote 3] We now affirm.

II

The federal *in forma pauperis* statute, enacted in 1892 and presently codified as 28 U.S.C. § 1915, is designed to ensure that indigent litigants have meaningful access to the federal courts. *Adkins v. E. I. DuPont de Nemours & Co.,* 335 U. S. 331, 335 U. S. 342-343 (1948). Toward this end, § 1915(a) allows a litigant to commence a civil or criminal action in federal court *in forma pauperis* by filing in good faith an affidavit stating, *inter alia,* that he is unable to pay the costs of the lawsuit. Congress recognized, however, that a litigant whose filing fees and court costs are assumed by the public, unlike a paying litigant, lacks an economic incentive to refrain from filing frivolous, malicious, or repetitive lawsuits. To prevent such abusive or captious litigation, § 1915(d) authorizes federal courts to dismiss a claim filed *in forma pauperis* "if the allegation of poverty is untrue, or if satisfied that the action is frivolous or malicious." Dismissals on these grounds are often made *sua sponte* prior to the issuance of process, so as to spare prospective defendants the inconvenience and expense of answering such complaints. *See Franklin v. Murphy,* 745 F.2d 1221, 1226 (CA9 1984).

The brevity of § 1915(d) and the generality of its terms have left the judiciary with the not inconsiderable tasks of

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fashioning the procedures by which the statute operates, and of giving content to § 1915(d)'s indefinite adjectives. [Footnote 4] Articulating the proper contours of the § 1915(d) term "frivolous," which neither the statute nor the accompanying congressional reports defines, presents one such task. The Courts of Appeals have, quite correctly in our view, generally adopted as formulae for evaluating frivolousness under § 1915(d) close variants of the definition of legal frivolousness which we articulated in the Sixth Amendment case of *Anders v. California,* 386 U. S. 738 (1967). There, we stated that an appeal on a matter of law is frivolous where "[none] of the legal points [are] arguable on their merits." *Id.* at 386 U. S. 744. By logical extension, a complaint, containing as it does both factual allegations and legal conclusions, is frivolous where it lacks an arguable basis either in law or in fact. As the Courts of Appeals have recognized, § 1915(d)'s term "frivolous," when applied to a complaint, embraces not only the inarguable legal conclusion, but also the fanciful factual allegation. [Footnote 5]

Where the appellate courts have diverged, however, is on the question whether a complaint which fails to state a claim under Federal Rule of Civil Procedure 12(b)(6) automatically satisfies this frivolousness standard. The petitioning prison officials urge us to adopt such a *per se* reading, primarily on the policy ground that such a reading will halt the "flood of frivolous litigation" generated by prisoners that has swept over the federal judiciary. Brief for Petitioners 7. In support of this position, petitioners note the large and growing

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number of prisoner civil rights complaints, the burden which disposing of meritless complaints imposes on efficient judicial administration, and the need to discourage prisoners from filing frivolous complaints as a means of gaining a "*short sabbatical in the nearest federal courthouse.'" Id. at 6, quoting Cruz v. Beto, 405 U. S. 319, 405 U. S. 327 (1972) (REHNQUIST, J., dissenting). Because a complaint which states no claim "must be*

dismissed pursuant to Rule 12(b)(6) anyway," petitioners assert, "delay[ing] this determination until after service of process and a defendant's response only delays the inevitable." Reply Brief for Petitioners 3.

We recognize the problems in judicial administration caused by the surfeit of meritless *in forma pauperis* complaints in the federal courts, not the least of which is the possibility that meritorious complaints will receive inadequate attention or be difficult to identify amidst the overwhelming number of meritless complaints. *See* Turner, When Prisoners Sue: A Study of Prisoner Section 1983 Suits in the Federal Courts, 92 Harv.L.Rev. 610, 611 (1979). Nevertheless, our role in appraising petitioners' reading of § 1915(d) is not to make policy, but to interpret a statute. Taking this approach, it is evident that the failure to state a claim standard of Rule 12(b)(6) and the frivolousness standard of § 1915(d) were devised to serve distinctive goals, and that, while the overlap between these two standards is considerable, it does not follow that a complaint which falls afoul of the former standard will invariably fall afoul of the latter. Appealing though petitioners' proposal may appear as a broadbrush means of pruning meritless complaints from the federal docket, as a matter of statutory construction, it is untenable.

Rule 12(b)(6) authorizes a court to dismiss a claim on the basis of a dispositive issue of law. *Hishon v. King & Spalding,* 467 U. S. 69, 467 U. S. 73 (1984); *Conley v. Gibson,* 355 U. S. 41, 355 U. S. 45-46 (1957). This procedure, operating on the assumption that the factual allegations in the complaint are true, streamlines

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litigation by dispensing with needless discovery and factfinding. Nothing in Rule 12(b)(6) confines its sweep to claims of law which are obviously insupportable. On the contrary, if as a matter of law "it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations," *Hishon, supra,* at 467 U. S. 73, a claim must be dismissed, without regard to whether it is based on an outlandish legal theory or on a close but ultimately unavailing one. What Rule 12(b)(6) does not countenance are dismissals based on a judge's disbelief of a complaint's factual allegations. District court judges looking to dismiss claims on such grounds must look elsewhere for legal support. [Footnote 6]

Section 1915(d) has a separate function, one which molds rather differently the power to dismiss which it confers. Section 1915(d) is designed largely to discourage the filing of, and waste of judicial and private resources upon, baseless lawsuits that paying litigants generally do not initiate because of the costs of bringing suit and because of the threat of sanctions for bringing vexatious suits under Federal Rule of Civil Procedure 11. To this end, the statute accords judges not only the authority to dismiss a claim based on an indisputably meritless legal theory, but also the unusual power to pierce the veil of the complaint's factual allegations and dismiss those claims whose factual contentions are clearly baseless. Examples of the former class are claims against which it is clear that the defendants are immune from suit, *see, e.g., Williams v. Goldsmith,* 701 F.2d 603 (CA7 1983), and claims of infringement of a legal interest which clearly does not exist, like respondent Williams' claim that his transfer within the reformatory violated his rights under the Due

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Process Clause. Examples of the latter class are claims describing fantastic or delusional scenarios, claims with which federal district judges are all too familiar.

To the extent that a complaint filed *in forma pauperis* which fails to state a claim lacks even an arguable basis in law, Rule 12(b)(6) and § 1915(d) both counsel dismissal. [Footnote 7] But the considerable common ground between these standards does not mean that the one invariably encompasses the other. When a complaint raises an arguable question of law which the district court ultimately finds is correctly resolved against the plaintiff, dismissal on Rule 12(b)(6) grounds is appropriate, but dismissal on the basis of frivolousness is not. This conclusion follows naturally from § 1915(d)'s role of replicating the function of screening out inarguable claims which is played in the realm of paid cases by financial considerations. The cost of bringing suit and the fear of financial sanctions doubtless deter most inarguable paid claims, but such deterrence presumably screens out far less frequently those arguably meritorious legal theories whose ultimate failure is not apparent at the outset.

Close questions of federal law, including claims filed pursuant to 42 U.S.C. § 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 U. S. 97 (1976); *McDonald v. Santa Fe Trail Transportation Co.,* 427 U. S. 273 (1976); *Bivens v. Six Unknown Fed. Narcotics Agents,* 403 U. S. 388 (1971); *Jones v. Alfred Mayer Co.,* 392 U. S. 409 (1968). It can hardly be said that the

Agents, 403 U. S. 388 (1971); *Jones v. Alfred Mayer Co.,* 392 U. S. 409 (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 outset. To term these claims frivolous

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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 U.S.C. § 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 mean that the claim is without arguable merit. *See Brower v. Inyo County,* 489 U. S. 593 (1989). That frivolousness in the § 1915(d) context refers to a more limited set of claims than does Rule 12(b)(6) accords, moreover, with the understanding articulated in other areas of law that not all unsuccessful claims are frivolous. *See, e.g., Penson v. Ohio,* 488 U. S. 75 (1988) (criminal defendant has right to appellate counsel even if his claims are ultimately unavailing, so long as they are not frivolous); *Christiansburg Garment Co. v. EEOC,* 434 U. S. 412, 434 U. S. 422 (1978) (attorney's fees may not be assessed against a plaintiff who fails to state a claim under 42 U.S.C. § 1988 or under Title VII of the Civil Rights Act of 1964 unless his complaint is frivolous); *Hagans v. Lavine,* 415 U. S. 528, 415 U. S. 536-537 (1974) (complaint that fails to state a claim may not be dismissed for want of subject matter jurisdiction unless it is frivolous).

Our conclusion today is consonant with Congress' overarching goal in enacting the *in forma pauperis* statute: "to assure equality of consideration for all litigants." *Coppedge v. United States,* 369 U. S. 438, 369 U. S. 447 (1962); *see also* H.R.Rep. No. 1079, 52d Cong., 1st Sess., 1 (1892). 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. [Footnote 8] 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

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so as to conform with the requirements of a valid legal cause of action. This adversarial process also crystallizes the pertinent issues and facilitates appellate review of a trial court dismissal by creating a more complete record of the case. *Brandon v. District of Columbia Board of Parole,* 236 U.S.App.D.C. 155, 158, 734 F.2d 56, 59 (1984), *cert. denied,* 469 U. S. 1127 (1985). By contrast, the *sua sponte* dismissals permitted by, and frequently employed under, § 1915(d), necessary though they may sometimes be to shield defendants from vexatious lawsuits, involve no such procedural protections.

To conflate the standards of frivolousness and failure to state a claim, as petitioners urge, would thus deny indigent plaintiffs the practical protections against unwarranted dismissal generally accorded paying plaintiffs under the Federal Rules. A complaint like that filed by Williams under the Eighth Amendment, whose only defect was its failure to state a claim, 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. 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. *See Haines v. Kerner,* 404 U. S. 519, 404 U. S. 520 (1972). [Footnote 9]

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We therefore hold that a complaint filed *in forma pauperis* is not automatically frivolous within the meaning of § 1915(d) because it fails to state a claim. The judgment of the Court of Appeals is accordingly

Affirmed.

[Footnote 1]

Both in its initial ruling and upon the motion to vacate and amend, the District Court also denied Williams leave to proceed *in forma pauperis*. It based this denial exclusively on its finding of frivolousness, stating that Williams had presumptively satisfied § 1915's poverty requirement. *Williams v. Faulkner,* Cause No. IP 86-1307-C (SD Ind., Jan. 16, 1987), *reprinted at* App. 22. In so ruling, the District Court adhered to precedent in the Court of

Appeals for the Seventh Circuit to the effect that, if a district court finds a complaint frivolous or malicious, it should not only dismiss the complaint but also retroactively deny the accompanying motion to proceed *in forma pauperis* under § 1915, regardless of the plaintiff's financial status. *See Wartman v. Branch 7, Civil Division,* County Court, Milwaukee County, Wis., 510 F.2d 130, 134 (1975). Other Circuits, however, treat the decision whether to grant leave to file *in forma pauperis* as a threshold inquiry based exclusively on the movant's poverty. *See, e.g., Franklin v. Murphy,* 745 F.2d 1221, 1226-1227, n. 5 (CA9 1984); *Boyce v. Alizaduh,* 595 F.2d 948, 950-951 (CA4 1979). Because our review is confined to the question whether the complaint in this case is frivolous within the meaning of § 1915(d), we have no occasion to consider the propriety of these varying applications of the statute.

[Footnote 2]

The two defendants against whom the Eighth Amendment claims were reinstated were Han Chul Choi, a reformatory doctor whom Williams alleged had refused to treat the brain tumor, and Dean Neitzke, who, as administrator of the reformatory infirmary, was presumptively responsible for ensuring that Williams received adequate medical care. *Williams v. Faulkner,* 837 F.2d 304, 308 (CA7 1988). The Court of Appeals held that Williams' complaint had alleged no personal involvement on the part of the remaining three defendants in his medical treatment, and that these defendants' prison jobs did not justify an "inference of personal involvement in the alleged deprivation of medical care." *Ibid.* Because Williams could thus make no rational argument to support his claims for relief against these officials, the Court of Appeals stated, the District Court had appropriately dismissed those claims as frivolous. *Ibid.*

[Footnote 3]

Compare Brandon v. District of Columbia Board of Parole, 236 U.S.App.D.C. 155, 159, 734 F.2d 56, 59 (1984), *cert. denied,* 469 U. S. 1127 (1985), *with Harris v. Menendez,* 817 F.2d 737, 740 (CA11 1987); *Spears v. McCotter,* 766 F.2d 179, 182 (CA5 1985); *Franklin, supra,* at 1227; *Malone v. Colyer,* 710 F.2d 258, 261 (CA6 1983).

[Footnote 4]

See, e.g., Catz & Guyer, Federal In Forma Pauperis Litigation: In Search of Judicial Standards, 31 Rutgers L.Rev. 655 (1978); Feldman, Indigents in the Federal Courts: The In Forma Pauperis Statute -- Equality and Frivolity, 54 Ford.L.Rev. 413 (1985).

[Footnote 5]

See, e.g., Payne v. Lynaugh, 843 F.2d 177, 178 (CA5 1988); *Franklin,* 745 F.2d at 1227-1228; *Johnson v. Silvers,* 742 F.2d 823, 824 (CA4 1984); *Brandon,* 734 F.2d at 59; *Wiggins v. New Mexico State Supreme Court Clerk,* 664 F.2d 812, 815 (CA10 1981), *cert. denied,* 459 U.S. 840 (1982).

[Footnote 6]

A patently insubstantial complaint may be dismissed, for example, for want of subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1). *See, e.g., Hagans v. Lavine,* 415 U. S. 528, 415 U. S. 536-537 (1974) (federal courts lack power to entertain claims that are "*so attenuated and unsubstantial as to be absolutely devoid of merit*") (citation omitted); *Bell v. Hood, 327 U. S. 678, 327 U. S. 682-683 (1946).*

[Footnote 7]

At argument, Williams' counsel estimated that many, if not most, prisoner complaints which fail to state a claim also fall afoul of § 1915's strictures, Tr. of Oral Arg. 27, an estimate with which our experience does not incline us to take issue.

[Footnote 8]

We have no occasion to pass judgment, however, on the permissible scope, if any, of *sua sponte* dismissals under Rule 12(b)(6).

[Footnote 9]

Petitioners' related suggestion that, as a practical matter, the liberal pleading standard applied to *pro se* plaintiffs under *Haines* provides ample protection misses the mark for two reasons. First, it is possible for a plaintiff to file

under *Haines* provides ample protection misses the mark for two reasons. First, it is possible for a plaintiff to file *in forma pauperis* while represented by counsel. *See, e.g., Adkins v. E. I. DuPont de Nemours & Co.,* 335 U. S. 331 (1948). Second, the liberal pleading standard of *Haines* applies only to a plaintiff's factual allegations. Responsive pleadings thus may be necessary for a *pro se* plaintiff to clarify his legal theories.

Materials

Oral Arguments

Oral Argument - February 22, 1989

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18 U.S. Code § 175 - Prohibitions with respect to biological weapons

U.S. Code Notes

(a) In General.—
Whoever knowingly develops, produces, stockpiles, transfers, acquires, retains, or possesses any biological agent, toxin, or delivery system for use as a weapon, or knowingly assists a foreign state or any organization to do so, or attempts, threatens, or conspires to do the same, shall be fined under this title or imprisoned for life or any term of years, or both. There is extraterritorial Federal jurisdiction over an offense under this section committed by or against a national of the United States.

(b) Additional Offense.—

Whoever knowingly possesses any biological agent, toxin, or delivery system of a type or in a quantity that, under the circumstances, is not reasonably justified by a prophylactic, protective, bona fide research, or other peaceful purpose, shall be fined under this title, imprisoned not more than 10 years, or both. In this subsection, the terms "biological agent" and "toxin" do not encompass any biological agent or toxin that is in its naturally occurring environment, if the biological agent or toxin has not been cultivated, collected, or otherwise extracted from its natural source.

(c) Definition.—

For purposes of this section, the term "for use as a weapon" includes the development, production, transfer, acquisition, retention, or possession of any biological agent, toxin, or delivery system for other than prophylactic, protective, bona fide research, or other peaceful purposes.

(Added Pub. L. 101–298, § 3(a), May 22, 1990, 104 Stat. 201; amended Pub. L. 104–132, title V, § 511(b)(1), Apr. 24, 1996, 110 Stat. 1284; Pub. L. 107–56, title VIII, § 817(1), Oct. 26, 2001, 115 Stat. 385; Pub. L. 107–188, title II, § 231(c)(1), June 12, 2002, 116 Stat. 661.)

18 U.S. Code § 175a - Requests for military assistance to enforce prohibition in certain emergencies

U.S. Code Notes

The Attorney General may request the Secretary of Defense to provide assistance under section 382 of title 10[1] in support of Department of Justice activities relating to the enforcement of section 175 of this title in an emergency situation involving a biological weapon of mass destruction. The authority to make such a request may be exercised by another official of the Department of Justice in accordance with section 382(f)(2) of title 10.[1]

(Added Pub. L. 104–201, div. A, title XIV, § 1416(c)(1)(A), Sept. 23, 1996, 110 Stat. 2723.)

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18 U.S. Code § 175b - Possession by restricted persons

U.S. Code Notes

(a) Offense.—

(1) In general.—It shall be unlawful for a restricted person to—

(A) ship, transport, or possess in or affecting interstate or foreign commerce any biological agent or toxin described in paragraph (2); or

(B) receive any biological agent or toxin described in paragraph (2) that has been shipped or transported in interstate or foreign commerce.

(2) Agents and toxins covered.—A biological agent or toxin described in this paragraph is a biological agent or toxin that—

(A) is listed as a non-overlap or overlap select biological agent or toxin under part 73 of title 42, Code of Federal Regulations, pursuant to section 351A of the Public Health Service Act (42 U.S.C. 262a); and

(B) is not excluded or exempted under part 73 of title 42, Code of Federal Regulations.

(3) Penalty.—
Whoever knowingly violates this section shall be fined as provided in this title, imprisoned not more than 10 years, or both, but the prohibition contained in this section shall not apply with respect to any duly authorized United States governmental activity.

(b) Transfer to Unregistered Person.—

(1) Select agents.—
Whoever transfers a select agent to a person who the transferor knows or has reasonable cause to believe is not registered as required by regulations under subsection (b) or (c) of section 351A of the Public Health Service Act shall be fined under this title, or imprisoned for not more than 5 years, or both.

(2) Certain other biological agents and toxins.—
Whoever transfers a biological agent or toxin listed pursuant to section 212(a)(1) of the Agricultural Bioterrorism Protection Act of 2002 to a person who the transferor knows or has reasonable cause to believe is not registered as required by regulations under subsection (b) or (c) of section 212 of such Act shall be fined under this title, or imprisoned for not more than 5 years, or both.

(c) Unregistered for Possession.—

(1) Select agents.—
Whoever knowingly possesses a biological agent or toxin where such agent or toxin is a select agent for which such person has not obtained a registration required by regulations under section 351A(c) of the Public Health Service Act shall be fined under this title, or imprisoned for not more than 5 years, or both.

(2) Certain other biological agents and toxins.—
Whoever knowingly possesses a biological agent or toxin where such agent or toxin is a biological agent or toxin listed pursuant to section 212(a)(1) of the Agricultural Bioterrorism Protection Act of 2002 for which such person has not

obtained a registration required by regulations under section 212(c) of such Act shall be fined under this title, or imprisoned for not more than 5 years, or both.

(d) Definitions.—In this section:

(1) The term "select agent" means a biological agent or toxin to which subsection (a) applies. Such term (including for purposes of subsection (a)) does not include any such biological agent or toxin that is in its naturally-occurring environment, if the biological agent or toxin has not been cultivated, collected, or otherwise extracted from its natural source.

(2) The term "restricted person" means an individual who—

(A) is under indictment for a crime punishable by imprisonment for a term exceeding 1 year;

(B) has been convicted in any court of a crime punishable by imprisonment for a term exceeding 1 year;

(C) is a fugitive from justice;

(D) is an unlawful user of any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

(E) is an alien illegally or unlawfully in the United States;

(F) has been adjudicated as a mental defective or has been committed to any mental institution;

(G)

(i) is an alien (other than an alien lawfully admitted for permanent residence) who is a national of a country as to which the Secretary of State, pursuant to section 6(j)[1] of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)), section 620A of chapter 1 of part M of the Foreign Assistance Act of 1961 (22 U.S.C. 2371), or section 40(d) of chapter 3 of the Arms Export Control Act (22 U.S.C. 2780(d)), has made a determination (that remains in effect) that such country has repeatedly provided support for acts of international terrorism, or (ii) acts for or on behalf of, or operates subject to the direction or control of, a government or official of a country described in this subparagraph;

(H) has been discharged from the Armed Services of the United States under dishonorable conditions; or

(I) is a member of, acts for or on behalf of, or operates subject to the direction or control of, a terrorist organization as defined in section 212(a)(3)(B)(vi) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(vi)).

(3) The term "alien" has the same meaning as in section 101(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(3)).

(4) The term "lawfully admitted for permanent residence" has the same meaning as in section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20)).

(Added Pub. L. 107–56, title VIII, § 817(2), Oct. 26, 2001, 115 Stat. 385; amended Pub. L. 107–188, title II, § 231(a), (b)(1), (c)(2), June 12, 2002, 116 Stat. 660, 661; Pub. L. 107–273, div. B, title IV, § 4005(g), Nov. 2, 2002, 116 Stat. 1813; Pub. L. 108–458, title VI, § 6802(c), (d)(1), Dec. 17, 2004, 118 Stat. 3767; Pub. L. 116–31, § 2, July 25, 2019, 133 Stat. 1034.)

18 U.S. Code § 175c - Variola virus

U.S. Code Notes

(a) Unlawful Conduct.—

(1) In general.—
Except as provided in paragraph (2), it shall be unlawful for any person to knowingly produce, engineer, synthesize, acquire, transfer directly or indirectly, receive, possess, import, export, or use, or possess and threaten to use, variola virus.

(2) Exception.—
This subsection does not apply to conduct by, or under the authority of, the Secretary of Health and Human Services.

(b) Jurisdiction.—Conduct prohibited by subsection (a) is within the jurisdiction of the United States if—

(1) the offense occurs in or affects interstate or foreign commerce;

(2) the offense occurs outside of the United States and is committed by a national of the United States;

(3) the offense is committed against a national of the United States while the national is outside the United States;

(4) the offense is committed against any property that is owned, leased, or used by the United States or by any department or agency of the United States, whether the property is within or outside the United States; or

(5) an offender aids or abets any person over whom jurisdiction exists under this subsection in committing an offense under this section or conspires with any person over whom jurisdiction exists under this subsection to commit an offense under this section.

(c) Criminal Penalties.—

(1) In general.—
Any person who violates, or attempts or conspires to violate, subsection (a) shall be fined not more than $2,000,000 and shall be sentenced to a term of imprisonment not less than 25 years or to imprisonment for life.

(2) Other circumstances.—
Any person who, in the course of a violation of subsection (a), uses, attempts or conspires to use, or possesses and threatens to use, any item or items described in subsection (a), shall be fined not more than $2,000,000 and imprisoned for not less than 30 years or imprisoned for life.

(3) Special circumstances.—
If the death of another results from a person's violation of subsection (a), the person shall be fined not more than $2,000,000 and punished by imprisonment for life.

(d) Definition.—
As used in this section, the term "variola virus" means a virus that can cause human smallpox or any derivative of the variola major virus that contains more than 85 percent of the gene sequence of the variola major virus or the variola minor virus.

(Added Pub. L. 108–458, title VI, § 6906, Dec. 17, 2004, 118 Stat. 3773.)

18 U.S. Code § 176 - Seizure, forfeiture, and destruction

U.S. Code Notes

(a) In General.—

(1) Except as provided in paragraph (2), the Attorney General may request the issuance, in the same manner as provided for a search warrant, of a warrant authorizing the seizure of any biological agent, toxin, or delivery system that—

(A) pertains to conduct prohibited under section 175 of this title; or

(B) is of a type or in a quantity that under the circumstances has no apparent justification for prophylactic, protective, or other peaceful purposes.

(2) In exigent circumstances, seizure and destruction of any biological agent, toxin, or delivery system described in subparagraphs (A) and (B) of paragraph (1) may be made upon probable cause without the necessity for a warrant.

(b) Procedure.—
Property seized pursuant to subsection (a) shall be forfeited to the United States after notice to potential claimants and an opportunity for a hearing. At such hearing, the Government shall bear the burden of persuasion by a preponderance of the evidence. Except as inconsistent herewith, the same procedures and provisions of law relating to a forfeiture under the customs laws shall extend to a seizure or forfeiture under this section. The Attorney General may provide for the destruction or other appropriate disposition of any biological agent, toxin, or delivery system seized and forfeited pursuant to this section.

(c) Affirmative Defense.—It is an affirmative defense against a forfeiture under subsection (a)(1)(B) of this section that—

(1) such biological agent, toxin, or delivery system is for a prophylactic, protective, or other peaceful purpose; and

(2) such biological agent, toxin, or delivery system, is of a type and quantity reasonable for that purpose.

(Added Pub. L. 101–298, § 3(a), May 22, 1990, 104 Stat. 202; amended Pub. L. 103–322, title XXXIII, § 330010(16), Sept. 13, 1994, 108 Stat. 2144; Pub. L. 107–188, title II, § 231(c)(3), June 12, 2002, 116 Stat. 661.)

18 U.S. Code § 177 - Injunctions

U.S. Code Notes

(a) In General.—The United States may obtain in a civil action an injunction against —

(1) the conduct prohibited under section 175 of this title;

(2) the preparation, solicitation, attempt, threat, or conspiracy to engage in conduct prohibited under section 175 of this title; or

(3) the development, production, stockpiling, transferring, acquisition, retention, or possession, or the attempted development, production, stockpiling, transferring, acquisition, retention, or possession of any biological agent, toxin, or delivery system of a type or in a quantity that under the

circumstances has no apparent justification for prophylactic, protective, or other peaceful purposes.

(b) Affirmative Defense.—It is an affirmative defense against an injunction under subsection (a)(3) of this section that—

(1) the conduct sought to be enjoined is for a prophylactic, protective, or other peaceful purpose; and

(2) such biological agent, toxin, or delivery system is of a type and quantity reasonable for that purpose.

(Added Pub. L. 101–298, § 3(a), May 22, 1990, 104 Stat. 202; amended Pub. L. 104–132, title V, § 511(b)(2), Apr. 24, 1996, 110 Stat. 1284.)

18 U.S. Code § 178 - Definitions

U.S. Code Notes

As used in this chapter—

(1) the term "biological agent" means any microorganism (including, but not limited to, bacteria, viruses, fungi, rickettsiae or protozoa), or infectious substance, or any naturally occurring, bioengineered or synthesized component of any such microorganism or infectious substance, capable of causing—

(A) death, disease, or other biological malfunction in a human, an animal, a plant, or another living organism;

(B) deterioration of food, water, equipment, supplies, or material of any kind; or

(C) deleterious alteration of the environment;

(2) the term "toxin" means the toxic material or product of plants, animals, microorganisms (including, but not limited to, bacteria, viruses, fungi, rickettsiae or protozoa), or infectious substances, or a recombinant or synthesized molecule, whatever their origin and method of production, and includes—

(A) any poisonous substance or biological product that may be engineered as a result of biotechnology produced by a living organism; or

(B) any poisonous isomer or biological product, homolog, or derivative of such a substance;

(3) the term "delivery system" means—

(A) any apparatus, equipment, device, or means of delivery specifically designed to deliver or disseminate a biological agent, toxin, or vector; or

(B) any vector;

(4) the term "vector" means a living organism, or molecule, including a recombinant or synthesized molecule, capable of carrying a biological agent or toxin to a host; and

(5) the term "national of the United States" has the meaning prescribed in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)).

(Added Pub. L. 101–298, § 3(a), May 22, 1990, 104 Stat. 202; amended Pub. L. 104–132, title V, § 511(b)(3), title VII, § 721(h), Apr. 24, 1996, 110 Stat. 1284, 1299; Pub. L. 107–188, title II, § 231(c)(4), June 12, 2002, 116 Stat. 661.)

How current is this?

18 U.S. Code § 1961 - Definitions

U.S. Code Notes

As used in this chapter—

(1) "racketeering activity" means (A) any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of title 18, United States Code: Section 201 (relating to bribery), section 224 (relating to sports bribery), sections 471, 472, and 473 (relating to counterfeiting), section 659 (relating to theft from interstate shipment) if the act indictable under section 659 is felonious, section 664 (relating to embezzlement from pension and welfare funds), sections 891–894 (relating to

extortionate credit transactions), section 932 (relating to straw purchasing), section 933 (relating to trafficking in firearms), section 1028 (relating to fraud and related activity in connection with identification documents), section 1029 (relating to fraud and related activity in connection with access devices), section 1084 (relating to the transmission of gambling information), section 1341 (relating to mail fraud), section 1343 (relating to wire fraud), section 1344 (relating to financial institution fraud), section 1351 (relating to fraud in foreign labor contracting), section 1425 (relating to the procurement of citizenship or nationalization unlawfully), section 1426 (relating to the reproduction of naturalization or citizenship papers), section 1427 (relating to the sale of naturalization or citizenship papers), sections 1461–1465 (relating to obscene matter), section 1503 (relating to obstruction of justice), section 1510 (relating to obstruction of criminal investigations), section 1511 (relating to the obstruction of State or local law enforcement), section 1512 (relating to tampering with a witness, victim, or an informant), section 1513 (relating to retaliating against a witness, victim, or an informant), section 1542 (relating to false statement in application and use of passport), section 1543 (relating to forgery or false use of passport), section 1544 (relating to misuse of passport), section 1546 (relating to fraud and misuse of visas, permits, and other documents), sections 1581–1592 (relating to peonage, slavery, and trafficking in persons).,[1] sections 1831 and 1832 (relating to economic espionage and theft of trade secrets), section 1951 (relating to interference with commerce, robbery, or extortion), section 1952 (relating to racketeering), section 1953 (relating to interstate transportation of wagering paraphernalia), section 1954 (relating to unlawful welfare fund payments), section 1955 (relating to the prohibition of illegal gambling businesses), section 1956 (relating to the laundering of monetary instruments), section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity), section 1958 (relating to use of interstate commerce facilities in the commission of murder-for-hire), section 1960 (relating to illegal money transmitters), sections 2251, 2251A, 2252, and 2260 (relating to sexual exploitation of children), sections 2312 and 2313 (relating to interstate transportation of stolen motor vehicles), sections 2314 and 2315 (relating to interstate transportation of stolen property), section 2318 (relating to trafficking in counterfeit labels for phonorecords, computer programs or computer program documentation or packaging and copies of motion pictures or other audiovisual works), section 2319 (relating to criminal infringement of a copyright), section 2319A (relating to unauthorized fixation of and trafficking in sound recordings and music videos of live musical performances), section 2320 (relating to trafficking in goods or services bearing counterfeit marks), section 2321 (relating to trafficking in certain motor vehicles or motor vehicle parts), sections 2341–2346 (relating to trafficking in contraband cigarettes), sections 2421–24 (relating to white

slave traffic),[2] sections 175–178 (relating to biological weapons), sections 229–229F (relating to chemical weapons), section 831 (relating to nuclear materials), (C) any act which is indictable under title 29, United States Code, section 186 (dealing with restrictions on payments and loans to labor organizations) or section 501(c) (relating to embezzlement from union funds), (D) any offense involving fraud connected with a case under title 11 (except a case under section 157 of this title), fraud in the sale of securities, or the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), punishable under any law of the United States, (E) any act which is indictable under the Currency and Foreign Transactions Reporting Act, (F) any act which is indictable under the Immigration and Nationality Act, section 274 (relating to bringing in and harboring certain aliens), section 277 (relating to aiding or assisting certain aliens to enter the United States), or section 278 (relating to importation of alien for immoral purpose) if the act indictable under such section of such Act was committed for the purpose of financial gain, or (G) any act that is indictable under any provision listed in section 2332b(g)(5)(B);

(2) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, any political subdivision, or any department, agency, or instrumentality thereof;

(3) "person" includes any individual or entity capable of holding a legal or beneficial interest in property;

(4) "enterprise" includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity;

(5) "pattern of racketeering activity" requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity;

(6) "unlawful debt" means a debt (A) incurred or contracted in gambling activity which was in violation of the law of the United States, a State or political subdivision thereof, or which is unenforceable under State or Federal law in whole or in part as to principal or interest because of the laws relating to usury, and (B) which was incurred in connection with the business of gambling in violation of the law of the United States, a State or political subdivision thereof, or the business of lending money or a thing of value at a rate usurious under State or Federal law, where the usurious rate is at least twice the enforceable rate;

(7) "racketeering investigator" means any attorney or investigator so designated by the Attorney General and charged with the duty of enforcing or carrying into effect this chapter;

(8) "racketeering investigation" means any inquiry conducted by any racketeering investigator for the purpose of ascertaining whether any person has been involved in any violation of this chapter or of any final order, judgment, or decree of any court of the United States, duly entered in any case or proceeding arising under this chapter;

(9) "documentary material" includes any book, paper, document, record, recording, or other material; and

(10) "Attorney General" includes the Attorney General of the United States, the Deputy Attorney General of the United States, the Associate Attorney General of the United States, any Assistant Attorney General of the United States, or any employee of the Department of Justice or any employee of any department or agency of the United States so designated by the Attorney General to carry out the powers conferred on the Attorney General by this chapter. Any department or agency so designated may use in investigations authorized by this chapter either the investigative provisions of this chapter or the investigative power of such department or agency otherwise conferred by law.

(Added Pub. L. 91–452, title IX, § 901(a), Oct. 15, 1970, 84 Stat. 941; amended Pub. L. 95–575, § 3(c), Nov. 2, 1978, 92 Stat. 2465; Pub. L. 95–598, title III, § 314(g), Nov. 6, 1978, 92 Stat. 2677; Pub. L. 98–473, title II, §§ 901(g), 1020, Oct. 12, 1984, 98 Stat. 2136, 2143; Pub. L. 98–547, title II, § 205, Oct. 25, 1984, 98 Stat. 2770; Pub. L. 99–570, title I, § 1365(b), Oct. 27, 1986, 100 Stat. 3207–35; Pub. L. 99–646, § 50(a), Nov. 10, 1986, 100 Stat. 3605; Pub. L. 100–690, title VII, §§ 7013, 7020(c), 7032, 7054, 7514, Nov. 18, 1988, 102 Stat. 4395, 4396, 4398, 4402, 4489; Pub. L. 101–73, title IX, § 968, Aug. 9, 1989, 103 Stat. 506; Pub. L. 101–647, title XXXV, § 3560, Nov. 29, 1990, 104 Stat. 4927; Pub. L. 103–322, title IX, § 90104, title XVI, § 160001(f), title XXXIII, § 330021(1), Sept. 13, 1994, 108 Stat. 1987, 2037, 2150; Pub. L. 103–394, title III, § 312(b), Oct. 22, 1994, 108 Stat. 4140; Pub. L. 104–132, title IV, § 433, Apr. 24, 1996, 110 Stat. 1274; Pub. L. 104–153, § 3, July 2, 1996, 110 Stat. 1386; Pub. L. 104–208, div. C, title II, § 202, Sept. 30, 1996, 110 Stat. 3009–565; Pub. L. 104–294, title VI, §§ 601(b)(3), (i)(3), 604(b)(6), Oct. 11, 1996, 110 Stat. 3499, 3501, 3506; Pub. L. 107–56, title VIII, § 813, Oct. 26, 2001, 115 Stat. 382; Pub. L. 107–273, div. B, title IV, § 4005(f)(1), Nov. 2, 2002, 116 Stat. 1813; Pub. L. 108–193, § 5(b), Dec. 19, 2003, 117 Stat. 2879; Pub. L. 108–458, title VI, § 6802(e), Dec. 17, 2004, 118 Stat. 3767; Pub. L. 109–164, title I, § 103(c), Jan. 10, 2006, 119 Stat. 3563; Pub. L. 109–177, title IV, § 403(a), Mar. 9, 2006, 120 Stat. 243; Pub. L. 113–4, title XII, § 1211(a),

Mar. 7, 2013, 127 Stat. 142; Pub. L. 114–153, § 3(b), May 11, 2016, 130 Stat. 382; Pub. L. 117–159, div. A, title II, § 12004(a)(3), June 25, 2022, 136 Stat. 1328.)

18 U.S. Code § 1962 - Prohibited activities

U.S. Code Notes

(a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce. A purchase of securities on the open market for purposes of investment, and without the intention of controlling or participating in the control of the issuer, or of assisting another to do so, shall not be unlawful under this subsection if the securities of the issuer held by the purchaser, the members of his immediate family, and his or their accomplices in any pattern or racketeering activity or the

collection of an unlawful debt after such purchase do not amount in the aggregate to one percent of the outstanding securities of any one class, and do not confer, either in law or in fact, the power to elect one or more directors of the issuer.

(b) It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

(d) It shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section.

(Added Pub. L. 91–452, title IX, § 901(a), Oct. 15, 1970, 84 Stat. 942; amended Pub. L. 100–690, title VII, § 7033, Nov. 18, 1988, 102 Stat. 4398.)

18 U.S. Code § 1963 - Criminal penalties

U.S. Code Notes

(a) Whoever violates any provision of section 1962 of this chapter shall be fined under this title or imprisoned not more than 20 years (or for life if the violation is based on a racketeering activity for which the maximum penalty includes life imprisonment), or both, and shall forfeit to the United States, irrespective of any provision of State law—

(1) any interest the person has acquired or maintained in violation of section 1962;

(2) any—

(A) interest in;

(B) security of;

(C) claim against; or

(D) property or contractual right of any kind affording a source of influence over;

any enterprise which the person has established, operated, controlled, conducted, or participated in the conduct of, in violation of section 1962; and

(3) any property constituting, or derived from, any proceeds which the person obtained, directly or indirectly, from racketeering activity or unlawful debt collection in violation of section 1962.

The court, in imposing sentence on such person shall order, in addition to any other sentence imposed pursuant to this section, that the person forfeit to the United States all property described in this subsection. In lieu of a fine otherwise authorized by this section, a defendant who derives profits or other proceeds from an offense may be fined not more than twice the gross profits or other proceeds.

(b) Property subject to criminal forfeiture under this section includes—

(1) real property, including things growing on, affixed to, and found in land; and

(2) tangible and intangible personal property, including rights, privileges, interests, claims, and securities.

(c) All right, title, and interest in property described in subsection (a) vests in the United States upon the commission of the act giving rise to forfeiture under this section. Any such property that is subsequently transferred to a person other than the defendant may be the subject of a special verdict of forfeiture and thereafter shall be ordered forfeited to the United States, unless the transferee establishes in a hearing pursuant to subsection (l) that he is a bona fide purchaser for value of such property who at the time of purchase was reasonably without cause to believe that the property was subject to forfeiture under this section.

(d)

(1) Upon application of the United States, the court may enter a restraining order or injunction, require the execution of a satisfactory performance bond, or take any other action to preserve the availability of property described in subsection (a) for forfeiture under this section—

(A) upon the filing of an indictment or information charging a violation of section 1962 of this chapter and alleging that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section; or

(B) prior to the filing of such an indictment or information, if, after notice to persons appearing to have an interest in the property and opportunity for a hearing, the court determines that—

(i) there is a substantial probability that the United States will prevail on the issue of forfeiture and that failure to enter the order will result in the property being destroyed, removed from the jurisdiction of the court, or otherwise made unavailable for forfeiture; and

(ii) the need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the order is to be entered:

Provided, however, That an order entered pursuant to subparagraph (B) shall be effective for not more than ninety days, unless extended by the court for good cause shown or unless an indictment or information described in subparagraph (A) has been filed.

(2) A temporary restraining order under this subsection may be entered upon application of the United States without notice or opportunity for a hearing when an information or indictment has not yet been filed with respect to the property, if the United States demonstrates that there is probable cause to believe that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section and that provision of notice will jeopardize the availability of the property for forfeiture. Such a temporary order shall expire not more than fourteen days after the date on which it is entered, unless extended for good cause shown or unless the party against whom it is entered consents to an extension for a longer period. A hearing requested concerning an order entered under this paragraph shall be held at the earliest possible time, and prior to the expiration of the temporary order.

(3) The court may receive and consider, at a hearing held pursuant to this subsection, evidence and information that would be inadmissible under the Federal Rules of Evidence.

(e) Upon conviction of a person under this section, the court shall enter a judgment of forfeiture of the property to the United States and shall also authorize the Attorney General to seize all property ordered forfeited upon such terms and conditions as the court shall deem proper. Following the entry of an order declaring the property forfeited, the court may, upon application of the United States, enter such appropriate restraining orders or injunctions, require the execution of satisfactory performance bonds, appoint receivers, conservators, appraisers, accountants, or trustees, or take any other action to protect the interest of the United States in the property ordered forfeited. Any income accruing to, or derived from, an enterprise or an interest in an enterprise which has been ordered forfeited under this section may be used to offset ordinary and necessary expenses to the enterprise which are required by law, or which are necessary to protect the interests of the United States or third parties.

(f) Following the seizure of property ordered forfeited under this section, the Attorney General shall direct the disposition of the property by sale or any other commercially feasible means, making due provision for the rights of any innocent persons. Any property right or interest not exercisable by, or transferable for value to, the United States shall expire and shall not revert to the defendant, nor shall the defendant or any person acting in concert with or on behalf of the defendant be eligible to purchase forfeited property at any sale held by the United States. Upon application of a person, other than the defendant or a person acting in concert with or on behalf of the defendant, the court may restrain or stay the sale or disposition of the property pending the conclusion of any appeal of the criminal case giving rise to the forfeiture, if the applicant demonstrates that proceeding with the sale or disposition of the property will result in irreparable injury, harm or loss to him. Notwithstanding 31 U.S.C. 3302(b), the proceeds of any sale or other disposition of property forfeited under this section and any moneys forfeited shall be used to pay all proper expenses for the forfeiture and the sale, including expenses of seizure, maintenance and custody of the property pending its disposition, advertising and court costs. The Attorney General shall deposit in the Treasury any amounts of such proceeds or moneys remaining after the payment of such expenses.

(g) With respect to property ordered forfeited under this section, the Attorney General is authorized to—

> **(1)** grant petitions for mitigation or remission of forfeiture, restore forfeited property to victims of a violation of this chapter, or take any other action to protect the rights of innocent persons which is in the interest of justice and which is not inconsistent with the provisions of this chapter;

(2) compromise claims arising under this section;

(3) award compensation to persons providing information resulting in a forfeiture under this section;

(4) direct the disposition by the United States of all property ordered forfeited under this section by public sale or any other commercially feasible means, making due provision for the rights of innocent persons; and

(5) take appropriate measures necessary to safeguard and maintain property ordered forfeited under this section pending its disposition.

(h) The Attorney General may promulgate regulations with respect to—

(1) making reasonable efforts to provide notice to persons who may have an interest in property ordered forfeited under this section;

(2) granting petitions for remission or mitigation of forfeiture;

(3) the restitution of property to victims of an offense petitioning for remission or mitigation of forfeiture under this chapter;

(4) the disposition by the United States of forfeited property by public sale or other commercially feasible means;

(5) the maintenance and safekeeping of any property forfeited under this section pending its disposition; and

(6) the compromise of claims arising under this chapter.

Pending the promulgation of such regulations, all provisions of law relating to the disposition of property, or the proceeds from the sale thereof, or the remission or mitigation of forfeitures for violation of the customs laws, and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to forfeitures incurred, or alleged to have been incurred, under the provisions of this section, insofar as applicable and not inconsistent with the provisions hereof. Such duties as are imposed upon the Customs Service or any person with respect to the disposition of property under the customs law shall be performed under this chapter by the Attorney General.

(i) Except as provided in subsection (*l*), no party claiming an interest in property subject to forfeiture under this section may—

(1) intervene in a trial or appeal of a criminal case involving the forfeiture of such property under this section; or

(2) commence an action at law or equity against the United States concerning the validity of his alleged interest in the property subsequent to the filing of an indictment or information alleging that the property is subject to forfeiture under this section.

(j) The district courts of the United States shall have jurisdiction to enter orders as provided in this section without regard to the location of any property which may be subject to forfeiture under this section or which has been ordered forfeited under this section.

(k) In order to facilitate the identification or location of property declared forfeited and to facilitate the disposition of petitions for remission or mitigation of forfeiture, after the entry of an order declaring property forfeited to the United States the court may, upon application of the United States, order that the testimony of any witness relating to the property forfeited be taken by deposition and that any designated book, paper, document, record, recording, or other material not privileged be produced at the same time and place, in the same manner as provided for the taking of depositions under Rule 15 of the Federal Rules of Criminal Procedure.

(l)

(1) Following the entry of an order of forfeiture under this section, the United States shall publish notice of the order and of its intent to dispose of the property in such manner as the Attorney General may direct. The Government may also, to the extent practicable, provide direct written notice to any person known to have alleged an interest in the property that is the subject of the order of forfeiture as a substitute for published notice as to those persons so notified.

(2) Any person, other than the defendant, asserting a legal interest in property which has been ordered forfeited to the United States pursuant to this section may, within thirty days of the final publication of notice or his receipt of notice under paragraph (1), whichever is earlier, petition the court for a hearing to adjudicate the validity of his alleged interest in the property. The hearing shall be held before the court alone, without a jury.

(3) The petition shall be signed by the petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner's right, title, or interest in

the property, the time and circumstances of the petitioner's acquisition of the right, title, or interest in the property, any additional facts supporting the petitioner's claim, and the relief sought.

(4) The hearing on the petition shall, to the extent practicable and consistent with the interests of justice, be held within thirty days of the filing of the petition. The court may consolidate the hearing on the petition with a hearing on any other petition filed by a person other than the defendant under this subsection.

(5) At the hearing, the petitioner may testify and present evidence and witnesses on his own behalf, and cross-examine witnesses who appear at the hearing. The United States may present evidence and witnesses in rebuttal and in defense of its claim to the property and cross-examine witnesses who appear at the hearing. In addition to testimony and evidence presented at the hearing, the court shall consider the relevant portions of the record of the criminal case which resulted in the order of forfeiture.

(6) If, after the hearing, the court determines that the petitioner has established by a preponderance of the evidence that—

(A) the petitioner has a legal right, title, or interest in the property, and such right, title, or interest renders the order of forfeiture invalid in whole or in part because the right, title, or interest was vested in the petitioner rather than the defendant or was superior to any right, title, or interest of the defendant at the time of the commission of the acts which gave rise to the forfeiture of the property under this section; or

(B) the petitioner is a bona fide purchaser for value of the right, title, or interest in the property and was at the time of purchase reasonably without cause to believe that the property was subject to forfeiture under this section;

the court shall amend the order of forfeiture in accordance with its determination.

(7) Following the court's disposition of all petitions filed under this subsection, or if no such petitions are filed following the expiration of the period provided in paragraph (2) for the filing of such petitions, the United States shall have clear title to property that is the subject of the order of forfeiture and may warrant good title to any subsequent purchaser or transferee.

(m) If any of the property described in subsection (a), as a result of any act or omission of the defendant—

(1) cannot be located upon the exercise of due diligence;

(2) has been transferred or sold to, or deposited with, a third party;

(3) has been placed beyond the jurisdiction of the court;

(4) has been substantially diminished in value; or

(5) has been commingled with other property which cannot be divided without difficulty;

the court shall order the forfeiture of any other property of the defendant up to the value of any property described in paragraphs (1) through (5).

(Added Pub. L. 91–452, title IX, § 901(a), Oct. 15, 1970, 84 Stat. 943; amended Pub. L. 98–473, title II, §§ 302, 2301(a)–(c), Oct. 12, 1984, 98 Stat. 2040, 2192; Pub. L. 99–570, title I, § 1153(a), Oct. 27, 1986, 100 Stat. 3207–13; Pub. L. 99–646, § 23, Nov. 10, 1986, 100 Stat. 3597; Pub. L. 100–690, title VII, §§ 7034, 7058(d), Nov. 18, 1988, 102 Stat. 4398, 4403; Pub. L. 101–647, title XXXV, § 3561, Nov. 29, 1990, 104 Stat. 4927; Pub. L. 111–16, § 3(4), May 7, 2009, 123 Stat. 1607.)

18 U.S. Code § 1964 - Civil remedies

U.S. Code Notes

(a) The district courts of the United States shall have jurisdiction to prevent and restrain violations of section 1962 of this chapter by issuing appropriate orders, including, but not limited to: ordering any person to divest himself of any interest, direct or indirect, in any enterprise; imposing reasonable restrictions on the future activities or investments of any person, including, but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect interstate or foreign commerce; or ordering dissolution or reorganization of any enterprise, making due provision for the rights of innocent persons.

(b) The Attorney General may institute proceedings under this section. Pending final determination thereof, the court may at any time enter such restraining

orders or prohibitions, or take such other actions, including the acceptance of satisfactory performance bonds, as it shall deem proper.

(c) Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee, except that no person may rely upon any conduct that would have been actionable as fraud in the purchase or sale of securities to establish a violation of section 1962. The exception contained in the preceding sentence does not apply to an action against any person that is criminally convicted in connection with the fraud, in which case the statute of limitations shall start to run on the date on which the conviction becomes final.

(d) A final judgment or decree rendered in favor of the United States in any criminal proceeding brought by the United States under this chapter shall estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding brought by the United States.

(Added Pub. L. 91–452, title IX, § 901(a), Oct. 15, 1970, 84 Stat. 943; amended Pub. L. 98–620, title IV, § 402(24)(A), Nov. 8, 1984, 98 Stat. 3359; Pub. L. 104–67, title I, § 107, Dec. 22, 1995, 109 Stat. 758.)

18 U.S. Code § 1965 - Venue and process

U.S. Code

(a) Any civil action or proceeding under this chapter against any person may be instituted in the district court of the United States for any district in which such person resides, is found, has an agent, or transacts his affairs.

(b) In any action under section 1964 of this chapter in any district court of the United States in which it is shown that the ends of justice require that other parties residing in any other district be brought before the court, the court may cause such parties to be summoned, and process for that purpose may be served in any judicial district of the United States by the marshal thereof.

(c) In any civil or criminal action or proceeding instituted by the United States under this chapter in the district court of the United States for any judicial district,

subpenas issued by such court to compel the attendance of witnesses may be served in any other judicial district, except that in any civil action or proceeding no such subpena shall be issued for service upon any individual who resides in another district at a place more than one hundred miles from the place at which such court is held without approval given by a judge of such court upon a showing of good cause.

(d) All other process in any action or proceeding under this chapter may be served on any person in any judicial district in which such person resides, is found, has an agent, or transacts his affairs.

(Added Pub. L. 91–452, title IX, § 901(a), Oct. 15, 1970, 84 Stat. 944.)

18 U.S. Code § 1966 - Expedition of actions

U.S. Code Notes

In any civil action instituted under this chapter by the United States in any district court of the United States, the Attorney General may file with the clerk of such court a certificate stating that in his opinion the case is of general public importance. A copy of that certificate shall be furnished immediately by such clerk to the chief judge or in his absence to the presiding district judge of the district in which such action is pending. Upon receipt of such copy, such judge shall designate immediately a judge of that district to hear and determine action.

(Added Pub. L. 91–452, title IX, § 901(a), Oct. 15, 1970, 84 Stat. 944; amended Pub. L. 98–620, title IV, § 402(24)(B), Nov. 8, 1984, 98 Stat. 3359.)

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18 U.S. Code § 1967 - Evidence

U.S. Code

In any proceeding ancillary to or in any civil action instituted by the United States under this chapter the proceedings may be open or closed to the public at the discretion of the court after consideration of the rights of affected persons.

(Added Pub. L. 91–452, title IX, § 901(a), Oct. 15, 1970, 84 Stat. 944.)

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18 U.S. Code § 1968 - Civil investigative demand

U.S. Code

(a) Whenever the Attorney General has reason to believe that any person or enterprise may be in possession, custody, or control of any documentary materials relevant to a racketeering investigation, he may, prior to the institution of a civil or criminal proceeding thereon, issue in writing, and cause to be served upon such person, a civil investigative demand requiring such person to produce such material for examination.

(b) Each such demand shall—

(1) state the nature of the conduct constituting the alleged racketeering violation which is under investigation and the provision of law applicable thereto;

(2) describe the class or classes of documentary material produced thereunder with such definiteness and certainty as to permit such material to be fairly identified;

(3) state that the demand is returnable forthwith or prescribe a return date which will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying or reproduction; and

(4) identify the custodian to whom such material shall be made available.

(c) No such demand shall—

(1) contain any requirement which would be held to be unreasonable if contained in a subpena duces tecum issued by a court of the United States in aid of a grand jury investigation of such alleged racketeering violation; or

(2) require the production of any documentary evidence which would be privileged from disclosure if demanded by a subpena duces tecum issued by a court of the United States in aid of a grand jury investigation of such alleged racketeering violation.

(d) Service of any such demand or any petition filed under this section may be made upon a person by—

(1) delivering a duly executed copy thereof to any partner, executive officer, managing agent, or general agent thereof, or to any agent thereof authorized by appointment or by law to receive service of process on behalf of such person, or upon any individual person;

(2) delivering a duly executed copy thereof to the principal office or place of business of the person to be served; or

(3) depositing such copy in the United States mail, by registered or certified mail duly addressed to such person at its principal office or place of business.

(e) A verified return by the individual serving any such demand or petition setting forth the manner of such service shall be prima facie proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand.

(f)

(1) The Attorney General shall designate a racketeering investigator to serve as racketeer document custodian, and such additional racketeering investigators as he shall determine from time to time to be necessary to serve as deputies to such officer.

(2) Any person upon whom any demand issued under this section has been duly served shall make such material available for inspection and copying or reproduction to the custodian designated therein at the principal place of business of such person, or at such other place as such custodian and such person thereafter may agree and prescribe in writing or as the court may direct, pursuant to this section on the return date specified in such demand, or on such later date as such custodian may prescribe in writing. Such person may upon written agreement between such person and the custodian substitute for copies of all or any part of such material originals thereof.

(3) The custodian to whom any documentary material is so delivered shall take physical possession thereof, and shall be responsible for the use made thereof and for the return thereof pursuant to this chapter. The custodian may cause the preparation of such copies of such documentary material as may be required for official use under regulations which shall be promulgated by the Attorney General. While in the possession of the custodian, no material so produced shall be available for examination, without the consent of the person who produced such material, by any individual other than the Attorney General. Under such reasonable terms and conditions as the Attorney General shall prescribe, documentary material while in the possession of the custodian shall be available for examination by the person who produced such material or any duly authorized representatives of such person.

(4) Whenever any attorney has been designated to appear on behalf of the United States before any court or grand jury in any case or proceeding involving any alleged violation of this chapter, the custodian may deliver to such attorney such documentary material in the possession of the custodian as such attorney determines to be required for use in the presentation of such case or proceeding on behalf of the United States. Upon the conclusion of any such case or proceeding, such attorney shall return to the custodian any documentary material so withdrawn which has not passed into the control of such court or grand jury through the introduction thereof into the record of such case or proceeding.

(5) Upon the completion of—

(i) the racketeering investigation for which any documentary material was produced under this chapter, and

(ii) any case or proceeding arising from such investigation, the custodian shall return to the person who produced such material all such material other than copies thereof made by the Attorney General pursuant to this subsection which has not passed into the control of any court or grand jury through the introduction thereof into the record of such case or proceeding.

(6) When any documentary material has been produced by any person under this section for use in any racketeering investigation, and no such case or proceeding arising therefrom has been instituted within a reasonable time after completion of the examination and analysis of all evidence assembled in the course of such investigation, such person shall be entitled, upon written demand made upon the Attorney General, to the return of all documentary material other than copies thereof made pursuant to this subsection so produced by such person.

(7) In the event of the death, disability, or separation from service of the custodian of any documentary material produced under any demand issued under this section or the official relief of such custodian from responsibility for the custody and control of such material, the Attorney General shall promptly —

(i) designate another racketeering investigator to serve as custodian thereof, and

(ii) transmit notice in writing to the person who produced such material as to the identity and address of the successor so designated.

Any successor so designated shall have with regard to such materials all duties and responsibilities imposed by this section upon his predecessor in office with regard thereto, except that he shall not be held responsible for any default or dereliction which occurred before his designation as custodian.

(g) Whenever any person fails to comply with any civil investigative demand duly served upon him under this section or whenever satisfactory copying or reproduction of any such material cannot be done and such person refuses to surrender such material, the Attorney General may file, in the district court of the United States for any judicial district in which such person resides, is found, or

transacts business, and serve upon such person a petition for an order of such court for the enforcement of this section, except that if such person transacts business in more than one such district such petition shall be filed in the district in which such person maintains his principal place of business, or in such other district in which such person transacts business as may be agreed upon by the parties to such petition.

(h) Within twenty days after the service of any such demand upon any person, or at any time before the return date specified in the demand, whichever period is shorter, such person may file, in the district court of the United States for the judicial district within which such person resides, is found, or transacts business, and serve upon such custodian a petition for an order of such court modifying or setting aside such demand. The time allowed for compliance with the demand in whole or in part as deemed proper and ordered by the court shall not run during the pendency of such petition in the court. Such petition shall specify each ground upon which the petitioner relies in seeking such relief, and may be based upon any failure of such demand to comply with the provisions of this section or upon any constitutional or other legal right or privilege of such person.

(i) At any time during which any custodian is in custody or control of any documentary material delivered by any person in compliance with any such demand, such person may file, in the district court of the United States for the judicial district within which the office of such custodian is situated, and serve upon such custodian a petition for an order of such court requiring the performance by such custodian of any duty imposed upon him by this section.

(j) Whenever any petition is filed in any district court of the United States under this section, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry into effect the provisions of this section.

(Added Pub. L. 91–452, title IX, § 901(a), Oct. 15, 1970, 84 Stat. 944.)

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28 U.S. Code § 2679 - Exclusiveness of remedy

U.S. Code Notes

(a) The authority of any federal agency to sue and be sued in its own name shall not be construed to authorize suits against such federal agency on claims which are cognizable under section 1346(b) of this title, and the remedies provided by this title in such cases shall be exclusive.

(b)

(1) The remedy against the United States provided by sections 1346(b) and 2672 of this title for injury or loss of property, or personal injury or death arising or resulting from the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment is exclusive of any other civil action or proceeding for money damages by reason of the same subject matter against the employee whose

act or omission gave rise to the claim or against the estate of such employee. Any other civil action or proceeding for money damages arising out of or relating to the same subject matter against the employee or the employee's estate is precluded without regard to when the act or omission occurred.

(2) Paragraph (1) does not extend or apply to a civil action against an employee of the Government—

(A) which is brought for a violation of the Constitution of the United States, or

(B) which is brought for a violation of a statute of the United States under which such action against an individual is otherwise authorized.

(c) The Attorney General shall defend any civil action or proceeding brought in any court against any employee of the Government or his estate for any such damage or injury. The employee against whom such civil action or proceeding is brought shall deliver within such time after date of service or knowledge of service as determined by the Attorney General, all process served upon him or an attested true copy thereof to his immediate superior or to whomever was designated by the head of his department to receive such papers and such person shall promptly furnish copies of the pleadings and process therein to the United States attorney for the district embracing the place wherein the proceeding is brought, to the Attorney General, and to the head of his employing Federal agency.

(d)

(1) Upon certification by the Attorney General that the defendant employee was acting within the scope of his office or employment at the time of the incident out of which the claim arose, any civil action or proceeding commenced upon such claim in a United States district court shall be deemed an action against the United States under the provisions of this title and all references thereto, and the United States shall be substituted as the party defendant.

(2) Upon certification by the Attorney General that the defendant employee was acting within the scope of his office or employment at the time of the incident out of which the claim arose, any civil action or proceeding commenced upon such claim in a State court shall be removed without bond at any time before trial by the Attorney General to the district court of the United States for the district and division embracing the place in which the action or proceeding is pending. Such action or proceeding shall be deemed to

be an action or proceeding brought against the United States under the provisions of this title and all references thereto, and the United States shall be substituted as the party defendant. This certification of the Attorney General shall conclusively establish scope of office or employment for purposes of removal.

(3) In the event that the Attorney General has refused to certify scope of office or employment under this section, the employee may at any time before trial petition the court to find and certify that the employee was acting within the scope of his office or employment. Upon such certification by the court, such action or proceeding shall be deemed to be an action or proceeding brought against the United States under the provisions of this title and all references thereto, and the United States shall be substituted as the party defendant. A copy of the petition shall be served upon the United States in accordance with the provisions of Rule 4(d)(4)[1] of the Federal Rules of Civil Procedure. In the event the petition is filed in a civil action or proceeding pending in a State court, the action or proceeding may be removed without bond by the Attorney General to the district court of the United States for the district and division embracing the place in which it is pending. If, in considering the petition, the district court determines that the employee was not acting within the scope of his office or employment, the action or proceeding shall be remanded to the State court.

(4) Upon certification, any action or proceeding subject to paragraph (1), (2), or (3) shall proceed in the same manner as any action against the United States filed pursuant to section 1346(b) of this title and shall be subject to the limitations and exceptions applicable to those actions.

(5) Whenever an action or proceeding in which the United States is substituted as the party defendant under this subsection is dismissed for failure first to present a claim pursuant to section 2675(a) of this title, such a claim shall be deemed to be timely presented under section 2401(b) of this title if—

(A) the claim would have been timely had it been filed on the date the underlying civil action was commenced, and

(B) the claim is presented to the appropriate Federal agency within 60 days after dismissal of the civil action.

(e) The Attorney General may compromise or settle any claim asserted in such civil action or proceeding in the manner provided in section 2677, and with the same

effect.

(June 25, 1948, ch. 646, 62 Stat. 984; Pub. L. 87–258, § 1, Sept. 21, 1961, 75 Stat. 539; Pub. L. 89–506, § 5(a), July 18, 1966, 80 Stat. 307; Pub. L. 100–694, §§ 5, 6, Nov. 18, 1988, 102 Stat. 4564.)

28 U.S. Code § 1915 - Proceedings in forma pauperis

U.S. Code Notes

(a)

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

(2) A prisoner seeking to bring a civil action or appeal a judgment in a civil action or proceeding without prepayment of fees or security therefor, in addition to filing the affidavit filed under paragraph (1), shall submit a certified

copy of the trust fund account statement (or institutional equivalent) for the prisoner for the 6-month period immediately preceding the filing of the complaint or notice of appeal, obtained from the appropriate official of each prison at which the prisoner is or was confined.

(3) An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.

(b)

(1) Notwithstanding subsection (a), if a prisoner brings a civil action or files an appeal in forma pauperis, the prisoner shall be required to pay the full amount of a filing fee. The court shall assess and, when funds exist, collect, as a partial payment of any court fees required by law, an initial partial filing fee of 20 percent of the greater of—

(A) the average monthly deposits to the prisoner's account; or

(B) the average monthly balance in the prisoner's account for the 6-month period immediately preceding the filing of the complaint or notice of appeal.

(2) After payment of the initial partial filing fee, the prisoner shall be required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. The agency having custody of the prisoner shall forward payments from the prisoner's account to the clerk of the court each time the amount in the account exceeds $10 until the filing fees are paid.

(3) In no event shall the filing fee collected exceed the amount of fees permitted by statute for the commencement of a civil action or an appeal of a civil action or criminal judgment.

(4) In no event shall a prisoner be prohibited from bringing a civil action or appealing a civil or criminal judgment for the reason that the prisoner has no assets and no means by which to pay the initial partial filing fee.

(c) Upon the filing of an affidavit in accordance with subsections (a) and (b) and the prepayment of any partial filing fee as may be required under subsection (b), the court may direct payment by the United States of the expenses of (1) printing the record on appeal in any civil or criminal case, if such printing is required by the appellate court; (2) preparing a transcript of proceedings before a United States magistrate judge in any civil or criminal case, if such transcript is required by the

district court, in the case of proceedings conducted under section 636(b) of this title or under section 3401(b) of title 18, United States Code; and (3) printing the record on appeal if such printing is required by the appellate court, in the case of proceedings conducted pursuant to section 636(c) of this title. Such expenses shall be paid when authorized by the Director of the Administrative Office of the United States Courts.

(d) The officers of the court shall issue and serve all process, and perform all duties in such cases. Witnesses shall attend as in other cases, and the same remedies shall be available as are provided for by law in other cases.

(e)

(1) The court may request an attorney to represent any person unable to afford counsel.

(2) Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that —

(A) the allegation of poverty is untrue; or

(B) the action or appeal—

(i) is frivolous or malicious;

(ii) fails to state a claim on which relief may be granted; or

(iii) seeks monetary relief against a defendant who is immune from such relief.

(f)

(1) Judgment may be rendered for costs at the conclusion of the suit or action as in other proceedings, but the United States shall not be liable for any of the costs thus incurred. If the United States has paid the cost of a stenographic transcript or printed record for the prevailing party, the same shall be taxed in favor of the United States.

(2)

(A) If the judgment against a prisoner includes the payment of costs under this subsection, the prisoner shall be required to pay the full amount of the costs ordered.

(B) The prisoner shall be required to make payments for costs under this subsection in the same manner as is provided for filing fees under subsection (a)(2).

(C) In no event shall the costs collected exceed the amount of the costs ordered by the court.

(g) In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

(h) As used in this section, the term "prisoner" means any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program.

(June 25, 1948, ch. 646, 62 Stat. 954; May 24, 1949, ch. 139, § 98, 63 Stat. 104; Oct. 31, 1951, ch. 655, § 51(b), (c), 65 Stat. 727; Pub. L. 86–320, Sept. 21, 1959, 73 Stat. 590; Pub. L. 96–82, § 6, Oct. 10, 1979, 93 Stat. 645; Pub. L. 101–650, title III, § 321, Dec. 1, 1990, 104 Stat. 5117; Pub. L. 104–134, title I, § 101[(a)] [title VIII, § 804(a), (c)–(e)], Apr. 26, 1996, 110 Stat. 1321, 1321–73 to 1321–75; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327.)

28 U.S. Code § 1915A - Screening

U.S. Code

(a) SCREENING.—
The court shall review, before docketing, if feasible or, in any event, as soon as practicable after docketing, a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity.

(b) GROUNDS FOR DISMISSAL.—On review, the court shall identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint—

(1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or

(2) seeks monetary relief from a defendant who is immune from such relief.

(c) Definition.—

As used in this section, the term "prisoner" means any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program.

(Added Pub. L. 104–134, title I, § 101[(a)] [title VIII, § 805(a)], Apr. 26, 1996, 110 Stat. 1321, 1321–75; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327.)

28 U.S. Code § 2679 - Exclusiveness of remedy

U.S. Code Notes

(a) The authority of any federal agency to sue and be sued in its own name shall not be construed to authorize suits against such federal agency on claims which are cognizable under section 1346(b) of this title, and the remedies provided by this title in such cases shall be exclusive.

(b)

(1) The remedy against the United States provided by sections 1346(b) and 2672 of this title for injury or loss of property, or personal injury or death arising or resulting from the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment is exclusive of any other civil action or proceeding for money damages by reason of the same subject matter against the employee whose

act or omission gave rise to the claim or against the estate of such employee. Any other civil action or proceeding for money damages arising out of or relating to the same subject matter against the employee or the employee's estate is precluded without regard to when the act or omission occurred.

(2) Paragraph (1) does not extend or apply to a civil action against an employee of the Government—

(A) which is brought for a violation of the Constitution of the United States, or

(B) which is brought for a violation of a statute of the United States under which such action against an individual is otherwise authorized.

(c) The Attorney General shall defend any civil action or proceeding brought in any court against any employee of the Government or his estate for any such damage or injury. The employee against whom such civil action or proceeding is brought shall deliver within such time after date of service or knowledge of service as determined by the Attorney General, all process served upon him or an attested true copy thereof to his immediate superior or to whomever was designated by the head of his department to receive such papers and such person shall promptly furnish copies of the pleadings and process therein to the United States attorney for the district embracing the place wherein the proceeding is brought, to the Attorney General, and to the head of his employing Federal agency.

(d)

(1) Upon certification by the Attorney General that the defendant employee was acting within the scope of his office or employment at the time of the incident out of which the claim arose, any civil action or proceeding commenced upon such claim in a United States district court shall be deemed an action against the United States under the provisions of this title and all references thereto, and the United States shall be substituted as the party defendant.

(2) Upon certification by the Attorney General that the defendant employee was acting within the scope of his office or employment at the time of the incident out of which the claim arose, any civil action or proceeding commenced upon such claim in a State court shall be removed without bond at any time before trial by the Attorney General to the district court of the United States for the district and division embracing the place in which the action or proceeding is pending. Such action or proceeding shall be deemed to

be an action or proceeding brought against the United States under the provisions of this title and all references thereto, and the United States shall be substituted as the party defendant. This certification of the Attorney General shall conclusively establish scope of office or employment for purposes of removal.

(3) In the event that the Attorney General has refused to certify scope of office or employment under this section, the employee may at any time before trial petition the court to find and certify that the employee was acting within the scope of his office or employment. Upon such certification by the court, such action or proceeding shall be deemed to be an action or proceeding brought against the United States under the provisions of this title and all references thereto, and the United States shall be substituted as the party defendant. A copy of the petition shall be served upon the United States in accordance with the provisions of Rule 4(d)(4)[1] of the Federal Rules of Civil Procedure. In the event the petition is filed in a civil action or proceeding pending in a State court, the action or proceeding may be removed without bond by the Attorney General to the district court of the United States for the district and division embracing the place in which it is pending. If, in considering the petition, the district court determines that the employee was not acting within the scope of his office or employment, the action or proceeding shall be remanded to the State court.

(4) Upon certification, any action or proceeding subject to paragraph (1), (2), or (3) shall proceed in the same manner as any action against the United States filed pursuant to section 1346(b) of this title and shall be subject to the limitations and exceptions applicable to those actions.

(5) Whenever an action or proceeding in which the United States is substituted as the party defendant under this subsection is dismissed for failure first to present a claim pursuant to section 2675(a) of this title, such a claim shall be deemed to be timely presented under section 2401(b) of this title if—

(A) the claim would have been timely had it been filed on the date the underlying civil action was commenced, and

(B) the claim is presented to the appropriate Federal agency within 60 days after dismissal of the civil action.

(e) The Attorney General may compromise or settle any claim asserted in such civil action or proceeding in the manner provided in section 2677, and with the same

effect.

(June 25, 1948, ch. 646, 62 Stat. 984; Pub. L. 87–258, § 1, Sept. 21, 1961, 75 Stat. 539; Pub. L. 89–506, § 5(a), July 18, 1966, 80 Stat. 307; Pub. L. 100–694, §§ 5, 6, Nov. 18, 1988, 102 Stat. 4564.)

42 U.S. Code § 2000bb - Congressional findings and declaration of purposes

U.S. Code Notes

(a) FINDINGS

The Congress finds that—

(1) the framers of the Constitution, recognizing free exercise of religion as an unalienable right, secured its protection in the First Amendment to the Constitution;

(2) laws "neutral" toward religion may burden religious exercise as surely as laws intended to interfere with religious exercise;

(3) governments should not substantially burden religious exercise without

compelling justification;

(4) in Employment Division v. Smith, 494 U.S. 872 (1990) the Supreme Court virtually eliminated the requirement that the government justify burdens on religious exercise imposed by laws neutral toward religion; and

(5) the compelling interest test as set forth in prior Federal court rulings is a workable test for striking sensible balances between religious liberty and competing prior governmental interests.

(b) Purposes

The purposes of this chapter are—

(1) to restore the compelling interest test as set forth in Sherbert v. Verner, 374 U.S. 398 (1963) and Wisconsin v. Yoder, 406 U.S. 205 (1972) and to guarantee its application in all cases where free exercise of religion is substantially burdened; and

(2) to provide a claim or defense to persons whose religious exercise is substantially burdened by government.

(Pub. L. 103–141, § 2, Nov. 16, 1993, 107 Stat. 1488.)

42 U.S. Code § 2000bb–1 - Free exercise of religion protected

U.S. Code

(a) In general

Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, except as provided in subsection (b).

(b) Exception

Government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person—

(1) is in furtherance of a compelling governmental interest; and

(2) is the least restrictive means of furthering that compelling governmental interest.

(c) Judicial relief

A person whose religious exercise has been burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against a government. Standing to assert a claim or defense under this section shall be governed by the general rules of standing under article III of the Constitution.

(Pub. L. 103–141, § 3, Nov. 16, 1993, 107 Stat. 1488.)

42 U.S. Code § 2000bb–2 - Definitions

U.S. Code Notes

As used in this chapter—

(1) the term "government" includes a branch, department, agency, instrumentality, and official (or other person acting under color of law) of the United States, or of a covered entity;

(2) the term "covered entity" means the District of Columbia, the Commonwealth of Puerto Rico, and each territory and possession of the United States;

(3) the term "demonstrates" means meets the burdens of going forward with the evidence and of persuasion; and

(4) the term "exercise of religion" means religious exercise, as defined in section

2000cc–5 of this title.

(Pub. L. 103–141, § 5, Nov. 16, 1993, 107 Stat. 1489; Pub. L. 106–274, § 7(a), Sept. 22, 2000, 114 Stat. 806.)

42 U.S. Code § 2000bb–3 - Applicability

U.S. Code Notes

(a) In general

This chapter applies to all Federal law, and the implementation of that law, whether statutory or otherwise, and whether adopted before or after November 16, 1993.

(b) Rule of construction

Federal statutory law adopted after November 16, 1993, is subject to this chapter unless such law explicitly excludes such application by reference to this chapter.

(c) Religious belief unaffected

Nothing in this chapter shall be construed to authorize any government to burden any religious belief.

(Pub. L. 103–141, § 6, Nov. 16, 1993, 107 Stat. 1489; Pub. L. 106–274, § 7(b), Sept. 22, 2000, 114 Stat. 806.)

42 U.S. Code § 2000bb–4 - Establishment clause unaffected

U.S. Code Notes

Nothing in this chapter shall be construed to affect, interpret, or in any way address that portion of the First Amendment prohibiting laws respecting the establishment of religion (referred to in this section as the "Establishment Clause"). Granting government funding, benefits, or exemptions, to the extent permissible under the Establishment Clause, shall not constitute a violation of this chapter. As used in this section, the term "granting", used with respect to government funding, benefits, or exemptions, does not include the denial of government funding, benefits, or exemptions.

(Pub. L. 103–141, § 7, Nov. 16, 1993, 107 Stat. 1489.)

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Rule 9. Appearance of Counsel

1. An attorney seeking to file a document in this Court in a representative capacity must first be admitted to practice before this Court as provided in Rule 5, except that admission to the Bar of this Court is not required for an attorney appointed under the Criminal Justice Act of 1964, see 18 U. S. C. § 3006A(d)(7), or under any other applicable federal statute. The attorney whose name, address, and telephone number appear on the cover of a document presented for filing is considered counsel of record. The names of other members of the Bar of this Court or of the bar of the highest court of a State acting as counsel, and, if desired, their addresses, may be added. If the name of more than one attorney is shown on the cover of the document, the attorney who is counsel of record shall be clearly identified. See Rule 34.1(f). Names of persons other than attorneys admitted to a state bar may not be listed, unless the party is appearing *pro se*, in which case the party's name, address, and telephone number shall appear.

2. An attorney representing a party who will not be filing a document shall enter a separate notice of appearance as counsel of record indicating the name of the party represented. A separate notice of appearance shall also be entered whenever an attorney is substituted as counsel of record in a particular case.

Part III. Jurisdiction on Writ of Certiorari

Rule 10. Considerations Governing Review on Certiorari

Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers:

(a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;

(b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;

(c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.

Rule 11. Certiorari to a United States Court of Appeals Before Judgment

A petition for a writ of certiorari to review a case pending in a United States court of appeals, before judgment is entered in that court, will be granted only upon a showing that the case is of such imperative public importance as to justify deviation from normal appellate practice and to require immediate determination in this Court. See 28 U. S. C. § 2101(e).

Rule 12. Review on Certiorari: How Sought; Parties

1. Except as provided in paragraph 2 of this Rule, the petitioner shall file 40 copies of a petition for a writ of certiorari, prepared as required by Rule 33.1, and shall pay the Rule 38(a) docket fee.

UNITED STATES APPEALS COURT
FOR THE FIFTH CIRCUIT

Case No. 24-10614

Dennis Sheldon Brewer,
Plaintiff - Appellant

v.

William Burns, Director, Central Intelligence Agency,
Defendant – Appellee

Appellant Brief

1. This district court *sua sponte* dismissal of 23-cv-123 capriciously **disregarded (A) rights,** law, and facts. This district court made fundamental errors of miscomprehension, conflation, absence of analysis, failed to comply with procedural mandates in fair and impartial consideration, and engaged in a resultant abuse of discretion which violated the rights of the appellant, as it operated contrary to the interests of impartial justice, in a case which presents **(B)** a profound pattern of systematic violations, primarily by the federal government (UNITED STATES), of fundamental individual unalienable constitutional rights, including religious freedom in the absence of any compelling governmental interest (42 U.S.C. § 2000-bb1), and other violations of appellant rights under *the First, Third, Fourth, Fifth, Eighth, Ninth, Thirteenth,* and *Fourteenth* amendments. This district court's order and judgement (ROA.1522 ECF#8 and ROA.1524 ECF#9) dismissed the instant complaint *sua sponte* by its abuse of 28 U.S.C. § 1915(e)(2)(B)(i), and of the directly relevant *Denton* and *Neitzke* mandates (ROA.259-261, paragraphs 331-333) which govern *in forma pauperis pro se* litigation.

2. Appellant rights were violated by this district court dismissal as it capriciously **disregarded (C) law** - the fraught core legal issues which confront these privileged defendants are a direct result of their management and direct governmental and individual participation in patterns of acts, injuries, and violations

of law including, without limitation, **(C-1)** profound and continuing violations of constitutional rights under the *First, Third, Fourth, Fifth, Eighth, Ninth, Thirteenth,* and *Fourteenth* amendments (ROA.193, paragraph 251), **(C-2)** which have been and are fraudulently concealed in violations of 18 U.S.C. §§ 1961-1968 (ROA.261-268, paragraphs 334-346), and myriad other federal and state statutes (ROA.193, paragraph 251) presented in 54 distinct legal claims which offer remedies under law (ROA.1299-1307, paragraphs 893-901), and ignored the mandates prescribed to all federal courts in **(C-3)** *Neitzke* – that even the most unartful and fatally flawed pleadings must be fully considered in weighing *in forma pauperis pro se* litigation, which could not possibly have occurred here in less time (8 hours) than it would take to simply read the complete complaint (768 hours, calculated at paragraph 8 herein), and **(C-4)** *Denton* that even novel claims (ROA.259-261, paragraphs 331-333) regarded initially as fantastic cannot be dismissed *sua sponte* but must be developed for full and fair consideration in accordance with the procedures of Title 28 Chapter V.

3. Appellant rights were violated by this district court dismissal as it capriciously **disregarded (D) facts.** The district court's order and judgment were entered in the face of overwhelming factual evidence including **(D-1)** 110 specific sets of examples injuries to plaintiffs (ROA.426-899, paragraphs 593-710) referenced in the 54 distinct claims (ROA.940-1298, paragraphs 785-854), **(D-2)** district court suppression of direct evidence of frauds required to be pled with particularity under F. R. Civ. P. Rule 9(b), against defendants operating undercover in secrecy who cannot be readily identified, nearly all of which the district court suppressed from its own initial consideration and the initial record in its construction of that initial record by disallowing a reliable economical means of filing to the in forma pauperis pro se plaintiff (ROA.1465, ECF#4), which **(D-3)** prejudiced appellant rights by precluding the full and fair development of novel claims (see paragraphs P4A,B at page 18 herein) as mandated by *Denton* in Title 28 Chapter V litigation of the constitutional rights of the appellant and other disfavored plaintiffs, in **(D-4)** favor of privileged governmental institutions, and of current and former government officials (ROA.84-92,

paragraphs 34-37), who have and do participate in known patterns of rights violations and failure to protect (ROA.940-1298 paragraphs 785-854), have no valid defenses (ROA.81-84, paragraph 31-33) and who have and do **(D-4a)** perpetuate an associated-in-fact enterprise pattern of racketeering acts and rights violations (18 U.S.C. §§ 1961-1968, ROA.261-268, paragraphs 334-346) **(D-4b)** against a class of American citizens adversely selected based upon their religion (ROA.41-43, 299-309, paragraph 1-2, 409-421) in the complete absence of a compelling governmental interest (42 U.S.C. § 2000bb-1), and other illegal and discriminatory criteria arbitrarily determined without compliance with 5 U.S.C. § 301 (ROA.197-206, paragraphs 255-263 Interline Exhibit 2) for the primary purposes of illegal human medical experiments without consent on unwitting Americans (ROA.273-279, paragraph 356-363) to develop, test, and deploy the federal government's secret illegal and internationally prohibited bioweapon system (ROA.279-297, paragraph 364-402), violating 18 U.S.C. § 175 and the ratified 1972 Bioweapon Treaty, and for other illegal purposes (ROA.193, paragraph 251).

Purpose of Oral Argument

4. An oral argument will highlight the district court's fundamental errors - of analysis, of procedure, of compliance with legal mandates, of discretion, fairness, and impartiality - made when it dismissed *sua sponte* this extremely complex case regarding a long-running illegal bioweapon program which (i) has and does medically abuse and experiment on unwitting American children and adults, to and including torture and death, which (ii) has and does systematically abridge rights while violating well settled law and treaties, and the set of facts, legal precedents, and abuses of state secret privilege and of governmental immunities related to acts undertaken in bad faith, which bad faith acts (iii) have and do facilitate a conspiracy evidenced in the federal government's continuing coordinated pattern of fraudulent concealment and official silence, sustained primarily by and for the corrupt benefit of federal departments and agencies, their current

and former officials, officers, and agents, and for other defendants - against the rights and interests of the appellant, other plaintiffs and interested parties, and the American people generally.

Certificate of Interested Persons

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal. The known interested persons are the governmental, corporate, and individual defendants named herein, and an unknown number of members of the class of plaintiffs. The scope and magnitude of the class of plaintiffs is not yet identifiable due to governmental abuse of the state secret privilege and police powers exemptions which have precluded prospective plaintiffs from identifying themselves as a result of the continuing suppressive efforts of these self-interested defendants.

Plaintiffs:

DENNIS SHELDON BREWER, Individually,
1210 City Pl, Edgewater, NJ 07020,

Uknown number of plaintiffs who must be identified by affirmative acts of defendant UNITED STATES

Known Federal Defendants, Official Capacity:

William Burns
Director
Central Intelligence Agency (CIA)
Washington, DC 20505
(505) 855-6744,

Christopher Wray
Director, Federal Bureau of Investigation (FBI)
935 Pennsylvania Avenue, NW
Washington, District of Columbia 20535-0001
202-324-3000,

Known Entity Defendants:

ESTABLISH Inc.
c/o Corporation Service Company
251 Little Falls Drive
Wilmington, DE 19808,

ACME MARKETS Inc.
c/o: The Corporation Trust Company
830 Bear Tavern Road
West Trenton NJ 08628,

Merrick Garland
Attorney General of the United States (DOJ)
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC, 20530-0001
202-514-2000,

Ronald Davis
Director
United States Marshals Service (USMS)
1215 S. Clark St.
Arlington, VA 22202,

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Members of federal appeals and district courts who have specific knowledge of U.S. Department of Justice, Department of Defense, Central Intelligence Agency, and/or other federal police powers, military, and intelligence departments and agencies, direct participation in the illegal bioweapon and bioweapon delivery system program from 1968 forward to the present, and/or of associated and related police powers operations of subordinate jurisdictions to the United States have, or may have, direct conflicts of interest in this matter. Hereby certified by counsel of record's signature below dated: September 10, 2024.

Signature: _____

Dennis Sheldon Brewer, Pro Se Attorney, Counsel of Record
1210 City Place, Edgewater, NJ 07020

Appellant Brief

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Jurisdiction

5. Jurisdiction of this Court is invoked under Section 1291, Title 28, United States Code, as an appeal from a final judgment of an Order of Dismissal in the United States District Court for the Northern District of Texas. Notice of appeal (ROA.1525, ECF#10) was timely filed in accordance with Rule 4(b) of the Federal Rules of Appellate Procedure.

Issues Presented

6. This appeal concerns **(A)** hasty, conflated abuse of judicial discretion 28 U.S.C. § 1915(e)(2)(B)(i) by the district court's *sua sponte* dismissal of a Complaint regarding serial violations by the federal government of the Establishment Clause in its pattern of practice of adverse selection of veterans, other citizens, and their minor children, based upon religion in the complete absence of compelling governmental interest, (42 U.S.C. § 2000bb-1), and other constitutional rights under the *First, Third, Fourth,*

Fifth, Eighth, Ninth, Thirteenth, and *Fourteenth* Amendments, for governmental biomedical abuse and experiments without consent on unwitting involuntary human child and adult subjects in an illegal bioweapon and bioweapon delivery system program, also known herein as BRMT since its actual codename is unknown, which violates 18 U.S.C. § 175 and the ratified 1972 Bioweapon Treaty, and which the UNITED STATES has and does operate as an associated-in-fact racketeering enterprise (18 U.S.C. §§ 1961-1968) incorporating involuntary servitude in still on-going violations of the *Thirteenth* amendment, and has and does fraudulently conceal by its systematic abuse of state secret privilege. The District Court **(B)** failed to liberally construe the in forma pauperis pro se Complaint, and profoundly erred in its presumptive *sua sponte* threshold dismissal Order in 2:24-cv-123-Z, which it adjudged and entered one day after the filing of the highly complex 1,324 page Complaint (ROA.5-1328, ECF #3). The district court **(C)** acted without regard to the form of filing for the pleading of frauds required under F. R. Civ. P. Rule 9(b) required to plead predicate acts of fraud in an associated-in-fact enterprise pattern of racketeering acts by these defendants in a manner necessarily unique to this complaint (ROA.120-126, paragraph 93-99) against defendants who operate in secret, when it disallowed these essential evidentiary filings in its motions dismissal (ROA.1522, ECF #8). The district court **(D)** violated the core *Neitzke* and *Denton* mandates (ROA.259-261, paragraph 331-333) in its hasty, conflated, improper *sua sponte* dismissal.

Concise Statement Of The Case

7. This appeal concerns the abuse of judicial discretion in the peremptory threshold dismissal of a district court complaint filed under 28 U.S.C. § 1915 regarding federal government (UNITED STATES) violation of the Establishment Clause in its biomedical abuse of human subjects in an illegal bioweapon program violating 18 U.S.C. § 175 and the 1972 Bioweapon Treaty while operating an associated-in-fact racketeering enterprise (18 U.S.C. §§ 1961-1968, ROA.261-268, paragraphs 334-346), which has been and is fraudulently concealed in the systematic abuse of state secret privilege (ROA.202 -254, paragraphs

260-321). When this highly secret illegal bioweapon program was getting underway in the late 1950s or early 1960s (ROA.41-92, paragraphs 1-37), the federal government was already conducting parallel illegal secret programs, operated (i) by CIA and Army, the MKUltra illegal LSD drugging program, and (ii) by DOJ/FBI, the Cointelpro illegal and violent anti-civil rights program. Both those secret illegal programs were eventually detected by others, publicly exposed, and only then terminated in the public outrage which followed. But this illegal bioweapon program, running in parallel and using the same sets of illegal methods, was not detected and publicly exposed, so this well-established pattern of illegal acts by these defendants has and does continue through succeeding generations of the illegal bioweapon technology and of unwitting victims including the appellant. The illegal bioweapon program has and does violate the Establishment clause and religious rights of these plaintiffs, as the government has and does prima facie lack the compelling governmental interest (42 U.S.C. § 2000bb-1) required to establish and maintain an illegal program (5 U.S.C. § 301) abusing the state secret privilege and these conscientious objector religious plaintiffs and their children as its victims (ROA.60, 81, 199, paragraphs 18, 31, 259). The district court profoundly erred in dismissing this case for this fundamental constitutional reason and for other constitutional and statutory reasons described herein, as the federal government (UNITED STATES) and its co-conspirators have and do engage in systematic violations of the *First, Third, Fourth, Fifth, Eighth, Ninth, Thirteenth*, and *Fourteenth Amendments*, which violations are specifically established in the Complaint, ROA.940-1280, paragraphs 785-852.

Argument Summary - Documented Errors of Miscomprehension, Conflation, Case Law Misapplication, Suppression of Material Facts, Extreme Haste

8. The District Court profoundly erred in its hasty, presumptive threshold dismissal Order in 2:24-cv-123-Z at ROA.1522 ECF #8. Federal district courts are required to liberally construe pro se pleadings, *Boag v. MacDougall*, 454 U.S. 364, 365 (1982) (per curiam); *Haines v. Kerner,* 404 U.S. 519, 520 (1972) and must give good faith weight to each and every allegation and argument presented in order to arrive at a

threshold *sua sponte* dismissal order. Liberal construction requires the court to, at the very least, read, comprehend, and consider each claim. The district court failed to do so, making three very fundamental errors in its extremely hasty *sua sponte* dismissal and deprivation of constitutional and legal rights. (***Error 1***) It misunderstood basic facts of the case, and conflated the issue before it, (a) it confused the illegal bioweapon program, which is introduced and referenced as BRMT in the Complaint ROA.42-45, paragraph 2, and the directly related racketeering and rights violations which were instrumental in its fraudulent concealment for decades; with (b) CIA/Army program MKUltra, the illegal 100 million dose LSD drugging program targeted at the same mind control objective (ROA.276, Interline Exhibit 3 at paragraph 357). BRMT and MKUltra were illegally conducted contemporaneously until MKUltra was terminated in the early 1970s. MKUltra shared the same objective and pattern of practice but was terminated and is not the subject of this Complaint, which relates specifically to the government's illegal bioweapon (18 U.S.C. § 175) producing illegal targeted toxin effects defined at 18 U.S.C. § 178(2) by artificial external stimulus to the brain (ROA.45, 46-48, 256, paragraph 3, Illustrations 1-3, paragraph 324). (***Error 2***) The district court misapplied caselaw mandates in *Neitzke v. Williams*, 490 U.S. 319 (1989) and *Denton v Hernandez,* 504 U.S. 25 (1992),(ROA.259-261, paragraphs 331-333) directly relevant to in forma pauperis pro se complaints and claims, in its failures to liberally construe (or even merely to read and consider the documents presented, below at Error 4), and its failure to allow factual development of this novel bioweapon claim as the *Denton* mandate specifically requires (*ibid* at 33). (***Error 3***) The district court, in its order at ROA.1522 ECF #8, also suppressed direct evidence from the record which develops this bioweapon claim and the overarching racketeering claims (examples at ROA.1611-2178) which conceal the illegal program. This evidence is highly relevant to the novel claim and to the pattern of facts of the case as it documents the predicate acts of fraud instrumental to the decades of fraudulent concealment and involuntary servitude of the illegal BRMT bioweapon program. The district court thereby suppressed and

evaded any consideration whatsoever of that specific evidence required under F. R. Civ. P. Rule 9(b) for the pleading of frauds with particularity, which is required in these unique circumstances where defendants have and do operate continuously undercover and at times remotely, their identities are not readily ascertainable, and each defendant must answer specifically for their particular roles and actions. (***Error 4***) The district court received the Complaint by US Mail in the Clerk's office on June 4 at 1:56 PM according to the USPS, the Clerk entered it to the docket on June 5, 2024 and it was dismissed on June 6, 2024 (Clerk's certified docket). The district court allegedly reviewed the 384,315 word document, covering 56 years of fraudulent concealment and abuse of state secret privilege violating 5 U.S.C. § 301, and considered all these claims, facts, and law, all in less than eight working hours, which turnaround speed is literally impossible if fairly read and considered. The Complaint can be read, presuming a very high proficiency reading speed of 500 words per minute, in 768.6 hours, assuming no reference is made to the suppressed and essential documentary evidence intended to accompany the Complaint. The standard mandated by *Denton, Neitzke, Boag, and Haines* for in forma pauperis pro se litigation *sua sponte* dismissals, as for paid Complaints, demands individual review of each and every claim for the legal and factual basis of that specific claim, quoting "…a complaint cannot be dismissed simply because the court finds the allegations to be improbable or unlikely." *Denton* at 26. By dismissing the Complaint in extreme haste without actual consideration one day after docketing, the district court acted arbitrarily, in its conflated confusion (see ***Error 1*** above in this paragraph), on an incomplete initial record which the district court itself suppressed while it misapplied both the *Neitzke* mandate, quoting "dismissal is proper only if the legal theory …. or the factual contentions lack an arguable basis," *ibid* at 319, and the *Denton* mandate, quoting "to dismiss them as frivolous without any factual development is to disregard the age-old insight that many allegations might be "strange, but true…" *ibid* at 33.

9. A core issue in this complaint is the lack of any compelling governmental interest in making the adverse selection of these victims for tis illegal bioweapon program, including the appellant as a minor child and continuing victim, in violation of the Establishment clause. Quoting from International Religious Freedom Report for 2021 – China, page 6, prepared by United States Department of State • Office of International Religious Freedom:

> "The law does not allow individuals or groups to take legal action against the government based on the religious freedom protections afforded by the constitution."

10. Congress passed Title 42 Chapter 21B Religious Freedom Restoration Act in 1993 to restore its original meaning before a 1990 Supreme Court mandate cited therein, and to explicitly provide for judicial relief, 42 USC § 2000bb-1(c):

> "A person whose religious exercise has been burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against a government. Standing to assert a claim or defense under this section shall be governed by the general rules of standing under article III of the Constitution."

11. The religious rights limiting role played by the law in China as explained above is, regrettably, reserved in the United States to this federal district court - which dismissed the assertion of the protection afforded religious freedom in the absence of compelling governmental interest (42 USC 2000bb-1(b) *sua sponte* as "frivolous" (i) despite clear and plain appellant standing as a direct victim of religious discrimination in adverse selection as a minor child in the Quaker family of an Army Medical Corps veteran (ROA.41-43, 299-309, paragraph 1-2, 409-421), (ii) despite a durable pattern of factual evidence and of recent specific individual forensic identifications which definitively tie government officials and their departments and agencies to this pattern of facts (ROA.41-92,160, 187, 396, paragraphs 1-37, 149, 226, 541), wherein much of this evidentiary record has been written by the hands of these defendants themselves (ROA.2006-2178), (iii) despite the clear and concise law at Title 42 Chapter 21B Religious Freedom Restoration Act 2000bb through 2000bb-4 (ROA.197-201 paragraphs 255-259C), (iv) despite an

obvious pattern of fraudulent concealment and official silence in systematic abuse of state secret privilege (ROA.202-254, paragraphs 260-321), which privilege is conditioned on good faith compliance with law, and is inferior to the myriad constitutional rights violated herein including religious freedom, and which gives rise to the explicit cause of action defined by Congress, 42 USC § 2000bb-1(c) as quoted at paragraph 10 above, and (v) despite the overwhelming factual evidence of secret involuntary servitude, explicitly prohibited by the Thirteenth Amendment, used by these defendants to abuse the appellant and others in violations of the RICO Act 18 U.S.C. §§ 1961-1968, including in evidence suppressed from the initial record and from initial consideration prior to dismissal (ROA.1470, 1473, 1611-2178, ECF #5, 8) - all of which was individually and taken together, considered to be "frivolous" and worthy of neither weight nor merit, in the district court's dismissal order (ROA.1522, ECF #8).

12. "Frivolous" as used here was a ruse which concealed judicial caprice - substituted for judicial discretion by this district court. Caprice is a long-standing bad habit of federal district courts in favoring institutional defendants against less advantaged plaintiffs - as was demonstrated repeatedly over decades of federal district court dismissals of Catholic Church pedophilia civil cases without justification - which accusations DOJ and its prosecutors had previously been accustomed to disregarding – the executive department from which one must note here about 88% of Article III federal judges are drawn. This pattern continued until public visibility and pressure led to an avalanche of civil cases which began in the early 2000s. Caprice is neither judicial discretion nor Title 28 justice, regardless of the cloak it wears – it is partiality, it is bias, it is not justice and is impermissible in our constitutional system.

Argument - Parsing of District Court Order Demonstrates Pattern of Errors

13. Parsing the district court's Order phrase by phrase yields the following legal and factual analysis of the district court's errors:

C1. "Before the Court are Plaintiff's pro se	**P1A**. The filings posted to the docket are accurately stated by the district court. The Complaint (ROA.5-1328 ECF #3) and motion at ROA.1473 ECF

Complaint (ECF No. 3), and Motions for Leave to Proceed In Forma Pauperis (ECF No. 4), Motion for Permission for Electronic Case Filing (ECF No. 5), Motion to Appoint Counsel (ECF No. 6), and Motion to Certify Class (ECF No. 7) (collectively, "Motions"), all filed on June 5, 2024. Plaintiff, a resident of Edgewater, New Jersey, sues many federal officials, the New York City Police Department and several of its officials, various domestic and international entities, various individuals in their individual capacities, and an unknown number of John Does. ECF No. 3 at 1–9."	#7 reflect the complex history of the illegal bioweapon program, associated-in-fact enterprise pattern of racketeering acts, religious and other constitutional rights violations against this class, all fraudulently concealed by abuse of state secret privilege by privileged institutional and individual defendants (ROA.5-1328 Complaint, entirety) which DOJ refuses to hold to account (ROA.395-425, paragraphs 540-584) due to its direct, explicitly established participation in illegal acts (ROA.640-863, paragraphs 639-693), which pattern and participation are further established by its own contemporaneous conduct of similar illegal acts in other programs (ROA.104, paragraph 51, and the US Senate 1975 Church Committee final report on illegal activities of CIA and FBI, LPEE pages 6885-7288, not included to the record but is compared to appellant experiences at ROA.1872-2003). **P1B**. The fifty-six year fraudulently concealed pattern documented by the Complaint reflects the long-running pattern of bad faith acts in federal police powers, intelligence, and military operations to conceal the illegal bioweapon program. Non-federal police powers also acted in bad faith and well beyond their scope of constitutional and legal authority. See ROA.41-92, paragraphs 1-37.
C2. "A complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570) (2007)).	**P2A.** *Ashcroft v. Iqbal,* 556 U.S. 662, 678 (2009) related solely to a procedural issue in an evidentiary hearing, does not bear on the substantive content of the complaint as presented in either that matter or in this specific matter, so it is not even directly relevant to the substantive matters at hand in this Complaint. Nonetheless: **P2B**. Plausibility of claims is established by facts properly presented, and explicitly considered in a legal context which permits a remedy, not by opinions or impressions postulated absent clear demonstration of comprehended knowledge, expertise, and analysis based upon scientific, medical, and technological facts. Professionals develop these facts for both judges and juries in matters in which those persons would not reasonably be expected to possess the requisite knowledge. **P2C.** The appellant is educated and professionally experienced in technology, systems analysis, chemistry, physics, information technology, communications technology, finance, analysis of government programs,

	aerospace and space technologies, precision location systems, and other relevant domains of knowledge required both (a) for the district court to reasonably assess his direct experience with this illegal bioweapon program, and (b) which demonstrates his specific capabilities and experience to forensically reverse engineer the evolution of the directly relevant science, technologies, and complex systems integrations required in the operation and evolution of the bioweapon system in a professional manner ROA.246, 1758-1869, paragraph 320e and LPEE pages 140-236. **P2D.** Since this is a novel claim, extensive content in the Complaint and in the accompanying independent evidence cited therein intended to be filed therewith, was incorporated to develop and describe this matter to a level whereby the district court could attain at least a very rudimentary understanding of the scientific, medical, and technological foundations of the novel claim. Basic documentary assistance was offered in ROA.45-52, 46-52, 281-295, paragraphs 3-6, Illustrations 1-4, and paragraphs 369-395, and evidentiary matter at ROA.1611-1755, LPEE pages 1-139 refused entry by the district court in its motions dismissal at ROA.1522, ECF # 8. **P2E.** The district court is, prima facie, not qualified to render such discretionary factual judgements based solely upon its own education or experience without the assistance of experts. It simply disregarded *Denton* ("to dismiss them as frivolous without any factual development is to disregard the age-old insight that many allegations might be "strange, but true…" *ibid* at 33), and dismissed this novel claim and factual matter without a proper legal or factual foundation for its exercise of such discretion. This matter requires proper professional qualifications to factually assess. This is a clear factual and legal error.
C3. A complaint that lacks "an arguable basis either in law or in fact" is frivolous. Neitzke v. Williams, 490 U.S. 319, 325 (1989).	**P3A.** *Neitzke v. Williams* 490 U.S. 319, 325 (1989) principal holding is that an in forma pauperis pro se complaint cannot be dismissed, even in the face of such a fundamental legal failure as its complete failure to properly state a claim, unless every single aspect of the complaint is without merit, completely devoid of any "arguable basis in either fact or law" when liberally construed. The district court suppressed essential facts without even knowing what those essential facts, required to be liberally construed, might be. This is a clear violation of the *Boag* and *Haines* mandates to "liberally construe." (paragraphs 8 and 14 herein).
C4. A complaint that lacks "an arguable basis either in law or in fact" is frivolous. Neitzke v. Williams, 490 U.S. 319, 325 (1989).	**P4A**. *Denton v. Hernandez*, 504 U.S. 25, 33 (1992) requires a district court to conduct and document its analysis, such that the written analysis is sufficient for "intelligent appellate review." **P4B.** These "intelligent appellate review" tests from *Denton*, ibid at 33-34, are as follows: "Because the frivolousness determination is a discretionary one, we further hold that a § 1915(d) dismissal is properly reviewed for an abuse of that discretion…. " required by § 1915(a), is "entitled to weight"). In reviewing a §

	1915(d) dismissal for abuse of discretion, it would be appropriate for the court of appeals to consider, among other things, (i) whether the plaintiff was proceeding pro se, see Haines v. Kerner, 404 U.S. 519, 520-521 (1972); (ii) whether the court inappropriately resolved genuine issues of disputed fact, see supra, at 6-7; (iii) whether the court applied erroneous legal conclusions, see Boag, 454 U. S., at 365, n.; whether the court has (iv) provided a statement explaining the dismissal that facilitates "intelligent appellate review," ibid.; and whether the (v) dismissal was with or without prejudice." All five tests must be met with an unqualified yes to be successful. The answers for these tests in this appeal are: (i) Filing pro se – **Yes**. (ii) Appropriate resolution of factual issues – **No**, the district court neither read the base complaint in less than 8 hours when it requires more than 768 hours for a highly proficient reader, calculated at paragraph 8 herein, nor allowed facts to the record which are necessary for threshold evaluation at P6D herein. (iii) Proper application of legal conclusions – **No**, it misapplied *Neitzke* and did not consider the primary holding in *Neitzke* (at P3 herein) nor at *Denton* (at this P4A-G). (iv) Statement for intelligent appellate review- **No**, a conflating and confused district court which truncated the essential factual record has provided a flawed analysis which cannot and does not lead to a well-considered factually or legally sound discretionary decision. The district court erred. (v) Dismissed without prejudice – **Yes.** These five tests for intelligent appellate review have not been met by the district court, **P4C.** While the district court held that its dismissal is on 28 U.S.C. § 1915(e)(2)(B)(i): "(e)….(2) Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that—….. (B) the action or appeal (i)is frivolous or malicious;"… it is plain and clear to all that the district court did not comply with *Neitzke* and *Denton* in its dismissal Order. **P4D.** A well-considered finding as "frivolous" requires a distinct determination of the complete lack of any factual or legal merit whatsoever as to each and every one of the 54 claims. To reach such a discretionary conclusion in eight hours for a Complaint requiring 768 hours calculated at paragraph 8 simply to read the base document in a complex case is simply not credible on its face. The district court cannot professionally so act under 28 U.S.C. § 132(b) and Canon 3: A Judge Should Perform the Duties of the Office Fairly, Impartially and Diligently. The forensic factual basis of the 54 statutory claims in the Complaint (ROA.940-1280, paragraphs 785-854)

	includes 110 specific patterns of facts (ROA.426-899, paragraphs 593-710) and 12,500 pages of facts (sampled at ROA.2006-2178), which volume and independent documentary quality completely defeat any rational person making any finding that these claims are frivolous. The district court has profoundly erred. **P4E.** Further, material facts needed to fairly evaluate the Complaint under F. R. Civ. P. Rule 9(b) requiring particularity in the pleading of frauds were not allowed to the record in a manner which is financially affordable to the deliberately impoverished in forma pauperis pro se appellant. Such facts and evidence have been requested to be added electronically (ROA.1470, ECF # 5, and see ROA.2006-2178 examples), are carefully organized and paginated, clearly referenced throughout the Complaint and can be filed swiftly and efficiently by secure electronic means. The district court simply dismissed (at ROA.1522 ECF #8) the entire idea of considering these facts, including independent documentary evidence, expert level analytical evidence, and direct evidence written by the hands of these defendants themselves, sampled at ROA.2006-2178. **P4F.** *Denton* mandates that novel claims cannot be dismissed without subjecting those novel claims to discovery, *ibid* at 33: "An in forma pauperis complaint may not be dismissed, however, simply because the court finds the plaintiff's allegations unlikely. Some improbable allegations might properly be disposed of on summary judgment, but to dismiss them as frivolous without any factual development is to disregard the age-old insight that many allegations might be "strange, but true; for truth is always strange, Stranger than fiction." Lord Byron, Don Juan, canto XIV, stanza 101 (T. Steffan, E. Steffan, & w. Pratt eds. 1977)." **P4G.** This failure of the district court to fairly evaluate facts through mandated "factual development" is further addressed at P5A immediately below. The district court acted presumptively in haste and in error.
C5. This Court cannot exercise subject matter jurisdiction over a frivolous complaint. 28 U.S.C. § 1915(e)(2)(B)(i);	**P5A.** A professionally derived finding of frivolous which meets an objective legal standard based on logic and reason requires the district court to meet the primary holdings of *Neitzke* (an in forma pauperis complaint can stand even if there is no valid claim in the complaint, *ibid* at 319) and of *Denton* (that a rigorous process must be followed throughout any finding, all facts must be considered, and novel claims must be factually developed, *ibid* at 33). The Complaint described by the district court as "frivolous," contains 1324 pages of facts, legal arguments, and interline exhibits which include, without limitation, direct evidence of: **A.** Technological feasibility of the technology and neuroscience facts required to establish the biomedical and scientific basis for the illegal bioweapon) is demonstrated at length, ROA.45-52, 46-52, 281-295 paragraphs 3-6 Illustrations 1 through 4, paragraphs 369-395.

	B. Multiple antilog FDA approved biomedical devices which are currently being successfully used in human trials, and thereby explicitly establish the technical viability of an illegal bioweapon based upon those same principles of science, neuroscience, biomedicine, and technology, ROA.51, 52, 283-285, 1611-1755, paragraph 6, Illustration 4, paragraphs 374-376, LPEE pages 1-139. **C.** A coordinated coverup of illegal police powers actions by defendants NYPD and FBI over 27 days in September 2021, through NYPD's own direct written admission, followed 12 days later by a complete denial of any knowledge, any record, any prior activity, ROA.403, 413-423, 1990-2003, 2176-2178 paragraph 555, Interline Exhibits 17-19, LPEE NYPD communications. **D.** Racketeering acts by police powers defendants which have transpired in multiple jurisdictions over multiple years, ROA.640-863, paragraphs 639-693, (18 U.S.C. §§ 1961-1968). **P5B.** These allegations are documented by direct evidence written by these defendants' own hands, so the discretionary standard for a professional judgement that such matters are frivolous cannot be met by the district court. The district court has erred. **P5C.** Further, as quoted above at P4F, *Denton* requires novel claims brought in in forma pauperis matters be developed through discovery (*ibid* at 33). This mandate clearly has not been met. The district court has erred.
C6. see Hagans v. Lavine, 415 U.S. 528, 536–37 (1974) ("Over the years this Court has repeatedly held that the federal courts are without power to entertain claims otherwise within their jurisdiction if they are 'so attenuated and unsubstantial as to be absolutely devoid of merit . . . .'") (quoting Newburyport Water Co. v. Newburyport, 193 U.S. 561, 579 (1904));	**P6A.** "Attenuated" – Bank statements, wire transfer receipts, signed contracts, contemporaneous notes of incidents and meetings prepared by the Appellant and by the defendants themselves are evidence, not attenuation. These substantive facts have weight and merit, documenting relevant patterns of illegal practices also used contemporaneously by these defendants in other illegal operations, documented by Congress in 1975, ROA.60, paragraph 17, as this illegal bioweapon program was already running concurrently with those programs in DOJ, DOD, and CIA. There is no valid attenuation argument to be made. The district court has erred. **P6B.** "Unsubstantial" – The scientific, medical, and technological facts in this Complaint (ROA.44-52,1611-1755, paragraphs 2-7) are scientifically demonstrable by documentation in the initial tranche of LPEE evidence not considered by the district court, ROA.1522 ECF #8) at ROA.1611-1755 LPEE pages 1-139, and by expert witnesses at trial. The associated-in-fact enterprise racketeering claims are backed by ROA.640-863, 276, 344, 347-352, 354, 355, 370, 371, 388-394, 402, 413, 415, 417-423, paragraphs 639-693, Interline Exhibits 3-19, and thousands of pages of curated emails written by these defendants acting in undercover roles, by bank statements and signed contracts, meeting notes, appointment calendars, notes to file, and other documentation, all included in the evidence requested to be submitted documenting violations of 18 U.S.C. §§ 1961-1968. See

	examples ROA.2006-2178 of evidence not allowed to the initial district court record by the motions dismissal of ROA.1470 ECF # 5 at ROA.1522 ECF #8. **P6C.** "Devoid of merit" – we consider one single claim here for simplicity's sake. Over a 27 day period in September 2021, NYPD admitted, then coordinated with FBI Washington Headquarters, to cover up their direct involvement in this matter, as shown at ROA.413-415, 1190-2003, 2176-2178, Interline Exhibits 17 and 18, LPEE NYPD communications. This is direct independent evidence of the merit of that specific claim which was written by those defendants. There are thousands of other individual examples of such bad faith conduct embedded in the 110 subcounts which merit review and consideration, ROA.640-899, paragraphs 639-710. None were considered by the district court. **P6D.** As described above, all this evidence has been requested to be added to the record electronically (ROA.1470 ECF # 5) for economy to the impoverished Appellant acting pro se. The district court dismissed that motion at ROA.1522 ECF #8. The district court has erred in failing to allow the plaintiffs to simply create the threshold record to be used in reaching a fair and equitable threshold decision.
C7. see also Tooley v. Napolitano, 586 F.3d 1006, 1010 (D.C. Cir. 2009) (examining cases dismissed "for patent insubstantiality," including where the plaintiff allegedly "was subjected to a campaign of surveillance and harassment deriving from uncertain origins . . . .").	**P7A.** "Patent insubstantiality" discussed here as to the specific issue raised, "surveillance and harassment," which is an element argued in this case as it was when argued in that case, can be established or refuted very simply. The appellant can call members of his evolving security detail - (i) his former college roommates and classmates posing as friends and fellow students in Pullman, WA, of which the current sitting Attorney General (identified at ROA.86, 125, 917-929, paragraphs 36, 99m, and 762) could be called, but that is not necessary as there are sufficient other witnesses of comparable veracity (ROA.50, paragraph 5), (ii) Dolan, the former Chief of Staff to former Washington Governor Gregoire, known since 1974 from the Spokane, WA fake Sackville-West family members first known for Bill Sackville-West met in WSU Perham Hall in 1974 (ROA.50, paragraph 5) (iii) NYPD and federal details who accompany the Appellant on his travels and events. The district court can thereby discover the complete lack of "patent insubstantiality" of this specific claim in this specific circumstance, among the many others to be further developed through discovery. **P7B.** The broader issue of patent insubstantiality of each and all other claims can also be addressed through answers and discovery. Proven technologies used for nefarious and illegal purposes are not patently insubstantial if one regards the 1975 Senate Church Committee report as a serious investigation, LPEE pages 6885-7288 not included in entirety to record but compared to directly experienced methods at ROA.1872-2003. Both CIA and FBI have and do employ illegal methods, means, and technologies against US persons unalienable rights, to the point of severe

	physical injury and death, in ways that Congress deemed were not patently insubstantial in that report. That practice simply continued in this parallel secret illegal bioweapon program - which began in the same era as those programs - and continued undetected by the public until now.
C8. Courts must dismiss a complaint as frivolous "when the facts alleged rise to the level of the irrational or the wholly incredible." Denton v. Hernandez, 504 U.S. 25, 33 (1992).	**P8A.** "Irrational" facts – It is fact that antilog medical devices currently in successful FDA human medical trials use the same basic principles of biomedicine, computing, and communications technologies used in the illegal bioweapon, ROA.51, 1611-1755, paragraph 6, LPEE page 1-139. FDA approved medical devices which transmit focused energy pulses through the skull to specific areas of the brain are used daily in approved medical uses in US hospitals (ROA.285, paragraphs 375-376. These facts are developed at ROA.45-52, 46-52, 281-295, 1611-1755, paragraphs 3-6, Illustrations 1 through 4, and paragraphs 369-395, and at LPEE pages 1-139. **P8B.** "Wholly incredible" facts – Long running illegal programs are well established historical fact documented by Congress, news media, books, press interviews, and leaked reports from whistleblowers. The patterns in the Complaint match those same publicly documented patterns practiced by those same departments and agencies and are explicitly compared to those patterns at ROA.1872-2003, LPEE pages 237-367. **P8C.** The Appellant's own psychological well-being, emotional stability, rationality, education, and experience provide him a reasonable professional basis for evaluating these matters, as documented at ROA.246, paragraph 320e and at ROA.1758-1869, LPEE pages 140-236.
C9. Plaintiff's Complaint is frivolous.	**P9A.** The district court "frivolous" finding is factually and evidentiarily absurd, defeated by the overwhelming pattern of facts. The appellant has no need to pound the table. District Courts are granted broad discretionary authority in threshold matters, but must do so within a rational, professional context, and may not do so in in forma pauperis complaints without meeting the tests prescribed in *Neitzke* and *Denton*, above at P4B. These existing case law mandates require a very specific rational analysis, which the district court did not meet. **P9B.** As at P2B-E, the district court, of its own expertise, does not possess the requisite scientific and technical knowledge to evaluate the novel claim of an illegal bioweapon prohibited by 18 U.S.C. § 175, which is required to prepare this mandated analysis at P4B. **P9C.** The *Denton* mandated tests of discretion - professional analysis and judgement – require a decision maker considering these claims, facts, and law for their weight and merit, including a district court judge who is objectively reviewing these allegations and evidence, to rationally apply the following elements of knowledge to reach a valid, well-reasoned, sound judgement: A. a basic level of knowledge of biochemistry and physics,

	B. the evolution of scientific, biomedical, and technical knowledge from the crude understanding of hormones possessed in the 1950s to modern neuroscience, C. the evolution of basic computing and communications technologies from analog vacuum tubes and copper wires, through their digital transformations, to D. modern 5 and 7 nanometer semiconductors used in supercomputers operating at 1 exaflop per second, employing near zero latency encrypted communications, E. the evolution of space technology platforms from the simple radio pulses sent by Sputnik to modern encrypted command and control systems used in communication, navigation, and remote drone operations, F. reverse technological engineering skills to deduce the precision ground-station corrected pulsed energy weapons platform technology unavailable outside government, and G. the current successful use of comparable technology in beneficial biomedical contexts using the identical science and neuroscience principles to those used in the secret illegal bioweapon program of the UNITED STATES, which itself has a very specific track record of systematic illegal abuses of US persons in such illegal programs over many decades. Elements (i) through (v) above are matters of public knowledge discernible if one has relevant education and experience. Element (vi) and its evolution across time has been forensically reverse engineered by this appellant through knowledge of the suite of technologies which are specifically required to accomplish the extremely adverse biotoxin (18 U.S.C. § 178(2)) effects directly experienced by the appellant as a key long-term involuntary subject of this illegal bioweapon program. The existence of comparable technology based upon the same scientific and medical principles is verified by the FDA approved for human trials beneficial medical applications at (vii) above, ROA.51, 52, 283-285, paragraph 6, Illustration 4, paragraphs 374-376. **P9D.** As at P2B-E, to the best of this appellant's knowledge and belief, no law school requires such a knowledge base in in its prerequisites for admission nor provides such its own curriculum, nor do district court's generally possess the requisite independent professional expertise to evaluate these effects. It is difficult in the extreme to interpret this district court's decision as based upon a plausibly rational knowledge-based evaluation of the facts, science, and medical principles in relation to the illegal bioweapon technology, given the complete absence of any clear demonstration of relevant scientific, technical, and medical knowledge and experience. This district court acted without reference to the offered basic

	documentary materials (ROA.1611-1755 LPEE 1-139), and without the professional expertise of any experienced independent third party. **P9E.** Conversely, appellant's education in chemistry, physics, professional and life experience in systems analysis, design of systems to and including space systems, and information systems integration with other technologies, does provide such a base of knowledge, ROA.1758-1869, LPEE pages 140-236, as excluded from the initial record by ROA.1522 ECF #8. **P9F.** Since current commercial biomedical technologies in ongoing FDA approved human trials unequivocally substantiate the technical feasibility of this type of illegal device, ROA.51, 52, 281-295, 1611-1755, paragraph 6 and Illustration 4, paragraphs 369-395, and LPEE 1-139, this district court's finding is itself not based in fact and is "patently unsubstantial." The district court has erred.
C10. First, inter alia, it is a staggering and prolix 595 pages without attachments.	**P10A.** The 1324 page complaint was split across the docket by the Clerk as three separate documents at ROA.5-1328 ECF #3 due to length. The first section alone is 595 pages, but the complaint includes two other sections, which together comprise the entire Complaint. It is unclear whether the actual 1324 page length of the Complaint was even known by the district court, much less considered, as it noted only 595 pages in its Order (shown here to the left). **P10B.** The 384,315 word complaint covers 56 years of fraudulent concealment. It can be read at the very high proficiency reading speed of 500 words per minute in 768 hours calculated at paragraph 8 without reference to any directly related documentation. The Complaint was entered to the docket on June 5, 2024, and dismissed on June 6, 2024, as were all 54 claims – without no reference made to any deficiency in any claim. (Clerk's certified docket). **P10C.** This long running and fraudulently concealed bioweapon program, and its comprehensive set of facts and documents, spans the appellant's own mostly unwitting 56 year history in this fraudulently concealed program. This fact set has been forensically developed and analyzed with great care by the appellant, an experienced former management consultant, business executive, and involuntary servant of UNITED STATES, who is accustomed to diagnosing and remedying problems encountered in myriad initially unfamiliar situations (which is the inherent nature of almost all consulting and system design projects) over his thirty-plus year professional career, and fifty-six years of mostly unwitting victimization in this secret illegal program, see ROA.1758-1869, Lead Plaintiff Resume, Independent Psychological Tests LPEE pages 140-236. **P10D.** The 1324 page complaint is concisely organized to present a simple and plain analysis of the extremely complex long-running illegal program.

	P10E. It comprehensively and efficiently presents a highly complex set of facts, which these defendants have carefully planned, organized, secretly dictated, and forcibly imposed on these plaintiffs over six decades of fraudulent concealment, presented as follows (ROA.23-40): **1.** Synopsis of the case - 88 pages provide an overview of the facts and basic legal claims of fraudulently concealed illegal acts over six decades of secret abuses of rights, property, and statutes. **2.** Points of Law - 72 pages document the legal basis for the claims, invalid assertions of state secret privilege, out of scope and bad faith abuses of immunity, an unconstitutional statutory provision at 18 U.S.C. § 2340B, the applicability of *Bivens v. Six Unknown Fed. Narcotics Agents,* 403 U.S. 388 (1971) to the case, and fifty-one relevant Supreme Court mandates. **3.** Fact Narrative and Interline Exhibits – 157 pages of narrative history of the facts provides context for the 110 specific instances of acts, injuries, and violations described immediately below. **4.** Facts 514 pages incorporate 110 specific sequences, ranging from moments to years, of governmental and other defendants' violations of myriad federal and state statutes. **4a.** These facts are backed by approximately 12,500 pages of carefully curated documentation, intended to be electronically entered for cost and judicial efficiency (ROA.1470 ECF # 5) refused entry by the district court at ROA.1522 ECF #8. This evidence, required under F. R. Civ. P. Rule 9(b) particularity in pleading frauds when the exact identities of the defendants operating undercover are unknowable to these plaintiffs for reasons discussed at ROA.120-142, paragraphs 93-119, ranges from bank statements to appointment calendars to emails; other expert documentation which relates scientific and technical knowledge required for the most basic understanding of the technologies; and documentation of the illegal methods used by these defendants in their illegal operations, as also documented by Congressional investigations and a Presidential Commission (representative evidentiary samples at ROA.1611-2178). **5.** Claims - 359 pages relate these plaintiffs' injuries specifically and directly to 54 claims of acts, violations, and injuries under federal and state statutes by these defendants. **6.** Remedies - 30 pages document the remedies requested and the requisite statutory authority of the district court to grant those requested forms of injunctive and monetary relief. **P10E.** "Staggering" complexity is not unfamiliar to federal courts – asbestos poisoning and cancers, radiation poisoning, water rights, treaty rights, and other complex matters are proper subjects of federal jurisdiction as defined by Congress. Fifty-six years of a secret fraudulently concealed illegal program echoing Nazi treatment of religious, ethnic, and political prisoners is the staggering issue for any nation calling itself a democracy, not these

	1324 pages of facts and interline exhibits which include direct evidence and specific allegations which can immediately be tested for veracity in the typical motions calendar, through discovery, and by deposition of very high veracity witnesses, such as former Chief of Staff Dolan to former Washington Governor Gregoire. Dolan was directly involved in the program, whether unwittingly or otherwise, and has known the appellant since 1974. **P10F.** There is no absence of facts, no absence of fact witnesses, no absence of applicable law to fashion remedies. **P10G.** Other than public and international embarrassment to these defendants for their illegal and unconstitutional acts, there is no reason to fear these facts. **P10H.** It is a transparent absence of will - which this court must insist the district court overcome as the finder and trier of fact and law – to "establish justice" for these plaintiffs, and to overcome the continued abuse of state secret privilege and police power exemptions, abused in bad faith acts by corrupted governmental institutions.
C11, Second, Plaintiff makes incredible accusations of an "ultrasecret government 'mind control' program [that] ran from 1953 until its public disclosure in 1973" promulgated by an "ultrasecret and illegal bioweapon and bioweapon delivery system." ECF No. 3 at 40.	**P11A.** In its clear error of fact (as directly quoted here in the left column), the district court miscomprehended a single basic concept in the 1324 page Complaint (ROA.44, paragraph 2), confused and conflated two distinct programs - and then pounded the table with the term "frivolous" repeatedly in its order. Quoting from the actual text of paragraph 2 (Interline Exhibit 3 referenced herein is at ROA.276): "This illegal BRMT bioweapon and bioweapon delivery system is the successor in fact to the fatally flawed and failed illegal defendant CIA MKUltra LSD secret drugging program run by Dr. Sidney Gottlieb in which defendant ARMY also closely collaborated (Interline Exhibit 3). That ultrasecret government "mind control" program ran from 1953 until its public disclosure in 1973, when it was disclosed as the American people were still reeling from the 1971 disclosure of another out of control illegal federal government program, defendant FBI's Cointelpro…." It is the district court itself which has made the "incredible accusations" - of this appellant. In its profoundly fundamental error, the district court confused and conflated a Congressionally investigated program, CIA's MKUltra LSD 100 million dose secret drugging program (ROA.276, 274 Interline Exhibit 3 and paragraph 357), with this still secret illegal BRMT bioweapon and bioweapon delivery system program. The illegal BRMT bioweapon program herein did operate side-by-side with the now terminated MKUltra program. The BRMT illegal bioweapon program has and does "secretly" continue, and still conducts illegal human experiments, continues to produce illegal toxins 18 U.S.C. § 1768(2) and their adverse effects in US persons, operates an offensive weapon against US persons and others, and violates

	our laws 18 U.S.C. §§ 175, 1961-1968, and others, our Constitution and individual rights, our ratified 1972 Bioweapon Treaty, and other statutes (ROA.193, paragraph 251). Identified by the appellant as BRMT, since its codename is unknown to the public, this BRMT bioweapon program has been and is operated by the federal defendants named herein, primarily CIA and Army, through a series of increasingly complex generations of development into the present time (ROA.44-54, 972-983, paragraphs 2-10, 801). **P11B.** MKUltra was discontinued in 1973. The BRMT bioweapon and bioweapon delivery system program continues to be operated illegally by UNITED STATES in Army, CIA, enabled by DOJ racketeering and by other government departments and agencies. MKUltra and BRMT are two separate and distinct programs. Even this most basic fact was confused from the beginning of no more than eight working hours of review (Clerk's docket, ROA.5-1328 ECF #3) of a 1324 page Complaint document which requires 768 hours calculated at paragraph 8 at extremely high proficiency to simply read, whereupon all 54 exhaustively documented claims were dismissed with no explanation as to the rationale for the dismissal of any claim - simply a single word for 1324 pages of law and facts – "frivolous." The district court acted arbitrarily and abused its privilege of discretion to trample the rights of the appellant in its Order (ROA.1522 ECF #8). The Order fails any reasonably rational test of fair factual and legal analysis required in the exercise of professionally applied discretion and fails the mandates in *Nietzke,* P3 above, and *Denton,* P4 above. **P11C.** Mind control is an on-the-record objective of CIA, publicly described at ROA.276, 274 Interline Exhibit 3 and paragraph 357. This objective has never been renounced, even after MKUltra was terminated in 1973. ROA.276 Interline Exhibit 3 affirms this as fact, as did the Senate Committee known as the Church Committee in 1975, documented at ROA.262 paragraph 337, and at LPEE pages 6885-7288, the 1975 Senate Church Committee report on CIA and FBI compared at ROA.1872-2003. **P11D.** Long running illegal government programs are a matter of well documented fact and public record in the United States. Such illegal programs have been and are operated by the UNITED STATES and its political subdivisions. **P11E.** Prima facie, this fact pattern of illegal government programs is neither irrational nor incredible, to wit: 1. FBI's Cointelpro ran from 1956 to 1971 under DOJ's supervision, included illegal acts signed off by the Attorney General, and impacted millions of Americans civil and constitutional rights, as investigated by Congress. It was discovered by a citizen activist group's burglary of an FBI Field Office, having been run illegally by an Assistant Director of the FBI while he sat across the hall from Director Hoover. Cointelpro

consumed about 30% of the agency's workforce and budget for over 15 years (ROA.1522 ECF #8) LPEE pages 6885-7288 compared at ROA.1872-2003.

2. CIA's MKUltra secretly dosed American citizens and soldiers with 100 million doses of the hallucinogenic drug LSD from 1953 to 1973, as found by Congress and a Presidential Commission. LSD is well known for removing all social inhibitions from the drugged victim. LSD causes and creates both medical emergencies and extreme irrational behavior, to and including documented murderous acts by its victims (ROA.1522 ECF #8) LPEE pages 6885-7466 compared at ROA.1872-2003.
3. An Army researcher, Frank Olsen, was killed in 1953 by CIA as MKUltra was just getting underway after he objected to the illegal and unethical conduct then being proposed (and later used) in this secret program. His family received an apology for CIA's conduct from President Ford and CIA Director Colby in 1975. No person was ever held accountable by DOJ for this criminal conspiracy and act of murder, ROA.53 paragraph 9.
4. The illegal bioweapon program in this Complaint was already well underway in 1968. Appellant, then 12 years old, was secretly human trafficked, by a former Army buddy of appellant's father, for a test of a crude, primitive oxytocin hormone manipulation in an early version of the illegal bioweapon on a child, ROA.45, 304, paragraphs 3, 417.

P11F. Extreme secrecy is not unusual in legal large scale secret programs. Fat Man and Little Boy, the atomic bombs used in Japan in 1945, were unknown to nearly all workers on the project, and to most in the military and the Executive Office of the President, including VP Harry Truman. Truman learned of this secret program only after President Roosevelt's death in office.

P11G. Extreme secrecy has always been required for this illegal bioweapon program throughout its many iterations and development cycles. It has been and is internationally prohibited by a Senate ratified 1975 Bioweapon Treaty and under federal law 18 U.S.C. § 175, so program secrecy would be, if anything, greater than that for a legal secret program.

P11H. Secrecy is also an abused tool of privilege which the UNITED STATES has abused time and again to conceal illegal programs. Technological progress has been made with this illegal bioweapon over the decades since the end of World War II, when CIA was spun out of the Pentagon in 1947, and Nazi doctors were secretly brought to the US to leverage their Dachau illegal human subject research for CIA and Army. Imagine the outrage of American soldiers, veterans, and the general public upon discovering their government has secretly designated and selected, by those unwitting families' chosen religious beliefs, elementary school age children as the subjects of illegal biomedical experiments even unto death (ROA.986-995, 998-1035, paragraphs 803, 805) – and that those illegal

	human biomedical experiments were and are modeled on those medical atrocities against children in the Dachau Concentration Camps of World War II and prosecuted at Nuremberg in 1946-47. **P11I.** Imagine the public outrage on learning that a federal court's willful refusal to act results in their own children becoming the next generation of victims of this illegal bioweapon, just like this appellant has since age 12, now 68. **P11J.** Then you can understand why the federal government has elected to conceal this program from all scrutiny with the utmost secrecy, and still does engage in official silence at DOJ and elsewhere, even now in the UNITED STATES' self-imposed "emperor who has no clothes" phase, where the illegal bioweapon and its delivery system have become publicly known around the world. **P11K.** It is this pattern of absurd and illegal conduct which must be accounted for by these governmental, institutional, and individual defendants. Nuremberg, P11H above, became the site where UNITED STATES DOJ, military, and allied prosecutors conducted the 1946-47 Nuremberg trials after World War II. The Doctors Trial concerned similar matters – illegal biomedical experiments on involuntary human subjects, and illegal seizures and destruction of human lives, relationships, and property by official, illegal, and unconstitutional acts of government, ROA.314, 1029, paragraphs 429, 805BL. **P11L.** China lacks the laws permitting pursuit of such matters of religious rights discrimination by its citizens (paragraphs 9-11 pages 15-16 herein). In a country which alleges it stands for equal protection under our Constitution, it is the names of these defendants, and the fact set they have created with their own hands and with taxpayer resources, and which inculpates specific past and current members of USDOJ, some in the federal judiciary, and other public officials, past and present, for their direct illegal conduct against US persons, not any imagined frivolous nature, which has precluded this case from the judicial process to date**.** As of today, the United States lacks a federal court which is willing to lawfully and factually consider these same matters when legally placed before them in accordance with acts of Congress. **P11M.** The district court's "frivolous" rationale is itself clearly specious. Federal district courts were created by Congress to be finders of fact, and to consider matters involving the constitutional rights of citizens under Title 28, 42 U.S.C. § 2000bb-1, and the other statutes cited in the complaint (ROA.193, paragraph 251), not to act as purveyors of specious unqualified opinions, nor as protectors of illegal and invalid abuses of government privilege over the rights of deliberately impoverished plaintiffs under 28 U.S.C. § 1915 and our Constitution.

	P11N. These same acts, violations, and injuries, when perpetrated by other defendants, and against other non-impoverished plaintiffs, are handled routinely by these same courts. These governmental defendants, most particularly DOJ and its agencies, are the institutions in which many district court judges began their public employment, and thus may potentially be directly conflicted. Willful blindness to facts and law, and inherent personal or political conflicts of interest, are not matters of professional discretion permitted to any district court judge under 28 U.S.C. §§ 144, 1915, the Canon of Conduct, nor under any statutory authority constitutionally granted to these district or appellate courts by Congress. This appellate court must hold this district court to that same standard of dispassionate, objective professional conduct, regardless of the names and institutional identities of these defendants. **P11O.** If recusal and reassignment are required, this Court must intervene so that the integrity of our justice system and of unalienable rights in our Constitutional system are preserved.
C12. Neither the Court nor Defendants can reasonably be expected to identify Plaintiff's claims, and Defendants cannot be expected to prepare an answer or dispositive motion for such wide-ranging allegations.	**P12A.** Fifty-four specific claims are made in the Complaint's Claims section (ROA.940-1280, paragraphs 785-854), which each cite the specifically relevant 110 sets of facts (ROA.426-899, paragraphs 593-710), and incorporate approximately 12,500 pages of evidence, much of which is specifically required by F. R. Civ. P. Rule 9(b) in pleading frauds, wherein the specific defendant, operating in secrecy and undercover, cannot be readily identified by these plaintiffs, and therefore must have direct access to this curated evidence to self-identify to compose legally responsive answers and cross-claims. **P12B.** All 54 claims (ROA.940-1280, paragraphs 785-854), specifically identify culpable defendants to the maximum extent possible given the secrecy of the program. The primary perpetrators, CIA, Army, FBI, DOJ, include a specifically named US Attorney (defendant Rosenberg, later FBI Chief of Staff) who acted well outside the legal scope of authority granted at 28 U.S.C. § 547, and various specifically identified police powers agencies acting in bad faith well outside their legal scope of authority. all in an associated-in-fact enterprise pattern of racketeering acts (18 U.S.C. §§ 1961-1968) and rights violations. **P12C.** Complex litigation is in no way beyond the reach of the defendants' capabilities or resources – nor does the law abide such an excuse in any event. These defendants may wish to avoid specific answers to these very specific claims - but there is no legal basis for them to evade answering the Complaint. **P12D.** Unlike the impoverished appellant who is acting pro se as a result of defendants' injuries to him and others in his families of origin and marriage, these defendants are well equipped, well resourced, have documented knowledge and expertise in law, and direct access to the material facts

	needed to answer these claims directly, forthrightly, and timely. The district court cannot constitutionally abet evasion of these defendants' obligations under law. It has erred and deprived appellant and others of their constitutional rights.
C13. See, e.g., Brewer v. Wray, No. 1:22-cv-00996, 2022 WL 1597610 (D.D.C. May 16, 2022), aff'd, No. 22-5158, 2022 WL 4349776 (D.C. Cir. Sept. 20, 2022); see also Brewer v. Wray, No. 23-00415, 2023 WL 3608179 (D.D.C. Feb. 28, 2023), aff'd, No. 23-5062, 2023 WL 3596439 (D.C. Cir. May 23, 2023).	**P13A.** Material changes were made to citations of law, factual content, and to the number, nature and content of claims, between the 2022 D.D.C. complaints and this 2024 Northern District of Texas (NDTX) .complaint – all ignored by the district court in its one day from docket to dismissal process. The D.D.C. 22-cv-996 and 23-cv-415 complaints were both subsequently comprehensively rewritten. D.D.C. 22-cv-996 was 104 pages. D.D.C. 23-cv-415 was highly repetitive, with 1534 pages, and 43 claims. That district court also specifically suppressed, and failed to consider, essential evidence from the record, by its order at 23-mc-0014. **P13B.** This NDTX 2:24-cv-123-Z complaint is highly materially different in fact and legal analysis after thousands of hours of diligent forensic analysis and legal research, is far more tightly written with minimal repetition, argued in 1324 pages, and incorporates 54 claims. Detail in each claim was expanded by (a) thousands of hours of additional forensic analysis and legal research, and (b) the emergence of additional evidence including, without limitation, critical breakthroughs in the identifications of specific individual defendants, which specifically link those particular individual defendants to specific institutional defendants. These institutions were previously suspected but unknown due to fraudulent concealment, ROA.243 paragraph 320. These identification breakthroughs began in September 2023 through May 2024, and have continued into August 2024, requiring yet further revision to the complaint upon remand.
C14. For these reasons, and for those addressed in similar actions filed (and dismissed) in the D.C. Circuit, it is ORDERED that the Complaint is DISMISSED WITHOUT PREJUDICE**.**…..*same case listing as C13 above deleted here for brevity……* It is further ORDERED that Plaintiff's Motion for Leave to Proceed In Forma Pauperis (ECF No. 4) is GRANTED, while the	**P14A.** For the reasons cited above, the D.D.C. cases cited in this district court's order are very dissimilar from the NDTX case 2:24-cv-123-Z at issue here as those prior D.D.C. dismissals did not incorporate the more fully developed fact set and range of statutory violations, so are materially different in myriad respects. **P14B.** In view of the profound errors made by this district court as cited herein, this court is requested to reverse the entered Order and Judgement, and remand this matter to the district court, or reassign in the event of a conflict of interest not known to appellant, for proper consideration of the entire matter. **P14C.** In light of on-going hacking by defendants most likely associated with CIA and Army, a secure method for electronic entry (as requested at ROA.1470 ECF # 5) of the evidence required under F. R. Civ. P. Rule 9(b), both for judicial efficiency and to minimize costs to the purposefully impoverished appellant must be provided by the district court to maintain the integrity of evidence in this proceeding.

remaining Motions are DENIED. SO ORDERED. June 6, 2024	

14. Federal district courts are required to liberally construe pro se pleadings, *Boag v. MacDougall*, 454 U.S. 364, 365 (1982) (per curiam); *Haines v. Kerner*, 404 U.S. 519, 520 (1972) and must give good faith weight to each and every allegation and argument presented in order to arrive at a threshold *sua sponte* dismissal order. The factual basis of the Complaint includes, without limitation, (a) 54 specific statutory claims (ROA.940-1280, paragraphs 785-854) backed by 110 in-line examples of specific patterns of conduct, ROA.426-899 paragraphs 593-710, of which forty-nine (49) are backed by explicit direct evidence currently suppressed from the district court record, and some of those same forty-nine (49) and each of the other five (5) claims are inferred through strong circumstantial evidence which can be developed through discovery, (b) multiple antilog medical devices based upon the same principles of science and technology used in the illegal bioweapon currently in successful FDA human trials by Synchron and NeuraLink (ROA.51, 52, 283, paragraphs 6 Illustration 4, paragraphs 373, 374), (c) contemporaneous illegal practices by the UNITED STATES, documented by Congress. which have and do occur in the same departments and agencies which have abused these plaintiffs using those documented illegal methods (ROA.274-279, 297-299, paragraphs 357-364, 403-407), and (d) 12,500 pages of independent documentary and expert level analytical evidence not allowed to the record for consideration, examples shown at ROA.2006-2178. The legal bases of the Complaint are (e) 54 claims under federal and state statutes which each and all offer civil rights of action, and injunctive and monetary remedies (ROA.1299-1307, paragraphs 893-901), (f) serious legal arguments regarding abuse of state secrets and police powers by government organizations known for such practices (ROA.193-268, paragraphs 250-346), and (g) direct evidence of named major federal and local police powers agencies directly engaged in an attempted

coverup (ROA.403-424, paragraphs 555-572). Each of these dispositive fact patterns and related legal arguments are most certainly worthy of weight in any rational determination of frivolousness when liberally construed as required by the *Neitzke*, *Denton, Boag,* and *Haines* mandates. The district court failed to even allow itself the time necessary to read and comprehend the complaint.

15. A *sua sponte* dismissal order adjudged and entered (i) one day after a Complaint is docketed (Clerk's certified docket), which Complaint (ii) requires a highly proficient reader over 768 hours to read (calculated at paragraph 8 herein), and which (iii) is based upon an immediate reprise of dissimilar actions filed elsewhere prior to (iv) thousands of hours of (iv-a) extensive additional forensic research, (iv-b) specific identifications of persons noted in the Complaint (ROA.122, 395, paragraphs 99, 541) which explicitly tie certain persons to specific government police powers operations, (iv-c) and to those persons own direct conflicts of personal interest with the interests of justice, (iv-d) further factual and legal analysis, and (iv-e) eleven statutory claims added to the 43 previously entered in another district after thousands of hours of additional intensive forensic analysis (which did and does continue), does not and cannot meet any rational standard nor any reasonable interpretation of the principle of liberal construction required of district courts when considering in forma pauperis pro se complaints in accordance with the *Neitzke*, *Denton, Boag,* and *Haines* mandates. It is the district court's Order itself which must be regarded as the frivolous action – an abuse of discretion by the district court. This Court must remand to the district court to meet its own statutory obligation to fairly and impartially adjudge the cases before it under 28 U.S.C. § 43(b).

16. Federal district courts have a regrettable and persistent history of turning a blind eye to the complaints of US persons abused by institutions. Institutional corruption brought before federal courts has been de facto ignored through myriad forms of "discretionary," read properly as arbitrary, dismissals in such cases of profoundly harmful institutional conduct. Direct modern examples of this persistent pattern of

abuse of discretion by federal district courts, and of the parallel practice by DOJ, including willful blindness to institutional corruption and criminality, include the extreme injuries to generations of children by pedophilia widely practiced in the Catholic Church hierarchy for decades; to criminal conduct against civilians by the CIA and Army in their secret illegal drugging of Americans with 100 million doses of LSD over 20 years in MKUltra, paragraph P11 herein; and in the DOJ/FBI conduct of its secret Cointelpro war on the civil and constitutional rights of millions of Americans which damaged and destroyed civic, cultural, and religious organizations through disruption, mayhem, character assassination, direct violence, and the funding of violent White supremacist militia, paragraph P11 herein. .

17. It is also a fact of history, and of the present era, that most individual judges have and do hail from the very department, DOJ, which has and does ignore the prior entreaties and complaints of Americans, including the appellant, ROA.84-92, 398-425 paragraphs 34-37, 550-584, against powerful institutions who wrongfully and deliberately assert state secret privilege and police powers exemptions as abuse those privileges and exemptions to trample on citizens' unalienable rights. This is another in that series of cases. It is the federal court system, and its ability to act fairly and impartially on factual evidence, on valid statutes, and on legal precedents established by our higher courts, which is on trial in this appeal.

18. The appellant's own great-great grandfather fought for four years in the Civil War to defeat slavery and involuntary servitude and reunify our nation. He was awarded Army's Medal of Honor (that same Army which is a defendant herein in its involuntary servitude of his descendants) after his bold action at the Appomattox Courthouse in April 1865, one of 3,536 military personnel to be so honored in our nation's history. The appellant's father faithfully served that same Army during the Korean War era as a conscientious objector and medic. He was targeted by this illegal CIA and Army program for biomedical abuse and illegal human experiments over many years after his military service, as was and is his son, now the appellant. From age 12, the appellant, together with other family members, church members, and

others in this class of plaintiffs were secretly maneuvered for a time into two false government run churches, and have been subjected as unwitting involuntary human subjects to illegal medical experiments which directly echo the Nazi Dachau Concentration Camp experiments. (ROA.41-92, paragraphs 1-37) on religious, political, and ethnic prisoners, many of whom were arbitrarily rounded up and held without due process.

19. The UNITED STATES, through CIA, Army, DOJ, and other police powers, has illegally developed and tested the prohibited bioweapon and bioweapon delivery systems on unwitting American children and adults, violating 18 U.S.C. § 175. Conducted secretly at vast expense by UNITED STATES, including, without limitation, CIA, ARMY, and DOJ, this illegal BRMT bioweapon program has and does use the tools of racketeering (18 U.S.C. §§ 1961-1968) to sustain secret involuntary servitude in violation of the *Thirteenth* amendment, which serves as UNITED STATES' substitute for more transparently obvious illegal Dachau style physical incarceration, as it abuses the minds and bodies of these illegally selected unwitting human subjects it has arbitrarily chosen based upon their religion, violating 42 U.S.C. § 2000bb-1, to conduct its illegal, abusive and, at times, torturous and deadly, biomedical experiments. The appellant and other plaintiffs themselves have been, and are still, deprived of rights, property, and illegally constrained by this secretly managed associated-in-fact enterprise and its pattern of racketeering acts, 18 U.S.C. §§ 1961-1968, (ROA.640-863, paragraphs 639-710). For some, such as the appellant, an unrelenting accompanying stream of very public lies and orchestrated outrageous behaviors has been directed at them by UNITED STATES and its co-conspirators (ROA.426-899, 1232-1237, 1280-1296, paragraphs 593-710, 844, 853). Other members of this class, originating in this common Quaker religious heritage of generations of appellant's own family of origin, have suffered from this same painful, secret, and corrupt federal conduct of UNITED STATES and its co-conspirators (ROA.41-92, 929-939, 986-995, 998-1035, paragraphs 1-37, 766-781, 803, 805). Discovery will expand this class of plaintiffs well beyond this original core group of unwitting

human subjects, just as the appellant's forensic analysis has already accomplished for both plaintiffs and defendants herein (ROA.86, 160, 187, 396, paragraphs 36, 149, 226, 541). Clear documentary evidence, referenced at the 110 subcounts (ROA.426-899, paragraphs 593-710, which comprises the F. R. Civ. P. Rule 9(b) substance of nearly every one of the 54 claims (ROA.940-1298, paragraphs 785-854 was suppressed from the district court record by the order and judgement (ROA.1522, 1524 ECF #8, 9).

20. Methodically developed forensic identifications demonstrating the scope, extent, and duration of the federal executive branch cover-up and its direct conflicts of interest with the interests of justice are summarized at ROA.84-92, 120-126, 197-254, 920-929, paragraphs 34-37, 93-100, 255-321, 760-762. The basic principle behind this systematically fraudulently concealed violation of rights and law is simple. Federal officials present when J. Edgar Hoover de facto ran the Department of Justice (if there was no investigation ordered or consented to by Hoover, there was no prosecution by DOJ) into the early 1970s when the appellant's family was initially being trafficked and abused at his age 5 in 1961 and thereafter, carefully selected police powers and justice personnel who they then promoted and recommended for court nomination and confirmation, based upon the earlier inculpation of those same individuals in this secret illegal bioweapon program. For example, that is how defendant Mueller (ROA.88, paragraph 36) was maneuvered through DOJ and into the FBI Director position in 2001, having started in the false church in Kent, WA attended by the appellant from 1970-1972, after a medically prescribed overdose of codeine and aspirin was used to induce Reye Syndrome and death of one of two younger twin sisters of the appellant in April 1970 (ROA.41-43, 299-309, 986-989, 998-1016, paragraphs 1-2, 409-421, 803A-H. 805A-AM). Mueller was forensically identified in August 2024 by morphology and association with his then cover name Leland Herschberger, as forensic work to uncover identifications and make network connections among co-conspirators has continued during this appellate process,. The governmental incentive was, and still is, to fraudulently conceal and cover up their own involvement by inculpating their successors in these illegal

programs to perpetuate the continuing cover-up by removing, or at least massively reducing, the risk of future prosecutions in the event of discovery of the criminal conduct in this illegal bioweapon program, which has been fraudulently concealed by abuse of the state secret privilege for over six decades. The corrupt program and this pattern continue today, and simply put, comprise an associated-in-fact enterprise under 18 U.S.C. §§ 1961-1968..

21. These historical and contemporary patterns of predatory government police powers, intelligence, and military abuses of American citizens including, without limitation, the involuntary secret abuse of Americans as human guinea pigs in illegal bioweapon development; programmed destruction and illegal taking of life, rights, property by illegal government targeting, spying, and predation, by abuse of privilege must end. The unalienable rights of this appellant and these plaintiffs must be restored. The US Department of Justice has and does refuse to act, maintaining official silence to all entreaties and complaints (ROA.394-425, paragraphs 541-584, Interline Exhibit 15E). DOJ's current Attorney General and past leadership (paragraph 20 above) are hopelessly directly entangled in this illegal program and its criminal conduct, and have direct personal conflicts of interest with the interests of impartial justice.

22. The "inferior" federal courts created by Congress are obliged by statute and by their Canon of Conduct to recuse if their interests are in any way entangled with those of any party to a dispute before them, and to act as the constitutionally provided place of last resort they are intended to be, not as co-dependent enablers of the Article II department they hail from, nor as the last refuge of government scoundrels and co-conspirators. A primary function of Article III is to protect the American People from predatory acts of their government – that was among the conditions imposed in the Constitution by the Founders at the 1787 Constitutional Convention – and reinforced by the first ten amendments, the Bill of Rights, which the Constitution's principal author James Madison wrote at the insistence of the anti-federalists so they would agree to support ratification of our Constitution. This court must play its

Congressionally mandated role in that constitutional system, and protect the blessings of liberty, over the corrupted interests of those who prefer fraudulent concealment of another in a series of corrupt government programs.

23. Put another way – "For what is a man profited, if he shall gain the whole world, and lose his own soul?...." from Matthew 16:26. Religious liberty as constitutionally defined OR perpetuated empowerment of corrupted government institutions – that is the stark constitutional choice before you.

Requested Relief

24. This court is requested **(A)** to reverse the Order and Judgement (ROA.1522, 1524 ECF #8, 9) and remand to the district court, this matter for proper adjudication, or to reassign to another district court which is not conflicted in the event of a conflict of interest not currently known to appellant, as prescribed in Title 28 U.S.C. Part V, including discovery, motions, and trial by jury. This court is **(B)** further requested to order the district court to facilitate electronic entry of all evidence required under F. R. Civ. P. Rule 9(b) to the record by securely delivered portable electronic drive (flash drive) or compact disc (CD) to (i) avoid technical hacking by certain defendants previously discovered and documented, to (ii) provide security of evidence from defendant tampering, for (iii) judicial efficiency, and (iv) to minimize the costs of printing, postage, and handling to the purposefully impoverished Appellant acting pro se, so (v) these well-resourced defendants can secure their rights in making the required dispositive answers to the Complaint upon its amendment for the additional forensic discoveries made in the interim and (vi) may also enter any cross-claims against other defendants, particularly defendant UNITED STATES.

Dated: September 10, 2024

Respectfully submitted,

Dennis Sheldon Brewer

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Certificate of Compliance

By the signature below, this brief is certified to contain 12,889 words, as certified under Rule 28.1(e)(2), effective September 10, 2024.

Dennis Sheldon Brewer, pro se attorney, counsel of record

UNITED STATES APPEALS COURT
FOR THE FIFTH CIRCUIT

Case No. 24-10614

Dennis Sheldon Brewer,
Plaintiff - Appellant

v.

William Burns, Director, Central Intelligence Agency,
Defendant – Appellee

APPELLANT'S PETITION FOR EN BANC RECONSIDERATION OF ERRONEOUS APPELLATE COURT PANEL ORDER

Certificate of Interested Persons

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal. The known interested persons are the governmental, corporate, and individual defendants named herein, and an unknown number of members of the class of plaintiffs. The scope and magnitude of the class of plaintiffs is not yet identifiable due to governmental abuse of the state secret privilege and police powers exemptions which have precluded prospective plaintiffs from identifying themselves as a result of the continuing suppressive efforts of these self-interested defendants.

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_____

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John Does (unknown number)

Members of federal appeals and district courts who have specific knowledge of U.S. Department of Justice, Department of Defense, Central Intelligence Agency, and/or other federal police powers, military, and intelligence departments and agencies, direct participation in the illegal bioweapon and bioweapon delivery system program from 1961 forward to the present, and/or of associated and related police powers operations of subordinate jurisdictions to the United States have, or may have, direct conflicts of interest in this matter. Hereby certified by counsel of record's signature below.

Dated: December 5, 2024.

Signature: 

Dennis Sheldon Brewer, Pro Se Attorney, Counsel of Record
1210 City Place
Edgewater, NJ 07020

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STATEMENT OF ISSUES

A. The Circuit panel issued a per curiam Opinion finding no reversible errors of law, without citing any reason under Rule 47.6, which Rule citation is itself a prima facie violation of *Neitzke v. Williams,* 490 U.S. 319 (1989) which requires an *in forma pauperis pro se* complaint cannot be dismissed *sua sponte* for even the most fatal deficiencies found in paid pleadings (*ibid* at 329-331), and *Denton v. Hernandez*, 504 U.S. 25 (1992) which mandates, along with its other mandates at paragraphs 2-3 herein, that novel claims must be developed through the adversarial process at least to summary judgement so an appellate court can conduct "an intelligent appellate review" (*ibid* at 31-35). These particular case law mandates are directly applicable as this appeal is brought *in forma pauperis* under 28 U.S.C. § 1915, which pauper status has been caused and created by the injuries to the appellant by these defendants. The panel erred in both its opinion regarding the district court's *sua sponte* dismissal in violation of those mandates, and in its use of

Rule 47.6 in consideration of an *in forma pauperis pro se* pleading, as such a failure when conducting an "intelligent appellate review" is disallowed under the above referenced mandates.

B. Further, the panel's finding of no reversible errors of law by the district court in its *sua sponte* one day from docketing to dismissal order and judgement of the underlying complaint USDC 2:24-CV-123 is itself also a reversible error of law under *Boag v. MacDougall*, 454 U. S. 364 (1982) and *Haines v. Kerner,* 404 U.S. 519 (1972) as argued herein. The underlying complaint is (i) comprised of 1,324 pages, 384,315 words requiring more than 760 hours to read at a very high proficiency reading speed; (ii) incorporates 54 specific claims which are remediable under 28 U.S.C. §§ 1915, 2679(b)(2), 18 U.S.C. § 1964, *Fourth Amendment* violations which give rise to *Bivens* claims under *Bivens v Six Unknown Federal Agents,* 403 U.S. 388 (1971), and under other federal and state statutes as specifically cited therein, (iii) made under state statutes of multiple states where injuries occurred in the course of this fraudulently concealed illegal bioweapon and racketeering program, as well as under federal statutes including, without limitation, 5 U.S.C. § 301, 18 U.S.C. §§ 1961-1968 and offenses related thereto, 42 U.S.C. §§ 2000bb through 2000bb-4, (iv) all of which have been violated by defendants. The underlying complaint incorporates (a) claims under eight constitutional amendments, (b) 51 Supreme Court caselaw mandates, and (c) points of law arguments of state secret privilege, absolute and qualified immunity, *Bivens* claims, and specific conflicts of law with constitutional rights; (d) 110 substantive specific examples of justiciable conduct which relate to the 54 specific claims, (e) contains 19 inline exhibits, each of which specifically evidences particular injurious acts and the fraudulent concealment thereof by the defendants..

C. Both the district court and the Circuit panel made fatal errors of law in the most basic principle of constitutional jurisprudence – that fair consideration of facts and law requires the

district court to at least read the facts and law alleged in the complaint to render a valid judgment and opinion on each specific claim alleged in the complaint. There is no law nor any case law in any US federal jurisdiction that even asserts that the district court's failure to even merely read the contents of a complaint is sufficient to make any *sua sponte* decision – this most basic failure is a clear error of law under Supreme Court mandates and the intent of Congress. This practice is an unconstitutional abridgement of the most basic right of due process and an egregious error of law under *Boag* and *Haines,* as well as under *Neitzke* and *Denton* as argued at paragraph A above. this case is the result of decades of fraudulently concealed injuries all by these defendants who have deliberately sustained and fraudulently concealed on-going violations of the *Thirteenth Amendment* prohibition against involuntary servitude. The errors made by the district court and the Circuit panel are clear and undisputable errors of law.

STATEMENT OF THE COURSE PROCEEDINGS

D. Northern District of Texas 2:24-CV-123: Docketed on June 5, 2024. Dismissed sua sponte on June 6, 2024 with a two page order and one page judgement. Notice of Appeal docketed June 2, 2024, docketed by the Fifth Circuit Court of Appeals on July 12, 2024 as 24-10614.

E. Fifth Circuit Appeal 24-10614: Sufficient appellant brief mailed and dated September 10, 2024, accepted by Clerk and docketed. Per curiam Opinion dated November 11, 2024, correspondence was received November 20, 2024 by appellant but no copy of the per curiam Opinion was sent by Clerk's office to appellant. Telephone call by appellant to Clerk's office on November 20, 2024 resulted in reading of per curiam Opinion which found no reversible error and cited Rule 47.6 giving no reason for so finding. Per curiam Opinion mailed by Clerk on November 21, 2024, received by appellant on November 29, 2024.

F. Fifth Circuit En Banc Rehearing Petition 24-10614: En Banc Rehearing Petition mailed on November 12, 2024 without per curiam Opinion, and noting Clerk's omission of per curiam Opinion from mailing in Petition. Clerk's notice of deficiencies in En Banc Rehearing Petition mailed November 26, 2024, received December 4, 2024. Revised En Banc Rehearing Petition filed here.

STATEMENT OF FACTS

Errors of Law - Four Profoundly Fundamental Errors Violate Supreme Court Mandates

1. The Circuit panel issued a one page per curiam Opinion in 24-10614 which found there was no reversible error made by district court in its *sua sponte* dismissal one day from docket entry of a complex and novel 1,324 page complaint presented by the pro se plaintiff related to systematic federal executive branch violations of religious and other constitutional rights using a novel, illegal bioweapon which mere existence and offensive use without consent against US persons violates 18 U.S.C. §§ 175-178, 1961-1968. The panel made four profoundly fundamental errors of law and cited Rule 47.6. Affirmance Without Opinion, as below:

> *"47.6 Affirmance Without Opinion. The judgment or order may be affirmed or enforced without opinion when the court determines that an opinion would have no precedential value and that any one or more of the following circumstances exists and is dispositive of a matter submitted for decision:*

Rule 47.6 Compliance Standards	Rule 47.6 Compliance Errors By Circuit Panel
(1) that a judgment of the district court is based on findings of fact that are not clearly erroneous;	No findings of fact were made by the district court in its hasty, conflated abuse of judicial discretion 28 U.S.C. § 1915(e)(2)(B)(i).
(2) that the evidence in support of a jury verdict is not insufficient;	Complaint was dismissed *sua sponte* without any reasonable consideration of entirety of 54 claims in the complaint. Federal

	district courts are required to liberally construe pro se pleadings, *Boag v. MacDougall*, 454 U.S. 364, 365 (1982), and *Haines v. Kerner*, 404 U.S. 519, 520 (1972) and must give good faith weight to each and every allegation and argument presented in order to arrive at a threshold *sua sponte* dismissal order. Liberal construction requires the court to, at the very least, read, comprehend, and consider each claim. It did not expend any realistic effort to do so, as described below in this petition.
(3) that the order of an administrative agency is supported by substantial evidence on the record as a whole;	Not applicable.
(4) in the case of a summary judgment, that no genuine issue of material fact has been properly raised by the appellant;	A series of genuine issues of material fact, including conflation of another illegal former government program not at issue with the illegal injurious conduct in the district court's opinion, failure to even read and consider facts at all, and failure to comply with Supreme Court mandated further factual development required for novel claims (*Denton*) and in liberal construction (*Boag, Haines*) – all mandates which were ignored - were raised throughout the brief, as described below in this petition.
and (5) no reversible error of law appears.	Four specific reversible errors of law were raised in paragraph 8 of the appellant brief: **Error of Law 1** The district court misunderstood the basic facts of the case and conflated the issues before it with an unrelated

	program, which violates *Boag v. MacDougall,* 454 U. S. 364 (1982) and *Haines v. Kerner*, 404 U.S. 519, 520 (1972), liberal construction of facts required under law, with mandated additional weight and consideration to be accorded to unpaid *in forma pauperis pro se* litigants. **Error of Law 2** The district court misapplied caselaw mandates in *Neitzke v. Williams,* 490 U.S. 319 (1989) and *Denton v Hernandez*, 504 U.S. 25 (1992),(ROA.262-264, paragraphs 331-333) directly relevant to *in forma pauperis pro se* complaints and claims, in its failures to liberally construe even the most fatal errors (Neitzke at 329-331), and its failure to allow factual development of the novel bioweapon claim as the *Denton* mandate specifically requires at 31-35. **Error of Law 3** The district court, in its order at ROA.1522 ECF #8, suppressed direct evidence from the record which developed this novel bioweapon claim and the overarching racketeering claims (examples at ROA.1614-2181) which conceal the illegal program required under F. R. Civ. P. Rule 9(b) when concealed identities are used by police powers as in *Bivens*, which error further also violates *Boag v. MacDougall,* 454 U. S. 364 (1982), *Haines v. Kerner*, 404 U.S. 519, 520 (1972), and *Denton.* **Error of Law 4** The district court allegedly reviewed the 384,315 word complaint, covering 56 years of fraudulent concealment and

	abuse of state secret privilege in violation of § 301, considered all 54 claims which have civil remedies, and a complex set of related facts and of law, all in less than eight working hours. This complaint is impossible for any human to even read much less fairly consider in its complexity in that time period, as is required for liberal construction of claims under *Boag v. MacDougall,* 454 U. S. 364 (1982) and *Haines v. Kerner*, 404 U.S. 519, 520 (1972).

Errors of Law - *Denton v. Hernandez* 504 U.S. 25 (1992)Mandated Five Specific Circuit Court Tests Required To Affirm *Sua Sponte* Dismissals – These Tests Were Not Met

2. The Circuit panel failed to meet the Supreme Court's tests set out in *Denton v Hernandez* 504 U.S. 25 (1992) for proper appellate review of all district court *sua sponte* dismissals of in forma pauperis pro se complaints filed in any district court. The Supreme Court mandated that Circuit Courts review district court *sua sponte* dismissals of in forma pauperis pro se matters in a very particular manner - with which the Circuit panel materially failed to comply. To wit, citing *Denton*:

> "The federal in forma pauperis statute, codified at 28 U.S.C. 1915, allows an indigent litigant to commence a civil or criminal action in federal court without paying the administrative costs of proceeding with the lawsuit. The statute protects against abuses of this privilege by allowing a district court to dismiss the case "if the allegation of poverty is untrue, or if satisfied that the action is frivolous or malicious." 1915(d).
> In *Neitzke* v. *Williams*, 490 U.S. 319 (1989), we considered the standard to be applied when determining whether the legal basis of an in forma pauperis complaint is frivolous under 1915(d). The issues in this case are the appropriate inquiry for determining when an in forma pauperis litigant's factual allegations justify a 1915(d) dismissal for frivolousness, and the proper standard of appellate review of such a dismissal." (*ibid* at 27)
>
> …

"We therefore reject the notion that a court must accept as "having an arguable basis in fact", *id.* at 325, all allegations that cannot be rebutted by judicially noticeable facts. At the same time, in order to respect the congressional goal of "assur[ing] equality of consideration for all litigants," *Coppedge* v. *United States*, 369 U.S. 438, 447 (1962), this initial assessment of the *in forma pauperis* plaintiff's factual allegations must be weighted in favor of the plaintiff. In other words, the § 1915(d) frivolousness determination, frequently made *sua sponte* before the defendant has even been asked to file an answer, cannot serve as a fact finding process for the resolution of disputed facts.

"As we stated in *Neitzke*, a court may dismiss a claim as factually frivolous only if the facts alleged are "clearly baseless," 490 U. S., at 327, a category encompassing allegations that are "fanciful," *id.*, at 325, "fantastic," *id.*, at 328, and "delusional," *ibid.* As those words suggest, a finding of factual frivolousness is appropriate when the facts alleged rise to the level of the irrational or the wholly incredible, whether or not there are judicially noticeable facts available to contradict them. An *in forma pauperis* complaint may not be dismissed, however, simply because the court finds the plaintiff's allegations unlikely. Some improbable allegations might properly be disposed of on summary judgment, but to dismiss them as frivolous without any factual development is to disregard the age old insight that many allegations might be "strange, but true; for truth is always strange, Stranger than fiction." Lord Byron, Don Juan, canto XIV, stanza 101 (T. Steffan, E. Steffan & W. Pratt eds. 1977). (*ibid* at 32-33)

…

"In reviewing a § 1915(d) dismissal for abuse of discretion, it would be appropriate for the court of appeals to consider, among other things, whether the plaintiff was proceeding *pro se*, see *Haines* v. *Kerner*, 404 U.S. 519, 520-521 (1972); whether the court inappropriately resolved genuine issues of disputed fact, see *supra,* at 6-7; whether the court applied erroneous legal conclusions, *see* Boag*, 454 U. S., at 365, n.*; whether the court has provided a statement explaining the dismissal that facilitates "intelligent appellate review," *ibid.*; and whether the dismissal was with or without prejudice." (*ibid* at 34)

3. The Circuit panel failed to properly consider whether the district court had met the tests mandated by the Supreme Court in *Denton v Hernandez* 504 U.S. 25 (1992), as argued in the appellate brief, quoting here:

P4A. *Denton v. Hernandez*, 504 U.S. 25, 33 (1992) requires a district court to conduct and document its analysis, such that the written analysis is sufficient for "intelligent appellate review."
P4B. These "intelligent appellate review" tests from *Denton*, ibid at 33-34, are as follows:
"Because the frivolousness determination is a discretionary one, we further hold that a § 1915(d) dismissal is properly reviewed for an abuse of that discretion.… " required by § 1915(a), is "entitled to weight"). In reviewing a § 1915(d) dismissal for abuse of discretion, it would be appropriate for the court of appeals to consider, among other things, (i) whether the plaintiff was proceeding pro se, see Haines v. Kerner, 404 U.S. 519, 520-521 (1972); (ii) whether the court inappropriately resolved genuine issues of

disputed fact, see supra, at 6-7; (iii) whether the court applied erroneous legal conclusions, see Boag, 454 U. S., at 365, n.; whether the court has (iv) provided a statement explaining the dismissal that facilitates "intelligent appellate review," ibid.; and whether the (v) dismissal was with or without prejudice." All five tests must be met with an unqualified yes to be successful. The answers for these tests in this appeal are:

(i) Filing pro se – **Yes**.

(ii) Appropriate resolution of factual issues – **No**, the district court neither read the base complaint in less than 8 hours when it requires more than 768 hours for a highly proficient reader, calculated at paragraph 8 herein, nor allowed facts to the record which are necessary for threshold evaluation at P6D herein.

(iii) Proper application of legal conclusions – **No**, it misapplied *Neitzke* and did not consider the primary holding in *Neitzke* (at P3 herein) nor at *Denton* (at this P4A-G).

(iv) Statement for intelligent appellate review- **No**, a conflating and confused district court which truncated the essential factual record has provided a flawed analysis which cannot and does not lead to a well-considered factually or legally sound discretionary decision. The district court erred.

(v) Dismissed without prejudice – **Yes.**

These five tests for intelligent appellate review have not been met by the district court.

P4C. While the district court held that its dismissal is on 28 U.S.C. § 1915(e)(2)(B)(i):

"(e)….(2) Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that—….. (B) the action or appeal (i)is frivolous or malicious;"… it is plain and clear to all that the district court did not comply with *Neitzke* and *Denton* in its dismissal Order.

P4D. A well-considered finding as "frivolous" requires a distinct determination of the complete lack of any factual or legal merit whatsoever as to each and every one of the 54 claims. To reach such a discretionary conclusion in eight hours for a Complaint requiring 768 hours calculated at paragraph 8 simply to read the base document in a complex case is simply not credible on its face. The district court cannot professionally so act under 28 U.S.C. § 132(b) and Canon 3: A Judge Should Perform the Duties of the Office Fairly, Impartially and Diligently. The forensic factual basis of the 54 statutory claims in the Complaint (ROA.943-1301, paragraphs 785-854) includes 110 specific patterns of facts (ROA.429-902, paragraphs 593-710) and 12,500 pages of facts (sampled at ROA.2008-2181), which volume and independent documentary quality completely defeat any rational person making any finding that these claims are frivolous. The district court has profoundly erred.

P4E. Further, material facts needed to fairly evaluate the Complaint under F. R. Civ. P. Rule 9(b) requiring particularity in the pleading of frauds were not allowed to the record in a manner which is financially affordable to the deliberately impoverished in forma pauperis pro se appellant. Such facts and evidence have been requested to be added electronically (ROA.1470, ECF # 5, and see ROA.2008-2181 examples), are carefully organized and paginated, clearly referenced throughout the Complaint and can be filed swiftly and efficiently by secure electronic means. The district court simply dismissed (at ROA.1522 ECF #8) the entire idea of considering these facts, including independent documentary evidence, expert level analytical evidence, and direct evidence written by the hands of these defendants themselves, sampled at ROA.2008-2181.

P4F. *Denton* mandates that novel claims cannot be dismissed without subjecting those novel claims to discovery, *ibid* at 33:

"An in forma pauperis complaint may not be dismissed, however, simply because the court finds the plaintiff's allegations unlikely. Some improbable allegations might properly be disposed of on summary judgment, but to dismiss them as frivolous without any factual development is to disregard the age-old insight that many allegations might be "strange, but true; for truth is always strange, Stranger than fiction." Lord Byron, Don Juan, canto XIV, stanza 101 (T. Steffan, E. Steffan, & w. Pratt eds. 1977)."
P4G. This failure of the district court to fairly evaluate facts through mandated "factual development" is further addressed at P5A immediately below. The district court acted presumptively in haste and in error.

Errors of Law - *Neitzke v. Williams* Mandated A Specific Higher Standard of Care In Review Of All In Forma Pauperis Complaints By Circuit Courts – This Standard Was Not Met

4. *Neitzke v. Williams*, 490 U. S. 319 (1989) mandates a much higher standard of care and review by circuit panels when reviewing district court *sua sponte* dismissals in matters brought by *in forma pauperis* plaintiffs than this Circuit panel observed in its Order. The Supreme Court's primary focus in *Neitzke* was to establish whether a clear specific defect, the failure to state a claim, in *an in forma pauperis pro se* complaint was a fatal to that complaint, and a valid basis for dismissal in the context of an adversarial proceeding, when a defendant's motion to dismiss on that major, and ordinarily fatal defect for paid litigants, is considered by a district court in an *in forma pauperis* context. Under *Neitzke*, even such a material defect as a failure to state a claim is not adequate to dismiss an *in forma pauperis* complaint (*ibid* at 331) in an adversarial proceeding when considering the complaint for summary judgement. In this matter, there was not even an adversarial proceeding underway, nor was a material defect of any kind incorporated in the complaint in question, nor was any such defect cited in the district court's order and judgement. The panel itself made a very fundamental error of law in finding that there was no error of law. The *Neitzke* mandate relating to fatal defects, which also incorporates the *Haines* liberal construction mandate, was violated by the district court and then by the Circuit panel, which did not adhere to the mandate "to assure equality of consideration for all litigants." (ibid at 329.)

5. Quoting from *Neitzke* at 329-331:

> "Our conclusion today is consonant with Congress' overarching goal in enacting the *in forma pauperis* statute: **"to assure equality of consideration for all litigants."** ….
>
> "Given Congress' goal of putting indigent plaintiffs on a similar footing with paying plaintiffs, petitioners' interpretation cannot reasonably be sustained. 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. See *Haines v. Kerner*, 404 U. S. 519, 404 U. S. 520(1972). [Footnote 9].
>
> We therefore hold that a complaint filed *in forma pauperis* is not automatically frivolous within the meaning of § 1915(d) because it fails to state a claim."

6. The Circuit Court panel failed (I) to meet the substantive standards for Circuit review imposed by the tests set out in *Denton v Hernandez* 504 U.S. 25 (1992), and did not allow any development of the novel claim as required, all as clearly described at paragraph 3 above.

7. The Circuit Court panel failed (II) to properly examine whether the district court met the mandates in *Neitzke v. Williams*, 490 U. S. 319 (1989) described at paragraphs 4 and 5 above related to fatal errors in paid complaints which are permissible in in forma pauperis complaints.

Errors of Law – Liberal Construction Standards Mandated By *Boag v. MacDougall,* 454 U. S. 364 (1982) and *Haines v. Kerner*, 404 U. S. 519, 404 U. S. 520 (1972) Were Not Met

8. The Circuit Court panel failed (III) to meet the liberal construction mandates at *Boag v. MacDougall,* 454 U. S. 364 (1982) as described in P4B(iii) at paragraph 3 above.

9. The Circuit Court panel failed (IV) to meet the mandate that added consideration in liberal construction must be accorded to in forma pauperis indigent plaintiffs proceeding pro se, over and above that accorded paid litigants, in *Haines v. Kerner*, 404 U. S. 519, 404 U. S. 520 (1972) as described at paragraph 5 above.

Errors of Law Must Be Reversed To Preserve Individual Rights and Fifth Circuit Judicial Credibility

10. After failing to meet each of these Supreme Court mandates related to reversible errors of law at paragraphs 3-9 above, the Circuit panel then erroneously affirmed the district court had made no errors of law. The Supreme Court clearly mandated that each and every one of these specific errors of law MUST be reversed.

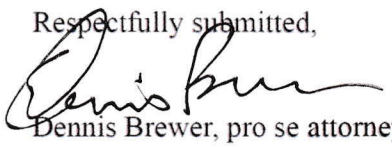
11. The Circuit panel allowed each and every one of these violations of Supreme Court mandates related to rights, to facts, and to law, to stand in its clearly erroneous no opinion Order. There are further profound constitutional questions related to the *First, Third, Fourth, Fifth, Eighth, Ninth, Thirteenth*, and *Fourteenth* Amendments to our Constitution throughout the underlying complaint in this matter which the Circuit Court will doubtless be required to address as this litigation proceeds forward. Profound errors of law, if allowed to stand as this Circuit panel has erred and without explanation under its citation of Rule 47.6 affirmed, profoundly jeopardize a broad sweep of constitutional rights - from the First Amendment Establishment clause to the Fourteenth Amendment equal protection clause - of every US person in this Fifth Circuit.

Request For En Banc Reconsideration

12. This in forma pauperis pro se plaintiff respectfully requests this Court rehear this appeal en banc, so it may properly consider both these failures of the Circuit panel to meet the noted Supreme Court mandates related to the errors of law herein, and the purposefully excluded portion of the record attempted in good faith to be entered to the record, and so it may properly remand the matter to the district court to correct the fundamental errors of law cited herein.

Dated: December 5, 2024

Respectfully submitted,



Dennis Brewer, pro se attorney

Fifth Circuit panel per curiam Opinion dated November 11, 2024 attached

Certification of Compliance With Fifth Circuit Appellate Rule 35(2)(A)

This document is comprised of 3,285 words and meets Rule 35(2)(A) standard of 3,900 words for such filings. Court mandates quoted herein totaling 822 words are excluded from this count.

Submitted under penalty of perjury. Dated: December 5, 2024

Dennis Brewer, pro se attorney

United States Court of Appeals for the Fifth Circuit

No. 24-10614
Summary Calendar

United States Court of Appeals
Fifth Circuit
FILED
November 11, 2024
Lyle W. Cayce
Clerk

DENNIS SHELDON BREWER,

Plaintiff—Appellant,

versus

WILLIAM BURNS, *Director, Central Intelligence Agency*,

Defendant—Appellee.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 2:24-CV-123

Before SMITH, CLEMENT, and WILSON, *Circuit Judges*.

PER CURIAM:*

After reviewing the appellant's brief and the record, we find no reversible error. We AFFIRM. *See* 5TH CIR. R. 47.6.

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

UNITED STATES APPEALS COURT
FOR THE FIFTH CIRCUIT

Case No. 24-10614

Dennis Sheldon Brewer,
Plaintiff - Appellant

v.

William Burns, Director, Central Intelligence Agency,
Defendant – Appellee

APPELLANT'S MOTION FOR REVERSAL AND STAY OF PER CURIAM ORDER

Certificate of Interested Persons

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal. The known interested persons are the governmental, corporate, and individual defendants named herein, and an unknown number of members of the class of plaintiffs. The scope and magnitude of the class of plaintiffs is not yet identifiable due to governmental abuse of the state secret privilege and police powers exemptions which have precluded prospective plaintiffs from identifying themselves as a result of the continuing suppressive efforts of these self-interested defendants.

[Intentionally left blank]

Plaintiffs:

DENNIS SHELDON BREWER, Individually,
1210 City Pl, Edgewater, NJ 07020,

Uknown number of plaintiffs who must be identified by affirmative acts of defendant UNITED STATES

Known Federal Defendants, Official Capacity:

William Burns
Director
Central Intelligence Agency (CIA)
Washington, DC 20505
(505) 855-6744,

Christopher Wray
Director, Federal Bureau of Investigation (FBI)
935 Pennsylvania Avenue, NW
Washington, District of Columbia 20535-0001
202-324-3000,

Merrick Garland
Attorney General of the United States (DOJ)
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC, 20530-0001
202-514-2000,

Ronald Davis
Director
United States Marshals Service (USMS)
1215 S. Clark St.
Arlington, VA 22202,

Avril Haines
Director of National Intelligence (DNI)
Office of the Director of National Intelligence
1201 New York Avenue NW. Suite 500

Known Entity Defendants:

ESTABLISH Inc.
c/o Corporation Service Company
251 Little Falls Drive
Wilmington, DE 19808,

ACME MARKETS Inc.
c/o: The Corporation Trust Company
830 Bear Tavern Road
West Trenton NJ 08628,

Daniel WEINER
HUGHES HUBBARD & REED LLP
One Battery Park Plaza
New York, New York 10004,

WALMART Inc.
702 SW 8th Street
Bentonville, AR 72716,

WALMART (CHINA) Investment Co., Ltd.
702 SW 8th Street
Bentonville, AR 72716,

COSTCO Wholesale Corporation
999 Lake Drive
Issaquah, WA 98027,

The KROGER Co.

Washington, DC 20005,

Lloyd Austin
Secretary of Defense (DOD)
1000 Defense Pentagon
Washington, DC 20301-1000
703-571-3343,

Christine Wormuth
Secretary of the Army (ARMY)
101 Army Pentagon
Washington, DC 20310,

Dr. Stefanie Tompkins
Director, Defense Advanced Research Projects Agency (DARPA)
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(703) 526-6630,

Alejandro Mayorkas
Secretary
Department of Homeland Security (DHS)
245 Murray Lane, SW
Washington, DC 20528-0075
202-282-800,

Kimberly Cheatle
Director
United States Secret Service (USSS)
245 Murray Ln SW - BLDG T-5
Washington, DC 20223
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Xavier Becerra
Secretary
Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201,

Jeanne Marrazzo, M.D., M.P.H.
Director
1014 Vine Street
Cincinnati, OH 45202,

PPG Industries Inc.
One PPG Place
Pittsburgh, Pennsylvania 15272,

INSIGHT NETWORK Spain
c/o: Don KEISER
Calle Antina 22 Primera Planta, 03130,
St. Pola, Comunidad Valenciana, España.
Teléfono: +34 96 541 17 58,

TECHNOLOGY SALES LEADS, Inc. (TSL)
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155 Federal Street, Suite 700 2nd Floor
Boston MA 02110,

LOEB & LOEB, LLP
c/o Mitchell NUSSBAUM
Vice Chairman
345 Park Avenue
New York, NY 10154,

Raymond F. SULLIVAN, LLC
c/o: Raymond SULLIVAN
Attorney
10440 Little Patuxent Parkway, Suite 900
Columbia, MD 21044,

TRADEKEY.COM, doing business in the United States through:
ORBIT TECHNOLOGIES LLC
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Teaneck, NJ 07666,

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Industrial Area, Shivaji Marg
New Delhi, India,

Vishal PATEL, MD
One Hudson Medical Associates, LLC
235 Old River Road

National Institute of Allergy and Infectious Diseases (NIAID)
5601 Fishers Lane
North Bethesda, Maryland 20852,

Colleen Shogan
Archivist of the United States
The National Archives and Records Administration (NARA)
8601 Adelphi Road
College Park, MD 20740-6001,

Known State and Local Defendants, Official Capacity:

Eric Adams
Mayor
City of New York (NYC)
New York City Law Department
100 Church Street
New York, NY 10007
212-356-1000,

Edward A. Caban
Commissioner
City of New York Police Department (NYPD)
Attention: PALS Unit
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New York, New York 10038,

Patrick J. Callahan
Colonel, State Police (NJSP)
State of New Jersey
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Port Authority of New York and New Jersey Police Department (PAPD)
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Edgewater, NJ 07020,

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Luis M. ASTUDILLO, MD
Northern New Jersey Cardiology Associates, P.A.
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North Bergen, NJ 07047,

MATCH GROUP, Inc.
Jared Sine
Chief Business Affairs & Legal Officer
8750 N. Central Expressway, Suite 1400
Dallas, TX 75231,

BUMBLE Inc.
1105 W 41st Street
Austin, TX 78756,

Known Individual Defendants, Generally Known to USMS institutionally:

William BURNS, individually
fka Dr. Patrick Heffron
c/o: Central Intelligence Agency
1000 Colonial Farm Road
Langley Virginia 22101,

Stephen BREYER, individually,
fka Jack Sackville-West
Harvard Law School
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Cambridge, MA 02138,

Andrew WEISSMANN, individually
fka Lyle Whiteman
New York University School of Law
40 Washington Sq. South
New York, NY 10012,

Charles ROSENBERG, individually
fka Chuck LeFevre (as CEO, NutraSource),

Christopher Trucillo
Chief Of Police
New Jersey Transit Police Department
One Penn Plaza East
Newark, New Jersey 07105,

Anthony Cureton
Sheriff
County of Bergen Sheriff's Department
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Hackensack, NJ 07601-7076,

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County Manager
County of Maricopa County, Arizona
c/o Maricopa County Attorney
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Phoenix, AZ 85003,

Paul Penzone
Sheriff, Maricopa County Sheriff's Department
550 West Jackson Street
Phoenix, AZ 85003
602-876-1000,

King County Sheriff's Department
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Washington State University
Attn: Asst. Attorney General, WSU
332 French Administration Building
Pullman, WA 99163,

Federal Way School District

fka William Drumm (as General Manager, ESTABLISH)
Crowell & Moring LLP
1001 Pennsylvania Avenue, NW
Washington, DC 20004,

Robert MUELLER
Address Known to USMS and FBI,

Leslie CALDWELL
fka name unknown while fraudulently misrepresenting self as Seed & Berry intellectual property attorney
Latham & Watkins LLP
505 Montgomery Street, Suite 2000
San Francisco, CA 94111,

Anthony FAUCI
fka Larry R. Cook
Address Known to USMS

Known Individual Defendants:

Roger STONE
fka David P. Moller while at CIA
Address Known to FBI
Fort Lauderdale, FL

Lisa RUBIN
fka Michelle Yarbrough while at FBI
MSNBC
30 Rockefeller Plaza
New York, NY 10112,

Alexander VINDMAN
fka Paul Yarbrough while at ARMY
8309-8409 SW 26th Street
Davie, FL 33324,

Ari MELBER
fka Wes Lewis while at FBI
MSNBC
30 Rockefeller Plaza
New York, NY 10112,

Joseph ARPAIO

33330 Eighth Ave S. Federal Way, WA 98003, Government Police Powers Departments And Agencies, While Operating As, And/Or Within, Apparently Private Entities, John Does (unknown number)	fka Greg Crossgrove while Sheriff, Maricopa County, AZ 12808 Vía Del Sol Fountain Hills, AZ 85268, David Reichert fka Sheriff, KCSD Address Known to USMS, DHS, KCSD, Neal KATYAL fka Shawn Morrissey while student Decatur High School, Federal Way, WA Hogan Lovells US LLP Columbia Square 555 Thirteenth Street, NW Washington, D.C. 20004, Thomas KEENE fka Michael Callahan while Dominick & Dickerman Managing Director Bloomberg Media 731 Lexington Ave New York, NY 10022, Stephanie Clifford (MODDERMAN) Address Known to USMS, Norelle Dean (GIA) Address Known to USMS, Marc CHALOM Address Known to USMS, Other Unknown Government Officers, Agents, and Employees, John Does (unknown number)

Members of federal appeals and district courts who have specific knowledge of U.S. Department of Justice, Department of Defense, Central Intelligence Agency, and/or other federal police powers, military, and intelligence departments and agencies, direct participation in the illegal bioweapon and bioweapon delivery system program from 1961 forward to the present, and/or of

associated and related police powers operations of subordinate jurisdictions to the United States have, or may have, direct conflicts of interest in this matter. Hereby certified by counsel of record's signature below.

Dated: January 11, 2025.

Signature: _____

Dennis Sheldon Brewer, Pro Se Attorney, Counsel of Record
1210 City Place
Edgewater, NJ 07020

1. The Circuit Court panel assigned to this matter 24-10614 considered the appeal of the Northern District of Texas 2:24-cv-0123 and entered its per curiam opinion and judgement on November 11, 2024, affirming the district court's sua sponte dismissal of this in forma pauperis pro se complaint within 24 hours after the 1,324 page complaint was docketed in the district court. In accordance with local rule 47.6, the circuit explicitly provided no reason to the appellant for its per curiam opinion and judgement. This circuit court panel then refused the petition to rehear the matter en banc by its per curiam order on December 30, 2024 "because no member of the panel or judge in regular active service requested that the court be polled on rehearing en banc." A mandate was entered on January 7, 2025. As shown in the exhibit incorporated at paragraph 2 below in this motion, mailed notice to the appellant was received on January 10, 2025, three days after the mandate had issued. This communication was mailed to the appellant – the same manner the court had previously required to communicate with the appellant on all occasions, and which was the only method permitted to the appellant throughout

the preparation and curing of deficiencies of both (i) a sufficient appellant brief and (ii) the petition for en banc rehearing were processed and decided.

2. In accordance with Rule 27.4, which appears in italicized quotation marks in this sentence, the appellant has *"serious need for the court to act within a specified time,"* as the mandate was issued without notice being received by the appellant in accordance with the filing method allowed by the court clerk – mail only, *"the motion must state the time requirement"* 90 days is requested, and *"describe both the nature of the need*" a petition for Writ of Certiorari is being prepared by the in forma pauperis pro se appellant for filing with the Supreme Court of the United States "*and the facts that support it"* wherein the appellant will *(fact i)* dispute the arbitrary application of the circuit's rules and *(fact ii)* the purposeful misapplication and systematic disregard of Supreme Court mandates and federal law by the circuit panel, as those facts are further set forth below. *(fact iii)* The mandate, entered on January 7, 2025, was received by mailed notice to the appellant, in the manner consistent with all prior filings and communications with and by the court, on January 10, 2025, three calendar days after the mandate had issued.. All prior notices and communications from the court had been received with at least two calendar days remaining for the appellant to act on those notices and communications. Basic fairness of process dictates the appellant be allowed to notice the court by phone in emergency and by mailed motion for stay prior to expiry.

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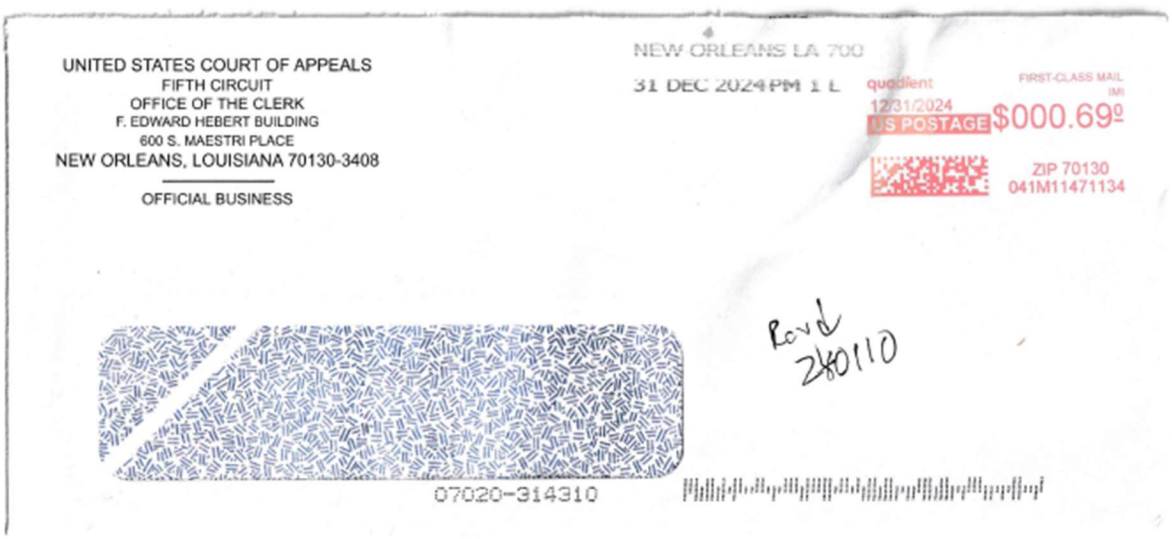
UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT
OFFICE OF THE CLERK
F. EDWARD HEBERT BUILDING
600 S. MAESTRI PLACE
NEW ORLEANS, LOUISIANA 70130-3408

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Case: 24-10614 Document: 40-1 Page: 1 Date Filed: 12/30/2024

United States Court of Appeals for the Fifth Circuit

No. 24-10614

United States Court of Appeals
Fifth Circuit
FILED
December 30, 2024
Lyle W. Cayce
Clerk

DENNIS SHELDON BREWER,

Plaintiff—Appellant,

versus

WILLIAM BURNS, *Director, Central Intelligence Agency,*

Defendant—Appellee.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 2:24-CV-123

ON PETITION FOR REHEARING EN BANC

Before SMITH, CLEMENT, and WILSON, *Circuit Judges.*

PER CURIAM:

Treating the petition for rehearing en banc as a petition for panel rehearing (5TH CIR. R. 40 I.O.P.), the petition for panel rehearing is DENIED. Because no member of the panel or judge in regular active service requested that the court be polled on rehearing en banc (FED. R. APP. P. 40 and 5TH CIR. R. 40), the petition for rehearing en banc is DENIED.

3. The Supreme Court mandate, Neitzke v Denton, 490 U. S. 329 330:

> "Our conclusion today is consonant with Congress' overarching goal in enacting the in forma pauperis statute: "to assure equality of consideration for all litigants." ....
>
> "Given Congress' goal of putting indigent plaintiffs on a similar footing with paying plaintiffs, petitioners' interpretation cannot reasonably be sustained. 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. See Haines v. Kerner, 404 U. S. 519, 404 U. S. 520(1972). [Footnote 9]."

4. Given Congress' goal of putting indigent plaintiffs on a similar footing with paying plaintiffs…," both the district court and the Circuit panel failed to meet this most basic test of fairness in their actions and decisions. The panel utterly failed to meet the mandate of basic fairness imposed upon them in their purposeful refusal to consider the appellant brief and petition in accordance with this mandate and Congressional intent. The circuit court clerk's office aided and abetted this unfair process by refusing to permit electronic filings and notices, then acting duplicitously in on-timely communication of the circuit court mandate to this pro se in forma pauperis appellant.

5. These federal courts' abuses of process have been used to defeat the appellant's constitutional rights to fair and equitable access to federal courts, to petition for redress, to dispute generations of fraudulently concealed religious discrimination in violation of the Establishment clause, to contest racketeering acts including, without limitation, involuntary servitude imposed by the government upon generations of religious families, and other discriminatory acts which systematically violate the First, Third, Fourth, Fifth, Eighth, Ninth, Thirteenth, and Fourteenth Amendments and other federal laws and caselaw, to wit:

Federal Statutory Violations

5 U.S.C. § 301
18 U.S.C. § 175
18 U.S.C. § 178
18 U.S.C. §§ 1961-1968
28 U.S.C. § 43(b)
28 U.S.C. § 1915
42 U.S.C. §§ 2000bb through 2000bb-4
42 U.S.C. § 2000bb-1

Supreme Court Case Law Violations and Conflicts of Law

Marbury v. Madison, 1 Cranch 137, 163, 2 L. Ed. 60 (1803)
Bradley v. Fisher, 13 Wall. 335, 80 U. S. 351 (1871)
United States v. Lee, 106 U. S. 220 (1882)
The Western Maid, 257 U.S. 419 (1922)
Bemis Bros. Bag Co. v. United States, 289 U.S. 28 (1933)
Jacobs v. United States, 290 U. S. 13, 290 U. S. 16 (1933)
Bell v. Hood, 327 U.S. 678 (1946)
United States v. Standard Oil Co., 332 U. S. 301, 332 U. S. 311 (1947)
US v. Karl Brant et al, Nuremberg trail record, November 21, 1946 and August 20, 1947
United States v. Reynolds, 345 U. S. 1 (1953)
United States v. Gilman, 347 U. S. 507 (1954)
Wheeldin v. Wheeler, 373 U. S. 647 (1963)
J. I. Case Co. v. Borak, 377 U. S. 426, 377 U. S. 433 (1964)
Bivens v. Six Unknown Fed. Narcotics Agents, 403 U.S. 388 (1971)
Haines v. Kerner, 404 U.S. 519, 520-521 (1972)
Gravel v. United States, 408 U. S. 606, 408 U. S. 615 (1972)
Doe v. McMillan, 412 U. S. 306, 412 U. S. 320 (1973)
Scheuer v. Rhodes, 416 U. S. 232 (1974)
Wood v. Strickland, 420 U. S. 308, 420 U. S. 322 (1975)
Imbler v. Pachtman, 424 U.S. 409 (1976)
Hampton v. Mow Sun Wong, 426 U. S. 88 (1976)
Stump v. Sparkman, 435 U.S. 349 (1978)
Butz v. Economou, 438 U. S. 478 (1978)
Davis v. Passman, 442 U. S. 228, 442 U. S. 245 (1979)
United States v. Kubrick, 444 U.S. 111, 100 S. Ct. 352, 62 L.Ed.2d 259 (1979)
Carlson v. Green, 446 U. S. 14 (1980)
Gomez v. Toledo, 446 U. S. 635 (1980)
Boag v. MacDougall, 454 U. S. 364 (1982)
Nixon v. Fitzgerald, 457 U. S. 731 (1982)
Harlow v. Fitzgerald, 457 U.S. 800 (1982)

Chappell v. Wallace, 462 U.S. 296 (1983)
Bush v. Lucas, 462 U.S. 367 (1983)
United States v. Stanley, 483 U.S. 669 (1987)
Erwin v. United States 484 US 292 (1988)
Schweiker v. Chilicky, 487 U.S. 412 (1988)
United States v. Kozminski, 487 U.S. 931 (1988)
Neitzke v. Williams, 490 U.S. 319 (1989)
Denton v. Hernandez, 504 U.S. 25 (1992)
FDIC v. Meyer, 510 U.S. 471 (1994)
Klehr v. A. O. Smith Corp., 521 U.S. 179 (1997)
Rotella v. Wood, 528 U.S. 549 (2000)
Correctional Services Corp. v. Malesko, 534 U.S. 61 (2001)
Wilkie v. Robbins, 551 U.S. 537 (2007)
Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
Tooley v. Napolitano, 586 F.3d 1006, 1010 (D.C. Cir. 2009)
Hui v. Castaneda, 559 U.S. 799 (2010)
Minneci v. Pollard, 565 U.S. 118 (2012)
Lozano v. *Montoya Alvarez*, 572 U.S. 1 (2014).
Ziglar v. Abbasi, 582 U. S. ___ (2017)
Hernández v. Mesa, 589 U. S. ___ (2020)
Egbert v. Boule, 596 U.S. 482 (2022)
Boechler v. *Commissioner*, 596 U. S. ___, ___ (2022)
Arellano v. McDonough, 598 U.S. ___ (2023)

6. The circuit court failed to provide proper timely notice to the appellant of its per curiam order and judgement in the form and manner which it required the in forma pauperis appellant to communicate with the court. Notice was not received until three days after the mandate had been entered using the US Mail as required. This bad faith act deprived the appellant of the right to timely request a stay of this mandate. This is a fundamentally unfair abuse of due process which violates the intent of Congress under 28 U.S.C. § 1915 and the Supreme Court mandates for federal jurisprudence when considering the pleadings of in forma pauperis pro se appellants under Boag v. MacDougall, 454 U. S. 364 (1982), Neitzke v. Williams, 490 U.S. 319 (1989), Denton v. Hernandez, 504 U.S. 25 (1992) and Haines v. Kerner, 404 U.S. 519 (1972).

Request For Mandate Reversal and Stay

7. A petition for Writ of Certiorari will be filed with the Supreme Court. The in forma pauperis pro se appellant respectfully requests this Court to reverse and stay its wrongful per curiam order of December 30, 2024 for 90 days so this matter may be submitted by petition for writ of certiorari offered in the customary fashion to the Supreme Court to (i) avoid profound prejudice to the civil and constitutional rights of this and all other in forma pauperis pro se litigants in this circuit, and (ii) contest this circuit's arbitrary, continuing, and willful disregard of the mandates of the Supreme Court listed in the table above, of Congressional intent in 28 U.S.C. § 1915, and of the government's profound and willful disregard of a broad sweep of constitutional and civil rights, and federal and state statutes, cited in 54 justiciable claims against the named and unknown defendants to the underlying action NDTX 2:24-cv-0123.

Dated: January 11, 2025

Respectfully submitted,

Dennis Sheldon Brewer, appellant and pro se attorney
1210 City Place
Edgewater, NJ 07020

Certification of Compliance With Fifth Circuit Appellate Rule 27(d)(2)(A)

This document is comprised of 1,614 words inclusive of federal statute and federal caselaw citations, and meets the Rule 27(d)(2)(A) standard of 5,200 words for such filings.

Submitted under penalty of perjury.

Dated: January 11, 2025