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 District of Columbia,

United States Circuit Court for the District of Columbia.

Signed this 13th day of June, 2023 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 $2,007 per month, self only, no spouse or other family member. Same expected going forward until January 2024, then $2,157.
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: $804 less unposted payments of $335, net available cash is $469.
5. Assets other than clothing and ordinary household furnishings: None.
6. Amounts owed:
   Credit card accounts Visa and Mastercard totaling $2,771
   Personal loan in the amount of due private party (redacted for privacy): $6,000
7. Dependents: None.
8. Average monthly expenses:
   a. Rent $382, not including Section 8 $1,618 rent subsidy
   b. Utilities $185
   c. Food $250
   d. Clothing $100
   e. Medical $148
   f. Transportation $50
   g. Entertainment $200
   h. Credit cards and debt service $685
   i. Total monthly expenses $2,000
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 required to submit this Petition for Cert required due to hacking of personal printer and related online services hacking. Estimated at 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 DC District Case Number 23-cv-0415 Table 2 and related Facts in the Complaint and accompanying exhibits filed therewith and filed in the Appendix to DC Circuit Court case number 23-5052, including therein the District Court Order in 23-mc-014 which prejudicially precluded the filing of predicate act evidence required under F. R. Civ. P. 9(b) related to particularity in the pleading of frauds in the underlying case DC 23-cv-0415..

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

Executed on June 13, 2023

_____

(Signature)

No. _____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

Dennis Sheldon Brewer — PETITIONER

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Circuit Court for the District of Columbia

PETITION FOR WRIT OF CERTIORARI

Dennis Sheldon Brewer

1210 City Place, Edgewater, New Jersey 07020

201-887-6541

QUESTION PRESENTED

Shall this Court permit persistent and continued errors and abuses against rights enshrined in the Fourth and Fifth Amendments by at least eight active district judges and six circuit judges dating from 2021 or prior in the District of Columbia, which errors and abuses consistently ignore this Court's *Denton* v. *Hernandez* 504 U.S. 25 (1992) mandated minimum standards of professional conduct in federal court practices involving *sua sponte* dismissals and their "intelligent appellate review," (ibid at 34) which persistent errors and abuses have, do, and will trample and fatally negate the constitutional rights of in forma pauperis and pro se litigants?

Shall federal courts in the District of Columbia be allowed to fail to remedy prior errors against in forma pauperis pro se litigants by wrongful instructions (on court provided Pro Se Form 2 twice: "Do not make legal arguments."), which then lead to *sua sponte* dismissals for failures to meet court standards in stating actionable claims and to fatal deprivations of rights?

Shall suppression of evidence without any review by a district court be affirmed, after suppression by action of defendants is reported to the court, alternate means is requested, and filing by practical means is then twice denied, thereby excluding 86% of all evidence to be filed including predicate acts under F. R. Civ. P. 9(b), when the exercise of *sua sponte* discretion violates this Court's *Denton* mandate regarding erroneous handling and development of facts?

Shall District of Columbia federal courts be allowed to evade controversial adversarial proceedings by *sua sponte* dismissal in a case where the in forma pauperis pro se litigant has a credible fear for personal safety based upon a 2022 verbal threat followed by three documented attempts on life causing physical injury in one attempt, mass casualty potential in another, and multiple vehicle rundown risks, when police powers and prosecutors, including the Department of Justice as documented, have persistently refused to act in such matters on multiple occasions?

LIST OF PARTIES

This case concerns *sua sponte* dismissals and appellate reviews of an in forma pauperis pro se case before the District of Columbia circuit and district court. No respondent service is required. The parties are listed completely in each and every caption of the relevant actions filed by plaintiff in the District of Columbia circuit and district courts for this Court's reference and convenience. Due to the duration and scope of the underlying 18 U.S.C. § 1962 conspiracies cited in the Complaint 23-cv-0415, that list of parties extends to approximately 19 pages of caption, so it is not reproduced here, and is not directly relevant to the matter before this Court. Primary defendants are departments and agencies of the federal executive including those with police powers, and state and local police powers agencies in several states.

RELATED CASES

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

Boag v. MacDougall 454 U. S. 364 (1982)

Brower v. Inyo County, 489 U. S. 593 (1989)

Christiansburg Garment Co. v. EEOC, 434 U. S. 412, 434 U. S. 422 (1978)

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

Coppedge v. United States, 369 U.S. 438 (1962)

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

Estelle v. Gamble, 429 U. S. 97 (1976)

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

Jones v. Alfred Mayer Co., 392 U. S. 409 (1968)

McDonald v. Santa Fe Trail Transportation Co., 427 U. S. 273 (1976)

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

Penson v. Ohio, 488 U. S. 75 (1988)

TABLE OF CONTENTS

INDEX TO APPENDICES

TABLE OF AUTHORITIES CITED

Brower v. Inyo County	489 U. S. 593 (1989)
Christiansburg Garment Co. v. EEOC	434 U. S. 412, 422 (1978)
Conley v. Gibson	355 U.S. 45-46 (????)
Coppedge v. United States	369 U.S. 438, 447 (1962)
Denton v. Hernandez	504 U.S. 25 27 32 33 34
Estelle v. Gamble	429 U. S. 97 (1976)
Haines v. Kerner	404 U.S. 519 520 521 (1972)
Jones v. Alfred Mayer Co.	392 U. S. 409 (1968)
McDonald v. Santa Fe Trail Transportation Co.	427 U. S. 273 (1976)
Nietzke v. Williams	490 U.S. 319 325 328 329 330 331 (1989)
Penson v. Ohio,	488 U. S. 75 (1988)

STATUTES AND RULES

H.R. Rep. No. 1079, 52d Cong., 1st Sess., 1 (1892), currently codified as 28 U.S.C. § 1915
28 U.S.C. § 1915 in forma pauperis pro se access to federal courts – at Appendix F
18 U.S.C. Chapter 10 prohibiting bioweapons and bioweapons delivery systems– at Appendix F
18 U.S.C. 1962-1965 racketeering offenses, civil remedies, venue – at Appendix F
Supreme Court Rule 10(a) correcting egregious wrongs– at Appendix G
Supreme Court Rule 10(c) correcting errant decisions conflicting with Court mandates– at Appendix G
Federal Rule of Civil Procedure 8(a) requiring clear, concise complaints – at Appendix H
Federal Rule of Civil Procedure 9(b) particularity pleading frauds, incl. predicate acts– at Appendix H

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 and has been designated for publication.

The orders of the United States district court appear at Appendices B and C to the petition and are reported in the CM/ECF system of this district court.

The critical relevant opinions of this Court appear at Appendix D 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 District of Columbia court of appeals initially affirmed the district court's dismissal order was May 23, 2023.

The date on which the United States court of appeals refused the petition to rehear its May 23, 2023 order affirming the district court's dismissal order was June 7, 2023.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fourth and Fifth Amendments

28 U.S.C. § 1915 due process and access for in forma pauperis pro se plaintiffs

18 U.S.C. Chapter 10 (§§ 175 – 178) bioweapons prohibited

18 U.S.C. 1962 (b), (c), and (d) racketeering, associated-in-fact enterprise

STATEMENT OF THE CASE

This petition for writ of certiorari is entered under this Court's Rules 10 (a) and 10(c) to correct persistent errors recurring in District of Columbia federal courts since at least 2021 which do abridge and may extinguish the Fourth and Fifth Amendment rights of individuals. The District of Columbia circuit court has (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."

These extreme and substantial deviations from this Court's mandates, from clear Congressional intent, and from the basic rights, fairness, and principles of equity enshrined in the rule of law and our Constitution are clearly demonstrated in the three major subsections below:

A. Procedural History of Violations of Due Process Affirmed by Circuit Court
B. Circuit Court Cited Incorrect Supreme Court Mandate as Governing Precedent, Then Made Substantial and Egregious Technical Legal Errors Demonstrating Obvious Bias and Prejudice
C. Circuit Court Repeatedly and Improperly Affirmed Deprivations of Plaintiff Rights

A. Procedural History of Violations of Due Process Affirmed by Circuit Court

A.1 Printer Hacked by Defendants, Electronic Filing Method Motion Denied by Court, Sequentially Suppressing 86% of Case Evidence Without Review

The defendants hacked and disabled plaintiff's printer at 8:30AM Monday, February 6, 2023, just as 10,059 pages of predicate act evidence, including emails, appointment calendars, phone logs, incident reports, personal statements, contracts, wire transfer receipts, bank statements, and other documentary evidence; comparative patterns of practice analyses; medical,

science, and technology assessments and reports affirming the underlying prohibited bioweapons systems and comparable antilog medical devices; were scheduled to begin to be printed for physical filing as required by the district court clerk's office. A motion requesting use of the only feasible means of electronic filing of this massive initial tranche of evidence was emailed to the district court on February 7, 2023 (23-mc-014). As the plaintiff was not allowed filing access, this emailed motion was entered by the clerk to the Pacer CM/ECF system on February 10, 2023.

One day before the plaintiff traveled from New Jersey to Washington, DC, the district court preemptively denied the motion on February 13, 2023, without reviewing any of the evidence. This deprived the in forma pauperis pro se plaintiff the right to file 10,059 pages of facts and evidence.

Suppressed evidence includes (i) predicate acts required in pleading frauds with particularity under Federal Rule of Civil Procedure 9(b) such as (i) photographs, receipts, wire transfer receipts, emails, bank statements, presentations, business plans, contracts; (ii) personal statements of fact; (iii) scientific and technical analyses of novel claims not previously before the district court; including expert scientific, medical, and technological statements and information; (iv) citations of comparable beneficial medical technologies in FDA approved trials which establish medical, scientific, and technological viability of the claimed prohibited bioweapon; (v) defendant pattern of practice as compared to those originally described in Congressional investigative reports, courts judgements and opinions, and media accounts; convictions, judgements, court orders, and media reports, relating to police powers defendants' systematic and durable color of law abuses by defendants, among others, and (vi) other content vital to the case, including a series of letters and evidence provided to the U.S. Attorney for the Southern

District of New York, the Attorney General's office, and the Assistant Inspector General for Investigations office.

Further, as explained in the Complaint 23-cv-0415 at paragraph vii on page 21, the plaintiff continues to be blocked and obstructed from 27 months of relevant predicate act emails and other currently unidentified documents attached to those emails on his own personal computer by these defendants.

A.2 Suppressed Evidence Again Offered Electronically at Time of Physical Paper Filing of Complaint and Again Excluded by the Court Without Review

The Complaint (23-cv-0415) was printed as required by the clerk and hand delivered to the district court clerk's office together with the final pages of the plaintiff's evidence (pages 10,060 through 11,629) on February 14, 2023. All other pages of evidence (86%, pages 1-10,059) were again excluded from the practical means of electronic filing in a reply voice mail received from the judge's assistant while busy at the clerk's window during the physical paper filing at clerk's office on February 14, 2023. The female assistant conveyed the court's refusal to consider electronic evidence in any form, including cell phone videos of the effects of the printer hacking. Plaintiff asked the clerk's office employee as well, who declined to accept the proffered electronic files. Between February 15 and February 17, 2023, this in forma pauperis pro se plaintiff emailed evidence which could not be printed due to defendants' hacking, and which fit within the 20MB email attachment limit, to the district court clerk's intake email address. The clerk's office hopelessly scrambled this evidence, mixing emails and page sequences within volumes, which rendered these volumes of incomplete evidence completely useless. This sequence of (i) defendants printer hacking, (ii) district court preemptive *sua sponte* exclusions without review, and (iii) the clerk's office jumbling of email submissions between February 6,

2023 and February 17, 2023, thus deprived the court and the record of 86% of the volume of evidence intended to be filed.

A.3 Complaint Dismissed *Sua Sponte* Without Adequate Time For Review

The Complaint (23-cv-0415) was dismissed on February 28, 2023, 13 calendar days after the physical paper filing required by the district court clerk, without review in the district court's order at ECF #10, which incorporated an irrelevant memorandum opinion from 22-cv-0996, a prior case filed in accordance with wrongful instructions in Pro Se Form 2 (see B.3.2a at pages 19-20 below) provided on the district court's website to all pro se plaintiffs on the district court website at that time.

A.4 Appeal Filed and Improperly Denied Under Incorrect Case Law

The in forma pauperis plaintiff appealed to the circuit court, docketed as 23-5052 on March 13, 2023, with final appellant brief and appendix submissions required by May 2, 2023. This appeal was dismissed *sua sponte* without benefit of hearing on May 23, 2023, strongly suggesting the circuit panel did not even completely review even the arbitrarily truncated record of the underlying case 23-cv-0415 (which would have required well over 600 hours of reading, see B.3.2a at pages 19-20). Its order, quoting here:

> "This appeal was considered on the record from the United States District Court for the District of Columbia and on the brief filed by appellant. See Fed. R. App. P. 34(a)(2); D.C. Cir. Rule 34(j). Upon consideration of the foregoing and the emergency motion for a hearing, it is
>
> "ORDERED that the emergency motion for a hearing be denied. Appellant has not shown he is entitled to the requested relief. It is
>
> "FURTHER ORDERED AND ADJUDGED that the district court's February 28, 2023 order be affirmed. The district court properly dismissed appellant's case as frivolous. See 28 U.S.C. § 1915(e)(2)(B)(i); ("[A] complaint . . . is frivolous where it lacks an arguable basis either in law or in fact.")."

A.5 Rehearing Requested, Appellant Petition Cited Proper *Denton* Case Law, Rehearing Denied Without Explanation

A petition requesting rehearing and citing this Court's *Denton* mandated appellate review standard, among many other arguments, was filed on May 26, 2023 and denied on June 7, 2023, in a one sentence order, with no indication of the reasons. Quoting here: "Upon consideration of the second amended petition for rehearing, it is ORDERED that the petition be denied."

The district court originally and wrongly cited *Nietzke.* The circuit court simply parroted the district court in its language. There is no documentation of the circuit court's compliance with this Court's *Denton* mandate for appellate review in either its initial *sua sponte* dismissal nor its denial of a rehearing. A motion for a 90 day stay to file this petition before this Court was entered on June 8, 2023.

B. Circuit Court Cited Incorrect Supreme Court Mandate as Governing Precedent, Then Made Substantial and Egregious Technical Legal Errors Demonstrating Obvious Bias and Prejudice

The district court wrongfully cited, and the circuit court wrongfully parroted 28 U.S.C. § 1915(e)(2)(B)(i); *Neitzke v. Williams*, 490 U.S. 319, 325 (1989)) ("[A] complaint . . . is frivolous where it lacks an arguable basis either in law or in fact."). The proper case law which governs both circuit review of and *sua sponte* district court dismissals of in forma pauperis pro se complaints is *Denton v Hernandez* 504 U.S. 25 (1992). Quoting here at 32:

> "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."

B.1 Circuit Court Affirmed Suppression of Evidence Without Review, Violating Federal Rules of Civil Procedure, Including Rule 9(b)

The circuit court improperly exploited that single sentence from *Neitzke* ("…frivolous where it lacks an arguable basis either in law or in fact") to egregiously affirm (i) the district court's preemptive *sua sponte* order denying the plaintiff's in forma pauperis pro se motion 23-mc-014, thereby preemptively suppressing 10,059 pages (86%) of evidence from the record without review. That suppression of evidence by the district court followed directly in time, the defendants' own technological hacking of the plaintiff's computer and printer, which disabled the printing required by the district court clerk for filing. That district court order also prejudged without review the complaint (plaintiff's overgenerous initial estimate including evidence, as reprised in the court order excerpt quoted below) which plaintiff intended to submit by the same electronic method:

"….because the complaint consists of "approximately 20,000 [printed] pages." Mot. ,r 1.

"A complaint of that length cannot plausibly satisfy the pleading standards of Federal Rule of Civil Procedure 8(a). Regardless, Petitioner claims that "Defendants have and do continue to abuse their police powers to block and obstruct the Lead Plaintiff in submitting this complex litigation to the District Court,….."

As previously described at A.1, pages 7-8, the defendants' had hacked and disabled the plaintiff's printer, and the evidence of the effects was offered to the district court. The actual length of the initial filing to the record intended to be printed in accordance with the clerk's order was 1,534 pages of Complaint and interline exhibits, and 11,629 pages of evidence, including supporting documentation and analyses.

The circuit court also parroted that single sentence from *Neitzke* ("…frivolous where it lacks an arguable basis either in law or in fact") to affirm (ii) the district court's *sua sponte* dismissal without proper review of the in forma pauperis pro se plaintiff's Complaint 23-cv-0415. That district court dismissal had occurred 13 calendar days after filing, so rapidly that the district court could not possibly have even read, much less considered, the 1,532 page body of that Complaint, including (i) its 20 inline exhibits evidencing predicate acts, frauds, and coordinated police powers misconduct, among other things, (ii) 92 specific examples of patterns of injuries, and (iii) citations of 43 types of statutorily compensable injuries under Title 18 and Title 42 Chapter 21 of the United States Code and of state laws. Merely reading the Complaint alone would have required more clock hours at a high competency reading speed of 575 words per minute (over 600 hours, excluding predicate act evidence; racketeering and pattern evidence; scientific, medical and technical analyses), than are available in the thirteen 24 hour day periods between the filing to dismissal (312 total hours).

B.2 Circuit Court Failed to Use This Court's *Denton* Review Standards

This Court established the correct standard for circuit court reviews of *sua sponte* dismissals in *Denton v Hernandez* 504 U.S. 25 (1992). Neither the circuit court nor the district court cited, much less applied, the standards mandated in *Denton* to their *sua sponte* decisions and orders. In *Denton,* this Court provides its mandated standards to circuit courts for reviewing

district court *sua sponte* dismissals of in forma pauperis pro se matters. Excerpting from *Denton* at 27, then 32-33, then 34:

> "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."
>
> … 32-33
>
> "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).

…34 (emphasis added)

"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* [*v. MacDougall*, 454 U. S. 364,] 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."

B.3 *Denton v. Hernandez* (1992) Mandates Four Specific Circuit Court Review Standards To Affirm *Sua Sponte* Dismissals – Circuit Court Used NONE of These Mandatory Review Standards

In its citation of the single sentence from *Neitzke v. Williams*, 490 U.S. 319 (1989), ("…frivolous where it lacks an arguable basis either in law or in fact") the Circuit panel failed to

properly consider whether the district court had met the standards mandated by this Court in *Denton v. Hernandez,* 504 U.S. 25 (1992) for "intelligent appellate review," including whether the district court:

B.3.1 *Denton* Appellate Review Mandate 1 "whether the court inappropriately resolved genuine issues of disputed fact"

a. **The court excluded without review 86% of evidence intended to be filed**. By its preemptive exclusion of 10,059 pages of evidence in 23-mc-014, the district court excluded without review 86% of evidence which the plaintiff attempted to file for the record in compliance with Federal Rule of Civil Procedure 9(b), among others. So, these facts, including extensive Rule 9(b) predicate act evidence, could not even be entered into the record for the purpose of being reviewed, much less subjected to the adversarial proceeding required to protect the rights of the massively imbalanced set of plaintiffs and defendants. This underlying action is focused primarily upon vast constitutional overreach and lawlessness of the federal executive, comparable to the combined impacts on rights of MKUltra and Cointelpro, and a systematic 153 year pattern of failures of the Justice Department to act against vast federal executive overreaches.

b. **The court disregarded 20 inline evidentiary exhibits in the Complaint,** shown by topic at Appendix E, which document specific patterns of crimes and official misconduct under color of law, including among other things, (i) coordinated civil rights violations, frauds, physical injury, intimidation and lethality threats and attempts over many years among numerous police powers agencies across the U.S., (ii) a coordinated coverup to suppress evidence in September 2021, between FBI and NYPD, and (iii) an

indirect verbal threat followed by an accelerated pattern of three lethality events in the second half of 2022.

c. All this information was included in the appellant brief and the appendix submitted to the circuit court, including a selection of examples of preemptively suppressed evidence never reviewed by the district court. **The circuit court twice ignored these facts in considering whether this substantive test of the proper handling of facts was met by the district court.** It simply failed.

d. **The court did not read the complaint and evidence in full.** The district court's *sua sponte* dismissal order in 23-cv-0415 came on the thirteenth calendar day after the 1,534 page Complaint and 689 pages (pages 10,060 through 11,629) of the evidentiary exhibits were filed. Reading these documents, without pauses for consideration or cross referencing between the Complaint and the scant evidence which the district court did allow to be submitted for review, would require the district court to have read 2,223 pages in 13 calendar days (a total of 312 clock hours at 24 hours per day). The Complaint alone contains 357,477 words. At an average reading speed of a high proficiency reader, about 575 words per minute, and without any pauses for consideration or cross-referencing to evidence, it would require 621 hours to read the Complaint only. Given that 10,059 pages of evidence (86%) were excluded preemptively from consideration, it is literally physically impossible for the district court to have met this *Denton* standard for proper review prior to entering its *sua sponte* dismissal.

e. **The court did not meaningfully review the complaint, it simply parroted prior practice in these courts.** Some added context is needed here. The plaintiff faithfully followed the district court's instructions in Pro Se Form 2, which instructs pro

se litigants NOT to make any legal arguments (see these instructions reproduced in *Denton* Appellate Review Mandate 2 below), making systematic improvements to eight consecutive complaints before seven district court judges on eight occasions. After the district court's *sua sponte* dismissal of 22-cv-996 and rejection of an appeal by the circuit in 22-5158, this plaintiff went back to the drawing board. Disregarding the improper instructions he had slavishly followed in the district court's Pro Se Form 2, he completely changed course.

f. As further described in *Denton* Appellate Review Mandate 2 below, this in forma pauperis pro se plaintiff spent approximately 1,400 hours over a six month period to (i) forensically reconstruct, (ii) to cross validate to the maximum extent possible given the defendants' ongoing hacks and obstructions of evidence, (iii) to compile and select a representative sample of about 2% of the discoverable evidence, and (iv) to construct the Complaint and exhibits from scratch.

g. While the completely reformulated Complaint 23-cv-0415 (i) is complex in nature, it is organized coherently and succinctly as shown at Appendix E; (ii) involves a period of considerable duration, including lethality attempts and other racketeering acts; (iii) provides an explanation of the integration of complex technologies (all of which are also in common civilian uses, including one of which is in FDA medical device trials and a second having been approved for trials, both of which are antilogs to the prohibited bioweapon) used together in a novel way as an integrated system, all of which is explained in a way which can be understood by a layperson such as a judge, defendant, witness, or juror; (iv) evidences malign behaviors of police powers operations which have and do incorporate substantial technological disruption. However, the very

incomplete evidentiary record allowed by the district court has been hopelessly scrambled, so even most of that portion is effectively suppressed.

h. This fact pattern actually requires extra care by both the district court and the Circuit panel to meet the *Denton* standards imposed upon them. These complicating factors are no excuse for the lack of due care demonstrated in the district court's handing and resolution of factual matters nor the Circuit panel's review of the district court's *sua sponte* dismissal under the *Denton* standard for appropriately resolving issues of fact.

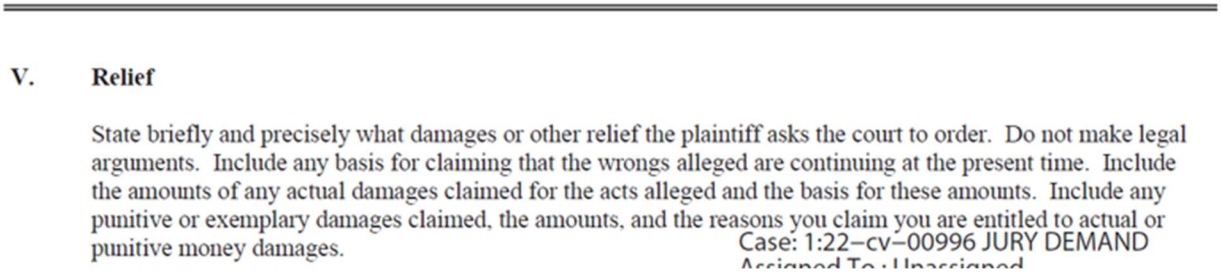
i. This *Denton* mandate, the appropriate handing of factual matters by the district court and the circuit court has been utterly disregarded by these courts. They simply failed.

B.3.2 *Denton* Appellate Review Mandate 2 "whether the court applied erroneous legal conclusions"

a. The Memorandum Opinion filed by the district court in dismissing 23-cv-0415 does not relate to the Complaint filed 23-cv-0415. It relates to a prior Complaint filed in 22-cv-996 on April 13, 2022, while this plaintiff was using Pro Se Form 2 provided by the district court on its website (and apparently recently removed from that website) for pro se litigants which includes the explicit instruction in both the second sentences below, quoting **"Do not make legal arguments."**

III. Statement of Claim

Write a short and plain statement of the claim. Do not make legal arguments. State as briefly as possible the facts showing that each plaintiff is entitled to the injunction or other relief sought. State how each defendant was involved and what each defendant did that caused the plaintiff harm or violated the plaintiff's rights, including the dates and places of that involvement or conduct. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.



V. **Relief**

State briefly and precisely what damages or other relief the plaintiff asks the court to order. Do not make legal arguments. Include any basis for claiming that the wrongs alleged are continuing at the present time. Include the amounts of any actual damages claimed for the acts alleged and the basis for these amounts. Include any punitive or exemplary damages claimed, the amounts, and the reasons you claim you are entitled to actual or punitive money damages.

Case: 1:22–cv–00996 JURY DEMAND
Assigned To : Unassigned

b. **By faithfully and repeatedly complying with erroneous instructions in the court's own form posted for use by pro se plaintiffs, this in forma pauperis pro se plaintiff's complaints were dismissed one after the other,** being described by various district court judges as fundamentally lacking in legal substance for failure to properly state a claim (as they would be but for *Nietzke* which mandates that failure to state a claim is not fatal to an in forma pauperis pro se complaint) and therefore frivolous. But none of the seven district court judge ever properly used the mandates in this Court's case law standard for *sua sponte* dismissal, *Denton v Hernandez,* 504 U.S. 25 (1992). None of their memorandum opinions ever documented full and fair application of the *sua sponte* dismissal mandates regarded as essential in appellate reviews in *Denton,* at 34. Two memorandum opinions, including the one reviewed in this matter, were simply cut and pasted from prior decisions without regard for new and profoundly modified form and content (that which was not suppressed from the record without prior review, 86% in this case).Therefore, the circuit court was not even able to undertake an "intelligent appellate review" as mandated by *Denton* at 34 and the circuit court did nothing to remedy these deficiencies prior to issuing its erroneous order.

c. Neither the term *sua sponte* nor the practice itself was taught in the in forma pauperis law school which this in forma pauperis pro se plaintiff attended (no classes, no tuition charged, no degree, no bar exam, no license issued). This plaintiff does have a graduate degree in business, is a former CPA despite only 2 or 3 college accounting classes, and has four decades of

consulting, executive, government, military, and intelligence problem solving, from complex systems integration to senior management positions.

d. Despite all that experience, which is uncommon among in forma pauperis pro se litigants who have had their rights abridged, deprived, or fatally denied over the years by these same courts, this plaintiff's deficient legal education (none) resulted in his failure to understand that these judges (i) did not understand *Denton's* superordinate application, nor their own proper role mandated by this Court. The plaintiff failed to recognize, in his ignorance, (ii) their ignorance and their improper failures to meet the standards for discretion (which are written and explicit, not mere opinions, whims, or personal judgement, much less groupthink) to be used in all *sua sponte* dismissals, as combined with (iii) the district court's own improper form Pro Se 2, and (iv) these courts' repeated misapplication of the wrong precedents, their orders, judgments, opinions, and mandates typically completely ignoring this Court's mandate to use *Denton,* and (v) their most persistent practice - **never once** applying the mandatory *Denton* tests of *sua sponte* discretion for achieving "intelligent appellate review."

e. So, eight consecutive erroneous orders went uncontested and untouched (they don't know the law, so a pro se plaintiff is supposed to catch these errors and correct them apparently). The in forma pauperis pro se plaintiff's rights were unfailingly deprived by seven district and three circuit judges in the District of Columbia from September 2021 through November 2022.

f. **23-cv-415 was completely reformulated and does not follow the improper form instructed in Pro SE Form 2.** Subsequent to the dismissal of that filing 22-cv-996 and during that appeal (in 22-5158), the in forma pauperis pro se plaintiff decided to ignore that specific

District of Columbia district court's Pro Se Form 2 This process was described to the district court, and then to the circuit court at paragraph 27, page 16 in the appellant brief.

g. The *sua sponte* dismissal Memorandum Opinion from 22-cv-996 was included in the record as the Memorandum Opinion for 23-cv-0415. That extremely dissimilar Complaint was filed in April 2022. As described at a. immediately above and in the appellant brief, the Complaint relevant to the appeal (23-cv-0415) was completely reworked over 6 months and 1,400 hours. None of the phrases and many of the assertions presumed by the completely outdated Memorandum Opinion from 22-cv-996 appear anywhere in the obviously and profoundly different Complaint 23-cv-0415. Yet the circuit court wrongly decided that the district court had provided the material it needed to conduct an "intelligent appellate review" of 23-cv-0415.

h. This standard of review, as actually practiced by the circuit court, can only be compared to the profoundly deficient standard of district court and circuit review commonly practiced for decades among federal courts in *sua sponte* dismissals of hundreds, perhaps thousands, of Complaints filed by litigants accusing Catholic Archdioceses of priestly pedophilia. That record of abysmal failures and profound injustices demonstrated groupthink in a systemic failure due to inherent bias, prejudice, and willful refusal to consider initially novel claims and evidence which may have contradicted some personal belief or bias but actually turned out to be horrifyingly commonplace.

i. ANY lack of objectivity in the handing of facts and the law has no place in rational and thoughtful jurisprudence under the Code of Ethics which all federal judges are subject to by law. So, it is not permissible under the *Denton* mandates for intelligent appellate review either. As affirmed by this circuit in this case, this case is a clear demonstration that these malign practices

persist in matters involving and novel claims in which these courts lack any of the requisite knowledge of the underlying technologies. These courts refuse to allow facts to be entered

j. These courts fail or willfully refuse to comprehend the federal executive's persistent history of abuses of U.S. persons without their knowledge or consent. The world's largest drug dealer for more than a decade in the 1950s and 1960s was CIA, which used 100 million doses of LSD on unsuspecting Americans to research "mind control." The FBI was the leading gang of unindicted felons from the 1950s into the early 1970s, when activists finally uncovered MKUltra. The evidence was in the field office filing cabinets, which memos were from an Assistant Director who sat across the hall from J. Edgar Hoover and were addressed to "All Field Offices."

g. There is no factual basis for the circuit court having reached an objective conclusion this district court exercised the due care required by the *Denton* mandate. No relevant memorandum opinion was even entered, just an old cut and paste job is in the record, so no "intelligent appellate review" was conducted. They cited the *Nietzke* sentence which mentions the word "frivolous" as the sole legal fig leaf for their embarrassing lack of "intelligent appellate review." There is no evidence the circuit court seriously contemplated *Denton* (mandatory) as it is not even mentioned in their judgement. They simply failed.

B.3.3 *Denton* Appellate Review Mandate 3. "whether the court provided a statement explaining the dismissal that facilitates "intelligent appellate review"

a. As described in Denton Appellate Review Mandate 2 above, the memorandum opinion from 22-cv-996 cut and pasted to the record by the district court does not relate at all to the form, construction, content, nor even one single sentence in the 23-cv-0415 complaint. The district

court's cut and pasted Memorandum Opinion simply does not correspond in any way to the facts and law as laid out in the Complaint 23-cv-0415.

b. Yet the Circuit panel used this irrelevant Memorandum Opinion as part of the record for its "intelligent appellate review." There is simply no basis in logic or law to use a memorandum opinion which is almost completely untethered to any of the facts and law cited in this specific complaint in an "intelligent appellate review." *Denton* was simply disregarded, and the in forma pauperis plaintiff yet again went unheard, ignored entirely, in this affirmation of a *sua sponte* dismissal without "intelligent appellate review." They failed.

B.3.4 *Denton* Appellate Review Mandate 4. Dismissals of novel claims "without any factual development."

a. Quoting again from *Denton v Hernandez,* 504 U.S. 25 (1992) 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)."

b. The district court relied on its own (lack of) scientific and technical expertise, rather than considering the 86% of evidence and expert knowledge which it actively suppressed in 23-mc-014, immediately after suppressive efforts by these defendants were reported to it. It did not allow the proper development of facts.

c. The science, facts, and patterns of evidence presented in the suppressed exhibits, gathered from independent sources, are compared in several exhibits, to previous actual

experiences (documented both prior to and continuing during the gathering of that independent documentary evidence) which is shown inline in the complaint and related in the exhibits. Considered objectively, these patterns match up rather precisely. There is amazing consistency in these patterns of historical and current prejudicial and adverse color of law abuses.

d. The vast majority of federal judges simply have never spent any time in the very real world of prejudicial color of law abuse. They worked in offices with reports, took depositions, and so forth. How the "sausage was made" - that was entirely up to others, who scrubbed it up before ever reached them on paper, video, photos, or lab reports. There is no reason to believe currently practicing judges (about 90% being Justice Department alumni as prosecutors and some as DOJ public defenders as well) would have much if any direct knowledge of these matters based upon any actual field experience or education.

e. **As reverse engineered** from open sources, graduate level education, and direct professional and personal experiences by this plaintiff who has never held a security clearance nor had access to any classified information**, the technologies which comprise both the prohibited bioweapon and the prohibited bioweapon delivery system are the underlying basis for the entire spectrum of durable illegal conduct documented in the Complaint.** The overall pattern of conduct, including human biomedical abuse, rights violations, and racketeering acts and injuries, have been used to research, develop, field test, and deploy this prohibited bioweapon on human subjects while attempting to maintain complete secrecy, as to the violation of both 18 U.S. Chapter 10 and the ratified international bioweapons treaty signed by President Richard Nixon in 1972, and violated by the United States each and every day since it came into force March 26, 1975. More detail on this prohibited bioweapon and bioweapon delivery system follows at subparagraphs j through m below.

f. While complex, the technologies used in the bioweapon and bioweapon delivery system are not particularly novel. Most are in fact based upon the same technologies and use the same or similar platforms commonly used in other military and intelligence applications and weapons systems. The same types of precision location, communication, and computing technologies and systems used in the prohibited bioweapon and bioweapon delivery system are also used in common commercial industries ranging from farming to trucking to airlines to stock trading to satellite television broadcasting.

g. Antilog systems, which are beneficial medical devices using similar principles of medicine and identical neuroscience, are in common localized use in hospitals of medium and high income countries around the world. U.S. hospitals use precisely targeted pulsed ultrasound routinely to deliver precision ultrasound pulses to the brain to break up disabling plaques and other undesirable structures.. Radiation is precisely aimed and dosed to treat cancers of the brain and body in this same way.

h. A Synchron brain to computer interface device is currently being successfully used for treatment of brain-related disabilities in FDA approved human trials in New York. Neuralink, an Elon Musk company, was approved to begin human trials by FDA in May, 2023. These uses are documented and explained in the suppressed and excluded 10,059 pages of evidence intended to be filed with the original complaint.

i. Numerous other commercial companies and research institutions are pursuing this same type of medical technology in the United States and other countries. The GAO and RAND Corporation, among others, have published analyses of the state of commercial development and the future of brain computer interface technology, and neuroscience is making extremely

rapid progress in understanding the biochemistry which comprises the actions and emotions of brain-centered animals, including humans.

j. The prohibited bioweapon is a remotely targeted computer to brain system (antilog to brain to computer medical devices) similar in form to any remote weapons system. The most advanced and novel portion, the bioweapon itself, is in fact simply software based upon neuroscience research and development. It runs on supercomputers. It uses a bioweapon delivery system platform and the software which controls that equipment (including ground based communications systems, a constellation of government satellites, and real time kinematics) to remotely locate, point, address, and deliver tiny amounts of specifically pulsed energy very precisely to the target, which can include any human brain.

k. The prohibited bioweapon transmits this signal to hijack a very specific address in a targeted brain in a very specific manner to trigger a thought, action, or involuntary change in the biomedical state of the target. The target cannot directly detect this target. Just like television or radio signal which drives video and sound on those devices, this signal drives an involuntary biochemical reaction in the brain, which is a thought, action, motion, or change in biomedical state (breathing, heart rate, and so forth). And, just like those signals, it leaves no evidentiary trace behind.

l. It is the prohibited bioweapon's use to manipulate brain chemistry very precisely and remotely (hijack the human subject's brain without their knowledge or consent) that makes it novel, unusual, and illegal under U.S. law, 18 U. S. C. Chapter 10 and under the ratified international *Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction* (effective in force March 26, 1975).

m. This program is the direct successor to MKUltra and the CIA's program's objective of quite literal mind control. MKUltra was documented in the 1975 Senate Select Intelligence Committee (the Church Commission) report and used for this plaintiff's comparative pattern of practice analysis contained in the suppressed evidentiary record. This successor program, known to the plaintiff as BRMT (brain remote management technology, actual codename unknown), is in fact a contemporary echo of the lawless history of (i) CIA's MKUltra 100 million dose LSD drugging program used on unwitting civilians and soldiers in the U.S., and (ii) FBI's Cointelpro which systematically violated rights, engaged in break-ins and wiretaps all without warrants, and employed and funded a White Supremacist militia, also extensively investigated and documented in the 1975 Church Committee report. These comparisons and analyses were excluded from evidence by the technical hacks of defendants and the preemptive acts of the district court as described thoroughly above.

n. Despite the factual evidence provided in 20 inline exhibits within the Complaint, the purposeful and preemptive truncation of the record by suppressing 86% of evidence without review, the sheer lack of adequate clock hours for the district court to even read the base Complaint, much less consider the preemptively suppressed and excluded evidence, the Circuit panel chose yet again to agree with the district court. It is clear the standards of reasonableness and due care did not meet even a basic "common sense man on the street" test of the district court's actions, much less for the specific mandates required for "intelligent appellate review." considering the development of facts in novel claims. They even missed this Court's pointed remark in *Nietzke v. Williams,* 490 U.S. 319 328-329 (1989): "**To term these claims frivolous is to distort measurably the meaning of frivolousness both in common and legal parlance."** The circuit court failed again.

C. Circuit Court Repeatedly and Improperly Affirmed Deprivations of Plaintiff Rights

C.1 Courts Deprived Plaintiff of Rights Under the Rule of Law

a. The circuit court (i) simply parroted the district court's single sentence from *Nietzke* incorporating the word "frivolous" as if it were an acceptable form of "intelligent appellate review" for their failure to properly use the specific *Denton* mandates which govern in forma pauperis pro se *sua sponte* dismissals; (ii) ignored this Court, Congressional, and Constitutional mandates which require it to fairly evaluate all claims under law (see subparagraph b below) and to give proper weight to the full array of facts (86% suppressed) in a manner which befits an in forma pauperis pro se plaintiff; then (iii) without even allowing itself enough elapsed time to review the complaint and deliberately truncated and scrambled record, swiftly dismissed the appeal as frivolous, while (iv) simultaneously affirming the district court's egregious preemptive exclusion of evidence (*i.e.,* without any review by any court of any of the evidence to be filed).

b. Under *Conley v. Gibson* 355 U.S. 45-46, 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.'"

e. The District of Columbia district and circuit courts thereby functionally aided and abetted the defendants' suppression of evidence from the record, and the defendants' efforts to cover up (i) their violations of plaintiff constitutional rights; (ii) violations of federal and state laws related to violent crimes, racketeering, terrorism, and constitutional rights; and

(iii) defendants' knowing violations of ratified international treaties under the cover of "state secrets." The circuit court failed.

C.2 Courts Deprived the Plaintiff of the Use of Facts and Evidence

a. The district court also relied on its own (lack of) scientific and technical expertise, rather than 10,059 pages of evidence and expert knowledge it did not permit to be submitted, in its threshold evaluation of complex and novel technology as "frivolous." The circuit court chose to agree with this finding. In so doing while excluding and suppressing facts and evidence, these courts deprived the plaintiff the right to enter to the record (i) predicate act evidence of wire, electronic mail, and bank frauds required under Federal Rule of Civil Procedure 9(b); (ii) scientific and technical expert reports and opinions demonstrating the technological feasibility and functionality of the prohibited bioweapon and bioweapon delivery system (as briefly summarized above at B.3.4 subparagraphs e through m); (iii) direct comparisons of prior patterns and current practices of defendants at issue in the Complaint and comparable historical patterns and practices of defendants, and of defendants' related prior convictions, judgements, and court orders in comparable matters; (iv) documentary evidence of injuries including receipts, contracts, photographs, bank statements, wire transfer receipts, fraudulent checks mailed and deposited by defendants; (v) calendar and phone logs; (vi) contemporaneous notes and incident reports; (vii) consistent failures to respond timely to public law information inquiries; (viii) evidence of coordination in suppressing evidence available but for defendants' use of technical means such as hacking; (ix) defendants' conspiracy and careful planning of a verbal lethality threat and subsequent lethality attempts against the plaintiff in July through November 2022.

b. None of this information was allowed to the record by the district court. The

circuit court failed to consider all this vital information cited in the appellant brief and in the district court actions and record. As before, the Circuit panel simply failed to consider and completely disregarded the *Denton v Hernandez* 504 U.S. 25 33 (1992) mandate requiring fundamental respect for unlikely facts "strange, but true; for truth is always strange, Stranger than fiction."

c. There is no other reasonable conclusion considering the circuit court's use of this *Denton* mandate. The circuit court failed.

REASONS FOR GRANTING THE PETITION

Reason 1: Repeated errors in applying precedent and profoundly flawed appellate review processes have and do prejudice the rights of in forma pauperis and pro se plaintiffs in the wrongful exercise of discretion in *sua sponte* orders of the courts in the District of Columbia circuit. This is the inescapable conclusion as to eight district court judges in nine badly flawed *sua sponte* orders and six circuit court judges in two badly flawed appellate *sua sponte* reviews and orders, all of are mandated by this Court to comply with the *Denton* precedent. Each and every order issued dismissing matters *sua sponte* failed to conform. The rights of this and other in forma pauperis plaintiffs have been violated repeatedly these courts from at least 2021 to the present. This Court must exercise its supervisory authority provided in Rule 10(a) and 10(c) to correct these widespread systemic deprivations of rights and failures to comply with this Court's *Denton* mandate which include specific standards for "intelligent appellate review."

Reason 2: As affirmed by this circuit court, the district courts also prejudiced the rights of this and all other in forma pauperis litigants in presenting Pro Se Form 2 on its website for an extended period of time. Complying with the repeated instructions on that form: "Do not make

legal arguments" was a principal reason for nearly two years of in forma pauperis pro se *sua sponte* dismissals in this plaintiff's case alone. The circuit court affirmed this district court systemic failure as to this plaintiff in 2022 in 22-5158. **This circuit and these district courts' non-compliance with the Denton mandate have prejudiced the rights of this plaintiff fatally if this petition is not granted, and very likely permanently and fatally prejudiced the rights of other in forma pauperis and pro se litigants in other matters in this circuit.** Rule 10 supervisory corrective action must be applied to this material deviation from fair jurisprudence

Reason 3: These courts preemptively and without review violated, then affirmed violation, of this in forma pauperis' right to file 86% of the evidence, as plaintiff reported immediately after these defendants had been and were hacking his computer and printer. Plaintiff twice offered electronic evidence and was twice refused the right to file, so was never entered, seen, heard, or reviewed. These requests were made seven days prior to filing in 23-mc-014, and actively through a court assistant during the time of the physical paper filing of the complaint 23-cv-0415. The plaintiff's attempt to enhance the record using email attachments were then hopelessly scrambled by the clerk's office when offered in the only remaining piecemeal fashion which could be used for any submission based upon weeks of requests and denials at the direction of the court and the clerk. These District of Columbia federal courts erroneous acts, purposeful and hostile or ignorant and inconsiderate, were affirmed by the circuit court. Constitutional rights and court legitimacy and fairness are at stake for those forced to file in forma pauperis pro se by life circumstances or actively hostile defendants with infinitely superior resources and powers which can be abused under color of law. Basic jurisprudential fairness and a series of fundamental violations of the *Denton* mandate both indicate yet another Rule 10(a) supervisory intervention is mandated.

In this matter, the circuit court's *sua sponte* affirmations at 23-5052 of the district court's *sua sponte* dismissals at 23-cv-0415 CM/ECF # 10 completely ignored and give absolutely no weight to:

a. 92 specific examples of injuries and color of law abuses in the complaint which represent the full array of lethality attempts, personal injuries, commercial injuries, and national security related pretexting by these defendants over time, listed in Appendix E hereto.

b. 43 compensable federal statutory forms of injury and violations of rights, and dozens of related state statutory injuries and violations,

c. 20 interline evidentiary exhibits in the body of underlying complaint itself contains which document, among many other things, strong evidence of intentional color of law pattern of practice abuses which comprise associated-in-fact enterprises under 18 U.S.C. 1962(b),(c), and (d) by federal police powers and intelligence operations, and their co-defendant police powers partners. One of these interline exhibits presents very strong circumstantial evidence of a September 2021 coordinated cover-up and denial by two defendant police powers operations (FBI and NYPD) after an initial admission by one of those defendants (NYPD) which acknowledged in writing it's possession of material evidence while declining to furnish that evidence to the plaintiff. Further interline evidence includes (i) plaintiff's then unwitting interactions with, and predicate acts by, a police powers defendant who has been previously federally judged liable multiple times for related civil rights offenses, resulting in over $100 million in damage awards to other plaintiffs (Joseph Arpaio, Maricopa County, Arizona Sherriff until 2018 and former 25 year federal DEA agent in Latin

América). Also included is abundant evidence of purposeful professional entanglements of the unwitting plaintiff in national security sensitive matters as pretext for ongoing federal color of law abuses, which include civilian commercial cover domestic legend building for international intelligence acquisition platform projects (1980s), nuclear technologies used in reactor and submarine operations (1990s), and rocket and satellite technologies used in military applications (1990s), and trafficking and forced labor (throughout).

d. 10,059 pages of facts and evidence, preemptively suppressed by the defendant, then immediately thereafter by the district court, which include essential evidence of predicate acts and other extensive violations of United States Code Title 18, Title 42 Chapter 21, and of five ratified international treaties by these defendants,

The circuit court affirmed this entire pattern of prejudicial rejection without review, overt suppression of evidence by the district court, first in the circuit's willful disallowing of a hearing or any factual development in its own *sua sponte* dismissal and affirmation, then again in its refusal to rehear what it had not heard in the first place. It invested two sentences by a judge's clerk in a no-compliant non-review and then one additional sentence in refusing a request for rehearing, joining the district court in trashing the plaintiff's constitutional right to have these facts be fairly considered and developed in an adversarial proceeding as required under this court's *Denton* mandate, 28 U.S.C. § 1915, and our Constitution.

The courts fundamental Constitutional reason to exist for citizens is to be the place of last resort to correct wrongs, including government abuses, redress profound overreaches, and preserve individual rights, so these broad precedential failures and process abuses in this important circuit MUST be reviewed by this Court under its 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**."

Reason 4: Finally, and Most Profoundly, when proven, the underlying matter before the courts here involves a grave threat to the public safety generally and the individual rights of U.S. persons have been systematically and durably violated by the federal executive acting outside its Constitutional and legal authorities. It is not some imaginary threat, as it uses existing technologies in a prohibited computer to brain bioweapon system, and has modern commercial antilogs, beneficial brain to computer medical devices which are in active use treating medical issues in the brain in FDA human trials. Many other technologies have come from defense and intelligence applications to commercial uses, such as GPS, digital communications, and the internet. This one has not and must be put in its proper [place, not continue to be use too inflict biomedical and worse harms no people.

The illegal bioweapon and bioweapon delivery system which undergirds this entire matter, has been, is being, and will continue to be illegally developed and used on U.S. persons

as human subjects, and has been, is being, and will be, illegally operated in secret, directly violating 18 U.S.C. Chapter 10 and the ratified 1972 treaty *Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction,* (effective in force March 26, 1975), if this Court fails to permit full and fair development of facts in an adversarial proceeding in accordance with the constitutional rights to redress of grievances which are guaranteed to even the least among us in accordance with 28 U.S.C. § 1915. More lives will be lost and destroyed if this litigation is not permitted.

The federal executive at all levels is simply too invested in avoiding domestic and international repercussions to protect individual rights, comply with the Constitution and laws in this matter. Political office holders run and hide when requested to assist with this issue, as they have repeatedly in this plaintiff's experience which include being cut from mailing lists, having mail and emails intercepted and diverted or "lost," and by a long running series of technology hacks, some requiring the purchase of replacement equipment, by these defendants. These patterns are identical to the patterns demonstrated by the Justice Department, and other elements of the federal executive as the CIA's MKUltra and FBI's Cointelpro scandals against individual rights of millions of Americans unfolded in the 1970s. Self-preservation and self-exculpation were and are the paramount values their patterns of actions and failures to act have and do demonstrate.

This offensive bioweapon and delivery system is a surreptitious computer to brain interface used remotely to indirectly manipulate the brain, abusing human subjects, and an antilog (opposite in function but based upon the same scientific principles and existing technologies) to Synchron commercial biomedical devices in FDA approved human trials in New York since 2022. This Synchron medical device is a brain to computer interface which assists

humans to overcome symptoms and limitations imposed by brain disorders and disabling brain disease progressions. A second FDA approval for human trials of a similar antilog medical device was granted to Neuralink, an Elon Musk funded company, on May 25, 2023.

Yes, this sounds fantastic to the uninitiated. That is understandable. Yellowstone National Park was widely known by the knowledgeable as a trapper's delusion for about 40 years, and dismissed as a drunken fantasy, before it became the world's first national park for the people rather than for a monarch. Satellite television shows old television re-runs 24 hours per day, it was pressed into existence in the aftermath of defense spending beginning in the late 1950s after the beep of Sputnik brought existential fear to America. And imagine sitting in a liquid fueled metal tube six miles in the sky traveling at 85% of the speed of sound – enjoy your Summer break.

But also give profound consideration to the realities faced by some of us on a daily basis at the hands of malign overreach:

a. these defendants include an overreaching federal executive with police powers and intelligence operations, and state and local partners at first unwittingly entangled, then tightly bound by their own overreach to this federal pattern of overreach, and invested in an outcome, not justice,

b. the profound reality that the Justice Department has <u>never</u> pursued systemic institutional corruption in federal departments and agencies in its entire 153 year history of full-time existence. For example, (i) FBI's Cointelpro crimes against thousands of people over 15 years were run out of an office across the hall from J. Edgar Hoover, (ii) FBI's protection of the criminal gang leader Whitey Bulger, known throughout FBI for 15 years as a strangler, extortionist, and truck hijacker, but the

entire responsibility was hung on one agent who ran Bulger as, all the while, the entire agency management team knew his criminal activities, and (iii) the intelligence community (e.g., CIA's MKUltra and 100 million doses of LSD for unsuspecting Americans. No management accountability for direct harms, aiding and abetting harms, conducting felony and destroying evidence (obstructing justice). These are fact-based American realities under our federal executive, which overreaches, claims legal exemptions, and runs to hiding behind whatever subterfuge it can find, including the classical criminal blame the victim strategy,

c. by acknowledging these realities of our system and its documented history, you are forced to the inescapable conclusion that this underlying case 23-cv-0415 will have profound impacts for the rights of individuals, for the rule of law, for any hope of halting color of law abuses of police, war, and other Constitutional powers by the federal executive. Any failure to allow the facts to be fully developed despite the protestations of an overreaching federal executive does and will directly threaten, as it most recently has on three occasions in late 2022, the life and safety of the plaintiff, of others similarly situated, and of the general public.

Injured plaintiffs are constitutionally entitled to contest the malign actions of any party in Article III courts under the Fourth and Fifth Amendments. If that adversarial proceeding is not permitted, one must inevitably conclude Article III courts in the District of Columbia function primarily to protect the interests of the federal executive in these matters, not civil liberties.

That would be anathema to liberty and to individual rights, and

that in turn would place the Article III courts of the United States

in an utterly untenable position.

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 critically important courts of the District of Columbia in their *sua sponte* actions, which will otherwise continue to severely prejudice the constitutional rights of this and all other in forma pauperis pro se litigants if allowed to persist in their current erroneous patterns of practice, functionally ignoring this Court's *Denton* mandate in *sua sponte* dismissals of in forma pauperis pro se actions,

(ii) protect the rights of all U.S. persons to access courts and justice, in that place of last resort, to remedy wrongs of a lawless executive, including by biomedical abuse which endangers those persons and the general public, and which has and does refuse to enforce its own laws in its own operations, by providing fair and equitable access to the courts, permitting the full and fair development of facts, and subjecting those facts under law to the same standards all other litigants are entitled using adversarial proceedings to attain just and equitable outcomes, including in these courts in the District of Columbia.

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

Respectfully submitted,

Date: June 13, 2023

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

This document contains 8,625 words on 39 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: June 13, 2023.

PROOF OF SERVICE

This case is presented to appeal a conflict of law which abuses the mandated standard of due care and protection of constitutional rights in *sua sponte* dismissal of in forma pauperis actions in the district and circuit courts of the District of Columbia, so 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 June 13, 2023.

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 23-5052 **September Term, 2022**

1:23-cv-00415-UNA

Filed On: May 23, 2023

Dennis Sheldon Brewer, Individually and on Behalf of All Others Similarly Situated,

Appellant

v.

Christopher A. Wray, Mr.; Director, Federal Bureau of Investigation, et al.,

Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BEFORE: Wilkins and Katsas, Circuit Judges, and Sentelle, Senior Circuit Judge

J U D G M E N T

This appeal was considered on the record from the United States District Court for the District of Columbia and on the brief filed by appellant. See Fed. R. App. P. 34(a)(2); D.C. Cir. Rule 34(j). Upon consideration of the foregoing and the emergency motion for a hearing, it is

ORDERED that the emergency motion for a hearing be denied. Appellant has not shown he is entitled to the requested relief. It is

FURTHER ORDERED AND ADJUDGED that the district court's February 28, 2023 order be affirmed. The district court properly dismissed appellant's case as frivolous. See 28 U.S.C. § 1915(e)(2)(B)(i); Neitzke v. Williams, 490 U.S. 319, 325 (1989) ("[A] complaint . . . is frivolous where it lacks an arguable basis either in law or in fact.").

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 23-5052 **September Term, 2022**

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Daniel J. Reidy
Deputy Clerk

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 23-5052 **September Term, 2022**

1:23-cv-00415-UNA

Filed On: May 9, 2023

Dennis Sheldon Brewer, Individually and on Behalf of All Others Similarly Situated,

Appellant

v.

Christopher A. Wray, Mr.; Director, Federal Bureau of Investigation, et al.,

Appellees

BEFORE: Wilkins and Katsas, Circuit Judges, and Sentelle, Senior Circuit Judge

O R D E R

The court concludes, on its own motion, that oral argument will not assist the court in this case. Accordingly, the court will dispose of the appeal without oral argument on the basis of the record and the presentation in appellant's brief. See Fed. R. App. P. 34(a)(2); D.C. Cir. Rule 34(j).

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Amanda Himes
Deputy Clerk

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

In Re
DENNIS SHELDON BREWER,)
)
Petitioner,)
)
) Miscellaneous Action No. 23-mc-14 (UNA)
)

ORDER

Petitioner, appearing *pro se*, wants the "Clerk of the Court to File Documents Not in Direct Conformance with Court Rules Due to Active Obstruction of Defendants' Abusing Police Powers to Obstruct Justice." The motion, to the extent intelligible, requests permission for Petitioner to file his official-capacity complaint against FBI Director Christopher Wray via a USB flash drive because the complaint consists of "approximately 20,000 [printed] pages." Mot. ¶ 1.

A complaint of that length cannot plausibly satisfy the pleading standards of Federal Rule of Civil Procedure 8(a). Regardless, Petitioner claims that "Defendants have and do continue to abuse their police powers to block and obstruct the Lead Plaintiff in submitting this complex litigation to the District Court," Mot. ¶ 2, which is belied by at least seven cases Petitioner filed against Wray but were dismissed as frivolous. *See Brewer v. Wray*, No. 22-cv-996 (UNA), 2022 WL 1597610, *aff'd*, No. 22-5158, 2022 WL 4349776 (D.C. Cir. Sept. 20, 2022); *Brewer v. Wray*, No. 1:22-cv-00116 (UNA), 2022 WL 226879, at *2 (D.D.C. Jan. 24, 2022); *Brewer v. Wray*, No. 21-cv-03218 (UNA), 2022 WL 160269, at *1 (D.D.C. Jan. 18, 2022); *see also Brewer v. Wray*, 22-cv-592 (UNA) (dismissed Apr. 7, 2022); *Brewer v. Wray*, 22-cv-365 (UNA) (dismissed Feb. 23, 2022); *Brewer v. Wray*, 21-cv-2954 UNA) (dismissed Nov. 16, 2021); *Brewer v. Wray*, 21-cv-2671 (UNA) (dismissed Oct. 15, 2021).

Accordingly, it is

ORDERED that Petitioner's motion to file a nonconforming pleading, ECF No. 1, and his accompanying motion to proceed in forma pauperis, ECF No. 2, are **DENIED**, and this miscellaneous action is closed.[1]

_____/s/_____
RUDOLPH CONTRERAS
United States District Judge

Date: February 13, 2023

[1] Petitioner may initiate a civil action by submitting a proper complaint in paper form with the Clerk of the Court, *see* LCvR 5.1, accompanied by either the $402 filing fee applicable to civil actions, *see* 28 U.S.C. § 1914(a) and Misc. Fee Schedule ¶ 14, or a motion to proceed in forma pauperis.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DENNIS SHELDON BREWER,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 23-00415 (UNA)
	)	
	)	
CHRISTOPHER WRAY *et al*.,	)	
	)	
Defendants.	)	

ORDER

It is hereby

ORDERED that Plaintiff's application for leave to proceed *in forma pauperis*, ECF No. 2, is **GRANTED**, and the remaining motions, ECF Nos. 5, 6, are **DENIED**; it is further

ORDERED that the voluminous complaint (1,534 pages sans exhibits) and this case are **DISMISSED** for the reasons stated in the Memorandum Opinion issued in *Brewer v. Wray*, No. 22-cv-996 (UNA), 2022 WL 1597610, *aff'd*, No. 22-5158, 2022 WL 4349776 (D.C. Cir. Sept. 20, 2022) (attached).[1]

This is a final appealable Order.

_____/s/_____
RUDOLPH CONTRERAS
Date: February 28, 2023 United States District Judge

[1] Plaintiff is notified that his persistence with filing repetitive and frivolous cases, *see id.; Brewer v. Wray*, No. 1:22-cv-00116 (UNA), 2022 WL 226879, at *2 (D.D.C. Jan. 24, 2022); *Brewer v. Wray*, No. 21-cv-03218 (UNA), 2022 WL 160269, at *1 (D.D.C. Jan. 18, 2022); *Brewer v. Wray*, 22-cv-592 (UNA) (D.D.C. Apr. 7, 2022); *Brewer v. Wray*, 22-cv-365 (UNA) (D.D.C. Feb. 23, 2022); *Brewer v. Wray*, 21-cv-2954 UNA) (D.D.C. Nov. 16, 2021); *Brewer v. Wray*, 21-cv-2671 (UNA) (D.D.C. Oct. 15, 2021), may result ultimately in an injunction preventing him from bringing future cases in forma pauperis (IFP). *See Hurt v. Soc. Sec. Admin*., 544 F.3d 308, 310 (D.C. Cir. 2008) (approving the denial of IFP status "prospectively" when "the number, content, frequency, and disposition of a litigant's filings show an especially abusive pattern").

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DENNIS SHELDON BREWER,	)	
	)	
Plaintiff,	)	
	)	Civil Action No. 1:22-cv-00996 (UNA)
v.	)	
	)	
CHRISTOPHER WRAY, *et al.*,	)	
	)	
Defendants.	)	

MEMORANDUM OPINION

This matter is before the Court on its initial review of plaintiff's *pro se* complaint ("Compl."), ECF No. 1, and application for leave to proceed *in forma pauperis*, ECF No. 3. The Court will grant the *in forma pauperis* application and dismiss the case pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii), by which the Court is required to dismiss a case "at any time" if it determines that the action is frivolous. Plaintiff has filed a motion for temporary restraining order ("Mot."), ECF No. 2, which will be denied.

"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), and a "complaint plainly abusive of the judicial process is properly typed malicious," *Crisafi v. Holland*, 655 F.2d 1305, 1309 (D.C. Cir. 1981).

Plaintiff, a resident of Edgewater, New Jersey, sues several federal officials, the New York City Police Department and several of its officials, and additional John Does. *See* Compl. at 1–2, 10–11. Any claims against the Doe defendants cannot stand, however, because the Local Rules of

this Court state that "[t]hose filing *pro se in forma pauperis* must provide in the caption the name and full residence address or official address of each defendant." D.C. LCvR 5.1(c).

The prolix complaint totals 372 pages, and due to the length of the pleading alone, 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. Further, a complaint "shall [not] have appended thereto any document that is not essential to determination of the action." D.C. LCvR 5.1(e).

Furthermore, the allegations are incomprehensible. For example, plaintiff contends that the "Complaint raises extremely critical issues of human autonomy crucial to the future of these United States and our ability to function as free and self-directed people." Compl. at 5. He goes on to state that "in the opinion of the Plaintiff, the international deployment of this coercive technology, by the United States, has resulted in retaliatory attacks against State and CIA employees of the United States operating outside U.S. boundaries, causing the spectrum of symptoms known as the Havana Syndrome. On September 16, 2021, three days after the initial mailing of the first version of this case to the Court, the Secretary of Defense instructed all personnel to report any Havana Syndrome symptoms to the chain of command." *Id.* at 8.

He further contends that defendants' "technology causes emotional trauma, physical pain, manufactured body movements, thoughts, and verbalizations which can endanger the life, and are directly detrimental to, the subject's human, constitutional, and civil rights[.]" *Id.* He believes that these "conspiratorial" actions, *see id.* at 23, occurred "[w]ithin and without the boundaries of the United States, including, without limitation, Canada, Mexico, the United Kingdom, and potentially including in the physical jurisdiction of France, Italy, Luxembourg, and Switzerland[,]" and that the "[t]he pattern of events date from approximately 1980[,]" *id.* at 7. He seeks myriad injunctive

and declaratory relief and monetary damages. *See id.* at 8. Plaintiff's motion for temporary restraining order is equally incredible. *See e.g.*, Mot. at 6 (discussing defendants' two alleged "notable recent efforts" to control plaintiff by use of "remote manipulation of brain and bodily functions," causing him to, respectively, choke on a piece of steak and to fall out of his chair, due to the government's "deadly manipulations.").

This Court cannot exercise subject matter jurisdiction over a frivolous complaint. *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)); *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."). Consequently, a court is obligated to 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), or "postulat[e] events and circumstances of a wholly fanciful kind," *Crisafi*, 655 F.2d at 1307–08. The instant complaint satisfies this standard. In addition to failing to state a claim for relief or establish this Court's jurisdiction, the complaint is deemed frivolous on its face.

Therefore, this case is dismissed without prejudice, and the motion for temporary restraining order is denied. A separate order accompanies this memorandum opinion.

TREVOR N. McFADDEN
United States District Judge

Dated: May 16, 2022

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.

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,

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.

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

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**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.

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-

---

*See Amended Complaint in *Hernandez* v. *Ylst*, et al., No. CIV S–83–0645 (Feb. 9, 1984) (alleging rape by unidentified correctional officers at California State 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. CIV S–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 1983), Brief for Respondent 5; Complaint in *Hernandez* v. *Ylst*, et al., No. CIV S–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. CIV S–84–1198 (Sept. 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. CIV S–85–0084 (Jan. 21, 1985) (alleging 16 additional incidents occurring between January 13 and December 10, 1984), Brief for Respondent 7.

> 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 S–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." See Exhibit G to Motion to Amend Complaint in *Hernandez* v. *Denton*, et al., No. CIV S–83–1348 (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.'"

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. *Hernandez* 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

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 pay or secure the costs" of litigation. *Adkins* v. *E. I. 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*

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 328–329. 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

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).

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),

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).

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.

JUSTIA

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

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490 U.S. 319

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490 U.S. 319

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR

THE SEVENTH CIRCUIT

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

Page 490 U. S. 320

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 of a unanimous Court.

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

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

Oral Argument - February 22, 1989

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

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

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

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

Page 490 U. S. 322

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

Page 490 U. S. 323

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,

Page 490 U. S. 324

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

Page 490 U. S. 325

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

Page 490 U. S. 326

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

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

Page 490 U. S. 327

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

Page 490 U. S. 328

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 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

Page 490 U. S. 329

is to distort measurably the meaning of frivolousness both in common and legal parlance. Indeed, we recently reviewed the dismissal under Rule 12(b)(6) of a complaint based on 42 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

Page 490 U. S. 330

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]

Page 490 U. S. 331

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 *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.

i. This case is complex and far-reaching due to the nature and extent of the violations of law and acts against civil rights undertaken by these Defendants against Lead Plaintiff and others of this class. The scope of this case rivals or exceeds the scope of the MKUltra secret drugging program of Defendant CIA and the Cointelpro burglary, violence, and assaults program of Defendant FBI, which were systematic, programmatic and long-running violations of the Constitution and rule of law by the United States between 1953 and 1973. A Complaint Table of Contents is shown at pages 21-28. As the historical record demonstrates, Defendant Department of Justice has never in its entire history acted against broad-based institutional corruption to establish and prosecute insider criminal liability and secure justice for the thousands of felonies committed and the thousands of persons victimized under the color of law by abuse of "state secrets" when these acts are institutional criminal acts of Defendant United States. Neither Congress nor the Executive has lifted a finger to remedy or even desist in these acts under the BRMT program running since the early 1970s, and an inseparable and inescapable interference in the life of the Lead Plaintiff and others of this class of plaintiffs, including victimized US persons and other innocents. See LP Evidentiary Exhibits pages 6645-6699, then 1-10, for an explanation of BRMT, then see 11-25 for a crude private sector reverse functioning comparable.

ii. Constitutional and legal protections have been functionally shredded and destroyed as this Complaint clearly demonstrates with prima facie evidence and clarity. This lawless program continues as this Complaint is being written, so this litigation and the accompanying request for an emergency temporary restraining order are literally the only reasonable remedy for the Lead Plaintiff and all those similarly situated. Given the series of lethal attempts described in Table 1 at page 30-46, Article III courts are the only refuge for these Plaintiffs and may literally be the only way to avoid lethal outcomes to this class of Plaintiffs.

iii. Defendant United States: The term "Defendant United States" is used herein to refer to the departments and agencies of the United States organized in the Executive branch of government and thereby subject to the direct and/or indirect authority of the President of the United States. "Defendants" refers to any and all defendants. The specific organizations and individuals involved in a specific act or set of acts are not readily discernible to the Plaintiffs. Thousands of organizations located in tens of thousands of places with over 1 million personnel have "top secret" clearances in the United States are known to participate in national security operations. The names of some agencies are classified. Another 18,000 organizations have over 700,000 officers. Police powers and intelligence personnel involved in the acts and violations herein operate undercover locally to the Plaintiffs and also operate remotely using technology, as do their partners, allies, informants, and others. Hence, they are identified as part of the more general class known herein as "Defendants." Defendants also includes various officers, contractors, agents, licensed and unlicensed private individuals and members of the general public both organized and unorganized who have acted at times in violation of law and/or in coordination with public officials.

iv. Page Numbering, Tables, Interline Exhibits: All page number references herein relate to the RED colored Bates numbering at the bottom of each page. Table 1 begins at page 30. Table 2 beings at page 132. These tables are numbered with paragraph references 1-xxx or 2-xxxx. Interline Exhibits are found throughout the Complaint.

v. Exhibits: Exhibits filed with this initial complaint are identified as LP Evidentiary Exhibits. Most exhibits are identified and located by the RED page number at the bottom of each page. Emails are identified and located by the date of the email in YYMMDD format, the sequence in which they are filed. The short title of each email relates to the Lead Plaintiff's

principal contact's name and the subject matter of the email, not necessarily the topic indicated in the subject line of the specific email. The emails submitted are a sampling of key emails and do not indicate the volume of total emails which are related to the contact or the subject.

vii. Compendium, Table of Contents: A compendium which includes the name and brief description of selected key entities and individuals, listings of selected key emails, documents, disbursements in both date and alphabetic orders is filed at LP Evidentiary Exhibits pages 934-1075.

Note that crucial evidence is currently blocked, or hacked and deleted, from various Lead Plaintiff's email accounts. Note that virtually all emails from 180304 through 200709 are blocked and inaccessible to Lead Plaintiff throughout the preparation of this Complaint. This greatly impacts the Plaintiffs' ability to completely address many of the claims presented herein at this time. For convenience of reference throughout this Complaint, the Table of Contents on the next page lists the RED color page number at the bottom of each page for key sections, tables, and interline exhibits.

COMPLAINT TABLE OF CONTENTS

BRMT: See LP Evidentiary Exhibits pages 6645-6699, then pages 1-10 explaining BRMT, then early stage private sector comparable at 11-25, FDA approved for human trials in 2021.

COMPLAINT

1. This Complaint arises on three basic claims against Defendant United States and its co-conspirator Defendants which demand the attention of and action by this Court:

First, Defendant United States has and does illegally deploy and operate Brain Remote Management Technology ("BRMT" herein) against US persons in violation of (i) the Constitution, of (ii) five ratified international treaties, of (iii) 18 USC § 175, and of (iv) Title 42 Chapter 21 Civil Rights, all as summarized at paragraph 7, pages 55-56. BRMT violates (v) the

2006—Subsec. (a). Pub. L. 109–171 substituted "$350" for "$250".
2004—Subsec. (a). Pub. L. 108–447 substituted "$250" for "$150".
1996—Subsec. (a). Pub. L. 104–317 substituted "$150" for "$120".
1986—Subsec. (a). Pub. L. 99–500 and Pub. L. 99–591 substituted "$120" for "$60".
Subsec. (d). Pub. L. 99–336 struck out subsec. (d) which provided that section was not applicable to District of Columbia.
1978—Subsec. (a). Pub. L. 95–598 substituted "$60" for "$15".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–171, title X, §10001(d), Feb. 8, 2006, 120 Stat. 184, provided that: "This section [amending this section and enacting provisions set out as notes under sections 1913 and 1931 of this title] and the amendment made by this section shall take effect 60 days after the date of the enactment of this Act [Feb. 8, 2006]."

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–447, div. B, title III, §307(c), Dec. 8, 2004, 118 Stat. 2895, provided that: "This section [amending this section and section 1931 of this title] shall take effect 60 days after the date of the enactment of this Act [Dec. 8, 2004]."

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–317, title IV, §401(c), Oct. 19, 1996, 110 Stat. 3854, provided that: "This section [amending this section and section 1931 of this title] shall take effect 60 days after the date of the enactment of this Act [Oct. 19, 1996]."

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–336, §4(c), June 19, 1986, 100 Stat. 638, provided that: "The amendments made by this section [amending this section] shall apply with respect to any civil action, suit, or proceeding instituted on or after the date of the enactment of this Act [June 19, 1986]."

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–598 effective Oct. 1, 1979, see section 402(c) of Pub. L. 95–598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

COURT FEES FOR ELECTRONIC ACCESS TO INFORMATION

Judicial Conference to prescribe reasonable fees for collection by courts under this section for access to information available through automatic data processing equipment and fees to be deposited in Judiciary Automation Fund, see section 303 of Pub. L. 102–140, set out as a note under section 1913 of this title.

§1915. Proceedings in forma pauperis

(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.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 28, U.S.C., 1940 ed., §§9a(c)(e), 832, 833, 834, 835, and 836 (July 20, 1892, ch. 209, §§1–5, 27 Stat. 252; June 25, 1910, ch. 435, 36 Stat. 866; Mar. 3, 1911, ch. 231, §5a, as added Jan. 20, 1944, ch. 3, §1, 58 Stat. 5; June 27, 1922, ch. 246, 42 Stat. 666; Jan. 31, 1928, ch. 14, §1, 45 Stat. 54).

Section consolidates a part of section 9a(c)(e) with sections 832–836 of title 28, U.S.C., 1940 ed.

For distribution of other provisions of section 9a of title 28, U.S.C., 1940 ed., see Distribution Table.

Section 832 of title 28, U.S.C., 1940 ed., was completely rewritten, and constitutes subsections (a) and (b).

Words "and willful false swearing in any affidavit provided for in this section or section 832 of this title, shall be punishable as perjury as in other cases," in section 833 of title 28, U.S.C., 1940 ed., were omitted as covered by the general perjury statute, title 18, U.S.C., 1940 ed., §231 (H.R. 1600, 80th Cong., sec. 1621).

A proviso in section 836 of title 28, U.S.C., 1940 ed., that the United States should not be liable for costs was deleted as covered by section 2412 of this title.

The provision in section 9a(e) of title 28, U.S.C., 1940 ed., respecting stenographic transcripts furnished on appeals in civil cases is extended by subsection (b) of the revised section to include criminal cases. Obviously it would be inconsistent to furnish the same to a poor person in a civil case involving money only and to deny it in a criminal proceeding where life and liberty are in jeopardy.

The provision of section 832 of title 28, U.S.C., 1940 ed., for payment when authorized by the Attorney General was revised to substitute the Director of the Administrative Office of the United States Courts who now disburses such items.

Changes in phraseology were made.

1949 ACT

This amendment clarifies the meaning of subsection (b) of section 1915 of title 28, U.S.C., and supplies, in subsection (e) of section 1915, an inadvertent omission to make possible the recovery of public funds expended in printing the record for persons successfully suing in forma pauperis.

EDITORIAL NOTES

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–134, §101[(a)] [title VIII, §804(a)(1)], designated first paragraph as par. (1), substituted "Subject to subsection (b), any" for "Any", struck out "and costs" after "of fees", substituted "submits an affidavit that includes a statement of all assets such prisoner possesses" for "makes affidavit", substituted "such fees" for "such costs", substituted "the person" for "he" in two places, added par. (2), and designated last paragraph as par. (3).

Subsec. (b). Pub. L. 104–134, §101[(a)] [title VIII, §804(a)(3)], added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 104–134, §101[(a)] [title VIII, §804(a)(2), (4)], redesignated subsec. (b) as (c) and substituted "subsections (a) and (b) and the prepayment of any partial filing fee as may be required under subsection (b)" for "subsection (a) of this section". Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 104–134, §101[(a)] [title VIII, §804(a)(2)], redesignated subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 104–134, §101[(a)] [title VIII, §804(a)(5)], amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: "The court may request an attorney to represent any such person unable to employ counsel and may dismiss the case if the allegation of poverty is untrue, or if satisfied that the action is frivolous or malicious."

Pub. L. 104–134, §101[(a)] [title VIII, §804(a)(2)], redesignated subsec. (d) as (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 104–134, §101[(a)] [title VIII, §804(a)(2), (c)], redesignated subsec. (e) as (f), designated existing provisions as par. (1) and substituted "proceedings" for "cases", and added par. (2).

Subsec. (g). Pub. L. 104–134, §101[(a)] [title VIII, §804(d)], added subsec. (g).

Subsec. (h). Pub. L. 104–134, §101[(a)] [title VIII, §804(e)], added subsec. (h).

1979—Subsec. (b). Pub. L. 96–82 substituted "Upon the filing of an affidavit in accordance with subsection (a) of this section, 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 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" and "Such expenses shall be paid when authorized by the Director of the Administrative Office of the United States Courts" for "In any civil or criminal case the court may, upon the filing of a like affidavit, direct that the expense of printing the record on appeal, if such printing is required by the appellate court, be paid by the United States, and the same shall be paid when authorized by the Director of the Administrative Office of the United States Courts".

1959—Subsec. (a). Pub. L. 86–320 substituted "person" for "citizen".

1951—Subsec. (b). Act Oct. 31, 1951, struck out "furnishing a stenographic transcript and" after "expense of".

Subsec. (e). Act Oct. 31, 1951, inserted provision that the United States shall not be liable for any of the costs incurred.

1949—Subsec. (b). Act May 24, 1949, §98(a), inserted "such printing is" between "if" and "required".

Subsec. (e). Act May 24, 1949, §98(b), inserted "or printed record" after "stenographic transcript".

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

"United States magistrate judge" substituted for "United States magistrate" in subsec. (c) pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of this title.

§1915A. Screening

(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.)

§1916. Seamen's suits

In all courts of the United States, seamen may institute and prosecute suits and appeals in their own names and for their own benefit for wages or salvage or the enforcement of laws enacted for their health or safety without prepaying fees or costs or furnishing security therefor.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under Title 11, Bankruptcy, before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as an Effective Date of 2005 Amendment note under section 101 of Title 11.

CHAPTER 10—BIOLOGICAL WEAPONS

Sec.

EDITORIAL NOTES

AMENDMENTS

2004—Pub. L. 108–458, title VI, §6911(b), Dec. 17, 2004, 118 Stat. 3775, added item 175c.

2002—Pub. L. 107–188, title II, §231(b)(2), June 12, 2002, 116 Stat. 661, substituted "Select agents; certain other agents" for "Possession by restricted persons" in item 175b.

2001—Pub. L. 107–56, title VIII, §817(3), Oct. 26, 2001, 115 Stat. 386, added item 175b.

1996—Pub. L. 104–201, div. A, title XIV, §1416(c)(1)(B), Sept. 23, 1996, 110 Stat. 2723, added item 175a.

[1] *So in original. Does not conform to section catchline.*

§175. Prohibitions with respect to biological weapons

(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.)

EDITORIAL NOTES

AMENDMENTS

2002—Subsec. (c). Pub. L. 107–188 substituted "protective, bona fide research, or other peaceful purposes" for "protective bona fide research, or other peaceful purposes".

2001—Subsec. (b). Pub. L. 107–56, §817(1)(C), added subsec. (b). Former subsec. (b) redesignated (c).

Pub. L. 107–56, §817(1)(A), substituted "includes" for "does not include" and inserted "other than" after "delivery system for" and "bona fide research" after "protective".

Subsec. (c). Pub. L. 107–56, §817(1)(B), redesignated subsec. (b) as (c).

1996—Subsec. (a). Pub. L. 104–132 inserted "or attempts, threatens, or conspires to do the same," before "shall be fined under this title".

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE

Pub. L. 101–298, §1, May 22, 1990, 104 Stat. 201, provided that: "This Act [enacting this chapter and amending section 2516 of this title] may be cited as the 'Biological Weapons Anti-Terrorism Act of 1989'."

PURPOSE AND INTENT

Pub. L. 101–298, §2, May 22, 1990, 104 Stat. 201, provided that:

"(a) PURPOSE.—The purpose of this Act [see Short Title note above] is to—

"(1) implement the Biological Weapons Convention, an international agreement unanimously ratified by the United States Senate in 1974 and signed by more than 100 other nations, including the Soviet Union; and

"(2) protect the United States against the threat of biological terrorism.

"(b) INTENT OF ACT.—Nothing in this Act is intended to restrain or restrict peaceful scientific research or development."

§175a. Requests for military assistance to enforce prohibition in certain emergencies

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.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 382 of title 10, referred to in text, was renumbered section 282 of title 10, Armed Forces, by Pub. L. 114–328, div. A, title XII, §1241(a)(2), Dec. 23, 2016, 130 Stat. 2497.

[1] *See References in Text note below.*

§175b. Possession by restricted persons

(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.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 351A of the Public Health Service Act, referred to in subsecs. (b)(1) and (c)(1), is classified to section 262a of Title 42, The Public Health and Welfare.

Section 212 of the Agricultural Bioterrorism Protection Act of 2002, referred to in subsecs. (b)(2) and (c)(2), is classified to section 8401 of Title 7, Agriculture.

Section 6(j) of the Export Administration Act of 1979, referred to in subsec. (d)(2)(G)(i), was classified to section 2405(j) of the former Appendix to Title 50, War and National Defense, prior to editorial reclassification and renumbering as section 4605(j) of Title 50, and was repealed by Pub. L. 115–232, div. A, title XVII, §1766(a), Aug. 13, 2018, 132 Stat. 2232. For provisions similar to those of former section 4605(j) of Title 50, see section 4813(c) of Title 50, as enacted by Pub. L. 115–232.

AMENDMENTS

2019—Subsec. (a). Pub. L. 116–31, §2(1), inserted subsec. heading; added pars. (1) and (2); redesignated former par. (2) as (3), inserted par. heading and realigned margin; and struck out former par. (1) which prohibited the shipment, transportation, or possession of certain biological agents or toxins.

Subsec. (d). Pub. L. 116–31, §2(2), inserted heading.

2004—Subsec. (a)(1). Pub. L. 108–458, §6802(d)(1), substituted "as a non-overlap or overlap select biological agent or toxin in sections 73.4 and 73.5 of title 42, Code of Federal Regulations, pursuant to section 351A of the Public Health Service Act, and is not excluded under sections 73.4 and 73.5 or exempted under section 73.6 of title 42, Code of Federal Regulations" for "as a select agent in Appendix A of part 72 of title 42, Code of Federal Regulations, pursuant to section 351A of the Public Health Service Act, and is not exempted under subsection (h) of section 72.6, or Appendix A of part 72, of title 42, Code of Federal Regulations".

Subsec. (d)(2)(G). Pub. L. 108–458, §6802(c)(1), designated existing provisions as cl. (i), added cl. (ii), and struck out "or" at end.

Subsec. (d)(2)(H). Pub. L. 108–458, §6802(c)(2), substituted "; or" for period at end.

Subsec. (d)(2)(I). Pub. L. 108–458, §6802(c)(3), added subpar. (I).

2002—Pub. L. 107–273 substituted "Possession by restricted persons" for "Select agents; certain other agents" in section catchline.

Pub. L. 107–188, §231(b)(1)(B), substituted "Select agents; certain other agents" for "Possession by restricted persons" in section catchline.

Subsec. (a)(1). Pub. L. 107–188, §231(a)(1), (c)(2)(A), designated existing provisions of subsec. (a) as par. (1) and substituted "shall ship or transport in or affecting interstate or foreign commerce, or possess in or

affecting interstate or foreign commerce, any biological agent or toxin, or receive any biological agent or toxin that has been shipped or transported in interstate or foreign commerce, if the biological agent or toxin is listed as a select agent in Appendix A of part 72 of title 42, Code of Federal Regulations, pursuant to section 351A of the Public Health Service Act, and is not exempted under subsection (h) of section 72.6, or Appendix A of part 72, of title 42, Code of Federal Regulations" for "described in subsection (b) shall ship or transport interstate or foreign commerce, or possess in or affecting commerce, any biological agent or toxin, or receive any biological agent or toxin that has been shipped or transported in interstate or foreign commerce, if the biological agent or toxin is listed as a select agent in subsection (j) of section 72.6 of title 42, Code of Federal Regulations, pursuant to section 511(d)(l) of the Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104–132), and is not exempted under subsection (h) of such section 72.6, or appendix A of part 72 of the Code of Regulations".

Subsec. (a)(2). Pub. L. 107–188, §231(a)(2), (3), redesignated and transferred subsec. (c) as par. (2) of subsec. (a).

Subsec. (b). Pub. L. 107–188, §231(a)(5), added subsec. (b). Former subsec. (b) redesignated (d).

Subsec. (c). Pub. L. 107–188, §231(a)(5), added subsec. (c). Former subsec. (c) redesignated (a)(2).

Subsec. (d). Pub. L. 107–188, §231(a)(4), redesignated subsec. (b) as (d).

Subsec. (d)(1). Pub. L. 107–188, §231(b)(1)(A), substituted "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" for "The term 'select agent' does not include".

Subsec. (d)(3). Pub. L. 107–188, §231(c)(2)(B), substituted "section 101(a)(3)" for "section 1010(a)(3)".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–458, title VI, §6802(d)(2), Dec. 17, 2004, 118 Stat. 3767, provided that: "The amendment made by paragraph (1) [amending this section] shall take effect at the same time that sections 73.4, 73.5, and 73.6 of title 42, Code of Federal Regulations, become effective [probably means the effective date of the final rule revising sections 73.4, 73.5, and 73.6 of title 42, C.F.R., which was Apr. 18, 2005, see 70 F.R. 13294]."

[1] *See References in Text note below.*

§175c. Variola virus

(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.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

FINDINGS AND PURPOSE

Pub. L. 108–458, title VI, §6902, Dec. 17, 2004, 118 Stat. 3769, provided that:

"(a) FINDINGS.—Congress makes the following findings:

"(1) The criminal use of man-portable air defense systems (referred to in this section as 'MANPADS') presents a serious threat to civil aviation worldwide, especially in the hands of terrorists or foreign states that harbor them.

"(2) Atomic weapons or weapons designed to release radiation (commonly known as 'dirty bombs') could be used by terrorists to inflict enormous loss of life and damage to property and the environment.

"(3) Variola virus is the causative agent of smallpox, an extremely serious, contagious, and sometimes fatal disease. Variola virus is classified as a Category A agent by the Centers for Disease Control and Prevention, meaning that it is believed to pose the greatest potential threat for adverse public health impact and has a moderate to high potential for large-scale dissemination. The last case of smallpox in the United States was in 1949. The last naturally occurring case in the world was in Somalia in 1977. Although smallpox has been officially eradicated after a successful worldwide vaccination program, there remain two official repositories of the variola virus for research purposes. Because it is so dangerous, the variola virus may appeal to terrorists.

"(4) The use, or even the threatened use, of MANPADS, atomic or radiological weapons, or the variola virus, against the United States, its allies, or its people, poses a grave risk to the security, foreign policy, economy, and environment of the United States. Accordingly, the United States has a compelling national security interest in preventing unlawful activities that lead to the proliferation or spread of such items, including their unauthorized production, construction, acquisition, transfer, possession, import, or export. All of these activities markedly increase the chances that such items will be obtained by terrorist organizations or rogue states, which could use them to attack the United States, its allies, or United States nationals or corporations.

"(5) There is no legitimate reason for a private individual or company, absent explicit government authorization, to produce, construct, otherwise acquire, transfer, receive, possess, import, export, or use MANPADS, atomic or radiological weapons, or the variola virus.

"(b) PURPOSE.—The purpose of this subtitle [subtitle J (§§6901–6911) of title VI of Pub. L. 108–458, see Short Title of 2004 Amendment note set out under section 1 of this title] is to combat the potential use of weapons that have the ability to cause widespread harm to United States persons and the United States economy (and that have no legitimate private use) and to threaten or harm the national security or foreign relations of the United States."

§176. Seizure, forfeiture, and destruction

(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.)

EDITORIAL NOTES

AMENDMENTS

2002—Subsec. (a)(1)(A). Pub. L. 107–188 substituted "pertains to" for "exists by reason of".
1994—Subsec. (b). Pub. L. 103–322 substituted "the Government" for "the government".

§177. Injunctions

(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.)

EDITORIAL NOTES

AMENDMENTS

1996—Subsec. (a)(2). Pub. L. 104–132 inserted "threat," after "attempt,".

§178. Definitions

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.)

EDITORIAL NOTES

AMENDMENTS

2002—Par. (1). Pub. L. 107–188, §231(c)(4)(A), in introductory provisions substituted "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" for "means any micro-organism, virus, infectious substance, or biological product that may be engineered as a result of biotechnology, or any naturally occurring or bioengineered component of any such microorganism, virus, infectious substance, or biological product, capable of".

Par. (2). Pub. L. 107–188, §231(c)(4)(B), in introductory provisions substituted "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—" for "means the toxic material of plants, animals, microorganisms, viruses, fungi, or infectious substances, or a recombinant molecule, whatever its origin or method of production, including—".

Par. (4). Pub. L. 107–188, §231(c)(4)(C), substituted "recombinant or synthesized molecule," for "recombinant molecule, or biological product that may be engineered as a result of biotechnology,".

1996—Par. (1). Pub. L. 104–132, §511(b)(3)(A), substituted "infectious substance, or biological product that may be engineered as a result of biotechnology, or any naturally occurring or bioengineered component of any such microorganism, virus, infectious substance, or biological product" for "or infectious substance" in introductory provisions.

Par. (2). Pub. L. 104–132, §511(b)(3)(B)(i), (ii), in introductory provisions, inserted "the toxic material of plants, animals, microorganisms, viruses, fungi, or infectious substances, or a recombinant molecule" after "means" and substituted "production, including—" for "production—".

Par. (2)(A). Pub. L. 104–132, §511(b)(3)(B)(iii), inserted "or biological product that may be engineered as a result of biotechnology" after "poisonous substance".

Par. (2)(B). Pub. L. 104–132, §511(b)(3)(B)(iv), inserted "or biological product" after "isomer".

Par. (4). Pub. L. 104–132, §511(b)(3)(C), inserted ", or molecule, including a recombinant molecule, or biological product that may be engineered as a result of biotechnology," after "organism".

Par. (5). Pub. L. 104–132, §721(h), added par. (5).

CHAPTER 11—BRIBERY, GRAFT, AND CONFLICTS OF INTEREST

Sec.

of the legally admissible evidence necessary to bring criminal and other sanctions or remedies to bear on the unlawful activities of those engaged in organized crime and because the sanctions and remedies available to the Government are unnecessarily limited in scope and impact.

"It is the purpose of this Act [see Short Title of 1970 Amendment note above] to seek the eradication of organized crime in the United States by strengthening the legal tools in the evidence-gathering process, by establishing new penal prohibitions, and by providing enhanced sanctions and new remedies to deal with the unlawful activities of those engaged in organized crime."

LIBERAL CONSTRUCTION OF PROVISIONS; SUPERSEDURE OF FEDERAL OR STATE LAWS; AUTHORITY OF ATTORNEYS REPRESENTING UNITED STATES

Pub. L. 91–452, title IX, §904, Oct. 15, 1970, 84 Stat. 947, provided that:

"(a) The provisions of this title [enacting this chapter and amending sections 1505, 2516, and 2517 of this title] shall be liberally construed to effectuate its remedial purposes.

"(b) Nothing in this title shall supersede any provision of Federal, State, or other law imposing criminal penalties or affording civil remedies in addition to those provided for in this title.

"(c) Nothing contained in this title shall impair the authority of any attorney representing the United States to—

"(1) lay before any grand jury impaneled by any district court of the United States any evidence concerning any alleged racketeering violation of law;

"(2) invoke the power of any such court to compel the production of any evidence before any such grand jury; or

"(3) institute any proceeding to enforce any order or process issued in execution of such power or to punish disobedience of any such order or process by any person."

PRESIDENT'S COMMISSION ON ORGANIZED CRIME; TAKING OF TESTIMONY AND RECEIPT OF EVIDENCE

Pub. L. 98–368, July 17, 1984, 98 Stat. 490, provided for the Commission established by Ex. Ord. No. 12435, formerly set out below, authority relating to taking of testimony, receipt of evidence, subpoena power, testimony of persons in custody, immunity, service of process, witness fees, access to other records and information, Federal protection for members and staff, closure of meetings, rules, and procedures, for the period of July 17, 1984, until the earlier of 2 years or the expiration of the Commission.

EXECUTIVE DOCUMENTS

EXECUTIVE ORDER NO. 12435

Ex. Ord. No. 12435, July 28, 1983, 48 F.R. 34723, as amended Ex. Ord. No. 12507, Mar. 22, 1985, 50 F.R. 11835, which established and provided for the administration of the President's Commission on Organized Crime, was revoked by Ex. Ord. No. 12610, Sept. 30, 1987, 52 F.R. 36901, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

[1] *So in original.*

[2] *See References in Text note below.*

§1962. Prohibited activities

(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.)

EDITORIAL NOTES

AMENDMENTS

1988—Subsec. (d). Pub. L. 100–690 substituted "subsection" for "subsections".

§1963. Criminal penalties

(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.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Federal Rules of Evidence, referred to in subsec. (d)(3), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

2009—Subsec. (d)(2). Pub. L. 111–16 substituted "fourteen days" for "ten days".

1990—Subsec. (a). Pub. L. 101–647 substituted "or both" for "or both." in introductory provisions.

1988—Subsec. (a). Pub. L. 100–690, §7058(d), substituted "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." for "shall be fined not more than $25,000 or imprisoned not more than twenty years, or both".

Subsecs. (m), (n). Pub. L. 100–690, §7034, redesignated former subsec. (n) as (m) and substituted "act or omission" for "act of omission".

1986—Subsecs. (c) to (m). Pub. L. 99–646 substituted "(l)" for "(m)" in subsec. (c), redesignated subsecs. (e) to (m) as (d) to (l), respectively, and substituted "(l)" for "(m)" in subsec. (i) as redesignated.

Subsec. (n). Pub. L. 99–570 added subsec. (n).

1984—Subsec. (a). Pub. L. 98–473, §2301(a), inserted "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." following par. (3).

Pub. L. 98–473, §302, amended subsec. (a) generally, designating existing provisions as pars. (1) and (2), inserting par. (3), and provisions following par. (3) relating to power of the court to order forfeiture to the United States.

Subsec. (b). Pub. L. 98–473, §302, amended subsec. (b) generally, substituting provisions relating to property subject to forfeiture, for provisions relating to jurisdiction of the district courts of the United States.

Subsec. (c). Pub. L. 98–473, §302, amended subsec. (c) generally, substituting provisions relating to transfer of rights, etc., in property to the United States, or to other transferees, for provisions relating to seizure and transfer of property to the United States and procedures related thereto.

Subsec. (d). Pub. L. 98–473, §2301(b), struck out subsec. (d) which provided: "If any of the property described in subsection (a): (1) cannot be located; (2) has been transferred to, 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 by any act or omission of the defendant; 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)."

Pub. L. 98–473, §302, added subsec. (d).

Subsecs. (e) to (m). Pub. L. 98–473, §302, added subsecs. (d) to (m).

Subsec. (m)(1). Pub. L. 98–473, §2301(c), struck out "for at least seven successive court days" after "dispose of the property".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–16 effective Dec. 1, 2009, see section 7 of Pub. L. 111–16, set out as a note under section 109 of Title 11, Bankruptcy.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6. For establishment of U.S. Customs and Border Protection in the Department of Homeland Security, treated as if included in Pub. L. 107–296 as of Nov. 25, 2002, see section 211 of Title 6, as amended generally by Pub. L. 114–125, and section 802(b) of Pub. L. 114–125, set out as a note under section 211 of Title 6.

§1964. Civil remedies

(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.)

EDITORIAL NOTES

AMENDMENTS

1995—Subsec. (c). Pub. L. 104–67 inserted before period at end ", 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".

1984—Subsec. (b). Pub. L. 98–620 struck out provision that in any action brought by the United States under this section, the court had to proceed as soon as practicable to the hearing and determination thereof.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–67 not to affect or apply to any private action arising under title I of the

Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) or title I of the Securities Act of 1933 (15 U.S.C. 77a et seq.), commenced before and pending on Dec. 22, 1995, see section 108 of Pub. L. 104–67, set out as a note under section 77l of Title 15, Commerce and Trade.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98–620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

CONSTRUCTION OF 1995 AMENDMENT

Nothing in amendment by Pub. L. 104–67 to be deemed to create or ratify any implied right of action, or to prevent Securities and Exchange Commission, by rule or regulation, from restricting or otherwise regulating private actions under Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), see section 203 of Pub. L. 104–67, set out as a Construction note under section 78j–1 of Title 15, Commerce and Trade.

§1965. Venue and process

(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.)

§1966. Expedition of actions

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.

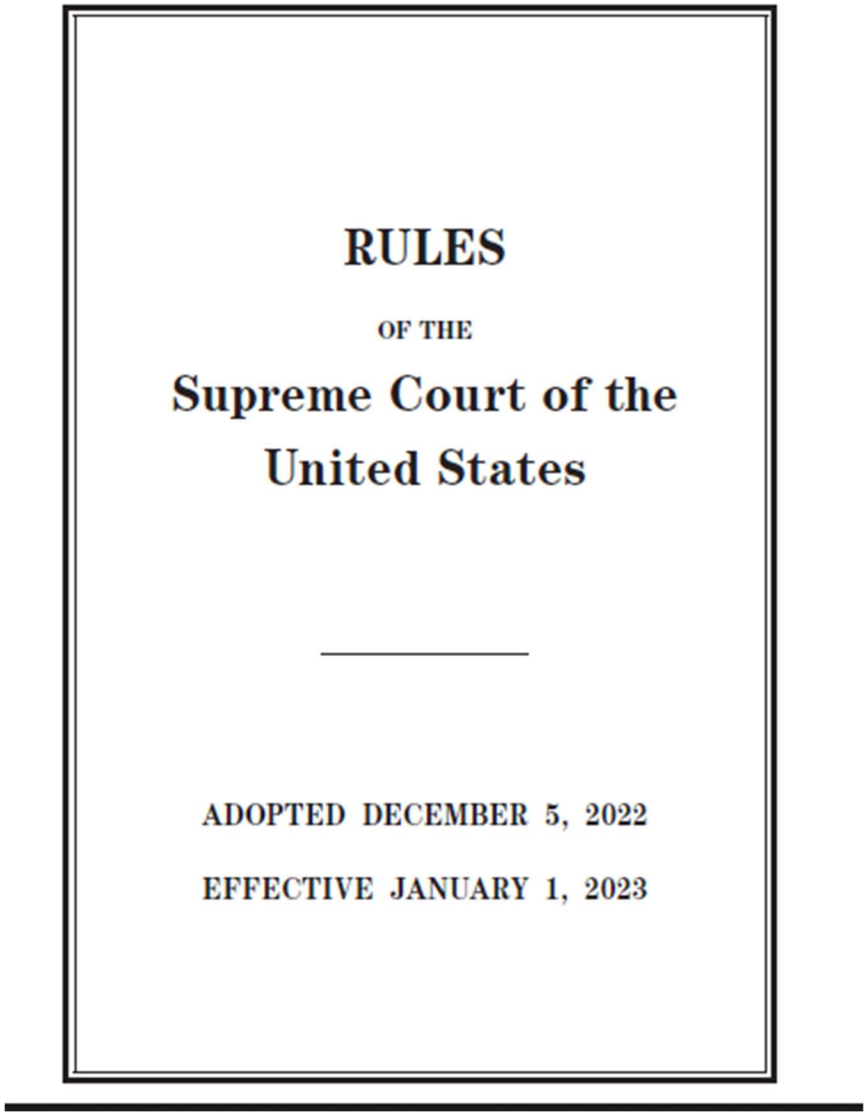
(Added Pub. L. 91–452, title IX, §901(a), Oct. 15, 1970, 84 Stat. 944; amended Pub. L. 98–620, title IV, §402(24)(B), Nov. 8, 1984, 98 Stat. 3359.)

EDITORIAL NOTES

AMENDMENTS

1984—Pub. L. 98–620 struck out provision that the judge so designated had to assign such action for hearing as soon as practicable, participate in the hearings and determination thereof, and cause such action to be expedited in every way.

STATUTORY NOTES AND RELATED SUBSIDIARIES



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.

FEDERAL RULES

OF

CIVIL PROCEDURE

DECEMBER 1, 2020

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THE COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

Rule 8. General Rules of Pleading

(a) CLAIM FOR RELIEF. A pleading that states a claim for relief must contain:

(1) a short and plain statement of the grounds for the court's jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional support;

(2) a short and plain statement of the claim showing that the pleader is entitled to relief; and

(3) a demand for the relief sought, which may include relief in the alternative or different types of relief.

(b) DEFENSES; ADMISSIONS AND DENIALS.

Rule 9. Pleading Special Matters

(a) CAPACITY OR AUTHORITY TO SUE; LEGAL EXISTENCE.

(1) *In General.* Except when required to show that the court has jurisdiction, a pleading need not allege:

(A) a party's capacity to sue or be sued;

(B) a party's authority to sue or be sued in a representative capacity; or

(C) the legal existence of an organized association of persons that is made a party.

(2) *Raising Those Issues.* To raise any of those issues, a party must do so by a specific denial, which must state any supporting facts that are peculiarly within the party's knowledge.

(b) FRAUD OR MISTAKE; CONDITIONS OF MIND. In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally.

(c) CONDITIONS PRECEDENT. In pleading conditions precedent, it