UNITED STATES APPEALS COURT
FOR THE FIFTH CIRCUIT

Case No. 24-10614

Dennis Sheldon Brewer,
Plaintiff - Appellant

v.

William Burns, Director, Central Intelligence Agency,
Defendant – Appellee

APPELLANT'S PETITION FOR EN BANC RECONSIDERATION OF ERRONEOUS APPELLATE COURT PANEL ORDER

Certificate of Interested Persons

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal. The known interested persons are the governmental, corporate, and individual defendants named herein, and an unknown number of members of the class of plaintiffs. The scope and magnitude of the class of plaintiffs is not yet identifiable due to governmental abuse of the state secret privilege and police powers exemptions which have precluded prospective plaintiffs from identifying themselves as a result of the continuing suppressive efforts of these self-interested defendants.

Plaintiffs:

DENNIS SHELDON BREWER, Individually,
1210 City Pl, Edgewater, NJ 07020,

Uknown number of plaintiffs who must be identified by affirmative acts of defendant UNITED STATES

_____

Known Federal Defendants, Official Capacity:

William Burns
Director
Central Intelligence Agency (CIA)
Washington, DC 20505
(505) 855-6744,

Christopher Wray
Director, Federal Bureau of Investigation (FBI)
935 Pennsylvania Avenue, NW
Washington, District of Columbia 20535-0001
202-324-3000,

Merrick Garland
Attorney General of the United States (DOJ)
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC, 20530-0001
202-514-2000,

Ronald Davis
Director
United States Marshals Service (USMS)
1215 S. Clark St.
Arlington, VA 22202,

Avril Haines
Director of National Intelligence (DNI)
Office of the Director of National Intelligence
1201 New York Avenue NW. Suite 500
Washington, DC 20005,

Lloyd Austin
Secretary of Defense (DOD)
1000 Defense Pentagon
Washington, DC 20301-1000
703-571-3343,

Christine Wormuth
Secretary of the Army (ARMY)
101 Army Pentagon
Washington, DC 20310,

Dr. Stefanie Tompkins

Known Entity Defendants:

ESTABLISH Inc.
c/o Corporation Service Company
251 Little Falls Drive
Wilmington, DE 19808,

ACME MARKETS Inc.
c/o: The Corporation Trust Company
830 Bear Tavern Road
West Trenton NJ 08628,

Daniel WEINER
HUGHES HUBBARD & REED LLP
One Battery Park Plaza
New York, New York 10004,

WALMART Inc.
702 SW 8th Street
Bentonville, AR 72716,

WALMART (CHINA) Investment Co., Ltd.
702 SW 8th Street
Bentonville, AR 72716,

COSTCO Wholesale Corporation
999 Lake Drive
Issaquah, WA 98027,

The KROGER Co.
1014 Vine Street
Cincinnati, OH 45202,

PPG Industries Inc.
One PPG Place
Pittsburgh, Pennsylvania 15272,

INSIGHT NETWORK Spain
c/o: Don KEISER
Calle Antina 22 Primera Planta, 03130,
St. Pola, Comunidad Valenciana, España.
Teléfono: +34 96 541 17 58,

Director, Defense Advanced Research Projects Agency (DARPA)
675 North Randolph Street
Arlington, VA 22203-2114
(703) 526-6630,

Alejandro Mayorkas
Secretary
Department of Homeland Security (DHS)
245 Murray Lane, SW
Washington, DC 20528-0075
202-282-800,

Kimberly Cheatle
Director
United States Secret Service (USSS)
245 Murray Ln SW - BLDG T-5
Washington, DC 20223
202-406-5708,

Xavier Becerra
Secretary
Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201,

Jeanne Marrazzo, M.D., M.P.H.
Director
National Institute of Allergy and Infectious Diseases (NIAID)
5601 Fishers Lane
North Bethesda, Maryland 20852,

Colleen Shogan
Archivist of the United States
The National Archives and Records Administration (NARA)
8601 Adelphi Road
College Park, MD 20740-6001,

Known State and Local Defendants, Official Capacity:

TECHNOLOGY SALES LEADS, Inc. (TSL)
c/o National Registered Agents, Inc
155 Federal Street, Suite 700 2nd Floor
Boston MA 02110,

LOEB & LOEB, LLP
c/o Mitchell NUSSBAUM
Vice Chairman
345 Park Avenue
New York, NY 10154,

Raymond F. SULLIVAN, LLC
c/o: Raymond SULLIVAN
Attorney
10440 Little Patuxent Parkway, Suite 900
Columbia, MD 21044,

TRADEKEY.COM, doing business in the United States through:
ORBIT TECHNOLOGIES LLC
264 Hemlock Terrace
Teaneck, NJ 07666,

WEBLINK.IN Pvt. Ltd.
33 and 33A Rama Road
Industrial Area, Shivaji Marg
New Delhi, India,

Vishal PATEL, MD
One Hudson Medical Associates, LLC
235 Old River Road
Edgewater, NJ 07020,

Michael SCIARRA, DO
Riverview Gastroenterology Limited Liability Company
300 Midtown Drive
Beaufort, South Carolina 29906,

Luis M. ASTUDILLO, MD
Northern New Jersey Cardiology Associates, P.A.
7650 River Rd Ste 300
North Bergen, NJ 07047,

MATCH GROUP, Inc.

Eric Adams
Mayor
City of New York (NYC)
New York City Law Department
100 Church Street
New York, NY 10007
212-356-1000,

Edward A. Caban
Commissioner
City of New York Police Department (NYPD)
Attention: PALS Unit
One Police Plaza
New York, New York 10038,

Patrick J. Callahan
Colonel, State Police (NJSP)
State of New Jersey
P.O. Box 7068
West Trenton, NJ 08628,

John Bilich
Chief of Security
Port Authority of New York and New Jersey Police Department (PAPD)
Four World Trade Center
150 Greenwich St
New York, NY 10006,

Christopher Trucillo
Chief Of Police
New Jersey Transit Police Department
One Penn Plaza East
Newark, New Jersey 07105,

Anthony Cureton
Sheriff
County of Bergen Sheriff's Department
2 Bergen County Plaza
Hackensack, NJ 07601,

James Todesco
County Executive

Jared Sine
Chief Business Affairs & Legal Officer
8750 N. Central Expressway, Suite 1400
Dallas, TX 75231,

BUMBLE Inc.
1105 W 41st Street
Austin, TX 78756,

Known Individual Defendants, Generally Known to USMS institutionally:

William BURNS, individually
fka Dr. Patrick Heffron
c/o: Central Intelligence Agency
1000 Colonial Farm Road
Langley Virginia 22101,

Stephen BREYER, individually,
fka Jack Sackville-West
Harvard Law School
1585 Massachusetts Ave.
Cambridge, MA 02138,

Andrew WEISSMANN, individually
fka Lyle Whiteman
New York University School of Law
40 Washington Sq. South
New York, NY 10012,

Charles ROSENBERG, individually
fka Chuck LeFevre (as CEO, NutraSource),
fka William Drumm (as General Manager, ESTABLISH)
Crowell & Moring LLP
1001 Pennsylvania Avenue, NW
Washington, DC 20004,

Robert MUELLER
Address Known to USMS and FBI,

Leslie CALDWELL
fka name unknown while fraudulently misrepresenting self as Seed & Berry intellectual property attorney
Latham & Watkins LLP
505 Montgomery Street, Suite 2000

County of Bergen, New Jersey
One Bergen County Plaza
5th Floor, Rm 580
Hackensack, NJ 07601-7076,

Jennifer Pokorski
County Manager
County of Maricopa County, Arizona
c/o Maricopa County Attorney
225 West Madison Street
Phoenix, AZ 85003,

Paul Penzone
Sheriff, Maricopa County Sheriff's Department
550 West Jackson Street
Phoenix, AZ 85003
602-876-1000,

King County Sheriff's Department
516 Third Avenue, Room W-116
Seattle, WA 98104-2312,

Washington State University
Attn: Asst. Attorney General, WSU
332 French Administration Building
Pullman, WA 99163,

Federal Way School District
33330 Eighth Ave S.
Federal Way, WA 98003,

Government Police Powers Departments And Agencies, While Operating As, And/Or Within, Apparently Private Entities,

John Does (unknown number)

San Francisco, CA 94111,

Anthony FAUCI
fka Larry R. Cook
Address Known to USMS

Known Individual Defendants:

Roger STONE
fka David P. Moller while at CIA
Address Known to FBI
Fort Lauderdale, FL

Lisa RUBIN
fka Michelle Yarbrough while at FBI
MSNBC
30 Rockefeller Plaza
New York, NY 10112,

Alexander VINDMAN
fka Paul Yarbrough while at ARMY
8309-8409 SW 26th Street
Davie, FL 33324,

Ari MELBER
fka Wes Lewis while at FBI
MSNBC
30 Rockefeller Plaza
New York, NY 10112,

Joseph ARPAIO
fka Greg Crossgrove while Sheriff, Maricopa County, AZ
12808 Vía Del Sol
Fountain Hills, AZ 85268,

David Reichert
fka Sheriff, KCSD
Address Known to USMS, DHS, KCSD,

Neal KATYAL
fka Shawn Morrissey while student Decatur High School, Federal Way, WA
Hogan Lovells US LLP
Columbia Square
555 Thirteenth Street, NW
Washington, D.C. 20004,

Thomas KEENE
fka Michael Callahan while Dominick & Dickerman
Managing Director
Bloomberg Media
731 Lexington Ave
New York, NY 10022,

Stephanie Clifford (MODDERMAN)
Address Known to USMS,

Norelle Dean (GIA)
Address Known to USMS,

Marc CHALOM
Address Known to USMS,

Other Unknown Government Officers, Agents, and Employees,

John Does (unknown number)

Members of federal appeals and district courts who have specific knowledge of U.S. Department of Justice, Department of Defense, Central Intelligence Agency, and/or other federal police powers, military, and intelligence departments and agencies, direct participation in the illegal bioweapon and bioweapon delivery system program from 1961 forward to the present, and/or of associated and related police powers operations of subordinate jurisdictions to the United States have, or may have, direct conflicts of interest in this matter. Hereby certified by counsel of record's signature below.

Dated: December 5, 2024.

Signature: 

Dennis Sheldon Brewer, Pro Se Attorney, Counsel of Record
1210 City Place
Edgewater, NJ 07020

TABLE OF CONTENTS

TABLE OF AUTHORITIES

28 U.S.C. § 1915		1, 10, 11, 18, 19, 20, 30, 31	16-18, 20
42 U.S.C. §§ 2000bb through 2000bb-4		15	11
42 U.S.C. § 2000bb-1		3, 10, 12, 15, 16, 30, 36	
Marbury v. Madison, 1 Cranch 137, 163, 2 L. Ed. 60 (1803)	277		
Bradley v. Fisher, 13 Wall. 335, 80 U. S. 351 (1871)	272		
United States v. Lee, 106 U. S. 220 (1882)	283		
The Western Maid, 257 U.S. 419 (1922)	277		
Bemis Bros. Bag Co. v. United States, 289 U.S. 28 (1933)	277		
Jacobs v. United States, 290 U. S. 13, 290 U. S. 16 (1933)	279		
Bell v. Hood, 327 U.S. 678 (1946)	277, 282		
United States v. Standard Oil Co., 332 U. S. 301, 332 U. S. 311 (1947)	279		
US v. Karl Brant et al, Nuremberg trail record, November 21, 1946 and August 20, 1947	358		
United States v. Reynolds, 345 U. S. 1 (1953)	24, 26a, 32, 66, 260, 262, 270, 271, 284, 315, 319, 351D, 396, 599B(v), 914		
United States v. Gilman, 347 U. S. 507 (1954)	279		
Wheeldin v. Wheeler, 373 U. S. 647 (1963)	279		
J. I. Case Co. v. Borak, 377 U. S. 426, 377 U. S. 433 (1964)	279		
Bivens v. Six Unknown Fed. Narcotics Agents, 403 U.S. 388 (1971)	91, 260, 277-285, 288-296		11, 15
Haines v. Kerner, 404 U.S. 519, 520-521 (1972)		12, 14, 18, 19, 33, 34	11-17, 19, 20
Gravel v. United States, 408 U. S. 606, 408 U. S. 615 (1972)	283		
Doe v. McMillan, 412 U. S. 306, 412 U. S. 320 (1973)	267A, 272B, 283		
Scheuer v. Rhodes, 416 U. S. 232 (1974)	272C		

Wood v. Strickland, 420 U. S. 308, 420 U. S. 322 (1975)	273		
Imbler v. Pachtman, 424 U.S. 409 (1976)	36, 276, 276B		
Hampton v. Mow Sun Wong, 426 U. S. 88 (1976)	283		
Stump v. Sparkman, 435 U.S. 349 (1978)	272		
Butz v. Economou, 438 U. S. 478 (1978)	272C, 274, 278, 283		
Davis v. Passman, 442 U. S. 228, 442 U. S. 245 (1979)	278, 282, 283		
United States v. Kubrick, 444 U.S. 111, 100 S. Ct. 352, 62 L.Ed.2d 259 (1979)	316		
Carlson v. Green, 446 U. S. 14 (1980)	278, 291		
Gomez v. Toledo, 446 U. S. 635 (1980)	273		
Boag v. MacDougall, 454 U. S. 364 (1982)	331	12, 14, 18, 19, 33, 34	11, 12, 14-18, 20
Nixon v. Fitzgerald, 457 U. S. 731 (1982)	260, 272C		
Harlow v. Fitzgerald, 457 U.S. 800 (1982)	91, 272C, 273, 320, 352, 914		
Chappell v. Wallace, 462 U.S. 296 (1983)	290, 291		
Bush v. Lucas, 462 U.S. 367 (1983)	290, 291		
United States v. Stanley, 483 U.S. 669 (1987)	290, 291		
Erwin v. United States 484 US 292 (1988)	267A, 272B		
Schweiker v. Chilicky, 487 U.S. 412 (1988)	290, 291		
United States v. Kozminski, 487 U.S. 931 (1988)	809, 820		
Neitzke v. Williams, 490 U.S. 319 (1989)	327, 331, 599H	1, 2, 11, 13, 14, 18, 19, 20, 23, 34	10, 12, 15-20
Denton v. Hernandez, 504 U.S. 25 (1992)	327, 331	1, 2, 11, 13, 14, 18, 19, 20, 21, 23, 28, 34	10, 12, 14-18, 20
FDIC v. Meyer, 510 U.S. 471 (1994)	290, 291		
Klehr v. A. O. Smith Corp., 521 U.S. 179 (1997)	316d		
Rotella v. Wood, 528 U.S. 549 (2000)	236, 315-317, 583		
Correctional Services Corp. v. Malesko, 534 U.S. 61 (2001)	290, 291		

Wilkie v. Robbins, 551 U.S. 537 (2007)	290, 291		
Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)		17	
Tooley v. Napolitano, 586 F.3d 1006, 1010 (D.C. Cir. 2009)		22	
Hui v. Castaneda, 559 U.S. 799 (2010)	284, 289, 290, 291, 293		
Minneci v. Pollard, 565 U.S. 118 (2012)	290, 291		
Lozano v. *Montoya Alvarez*, 572 U.S. 1 (2014).	316f		
Ziglar v. Abbasi, 582 U. S. ___ (2017)	290, 291		
Hernández v. Mesa, 589 U. S. ___ (2020)	290, 291		
Egbert v. Boule, 596 U.S. 482 (2022)	290, 297		
Boechler v. *Commissioner*, 596 U. S. ___, ___ (2022)	316		
Arellano v. McDonough, 598 U.S. ___ (2023)	316f		
Fifth Circuit Rule 47.6			10, 11, 12, 13, 21

STATEMENT OF ISSUES

A. The Circuit panel issued a per curiam Opinion finding no reversible errors of law, without citing any reason under Rule 47.6, which Rule citation is itself a prima facie violation of *Neitzke v. Williams,* 490 U.S. 319 (1989) which requires an *in forma pauperis pro se* complaint cannot be dismissed *sua sponte* for even the most fatal deficiencies found in paid pleadings (*ibid* at 329-331), and *Denton v. Hernandez*, 504 U.S. 25 (1992) which mandates, along with its other mandates at paragraphs 2-3 herein, that novel claims must be developed through the adversarial process at least to summary judgement so an appellate court can conduct "an intelligent appellate review" (*ibid* at 31-35). These particular case law mandates are directly applicable as this appeal is brought *in forma pauperis* under 28 U.S.C. § 1915, which pauper status has been caused and created by the injuries to the appellant by these defendants. The panel erred in both its opinion regarding the district court's *sua sponte* dismissal in violation of those mandates, and in its use of

Rule 47.6 in consideration of an *in forma pauperis pro se* pleading, as such a failure when conducting an "intelligent appellate review" is disallowed under the above referenced mandates.

B. Further, the panel's finding of no reversible errors of law by the district court in its *sua sponte* one day from docketing to dismissal order and judgement of the underlying complaint USDC 2:24-CV-123 is itself also a reversible error of law under *Boag v. MacDougall*, 454 U. S. 364 (1982) and *Haines v. Kerner,* 404 U.S. 519 (1972) as argued herein. The underlying complaint is (i) comprised of 1,324 pages, 384,315 words requiring more than 760 hours to read at a very high proficiency reading speed; (ii) incorporates 54 specific claims which are remediable under 28 U.S.C. §§ 1915, 2679(b)(2), 18 U.S.C. § 1964, *Fourth Amendment* violations which give rise to *Bivens* claims under *Bivens v Six Unknown Federal Agents,* 403 U.S. 388 (1971), and under other federal and state statutes as specifically cited therein, (iii) made under state statutes of multiple states where injuries occurred in the course of this fraudulently concealed illegal bioweapon and racketeering program, as well as under federal statutes including, without limitation, 5 U.S.C. § 301, 18 U.S.C. §§ 1961-1968 and offenses related thereto, 42 U.S.C. §§ 2000bb through 2000bb-4, (iv) all of which have been violated by defendants. The underlying complaint incorporates (a) claims under eight constitutional amendments, (b) 51 Supreme Court caselaw mandates, and (c) points of law arguments of state secret privilege, absolute and qualified immunity, *Bivens* claims, and specific conflicts of law with constitutional rights; (d) 110 substantive specific examples of justiciable conduct which relate to the 54 specific claims, (e) contains 19 inline exhibits, each of which specifically evidences particular injurious acts and the fraudulent concealment thereof by the defendants..

C. Both the district court and the Circuit panel made fatal errors of law in the most basic principle of constitutional jurisprudence – that fair consideration of facts and law requires the

district court to at least read the facts and law alleged in the complaint to render a valid judgment and opinion on each specific claim alleged in the complaint. There is no law nor any case law in any US federal jurisdiction that even asserts that the district court's failure to even merely read the contents of a complaint is sufficient to make any *sua sponte* decision – this most basic failure is a clear error of law under Supreme Court mandates and the intent of Congress. This practice is an unconstitutional abridgement of the most basic right of due process and an egregious error of law under *Boag* and *Haines,* as well as under *Neitzke* and *Denton* as argued at paragraph A above. this case is the result of decades of fraudulently concealed injuries all by these defendants who have deliberately sustained and fraudulently concealed on-going violations of the *Thirteenth Amendment* prohibition against involuntary servitude. The errors made by the district court and the Circuit panel are clear and undisputable errors of law.

STATEMENT OF THE COURSE PROCEEDINGS

D. Northern District of Texas 2:24-CV-123: Docketed on June 5, 2024. Dismissed sua sponte on June 6, 2024 with a two page order and one page judgement. Notice of Appeal docketed June 2, 2024, docketed by the Fifth Circuit Court of Appeals on July 12, 2024 as 24-10614.

E. Fifth Circuit Appeal 24-10614: Sufficient appellant brief mailed and dated September 10, 2024, accepted by Clerk and docketed. Per curiam Opinion dated November 11, 2024, correspondence was received November 20, 2024 by appellant but no copy of the per curiam Opinion was sent by Clerk's office to appellant. Telephone call by appellant to Clerk's office on November 20, 2024 resulted in reading of per curiam Opinion which found no reversible error and cited Rule 47.6 giving no reason for so finding. Per curiam Opinion mailed by Clerk on November 21, 2024, received by appellant on November 29, 2024.

F. Fifth Circuit En Banc Rehearing Petition 24-10614: En Banc Rehearing Petition mailed on November 12, 2024 without per curiam Opinion, and noting Clerk's omission of per curiam Opinion from mailing in Petition. Clerk's notice of deficiencies in En Banc Rehearing Petition mailed November 26, 2024, received December 4, 2024. Revised En Banc Rehearing Petition filed here.

STATEMENT OF FACTS

Errors of Law - Four Profoundly Fundamental Errors Violate Supreme Court Mandates

1. The Circuit panel issued a one page per curiam Opinion in 24-10614 which found there was no reversible error made by district court in its *sua sponte* dismissal one day from docket entry of a complex and novel 1,324 page complaint presented by the pro se plaintiff related to systematic federal executive branch violations of religious and other constitutional rights using a novel, illegal bioweapon which mere existence and offensive use without consent against US persons violates 18 U.S.C. §§ 175-178, 1961-1968. The panel made four profoundly fundamental errors of law and cited Rule 47.6. Affirmance Without Opinion, as below:

> *"47.6 Affirmance Without Opinion. The judgment or order may be affirmed or enforced without opinion when the court determines that an opinion would have no precedential value and that any one or more of the following circumstances exists and is dispositive of a matter submitted for decision:*

Rule 47.6 Compliance Standards	Rule 47.6 Compliance Errors By Circuit Panel
(1) that a judgment of the district court is based on findings of fact that are not clearly erroneous;	No findings of fact were made by the district court in its hasty, conflated abuse of judicial discretion 28 U.S.C. § 1915(e)(2)(B)(i).
(2) that the evidence in support of a jury verdict is not insufficient;	Complaint was dismissed *sua sponte* without any reasonable consideration of entirety of 54 claims in the complaint. Federal

	district courts are required to liberally construe pro se pleadings, *Boag v. MacDougall*, 454 U.S. 364, 365 (1982), and *Haines v. Kerner*, 404 U.S. 519, 520 (1972) and must give good faith weight to each and every allegation and argument presented in order to arrive at a threshold *sua sponte* dismissal order. Liberal construction requires the court to, at the very least, read, comprehend, and consider each claim. It did not expend any realistic effort to do so, as described below in this petition.
(3) that the order of an administrative agency is supported by substantial evidence on the record as a whole;	Not applicable.
(4) in the case of a summary judgment, that no genuine issue of material fact has been properly raised by the appellant;	A series of genuine issues of material fact, including conflation of another illegal former government program not at issue with the illegal injurious conduct in the district court's opinion, failure to even read and consider facts at all, and failure to comply with Supreme Court mandated further factual development required for novel claims (*Denton*) and in liberal construction (*Boag, Haines*) – all mandates which were ignored - were raised throughout the brief, as described below in this petition.
and (5) no reversible error of law appears.	Four specific reversible errors of law were raised in paragraph 8 of the appellant brief: **Error of Law 1** The district court misunderstood the basic facts of the case and conflated the issues before it with an unrelated

	program, which violates *Boag v. MacDougall,* 454 U. S. 364 (1982) and *Haines v. Kerner*, 404 U.S. 519, 520 (1972), liberal construction of facts required under law, with mandated additional weight and consideration to be accorded to unpaid *in forma pauperis pro se* litigants. **Error of Law 2** The district court misapplied caselaw mandates in *Neitzke v. Williams,* 490 U.S. 319 (1989) and *Denton v Hernandez*, 504 U.S. 25 (1992),(ROA.262-264, paragraphs 331-333) directly relevant to *in forma pauperis pro se* complaints and claims, in its failures to liberally construe even the most fatal errors (Neitzke at 329-331), and its failure to allow factual development of the novel bioweapon claim as the *Denton* mandate specifically requires at 31-35. **Error of Law 3** The district court, in its order at ROA.1522 ECF #8, suppressed direct evidence from the record which developed this novel bioweapon claim and the overarching racketeering claims (examples at ROA.1614-2181) which conceal the illegal program required under F. R. Civ. P. Rule 9(b) when concealed identities are used by police powers as in *Bivens*, which error further also violates *Boag v. MacDougall,* 454 U. S. 364 (1982), *Haines v. Kerner*, 404 U.S. 519, 520 (1972), and *Denton.* **Error of Law 4** The district court allegedly reviewed the 384,315 word complaint, covering 56 years of fraudulent concealment and

	abuse of state secret privilege in violation of § 301, considered all 54 claims which have civil remedies, and a complex set of related facts and of law, all in less than eight working hours. This complaint is impossible for any human to even read much less fairly consider in its complexity in that time period, as is required for liberal construction of claims under *Boag v. MacDougall,* 454 U. S. 364 (1982) and *Haines v. Kerner*, 404 U.S. 519, 520 (1972).

Errors of Law - *Denton v. Hernandez* 504 U.S. 25 (1992)Mandated Five Specific Circuit Court Tests Required To Affirm *Sua Sponte* Dismissals – These Tests Were Not Met

2. The Circuit panel failed to meet the Supreme Court's tests set out in *Denton v Hernandez* 504 U.S. 25 (1992) for proper appellate review of all district court *sua sponte* dismissals of in forma pauperis pro se complaints filed in any district court. The Supreme Court mandated that Circuit Courts review district court *sua sponte* dismissals of in forma pauperis pro se matters in a very particular manner - with which the Circuit panel materially failed to comply. To wit, citing *Denton*:

> "The federal in forma pauperis statute, codified at 28 U.S.C. 1915, allows an indigent litigant to commence a civil or criminal action in federal court without paying the administrative costs of proceeding with the lawsuit. The statute protects against abuses of this privilege by allowing a district court to dismiss the case "if the allegation of poverty is untrue, or if satisfied that the action is frivolous or malicious." 1915(d).
> In *Neitzke* v. *Williams*, 490 U.S. 319 (1989), we considered the standard to be applied when determining whether the legal basis of an in forma pauperis complaint is frivolous under 1915(d). The issues in this case are the appropriate inquiry for determining when an in forma pauperis litigant's factual allegations justify a 1915(d) dismissal for frivolousness, and the proper standard of appellate review of such a dismissal." (*ibid* at 27)
>
> …

"We therefore reject the notion that a court must accept as "having an arguable basis in fact", *id.* at 325, all allegations that cannot be rebutted by judicially noticeable facts. At the same time, in order to respect the congressional goal of "assur[ing] equality of consideration for all litigants," *Coppedge* v. *United States*, 369 U.S. 438, 447 (1962), this initial assessment of the *in forma pauperis* plaintiff's factual allegations must be weighted in favor of the plaintiff. In other words, the § 1915(d) frivolousness determination, frequently made *sua sponte* before the defendant has even been asked to file an answer, cannot serve as a fact finding process for the resolution of disputed facts.

"As we stated in *Neitzke*, a court may dismiss a claim as factually frivolous only if the facts alleged are "clearly baseless," 490 U. S., at 327, a category encompassing allegations that are "fanciful," *id.*, at 325, "fantastic," *id.*, at 328, and "delusional," *ibid.* As those words suggest, a finding of factual frivolousness is appropriate when the facts alleged rise to the level of the irrational or the wholly incredible, whether or not there are judicially noticeable facts available to contradict them. An *in forma pauperis* complaint may not be dismissed, however, simply because the court finds the plaintiff's allegations unlikely. Some improbable allegations might properly be disposed of on summary judgment, but to dismiss them as frivolous without any factual development is to disregard the age old insight that many allegations might be "strange, but true; for truth is always strange, Stranger than fiction." Lord Byron, Don Juan, canto XIV, stanza 101 (T. Steffan, E. Steffan & W. Pratt eds. 1977). (*ibid* at 32-33)

…

"In reviewing a § 1915(d) dismissal for abuse of discretion, it would be appropriate for the court of appeals to consider, among other things, whether the plaintiff was proceeding *pro se*, see *Haines* v. *Kerner*, 404 U.S. 519, 520-521 (1972); whether the court inappropriately resolved genuine issues of disputed fact, see *supra,* at 6-7; whether the court applied erroneous legal conclusions, *see* Boag*, 454 U. S., at 365, n.*; whether the court has provided a statement explaining the dismissal that facilitates "intelligent appellate review," *ibid.*; and whether the dismissal was with or without prejudice." (*ibid* at 34)

3. The Circuit panel failed to properly consider whether the district court had met the tests mandated by the Supreme Court in *Denton v Hernandez* 504 U.S. 25 (1992), as argued in the appellate brief, quoting here:

P4A. *Denton v. Hernandez*, 504 U.S. 25, 33 (1992) requires a district court to conduct and document its analysis, such that the written analysis is sufficient for "intelligent appellate review."
P4B. These "intelligent appellate review" tests from *Denton*, ibid at 33-34, are as follows:
"Because the frivolousness determination is a discretionary one, we further hold that a § 1915(d) dismissal is properly reviewed for an abuse of that discretion.… " required by § 1915(a), is "entitled to weight"). In reviewing a § 1915(d) dismissal for abuse of discretion, it would be appropriate for the court of appeals to consider, among other things, (i) whether the plaintiff was proceeding pro se, see Haines v. Kerner, 404 U.S. 519, 520-521 (1972); (ii) whether the court inappropriately resolved genuine issues of

disputed fact, see supra, at 6-7; (iii) whether the court applied erroneous legal conclusions, see Boag, 454 U. S., at 365, n.; whether the court has (iv) provided a statement explaining the dismissal that facilitates "intelligent appellate review," ibid.; and whether the (v) dismissal was with or without prejudice." All five tests must be met with an unqualified yes to be successful. The answers for these tests in this appeal are:

(i) Filing pro se – **Yes**.

(ii) Appropriate resolution of factual issues – **No**, the district court neither read the base complaint in less than 8 hours when it requires more than 768 hours for a highly proficient reader, calculated at paragraph 8 herein, nor allowed facts to the record which are necessary for threshold evaluation at P6D herein.

(iii) Proper application of legal conclusions – **No**, it misapplied *Neitzke* and did not consider the primary holding in *Neitzke* (at P3 herein) nor at *Denton* (at this P4A-G).

(iv) Statement for intelligent appellate review- **No**, a conflating and confused district court which truncated the essential factual record has provided a flawed analysis which cannot and does not lead to a well-considered factually or legally sound discretionary decision. The district court erred.

(v) Dismissed without prejudice – **Yes.**

These five tests for intelligent appellate review have not been met by the district court.

P4C. While the district court held that its dismissal is on 28 U.S.C. § 1915(e)(2)(B)(i):

"(e)….(2) Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that—….. (B) the action or appeal (i)is frivolous or malicious;"… it is plain and clear to all that the district court did not comply with *Neitzke* and *Denton* in its dismissal Order.

P4D. A well-considered finding as "frivolous" requires a distinct determination of the complete lack of any factual or legal merit whatsoever as to each and every one of the 54 claims. To reach such a discretionary conclusion in eight hours for a Complaint requiring 768 hours calculated at paragraph 8 simply to read the base document in a complex case is simply not credible on its face. The district court cannot professionally so act under 28 U.S.C. § 132(b) and Canon 3: A Judge Should Perform the Duties of the Office Fairly, Impartially and Diligently. The forensic factual basis of the 54 statutory claims in the Complaint (ROA.943-1301, paragraphs 785-854) includes 110 specific patterns of facts (ROA.429-902, paragraphs 593-710) and 12,500 pages of facts (sampled at ROA.2008-2181), which volume and independent documentary quality completely defeat any rational person making any finding that these claims are frivolous. The district court has profoundly erred.

P4E. Further, material facts needed to fairly evaluate the Complaint under F. R. Civ. P. Rule 9(b) requiring particularity in the pleading of frauds were not allowed to the record in a manner which is financially affordable to the deliberately impoverished in forma pauperis pro se appellant. Such facts and evidence have been requested to be added electronically (ROA.1470, ECF # 5, and see ROA.2008-2181 examples), are carefully organized and paginated, clearly referenced throughout the Complaint and can be filed swiftly and efficiently by secure electronic means. The district court simply dismissed (at ROA.1522 ECF #8) the entire idea of considering these facts, including independent documentary evidence, expert level analytical evidence, and direct evidence written by the hands of these defendants themselves, sampled at ROA.2008-2181.

P4F. *Denton* mandates that novel claims cannot be dismissed without subjecting those novel claims to discovery, *ibid* at 33:

"An in forma pauperis complaint may not be dismissed, however, simply because the court finds the plaintiff's allegations unlikely. Some improbable allegations might properly be disposed of on summary judgment, but to dismiss them as frivolous without any factual development is to disregard the age-old insight that many allegations might be "strange, but true; for truth is always strange, Stranger than fiction." Lord Byron, Don Juan, canto XIV, stanza 101 (T. Steffan, E. Steffan, & w. Pratt eds. 1977)."
P4G. This failure of the district court to fairly evaluate facts through mandated "factual development" is further addressed at P5A immediately below. The district court acted presumptively in haste and in error.

Errors of Law - *Neitzke v. Williams* Mandated A Specific Higher Standard of Care In Review Of All In Forma Pauperis Complaints By Circuit Courts – This Standard Was Not Met

4. *Neitzke v. Williams*, 490 U. S. 319 (1989) mandates a much higher standard of care and review by circuit panels when reviewing district court *sua sponte* dismissals in matters brought by *in forma pauperis* plaintiffs than this Circuit panel observed in its Order. The Supreme Court's primary focus in *Neitzke* was to establish whether a clear specific defect, the failure to state a claim, in *an in forma pauperis pro se* complaint was a fatal to that complaint, and a valid basis for dismissal in the context of an adversarial proceeding, when a defendant's motion to dismiss on that major, and ordinarily fatal defect for paid litigants, is considered by a district court in an *in forma pauperis* context. Under *Neitzke*, even such a material defect as a failure to state a claim is not adequate to dismiss an *in forma pauperis* complaint (*ibid* at 331) in an adversarial proceeding when considering the complaint for summary judgement. In this matter, there was not even an adversarial proceeding underway, nor was a material defect of any kind incorporated in the complaint in question, nor was any such defect cited in the district court's order and judgement. The panel itself made a very fundamental error of law in finding that there was no error of law. The *Neitzke* mandate relating to fatal defects, which also incorporates the *Haines* liberal construction mandate, was violated by the district court and then by the Circuit panel, which did not adhere to the mandate "to assure equality of consideration for all litigants." (ibid at 329.)

5. Quoting from *Neitzke* at 329-331:

> "Our conclusion today is consonant with Congress' overarching goal in enacting the *in forma pauperis* statute: **"to assure equality of consideration for all litigants."** ….
>
> "Given Congress' goal of putting indigent plaintiffs on a similar footing with paying plaintiffs, petitioners' interpretation cannot reasonably be sustained. According opportunities for responsive pleadings to indigent litigants commensurate to the opportunities accorded similarly situated paying plaintiffs is **all the more important because indigent plaintiffs so often proceed pro se**, and therefore may be less capable of formulating legally competent initial pleadings. See *Haines v. Kerner*, 404 U. S. 519, 404 U. S. 520(1972). [Footnote 9].
>
> We therefore hold that a complaint filed *in forma pauperis* is not automatically frivolous within the meaning of § 1915(d) because it fails to state a claim."

6. The Circuit Court panel failed (I) to meet the substantive standards for Circuit review imposed by the tests set out in *Denton v Hernandez* 504 U.S. 25 (1992), and did not allow any development of the novel claim as required, all as clearly described at paragraph 3 above.

7. The Circuit Court panel failed (II) to properly examine whether the district court met the mandates in *Neitzke v. Williams*, 490 U. S. 319 (1989) described at paragraphs 4 and 5 above related to fatal errors in paid complaints which are permissible in in forma pauperis complaints.

Errors of Law – Liberal Construction Standards Mandated By *Boag v. MacDougall,* 454 U. S. 364 (1982) and *Haines v. Kerner*, 404 U. S. 519, 404 U. S. 520 (1972) Were Not Met

8. The Circuit Court panel failed (III) to meet the liberal construction mandates at *Boag v. MacDougall,* 454 U. S. 364 (1982) as described in P4B(iii) at paragraph 3 above.

9. The Circuit Court panel failed (IV) to meet the mandate that added consideration in liberal construction must be accorded to in forma pauperis indigent plaintiffs proceeding pro se, over and above that accorded paid litigants, in *Haines v. Kerner*, 404 U. S. 519, 404 U. S. 520 (1972) as described at paragraph 5 above.

Errors of Law Must Be Reversed To Preserve Individual Rights and Fifth Circuit Judicial Credibility

10. After failing to meet each of these Supreme Court mandates related to reversible errors of law at paragraphs 3-9 above, the Circuit panel then erroneously affirmed the district court had made no errors of law. The Supreme Court clearly mandated that each and every one of these specific errors of law MUST be reversed.

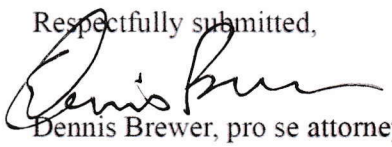
11. The Circuit panel allowed each and every one of these violations of Supreme Court mandates related to rights, to facts, and to law, to stand in its clearly erroneous no opinion Order. There are further profound constitutional questions related to the *First, Third, Fourth, Fifth, Eighth, Ninth, Thirteenth*, and *Fourteenth* Amendments to our Constitution throughout the underlying complaint in this matter which the Circuit Court will doubtless be required to address as this litigation proceeds forward. Profound errors of law, if allowed to stand as this Circuit panel has erred and without explanation under its citation of Rule 47.6 affirmed, profoundly jeopardize a broad sweep of constitutional rights - from the First Amendment Establishment clause to the Fourteenth Amendment equal protection clause - of every US person in this Fifth Circuit.

Request For En Banc Reconsideration

12. This in forma pauperis pro se plaintiff respectfully requests this Court rehear this appeal en banc, so it may properly consider both these failures of the Circuit panel to meet the noted Supreme Court mandates related to the errors of law herein, and the purposefully excluded portion of the record attempted in good faith to be entered to the record, and so it may properly remand the matter to the district court to correct the fundamental errors of law cited herein.

Dated: December 5, 2024

Respectfully submitted,



Dennis Brewer, pro se attorney

Fifth Circuit panel per curiam Opinion dated November 11, 2024 attached

Certification of Compliance With Fifth Circuit Appellate Rule 35(2)(A)

This document is comprised of 3,285 words and meets Rule 35(2)(A) standard of 3,900 words for such filings. Court mandates quoted herein totaling 822 words are excluded from this count.

Submitted under penalty of perjury. Dated: December 5, 2024

Dennis Brewer, pro se attorney

United States Court of Appeals for the Fifth Circuit

No. 24-10614
Summary Calendar

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

DENNIS SHELDON BREWER,

Plaintiff—Appellant,

versus

WILLIAM BURNS, *Director, Central Intelligence Agency*,

Defendant—Appellee.

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

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

PER CURIAM:*

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

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