

No. _____

*In The
Supreme Court of the United
States*

◆
CLARK A. HULS,

Petitioner,

v.

LUSAN C. LLABONA,
LUSAN C. LLABONA, P.A.,

Respondents.

◆
On Petition For A *Writ Of Certiorari*
To The United States Court Of Appeals
For The Eleventh Circuit

◆
PETITION FOR WRIT OF CERTIORARI
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THE QUESTIONS PRESENTED

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1.

Is a private attorney subject to § 1983 liability by prosecuting a fraudulent child support contempt motion in a constitutionally deficient court?

2.

Does an appellate court err if it affirms a 12(b)(6) dismissal for other reasons if the district court failed to take the complaint as true?

3.

Does an appellate court err by refusing to consider the § 1983 “state nexus” averments that are raised for the first time in a *pro se* plaintiff’s response to a 12(b)(6) motion?

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RULE 14.1(b) STATEMENT

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All parties involved in this case from its inception are listed in the caption.

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RULE 29.6 STATEMENT

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Upon Petitioner's belief, no entity that is not a party in this case has an interest in any corporation that is a party in this case.

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OPINIONS BELOW

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The opinion of the Eleventh Circuit Court of Appeals to deny rehearing *en banc* was originally issued on October 17, 2011 and is unpublished. The opinion is attached herein at App. 20.

The opinion of the Eleventh Circuit Court of Appeals affirming the District Court's dismissal was originally issued on August 15, 2011. It is published at *Huls v. Llabona*, 437 Fed.Appx. 830, 2011 WL 3558194. The opinion is attached herein at App. 1.

The opinion of the Middle District Court of Florida (Orlando Division) was issued on June 7, 2010. It is published at *Huls v. Llabona*, Slip Copy, 2010 WL 2293187, M.D. Fla. The opinion is attached herein at App. 9.

The opinion of the Middle District Court of Florida (Orlando Division) to deny reconsideration of its opinion of the 7 of June 2010 and deny leave to amend the complaint was issued on July 16, 2010, and is unpublished. The opinion is attached herein at App. 14.

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JURISDICTION

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This Court may exercise its judicial discretion to accept this petition for a *writ of certiorari* to review the final order from the Eleventh Circuit Court of Appeals, case number 10-13610, entered on August 15, 2011, and denied rehearing on October 17, 2011.

No request has been made of this Court for an extension of time to petition for *certiorari*.

This Court has specific appellate jurisdiction under 28 U.S.C. § 1254(1) to review orders from the Eleventh Circuit Court of Appeals.

This Court has jurisdiction under 28 U.S.C. § 1331, 42 U.S.C. § 1983, and Section 1 of the Fourteenth Amendment to the United States Constitution.

The basis for federal jurisdiction in the Middle District Court of Florida (Orlando Division) was under Title 42 U.S.C. § 1983.

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**CONSTITUTIONAL, STATUTORY, AND
REGULATORY PROVISIONS AT ISSUE**

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Amendment XIV § 1 to the United States Constitution, is at issue and is recited *verbatim* at App. 22.

Title 42 U.S.C. § 1983, is at issue and is recited *verbatim* at App. 22.

The Federal Rules of Civil Procedure, Rule 1 is at issue and is recited *verbatim* at App. 23.

The Florida Family Law Rules of Procedure, Rule 12.615, is at issue and is recited *verbatim* at App. 24.

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STATEMENT OF THE CASE

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I. Background

Petitioner Huls and his ex-wife were married for 14 years and were blessed with two daughters before their marriage became irreconcilable. In the course of this unhappy time, the two reached an agreement on how to end the marriage and together they decided what was in the best interest of their children. Relevant to the case at hand, Huls agreed to provide all medical benefits of any kind for their children and would reimburse his ex-wife for any out-of-pocket expenses she incurred on their behalf in exchange for the original receipt. At the time of the divorce, obtaining health insurance for the children was never required of either Huls or his ex-wife as shown by their marital settlement agreement, (“MSA”) (App. 160).

In the months after their divorce was finalized, Huls’s ex-wife had divorce remorse and remarked on numerous occasions about the divorce not being financially fair for her. This discontent lead to the ex-wife filing a motion to compel Huls in 2003, about a year after their divorce was finalized. The motion to compel was primarily for non-contemptible civil claims, which were piggybacked on the contemptible issue of child support in order to obtain a speedy

court date. In his belief that his ex-wife just wanted her day in court and not understanding the seriousness of a contempt charge, Huls acquiesced at the hearing and offered no defense, including the fact that he had paid his ex-wife \$7,500 the month before the hearing.

Huls was found to be in contempt of court and was ordered to pay two months worth of child support within 10 days of the hearing, and \$3,500 to the ex-wife's legal counsel (App. 153). Huls complied. During the 2003 contempt hearing, Judge Sprinkel, who has since retired from the bench, *sua sponte* ordered that,

The Former Wife is to immediately obtain health insurance for the minor children of the parties. The Former Husband will be fully responsible for the costs and expenses associated with the purchase and upkeep of this insurance as an additional form of child support. The Former Wife will immediately forward the bill for this insurance to the Former Husband, who will promptly pay this obligation immediately upon its receipt.

(App. 154) (emphasis added).

This order was a surprise to both Huls and his ex-wife as she never raised any issue regarding their children's health benefits in her 2003 motion to compel. Additionally, the Eleventh Circuit erroneously

included as fact in its opinion that, “In 2003, the state court held Huls in contempt for willfully failing to abide by the terms of the divorce, including the provision of health insurance benefits for his two minor children.” (App. 2). This is untrue and never happened as shown in the MSA (App. 173) and the 2003 contempt order, (“2003 Order”) (App. 154).

The following month, without any coercion, Huls signed over his half of the equity in the 3,500 square foot, former marital residence to his ex-wife. This house was still being resided in by Huls’s ex-wife and the couple’s children. Huls unilaterally offered his ex-wife this transfer with the understanding that neither of them would hale the other into court.

More than two years passed after the 2003 Order (App. 152) was issued before Huls’s ex-wife retained the services of the Respondent, Lusan Llabona, who was the ex-wife’s third attorney in as many years. Llabona created, signed, and filed her motion for contempt, which included a 15 page exhibit “A”, (“2005 Motion”) (App. 127-151). Llabona’s 2005 Motion is the basis for this suit. In the mean time Huls’s ex-wife never obtained the children’s health insurance as she was ordered by Judge Sprinkel in his 2003 Order.

In her 2005 Motion, Llabona astutely misrepresented the 2003 Order when she wrote that, “Pursuant to Paragraph 5 of that Order, the Former

Husband was ordered to ‘...immediately obtain health insurance for the minor children of the parties....’” In the following paragraph Llabona followed up on this falsehood by stating that, “In violation of that Order, the Former Husband failed to provide any insurance coverage.” (App. 130). Additionally, Llabona made a number of other statements that she knew were not true as she had the related orders in hand. These statements are detailed in Huls’s response to Llabona’s motion to dismiss (App. 62-64).

Llabona’s deception of the family court had a two-fold benefit for her client with very little risk -- because she could always justify her deed as an error --, which she did in this case but only after receiving the benefit of the dismissal (App. 3, f.n. 2). Llabona was able to wash her client’s hands in the view of the court and Llabona was able to prejudice Judge Sprinkel against Huls for the false belief that Huls had defiantly violated the Judge’s very own order from two years before.

Huls, who proceeded *pro se* at the time of the contempt hearing was unaware that failing to provide health insurance for the minor children was a contemptible offense and instead focused his defense on obtaining the evidence that he had indeed paid his former wife the money she was now claiming he owed. But Huls was unable to obtain enough evidence from the banks in the 25 business days be-

tween the time he was served and the contempt hearing. This was because the time period covered 39 months since the divorce was finalized and the banks needed more time for their research.

As a result of Llabona's machinations, Judge Sprinkel believed absolutely nothing that Huls said in the hearing and found him in arrears of child support; in contempt of court; and sentenced him to 180 days in jail or until Huls paid a purge of over \$25,000 (App. 125). Judge Sprinkel also rebuked the deputy sheriff for not putting handcuffs on Huls rapidly enough to take Huls to the court's holding cell.

Additionally, Huls's ex-wife was awarded a \$17,000 civil judgment for her claimed health related expenditures that were attached as exhibit "A" in Llabona's 2005 Motion (App. 134-151).

While he was in jail, Huls's family retained counsel on his behalf, who over Llabona's and her client's objections, was able to convince Judge Sprinkel that Huls clearly did not have the ability to pay the purge amount and that the ex-wife's testimony was questionable at best.

Judge Sprinkel suspended Huls's sentence for 60 days and released him from jail on the 27th day of his 180 day incarceration so that he could gather the evidence of his innocence and reestablish his construction career.

To Judge Sprinkel's credit, he also allowed Huls access to the bank records of his ex-wife over the strenuous objections of Llabona and her client, so as to get to the heart of the matter.

The following month Llabona withdrew as the ex-wife's counsel and left Judge Sprinkel and the parties with the havoc that she had created.

Over four years later, Huls resolved the contempt-of-court case with his ex-wife that Llabona had initiated. In March 2010 it was ordered that at the time of his incarceration in 2006, Huls had paid his ex-wife more than he owed her (App. 114), which the family court found at a previous hearing to average more than \$5,000 per month for the 39 months after the divorce. At that previous hearing the family court found that Huls was ahead in payments to his former wife by over \$11,000 when he was incarcerated. This included child support; equitable distribution; health benefits for the children; health insurance premiums for the ex-wife; education expenses for the children and ex-wife; etcetera.

The family court's witness, who was a certified public accountant, determined that Huls's ex-wife had spent less than \$6,000 on medical bills from the time the divorce was final through the hearing in which Huls was incarcerated, despite having shown

Judge Sprinkel more than \$17,000 in receipts as part of Llabona's 2005 Motion (App. 134-151).¹

Because of Llabona's malicious prosecution, Huls spent 27 days in jail in the belief that he would be incarcerated for the full 180 days since he knew he could not pay the purge amount of over \$25,000. Huls's remaining unserved jail sentence was canceled in the family court's order of June 2, 2010, *nunc pro tunc* to March 4, 2010, which additionally ordered that, "All monetary judgments against the Former Husband stemming from the hearing on January 18th, 2006 and subsequent Order entered the 2nd day of February 2006 are hereby set aside." (App. 120). At the same time, Huls settled all claims against his ex-wife relating to her part in this scheme. The settlement released Huls from all monetary obligations that were required by the MSA from the time of his incarceration in 2006 through the year 2015. Additionally, the required child support payments were reduced to the statutorily calculated amount from the agreed upon amount in the MSA.

Concerned about the statute of limitations, Huls filed this lawsuit five days after that hearing, which was before the family court's written order was pre-

¹ Of the \$17,000 in receipts that Llabona included as composite exhibit "A" to the 2005 Motion, two are fraudulent. (App. 150).

pared, on the 9 of March 2010, in the Ninth Circuit Court of Orange County, Florida.

Because Florida's laws regarding punitive damages requires that, "an initial showing by evidence in the record or proffered by the claimant which would provide a reasonable basis for recovery of such damages," (*WFTV, Inc. v. Hinn*, 705 So.2d 1010 (Fla. 5th DCA 1998)), before a punitive damage claim may be made, Huls filed the relevant documents from the underlying contempt case as exhibits that were incorporated into the complaint (App. 122-182).

After removing the amended complaint to federal court in April 2010, Llabona filed a 12(b)(6) motion to dismiss the suit, in which she either directly claimed or implied by citing precedence numerous times that Huls's suit was about Llabona's actions during the contempt proceeding (detailed in section II.A. at p. 16).

Trusting Llabona's 12(b)(6) motion for both the interpretation of the complaint and for the citations to precedent, the district court ordered Huls's lawsuit against Llabona dismissed (App. 12).

Nine days after the dismissal order, Huls filed a motion for reconsideration and leave to amend the complaint to include the omitted "state nexus" averments that are required for a § 1983 claim. Because the district court viewed Huls's inartful complaint through Llabona's interpretation, the court believed

that Llabona's actions were privileged and denied Huls the opportunity to amend his complaint, as this suit was frivolous in the mind of the court (App. 14).

Huls filed a timely notice of appeal but failed to list the docketed post-judgment order denying reconsideration and leave to amend. As a result the appellate court refused to consider Huls's "state nexus" averments in the seconded-amended-complaint exhibit to the motion for leave to amend (App. 8) and affirmed the district court's dismissal on the basis that Llabona was not considered a "state actor" subject to section 1983 liability because Huls failed to list a "state nexus" in the complaint (App. 6).

II. Reasons For Issuing A Writ Of Certiorari For This Case

When it ruled on Llabona's 12(b)(6) motion, the district court failed to accept as true any of the factual allegations of Huls's complaint regarding Llabona initiating a malicious prosecution. The district court instead adopted Llabona's misrepresentation of the complaint, which she said accused her of acting improperly during a court hearing, which is privileged behavior. This is a vast departure from established precedence of accepting the complaint as true when considering a 12(b)(6) motion and if this Court does not correct this behavior, it will encourage future defendants to take the risk of misrepre-

senting complaints to the courts for an undeserved dismissal.

The appellate court erred by stating that it did not matter in its analysis if the district confused the privileged acts of speaking in court, which are described in Llabona's 12(b)(6) motion, with the non-privileged claim of initiating a false prosecution that was made in the complaint.

While the appellate court conceded that the district court erred in applying state law to a constitutional injury, it affirmed the dismissal on the basis that Huls had failed to make any "state nexus" averments in his complaint. This is error because the appellate court knew about, yet refused to consider Huls's legitimate "state nexus" averments that were in his response to the 12(b)(6) motion and in the second amended complaint exhibit that was attached to his motion for reconsideration and to amend, which was docketed after the dismissal.

Because this is a *pro se* versus represented litigant, contempt of court, section 1983, malicious prosecution case, for which some constitutional provisions have yet to be ruled upon, this Court should grant *certiorari*.

II.A. The District Court's Departure From Established Precedent Calls For This Court To Use Its Supervisory Powers.

Huls's complaint stated that, "In her 2005 Motion, Ms. Llabona ... misleads the Court by claiming Mr. Huls was responsible for obtaining the children's health insurance[,] which was never required of him." (App. 97). Nowhere in his complaint does Huls make any claims about Llabona's privileged statements during the contempt hearing.

The gravamen of the district court's order on Llabona's 12(b)(6) motion is that:

Under Florida law, "absolute immunity must be afforded to any act occurring **during the course of a judicial proceeding** ... so long as the act has some relation to the proceeding." *Green Leaf Nursery v. E.I. DuPont De Nemours and Co.*, 341 F.3d 1292, 1302 n. 8 (11th Cir. 2003). The litigation privilege "extends not only to the **parties in a proceeding** but to ... counsel as well." *Levin, Middlebrooks, Mabie, Thomas, Mayes & Mitchell, P.A. v. United States Fire Ins. Co.*, 639 So.2d 606, 608 (Fla. 1994).

Llabona raises numerous arguments in favor of dismissal. She contends that any **statements she made during that proceeding** were absolutely privileged. She notes that she was not acting under color of law as required to establish liability under Section 1983. And she argues that the allegations of the

Amended Complaint (Doc. 3) otherwise fail to state a claim for relief.

Llabona is correct, and the Amended Complaint must be dismissed pursuant to Fed.R.Civ.P. 12(b)(6). **Llabona's statements to the judge** - that Huls had violated a previous child support order - obviously had some relation to the **child support proceeding during which they were made**. As such, they were absolutely privileged, and any claims Huls might make based on those statements are barred as a matter of law. Moreover, Llabona's other arguments in favor of dismissal are also correct, but the Amended Complaint is so patently frivolous that no further discussion is warranted.

(App. 12, 13) (emphasis added).

For additional substantiation that the basis of the district court's decision was Llabona's interpretation of the complaint, the court failed to cite *Briscoe v. LaHue*, 460 U.S. 325 (1983) or any of *Briscoe's* progeny in its order for the acts it believed were privileged that had taken place in a hearing. Instead the district court adopted Llabona's erroneous cites to precedence regarding Florida's litigation immunity, which the appellate court conceded does not supersede a constitutional injury (App. 4).

Nowhere in the complaint, does Huls charge Llabona with any misbehavior during the contempt hearing. However, Llabona persuaded the district court that this case is about privileged in-court activity by stating the following in her 12(b)(6) motion:

This lawsuit arises from Defendants, Lusan Llabona's, prior representation of the Plaintiff's former wife **during a child support dispute.**

(App. 29, ¶1) (emphasis added).

The Plaintiff is attempting to sue his ex-wife's lawyer, Ms. Llabona, for allegedly making fraudulent statements **during the child support hearings** in connection with an alleged scheme or plan to subject the Plaintiff to wrongful incarceration.

(App. 29, ¶5) (emphasis added).

"[A]bsolute immunity must be afforded to any act occurring **during the course of a judicial proceeding**, regardless of whether the act involves a defamatory statement or...other tortious behavior...so long as the act has some relation to the proceeding." [citation omitted].

(App. 34) (emphasis added).

In affirming the dismissal, the Florida Supreme Court reiterated its earlier ruling in *Fridovich v. Fridovich*, 598 So.2d 65 (Fla. 1992), that acts occurring **during**["the

course of judicial proceedings are absolutely privileged, no matter how false or malicious the statements may be, so long as the statements are relevant to the subject of the inquiry”

(App. 36) (emphasis added).

“The immunity afforded to statements made **during the course of a judicial proceeding** extends not only to the **parties in a proceeding** but to judges, witnesses, and counsel as well.”

(App. 36) (emphasis added).

“[P]articipants in judicial proceedings must be free from the fear of later civil liability as to **anything said or written during litigation** so as not to chill the actions of the participants in the immediate claim.”

(App. 36) (emphasis added).

Additionally, Florida provides for adequate remedies in situations where wrongful conduct occurs **during the course of a judicial proceeding**.

(App. 37) (emphasis added).

In the case before this Court, Attorney Llbona’s *[sic]* **conduct during the course of the child support and contempt judicial proceedings, including all statements made during oral argument** and in her

pleadings, is entitled to absolute immunity from civil litigation.

(App. 37, 38) (emphasis added).

Attorney Llabona's conduct at issue in this case **involves her statements made during oral argument**, her pleadings, and notices she filed to the Court.

(App. 38) (emphasis added).

As discussed below, the Plaintiff has failed to plead a cause of action under 42 U.S.C. §1983 for deprivation of civil rights because Attorney Llabona was not acting under color of law **during the child support and contempt judicial proceedings** before Judge George Sprinkel.

(App. 39) (emphasis added).

Even if this Court believes that Attorney Llabona's alleged actions **during the child support hearing** before Judge Sprinkel

(App. 47) (emphasis added).

The Plaintiff has only alleged that Attorney Llabona **represented his ex-wife during a child support dispute**.

(App. 47) (emphasis added).

It is clear that the Plaintiff is bringing a claim against his ex-wife's attorney in response to disputes that arose as a consequence of the di-

voiced and subsequent child support hearings. **During those the child support hearings,** the Plaintiff has [*sic*] sentenced to serve jail time.

(App. 49) (emphasis added).

The Plaintiff, feeling that Judge Sprinkel wrongly sentenced him to jail, **now sues his wife's lawyer for statements** that had no bearing on the Judge's decision to hold him in contempt.

(App. 49) (emphasis added).

Additionally, Judge Sprinkel had the authority and was in the best position to sanction Ms. Llabona **for her conduct during the judicial proceeding.**

(App. 49) (emphasis added).

Second, should this Court determine that Ms. Llabona's conduct is not protected by the privilege, the Plaintiff's counts I and II under the §1983 of the Civil Rights Act should be dismissed with prejudice because Attorney Llabona was not acting under "color of law" **during the judicial proceedings.**

(App. 50) (emphasis added).

It is not surprising that the district court would assume that this case is about privileged acts after reading Llabona's 12(b)(6) motion. It just failed to look at the Plaintiff's complaint and take it as true,

much less liberally construe it as the court is supposed to do for a *pro se* plaintiff. This is plain error and an abuse of discretion.

Not taking the complaint as true and instead relying on the defendant to interpret the complaint is an unjust act that thwarts the Federal Rules of Civil Procedure Rule 1, which states that the rules are to be “construed and administered to secure the just, speedy, and inexpensive determination of every action and proceeding.”

This Court should establish the bright-line rule that if a court fails to take the facts of the complaint as true, a 12(b)(6) dismissal may not be affirmed for another reason. Establishing this bright line rule will eliminate the incentive for defendants to misrepresent what are in complaints to the courts.

II.B. The Eleventh Circuit Court Of Appeals’ Departure And Sanction Of A Departure From Established Precedent Calls For This Court To Use Its Supervisory Powers.

The appellate court affirmed the dismissal by holding that Llabona was not a “state actor” subject to section 1983 liability, because (1) she was not a state employee and (2) Huls had failed to list a “state nexus” in his complaint. These reasons for the dismissal are much different than those given by the district court and is error for the following reasons.

Firstly, the appellate court failed to establish a complete appellate record regarding Huls's claim that the district court never accepted the complaint as true because the appellate court felt that it was "irrelevant to the analysis of Huls's claims." (App. 7).

The appellate court failed to recognize the distinction between the privileged act of participating in a court hearing and the non-immune act of filing false charges to initiate the wheels of government against another. Florida's rules of procedure states that child-support-contempt enforcement "may be initiated by motion" (App. 24), which is how Llabona commenced the process. The appeals court erroneously held that Llabona's 2005 Motion was a continuation of legal proceedings and not the initiation of them when it stated that, "Because Llabona's challenged conduct ... took place **during the course of contempt proceedings against Huls**, and was related directly to those proceedings, Llabona was absolutely immune under state law." (emphasis added), (App. 6,7).

In an erroneous conjunction of ideas that further demonstrates the appellate court's misunderstanding, it held that, "Huls asserts that the district court improperly characterized his complaint as focusing on Llabona's in-court oral statements, instead of the written statements contained in her motion for contempt. Not only is this claim unsupported by the re-

cord, but this distinction is irrelevant to the analysis of Huls's claims." (App. 7). This is error because the distinction is between privileged and non-privileged acts and is the difference between a frivolous or a meritorious lawsuit.

Secondly, the appellate court refused to consider the legitimate "state nexus" averments that Huls listed in his response to Llabona's 12(b)(6) motion, inexplicably holding that new averments may not be raised "through argument in a brief **opposing summary judgment.**" (App. 6, f.n. 5), (emphasis added). This inexplicable holding is inapposite as the case before the appeals court was from a 12(b)(6) motion and not a summary judgment motion, which takes place deep into litigation after the expense of discovery has commenced. This was an error by the appellate court since this dismissal had nothing to do with summary judgment.

Thirdly, the appeals court refused to consider the section 1983 "state nexus" averments, which Huls included in his second-amended-complaint exhibit, because Huls inadvertently failed to list the post-judgment docketed order denying his motion for reconsideration or leave to amend on his notice of appeal. The Eleventh Circuit determined, *sua sponte*, that "[c]onstrued liberally, nothing in Huls's notice of appeal indicated that he intended to appeal the court's order denying him leave to amend his

complaint.” (App. 8). Adding insult to injury, the appellate panel offered Huls the guidance of a Monday-morning quarterback when it stated that Huls should have sought leave to amend his complaint before dismissal instead of delineating the “state nexus” “argument in his response to Llabona’s motion to dismiss” (App. 6, f.n. 5).

This is error because the appellate court knew that Huls had proffered legitimate “state nexus” averments in his brief opposing Llabona’s 12(b)(6) motion (App. 73-78) and in Huls’s motion-for-leave-to-amend exhibit. Despite this knowledge, the court of appeals violated its very precedence that a *pro se* plaintiff is to be allowed to amend his complaint even if leave to amend was not requested (*Bank v. Pitt*, 928 F.2d 1108 (11th Cir.1991), overruled for represented litigants only by *Wagner v. Daewoo Heavy Industries America Corp.*, 314 F.3d 541, 542 (11th Cir. 2002), (*en banc*)).

Regardless of the unmentioned post-judgment order in Huls’s notice of appeal - which was error for the appeals court to not liberally construe - the appeals court erred by not reviewing, *sua sponte*, the district court’s error of dismissing the suit without granting Huls leave to amend his complaint to include the “state nexus” averments that it knew existed. This violated “Rule 15 (a) [that] declares that leave to amend ‘shall be freely given when justice so

requires'; this mandate is to be heeded." *Foman v. Davis*, 371 U.S. 178, 182 (1962).

II.C. The Case At Hand Is A Novel Section 1983 Malicious Prosecution, Which Follows Up On *Turner v. Rogers*.

When Llabona created, signed, and filed her 2005 contempt motion she was acting as a complaining witness analogous to *Kalina v. Fletcher*, 522 U.S. 118 (1997). In *Kalina*, this Court held that even a prosecutor who normally has absolute immunity from suit is not immune when acting as a complaining witness and falsely swears to an arrest affidavit.

Llabona exploited the constitutionally deficient customs and procedures of Florida's Ninth Circuit Court, which is analogous to *Wyatt v. Cole*, 504 U.S. 158 (1992). In *Wyatt*, an attorney and his client were held to not be immune from suit because they utilized a constitutionally deficit replevin law to seize property in order to collect money they claimed was owed. The similarity between *Wyatt* and this case is that Huls himself was the chattel being held until money was paid.

In 2011, this Court ruled on the constitutionally challenged procedures involved in contempt of court enforcement issues in *Turner v. Rogers*, 131 U.S. 2507, 2520 (2011). The holding in *Turner* only applied to *pro se* litigant versus *pro se* litigant cases,

which as compared to the case at hand is represented litigant versus *pro se* litigant.

As contempt cases are rare for this Court's review because they are capable of repetition while evading review, the case at hand draws attention to the many other constitutional protections that are lacking in the Ninth Circuit Court of Florida, which has expanded its utilization of contempt procedures in conjunction with incarceration to collect civil fines for offenses as innocuous as traffic violations in its "collection court". Granting *certiorari* will either allow for this Court to review those unconstitutional procedures now or allow them to ripen for a later date.

Additionally this Court has not reviewed a section 1983 malicious prosecution case as stated in the second footnote of *Wallace v. Kato*, 549 U.S. 384 (2007).

If this Court allows this case to move forward, private attorneys prosecuting contempt cases will assist the courts to remain diligent in providing constitutional protections to all participants and avoid exploiting constitutional deficiencies for their own gain.

CONCLUSION

Petitioner Huls prays that this Court will accept this petition and grant *certiorari*.

Respectfully submitted,

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