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No. 03-6244

UNITED STATES COURT OF APPEALS

For the Southern District of New York

RODNEY F. STICH, Plaintiff—Appellant

v.

UNITED STATES GOVERNMENT, Defendant--Appellee

APPELLANT’S PETITION FOR REHEARING EN BANC

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1 **PETITION FOR REHEARING EN BANC**

2 Pursuant to Federal Rules of Appellate Procedure Rules 35 and 40, Appellant petitions for a
3 rehearing en banc. An en banc consideration is necessary because the proceeding involves
4 multiple questions of exceptional importance to major national interests, including national
5 security. These questions include:

- 6 1. Whether federal judges can legally block Appellant and other former federal agents from
7 reporting federal crimes to a federal judge under the mandatory requirement of the
8 federal crime reporting statute, Title 18 U.S.C. § 4.
- 9 2. Whether Appellant’s attempts to report criminal activities that he initially discovered as a
10 federal agent constitute frivolous filings
- 11 3. Whether Appellant’s exercise of federal remedies under the Civil Rights Act, *Bivens*,
12 Declaratory Judgment Act, void judgment doctrine, for major violations of federally
13 protected rights, meet the definition of frivolous filings.
- 14 4. Whether orders permanently barring Appellant from filing any papers in the federal
15 district and appellate courts, rendered on the basis of Appellant’s attempts to report
16 criminal activities associated with a series of airline disasters, and exercise of federal
17 defenses, violate constitutional due process and equal protection of the law.
- 18 5. Whether the three-judge appellate panel de novo upholding of the district court’s sua
19 sponte dismissal constituted violations of constitutional and legal due process.
- 20 6. Whether the panel’s decision conflicted with constitutional due process and equal
21 protection; bar against dismissal when federal causes of actions are stated in the
22 complaint; bar against Rule 12 and Rule 54 dismissal that require discovery, affidavits,
23 and a hearing. The three-judge panel overlooked, misapprehended, misstated facts and
24 law, and failed to address major federal issues stated in Appellant’s Complaint.
- 25 7. Combination of documented misconduct that created and protected the conditions that
26 enabled terrorists to hijack four airliners on September 11, 2001.
- 27 8. The violations of decisions of the U.S. Supreme Court on the matters of due process,
28 equal protection, and the de novo responsibility of appellate court judges.

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10 *U.S. v. Diebold, Inc.* 369 U.S. 6545

11 *Wolff v. McDonnell* (1974) 418 U.S. 5395

12 **Constitutional Issues**

13 Constitution 5th and 14th amendments, including due process and equal protection;

14 right to travel interstate without losing previously adjudicated and acquired personal

15 and property rights; protection against violations of constitutional rights;

16 protection against deprivation of life, liberty and property without due process,

17 right to an unbiased court; deprivation of liberty and property; privileges

18 and immunities clause.....9

1 **JURISDICTIONAL STATEMENT**

2 The district court’s jurisdiction arose pursuant to (a) Title 18 U.S.C. § 4, reporting federal
3 crimes to a federal judge; (b) Title 28 U.S.C. § 1331, on basis of civil actions arising under the
4 laws and Constitution of the United States; (c) Title 28 U.S.C. § 1343 and 42 U.S.C. §§ 1983-
5 1985, on the basis of massive civil and constitutional violations occurring in the California and
6 federal courts as part of a scheme to halt reports of criminal activities in government offices; (d)
7 Federal Tort Claims Act (42 U.S.C. §§ 2671-2274, on the basis of torts perpetrated against
8 Appellant by government employees; (e) RICO, (42 U.S.C. §§ 1961-1965), on the basis of
9 multiple predicate acts, in a conspiracy, inflicting great personal and financial harm upon
10 Appellant, and inflicting great harm upon interstate commerce; (f) Declaratory Judgment Act ,
11 28 U.S.C. §§ 2201, 2202, FRCivP 57, to declare Appellant’s legal rights and obligations
12 established in five judgments that have been violated and remain in controversy; (g) void
13 judgment doctrine, to rescind orders seizing Appellant’s life assets in gross violations of due
14 process, including violating requirement for a hearing, notice of hearing, and legal cause; (h)
15 void order doctrine, to regain civil and constitutional rights taken from Appellant by series of
16 unlawful and unconstitutional orders barring appellant from federal district and appellate courts
17 for the remainder of his life (intended to block Appellant’s reporting of criminal activities and
18 deprive him of the federal defenses against the concurrent civil rights violations); (i) Bivens; for
19 violations of civil rights under color of federal law; and (j) the due process and equal protection
20 rights guaranteed by the laws and Constitution of the United States .

21 The Court of Appeals jurisdiction arises pursuant to Title 28 U.S.C. § 1291, as well as its
22 responsibility to receive reports of federal crimes under Title 18 U.S.C. § 4. Authority for
23 rehearing en banc is provided by Rule 40.

24 This appeal is from the final order of U.S. district judge Michael Mukasey filed on
25 September 22, 2003, dismissing the lawsuit that had been received a year earlier, which was
26 denied filing for 13 months, and filed on the same day that the five-page sua sponte dismissal
27 order was filed. A timely notice of appeal was filed on October 20, 2003.

28 Appellant filed an appellate brief and a reply brief in the court of appeals. Oral argument

1 occurred on August 24, 2004, and an order affirming the sua sponte decision of the district court
2 was filed on August 26, 2004. This petition for rehearing en banc follows.

3 **STANDARD OF REVIEW**

4 The standard of review for the court of appeals under a Rule 12 or Rule 54 dismissal is de
5 novo. *Bose Corp. v. Consumers Union of United States*, 466 U.S. 485 (1984).

6 **STATEMENT OF ISSUES PRESENTED FOR REVIEW**

7 The issues raised by this appeal of the sua sponte dismissal of Appellant's Complaint, and the
8 affirmance by the three-judge appellate panel, includes the following:

- 9 • Whether the district court judge—and the appellate court judges—violated Title 18
10 U.S.C. § 4 by blocking Appellant from reporting criminal activities in government offices
11 to a federal judge under the mandatory requirements of that federal crime reporting
12 statute.
- 13 • Whether the sua sponte dismissal denied Appellant due process by:
 - 14 ○ The 13-month delay filing the Complaint, that the law requires should have been filed
15 when received.
 - 16 ○ Dismissing the complaint under FRCivP 12, without notice, when dismissal was
17 barred on the basis of any one of the multiple federal causes of actions stated in the
18 Complaint, and requirement to accept the allegations as true in opposing dismissal.
 - 19 ○ Dismissing the complaint when the Rule 12 dismissal was converted to a Rule 54
20 dismissal on the basis of the court making reference to material not in the pleadings—
21 thereby requiring discovery, affidavits, and a hearing.
 - 22 ○ Denying Appellant the right to a jury trial to determine the existence of a conspiracy
23 to obstruct justice and conspiracy to violate Appellant's civil and constitutional rights,
24 and as required under Declaratory Judgment Act and Rule 57.
 - 25 ○ Reversing the legal definition of frivolous by placing a frivolous label on the
26 Complaint that stated major federal causes of action, including Appellant's attempts
27 to report criminal activities adversely affecting national security.
 - 28 ○ Reversing the legal definition of vexatious litigant and calling Appellant a vexatious

1 litigant for his attempts to report criminal activities, and for exercising federal
2 defenses against major violations of federally protected rights.

- 3 ○ Violating Appellant's due process and equal protections rights by seeking support in a
4 series of unlawful, unconstitutional, and void orders permanently barring Appellant
5 from filing any papers in any federal district or appellate court. These orders acted,
6 and were intended, to obstruct justice, by blocking Appellant from reporting criminal
7 activities that he and several other former government agents discovered.

8 **STATUTES AND CONSTITUTIONAL ISSUES INVOLVED**

9 The statutes directly involved include Title 18 U.S.C. §§ 4; Title 28 U.S.C. §§ 1331, 1343,
10 2201, 2202; Title 48 U.S.C. §§ 2671-2674, 1983-1986; 1961-1965. The U.S. constitution 5th and
11 14th amendments, including due process and equal protection; right to travel interstate without
12 losing previously adjudicated and acquired personal and property rights; protection against
13 violations of constitutional rights; protection against deprivation of life, liberty and property
14 without due process; right to an unbiased court; deprivation of liberty and property; and
15 privileges and immunities clause.

16 **STATEMENT OF THE CASE**

17 **A. Nature of the Case**

18 This case involves Appellant's attempts to (a) report criminal activities under the mandatory
19 requirements of Title 18 U. S.C. § 4 that he *initially discovered* after the federal government
20 gave him the assignment to correct the conditions responsible for the worst series of airline
21 crashes in the nation's history at that time; and (b) Appellant's exercise of federal defenses
22 against massive violations of state and federal laws and constitutional protections that were part
23 of the documented tactics to block reports of criminal activities. These violations constitute
24 federal causes of actions and claims under the Civil Rights Act, *Bivens*, Declaratory Judgment
25 Act, RICO, void judgment doctrine, and FTCA.

26 **B. Proceedings Below**

27 The district court received Appellant's complaint (CT: 1) for filing on August 15, 2002, and
28 unlawfully blocked the filing of that Complaint for 13 months, despite the fact that the filing fee

1 was paid and the papers in order. It was finally filed on September 23, 2003, along with a five-
2 page sua sponte dismissal order. Appellant then filed a timely notice of appeal, an appellate brief,
3 and a reply brief. Oral argument occurred on August 24, 2004. The three-judge appellate panel
4 filed an order on August 26, 2004, affirming the district court's sua sponte dismissal, despite
5 their requirement to address the federal causes of actions—including reporting criminal
6 activities—de novo.

7 **SUMMARY OF ARGUMENT**

8 The district court erred in (a) Blocking Appellant from reporting criminal activities that he
9 and a group of other former government agents discovered, and which he sought to report under
10 the mandatory requirements of 18 U.S.C. § 4, and violated multiple procedural due process and
11 substantive rights guaranteed by the laws and Constitution of the United States.

12 **ARGUMENT**

13 **1) The Dismissal Order Blocked Appellant from Reporting Criminal Activities in** 14 **Government Offices**

15 The *sua sponte* dismissal unlawfully blocked Appellant and his group of former and present
16 government agents from reporting criminal activities that they had *initially discovered* during
17 their official government duties. The federal crime reporting statute *requires all* federal judges,
18 as part of their *administrative* duties, to receive information of a federal crime offered by *any*
19 *person*, and certainly by former government agents. The law reads:

20 *Title 18 U.S.C. § 4. Misprision of felony. Whoever, having knowledge of the actual*
21 *commission of a felony cognizable by a court of the United States, conceals and does not as*
22 *soon as possible make known the same to some judge or other person in civil or military*
authority under the United States, shall be fined under this title or imprisoned not more than
three years, or both.

23 **A) Falsely Stated Appellant Was Attempting to Interfere with Prosecutor's Function**

24 The dismissal order falsely stated (CT: 2:pgs.12-16) Appellant's attempt to *report* criminal
25 activities under 18 U.S.C. § 4 interfered with the prosecutor's discretion:
26

27 *Appellant lacks right to interfere with prosecutor's determination to dismiss criminal*
28 *action. ... Criminal prosecutions are within the province of the United States Attorney*
who has complete discretion over the decision to continue or cease prosecution. Thus,
Appellant's claim fails. A private citizen lacks a judicially cognizable interest in

1 prosecution or non-prosecution of another.

2 **B. Falsely Stated Appellant Had no Standing to Report Criminal Activities**

3 The dismissal order falsely stated that Appellant had no *standing* to report federal crimes
4 *Appellant’s claim pursuant to 18 U.S.C. § 4 must be dismissed because he does not have*
5 *standing to maintain such an action. The Court advises Appellant that the claim must be*
6 *dismissed because there is no explicit or implied authority for private citizens to bring suit*
7 *under this statute.*

8 Appellant, and every other person in the United States, has *standing* to report a federal crime
9 of which that person becomes aware, under the mandatory language of 18 U.S.C. § 4. Failure to
10 report the federal crimes become a felony—just as blocking such reports becomes a felony.

11 **2. The Dismissal Order Violated Multiple Procedural Due Process Defenses**

12 The dismissal order violated numerous *procedural* due process protections guaranteed to all
13 citizens by the laws and Constitution of the United States.

14 **A) Violated Due Process Defenses Barring Sua Sponte Dismissals**

15 The dismissal order violated federal law requiring the party opposing dismissal have the right
16 to a hearing. In *Wolff v. McDonnell* (1974) 418 U.S. 539, the Court stated:

17 “The Court has consistently held that some kind of hearing is required before a person is
18 finally deprived of his property interests; In *Anderson National Bank v. Lueckett* (1944) 321
19 U.S. 233, 246, the court held: “It is error to dismiss a claim on the merits without notice, a
20 hearing, and an opportunity to respond.” FRCivP Rule 12(b)(6). “[T]he court must give notice
21 of its sua sponte intention to invoke Rule 12(b)(6), and afford Appellants ‘an opportunity to at
22 least submit a written memorandum in opposition to such motion,” *Crawford v. Bell*, 599 F.2d
23 890, 893 (9th Cir. 1979)..”

24 **B) Violated Rule 12 Bar Against Dismissal Arising From any
25 One of the Multiple Federal Causes of Actions Stated in Complaint.**

26 The Complaint stated facts constituting multiple federal causes of actions for which federal
27 judges had a duty to provide a court forum, some semblance of due process, and relief.

28 Dismissals under Fed.R.Civ.P.12(b)(6). “are permitted on a motion if the Complaint
“fails to state a claim upon which relief can be granted.” “The court cannot subject even
undisputed evidence to interpretation, unless it is only subject to one possible
interpretation; it cannot weight conflicting inferences or interpretations that can be put on
the evidence. *U.S. v. Diebold, Inc.*, 369 U.S. 654; “The district court may dismiss the

1 complaint “only if it is certain that no relief can be granted under any set of facts which
2 could be proved.” *Anders v. California* (1967) 386 U.S. 738.

3 **C) Violated Rule 12 Defense Requiring Factual Allegations Stated in**
4 **Complaint to be Accepted as True in Barring Dismissal**

5 A Rule 12 dismissal based on failure to state a claim upon which relief can be granted
6 requires that the factual allegations of the complaint must be taken as true, and any ambiguities
7 or doubts concerning the sufficiency of the claim must be resolved in favor of the pleader. See
8 *Scheuer v. Rhodes*, 416 U.S. 232, 236, 94 (1979); *Conley v. Gibson*, 355 U.S. 41, 45-46, 78.

9 *Dennis v. Sparks* 449 U.S. 24 (1980)(“a section 1983 complaint should not be dismissed unless
10 it appears that the Appellant can prove no set of facts which would entitle him to relief... For
11 the purposes of testing sufficiency of the complaint, the allegations of the complaint must be
12 accepted as true. ... If Appellant's allegations state a claim for which federal courts can grant
13 relief, the court must accept jurisdiction.”); *Gardener v. Toilet Goods Assn.*, 387 U.S. 167, 172
14 (1967). (An action, “especially under the Civil Rights Act, should not be dismissed at the
15 pleadings stage unless it appears to a certainty that Appellants are entitled to no relief under any
16 state of the facts, which could be proved in support of their claims.” *Escalera v. N.Y. Housing*
17 *Auth.*, 425 F.2d 853, 857 (2nd Cir. 1970). See also *Conley v. Gibson*, 355 U.S. 41, 45-7) 1957).

18 **Using Material Outside of the Pleading Converted Dismissal from Rule 12 to Rule 54**

19 The dismissal order used material outside of the pleading, including statements that the issues
20 had been previously adjudicated, that Appellant’s prior filings were frivolous, and that he was a
21 vexatious litigant. The relevant portions of Rule 12 (b) state:

22 Rule 12(b)(6). If, on a motion asserting the defense numbered (6) to dismiss for failure of the
23 pleading to state a claim upon which relief can be granted, matters outside the pleadings are
24 presented to and not excluded by the court, the motion shall be treated as one for summary
25 judgment and disposed of as provided in Rule 56.

26 Rule 12(c) Motion for Judgment on the Pleadings. After the pleadings are closed but
27 within such time as not to delay the trial, any party may move for judgment on the pleadings.
28 If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to
and not excluded by the court, the motion shall be treated as one for summary judgment and
disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to
present all material made pertinent to such a motion by Rule 56.

29 *In Doe v. United States Dept. of Justice*, 753 F.2d 1092 (1985) the court held: “Rule 12
30 provides that if “matters outside the pleadings are presented to the court, the motion shall be
31 treated as one for summary judgment and disposed of as provided in Rule 56...” See
32 Fed.R.Civ.P. 12(b)(noting that, if a Rule 12 motion is converted into a summary judgment

1 proceeding, “all parties shall be given reasonable opportunity to present all material made
2 pertinent to such a motion by Rule 56.” The relevant part of Rule 56 (c) states:

3 (b) For Defending Party. The judgment sought shall be rendered forthwith if the
4 pleadings, depositions, answers to interrogatories, and admissions on file, together with
5 the affidavits, if any, show that there is no genuine issue as to any material fact and that
the moving party is entitled to a judgment as a matter of law.

6 **D) Violated Protection of Jury Trial on Factual Matters, to Determine the**
7 **Combined Conspiracy to Obstruct Justice and Violate Civil Rights; and the**
8 **Declaratory Judgment Issues**

9 Appellant’s Complaint (CT 1:pg 1) demanded a jury trial that was provided by law. FRCivP
10 38 states: Jury Trial of Right. (a) Right Preserved. The right of trial by jury as declared by the
11 Seventh Amendment to the Constitution or as given by a statute of the United States shall be
12 preserved to the parties inviolate.

13 The right to a jury trial is further stated in FRCivP Rule 57:

14 Declaratory Judgments. The procedure for obtaining a declaratory judgment pursuant to Title
15 28 U.S.C. § 2201 shall be in accordance with these rules, and the right to trial by jury may be
16 demanded under the circumstances and in the manner provided in Rules 38 and 39. The
17 existence of another adequate remedy does not preclude a judgment for declaratory relief in
cases where it is appropriate. The court may order a speedy hearing of an action for a
declaratory judgment and may advance it on the calendar.

18 In *City of Morgantown, W.Va. v. Royal Insurance Co*, 337 U.S. 254 (1949), the Court held:

19 Trial by jury is a vital and cherished right, integral in our judicial system. It is argued that
20 the importance of an interlocutory order denying or granting jury trial is such that it
21 should be appealable. Many interlocutory orders are equally important, and may
22 determine the outcome of the litigation, but they are not for that reason converted into
23 injunctions. The Constitution guarantees to litigants in the federal courts the right to have
24 their case tried by a jury, and Rule 38 of the Rules of Civil Procedure explicitly
implements that guarantee. Denial of the right in a case where the demanding party is
entitled to it is of course error. The rulings of the district courts granting or denying jury
trial are subject to the most exacting scrutiny on appeal.

25 **E) Violated Due Process, and Criminal Statutes, by Placing a Frivolous Label on**
26 **Attempts to Report Criminal Activities and the Exercise of Federal Defenses**
27 **Against Massive Violations of Federally Protected Rights**

28 The dismissal order stated (CT 1: pg 3):

“All the actions filed by Appellant between 1984 and 1991 were deemed to be without

1 merit and all actions were summarily dismissed. After finding that Appellant “has
2 overwhelmingly demonstrated that he is a vexatious litigant,” the United States District
3 Court for the Northern District of California enjoined him “from filing any civil actions
4 in federal court without leave of court.”

5 “Section 1915 ... authorizes courts to dismiss a ‘frivolous or malicious’ action, but
6 there is little doubt they would have power to do so even in the absence of this statutory
7 provision. ... A district court in the Second Circuit may sua sponte dismiss a complaint
8 even if the Appellant has paid the filing fee. ... The law in this circuit is that a district
9 court may sua sponte dismiss a frivolous complaint even if the Appellant has paid the
10 filing fee. ... although pro se litigants must be afforded special solicitude, court may
11 dismiss “claims describing fantastic or delusional scenarios. [a]uthorizes a district court
12 to dismiss sua sponte a fee-paid complaint that is fantastic or delusional. ... discussing
13 appellant court’s inherent authority to dismiss meritless and/or frivolous fee-paid
14 cases.” “Accordingly, the instant complaint is DISMISSED because it fails to state a
15 claim on which relief may be granted and seeks monetary relief against defendants who
16 are immune from such relief. Fed.R.Civ.P.12(b)(6). [Dismissal order, pg 4]

17 The law is clear as to what is frivolous, or without merit:

18 “An appeal [or complaint] is not frivolous if any of the legal points [are] arguable on their
19 merits ...” *Anders v. California* (1967) 386 U.S. 738; “The objective standard looks at the
20 merits of the appeal [or complaint] from a reasonable person's perspective. ... whether
21 any reasonable person would agree that the point is totally and completely devoid of
22 merit, and therefore, frivolous. ... an appeal is not frivolous if “any of the legal points
23 [are] arguable on their merits.”

24 Continuing in same vein, the sua sponte dismissal order charged Appellant with being a
25 vexatious litigant (CT 2: pgs 3,4)

26 “[P]laintiff has overwhelmingly demonstrated that he is a vexatious litigant, ... Section
27 1915 ... authorizes courts to dismiss a frivolous or malicious action ...”

28 To be guilty of being a vexatious litigant the person must be guilty of filing numerous
lawsuits that meet the definition of a frivolous action and having no arguable merit in law. Every
filing by Appellant was to either *report criminal activities*, under 18 U.S.C. § 4, or to *defend*
against massive violations of federally protected rights, or a combination of the two.

Frivolous? The massive violations of state and federal laws and constitutional protections
resulted in the loss of Appellant’s home, his business, his entire \$10 million in assets, converting
him from a multi-millionaire to a state of poverty. For exercising federal defenses against
massive violations of federally protected rights, federal judges have placed a vexatious litigant
label upon him—as part of the dual obstruction of justice tactics!

1 **F) Violated Due Process Defenses, and Obstructed Justice, by Misstating**
2 **Attempts to Report Criminal Activities and Defend Against Massive**
3 **Violations of Federally Protected Rights, as “Failure To State a Claim”**

4 The dismissal order stated (CT 2:pg 5):

5 [T]he instant complaint is DISMISSED because it fails to state a claim on which
6 relief may be granted and seeks monetary relief against defendants who are immune
7 from such relief. FRCivP12 (b)(6).

8 Federal causes of actions stated in Appellant’s Complaint stated claims under the federal crime
9 reporting statute, and under such claims as arising under the Civil Rights Act, Bivens,
10 Declaratory Judgment Act, void judgment doctrine, RICO, and FTCA.

11 **G) Violated Due Process by Upholding Unlawful and Unconstitutional Orders**
12 **That Permanently Terminated Appellant’s Right to Federal Court Access**

13 The dismissal order violated Appellant’s due process and equal protection rights¹ by
14 upholding prior unlawful and unconstitutional orders permanently terminating Appellant’s right
15 to file papers in federal district and appellate court.

16 “After finding that Appellant “has overwhelmingly demonstrated that he is a vexatious
17 litigant,” the United States District Court for the Northern District of California enjoined him
18 “from filing any civil actions in federal court without leave of the court.” *Stich v. Patel et al.*,
19 No. 86-0384 (N.D. Cal. June 6, 1986). [CT 2: pg 3)

20 “The instant action, also brought without seeking leave of the Court, marks yet another
21 attempt by Appellant to ignore previous warnings and Orders of the Court. Appellant is
22 advised that the June 6, 1986 Order of the United States District Court for the Northern
23 District of California, enjoining him from filing any civil actions in federal court without
24 leave of court, remains in effect.” (CT 1:pg 4)

25 These orders permanently barring Appellant from filing any papers in the federal courts
26 acted, and were intended, to block Appellant from reporting criminal activities to a federal judge
27 under the mandatory requirements of 18 U .S.C. § 4, and to block Appellant from defending
28 against the massive violations of state and federal laws.

Arguably, the tactic to block the reporting of criminal activities obstructed justice, felonies

1 The equal protection rights stated in the Fourteenth Amendment, Section 1 have been held to apply in federal courts also. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

1 under various criminal statutes, including Title 18 U.S.C. § 245 and 42 U.S.C. § 1985.

2 The injunctive orders required off-the-record approval before Appellant could report criminal
3 activities against the United States and to exercise the protections guaranteed by the laws and
4 Constitution of the United States. In addition to the unconstitutional nature of the injunctive
5 orders, the repeated wholesale violations of state and federal laws and constitutional rights, and
6 the repeated block to reporting criminal activities, made it obvious that Appellant would never be
7 granted the right to exercise federal defenses.

8 **H. Violated Federal Defenses by Misstating Facts, by Omissions, and by Deception**

9 The dismissal order falsely stated every issue raised in the Complaint had been previously
10 adjudicated. (CT:3:13-15)

11 *The Court notes that Appellant has brought numerous actions in the United States*
12 *District Court for the Northern District of California and other Federal Courts*
13 *containing similar allegations. All the actions were deemed to be without merit and all*
14 *actions were summarily dismissed. After finding that Appellant “has overwhelmingly*
15 *demonstrated that he is a vexatious litigant,” the United States District Court for the*
16 *Northern District of California enjoined him “from filing any civil actions in federal*
17 *court without leave of court. ... all the actions were deemed to be without merit.*

18 Not a single filing, including the repeated attempts to report criminal activities in government
19 offices, or exercising federal defenses against massive violations of federally protected rights,
20 were ever allowed to proceed. They were either blocked at the initial pleading stage, or
21 dismissed sua sponte as soon as the Complaints were filed. None were ever adjudicated, and no
22 evidence was provided to show that they were litigated.

23 **I) Violated Due Process by Falsely Stating Complaint Raised “No Meritorious Issue”**

24 The dismissal order falsely stated: (CT 2:4)

25 “Appellant presents no arguably meritorious issue. ... Section 1915 ... authorizes courts to
26 dismiss a frivolous or malicious action.”

27 Twenty-one pages of facts showing massive violations of state and federal laws for which
28 federal defenses exist, and attempts to report criminal activities under 18 U.S.C. § 4 associated
with a series of deadly airline disasters and other effects upon national security, contradicts the
blatant false statement of no meritorious issue. Further, a section 1915 dismissals pertain to

1 proceedings in forma pauperis, where the filing fee is not paid. Appellant paid the filing fee.

2 **3) DISMISSAL VIOLATED MULTIPLE SUBSTANTIVE PROTECTIONS**

3 The sua sponte dismissal violated and denied to Appellant numerous substantive defenses
4 and protections guaranteed to all citizens by the laws and Constitution of the United States..

5 **A) Violated Federal Defenses Under the Declaratory Judgment Act to Declare**
6 **Legal Rights Established in Five Judgments That are in Controversy.**

7 Federal law provides Appellant the right to a declaratory judgment declaring Appellant's
8 legal rights and obligations previously adjudicated that are in dispute. Declaratory Judgment Act,
9 28 U.S.C. § 2201, 2202, FRCivP 57, and related case law. The rights that have been violated
10 were established in a 1966 judgment, and the entry of that judgment as a local judgment in the
11 states of Oklahoma, Texas, Colorado, Nevada, and California. These rights were violated in the
12 California and federal courts and have yet to be adjudicated.

13 **B) Violated Federal Defenses Under Void Judgment Doctrine Related to Unlawful and**
14 **Unconstitutional Orders Seizing and Liquidating Appellant's Life Assets**

15 Unlawful and unconstitutional orders were rendered, seizing Appellant's \$10 million in
16 assets, that violated the legal and constitutional due process rights to a hearing, notice of hearing,
17 and legally required cause. These void orders were then compounded with an order barring
18 Appellant from filing any objections. The Supreme Court has declared, under the void judgment
19 doctrine,² the right to seek an order, at any time and in any case, holding as void, orders that
20 violated due process.

21 **C) Violated Federal Defenses Under the Void Judgment Doctrine to Regain**
22 **Civil and Constitutional Rights That Were Terminated Through Series of**
23 **Unlawful and Unconstitutional Orders That Permanently Terminated**
24 **Appellant's Right to Federal Court Access**

24 The lower court upheld the orders permanently barring Appellant access to district and
25 appellate courts. The nature of these orders terminated for Appellant the due process and equal

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27 2 An order that exceeds the jurisdiction of the court, is void, or voidable, and can be attacked in any proceeding in
28 any court where the validity of the judgment comes into issue. (See *Rose v. Himely* (1808) 4 Cranch 241, 2 L ed
608; *Pennoyer v. Neff* (1877) 95 US 714, 24 L ed 565; A judgment may not be rendered in violation of constitutional
protections. The validity of a judgment may be affected by a failure to give the constitutionally required due process
notice. *Earle v. McVeigh*, 91 US 503, 23 L Ed 398.

1 protection rights guaranteed by the laws and Constitutional of the United States.

2 **D) Violated Federal Defenses Under FTCA Against**
3 **Torts Perpetrated by Government Employees**

4 The dismissal order violated Appellant’s defenses under the Federal Tort Claims Act (FTCA)
5 to obtain financial damages against the United States arising from the torts by federal employees
6 as they sought to block Appellant from reporting and exposing corrupt and criminal activities in
7 government offices. The lower court’s sua sponte order stated:

8 “Appellant’s claim against the United States Government must be dismissed because the
9 doctrine of sovereign immunity bars from federal court all suits grounded in tort against
10 the United States absent its express consent.”

11 Congress legislated, through the Federal Tort Claims Act, the right of people to sue the
12 federal government for torts perpetrated by government employees. The dismissal order also
13 stated and implied that Appellant had not exhausted his administrative remedies under the FTCA
14 claim by filing an administrative claim. Appellant *did file* administrative claims, only to be
15 blocked by federal judges from court access.

16 **E) Violated Federal Defenses Under RICO for Multiple Acts in a Conspiracy**
17 **That Had Catastrophic Effects Upon Interstate Commerce**

18 The sua sponte dismissal order violated Appellant’s rights under the RICO claim (Title 42
19 U.S.C. §§ 1961-1965) stated in the Complaint. (CT 1: pg 18) The Complaint stated defendants
20 engaged in multiple predicate acts, in a racketeering enterprise, that affected and inflicted great
21 harm upon interstate and international commerce, and upon Appellant. These were associated
22 with the legal schemes to block Appellant’s exposure of criminal activities in the three branches
23 of government. On pages 18 and 21 of the Complaint, Appellant stated he would name the
24 defendants in a separate filing for his Civil Rights, *Bivens*, and RICO causes of action.

25 **F) Violated Federal Defenses, and Obstructed Justice, by Placing Delusional Label**
26 **On Efforts to Report Criminal Activities and Exercising Federal Defenses**

27 The dismissal order stated:

28 “Although pro se litigants must be afforded special solicitude, court may dismiss “claims
describing fantastic or delusional scenario. ... Fed.R.Civ.P. 12(b)(6) authorizes a district
court to dismiss sua sponte a fee-paid complaint that is fantastic or delusional.”

1 Appellant was one of the federal government's most experienced and qualified aviation
2 safety experts. The federal government gave him the assignment to correct the conditions
3 responsible for the worst series of airline crashes in the nation's history. He has written books on
4 aviation safety, and appeared as guest and expert on over 3,000 radio and television shows since
5 1978. He had years as an international airline captain and was a Navy Patrol Plane Commander
6 and instructor during World War II. Respected people in the aviation community have praised
7 his writings.

8 In addition, his allegations have been stated to be serious by U.S. district judge Schnacke in
9 the 9th Circuit; one of the judges on 9th Circuit court of appeals during oral argument; Assistant
10 U. S. Attorney George Stoll; U.S. district judge Schwartz in the 9th Circuit (a week before he
11 suddenly reversed himself and placed a frivolous label on major federal causes of actions); and
12 by members of Congress, who then stated they lacked responsibility over the matters.

13 SUMMARY

14 In summary, the lower court judge continued the practice of blocking former federal agents
15 from reporting corrupt and criminal acts that continue to inflict catastrophic consequences upon
16 national security and the lives of many innocent people. By obstructing justice, including
17 protecting those whose violations of federally protected rights have inflicted great personal and
18 financial harm upon Appellant, he continues the corrupt and criminal conditions responsible for
19 such tragedies as the terrorist hijackings of four airliners on September 11, 2001.

20 Blatant and deadly pathological lying has become the standard as federal judges continue to
21 block the reporting the criminal and subversive activities.

22 Any one of the many federal judges who participated in these federal offenses, and those who
23 knew of them and did not act to prevent them, share blame in such deaths as those that occurred
24 on 9/11. This court has the choice of either continuing this fraud upon the United States and its
25 people, or exercising its moral and legal responsibilities.

26 Dated: September 7, 2004.

27 _____
28 Rodney Stich
Appellant in pro se

1
2 Every attempt by Appellant to report the federal crimes, except for the attempts in the early
3 1980s,³ was blocked by federal judges and Justice Department lawyers, despite the admission
4 of numerous officials that the allegations were very serious.

5 The district court judge held that Appellant:

- 6 • Lacked standing to report the criminal activities.
- 7 • Was seeking to force the prosecutor to prosecute.
- 8 • Causes of actions under the Civil Rights Act, Bivens, FTCA, were actions against the
9 government for which it had sovereign immunity.
- 10 • The federal causes of action under the Declaratory Judgment Act and void judgment
11 doctrine were not addressed by the court.

12 The lower court denied Appellant a hearing, discovery, and the opportunity to be heard. The district judge continued
13 the practice of reversing the legal definition of frivolous and held that Appellant's complaint—which sought to report
14 criminal activities that enabled a number of fatal airline crashes to occur and which exercised federal defenses.

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24 3 *Stich v. United States, et al.*, 554 F.2d 1070 (9th Cir.) (table), *cert. denied*, 434 U.S. 920 (1977)(addressed hard-
25 core air safety misconduct, violations of federal air safety laws, threats against government inspectors not to report
26 safety violations and misconduct); *Stich v. National Transportation Safety Board*, 685 F.2d 446 (9th Cir.)(table), *cert.*
27 *denied*, 459 U.S. 861 (1982))(addressed repeated criminal falsification of official airline accident reports, omitting
28 highly sensitive air safety misconduct, making possible repeated crashes from the same sequestered problems);
Amicus curiae brief filed on July 17, 1975, in the Paris DC-10 multi-district litigation, *Flanagan v. McDonnell*
Douglas Corporation and United States of America, Civil Action 74-808-PH, MDL 172, Central District
California.)(addressing the long standing FAA misconduct, of which the cover-up of the DC-10 cargo door problem
was one of repeated instances of tragedy related misconduct); *U.S. v. Department of Justice, District of Columbia*,
Nos. 86-2523, 87-2214, and other actions filed by Stich seeking to expose and correct the powerful and covert air
disaster misconduct.