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June 04, 2006

Elizabeth A. Shumaker, Clerk  
U.S. Court of Appeals for the Tenth Circuit  
1823 Stout Street  
Denver, CO 80257

RE: Supplemental Authority re: *Harrington v. Wilson, et al.*, N<sup>o</sup> 06-1418

Dear Ms. Shumaker:

Pursuant to Fed.R.App.P. 27(j), please take notice of an opinion issued today, June 4<sup>th</sup> 2007, 551 U.S. \_\_\_\_ (2007), [N<sup>o</sup> 06-7317](#) (vacating and remanding *Erickson v. Pardus*, [10<sup>th</sup> Cir., N<sup>o</sup> 06-1114](#)).

The opinion observes that, like my trial court case, the Article III judge issued a short order adopting the magistrate's recommendations, thereby providing no clarification or analysis.<sup>1</sup> *Id.* at p. 4. The Court further noted that

Specific facts are not necessary; the statement need only give the defendant fair notice of what the . . . claim is and the grounds upon which it rests. In addition, when ruling on a defendant's motion to dismiss, a judge must accept as true all of the factual allegations contained in the complaint.

\* \* \*

Whether petitioner's complaint is sufficient in all respects is a matter yet to be determined . . . In particular, the proper application of the controlling legal principles to the facts is yet to be determined.

*Id.* at 5. (citations and quotations omitted).

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<sup>1</sup> Consequently, consideration of the merits was left to the complaint & attachments, magistrate's recommendations and objections thereto.

The Court of Appeals' departure from the liberal pleading standards set forth by Rule 8(a)(2) is even more pronounced in this particular case because petitioner has been proceeding, from the litigation's outset, without counsel. A document filed *pro se* is to be liberally construed and a *pro se* complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers. *Cf.* Fed. Rule Civ. Proc. 8(f) ("All pleadings shall be so construed as to do substantial justice").

\* \* \*

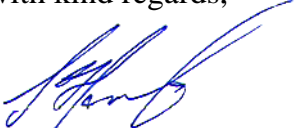
The case cannot, however, be dismissed on the ground that petitioner's allegations of harm were too conclusory to put these matters in issue.

*Id.* at 6. (citations and quotations omitted).

These holdings and *dicta* are applicable to my case because, in addition to the procedural similarities, the Court exhorts that claims should not be dismissed because a trial court concludes the statements are conclusory but, rather that the correct action by a district judge is to grant leave to amend.

I would have cited the opinion in my Opening Brief at pp. 10 and 40.

. . . with kind regards,



Sean Harrington

cc: all parties by electronic mail