

FILED

SEP 11 2017

SUSAN Y. SOONG  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

Rev. Josephenie E. Robertson, M.T.T.  
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In Propria Persona

**In the United States District Court  
For the District of Northern California  
San Francisco Division**

Rev. Josephenie E. Robertson, M.T.T., individually, )  
and in her capacities as a member of the Traditional )  
Royal Authority and representative of the Miskitu )  
Indigenous Nation and non-American citizens; And, )  
all other Miskitu Indigenous peoples; )

Plaintiff(s), )

v. )

The Republic of Nicaragua, Daniel Ortega, Rosario )  
Murillo, Sandinista Party, Infinity Energy Resources,) )  
Inc.; )

Defendants. )

Civil Case No. 3:17-cv-00852-JST

) PLAINTIFF'S OBJECTION & OPPOSITION  
) TO DEFENDANT'S MOTION TO DISMISS  
) AMENDED COMPLAINT with  
) PROPOSED ORDER

**PLAINTIFF'S OBJECTION AND OPPOSITION TO DEFENDANT'S MOTION TO DISMISS AMENDED  
COMPLAINT AND INCORPORATE DEFENDANT'S MEMORANDUM WITH PROPOSED ORDER**

COMES NOW the Plaintiff Rev. Josephenie E. Robertson, M.T.T. hereby files Objection and the following supportive opposition to the Defendant's Motion to Dismiss the Plaintiff's Amended Complaint and Incorporate the Defendant's Memorandum of Points and Authorities and further the plaintiff's motion the Court by and through its inherent power of discretion to deny their motion, including but not limited to, the following reasons: To Wit:

Rev. Josephenie E. Robertson, M.T.T., v. The Republic of Nicaragua, et al., Case No. 3:17-cv-00862-JST  
Plaintiff's Objection & Opposition to Defendant's Motion to Dismiss Amended Complaint with Proposed Order.

On September 5<sup>th</sup>, 2017 the Court issued an order denying the plaintiff's "motion for reconsideration" while at that very same time, the Defendant's lawyers filed their Motion to Dismiss the Amended Complaint and incorporate their memorandum of points and authorities as part of the records. Also, during this very same time period, the plaintiffs were preparing, without any knowledge of the Court's order or that the Defendant's were filing a motion, subsequently on September 6<sup>th</sup>, 2017 filed our own motion for sanctions under FRCP Rule 37 after receiving disturbing information with respect to securing counsel.

The Court's Order of September 5<sup>th</sup>, 2017 is very specific with respect to its denial of reconsideration regarding one sole issue, the right of counsel being appointed to the plaintiffs to pursue a class action lawsuit.

However, this pleading was not solely a "motion for reconsideration" but rather a "motion for reconsideration or in the alternative clarification" with respect to far more reaching issues that the Court has not addressed and remained silent on, such as the Court affording the plaintiff Ercell Fleurima the right to represent herself as shown by the minutes of the Court, yet omitted in the Court's June 26<sup>th</sup>, 2017 order that does not address or afford her to proceed in a none class action amended complaint, in Propria persona or as a traditional authority. This confounded and perplexed confusion clearly affords the plaintiffs the right to clarification in order to amend the complaint in accordance with the Court's order that identified the deficiencies. The Court pursued a course in its September 5<sup>th</sup>, 2017 order that omitted serious questions that would seem to require an answer, unless the Court concurs with the plaintiffs' positions on these matters.

Without any input, the plaintiffs proceeded and submitted an amended complaint that cured all deficiencies identified by the Court in its June 26<sup>th</sup>, 2017 order to proceed as a class action lawsuit, with the exclusion of the appointment of counsel. That very same order afforded the plaintiff Reverend Josephenie E. Robertson, M.T.T. the right to continue and pursue her complaint as a non-class action lawsuit. The Complaint as amend was written precisely under that context of proceeding with the complaint "pro se" in case counsel could not be secured.

**Procedural Due Process Rights of Pro Se Civil Litigants.**

Pro Se litigants deserve, of course, the minimum due process rights to which all other litigants are entitled. The most significant of these rights is an opportunity to be heard, "granted at a meaningful time and in a meaningful manner."<sup>1</sup> Other minimum due process protections include the requirement of adequate notice, the right to a neutral and detached decision maker, the right to hire counsel, the right to present evidence and confront and cross-examine witnesses.

At the risk of sounding tautological, a meaningful opportunity to be heard under the due process clause requires, therefore, an inquiry to determine how much further process is due under the facts and circumstances of the particular case. This comment concludes that, at a minimum, a civil pro se litigant is entitled to a liberal construction of his pleadings as is already required under Haines v. Kerner.<sup>2</sup> This liberal construction will in turn facilitate the court's efforts to determine what further procedural protections the due process balancing test requires. Procedural due process inquiries require a two-step analysis. The first step is identification of a protected interest of which the litigant otherwise would be deprived. The second step is a determination of what type of judicial process is due.<sup>3</sup>

Civil litigants have a protected interest in a meaningful opportunity to be heard. This interest is analytically distinct from any protected liberty or property interests that may underlie the litigant's cause of action or legal defenses.<sup>4</sup> Litigants have invoked the interest in a meaningful opportunity to be heard in order to gain access to the courts in the absence of any potential deprivation of an underlying substantive interest.<sup>5</sup> This subsection argues that, regardless of whether there are protected liberty or property interests attached to a given pro se litigant's underlying claim, courts should hold that a meaningful opportunity to

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<sup>1</sup> Logan v. Zimmerman Brush Co., 455 U.S. 422, 437 (1982), quoting Armstrong v. Manzo, 380 U.S. 545, 552 (1965). See also Little v. Streater, 452 U.S. 1, 5-6 (1981).

<sup>2</sup> 404 U.S. 519 (1972).

<sup>3</sup> Logan, 455 U.S. at 428.

<sup>4</sup> Laurence H. Tribe, American Constitutional Law § 10-18 at 753-54 (2d ed. 1988).

<sup>5</sup> John E. Nowak, Ronald D. Rotunda, J. Nelson Young, Constitutional Law § 13.10 at 517 (3d ed. 1986).



be heard is itself a protected interest for such litigants. Authorities are split on whether there is a constitutional right to proceed pro se in civil cases."<sup>6</sup> In fact, access to court is rarely unconditional where there are no fundamental constitutional rights at stake or there is no necessity to resort to the court system."<sup>7</sup> *Civil litigants, however, have a statutory right to proceed pro se under 28 U.S.C. § 1654.*

Although the government may not be required to give litigants access to court, case law indicates that once it does grant access, the procedures used must comport with due process."<sup>8</sup>

Moreover, statutory interpretation supports this argument: Congress, after all, would not have granted the right to proceed pro se without conveying with that right a meaningful opportunity to be heard. Ordinarily, a denial of due process does not occur if a state restricts the right of access by means of reasonable procedural requirements.<sup>9</sup>

A litigant is denied due process, however, if these requirements work to deny him a meaningful opportunity to be heard.<sup>10</sup>

<sup>6</sup> See the cases cited in Note, 55 Fordham L.Rev. at 1109 n.3 (cited in note 53).

<sup>7</sup> See United *States v. Kras*, 409 U.S. 434 (1973) (access to bankruptcy court could be denied to those who could not pay the \$50 filing fee because alternatives, such as settling one's debts out of court, exist); *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 430 n.5 (1982) ("having made access to the courts an entitlement or a necessity, the State may not deprive someone of that access unless the balance of state and private interests favors the government scheme"). For an example of a fundamental right requiring access to the state court system, see *Boddie v. Connecticut*, 401 U.S. 371 (1971) (filing fee required to initiate a divorce action could not constitutionally be applied to indigents to keep them out of court because of freedom of choice in marital decisions).

<sup>8</sup> See, e.g., *Evitts v. Lucey*, 469 U.S. 387, 393 (1985) (states are not constitutionally required to grant an appeal as of right to a criminal defendant, but if the state has created appellate courts as an integral part of its justice system, the procedures in deciding appeals must comport with due process); Nowak, Rotunda, Young, Constitutional Law § 13.10 at 518 n.8 (cited in note 110).

<sup>9</sup> Tribe, American Constitutional Law § 10-18 at 756 (cited in note 109), discussing *Martinez v. California*, 444 U.S. 277 (1980) (statute granting immunity from suit to state parole officials did not violate due process).

<sup>10</sup> *Boddie*, 401 U.S. at 377-80; *Walters v. Nat. Assn. of Radiation Survivors*, 473 U.S. 305, 319-34 (1985) (plaintiff's interest in a "meaningful presentation," here alleged to be denied by an attorney fee limitation statute that deprived plaintiff of the right to be represented by counsel of his choice, was outweighed by the government's interests in having informal proceedings before the Veterans Administration and in preventing large portions of awards from going to attorneys). See discussion of the procedural due process determination at section III.B.2. See also Tribe, American Constitutional Law § 10-18 at 753-60 (cited in note 109).

Once a protected interest is identified, courts must then determine how much process is due the civil pro se litigant. The Supreme Court in Mathews v. Eldridge promulgated its test for determining the procedural protections to which a litigant is entitled by due process."<sup>11</sup>

The Defendants have motioned this Court to dismiss my complaint as amend and incorporate their memorandum of authorities as part of the record using many of the very same defenses that the Court declined to sustain in its July 26<sup>th</sup>, 2017 ruling. Therefore, in pertinent part, I hereby annex, absorb, and apply the plaintiffs' previous defenses regarding those specific issues that the Court declined to sustain the Defendant's position on those matters.

Additionally, in verbatim with respect to my Motion for Reconsideration and/or in the alternative Clarification that I had outlined the remedies with respect to the deficiencies detailed by the Court order, where I have incorporated those very same "in the amended complaint, excluding securing counsel to proceed with my class action lawsuit.

If the Court would please take judicial notice, that the Court itself does not dispute that the plaintiffs have remedied those deficiencies in the amended complaint, with the exception cited on September 5<sup>th</sup>, 2017 regarding securing counsel.

It is therefore my contention, that I have the right to proceed with my claims, in the proper person (pro se) without counsel. I have my researchers, helpers, and traditional Miskitu authorities providing me insight to maintain the proper court décor while proceeding in Propria persona under the circumstances that we have tried vigorously to secure counsel but can not either meet the financial requirements requested, or have been obstructed, intimidated, and threatened as shown by the evidence attached in my recent motion for sanctions that leads me to believe there are some due process issues that need to be addressed and sanctioned by the Court.

As a traditional authority, I have the right name additional defendants as well as to be involved in any and all negotiations where Miskitu natural resources are being negotiated

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<sup>11</sup> 424 U.S. 319 (1976).



with international businesses where the monies from those business proceedings are being withheld from my people's welfare and well-being.

**SUPPORTIVE AFFIDAVIT**

I, Reverend Josephenie E. Robertson, M.T.T. am proceeding with my amended complaint, pro se before this Court until such time that I can secure the effective assistance of counsel. Until that time, it is my opinion that with my helpers, researchers, and Miskitu traditional authorities that I can properly proceed with my complaint before this Honorable Court.

With all due respect, from the Court, because of my age and diminishing eye sight, I may need the assistance of my daughter Ercell Fleurima to read aloud, by my side in open court, of what I have prepared and will prepare for future hearings pending trial. It is my request to be afforded this leeway.

For the aforementioned reasons, I object and oppose the defendant's motion to dismiss my amended complaint and further move this court to deny their motion, setting dates for conferences and trial.

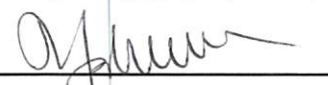
**Further Affiant Sayeth Not.**

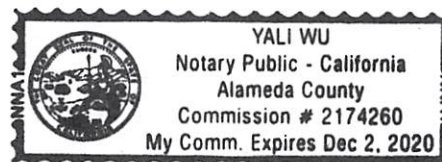
Should no Notary Public be available, this statement is sworn pursuant to 28 U.S. Code § 1746(2), Whereas, I, the Reverend Josephenie E. Robertson, M.T.T., declares under penalty of perjury that the foregoing is true and faithfully correct.

Executed on this \_\_\_\_ day, in the month of September, 2017.

  
REV. JOSEPHENIE E. ROBERTSON, M.T.T. - AFFIANT

SWORN TO AND SUBSCRIBE before me by REV. JOSEPHENIE E. ROBERTSON, M.T.T., as sworn to, this 11<sup>th</sup> day of September 2017.

  
NOTARY PUBLIC in and for the State of  
California. Commission expires on.  
December 2nd, 2020



Rev. Josephenie E. Robertson, M.T.T., v. The Republic of Nicaragua, et al., Case No. 3:17-cv-00862-JST  
Plaintiff's Objection & Opposition to Defendant's Motion to Dismiss Amended Complaint with Proposed  
Order.

**Order**

It is so Ordered. The Defendant's Motion to dismiss the complaint as amend is denied. It is further ordered, \_\_\_\_\_

Dated: \_\_\_\_\_

\_\_\_\_\_  
Judge Jon S. Tigar

**Certification of Service**

I, the Rev. Josephenie E. Robertson, M.T.T., and/or Ercell Fleurima, are the co-Plaintiffs in the above entitled case. I am over t he age of 18. On the date listed below, I mailed a true copy of this document, "Plaintiff's Objection & Opposition to Defendant's Motion to Dismiss Amended Complaint with Proposed Order" to the United States District Court, Office of the Filing Clerk of the Court, at the address of 450 Golden Gate Avenue, San Francisco, CA 94102-3489 and true copies were mailed to the Defendants counselors/parties in this case, as sewn to, this \_\_\_\_ day of September 2017, at their respective places of practice and addresses noted below:

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Signature - Certifier