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October 10, 2017

Via Federal Express

Honorable Scott S. Harris, Clerk
Supreme Court of the United States
1 First Street, N.E.
Washington, DC 20543

Re: *Jameka Evans v. Georgia Regional Hospital*, No. 17-370

Dear Mr. Harris,

This letter responds to respondents' letter dated October 4, 2017, in which they say "they do not intend to participate" in proceedings in this Court because they were not served with process in the district court.

Petitioner assumes the Court will treat respondents' letter as a waiver, under this Court's Rule 15.1, of the right to respond to the petition for certiorari. Petitioner offers the following brief rejoinder to dispel any implication in respondents' letter that the Court lacks the authority to order respondents to file a brief in response to the petition (and ultimately to grant certiorari).

Under this Court's Rule 12.6, "all parties other than petitioner are considered respondents." And if the Court orders a respondent to file a brief in response to a cert petition, such a filing is "mandatory." S. Ct. Rule 15.1. "Any objections to the jurisdiction of the Court to grant a petition for a writ of certiorari shall be included in the brief in opposition," not some other kind of submission. S. Ct. Rule 15.4.

Respondents nonetheless suggest that, under the circumstances here, this Court "may not exercise power" over them. Letter at 1 (quoting *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 350 (1999)). Respondents are mistaken. Petitioner filed the complaint at issue here *pro se* and requested to proceed *in forma pauperis*. Those actions triggered the procedural system set forth under 28 U.S.C. § 1915, which requires the district court to "issue and serve all process." 28 U.S.C. § 1915(d). Before doing so, however, a court may prescreen the complaint and dismiss it if the court concludes that it "fails to state a claim upon which relief may be granted." *Id.* § 1915(e)(2)(B)(ii). That is what the district court did here. Pet. App. 55a, 57a; *see also id.* 2a, 5a-7a. And when that happens, the plaintiff may pursue an

appeal, and the defendants may defend the holding of the district court. *See, e.g., Franks v. Rubitschun*, 312 F. App'x 764, 765-66 (6th Cir. 2009); *Covington v. Mitsubishi Motor Mfg. of N. Am., Inc.*, 154 F. App'x 523, 524 (7th Cir. 2005); *Shakur v. Selsky*, 391 F.3d 106, 110 (2d Cir. 2004).

This Court's case law and practices are in accord. In *Neitzke v. Williams*, 490 U.S. 319 (1989), this Court stressed that the rules Section 1915 establishes should not be construed to deprive *pro se* plaintiffs of "the practical protections against unwarranted dismissal generally accorded paying plaintiffs under the Federal Rules." *Id.* at 330. Foremost among those protections, of course, is the ability to seek appellate review when a district court dismisses a complaint for failure to state a claim upon which relief may be granted. Indeed, just a few Terms ago, this Court called for a response (and later granted certiorari) in a case in exactly the same procedural posture as this one. *See Burnside v. Walters*, 133 S. Ct. 2337 (2013).

The *Murphy Bros.* case that respondents cite is not to the contrary. The Court held there that the procedural obligations of defendants named in a complaint—such as seeking removal to federal court—are not triggered until the party has been served. 526 U.S. at 350-56. But nothing about that holding implicates Section 1915 or undermines this Court's power to treat defendants in cases where complaints have been dismissed under 1915(e)(2)(B)(ii) as proper respondents for purposes of this Court's certiorari jurisdiction.

Sincerely,

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cc: Sarah Hawkins Warren, Solicitor General of Georgia