

ROBERTS v. UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFOR-
NIA ET AL.

ON MOTION FOR LEAVE TO FILE PETITION FOR WRIT OF
MANDAMUS.

No. 2, Misc. Argued March 31, 1950.—Decided June 5, 1950.

1. Whether one is a "citizen" for the purpose of *in forma pauperis* proceedings in the federal courts under 28 U. S. C. § 1915 is a question solely of federal law. Pp. 844-845.
2. Congress has not prescribed loss of citizenship for conviction of crimes other than desertion and treason. P. 845.
3. An order of a Federal District Court denying a motion for leave to proceed *in forma pauperis* is appealable to the Court of Appeals under 28 U. S. C. § 1291. P. 845.
4. Petitioner's motion in this Court for leave to file a petition for a writ of mandamus to the District Court is denied, because of the ambiguous state of the record in the case and the fact that denial of the motion will not prejudice further applications by petitioner for leave to proceed *in forma pauperis*. P. 845.

Motion denied.

Max Radin, acting under an assignment by the Court, argued the cause and filed a brief for petitioner.

No appearance for respondents.

PER CURIAM.

Petitioner, who is confined in a California state prison, sought to file a petition *in forma pauperis* for a writ of injunction in the District Court below. That court denied leave to proceed *in forma pauperis*, holding that petitioner was not entitled to the benefits of 28 U. S. C. § 1915 because he was no longer a "citizen" as required by that section. The District Court reached that decision in reliance on California Penal Code § 2600, which provides that one sentenced to imprisonment for a term

of years is deprived of his civil rights for the period of imprisonment. The decision of the District Court is in error. Citizenship for the purpose of *in forma pauperis* proceedings in the federal courts is solely a matter of federal law. Congress has not specified criminal convictions, except for desertion and treason, as grounds for loss of citizenship. 8 U. S. C. § 801.

Petitioner thereafter filed a motion in the Court of Appeals for the Ninth Circuit for allowance of an appeal from the order of the District Court. The denial by a District Judge of a motion to proceed *in forma pauperis* is an appealable order. 28 U. S. C. § 1291; see *Cohen v. Beneficial Industrial Loan Corp.*, 337 U. S. 541 (1949). The Court of Appeals, however, held that it had "no power to grant an application for allowance of an appeal," and dismissed the petition.

Finally, petitioner filed in this Court a motion for leave to file a petition for a writ of mandamus to the District Court. Mandamus is an extraordinary remedy, available only in rare cases. *Ex parte Collett*, 337 U. S. 55, 72 (1949), and cases there cited. Because of the ambiguous state of this record, and the fact that a denial of this motion will not prejudice petitioner in further attempts to proceed *in forma pauperis*, the motion must be denied.

It is so ordered.

MR. JUSTICE FRANKFURTER took no part in the consideration or decision of this case.