NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

DENTON, DIRECTOR OF CORRECTIONS OF CALIFORNIA, ET AL. *v.* HERNANDEZ

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 90–1846. Argued February 24, 1992—Decided May 4, 1992

Respondent Hernandez, a prisoner proceeding *pro se,* filed five civil rights suits *in forma pauperis* against petitioner California prison officials, alleging, *inter alia,* that he was drugged and homosexually raped 28 times by various inmates and prison officials at different institutions. Finding that the facts alleged appeared to be wholly fanciful, the District Court dismissed the cases under 28 U.S.C. §1915(d), which allows courts to dismiss an *in forma pauperis* complaint ``if satisfied that the action is frivolous.'' Reviewing the dismissals *de novo,* the Court of Appeals reversed and remanded three of the cases. The court's lead opinion concluded that a court can dismiss a complaint as factually frivolous only if the allegations conflict with judicially noticeable facts and that it was impossible to take judicial notice that none of the alleged rapes occurred; the concurring opinion concluded that circuit precedent required that Hernandez be given notice that his claims were to be dismissed as frivolous and a chance to amend his complaints. The Court of Appeals adhered to these positions on remand from this Court for consideration of the Court's intervening decision in *Neitzke* v. *Williams,* 490 U.S. 319, which held that an *in forma pauperis* complaint ``is frivolous [under §1915(d)] where it lacks an arguable basis either in law or in fact,'' *id.*, at 325.

Held:

1.The Court of Appeals incorrectly limited the power granted the courts to dismiss a frivolous case under §1915(d). Section 1915(d) gives the courts ``the unusual power to pierce the veil of the complaint's factual allegations and dismiss those claims whose factual contentions are clearly baseless.'' *Id.,* at 327. Thus, the court is not bound, as it usually is when making a determination based solely on the pleadings, to accept without

question the truth of the plaintiff's allegations. However, in order to respect the congressional goal of assuring equality of consideration for all litigants, the initial assessment of the *in forma pauperis* plaintiff's factual allegations must be weighted in the plaintiff's favor. A factual frivolousness finding is appropriate when the facts alleged rise to the level of the irrational or the wholly incredible, whether or not there are judicially noticeable facts available to contradict them, but a complaint cannot be dismissed simply because the court finds the allegations to be improbable or unlikely. The ``clearly baseless'' guidepost need not be defined with more precision, since the district courts are in the best position to determine which cases fall into this category, and since the statute's instruction allowing dismissal if a court is "satisfied" that the complaint is frivolous indicates that the frivolousness decision is entrusted to the discretion of the court entertaining the complaint. Pp.5–7.

Syllabus

2.Because the frivolousness determination is a discretionary one, a §1915(d) dismissal is properly reviewed for an abuse of that discretion. It would be appropriate for a court of appeals to consider, among other things, whether the plaintiff was proceeding *pro se,* whether the district court inappropriately resolved genuine issues of disputed fact, whether the court applied erroneous legal conclusions, whether the court has provided a statement explaining the dismissal that facilitates intelligent appellate review, and whether the dismissal was with or without prejudice. With respect to the last factor, the reviewing court should determine whether the district court abused its discretion by dismissing the complaint with prejudice or without leave to amend if it appears that the allegations could be remedied through more specific pleading, since dismissal under §1915(d) could have a res judicata effect on frivolous determinations for future *in forma pauperis* petitions. This Court expresses no opinion on the Court of Appeals' rule that a *pro se* litigant bringing suit *in forma pauperis* is entitled to notice and an opportunity to amend the complaint to overcome any deficiency unless it is clear that no amendment can cure the defect. Pp.7–9.

929 F.2d 1374, reversed and remanded.

O'CONNOR, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and WHITE, SCALIA, KENNEDY, SOUTER, and THOMAS, JJ., joined. STEVENS, J., filed a dissenting opinion, in which BLACKMUN, J., joined.