

Supreme Court, U.S.  
FILED

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No. \_\_\_\_\_

**IN THE**  
**SUPREME COURT OF THE UNITED STATES**

JEREMY FONTANEZ --PETITIONER

vs.

JOSEPH COAKLEY, WARDEN --RESPONDANT

**ON PETITION FOR A WRIT OF CERTIORARI TO**

**UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT**

**PETITION FOR WRIT OF CERTIORARI**

JEREMY FONTANEZ 56997-066 (PRO-SE)  
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## **QUESTIONS PRESENTED**

1. DOES THE SENTENCING COURT VIOLATE THE MANDATORY VICTIMS RESTITUTION ACT (MVRA) WHEN IT DELEGATES ITS RESTITUTION PAYMENTS TO THE BOP?
2. IS THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT VIOLATED WHEN RESTITUTION ORDER IS UNLAWFUL?
3. DO THE PENALTIES ASSOCIATED WITH NON-COMPLIANCE WITH THE INMATE FINANCIAL RESPONSIBILITY PROGRAM VIOLATED THE DUE PROCESS CLAUSE WHEN A RESTITUTION ORDER IS UNLAWFUL?
4. IS THE IFRP UNDER 28 C.F.R. §545 "VOLUNTARY" AS INTERPRETTED BY THE FOURTH CIRCUIT?
5. CAN 28 U.S.C. §2241 BE USED TO CHALLENGE THE BOP'S EXECUTION OF AN UNLAWFUL RESTITUTION ORDER?
6. THIS COURT MUST SETTLE A CIRCUIT SPIT ON THESE ISSUES

**LIST OF PARTIES**

All parties appear in the caption of the case on the cover page.

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## STATUTE AND RULES

18 U.S.C. §3664(f)(2) - Mandatory Victims restitution Act (MVRA)  
28 C.F.R. §545.10 and §545.11 - Inmate Financial Responsibility  
28 U.S.C. §2241

IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI  
OPINIONS BELOW

Petitioner respectfully prays that a writ of certiorari issue to review the judgments below.

The opinion of the United States Court of Appeals for the Fourth Circuit appears at Appendix A to this petition and is:  
reported at No. 17-6664

The opinion of the United States District Court for the Northern District of West Virginia appears at Appendix B to this petition and is:  
reported at Civil Action No. 5:14CV77

**JURISDICTION**

The date on which the United States Court of Appeals decided my case was on October 6, 2017.

No petition for rehearing was timely filed in this case.

the jurisdiction of this Court is invoked under 28 U.S.C. §1254(1)

**CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT

28 U.S.C. §2241

28 C.F.R. §545

18 U.S.C. §3664(f)(2) - MANDATORY VICTIMS RESTITUTION ACT (MVRA)

## STATEMENT OF THE CASE

On December 7, 2004, Petitioner, pro-se, was sentenced in the Eastern District of Pennsylvania pursuant to a guilty plea to conspiracy and two counts for use of a firearm. In addition to Petitioner's sentence of incarceration, Petitioner also received an order to pay restitution in the amount of \$27,972.61 and \$1,400 special assessment fee as part of the overall sentence.

During sentencing, however, the court ordered restitution payable "immediately," and delegated payment scheduling responsibility to the B.O.P. and U.S Probation Office (See: Appendix - C, J&C, pg. 7, ¶F, Special Instructions). The delegation of such responsibility is an "impermissible delegation of authority," and as such, violates 18 U.S.C. §3664(f)(2), which in turn violates the due process clause of the Fifth Amendment.

On May 27, 2014, Petitioner submitted a pro-se petition under 28 U.S.C. §2241 to the Northern District of West Virginia. He challenged the continued execution of the portion of the sentence that relates to the impermissible delegation of authority to the B.O.P. and U.S. Probation Office to determine a payment schedule for the collection of restitution payments while also claiming that the restitution order was unlawful in violation of 18 U.S.C. §3664(f)(2), and therefore divested jurisdiction from the B.O.P. for requiring Petitioner from participating in the Inmate Financial Responsibility Plan (IFRP)(See: 28 C.F.R. §545).

The district court dismissed the motion, concluding that Petitioner's claim sought to challenge the validity of the restitution order rather than the execution of his sentence and

thus was not cognizable under §2241 and did not meet the requirements of §2255's savings clause.

Petitioner timely appealed to the United States Court of Appeals for the Fourth Circuit. The Fourth Circuit reversed and remanded, concluding that, as the arguments had been clarified on appeal, Petitioner was attacking only the B.O.P.'s administration of the IFRP and not the validity of the restitution order itself. The court held that "an inmate's challenge to the B.O.P.'s administration of the IFRP is a challenge to the 'execution' of a sentence that is cognizable under ...§2241."

The court remanded for a determination of whether it is necessary to reach the merits of Petitioner's petition and whether the B.O.P.'s refusal to allow Petitioner to withdraw from the IFRP was unlawful. The court also observed that:

"the distance between the parties appears to have narrowed as the issues have been refined on appeal. Fontanez challenges the Warden's refusal to let him stop making payments through the IFRP. The Warden now takes the position that 'the IFRP is a purely voluntary program' and that Fontanez 'is entitled to stop participating at any time.'"

On remand, the Warden filed a new motion to dismiss, or alternatively, for summary judgment, arguing that Petitioner's petition is now moot because the Warden conceded that the IFRP is voluntary and that Petitioner may stop participating at any time. The Warden, alternatively, argued that Petitioner's petition fails on the merits because the restitution order did not require him to participate in the IFRP.

Magistrate Judge Aloi entered a report recommending that this Court grant the Warden's motion. He concluded that the petition fails to state a claim under §2241 because the restitution order

does not violate §3664. Petitioner filed a timely objections, arguing that the restitution order violates §3664 and unconstitutionally delegated the sentencing court's power to impose restitution by requiring him to make payments through the IFRP as administered by the B.O.P. The Magistrate judge did not address the issue of whether the Warden properly refused to allow Petitioner to withdraw from the IFRP, and Petitioner did not discuss this issue in his objections.

Magistrate Judge also failed to address the question of the "voluntariness" of IFRP, which Petitioner argued against.

In reviewing the magistrate's recommendation, the district court considered the issues, and, determined that it was to consider Petitioner's petition and the Warden's motion in the following context. First, Petitioner's petition challenges only the Warden's refusal to permit his withdrawal from the IFRP. Second, the warden conceded that Petitioner may withdraw from the IFRP at any time. Third, the Warden initially refused to permit Petitioner withdrawal from the IFRP because he took the position that the restitution order required Petitioner to participate in the IFRP. Fourth, Petitioner may not challenge the validity of the restitution order in these proceedings, but its validity is relevant regarding the IFRP.

As noted above, the magistrate judge's report and recommendation deals only with the validity of the restitution order but not with the limited scope of Petitioner's petition or the Warden's concession. Nor did the magistrate judge address the contested voluntary nature of the IFRP.

The district court considered all the issues above, except for the voluntary nature of the IFRP, de novo. In its decision, the court failed to address the voluntary nature of the IFRP as the Petitioner challenged.

However, it did address the four issues outlined herein.

The district court acknowledged that Petitioner was challenging the Warden's prior refusal to permit his withdrawal. Though the Warden did ultimately concede that Petitioner could withdraw from the IFRP at any time, but there was no evidence in the record to show that he was permitted to withdraw. Therefore, the question of whether the Warden abused his discretion in refusing to permit Petitioner's withdrawal was still live.

Because the Warden conceded that the IFRP was voluntary, and that Petitioner was permitted to withdraw from it at any time, the district court found that the Warden's refusal to permit Petitioner's withdrawal from the IFRP was an abuse of discretion unless the court's restitution order required Petitioner to participate in the IFRP, which the district court reasoned that Petitioner argued that such a requirement would violate §3664 and the separation of powers. The magistrate judge determined that the restitution order was valid because it merely permitted Petitioner to make payments through the IFRP without delegating any authority to the BOP. As the district court noted, Petitioner objected to this conclusion. The district court declined to rule on the validity of the restitution order, and then found no error in the magistrate judge's conclusion in the report and recommendation.

On this issue, the district court found that the sentencing court merely permitted the Petitioner to pay his restitution

through the B.O.P.'s IFRP. ¶

Petitioner contests this finding.

In its finding, the court failed to address the contested fact that the IFRP is voluntary. Therefore, once the district court rendered its decision, Petitioner filed a motion to clarify the order, asking that the court address the contested fact of the voluntary nature of the IFRP. The court then order the government to respond. Ultimately, the district court ruled against Petitioner, claiming that the sanctions related to non-participation of the IFRP do not constitute a violation of of due process, because any privilages associated with the IFRP are not constitutionally protected.

On May 21, 2017, Petitioner filed a timely appeal to the Fourth Circuit Court of Appeals. On October 6, 2017, the Fourth Circuit affirmed the district court's decision, finding there was no clear error. The Mandate issued on november 28, 2017.

Petitioner now submits this timely petition for writ of certiorari.

## REASONS FOR GRANTING THE WRIT

### **1. DOES THE SENTENCING COURT VIOLATE THE MANDATORY VICTIMS RESTITUTION ACT (MVRA) WHEN IT DELEGATES ITS RESTITUTION PAYMENTS TO THE B.O.P.?**

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The Mandatory Victims restitution Act (MVRA), 18 U.S.C. §3664(f)(2), directs that a sentencing court "shall...specify in the restitution order that manner in which, and the schedule according to which, the restitution payment is to be paid." 18 U.S.C. §3664(f)(2).

The district court's statutory responsibility to set the restitution payment schedule is "non-delegable". United States v. Gunning, (Gunning I), 339 F.3d 948, 949 (9th Cir. 2003); United States v. Gunning (Gunning II), 401 F.3d 1145, 1149 (9th Cir. 2005) ("[T]he district court simply does not have the authority to delegate its own scheduling duties--not to the probation office, not to the B.O.P., not to anyone else." Gunning II, 401 F.3d at 1150).

In Petitioner's case, the district court entered an order that restitution be paid "immediately," and additionally ordered in its special instructions that restitution shall be paid during incarceration through the B.O.P. IFRP. No detailed or proper scheduling order followed. The court simply left it to the B.O.P to work out the details. This delegation to the B.O.P. is "impermissible" and violates the due process. See: United States v. Gunning, (Gunning II), 401 F.3d 1145, 1149(9th Cir. 2005) ("When the district court ordered that (1) during the time of [the defendant's] imprisonment, it [restitution] was to be paid through the B.O.P. Inmate Financial Responsibility Program (IFRP)...the district court

impermissibly delegated its authority to the B.O.P. Id at 1150); see also: Ward v. Chavez, 678 F.3d 1042(9th Cir. 2012, at 1047).

In Gunning I (United States v. Gunning, 339 F.3d 948, 949 9th Cir. 2003), the district court ordered restitution payment "immediately" with any mount unpaid after defendant's release "to be paid during the period of supervised release as directed by a U.S. Probation Officer," 339 F.3d at 950. The Circuit court held in that case that this ordered assigned to the probation office "full control of subsequent payment," and thus impermissibly delegated the district court's authority to the probation officer. ID.

In the isntant case, not only did the district court abdicate its responsibility and "impermissibly" delegated authority to the B.O.P. to set a payment schedule, it also ordered that "Any remaining balance upon release from custody shall be paid at a rate determined by the United States Probation Office." (See Appendix - C, J&C, pg. 7, ¶¶F). Here, again, the district court gave "full control" to another agency, namely the Probation Office, as id did to the B.O.P., adn therefore Petitioner contends that the sentencing court impermissibly delegated its authority to someone else, and that the district court and the Fourth Circuit both miscatorized the validity of the restitution order.

Petitioner's J&C clearly reflects the circumstances outlined above. To continually allow the B.O.P. to "execute" this portion of Petitioner's sentence by obligating him to comply with IFRP is a die process violation. The sentencing court cannot delegate its authority to the B.O.P. to set a scheduling plan for restitution payments as it did in this case. Because the restitution payments

order is part of the sentence, due process has been violated.

For a restitution order to be lawful, §3664(f)(2) requires that the district court set a specific payment schedule in consideration of the defendant's financial resources. It is the district court's duty to specify any amount to be paid, and the specific schedule upon which the amount is to be withheld from Petitioner, and the length of time and continued specific manner in which these payments shall be made.

Where a defendant lacks the financial resources to make immediate payment, as Petitioner in this case does, a sentencing court may not order immediate payment because it implicitly delegates to the B.O.P. or Probation Office the district court's obligation to schedule payments.

Since setting the payment schedule is a "core judicial function" a restitution schedule ordering "immediate" payment with an informal understanding that the probation office [or B.O.P.] shall set a payment schedule, "impermissibly delegated the district court's duty. See: United States v. Prouty, 303 F.3d 1249, 1245-55 (11th Cir. 2002).

In the instant case, the sentencing court simply ordered payment due "immediately". No specific amount was ever ordered, and the district court simply abdicated its duty to the B.O.P. and probation office to set the payment schedule, and to collect such payments as found by Prouty above.

Likewise, the Third Circuit (Petitioner's Circuit), found that the district court may not simply order immediate payment of restitution with expectation that the B.O.P. or Probation Office

will set details of payment. See: United States v. Corley, 500 F.3d 210, 225-27 (3rd Cir. 2007).

Petitioner in this case was found unable to make immediate payments because of the lack of financial resources. Because the district court in Petitioner's case understood that Petitioner could not make immediate payments in full, it was required under §3664(f)(2) to set a different schedule of payments. "Orders directing 'immediate' payments under such circumstances are indistinguishable in principle from outright delegations of authority to the B.O.P." Corley, 500 F.2d at 226-27.

Likewise, the Second Circuit in United States v. Kinlock, 174 F.3d 297, 301 (2d Cir. 1999), rejected a restitution order that simply ordered repayment "immediately" holding that "[W]hen restitution cannot be paid immediately, the sentencing court must set a schedule of payments for the terms of incarceration, supervised release or probation." See: United States v. Kinlock, 174 F.3d 297, 301 (2d Cir. 1999).

For a restitution order to be lawful, §3664(f)(2) requires that the district court set a schedule in consideration of the defendant's financial resources. If the district court simply orders immediate repayment, and leaves it to another agency like the B.O.P. to actually set the payment schedule that the statute obligates the court to determine, that order is unlawful as the district court has abdicated its duty to set the schedule "in consideration of" the financial circumstances of the defendant. (See: Ward v. Chavez, 678 F.3d at 1050).

Accordingly, because the sentencing court in Petitioner's case did not set forth a proper payment schedule in the restitution

order, that order is unlawful, and the B.O.P. therefore lacks authority to collect restitution payments from Petitioner through the IFRP. See: e.g. Ybarra v. Smith, No. CV-09-1447-PHX-DGC(JRI), 2010 U.S. Dist. LEXIS 135695, at \*5-6 (D. Ariz. Dec. 20, 2010) ("Without a proper order, the B.O.P. does not have the authority to require a schedule of restitution payments collected while Petitioner is participating in the IFRP.")(See also: Ward v. Chavez, 678 F.3d at 1052).

the record in this case is clear. The district court failed to order a proper restitution order, and impermissibly delegated its authority to the B.O.P. and United States Probation Officer in violation of 18 U.S.C. §3664(f)(2)(MVRA). For this reason, Petitioner contends that he has suffered a due process violation, and the Fourth Circuit has made an err in dismissing his petition.

This court should grant writ to determine if the sentencing court has violated the due process and the Mandatory Victims restitution Act (MVRA) 18 U.S.C. §3664(f)(2).

**2. IS THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT VIOLATED WHEN A RESTITUTION ORDER IS UNLAWFUL**

Although a sentence is usually based on criminal proceedings, a restitution order does implicate the due process clause in the Fifth Amendment. The Fifth Amendment states, in relevant part:

"No person shall be held to answer for a capital, or otherwise infamoua crime, unless on a presentement or indictment of a Grand Jury,...nor be deprived of life, liberty, or property without the due process of law."

Fifth Amendment.

Here, it would seem, that a violation of the statutory provision

in 18 U.S.C. §3664(f)(2), where any monatyary payment would be considered property would also implicate the Fifth Amendment due process protections.

This court should grant writ to determine if a the impermissible delegation of authority in regards to a restitution order violates the Fifht Amendment due process clause.

**3. DO THE PENALTIES ASSOCIATED WITH NON-COMPLIANCE  
WITH THE INMATE FINANCIAL RESPONSIBILITY PROGRAM  
VIOLATE THE DUE PROCESS CLAUSE WHEN A  
RESTITUTION ORDER IS UNLAWFUL/**

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In its opinion, the district court adopted the government's claim that any penalty associated with the non-compliance in the B.O.P.'s IFRP does not violate the due process. It claims that such loss is of privilages, and therefore are not protected by the due process.

However, if a restitution order is part of the sentence, and that restitution order is found to be unlawful, than any execution of that portion of the sentence would be a due process violation, including penalizing an inmate for not participating in the IFRP under an unlawful order.

An inmate loses his/her ability to participate in programs, earn a higher grade pay at work, and suffers commissary restrictions, among other things, when he does not comply with the the IFRP provisions. Such losses amount to "property" under the due process clause, and therefore, any such loss would violate the due process clause when under an unlawful restitution order.

This Court should grant writ to settle once and for all the question of whether a loss of privilages for non-complaintce in the IFRP amounts to a due process violation when mandated under an

unlawful restituion order. The B.O.P. shouold not have any authority of jurisdiction over such an unlawful order.

**4. IS THE IFRP UNDER 28 C.F.R. §545 "VOLUNTARY"  
AS INTERPRETTED BY THE FOURTH CIRCUIT**

Petitioner filed a motion to the district court to clarify its original order. In the court's original order, it did not address the issue of whether or not the IFRP was truly voluntary, despite the fact that the issue was consitantly briefed by the Petitioner throughout the entire proceedings.

In the district court's order regarding this question, the court found that Fourht Circuit precedent dictates that the IFRP is a voluntary program.

The district court states that refusal to participate in the IFRP deprives an inmate only of "privilages" the inmate would receive by participating in the program. It stated, "Prisoners are not entitled, constitutionally or otherwise, 'to any of the benefits agreeing to participate in the IFRP would provide, such as: work detail outside the prison perimeter, a higher commissary spending limit, a release gratuity, or pay bwyond the maintenance pay level'" Jordan v. Holt, 488 F.Appx 587, 588 (3d Cir. 2012) (quoting United States v. Lemoine, 546 F.3d 1042, 1049 (9th Cir. 2008)); see also: Driggers v. Cruz, 740 F.3d 333, 338-9 (5th Cir. 2014)(concluding that the loss of privilages for failure to partitipate in the IFRP does not constitute a deprivation of an inmate's liberty interests under the Due Process Clause). As argued earlier, Petitioner maintains that the Due Process Clause covers "property" just as clearly as it covers "liberty" interests," and therefore

such deprivation, based on a statutory requirement, does violate the due process clause.

In regards to the question of voluntariness of the IFRP, petitioner contends that the statute does not imply voluntary nature of the IFRP.

Petitioner contends that the IFRP is not voluntary and points to the statutory language and the practical use of the program.

First, as has been settled even by the government and the Fourth Circuit, "Any inmate who verbally refuses to participate in the IFRP is placed in an IFRP status known as "REFUSE". Any inmate in "REFUSE" status will relinquish certain privileges associated with participating in the IFRP" and "If Fontanez stops making restitution payments through the IFRP and is placed in "REFUSE" status, his compensation [for his institutional job] will be adjusted to the level of "maintenance pay," and he would earn a total of \$5.25 per month".

The deprivation and sanctions outlined here do not fit the definition of "voluntary".

Generally, courts find that the IFRP is "voluntary," however, any inmate who refuses to participate faces sanctions. The practical interpretation of this assessment means that the voluntary nature of the IFRP is illusory.

To analyze this assessment further, Petitioner brings to the attention of the court the literal dictionary definition of the terms related to IFRP.

First, we analyze the definition of the word "voluntary". The Webster Dictionary defines the word "voluntary" as:

"done, made, or given freely **without compulsion**".

Second, we analyze the word "compulsion:"

"1. an act of compelling; 2. a **force** that **compels**"

The synonym for compulsion is "duress". That word is defined by Webster as :

"**compulsion** by threat".

The terms outlined above all relate to the factual nature of the IFRP. An inmate faces sanctions if he does not participate in the IFRP Program. Those sanctions are threats by the IFRP Policy Statement that **compel** inmates to participate for fear of suffering those sanctions.

As defined above, the IFRP is as worst "mandatory," at best it is "compulsory". Either way, The IFRP Program is not a "voluntary" program.

In further analyzing the questioned "voluntary" nature of the IFRP, we look to the statute. As has been established above, without dispute, an inmate will suffer sanctions and penalties for withdrawing or refusing to engage in the IFRP. In a literal and logical sense, such sanctions act as a clearly compulsory reason to enroll in the IFRP.

These provisions are found in the statute 28 C.F.R. §545.10 and 28 C.F.R. §545.11. This court's inquiry into the question of the voluntariness should begin with the language of the 28 C.F.R. §§545.10 and 545.11 statute itself. See: Consumer Prod. Safety Comm'n et al v. GTE Sylvania Inc., 447 U.S. 102, 108, 64 L.Ed. 2d 766, 100 S.Ct 2051 (1980) ("starting point for interpreting a statute is the statute itself.); Sheek, 990 F.2d at 152-53; Davis v. Lukhard, 788

F.2d 983 (4th Cir.) ("a court's preliminary point of inquiry must be the language of the statute that Congress employed.") cert. denied sub nom Staton v. Lukhard, 479 U.S. 868, 93 L.Ed 2d 157, 107 S.Ct 231 (1986). In this case, the language of the statute 28 C.F.R. §545.11 could not be more plain.

the Warden, as the Respondant, was correct when he stated that the BOP staff "shall" help that inmate develop a financial plan and "shall" monitor the inmate's progress in meeting that "obligation". The Warden, in his response during the proceeding, emphasized the term "shall". Black's Law Dictionary, Third Pocket Edition, defines the word "shall" as, "1. Has a duty to; more broadly, is required to." Because 28 C.F.R. §545.11 is a federal statute, the more strict standard applies to this term. Therefore, the term "shall" indicates a "requirement" to do something.

The term "shall" is again used in §545.11(d), where the statute states, "Refusal by an inmate to participate in the financial responsibility program to comply with the provisions of his financial plan ordinarily "shall" result..." and the statute provides a list of penalties for non-compliance. This language shows clear compulsion to "comply" with the provisions of the IFRP. Nothing that indicates a voluntary nature within this language.

The term "shall" used throughout the entirety of the 28 C.F.R. §545.11 statute leaves no room for any misplaced assertion that the IFRP is voluntary. In fact, the Fourth Circuit and other courts contradict this theory. It has been determined that "When an inmate abstains from the IFRP, he forfeits certain privileges." As discussed above, such loss of privileges and sanctions are a

compulsory reason to "comply" with the IFRP. In fact, such sanctions are the very definition of the term "compulsory". Black's Law disctionary defines compulsory as, "compelled; mandated by legal process or by statute." The root term "compulsion" is defined as, "1. the act of compelling; the state of being compelled...3. Objective necessity; "duress".

There is not question that the applied sanctions for non-compliance compell inmates to engae in the IFRP. Petitioner would also like to bring to this court's attention the term "objective," used in the above definition. "Objective" is defined by Black's Law Dictionary as, "1. of, relating to, or based on 'externally' verifiable phenomena, as 'opposed' to an individual's perceptions, feelings or intentions." Under this "objective" standard, an inmate facing sanctions for non-compliance will simply and logically be "compelled" to comply with the IFRP And the notion of "voluntariness" disappears.

The term "duress" is also utilized in the definitions above. Black's Law Dictionary defines duress as, "strictly, the physical confinement of a person **OR** the detention of a contracting party's 'property'". Again, the loss of commissary, loss of wages for work and other related sanctions and penalties clearly and logically put one under duress to "comply" with the IFRP, especially when one does not have any other means of supporting oneself.

Simply put, there is absolutely nothing in the language of 28 C.F.R. §545.10 or 545.11 that supports an assertion that the IFRP is "inherently voluntary". All related statutory terminology used clearly implicate a compulsory or mandatory requirement to comply with the IFRP. The sanctions suffered for non-compliance

alone are strong compelling factors, and cannot be logically deemed "voluntary". There ore, in considering the voluntariness of the IFRp, this court must look to the literal wording of the 28 C.F.R. §545.11 statute. See United States v. Sheek, 990 F.2d 150 (4th Cir. 1993)( "In determining the scope of a statute the court must first look to its language. the words of the statute are to be given their ordinary meaning...statutory construction must begin with the laguage o : the statute adn the court should not look beyond that language unless there is abiguity or unless the unambiguously expressed legislative intent gleamed from the statute's legislative history...Even if the result appears to be anomolous or absurd in a particular case, the court may not disregard unambiguous language.")

Everything in the Fourth Circuit's case jurisprudence on this issue shows the clear compulsory nature of the IFRP. Nothing indicates, in literal terms, that the IFRP is voluntary. And, as the Fourth Circuit has found, "...in the absence of clearly expressed legislative intention ot the contrary, the plain language of the statute is to be recognized as conclusive." United States v. Jones, 902 F.2d 1152, 1153 (4th Cir. 1990).

28 C.F.R. §545.11 requires inmates to make payments towards court ordered obligations, including fines. A literal reading of the statute willshow as much. That is why this Court's analysis must begin with the language of the statute, despite various "interpretations" presented by other circuits. A well recognized cannon of construction requires courts to read the statutory provisions so that, when possible, no part of the statute is superfluous. See Virginia v. Browner, 80 F.3d 869, 876 (4th Cir.

1996) ("A court should no--and we will not--construe a statute in a manner that renders terms of the statute superfluous.").

The Fourth Circuit would have this court interpret 28 C.F.R. §545.11 statute so that the clearly unambiguous term "shall" does not indicate a requirement to comply with the IFRP, and such a term would be rendered "superfluous".

Finally, Petitioner would like to bring the Court's attention to the term "voluntary". Black's Law dictionary defines the term "voluntary" as, "1. done by design or intention. 2. Unconstrained by interference; not compelled by outside interference" With the sufferage of sanctions for non-compliance, there is clearly outside interference in the decision to comply with the IFRP. This cannot logically be disputed.

The plain truth here is that the literal meaning of the related terms and the language of the statute do not support an assertion that the IFRP is voluntary. There is no scenario in this realm of reality where such an assertion can be supported without deliberate disregard for the laws of logic.

The validity of the restitution order, Petitioner's base argument, is relevant here. If the order is unlawful, than the voluntary status of the IFRP is important. The B.O.P. is executing an unlawful portion of the sentence, which triggers constitutional questions as has been raised herein.

This court should grant the writ to settle this question.

**5. CAN 28 U.S.C. §2241 BE USED TO CHALLENGE THE BOP'S  
EXECUTION OF AN UNLAWFUL RESTITUTION ORDER**

28 U.S.C. §2241 is applicable when a Petitioner looks to challenge the "execution" of the sentence, rather than the "imposition" of the sentence. In the instant case, the sentencing court imposed a restitution order payment in the amount of \$27,972.61 and a \$1,400 special assessment fee. However, several years later the Ninth Circuit determined that a sentencing court cannot "delegate" its authority to set the restitution and payment schedule to another agency in Ward V. Chavez, 678 F.3d at 1052.

As such, the sentencing court in this case was found to have failed to make a properly detailed payment schedule, and impermissibly delegated its responsibility to the B.O.P. and the United States Probation Office. This is all in violation of 18 U.S.C. §3664(f)(2), and the continued execution, and the BOP's authority and jurisdiction to compel payment in the IFRP, are in question. Petitioner asserts that they violate the due process clause. (See argument 1 in this brief.)

Is §2241 the proper procedural avenue to attack the BOP's authority to continue the execution of an unlawful order. This court should grant the writ to settle this issue.

**6. THIS COURT MUST SETTLE A CIRCUIT SPLIT ON THIS ISSUE**

The Fourth Circuit's decision in this case contradicts the decision of other circuits on this same issue, which creates a clear circuit split.

The following circuits have found that the circumstances in

case mirror those in United States v. Gunning (Gunning I), 339 F.3d 948, 949 (9th Cir. 2003); United States v. Gunning, (Gunning II), 401 F.3d 1154, 1149 (9th Cir. 2005)("[T]he district court simply does not have that authority to delegate its own scheduling duties --not to the probation office, not to the B.O.P., not to anyone else."); See also United States v. Prouty, 303 F.3d 1249, 145-55 (11th Cir. 2002)(Since setting the payment schedule is a "core judicial function" a restitution schedule ordering "immediate" payment with an informal understanding tha the probation office [or BOP] shall set a payment schedule "impermissibly delegated the district court's duty."); see also United States v. Corley, 500 F.3d 210, 225-27 (3d Cir. 2007); see: United States v. Kinlock, 174 F.3d 297, 301 (2d Cir. 1999)("[W]hen restitution cannot be paid immediately, the sentencing court must set a schedule of payments for the terms of incarceration, supervised release or probation.") See also the impatus of these proceedings, Ward v. Chavez, 678 F.3d 1042 (9th Cir. 2012).

The decision in the Fourth Circuit in this case is contrary to those listed aboe. In fact, Petitioner's circumstance mirror exactly those outlined in Ward, yet, the Fourth Circuit has taken a different approach to this issue.

This court should grant writ to settle this issue.

#### CONCLUSION

Petitoiner is a pro-se litigant, but the entirety of these proceedings in the lower courts has revelaed a very complicated structure and set of questions related to the Inmate Financial Responsibility Program, and this court should grant writ to settle