

No.: 18-3840

IN THE SUPREME COURT OF THE UNITED STATES

Record No. 18-1755 : Civil Action Case No. : 3:18-cv-00281-HEH

In The Matter Of

FRIZZELL CARRELL WOODSON,
Appellant / Petitioner, *Pro se* Litigant

v.

THE UNITED STATES OF AMERICA,
Defendant / Respondent

ORIGINAL

Supreme Court, U.S.
FILED
APR 15 2019
OFFICE OF THE CLERK

THE APPELLANT / PETITIONER, *PRO SE LITIGANT* IN WANT OF
A PETITION FOR A WRIT OF CERTIORARI TO REVIEW THE
UNITED STATES COURT OF APPEALS FOR THE FOURTH
CIRCUIT *PER CURIAM* UNPUBLISHED OPINION AND RELEVANT
APPENDICES

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The Honorable Noel J. Francisco, *U.S. Solicitor General*

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QUESTIONS PRESENTED

Whether the invoked appellate court adjudicative jurisdiction should acknowledged the particularism of any trial court judge's non-judicial palpable acts, that engaged threshold omission of ministerial obligations imposed by law to decide matters assigned therefor, and to the legal extent judicial policy confers fundamental principles are particularly constituted to restrict any wholesale review of the judicial juxtaposition facts cognizable realized attendant from the real jurisdictional parties interests compulsory to be heard in due course therefrom, justly in accord to apply and administer the settled law thereof, without any perceivable severe bias influential circumstances and or clear absence of potential wholesale prejudicial implication of undue oppression exciting restraint that may arise in a particular cause, should the reviewing court consider and give perfect addressability as whether or not the final trial court appealable decision validity, is pronounced with competence disposition in the rule of law consistency having a civil society common intelligible purpose effecting substantial public trust in the adversarial legal system, that the administration of equality justice primary objective at all times in a manner must satisfy the normative true spirit standard maintenance for the appearance of impartiality that promotes public confidence in the integrity and independence of the judiciary?

PARTIES TO THE COMMENCED CIVIL ACTION

The Appellant / Petitioner, as a natural person, Frizzell Carrell Woodson, a *pro se litigant* in all matters theretofore, as to date, pursuance to the Article III Constitutional standing and Prudential requirements of a concrete aduerseness between the named Defendant herein, arising under the Federal Tort Claims Act § 1346 (b) ("FTCA") filing in the federal court jurisdictional venue.

May the record reflect, pursuance to the FTCA section 1346 (b) six enumerated threshold elements are satisfied for venue jurisdiction and granted waiver of sovereign immunity is thereby as a matter of law, shall constitute for this permissible tort civil action commenced within the set congressional statute of limitation as prescribed in § 2401 (b).

The proper Defendant, the United States of America, advent in legal sum under section 1346 (b) (1) of 28 United States Code, pursuant to 28 U. S. C. § 2680 (h) a waiver of sovereign immunity exists plausible for the government is liable for tortious acts committed by any employee of the Government negligence while acting within the scope of his official office appointment and or federal employment.

The Litigation Counsel for the Defendant, The United States of America, shall be at all times, pursuant to 28 U. S. C., § 516 - 519, and conjoining § 547 be statutorily deemed in Full Legal Representation by the United States Department Justice.

TABLE OF CONTENTS

Question Presented	i
Parties To Commenced Civil Action	ii
Table Of Contents	iii
Table Of Appendices Content.....	iv
Table Of Authorities	v - viii
Petition For Writ Of Certiorari	1
Opinions Below	2
Jurisdiction	2 - 3
Constitutional and Statutory Provisions Involved	3
Statement of Relevant Facts	3 - 24
Procedural Background	24 - 25
Reasons For Granting Writ	25 - 28
I. The Question Presented Is Exceptionally Important For Three Overarching Reasons.....	28 - 39
1. Whereas, an evidenced claim of a Constitutional Matter.....	28 - 34
2. Whereas, an evidenced claim of a Statutory Matter.....	34 - 39
3. Whereas, the blatant disregard for the application of pertinent well - settled Constitutional Law to cognizable facts.....	39
Conclusion	39
//	
//	
//	

TABLE OF APPENDICES CONTENTS

Opinions Below

Petition Appendix A Notice of Judgment from Appellate Court:
Pet. App. A [43a] - [52a].

Petition Appendix B *En Banc Rehearing* Order from Appellate Court:
Pet. App. B [53b] - [56b].

Petition Appendix C District Court Memorandum Order Granted
Plaintiff's Application on Motions to Proceed *In Forma Pauperis*,
Dismissed Civil Action: Pet. App. C [57c] - [62c].

Petition Appendix D Civil Activity Instruments from U. S. District
Court: Pet. App. D [63d] - [64d].

Petition Appendix E Civil Activity Instruments from Appellate Court:
Pet. App. E [65e] - [66e].

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TABLE OF AUTHORITIES

Constitutional Amendments

U.S. Const. amend. I. Pages(s)	29
U.S. Const. art. III sec. 2. Pages(s)	26
U.S. Const. art. III. Pages(s)	27
U.S. Const. Amend. XIV Sect. 1. Pages(s)	30
Fifth Amendment. Pages(s)	30
Fourteenth Amendment. Pages(s)	30

Acts and Clauses

The Equal Protection Clause. Pages(s)	30
First Amendment's Petition Clause. Pages(s)	29
Fourteenth Amendment Due Process Clause. Pages(s)	29 - 30
Public Law 91-596 - 84 STAT. 1590 91 st Congress 5. 2193 December 29, 1970 as amended through January 1, 2004 (1). Pages(s)	14

Authorities

Adarand Construction, Inc v. Pena 515 U. S. 200, 224 (1995). Pages(s)	30
Armstrong v. Obucino, 300 Ill. 140, 143 (1921). Pages(s)	32
Anastoff v. United States (8 th Cir. 2000). Pages(s)	33
B & C Investments, Inc., v. T & M Nat. Bank & Trust, 903 P.2d 339 (Okla. App. Dov. 3, 1995). Pages(s)	33
Bracy v. Warden, U.S. No. 96-6133 (June 9, 1997). Pages(s)	32
Catz & Guyer. Pages(s)	35

Catz & Guyer, <i>supra</i> note 15, at 672 n. 109. Pages(s)	36
Cohens v. Virginia, 19 US (6 Wheat.) 264 (1821). Pages(s)	27
Cmty. First Bank v. Nat'l Credit Union Admin., 41 F.3d 1050, 1053 (6 th Cir. 1994). Pages(s)	31
Cohen v. Beneficial Indus. Loan Corp., 33 U. S. 541, 545 - 46 (1949). Pages(s)	26
Conley v. Gibson, 355 U. S. 41, 47 (1957). Pages(s)	34
Cutis v. Davis, 851 F.3d 358 (4 th Cir. 2017). Pages(s)	37
Dean Neitzke etc al. Petitioners v. Harry Lawrence Williams Sr., 490 U.S. 319 109 S. Ct. 1827, 104 L.Ed.2 338 (1989). Page(s).....	38
Franklin v. Murphy, 745 F.3d 1221, 1228 (9 th Cir. 1984). Pages(s) ...	35
Horn v City of Chicago, 860 F.2d 700, 703 n.6 (7 th Cir. 1988). Pages(s)	38
In re Jennings, 68 Ill. 2d 125, 368 N. E. 862 (1977). Pages(s)	33
Jaffe and Asher v. Van Brunt, SDNY 1994 158 F. R. D. 278. Pages(s)	33
Jones v. Bock, 549 US 199 (2007) [PLN, May 2007, p.36]. Pages(s)	37
Lombard v. Elmore, 134 Ill. App. 3d 202, 204, 328 N. E.2d 142 (1975). Pages(s)	32
Pacific Telephone & Telegraph v. NLRB, 711 F. 2d 134, Pages(s)	14
Sheldon v Sill, 49 US (8 How) 441 (1850). Pages(s)	27
State v. Dvorak, 574 N. W.2d 492, 254 Neb. 87 (1998). Pages(s)	32
State v. LaPier, 961 P.2d 1274, 289 Mont. 392, 1998 MT 174 (1998). Pages(s)	32

Stewart Title Guar. Co. v. Cadle Co., 74 F.3d *35, 836 (7 th Cir. 1996). Pages(s)	37
Tool v. Carroll Touch, Inc., 977 F.2d 1129, 1134 (7 th Cir. 1992). Pages(s)	35
Tingler v. Marshall, 716 F.2d 1109 (6 th Cir 1983). Pages(s)	36
The Mary, 13 U.S. (9 Cranch) 126, 146 (1815). Pages(s)	38
Marbury v. Madison 5 US (1 Cranch) 137 (1803). Pages(s)	28
Mullane v. Central Hanover Bank & Trust Co. Pages(s)	31
Wallingford Board of Education, 69 F.3d 699, 673 (2 nd Cir. 1995). P	35
Wartman v. Branch 7, Civil Div., County Court, 510 F.2d 130, 134 (7 th Cir. 1975). Pages(s)	35
Weisman v. LeLandais, 532 F.2d 308, 311 (2 nd Cir. 1976). Pages(s) ...	35
Wolf v. McDonnell, 418 U. S. 539, 94 S. Ct. 2963, 41 L. Ed. 2d 935 (1974). Pages(s)	31
Wright v. BankAmerica Corp., 219 F.3d 79, 89 (2 nd Cir. 2000). Pages(s)	31
<u>Miscellaneous references</u>	
Hart the Power of Congress to Limit the Jurisdiction of Federal Courts: An Exercise In Dialectic, 66 Harv. L. Rev. 1362 (1953). Page(s)	27
Ratner, Congressional Power Over the Appellate Jurisdiction of the Supreme Court, 109 U. PA L. Rev. 157, 201-02 (1960). Page(s)	27
Playing by the Rules, <i>supra</i> note 49, at 147 -49. Page(s)	36
<i>cf.</i> R. Berger, Congress V. The Supreme Court 285-96 (1969). Page(s)	27
Wechsler, The Courts and the Constitution, 65 Colum. L. Rev. 1001, 1005-06 (1965). Page(s)	27

United States Codes and State Code

28 U.S.C. § 453 Oath of Justices and Judges. Pages(s)	26, 38
28 U.S.C. § 455 (a); (b) (1). Pages(s)	38
28 U.S.C. sec. 1252-58 (1970). Pages(s)	27
28 U.S.C. § 1291. Pages(s)	31
28 U.S.C. § 1292 (2012). Pages(s)	26
§ 1915 (c). Pages(s)	36
§ 1915 (d). Pages(s)	38
28 U.S.C. § 1915 (e) (2) (B) (ii). Pages(s)	17, 18, 19, 20, 21
28 U.S.C. § 2679 (d) (2). Pages(s)	16, 17, 23 - 24
28 U.S.C. § 1346 (b). Pages(s)	17, 18, 19, 20, 25
28 U.S.C. § § 1346 (b), 1346 (b) (1), 1402 (b), 2401 (b), 2402, 2671 - 2680. Pages(s)	17, 19
28 C.F.R. § 50.15 - 15. 16. Pages(s)	24
28 C.F.R. § 50.15 (a) (2). Pages(s)	24
Virginia Code § 8.2-417. Pages(s)	21

Federal Rules

Rule 4 (c) (2) (B) (i). Pages(s)	36
Fed. R. Civ. P. 8 (a). Pages(s)	34
Fed. R. Civ. P. Rule 12 (b) (6). Pages(s)	17, 18, 19, 20, 21, 38
Fed. R. Civ. P. 15 (a). Pages(s)	37
Fed. R. Civ. P. 54 (b). Pages(s)	26

PETITION FOR WRIT OF CERTIORARI

In this case now here, in the home circuit of the Chief Justice for The U. S. Supreme Court, which no other legal avenues constitutionally means exists, within a inherent forum of redressability and immediacy, as a matter of law, for this unresolved remedial § 1346 (b) standing civil action brought forth thereagainst the proper substituted Defendant, the United States of America. (§ 2680 (h)).

Wherefore, I am Frizzell Carrell Woodson, a natural person in truth and in law, the original plaintiff *pro se litigant*, of clear tangible or intangible rights afforded, as such citizenry immutable liberties, privileges and immunities, having appealed the unfavorable ruling as well as the Appellant *pro se litigant*, save effortfully in a manner as such prescribed therefor, do effect, in jurisprudential spirit and in jurisdictional fact heretofore, respectfully petition this Supreme Court, as the purposed Appellant / Petitioner, *pro se litigant*, for a writ of certiorari that is both unique and important, pursuance to supervisory review of the United States Court of Appeals for the Fourth Circuit.

Whereas, the affirmed unpublished *per curiam* opinion, rendered on November 19, 2018, by The Honorable Diana Gribbon Motz, The Honorable Pamela A. Harris, The Honorable Clyde H. Hamilton, Senior Judge. And the Denial of *En Banc* Rehearing on was entered on November 29, 2018.

OPINIONS BELOW

The Notice of Judgment rendered by the Fourth Circuit was entered on November 19, 2018. The *unpublished per curiam* opinion of the Fourth Circuit Judges This Order appears in Pet. App. A [43a] - [52a].

The Notice of Rehearing and *En Banc* Rehearing Order rendered by the Fourth Circuit Article III Appellate Judges was entered on November 29, 2018, This Order appears in Pet. App. B [53b] - [56b].

The District Court Granted Plaintiff's Application to Proceed *In Forma Pauperis*, Dismissing Complaints, Ordering Plaintiff to Show Cause, for all five *sua sponte* decrees filed on June 5, 2019. However, incorporated a judicial request for a responsive answer to civil action 3:18-cv-00279-HEH, thereupon the *sua sponte* foreclosure of the initial pleading complaint. Simultaneously, expressed a administrative instructional *Sua Sponte* Judicial Foreclosure pursuant to U.S.C. § 1951 (e) (2) (B) (ii) and Rule 12 (b) (6) after granting prepayment of each *Informa Pauperis* ascribed status for the independent commenced § 1346 (b) Civil Actions 3:18-cv-00278-HEH, 3:18-cv-00279-HEH, 3:18-cv-00280-HEH, 3:18-cv-00281-HEH, and 3:18-cv-00282-HEH, all filed on April 26, 2018. This Order appears in Pet. App. C [57c] - [62c].

JURISDICTION

The U.S. District Court had original jurisdiction pursuant to U.S.

Const. Art. III § 2 c., for the above captioned cause, arising under U.S.C. § 1346 (b) provisions and circumscribed venue in accord to 28 U.S.C. § 1331.

The Fourth Circuit had appellate jurisdiction pursuant to 28 U.S.C. § 1291, 28 U.S.C. § 1292 (2012), and Fed. R. Civ. P. 54 (b).

Accordingly, this Court of original and appellate jurisdiction is invoked under 28 U. S. C. § 1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U. S. Constitution compulsory provisions First Amendment; Fifth Amendment; and Fourteenth Amendment. 28 U. S. C. 453 Oath of Justices and Judges; 28 U.S.C. § 455 (a), (b) (1); 28 U.S.C. § 1292 (2012); 28 U.S.C. § 1915 (a) et seq.; Fed. R. Civ. P. 4 (c) (2) (B) (ii); Fed. R. Civ. P. 15 (a); Fed. R. Civ. P. 54 (b).

STATEMENTS OF RELEVANT FACTS

The Appellant / Petitioner prior to the relevant time period as a federal civilian employee, had successful obtained the eligibility of 33 Job Titles maintained in my eCareer Candidate Profile. The Job Posting Titles and expiration dates are hereinafter:

I. Business Solutions Specialist EAS - 17 Richmond VA NC68471187; Expiration date 1 / 20 / 2019: *(1) Business Solutions Specialist (2370 - 0398) *(2) Business Solutions Specialist (2370 - 0399).

II. Automotive Technician Richmond VA NC67632083; Expiration date

11 / 26 / 2018: *(3) Automotive Mechanic (5823 - 0006); *(4) Automotive Technician (5823 - 0001); *(5) Lead Automotive Mechanic (5823 - 10XX); *(6) Lead Automotive Technician (5823 - 0004); *(7) Garageman (6955 - 02XX); *(8) PSE Automotive Mechanic (2395 - 0002); *(9) PSE Automotive Technician (2395 - 0003); *(10) PSE Garageman (2395 - 0009).

III. PSE Custodian Lynchburg VA NC64750358; Expiration date 11 / 25 / 2018: *(11) Laborer, Custodial (3502 - 03XX); *(12) Laborer, Custodial (3502 - 1019); *(13) Laborer, Custodial (3502 - 1022); *(14) Custodian (3566 - 04XX); *(15) Custodian Laborer (C) (3566 - 07XX); *(16) PSE Custodian (2395 - 0001).

IV. PSE Mail Processing Clerk Lynchburg VA NC67827013.
Expiration date 11 / 28 / 2018: *(17) Sales and Services Associate (2320 - 0001); *(18) Sales, Services and Distribution Associate (2320 - 0003); *(19) City Carrier (2310 - 2009); *(20) Mail Handler (2315 - 01XX); *(21) Mail Processing Clerk (2315 - 0063); *(22) Markup Clerk - Automated (2340 - 0033); *(23) Rural Carrier (2325 - 01XX); *(24) Rural Carrier ASC?CV RG RT (2325 - 07XX); *(25) Rural Carrier ASSOC / SVR AUX RTE (2325 - 09XX); *(26) PSE Sales Services and Distribution Associate (2395 - 0017); *(27) PSE Mail Processing Clerk (2395 - 0018); *(28) PSE Markup Clerk - Automated (2395 - 0014); *(29) PSE Post Office Clerk (2395 - 0016); *(30) Delivery / Sales Services and Distribution Associate

(2320 - 0007); *(31) Lead Customer Service Clerk (2320 - 0008); *(32) Lead Mail Processing Clerk (2315 - 7153); *(33) Lead Sales and Services Associate (2320 - 0009).

The Appellant / Petitioner and two other selected consanguinity relatives were employed by the United States Postal Service (USPS) on the entrance date of February 1, 2013 appointment for the 360 day term with the operational Implied Contractual Agreement continuum tenure, therein the divisional Custodial Maintenance Craft under the job title of Postal Support Employee (PSE) Custodial Labor (New Work) through the application of and Examination assessment for the External employment position posting Richmond VA NB68312224 External, NC68312480.

Wherein, holding in legal expressed mutual understanding, the legitimate expectation of a constitutional Property Rights equitable vested interests and their created statutory dimensions defined by existing promulgated rules of the employing quasi - governmental agency, thereupon, executing the USPS employment application components necessary and proper, forming a basis for an exactitude implied contract agreement which provide terms and conditions of continued employment as such property interests to the extended constitutional protectible occupational liberty interests.

The Appellant / Petitioner and two other selected consanguinity

relatives scope of federal employment was effective Pursuance to the Memorandum of Understanding Between the United States Postal Service and the American Postal Workers Union, AFL - CIO. Subject: Maintenance Craft Jobs and APWU Collective Bargaining Agreement arising under Article 5 as defined in Section 8 (d) of the National Labor Relations Act, Article 6, and Article 38 union coverage representation particular for all Just Cause Protections extended to all divisional USPS Maintenance Craft, upon completion of their 360 - day term Contractual agreement based on their superior seniority tenure triggers benefits associated and afforded arising under the 2010 - 2015 APWU Memorandum of Understanding on PSEs Reappointments that encompasses the corollary provisions.

Particularly, with the clear primary duty station Postal Facility Operations Complex at 1801 Brook Road, Richmond, Virginia (23232 - 9998), to include the daily business operations of the Richmond District Corporate Offices, the Postal Service Customer's Retail and Rental Mail Box Section, Postal Carrier's Annex Mail Floor and designated outside postal grounds, primarily to fill the immediate custodial vacancy for a daily tour duty (8 hour service day), for a weekly tour duty (5 day service week), a 40 hour work week on a regular recurring basis to discharge custodial duties on each career unionized custodian duty tour on their mandatory day off, to eliminate the paucity tenure custodial

staff consistent overtime effected by the USPS Corporate level directive.

Further, This Installation Managerial / Human Capital Management created the (unquestioned and or union debatable) and implemented the Supervisory decisional Implied designated Floating Custodian position for the Richmond District Postal facilities, pertaining to secondary scheduling supervisory authorization of non - conflicting custodial duties necessitate, of which resulted in my occasioned over - time pay wages due to the travel time foreseeability with the assigned facility and the team leader delegations of my discharge responsibility of the last minute emergency request for a completion of a double duty tour coverage in connection with any realized absence custodial employee(s).

At the onset of this employer - employee relationship stage, my job security property interests was sufficiently effected by explicit material sources of provisions governing the employment relationship and due process protection to be secured by statutes, regulations, collective bargaining agreements, operational procedures, practices of a just cause standard, customs / directives of providing and safeguarding industrial due process, direct or indirect promulgated agency representations, express or implied promises, including all components of employee handbooks, manuals, and all other sources of the written and unwritten personnel policies.

Therefrom the preferred addressability in the workplace as

“RoadKill” in the initial probationary period, at this entrance level, in effect became a common Target for realized discriminatory tensions and the subject of pervasive employment Psychological harassment, I thereupon exercised my voice of disapproval in full regards to the negative treatment a direct unwelcome victimization purposed workplace harassment as to create an intimidating, prohibited hostile and offensive working environment, reported internally under the concept of protected activity during the scope of applicant / candidate status of USPS custodial maintenance employment, that was sufficiently voiced in various effortful internal avenues for addressability as such sufficiently severe inequities ongoing and with serious pervasiveness that a reasonable person in Plaintiff's position would find the said work environment to be hostile and threshold abusive.

The identifiable appointed managerial / supervisory Human Capital managemental chain of command employed capacity of conscious and or unconscious constructive knowledge of the operations and efficient business, gave to the legal liability of the respondeat superior never informally or formally addressed to cease and desist the hostile workplace, engaged by the tenure custodial employees and superior female supervisors overt / inequitable conduct complained of, my being subjected to proscribed verbiage oppression, to induce physical, psychological, and unwarranted domestic submission to be directed

emphatically as to alter fundamental tenets of the conditions and terms of Plaintiff's federal employment.

Clearly, at this point, without the employer intervention to allow a schedule change request to be distant from the five disgruntle unionized career custodial employees, without the vetting procedural necessitate over a newly Implied Title Position Floating Custodian for the Richmond District, the catalyst for a foreseeable micro-aggression uncontrolling and problematic issue of confrontational face-to-face Psychological torrent emotionalism and engaged Physical Mobbing Assault, created a problematic directional unionized informal grievance imposed on my probationary employment status, the confluence on going conflictive verbal troubling intimidations, purposed to create my performance default and or violations of USPS Policy to eliminate the on premise new instituted employment position, expressed and approval by the appointed managerial / supervisory of the duty station.

The employing Agency's illegitimate criterion violation of their own regulations and federal laws was a direct substantial factor in the imposed adverse employment action of an indefinite suspension of a non-pay / non-duty status, purposed to subserve termination of plaintiff's employment on account of a matter alleged to be Religion, Race, Sex, and Age Discrimination complained of, all perceivable motivating factors, as retaliation realized in the unconstitutional acts of

omissions of promulgated regulations, and Agency adopted policy guidelines, effected a contrary operational decision.

And thereby to the legal threshold extent, arising in fact of conduct and or effected transaction to the legal threshold degree sufficient as such practical contractual terms and conditions expectation unrealized, the measurable described acts, practices, and omissions, condoning or tolerating such serious discriminatory harassment, subjecting Plaintiff to less favorable terms and conditions of employment, violated my right to equal opportunity, as protected by Title VII and ADEA being a true beneficiary member of the statutory protected class with respect to opportunities for hiring, promotion, transfer, job assignment, compensation and other terms and conditions of federal employment *prima facie* inequity, pursuant to the conspiracy of tangible harm.

During the relevant period in the course of my employer - employee relationship I reported a Federal Crime occurrence on the date of March 21, 2013 to the immediate chain of command at the assigned duty station, on the date March 22, 2013 verbally and by a handwritten incident report upon being instructed, arising under documented Criminal Resource Manual 1570 Assaults on Postal Employee's - 18 U.S.C. § 1114, 1565 Forcible Act Required - 18 U.S.C. § 111 - Application of Statute to Threats, 1549 Penalties, Venue, Effect on Other Laws - 18 U.S.C. § 1752, and 1555 Disruption of Government

Business.

Whereas, all matters to this cause, was based solely on out of court statements defamatory contents by five hostile unionized co-workers and the postal inspectors assistance in original handwritten surrogated construction implied stigmatization of occupational interests, signatory endorsements dated on March 27, 2013 and on March 30, 2013 , to create the cause of a agency reason for concealment of undocumented suspension and wrongful termination, an accessory after the fact of non compliance to the adopted policy mandated Threat Assessment Team evaluation and due process violation and provided not any meaningful opportunity to defend my rights prior to any decision - making in violation of my due process administrative agency statutorily meaningful hearing and the nexus occupational liberty interest by the identifiable chain of managerial command. embracing imposed workplace Stigmatization of a calculated rumor to breach the peace effected by the investigating postal inspectors rough draft Investigative Memorandum explanatory report written contents expressed in third person, and without any signatory authorization upon the face of the said instrument relied upon, or even a stamp date for true controlling possession necessary and proper conducive to the final decision justifiable for imposing the personnel action of employment separation.

In due course of my postal inspection interview on March 29, 2013, I

was not afforded any due process of preferred documented reasons substantial wrongful conduct or any examination of the out of court statements compilation on March 27, 2013 upon my legitimate request for the asserted allegations beyond my knowledge, pursuant to substantial due process, the employing agency must establish three criteria when taking an advance action against an employee to give constitutional infringement of my employment tenure status by the two independent adverse actions imposed by the female supervisor, an indefinite suspension without statutory notification and opportune to respond to unknown charges or any viable investigation of any attributable incident occurrence of legal record relied upon, circumvented the deciding official authorization disrupting the employment from the date of March 26, 2013 and *de facto* termination without due process meaningful opportunity at a meaningful place within the agency employment jurisdiction, effected on the date April 25, 2013.

First, it must establish by preponderant evidence that the charged conduct occurred. 5 U.S.C. § 7701(c)(1)(B). Second, it must show a nexus between that conduct and the efficiency of the service *Id.* § 7513 (a). Third, it must demonstrate that the penalty imposed was reasonable in light of the relevant factors set forth in *Douglas v. Veterans Admin.*, 5 MSPB 313, 5 M.S.P.B. 280, 307-08 (1981)

Firstly, the suspension was executed without a USPS letterhead statutory communication to establish my understanding by a letter of proposed adverse action for suspension on March 26, 2013 by the female supervisor without any documented violations, presented to my examination on the Mail room floor, commanding the relinquishment of my Time Card and Security Badge into here immediate possession by word of mouth only, and gave instructions emphatically thereat to be escorted from the premises of my duty station, by the accompanied the male Safety Inspection, this event was unauthorized to be effected and in violation of my federal employment rights, and APWU collective bargaining agreement sufficient standings, of which was clearly without any written proposed procedural intent of adverse employment action for just cause based on USPS regulations and adopted guidelines.

This invasion of my constitutional rights on March 26, 2013, with no given opportunity to respond to any legal cited charges having the appointing official signatory to give cause and effect to the operation and validity of due process enforcement, constitutes a Bivens violation by the supervisor actions and demonstrated retaliation and discrimination.

Secondly, I without a USPS letterhead statutory communication to establish my understanding by a letter of proposed adverse action for

termination with time based opportunity to respond the cited charges by the highest legal management authority as to the Human Resource Office Manager, Labor Relations Manager, and or Customer Service Manager of Human Capital, as signatory for an operational document of procedural enforcement.

The highest operational management engaged no Threat Assessment Team for documented participation and evaluation of true facts to be in compliance with The Occupational Safety And Health Administration (OSHA) is responsible for assuring that American Employer's operate workplaces free from recognized safety and health hazards. Public Law 91-596 - 84 STAT. 1590 91st Congress 5. 2193 December 29, 1970 as amended through January 1, 2004 (1). The employer is responsible for protection of employee's health and safety and welfare at work for all employees subject to OSHA's jurisdiction.

Created dimensions as a focusable threshold issue clearly arising therefrom omission of a Preinterview Consultation with APWU Richmond Branch 199 union steward and constituted thereunder constitutional law, it is the Policy of the Postal Service to comply with its contractual and legal obligations. In *Pacific Telephone & Telegraph v. NLRB*, 711 F. 2d 134, the Ninth Circuit Court of Appeals (which covers California and other western states) held that an employee is entitled to consult with his representative prior to an investigative

interview. Since preinterview consultation is the in law in that circuit and the U. S. Postal Service's Policy is to comply with that law, without modifications of USPS Policy. Insofar as the USPS is statutorily obligated in continuum to comply with applicable provisions of the National Agreement with regard to this matter, in any and all installations not covered by the Ninth Circuit Court jurisdiction.

That in this superiority managerial formatted overview, human resources per policy procedures and conjoining labor relations union rights oversight, the internal decision contrary employment tenure, constitutional due process and intentional violation of protected liberty interest and conspiracy of silence included the Offices of the Richmond District Manager, the Richmond City Postmaster, the Richmond District Human Resources Manager, the Richmond District Labor Relation Manager, the Generalist Principal, the Manager of Customer Service Operations, enabling employer liability of maladministration.

To clear my legal name from the imposed fraudulent undue stigmatization detrimental to my occupational employment interests and reputation and exercise my employment entitlement I filed a Title VII complaint with the Equal Opportunity Employment Commission subsequently resulting in the Federal civil action commenced in U.S. District Court Frizzell Carrell Woodson Plaintiff *pro se* v. Megan J. Brennan Postmaster General, United States Postal Service Agency,

Defendant, civil action Civil Action Case No. : 3: 17-cv-00748-HEH dismissed by a *sua sponte* decree under the hand of presiding Judge Henry Edward Hudson.

To clear my legal name and exercise my Afro - American Native Citizen Beneficiary entitlement I filed five independent civil actions in the Richmond General District in Virginia for Defamation *per se* Libel & Slander for sum certain relief, that were removed to the federal court jurisdiction by the Office of U.S. Attorney General for the Eastern District of Virginia acting in the official capacity of litigation representation therefor:

*Woodson v. United States of America, 28 U.S.C. § 2679 (d) (2) Civil Action No. 3:14CV862-HEH ~ Original Defendant Lanard J. Shelton, Defamation *per se* Libel & Slander ~ Richmond General District Case No.: GV-14041823-00. Dismissal of civil actions in both jurisdictional courts by Presiding Article III Judge Henry Edward Hudson.

*Woodson v. United States of America, 28 U.S.C. § 2679 (d) (2) Civil Action No. 3:15CV001-HEH ~ Original Defendant ~ Ulysses G. Otey, Defamation *per se* Libel & Slander ~ Richmond General District Case No.: GV-14041855-00. Dismissal of civil actions in both jurisdictional courts by Presiding Article III Judge Henry Edward Hudson.

*Woodson v. United States of America, 28 U.S.C. § 2679 (d) (2) Civil Action No. 3:15CV002-HEH ~ Original Defendant ~ Earle E. Fraser,

Defamation *per se* Libel & Slander ~ Richmond General District Case

No.: GV-14041854-00. Dismissal of civil actions in both jurisdictional courts by Presiding Article III Judge Henry Edward Hudson.

*Woodson v. United States of America, 28 U.S.C. § 2679 (d) (2) Civil Action No. 3:15CV003-HEH ~ Original Defendant ~ Larry S. Palmer, Defamation *per se* Libel & Slander ~ Richmond General District Case No.: GV-14041856-00. Dismissal of civil actions in both jurisdictional courts by Presiding Article III Judge Henry Edward Hudson.

*Woodson v. United States of America, 28 U.S.C. § 2679 (d) (2) Civil Action No. 3:15CV004-HEH ~ Original Defendant William A. Smith Defamation *per se* Libel & Slander ~ Richmond General District Case No.: GV-14041857-00. Dismissal of civil actions in both jurisdictional courts by Presiding Article III Judge Henry Edward Hudson.

To clear my legal name I justifiably exercised my Afro - American Native Citizen Beneficiary entitlement in the filed four independent civil actions in the U.S. District Court arising under the provisions of 28 U.S.C. § § 1346 (b), 1346 (b) (1), 1402 (b), 2401 (b), 2402, 2671 - 2680.

*Woodson v. United States of America, 28 U.S.C. § 1346 (b) Civil Action No. 3:16CV233-HEH Compliant filed on 04 / 25 / 2016; ~ Granted *In Forma Pauperis* status, asserted Plaintiff failed to state a claim upon which relief can be granted cited Statute 28 U.S.C. § 1915 (e) (2) (B) (ii) and Fed. R. Civ. P. Rule 12 (b) (6) Dismissal of Unamended

Complaint and simultaneously Terminated Civil Action. Executed by Presiding Article III Judge Henry Edward Hudson. Filed 05 / 20 / 2016.

*Woodson v. United States of America, 28 U.S.C. § 1346 (b) Civil Action No. 3:16CV234-HEH Compliant filed on 04 / 25 / 2016; ~ Granted *In Forma Pauperis* status, asserted Plaintiff failed to state a claim upon which relief can be granted cited Statute 28 U.S.C. § 1915 (e) (2) (B) (ii) and Fed. R. Civ. P. Rule 12 (b) (6) Dismissal of Unamended Complaint and simultaneously Terminated Civil Action. Executed by Presiding Article III Judge Henry E. Hudson. Filed 05 / 20 / 2016.

*Woodson v. United States of America, 28 U. S. C. § 1346 (b) Civil Action No. 3:16CV235-HEH Compliant filed on 04 / 25 / 2016; ~ Granted *In Forma Pauperis* status, asserted Plaintiff failed to state a claim upon which relief can be granted cited Statute 28 U. S. C. § 1915 (e) (2) (B) (ii) and Fed. R. Civ. P. Rule 12 (b) (6) Dismissal of Unamended Complaint and simultaneously Terminated Civil Action. Executed by Presiding Article III Judge Henry E. Hudson. Filed 05 / 20 / 2016.

*Woodson v. United States of America, 28 U.S.C. § 1346 (b) Civil Action No. 3:16CV236-HEH Compliant filed on 04 / 25 / 2016; ~ Granted *In Forma Pauperis* status, asserted Plaintiff failed to state a claim upon which relief can be granted cited Statute 28 U. S. C. § 1915 (e) (2) (B) (ii) and Fed. R. Civ. P. Rule 12 (b) (6) Dismissal of Unamended Complaint and simultaneously Terminated Civil Action. Executed by

Presiding Article III Judge Henry E. Hudson. Filed 05 / 20 / 2016.

To clear the imposed employment stigmatization from my legal name and personal reputation I exercise my Afro - American Native Citizen Beneficiary entitlement I filed five independent civil actions in the U.S. District Court arising under the provisions of 28 U.S.C. § § 1346 (b), 1346 (b) (1), 1402 (b), 2401 (b), 2402, 2671 - 2680 et. seq.

*Woodson v. United States of America, 28 U.S.C. § 1346 (b) Civil Action Case No. : 3:18-cv-00282-HEH ~ Granted *In Forma Pauperis* status, asserted Plaintiff failed to state a claim upon which relief can be granted cited Statute 28 U.S.C. § 1915 (e) (2) (B) (ii) and Fed. R. Civ. P. Rule 12 (b) (6) Dismissal of Unamended Complaint and Terminated Civil Action. Executed *Sua Sponte* Decree by Presiding Article III Judge Henry E. Hudson.

*Woodson v. United States of America, 28 U.S.C. § 1346 (b) Civil Action Case No. : 3:18-cv-00281-HEH ~ Granted *In Forma Pauperis* status, asserted Plaintiff failed to state a claim upon which relief can be granted cited Statute 28 U.S.C. § 1915 (e) (2) (B) (ii) and Fed. R. Civ. P. Rule 12 (b) (6) Dismissal of Unamended Complaint and Terminated Civil Action. Executed *Sua Sponte* Decree by Presiding Article III Judge Henry E. Hudson.

*Woodson v. United States of America, 28 U.S.C. § 1346 (b) Civil Action Case No. : 3:18-cv-00280-HEH ~ Granted *In Forma Pauperis*

status, asserted Plaintiff failed to state a claim upon which relief can be granted cited Statute 28 U.S.C. § 1915 (e) (2) (B) (ii) and Fed. R. Civ. P. Rule 12 (b) (6) Dismissal of Unamended Complaint and Terminated Civil Action. Executed *Sua Sponte* Decree by Presiding Article III Judge Henry E. Hudson.

*Woodson v. United States of America, 28 U.S.C. § 1346 (b) Civil Action Case No. : 3:18-cv-00279-HEH~ Granted *In Forma Pauperis* status, asserted Plaintiff failed to state a claim upon which relief can be granted cited Statute 28 U.S.C. § 1915 (e) (2) (B) (ii) and Fed. R. Civ. P. Rule 12 (b) (6) Dismissal of Unamended Complaint and Terminated Civil Action. Executed *Sua Sponte* Decree by Presiding Article III Judge Henry E. Hudson.

*Woodson v. United States of America, 28 U.S.C. § 1346 (b) Civil Action Case No. : 3:18-cv-00278-HEH~ Granted *In Forma Pauperis* status, asserted Plaintiff failed to state a claim upon which relief can be granted cited Statute 28 U.S.C. § 1915 (e) (2) (B) (ii) and Fed. R. Civ. P. Rule 12 (b) (6) Dismissal of Unamended Complaint and Terminated Civil Action. Executed *Sua Sponte* Decree by Presiding Article III Judge Henry E. Hudson.

*Woodson v. United States of America, 28 U.S.C. § 1346 (b) Civil Action Case No. : 3:18-cv-00280-HEH~ Granted *In Forma Pauperis* status, asserted Plaintiff failed to state a claim upon which relief can

be granted cited Statute 28 U.S.C. § 1915 (e) (2) (B) (ii) and Fed. R. Civ. P. Rule 12 (b) (6) Dismissal of Unamended Complaint and Terminated Civil Action. Executed *Sua Sponte* Decree by Presiding Article III Judge Henry E. Hudson.

Preceding any independent civil actions mentioned above due process procedural protections as the particular situation demands, I was subjected to the foreclosure of constitutional freedoms without given federal employment tenure entitlement constitutional due process opportunity to challenge, dispute and or defend my repute, my job status, and a nexus employment occupational liberty interest deprivation entitlement under the protected liberty interest afforded against the undue consequential advent of pure economic damages, liberty interest injuries, and loss of last clear chance of personal recovery, for my honest character of integrity and pillar reputation survival.

Given to the extent as such dimensions of liberty interests, privileges, and immunity prevailing enjoyment existence, triggers the insurmountable protection secured by the spirit and purposed legalism, as such legal avenue resolution caused within a public forum, on the merits of a claim created and defined by statutory terms originated in the General District Court - Richmond that were filed for the preferred charges of a threshold determination of Virginia Code § 8.2-417 instituted by a published a false orchestrated verbiage defamatory

matter for adjudicative jurisdiction for remedial monetary relief sought.

That in exercising my Afro - American Native Citizen Beneficiary entitlement, I filed Federal Criminal Complaints of sufficient interest afforded and to officially request a complete and thorough legitimate Fresh Process independently seeking investigative interest or duty enforceability of laws owed to all citizenry with the Office of the U.S. Attorney in the Eastern District of Virginia Richmond and other United States Department of Justice Legal Divisions of the Federal Government Agencies with the authority to set forth the investigation and or referral to engaged a Whistleblower Act sufficient.

For the reported incident occurrence on USPS property upon my persons for the commission of a Federal Crime of Assaultive / Battery egregious behavior. The actionable violation of the invasion of my intimate zone of interest, as such recognizable personal physical space, in a harmful or offensive way or the imminent threat of such invasion is enough to establish cognizable harm.

Given the fact I received no official correspondence for a free standing complaint dated February 21, 2014, via U.S. Mail to the U. S. Attorney's Office, for the Eastern District of Virginia thereat the location of intake Main Street Centre 600 E. Main Street, Suite 1800 Richmond, Virginia 23219 the assigned office for U.S. Assistant Attorney Jonathan Holland Hambrick.

The submitted federal complaint constituted the procedural compulsory consideration during the agency departmental intake statutory / policy mandated duty to examine the factual averments complained of provided substantial DOJ fact finding jurisdiction operational to determine if the complainant's position necessitate sufficiency.

The Office U.S. Assistant Attorney General litigation counsel for the Defendant, demonstrated suppression of knowledge imposed by law to reveal, failed to respond to this federal complaint submitted and lodged in the Court's Record during the opening civil actions engaged further by the failure to investigate, which was a deliberate decision not to acquire knowledge of facts that might confirm the probable falsity of the subject charges triggers Professional misconduct is a violation of an attorney's responsibility to maintain honesty, trustworthiness, and fitness as a lawyer, and consists of actions that involve dishonesty, fraud, deceit, or fraudulent misrepresentation resulting in the obstruction of the administration of justice.

Pursuant to the substitution provision of the Westfall Legislation provides that upon certification by the Attorney General that the defendant was action within the scope of his or her office or employment at the time of the incident out of which the claim arose, the United States shall be substituted as party defendant 28 U.S.C. §

2679 (d) (1).

Where a federal employee, rather the United States is named as the defendant, individual capacity representation must be authorized by the Department of Justice in accordance with regulations found at 28 C.F.R. § 50.15 - 15.16.

Representation will be authorized where the employee acted in the scope of his federal employment and representation is otherwise in the interest of the United States. 28 C.F.R. § 50.15 (a) (2).

A representation request should contain three categories of material: (1) the summons, complaint and other relevant pleadings; (2) a written request by the employee seeking representation; and (3) a recommendation by the employing agency explaining the scope and interest inquires as they relate to the facts of the particular case.

The concept that every individual who enters into a learned profession of jurisprudence undertakes to bring to the exercise a reasonable degree of prudence and professional skill pursuant to the clear established principles of laws and professional ethical standards.

PROCEDURAL BACKGROUND

The U.S. District Court civil activity docket appears at Pet. App. D [63d] - [64d].

The U.S. Court of Appeals civil activity docket appears in Pet. App. E [65e] - [66e].

The Judicial Record civil activity docket demonstrates the appearance of Appellant / Petitioner, *Pro se* to commence the cause of action thereupon the submitted Complaint for a matter alleged to be the violation of 42 U.S.C. § 1346 (b).

The Judicial Record in memory by law does not demonstrate the appearance of the Defendant / Respondent to statutorily submit any requisite responsive answer, purposed to assert or claim any legal defense, or otherwise cognizance to the open matter in the original District Court's jurisdiction therefrom the inspection and examination of the judicial record relied upon in this instance.

REASONS FOR GRANTING WRIT

Wherefore, the Appellant / Petitioner shall informed this Court, through the necessary and proper passage of this writ of certiorari petition accorded Questions therefor, invoking this Court's discretionary jurisdiction attentiveness in permissible urgency selection thereof, in and for the interest of justice to overlook not, the inferior Fourth Circuit vexatiously passive pattern squarely flouting the particularized implication traceable progression to the lower District Tribunal unreasonably divergence practice of high judicial policy departure and dereliction of judicial duty to the extent of the violation of ethical standards. a breach of a legal Ministerial duties

Whencesoever, detrimental to native justice, in this open civil

matter, it is important for this Court to address the review of tangible ascertainment of moral hazard to citizenry orthodox zone of democracy and principled freedom.

This case perfect posture given to the conferred consideration of reviewability of departure by the appellate court panel dual decisions set out in substantial error, offers an ideal vehicle to resolve the trifecta questions left open heretofore, emphasizing Constitutional jurisprudence of the First, Fifth, and Fourteenth Amendments infringements, clearly at issue in connection with this case particular, the challenged constituted limited jurisdiction, the usurpative judicial *sua sponte* dismissals, and the judicial ministerial self-executing recusal / legal disqualifications.

The invoked appellate judiciary ministerial ethical obligations binding under 28 U.S.C. § 453 Oath of Justices and Judges and adjudicative duty pursuant to 28 U.S.C. § 1292 (2012), and certain interlocutory and collateral orders, 28 U.S.C. § 1292 (2012); Fed. R. Civ. P. 54 (b); *Cohen v. Beneficial Indus. Loan Corp.*, 33 U. S. 541, 545 - 46 (1949), is to interpret and apply law to specific situations and not define law which is the responsibility of the legislature.

The Court's appellate jurisdiction under Article III gives it an independent institutional power. Congress may by statute limit this jurisdiction. U.S. Const. art. III sec. 2. The power of limitation extends

only to the appellate jurisdiction. A legislature restraint on district court jurisdiction may limit the Court's appellate jurisdiction from those courts *Sheldon v Sill*, 49 US (8 How) 441 (1850), but will not limit the Court's appellate jurisdiction over subject matter, which still may come up from the states courts.

Whereas, any wholesale attempt to limit Supreme Court review of constitutional questions would itself be unconstitutional. Hart the Power of Congress to Limit the Jurisdiction of Federal Courts: An Exercise In Dialectic, 66 Harv. L. Rev. 1362 (1953); a *Ratner*, Congressional Power Over the Appellate Jurisdiction of the Supreme Court, 109 U. PA L. Rev. 157, 201-02 (1960); *cf. R. Berger*, Congress V. The Supreme Court 285-96 (1969). But see *Wechsler*, The Courts and the Constitution, 65 Colum. L. Rev. 1001, 1005-06 (1965).

If Congress cannot undercut the Court's power to decide constitutional questions, neither may the Court itself refuse to do its job of constitutional adjudication. It may not decline to exercise the jurisdiction conferred upon it by the Constitution US Const. art. III and Congress 28 U.S.C. sec. 1252-58 (1970).

As Chief Justice Marshall voiced in *Cohens v. Virginia*, 19 US (6 Wheat.) 264 (1821). It is most true that this Court will not take jurisdiction if it should not; but it is equally true that it must take jurisdiction if it should. The judiciary cannot, as the legislature may,

avoid a measure, because it approached the confines of the constitution . . . We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the constitution. *Id.* at 404.

Therefrom Article III and *Marbury v. Madison* 5 US (1 Cranch) 137 (1803), it is mandatory within the scope of authority the power or manner of the federal courts adjudicators exercise of a conferred corollary duty to provide a constitutional adjudicative forum competence to dispose of all judicial matters fairly, promptly, and efficiently, in administering of relevant laws nexus to the cognizable facts of the interested legal litigants equal under the law sustained by constituted Plea Adjudicative jurisdiction, that must be decided at its earliest opportunity and before allowing the litigation to proceed to impose juxtaposition of a attendant claim brought forth by statutory authority and its due process maintenance is essential to the impartial and equal administration of justice.

I. The Question Presented Is Exceptionally Important For Three Overarching Reasons.

1. Whereas, an evidenced claim of a Constitutional Matter.

The presentment for appellate review significantly highlights all substratum reasons independent, and or collective opinions effected, constitutionally and or unconstitutional therein the entire fashion and

format submission into the Record, of foundational equality, inequality, or otherwise, to facilitate the constituted adjudicative jurisdiction of the adversarial legal system's uniformity decisions arising from the as such developed facts to the pure end of justice and adjudicated law.

A trial court has a ministerial duty to consider and decide pleading, motions and other instruments properly filed and brought to its attention to accord to every person who has a legal interest in a proceeding . . . the right to be heard according to law and to act at all times in a manner that promotes public confidence in the integrity and the impartiality of the judiciary.

Petitioner contends in the performance of judicial duties are derived and pinned to the constitution that any deprivations of my constitutional fundamental rights, privileges, immunities, and liberties whether consciously and or unconsciously imposed, constitutes an irreparable constitutional injury even for a minimal period of time.

Clearly, the lower courts decisional circumstances below in their judicial capacity violated my indisputable constitutional entitlements when, its departure from well developed standing rule of law, failing to acknowledge that, under the First Amendment entitlement my initial pleading brought forth commenced a cause of action, jurisdictional claims exists and triggers a holding of an established property right protected by the Fourteenth Amendment Due Process Clause.

The Equal Protection Clause which prohibits the government from denying to any person within its jurisdiction the equal protection of laws. U. S. Const. Amend. XIV Sect. 1. *Adarand Construction, Inc v. Pena* 515 U. S. 200, 224 (1995) noting that equal protection analysis is the same under the Fifth Amendment as it is under the Fourteenth Amendment.

Here the Fourth Circuit silence addressability to the trial court's overt refusal to rule on the constituted Plea to the Adjudicative Jurisdiction prerequisite, by itself, justifies automatic disqualification, regardless of the amount of time the motion as pending ... because judges have a ministerial duty to decide matters assigned to their court appointment deemed competent to decide Article III cases and controversy whenever it has proper jurisdiction.

In legal argument standing alone, this issue raises the Fifth and the Fourteenth Amendment to the U. S. Constitution settled principles that prohibits all levels of government from arbitrarily or unfairly depriving individuals of their basic constitutional right of due process of law, meaning in plain language the process in any proceeding which is to be accorded finality, is notice reasonably calculated under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present the merits of a claim of right protected interest for the cause of action in that public forum.

Settled in *Mullane v. Central Hanover Bank & Trust Co.*, the core case setting forth Constitutional Notice Requirement the U. S. Supreme Court held that notice must be reasonably calculated under all the circumstances to apprise interest parties of the pending of action and afford them an opportunity to present their objections.

Jurisdictional grounds lies within the zone of interests addressed by the statutory cause of action. A doctrine that jurisdictional in the eyes of the court. See e. g. *Wright v. BankAmerica Corp.*, 219 F.3d 79, 89 (2nd Cir. 2000) (“The concept of standing, which in both its constitutional and prudential dimensions, is a prerequisite to federal subject - matter jurisdiction.”); see *Cmtv. First Bank v. Nat'l Credit Union Admin.*, 41 F.3d 1050, 1053 (6th Cir. 1994) (“If plaintiffs have standing, we have jurisdiction over this appeal from a final order of the district court pursuant to 28 U.S.C. § 1291.”)

Moreover, *Once jurisdiction has been challenged, the court cannot proceed when it clearly appears that the court lacks jurisdiction: *Lack of subject matter jurisdiction is a non - weighable defect which may be raised at any stage of the proceeding: *That when jurisdiction is challenged, it must be proven, on the record: *The court has no authority to reach merits: *Ruling made in absence of subject matter jurisdiction is a nullity.

The Doctrine of Precedence clarifies clearly a judge cannot claim

jurisdiction by fiat. All orders and judgments issued by a judge in a court of limited jurisdiction must contain the findings of the court showing that the court has subject - matter, not allegations that the court has. "In a special statutory proceeding an order must contain the jurisdictional findings prescribed by statute." *In re Jennings*, 68 Ill. 2d 125, 368 N. E. 862 (1977). A judge 's allegation that he has subject matter jurisdiction is only an allegation. *Lombard v. Elmore*, 134 Ill. App. 3d 202, 204, 328 N. E.2d 142 (1975).

In furtherance, subject - matter jurisdiction fails: if a judge does not follow statutory procedure, and where the judge does not act impartially. *Armstrong v. Obucino*, 300 Ill. 140, 143 (1921), *Bracy v. Warden*, U. S. No. 96 - 6133 (June 9, 1997) (underline emphasis).

Notably, Lack of subject - matter jurisdiction is a non - waivable defect which may be raised at any stage of the proceeding." *State v. LaPier*, 961 P.2d 1274, 289 Mont. 392, 1998 MT 174 (1998).

Holding any Ruling made in absence of subject - matter jurisdiction is a nullity." *State v. Dvorak*, 574 N. W.2d 492, 254 Neb. 87 (1998).

Further, judgments entered where court lacked either subject matter or personal jurisdiction, or that were otherwise entered in violation of due process of law, must be set aside". *Jaffe and Asher v. Van Brunt*, SDNY 1994 158 F. R. D. 278.

Personal jurisdiction the manifest right to control individual within

the territorial boundaries clearly established by constitutional law. The purpose of notice to assert constitutional power and give statutorial notice of pendency of a legitimate action exercising jurisdictional analysis must be provenly a reasonable minimum precedential contact existence as a threshold matter by preponderant evidence and not by making nonfrivolous allegations.

Second, if it could not legally hear the matter upon the jurisdictional paper presented, its finding that it had the power can add nothing to its authority, it had no authority to make the findings." The *People v. Brewer*, 328 Ill. 472, 483 (1928) without specific finding of jurisdiction by the court in an order judgment, the order or judgment does not comply with the law and is void. The finding can not be merely an unsupported allegation.

A Decision is void on the face of judgment roll when from four corners of that roll, it may be determined that at least one of three elements of jurisdiction is absent: (1) jurisdiction over the parties, (2) jurisdiction over the subject matter, or (3) jurisdictional power to pronounce particular judgment that was rendered". *B & C Investments, Inc., v. T & M Nat. Bank & Trust*, 903 P.2d 339 (Okla. App. Dov. 3, 1995). Settled in *Anastoff v. United States* (8th Cir. 2000) "The judicial power of the United States is limited by the doctrine of precedence.") The law is well-settled that a void order or judgment is void even

before reversal. "Courts are constituted by authority and they cannot go beyond that power delegated to them. If they act beyond that authority, and certainly in contravention of it, their judgments and orders are regarded as nullities. They are not voidable, but simply void, and this even prior to reversal." *Valley v. Northern Fire & Marine Ins. Co.*, 254 U.S. 348, 41 S.Ct. 116 (1920).

Further Once Challenged, jurisdiction cannot be assumed, it must be proved to exist." *Stuck v. Medical Examiners*, 94 Ca 2d 751. 211 P.2d 389. Therefore in this precedent adoption, "The burden shifts to the Court to prove jurisdiction." *Rosemond v. Lambert*, 469 F.2d 416, and to justify constituted limited jurisdiction, "Courts must prove on the record, all jurisdiction facts related to the jurisdiction asserted." *Latana v. Hopper*, 102 F.2d 188: *Chicago v. New York*, 37 F.Supp. 150.

This ministerial duty is reflected in relevant case law and the Judicial Code of Conduct which provides a judge shall hear and decide matters assigned to the judge except those in which disqualification is required or recusal is appropriate.

2. Whereas, an evidenced claim of a Statutory Matter.

Given for a measurable equity component relative to the ascribed indigence benefit elements afforded, and the appearance of impropriety set forth self-executing ministerial judicial recusal and or conducive to invoking automatic federal disqualification provisions.

The leading court case on pleadings is *Conley v. Gibson* which contains the quoted standard, “all the Rules require is ‘a short and plain statement of the claim’ that will give the defendant fair notice of what the plaintiff’s claim is and the grounds upon which it rests.”

Conley v. Gibson, 355 U.S. 41, 47 (1957) (quoting Fed. R. Civ. P. 8 (a)).

Indeed, it may appear on the face of the pleading that a recovery is very remote and unlikely but this is not the test. “*Gant v. Wallingford Board of Education*, 69 F.3d 699, 673 (2nd Cir. 1995) (quoting *Weisman v. LeLandais*, 532 F.2d 308, 311 (2nd Cir. 1976)).

Even more so it is not even necessary that a plaintiff request appropriate relief, properly categorize legal theories, or point to any legal theory at all. *Tool v. Carroll Touch, Inc.*, 977 F.2d 1129, 1134 (7th Cir. 1992) (complaint sufficiently states a claim even if it points to no legal theory or even if it points to wrong legal theory, as long as “relief is possible under any set of facts that could be established consistent with the allegations”) (emphasis supplied).

Furthermore, this factual inquiry should be a threshold inquiry and not a fact-finding process for resolution of the disputed facts. *Franklin v. Murphy*, 745 F.3d 1221, 1228 (9th Cir. 1984). And to the extent of procedural fairness requiring the issuance of process. *See Wartman v. Branch 7, Civil Div., County Court*, 510 F.2d 130, 134 (7th Cir. 1975); see also *Catz & Guyer*, (arguing that *in forma pauperis* plaintiffs

should be treated the same way as paying plaintiffs under the Federal Rules of Civil Procedure).

Once the application to proceed *informa pauperis* ascribed benefit payment is made upon order of the Court administrative instruction to the Court Clerk to engaged the ministerial duty commencing the civil action filing, Pursuant to the mandated by Rule 4 (c) (2) (B) (i) and § 1915 (c) the issuance of the formal writ and Order Directing Service By the United States Marshal without Prepayment of Costs for service of Order from the above U.S. District Court of competent jurisdiction, must, promptly set forth to the jurisdiction of the U. S. Marshal Service, to promptly effect and officially execute the instruments of civil authority, to include the service of process Form USM - 285 Process Receipt and Return, the completed summons, copies of the initial complaint in full and otherwise for effected service on the said defendant's statutory litigation counsels and or otherwise.

Whereupon, all Federal Rules of Civil Procedure has to be followed, and Neither the "Rule" nor the "IFP Statute" vests a judge with discretion to intervene at this stage of the pleading to determine whether the clerk may issue a summons. *See Catz & Guyer, supra* note 15, at 672 n. 109; *Playing by the Rules, supra* note 49, at 147 -49.

Further precedence in *Tingler v. Marshall*, 716 F.2d 1109 (6th Cir 1983) the Sixth Circuit ruled that before a complaint may be dismissed

sua sponte, the court must require Federal Rules of Civil Procedures Benefits: (1) service of complaints on the defendants in accordance to Rule 4 (c) (2) (B) (i) including issuing of a summons pursuant to § 1915 (c); (2) prior notice of court's intent to dismiss the filed complaint; (3) a statutory maintenance opportunity for Plaintiff to amend his complaint Fed R. Civ. P. 15 (a), or respond to the reasons stated by the district court in its notice of intended *sua sponte* dismissal; (4) an opportunity for defendant to respond or file an answer or motions, and (5) a statement of reasons for dismissal.

Whereas, the Fourth Circuit vacates *Sua Sponte* Dismissal due to Non-exhaustion *Cutis v. Davis*, 851 F.3d 358 (4th Cir. 2017). The appellate court executed the reversal on March 23, 2017, holding that the dismissal was improper. Noting that the Supreme Court held in *Jones v. Bock*, 549 US 199 (2007) [PLN, May 2007, p.36] that failure to exhaust is an affirmative defense that must be raised by the defendant, the appellate court found the district court erred when it *sua sponte* examined *Cutis's* exhaustion of available administrative remedies."

When a court dismisses complaint *sua sponte*, it is required to give the plaintiff notice of its intent to do so and an opportunity to respond. *Stewart Title Guar. Co. v. Cadle Co.*, 74 F.3d *35, 836 (7th Cir. 1996). A failure to follow these steps deprives the litigant of his

day in court, denies the judge the benefit of the litigant's analysis, and , tends to transform the district court into a proponent rather than an independent entity. (quoting *Horn v City of Chicago*, 860 F.2d 700, 703 n.6 (7th Cir. 1988).

The District Court had wrongly equated the standard for failure to state a claim under Rule 12 (b) (6) with the standard for frivolousness under § 1915 (d). The frivolousness standard, authorizing *sua sponte* dismissal of an *informa pauperis* complaint "only if the petitioner cannot make any rational argument in law or fact which would entitle him or her to relief, "is more lenient" standard of Rule 12 (6) (b) the court stated. 837 F.2d at 307. Unless there is "indisputably absent any factual or legal basis" for the wrong asserted in the complaint, the trial court, "in a close case" should permit the claim to proceed at least to the point where responsive pleadings are required. *Dean Neitzke etc al. Petitioners v. Harry Lawrence Williams Sr.*, 490 U.S. 319 109 S. Ct. 1827, 104 L.Ed.2 338 (1989).

In these circumstances the overt refusal of a mandated duty, clearly without discretion or choice, is by itself a violation of the court's ministerial duty sufficient to warrant disqualification of any judicial officer pursuant to under the provisions of 28 U.S.C. § 455 (a), (b) (1), Federal law requires the automatic disqualification of a Federal judge even if there is no motion asking for his disqualification. Recusal

under Section 455 is self-executing; a party need not file affidavits in support of recusal and the judge is obligated to recuse himself / herself *sua sponte* under the stated circumstances. None of the orders issued by any judge who has been disqualified by law would appear to be valid as a matter of law, and are of no legal force or effect.

It appears the Fourth Circuit is contrarily in consistent harmony with the trial court *sua sponte fiat* ruling without personal jurisdiction over the legal defendant and sustainable subject-matter jurisdiction.

3. Whereas, the blatant disregard for the application of pertinent well-settled Constitutional Law to cognizable facts.

Clearly, the inferior courts failed to follow Supreme Court supremacy rulings, that adjudicators must provide parties with the opportunity to be heard on the merits of each claim of right. *The Mary*, 13 U.S. (9 Cranch) 126, 146 (1815) (holding no decision may stand “in which the person affected by the sentence” does not have “a full opportunity to assert his rights”).

CONCLUSION

For the foregoing reasons this Court should grant a writ of certiorari.

Respectfully requested and submitted by,

 Date: 4/4/2019
Frizzell Carrell Woodson Appellant / Petitioner, *pro se*
Afro-American Native Citizen Beneficiary
2432 Cumberland Road, Farmville, Virginia 23901-4305