No. 18-92

In the Supreme Court of the United States

DAVID V. PERRY,

Petitioner,

–v–

BRUCE KRIEGMAN,
In His Capacity of Chapter 11 Trustee LLS America,

Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit

PETITION FOR REHEARING

DAVID V. PERRY
PETITIONER PRO SE
9/10 COORAY PLACE
OFF EDIRIGODA ROAD
STANLEY THILLAKARATHNE MAWATHA
NUGEGODA
SRI LANKA
+94 77 376 0777
DAVID.V.PERRY@GMAIL.COM

OCTOBER 26, 2018

SUPREME COURT PRESS ♦ (888) 958-5705 ♦ BOSTON, MASSACHUSETTS

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii
PETITION FOR REHEARING 1
CONCLUSION 13
RULE 44 CERTIFICATE 16

TABLE OF AUTHORITIES

Page

CASES

Bennett v. Spear,
520 U.S. 154 (1997) 10

Board of Regents of State Colleges v. Roth,
408 U.S. 564 (1972) 9, 11

Gordon v. Holder,
721 F.3d 638 (D.C. Cir. 2013) 12

Hurtado v. People of Cal.,
110 U.S. 516 (1984) 9, 10

Scenic America, Inc. v. U.S. DOT,
No. 14-5195 (D.C. Cir. 2016)..... 10

Tozzi v. U.S. Dep't of Health & Human Servs.,
271 F.3d 301 (D.C. Cir. 2001) 10

Wisconsin v. Constantineau,
400 U.S. 433 (1971) 9

OTHER AUTHORITIES

Congressional Record Volume 162, Number 21
(Thursday, February 4, 2016) https://
www.gpo.gov/fdsys/pkg/CREC-2016-02-04/
html/CREC-2016-02-04-pt1-PgH570-7.
htm..... 7

Darrell Issa and Jim Jordan,
Letter to Martin Greenberg of FDIC
(June 9, 2014) https://oversight.house.gov/
wp-content/uploads/2014/06/2014-06-09-
DEI-Jordan-to-Gruenberg-FDIC-Choke-
Point-and-Reputational-Risk.pdf..... 4

TABLE OF AUTHORITIES—Continued

Page

Department of Justice, *Attorney General Eric Holder Launches Consumer Protection Working Group to Combat Consumer Fraud* (February 10, 2012) https://www.justice.gov/opa/pr/attorney-general-eric-holder-launches-consumer-protection-working-group-combat-consumer-fraud 4

Iain Murray, *Operation Choke Point: What It Is and Why It Matters*, https://cei.org/sites/default/files/Iain%20Murray%20-%20Operation%20Choke%20Point.pdf 8

Kelsey Harkness, *Unsealed Choke Point Documents Show Obama Was Far From Scandal-Free*, https://www.dailysignal.com/2018/10/16/unsealed-choke-point-documents-show-obama-was-far-from-scandal-free/ 15

Ken Blackwell, *Obama's Operation Choke Point finally unmasked*, https://www.washingtonexaminer.com/opinion/op-eds/obamas-operation-choke-point-finally-unmasked 15

Oversight Press Release, *Report: DOJ's Operation Choke Point Secretly Pressured Banks to Cut Ties with Legal Business* (May 29, 2014) https://oversight.house.gov/release/report-dojs-operation-choke-point-secretly-pressured-banks-cut-ties-legal-business/ 4

TABLE OF AUTHORITIES—Continued

Page

Staff Report, *FDIC's Involvement in "Operation Choke Point"* (December 8, 2014) http://oversight.house.gov/wp-content/uploads/2014/12/Staff-Report-FDIC-and-Operation-Choke-Point-12-8-2014.pdf 9

William M. Isaac, *BankThink 'Operation Choke Point': Way Out of Control*, http://www.americanbanker.com/bankthink/operation-choke-point-way-out-of-control-1067013-1.html 8

PETITION FOR REHEARING

NEWLY DISCOVERED EVIDENCE

My Certiorari Petition was denied 10/1/2018. Eleven days later, 10/12/2018, in unrelated case 1:14-cv-00953 District of Columbia, dramatic previously concealed evidence came to light through Doc 199-1 (Motion for Summary Judgment) & Doc 199-2 (Plaintiffs Statement of Undisputed Material Facts).

This evidence, hidden from the public until now, exposes a major scandal involving constitutional violations by the previous administration affecting my case. Petitioner previously submitted documents before various courts evidencing that prior to official formation of Operation Choke Point, well before 2011, the government was secretly trying to destroy paydays. Amongst other revelations this new evidence explains motive precisely, in addition to naked greed ($15,000,000 to Trustee and associates with virtually nothing to most victims), behind Trustee's illegally categorizing a legitimate business as nothing but "a Ponzi Scheme". And from its very inception, against all facts and despite Judge Whaley of the criminal court clearly indicating it was not.

Trustee, although obviously influenced by "Operation Choke Point", claims irrelevancy. Relevancy is now demonstrated beyond the shadow of doubt by recent submissions including hitherto unknown background information.

Impossible that the lower courts were fully informed, ruling impartially, when discovered only post trial that the government had a hidden agenda to destroy one of the defendants, yet keeping this conflict of interest secret from the courts!

With documents released 10/12/2018, also impossible for me 87 years of age, pro se, living in Sri Lanka, to gather all references for this Appeal. New evidence fills 98 pages without references.

Due to word limitations and deadline Oct. 26, I lacked the required 15 days to request leave for excess words. Much information cannot be included; therefore, references are quotes (some edited for space), pages and websites where relevant information is found.

Additionally, one LLS case ("*Kriegman vs, Dill*") has been presented to the Supreme Court of Canada. Outcome awaited.

UNCONSTITUTIONAL SCHEME REVEALED

In late 2010 or early 2011, the Regional Directors of the FDIC—officials in the field entrusted with supervising the "safety and soundness" of banks throughout the Nation—were summoned to Washington D.C. and received an important message direct from the "Sixth Floor" offices of the Chairman himself: "if a bank was found to be involved in payday lending," in any Regional Office, "someone was going to be fired."

Accordingly, "if an institution in their region was facilitating payday lending, the Regional Director should require the institution to submit a plan for exiting the business."

Payday lending is a lawful, legitimate business. Payday loans provide short-term credit to millions of American households, especially those that are underbanked, helping them to pay their bills between paychecks without relying on more costly forms of informal credit such as overdraft protection, bounced checks, and late-payment fees. But starting in 2011, payday lenders found themselves in the cross-hairs of a clandestine pressure campaign, carried out by banking regulators at the FDIC and OCC through backroom meetings, threatening letters, and whispered threats, all in pursuit of a single-minded purpose: to cast payday lending as a "high-risk," "dirty business," and to "stop [supervised] banks from facilitating" the industry by all available means. (1:14-cv-00953 Doc 199-1 p.5)

In the summer of 2011, FDIC published a Supervisory Insights article [which listed] "merchant categories that have been associated with high risk activity," and the list included "PayDay Loans" along with activities such as "Drug Paraphernalia," "Escort Services," "On-line Gambling," "Ponzi Schemes," and "Racist Materials." (p.13)

No justification was given for including payday loan businesses together with a group of patently illegal activities.

In February 2012, a Consumer Protection Working Group of the Financial Fraud Enforcement Task Force—established by the President under chairmanship of Attorney General Eric Holder in 2009—was established by the Department of Justice. https://www.justice.gov/opa/pr/attorney-general-eric-holder-

launches-consumer-protection-working-group-combat-consumer-fraud

The press release announcing the group's formation stated, "The Consumer Protection Working Group will address several areas of concern, including payday lending and other high-pressure telemarketing or Internet scams." https://oversight.house.gov/release/report-dojs-operation-choke-point-secretly-pressured-banks-cut-ties-legal-business/

The group's labeling payday lending as a "scam" belied its' claim that its mission was to tackle consumer financial fraud.

Contrary to (DOJ's) public statements, Operation Choke Point was primarily focused on the payday lending industry. https://oversight.house.gov/release/report-dojs-operation-choke-point-secretly-pressured-banks-cut-ties-legal-business/

November 12, 2012 a memorandum from Joel Sweet, Assistant United States Attorney, to Stuart Delery, Acting Assistant Attorney General Civil Division, entitled "Operation Chokepoint", admitted to a government collusion by stating: "DOJ, through the Consumer Protection Branch, should take the lead in implementing this strategy. Partner agencies should include the FTC, FDIC, OCC, FinCEN (Treasury), Federal Reserve Banks, NAAG, CFPB, FBI, and USPIS . . . " https://oversight.house.gov/wp-content/uploads/2014/06/2014-06-09-DEI-Jordan-to-Gruenberg-FDIC-Choke-Point-and-Reputational-Risk.pdf

Atlanta Regional Director Thomas Dujenski was an enthusiastic and active participant in Operation Choke Point. Dujenski's emails are suffused with

blatant hostility to payday lenders. In one email to Director Pearce, Dujenski emphasized that he was "sincerely passionate" about the fact that "I literally cannot stand pay day lending." (199-1 p.21)

According to a 2013 email, Deputy Director Miller insisted that whenever the letters or talking points prepared for Acting Chairman Gruenberg discussed payday lending, they should also mention pornography, because associating the two gives "a good picture regarding the unsavory nature of the businesses at issue" and thus "help[ed] with the messaging on this issue." (p.17)

Dujenski's reactions starkly illustrate the covert, illegitimate nature of Defendants' pressure campaign and their efforts to whitewash their illegal behavior. Upon first hearing that the bank was terminating its payday-lender clients, Dujenski replied that "I hope he relays it is the banks decision." And when regional officials later learned that the Chairman had communicated to the Bank's board that the FDIC had established a *de facto* policy against bank relationships with payday lenders, Deputy Director Patton reached out to him to "express concern" about that characterization.

"Dujenski was extremely effective in getting his message across: during his tenure, every bank within his jurisdiction that had a relationship with payday lenders ultimately terminated those relationships."

Chicago Director Anthony Lowe "used every tool at his disposal" to pressure banks into ending payday relationships. (pgs.23, 24)

Nor was the intimidation campaign limited to the Washington office. The House Oversight Committee, reported that a senior FDIC official in the Kansas City region threatened a bank considering serving payday lenders with severe regulatory consequences: "The official told the banker, 'I don't like this product, and I don't believe it has any place in our financial system. Your decision to move forward will result in an immediate unplanned audit of your entire bank.'" (p.27)

Since 2013, about 275 banks have refused Advance America's business because of their status as a payday lender. (p.32)

Even before LLS entered bankruptcy, it was already fighting off attacks on its banking liberties:

> When all banking activity was transferred from Wells Fargo to BOA in June 2009, management was unable to find a bank to handle online loans and collections for Canada (cross-border). The decision was then made to discontinue the Canadian business. At that time, the Canadian business had about $401,000 in active loans outstanding and over $5.3 million of accounts receivable on the balance sheet.

Ea. Wa. 09-06194-FPC11 Doc 240 Pg 18, 19.

Members of Congress have expressed numerous Constitutional concerns about Operation Choke Point:

> "Mr. Chairman, this is the worst form of government intrusion I have ever seen and can think of."

"They thought it was illegal themselves to do what they were doing, and yet they did this. Mr. Chairman, for anybody who is listening and watching today, it should send a chill down their spine when you sit here and have the leading law enforcement agency in this country believe and know that they are doing something wrong and still do it . . . "

"It reads that, even though you are a perfectly legal business, if we don't like you, we are going to crush you, and there is nothing you can do about it because we are the Federal Government."

"Perhaps, Mr. Chairman, they should indict themselves for bringing forth something we haven't seen since the Nixon era."

"Who will stand up and defend the small mom and pop shops on Main Street from the billions of dollars and the thousands of lawyers at the so-called Justice Department who wake up one day and decide that, notwithstanding current law, they are going to put them out of business?"

"It is time to stand up for those who do not have voice, for those who do not have power."

"It is time to stand up for the Constitution. It is time to stand up for the rule of law."

https://www.gpo.gov/fdsys/pkg/CREC-2016-02-04/html/CREC-2016-02-04-pt1-PgH570-7.htm

On January 8, 2014, House Oversight and Government Reform Committee Chairman Darrell Issa wrote Attorney General Holder outlining several concerns about Operation Choke Point. "The Chairman concluded, 'The use of 951(d) subpoena power to eliminate a legitimate and legal financial service, rather than to combat actual fraud, is a significant abuse of the Department's FIRREA authority.'" https://cei.org/sites/default/files/Iain%20Murray%20-%20Operation%20Choke%20Point.pdf p.16

(F)ormer FDIC Chairman William Isaac accused Operation Choke Point of being "way out of control". Choke Point "is a direct assault on the democratic system and free-market economy that have made the United States the most powerful and prosperous nation in world history. Without color of law and based on a political agenda, unelected bureaucrats at the Department of Justice are coordinating with bank regulators to deny essential banking services to companies engaged in lawful business activities." http://www.americanbanker.com/bankthink/operation-choke-point-way-out-of-control-1067013-1.html.

On May 29, a House Oversight Committee staff report criticized Operation Choke Point as:

> Targeting the entire payday lending industry, including legitimate organizations despite public assurances to the contrary.

https://cei.org/sites/default/files/Iain%20Murray%20-%20Operation%20Choke%20Point.pdf p.20

In an effort to conceal the abuses, FDIC counsel even went so far as to testify falsely to Congress about this Operation! http://oversight.house.gov/wp

-content/uploads/2014/12/Staff-Report-FDIC-and-Operation-Choke-Point-12-8-2014.pdf

The evidence shows that the DOJ was never really interested in fraud as claimed. They were bent on the illegal destruction of an entire industry regardless of whether it was operating lawfully or not.

The Due Process Clause does not permit the Government to attack the law-abiding members of a lawful industry in this manner. The Constitution's guarantee of due process is a bulwark of the rule of law, and it "was designed to protect the citizen against all mere acts of power, whether flowing from the legislative or executive branches of the government." *Hurtado v. People of Cal.*, 110 U.S. 516, 527. The evidence amassed in discovery shows that Plaintiffs are entitled to judgment on either of two related due process theories.

First, under *Wisconsin v. Constantineau*, 400 U.S. 433, due process must be afforded before the Government can stigmatize individuals in a way that prevents them from exercising pre-existing liberty or property rights "in common with the rest of the citizenry." *Constantineau* involved the liberty to purchase alcohol; here, Defendants have restricted payday lenders' liberty to access the banking system—a liberty of far more consequence—by tarring them as illegitimate and "high risk" and by imposing an unauthorized regulatory surcharge on any bank bold enough to do business with them. Second, under *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, due process must be afforded before the Government can make stigmatizing statements in connection with the extinguishment of a right or benefit. Here, Defendants

have coerced banks across the nation into extinguishing Plaintiffs' bank accounts—all against the backdrop of the stigmatizing charge that banking payday lenders is a "high-risk" proposition and that even offering a payday lender a checking account could tarnish a bank's reputation.

The Constitution will not brook these "mere acts of power," *Hurtado*; not, at least, without a modicum of due process—and the Court must declare Defendants' pressure tactics unlawful and put a stop to them. (199-1 p.7)

The undisputed facts also establish causation. While the traceability requirement is not satisfied "if the injury complained of is the result of the independent action of some third party not before the court," Article III "does not exclude injury produced by determinative or coercive effect upon the action of someone else." *Bennett v. Spear*, 520 U.S. 154, 169. To show causation, a plaintiff need not establish "that a challenged government policy compel[led] a third party to act," *Scenic America, Inc. v. DOT*. . . , but merely that the "agency action is at least a substantial factor motivating the third parties' actions," *Tozzi v. U.S. Dep't Health & Human Servs.* Here, the record shows that Defendants' intimidation campaign was at the very least a substantial factor leading to Plaintiffs' injuries. That is evident from the strong direct evidence of causation in the record, as well as from the overwhelming indirect evidence."

The United States Constitution provides that no person shall "be deprived of life, liberty, or property, without due process of law." While government defamation, standing alone, does not amount to violation

of the Due Process Clause, due process is implicated when the government (1) stigmatizes a person or entity, and (2) that stigmatization causes or is connected with an adverse impact on a background liberty or property right. Three related, but distinct, strands of cases fleshing out this inquiry have developed."

First, the courts have held that due process must be afforded before the Government can stigmatize a person in a way that alters their background legal rights or status. This "stigma-plus" theory is generally a forward-looking inquiry, asking whether stigmatizing actions or statements alter or extinguish a right, previously held, to engage in some activity.

Second, where the liberty in question is the right "to follow a chosen trade or profession," the D.C. Circuit has prescribed a different analysis: is the plaintiff "broadly precluded" from engaging in their chosen line of business. This "broad preclusion" inquiry is also essentially forward-looking.

Third, a separate line of cases holds that due process must be provided where the Government stigmatizes a plaintiff in the course of extinguishing its protected rights or benefits. This "reputation-plus" inquiry, arising from the Supreme Court's case in *Board of Regents of State Colleges v. Roth* is generally backward-looking.

Here, the record evidence shows that Defendants have violated Plaintiffs' due-process rights. (pgs. 34-40)

The stigmatizing nature of this high-risk label has been heightened by the association of law-abiding payday lending with Ponzi schemes, online gambling, and other unsavory—if not illegal—activities. Like the

stigma-plus theory, the reputation-plus theory does not require Plaintiffs to show that they have been cut off from the banking system entirely. Rather, Plaintiffs need to show that Defendants defamed them "in the course of the termination" of their accounts.

As this Court has already held, Plaintiffs plainly face irreparable injury, since the D.C. Circuit has held that an ongoing violation of due process amounts to irreparable harm. And the balance of the equities and the public interest—factors that "merge when the Government is the opposing party, also favor injunctive relief, since 'enforcement of an unconstitutional law is always contrary to the public interest.'" *Gordon*, 721 F.3d at 653. (pgs. 47-49).

CONCLUSION

Now undisputed: high-level unelected officials in no less than 10 government agencies colluded in a scandal intentionally hidden from the public to evade due process for the sole purpose of destroying an industry they personally hated. Although their attorneys warned them what they were doing was illegal, the DOJ took the lead in bringing "Chicago-style politics" to Washington, D.C.

They oversaw the bankruptcy of a business for which they had a hidden agenda of destruction using "all available means" and "every tool at their disposal", including stigmatizing a legal and legitimate business as a "Ponzi Scheme".

Evidence is now overwhelming as to why Trustee under DOJ supervision shut down Little Loan Shoppe claiming it was a Ponzi Scheme despite its making millions in bankruptcy.

"Beyond the shadow of a doubt." How often Petitioner has heard those words throughout the past eight decades. This case brings that not trite but true phrase before the Supreme Court as perhaps never before. Has there ever before been a case proving "beyond the shadow of a doubt" that an administration secretly orchestrated a scandal so contrary to the constitution that any business considered to be its political enemy was guilty and could not be proven innocent? And has anyone been held accountable?

Former Attorney General John Ashcroft's complaint about Bankruptcy Court corruption appears to have now spread with impunity throughout our entire government, "Bankruptcy court corruption is not just

a matter of bankruptcy trustees in collusion with corrupt bankruptcy judges. The corruption is supported, and justice hindered by high ranking officials in the United States Trustee Program. The corruption has advanced to punishing any and all who mention the criminal acts of trustees and organized crime operating through the United States Bankruptcy Courts. As though greed is not enough, the trustees, in collusion with others, intentionally go forth to destroy lives . . . . The American public, victimized and held hostage by bankruptcy court corruption, have nowhere to turn."

The Supreme Court has the ultimate responsibility to ensure "Equal Justice Under Law". In a truly free society, justice is not simply a goal, it is a necessity. Any conspiracy to pervert justice in itself demands resolution. A secretive "operation" to avoid due process to deprive citizens of life, liberty and property by the highest levels of any administration demands much more.

The doctrine of Manifest Injustice allows the courts to overrule any deficiencies in laws, court rulings, filings or technicalities in favor of justice. The Supreme Court has now before it perhaps the most blatant governmental assault on the constitutional rights of Americans and American businesses ever discovered.

By any reasonable standard of justice, should it not be heard?

Although I stand alone as one in behalf of many in the public interest, I simply plead that with such overwhelming evidence of governmental duplicity under the previous administration now being increasingly

exposed daily, may justice now finally be seen to prevail.

https://www.washingtonexaminer.com/opinion/op-eds/obamas-operation-choke-point-finally-unmasked

https://www.dailysignal.com/2018/10/16/unsealed-choke-point-documents-show-obama-was-far-from-scandal-free/

Such abuses must end once and for all for the preservation of the American way of life. I have tried to do my part. I beg you now to act.

Respectfully submitted,

DAVID V. PERRY
PETITIONER PRO SE
9/10 COORAY PLACE
OFF EDIRIGODA ROAD
STANLEY THILLAKARATHNE MAWATHA
NUGEGODA
SRI LANKA
+94 77 376 0777
DAVID.V.PERRY@GMAIL.COM

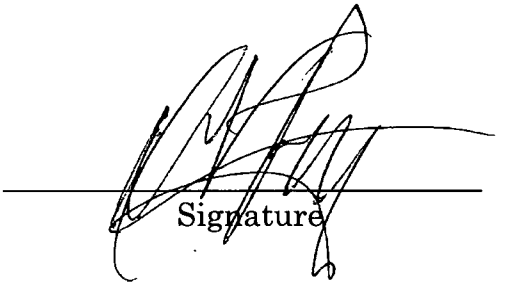
OCTOBER 25, 2018

RULE 44 CERTIFICATE

I, David V. Perry, petitioner pro se, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury that the following is true and correct:

1. This petition for rehearing is presented in good faith and not for delay.

2. The grounds of this petition are limited to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented.



Executed on October 25, 2018