No. 19-1090

IN THE

Supreme Court of the United States

BAHIG F. BISHAY,
Petitioner,
v.
UNITED STATES DEPARTMENT OF JUSTICE, *ET AL.*,
Respondents.

On Petition For A Writ Of Mandamus To The U.S. District Court For The District Of Columbia; The U.S. Court Of Appeals For The District Of Columbia Circuit

PETITION FOR WRIT OF MANDAMUS

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QUESTION PRESENTED

Against the backdrop of this Court's most recent guidance set forth in *Weyerhaeuser Co.*, -- where the Court held, to wit: "*The Administrative Procedure Act creates a basic presumption of *** judicial review *** [for] one suffering legal wrong because of agency action*", citing *Abbott Laboratories* and quoting 5 U.S.C. § 702, in both matters the Court relied on the language set forth in Section 10 of the *Administrative Procedure Act*: "*Any person suffering legal wrong because of any agency action, or adversely affected or aggrieved by such action within the meaning of any relevant statute, shall be entitled to judicial review thereof*" -- pursuant to 28 U.S.C. § 1331; § 1391(b); § 1651(a); § 1361; and § 2201 -- did the U.S. District Court *err* when it, notwithstanding the clarity of the foregoing, dismissed, *sua sponte*, (before the defendant agency answered the complaint presented), proffering that U.S. District Court[s] lack jurisdiction to judicially review decisions *** of agencies *not* statutorily exempt from judicial review *** under the explicit mandates set forth in 5 U.S.C., § 701; § 702; § 703; § 704; § 705; and § 706?

PARTIES TO THE PROCEEDINGS BELOW

The caption identifies the parties to the proceedings below, as follows: U.S. Department of Justice, the Federal Bureau of Investigation, Christopher A. Wray in his individual and official capacity as Director of the Federal Bureau of Investigation, and James A. Crowell in his individual and official capacity as Director of the Executive Office for United States Attorneys.[1]

Respondents in this Court are the United States District Court for the District of Columbia and the United States Court of Appeals for the D.C. Circuit. This because, as the record[2] reflects, the above referenced parties were *not* given an

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[1] To obviate the potential for confusion, in its Memorandum Opinion dated April 30, 2019 (A-3), the District Court reported that the Plaintiff *did not* also name the state judge and the other individuals who defalcated the $3.7 in cash and other property, as additional Defendants in the same action. The reason should have been clear to the District Court. In that, the said action was limited to the discrete issue of the "judicial review" mandated pursuant to §§ 701-706 *of the agency's failure to investigate and prosecute the said federal crimes*, and that, in due course, other proceedings are expected to take place in a different tribunal within the District of Massachusetts. Notwithstanding the District Court's gratuitous statement, however, all twenty four (24) individuals are listed in the *Concise statement relative to the criminal case* the said agency received from the Petitioner named here. [RA-19]

[2] [RA-19] refers to the evidence presented below, available through Pacer at Docket Entry: Appellate Brief [1797023] [19-5141] 07/12/2019, C.A.D.C.Cir.; (A-__) refers to the decisions of the lower courts, the subject of this Petition.

opportunity by the District Court to, at a minimum, answer the complaint, as a threshold matter. Instead, however, the District Court erroneously proffered, *sua sponte*, that it "lacked authority", notwithstanding the clarity of this Court's holding in *Weyerhaeuser Co.* and *Abbott Laboratories*; 5 U.S.C., §§ 701-706 and the *Administrative Procedure Act*, all mandating just the opposite action to be taken by the District Court.

RELATED PROCEEDINGS

Bahig F. Bishay v. U.S. Department of Justice, et al., U.S. District Court for the District of Columbia, Civil Action No. 1:19-cv-01045 (UNA), the subject of the within Petition; and *Bahig F. Bishay v. U.S. Department of Justice, et al.*, U.S. Court of Appeals for the District of Columbia, No. 19-5141, the subject of the within Petition.

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In the Supreme Court of the United States

No.____

IN RE BAHIG F. BISHAY, PETITIONER

ON PETITION FOR A WRIT OF MANDAMUS TO THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

PETITION FOR A WRIT OF MANDAMUS

Petitioner Bahig F. Bishay ("Bishay" or the "Federal Victim", interchangeably) respectfully petitions for a writ of mandamus to the United States District Court for the District of Columbia. In the alternative, Bishay respectfully requests that the Court treats this petition as a petition for a writ of certiorari to review the Judgment of the United States District Court for the District of Columbia, or as a petition for a common-law writ of certiorari to review the District Court's decision dismissing, *sua sponte* (before the defendants answered the complaint presented), proffering it "lacked authority" to "judicially review" the agency's actions or inactions, as required under the *Administrative Procedure Act,* upon which this Court relied in *Weyerhaeuser Co.* and *Abbott Laboratories;* 5 U.S.C. §§ 701-706, and the U.S. Court of Appeals for the

D.C. Circuit's failure to correct such erroneous posture.

OPINIONS BELOW

The opinion of the District Court dismissing the complaint, [RA-1], *sua sponte*, (A-1, *infra*), is not published in the Federal Supplement but available at 777 Fed. Appx. 526, 2019 WL 3074559 (C.A.D.C.) and 4565657. The opinion of the Appeals Court, affirming the District Court's dismissal, (A-11, *infra*), is not published in the Federal Supplement but available at 777 Fed. Appx. 526, 2019 WL 3074559 (C.A.D.C.) and 4565657. The Judgment, *Per Curiam*, denying a timely petition for a panel rehearing[3] or *en banc* review, (A-14-17, *infra*), is not published in the Federal Supplement but available at 777 Fed. Appx. 526, 2019 WL 3074559 (C.A.D.C.) and 4565657.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. 1651. In the alternative, the jurisdiction of this Court is invoked under 28 U.S.C. 1251(1). The U.S. Appeals Court for the D.C. Circuit denied a

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[3] The term "rehearing" is used here for consistency only based on the limited list of procedures reflected in the *Fed. R. App. P.*, otherwise the docket reflects the following entry: "*PER CURIAM ORDER [1804686] filed that the court will dispose of the appeal without oral argument on the basis of the record and presentations in the briefs pursuant to Fed. R. App. 34(a)(2); D.C. Cir. Rule 34(i). Before Judges: Tatel, Rao and Sentelle. [19-5141 [Entered: 09/03/2019 02:02 PM]*" (A-9, *infra*).

timely appeal on September 17, 2019 (A-11, *infra*); the U.S. Court of Appeals for the D.C. Circuit denied a timely petition for panel rehearing or *en banc* review, (A-14-17, *infra*), *Per Curiam*, on December 27, 2019.

RELEVANT STATUTORY PROVISIONS

Administrative Procedure Act; 5 U.S.C., § 701, § 702, § 703, § 704, § 705 and § 706; 11 U.S.C., §362; 18 U.S.C., § 2, § 4, § 63, § 152, §§ 1961-1968, and § 3284; 18 U.S.C., Ch. 73, § 1509; 28 U.S.C., § 1331, § 1391(b), § 1651(a), § 1361 and § 2201; *Mandatory Restitution Act* of 1996 [18 U.S.C., §§ 3663A and 3664]; *Restitution Process for Victims of Federal Crimes*; Article III of the U.S. Constitution; 42 U.S.C., § 1983; and the *Fourteenth* Amendment to the U.S. Constitution. *Id.*

STATEMENT OF THE CASE

1. Bishay commenced said District Court action in April 2019, in his capacity of a $6.8 million creditor [RA-38] of an entity known as U.S. Auto Exchange Group, Ltd. ("USAX"), a corporate entity previously organized under the laws of Massachusetts which filed for bankruptcy protection in 2002 in the U.S. Bankruptcy Court for Eastern Massachusetts, Case No. 02-10310-RS. [RA-31]

In the within matter, Bishay is defined as the "*Victim of Federal Crimes*", as set forth and so described under the *Mandatory Restitution Act of*

1996, 18 U.S.C. §§ 3663A and 3664, promulgated by the Department of Justice. *Id.*

In said complaint [RA-1], Bishay alleged that Defendants U.S. Department of Justice, the Federal Bureau of Investigation (FBI), Christopher A. Wray in his individual and official capacity as Director of the Federal Bureau of Investigation, and James A. Crowell in his individual and official capacity as Director of the Executive Office for United States Attorneys, abrogated strict federal mandates and abridged Bishay's constitutional right to the "due process of law" guaranteed under the *Fifth* and the *Fourteenth* Amendments to the United States Constitution, and did so in their [o]fficial and [i]ndividual capacities as the "Actors" so defined in 42 U.S.C. § 1983.

Inter alia, Bishay; as the Federal Victim under the *** *Mandatory Restitution Act of 1996* (18 U.S.C. §§ 3663A and 3664) and the *Restitution Process for Victims of Federal Crimes* *** as so promulgated by the U.S. Department of Justice (one of the defendants named here), is indeed entitled to a writ of mandamus under *** 28 U.S.C. § 1361 *** requiring said Defendants to investigate and prosecute, once they confirmed for themselves the veracity of the evidence they received from the Federal Victim [RA-19-66] and the RICO violations the Federal Victim reported to them pursuant to *** 18 U.S.C., § 4 *** and *** 18 U.S.C. §§ 1961-1968 *** which Bishay supported with [un]controverted evidence [RA-39-58] he uncovered through subpoena

served on Santander Bank (f/k/a Sovereign Bank)[4], all of which the Defendants *did not* deny receiving from Bishay.

In the within matter, Bishay further contended that although the Defendants are sophisticated and presumed to know they are mandated to investigate and prosecute the misprision of felonies under *** 18 U.S.C. § 4 *** the U.S. District Court, and subsequently the U.S. Appeals Court, erroneously concluded that said federal agency and the individuals named in Bishay's complaint [A-1] were somehow immune from the "judicial review" mandated under the *Administrative Procedure Act*; 5 U.S.C., § 701, § 702, § 703, § 704, § 705 and § 706, in the face of the specific language set forth in § 701(a) (1) and (2), particularly after said Defendants recklessly contended: "***My supervisor advised that we do not have the resources to address this issue, so you should proceed at your discretion with prosecuting the case.***"[RA-11]

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[4] Including Bankruptcy Court record confirming that USAX was subject to the "exclusive" jurisdiction of the U.S. Bankruptcy Court during all times relevant, and that a state-court receiver; state judge and twenty three (23) accomplices named in the evidence Bishay transmitted to the federal agency named above, deliberately engaged in a fraudulent state-court scheme they orchestrated to siphon off millions of dollars in cash and other property they knew was subject to the "exclusive" jurisdiction of the U.S. Bankruptcy Court, including the $3.7 million in cash and other property they successfully defalcated.

This egregious response, Bishay averred below, crossed the proverbial line and immediately subjected said Defendants to the predictable "judicial review" mandated pursuant to the clear language set forth in the *Administrative Procedure Act* upon which this Court relied in *Weyerhaeuser Co.* and *Abbott Laboratories;* 5 U.S.C. §§ 701-706.

This was most troubling to Bishay, particularly in light of the two "factual" reasons stated by said Defendants which immediately entitled Bishay to take discovery so he could examine said Defendants, under oath, about other public statements they made to the contrary (*infra*), in connection with their purported "lack of resources" to (i) investigate the veracity of the "evidence" Bishay delivered to them [RA-19-58]; and (ii) to explain the mockery and disingenuousness of their written response directing Bishay to "prosecute" the twenty four (24) state perpetrators who engaged in the seven (7) federal crimes Bishay reported to said agency. In other words, when said agency, through its "supervisor", directed Bishay to "prosecute" said twenty four (24) state perpetrators in his capacity as an ordinary citizen, the Defendants knew well that there is *no* federal authority upon which Bishay could rely in assuming said agency's (FBI) prosecutorial authority which is exclusively conferred upon said agency either by the President of the United States, the U.S. Congress, the U.S. Senate, or the U.S. Department of Justice, to prosecute the federal climes listed in the complaint (R-1; *supra* and *infra*), at the behest of the United States; and that said "exclusive" authority

could not possibly extend to Bishay, as an ordinary citizen of the United States.

On appeal below, Bishay asked the U.S. Court of Appeals for the D.C. Circuit to determine whether *** under the *Administrative Procedure Act*; this Court's holding in *Weyerhaeuser Co.* and *Abbott Laboratories;* and 5 U.S.C. §§ 701-706 *** the two reason[s] stated by the Defendants (*supra*) justified the Defendants' failure to carry out the otherwise strictly mandated investigative-prosecutorial duties, or whether the Defendants' stated reason[s] (*supra*) must *** under 28 U.S.C. § 1361 *** be deemed *arbitrary*, *capricious*, and *abuse of discretion*, all of which are *** judicially reviewable actions or inactions under 5 U.S.C. §§ 701-706 *** thus requiring the District Court to issue the mandamus Bishay sought in his complaint (A-1) pursuant to the authority set forth in 28 U.S.C. § 1361, which mandates *all* District Courts to exercise the "original jurisdiction" specifically conferred upon said courts as follows:

> The district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff.

See 28 U.S.C. § 1361 (Added Pub. L. 87–748, § 1(a), Oct. 5, 1962, 76 Stat. 744).

The *Administrative Procedure Act*, in the relevant part, states as follows:

> **Definitions**
>
> As used in this Act-(a) AGENCY.- "Agency" means each authority (whether or not within or subject to review by another agency) or the Government of the United States other than Congress, the courts, or the governments of the possessions, Territories, or the District of Columbia. Nothing in this Act shall be construed to repeal delegations of authority as provided by law. Except as to the requirements of section 3, there shall be excluded from the operation of this Act (1) agencies com- posed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them, (2) courts martial and military commissions, (3) military or naval authority exercised in the field in time of war or in occupied territory, or (4) functions which by law expire on the termination of present hostilities, within any fixed period thereafter, or before July 1,1947, and the functions conferred by the following statutes: Selective Training and Service Act of 1940; Contract Settlement Act of 1944; Surplus Property Act of 1944.

Judicial Review

Final agency decisions are subject to judicial review. Generally, challenges to agency regulations have a six-year statute of limitations.

Scope of Review

The reviewing court shall decide "all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action." The reviewing court must (A) compel agency action that was either "unlawfully withheld or unreasonably delayed" and (B) find unlawful and "set aside agency action, findings, and conclusions" that are: (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) contrary to constitutional right, power, privilege, or immunity; (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (4) without observance of procedure required by law; (5) unsupported by substantial evidence in a case subject to sections 556 and 557 of Title 5 (Government Organization and Employees) of the United States Code or otherwise reviewed on the record of an agency hearing provided by statute; or (6) unwarranted by the facts to the

extent that the facts are subject to trial de novo by the reviewing court.

Standards of Review

There are three standards of review: (1) substantial evidence; (2) arbitrary and capricious; and (3) statutory interpretation.

The "substantial evidence" standard of review is required for formal rulemaking and formal adjudication. Courts are required to uphold a rule if they find the agency's decision to be "reasonable, or the record contains such evidence as a reasonable mind might accept as adequate to support a conclusion." Agency actions that are invalidated by substantial evidence review are typically abandoned.

The "arbitrary and capricious" standard is mainly applied to informal rulemakings. In *Citizens to Preserve Overton Park v. Volpe* (401 U.S. 402), the Supreme Court held that in order to find agency decisions arbitrary in informal adjudications, courts must first "consider whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment." In performing this inquiry, courts cannot inquire as to why agencies relied upon particular

data to make their decisions; however, courts can inquire as to what data the agency reviewed. Typically, when agency action is invalidated under the arbitrary and capricious standard of review, the action is remanded to the agency to substantiate the record. In the *Motor Vehicle Manufacturers Association of the United States, Inc. v. State Farm Mutual Automobile Insurance,* the Supreme Court held that "the agency nevertheless must examine the relevant data and articulate a satisfactory explanation for its action" including a "rational connection between facts and judgment . . . to pass muster under the 'arbitrary and capricious' standard."

The "statutory interpretation" standard of review involves a two-step analysis, which derived from *Chevron, U.S.A., Inc. v. Natural Resources Defense Council* (468 U.S. 1227). Under *Chevron*, courts must first assess whether Congress has spoken to the "precise question at issue." To do this, courts must look to the language and design of the statute, as well as look to the traditional canons of construction. If the court finds that Congress has not directly addressed the precise issue, the court must then determine if the agency's action is based on a

> "permissible construction of the statute." Under *Chevron*, legislative regulations are given deference unless they are arbitrary, capricious, or manifestly contrary to the statute.

See Administrative Procedure Act, Public Law 404 - 79th Congress.

Relying on the foregoing, in *Weyerhaeuser Co.*, this Court held, to wit: "***The Administrative Procedure Act creates a basic presumption of *** judicial review *** [for] one suffering legal wrong because of agency action***", citing *Abbott Laboratories* and quoting 5 U.S.C. § 702. *See Weyerhaeuser Co. v. U.S. Fish & Wildlife Serv.*, 139 S.Ct. 361, 202 L.Ed.2d 269 (2018)

Notwithstanding such clarity and the [un]controverted evidence Bishay delivered to the Defendants, confirming that the reported seven (7) federal crimes were undisputedly carried out by a state-court receiver and twenty three (23) accomplices under the supervision of a state court judge, and resulted in the defalcation of more than $3.7 million in cash and other property belonging to the Federal Victim named in the District Court action, Bishay invoked his constitutional right by seeking redress under the *Mandatory Restitution Act* of 1996 (18 U.S.C. §§ 3663A and 3664), to determine the exact amount of restitution to which he is entitled under the *Restitution Process for Victims of Federal Crimes,* as so promulgated by the U.S.

Department of Justice (one of the Defendants named in the within action).

Notwithstanding the foregoing, however, the U.S. District Court and the U.S. Court of Appeals for the D.C. Circuit took matters into their own hands and deliberately deprived Bishay from his right to the "restitution" available to *all* such Federal Victims, as set forth as follows:

> In most fraud cases, restitution may be ordered where victims of the offense of conviction have suffered the loss of money or some negotiable instrument (investor fraud offenses or offenses involving the misuse of stolen credit cards), or the damage or loss of property... The Court may order a defendant to pay an amount equal to each victim's actual losses, usually the value of the principal or property fraudulently obtained... The Court may order the return of property or money to a victim or to someone a victim chooses. The Court may also order restitution to persons other than victims of a convicted offense, if agreed to in a plea agreement....

See Restitution Process for Victims of Federal Crimes.

2. On April 30, 2019, against the backdrop of such clear and unambiguous governing authorities

(*supra*), the U.S. District Court dismissed Bishay's complaint, *sua sponte*, before it issued the Summons Bishay requested so he could serve his complaint on said Defendants. In so erroneously dismissing, the District Court averred that it "lacked authority" to "judicially review" the agency's actions or inactions in the within matter, pursuant to 5 U.S.C. §§ 701-706, and further averred that it also "lacked authority" to issue the mandamus Bishay sought pursuant to the authority set forth in 28 U.S.C. § 1361.

Notwithstanding the overwhelming evidence appended to Bishay's complaint [RA-1], which the Defendants did not deny receiving from Bishay as required under 18 U.S.C. § 4, the District Court erroneously opined as follows:

> "It is well-settled that a writ of mandamus is not available to compel discretionary[5] acts... this court has no authority to compel these defendants to initiate a criminal investigation or to prosecute a criminal case." (Quotation marks appearing in original text) (A-3)

3. On May 24, 2019, in response to Bishay's Motion for Reconsideration, the District Court further opined as follows:

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[5] None of the Defendants named in the within matter enjoyed statutory [d]iscretion; none exempt from judicial review. *See* 5 U.S.C. § 701(a) (1) and (2).

> This matter has come before the Court on the plaintiff's motion for reconsideration, which is construed as one to alter or amend judgment under Rule 59(e) of the Federal Rules of Civil Procedure. "A Rule 59(e) motion is discretionary and need not be granted unless the district court finds there is an 'intervening change of controlling law, the availability of new evidence *** **or the need to correct a clear error or prevent manifest injustice.** *** None of these circumstances is evident."
>
> (Quotation marks appearing in original text; bold text provided for emphasis)...
>
> The plaintiff seeks an order directing the defendants to initiate a criminal investigation into and prosecute a criminal case against individuals who allegedly conspired to steal the plaintiff's' cash and other property. The Court properly dismissed the complaint, given its lack of authority to compel discretionary[6] acts (citation omitted), such as the initiation of a criminal prosecution (citation omitted).

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[6] See FN-5. *Supra.*

> Accordingly, it is hereby ORDERED that the plaintiff's motion for reconsideration is DENIED. (A-7)

4. Bishay timely appealed the District Court's dismissal and denial of his Motion for Reconsideration, whereupon, on September 17, 2019, the U.S. Appeals Court for the D.C. Circuit affirmed the lower court's proffer that it "lacked authority" to "judicially review" the agency's failure to investigate or prosecute the twenty four (24) individuals who engaged in the seven (7) federal crimes listed in Bishay's complaint (*supra*), as so mandated under 5 U.S.C. §§ 701-706; or to issue the writ Bishay sought pursuant to 28 U.S.C. § 1361; or to permit Bishay to recover millions of dollars in cash and other property defalcated by said individuals (*supra*), pursuant to the *Mandatory Restitution Act* of 1996 (18 U.S.C. §§ 3663A and 3664) and the *Restitution Process for Victims of Federal Crimes*, as so promulgated by the U.S. Department of Justice (one of the defendants named in the within action). In so affirming, the U.S. Appeals Court for the D.C. Circuit wrote:

> The district court correctly concluded that it lacked authority to compel appellees to initiate a criminal investigation or prosecution based on appellant's allegation of a conspiracy to deprive him of property (citation omitted). With respect to appellant's contention that appellees' decision not to pursue such an investigation or prosecution deprived him of his

> constitutional right to due process, the court correctly concluded that "a private citizen lacks a judicially cognizable interest in the prosecution or nonprosecution of another." (A-11) (Quotation marks appearing in original text)

5. On December 27, 2019, Circuit Judges, Tatel, Rao and Sentelle, *Per Curiam*, DENIED Bishay's Petition for Rehearing. (A-14)

6. On December 27, 2019, Chief Judge Garland, Circuit Judges Henderson, Roger, Tatel, Griffith, Srinivasan, Millett, Pillard, Wilkins, and Rao, and Senior Circuit Judge Sentelle, declined to review the District Court's dismissal and the panel's affirmation of same, and stated, *Per Curiam*, as follows:

> Upon consideration of the petition for rehearing *en banc*, and the absence of a request by any member of the court for a vote, it is ORDERED that the petition be denied. (A-16)

THE RELIEF SOUGHT

If the Court swiftly concludes that the District Court, and subsequently the U.S. Court of Appeals for the D.C. Circuit, indeed *erred* when they proffered that District Court[s] lack jurisdiction to "judicially review" agencies' decisions pursuant to this Court's holding in *Weyerhaeuser Co*; 5 U.S.C., §§

701-706; and the *Administrative Procedure Act*, the Petitioner named above respectfully moves this Honorable Court to exercise its authority, pursuant to Section 13 of the Act of 1789, by granting the injunctive relief sought here through a Writ of Mandamus directing the U.S. District Court for the District of Columbia to judicially review the [factual] reasons stated by the agency, where said agency informed the victim (the Petitioner here), in writing with impunity, that: (i) said agency "lacked resources" to investigate and prosecute twenty four (24) individuals who engaged in the defalcation of more than $3.7 million in cash and other property belonging to the Petitioner, consisting of a state-court receiver and twenty three (23) accomplices -- a "factual" issue which must be presented to the *trier of fact* (the district court here); and (ii) that the victim should *** in his individual capacity *** assume said agency's prosecutorial authority and prosecute the twenty four individuals who committed the federal crimes chronicled below *** at the behest of the United States *** when said agency was presumed to know that the victim was [n]either authorized by the President of the United States, nor the U.S. Congress, nor the U.S. Senate, nor the Department of Justice, to step into said agency's shoes and prosecute said individuals; and that said agency was further presumed to know that the restitution sought pursuant to the *Mandatory Restitution Act* of 1996 [18 U.S.C. §§ 3663A and 3664] and the *Restitution Process for Victims of Federal Crimes* promulgated by the U.S. Department of Justice, can only be sought by said agency [FBI]

on behalf of the victim; and not by the victim himself?

i) RICO violations, pursuant to 18 U.S.C., §§ 1961-1968, documented through the evidence transmitted to the agency by the victim pursuant to 18 U.S.C., § 4;

ii) Mail Fraud violations, pursuant to 18 U.S.C., § 63, documented through the evidence transmitted to the agency by the victim pursuant to 18 U.S.C., § 4;

iii) Bankruptcy Fraud violations, pursuant to 18 U.S.C., § 152, documented through the evidence transmitted to the agency by the victim pursuant to 18 U.S.C., § 4;

iv) Concealment of Debtor's Assets violations, pursuant to 18 U.S.C., § 3284, documented through the evidence transmitted to the agency by the victim pursuant to 18 U.S.C., § 4;

v) Bankruptcy Automatic Stay violations, pursuant to 11 U.S.C., §362, documented through the evidence transmitted to the agency by the victim pursuant to 18 U.S.C., § 4;

vi) Misprision of felony, pursuant to 18 U.S.C., § 4, where a state judge failed to report to the FBI or to the U.S. Attorney the $3.7 million felony and the evidence the victim uncovered and delivered to the state judge presiding over a state-court action through which the victim uncovered the defalcation

of more than $3.7 million in cash and other property belonging to the victim, as he was so required pursuant to 18 U.S.C., § 4, which the victim uncovered through subpoena he served upon Santander Bank, whereupon the state judge engaged in a *cover-up* scheme detailed in a *Concise statement relative to the criminal case* transmitted to said federal agency by the victim [RA-19], detailing the violation of the federal *Aiding and Abetting Statute*, 18 U.S.C., § 2, which were documented through the evidence the victim transmitted to said federal agency pursuant to 18 U.S.C., § 4; and

vii) Obstruction of justice, pursuant to 18 U.S.C., Ch. 73, § 1509, where said state judge chose to enjoin the victim from prosecuting any action against the state-court's receiver and his 23 accomplices, in any state court, who together defalcated said cash and other property, through the obstruction of justice scheme in which said state judge and the twenty four (24) individuals engaged, all of which was documented through the evidence the victim transmitted to said federal agency pursuant to 18 U.S.C., § 4.

REASONS FOR GRANTING THE PETITION

A writ of mandamus is warranted when a party establishes that (1) the "right to issuance of the writ is 'clear and indisputable,'" (2) the party has "no other adequate means to attain the relief" sought, and (3) "the writ is appropriate under the circumstances." *Cheney v. United States Dist. Court*, 542 U.S. 367, 380-381 (2004) (citation omitted).

Mandamus is reserved for "exceptional circumstances amounting to a judicial 'usurpation of power.'" *Id.* at 380 (citation omitted). Those are the circumstances of this case. The District Court's proffer that it *** "lacked authority" to *** judicially review *** the action or inaction of a federal agency *not* exempt from "judicial review"; the affirmation of such erroneous determination by the U.S. Court of Appeals for the D.C. Circuit, is beyond appalling based on the clarity of this Court's holding in *Weyerhaeuser Co. v. U.S. Fish & Wildlife Serv.*, 139 S.Ct. 361, 202 L.Ed.2d 269 (2018); 5 U.S.C. §§ 701-706; and 28 U.S.C. § 1361.

"The common-law writ of mandamus against a lower court is codified at 28 U.S.C. § 1651(a): 'The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.'" *Id.* at 380

Here, the factors for mandamus are readily satisfied. Given the clear and [un]ambiguous federal authority conferred upon *all* District Courts, pursuant to 28 U.S.C. § 1331, § 1391(b), § 1651(a), and § 2201; 5 U.S.C. §§ 701-706; and 28 U.S.C. § 1361, and the egregious defects in the District Court's "lack of authority" proffer, Bishay has clearly established a "clear and indisputable" right to relief. *Cheney*, 542 U.S. at 381 (citation omitted). Bishay has "no other adequate means" to attain the relief' he seeks which the District and the Appeals Courts refused to grant, erroneously contending "lack of

authority". *Id.* at 380-381 (citation omitted). And issuance of "the writ is appropriate under the circumstances"; indeed, because the "traditional use of the writ *** has been to confine" a court "to a lawful exercise of its prescribed jurisdiction." *Id.* at 380 (citation omitted). Mandamus is especially appropriate here, because the District and the Appeals Courts are presumed to know that the two discrete reasons given by the Defendants named in the complaint which was dismissed before issuing the required Summons to serve on said Defendants, is that (i) the agency "lacked resources", which is a factual issue requiring the taking of discovery; not the dismissal of the complaint; and (ii) that Bishay, in his capacity of an ordinary citizen, was disingenuously directed to step into the agency's shoes and assume the agency's investigative and prosecutorial "exclusive" authority, at the behest of the United States. *Id.* Therefore, there can be no legitimate debate that both courts deliberately abridged Bishay's constitutional rights; clearly and [un]ambiguously abrogated the governing federal authority; and only this Court may now intervene by issuing the mandamus sought through this Petition.

A. Bishay Has A Clear And Indisputable Right To Relief From The District Court's Refusal To Issue The Mandamus Sought; In the Alternative, For The District Court To "Judicially Review" The Agency's Action Or Inaction, Pursuant To *The Administrative Procedure Act* Which Creates A Basic Presumption Of Judicial Review [For] One Suffering Legal Wrong Because Of Agency Action." 5 U.S.C. § 702.

Bishay's right to the "judicial review" sought below, under the *Administrative Procedure Act*; 5 U.S.C. §§ 701-706, is "clear and indisputable." *Cheney*, 542 U.S. at 381 (citation omitted). Therefore, the District and the Appeals Courts' "lack of authority" proffer is procedurally and substantially defective in numerous ways, including the following:

1. Most fundamentally is the District Court's proffer that it *** "lacked authority" *** to *** "judicially review" *** the federal agency's actions or inactions, an agency which the District Court is presumed to know is *neither* immune *nor* statutorily exempt from "judicial review", as set forth in the *Administrative Procedure Act*; 5 U.S.C. §§ 701-706, as follows: "***The Administrative Procedure Act creates a basic presumption of judicial review [for] one suffering legal wrong because of agency action***", citing *Abbott Laboratories* and quoting 5 U.S.C. § 702. In both matters, this Court relied on the language set forth in Section 10 of the *Administrative Procedure Act*, as follows: ***Any***

person suffering legal wrong because of any agency action, or adversely affected or aggrieved by such action within the meaning of any relevant statute, *** shall be entitled to judicial review thereof" *** pursuant to 28 U.S.C. § 1331; § 1391(b); § 1651(a); and § 2201, as this Court so held in *Weyerhaeuser Co.* and *Abbott Laboratories. Id.*

2. In *Weyerhaeuser Co.,* this Court further held, to wit: ***As we explained recently, "legal lapses and violations occur, and especially so when they have no consequence. That is why this Court has so long applied a strong presumption favoring judicial review of administrative action",*** citing *Mach Mining, LLC v. EEOC*, 575 U.S. ——, —— – ——, 135 S.Ct. 1645, 1652–1653, 191 L.Ed.2d 607 (2015).

3. This Court further held, to wit: ***"presumption may be rebutted only if the relevant statute precludes review",*** citing 5 U.S.C. § 701(a)(1)***, "or if the action is 'committed to agency discretion by law'"***, citing § 701(a)(2).

4. Here, there can be no legitimate debate that the agency named below (FBI) enjoys *no* discretion under federal "statute" or "law" that could possibly preclude "judicial review" of its action or inaction in the within matter, under § 701(a) (1) and (2).

5. In their rulings (A-2, 7 and 11), neither the District Court nor the Appeals Court provided a single evidentiary or statutory support, under any

federal "statute" or federal "law", to exempt or immune said agency (FBI) from the "judicial review" mandated under 5 U.S.C. §§ 701-706 or under any U.S. Sup. Ct. reasoning.

6. What Bishay argued below, on the other hand, is this Court's specific guidance as the Court explained that there might be some "tension" between the prohibition of judicial review for actions "committed to agency discretion" and the command in § 706(2)(A) that courts set aside any agency action that is "***arbitrary***, ***capricious***, an ***abuse of discretion***, or otherwise ***not in accordance with law***", where the Court cited its earlier holding in *Heckler v. Chaney*, 470 U.S. 821, 829, 105 S.Ct. 1649, 84 L.Ed.2d 714 (1985). The Court further held that a court could never determine that an agency abus[ed] its discretion if all matters committed to agency discretion were [un]reviewable. 139 S.Ct. 370-371. Precisely what Bishay vigorously argued below.

7. Moreover, the below courts' reasoning that the agency's failure to investigate and prosecute the chronicled federal crimes here (*supra* and *infra*) -- suggesting that said agency's failure is somehow [un]reviewable -- squarely conflicts with the this Court's contrary holding in *Weyerhaeuser Co.* and *Abbott Laboratories* (*supra* and *infra*); 5 U.S.C. §§ 701; 702; and 706, because the agency's failure to carry out its duty to investigate and prosecute the seven (7) federal crimes alleged in Bishay's complaint -- which are supported by [un]controverted bank records produced by Sovereign Bank, N.A. n/k/a Santander Bank, N.A.,

confirming sixty eight (68) [un]authorized bank transaction[s] carried out by a state-court receiver and twenty three (23) accomplices [RA-39-58] -- is unquestionably a [j]udicially [r]eviewable activity by the District Court and subsequently by the Appeals Court that merely rubber-stamped such erroneousness, so arbitrarily.

8. This Court went on to further explain that to give effect to § 706(2)(A) and to honor the presumption of review, this Court would have to read the exception in § 701(a)(2) quite narrowly, restricting it to "***those rare circumstances where the relevant statute is drawn so that a court would have no meaningful standard against which to judge the agency's exercise of discretion***", citing *Lincoln v. Vigil*, 508 U.S. 182, 191, 113 S.Ct. 2024, 124 L.Ed.2d 101 (1993).

9. Therefore, given the District Court's *abuse of discretion* in the within matter, purporting [lack] of authority, which pursuant to this Court's relevant rulings is a reversible error, in the within matter the agency's stated reason for its failure to prosecute the state-court receiver and his twenty three (23) accomplices who, together, carried out the seven (7) federal crimes alleged in the complaint concerning the defalcation of more than $3.7 million in cash and other property belonging to the Federal Victim named in the action commenced below, is indeed a judicially reviewable act. This, because, the agency named here ***did not*** and ***does not*** enjoy absolute discretion absent a federal "statute" or federal "law", pursuant to § 701 (a) (1) and (2), to inform the

Federal Victim that said agency lack[ed] "resources" (*supra* and *infra*) and directed him (Bishay) to [prosecute] said federal crimes [himself], at the behest of the United States.

10. Thus there can be no legitimate debate that said agency was amply aware that the Federal Victim is neither authorized by the President of the United States, nor by the U.S. Congress, Nor by the U.S. Senate, nor by the Department of Justice, to step into said agency's shoes and assume what is otherwise the agency's [exclusive] prosecutorial authority conferred upon it to investigate and prosecute the following federal crimes:

i) RICO violations, pursuant to 18 U.S.C., §§ 1961-1968, documented through the evidence transmitted to the agency by the victim pursuant to 18 U.S.C., § 4;

ii) Mail Fraud violations, pursuant to 18 U.S.C., § 63, documented through the evidence transmitted to the agency by the victim pursuant to 18 U.S.C., § 4;

iii) Bankruptcy Fraud violations, pursuant to 18 U.S.C., § 152, documented through the evidence transmitted to the agency by the victim pursuant to 18 U.S.C., § 4;

iv) Concealment of Debtor's Assets violations, pursuant to 18 U.S.C., § 3284, documented through the evidence transmitted to the agency by the victim pursuant to 18 U.S.C., § 4;

v) Bankruptcy Automatic Stay violations, pursuant to 11 U.S.C., §362, documented through the evidence transmitted to the agency by the victim pursuant to 18 U.S.C., § 4;

vi) Misprision of felony, pursuant to 18 U.S.C., § 4, where a state judge failed to report to the FBI or to the U.S. Attorney the $3.7 million felony and the evidence the victim uncovered and delivered to the state judge presiding over a state-court action through which the victim uncovered the defalcation of more than $3.7 million in cash and other property belonging to the victim, as he was so required pursuant to 18 U.S.C., § 4, which the victim uncovered through subpoena he served upon Santander Bank, whereupon the state judge engaged in a cover-up scheme detailed in the *Concise statement relative to the criminal case* transmitted to said federal agency by the victim [RA-19], detailing the violation of the federal Aiding and Abetting Statute, 18 U.S.C., § 2, which were documented through the evidence the victim transmitted to said federal agency pursuant to 18 U.S.C., § 4; and

vii) Obstruction of justice, pursuant to 18 U.S.C., Ch. 73, § 1509, where said state judge chose to enjoin the victim from prosecuting any action against the state-court's receiver and his 23 accomplices, in any state court, who together defalcated said cash and other property, through the obstruction of justice scheme in which said state judge and the twenty four (24) individuals engaged, all of which was documented through the evidence

the victim transmitted to said federal agency pursuant to 18 U.S.C., § 4.

11. It is therefore abundantly clear that (i) the District and the Appeals Courts' proffer is a stark deviation from this Court's straightforward holing in *Weyerhaeuser Co.*; and (ii) such erroneous conclusion is unquestionably of exceptional importance as a matter of federal law, statute and *public policy*.

12. Accordingly, if this Court grants the injunctive relief sought in the form of a writ of mandamus, consistent with this Court's holding in *Weyerhaeuser Co.*; and §§ 701; 702; and 706, the Federal Victim will finally be able to undertake the required discovery under Rules 30-36 of the *Fed.R.Civ.P.*, so that said District Court would determine, through said statutory "judicial review", whether the agency's action or inaction pertaining to the seven (7) federal crimes listed in the complaint amount to ***arbitrary***, ***capricious***, and ***clear abuse of discretion***, in light of the "factual" reasons stated by said agency, specifically (a) that said agency "lacked resources" to investigate and prosecute the seven (7) federal crimes alleged in Bishay's complaint concerning the defalcation of more than $3.7 million in cash and other property belonging to the Federal Victim, whereby the Federal Victim would be permitted to exercise his [C]onstitutional right to orally examine Special Agent Kelly Bell, who, in March 2018, informed Bishay as follows: "***My supervisor advised that we do not have the resources to address this issue, so you should proceed at your discretion with prosecuting the***

case" [RA-11], against a public statement appearing in the Boston Globe on March 13, 2019, where U.S. Attorney Andrew Lelling (named in the complaint [RA-3], confirmed the following: "***We frankly had the resources and the sophistication to take down a case of this magnitude***" (quotation marks appearing in original public announcement), so that the District Court in the within matter would be able to determine whether the first factual statement is consistent with the second factual statement; and whether such exercise comports with the credibility and veracity tests frequently administered by federal tribunals through evidentiary hearings and bench trials; and (b) similarly, pursuant to Special Agent Bell's written statement, Bishay would, procedurally, be entitled to examine Special Agent Bell, her supervisor, and U.S. Attorney Lelling on the federal authority upon which they relied when they directed Bishay to step into said agency's shoes and prosecute said seven (7) federal crimes, knowing that Bishay was *not* authorized by the appropriate governmental authority to carry out any such prosecutorial tasks, which are otherwise exclusively conferred upon said agency and not upon ordinary citizens of the United States, such as Bishay in the within matter.

13. Accordingly, therefore; consistent with this Court's relevant rulings (*supra*); §§ 701, 702; and 706, the District Court needs, at a minimum, to permit Bishay to undertake the required discovery under Rules 30-36 of the *Fed.R.Civ.P.*, so that the District Court would appropriately determine, through an evidentiary hearing or bench trial,

whether the agency named here indeed abus[ed] its discretion when it refused to investigate and prosecute the seven (7) federal crimes alleged in Bishay's complaint, contending (a) it lacked "resources"; and (b) directed the Federal Victim to prosecute said federal crimes at the behest of the United States – and not the reckless dismissal of Bishay's complaint, which was "verified" as the record so reflects. (RA-6)

B. Bishay Has No Other Adequate Means To Attain The Discrete Relief Sought Below.

Mandamus is warranted to correct the District and the Appeals Courts' egregious errors because Bishay has "no other adequate means" to obtain relief from the District Court's refusal to "judicially review" the agency's failure to investigate and prosecute the seven (7) federal crimes listed in the complaint. *Cheney*, 542 U.S. at 380 (citation omitted)

Here, this matter presents clear mockery, disingenuousness and deliberate abrogation of [un]ambiguous federal authority, particularly as the said federal agency brazenly directed Bishay to assume said agency's *** exclusive authority *** to investigate and prosecute said federal crimes at the behest of the United States. Mockery and disingenuousness the District Court endorsed by refusing to review such reckless conduct, pursuant to 5 U.S.C. §§ 701-706; mockery and disingenuousness the Appeals Court readily rubber-stamped knowing well that Bishay, an ordinary citizens, is neither authorized by the President of the United States, nor

by the U.S. Congress, nor by the U.S. Senate, nor by the Department of Justice, to assume said agency's otherwise [ex]clusive prosecutorial authority at the behest of the United States. Mandamus is therefore warranted to correct such egregious errors.

C. Mandamus Relief Is Appropriate Under The Circumstances.

Finally, and for the reasons discussed above, mandamus relief is indeed "appropriate under the circumstances." *Cheney*, 542 U.S. at 381. As noted, mandamus is traditionally used "to confine [an inferior court] to a lawful exercise of its prescribed jurisdiction", and granting mandamus directing the District Court in the within matter to exercise its judicial authority, as set forth in Article III; as cognizable constitutional right guaranteed to every citizen including Bishay in the within matter, would be consistent with that use. *Id.* at 380 (citation omitted)

Mandamus is particularly appropriate here because directing the District Court to judicially review the federal agency's action or inaction is not left for the District Court's discretion; but is mandated under the federal authorities cited above.

Therefore, the "novelty of the District Court's" ruling "combined with its potentially broad and destabilizing effects," underscores that granting such a writ is "'appropriate under the circumstances.'" *See In re Kellogg Brown & Root*, 756 F.3d at 763 (quoting *Cheney*, 542 U.S. at 381)

CONCLUSION

For the foregoing reasons, the Court should issue a writ of mandamus directing the District Court to review the agency's failure to investigate and, once the agency is satisfied with the veracity of the evidence Bishay delivered to it, to prosecute the seven (7) federal crimes chronicled in Bishay's complaint. Alternatively, the Court should construe this petition as either (1) a petition for a writ of certiorari seeking review of the Court of Appeals' September 17, 2019 decision (A-11) or (2) a petition for a common-law writ of certiorari seeking review of the District Court decision dismissing the complaint, *sua sponte*, (id. at A-1-6), and grant certiorari on the questions presented.

Respectfully submitted,

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