

19-396

No. 19-

In the Supreme Court of the United States

CHARLES SIMON,

Petitioner,

v.

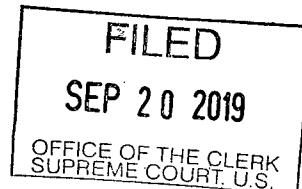
UNITED STATES DEPARTMENT OF JUSTICE;
T. SPEIGHTS, Coordinator of Federal Prisons Industries Inc.,
28 C.F.R. Part 301; FEDERAL PRISON INDUSTRIES, INC.;
STEVE SHWALB, Retired Chief Operating Officer of Federal
Industries, Inc., Policy, 18 U.S.C. § 4126, 28 C.F.R. Part 301,

Respondents.

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

PETITION FOR WRIT OF CERTIORARI

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BOSTON, MASSACHUSETTS

QUESTIONS PRESENTED

1. Whether the Three Judge Panel's ruling invites judicial review for Petition for Writ of Certiorari where the ruling conflicts with the Supreme Courts' decisions and United States Circuit Courts rulings hence the lower court admit the well pleaded facts of unlawful termination without cause but denies its legal sufficiency disregard judicial review of the merits of the Administrative Agency's decision is restricted to arbitrary and capricious standard under Section 10 of the Administrative Procedure Act 5 U.S.C. § 701, *et seq.*
2. Whether the preliminary injunction should issue enjoining Retired Chief Operating Officer of Federal Prison discriminatory practice under 18 U.S.C. § 4126 attending 28 C.F.R. Part 301 and enjoin disparate impact pursuant Inmate Accident Compensation Procedure under 18 U.S.C. § 4126 delineated in 28 C.F.R. § 301.314 *et seq.*, where Department of Justice concede intentional waiver to oppose Appellant's Appeal Brief upon Three Judge Panel failure to enter finding of fact and conclusion of law in denying Appeal hence the Three Judge Panel abused its discretion chill Appellant's First Amendment speech right to the Petition for rehearing *En Banc* circumventing Title VII of Civil Rights Act of 1964 remedy for issuance of mandatory Preliminary Injunction.

PARTIES TO THE PROCEEDING

Petitioner

- CHARLES SIMON

Respondents

- UNITED STATES DEPARTMENT OF JUSTICE
- T. SPEIGHTS, Coordinator of Federal Prisons Industries, 28 C.F.R. Part 301
- FEDERAL PRISON INDUSTRIES, INC.
- STEVE SHWALB, Retired Chief Operating Officer of Federal Industries, Inc., Policy 18 U.S.C. § 4126, 28 C.F.R. Part 301

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OPINIONS BELOW

The Opinion and Judgment of the United States Court of Appeals for the First Circuit dated June 26, 2019 is included below at App.1a. The Memorandum Opinion of the District Court of Massachusetts and the final order of that court, dated November 19, 2019 are included below at App.4a, 13a. These opinions and orders are not designated for publication.



JURISDICTION

A timely filed rehearing en banc petition was denied on November 19, 2019. The Three Judge Panel Order denied this petition for rehearing en banc. (App.14a) The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).



STATEMENT OF THE CASE

A. Preliminary Overview of Procedural Background

As a preliminary matter, Petitioner respectfully move the Supreme Court take judicial notice that Federal Prison Industries Inc., is owned by Congress; 18 U.S.A.C. § 4126 authorizes a Federal Prison Industries, Inc., a federal corporation, to award compensation to inmates for injuries suffered in any industry or in any work activity in connection with the maintenance or operation where confined moreover,

Congress authorize the Attorney General almost complete discretion to promulgate regulations under 28 C.F.R. §§ 301.101 through 301.319. These regulation govern unless they are arbitrary and capricious. *See Nicastro v. Reno*, 29 F.3d 682, (D.C. Cir. 1994). Thus the Three Judge Panel admit the well pleaded facts of unlawful termination without cause but denies its legal sufficiency, *Hospital Building Co. v. Trustees of Rex Hospital*, 425 U.S. 738, 749 (1976), the Appeals Court disregard judicial review of the merits of the Administrative Agency's decision is restricted to arbitrary and capricious standard under Section 10 of the Administrative Procedure Act 5 U.S.C. § 701, *et seq.*, Petitioner received last check 3/23/2018; Count II, disparate treatment imposed by Retired Chief Operating Officer of Federal Prison Industries, Inc., policy 18 U.S.C. § 4126 attending 28 C.F.R. Part 301, and Count III disparate impact pursuant the unconstitutional vague Inmate Accident Compensation Procedure 18 U.S.C. § 4126 delineated in 28 C.F.R. § 301.314 *et seq.*, IACP enacted by Congress. Judicial Notice that The Retired Chief Operating Officer of Federal Prison Industries, Inc., fraud policy under 18 U.S.C. § 4126 attending 28 C.F.R. Part 301 stands in mark contrast to Inmate Accident Compensation Procedure 18 U.S.C. § 4126 delineated in 28 C.F.R. § 301.314 *et seq.*, thus. The C.O.O.'s policy Freezes all entitlement under the IACP into discriminatory patterns that exist before the Act; Central to this factual conclusion.

The vague and imprecise ruling tantamount to rubber stamping; the mischief of the adverse ruling so constitute, the judicial proceedings woefully inadequate in properly developing the facts upon which

the Appeal Court's decision must rest . . . Since 18 U.S.C. § 4126 provides exclusive remedy for collection of benefits by claimant; The Three Judge Panel failed to present any rational justification for such a-drastic curtailment of the rights of a disability claimant, the substance of which states as follows: First, the June 26, 2019 Order conflicts with the Supreme Court's ruling in *United States v. Demko*, 385 U.S. 149 (1966), and the holding of the Second Circuit in *Granade v. United States*, 356 F.2d 837 (2nd Cir. 1966); Secondly, the Appeals Court's Order reflect a fundamental misapprehension of the issues expressly raised in the Verified Complaint, and the fact that there is no legitimate procedural escape hatch for Defendants to avoid providing Title VII of the Civil Rights Act 42 U.S.C. § 2000e broad remedial remedy; Accordingly,. Title VII of Civil Rights Act of 1964 42 U.S.C. § 2000e does not look to see who is litigating the case, thus lack performance upon Pro Se litigation; instead, Title VII of Civil Rights Act of 1964 42 U.S.C. § 2000e bars all overt acts of disparate treatment and policies and practice that are fair in form and intent but nonetheless discriminatory in practice. *Briggs v. Duke Power Co.*, 410 U.S. 431 (1971); *McDonnell Douglas Corp., v. Green*, 411 U.S. 792 (1973). This Case makes no exception. It appears the Three Judge Panel's ruling invites judicial review pursuant the Petition for Writ of Certiorari; This factual assertion rest upon the unconstitutional procedural departure pursuant the Three Judge Panel failure to undertake a constitutional scrutiny of administrative agency discriminatory practice under challenge; Instead, the Three Judge Panel show favoritism, adopted the Government's Attorney frivolous Local Rule 27 Motion to stay Briefing

Schedule, thereby the Appeals Court afforded Defendants unbridled license to countermand the prudential policy on which the Rules 27(B)(i); (B)(iii) rest. The Assistant United States Attorney constitutionally defective Local Rule 27 Motion, its failure to include Affidavit and a copy of District Court's Opinion and the administrative agency's decision under challenge, a prerequisite when filing said Local Rule 37 Motion. And in affect, the ruling chill Appellant's First Amendment speech rights to Appeal review. *Grayned v. City of Rockford*, 408 U.S. 104, 108-109 (1972). More critical still, the June 26, 2019 rulings overlooked The Circuit's also recognize that judicial review of merits of the administrative Agency decision itself should be restricted to the "arbitrary and capricious" standard prescribed by the APA. Furthermore, the Tenth Circuit's decision in *Bird v. Seamans*, 507 F.2d 765 (1974), whereas the Court held the Administrative Procedure Act to be jurisdictional, indicates the validity of preliminary jurisdictional finding. *Ryan v. Shea*, 525 F.2d 268 (10th Cir. 1975). *Thompson v. United States, Federal Prison Industries*, 293 F.2d 1082 (5th Cir. 1974). *Durham v. Federal Prison Industries*, 492 F.2d 1082 (5th Cir. 1974). The Three Judge Panel failure to recognize Appellant's Preliminary Injunction, thus the Court failed to enter finding of fact and conclusion of law under Administrative Procedure Act in denying this Case at bar; accordingly meaningful review is well-nigh impossible. Quoting *Sampson v. Murray*, 415 U.S. 61 (1970). This procedural facts evidence the Government's concession, intentional waiver by the United States Department of Justice in its failure to oppose Appellant's Appeal brief.

B. OVERT ACTS OF DISCRIMINATORY PRACTICE EVIDENCE VIOLATION OF TITLE VII OF THE CIVIL ACT OF 1946 42 U.S.C. § 2000E AND DISCUSSION OF THE LOWER COURT'S CONSTITUTIONALLY DEFECTIVE VOID JUDGMENT.

Please take Judicial Notice that from the outset of this constitutional challenge of 18 U.S.C. sec 4126 attending 28 C.F.R. Part 301, and 18 U.S.C. § 4126 delineated in 28 C.F.R. § 301.314 *et seq.* (IACP); the Lower Court always adopted the Chief Operating Officer's discriminatory practice under 28 C.F.R. Part 301. *See Simon v United States Dept. of Justice*, No 94-11212 (D. Mass.) aff'd 89 F.3d 823 (1st. Cir 1996).

Specifically, Page 2 of the District Court's Order falls prey victimized by the *void for vagueness* doctrine, the District Court ruling is replete with independent determinations of the facts in regulatory scheme under 28 C.F.R. § 301.314 *et seq.*, (IACP) the constitutional defective ruling states: "The statutory text of the IACP and the implementing regulations does not contain any minimum requirements or guidelines for determining the amount of such compensation." This assertion is patently false and contrary to § 301.314(c) of the IACP expressly states: "All awards of Inmate Accident Compensation shall be based upon the minimum wage (as prescribed by the Fair Labor Standards Act)." Judicial Notice the Lower Courts vigorously avoid judicial review of the retired C.O.O., 28 C.F.R. § 301.313. of Federal Prison Industries, Inc. discriminatory fraud policy under 18 U.S.C. § 4126 attending 28 C.F.R. Part 301.

The thrust of this case evidence the merits encompass the facts are inextricable entwine With the

U.S. Const. Amend. I and V, Equal Protection Clause, grounded in the Inmate Accident Compensation Procedure 18 U.S.C. § 4126 delineated in 28 C.F.R. § 301.314 *et seq.*; As such, Petitioner's right the Petition for Writ of Certiorari for issuance of mandatory Injunction enjoining the Retired Chief Operating Officer of Federal Prison Industries, Inc, discriminatory fraud policy under 18 U.S.C. § 4126 attending 28 C.F.R. Part 301, and enjoin disparate impact the Inmate Accident Compensation Procedure 18 U.S.C. § 4126 delineated in 28 C.F.R. § 301.314 *et seq.* this right of entitlement is clear and undisputable. Petitioner appealed from the district court's void judgment pursuant denial of Motion under Fed. R. Civ. P. 60(b)(4). The ruling was inconsistent with due process of law. Citation omitted. Count 1 of Petitioner's evidence reveal unlawful termination of compensation benefit without notice or cause for unconstitutional termination the Three Judge Panel admit the well pleaded facts of unlawful termination without cause but denies its legal sufficiency, *Hospital Building Co. v. Trustees of Rex Hospital, supra*. The Appeals Court disregard judicial review of the merits of the Administrative Agency's decision is restricted to arbitrary and capricious standard under Section 10 of the Administrative Procedure Act 5 U.S.C. § 701, *et seq.*

The Supreme Court explicating the nature of Protected property interest in *Board of Regents of State Colleges v. Roth*, 408 U.S. 546 (1972), Petitioner have a legitimate claim of entitlement to it. A reliance that must not be arbitrarily undermine. It is a purpose of the constitutional right to a hearing to provide an opportunity for person to vindicate those claims. *Goldberg v. Kelly*, 397 U.S. 254, (1970). The

Appeals adopted the District Court's opinion on Count 1, illegal termination ruling that lack jurisdiction or improper venue; the Lower Courts disregarded The Circuit's also recognize that judicial review of merits of the administrative Agency decision itself should be restricted to the "arbitrary and capricious" standard prescribed by the APA. Furthermore, the Tenth Circuit's decision in *Bird v. Seamans*, 507 F.2d 765 (1974), whereas the Court held the Administrative Procedure Act to be jurisdictional, indicates the validity of preliminary jurisdictional finding. *Ryan v. Shea*, 525 F.2d 268 (10th Cir. 1975). *Thompson v. United States, Federal Prison Industries*, 293 F.2d 1082 (5th Cir. 1974). *Durham v. Federal Prison Industries*, 492 F.2d 1082 (5th Cir. 1974). Furthermore, the Low Courts fell prey, victimize by the void for vagueness doctrine; vagueness of disparate impact under 28 C.F.R. § 301. 314 *et seq.*, of the Inmate Accident Compensation Procedure. *Village of Hoffman Estates v. Flipside*, 455 U.S. 489, 495 (1982). *Parker v. Levy*, 417 U.S. 733, 756 (1974). When the Government's conduct is covered by a regulation, the 78 year old Pro Se disabled compensation recipient has standing to attack the regulations vagueness. *Village of Hoffman Estates v. Flipside, supra*. Moreover, the thrust of Pro Se litigant's blatant evidence that the Government concede rest upon the wisdom of the Supreme Court explication defined the void for vague doctrine which forbid or requires the doing of an act in terms so vague that persons of common intelligence must necessary guess at its meaning and differ as to its application, vagueness violates the first essential of due process of law. *Roberts v. United States Jaycees*, 468 U.S. 609, 629 (1984). Furthermore, the standard

for evaluating vagueness were enunciated in *Grayned v. City of Rockford*, 408 U.S. 104, 108-109 (1972).

Petitioner turns to Count II disparate treatment imposed by Retired Chief Operating Officer of Federal Prison Industries, Inc., discriminatory fraud policy under 18 U.S.C. § 4126 attending 28 C.F.R. Part 301.

C. Disparate Treatment

The retired C.O.O. 28 C.F.R. § 301.313 of Federal Prison Industries, Inc. applies different terms and condition of imposing substandard compensation; thus frustrate the express will of Congress and effectively freeze[s] the entire compensation benefits into discriminatory patterns that exist before the Act. The retired C.O.O. policy attending 28 C.F.R. Part 301 stands in mark contrast to the elaborate regulatory scheme of the Inmate Accident Compensation Procedure delineated in 28 C.F.R. § 301.314 *et seq.*, enacted by Congress. Judicial Notice: The retired C.O.O. policy attending 28 C.F.R. Part 301. reduces the minimum wage Fair Standard Labor Act 29 U.S.C. § 201-219 *et seq.*, under § 301.314(c) to 66 2/3% using Federal Employees Compensation Act § 8106(a) to make its first reduction; thus using vague language under IACP § 301.314(b) and 5 U.S.C. § 8107 to further reduce minimum wage to \$125.67 monthly compensation. The retired C.O.O. 28 C.F.R. § 301.313 policy attending 28 C.F.R. Part 301 precludes coverage under the Federal Employees' Compensation Act; thus precludes any medical treatment under § 301.315(a) and § 301.317.

D. Disparate Impact Claim

The Inmate Accident Compensation Procedure that govern compensation is found under Establishing the amount of awards 28 C.F.R. § 301.314, § 301.314(b) is unconstitutionally vague; the language under Subpart (b) ambiguously states in part “In determining the amount of compensation to be paid, the permanency and severity of injury in terms of functional impairment shall be considered. The provision of the Federal Employees’ Compensation shall be followed when (FEDA) (5 U.S.C. § 8101 *et seq.*) shall be followed when practicable.” The vague language failed to mention the United States shall pay the injured 66 2/3% lost time wages, wage earning capacity under the Federal Employees’ Compensation Act 5 U.S.C. § 8106(a) (FEDA). Quoting *United States v. Demko*, *supra*. Moreover, judicial notice, the mandatory, the mandatory language SHALL under § 301.314(c) precludes recipients from coverage under Federal Employees’ Compensation Act 5 U.S.C. § 8106(a) (FEDA; 28 C.F.R. Part 301(c) confines recipients to minimum wage Fair Standards Labor Act. Notice all awards of Inmate Accident Compensation Shall be based upon the minimum wage (as prescribe by Fair Labor Standards Act).



REASONS FOR GRANTING THE PETITION

Pro Se Appellant depends on its jurisdictional nexus for judicial review of its Petition for Certiorari From the July 31, 2019 decision denial of rehearing *en banc* by the Three Judge Panel; moreover, Rule

(10)(a) invites judicial review by Supreme Court virtue of the lower courts' 'decision conflict with the Supreme Courts' decision; and U.S. Circuits' opinions; however, several other novel compelling reasons exist outside of Rule 10(a) lie squarely in the ambit for issuing the Petition for Writ Certiorari. More telling salient and compelling infringement of U.S. Const. Amend. I where the Three Judge Panel usurp is authority denied the Petition for rehearing *En Banc* circumventing Title VII of Civil Rights Act of 1964 remedy for issuance of mandatory Preliminary injunction; accordingly, the Procedural posture upon the facts of this case create a preemptory obligation on the Supreme Court to do a duty owed to the Pro Se Petitioner; that duty is clearly defined by: Fed. R. Civ. P. 65, Title VII Civil Rights Act of 1964 42 U.S.C. § 2000e, under Section 10 of the Administrative Procedure Act 5 U.S.C. § 701, *et seq.*, and Declaratory judgment 28 U.S.C. § 2201, ruling that the Retired Chief Operating Officer of Federal Prison Industries, Inc., policy 18 U.S.C. § 4126 attending 28 C.F.R. Part 301, and the Inmate Accident Compensation Procedure enacted by CONGRESS under 18 U.S.C. § 4126 delineated in 28 C.F.R. § 301.314 *et seq.*, is not legally valid under the two controlling cases cited herein, *Granade v. United States*, 356 F.2d 837 (2nd Cir. 1966); *United States v. Demko*, 385 U.S. 149 (1966), and in discord with congressional intent and the delegation of authority conferred by 18 U.S.C. § 4126. Moreover, the lower court admit the well pleaded facts of unlawful termination without cause but denies its legal sufficiency disregard judicial review of the merits of the Administrative Agency's decision is restricted to arbi-

trary and capricious standard under Section 10 of the Administrative Procedure Act 5 U.S.C. § 701, *et seq.*;

In commencing its assessment of whether and to what extent due pro se applies for the Supreme Court accepting invocation of this Petition for Certiorari by Pro Se litigant; Respectfully, the Supreme Court should be duly mindful of the Supreme Court's explication in *Morrissey v. Brewer*, 408 U.S. 471, 481, (1972), wherein it observed: "Whether any procedural protection are due depends on the extent to which an individual will be condemned to suffer a grievous loss. *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U.S. 123, 168 (1975). Quoted in *Goldberg v. Kelly*, 397 U.S. 254, 263 (1970). The question is not merely the weight of the individuals interest, but whether the nature of interest in one within the completion of the liberty property language of the Fifth and Fourteenth Amendment." *Fuentes v. Shevin*, 407 U.S. 67 (1972); Necessary then, upon the well pleaded facts, Pro Se Petitioner possesses a property interest of sufficient magnitude to invoke the protection of the Fifth Amendment's due Process clause *Goldberg v. Kelly, supra*.

Moreover, the thrust of Pro Se litigant's claim evidence the Government concession rest upon the wisdom of the Supreme Court explication defined the void for vague doctrine which forbid or requires the doing of an act in terms so vague that persons of common intelligence must necessary guess at its meaning and differ as to its application, violates the first essential of due process of law. *Roberts v. United States Jaycees*, 468 U.S. 609, 629 (1984). Furthermore, the standard for evaluating vagueness were enunciated

in *Grayned v. City of Rockford*, 408 U.S. 104, 108-109 (1972). Vague laws that may trap the innocent by not providing fair warning. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide standards for those who apply them; A vague law impermissibly delegates basic policy matters to policeman, judges and juries for resolution on an ad hoc and subjective basis, and discriminatory application. The most important factor affecting clarity that Constitution requires is whether it inhibits the exercise of free speech or other protected constitutionally protected rights. For all the factual and legal reasons explicated herein, the Petition for Certiorari should be granted for issuing a mandatory Injunction enjoining the Retired Chief Operating Officer of Federal Prison Industries, Inc, discriminatory fraud policy under 18 U.S.C. § 4126 attending 28 C.F.R. Part 301, and enjoin disparate impact the Inmate Accident Compensation Procedure 18 U.S.C. § 4126 delineated in 28 C.F.R. § 301.314 *et seq.*;

RELIEF REQUESTED

Issue the:

1. Mandatory Preliminary Injunction forthwith enjoining disparate treatment under 18 U.S.C. § 4126 attending 28 C.F.R. Part 301 and enjoin disparate impact under 18 U.S.C. § 4126 delineated in 28 C.F.R. § 301.314 *et seq.*;
2. Thus granting the 78 year old disabled litigant Title VII Civil Rights Act of 1964 42 U.S.C. § 2000e broad remedial nonpunitive remedy of 305 months of lost time wage under the Federal Employees' Compensation Act; total compensatory liability \$31 million.

3. Issue declaratory judgment 28 U.S.C. § 2201, ruling that the Retired Chief Operating Officer of Federal Prison Industries, Inc., policy 18 U.S.C. § 4126 attending 28 C.F.R. Part 301, and the Inmate Accident Compensation Procedure enacted by CONGRESS under 18 U.S.C. § 4126 delineated in 28 C.F.R. § 301.314 *et seq.*, is not legally valid under the two controlling cases cited herein, *Granade v. United States*, 356 F.2d 837 (2nd Cir. 1966); *United States v. Demko*, 385 U.S. 149 (1966), and in discord with congressional intent and the delegation of authority conferred by 18 U.S.C. § 4126;
4. Thus Re-determine Inmate Accident Compensation Procedure benefits in accordance with the two controlling cases cited herein and Congressional intent.
5. Rewrite the Inmate Accident Compensation Procedure under establishing the amount of awards 28 C.F.R. § 301.314 making it crystal clear; All awards shall be based on the Federal Employees' Compensation Act 5 U.S.C. § 8106(a).
6. Make medical treatment mandatory under 28 C.F.R. § 301.315(a) and § 301.317 under the language 28 C.F.R. Part 301 shall.
7. Grant Petitioner monthly compensation of \$16,496 wage earning capacity under the Federal Employees' Compensation Act 5 U.S.C. § 8106(a), to be paid the first day of each month.
8. Direct deposit al of recipient's monthly check.
9. As the prevailing party after Twenty five years of litigating this Title VII of the Civil Rights Act of 1964 unconstitutional claims, a burden never imposed upon pro se litigation, award Pro Se Petitioner \$1.00

nominal damage fee 42 U.S.C. § 1988; Grant any other relief the Court may deem proper and just.



CONCLUSION

For the reasons and authorities set forth above, petition respectfully request that the Petition for Certiorari be granted.

Respectfully submitted,

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SEPTEMBER 20, 2019