

19-6224
No. _____

Supreme Court, U.S.
FILED

SEP 11 2019

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

Philong Huynh

(Your Name)

— PETITIONER

vs.

Postmaster General

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Court of Appeal for the District of Columbia

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Philong Huynh

(Your Name)

P.O. Box 409090

(Address)

Ione, CA 95640

(City, State, Zip Code)

N/A

(Phone Number)

ORIGINAL

QUESTION(S) PRESENTED

If government oversight function, including the power of investigation, is a way of carrying laws into effect (1 Am J 2d Adm L § 81), then is that power or duty to investigate as set out by congressional statutes subject to the discretionary function exception?

LIST OF PARTIES

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

☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

Block v. Neal, 460 U.S. 289, 296-98

5

Gulfstream Aerospace Corp. v.

Mayacamas Corp. 485 U.S. 271, 289
(1988)

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United States v. Gaubert, 499 U.S. 315

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STATUTES AND RULES

39 USC 403

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39 USC 404

4

OTHER

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

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

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

The opinion of the United States district court appears at Appendix C to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was June 27, 2019.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: August 12, 2019, and a copy of the order denying rehearing appears at Appendix B.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

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

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- 28 USC 1339 (postal matters)
- 39 USC 403 & 404 - duties to investigate postal matters including non-delivery of mail.
- Due Process Right under the 14th Amendment of the U.S. Constitution.

STATEMENT OF THE CASE

I, petitioner, am a state prisoner on federal habeas in the Southern District of California. That court had to twice order a supplemental answer due to non-delivery of mail. The petition to the lower court also documented several other instances of non-delivery of legal mail. See Appendix D.

I wrote the U.S. Postal Inspector in Washington, D.C., requesting under 39 USC 403 and 404 for the agency to investigate the cause of non-delivery of mail as spelled out in the above statutes. The agency did not respond. I filed a petition for writ of mandate. Eventually the district court in D.C. held that postal duty to investigate has not been shown to be mandatory. The D.C. Court of Appeal affirmed citing Gulfstream Aerospace Corp. v. Mayacamas Corp., 485 U.S. 271, 289 (1988) (clear and indisputable right to relief) indicating that the government agency did not have a clear duty to act.

REASONS FOR GRANTING THE PETITION

U.S. Postal does have a clear congressional mandate under 39 USC 403 and 404 to carry out the laws and investigate non-delivery of mail. This Court has held that government oversight function (Block v. Neal, 460 U.S. 289, 296-298) and statutory mandate (United States v. Gaubert, 499 U.S. 315) are not subject to the discretionary function exception.

A writ of mandate should have thus been issued to U.S. Postal to carry out its statutory function under the law, because missing or undelivered legal mail delay and deny access to court and counsel in violation of Due process as extended by the 14th Amendment of the U.S. Constitution.

For indigent prisoners like myself, the mail is the only way of having access to court, and if the government refuses to carry out the laws there is no meaningful access to court.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Phu Long Huynh (PHILONG HUYNH)

Date: September 3rd, 2019.