

No.:

19-6484

IN THE
UNITED STATES SUPREME COURT

1 First Street, N. E.
Washington, DC 20543

LAWRENCE T. TYLER

Petitioner / Plaintiff / Appellant

v.

UNITED STATES FEDERAL BUREAU OF PRISONS

Respondent / Defendant / Appellee

ORIGINAL

Supreme Court, U.S.
FILED

OCT 24 2019

OFFICE OF THE CLERK

On Petition For Writ Of Certiorari To The
United States Court Of Appeals For The District-Of-Columbia Circuit
And The District-Of-Columbia District Court

**PETITION FOR WRIT OF CERTIORARI
OF THE DENIAL OF MY PRIVACY-ACT, FREEDOM-OF-INFORMATION-ACT,
AND ADMINISTRATIVE-PROCEDURE-ACT LAWSUIT, AGAINST
THE UNITED STATES FEDERAL-BUREAU-OF-PRISONS AND
THE GEO GROUP INC..**

LAWRENCE T. TYLER,
Pro Se
A # 029 692 445 / BOP # 73142-279
Folkston ICE Processing Center
3026 Hwy. 252 East
Post Office Box # 248
Folkston, GA 31357

THIS CASE IS ENTITLED TO PREFERENCE

QUESTIONS PRESENTED FOR REVIEW

I argued in the DC District Court and Court-Of-Appeals that the prison's Staff did not take the required reasonable steps, to verify the challenged inaccurate and/or incomplete information (Total Loss Amount and My Citizenship) used to make an adverse determination against me, in accordance with the Privacy-Act, Administrative-Procedures-Act, and its own policy statement, as I requested.

In light of the lower Courts' decision in this matter, which conflicts with other Circuits holding, and the relevant decision of this United States Supreme Court, the questions I now present are as follow :

- 1, Whether the challenged records used to make an adverse determination against me are indeed **inaccurate and/or incomplete as a matter of** this U.S. Supreme Court's case **law, statute and record.**
- 2, Whether the prison's Staff took the required reasonable steps to **verify** the accuracy and/or completeness of the challenged records, used to make an adverse determination against me, in accordance with the relevant decisions of this U.S. Supreme Court, other Circuit Courts, the Privacy Act (PA), and its own policy statement.
- 3, Whether regulation that exempts the Bureau Of Prisons (BOP) from the provision of the Privacy Act (PA) regarding amendment of inaccurate records, is tantamount to an exemption of of the BOP from the provision creating the duty to accurately maintain records used in making adverse determinations against me, as required by the relevant decisions of other Circuit, and this U.S. Supreme Court.
- 4, Whether the District Court can sit as trier of fact, of disputed declaration/Affidavits when there are genuine disputed issues of dispositive material fact and a jury demand in this case.
- 5, Whether THE GEO GROUP, INC., (GEO) is to be treated as an **Agency** for purpose of the Privacy Act (PA) because of its substantial independence, in the carrying out of its administrative duties.
- 6, Whether my claims of human-trafficking, slave-labor, and discrimination based my on national origin, against THE GEO GROUP INC., are still cognizable under a different legal approach.

PARTIES TO PROCEEDING:

All parties **do not** appear in the case caption of 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 :

Petitioner/Plaintiff/Appellant

Lawrence T. Tyler

represented by **Lawrence T. Tyler**

Pro Se

A # 029 692 445 / BOP # 73142-279

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V.

Respondent/Defendant/Appellee

United States Federal Bureau Of Prisons

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V.

Respondent/Defendant/Appellee

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TABLE OF CONTENTS

	<u>Page #</u>
QUESTIONS PRESENTED.....	i
PARTIES TO PROCEEDINGS.....	ii
TABLE OF CONTENTS.....	iii
INDEX OF APPENDICES.....	iv to v
TABLE OF AUTHORITIES CITED.....	vi to vii
<u>Cases</u>	iv to vii
<u>Statutes</u>	viii
<u>Rules</u>	viii
PRAYER.....	1
OPINIONS BELOW.....	1
JURISDICTION.....	1
BASIS OF FEDERAL JURISDICTION IN THE U.S.DC-CIRCUIT-COURT-OF-APPEALS.....	1
BASIS OF FEDERAL JURISDICTION IN THE UNITED STATES DC DISTRICT COURT.....	2
CONSTITUTIONAL AND STATUTORY AUTHORITIES INVOLVED.....	3
<u>Constitutional Authorities Involved</u>	3
<u>Statutes Involved</u>	3
<u>Rules Involved</u>	3
<u>Other</u>	3
STATEMENT OF THE CASE.....	4
REQUEST FOR LIBERAL CONSIDERATION.....	5
REASON FOR GRANTING THE WRIT.....	6 TO 27
CONCLUSION.....	27

INDEX TO APPENDICES

APPENDIX A: FINAL ORDER of The Court-Of-Appeals for the District-Of-Columbia-Circuit.

denying my timely PETITION-FOR-REHEARING EN BANC

Filed on **August 12, 2019**.

APPENDIX B: Mandate of the United-States-Court-of-Appeals For The District-Of-Columbia-Circuit,

Filed on May 23, 2019.

APPENDIX C: JUDGMENT ORDER unpublished disposition of the Court-Of-Appeals for the

District-Of-Columbia-Circuit, Filed March 28, 2019.

APPENDIX D: Final Judgment of the United-States-District-Court for the District-Of-Columbia.

APPENDIX E: My Motion To Reinstate the time to file my petition for Rehearing en banc because I

was never served the court order.

APPENDIX F: Order granting Motion To Reinstate the time to file my petition-f-rehearing en banc.

APPENDIX G: The United States Supreme Court Case Of Southern Union Company v. United-States.

APPENDIX H: Jury Demand Request.

APPENDIX I : FBI Fingerprinting Records.

APPENDIX J: Citizenship Interview Documentation.

APPENDIX K: Records of Civic Test.

APPENDIX L: Record of attachment to the U. S. Constitution/Swearing-in.

APPENDIX M: N400 Application for Naturalization.

APPENDIX N: NCIC/NLETS RECORD OF MY U.S. CITIZENSHIP.

APPENDIX O: CRIMINAL JUDGMENT SHEET (TOTAL LOSS AMOUNT).

APPENDIX P: FEDERAL-BUREAU-OF-PRISONS' POLICY STATEMENT # 5800.17 11 c

APPENDIX Q: Petitioner's Request for Verification of the Inaccurate and/or incomplete information

APPENDIX R: FEDERAL-BUREAU-OF-PRISONS' REJECTION AND RESPONSE TO
RESPNDENT'S REQUEST FOR VERIFICATION OF THE INACCURATE
AND/OR INCOMPLETE INFORMATION.

APPENDIX S: Declaration Of Lawrence T. Tyler and Declaration Of Rodolfo Martinez.

APPENDIX T: DISPUTED FACTUAL ISSUES.

APPENDIX U: UNITED STATES DEPARTMENT OF JUSTICE'S response to Petitioner's FOIA/PA
request for records of Respondents' alleged verification (of the Inaccurate and/or
incomplete information).

APPENDIX V: Petitioner's FOIA request to Respondents for alleged verification records.

APPENDIX W: Declaration Of Wendi Sorrell (Respondent's Staff Declaration)

TABLE OF AUTHORITIES CITED

<u>Cases</u>	<u>Page #</u>
Alleyne v. United States, 133 s. Ct. 2151, 186L. Ed. 2D 314 (2013).....	8,9
Apprendi v. New Jersey.....	8,9
Barton v. U.S.....	11
Boag v. Macdougall 454 U.S. 265 (1982).....	5
Charles Henry Castello v. United States.....	23
CREW.....	22
Deters, 85 F. 3d at 658, 658 n.2.....	18
Dong v. Smithsonian, 125 F. 3d 877 (D.C. Cir. 1997).....	20,21
Douge v. Trustees of Nat. Galery of Art 326 F. Supp. 2D 1, 12 (D.D.C. 2004).....	20
Flacco v. State Farm Mut. Auto Insurance Co. 752 A 2d 147, 155 (D.C. App. 2000).....	22
Haines v. Kerner 404 U.S.....	5,24,26
ICE 555 US at 170, 129 S. Ct. 711, 172 Led 2d 517.....	9
Johnson v. United States, 554 U.S. 295 (2005).....	12
Labadie Coal v. Black 217 U.S. App. D.C. 239. 672 F. 2d 92, 96 (D.C. Cir 1982).....	22
Meyer, 981 F. 2d at 1292 n.1.....	21
Moore v. Agency For int'l Dev. 301 U.S. App D.C. 327, 994 F. 2d 874, 877-78 (D.C. Cir. 1993).....	24
Phillips v. hawk, No. 98-5513, 1999 U.S. App. LEXIS 11039, 19999 wt 325487 (D.C. Cir.).....	18
Price v. Johnson 334 U.S. 266, 292, 98 Ct 1063 92 L Ed 1356 (1948).....	24
Schuvler Stanton v. United States.....	12
Sellers v. Bureau Of Prisons.....	18
Soucie v. David 488 F. 2d 1067, 1073, 145 U.S. App. D.C. 144 (D.C. Cir. 1971).....	21
Southern-Union-Company v. United States.....	8,9,10
Sun II Yoo v. INS 534 F. 2d 1325.....	8

TABLE OF AUTHORITIES CITED

<u>Cases</u>	<u>Page #</u>
United States v. Collins, 774 F 3d 256, 265-66.....	9
United States v. Dale 178 F. 3d 429 (6 th Cir. 1999).....	10
United States v. Jordan 915 F. 2d 622.....	24
United States v. Maturin 488 F. 3d 657, 660-61 (5 th cir. 2007).....	11
 <u>Statutes</u>	
5 U.S.C. Section 551(1)(A)-(H).....	20
5 U.S.C. Section 552(f)(1).....	20
5 U.S.C. Section 552a(d).....	2,3,6,18
5 U.S.C. Section 552a(e)(5).....	2,3,6,14,18
5 U.S.C. Section 552a(g).....	2,3,14,18,21
5 U.S.C. Section 706(1).....	2
8 C.F.R. Section 335.3(a).....	3,7
Immigration and Nationality Act (INA).....	3,11
INA Section 237(a)(2)(iii).....	3,11
INA Section 101 (a)(43)(M).....	3
INA Section 101 (a)(43)(U).....	3
18 U.S.C. Section 111.....	22
18 U.S.C. Section 1114.....	22
18 U.S.C. Section 1254(1).....	1
28 U.S.C. Section 1291.....	1
28 U.S.C. Section 3742.....	1
Administrative Procedure Act (APA).....	2,3,4,20,21,22,23
Freedom-Of-Information-Act (FOIA).....	2,3,4,14,18,20,23,26
Privacy-Act (PA).....	2,3,4,14,18,20,23,26
Trafficking-Victim-Protection-Act.....	3,6,24,25

TABLE OF AUTHORITIES CITED

Cases

Page #

Unjust Enrichment Laws.....	3,6,24,25
-----------------------------	-----------

TABLE OF AUTHORITIES CITED

Rules

United States Supreme Court Rule 13.1.....	1
Fed. Crim. P. Rule 36.....	3,11
Fed. Crim. P. Rule 43.....	3,11

TABLE OF AUTHORITIES CITED

Other

United States Federal Bureau Of Prisons' Policy Statement # 5800.17.....	3,4,6,14,15
United States Federal Bureau Of Prisons' 1976 Regulation.....	3,6,18

PRAYER

The petitioner, Lawrence T. Tyler, (Hereinafter “Tyler”) respectfully prays that a Writ Of Certiorari be granted to review the judgment and opinion of the United States Court of Appeals For The District-Of-Columbia Circuit issued on August 12, 2019 And The DC District Court.

OPINIONS BELOW

The Opinion of the United States Court Of Appeals appears at Appendix A, B, and C to the petition and is unpublished. The Opinion of the United States District Court appears at Appendix D to the petition.

JURISDICTION

The date on which the United States Court of Appeals decided my case was August 12, 2019 (See Appendix A). A timely petition for rehearing was denied by the United States DC Circuit Court Of Appeals on the following date: August 12, 2019, and a copy of the order denying rehearing appears at Appendix A.

This petition is filed within ninety days after entry of the judgment. See Sup. Ct. R. 13.1. Jurisdiction of this Court is invoked under Title 28, United States Code, Section 1254(1). This Petition is timely submitted from the final Judgment Document filed August 12, 2019, in The United States Court Of Appeals For The District Of Columbia at Washington DC.

BASIS OF FEDERAL JURISDICTION IN THE APPELLATE COURT

The District Court had jurisdiction of this case pursuant to 18 U.S.C. Section 3231 because Petitioner was charged with an offense against the laws of the United States. The Court Of Appeals had Jurisdiction over the appeal pursuant to 28 U.S.C. Section 1291 and 18 U.S.C. Section 3742, which gave the Court Of Appeals jurisdiction over all final decisions and sanctions of The District Court Of The United States.

BASIS OF FEDERAL JURISDICTION IN THE UNITED STATES DC DISTRICT COURT

This case was brought originally as a civil law suit under the (FOIA), The Privacy-Act (PA), and the (APA). The DC District Court therefore had original Jurisdiction pursuant to U.S. Government Defendant Jurisdiction, FOIA, PA, APA and diversity of Citizenship. The Petitioner subsequently file an Appeal in the DC Circuit Court Of Appeals, which was denied. The Freedom-Of-Information-Act (FOIA) vest Jurisdiction in Federal District Courts to enjoin an agency from maintaining incomplete and inaccurate records used in making an adverse determination. The Privacy-Act of 1974 vest jurisdiction in Federal District Court to enjoin Federal Agencies to maintain records use in making determinations with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination about the individual. 5 U.S.C. Section 552a(e) (5). Section 552a(d) allows individual access to agency records about themselves and to request the amendment of records they believe to be inaccurate, irrelevant, untimely, or incomplete. Section 552a(g)(1)(A) and (C) authorize civil actions to enforce the amendment and accuracy requirements in addition, section 552a(g)(4) provides for monetary damages, cost and attorneys' fees where the agency is shown to have acted intentionally or willfully. An agency may be liable for actual damages sustained by the individual as a result of the refusal or failure to maintain accurate records and consequently a determination is made³ which is adverse to the individual 5 U.S.C. Section 552a(g)(1)(C) and (g)(4) (A). Thus the District Court had subject matter Jurisdiction of this under the FOIA, APA and PA. In Addition, because the claim arises by virtue of the Act, it arises under the laws of the United States, and the District Court had subject matter Jurisdiction pursuant to 28 U.S.C. Section 1331. Venue was proper in the District-Of-Columbia by statutory prescription as a permissible venue of FOIA and PA suits. The District Court may entertain challenges to unreasonably delayed agency action on the basis of 28 U.S.C. Section 1331 jurisdiction and 5 U.S.C. Section 706(1) of the Administrative-Procedure-Act (APA). The District Court had federal question jurisdiction over claims which requires the interpretation of federal statues but which are not pursued as causes of action under the statute.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitutional Authorities involved

Six Amendment of the United States Constitution

Thirteenth Amendment to the United States Constitution

Federal Statutes Involved

5 U.S.C. Section 552a(e)5

5 U.S.C. Section 552a(g)(1)(C)

5 U.S.C. Section 552a(d)

8 C.F.R. Section 335.3(a)

The Administrative Procedure Act (APA)

The Freedom Of Information Act (FOIA)

The Privacy Act (PA)

Trafficking Victims Protection Act

The unjust enrichment laws

The Immigration And Nationality Act (INA)

* INA Section 237(a)(2)(iii)

* INA Section 101(a)(43)(M)

* INA Section 101(a)(43)(U)

Rules Involved

Rule 36 Of Fed. Crim. P.

R. 43 Fed. Crim. P.

Other

Bureau Of Prisons (BOP) Policy Statement # 5800.17

Bureau Of Prison (BOP) 1976 Regulation

STATEMENT OF THE CASE

On May 5, 2017, my Initial Pleading was filed under the Freedom Of Information Act (FOIA), The Privacy Act (PA), and the Administrative Procedure Act (APA), in the U.S. District For Court District Of Columbia (Washington DC) Civil Docket # 1:17-cv-01107-EGS. The issue I raised was Respondents deliberately and intentionally failed to verify inaccurate and/or incomplete information in my records, based upon which Respondents made adverse determinations against me, *inter alia*. In said pleading I sought financial damages due to respondents' **willful and intentional failure to verify** the inaccurate and/or incomplete information that I challenged, and requested that the Respondents verify, in accordance with the relevant statutes and Respondents Policy Statement # 5800.17. I sought financial damages because the Respondent willfully and intentionally failed to verify said information in accordance with the relevant statutes and Respondent's own policy statement, as I requested. Additionally, Respondents then used said information to make adverse determinations against me, carrying adverse collateral consequences. To put it in a nutshell, the Respondents' basic position is that they are not subject to the Privacy Act, nor responsible to accurately maintain records used to make adverse determination against me. Respondents hold this erroneous position, Even though Respondents willfully and intentionally failed to verify said records as mandated by the relevant statutes and its own policy statement. **I disagree.**

REQUEST FOR LIBERAL CONSIDERATION

I have no legal experience nor legal training, and lack the sophistication and knowledge of learned Counsel. Thus, I humbly asks that this Honorable Court liberally construe my request, motions, and Petition, in accordance with the Supreme Court's statement in Haines v. Kerner, 404 U.S. 91972), which holds that a Pro se litigant's filings should be held to a less stringent standard than formal papers submitted by attorneys. I ask for liberal consideration despite failure to cite proper legal authority, confusion of legal authority, confusion of legal theories, poor syntax and sentence construction. See Boag v. Macdougall, 454 U.S. 265 (1982). I am **incarcerated/detained** for the past several years at the following institution/facility D. Ray James Correctional Facility/Folkston ICE Processing Center which is located at 3026 Hwy. 252 East, Folkston, Georgia 31537 and I am proceeding in forma pauperis.

REASONS FOR GRANTING THE WRIT

The Writ should be granted because the challenged records are inaccurate; hence I am a naturalized United States Citizen and the **Actual Total Loss** is \$0.00, as a matter-of-law and record. This is based on established legal precedence of several Circuits and the relevant decision of this United States Supreme Court (as well as the plain and unambiguous reading of the relevant statutes). Certiorari should be granted because after I challenged said inaccurate and/or incomplete information (used to make an adverse determination against me), the Prison's Staff did not take reasonable steps to verify the challenged records, as required under Sub Sections (e)(5) and (g)(1)(C) of the Act, and its own policy statement # 5800.17, thus making Respondents liable for monetary damages. Certiorari should be granted because while BOP's 1976 regulation exempted prison records from the Privacy Act Section 552a(d), the provision regarding amendment of inaccurate records, that regulation did **not** exempt BOP records from Section 552a(e)((5), the provision creating the duty to accurately maintain records **"used... in making any determination."** Certiorari should be granted to preserve the Jury's historic role as a boardwalk between the state and the accused so that the district court may not sit as trier of fact, of disputed declaration, when there are genuine issues of dispositive material fact, and **a Jury Demand**. Certiorari should be granted to send a very strong message to GEO and the Prison Industrial Complex that stratagem will not shield Respondents from the Trafficking-Victims-Protection-Act, and The Unjust Enrichment Laws, when Respondents engages in **unconstitutional acts**, such as human-trafficking, human-slavery, human-right-abuse and systematic oppression, regardless of what ploy they employ.

THE RECORDS I CHALLENGED ARE INDEED INACCURATE AND/OR INCOMPLETE

I am a United States Citizenship as a matter-of-law and Record

I am a naturalized United States Citizen as a **matter-of-law** and **matter-of-record**. I was granted political asylum. After the required number of years I adjusted my status to a permanent resident of the United States status. After the required number of years **I then meet all of the requirements and completed all of the processes for naturalization as a United States Citizen**. I completed all of the following:

- 1, I completed and submitted my United States Naturalization Application several years ago.
(Fee Date 10/19/2000) See Appendix M ;
- 2, I paid all the required fees several years ago ;
- 3, I completed/passed the fingerprinting and criminal background check several years ago
See Appendix I ;
- 4, I completed the the United States Citizenship interview several years ago See Appendix J ;
- 5, I completed and passed the United States Citizenship Civic test several years ago on
December 17, 2012, See Appendix K ;
- 6, I have established attachment to the United States Constitution/sworn-in as required under
8 U.S.C. Section 1448 (a) , See Appendix L ;
- 7, I have established physical presence/residence several years ago, 12/17/2012, See Appendix J ;
- 8, I have met section 312 requirements at initial interview, See Appendix I ;

I never requested that my N400 Naturalization Application be “Administratively closed”. The Immigration and Naturalization Service's (INS) regulation provide that an INS officer **shall** grant the application for naturalization if the applicant has complied with all the requirements for naturalization. A decision to grant or deny the application must be made **within 120 days** after the date of the initial examination of the applicant 8 C.F.R. Section 335.3 (a). It has been over a 120 days. **For reasons mentioned supra, as far as I am concern, I am already a naturalized United States Citizen.**

Also See Appendix N, (NCIC/NLETS record of my U.S. Citizenship). Because the USCIS did not rule on my N400/Naturalization Application within the (120) one hundred twenty days prescribed statutory timeframe, my N400/Naturalization Application is deem granted by the Operation Of Law, due to the effluxion of time. The USCIS inaction does not change the current states of the law. "Once an alien has gathered and supplied all relevant information and has fulfilled all requirements, [as I did] INS officials are under a duty to accord to [me] within a reasonable time the status to which [I am] entitled by law.". See Sun II Yoo v. INS, 534 F. 2d 1325 (9th Cir. 1976). USCIS's duty to approve applications for Citizenship is ministerial rather than discretionary.

The Total Legal Actual Loss Amount in my case is \$0.00 as a matter-of-law and Record.

The BOP was compelled to argue in its reply Document # 1765332 (Page # 2 of 8 footnote 2) regarding my Texas habeas petition as follow :

"Given that the 'Total Loss'amount was prefaced on a requirement that did not apply to Tyler, the \$0.00 is not indicative of the amount of loss, which was established at sentencing, and from which Tyler's advisory sentence was calculated under the Guidelines."

At this juncture I feel that it is necessary to neutralize the Houston Magistrate Judge's argument because said argument is now adopted by the BOP, in its reply Document # 1765332. Therefore, the door is now open for me to discuss this issue which has been a great source of misinterpretation and misunderstanding. Any fact other than the fact of a prior conviction, that carries pecuniary sentencing consequences **for which there is no prescribed prescribed pecuniary sentencing range**, (or carries collateral consequences such as deportation) is a fact that must be found beyond a reasonable doubt.

The Letter-Of-Special-Verdict-Law analysis of Apprendi/Alleyne requires proof beyond a reasonable doubt of facts that increases the statutory **minimum and maximum** prescribed sentencing range. This Court's precedent case law of Southern Union Company v. United States **still apply in this instant case**. (See Appendix G). The Apprendi / Alleyne case do not apply to guidelines calculations that falls within the statutory range. The statutory range is indeed specific for the
(Page # 8 of 27)

imprisonment and supervised release. Nevertheless, **the statute does not specify a statutory range for a pecuniary Criminal Sentence such as Restitution Award**; except that it **must** be based on The Actual Legal Loss Amount tied to the counts of conviction. Therefore, **the Actual Loss Amount becomes the statutory maximum for pecuniary Criminal Sentence and must be found beyond a reasonable doubt** (for purposes of Apprendi/Alleyne). In United States v. Collins, 774 F 3d 256, 265-66 (5th Cir. 2014), the Fifth-Circuit made it clear that the type of complaints I raise apply only when a defendant's sentence is increased above the statutory maximum. However, the convicted statutes do not provide a statutory range for the pecuniary criminal sentence (Restitution-Award); except that **it must be based on the Actual Loss Amount, thus making the Loss Amount the statutory maximum**. (for Apprendi/Alleyne purposes). To increase the Loss Amount by a preponderance of the evidence in a Jury Trial, is tantamount to the District Court increasing the maximum pecuniary sentencing range. The legal precedent is clearly established when **“Southern Union Company contended that based on the Jury's verdict and the District Court's instructions to the Jury, the only violation the Jury necessarily found was for one day.”**. See Southern Union Company v. United States 567 U.S.--, 132 S Ct.--, 183L Ed 2d 323 U.S. LEXIS 4662 [No 11-94]. I likewise contend that based on the Jury's verdict, and the District Court's instructions to the Jury, and the \$0.00 Total Loss¹ Amount clearly stated on the criminal judgment sheet, the Total Loss Amount the Jury necessarily found was for **\$0.00. The Letter-Of-The-Law “reserves to the Jury the determination of facts that warrant punishment for specific statutory offense.”**. ICE 555 U.S. , at 170, 129 S. Ct. 711, 172 Led 2d 517. This include pecuniary criminal sentence and collateral civil consequences such as deportation². “Where a Jury's verdict is ambiguous, a sentence imposed for a conviction on a count charging violation of multiple statutes or provision of statutes may not exceed the lowest of the potentially applicable maximum”. The provision in this instant case is the loss amount. If it's a

(Page # 9 of 27)

¹ The greater of Actual or Intended Loss Amount.

² The Plain and Unambiguous languish of the statute mandate removal for convicted facts only.

provision/fact that warrant punishment that's not prescribed by the statute of conviction, (as is the case in this instant case) then determination of said facts is reserved to the Jury. Judicial fact-finding in absentia, after trial and sentencing, by a preponderance of the evidence which carries collateral consequences such as deportation, and increase the pecuniary criminal sentence for which there is no prescribed statutory range, 1, impedes the six amendment's Jury-Trial Guarantees; 2, conflicts with Rule 36 of the Federal Criminal Procedure; 3, conflicts with the Six Circuit's decision; and 4, Conflicts with this U. S. Supreme Court's relevant Decision.

The Spirit-Of-Special-Verdict-Law in the Southern-Union-Company case demand that each day of violation carries pecuniary punishment. In the instant case every dollar of Actual Loss Amount carries pecuniary punishment not prescribed by the statute of conviction and collateral civil consequence of deportation if greater than \$10,000³. In the Southern Union Case the pecuniary punishment is restricted by the number of days of violation. In my case the pecuniary sentence is indeed restricted by the Actual Loss Amount. The Spirit-Of-The-Law that the Southern Union Company case embodies is that, **“[...]if the government seeks punishment reflecting culpability [... for more than one day or (in my case greater than \$0.00 Actual Loss Amount)] then it, the government MUST also seek a special verdict.** See also United States v. Dale 178 F.3d 429 (6th Cir. 1999). Because The Fifth-Circuit's decision in this matter conflicts with the 6th Circuit's decision in Dale and also conflicts with this Court's Relevant Decision in Southern Union Company V. United States Certiorari should be granted. The Actual Loss Amount tied to the counts of conviction is \$0.00 See Appendix O. It is well settled that Restitution Award can only encompass the actual Loss that's resulted from the offense for which I was convicted. Statements inserted in the Magistrate Judge's (R&R) such as “[...] restitution in

(Page # 10 of 27)

³ Section 237 (a) (2) (iii) of the Immigration and Nationality Act (Act), as amended, in that, at any time after admission, you have been convicted of an aggravated felony as defined in section 101 (a) (43) (M) of the Act, a law relating to an offense that (I) involve fraud or deceit in which the loss to the victim or victims exceeds \$10,000; or you have been convicted of an aggravated felony as defined in section 101 (a) (43) (U) of the Act, a law relating to an attempt or conspiracy to commit an offense described in section 101 (a) (43) (M) of the Act.

the amount of \$1,238,823.85, which represented the amount actually paid by medicare and medicaid [...]” are not binding upon me and does not control the oral sentence because it was not established at trial nor at sentencing, nor admitted by me. Rule 36 of the Fed. Crim P. allows the court to fix the written Judgment to conform with the oral Judgment at any time. But **the Court cannot change the oral judgment nor change the Actual Loss Amount after Trial nor after Sentencing** in absentia to legitimize an otherwise erroneous restitution award. . Rule 43 Fed R. Crim P., holds that, I, Tyler, **must** be present at every stage of the trial and sentencing proceeding and my oral sentence must be consistent with my written judgment See Barton v. United States. In this instant case there is no Actual LossAmount proven beyond a reasonable doubt, nor admitted by me, that the District Court can use to legitimize ordering any criminal pecuniary sentence (restitution award). “The District Court can award restitution to the victim of the offense, but the restitution-award can encompass only **actual** loss that resulted from the offense for which the defendant was convicted.”. United States v. Maturin 488 F. 3d 657, 660-61 (5th Cir. 2007). Given that the 'Total Loss' amount was prefaced on a requirement that did not apply to my sentence, does not invalidate the \$0.00 Total Loss Amount See Appendix O. First of all, the Guidelines do not call for restitution award based on **intended** loss. Secondly, the Total Loss Amount is clearly stated on the Criminal Judgment Sheet as \$0.00 Total Loss. Thirdly, because the the Actual loss amount increases the pecuniary sentence (for which there is no prescribed statutory range), **if any amount greater than the \$0.00 is to be used, then it must be found beyond a reasonable doubt.** Lastly, let's examine the actual letter of the Preface in a asterisk (*) which states : “ Finding for the total losses are required under Chapter 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.”. The literal interpretation of the prefaced comment **does not** invalidate the \$0.00 Total Loss Amount. It merely state that the Loss Amount **does not have to be found.** Just because the Loss Amount does not have to be found , does not change, nor invalidate the fact that it was found to be

\$0.00 See Appendix O. The question of whether the Loss Amount finding is required is therefore irrelevant, because the answer to said question does not change the fact that the Total Loss amount was indeed determined to be \$0.00, as a matter of this court's Southern-Union-Company case law the record. See Appendix O. The Asterisk comment only mandate that Total Amount of Losses are required for the listed chapters and time. It does not invalidate the fact that the Loss Amount was found to be \$0.00 Total Loss. All adverse determination based on a misunderstanding of what the Legal Total Loss Amount is **must** be vacated. **The situation is analogous to an adverse determination imposed based on the “fact” of a prior conviction that is now vacated. (As-A-Matter-Of-Law).** See Johnson v. United States, 544 U.S. 295 (2005). Also See Schuyler Stanton v. United States 2017 U.S. Dist. Lexis 47603.

Let's be crystal clear. Once a material fact has been proven to be inaccurate and/or incomplete, then it is within my rights to challenge any adverse determination made against me that is premised on said inaccurate and or incomplete information. This is regardless of the means by which said material fact has been proven to be inaccurate and/or incomplete. This is regardless of whether said material fact was proved to be inaccurate and/or incomplete by way of **this U.S. Supreme Court's case law, statutes, or the records.** The fact that other sovereign such as the Fifth-Circuit and The Houston District Court has made adverse determinations against me, premised on said inaccurate and/or incomplete material fact (which is under review by this Court.), does not relinquish my rights to resist, challenge, and seek damages for suffering caused by said adverse determinations made against me by the Respondents, premised on said inaccurate and/or incomplete records. This predicated on the fact that Respondents willfully and intentionally failed to take the required reasonable steps to verify the challenged inaccurate and/or incomplete information used by Respondents in making adverse determination against me. Contrary to what the Respondents purports, this is not an collateral attack on my on any sentence imposed by the Houston District Court, premised on said inaccurate information.

The situation is analogous to the Judiciary increasing the statutory maximum sanction and then ordering a sanction above the original legal statutory maximum sanction that's mandated by the violated statute. This violates the separation of powers. It is an encroachment on congressional powers. It is the prerogative of congress to make laws/statutes, and to set the statutory maximum sanctions for the violation of said statutes. The power to set statutory maximum sanction for a violated statute does not belong to the Immigration Judge, nor any other judiciary. This power certainly does not belong to the Respondents.

THE PRISON'S STAFF DID NOT TAKE THE REQUIRED REASONABLE STEPS TO VERIFY THE ACCURACY AND/OR COMPLETENESS OF THE CHALLENGED RECORDS, (USED TO MAKE AN ADVERSE DETERMINATION AGAINST ME), IN ACCORDANCE WITH ITS OWN POLICY STATEMENT # 5800.17 AND THE PRIVACY-ACT (PA).

As long as the information contained in an agency's files, that I challenged as inaccurate and/or incomplete is capable of being verified, , then under Sub Sections (e)(5) and (g)(1)(C) of the Act, the agency **must** take reasonable steps to maintain the accuracy of the information to assure fairness to me. Because the Prison's Staff willfully and intentionally failed to maintain its records in that way, **(after I have challenged said records and requested verification)** and as a direct result, it made adverse determinations against me, then it is liable to me for the monetary damages I seek. This is the predicate for the monetary award I seek. The records of the case including my uncontested exhibits are self evident that the BOP's failure to verify said inaccurate and/or incomplete records was willful deliberate, and intentional. A unilateral internal review of the very same inaccurate and/or incomplete records allegedly carried out by one of BOP's Staff/ Wendi Sorrell, does not constitute the requisite verification mandated under the Privacy Act and the BOP's policy statement # 5800.17. The BOP could no produce any documentation of the require verification to the probation office nor the USCIS agency as required by the privacy act and its own policy statement # 5800.17. No such records was ever produce in

response to my FOIA request for said records. **The U.S. BOP's Policy Statement 5800.17 11 c states:**
"Inmate Challenge to Information. An inmate may challenge the accuracy of Central File Material. Unit Staff takes reasonable steps to ensure the accuracy of challenged information, particularly when that information is capable of being **verified**. The inmate is required to provide staff with sufficient information in support of a challenge (name of persons to contact, government agency, etc.). When an inmate provide such information, staff review the alleged error(s) and take reasonable steps to ensure the information is correct. For example, if an inmate challenges information in the PSR, staff instruct the inmate to prepare a written challenge, which staff then forward to the appropriate U.S. Probation Officer (USPO). USPO procedures, however, do not allow changes or addendum to be made to the Presentence Investigation Report after sentencing since it is a court document. If the USPO subsequently reports that the challenged information, or some part thereof, is not accurate, staff attach the inmate's inquiry and the USPO response to the challenged document. Staff file this information in the applicable section of the Inmate Central File, and also make a notation on the inmate Activity Record (BP-A0337), the Custody Classification form (BP-A0338), Progress Report, and any other reports, data, it should be immediately inserted in the file or data base and the inaccurate information or document removed. Annotation on the Inmate Activity Record form should acknowledge the insertion of the corrected information or document."

(See Appendix. P)

In accordance with the U. S. Federal Bureau Of Prisons' (BOP) policy statement # 5800.17 11.c, I made a request to Unit Staff member R. Hulings indicating a particular need to review his prison records kept and maintained by THE GEO GROUP INC., at D. Ray James Correctional Facility. My request was acknowledge by Case Manager R. Hulings. I was permitted to review the files. The Inmate Activity Record (BP-A0381) or THE GEO GROUP INC., equivalent should show the dates I review the files. Case Manager R. Hulings was the monitoring staff member who monitored my review of the records. The files consisted of only papers hard copies. **The files were maintained at the D. Ray James Correctional Facility/THE GEO GROUP INC., by THE GEO GROUP INC..** After reviewing the files, I challenged the inaccurate and/or incomplete information in said files, used by the Respondents in making adverse determinations against me. **See Appendix Q.** I provided the staff with sufficient information in support of my challenge, in accordance with BOP's policy statement 5800.17 11 c. **See Appendix P.** I provided the Unit Staff with official records that was given to me by the USCIS in response to my FOIA request (reflecting my US Citizenship). See Appendix N. I also provided the Prison Unit Staff with the names of the government agency to contact to verify my United States Citizenship, so that the document and information can be authenticated. **See Appendix Q.** The address to the United-States-Citizenship-and-Immigration-Service, National-Records-Center, was also provided to the Unit Staff **See Appendix Q.** No reasonable steps was taken to contact the USCIS / National-Records-Center to verify the information, nor authenticate the document (**See Appendix R**). I also presented my criminal monetary penalties judgment sheet which shows my Total Loss Amount to be \$0.00. See Appendix O. I requested that the Respondents verify the Total Loss Amount. The Respondents again took no reasonable steps to verify said information. **See Appendix Q and R.** I also provided the contact information to the United States Probation Office in Houston Texas to the Respondents. I submitted my written challenge to the Prisons' Unit Staffs. **See Appendix Q.** The Prisons' Unit Staffs never took any reasonable steps to forward my written

challenge to the Houston, U.S. Probation Office as stated and exemplified in BOP's policy statement #5800.17 11 c. Though Respondents purport that verification of the inaccurate and/or incomplete information was made, the **evidence suggest otherwise**. When I requested verification THE UNITED-STATES-FEDERAL-BUREAU-OF-PRISONS central office rejected my request and responded to me saying, **"YOUR ISSUE IS NOT APPEALABLE TO THE BOP"** See Appendix R.

THE FREEDOM OF INFORMATION ACT (FOIA)

Regarding my claim under the FOIA, the Bureau Of Prisons (BOP) can not "have it cake and eat it too". It is quite clear from the records or lack thereof that Respondents did not verify the challenged information with the U.S. Probation Office, nor the "USCIS" as purported. Respondents once again tried to muddy up the waters by referencing a "letter from the U.S. Department Of Justice" (See Appendix U) that is of no relevance within the context it is raised. The context in which I included said letter is to establish the fact that after requesting all records within the possession of the Respondent under the my FOIA/PA request of Respondents alleged verification/or attempt at verification, no such record was ever produced. This vitiates all claims by the Respondents that any verification or attempt at verification of the challenged information was ever conducted. (See Appendix V). If in fact verification was indeed made, (with the U.S. Probation Office and The USCIS) as alleged by the respondents, then respondents are in fact in violation of the FOIA for it failure to produce any documentation of said verification in its response to my FOIA request for said documentation. On the other hand, if no verification was made (as indicated by the records) then the Respondents are in fact in subject to damages under the Privacy Act for its deliberate and intentional failure to verify the challenged information. Like I said the BOP "cannot have its cake and eat it too.". In this instant case, the records and my exhibits clearly demonstrates that the BOP **willfully and intentionally failed to verify the challenged information which is the predicate for my requested monetary award**.

ADVERSE DETERMINATIONS AND COLLATERAL CONSEQUENCES MADE

My lawsuit is an attack on the adverse determinations **made by the respondents** against me, and its collateral consequences that I suffered (that's premised on inaccurate and/or incomplete information). This is not to be construed as a collateral attack on my sentence that was imposed by the Houston District Court, as purported by the Respondents. I seek pecuniary damages for the collateral consequences suffered by myself, due to said adverse determinations made by the Respondents in their failing to take the required reasonable steps to verify the challenged inaccurate and/or incomplete information. The collateral consequences I suffered include but is not limited to the following :

- 1, Double Incarceration (in the form of ICE Detention pending adjudication of the inaccurate information);
- 2, Disqualification for release program to help me reintegrate back into society (with more time spend incarcerated). This is not the same treatment that similarly situated federal inmates that are designated as U.S. Citizens receives.
- 3, Racial Discrimination in the form of segregation based on national origin;
- 4, Slave-labor, forced to work under threat;
- 5, Emotional abuse by endangering my physical safety (By housing me with gang Members even though my security classification is Low/Camp.) **See Appendix X**
- 6, About a year confine in solitary confinement;
- 7, Price gouging at there private institution, where the vulnerable minority population are designated;
The Private Prison GEO does not follow this rule even though BOP's policy clearly state no more than 30% price mark up at the prison store and no tax on any items sold at the prison store.
(Example a typical 0.99 cent jar of benut butter is sole for \$4.00). This is nothing short of usury.
This is not the same treatment that similarly situated federal inmates at facilities that housed U.S. Citizenship receive. What ever happen to equal treatment under the law. **See Appendix Y**

THE REGULATION THAT EXEMPTS THE BUREAU OF PRISONS (BOP) FROM THE PROVISION OF THE PRIVACY ACT REGARDING AMENDMENT OF INACCURATE RECORDS, DOES NOT EXEMPT THE (BOP) FROM THE PROVISION CREATING THE DUTY TO ACCURATELY MAINTAIN RECORDS USED IN MAKING ADVERSE DETERMINATIONS AGAINST ME.

The Respondents argues that the "Inmate Central Records System, which contains the records That Tyler challenged as inaccurate, is exempt from the Privacy Act's **amendment, accuracy, and damages provision.**". Contrary to what the BOP purport, the BOP's 1976 regulation exempted prison records from Privacy Act Section 552a(d), the provision regarding **amendment** of the inaccurate record, but that regulation did not exempt BOP records from Section 552a(e)(5), the provision creating the duty to accurately maintain records "used... in making any determination.". See Deters, 85 F.3d at 658 n.2; Phillips v. Hawk, No. 98-5513, 1999 U.S. App. LEXIS 11039, 1999 Wt 325487, at *1 (D.C. Cir. Apr. 14, 1999). And as explained in Sellers v. Bureau Of Prisons, the damages provision of Privacy Act Section 552a(g) provides a remedy for violations of Section 552a (e)(5). 959 F. 2d 307, 310, 294 U.S. App. D.C. 361 (D.C. Cir. 1992); See Deters, 85 F.3d at 657. Even though the BOP Inmate Central Records System is exempt from the Privacy Act's accuracy provision, Respondents are still subject to pay me damages under the Privacy Act because of the Prison Staff's willful and intentional failure to verify the challenged inaccurate and/or incomplete records, in accordance with the Privacy Act and its own policy statement. Section 552a(g)(4) provide for monetary damages, cost and attorneys' fees where the agency is shown to have acted intentionally and willfully. An agency may be liable for actual damages sustained by the individual as a result of the refusal or failure to maintain accurate records and consequently a determination is made which is adverse to the individual Section 552a(g)(1) (C) and (g)(4)(a).

**THE DISTRICT COURT CANNOT SIT AS TRIER OF FACT,
OF DISPUTED DECLARATIONS/AFFIDAVITS WHEN THERE ARE
GENUINE DISPUTED ISSUES OF DISPOSITIVE MATERIAL FACT AND A JURY DEMAND**

The DC District Court did unlawfully sit as a trier of fact in resolving contested dispositive factual issues in conflicting Declarations in this instant case. See "Declaration Of Lawrence T. Tyler", Document # 35, Filed on 01/30/17, in the DC District Court and "Declaration of Rodolfo Martinez". **(See Appendix S)** Also See "Declaration Of Wendi Sorrell" and "Declaration of Philip Childs". The DC District Court did in fact sit as trier of fact of these two conflicting declarations and other evidence presented in Appendix N, provided by me by the USCIS, in response to my FOIA request. The District Court did sit as trier of fact in these and other matters that I previously argued in the lower court, though I made a Jury Demand in this case. See Appendix H. Notwithstanding my Jury Demand, the District Court still sat as trier of disputed factual issues in this instant case. **(See Appendix T)** The Respondent argued that "the District Court never open a period of discovery."; but this did not stop the Respondent from filing discovery document such as the "Declaration Of Wendi Sorrell" and "Declaration Of Philip Childs". **(See Appendix W)** Additionally, it certainly did not stop the District Court from accepting and docketing said discovery while sentimentiously rejecting and failing to docket my conflicting discovery such as "Declaration of Rodolfo Martinez" and "Declaration of Lawrence T. Tyler". **(See Appendix S)** I was not even notify by the Court that my discoveries were not even docketed. I had to discover that all on my own. **This reflects great judicial bias.** Notwithstanding this fact, the District Court acted as trier of fact on the conflicting discovery declaration documents mentioned supra, therefore this judgment must be vacated. It is well established in the D.C. Circuit that Courts may not resolve genuine disputes of fact in favor of the party seeking summary judgment and the evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in his favor. Courts must avoid making credibility determinations or weighing the evidence, since credibility determinations , the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions.

THE GEO GROUP INC., SHOULD BE TREATED AS AN AGENCY
FOR PURPOSE OF THE PRIVACY-ACT (PA)
BECAUSE OF ITS SUBSTANTIAL INDEPENDENT AUTHORITY

The Lower Court agrees with THE GEO GROUP INC., (GEO) argument that “[a]n entity may be intertwined with the Federal Government without being an authority of the Government of the United States.” *Douge v. Trustees of Nat. Gallery of Art.* 326 F. Supp. 2D 1, 12 (D.D.C. 2004)(internal quotation Mark Omitted)(citing *Dong v. Smithsonian*, 125 F. 3d 877 (D.C. Cir. 1997)). The District Court dismissed my case against GEO, by agreeing with GEO's argument that GEO is “a private corporation” and **not an Agency**, and is not controlled by the Government, and is therefore not subject to the Privacy Act. In short, it is the lower court's decision that I do not have a privacy act claim against GEO, because GEO is not an “Agency”. **I disagree.** Section 552(f) defines “Agency” by noting that “Agency” also “includes any executive department, military department, Government Corporation, Government Controlled Corporation, or other establishment in the executive branch of the Government (including the executive office of the President) or any independent regulatory agency.”. Section 552(f)(1). Under the above definition of “Agency”, GEO would **not** be subject to the Privacy Act, as argued by the GEO's Counsel. Nevertheless, GEO IS STILL SUBJECT TO THE Privacy-Act for the following reason:

The Privacy Act **also** incorporates the definition of “Agency” found in both the Freedom-Of Information-Act (FOIA) **and** The-Administrative-Procedure-Act (APA). **The APA is also one of the Cause-Of-Action of this lawsuit.** The APA defines “Agency” to mean “each authority of the Government of the United States”, with certain exceptions that are not applicable in this case. See Section 551(1)(A)-(H). The APA definition further specifies that a U.S. Government authority, such as GEO is a agency regardless of “whether or not it is within or subject to review by another agency.” Section 551(1). The Privacy-Act thus incorporates the definition of “agency” found in both the FOIA and the APA. Therefore, GEO still falls within the “Agency” definition, and is subject to the Privacy

Act. This is further established when the DC Circuit established the “**substantial independent authority**” test. The DC Circuit established the “substantial independent authority” test in *Soucie*, a case that was brought under FOIA, but at a time when the definition of “Agency” for purposes mirrored the APA definition. In that case, the DC Circuit held that “**the APA apparently confers agency status on any administrative unit with 'substantial independent authority.'**” *Soucie v. David*, 488 F.2d 1067, 1073, 145 U.S. App. D.C. 144 (D.C. Cir. 1971)(emphasis added); *Meyer*, 981 F.2d at 1292 n.1 ([b]efore the 1974 Amendments, FOIA simply had adopted the APA's definition of “agency”); see also *Dong v. Smithsonian Institute*, 125 F.3d 877, 881, 326 U.S. App. D.C. 350 (D.C. Cir. 1997). The Privacy Act defines “agency” by reference to 5 U.S.C. Section 552(e); the definition given in the FOIA section 552a(a)(1). Since section 552a(a)(1) first incorporated section 552a(e) by reference, section 552(e) has been moved to section 552(f). See Freedom-Of-Information-Act of 1986, Pub. L. No. 99 – 570, tit. 1, Subtit. N; Section 1802 (b), 100 Stat. 3207 – 48, 3207 – 49.3, Section 552 (f) defines “agency” first by reference to 5 U.S.C. Section 551(1) (808 F. Supp. 2D 199), the definition given in the Administrative Procedure Act, (APA). **My lawsuit was brought under the FOIA, APA, and PA** cause-of-action. There is no better example of a entity with “substantial independent authority” in the exercise of its specific prison function than THE GEO GROUP INC... GEO is really a dummy and a sham for the BOP. GEO is intertwine with the BOP in its prison operation/functions that it is hard to tell where GEO ends, and where BOP begins. Although the District Court agreed with GEO's argument that “[a]n entity may be intertwined with the Federal Government without being an authority of the government of the U.S.”, in this instant case, GEO is functioning as an authority of the Bureau Of Prisons, in the carrying out of its prison functions (in every meaningful way that an agency would). GEO exerts substantial independent authority over federal inmates in its custody, in the exercise of its prison functions. All of the day to day security duties are handled by THE GEO GROUP INC.'s Guards and Staffs. GEO exercise absolute authority over federal inmates at its facilities and exacts

employees, are employees of the BOP, within the context of their willful and intentional violation of my rights and their failure to take the required reasonable steps to verify the challenged inaccurate and/or incomplete records used to make an adverse determination against me, in accordance with federal statutes and its own policy statements. GEO and its employees are liable for their actions and or lack thereof, in this matter, just as a federal employee and or a federal Agency would be liable for damages under the Privacy-Act, Administrative-Procedure-Act, and the Freedom-Of-Information-Act. An individual employed to assist with the security of Federal Prisoner is an employee of the BOP (even if that individual is **not directly employed by the BOP**), within the meaning of 18 U.S.C. Section 111 and 1114. See Charles Henry Castillo, v. United States, U.S. Court Of Appeals for the 11th Circuit, 2017. Therefore, said individual is also an employee of the United States Federal Bureau Of Prisons for purpose of violating a Federal Prisoner's rights. In this instant case, I am a federal prisoner whose rights has been violated. For reasons mentioned supra GEO is still liable for damages in this instant case.

**MY CLAIMS OF HUMAN-TRAFFICKING, SLAVE-LABOR, AND DISCRIMINATION
BASED ON MY NATIONAL ORIGIN, AGAINST THE GEO GROUP INC.,
ARE STILL COGNIZABLE UNDER A DIFFERENT LEGAL APPROACH.**

The District Court failed to construe my Pro Se constitutional pleading liberally, See Wintrop-Redin v. United States, 767 F.3d 1210m 1215 (11th Cir. 2014), and to “determine whether [my claims were] in effect, cognizable under a different remedial statutory framework,” United States v. Jordan, 915 F.2d 622. I am a Pro Se litigant that requested the District Court to look behind the level and determine whether my filing regarding constitutional violations are cognizable under a different legal approach. I made this request pursuant to Haines v. Kerner, 404 U.S. 519 (1972); Price v. Johnston 334 U.S. 266, 292, 98 S.Ct 1063, 92 L. Ed 1356 (1948) and or United States v. Jordan 915 F. 2d 622, 624-25 (1990). The District Court failed to alert me to the possibility of filing an amended complaint my Human-Trafficking, Slave-labor, and Discrimination Claims against GEO, if they were not cognizable under the Privacy-Act, Administrative-Procedures-Act or any of my cause-of-action. Cf Moore v. Agency for int'l Dev. 301 U.S. App. D.C. 327, 994 F. 2d 874, 877-78 (D.C. Cir. 1993)(reversing district Court's dismissal of Pro Se complaint where Plaintiff complained that district Court should have alerted him to defects in his complaint and allowed him to amend).

Assuming arguendo that the Civil remedies provided pursuant to the (PA),(APA) and (FOIA), does not apply to Respondents, those civil remedies provided pursuant to “FEDERAL ANTI TRAFFICKING LAWS” and “UNJUST ENRICHMENT LAWS” does apply to GEO and BOP (by virtue of the collateral consequences inflicted on me by the Respondents. I articulated those collateral consequences throughout my complaint to the Lower Court. The Lower Court should have looked behind the level of the current cause-of-action and determined that my other claims are still cognizable under a different legal approach, including the “FEDERAL ANTI TRAFFICKING LAWS” and “UNJUST ENRICHMENT LAWS”. I am entitled to damages for punitive, physical, and emotional injuries, due to Respondents forcing me to work under treat for several years.

I was forced to work for pennies a day under threat of solitary confinement and under threat of lost of "Good Conduct Time" by GEO, (a privately owned for profit corporation). See Declaration Of Lawrence T. Tyler, **Attached as Appendix S. Also See Declaration of Rodolfo Martinez, Attached as Appendix S Docket Entry # 37 Case # 1:17-cv-01107-EGS**). The Collateral Consequences in of itself is a violation of the trafficking Victims Protection Act, and the unjust enrichment laws, (not taking into consideration the current causes-of-action). **GEO is violating the law's prohibition on using threats to obtain labor.** It is forced labor for someone to say "we'll arrest you for not working for me" quoting David Seligman. **It is similarly forced labor to say "we're going to remove you from all contact with other people and take away your good conduct time if you don't work for me".** GEO's work program that pays pennies a day is not optional but rather mandatory. This also violates the common law against "unjust enrichment". In my case, the pennies a day that I was paid, was taken back by GEO for items such as the following:

- 1, Making Legal Copies, to mail to the Court.;
- 2, Postage to Mail Court Filings;
- 3, Stationary such as Paper, Pencil, and pen, to do legal work.

All of the above items should have been provided free at no charge for indigent inmate. But instead GEO paid me pennies, and then took back the pennies for the items they should have provided at no cost. Extensive use of Slave-labor, saved GEO money. Letting companies run detention center and prisons reduces accountability for potential abuses. Profit motive encourages excessive cost cutting, forced slave-labor under threat, and double imprisonment/detention. "There is, almost by definition, a focus on maximizing profit and shareholder value at any publicly held private business," say David Lopez who served as General Counsel of the Equal Employment Opportunity Commission under President Obama.

My constitutional complaint of segregation and designation based on citizenship, and or believed

citizenship, violates the equal treatment and protection that's guaranteed by the United States Constitution. The District Court failed to construe these constitutional pleading that I presented as a Pro Se litigant liberally, by looking behind the level and determining whether they were cognizable under a different legal approach; if not cognizable under my current cause-of-action. The District Court did not alert me of defect in my complaint to allow me the opportunity to amend the defect.

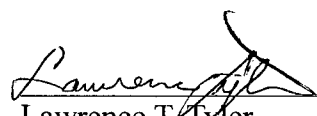
Respondents segregates and designates inmates (such as myself), based on U.S. Citizenship or believed U.S. Citizenship. My security classification is a low/camp, nevertheless I'm housed in the same facility and housing unit as active gang members (because of Respondents' erroneously designating me as a non-United-States-Citizen). **My life and personal safety is placed at a greater security risk, causing me tremendous stress and suffering during my incarceration and detention. (I'm not a gangster).** If not for this erroneous designation, I would or should have been designated to a camp/low security risk facility. This adverse determination classification is based on the inaccurate and/or incomplete citizenship records. I'm often threaten and bullied by the gangsters that I'm locked up with causing me great emotional stress. **I was forced to spent about a year in solitary confinement because of this very same threat.** This is cruel and unusual punishment. This very practice of segregation and designation of inmates based on citizenship, and **placing non U.S. Citizens in a more harsh environment violates the equal treatment and equal protection guarantees of the United States Constitution.** This practice is not any different than the practice of **Apartheid** within the Criminal Justice System (**Cloaked under the vial of public safety factor of an alien**). It's professed to be separate but equal facilities, **but in actuality it is separate and unequal.** This is all done in the interest of profit for the private prison. I bring this claim against the Respondents for their discrimination, segregation, and designation causing me great emotional/physical stress, and suffering. The Lower Court should have looked beyond the level of the Privacy-Act (PA)/(FOIA) and (APA) To determined that this claim is in fact cognizable under a different legal approach, pursuant to Haines v.

Kerner 404 U.S. 519 (1972). The District Court should have also alerted me of defect in my complaint and given me the opportunity to amend my complaint. See Also Moore v. Agency for int'l Dev. 301 U.S. App. D.C. 237, 994 F. 2d 874, 877-78 (DC Cir. 1993)(reversing District Court's dismissal of Pro Se complaint where Plaintiff complained that District Court should have alerted him to defect in his complaint and allow him to amend).

CONCLUSION

I pray that this petition for certiorari be granted, so that **corporate greed** that's cloaked under the vial of of public safety factor of an alien, using the shield of a corporation, **is not allow to trample over the basic human rights** that are guaranteed by the United States Constitution.

Respectfully Submitted,

 Date: October 24, 2019
Lawrence T. Tyler
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BOP#73142-279
"without prejudice" UCC1-308
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