19-8075

No. 20-_____

In the Supreme Court of the United States

S. PATRICK MENDEL, et al

Petitioner

v.

UBER TECHNOLOGIES INC., et al.

Respondents

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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I. QUESTIONS PRESENTED

Briefly, federal authority over **intrastate** transportation provides:

- ... no State ...shall enact or enforce any law, rule, regulation, standard, or other provision having the force and effect of law relating to intrastate rates, intrastate routes, or intrastate services **of any** freight forwarder or **broker. 49 U.S.C. §14501(b)**
- Mandates Pre-Arranged ground transportation providers have State passenger vehicle registration and State passenger authority **49 U.S.C. §14501(d)(1)(B)**
- ...no person can sell or arrange passenger transportation to private motor vehicles for compensation or as an occupation or business. **49 CFR §372.101** See Also: 49 CFR §350.201

California, joined by 40 other States', enacted Transportation Network Company laws which allow the permit holder, (Uber and Lyft) to sell and arrange passenger transportation to private motor vehicles contrary to federal law. This has led to an explosion of unsafe travel for the public resulting in more than: a dozen preventable murders, 57 deaths; and several hundreds of rapes and several thousands of assaults annually upon drivers and riders....as well as at least 10 driver suicides!

QUESTION 1.

Whether private contracts, with the aid of the States, designed to defeat federal transportation and antitrust laws should be enjoined by this Court by mandamus or other legal process to urgently and sua sponte grant relief to prevent the continuing massive violent carnage and labor strife across the United States?

QUESTION 2.

Whether California's Transportation Network Company "TNC" codes which grant authority to (the permit holder) to sell and arrange passenger transportation in private motor vehicles conflicts with federal laws which mandate:

(1) State passenger vehicle registration and state passenger authority for passenger ground transportation 49 U.S.C. §14501(d)(1)(B) and;

(2) prohibiting States from making ANY broker laws related to intrastate rates, intrastate routes **or intrastate services** 49 U.S.C. 14501(b) and;

(3) Preempting the States and Airports from taxing or charging fees on interstate passenger transportation under 49 U.S.C. §14505

... **and** should be found unconstitutional and preempted?

QUESTION 3.

Whether the lower courts erred by failing to provide a constitutionally sound judicial forum and to liberally construe the *pro se* complaints below, with the same consideration as instructed by this Court under ***Sause v. Bauer***, *585 U.S. __(2018)* and its descendants?

II. PARTIES TO THE PROCEEDINGS

Ninth Circuit Case No. 18-16610 [Dist. Court Case No. 18-02166-EMC]

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Ninth Circuit Case No. 19-17073 [Dist. Court Case No. 13-03826-EMC]

Petitioner: S. Patrick Mendel, (Movant-Objector below)

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Ninth Circuit Case No. 19-17380 [Dist. Court Case No. 19-03244-JST]

Petitioner: S. Patrick Mendel, (Appellant/Plaintiff below)

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No. 20-_____

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V. PETITION FOR WRIT OF CERTIORARI

Petitioner S. Patrick Mendel Petitioner respectfully prays that a writ of certiorari issue to review the judgments and ORDERS below of the United States Court of Appeals for the Ninth Circuit in case Nos. 18-16610, 19-17073, and 19-17380, to restore the rule of law, the safety of the traveling public and the future of our constitutional republic.

Case No. 18-16610, is unpublished; an appeal that challenged the dismissal of the Petitioner's complaint with prejudice, on the first challenge of the pro se complaint was affirmed **contrary to** Ninth Circuit and other circuits precedent which grant at least one amendment under the Federal Rules of Civil Procedure, Rule 15(a)(2), upon first challenge unless no set of facts could possibly provide for a valid complaint.

Case No. 19-17073, is unpublished; was dismissed by summary affirmance before appellant could file his opening brief, or the Court could review the record below, which is contrary to standing Ninth Circuit precedent.

Case No. 19-17380 is unpublished; was dismissed by the appellate court because it claimed it lacked jurisdiction over a constitutional "Appointments Clause" challenge which it claimed was not a final decision entitled to appeal contrary to this Court's precedent.

These cases are combined and appealed here under 28 U.S.C. §1254(1) after the judgments of the Ninth Circuit Court of Appeals and in accord with the 90 day time limit of 28 U.S.C. §2101(c) as the underlying issues are related, concern the same constitutional issues and federal law and State law conflicts, with different parties Plaintiff and Respondent.

VI. OPINIONS BELOW

The opinion of the Court of Appeals, Case No. 18-16610, filed March 10, 2020, from the Order of the district court in case 18-02166 which is reported at 333 F.

Supp.3d 927 (2018). The decision of the Ninth Circuit affirming the district court's dismissal of Petitioner's pro se complaint *with prejudice*, on first challenge, without leave to amend, was contrary to circuit precedent and other circuits which allow for at least one amendment of the pro se complaint under Federal Rules of Civil Procedure, Rule 15(a)(2), before dismissal with prejudice, and are provided in Appendix A.

The opinion of the Court of Appeals in case No. 19-17073, was filed 12/20/2019. The underlying ORDER appealed district court approval of a class action Final Settlement over an alleged "illegal contract" over the objection of Objector/movant, Mendel, Petitioner here, in district court case No. 13-03826-EMC, filed 9/13/2019 and are provided in Appendix B.

The ORDER of the Court of Appeals Case No. 19-17380, dismissed Petitioner Mendel's appeal because the Court of Appeals said it lacked jurisdiction as the ORDERS appealed from are not final or appealable, was filed on 1/23/2020. The ORDER, Denying Motion to Disqualify Judicial Officer (on Appointment Clause constitutional grounds), district court case No. 19-03244-JST, was filed 10/25/2019, the Orders are provided in Appendix C.

VII. JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S. C. §1254(1). No petition for rehearing was filed below.

Case No. 18-16610, *Overton v. Uber Technologies Inc.,* was appealed under 28 U.S.C. §1291, from district court case 18-02166 the appeal timely filed on August 23, 2018, the decision of the Ninth Circuit Court of Appeals was filed on March 10, 2020.

Case No. 19-17073, *O'Connor v. Uber Technologies, Inc.*, was appealed under 28 U.S.C. §1291 from district court case No. 13-03826 (*O'Connor v. Uber*) which appeal was timely filed on October 18, 2019. The judgment (19-17073) of the Court of Appeals for the Ninth Circuit was entered on December 20th, 2019.

Case No. 19-17380, *Mendel v. Chao,* was appealed under 28 U.S.C. §1291, from district court case No. 19-03244 which was timely appealed on November 22, 2019, On January 23, 2020 the Ninth Circuit issued an ORDER dismissing the case because it claimed it lacked jurisdiction over the Orders appealed from as not final orders subject to appeal.

Jurisdiction in the district court case Nos. 13-03826, 18-02166, and 19-03244 was based upon 28 U.S.C. §§1331 Federal Question, §1337 Commerce and antitrust regulations AND §1367 Supplemental jurisdiction.

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1) as Petitioner has filed within 90 days of the appellate judgments and Orders in case Nos. 18-16610, 19-17073, 19-17380.

Petitioner has combined his cases in this action because they involve *related* constitutional questions and federal laws. Petitioner filed for a stay of the decisions

while on appeal to this Court, which were denied or declared moot by the courts below. No stay request is sought here.

VIII. CONSTITUTIONAL PROVISIONS AND LAWS INVOLVED

[Complete Citations are provided in Appendix D]

United State Constitution, Article II, Section 1, Clause 5

United State Constitution, Article II, Section 2, Clause 2

United States Constitution, Amendment 1

United States Constitution, Amendment 5

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FEDERAL STATUTES INVOLVED – Complete Citations in Appendix E

9 U. S. C. §1 - Maritime Transactions and commerce defined; exceptions to operation of title

15 U.S.C. §1 - Trusts, etc. in restraint of trade, illegal; penalty

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49 U.S.C. §13703 Certain Collective activities; exemption from antitrust laws

49 U.S.C. Chapter 139 Registration – 49 U.S.C. §§13901, 13902, 13904

49 U.S.C. Chapter 145 Federal – State Relations - 49 U.S.C. §14501,

49 U.S.C. §14505 – State Tax

CALIFORNIA LAWS INVOLVED - Complete Citations in Appendix F

California Public Utilities Code §421

ARTICLE 7. Transportation Network Companies [5430 - 5450]

Particularly Code sections: 5430, 5431, 5437, 5440, 5441, 5446.

IX. SUMMARY OF THE CASE

This Petition concerns the Rule of Law in three (3) combined appellate cases.

Raised here are State enactments alleged to be unconstitutional and preempted, enabling federally unauthorized transportation competition from private corporations Uber[1] and Lyft to *disrupt* safe travel and destroy lawful competition.

It was the failure of federal officials to enforce federal agreements and laws with the States and to enforce federal transportation and antitrust laws to stop Uber and Lyft's destructive mayhem upon interstate travelers' safety, inciting national labor strife and driving lawfully operating transportation providers into insolvency.

The result of this lawlessness has destroyed the federal statutory transportation scheme designed to insure safe intrastate and interstate passenger travel by responsible competitors in the federally regulated "Pre-Arranged Ground Transportation" business under the RIDE ACT, 49 U.S.C. §14501(d).

The Petitioner is a 40 year veteran of the "Black Car" business regulated under the federal "Ride Act." He claims his business and occupation were destroyed by these "technology disruptors" with the unlawful cooperation of the State of California Officials, which rendered him financially insolvent and unable to enjoy or exercise

[1] Throughout this brief Uber Technologies, Inc. and its subsidiaries and Lyft Inc. are for simplicity referred to as "Uber" and "Lyft".

his legally compliant (State and Federal) black car business and occupation of choice. Complaints to federal officials were ignored!

Aggravating matters he asserts he has been improperly thwarted in the lower federal courts from securing a constitutionally competent judicial forum; having his complaints' liberally construed, and been subjected to lower court determinations in defiance of the plain language of federal and State laws or in defiance of this Court's precedents.

Petitioner seeks urgent relief from this Court to stop the violent carnage in the streets and labor strife, a determination of constitutional provisions and federal laws in order to restore constitutional supremacy, the rule of law and ordered liberty.

The Petition properly raises conflicts of law within the Ninth Circuit and between at least five (1st, 3rd, 5th, 8th, 10th Circuits) different circuit courts. This case involves federal law determinations affecting the physical safety of at least tens of millions of travelers, millions of drivers and the lawful competition and labor rights of millions of drivers[2].

Failure to secure <u>any</u> relief here will result in the continued preventable murders, deaths, rapes, assaults, suicides; massive labor strife, and the financial insolvency destruction of legitimate transportation operators (taxi cabs, black cars)

[2] Petitioner cannot assert the term "citizens" versus "drivers" because many of the drivers are not citizens. Uber and Lyft avoid the federal E-Verify system by insisting their drivers are "independent contractors" rather than employees.

as documented here and in the media. A resolution would also address the escalating cases of disputes choking the federal and State courts below. Uber's own "Safety Reports," show the increasing deaths, rapes and violent assaults[3].

X. STATEMENT OF THE CASE

This case presents questions affecting the urgent physical safety of millions of Americans. The following is a necessary overview of the issues.

The unlawful contracts...

Respondents below, Uber and Lyft now operate in nearly all 50 States. They sell passenger transportation via private motor vehicles which is prohibited under federal law and regulations. They provide the transportation with drivers via contracts of adhesion in which the contracts, on their face, violate federal transportation, antitrust and arbitration laws. By operation of the contracts, all of the federal regulatory requirements which induce "inherent responsibility" and "lawful conduct" have been avoided creating an open environment of lawlessness destroying people's lives and legal competitor businesses in the process. No technology device, software, or added 911 "button" will cure the problem.

An example: Black Cars have never had a need for Plexiglas safety screens, like taxicabs, separating drivers from riders because they have complied with 49 U.S.C.

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[3] SEE: Uber Safety Report at Uber's Web site at: https://www.uber.com/us/en/about/reports/us-safety-report/?irgwc=1&utm_term=SrhVr2zFzxyOWEvwUx0Mo34GUknWGa2lR0-Rzs0&adg_id=284979&cid=10078&utm_content=&utm_campaign=affiliate-ir-Skimbit%20Ltd._1_-99_national_D_all_ACQ_cpa_en&utm_source=affiliate-ir

§14501(d)(1)(C)(providing such service pursuant to a contract for...) In the industry the contracts are called, "Waybills." A waybill was between two legally identifiable persons. A proper Waybill properly identified the Company and driver AND the passenger. Uber and Lyft waybills do not properly identify the passengers. This results in the destruction of the natural "inherent responsibility and behavior" of passengers who are not properly identified. Unscrupulous passengers who know their true identity is disguised or misleading (i.e. JJ, "2" "R2d2") wreak havoc upon the drivers resulting in preventable murder.

The complete absence in the contracts of financial consideration for the drivers costs of vehicles, operational expenses, or the labor to provide the transportation allow Uber and Lyft to effectively take the drivers' property for less than its actual value without paying for it[4]. It is this abuse, combined with the unlawful "maximum fixed pricing of the "independent contractor" drivers' fares, across all the contracted drivers which affords Uber and Lyft's ability to compete with local mass transit on price and severely underprice every lawful, legal competitor, providing passenger transportation everywhere they operate. They have decimated the legal taxi business, the Petitioner and his business, all with the unlawful federally preempted aid of the State of California Officials conduct.

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[4] **As an example**: Since 2013 the Internal Revenue Service allows for .54 to .58.5 cents a mile for vehicle use reimbursement by employees who use their vehicles for work related use, while Uber and Lyft, in the San Francisco Bay Area, one of the most expensively priced areas of their operations, where they pay the drivers approximately .61 cents a mile. Trying to make minimum wage and expenses out of these .07 cent differences in rates explains the labor strife!

The result is:

- An unregulated environment ripe for escalating criminal murder, rape and assault, on a continuing daily basis against unsuspecting riders and drivers alike.
- Uber and Lyft unlawful competition via contracts which violate antitrust law by unlawfully fixing maximum pricing among all their independent contractor drivers.
- The Uber and Lyft contracts unlawfully impose Arbitration upon the contracts of workers engaged in interstate commerce that Congress said are exempt from arbitration under 9 U.S.C. §1, destroying both State and Federal labor protections and rendering State Administrative Labor enforcement agencies ineffective and worthless.

The Uber and Lyft contract terms on their face violate the Sherman Antitrust Act, 15 U.S.C. §1, (SEE: *Arizona v. Maricopa County Medical Society*, 457 U.S. 332 (1982)),See also 49 U.S.C. §13703 (Board approval for such contracts) because the contracts grant Uber and Lyft the unilateral right to fix maximum pricing across their millions of "independent contractor" drivers.

The Federal Arbitration Act does not apply to "contracts of workers...engaged in foreign or interstate commerce." (9 U.S.C. §1). Currently there are intra-circuit conflicting decisions in the Ninth Circuit[5], and conflicts between the Ninth, Eight,

[5] For Ninth Circuit conflict compare *In re Van Dusen*, 654 F. 3d 838 (9th Cir. 2011) and *In re Swift Transportation*, 830 F.3d 913(9th Cir. 2016)(requiring a determination of exemption before a district court has authority to order arbitration) with *Mohamed v. Uber*, 848 F. 3d 1201 (9th Cir. 2016) and *O'Connor v. Uber Technologies, Inc.*, 904 F.3d 1087 (9th Cir. 2018)(where the Ninth Circuit ignored or abandoned the process for a "determination" of exemption before ordering arbitration contrary to circuit precedent).

Third and First Circuits over the procedure and interpretation of the exemptions for "workers engaged in interstate commerce," under section 1 of the Federal Arbitration Act.

The tool provided by Congress (49 U.S.C. §14707) to enjoin "unauthorized transportation" in the district courts has been rendered worthless in the Ninth Circuit because it allows the injection of elements of irreparable harm by the district courts, elements not required in the Eight Circuit, because as the Eight Circuit explained, Congress can set the elements to: (1) a person injured[6] and (2) a **clear** violation of the registration requirements of motor carriers or brokers.

Every Government Labor Agency is rendered ineffective!

Every single Federal and State Labor law and government labor agency that exists to hold this abuse of labor in check, including administrative agency actions has been rendered worthless. Every complaint raised by a driver through these government labor enforcement channels is thwarted by Uber and Lyft because they raise the "embedded arbitration clause" of their contracts to stop these government

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Compare the *Mohamed* and *O'Connor* decisions with the First Circuit in *Oliveira v. New Prime Inc.*, 857 F. 3d 7 (1st Cir. 2017),(driver entitled to exemption from arbitration under section 1 of the FAA.) and with the 3rd Circuit in ***Singh v. Uber Technologies***, 939 F.3d 210 (3rd Cir. 2019)(drivers entitled to a determination of exemption before ordering arbitration) and *Uber Technologies, Inc. v. Sangam Patel*, Julie Su, Labor Commissioner, State of California Department of Industrial Relations, California Superior Court, County of San Francisco, Case # 17-515894 Granting Labor Commissioners request for discovery, (of exemption from arbitration. Pre-Arranged Trips to the airport are part of interstate transportation.) November 26, 2019.

[6] In district court case 18-02166 the Court injected the belief that the "person injured" element must be a person holding federal motor carrier authority,

administrative agency labor actions cold in their tracks. To date: There has not been any arbitration hearings held under the contracts. Some hundreds of tens of thousands of drivers have been deprived of any actual "arbitration hearings" because the driver attorneys, like Lichten & Liss-Riordan, respondents here, reach settlements with Uber and Lyft for the drivers too poor to exercise any other choice at ridiculous settlements with attorney's fees of 50% percent plus expenses or more without ever having held even one hearing before an arbitrator. These levels of attorney's fees, (in excess of 50 %) would never pass muster in the Ninth Circuit over a completed federal court class action.

Respondents below, Officials of the State of California, are the five (5) Commissioners of the California Public Utilities Commission "CPUC" and the California Attorney General. These officials were sued under this Court's principals under *Ex parte Young*, 209 U.S. 123 (1908) allowing for suits in federal courts for injunctions against State officials despite the State's sovereign immunity, when the State acted contrary to any federal law or contrary to the constitution, to the detriment and injury of the Petitioner.

Additionally, Petitioner is entitled to bring an action against State officials under 42 U.S.C. §1983 for commerce clause violations seeking declaratory and injunctive relief. *Dennis v. Higgins*, 498 U.S. 439, 442, 111 S.Ct.865, 112 L.Ed.2d 969 (1991). (right to bring action under §1983 for commerce clause violations and Qualified Immunity is not at issue here.)

Respondent Federal Officials were sued under the Administrative Procedures Act for failing to perform their non-discretionary duties to enforce federal laws and grant programs to the detriment and injury of the Petitioner entitled to equal application of the laws under the Fourteenth Amendment. In numerous decisions, the U.S. Supreme Court "has held that the Due Process Clause of the Fifth Amendment forbids the Federal Government to deny equal protection of the laws. *E. g., Hampton* v. *Mow Sun Wong,* 426 U. S. 88, 100 (1976); *Buckley* v. *Valeo,* 424 U. S. 1, 93 (1976); *Weinberger* v. *Wiesenfeld,* 420 U. S. 636, 638 n. 2 (1975); *Bolling* v. *Sharpe,* 347 U. S. 497, 500 (1954)." *Vance* v. *Bradley,* 440 U. S. 93, 95 n. 1 (1979).

Respondents City and County of San Francisco and San Francisco International Airport Commission and Director are sued for charging Petitioner airport access fees, on his interstate transportation specifically prohibited under federal law 49 U.S.C. §14505, as only Congress can tax interstate transportation. *See*: Dennis v. Higgins, 498 U.S. 439 (1991) (unlawful taxes and fees constituted an unlawful burden on interstate commerce)

Respondent Attorneys of the Lichten & Liss Riordan Law firm were sued for attorney malpractice for failing and refusing to discover essential federal laws and particularly facts under federal transportation laws; the interstate nature of the drivers work entitling them to exemption from arbitration, failing to pursue or apply well-established federal transportation private rights of action (49 U.S.C. §14704, §14707) and antitrust laws (15 U.S.C. §1) for the protection of their driver clients; and placing their personal interests above the interests of their driver

clients, including Petitioner. It was unconscionable for these attorneys to have completely ignored or avoided federal transportation and antitrust laws given the plain language of the contracts between the drivers and Uber and Lyft.

Notably: These attorneys represented to the district court they were entitled to bring a class action employment misclassification complaint for determination when federal laws and regulations, 49 CFR§372.101, prohibit the very occupation (drivers of private vehicles) they claimed to represent as a labor class action!

These failures led to adverse decisions in the Ninth Circuit, who imposed arbitration on the drivers' without a required determination of exemption, under current Ninth Circuit precedent, (*See: In re Van Dusen, supra*) as "contracts of workers'... engaged in interstate and foreign commerce under 9 U.S.C. §1, and who should be exempt. (SEE: *In re Van Dusen*, 654 F.3d 838, (9th Cir. 2011), *In re Swift Transportation*, 830 F.3d 913 (9th Cir. 2016)). This attorney failure severely reduced settlements and offers to Petitioner (and other drivers) including the *actual value* loss of property unlawfully taken, including labor and the loss of constitutional rights to due process and access the federal courts, under the First Amendment and as provided for by Congress under 9 U.S.C. §1.

A proper cause of action here should have been under California's Unfair Competition law, and the disgorgement of the unlawful commissions Uber and Lyft took from the drivers' fares for their "federally unauthorized passenger operations." The drivers' fares were and are by the terms of the contract the property of the

drivers. Under California contract and Unfair Competition Laws, disgorgement of the drivers property from Uber and Lyft, for their federally unauthorized conduct is the proper remedy under *Cel-Tech Communications v LA Cellular*, 973 P. 2d 527 Cal. Supreme Court (1999) SEE: Also *Korea Supply Co. V. Lockheed Martin Corp*. 63 P.3d 937 Cal. Supreme Court (2003).

The district court (Case 13-03826) disagreed with Petitioner and approved the settlement over the Petitioner's objection and this Court's precedent regarding illegal agreements under *Kaiser Steel Corp. v. Mullins, et al*. 455 U.S. 72 (1982).

On appeal (case 19-17073), the Ninth Circuit granted summary affirmance of the district court approval of the settlement agreement, contrary to standing Ninth Circuit precedent *Page v. United States*, 365 F.2d 337, 339 (9th Cir. 1966) which prohibits summary affirmance until after the filing of Appellants Opening brief and review of the district court record. Petitioner claims this was error depriving him of due process of law to file his opening brief and his right to appeal.

The drivers have done nothing wrong but work as indentured servants at ridiculously excessive hours (84 to 135 hours a week) to remain solvent and meet vehicle financial commitments and bare essentials of food. Many live out of their vehicles, including Petitioner, in a battle to survive.

In Case 19-17380 the Appellate panel dismissed Petitioner's appeal seeking to immediately disqualify the judicial officer assigned in case 19-03244, as appointed in violation of the Constitutions Appointment Clause by an ineligible President.

The Petitioner immediately and properly sought to have the judicial officer assigned to this case disqualified because he was appointed to the bench in violation of the Appointments clause of the U.S. Constitution. Contrary to Petitioner's efforts, the challenged judicial officer decided his own "disqualification."

Petitioner appealed. The appellate court by Order dismissed the appeal for lack of jurisdiction. Petitioner claims this was error. This Court said Appointments Clause challenges (SEE: *Ryder, supra* and *LUCIA, supra*, below) should be raised as soon as possible. Why is Petitioner supposed to continue before an alleged constitutionally improperly appointed judicial officer and exhaust court and party resources only to have all of it reversed and a new trial granted, if the challenge is later determined to be correct? This is supposed to be the type of challenge subject to appeal before a final decision. Since when is it lawful for a judge to be a decision maker in his own cause? "No man is allowed to be a judge in his own cause; because his interest would certainly bias his judgment, and, not improbably, corrupt his integrity." *James Madison, Founding Father, Federalist #10*. SEE: *Caperton v. AT Massey Coal.*, 556 U.S. 868 (2009), *In re Murchinson.*, 349 U.S. 133 (1955). This dismissal was error according to the teachings of this Court and requires reversal!

Finally, Petitioner seeks a determination of the Constitution's Appointments Clause provisions and whether he is entitled to a constitutionally appointed judicial officer by a constitutionally eligible President.

THE FEDERAL TRANSPORTATION REGULATORY SCHEME

Approximately 2002, Congress began the regulation of Pre-Arranged Ground Transportation, (Black Cars) as an amendment to the Motor Carrier Act.

Congress used two tools at its disposable to regulate intrastate ground transportation effecting interstate commerce, *laws* and *federal grant funding*, to restrain State interference with the federal scheme.

First, Congress passed laws, the "Ride Act", 49 U.S.C. §14501(d), regulating intrastate ground passenger transportation.

Second, Congress passed grant funding programs, (Motor Carrier Safety Assistance Program, "MCSAP" *See* 49 CFR §350.201.) to which the several States could sign written agreements to comply and enforce federal laws and regulations (i.e. motor carrier registration, safety laws) in return for federal grant funding. All 50 States signed on, including California. The program calls for penalties by defunding grants for States who fail to comply and enforce federal transportation laws and regulations according to the agreements and federal regulations, *See* 49 CFR §350.201.

Federal transportation law asserts authority over **intrastate** transportation 49 U.S.C. §14501, because the conduct is affecting interstate and foreign commerce; to, for example: prohibit the States from enacting laws related to ANY broker's (passenger or freight) intrastate rates, intrastate routes and intrastate services under 49 U.S.C. §14501(b).

The enactments by California, and the creation by its Public Utilities Commission, of "TNC" permits under Transportation Network Company Codes 5430 – 5450 (spelled out in Addendum F) which permits the sales and arranging of "pre-arranged" passenger transportation to private motor vehicles is in direct conflict with federal requirements under 49 U.S.C. §14501(d) sections A-C (requiring commercial plates – State passenger vehicle registration and State passenger authority, a California TCP permit). These "TNC" permits are also contrary to 49 CFR 372.101, 49 U.S.C. §13506(b) and California's MCSAP agreements under 49 CFR §350.201. *See also*: California v. Zook, 336 U.S. 725 (1949) (preemption where the federal government occupies the field); COMPARE: *California v. Thompson*, 313 U.S. 109 (1941)(no preemption where the federal government does not occupy the field being regulated.)

Passenger Brokers versus Freight Brokers...the Law

Important to note: *Brokers* of passenger transportation are not *necessarily*[7] required to register in the same manner as freight brokers.

BUT, brokers for passenger transportation are required, under 49 U.S.C. §13904(f), like freight brokers to secure, under 49 U.S.C. §13906, mandatory Bonds*[8] and

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[7] SEE ALSO: 49 U.S.C. §13902(i) (Registration as Freight Forwarder or Broker Required)

[8] The amount of BOND posted for each passenger Broker is established by the Secretary of Transportation based upon the Broker's volume of business. While the statute §13904(f) is permissive, all brokers by law 49 U.S.C. §13906 and supporting regulations are required to post BONDS beginning at a $75,000.00 minimum to

provide proof of required Insurance, under 49 U.S.C. §31138, with the Secretary of Transportation through the Federal Motor Carrier Safety Administration, in order to lawfully broker passenger transportation. *Brokers* of passenger transportation, who provide motor vehicle transportation for compensation are also required to register as "*motor carriers*" 49 U.S.C. §13904(d)(1). Likewise, *motor carriers* under 49 U.S.C. §13902(i) may not provide *broker* services unless the *motor carrier* has registered as a *broker* under the requirements in 49 U.S.C. §13904(d) and (f).

Uber's continued erroneous arguments below, that it is a technology company and not a transportation company, in this area of the law is completely without merit. Since 2015, the district court below (case 13-03826) determined that Uber "sells transportation, and it did this without ever even considering federal definitions of transportation under 49 U.S.C. §13102(23)! *See*: *O'Connor v. Uber Technologies, Inc.* 82 F.Supp.3d 1133, 1141, 1142 (Dist. Court, ND California 2015) *See also*: *Zabriskie v. Federal Nat. Mortg. Association*, 940 F.3d 1022 (9th Cir. 2019).

Federal law requires all Pre-arranged ground transportation providers to:

- (1) meet all applicable registration requirements under Chapter 139*[9] (Registration of *Motor Carriers* and *Brokers*) for the interstate transportation of passengers 49 U.S.C. §14501(d)(1)(A)

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protect shippers and passengers from insolvencies or failure to fulfill services paid for and to secure insurance under 49 U.S.C. §31138 (1.5 million in liability).

[9] *Transportation providers, "motor carriers" who meet all of the federally imposed State passenger vehicle registration and State passenger authority requirements (Item 2 above) for each State through which they operate are exempt from federal motor carrier registration under misc. exemption law 49 U.S.C. §13506(b)(1)(B).

- (2) secure State vehicle passenger registration and (2) State passenger authority. In California this is Transportation Charter Party, "TCP" (Black Car) Carrier permits. 49 U.S.C. §14501(d)(1)(B)
- (3) provide service pursuant to a contract (called a waybill), including the start, intermediate stops and final stops, between the provider and passenger 49 U.S.C. §14501(d)(1)(C).

The Motor Carrier Act has never been repealed, but has been amended over 84 plus years of Congressional action. The scheme, while disjointed, is designed to indoctrinate an "inherent responsibility" for safe travel whether the transportation provider has one vehicle and one driver or thousands. For example: the requirement for State passenger vehicle registrations' purpose is to impose "third party" vehicle safety inspections to insure the safety of the traveling public. The designed penalties are such that the risk of regulatory avoidance or violations is not worth (1) the loss of operating authority, (2) the impoundment of vehicles or (3) extreme fines, 49 U.S. C. §14901(5) ($25,000.00 per violation involving passenger transportation) and potential imprisonment imposed for failing to comply or pay the fines.

Congress also by law preempted the States or localities (read Airports) from collecting or levying a tax, fee, head charge, or other charge on interstate travel by:[10]

(1) passengers traveling in ...

This means California "TCP" (Black Car) providers meet the exemption; "TNC" transportation providers using private vehicles do not!

[10] Congress granted one exception, located under 49 U.S.C. §14501(d)(3)(B) stating nothing in this subsection shall be construed as prohibiting or restricting an airport, train, or bus terminal operator from contracting to provide preferential access or facilities to one or more providers of pre-arranged ground transportation service; ... to which they may charge fees for.

(2) the transportation of a passenger traveling in...

(3) the sale of passenger transportation in...

(4) the gross receipts derived from such transportation...

...***in interstate commerce*** by motor carrier. *See also*: Federal Express v. California Public Utilities Commission, 936 F.2d 1075 (9th Cir. 1991). *See also*: Charter Limousine v. Dade County Board of County Com'rs, 678 F.2d 586 (5th Cir. 1982); Executive Town & Country Services, Inc. v. City of Atlanta, 789 F.2d 1523 (11th Cir.1986)(prearranged trips to the airport as part of the journey qualify as interstate transportation) *Pennsylvania Public Utility Comm'n v. U.S.,* 812 F.2d 8 (D.C.Cir.1987), (through tickets not required to be interstate); *Southerland Tours v. St. Croix Taxicab Ass'n,* 315 F.2d 364, 369 (3rd Cir.1963)(prearranged passenger travel arranged through a third party is part of interstate travel); *Airport Taxi Cab Advisory Committee v. City of Atlanta,* 584 F.Supp. 961, 964 (N.D.Ga., 1983) ("If taxi service or other local ground transportation is pre-arranged for the interstate travelers, the courts have found the local transportation to be part of the flow of interstate commerce")

When intrastate transportation is Interstate Commerce

Quoting this Court in United States v. Yellow Cab, 332 U.S. 218, 228, 229 (1947):

> "When persons or goods move from a point of origin in one state to a point of destination in another, the fact that a part of that journey consists of transportation by an independent agency solely within the boundaries of one state does not make that portion of the trip any less interstate in character. The Daniel Ball, 10 Wall. 557, 565. That portion must be viewed in its relation to the entire journey rather than in isolation. So viewed, it is an

integral step in the interstate movement. See Stafford v. Wallace, 258 U.S. 495."

Every single trip made by Uber and Lyft drivers is "pre-arranged" transportation, which is what they do, that is the regulatory description by State law, whether operating under Uber and Lyft's "challenged" "TNC" permits or a federally proper State "TCP" (Black Car) permit like Petitioner's. When the passenger, like a shipper of freight, prearranges their total interstate journey using "*prearranged*" ground transportation, with Air, ship and train travel, the Uber and Lyft trips are an integral part of the total interstate journey. As already shown above, the 3rd, 5th, and 11th Circuits are in accord with this Court and the Ninth Circuit isn't!

THE ERRONEOUS CLAIMS AND ERRORS MADE BELOW

Respondents Uber (and Lyft) repeatedly attempt to claim they are technology companies, not transportation companies. This argument fails for two (2) reasons.

One, federal law defines transportation, 49 U.S.C. §13102(23) as:

> "(23) Transportation .— The term "transportation" includes— (A) a motor vehicle, vessel, warehouse, wharf, pier, dock, yard, property, facility, instrumentality, or equipment of any kind related to the movement of passengers or property, or both, regardless of ownership or an agreement concerning use; and (B) services related to that movement, including arranging for, receipt, delivery, elevation, transfer in transit, refrigeration, icing, ventilation, storage, handling, packing, unpacking, and interchange of passengers and property. [Emphasis added]

Uber and Lyft' use of smartphones and software (equipment of any kind) to arrange passenger transportation which is certainly an, "instrumentality, or equipment of any kind related to the movement of passengers,"...regardless of ownership of the

vehicles or Uber and Lyft's agreements with the drivers. Additionally, it cannot be reasonably argued to the contrary, - that Uber and Lyft DO provide, "services related to passenger movement, including, "arranging for..." and Uber's argument that they don't guarantee to arrange any trips for drivers or guarantee the passenger they will secure any transportation is irrelevant according to the federal law definition of transportation.

Two, particularly in Uber's case, the district court below, (case No. 13-03826, appeal No. 19-17073), without considering federal law definitions at all, in 2015, determined that Uber "sells" transportation, is not a technology company, but a transportation company. *O'Connor v. Uber Technologies, Inc.* 82 F.Supp.3d 1133, 1141, 1142 (Dist. Court, ND California 2015. (Even the Ninth Circuit acknowledged Uber's ruse in *Zabriskie v. Federal Nat. Mortg. Association*, 940 F.3d 1022 (2019), (Uber Technologies, Inc.'s attempt to masquerade as a technology company...).

The Ninth Circuit erred in case 18-16610

The entire appeal sought a reversal because the district court dismissed the Petitioner's case with prejudice upon the first challenge contrary to FRCP, Rule 15(a)(2).

The Ninth Circuit panel began their opinion in error by affirming that Overton and Mendel lacked Article III standing. They supported this with the following statements:

"First, appellants did not sufficiently allege an injury in fact in any federal enforcement of Federal Motor Carrier Act registration requirements on drivers such as themselves."

If the complaint *"did not sufficiently allege an injury in fact"* then why were we deprived of the benefit of Rule 15(a)(2), of the Federal Rules of Civil Procedure which declares that leave to amend should be freely given when justice so requires" Foman v. Davis, 371 U.S. 178 (1962); Noll v. Carlson, 809 F.2d 1446, 1448-49 (9th Cir.1987) (stating five safeguards to protect pro se litigants from an unfair dismissal)

The ninth Circuit realized we were Uber drivers, driving under the challenged "TNC" permits and Federal law specifically says, 49 U.S.C. 14901(a)(5) a fine of "$25,000.00 for each violation relating to providing transportation of passengers" for not complying with registration requirements. The fact that the federal government has not yet acted to enforce the law does not mean that Overton and Mendel do not have the potential fine, hanging like the sword of Damocles over their heads while driving for and under Uber's "challenged "TNC" permit.

> *"Second, appellants did not show that any federal enforcement would be caused by the CPUC"*

This "Second" statement is irrational. The CPUC created this "TNC" permit, with later followed State legislative enactments allowing the use of private vehicles to transport passengers in private motor vehicles contrary to 49 CFR §350.201; 49 CFR §372.101 and 49 U.S.C. 14501(d)(1)(A-C). The CPUC permits what federal laws and regulations prohibit. That's an undisputed fact of law! Of course the CPUC creation induces unlawful conduct.

The "Second" statement also fails to account for the fact Overton and Mendel held California "TCP" federally compliant §14501(d)(1)(B)) State passenger authority and we were suffering the unlawful competitive effect unleashed by the CPUC against us by these "TNC" drivers who were not required to pay the higher price for

federally required commercial passenger registration of their vehicles or the 5 fold more expensive commercial insurance. A fact realized by the district court where it stated: *Overton v. Uber technologies Inc.*, 333 F.Supp.3d 927 (Dist. Ct. ND CA 2018)

> "Assuming one does not have to register under the FMCA to sue under § 14707(a), Plaintiffs allege Uber's non-compliance causes them competitive harm."... [Emphasis added]
>
> "...As a result, Uber allegedly obtains an unfair competitive advantage over Plaintiffs in their TCP business due to Uber's ["TNC"] non-compliance with applicable laws and regulations."

How is the CPUC not responsible for Petitioner's injury for their "TNC" creation?

> *"Third, appellants did not plausibly allege that invalidation of the TNC statute would redress their alleged harm because, whether or not California administers a TNC program, the federal requirements would still exist."*

The *"Third"* statement is as irrational as the first two. If the "TNC" statute were invalidated we would not suffer from either the (1) unlawful "TNC" competition or (2) be subjected to federal fines for providing passenger transportation under the Uber's federally unauthorized and dispatched "TNC" trips.

Ninth Circuit panel states: *"the federal requirements would still exist."*, which is an obvious recognition of different requirements between the CPUC "TNC Statute" and *federal requirements*, they have expressed a federal-State difference without a conscious thought to the absurdity of their opinion.

The panel continued:

> *We affirm the district court's conclusion that 49 U.S.C. § 49505 (sic 14505), a Federal Motor Carrier Act prohibition against state collection of fees on interstate passenger transportation, does not preempt California's assessment of "PUCTRA"*

fees on passenger carriers pursuant to Cal. Pub. Util. Code §§421, 431. [Citations omitted]

PUCTRA fees are assessed only on intrastate transportation, and the Federal Motor Carrier Act applies only to interstate transportation. See 49U.S.C. §13501; Cal. Pub. Util. Code § 424(b).

The Plain Language of the California Law is Misinterpreted

Does the Ninth Circuit even read the laws to which they cite? Cal. Pub. Util. Code § 421, 431 does not give the CPUC the authority to tax a percentage of the gross fares or gross revenue whether intrastate or interstate of ANYONE! That's the problem. This error is worse than absurd, it defies the State law as written.

For the record, the following is the relevant California law of §421.

421. (a) The commission shall annually determine a fee to be paid by every passenger stage corporation, charter-party carrier of passengers, pipeline corporation, for-hire vessel operator, common carrier vessel operator, railroad corporation, and commercial air operator, and every other common carrier and related business subject to the jurisdiction of the commission, except as otherwise provided in Article 3 (commencing with Section 431) of this chapter and Chapter 6 (commencing with Section 5001) of Division 2. [Emphasis added]

(b) The annual fee shall be established to produce a total amount equal to the amount established in the authorized commission budget for the same year, including adjustments appropriated by the Legislature and an appropriate reserve, to regulate common carriers and related businesses, less the amount to be paid from special accounts or funds pursuant to Section 403, reimbursements, federal funds, other revenues, and unencumbered funds from the preceding year. [Emp. Added]

By the plain language of the law cited above, §421(b) the PUCTRA fees are not supposed to be based upon any percentage of revenue of the transportation providers at all...it is supposed to be based upon the annual budget requirements

(read budget needs) based upon the predetermined budget needs of the CPUC including specific adjustments not relevant here.

Once calculated the fees charged as annual fees are to be divided by the CPUC among the transportation providers,(by vehicle or company) as fixed fee annual amounts. None of these budget need items has anything to do with the transportation providers' revenue, in any fashion. Not a penny more than the CPUC "budget" or a penny less than the CPUC budget! That's what *equal to* means.

When the CPUC charged a percentage based upon revenue, contrary to State law, they would either end up with insufficient fees to cover their operating budget needs or taxing beyond their needs which the law seeks to prevent. The legislature enacted code §421 in its present form because of *Federal Express v. California Public Utilities Commission*, 936 F.2d 1075 (9th Cir. 1991) (improper State regulation and imposition of fees unlawfully burdened interstate commerce and was preempted)

California Public Utility Commission Admits it Abused its Authority

Petitioner's complaint below, as acknowledged by the Ninth Circuit; complained that the CPUC was unlawfully charging a percentage of gross fares for PUCTRA fees. (one reason the CPUC revoked Petitioners permit for failure to pay). The Ninth and the District Court apparently reached into the atmosphere and latched onto "intrastate versus interstate" fares and justified the PUCTRA fees on "intrastate" fares, as permitted to be charged against Petitioner's fares. THIS WAS

CLEAR ERROR. The plain language of California law §421 does not give the CPUC any right or authority or consent to tax *a percentage of Petitioner's revenue,* whether interstate or intrastate, or any other revenue, not even cotton candy or water sales of the Petitioner or the transportation providers.

As stated above, IF the CPUC charged by *percentage of revenue* it would not collect the correct amount according to §421 **equal to** its budget needs. **That is exactly what happened**. The CPUC recently **publically admitted** it collected $15,200,000.00 million dollars in 2018, which was $5,973,000 million more than what the law allowed them to collect. Their Total estimated budget needs for 2019-2020 was 10,317,000.00 million. They owe a refund for charging more than 30% OVER THEIR "BUDGET" NEEDS to the transportation providers. Instead of just admitting their error, they issued a "RESOLUTION" No. M-4838 on January 31, 2019. The resolution which admits the overcharges; fails to refund; and resorts to simply reducing the fees for the next year. This resolution can be found at the official CPUC web site at:

http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M264/K682/264682931.PDF

The CPUC RESOLUTION essentially admits to Petitioner's complaint of unlawful taxing and overcharges! The CPUC never had the authority to tax the **revenue** of those they regulate, including Petitioner. The Ninth Circuit's opinion is absurd as it is not based upon the plain language of the State law (§421) which was written to avoid conflict with federal preemption law under 49 U.S.C. §14505!

The Ninth Circuit panel error here was prejudicial to Petitioner's right to due process in accordance with the plain language of the State and Federal law. This decision should be reversed, in accordance with this Court's decision in Dennis v. Higgins, 498 US 439 (1991).

Uber and Lyft Operate in "CLEAR" violation of federal law!

The federal courts are supposed to interpret the law in the sum of its parts. To pick and choose parts to fit a determination as the Ninth Circuit did here has led to further absurd results. The Ninth Circuit stated:

> *As to appellants' claims against the Uber defendants, the district court properly held that appellants lacked standing... based on fear of federal prosecution...*
>
> *...to allege Uber was operating as a motor carrier without registration in violation of 49 U.S.C. §14707. [citation omitted]*
>
> *...alternatively, plaintiffs' registration claim failed on its merits.*
>
> *Uber is not a "motor carrier" required to register under the Federal Motor Carrier Act because it does not own, rent, or lease vehicles. See 49 U.S.C. §§13102(14), 13902(a).*

The gross error here is that the Ninth Circuit apparently imputes elements not found in the federal definitions they cite. The definition of *motor carrier,* 49 U.S.C. 13102(14), is simply a *person providing motor vehicle transportation for compensation.* The finding also conflicts with the district courts established 2015, finding, by the same judicial officer, that Uber "sells transportation." Selling transportation IS providing motor vehicle transportation for compensation. *See* O'Connor v. Uber Technologies, Inc. 82 F.Supp.3d 1133, 1141, 1142 (Dist. Court, ND

California 2015)(Uber "sells" transportation, is not a technology company, but a transportation company.) Even the Ninth Circuit acknowledged in *Zabriskie v. Federal Nat. Mortg. Association*, 940 F.3d 1022 (2019) (Uber Technologies, Inc.'s attempt to masquerade as a technology company rather than a transportation company)

Motor carriers do not have to "own, rent, or lease vehicles, they can and do contract to others, as Uber does, for the actual vehicles and labor to provide the transportation. The motor carrier definition consumes "broker activity" as well. The definition of broker §13102(2) also does not contain any element of vehicle ownership or operation. Pointedly, none of these definition descriptions separates freight or passengers; they include **all** transportation by motor carriers and brokers.

The absence of mention by the panel of statute: 49 U.S.C. §13904(f) (Bonds and Insurance..."*on brokers for motor carriers of passengers*"...must mean there is such a thing as brokers for passenger transportation and requirements for them contrary to their opinion.

They erred by utilizing freight motor carrier statutes instead of the correct federal statute[11] (The RIDE Act) regulating the "Pre-arranged ground transportation" of passengers under §14501(d)(1)(A), which states:

> "(A) meets all applicable registration requirements under chapter 139 for the interstate transportation of passengers;"

[11] The Ninth's citation to 49 U.S.C. 14707 as being violated is also misplaced. §14707 is the remedy for violating or §§13901-13902 or §13904 or §14501(d).

Statues §§13904(f) and 13904(d) are part of Chapter 139 and must be met!

§13904(d)(1) says:

> "a broker for transportation may not provide transportation as a motor carrier unless the broker has registered separately under this chapter to provide transportation as a motor carrier."

The Ninth then stated:

> *Further, assuming Uber is a broker under the Act, registration is required only for brokers for transportation of property, as opposed to transportation of passengers. See 49 U.S.C. §§13102(2) (defining broker).*

The definition §13102(2) of broker IS NOT limited to "freight brokers." The only difference between freight brokers and passenger brokers is the "exact" manner of federal authorization (read registration). Passenger brokers MUST secure Bonds and Insurance §13904(f) just like freight brokers, and IF they "provide motor vehicle transportation for compensation (§13102(14)), which Uber has been found to do, they must register as motor carriers §13904(d)(1) as well, under the law.

The Ninth Circuit's decision here has selectively chosen incorrect and incomplete segments of the federal transportation laws to fit their absurd conclusions. This decision should not be allowed to stand.

Finally the panel stated:

> *"The district court properly dismissed Overton and Mendel's state law claims against Uber for breach of contract, unjust enrichment, indemnification, violation of California's Unfair Competition law, and fraud."*

The panel makes the above statement based upon the previously addressed absurd federal law determination results attributable to their complete failure to

comprehend the plain language of California State law (PUC Code§421, 431) and the panel's failure to read federal transportation laws (Title 49, Chapter 39 and §14501(d)) as a comprehensive regulatory scheme as made for its regulatory purpose and effectiveness.

The proper case and proper relief was not a Labor misclassification action, but contract action for breach of contract for unlawful conduct!

Petitioner, here, as well as in Appeal 19-17073, and the underlying district court case 13-03826 properly sought to have the district court apply California contract law principals. The proper relief here is a breach of contract action, not labor[12], and the "disgorgement" of commissions that Uber (and Lyft) took from the drivers' property (fares) for Uber and Lyft's unlawful and federally unauthorized conduct. *Cel-Tech Communications v LA Cellular*, 973 P. 2d 527 Cal. Supreme Court (1999) SEE: Also *Korea Supply Co. V. Lockheed Martin Corp*. 63 P.3d 937 Cal. Supreme Court (2003).

This would be true due process and not subject to the conjectures and uninformed relief approved by the district court below in error. The exact amount of the property taken from the drivers is an accurate and easily ascertained number by Uber and the drivers. The guestimates approved by the district court, and allowed to be decided in Uber's discretion and drivers could not factually dispute was

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[12] Since federal law prohibits the occupation under its regulations, 49 CFR 372.101, it was Uber's failure to secure federal authorization as a motor carrier under the contract that caused the problem. The drivers should not be penalized for complying with State laws, created by the financial lobbying of Uber and Lyft toward State Officials.

unrealistic and abusive of the drivers property rights. Drivers' plaintiff counsel should take nothing for its gross mishandling and misrepresentations before the federal courts and toward their driver clients.

Violations of the Appointments Clause of the Constitution

Petitioner and his fellow citizens do not sit on the world's longest stupid bench. We know we were deprived of constitutional Presidential elections in 2008 and 2012. None of the candidates, (John McCain, Mitt Romney or Barack Obama) in these **two elections** was a *natural born citizen*, as required by the U.S. Constitution. The term "natural born citizen" undefined in the Constitution, was defined by this Court in *Minor v. Happersett*, 88 U.S. 162 (1875). The political parties caused this problem, and our Founders warned us about these troubles.

In *Minor, supra* this Court stated:

> "At common-law, with the nomenclature of which the framers of the Constitution were familiar, it was never doubted that all children born in a country of parents who were its citizens became themselves, upon their birth, citizens also. These were natives, or ***natural-born citizens*** as distinguished from aliens or foreigners. Some authorities go further and include as citizens children born within the jurisdiction without reference to the citizenship of their**[p168]** parents. As to this class there have been doubts, but never as to the first...." [Emphasis added]

No law is required to be a natural born citizen, it occurs regardless of the laws!

John McCain was born in Panama, Mitt Romney born in Mexico, and Barack Obama's father was not a U.S. citizen. Ted Cruz was born in Canada, none of these men is a *natural born citizen*. The fact each is a U.S. citizen, IS NOT ENOUGH

under the natural born citizen requirements of the Constitution. You must be born on U.S. soil to two (2) U.S. Citizen Parents to be constitutionally eligible to be President.

The Courts, including this one, previously avoided the question demonstrating a severe loss of virtue to the Petitioner and my fellow citizens. The avoidance should not continue and with it the diminishing ability of this Republic to survive under a constitutional rule of law.

THIS COURT says contrary to the decisions below, Petitioner has Article III standing to raise an Appointments Clause challenge under *Ryder v. United States*, 515 U.S. 177 (1995), and *Lucia v. SEC*, 138 S. Ct. 2044 (2018). Petitioner's motion to disqualify the judicial officer below, case No. 19-03244 was denied in error. The judicial officer in case Nos. 13-03826 and 19-02166 was also appointed in violation of the appointments clause.

In *Ryder, supra* this Court stated:

> "We think that one who makes a timely challenge to the constitutional validity of the appointment of an officer who adjudicates his case is entitled to a decision on the merits of the question and whatever [183] relief may be appropriate if a violation indeed occurred. Any other rule would create a disincentive to raise Appointments Clause challenges with respect to questionable judicial appointments."

We hold this Court to its word to decide the matter presented. This Court also said the "*defacto doctrine*" does not apply when the issue is raised at the soonest it was discovered and not after decisions have been rendered. Petitioner followed this

Court's directive. He was denied his motion to disqualify the judicial officer in district court case 19-03244, as this judicial officer was appointed by the constitutionally ineligible Barack Obama.

Only a person eligible under the constitution is entitled to exercise the office of President. This Court stated in *Marbury v. Madison 5 U.S. 137 (1803)*, that Congress cannot make laws contrary to the limits of the U.S. Constitution. Likewise the executive department (FBI or Federal Election Commission) should not allow ineligible U.S. Citizens to enter the office of the Presidency and the Courts should not tolerate appointments to the judiciary by a person whose title to that office, which he admits by his birth certificate, he posted on the official Whitehouse web site rendering him ineligible under the Constitution. Barack Obama appointed 329 judicial officers without constitutional authority to do so.

Your Petitioner is both a "natural born citizen" and veteran, having served our country. The first lessons we were taught in "basic training" were about the U.S. Constitution and the Uniform Code of Military Justice. **Significantly**, we were taught to recognize an unlawful order from superior officers, and our duty to the oath we took in support of the Constitution, it gave us the right to refuse to obey an unlawful or unconstitutional Order. Are the Courts of the United States now impotent to carry out constitutional questions entrusted to enlisted military?

Every judicial officer is also required to take an oath of office, to support and defend the constitution and laws of the United States. As warned in *Marbury, supra* some

329 judicial officers have sworn under oath under a cloud of uncertainty concerning the constitutionality of the eligibility of Barack Obama to hold the office he was unlawfully granted by Congress. Barack Obama's birth certificate is displayed for the world to see, he had a non-citizen parent, substantial evidence which should have prevented this constitutional violation: Judicial Notice was sought below of the Whitehouse official government web site. https://obamawhitehouse.archives.gov/sites/default/files/rss_viewer/birth-certificate.pdf

This is a question of law, of the Supreme Law of the land, and contrary to the district court, it is not political. The district court decision, case 19-03244, was error. The Ninth Circuit Order in case 19-17380 was error under *Ryder, supra*.

The media reports the consequences of the failure of government to adhere to the rule of law.

An Uber driver violated company policy (there is no State law prohibiting minors from using Uber or Lyft only company policy) and transported a 12 year-old girl from her home in Orlando to a downtown parking garage where she jumped to her death.[13] In another, Doug Shifter, a 40 year career veteran New York Livery driver

[13] SEE: CBS NEWS Report available on the web at: https://www.cbsnews.com/news/benita-bb-diamond-died-by-suicide-after-uber-ride-now-her-family-is-fighting-for-change-2019-06-08/

destroyed by Uber's unlawful competition went to the steps of New York City Hall and publically blew his brains out with a shotgun blast to the head![14]

Congress recently (October 2019) held hearings concerned over the safety and labor practices of these "gig economy operators" and requested Uber and Lyft to appear. Uber and Lyft blew them off.[15] During the hearings no one raised the federal transportation laws! Congress, its transportation committee members seemed to be completely ignorant of its own transportation laws prohibiting Uber and Lyft's business in the first place. They have been served copies of this Petition.

In the federal courts below, it gets worse...

A Florida taxi cab driver Timothy Layne Anderson, who brought a complaint into federal court complaining about Uber's unlawful competition, was dismissed, - He then brought a disposable phone, loaded the Uber app using the alias of John Smith, ordered an Uber and during the ride shot the unsuspecting driver to death.[16]

When the Courts fail the people, desperate people do not stand still. We, as a country were founded for higher virtuous outcomes than what is evolving here.

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[14] SEE: New York Times, "A Driver's Suicide Reveals the Dark Side of the Gig Economy" available on the web at: https://www.nytimes.com/2018/02/06/nyregion/livery-driver-taxi-uber.html

[15] SEE: The Washington Post article, "Congress wanted to grill Uber and Lyft on safety. The Companies blew them off." available on the web at: https://www.washingtonpost.com/technology/2019/10/16/congress-wants-grill-uber-lyft-safety-companies-are-blowing-them-off/

[16] SEE: Panama City Herald available on the web at: https://www.newsherald.com/news/20180627/court-records-shed-light-on-man-accused-of-shooting-uber-driver/1

All of this loss of life and labor strife is completely preventable. Please immediately take this case and restore the rule of law. It's that simple.

CONCLUSION

This court is reminded of the warning issued by this Court in *Marbury v. Madison*, 5 U.S. 137 (1803):

"Why otherwise does it [the Constitution] direct the judges to take an oath to support it? This oath certainly applies in an especial manner, to their conduct in their official character. How immoral to impose it on them, if they were to be used as the instruments, and the knowing instruments, for violating what they swear to support!"

This case should not be subject to further delay. Simply clear the Circuit confusion compare State law to federal law and restore the rule of law.

This Court has the authority, and attention of each responsible federal and State official brought here, to preempt the California Public Utility Codes 5430-5450 creating "TNC" permits which conflict with federal requirements under 49 U.S.C. §14501(d) et seq. and to restore the "inherent responsibility," Congress carefully crafted for safe intrastate and interstate passenger travel without unlawful State tax.

This Court should urgently and sua sponte enjoin under 49 U.S.C. §14707 or by mandamus direction to a lower court to issue injunctive relief under 49 U.S.C. §14707 as previously sought by Petitioner, to shut down the federally unauthorized

passenger transportation of Uber and Lyft for occupations and businesses which Congress has prohibited and for the safety reasons this Court has understood since 1949 and explained in *California v. Zook*, 336 U.S. 725 (1949).

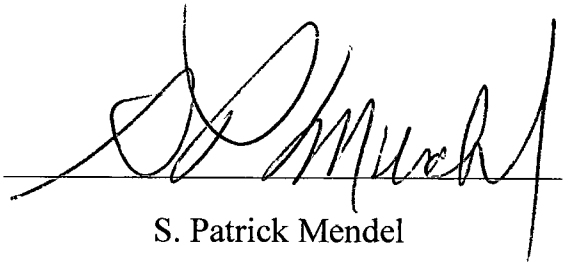
A referral by this Court to the U.S. Attorney General of the Uber and Lyft contracts with their "price fixing of maximum pricing across millions of "independent contractor" drivers as violative of antitrust laws, 15 U.S.C. §1, would immediately result in action to relieve the labor strife.

The loss of employment to millions of drivers can be severely lessened by insuring the drivers receive the return of their own property, the unlawful commissions taken by Uber and Lyft from the drivers' fares allowing them the resources to secure their future federally lawful employment of choice.

That is the law!

Respectfully submitted;

Dated: March 16, 2020



S. Patrick Mendel