

No. 19-

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**In the Supreme Court of the United States**

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SEAN A. CLARK,

*Petitioner,*

v.

COMMISSIONER OF SOCIAL SERVICES,

*Respondent.*

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

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**PETITION FOR WRIT OF CERTIORARI**

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NOVEMBER 6, 2019

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## QUESTIONS PRESENTED

Petitioner's public benefits were discontinued by the Department of Social Services of New York ("DSS") on January 17, 2014, despite my alleged exemption from work requirements due to my physical impairments of disability. The administrative record in state proceedings contained defects that were never corrected such as mislabeling gender, designating me a drug user, labeling me the wrong religion, listing me as deceased, and having committed fraud occurred in an unknown amount in 2014. Petitioner brought suit in the United States District Court for the Southern District of New York alleging fraud on the part of the New York DSS and seeking to reinstate disability benefits. The district court judge dismissed the summons and complaint under Rule 12(b)(6), citing the *Rooker-Feldman* doctrine, and Eleventh Amendment immunity.

### THE QUESTIONS PRESENTED ARE:

1. Can a federal district court review a state court ruling, exempting the case via *Rooker-Feldman* preclusion, where the state court judgment was allegedly procured through fraud", as has been held by the United States Sixth Circuit Court of Appeals?
2. Is the statute of limitations tolled when a party has submitted an expedited motion under FRAP 4(a) (5) detailing his disability and the need for additional time?

## **LIST OF PROCEEDINGS**

United States Court of Appeals for the Second Circuit

*Sean A. Clark v. Commissioner of Social Services*

No. 19-1823

Decision Date: October 23, 2019

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United States District Court for the Southern District  
of New York

*Sean A. Clark v. State Commissioner of Social Service  
Department*

No. 18 Civil 10038 (LAP)

Judgment Date: April 24, 2019

Order Date: April 23, 2019

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## **OPINIONS BELOW**

Order of the Court of Appeals for the Second Circuit dated on October 23, 2019 is added at App.1a. Judgment and Order of the United States District Court for the Southern District of New York dated on April 24, 2019 is added at App.3a and App.5a.



## **JURISDICTION**

The Second Circuit entered its judgment and opinion on October 23, 2019. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).



## **CONSTITUTIONAL AND STATUTORY PROVISIONS**

### **U.S. Const. amend. V**

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due

process of law; nor shall private property be taken for public use, without just compensation.

**U.S. Const. amend. XI**

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

**U.S. Const. amend. XIV § 1**

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

**U.S. Const. amend. XIV § 5**

The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

**5 U.S.C. § 706(2)(a)**

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall—

- (2) hold unlawful and set aside agency action, findings, and conclusions found to be—
  - (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

**Sup. Ct. R. 12(b)(6)**

**Defenses and Objections: When and How Presented; Motion for Judgment on the Pleadings; Consolidating Motions; Waiving Defenses; Pretrial Hearing**

- (b) How to Present Defenses. Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion:
  - (6) failure to state a claim upon which relief can be granted;



## **INTRODUCTION**

This case # 8877557c should have been closed after the decision on January 17, 2014 from the Commissioner's designee decision stating, "The Agency's determination to discontinue the appellant's-petitioner public assistance benefits because the appellant-petitioner had failed, without good cause, to keep an appointment with the agency for the purpose of evaluating the appellants-petitioner current status as exempt from participating in work activities is correct". I appealed the decision under Article 78, "which encompasses three writs: mandamus, prohibition, and certiorari. An Article 78 proceeding serves as a uniform device

to challenge the activities of an administrative agency in court". The New York State judge decision on July 11, 2014 stated that "The application of prose petitioner for an order pursuant to CPLR Article 78, annulling and vacating the determination of respondent discontinuing Public Assistance benefits of petitioner for failure to attend a mandatory interview, is hereby transferred to the Appellate Division, First department". However, the case was never transferred from the judge decision order on July 11, 2014, if I hadn't of submitted all of the required paperwork to the Manhattan Supreme Court in August of 2018 the case would never have been transferred.

The respondent representative stated, "according to the complaint, NYC-HRA improperly discontinued Plaintiff's-petitioner disability benefits on January 17, 2014, despite Plaintiff's-petitioner alleged exemption from work requirements due to his physical impairments". The medical statement and history would suffice any court to believe that I am not able to work and was discontinued unlawfully. Somehow documents were altered or changed from a computer base system regarding index number 400256/2014 and case # 8877557c to change the authenticity of the document to make it's features different from the original document. With today's new technology hackers can change documents easily on any computer terminal network. When I'm typing a document in the public library and proofreading that document to make sure it is correct before I print it so that the document is in original format, I noticed professional hackers can see the document while I'm typing. Once the document is printed some words are changed or misspelled in a way that was not there before when I read the entire

document. Some librarians recommend that I print the document on a private secure network so others won't see your work on a public computer network terminal. Index number 400256/2014/ case # 8877557c documents were changed in a way to label me something that I am not. Human Resource Administration changed the original context of the document relating to case # 8877557c into a label that I am not, such as, labeling me another gender, and labeling me another religion instead of Christianity, and also labeling me as deceased and a drug user.



#### **STATEMENT OF THE CASE**

The respondent stated, "The complaint must be dismissed in its entirety for lack of subject matter jurisdiction and failure to state a claim upon which relief can be granted. "First, Plaintiff's-petitioner suit against the state of New York for damages for past injuries is jurisdictionally barred by the Eleventh Amendment". The Eleventh Amendment is waived pursuant to the APA 5 U.S.C. § 706(2)(a) and tort law which is "a civil wrong that causes a claimant to suffer loss or harm resulting in legal liability for the person who commits the tortious act". Second, the respondent stated, "notwithstanding the Eleventh Amendment's jurisdictional bar to suit, the *Rooker-Feldman* doctrine also bars this action in its entirety. This Court lacks jurisdiction to overturn the State Court Order because a federal district court may not consider claims brought by state-court losers complaining of injuries caused by state-court judgments rendered before the

district court proceedings commenced and inviting district court review and rejection of those judgments". "The *Rooker-Feldman* doctrine applies when four requirements are met: (1) the federal plaintiff-petitioner lost in state court, (2) the plaintiff-petitioner complains of injuries caused by the state court judgment, (3) that judgment issued before the federal suit was filed, and (4) the plaintiff-petitioner invites the district court to review and reject the state court judgment".

The *Rooker-Feldman* cannot be implemented or enforced in this litigation because of fraud and facts stated by the sixth circuit which state, "An exception to the *Rooker-Feldman* of just such an equitable persuasion has taken root. A few courts-most especially the United States Court of Appeals for the Sixth Circuit-have determined that the *Rooker-Feldman* does not prevent the lower federal courts from reviewing state court judgments that were allegedly procured through fraud". Third, the respondent stated in the Memoranda of Law submitted on 1/14/2019 Dkt. # 18-cv-10038, Plaintiff's-petitioner fraud claims under various criminal statutes must be dismissed because the cited criminal statutes do not provide a private cause of action. Statute 18 U.S. Code § 1028 relates to "Fraud and related activity in connection with identification documents, authentication features, and information". Statute 18 U.S. Code § 1030 is, "fraud and related activity in connection with computers"- "having knowingly accessed a computer without authorization or exceeding authorized access, and by means of such conduct having obtained information that has been determined by the United States Government pursuant to an Executive order or statute to require protection

against unauthorized disclosure for reasons of national defense or foreign relations, or any restricted data". 18 U.S. Code § 1623. False declarations. Since Index number 400256/2014 was disposed and unsettled then embezzlement had to have occurred by using a restricted area computer terminal to access certain information. Statute 18 U.S. Code Chapter 47 relates to "fraud and false statements". If embezzlement still occurs then false statements have to opposition itself relating to Index number 400256/2014.

Since double jeopardy occurred in this litigation the above statutes can be enforced. "The double jeopardy clause of the Fifth Amendment prohibits placing a person twice in jeopardy of life or limb for the same offense". Double Jeopardy is covered by the Fifth Amendment of the U.S. Constitution which states, "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation". "Neither the multiple prosecution nor the multiple punishment protections explicitly include or exclude sanctions assessed in civil proceedings following criminal prosecutions or in criminal prosecutions following civil proceedings". The Constitution bars double jeopardy, period". Double jeopardy relates to the certificate of disposition documents that were attached to the

Motion for expedited relief I submitted on 7/1/2019 to the U.S. court of appeals for the Second Circuit.

Fourth, the respondent stated, "Plaintiff has failed to state a claim for violation of Title II of the ADA upon which relief can be granted because he has failed to plead that OTDA harbored discriminatory animus or ill will toward him because of his disability". ADA of 1990 Title II, "prohibits discrimination on the basis of disability in all services, programs, and activities provided to the public by State and local governments". Title II of the ADA covers the programs, activities, and services provided by public entities. (state and local governments and their instrumentalities and special purpose districts) Since I was supposedly terminated from receiving public benefits I was not able to receive adequate housing based on limited income or receive the appropriate benefits for day to day living. This violates the ADA of 1990-deprivation of benefits policy. Finally, the respondent preliminary statement from the memorandum of law that was submitted to the district court on 1/11/2019 Dkt. # 18-cv-10038-# 18 states, "Plaintiff-petitioner Fourteenth Amendment claims must be dismissed because Plaintiff-petitioner has not sufficiently alleged that OTDA violated his substantive or procedural due process rights". The Fourteenth Amendment Section 1 states, "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any

person within its jurisdiction the equal protection of the laws". Due process means obtaining public benefits without unlawfully being discontinued because of unrelated work requirements which are exempt to physical disabled recipients. ICCPR Articles 2-16 is implemented so that foreign diplomats do not interfere with federal jurisdiction proceedings pertaining to the United States Constitutional law guidelines and boundaries.

The district judge stated in the decision order dated 4/23/2019 Dkt. # 18-cv-10038-# 39 that, "with respect to his motion for a default judgment, plaintiff-petitioner claims that he served defendant-respondent on November 5, 2018". "He argues that defendant-respondent's failure to respond within thirty days entitles him to a default judgment". I wrote the district judge a letter to disregard the default judgement on the docket sheet # 8-Dkt. # 18-cv-10038 because the process server sent the summons & complaint to the wrong address, which was 112 State Street Room 600, Albany, New York 12207. The correct address was served twice. Once on 1/23/2019 at: 28 Liberty Street 15th floor, New York, New York 10005 by process server and on 1/25/2019 by process server at: 28 Liberty Street 16th floor, New York, New York 10005. Not only was the address wrong but the caption was wrong also. The correct caption should be [*Sean A. Clark, Appellant-petitioner v. State Commissioner of Social Services, Appellee-respondent*]. Departments should never have been added to the caption. In my motion I submitted on 7/1/2019 I stated I was misinformed of the caption when I first filed the petition for an Article 78 proceedings. Again, a petitioner

should never be misled when pursuing a civil lawsuit with inaccurate information.

The district judge stated in the decision order dated 4/23/2019-dkt. # 18-cv-10038# 39, “to survive a motion to dismiss under Rule 12(b)(6), the plaintiff-petitioner must plead enough facts to state a claim to relief that is plausible on its face”. “A court must accept all well-pleaded facts as true and must draw all reasonable inferences in favor of the plaintiff-petitioner”. “Rule 12(b)(6) of the Federal Rules of Civil Procedure tests the form and sufficiency of a statement of a claim under the liberalized pleading rule. However, since the Federal Rules attempted to adopt the successes and avoid the failures’ of code pleading,’ the purpose of Rule 12(b)(6) seems to conflict with the purpose of modern pleading.’ Although the liberal pleading rule generally allows a plaintiff to set forth a claim in a short and plain statement, Rule 12(b)(6) allows a court to dismiss a complaint before the development of the proceeding. The problem is when and how a Rule 12(b)(6) motion is to be granted. Although it has been said that a Rule 12(b)(6) motion is rarely granted, the district court has granted a Rule 12(b)(6) motion and the court of appeals has reversed or vacated that grant in a considerable number of cases. There are conflicting views on the interpretation of Rule 12 (b)(6)”. “The Federal Rules and other statutes adopted various devices which have diminished the functions of Rule 12(b)(6). Behind the policy there is a basic precept that the primary objective of the law is to obtain a decision on the merits of any claim; and that a case should be tried substantially on the merits rather than technically on the pleading”. (<https://>

[scholarship.law.campbell.edu/cgi/viewcontent.cgi?  
article=1249&context=clr](http://scholarship.law.campbell.edu/cgi/viewcontent.cgi?article=1249&context=clr)

The case was dismissed quickly before I could address the merits of the case. My medical condition alone would suffice any court of law that I have supportive details on the merits and that I am unable to work on any level or occupation. The respondent never answered the summons & complaint pertaining to embezzlement of index # 400256/2014. Fraud occurred in an unknown amount in 2014 after the decision by the Article 78 judge on 7/11/2014 and the issue was never addressed by the respondent. The district judge stated in the decision order dated 4/23/2019 dkt. # 18-cv-10038-# 39, "A pro se plaintiff's-petitioner claim must be construed liberally and interpreted to raise the strongest arguments they suggest". My detailed medical condition which is explained below and fraud relating to index # 400256/2014 raises enough discovery for a judgement in my favor. The administrative file was never transferred in 2014 due to embezzlement in an unknown amount. Again the Eleventh Amendment is waived pursuant to the APA 5 U.S.C. § 706 (2)(a). *See Greater Yellowstone Coalition v. Lewis*, 628 F.3d 1143, 1148 (9th Cir. 2010)

"Pursuant to the APA, an agency decisions may be set aside only if arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." *See United States v. Bean*, 537 U.S. 71, 77 (2002); *Gardner v. U.S. Bureau of Land Mgmt.*, 638 F.3d 1217, 1224 (9th Cir. 2011); *Latino Issues Forum v. EPA*, 558 F.3d 936, 941 (9th Cir. 2009); *High Sierra, Hikers Ass'n.*, 390 F.3d at 638; *Public Util. Dist. No. 1*, 371 F.3d at 706. The law the respondent refers to

is Rule 12(b)(6) which I already explained above. The case was dismissed without each argument being thoroughly investigated and contested pertaining to fraud from index # 400256/2014. For this reason, the *Rooker-Feldman* doctrine cannot be enforced because of fraud and the eleventh amendment is waived pursuant to the APA 5 U.S.C. § 706(2)(a) "The arbitrary and capricious standard is appropriate for resolutions of factual disputes implicating substantial agency expertise". *See Marsh v. Oregon Natural Res. Council*, 490 U.S. 360, 376 (1989); *Safari Aviation Inc. v. Garvey*, 300 F.3d 1144, 1150 (9th Cir. 2002); *Ninilchik Traditional Council v. United States*, 227 F.3d 1186, 1194 (9th Cir. 2000). "The reviewing court must determine whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment". *See Marsh*, 490 U.S. at 378; *Ocean Advocates*, 402 F.3d at 859; *Forest Guardians v. U.S. Forest Serv.*, 329 F.3d 1089, 1097 (9th Cir. 2003); *Env'l. Def. Ctr.*, 344 F.3d at 858 n.36. There has been a clear error of judgement based on fraud and defects in the administrative record that were never corrected. "An agency's interpretation or application of a statute is a question of law reviewed de novo". *See Snoqualmie Indian Tribe v. FERC*, 545 F.3d 1207, 1212 (9th Cir. 2008); *Schneider v. Chertoff*, 450 F.3d 944, 952 (9th Cir. 2006); *Vernazza v. SEC*, 327 F.3d 851, 858 (9th Cir.), *amended by* 335 F.3d 1096 (9th Cir. 2003). "An agency's interpretation of its statutory mandate is also reviewed de novo". *See* *amended by* 335 F.3d 1096 (9th Cir. 2003); *American Rivers v. FERC*, 201 F.3d 1186, 1194 (9th Cir. 2000).

"Under FRCP Rule 26(c), a district court may stay discovery during the pendency of a motion to dismiss

upon a showing of good cause". "Looking to the particular circumstances and posture of each case, courts consider (1) [the] breadth of discovery sought, (2) any prejudice that would result, and (3) the strength of the motion". "As to the strength of the motion to dismiss, it must be supported by substantial arguments for dismissal, *i.e.*, the movant must make a strong showing that the plaintiff's-petitioner claim is unmeritorious". "Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any non-privileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable". The first discovery is the misinformation pertaining to the correct caption of the case.

In 2014, I was misinformed of the caption which led to a scheme of embezzlement. The second discovery is the respondent made a false statement in the Memorandum of law that was submitted on 1-14-2019 dkt. # 18-cv-10038-# 39 when stating that the case was transferred shortly after the decision from the Article 78 Judge on 7/11/2014. The case was not transferred shortly after per judge order. If I had not of submitted a subpoena to the Supreme Court of Manhattan the case never would have been transferred. The third discovery is a falsified stipulation to obtain my gold bars from my estate account with my signature

from illegal certified mail. I've requested that all of my gold bars be returned to my estate account and refurbished but to no avail I was denied. The burden of proof is fraud from index # 400256/2014 and medical description that support my claim in its entirety. The eleventh amendment is waived pursuant to the APA 5 U.S.C. § 706(2)(a) and tort law.



#### **REASONS FOR GRANTING THE PETITION**

Since the case was disposed and unsettled on July 11, 2014 embezzlement still occur by a unknown government official entity, or vigilante. Sovereign immunity is waived pursuant to section 5 U.S.C. § 706(2)(a) of the APA which states, the agency action is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law"; and tort law which states, "in common law jurisdictions, is a civil wrong that causes a claimant to suffer loss or harm resulting in legal liability for the person who commits the tortious act".

[https://www.patentofficelawsuit.info/apa\\_act.htm](https://www.patentofficelawsuit.info/apa_act.htm)

The respondent states in the Memorandum of Law submitted on 1/11/2019 dkt. 18-cv-10038(# 18) that, "[T]o state a 42 U.S.C. § 1983 claim for denial of procedural due process, a plaintiff-petitioner must demonstrate that he possessed a protected liberty or property interest, and that he was deprived of that interest without due process". Case # 8877557c is a case that has been open for more than ten years and the defects of labels were never corrected. Because of these defects in the administrative record all of these cases

in this court were not in my favor: 10-5273, 13-6208, 13-8865, 14-5566, 14-5568, 14-5858, 14-8118, 16-6495.

**I. RESPONDENT MADE NUMEROUS MATERIAL FALSE DECLARATIONS TANTAMOUNT TO COMMON LAW FRAUD.**

**A. Common Law Fraud**

“Under common law, three elements are required to prove fraud: a material false statement made with an intent to deceive (scienter), a victim’s reliance on the statement and damages”. “In the United States, common law generally identifies nine elements needed to establish fraud: (1) a representation of fact; (2) its falsity; (3) its materiality; (4) the representer’s knowledge of its falsity or ignorance of its truth; (5) the representer’s intent that it should be acted upon by the person in the manner reasonably contemplated; (6) the injured party’s ignorance of its falsity; (7) the injured party’s reliance on its truth; (8) the injured party’s right to rely thereon; and (9) the injured party’s consequent and proximate injury.”

**B. A Representation of Fact**

I’ve provided substantial admissible evidence of Procedural due process to show that the respondent made a false declaration when stating that the administrative file was transferred on or around July 11, 2014 the day an Article 78 New York State Judge made a decision order annulling and vacating the case, which means the case is disposed and unsettled due to fraud. The administrative file was never transferred on that day or around that date. The administrative file should have been transferred to the Appellant Di-

vision, First Department per judge's order after my proof of service to the county clerk's office of New York was submitted on 8/20/2014. Also, I was misinformed when I first applied for a petition in 2014. The court representative gave me the wrong information in regards to the caption. Departments should never have been added to social services. The case should not have been dismissed under Rule 12(b)(6), the *Rooker-Feldman* doctrine, and the eleventh amendment. A claim is stated for relief but fraud occurred regarding index # 400256/2014 in an unknown amount. The *Rooker-Feldman* cannot be enforce because of fraud and the eleventh amendment immunity is waived per APA 5 U.S.C. § 706(2)(a).

### **C. Its Falsity**

Respondent states, "suits against states and their officials seeking damages for past injuries are firmly foreclosed by the Eleventh Amendment". The eleventh amendment is waived pursuant to the APA 5 U.S.C. § 706(2)(a) which states, "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law"; tort law which states, "is a civil wrong that causes a claimant to suffer loss or harm resulting in legal liability for the person who commits the tortious act", and the fourteenth amendment section 5. which states, "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws". The respondent cannot implement or enforce the *Rooker-Feldman* doctrine because of fraud that occurred in 2014 relating to index

number # 400256/2014. The exception to the *Rooker-Feldman* is “of just such an equitable persuasion has taken root. A few courts-most especially the United States Court of Appeals for the Sixth Circuit-have determined that the *Rooker-Feldman* does not prevent the lower federal courts from reviewing state-court judgments that were allegedly procured through fraud”. “In other words, when a state-court loser complains that the winner owes his triumph not to sound legal principles—or even unsound ones—but to fraud, then the loser is not really complaining of an injury caused by a state-court judgment, but of an injury caused by the winner’s chicanery”. On 10/24/2019 the United States court of appeals for the second circuit dismissed the case as moot and untimely but this is not a moot case because the expedited relief sought occurred through fraud which violates the APA 5 U.S.C. § 706(2)(a) and I submitted a motion form under FRAP 4(a)(5) for an extension of time which was received and stamped on 6/19/2020 because I was not feeling well due to my entitled disability. (<https://www.fclr.org/fclr/articles/html/2010/baker.pdf>)

#### **D. Its Materiality**

The material which is the decision order from an Article 78 New York State Judge dated 7/11/2014 and Proof of Service to the County Clerk’s office of New York dated 8/20/2014 was attached to the complaint on October 31, 2018. The decision order on 7/11/2014 states, “The application of pro se petitioner for an order pursuant to CPLR Article 78, annulling and vacating the determination of respondent discontinuing Public Assistance (PA) benefits of petitioner for failure to attend a mandatory interview, is hereby transferred

to the Appellate Division, First Department". "Accordingly, it is hereby ordered, that petitioner is directed to serve a copy of this order with notice of entry upon all parties and file proof thereof with the Office of the County Clerk, who is directed to transfer this action to the Appellate Division, First Department". Proof of service to the county clerk's office of New York was served on 8/20/2014. However when I first applied for the petition I never received the proper material to start the petition, like the appropriate caption.

**E. The Representer's Knowledge of Its Falsity or Ignorance of Its Truth**

The respondent is aware of the false declaration that was made in the memorandum of law that was submitted on January 14, 2019 which violates statute, 18 U.S. Code § 1623. Substantive Due Process is a pre-deprivation remedy that was made from the Commissioner's designee on 1/17/2014 stating, "The Agency's determination to discontinue the Appellant-petitioner Public Assistance benefits because the Appellant-petitioner had failed, without good cause, to keep an appointment with the Agency for the purpose of evaluating the Appellant's-petitioner's current status as exempt from participating in work activities is correct". "The substantial evidence standard requires the appellate court to review the administrative record as a whole, weighing both the evidence that supports the agency's determination as well as the evidence that detracts from it". *See De la Fuente*, 332 F.3d at 1220 (reviewing the record as a whole); *Mayes v. Massanari*, 276 F.3d 453, 458-59 (9th Cir. 2001); *Smolen v. Chater*, 80 F.3d 1273, 1279 (9th Cir. 1996). The Procedural due process is a post-deprivation remedy which was

made by an Article 78 New York State Judge on 7/11/2014 who stated that the case is annulled and vacated which means the case was essentially overturned from the Commissioner's designee decision on 1/17/2014.

**F. The Representer's Intent that It Should Be Acted Upon By the Person in the Manner Reasonably Contemplated**

The Eleventh Amendment is waived and the *Rooker-Feldman* Doctrine is not enforced or implemented in this litigation because it violates my constitutional right which is the 14th amendment section 5 which states, "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; The "APA 5 U.S.C. § 706(2)(a) which states, "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law"; and tort law which states, "is a civil wrong that causes a claimant to suffer loss or harm resulting in legal liability for the person who commits the tortious act".

**G. The Injured Party's Ignorance of Its Falsity**

For the record, I was not ignorant of the respondent's false declaration under statute 18 U.S. Code § 1623 or the fact that I was misled with false information when I first applied to file for a petition. The clerk receptionist should have informed me of the right caption when I first applied in 2014 but this was a falsified stipulation to try and obtain my gold bars from my estate account.

#### **H. The Injured Party's Reliance on Its Truth**

The truth of the matter is that the respondent made a false declaration when stating that the administrative file index number # 400256/2014 was transferred to the Appellant Division, First Department on 7/11/2014 or shortly after. The file was not transferred on that particular date nor was it transferred on 8/20/2014 the day I submitted my proof of service document to the County Clerk's Office of New York. Another truth is that I was misled by falsified information when I first applied for my lawsuit with the wrong caption. The last truth is that the Eleventh Amendment is waived pursuant to APA 5 U.S.C. § 706(2)(a) which states, "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law"; and tort law which states, "is a civil wrong that causes a claimant to suffer loss or harm resulting in legal liability for the person who commits the tortious act". Also The *Rooker-Feldman* doctrine cannot be enforced in this action because of fraud and the above exception by the sixth circuit.

#### **I. The Injured Party's Right to Rely Thereon**

This is a given fact that the decision made by the Article 78 New York State judge on 7/11/2014 is a post-deprivation remedy which is a procedural due process. The Judge stated on 7/11/2014 that, "The application of pro se petitioner for an order pursuant to CPLR Article 78, annulling and vacating the determination of respondent discontinuing Public Assistance (PA) benefits of petitioner for failure to attend a mandatory interview, is hereby transferred to the Appellate Division, First Department". "Accordingly, it is hereby ordered, that petitioner is directed to serve a copy of

this order with notice of entry upon all parties and file proof thereof with the Office of the County Clerk, who is directed to transfer this action to the Appellate Division, First Department". The administrative file was never transferred because fraud occurred in 2014 relating to index # 400256.

**J. The Injured Party's Consequent and Proximate Injury**

The injury caused prevented me from getting adequate housing and the appropriate resources to live a sustainable life. Since this case pertains to index number # 400256/2014 fraud in an unknown amount, Under Rule 42(1) I'm requesting interest and damages retroactively to the date the embezzlement began which is 7/11/2014.

**II. DOUBLE JEOPARDY ANALYSIS IN GOVERNMENT INITIATED CIVIL AND CRIMINAL PROSECUTIONS.**

I was arrested in 2012 for sitting in the park in a designated restricted area designed for kids to play. If you are not accompanied with a child or toddler then you are not allowed in that area. I did not read the small print sign that was on the gate during my entrance and there were no kids in the area at this time because it was around noon time and I had just bought a sandwich and cold beverage fruit drink from the local convenient store and when I started to eat my sandwich and continue to read my book two law enforcement officers came inside the park and arrested me. The charges were later dismissed and dropped but vigilantes can use criminal justice law to acquire monetary funds from a civil lawsuit but not after the case was dismissed and sealed on 8/12/2013. Although

the judge that dismissed the case said sitting in a park and minding your own business is not a crime I still had to keep coming to court to contest the charges. The sealing documents were attached to my Memorandum of Law that was submitted on 3/20/2019 Dkt. # 18cv10038.

“The double jeopardy clause of the Fifth Amendment prohibits placing a person twice in jeopardy of life or limb for the same offense. Centuries before its incorporation into the bill of rights the prohibition against double jeopardy was securely entrenched in English common law practice. In interpreting and applying the clause, the court’s double jeopardy decisions have considered both the history of the clause and the clause’s underlying interests in finality and fairness”. ([https://www.jstor.org/stable/1073192?seq=3#metadata\\_info\\_tab\\_contents](https://www.jstor.org/stable/1073192?seq=3#metadata_info_tab_contents)) Double Jeopardy is covered by the Fifth Amendment of the U.S. Constitution which states, “No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation”. “Neither the multiple prosecution nor the multiple punishment protections explicitly include or exclude sanctions assessed in civil proceedings following criminal prosecutions or in criminal prosecutions following civil proceedings” “The Consti-

tution bars double jeopardy, period". "In an 1873 case, *Ex Parte Lange*," the Supreme Court rejected this narrow conception of the clause's prohibitions. *Ex Parte Lange* not only clarified and expanded the scope of the double jeopardy clause, it also explained that "the Constitution was designed as much to prevent the criminal from being twice punished for the same offence as from being twice tried for it." A great deal of doubt surrounds the applicability of the double jeopardy clause in situations involving a criminal prosecution and a prior or subsequent civil suit. Over fifty years ago, the Supreme Court stated that "Congress may impose both a criminal and a civil sanction in respect to the same act or omission." According to the Court's modern interpretation, the double jeopardy clause provides three analytically distinct protections.

A defendant-respondent may not be subjected to "[1] a second prosecution for the same offense after acquittal; [2] a second prosecution for the same offense after conviction; and [3] multiple punishments for the same offense." The Commissioner's designee decision was on 1/17/2014 which is after the sealing of the last Certificate of Disposition # 504014 dismissed date of 8/12/2013. The other three Certificate of Disposition # 504013, # 504012, and # 504011 were dismissed on 2/15/2005, 12/20/2004 and 7/14/2004. These cases pertain to metro cards not working properly when registered on a bus and sitting in a park minding my own business. Since all of these cases were sealed before the Commissioner's designee decision they should not have been opened for embezzlement and leaked to my driver's license. This violates the 5th amendment which states, "No person shall be held to answer for a capital, or otherwise infamous crime,

unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.” “The clauses incorporated within the Fifth Amendment outline basic constitutional limits on police procedure”. “The guarantee of due process for all persons requires the government to respect all rights, guarantees, and protections afforded by the U.S. Constitution and all applicable statutes before the government can deprive any person of life, liberty, or property”. For vigilantes to acquire monetary funds through civil court settlements they have to open sealed court documents that have already been sealed which violates the 5th Amendment of the U.S. Constitution and double jeopardy clause.

### **III. PETITIONER WAS DEPRIVED OF SUBSTANTIVE DUE PROCESS.**

Substantive due process “is the notion that due process not only protects certain legal procedures, but also protects certain rights unrelated to procedure”. When the Commissioner’s designee dismissed my benefits on 1/17/2104 for supposedly good cause and the Article 78 judge vacated the decision this was the proper method for using the substantive due process based on a pre-determined decision that was based on assumptive medical facts. As I stated above referring to Common Law Fraud that Substantive Due Process is

a pre-deprivation remedy that was made from the Commissioner's designee on 1/17/2014. Apparently, it was a process designed to temporarily discontinue my benefits until the next level of appeal. "The Fourteenth Amendment's Due Process Clause is not a secret repository of substantive guarantees against unfairness". "The Due Process Clause protected individuals from state legislation that infringed upon their "privileges and immunities" under the federal Constitution".

"The Constitution states only one command twice. The Fifth Amendment says to the federal government that no one shall be "deprived of life, liberty or property without due process of law." The Fourteenth Amendment, ratified in 1868, uses the same eleven words, called the Due Process Clause, to describe a legal obligation of all states. These words have as their central promise an assurance that all levels of American government must operate within the law ("legality") and provide fair procedures". When the Commissioner's designee discontinued my benefits on 1/17/2014 fair procedures were not implemented but rather a resolution designed to get me the recipient to work. "The clause also promises that before depriving a citizen of life, liberty or property, government must follow fair procedures. Thus, it is not always enough for the government just to act in accordance with whatever law there may happen to be. Citizens may also be entitled to have the government observe or offer fair procedures, whether or not those procedures have been provided for in the law on the basis of which it is acting. Action denying the process that is "due" would be unconstitutional". "The Constitution does not require "due process" for establishing laws; the provision applies when the state acts against individuals

“in each case upon individual grounds”—when some characteristic unique to the citizen is involved. Of course there may be a lot of citizens affected; the issue is whether assessing the effect depends “in each case upon individual grounds.” “Substantive due process is to be distinguished from procedural due process. The distinction arises from the words “of law” in the phrase “due process of law”. “Procedural due process protects individuals from the coercive power of government by ensuring that adjudication processes, under valid laws, are fair and impartial. Such protections, for example, include sufficient and timely notice on why a party is required to appear before a court or other administrative body, the right to an impartial trier of fact and trier of law, and the right to give testimony and present relevant evidence at hearings. In contrast, substantive due process protects individuals against majoritarian policy enactments that exceed the limits of governmental authority: courts may find that a majority’s enactment is not law and cannot be enforced as such, regardless of whether the processes of enactment and enforcement were actually fair”.

In this case the Commissioner’s designee did not use good majority leadership when stating that the decision was based on good cause when in actuality the decision was not based on good cause but rather a medical assumption. “The term “substantive due process” itself is commonly used in two ways: to identify a particular line of case law and to signify a particular political attitude toward judicial review under the two due process clauses”. “When a law or other act of government is challenged as a violation of individual liberty under the Due Process Clause, courts now use

two forms of scrutiny or judicial review. The inquiry balances the importance of the governmental interest being served and the appropriateness of the method of implementation against the resulting infringement of individual rights. If the governmental action infringes upon a fundamental right, the highest level of review, strict scrutiny, is used. To pass strict scrutiny, the law or the act must be both narrowly tailored and the least restrictive means of furthering a compelling government interest. If the governmental restriction restricts liberty in a manner that does not implicate a fundamental right, rational basis review is used, which determines whether a law or act is rationally related to a legitimate government interest. The government's goal must be something that it is acceptable for the government to pursue. The legislation must use reasonable means to the government's goals but not necessarily the best. Under a rational basis test, the burden of proof is on the challenger so laws are rarely overturned by a rational basis test. There is also a middle level of scrutiny, called intermediate scrutiny, but it is used primarily in Equal Protection cases, rather than in Due Process cases": "The standards of intermediate scrutiny have yet to make an appearance in a due process case." "To pass intermediate scrutiny, the challenged law must further an important government interest by means that are substantially related to that interest". It's never acceptable to use the wrong standard of procedure when making a decision that is not based on the facts but rather the assumption. This assumption of good cause is why the decision was vacated by an Article 78 judge on 7/11/2014.

[https://www.law.cornell.edu/wex/  
substantive\\_due\\_process](https://www.law.cornell.edu/wex/substantive_due_process)

[https://www.law.cornell.edu/wex/due\\_process](https://www.law.cornell.edu/wex/due_process)

[https://en.wikipedia.org/wiki/Substantive\\_due\\_process](https://en.wikipedia.org/wiki/Substantive_due_process)

“The due process of law guarantee is an effort—one with deep roots in the history of western civilization—to reduce the power of the state to a comprehensible, rational, and principled order, and to ensure that citizens are not deprived of life, liberty, or property except for good reason. What sorts of reasons are “good” is obviously a normative question, but notwithstanding the arguments of many critics of substantive due process, the Due Process Clause invites—indeed, requires—courts and legal scholars to take seriously the idea that there are real answers to such normative questions. Though contemporary discourse often treats normative matters as essentially irrational, subjective preferences, the Due Process Clause is based on the opposite premise: that law and arbitrary command, justice and mere force genuinely differ. And the idea of a lawful political order depends on recognizing that difference. In short, procedural guarantees are constructed out of substantive guarantees. This dual character of the lawfulness requirement bars the government from using any kind of force which pretends law,” whether it be an act of “mere force,” or “a malicious ensnarement under colour of law, or if the arbitrariness resides in the harshness of the law itself.” <https://object.cato.org/sites/cato.org/files/articles/Sandefur-HJLPP-v35n1.pdf>

#### **IV. PETITIONER WAS DEPRIVED OF PROCEDURAL DUE PROCESS.**

Procedural due process, "is a legal doctrine in the United States that requires government officials to follow fair procedures before depriving a person of life, liberty, or property. When the government seeks to deprive a person of one of those interests, procedural due process requires at least for the government to afford the person notice, an opportunity to be heard, and a decision made by a neutral decision maker. Procedural due process is required by the Due Process Clauses of the Fifth and Fourteenth Amendments to the United States Constitution". ([https://en.wikipedia.org/wiki/Procedural\\_due\\_process](https://en.wikipedia.org/wiki/Procedural_due_process))

The most obvious requirement of the Due Process Clause is that states afford certain procedures ("due process") before depriving individuals of certain interests ("life, liberty, or property"). Although it is probably the case that the framers used the phrase "life, liberty, or property" to be a shorthand for important interests, the Supreme Court adopted a more literal interpretation and requires individuals to show that the interest in question is either their life, their liberty, or their property-if the interest doesn't fall into one of those three boxes, no matter how important it is, it doesn't qualify for constitutional protection". In my case I was deprived of all three required elements of the constitution. I was deprived of living life without adequate funding. I was deprived of liberty without the basic needs of adequate resources which limits a recipient's day to day activities, and I was deprived of property by the embezzlement of my section 8 voucher which was processed in 2006. "The Due Process

Clause is essentially a guarantee of basic fairness. Fairness can, in various cases, have many components: notice, an opportunity to be heard at a meaningful time in a meaningful way, a decision supported by substantial evidence, etc. In general, the more important the individual right in question, the more process that must be afforded. No one can be deprived of their life, for example, without the rigorous protections of a criminal trial and special determinations about aggravating factors justifying death. On the other hand, suspension of a driver's license may occur without many of the same protections". I'm not on any criminal trial and my driver's license have not been suspended. <http://law2.umkc.edu/faculty/projects/trials/conlaw/proceduraldueprocess.html>

"Procedural Due Process, unlike its textual sibling, Substantive Due Process, is fairly self-evident from the words of the Constitution themselves. As stated in the Due Process Clause, "[N]or shall any State deprive any person of life, liberty, or property, without due process of law." Meaning, if there is some government action (the federal government also being subject to these requirements through the 5th Amendment) seeking to deprive a person of life, liberty or property, then the government is required to afford some minimum amount of procedure to allow the person being deprived to reasonably defend himself or herself. Once there is some life-interest, liberty-interest, or (much more regularly) property-interest at stake, the government must provide the person with both reasonable notice and a reasonable opportunity to be heard". When I had an opportunity to be heard from an Article 78 judge by writing a ten page document about my medical condition, the Article 78 judge

vacated the decision by the Commissioner's designee on 1/17/2014. <https://constitutionallawreporter.com/amendment-14-01/procedural-due-process/>

#### **V. PETITIONER STILL QUALIFIES FOR DISABILITY BENEFITS DUE TO CHRONIC, EXTREME BACK PAIN.**

My entitled Social Security disability consist of chronic back physical impairments to the lower spine due to a sports injury. The onset date of my disability is July of 2002 but I have been entitled of a physical disability since 2012. "Chronic pain is pain that persists for three months or longer, even after the original cause has healed and can in itself become a major focus of disability or dysfunction". Most common types of back pain originate in one or more of three places in the back: "The bones of the spine (the vertebrae), the muscles, tendons and ligaments attached to these bones, and the nerves that come from the spinal cord that weave in and out of the spine. Structural changes in bones or soft tissue can press on nerves which results in pain. In some conditions the nerves themselves become inflamed and this causes the pain".

Discogenic back pain (herniated (slipped) disc) occurs when the cushioning, shock-absorbing discs between the vertebrae malfunction or break, slipping out of position and pinching spinal nerves". "Spondylolisthesis occurs when one vertebrae in the spinal column slips forward over another. This disrupts the whole integrity of the spine, destabilizing it. When the spine is destabilized the vertebrae pull on muscles, ligaments and other discs, compressing nerves and causing pain. The sciatic nerve is actually a collection of spinal nerves joined together at the lower part of the spine. At the end of the spine the sciatic nerve splits

in two sending branches through the buttocks and down the back of each leg all the way to the feet. When any one nerve in this group gets irritated or compressed it sends pain signals to all of the other nerves and this pain can extend all the way down the leg". If I am walking, sitting, or standing for prolong periods I will get a shooting-pain feeling down my right leg near the hip area. "Nociceptive pain is pain caused by stretching, pressure, or injury to tissues, muscles or organs anywhere in the body and includes aches or pains deep within the body". There are damaged tissue organs at the L3/L4 level of my lower back spine which causes nociceptive pain. There is a central disc protrusion at the L5/S1 level of my lower spine abutting the S1 nerve roots bilaterally which causes neuropathic pain. At the L3/L4 and L5/S1 level of my lumber spine there is a degenerative disc disease which is known as disc herniation. "When a disc herniation occurs the cushion that sits between the spinal vertebrae is pushed outside its normal position".

At the L3/L4, L4/L5, and L5/S 1 level there is a diffuse bulging disc. A bulging disc can cause discomfort and disability in various parts of the body, depending on the location of the affected disc. "A bulging disc occurs when one of the discs between your vertebrae develops a weak spot and pops out beyond its normal perimeter. In the lower back, the damaged disc can cause pain to travel to the hips, buttocks, legs and feet. In the upper back, the pain would radiate from the neck down the arm and to the fingers. Approximately 90% of bulging discs occur in the lower back or lumbar area of the spine. The most common lumbar bulging disc is seen around levels L4-L5 (Lumbar segment 4

and 5) or L5-S1 (Lumbar segment 5 and sacral segment 1), which causes in the L5 nerve or S1 nerve. If the bulging disc impinges on the sciatic nerve in the lower back it can lead to back problem called sciatica. On the other hand if the bulging disc is located in the neck it is called a cervical bulging disc. Sciatica is caused by irritation of the sciatic nerve. The sciatic nerve can be pinched or stretched. A herniated disc (sometimes called a slipped disc) is the most common cause of sciatica. Discs are the cushions between the bones in the back. Disc typically degenerate in stages: the first stage is often a bulging disc, when the disc inner material called nucleus pulposus moves beyond its normal parameters and pushes into the thick outer wall, called the annulus fibrosus creating a bulge. A bulging disc is said to involve more than half (more than 180 degrees) of the disc circumference". (*See [http://www.laserspineinstitute.com/back\\_problems](http://www.laserspineinstitute.com/back_problems)*) Clinical laboratory diagnosis noted in my lumbar spine that there is straightening of the lumbar lordosis which is the curve at the base of the spine. If you look at your back from the side, you will see that your spine naturally curves inwards at the neck and your lower back curves outwardly in the middle. Each person may have variations in the shape and size of these curves.

In my case, my lumbar lordosis naturally curves when sitting in an upward position, this is known as sway back posture. So straightening of the lumbar lordosis will only harm or rupture the damaged degenerative disc. Furthermore, at the L3/L4 level there is a central canal stenosis (lumbar spinal stenosis) which is a disease that is caused by a gradual narrowing of the spinal canal. (*See [www.spine-health.com](http://www.spine-health.com)*)

“The sacroiliac joint (or S1 joint) located at the L5/S1 level connects the sacrum and the iliac crest to support the spine and hips. The joint is small and strong and held together by tough fibrous ligaments. The pain is similar to sciatica and other back pain issues. The sagittal (T1 and T2)-relates to or denotes the suture on top of the skull which runs between the parietal bones in a front to back direction”. Spondylosis is located at the L5/S1 level and refers to a situation where there is degeneration of the spine. (Degeneration in the lower back-lumbar spondylosis) There is evidence for subluxation which is when one or more of the bones of your spine (vertebrae) move out of position and create pressure on or irritate spinal nerves. Spinal nerves are the nerves that come out from between each of the bones in your spine. This pressure or irritation on the nerves then causes those nerves to malfunction and interfere with the signals traveling over those nerves”.

My chronic back pain symptoms which are, disc protrusion, disc degeneration, spondylosis, straightening of the lumbar lordosis, subluxation, osteophytes, and central canal stenosis are classified as chronic fatigue syndrome (CFS). “Chronic Fatigue Syndrome is a systemic disorder consisting of a complex of symptoms that may vary in incidence, duration, and severity. The current case criteria for CFS, developed by an international group convened by the centers for Disease Control and Prevention (CDC) as an identification tool and research definition include a requirement for four or more of a specified list of symptoms. These constitute a patient’s complaint as reported to a provider of treatment”.

My chronic back pain impairments has lasted for more than six months and more than twelve months and will continue to last upon the point of death. As of now, my chronic back pain condition impairments has lasted for more than seventeen years since July of 2002. My chronic lower back pain is also known as chronic pain syndrome (CPS) which demonstrates a tremendous amount of long lasting and structurally illogical symptoms. "In some cases, the diagnosis is made when structural issues may be the underlying causation but symptoms do not correlate clinically or previous treatment attempts have since resolved the structural issues yet the pain remains or even worsens".

"Chronic pain syndrome is theorized to exist due to nerve damage or scar tissue". Diagnostics noticed at the L5/S1 level of my lower lumbar spine there is an interval increase in the central disc protrusion abutting the S1 nerve roots bilaterally. Disability law defines a disability "as a physical or mental impairment that substantially limits one or more of the major life activities or an individual. Also a record of such an impairment or being regarded as having such an impairment. An individual who has a record of a physical impairment that substantially limits a major life activity is within the statute even if that person was previously misclassified as having such impairment". (*See Americans with Disabilities Act of 1990*). My chronic back pain impairment prevents me from doing any kind of substantial, sedentary, or menial work. Good cause consists of an entitled physical disability person who has a degenerated disc disease which therefore exempts him from participating in any work requirement activities. However, I am able

to continue my education at a high level curriculum  
mental capacity.



### CONCLUSION

Under Rule 42(1) I request that this court grant my petition for writ of certiorari because of factual evidence, false information by the respondent, burden of proof, admissible evidence, mislead information, and defects in the administrative record. Also, I'm requesting all of my gold bars from my estate account are returned and refurbish them as they were before they were stolen and to correct all label defects in the administrative record. For the record, I am a male, a heterosexual, a protestant Christian, and I never indulged in any drug substances. I am a native American in this country. Both of my parents were born in this country and both of my grandparents were born in this country. <https://lawshelf.com/courseware/entry/jurisdiction-over-the-subject-matter-of-the-action-subject-matter-jurisdiction>

Respectfully submitted,

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