

20-1535
No. 21-____

In The
Supreme Court of the United States

KEVIN DIAZ,

Petitioner,

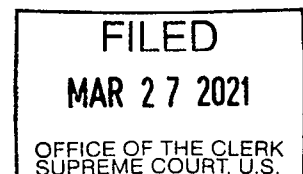
v.

ASHLEY JOHNSON,

Respondent.

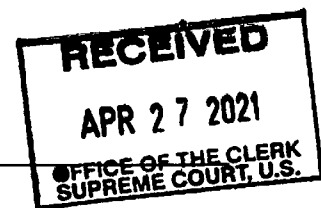
Petition for Writ of Certiorari

On Petition for Writ of Certiorari
United States Court of Appeals
for the First Circuit
Case No. 19-1501



Kevin Diaz, Pro se
MobilityNodes.com
Legal Defense of Article I
For Writings and Discoveries

Petitioner-Prosecutor



FEDERAL QUESTIONS PRESENTED

1. Whether the Lower Court erred in not admitting nexus evidence for administrative action taken under the jurisdiction of §§ 702 706 of the APA implemented under Pub. L. 106-398, § 1 [[div. A], title IX, § 904(a)(1)] Oct. 30, 2000, 114 Stat. 1654, 1654A-225, substantive law for emerging technology in 2014 and not applicable to the Tucker Act.
2. Whether ex parte communications fulfill libel and use of the secret code word in Respondent's Official agency action Determination were arbitrary and capricious when reversing prior official agency action in 2014 for Technology Capability development.
3. Whether original claim had substantial evidence for causation under APA § 706.
4. Whether the Federal Question in the Appeal's Court was summarily avoided using the Political or Major Question Doctrine with initial agency action substantial evidence was present in 2014 and subsequent 2015 adjudication contained unsupported slander with no evidence to exclude judicial analysis of the Petitioner's Cause of Action.
5. Whether Chevron deference applies to a statutory interpretation question that determines both the lawfulness of agency action and, the court's jurisdiction that excluded prima facie nexus evidence submitted into the record with affidavit.

PARTIES TO THE PROCEEDING

The following Petitioner represented himself as the appellant in the court of appeals:

Kevin Diaz, Developer of Mobility Nodes, in his official capacity as the originator and owner.

Ashley Johnson is the Respondent represented by the Department of Justice in the Lower Courts.

RULE 29.6 DISCLOSURE STATEMENT

Petitioner Kevin Diaz has no parent corporation and is not a publicly held company.

RELATED PROCEEDINGS

The following proceeding is directly related to this petition:

Kevin Diaz v. Ashley Johnson, et al. 19-1612.

TABLE OF CONTENTS	Page
QUESTIONS PRESENTED	1
PARTIES TO THE PROCEEDING	2
RULE 29.6 DISCLOSURE STATEMENT	3
RELATED PROCEEDINGS	4
TABLE OF AUTHORITIES	6
JURISDICTION	8
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	8
STATEMENT OF THE CASE	8
REASONS FOR GRANTING WRIT OF CERTIORARI	16
CONCLUSION	35
APPENDIX A- First Circuit's Judgement	Attached
APPENDIX B- District Court's Judgement	Attached
APPENDIX C- Denied Request for Reconsideration	Attached

TABLE OF AUTHORITIES	Page(s)
<i>American Hospital Association, ET AL., Petitioners, v. Norris Cochran, (2021)</i>	<i>en banc</i>
<i>American Textile Mfrs. Institute, Inc. v. Donovan</i> , 452 U. S. 490, 452 U. S. 539 (1981)	17
<i>ATD Corp. v. Lydall, Inc.</i> , 159 F.3d, 534, 549, 48 U.S.P.Q.2d 1321, 1332 (Fed. Cir. 1998)	16
<i>Auer v. Robbins</i> , 519 U.S. 452 (1997)	24
<i>Bowen v. Massachusetts</i> , 487 U.S. at 900 (1988)	9, 28, 34
<i>Brown & Williamson</i> , 529 U.S. at 145-46 (2000)	12
<i>Burlington Truck Lines, Inc. v. United States</i> , 371 U.S. at 371 U. S. 168 (1962)	13
<i>Chevron U.S.A. v. Natural Resources Defense Council</i> , 467 U.S. 837 (1984)	throughout
<i>Citizens to Preserve Overton Park v. Volpe</i> , 401 U.S. 402 (1971)	21
<i>City of Arlington v. FCC.</i> , 569 U.S. 299 (2013)	22
<i>Czyzewski v. Jevic Holding Corp.</i> , 137 S.Ct. 973 (2017)	32
<i>Dillmon v. NTSB</i> , 588 F.3d 1085, 1091 (D.C. Cir. 2009)	27
<i>Emp’r Solutions Staffing Grp. II, L.L.C. v. Office of Chief Admin. Hearing Officer</i> , 833 F.3d 480, 484 (5th Cir. 2016)	33
<i>Encino Motorcars, LLC v. Navarro</i> , 138 S. Ct. 1134 (2018)	13
<i>FCC v. Fox TV Stations, Inc.</i> , 556 U.S. 502, 129 S. Ct. 1800 (2009)	27
<i>Mathews v. Eldridge</i> , 424 U.S. 319 (1976)	9, 23, 33
<i>Miller v. Johnson</i> , 515 U.S. 900, 923 (1995)	32
<i>United states v. Mead corp.</i> , (99-1434) 533 U.S. 218 (2001)	34
<i>MCI Telecomms. Corp. v. AT&T Co.</i> , 512 U.S. 218, 234 (1994)	12
<i>National Labor Relations Board v. Noel Canning</i> , 573 U.S. 513 (2014), 134 S. Ct. 2550 (2014)	35
<i>Northeast Marine Terminal Co. v. Caputo</i> , 432 U.S. 249 (1977)	16

TABLE OF AUTHORITIES Cont'd	Page(s)
<i>Paul v. Davis</i> , 424 U.S. 693 (1976)	30
<i>Pierce v. Underwood</i> , 487 U.S. 552, 565 (1988)	24
<i>Pittston Stevedoring Corp. v. Dellaventura</i> , 544 F.2d 35, 49 (2d Cir. 1976)	16
<i>Richardson v. Perales</i> , 402 U.S. 389 (1971)	33
<i>SEC v. Chenery Corp. (Chenery II)</i> , 332 U.S. 196 (1947)	17
<i>Skidmore v. Swift & Co.</i> , 323 U.S. 134, 140 (1944)	throughout
<i>Solid Waste Agency of N. Cook Cnty. v. U.S. Army Corps of Eng'rs</i> , 531 U.S. 159, 168 (2001)	12
<i>Sorenson Commc'ns Inc. v. FCC</i> , 755 F.3d 702, 706 (D.C. Cir. 2014)	33
<i>Spokeo, Inc. v. Robins</i> , — U.S. —, 136 S.Ct. 1540, 1547, 194 L.Ed.2d 635 (2016)	31
<i>Motor Veh. Mfrs. Ass'n v. State Farm Ins.</i> , 463 U.S. 29 (1983)	throughout
<i>State v. Ross</i> , 358 F. Supp. 3d 965 (2019)	27
<i>TianRui Group Co. v. ITC</i> , 661 F.3d 1322, 1337 (Fed. Cir. 2011)	30
CONSTITUTIONAL PROVISIONS:	
U.S. Const. Art. I, § 8	throughout
Fifth Amendment	throughout
Fourteen Amendment	throughout
STATUTES:	
28 U.S.C. § 1254(1)	8
42 U.S.C. Section 1983	22
10 U.S.C. Sections 181 1818 2358 2359	22
5 U.S.C. §§ 551-559 701-706	throughout

PETITION FOR A WRIT OF CERTIORARI

Petitioners respectfully seek a writ of certiorari to review the judgment of the United States Court of Appeals for the District of Columbia Circuit in this case. According to Rule 14, this case presents the question whether Technology Developers may obtain judicial review of agency determinations issued as letter rulings under statutory authority assessed as joint military capability to identify ten capability gaps by the Office of Secretary of Defense as a Joint Concept of Operations and for advances in technology under Title 10 U.S.C. §§ 181 2358 2359. This is a case of first impression with Federal Questions presented and based on the merits for certiorari.

JURISDICTION

The First Circuit Court of Appeals entered judgment on November 12, 2020. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1), original jurisdiction under the APA.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article I, Section 8 of the United States Constitution, the due process clause in the 5th and 14th Amendments that states no one shall be "deprived of life, liberty or property without due process of law" the Administrative Procedure Act and several statutes primarily under Title 10.

STATEMENT OF THE CASE

At issue in this case is a fundamental question of Judicial Review of Agency Action without taking notice of evidence from motion following Federal Rules of Evidence. Lower Court Judgements allowed slander to Technology Developer's origination without substantial evidence, being the substance of means for commerce with lost public funding and credibility.

Petitioner submits his Writ of Certiorari for review having jurisdiction under the Administrative Procedure Act (APA). Merits of the case include Petitioner's Complaint containing justiciable Claim specifically pointing out his cause of action having jurisdiction under the Administrative Procedure Act. Respondent's subsequent action was a violation of law.

The Appeals Court chose not to apply the APA law for the Agency Action by the Respondent with Section 2358 sole authority in 2014 and 2015. The Respondent's Agency Actions cannot be guided by Federal Acquisition Regulations under the Tucker Act due to the fact emerging Technology was pre-acquisition according to public law and Article I at the time of Respondent's initial Official 2014 action and subsequent 2015 Determination.

This is due to Petitioner's Technology originated a new Joint Enabling Capability and was in the pre-acquisition stage, being at TRL 3, between Budget Activities 3-4 assessed by the Respondent's Chief Technology Officer for Science and Technology activities under public law. This can be attested to by Department of Defense subject matter experts assessing new Technology Capabilities. The Lower Court had jurisdiction to set aside action under §§ 702 706.

Petitioner invoked statute § 2359 from public law controls over regulations. In other words, the jurisdiction of APA is for the Statute implemented and the jurisdiction of the Tucker Act is for acquisition regulations promulgated. The Emerging Technology Capability originated by the Petitioner had been patented demonstrating property interest. Under the *Mathews Test*, due process was violated, meaning a hearing to face accuser(s) that the Petitioner did not originate his patented Technologies. Without identifying Petitioner's property interest, use of slander, a letter ruling—change identification, the Lower Courts were **erroneous** to use only Tucker Act jurisdiction for acquisition regulations and incorrectly inserted ¶¶ 8 18 as the only source of redress sought. Redressability was cited from *Bowen* for specific relief and to set aside Determination. Cause of action is justiciable under § 702, no administrative solution was offered.

Petitioner detailed primary jurisdiction found in Section 702 of the APA for right of review when prior action evidence was admissible and proof of decision for procurement and an Agency advocate was provided for procurement. This is the "matter" to be decided on the merits for the emerging Technology decisions made by the Respondent in 2014 and 2015.

Each question of law was within the scope of review for the Complaint's Claim and was supported in Briefs and Memos. Deference cannot be afforded to a Respondent whose subsequent action is unsupported and arbitrary and capricious with abuse of discretion. Ex parte communications outside the agency were demonstrated violations from §§ 554 557.

Petitioner presents his cause of action having jurisdiction in the Administrative Procedure Act (APA) for review of Agency Action and 42 U.S.C. Section 1983. The Federal Questions were introduced in the Appeals Court and not acknowledged or judged by either Lower Court. The original Claim was preserved in the Lower Court and contained cause of action for Statutory and Constitutional violations for levying and allowing accusations by Respondent that Petitioner did not originate his Technology Capability Mobility Nodes when patented following Article I Section 8 Clause 8. Petitioner has been the Project Manager of said Joint Enabling Capability following the letter of the Law found in 10 U.S.C Section 181 for ten years to fulfill this essential Joint Military Capability. Requirements to ensure interoperability and fulfill a capability gap of more than one armed force were assessed by the Respondent with sole authority under § 2358 in 2014 for initial decision and prior action for robotic and modular Mobility, Force Protection and Survivability for Dismounted Warfighters in area denial environments (IED/Mines). Defendant's subsequent Determination was adjudicated without an Administrative Law Judge and with Respondent's Claim Petitioner was not the originator of Mobility Nodes. This was found to be rational by both Lower Courts without admissibility of the official 2014 action communication.

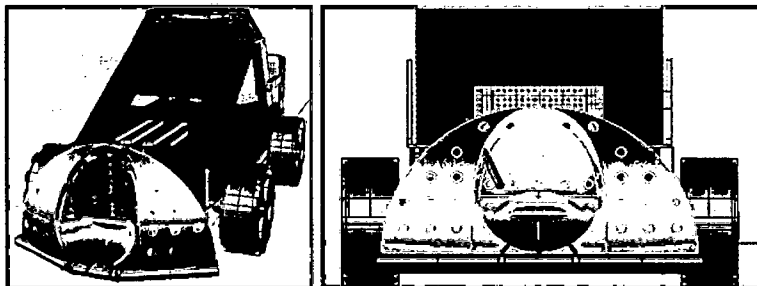
In the paragraphs that follow the subtleties of effects of not applying the rule of law are developed. After Respondent's reverse in course as the agency official with Authority in 2015, the Petitioner continued to seek public funding for his emerging technology from other procurement sources but adjudication credibility and litigation damage has had the effect to negate procurement for further development. The Lower Courts' review of the Petitioner's

Complaint and claim did not find property interest in three patents stated under Article I that had the effect to negate mobility patents for the technology capability Petitioner originated. This case is presented as a case of first impression with foundation supported by the evidence by the Respondent himself and several witnesses available under FRE.

Time History of Mobility Nodes Intellectual Property for § 2359 Technology Development:

- 2011) First US Patent Application submitted.
- 2012) First US Patent.
- 2013) Build full-scale model (form and modular function) and display, EOD Exhibition.
- 2014) Investigate and find the new agency IHEODTD with §§ 2358 2359 authority, submit patented 4D robotic technology capability, receive CTO assessment & official agency decision to develop having an agency procurement advocate.
- 2015) Operations Research is published for overland and on water maneuver for Joint Service use with US Application for amphibious platform (removed from patent prosecution by Navy). Perform experiment simulation for Capability Solutions.
- 2016) US Mobility and Force Protection Patent granted but removed from public view for private sector investment of a new emerging technology capability.
- 2017) Action for Judicial Notice for Ex Parte Communication to remove action to develop in violation of Statutory Authority filed in Federal District Court.
- 2018) RAS Concept of Operation Copyrighted for Future Force Development (FFD).
- 2019) Pentagon G-8 FDD assesses Plaintiff's technology capability and delivers CONOP/CDD to Capability Development Directorate.
- 2020) *Mobility Node* technology capability aligned for new MDC2 Joint Capability.
- 2021) Mobility Nodes Joint Concept Copyrighted as Joint Enabling Capability.

Diagram of Petitioner's Technology Mobility Nodes



Emerging Technology Patent(s) 9,234,725 & Application 14/962,765(2015)

Motion for Judicial Notice of Record Evidence Unanswered

Without taking judicial notice of nexus evidence of initial agency action in 2014 for safety device technology development, the precedent of *State Farm* and *Chevron* have not been cited when the exact text under Rule of Law for cause of safety device development is found in the meaning of Public Law at the time of initial agency decision in 2014 AND has positive treatment from these two highly influential historical case precedents. E.g., *Solid Waste Agency of N. Cook Cnty. v. U.S. Army Corps of Eng'rs* [hereinafter SWANCC], 531 U.S. 159, 168 (2001) (looking to agency's original interpretation of a federal statute), see *Brown & Williamson*, 529 U.S. at 145-46 (looking to prior agency interpretations of the governing statute, as announced in congressional hearings). The Lower Courts did NOT reject arguments regarding legislative purpose nor judicially analyze § 2359 in light of clear statutory meaning, see *MCI Telecomms. Corp. v. AT&T Co.*, 512 U.S. 218, 234 (1994). This, instead of using traditional tools of statutory interpretation, had to do with deploying the political question, major question or Chevron doctrine. While the fact did not satisfy the *intelligible principle test*, lower courts accepted without substantial evidence, Petitioner could not be the originator of his technology.

To avoid, was to dodge Petitioner's nexus and justiciable evidence. The lower courts used several unrelated line of cases and non-applicable acquisition regulations under the Tucker Act to afford shielding to the Executive Branch. Unlimited discretion to the Agency Official is contrary to "Separation of Powers Restoration Act," intended to eliminate *Chevron* deference by amending 5 U.S.C. § 706 to require courts to "decide de novo all relevant questions of law, including the interpretation of constitutional and statutory provisions, and rules made by agencies." House Resolution 5; H.R. 4768. H.R. 5 adds, "If the reviewing court determines that a statutory or regulatory provision relevant to its decision contains a gap or ambiguity, the court shall not interpret that gap or ambiguity as an implicit delegation to the agency [] and shall not

rely on such gap or ambiguity as a justification either for interpreting agency authority expansively or for deferring to the agency's interpretation on the interpretation on the question of law" and in this case arbitrarily chose not impose this Act on the Executive, contrary to the *Encino Court* requiring reasoned explanation and further failed passing for *Skidmore deference*.

This represented arbitrary and capricious shepardizing of fiction for crafting the known Chevron anticanon, without mentioning it, for which the Petitioner on several occasions objected to for lack of transparency to grant preemption to the Respondent having erroneous common law cited for either safety devices or § 553 letter rulings besides mens rea for ignoring the slander as reason—preponderance of origination of his technology capability AND for not taking notice of this question of law for action given to develop technology (labeled official) in 2014.

Instead, both the Lower Courts used post hoc non-relevant Common Law citations to the causation found in the Petitioner's Complaint which included criminal law instead of civil administrative law precedence when Section 2359 derived from Public Law had clear meaning. The court may not accept appellate [Court]'s *post hoc* rationalizations for agency action, *see Burlington Truck Lines, Inc. v. United States*, 371 U.S. at 371 U. S. 168.

The citations written by the Lower Court formed a rationalization without substantive evidence included. This means the DoJ Manual for procedure for equal prosecution under the law as well as the Panel of Judges had the field of view and were aware of Plaintiff's evidence, being the property interest of the patented technology capability that was present in the administrative record. Yet the Lower Courts converted the Respondent's claim to libel, Plaintiff did not originate this patented Capability Solution now copyrighted as *Mobility Nodes TX* 0008938661. As the Project Manager of this Mobility Nodes Capability, Petitioner had disclosed his technology capability according to US law as the originator and submitted to procurement opportunities after assessed by the official having agency action to develop the

safety device technology under the auspices of *State Farm Court* line of precedence.

This distinction between Capability Development and Materiel Solution development bears out constitutional foundation as it is the constitution that controls and permits exclusive rights to authors here the capability developed; and to the inventors the Materiel Solution developed. These same distinctions are clearly written into 2015 & 2018 JCIDS versions.

Petitioner requests this Court to consider the prima facie evidence and cause of action on the merits that Science and Technology Programs for emerging technology do not fall under acquisition law under Article I, Section 8, Clause 8 of the United States Constitution.

This meant, through reverse holdup, taking possession of the modular capability developed after having “set the Standard” with three DoD copyrighted Concept of Operations and patents to demonstrate both proof of concept and feasibility as intellectual property.

Respondent found the extraordinary way of creating and using false-fact as libel to reverse course, a violation of blackletter law, Blackletter Statement, Part 3, §§ E.F. V.F.

As a note on origination of evidence a fortiori, as recent as 2018 the Chief of Staff acknowledged Petitioner's technology as new Robotic Capability. The 2014 initial Official Agency action showed the Respondent's own Chief Technology Officer behind development of Petitioner's EOD technology and demonstrates that he decided FORAC with clear perspective.

Herein lies the consequence for the Petitioner to absorb, as “experience shows us that every man invested with power is apt to abuse it, and to carry his authority as far as it will go”, see *De l'Esprit des Loix*, XI, 4. Without stating *Chevron* framework, the Lower Courts ignored § 2359 without reference opposite to statutory meaning for technology development to succeed.

Later, due to the results of the Lower Court's refusal to not take judicial notice of the 2014 agency action which included the Official NAVSEA IHEODTD Agency Statement, the US Army G-8 acknowledged Petitioner's Joint Concept Technology as new but then CDID stated

Petitioner was **not** the Capability Developer in verbal and written communication. SOCOM SOF repeated the procurement decision step by stating **not** at this time. The Respondent loosely defined *data rights* as gathering proprietary information when in reality the capability and materiel solution were taken possession of in the time-space of the Lower Court proceedings while restricting evidence admissibility, jurisdiction and judicial remedies in the time span between 2014 and 2018.

The specific document that now includes the Petitioner's Joint Concept for Mobility was in 2018 is named Initial Capabilities Document, Robotic and Autonomous Systems (RAS ICD 2018). This sequence of events through the years was only possible through the Lower Court's suppression of evidence of who developed [the] invention independently, *see Cotropia & Lemmly*, 105 MICH. L. REV. 1525, 1526 (2007). This inclusion of this patent work is for the Justices edifice for merit of the questions of law in this case.

The Lower court was informed of the multiple statutory requirements that have to do with the four statutory mandatory KPPs of Energy, System Survivability, Force Protection, and Sustainment in one robotic platform under 10 U.S.C. §§ 181 1818 which circumscribes the Federal Questions Presented. Yet after implementing the statutes for agency action the Respondent was allowed to use the per se violations of a letter ruling and to contain slander with no basis for libel that the Petitioner did not originate his patented technology.

To omit the truth means no justice for the Author–Inventor–Developer and removes credibility.

Unfortunately, the First Circuit reached the opposite conclusion with the DoJ ADA having excluded the prima facie nexus evidence of the exact Joint Concept that is patented, copyrighted and was given official agency action by the Respondent in 2014. The Petitioner's original Claim was preserved in the Lower Court that specifically set out to detail the irreparable harm done by the Defendant as described by the Lower Court Judge. The irreparable harm done

was from the damage done by the Defendant's reversal of prior initial action in the subsequent determination that included discrediting the Petitioner as not the originator of his technology capability. This method of changing the prior decision (which included the Official's Section 2358 Authority label and Notice of Official Agency communication) was without change-identification by the judiciary and according to 28 U.S.C. § 2111. ("Refusal to take such action appears to the court inconsistent with substantial justice."). Certainly, SCOTUS shall find it interesting to review this Writ of Certiorari to find when at any point, the Lower Courts' Judicial review had taken judicial notice of the evidence as required and whether change identification was performed. The previous Motion pointed specifically to this question of Law with the clearly erroneous outcome and to the effect of irreparable harm as assessed by the Lower Court Judge:

Whether the Agency's decision for action to develop technology had subsequent policy change identification violated the Public Law, Pub. L. 106-398, §1[[div.A], title IX, §904(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A-225, by the Director of Agency with responsibility and sole § 2358 authority of EOD technology.

This effected substantial rights of the party, see, e.g. ATD Corp. v. Lydall, Inc., 159 F.3d, 534, 549, 48 U.S.P.Q.2d 1321, 1332 (Fed. Cir. 1998) ("the test of whether a substantial right of a party has been affected is whether the error in question affected the outcome of the case.")

REASONS FOR GRANTING THE PETITION

The argument raised for this Cause of Action has leading cases support[] the view that decisions can be reversed only if without rational basis and there is the impressive body of law sanctioning free substitution of judicial for administrative judgment when the question involves the meaning of a statutory term, *see Pittston Stevedoring Corp. v. Dellaventura*, 544 F.2d 35, 49 (2d Cir. 1976), *aff'd sub nom AND Northeast Marine Terminal Co. v. Caputo*, 432 U.S. 249 (1977). Citations applied by the Petitioner are favorable and relevant as compared to the Lower Court precedence used that are not related to the facts and circumstances in this case. In 2014,

agency expertise determined and decided to develop Petitioner's technology and subsequently in 2015 reversed course by stating Petitioner was not the originator of the exact same technology when by title was patented as a discovery by the inventor under Article I. Here, unlike *Mayo*, every intuition points towards patent-eligibility. And yet the First Circuit felt compelled by *Mayo* to condemn the Petitioner's patents.

A fortiori, Petitioner's protected property was then irreparably harmed. This cannot be what Mayo intended as the Patent work developed required enormous investment to validate the breakthrough of robotic platform use to establish standoff for dismounted walking in IED/Mines.

The Lower Court failed to take notice of this fact in law by not taking judicial notice of the prima facie evidence (nexus evidence entered into the administrative record with affidavit). The Appeals Court Panel of Judges of course knew, as a matter of judiciary responsibility, what to do for this step to perform change identification of Agency Action is clear as sky as demonstrated by the substantial evidence test. It is well established that an agency's action must be upheld, if at all, on the basis articulated by the agency itself. *Ibid.*; *SEC v. Chenery Corp.*, 332 U.S. at 196; *American Textile Mfrs. Institute, Inc. v. Donovan*, 452 U. S. 490, 452 U. S. 539 (1981). The Court's direct omission of the Petitioner's 2014 agency action, an official Section 2358 Agency action reflected the statute's substantive provision *for development* but was undermined by the Lower Courts with no substantial evidence standard of review.

When the Lower Courts chose to not take notice of the Petitioner-Plaintiff's nexus evidence of prior 2014 agency action, the Section 2359 Statutory terms to "foster the transition" science and technology to higher levels of research and development, causation for this case, was eliminated. The capability of the DoJ USADA to place Motions and Memos into the docket without access by Petitioner is a gross structural violation of Separation of Powers. Instead of judicial notice, the Lower Courts' gave deference to agency discretion being clearly erroneous.

This agency abuse of discretion was not marked, yet simultaneously found, *reasonably be discerned*, with no substantial evidence to support a rational basis to negate technology origination found in Plaintiff's de facto Technology Capability of Mobility Nodes from the Inventor's Discoveries (US Patents) and Author's Writings (US Copyrights) as set in Article I of the US Constitution, a striking abdication of judicial responsibility. This meant the Judiciary found both reason and sanction onto the Petitioner. His research and development for commerce was upended willfully that contravened several long-standing legal doctrines for Rule of Law **AND** the line of Common Law Cases cited by the Petitioner making this an exceptional case.

As one Author and Inventor, the Defendant achieved libel through slander of the Petitioner's origination of advanced Robotic and Autonomous Systems (RAS) for dismantled warfighters developed to the technology level of TRL 3-4 assessed by the agency themselves, for the Concept of Operation defined Capability of mobility Nodes. The Defendant through reversal of prior official's decision for action to develop Petitioner's technology damaged Petitioner's interests for commerce by including statements made that he could not be determined to be the originator of his Capability Solution that is clearly disclosed as patented and published as required by public laws and protected under the US Constitution. This has to do with Statutes that require new technology to meet the requirements for Joint Military Capability to be agnostic, feasible, interoperable, scalable and modular as titled by the Petitioner's Patent textually matching, e.g. Force Protection and Mobility Modules for Breaching and Comms System to *fulfill a capability gap of more than one armed force*. (10 U.S.C. §§ 181 1818).

Instead of finding the Opinion to *have* transparency, the line of cases cited in the lower court create a deflection from the issue of law the Petitioner's Case consists of citing the most relevant *civil* cases that are categorically and textually the same for Administrative procedure and safety devices as opposed to the incorrect use of incorrect *criminal* cases.

The facts in this case clearly indicate the First Circuit has eliminated both Law(s) set by Congress and the Article(s) written in the US Constitution. This is the furthest indication of proper judicial responsibility set by the Lower Courts and ample justification for why this Cert Petition should be granted. The Lower Court actually relied on and inserted criminal citations for Petitioner's Civil Complaint for civil violations of Civil Statutes and public law. All of which were stated in the Petitioner's original Claim and Brief and understandable to each judge on the panel according to the Appeals court and DoJ AUSA. This is the most kind of dangerous judicial analysis when Judges in the Appeals Court intentionally find incorrect common law to shade the truth of the matter reversing transparency AND fail to take judicial Notice of the "substantial evidence contained in [the] written record" as required to follow Federal Appeals Court Procedure and the Federal Rules of Civil Procedure (FRCP), *see Arlington*.

In point of fact, the Administrative Procedure Act and Chevron were not applied in any proper way for judicial analysis having the end result of *mens rea* to have concealed the truth of the Petitioner-Plaintiff as originating, as a sole proprietor under § 2302(9), the National Security objective of Counter-Area Denial Capability Solutions through US patents, copyright and having built and demonstrated a full-scale model at the National EOD Exhibition in 2013.

The Lower Courts and DoJ's USADAs could not claim ignorance to acknowledge the fact of Petitioner's emerging technology existed as acknowledged by the Defendant in 2014. But for an ability to conceal-exclude-suppress Petitioner's nexus evidence and without transparency of DoJ Motions and Memorandums entered into the docket, these Questions of Law allowed use of the avoidance doctrine by Lower Courts' Countenance occurring without separation of powers.

This demonstrates the Judges willingness and anticipation that the pro se Petitioner would not be able to prosecute the relevant law through textual meaning. This may have to do with friends on the Bench but was not investigated by the DoJ. In this case the Plaintiff had prosecuted Federal Law violations from the APA requirement 5 U.S.C. § 706(2)(A) (2012) and

Section 2359 which clearly assigns the responsibility for interpreting statutory provisions entirely to courts and assigns no role in statutory interpretation to agencies.

On November 10, 2014 Petitioner had for action determined by the Official with Section 2358 authority for his technology capability presented, the Defendant's agency for funding development and one year later an unlawful letter ruling was used to remove the Inventor as originator of his discoveries according to the US Constitution Art. 1 Sect. 8 Cl. 8 as demonstrated by his many US Patents. Defendant achieved reversal of 2014 prior action in 2015 with capricious slander and libel. The effect was to invalidate the Petitioner's patent-work and credibility with the use of unrelated common law precedence to yield the result for the major question and political doctrines yielding the untenable result to be arbitrary and capricious.

The Petitioner's lightweight modular robotic capability did much more than combine existing techniques. Breakthrough and revolutionary emerging technology is carefully vetted by JCIDS and the Joint Concept of C2OTM having assured mobility capability for dismounted force protection was the patent title intercepted by the Respondent's agent in 2015 during the JEON development phase for counter area denial capabilities. This technology to combine through statutory requirements detection, standoff, C2 and simultaneous breaching survivability can be attested to by the agency overseeing technology advancements for joint service S&T.

The Agency Determination was an Adjudication under the §§ 701 702 706 of the APA and rescission of § 2359 as well as several other Public Laws with *Chevron* and the major question doctrine used to foster these decisions only as ostensible, being a dangerous warning to external Capability Developers that permission is now granted to slander after initial official Section 2359 agency action is received. This has to do with leverage of reverse holdup as cited in the Petitioner's related-case of antitrust. The preemptive effect to simply wait for the Agency to build onto the base robotic platform with further requirements enables the Agency to achieve

both budget concerns for preacquisition development costs (and keep internally) and denies the original Joint Concept of Capability Development to the external developers' discoveries and writings as found in the US Constitution. This chain of judicial procedure if allowed, shall continue the lower court's ability to summarily ignore the Administrative Procedure Act and all of the related common law precedence most notably *Overton Park and Burlington Truck Lines*.

Petitioner describes his cause of action from the perspective of favorable precedence from this court and from scholarly review as foundation. The standard of review of Substantial Evidence with the step of fact correlation is not a matter of degree and was not performed in any lower court judicial analysis. The Lower Court had this nexus evidence, did accept Motion for to take judicial notice for the Defendant's 2014 action communication. In point of fact, the Panel had no questions of facts AND no Questions of Law concerning the Petitioners Claim which specifically stated both Public Law and Statute for causation in his complaint. Petitioner confirms for the Supreme Court there was no pretrial hearing for evidence after FRCP and FCCA Motion. Petitioner preserved his Claim in the Lower court by stating his interests had been violated under the Administrative procedure Act and with the Citations of *State Farm* from official Agency Action for development of a Safety Device under the statute § 2359 by the agency official with § 2358 Authority. This is the method the Defendant used to remove credibility and change Respondent's prior action not to develop the standoff capability requirement found in Public Law, "[agency]'s later decision to rescind the requirement. That decision remains subject to the "arbitrary and capricious" standard", see pp. 463 U. S. 44-46.

The Petitioner's argument with foundation in the Constitution and Common Law is an important one as without these Issues to Consider, the Respondent and other agency officials shall have yet another Appeal's Court judgement as a dangerous precedent to contain only Letter Ruling Determinations, founded on no reasoned evaluation and without the required

administrative law judge. Petitioner reminds the Supreme Court, the Petitioner researched and developed the capability and brought it to the Respondent, NOT the other way around as is the case in the desired acquisition procedure without agencies engaged in reasoned decisionmaking.

In the Petitioner's response to the Lower courts, the Respondent did not demonstrate persuasive reasoning and lacked any evidence to state the Petitioner could not be the originator of his Technologies for the Lower Courts to apply *Chevron* and any line drawing had to have been set for *Skidmore* deference. From *Arlington*, the *Skidmore Court* is the minimum standard of review appropriate given the fact in evidence and question of law.

Petitioner's protected property rights were of no concern to the lower court with no opportunity to be heard when removing invention origination as cause had lack of substantial evidence giving rise to question procedural guarantees of due process for the Official agency adjudication from Section 1983 and taking possession as deprivation under the 14th amendment.

Origination credibility was raised in the lower court for damage for illegal use of USPTO's SAWS Program. The agency proceedings went from transparency to opaque without formality or evidence-based procedure, no checks and balances. APA 5 U.S.C. § 702 states "A person suffering legal wrong because of agency action . . . is entitled to judicial review thereof" yet the Lower Court provided absolutely no judicial role in the Rule of Law in the Cause of Action presented with original claim preserved and Federal Questions presented.

The Technology Capability of Mobility Nodes does not fall into delegation for Major Question Doctrine for what is 10 U.S.C. Sections 181 1818 2358 2359. The Federal Questions caused by the Lower Courts' arbitrary and capricious decision to either place unrelated common law precedence, perform docket housekeeping or for not selecting the proper standard of review when the substantial evidence is from the Respondent himself in 2014 as prior action for the same exact same Technology Capability with Materiel Solutions also defined by patent work.

The Respondent-Official with authority has gone beyond what Congress has permitted for agency discretion and not engaged in reasoned decision-making in the subsequent 2015 Determination, see *Arlington* at 1871. The jurisdictional issue is correctly contained by sole Authority held in Section 2358 and for scope of review held in the APA. Yet the Lower Courts analysis maintained the Petitioner's question of law was ultra vires to any valid cause of action.

The lower courts judicial analysis made this APA jurisdictional analysis a mirage.

The flip-flop result was not based on changes in interpretations or policy change. The agency reversed course from its prior action with no reasoned explanation in violation of Blackletter Law but for the removal of the 2014 action to Develop nexus evidence to change the **action status** using the falsehood Petitioner is not the Technology Capability originator. The First Circuit and DoJ ADA both found this course of action perfectly acceptable in face of the evidence on the record and National Security objectives under 10 U.S.C. §§ 181 2359. This fact and circumstance can be verified and attested to by the agency responsible for assessing technology advancements. Agency deference is not warranted when discretion involves inserting falsehoods without substantial evidence and is clear grounds to set the Lower Courts' decision aside agency action under Section 706(2) as arbitrary and capricious.

The following scholars have written relevant articles concerning this phenomenon of using *Chevron* in violation of the Separation of Powers instead of Rule of Law prescribed by Administrative Procedure Act. The Lower Courts were silent on whether the violations raise a serious Constitutional Question in the presence of both the *Frye Test* and *Mathews Test* being self-evident and true with substantial evidence standard when Petitioner had purposefully built a technology having met the requirements of four 10 U.S.C. Sections for Joint Modular scalable feasible technology. This where the Tucker Act does not cover the scope of Non-acquisition S&T activities that compose emerging technology, the question in law described in Public Law.

All have to follow 28 U.S.C. Section 453 whether judge, justice, magistrate, juror, lawyer, attorney or esquire. This means to perform the duty to administer justice especially our constitution. To not do so applies privilege through application of the Avoidance Canon. This further discharge of power is additive to the other branch of government and is a clear violation of separation of power having the effect to exclude Petitioner's evidence and demonstrates willingness to perform judiciary functions with partiality to the executive branch having net effects involving public funds. See Pub. L. 101-650, title IV, S 404, Dec. 1, 1990, 104 Stat. 5124.

Here, market leverage meant for the Respondents and ex parte communicators from the different Office affected use of public funds for which they did not have authority to do so. The Lower Courts, without hesitation ignored agency action—separation of powers when employing the DoJ to defend the Executive branch, without transparency having represented by proxy the executive branch with no implementation of separation of powers when keeping several docket motions and memorandums without access as to content or purpose to the Panel of Judges in defense of the Defendant and concealed from the Petitioner while suppressing the evidence.

Justices are directed to notice when to know who's behind this, the originator and the ex parte communicator. The Standard of Review used did not use the substantial evidence for this case. The Lower Court had further chosen to gaze over and not object to the SAWS program investigated to be within the USPTO after providing evidence Petitioner's two patents were removed from prosecution. A patent is a legal document and is titled *Force Protection and Mobility Modules for Breaching System*. This patent was prosecuted at the same time of the Agency Action and sabotaged internally by the identified Navy Agent at the USPTO and later for procurement within SOCOM. The fact proved, "to support a conclusion", was multiple patent disclosures and, findings unsupported by substantial evidence are clearly erroneous when the standard of appellate review is abuse of discretion, *see Pierce v. Underwood*, 487 U.S. at 565.

In writing the Judgement, the Appeals court cannot write the reasoning for deference without citing the underlying *Auer* precedence. That is to say be the opposite of transparent for reaching the interpretation for the agency when the statute takes priority over the agency regulation when the interest has been harmed by the Defendant's violation of law with or without Chevron doctrine. as the judicial analysis done did not include either interpretation or construction of public law, statute and change identification of 2014 prior action.

Under Chevron, the effect of the word "foster" was not considered to be ambiguous but the factual error created preemption by no judicial notice on the nexus evidence. The discovery of the meaning (or communicative content) of a statute and the determination of the legal effect (including implementing rules) from the statutory text. The Lower Court did not perform step one under Chevron. and did not cite and apply the governing law for administrative action. Exposing Communications that two separate agencies had ex parte communications with one receiving direction from the other after making the official decision for action to develop Petitioner's safety device technology with any procurement vehicle (Agency had such public funds for technology development and had authority to procure services).

Scalia detailed much of such use of *Chevron* and Violation of the Separation of Powers clauses of the constitution. Plaintiff was not contacted by Civil Division 4-1312 or 4-13131 retained or delegated case for this Federal Program as the private litigant about the evidence already in the administrative record. The work product and nature of the suit was not previously litigated and serious due process violations *provided the* agency the fruits of noncompliance for maintaining internal future capabilities that were developed externally by the § 2302(9) non-traditional contractor. The agency director responded himself in official communication. The acceptance of such a change in position with no reason gives effect statute recission without judicial review under the APA. This question of law was in the lower court complaint and brief.

What followed was not judicial analysis for a safety device receiving administrative action and included only irrelevant and unrelated precedence used as a trope over the Rule of Law that included to disguise the evidence not shown in the Panel's judgment and the question of law found in the Petitioner's Claim. By simply ignoring each point of law, akin to 1950's *Mississippi Pillars of Justice*, the rule of law is subverted that Congress had textually defined the meaning for science and technology discoveries to be funded for development within Article I for commerce. Defendant receives annual formula public funding.

In competition for internal development funds, Petitioner filed his Motion in support of his previous claim for a decision of his case for Grant of Partial Summary Judgement. Specific relief was supported by his original Complaint with common law citation, prima facie evidence and Brief demonstrating substantive right under Science and Technology Development, 10 U.S.C. § 2359 as prescribed by Pub. L. 106-398, § 1 [[div. A], title IX, § 904(a)(1)] Oct. 30, 2000, 114 Stat. 1654, 1654A-225. DoJ ADA per USAM ignored responsibility to include the Petitioner's nexus evidence properly entered with FRCP Affidavit into the administrative record.

Petitioner has included Scholarly entries for meaning, interpretation and construction for a Standard of Review for which the Lower Court chose not to select in judicial analysis. Respondents implemented Section 2359 Statue by decision with official agency communication with the code word FORAC in violation of an official agency proceeding. "[I]ts prior policy has engendered serious reliance interests" contrary to bedrock rule-of-law, see 129 S. Ct. 1800 (2009). The agency entirely failed to consider an important aspect of the problem [Offeror's robotic safety device capability for IED/Mines], offered an explanation for its decision that runs counter to the evidence before the agency, or is [] implausible. *See State Farm*, 463 U.S. at 43. *Fox* clearly provides a standard for cases like *Dillmon* — unexplained agency changes are per se arbitrary and capricious, see *Dillmon v. NTSB*, 588 F.3d 1085, 1091 (D.C. Cir. 2009).

Petitioner described such cause of action, evidence from Respondent himself. This was the DOJ ADA function who chose to **not** prosecute equally under the law per AG Manual, at that time, aware of both the property injury, traceability and admissibility. The RAS Capability in 2014 was developed by an external developer for counter-area denial systems, JUON (2015).

Each of these violations of Law were spelled out clearly for the Court and had the USADA in review of the facts in evidence as well. The account of what happened is to say Defendant exercised his discretion and the probative value outweighs any notion of privilege to shield under FRE 501. This duty to disclose that there is an abuse of discretion of material element of the cause of action. This direction taken by Defendant to negate Plaintiff as originator was an indefensible link as illegal acts for the causation, *see State v. Ross*, 358 F. Supp. 3d 965. Defendants' administrative staff described use and implementation of Anonymous and can testify with supporting documents as to the modular § 2446b(e) Maneuver System assessment done in secrecy by at least one *Anonymous* in violation of §§ 554(d) 557(d) at the time the Respondent had followed the required procedure from 10 U.S.C. § 2359 for Non-Acquisition Programs for Future Naval Capabilities (FNC) as shown in the following DoD process diagram:

1.7 Non-Acquisition Programs

Examples of non-acquisition programs are:

a. Science and Technology (S&T) Programs.

(1) Technology based programs in basic research (RDT&E Budget Activity (BA) 1) and applied research (RDT&E BA 2) (part of Future Naval Capability (FNC) program).

(2) Advanced technology development (RDT&E BA 3) (part of FNC program).

b. Developmental or operational assessment of developmental articles, concepts, and experiments funded by RDT&E BA 4 or BA 7 funding and with **no** directly related acquisition program effort.

c. Management and support of installations or operations required for general-purpose research and development use (included would be test ranges, maintenance of test aircraft and ships, and studies and analyses **not** in support of a specific

1-27

Enclosure (1)

Above: Pub. L. 106-398, § 1 [[div. A], title IX, § 904(a)(1)] Oct. 30, 2000, 114 Stat. 1654, 1654A-225
The Tucker Act did not apply to Non-Acquisition Programs as stated above for emerging technology

The Diagram above is from the Respondents' procedure at the time of the subsequent adjudication. This 5000.02 DoDI Non-Acquisition Program was Public Law at the time of Defendants' Determination and Tucker Act is not applicable. Respondent, Lower Courts and USADA all knew this S&T Non-Acquisition Process as the Petitioner reminded them of this law.

Thus, this then created and used false-fact as slander to reverse course, violation of blackletter law, Blackletter Statement, Part 3, §§ E.F. V.F. and abuse of discretion and arbitrary and capricious under APA § 706.

Delegation under Chevron was by reason for deliberate use of ex parte communications and carefully crafting slander to materialize libel for discrediting the technology and the originator of the capability. The Judgement was written to hold aside the evidence in the administrative record written with common law with not related to the cause of action in the complaint. The agency had use of expertise of internal counsel in implementing a complex statutory scheme through crafting adjudication that did not mention any law applied nor name attorneys involved without an administrative law judge handling this letter ruling determination.

The spirit of democratic laws dictates that the Articles form commerce for business and, the procurement for development takes the shape of Science and Technology for our country. Petitioner invoked the question of Law from action to develop Capability reviewed for discoveries for emerging technology for a Joint concept of operations defined capability before the 2015 determination after the Defendant had already provided official communication for action to develop for his new joint enabling capability by § 2448.

Under Article I of the US constitution, Petitioner has demonstrated origination of writings and discoveries without commerce as the capability developer of Mobility Nodes. Specific relief was detailed under the *Bowen Court* and denied (not as monetary damages)..

Petitioner had certain ownership of an enabling capability after his R&D activities which yielded the system technology with Joint Gap traceability for Maneuvers to include combining key system attributes for Command and Control, Survivability, Force Protection and Situational Awareness for Future maneuver forces require the mission command enabling capability to predict, detect, prevent, neutralize, and protect from hazards and obstacles in a joint NATO Operational Environment for assured mobility for land and amphibious to mean gap crossing.

The combination of Capability Development and Materiel Solution is what led to the *a priori* decision for action by the Respondent in 2014 to develop this technology for equipping forces with a new capability requirement originated by the Petitioner in 2014.

Question of Legal Authority

From Cass Sunstein, *Beyond Marbury* "the use of the words "interpretation" and "construction" to mark the difference between meaning and legal effect", *see Lawrence B. Solum, The Unity of Interpretation*, 90 B.U. L. REV. 551, 568–69 (2010). Petitioner's original Complaint, as filed, clearly presented statute § 2358—Public Law implemented by the Defendant.

When § 181 takes effect is when a technology presents a needed capability for Determination as a Capability request. A capability request to HQDA is an operational commander's request for a materiel and/or non-materiel solution to correct a deficiency or to improve a capability that affects mission accomplishment for a unit deploying or deployed on orders. Capability requests come to HQDA in two categories— (1) This was followed up by both OPLAN and request for ONS for procurement for technology development as shown textually in the Defendants' own communications for official Equipment sourcing for future capabilities.

Through use of executive power, the agency was able to lay waste to the external developer's Capability Solution. As easy prey, false basis was the only reasoning provided to

remove his Article I business-commerce interests and IP credibility. Safety technology features that formed a capability in 2014 were and are trade secrets. Compare to in 2019, "[t]his rule was a de facto air bag mandate, since no other technologies were available to comply with the standard." *See State Farm Note 11*. Others were unwilling or unable to produce the capability.

Plaintiff was leveraged to divulge trade secrets over a five-year time period before several agencies. The technology capabilities are protected under 18 U.S.C § 1832 that were stability, survivability and situational awareness mobility attributes describing theory of mechanism design with advanced concepts of section modulus, gas reactions, time step buckling analysis, shape change, portability and modular removable interoperable functionality.

With the information solicited and forced to be submitted in a hurry are once gathered, no response whatsoever was given but with the Respondent's subsequent letter ruling containing ex parte communication as an *Anonymous* accuser to deny origination of technology and credibility.

For facts and circumstances of this case *TianRui Group Co. v. ITC*, 661 F.3d 1322, 1337 (Fed. Cir. 2011) is cited as favorable in the previous filings. P 214. In *Hyatt, Re Paul* and *TianRui* have now been cited dispositive and favorable and the need to concede each cause of law cases involving context of property rights for stare decisis. This ties to (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo, Inc. v. Robins*, — U.S. —, 136 S.Ct. 1540, 1547, 194 L.Ed.2d 635 (2016).

Favorable law is found in *Paul v. Davis*, 424 U.S. 693 (1976). Petitioner had shepardized: 1) Specifically, from 136 S. Ct. 2117 (2016), "But where the agency has failed to provide even that minimal analysis, (less analysis than provided from the prior initial action) its action is arbitrary and capricious and so cannot carry the force of law." (Plaintiff did object to the

defendant's procedure used with no due process and with a secret ex parte direction.) See 5 U.S.C. § 706 (2)(A); *State Farm* at 42-43, 103 S. Ct. 2856. 2) "This lack of reasoned explication for a regulation that is inconsistent with the Department's longstanding earlier position results in a rule that cannot carry the force of law.[i]it follows that this regulation does not receive Chevron deference in the interpretation of the relevant statute." (this has to do with using FAR for S&T). 3) "but *Chevron* deference is not warranted where the regulation is 'procedurally defective'—that is, where the agency errs by failing to follow the correct procedures in issuing the regulation." (Incorrect FAR regulations and procedure were used).

The proximate cause was not disputed and provided justification to allow Plaintiff's two cases to be consolidated but for DoJ ADA mens rea, omission of record evidence, a responsibility stated in the US Attorney General Manual (USAM). All of this is in the context of information gathering where the agency purports to present funding opportunities to obtain funding to gain confidence (man). Then changes topic scope, cancels programs, does not respond as written and takes possession of the Joint Enabling Concept Capability. Here, the Respondent achieved taking the waiver for work-product protection Article V Privileges inside out. Given improper application of deference coupled with the fact that *Chevron* only has one practical step shown by Stephenson Vermeule Book. This reasoning for choosing a standard is found verbatim in the *State Farm* precedent, *NHTSA's* later decision to rescind the requirement. That decision remains subject to the "arbitrary and capricious" standard. Pp. 463 U. S. 44-46.

With the application of unrelated common law citations, the Lower Court succeeded in a RESCISSORY ACTION of the text of at least Public Laws. 10 U.S.C. §§181 2359 whereby the RESCISSIO in the civil law or an annulling of laws created by Congress. This may also be termed making void or an abrogation of laws.

Additionally, this rescission and nullity took place with the act affected by a radical vice, slander and libel of inventorship and Authorship of the 2014 Capability Solution Mobility Nodes which prevented it from producing any effect. See Black's Dictionary for legal definitions.

In *State Farm*, the Court considered "usage of automatic belts in Rabbits". In the instant case, Petitioner requests the Court to consider the question of Public laws for usage of robotic platforms for standoff for Dismounted Warfighters walking in or around IED/Mines. The Lower Court refused to acknowledge or thought it not important to observe these public laws textually including these factors for public safety. "Lost federal funding, no matter the magnitude, qualifies as an injury-in-fact", *see Czyzewski*, 137 S.Ct. at 983.

With the automatic breaching robot in use dismounted warfighters are equipped with a use-inducing device inhibiting injury and member detachment or death. Respondent has demonstrated through substantial evidence the agency selected the Plaintiff technology for further development in fulfilling its statutory mandate. *see state farm* at Page 463 U. S. 43.

The nature of the analysis placed an unrelated set of common law precedence that had no tangible or rational connection to the facts presented and law implemented fully described in the case or controversy. Here, the environment is several orders of magnitude more dangerous than that of *Chevron* or *State Farm* for the matter to receive judicial analysis by the Article III Court.

The statute is clear on its face, the court must effectuate Congress's stated intent, *see Sorenson Commc'ns Inc. v. FCC*, 755 F.3d 702, 706 (D.C. Cir. 2014) ("[A]n agency has no interpretive authority over the APA."). Section 552(a)(4)(B) also reads that "a de novo review of the agency's withholding of information" [what the court did not investigate], *see, e.g., Emp'r Solutions Staffing Grp. II, L.L.C. v. Office of Chief Admin. Hearing Officer*, 833 F.3d 480, 484 (5th Cir. 2016); *see also Miller v. Johnson*, 515 U.S. 900, 923 (1995) (declining to extend deference to an agency interpretation that "raises a serious constitutional question").

The Determination ignored by the Lower Courts is a violation of Article III for Courts to decide a case or controversy., was the Official adjudication for the conducted “on the record” must apply formal court-like procedures §§ 556, 557 (adjudications). 529 U.S. 576, 587 (2000).

This failure to perform the judicial step of change identification for the 2014 prior action is a violation of Article III Courts to decide a case or controversy, meaning to not weigh the record evidence presented in the Lower Court.

Petitioner emphasizes to the Supreme Court to Grant Certiorari that the Lower Courts are in error by the substantial evidence test with the *Mathews and Frye Tests*. No preliminary hearing to argue the facts in evidence and merits of his cause of action and question of law was ever performed. This question of law was not judged with specific impact and may be familial.

The Complaint identified Anonymous ex parte communication use by the Respondent from another Office with original preserved claim to demonstrate violating Sections 554 557. Respondent’s counsel was surely consulted for the adjudicatory practice acceptability through the court system and the Plaintiff informed the DoJ USADA and Lower Court Judges as well with familial issue of same last names. Each of these Memoranda were entered into the case docket BUT were NOT visible to the Petitioner-Plaintiff.

The accepted standard for admissibility is from FRAP and FRE and here the Lower courts did more than cutting corners, *see Richardson v. Perales*, 402 U.S. 389 (1971). The objective is to be presumed innocent for due process and instead the Respondent assigned the previous agency action to reversal with not being the originator, removing the property interest.

This factual error was then accepted in the lower courts with no due process for concrete injury to his property interest and credibility. The causation found for violations of Section 702 are for an Agency Director’s reversal of decision when implementing Section 2359 to develop

Petitioner's technology capability in 2014. No Administrative law Judge (ALJ) was used to adjudicate the Defendant's subsequent §§ 553 554 Letter Ruling Determination, a violation from Mead. The "ruling letter in the case" does not qualify as administrative formality for procedure for *Chevron* status, *see Mead*, 533 U.S. at 231, as "letter rulings do not foster the fairness and deliberation or bespeak the legislative type of activity that would naturally bind more than the parties to the ruling." *Id* at 232. The specific relief cited by the Petitioner for redressability has foundation in Section 1983 and the APA so long as not money damages, *see Bowen Court* 487 U.S. at 900.

No common law cited by the Lower Court qualifies for precedence for the facts and circumstances in the Petitioner's Complaint and Claim. The belief that the Supreme Court will not take this up this Cert Petition in the future was thought—not employing the *Skidmore* Court.

Petitioner had invoked the statutes, Public Law and Common Law required for the inquiry into the laws' meaning and laws that were not acquisition regulations under the Tucker Act. Instead, quietly, with unrelated line of precedence "'deference" [was granted for preemption **without** change identification] not necessarily meaning anything more than considering those views with attentiveness and profound respect, before we reject them. But to say that those views, if at least reasonable, will ever be binding—that is, seemingly, a striking abdication of judicial responsibility" (acquiesce to the Executive), *see* Scalia, *Judicial Deference to Administrative Interpretations of Law*, page 514. *see also Noel Canning*, 134 S. Ct. at 2617 (Scalia, J., concurring in the judgment) ("We should . . . take every opportunity to affirm the primacy of the Constitution's enduring principles over the politics of the moment.").

The Panel did not have to find the relevant common law for safety devices under the *State Farm Court*, and civil law, it was given to them by Petitioner. Lower Court use of Tucker Act was erroneous for the Public Law for Non-Acquisition and the constitutionality of

Intellectual Property with no substantial evidence legal standard. In doing so, Rule of law was vacated under Article I for Commerce, Discoveries and Writings for Inventors and Authors seeking procurement for science and technology development.

The Respondent and his counsel imposed the strategy to set Author–Inventor, the external developer back on his heels, forced to shift his efforts to restore credibility, prove origination of technology (US Patents and Copyrights) to demonstrate to this court the § 557 initial decision for action (FORAC) to develop, marked as official agency communication, was in-fact sent by Respondent in 2014. The R&D origination credibility had to be defended through years of litigation, without a hearing to face his accuser(s) in Federal Court.

Conclusion

Given stare decisis, violations of public law, Administrative Procedure Act jurisdiction and unconstitutional delegation under the separation of power this court should grant Certiorari.

AFFIDAVIT

Plaintiff provides FRCP Rule 11 (b) certifying under the pains of perjury that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

- (1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
- (2) the claims, defenses, and other legal contentions are warranted by existing law or by a non-frivolous argument for extending, modifying, or reversing existing law or for establishing new law;
- (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and
- (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

Plaintiff has invoked common laws with relevant Civil Law under Rule 11 and Affidavit with substantial evidence entered into the record.

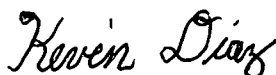
AFFIDAVIT

Plaintiff submits his Petition for Writ of Certiorari Affidavit to the United States Court of Appeals for The First Circuit and attests under the penalty of perjury to the facts, circumstances, injury and genuine need to address these issues of law.

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on the 19th day of April 2021, this "Petition for Writ of Certiorari" was delivered to the Court to be sent to all related parties by the Clerk of the Court.

Respectfully submitted,



Kevin Diaz

April 19, 2021

Author Mobility Nodes
MobilityNodes.com