

05/25/21

No. 20-1658

MO

IN THE
SUPREME COURT OF THE UNITED STATES

Rimini — PETITIONER
(Your Name)

vs.

Dep't of Labor — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Court of Appeals for the First Circuit

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

PETITION FOR WRIT OF CERTIORARI

Thomas Rimini

(Your Name)

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Questions Presented

1. Did the First Circuit lack subject matter jurisdiction to rule while an earlier-filed Sarbanes-Oxley matter with identical causes of action is not yet administratively exhausted before the Department of Labor?
2. Must the Department of Labor comply with Federal Rules of Appellate Procedure 17 in response to a Petition for Review here including upon request by Petitioner that the Department of Labor submit the whole administrative record, so that current administrative activity and subject matter jurisdiction over the issues presented can be properly and fairly determined?
3. Did the First Circuit err in mentioning an unrelated and materially breached agreement dated 2008 despite Sarbanes-Oxley Section 806's non-waiver mandate and prior written agreements bar and not having subject matter jurisdiction over the issues raised because they are administratively active before the Department of Labor?

LIST OF PARTIES

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

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

RELATED CASES

First Circuit : 19-1531 et al

Second Circuit : 20-4003 (pending)

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	7
CONCLUSION.....	15

INDEX TO APPENDICES

APPENDIX A First Circuit Judgement 19-1970

APPENDIX B

APPENDIX C

APPENDIX D

APPENDIX E

APPENDIX F

TABLE OF AUTHORITIES CITED

CASES

	PAGE NUMBER
<u>Daly v. Citigroup Inc</u> 929 F.3d 415, 140 S.Ct. 1117	4-5
<u>Wong v. CKX</u> 890 F.Supp 2d 411	
<u>Sharkey v. J.P. Morgan Chase + Co</u> 805 F.Supp 2d 45	
<u>Bozeman v. Per-Sc Tech. Inc.</u> 456 F.Supp 2d 1282	
<u>Numan v. Lehman Brothers</u> 901 F.3d 19	
<u>Johnson v. Ry. Exp.</u> 421 U.S. 454	6
<u>Xanthopoulos v. U.S. Dep't of Lab.</u> 991 F.3d 823	6

STATUTES AND RULES

Federal Rules of Appellate Procedure, including FRAP 17
Sarbanes-Oxley Act of 2002, as amended, including 18 USC 1514A

OTHER

DOL Policy Guidelines for Approving Settlement Agreements
in Whistleblower Cases, August 23, 2016.

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

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

OPINIONS BELOW

For cases from **federal courts**:

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

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

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

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

For cases from **state courts**:

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

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

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

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 2/24/2021.

No petition for rehearing was timely filed in my case.

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

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

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

→ 60-day extension of time to file this writ
was given by Clerk.

For cases from **state courts**:

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

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

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Sarbanes-Oxley Act of 2002

Due Process

Statement of the Case

I worked in the Office of the General Counsel at JPMorgan Chase & Co., underlying defendant here. My job included regulatory compliance in employee surveillance requiring reports internally and to government regulators, including to the Securities & Exchange Commission (SEC), which results in this Sarbanes-Oxley (SOX) action now.

I was not an attorney at JPMorgan Chase & Co.

I am pro se in this matter.

I. First Circuit Improperly Ruled On Identical Causes Of Action Administratively Active Before The Department Of Labor, Requiring Reversal.

The First Circuit ruled while this matter is still administratively active at the Department of Labor (DOL) and while the matter is pending as first-filed in the Second Circuit as 20-4003.

Federal courts are deprived of subject matter jurisdiction in SOX matters until administrative remedies are exhausted. Daly v. Citigroup Inc., 939 F.3d 415, 427-428 (2d Cir. 2019), cert. denied, 140 S. Ct. 1117, 206 L. Ed. 2d 185 (2020). See also, Wong v. CKX 890 F. Supp. 2d 411 (SDNY); Sharkey v. J.P. Morgan Chase & Co., 805 F. Supp. 2d 45, 53 (S.D.N.Y. 2011); Bozeman v. Per-Se

Technologies, Inc. 456 F. Supp. 2d 1282. Contra – Newman v. Metro. Life Ins. Co., No. 12-CV-10078, 2015 WL 275703, at *4 (D. Mass. Jan. 21, 2015), aff'd sub nom. Newman v. Lehman Bros. Holdings Inc., 901 F.3d 19 (1st Cir. 2018) (administrative exhaustion not required).

The First Circuit's precedent on administrative exhaustion is different now from those of other circuits, including of the Second Circuit which stated in Daly v. Citigroup Inc., “[T]he text of SOX makes clear that Congress intended for its administrative exhaustion requirements to be a jurisdictional prerequisite to suit in federal court.” The matter was reviewed by the Supreme Court.

There is (1) a 2016 Complaint and (2) a request for hearing to review documents bearing directly on this matter pending before the DOL. The issues the First Circuit considered and the matter generally are not administratively exhausted at DOL.

Therefore, the First Circuit must be reversed.

II. DOL Did Not Comply With FRAP 17, Raising Due Process Issues

a. The DOL did not submit the whole administrative record in this matter as required by FRAP 17 and my requests, so the matter has proceeded unfairly and outside of due process and backwards, including temporally backwards, because an earlier SOX complaint filed in July 2016 is still administratively active at the DOL.

5

Without the full administrative record, it was impossible for the First Circuit assess its jurisdiction and whether it had subject matter over the issues it reviewed and whether it would break from its own precedent to align with other courts and Daly v. Citigroup Inc.

Notwithstanding, the First Circuit did not have jurisdiction because the issues it considered are administratively active before the DOL and, additionally, all of violations of the SOX statute occurred in New York City while working in New York City and a resident there. The First Circuit's statement that I have not worked since 2008 is factually incorrect and does not reflect the record.

Appellate jurisdiction in SOX matters attaches to the U.S. Court of Appeals in the Circuit where the violations occurred or the claimant lived at the time, both New York City.

b. There is a “complete identity of the causes of action” among the issues proceeding before the DOL and those the First Circuit considered.

The First Circuit simply did not have the subject matter jurisdiction required to rule in this matter or full administrative details to properly consider equitable tolling, even outside of the jurisdictional issue, requiring reversal. Johnson v. Ry. Exp. Agency, Inc., 421 U.S. 454, 467, 95 S. Ct. 1716, 1723, 44 L. Ed. 2d 295

(1975). See, Xanthopoulos v. United States Dep't of Lab., 991 F.3d 823, 833 (7th Cir. 2021).

If necessary, later this matter should be fairly equitably tolled.

III. Prior Written Agreements Are Barred From SOX Matters, Pursuant Sarbanes Oxley Section 806. 18 USC 1514A(e)(1).

The First Circuit ruled against SOX blackletter law and the DOL's own policies by mentioning an unrelated and materially breached employment contract dated in 2008, notwithstanding that the First Circuit did not have subject matter jurisdiction to rule.

Sarbanes-Oxley, 18 USC 1514A(e)(1) states:

“The rights and remedies provided for in this section may not be waived by any agreement, policy form, or condition of employment, including by a predispute arbitration agreement.”

Further, the agreement violates express DOL policy and is unenforceable in a SOX action, pursuant to DOL's Policy Guidelines for Approving Settlement Agreements in Whistleblower Cases, DOL August 23, 2016. See, Exhibit A.

The First Circuit's ruling is clearly erroneous, against SOX law 18 USC 1514A(e)(1) and represents a complete u-turn from DOL policy.

Reasons for Granting the Petition

I. The First Circuit's Ruling Conflicts With And Splits From Widely-Accepted Precedent Reviewed By the Supreme Court.

Federal courts are deprived of subject matter jurisdiction in SOX matters until administrative remedies are exhausted. See, Daly v. Citigroup Inc., 939 F.3d 415, 428 (2d Cir. 2019), cert. denied, 140 S. Ct. 1117, 206 L. Ed. 2d 185 (2020)

The First Circuit did not have subject matter jurisdiction to rule. The matter is administratively active before the DOL.

Because this was no attempt to determine administrative activity and the full administrative record was not submitted by DOL as required by FRAP 17 during First Circuit proceedings, this matter has proceeded outside of due process and confusingly.

II. Equitable Tolling Would Be Entirely Proper If The First Circuit Had Subject Matter Jurisdiction

The issues are identical to those administratively active and proceeding before the DOL, equitable tolling would be proper and appropriate if this matter were administratively exhausted. Johnson v. Ry. Exp. Agency, Inc., 421 U.S. 454, 467, 95 S. Ct. 1716, 1723, 44 L. Ed. 2d 295 (1975).

Notwithstanding, the First Circuit did not have subject matter jurisdiction to rule.

The file numbers referenced by the First Circuit as part of this Petition for Review are ARB Nos. 2018-39 and 2018-70 and 2019-73 and exclude a July 2016 complaint administratively active at DOL.

Furthermore, one of the complaints included among the ARB file numbers above is not a complaint at all. It is a statement I provided to OSHA pursuant to the Investigator's request in connection with the current administrative action pending before DOL. It's not a separate complaint. This is another due process error. All of this is impossible for courts to review because of DOL's noncompliance with FRAP 17.

The complaint currently administratively active before the DOL and issues therein cannot be included for review in federal court until they are administratively exhausted, mandating First Circuit reversal in this case.

III. The First Circuit's Ruling Contravenes DOL Policy And Blackletter Sarbanes-Oxley Law, Specifically 18 USC 1514A(e)(1).

SOX expressly prohibits the use of prior written agreements as a defense or bar to any remedy in SOX Section 806 employee protection actions, notwithstanding the agreement referenced is materially breached and not allowed and unenforceable under DOL policies included infra.

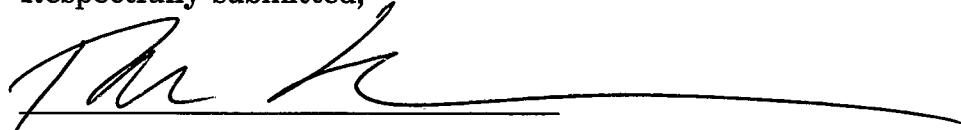
I asked that the First Circuit enter a default judgement because the DOL did not comply with FRAP 17 making this matter impossible to fairly evaluate according to due process resulting in prejudice.

I ask that the Supreme Court consider entering a default judgement against DOL in this matter for noncompliance with FRAP 17. I have made many requests to DOL that it perfect the record pursuant to FRAP 17 and it has not.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: May 25, 2021