No. _____

In The
Supreme Court of the United States

JACK JORDAN,

Petitioner,

v.

UNITED STATES DEPARTMENT OF LABOR,

Respondent.

DYNCORP INTERNATIONAL, LLC,

Intervenor-Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether, in adjudications under the Administrative Procedure Act ("APA"), federal judges are free to flout and knowingly violate (and help administrative judges flout and knowingly violate) the APA, the U.S. Constitution and this Court's precedent.

2. Whether agency sanctions for exercising the freedom of speech to criticize agency employees or the right to petition for redress of grievances against agency employees must be subjected to strict scrutiny and supported by clear and convincing evidence of each material fact.

INDIRECTLY RELATED PROCEEDINGS

U.S. Supreme Court:

Jack Jordan v. U.S. Dept. of Labor, No. 21-1180, petition for certiorari filed Feb. 25, 2022

Robert Campo, et al. v. U.S. Dept. of Justice, *et al*., No. 21-1320 petition for certiorari filed Apr. 4, 2022

DIRECTLY RELATED PROCEEDINGS

U.S. Court of Appeals for the Eighth Circuit:

Jack Jordan v. U.S. Dept. of Labor, Nos. 20-3402, 20-3404 (Nov. 5, 2021), petition for reh'g denied, Jan. 10, 2022

U.S. Department of Labor, Administrative Review Board:

Jack Jordan v. DynCorp Int'l, LLC, *et al*., ARB No. 2018-0035, ALJ No. 2016-SOX-00042 (Sep. 16, 2020)

Jack Jordan v. DynCorp Int'l, LLC, *et al*., ARB No. 2019-0027, ALJ No. 2017-SOX-00055 (Sep. 16, 2020)

U.S. Department of Labor, Office of Administrative Law Judges:

Jack Jordan v. DynCorp Int'l, LLC, *et al*., ALJ No. 2017-SOX-00055 (Apr. 9, 2018) (imposing sanctions)

Jack Jordan v. DynCorp Int'l, LLC, *et al*., ALJ No. 2017-SOX-00055 (Feb. 15, 2018) (dismissing claims)

Jack Jordan v. DynCorp Int'l, LLC, *et al*., ALJ No. 2016-SOX-00042 (Feb. 28, 2018) (dismissing claims and imposing sanctions)

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PETITION FOR WRIT OF CERTIORARI

Petitioner Jack Jordan respectfully petitions for a writ of certiorari to review circuit court judges' pretenses that they have the power to knowingly violate—and facilitate administrative judges' knowing violations of—Petitioner's rights under federal law and the Constitution.

DECISIONS BELOW

The opinion of the U.S. Court of Appeals for the Eighth Circuit (App. 1-2) is captioned *Jack Jordan v. U.S. Dept. of Labor* (8th Cir. 2021) and is unreported but available at 2021 U.S. App. LEXIS 32956; 2021 WL 5149822. An order denying rehearing (App. 29-30) is unreported but available at 2022 U.S. App. LEXIS 638.

Decisions of the U.S. Department of Labor ("DOL") are captioned *Jack Jordan v. DynCorp Int'l, LLC*, *et al*. and are available on the DOL website, including ARB Orders in Nos. 2019-0027, 2018-0035 (App. 3-6, 7-11) (Sep. 16, 2020); ALJ No. 2017-SOX-00055 Order Apr. 9, 2018 (App. 12-28) and Order Feb. 15, 2018 (dismissing claims); ALJ No. 2016-SOX-00042 Order Feb. 28, 2018 (dismissing claims and imposing sanctions).

JURISDICTION

The Eighth Circuit's judgment was entered and opinion was issued on November 5, 2021 (App. 1-2). A

timely-filed petition for rehearing was denied on January 10, 2022 (App. 29-30). This Court has jurisdiction pursuant to 28 U.S.C. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The U.S. Constitution, Amendment I, provides:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

The U.S. Constitution, Article III, Section 1, provides:

> The judicial Power of the United States shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

The U.S. Constitution, Article VI, clauses 2 and 3, provide:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall

be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

5 U.S.C. 3331 provides:

An individual, except the President, elected or appointed to an office of honor or profit in the civil service or uniformed services, shall take the following oath: "I, AB, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God." This section does not affect other oaths required by law.

28 U.S.C. 453 provides:

> Each justice or judge of the United States shall take the following oath or affirmation before performing the duties of his office: "I, ___ ___, do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as ___ under the Constitution and laws of the United States. So help me God."

STATEMENT OF THE CASE

Petitioner is an attorney who (in a collection of related proceedings starting in 2013) has represented American citizens exercising their privileges and immunities under the First Amendment, the Administrative Procedure Act ("APA"), 5 U.S.C. 551 *et seq*., and the Freedom of Information Act ("FOIA"), 5 U.S.C. 552. Eighth Circuit judges (in multiple appeals involving Petitioner) have violated all the foregoing so clearly, knowingly and indefensibly that they barely even pretended that their conduct was legal.

The opinion purporting to justify the so-called judgment below is illustrative. It failed to address any violation of federal law, the Constitution or this Court's precedent presented by Petitioner except to merely parrot (in a single sentence) a number of conclusory

contentions, each of which the judges knew were false. *See* App. 2 ("the ARB's [two] decisions were not arbitrary, capricious, an abuse of discretion, contrary to the law, or unsupported by substantial evidence in the record" regarding any issue).

The Eighth Circuit opinion (and the denial of oral argument) when contrasted with the parties' briefing clearly established that the Eighth Circuit judges knowingly violated (and helped U.S. Department of Labor ("DOL") Administrative Review Board ("ARB") judges violate) virtually every relevant requirement or prohibition in the APA, the Constitution and this Court's precedent.

Eighth Circuit judges used a single sentence (above) to merely pretend to review two ARB decisions under the APA and the Sarbanes-Oxley Act of 2002, 18 U.S.C. 1514A ("SOX") and the DOL's regulations thereunder, 29 C.F.R. 1980.

The ARB also had merely pretended to review multiple ALJ decisions. In two appeals, Petitioner filed lengthy briefs addressing dozens of violations of law by ALJs. To dispense with every violation of law by ALJ Almanza that Petitioner presented to the ARB, the ARB merely summarily contended that Petitioner "failed to present any argument that compels us to reverse [ALJ Almanza's] ruling." App. 10. The ARB failed to even assert that much regarding any ruling by ALJ Barto. *Cf*. App. 5-6. The ARB failed to assert any contention whatsoever about the legality of ALJ Barto's

dismissal of Petitioner's claims against any respondent.

Regarding both dismissals of all Petitioner's claims against multiple respondents, the ARB repeatedly insisted "[i]n considering a dismissal for failure to state a claim, the ARB [and the ALJ] must accept [Petitioner's] factual allegations as true and draw all reasonable inferences in [Petitioner's] favor." App. 6, 9.

The ARB knew that ALJs Barto and Almanza purportedly "granted" multiple respondents' "motions to dismiss" for failure to state a claim. App. 4, 8. But the ARB repeatedly clearly and completely failed to address whether any ALJ or the ARB applied the standard the ARB stated. The ARB's cursory discussions clearly and completely failed to address any factual allegation by Petitioner or any allegation or inference that Petitioner addressed on appeal. *Cf.* App. 4-6, 10.

The ARB also knew that ALJ Barto dismissed Petitioners' claims against "Respondent Judges" (ALJs Merck and Almanza) without those respondents even filing any motion to dismiss. App. 5. *Cf.*, *e.g.*, App. 17; App. 24, n.4. The ARB knew that ALJ Barto illegally chose to act on behalf of litigants (ALJs Merck and Almanza) by *sua sponte* contending that he merely "was not persuaded by" Petitioner's "assertions and dismissed the Complaint" against them because ALJ Barto *sua sponte* argued and "concluded that the Respondent Judges were absolutely immune from suit." App. 16.

No evidence in the record indicated that Petitioner sought any damages from any ALJ respondent. *Cf.* App. 17. No judge below addressed any of this Court's precedent (presented to them) establishing the limits of ALJ immunity, including amenability to suit for equitable relief or regarding conduct that clearly was outside judicial functions, including lying about the content of evidence and concealing evidence of such lies. *Cf. id*.

Having completely failed to address any violation of law by ALJ Barto that was addressed by Petitioner on appeal, the ARB summarily affirmed ALJ Barto's order that Petitioner "pay" DynCorp "$1,000.00, as reasonable attorneys' fees." App. 5. The only ARB justification for affirming were irrational lies.

Although ALJ Barto issued two orders regarding sanctions (one imposing sanctions and a second refusing to comply with federal law on reconsideration) the ARB merely contended that only one such "decision" purportedly "is in accordance with the law and is well-reasoned." App. 6. It was impossible to ascertain from the ARB decision which ALJ decision (much less which findings of fact or conclusions of law) the ARB purported to describe.

Eighth Circuit and ARB judges knowingly failed to comply with many provisions of the APA and failed to apply many provisions of SOX or the SOX regulations. They all merely asserted conclusory contentions (that they knew were false) to pretend to justify summarily affirming lower-level decisions. *See* App. 2-11.

Instead of applying and complying with the plain language of the Constitution, federal law and this Court's precedent, Eighth Circuit and DOL judges chose to retaliate and to facilitate and cover up their own and other judges' criminal misconduct. *Cf.* 18 U.S.C. 241, 242, 371, 1001, 1512(b)(3), 1519.

Three days before they rendered their so-called judgment and issued their opinion in this matter, unidentified Eighth Circuit judges—hiding behind anonymity—announced their decision to disbar Petitioner with one short sentence devoid of any fact or legal authority. *See* Petition 21-1180 at 4-5. They did so because Petitioner exposed the lies and crimes of Eighth Circuit judges for the purpose of concealing evidence that agency attorneys and judges and Judge Smith (Mo. W.D.) lied about the content and nature of Powers' email. *See id.*; Petition 21-1320 at 4-11.

Within minutes of doing so, Eighth Circuit judges announced their decision to help district court and agency judges and agency attorneys criminally conceal some of the same evidence (Powers' email) as was at issue in the DOL proceedings below. *Cf.* Petition 21-1320 at 4-11. Months earlier, Judges Gruender, Benton and Stras openly flaunted their intent to ensure that "Jack Jordan" (Petitioner) cannot "get various emails," including Powers' email, which they knew DOL (and federal) judges were criminally concealing. Petition 21-1320 at 10. *Cf.* 18 U.S.C. 1001(a)(1), 1519.

The Eighth Circuit panel (Judges Gruender, Loken and Erickson) overlapped with the panel (Judges

Gruender, Benton and Stras) that helped the DOL conceal Powers' email by knowingly violating FOIA and disbarring Petitioner. *Compare* App. 2 *with* Petition 21-1180 App. 4; Petition 21-1320 App. 2. Both panels denied all petitioners any opportunity for oral argument. Regarding all appeals at issue here and in Petition 21-1320, all petitioners petitioned for rehearing en banc and by the panel, and all such petitions were denied. *See* App. 30; Petition 21-1320 App. 76.

Three days after disbarring Petitioner and knowingly violating FOIA to help the DOL conceal Powers' email, Eighth Circuit judges announced their judgment below, again helping DOL judges illegally conceal Powers' email and again punishing Petitioner for exposing ALJs' lies and crimes to conceal Powers' email.

Eighth Circuit judges affirmed the ARB decision affirming ALJ Barto's decision (App. 12-28) ordering Petitioner to pay DynCorp $1,000 for presenting claims addressing the extent to which ALJs Merck and Almanza and DynCorp's counsel functioned as agents of DynCorp (including by lying about evidence and criminally concealing evidence of their lies) to help DynCorp conceal evidence that DynCorp's counsel and employees and ALJ Merck lied to commit mail and wire fraud against a DynCorp employee who was injured in Iraq.

ALJ Barto's justifications for sanctioning Petitioner specifically targeted Petitioner's First Amendment speech and petitioning. ALJ Barto emphasized that Petitioner's "Complaint was" based on allegations that DynCorp's counsel and ALJs Merck and Almanza

"violated [SOX] on behalf of [DynCorp] by their actions during previous litigation." App. 15. ALJ Barto *sua sponte* argued that naming such individuals as respondents "is evidence that [Petitioner] is filing complaints merely to harass counsel and judges who rule against him and needlessly increase the cost of the proceedings." App. 18. ALJ Barto contended that the mere "serial, aggregative nature of the litigation at issue provides substantial evidence that [Petitioner] filed this action merely to harass counsel and judges who have ruled or worked against him during litigation and to needlessly increase the cost of the proceedings." App. 25.

ALJ Barto clearly failed to accept Petitioner's allegations as true. Moreover, the evidence (especially that presented to the ARB) proved that ALJ Barto's contentions were false. In 2016 and 2017, ALJ Merck repeatedly lied (*sua sponte*) to support ALJ Merck's (and DynCorp's) contention that two emails were protected by the attorney-client privilege. To make up for a complete absence of evidence supporting DynCorp's assertions of such privilege, ALJ Merck *sua sponte* personally fabricated the lie that two DynCorp managers (Robert Huber and Darin Powers) "*expressly* sought *legal advice*" in Huber's email and Powers' email. *Jordan v. U.S. Dep't of Labor*, 273 F.Supp.3d 214, 235 (D.D.C. 2017) (emphasis added).

In the proceedings before ALJ Merck, DynCorp's counsel did not even assert any such contention regarding either email. They waited until ALJ Merck had repeatedly asserted such contentions and determinedly

concealed all relevant evidence. Only afterward did DynCorp's counsel assert such contentions to a DOL board on appeal.

To conceal evidence that ALJ Merck (and DynCorp's counsel) lied, DOL and U.S. Department of Justice ("DOJ") attorneys fought for years to conceal both emails behind additional lies. They knowingly misrepresented (including in a declaration) that both "DynCorp emails" (Huber's email and Powers' email) "*expressly* sought DynCorp's attorney's *input* and *review*" and both "DynCorp emails" were "marked" (by some unidentified person at some unidentified time) "Subject to Attorney Client Privilege." *Id*. at 232 (emphasis added). Huber's email clearly did not include any privilege notation or any request for any attorney's advice, input or review, and Powers' email clearly did not include the privilege notation that DOL and DOJ attorneys contended it did. *See id*.

While DOL judges and attorneys concealed all evidence of their lies, deceit and perjury, DynCorp's counsel requested and DOL ALJs granted sanctions against Petitioner for filing complaints under SOX addressing the fact that ALJ Merck acted as DynCorp's agent (*sua sponte* lying and concealing evidence of his lies to help DynCorp conceal all text in both emails and other evidence that DynCorp counsel and employees lied to defraud an employee injured in Iraq). *Cf*. 18 U.S.C. 1001, 1519. For example, in April 2018, ALJ Barto sanctioned Petitioner and ordered him to pay DynCorp $1,000. *See* App. 28.

On May 30, 2018, however, as the result of a FOIA suit, Petitioner obtained Huber's email, which proved irrefutably that ALJ Merck, DOL and DOJ attorneys and DynCorp's counsel lied repeatedly about the nature and content of Huber's email. Petitioner presented Huber's email and analysis thereof to the ARB and the Eighth Circuit, but they failed to even address such evidence. DynCorp, DynCorp's counsel and the DOL continue to illegally conceal Powers' email.

To this day, no judge or government attorney ever even denied Petitioner's allegations (and evidence) that ALJs Merck and Almanza and DynCorp's counsel lied to conceal evidence for DynCorp. Instead, agency and federal judges determinedly helped DOL and DynCorp employees and counsel conceal all evidence that they lied about Powers' email (including that it included the words "Subject to Attorney Client Privilege" and expressly requested an attorney's advice, input or review).

REASONS FOR GRANTING THE WRIT

For many compelling reasons, this petition should be granted, including "because of the public importance of the issues presented and the need for their prompt resolution." *United States v. Nixon*, 418 U.S. 683, 687 (1974). The lies and crimes of Eighth Circuit judges were so obvious, intentional and egregious that if they are not remedied by this Court, Petitioner will be compelled to address them in additional public

forums. The judiciary's failures to support and defend the Constitution by addressing agency and federal judges' knowing violations thereof and of federal law will harm public confidence in the federal judiciary and this Court. In many respects, Eighth Circuit judges did (and allowed ARB judges to) so far, so deliberately and so egregiously depart from the accepted and usual course of judicial proceedings (and violate the Constitution) as to call for prompt exercise of this Court's supervisory power.

I. ARB and Eighth Circuit Judges Clearly Failed to Apply the Plain Language of SOX.

Contrary to the ARB's own statement of the standard to be applied (*see* page 6, above), when purporting to adjudicate the dismissal of any of Petitioner's claims against any respondent no judge below accepted any of Petitioner's allegations of fact as true or made any inference favoring Petitioner regarding any of the following elements of a claim under SOX.

SOX protects any DynCorp employees who "provide information" or "cause information to be provided" in any way "regarding any conduct which the employee reasonably believes constitutes" mail or wire fraud or who "participate in, or otherwise assist in" any "proceeding" that is "relating to [any] alleged" mail or wire fraud. 18 U.S.C. 1514A(a)(1), (2) citing 18 U.S.C. 1341, 1343. Petitioner alleged that he engaged in all the foregoing protected activities, and he was a DynCorp

employee between 2005 and 2013. Former employees are employees protected by SOX. *See* 29 C.F.R. 1980.101(b).

DynCorp and any "officer, employee, contractor, subcontractor, or agent of" DynCorp can be guilty of violating SOX. 18 U.S.C. 1514A(a). It was illegal for any such person to "threaten" or "harass" Petitioner "because" he engaged in any protected activity. *Id*. Illegal discrimination includes "intimidating, threatening, restraining, coercing, blacklisting." 29 C.F.R. 1980.102(a).

No one ever even disputed Petitioner's allegations that (to help DynCorp and DynCorp's counsel criminally conceal evidence and to justify fraudulent judgments for DynCorp), ALJs Merck or Almanza functioned as DynCorp agents. No one ever even disputed, for example, Petitioner's allegations that ALJ Merck personally fabricated multiple lies in 2016 and 2017 regarding evidence including (but not limited to) Huber's email and Powers' email. No one ever even disputed Petitioner's allegations that ALJ Merck committed crimes to conceal material facts and relevant evidence. *Cf*. 18 U.S.C. 1001(a), 1519. No one ever even disputed Petitioner's allegations that DynCorp, DynCorp's counsel, the ARB and Eighth Circuit judges knew of and used ALJ Merck's lies to commit mail and wire fraud (to defraud Petitioner of $1,000 and defraud his client (another DynCorp employee who was injured in Iraq) of about $80,000). *Cf*. 18 U.S.C. 1341, 1343.

II. Eighth Circuit Judges Clearly Knowingly Violated Petitioner's First and Fifth Amendment Rights.

For years, DOL judges and attorneys and DOJ attorneys and federal judges have lied, deceived and committed crimes to conceal all evidence that DOL judges and attorneys and DOJ attorneys lied and deceived about the content and purposes of Powers' email (especially regarding two phrases that Powers purportedly included in Powers' email on July 30, 2013). *See* pages 8-12, above; Petition 21-1320 at 4-11 (clearly illegal efforts to conceal evidence that government employees lied or deceived about whether Powers included in Powers' email the notation "Subject to Attorney Client Privilege" and non-commercial words expressly requesting an attorney's advice, input or review (*e.g.*, "please advise regarding" or "please review and provide input")).

Eighth Circuit judges clearly conspired with agency attorneys to conceal all evidence that agency judges and attorneys lied and deceived about facts material to and evidence relevant to DOL and DOJ proceedings. *See id*. Their conduct in the proceedings below was an extension of the misconduct at issue in such prior proceedings.

Judge Gruender was on the panel below, as well as on the panel that knowingly and irrefutably violated FOIA requesters' rights to obtain Powers' email, and all available evidence supports the conclusion that he was among the judges who disbarred Petitioner

(without a hearing) for exposing the lies and crimes of Eighth Circuit judges to conceal evidence of the two phrases purportedly in Powers' email. *See* pages 8-9, above. *Cf*. Petition 21-1320 at 4-11; Petition 21-1180 at 4-5. Moreover, the en banc court denied petitions for rehearing regarding every such appeal. *See* App. 30; Petition 21-1320 App. 76. Clearly, the misconduct at issue was not limited to only a few Eighth Circuit judges.

All evidence supports the conclusion that Eighth Circuit judges below merely parroted (in a single sentence) legally-acceptable standards for the purpose of knowingly violating Petitioner's right to petition for redress of grievances against DOL judges and to expose such judges' lies and crimes. *See* page 5, above.

Eighth Circuit judges clearly purported to abridge Petitioner's "freedom of speech" and his "right" to "petition" the DOL and federal courts "for a redress of grievances." U.S. Const. Amend. I. They clearly purported to deprive Petitioner of "liberty" and "property" (including two court filing fees and a $1,000 sanction) "without due process of law." Amend. V. Moreover, ALJ Barto (who was affirmed by ARB and Eighth Circuit judges) clearly and expressly purported to sanction Petitioner $1,000 because he petitioned for redress of grievances against ALJs who lied to help DynCorp conceal evidence including Powers' email. *See* pages 9-12, above.

"It is imperative that, when the effective exercise of" First Amendment "rights is claimed to be abridged," all "courts should 'weigh the circumstances'

and 'appraise the substantiality of the reasons advanced' in support of the challenged regulations" or punishment. *Thornhill v. Alabama*, 310 U.S. 88, 96 (1940). "[W]hen it is claimed that" First Amendment "liberties have been abridged," subsequent courts "cannot allow a" mere "presumption of validity of the exercise of" any prior court's "power to interfere with" the subsequent court's "close examination of the substantive claim presented." *Wood v. Georgia*, 370 U.S. 375, 386 (1962). The mere conclusory contentions by judges below "may not preclude" or in any way diminish any other court's "responsibility to examine" all relevant "evidence to see whether" the evidence "furnishes a rational basis for the characterization" that was previously "put on it." *Id*. at 386.

Due process requires more than the mere "enunciation of a constitutionally acceptable standard." *Id.* at 386. "Unlike those cases in which elaborate findings have been made to support such a conclusion, this record is barren of such findings." *Id*.

The "proof presented to show" each material fact must have "the convincing clarity which the constitutional standard demands." *New York Times Co. v. Sullivan*, 376 U.S. 254, 285-86 (1964). The "First Amendment mandates a 'clear and convincing' standard" of proof regarding each material fact. *Anderson v. Liberty Lobby, Inc*., 477 U.S. 242, 252 (1986). But no judge below even purported to apply such standard. *Cf*. App. 16 (ALJ Barto merely contending that he "was not persuaded by Complainant's assertions").

No "group in power" may "impose penal sanctions on" Petitioner's "peaceful and truthful discussion of matters of public interest." *Thornhill*, 310 U.S. at 104. "The freedom of speech" irrefutably "embraces at the least the liberty to discuss publicly and truthfully all matters of public concern without previous restraint or fear of subsequent punishment." *Id.* at 101-02. As the Founders emphasized, such freedom exists so that "oppressive officers are ashamed or intimidated, into more honourable and just modes of conducting affairs." *Id*. at 102 (citation omitted).

"Truth may not be the subject of" any type of "either civil or criminal sanctions where discussion of public affairs is concerned." *Garrison v. Louisiana*, 379 U.S. 64, 74 (1964). Clearly "only those false statements made with the high degree of awareness of their probable falsity demanded by *New York Times* may be the subject of either civil or criminal sanctions" because "speech concerning public affairs" is "the essence of self-government." *Id*. at 74-75.

Discussion of "public issues should be uninhibited, robust, and wide-open" and it "may well include vehement, caustic" and "unpleasantly sharp attacks on government and public officials," including, specifically, judges. *Id.* Such "public-official rule protects the paramount public interest in a free flow of information to the people concerning public officials, their servants," so "anything which" even "might touch on an official's fitness for office is relevant. Few personal attributes are more germane to fitness for office than dishonesty,

malfeasance, or improper motivation." *Id.* at 77 (pertaining specifically to criticism of judges).

Litigation "comes within the generous zone of First Amendment protection" when used as Petitioner used it, *i.e.*, "as a vehicle for effective political expression and association" or "as a means of communicating useful information to the public" about matters of public concern. *In re Primus*, 436 U.S. 412, 431 (1978). Such action is within "core First Amendment rights," and any "action in punishing" it "must withstand" the "exacting scrutiny applicable" to repression of "core First Amendment rights." *Id*. at 432.

The "proper test to be applied to determine the constitutionality of" the sanctions imposed on Petitioner is "strict scrutiny," *i.e.*, the government must "prove that" its rule "is (1) narrowly tailored, to serve (2) a compelling state interest." *Republican Party v. White*, 536 U.S. 765, 774-75 (2002). To "show that the" rule "is narrowly tailored," the DOL "must demonstrate that it" did not "unnecessarily circumscribe protected expression." *Id*. at 775. Clearly, "it suffices to say that" no judge below "carried the burden imposed by [the] strict-scrutiny test" regarding any material fact. *Id*. at 781. At most, they "offered" only "assertion and conjecture." *Id*.

III. Circuit Court and ARB Judges Knowingly Violated Petitioner's Due Process of Law under the APA.

Every legal authority addressed in this Section was presented to the Eighth Circuit judges at least once and at least as clearly and emphatically as it was presented below. The judges knowingly violated (or helped ARB judges violate) every provision of the APA or the Constitution presented below.

Agency judges must "take Care that" all "Laws" governing DOL adjudications "be faithfully executed." U.S. Const. Art. II, §3. Federal judges must ensure they do. "No person" may "be deprived" by any court or agency employee of any "liberty" or "property" whatsoever "without due process of law." Amend. V.

"Congress shall make no law" (and judges on congressionally-created tribunals must not pretend any exists) "abridging" Petitioner's "freedom of speech" or his "right" to "petition" the DOL and federal courts "for a redress of grievances." Amend. I. But ARB and Eighth Circuit judges pretended they had the power to abridge Petitioner's petitioning to redress grievances against such DOL judges.

"The judicial Power of the United States" is "vested in" this "one supreme Court," to which every other tribunal is "inferior" regarding the construction and application of the Constitution and federal law. Art. III, §1. Such "judicial Power shall extend" (only) as far as permitted "under [the] Constitution" and federal "Laws." *Id*., §2. Relevant to Petitioner's appeals, the

"Constitution" and federal "Laws" are the "supreme Law of the Land," and all "Judges" are "bound thereby." Art. VI cl. 2. *Accord* 5 U.S.C. 3331; 28 U.S.C. 453; 18 U.S.C. 241, 242.

Contrary to all the foregoing, with a single sentence, Eighth Circuit judges pretended to justify their judgment and blatantly mock this Court, Congress, federal law and the Constitution. The judges clearly misrepresented that nothing in either ARB decision was "arbitrary, capricious, an abuse of discretion" or "contrary to the law" regarding even one issue. App. 2. Such sentence was obviously false regarding each such standard. In their one sentence, Judges Gruender, Loken and Erickson lied repeatedly. They also precluded oral argument, which required unanimity regarding each lie. *See* Fed.R.App.P. 34(a)(2).

The ARB did virtually nothing required of it by the APA and the Constitution. For example, according to the ARB, itself, the ARB and the ALJs were required to expressly address Petitioner's factual allegations and inferences favoring Petitioner. *Cf*. page 6, above. The ARB knowingly and willfully failed (and failed to require either ALJ) to address any factual allegation by Petitioner or inference favoring Petitioner.

Like the Bill of Rights, the APA's primary purpose is to support the Constitution as a "bill of rights for [the multitude of] Americans whose affairs are controlled or regulated" by federal agencies. 92 Cong. Rec. 2149 (Statement of Sen. McCarran).

Congress initially enacted the APA in 1946 (and re-enacted it in 1966) after many years' careful consideration by many legal luminaries. *See Wong Yang Sung v. McGrath*, 339 U.S. 33, 37-41 (1950).

> The [APA] thus represents a long period of study and strife; it settles long-continued and hard-fought contentions, and enacts a formula upon which opposing social and political forces have come to rest. It contains many compromises and generalities . . . [and] it would be a disservice to our form of government and to the administrative process itself if the courts should fail, so far as the terms of the [APA] warrant, to give effect to its remedial purposes where the evils it was aimed at appear.

Id. at 40-41.

"It is the plain duty of" courts "to construe" the APA "to eliminate, so far as its text permits, the practices it condemns." *Id.* at 45. All courts are "charged" with "ensuring that agencies comply with" the "minimum essential rights and procedures" in "the APA." *Chrysler Corp. v. Brown*, 441 U.S. 281, 313 (1979).

All ARB and Eighth Circuit judges knew the ARB was required (but failed) to "show the ruling on each finding, conclusion, or exception" that was "presented" by Petitioner. 5 U.S.C. 557(c). They knew the ARB was required (but failed) to "include a statement" of the "findings and conclusions" and "a statement" of "the reasons or basis" for each of the "findings and

0conclusions" on "all the material issues of fact, law, or discretion" that were "presented on the record." *Id*.

Clearly no ARB action was upheld based on any showing of compliance with the foregoing or the following commands in the APA or this Court's precedent. It is impossible to even ascertain (from any ARB or Eighth Circuit contentions) any issue of fact, law or discretion (any violation of law by any ALJ or the ARB) that Petitioner appealed to the ARB or the Eighth Circuit.

It is impossible that any ARB or Eighth Circuit judge even believed that the ARB complied with any command applicable to the ARB in any law or Supreme Court precedent presented herein (and to the Eighth Circuit and the ARB).

No "sanction" whatsoever (including the $1,000 sanction against Petitioner) could "be imposed" and no DOL "order" whatsoever could be "issued" **(1)** "except on consideration of the whole record" or at least the "parts thereof cited by" Petitioner, and **(2)** unless it was "supported by and in accordance with [all] reliable, probative, and substantial evidence" presented to the DOL. 5 U.S.C. 556(d). No judge even contended (much less showed) that any judge considered all evidence in the whole record or even the parts cited by Petitioner. No judge even contended (much less showed) that any judge gave credence to Petitioner's allegations or considered the evidence and analysis proving that ALJ Merck and DynCorp's counsel lied blatantly about the content and nature of Huber's email. *Cf*. pages 10-12, above.

The second part of the foregoing sentence in Section 556(d) established "a standard of proof" for each conclusion and order, *i.e.*, the "preponderance-of-the-evidence standard." *Steadman v. SEC*, 450 U.S. 91, 102 (1981). This Court previously even emphasized that the DOL has no power to apply any other standard.

"The Department [of Labor] cannot allocate the burden of persuasion in a manner that conflicts with the APA." *Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 281 (1994). Clearly "the proponent of [any] rule or order" must bear "the burden of proof." *Id*. at 269 quoting 5 U.S.C. 556(d). The APA requires "the proponent [of any order or sanction to] meet its burden by a preponderance of the evidence." *Id*. at 277 citing *Steadman*. *See also id*. at 278-79 quoting and discussing legislative history.

No judge below even contended (much less showed) that any purported finding regarding even one fact was supported by the preponderance of the evidence. No judge even contended (much less showed) that any judge weighed any evidence relevant to even one fact. Instead, Eighth Circuit judges merely summarily contended that no entire ARB decision was "unsupported by substantial evidence in the record." App. 2. The ARB merely implied that it must (and did) review each "ALJ's factual findings" for nothing more than "substantial evidence." App. 6, 9. Each such judge knew their contentions and conduct clearly violated Section 556(d) and flouted this Court's precedent.

This Court also repeatedly has long emphasized that each ALJ or ARB decision must "articulate a satisfactory explanation for [each agency] action including" a "rational connection between the facts found and [each] choice made." *Motor Vehicle Mfrs. Assn. of United States, Inc. v. State Farm Mut. Automobile Ins. Co.*, 463 U.S. 29, 43 (1983). Any ALJ or ARB action "must be upheld, if at all," only "on the basis articulated" in the decision being reviewed. *Id.* at 50.

"The requirement for administrative decisions based on substantial evidence and reasoned findings" is the APA feature that "alone make[s] effective judicial review possible." *Balt. & O. R. Co. v. Aberdeen & R. R. Co.*, 393 U.S. 87, 92 (1968).

> There are no findings and no analysis here to justify the choice made, no indication of the basis on which the [agency purportedly] exercised its expert discretion. [The APA] will not permit [courts] to accept such adjudicatory practice. . . . "[U]nless [courts] make the requirements for administrative action strict and demanding, expertise, the strength of modern government, can become a monster which rules with no practical limits on its discretion." "Congress did not purport to transfer its legislative power to the unbounded discretion of the [agency]." [Each agency authority] must exercise [any] discretion [ ] within the bounds expressed by the standard [in controlling law]. And for the courts to determine whether the agency has done so, it must "disclose the basis of its order" and "give clear

> indication that it has exercised [only] the discretion with which Congress has empowered it." The agency must make findings that support its decision, and those findings must be supported by substantial evidence.

Burlington Truck Lines, Inc. v. United States, 371 U.S. 156, 167-68 (1962) (citations omitted).

There is "no difference in the scope of judicial review depending upon the nature of the agency's action." *State Farm*, 463 U.S. at 41. Each court must "determine" for itself "the meaning or applicability of the terms of [any] agency action" to the full "extent necessary to [any] decision" when "presented." 5 U.S.C. 706. It must expressly "decide all relevant questions of law" and "interpret constitutional and statutory provisions" to the full "extent necessary to decision" because Petitioner "presented" them. *Id*.

Each court must "compel" any "agency action" that was "unlawfully withheld or unreasonably delayed." 5 U.S.C. 706(1). In addition, the "provisions of 5 U.S.C. s 706(2) are" set out in "six" parts which state additional "separate standards" that this Court must apply. *Bowman Transp., Inc. v. Arkansas-Best Freight System, Inc*., 419 U.S. 281, 284 (1974).

This Court previously emphasized that courts must consider particular factors when considering potential abuses of discretion or arbitrary action. A court or agency "would necessarily abuse its discretion if it based its ruling on an erroneous view of the law or on

a clearly erroneous assessment of the evidence." *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 405 (1990).

> [Action is] arbitrary and capricious if the agency has relied on factors which [it was] not intended [ ] to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.

State Farm, 463 U.S. at 43. Every agency action, finding or conclusion must be "based on [express] consideration of [truly] relevant factors." *Id.* at 42.

The APA "establishes a scheme" of "reasoned decisionmaking," and each DOL "adjudication is subject to" such "requirement." *Allentown Mack Sales and Service, Inc. v. NLRB*, 522 U.S. 359, 374 (1998). The "process by which" the DOL "reaches" each "result must be logical and rational." *Id*. "Reasoned decisionmaking" (and the APA and the Due Process and Supremacy Clauses) necessarily require that "the rule announced" in federal law (or the Constitution) be "the rule applied" in agency and court decisions. *Id*. at 375.

"It is hard to imagine a more violent breach of" those "requirement[s] than applying a [purported] rule of primary conduct" that "is in fact different from the rule or standard formally announced. And the consistent repetition of that breach can hardly mend it." *Id*. at 374. When any judge "applies a standard other

than the one" in the law, he personally perpetrates and perpetuates "evil" that "spreads in both directions, preventing both consistent application of the law" by agencies and "effective review" by "courts." *Id*. at 375. Every judge "must be required to apply in fact the clearly understood legal standards that" controlling legal authority "enunciates." *Id*. at 376. The ARB and Eighth Circuit judges clearly and knowingly violated and flouted all the foregoing.

There is no evidence the ARB or the Eighth Circuit complied with any APA requirement or any of this Court's precedent addressed herein. There is no evidence any ARB or Eighth Circuit judge even read any of Petitioner's briefing or any of this Court's precedent addressed herein. The APA required the Eighth Circuit to ensure the ARB created such evidence. The Eighth Circuit failed to provide any evidence or any reason to believe that it complied with any requirement in Section 706 or any of this Court's precedent thereunder.

IV. This Petition Addresses Issues of Broad Significance to Americans Seeking to Fulfill Core Purposes of the Constitution and the APA.

Every judge below pretended to have the power to knowingly violate Petitioner's rights under the Constitution and federal law. No judge should be able to pretend or believe he has any such power. Multiple provisions of this country's most important legal documents, including the Constitution, the APA and

copious Supreme Court precedent, established and confirmed that no judge below had any such power.

Even in areas in which a judge "has wide discretion," he has discretion "only when" (only to the extent) he "calls the game by the right rules." *Fox v. Vice*, 563 U.S. 826, 839 (2011). Federal "judicial Power" was "created by Article III" of "the Constitution," so it clearly "is not" and cannot be "*whatever* judges choose to do." *Vieth v. Jubelirer*, 541 U.S. 267, 278 (2004). "One of the most obvious limitations" is that "judicial action must be governed by *standard*, by *rule.*" *Id*. *Accord Rucho v. Common Cause*, 139 S. Ct. 2484, 2507 (2019). Any legal pronouncement "by the courts must be principled, rational, and based upon reasoned distinctions." *Vieth* at 278. The plain language of many provisions of the Constitution, below, emphatically established and confirmed the foregoing.

The Founders and their families risked literally everything they had or ever could have had to establish particular protections for the "people." As profoundly as any legislator possibly could, the Framers meant every word of the Constitution below.

Every exercise of federal judicial power must further the purposes of the Constitution, the federal government and this country, itself, *i.e*., to "establish Justice" to "secure the Blessings of Liberty" to "insure domestic Tranquility" to "form a more perfect Union" to "provide for the common defense" against tyrants and usurpers to "promote the general Welfare" of "the people" as a whole, including "posterity." U.S. Const.

Preamble. The foregoing is established in the text and structure of much of the Constitution.

Every branch of government was carefully crafted to operate with the advice and consent of the people as the ultimate sovereign. Every branch of government and "the people" participate in creating, staffing and operating courts and agencies to support the foregoing purposes.

The "people" did "ordain and establish this Constitution," in significant part to "establish Justice" and "secure the Blessings of Liberty." Preamble. They did so to ensure all "Citizens" are afforded "all Privileges and Immunities of Citizens." Art. IV, §2. All "powers" relevant here that were "not delegated to the United States by the Constitution" were expressly "reserved" to "the people." Amend. X.

"No person" ever may "be deprived" by any court or agency employee "of life" or any "liberty" or any "property, without due process of law." Amend. V. Such law clearly includes the "Constitution" and federal "Laws," which "shall be the supreme Law of the Land," so all "Judges" (state and federal) "shall be bound thereby" in all official conduct. Art. VI. All federal "Judges, both of the supreme and inferior Courts," may "hold their Offices" only "during good Behaviour." Art. III, §1. Their "judicial Power" (good behavior) "shall extend" no further than permitted "under this Constitution" and federal "Laws." *Id*., §2.

"The President" must always "to the best of" his "Ability, preserve, protect and defend the Constitution."

Art. II, §1. "[H]e shall take care that the Laws be faithfully executed, and shall Commission all" executive and judicial "Officers" for such purposes. *Id*., §3. All "Senators and Representatives," all "members" of "state legislatures, and all [federal or state] executive and judicial Officers," in all official conduct, "shall be bound" to "support this Constitution." Art. VI.

Congress has broad power "[t]o make all Laws which shall be necessary and proper for" executing absolutely "all" the "Powers vested by this Constitution in the [federal] Government" or "any Department or Officer thereof." Art. I, §8. Congress may "constitute Tribunals inferior to the supreme Court." *Id*. "Congress" may "ordain and establish" federal "Courts" below the "one supreme Court." Art. III, §1.

In exercising any power, however, "Congress shall make no law" (and delegate no power) "abridging the freedom of speech" or "the right of the people peaceably to assemble" and "petition the government" to "redress" any "grievances" against agencies under the APA. Amend. I. No DOL or federal judge should be able to believe (or pretend) he has the power to make or enforce any court rule or ruling purporting to do the opposite of what the Constitution expressly forbids or compels.

No judge has the power to knowingly violate federal law to defeat or thwart all the foregoing. But many judges have cowed and conned many people into believing that federal judges have the power to knowingly violate federal law and the Constitution. They

make themselves supreme above the "one supreme Court" (Art. III), "the supreme Law of the Land" (Art. VI) and "the [sovereign] people" (Preamble).

All judges must "support and defend the Constitution" against "all enemies," including "domestic" enemies. 5 U.S.C. 3331. Any judge knowingly violating such oath is "worse than solemn mockery." *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 180 (1803) (Marshall, C.J.). Any judge "usurp[ing]" any power "not given" in the Constitution commits "treason to the Constitution." *United States v. Will*, 449 U.S. 200, 216, n.19 (1980) (Burger, C.J.) quoting *Cohens v. Virginia*, 19 U.S. (6 Wheat.) 264, 404 (1821) (Marshall, C.J.).

"[I]n declaring what shall be the *supreme* law of the land, the *constitution* itself is first." *Marbury*, 5 U.S. at 180. The Constitution repeatedly emphasized that judges are bound by the Constitution and federal law. *See* pages 30-31, above. "Thus, the particular phraseology of the constitution" emphatically and repeatedly "confirms" that "*courts*" always "are bound by" the Constitution and any judicial contention or conduct "repugnant to the constitution is void." *Marbury* at 180. Irrefutably, "the constitution controls any" judicial "act repugnant to it." *Id*. at 177. Any act "repugnant to the constitution" is "void." *Id*. No "act repugnant to the constitution, can become the law of the land." *Id*. at 176. Many judges below pretended otherwise.

When any judge in any matter subject to this Court's jurisdiction acts in "opposition to the constitution," this Court must "decide" the case "conformably

to the constitution." *Id.* at 178. "This is" the "very essence of judicial duty" under the Constitution. *Id*. "It is emphatically" judges' "duty" to "say what the law is." *Id*. at 177. When applying any "rule," judges "must" expressly "expound and interpret that rule." *Id*. "Article III of the Constitution establishes" judges' "duty" to "say what the law is" in "particular cases and controversies." *Bank Markazi v. Peterson*, 136 S. Ct. 1310, 1322-23 (2016).

Clearly, "the constitution" must "rule" the "government of *courts*." *Marbury*, 5 U.S. at 179-80. Every litigant "has a right to resort to the laws of his country for a remedy." *Id*. "The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury. One of the first duties of government is to afford that protection." *Id.* at 163. Judges "cannot" maliciously "sport away" litigants' "vested rights," as the ARB and Eighth Circuit judges below did. *Id.* at 166.

Allowing such judicial misconduct clearly "would subvert the very foundation of" the Constitution. *Id*. at 178. "It would declare, that" judges may "do what is expressly forbidden" by the Constitution, giving them "a practical and real omnipotence." *Id*. at 178. Such conduct "reduces to nothing" our "greatest improvement on political institutions—a written constitution." *Id*.

The Constitution precludes agency or federal judges' dispensing with the due process protections in the APA.

V. The Constitution Compels this Court to Ensure Lower Courts Respect this Court's Precedent.

The Constitution expressly vested the ultimate "judicial Power of the United States" in this "one supreme Court," so no "inferior Courts" that "Congress" may "ordain and establish" have the power to flout this Court's precedent. U.S. Const. Art. III, §1. No federal "judicial Power shall extend" any further than permitted "under [the] Constitution." *Id*., §2.

This Court repeatedly has emphasized that "if the same judgment would be rendered by" another "court after" this Court "corrected its views of" controlling legal authority, then this Court's "review could amount to nothing more than an advisory opinion." *Coleman v. Thompson*, 501 U.S. 722, 729 (1991). In fact, many times many judges below treated many of this Court's decisions as "only advisory." *Gompers v. Buck's Stove & Range Co*., 221 U.S. 418, 450 (1911). Eighth Circuit and ARB judges *sub silentio* made themselves "judge of the validity of orders which have been issued" by this Court, and each in an "act of" willful "disobedience set them aside," flaunting his pretense that this Court is "impotent" and the federal "judicial power" in "the Constitution" is "a mere mockery." *Id*. That has happened in every case or appeal involving Petitioner in or under the Eighth Circuit.

Some might think we "run no risk of returning to the days when a President" might say that this Court "has made [its] decision; now let [this Court] enforce

it!" *Bush v. Gore*, 531 U.S. 98, 158 (2000) (Breyer, J., dissenting). But there can be no doubt that many federal and agency judges openly flaunt that very attitude. Eighth Circuit and ARB judges openly flouted copious precedent of this Court.

Only three years ago this Court emphatically reminded Eighth Circuit judges (in decisions applying the APA) that they must start with "a careful examination of the ordinary meaning and structure of the law itself" and when "that examination yields a clear answer" all "judges must stop." *Food Marketing Institute v. Argus Leader Media*, 139 S. Ct. 2356, 2364 (2019). At the same time, this Court emphasized that each "court must apply all traditional methods of interpretation" to all controlling legal authorities, and then it "must enforce the plain meaning" that "those methods uncover." *Kisor v. Wilkie*, 139 S. Ct. 2400, 2419 (2019). This Court emphatically reiterated that each court "must exhaust all the 'traditional tools' of construction" of controlling legal authorities. *Id.* at 2415 quoting *Chevron U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 843, n.9 (1984). And when "the law gives an answer—if there is only one reasonable construction of" the law "then a court has no business" choosing "any other reading, no matter how much" anyone "insists it would make more sense." *Id*.

VI. This Petition Presents a Clean Vehicle for Decision.

No material fact could be in dispute. There is no possibility that any ARB or Eighth Circuit judge below did not know that the APA, SOX and this Court's precedent constituted controlling legal authority. There is no possibility that any ARB or Eighth Circuit judge below did not know the standards stated in controlling authority and presented by Petitioner.

ARB and Eighth Circuit judges did not even attempt to show compliance with any provision of the APA or the Constitution or any of this Court's precedent presented above (and to the Eighth Circuit and the ARB). All such judges simply pretended that all controlling legal authorities could be violated or flouted if such judges merely asserted a few conclusory contentions.

ARB and Eighth Circuit judges failed to accept Petitioner's factual allegations as true when considering dismissal of any Petitioner claim against any respondent. ARB and Eighth Circuit judges failed to apply or in any way address the burdens of proof (preponderance of the evidence or clear and convincing evidence) that they knew applied to particular issues.

VII. ARB and Eighth Circuit Judges' Conduct Was So Antithetical to Our Systems of Government and Justice that Congress Made Such Conduct Criminal.

The APA and the Constitution are bolstered by multiple additional federal statutes that are relevant hereto.

It was and is a crime for any agency employee to "conspire" with anyone (including any judge) "either to commit any offense against" or "to defraud the United States, or any agency thereof in any manner or for *any* purpose." 18 U.S.C. 371. Such "broad language" puts "no limits based on the *method* used to defraud." *Tanner v. United States*, 483 U.S. 107, 129 (1987). "To conspire to defraud the" U.S. includes "to interfere with or obstruct" even "one of its lawful governmental functions by deceit, craft or trickery, or at least by means that are dishonest." *Hammerschmidt v. United States*, 265 U.S. 182, 187 (1924). "It is not necessary that the" U.S. suffer "property or pecuniary loss by the fraud, but only that its legitimate official action and purpose shall be defeated by misrepresentation, chicane, or the overreaching of those charged with carrying out the governmental intention." *Id*.

No DOL or federal judge may "knowingly and willfully" **(1)** use any "trick, scheme, or device" to falsify, conceal or cover-up any "fact" that was "material" to any case or **(2)** use "any false writing or document" while "knowing the same to contain any materially

false, fictitious, or fraudulent statement or entry." 18 U.S.C. 1001(a)(1), (3).

No person may knowingly alter or conceal, cover up, falsify, or make any "false entry in any record" or "document" "with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any" federal "department or agency" or "in relation to or contemplation of any such matter." 18 U.S.C. 1519.

No judge or DOL or DynCorp attorney may "conspire" with any other person to "injure" or "oppress" Petitioner "in the free exercise or enjoyment of any right or privilege secured to" such Petitioner "by the Constitution" or federal "laws," or because Petitioner "exercised" any such "right or privilege." 18 U.S.C. 241. No judge or DOL or DynCorp attorney may act "under color of" any legal authority to "willfully" deprive Petitioner "of any rights, privileges, or immunities" that are in any way "secured or protected by the Constitution" or any federal "laws." 18 U.S.C. 242.

"Even judges" can "be punished criminally" under Sections 241 or 242 "for willful deprivations of constitutional rights." *Imbler v. Pachtman*, 424 U.S. 409, 429 (1976). "Both" sections cover all "rights or privileges secured by the Constitution" or federal "laws." *United States v. Price*, 383 U.S. 787, 797 (1966). "The language" is "plain and unlimited" and it "embraces all of the rights and privileges secured to citizens by all of the Constitution and all of the laws of the United States." *Id*. at 800. The "qualification with respect to alienage,

color and race" in Section 242 "refers only to differences in punishment and not to deprivations of any rights or privileges secured by the Constitution." *United States v. Classic*, 313 U.S. 299, 326 (1941).

Despite knowing all the foregoing, Judges Gruender, Loken and Erickson clearly lied and knowingly violated Petitioner's rights under many provisions of the APA, SOX and the Constitution. *Compare* pages 4-12, above, *with* pages 13-14, 16-19, 22-28, above. It is not possible that any judge below even believed their conclusory contentions were true.

The legal authorities and issues are clear and compelling. Federal judges clearly and knowingly violated judges' duties and Petitioner's rights under many clear provisions of the Constitution and federal law. Such judges pretended to have the power to thwart, flout, violate and undermine their own courts, this Court, the President, Congress, federal law and the Constitution. *Cf*. U.S. Const. provisions quoted herein. "No man in this country is so high that he is above the law. No officer of the law may set that law at defiance with impunity. All the officers of the government from the highest to the lowest, are creatures of the law, and are bound to obey it." *Butz v. Economou*, 438 U.S. 478, 506 (1978).

CONCLUSION

Many federal judges and government attorneys believe or pretend they may misrepresent facts, evidence or the law and violate the law and the Constitution. That problem plagues adjudications under the APA, including under FOIA.

Many restrictions or requirements in the Constitution, the law (including FOIA and the APA) and this Court's precedent designed to protect the people from abuse by government employees are openly and deliberately violated by many judges of district and circuit courts. That is exactly what happened here.

This country's laws, this Court's precedent and the Constitution will mean essentially nothing to very many (people and public officials) unless this Court enforces them. This petition should be granted for the foregoing reasons and purposes.

Respectfully submitted,

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