

21-182

No. _____

Supreme Court, U.S.
FILED

AUG - 5 2021

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In The
Supreme Court of the United States

SEAN A. CLARK,

Petitioner,

v.

MARK SCHROEDER,
NYS COMMISSIONER OF DMV,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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SUPREME COURT, U.S.

QUESTION PRESENTED

This actions pertains to the leakage of my current drivers license #xxx-xxx-678 which expires in 2025. A leakage is secret information that exposes the omission of my current drivers license #xxx-xxx-678 as well as my previous drivers license #xxx-xxx-678. The leakage pertains to index number 400256/2014 of human resource administration, my social security disability benefits which I won a fully favorable decision on July 10, 2012 but I did not receive the full amount of benefits pursuant to Social Security Act XVI Sec. 1611. [42 U.S.C. 1382] (a)(1), and student loan embezzlement which relates to dkt. #18-cv-9354, dkt. #15-cv-5863 and No. #16-6495 of this court. All debts were paid by Social Security Administration in 2013 a total of \$50,394.90. The succinct order by the U.S.D.J on November 5, 2020 was based on the eleventh amendment immunity, sua sponte, and prejudice. Under Rule 4(m) of FRCP, I was not given ninety days to serve the respondent. The second circuit panel of judges dated 5/14/2021 stated, "because the district court dismissed Clark's complaint before the DMV commissioner was served properly, this court lacks jurisdiction over him". Does this action violate the Fourteenth and Fifth Amendment Due Process Clause?

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PETITION FOR WRIT OF CERTIORARI

I, Sean A. Clark, petitioner, respectfully petition this court to review the second circuit court of appeals decision on May 14, 2021 and U.S.D.J. decision on 11/5/2020.

OPINIONS BELOW

The U.S.D.J. dismissed the complaint as frivolous and stated that the eleventh amendment immunizes the respondent from this suit on 11/5/2020. The U.S.S.C. dissension affirmed the decision on 5/14/2021.

JURISDICTION

Since the United States Second Circuit stated that the court lacks jurisdiction over me (petitioner) I'm requesting under 28 *U.S.C.* § 1257 that this court maintain jurisdiction in this procedural matter.

CONSTITUTIONAL PROVISION INVOLVED

14th amendment which states, "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty,

or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws." The 5th amendment which states, "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of war or public danger, nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law, nor shall private property be taken for public use, without just compensation."

◆

STATEMENT OF THE CASES

1. BACKGROUND

Again, briefly explaining index number 400256/2014 (case #8877557c), the Commissioner of Social Services is the one who designates authorized personnel to handle the affairs of OTDA hearing decisions. NYC-HRA improperly discontinued my public benefits on January 17, 2014, despite my alleged exemption from work requirements due to my physical impairments. I appealed the decision under Article 78, which encompasses three writs: mandamus, prohibition, and certiorari. The U.S.D.J. Judgement order dated 11/5/2020 stated, "Plaintiff's suit does not fall under this exception of immunity as plaintiff does not

request injunctive relief but instead seeks compensatory damages”. This is where mandamus is implemented for injunctive relief to compel the respondent to compensate punitive damages to me the petitioner for all of those previous years of neglect. Writ of certiorari has jurisdiction on all district court civil cases under 28 U.S.C. § 1331 pertaining to a federal question. Writ of prohibition does not prohibit district courts from analyzing an administrative or government official decision based on the merit of fact under the fourteenth amendment due process law. The succinct order by the U.S.D.J. on November 5, 2020 was based on the eleventh amendment immunity, sua sponte, and prejudice. Under Rule 4(m) of FRCP, I was not given ninety days to serve the respondent. I stated that there is an exception to the Eleventh Amendment immunity, in *Ex parte Young*, 209 U.S. 123 (1908). The exception is my entitled physical disability which is supported by the ada act of 1990 and the exception is also my gold bars in my estate account. “If government officials attempt to enforce an unconstitutional law, sovereign immunity does not prevent people whom the law harms from suing those officials in their individual capacity for injunctive relief. This is because they are not acting on behalf of the state in this situation”. “The majority was forced to reconcile the eleventh amendment’s ban on individuals suing states with the fourteenth amendment’s requirement that states respect due process rights of individuals”. *Labsy v. Howes Leather Co.*, 352 U.S. 249 (1957); *United States v. McGarr*, 461 F.2d 1 (7th Cir. 1972); *Schlagenhauf v. Holder*, 379 U.S. 104 (1964); *Spacil v. Crowe*, 489 F.2d

614 (5th Cir. 1974); *Ex parte United States*, 287 U.S. 241, 248 (1932)

The 14th amendment section 1 and section 5 states,

“All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws”. The exception is my physical disability since 2002 and my gold bars in my estate account.

1a. Leakage to HRA for Social Services History:

Again, briefly explaining index number 400256/2014 (case #8877557c), the Commissioner of Social Services is the one who designates authorized personnel to handle the affairs of OTDA hearing decisions. NYC-HRA improperly discontinued my public benefits on January 17, 2014, despite my alleged exemption from work requirements due to my physical impairments. I appealed the decision under Article 78, which encompasses three writs: mandamus, prohibition, and certiorari. The New York State judge decision on July 11, 2014 stated that,

“The application of prose petitioner for an order pursuant to CPLR Article 78, annulling and vacating the determination of respondent discontinuing Public Assistance benefits of petitioner for failure to attend a mandatory interview, is hereby transferred to the Appellate Division, First department”.

“Anytime a proceeding involves substantial evidence under Article 78 the proceeding should be transferred to the Appellate Division, First Department pursuant to CPLR 7804(g)”.

“CPLR 7804(g) authorizes the court in which the article 78 proceeding is commenced to decide any issues which would terminate the case if no issue of substantial evidence is raised. Otherwise, the section requires the court to transfer the case to the Appellate Division for disposition”.

Al Turi Landfill, Inc. v. New York State Dept. of Envtl. Conservation, 98 NY2d 758, 760 (2002). The U.S.D.J. Judgement order dated 11/5/2020 stated, “Plaintiff’s suit does not fall under this exception of immunity as plaintiff does not request injunctive relief but instead seeks compensatory damages”. This is where mandamus is implemented for injunctive relief to compel the respondent to compensate punitive damages to me the petitioner for all of those previous years of neglect. Writ of certiorari has jurisdiction on all district court civil cases under 28 U.S.C. § 1331 pertaining to a federal question. Writ of prohibition does not prohibit district courts from analyzing an administrative or

government official decision based on the merit of fact under the fourteenth amendment due process law.

Besides, the leakage to my drivers license occurred in New York State therefore this legal action is within the jurisdiction requirements by law. What the U.S.D.J. is implying in the judgement order on 11/5/2020 is that as long as an unconstitutional law of immunity exist then it is standard procedure for the respondent to have authorized personnel to leak into my drivers license #xxx-xxx-678 for embezzlement systematic impersonation. Again, I was not given ninety-days to serve the respondent under *FRCP 4(m)*.

1b. SUBSTANTIVE DUE PROCESS:

Substantive due process “is the notion that due process not only protects certain legal procedures, but also protects certain rights unrelated to procedure”. When the Commissioner’s designee dismissed my benefits on 1/17/2014 for supposedly good cause and the Article 78 judge vacated the decision this was the proper method for using the substantive due process based on a pre-determined decision that was based on assumptive medical facts. Substantive Due Process is a pre-deprivation remedy that was made from the Commissioner’s designee on 1/17/2014. Apparently, it was designed to temporarily discontinue my benefits until the next level of appeal.

“The Fourteenth Amendment’s Due Process Clause is not a secret repository of substantive guarantees against unfairness”. “The Due

Process Clause protected individuals from state legislation that infringed upon their “privileges and immunities” under the federal Constitution”.

“The Constitution states only one command twice. The Fifth Amendment says to the federal government that no one shall be “deprived of life, liberty or property without due process of law.” The Fourteenth Amendment, ratified in 1868, uses the same eleven words, called the Due Process Clause, to describe a legal obligation of all states. These words have as their central promise an assurance that all levels of American government must operate within the law (“legality”) and provide fair procedures”.

When the Commissioner’s designee discontinued my benefits on 1/17/2014 fair procedures were not implemented but rather a resolution designed to get me the recipient to work. However, the case was transferred later rather than early from the judge decision order on July 11, 2014 after I submitted my proof of service on 8/20/2014. If I hadn’t of submitted all of the required paper work to the Manhattan Supreme Court in August of 2018 the case would never have been transferred. I have been deprived of a public benefit which violates the 14th and 5th amendment due process rights.

“The clause also promises that before depriving a citizen of life, liberty or property, government must follow fair procedures. Thus, it is

not always enough for the government just to act in accordance with whatever law there may happen to be. Citizens may also be entitled to have the government observe or offer fair procedures, whether or not those procedures have been provided for in the law on the basis of which it is acting. Action denying the process that is “due” would be unconstitutional”. “The Constitution does not require “due process” for establishing laws; the provision applies when the state acts against individuals “in each case upon individual grounds”—when some characteristic unique to the citizen is involved. Of course there may be a lot of citizens affected; the issue is whether assessing the effect depends “in each case upon individual grounds.”

The Rooker-Feldman doctrine does not apply in this case because of fraud and facts stated by the sixth circuit which state,

“An exception to the Rooker-Feldman of just such an equitable persuasion has taken root. A few courts especially the United States Court of Appeals for the Sixth Circuit-have determined that the Rooker-Feldman does not prevent the lower federal courts from reviewing state court judgments that were allegedly procured through fraud”.

Fraud occurred shortly after the Article 78 judge decision on July 11, 2014 in an unknown amount. This fraud was occurred through the leakage of my drivers license number XXX-XXX-678 which is the “gateway” of illegal monetary funds. *Under 28 U.S.C. § 1331*

any district court has jurisdiction over all civil actions pertaining to a Federal Question. The previous district judge stated in the decision order dated 4/23/2019-dkt. #18-cv-10038-#39, "to survive a motion to dismiss under Rule 12(b)(6), the plaintiff must plead enough facts to state a claim to relief that is plausible on its face". "A court must accept all well-pleaded facts as true and must draw all reasonable inferences in favor of the plaintiff". "Rule 12(b)(6) of the Federal Rules of Civil Procedure tests the form and sufficiency of a statement of a claim under the liberalized pleading rule. However, since the Federal Rules attempted to adopt the successes and avoid the failures of code pleading, the purpose of Rule 12(b)(6) seems to conflict with the purpose of modern pleading." "Although the liberal pleading rule generally allows a plaintiff to set forth a claim in a short and plain statement, Rule 12(b)(6) allows a court to dismiss a complaint before the development of the proceeding. The problem is when and how a Rule 12(b)(6) motion is to be granted."

This action is a false stipulation designed to acquire my gold bars from my estate account. I retained an attorney in 2006 and the attorney informed me that there is in fact gold bars in my estate account and I am the only legal heir of the estate. This document dated September 29, 1998 was attached to the summons & complaint and also was attached to the appendix. The second circuit did not reverse or vacate its judgment on May 14, 2021 but agreed with the district court error even though facts were presented from the appendix.

2. Leakage to Social Security Administration History:

Another leakage to my drivers license #xxx-xxx-678 pertains to my social security disability benefits. The onset date of my disability is 7-10-2002. (See Court Transcript dated 11-18-2008 page #294 of SSA) I first applied for SSI/SSD on 1/22/2004 and after denial I did not attend the administrative fair hearing that was scheduled for me to attend. I re-applied on November 24, 2006 not October 27, 2006 and the SSA state agency had reports from Bellevue Hospital dated 12/25/04 thru 5/06/05, Lebanon Hospital report of 11/02/06, HS systems report of 8/13/04 and examination report of 1/04/07. The SSA state agency stated that my condition "is not severe enough to be considered disabling". (See court administrative transcription record of SSA dated 11-18-2008 page #61) I proceeded to the next step in the appeals process which is a fair hearing on 10-30-2007. The ALJ (Administrative Law Judge) stated that "the above impairment causes more than slight restrictions of the claimant's physical ability to perform basic work activities". The ALJ also stated "the claimant generally continues to have the burden of proving disability at this step", which is step five of the Social Security Act evaluation process. (See court administrative transcription record of SSA dated 11-18-2008 page #8) Pertaining to the MRI dated 5-11-2007 the ALJ stated that,

"there's wedging at the T12 and L1 levels, straightening of the normal lumbar lordosis in the neutral position, degenerative changes

were present at the L3/L4 level, excursion on flexion and extension views were somewhat limited, the sacroiliac joints were normal in appearance with mild sclerosis at the iliac margins”.

(See court administrative transcription record of SSA dated 11-18-2008 page #12)

The November 2006 New York City Human Resource administration consulting examination report from the Federation Employment and Guidance Service states that, “the claimant has a mild reduced ROM (range of motion) of his lower back of an unspecified degree”. (See court administrative transcript record of SSA dated 11-18-2008 page #13) The ALJ stated on 11-09-2007 “under sections 216(I) and 223(d) and under section 1614(3)(A) of the Social Security Act that the claimant is not disabled”. Next, the Appeals Council review dated 9-09-2008 stated “no reason under their rules to review the Administrative Law Judge’s decision”. I then proceeded to a civil action lawsuit on 10-02-2008 dkt. #08-cv-8443 (AKH). The previous U.S.D.J. dkt. #08-cv-8443 (AKH) in the final decision notice dated 5-12-2009 page #2 stated that “the evidence supporting a decision is substantial if a reasonable mind might accept the evidence as adequate. (*See Pollard*, 377 F.3d at 188) (*citing Richardson v. Perales*, 402 U.S. 389, 407 (1971)). The substantial evidence test applies not only to findings of basic evidentiary facts but also to inferences and conclusions drawn from such facts”. (*See Rodríguez v. Califano*, 431 F. Supp. 421, 423 (S.D.N.Y. 1977))

Social Security Act §216(I) and Social Security Act §1614(a)(3) define disability,

“as the inability to engage in any substantial gainful activity (SGA) by reason of any medically determinable *physical* or mental impairment (or combination of impairments) which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months”. “A claimant is disabled under the act only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot considering his age, education, and work experience cannot engage in any other kind of substantial gainful work which exists in the national economy”. The previous U.S.D.J. 08-cv-8443 (AKH) further stated that, “the Social Security Administration has promulgated a five-step procedure for evaluating disability claims. First, the Social Security Administration (SSA) considers whether the claimant is currently engaged in any substantial gainful activity. If not then secondly the Social Security Administration (SSA) considers whether the claimant has a severe impairment which significantly limits his physical or mental ability to do basic work activities. If the claimant suffers such an impairment then the third inquiry is whether based solely on medical evidence that the claimant has impairments. If the claimant has an impairment the Social Security Administration (SSA) will consider him disabled without considering

vocational factors such as age, education, and work experience. Assuming the claimant does not have a listed impairment then the fourth inquiry is whether despite the claimant severe impairment that he has the residual functional capacity to perform his past work. Finally if the claimant is unable to perform his past work then the SSA determines whether there is other work which the claimant can perform”.

The previous U.S.D.J. dkt. #08-cv-8443 (AKH) further stated that the “burden rests on the claimant through the first four steps of the Social Security Act”. (See decision notice dated 5-12-2009 08-cv-8443 (AKH) pages 2-3) Again, the previous U.S.D.J. dkt. #08-cv-8443 (AKH) final statement concluded that “the evidence substantially supports the determination of the ALJ as a reasonable mind might accept as adequate to support that determination”. Next, I proceeded to the next level of appeal on 7-10-2009 dkt. #09-2974-cv.

Shortly after appealing, I submitted a brief dated 8-18-2009 (09-2974-cv U.S.S.C.) stating that I have not engaged in any type of substantial gainful activity since 4-15-2006 which is the last quarterly day of my employment. Secondly, that my severe impairment prevents me from doing any kind of menial or substantial work. My degenerative disc disease is ongoing pain that never cease. The pain is more detrimental when lifting heavy objects or standing for long periods. Thirdly, my physical impairment has lasted for more than twelve months and will continue to last until the

point of death. Fourthly, pertaining to residual functional capacity, due to the severity of my impairment it is impossible for me to perform daily tactical routines on a daily basis by consistently maneuvering in a steady environment. Lastly, the ALJ (Administrative Law Judge) stated that “the impairment causes more than slight restrictions of the claimant’s physical ability to perform basic work activities”. (See Court Administrative Transcript record for SSA dated 11-18-2008 page #8) This statement is evident of how severe my medical condition entail.

After I submitted my brief on 8/18/2009, the panel of judges in the U.S.S.C. entered a judgement dated 5-19-2010 (dkt. #09-2974-cv) stating that the “defendant moves to remand the case to the district court for the Southern District of New York so that it may vacate its decision and judgement and remand the case to the Commissioner for further administrative proceeding to correct deficiencies in the administrative record pursuant to the fourth sentence of **42 U.S.C. § 405(g)**. Upon due consideration it is hereby ordered that the motion is granted and the case is remanded to the district court with instructions to vacate its judgement and remand the case to the commissioner”.

I applied again and the administrative law judge issued a fully favorable on 7/10/2012 but the commissioner never evaluated the entire administrative record to correct defects per court order dkt. #09-2974cv. The U.S.D.J. stated in the judgement order dated 11/5/2020 “plaintiff does not address the defects in the response of the complaint”. Defects were never

corrected concerning the application date of November 24, 2006 not October 27, 2006. Other defects in the administration were never corrected per 42 U.S.C. § 405(g). The only way the leakage of my drivers license could have occurred is the incorrect date of my SSD/SSI application date for embezzlement. The ALJ based his decision of favorable on facts I submitted to the hearing from medical reports and x-ray reports. The agency or commissioner never examined the entire administrative record to correct defects and the appropriate amount of disability benefits. I submitted a letter to the adjudication review board on 7/26/2012 by one day express mail (tracking number #E1486128197US) but I never received any kind of response from the adjudication review board.

Under Social Security Act XVI Sec. 1611. [42 U.S.C. 1382](a)(1), "Each aged, blind, or disabled individual who does not have an eligible spouse and—(A) whose income, other than income excluded pursuant to section 1612(b), is at a rate of not more than \$3,011".

My benefits are not correct under the Social Security Act. This is why embezzlement still occur through a leakage of my drivers license because I am entitled to receive the full amount of benefits and the application date I applied for SSD/SSI was never corrected. I submitted an application on November 24, 2006 not October 27, 2006. *Refer to court transcript administrative record of SSA dated **November 18, 2008 pages 83-91.***

The representative for SSA stated in the letter dated September 6, 2019, "it appears that a final judgment remanding the case to the Commissioner should have been entered but was not". An order of the judgment was entered on May 21, 2010 dkt. #08-cv-8443 #20 on the docket sheet. Under "Social Security Act §1632 [42 U.S.C. 1383a](e)(1) The Commissioner of Social Security shall review determinations, made by State agencies pursuant to subsection (a) in connection with applications for benefits under this title on the basis of blindness or disability, that individuals who have attained 18 years of age or disabled as of a specified onset date".

The x-ray report from the radiology department at Bellevue Hospital dated 9-05-2008 stated that, "there is a degenerative disc disease at the L3-L4 levels with small anterior osteophytes and disc space narrowing of the lumbar spine. Other intravertebral disc space heights are preserved".

There is a central disc protrusion at the L5/S1 level of my lower spine abutting the nerve roots bilaterally which causes neuropathic pain. At the L3/L4 and L5/S1 level of my lumbar spine there is a degenerative disc disease which is known as a disc herniation. At the L3/L4, L4/L5, and L5/S1 level of my lower back there is a diffuse bulging disc. When my bulging disc impinges on my sciatic nerve in my lower back it can lead to a back problem called *sciatica*.

Furthermore, at the L3/L4 level of my lower back there is a central canal stenosis (lumbar spinal stenosis) which is,

“a disease that is caused by a gradual narrowing of the spinal canal. This narrowing happens as a result of the degeneration of both the facet joints and the intervertebral discs. In this condition bone spurs called osteophytes which develop because of the excess load on the intervertebral disc grow into the spinal canal. The facet joints also enlarge as they become arthritic which contributes to a decrease in the space available for the nerve roots. The ligaments of the spinal column, especially the ligamentum flavum become stiff less flexible and thicker with age which also contributes to spinal stenosis. These processes narrow the spinal canal and may begin to impinge and put pressure on the nerves roots and spinal cord creating the symptoms of spinal stenosis. Stenosis may occur in the central spinal canal (central stenosis) where the spinal cord or cauda equine are located, in the tract where the nerve root exits the central canal (lateral recess stenosis) or in the lateral foramen (foraminal stenosis) where the individual nerve roots exit out of the body”.

3. Leakage to Student Loan History which was promulgated

Next, is a student loan debt in the amount of \$14,399.29 by the U.S. Department of Education and \$7,120.22 by Student Loan Finance Corporation. The

correct method applied by the Student loan interest rate calculator is-Loan amount \$3,500-Loan amount in years-20-Interest Rate-4.45%=\$1,791.61 Therefore, the correct amount for the U.S. Department of Education is **\$10,583.61** instead of \$14,399.29. Student Loan Finance Corporation accumulation amount is inaccurate as well. The correct method is-Loan amount-\$1,708-Loan amount in years-20-Interest rate -4.45%=\$874.31. Therefore, the correct amount should have been **\$5,164.71** instead of \$7,120.22. This is a false statement by the U.S. Department of Education and SLFC which violates statute *APA 5 U.S.C. § 706(2)(a)*. The representative for the U.S. Department of Education confessed to an error and was granted a remand on 5/11/2016 dkt. #15-cv-5863. However, the error was never corrected from the U.S. Department of Education decision on 1/15/2019. All debts were paid by Social Security Administration in 2013 a total of **\$50,354.90**.

This case was first presented to this court in 2016 as No. **#16-6495**. *See-Sean A. Clark v. Student Loan Finance Corporation, Allied Interstate, and U.S. Department of Education*. The representative for the U.S. Department of Education confessed to an error and was granted a remand on 5/11/2016. However, the error was never corrected.

3a. FACTUAL EVIDENCE THAT A DEBT DOES NOT EXIST AND A DEBT IS NOT OWED.

The complaint that was submitted to U.S.D.C. dkt. #20-8000cv does show “sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face”. *Ashcroft v. Iqbal*, 556 U.S. 662 (2009)

Two scenarios to consider is the fact that the information on the previous credit report dated 9/22/2015 should have remain on the experian credit report until July of 2016 but it was deleted on 10/27/2015 due to a disputed investigation. The other scenario is the inaccurate amount of the student loan debt which is \$14,399.29 and should have been \$10,583.61. The correct method is applied by the Student Loan Interest Rate calculator above. I never attended Anthem College in the State of Georgia in 2003 or signed an online Direct Consolidation loan Application on 1-7-2013.

3b. There is a Viable Claim for Violation of my Civil Rights in this Case

As I stated in the summons & complaint that was submitted on 9/28/2020 in the U.S.D.C. dkt. #20-8000cv that the student loan amount by the U.S. Department of Education is inaccurate and a violation of my civil rights which denied me benefits of service to continue my education at a higher level of academics. I could not further advance my education because of this fraudulent identity theft. I’ve been entitled with my physical disability since 2002 due to a sports injury. The major

cause of my herniated disc is sciatica which prevents me from doing any kind of work activities. I do not have a mental disability only a physical disability, therefore I am still able to learn. I was denied benefits from a federal program because the benefits are incorrect which denied me good credit. Good credit is important in today's economy because you can apply for a loan, get a credit card, or get a grant for financial aid which helps pay for tuition fees. This action violates my due process rights because the U.S. Department of Education collection of \$26 dollars per month for four months on 3/11/2015, 4/08/2015, 5/13/2015, and 6/10/2015 was illegal and violates the 14th and 5th amendment due process law. Why wasn't the collection cycle continued until July of 2016 when the item was supposed to remain on the Credit report from Experian? This question was never answered by the representative of the U.S. Department of Education.

3c. This Matter was Remanded to the U.S. Department of Education on 5/11/2016 to Evaluate the Procedure using the APA-Administrative Procedure Act approach in more Context

This act "is the United States federal statute that governs the way in which administrative agencies of the federal government of the United States may propose and establish regulations. To protect citizens, the APA also grants the judiciary oversight over all agency actions". "The APA requires that to set aside agency actions that are not subject to formal trial-like

procedures, the court must conclude that the regulation is “arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with the law”.

“Substantial evidence review gives the courts leeway to consider whether an agency’s factual and policy determinations were warranted in light of all the information before the agency at the time of decision. Accordingly, arbitrary and capricious review is understood to be more deferential to agencies than substantial evidence review is”.

Substantial evidence is the falsified credit item dated 9/22/2015 that was deleted on 10/27/2015 due to a disputed investigation on 10/2/2015. The item was to remain on the credit report until July of 2016. These items were attached to the previous amended complaint on 10/29/2015 and was electronically filed. Another error was the incorrect amount of Student Loan Debt. The U.S. Department of Education stated, “a FFEL STAFFORD loan was processed on 11/30/1999 for the amount of \$3,500 from West Los Angeles College”. The interest rate for this loan over a twenty year period is-Loan Amount \$3,500-Loan Amount in years-20-Interest Rate-4.45%. Therefore, the correct amount should have been \$10,583.61 instead of \$14,399.29. However, since all debts were paid in 2013 by Social Security Administration the amount in 2013 for the U.S. Department of Education would have been \$8,304.2. (Loan amount-\$3,500-Loan terms in years 15-interest rate-4.45%-monthly payments-\$26.69) The amount in 2013 for Student Loan Finance Corporation would have been \$3,960.64. (Loan

amount-\$1,708-Loan term in years-13-interest rate-4.45%-monthly payments-\$14.44)

These acts are arbitrary and capricious and not according to any federal laws. (https://en.wikipedia.org/wiki/Administrative_Procedure_Act_United_States)

3d. The U.S. Department of Education used an Incorrect Method when Evaluating Discharge Application

The U.S. Department of Education stated, “The DOE denied Clark’s discharge application by applying the wrong legal standard”.

“Specifically, in the July 29 letter to Clark, the DOE explained its decision to deny the discharge application, stating that Clark had failed to submit a required set of documentation including, *inter alia*, various signature samples and the police report pertaining to the alleged identity theft”.

Law enforcement officials stated, “since I never attended Anthem College I cannot submit a police identity theft report”. The representative for the U.S. Department of Education stated, “In this situation, Clark’s discharge application should be reviewed under the standard of common law fraud”. “Where, as here, an agency’s decision is based on legal error, the appropriate judicial remedy under the APA, with one exception not relevant here, is a judicial order setting aside the agency decision and remanding the matter for further administrative proceedings”. After almost

three years from the remand decision dated 5/11/2016 the U.S Department of Education submitted a decision notice dated 1/15/2019 with no correction of error.

3e. LOAN HISTORY

The National Student Loan Database System stated a total of five loans “pursuant to the Direct Loan Program and Federal Family Education Loan (FFEL) Program” was processed in my name. “A FFEL promissory note to attend West Los Angeles College on or about 11-9-1999”. “Pursuant to this promissory note, a loan was disbursed in the amount of \$3,500 on 12-2-1999 through 4-10-2000”. The representative for the U.S. Department of Education stated, “This loan was made and held by Bank of America until your default”. “You defaulted on this loan on 7-11-2002”. “In light of your default, this loan was assigned to the U.S. Department of Education on 7-29-2009”. “As of 1-11-2019, this FFEL loan has an outstanding balance of \$5,863.08” (\$3,707.96, principle; \$2,155.12, interest). This item was transferred to the U.S. Department of Education on 7-29-2009 and is the same item that was on my Experian credit report dated 9/22/2015 and deleted on 10/27/2015 through a disputed investigation. If this item was not paid off in full then why did the item not remain on my credit report until July of 2016 which would have been seven years of delinquency? This question was never answered by the representative of the U.S. Department of Education.

NSLDS stated, "A FFEL master promissory note to attend Anthem College was signed on or about 9-29-2000". "Pursuant to this promissory note, two loans in the amount of \$2,625 and \$4,000 were disbursed on 10-19-2000 through 2-12-2001". "These two loans were held by the lender, U.S. Bank, until your default 9-26-2002, when the loans were transferred to Educational Assistance Corporation, the loan guarantor". "On or about 3-6-2003, these loans were paid in full through consolidation". "The current balance on these loans is zero". "The Department never held these two loans". NSLDS also stated, "I completed an online Direct Consolidation loan application on or about 1-7-2013 and signed a paper promissory note for this loan on or about 2-03-2003". "Pursuant to this promissory note, a total of \$5,100.30 was disbursed and the proceeds were used to repay two Federal Family Education Loan Program loans taken to attend Anthem College". "As a result of the consolidation, these two FFEL loans were paid in full". "As of 1-11-2019, this Direct Consolidation loan has an outstanding balance of \$8,633.17". I never signed any Direct Consolidation loan application online on 1-7-2013. Anyone can submit an online application in my name and sign my signature exactly like my signature on my drivers license or form of identification. Why wasn't this document dated 1/7/2013 part of the court transcript documents that the U.S. Department of Education submitted with the Memorandum of Law on 4/22/2019 and decision letter on 1/15/2019? This question was never answered by the representative of the U.S. Department of Education.

3f. PROCEDURAL HISTORY

I did submit an identity theft claim form in July of 2015 but the claim form was denied because I did not attend Anthem College in 2003. In order to submit an identity theft claim form a person has to be registered to the school of admissions where the identity theft occurred. I did not attend Anthem College in 2003 nor did I submit an online application as such stated on 1-7-2013. I only stated two loans were paid in full in 2013 by Social Security Administration. These two loans in the amount of \$3,500 from West Los Angeles College and \$1,708 from High tech Institute were paid in 2013. I graduated in 2000 from West Los Angeles College and have not attended any College since graduation. Student Loan debts were paid off for someone else's student loan debt obligation. There was only one defect on my Experian credit report that was disputed on 10/2/2015 and deleted through disputed investigation on 10/27/2015. This item was supposed to remain on my Experian credit report until July of 2016. If this amount of student loan debt was not paid in full why was the item deleted before July of 2016 as such stated on the credit report dated 9/22/2015? This question was never answered by the representative of the U.S. Department of Education. I never received any court order documents for student loan payments. I submitted the following documents below in further support of my claim:

- Certification/Agreement of Cooperation of Identity Theft Claims form, dated 7-14-2015

- A letter dated 7-14-2015 titled "Certification Identity theft claims"
- Copy of New York commercial driver's license
- Copy of social security card
- Transunion Credit Report #xxxxxxx311, dated 6-30-2015
- Copy of Benefit statement from Social Security Administration in 2015

I submitted another Identity theft claim in September of 2015 objecting to all of the student loans that were processed in my name under false pretense. Monetary funds in the amount of \$26.00 dollars were withdrawn from my checking account on 3/11/2015, 4/08/2015, 5/13/2015, and 6/10/2015 without a notice or court order. If any student loan amount was owed as such stated then why wasn't the cycle of \$26.00 dollars per month continued after June 10, 2015? This question was never answered by the representative of the U.S. Department of Education. I did request that the Department of Education contact Social Security Administration for the correct update and to reimburse my payments but to no avail I was denied. I submitted the following documents to support my second student loan identity theft claim form:

- Certification/Agreement of Cooperation of Identity Theft Claim form dated 9-18-2015

- A letter dated 9-18-2015 titled "Certification identity theft supportive claim letter"
- Copy of July 2015 claim submission
- Form SSA-1099-Social Security Benefit Statement for 2013
- Copy of a letter written to Experian Credit Reporting Agency dated 9-11-2015
- Experian Report dated 8-28-2015
- Experian Report dated 8-29-2015
- Transunion Credit Report dated 6-30-2015
- Experian Report dated 6-15-2015 for Sean A. Clark Jr.

Notice the last item states Junior instead of Senior. I am the only Sean A. Clark Senior there is no junior added to my name. The U.S. Department of Education denied my second claim on 10-1-2015 stating "the consolidation of your debts served as official ratification of those debts". "A duplicate denial letter regarding your September 2015 identity theft claim was sent to you on 10-6-2015"; "this letter contained the same information as the 10-1-2015 letter". The U.S. Department of Education continually stated, "since the claim you alleged in your 7-14-2015 submission was that of common law fraud rather than identity theft, on 2-29-2016, the Department sent you a letter informing you of an opportunity to receive another review of your claim. The letter listed the documents previously

provided by you, and gave you an opportunity to submit any additional documentation to support of your contention that you were not responsible for the loans in question”.

Another identity theft claim form was submitted in May of 2016. The following documents were submitted to support that claim:

- Certification/Agreement of Cooperation of Identity Theft Claim form, dated 9-18-2015
- Six page decision order notice from the United States District Court, Southern District of New York, dkt. #15-cv-5863
- A letter dated 9-18-2015 titled “Certification identity theft supportive claim letter”
- Certification/Agreement of Cooperation of Identity Theft Claim form, dated 7-14-2015
- A letter dated 7-14-2015 titled “Certification Identity Theft Claim”
- Copy of benefit letter from Social Security Administration for 2015
- Transunion Credit Report, dated 6-30-2015
- Citibank Transaction Journal, dated 1-14-2015 through 6-10-2015
- Copy of Experian-dispute status, printed 10-2-2015

- Copy of Experian-dispute status results, printed 10-27-2015
- Experian annual credit report dated 9-22-2015
- Form SSA-1099-Social Security Benefit Statement for 2013 and other tax years
- Allied Interstate statement letter, dated 7-23-2015
- Student Loan Finance Corporation statement letter, dated 8-7-2015

Five items above are admissible evidence to prove identity theft occurred pertaining to Student loans which relates to my drivers license #xxx-xxx-678. The first item is the citibank transaction journal dated 1-14-2015 through 6-10-2015. An amount of \$26.00 dollars was withdrawn from my checking account without a notice or court order. If such Student loan debt was owed why was the withdrawal amount stopped after June 10, 2015 instead of a continual cycle of withdrawals from my checking account? The second and third item is the Experian dispute status which started on 10-2-2015 and ended on 10-27-2015 which deleted the item on the Experian credit report before July of 2016. Why didn't the item remain on the Experian credit report until July of 2016? The fourth item is the Experian credit report dated 9-22-2015 which had one item on the credit report before it was deleted on 10-27-2015 due to Experian dispute investigation. Why was that item deleted before the status date of July of 2016? The last item is the Social Security Administration Benefit

Statement form-1099 for 2013 and other tax years. The total amount paid by Social Security Administration was **\$50,354.90** for 2013 and other tax years, which are 2012, 2011, 2010, 2009 and so forth. Why were no checks returned to Social Security Administration if benefits were not paid in full for those years? These questions were never answered by the representative of the U.S. Department of Education.

3g. EVALUATION OF DETERMINATION

In my letter dated 7/14/2015 I stated that there is a defect in my Experian annual credit report file that was never investigated properly. The Transunion report is a clear and precise report dated 6/30/2015 with no student loan debts items mentioned. In my second Identity theft claim letter dated 9/18/2015 I spoke with one of the representatives from the U.S. Department of Education and they informed me that no court order was issued but that I'm obligated to pay the student loan debt by default. I informed the representative from the U.S. Department of Education that all payments were made by Social Security Administration for the 2013 tax year and all previous years a total of \$50,354.90. As I stated in my first claim dated 7/14/2015 that there are defects in my Experian credit file that needs correction. Again, the item was disputed on 10-2-2015 and deleted permanently on 10-27-2015 due to a disputed investigation. However, the item status was supposed to remain on the experian credit report file until July of 2016. I also attached the letter I received from Allied Interstate in the amount of

\$16,600.78. (#P62742120; Titanium #1003192789)
This number is totally inaccurate and was never on any of my credit reports from the three credit bureaus. In the letter dated 1/15/2019 the U.S. Department of Education stated, “the department records and the following documentation were considered in making our decision”:

- FFEL Promissory Note, signed 11-9-1999
- FFEL Promissory Note, signed 9-29-2000
- Direct Consolidation Promissory Note, signed 2-3-2003
- National Student Loan Database System (NSLDS) data
- Debt Management and Collection System (DMCS) data
- School records from West Los Angeles College
- Letters from the Department dated 7-29-2015, 10-1-2015, and 10-6-2015
- Consolidation loan data
- Copy of New York commercial driver’s license, issued 8-31-2009
- Copy of Social Security Card
- Form SSA 1099-Social Security Benefit Statement for 2013
- Copy of New Benefit amount letter regarding social security benefits for 2015

- Citibank Transaction Journal, dated 1-14-2015 through 6-10-2015
- Experian Report Number 3888-1752-85, dated 6-19-2015 for Sean A. Clark Jr.
- Transunion Credit Report #xxxxxx311, dated 6-30-2015 for Sean A. Clark
- Certification/Agreement of Cooperation of Identity Theft Claim (COOP) form, dated 7-14-2015
- A letter dated 7-14-2015 titled "Certification Identity theft claims"
- Allied Interstate Correspondence, dated 7-23-2015
- Student Loan Finance Corporation Statement, dated 8-7-2015
- Experian Report Number 3892-3535-31, dated 8-29-2015 for Sean Alexander Clark Sr.
- Experian Report Number 1879-0871-15, dated 8-28-2015 for Sean Alexander Clark
- Experian Report Number 2952-8715-08, dated 8-29-2015 for Sean A. Clark
- Copy of Letter dated 9-11-2015 to Experian
- Certification/Agreement of Cooperation of Identity Theft Claim (COOP) form, dated 9-18-2015

- A letter dated 9-18-2015 titled "Certification identity theft supportive claim letter"
- Experian Report Number 0404-0623-81, dated 9-22-2015 for Sean Alexander Clark Sr.
- Experian Dispute Status for Sean Alexander Clark Report Number 0404-0623-81, dated 10-2-2015
- Experian Dispute Status completed and item deleted for Sean Alexander Clark, Report Number 0404-0623-81, dated 10-27-2015

A total of twenty-eight documents were submitted to the U.S. Department of Education for an appropriate and correct decision but the U.S. Department of Education did not make the correct decision when evaluating the above documents. The admissible evidence from the above list are: Form SSA 1099-Social Security Benefit Statement for 2013, which states all tax years from 2013 and previous years were paid in full by Social Security Administration a total of **\$50,354.90**, tax years include all student loan debts from West Los Angeles College in 1999-2000 and High Tech institute in 2001; Citibank Transaction Journal dated 1-14-2015 through 6-10-2015; Since all debts and loans were paid in 2013 there was no reason to withdraw funds from my checking account in the amount of \$26.00 dollars for four months; Experian report number xxxx-xxxx-85 dated 6-19-2015 for Sean A. Clark Jr., My name should have ended with senior; Allied Interstate

correspondence dated 7-23-2015, and Student Loan Finance Corporation Statement letter dated 8-7-2015 these statement amounts are inaccurate because all debts were paid in 2013; Experian report number xxxx-xxxx-81 dated 9-22-2015 for Sean Alexander Clark Sr., this item should not have been on my credit report due to a disputed investigation result on 10-27-2015; Experian dispute status for Sean Alexander Clark report number xxxx-xxxx-81 dated 10-2-2015 and experian dispute status completed and item deleted for Sean Alexander Clark report number xxxx-xxxx-81 dated 10-27-2015; These two items are evidence of burden of proof to show that an item should not have appeared on my credit report because the item was paid.

I never attended Anthem College in 2003 or signed a direct loan consolidation application online on 1-7-2013. Just because an online signature matches my driver's license, does not mean I signed the application anyone can impersonate a signature online. The case was remanded to DOE for further administrative proceedings on May 11, 2016 due to the U.S. Department of Education confessed error. A remand is only three to twelve months not three years and the administrative record is still not evaluated correctly and false statements such as the inaccurate amount of \$14,399.29 in student loan debt by the U.S. Department of Education was never corrected this action violates the *fourteenth and fifth amendment*. Defects in the administrative record were never corrected. Also, not evaluating the credit reports properly due to documents that were submitted pertaining to disputed investigation on

10-2-2015 and 10-27-2015. This is evidence of fraud because that item on the credit report was to remain on the credit report until July of 2016 not 10-27-2015 due to a disputed investigation. As far as the Debt collection Improvement act of 1996, you can never offset something that does not exist all debts were paid off in 2013 a total of \$50,354.90. The amount of \$14,399.29 which the representative for the U.S. Department of Education presumes is totally ridiculous and totally inaccurate. The correct amount should have been \$10,583.61 by using the correct student loan interest rate calculator. This amount was paid off in full by Social Security Administration in 2013.

REASON FOR GRANTING THE WRIT

There are four reasons why this petition should be granted. The first reason is that as I stated above that there is an exception to immunity which is, in *Ex parte Young*, 209 U.S. 123 (1908). Secondly, the district court did not allow me ninety days to serve the respondent which violates *FRCP Rule 4(m)*. Thirdly, the Second Circuit court of appeals stated on page three of the decision order dated 5/14/2021 that "Clark does not mention his fifth amendment claim". I did mention the fifth amendment and fourteenth amendment on page twelve of my brief dated 1/8/2021. Fourthly, the Second Circuit court of appeals also stated on page four of the decision order dated 5/14/2021 that I'm mistaken because the exception to immunity does not apply here. It is obvious that the exception is my physical

disability of sciatica which is a nerve impinged by a bulging disc and also the exception is my gold bars from my estate account which is a predominately valuable asset. A systematically stolen drivers license is never a frivolous complaint, brief, or petition pertaining to one's identity. The merit of the case is that there is a leakage from my drivers license #xxx-xxx-678 pertaining to Index #400256/2014 of HRA, Social Security Administration benefit entitlement, and Student loan identity theft embezzlement. This leakage to my drivers license is my stolen identity. Not stolen physically, but rather privately systematically through a computer database. Because of this leakage to my drivers license, all of these cases were not in my favor in this court No. #10-5273, No. #13-6208, No. #13-8865, No. #14-5566, No. #14-5568, No. #14-5858, No. #14-8118, No. #16-6495, and No. #19-938.

As I stated in the U.S.D.C. summons & complaint dated 9/28/2020 dkt. #20-cv-8000, that the most recent embezzlement was case number #19-938 which is a case that presided in this court and relates to index #400256/2014 defects in the administrative record. The admissible evidence and burden of proof is the judge order dated 7/11/2014, proof of service dated 8/20/2014, letter pertaining to my gold bars from my estate account dated 9/29/1998, panel of judges order for Commissioner of Social Security Administration dated 5-19-2010 (dkt. #09-2974cv) and May 9, 2013 (dkt. #13-866cv) to correct all defects in the administrative record, benefit statement from Social Security that all debts and taxes were paid in 2013, letter to

appeals council disability adjudication and review board dated 7/26/2012 and post office receipt dated 7/26/2012. I submitted an appeal form to the appeals council review board on 7/26/2012 by express one day mail but I never received any kind of response from the appeals council review board regarding tracking number #E1486128197US. Also a summons for Student Loan Finance Corporation, U.S. Department of Education, and Allied Interstate was issued on November 30, 2015.

Furthermore, I submitted a census questionnaire on March 13, 2020 and on July 18, 2020 but somehow the information that I imputed was changed to a label that I am not. For the record, I am a native american citizen because I was born in this country and my parents and my grandparents were also born in this country. I'm requesting all information from the Census is corrected to the formal standard of March 13, 2020 and July 18, 2020. Also for the record I am not deceased and I am not a female gender and I never indulged in any legal or illegal substance abuse.

"There is a certain code of conduct which a judge must follow at all times in regards to respecting the law". "A judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary". The U.S.D.J. decision on 11/5/2020 was not only unlawful but unconstitutional. Under FRCP Rule 4(m) I'm required ninety days to serve the respondent. A judge decision should be based on the concept of rule of law for "human right principles".

“The driver’s license is the gateway to everyday interaction. If someone has a legitimate license from an issuing authority under false pretenses, it empowers them to do bad things”. “In New York where the technology was adopted in 2010, the DMV has identified 14,500 people with two or more licenses all fraudulent. Some date to the 1990’s and are too old to prosecute. There is only one license for one driver”. (Pewtrusts.org)

CONCLUSION

I, therefore respectfully ask that this court grant my petition for the reasons stated above and under Rule 42.1 I’m requesting six-hundred trillion dollars cash only and to retrieve all of my gold bars from my estate account and fix the leakage to my drivers license or the required amount from all of the previous cases and to correct defects in the administrative record per dkt. #09-2974cv and for the leakage of my drivers license that dates back to 2010 with case No. **#10-5273** of this court. A judgement decision should never be based on an unconstitutional law but rather judged by the facts and merit of the case. Immunity is unconstitutional pursuant to the fourteenth amendment and in *Ex parte Young*, 209 U.S. 123 (1908). As I also stated above, I was not given ninety days to serve the respondent under FRCP Rule 4(m). Lastly, for the record, my religion is christianity. I’ve always congregated with christian beliefs from the time I was baptized as a toddler to the time I was baptized as an adult I’ve

always been a christian. I respect all religions but you cannot label someone that they are not. Also, I'm requesting that ICCPR is implemented for foreign diplomats non-intervention.

Respectfully submitted by,

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