

21-8004

ORIGINAL

IN THE  
SUPREME COURT OF THE UNITED STATES

FILED  
MAY 23 2022

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

Kofi Kyei

— PETITIONER

(Your Name)

vs.

Division of Child Support

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Oregon Court of Appeals

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

PETITION FOR WRIT OF CERTIORARI

Kofi Kyei

(Your Name)  
c/o Kyei Family, Relatives, Benefactors

PO Box 961

(Address)

Newport, Oregon, 97365

(City, State, Zip Code)

707-289-1020

(Phone Number)

## **QUESTIONS PRESENTED**

1.

Whether the State's administrative order to suspend a federally governed license, squarely against the directives of a judicial court injunction order that mandated one additional due process step before suspending that license, also violated the federal constitutional rights of the licensee?

2.

Whether the State's administrative order violated the commerce clause of the United States Constitution by taking away a commercial license that is governed by federal law and is required for interstate commerce?

## **LIST OF PARTIES**

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

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

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

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

**OPINIONS BELOW**

For cases from **federal courts**:

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

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 is unpublished.

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

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 is unpublished.

For cases from **state courts**:

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

reported at Kyei v. Div. of Child Support, 669 Or App 517 (Sept 2021), or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

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

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

**JURISDICTION****[ ] For cases from federal courts:**

The date on which the United States Court of Appeals decided my case was \_\_\_\_\_.

[ ] No petition for rehearing was timely filed in my case.

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

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

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

**[X] For cases from state courts:**

The date on which the highest state court decided my case was 9/15/2021.  
A copy of that decision appears at Appendix A.

[X] A timely petition for rehearing was thereafter denied on the following date: 2/24/2022, and a copy of the order denying rehearing appears at Appendix C.

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

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

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

A fuller text of the provisions involved are provided at Appendix E.

### The Ninth Amendment of the US Constitution (Unenumerated Rights)

The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people.

### The Fourteenth Amendment of the US Constitution, Section One

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 Commerce Clause of the US Constitution, Article 1, Section 8, Clause 3

The United States Congress retains the power to “regulate commerce with foreign nations, and among the several states, and with the Indian tribes”.

### 49 USC Section 31308

Federal Commercial Driver’s License Law

### 49 CFR Parts 300-399

Federal Motor Carrier Safety Administration (FMCSA) Regulations

### Oregon Revised Statutes (ORS)

### 25.084

(1) The administrator may provide support enforcement services as described in ORS 25.080 only if \*\* a person has provided a written application to the administrator that:

- (a) Is signed by the person;
- (b) Includes the last-known addresses of the obligor and the obligee; and
- (c) Indicates that the person is applying for child support services.

25.759

The only bases for contesting the suspension are:

- (a) That the arrears are not greater than three months of support or \$2,500;
- (b) That there is a mistake in the identity of the obligor;
- (c) That the person subject to the suspension has complied

183.482

(7) Review of a contested case shall be confined to the record, and the court shall not substitute its judgment for that of the agency.

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## STATEMENT OF THE CASE

This case presents the simplest and most perfect vehicle to constrain the administrative powers of the State when it comes to State actions that disregard either federal law, the independence of judicial power, or constitutional rights.

The result of plenary judicial (not administrative) court litigation from May 2012 to February 2013 was a judicial court injunction order (“judicial order”) that constrained the State administrative process. The judicial order was also signed off by the involved parties. It was not appealed. The order required one additional due process step before any State administrative action was taken to suspend the licenses of the Licensee (“Petitioner”) on the basis of any child support or arrears. Licensee is the Petitioner before this Court. The judicial order stated:

“Based on the stipulation of the parties below, the court orders filed on 04/17/2009, 05/06/2009, 07/01/2011 and the consistent court record against any suspension of Petitioner’s licenses in this matter until further order of the court on that issue;

### THE COURT HEREBY ORDERS AS FOLLOWS:

The Division of Child Support and District Attorney are to immediately issue vacate orders to clear all prior suspensions of Petitioner’s [Licensee’s] licenses. The Department of Motor Vehicles shall abide by the vacate orders and restore all of Petitioner driving privileges and clearances to their pre-suspension statuses. Unless a suspend order issues from the court, Petitioner licenses shall not be suspended based on any child support or arrears.”

The record shows that the testimony and uncontroverted facts before the judicial court at the issuance of this order included, but not limited to: four or more instances of the State suspending or taking away all of the licenses of Petitioner without the mandatory, prerequisite, statutory authority to do so administratively

that is codified by State law at ORS 25.084; four or more instances of the State's violations against court orders barring the State from suspending Petitioner Licensee's licenses (instances which precipitated the litigation and the resultant judicial order at issue); four or more instances of the State taking away Petitioner's interstate commercial licenses or his federal commercial driver license based on false or incorrect entries into Oregon's Child Support Worksheet and the resultant false administrative determination of child support and arrears; four or more instances of the State certifying the incorrect, overinflated child support and arrears, without credit to previous support payments as required, as basis for its administrative license suspension actions; personal conflicts of interest involving the State administrators who advanced the incorrect support and arrears; the adverse disruption of license suspensions to Petitioner's employment and right to earn a living; the record of the State suspensions obstructing Petitioner's ability to earn any income from 2009 to 2013, and the subsequent dismantling of his career and ability to earn a living in order to support his family and his children, due to the State's history of administrative license suspensions that were in turn based on the State's incorrect administrative determination of support and arrears.

Four years later in 2017, the same slate of State administrators reopened and advanced this same State support matter between the same parties on the same issues and with the same State case number, but in another county jurisdiction where their administrative office was located. While the case number in

Clackamas County was 17DR13435 and the prior case number in Multnomah County was 0406-66558, the State case number (#051AAAK52141) and all other factors in both counties were identical. The State thus advanced that same State administrative case that was squarely addressed by the judicial order, which in turn had not been appealed, superseded or otherwise affected by any subsequent judicial court proceeding or court order. The same State administrators then proceeded with their own parallel administrative order proceedings to repeat the suspension of Petitioner's licenses, in total disregard to the one additional step constraint that was mandated by the plain text of the judicial order.

The State's administrative proceedings involved an administrative law judge (ALJ), a regular State employee who was tasked with making decisions according to State administrative law. Under Oregon's administrative statutes, the ALJ and State administrators made a record that only considered the amounts of support and arrears as claimed by the State administrators, whether correct or incorrect, and excluded any objection, challenge or any other record that would invalidate the amounts of State administrative child support and arrears.

Oregon has a standard worksheet and formula for establishing child support and arrears. In establishing its incorrect child support and arrears, the State administrators had made multiple false entries into the worksheet that grossly exaggerated the child support and arrears. For example, the State entered an annual salary of \$135,000 instead of \$11,700; the number of non-joint minor

children or dependents as zero (0) instead of 3; and the number of overnight visits for the sole one child in the support matter as zero (0) instead of 60 at that time.

The ALJ specified that: "I won't be addressing whether or not that order is valid." See Oregon Appellate record Transcript at 25. Petitioner was thus blocked by the ALJ from showing that the false entries were inconsistent with the contents of the State's own files and government records, or that the State administrators also failed to fully credit Petitioner's prior child support payments, resulting in a markedly overinflated, false administrative support and arrears order.

Notably, had the State actually made accurate entries into the child support worksheet, and had the previously paid child support been correctly credited, the support amounts would have been correctly determined. The result would have been a fully paid support record and no arrears, with credit for overpayments.

By excluding corrective or vetting steps, the State administrative process confirmed the continuing suspension of all of Petitioner's licenses, including commercial, federal interstate and driver licenses. Because the child support and arrears bases used by the State were too outlandish to be satisfied by Petitioner, the State suspensions and resulting blockages were effectively permanent.

The State administrative action took away Petitioner's livelihood and ability to care for his family and children by taking away the federal commercial licenses that he needed to work and earn income under federal regulations. Such grave

injustice permanently harming Petitioner's career, family and children would have been eliminated if the State had obeyed the judicial order.

Petitioner appealed to the Court of Appeals. In a published decision at *Kyei v. Div. of Child Support*, 669 Or App 517 (Sept 2021), the appellate court stated that its review of the State's administrative actions on appeal was constrained by Oregon administrative law to substantial reason within the confines of the administrative record that had been created by the State. See *Kyei* at 518; ORS 183.482(7). That administrative record on appeal excluded any verification or vetting of the State's underlying, incorrect support and arrears order, and excluded the one additional step mandated by the existing judicial order. At its discretion, the Oregon Supreme Court declined any further review the appellate decision. Hence this Petition for Certiorari.

## REASONS FOR GRANTING THE PETITION

The State administratively exercised power over an important question of federal law with profound national ramifications that should be settled by the US Supreme Court, and this is the perfect vehicle to do so. Counsel and Amici Curiae are also available to further advise the Court, at no cost to Petitioner.

The questions presented are of keen public significance as this Court has repeatedly asserted that the unrestrained administrative power of the government is of national importance, especially when the administrative action implicates the ninth and fourteenth amendments, or the commerce clause of the US Constitution.

This Court should note the use of the word “any” in the judicial court injunction order at issue, in its statement: “Petitioner licenses shall not be suspended based on *any* child support or arrears.”

And compare to, for example, *Niz-Chavez v. Garland*, 593 U. S. -- (2021) which prominently emphasized the single letter “a”. This Court explained that: “Words are how the law constraints power ... If men must turn square corners when they deal with the government, it cannot be too much to expect the government to turn square corners when it deals with them.”

The published appellate opinion from the Court of Appeals decided an important question that impacts federal law, and is in conflict with the US Constitution and the relevant decisions of the US Supreme Court.

The published appellate decision below sanctioned State administrative authority over a fully litigated and adjudicated judicial court order in a way that so far departed from the accepted and usual course of judicial proceedings, as to call for an exercise of the US Supreme Court's supervisory power. The results rendered as impotent, the independent adjudicative power of the judiciary under State administrative law.

The published appellate decision allowed the State administrators to take away federal commercial licenses that are propagated and governed under federal law, which in turn directly impacts federal interstate commerce. See, for example, 49 USC Section 31308 and 49 CFR Parts 300-399.

The decision below, however, goes beyond raising the State administrative process above the judicial process. It also allowed the State to avoid the one due process step that was specified by the judicial order. The record shows that in the face of several years of unauthorized suspensions of Petitioner's licenses and improper exercise of State administrative power, the court order mandate of one additional due process step was to facilitate the vetting of the State's record of incorrect child support and arrears numbers, which the State administrators had repeatedly used as the improper basis for their license suspensions.

The record also implicates the cherry-picking of laws to advance an improper child support enforcement proceeding, which is an issue of critical national import. The decisions from Oregon below claimed to abide by State law at ORS 25.750. Yet

they did not address the prerequisite due process steps that are also specified and mandated by State law at ORS 25.084. The State administrative suspension process also side-stepped the inconvenience of the timely, due process requirement to revise and correct its child support numbers at ORS 25.287(1)(f).

Of note, since the incorrect support and arrears amounts claimed by the State administrators are outliers that Petitioner cannot meet, and it takes several years of litigation to possibly overcome the administrators' baked-in errors even if successful, and with regard to possible qualified immunity, it is also of critical national importance that the administrative process must, before the State administrative order is enforced, require the State's support and arrears amounts to be independently reviewed, vetted and aligned with the ability to pay, and the accuracy of the factors and entries into State child support worksheets must be independently reviewed and vetted to prevent the arbitrary entries and grossly overinflated, incorrect support amounts. Cf: *Turner v. Rogers*, 564 US 431 (2011).

The effectiveness of improper State administrative actions at nullifying careers, dismantling families, traumatizing children and depriving dependents should be addressed by the US Supreme Court as a national priority.

## **CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Kofi Kyei M. Kyei

Date: 5/23/2022