

No. 22-

351

In the
Supreme Court of the United States

FILED

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OFFICE OF THE CLERK
SUPREME COURT, U.S.

CHARLES SIMON,

Petitioner,

v.

UNITED STATES DEPARTMENT OF JUSTICE, ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Seventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Lower Courts' unconstitutional procedural departure conflicts with the prerequisite demand pursuant several holding of United States Appeals Court, where judicial review of the merits of an administrative decision is restricted to the "arbitrary and capricious" standard prescribed by the Administrative Procedure Act 5 U.S.C. § 701 *et seq.*, the conflict pursuant the unconstitutional procedural departure renders the judicial proceeding null in void.

2. Whether the Appeals Court has enter a decision replete with conflicts with the Supreme Court of United States, the holding of United States Appeals Court, and in disaccord with Congressional intent renders the ruling a nullity, hence void judgment.

3. Whether the Appeals Court administrative decision on the face of its Order reveals, "Charles Simon challenging the amount of monthly compensation he was awarded in 1994 under the Inmate Accident Compensation Procedure 18 U.S.C. § 4126; Section 301.301 *et seq.*, along with the termination of his payments in 2018." said allegation in part show a blatant conflict expressed at documented evidence of fact at Exhibit D, reveal the COO's discriminatory fraud policy under 28 C.F.R. Part 301. The Appeals Court issued a political partisan decision rather than issue finding of fact and conclusion of law in the denial of Preliminary Injunction under (APA) 5 U.S.C. § 701 *et seq.*, mandated by *Simpson v. Murray*, 415 U.S. 61(1970)

4. Whether on the face of Exhibit-D, expressly cited and accompanied the Verified Complaint and Appeal Brief, evidence that ultimately prove obstruction of justice imposed by the retired Chief Operating

Officer of Federal Prison Industries, fraud discriminatory policy under 28 C.F.R. Part 301 said discriminatory policy require compensation recipient report Public Assistance Program evidence the clear distortion of Inmate Accident Compensation Procedure under 28 C.F.R. § 301.315(b) *et seq.*, enacted by Congress. Said COO's policy under 28 C.F.R. Part 301, freezes all entitlement of the Inmate Accident Compensation Procedure 18 U.S.C. § 4126 attending sec. 301.314 *et seq.*, enacted by Congress.

5. Whether the Lower Court's ruling pursuant exhausting of remedy upon the illegal termination imposed by the Chief Operating Officer of Federal Prison Industries fraud discriminatory policy at 28 C.F.R. Part 301 conflict with the Inmate Accident Compensation Procedure enacted by Congress under 18 U.S.C. § 4126 attending 28 C.F.R. § 301.315(a), Section 301.314(b), Section 301.313.

6. Whether the Appeals Court adopts the legal point of law that conflict with the Supreme Court in *Monel v. Department of Social Services of the City of New York*, 436 U.S. 658 (1978);

7. Whether the Declaratory Judgment and Preliminary Injunction should issue upon the Lower Courts' usurpation of Judicial authority hindered Due Process without cause blocking Pro Se Plaintiff from receiving and issuing summons on DOJ Attorney General thereby protecting the DOJ from mandatory injunction upon the COO's fraud policy under 28 C.F.R. Part 301, enjoin disparate impact imposed by Inmate Accident Compensation Procedure 18 U.S.C. § 4126 attending 28 C.F.R. § 301.314 *et seq.*, pursuant Title VII of Civil Rights of 1964, 42 U.S.C. § 2000e violations.

PARTIES TO THE PROCEEDINGS

Petitioner and Plaintiff-Appellant Below

- Charles Simon

Respondents and Defendants-Appellees Below

- United States Department of Justice
- Rudolph Contreras, U.S. District Court Judge,
District of Columbia, Civil Action No. 20-0580
- Federal Prison Industries, Incorporated
- Steve Schwalb, Retired Chief Operating Officer
of Federal Bureau of Prisons
- T. Speights, Coordinator of Federal Prison
Industries

LIST OF PROCEEDINGS

United States Court of Appeals, Seventh Circuit

No. 22-1996

Charles Simon, *Plaintiff-Appellant*, v. United States
Department of Justice, Et Al., *Defendants-Appellees*.

Date of Final Judgment: September 8, 2022

United States District Court,
Western District of Wisconsin

Case No. 22-cv-261-jdp

Charles Simon, *Plaintiff*, v. Department of Justice,
En Banc U.S. Appeals Court, District of Columbia
Circuit, Docket No. # 21-5099, U.S. Appeals Court,
District of Columbia Circuit, Docket No. # 20-5259,
Hon. Rudolph Contreras, Federal Prison Industries,
Inc., Steve Schwalb, and t. Speights, *Defendants*.

Date of Final Judgment: May 16, 2022

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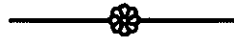
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OPINIONS BELOW

The Order of the United States Court of Appeals for the Seventh Circuit dated September 8, 2022 is reproduced in the appendix to this petition at App.2a. The final Judgment of the Seventh Circuit was also issued on the same date and is reproduced at App.1a. The Judgment of the United States District Court for the Western District of Wisconsin was entered on May 16, 2022 and is reproduced at App.9a, 11a.



JURISDICTION

The final judgment of the United States Court of Appeals for the Seventh Circuit was issued on September 8, 2022. (App.1a) This Court has jurisdiction under 28 U.S.C. § 1254(1). In the Lower Courts, Petitioner depends on its jurisdictional nexus from Supreme Court Rule 11 pursuant to 28 U.S.C. § 2101e and the Administrative Procedure Act 5 U.S.C. § 701 *et seq.*

The Supreme Court depend on its jurisdictional nexus stem from the Lower Courts final order 28 U.S.C. § 1291 and the Administrative Procedure Act (APA) 5 U.S.C. § 701 *et seq.*; The U.S. Appeals Courts' Circuits also find the Administrative Procedure Act to be jurisdictional, indicates the validity of preliminary jurisdictional finding. See the Tenth Circuit's decision in *Bird v. Seaman*, 507 F.2d 268 (10th Cir. 1974), *Ryan v. Shea*, 525 F.2d 268 (10th Cir. 1975), *Thompson v. United States, Federal Prison Industries*, 492 F.2d 1082 (5th Cir. 1974), *Durham v. Federal Prison Industries*,

464 F.2d 1026 (5th Cir. 1972). The Lower Courts' failure to recognize judicial review of the merits of an administrative decision is restricted to the "arbitrary and capricious" standard prescribed by the Administrative Procedure Act 5 U.S.C. § 701 *et seq.*; Accordingly, meaningful review in this case was well-nigh impossible. Quoting *Sampson v. Murray*, 415 U.S. 61 (1974).



INTRODUCTION

As a preliminary matter, in this extraordinary Petition for Writ of Certiorari, it appears from the Lower Courts' specious ruling the Appeals Court is seeking Certification under the Supreme Court Rule 19; This asserted fact is evidence by virtue of the Lower Courts made a political partisan decision rather than issuing findings of fact and conclusions of law under the APA and the denial of a preliminary injunction in accordance with the mandate of *Simpson v. Murray*. making a legal ruling. More telling is the Appeals Court's narrow review of this administrative case, the Order is replete with decisions that conflict with the Supreme Court of United States and the holding of the United States Court of Appeals, and in disaccord with Congressional intent. Moreover, the Supreme Court need not have to rely on the demeanor or credibility of some Government Official, to the contrary, the record of documented evidence of facts accompanied by Exhibit-D paint a detail picture of the vague and imprecise ruling entered on 9/8/2022 renders the ruling a void judgement. Specifically, this case represent the epitome pursuant fruit of the poisonous tree doctrine. *Weeks v. United States*, 232 U.S. 383

(1914); *Silverthorne Lumber Co. v. United States*, 251 U.S. 385 (1920). Thus inextricably entwined where the judicial proceeding mirror Jim Crow, Kangaroo Court judicial procedure in this modern era of jurisprudence. *Skilling v. United States*, 130 S. Ct. 2896, 2914-17 (2010). Central to this factual conclusion, the glaring documented evidence of fact show the judicial proceeding mirror deep-seated bias 28 U.S.C. § 455(a) against Pro Se litigation; More specifically, this Verified Complaint at Exhibit-D show where "Department of Justice orchestrated an elaborate insidious scheme to conspire 18 U.S.C. § 371 with Federal Courts to obstruct justice and shield the retired Chief Operating Officer's discriminatory fraud Policy under 28 C.F.R. Part 301; Judicial Notice Exhibit D, reveals the counterfeit policy under 28 C.F.R. Part 301 require compensation recipient report Public Assistance Program, evidence the clear distortion of Inmate Accident Compensation Procedure under 28 C.F.R. § 301.315(b) IACP enacted by Congress; The apparent erosion of Pro Petitioner's Civil Liberties pursuant Constitutional Rights under the First and Fifth Amendment Equal Protection Clause, *Goldberg v. Kelly*, 397 U.S. 254 (1971). Pursuant to the COO's fraud discriminatory policy under 28 C.F.R. Part 301 precludes compensation recipient of all entitlements of the Inmate Accident Compensation Procedure under 18 U.S.C. § 4126 and its attending regulations under 28 C.F.R. 301.314 *et seq.*, enacted by Congress, thus condemned disabled Pro Se litigant to suffer grievous loss with uncompensated disability for over two decades. *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U.S. 123, 168 (1951).

Another salient and compelling violation pursuant the jurisdictional nexus that stem from the statutory and constitutional violations emerge from the Government's unconstitutional procedural departure to avoid its peremptory constitutional duty bypassing the jurisdictional nexus that procedurally required the Federal Court to subject the Department of Justice/ Bureau of Prisons administrative decisions to a narrow review to ascertain its compliance with procedural due process requirement; the Lower Courts failed to recognize judicial review of the merits of the administrative decision is restricted to the "arbitrary and capricious" standard prescribed by the Administrative Procedure Act 5 U.S.C. § 701 *et seq.*, citations omitted. It must be remembered, the Honorable Merrick Garland, United States Attorney General recent pronouncement that no one is above the law.



STATEMENT OF THE CASE

A. Facts of Procedural Background

Judicial Notice Congress authorized the Attorney General almost complete discretion to promulgate the Inmate Accident Compensation Procedure under 18 U.S.C. § 4126 attending 28 C.F.R. section 301.101 through 301.319. These regulations govern unless they are arbitrary and capricious. *See in United States v. Demko*, 385 U.S. 149 (1966), and *Nicastro v. Reno*, 29 F.3d 682 (D.C. Cir. 1994), in commencing its assessment of whether and to what extent due process applies, given the fact the Department Of Justice is the creator of the fraud discriminatory Policy under

28 C.F.R. Part 301 that freezes all compensation entitlements of the Inmate Accident Compensation Procedure enacted by Congress under 18 U.S.C. § 4126 attending 28 C.F.R. § 301.314 *et seq.*; The documented evidence of facts explicated in Exhibit-D reveal Hon. Eliot L. Engle, Congressman recognize the Appeals Court in *Simon v. Fed. Prison Indus.*, 159 F.3d 637 (D.C. Cir. 1998) adopted the DOJ outrageous discriminatory practice under 28 C.F.R. Part 301. Necessarily then, the Appeals Court need to be mindful of the Supreme Court's explication in *United States v. Demko*, *supra*, undertake the peremptory responsibility and provide Pro Se Appellant the right of law since the DOJ and Congress failed to abolish the fraud discriminatory practice under 28 C.F.R. Part 301.

Congress enacted Title 18 United States Code, of Section 4126 and its attending regulations authorizes Federal Prison Industries Inc., to employ the Prison Industries Fund in paying compensation to inmates and their dependents for injuries suffered in any work activity in connection with the maintenance or operation of the institution where confined, pursuant rules and regulations promulgated by the Attorney General. Judicial Notice Title 28 C.F.R. Section 301.101 through 301.319 govern. Petitioner was a former federal inmate at the Federal Correctional Institution at Oxford Wisconsin in 1987; While incarcerated Plaintiff slipped and fell injured the back while working in the kitchen. Upon Petitioner being released pursuant Section 301.102(b), Petitioner was granted compensation benefits under 28 C.F.R. § 301.314 *et seq.*, by satisfying the criteria set forth by the regulations. By their establishment of an objective medical report by prison physician recommending medical treatment under Section

301.317 and back surgery. See second Page of Exhibit D. By contrast, the apparent erosion of Petitioner's Constitutional Rights under the First and Fifth Amendment, stem from the Chief Operating Officer of Federal Prison Industries Inc., fraud counterfeit document under 28 C.F.R Part 301; See administrative review under Section 301.313, where on March 1st 1995 the "COO" coerced Pro Se Petitioner to sign a fictitious contract forcing Petitioner to sign away all due process rights under the compensation scheme/entitlements of the Inmate Accident Compensation Procedure pursuant under 18 U.S.C. § 4126 attending 28 C.F.R. § 301.314 *et seq.*, enacted by Congress, which include the "COO" disregarding the holdings of the two controlling cases; see *U.S. v. Demko*, 385 U.S. 149 (1966), and *Granade v. United States*, 356 F.2d 837 (1966). The Supreme Court and the Second Circuit expound the equity of the Inmate Accident Compensation Procedure. Moreover, Count I, a claim of illegal termination without notice or cause imposed by the retired Chief Operating Officer of Federal Prison Industries Inc., discriminatory fraud practice under 28 C.F.R. Part 301. Said discriminatory practice under 28 C.F.R. Part 301 is in contravention of the Inmate Accident Compensation Procedure enacted by Congress under 18 U.S.C. § 4126 attending 28 C.F.R. § 301.315(a) *et seq.*

B. Disparate Treatment

The Chief Operating Officer of Federal Prison Industries Inc., policy under 28 C.F.R. Part 301 evidence overt acts of "disparate treatment" states as follows: (i) reducing minimum wage Fair Labor Standards Act 28 U.S.C. §§ 201-219 *et seq.*, under Section 301.314(c) to substantially less than the \$7.25 per hour (FLSA) reduced to \$125.56 monthly compensation; (ii)

Preclude any medical treatment under section 301.315(a) and section 301.317 even when the Government's Physician recommend future medical treatment and back surgery; (iii) Preclude coverage under the Federal Employees' Compensation Act authorized by Congress and *U.S. v. Demko*, 385 U.S. 149 (1966), and *Granade v. United States, supra*.

C. Disparate Impact

Section 301.314(c) mandatory language Shall confides recipient to minimum wage preclude coverage Federal Employees' Compensation Act § 8106(a) causing significant impact; quoting *U.S. v. Demko*, 385 U.S. 149 (1966), and *Granade v. United States, supra*. The language under 28 C.F.R. § 301.315 is unconstitutionally vague.



REASONS FOR GRANTING THE PETITION

The most important factor affecting clarity that Constitution requires is whether it inhabits the exercise of free speech or other Constitutional rights. *Id.* The prohibition against vagueness applies to administrative regulations as well as statutes. *Village of Hoffman Estates v. Flipside*, 455 U.S. 489, 495 (1982); *Parker v. Levy*, 417 U.S. 733, 747 (1974). The Lower Courts from the outset failed to recognize Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e does not lack performance upon Pro Se litigation; Rather, Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e bars all overt acts of disparate treatment and policies and practices that are fair in form an intent but discriminatory in operation. *McDonnell Douglas Corp. v. Green*,

411 U.S. 792 (1973); *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971). This case should be no exception.

The Lower Courts ignored its peremptory duty authorize by statute upon the Court's deliberate unconstitutional procedural departure from the prerequisite demand pursuant judicial review of the merits of an administrative decision is restricted to the "arbitrary and capricious" standard prescribed by the Administrative Procedure Act 5 U.S.C. § 701 *et seq.*, the procedural departure renders the ruling upon the judicial proceeding null in void. *Thompson v. United States, Federal Prison Industries, supra.*

Furthermore, the Lower Courts' decision was replete with conflicts of facts and law, rendering the ruling a nullity, hence void. *Teva Pharmaceuticals USA, Inc. v. Sandoz, Inc.*, 574 U.S. 318 (2015); *Anderson v. Bessemer City*, 470 U.S. 564 (1985). Moreover, the Lower Courts ignored the entire administrative documented evidence of facts expressly cited in Exhibit-D, that accompanied the Verified Complaint; The Court ignored the evidence that ultimately proved obstruction of justice imposed by "DOJ" and the retired Chief Operating Officer of Federal Prison Industries, fraud discriminatory policy under 28 C.F.R. Part 301, said discriminatory policy require compensation recipient report Public Assistance Program evidence the clear distortion of Inmate Accident Compensation Procedure under 28 C.F.R. § 301.315(b) *et seq.*, enacted by Congress.

Central to the above factual conclusions, the Lower Courts' ruling reflect a fundamental conflict on the genuine issue of exhausting of administrative remedy under the Inmate Accident Compensation Procedure pursuant the two tier exhaustion by Claims

Examiner under 28 C.F.R. § 301.312 and the COO review under Section 301.313 which an applicant can exhaust only one time; Where for over two decades have passed since Appellant exhausted remedy under the Chief Operating Officer's discriminatory fraud policy under 28 C.F.R. Part 301; Notice the illegal termination was imposed by the Chief Operating Officer of Federal Prison Industries fraud discriminatory policy, where the Lower Courts incorrectly conflict and assume exhaustion of remedy can happen on an administrative whim under 28 C.F.R. Part 301 at any time. *Board of Regents of State Colleges v. Roth*, 408 U.S. 564 (1972). Clearly under 28 C.F.R. § 301.315(a) termination of compensation benefits shall only be executed upon the failure to submit medical examination by a physician specified or approved by the Claim Examiner.

Whether the Lower Courts' wildly incredible decisions conflict with the United States Supreme Court, where the Supreme Court made clear in *Monel v. Department of Social Services of the City of New York*, 436 U.S. 658 (1978); Ruling Municipal, Corporations were person who could be sued for bad faith action of its officials; The Department of Justice & Federal Prison Industries Inc., is indeed a person subject to suit under Title 42 U.S.C. § 1983 action for deprivation of statutory and Constitutional rights under the First and Fifth Amendment. Finally, Whether the Declaratory Judgment and mandatory Preliminary Injunction should issue upon the Lower Courts' abuse of discretion by precluding Due Process, *Goldberg v. Kelly*, 397 U.S. 254, 263 (1970); Thus, the Lower Court impermissibly blocked Pro Se Plaintiff's non frivolous Verified Complaint from receiving summons to serve Department of Justice Attorney General. The Lower Courts

simply failed to dutifully and commendably preform the respective task as required by law; *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972). The present regulatory procedures established by The Chief Operating Officer of Federal Prison Industries Inc., fraud policy under 28 C.F.R. Part 301 and the Inmate Accident Compensation Procedure 18 U.S.C. § 4126 attending 28 C.F.R. 301.314 *et seq.* Must be deemed constitutional defective under the clear mandate of the two controlling cases cited herein, *United States v. Demko*, 385 U.S. 149 (1966), *Granade v. United States*, 356 F.2d 837 (2nd Cir. 1966) and therefore in disaccord with Congressional intent and delegation of authority conferred by 18 U.S.C. § 4126.

In closing, Remember the Department of Justice condemned Appellant to suffer grievous loss with uncompensated disability for over two decades; In effect, denied Pro Se litigant access to the court under the U.S. Constitution pursuant the First and Fifth Amendment Equal Protection Clause; thus denied Pro Se the legal process to remedy civil wrong under the Administrative Procedure Act.

Therefore, exact lump sum liability amount is \$155 MILLION; The erosion of stare decisis mandate the preliminary injunction and declaratory judgment. RELIEF should Issue 1. mandatory Preliminary Injunction Fourth-with enjoining/abolish disparate treatment under 18 U.S.C. § 4126 attending 28 C.F.R. Part 301 and enjoin disparate impact under 18 U.S.C. § 4126 delineated in 28 C.F.R § 301.314 *et seq.*; 2. thus granting the 82 year old disabled Pro Se litigant Title VII Civil Rights Act of 1964 42 U.S.C. § 2000e broad remedial nonpunitive remedy pursuant 26 year of deprivation,

entitlement to the Inmate Accident Compensation Procedure under Federal Employees' Compensation Act, total lump sum compensatory liability amount to \$155 MILLION; 3. issue declaratory judgment 28 U.S.C. § 2201, ruling that the Retired Chief Operating Officer of Federal Prison Industries, Inc., policy 18 U.S.C. § 4126 attending 28 C.F.R. Part 301, and the Inmate Accident Compensation Procedure enacted by Congress under 18 U.S.C. § 4126 delineated in 28 C.F.R. § 301.314 *et seq.*, are in discord with Congressional intent and in conflict with the two controlling cases cited herein. *Granade v. United States*, 356 F.2d 837 (2nd Cir. 1966); *United States v. Demko*, 385 U.S. 149 (1966) the delegation of authority conferred by 18 U.S.C. § 4126. Thus Re-determine Inmate Accident Compensation Procedure benefits in accordance with the two controlling cases cited herein and Congressional intent; 4. Rewrite the Inmate Accident Compensation Procedure under establishing the amount of awards 28 C.F.R. § 301.314 making it crystal clear. All awards shall be based on the Federal Employees' Compensation Act 5 U.S.C. § 8106(a); 5. Make medical treatment mandatory under 28 C.F.R. § 301.315(a) and Section 301.317; 6. Grant Petitioner monthly compensation of \$16,495 wage earning capacity under Federal Employees Compensation Act 5 U.S.C. § 8106; 7. Direct deposit all of recipient's monthly checks; 8. As the prevailing party award Pro Se Petitioner \$1.00 nominal damage fee 42 U.S.C. § 1988. Grant any other relief that the Court may deem proper and just.



CONCLUSION

For all the reasons and authorities explicated in this Petition, Pro Se Petitioner request that this Petition for Writ of Certiorari be granted.

Respectfully submitted,

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OCTOBER 7, 2022

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