

Supreme Court of the United States

October Term 2022

No. 2022 WL 4654802

Willie Johnson, Petitioner

v.

Stellas, Dir. S.C. Doc, Et Al. . . . Respondent

Petition for Rehearing

Petitioner respectfully requests that this Court grant rehearing of its order dated Oct 3, 2022, which denied certiorari and that the Court now grant certiorari. I.

The Petition for Certiorari previously filed herein presented the question in this case raises a question of interpretation set forth in H.R. Rep. 94-1609 at (2) Dispositive Motions, Habeas Corpus, and Prisoner Petitions. As stated previously in this report, certain motions which are dispositive of the litigation are specifically excepted from the Magistrate's power under Subparagraph (A) "to hear and determine" these excepted motions viz: (1) A Motion for instructional relief;

This question presented is of great public importance because it affects the operations of judicial process. The petition for certiorari discussed the importance of the question presented by the Fourth Circuit's decision in this case and its impact upon the administration of justice in the federal courts. At the same time, the petition for certiorari acknowledged that, although several comparable cases decided in other circuits there did exist a conflict with decision of other courts, the lower courts is directly to the holdings of the Ninth Circuit in Reynolds v. Commissioner, 971 F.2d 414 (9th Cir. 1992). In addition the Ninth Circuit has held that a magistrate judge lacks the authority to issue a dispositive order, including an order denying injunctive relief. In addition, the Sixth Circuit in Meyer v. City of Ferndale, 7 F.3d 506, the Sixth Circuit has held under the authority of 28 U.S.C. § 636 (b)(1) (A) (1990), a district court "may designate a magistrate to hear and determine any pretrial matter pending before the court" "excepted with certain listed exceptions, namely: (1) a motion for injunctive relief; (2) a motion for judgment on the pleadings; -

(37) a Motion for summary judgment; (47) a Motion to dismiss / request an information / indictment made by a defendant; (57) a Motion to suppress evidence in a criminal case; (67) a Motion to dismiss / permit maintenance of a class action; (77) a Motion to dismiss for failure to state a claim upon which relief can be granted; and (87) a Motion to involuntarily dismiss an action.

In this case it is undisputed the intent of Congress set forth in 28 U.S.C. 636 (b)(1) (A), including codified statute set forth in 32 Am. Jur. 2d Federal Courts § 131 and 132, to the extent a motions not designated in that provision are nonetheless to be treated as dispositive when they have an identical effect. When Congress enactment limits the manner in which something suppose to be done, the enactment also enforces the intent that it shall not be done another way.

Both due process and common sense dictate there is simply no 141333C in the statute set forth in 28 U.S.C.A. 636 (b)(1) (A), includes in 32 AM JUR. 2d Federal Courts § 131 and 132 that give lower courts the enumerated power to refer motions for a preliminary injunction to a magistrate judge. If Congress had-

intended for a Magistrate Judge to make a "Report and Recommendation ~~on~~ Motion for a Preliminary Injunction" or lower court to refer Motion for a Preliminary Injunction to Magistrate Judge. It could have done so, it could include such language in the statute or Federal Magistrate Act, to the extent if Congress intended statute or Federal Magistrate Act to apply to certain proceedings, it could have done so by including such language. See Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 104 S. Ct. 2158. When it had decided that Congress itself had not given lower courts enumerated power to refer Motion for a Preliminary Injunction to a Magistrate Judge.

II.

More specifically, the Court of Appeals for the Fourth Circuit rendered a decision in Jones v. Rizzo, 305 Fed. Appx. 986, the Court of Appeals for the Fourth Circuit held that Magistrate Judge lacked the authority to enter a final dispositive order where nothing in the record showed that the Parties agreed to have Motion for Preliminary Injunction —

decided by the Magistrate Judge. However, to the extent the Court of Appeals for the Fourth Circuit the Court cited the Ninth Circuit in Ryan v. Commis 917 F.2d 414-18 (9th Cir. 1991) and the Sixth Circuit in Messox v. City of Fendale 763 F.2d 306-11 (6th Cir. 1985). However, just as in Jones v. Russ, 305 Fed. Appx. 986 (4th Cir. 2009), a case involving a writ similar that Magistrate Judge lacked the authority to act upon motion for preliminary injunction decided [redacted] years prior to Magistrate's report was made.

With respect to the circumstances involved in the instant case, a reasonable interpretation of the statute set forth in 28 U.S.C. § 636 (b)(1)(A) that listed exceptions in section (b)(1)(A) that excluded that motion above. However, in this case where Court of Appeals for the Fourth Circuit decision contrary to Jones v. Russ, 305 Fed. Appx. 986 (4th Cir. 2009). This constitutes to be a serious violation as described in section (b)(1)(A), to the extent the language of 28 U.S.C. § 636 (b)(1)(A) will show beyond a reasonable doubt that Congress did not intended the lower court to refer a motion for preliminary injunction to a Magistrate Judge.

~~THE~~

Additionally, however, to quote Justice Scalia's criticism of Skidmore deference:

1. The Justice Scalia Criticism

"There is, in short, no way to avoid the ossification of Federal law that today's opinion sets in motion. What I could say is the law after according Skidmore deference will be the law forever beyond the power of the President to change even through rulemaking."

2. The Court's Mead Response

Inasmuch, the Court did not respond directly to Justice Scalia's charge in its Mead opinion. Nevertheless, it did include some explanatory comments on its decision to recognize both Chevron and Skidmore deference. First, it said the position it took taken as a choice about the best way to deal with an inescapable feature of the body of congressional legislation authorizing administrative action, that Federal is the single variety of way in which the laws invest the Government's administrative with discretion, and with procedures for exercising it in various means to Acts of Congress. Citing Skidmore v. Swift & Co. 323 U.S. 134, 65 S. Ct. 161 (1944) and U.S. v. Mead 533 U.S. 218, 247 (2001)

Inasmuch, the facts of this case before this Court do fall within the specific facts since, as expressed in Petitioner's brief certiorari, to the extent lower courts' decision were inconsistent with Skidmore law set forth in 28 U.S.C. § 1252.

As Mention above, the Justice Scalia's opinion, it is what the Fourth Circuit says in Tolles v. Biss, 305 Fed. Appx. 926 (4th Cir. 2008), including the Ninth Circuit Reynolds v. Commissioner, 917 F.2d 444-18 (9th Cir. 1992) and the Sixth Circuit in Mason v. City of Toledo, 7 F.3d 506-16 (6th Cir. 1993) the result what circuits says is the law. Therefore, the lower courts manifest & totally disregard of the law. See also, Hell Street Associates L.L.C. v. Mettel, 552 U.S. 576, 128 S.Ct. 1336 (2008).

It should be noted that the quoted 1934-35 concerning the Congressional expectation is set forth in 28 U.S.C. 5636 (b) (5) (A), the courts have recognized that it is inappropriate and often misleading, to overlook the plain meaning of a statute and rely on unadopted legislative, "are neither enacted by Congress nor signed by the President, and thus they do not have the force of legislation." see Bondholders Protective Committee v. I.C.C., 452 F.2d 268 (3rd Cir. 1970) including In re Evers, 452 F.2d 1239 (D.C. Cir. 1971). This facts is overlooked by lower courts, to the extent the lower courts order was contrary to law.

In similar fashion, the lower courts violated the spirit of the law and code of conduct.

wherein canon 2A of the code of conduct provides, "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~~, includes canon 3 of the code of conduct states "A Justice should perform the duties of the office faithfully, impartially and diligently." Canon 2 of the model code similarly provides, "A judge of judicial office impartially competently."

As explained above, the Fourth Circuit in Jones v. Bissel, 305 Fed Appx 986 (4th Cir. 2009) where same circuit judges that render the decision in Petitioner's case before this court, to the extent the circuit judges were im-
partial in violation of canon 2A and 3A, the federal basis existed constitute a violation of Petitioner's equal protection of 14th Amendment, including a deprivation of the Petitioner's of civil rights, see Hall v. Hall, 138 S. Ct. 1118 (2018)

the tried, tested principles reflected in cases like Jones thus continue to supply the relevant benchmark for pure statutory claims like the one at issue here.

But steadfastly for that practice is found in 28 U.S.C. § 1256 (b)(1) (A) "which authorizes this Court to 'dispose' of the matter as law and justice require". Thus much, the lower courts deprivation of right under color of law, deprived petitioner of his Eighth and Fourteenth Amendment Rights including deprivation of civil rights, see Pearson 386 U.S. 547, 87 S. Ct. 1213 (1967); Griffin v. Breckinridge 403 U.S. 88, 91 S. Ct. 1790 (1971) and Johanson v. Mueller, 405 F.2d 354 (9th Cir. 1969). However to the extent the lower courts does not have certificate to adopt any broad statement of principle or rule it may desire, see Guthrie v. United States, 221 F. Supp. 450 (C.D. Tex. 1963). Boldly states, the lower courts imposes a decision & requirement with no statutory or logical justification, to use Justice Brandeis's word the majority approach "is nothing more than arbitrary government exercised as reasoned judgment". Udell v. Washington, Virginia and Maryland Coach Co., 398 F.2d 765, 770 (D.C. Cir. 1968). Inasmuch, announces that "the Laws of the United States... shall be the Supreme Law of the Land, and the Judges shall be bound thereby". However to the extent - 9 -

the laws which operated elsewhere created obligations in justice that courts of the former Federal Courts would enforce. See, e.g., McKenry v. Fish, 1 How 241, 247-249, 11 L. Ed. 117 (1843) [the judges in Federal Court shall be bound [by federal law] See also, Printz v. U.S., 521 U.S. 898 (1997) and Marbury v. Madison, 1 Cranch 137 5 U.S. 137 (1803)

Inasmuch "the obligation that [set forth] set forth [upon [Lower Courts]] to ensure fairness and equality, to the extent permitted to 28 U.S.C. § 453; v.

§ 453 Oaths of Justice and Judge

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

At all time relevant hereto, the [blank] (Appendix A) will prove beyond a reasonable doubt, that lower Courts violated their Oaths set forth in 28 U.S.C. § 453, to the extent lower courts were unfaithful to the law.

Furthermore the Attorney General opinion has ruled that the expression "Judge of any Court of the United States" applied to the Chief Justice and all Judges of the Court of claims" (21 OP Atty Gen. 443) 80th Congress House No. 308.

As presented above, instead of discharging their responsibilities in conformity with Federal law and constitution, to the extent to a deprivation of the Petitioner civil rights, including the lower courts intentionally violated the provision of section 28 U.S.C.A. § 636 (b) (1) (A). Hence, the lower courts is Respire to know and Obey the laws and dates set forth in 28 U.S.C.A. § 636 (b) (1) (A).

As mention above pursuant to 28 U.S.C.A. § 453 created a liberator interest. The Mandatory "shall" was the word the word "shall".

Inasmuch as "Mandatory duty" upon lower courts to carry out the wish of Congress in 28 U.S.C.A. § 636 (b) (1) (A), to the extent the lower Court failed to perform their duty to enforce provisions of the statute. Thus, when a law is clear and unambiguous and its application does not lead to absurd consequences, the law shall be applied as written and no further interpretation should be made in search of the -

intent of Congress. ^{IV.}

Inasmuch, the lower court is powerless to change words of statute as that is matter for Congress consideration. However to the extent the U.S. Supreme Court has ruled that Courts shall enforce statutes according to their plain words see Leong v. Trustee, 540 U.S. 566 (2004) "to supply omissions transcends the judicial function," see also, Iselin v. U.S. 46 S. Ct. 248 (1926).

The intention of the legislature as to the mandatory or directory nature of a particular statutory provision is determined primarily from the language of the statute words or phrases which are generally regarded as making a provision mandatory include "shall" and "must". Accordingly, a statute's use of the mandatory term "shall" normally creates an obligation imperious to judicial discretion. see 13 Am. Jur. 2d Statutes §2 "Effect of words used in statute".

As discussed in the "Petition for writ Certiorari" the Petitioner simply makes a Biblical point of view it does no "binding Authority" to the extent the Biblical Principle are not seen toward overturning Obergefell v. -

Hodges, 576 U.S. 644, 135 S.Ct. 2584 (2015), the particular issue in this case, the question of 1983 is whether lower courts had enumerated power from Congress to refer a Motion for Preliminary Injunction to U.S. Magistrate Judge.

With respect, the issues in this case, do not included some- got message, to the extent "Lord spoke through His Prophet when He went to get message across to the one He place in charge, please do not kill messengers, to the extent whatever God said through me to this court, that particular issue between "God" and this "Court" it has known bearing in this case before the court.

VI.

Petitioner argues the question of law is whether Congress gives lower courts the enumerated power to refer a Motion for Preliminary Injunction to U.S. Magistrate Judge? Further lower courts noncompliance with statute deprived Petitioner "Equal rights under the law" according to 42 U.S.C.A. § 1981, to the extent statute set forth in 28 U.S.C.A. 636 (b)(7)(A) pre empts the lower courts decision in this case, on this point the lower courts noncompliance with statute constitutes "equal bases" and "equal justice". Inasmuch, the "lower court" has -

a judicial duty to obey enacted law of Congress.
Further, lower court actions that constitute
a "failure to observe that fundamental to the
very concept of justice. see Brown v. Board of
Educ. of Topeka Kan., 349 U.S. 219, 75 S.Ct.

183; Plessy v. Ferguson 163 U.S. 535, 16 S.Ct.
1138. However to the extent there is "great
disparities in judicial system in lower courts

with respect to equity & comcast from U.S.
supreme court: "The Supreme Court has held that
former Pres. Trump is not "above the law", not
using "lower court" is not "above the law".

The Framers of the Constitution agreed, without
dispute, to six basic principles:

1. It was understood that all states would be equal.
The national government cannot give special privileges to
one state.

2. There should be three branches of government - one
to make the laws, another to execute them, and a third
to settle questions of laws.

3. All persons are equal before the law; and anyone rich
or poor, can demand the protection of the law in the exercise
of rights.

4. The Government is a government of laws, not of men.
No one is above the law. No officer of the Government
can use authority unless the Constitution or the law permits.

5. The people can change the authorities of the Govern-
ment by changing the constitution. (one such change
was the election of Senators by direct vote instead of
by state legislatures)

6. The Constitution, the Acts of Congress, and the

- Executives of the U.S. are few, the highest in the land. The national Government is a Government of the People, and not of the states alone.

As mentioned above, the Framers of the Constitution created the Federal system of Government so that the People's rights would be secured by the division of power. Inasmuch, the lower Courts failed to comply with the basic principles set forth above.

VII

As presented above, the explanation for the "Plain Meaning" principle is that, of course, Congress could not have intended the "absurd result" nevertheless, it may be well to add that unless that result is truly "absurd result" the words used are to give their Plain meaning, and it is not for the lower Courts to ignore or to frustrate the Plain language of the statute set forth 28

U.S.C. § 1361 (b) (7) (A). See U.S. v. American Trucking Ass'n, 370 U.S. 534, 60 S.Ct. 1059 (1962) in the interpretation of statutes, the function of the courts is easily stated. It is to construe the language so as to give effect to the intent of Congress. See also Bell v. Hood, 137 U.S. 678, 66 S.Ct. 773 (1946).

As noted above, the lower court's obligation to ensure faithful execution of the law included an obligation to ensure faithful execution of lawful judgments, because judgments were seen implicitly to have a legal status like the laws under which they were issued.

Certificate of Counsel

Pursuant to Rule 44.2, I hereby certify that the foregoing Petition for Rehearing is presented in good faith and not for delay, and is limited to the grounds specified in 44.2.

To reiterate, the question presented herein was not previously adjudicated on the merits by the Court of Appeals for the Fourth Circuit and this Court. However to the extent this decision of the Court of Appeals for the Fourth Circuit conflicts with the Constitution as decided by several federal Courts of Appeal and this Court. This question present a substantial ground for relief. Ground in this lower Court refer & motion for preliminary injunction to Maryland Judge.


Willie Johnson, Pro Se

(Appendix A)

11/08/2018	<u>3</u>	MOTION for Preliminary Injunction by Willie Johnson. (Attachments: # <u>1</u> Supporting Documents, # <u>2</u> Memo of Law in Support of Preliminary Injunction, # <u>3</u> Declaration in Support, # <u>4</u> Certificate of Service, # <u>5</u> Envelope) Motions referred to Bristow Marchant. (egra,) (Entered: 11/09/2018)
11/08/2018	5	TRUE DIVISION FOR TRIAL: Columbia. (egra,) (Entered: 11/09/2018)
01/02/2019	<u>7</u>	Letter from Willie Johnson. (Attachments: # <u>1</u> Proposed Order, # <u>2</u> Envelope) (hada,) (Entered: 01/03/2019)
02/11/2019	<u>9</u>	PROPER FORM ORDER Case to be brought into proper form by 3/4/2019. Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6. Signed by Magistrate Judge Bristow Marchant on 02/11/2019. (egra,) (Entered: 02/11/2019)
02/11/2019	10	***DOCUMENT MAILED <u>9</u> Proper Form Order, and required documents placed in U.S. Mail to Willie Johnson 127069 Kirkland Correctional Institution 4344 Broad River Road Columbia, SC 29210. (egra,) (Entered: 02/11/2019)
02/11/2019	<u>11</u>	REFERENCE <u>9</u> ORDER finding as moot <u>3</u> Motion for Preliminary Injunction. Signed by Magistrate Judge Bristow Marchant on 02/11/2019. (egra,) (Entered: 02/11/2019)
03/07/2019	13	Case Reassigned to Judge Honorable Richard M Gergel. Judge Chief Judge R Bryan Harwell no longer assigned to the case. (cwil,) (Entered: 03/07/2019)
03/07/2019	<u>14</u>	MOTION to Amend/Correct <u>1</u> Complaint by Willie Johnson. (Attachments: # <u>1</u> Envelope) Motions referred to Bristow Marchant. (egra,) (Additional attachment(s) added on 3/7/2019: # <u>2</u> Amended Complaint) (egra,). (Entered: 03/07/2019)
03/07/2019	<u>15</u>	MOTION for Preliminary Injunction, MOTION to Transfer Case by Willie Johnson. (Attachments: # <u>1</u> Envelope) Motions referred to Bristow Marchant. (egra,) (Entered: 03/07/2019)
03/07/2019	17	***DOCUMENT MAILED Address update form placed in U.S. Mail to Willie Johnson document sent to Broad River Correctional Institution as listed on envelope. (egra,) (Entered: 03/07/2019)
03/19/2019	<u>19</u>	ORDER directing Clerk not to authorize service and advising plaintiff to notify Clerk in writing of any change of address. Signed by Magistrate Judge Bristow Marchant on 03/19/2019. (egra,) (Entered: 03/19/2019)
03/19/2019	<u>20</u>	REPORT AND RECOMMENDATION of Magistrate Judge Bristow Marchant. It is recommended that Plaintiff's motion for preliminary injunction and transfer (ECF No. 15) be denied. It is recommended that the Court dismiss Plaintiff's Complaint with prejudice and without issuance and service of process. It is also recommended that Plaintiff's motions for a preliminary injunction and transfer (ECF No. 15) and to proceed IFP (ECF No. 2) be denied. Objections to R&R due by 4/2/2019. Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6 or Fed. R. Crim. P. 45. Signed by Magistrate Judge Bristow Marchant on 03/19/2019. (egra,) (Entered: 03/19/2019)
03/19/2019	21	REFERENCE <u>19</u> ORDER granting <u>14</u> Motion to Amend/Correct. The Clerk of Court is directed to file the proposed amended complaint (ECF Nos. 14-1, 16) and support documents (ECF No. 16-1) as the amended complaint in this case. Signed by Magistrate Judge Bristow Marchant on 03/19/2019. (egra,) (Entered: 03/19/2019)
03/19/2019	<u>22</u>	AMENDED COMPLAINT against Bryan P Stirling, filed by Willie Johnson. (Attachments: # <u>1</u> Amended complaint, # <u>2</u> Supporting Documents, # <u>3</u> Envelope) (egra,)

Certificate of Service

I, Willie Johnson, do certify that 9 copies of this
Petition for Rehearing was Mail First Class, Post-
age prepaid, to Respondents Attorneys listed
below Addresses:

Jonathan M. Riddle
Davidson, Allen & Demesters, P.A.
P.O. Box 8568
Columbia, South Carolina 29202



Willie Johnson