

No. 22-5393

IN THE

SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED

AUG 15 2022

OFFICE OF THE CLERK

SETH MITCHEL, CFA — PETITIONER
(Your Name)

vs.

VA, DoD, et al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES Court of Appeals for the Second Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

SETH MITCHEL, CFA
(Your Name)

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QUESTIONS PRESENTED

1. *“When, if ever, can United States Governmental agencies (United States Department of Veterans Affairs, United States Department of Defense) intentionally withhold vitally-important documentation – easily-obtained – from a good-faith Requester, in purposeful violation of the Freedom of Information Act (5 USC §552)”*
2. *“When, if ever, can a United States Court unjustly deny requisite relief under The Privacy Act (5 U.S.C. §552a) when the aggrieved party successfully proves indubitably that United States Governmental agencies and their employees intentionally caused the Complainant direct harm, where such injuries include purposeful FOIA violations”*

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:

- UNITED STATES DEPARTMENT OF VETERANS AFFAIRS
- UNITED STATES DEPARTMENT OF DEFENSE
- DIANA RUBENS
- DIANE DENT
- JEANNE KING
- JOHN & JANE DOES 1-1,000

RELATED CASES

N/A

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	15
CONCLUSION.....	21

INDEX TO APPENDICES

APPENDIX A	Ex parte BERNARD DISMISSING APPEAL DATED 13 APRIL 2022, USCA 2ND CIRCUIT
APPENDIX B	Ex parte BERNARD DISMISSING CASE DATED 8 NOVEMBER 2021, USDC - SD NY
APPENDIX C	Ex parte BERNARD DENYING RECONSIDERATION/EN BANC DATED 18 MAY 2022, USCA 2ND CIRCUIT
APPENDIX D	

APPENDIX E

APPENDIX F

TABLE OF AUTHORITIES CITED

Cases

<i>(Mitchell v. US DEPARTMENT OF VETERANS AFFAIRS</i> , No. 18-CV-2672 (VSB) (S.D.N.Y. Nov. 8, 2021)	5
<i>(Valencia-Lucena v. US Coast Guard</i> , 180 F. 3d 321 - Court of Appeals, Dist. of Columbia Circuit 1999)	17
<i>Chambers v. U.S. Dep't of Interior</i> , 568 F.3d 998, 1006-07 (D.C. Cir. 2009)	18
<i>Department of the Air Force v. Rose</i> , 425 U.S. 352, 361, 96 S.Ct. 1592, 48 L.Ed.2d 11 (1976)	18
<i>Founding Church of Scientology v. National Sec. Agency</i> , 610 F.2d 824, 837 (D.C.Cir. 1979)	18
<i>John Doe Agency v. John Doe Corp.</i> , 493 U.S. 146, 151, 110 S.Ct. 471, 107 L.Ed.2d 462 (1989)	18
<i>John Doe Agency</i> , 493 U.S. at 151, 110 S.Ct. 471	18
<i>Kowalczyk v. Department of Justice</i> , 73 F.3d 386, 388 (D.C.Cir. 1996)	18
<i>Krikorian v. Department of State</i> , 984 F.2d 461, 468 (D.C.Cir. 1993)	18
<i>Nation Magazine v. United States Customs Serv.</i> , 71 F.3d 885, 889 (D.C.Cir. 1995)	18
<i>Oglesby v. United States Dep't of the Army</i> , 920 F.2d 57, 68 (D.C.Cir. 1990)	18
<i>See Campbell v. United States Dep't of Justice</i> , 164 F.3d 20, 27 (D.C.Cir. 1998)	18
<i>Truitt v. Department of State</i> , 897 F.2d 540, 542 (D.C.Cir. 1990)	18
<i>Weisberg v. Department of Justice</i> , 705 F.2d 1344, 1351 326*326 (D.C.Cir. 1983)	18
<i>Weisberg v. United States Dep't of Justice</i> , 627 F.2d 365, 369-70 (D.C.Cir. 1980)	18

Statutes

(5 U.S.C. §552a(g)(4))	19
28 USC §2401(b)	13
38 U.S.C. §1925	16

38 USC §7107 _____ 12

5 USC §552 _____ 12

Other Authorities

Permanent Order 135-26 _____ 6

Permanent Order 161-07 _____ 7

Rules

38 C.F.R. § 20.900(c) _____ 19

38 CFR §20.900(c)) _____ 11

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 A 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 B 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 _____ 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 _____ 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 13 APRIL 2022

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: 18 MAY 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. § 1254(1).

For cases from **state courts**:

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

A timely petition for rehearing was thereafter denied 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. § 1257(a).

CONSTITUTIONAL & STATUTORY PROVISIONS INVOLVED

- 1. Freedom of Information Act ("FOIA") 5 USC §552:**
<https://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/amended-foia-redlined.pdf>
- 2. Privacy Act 5 USC §552a(g):** <https://www.justice.gov/opcl/overview-privacy-act-1974-2020-edition/remedies>

STATEMENT OF THE CASE

I. APPELLANT'S MERITORIOUS FOIA CLAIM

This controversy at its inception dealt with VA's intentional failure to provide sole Plaintiff – Appellant with voluminous and substantive records which it maintained for Plaintiff's cherished Grand Father and United States Veteran – Patriot Henry Milton Sandler (***United States Army, World War II, European Theatre of Operations: Operation Overlord: Bronze Star Medal and Purple Heart recipient***). Specifically, VA had intentionally withheld records vital to Plaintiff's pursuit of an underlying VA Administrative Claim with the sole nefarious intent to frustrate Plaintiff's pursuit of the rightful good faith Administrative Claim, where the surreptitiously hidden records were integral to Plaintiff's VA prosecution; for the sake of clarity, the Records which are hereby still demanded of VA is Mr. Sandler's entire VA Information File for the period 1966 – 1989. These records are easily obtainable by VA and VA's continued obfuscation of them has caused Plaintiff – Appellant significant financial and emotional distress. Appellant's FOIA Claim is meritorious: there is no way that over twenty years of Mr. Sandler's data is not readily available and easily obtainable by VA, and the defendants' statements to the contrary can only be construed as markedly fraudulent.

II. APPELLANT'S MERITORIOUS PRIVACY ACT CLAIM

Plaintiff had proven that not only had VA purposefully withheld vital evidence from Him (***the entirety of Mr. Sandler's VA Records from the period 1966 – 1989***) but also that it did so with dedicated intent to harm Him: VA staffer Dent-Lockett, at least, participated in a devious and outrageous scheme to delay Appellant's receipt of Mr. Sandler's VA Records by illegally hiding them in her personal desk drawer, thereby needlessly and tragically delaying Appellant's meritorious pursuit of the underlying VA Administrative Claim as recognized by BVA itself; Appellant is owed actual damages as VA's malevolent actions are recursively intentional and willful. Appellant's PAC Claim is meritorious: VA hides evidence which is required for Appellant's successful ongoing pursuit of his underlying VA Administrative Claim (which was Advanced and Expedited on the BVA Docket for Good Cause), and such dedicated concealment causes Him

infinite harm and tangible damage. In short, the records still demanded are now Appellant's Records, not Mr. Sandler's Records, and the suppression of said records is an ongoing and irreparable injury to good Plaintiff – Appellant.

III. DISTRICT COURT PROCEEDINGS

After thoroughly exhausting His VA administrative appeals, Appellant Filed good faith Civil Action with The District Court of the Southern District of New York on 26 March 2018 in pursuit of his meritorious and clearly stated FOIA Claim, where He was granted leave to proceed *in forma pauperis*. VA answered Plaintiff - Prosecutor on 20 August 2018 and moved for summary judgment on the FOIA Claim on 3 December 2018. Appellant was granted Leave to File First Amended Complaint on 14 March 2019 which He did File on 29 March 2019, adding DoD as Defendant and incorporating the meritorious PACs into the lawsuit.

On 8 November 2021, the day before Appellant's birthday, United States District Judge Vernon S. Broderick in his devastating Opinion and Order erred in unjustly denying Appellant's FOIA and PAC Claims and Appellant's additional good faith requests for relief, thereby compelling Appellant to good faith File Notice of Appeal to United States Court of Appeals for The Second Circuit on 28 November 2021. (*Mitchell v. US DEPARTMENT OF VETERANS AFFAIRS*, No. 18-CV-2672 (VSB) (S.D.N.Y. Nov. 8, 2021)).

STATEMENT OF THE FACTS

POINTS 1 – 43, Docket No. 79 (A10)

1. On 26 May 1942 Henry was Inducted into Selective Service at Fort Jay, Governor's Island, New York;
2. On 13 June 1944, roughly 1700 hours, St. Lô, France, European Theatre of Operations, Henry was severely wounded from shrapnel released by a German 88mm shell on the Normandy battlefield front, as 1st Gunner, Anti-tank Gunman on 37mm and 57mm guns, Headquarters, 116th Infantry Regiment, 29th Infantry Division, Antitank Company; evacuated post-injury to 129th General Hospital, England for recuperation;
3. On 9 January 1945 Henry was Awarded Purple Heart for wounds sustained in Normandy, France in June 1944 (whilst working for United States Army in London, England in 3143rd Signal Service Company after recuperating from battlefield wounds);
4. On 29 June 1945 Henry was Demobilized at the Convenience of the Government of the United States of America;
5. On 13 September 1965 Henry's NLSI "JR" Policy in the Face Amount of \$US7,000.00 became effective and remains so today;
6. On 15 May 2014 via Permanent Order 135-26 The United States Army Re-Affirmed the Award to Henry of the Purple Heart as a result of Good Plaintiff – Prosecutor's audit of Henry's United States Military Records;
7. On 15 May 2014 via Permanent Order 135-27 The United States Army Re-

Affirmed The Army Good Conduct Medal issued to Henry for his Service as a result of Good Plaintiff – Prosecutor's audit of Henry's United States Military Records;

8. On 10 June 2014 via Permanent Order 161-07 The United States Army made a First-time Award of the Bronze Star Medal to Henry as a result of Good Plaintiff – Prosecutor's audit of Henry's United States Military Records;
9. On 29 December 2014 Good Plaintiff – Prosecutor requested of VA a full copy of Henry's military-based insurance records held at VA from the period 1942 - Present; only a redacted version of these records was provided to Him, *with no records for the period 1966 – 1990 included whatsoever;*
10. On 7 January 2015 VA denied in bad faith Good Plaintiff – Prosecutor's formal request for Henry's full, unredacted insurance file;
11. On 13 January 2015 Good Plaintiff – Prosecutor send an email to Dent-Locket requesting once again Henry's full, unredacted insurance file including the information withheld for the entire period of 1966 – 1990;
12. On February 2015 United States Department of Veterans Affairs, Philadelphia Regional Benefit Office unjustly denied Good Plaintiff – Prosecutor's Demand for Payment under Henry's NLSI JR Policy with Face Amount \$US7,000.00;
13. On 23 February 2015 Good Plaintiff – Prosecutor initiated the BVA Appeals process for the Bad Faith Insurance Claim under the NLSI JR Policy;
14. On 29 February 2016 Dent-Locket writes to BVA, regarding Plaintiff's in-person Hearing Request, that *“....the insurance and claims files of the referenced veteran are temporarily transferred to your office.....”* a full month

before Dent-Lockett allegedly switched jobs and offices and hid Mr. Sandler's UNIQUE, ORIGINAL Insurance and Claim Files in her Insurance Center office without communicating to any of her colleagues that such sensitive, private, material non- public information was kept there illicitly.

15. On 21 April 2017 Good Plaintiff – Prosecutor received an email from King stating: “....*Mr. Mitchell: RE: FOIA #15-05402-FP I will be requesting the original insurance folder of veteran Henry Sandler from the federal archives facility that is currently holding it among its records. The file # for the veteran's insurance policy is V190071....*”;
16. On 28 April 2017 Good Plaintiff – Prosecutor received an email from King stating: “...*Mr. Mitchell: RE: FOIA # 15-05402-FP I regret to inform you that I will not able to forward to you a copy of the contents of the insurance folder of veteran Henry Sandler, File # V 190071. The folder is missing from the VA archives facility and cannot currently be located. Sincerely, Jeanne King...*”;
17. On 13 June 2017 Good Plaintiff – Prosecutor attended his BVA Hearing before Judge Larkin at VA Headquarters in Washington, DC without the benefit of a full set of information in Henry's insurance file from the period 1942 – Present, further aggrieving him to a significant extent.
18. On 8 August 2017 Good Plaintiff – Prosecutor received an email from King stating: “....*Mr. Mitchell: I have discussed in my previous correspondence that all of the information available to this office regarding veteran Henry Sandler has already been provided to you, and unfortunately the insurance folder in question was not able to be located by the federal records center of*

jurisdiction. I will certainly notify you if any new information should become available, but that is unlikely to occur in this case. Sincerely, Jeanne King....";

19. On 29 August 2017 Good Plaintiff – Prosecutor was written by Ms. Kenyatta McLeod-Poole, Acting Chief Counsel, Information Law Group, Office of the General Counsel, VA stating that, in fact, Henry's insurance file had been *unlawfully held by Dent-Lockett herself* instead of properly being housed in the appropriate "Federal Records Center" which was the only reason that King had been unable to locate it prior to the 13 June 2017 BVA Hearing; the matter was then remanded back to King and Dent-Lockett for them to then provide Good Plaintiff – Prosecutor with the "*additional records*". Such "*additional records*" have been unconscionably withheld from him to this day, further aggrieving Him to a significant extent;

20. On 29 August 2017 Ms. McLeod-Poole advised via her Letter that Good Plaintiff – Prosecutor had "*....the right to file a civil action against the Department in an appropriate United States District Court....*";

21. On 22 August 2017 BVA Judge Larkin Issued the Preliminary Order under Docket No. 15-42 544A that required Philadelphia Regional Benefit Office under no uncertain terms to:

- a. "...Obtain [exhaustively] and associate with the Veteran's Claim File all VA Insurance Records...";
- b. "...Complete any development deemed necessary in light of evidence obtained pursuant to [Topic] 1..."; and

- c. “....Re-adjudicate the Veterans Claim...where this Claim must be afforded expeditious treatment....”;
- 22. On 23 September 2017 Good Plaintiff – Prosecutor send via email to Rubens a mutually beneficial good faith Offer of Settlement to the outstanding Bad Faith Insurance Claim under Henry’s Account; Rubens has failed to provide any answer since; given that six months have passed, Good Plaintiff – Prosecutor concludes that the defendants have refused to Afford this Claim Expeditious Treatment in stark bad faith and in purposeful contempt of the BVA Preliminary Order dated 22 August 2017, further aggrieving this Claimant to a significant extent;
- 23. On 3 July 2018 PHRBO issued a “Supplemental Statement of the Case in The Appeal of Seth Mitchell” where it deceitfully stated that “....*no additional evidence was found in the VA Insurance Record....*” based upon the BVA Order to Remand;
- 24. On 14 August 2018 PHRBO notified The Prosecution that “....Mr. Sandler’s Records are being placed in the docket of BVA for disposition....”;
- 25. On 18 September 2018 Mr. David Spickler, Vice Chairman, BVA notified via Postal Letter The Prosecution that Mr. Sandler’s Claims Folder was suspiciously being transferred not to BVA for Appeal Claim adjudication but to St. Petersburg RBO “....*for further Docket development....*”;
- 26. On 23 October 2018 Sole Claimant applied for a VA Home Loan Benefit Certificate of Eligibility under Henry’s Account;

| D.

27. On 29 October 2018 Department of Veterans Affairs Cleveland Regional Loan Center Loan Production Department unjustly denied Sole Claimant's Application for Certificate of Eligibility;
28. On 15 November 2018 K. Osborne, Vice Chairman, BVA notified via Postal Letter The Prosecution that *“....your Appeal has been returned to the BVA and has resumed its place on the Docket.....”* without any evidence, information, or proof that any additional development or value-add occurred at St. Petersburg RBO;
29. On 26 November 2018 VA via phone call with The Prosecution VA confirmed that a search of VA Information Systems evidenced that no Federal Home Loan Benefit was ever issued under Mr. Sandler's Account from the period 1945 - Present in the States of New York, New Jersey, and Florida;
30. On 19 November, 27 November, and 10 December 2018, VA Home Loan Production refused unjustly via email to provide written substantiation of the results of Plaintiff's 26 November 2018 Call with VA regarding the fact that Mr. Sandler's Federal Home Loan Benefit remains unused and unquestionably available to Good Plaintiff - Prosecutor and Sole Claimant SETH MITCHELL, CFA;
31. On 3 December 2018 the FTC accrued when Plaintiff was informed via The Weaver Declaration that various Federal employees including but not limited to the nefarious Dent - Lockett acted with negligence regarding the misplacement of Mr. Sandler's full unredacted original VA Claims File, which resulted in the unconscionable delay *to this day* of an expedited final

adjudication of the underlying VA Administrative Claims (see 38 USC §7107 and 38 CFR §20.900(c)).

32. On 28 January 2019 VA confirmed via Letter response to Plaintiff's FOIA request under 5 USC §552 that no Federal Home Loan Benefit had ever been extended under Mr. Sandler's Account from the period 1945 – Present;
33. On 19 March 2019 Sole Claimant SETH MITCHELL presented himself to VA New York Regional Office at 245 West Houston Street, New York County, New York, 10014, to verify His identity and direct matrilineal blood tie to Mr. Sandler by providing VA with Mr. Mitchell's United States Passport Card, United States Social Security Card, City of New York Long Form Birth Certificate, and Mr. Sandler's WD-AGO Form 53-55;
34. On 19 March 2019 VA New York Regional Office "added" Plaintiff's business email address to Mr. Sandler's DEERS Record, yet Plaintiff did not receive requisite follow-up from DoD or VA regarding username and password to access DS LOGON subsequent to such in-person identity and familial verification;
35. On 20 March 2019 Mr. Richard Ha, JD, CIPP/G, OSVA FOIA/Privacy Officer, Office of the Executive Secretary, Office of the Secretary, U.S. Dept. of Veterans Affairs (OSVA) forwarded Claimant's email request for VA Dispute Resolution/Mediation Services to Mr. John Buck, VA FOIA Public Liaison;
36. On 22 March 2019 the Prosecution lodged a formal FOIA request of DoD for any and all records under Mr. Sandler's DEERS/eBenefits Account where such good faith request remains unfulfilled (i.e. Prosecution does not possess the

responsive records search results and does not possess the username and password required to obtain online access to our DEERS/eBenefits Account;

37. On 26 March 2019 Sole Claimant presented Mr. Buck via email with a fair and reasonable Settlement Offer to resolve the meritorious Privacy Act Claim, with hard deadline for VA's agreement in principle of 28 March 2019;
38. On 29 March 2019 Sole Claimant's 26 March 2019 Settlement Offer sent to Mr. Buck expired without any response from VA whatsoever;
39. On 29 March 2019 Plaintiff Files the FAC after obtaining Leave to File an Amended Complaint from Court on 14 March 2019 and without any good faith offer of private settlement put forth privately by the defendants to resolve any and all outstanding litigation Claims asserted meritoriously against them in this Action.
40. On 26 July 2019 Plaintiff sent a FOIA request to Mr. Bruno Leuyer, Defense FOIA Public Liaison with copy to Mr. Cowart, and this good faith FOIA request has gone totally unanswered;
41. On 17 August 2019 sole Claimant Filed Form SF-95 on a timely basis with an acknowledgment by VA that the Claim was received on 21 August 2019.
42. On 3 January 2020 VA illegally denied the FTC, providing sole Claimant with guidance that *“.....the FTCA provides that when an agency denies an administrative tort claim, the claimant may seek judicial relief in a proper Federal District Court....the claimant must initiate the suit within six (6) months of the mailing of this notice as shown by the date of this denial...see 28 USC §2401(b)....in any FTCA lawsuit, the proper party defendant is the United*

States, not the Department of Veterans Affairs (or an individual health care provider).....”

43. On 2 February 2020 Good Plaintiff – Prosecutor Filed with this Court a Motion for Leave to Amend the First Amended Complaint to incorporate the FTC into this Action, where judicial efficiency dictates that this Court should adjudicate said FTC given that the same underlying facts give rise to the FOIA, Privacy Act, and FTC Claims.
44. 29 September 2020 the lower court unjustly denied Appellant’s Filing of a Second Amended Complaint (**Docket No. 81 (A10)**).
45. On 8 November 2021 the lower court erred in its entirety by unfairly granting defendants’ summary judgment to dismiss, and further injured this irreparably and intentionally damaged Appellant by incorrectly denying Appellant’s cross motion for summary judgment (**Docket No. 86 (A11)**).
46. On 28 November 2021 Appellant Filed good faith Notice of Appeal with this good court (**Docket No. 87 (A11)**).

REASON FOR GRANTING THE PETITION

The lower court erred egregiously as a matter of fact and law in denying Appellant's FOIA, PAC Claims, and ancillary Claims for civil, injunctive, and declaratory relief; whilst the defendants will attempt to obfuscate and overcomplicate this controversy in their flawed efforts at frustrating Appellant's pursuit of his meritorious and clearly – articulated Administrative VA and Federal Civil Claims, Appellant's successful argument wins due to its sheer simplicity and veracity:

1. The United States Government maintains an exquisitely detailed and comprehensive information file on Veteran – Patriot Sandler from the period 1945 – Present yet refuses to this very day to release to Appellant that entire portion of the File from 1966 – 1989 solely for the purpose of frustrating Appellant's pursuit of an underlying Administrative Claim at VA; whilst VA may possibly have conducted an “adequate search” it is simply refusing to provide the entire set of required data to Appellant. The defendants have not sought to defend their stance of failing to disgorge the vital materials from 1966 – 1989 whatsoever, and therefore none of this information is exempt from Appellant's FOIA request; Appellant is confident that after trial by jury he would be victorious.
2. Judge Broderick's stance that Appellant's PAC “is non-cognizable” is wholly-flawed: in agreeing with the defendants, the lower court unjustly and defectively concludes that, as per *Warren*, “...the Second Circuit found that because plaintiff was not entitled to his father's records....SSA's refusal to provide them did not violate the Act...” thereby finding that here, Appellant isn't owed the requested records from the period 1966 – 1989 –a blatant error of fact. Veteran – Patriot Sandler's VA Records now belong in their entirety to Appellant – **they are now Seth's and not Henry's** – and the entirety of those records being received by Appellant is crucial to the successful pursuit of the underlying Administrative Claim at VA. Additionally, contrary to the lower

court's determination, Appellant has proven indubitably that Dent-Lockett's purposeful misplacement of the Records (intentionally, maliciously, and illegally keeping the original copy in her personal filing cabinet which delayed by years Appellant's pursuit of the underlying Administrative Claim at VA) at least proximately caused him monumental harm – severe emotional and definitive financial distress, infinite mental anguish, and tangible anxiety. It shocks the consciousness of any reasonable person for the lower court to state callously and uncaringly that “.....*rather than being harmed by the BVA action, Plaintiff's claim was advanced by its remand and directions.....indeed, shortly after the remand, the Records were located...*” for the simple fact that whilst the “Records” were “located” the requisite information from the Period 1966 – 1989 was not disgorged ever to irreparably injured Appellant! Appellant is confident that after trial by jury he would be victorious.

ARGUMENT

I. VA'S SEARCH FOR RESPONSE RECORDS FOR THE PERIOD 1966 – 1989 IS INEXHAUSTIVE, INADEQUATE, AND MADE IN BAD FAITH: DEFENDANTS' MOTION FOR SUMMARY JUDGMENT MUST FAIL

The gravamen of Appellant's FOIA Claim is that it is clear from the Record that instances of intentional wrongdoing on the part of VA regarding information security lapses and violations (such as the well-documented Dent-Lockett crimes) simply cannot be overlooked by the courts, particularly when the withheld information (the VA Record from the period 1966 – 1989) relates directly to successful pursuit of an underlying Administrative Claim: “...*other records in Sandler's insurance folder concern his attempt to obtain....insurance for Veterans with disabilities who served in the uniformed services between October 1940 and January 1957....known as Veterans Reopened Insurance (“VRI”) and is currently codified at 38 U.S.C. §1925...records from Sandler's insurance folder indicate that he did not pay in full the required premium...*” (**Supplemental Weaver Declaration, Docket No. 71 (A9)**). Appellant Rejects in full this assertion by VA, given His acting as character witness for his Cherished Grand Father given that Henry cannot

now Act in this capacity for Himself. It is more than just a coincidence that Mr. Sandler's records "end" in 1966 at just the time that defendants contend that "*he did not pay in full the required premium*" – where the requisite information flow conveniently only resumes over two decades later: good Court – this is a coverup of monumental proportions!

Even the defendants recognize the shoddy recordkeeping and information security lapses evident on Mr. Sandler's account "*....the VA has been unable to locate a copy of the documents produced to Plaintiff in 2014 that sets forth the precise information that it withheld from the production...*" (**Cowart Letter, Docket No. 28 (A5)**)

Defendants' contention that "*....it would be an enormous administrative burden to create a receipt for each premium payment received and maintain these receipts in millions of insurance folders...to evidence issuance of a life insurance policy, the VA would send the Veteran an insurance certification....the VA would not keep a copy...in a Veteran Policyholder's insurance folder....*" (**Supplemental Weaver Declaration (A9)**) is utterly specious in that it is a total impossibility that whilst Mr. Sandler maintained at least four (4) United States Governmental life insurance policies over the period 1942 - 1989:

- N2664286
- V190071
- N20689285
- JR80906363

where there is absolutely no written evidence whatsoever of said in-force policies from the period 1966 – 1989. VA is clearly failing to disgorge said evidence to Appellant in stark bad faith and if it is illegally withholding requisite information from Henry and Seth than Appellant asks this good Court, how many other Veteran – Patriots and their families are also unwitting "information" victims of this most malicious VA?

As per *Valencia – Lucena v. Coast Guard* (*Valencia-Lucena v. US Coast Guard*, 180 F. 3d 321 - Court of Appeals, Dist. of Columbia Circuit 1999):

"....*The law in this circuit on agency obligations under FOIA is long-established and embraces the congressional purpose of open government. See Campbell v. United States Dep't of Justice, 164 F.3d 20, 27 (D.C.Cir. 1998).* While recognizing that the number of requests for information may pose burdens on agencies, Congress determined its

ultimate policy of open government should take precedence. See John Doe Agency v. John Doe Corp., 493 U.S. 146, 151, 110 S.Ct. 471, 107 L.Ed.2d 462 (1989); Department of the Air Force v. Rose, 425 U.S. 352, 361, 96 S.Ct. 1592, 48 L.Ed.2d 11 (1976). The fundamental principle animating FOIA is public access to government documents. John Doe Agency, 493 U.S. at 151, 110 S.Ct. 471. Accordingly, this court has required agencies to make more than perfunctory searches and, indeed, to follow through on obvious leads to discover requested documents. Campbell, 164 F.3d at 28. An agency fulfills its obligations under FOIA if it can demonstrate beyond material doubt that its search was "reasonably calculated to uncover all relevant documents." Truitt v. Department of State, 897 F.2d 540, 542 (D.C.Cir. 1990) (quoting Weisberg v. Department of Justice, 705 F.2d 1344, 1351 326*326 (D.C.Cir. 1983)). "[T]he agency must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested." Oglesby v. United States Dep't of the Army, 920 F.2d 57, 68 (D.C.Cir. 1990) ("Oglesby I"). The agency "cannot limit its search" to only one or more places if there are additional sources "that are likely to turn up the information requested." *Id.*; see also Campbell, 164 F.3d at 28.....A requester dissatisfied with the agency's response that no records have been found may challenge the adequacy of the agency's search by filing a lawsuit in the district court after exhausting any administrative remedies. See 5 U.S.C. § 552(a)(6)(A)(i) & (C); Oglesby I, 920 F.2d at 67. At the summary judgment stage, where the agency has the burden to show that it acted in accordance with the statute, the court may rely on "[a] reasonably detailed affidavit, setting forth the search terms and the type of search performed, and averring that all files likely to contain responsive materials (if such records exist) were searched." Oglesby I, 920 F.2d at 68; see also Kowalczyk v. Department of Justice, 73 F.3d 386, 388 (D.C.Cir. 1996); Weisberg, 705 F.2d at 1351. However, if a review of the record raises substantial doubt, particularly in view of "well defined requests and positive indications of overlooked materials," Founding Church of Scientology v. National Sec. Agency, 610 F.2d 824, 837 (D.C.Cir. 1979), summary judgment is inappropriate. *Id.*; see also Oglesby v. United States Dep't of the Army, 79 F.3d 1172, 1185 (D.C.Cir. 1996) ("Oglesby II"); Krikorian v. Department of State, 984 F.2d 461, 468 (D.C.Cir. 1993); Weisberg v. United States Dep't of Justice, 627 F.2d 365, 369-70 (D.C.Cir. 1980). Most recently, for example, in Campbell, 164 F.3d at 28, the court held a search inadequate when it was evident from the agency's disclosed records that a search of another of its records system might uncover the documents sought. So too here, on de novo review, see Nation Magazine v. United States Customs Serv., 71 F.3d 885, 889 (D.C.Cir. 1995), the record indicates that the search was deficient and consequently summary judgment for the Coast Guard was not proper...."

As per *Valencia*, in this matter, VA has failed “to make a more than perfunctory search”, “follow through on obvious leads to discover requested documents”, and “to demonstrate beyond material doubt that its search was reasonably calculated to uncover all relevant documents”; here, indubitably, “...a review of the record raises substantial doubt, particularly in view of well-defined requests and positive indications of overlooked materials, summary judgment is inappropriate.....”

II. THE LOWER COURT'S CITATION OF WARREN IS FUNDAMENTALLY FLAWED IN ITS DENIAL OF APPELLANT'S PAC

In this matter, Appellant seeks rightful damages under The Privacy Act (5 U.S.C. §552a(g)(4)) and yet does not seek to compel the defendants to disgorge the VA Records at controversy under said Act as per *Warren* “....the Act does not provide an individual with a right to demand materials pertaining to him but contained only in another individual's records...”. Appellant's rightful information demands fall under FOIA, not The Act, and the defendants have recognized Appellant's rightful Claim to obtain any and all records requested under FOIA (although they recursively fail to provide all reasonably requested records). In fact, the BVA has stated clearly in its Decision of 22 August 2017:

“...Accordingly, the case is REMANDED for the following action: (Please note, this appeal has been advanced on the Board's docket pursuant to 38 C.F.R. § 20.900(c). Expedited handling is requested.) 1. Using all available sources, obtain and associate with the Veteran's claims file all VA insurance records, to specifically include any and all records regarding the Veteran's National Service Life Insurance Policy ([redacted]) as identified by the Appellant. Document the efforts made to obtain these records along with any and all negative responses. Specifically, document any and all correspondence with, and information obtained from, the VA Office of General Counsel regarding their investigation into attempts to locate and obtain the aforementioned records.....”

Given that the responsive records are owed to Sole Claimant and Appellant Seth Mitchell, CFA as per BVA and FOIA, and not The Privacy Act, it is conclusive that the lower court has erred clearly based upon irrefutable fact applied to applicable and

relevant law regarding the cognizable nature of his PAC.

III. CONTRARY TO THE LOWER COURT, APPELLANT'S PAC IS MERITORIOUS AND PAYMENT IS DUE IMMEDIATELY

Appellant has proven indubitably that not only has "...*the misplacement of Records...*" caused him direct and tangible harm, VA's intentional failure to disgorge to this day the full set of Records [Period 1966 – 1989] coupled with Dent-Lockett's wonton criminality, for instance, evidences the nefarious intent to cause damage, injury and destruction, via the frustration of Appellant's Prosecution of his underlying meritorious VA Administrative Claim.

Contrary to the lower court's citation of *Chambers* (*Chambers v. U.S. Dept. of Interior*, 568 F.3d 998, 1006–07 (D.C. Cir. 2009) in its flawed logic unjustly denying Appellant's PAC, "...*explaining that to recover damages a plaintiff must establish among other things that he was 'aggrieved by an adverse determination' which was proximately caused by "the agency's reliance on . . . inaccurate records.....*" Appellant posits that that is exactly what He did, as per the lower court record: He has been aggrieved by the defendants' adverse determination to deny Him rightful access to the VA Insurance Record from the Period 1966 – 1989, and then the BVA's adverse determination to deny His Administrative Claim (**Docket No. 84 (A10)**) based solely on the failure of VA to provide the requisite evidentiary record from the Period 1966 – 1989.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Seth

Date: 14 AUGUST 2022

27.