

In the Supreme Court of the United States

No. 22-5820

S. PATRICK MENDEL, et al

Petitioner

v.

LIANE RANDOLPH, et al.

Respondents

Supreme Court, U.S.
FILED

FEB 01 2023

OFFICE OF THE CLERK

*ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT*

PETITION FOR REHEARING

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INTRODUCTION

Pursuant to Rule 44, Petitioner S. Patrick Mendel requests rehearing and reconsideration of the Court's January 9, 2023 order denying his Petition for a Writ of Certiorari, on the grounds of substantial intervening circumstances and substantial grounds not previously presented. [See Bullet Points below]¹

The *substantial intervening circumstances are the murders*, the entirely preventable murders of innocent citizens and the denial of Petitioner's rights to enforce the federal transportation laws and Petitioner's right to be granted a remedy for his injuries as the federal transportation laws provide.

This Court not only denied Petitioner's Writ, BUT ALSO denied his Application for Injunctive Relief which would have prevented the murders of innocent Uber drivers that have occurred during these proceedings and those that continue to occur, as well as Petitioner being forced to file for bankruptcy because of this Court's denial. The defendant/respondents unlawful conduct destroyed Petitioner's federally lawful occupation and business; while this Court's denial of the Writ sought deprives Petitioner of his rights and remedies ALL contrary to the jurisdiction of these issues under laws of Congress as provided by the U.S. Constitution.

At no time has this Court or any federal court in any circuit or district ever applied the federal transportation laws to the conduct of Uber Technologies Inc. a defendant to more than 400 federal court cases who unlawfully contracts with millions of Citizens al across America!

¹ Because Petitioner believes that no Justice has even seen the covers of his moving papers before this Court, and still may not, this Petition is being written simply so that the general public via Petitioner's "Letters to the Editors of media and Letters to Congress, of this brief may inform all citizens that this Court abuses its discretion and refuses to enforce the federal laws designed to prevent the murder of innocent citizens and protect the rights of the poor and "pro se" litigants.

Additionally, Petitioner will send copies of this action to the families of the murdered innocent citizens, so they will know who had the responsibility to prevent such criminal conduct in the first place. Maybe their future efforts will gain justice.

These failures to enforce the law and provide remedies are a shocking abdication of the responsibilities assigned to the courts by Congress...and here it continues.

After this Petition was properly filed, including an Application for Injunctive Relief, as is Petitioner's federal statutory right under federal laws 49 U.S.C. §14704 and 49 U.S.C. §§14704, 14707, [49 CFR §372.101], this Court's denial of the Writ is an error in defiance of the laws and regulations of Congress which imposed upon the federal courts the obligation to enforce the federal transportation laws, without a grant of discretion, and the subject of Petitioner's Writ for Certiorari. Let's not forget Petitioner's Constitutional First Amendment rights to Petition the government for a redress of grievances, also denied. Where there is a right there must be a remedy in a country that claims it is governed, "by the rule of law and not of men." *Marbury v. Madison*, 5 U.S. 137 (1803).

Additionally, the Constitution of the United States, Article 3, Section 2, provides, "In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, **with such exceptions, and under such regulations as the Congress shall make.**" The denial of Petitioner's Writ, by this Court is a plain defiance of the Constitutional grant of power and authority of Congress to impose the jurisdiction of the federal Courts under Article 3, Section 2 to enforce the transportation laws and provide remedies.

This Court's expanded abuse of discretion denied Petitioner his federal statutory rights under 49 U.S.C. §§14704 and §14707 to enforce the federal transportation laws, granted by Congress, in this Court and the lower courts under these applicable laws: 49 U.S.C. §13506(b)(2), (see also) 49 U.S.C. §§13901, 13904, 13904(d), 13904(f).

Petitioner has a federal statutory right to demand that the federal courts enforce the laws, as Congress by law requires, and the federal courts must provide him a remedy for the destruction of his legal passenger transportation business, a remedy he is entitled to as a matter of law. A right without a remedy is no right at all. Petitioner has a statutory right to a remedy under federal law 49 U.S.C. §14704(2), for damages he sustained from the unlawful conduct of Respondents and Petitioner cannot and should not have been denied the enforcement and remedy by this Court as provided by law.

There are substantial reasons that this Court's denial must be reversed:

- The denial is flagrantly disobedient to the laws of Congress requiring federal court jurisdiction to enforcement of their federal transportation laws, with applicable remedies, designed to prevent criminal murder, rape and assault and keep a level competitive passenger transportation playing field.
- Petitioner has a federal statutory right to bring before the federal courts his injuries caused by the Respondent/Defendants unlawful conduct, and a right to secure the remedy he is entitled to by having the federal courts enforce the laws, preserve rights and provide remedies, as Congress has enacted.
- The evidence is undisputable and contradicts this Court's abuse of discretion that defendants' [all] California Public Utilities Commission "permits" with the aid of unconstitutional California State laws, allowing passenger transportation arranged by Uber with private motor vehicles for compensation, in conflict and contrary to federal transportation laws, [49 CFR §372.101] which prohibit the selling and arranging of passenger transportation to private motor vehicles as an occupation or business for compensation.

Uber Technologies, Inc., and its subsidiaries' continue to operate "unlawful rideshare services" in defiance of the federal transportation laws with the unconstitutional aid of the State of California and its defendant/respondent CPUC agency, whose combined unlawful conduct continues unabated stimulating criminal murder contrary to Congress's regulatory transportation scheme designed to prevent murder, rape and assault.

All this criminal mayhem occurs because unlike buses and airlines who require "positive identification of passengers," Uber does not positively "identify" any passenger identical to the conduct of the travel bureaus of the 1940's and as more fully explained by this Court in *California v. Zook*, 336 U.S. 725 (1949).

❖ The Secretary of Transportation has by law discretion and by direction of Congress is to refrain exercising its discretion in the enforcement; and will not enforce the transportation laws. SEE: US SUPREME COURT CASE, *New Prime dba Prime Inc. and Success Leasing v. Owner-Operator Independent Drivers Association, Inc. et al.*, NUMBER 99-1169, BRIEF FOR THE FEDERAL RESPONDENTS IN OPPOSITION, by the esteemed Seth Waxman, Solicitor General of the United States, explaining why the Department of Transportation does not and will not exercise their jurisdiction to enforce the laws sought to be enforced here by the Petitioner. You don't seem to believe Petitioner, then believe as you have before the Solicitor General of the United States in his brief to this Court!

THEREFORE: Because this Court denied Petitioner's Writ of Certiorari, Petitioner, the murdered drivers, and the millions of other "rideshare drivers" have no right to enforcement of the law and no remedy for their injuries to rights and property contrary to the laws of Congress!

The result of this Court's denials was not limited to a denial of Petitioner's rights, and depriving him of a remedy the law provides for and ignored by this Court. This Court's denial, lead directly to the *preventable murder* of innocent Americans, as Petitioner warned it would, because this Court refused to enforce the laws of Congress and its assignment of jurisdiction over enforcement of the transportation laws upon the federal courts as Congress has the right to do under Article 3, section 2 of the US Constitution!

This Court's recent "leaked abortion decision" was alleged to have been done by a "Clerk." Investigation of which failed to find the leaker. Don't kid yourself, we humble citizens knew from the announced "investigation" that no "Clerk" or "Leaker" would be found. We believe it was the intention of this Court to test the waters of their decision out of fear....fear of reprisal...the Court should fear the complete loss of credibility, courage and honor...not the people of the United States!

This Court has had the opportunity since at least May 6, 2020, to enforce the federal transportation laws designed to prevent the rampant murders and destruction of legal transportation businesses like Petitioner's here, yet it continues to abuse its discretion, through its intermediaries, in spite of the plain purpose and meaning of the laws of Congress. Petitioner lists those who were murdered by the unidentified passengers Uber assigned to them. Listed are only those murdered since The Honorable Justice Elena Kagan summarily denied Petitioner's proper and timely Application for Injunctive Relief, on November 6, 2022, to stop the murders.

IN MEMORIAM

- Caron Arterberry, 36, Uber driver, was shot and murdered, **November 2022**
 - Media Web site: <https://wgntv.com/news/chicagocrime/uber-driver-shot-and-killed-passenger-wounded-in-south-side-ambush/>

- Richard Skelskey, 80 year-old, Uber driver, was shot to death on Barron Avenue near Getwell Road, Memphis Police confirmed to FOX13. **Nov. 2022**
 - Media Web site: <https://www.fox13memphis.com/news/local/family-mourns-80-year-old-rideshare-driver-shot-death-memphis/MDQFO52AKBARHICXJVL54LJVWQ/>
- Yolanda Dillion, 54, Uber driver was knifed multiple times by her passenger, and later died from her wounds, **December 2022**
 - Media Web site:

<https://www.investigationdiscovery.com/crimefeed/murder/man-confesses-to-killing-his-uber-driver-posting-a-video-of-the-attack-on-facebook>
- Ainzurgal Totakhil, Uber Driver, murdered, **December 2022**
 - Media Web Site: <https://www.foxcarolina.com/2023/01/10/father-7-killed-while-driving-uber-family-says/>
- Julia Holland, Uber Driver, was shot in the back of her head and killed over New Year's weekend, **January 2023**
 - Media web site: https://www.themountaineer.com/news/uber-driver-killed-new-year-s-eve-in-canton-area/article_706e549c-934e-11ed-972f-53a999fd6248.html

None of these citizens should have been driving for Uber and would be alive and well. The families of the murdered are owed an apology.

- Over 50 Uber and Lyft drivers were murdered by their passengers since 2017, and since April of 2022 to present more than 75. This Court had the opportunity since May of 2020, to stop the murders by simply enforcing the federal transportation laws as Congress requires by law.

SEE: *Mendel v. Uber Technologies, Inc*, US Supreme Court case 19-8075, filed March 23, 2020, Certiorari Denied, May 2020

Question: 1st. Has the Petitioner a right to the relief he demands?

His right originates in federal law 49 U.S.C. §§14707 and 14704. The law, §14707 is entitled, “Private Enforcement of registration requirement.” Respondent/Defendant Uber Technologies Inc., is required by law to “register as a motor carrier under 49 U.S.C. §13901, and because it brokers passenger transportation it must also comply with 49 U.S.C. §13904(d) and §13904(f). Uber has not done so and competes against Petitioner unlawfully. The undisputed evidence is at www.SAFER.gov, the official US Department of Transportation web site that is kept current for law enforcement, the Courts, and citizens at large to determine any transportation provider’s lawful compliance with the transportation laws.

- Uber has no federal permit as a motor carrier, under §13901, and §13904(d) as required.
- Uber has not posted Bonds and Insurance required of passenger brokers by federal law §13904(f).
- Uber has no written leases with their contracted driver providers as required under 49 U.S.C. §14102, for “Leased Motor Vehicles” not owned by Uber.
- Significantly, Uber does not carry federally required “workmen’s compensation” liability insurance, to cover their contracted rideshare drivers who have been murdered, or lost their lives due to accidental death or dismemberment or disability.

The Defendant/Respondents California Public Utilities Commission DOES NOT REQUIRE any “rideshare” “unlawful” provider “Uber” to carry workmen’s compensation insurance. WHY? When the respondent California Public Utilities Commission created their unlawful “rideshare” – their Transportation Network Company permit, they were improperly lobbied by Lyft, through a former commission member, unauthorized lobbyist named Susan Kennedy, publically

fined for her conduct, to formulate their Transportation Network Company permits leaving out the requirement and expense of workmen's compensation.

Petitioner, as a lawful State prearranged "black car" passenger transportation provider, under 49 U.S.C. §14501(d)(1)(B), "Federal Authority over interstate transportation" - was required under California law to carry workmen's compensation insurance. Again, why the difference for "rideshare"?

Petitioner's right to enforcement and to a remedy is found under, §14704, he is entitled to, Rights and remedies of persons injured by carriers or brokers. This federal statutory right AND it's remedy belongs to the Petitioner, and neither this Court or the lower Courts have the right to deny these rights and remedies by the improper use of discretion, and imposing "judicial doctrines" like res judicata, which occurred here, which improperly places "judicial doctrines above the laws enacted by Congress. Two separate instances of, "unlawful conduct" occurring after previous judicial determinations are final, IS NOT the same cause of action and cannot be disregarded by the judicial doctrine of res judicata as was done here. This error, like the denial of Petitioner's Writ cannot or should not stand!

Federal law 49 U.S.C. §13506 (b)(2) provides an exception to exemptions by stating:

(2) transportation by motor vehicle provided casually, occasionally, or reciprocally but not as a regular occupation or business, except when a broker or other person sells or offers for sale passenger transportation provided by a person authorized to transport passengers by motor vehicle under an application pending, or registration issued, under this part;

This law is further explained and enforced with federal regulation 49 CFR §372.101 which provide:

§ 372.101 Casual, occasional, or reciprocal transportation of passengers for compensation when such transportation is sold or arranged by anyone for compensation.

The partial exemption from regulation under the provisions of 49 U.S.C. subtitle IV, part B of the casual, occasional, and reciprocal transportation of passengers by motor vehicle in interstate or foreign commerce for compensation as provided in 49 U.S.C. 13506(b) be, and it is hereby, removed to the extent necessary to make applicable all provisions of 49 U.S.C. subtitle IV, part B to such transportation when sold or offered for sale, or provided or procured or furnished or arranged for, by any person who sells, offers for sale, provides, furnishes, contracts, or arranges for such transportation for compensation or as a regular occupation or business.

§372.101 means that Uber cannot sell or arrange passenger transportation or provide their “rideshare” transportation because it is prohibited by federal transportation laws. The reasons are long standing and explained by this Court’s examination of and in depth view of the actions of the Department of Transportation investigations and the actions of Congress in the well settled case of *California v. Zook*, 336 U.S. 725 (1949).

§13506(B)(2) AND 49 CFR §372.101, also mean that the defendant/respondent the California Public Utilities Commission and the laws of the State of California, [SEE: California Public Utilities Code Article 7 §§5430 – 5450, which grant authority for Uber, “a Transportation Network Company” to broker passenger transportation to private “personal” motor vehicles for compensation and as a business for compensation which is prohibited under federal law 49 U.S.C. §13506(b)(2) and federal regulation 49 CFR §372.101. The California laws are violative of the U.S. Constitution’s Commerce clause and the Supremacy Clauses. Yet this Court, ignores the very public media reported 3 plus million citizens contracted with Uber [and Lyft] who are “working and providing passenger transportation for compensation using their private “personal” motor vehicles” which is federally prohibited.

No federal Court in the United States, in the hundreds of cases involving Uber and Lyft has ever addressed and has used and abused “judicial doctrines” to avoid recognition of the federal transportation laws and the requirement that the

federal courts enforce these laws. It's a disgrace and has left the streets of America littered with the bodies of innocent citizens.

Secondly: If he has a right, and that right has been violated, do the laws of his country afford him a remedy? YES, as a matter of law they do!

Under, 49 U.S.C. §14704(2) Damages for violations – the law provides:

(2)Damages for violations.—

A carrier or broker providing transportation or service subject to jurisdiction under chapter 135 is liable for damages sustained by a person as a result of an act or omission of that carrier or broker in violation of this part.

Quoting Chief Justice Marshall of this Court:

Marbury v. Madison, 5 U.S. 137 (1803)

"The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury. One of the first duties of government is to afford that protection. In Great Britain the king himself is sued in the respectful form of a petition, and he never fails to comply with the judgment of his court.

In the 3d vol. of his Commentaries, p. 23. Blackstone states two cases in which a remedy is afforded by mere operation of law. In all other cases," he says, "it is a general and indisputable rule, that where there is a legal right, there is also a legal remedy by suit, or action at law, whenever that right is invaded."

The government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation, if the laws furnish no remedy for the violation of a vested legal right.

After stating that personal injury from the king to a subject is presumed to be impossible, Blackstone, vol. 3. P. 255. Says, "but injuries to the rights of property can scarcely be committed by the crown without the intervention of its officers; [or the Clerks of this Court] for whom the law, in matters of right,

entertains no respect or delicacy; but furnishes various methods of detecting the errors and misconduct of those agents, by whom the king has been deceived and induced to do a temporary injustice."

But where a specific duty is assigned by law, and individual rights depend upon the performance of that duty, it seems equally clear that the individual who considers himself injured, has a right to resort to the laws of his country for a remedy.

The constitution vests the whole judicial power of the United States in one supreme court, and such inferior courts as congress shall, from time to time, ordain and establish. This power is expressly *extended to all cases arising under the laws* of the United States; and, consequently, in some form, may be exercised over *174 the present *case; because the right claimed is given by a law of the United States.

The oath of [judicial] office, too, imposed by the legislature, is completely demonstrative of the legislative opinion on this subject. It is in these words: "I do solemnly swear that I will administer justice without respect to persons, and do equal right to the poor and to the rich; and that I will faithfully and impartially discharge all the duties incumbent on me as, according to the best of my abilities and understanding, agreeably to the constitution and laws of the United States."

CONCLUSION

The denial of Petitioner's Writ of Certiorari and Application for Injunctive Relief should be reversed.

This case is as simple as any case could be. Compare federal law to the undisputed unlawful conduct of respondents and the undisputed facts... simply apply the law to respondents' unlawful conduct immediately.

Rideshare is unlawful:

- The law says: 49 CFR §372.101, The exemption from regulation of the casual, occasional, and reciprocal transportation of passengers by motor vehicle in interstate or foreign commerce for compensation as provided in 49 U.S.C. 13506(b) is removed when sold or offered for sale, or provided or procured or furnished or arranged for, by any person [includes Uber] who sells, offers for sale, provides, furnishes, contracts, or arranges for such transportation for compensation or as a regular occupation or business.

Respondent Uber, an undisputed broker of passenger transportation does not comply with any federal broker or prearranged passenger transportation laws.²

- UBER is not registered or insured as a motor carrier under 49 U.S.C. §13901, and violates the requirement as a broker for transportation required to register as a motor carrier under 49 U.S.C. §13904(d);
- UBER does not comply with mandatory passenger broker Bond and Insurance requirements under 49 U.S.C. §13904(f);
- Uber does not comply with 49 U.S.C. §14501(d)(1)(A) federal registration of prearranged passenger ground transportation providers.

Respondent California Public Utilities Commission and the Laws of California:

- California Public Utilities Code §5431 permits Transportation Network Companies [rideshare"] to contract with participating drivers using their "personal [private] vehicles to provide passenger transportation for compensation in direct conflict with federal law prohibitions of the same conduct under 49 U.S.C. §13506(b) and 49 CFR 372.101.

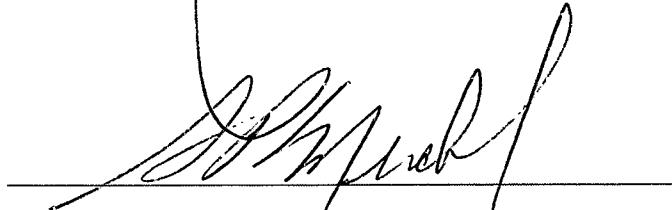
² See: the official US Government web site www.SAFTER.GOV constantly kept updated on the status of every lawful transportation provider throughout the United States, designed to aid the Courts, Law Enforcement and citizens of lawful and insured providers of transportation.

- 49 U.S.C. §14501(d)(1) specifically preempts California's laws and its California Public Utilities Commission's rideshare permitting - from enacting or enforcing any law, rule, regulation or standard. Fees or license requirements having the force and effect of law contrary to the Congressional prearranged passenger transportation scheme with specific exceptions only for drug testing and criminal background checks.

This Court may require a response from the respondents IF they have any for why they flagrantly violate the federal laws cited here.

This case does not require "oral argument" or even the appointment of counsel, -- all this Court needs to do is review the laws cited here, and enforce them, against the defendant/respondents which would immediately restore the preventatives Congress spent 80 years of design amendments to the Motor Carrier Act to insure a safe and reliable passenger transportation, by lawful providers in a competitive playing field – and instruct the lower Courts to provide Petitioner with the enforcement and remedies for his injuries he is entitled to under the law as a matter of right.

Respectfully submitted;

A handwritten signature in black ink, appearing to read "S. Patrick Mendel", is written over a horizontal line.

S. Patrick Mendel