

No. 22-6330

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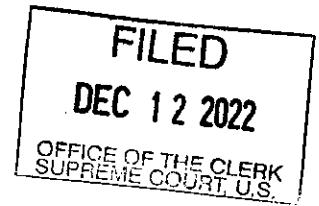
IN THE

SUPREME COURT OF THE UNITED STATES

BILLY RAY JACKSON—PETITIONER

VS.

BRYAN DANIEL, in his individual capacity; JULIAN ALVAREZ, III, in his individual capacity; AARON DEMERSON, in his individual capacity—————  
—————RESPONDENT(S)



ON PETITION FOR A WRIT OF CERTIORARI TO UNITED  
STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT No. 22-50558

PETITION FOR WRIT OF CERTIORARI

BILLY RAY JACKSON

4802 BLUEBERRY TRAIL

AUSTIN, TEXAS 78723

512-436-6334

## QUESTION(S) PRESENTED

**Whether** petitioner Billy Ray Jackson's allegations in his 42 U.S.C. 1983 complaint brought against the respondent(s) state official(s) of the Texas Workforce Commission Bryan Daniel, in his individual capacity; Julian Alvarez III, in his Individual capacity; Aaron Demerson, in his individual capacity, construed to be persons for the purpose of section 1983, construed the provision "under color of any statue" to include virtually any STATE Action including the exercise of power of one "possessed by virtue of state law and made possible only because the wrongdoer's are clothe with the authority of state law"

**(United States v. Classic, 313 U.S. 299, 61 S. Ct. 1031, 85. Whether** the respondent(s) Bryan Daniel, in his individual capacity; Julian Alvarez III, in his Individual capacity; Aaron Demerson, in his individual capacity are respectively an official of city and of county government is action is thereby transmuted into one for deprivation by the State of rights secured under the Fourteenth

Amendment.... **Paul v. Davis, 42 U.S. 693 (1976).** **Whether** government officials attempt to enforce an unconstitutional action under color of State law, sovereign immunity does not prevent people whom the law harms from suing those officials in their individual capacity for monetary and punitive damages.

This is because they are not acting on behalf of the state in this situation. **Ex parte Young, 209 U.S. 123 (1908).** **Whether** irreversible, government actions under color of State are neutral and gener-ally applicable , and therefore trigger strict scrutiny under the Due Process Clause required by the Fourteenth Amendment, whenever they deprive a United States citizen of Life, Liberty, and Property ....**RITESH TANDON, ET AL. v. GAVIN NEWSOM, GOVERNOR OF CALIFORNIA, ET AL. No. 20A151.** **Whether** petitioner

Billy Ray Jackson a 62 year old African American at-risk worker with underlining medical conditions at high risk to COVID-19 (diabetes, high blood pressure, high cholesterol and prostate cancer), and a household member (wife) is 65 or older. Also, petitioner Jackson had a constitutionally entitled protected "liberty" interest to refuse to return to work according to the Texas Workforce Commission and the (CARES) Act guidance, which should have triggered a requirement that the respondent(s) Bryan Daniel, in his individual capacity; Julian Alvarez III, in his Individual capacity; Aaron Demerson, in his individual capacity "must" the state must provide a full hearing before a hearing officer,

finding that the Due Process Clause required such a hearing before a state terminates a u recipient's continued unemployment benefits payments.

**Goldberg v. Kelly.** Whether petitioner Billy Ray Jackson have shown that he was, if fact, within the statutory terms of eligibility and had a claim of entitlement to continued unemployment benefit payments that was grounded in the statute defining eligibility for them and had a right to a hearing at which he might attempt to do so. **Goldberg v. Kelly**; and the respondent(s) Bryan Daniel, in his individual capacity; Julian Alvarez III, in his Individual capacity; Aaron Demerson, in his individual capacity has given any legitimate reason for the decision and no opportunity to challenge it at any sort of hearing. **Board of Regents v. Roth**, 408. Whether the respondent(s) Bryan Daniel, in his individual capacity; Julian Alvarez III, in his Individual capacity; Aaron Demerson, in his individual capacity deprived petitioner Billy Jackson of his right to appeal or obtain administrative review an adequate timely notice, to appoint a referee, who held a hearing) pursuant to State law,” if he receives a decision that says, “we cannot pay you benefits” Pursuant to this provision the respondent(s) failed to provide an adequate timely Determination notice, to appoint a referee, who held a hearing, without affording him and opportunity to respond or providing him a hearing at which he might attempt to shown that he had entitlement to continuation of unemployment benefit, without Accommodations for his adversary hearing at a meaningful time and in a meaningful manner either prior to his termination of his benefit payments or within a reasonable time thereafter and denied him a meaningful appeal pursuit to 42 U.S.C. Section 5177 and rules adopted under that section; Texas Labor Code Sec. 207.0212, and was unconstitutional on its face because it did not comply with minimum requirements of due process clause of the Fourteenth Amendment of the United States Constitution and whether these allegations are sufficient to establish a claim under 1983 and the Fourteenth Amendment.

Whether the United States District Court, For the Western District of Texas, Austin Division error when it dismissed Billy Ray Jackson's 42 U.S.C. 1983 complaint with prejudice as frivolous pursuant to 28 U.S. 1915(e) (2) (B), against the respondent(s) Bryan Daniel, in his individual capacity; Julian Alvarez III, in his Individual capacity; Aaron Demerson, in his individual capacity without triggering strict scrutiny under the Due Process Clause, or a

hearing for petitioner Billy Jackson to attempt to show a protected “Life”, “Liberty”, and “Property Claim.” **RITESH TANDON, ET AL. v. GAVIN NEWSOM, GOVERNOR OF CALIFORNIA, ET AL. No. 20A151.**

Whether the United State Court of Appeals for the Fifth Circuit error in its opinion that the State of Texas sent written to the United States Secretary of Labor, sovereign immunity does not prevent people whom the law harms from suing those officials in their individual capacity for injunctive relief. This is because they are not acting on behalf of the state in this situation. **Ex parte Young, 209 U.S. 123 (1908).** A state official or the respondent(s) Bryan Daniel, in his individual capacity; Julian Alvarez III, in his Individual capacity; Aaron Demerson, in his individual capacity sued in their personal capacities, are considered to be persons for the purpose of section 1983. The Supreme Court has broadly construed the provision “under color of any statue” to include virtually any STATE Action including the exercise of power of one “possessed by virtue of state law and made possible only because the wrongdoer’s are clothe with the authority of state law” (**United States v. Classic, 313 U.S. 299, 61 S. Ct. 1031, 85 L. Ed. 1368 {1941. Whether** the respondent(s) Bryan Daniel, in his individual capacity; Julian Alvarez III, in his Individual capacity; Aaron Demerson, in his individual capacity deprivation (termination) of his constitutionally protected, under color of State law, without cause was capacity conduct violated a clearly established statutory or constitutional rights of which a reasonable person would have known, their conduct was objectively unreasonably in light of clearly established law at the time of the violation. **Terry v. Huber 609 F. 3d 757, 761 (5<sup>th</sup> Cir. 2010) (citation omitted).**

### **LIST OF PARTIES**

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

## **RELATED CASES**

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**Board of Regents v. Roth 408 U.S. 564 (1972)**

**Vitek v. Jones, 445 U.S. 480 (1980)**

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**Morrissey v. Brewer, 408 U.S. 471 (1972)**

**Terry v. Huber 609 F. 3d 757, 761 (5<sup>th</sup> Cir. 2010)**

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

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

**OPINIONS BELOW**

The opinion of the United States court of appeals appears at Appendix B to the petition and it has been determined by the court that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5<sup>th</sup> Circle Rule 47.5.4.

1.

**JURISDICTION**

The date on which the United States Court of Appeal's decided my case was September 28 2022.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: November 8, 2022, and a copy of the order denying rehearing appears at Appendix A.

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

**CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

The Due Process Clause of the Fourteenth Amendment rights that the Clause guarantees against the states: "No State shall deprive any person of life, liberty, or property, without due process of law."

- Procedural protections, such as notice and a hearing before termination of entitlements such as State UI unemployment and mandated entitled Federal unemployment benefits payments.

42 U.S.C. 1983 is the primary remedial statue for asserting federal civil rights claims against local public entities, officers and employees.

## **STATEMENT OF THE CASE**

In April 2020 the Texas Workforce Commission, determined that petitioner Billy Ray Jackson's was eligible and entitled to State UI unemployment benefit payments and (PEUC ad FPUC) because their investigation showed that his employer laid him off from his last work because of a natural disaster declared by the president of the United States under the Robert T. Stafford disaster Relief and Emergency Assistance 42 U.S.C. Section 5121 et seq.; 42 U.S. C. Section 5477, rules adopted under that section; Law Reference: Section 207.044 and 207.0212 of the Texas Unemployment Compensation Act) and could pay him benefits, if he meet all other weekly requirements such as being able, available, and actively searching for work, Section 2107 of the (Cares) Act enacted March 2020 created Pandemic Emergency Unemployment Compensation (PEUC) and Federal Pandemic Unemployment Compensation (FPUC) specifically extended the PEUC and FPUC period in the American Rescue Plan to end September 6, 2021, this expiration date was set by federal law and could not be waived or modified, any change to the expiration date required congressional action and it prohibit the States (Texas) from reducing UC benefit amount or duration during the PEUC period.

On September 9, 2020, petitioner Jackson exhausted all state regular benefits and qualified for Pandemic Emergency Unemployment Compensation and The Texas Workforce Commission determined that they could pay him benefits if he remains eligible for each claim week by continuing to meet all ongoing requirements. Petitioner Jackson's entitlement to continuation of unemployment benefit payments his claim was based on his initial unemployment claims dated on or after July 2018 and after the claimant has exhausted all regular benefits and were grounded in the statute defining eligibility for them.

On May 20, 2021 the respondent(s) ) BRYAN DANIEL, in his individual capacity; JULIAN ALVAREZ, III, in his individual capacity; AARON DEMERSON, in his individual capacity together, which oversees the functioning of the Texas Workforce Commission and develop agency policy sent petitioner Jackson an email that said “we cannot pay you benefits” because the State of Texas is ending its participation in all federal pandemic unemployment benefits programs on June 26, 2021, even if you have a balance of \$8,034.00. Petitioner Billy Ray Jackson under State law Section 207.044 and 207.0212 was considered an “unemployed (due to no fault of his own) 62 year old at-risk working with underlying health conditions (Diabetes Mellitus Active 05/55/2020, Elevated Blood Pressure Active 05/22/2020, High cholesterol Active 05/22/2020, Raised Prostate Specific Antigen Active 06/08/2020; Prostate Nodule Active 06/08/2020; and Carcinoma of Prostate Active 06/26/2020) “high-risk of serious consequences (death) from COVID-19 and with a household member (wife) 65 or older. Such an “unemployment status” made petitioner Jackson eligible to refuse to return to work under both the Texas Workforce Commission and (CARES) Act guidance and entitled to continued unemployment benefit payments, as long as he meet all other weekly requirements such as being able, available, and actively searching for work, once the State of Texas grants the conditional “liberty” interest, due process protections attach to the decision to termination the “unemployment benefit payment.” Therefore, Petitioner Jackson had a property right in continued unemployment benefit payments and was entitled to retain his unemployment benefit payments except if he fails to meet all other requirements such as being able, available, actively searching for work and may obtain administrative review if he receives a decision that says, “we cannot pay you benefits.” Pursuant to this provision, the respondent(s) BRYAN DANIEL, in his individual capacity; JULIAN ALVAREZ, III, in his individual capacity; AARON DEMERSON, in his individual capacity of the (Texas Workforce Commission) failed to provide an adequate timely notice, to appoint a referee, who held a hearing.

However, to the contrary, on June 26, 2021 at 12:01 am the respondent(s) BRYAN DANIEL, in his individual capacity; JULIAN ALVAREZ, III, in his individual capacity; AARON DEMERSON, in his individual capacity implemented plan changes without official guidance and modified the systems

to effectively terminate petitioner Jackson's entitled unemployment benefit payments and limited access to online payment request "with immediate effect", without due process and denied him a right to appeal, under color of State law, without cause and without due process of law required by the Fourteenth Amendment of the United States Constitution, his right to a timely adequate notice, his right to hearing to respond to any charges against him prior to the termination and without given sufficiently prompt post-termination hearing, his right to counsel, his right to a pre-deprivation and post-deprivation hearing, the right to cross-examine, the right to have a neutral person review and adverse decision, his right to recover compensation for a wrongful deprivation, his right to be present when adverse evidence was presented to the fact-finder, and denied him a meaningful appeal, As, a result, termination of his entitled unemployment benefits payments , he was deprived of constitutionally protected " life", "liberty" and "property" to continued unemployment benefit payments without due process of law required by the Fourteenth Amendment of the United States Constitution.

On December 6, 2021, petitioner Billy Ray Jackson a Texas resident, brought the present 42 U.S.C. 1983 complaint in the Federal District Court for the Western District of Texas, Austin Division against TWC Commissioners Bryan Daniel, in his individual capacity Julian Alvarez III, in his individual capacity and Aaron Demerson, in their individual capacities are responsible for administering the State's unemployment compensation program (Texas has what is known as a weak governor) and administered in an agreement under this section with the Secretary of Labor. The complaint and subsequent pleadings alleged that the respondent(s) JULIAN ALVAREZ, III, in his individual capacity; AARON DEMERSON, in his individual capacity deprived him of his constitutionally protected right to "Life, "Liberty" and "Property" interest in continued unemployment benefit payments without due process of law required by the Fourteenth Amendment of the United States Constitution and denied him a meaningful appeal.

In addition, petitioner Jackson's complaint and subsequent pleadings alleged that the termination of his unemployment benefit payments were unconstitutional on its face as applied because respondent(s) Bryan Daniel, in his individual capacity Julian Alvarez III, in his individual capacity and

Aaron Demerson was unconstitutional on its face because it did not provide him a timely adequate notice, “he” was not given a hearing or a sufficiently prompt post-termination hearings, his right to counsel, his right to a pre-deprivation hearing or post-deprivation hearing during a global pandemic, the right to cross-examine witnesses, his right to have a neutral person review and adverse decision, the right to recover compensation for a wrongful deprivation, the right to be present when adverse evidence is presented to the fact-finder, and denied him and a timely meaningful appeal. As a result, the termination of his entitled continued unemployment benefit payments deprived him of his constitutional protected right to “Life”, “Liberty” and “Property” that were grounded in the statute defining eligibility and the he was entitled to continued receiving these unemployment benefit payments , as a matter of statutory law cannot be terminated pursuant to certain procedures, until there was a reason to take them away under the due process clause required by the Fourteenth Amendment. The complaint also alleged that the respondent(s) violated federal statuary law by modifying ending dates set by federally statutory law set forth in the American Recue Plan Act.

On March 25, 2022 petitioner Billy Ray Jackson filed his Movant Motion for Partial Summary Judgement alleging the same allegations in complaint and subsequent pleadings to compel payment of monetary damages to him in the sum of \$50,000.00 each within 30 days and petitioner Jackson requested Jury trial to determine if the respondent’s BRYAN DANIEL, in his individual capacity; JULIAN ALVAREZ, III, in his individual capacity; AARON DEMERSON, in his individual capacity were reckless or callous indifference to the section 1983 and deprived him of his constitutionally protected life, liberty or property interest and liable for punitive damages..

On April 18, 2022 the U.S District Court for the Western District of Texas, Austin Division’s Magistrate Judge’s filed the Report and Recommendation cherry picked and misrepresented the facts and allegations that petitioner Jackson filed a lawsuit under 42 U.S.C 1983 in forma pauperis contesting Texas’s withdrawal, under 15 U.S.C. 90225(a)(1), from the supplemental unemployment benefits provide under the CARES Act, that petitioner Jackson did not have a protected property right under the CARES Act and failed to state a plausible claim for relief under Federal Rule of Civil Procedure 12(b)(6), his

Complaint should be dismissed as frivolous without requiring the respondent(s) to answer his allegations in his 42 U.S.C. 1983 complaint, without requiring the respondent(s) to answer the allegation in his Motion for Partial Summary Judgement, and without a hearing or proceedings in this action, which involved state-created “property” and “liberty” interest and the deprivation under color of law encroaching on a fundamental right generally “must” pass strict scrutiny to be upheld as constitutional) and recommending that the court dismiss petitioner Jackson’s complaint as frivolous pursuant to 28 U.S.C. 1915 (e) (2), and dismiss petitioner Jackson’s motion for partial summary judgment as moot.

On June 16, 2022 the U.S District Court for the Western District of Texas, Austin Division APPROVED AND ACCEPTED the magistrate judge’s Report and Recommendation (Doc.#11) recommending that the court dismiss petitioner Jackson’s complaint as frivolous pursuant to 28 U.S.C. 1915 (e) (2), and dismiss petitioner Jackson’s motion for partial summary judgment as moot. The Court without hearings or proceedings in this action, the court overruled petitioner Jackson’s objections and entered judgment in favour of the Respondent(s) and on April 18, 2022 dismissed his complaint with prejudice as frivolous, and dismissed his Motion for Partial Summary Judgment (Doc. #8), under 28 U.S.C. 1915(e) (2) (B), and the Petitioner appealed to the United States Court of Appeals for the Fifth Circuit.

On September 28, 2022 the Court of Appeals for the Fifth Circuit agreed with the district court, holding that the statute expressly allows such a withdrawal upon providing thirty days’ written notice (which Texas did), to the United States Labor Secretary, the district court dismissed the case under 28 U.S.C. 1915 (e) (2) (B). Jackson’s appellant brief fails to demonstrate any error in this determination. WE AFFIRM. Jackson’s motion for appoint of counsel was DENIED and on November 8, 2022; IT IS ORDERED that his petition for rehearing is DENIED.

On September 28, 2022 the Court of Appeals for the Fifth Circuit agreed with the district court, Jackson’s appellant brief fails to demonstrate any error in this determination. WE AFFIRM. Jackson’s motion for appoint of counsel was DENIED and on November 8, 2022; IT IS ORDERED that his petition for rehearing is DENIED.

## REASONS FOR GRANTING THE PETITION

This case does not involve the state-created property interest and the abrogation of state created rights by State official BRYAN DANIEL, in his individual capacity; JULIAN ALVAREZ, III, in his individual capacity; AARON DEMERSON ; in his individual capacity acting under color of State law enforce an unconstitutional law, sovereign immunity does not prevent petitioner Jackson whom the law harms from suing those officials in their individual capacity for monetary and punitive damages under 42 U.S.C. 1983. This is because they are not acting on behalf of the state in this situation. *Ex parte Young*, 209 U.S. 123 (1908). Government officials' actions are not neutral and generally applicable, and therefore trigger strict scrutiny under the Due Process Clause, whenever they deprive a citizen of "Life," "Liberty" and "Property" without due process of law required by the Fourteenth Amendment of the United States Constitution. The State statute were firmly fixed in state law and statutes Section 207.044 and 207.0212 of the Texas Unemployment Compensation Act without complying with minimum requirements of the due process clause of the Fourteenth Amendment of the United States Constitution which are issues of importance public interest of extraordinary circumstances presented here demands it beyond the particular facts and parties involved and underscores minimum requirements of due process constitutional and federal statutory laws without complying to the command of the Fourteenth Amendment with that had a substantial adverse impact on petitioner Billy Ray Jackson. The court's opinion may affect nearly 900,000.00 Texans, including African Americans at-risk worker with underlining medical conditions or w household member 65 or older who's eligible to refuse to return to work, and Twenty-five Republican-controlled states, including Louisiana deprived them of their constitutionally protected entitlement to continued unemployment benefit payments that was grounded in the statute defining eligibility for them, without acknowledgement of racial injustice and racial disparities that has gone for far too long in this country.

The United States Court of Appeals for the Fifth Circuit *overlooked a material or legal matter in the decision, when it Affirmed* petitioner's Billy Ray Jackson's appeal from his 42 U.S.C. 1983 complaint brought against the respondent(s) ) BRYAN DANIEL, in his individual capacity; JULIAN ALVAREZ, III, in his individual capacity; AARON DEMERSON, in his individual capacity "because the State of Texas opted out of the terms of a payment agreement by sending notice to the United States Secretary of Labor within 30 days, without providing petitioner Jackson a timely adequate notice, the opportunity to be heard, and a decision by a neutral decision maker and his right to appeal. In addition, petitioner Jackson never agreed with the State of Texas or the respondent(s) that emails qualifies as Notice.

*The opinion is in conflict with decision of the U.S. Supreme Court, and the conflict is not addressed in the opinion.* This position misconceives the nature of the issue and is refuted by prior decisions. The Fourteenth Amendment forbids the State to deprive any person of life, liberty, or property without due process of law, state statutes or rules entitling the citizen to certain benefits. *Board of Regents v. Roth*, 408 U.S. 564 (1972).

This honourable Court has held that a state official sued in their personal capacities, are considered to be persons for the purpose of section 1983. In addition, This Honorable Court has broadly construed the provision "under color of any statue" to include virtually any STATE Action including the exercise of power of one "possessed by virtue of state law and made possible only because the wrongdoer's are clothe with the authority of state law" (United States v. Classic, 313 U.S. 299, 61 S. Ct. 1031, 85 L. Ed. 1368 {1941}.

There is no dispute that the Texas Workforce commission is a creature of the state of Texas and if the respondent(s) attempt to enforce an unconstitutional deprivation of constitutionally protected "Life" and Property, sovereign immunity does not prevent people whom the law harms from suing those officials in their individual capacity for monetary and punitive damages under 42 U.S.C. 1983 civil complaint. This is because the respondent(s) BRYAN DANIEL, in his individual capacity; JULIAN ALVAREZ, III, in his individual capacity; AARON DEMERSON, in his individual capacity were not acting on behalf of the state in this situation. *Ex parte Young*, 209 U.S. 123 (1908).

Irreversible, government action under color of State law are not neutral and generally applicable, and therefore trigger strict scrutiny under the Due Process Clause, whenever they deprive a citizen of the Due Process Clause as being "that an individual be given an opportunity for a hearing before he is deprived of any significant property interest." This principle requires "some kind of a hearing" prior to the discharge of an employee who has a constitutionally protected property interest in his continued unemployment benefit payments. Even decisions finding no constitutional violation in termination procedures have relied on the existence pre-termination opportunity to respond.... U.S. Supreme Court *Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985)

This presumption changed in 1970 with the decision in *Goldberg v. Kelly*, a case arising out of a state-administered welfare program. The Honorable Court found that before a state terminates a welfare recipient's benefits, the state must provide a full hearing before a hearing officer, finding that the Due Process Clause required such a hearing.

In *Bell v. Burson* 402 U.S. 535 (1971); *Morrissey v. Brewer*, 408 U.S. 471 (1972), this Honorable Court held for example, the State by issuing a drivers' licenses recognized in its citizens a right to operate a vehicle on the highways of the State that the State could not withdraw this right without giving petitioner due process. Also, In *Paul v. Davis*, 42 U.S. 693 (1976), this Honorable Court has held that these interests attain this constitutional status by virtue of the fact that they have been initially recognized and protected by state law, and have repeatedly ruled that the procedural guarantees of the Fourteenth Amendment apply whenever the State seeks to remove or significantly alter that protected status.

In *Morrissey v. Brewer*, 408 U.S. 471 (1972), this Honorable Court held that held the State afford parolees the right to remain at liberty as long as the conditions of their parole were not violated and before the State could alter the status of a parolee because of alleged violations of these conditions, held that the Fourteenth Amendments' guarantee of due process of law required certain procedural safeguards and applied the limitations of the Due Process Clause to governmental decisions to terminate unemployment benefits, although an unemployed worker has no constitutional right to the status, Here, on the basis

of state law the Due Process Clause came into play when the State subjects a citizen to a “severe detriment or grievous loss. “That once a State grants a conditional liberty or property interest, due process protections attach to the decision to revoke parole. Deprivation of his entitled unemployment benefit payments constituted a major change in his economic conditions and amount to a “grievous loss” that should not be imposed without the opportunity for timely adequate notice an hearing, the right to counsel, prompt post-termination hearing, his right to a pre-deprivation hearing , his right to a post-deprivation hearing, his right to cross-examine witnesses, his right to have a neutral person review an adverse decision, his right to recover compensation for a wrongful deprivation, and his right to be present when averse evidence is presented to the fact-finder in Paul v. Davis, 42 U.S. 693 (1976), Accordingly, a state employee who under state law, or rules promulgated by state officials, has a legitimate claim of entitlement to continue employment absent sufficient cause for discharge may demand the procedural

This Court held in Goldberg v. Kelly, 397 U.S. 254 (1970); Goss et al. Lopez et al. 419 U.S. 565 (1975); Vitek v. Jones, 445 U.S. 480 (1980) that it is significant because it gives parameters to the requirements of procedural due process in connection with statutory entitlements. By requiring an evidentiary process before benefits are taken away gives welfare beneficiaries a type of property interest in the benefits they receive. Procedural due process under the Fourteenth Amendment’s Due Process Clause demands that a welfare recipient be allowed an evidentiary hearing before welfare benefits are terminated, for people qualified to receive them, welfare benefits are not a privilege, but a statutory entitlement. Procedural due process is required before such entitlements are terminated. Further, the welfare recipient’s interest in receiving benefits (which provide essentials for basic living) coupled with the State’s interest in making sure eligible people receive those benefits uninterrupted, clearly outweighs the burden of ferreting out people who are improperly receiving welfare benefits, accordingly, a pre-termination hearing is required to ensure that welfare recipients are accorded procedural due process, (1). Adequate notice, (2).The chance for the welfare recipient to be heard and cross-examine adverse witnesses, (3). An impartial decision-maker, and (4) a written decision based on the facts presented.

This Court held in each of the cases, as a result of the state action complained of, a right or status previously recognized by state law was distinctly altered or extinguished. It was this alteration, officially removing the interest from the recognition and protection previously afforded by the State, which this Honorable Court found sufficient to invoke the procedural guarantees contained in the Due Process Clause of the Fourteenth Amendment.

**The proceeding involves one or more questions of exceptional importance,**

Whether the respondent(s) BRYAN DANIEL, in his individual capacity; JULIAN ALVAREZ, III, in his individual capacity; AARON DEMERSON; in his individual capacity, the Texas Workforce Commissioners, together, which oversees the functioning of the State's unemployment program and develop agency policy are not neutral and generally applicable , and therefore trigger strict scrutiny under the Due Process Clause, whenever they deprive a citizen of "Life", Liberty" and Property to continued unemployment payments under the due process clause of the Fourteenth Amendment of the United States Constitution, "arguing that petitioner Jackson's constitutionally protected entitled continued unemployment benefit payments were 'disincentivizing' him and other African American at-risk workers with underlining medical conditions or household member 65 or older Texans who's eligible to refuse to return to work according to the Texas Workforce Commission and (CARES) Act guidelines. Implemented irreversible plan changes to enforce an unconstitutional law on June 26, 2021, that deprived petitioner Jackson and African Americans of their claim of entitlement to continued unemployment benefit payments that was grounded in the statute defining eligibility for them. Goldberg v. Kelly, *supra*, and removed their eligibility to refuse to return to work. Until they have worked and earned enough wages in their last five completed calendar quarters before the week they apply for benefits. 2. They have an eligible reason for being unemployed, and 3. They are able and available for full-time work, without an adequate notice, their right to counsel, their right to a post-termination hearing, their right a deprivation hearing, their right to a post-deprivation hearing, their right to cross-examine witnesses, their right to have a neutral person review an adverse decision, their right to recover

wrongful deprivation and their right to be present when adverse evidence is presented to the fact-finder and denial of their right to appeal (to seek redress of grievances).

It is a national scandal that African Americans are not only dying of COVID-19 at much higher rates; they are also suffering vastly more economic pain than virtually anybody else and because “we” African Americans have systematically been excluded from opportunity and wealth in American, it is a lot less likely that “we” have the financial resources to weather the storm is just going to perpetuate the economic injustice. The respondent(s) unconstitutionally strip away protected continued unemployment benefits of petitioner Jackson and African Americans, who are disproportionately suffering to force “us” back into a contagious workplace also further the spread of the virus that has killed over one million Americans and turned nusing homes nationwide into scenes of tragedy, that President **JOSEPH R. BIDEN JR.** sent to the *Federal Register* for publication the enclosed notice stating that the national emergency declared in Proclamation 9994 of March 13, 2020, beginning March 1, 2020, concerning the coronavirus disease 2019 (COVID-19) pandemic, is to continue in effect beyond March 1, 2022; also, that Governor **GREG ABBOTT** Governor of Texas, issued a disaster proclamation on March 13, 2020 – September 19, 2022 (with no end in sight), certifying under Section 418.014 of the Texas Government Code that the novel coronavirus (COVID- 19) poses an imminent threat of disaster for all counties in the State of Texas and the Department of Health and Human Services **XAVIER BECERRA**, Secretary, pursuant to the authority vested in him undersection 319 of the Public Health Service Act will extend the COVID-19 public health emergency through at least April 11, 2023, Biden administration officials have confirmed. This is the twelfth extension of the PHE since January 2020, **as rising to genocide and crime against humanity, acting under color of State law** to deliberately (no intent is required under 42 U.S.C. 1983) inflicting the deprivation housing, medical care, the inability to provide food shelter and adequate childcare for families of United States African American Citizens with underlining medical conditions or a household member 65 or older who’s was eligible to refuse to return to work, conditions of life calculated to bring about its physical destruction. The deaths are not immediate (or may

not come to pass), but rather create circumstances that do not support prolonged life with without the minimum due process required by the Fourteenth Amendment of the United States Constitution.

Jha, The White House COVID-19 coordinator, told ABC “This Week” co-anchor Martha Raddatz on November 27, 2022 of the virus that has killed more than 1 million people in the United States and COVID-19 deaths are still averaging more than 2,000 per week (Meghan Macpherson).

The system is already rigged and the deck is stack in favour of the powerful and the wealthy the respondent(s) are declaring a national disaster and receiving Billions of federal aid each month while blocking all federal aid to at-risk African American unemployed workers.

It is about fairness for African Americans with underlining medical conditions. Who are disproportionately suffering? Who can “we” tell when government official attempt to enforce an unconstitutional laws and conduct, sovereign immunity not prevent people whom the law or actions harms for suing those officials in their individual capacity for monetary and punitive damages. This is because they are not acting on behalf of the state in this situation, if not the Courts.

## CONCLUSION

There is no dispute that the petitioner Billy Ray Jackson that the Texas Workforce investigation found that his employer (Transformco) laid (due to no fault of his own) him off from his last work because of a natural disaster declared by the president. Section 207.044 and 207.0212 and is a 62 year old at-risk African American worker with underling medical conditions high risk to serious consequences to COVID-19, such as (Diabetes, High Blood pressure, High cholesterol and Prostate Cancer), at, with a household member 65 or older; eligible to refuse to return to work (had a protected state-created conditional) “Liberty” and “Property” claim of entitlement to continued unemployment benefit payments if he meet under Texas Workforce commission and (CARES) Act guidelines meet all other weekly requirements such as being able, available, and actively searching for work, therefore, the petitioner Jackson has alleged that he was both eligible and entitled to continued unemployment payments on June 26, 2021.

There is no dispute that the Texas Workforce commission is a creature of the State of Texas and that the respondent(s) BRYAN DANIEL, in his individual capacity; JULIAN ALVAREZ, II, in his individual capacity; and AARON DEMERSON, in his individual capacity, are state official sued in their personal capacities, are considered to be persons for the purpose of section 1983. The This Honorable Court has broadly construed the provision "under color of any statue" to include virtually any STATE Action including the exercise of power of one "possessed by virtue of state law and made possible only because the wrongdoer's are clothe with the authority of state law" (United States v. Classic, 313 U.S. 299, 61 S. Ct. 1031, 85 L. Ed. 1368 {1941}).

Petitioner contends, since the respondent(s) are respectively an official of city and of county government this action is thereby transmuted into one for deprivation by the State of rights secured under the Fourteenth Amendment.... Paul v. Davis, 42 U.S. 693 (1976). Irreversible government action by official to enforce an unconstitutional deprivation of protected "Life or "Property "interest, sovereign immunity does not prevent people whom the law harms from suing those officials in their individual capacity for injunctive relief. This is because they are not acting on behalf of the state in this situation. Ex parte Young, 209 U.S. 123 (1908), and and therefore trigger strict scrutiny under the under the Due process clause required by the Fourteenth Amendment of the United State Constitution constituted a major change in the conditions of confinement amounting to a "grievous loss" that should not be imposed without the opportunity for notice and an adequate hearing It has been over eighteen (18) months since the termination the respondents still haven't given him a no legitimate reason for their decision and no opportunity to challenge it at any sort of hearing. Board of Regents v. Roth, 408; Goss v. Lopez et al. 419 U.S. 565 (1975). A right or status previously recognized by state law was distinctly altered or extinguished, officially removing the interest from the recognition and protection previously afforded by the State firmly fixed in state law to insure that the state-created right is not arbitrarily abrogated. Vitek v. Jones, 445 U.S. 480 (1980); Morrissey v. Brewer, 408 U.S. 471 (1972); Gagnon v.Scarpelli, 411 U.S. 778 (1973); and Wolff v. McDonnell, 418 U.S. 539 (1974).Id. at 418 U.S. 571-572, n. 19, Page 445 U.S 489, Id. At 418 U.S. 557.

The respondent(s) BRYAN DANIEL, in his individual capacity; JULIAN ALVAREZ, II, in his individual capacity; and AARON DEMERSON, in his individual capacity are state official sued in their individual capacities, are considered to be persons for the purpose of section 1983. The Supreme Court has broadly construed the provision “under color of any statue” to include virtually any STATE Action including the exercise of power of one “possessed by virtue of state law and made possible only because the wrongdoer’s are clothe with the authority of state law” (United States v. Classic, 313 U.S. 299, 61 S. Ct. 1031, 85 L. Ed. 1368 {1941}), sovereign immunity does not prevent people whom the law harms from suing those officials in their individual capacity for injunctive relief. This is because they are not acting on behalf of the state in this situation. *Ex parte Young*, 209 U.S. 123 (1908), and therefore trigger strict scrutiny under the Due Process Clause of the Fourteenth Amendment of the United constitution, whenever they deprive a United States “citizen” of constitutionally protect rights to “Life”, “Liberty” and “Property” their entitlement to continued unemployment benefit payments aim to help petitioner Jackson , but especially minority populations that have been hit hardest by the virus, and efforts to address the disparate impact of COVID-19 on petitioner Jackson, African Americans and others without complying with minimum requirements of due process. *RITESH TANDON, ET AL. v. GAVIN NEWSOM, GOVERNOR OF CALIFORNIA, ET AL...*their conduct violated a clearly established statutory or constitutional rights of which a reasonable person would have known, their conduct was objectively unreasonably in light of clearly established law at the time of the violation deprived petitioner Jackson of his constitutionally protected right to “Life, Liberty” and Property to continued unemployment benefit payment that was grounded in the statute defining eligibility for them, without cause .*Terry v. Huber* 609 F. 3d 757, 761 (5<sup>th</sup> Cir. 2010) (citation omitted).

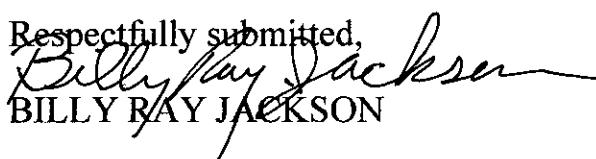
The Fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner and a meaningfully appeal from an adverse decision.” *Goss v. Lopez*. Especially, irreversible, government action, constituted a major change in the economic condition amounting to a “grievous loss” that should not be imposed without the opportunity for notice and an adequate hearing. *Vitek v. Jones*, 445 U.S. 480 (1980). This is because they are not acting on behalf of the state in this situation.

Petitioner Billy Ray Jackson urges that this Honorable Court remand this case to the Court of Appeals for the Fifth Circuit for consideration of his Movant Motion for Partial Summary Judgement pursuant to 42 U. S. C. §1983, seeking monetary damages because he has shown that he had a claim of entitlement to continued unemployment benefit payments that was grounded in the statute defining eligibility for them and he has shown that he was, in fact, within the statutory terms of eligibility on June 26, 2021, the date his unemployment claim was terminated at Trial. Also, to set a Court date for a Jury Trial to determine punitive damages against the respondents(s) BRYAN DANIEL, in his individual capacity; JULIAN ALVAREZ, II, in his individual capacity; and AARON DEMERSON, in his individual capacity conduct is shown to be motivated by evil motive or intent, or when it involves reckless or callous indifference to the federally protected rights of others) for alleged violations of his constitutional rights.

This Honorable Court has broadly construed the provision “under color of any statute” to include virtually any STATE Action including the exercise of power of one “possessed by virtue of state law and made possible only because the wrongdoer’s are clothe with the authority of state law” (United States v. Classic, 313 U.S. 299, 61 S. Ct. 1031, 85 L. Ed. 1368 {1941}). If government officials attempt to enforce an unconstitutional law, sovereign immunity does not prevent people whom the law harms from suing those officials in their individual capacity for monetary and punitive damages. This is because they are not acting on behalf of the state in this situation. Ex parte Young, 209 U.S. 123 (1908).

The petition for writ of certiorari should be granted.

Respectfully submitted,

  
BILLY RAY JACKSON

Date: December 11, 2022