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Supreme Court, U.S.
FILED

DEC 13 2022

OFFICE OF THE CLERK

No. _____

22-7175

IN THE
SUPREME COURT OF THE UNITED STATES

MARVIN EDUARDO LUNA GOMEZ — PETITIONER
(Your Name)

vs.

INTERNAL REVENUE SERVICE'S
U.S. DEPARTMENT OF THE TREASURY — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. COURT OF APPEALS FOR THE FOURTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

MARVIN EDUARDO LUNA GOMEZ

(Your Name)

VADOC CENTRALIZED MAIL DISTRIBUTION CENTER

3521 WOODS WAY, STATE FARM, VA. 23160

(Address)

STATE FARM, VIRGINIA 23160

(City, State, Zip Code)

none n/a

(Phone Number)

ORIGINAL

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QUESTIONS PRESENTED

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~~BOYLE~~ BOYLE V. U.S., 200 F.3d 1369, 1371 (FED. CIR. 200) (WHETHER COURT HAS JURISDICTION AND WHETHER COMPLAINT STATES A CLAIM ARE QUESTIONS OF LAW REVIEWED DE NOVO). MR. GOMEZ THE PLAINTIFF IN THIS CASE HAS COMPLIED WITH THE COURT AND PROVIDED "MATERIAL FACTS" ALONG WITH WAGES EARNED FOR WHICH HE WAS APPROVED BY (IRS) AND ACCEPTED TO RETURN BACK \$9,860.00 DOLLARS IN HIS TAX REFUND FOR 2017 FOR THE WAGES EARNED IN 2016, WHICH WERE STOLEN IN A BREACH OF DATA CALLED "THE ANTHEM IDENTITY DATA BREACH" WHEN THE (IRS) IDENTITY DATA BASE WAS HACKED AND BREACHED TO STEAL PEOPLES IDENTITY TO COMMIT FRAUD. 18 § 246. DEPRIVATION OF RELIEF BENEFITS.

AUGUST 1, 2017 MR GOMEZ REPORTED THE DELAY AND ~~REPORTED~~ HE WAS INFORMED OF A IDENTITY BREACH IN THE (IRS) AND PROMISED TO PAY BACK THE FULL AMOUNT REFUND CHECK WHICH THEY REFUSE TO DO SO. § 26. § 7207. FRAUDULENT RETURNS, STATEMENTS. ANDERSON V. LIBERTY LOBBY, INC. 477 U.S. 242, 248, 106 S. CT. 2505

(1986) THE DISPUTED FACTS ALLEGED BY THE PLAINTIFF ARE MATERIAL.

HOWEVER THE U.S. DISTRICT COURT DISMISSED MR. GOMEZ CLAIM FOR BEING FRIVOLOUS AND FOR FAILURE TO STATE A CLAIM AND WHEN APPEALED TO THE U.S. COURT OF APPEALS, THIS CLAIM WAS DENIED FOR APPEAL. ARBON STEEL & SERV. CO. V. U.S., 315 F.3d 1332, 1334. (FED. CIR. 2003) ("MATTERS OF CONSTITUTIONAL INTERPRETATION RECEIVE PLENARY REVIEW"). 18. 242 FEDERAL STATUTE, DEPRIVATION OF FEDERAL CIVIL RIGHTS. THIS CLAIM IS SUBJECT FOR RELIEF BUT MR. GOMEZ THE PLAINTIFF HAS ^{NOT} BEEN ABLE TO CONFIRM THE DEFENDANTS PURSUANT TO 4TH, 5TH, 6TH, AND 14TH CONSTITUTIONAL AMENDMENT OF THE UNITED STATES. BORST V. CHEVRON CORP., 36 F.3d 1308, 1314 N.11 (5TH CIR. 1994) (NOTING THAT BECAUSE THE APPELLATE COURT DID NOT CONSIDER AN ISSUE, "THE DISTRICT COURT'S RULING ON THAT ISSUE IS NOT CONCLUSIVE BETWEEN THE PARTIES").

SEE HARPER V. SHOWERS, 174 F.3d 716, 718. N.3 (5TH CIR. 1998) (STATING THAT DE NOVO REVIEW IS ONLY APPROPRIATE FOR DISMISSALS FOR FAILURE TO STATE A CLAIM ON WHICH RELIEF MAY BE GRANTED. § 18. § 1955. FAILURE TO SECURE PERSONAL IDENTITY. SECTIONS 5.

LINER V. BOORD, 196 F.3d 132, 134 (2d CIR. 1999) HOLDING THAT "28 U.S.C. § 1915 (A) AND 42 U.S.C. § 1999(e)(c)(2) DISMISSALS ARE SUBJECT TO DE NOVO REVIEW"; BARRON V. HARRINGTON. 152 F.3d 1193, 1194 (9TH CIR. 1998) (HOLD THAT DISMISSALS FOR FAILURE TO STATE A CLAIM ARE REVIEWED DE NOVO.

§ 18. § 245. FEDERALLY PROTECTED ACTIVITIES. (B) PARTICIPATING OR ENJOYING ANY BENEFIT, SERVICE, PRIVILEGE, PROGRAM, FACILITY OR ACTIVITY PROVIDED OR ADMINISTERED BY ANY STATE, OR SUBDIVISION THEREOF:

18 U.S.C. § 242. CLARIFIES, A FEDERAL STATUTE THAT MAKES IT A CRIME FOR SOMEONE ACTING UNDER COLOR OF STATE LAW TO DEPRIVE ANOTHER PERSON OF FEDERAL CIVIL RIGHTS, ("DENIAL OF ADEQUATE FOOD") PHYSICAL INJURY.

LIST OF PARTIES

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- ☒ 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:

INTERNAL REVENUE SERVICE

DEPARTMENT OF THE TREASURY

RELATED CASES.

GALL V. UNITED STATES, 552 U.S. 38 128 S. CT. 586, 591, 169 L. Ed. 2d 445 (2007).

HARPER V. SHOWERS, 174 F. 3d 716, 718 N.3 (5TH CIR. 1998)

TRUDEAU V. FEDERAL ^{TRADE} COMMISSION, 456 F. 3d 178, 186-87 (D.C. CIR. 2006)

ARBON STEEL & SERV. CO. V. U.S., 315 F. 3d 1332, 1334. (FED. CIR. 2003)

BORST V. CHEVRON CORP., 36 F. 3d 1308, 1314 N.11 (5TH CIR. 1994)

ANDERSON V. LIBERTY, INC., 477 U.S. 242, 248, 106 S. CT. 2505 (1986).

BARREN V. HARRINGTON, ~~152 F. 3d 1193, 1194 (9TH CIR. 1998)~~ 152 F. 3d 1193, 1194. (9TH CIR. 1998)

HOWLETT V. ROSE, 496 U.S. AT 375-78 (STATE IMMUNITY RULES DO NOT APPLY IN STATE COURT § 1983 ACTION.)

5. U.S.C. § 702 WAIVES IMMUNITY FOR ALL CLAIMS AGAINST FEDERAL OFFICERS, AGENCIES, WHO ACT IN THEIR OFFICIAL CAPACITY OR FAILED TO ACT UNDER COLOR OR LEGAL AUTHORITY.

BASS V. E.I. DUPONT DE NEMOURS & CO., 324 F. 3d 761, 765. (4TH CIR. 2003) (CITING

DICKSON V. MICRO SOFT CORP., 309 F. 3d 193, 213 (4TH CIR. 2002).

ANDERSON V. LIBERTY LOBBY, INC. 477 U.S. 242, 248, 106 S. CT. 2505 (1986) THE DISPUTED FACTS ALLEGED BY THE PLAINTIFF ARE MATERIAL.

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TABLE OF AUTHORITIES CITED

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CASES	PAGE NUMBER
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PITTMAN V. KURTZ, 165 F. SUP. 2d 1243, 1247 (D.KAN. 2001);	
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LINER V. GOORD, 196 F. 3d 132, 134 (2d CIR. 1999) HOLDING "28 U.S.C. §1915A AND 42 U.S.C. §1999e (c)(2) DISMISSALS ARE SUBJECT TO DE NOVO REVIEW"	
ANDERSON V. LIBERTY LOBBY, INC., 477 U.S. 242, 248, 106 S. CT. 2505 (1986)	
ARBON STEEL & SERV. CO. V. U.S., 315 F. 3d 1332, 1334 (FED. CIR. 2003)	
BOYLE V. U.S., 200 F. 3d 1369, 1371 (FED. CIR. 2000)	
GALL V. UNITED STATES, 552 U.S. 38, 128 S. CT. 586, 591, 169 L. Ed. 2d 445 (2007)	
BORST V. CHEBRON CORP., 36 F. 3d 1308, 1314 N. 11 (5TH CIR. 1994).	
HOWETT V. ROSE, 496 U.S. AT 375-78 (STATE IMMUNITY RULES DO NOT APPLY IN STATE COURT §1983 ACTION).	

STATUTES AND RULES

§18.242. DEPRIVATION OF RIGHTS UNDER COLOR OF LAW
§18.246. DEPRIVATION OF RELIEF BENEFITS
§5 U.S.C. §702 WAIVER OF IMMUNITY, AND FED. R. CIV. P. 17 (b)
§26 §7206. FRAUD AND FALSE STATEMENTS
§26 §7207. FRAUDULENT RETURNS, STATEMENTS, OR OTHER DOCUMENTS.
§26 §7213. UNAUTHORIZED DISCLOSURE OF INFORMATION
§26 §7214. OFFENSES BY OFFICERS AND EMPLOYEES OF THE UNITED STATES. (A), (3), (B). UNLAWFUL ACTS OF REVENUE OFFICERS OR AGENTS.
SECTION §18. §1955. FAILURE TO SECURE PERSONAL IDENTITY. SECTION 5
POWERS OF THE COMMISSION "(C), (d), (1), (2), (3), (A), (B).
THE 11TH AMENDMENT DOES NOT FORBID SUING THE STATE OFFICIALS FOR DAMAGES IN THEIR INDIVIDUAL CAPACITIES, AND FOR DECLARATORY OR INJUNCTIVE RELIEF IN THEIR OFFICIAL CAPACITIES, ALSO, A DEFENDANT MUST BE A PERSON TO BE SUED UNDER §1983. IN MOST CASES, "PERSON" MEANS THE SAME THING UNDER §1983 AS IN ORDINARY USE → HOWEVER, A CITY OR COUNTY GOVERNMENT IS ALSO A PERSON FOR PURPOSES OF §1983.
§224.4; 18 U.S.C. A. §1506, 2071, 2073. "FALSIFYING OR CONCEAL WRONG DOING."
OTHER: §18. §245. FEDERALLY PROTECTED ACTIVITIES. §18. §245 (B)
18 (a) FED. R. CIV. P. AND 20 (2) (A) (B) FED. R. CIV. P.
PRA 28 U.S.C §1915 (b) PRA 28 U.S.C §1915 (g)
14TH AMENDMENT OF THE UNITED STATES CONSTITUTION, 4TH, 5TH, AMENDMENT.
42 U.S.C. §1983
FED. R. CIV. P. 52 (b), "CLEARLY ERRONEOUS STANDARD."

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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 N/A ; 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
TO THE PETITION AND IS;

☐ REPORTED AT N/A ; 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 B TO THE PETITION AND IS

☐ REPORTED AT N/A ; 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 N/A ; OR,

☐ HAS BEEN DESIGNATED FOR PUBLICATION BUT IS NOT YET REPORTED; OR,

☐ IS UNPUBLISHED.

JURISDICTION

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☒ FOR CASES FROM FEDERAL COURTS:

THE DATE ON WHICH THE UNITED STATES COURT OF APPEALS DECIDED MY CASE WAS ~~TO BE DETERMINED~~ . OCTOBER 26, 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: DECEMBER 6, 2022, AND A COPY OF THE ORDER DENYING REHEARING APPEARS AT APPENDIX A.

n/a ☐ AN EXTENSION OF TIME TO FILE THE PETITION FOR A WRIT OF CERTIORARI WAS GRANTED TO AND INCLUDING n/a (DATE) ON n/a (DATE) IN APPLICATION NO. A.

THE JURISDICTION OF THIS COURT IS INVOKED UNDER 28 U.S.C. § 1254(1).

n/a ☐ 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 n/a (DATE) ON n/a (DATE) IN APPLICATION NO. A.

THE JURISDICTION OF THIS COURT IS INVOKED UNDER 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. 42 U.S.C. §1983 CIVIL RIGHTS ACTIONS.

SEVERAL FEDERAL STATUTES PROVIDE FOR CIVIL RIGHTS LAWSUITS AGAINST STATE AND LOCAL OFFICIALS OR GOVERNMENTS, AND IN SOME CASES AGAINST PRIVATE PERSONS. FEDERAL COURTS HAVE "FEDERAL QUESTION" JURISDICTION OVER SUCH CASES. STATE COURTS ALSO HAVE JURISDICTION TO HEAR CLAIMS BASED ON FEDERAL CIVIL RIGHTS STATUTES AND MUST APPLY FEDERAL LAW IN DOING SO.

2. RIGHTS, PRIVILEGES, OR IMMUNITIES SECURED BY FEDERAL LAW.

SECTION 1983 DOES NOT CREATE ANY RIGHTS. IT SERVES TO ENFORCE RIGHTS THAT ALREADY EXIST IN THE CONSTITUTION OR IN OTHER PROVISIONS OF FEDERAL LAW. FEDERAL STATUTES AND REGULATIONS MAY BE ENFORCEABLE UNDER §1983 UNDER LIMITED CIRCUMSTANCES.

3. MOST PRISONERS CIVIL RIGHTS SUITS ARE BROUGHT UNDER 42 U.S.C. §1933, WHICH PROVIDES:

EVERY PERSON WHO, UNDER COLOR OF ANY STATUTE OR ORDENANCE, REGULATION, CUSTOM, OR USAGE, OF ANY STATE OR TERRITORY OR THE DISTRICT OF COLUMBIA, SUBJECTS, OR CAUSES TO BE SUBJECTED, ANY CITIZEN OF THE UNITED STATES, OR OTHER PERSON WITHIN THE JURISDICTION THEREOF TO THE DEPRIVATION OF ANY RIGHTS, PRIVILEGES, OR IMMUNITIES SECURED BY THE CONSTITUTION AND LAWS, SUIT IN EQUITY, OR OTHER PROCEEDING FOR REDRESS, EXCEPT THAT IN ANY ACTION BROUGHT AGAINST A JUDICIAL OFFICER FOR AN ACT OR OMISSION TAKEN IN SUCH OFFICER'S JUDICIAL CAPACITY, INJUNCTIVE RELIEF SHALL NOT BE GRANTED UNLESS DECLARATORY DECREE WAS VIOLATED OR DECLARATORY RELIEF WAS UNAVAILABLE FOR PURPOSES OF THIS SECTION, ANY ACT OF CONGRESS APPLICABLE EXCLUSIVELY TO THE DISTRICT OF COLUMBIA SHALL BE CONSIDERED TO BE A STATUTE OF THE DISTRICT OF COLUMBIA.

4. 4TH CONSTITUTIONAL AMENDMENT TO THE UNITED STATES.

THE RIGHT OF THE PEOPLE TO BE SECURE IN THEIR PERSONS, HOUSES, PAPERS, AND EFFECTS, AGAINST UNREASONABLE SEARCHES AND SEIZURES, SHALL NOT BE VIOLATED, AND NO WARRANTS SHALL ISSUE, BUT UPON PROBABLE CAUSE, SUPPORTED BY OATH OR AFFIRMATION, AND PARTICULARLY DESCRIBING THE PLACE TO BE SEARCHED, AND THE PERSONS OR THINGS TO BE SEIZED.

4 1/2 PURSUANT TO STATUTE MODEL PENAL CODE §224.4 §18 U.S.C.A. §1506, 2071, 2073. WHICH PROVIDES. IT IS A CRIME, UNDER STATE AND FEDERAL STATUTES, FOR A PERSON, KNOWING THAT HE HAS NO PRIVILEGE TO DO SO, TO FALSIFY OR OTHERWISE TAMPER WITH PUBLIC RECORDS WITH PURPOSE TO DECEIVE OR INJURE ANYONE OR TO CONCEAL ANY WRONG DOING. SEE ~~FALSE~~ FALSE CRIMEN.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

5. 5TH CONSTITUTIONAL AMENDMENT TO THE UNITED STATES.

NO PERSON SHALL BE HELD TO ANSWER FOR A CAPITAL, OR OTHER WISE INFAMOUS CRIME, UNLESS ON A PRESENTMENT OR INDICTMENT OF A GRAND JURY, EXCEPT IN CASES ARISING IN THE LAND OR NAVAL FORCES, OR IN THE MILITIA, WHEN IN ACTUAL SERVICE IN TIME OF WAR OR ~~IN THE PUBLIC DANGER~~ PUBLIC DANGER; NOR SHALL ANY PERSON BE SUBJECT FOR THE SAME OFFENSE TO BE PUT TWICE IN JEOPARDY OF LIFE OR LIMB; NOR SHALL BE COMPELLED IN ANY CRIMINAL CASE TO BE A WITNESS AGAINST HIMSELF, NOR BE DEPRIVED OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW; NOR SHALL PRIVATE PROPERTY, WITHOUT DUE PROCESS OF LAW; NOR SHALL PRIVATE PROPERTY BE TAKEN FOR PUBLIC USE, WITHOUT JUST COMPENSATION.

6. 14TH CONSTITUTIONAL AMENDMENT

SECTION I.

ALL PERSONS BORN OR NATURALIZED IN THE UNITED STATES, AND SUBJECT TO THE JURISDICTION THEREOF, ARE CITIZENS OF THE UNITED STATES AND OF THE STATE WHEREIN THEY RESIDE. NO STATE SHALL MAKE OR ENFORCE ANY LAW WHICH SHALL ABRIDGE THE PRIVILEGES OR IMMUNITIES OF CITIZENS OF THE UNITED STATES; NOR SHALL ANY STATE DEPRIVE ANY PERSON OF LIFE, LIBERTY OR PROPERTY, WITHOUT DUE PROCESS OF LAW; NOR DENY TO ANY PERSON WITHIN ITS JURISDICTION THE EQUAL PROTECTION OF THE LAWS.

7. PLRA 28 U.S.C. § 1915 (b) ~~APPEAL~~ ~~12~~ PLRA U.S.C. § 1915 (g) PURSUANT TITLE 28 OF THE UNITED STATES ~~CODE~~ CODE, ARBON STEEL & SERV. CO. V. U.S., 315 F.3d 1332, 1334. (FED. CIR. 2003), "MATTERS OF CONSTITUTIONAL INTERPRETATION RECEIVE PLENARY REVIEW"

8. RULE 52(b) "CLEARLY ERRONEOUS" STANDARD OF FED. R. CIV. P. 52 (b). IN THIS CLAIM THE PLAINTIFF SHOWS MATERIAL FACTS IN SUPPORT. ANDERSON V. LIBERTY LOBBY, INC. 477 U.S. 242, 248, 106 S. CT. 2505 (1986) THE DISPUTED FACTS ALLEGED BY THE PLAINTIFF ARE MATERIAL.

9. § 224.4; 18 U.S.C.A. § 1506, 2071, 2073. "FALSIFYING A RECORD OR CONCEAL WRONG DOING."

10. 18 § 245. FEDERALLY PROTECTED ACTIVITIES. 18 § 245 (B) PARTICIPATING OR ENJOYING ANY BENEFIT, SERVICE, PRIVILEGE, PROGRAM, FACILITY OR ACTIVITY PROVIDED OR ADMINISTERED BY ANY STATE OR SUBDIVISION THEREOF.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

11. 18. § 242. DEPRIVATION OF RIGHTS UNDER COLOR OF LAW. FEDERAL STATUTE MAKES IT A CRIME FOR SOMEONE ACTING UNDER COLOR OF LAW TO DEPRIVE ANOTHER PERSON OF FEDERAL CIVIL RIGHTS.
12. 18. 246. DEPRIVATION OF RELIEF BENEFITS.
13. FEDERAL RULE IN CIVIL PROCEDURE 17 (b) WAIVER OF SOVEREIGN IMMUNITY.
14. § 26. § 7207. FRAUDULENT RETURNS, STATEMENTS, OR OTHER DOCUMENTS.
15. § 26. § 7206. FRAUDULENT AND FALSE STATEMENTS OR OTHER DOCUMENTS.
16. 26. § 7213. ~~UNAUTHORIZED DISCLOSURE OF INFORMATION. OFFENSES BY OFFICERS AND EMPLOYEES OF THE UNITED STATES.~~
17. 26. § 7214. OFFENSES BY OFFICERS AND EMPLOYEES OF THE UNITED STATES.
(a) UNLAWFUL ACTS OF REVENUE OFFICERS OR AGENTS. (3), (8)
18. § 18. § 1955 FAILURE TO SECURE PERSONAL IDENTITY. SECTION 5.
POWERS OF THE COMMISSION "(c), (d), (1), (2), (3), (A), (B).
19. 5. U.S.C. § 702 WAIVES IMMUNITY FOR ALL EQUITABLE CLAIMS AGAINST FEDERAL OFFICERS, AGENCIES, WHO ACT IN THEIR OFFICIAL CAPACITY OR FAILED TO ACT UNDER COLOR OR LEGAL AUTHORITY.
20. HOWLETT V. ROSE, 446 U.S. AT 375-78 (STATE IMMUNITY RULES DO NOT APPLY IN STATE COURT § 1983 ACTION);
21. LINER V. GOORD, 196 F. 3d 132, 134 (2d CIR. 1999) HOLDING THAT "28 U.S.C. § 1915 A AND 42 U.S.C. § 1999 e (c) (2) DISMISSALS ARE SUBJECT TO DE NOVO REVIEW";
22. PITTMAN V. KURTZ, 165 F. SUP. 2d 1243, 1247. (D. KAN. 2001);
POWELL V. COOK COUNTY JAIL, 814 F. SUPP. 757, 758. (N.D. ILL. 1993)
ABSOLUTE IMMUNITY OR QUALIFIED IMMUNITY DOES NOT PROTECT LOCAL GOVERNMENTS THEMSELVES, WHICH ARE OFTEN LIABLE UNDER § 1983.
23. BOYLE V. U.S., 200 F. 3d 1369, 1371 (FED. CIR. 200) (WHETHER COURT HAS JURISDICTION AND WHETHER COMPLAINT STATES A CLAIM ARE QUESTIONS OF LAW REVIEWED DE NOVO).

STATEMENT OF THE CASE

THIS IS A ~~42~~ 42 U.S.C. §1983 CIVIL RIGHTS ACTION BROUGHT BY MARVIN GOMEZ AN INMATE IN STATE PRISON. §18.242 DEPRIVATION OF CIVIL RIGHTS FEDERAL AND CONSTITUTIONAL CIVIL RIGHTS ACTIONS. §18.245(B) AND 18. §246. FEDERALLY PROTECTED ACTIVITIES.

SEVERAL FEDERAL STATUTES PROVIDE FOR CIVIL RIGHTS LAWSUITS AGAINST STATE AND LOCAL OFFICIALS OR GOVERNMENTS, AND IN SOME CASES AGAINST PRIVATE PERSONS. FEDERAL COURTS HAVE "FEDERAL QUESTION" JURISDICTION OVER SUCH CASES. STATE COURTS ALSO HAVE JURISDICTION TO HEAR CLAIMS BASED ON FEDERAL CIVIL RIGHTS STATUTES MUST APPLY FEDERAL LAW IN DOING SO. MR. GOMEZ CLAIM INVOLVES ALSO VIOLATIONS OF TITLE §18. §245 FEDERALLY PROTECTED ACTIVITIES (B) PARTICIPATING OR ENJOYING ANY BENEFIT, SERVICE, PRIVILEGE, PROGRAM, FACILITY OR ACTIVITY PROVIDED OR ADMINISTERED BY ANY STATE, OR SUBDIVISION THEREOF. HARPER V. SHOWERS, 174 F. 3d. 716, 718 N. 3 (5TH CIR. 1998) STATING THAT DE NOVO REVIEW IS ONLY APPROPRIATE FOR DISMISSALS FOR FAILURE TO STATE A CLAIM ON WHICH RELIEF MAY BE GRANTED. FURTHERMORE PREVIOUS COURTS HAVE FAILED TO SEE THE "MATERIAL FACTS" AS DECIDED IN BORST V. CHEBRON CORP., 36 F. 3d. 1308, 1314 N. 1 (5TH CIR. 1994) (NOTING THAT BECAUSE THE APPELLATE COURT DID NOT CONSIDER AN ISSUE "THE DISTRICT COURT'S RULING ON THAT ISSUE IS NOT CONCLUSIVE BETWEEN THE PARTIES.")

MR. GOMEZ WAS SUBJECTED TO INHUMANE CONDITIONS WHEN FORCED OUT OF HIS APARTMENT ROOM, BECAUSE HIS TAX REFUND OF ALMOST \$10,000 DOLLARS WAS NEVER DEPOSITED BY THE (IRS) IN HIS PERSONAL BANK ACCOUNT SO MR. GOMEZ COULD PAY FOR HIS BILLS. MR. GOMEZ WAS ALSO SUBJECTED TO THE CONSEQUENCES OF FAILURE TO TREAT ILLNESS OR INJURY, BOTH IMMEDIATE AND LONGER TERM OR PROSPECTIVE, AND DENIAL OF ADEQUATE FOOD, INFLECTION OF PAIN OR ILLNESS THROUGH EXTREME CONDITIONS OF CONFINEMENT WHEN MR. GOMEZ WAS FORCED TO LIVE IN HIS CAR FOR 10 MONTHS IN THE ~~WINTER~~ COLD AND SUMMER HEAT, BECAUSE THE INTERNAL REVENUE REFUSES TO PAY MR. GOMEZ'S FRAUD CLAIM WHEN THEY CLAIM THAT MR. GOMEZ'S WIFE DONATED THE REFUND TO THE BLUE CROSS TO WHAT MR. GOMEZ REPLIED THAT IT IS IMPOSSIBLE BECAUSE HIS WIFE DIED IN 2016 AND HE FILED TAXES IN 2017, MR. GOMEZ ALSO LEFT A 2 YEAR OLD DAUGHTER THAT HE COULD NOT SUPPORT FINANCIALLY DUE TO THE INTERNAL REVENUE FAILURE TO PROTECT AND SECURE PERSONAL IDENTITY.

§18 §1955 SECTIONS POWERS OF THE COMMISSION "(c), (d), (1), (2), (3), (A), (B)". WHEN THE (IRS) NOTIFIED MR. GOMEZ TO TELL HIM THAT THE REASON WHY HE DID NOT RECEIVE HIS DIRECT DEPOSIT PAYMENT WAS BECAUSE MR. GOMEZ HAD BEEN A VICTIM OF THE ANTHEM IDENTITY DATA BREACH. IF GOMEZ WOULD HAVE BEEN PAID HIS TAX REFUND IN TIME HE WOULD HAVE HIS 3 CARS, TOOLS, APARTMENT ROOM, AND COULD BEEN ABLE TO SUPPORT HIS DAUGHTER, AND HE WOULD NOT HAVE BEEN EXPOSED TO AND SUBJECTED TO PAIN AND SUFFERING, EXTREME CONDITIONS, AND LACK OF FOOD. IF MR. GOMEZ WOULD HAVE NEVER BEEN BREACHED HIS WHOLE LIFE WOULD BE DIFFERENT. IT IS THE IRS FAULT THAT HE HAVE LOST ALMOST ALL.

REASONS FOR GRANTING THE PETITION

THE 14TH AMENDMENT OF THE UNITED STATES CONSTITUTION SECTION 1 PROVIDES: THAT ALL PERSONS BORN OR NATURALIZED IN THE UNITED STATES, AND SUBJECT TO THE JURISDICTION THEREOF, ARE CITIZENS OF THE UNITED STATES AND OF THE STATE WHEREIN THEY RESIDE. NO STATE SHALL MAKE OR ENFORCE ANY LAW WHICH SHALL ABRIDGE THE PRIVILEGES OR IMMUNITIES OF CITIZENS OF THE UNITED STATES; NOR SHALL ANY STATE DEPRIVE ANY PERSON OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW; NOR DENY TO ANY PERSON WITHIN ITS JURISDICTION THE EQUAL PROTECTION OF THE LAWS. MR. GOMEZ CLAIM IN HIS 42 U.S.C §1983 IS ALSO SUPPORTED BY §18-242 DEPRIVATION OF RIGHTS THE (IRS) HAS DEPRIVED MR. GOMEZ OF HIS FEDERAL AND CIVIL RIGHTS WHEN THE (IRS) WAS BREACHED MR. GOMEZ WAS BREACHED, IRS PROMISED TO REPAY MR. GOMEZ AND THEY NEVER DID, THEREFORE MR. GOMEZ WAS DEPRIVED OF HIS RELIEF BENEFIT (APPROVED TAX REFUND) 18.246 AND 18.245. FEDERALLY PROTECTED ACTIVITIES, 18.245 (B) PARTICIPATING OR ENJOYING ANY BENEFIT, SERVICE, PRIVILEGE, PROGRAM, FACILITY OR ACTIVITY PROVIDED OR ADMINISTERED BY ANY STATE OR SUBDIVISION THEREOF. THE PREVIOUS COURTS HAVE FAILED TO SEE THE FACTS OR IGNORED THE EVIDENCE PROVIDED SEE ARBON STEEL & SERV. CO. V. U.S., 315 3.d 1332, 1334. (FED. CIR. 2003) "MATTERS OF CONSTITUTIONAL INTERPRETATION RECEIVE PLENARY REVIEW"; ANDERSON V. LIBERTY LOBBY, INC. 477. U.S. 242. 248, 106 S. CT. 2505 (1986) THE DISPUTED FACTS ALLEGED BY THE PLAINTIFF ARE MATERIAL. (COPIES OF ALL WAGES EARNED FOR WHICH HE WAS CLAIMING TAXES FOR ARE ATTACHED TO THE CLAIM. THEREFORE THE DISMISSAL OF THIS CLAIM IS "CLEARLY/ERRONEOUS" PURSUANT TO RULE 52(b) STANDARD OF FED. R. CIV. P. MR. GOMEZ ALSO STATED INTERNAL REVENUE VIOLATIONS §26.7206 FRAUDULENT RETURNS AND FALSE STATEMENTS OR OTHER DOCUMENTS, §26.7207 FRAUDULENT RETURNS, STATEMENTS, OR OTHER DOCUMENTS. GRANTING THIS PETITION WILL BE IMPORTANT BECAUSE IT WILL MAKE JUSTICE AND IT WILL MAKE A DIFFERENCE IN THE COMMUNITIES OF EVERY CITY IN D.C. AND ALL OVER THE 50 STATES ACROSS THE U.S., DISMISSING IT WILL ONLY ATTRIBUTE TO THE AGENCIES ACROSS THE U.S. TO CONTINUE TO DEPRIVE PEOPLE AND DENY THEIR RIGHTS TO RELIEF BENEFITS. THIS "ANTHEM IDENTITY BREACH OF DATA" IS (IRS) FAULT WHERE MR. GOMEZ WAS A VICTIM AND AFTER BEING INFORMED OF WAS PROMISED TO BE REIMBURSED. HOWEVER THE (IRS) DENIES "THE ANTHEM IDENTITY DATA BREACH", DENIES THAT I WAS A VICTIM, AND CLAIMS THAT MR. GOMEZ'S WIFE DONATED THE MONEY, WHICH IS A LIE BECAUSE SHE DIED IN 2016, AND HE FILED THE TAXES IN 2017, TURBO TAX APPROVED MR. GOMEZ FOR \$9,860 DOLLARS FILED WIDOWER WITH A DEPENDENT CHILD, DONATED \$1,000 IN USED CLOTHES, SHOES, AND TOYS TO THE PURPLE HEART FOUNDATION, AND AFTER APPROVAL HE NEVER RECEIVED HIS DIRECT DEPOSIT PAYMENT TO HIS BANK ACCOUNT WHICH IS WHY HE REPORTED THE DELAY TO (IRS) AUGUST 01, 2017 WHERE A FRAUD CLAIM WAS REPORTED. "ANTHEM IDENTITY DATA BREACH".

WHETHER COURT HAS JURISDICTION AND WHETHER COMPLAINT STATES A CLAIM ARE QUESTIONS OF LAW REVIEWED DE NOVO).

LINER V. GOORD. 196 F. 3d 132, 134 (2d CIR. 1999) HOLDING THAT "28 U.S.C. § 1915 (A) AND 42 U.S.C. § 1999c (C)(2) DISMISSALS ARE SUBJECT TO DE NOVO REVIEW";

FEDERAL RULE OF CIVIL PROCEDURE 17(b) WAIVER OF SOVEREIGN IMMUNITY AND 5 U.S.C. § 702 WAIVES IMMUNITY FOR EQUITABLE CLAIMS AGAINST FEDERAL OFFICERS, AGENCIES, WHO ACT IN THEIR OFFICIAL CAPACITY OR FAILED TO ACT UNDER COLOR OR LEGAL AUTHORITY. PURSUANT TO STATUTE MODEL PENAL CODE § 224.4 § 18 U.S.C. A.

§ 1506, 2071, 2073. WHICH PROVIDES. IT IS A CRIME, UNDER STATE AND FEDERAL STATUTES, FOR A PERSON, KNOWING THAT HE HAS NO PRIVILEGE TO DO SO, TO FALSIFY OR OTHERWISE TAMPER WITH PUBLIC RECORDS WITH PURPOSE TO DECEIVE OR INJURE ANY ONE OR TO CONCEAL ANY WRONG DOING.

CONCLUSION

FOR THESE REASONS I ASK THE SUPREME COURT TO FIND IT OF ~~CONSTITUTIONAL~~ IMPORTANCE TO CORRECT AND ENFORCE THE LAWS VIOLATED BY IRS. AND GRANT THIS MOTION.

THE PETITION FOR A WRIT OF CERTIORARI SHOULD BE GRANTED.

RESPECTFULLY SUBMITTED,

Mir Estelita Gomez

DATE: 01-17-2023