

No. 27-1748

In the
Supreme Court of the United States

IN RE CHARLES SIMON,

Petitioner

FILED
JUN 13 2024
OFFICE OF THE CLERK
SUPREME COURT USA

ORIGINAL

On Petition for Extraordinary Writ of Mandamus
Under the All Writs Act, 28 U.S.C. § 1651, to the
United States Court of Appeals for the Second Circuit

**PETITION FOR AN
EXTRAORDINARY WRIT OF MANDAMUS
UNDER THE ALL WRITS ACT, 28 U.S.C. § 1651**

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QUESTIONS PRESENTED

1. Whether the Three Judge Panel Two Page Order denied and rubber the Mandamus All Writs Act 28 U.S.C. section 1651, consolidated with the appeal, ignored outrageous conduct record where, The Clerk of Appeals Court and the Appeal Court Judge illegally used the Appellees' DOJ Attorney constitutionally defective Request for Extension of Time to file Appellees' Brief, thus falsely claim the Request for Extension of Time was Appellees' motion to oppose Appellant's motion for an expedited appeal chilling Appellant's First Amendment Rights to Appeal pursuant Access to the court.
2. Whether the Three Judge Panel Judicial proceeding mirror deep-seated favoritism 28 U.S.C. section 455(a), issued The unconstitutional *ex parte* two Page JUDGMENT, where the Three Judge Panel ignored the record of the entire judicial proceeding that is under the precincts patrolled by Title VII of Civil Rights Act of 1964, 42 U.S.C. sec. 2000e; Administrative Procedure Act 5 U.S.C. Sec 701 et seq; Fed. R. Civ. Pro 65; Fed. R. Civ. Pro. 55; Fed. R. Civ. Pro. 56; and All Writs Act 28 U.S.C. sec. 1651; (i) Ignored Exhibit of the Chief Operating Officer's fraud discriminatory Policy under 28 C.F.R. Part 301 that accompanied the Appeal Brief; (ii) Ignored Exhibit of the Appellees' DOJ Attorney's letter conceding the case from the outset of the litigation by failing to file any responsive pleading to the Jury Demand Verified Complaint incorporated with memorandum of law, Accompanied with Preliminary Injunction Fed. R. Civ. Pro. 65.
3. Whether Pro Se Appellant's litigation was subject to discriminatory judicial practice that chilled

Pro Se Appellant's exercise of First Amendment Rights, where Appellant Petition for rehearing En Banc FRAP 40 upon the Three Judge Panel's *ex parte* 2/22/2024 decision denial of Appellant's Appeal, the two Page ruling was code evidence where Case manager fictitious denial of several En Banc FRAP 40 Petition as defective, Appellant corrected several more defective En Banc FRAP 40 Petitions where manager deliberately erected procedural devices that cause the hardship consequence of inevitable delay; And in effect, mis directed Pro Se Appellant to file Petition for Reconsideration to same Three Judge Panel's that rendered to same *ex parte* 2/22/2024 unconstitutional decision tantamount to chilling U.S. Const 1st Amendment Right to access to the Appeals Court to remedy civil wrong correct manufactured by case manage. This case is replete with deep seated favoritism against pro se litigation where the extraordinary writ authorized by 28 U.S.C. sec. 1651 should be a matter of right in the exceptional circumstances of this case.

4. Whether the Writ Section 1651 should issue upon outrageous conduct pursuant First Amendment deprivation, where Pro Se litigant is entitled to mandatory Preliminary Injunction Fed. R. Civ. Pro. 65 pursuant disparate treatment imposed by Chief Operating Officer's discriminatory fraud policy under 28 C.F.R. Part 301 And Summary Judgment Fed. R. Civ. Pro. 56 where Defendant's concede case by failing to file any responsive pleading to the verified Complaint, that demand for jury trial in the district court, reduced to \$85 million Settlement and any other legal fees afforded the prevailing Petitioner.

LIST OF PROCEEDINGS

U.S. Court of Appeals for the Second Circuit
Nos. 23-1216, 23-7922

Charles Simon, *Plaintiff-Appellant*, v. Federal Prison Industries Inc., Steve Schwalb, Chief Operating Officer of Federal Prison Industries, *Defendants-Appellees*.

Final Order: February 22, 2024

Order Denying Reconsideration: May 8, 2024

U.S. District Court, Southern District of New York
No. 23-cv-05125 (LJL)

Charles Simon, *Plaintiff*, v. Federal Prison Industries Inc. and Steve Schwalb, Chief Operating Officer of Federal Prison Industries, *Defendants*.

Date of Final Order: May 13, 2024

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
LIST OF PROCEEDINGS	iii
TABLE OF AUTHORITIES	vi
OPINIONS BELOW	1
JURISDICTION	1
STATEMENT	2
REASONS FOR GRANTING THE PETITION:	
PROCEDURAL FACTS INEXTRICABLE	
ENTWINED WITH LEGAL REASONS THE	
WRIT SHOULD ISSUE	4
RELIEF SOUGHT	9

TABLE OF CONTENTS – Continued

	Page
APPENDIX TABLE OF CONTENTS	
OPINIONS AND ORDERS	
Order, U.S. Court of Appeals for the Second Circuit (February 22, 2024)	1a
Order Denying Appellant's Request for Expedited Appeal, U.S. Court of Appeals for the Second Circuit (September 28, 2023).....	4a
RECONSIDERATION ORDER	
Order Denying Motion for Reconsideration, U.S. Court of Appeals for the Second Circuit (May 8, 2024)	6a
OTHER DOCUMENT	
USDOJ Letter Request for Extension, Filed in the U.S. Court of Appeals for the Second Circuit (September 28, 2023)	8a

TABLE OF AUTHORITIES

	Page
CASES	
<i>Aetna Life ins. Co. v. Lavoie</i> , 475 U.S. 813 (1986)	3
<i>Bakers Life & Cas Co v. Holand</i> , 346 U.S. 379 (1953)	3, 7
<i>Briggs v. Duke Power Co.</i> , 410 U.S. 413 (1971)	6
<i>Dent v. West Virginia</i> , 129 U.S. 114 (1898)	3
<i>Grande v. United States</i> , 350 F.2d. Cir. (1966)	6, 7
<i>Lewis v. Casey</i> , 518 U.S. 343 (1996)	2
<i>McDonnell Douglas Corp., v. Green</i> , 411 U.S. 792 (1973).....	6, 7
<i>Romero v. United States</i> , 459 U.S. 926 (1982).	1
<i>Sampson v. Murray</i> , 415 U.S. 61 (1970).....	8
<i>Singleton v. Wulff</i> , 428 U.S. 106 (1976)	5
<i>U.S. v. Demko</i> , 385 U.S. 149 (1966).....	6, 7
<i>Whalen v. County of Fulton</i> , 126 F.3d 400 (2d Cir. 1997)	2
<i>White Plains Towing Corp. v. Patterson</i> , 991 F.2d 1049 (2d Cir. 1993)	3

TABLE OF AUTHORITIES – Continued

	Page
CONSTITUTIONAL PROVISIONS	
U.S. Const. amend. I	i, ii, 2, 3, 7, 8
U.S. Const. amend. V.....	8
STATUTES	
28 U.S.C. § 1651.....	i, ii, 8, 9
28 U.S.C. § 455(a)	i, 1, 3, 4, 7
5 U.S.C. § 701 et seq.....	i, 1, 6
Title VII of Civil Right Act of 1964, 42 U.S.C. sec. 2000e	i, 4, 6, 7
JUDICIAL RULES	
Fed. R. App. P. 40	ii, 2, 8
Fed. R. Civ. P. 55	i
Fed. R. Civ. P. 56	i, ii, 9
Fed. R. Civ. P. 65	i, ii, 5, 9
REGULATIONS	
28 C.F.R. 301.315(b)	6
28 C.F.R. Part 301	i, ii, 5, 6, 7, 9



OPINIONS BELOW

The U.S. Court of Appeals for the Second Circuit denied a petition for writ of mandamus on February 22, 2024. (App.1a). This petition is solely directed at the Second Circuit, and therefore the lower court opinions are not reproduced in the appendix.



JURISDICTION

This Petition pursuant to 28 U.S.C. § 1651, targets the judicial proceeding in this case showing deep seated bias 28 U.S.C. § 455(a) towards pro se litigation; thus, the judicial proceeding are tantamount to a farce and mockery of justice system. *Romero v. United States*, 459 U.S. 926 (1982). Furthermore, Petitioner invokes All Writs Act authorizes United States Federal Court to issue all Writs necessary or appropriate in aid of their respective jurisdiction and agreeable to the usages and principles of law.

The Second Circuit denied a petition for writ of mandamus on February 22, 2024. (App.1a). Under Rule 20, petitioner has exhausted avenues in the Second Circuit. and jurisdiction is therefore properly invoked under the All Writs Act, 28 U.S.C. § 1651. The writ depends on the jurisdictional nexus of the Administrative Procedure Act, 5 U.S.C. § 701 et seq.



STATEMENT

As a preliminary matter, The administrative record will show Pro Se Petitioner satisfied the three requirements to obtain the Writ from text; Petitioner has no other means to attain relief such as Petition for Rehearing En Banc Fed. R. App. P. 40 Appeal, where the Three Judge Panel's February 22, 2024 Ex Parte Order ignored the entire documented evidence of facts and denied Mandamus Section 1651 23-7922 relief that was consolidated with Pro Se Appellant's Appeal 23-1216. The two Page Ex Parte unconstitutional decision was code to prevent Pro Se litigation from Rehearing En Banc Fed. R. App. P. 40, Appeal; The adverse judicial procedure chilled First Amendment Speech right of the United States Constitution.

The Exhibits of the administrative record will prove Petitioner's clear and indisputable right to issue the writ pursuant First Amendment rights deprivation; The First Amendment protect the right of access to the court; *Lewis v. Casey*, 518 350, (1996) First, the docket entries is replete with false and blatant inaccuracies; hence, where Pro Se Motion to Preclude Appellee's DOJ Attorney From Any Extension of Time to file Appellees' Brief in Opposition to Appellant's Appeal Brief, said Pro Se Motion was deemed defective by case manager [DE-32]. When the government obstruct an individual's effort to seek judicial redress, that right is violated; *Whalen v. County of Fulton*, 126 F.3d 400, 406 (2d Cir. 1997); More critical still, the exhibits mirror the outrageous conduct, the Order dated 28th day of September 2023 endorsed by U.S. Appeals Court Judge, signed by Honorable Catherine

O'Hagan Wolfe, Clerk of Court, States: "Appellant moves for expedited appeal."

Thus the Appeal Court Judge and Clerk of Court fictitious Order falsely claimed, "Appellees' DOJ Attorney Motion oppose Appellant's Motion for expedited Appeal." The Clerk of Court and the and Appeal Court Judge outrageous conduct used the DOJ Attorney constitutionally defective Request for Extension of Time dated September 28, 2023, to oppose Appellant's Motions for an Expedited Appeal; Usurping of judicial authority coupled with clear abuse of discretion clothes with judicial favoritism Section 455(a) *Aetna Life ins. Co. v. Lavoie*, 475 U.S. 813 (1986), the Writ Section 1651 will issue; *Bakers Life & Cas Co v. Holand*, 346 U.S. 379 (1953); A prerequisite of exceptional novel circumstances pursuant the First Amendment right to free speech, deprivation give rise to irreparable injury; will satisfy the threshold question for issuance the writ; *White Plains Towing Corp. v. Patterson*, 991 F.2d 1049, 1049 (2d Cir. 1993); As the touchstone of due process is protection of the individual against arbitrary action of government; *Dent v. West Virginia*, 129 U.S. 114, 123 (1898). The Mandamus should issue.



**REASONS FOR GRANTING THE PETITION:
PROCEDURAL FACTS INEXTRICABLE
ENTWINED WITH LEGAL REASONS
THE WRIT SHOULD ISSUE**

First, as a preliminary matter, On the top of Page two of the Court's Order, the Three Judge Panel overlooked and misapprehended the factual record that the Appellees' DOJ Attorney frivolous request dated 9/28/2023 for extension of time to file Appellees' brief 91 days from the date Appellant file Pro Se Appeal brief; *See Attached Exhibit*; The Three Judge Panel incorrectly alleged the Government has Filed No such motion; Judicial Notice Every Motion filed by the Appellees' Department of Justice Attorney was addressed to the Clerk of Appeals Court seeking favor; the Appellees' DOJ Attorney constitutional defective extension of time to file Appellees' brief 91 days from the date Appellant file the Appeal brief, The DOJ Attorney erection of elaborate procedural devices to hinder the resolution of this Administrative Civil Right Title VII of Civil Right Act of 1964, Section 2000e litigation.

Moreover, to preclude expedited appeal holding appellant's Appeal Brief 9/28/2023 in abeyance merely to afford unnecessary favor Section 455(a), to Appellees' DOJ Attorney to submit frivolous request dated 9/28/2023 for extension of time to file Appellees' brief 91 days from the date Appellant file Appeal brief; Appellant's Motion to preclude Appellee's DOJ Attorney from any extension of time to file Appellee's Appeal Brief was deemed defective without reason by Case Manager (DE-31); Appellant's Motion to preclude any

extension is grounded in sound constitutional reasoning; The first procedural reason to preclude Appellees extension rest on the scope of appellate review is defined by the record below; the general rule is that this Court should not consider an issue on appeal that was not raised below. The scope of appellate review is limited to issues raised below. *Singleton v. Wulff*, 428 U.S. 106, 120 (1976);

Furthermore, the DOJ Attorney seeking ninety-day extension is inadequate because DOJ Counsel did Not give any reason for seeking extension, the moving paper patently frivolous, hence devoid of any factual or legal basis pursuant sound constitutional reasoning of extraordinary circumstances FOR EXTENSION OF TIME, Rather, the DOJ Attorney request seeks favor from the Appeals Court Judges through the Clerk of Court. The request for extension was too little to late pursuant the procedural bar; The procedural bar is premised on the fact the DOJ Attorney failure to file any responsive pleading to the Jury demand Verified Complaint incorporated with memorandum of law, accompanied by the affidavit Preliminary Injunction Fed. R. Civ. Pro. 65; More specifically, the letter appended to the Appeal Brief reveal Joseph A. Pantoja, Assistant United States Attorney, concede this case. Judicial Notice the DOJ Attorney admit the well pleaded facts of the complaint but deny the legal sufficiency of Appellant's Constitutional claim; by failing to undertake a judicial review under APA; The DOJ Attorney unconstitutional procedural departure fail to recognize judicial review of the merits of the Chief Operating Officer of Federal Prison Industries, administrative decision under 28 C.F.R. Part 301 is restricted to the "arbitrary and

capricious" standard prescribed by the Administrative Procedure Act 5 U.S.C. sec. 701 et seq;

This case is pleaded with heighted degree of specificity, and there is not any legitimate procedural escape hatch to avoid providing Title VII of Civil Rights Act of 1964, 42 Section 2000e remedy; Furthermore, the record show the Chief Operating Officer of Federal Prison Industries Inc., The unconstitutional policy 28 C.F.R. Part 301 practice conflict with the holding of *U.S. v. Demko*, 385 U.S. 149 (1966); *Grande v. United States*, 350 F.2d. Cir.(1966) and in disaccord with Congressional intent. Therefore, the Three Judge panel should have enjoined 28 C.F.R Part 301 discriminatory practice upon the enforcement of Title VII of the Civil Rights Act of 1964, 42 U.S.C. sec. 2000e; *See McDonnell Douglas Corp., v. Green*, 411 U.S. 792 (1973); *Briggs v. Duke Power Co.*, 410 U.S. 413 (1971).

Rather, The Three Judge Panel Two Page Order says "DISMISSED" the appeal "as it lacks an arguable basis either in law or in fact." Favoritism ensued when the Three Judge Panel ignored the entire documented evidence of fact that accompanied the Appeal Brief. By contrast the Department of Justice Motion to Dismiss on page 3 admits the illegal termination that occurred in 2018. The COO's 301 policy breached the IACP under 28 C.F.R. 301.315(b). The Department of Justice admits the well pleaded facts but denies the legal sufficiency. Thus, the DOJ attorney failed to recognize that judicial review of the merits of the administrative decision is under arbitrary and capricious standard prescribed by the Administrative Procedure Act; Central to this factual conclusion, the DOJ and the Appeals Court failed to recognize The COO's unconstitutional Policy practice under 28 C.F.R. Part

301 conflict with the holding of *U.S. v. Demko*, 385 U.S. 149 (1966) and *Grande v United States*, 550 F.2d, Cir. (1966), thus in accord with Congressional intent; Furthermore, Title VII of the Civil Rights Act of 1964, 42 U.S.C. sec. 2000e does waver lacking performance upon Pro Se litigation, to the contrary, Title VII of the Civil Rights Act bars all overt act discriminatory practice; *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), this case should be no exception.

The outrageous conduct pursuant usurping of judicial authority, coupled with clear abuse of discretion clothes with judicial favoritism Section 455(a) the Writ Section 1651 will issue; *Bakers Life & Cas Co v. Holand*, 346 U.S. 379 (1953) ; See attached docket entry; Therefore, because of the drastic curtailment in the judicial proceeding precluding Pro Se Appellant access to the court to Petition for rehearing En Banc upon the Three Judge Panel's *ex parte* 2/22/2024 decision denial of Appellant's Appeal, the two Page ruling was code evidence where Case manager fictitious denial of several Rehearing En Banc FRAP 40; Petition as defective, Appellant corrected several more defective En Banc Petitions where manager deliberately erected procedural devices that cause the hardship consequence of inevitable delay; And in effect, misdirected and forced Pro Se Appellant to file Petition for Reconsideration to same Three Judge Panel that rendered to same *ex parte* ruling 2/22/2024 unconstitutional decision; The Adverse action tantamount to chilling Pro Se litigant U.S. Const 1st Amendment Right to access to the Appeals Court to remedy civil wrong correct; Judicial Notice the Three Judge DENIED RECONSIDERATION Petition May 8, 2024.

Therefore, because of the drastic curtailment in the judicial proceeding where Pro Se Petition was denied access to the Court for rehearing En Banc FRAP 40 upon the Three Judge Panel's *ex parte* 2/22/2024 decision denial rubber stamp of Appellant's mandamus Section 1651 and Appeal, The two Page ruling was code evidence where Case manager fictitious decision denial of several En Banc FRAP 40 Petition as defective, Appellant corrected several more defective En Banc FRAP 40 Petitions where manager deliberately erected procedural devices that cause the hardship consequence of inevitable delay; And in effect, misdirected Pro Se Appellant to file Petition for Reconsideration to same Three Judge Panel's that rendered to same *ex parte* 2/22/2024 unconstitutional decision tantamount to chilling U.S. Const. 1st Amendment Right to access to the Appeals Court to remedy civil wrong correct manufactured by case manager.

This case is replete with deep seated favoritism against pro se litigation; First the Petition for Reconsideration was denied May 8, 2024 (see the order in the Appendix at App.6a.); The extraordinary writ authorized by 28 U.S.C. sec. 1651 should be a matter of right in the exceptional circumstances of this case where fair judgment is impossible, *Sampson v. Murray*, 415 U.S. 61 (1970), Thus the repeated denial of access to the court and the legal process to remedy civil wrong in violation of several statutory rights, includes violation of United States Constitutional Rights under the First, Fifth Amendment Equal Protection Clause,



RELIEF SOUGHT

Accordingly, for all the factual and legal reasons delineated herein, Writ Section 1651 should issue upon outrageous conduct pursuant First Amendment deprivation, where Pro Se litigant is entitled to mandatory Preliminary Injunction Fed. R. Civ. P. 65 pursuant disparate treatment imposed by Chief Operating Officer's discriminatory fraud policy under 28 C.F.R. Part 301 And Summary Judgment Fed. R. Civ. P. 56 where Defendant's concede case by failing to file any responsive pleading to the verified Complaint, that demand for jury trial in the district court, reduced to \$85 million Settlement and any other legal fees afforded the prevailing Petitioner. Because of the prejudice and discriminatory practice toward Pro Se litigation; And upon the facts and law delineated herein, The Supreme Court should issue the Writ of Mandamus Section 1651 forth with.

Respectfully submitted,

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June 13, 2024