23-78

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

PALANI KARUPAIYAN et al

---Petitioners

V.

ARNAUD VAISSIE et al

---- Respondents

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit
Docket-23-1288

PETITION FOR A WRIT OF CERTIORARI

Palani Karupaiyan.
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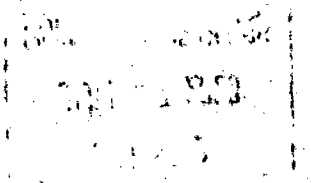

I. QUESTION PRESENTED

Petitioner's prayed 9 reliefs were

i) National importance of having the US Supreme Court decide or conflict with USSC ruling, or importance of similarly situated over millions of citizens or the first impression is raised at USSC.

Petitioner's prayed 9 reliefs were as Writ of Mandamus or Prohibition or alternative so the questions were part of three test condition requirement of the Writs.

ii) *Lower -Courts ruled*

Plaintiff [petitioner] contends, however, that the judgment in the Prior Action was not "on the merits" because it was premised on pleading deficiencies under Rules 8 and 10 and on his failure to comply with Court Orders under Poulis v. State Farm Fire and Casualty Co., 747 F.2d 863 (3d Cir. 1984). While Plaintiff is correct as to the bases of the prior dismissal, he is incorrect as to the preclusive effect of such dismissals.

Lower Courts' decisions about preclusive effect on Meritless (not on merits) order is incorrect as below

Semtek Int'l Inc. v. Lockheed Martin Corp., 531 US 497 - Supreme Court 2001@502 -503

i) *("The prototyp[ical] [judgment on the merits is] one in which the merits of [a party's] claim are in fact adjudicated [for or] against the [party] after trial of the substantive issues").*

ii) *Semtek @503, In short, it is no longer true that a judgment "**on the merits**" is*

necessarily a judgment entitled to claim-preclusive effect; and there are a number of reasons for believing that the phrase "adjudication upon the merits" does not bear that meaning in Rule 41(b).

iii) When *Moses H. Cone Memorial Hospital v. Mercury Constr. Corp., 460 US 1 - Supreme Court 1983* @footnote[6] ruled that

More fundamentally, a Court of appeals has no occasion to engage in extraordinary review by mandamus "in aid of [its] jurisdiction[n]," 28 U. S. C. § 1651, when it can exercise the same review by a contemporaneous ordinary appeal. See, e. g., Hines v. D'Artois, 531 F. 2d 726, 732, and n. 10 (CA5 1976).

Following USCA3's ruling is error

Mandamus relief is unavailable because he may challenge the District Court's dismissal order through the normal appeal process. See In re Nwanze, 242 F.3d 521, 524 (3d Circuit. 2001) (noting that, "[g]iven its drastic nature, a writ of mandamus should not be issued where relief may be obtained through an ordinary appeal") (citation omitted).

II. PARTIES TO THE PROCEEDING

PALANI KARUPAIYAN; P. P.; R. P. are petitioners

Respondents are

ARNAUD VAISSIE, Individually and in his official capacity as CEO of International SOS;
DESSI NIKALOVA, Individually and in her official capacity as director, product engineering of the international SOS;
ACCESS STAFFING LLC;
MIKE WEISTEIN, Individually and in is official capacity as principal, product engineering of Access Staffing LLC;
KAPITAL DATA CORP;
KUMAR MANGALA, individually and in their official capacity as founder and CEO of the Kapital Data Corp;
KARUPAIYAN CONSULTING INC;
GREGORY HARRIS, individually and in his official capacity as team leader, mobile applications of the international SOS;
INTERNATIONAL SOS ("ISOS")

III. RELATED CASE

Palani Karupaiyan v. International SOS et al.

USSC- Docket 21-7532

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V. TABLE OF AUTHORITIES

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VI. PETITION FOR A WRIT OF CERTIORARI.

Petitioner respectfully prays that a Writ of Certiorari to review the opinion/ judgment/ orders of USCA3's (docket 23-1288) and US Dist Court for Eastern Dist of Pennsylvania (Dist docket 22-cv-3083) below.

VII. OPINION(S)/ORDERS/JUDGMENT(S) BELOW (FROM DIST COURT AND USCA3)

1. USCA3's Opinion dated Apr 19, 2023 (**App.1**) Hon. KRAUSE, PORTER, and MONTGOMERY-REEVES Circuit Judges
2. USCA3's Order dated Apr 19, 2023 (**App.4**)
3. Dist Court order dismissal of complaint for International SOS defendants. Jan 31 2023. Ecf-34 (**App.5**)
4. Dist Court order dismissal of complaint for Access Staffing defendants. Jan 31 2023. Ecf-35 (**App.12**)

Hon. NITZA I. QUIÑONES ALEJANDRO USDJ

VIII. JURISDICTION

In *Hohn v. United States, 524 US 236 - Supreme Court 1998@* 258 (*"Rosado v. Wyman, 397 U. S. 397, 403, n. 3 (1970) (a Court always has jurisdiction to determine its jurisdiction)).*

Hohn @264 (*"We can issue a common-law writ of certiorari under the All Writs Act, 28 U. S. C. § 1651.)*

Hobby Lobby Stores, Inc. v. Sebelius, 568 US 1401 - Supreme Court 2012@ 643

> *The only source of authority for this Court to issue an injunction is the All Writs Act, 28 U.S.C. § 1651(a) and*
>
> *Following a final judgment, they [Petitioner] may, if necessary, file a petition for a writ of certiorari in this Court.*

On Apr 19 2023, United States Court of Appeals for 3rd Cir entered opinion and Order. App.1 to App.4

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

IX. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.

All Writs Act, 28 U.S.C. § 1651(a)
Title VII,
The Americans with Disabilities Act;
(iii) The Genetic Information Nondiscrimination Act; and
(iv) The Age Discrimination in Employment Act
42 U.S.C. § 1981
42 US Code § 1988 - Proceedings in vindication of civil rights

Pennsylvania Human Relations Act (PHRA),
26 U.S. Code § 7201. Attempt to evade or defeat tax, 26 U.S.C. § 7203 and § 7206(1)

18 USC § 371 - Conspiracy to commit offense or to defraud United States, 18 U.S.C. § 1956, money laundering law.
Copyright Act of 1976, 17 U. S. C. §§ 101(2) and 201(a)
8 U.S.C. § 1182(a)(5)(A) and 8 CFR 214.2(h) (h1-b visa).

8 U.S. Code § 1188
The Immigration and Nationality Act (INA) Section - 101(a)(15)(H)(i)(b).
20 C.F.R. § 656.17(e) (Labor Certification)
20 C.F.R. §655.101(b)(1) (Temp employment for foreigner)

X. STATEMENT OF THE CASE

a) DIST COURT OLD DOCKET

This case was previously docket with Dist Court of Eastern Pennsylvania. Docket#19-cv-2259, Docket entry 46 as below.

46	ORDERED THAT PLAINTIFF'S AMENDED COMPLAINT IS DISMISSED WITHOUT PREJUDICE. IT IS FURTHER ORDERED THAT WITHIN 30 DAYS PLAINTIFF SHALL FILE A SECOND AMENDED COMPLAINT. DEFENDANTS MOTIONS TO DISMISS, PLAINTIFF'S MOTION FOR ACCEPTING ADDITIONAL EVIDENCE AND ADDITIONAL SIX MOTIONS, AND FOR ADDITIONAL TIME ARE ALL DENIED AS MOOT. THE CLERK OF COURT IS DIRECTED TO CORRECT PLAINTIFF'S NAME ON THE DOCKET. ETC.. SIGNED BY HONORABLE PETRESE B. TUCKER ON 5/6/2020.5/6/2020 ENTERED AND COPIES E-MAILED. NOT MAILED TO PRO SE.(sg,) (Emailed to litigant on 06/16/2020 per chambers) Modified on 6/16/2020 (nd,). (Entered: 05/06/2020)

Clearly the above docket entry stated Hon Judge TUCKER signed on May 6 2020 to amend the complaint within 30 days which was not emailed to prose plaintiff until Jun 16 2020.

This Old docket, Dist Court dismissed under *Poulis v. State Farm Fire and Casualty Co., 747 F.2d 863 (3d Cir. 1984).*

b) DIST COURT PROCEEDING AND RULING

On Aug 1 2022, Plaintiff filed employment related complaint against the respondents US Dist Court of Eastern PA under Title VII, Pennsylvania Human Relations Act (PHRA), and copyright and so on and timely served the complaint to all defendants.

On Nov 3 2022 Dist Court granted the forma pauperis and ordered the plaintiff to serve the complaint and summon. **ECF-17. App.18.**

On Juan 31 2023, District Court dismissed the 1st amended complaint for International SOS (ISOS) and Access Staffing on the basis of *Res Judicata.* **App.5 and App.12.**

In dismissal of complaint, Dist Court ruled that

> *Plaintiff contends that the judgment in the Prior Action was not "on the merits" because it was premised on pleading deficiencies under Rules 8 and 10 and on his failure to comply with Court Orders under Poulis v. State Farm Fire and Casualty Co., 747 F.2d 863 (3d Cir. 1984), Dist Court ruled that*
>
> > *"Plaintiff is correct as to the bases of the prior dismissal, he is incorrect as to the preclusive effect of such dismissals.*

Timely Petitioner filed Notice of Petition for Writ of Mandamus, Prohibition or Alternative. **ECF-44.**

c) USCA3 PROCEEDING AND RULING

On Apr 19 2023, USCA3 entered NOT PRECEDENTIAL opinion (App.1) and order (App.4) entered.
USCA3's ruled that

(i) *" we will deny in part and dismiss in part the petition"*

(ii) *Mandamus relief is unavailable because he may challenge the District Court's dismissal order through the normal appeal process. See In re Nwanze, 242 F.3d 521, 524 (3d Cir. 2001) (noting that, "[g]iven its drastic nature, a writ of mandamus should not be issued where relief may be obtained through an ordinary appeal") which is error by Moses 460 US 1(1983) Footnote[6]*

XI. INTERNATIONAL SOS'S BUSINESS

Defendant International SOS ("ISOS") is the world's largest medical and travel security services firm, which count nearly two-thirds of the Fortune Global 500 companies as clients. ISOS employed 10,000+ employees and 2 billion dollars revenue in USA which major revenue market of international SOS. ISOS home country is Britain/ Singapore.

XII. ISOS'S PURPOSE OF OUTSOURCE

The purpose of International SOS's outsourcing is to evade the Dept of Labor's Labor certification fee (which is perjury crime), Immigration fee, payroll tax to US and Local Govts, tax liabilities, properties tax to the Local Govts in US. **Secretly, untraceably** transfer the money out of US in the name of outsource into

India and these tax evaded money is benefitted by International SOS's corporate officer who decided the outsourcing.

XIII. ALL WRITS ACT, 28 U.S.C. § 1651(A)

In *Pa. Bureau of Correction v. US Marshals Service, 474 US 34 - Sup Ct 1985* @43
"The All Writs Act is a residual source of authority to issue writs that are not otherwise covered by statute".

XIV. RELIEFS SHOULD BE GRANTED UNDER RULE 8(A)(3)/54(C) OR WITHOUT RULE 12(B)'S REQUIREMENT

In *Bontkowski v. Smith, 305 F. 3d 757 - USCA, 7th Cir. 2002*@762 *"can be interpreted as a request for the imposition of such a trust, a form of equitable relief and thus a cousin to an injunction. Rule 54(c), which provides that a prevailing party may obtain any relief to which he's entitled even if he "has not demanded such relief in [his] pleadings."* See *Holt Civic Club v. City of Tuscaloosa,* 439 U.S. 60, 65-66, 99 S.Ct. 383, 58 L.Ed.2d 292 (1978);

In *Boyer v. CLEARFIELD COUNTY INDU. DEVEL. AUTHORITY, Dist. Court, WD Penn 2021*

"Thus a prayer for an accounting, like a request for injunctive relief, is not a cause of action or a claim upon which relief can be granted. Rather, it is a request for another form of ***equitable relief,*** *i.e., a "demand for judgment for the relief the pleader seeks" under Rule 8(a)(3) of the Federal Rules of Civil Procedure. Ð****As such, it too is not the proper subject of a Rule 12(b)(6) motion. Ð***Global Arena, LLC, 2016 WL 7156396, at *2; see also Bontkowskiv. Smith, 305 F.3d 757, 762 (7th Cir. 2002).*

XV. WHY USCA3 WAS NOT ABLE TO GRANT THE APPELLANT'S WRITS/ INJUNCTION(S) RELIEFS

In the Dist Court this petitioner filed i) Notice of appeal and ii) Notice of Petition for Writ of Mandamus, Prohibition or alternative. As per the *Moses* footnote [6], USCA3 shall not able to grant the injunctive reliefs along with the appeal.

In *Moses H. Cone Memorial Hospital v. Mercury Constr. Corp., 460 US 1 - Supreme Court 1983* @footnote[6].

> *More fundamentally, a Court of appeals has no occasion to engage in extraordinary review by mandamus "in aid of [its] jurisdiction[n]," 28 U. S. C. § 1651, when it can exercise the same review by a contemporaneous ordinary appeal. See, e. g., Hines v. D'Artois, 531 F. 2d 726, 732, and n. 10 (CA5 1976).*

XVI. USSC'S WRIT AGAINST LOWER COURT(S)

Bankers Life & Casualty Co. v. Holland, 346 US 379 - Supreme Court 1953@383

> *As was pointed out in Roche v. Evaporated Milk Assn., 319 U. S. 21, 26 (1943), the* ***"traditional use of the writ in aid of appellate jurisdiction both at common law and in the federal Courts has been to confine an inferior Court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so."***
>
> *Bankers @383 there is clear* ***abuse of discretion or "usurpation of judicial power"***

of the sort held to justify the writ in De Beers Consolidated Minesv. United States, 325 U. S. 212, 217 (1945).

XVII. PRO SE PLEADING STANDARDS

Erickson v. Pardus, 551 US 89 – Sup. Ct. 2007 @ 2200

*A **document** filed pro se is "to be liberally construed," **Estelle, 429 U.S., at 106, 97 S.Ct**. 285, and "a pro se complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers.*

XVIII. USSC'S RULE 20.1 AND RULE 20.3.

In *re US, 139 S. Ct. 452 - Supreme Court 2018* @ 453

> S.Ct. Rule 20.1 (Petitioners seeking extraordinary writ must show "that adequate relief cannot be obtained in any other form or **from any other Court**" (emphasis added));
>
> S.Ct. Rule 20.3 (mandamus petition must "set out with particularity **why the relief sought is not available** in any other Court"); see also *Ex parte Peru, 318 U.S. 578, 585, 63 S.Ct. 793, 87 L.Ed. 1014 (1943)* (mandamus petition "ordinarily must be made to the intermediate appellate Court").

USCA3 denied petitioners' petition and opinioned that

> *Mandamus relief is unavailable because he may challenge the District Court's dismissal order through the normal appeal process. See In re Nwanze, 242 F.3d 521, 524 (3d Cir. 2001) (noting that, "[g]iven its drastic nature, a writ of*

mandamus should not be issued where relief may be obtained through an ordinary appeal")

The above USCA3's ruling is error when USSC ruled that Moses *460 US 1 - Supreme Court 1983* @footnote[6].

> *More fundamentally, a Court of appeals has no occasion to engage in extraordinary review by mandamus "in aid of [its] jurisdiction[n]," 28 U. S. C. § 1651, when it can exercise the same review by a contemporaneous ordinary appeal. See, e. g., Hines v. D'Artois, 531 F. 2d 726, 732, and n. 10 (CA5 1976)*

Also the above Substitute the Test-1 of 3 tests requirement of grating the Writs in the US Supreme Court.

XIX. THREE TEST CONDITIONS FOR GRANT THE WRITS (OF MANDAMUS, PROHIBITION OR ANY ALTERNATIVE)

Test-1: No other adequate means [exist] to attain the relief [the party] desires
Or it (injunction) is necessary or appropriate in aid of our jurisdiction (28 USC§ 1651(a))
Or
"the party seeking issuance of the writ must have no other adequate means to attain the relief [it] desires";
Test-2: the party's `right to [relief] issuance of the writ is clear and indisputable
Or *Bankers Life & Casualty Co. v. Holland, 346 US 379 – Sup.Ct 1953*

> *clear abuse of discretion or "usurpation of judicial power" of the sort held to justify the writ in De Beers Consolidated Minesv. United States, 325 U. S. 212, 217 (1945).*

Or *Hobby Lobby Stores, Inc. v. Sebelius, 568 US 1401 – Sup.Ct 2012*

> *whatever the ultimate merits of the applicants' claims, their entitlement to relief is not "indisputably clear"*

Or the Petitioner must demonstrate that the "*right to issuance of the writ is clear and indisputable.*" *Cheney*, 542 U.S. at 380-81, 124 S.Ct. 2576
0r *Cheney v. United States Dist. Court for DC, 542 US 367-Sup.Ct 2004*

> *Defendant owes him a clear non-discretionary duty*

Test-3: a question of first impression is raised.
Or

> *"the issuing Court, must be satisfied that the writ is appropriate under the circumstances"*

XX. REASONS FOR GRANTING THE WRIT(S)

1) Writ against International SOS that ISOS should not discriminate the US citizenship AND favor of foreign nationals against US citizen in employment or in application for employment

Test-2: i) International SOS denied employment to the petitioner because of his US Citizenship and employed the young foreigner instead of US citizen petitioner. ECF-24, FAC@134,147,137,138

Test-3: Favoring foreigner against US Citizen in employment is discrimination.

In *Novak v. World Bank, No. 79-0641, 1979 U.S. Dist. LEXIS 11742 (D.D.C. June 13, 1979)*, the plaintiff argued that defendant had a policy of discriminating against United States citizens in violation of Title VII's prohibition against national origin discrimination. The Court held that such a claim — i.e., discrimination against U.S. citizens — alleges discrimination based only on citizenship and thus was barred by the holding in ***Espinoza***[1]. Id. at *3. (Cited in *English v. MISYS INTERNATIONAL BANKING SYS TEMS, INC., Dist. Court*, D.NJ 2005)

In ***Novak*** v. ***World Bank, 20 Fair Empl. Prac. Cas.*** (BNA) ***1166***, 1167 ***(D.D.C.1979),*** *Discrimination against a United States citizen in favor of an alien has been labeled reverse* Espinoza.

[1] Espinoza v. Farah Mfg. Co.,414 U.S. 86, 88 (1973).

Reasons stated above, petitioner prays this Court for Writ that ISOS should not discriminate the US citizenship and favor the foreigner against US citizen in employment.

2) Order that (i) International SOS should not outsource it's IT/BPO jobs. (ii) International SOS should not involve in Tax evasion and Money Laundering against United States and its Local govt(s).

Test-2: International SOS outsourced the IT/ BPO jobs to India. ECF-24, FAC@265-267,270-271

Test-3: The foreigner employee(s) to do the US Corporate Jobs, the [potential] employer need to get approved Labor Certification[2] from Dept of Labor that No US Citizen is available to take the jobs. So the potential employer can hire foreign employee without discrimination US citizen. The outsourcing, put the foreigner at front, automatically discriminate the US citizen in employment. *See* 8 U.S.C. § 1182(a)(5)(A) and 8 CFR 214.2(h) (h1-b visa).

8 U.S. Code § 1188
The Immigration and Nationality Act (INA) Section - 101(a)(15)(H)(i)(b).
20 C.F.R. § 656.17(e) (Labor Certification[3])

---

[3] Foreigner to do the US based Job, [Potential employer to foreign employee(s), need to get Labor Certification from Dept of Labor that no US citizen is available to take the job so the potential employer need to hire foreigner. In outsourcing, International SOS did not get Labor certification, simply outsourced and evaded the tax including payroll tax

20 C.F.R. §655.101(b)(1) (Temp employment for foreigner)

When the International SOS IT Jobs/BPO Jobs were outsourced, International SOS involves Tax evasion including Payroll tax against United States and its Local govts. 26 U.S. Code § 7201. Attempt to evade or defeat tax, 26 U.S.C. § 7203 and § 7206(1)

ISOS outsourcing is violation in 18 USC § 371 - Conspiracy to commit offense or to defraud United States, 18 USC § 1956, money laundering law.

In Sullivan v. Little Hunting Park, Inc., 396 US 229 - Supreme Court 1969 @ 239-240

Compensatory damages for deprivation of a federal right are governed by federal standards, as provided by Congress in 42 U. S. C. § 1988, which states:

> *"The jurisdiction in civil . . . matters conferred on the district Courts by the provisions of this chapter and **Title 18**, for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect*

By-product of discriminating the US Citizen, Outsourcing cause the tax evasion, money laundering against the United States and local Govts, knowledge drain to Nation's STEM knowledge sector.

For the above reasons, petitioner pray this Court for order that ISOS should not outsource the IT/BPO jobs and should not involve tax evasion, Money laundering,

Also Order that International SOS should deposit to US treasury the 3 times of Money International SOS took out of United States by Outsourcing and lock/jail the International SOS's CEO when International SOS fail to deposit the money within 3 months of this Court order. Also petitioner prays this Court for order that equal amount of money ISOS send out for outsourcing, ISOS need to pay the plaintiff/petitioner.

3) Order that International SOS should deposit to US treasury the 3 times of Money International SOS took out of United States by Outsourcing and lock/jail the International SOS's CEO when International SOS fail to deposit the money within 3 months of this Court order.

Test-2: International SOS outsourced the IT/ BPO jobs without US Dept of Labor certification[4] that when US citizen were available and able to take the Jobs and evade the USCIS fees, Payroll tax against US and local govts i.e International SOS illegally outsourced and money laundered.

Test-3:

[4] Foreigner to do the US based Job, [Potential employer to foreign employee(s), need to get Labor Certification from Dept of Labor that no US citizen is available to take the job so the potential employer need to hire foreigner. In outsourcing, International SOS did not get Labor certification, simply outsourced and evaded the tax including payroll tax.

Any wrongdoing with Dept of Labor certification is perjury crime. 8 USC § 1182(a)(5)(A) and 8 CFR 214.2(h) (h1-b visa)

By Illegal outsourcing, without Dept of Labor's Certification, International SOS did Tax evasion including payroll tax, money laundering, corrupt corporate business practices.

International SOS's CEO should be lock until these 3 times outsourced money recovered and deposited to US Treasury. These Top officials were personally economically benefitted/gained by outsourcing.

So petitioner prays this Court to order that ISOS should deposit 3 times of money to US treasury, the money ISOS took out of US thru outsourcing and lock these ISOS's CEO until all money recovered and deposited to US Treasury. These wrong doings were did by these Top officials were done knowingly, intentionally.

4) Order for 50% Copyright ownership of ISOS's i) Mobile ASSIST application and ii)Mobile Web management application to petitioner Karupaiyan.

Test-2: Petitioner Karupaiyan worked on i) Mobile ASSIST application and ii) Mobile Web management application. These two applications are core business application of ISOS. Petitioner worked software parts/modules/codes are unseparately tightly integrated ISOS's core Business application, and running. Petitioner was not paid by ISOS or any joint employer for the Mobile ASSISTANT, Mobile Web Management software developed for ISOS.

Test-3: These two applications are ISOS business's Core Application, ISOS is continuously benefitted/profited.

Copyright Act of 1976, and Community for Creative Non-Violence v. Reid, 490 US 730 - Supreme Court 1989 @753

> *Because Reid was an independent contractor, whether "Third World America" is a work for hire depends on whether it satisfies the terms of § 101(2). This petitioners concede it cannot do. Thus, CCNV is not the author of "Third World America" by virtue of the work for hire provisions of the Act. However, as the Court of Appeals made clear, CCNV nevertheless may be a joint author of the sculpture if, on remand, the District Court determines that CCNV and Reid prepared the work "with the intention that their contributions be merged into inseparable or interdependent parts of a unitary whole." 17 U S C § 101.[32] In that case, CCNV and Reid would be co-owners of the copyright in the work. See § 201(a).*

For Above said reasons, petitioner pray this Court for an order that Petitioner Karupaiyan should owe 50% copyright ownership ISOS's Mobile ASSIST app ii) Mobile Web management application.

5) Order that International SOS should pay the petitioner $15 million dollars for [r]easonable money for time and effort of the [P]laintiff, pain and suffering and all expenses and costs of this action.

Test-2: When Petitioner tried to get attorney to representation to file the case, the attorney told that employment cases were complicated and requested the petitioner for down payment which was not affordable to the petitioner when the petitioner is unemployed, disabled status, and pauperis.

Test-3:

Without help of attorney, and attorney is unavailable to the petitioner, with petitioner spine injury, back pain, diabetic disability which eyes were blurring, petitioner drafted the complaint and this petition. For Petitioners multiple request, Lower Courts multiple time failed/denied to appoint attorney to the petitioners.

In *Boyadjian v. Cigna Companies, 973 F. Supp. 500 - Dist. Court, D. New Jersey 1997*@504

Although plaintiff may not recover attorneys' fees, he may recover litigation costs reasonably incurred. See Cunningham, 664 F.2d at 387 n. 4; Carter, 780 F.2d at 1482; DeBold, 735 at 1043 (citing Crooker v. United States Dep't of Justice, 632 F.2d 916, 921 (1st Cir.1980)) ("[A] pro se litigant who substantially prevailed certainly is entitled to ***`litigation costs reasonably incurred'*** *A pro se litigant is made whole thereby, serving as a small incentive to pursue litigation if no attorney may be found to represent the litigant.")

Crooker v. Department of Justice, supra, *holding that "in actions where the complainant represents himself, sometimes as a hindrance instead of an aid to the judicial process, an award of fees does nothing more than subsidize the litigant for his own time and personal effort*

So petitioner prays this Court's order that the International SOS to pay $15 million the petitioner for the petitioner time, effort, pain and suffering for the petitioner(s) went thru in this proceeding.

6) Order that International SOS should pay the petitioner for Title VII, Section 1981/1988, ADA, ADEA, GINA, US citizenship discrimination, favoring foreigner against US Citizen, and PHRA claims

Test-2: undisputed facts are that Plaintiff/ Petitioner Worked with ISOS and applied permanent employment **ECF-24, FAC@134,147, 137,138** with ISOS denied employment to the plaintiff/ Petitioner because of Plaintiff is 50 years old US Citizen, Disabled status, GINA status, black colored and ISOS wanted to employees' age at 25.

Still today Petitioner is unemployed due to ISOS discriminative wrongdoings such as US Citizenship discrimination, favoring foreigner against US Citizen, Section 1981, Disability status, GINA status, Title VII and PHRA.

Test-3:

Section 1981 protects U.S. Citizens by the Supreme Court in *McDonald v. Santa Fe Trail Trans.*

Co. 427 U.S. 273,287, 96 S.Ct. 2574, 49 L.Ed.2d 493 (1976).

1) i) US Citizen Discrimination, ii) favor the foreigner against US Citizen, iii) Age Discrimination, & iv) Failure to hire. V) Wrongful termination.

Plaintiff/ Petitioner Worked with ISOS and applied permanent (job id 19713) employment **ECF-24, FAC@134,147, 137,138** with ISOS denied employment to the plaintiff/ Petitioner because of Plaintiff is 50 years old US Citizen.

Because ISOS need to employer foreigner, ISOS terminated the plaintiff. **FAC@139,140.109 to 115 132,133**

2) Race/color discrimination

Petitioner was discriminated by his RACE and Color by ISOS and Access. See. **ECF-24, FAC@158-159, 89-90**

3) Desperate treatment/ less well treatment

Petitioner was denied to access the Printer. Petitioner printed his timesheet from Staples. No other ISOS's employee was denied Printer access. ECF-24,FAC@92-95

4) Failed to accommodate disability

Petitioner was denied monitor (Computer display) to fit the need of his diabetic eye blurring. Petitioner was not allowed to use his monitor, and ISOS damaged the petitioner monitor. See **ECF-24, FAC@73-77, 155.**

5) Genetic status – discrimination.

When plaintiff asked money Nikolova to buy medicine for diabetic and genetic difficulties, illness, Nikolova yelled " go to hell, we do not want sick people, you will be fired" see **ECF-24, FAC@130**

6) Intentional infliction of emotional distress (IIED)

Because of the wrong doing of joint-employer and its managers, joint employer did not pay the plaintiff, Now without proper medicine and money to buy medicine, because of defendants/joint-employers failed to pay the plaintiff, Plaintiff's one kidney and one urinal bladder started dysfunction. Urine comes with blood. See. **ECF-24, FAC@119**, **App.23,24**.

7) National Origin discrimination.

Harris pulled the paper from petitioner's hand, squeeze it harder and throw that paper into my face and He told "You Black Indian. I will kill you if you print again my coding, Go back to India". The paper hit my face and eye. Also Harris punched his desk by hand aggressively See. **ECF-24, FAC@90**

Based on Southern California Edison verdict,

	https://www.dailybreeze.com/2022/06/03/l-a-jury-awards-more-than-460-million-to-2-former-socal-edison-employees-in-harassment-lawsuit/

this Court should order the ISOS to pay the petitioner as per the **Appendix-R. App.21**

In *Sullivan* @ 239-240

*We had a like problem in Bell v. Hood, 327 U. S. 678, where suit was brought against federal officers for alleged *239 violations of the Fourth and Fifth Amendments. The federal statute did not in terms at least provide any remedy. We said: 239*

> *"[W]here federally protected rights have been invaded, it has been the rule from the beginning that Courts will be alert to adjust their remedies so as to grant the necessary relief. And it is also well settled that where legal rights have been invaded, and a federal statute provides for a general right to sue for such invasion, federal Courts may use any available remedy to make good the wrong done." Id., at 684."*

The existence of a statutory right implies the existence of all necessary and appropriate remedies. See *Texas & N. O. R. Co. v. Railway Clerks*, 281 U. S. 548, 569-570.

a) AGAINST LOWER COURTS

7) Order to vacate the Dist Court order of dismissal of 1st-amended Complaint against ISOS and Access Staffing, ECF-34, 35: App.5, 12 and USCA3's Order App.4.

Test-2. Dist Court dismissed the amended complaint against ISOS and Access staffing for *Res Judicata* as below

> *Plaintiff contends, however, that the judgment in the Prior Action was not "on the merits" because it was premised on pleading deficiencies under Rules 8 and 10 and on his failure to comply with Court Orders under Poulis v. State Farm Fire and Casualty Co., 747*

F.2d 863 (3d Cir. 1984). While Plaintiff is correct as to the bases of the prior dismissal, he is incorrect as to the preclusive effect of such dismissals.

Further USCA3 ruled

Mandamus relief is unavailable because he may challenge the District Court's dismissal order through the normal appeal process. See In re Nwanze, 242 F.3d 521, 524 (3d Cir. 2001) (noting that, "[g]iven its drastic nature, a writ of mandamus should not be issued where relief may be obtained through an ordinary appeal") (citation omitted). For the same reason, Karupaiyan may not seek through mandamus the vacatur of the District Court's dismissal orders.

For the foregoing reasons, we will deny in part and dismiss in part the amended petition for a writ of mandamus

Test-3: Now Petitioner focus how lower Courts errored that

"he [petitioner] is incorrect as to the preclusive effect"

For preclusive, lower Court followed following ruling.

1) Parklane Hosiery Co. v. Shore, 439 U.S. 322, 327 (1979).

No final judge in this petitioner's prior case. No trial happened to the prior case

See In Semtek Int'l Inc. v. Lockheed Martin Corp., *531 US 497 – Sup. Court 2001*@502 -503

("The prototyp[ical] [judgment on the merits is] one in which the merits of [a party's] claim are in fact adjudicated [for or] against

the [party] after trial of the substantive issues").

Semtek @ 503

In short, it is no longer true that a judgment "on the merits" is necessarily a judgment entitled to claim-preclusive effect; and there are a number of reasons for believing that the phrase "adjudication upon the merits" does not bear that meaning in Rule 41(b).

In Lawlor v. National Screen Service Corp., *349 US 322 – Sup.Ct 1955* @328

*That both suits involved "essentially the same course of wrongful conduct" is not decisive. Such a course of conduct—for example, an abatable nuisance- may frequently 328*328 give rise to more than a single cause of action. And so it is here.*

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defendants' conduct be regarded as a series of individual torts or as ***one continuing tort,*** *the 1943 judgment does not constitute a bar to the instant suit.*

In this case, Plaintiff/petitioner's kidney/bladder dysfunction is continues tort.
So the lower Courts are incorrect.

2) Blunt v. Lower Merion Sch. Dist., 767 F.3d 247, 277 (3d Cir. 2014)
See the 4th test of Blunt as below
(4) whether the material facts alleged are the same.
No trial or discovery happened in the petitioner's prior case.
So lower Courts where incorrect.

3) Costello v. United States, 365 U.S. 265, 286 (1961)
dismissal for reasons enumerated in Rule 41(b), including "failure . . . to comply with an order of the Court," would normally "bar a subsequent action

The Dist Court agreed with petitioner that dismissal under *Poulis* is incorrect.

Dispute is that, in prior case, order to amend the complaint within 30 days did not reach the plaintiff/petitioner within 30 days as to prior docket entry #46.

Now the lover Court did clear error against this petitioner.

4) McCarter v. Mitcham, 883 F.2d 196, 199–200 (3d Cir. 1989).
Same as Costello, 365 U.S. 265, 286.

McCarter@199

> *For relitigation to be precluded, Pennsylvania law requires that the prior determination be "on the merits. "See Ross v. Bowlby, 353 Pa.Super. 59, 509 A.2d 332 (1986) (disposition of case not on the merits does not bar relitigation)*

Under *McCarter* also favor the plaintiff/ petitioner. Dist Court agreed that the order of dismissal of prior case is **meritless**.

So petitioner prays this Court to vacate the order of dismissal of amended complaint against ISOS and Access Staffing. **App.5,12**

Also petitioner pray this Court to vacate the USCA3's order deny in part/dismiss in part the petition for Writ as well. **App.4**. because

In *Moses H. Cone Memorial Hospital v. Mercury Constr. Corp., 460 US 1 - Supreme Court 1983* @footnote[6] ruled that

> *More fundamentally, a Court of appeals has no occasion to engage in extraordinary review by mandamus "in aid of [its] jurisdiction[n]," 28 U. S. C. § 1651, when it can exercise the same review by a contemporaneous ordinary appeal. See, e. g., Hines v. D'Artois, 531 F. 2d 726, 732, and n. 10 (CA5 1976).*

Following USCA3's ruling is error

> *Mandamus relief is unavailable because he may challenge the District Court's dismissal order through the normal appeal process. See In re Nwanze, 242 F.3d 521, 524 (3d Cir. 2001) (noting that, "[g]iven its drastic nature, a writ of mandamus should not be issued where relief may be obtained through an ordinary appeal") (citation omitted).*

Petitioner prays this Court to remand the case back to US Dist Court for further proceeding.

8) Order to appoint guardian ad litem or alternatively pro bono attorney

Test-2. USCA3, Dkt-2, Ruled that Petitioner Karupaiyan should not represent the children-Minor petitioner under

See 28 U.S.C. § 1654; see also *Osei-Afriye v. The Medical College of Pennsylvania, 937 F.2d 876 (3d Cir. 1991)* (non-lawyer appearing pro se may not act as attorney for minor child or incompetent).

For the above USCA3's Ruling petitioner filed response **Dkt-4**, Motion to appoint pro bono attorney

and/or appoint petitioner father Karupaiyan as guardian ad litem which is denied.

Test-3. In *Montgomery v. Pinchak, 294 F. 3d 492 - USCA, 3rd Cir. 2002* @ 502 (*"Montgomery was not a sophisticated "jailhouse lawyer"). Tabron v. Grace, 6 F. 3d 147 - Court of Appeals, 3rd Circuit 1993* @ 156-157 (*The plaintiff's ability to present his or her case is, of course, a significant factor that must be considered in determining whether to appoint counsel. See Hodge, 802 F.2d at 61; Maclin, 650 F.2d at 888).*

In this case, Petitioner is homeless, live here and there, and car/van towed away. Suffering from spine injury.

In *Bethel School District No. 403 et al. v. Fraser, A Minor, et al . 478 U.S. 675 (1986*) (*minor is party and his father was appointed as Guardian ad litem. See @ FRASER 680. The father brought the action in the Dist Court for FIRST AMENDMENT constitutional violation.* In Board *Of Education Of The Westside Community Schools (Dist. 66) et al. V. Mergens, By And Through Her Next Friend, Mergens, Et. 496 U.S. 226 (1990*), @233 (*Respondents, by and through their parents as next friends, then brought this suit in the United States District Court for the District of Nebraska for Constitutional violation.* In *ANKENBRANDT, as next friend and mother of L. R., et al. v. RICHARDS et al 504 U.S. 689 (1992) (mother is party and claimed as next friend to her minor daughter for tort claim.*

In Jacob *WINKELMAN, a minor, by and through his parents and legal guardians, Jeff and Sandee WINKELMAN, et al., v. PARMA CITY SCHOOL DISTRICT, 550 U.S. 516- 127 S.Ct. 1994 (2007*),

In *Winkelman*, Parents on their own behalf and on behalf of Jacob, filed a complaint in the United States

District Court for the Northern Dist of Ohio, later their appeal, without the aid of an attorney,

When the USSC examined *"The question is whether parents, either on their own behalf or as representatives of the child, may proceed in Court unrepresented by counsel though they are not trained or licensed as attorneys"*

And USSC ruled that (Winkelman @2007)

"The Court of Appeals erred when it dismissed the Winkelmans' appeal for lack of counsel.

It is beyond dispute that the relationship between a parent and child is sufficient to support a legally cognizable interest [in the education of one's child";

In this case, Children childsupport rights is under 14th amendment, Children Educational rights.

Winkelman @2008

"party aggrieved" means "[a] party entitled to a remedy; esp., a party whose personal, pecuniary, or property rights have been adversely affected by another person's actions or by a Court's decree or judgment" ante, at 2003-2004.

"rights and remedies are parents properly viewed as "parties aggrieved," capable of filing their own cases in federal Court. They [Parents] are "parties aggrieved" when those rights are infringed, and ***may accordingly proceed pro se*** *when seeking to vindicate them"*

Winkelman @2011

"They will have the same remedy as all parents who sue to vindicate their children's rights: the power to bring suit. I agree with the Court that they may proceed pro se with respect to the first two claims"

In this case, Appellant Karupaiyan not only guardians of their children's rights,

Appellant Karupaiyan himself real party/plaintiff for his claims which is unlike Osei-Afriye, USCA3's ruling against this case Appellant father.

In this case Prose father parental rights under 14th amendment, *Washington v. Glucksberg*, 521 U.S. 702 (1997), *Troxel v. Granville*, 530 U.S. 57 (U.S. 2000).

Children has right on the Reverse of Parental rights, 14th amendment **Equal Protection Clause.**

1) Rule 17(c) Robidoux v. Rosengren, 638 F. 3d 1177 – USCA9 2011 @ 1182

> *"District Courts have a special duty, derived from Federal Rule of Civil Procedure 17(c), to safeguard the interests of litigants who are minors. Rule 17(c) provides, in relevant part, that a district Court "must appoint a guardian ad litem or issue another appropriate order".*

2) In *CJLG v. Barr, 923 F. 3d 622 - Court of Appeals, 9th Circuit 2019,* @632 *"children have due process rights to appointed counsel. See, e.g., In re Gault, 387 U.S. 1, 36-37, 87 S.Ct. 1428, 18 *632 L.Ed.2d 527 (1967)"*

In *CJLG* @ 633-639

> *"When determining whether there is a right to counsel in civil proceedings, like here, the Court must "set [the] net weight" of those three factors "against the presumption that there is a right to appointed counsel only where the indigent, if he is unsuccessful, may lose his personal freedom." Lassiter v. Dep't of Social Servs. of Durham Cty., 452 U.S. 18, 27, 101 S.Ct.2153, 68 L.Ed.2d 640 (1981). The **Lassiter** presumption is rebuttable. Id. at 31, 101 S.Ct. 2153". Mathews, 424 U.S. at 348, 96 S.Ct. 893. The government also has an interest in fair proceedings and correct decisions.*

In CJLG @ 639,

> *"Providing counsel would be costly to the government, but the government already chooses to undertake similar costs here. It would also lead to fairer, more accurate decisions—decisions that a broader public might view as more legitimate".*

For reasons above, petitioners pray this Court for above prayers to be granted.

9) Order that International SOS should pay $20 million dollar to the Minor Petitioners PP and RP ("Minor Petitioners").

Test-2: Valid Children Support Court orders to support the need of Minor Petitioners and the Petitioner Karupaiyan need to pay the child support thru the income from software engineer job which is only source of Income. Till today the Child support orders were active.

Test-3: Only source of Income to the Petitioner Karupaiyan is working as IT/Software engineer which was denied by ISOS for the purpose of outsourcing, discriminating US citizenship, favoring the foreigner against US citizen in employment and discriminating because of Black color, disabled/GINA Status. Since ISOS denied the employment, Karupaiyan was not able to pay the child support. Children/Minor Petitioners rights were under 14th amendment constitutional rights which was violated by ISOS by denial of employment to US Citizen petitioner Karupaiyan. And by outsourcing, ISOS's CEO is personally benefitted.

To personal gain/benefit of ISOS's CEO, Nikolova the ISOS defendant denied employment to petitioner and employed the foreigner when petitioner only income is source to pay childsupport which is unjust enrichment.

Sullivan @ 239

"[W]here federally protected rights have been invaded, it has been the rule from the beginning that Courts will be alert to adjust their remedies so as to grant the necessary relief. And it is also well settled that where legal rights have been invaded, and a federal statute provides for a general right to sue for such invasion, federal Courts may use any available remedy to make good the wrong done." Id., at 684."

For the above arguments, petitioners pray this Court for order that International SOS should pay $20 million dollars to the Minor Petitioners PP and RP for the fundamental rights, constitutional rights were violated by International and its CxOs.

XXI. CONCLUSION

Petitioner(s) Palani Karupaiyan, PP, RP pray(s) the US Supreme Court for the Petition for a Writ of Certiorari should be granted.

Respectfully submitted.

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