No. 23-811

In The

Supreme Court of the United States

BARRY AHURUONYE,

Petitioner,

v.

UNITED STATES DEPARTMENT OF THE INTERIOR,

Respondent.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The District Of Columbia Circuit

PETITION FOR WRIT OF CERTIORARI

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January 24, 2024

QUESTIONS PRESENTED

The questions presented are: 1. Whether, under doctrine of issue preclusion (also known as collateral estoppel) And Article III of the Constitution moot issues.

(1) Whether the principles of collateral estoppel/ Issue preclusion applies when Merit Systems Protection Board (MSPB) a quasi-judicial federal administrative agency that was established by the Civil Service Reform Act of 1978 (CSRA) has resolved an issue like wage increase and performance issues

(2) Whether the court is permitted under Article III of the constitution moot issues to adjudicate and affirm Interior relitigating of moot FY 2013 performance and Wage Increase issues reversed by Merit Systems Protection Board (MSPB) on 2/28/14 and granted by Department of Interior on 3/10/14 with no relief to be granted by district court.

(3) Whether the court is permitted under Article III of the constitution moot issues to adjudicate and affirm Interior relitigating of moot FY 2014 performance and Wage Increase issues reversed by Merit Systems Protection Board (MSPB) on 12/29/14 and granted by Department of Interior on 1/20/15

(4) Whether under doctrine of issue preclusion (also known as collateral estoppel) prohibits and bars Department of Interior relitigating of their 10/17/13 Employee Performance

QUESTIONS PRESENTED – Continued

Appraisal Plan (EPAP) already litigated as the basis of 5/1/14 Summary Rating of "Minimally Successful" and reversed by MSPB on 12/29/14

(5) Whether under Article III of the constitution if A **federal court is permitted to adjudicate moot issues when it cannot give the petitioner any effective relief.**

(6) Whether it's a contravention of issue preclusion (also known as collateral estoppel) And Article III of the Constitution for the District court to adjudicate on merit Interior relitigating of a moot 2014 WIGI Denial and DC circuit affirmed: **Therefore, because the plaintiff has failed to overcome the Department's well-documented basis for denying his WIGI, the Court concludes that the Department is entitled to summary judgment on the plaintiff's claim that he was denied a 2014 WIGI.** App. 137 **https://casetext.com/case/ahuruonye-v-united-states-dept-of-the-interior**_Moot issues, See 12/3/15 MSPB Petition for Enforcement for FY2014 Wage Increase Remand order: **Compliance Initial Decision (CID). She found that the agency fully complied with the Board's order because it: (1) retroactively effected the appellant's WIGI to GS-12, step 3; (2) paid him the appropriate amount of back pay with interest and adjusted his benefits; and (3) informed him in writing of all actions**

QUESTIONS PRESENTED – Continued

taken to comply with the Board's order @ App. 65. https://www.mspb.gov/decisions/nonprecedential/AHURUONYE_BARRY_DC_531D_14_0587_C_1_REMAND_ORDER_1248737.pdf.

(7) Whether the district court have jurisdiction under Article III of the constitution and 5 U.S.C. § 7703(b)(1)(A)(2) C To adjudicate Department of Interior relitigating of their moot FY 2013 and FY 2014, performance and wage increase defeat of 12/29/14 at MSPB and granting Interior summary judgment for a nonexistent "FY 2014 wage increase denial step#3": When Merit Systems Protection Board (MSPB) specifically Informed Department of Interior that its Order of 12/29/14 reversing FY 2014 Performance determination and Wage increase step #3 is final: "**Dear Mr. Hildreth: This is in response to your request for reconsideration of the Board order dated 12/29/14. The order directed the agency to retroactively grant the appellant relief. The Board's regulations do not provide for your request for reconsideration of the Board's decision. Therefore, no further right to review this appeal by the Board.** App. 119. ***See*** **5 C.F.R. § 1201.113(c).**

(8) Whether the US Department of Interior relitigating of FY 2013 Wage increase denial reversed by MSPB on 2/28/14 and granted by Interior on 3/10/14 and for FY 2014 Wage

QUESTIONS PRESENTED – Continued

increase denial reversed by MSPB on 12/29/14 and granted by Interior on 1/20/15 constitutes contempt of 2/28/14 and 12/29/14 MSPB Orders and constitutes harassments, reprisal, discrimination, and hostile work environments.

(9) Whether under collateral estoppel/ Issue preclusion and Article III of the constitution **a federal court has authority "to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it.** More than seven years after MSPB reversed Interior FY 2014 performance determination and wage increases denial on 12/29/14 and granted by Department of Interior on 1/20/15 because "**Additionally, the Board may not sustain an agency's withholding of an employee's WIGI unless that action is supported by substantial evidence. Here, the agency failed to submit any of the appellant's work products that included apparent errors. In addition, failed to submit any supporting evidence. Therefore, the action must be reversed.**" Nevertheless, district court adjudicated this "non-justiciable," moot "FY 2014 wage increase denial" and performance issues reversed by MSPB: **Therefore, because the plaintiff has failed to overcome the Department's well-documented basis for denying his WIGI, the Court concludes that the**

QUESTIONS PRESENTED – Continued

Department is entitled to summary judgment on the plaintiff's claim that he was denied a 2014 WIGI App. 137. **https://casetext.com/case/ahuruonye-v-united-states-dept-of-the-interior**

(10) Whether Department of Interior unlawful employment removal of April 14, 2015, less than 30 days from 3/26/15 employment termination notification violated 30 days Statutory entitlements under 5 CFR § 752.404(1)

(11) Whether the 30 days retroactive suspension from 12/15/14 to 1/9/15 was a violation of Statutory entitlements under 5 CFR § 752.404(1)(a) and 5 CFR 752.402 5 U.S.C. 7513(b)

PARTIES TO THE PROCEEDING

Petitioner BARRY AHURUONYE

Respondents US DEPARTMENT OF THE INTERIOR

STATEMENT OF RELATED CASES

(1) BARRY AHURUONYE v. DEPARTMENT OF INTERIOR, DC Circuit Case # 22-5239 judgment entered on 8/24/23. Timely Rehearing en banc denied on 10/26/23; Mandate issued on 11/3/23.

(2) AHURUONYE v. DEPARTMENT OF THE INTERIOR et al (D.D.C.), Case 1:16-cv-01767-RBW judgment entered on May 31, 2022.

(3) BARRY AHURUONYE v. DEPARTMENT OF THE INTERIOR, DOCKET NUMBER DC-53 1D-13-1273-I-1 United States of America Merit Protections Board, Washington Regional Office. Judgment entered 2/28/14

(4) BARRY AHURUONYE v. DEPARTMENT OF THE INTERIOR, DOCKET NUMBER 531D-14-0587-I-1 United States of America Merit Protections Board, Washington Regional Office. Judgment entered 12/29/14

(5) BARRY AHURUONYE v. DEPARTMENT OF THE INTERIOR, DOCKET NUMBER DC-531D-14-0587-C-United

STATEMENT OF RELATED CASES – Continued

States of America Merit Protections Board, Washington Regional Office. Judgment entered 12/3/15

(6) BARRY AHURUONYE v. DEPARTMENT OF THE INTERIOR, DOCKET NUMBER DC 531D-15-0242-I-1 – United States of America Merit Protections Board, Washington Regional Office. Judgment entered 6/29/15

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2. District Court Memorandum Opinion, 5-31-22 App. 4-App. 43
3. MSPB Final Order, 7-15-16 App. 44
4. MSPB Remand Order, 12-3-15 App. 62
5. MSPB Remand Order, 6-29-15 App. 71
6. MSPB Remand Order, 12-29-14 App. 79
7. MSPB Initial Decision, 2-28-14 App. 88
8. Circuit Court Order (denying rehearing), 10-26-23. App. 112
9. MSPB Letter, 1-13-15 App. 119

JURISDICTION

The D.C. Circuit entered judgment on August 24, 2023. The court denied a timely petition for rehearing en banc on 10/26/23. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

Pertinent provisions of the Article III moot issues (2) Issue preclusion also known as collateral estoppel (3) 5 CFR § 1201.113 – Finality of MSPB decision The initial decision of the judge will become the Board's final decision 35 days after issuance **(4)** 5 CFR § 1201.113(c) if the Board grants the petition, its decision is final when issued.

5 U.S. Code § 7703(b)(1) **gives the Federal Circuit jurisdiction over "petition[s] to review a final order or final decision of the Board.":** 5 U.S.C. § 7703(b)(1)(A)**(2)** MSPB shall be named as the Respondent. i.e., *"Interior" v. MSPB,"* 5 CFR § 752.404(1)(3) 5 **U.S.C. 7513**(b) 5 CFR § 532.417(a). 5 CFR § 532.417(a). **An employee . . . with** a **work performance of satisfactory shall advance automatically to the next higher step within the grade in accordance with 5343(e)(2)(4)** 5 U.S.C. § 5335 – **U.S. Code - Title 5. Government Organization and Employees "If the reconsideration or appeal results in** a **reversal of the earlier determination, the new determination supersedes the earlier determination and is deemed to have been made as of the date of the earlier determination. (5) 5 U.S.C. § 4302(b)(2) (2012), Performance standards must be communicated to the employee at the beginning of each appraisal period, which generally runs for 12 months, 5 C.F.R. § 430.206(a)(2)(6)** The 4/14/15 unlawful employment removal less than 30 days from the 3/26/15 employment removal

proposal notification in violation of CFR § 752.404(1) (1) An employee against whom an action is proposed is entitled to at least 30 days' advance written notice (7) The 30 days retroactive suspension from 12/15/14 to 1/9/15 in violation of 5 CFR § 752.404(1)(a) and 5 CFR 752.402 5 U.S.C. 7513(b) Statutory Due Process Violation **5 CFR § 630.401 – Granting sick leave** (a) **Subject to paragraphs (b) through (e) of this section, an agency must grant sick leave to an employee when he or she.** (4) **Makes arrangements necessitated by the death of a family member or attends the funeral of a family member; 5 CFR § 531.404**

INTRODUCTION

The Petitioner Barry Ahuruonye (Pro se) respectfully petitions this court for a writ of certiorari to review the judgment of the DC Court of Appeals. That affirmed District court adjudication of Interior Relitigating of moot and nonjusticiable FY 2013 performance and wage increase issues reversed by MSPB on 2/28/14 and granted by Department of Interior on 3/10/14 & FY 2014 WIGI and performance issue reversed by MSPB on 12/29/14 and granted by Department of Interior on 1/20/15. And granting summary judgment on non-existent FY 2013 and FY 2014 wage increases denial. On 1/13/15 MSPB denied Department of Interior request for a relitigating rematch documenting: "**Dear Mr. Hildreth: This is in response to your request for reconsideration of the Board order dated 12/29/14. The order directed the**

agency to retroactively grant the appellant relief. The Board's regulations do not provide for your request for reconsideration of the Board's decision. Therefore, no further right to review this appeal by the Board." App. 119. ***See* 5 C.F.R. § 1201.113(c).** Department of Interior proceeded to District court and obtain a void and invalid judgment on 5/31/22 on a nonexistent "FY 2014 Wage Increase denial" Even this relief has been granted as of 1/20/15. This void judgment has now been cited as an authority in the DC circuit by federal agencies to prejudice the merit of federal employees litigating against their federal employees.

STATEMENT OF THE CASE

The issue presented in this case involves a conflict with Merit Systems Protection Board (MSPB) and district court, when through its decision/judgment MSPB had resolved a conflict between a federal employee and their employing agency. Whether a federal district court has authority and jurisdiction under Article III of the constitution and 5 U.S.C. § 7703(b)(1)(A)(**2) C** to adjudicate the defeated agency relitigating the same cause of action. After the employee has obtained a relief in the form of FY 2013 wage increase and SF 50 satisfactory performance on 2/28/14 and granted by "Interior" on 3/10/14. And for FY 2014, MSPB reversed "Interior's" wage increase denial on 12/29/14 and was granted by "Interior" on 1/20/15 along with satisfactory Standard Form 50 (SF 50). Leaving the petitioner's FY

2013 and FY 2014 wage increase and performance issues moot and nonjusticiable. Eight years after MSPB had reversed "Interior's" FY 2013 & FY 2014 wage increase and negative performance determination and were all granted by Interior in contravention of Article III moot issues (2) Issue preclusion also known as collateral estoppel. Department of Interior embarked on prohibited relitigating of these same resolved FY 2013 & FY 2014 wage increase and negative performance and obtaining and invalid and void summary judgment on 5/31/22 from the district court that FY 2013 & FY 2014 wage increase was denied. And presents a case of national importance issue that affects Federal employees who relies on 5 CFR § 1201.113 – Finality of MSPB decision and not expecting to have to be relitigating the same issues from a disgruntled and vexatious federal agency. Whether Article III moot issues and the principles of collateral estoppel, also known as Issue preclusion, apply when an administrative agency like Merit Systems Protection Board (MSPB) has resolved an issue like wage increase and performance issues. MSPB is an independent, quasi-judicial federal administrative agency that was established by the Civil Service Reform Act of 1978 (CSRA).

UNITED STATES OF AMERICA MERIT SYSTEMS PROTECTION BOARD BARRY AHURUONYE, Appellant v. DEPARTMENT OF THE INTERIOR, Agency. DOCKET NUMBER DC-531D-15-0242-I-1 DATE: June 29, 2015

FY 2013 wage increase step# 2: **On April 4, 2014, an initial decision in a prior Board appeal**

ordering the agency to grant the appellant a WIGI to step 2 retroactive to December 2, 2012, became the Board's final decision when neither party filed a petition for review. MSPB Docket No. DC-531D-13-1273-I-1, Initial Decision (Feb. 28, 2014); see 5 C.F.R. § 1201.113. The appellant therefore was due to receive his WIGI to step 3 on December 1, 2013. See 5 U.S.C. § 5335(a)(1). App. 74

FY 2014 Wage increase step#3"**On May 23, 2014, the agency informed him of its decision to deny his WIGI to step 3. IAF, Tab 21 at 19. The appellant filed an appeal with the Board regarding the agency's denial of his WIGI to step 3 and, on December 29, 2014, the Board reversed the action and ordered the agency to retroactively grant him his WIGI to step 3. MSPB Docket No. DC-531D-14-0587-I-1, Remand Order (Dec. 29, 2014). The agency subsequently granted the step 3 WIGI retroactive to December 1, 2013. IAF, Tab 21 at 61.** App. 75

https://www.mspb.gov/decisions/nonprecedential/AHURUONYE_BARRY_DC_531D_15_0242_I_1_REMAND_ORDER_1193210.pdf More than eight years after MSPB reversed the FY 2013 unlawful wage increase denial on 2/28/14 and paid by Department of Interior on 3/10/14. The judicial record website of the district court documents that it was denied on 5/23/14, more than two months after it had been paid as ordered by MSPB. Likewise, FY 2014 unlawful wage increase denial, on 12/29/14 MSPB reversed it and Paid by

Department of Interior on 1/20/15. The district court is granting summary judgment to the Department of Interior on a moot nonexistent "Denial of 2013 WIGI" "and moot nonexistent Denial of 2014 WIGI" posting on court's internet public website. **On May 23, 2014, "[the Department] informed [the plaintiff] of its decision to deny his WIGI[.]" *Ahuruonye*, 2016 WL 526740, at *4. his "WIGI denial was due to his [unsatisfactory fiscal year (']FY[')] 2013 performance evaluation[.]" Pl.'s Mot. at 26.** App.7 & 8 For FY2013 following Interior's 2/28/14 defeat at MSPB App. 102: On 3/10/14 WIGI was granted **@WORK PERFORMANCE IS AT ACCEPTABLE LEVEL OF COMPETENCE CORRECTION FROM MSPB RULING DATED 2/28/14 effective 12//02/12 to 12/03/13** App. 137

Likewise: **Denial of 2014: WIGI Therefore, because the plaintiff has failed to overcome the Department's well-documented basis for denying his WIGI, the Court concludes that the Department is entitled to summary judgment on the plaintiff's claim that he was denied a 2014 WIGI** App. 137. https://casetext.com/case/ahuruonye-v-united-states-dept-of-the-interior. District grant of summary judgment for a nonexistent and moot **Denial of 2014** was even contradicted by the Department of Interior. For FY **2014** See Interior 3/4/15: **Agency Notice of compliance of March 4, 2015: Mr. Ahuruonye: The Agency has complied fully with the December 29, 2014, Remand Order. The Agency issued an SF-50 on January 20, 2015, granting you** a **Within**

Grade Increase effective December 1, 2013. The Agency has also issued you back pay, and benefits associated with that correction. @ App. 121

UNITED STATES OF AMERICA MERIT SYSTEMS PROTECTION BOARD BARRY AHURUONYE, Appellant v. DEPARTMENT OF THE INTERIOR, Agency. DOCKET NUMBER DC-531D-14-0587-C-1 DATE: December 3, 2015

The appellant's May 30, 2015, submission was docketed as his petition for enforcement, The agency responded in opposition to the appellant's petition for enforcement. CF, Tab 5. The agency asserted that it has fully complied with the Board's order by: (1) processing the appellant's WIGI; (2) properly paying him back pay; and (3) notifying him of its full compliance with the Board's order. Id App. 65 https://www.mspb.gov/decisions/nonprecedential/AHURUONYE_BARRY_DC_531D_14_0587_C_1_REMAND_ORDER_1248737.pdf. In *Montana v. United States*, **the Supreme Court stated: "[u]nder collateral estoppel, once an issue is actually and necessarily determined by a court of competent jurisdiction, that determination is conclusive in subsequent suits . . . "** 440 U.S. 147, 153 (1979) A **federal court is not permitted to adjudicate moot issues when it cannot give the petitioner any effective relief.** **Spencer v. Kemna*, **523 U.S. 1, 7 (1998)** *Calderon v. Moore*, **518 U.S. 149, 150 (1996) The inability to review moot cases stems from the requirement of Article III of the Constitution Spencer, 523 U.S. at 7. It has**

long been settled that a federal court has no authority "to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it." *Mills v. Green*, 159 U.S. 651, 653 (1895). See also *Preiser v. Newkirk*, 422 U.S. 395, 401 (1975); *North Carolina v. Rice*, 404 U.S. 244, 246 (1971).

This case was originally a "mixed case," i.e., it involved a personnel action appealable to the MSPB and a claim of prohibited discrimination. See 29 C.F.R. § 1614.302(a); 5 C.F.R. § 1201.151. In such cases, "**the intersection of federal civil rights statutes and civil service law has produced a complicated, at times confusing, process for resolving claims of discrimination in the federal workplace.**" *Kloeckner v. Solis*, 568 U.S. 41, 49 (2012). **As with some other mixed cases, Appellant's case has traversed a byzantine labyrinth of administrative and judicial channels of review.** *Kerr v. Merit Sys. Prot. Bd.*, 908 F.3d 1307 (Fed. Cir. 2018) Petitioner brought what is known as a "mixed case" claim/appeal before the Merit Systems Protection Board (MSPB), combining a Title VII discrimination claim with a challenge to his FY 2013 Step 2 WIGI denial: FY 2014 Step 3 WIGI denial FY 2015 WIGI Step 4 The 4/14/15 unlawful employment termination less than 30 days from 3/26/15 employment removal proposal in violation of CFR § 752.404(1) (1) ***Statutory entitlements.*** An employee against whom action is proposed under this subpart is entitled to the procedures provided in 5

U.S.C. 7513(b). An employee against whom an action is proposed is entitled to at least 30 days' advance written notice (7) The 30 days retroactive suspension from 12/15/14 to 1/9/15 in violation of 5 CFR § 752.404(1)(a) and 5 CFR 752.402 5 U.S.C. 7513(b) under the Civil Service Reform Act, 5 U.S.C. § 4303. "**A mixed case appeal is an appeal filed with the MSPB that alleges an appealable agency action was effected, in whole or in part, because of discrimination on the basis of race, color, religion, sex, national origin, handicap or age." 29 CFR § 1614.302(a)(2). Before bringing suit under Title VII in federal court, a federal employee must exhaust his administrative remedies.** ***See Butler v. West*****, 164 F.3d 634, 638 (D.C. Cir. 1999). "Exhaustion is required in order to give federal agencies an opportunity to handle matters internally whenever possible and to ensure that the federal courts are burdened only when reasonably necessary."** ***Brown v. Marsh*****, 777 F.2d 8, 14 (D.C. Cir. 1985). MSPB is an independent, quasi-judicial federal administrative agency that was established by the Civil Service Reform Act of 1978 (CSRA), 5 U.S.C. § 1101** ***et seq.*****, to review civil service decisions.** ***See*** **5 U.S.C. § 7701. Where, as here, a plaintiff first elects to file an appeal to MSPB, an Administrative Judge is assigned to the case and "takes evidence and eventually makes findings of fact and conclusions of law."** ***Butler*****, 164 F.3d at 638. Within 120 days of the filing of the mixed-case appeal, the Board is to "decide both the issue of discrimination and the appealable**

action." 5 U.S.C. § 7702(a)(1). An initial decision of an Administrative Judge "becomes a final decision if neither party, nor the MSPB on its own motion, seeks further review within thirty-five days." *Butler*, 164 F.3d at 638; 5 C.F.R. § 1201.113. "However, both the complainant and the agency can petition the full Board to review an initial decision. Should the Board deny the petition for review, the initial decision becomes final, *see* 5 C.F.R. § 1201.113(b); if the Board grants the petition, its decision is final when issued. *See* 5 C.F.R. § 1201.113(c)." *Butler*, 164 F.3d at 639. A plaintiff may file a civil suit in district court within thirty days after a *final* MSPB decision. *See* 5 U.S.C. § 7703(b).

For FY 2013 WIGI Step2 MSPB 2/28/14 ORDER: Gerald L. Gilliard, Esquire, Washington, D.C., for the appellant. Josh C. Hildreth, Washington, D.C., for the agency DOCKET NUMBER DC-531D-13–1273-I-1 DATE: February 28, 2014. The agency has not cited any law, rule or regulation that allows an agency to make an acceptable level of competency determination absent a **rating of record.@** App. 91 **DECISION The agency's action is REVERSED. I ORDER the agency to award the appellant** a **Within Grade Increase @** App. 101

Please see also as documented by MSPB BARRY AHURUONYE, Appellant v. DEPARTMENT OF THE INTERIOR, Agency. DOCKET NUMBER DC-531D-14-0587-I-1 DATE: December 29, 2014: **On July 9, 2013,**

the agency denied the appellant's WIGI to step 2 in his position as GS-12 Grants Management Specialist, retroactive to December 2, 2012. On appeal, a Board administrative judge reversed the action, finding that the agency had failed to provide the appellant with a performance rating prior to denying his WIGI. She ordered the agency to award the appellant the WIGI. Ahuruonye v. Department of the Interior, MSPB Docket No. DC-531D-13-1273-I-1, Initial Decision at 2, 11 (Feb. 28, 2014). That decision became the Board's final decision on April 4, 2014, when neither party filed a petition for review @App. 80 Under 5 CFR § 1201.113 – Finality of decision. The FY 2013 WIGI and performance issue was resolved by MSPB on 4/4/14 when neither party appealed to MSPB Appeal Board.. For defeated litigants like Interior dissatisfied with MSPB final disposition. *5 U.S. Code § 7703(b)(1) **gives the Federal Circuit jurisdiction over "petition[s] <u>to review</u> a final order or final decision of the Board.":** *5 U.S.C. § 7703(b)(1)(A)(**2**) MSPB shall be named as the Respondent, i.e., "**Interior" v. MSPB".** And not for the district court to adjudicate. **Judgments in excess of subject-matter jurisdiction "are not voidable, but simply void."** *Elliott v. Peirsol*, 26 U.S. 328, 340 (1828).

DC Circuit ruled: **To the extent that appellant argues that the district court's judgment was void as to his claim that appellee unlawfully denied him** a **pay increase in 2014, appellant conflates an unrelated pay increase he received in**

2013 with the one at issue in this case@ App. 2. However, the appellant never raised any issue of FY 2013 and FY 2014 WIGI denial before the court as they have been granted through MSPB litigations. Department of the Interior was the party that raised them for relitigating purposes. Neither FY 2013 nor FY 2014 WIGI denial was at issue before the court as they were both moot issues. For FY **2014** See Interior 3/4/15: **Agency Notice of compliance of March 4, 2015**: **Mr. Ahuruonye: The Agency has complied fully with the December 29, 2014, Remand Order. The Agency issued an SF-50 on January 20, 2015, granting you** a **Within Grade Increase effective December 1, 2013. The Agency has also issued you back pay, and benefits associated with that correction.** @ App. 121 In their relitigating of their February 28, 2014; FY2013 performance and WIGI issues defeat at MSPB. United States Department of Interior misrepresented to DC Circuit: "**His performance rating on 5/8/14, refers to his performance rating for FY 2013,** @pg17 A moot issue, for FY 2013: following Interior's 2/28/14 defeat on 3/10/14 FY 2013 WIGI was granted **@WORK PERFORMANCE IS AT ACCEPTABLE LEVEL OF COMPETENCE CORRECTION FROM MSPB RULING DATED 2/28/14 effective 12//02/12 to 12/03/13** @App. 137 In contravention to collateral estoppel and Issue Preclusion. The district court adjudicated, and DC Circuit affirmed this moot FY 2013 performance and WIGI relitigating ruling: **On May 23, 2014, "[the Department] informed [the plaintiff] of its decision to deny his WIGI[.]" Ahuruonye, 2016 WL 526740, at *4. his "WIGI**

denial was due to his [unsatisfactory fiscal year (') FY (')] 2013 performance evaluation[.]" @ App.7 & 8 For FY 2013: following Interior's 2/28/14 defeat on 3/10/14 FY 2013 WIGI was granted **@WORK PERFORMANCE IS AT ACCEPTABLE LEVEL OF COMPETENCE CORRECTION FROM MSPB RULING DATED 2/28/14 effective 12//02/12 to 12/03/13.** App. 137. On March 14, 2014, the petitioner's lawyer who represented me in the FY 2013 unlawful wage increase filed his: **MEMORANDUM IN SUPPORT FOR MOTION FOR COUNSEL FEES**

The Appellant is the "prevailing party" in this action and incurred fees pursuant to an existing attorney-client relationship. An appellant who shows that he obtained a material alteration of the legal relationship between the parties through an enforceable final judgment on the merits or a settlement agreement entered into the record for purposes of enforcement by the Board is a "prevailing party" for the purposes of 5 U.S.C. § 7701(g)(1). *Sanchez v. Dep't of Homeland Security*, 116 M.S.P.R. 183, ¶ 10 (201) (citing *Buckhannon Board & Care Home, Inc. v. West Virginia Dep't of Health & Human Resources*, 532 U.S. 598 (2001)). App. 114

In our fee petition, we request a total award of $10,611.25 in attorney fees. This was a case in which the agency knew or should have known that it would not prevail on the merits when it began the proceeding. The workload of this law firm was unduly prolonged by the agency's

attempts to introduce falsified "evidence" (Appellant's purported work product) to support its assertion that it issued the Appellant a rating of record, and further reliance upon statements by Agency counsel's during a status conference to the Administrative Judge to the effect that it had issued the Appellant a rating of record. See generally Appellant's Statement of Affirmative Defenses, Appellant's Motion for Sanctions. @ App. 117. Article III moot issues, collateral estoppel bars Interior relitigating and district court adjudication of Dept. of Interior's FY 2013 Wage Increase denial defeat that that was reversed by MSPB on 2/28/14@ App. 101 and paid by Department of Interior on 3/10/14 App. 137. **The objective of the doctrine of issue preclusion (also known as collateral estoppel) is judicial finality; it fulfills "the purpose for which civil courts had been established, the conclusive resolution of disputes within their jurisdiction." *Kremer v. Chemical Constr. Corp.*, 456 U.S. 461, 467 n. 6, 102 S.Ct. 1883, 1890 n. 6, 72 L.Ed.2d 262 (1982).**

FY2014 Litigation: MSPB: REMAND ORDER 12/29/14 FY2014 WIGI step3 Barry Ahuruonye, Hyattsville, Maryland, pro se. Josh C. Hildreth, Esquire, Washington, D.C., for the agency. DOCKET NUMBER DC-531D-14–0587-I-1 DATE: December 29, 2014

The agency argued, and submitted evidence to show, that, on October 17, 2013, the appellant's supervisor had issued him an Employee

Performance Appraisal Plan that he refused to sign, and that, on or about May 1, 2014, she issued him a Summary Rating of "Minimally Successful" Here, the agency relied upon the Minimally Successful performance rating it provided to the appellant in 2014 to support the denial of his WIGI Additionally, the Board may not sustain an agency's withholding of an employee's WIGI unless that action is supported by substantial evidence. Here, the agency failed to submit any of the appellant's work products that included apparent errors. In addition, failed to submit any supporting evidence. Therefore, the action must be reversed. Although we reverse the action on appeal, further adjudication is necessary to resolve the appellant's claims of discrimination and retaliation for protected activity. See *Schibik v. Department of Veterans Affairs*, 98 M.S.P.R. 591, ¶ 11 (2005) (an appellant has the right under 5 U.S.C. § 7702(a) to a decision on a discrimination claim even when the Board has already determined that the action appealed must be reversed on other grounds). ORDER We REVERSE the initial decision and direct the agency to retroactively grant the appellant's WIGI to step 3. See *Oulianova v. Pension Benefit Guaranty Corporation*, 120 M.S.P.R. 22, ¶ 11 n.6 (2013). We also REMAND this case to the regional office for adjudication of the appellant's claims of discrimination and retaliation for protected activity.@ App. 80-86

In *Montana v. United States*, **the Supreme Court stated: "[u]nder collateral estoppel, once an issue is actually and necessarily determined by a court of competent jurisdiction, that determination is conclusive in subsequent suits . . . "** 440 U.S. 147, 153 (1979) A **federal court is not permitted to adjudicate moot issues when it cannot give the petitioner any effective relief.** **Spencer v. Kemna*, **523 U.S. 1, 7 (1998)** *Calderon v. Moore*, **518 U.S. 149, 150 (1996) The inability to review moot cases stems from the requirement of Article III of the Constitution.** ***Spencer*, 523 U.S. at 7. It has long been settled that a federal court has no authority "to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it."** *Mills v. Green*, 159 U.S. 651, 653 (1895). See also *Preiser v. Newkirk*, 422 U.S. 395, 401 (1975); *North Carolina v. Rice*, 404 U.S. 244, 246 (1971)

In contravention of Issue preclusion also known as collateral estoppel and Article III moot issues the District court Adjudicated Department of Interior relitigating of the FY 2014 Wage Increase Step#3 reversed by MSPB on 12/29/14 and granted by Department of Interior on 1/20/15 and was affirmed by DC Circuit and The agency argued, and submitted evidence to show, that, on October 17, 2013, the appellant's supervisor had issued him an Employee Performance Appraisal Plan for Fiscal Year (FY) 2013 that he refused to

sign, and that, on or about May 1, 2014, she issued him a Summary Rating of "Minimally Successful" Here, the agency relied upon the Minimally Successful performance rating it provided to the appellant in 2014 to support the denial of his WIGI, and the administrative judge appeared to have no issue with such reliance. ID at 4. Additionally, the Board may not sustain an agency's withholding of an employee's WIGI unless that action is supported by substantial evidence. *Chaggaris v. General Services Administration*, 49 M.S.P.R. 249, 255 (1991). Here, the agency failed to submit any of the appellant's work products that included apparent errors . . . in addition, failed to submit any supporting evidence. Therefore, the action must be reversed. ORDER We REVERSE the initial decision and direct the agency to retroactively grant the appellant's WIGI to step 3. See *Oulianova v. Pension Benefit Guaranty Corporation*, 120 M.S.P.R. 22, ¶ 11 n.6 (2013) App. 84 85

In contravention of Issue preclusion also known as collateral estoppel and Article III moot district court ruled and DC circuit affirmed: **Denial of 2014: WIGI Therefore, because the plaintiff has failed to overcome the Department's well-documented basis for denying his WIGI, the Court concludes that the Department is entitled to summary judgment on the plaintiff's claim that he was denied a 2014 WIGI** App. 137.

https://casetext.com/case/ahuruonye-v-united-states-dept-of-the-interior

Department of Interior had more than seven years earlier provided evidence to MSPB during the petition for enforcement litigation that the FY 2014 wage increase had been granted @ DC-531D-14-0587-C-1 DATE: December 3, 2015

The appellant, a Grants Management Specialist, filed an appeal with the Board asserting that the agency improperly denied his WIGI to GS-12, step 3, effective December 1, 2013. Ahuruonye v. Department of the Interior, MSPB Docket No. DC-531D-14-0587-I-1, Initial Appeal File (IAF), Tab 1. On petition for review, the Board found that the agency action denying the appellant's WIGI must be reversed because the agency failed . . . proffer substantial evidence that his work was at an unacceptable level. As a result, the Board: (1) ordered the agency to retroactively grant the appellant's WIGI to step 3 and pay him the correct amount of back pay, interest on back pay, and other benefits under the Office of Personnel Management's regulations; and (2) remanded the appeal for the administrative judge to adjudicate the appellant's claims of discrimination and retaliation for engaging in protected activity. Id. at 6. ¶3 On February 22, 2015, the appellant filed a petition for enforcement of the Board's Remand Order. He asserted that the agency was in noncompliance with the Remand Order because it: . . . failed to explain to

him how it arrived at its back pay calculations; (3) appeared to have underpaid him for the "pay period of 2/17/15;" (4) failed to establish that it made appropriate Thrift Savings Plan (TSP) contributions At the outset, we find that this case must be remanded for consideration of the appellant's February 22, 2015, submission. . . . The appellant replied, asserting that the agency had not complied with the Board's order because it: (1) issued a back pay payment and thereafter initiated an action to collect the amount paid as an overpayment, such that he never received any payment @ App. 65

In contravention of Issue preclusion also known as collateral estoppel, the Oct 17, 2013, Employee Performance Appraisal Plan used for May 1, 2014, Summary Rating of "Minimally Successful" for FY 2014 Reversed by MSPB on 12/29/14

Per the District court: **The Department first communicated the performance standards and critical elements to the plaintiff in October 2013, when it provided him with a copy of the notification standards for his 2014 Employment Performance Plan, which he refused to sign. *See* Def.'s Mot., Ex. 2 (Employee Performance Appraisal Plan) On November 28, 2014, the plaintiff received his summary rating for his 2014 EPAP:** App. 8-9

FY2014 Litigation: MSPB: REMAND ORDER 12/29/14 FY2014 WIGI step3 Barry Ahuruonye, Hyattsville, Maryland, pro se. Josh C. Hildreth, Esquire, Washington, D.C., for the agency. DOCKET NUMBER DC-531D-14–0587-I-1 DATE: December 29, 2014

The agency argued, and submitted evidence to show, that, on October 17, 2013, the appellant's supervisor had issued him an Employee Performance Appraisal Plan that he refused to sign, and that, on or about May 1, 2014, she issued him a Summary Rating of "Minimally Successful" Here, the agency relied upon the Minimally Successful performance rating it provided to the appellant in 2014 to support the denial of his WIGI.. ORDER We REVERSE App. 84 85

The Supreme Court has defined issue preclusion to mean that "once a court has decided an issue of fact or law necessary to its judgment, that decision may preclude relitigation of the issue in a suit on a different cause of action involving a party to the first case." *Allen v. McCurry*, 449 U.S. 90, 94, 101 S.Ct. 411, 414, 66 L.Ed.2d 308 (1980). Collateral estoppel bars "successive litigation of an issue of fact or law actually litigated and resolved in a valid court determination essential to [a] prior judgment." *Gulf Power Co. v. FCC*, 669 F.3d 320, 323 (D.C. Cir. 2012).

The only issue left from FY 2014 is the 7/15/16, MSPB REMAND ORDER "Ex. (FY 2014

EPAP)" : **Which found that he failed to prove his claims of discrimination and retaliation in connection with the agency's action denying his WIGI. The Board already has reversed the agency's action denying his WIGI and ordered the agency to grant it, and the appellant does not suggest that that has not occurred. The Board directed the administrative judge, on remand, only to consider and analyze the appellant's claims of discrimination and retaliation. Ahuruonye Remand Order,** ¶ App. 50. **This Final Order constitutes the Board's final decision in this matter.** 5 **C.F.R. § 1201.1 13. You have the right to request further review of this final decision.** App. 58 When FY 2014 wage increase was unlawfully denied retroactive to 12/1/13 Petitioner work performance was satisfactory **@ WORK PERFORMANCE IS AT ACCEPTABLE LEVEL OF COMPETENCE CORRECTION FROM MSPB RULING DATED 2/28/14 effective 12//02/12 to 12/03/13** overlapping into FY 2014 by three months@@App. 137. 5 CFR § 532.417(a). **An employee . . . with** a **work performance of satisfactory shall advance automatically to the next higher step within the grade in accordance with 5343(e)(2)** Burdine, 450 U.S. at 252-53; Essary & Friedman, supra note 8, at 120. **If the defendant is unable to produce evidence of legitimate, nonretaliatory motive after the plaintiff has established** a **prima facie case, then the plaintiff wins the claim as** a **matter of law.** see* *St. Mary's Honor Ctr. v. Hicks*, 509 U.S. 502, 510 n.3 (1993); *See *Reeves v. Sanderson Plumbing Prods.*, 530 U.S. 133, 146-48

(2000) (elaborating on the standard adopted in Hicks). **'[T]here must be an end to litigation someday, and free, calculated, deliberate choices are not to be relieved from."** Id. At 577 (Quoting *Ackermann v. United States*, 340 U.S. 193, 198 (1950))

At Issue is FY 2015 Step #4: The appellant was due to receive his WIGI to step 4 on November 30, 2014. UNITED STATES OF AMERICA MERIT SYSTEMS PROTECTION BOARD BARRY AHURUONYE, Appellant v. DEPARTMENT OF THE INTERIOR, Agency. DOCKET NUMBER DC-531D-15-0242-I-1 DATE: June 29, 2015¶

***FY 2015 Step#4:* The appellant was due to receive his WIGI to step 4 on November 30, 2014. ¶**

FY 2013 Wage increase step# 2: **On April 4, 2014, an initial decision in a prior Board appeal ordering the agency to grant the appellant a WIGI to step 2 retroactive to December 2, 2012, became the Board's final decision when neither party filed a petition for review. MSPB Docket No. DC-531D-13-1273-I-1, Initial Decision (Feb. 28, 2014); see 5 C.F.R. § 1201.113. The appellant therefore was due to receive his WIGI to step 3 on December 1, 2013. See 5 U.S.C. § 5335(a)(1).** App. 74

FY 2014 Wage increase step# 3: **On May 23, 2014, the agency informed him of its decision to deny his WIGI to step 3. IAF, Tab 21 at 19. The appellant filed an appeal with the Board regarding the agency's denial of his WIGI to step 3 and, on**

December 29, 2014, the Board reversed the action and ordered the agency to retroactively grant him his WIGI to step 3. MSPB Docket No. DC-531D-14-0587-I-1, Remand Order (Dec. 29, 2014). The agency subsequently granted the step 3 WIGI retroactive to December 1, 2013. IAF, Tab 21 at 61. App. 75

FY 2015 Wage increase step# 4: **We therefore find that the appellant was due to receive his WIGI to step 4 52 weeks later on November 30, 2014. See 5 U.S.C. § 5335(a)(1). ¶8 We reject the agency's assertion that it believed the appellant was not due to receive his WIGI to step 4 until May 23, 2015, because it did not inform him until May 23, 2014, of its decision to deny his WIGI to step 3. See PFR File, Tab 1 at 5. The agency is not permitted to extend the appellant's due date for a WIGI simply by delaying in informing him of its decision to deny it. Section 531.411 does not support the agency's position. In the instant case, the agency failed to notify the appellant of his right to request reconsideration on November 30, 2014, the date his WIGI was denied.** @App. 74-78. On November 30, 2014, the date petitioner wage increase was unlawfully denied Performance was **@WORK PERFORMANCE IS AT ACCEPTABLE LEVEL OF COMPETENCE** effective 12//01/13 to 12/02/14 @App. 132 Overlapping into FY 2015 by three months **"Legal Authority REG 531.404".** 5 **CFR § 531.404 – Earning within-grade increase An employee paid at less than the maximum rate of the**

grade of his or her position shall earn advancement in pay to the next higher step of the grade or the next higher rate within the grade (as defined in § 531.403) upon meeting the following three requirements established by law: (a) The employee's performance must be at an acceptable level of competence, as defined in this subpart. 5 CFR § 532.417(a). An employee with a **work performance of satisfactory shall advance automatically to the next higher step within the grade in accordance with 5343I(2)** Burdine, 450 U.S. at 252-53; Essary & Friedman, supra note 8, at 120. **If the defendant is unable to produce evidence of legitimate, non-retaliatory motive after the plaintiff has established** a **prima facie case, then the plaintiff wins the claim as** a **matter of law.** see* *St. Mary's Honor Ctr. v. Hicks*, 509 U.S. 502, 510 n.3 (1993); *See *Reeves v. Sanderson Plumbing Prods.*, 530 U.S. 133, 146-48 (2000) (elaborating on the standard adopted in Hicks). Additionally, regarding, **In the instant case, the agency failed to notify the appellant of his right to request reconsideration on November 30, 2014, the date his WIGI was denied.** @ App. 74-78 **We said the same in Crocker, 49 F.3d at 739: the law-of-the-case doctrine applies to questions decided "explicitly or by necessary implication." "by necessary implication." Dissent at 3. Under Christianson, nothing more is required.** *LaShawn A. v. Barry*, 87 F.3d 1389, 1394 (D.C. Cir. 1996) "Crocker *v. Piedmont Aviation, Inc.*, 49 F.3d 735, 739 (D.C. Cir. 1995) **Procedural due process requires that certain substantive rights –**

including the property interest established by certain kinds of federal employment – cannot be deprived unless constitutionally adequate procedures are followed. * *Stone v. Fed. Deposit Ins. Corp.*, 179 F.3d 1368, 1375 (Fed. Cir. 1999) **Applicable to this case are "[t]he essential requirements of due process, notice and an opportunity to respond**." Id. At 1375-76 *(quoting *Loudermill*, 470 U.S. at 546, 105 S.Ct. 1487, 84 L.Ed.2d 494 **(1985)**. **As such, an employee is entitled to notice of the charges against him, an explanation of the employer's evidence, and an opportunity to present his side of the story before an adverse personnel action becomes effective**. Id. **See* *Sullivan v. Department of the Navy*, 720 F.2d 1266, 1274 (Fed. Cir. 1983);** see also *Douglas v. Veterans Admin.*, 5 MSPB 313, 5 M.S.P.R. 280, 304 (1981).

Legal Effect of Standard Form-50

The SF-50 is notice that the action has occurred. According to the Federal Personnel Manual (FPM) ch. 296, subch. 2-1, it provides basic documentation of a person's federal employment. See *National Treasury Employees Union v. Reagan*, No. 81-1294, slip op. at 8 (D.C. Cir., Aug. 11, 1981). The SF-50, Notification of Personnel Action (App. 132 & 137), is the document used to record personnel actions after they are effective. . . . *SF-50 simply documents the action.* In *Shaw v. United* States, 622 F.2d 520 (Ct.Cl.), *cert. denied*, 449 U.S. 105, 101 S.Ct. 231, 66 L.Ed.2d 105

(1980), **a subsidiary issue was determining the point at which the plaintiff began employment. The court decided, without discussion, that "plaintiff began employment on January 4, 1971, the date of his appointment evidenced in Standard Form 50."** ***Id.*** **At 528.**

For FY 2013: following Interior's 2/28/14 defeat on 3/10/14 FY 2013 WIGI was granted **@WORK PERFORMANCE IS AT ACCEPTABLE LEVEL OF COMPETENCE CORRECTION FROM MSPB RULING DATED 2/28/14 effective 12//2/12 to 12/03/13.** App. 137 For FY 2014: following Interior's 12/29/14 defeat on 1/20/15 FY 2015 WIGI was granted **WORK PERFORMANCE IS AT ACCEPTABLE LEVEL OF COMPETENCE** effective 12//01/13 to 12/02/14 @ App. 132 Overlapping into FY 2015 by three months

The Court failed to address my claims for Damages and relief from the Department of Interior, with respect to unlawful 4/14/15 employment less than 30 days from 3/26/15 employment removal notice CFR § 752.404(1) (**1**) ***Statutory entitlements.*** An employee against whom action is proposed under this subpart is entitled to the procedures provided in 5 U.S.C. 7513(b). An employee against whom an action is proposed is entitled to at least 30 days' advance written notice (7) The 30 days retroactive suspension from 12/15/14 to 1/9/15 in violation of 5 CFR § 752.404(1)(a) and 5 CFR 752.402 5 U.S.C. 7513(b) The FY 2015 step# 4 unlawful wage increase denial. 5 CFR § 532.417(a). **An employee with** a **work performance of**

satisfactory shall advance automatically to the next higher step within the grade in accordance with 5343(e)(2)

April 14, 2015 discriminatory and retaliatory Unlawful termination: The district court adjudicated and DC Circuit affirmed a hearsay and moot performance issues and ruled: **The Dept. evidence shows that the plaintiff terminated because he performed unacceptably** Apex 1pg15 The court ignored, Department of the Interior's issued 1/20/15's SF 50 Documenting: **WORK PERFORMANCE IS AT ACCEPTABLE LEVEL OF COMPETENCE effective 12//01/13 to 12/02/14** @ Apex18pg3 Overlapping into FY 2015 by three months Burdine, 450 U.S. at 252-53; Essary & Friedman, supra note 8, at 120. **If the defendant is unable to produce evidence of legitimate, non-retaliatory motive after the plaintiff has established** a **prima facie case, then the plaintiff wins the claim as** a **matter of law.** See *Reeves v. Sanderson Plumbing Prods.*, 530 U.S. 133, 146-48 (2000) (elaborating on the standard adopted in Hicks). There was **No acceptable level of competence (ALOC) made** by Department of Interior in FY 2015. As admitted by Interior on 1/8/15, the petitioner was not even due for any statutory performance evaluation until May 23, 2015, MSPB had already reversed Interior's "minimal" Acceptable level of competence (ALOC) Determination on 12/29/14. **It asserted that it was not required to make such a determination until May 23, 2015, because its last determination that the appellant was not performing**

at an acceptable level of competence (ALOC) occurred on May 23, 2014. Id. At 4A'[t]here must be an end to litigation someday, and free, calculated, deliberate choices are not to be relieved from." Id. at 577 (Quoting *Ackermann v. United States*, 340 U.S. 193, 198 (1950))

The 4/14/15 unlawful employment removal less than 30 days from the 3/26/15 notice date in violation of 5 CFR § 752.404(1)(a)

The 4/14/15 unlawful employment removal less than 30 days from the 3/26/15 notice date. Based on race (African American) and national origin (Nigerian) and engaging in protected activities. Per 'Interior" on 3/26/15 ""**Effective today at close of business you will be placed on administrative leave pending your removal. You will remain on administrative leave until further notice . . . during this period, you are directed not come to this office . . . You are not to have any contact with employees of this office . . . You are not to conduct service business"** @ECF 32 Ex A pg6". @ App. 122 On 4/14/15 Petitioner was unlawfully terminated less 30 days from 3/26/15 employment proposed removal notification in violation of 5 CFR § 752.404(1)(a). **See EMPLOYER CERTIFICATION: Employment Begin Date 12-02-2011 Employment End Date 04–14–2015** @ App. 124 *5 CFR § 752.404(1)(a) **Statutory entitlements. An employee against whom action is proposed under this subpart is entitled to the procedures provided in 5 U.S.C. 7513(b). The rule has been firmly established in pay cases "that unlawful**

administrative action depriving a claimant of a procedural right voids the action and leaves the plaintiff entitled to his money otherwise due." *Garrott v. United States*, 169 Ct.Cl. 186, 340 F.2d 615 (January 1965) **Where it is found that an adverse personnel action has been carried out in substantial violation of procedural regulation, it is a void action and the employee is entitled to recover any pay of which he has been illegally deprived. *Vitarelli v. Seaton*, 359 U.S. 535, 79 S.Ct. 968, 3 L.Ed.2d 1012 (1959); *Service v. Dulles*, 354 U.S. 363, 77 S.Ct. 1152, 1 L.Ed.2d 1403 (1957);**

The 30 days unlawful retroactive suspension from 12/15/14 to 1/9/15 in violation of 5 CFR § 752.404(1)(a) and 5 CFR 752.402, In DC-1221-15-1012-W-1, The appellant filed an appeal with the Board asserting that the agency subjected him to a suspension exceeding 14 days In December 2014, the appellant claimed his supervisor granted him 80 hours of paid leave for pay period 22 due to his father's death. AF-1012-W-1, Tab 1 at 2. In February 2015, the agency converted this leave to AWOL retroactively for the period from (1) Monday, December 29, 2014, through Friday, January 9, 2015. Id. The agency then initiated a debt collection action to recover payment for the previously paid leave. (2) (From Monday, December 15, 2014, through Friday, December 26, 2014), Id. *See* Apex21 *See* *5 CFR 752.402 ***Statutory entitlements.*** *5 U.S.C. 7513(b)) 5 U.S. Code § 7513 – Cause and procedure (b) An employee

against whom an action is proposed is entitled to – (1) at least 30 days' advance written notice. **Under: § 630.401 Granting sick leave.: (a) Subject to paragraphs (b) through I of this section, an agency must grant sick leave to an employee when he or she (4) Makes arrangements necessitated by the death of** a **family member or attends the funeral of** a **family member.** Please see also:" **Employee Benefits at Interior: Paid military, jury duty and** bereavement leaves @ ECF32 Ex. C page #16.

The rule has been firmly established in pay cases "that unlawful administrative action depriving a **claimant of** a **procedural right voids the action and leaves the plaintiff entitled to his money otherwise due."** *Garrott v. United States*, 169 Ct.Cl. 186, 340 F.2d 615 (January 1965) **Where it is found that an adverse personnel action has been carried out in substantial violation of procedural regulation, it is a void action and the employee is entitled to recover any pay of which he has been illegally deprived. *Vitarelli v. Seaton*, 359 U.S. 535, 79 S.Ct. 968, 3 L.Ed.2d 1012 (1959); *Service v. Dulles*, 354 U.S. 363, 77 S.Ct. 1152, 1 L.Ed.2d 1403 (1957).**

REASONS FOR GRANTING THE PETITION

(I)

The district court grant of summary judgment and DC circuit affirmation to Department of Interior for

nonexistence FY 2013 and FY 2014 fictious wage increase denials violated Article III of the constitution as it appertains to moot issues.

As briefed, to circuit court MSPB had already rebuffed Interior's quest and pursuit for an FY2014 Rematch on 1/13/15 (Br.pg.21) **"Dear Mr. Hildreth: This is in response to your request for reconsideration of the Board order dated 12/29/14. The order directed the agency to retroactively grant the appellant relief. The Board's regulations do not provide for your request for reconsideration of the Board's decision. Therefore, no further right to review this appeal by the Board.** @App. 119. For defeated litigants like Department of Interior dissatisfied with MSPB final disposition. *5 U.S. Code § 7703(b)(1) **gives the Federal Circuit jurisdiction over "petition[s] to review a final order or final decision of the Board.":** *5 U.S.C. § 7703(b)(1)(A)(**2**) MSPB shall be named as the Respondent . . . i.e., **"Interior" v. MSPB".** And not for district court to adjudicate moot "FY 2014 WIGI Denial" and DC Circuit to affirm Interior prohibited relitigating. **Judgments in excess of subject-matter jurisdiction "are not voidable, but simply void."** ***Elliott*** *v. Peirsol*, 26 U.S. 328, 340 (1828).

This is a case where Department of Interior officials played **fast and loose with the judicial machinery and deceive the courts *Di Frischia v. New York Central R.R.*, 279 F.2d 141 (3d Cir. 1960) A defendant may not play fast and loose with the judicial machinery and deceive the courts.**

And constitutes a direct contradiction and contravention of multiple Supreme Court precedents and case laws that prohibited and bars relitigating and a rematch with a losing litigant: According to the supreme court: **This result is in accord with the principles of collateral estoppel. Pp. 384 U.S. 421-422. Since the Board was acting in a judicial capacity when it considered these claims, the factual disputes were relevant to the issues properly before it, and both parties had an opportunity to argue their version of the facts and to seek court review of adverse findings, there is no need or justification for a second evidentiary hearing on these matters. P. 384 U.S. 422." *Parklane Hosiery Co. v. Shore, 439 U.S. 322 *United States v. Utah Constr. & Mining Co., 384 U.S. 394, 384 U.S. 422 (1966). Such repose is justified on the sound and obvious principle of judicial policy that a losing litigant deserves no rematch after a defeat fairly suffered, in adversarial proceedings, on an issue identical in substance to the one he subsequently seeks to raise. To hold otherwise would, as a general matter, impose unjustifiably upon those who have already shouldered their burdens, and drain the resources of an adjudicatory system with disputes resisting resolution.**

This case Is an Ideal Vehicle to Resolve Exceptionally Important federal employees Issues where a district court issues a conflicting judgement about eight years more than MSPB resolved the FY 2013 wage increase on 2/28/14 and granted by "Interior" on 3/10/14

likewise FY 2014 wage increase, and performance issues was reversed by MSPB on 12/29/14 and granted by "Interior" on 1/20/15. In contravention of collateral estoppel/Issue preclusion and Article III moot issues on 5/31/22 the district court adjudicated Department of Interior relitigating of nonexistent FY 2013 and FY 2014 wage increase denial and granting summary judgement on nonexistent "FY 2013 and FY 2014 wage increase denial" **See*** *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 326 (1979). **The principle holds true when a court has resolved an issue and should do so equally when the issue has been decided by an administrative agency, be it state or federal, see*** *University of Tennessee v. Elliott*, 478 U.S. 788, 478 U.S. 798 (1986), **which acts in a judicial capacity. *Astoria Fed. Sav. and Loan Ass'n v. Solimino*, 501 U.S. 104 (1991).**

The decision below is a case in point and an ideal vehicle for this Court's review.

CONCLUSION

For the foregoing reasons, Supreme Court should grant the petition for writ of certiorari.

Respectfully submitted,

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