No. 24-5084 ORIGINAL

In the Supreme Court of the United States

TERRENCE E. GILCHRIST,
Petitioner,

–v.–

SIMONE R. CRAIG, *ET AL.*,
Respondents.

On a Petition for a Writ of Certiorari to the Tenth District Court of Appeals of Ohio

PETITION FOR A WRIT OF CERTIORARI

QUESTIONS PRESENTED

After this Court decided *Turner* v. *Rogers*, 564 U. S. 431 (2011), many state courts adjusted contempt proceedings in child support cases under Title IV, Part D, of the Social Security Act. In December 2016, the United States Department of Health and Human Services, which funds programs under that same Part, promulgated revised regulations that implemented due process safeguards, based upon the three–prong test from *Mathews* v. *Eldridge*, 429 U. S. 319 (1976), as discussed in *Turner* v. *Rogers*. States likewise revised corresponding regulations for their courts and tribunals. The federal legislative branch also made changes such as an expression of a "Sense of the Congress regarding offering of voluntary parenting time arrangements," by enacting the Preventing Sex Trafficking and Strengthening Families Act, in September 2014, and expansion of "529 Account Funding for Elementary and Secondary Education," within the enactment of the Tax Cuts and Jobs Act in December 2017. The questions presented herein are as follows:

> Whether non–adherence to Turner procedural protections, under 45 CFR § 303.6(c)(4–5), violates substantive due process as well as privileges and immunities when fundamental rights and liberties are implicated, affronts the Takings Clause of the Fifth Amendment as well as the Due Process and Equal Protection Clauses of the Fourteenth Amendment, from which equitable relief is available, as found by Massachusetts, Nebraska, and Nevada as well as the First, Third, Sixth, Eighth, Ninth, and Eleventh Circuits, or is instead moot, as found in Ohio and Texas.
>
> Whether a dignity factor, scrutiny under substantive due process, or with privileges and immunities, as well as by specific Amendments may supplant the *Mathews* factors and *Turner* procedural protections in proceedings under Part D of Title IV of the Social Security Act when fundamental rights and liberties are at stake.
>
> Does lack of perfection of service divest a trial court of subject matter jurisdiction under the Due Process Clause of the Fourteenth Amendment, for "any matters," after confirmation of the registration of an order under the Uniform Interstate Family Support Act.

LIST OF PARTIES

Other parties with privity to the matter include The Honorable Monica E. Hawkins, Franklin County Court of Common Pleas; the Honorable Terri B. Jamison, Tenth District Court of Appeals of Ohio, Franklin County, Susan A. Brown, Esq., Director, Franklin County Child Support Enforcement Agency; and Lucy D'Anna, Supervisor, Superior Court of New Jersey, Morris County, Probation Division, Child Support Enforcement.

TABLE OF CONTENTS

* * * * *

INDEX TO APPENDICES Pages

TABLE OF AUTHORITIES CITED

CASES:

* * * * *

Constitution, Statutes, and Rules

In the Supreme Court of the United States

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Petitioner respectfully prays that writ of certiorari issue to review the judgment below by the court of appeals, tenth district, of Ohio.

OPINIONS BELOW

JURISDICTION

This petition has been filed, pursuant to Rule 29.2, within the extension of time allowed by Justice Brett Kavanaugh, Circuit Justice for the Sixth Circuit, to and including April 26, 2024. The statutory provisions conferring jurisdiction upon this Court include 28 U. S. C. § 2106, "Determination," and 28 U. S. C. § 1257(a), "State courts; certiorari." The constitutional provision conferring jurisdiction upon this Court is U. S. Const., Art. III, § 2, with regard to how the matter below draws into question the following statutory provision of the Full Faith and Credit for Child Support Orders Act, 28 U. S. C. § 1738B(h), and the statutory and regulatory provisions of Title IV Part D of the Social Security Act: 42 U. S. C. §§ 658a(c), 666(a)(7)(A–B), and 666(f) as well as 45 CFR §§ 303.6(c)(4–5) and 303.12.

The date of entry by the supreme court of Ohio to deny an amended motion for reconsideration was November 28, 2023. The state appellate decision for review and entry were issued December 13, 2022 with a subsequent filing in the state lower common pleas court, of the same appellate entry of the same appellate decision, on December 21, 2022.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Full Faith and Credit Clause, U. S. Const., Art. IV, § 1, provides that "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."

The Privileges and Immunities Clause, U. S. Const., Art. IV, § 2, cl. 1, provides that "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States."

The Supremacy Clause, U. S. Const., Art. VI, cl. 2, provides that "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, . . ." Liberty of Intimate Association under U. S. Const., Amdt. 1, provides that "Congress shall make no law . . . abridging the freedom . . . of the right of the people peaceably to assemble . . ."

The Takings and Just Compensation Clause of Amdt. 5 provides that "[N]or shall private property be taken for public use, without just compensation."

Unenumerated Rights under U. S. Const., Amdt. 9, provide that "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

The Privileges or Immunities, Due Process, and Equal Protection Clauses, of Amdt. 14, § 1, provide that "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

[RELEVANT STATUTORY PROVISIONS INVOLVED]

[REGULATORY PROVISIONS INVOLVED]

STATEMENT OF THE CASE

The Petitioner became a displaced government work in September 2013. With the exception of 1994, he had either full-time or part-time employment every year from 1993 through 2013. In the year prior, the Appellant initiated Title IV–D services in New Jersey in October 2012, for the purpose of ensuring parenting time and establishing the child as his beneficiary via paternity testing. After an almost mediation in December 2012, a child support order was issued from the Superior Court of New Jersey, May 2013. Inexplicably, a few months later, the Appellant lost employment with the Governor's Office, State of Maryland, and the Petitioner never again worked in government. From May 2013 to October 1, 2013, the Appellant had reduced the instantaneous retroactive arrears of $4,554, plus $94.25 fee for two genetic test, to $3,148.25.

From September 4, 2013 through January 10, 2017, the Appellant endured 3 years, 4 months, and 1 week, or 1,225 consecutive days, of long-term unemployment. As a last resort, after conversing with a therapist in July 2019, the Appellant returned to substitute teaching, after having been a substitute teacher for the Columbus City School District intermittently from December 2001 to March 2017 then was a substitute teacher for the Columbus Diocese from September 2019 to June 2021.

During that time, in January 2017, a "petition" from an administrative unit within the Superior Court of New Jersey, called Morris County Child Support Enforcement, for to register the New Jersey support order and for enforcement upon arrears was sent and eventually received by the Franklin County Child Support Enforcement Agency in March 2017 then filed with the Franklin County Court of Common Pleas, April 2017. Perfection of service upon Appellant, of that same petition and accompanying documents, was never accomplished within twelve months of the initial registration of the petition with the Franklin County Court of Common Pleas, April 6, 2017.

In oral argument at the purge hearing by the Attorney for this Petitioner, (Tr. 215 12/21/2021 at 9), and subsequently pressed with the state intermediate appellate court and state highest court, a federal question was raised as to whether child support payments submitted into the Superior Court of New Jersey by the Petitioner has verity to a state court in Ohio under the Full Faith and Credit Clause of U.S. Const., Art. IV, § 1; the Choice of Law provision of the Full Faith and Credit for Child Support Orders Act, under 28 U.S.C. § 1738B(h); as well as statutory and regulatory provisions granting credit for an interstate child support order to both the respective Title IV Part D state agencies in New Jersey and Ohio for payments made in either state under 42 U.S.C. § 658a(c) and 45 C.F.R. § 304.12.

Also presented and pressed with the state intermediate appellate court and state highest court was whether the Franklin County Court of Common Pleas and the Franklin County Child Support Enforcement Agency failed to adhere to the mandated safeguards, of the *Turner* v. *Rogers* procedural protections under 45 C.F.R. § 303.6(c)(4–5), in disregarding the valid evidence from the Superior Court of New Jersey, which revealed the Petitioner in 2021 having (a) paid $5,789.67 surpassing by $1,109.67 the $4,680 due for child support, (Record 190 and 191), as well as (b) thirty court–ordered reunification therapy sessions, for which the Petitioner paid $3,209.25 in 2021, (Record 194).

The question of a violation under the Equal Protection Clause of the Fourteenth Amendment to the U.S. Const. was pressed with the state intermediate appellate court and the state highest court with the denial to the Petitioner of the aforementioned *Turner* procedural protections under 45 CFR § 303.6(c)(4–5) when, in contrast, the state highest judicial court of Massachusetts reversed a judgment entry adverse to a noncustodial litigant in a child support civil purge hearing in the case *Department of Revenue Child Support Enforcement* v. *Grullon*, 485 Mass. 129, 147 N. E. 3d 1066 (2020).

[Federal Acts and Law][Payments]
At the purge hearing, the Attorney for the Petitioner stated

[Fundamental Rights]
At purge hearing, October 5, 2021
Reunification therapy
Interstate travel
529 K-12 college fund account

[Perfection of Service]
June 2017 hearing
October 2017 hearing
Absolute verity of the docket
Clerk of court never received confirmation of signed delivery
This was noted by the state intermediate appellate court in 19AP-804

[Turner procedural protections]
Evidence given to Attorney for Petitioner and county csea
Payment history, December 2019 through November 2021
Receipt, $400, window of Finance Division of the Superior Court of New Jersey
Update about employment
Inquiry posed to people not with privity to the matter in New Jersey
Protestations by Attorney for Petitioner and Petitioner ignored
"seek employment" was the purge condition, which is ambiguous
Prospective employer did contact Petitioner *via* email that same morning

Access and Visitation funds were allowed for the reunification therapy
Interference with the Title IV Part D Access and Visitation-funded therapy by the Title IV Part D civil contempt proceedings

529 K-12 college fund account
Judge had questioned
Petitioner stated this was adjudicated and [allowed] by the Superior Court of New Jersey

Reunification therapy
From February 2019 through March 2021, five orders
At October 5, 2021, hearing, Petitioner stated $2,316 to date had been spent since April 2021

Regulatory and Statutory History

When read *in pari materia,* along with an understanding of the history of the Congressional intent for the Child Support Enforcement Amendments of 1984, Public Law 98-378, there are safeguards under Title IV, Part D, of the Social Security Act against overzealousness by government collection activities and against noble cause corruption in child support enforcement action. The legislative history of the Child Support Amendments Act of 1984 were co-incidental with the legislative history of the Debt Collection Act of 1982, which permitted the federal government and the states to deploy practices used by private sector debt collectors. In the legislative process resulting in the Debt Collection Act of 1982, members of the United States Senate contemplated with Executive Branch officials safeguards against adverse government action. See, *infra,* Senate Hearing (November 19 and 20, 1980) on S. 3160 before the Committee on Governmental Affairs, 96th Congress, 2nd Session, at 12.
Hearing on S. 3160

B. The Statutory History

1. Amending Title IV of the Social Security Act

Title IV of the Social Security Act was amended with Part D upon the passage in November 1974 of the Social Services Amendments of 1974, Pub. L. 93–647, signed into law by President Gerald R. Ford, January 4, 1975. Soon thereafter, Congress recognized in 1980 the potential for overzealousness in federal debt collection. Not mentioned in the Congressional Research Services excellent and extensive legislative history of federal child support enforcement, as previously compiled over the decades by the now retired Carmen Solomon–Fears, is how the legislative process culminating in the Child Support Amendments Act of 1984 was coterminous with the Debt Collection Act of 1982, which permitted the federal government and the states to adopt and deploy practices used by private sector debt collectors. When read *in pari materia,* along with an understanding of the history of the Congressional intent for the Child Support Enforcement Amendments of 1984, Pub. L. 98–378, there are safeguards under Title IV–D of the Social Security Act against noble cause overzealousness by government collection activities in child support enforcement action. In the legislative process of 1980 that resulted in the Debt Collection Act of 1982, members of the United States Senate contemplated with Executive Branch officials safeguards against adverse government action. See Hearings on S. 3160 before the Committee on Governmental Affairs, 96th Cong., 2nd Sess., p. 12 (November 19 and 20, 1980).

> SENATOR WILLIAM COHEN of Maine: I was wondering as we make these modifications, would you recommend that we also build in certain safeguards to be sure we don't become overzealous in our collection activities to the point where we defeat the very purpose of it?

> ELMER STAATS, Comptroller of the United States: I would agree. I guess what we are trying to address ourselves to here is we ought to remove the legal impediments to using some of the means that are at our disposal. The question of safeguards is partly an administrative question. But it also may be a question of legal safeguards written into the statute.
>
> SENATOR WILLIAM COHEN of Maine: I think that is the reason why the motion to allow for the withholding of income tax refunds from individuals who had defaulted student loans failed.

In the legislative process resulting in the Child Support Amendments Act of 1984, Senator Charles Grassley of Iowa had introduced Senate Bill 1708, which proposed reporting arrears to credit agencies. See House Conference Report No. 98-925, accompanying H.R. 5325, pp. 30, 38-39 (August 1, 1984); S.B. 1708 (July 25, 1983). There were even discussions of student loan debt collection with collection child support arrears. See Senate Hearing 98-498 (September 16, 1983) at 28, 51, 54. From this legislative process, November 1980 through August 1984, provisions for safeguards under Title IV-D of the Social Security Act were included in the Child Support Amendments Act of 1984.

H. R. Rep. No.
Hearings on S. 98-498

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2. Amending Title IV of the Social Security Act with Interstate Uniformity

Shortly thereafter these statutory amendments to Title IV–D of the Social Security Act, there were hearings that resulted in further statutory amendments called the Family Support Act of 1988, again, incidentally in a federal election year. As part of that legislative process, there was an emphasis upon rectifying the disparate support enforcement approaches across various states. There were claims that some parents while visiting their children in another state were 'ambushed' with litigation. There were also claims that some noncustodial parents moved away to certain other states as a way of 'forum shopping' to attain an advantage in domestic relations litigation.

REASONS FOR GRANTING THE WRIT

I. Lack of Uniformity Exists in State Appellate Court Review of the Application of the Mandated Due Process Safeguards under *Turner* v. *Rogers* (2011) and 45 CFR § 303.6(c)(4-5).

A. With Respect to the Turner Procedural Protections, the State Highest Courts of Massachusetts, Nebraska, and Nevada and Several State Intermediate Appellate Courts Opine toward Adherence Whereas the State Courts of Appeal of Ohio, South Carolina, and Texas Allow Abuse of Discretion.

With the split in determinations, the problem is that some state courts grant appellate review and recognize abuse of discretion while others use appellate review to avoid finding abuse of discretion.

The decision in the instant case by the state intermediate appellate court of Ohio is similar to a recent decision by a state intermediate appellate court in Texas; however, both conflict with the state highest courts of Massachusetts, Nebraska, and Nevada.

State intermediate courts of appeal in Ohio, Iowa, and Texas conflict with the state highest courts of Massachusetts, Nebraska, and Nevada as well as conflict with the state intermediate appellate courts of Arizona and Kentucky.

With the split in determinations, the problem is that some state courts grant appellate review and recognize abuse of discretion while others use appellate review to avoid finding abuse of discretion. The decision in the instant case by the state intermediate appellate court of Ohio is similar to a recent decision by a state intermediate appellate court in Texas; however, both conflict with the state highest courts of Massachusetts, Nebraska, and Nevada. State intermediate courts of appeal in Ohio, Iowa, and Texas conflict with the state highest courts of Massachusetts, Nebraska, and Nevada as well as conflict with the state intermediate appellate courts of Arizona and Kentucky.

B. For Nearly Fifty Years, State Appellate Courts Have Known That the Respective Federal Regulatory Enforcement Procedures under 45 C.F.R. § 303.6 Are Mandatory.

All of these state courts are required to follow the federal law. In *Rose* v. *Arkansas State Police*, 479 U. S. 1 (1986), "There can be no dispute that the Supremacy Clause invalidates all state laws that conflict or interfere with an Act of Congress." *Ibid.*, 3. In *Armstrong* v. *Exceptional Child Center, Inc.*, 575 U. S. 320, "this Clause creates a rule of decision * * * It instructs courts what to do when state and federal law clash, but is silent regarding who may enforce federal laws in court, and in what circumstances they may do so." *Ibid.*, 1383. State courts are to adhere to the interpretation of federal law by this Court. See *DirecTV, Inc.*, v. *Imburgia*, 577 U. S. 47, 53 (2015).

In matters of interpreting conflicts of state and federal regulations, the federal law preempts state law. See *English* v. *General Electric Co.*, 496 U. S. 72, 89 (1990). State administrative agencies in Spending Clause fields are to abide by federal guidelines unless a permissible exception is authorized. See *Kansas* v. *United States*, 214 F. 3d 1196 (CA10 2000).

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Kansas v. *United States*, 214 F. 3d 1196 (CA10 2000)

Massachusetts, Grullon
Nebraska, *Sickler* v. *Sickler*
Nevada, *Foley* v. *Foley*

Ohio
Texas

With the Full Faith and Credit Clause, evidence from one court is valid evidence to another court.

The problem is that some state courts recognize the veracity of the judicial documents from the court of another state while other state courts impeach the documents.

Massachusetts
New York

Ohio

Under the Equal Protection Clause, indigent status is not a justification for denying the liberty of fundamental rights and vested interests.
The problem is that depending upon where an indigent litigant accesses the judicial process, by state, the same indigent litigant with the same case will have different outcomes by state.

II. Strict Scrutiny and a Dignity Factor May Augment or Supplant the *Mathews* v. *Eldridge* Factors in Title IV Part D Proceedings When Fundamental Rights and Vested Interests, Beyond Bodily Restraint, Are at Stake.

For affiliational rights, interstate travel, education, and child rearing, the due process safeguards of Turner procedural protections are not effective as heightened protection of these fundamental rights and liberties.

Kansas v. *United States*, 214 F. 3d 1196 (CA10 2000)

South Dakota v. *Dole*, 483 U. S. 302 (1987)

. Development of guidelines for visitation and alternative custody arrangements
45 CFR § 303.109(c)(2)
42 U .S. C. § 669b(a)
"grants under this section to enable States to establish and administer programs to support and facilitate
noncustodial parents' access to and visitation of their children,
by means of activities including []
visitation enforcement (including monitoring, supervision and neutral drop-off and pickup), and
development of guidelines for visitation and alternative custody arrangements."

Harmonize federal regulations and statutes
with first and third prong of test in South Dakota v. Dole
first prong is "the general welfare"
third prong is legitimacy of conditions
"to the federal interest in particular national projects or programs"
45 CFR § 303.6(c)(4-5) with 45 CFR § 303.109(c)(2)
42 U. S. C. § 666 with 42 U .S. C. § 669b(a)

III. The Decision of the Court of Appeals of Ohio Is Irreconcilable with this Court's Rulings as to Prudential Mootness, Federal Preemption, and Contempt and Thereby Threatens Consequential Adverse Effects to Children and Families.

A. The Inadequate Reasons for Prudential Mootness by the Court of Appeals of Ohio Contradict This Courts Corresponding Mootness Considerations in *Turner* v. *Rogers*, 564 U. S. 431 (2011) and *United States* v. *Sanchez-Gomez*, 584 U. S. 381 (2018) and Similar Mootness Considerations by the Third, Sixth, Eighth, Ninth, and Eleventh Circuits as well as the United States Tax Court and State Highest Judicial Courts of Massachusetts and Michigan

1. Arrears, or a Financial Obligation, Allows the Exception.

2. Equitable Relief Permits the Exception.

3. With the Same Complaining Party, the Exception Is Allowed.

4. Only Inadequate Grounds Are under the Ohio Constitution in This Matter.
The Ohio Constitution is not an adequate ground when the Ohio General Assembly limited the jurisdiction of the state lower court to adherence to the Title IV Part statutes and to the corresponding implementing regulations, under Ohio R.C. 3125.25, "Administrative rules governing operation of support enforcement," effective October 17, 2019.

B. The Lower Court Decision Contradicts This Courts Opinions of the Full Faith and Credit Clause as well as Affronts the Intendment of Congress with the Full Faith and Credit for Child Support Orders Act to the Disadvantage of Interstate Family Law Litigants.

1. Under the Supremacy Clause, Federal Law Preempts State Law and Judicial Proceedings from Out-of-State Courts Are Accorded Comity.
2. The Lower Court Accomplishes the Opposite of the Full Faith and Credit for Child Support Orders Act.

C. In Proceedings under Title IV Part D of the Social Security Act, Incarceration No Longer Has a Legal or Scientific Basis.

Has no penological basis
Adversely affects health of the individual and their family
Inability to pay is already a defense to incarceration
State highest – Nebraska, Mississippi
Circuits – Fifth, Seventh, Ninth, Ninth citing Eighth from 1902
Supreme - *Shillitani* v. *United States*

IV. Equitable Relief Is Available for "Any Matters" *Post* Confirmation of a Registered Interstate Child Support Order and the Decision by the Court of Appeals of Ohio Deepens the Split in Uniformity Among States Toward Access to Justice for Substantive Issues

Alaska, Florida, New Hampshire, New York, and South Carolina, West Virginia
- exercised judicial review of a country or state agency

Iowa, Mississippi, Montana, and Wyoming
- Restraint, deferring to legislature

California, Ohio, and North Carolina have done both; in fact, California intervened by issuing an exception to estoppel

Iowa, which stated that a 'conference' with the agency suffices for due process, the highest court in Alaska was open to being persuaded. In *Blessing* v. *Freestone*, (1997) and *Gonzaga University* v. *Doe*, (2002), if a statute has a federal right designated for a set of individuals and the regulatory scheme is not comprehensive enough to effectuate a regulatory remedy, then a private cause of action arises under that same statute.

From *Blessing* v. *Freestone*, the Supreme Court of the United States delineated three factors for determining whether a statutory provision affords a federal right: (1) "Congress must have intended that the provision in question benefit the plaintiff"; (2) "the plaintiff must demonstrate that the right assertedly protected by the statute is not so 'vague and amorphous' that its enforcement would strain judicial competence"; and (3) "the provision giving rise to the asserted right must be couched in mandatory, rather than precatory, terms." In that case, the Supreme Court of the United States stated "We do not foreclose the possibility that some provisions of Title IV–D give rise to individual rights." From Gonzaga v. Doe, the Supreme Court of the United States held further additional factors for determining whether a statutory provision affords a federal right: (4) "For a statute to create such private rights, its text must be 'phrased in terms of the persons benefited'"; (5) "where a statute is phrased in such explicit rights-creating terms, a plaintiff suing under an implied right of action still must show that the statute manifests an intent 'to create not just a private right but also a private remedy'; and (6) "an aggrieved individual lacked any federal review mechanism * * * ."

The provisions of 42 U.S.C. 666(a) (7) satisfies these factors. For the first and fourth prongs, Congress specified "noncustodial parent" twice. 42 U.S.C. 666(a)(7)(A–B). For the second and fifth prongs, Congress in a plain statement used the phrase "such parent has been afforded all due process required under State law" in a way that is not ambiguous and clearly denotes a private remedy. 42 U.S.C. 666(a)(7)(B)(i). For the third prong, Congress mandates the provision with the phrase "each State must have in effect laws requiring the use of the following procedures." 42 U.S.C. 666(a). Also, for the third prong, Congress mandated "all due process required under State law." 42 U.S.C. 666(a)(7)(B)(i). For the sixth prong, in *Blessing, supra*, the

Supreme Court of the United States held that a parent may seek redress, such as under civil rights laws.

> The enforcement scheme that Congress created in Title IV–D is far more limited than those in Sea Clammers and Smith. Unlike the federal programs at issue in those cases, Title IV–D contains no private remedy—either judicial or administrative—through which aggrieved persons can seek redress. * * * To the extent that Title IV–D may give rise to individual rights, therefore, we agree with the Court of Appeals that the Secretary's oversight powers are not comprehensive enough to close the door on § 1983 liability.

Kenck v. *Montana*, 2013–MT–380, 373 Mont. 168, 315 P.3d 957 (2013)

- Other statutes: 42 U. S. C. § Credit for payments
- Other regulations: 45 CFR

CONCLUSION

Wherefore the reasons presented herein, this Court should grant a writ of certiorari.

Respectfully submitted,

July 8, 2024

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