

24 - No. 24-~~5531~~

ORIGINAL

SUPREME COURT OF THE UNITED STATES

Frederick Foster,

Petitioner,

vs.

United States Postal Service, et al,

Respondents.

On Petition for a Writ of Certiorari to
the United States Court of Appeals
for the Third Circuit

PETITION FOR A WRIT OF CERTIORARI

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Questions Presented

The questions presented require this Court to resolve an intolerable conflict between the Federal Circuit versus the Third Circuit and the DC Circuit, and an intra-circuit conflict between the presiding Panel and previous panel of the Third Circuit. The questions presented are of importance to the general public and the United States in regards to a person's Constitutional and Federal rights to due process and equal protection of the laws, waste and abuse of tax-payer dollars and United States' resources.

What is also highly important is the fact that the questions presented will allow this U.S. Supreme Court to set a precedence that will prevent any other Federal district or circuit judge, law clerk, or DOJ Attorney from aiding and abetting Respondent USPS evade justice, thereby placing themselves onto the "glue trap" of uncompromising Federal procedural laws that Congress enacted to govern Respondent USPS's private status, its activities in the private sector, and suits brought against Respondent USPS and "such agency or any officer or employee" arising from intentional torts and violations of Federal law.

"Corruption takes the place of justice when procedural rules are allowed to be disregarded." This petition arises from judicial officers of the district and circuit courts choosing to disregard the *unassailable* Acts of Congress, Federal procedural law, a person's clearly established Constitutional Rights, the binding precedents of its own circuit —only to— act on the behalf of Respondent USPS and its "private sector stakeholder" and provide favors for colleagues and employees of the district,

in what categorically constitutes intentional torts and violations of Federal law committed in the “courthouse”.

Title 39, and its amendment, the Postal Accountability and Enhancement Act (“PAEA”), provides that the United States Postal Service (“USPS”) may compete in the “private sector” under the strict procedural laws of 39 U.S.C. Section 404 SUITS BY AND AGAINST THE POSTAL SERVICE that: 1) subjects all USPS activities to Federal laws prohibiting the conduct of business in a *fraudulent* manner; 2) unequivocally grants jurisdiction to the district courts; 3) requires that the USPS and “such agency or any officer or employee” acting on the behalf of or in concert with the USPS in any violation of Federal law shall be considered ‘persons’ and summoned in their individual capacities; 4) eliminates any and all doctrines of sovereign immunity protections from suit in Federal court by any person against the USPS and such agency or any officer or employee acting on the behalf of or in concert with the USPS in any violation of Federal law; 5) prohibits the United States Department of Justice/United States Attorneys Office (“DOJ/USAO”) from furnishing legal representation to the USPS and “such agency or any officer or employee” acting on the behalf of or in concert with the USPS in any action, suit, or proceeding arising in whole or in part from any violation of Federal law; and, 6) requires the USPS and “such agency or any officer or employee” acting on the behalf of or in concert with the USPS, to represent themselves and/or employ attorneys to represent them in any action, suit, or proceeding arising in whole or in part from

any violation of Federal law. As such, the USPS has the USPS General Counsel Civil Division.

The questions presented are:

1. Whether 39 U.S.C. §409(d) & (e) waive any doctrine of sovereign immunity from judicial officers, Federal agencies, and employees acting on the behalf of or in concert with the USPS in any violation of Federal law?
2. Whether 39 U.S.C. §409(g)(1) prohibits the DOJ/United States Attorney's Office from furnishing legal representation to the USPS and "such agency or any officer or employee" acting on the behalf of or in concert with the USPS in any action, suit, or proceeding arising in whole or in part from any violation of Federal law?
3. Whether the district courts have jurisdiction over the USPS and "such agency or any officer or employee" acting on the behalf of or in concert with the USPS in any action, suit, or proceeding arising in whole or in part from any violation of Federal law?
4. Whether the United States can be substituted as a defendant for the USPS and "such agency or any officer or employee" "acting on the behalf of or in concert with" the USPS in any violation of Federal law?

PARTIES TO THE PROCEEDING

The petitioner is Frederick Foster.

The respondents are Joel H. Slomsky, the United States Postal Service, Pitney Bowes, Incorporated, Landon Y. Jones, William M. McSwain, United States Attorney's Office for Eastern District of Pennsylvania, United States Department Of Justice, Janine Castorina, Christopher A. Lewis, Jonathan S. Goldman, Katherine P. Barecchia, Zane David Memeger, Gregory B. David, Annetta Foster Givhan, Margaret L. Hutchinson, Blank Rome, LLP.

RELATED CASES

Foster v. Pitney Bowes, Corp., No. 2:11-cv-07303, U.S. District Court for the Eastern District of Pennsylvania. Judgment entered July 23, 2012.

Foster v. Pitney Bowes, Corp., No. 13-1374-1444, U.S. Court of Appeals for the Federal Circuit. Judgment entered January 11, 2013.

Foster v. United States Postal Service, PRC Complaint C2015-3, Postal Regulatory Commission. Judgment entered August 26, 2015.

Foster v. Postal Regulatory Commission, No. 15-1334, U.S. Court of Appeals for the DC Circuit. Judgment entered August 22, 2018.

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Petitioner, Frederick Foster respectfully petitions for a
writ of certiorari to review the judgment of the United
States Court of Appeals for the Third Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals denying the district court's *inherent* jurisdiction and Petitioner's Constitutional rights to due process and equal protection of the laws, Third Circuit Case No. 23-1298, (App., *infra*. 1a) is believed unreported. The opinion of the district court denying the district court's inherent jurisdiction and Petitioner's Constitutional rights to due process and equal protection of the laws, EDPA 2:22-cv-03349, which attempted to execute judgments that are VOID *ab initio*, (App., *infra*. 9a) is believed unreported.

The earlier opinion of the court of appeals denying the district court's *inherent* jurisdiction and Petitioner's Constitutional rights to due process and equal protection of the laws, Federal Circuit Case No. 13-1374-1444, (App., *infra*. 19a) is believed unreported. The district court's order denying the district court's inherent jurisdiction and Petitioner's Constitutional rights to due process and equal protection of the laws, 2:11-cv-07303, (App. *infra*. 38a) is believed unreported.

JURISDICTION

The judgment of the court of appeals was entered on April 11, 2024. A petition for rehearing was denied on June 11, 2024 (App., *infra*. 16a). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

The relevant provisions of the Fourteenth Amendment of the United States Constitution, Title 39 and the Postal Accountability and Enhancement Act of 2006,

Pub. Law No. 109-435—DEC. 20, 2006, are reproduced in the appendix to this petition (App., *infra*. 39a).

STATEMENT

A. Introduction

The questions presented in this petition are of first impression and requires this Court to resolve an intolerable: 1) circuit conflict between the Third Circuit, DC Circuit and the Federal Circuit; and, 2) an *intra-circuit* conflict between the final decisions of the Panel upon which review is sought and the decisions of the previous panel of the Third Circuit as well as the DC Circuit's decision on the issues regarding: 1) Congress's specific waiver of Respondent USPS's sovereign immunity protections; 2) a person's right to sue Respondent USPS for intentional torts and any violation of Federal law; and, 3) Congress's *unequivocal* grant of jurisdiction to the district courts.

Additionally, there is a question presented of first impression of which the district and circuit courts have ignored, overlooked, and disregarded since 2006 and Congress's enactment of 39 U.S.C. §409(g)(1) which prohibits the DOJ from furnishing legal representation to the USPS, *et al*, in any action, suit, or proceeding arising in whole or in part from any violation of Federal law. (App., *infra*. 39a).

As a whole, the questions presented are based solely on the set of Federal procedural laws enacted by Congress to govern USPS activities in the private sector and suits against the USPS and “such agency or any officer or employee”, including judges, law clerks, the DOJ/United States Attorney’s Office and its attorneys, acting

on the behalf of or in concert with the USPS in any violation of Federal law or intentional tort. (App., *infra*. 39a).

The questions presented arose from a slew of Federal judicial officers and employees in multiple forums, disregarding Acts of Congress, Federal law, their Public Oaths, *binding* precedents, procedural rules, the district court's *inherent* jurisdiction and Petitioner's rights. All on the behalf of Respondent USPS, under the false pretense that their *unlawful* acts are protected by sovereign immunity.

By resolving these conflicts, this Court will *not only* correct a conundrum of *unlawful* acts, but will prevent such agencies—the DOJ/ United States Attorney's Office, or any officer—district and circuit court judges, or employees—Assistant U.S. Attorneys and law clerks from engaging with the USPS in any violation of Federal law, including, but not limited to, deprivation of a person's Constitutional Rights, deprivation of the district courts' *inherent* jurisdiction, *fraud* upon the court, and *fraud* against the United States.

By resolving these conflicts, this Court will prevent other Federal judges, law clerks, Assistant U.S. Attorneys, Federal agencies and employees from abusing their offices to aid and abet the USPS evade justice, thereby placing themselves on the “glue trap” of the Federal procedural laws enacted by Congress for this very purpose; governing the USPS's private status, its activities in the private sector, and any action, suit, or proceeding in which the USPS is a party.

Subsequently, in this petition, Petitioner is indeed a victim of lawlessness, however, the District and Circuit Courts' records are the witnesses, while the Acts

of Congress, Federal law, the *binding* precedents of the Third Circuit in *Licata*, declaration in PRC Order 2460, and DC Circuit precedents in *Lopez* are the accusers.

The initial dispute arose from Petitioner introducing his proposal for a “secure digital delivery service”, trade named the Virtual P.O. Box/Internet Passport (“VPOBIP”), to the USPS. The VPOBIP was intended to: 1) protect the Nation’s digital communications and money transfers from being victimized by cyber or Internet criminals; and, 2) repair the USPS’s failing financial condition. Petitioner’s communications and intellectual property were under the protection of 39 U.S.C. §404a. (App., *infra*. 39a).

In two (2) separate emails, Petitioner received notice from the USPS that its Executives, referred to as “internal stakeholders”, had approved Petitioner’s proposal and they were awaiting responses from “potential stakeholders”. A review of the USPS’s Supply Principles and Practices Manual (“USPS SP&P”) showed, the “potential stakeholders” were the USPS incumbent suppliers and mass mailers *“who may represent different client groups...Consider everyone affected by the supply decision, those who have influence or power over it, and those who have an interest in its outcome...”* By their own admission, the USPS had already disclosed Petitioner’s intellectual property and trade secrets to “third parties” without Petitioner’s prior knowledge or consent.

At that time, Petitioner maintained communications with high-ranking government officials from the PRC, Government Accountability Office, and the

House and Senate since Petitioner's proposal for a secure digital delivery service was an essential service that was in the interest of this Nation and the general public. Thereafter, Petitioner was informed by said high-ranking government officials that, in basic terms, Respondents USPS and Pitney Bowes Inc. had stolen Petitioner's "secure digital delivery service" concept. Said officials sent Petitioner the link to the USPS's primary stakeholder, Pitney Bowes, Inc.'s, digital "white paper" announcing the launch of "Volly", a "secure digital delivery service", a modified facsimile of Petitioner's proposal and trade secrets.

Thereafter, Petitioner filed Case No. 2:11-cv-07303 in the Eastern District of Pennsylvania ("EDPA") against Respondents USPS and Pitney Bowes, Inc. A review of the record shows, in 2:11-cv-07303, the Respondents and counsels made numerous *fraudulent* misrepresentations of law, while the District Court:

1. ruled that — "USPS is an agency of the federal government. See 39 U.S.C. § 201. To assert a tort claim against the federal government, a plaintiff must comply with the provisions of the Federal Tort Claims Act ("FTCA") ...the Court will grant Defendant United States Postal Service's Motion to Dismiss Plaintiff's Complaint pursuant to Federal Rule of Civil Procedure 12(b)(1)"

Here, the 2:11-cv-07303 Court conflated the USPS's Federal employment, which is the conveyance of mail matter—with—its status of a private commercial enterprise. A review of 39 U.S.C. §201 subsection "3621 Applicability; definitions" shows, the FTCA and §201 applies exclusively to the Postal Monopoly, the delivery of mail, access to mail boxes, and Market-Dominate Products, "(1) first-class mail letters and sealed parcels; "(2) first-class mail cards; "(3) periodicals; "(4) standard mail; "(5) single-piece parcel post; "(6) media mail; "(7) bound printed matter; "(8)

library mail; “(9) special services; and “(10) single-piece international mail. None of Petitioner’s claims were mail related. The FTCA and §201 *do not* apply to Respondent USPS’s private status, those provisions are covered by 39 U.S.C. §§401(1), 409(a), (d)(1), (e), and (g)(1). (App., *infra*. 38a).

2. ruled that — “Plaintiff’s claim of misrepresentation and fraud will be dismissed because the FTCA specifically prohibits a party from filing a claim of misrepresentation against the federal government. See 28 U.S.C. § 2680(h)”. (App., *infra*. 38a).

Here, the 2:11-cv-07303 Court abused its discretion by asserting the provisions of 28 U.S.C. §2680(h) which exclusively applies to “Federal investigative or law enforcement officers” acting within the scope of their employment. Neither Respondent USPS nor Pitney Bowes, Inc. were “Federal investigative or law enforcement officers” and none of Petitioner’s claims of misrepresentation/fraud arose from damages incurred as the result of Federal officers conducting an investigation or enforcing the law.;

3. ruled that — “Because Plaintiff has not filed a claim with the PRC, his claim under Section 404a must be dismissed for lack of subject matter jurisdiction. Even if he had preserved such a claim, he is required to appeal an adverse ruling to the United States Court of Appeals for the District of Columbia, which would have subject matter jurisdiction over his suit.” (App., *infra*. 38a).

Here, the 2:11-cv-07303 Court conferred jurisdiction over Petitioner’s common law damages claim that arose under 39 U.S.C. §404a to the Postal Regulatory Commission where none existed. As shown by a review of PRC Order No. 2460 and DC Circuit precedents enunciated in *Lopez*, neither the PRC nor the DC Circuit had any jurisdiction over common law damages claims against Respondent USPS, including Petitioner’s claims that arose under §404a. In *Lopez*,

the DC Circuit decided that claims against Respondent USPS, *et al*, that arose from common law damages and intentional torts are in the *exclusive* jurisdiction of the district courts;

4. abused its discretion by knowingly facilitating the U.S. Attorney's Office for the EDPA and its Assistant U.S. Attorneys' *unlawful* furnishing of legal representation to the USPS in claims arising from intentional torts and violations of Federal laws which constitutes a violation of 39 U.S.C. §409(g)(1), deprivation of Petitioner's Constitutional rights, *fraud* upon the court, fraud, waste, and abuse of United States resources and tax-payer dollars; (App., *infra*. 39a).

5. issued judgments that were VOID *ab initio* for failure and refusal to act in accordance with due process law and being produced by fraud, and therefore committed *inter alia* violations of Petitioner's Fourteenth Amendment Rights to due process and equal protection of the law. (App., *infra*. 39a).

Subsequently, the District Court disregarded the USPS's private status and Congress's specific waiver of its sovereign immunity protections, deprived Petitioner of his due process rights to sue the USPS in its official name and deprived the district court of its *inherent* jurisdiction, *inter alia*. (App., *infra*. 39a).

As shown by the related cases, Petitioner was bounced around from forum to forum only to discover more evidence that, in EDPA Case No. 2:11-07303, all parties, counsels, and judicial officers of the court did acts in furtherance of the conspiracy of deprivation and fraud on the behalf of and in concert with Respondent USPS. Petitioner then filed an independent action, EDPA Case No. 2:22-cv-03349,

pursuant to Fed. R. Civ. Pro. 60(b)(4), (d)(1) & (d)(3), naming all parties who engaged in said conspiracy as defendants. “Such agency or any officer or employee”—DOJ/United States Attorney’s Office and judicial officers, including Assistant U.S. Attorneys and law clerks, were summoned under 39 U.S.C. §409(e), as “persons” in their individual capacities, with all doctrines of sovereign immunities waived. And, as required by law, the United States was not a party or defendant in any claim arising from intentional torts or violations of Federal laws.

A review of the record of EDPA Case No. 2:22-cv-03349 shows, the 2:22-cv-03349 Court trespassed the law by attempting to execute or enforce the VOID judgments that were issued in Case No. 2:11-cv-07303. (App., *infra*. 9a).

Petitioner appealed the 2:22-cv-03349 Courts’ decisions in the United States Court of Appeals for the Third Circuit, Case No. 23-1298 in confidence that the Panel upon which review is sought would render fair judgments, in accordance with due process law, and consistent with the *binding* precedents set by the previous panel in *Licata v. USPS* Decision, Case No. 93-5637, (3d Cir. 1994). *To no avail.*

B. Act of Congress, 2006 PAEA Bill Summary, Unassailable Federal Statutory and Common Laws, and *Binding* Precedents That Govern USPS Activities in its Private Status and Suits Against the USPS, *Et Al*, Arising from Intentional Torts and Violations of Federal Law

Legislative history shows, when Congress amended Title 39 and the Postal Reorganization Act of 1970 with the Postal Accountability and Enhancement Act of 2006 (“2006 PAEA”), their intent was to allow the United States Postal Service (“USPS”) to fairly compete in the private sector. To assure that the USPS would *not* cause disruption in the private sector by abusing its quasi-government status to

create any unfair advantage for itself and its affiliates, Congress enacted a set of strict Federal procedural laws. (App., *infra*. 39a).

The following are a list of the prevailing, unassailable Federal procedural laws that govern the USPS's private status and activities in the private sector, the 2006 PAEA Bill Summary showing Congress's intent for said laws, and the relevant and binding case laws from the Third and DC Circuits, in chronological order. All of which are consistent with Congress's intent:

Postal Reorganization Act of 1970:

39 U.S.C. §401(1):

Subject to the provisions of section 404a, the Postal Service shall have the following general powers: (1) to sue and be sued in its official name;

39 U.S.C. §404-409 "Suits By And Against the Postal Service":

"(a) Except as otherwise provided in this title, the United States district courts shall have original but not exclusive jurisdiction over all actions brought by or against the Postal Service." (App., *infra*. 39a).

Licata v. USPS Decision, Case No. 93-5637, (3d Cir. 1994):

1) "The plain meaning of the first sentence of 409(a) grants the district court "jurisdiction" over Licata's complaint, since it is an "action brought...against the Postal Service" and does not fall within the exception at the beginning of the sentence" ... 2) "the words of section 409(a) are a clear and unequivocal grant of jurisdiction to the district courts" ... "Indeed, we cannot imagine how Congress could grant jurisdiction more plainly"; 3) "It is 39 U.S.C. § 401(1) that waives the [Postal] Service's sovereign immunity by providing that it may "sue and be sued" in its official name.>"; 4) "By launching the Postal Service into the commercial world, and giving it a sue and be sued clause in its charter, Congress has cast off the Service's cloak of sovereignty and given it the status of a private commercial enterprise"; 5) "The Postal Service is a legal entity separate from the United States itself"; and, "a suit may be maintained against the Postal Service without joining the United States as a party, and... the district courts have jurisdiction over suits against the Postal Service for amounts over \$10,000.>"; 6) "We believe the Postal Service conflates the issues of subject matter jurisdiction, sovereign immunity, and a valid cause of action.>"; 7) "Congress made it clear in the Postal Reorganization Act of 1970 that the Postal Service was essentially to be separate from the government."; (App., *infra*. 42a).

2006 Postal Accountability and Enhancement Act Bill Summary, H.R.6407 — 109th Congress (2005-2006) Public Law No. 109-435 — Section 404 “Suits By and Against the Postal Service”:

“(Sec. 404) Subjects all Postal Service: (1) activities to federal laws prohibiting the conduct of business in a fraudulent manner... Eliminates Postal Service sovereign immunity protection. Requires the Postal Service to: (2) represent itself in most legal proceedings (currently, representation is provided through the Department of Justice; (App., *infra*. 59a).

2006 PAEA:

39 U.S.C. §404a Specific limitations:

“(a) Except as specifically authorized by law, the Postal Service may not — “(1) establish any rule or regulation (including any standard) the effect of which is to preclude competition or establish the terms of competition unless the Postal Service demonstrates that the regulation does not create an unfair competitive advantage for itself or any entity funded (in whole or in part) by the Postal Service; “(2) compel the disclosure, transfer, or licensing of intellectual property to any third party (such as patents, copyrights, trademarks, trade secrets, and proprietary information); or “(3) obtain information from a person that provides (or seeks to provide) any product, and then offer any postal service that uses or is based in whole or in part on such information, without the consent of the person providing that information, unless substantially the same information is obtained (or obtainable) from an independent source or is otherwise obtained (or obtainable)”. (App., *infra*. 39a).

39 U.S.C. §409(d)(1) in pertinent part:

“For purposes of the provisions of law cited in paragraphs (2)(A) and (2)(B), respectively, the Postal Service — “(A) shall be considered to be a ‘person’, as used in the provisions of law involved; and “(B) shall not be immune under any other doctrine of sovereign immunity from suit in Federal court by any person for any violation of any of those provisions of law by any officer or employee of the Postal Service.” (App., *infra*. 39a).

39 U.S.C. §409(e) in pertinent part:

“To the extent that the Postal Service, or other Federal agency acting on behalf of or in concert with the Postal Service, engages in conduct with respect to any product which is not reserved to the United States under section 1696 of title 18, the Postal Service or other Federal agency (as the case may be) — “(A) shall not be immune under any doctrine of sovereign immunity from suit in Federal court by any person for any violation of Federal law by such agency or any officer or employee thereof;”

39 U.S.C. §409(g)(1):

“Notwithstanding any other provision of law, legal representation may not be furnished by the Department of Justice to the Postal Service in any action, suit, or proceeding arising in whole or in part under...Subsection (d) or (e) of this section. The Postal Service may, by contract or otherwise, employ attorneys to obtain any legal representation that it is precluded from obtaining from the Department of Justice under this paragraph”. (App., *infra*. 39a).

PRC Order No. 2460 — Postal Regulatory Commission, Complaint of Center for Art and Mindfulness, Inc., Docket No. C2015-1:

“...the Commission has limited jurisdiction to hear “rate and service” complaints as prescribed by 39 U.S.C. §3662(a)”. (App., *infra*. 54a).

Ramon Lopez v. Postal Regulatory Commission, Judgment, Case No. 12-1341 (D.C. Cir. 2017) — regarding the DC Circuit’s and the PRC’s jurisdiction over Respondent USPS in claims arising from common law damages and intentional torts:

“The Court agrees that it does not have jurisdiction to decide the issue. See 28 U.S.C. § 1346(b)(1) (establishing “exclusive jurisdiction” over certain civil claims against the U.S. government in the district court).” And, “The Clerk is directed to transmit a copy of this judgment and the portion of the original file pertaining to Petitioner’s damages claim to the United States District Court for the Southern District of Florida”. (App., *infra*. 49a).

The culmination of the previous procedural and case laws shows, 39 U.S.C. §§401(1), 409(a), (d), (e) & (g)(1) are Congress’s:

1. unequivocal grant of jurisdiction to district courts over suits against the USPS;
2. specific waiver of any doctrine of sovereign immunity from the USPS and “such agency or any officer or employee” acting on the behalf of or in concert with the USPS in any violation of Federal law; and,
3. provisions that allow the USPS and “such agency or any officer or employee” acting on the behalf of or in concert with the USPS in any violation of Federal law to be sued in Federal court by any person.
4. prohibition of the DOJ’s legal representation under these conditions.

Moreover, under these provisions, the USPS and “such agency or any officer or employee” acting on the behalf of or in concert with the USPS in any violation of Federal law must be sued in their “individual capacities” with all immunities waived and the United States must not be named as a defendant.

It is well settled law that the United States *cannot* commit intentional torts or violations of Federal law, only “such agency or any officer or employee” can. It is also well settled that intentional torts and violations of Federal law are deemed acts outside of such agency’s, any officer’s, or employee’s Federal employment. 32 CFR § 750.23(b) states “any employee who commits an intentional tort is normally considered to be acting outside the scope of their employment”.

Furthermore, a review of §409(g)(1) shows, to cure the problem and contradiction of enforcers of Federal law —acting as defense counsel to— violators of Federal law, Congress *emphatically* prohibited the Department of Justice/United States Attorneys Office and its attorneys from furnishing legal representation to the USPS and “such agency or any officer or employee” acting on the behalf of or in concert with the USPS in any violation of Federal law. Congress required that the USPS represent itself or employ attorneys to obtain any legal representation that it is precluded from obtaining from the Department of Justice. Plainly put, the United States Attorney’s Office are the attorneys *exclusively* for the United States. (28 U.S.C. §547 Appx.) *And*, Respondent USPS does indeed have its *own* attorneys to represent it, the USPS General Counsel.

The record of EDPA 2:11-cv-07303 shows, the Respondents and counsels conflated “*the issues of subject matter jurisdiction, sovereign immunity, and a valid cause of action*” and made numerous *fraudulent* misrepresentations of law, thereby repeating and establishing a pattern of the very misconduct that the Third Circuit ruled against in Licata, which constitutes a “conspiracy”. Moreover, the DOJ/US Attorney’s Office’s very “Entry of Appearance” was *unlawful* and therefore, every entry made on the behalf of Respondent USPS constitutes *fraudulent* misrepresentations of law, “fabrication of evidence by counsel”, and “fraud upon the court”.

As such, the record shows, all judgments issued in District Court Case Nos. 2:11-cv-07303 and 2:22-cv-03349 and Third Circuit Case No. 23-1298 are VOID *ab initio* for the courts’ failure and refusal to act in accordance with due process law and being produced by *fraud*. (App., *infra*. 38a, 1a, and 9a).

Because this case is an optimal vehicle for addressing the exceptionally important questions presented, the petition for a writ of certiorari should be granted.

C. Procedural History and Violations of Procedural Law

In EDPA 2:11-cv-07303, the Court DISMISSED Petitioner’s common law damages claims of misrepresentation, fraud, misappropriation of trade secrets, *inter alia*, pursuant to Fed. R. Civ. Pro. 12(b)(1), purporting that “*the FTCA specifically prohibits a party from filing a claim of misrepresentation against the federal government. See 28 U.S.C. § 2680(h)*” and the district court lacked subject matter.

The 2:11-cv-07303 Court abused its discretion by invoking sovereign immunity protections to Respondent USPS, which Congress had eliminated, and applying the provisions of 28 U.S.C. §2680(h) which is applicable *exclusively* to violations “*if committed by Federal investigative or law enforcement officers*”. None of the Defendants in EDPA 2:11-cv-07303 were Federal investigative or law enforcement officers. (App., *infra*. 38a).

The 2:11-cv-07303 Court also ruled that the PRC and DC Circuit had *exclusive* jurisdiction over Petitioner’s common law damages claims that arose under 39 U.S.C. §404a. In PRC Order No. 2460, the PRC declared, “*the Commission has limited jurisdiction to hear rate and service complaints as prescribed by 39 U.S.C. §3662(a)*” wherein, none of Petitioner’s claims that were brought under 39 U.S.C. §404a were “rate or service” related. (App., *infra*. 54a). *And*, in *Ramon Lopez v. Postal Regulatory Commission*, Judgment, Case No. 12-1341 (D.C. Cir. 2017), the DC Circuit decided that *neither* the DC Circuit *nor* the PRC had any jurisdiction over any common law damages claims against the USPS, such claims are in the exclusive jurisdiction of the district courts. (App., *infra*. 49a).

Therefore, all of the 2:11-cv-07303 Court’s judgments were VOID *ab initio* for failure and refusal to act in accordance with due process law and being produced by fraud. In light of the 2:11-cv-07303 Court’s abuse of discretion on the issues regarding Congress’s specific waiver of Respondent USPS’s sovereign immunity and unequivocal grant of jurisdiction to the district courts over Respondent USPS in claims that are *not* “mail related”, arising from intentional torts and violations of

Federal law, Petitioner filed a motion for leave to appeal those issues in the Third Circuit who had already enunciated decisions on these very issues; which are *binding* to the 2:11-cv-07303 Court. Petitioner's motion stated:

"I am requesting the correction of an error made on my part that appeared on the Civil Cover Sheet and the Designation Form that is now adversely affecting the proper disposition of this case. Specifically, the initial error was labeling the above captioned case as a "Patent Infringement" case. This case is not a patent infringement case as it was determined through the motions and responses of the Plaintiff, Defendants, and the Honorable Courts. I am requesting that the Nature of Suit and Federal Question is corrected to that of misrepresentation/fraud, violations of Title 39 USC (PAEA), misappropriation of trade secrets, and unjust enrichment. I am requesting that the appeal which was allocated to the US Court of Appeals for the Federal District be moved to the US Court of Appeals for the Third Circuit".

Although Third Circuit decisions are *binding* to the 2:11-cv-07303 Court, the record shows, the 2:11-cv-07303 Court still DENIED Petitioner's motion and forced Petitioner to file the appeal of its Order in the Federal Circuit. The record shows, the Federal Circuit AFFIRMED the 2:11-cv-07303 Court's VOID judgments and thereby created a circuit conflict with the Third Circuit's decisions in *Licata*.

The Federal Circuit also embraced the Respondents' and counsels' inapposite citing of what may be a flawed Third Circuit decision, *Anselma Crossing, L.P. v. U.S. Postal Serv.*, 637 F.3d 238, 246 (3d Cir. 2011), to counter the Third Circuit's precedents enunciated in *Licata*:

"Indeed, § 409 specifically states that its grant of jurisdiction to the district courts does not apply to exceptions "otherwise provided in this title." 39 U.S.C. § 409(a). Section 3662, with its grant of jurisdiction to the PRC over claims arising under § 404a, provides such an exception. Thus, the district court correctly determined that it lacked subject matter jurisdiction to consider claims arising under § 404a. See *Anselma Crossing, L.P. v. U.S. Postal Serv.*, 637 F.3d 238, 246 (3d Cir. 2011) (holding that a later-enacted and specific statutory provision bars district court jurisdiction for contract

claims against USPS despite § 409's general grant of jurisdiction)." (App., *infra*. 19a).

A review of *Anselma Crossing, L.P. v. U.S. Postal Serv.* shows, that case was a contract dispute wherein Respondent USPS's counsel, the US Attorney's Office raised and the Courts invoked the provisions of the Contract Dispute Act ("CDA"). However, as intended by Congress, "*(Sec. 404) Subjects all Postal Service: (1) activities to federal laws prohibiting the conduct of business in a fraudulent manner... Eliminates Postal Service sovereign immunity protection... Requires the Postal Service to: (2) represent itself in most legal proceedings.*" Therefore, all sovereign immunity protections, including the CDA and the FTCA are *not* applicable to the USPS. The U.S. Attorney's office is prohibited from representing the USPS in contract disputes in the private sector. And, as corroborated by PRC Order 2460, §3662 applies solely to "rate and service complaints". Subsequently, by *no* means, can the flawed decisions made in *Anselma* should have been applied to Petitioner's claims or Congress's *unassailable* laws.

Petitioner then filed a petition for a writ of certiorari on the Federal Circuit in this U.S. Supreme Court. This Court DENIED review of Petitioner's petition.

In accordance with the 2:11-cv-07303 Court's ruling that falsely asserted that the PRC and DC Circuit had *exclusive* jurisdiction over Petitioner's claims that arose under §404a, Petitioner filed PRC Complaint C2015-3 seeking clarification on the PRC's jurisdiction, only to discover that the Commissioners of the PRC attempted to act on the behalf of Respondent USPS. Despite the PRC's efforts, PRC Order No. 2460 shows, the Commissioners declared, "...the Commission has limited

jurisdiction to hear “rate and service” complaints as prescribed by 39 U.S.C. §3662(a).” (App., *infra*. 54a). Therefore, the PRC *did not* have any jurisdiction to hear Petitioner’s common law damages claims against Respondent USPS that arose under §404a and *all* judgments made by the PRC were VOID *ab initio*.

Petitioner appealed the PRC’s VOID judgments in DC Circuit Case No. 15-1339. Petitioner sought clarification on the issues regarding a person’s right to sue Respondent USPS in its official name and the district courts’ jurisdiction over common law damages claims brought against it. The record shows, the DC Circuit also attempted to act on the behalf of Respondent USPS.

While the DC Circuit case was pending, Petitioner discovered *Ramon Lopez v. Postal Regulatory Commission*, Judgment, Case No. 12-1341 (D.C. Cir. 2017), wherein the DC Circuit decided that *neither* the DC Circuit *nor* the PRC had any jurisdiction over any common law damages claims against Respondent USPS, such claims are in the *exclusive* jurisdiction of the district courts. (App., *infra*. 39a).

Upon the discovery of PRC Order 2460 and *Lopez*, the record showed that all judgments issued in EDPA 2:11-cv-07303 were VOID *ab initio* for failure to act in accordance with due process law and being produced by fraud.

Petitioner then filed a “Motion for Relief from a Judgment or Order Pursuant to Rule 60(b)(4) and (d)(3)”. Petitioner’s Rule 60(b) motion presented the “newly discovered evidence” of PRC Order 2460 and DC Circuit precedents in Lopez, and said motion was a “litmus test” for all opposing parties, counsels, and judicial officers, that would determine “individuals” were engaged with Respondent USPS

and did acts in furtherance of the conspiracy of deprivation and fraud. The record of 2:11-cv-07303 showed, the 2:11-cv-07303 Court refused to review or consider the Commission's declaration made in PRC Order 2460 and the DC Circuit precedents in *Lopez*, and DENIED Petitioner's motion for relief. The record also showed, *all* opposing parties, counsels, and judicial officers did additional acts in furtherance of the conspiracy on the behalf of and in concert with Respondent USPS.

On or about August 23, 2022, Petitioner filed an independent action/motion for relief" pursuant to Fed. R. Civ. Pro. 60(b)(4), (d)(1), and (d)(3), EDPA Case No. 2:22-cv-03349 and named all opposing parties, counsels, and judicial officers who did acts in furtherance of the conspiracy as defendants. Petitioner brought the independent action under:

1. 39 U.S.C. §§401(1) and 409(a)—Congress's *unequivocal* grant of jurisdiction to the district courts over suits by and against Respondent USPS;
2. §409(e), Congress's specific waiver of any doctrine of sovereign immunity from suit in Federal court by any person against the Respondents for acting on the behalf of and in concert with Respondent USPS in violations of Federal law;
3. §409(g)(1)—Congress's prohibition of the DOJ from furnishing legal representation to Respondent USPS and "such agency any officer or employee" who acted on the behalf of Respondent USPS in any violation of Federal law, thereby requiring Respondent USPS, *et al*, to represent themselves or employ attorneys to represent them.

In 2:22-cv-03349, as required by law, the United States was *not* a party or defendant. And, all parties were summoned in their “individual capacities” for acts outside the scope of their Federal employment, *not* in connection of duties performed on the United States behalf, but on the behalf of Respondent USPS. Therefore, *no* claim was against any party in their “official capacity”.

Petitioner cited several case laws and U.S. Supreme Court holdings on void judgments and fraud upon the court, including, but not limited to:

1. *Only an inspection of the record of the case showing that the judge was without jurisdiction or violated a person's due process rights, or where fraud was involved in the attempted procurement of jurisdiction, is sufficient for an order to be void.*
2. *The Court Has A Responsibility To Correct a Void Judgment: The statute of limitations does not apply to a suit in equity to vacate a void judgment.* (*Cadenasso v. Bank of Italy*, p. 569: Estate of Pusey, 180 Cal. 368, 374...) *This rule holds as to all void judgments.* US Supreme Court.”
3. *A void judgment may be attacked at any time by a person whose rights are affected.*
4. *Any single attempt by officers of the court to defraud the Court vitiates the entire proceeding.*
5. *A person or group who elects to defraud a court by false testimony and material misrepresentations is deemed to know that such a bold fraud might very well be discovered.*
6. *Fraud Upon the Court is an extremely serious crime, and so in dire opposition to the definition of justice that this crime is not subject to any statute of limitation.*

The proceeding was to be governed by Congress's strict and *unassailable* Federal procedural laws, 39 U.S.C. §§409(e) and (g)(1) and the *binding* precedents set by the Third Circuit in Licata and this U.S. Supreme Court, the precedential rulings of the DC Circuit in Lopez and the declaration in PRC Order No. 2460.

The 2:22-cv-03349 Court *only* needed to inspect the record of 2:11-cv-07303 for deprivation and fraud. The Respondents' fraudulent pleadings and VOID rulings, was the evidence —while— Federal statutory and common law was the accuser, whose accuracy *cannot* reasonably be questioned. Therefore, the 2:22-cv-03349 Court *did not* need any further pleadings from the Respondents. Petitioner's entry was merely a map or listing of the numerous *fraudulent* misrepresentations of law and VOID judgments found on the 2:11-cv-07303 Court's record.

Subsequently, the stage was set, the Respondents were cornered by Federal statutory and common law, and there was *no lawful* way for the 2:22-cv-03349 Court to aid the Respondents evade justice.

The record shows, the Respondents attempted to dodge and evade service for more than a month. Then, on September 29, 2022, at 4:59 AM, Assistant U.S. Attorney Peter Carr filed an "Entry of Appearance" that stated:

"Please enter the undersigned's appearance on behalf of the United States Attorney's Office for the Eastern District of Pennsylvania, United States Department of Justice and United States Postal Service, in the above-captioned matter." ... endorsed by U.S. Attorney Jacqueline C. Romero.

AUSA Peter Carr's entry of appearance on the behalf of Respondent USPS was a clear violation of 39 U.S.C. §409(g)(1). Moreover, the DOJ/United States Attorney's Office furnishing legal representation to Respondent USPS, who Congress required to represent itself in actions arising from intentional torts and violations of Federal law, and does indeed have its own USPS General Counsel — yet — *does not* furnish legal representation to Petitioner *Pro Se*, who the record shows is a victim of deprivation and fraud and has *no* counsel, constitutes another

act of deprivation of Petitioner's Fourteenth Amendment Rights to due process and equal protection of the law.

And, AUSA Peter Carr's representation of the United States Attorney's Office for the Eastern District of Pennsylvania and United States Department of Justice was questionable since, his representation was at the expense of United States and tax-payer dollars, and conflicted with 39 U.S.C. §409(e), Congress's specific waiver of any doctrine of sovereign immunity from suit against "such agency" acting on the behalf of or in concert with Respondent USPS in any violation of Federal law, and §409(g)(1) which emphatically prohibits the DOJ from furnishing legal representation to "such agency". (App., *infra*. 39a).

The record shows, the 2:22-cv-03349 Court DENIED Petitioner's several motions to disqualify AUSA Peter Carr's and the U.S. Attorney's Office's *unlawful* representation of Respondent USPS, *et al*, and continued its *unlawful* process. This was one of the 2:22-cv-03349 Court's initial acts of deprivation and fraud.

Then, on November 8, 2022, the 2:22-cv-03349 Court issued ORDER Doc. No. 43, that stated "It is ORDERED":

"1) "Defendants USAO, DOJ, USPS and Janine Castorina respond to Petitioner's Amended Complaint by answer or motion on or before November 14, 2022"; 2) "Pursuant to 28 U.S.C. §517, the United States may file a statement of interest by November 14, 2022, addressing the individual capacity claims against the Defendants who were employed as Assistant US Attorneys, Respondents Slomsky and John and Jane Does 1-10"; 3) "The deadline, if any, for the Defendants referenced in paragraph 2 of this Order to respond to the Amended Complaint is STAYED pending the entry of an Order in response to the United States statement of interest".

As shown by the foregoing and following sequence of events, the 2:22-cv-03349 Court's Order was a crafted invitation by the 2:22-cv-03349 Court, for AUSA Peter Carr and the U.S. Attorney's Office to commit further acts of "fraud upon the court", deprivation of Petitioner's rights, and fraud against the United States, by allowing them to *unlawfully* represent the Respondents in their "individual capacities" using a "United States Statement of Interest" that was most likely fabricated and *not* authorized by the Attorney General, Merrick Garland.

28 U.S.C. §517 states in pertinent part:

"The Solicitor General, or any officer of the Department of Justice, may be sent by the Attorney General...to attend to the interests of the United States in a suit pending in a court of the United States...or attend to any other interests of the United States".

On November 14, 2022, the Respondents filed the "Motion to Dismiss for Failure to State a Claim" which requested the 2:22-cv-03349 Court to:

"substitute the United States as a defendant for all Government Employee Defendants to the extent those defendants are sued in their official capacities for alleged common law torts".

As shown by the record, there were *no* claims against the United States or any party in their "official capacities". Therefore, the Respondents motion to dismiss and request were *fraudulent*, irrelevant, and frivolous.

The Respondents also filed a subsequent entry that was titled "Statement of Interest by United States Attorney Office for the Eastern District of Pennsylvania, United States Department of Justice" on the Court's "Notice of Electronic Filing" but the actual document was titled "United States Statement of Interest". The "so-called" "United States Statement of Interest" stated:

“United States has submitted a statement of interest suggesting why the individual capacity claims against all Government Employee Defendants also should be dismissed at this early stage”.

The culmination of these two statements shows, at the direction of the 2:22-cv-03349 Court, AUSA Peter Carr and the USAO for the EDPA fabricated these documents purporting to and pretending to represent the Respondents in their “official capacities” only to *unlawfully* represent the Respondents in their “individual capacities”. There were *no* “official capacity” claims.

By law, the Attorney General *would not* and *could not* legally authorize or endorse violations of Federal law or send the Solicitor General or any officer of the Department of Justice to do so. Such act would implicate the Attorney General. Moreover, the United States *cannot* pardon or suggest the dismissal of a civil suit against individuals in their “individual capacities” for common law damages claims arising from private civil offenses, intentional torts or violations of Federal law.

Nevertheless, the 2:22-cv-03349 Court accepted the Respondents’ Motion to Dismiss and the purported “United States Statement of Interest”. *All* parties incorporated and endorsed the Motion to Dismiss and the “so-called” United States Statement of Interest in their entireties.

The fabricated, *unlawful* “United States Statement of Interest” acted as the sole basis for the 2:22-cv-03349 Court’s DISMISSAL of Petitioner’s claims against the Respondents in their “individual capacities”.

In fact, Petitioner had already filed a DOJ Civil Rights Civil Liberties Complaint on September 17, 2020, with the DOJ Office of Inspector General and

notified the U.S. Attorney General, Merrick Garland on May 13, 2021. On October 2, 2020, the DOJ OIG forwarded Petitioner's complaint to the DOJ Office of Professional Responsibility ("OPR") and Executive Office for the United States Attorneys General Counsel. On February 15, 2021, the OPR responded in pertinent part:

"... It is, however, the policy of this Office to refrain from investigating issues or allegations that could have been or still may be addressed in the course of litigation... Based on our review of your correspondence, we have determined that your allegations fall into this category. Accordingly, we concluded that no action by this Office is warranted."

The OPR's response shows, in accordance with the operating procedures of the DOJ, *neither* the governing bodies of the DOJ *nor* the Attorney General declared the U.S. Attorney's Office for the EDPA representation of Respondent USPS was lawful, but concluded that the issues could have been or may still be addressed in the course of litigation and "no action by this Office is warranted". Subsequently, *neither* the Solicitor General *nor* any officer of the Department of Justice was sent by the Attorney General to attend to the interest of the United States with a "United States Statement of Interest". Such action is *unlawful*.

Nevertheless, on December 27, 2022, the 2:22-cv-03349 Court DISMISSED all of Petitioner's claims against all parties. (App., *infra*. 9a).

Petitioner gave the 2:22-cv-03349 Court notice that *all* judgments issued in that case were VOID *ab initio*, meaningless noise, of no legal force of effect for failure and refusal to act in accordance with due process law and being produced by *fraud*.

On February 13, 2023, the 2:22-cv-03349 Court imposed a filing injunction against Petitioner that stated with the following typos:

“ORDERED as follows: 1. The Clerk of Court SHALL NOT ACCEPT any further filings by Plaintiff Frederick Foster in this matter or Foster v. Pitney Bowes Corp., et al., No. 11 cv-7303, without prior leave of Court; 2. Mr. Foster is ENJOINED from filing in this District any new case that is related to, or arises out of, the claims he has raised in this case and Foster v. Pitney Bowes Corp., et al., No. 11 cv-7303, without prior leave of Court; 3. Plaintiff must attach a copy of this Order to any motion for leave to submit further filings in this case, Foster v. Pitney Bowes Corp., et al., No. 11 cv-7303, or any related new case. 4. Any such motion that the Court concludes are frivolous or seek relief previously denied by the Court will subject pro se Plaintiff to sanctions of \$100 per violation.. SIGNED BY DISTRICT JUDGE JOSHUA D. WOLSON ON 2/13/2023.”

Clearly, the 2:22-cv-03349 Court’s filing injunction was an attempt to further enforce the VOID judgments issued by the 2:11-cv-07303 Court, further deprive Petitioner of his due process rights and the district court of its *inherent jurisdiction*, and to act as a cloak for the Court’s, the Respondents’, and “any officer’s” past and future violations of Federal law, thereby depriving Petitioner of his 14th Amendment rights, *defrauding* the Court and *defrauding* the United States.

Despite the 2:22-cv-03349 Court’s failure and refusal to act in accordance with due process law and willingness to engage in the Respondent’s misconduct, the culmination of *Licata*, EDPA Cases 2:11-cv-07303 and 2:22-cv-03349 shows, the Respondents, once again, repeated the same pattern of making *fraudulent* misrepresentations of law and conflating “*the issues of subject matter jurisdiction, sovereign immunity, and a valid cause of action*”, *inter alia*, that the Third Circuit ruled against in *Licata*. And since, AUSA Peter Carr’s and the USAO’s representation of the Respondents was *unlawful*, and every entry that asserted

“*fraudulent* misrepresentations of law” constitutes “fabrication of evidence by counsel”, then the unlawful “United States Statement of Interest” *unequivocally* constituted “fabrication of evidence by counsel”, deprivation and fraud.

D. Decisions of the Panel Upon Which Review is Sought

On February 13, 2023, Petitioner filed his “Notice of Appeal” with the Third Circuit and the 2:22-cv-03349 Court. Petitioner’s case was assigned Third Circuit Case No. 23-1298. Petitioner filed the appeal with confidence that the 23-1298 Court would render judgments that were in accordance with Congress’s set of strict procedural laws, *unequivocal* grant of jurisdiction to the district court and specific waiver of sovereign immunity from Respondent USPS as already decided by the Third Circuit’s previous panel in *Licata v. USPS* Decision, Case No. 93-5637, (3d Cir. 1994). (App., *infra*. 42a).

However, a review of the decisions of the Panel upon which relief is sought shows, the Panel failed and refused to lawfully address the germane issues regarding Third Circuit *binding* precedents in *Licata* or Congress’s: 1) unequivocal grant of jurisdiction to the district courts; 2) a person’s right to sue the Respondents in their individual capacities for committing acts outside the scope of their Federal employment; 3) specific waiver of any doctrine of sovereign immunity from Respondent USPS and “such agency or any officer or employee”, acting on the behalf of and in concert with the USPS in any violation of Federal law.

Instead, the Panel decided to: 1) enforce the VOID judgments of the 2:11-cv-07303 and 2:22-cv-03349 Courts; 2) disregard the unassailable Federal procedural

laws and Congress's intent for said laws; 3) disregard Petitioner's clearly established Constitutional and Federal Rights; and, 4) disregard and overrule the *binding* decisions made by the previous panel in *Licata*. (App., *infra*. 1a).

In accordance with the Third Circuit's Internal Operating Procedures, I.O.P 9.1— Policy of Avoiding Intra-circuit Conflict of Precedent — “*It is the tradition of this court that the holding of a panel in a precedential opinion is binding on subsequent panels. Thus, no subsequent panel overrules the holding in a precedential opinion of a previous panel. Court en banc consideration is required to do so.*”

Subsequently, the decisions of the Panel upon which relief is sought has *no* legitimacy since the Panel failed and refused to get a majority en banc approval for their attempt to overrule the *binding* decisions of the previous panel enunciated in *Licata*. Consequently, the decisions of the Panel upon which relief is sought has *unequivocally* created an *intra*-circuit conflict with *Licata* and a circuit conflict with *Ramon Lopez v. Postal Regulatory Commission*, Judgment, Case No. 12-1341 (D.C. Cir. 2017). (App., *infra*. 49a).

Additionally, the Panel AFFIRMED the 2:22-cv-03349 Court's DISSMISSAL of Petitioner's claims on the basis of “sovereign immunity”, “judicial privilege”, and “collateral estoppel”. As shown by the prevailing Federal procedural laws, Congress specifically waived any doctrine of sovereign immunity from Respondent USPS and “such agency or any officer or employee” acting on the behalf of or in concert with Respondent USPS in any violation of Federal law. Moreover, the doctrines of

“sovereign immunity”, “judicial privilege”, and “collateral estoppel” *do not* apply to VOID judgments or “fraud upon the court” since, it is well settled law that: 1) *“The Court Has A Responsibility To Correct A Void Judgment.”*; 2) *“A void judgment may be attacked at any time by a person whose rights were affected”*. (US Supreme Court holdings on void judgments); 3) *“A decision produced by fraud upon the court is not in essence a decision at all, and never becomes final.”*; 4) *“Fraud Upon the Court is an extremely serious crime, and so in dire opposition to the definition of justice that this crime is not subject to any statute of limitation.”*; 5) *“any single attempt by officers of the court to commit fraud upon court vitiates the entire proceeding”*. (Seventh Circuit)

REASONS FOR GRANTING THE PETITION

This case is a superior vehicle for resolving a circuit conflict and an intra-circuit conflict on well-defined legal issues of exceptional importance to the Federal Judiciary, persons sharing intellectual property and seeking to do business with the USPS, commercial enterprises who compete with the USPS, and national security.

A. This Court Should Grant Review To Bring Uniformity In The Application of Congress's Federal Procedural Laws That Govern USPS Activities In The Private Sector And Suits Arising From Violations Of Any Federal Law

Contrary to Federal procedural law, Third and DC Circuit precedents, and the declaration made by the PRC Commissioners themselves, the Panel upon which review is sought, as well as the Federal Circuit, has held that the USPS and such agency or any officer or employee acting on the behalf of or in concert with the USPS in violations of Federal law: 1) are protected by doctrines of sovereign

immunity, including the FTCA, from suit in Federal court by any person; 2) the U.S. Department of Justice can furnish legal representation as defense counsel; 3) the district courts lack subject-matter jurisdiction over the USPS and such agency or any officer or employee acting on the behalf of or in concert with the USPS in any violation of Federal law; and, 4) the Postal Regulatory Commission has *exclusive* jurisdiction over common law damages claims of “unfair competition”, unlawful disclosure and misappropriation of trade secrets.

However, a review of *Licata v. USPS* Decision, Case No. 93-5637, (3d Cir. 1994), *Ramon Lopez v. Postal Regulatory Commission*, Judgment, Case No. 12-1341 (D.C. Cir. 2017), and PRC Order No. 2460, all of which are consistent with the Federal procedural laws enacted by Congress, shows, there is an intolerable conflict between these decisions and the decisions made by the Federal Circuit in *Foster v. Pitney Bowes Corp.*, 549 F. App'x 982, 988 (Fed. Cir. 2013). Moreover, a review of the decisions of the Panel upon which relief is sought shows, these decisions have deepened the existing conflict by creating an even more intolerable *intra-circuit* conflict with the decisions made by the previous panel of the Third Circuit in *Licata*. (App., *infra*, 1a, 19a, 42a, 49a, and 54a). Therefore, this Court should review and correct the Federal Circuit's and the Panel's, disregard, failure and refusal to act in accordance with Congress's intent for enacting the set of strict Federal procedural laws to govern Respondent USPS's activities and suits arising from any violation of Federal law.

B. This Court Should Grant Review To Prevent Any Federal Agency, Officer, or Employee From Placing Themselves On The “Glue Trap” Of Federal Procedural Laws Enacted By Congress to Govern USPS Activities In The Private Sector and Suits Against the USPS And Such Agency Or Any Officer Or Employee Acting On The Behalf Of the USPS In Any Violation Of Federal Law

What might be considered by some as a band of Federal employees, including the U.S. Attorney’s Office for the Eastern District of Pennsylvania, several Assistant U.S. Attorney’s, and several judicial officers, siding with the USPS to dismiss a suit brought against it by a *pro se* litigant, under the false pretense that their acts are protected by doctrines of sovereign immunity — *unequivocally* constitutes — a band of Federal employees who: 1) acted on the behalf of and in concert with the USPS in violations of Federal laws; 2) committed acts in furtherance of the conspiracy that deprived Petitioner of his clearly established rights; 3) deprived the District Court of its inherent jurisdiction; 4) *defrauded* the US Courts; and 5) *defrauded* the United States.

When Congress enacted its specific waiver of any doctrine of sovereign immunity from the USPS and “such agency or any officer or employee”, 39 U.S.C. §409(e), it was clear that the prime candidates with the most powers to act on the behalf of the USPS in any violation of Federal law are Federal judicial officers, the DOJ, its subsidiaries and employees. The operative words in 39 U.S.C. §409(e) provide that:

- 1) “shall not be immune under any doctrine of sovereign immunity” *unequivocally* constitutes Congress’s specific waiver of “any doctrine of sovereign immunity”, including “judicial” and/or “absolute immunity”;

- 2) "*from suit in Federal court by any person*" unequivocally permits any person to file suit for common law damages against the USPS, et al, in their "individual capacities" and grants jurisdiction to the district courts;
- 3) "*such agency or employee*" categorically applies to the DOJ, the USAO, and the Assistant U.S. Attorneys; and,
- 4) "*any officer*" indisputably applies to any "judicial officer", including judges. (App., *infra*. 39a).

Therefore, it is imperative that this Court grants review and corrects the Panels errors to prevent any other Federal agency, officer, or employee from placing themselves on the "glue trap" of strict Federal procedural law that govern USPS activities in the private sector and suits against it and "such agency or any officer or employee" acting on the behalf of or in concert with the USPS in any violation of Federal law. Such actors will be named defendants if forthcoming proceedings.

C. This Court Should Grant Review To Prevent Any Further Acts of Deprivation, Fraud, Waste, or Abuse of United States Resources By The U.S. Department Of Justice, The U.S. Attorney's Office, And Its Assistant U.S. Attorneys

39 U.S.C. §409(g)(1) provides that, despite any other provision of law, including the Federal district and Circuit Court rulings, legal representation may not be furnished to the USPS, et al, in any action, suit, or proceeding arising in whole or in part under any violation of Federal law and requires the USPS, et al, to represent itself or employ attorneys to represent it under these conditions. (App., *infra*. 39a).

In fact, the USPS *does indeed* have its own attorneys, the USPS General Counsel. Therefore, DOJ representation is *not only unlawful*, but constitutes further acts of deprivation of Petitioner's 14th Amendment Rights, fraud, waste, and abuse of United States resources and tax-payer dollars by the U.S. Department of Justice, the U.S. Attorney's Office, and its Assistant U.S. Attorneys.

Moreover, Federal agencies, judicial officers, and employees should be held to higher standards. As such, the U.S. Department of Justice established strict policies to enforce 18 U.S.C. §242 Deprivation of Rights Under Color of Law and 18 U.S.C. §371 Conspiracy to Defraud the United States. (App., *infra*, 72a and 73a). The DOJ established these policies to address unlawful acts committed by rogue Federal employees. The DOJ's policies for 18 U.S.C. §242 states: "*Section 242 of Title 18 makes it a crime for a person acting under color of any law to willfully deprive a person of a right or privilege protected by the Constitution or laws of the United States. For the purpose of Section 242, acts under "color of law" include acts not only done by federal, state, or local officials within their lawful authority, but also acts done beyond the bounds of that official's lawful authority, if the acts are done while the official is purporting to or pretending to act in the performance of his/her official duties. Persons acting under color of law within the meaning of this statute include police officers, prisons guards and other law enforcement officials, as well as judges, care providers in public health facilities, and others who are acting as public officials. It is not necessary that the crime be motivated by animus toward the race, color, religion, sex, handicap, familial status or national origin.*"

Although there is no private right of action for 18 U.S.C §242 offenses, like 39 U.S.C. §409(e), the statute waives any doctrine of sovereign immunity. Subsequently, the Respondents should be held accountable for violations of 18 U.S.C. §§242 and 371 and the DOJ's failure and refusal to enforce these laws also constitutes deprivation of Petitioner's 14th Amendment Rights to equal protection of the laws.

D. This Court Should Grant Review To Bring This Nation and General Public Closer To The Implementation of A Secure Digital Delivery Service To Protect the Nation's Digital Communications and Money Transfers

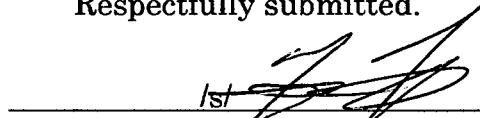
Petitioner's initial interaction with Respondent USPS was to partner with the USPS in the implementation of a "secure digital delivery service" intended to protect the Nation's digital communications and money transfers and repair the USPS's failing financial condition. However, certain rogue USPS Executives chose to violate Petitioner's Constitutional and Federal Rights, establish rules to preclude competition, and misappropriated Petitioner's trade secrets to their primary stakeholder Pitney Bowes, Inc. To date, the Nation's digital communications and money transfers have been and still remain vulnerable to Internet/cyber criminals, foreign and domestic. Since Petitioner's initial introduction, almost every of U.S. citizen, business, and government agency have been victimized by individual hackers, Internet hacker groups, and foreign governments alike. Not only has the USPS failed and refused to even attempt to exercise its Universal Service Obligation and fiduciary duty to serve the modern needs of this Nation, but took

unlawful steps to prevent Petitioner from doing so. For this additional reason, it is also imperative that this Court grants review of this petition.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.



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