

No. 24-5579

IN THE
SUPREME COURT OF THE UNITED STATES

ON PETITION FOR REHEARING IN GOOD FAITH FROM DENIAL ON
NOVEMBER 12, 2024 OF A WRIT OF CERTIORARI MO. 24-5579 TO THE
COURT OF APPEALS THE THIRD CIRCUIT DOCKET NO. 24-1208 ECF #
76 DENIAL OF EN BANC HEARING DATED AUGUST 2, 2024

PETITION FOR REHEARING IS PURSUANT TO SCOTUS RULE 44. The petition involves extraordinary circumstances, with its grounds limited to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously highlighted or presented.

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AND NOW, the petitioner John F Kodenkandeth, files this petition, in good faith, for Rehearing pursuant to Scotus Rule 44, regarding extraordinary circumstances that was not previously presented or considered, And this lack of focus and lack of presentation of the extraordinary circumstances caused the court to favor the responds who" hijacked" the petitioner's state of Pa case at GD23-12622, when the respondents were in a state/mode of default at the state of Pa as of November 21, 2023.

And this deprived and violated petitioner's Pa and IS constitutional rights of due process, Equal Protection, and improperly removed/hijacked petitioner's complaint in violation of 28 USC §1442 et seq §1446(b)(1), and State of Pa RCP 1028 to 1032 et seq, and avers as follows:

- 1) Petitioner incorporates the entire Writ of Certiorari at No, 24-5579 here in;
- 2) EXTRAORDINARY CIRCUMSTANCES FOR REHEARING:
- a) BACKGROUND AND PROCEDURAL HISTORY

On October 31, 2023 Petitioner filed a Civil Complaint at the State of PA, Allegheny County Common Pleas Court (ACCPC) that was docketed at GD23-12632;

- b) The respondents were timely served the complaint on October 31, 2023 pursuant Pa RCP 424;
 - c) Petitioner's Complaint contained two state of Pa Notices to the defendant/respondents to defend the
 - i) First, State of Pa Mandatory Notice to Defendant the lawsuit in twenty (20) days and failure to respond will result in default judgment;
 - ii) Second, a Notice to plead pursuant to Pa RCP 1026 et seq., and failure to respond will result in a default judgment pursuant to Pa RCP 1028 to 1032 et seq;
- 3) On or about November 21, 2023, all responds defaulted by failure to respond to the petitioner's complaint at GD23-12632 as mandated by the two notices to defend and plead pursuant Pa RCP 1026 et seq.
 - a) None of the respondents' lawyers filed an appearance pursuant Pa RCP 1012, at State Court of Pa at ACCPCm and hence had no standing to represent their clients for any legal actions;
 - b) Only respondent DHHS/DOJ filed an invalid and improper Federal Officer removal action pursuant to 28 USC §1442(a)(1) on or about December 6, 2023 that had no merit due to the default on November 31, 2023 and failure to file an appearance pursuant to Pa RCP 1012 et seq;
 - c) Only respondent DHHS/DOJ filed an invalid, untimely late and improper Notice of Removal action pursuant to 28 USC §1446(a)(1) on or about December 6, 2023 that had no merit due to the default on November 31, 2023 and failure to file an appearance pursuant to Pa RCP 1012 et seq;

- i) This Removal notice filed by respondent DHHS was invalid pursuant to 28 USC §1446(b)(1) since the shorter 20 day Rule applied due to the Pa State mandatory Notice to defend and plead pursuant {Pa RCP 1026 et seq;
- ii) And Respondents were barred from even filing any actions at ACCPC after November 21, 2023 without explicit leave of court pursuant Pa Supreme Court precedential ruling in : *Joyce v Safeguard Mutual Ins Co , 524 A. 2d 1362 - Pa: Supreme Court 1987.*;
- iii) And IN *Mallory v Northfolk Southern Railroad Co , 600 US 122 Citations from Ca3 ECF 75; Scotus in Mallory stated very clearly by Justice Gorsuch that all Pa registered business must pursue pursuant to Pa Code 25 §411 must first settle all disputes (including Removal of Complaint) first in a Pa State court like ACCPC;*
- iv) **Respondents UPMC and Maximus filed nothing at the State of Pa Court ACCPC and have NO standing or presence in the state court of Pa at ACCPC . And this is another reason for the extraordinary circumstances required for the rehearing pursuant to SCOTUS rule 44 et seq;**

4) As the result of the extraordinary circumstances described supra, Respondents have no standing and waive all rights due to default on November 21, 2023 that include but not limited to the following:

Q2) • Whether, the 3rd circuit court of Appeal and district court of Western Pennsylvania, erred by Arbitrary, Capricious abuse of discretion by deliberate indifference (Wilful Blindness) of the lack of standing of the defendants/appellees/respondents to remove the plaintiff/appellant/petitioner's complaint GD23-12632 filed on October 31, 2023 at State of Pa Allegheny County Court of Common Pleas (ACCPC). For reasons that include but not limited to the following:

- a) The defendants/appellees/respondents defaulted on November 21, 2023 by failing to respond to the mandatory Notice to defendant and Pa RCP 1026 notice to Plead. And failed to cure the default . See Ca3 ECF 42, 43, & 75, *inter alia*.
 - i) This is a violation of 28 USC §1446(b)(1), which required the defendants to file a response (notice of Removal) on or BEFORE the shorter time period of twenty (20) days rather than 30 days;
 - ii) Removal of complaint is not a discretionary issue/matter but a Jurisdictional issue and a collateral issues pursuant to 28 USC §1292
- b) The defendants/appellees/respondents failed to file at ACCPC, Preliminary objections pursuant to Pa RCP 1028 et seq, and hence, waived all rights to the following:
 - i) Waived objections as to Venue, forum, jurisdiction, and right to removal of plaintiff's Complaint, pursuant to Pa RCP 1028(a)(2) et seq and 28 USC § 1442(a)(1) et seq, and 28 USC §1446(b)(1) et seq;
 - ii) Waived all rights to new matter affirmative defenses and CounterClaims , pursuant to Pa RCP 1030 & 1031 et seq; and

- iii) Waived all rights to subject matter jurisdiction pursuant to Pa RCP 1032 et seq; and
 - iv) Defendants admitted to all counts in plaintiff's original complaint at GD23-12632;
 - v) Defendants/appellees/respondents, improper and unlawful removal Notice for complaint dated December 6, 2023 was six days late in violation of the 30 day rule 28 USC § 1446(b)(1) et seq; And more than 16 days late using the 20 day rule in 28 USC §1446(b)*1) See Allegheny County Common Pleas Court docket GD23-12632;
 - vi) In Short, respondents' defaulted on Nov 21, 2023 and respondent DHHS has no standing to file a notice of removal on Dec 6, 2023 at ACCPC or on December 1 at Federal District Court PaWD;
 - vii) Inter alia
- 5) Whether, the 3rd circuit court of Appeal and district court of Western Pennsylvania, erred by Arbitrary, Capricious abuse of discretion by deliberate indifference (Wilful Blindness) and violated the separation of powers (between Judiciary and DOJ) and acted as " servants" of the DOJ . Corruption of the Judiciary is prejudicial and violates the petitioner's constitutional rights of an independent Judiciary and " Equal Protection clause"under the 14th Amendment of the US Constitution. . See Ca3 docket ECF # 42, 43. & 75 , inter alia.
- a) As an arguendo the appellant agrees with the appellate judges that the appealed orders ECF 39, 40 & 41 are NOT final Orders ;;
 - b) But, these appealed orders 39, 40, & 41 can be collateral orders which deals with improper removal that are separate and collateral to the 41 counts in plaintiff's original complaint filed in the state of Pa, on October 31, 2023;
 - c) Therefore district court and 3rd Circuit appeals courts argument that the appealed orders 69 , 40 & 41 are not appealable has no merit;
- 6) Whether, the 3rd circuit court of Appeal and district court of Western Pennsylvania, erred by Arbitrary, Capricious abuse of discretion by deliberate indifference (Wilful Blindness) and violated the constitutional rights of plaintiff/appellant/petitioner by ignoring the improper removal and " hijacking of the complaint" from the state court of Pa; and
- a) Nameless attorneys and clerks in the DOJ circumvented the "due process safeguards and procedures " and ordered (unrecorded phone line) the clerks in the state court (Allegheny County Common Pleas Court) to cancel the hearing (lawfully scheduled /calendared on March 4, 2024) and engaged in ex parte communications with the the clerks of General motions court of Allegheny County Common Pleas court of Pittsburgh Pa; See ECF 33, Honorable Judge Klein's order dated March 22, 2024;
- In Spite of this serious error Federal District Judge CC Wiegand engaged in deliberate indifference and wilful blindness and dismissed plaintiff's non existing removed complaint at the Federal district court on August 16, 2024, even though

plaintiff has appealed to the Third Circuit on February 2, 2024. see Ca3 docket No. 24-1208.

7) **Federal District Court PAwd and 3rd Circuit Ct of Appeals erred by REFUSING TO STAY the proceeding after petitioner appealed on February 2, 2024 the Federal District denial of the plaintiff's , motion for remand on or about January 23, 2024. Federa; District Judge CCW disregarded the traditional stay pending appeal, by claiming that the appeal of a denial of Remand is NOT a final order. While Judge Wiegand in an abuse of discretion ignored the collateral order doctrine that allows appeals pursuant to 28 USC §1292 et seq. See**

- BP Plc v Mayor & City Council of Baltimore. 141 S.Ct 1532, 1537-38 (2021) for 28 USC § 1447(d)
- And See Quackenbush v Allstate Insurance, 527 US 706, 723-713 (1996); for review and appeal of denial of Remand motion pursuant 28 USC §1291.

8) **Federal Court and 3rd Cir Ct of Appeals erred and engaged in abuse of due process by ignoring the improper removal of complaint and default at the state ACCPC and continuing to dismiss the improperly removed complaint based on bogus and improper motions to dismiss (District ECF 49, 51 & 52) filed after the plaintiff's appeal filed on Feb 2, 2024**

9) **Federal District Court and 3rd Circuits Ct of Appeals, erred and engaged in abuse discretion, when defendants failed to file an Appearance in the state of Pa Allegheny County common Pleas Court / And had NO standing as an attorneys pursuant to Pa RCP 1012 st seq. Meaning that the Notice of Removal filed by DOJ at ACCPC on December 6, 2023 was null and void;**

10) Whether, the 3rd Circuit Ct of Appeals and Federal district Court Erred , by arbitrary and capricious abuse of discretion, when it, without jurisdiction accepted defendants improperly removed complaint ECF 1 &2 in the district docket 2:23-cv-2049-CCW

- **The Federal District Court did Not have F RCP 12(b)(1) jurisdiction over the "invalid removed complaint"**
- **Defendants were in violation of 28 USC §1446(b)(1) et seq. specifically a Twenty(20) day rule applied to the defendants removal, instead of the thirty(30) day rule;**
- **Further, District Court erred by dismissing plaintiff's state claims under F RCP 12(b)(6) when defendants did Not have F RCP 12(b)(1) jurisdiction. And Federal preemption of State Claims need specific Congressional intent and explicit statutory language in the Federal Statute, which the district court and the defendants failed to cite or identify as grounds;**
- **See Dooner v. DiDonato Supreme Court of Pennsylvania. June 04, 2009 601 Pa. 209 971 A.2d 1187**

- When determining whether a federal statute preempts state law, the task of statutory construction must in the first instance focus on the plain wording of an express preemption clause, which necessarily contains the best evidence of Congress' pre-emptive intent. U.S.C.A. Const. Art. 6, cl. 2....
- ... The "task of statutory construction must in the first instance focus on the plain wording of the [express preemption] clause, which necessarily contains the best evidence of Congress' pre-emptive intent."
- See Farina v Nokia et al , 625 F.3d 97 (2010)
- Wyeth v. Levi Supreme Court of the United States March 04, 2009 555 U.S. 555 129 S.Ct. 1187

11) The Third Circuit erred by refusing consider the plaintiff's appeal pursuant to 28 US §1447(d), §1292, §1291, *inter alia*

- Remand that was denied, when there was clear evidence on the docket (state of Pa GD23-12632 and Federal docket 2:23-cv-2049-CCW) that the defendants did NOT have valid F RCP 12(b)(1) at the Federal District Court , and a valid Pa RCP 1028 et seq jurisdiction at the State of Pa Court ACCPC;
- The 28 USC § 1442(a) et seq Remand was invalid , due to violation od 28 USC §1446(b)(1) twenty (20) day rule and the Thirty day Rule;
- And denial of the plaintiff's Remand Motion is reviewable and appealable pursuant to 28 USC § 1447(d) , §1291, and 1292 *inter alia*. See BP Plc v Mayor & City Council of Baltimore. 141 S.Ct 1532, 1537-38 (2021) for 28 USC § 1447(d)
- And See see Quackenbush v Allstate Insurance, 527 US 706, 723-713 (1996); for review and appeal of denial of Remand motion pursuant 28 USC §1291.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows. All parties appear on the caption page.

RELATED CASES

1) John F Kodenkandath v Secretary, DHHS, UPMC Health Plan Inc et al filed at Allegheny County Common Pleas Court, Pittsburgh State of Pa GD23-12632;

- 2) **John F Kodenkandath v Secretary, DHHS, UPMC Health Plan Inc et al improperly removed to Federal District Court of Western Pa Docket # 2:23-cv-2049-CCW ;**
- 3) **John F Kodenkandath v Secretary, DHHS, UPMC Health Plan Inc et al appealed to 3rd Circuit Court of appeals at Ca3 24-1208;**
- 4) **John F Kodenkandath v Higmark Health et al filed at Allegheny County Common Pleas Court Pittsburgh, Pa docket No. GD23-12812;**
- 5) **John F Kodenkandath v Higmark Health et al filed at , improperly removed to Federal District Court of Western Pa Pittsburgh, Pa docket No. 2:23-cv-2051-CB ;**

TABLE OF AUTHORITIES CITED

- **BP Plc v Mayor & City Council of Baltimore. 141 S.Ct 1532, 1537-38 (2021)**
- **Dooner v. DiDonato** Supreme Court of Pennsylvania. June 04, 2009 601 Pa. 209 971 A.2d 1187
- **Fischer v United States** Scotus Docket No 23-5572 June 28, 2024
- **See Farina v Nokia et al ,** 625 F.3d 97 (2010)
- **Quackenbush v Allstate Insurance,** 527 US 706, 723-713 (1996) of NYstate courts;
- **Joyce v Safeguard Mutual Ins Co ,** 524 A. 2d 1362 - Pa: Supreme Court 1987.;
- **Mallory v Northfolk Southern Railroad Co ,** 600 US 122
- **Citations from Ca3 ECF 75;**
- **Midland Asphalt Corp. v. United States,** 489 U.S. 794, 798 (1989) (citing **Cohen v. Beneficial Industrial Loan Corp.,** 337 U.S. 541, 546 (1949)).
- **Cohen V Beneficial Industries,** 337 U.S. 541, 69 S.Ct. 1221, 93 L.Ed. 1528 ";
- **Graber v. Doe II,** 59 F.4th 603, 607 (3d Cir
- **Menoken v. McNamara** United States District Court, D. New Jersey. February 27, 2003 213 F.R.D. 193 2003 WL 549404
- **Thomas for Brown v Sullivan,** 788 F.SUPP 788
- **Trump v United States ,** Scotus Docket No. 23-939 immunity.
- **Wyeth v. Levi** Supreme Court of the United States March 04, 2009 555 U.S. 555 129 S.Ct. 1187

STATUTES AND RULES

- US Constitution 5th amendment due process
- US Constitution 14th Amendment Due Process
- US Constitution 14th Amendment Equal Justice & equal Protection
- 28 USC § 1291 et seq
- 28 USC § 1292 et seq Collateral order Doctrine
- 28 USC § 1442(a)(1) et seq
- 28 USC § 1446(b)(1) et seq
- 28 USC § 1447 et seq
- 28 USC § 1455(d) et seq
- 28 U. S. C. § 1254(1).
- LCvR 83.2(C) et seq Notice of Appliance

Federal Rules of Appellate Procedure

- FRCP 12, 15, 37, 50 & 55
- FRAP 27 motions
- FRAP 26, 30, & 35.

SCOTUS Rules

- Rules 13.3, 24, 33.1, 33.2, & 39, 44

State Of Pa STATUTES & Rules of Civil Procedure

- 42 Pa CSA § 704 et seq, Waiver of Jurisdiction
- 42 Pa CSA § 1012 et seq Notice of Appearance
- Pa RCP 1026 et seq;
- Pa RCP 1028 et seq;
- Pa RCP 1028 (a) (1) et seq;
- Pa RCP 1029 et seq;
- Pa RCP 1030 et seq;
- Pa RCP 1031 et seq;
- Pa RCP 1032 et seq;
- Pa RCP 237.1 et seq;

OTHER

- Pa Constitution Article 1, § 11 Open court doctrine;
- Pa Constitution Art 5, § 10 et seq Powers of Pa Supreme court

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays for a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[x] For cases from federal courts: The opinion of the United States court of appeals appears at Appendix to the petition and is

[X] reported at ; no opinion made by appellate court; but order of denial are attached as in appendix

[] has been designated for publication but is not yet reported; or, NOT APPLICABLE

[] is unpublished. The opinion of the United States district court appears at Appendix to the petition and is NOT APPLICABLE

[] reported at ; or, NOT APPLICABLE

[] has been designated for publication but is not yet reported; or NOT APPLICABLE

, [] is unpublished. NOT APPLICABLE

[X] For cases from state courts: The opinion of the highest state court to review the merits appears at Appendix to the petition and is: Petitioner's state complaint was improperly removed, depriving the State Court from reviewing the complaint

[x] reported at NA ; or, The state courts were deprived from rendering an opinion by the unlawful "hijacking" of the case GD23-12632 by improper removal to Federal district court by DOJ and defendant Department of Health and Human Services

See Honorable Judge Klein's order at ECF 33 and Appendix

[] has been designated for publication but is not yet reported; or, [] is unpublished. The opinion of the court appears at Appendix to the petition and is ***Not applicable***

[] reported at ;_ NA or, ***Not Applicable. See Honorable Judge Klein's order at ECF 33 . attached to Appendix***

[x] has been designated for publication but is not yet reported; or, [] is unpublished. ***The State Court of Pennsylvania was deprived by Hijacking of the case by the DOJ. See Honorable Judge Klein's order at ECF 33 See appendix***

JURISDICTION

[x] For cases from federal courts:

The date on which the United States Court of Appeals decided my case was .
August 2, 2024

[x] Petition for rehearing was timely filed in my case. Yes

[x] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: August 2, 2024 , and a copy of the order denying rehearing appears at Appendix .A

[] ***Not applicable*** An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) _____ on (date) in Application No _____. A _____. The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[] ***Not applicable*** For cases from state courts:

The date on which the highest state court decided my case was . A copy of that decision appears at Appendix *Not applicable*.

[x] A timely petition for rehearing was thereafter denied on the following date:, and a copy of the order denying rehearing appears at Appendix A.

[] *Not applicable* An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No.____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case shows that the US constitution can be easily circumvented by the DOJ (Department of Justice). The DOJ usually partners with administrative clerks of the Court to prejudice the plaintiff/petitioner. This type of off the record partnering has already happened in this instant case. Many times, that conduct of the DOJ prejudiced the petitioner.

The US Constitutional Violations in this case include but NOT limited to:

- a) Violation of Due Process of the 5th and 14th amendment;
 - i) Due Process violation is the most common violation in this case. This violation was committed by Judges, Law clerks, nameless staff of the courts, nameless staff of the DOJ and defendants. All these "due process" violations prejudiced the plaintiff petitioner.
 - ii) Some of the due process violations are described in detail in ECF 42, 43, & 75. *Inter alia*.
- b) Violation of " Equal Protection": With the presence of the DOJ and DHHS, as defendants , in this case, it was common for the DOJ attorneys to contact court staff *ex parte* , and request favors that were very prejudicial to the plaintiff. The Federal district court, appellate court and even the state of Pa court made no effort to prevent this violation of the " equal protection clause " of the 14th Amendment;
 - i) For example on or about February 22, 2024 plaintiff filed a motion for Non Pros to be heard on March 4, 2024 at Allegheny County Court of Common Pleas (ACCPC);

- ii) On March 1, 2024, DOJ attorney Ryan Wilk made an ex parte contact with ACCPC staff and had the hearing removed from the court calendar. There was no hearing or motion for continuance by the DOJ;.
 - iii) This is an example of the coercive power of the DOJ.
 - iv) For more details see ECF 42, 43, & 75 inter alia.
- c) Violation of Separation of powers that eschews colluding, partnering and favoring DOJ over the Pro se plaintiff.
- For example, the partnering of district and Ca3 appeals judges with the DOJ's self-serving narrative that only "final orders" can be appealed. And these Judges completely ignored the Collateral issue of the fact that there is an improper and non existing removed complaint at the federal district court, because the removal at the state court on December 6, 2023 was six days late and invalid. See ECF 42, 43 & 75 , inter alia.
- i) Petitioner cites the ongoing Trump trials at the DC federal District and appeals courts and the Alvin Bragg and Judge Machan partnership on Manhattan NY state Court;
- Separation of powers becomes important for a Pro se plaintiff when the defendant involves the United States and DOJ. The judges favor the United States and the DOJ, seriously prejudicing the plaintiff Pro Se;
- d) Plaintiff/petitioner's right to a fair and impartial trial has been ineluctably impaired, and relief is mandatory and essential for preservation of the rule of law and constitutional fairness of the justice system.
 - e) See recent constitutional ruling in
Fischer v United States, Scotus Docket No 23-5572 June 28, 2024

IMPORTANT FEDERAL STATUTES INVOLVED

- a) 28 USC § 1292 Collateral order Jurisdiction:
- b) 28 USC § 1291 Final order Rule
- c) 28 USC § 1442 Federal Officer removal
- d) 28 USC § 1446(a & b)(1) The thirty day rule & Twenty day Rule
- e) 28 USC § 1447(d) Remand;

STATEMENT OF THE CASE AND THE EXTRAORDINARY CIRCUMSTANCES THAT SUPPORT A REHEARING

this case is a matter of first impression

- 1) IIKE the saying " one cannot see the forest for the trees " the petition for writ of certiorari could NOT see the extraordinary circumstances of complete default,

lack of standing at the state of Pa court ACCPC , and lack of validity of the respondents filings at the State of Pa Allegheny County Court of Common Pleas (ACCPC) .

- a) All defendants/respondents' counsels failed to file an appearance at ACCPA pursuant to Pa RCP 1012 et seq**
 - b) All respondents failed to file a mandatory response to the plaintiff's complaint within twenty (20) days pursuant to Pa RCP 1026 et seq.**
 - c) Hence all respondents were in default as of November 21, 2023, and required leave of court at ACCPC for legal filings. see Pa Supreme Court Precedential ruling in**
 - Joyce v Safeguard Mutual Ins Co , 524 A. 2d 1362 - Pa: Supreme Court 1987.;**
 - And Scotus ruling in Mallory v Northfolk Southern Railroad Co , 600 US 122**
 - d) Further respondent DHHS.DOJ did not have credentials or standing pursuant to 28 USC § 1442 at ACCPC to file a Notice of Removal at ACCPC due to the default on November 21, 2023;**
 - e) And respondent DHHS/DOJ's filing on December 6, 2023, for Notice of Removal was invalid due to being untimely pursuant to 28 USC 1446(b)(1) twenty (20) and thirty day rule. See ¶ 1 to 11 Supra for more details**
 - f) *inter alia*, all related and lesser issues included.**
- 2) On or about October 31, 2023 plaintiff/petitioner filed a complaint in the state Court of Pa, Allegheny County Common Pleas Court (ACCPC), This complaint contained 41 counts of state of Pa based claims and about two issues that involved Medicare benefits. One of these was later rescinded .**
- a) Even though 39 of the 41 counts in the plaintiff's complaint were state claims, the plaintiff was improperly forced to go through the four step Medicare appeal process that started in April 2021 and September 2021. And the final Medicare appeal Council (MAC) ruling for M-22-284 & M-22-1424 sixty day Judicial review date was on or before November 20, 2023**
 - b) Forcing the plaintiff to go through a time consuming MAC four level appeal process for the 39, state of Pa counts. Which is in violation of the current interpretation of the Chevron doctrine, by Scorus;**
 - c) Even though Federal Preemption of state of Pa claims requires an explicit congressional intent in the language of the federal preemption statute- which did not exist for the common law state of Pa claims-- federal district court failed to bar the preemption of state of Pa claims**

- 3) Plaintiff's state complaint filed on October 31, 2023 GD23-12632 had a mandatory Notice to defend in twenty (20) days, and a Pa RCP 1026 Notice to plead in twenty (20) days on or before November 21, 2023;
 - a) All five defendants failed to respond to the mandatory state of Pa requirement to affirmatively respond on or before November 21, 2023;
 - b) The defendants/appellees/respondents failed to file Preliminary objections pursuant to Pa RCP 1028 et seq, and waived all rights to the following:
 - i) Waived objections as to Venue, form and jurisdiction, and removal pursuant to 28 USC § 1442(a)(1) et seq; and
 - ii) Waived all rights to new matter and affirmative defenses pursuant to Pa RCP 1030 & 1031 et seq; and
 - iii) Waived all rights to subject matter jurisdiction pursuant to Pa RCP 1032 et seq; and
 - iv) Defendants admitted to all 41 counts in plaintiff's original complaint at GD23-12632;
 - v) Defendants/appellees/respondents' improper and unlawful removal dated December 6, 2023 was six days late in violation of the 30 day rule 28 USC § 1446(b)(1) et seq; See Allegheny County Common Pleas Court docket GD23-12632;
 - vi) Defendants failed to seek leave of the State Court at ACCPC following their default on Nov 21, 2023, pursuant to Supreme Court of Pennsylvania, precedent at Joyce v Safeguard Mutual Insurance Co, 524 A. 2d 1362 - Pa Supreme Court 198;
 - vii) *Inter alia*;
- 4) In spite of the fact that the DOJ did NOT have a valid removed complaint and was in default at the state court of Pa at ACCPC. Without removing the plaintiff's complaint at ACCPC, the DOJ unlawfully filed a fake invalid removed complaint on December 1, 2023 in the Federal district court of Western Pa.
 - a) Federal district Court and Judge CCW wilfully failed to flag/tag that defendants had failed to remove the plaintiff's complaint at State of Pa Court ACCPC until December 6, 2023,
 - i) And this date of December 6, 2023 was six days late in violation of the 30 day rule 28 USC 1446 (b)(1) et seq by six days and 16 days late using the 20 day rule;
 - b) Federal District Judge CC Wigand, with deliberate indifference (wilful Blindness) ignored the fact that DOJ's removed complaint at 2:23-cv-2049-ccw was improper and had numerous irregularities and State of Pa violations;
 - i) Federal Judge CCW failed to note that the defendants removed complaint filed on December 1, 2023 was invalid and null and void, since the removal of the complaint at state of Pa, invalid

- Removal, had not happened until December 6, 2023. See State of Pa docket at GD23-12632
- ii) This improper conduct of Judge CCW and clerks of federal district Court, of favoring and covering up for DOJ is a violation of the separation of Powers that prejudiced the plaintiff;
 - iii) This conduct of treating the DOJ as a favored party continued to the third circuit appellate court, in violation of separation of powers required by the constitution of US;
 - (1) Issues dealing with Separation of Power between DPJ and the Judiciary is another extraordinary circumstances for the rehearing requested pursuant to SCOTUS Rule 44;
 - iv) Constantly referring to the plaintiff as Pro Se, in a pejorative sense is a violation of the " equal protection" clause of the 14th Amendment and a violation of the Constitutional separation of Powers;
- 5) Extraordinary Circumstance regarding Separation of Powers and abuse of office
- Meanwhile the DOJ was engaged in administrative misconduct, when the DOJ attorney Mr Wilks called the clerk of general motions court at ACCPC and coerced this clerk to cancel a scheduled hearing for plaintiff's motion for Non Pros judgment, at ACCPC for March 4, 2024 to be removed from the court calendar at ACCPC;
- a) This misconduct of the DOJ attorney deprived the plaintiff of his Pa Constitutional section § 11 right of access to Pa Court and at the same time deprived the Pa ACCPC court to rule on the Plaintiff's motion for judgment for Non Pros, in open court. See ECF 33 in Ca3 docket 24-1208
 - b) Honorable Judge Arnold Klein of ACCPC was deprived from entering Judgment of Non Pros against defendants and DHHS, because DOJ " Hijacked " plaintiff's complaint from ACCPC in violation of State of Pa due Process requirements;
 - c) This conduct of the DOJ is in violation of Scotus ruling in Fisher v United states ruled on June 28, 2024. That DOJ is in violation of the 18 USC §1512(c)(1) et seq of obstructing an official proceeding for an improper purpose;
 - d) Defendant DHHS and GOJ are engaged in hubris and conduct outside the scope of their Congressional mandate and needs to be disciplined in the manner indicated in the " Big Question Doctrine Ruling of Scotus" in West Virginia v EPA, Recently SCOTUS ruled on a case West Virginia v EPA, 597 US 697 (2022) where SCOTUS ruled to Curb the abusive and Ultra Vires power of the EPA, to extend its authority into area that is outside its scope of its

congressional approved scope of duty or work.' This new curbs or limits to the power of an agency without permission is called " Big Question Doctrine ";

- e) And can be applied in this instant case at Writ of Certiorari to curb and clip the wings of defendant DHS , DOJ. defendant UPMC and Maximus.

REASONS FOR GRANTING THE PETITION FOR REHEARING

This petition is a good vehicle to ELIMINATE THE NEXIS AND ADMINISTRATIV DEEP STATE BETEEM THE DOJ AND THE JUDICIARY MEANING FEDERAL COURTS UNDER THE JURISDICTION OF SCOTUS

And improve the judicial branch that has become arrogant, haughty, and distant from the needs of the people. Scotus has a duty to oversee and correct the misconduct of the courts and make sure there is no violation of the constitutional separation of powers. Meaning the court judges and staff should not become subservient and a " rubber stamp " for the DOJ. defendant DHHS and defendants UPMC and defendant Maximus.

- 1) On August 2, 2024, the En Banc 3rd Circuit Appellate Court voted against the petitioner's appeal at Ca3 docket 24-1208, because the appealed orders 39, 40 & 41 (from the district court docket 2:23-cv-2049-CCW) were NOT " final orders "pursuant to 28 USC § 1291. Bit the 3rd circuit panels of judges wilfully with deliberate blindness and indifference ignored 28 USC §1292, 28 USC §1447(d), *inter alia*.
 - a) However the 3rd Circuit Court and Federal district court of Western Pa are silent on whether the orders 39, 40 & 41 are collateral appealable orders pursuant to 28 USC § 1292 et seq and 28 USC § 1447(d);
 - b) This is wilful and deliberate indifference and blindness that helps defendant such as United States, DHHS, UPMC Maximus and DOJ;
 - c) Defendant DHHS in its motion to dismiss at ECF #6 , admitted in ¶ 9 of ECF #6, that petitioner's appeal for orders 39, 40 & 41 could meet the requirements of the collateral order doctrine pursuant to 28 USC § 1292 et seq, Citing:

Cohen v. Beneficial Industrial Loan Corp., 337 U.S. 541, 546 (1949).

• Cohen V Beneficial Industries, 337 U.S. 541, 69 S.Ct. 1221, 93 L.Ed. 1528 ";

• Judge CC Wiegabd on Graber v. Doe II, 59 F.4th 603, 607 (3d Cir) admits that collateral order applies to petitioner's appeal at Ca3 24-1208. See PaWD ECF 61.

Also, see petitioner's response at ECF 42, 43 & 75

- d) Federal Judge CC Wiegand in her order at ECF 61 (PaWD docket 2:23-cv-2029-CCW) admits that the 3rd Circuit appellate Court could have jurisdiction over plaintiff's appeal at 24-1208 pursuant to collateral order doctrine at 28 USC §1292 et seq; See Graber v. Doe II, 59 F.4th 603, 607 (3d Cir)
- 2) There are many other Federal Circuits and Federal districts that engage in violation of the separation of powers, that favors DOJ and United States agencies, such as:
 - a) District of Columbia (DC) Federal District Court and Judge Tanya S Chakins who openly favors DOJ;

- b) DC Circuit appellate Court and its Judges;
 - c) Federal District Courts of the Southern district of NY and its Judges and Prosecutors
 - d) Second Circuit Appellate Court and its Judges
 - e) NY State courts and Prosecutors like Alvin Bragg;
 - f) Petitioner is citing indirectly all the "Trump cases" in all Federal and State Jurisdictions as violation of Separation of Powers
 - g) Inter alia;
- 3) This is a case of first impression, that will help millions of Medicare enrollees, for generatins;
- 4) Scotus has an affirmative and Fiduciary duty under Article III (three) of the US Constitution to prevent and correct the violation of the separation of powers. And prevent the judiciary from become a tool and weapon in the hands of the DOJ, defendant DHHS and other Federal agencies;
- 5) See petitioner's filings at Ca3 ECF 42, 43 & 75 for more details.
- 6)

CONCLUSION :

- 1) In November 12, 2024 Scotus denied petitioner's writ of Certiorari with a rubber stamp one word " Denied " This robotic one word does not inform the petitioner or anyone of the scotus's reasoning if any.
- a) Hence Petitioner's request for rehearing and an opinion should be granted;

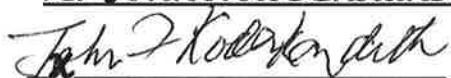
RELIEF SOUGHT BY PETITIONER:

- 1) Grant the petitioner rehearing pursuant to SCOTUS Rule 44 based on the extraordinary circumstances stated supra;
- 2) Vacature of the Third Circuit Rubber Stamp rulings dated May 20, 2024 and August 2, 2024;
- 3) Vacature of the Federal District Court denial of plaintiff/petitioner's Motion to Remand district ECF 22;
 - a) And Order the remand of Petitioner's improperly removed complaint to the State Court of Pa at ACCPC with Munsinger instruction to enter judgment against all defendants pursuant to plaintiff; a motion for mon Pros already on the docker at ACCPC GD23-12632 as of February 22, 2024;
 - b) Grant leave of court to plaintiff/petitioner to file for sanctions against the DOJ's and defendants counsels' for unethical and unprofessional conduction in the Courts below;
- 5) Provider any other relief that Scotus deems appropriate to avis abuses and arrogance of the lower courts

WHEREFORE The petition for rehearing of the writ of certiorari should be granted.

Respectfully submitted,

/S/ JOHN F. KODENKANDETHE



Date: : December 3, 2024

SEE appendices in the petition for writ of Certiorari