No. 25-2540

SUPREME COURT OF THE UNITED STATES

NICHOLAS WEIR - PETITIONER

vs.

UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES (USCIS), TAMIKA GRAY, NEW YORK DISTRICT DIRECTOR (OFFICIAL CAPACITY), THOMAS M. CIOPPA (INDIVIDUAL CAPACITY), AND ISO I. BOLIVAR (OFFICIAL AND INDIVIDUAL CAPACITY) - RESPONDENTS

On Petition for a Writ of Certiorari to

the United States Court of Appeals for the Second Circuit

PETITION FOR WRIT OF CERTIORARI

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I. QUESTIONS PRESENTED FOR REVIEW

Can the United States Citizenship and Immigration Services ("USCIS") and its employees deny an application for naturalization because the applicant request a modified oath of allegiance on conscientious objection to serve in the military on First Amendment ground (self-contemplated and deeply-held belief) announced in Welsh v. United States, 398 U.S. 333 (1970)?

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Nicholas Weir, a high achieving biotechnology scholar who has been subjected to aggressive, prolonged, complex, and life-threatening U.S. military recruitment efforts instigating the denial of his application for naturalization, respectfully petitions this court for a writ of certiorari to review the judgment of United States Court of Appeals for the Second Circuit.

V. OPINIONS BELOW

On August 14, 2023, the United States District Court for the Eastern District of New York (Eric R. Komitee, Judge) dismissed Weir's claims against United States Citizenship and Immigration Services ("USCIS") and two USCIS employees arising out of the denial of Weir's application for naturalization. See **Appendix A**[1]. On November 22, 2024, the United States Court of Appeals for the Second Circuit denied Mr. Weir's appeal and Mr. Weir ultimately filed a petition for rehearing and rehearing en banc. See **Appendix B** (Joint petition and Summary Order attached). On February 13, 2025, the United States Court of Appeals for the Second Circuit denied Mr. Weir's petition for rehearing and rehearing en banc. See **Appendix C**.

[1] The decision from the District Court is included because the Second Circuit adopted the District Court's opinion on the non-APA claims.

VI. JURISDICTION

Mr. Weir's petition for hearing and rehearing en banc to the United States Court of Appeals for the Second Circuit was denied on February 13, 2025. Mr. Weir invokes this Court's jurisdiction under 28 U.S.C. § 1254 or other applicable law, having timely filed this petition for a writ of certiorari within ninety days of the United States Court of Appeals for the Second Circuit denial of the joint petition for rehearing.[2]

VII. CONSTITUTIONAL PROVISION INVOLVED

First Amendment of the US Constitution:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

[2] See also Rule 29(2).

VIII. STATEMENT OF THE CASE

In *Seeger*, the U.S. Supreme Court made it clear that the belief in a traditional God is not required and henceforth the affiliation with traditional religion is not required. See *United States v. St. Clair*, 293 F. Supp. 337 (E.D.N.Y. 1968) quoting *United States v. Seeger*, 380 U.S. 163 (1965) ("The classification sought required that defendant, "by reason of religious training and belief [and not because of] philosophical views, or a merely personal moral code," be "conscientiously opposed to participation in war in any form." 50 U.S.C. App. § 456(j). Belief "in a traditional God" is not required. United States v. Seeger, 380 U.S. 163, 178, 85 S.Ct. 850, 860, 13 L.Ed.2d 733 (1965), aff'g United States v. Jakobson, 325 F.2d 409, 415 (2d Cir. 1963) ("does not require belief in an anthropomorphic deity").")

In *Welsh*, the U.S. Supreme Court addressed the unconstitutional exclusion of conscientious objector who seek exemption from military service based on a nonreligious and deeply-held personal belief. See *Welsh v. United States*, 398 U.S. 333 (1970) ("The language of § 6(j) cannot be construed (as it was in United States v. Seeger, supra, and as it is in the prevailing opinion) to exempt from military service all individuals who in good faith oppose all war, it being clear from both the legislative history and textual analysis of that provision that Congress used the words "by reason of religious training and belief" to limit religion to its theistic

sense, and to confine it to formal, organized worship or shared beliefs by a recognizable and cohesive group. [...] In view of the broad discretion conferred by the Act's severability clause and the longstanding policy of exempting religious conscientious objectors, the Court, rather than nullifying the exemption entirely, should extend its coverage to those like petitioner who have been unconstitutionally excluded from its coverage.")

In both *Seeger* and *Welsh*, the exemption from military service was done under Section 6(j) of the Universal Military Training and Service Act. The USCIS Policy Manual has incorporated and cited both *Seeger* and *Welsh* in assessing exemption from military service in the naturalization process pursuant 8 U.S.C. § 1448(a).

Welsh (and the USCIS by adoption) recognizes self-contemplated deeply-held beliefs akin to traditional religion. Respondents stated that an "applicant's own oral testimony or written statement may constitute sufficient evidence." See p. 113-161 of Volume 2 of 2 of Appellant's Appendix in the Second Circuit (ECF No. 74-1 in the District Court). Petitioner provided oral testimonies at two in-person interviews and written statements identifying specific aspects of his deeply-held personal belief for his request for exemption from military service in the naturalization process.

This case seeks clarification on what is deemed sufficiently clear and convincing evidence in determining conscientious objector who seek exemption from military service in the naturalization process based on a nonreligious and deeply-held personal belief.

Evidence supportive of the five factors normally assessed in determining an Applicant's qualification for the modified Oath

Respondent stated that "the USCIS officer may ask an applicant questions regarding his beliefs, and review [][five] factors". See p. 113-161 of Volume 2 of 2 of Appellant's Appendix in the Second Circuit (ECF No. 74-1 in the District Court). Petitioner has provided written and/or oral evidence in support of these five factors:

1. General pattern of pertinent conduct and experiences

Petitioner's belief system is self-contemplated and Petitioner has also conveyed that he is a generally private individual. Many pertinent conduct and experiences related to Petitioner's belief system are not based in any group activity in general but rather on day-to-day personal activities. The framework or routine activity pattern observed in a traditional religion is absent from the practicality of Petitioner's belief system.

2. Nature of applicant's objection and principles on which objection is based

The nature of Petitioner's objection is a self-contemplated and deeply-held belief system. The principles on which the objection is based stems from at least two components of Petitioner's belief system: (1) "maintaining a moral character" and (2) "utter free-will in any actions I am engaging in". p. 77-78 of Volume 1 of 2 of

Appellant's Appendix (ECF No. 94). The nature of the U.S. armed forces conflicts partly or entirely with these two components of Appellant's belief system.

3. Training in the home or a religious organization

Petitioner stated that his belief system "does not stem from any particular religious training." Id. Petitioner's belief system is self-contemplated and does not necessarily stem from training in the home.[3]

4. Participation in religious or other similar activities

Petitioner's belief system is self-contemplated and he does not participate in religious or other similar activities.

5. Whether the applicant gained his or her ethical or moral beliefs through training, study, self-contemplation, or other activities comparable to formulating traditional religious beliefs in the home or through a religious organization

Petitioner stated that his belief system "does not stem from any particular religious training." p. 77-78 of Volume 1 of 2 of Appellant's Appendix (ECF No. 94). Petitioner stated that his belief system is "personal" and "originated in 2009 and it has been gradually developing since." Id. "Plaintiff repeatedly expressed during the interviews and in writing that his belief system is personal; and therefore, it

[3] Surely, Petitioner's upbringing in a Christian home and in the religion of Christianity influenced his character. However, his personal belief system is self-contemplated.

originated from self-contemplation." See p. 79-110 of Volume 2 of 2 of Appellant's Appendix (ECF No. 75).

IX. REASONS FOR GRANTING THE WRIT

1. Individuals who have deeply-held beliefs that differ from the traditional religion should not be deprived of their First Amendment protection based on any prejudice against such individuals in the naturalization process.

In denying Petitioner's N-336 Application, Defendant Thomas Cioppa, former New York District Director, discriminatorily and arbitrarily characterized Petitioner's belief system as a "philosophy". Appellees have not shown that Petitioner was influenced by a particular philosopher or that he was even a student of philosophy. See United States v. Shacter, 293 F. Supp. 1057 (D.Md. 1968) ("The government concedes here that defendant's opposition to participation in war is not based on political or sociological views. It urges, however, that his beliefs stem essentially from philosophical origins. A careful review of the record gives no indication whatsoever that defendant was influenced by a particular philosopher or that he was even a student of philosophy. On the other hand, the record clearly shows that he was instructed in Judaism, and his statements submitted in support of his claimed exemption are replete with indications that he has been strongly influenced

by such religious teachings. The government further notes that defendant told his draft board that he was an atheist. This statement, considered in the context of the record as a whole, would not provide a basis in fact for concluding that defendant's beliefs were not reached by reason of religious training and belief, as that term has been construed by the Supreme Court in Seeger. [...] there was no basis in fact for the draft board's action in refusing to classify defendant as a conscientious objector.")

2. In a judicial review under Administrative Procedures Act, 5 U.S.C. § 701, et seq. ("APA"), the Court should review the full and limited administrative record before depriving individuals of their First Amendment protection in the naturalization process.

The audio recording of the testimonial evidence from the two interviews were excluded despite Appellant's request for the audio recording. The audio recordings are part of the administrative record. Appellant's motion to compel the deposition of Defendant ISO I. Bolivar was biasedly denied. These errors violated federal rules of evidence such as 103, 401, 403, 602, 607, 608, 610, 611, 614, 801(d), 806, and 1007.[4] Moreover, Respondents have not shown any inconsistencies in written or oral statements that at least a portion of Petitioner's belief system is supportive of a

[4] There is an extensive number of plain errors in facts and errors in laws in the record. Some of these are identified in Petitioners Appendix B (Joint Petition for Rehearing). There is an oversized version of the joint petition filed in Second Circuit but leave to accept was denied.

conscientious objector to bearing arms and performing a noncombatant role in the US military. See United States v. St. Clair, 293 F. Supp. 337 (E.D.N.Y. 1968) ("There are no inconsistencies in defendant's written statement of his religious beliefs that would warrant denial of his claimed classification. Belief in the use of force to restrain the mentally ill or to prevent injuries to others is not inconsistent with the belief that participation in war in any form is immoral. See Sicurella v. United States, 348 U.S. 385, 75 S.Ct. 403, 99 L.Ed. 436 (1955); United States v. Purvis, 403 F.2d 555 (2d Cir. 1968); United States v. Gearey, 379 F.2d 915, 920 (2d Cir. 1967); Taffs v. United States, 208 F.2d 329 (8th Cir. 1953), cert. denied, 347 U.S. 928, 74 S.Ct. 532, 98 L.Ed. 1081 (1954). Opposition to the war in Vietnam is not inconsistent with opposition to all war.")

3. Requiring a detailed description of a self-contemplated belief but not a detailed description of traditional and other forms of non-traditional belief is discriminatory under Welsh.

Welsh was not required to provide a detailed description of his belief. He conveyed components of his sincere belief that stands in his way of military service. See Welsh v. United States, 398 U.S. 333 (1970) ("standpoint of the welfare of humanity and the preservation of the democratic values [...] practical standpoint, [...] from the more important moral standpoint, it is unethical."). Here, Petitioner

conveyed at least two major components of his personal belief system that stands in his way of military service. See p. 77-78 of Volume 1 of 2 of Appellant's Appendix (ECF No. 94) ("maintaining a moral character" and "utter free-will in any actions I am engaging in"). Appellees' denial of Petitioner's N-400 and N-336 applications on the discriminatory and arbitrary mischaracterization of Petitioner's belief as a philosophy and the lack of outward manifestation of Petitioner's belief system that tend to show the centrality of those beliefs in his life violates Welsh v. United States and other precedents such as Eisenstadt v. Baird. See Eisenstadt v. Baird, 405 U.S. 438 (1972) ("By providing dissimilar treatment for married and unmarried persons who are similarly situated, the statute violates the Equal Protection Clause of the Fourteenth Amendment.")

4. While the decision to grant a modified oath is discretionary, USCIS's treatment of an applicant's constitutionally-protected free exercise rights is not discretionary under Welsh

The District Court pointed out the discretionary nature of the decision to grant a modified Oath. See p. 22-46 of Volume 1 of 2 of Appellant's Appendix (ECF No. 98) ("pursuant to Section 1448(a), the decision to grant a modified oath is discretionary"). While the decision to grant a modified oath is discretionary, USCIS's treatment of applicants' constitutional rights is not discretionary and it is

subjected to judicial review. See Ruiz v. Mukasey 552 F.3d 269 (2d Cir. 2009) ("the Administrative Procedure Act provides that "[a] person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof," 5 U.S.C. § 702, unless review is precluded by statute or the complained-of decision was committed to agency discretion, see id. § 701(a). Unless otherwise provided, the district courts possess jurisdiction over such actions. See 28 U.S.C. § 1331"). If Appellees were allowed to casually treat applicants' constitutional rights including protected classes in a discretionary manner, common-laws would be meaningless, and frankly, the Constitution would be meaningless. The Welsh Court is instructive on discrimination based on religion against applicants like Petitioner. Respondent cannot discriminate against Petitioner's free exercise and privacy rights and treat him unequally comparative to other applicants ("who Respondent likes").

X. CONCLUSION

For the foregoing reasons, petitioner respectfully requests that this Court issue a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit.[5]

[5] As I finalized this Petition, Petitioner became aware of this Court's power to assign counsel as noted in Rule 39. Nonetheless and alternatively, Petitioner has argued before Judges primarily in state court as a pro se litigant. Petitioner believes that he can argue before this Court; however, Petitioner is open to accept an assigned counsel,