

No. 17 - 337

**In The
Supreme Court of the United States**

MICHAEL S. BENT,
Petitioner,

v.

**STEVEN WAGNER, Acting Assistant Secretary for
the Administration for Children and Families,**
Respondents.

**On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Ninth Circuit**

PETITION FOR REHEARING

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PETITION FOR REHEARING

Petitioner Bent herein seeks rehearing of his petition seized without cause and extensively processed by the Supreme Court police before delivery to the Clerk. The Clerk cannot assure booklets received and filed are truly Bent's Petition for Writ of Certiorari.

Bent's case challenges a program of the Administration for Children and Families ("ACF"). The District Court dismissed claim against the ACF Secretary and the United States Court of Appeals for the Ninth Circuit denied interlocutory appeal¹. Bent seeks review of the ACF dismissal.

However, this Court's filing process has been so alarmingly subverted that the Clerk cannot assure filed booklets are authentic. In particular, the Clerk cannot assure petition 17-337 to be his true and uncompromised documents because his booklets were seized by Court police without cause and suspiciously sent for offsite processing (without Court approval) before filing. The booklets the Court reviewed are believed inauthentic.

Bent filed an Application to question the police booth seizure protocol under the obscure rule². The seizure protocol, herein referenced as the "Webmaster Rule," contravenes the Rules of the

¹ All claims against all parties are now dismissed by the District Court.

² Internet site last visited November 26, 2017:
<https://www.supremecourt.gov/deliveryofdocuments.aspx>.

Supreme Court of the United States ("Court Rules") and restricts public access to the Clerk.

The Clerk dismissed Bent's Application and Bent subsequently initiated a lawsuit³ to restrain seizure of briefs at the police booth. Trusting the District Court will timely issue an Order to prohibit unjustified seizure of briefs, Bent prays this Petition for Rehearing will not be compromised.

Numerous opinions on the topic of judicial integrity reveal the significance of the perception of judicial integrity. Bent undertakes this enormous feat assured that this Court would not condone the police booth seizure protocol and prays assured that this Court will be persuaded by his uncompromised Petition for Writ of Certiorari.

FACTUAL & PROCEDURAL BACKGROUND

I. Proceedings Below

Below, Bent challenges the Child Support and Establishment of Paternity program, 42 U.S.C. §§ 651-669 (herein, "Title IV-D").

Firstly, the invidious classification of "noncustodial parent" is central to Title IV-D but Title IV offers no definition and fails to clarify what transgressions lead to the classification. Bent was not adjudicated a "noncustodial parent" but the state agency conveniently identifies Bent as such to claim Title IV-D incentive grants from ACF. Bent argues

³ District Court Civil Action No. 17-02320, District of Columbia.

that evidence of willful abandonment is necessary to be convicted as a "noncustodial parent" within the meaning of Title IV-D.

Secondly, Bent argues that incentive payments to courts infringes his right to an impartial tribunal. Title IV-D affords "incentives" paid to unspecified "appropriate courts" under *Incentive payments to States*, § 658a. Incentives are paid to "appropriate courts" when judges and law enforcement personnel act, in the language of Title IV-D, to "assure optimum results under such program." 42 U.S.C. §658a and § 654(7)⁴.

Various schemes are used to undermine constraints aimed at preventing judicial bias. Here, Title IV-D grants are used to reimburse the cost of Commissioners who offload monotonous cases from Judges. This arrangement surely biases Judges to assure adequate grants are received to cover Commissioners wages.

Bent sought judicial review of Title IV-D under the Administrative Procedures Act ("APA"), 5 U.S.C. §§ 701 - 706. The District Court dismissed the ACF Secretary, ruling it lacked jurisdiction under the APA. A separate 42 U.S.C. § 1983 claim against the state agency survived. The Court of Appeals for the Ninth Circuit denied interlocutory appeal.

⁴ 42 U.S.C. § 654(7), "provide for entering into cooperative arrangements with appropriate courts and law enforcement officials ... (A) ... including the entering into of financial arrangements with such courts and officials in order to assure optimum results under such program."

II. Proceedings Before This Court

Bent attempted to petition this Court for a writ of certiorari to review the judgments below.

1. Initial Attempted Delivery

Bent first sent his petition to the Clerk via mail. After weeks of unexplained delay, the accompanying filing documents were reported missing. See Appendix A. The Clerk affirmed the petition had been sent for offsite processing and was finally delivered four weeks after being mailed.

2. Second Attempted Delivery

To assure successful redelivery, Bent arranged for personal delivery of his petition. Bent's courier travelled on commercial flights and arrived at this Court the morning of August 31, 2017. His courier cleared this Court's visitor security to enter into the Clerk's Office and met directly with the Clerk seeking to deliver the 40 booklets and filing documents. However, the Clerk advised that direct delivery of papers to the Clerk was prohibited. Citing the Webmaster Rule, the Clerk instructed that the documents must be taken outside the Court and deposited at the police booth.

Bent's courier proceeded to deliver his petition at the police booth. At the courier's request, the officer at the police booth acknowledge only via her badge number that Bent's documents were delivered. The next day, the Clerk warned that Bent's documents deposited the prior morning were again shipped offsite for processing.

Booklets delivered to the Clerk on September 5, 2017 were presumed to be Bent's true and uncompromised petition and filed. See Appendix B: Response due date of October 5, 2017 after original mailing on June 12, 2017 due substantially to unexplained delay for police booth processing. Bent questioned the authenticity of the filed booklets and the Clerk could not assure that the documents finally filed were truly Bent's documents.

The Clerk offered Bent to visit the Court to review the single booklet pulled from the top of the stack of booklets finally delivered, clarifying that Clerks reserve the top booklet for archiving. He repudiated Bent's concern that validating the top booklet to be unadulterated would not assure booklets to be distributed for review are true copies of his petition.

III. Intervening Actions

Bent subsequently submitted an Application to Justice Kennedy on October 2, 2017, seeking to verify authenticity of the filed booklets. The Clerk, having returned from two weeks of seemingly unexpected absence from his post, called Bent on October 24, 2017 to verbally dismiss the Application *sua sponte*.

On October 29, 2017, Bent initiated a federal lawsuit against the Supreme Court Marshal and Chief of Police aiming to give effect to this Court's Rules by restraining seizure of briefs under the Webmaster Rule. That rule, entitled "Delivery of

Documents to the Clerk's Office" requires:

"Briefs that are delivered to the police booth at the North Drive of the Supreme Court building ... will be delivered to the Clerk's Office ... Parties to merits cases are strongly encouraged to have briefs hand-delivered to the police booth ..."

While "deliver[y] to the police booth" does not explicitly authorize police to seize and search, or allow for interested parties to modify briefs, the Webmaster Rule has those effects and impermissibly enables Court Police to undermine the Court's filing process.

REASONS FOR GRANTING THE PETITION

I. Substantial Weight given Perception of Judicial Integrity Necessitates Rehearing.

The many opinions of this Court on the topic of judicial integrity makes evident this Court places substantial weight on the perception of judicial integrity, requiring "justice must satisfy the appearance of justice." *Republican Party of Minnesota v. White*, 536 U.S. 765, 817, 122 S.Ct. 2528, 153 L.Ed.2d 694 (2002). This Court's "cases have jealously guarded that basic concept, for it ensures that no person will be deprived of his interests in the absence of a proceeding in which he may present his case with assurance that the arbiter is not predisposed to find against him." *Id.* at 814.

This perspective reflects profound respect for the people but also reflects the immense importance to the judiciary. As this Court keenly recognizes, “[Courts’] authority ultimately rests on public faith in those who don the robe.” *Mistretta v. United States*, 488 U. S. 361, 407 (1989). Furthermore, “all legal systems—regardless of their method of judicial selection—can function only so long as the public, having confidence in the integrity of its judges, accepts and abides by judicial decisions.” *Republican Party*, 536 U.S. at 818.

II. Judicial Approval of Police Booth Operation is Unfathomable. Title IV-D Insignia Evident.

1. Police Booth Operation Violates Federal Law.

Only the Supreme Court Marshal and Chief of Police have authority under federal law to promulgate rules for the Court not otherwise stipulated by the Justices. However, this authority is not without limit. Under 40 U.S.C. § 6102(a), the Marshal may only prescribe regulations that are “approved by the Chief Justice.” Likewise, under § 6121, only in “accordance with regulations ... approved by the Chief Justice” does the Chief of Police have authority “to police the Supreme Court Building and grounds.” As such, the Court Police must act in accordance with the Court Rules which represent the expectations of the Justices.

Court Rules⁵ strongly reflect an intention to assure integrity and the only provision for intermediaries is for a courier selected by the litigant to deliver case documents to the Clerk. Likewise after receipt, the Clerk is accountable to assure case documents are secure and not casually removed from the Court. See Court Rule 1.2. Surely this Court did not delegate authority to the Clerk to dictate the process for Delivery of Documents. If so intended, the Court would have done so explicitly as done under Rule 29.7 for electronic submissions.

Court Rules 1, 12, 13 and 29 lead to the unambiguous conclusion that litigants are to deliver case documents to the Clerk. For example, Rule 29.2 clarifies a document is timely filed “if it is sent to the Clerk through the United States Postal Service or ... carrier for delivery to the Clerk” and makes no mention of delivery to a police booth. This is also evident to lower courts holding that “[t]he Clerk of the Supreme Court is the designated recipient of all documents filed with the Supreme Court ...” *Hilderbrand v. Suter*, Dist. Court Civil Action No. 14-1449, Dist. of Columbia, 2014.

Given the Webmaster Rule contravenes the Court Rules, it evidently lacks approval of the Chief Justice. As such the Webmaster Rule violates federal law (40 U.S.C. § 6102(a) and § 6121) and raises serious question of its origin.

⁵ RULES OF THE Supreme Court of the United States; Adopted April 19, 2013 and Effective July 1, 2013. Applicable sections are unchanged in rules Adopted September 27, 2017 and Effective November 13, 2017.

2. Police Booth Seizure Violates Petitioner's Right to be Secure in his Papers.

While not explicit, the Webmaster Rule effects a seizure under a presumption of legitimacy and mandated voluntary action. It only demands delivery to the police booth, but once concealed in possession of the police, the documents may be searched, diverted, or replaced and the veracity of the documents can no longer be assured. However, Bent's right to be secure in his papers is guaranteed by the Fourth Amendment.

Rightfully viewed as a seizure and enabler for unmonitored search of Bent's documents, the question then is whether the warrantless search is reasonable. While "the text of the Fourth Amendment does not specify when a search warrant must be obtained, [this] Court has inferred that a warrant must generally be secured." *Kentucky v. King*, 563 U.S. 452, 459, 131 S.Ct. 1849, 179 L.Ed.2d 865 (2011).

Presumably, the Webmaster Rule enables a "special need" other than conducting criminal investigations. This Court "has referred to this kind of search as an administrative search." *City of Los Angeles v. Patel*, Supreme Court No. 13-1175, § III A ¶ 2, 2015. "[A]bsent consent, exigent circumstances, or the like, in order for an administrative search to be constitutional, the subject of the search must be afforded an opportunity to obtain precompliance review before a neutral decisionmaker." *Id.* at § III A ¶ 3. Given that the Webmaster Rule affords no

opportunity whatsoever, under this Court's controlling precedent, it is "facially invalid". *Id.* at § III A ¶ 3.

However, even if their seizure and search passes constitutionally, misrepresenting what Bent wrote fails. The Webmaster Rule, even considered as merely a content-neutral restriction on Bent's speech, "still must be narrowly tailored to serve a significant governmental interest." *McCullen v. Coakley*, 134 S. Ct. 2518, 2534 (2014). Considering the Webmaster Rule requires all briefs to be surrendered, it is antithetical to narrowly tailored. Moreover, the government "may not regulate expression in such a manner that a substantial portion of the burden on speech does not serve to advance its goals" and enabling parties to distort the content of Bent's Petition thus violates his First Amendment right. *Id.* at 2535. Undoubtedly, the Webmaster Rule lacks this Court's approval and raises serious question of legitimacy.

3. Police Booth Seizure Violates Petitioner's Right to Due Process.

Petitioner Bent has a federal statutory right of meaningful access to petition this Court protected by the Due Process clause of the Fifth Amendment. Meaningful access requires the Court assure Bent's filings are in fact the documents he has submitted to communicate his requests, arguments and pleas. If the Court permits Bent's Petition to be altered, resulting in filed booklets not representing his

intent, then, in a practical sense the Court has in fact denied Bent meaningful access.

Viewed for what it is, a clandestine seizure, it becomes evident that the Webmaster Rule interposes an outpost that requires Bent to surrender his right of access to petition this Court. This Bent is assured is a step this Court would not sanction and hints of corruption.

4. Police Booth is Unnecessary.

Visitors regularly enter with personal packages screened under security procedures at the visitor's entrance as did Bent's courier who initially brought into the Clerk's office the very booklets that were sent offsite for processing. Obvious, the police booth's location outside the court building is of no added security benefit over what is now provided at the courthouse entrance. Whatever security risk presented by paper booklets is simply not mitigated even by seizure of packaged briefs at the police booth and raises doubt that processing of briefs in the outpost is actually for the Court's security.

As such, even if to promote the important objective of Court personnel safety, nothing prohibits prudent inspection by the Court Police in a secure manner either in view of the litigant or the Clerk inside the Court. Intercepting case documents may be efficient given "[intrusive means are] easy to enforce, [but] the prime objective of the [Constitution] is not efficiency." *Id.* at 2540.

Given what has been said, the Webmaster

Rule is unnecessary and begs to be rationalized.

5. Police Booth Operation Possibly Incited by Title IV-D.

Under Title IV-D, Secretary Wagner's office has statutory authority to provide for "Incentives" payable by his agents to any court or law enforcement officer his affiliated agencies consider "appropriate." That ghastly provision of federal law allows his agency to legally entice any court to do as the agency pleases. This provision affords the Secretary and his affiliated agencies worrisome influence because "[i]n cases specifically involving the Judicial Branch, [this Court has] expressed ... vigilance against [any] provision of law [that] impermissibly threatens the institutional integrity of the Judicial Branch." *Mistretta*, 488 U.S. at 383. Title IV-D operates, as does the Webmaster Rule, due to the presumption of legitimacy afforded federal law.

Considering that this Court holds jurisdiction to review and possibly upset Title IV-D cases, this Court is certainly an "appropriate court" permitting agents of the ACF to legally provide federal "incentive payment" under flexible "financial arrangements with ... law enforcement officials" (for example Court Police), that "assure optimum results under such program" under 42 U.S.C. §658a and § 654(7). It is similarly possible that this Court's review of the ACF dismissal could compromise the viability of the federal incentive program. It would

therefore be entirely conceivable under the ghastly Title IV-D program for ACF affiliates to provide federal incentives to the Court Police to interrupt Bent's petition.

Nothing in Title IV-D, nor the grant of policing authority (40 U.S.C. § 6102(a) and § 6121), prohibits the Court Police from accepting federal incentives nor prohibits them from relinquishing documents to persons interested in modifying case documents. Accepting that "[i]n the general course of human nature, a power over a man's subsistence amounts to a power over his will," make evident the risk Title IV-D presents to this Court's integrity. *US v. Will*, 449 U.S. 200, 218 (1980).

The incentive that undermines justice at all levels of the judicial system, here presents a great motive and substantial reason to doubt that all true copies of Bent's petitions were delivered and reviewed by this Court.

III. Rehearing is in the Public Interest.

The Webmaster Rule prevents Clerks acceptance of original case documents and renders them unable to assure the integrity of case documents now filed in this Court. It greatly compromises the integrity of this Court by subverting provisions of the Court Rules and greatly undermines public access to the Court. As wisely observed by this Court, "[t]he Court's power lies in its legitimacy, a product of substance and perception that shows itself in the people's acceptance of the

Judiciary as fit to determine what the Nation's law means and to declare what it demands." *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833, 865, 112 S.Ct. 2791, 120 L.Ed.2d 674 (1992). The general public, even those not petitioning the Court, have a vested interest in effective governance that is now hindered by the Webmaster Rule.

CONCLUSION

It is difficult to imagine a case more worthy of review by this Court. Federal law encapsulated in Title IV-D undermines core principles of federalism, separation of powers, and the very institution of justice established to safeguard the public. This case vividly illustrates the enormous injury Title IV-D presents to the public perception of even this Court by likely having undermined the Court's own procedural integrity by promoting the creation and funding for the heinous Webmaster Rule.

Respectfully submitted November 30, 2017.

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CERTIFICATE OF PETITIONER

I hereby certify that this petition for rehearing is restricted to grounds limited to intervening circumstances of a substantial or controlling effect and to other substantial grounds not previously presented.

I hereby certify that this petition for rehearing is presented in good faith so that justice may be done, and is not for delay.

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APPENDIX

APPENDIX A

**SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001
July 11, 2017**

Michael S. Bent
1115 SE 164th Avenue
Suite 210-S33
Vancouver, WA 98683

RE: Bent v. Lashway, et al.
USCA 9 No. 17-35182

Dear Mr. Bent:

Returned are all copies of the petition for a writ of certiorari in the above-entitled case postmarked on June 12, 2017 and received on June 15, 2017, which fails to comply with the Rules of this Court.

The petitions must come with the \$300.00 filing fee.

The proof of service must be separate from the petition, not within it. See Rule 29.5.

You must submit a certificate stating that the petition complies with the word limitation. The certificate must state the number of words in the document and must be separate from the petition. Rule 33.1(h). If the certificate is signed by a person other than a member of the Bar of this Court, the counsel of record, or the unrepresented party, it must

contain a notarized affidavit or declaration in compliance with 28 USC 1746.

Kindly correct the petition so that it complies in all respects with the Rules of this Court and return it to this Office promptly so that it may be docketed. Unless the petition is submitted to this Office in corrected form within 60 days of the date of this letter, the petition will not be filed. Rule 14.5.

When making the required corrections to a petition, no change to the substance of the petition may be made.

Sincerely,
Scott S. Harris, Clerk
By:
/s/ Jacob C. Travers
Jacob C. Travers
(202) 479-3039

Enclosures

APPENDIX B

No. 17-337

Title: Michael S. Bent, Petitioner

v.

Patricia Lashway, et al.

Docketed: September 5, 2017

Lower Ct: United States Court of Appeals for the
Ninth Circuit

Case Numbers: (17-35182)

Decision Date: March 14, 2017

Date	Proceedings and Orders
Jun 12 2017	Petition for a writ of certiorari filed. (Response due October 5, 2017)
Sep 14 2017	Waiver of right of respondents Patricia Lashway, et al. to respond filed.
Oct 05 2017	Waiver of right of respondents Patricia Lashway, et al. to respond filed.
Oct 18 2017	DISTRIBUTED for Conference of 11/3/2017.
Nov 06 2017	Petition DENIED.

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Party name: Federal Respondents

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Party name: Patricia Lashway, et al.