
Respondent(s)

No. 16-7425

(Phone Number)

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Anderson v. Liberty Lobby, Inc, 477 U.S. at 248 (1986)

Brown v. Crawford, 906 F. 2d 667, 670 (11th Cir. 1990) cert. denied 111 S. Ct. 2056 (1991)

Bukhari v. Hutto, 487 F. Supp. 1162, 1167-1178 (E.D. VA 1980)

Castaneda v. Henman, 914 F. 2d 981, 985-986 (7th Cir 1990)

Compare Jackson v. Federal Bureau of Prisons, 538 F. Supp. 2d 194, 198 (D.C. Mar. 14, 2008)

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Elkins v. Moreno, 435 U.S. 647, 665-66 (1978)

Eric Telecommunication, Inc. v. City of Erie, PA 85 F. 2d 1084, 1093 (3rd Cir. 1988)

Farinaro v. Coughlin, 642 F. Supp 276; 281-282 (S.D.N.Y. 1986)

Gray v. Spillman, 925 F.2d. 90, 95 (4th Cir. 1991)

Hathaway v. Coughlin, 841 F. 2d 48, 50 (2nd Cir. 1988)

Holloway v. United States 526 U.S.1, 6, 119 S. Ct. 966, 143 L. Ed 1 (1997)

Matushita Electric Industrial Co., Ltd. v. Zenith

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Paine v. Barker, 595 F. 2d. 197, 201 (4th Cir. 1979), cert denied, 444 U.S. 925 (1979);

Preiser v. Rodriguez 411 U.S. 475, 486, 498-500, 93 S. Ct 1827, 36 L. Ed. 2d 439 (1973)

Radio Corp. 475 U.S. 574, 587, 106, S. Ct 1348 (1986)

Salomon Forex, Inc., v. Tauber 8 F. 3d 966, 975 (4th Cir 1993)

Seller v. Bureau of Prisons, 294 U.S. App D.C. 361, 366, 959 F 2d 307, 312

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Titran v. Ackman, 893 F. 2d 145, 147 (7th Cir. 1990)

Tobey v. Extel/JWP, Inc., 985 F. 2d 330, 332 (7th Cir 1993)

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United States v. Lauersen 648 F. 3d 115 (2nd Cir. 2011)

United States v. Roper, 462 F. 3d 336 (4th Cir. 2006)

Wilson v. City of Chicago, 707 R. Supp. 379, 381-382 (N.D. 111. 1989)

Constitutional provisions

5th, 13th, 14th Amendment of the United States Constitutional, Constitution

For the Commonwealth of Virginia

Fed. R. Criminal P.

21 USC 846

21 USC 841(b)

18 USC 3572(i)

18 USC 3572(h)

18 USC 3613A

18 USC 3614(a)&(b)

Title 5 552a(e)(5), 552a(g)(1)(C), 552a(g)(4)

18 USC 3612(b)(1)

18 USC 3612(f)(3)

18 USC 3612(h)

18 USC 3612

Criminal Fine Improvement Act of 1987, Pub. L. no. 100-185 11, 101 Stat.

1279,1283-85 (1987)

Bureau of Prisons

Federal Bureau of Prisons Program Statement 5800.11

- I. Whether the district court in granting summary judgment improperly decided disputed factual issues?
- II. Whether the Petitioner's factual allegations of the Bureau of Prisons (BOP) willfully and intentionally maintaining inaccurate records in Petitioner's inmate central file raised a material issue under the 5th, 13th and 14th Amendment of the United States Constitution, the Constitution of the Commonwealth of Virginia but not limited to other laws?
- III. Whether the Petitioner's factual allegation raised a material issue under the 5th, 13th and 14th Amendment of the United States Constitution, the Constitution of the Commonwealth of Virginia but not limited to other laws when Petitioner 's records prove that charges UNITED STATES V. TONY JONES 2:97CR00102-001 had been adjusted by the IRS?
- IV. Whether the Petitioner's factual allegations raised a material issue under the 5th, 13th and 14th Amendment of the United States Constitution, the Constitution of the Commonwealth of Virginia but not limited to other laws that Petitioner's Affidavit in Support of Petition for a Writ of Habeas Corpus and exhibits A through Z-13 are the facts in this case on the grounds of that Defendant has not provided any Affidavits or sworn statements under penalty of perjury to rebut the Petitioner's facts?
- V. Whether the Petitioner's factual allegations raised a material issue under the 5th, 13th, and 14th Amendment of the United States Constitution, the Constitution of the Commonwealth of Virginia but not limited to other laws that Defendant actually knew of Chief United States Probation Officer Ms. Vogel's response as of 1/19/2012

but failed to respond reasonably by taking reasonable steps to ensure the information is correct thereby the violations continued i.e. violating BOP policy program statement 5800.11 and Title 5 of the Privacy Act in reference to maintaining inaccurate records?

Parties The Petitioner is TONY JONES who was release from custody by clemency from former president Barack Obama on September 28, 2016.

The Respondent/Defendant is ERIC D. WILSON the warden at my last federal institution in Petersburg VA.

DECISION BELOW

The Fourth Circuit three judge panel concluded by affirming the district court holding. See exhibit B-1

JURISDICTION

The United States Court of Appeals for the Fourth Circuit entered judgment on April 27, 2017. Exhibit B-1 The Petitioner filed a petition for rehearing and rehearing en banc. The court denies the Petition for rehearing and rehearing en banc on July 3, 2017. Exhibit B-2 On July 11, 2017 the United States Court of Appeals for the Fourth Circuit issued a mandate. Exhibit B-2

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the 5th, 13th and 14th Amendment of the United States Constitution. The 5th Amendment says to the federal government that no one shall be “deprived of life, liberty or property without due process of law.

The 13th Amendment to the Constitution declared that “neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

The 14th Amendment states that “no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

The Amendments are enforced by Title 5 section 552a(e)(5), 552a(g)(1)(C) and 552a(g)(4) of the Privacy Act. The Amendments are also enforced by Bureau of Prisons program statement 58000.11.

STATEMENT OF THE CASE

The issue in this original 2241 habeas corpus are Federal Bureau of Prisons Program Statements 5800.11 section (e)(5), (g)(1)(C) and (g)(4) of the Privacy act. Section (e)(5) provides that each agency that keeps a system of records must “maintain all records...with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination. “5 USC 552a(e)(5). Section (g) of the Act provides civil remedies for violation of Section (e)(5). In particular, section (g)(1)(C) permits a civil action if an agency “fails to maintain any record concerning any individual ...and consequently a determination is made which is adverse to the individual.” 5 USC 552a(g)(1)(C) and section (g)(4) provides that in any action brought under section (g)(1)(C) “in which the court determines that the agency acted in a manner which was intentional or willful the United States shall be liable for actual damages sustained by the individual not less than \$1,000 as well as litigation costs

and attorney fees 5 USC 552a(g)(4). BOP Program Statement 5800.11 pp 8 (g)(1)(d) and 15(c) (Sept 8, 1997) states in pertinent part; When an inmate challenges information in his PSR, BOP staff “should inform the appropriate U.S. Probation office (USPO), in writing, of the disputed information, and request that a written response also be provided.” When the inmate brings to the staff’s attention that information in their central file is inaccurate, especially when that information is capable of being verified. The inmate is required to provide staff with sufficient information in support of a challenge (names of persons to contact, government agency etc...) When an inmate provides such information, staff shall review the alleged error(s) and take reasonable steps to ensure the information is correct. The Federal Bureau of Prisons Program Statement 5800.11 further states; the Bureau is required to take “reasonable steps to ensure the accuracy of the challenged information, particularly when that information is capable of being verified.” The petitioner and BOP staff unit manager Ryan contacted the U. S. Chief Probation officer Ms. Vogel via inquiry Inmate Request to staff form see exhibit A & B in accordance to BOP Program statement 5800.11 and Title 5 USC 552a(e)(5). The U.S. Chief Probation Officer responded to my request stating that “This is in response to your request on December 7, 2011. The information contained in your presentence report is based on the information available at the time of your sentencing. Therefore, the presentence report is not modified post-sentencing based on the actions or conduct by the inmate. See exhibit E The obligation to correct the petitioner’s inmate central file is on the Bureau of Prisons. The U.S. Chief Probation Officer mentioned that the presentence report is not modified post-sentencing based on the actions or conduct by the inmate. Unit manager Ryan refuse to maintain accurate records after the response from the U.S.

Chief Probation officer Ms. Vogel. The facts prove that the Bureau of Prisons used the erroneous PSR, J & C and sentence monitoring computation data in my inmate central file to make a determination adverse to him in violation of (e)(5), (g)(1)(C) and (g)(4) of the Privacy act. The correct record would warrant a different determination. The correct record would make a determination that the Petitioner is no longer in default on the payment of the fine and the life sentences received on January 29, 1998 are no longer warranted on the grounds that when the IRS adjusted the account the Petitioner is in compliance with the order of the fine. The district court granted summary judgment to the defendants on the grounds that Jones sentence never included any fine, stating that “no fine have been imposed in this case”) and in any event, his sentence could not be lengthened or shortened because of any fine. See exhibit B-3 order dated August 31, 2016.

The Petitioner stated in an affidavit under penalty of perjury that the defendants willfully and intentionally are maintaining inaccurate records in Petitioner’s inmate central file (i.e. PSR, J & C, sentence monitoring computation data and else where) that Petitioner is in default of a payment of a fine and/or penalty because of January 29, 1998 declared delinquency and default status in reference to charges 21 USC 846 and 21 USC 841(b) in accordance to 18 USC 3572(i), 18 USC 3613A, 18 USC 3614(a)(b) in violation of Program statement 5800.11, Title 5 of the Privacy act 552a(e)(5), 552a(g)(1)(C), 552a(g)(4) and the 5th, 13th and 14th Amendment of the United States Constitution, the Constitution of the Commonwealth of Virginia but not limited to other laws.

The defendants submitted [n]o affidavits under penalty of perjury to support their claim.

The district court held that “As Wilson has accurately enunciated in his pleading, Jones’ sentence never included any fine, see J. in a Crim. case, Jones no. 2:97CR00102-001 (Jan 29, 1998 E.D.Va.) (explicitly stating that “[n]o fines have been imposed in this case”) and in any event, his sentence could not be lengthened or shortened because any fine. Wilson Mem. 8-9. Furthermore, the BOP’s alleged failure to document Jones’ purported payment of this nonexistent fine has no bearing whatsoever on his sentence for these reasons, as well as those articulated by Wilson in his memorandum in support, Wilson’s motion for summary judgment [Doc. No. 8 is GRANTED, and it is hereby ORDERED that Jones’ petition for a writ of Habeas Corpus under 28 USC 2241 be and is DIMISSED.

The Petitioner’s affidavit squarely contradicted the factual allegations of the defendants, and the facts it alleged would have supported a judgment for the Petitioner’s under the 5th, 13th and 14th Amendment of the United States Constitution, the Constitution of the Commonwealth of Virginia but not limited to other laws.

BASIS FOR FEDERAL JURISDICTION

This case raises a question of interpretation of the Due Process Clause of the 5th and the 13th and 14th Amendment to the United States Constitution. The district court had jurisdiction under the general federal question jurisdiction conferred by 28 U.S.C 1331. The Supreme Court has the power to review decisions of a federal court of appeals. See 28 USC 1254(1), 28 USC 1251, Rule 10 & 11 Supreme Court Rules 28 USC 2101(c) Rule 13.1 Supreme Court Rules, Rule 14.1 Supreme Court Rules

ARGUMENT IN SUPPORT OF GRANTING CERTIORARI

A. Conflicts with Decisions of this court, the Fourth Circuit Court of Appeals and D.C Court of Appeals

The holding is directly contrary to *Seller v. Bureau of Prisons*, 294 U.S. App D.C. 361, 366, 959 F.2d 307, 312(1992) & Compare *Jackson v. Federal Bureau of Prisons*, 538 F. Supp. 2d 194, 198 (D.C. Mar. 14, 2008) (“A ruling in plaintiff’s favor on his Privacy Act claim would have a direct impact upon the duration of his confinement... [which] must be brought in a petition for a writ of habeas corpus.”), with *Smith v. U.S. Parole Com’n*, No. 7:05-cv-00120, 2005 U.S. Dist. LEXIS 33206, 2005 WL 1594452 *2, (W.D. Va. June 29, 2005) (a 2241 petition is not the proper method to bring a Privacy Act claim when the claim does not implicate the execution of a sentence). The alleged erroneous information maintained in petitioner’s inmate central file did impact the continued execution of a life sentence. First with respect to the November 28, 2007 letter from the IRS, the BOP needed only to determine whether that letter was accurate. To aid them in this determination, the Bureau of Prisons could have wrote to the IRS inquiring was the letter from the petitioner authentic they chose not to. Second the petitioner’s due diligence requirement of proving that the letter from the IRS was accurate. BOP staff and the petitioner wrote to the USPO. See exhibit E the Chief Probation officer stated “This is in response to your request on December 7, 2011. The information contained in your presentence report is based on the information available at the time of your sentencing. Therefore, the presentence report is not modified post-sentencing based on the actions or conduct by the inmate. This is evidence from the Chief United States Probation officer that the letter from the IRS is authentic and it is the duty of the Bureau of Prisons to correct the petitioner’s inmate central file because the presentence report is not modified

post-sentencing. Bureau of Prisons program statement instructs the staff that BOP Program Statement 5800.11 pp 8 (g)(1)(d) and 15(c) (Sept 8, 1997) states in pertinent part; When an inmate challenges information in his PSR, BOP staff “should inform the appropriate U.S. Probation office (USPO), in writing, of the disputed information, and request that a written response also be provided.” When the inmate brings to the staff’s attention that information in their central file is inaccurate, especially when that information is capable of being verified. The inmate is required to provide staff with sufficient information in support of a challenge (names of persons to contact, government agency etc...) When an inmate provides such information, staff shall review the alleged error(s) and take reasonable steps to ensure the information is correct. The Federal Bureau of Prisons Program Statement 5800.11 further states; the Bureau is required to take “reasonable steps to ensure the accuracy of the challenged information, particularly when that information is capable of being verified.” The regulation give as an example an inmate challenge to information in the presentence investigation report, and spell out procedural steps that the staff must follow in response. Bureau of Prisons staff shall file this information in the applicable section in the inmate central file, and also make a notation on the Inmate Activity Record form (BP-381) to ensure that future decisions affecting the inmate are not based on the discredited information. If the United States Probation office subsequently reports that the challenged information, or some part thereof, is not accurate, staff shall attach the Bureau’s inquiry and the USPO response to the challenged document. BOP staff shall file this information in the applicable section of the inmate central file, and also make a notation on the Inmate Activity Record form (BP-

381) to ensure that future decisions affecting the inmate are not based on the discredited information.

United States v. Roper, 462 F. 3d 336, 340 (4th Cir 2006) and Holloway v. United States 526 U.S. 1, 6, 119 S. Ct. 966, 143 L.Ed 1 (1999). The district court does not have the authority to waive all or part of delinquency and default penalties. The Petitioner's judgment and commitment does not have any mentioned words that this judgment is being modified or remitted. It specified that the total fine and other monetary penalties shall be due as follows: [x] in full immediately and may be subject to penalties for delinquency and default. The defendant has not stated under penalty of perjury that the Attorney General waived all of the specified delinquency and default penalties. There is no record of this in Petitioner's docket sheet no. 2:97CR00102-001. The requirement regarding payment of interest and delinquency and default penalties date back to the Criminal fine Improvements Act of 1987, Pub. L. no. 100-185 11, 101 Stat. 1279, 1283-85 (1987). Congress added both the interest and penalty requirement at the same time, in the same statute. As is true today. Congress provided that both district courts and the Attorney General may waive all or part of the specified interest on fine. However, Congress provided that only the Attorney General may waive all or part of specified delinquency and default penalties. Congress could have given district court similar authority for delinquency and default penalties, [b]ut it did not. The court further stated "that Congress expresses its intent through the language it chooses." See e.g., Holloway v United States 526 U.S. 1, 6, 119 S. Ct. 966, 143 L.Ed 1 (1999) Congress granted district courts the power to waive or modify interest obligation, while granting only the Attorney General the authority to waive all or part of delinquency and default penalties- and it did

so within the same Act, codified in the same section of the United States Code. The court also stated “section 3612 itself does not authorize district courts to waive either fines and restitution or delinquency and default penalties. The use of the words “modifying and “remitting in section 3612(b)(1) merely reflects that some types of fines and restitution orders may be modified or remitted and for those, as for the original imposition thereof, the district court must include certain information in the judgment. Id; accord United States v. Roper, 462 F. 3d 336, 340 (4th Cir 2006). This language does not suggest that delinquency and default penalties themselves may be modified by district courts. Indeed, section 3612(b) explicitly mentions modifying or remitting only fines and restitution orders-not delinquency and default penalties. The court stated in United States v. Roper, 462 F.3d 336 (4th Cir 2006) “When called to interpret federal statutes, [c]ourts indulge a strong presumption that Congress expresses its intent through the language it chooses. Therefore, when the terms of a statute are clear and unambiguous, our inquiry ends and we should stick to our duty of enforcing the terms of the statute as Congress has drafted it” United Kingdom Ministry of Def. v. Trimble Navigation Ltd., 422 F. 3d 165,171 (4th Cir 2005) (internal quotation marks omitted). “We assume that the legislative used words that meant what it intended; that all words had a purpose and were meant to be read consistently... and that a statute is not self-contradiction or otherwise irrational.” See Salomon For ex, Inc v. Tauber, 8 F.3d 966, 975 (4th Cir 1993)

In United States v. Chusip 372 F 3d 113 (2nd Cir 2004) in a criminal case date May 28, 2003 resentencing him pursuant to 18 USC 3614 (the resentencing order)

BACKGROUND on March 1, 2001 Eugene Chusid appeared before judge because of his delinquency, pursuant to 18 USC 3572(i) to pay restitution and fines. The government

also requested that Chusid be resentenced pursuant to 18 USC 3614 because of his failure to meet these obligations. In *United States v. Felts* 00-CR-80 C 02 (W.D. Wis Feb 10, 2003) District of Wisconsin on June 4, 2001, following his conviction for mail fraud in violation of 18 USC 1341 a class D felony he was committed to the custody of the Bureau of Prisons to serve a term,, of imprisonment of 15 months, with a 36 month terms of supervised release to follow. Further, he was ordered to pay restitution in the amount of 881,644.80 and having been granted an extension of time for payment by the government. According to 18 USC 3572(i) defendant is in default in paying restitution because he is more than 90 days delinquent ... revoking the three year term of supervised released imposed on defendant on June 4, 2003 pursuant to 18 USC 3613A.

B. Importance of the Questions Presented

This case presents a fundamental questions of the interpretation of the court's decisions in *Sellers v. Bureau of Prisons*, 959 F.2d 307, 312 (D.C. Cir 1992) *United States v. Roper*, 462 F. 3d 336, 340 (4th Cir 2006) and *Holloway v. United States* 526 U.S. 1, 6, 119 S. Ct. 966, 143 L.Ed 1 (1999). The abovementioned United States case law is straight to the point. The petitioner was declared inability to pay as specified in the J &C and PSR and was subject to penalties for delinquency and default. The Bureau of Prisons has been avoiding this claim ever since petitioner's inquiry on December 7, 2011 to BOP staff unit manager Ryan and Chief United States Probation Officer Ms. Mary Anne Vogel. BOP staff unit manager Ryan, Warden C. Zych, and the Regional Director et al known and unknown obstructed the petitioner's initial administrative remedy proceedings. See exhibit O There is only one reason BOP staff et al hindered the petitioner's claim was to avoid giving him the appropriate relief as requested i.e. correcting his inmate central file

from the default status on January 29, 1998 to the new and recent change that is documented with the IRS on November 28, 2007. The petitioner states that he requested BOP prison officials to correct his inmate central file via (Inmate Activity Record form BP-381) to ensure that future decisions affecting the inmate are not based on the past discredited information they refused. See *Paine v. Barker*, 595 F. 2d 197, 201 (4th Cir 1979); accord, *Farinaro v. Coughlin*, 642 F. Supp 276 281-82 (S.D.N.Y. 1986) *Bukhari v. Hutto*, 487 F. Supp. 1162,1167 -78 (E.D.Va 1980); (denial of parole based on admittedly false information denies due process.) The petitioner has utilized any and all available statutory and/or BOP administrative procedures before filing this habeas petition to get my inmate central file corrected. See *Sellers v. Bureau of Prisons*, 959 F.2d 307, 312 (D.C Cir 1992) under Federal Privacy Act, agencies “must take reasonable steps to maintain the accuracy of the information to assure fairness to the individual. One court has held that the available administrative remedies provide all the process due to federal prisoners with respect to their file *Castaneda v. Henman*, 914 F. 2d 981, 985-86 (7th Cir. 1990.) The question presented is of great public importance because it affects the operations of the prison system and the criminal justice system in all fifty states, the District of Columbia and hundreds of cities and county jails. In view of the large amount of records maintained in the prison system there must be uniform guidance for staff to comply with to ensure the inmate’s PSR, J&C and sentence monitoring computation data sheet are accurate. In addition, the question is of great importance to prisoners, because it affects their ability to receive fair decisions in proceedings that may result in months or years of added incarceration.

The issue's importance is enhanced by the fact that the lower courts in this case have seriously misinterpreted *Sellers v. Bureau of Prisons*, 959 F.2d 307, 312 (D.C Cir 1992) *United States v. Roper*, 462 F. 3d 336, 340 (4th Cir 2006) and *Holloway v United States* 526 U.S. 1, 6, 119 S. Ct. 966, 143 L. Ed 1 (1999).

The common sense understanding of 18 USC 3572(i) according to 18 USC 3572(i) the Petitioner is in default of payment of fine because he is more than 90 days delinquent.

The common sense understanding of 21 USC 841(b) and 846. "In accordance to Federal Criminal Code and Rule 1993 edition 21 USC 841(b) in pertinent part states; penalties (b) except as otherwise provided in section 859,860, or 861 of this title, any person who violates such person shall be sentenced to a term of imprisonment which may not be less than 10 years or more than life and if death or serious bodily injury results from the use of such substance shall be not less than 20 years or more than life, a fine not to exceed the greater of that authorized in accordance within the provisions of title 18, or \$4,000,000 if the defendant is an individual or 10,000,000 if the defendant is other than an individual or both.

21 USC 846 states; Attempt and conspiracy

Any person who attempts or conspires to commit any offense defined in this subchapter shall be subject to the same penalties as those prescribed for the offense, the commission of which was the subject of the attempt or conspiracy.

The common sense understanding of 18 USC 3613A. The Petitioner was sentenced in accordance with 18 USC 3572(i) & (h), 18 USC 3613A, 3614(a) Resentencing (b) Imprisonment. The Fourth Circuit confirms penalties for delinquency and default in *United States v. Roper*, 462 F. 3d 336, 340 (4th Cir 2006). See *United States v. Chusip*

372 F.3d 113 (2nd Cir 2004) *United States v. Felts* 00-CR-80 C 02 (W.D. Wis Feb 10, 2003) District of Wisconsin on June 4, 2001, and *United States v. Lauersen* 648 F.3d 115 (2nd Cir. 2011).

The lower court's judgment stated "As Wilson has accurately enunciated in his pleading, Jones' sentence never included any fine, see J. in a Crim. case, Jones no. 2;97CR00102-001 (Jan 29, 1998 E.D.Va.) (explicitly stating that "[n]o fines have been imposed in this case") and in any event, his sentence could not be lengthened or shortened because any fine. Wilson Mem. 8-9. Furthermore, the BOP's alleged failure to document Jones' purported payment of this nonexistent fine has no bearing whatsoever on his sentence for these reasons, as well as those articulated by Wilson in his memorandum in support," The order from the District court is unconvincing. The decision conflicts with Congress intent regarding to the Criminal Fine Improvements Act of 1987, Pub.L.no. 100-185 11,101 Stat. 1279,1283-85(1987), Supreme Court decision *Holloway v. United States* 526 U.S.1,6, 119 S.Ct.966, 143 L E d 1 (1999), as well the Fourth Circuit court's decision in *United States v. Roper*, 462 F.3d 336, 340 (4th Cir 2006), *United Kingdom Ministry of Def. v. Trimble Navigation Ltd.*, 422 F.3d 165, 171 (4th Cir 2005), *Salomon For ex, Inc v. Tauber*, 8 F.3d 966,975 (4th Cir 1993) and Federal Rules of Criminal Procedure statutes 21 USC 841(b), 21 USC 846, 18 USC 3572(i) &(h), 18 USC 3613A, 18 USC 3614(a)&(b) 18 USC3612(b)(1), 18 USC 3612(f)(3),3612(h), and 3612.

The district court seriously misinterpreted *Sellers v. Bureau of Prisons*. The court should have denied movant's/defendant's motion for summary judgment on the grounds that the challenged information in the non-moving/petitioner's (inmate central file) is capable of being verified, the movant did not satisfy the requirement of the Privacy Act 5 USC

552a(e)(5), (g)(1)(C) and (g)(4). The movant has not submitted any facts and/or reasonable inferences in favor of the movant's claim i.e. no sworn statements under penalty of perjury from any federal employee, agent, attorney or any agencies that is related to the non-moving genuine issue of material fact i.e. Bureau of Prisons staff, Chief United States Probation Office Ms. Vogel, United States Department of Treasury/IRS operation Manager John Lad, United States Attorney's Office and United States District Court Eastern District Court Clerk Mariam Newton or Clerk Fernando Galindo to rebut non-moving's Affidavit in support of Writ of Habeas Corpus and exhibits filed in this petition. In determining whether there is a genuine issue of material fact, the court must view all facts and all reasonable inferences in favor of the non-moving party. See *Matushita v. Electric Industrial Co., Ltd. v. Zenith Radio Corp.* 475 U.S. 574, 587, 106 S.Ct 1348 (1986) ; *Hathaway v. Coughlin*, 841 F.2d 48, 50 (2d Cir. 1988); see *Smith v. Maschner*, 899 F. 2d 940, 949 (10th Cir. 1990) (circumstantial evidence could create an issue of material fact barring summary judgment); *Wilson v. City of Chicago*, 707 F. Supp. 379, 381-82 (N.D. 111. 1989) (Summary judgment could not be granted to a police supervisor whose conduct permitted the inference that he condoned or encouraged excessive forced. A genuine issue exist if the evidence is such that a reasonable jury could return a verdict for the non-moving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. at 248; see *Brown v. Crawford*, 906 F. 2d 667,670 (11th Cir. 1990), cert. denied 111 S.Ct 2056 (1991); *Murphy v. Dowd*, 757 F. Supp. 1019, 1022 (E.D. Mo. 1990). The district court seriously misinterpreted the Fourth Circuit Court in *Roper* and this court in *Holloway* by failing to distinguish between the district court authority to waive delinquency or default penalties. The controlling authority states only

the Attorney General, not a district court, may waive all or part of a delinquency or default penalty properly assessed pursuant to section 3612(g). Congress specified that the Attorney General not the district court, may waive all or part of the penalty. Id 3612(h) Congress clearly expressed its intent to withhold such discretion from district courts. Cf Elkins v. Moreno, 435 U.S. 647,665-66 (1978).

This argument dates backs to 11/20/2011 when the Petitioner and unit manager sent Chief United States Probation officer Mary Anne Vogel an inquiry requesting the USPO/BOP to correct inaccurate records.

Argument I.

Whether, the district court in granting summary judgment improperly decided disputed factual issues?

The Petitioner's affidavit squarely contradicts the defendant's story concerning what the inmate central file i.e. presentence report, Judgment & Commitment sentence monitoring computation consist of, how it was used, when it was used and why it was used. The Petitioner has present the facts that Petitioner was fined in accordance to 21 USC 841(b) and 21 USC 846. The Petitioner has presented facts and evidence via United States statutes and court documents that the Petitioner had a financial obligation to satisfy the charges or suffer the penalties for delinquency and default. See 18 USC 3572(i) & (h), 18 USC 3613A, 18 USC 3614(a) & (b). The Petitioner has presented facts and evidence that Petitioner's charges were in fact adjusted and discharged by the IRS on November 28, 2007. Petitioner will refer to the Affidavit in Support of Petition for a Writ of Habeas Corpus no. 4 on the docket sheet. The Petitioner states that the affidavit are the facts in this case submitted under penalty of perjury. In accordance to Federal Rules of Criminal procedure 1993 edition 21 USC 841(b) penalty provision the Petitioner was fined \$4,000,000 as

the statute 21 USC 846 states that any person who attempts or conspires to commit any offense defined in this subchapter shall be subject to the same penalties as those prescribed for the offense. The Petitioner is subject to the same penalties as those prescribed for the offense, which is \$4,000,000 fine in accordance to 21 USC 841(b). This is how the presentence report, written by the probation officer, and the Judgment and Commitment written by Judge Jackson, derived their finding of the \$8,000,000 fine. 18 USC 3572(i) states A fine or payment of restitution is in default if a payment is delinquent for more than 90 days. Notwithstanding any installment schedule, when a fine or payment of restitution is in default, the entire amount of the fine or restitution is due within 30 days after notification of the default, subject to the provisions of section 18 USC 3613A. On 10/8/1997 the Petitioner was found guilty by jury verdict. Sentencing was set for 1/8/1998. See criminal docket sheet. This 90 days grace period is in accordance to 18 USC 3572(i) see United States v. Chusip 372 F 3d 113 (2nd Cir 2004) On 1/29/ 1998 the Petitioner was sentenced in accordance to title 18 USC 3613A (a)(1), 18 USC 3614(a) Resentencing (b) Imprisonment. 18 USC 3613A Effect of default states upon a finding that the defendant is in default on a payment of a fine or restitution, the court may pursuant to section 3565, revoke probation or a term of supervised release, modify the terms of conditions of probation or a term of supervised release, resentence a defendant pursuant to section 3614, hold the defendant in contempt of courts enter a restraining order or injunction order the sale of property of the defendant, accept a performance bond, enter or adjust a payment schedule, or take any other action necessary to obtain compliance with the order of a fine or restitution. 18 USC 3614(a) Resentencing upon failure to pay a fine or restitution states subject to the provisions of subsection (b) if a defendant knowingly fails to pay a delinquent fine or restitution the court may resentence the defendant to any sentence which might originally have been

imposed. (b) Imprisonment- The defendant may be sentenced to a terms of imprisonment under subsection (a) only if the court determines that –(1) the defendant willfully refused to pay the delinquent fine or had failed to make sufficient bona fide efforts to pay the fines. The Petitioner states the abovementioned U.S. statutes/codes gives Petitioner the consequences of the effect of default on a payment of a fine. This is evidence that this \$8,000,000 fine imposed in Petitioner's J&C and PSR i.e. inmate central file is not fictitious as the Defendant states. Petitioner will refer to the Affidavit in Support of Petition for a Writ of Habeas Corpus. The Petitioner states that no. 1 through 12 in the Affidavit are fact under penalty of perjury. The Defendant did not rebut the petitioner's Affidavit with any sworn statements via Affidavit under penalty of perjury from anyone from the IRS stating that Petitioner fine is fictitious or that operation manager John Lad of the IRS did [n]ot adjust and discharge the charges 2:97CR00102-001

Argument II.

Whether the petitioner's factual allegation of the Bureau of Prison willfully and intentionally maintaining inaccurate records in Petitioner's inmate central file raised a material issue under the 5th, 13th and 14th Amendment of the United States Constitution, the Constitution of the Commonwealth of Virginia but not limited to other laws?

The Petitioner stated in an Affidavit under penalty of perjury that the defendant willfully and intentionally are maintaining inaccurate records in Petitioner's inmate central file (i.e. PSR, J&C, and sentence monitoring computation data and elsewhere) that Petitioner is in default of a payment of a fine and/or penalty because of January 29, 1998 declared inability to pay status in reference to charges 21 USC 846 and 21 USC 841(b) in accordance to 18 USC 3572(i), 18 USC 3613A, 18 USC 3614(a)(b) in violation of Program Statement 5800.11, Title 5 of the Privacy Act 552a(e)(5), 552a(g)(1)(C),

552a(g)(4) and the 5th, 13th and 14th Amendment of the United States Constitution, the Constitution of Commonwealth of Virginia but not limited to other laws. The Petitioner's Affidavit squarely contradicted the factual allegations of the defendants, and the facts it alleged would have supported a judgment for the Petitioner under the 5th, 13th and 14th Amendment of the United States Constitution, the Constitution of the Commonwealth of Virginia but not limited to other laws. The defendant has not established the necessary facts in the manner required by the rules. The defendant has not submitted an adequate factual case. The Petitioner has put sufficient facts before the court to show that there is a genuine factual issue as to each point the Petitioner numbered I. thru V.

Summary judgment is to be granted only if the record before the court shows "that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Rule 56(c), Fed R. Civ. P. Whether a party is entitled to summary judgment is a question of law over which this court exercise plenary review. *Tobey v. Extel/JWP, Inc* 985 F. 2d 330, 332 (7th Cir 1993); *Eric, Pa*, 853 F. 2d 1084, 1093 (3rd Cir. 1988). The movant has not submitted any facts and/or reasonable inference in favor of the movant's claim i.e. no sworn statements under penalty of perjury from any federal employee, agent, attorney or any agencies that is related to the Petitioner's genuine issue of material fact.

Argument III.

Whether the Petitioner's factual allegation raised a matter issue under the 5th, 13th, and 14th Amendment of the United States Constitution, the Constitution of the Commonwealth of Virginia but not limited to other laws when Petitioner's record prove that charges 2:97CR00102-001 had been adjusted by the IRS?

The Petitioner states for the record that he has provided a correspondence from the United States Treasury Department/IRS to substantiated his claim. See exhibit C The defendant has not rebutted that document or mentioned it in their Memorandum of Law in Support of summary judgment. This proves that the document is authentic. The argument involves a question of exceptional importance. Congress specified that the Attorney General, not the district court, may waive all or part of the penalty. 3612(h). Congress clearly expressed its intent to withhold such discretion from district courts. Cf. *Elkins v. Moreno*, 435 U.S. 647, 665-66 (1978) This inmate central file if not corrected is in conflict with Congress intent in reference to federal statutes 18 USC 3612(b)(1), 3612(f)(3), 3612(h), 3612, 18 USC 3572(i), 18 USC 3613A, 18 USC 3614(a)&(b), 21 USC 841(b), 21 USC 846, the Criminal Fine Improvement Act of 1987, Pub.L. no. 100-185.11, 101 Stat. 1279, 1283, the United States Supreme Court explain Congress's intent in *Holloway v. United States* 526 U.S. 1,6,119 S.Ct. 966, 143 L. Ed 1 (1999) and in *United States v. Roper* 462 F. 3d 336, 340 (4th Cir 2006). The district court did not cite any case law, statute or authoritative opinion to substantiate the summary judgment ruling.

Argument IV.

Whether the Petitioner's factual allegations raised a material issue under the 5th, 13th and 14th Amendment of the United States Constitution, the Constitution of the Commonwealth of Virginia but not limited to other laws, that Petitioner's Affidavit in Support of Petition for Writ of Habeas Corpus and exhibits A through Z-13 are the facts in this case on the grounds that defendant has not provided any Affidavit or sworn statement under penalty of perjury to rebut the Petitioner's facts?

The Petitioner states that he was sentenced as the results of statutes 21 USC 846, 21 USC 841(b), 18 USC 3572(i), 18 USC 3613A, 18 USC 3614(a) &(b), the Criminal Fine Improvement Act of 1987, Pub. L. no. 100-185., 101 Stat. 1279, 1283, 18 USC 3612(b)(1), 18 USC 3612(f)(3), 18 USC 3612(h), 18 USC 3612.

The Petitioner draws the courts attention to no. 36 in the Affidavit in Support of Writ of Habeas Corpus. The Petitioner states that no. 36 in the Affidavit are facts under penalty of perjury that has not been rebutted by the defendant. The defendant has not rebutted that document or mentioned it in their motion. The defendant's argument is based on rhetoric that is not substantiated with any proof whatsoever. The Petitioner was declared 'inability of pay' as specified in the J&C and PSR and was subject to penalties for delinquency and default. The Petitioner was found in default on January 29, 1998 to the \$8,000,000 fine. The district court lack authority to waive the fine, delinquency and default penalties as it is mentioned in the petitioner's J&C in accordance to United States statutes 18 USC 3612(b)(1), 3612(f)(3), 3612(h), 3572(i), 18 USC 3613A, 18 USC 3614 (a)&(b) and the Criminal Fine Improvement Act.

Certioranri should be granted, as the court stated in United States v. Roper, 462 F. 3d 336 (4th Cir 2006)" When called to interpret federal statutes, [c]ourts indulge a strong presumption that Congress expresses it intent through the language it chooses. Therefore, when the terms of a statute are clear and unambiguous, our inquiry ends and we should stick to our duty of enforcing the terms of the statute as Congress has drafted it United Kingdom Ministry of Def, v. Trimble Navigation Ltd., 422 F. 3d 165, 171 (4th Cir 2005) (internal quotation mark omitted). We assume that the legislative used words that meant

what it intended; that all words had a purpose and were meant to be read consistently... and that a statute is not self-contradiction or otherwise irrational” see Salomon for ex, Inc v. Tauber, 8 F. 3d 966, 975 (9th Cir 1993).

Argument V.

Whether the Petitioner’s factual allegations raised a material issue under the 5th, 13th, and 14th Amendment of the United States Constitution, the Constitution of the Commonwealth of Virginia but not limited to other laws that defendant actually knew of Chief United States Probation Officer Ms. Vogel’s response as of 1/19/2012 but failed to respond reasonably by taking reasonable steps to ensure the information is correct thereby the violations continued i.e. violating BOP policy program statement 5800.11 and Title 5 of the Privacy Act in reference to maintaining inaccurate records?

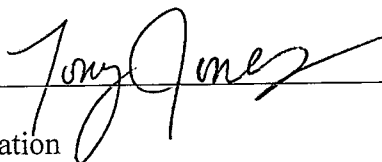
On November 23, 2011, the Petitioner notified BOP/U.S. Probation office of my status change as of November 28, 2007 in reference to charges 2:97CR00102-001. The Petitioner mentioned that this can be verified through operations manager John Lad of the IRS/United States Treasury Department, Assistant United States Attorney Arenda L. Wright Allen and the United States District Court (clerk) Eastern District of Virginia (Norfolk). See exhibit A On December 7, 2011 an inquiry was conducted by unit manager Ryan to Chief United States Probation officer Mary Anne Vogel. Unit Manager Ryan stated in pertinent part “Specifically, Mr. Jones is challenging how his status is listed for his fines, assessment and forfeitures as listed. His enclosed request explains how, and what, he is challenging” see Exhibit A On December 22, 2011 Mary Anne Vogel CUSPO stated “This is in response to your request on December 7, 2011. “The information contained in your presentence report is

based on the information available at the time of your sentencing. Therefore, the presentence report is not modified post sentencing based on the actions or conduct by the inmate." See exhibit D the USPO did not deny the petitioner's inquiry. The BOP staff did not take reasonable steps to correct the disputed information after the USPO verified the Petitioner's claim in violation BOP program statement 5800.11 and Title 5 USC 552a(e)(5). The claim dates back to 3/2/2012. It was not until 06/25/15 in a Request for Administrative Remedy when the warden stated in part "Additionally, your central file contains information showing the fine was waived at sentencing based on your inability to pay." see exhibit Z-9 It took three attempts in exhausting my administrative remedies and the response from Central office informing me to resubmit the PSR issue. The petitioner presented a "typical" Privacy act case because the facts at issue were clearly provable. See Exhibit Z-5 This response from the warden is in contrary to the Fourth Circuit court in *Roper*, this court in *Holloway* and United States codes 18 USC 3612 but not limit to other laws.

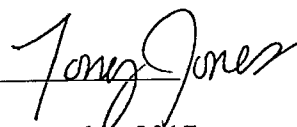
Conclusion

For the reasons set forth above, CERTIORARI should be GRANTED in this case.

Respectfully submitted,

11/15/2017 
Verification

I have read the foregoing and hereby verify that the matter therein is true, and correct to the best of my knowledge. I certify under penalty of perjury in accordance with 28 USC 1746 that the foregoing is true correct and complete.

Respectfully submitted on 11/15/2017 
This 15 day of November 2017