
In the Supreme Court of the United States

RICK D. SALERNO, PRO SE, *PETITIONER*

v.

DEPARTMENT OF INTERIOR, ET AL., *RESPONDENT*

**ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Are Powers that support freedoms of the governed, as adapted by Constitution Article(s) I & II, currently engaged, under modern assault, where expiatory sin diminishes the Judiciary?

1. When implied Powers of Congressional Oversight are used to alert the President of an imminent need to appoint an Inspector General for the Department of Interior; whereas the House of Representatives Committee Chairman delivers a letter to the President stating urgency for a permanent appointment. Could an extended vacancy of the Inspector General create grave risk to safety and compromise national security?
2. Where the Director of the Office of the Chief Information Officer (OCIO) promulgates by Directive to "Interior" bureau(s), in compliance with Presidential Executive Order 13526; Could non-enforcement of OCIO Security Directive(s) create grave risk to national security?
3. Where Supervisor(s) force employees, protected as "minority's" or "technology specialists", to violate US security encryption laws. When the General Accounting Office (GAO) provides review spanning across law enforcement agencies. If recommendations are not followed or enforced with oversight, is national security and critical infrastructure safeguarded?
4. Where Due Process is denied while evidence states a need for sensitive handling regarding safety of employees and retired Supervisors; whereas if "Discovery" is also not provided to unmask State and Federal Agency cooperation, could criminal allegations become misplaced?
5. When a true last name of a "Regional Solicitor" is not known in Federal directories, or by the employees Union President; when the registered name in the California Bar is identically spelled to be the same last name as the Supervisor who is alleged in terrorizing employees. Should the true name of the Agency Counsel be disclosed prior to participation in litigation?
6. Where the Regional Solicitor of Interior submits an Order to the National MSPB Board to deny the Petitioner's request for a "Petition For Review"; Whereas a Motion is presented to the MSPB that identifies ethics violations, of and by the same Regional Solicitor?
7. Where the MSPB National Board is staffed with one (1) member, yet includes a review by two (2) members with public record showing conflict in MSPB appellant rules. Does judicial discretion allow conflicts to bypass MSPB Rules created prior to issuing a "Final Order"?

LIST OF PARTIES

[**X**] All parties appear in the caption of the case on the cover page.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1) is Not Published. The opinions of the Merit System Protection Board (Pet. App 2, App 3, App 5 and App 6) are Not Published. The opinion of the Merit System Protection Board (Pet. App 4) is reported at, *2016 MSPB 10*.

JURISDICTION

[X] For cases from **federal courts**:

The judgement of the Court of Appeals for the Federal Circuit was entered on November 17, 2017. No petition for rehearing was timely filed. The jurisdiction of this Court is invoked under U. S. C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The constitutional provisions, statutes and regulations involved in this case, set out placement of the original doctrine as the authority and solution, that limits the breadth of conflict by undergoing the model image of a “top-down” management hierarchy. This Court with jurisdiction, is aided historically by “learned experiences” can reinstate the impregnable desire needed to retain an original view used in the separation of powers. The doctrine emphasizes enforcement by the Executive Powers of Appointment and the Implied Powers of Oversight as a paramount requirement. In this Case, without oversight, the attempt to redirect responsibilities into the lowest level of management creates an unwarranted path that alters priorities. Allowing distraction from critical laws to be misplaced with the biased subject matter of personalities and personal character manipulation. Original Articles (App-1 and App-2) are needed to clarify and minimize the adverse actions in this Case. To restrict priority to the original doctrine arguments, and direct to the highest level of leadership accountable within the Executive Office hierarchy to be enforced through Powers given to the Legislative and the Judiciary Branches.

STATEMENT OF THE CASE

On February 4, 2013, Mr. Salerno entered Whistle Blowing when submitting Form 11 to the Office of Special Counsel (OSC). The purpose of filing was to bring internal visibility to a COMSEC Security Office or Inspector General regarding need of an immediate actionable response and oversight. Contents in the complaint included other allegations known to be associated with security. Such as budget and contract management violations not normally allowed without oversight, by an agency of the US government. Standards used in the decision to file complaint to the OSC were derived from knowledge gained in 30 years of experience and training received from the US Department of Defense. Evidence included in the filing was not expected to be misunderstood in determining jurisdiction, based on the serious nature of Security Classifications known to be critical by the Office of Personnel Management (OPM).

Merit of the filing has been known to be handled as a priority by OPM. Including specialized training of personnel engaged in security encryption programming. At the time of filing, Mr. Salerno was unaware of vacancy in the appointment of an Inspector General, or the House of Representatives Committee Oversight Report with letter to the President, declaring urgency in nominating and appointing an Inspector General to the Department of Interior. [App-J]. Mr. Salerno was unaware that there was not a CMS Custodian or COMSEC Officer within the Department. Mr. Salerno was certain of the need for compliance with radio encryption security law and was compelled to seek answers. The questions were not addressed within the chain of command and remain unanswered by the Agency today.

The need to understand how encryption programming could be managed was initially raised by Mr. Salerno on the first day of his employment through discussion with the Human Resources Officer(s). Important Note: this question was presented as interrogatory # 1 in the Discovery Request submitted. Discovery was denied by the Agency. [APP - 6].

Mr. Salerno declared in a Pleading to the MSPB and Agency that he would not begin research into facts until an Opinion or Decision was reached by the MSPB. An objective review would reveal facts and limit undesired litigation to direct priority and focus to laws and regulations of national security critical issues. This view was interrupted because of the apparent emotionally driven actions taken by the Agency to create and embellish facts to discredit the professional integrity and character of Mr. Salerno. The Agency chose to use formal tactics to

distract from the actions of Supervisor(s), who are accountable for the serious violations of security law, while aware of the unscreened conditions and without oversight.

Mr. Salerno assumed the response by the Agency would not stand if an investigation was conducted. However, an investigation would expose other violations of discrimination and harassment in the workplace that degraded professional performance, assigned by Agency Supervisors and the Telecommunications Manager, for the State of California.

Contained within the Whistle Blower file submitted, a reference was made to the OIG-GAO report that cited safety recommendations regarding radio systems used within the Department of Interior. Comments received from the MSPB Judge Opinion [APP-2] were quoted from the *redacted* OIG report as, “unsafe and unreliable radio communications environment that jeopardizes the health and safety of [agency] employees and the public”. Jurisdiction denied?!

Premises of the topic, “Questions Presented”, is in the citing of whether leadership by government appointment is faltering when an Executive Order specifies requirements to the agency authority, that was not previously slated for, or identified with budget needs to address time related challenges in the type, scope and mission supporting a new mandate on the Department of Interior through Executive Order.

It is reasonable to accept that differences exist between Departments in their specialty and readiness to apply the needed organizational “startup requirements” in a critical Presidential Executive Order 13526 [EO13526] Classified National Security Information. Many Agencies have used assigned statutory mandates to accomplish mission goals, created with decades of experience gained in managing security. The understanding and lessons learned aid in the preparation to generate accurate budget calculations and to enable compliance with changes reviewed while implementing policy of EO 13526.

The burden of adapting a changed security policy along with, adapting change into a new organizational functional requirement, exposes risk to national security that elevates concerns in other branches of government. Within the “changes” are serious questions in need of understanding that are critical and arguable for clarity. However, the need for preliminary discussion and staffing additions inside Programs Management can initially become overwhelmed with decisions needed or questions for clarity, that arise from a departmental

functional change and a technical modification in security classification process and procedures. As is relevant to this Case: Where the OCIO Director of the "Interior" issues an Order by Directive for the Bureau Chiefs to establish COMSEC principles within their organizations [APP - 7]. The action may be in error or conflict with EO 13526 but is understood by Mr. Salerno as needed in the management of security encryption keys, previously known to be critical. From a review of EO 13526 the COMSEC Requirement was changed by the new policy, to the point that many could argue with a classified justification based on knowledge and understanding of technical history involving COMSEC violations. The argument could hold standing for justification of national security and national defense based on historical data lessons learned.

It can be possible that an Agency leader could employ the "We will do it our self" approach without fully analyzing the associated detail or risk involved with incompatible security classifications placed on managing of budget estimates.

Article I, II and III of the Constitutions define the components needed for three branches of government with accountability to proscribe the top tier of leadership that sets framework and removes questions by the lower level tiers in government. Many arguments are relating the balance of Power with complexity through-out. But enforcement of the Laws to sustain National Defense should not be ignored. Without oversight, the framework is faltered.

REASONS FOR GRANTING THE PETITION

This Case is an ideal vehicle to resolve reoccurring jurisdiction concerns in the Whistle Blowing Protection Act (WPA) of national importance. The lower Court refusal to exercise discretion and compel the Department of Interior ["Interior"] for a Discovery Request is compounding and obstructing when the Office of Special Counsel (OSC) does not find cause for investigating subject matter that is technically complex regarding violations of national security. Further exasperated by, and to the extent that the case is of such imperative public importance as to justify deviation from normal appellate practice that may require expedited determination. 28 U. S. C. § 2101. Whereas, answers found in a Discovery Request may expose necessary evidence to identify serious lapses in policy and regulations.

Due diligence was sought to describe the existence of prima facie case of whistleblower retaliation by Mr Salerno. This detail was inserted into the request for, "Petition for Review" (PFR) set before the MSPB Board on 05 July 2016. The Final Order was returned with Decision on 01 September 2016 [App-2]. The MSPB Board Opinion did not address comments on many critical points in the PFR pertaining to Jurisdiction, Discovery Request and new evidence. This created the basis of the Appeal to the US Court of Appeals for the Federal Circuit on 02 November 2016. The Opinion was issued on 17 November 2017 [App-1]. Of which comment was not provided regarding the purpose for submitting a Request For Review to the Courts jurisdiction.

CONCLUSION

For the foregoing reasons, this Court should grant the Petition for Writ of Certiorari.

Respectfully Submitted by:

Signature 

Date 23 JANUARY 2018