IN THE SUPREME COURT OF THE UNITED STATES

October term 2018

Case No. _____

JOSEPH JOHNSON

Plaintiff / Petitioner,

v.

THE UNITED STATES

Defendant / Respondent,

WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE

FEDERAL CIRCUIT EN BANC NO: 17-2569, 18-1021, 18-1091

SUP. CT. R. 22.1

"BRIEF OF PETITIONER"

JOSEPH JOHNSON

10338 BON OAK DR.

St. LOUIS, MO 63136

(314) 867-5407

PETITIONER, PRO SE

JURY TRIAL DEMAND

QUESTION PRESENTED

Does the Constitution 'fundamental law" form the 'basis test' for laws passed by Congress, and the Court's holding by the Marbury Court, (1803), control in Petitioner's appeal challenging the constitutionality of laws passed by Congress, and statutes passed by Congress preempt promulgated rules enacted by Claims Court?

PARTIES

JOSEPH JOHNSON,
Pro se PETITIONER / APPELLANT,

v.

THE UNITED STATES,

Donald J. Trump, President
Jeff Sessions, Attorney General
Noel J. Francisco, Solicitor General
Channing Phillips, U.S. Attorney, (DOJ)
Chad A. Readler, Acting Asst. Attorney General, (DOJ)
Robert E. Kirschman, Jr., Director, Commercial Litigation Branch, (DOJ)
Patricia M. McCarthy, Asst. Director, Commercial Litigation Branch, (DOJ)
Agatha Koprowski, Trial Attorney, Commercial Litigation Branch, (DOJ)

U.S. Supreme Court
John G. Roberts, Jr., Chief Justice
Clarence Thomas, Assoc. Justice
Elena Kagan, Assoc. Justice
Sonia Sotomayor, Assoc. Justice
Stephen G. Breyer, Assoc. Justice
Ruth B. Ginsburg, Assoc. Justice
Anthony M. Kennedy, Assoc. Justice
Samuel A. Alito, Jr., Assoc. Justice
Scott Harris, Clerk

Court of Appeals for the Federal Circuit, En Banc
Sharon Prost, Chief Judge
Pauline Newman, Appeals Judge
Haldane R. Mayer, Appeals Judge
S.J. Plager, Appeals Judge
Allan D. Lourie, Appeals Judge
Raymond C. Clevenger, III, Appeals Judge
Alvin A. Schall, Appeals Judge

William C. Bryson, Appeals Judge
Richard Linn, Appeals Judge
Timothy B. Dyk, Appeals Judge
Kimberly A. Moore, Appeals Judge
Kathleen M. O'Malley, Appeals Judge
Jimmie V. Reyna, Appeals Judge
Evan J. Wallach, Appeals Judge
Richard G. Taranto, Appeals Judge
Raymond T. Chen, Appeals Judge
Todd M. Hughes, Appeals Judge
Kara F. Stoll, Appeals Judge
Peter R. Marksteiner, Clerk,

United States Court of Federal Claims
Susan G. Braden, Chief Judge
Nancy B. Firestone, Senior Judge
Bohdan A. Futey, Senior Judge
Lisa Reyes, Acting Clerk,

RESPONDENT-APPELLEE,

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OPINION(S)

Order of the Court of Appeals Federal Circuit en banc in purported is Appendix A, and Federal Circuit en banc mandate is Appendix B, merits panel's opinion is Appendix C, and Claims Court opinion is Appendix G.

JURISDICTION

This Court's jurisdiction continues to be invoked under 28 U.S.C. S 1251, 28 S 2101(e), and Article III, sec. 2.

CONSTITUTION

FIFTH AMENDMENT in pertinent part: "No person shall be...deprived of life, liberty or property, without due process."

SEVENTH AMENDMENT in pertinent part: "In suit at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved...in any court of the United States...according to the rules of the common law."

Judiciary Act of 1789, sec. 15, in pertinent part: "And be it further enacted, That all the said courts of the United States, shall have power in the trial of actions at law...to give judgment against him or her by default."

STATUTES

28 U.S.C. S 1915 states in pertinent part: sec. (d) "The officers of the court shall issue and serve all process, and perform all duties in such cases...and the same remedies shall be available as are provided for law in other cases."

42 U.S.C. S 1491 in pertinent part: sec. (a)(1) ""United States Court of Federal Claims has jurisdiction upon any claim against the United States...Constitution, or Act of Congress, or agency regulation."

28 U.S.C. S 2702 in pertinent part: "Such rules shall not abridge...or modify any substantive right."

STATEMENT OF THE CASE

A. OVERVIEW

Federalist No. 78: "[A]ccordingly, whenever a particular statute contravenes the Constitution, it will be the duty of the Judicial tribunals to adhere to the latter and disregard the former"; and-

[T]he courts were designed to be an intermediate body between the people and the legislature, in order, among other things, to keep the latter within the limits assigned to their authority. A constitution is, in fact, and must be regarded by the judges as, a fundamental law."

"It is emphatically the province and duty of the Judicial Department [judicial branch] to say what the law is", and, "the right to decide the constitutionality of a law"; Marbury v. Madison, 5 U.S. 137 1 Cranch 137 (1803).

FIFTH AMENDMENT Rule 5.1 Collection of Cases Challenges to Laws (Acts) Passed By Congress Declared Unconstitutional by Supreme Court Decision(s).

Act of Jan 11, 1971 (S 4, 84 Stat 2049); Department of Agriculture v. Murray, 413 U.S. 508 (1973). Act of Oct 24, 1992, Title XIX 106 Stat. 3037 (Pub.L. 102-486) 26 U.S.C. S 9701 (1998); Eastern Enterprise v. Aptel, 524 U.S. 498 (1998). Act of May 5, 1892 (27 Stat. 25, 84); Wong Wing v. United States, 163 U.S. 228 (1986). Act of June 22, 1874 (18 Stat. 1878, S 4); Boyd v. United States, 116 U.S. 616 (1886). Act of Feb 20, 1812 (2 stat. 677); Reichart v. Felps, 73 U.S. (6 Wall) 160 (1968).

B. BACKGROUND

i. Procedural History of State and Federal Court Fraud Against Person 18 U.S.C. S 371 "Denial To Honest Service" 18 U.S.C. S 241 and 18 S 242

The conduct of the Federal courts [Justices and Judges] named 'parties' over 30 years, is not merely based upon statutory interpretation, which in most instances, would not rise to the level of fraud, nor was the courts' conduct based merely upon ignoring a civil rights injury "in fact" deprivation enjoining Title III criminal felony admission by the defendant, United States; but the courts' conduct over

the past 30 years was based more specifically, upon criminal conduct by judges [state and federal] and the need to conceal that conduct from public disclosure.

The Federal courts [Supreme Court, district court(s), circuit court(s), Claims Court, merits panel, and Federal Circuit en banc] in furtherance of, the conspiracy to conceal judicial misconduct, acted in concert with the Executive branch to execute fraudulent artifacts [orders, opinions, judgments, mandates, and waivers], too, dismiss as frivolous criminal acts by the Executive and Judicial branches of government, and Supreme Court [court of last resort] denying certiorari review based upon the conduct by judges [constructive fraud] denial to "honest service" deprivation, in a scheme involving the use of the U.S. Mail, court employees, Justice Department, White House and members of Congress.

1989-1991: [State of Missouri, et al defendant's] agent James A. Pudlowski, Chief Judge, Court of Appeals for the Eastern District of Missouri, fraudulently impersonating being a United States Magistrate Judge, Judge Pudlowski entered an order to deny then, plaintiff [Johnson's] civil action alleging a Title III injury "in fact"; at the time, Judge Donald Lay was the Chief Judge of the court of appeals for the Eighth Circuit when, District Judge Edward L. Filippine of the Federal district court [Eighth Circuit] impersonated being the Chief Judge of the court of appeals, District Judge Filippine entered an order to deny appellant [Johnson's] appeal of the fraudulent order entered by State Judge Pudlowski; at the time, William H. Rehnquist was the Chief Justice of the Supreme Court and Associate Justice Clarence Thomas was the Circuit Justice over the Eighth Circuit when, the criminal offenses were committed by Judge(s) Pudlowski and Filippine. The Supreme Court filed and set for hearing petitioner [Johnson's] appeal then, on December 16, 1991, defendant, United States, Office of the Solicitor General, in the person of, Solicitor General Kenneth W. Starr before the Supreme Court executed defendant's first waiver, too, petitioner [Johnson's] allegation of the Title III felony [electronic interception and eavesdropping] domestic surveillance by the United States and et al defendant [State of Missouri].

"Thus, the notice of hearing and the opportunity to be heard "must be granted at a meaningful time and in a meaningful manner"; Armstrong v. Manzo, 380 U.S. 545, 552 (1963); petitioner's appeal was not rendered to final decision from 1991-

2005 within a "meaningful time" during the tenure of Chief Justice Rehnquist prior to the Chief Justice's death; 2005-present under the tenure of Chief Justice Roberts denying certiorari review did not equate to adjudicating petitioner's appeal filed and set for hearing by his predecessor in "a meaningful manner."

2009-2010: Defendant, United States, under the administration of President Barack H. Obama, and agency head Attorney General Eric H. Holder, Jr., the Department of Justice, Executive Offices for United States Attorneys, (EOUSA), under (2) FOIA Request(s) disclosed the Central Intelligence Agency, (CIA) and National Security Agency, (NSA), were the intelligence agencies conducting the ongoing domestic spying program in violation of the National Security Act of 1947, prohibiting spying against U.S. citizens inside the United States, spying program facilitated within the State of Missouri [criminal enterprise] RICO.

Since, the defendant United States' Title III criminal felony admission under FOIA acknowledging the criminal enterprise RICO occurred after, the criminal conduct by State Judge Pudlowski, and federal Judge Filippine; knowledge of the criminal conduct by judge(s) Pudlowski and Filippine was known by Chief Justice Rehnquist and Circuit Justice Thomas, based upon copies of the orders signed by judge(s) Pudlowski and Filippine proffered as **exhibits** in petitioner's appeal filed by the Supreme Court in 1991. Therefore, subsequent acts by the Federal courts [dismissals, denying certiorari review, denying appeals by merits panel and en banc] was predicated, more-so, on concealing the initial criminal acts [orders] entered by state and federal judge(s) in 1989-1990, and secondary judicial consideration was concealing the criminal enterprise [RICO violations] Title III criminal admission by the Executive branch in 2009-2010.

2005, Chief Justice John G. Roberts, Jr., retained supervisory authority over proceedings filed and set for hearing in 1991 by Chief Justice Robert's predecessor William H. Rehnquist, deceased, presided over 'do over' [re-filings] requested by Supreme Court relevant to proceedings in the Federal courts [Eighth Circuit and DC Circuit] post 1989-1991; presiding as Chief Justice at the time of the Title III felony admission by defendant, United States in 2009-2010, over proceeding in the district court, and Circuit Justice over proceedings conducted by the Claims Court and court of appeals for the Federal Circuit.

The conspiracy to conceal by the Judicial Department [judicial branch] involved the entry of artifacts [orders, opinions, mandates, judgments, cert denials] absent any public notice electronic record [**Pacer**], violating federal law [Public Records Act of 1950, Pub.L. 81-754 at 64 stat. 578, 64 Stat. 583 U.S.C. 44 U.S.C. ch. 31 S 3101 et seq.] requiring each federal agency to establish an ongoing program for records management [paper form]; November of 2014 Amendment applied to electronic records [EM/ECF] see, e.g. preservation, creating, maintaining and disposing of federal records, and records retained by the agency [federal courts] or executive department [Department of Justice, (DOJ)].

ii. **Continuing Violation Doctrine [Continuing Claim] Applies to Conduct of Judicial Department and Executive Branch**

Federal courts acting collectively under the tenure of Chief Justice Roberts, orchestrated schemes involving dismissals, affirming decisions and denying certiorari review repugnant against the Constitution "fundamental law", and contravening due process and equal protection of law Fifth Amendment. Judicial department, first instance, presiding over proceeding in the Federal district court(s) and courts of appeals when, the defendant failed to file avoidances or affirmative defenses, and defendant subsequently enters a "waiver" during Supreme Court appellate proceedings in 2014; during proceedings before the Claims Court defendant files avoidances and affirmative defenses in 2017, and defendant enters a "waiver" during Supreme Court appellate proceedings removed under S.Ct. Rule 11, in each instance, whether the defendant plead or failed to plead the High Court denied certiorari review.

Chief Justice Roberts has employed, what can only be described, as, this merry-go-round misconception of due process involving defendant, United States' complicity "not filing or filing avoidances" then "filing waivers", and the Court "entering orders" denying certiorari review. The intent of the "continuing violation doctrine" was to afford the parties the right not to be defrauded of their right to due process based upon "statute of limitation" imposed under law; continuing claim doctrine 'relieves a plaintiff of a limitations bar if he/she can show a series of related facts to him/her one or more of which falls within the limitations period'; see, e.g. Pegram v. Honeywell, Inc., 361 F.3d 272, 279 (5th Cir.

2004), in the instant case defendant "not filing, or filing avoidances" then "filing waivers", and the Court "entering orders" denying certiorari review; the judicial department has turned the process [continuance claim doctrine] upon its head, now the judicial department is using "time" as an avoidance defense causing delay in the adjudication of judicial misconduct, affecting privileges and immunities guaranteed under the Constitution and federal statutes; Justices [Parties] and defendant, United States' scheme "not filing or filing avoidances", "filing waivers", and "entering orders" denying certiorari review "intent becomes apparent" a conspiracy to deny privileges and immunities 18 U.S.C. S 2; Village of Arlington Heights, 429 U.S. at 252.

Justices [Parties] knew or should have known in the court's 1991 filing and setting for hearing of petitioner's appeal alleging civil injury enjoining Title III felony, defendant, United States' waiver dated December 16, 1991, constituted 'no contest' admission by the government in litigation involving the United States and a state [State of Missouri], principal and accessory violating the National Security Act of 1947 by conducting a domestic spying program inside the United States against U.S. persons criminal enterprise crossing state lines [RICO]; High Court's "exclusive jurisdiction" provision Judiciary Act of 1789, sec. 13, "And be it further enacted, That the Supreme Court shall have exclusive jurisdiction of all controversies of a civil nature, where a **state** is a party."

1988-1991, under the tenure of Chief Justice William H. Rehnquist, Deceased, the Court filing Johnson, et al v. United States & State of Missouri, et al, first and second parties plaintiffs [P.D. and Vandelia W. Johnson] Probate Division No. 10381-PD "taking clause" deprivation Fourteenth Amendment by state actors [State of Missouri], and United States execute electronic and eavesdropping interception program against 3rd party children; 1991-2005, Supreme Court under the tenure of Chief Justice Rehnquist took no further intermediate action denial to due process Fifth Amendment; under the tenure of Chief Justice John G. Roberts, Jr., 'do-over' judicial scheme proceedings in Federal district court(s), civil rights deprivation denying petitioner to privileges and immunities under 18 U.S.C. S 241 and sec. 242, the 1866 Civil Rights Act affords redress [vindication] for civil rights deprivation to Supreme Court "exclusive jurisdiction" [court of last resort].

iii. **"Rule of Necessity" Chief Justice or Majority of Court To Sit Not Germane Under "Lone Qualified Justice" Proceeding Instituted by Chief Justice**

Chief justice Roberts, Circuit Justice over the Federal Circuit, Justice Roberts knew or should have known the Court had jurisdiction, Claims Court had promulgated RCFC 5.1 Challenges to Statutes [Not Used] when, the High Court on October 30, 2017, docketed petitioner [Johnson's] writ of certiorari under S.Ct. Rule 11 removal [Certiorari to a United States Court of Appeals Before Judgment], and petitioner's motion Rule 5.1 Memorandum challenging statutes passed by Congress, and rules promulgated by the Claims Court.

iv. **Want of Jurisdiction By Merits Panel and Federal Circuit En Banc**

Supreme Court [proper venue] had appellate jurisdiction over the subject matter petitioner's constitutional challenges to laws passed by Congress under promulgated rule 5.1 Fed. R. Civ. P., and the Justices [Parties] denying certiorari review in its order dated December 4, 2017 due process denial Fifth Amendment. Or, the alternate Chief Justice Roberts, Circuit Justice, over the Federal Circuit could have presided over proceedings in court of appeals to address appellant's constitutional challenges case there is precedent United States v. Samuel Wonson (1812) Associate Justice Joseph Story sat as a single judge circuit court.

Justices [Parties] conduct is conspiratorial in the denial of due process, thus considering "there is an unconstitutional "potential for bias" warranting recusing, see, e.g. Caperton v. A.T. Massey Coal Co., 556 U.S. at 868 (2009), in addition, Defendant Justice Kennedy writing for the majority [5 to 4] in Caperton stated the following; the due process Clause Fourteenth Amendment (see, e.g. due process Fifth Amendment) required recusing when there was evidence of "serious risk of actual bias." Justices [Parties] "prior familiarity" and potential continued bias against the petitioner; "might reasonably be questioned by reasonable person" originating in (2) cases,[1[, outside the case itself; Liteky v. United States, 510 U.S. 540 (1994).

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1989-present before the federal district courts and courts of appeals [Eighth Circuit and DC Circuit].

Justices [Parties] therefore should recuse under "lone qualified Justice" proceeding orchestrated by Chief Justice, cause should be assigned non-defendant, Associate Justice Neil Gorsuch for, mandamus relief [final judgment] proceedings S.Ct. Rule 19.2, the court of appeals for the Federal Circuit [en banc] has denied appellant's appeal to review decision of merits panel affirming want of jurisdiction in trial court's decision to dismiss 28 U.S.C. S 1491.

C. **FACTS**

The Supreme Court's landmark decision in Marbury (1803) "binding precedent or mandatory precedent" is authoritative on the meaning of the law, and inferior appellate courts [merits panel, Federal Circuit en banc] cannot evade binding precedent of superior court; and the Supreme Court has exclusive authority over its constitutional decisions; and-

(a). "It is the province and duty of the Judicial Department...to decide the constitutionality of a law." 5 U.S. 137 1 Cranch 137.

The question not addressed by the court below [merits panel]; "Did Congress exceed its legislative power by expressing its "advisory opinion" on what constitutes "cases and controversies" under its elastic powers to limit the Claims Court's jurisdiction 28 U.S.C. S 1491 to Tucker Act/Little Tucker Act [contract]?"

See, e.g. Act of March 3, 1901 (31 Stat. 1341, S 935) the Supreme Court holding the Act unconstitutional; Congress assumed to express in the Act an "advisory opinion" contravening Art. III, sec. 2, when the court determines what the law is in actual "cases and controversies"; United States v, Evans, 213 U.S. 297 (1909), see also Jones v. Meehan, 175 U.S. 1 (1899) holding "judicial interpretation" is the province of the court."

v. **Article I Established Tribunal Amended to Article III Court**

Court of Federal Claims as amended in 1866 from an Article 1, sec. 8, cl. 9 [established tribunal] to an Article III, sec. 2 court, the Constitution [supreme law] Judiciary Act of 1789, sec. 15 'relations back' the Claims Court once established by Congress fall within the wordings; "And be it further enacted, That all the said courts of the United States, shall have power in the trial of actions at law"; and-

(a). action at law "actual cases and controversies" [torts].

Claims Court..."It concluded it lacked jurisdiction over Mr. Johnson's tort claims"; clear error. (Merit Panel's Opinion, paragraph 2, pg. 2).

Mr. Johnson, also moved for "Partial Declaratory Judgment-Default." The Claims Court [Senior Judge Futey, second judge] denied the motions, holding that the government had timely moved to dismiss before the May 15, 2017 deadline to respond to Mr. Johnson's complaint pursuant to RCFC 12(a)(1)(A). (Merits Panel's Opinion, paragraph 3, pg. 2). Erroneous clear err.

March 15, 2017, Claims Court filed plaintiff's complaint and motion for declaratory judgment-default. Senior Judge Nancy B. Firestone [first judge] 'sua sponte' under RCFC 12(4)(C) shortened the defendant's time to respond to plaintiff's motion for default under the court's automatically-generated deadline of April 3, 2017 and not a response by defendant to plaintiff's complaint.

Defendant, United States' Trial Attorney Koprowski acknowledged defendant failed to "plead or otherwise defend" against plaintiff's motion for default on or before April 3, 2017. "The Government did not file a response to Mr. Johnson's first motion on or before April 3, 2017." (Trial Attorney Koprowski's Motion For Leave To File Out Of Time And Motion For Enlargement, id at paragraph 1, pg. 2).

Based upon defendant's failure to "plead or otherwise defend" against plaintiff's first motion for default judgment on or before April 3, 2017 plaintiff filed his 2nd Partial Motion for Declaratory Judgment-Default, and according to the merits panel opinion the clerk was to entered a default RCFC 55(a), or the alternate Senior Judge Firestone [first judge] the court to enter default RCFC 55(b)(2).

"An actual controversy exists between Plaintiff and Defendant as to their rights and duties to each other. Accordingly, a declaration is necessary and proper at this time." Michael Avenatti, Attorney at Law, 2018, on petition for declaratory judgment for party "PP."

"Claims Court Rule 55(a) provides that the clerk **must** enter **default** if the party "has failed to plead or otherwise defend." (Merits Panel's Opinion, paragraph 1, pg. 4).

vi. **Unconstitutional Local Rule Repugnant Against A Law of The United States [Constitution] and Contravenes Fifth Amendment**

"We rely on judges to ensure that people's lives are decided by neutral, independent arbiters who impartially evaluate the evidence and apply the law. That's the only way we can **trust** in a system that has such awesome power to take away people's liberty." Rachell Marshall, Public Defender, Oakland, Cal. (2018).

Federalist No. 78 in part: "A constitution is, in fact, and must be regarded by the judges as, a fundamental law."

Webster Dictionary defines fundamental-serving as **primary**, foundation or **basis**, essential, a primary or necessary principle.

Judiciary Act of 1789, sec. 15 in part: "That all said courts of the United States, shall have power...to give judgment against him or her by default."

"The jurisdiction of the Claims Court is set forth in the Tucker Act, 28 U.S.C. S 1491(a)." (Merits Panel's Opinion, paragraph 2, pg. 3; clear error, once amended to an Article III court the Claims Court derive its jurisdiction, first and foremost, from the Constitution [fundamental law] then, statutory enactment under S 1491(a), but Congress omitted the wording Tucker Act from the opening text sec. (a)(1); Congress unambiguously did not state its 'legislative intent' that Tucker Act way primary [contract].

In 28 U.S.C. S 1491 opening text sec (a)(1) Congress used the wording "any claim founded upon the Constitution", followed by the disjunctive **"or" from a list alternatives**; and judges are to regard the Constitution as "fundamental law" [primary jurisdiction] of the Claims Court under the "any claim" provision [default] Judiciary Act of 1789, sec. 15, the court to "enter judgment...by default."

Appellant challenged the constitutionality of S 1491 in whole or in part as arbitrary, capricious, and vague based upon the statute's ambiguity, legislative intent must be inferred from sources other than the actual text of the statute. Accordingly, appellant argued S 1491 was repugnant against the court's Article III, sec. 2 power, by Congress expressing its "opinion" to limit S 1491 to Tucker Act when, it is the province and duty of the court to determine what the law is in actual "cases and controversies." United States v. Evans, 213 U.S. 297 (1909).

Appellant's appeal addressing constitutional determination would Congress still have passed S 1491 in its current form, or have passed a certain section (a)(1) by adding the wording Tucker Act, or not expressing its "advisory opinion" seeking to limit the court's Article III, sec. 2 powers in S 1491 to Tucker Act, or have used the conjunctive "**and**" instead of the disjunctive "**or**" had it known about the constitutional invalidity of the other portions of the statute, if, the statute {28 S 1491] was struck down on appeal in whole or in part?

Case in point: The Supreme Court in Johnson v. Southern Pacific Co., (1904) 196 U.S. 1, where the court decided that a man may sue the railroad for failing to have an automatic coupler since the legislature was attempting to remedy the problem of multiple injuries by railroad coupling.

In the instant case, Congress establishing the United States Court of Federal Claims [Article 1 tribunal] to provide a remedy [venue] to address suits against the United States and civil redress by Congress, independent of the Federal district court, Claims Court was amended in 1866 to an Article III, sec. 2 court to address suit brought by private individuals actions at law actual "cases and controversies" torts to address civil wrongs.

In the Federal district court defendant United States was sued inter alia for civil rights violations deprivation of plaintiff's substantive right under the Fourth Amendment, and Fifth Amendment. Defendant, United States failed to "plead or otherwise defend" default Fed. R. Civ. P. 55. March 15, 2017, Claims Court filed plaintiff's complaint and Motion for declaratory judgment-default listed as et al defendant [Congress] the current Speaker of the House and Majority Leader of the Senate, see, e.g. 'public office succession' 42 U.S.C. S 1981 sec. 1131 and Rule 25(d) Fed. R. Civ. P.

Congress establishes the Claims Court for redress against the government; but the merits panel's opinion affirms Congress established under its 'elastic powers' a 'sham court': "The jurisdiction of the Claims Court is set forth in...28 U.S.C. S 1491(a), but it does not itself create a right enforceable against the United States. Alvarado Hosp., 868 F.3d at 983, 991 [Fed. Cir. 2017).

Federal Circuit's judicial pronouncement, id, grants the court arbitrary judicial power to "enforce" or "not enforce" a party's right to due process and equal protection of law, in exercising arbitrary judicial discretion contravening the Fifth Amendment and repugnant to laws of the United States; and-

(a). FTCA 28 U.S.C. S 2674 states in pertinent part: "The United States shall be liable, respecting provisions of this title relating to tort claims, in the same manner and to the same extent as private individual under like circumstances," see, e.g. Judiciary Act of 1789, sec. 15, "court to enter judgment...by default."

The merits panel's opinion states further: "To establish Claims Court jurisdiction...a party must identify a substantive law that creates the right to money damages against the United States." Id.

Congress places the train on the track [establishes the Claims Court] to address claims against the government purported contracts [Tucker Act] then, a passenger boards the train [sues] with a ticket [contract with the government], and the conductor [Federal Circuit] states the ticket "does not itself create the right" to ride the train to sue for money damages [promissory estoppels], then the conductor states, you have to come-up with an "alternate" reason for being on the train; generally, Claims Court even if, limited to Tucker Act under the court's reasoning, such litigation involve an element of "contract breaching" [services rendered and payment due]; germane to the Constitution "fundamental law] [Judiciary Act of 1789, sec. 15] "court of the United States...to give judgment against him or her by default", actual "case and controversy" court to determine facts and enter judgment against the breaching party in "default" of the terms and conditions of the agreement between the principals, money–mandating recovery based upon the contractual terms and assets in dispute between the principals; principal's right to recover assets by non-breaching party in dispute, not based upon citing a "substantive law" independent of the contract itself.

vii. **Litigation Before Another Tribunal RCFC 9(o)(p); Fraud and Collusion Between Judicial Department(s) and Agency, (DOJ)**

RCFC 9(o) "In relying on an action by another tribunal or body, a party must describe the action taken on the claim...a department or agency of the United States, or other court."

Defendant, United States failed to "plead or otherwise defend" before the Federal district court and circuit court, and enters a waiver voluntarily forgoing a prior right [default]. DOJ, Office of the United States Attorney, Eastern District of Missouri, in district court proceedings did not file the avoidance government's motion to dismiss required under agency regulation USAM 4-4.210.

RCFC 9(p) "In pleading a claim that has been previously presented to another court...a party must include a statement identifying the effect...of the prior litigation on this court's subject matter jurisdiction."

Notwithstanding Claims Court's RCFC 55 Default Against United States [Not Used], Claims Court deemed to be a "court of the United States" trial court [Senior Judge Firestone / Senior Judge Futey] knew or should have known the [supremacy Clause] of the Constitution "fundamental law" sec. 15 of the Judiciary Act of 1789, Claims Court has power over actions at law and can enter "default judgments" 28 S 1491, sec. (a)(1) "any claim" provision founded upon the Constitution, or...agency regulation."

Plaintiff's motion contesting defendant "motion to dismiss" as untimely based upon defendant's failure to 'plead' said avoidance on or before the court's automatically-generated deadline of April 3, 2017; plaintiff's affirmative defense against defendant's motion to dismiss was allowed under the court's jurisdiction sec. (a)(1) "any claim" provision [or agency regulation], said motion to dismiss was prayed before an improper venue, according to agency regulation USAM 4-4.210 the United States Attorney should have moved to dismiss in the Federal district court [Eighth Circuit]; see, e.g. Bowen, 487 U.S., at 879, 910 n.48.

Trial court's opinion, **id** at pg. 6, defendant's motion to dismiss filed on May 12, 2017 was "timely" before an improper venue contravenes agency regulation sec. 4-4.210, id, merits panel and Federal Circuit en banc-Affirming; clear error.

In the instant case, plaintiff's cause of action arrived at the Claims Court based upon prior litigation before the Federal district court, and defendant, United States' Title III felony admission intelligence agencies [CIA / NSA] were the government entities conducting intelligence gathering inside the United States against U.S. citizens prohibited under the National Security Act of 1947.

Judicial Department's "habit or routine practices" of dismissing, prior too, effectuating service of process of plaintiff's complaint and summons mandated under 28 U.S.C. S 1915 during in forma pauperis proceedings; plaintiff effectuated service of the complaint upon Attorney General Eric H. Holder, Jr., in Federal district court proceeding No. 4:10-cv-02303CDP/RWS Fifth Amendment "due process nonetheless imposes various equal protection requirement on federal government," Bollings, 347 U.S. 497, defendant to "plead or otherwise defend."

(See Attorney General, U.S. Postal Service, Certified Mail-Receipt, 7008 1140 0001 2493 3371 attached hereto as Plaintiff's **Appendix D**).

Pursuant to the 1986 Act 18 U.S.C. S 2521 attorney general was to enjoin in Federal district court in litigation involving a Title III felony admission by the government; and attorney general "prosecutorial discretion" not to enjoin was "checked by...statute" S 2521; Nader v. Saxbe, 479 F.2d at 676, 679, and Solicitor General Noel J. Franciso's waiver in 2017 re plaintiff's [continuing claim doctrine] within six-year statute of limitation 28 U.S.C. S 2501. (Waiver **Appendix E**).

True to form, the attorney general in Federal district court proceedings failed "to enjoin" mandated under statute, id, during district court proceedings No. 4:10-cv-02303CDP/RWS; and failed to "plead or otherwise defend" by not filing defendant's motion to dismiss under agency regulation USAM 4-4.210 within (60) days mandated under Rule 12(a)(2)(3) Fed. R. Civ. P., estoppels by laches attached to defendant's motion to dismiss precluding citing statute of limitation as avoidance defense. Federal district court under the "continuing violation doctrine" prior too dismissal failed to effectuate the court's service of process of plaintiff's complaint and summons, "ministerial duties lawfully owed" under 28 U.S.C. S 1915 in pertinent part: "officer of the court to perform **all** duties in such cases", and defendant, United States in each proceeding failed to "plead or otherwise defend" a default under Rule 55 Fed. R. Civ. Proc.

Before Federal court of appeals [Eighth Circuit] defendant, United States failed to "plead or otherwise defendant" against appellant's appeal, but the court of appeals en banc affirmed trial court's dismissal S 1915(e)(2)(B), notwithstanding the trial court not effectuating service of process mandated under S 1915, and due process under equal protection Fifth Amendment required attorney general to enjoin to "plead or otherwise defend" S 18 U.S.C. S 2521.

2014, Justices [Parties] in No. 13-10381 for the second time had filed an appeal material to the court's 1991 filing, at appeal the Justices had proffered proof of the Title III felony by the government [DOJ's FOIA] disclosures by defendant, President Barack H. Obama's Justice Department's agency head Attorney General Eric H. Holder, attorney general who failed to "plead or otherwise defend" in the trial court and court of appeals then, during the appeal DOJ, Office of The Solicitor General, Donald b. Verrilli, Jr., executed an "implied or express waiver" of defenses 'no contest' in 2014, and true-to-form the Justices [Parties] entered an order to deny certiorari review without remand.

1866 Civil Rights Act the governments total "disregard of the command of a statute...resulting in damages to one of the class" whose especial benefit the statute was enacted, the right to recover damages from the party in default is implied"; Texas v. Pacific Ry. v. Rigsby, 241 U.S. 39, 40 (1916), and "every right must have a remedy"; Marbury v. Madison, (1803); and-

(a). "deliberate indifference is civil rights violation"; see, e.g. Baker v. McCollan, 443 U.S. 137 (1979); and

(b). 1866 Civil Rights Act, sec.1, in part: "That any person who under color of any law, statute...regulation...subject any inhabitant...to the deprivation of any right secured or protected by this Act...be reason of his color or race...shall be deemed guilty of a misdemeanor."

viii. **Misdemeanor By Judicial Department "Relations Back"**

1991, Supreme Court filed and set for hearing petitioner's appeal Johnson, et al v. United States, et al alleging civil rights deprivation and Title III felony by the government [National Security Act of 1947]; defendant, United States before the Federal district court [Eighth Circuit] failed to "plead or otherwise defend"

required under Rule 12(a)(2)3) default Rule 55 Fed. R. Civ. P.

1991, at the onset, in a Title III criminal enterprise [RICO] involving the defendant United States and State of Missouri the Supreme Court had "exclusive jurisdiction" since filing and setting for hearing petitioner's appeal in 1991 Judiciary Act of 1789, sec. 13, "And be it further enacted, That the Supreme Court shall have exclusive jurisdiction of **all** controversies of a civil nature, where a **state** is a party." Supreme Court rejecting the filing petitioner's original action S.Ct. Rule 10, in a notification from the clerk's office; "Mr. Johnson please do not keep forwarding papers to the Court that will not be filed"; the Court en banc denied petitioner of "privileges and immunities" to access to the court's "exclusive jurisdiction" under color of law sec. 13, id. in furtherance of the High Court's denial to "privileges and immunities" at the appellate stage and rejecting its "exclusive jurisdiction," as the last court of resort for vindication of civil rights [1866 Civil Rights Act, sec. 10: "And be it further enacted, That upon questions of law arising in any cause under the provisions of this act a final appeal may be taken to Supreme Court of the United States."

2009-2010, defendant, United States' Title III felony admission under FOIA disclosures intelligence agencies [CIA / NSA] facilitated the criminal enterprise [RICO] with the assistance of a state [State of Missouri] notwithstanding, Supreme Court's failure to "perform ministerial duties lawfully owed" to petitioner under it "exclusive original jurisdiction," Federal district court and circuit court had jurisdiction over defendant's civil and criminal admission under 1866 Civil Rights Act, sec. 3 in part: "The jurisdiction in civil and criminal matter hereby conferred on district court or circuit court of the United States shall be exercised, enforced in conformity with the laws of the United States."

2010-2014, post admission to Title III felony under FOIA disclosure defendant United States continued to fail to "plead or otherwise defend" in the Federal district court and circuit court. Federal district court's orders dismissing a civil action enjoining criminal act [Title III felony admission] as "frivolous" under color of federal law 28 U.S.C. S 1915(e)(2) and circuit court affirming, satisfying "specific intent" requirement mens rea [meeting of minds] "habit or pattern of practice" denial to "privileges and immunities" by the Judicial Department. Criminal

admission by the defendant to the Title III felony admission, and judicial misconduct denial to "privileges of immunities," and a conspiracy to conceal by the government [judicial, executive and legislature]; but the court attempts to blame the victim and questions the right to protected "free speech" to petition the government for redress of grievances First Amendment, as "hate speech" on petitioner's part.

"As a result, The Court finds this action is malicious, and the Court will dismiss it under 28 U.S.C. S 1915(e). Because this action is malicious..."(John A. Ross, District Judge's Order, May 23, 2012, sec. Discussion, paragraph 1, pg. 3).

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ix. **Claims Court, Merits Panel and Federal Circuit En Banc Reliance Upon Statute of Limitation; "Equitable Estopple Tolling" Opinions "Clear Error"**

"It concluded that all claims accruing before March 15, 2011 were barred by the six year statute of limitations under 28 U.S.C. S 2501."

Notwithstanding Judicial Department's scheme to prevent service of process upon defendant, United States mandated under 28 U.S.C. S 1915, Federal district court in No. 4:10-cv-02303CDP/RWS plaintiff effectuated service upon Attorney General Eric H. Holder, Jr., defendant United States under Rule 12(a)(2)(3) had (60) days to "plead or otherwise defend" citing statute of limitation in an avoidance [motion to dismiss], e.g. 'equitable estoppel' prevents defendant from arguing statute of limitations in Claims Court upon voluntary conduct, silence, and acquiescence in defendant failing to pursue said defense in Federal district court.

In 2017, Plaintiff's continuing claim; estoppel by Laches precludes defendant from brining an action [to dismiss] citing statute of limitations when the party knowingly failed to claim, or enforce a legal right at the proper time, see, e.g. People v. Heirens, 648 N.E.2d 260 (Ill. 1st Dist Ct. App). Defendant's avoidance or affirmative defense [motion to dismiss] citing statute of limitations was germane to the Federal district court USAM 4-4.210 "United States attorney should be vigilant in moving to dismiss in the district court." Bowen, 487 U.S. 879, 910 n.48.

The defendant, United States' affirmative defense motion to dismiss citing statute of limitation had "tolled" when, defendant failed to "plead or otherwise defend" after (30) years [10,950 days and (3) waiver later]; "equitable tolling can be applied against the United States, despite the Spending Clause, see, e.g. United States v. Wong, 135 S.Ct. 1625 (2015).

x. **Equitable Tolling In Cases Involving Fraud and Fraud Upon The Court By The Court "Denial To Honest Service" Due Process Denial Fifth Amendment**

Basically, the Judicial Department [Caucasian judges] grabbed nails and hammers and nailed the courthouse doors shut, the problem being, the judges and plaintiff are the only parties locked inside the courtroom at the time, defendant had been a no-show for (29) years then, in the 30th year [2017] now, there is this knock at the door, as if, the judge doesn't know it's the co-conspirator defendant and the judge asks "who is it", and the defendant says "it's me United States", and the plaintiff says "I've been looking for that guy." So, the judges grab the hammer and removes the nails, the defendant walks in and says, "you guys haven't finished, but I have a suggestion, I say the statute of limitations to hear this has lapsed", and the judge says, "let me check my calendar, you know, I think you're right, case dismissed", the plaintiff says "but judge, I have proof of criminal conduct and criminal admission by the defendant", and the judge says "does it involve me", and the plaintiff says, "I'm more than happy to report, yes judge" and the judge says, "you're case is really dismissed."

So, under the court's reasoning a conspiracy between the judges and defendant isn't material to afford "equitable tolling" affecting the statute of limitations under S 2501. Under the tenure of Chief Justice Rehnquist from 1989-2005 presided over a civil case enjoining a Title III felony not rendered to decision, and Chief Justice Roberts from 2005-present continues to preside over the same civil case enjoining a Title III felony, and the defendant has handed-out more waivers than the Boston Celtics have basketball championships. Under these kind of circumstances the odds stacked against the plaintiff by the Judicial Department, "equitable tolling plaintiff is not required to sue within (any) statutory period if he cannot in the circumstances reasonably be expected to do so. [Dixon v. United States, 1999 U.S. App. Lexis 13215 (10th Cir Okla 1999).

Purportedly, litigation based on questionable application of the law, judicial interpretation under the Constitution, requiring due process Fifth Amendment, constitutional challenges to a court's statutory jurisdiction, rules promulgated are not in the public interest, and breaks no new legal ground [nonprecedential].

xi. **Merits Panel's Opinion Acknowledged Material Fact RCFC 55 Default Against United States [Not Used] Contravenes Constitution "Fundamental Law"**

"Furthermore, default judgments are governed by RCFC 55. Plaintiff cannot obtain such a judgment against the United States." (Trial Court, Judge Futey's Opinion, paragraph 2, sec. **PROCEDURAL HISTORY**, pg. 6).

"Claims Court Rule 55(a) provides that the clerk **must** enter default if the party "has failed to plead or otherwise defend." (Merits panel's Opinion, paragraph 1. Pg. 4).

Defendant's trial attorney acknowledge the government failed to "plead or defend" against plaintiff's motion for declaratory judgment-default on or before April 3, 2017, accordingly, the merits panel's opinion clerk's office was mandated to enter **default** RCFC 55(a), if, a "party fails to plead or otherwise defend" or the alternate Senior Judge Firestone [first judge] under RCFC 55(b)(2) was to enter a bench default against the defendant based upon plaintiff's 2nd motion [Partial Motion for Declaratory Judgment-Default]; the Judicial Department [district court(s) and Claims Court] and its functionaries failed to enter defendant's default due process denial Fifth Amendment.

Opinions of the trial court, merits panel and Federal Circuit en banc omitted referencing the trial court Senior Judge Firestone [first judge] set the automatically-generated deadline of April 3, 2017, "material fact" germane to default judgment "any claim" provision sec. (a)(1) founded upon the Constitution, [Judiciary Act of 1789, sec. 15] "fundamental law" governing default judgments entered by courts of the United States.

Merits panel opinion stating; "The government's response to Mr. Johnson's complaint, however, was not due until May 15, 2017 under RCFC 12(a)(1)(A). The government timely moved to dismiss on May 12, 2017 and did not "fail to plead"; was moot relevant to plaintiff's complaint when, defendant "failed to plead or

otherwise defend" defendant's avoidance or affirmative defense to plaintiff's motion for declaratory judgment-default set under the trial court's automatically-generated deadline of April 3, 2017.

Johnson v. United States had been litigated in the Federal district courts [Eighth Circuit and District of Columbia Circuit], the trial court and merits panel ignored litigations conducted in the Federal district court, and plaintiff's avoidance defense under S 1491(a)(1) "or agency regulation" USAM, sec. 4-4.210 defendant "United States Attorney should be vigilant in moving to **dismiss** in the district court"; citing Bowen v. Massachusetts, 487 U.S. 879, 910 n. 48 (1988); North Star Alaska v. United States, 14 F.3d 36, 37 (9th Cir.) cert. denied, 114 S.Ct. 2706 (1994).

D. FULL FAITH AND CREDIT CLAUSE

A court of the United States [court of appeals Federal Circuit] presents itself as this semi-insular agency subject only to precedent set by Supreme Court and Federal Circuit decisions, even if, sister agency [Federal appeal court] decisions aren't considered during Federal Circuit deliberations not due "full faith and credit," notwithstanding Claims Court RCFC 5.1 Challenges to Statutes [Not Used], the Federal Circuit appellate rules do not contain a corresponding Challenges to Statutes [Not Used]. The merits panel and Court en banc arbitrarily and capriciously focused on the Tucker Act [contract] as the trial court's 'primary jurisdiction,' but S 1491, sec. (a)(1) contains the word Constitution [supreme law], and would be the "primary" fundamental law on the question of Claims Court jurisdiction, and merits panel and Federal Circuit en banc's deliberations Supreme Court precedent in Marbury controlled, "it is the province and duty of the court to say what the law is"; based upon the defendant arguing Tucker Act [contract] affords jurisdiction, and the plaintiff arguing the Constitution affords jurisdiction, and whether [default] within itself constitutes a claim under sec (a)(1) "any claim" provision, and would the Constitution "fundamental law" [Judiciary Act of 1789, sec. 15] governing default judgment entered by courts of the United States preempts RCFC 55 Default Against United States [Not Used], if the Claims Court qualifies as a "court of the United States," sec. 15, id, would be grounds to strike down RCFC Rule 55 as unconstitutional. The merits panel and Federal Circuit en

banc [opinions] were intentionally silent [not addressing] appellant's constitutional challenge to 28 U.S.C. S 1491 in whole or in part.

xii. **Court(s) Below Used Non-Controlling Precedent(s) Contravening The Constitution [Supreme Law]; Supremacy Clause Preempting**

Judiciary Act of 1789, sections 13-14, by reference dealt with the establishment of the Supreme Court, Federal district court and Circuit Court of appeals then, in sec. 15 uses the wording; "in all said courts of the United States" is unambiguous, future reference, too, include the United States Court of Federal Claims and court of appeals Federal Circuit not established by Congress until 1866 under Article 1, sec. 8, cl. 9, would fall within "in all said court of the United States."

Court of Federal Claims amended to an Article III, sec. 2, court by Congress in 1866 "shall have power in the trial of actions at law", sec. 15, id, [tort claims] to address civil wrong, and Court of Federal Claims having power in actions at law "to give judgment against him or her by default." Id.

"The Tucker Act explicitly excludes tort claims from this Court's jurisdiction, 28 U.S.C. S 1491(a)(1) the trial court citing further; "[t]he plain language of the Tucker Act excludes from the Court of Federal Claims jurisdiction claims sounding in tort." Rick's Mushroom Serv., Inc. v. United States, 521 F.3d 1338, 1343 (Fed. Cir. 2008); and merit panel and Court en banc Affirmed; clear error.

Whether intentionally or unintentionally Congress omitted the wording Tucker Act but used the word **contract** in the opening text S 1491 sec. (a)(1); Congress also including in the opening text the word Constitution, and the trial court and merits panel construed jurisdiction based upon Tucker Act [contract] as primary for dismissal and affirming; but the judge(s) were to regard, a constitution, in fact as fundamental law under sec. (a)(1) "any claim" provision, Constitution [supremacy clause]. It ii the petitioner's argument the trial court [Claims Court] erred in dismissing continuation the denial to "privileges and immunities," and merits panel and Federal Circuit en banc affirming citing the Claims Court's jurisdiction under 28 U.S.C. S 1491 was "primarily" under Tucker Act.

xiii. **"Statute(s) Thus Construed Is Valid Exercise of Congress "elastic powers"; Jones v. Alfred H. Mayer, Co., 397 U.S. 409 (1968)**

28 U.S.C. S 2071 grants Supreme Court [Chief Justice] and Judicial Conference authority to promulgate the Federal Rules of Civil Procedures, and once promulgated were adopted by Congress [House Judiciary Committee]; and-

(a). S 2071 in pertinent part: "all **courts** established by Act of Congress may...prescribe rules. Such rules shall be consistent with Acts of Congress and rules of practice and procedures under section S 2072"; and-

(b). S 28 U.S.C. S 2072 in pertinent part: "Such rules shall not abridge, enlarge or modify any substantive right."

"Where rights secured by the Constitution are involved, there **can be no rule making or legislation**, which could abrogate them." Miranda v. Arizona, 384 U.S. 436 (1966).

Judiciary Act of 1789, Sec. 17 states in pertinent part: "And be it further enacted, That all the said courts of the United States shall have power to...(b)... make and establish all necessary rules for the orderly conducting business in the said courts, **provided** such rules are not **repugnant** to the laws of the United States.

Claims Court [Article III, sec. 2] court of jurisdiction promulgated RCFC 55 Default Against United States [Not Used] abrogating "fundamental law" Judiciary Act of 1789, sec. 15, "courts of the United States...to enter judgment against him or her by default", and RCFC 55 contradicting its preempting counterpart Rule 55 Fed. R. Civ. Proc. adopted by Congress [House Judiciary Committee] addressing default judgments against United States; and RCFC 5.1. Challenges to Statutes [Not Used] repugnant against and contravening due process Fifth Amendment, and RCFC 37 Jury Trial Demand [Not Used] contravenes Seventh Amendment, and RCFC 38 Jury Trial and Bench Trial [Not Used]; and RCFC 39 Motion Hearing [Not Used] repugnant against the right to public trial Sixth Amendment by was of the due process Fifth Amendment, and the right to jury trail preserved inviolate Seventh Amendment.

Congress enacted 28 U.S.C. S 2502 granting Claims Court [directive verdict] jurisdiction unconstitutional "prior restraint" on the right to jury trial preserved inviolate contravening Seventh Amendment, a Seventh Amendment deprivation fact supported by the trial court's opinion, sec, VIII, paragraph 1, pg. 18).

"Plaintiff also demands a jury trial, however, "[b]y filing in the Court of Federal Claims one waives the right to a jury trial." Arunga v. United States, 465 F. App's 966, 967 n.2 (Fed. Cir. 2012) (citing James v. Caldera, 159 F.3d 573, 589-90 (Fed. Cir. 1998).

October 2, 2017, Supreme Court filed petitioner's writ of certiorari before judgment of the court of appeals S.Ct. Rule 11, and on October 30, 2017, petitioner's appeal and Rule 5.1 Memorandum [constitutional challenges] were docketed in re appeal No. 17-6524; and-

(a). RCFC 5.1 Challenges to Statutes [Not Used] subject matter [constitutional challenges] removed from Federal Circuit per S.Ct. R. 11 post docketing by Supreme Court on October 30, 2017; merits panel and Court en banc opinions; "Void judgment is one entered without jurisdiction over the parties or subject matter"; Peoples v. Sales, 551 N.E.2d 1350 (Ill.App. 2 Dist. 1990).

Fed. R. Civ. P. 5.1(a) Notice By A Party. "A party that files a pleading, written motion, or other paper drawing into question the constitutionality of a federal...statute must promptly, sec. 1 "File a notice of constitutional question stating the question and identifying the paper that raises it"; and-

(a). In forma pauperis appeal clerk's **duty** to effectuate service of process 28 U.S.C. S 1915; Rule 5.1(a)(2)(d) No Forfeiture. "...the court's failure to certify a constitutional claim or defense that is otherwise timely asserted."

Merits panel and Federal Circuit en banc knew RCFC 5.1 Challenges to Statutes [Not Used] was not germane at the time of appellant's appeal when, Federal Circuit deliberation were governed under Supreme Court constitutional precedent set by the Marbury Court (1803) controlled. Merits panel and Federal Circuit en banc in order to comply with the Marbury Court, merits panel had to certify to

attorney general under preempting Rule 5.1(a)(2)(b) Fed. R. Civ. Proc., and attorney general had (60) days to intervene; merits panel true-to-form did not certify to attorney general, but effectuated service of process upon Trial Attorney Koprowski, Commercial Litigation Branch, DOJ, and appellant's constitutional challenges once "timely asserted" was germane throughout the appellate process Rule 5.1(a)(2)(d) "No Forfeiture" provision; and the Federal Circuit en banc knew absent certifying to attorney general by the merits panel, the Federal Circuit en ban could have set-aside the opinion of the merits panel denial of due process Fifth Amendment; "judgment entered in violation of due process, must be set-aside"; Jaffe, Asher, 158 F.R.D. at 278.

Judicial Departments promulgating rules abrogating due process, or rules repugnant against laws of the United States, A traditional factor in any due process analysis is "the protection implicit in the office of the functionary whose conduct is challenged." Anti-Facist Committee v. McGrath, 341 U.S. at 341 U.S. 163 (Frankfuter, J., concurring), e.g. citing Goss v. Lopez, 419 U.S. 565 (1975).

Merits panel's failure to certify to attorney general, and merits panel "specific intent" not certifying to attorney general was to avoid compliance with Supreme Court holding in the Marbury decision "it is the province and duty of the court to determine what the law is", in the event, attorney general did intervene "to plead or otherwise defend' the constitutionality of statues challenged by the appellant, notwithstanding Federal Circuit [en banc] determining to "affirm" the merit panel 'stealth' denial of due process on the laws challenged by not to certifying to attorney general, resulting in 'prior restraint' upon the Federal Circuit en banc Rule 5.1(a)(2)(d) Fed. R. Civ. P, Federal Circuit en banc could not enter an order rejecting appellant's constitutional challenges.

xiv. **Supreme Court and Federal Circuit "Due Process Denial" Intertwined Under RCFC 5.1 and Rule 5.1 Fed. R. Civ. Proc. and Proper Venue Question**

28 U.S.C. S 2071 Chief Justice and Judicial Conference promulgated Rule 5(a)(2)(b) mandating certification to attorney general in appeals challenging laws

passed by Congress. Petitioner submitted for filing with said appeal an accompanying 5.1 Memorandum [constitutional challenges], but the Justices [Parties] did not certify to attorney general and did not file petitioner's supplemental motion challenging service upon the Solicitor General S.Ct. Rule 29.4(a) a due process denial Fifth Amendment.

Supreme Court after promulgating preempting Rule 5.1(a)(2)(b) and (a)(2)(d), post filing and docketing petitioner's appeal [writ of certiorari S. Ct. Rule 11 Certiorari to a United States Court of Appeals Before Judgment] and accompanying Rule 5.1 Memorandum addressing petitioner's constitutional challenges, the Court was attempting to avoid its precedent set by the Marbury Court, November 7, 2017, Solicitor General Noel J. Francisco for, defendant United States true-to-form executed a waiver in appeal No. 17-6524.

The Justices [Parties] caused to be filed and docketed petitioner's Rule 5.1 Memorandum addressing constitutional challenges to laws passed by Congress then, on December 4, 2017, said Justices [Parties] entered an order denying petitioner's writ of certiorari without remand.

Ordinarily, the Supreme Court denying certiorari review has no merit on the case below in the court of appeals Federal Circuit; but the Supreme Court denying certiorari review of petitioner's Rule 5.1 constitutional challenges had a legal effect on the merit [jurisdiction over the subject matter] in appeal No. 17-2569 in the court below, since the Claims Court had promulgated RCFC 5.1 Challenges to Statutes [Not Used] and Federal Circuit deliberation did not go to question of merit; Supreme Court [proper venue] had exclusive appellate subject matter jurisdiction over petitioner's constitutional challenges Rule 5.1.

The Justices [Parties], Federal Circuit en banc and merits panel without comment on petitioner's 5.1 constitutional challenges, denied petitioner the equal protection of law Fifth Amendment, see, e.g. collection of cases, pg. 2, Fifth Amendment constitutional challenges addressed by Supreme Court, and, the Justices [Parties] failed to comply with its own precedent in the Marbury Court holding "it is emphatically the province and duty of the [judicial branch] to say what the law is", and determine the "constitutionality of a statute" passed by Congress.

The court of appeals for the Federal Circuit under appellant's appeal [rehearing en banc] knew or should have known the instructions on seeking a petition for rehearing en banc was appropriate when, "the party seeking rehearing en banc must show that...the merits panel has failed to follow identifiable decisions of the U.S. Supreme Court." The merits panel and Federal Circuit en banc failed to "perform fiduciary duties lawfully owed" under Supreme Court's holding in Marbury "to say what the law is" germane to appellant's constitutional challenges under preempting counterpart Rule 5.1 Fed. R. Civ. P., notwithstanding, RCFC 5.1 Challenges to Statutes [Not Used], RCFC 5.1 being repugnant against a law of the United States 28 U.S.C. S 2702 "abrogating" plaintiff's right to equal protection of law Fifth Amendment.

Appellate rules of the Federal Circuit does not contain a local rule Challenges to Statutes [Not Used], the merits panel and Federal Circuit en banc judicial review were not restrained based upon Claims Court promulgated RCFC 5.1; the Constitution the "fundamental law" and precedent holding by the Marbury Court controlled during merits panel and Federal Circuit en banc appellate review.

xv. **Obstruction of Justice "Tampering With Pending Federal Proceeding"**

Defendants President Donald J. Trump and Attorney General Jeff Sessions tampered with a federal proceeding No. 1:17-cv-0353, beyond the scope of the president's Article II power to nominate judges to the federal bench.

Claims Court and Article III, sec. 2 "court of the United States" fall under the supervisory authority of the Supreme Court and [Circuit Justice]; Senior Judge(s) assigned to the court [Claims Court] to determine the rotation of the position as Chief Judge of the court. March 13, 2017 President Donald J. Trump elevates Senior Judge Susan B. Braden to Chief Judge of the Claims Court, a process contravening the "checks and balance" doctrine Tenth Amendment, accordingly, the President's Article 2 powers to nominate, or give notice of the president's choice for appointment of Senior Judge Braden to Chief Judge of the Claims Court, and Congress [Senate's] Article 1 powers to affirm or reject said appointment to Chief Judge, normal, check and balance observed with other Article III courts [Supreme Court, Federal district courts and circuit court of appeals].

Chief Judge Braden assigned Senior Judge Nancy B. Firestone plaintiff's complaint and Motion for declaratory judgment-default filed March 15, 2017 No. 1:17-cv-00353. Senior Judge Firestone sets the court's automatically-generated deadline of April 3, 2017 for defendant to respond to plaintiff's motion for declaratory judgment-default, and defendant failed to "plead or otherwise defend" on or before April 3, 2017 a material fact acknowledged by Trial Attorney Agatha Koprowski [defendant's Motion for Extension of Time to File and For Enlargement]; and according to the merits panel's opinion the clerk should have entered defendant's default RCFC 55(a), see, e.g. obstruction of justice 18 S 1505.

"to neglect and ignore a date for action in a court proceeding is in actuality a thinly-veiled species of disrespect or contempt for the court." Accord H&R Barge Co. v. Garber Bro., 71 F.R.D. 5, 10 (E.D. La. 1974); see also RCFC 4.1(a)(1) Contempt Proceeding Order.

More-likely-than-not doctrine Senior Judge Firestone was prepared to enter a bench default judgment against defendant by court RCFC 55(2)(b). President Donald Trump and Attorney Generally Sessions during illegal ex parte contact / communication with Chief Judge Braden sought the removal of Senior Judge Firestone. May 1, 2017 Chief Judge Braden without any Senior Judge Firestone having a prior "conflict of interest" [associational or familiarity] outside in the instant case involving the plaintiff, Chief Judge Braden sua sponte entered an order removing Senior Judge Firestone citing the recusing purportedly was "in the interest of justice." The recusing order by Chief Judge Braden occurred after the defendant United States had defaulted under the court [Senior Judge Firestone's] automatically-generated deadline set on April 3, 2017.

Defendants President Trump, Attorney General Sessions and Chief Judge Braden in a scheme to defraud plaintiff of due process Fifth Amendment, too, default judgment [Judiciary Act of 1789, sec. 15] "said court of the United States...to give judgment against him or her by default," defendants brought back to the Claims Court retired Senior Judge Bohdan A. Futey and assigned the Senior

Judge No. 1:17-cv-00353. After, defendant failed to "plead or otherwise defend" under the courts automatically-generated deadline of April 3, 2017, defendant was granted a "second bite at the apple," and defendant filed an "untimely" motion to dismiss in the Claims Court [improper venue] when, under DOJ agency regulation USAM 4-4.210 said motion to dismiss had to be filed by United States Attorney germane to the prior Federal district court proceeding in 1989 Johnson v. United States relations back. Defendant in Federal district court and circuit court proceedings in 2010-2014 failed to file said avoidance, or affirmative defense [motion to dismiss] referencing [statute of limitation], and defendant failed to "plead or otherwise defend"; avoidances "time barred" in Claims Court plaintiff's avoidance sec. (a)(1) "any claim" agency regulation USAM 4-4.210.

The "failure to pled an affirmative defense generally results in a waiver of that defense"; Latimer v. Roaring Toyz, Inc., 601 F.3d 1224, 1239 (11th Cir. 2010).

June 7, 2017, Senior Judge Futey entered an order denying plaintiff's motion for declaratory judgment, satisfying the required element "specific intent" mens rea [meeting of minds] defendant and judge, one order recusing [removal] of the judge assigned during pending proceeding, two assigning of retired Senior Judge constituted judge shopping, and thirdly newly assigned judge denying plaintiff's motion for declaratory judgment-default after the fact [defendant's default] on April 3, 2017 fraud against person 18 U.S.C. S 371 denial to "honest service."

xvi. **Collusion Between Trial Court [Judge Futey's] Orders and Merits Panel Altering of Facts In Opinion and Federal Circuit En Banc Affirming**

March 15, 2017, Claims Court's filed plaintiff's complaint and motion for declaratory judgment-default. Senior Judge Futey in the order dated June 7, 2017 stated in part: "Accordingly, plaintiff's partial motions [plural] for declaratory judgment-default are DENIED." Senior Judge Futey in the order dated June 16, 2017 stated in part: "On June 7, 2017, the court denied plaintiff's motions [plural] for declaratory judgment," acknowledging the court granted the defendant a "second bite at the apple" post default by the defendant on April 3, 2017.

Senior Judge Futey acknowledges plaintiff filed (2) individual motions an original motion for declaratory judgment filed by Claims Court on March 15, 2017 [ECF No. 3] and partial motion for declaratory judgment-default filed on April 10, 2017 [ECF No. 6] after defendant had defaulted under the court's automatically-generated deadline, prior too, defendant filing said motion for leave to file out of time on April 18, 2017. Defendant's motion seeking 'more time' to respond to plaintiff's motion for declaratory judgment-default was "not timely" based upon (2) factors, one a motion seeking 'more time' would have been material to RCFC 12(a)(1)(A) defendant requesting additional time to the (60) days, if, the court had not shortened the response time from March 15, 2017 to April 3, 2017 a time period covering less than (60) days, but the trial court shortened the (60) days under RCFC 12(a)(1)(A) to (18) days under RCFC 12(4)(C), two defendant's motion for 'more time' should have been filed, contesting the shortened deadline imposed under RCFC 4(4)(C) seeking the extension for 'more time', prior too, the defendant's default under the April 3, 2017 automatically-generated deadline.

The merits panel's opinion dated January 12, 2018 states in part: "Mr. Johnson also moved for "Partial Declaratory Judgment-Default," the second motion filed on April 10, 2017 [ECF No. 6], the opinion did not mention the motion captioned Motion For Declaratory Judgment-Default filed March 15, 2017 [ECF No. 3], material to the court's automatically-generated deadline of April 3, 2017 which defendant failed to "plead or otherwise defend" against [default] and not the complaint; "Claims Court Rule 55(a) provides that the clerk must enter default if the party "has failed to plead or otherwise defend," (Opinion, id. pg. 4); and-

(a). The opinion further states: "The government's response to Mr. Johnson's **complaint**, however, was not due until May 15, 2017," was moot, after the defendant failed to "plead or otherwise defend" against said **motion** [declaratory judgment-default] under the April 3, 2017 deadline; and-

(b). The allegations raised in the **complaint; "We accept his undisputed allegations as true and draw all reasonable inferences in his favor";** Trusted Integration, Inc. v. United States, 659 F.3d 1159, 1163 (Fed. Cir. 2011) (Opinion, id. at pg. 3), undisputed fact of civil rights deprivation enjoining Title III injury "in fact" and default before the Federal district court, based upon the defendant's

default failure to "plead or otherwise defend" against said **motion** [declaratory judgment-default] filed March 15, 2017 a response due on or before April 3, 2017.

xvii. **Merit Panel and Federal Circuit En Banc to Certify Question [Constitutional Challenges] To Supreme Court [Proper Venue] Exclusive Jurisdiction**

October 19, 2017, the merits panel entered an order granting appellant [Johnson's] motion for leave to proceed in forma pauperis 28 U.S.C. S 1915. The Claims Court having promulgated RCFC 5.1 Challenges to Statutes [Not Used], on September 27, 2017, appellant submitted for filing his motion to certify question(s) by the merit panel of appellant's constitutional challenges to Supreme Court, and pursuant to 28 S 1915 [in forma pauperis] proceedings "the court shall perform all duties in such cases" sua sponte. The merits panel and Federal Circuit en banc failure to certify to attorney general, and failing to certify constitutional challenges to proper venue [Supreme Court] was a denial to due process Fifth Amendment, since Claims Court promulgated RCFC 5.1 Challenges to Statutes [Not Used], was the 'stealth' reasoning the Federal Circuit en banc never addressed appellant's avoidance and affirmative defenses under Marbury and the Constitution "fundamental law."

"There is a standard...maxim of deciding cases that prefers avoiding constitutional questions if there are other grounds for a decision." Jenny C. Pizer, 2018.

In the instant case, the Claims Court's dismissal citing want of jurisdiction under color of law 28 S 1491(a) "any claim" provision default claim, a continuing pattern and practice by the Federal district court dismissing under color of federal law 28 U.S.C. S 1915 civil rights case enjoining Title III felony admission; constitutional questions were unavoidable under due process Fifth Amendment, and were material to the question of jurisdiction under 28 U.S.C. S 1491, and contesting promulgated rules contravening laws of the United States and the Constitution [supreme law], and lower appellate courts not adjudicating plaintiff's appeal based upon higher court precedent [Marbury Court].

xviii. **Constitutional Challenges "Timely Asserted" No Forfeiture**

In forma pauperis appeal petitioner's constitutional challenges submitted for filing with Supreme Court filed and docketed under No. 17-6524 "timely asserted" not forfeited relations back, see, e.g. Rule 5(2)(d) "...court's failure to certify does not forfeit a constitutional claim or defense that is otherwise timely asserted," Judicial Department and Executive Branch [interagency] conspiracy to defraud petitioner; failure to certify by Court and attorney general lack of intervention to "plead or otherwise defend" against petitioner's constitutional challenges [default] by attorney general.

xix. **42 U.S.C. S 1983 "Implied Money-Mandating"; "King Can Do No Wrong"**

42 U.S.C S 1983 in pertinent part: "any citizen of the United States...within the jurisdiction thereof of the deprivation of any right, privileges, or immunities secured by the Constitution and law, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

Judicial Department [Supreme Court, Federal district court and Circuit Court, Claims Court, Merits Panel and Federal Circuit en banc] has conspired to deny plaintiff 'inter alia' to due process Fifth Amendment. Plaintiff alleged in 1989-1991 a Fourth Amendment deprivation by the defendant United States and co-conspirator State of Missouri under Supreme Court's "exclusive jurisdiction" [Judiciary Act of 1789, sec. 13]. 2009-2010, defendant United States' agency Department of Justice, DOJ, under FOIA acknowledged agencies of the Intelligence Community [CIA / NSA] and "gathered" and "retained" information on the plaintiff in violation of the National Security Act of 1947 prohibition against the CIA performing "police powers" inside the United States against U.S. persons [Title III felony]. In this case, plaintiff was able to make a specific claim addressing civil rights deprivation, that were more than conclusory statements, and, defendant's acknowledgment of criminal Title III felony injury "in fact", that supported plaintiff's claim, that the Judicial Department refusing plaintiff redress Fifth Amendment had cause plaintiff substantial harm [time, delay, expense] that was independent from the harm caused by the governmental Fourth Amendment search and seizure based upon the illegal domestic electronic surveillance and interception program [criminal enterprise] RICO.

Notwithstanding, S 1983 unambiguously limited liability in the amount of $5,000 to a person's survivor if, the deprivation caused the death of a person, there is no ambiguity money-mandating civil damages recovery is allowed "right to sue" in action at law [tort] for civil wrong [Federal district court]. Defendant, United States before the Federal district Court failed "to plead or otherwise defend" constituted default Rule 55 Fed. R. Civ. Proc., and defendant was "liable" S 1983, supra, under the Constitution [Judiciary Act of 1789] sec. 15, "court of the United States to give judgment against him or her by default," in 1991 under the Supreme Court's "exclusive jurisdiction" sec. 13, id, default proceeding litigation involving a state, and in 2017 Claims Court's jurisdiction S 1491(a) provision "any claim" [default judgment] founded under the Constitution, sec. 15, id.

"Claims Court...It concluded it lacked jurisdiction over Mr. Johnson's tort claims and claims relying on provisions that do not create a right for money damages against the United States." (Merits Panel's Opinion, paragraph 2, pg. 2). Federal Circuit en banc-AFFIRMING: clear error.

Or, plaintiff could constitutionally challenge S 1983 as unconstitutional being arbitrary, capricious and vague, Congressional ambiguity in the statute [S 1983] not citing "dollar amount" authorized to be recovered in suit action at law denial to privileges, or immunities not involving the death of a person, but actual noted $5,000 can be recovered in the event of a person's death based upon the deprivation. In addition, FTCA S 2674 "The United States shall be liable, respecting provisions of this Title relating to tort claims, in the same manner and to the same extent as private individual under like circumstances," every statute enacted by Congress affording 'civil relief' and 'damages' without citing an actual money amount able to be recovered could be constitutional challenges, therefore there is ambiguity in basically every statute [civil redress] enacted by Congress.

Defendant filed a motion to dismiss stating plaintiff failed to cite a money-mandating statute right to recover money against the United States; Plaintiff filed a motion seeking a "more definitive statement" RCFC 12(e) on the government's

position on the wording in statutes enacted by Congress citing "right to sue", and "damages recoverable", asking the question relevant to S 1983, "What is a party suing for money, or apples and oranges? Defendant filed a motion to stay the trial court ruling on plaintiff's motion, and the trial court granting defendant's motion for "stay" in an order dated June 16, 2017, and trial court denied plaintiff's motions in their entirety in an order dated June 27, 2017. So, the trial court and defendant conspired not to address plaintiff's motion for more definitive statement; plaintiff's motion was materially relevant to the defendant in the motion to dismiss citing plaintiff failed to cite a money-mandating statute.

"Claims Court did not err in dismissing the complaint or denying Mr. Johnson's motion, we affirm." (Merits Panel's Opinion, paragraph 1, pg. 2). And, Federal Circuit en banc-Affirming; clear error.

REASONS FOR GRANTING RELIEF

The Supreme Court also recognizing **non-contractual** basis of Tucker Act jurisdiction which includes those claims "founded either upon the Constitution, or any Act of Congress, or any regulation of a department"; Testan, 424 U.S. at 398, 96 S.Ct. 9, 48.

Appellant's constitutional challenges raised not addressed by the merits panel and Federal Circuit en banc "prevented plaintiff from fully presenting his case so that no real contest occurred would be sufficient to set aside a prior judgment"; United States v. Throckmorton, 98 U.S. 61 (1878), and denial to a "full and fair defense"; Toledo Scale Co. v. Computing Scale Co., 261 U.S. 399 (1923).

Supreme Court under the tenures of Chief Justice William H. Rehnquist, deceased, and Chief Justice John G. Roberts, Jr., used "time", and "delay", and non-jurisdictional proceedings, or extrajudicial scheme(s) with the Executive branch, to defraud or deny petitioner of "privileges and immunities" under due process Fifth Amendment when, the Constitution "fundamental law", id, granted exclusive jurisdiction to Supreme Court, and the Civil Rights Act of 1866 Supreme

Court to be "last court of resort" for the vindication of civil rights in 1991.

Default proceedings were germane to Supreme Court proper venue "exclusive jurisdiction" relations back to Court's 1991 filing Johnson, et al v. United States, et al, and 2017 petitioner's constitutional challenges to law passed by Congress the Court had subject matter jurisdiction; the opinion of the merits panel and Federal Circuit en banc were "void judgments" affirming want of jurisdiction dismissal by Claims Court 28 U.S.C. S 1491, post 1991 want of jurisdiction was germane to Federal district court, circuit court, Claims Court, merits panel and Federal Circuit en banc proceedings when, Supreme Court retained "exclusive jurisdiction"; Justices [Parties] denial of certiorari review was a denial to due process Fifth Amendment, petitioner is due mandamus relief; 1991, Supreme Court failed to exercise the court's "exclusive jurisdiction" post "waiver" by DOJ, Officer of The Solicitor General, Solicitor General Kenneth W. Starr; 1986 Act 18 U.S.C. S 2521 Supreme Court to enter any order warranted, too, compel the attorney general to enjoin, and Court enter an order granting injunctive relief and "final determination" affording "exclusive federal remedy" in civil rights deprivation involving a State; Jett v. Dallas Indep. School Dist, 2702, 149 U.S. 701, 105 (1989).

Plaintiff / Appellant / Petitioner [Johnson] over 30 years has been denied due process of law Fifth Amendment in a scheme by defendant, United States [Judicial Department, Executive Branch and Legislature] to deny privileges and immunities; denial to an "impartial arbiter" in a civil case enjoining Title III felony criminal admission; Goldberg v. Kelly, 397 U.S. 254, 271 (1970). Based upon malfeasance and misfeasance by the Judicial Department the merits panel construed in the opinion fraud upon the court by the court wasn't material to 'equitable tolling' the statute of limitations 28 U.S.C. S 2501, and Federal Circuit en banc-AFFIRMED.

"The Claims Court...It concluded that all claims accruing before March 15, 2011 were barred by the six-year statute of limitations under 28 U.S.C. S 2501]. (Merits Panel's Opinion, paragraph 2, pg. 2). And, Federal Circuit en banc-Affirming; clear error.

Judicial Department and Department of Justice, Office of the Attorney General, conspired to prevent service of process upon et al defendants mandated under 28 U.S.C. S 1915, and attorney general failed to enjoin an action at law [civil rights and Title III proceeding] mandated under 18 U.S.C. S 2521; defendant, United States is the lone party before Claims Court in default proceedings, under "exclusive federal remedy" involving a state; Jett, 2702, 149 U.S. 701, 105, see, e.g. FTCA the real defendant is the United States and should relief be awarded, it would be against the resources of the United States: Kentucky v. Graham, 473 U.S. 159 (1983). In this case, certain carry-over judicial beliefs of the Judicial Department were manifested not the 'rule of law' Constitution, or federal laws, or higher court precedent one, Dred Scott decision a majority of the Court articulating; "negroes do not have any rights" Caucasian judges are bound to respect, two English doctrine the "King can do no wrong" applies in cases involving pro se negro litigants, and thirdly rights afforded slaves and their descendents under the Constitution are mere perception; substantive rights guaranteed to all citizens under the 1866 Civil Rights Act are subjectively applied based upon race and class animus discrimination in the instant case.

The "King" [government] shots a citizen [surveils plaintiffs], and voluntarily hands the plaintiff the gun [FOIA disclosures], the injured party under the law takes the gun [FOIA] disclosures to the courthouse, the defendant confesses executes [waivers] acknowledging he shot [surveiled] the plaintiff, and having given the gun [FOIA] disclosures to the injured party, and the wound [Fourth Amendment] deprivation was a direct result of the 'King" shooting a citizen [surveillance] breaking the King's own command [National Security Act], and the court was provided the evidence gun [FOIA] disclosures. But, it wasn't a matter of the King's guilt, it was the guilt [complicity] of the judges appointed by the King

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"We have considered Mr. Johnson's remaining arguments and find them unpersuasive." (Merits Panel's Opinion, paragraph 2, pg. 4). Federal Circuit en banc-Affirming; clear error.

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judges acting in furtherance of the King's conduct.

Trial court [Senior Judge Futey] construed in the opinion the United States, is this, invisible entity not subject to detection by any of the 5 senses [sight, taste, touch, smell, hearing], and has to consent to being "sued"; "The United States, as sovereign, is immune from suit save it consents to be sued", opinion, id, pg. 8. Then the opinion further states; "Almost all of plaintiff's allegations are against individuals...that cannot properly be characterized as the United States. Count 1, for example, lists as defendants the President, Congress...judges, clerks, Attorney General, director of executive agencies." Id., pg. 10. The defendant United States [government] in the trial court's reasoning is not comprised of individuals, and merits panel and Federal Circuit en banc-Affirming. This entity United States cannot commit a criminal acts, only, individuals [employees] within the government [United States] can commit fraud against the United States and against persons 18 U.S.C. S 371; the United States speaks through laws enacted.

Consent to suit by United States: Individuals of executive, legislative and judicial immunity voided in "action at law" case and controversy FTCA and S 1983; acts attributed to United States Government 28 U.S.C. 2671, 28 U.S.C. 2764, 28 U.S.C. S 1346(b), 2671-2680, see, e.g. 60 Stat. 843 [28 U.S.C.A. 1346(b), 2674, 2680].

Judicial Department [Supreme Court, Federal district court and circuit court, Claims Court, merits panel and Federal Circuit en banc] did not reason to "accept his undisputed allegations as true and draw all reasonable inferences in his favor"; Erickson v. Purdue, 551 U.S. 89, 94 (2007); "undisputed cognizable claim" since the defendant acknowledged the Fourth Amendment deprivation [FOIA], and failed to "plead or otherwise defend" in the Federal district court Rule 8(b)(1)(A)(B) then, defendant fails to "timely" "plead or otherwise defend" under the trial court's automatically-generated deadline on April 3, 2017 then defendant files a motion "to dismiss" germane and material to Federal district court proceedings under agency regulation; see, e.g. USAM 4-4.210, and court

precedent in Bowen affirmed a "motion to dismiss" would have been germane to Federal district court proceedings, id, 487 U.S. 879, 910 n.48, and Judicial Department stark disregard of the court's duty in forma pauperis proceedings [service of process] upon et al defendants governed under 28 U.S.C. S 1915, a procedural due process denial contravening Rule 8(a)(2) initial pleading [motion] action at law withheld, and failure to effectuate service violation of "due notice" provision Judiciary Act of 1789, sec. 15, due process denial to privileges and immunities Fifth Amendment, judicial conduct displaying "sufficiently culpable state of mind" and "cognizable independent harm" independent of the defendant, United States' Fourth Amendment deprivation [Title III]; "substantial harm" inter alia to plaintiff, familial and associations right to privacy [liberty].

Justices [Parties] order [per curiam] entered December 4, 2017 denying certiorari review affirms due process denial Fifth Amendment under Court's "exclusive jurisdiction" additional parties being added to original "action at law" relations back Rule 15(c)(1)(B)(C) Fed. R. Civ. P. to court of last resort filing and setting for hearing Johnson, et al v. United States, et al, in 1991, and Justices [Parties] denying review of plaintiff's constitutional challenges Rule 5.1 Fed. R. Civ. P., Supreme Court competent jurisdiction [proper venue] when, merits panel and Federal Circuit en banc could only rule on jurisdiction and not merit, material to Claims Court promulgated local rule RFCF 5.1 Challenges to Statutes [Not Used]. (Justices [Parties] Order attached as Plaintiff's **Appendix F**).

xx. **Obstruction of Justice By Agencies [Judicial Department and DOJ]**

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18 U.S.C. S 1505 "Whoever corruptly...influence, obstruct, or impede the due and administration of law under which any pending proceeding is being had before any...agency of the United States", see, e.g. fraud against the United States or person 18 U.S.C. S 371.

1989-present, Judicial Department and Department of Justice, DOJ, have corruptly impeded plaintiff's right to due process Fifth Amendment, in a scheme to defraud persons [Johnson, et al] to meaningful access to the court for the

vindication of civil rights under the 1866 Civil Right Act. In pending proceeding Judicial Department in a Title III felony admission case and interstate criminal conspiracy under RICO by governments [United States / State of Missouri], judges denied plaintiff inter alia of default judgment under the nation's "fundamental law" [Constitution]; conspiracy to conceal in obstructing service of process during in forma pauperis proceedings, prior too, Federal district court(s) entering orders to dismiss under color of federal law 28 U.S.C. S 1915, or in pending proceedings entering order to dismiss citing want of jurisdiction 28 U.S.C. S 1491 by Claims Court; judicial proceedings having "relations back" Rule 15(c)(1)(B) additional parties [defendants] added post Supreme Court filing and setting for hearing Johnson, et al v. United States, et al in 1991, still pending proceeding.

Agency (DOJ) aided and abetted, and impeded the administration of justice in the failure to comply with federal law 1986 Act 18 U.S.C. S 2521 mandating the attorney general to file suit to enjoin before the Federal district court, post admission to government's Title III felony admission, and DOJ corruptly sought to influence default proceedings in Claims Court "any claim" jurisdiction, by DOJ filing a "untimely" motion to dismiss germane to Federal district court proceeding under agency regulation USAM 4-4.210, subsequently, Judicial Department and DOJ intentional delay and dismissal(s) were to "obstruct" public knowledge, and avoid prosecution of offenses by government employees, and deny vindication [civil judgment] against United States by some non-lawyer pro se Negroes.

CONCLUSION

Supreme Court had "exclusive jurisdiction" relations back to the court's 1991 filing and setting for hearing Johnson, et al v. United States, et al, orders of the Federal district court, circuit court, Claims Court, merits panel and Federal circuit en banc are "nullity" void judgments when, Supreme Court had "exclusive jurisdiction" [original action]; plaintiff is due mandamus relief 28 U.S.C. S 1361 remand to Federal district court [Eighth Circuit] jury trial demand, or default proceeding, or the alternate final determination by Supreme Court S.Ct. Rule 19.2 on motion [constitutional challenges] "timely asserted" in re No. 17-6524 before "lone qualified Justice" S.Ct. Rule 22.1.

5/5/2018

Joseph Johnson, Petitioner, pro se — Date

10338 Bon Oak Dr.
St. Louis, MO 63136
Tel. (314) 867-5407

5/5/2018

Jeffrey L.G. Johnson, Witness — Date

CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing [corrected petition] on the 5th day of May, 2018, via private carrier [FedEx] was mailed to the following.

ATTN:

Associate Justice Neil M. Gorsuch
United States Supreme Court
Office of the Clerk
1 First Street, N.W. Washington, DC 20543

Joseph Johnson