

ORIGINAL

No. 18-8663

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SUPREME COURT U.S.

IN THE
SUPREME COURT OF THE UNITED STATES

Donald Eugene Mallory - PETITIONER

VS.

WILLIAM P. BARR - RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MICHIGAN

PETITION FOR WRIT OF CERTIORARI

Donald Eugene Mallory, Cestui Que Trust
C/O DONALD MALLORY # 142119
L.C.F.
141 First Street
Coldwater, Michigan [49036]

QUESTIONS PRESENTED

(1) IS A PRE-1933 PRIVATE U.S. CITIZEN AND CESTUI QUE TRUST WHO IS NOT AN ENEMY, ALLY OF AN ENEMY, OR FOREIGN NATIONAL PRECLUDED FROM SUING THE U.S. GOVERNMENT FOR THE RETURN OF VESTED PRIVATE TRUST PROPERTY UNDER 50 U.S.C. SEC. 4309(a) BECAUSE OF INCARCERATION?

(2) DID THE LOWER COURTS' RULINGS VIOLATE THE CESTUI QUE TRUST PETITIONER'S 1st, 5th, 9th, & 14th AMENDMENT RIGHTS OF THE U.S. CONSTITUTION WHEN: (a) DENIED THE REDRESS OF GRIEVANCE; (b) JUST COMPENSATION, (c) PROTECTION OF THE CONSTITUTION AND, (d) DUE PROCESS BY REFUSING JUDICIAL REVIEW UNDER 50 U.S.C. SEC. 4309(a) WHERE ARTICLE III ALLOW SUCH SUIT AGAINST THE GOVERNMENT?

LIST OF PARTIES

- All parties appear in the caption of the case on the cover page.
- All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

TABLE OF AUTHORITIES CITED

CASES	PAGE
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Draeger v. Crowley, (D.C. N.Y.) 49 F.S. 215	15
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In re Estate of Shaw, 2004 OK, Civ. App. 38; P. 3d 588 (Div. 2, 2004).	14
In re Marriage of Langham and Kolde, 153 Wash. 2d 553, 106 P. 3d 212 (2005).	13
In re Mossaui, 334 N.J. Super. 112, 756 A.2d 1076 (Ch. Div. 2000).	16
Jewell v. Jewell, 602 S.W. 2d 35 (1980).	13
Jewett Car. Co. v. Kirkpatrick Const. Co., 107 F. 622	16
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Schilling v. Rogers, 363 U.S. 666, 4 L.Ed 2d 1478, 80 S.Ct. 1288.	14
Thompson v. Smith, 154 S.E. 579.	14
Wellington Hotel Associates v Miner, 543 A.2d 656 (R.I. 1988).	16
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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the United States district court appears at Appendix A to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 12/28/2018.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___ A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(d).

For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___ A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

ARTICLE III

Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; - to all Cases affecting Ambassadors, orther public Ministers and Consuls; - to All Cases of admiralty and maritime Jurisdiction; - to Controversies to which the United States shall be a Party; - to Controversies between two or more States; - between a State and Citizens of another State; - between Citizens of different States; -between Citizens of the same State claiming Lands under the Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be a Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The trial of all Claims, except in Cases of Impeachment, shall be by jury; and such trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

AMENDMENT 1

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

AMENDMENT V

No person shall be held for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be witness against himself, nor deprived of life, liberty, or property, without due process of law, nor shall private property be taken for public use, without just compensation.

AMENDMENT XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

AMENDMENT IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Document: 50 USCS § 4309

50 USCS § 4309**Copy Citation**

Current through PL 115-391, approved 12/21/18, with a gap of PL 115-334

**United States Code Service - Titles 1 through 54 TITLE 50. WAR AND NATIONAL
DEFENSE CHAPTER 53. TRADING WITH THE ENEMY**

§ 4309. Claims to property transferred to Custodian; notice of claim; filing; return of property; suits to recover; sale of claimed property in time of war or during national emergency

(a) In general. Any person not an enemy or ally of enemy claiming any interest, right, or title in any money or other property which may have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States, or to whom any debt may be owing from an enemy or ally of enemy whose property or any part thereof shall have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States may file with the said custodian a notice of his claim under oath and in such form and containing such particulars as the said custodian shall require; and the President, if application is made therefor by the claimant, may order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States, or of the interest therein to which the President shall determine said claimant is entitled: *Provided*, That no such order by the President shall bar any person from the prosecution of any suit at law or in equity against the claimant to establish any right, title, or interest which he may have in such money or other property. If the President shall not so order within sixty days after the filing of such application or if the claimant shall have filed the notice as above required and shall have made no application to the President, said claimant may institute a suit in equity in the

Supreme Court of the District of Columbia [the United States District Court for the District of Columbia] or in the district court of the United States for the district in which such claimant resides, or, if a corporation, where it has its principal place of business (to which suit the Alien Property Custodian or the Treasurer of the United States, as the case may be, shall be made a party defendant), to establish the interest, right, title, or debt so claimed, and if so established the court shall order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States or the interest therein to which the court shall determine said claimant is entitled. If suit shall be so instituted, then such money or property shall be retained in the custody of the Alien Property Custodian, or in the Treasury of the United States, as provided in this Act, and until any final judgment or decree which shall be entered in favor of the claimant shall be fully satisfied by payment or conveyance, transfer, assignment, or delivery by the defendant, or by the Alien Property Custodian, or Treasurer of the United States on order of the court, or until final judgment or decree shall be entered against the claimant or suit otherwise terminated: *Provided further*, That upon a determination made by the President, in time of war or during any national emergency declared by the President, that the interest and welfare of the United States require the sale of any property or interest or any part thereof claimed in any suit filed under this subsection and pending on or after the date of enactment of this proviso [enacted Oct. 22, 1962] the Alien Property Custodian or any successor officer, or agency may sell such property or interest or part thereof, in conformity with law applicable to sales of property by him, at any time prior to the entry of final judgment in such suit. No such sale shall be made until thirty days have passed after the publication of notice in the Federal Register of the intention to sell. The net proceeds of any such sale shall be deposited in a special account established in the Treasury, and shall be held in trust by the Secretary of the Treasury pending the entry of final judgment in such suit. Any recovery of any claimant in any such suit in respect of the property or interest or part thereof so sold shall be satisfied from the net proceeds of such sale unless such claimant, within sixty days after receipt of notice of the amount of net proceeds of sale serves upon the Alien Property Custodian, or any successor officer or agency, and files with the court an election to waive all claims to the net proceeds, or any part thereof, and to claim just compensation instead. If the court finds that the claimant has established an interest, right, or title in any property in respect of which such an election has been served and filed, it shall proceed to determine the amount which will constitute just compensation for such interest, right, or title, and shall order payment to the claimant of the amount so determined. An order for the payment of just compensation hereunder shall be a judgment against the United States and shall be payable first from the net proceeds of the sale in an amount not to exceed the amount the claimant would have received had he elected to accept his proportionate part of the net proceeds of the sale, and the balance, if any, shall be

payable in the same manner as are judgments in cases arising under section 1346 of title 28, United States Code [28 USCS § 1346]. The Alien Property Custodian or any successor officer or agency shall, immediately upon the entry of final judgment, notify the Secretary of the Treasury of the determination by final judgment of the claimant's interest and right to the proportionate part of the net proceeds from the sale, and the final determination by judgment of the amount of just compensation in the event the claimant has elected to recover just compensation for the interest in the property he claimed.

(b) Return of property to certain persons, entities, or Governments; determination by President. In respect of all money or other property conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States, if the President shall determine that the owner thereof at the time such money or other property was required to be so conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or at the time when it was voluntarily delivered to him or was seized by him was--

(1) A citizen or subject of any nation or State or free city other than Germany or Austria or Hungary or Austria-Hungary, and is at the time of the return of such money or other property hereunder a citizen or subject of any such nation or State or free city; or

(2) A woman who, at the time of her marriage, was a subject or citizen of a nation which has remained neutral in the war, or of a nation which was associated with the United States in the prosecution of said war, and who, prior to April 6, 1917, intermarried with a subject or citizen of Germany or Austria-Hungary and that the money or other property concerned was not acquired by such woman, either directly or indirectly, from any subject or citizen of Germany or Austria-Hungary subsequent to January 1, 1917; or

(3) A woman who at the time of her marriage was a citizen of the United States, and who prior to April 6, 1917, intermarried with a subject or citizen of Germany or Austria-Hungary, and that the money or other property concerned was not acquired by such woman, either directly or indirectly, from any subject or citizen of Germany or Austria-Hungary subsequent to January 1, 1917; or who was a daughter of a resident citizen of the United States and herself a resident or former resident thereof, or the minor daughter or daughters of such woman, she being deceased; or

(3A) An individual who was at such time a citizen or subject of Germany, Austria, Hungary, or Austria-Hungary, or not a citizen or subject of any nation, State or free city, and that the money or other property concerned was acquired by such individual while a bona fide resident of the United States, and that such individual, on January 1, 1926, and at the time of the return of the money or other property, shall be a bona fide resident of the United States; or

(3B) Any individual who at such time was not a subject or citizen of Germany, Austria, Hungary, or Austria-Hungary, and who is now a citizen or subject of a neutral or allied country:

STATUTE

50 UNITED STATES CODE SERVICE SECTION 4307(C)

If the President shall so require any money or other property including (but not thereby limiting the generality of the above) patents, copyrights, applications therefor, and rights to apply for the same, trade marks, choses in action, and rights and claims of every character and description owing or belonging to or held for, by, on account of, or on behalf of, or for the benefit of, an enemy or ally of enemy, not holding a license granted by the President hereunder, which the President after investigation shall determine is so owing or so belongs or is so held, shall be conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian, or the same may be seized by the Alien Property Custodian; and all property thus acquired shall be held, administered and disposed of as elsewhere provided in this Act.

Any requirement made pursuant to this Act, or a duly certified copy thereof, may be filed, registered, or recorded in any office for the filing, registering, or recording of conveyances, transfers, or assignments of any such property or rights as may be covered by such requirement (including the proper office for filing, registering, or recording conveyances, transfers, or assignments of patents, copyrights, trade-marks, or any rights therein or any other rights); and if so filed, registered, or recorded shall impart the same notice and have the same force and effect as a duly executed conveyance, transfer, or assignment to the Alien Property Custodian so filed, registered, or recorded.

Whenever any such property shall consist of shares of stock or other beneficial interest in any corporation, association, or company or trust, it shall be the duty of the corporation, association, or company or trustee or trustees issuing such shares or any certificates or other instrument representing the same or any other beneficial interest to cancel upon its, his, or their books all shares of stock or any other beneficial standing upon its, his, or their books in the name of any person or persons, or held for, on account of, or on behalf of, or for the benefit of any person or persons who shall have been determined by the President, after investigation, to be an enemy or ally of enemy, and which shall have been required to be conveyed, transferred, assigned, or delivered to the Alien Property Custodian or seized by him, and in lieu thereof to issue certificates or other instruments for such shares or other beneficial interest to the Alien Property Custodian or otherwise, as the Alien Property Custodian shall require.

The sole relief and remedy of any person having any claim to an money or other property heretofore or hereafter conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian, or required so to be, or seized by him shall be that provided by the terms of this Act., and in the event of sale or other disposition of such property by the Alien property Custodian, shall be limited to and enforced against the net proceeds received therefrom and held by the Alien Property Custodian or by the Treasurer of the United States.

STATEMENT OF THE CASE

"One who seeks equity must do equity"

Petitioner is a Pre-1933 Private American National Citizen of the United States being protected by Section 1 of the 14th Amendment to the Constitution of the United States of America. [See Appendix A.]

Petitioner as a Private Citizen has no express or implied contract with either the federal or state governments that may have altered or modified said first class constitutional citizenship status thereby reducing said status in substance to a quasi-corporation/artificial person by operation of law or otherwise.

Petitioner is a member of the American Political Community known as "We the People," having ordained and established the "Constitution for the United States of America" to secure the blessing of liberty for themselves and their posterity of which Petitioner is a beneficiary-interested member.

Petitioner is the beneficiary, the Respondent the Trustee of the Express Grantor Trust: "DONALD EUGENE MALLORY PRIVATE BUSINESS TRUST."

Petitioner in efforts to settle all claims against the Corporate Sole and Trust Estate donaldmallory conveyed to the Internal Revenue Service Advisory Group private bonds and sundry documents recorded with the 2012 Income Tax Return [See Appendix B,C,& C-1].

Petitioner tendered private bonds and securities to the office of Kym L. Worthy, Wayne County Prosecutor, for settlement of claims on account #86-07734-01-FY, tendered under Complex Trust No. DEM-2013-86. All issues related to settlement of the account(s) were the subject of a Private Administrative Remedy and the facts associated therein have been adjudicated and settled pursuant to the Administrative Judgment entered therein. [See Appendix D-1.] Said Administrative Judgment and issues contained therein are part of the Trust

Res. conveyed and transferred into the Private Business Trust and have been reported and authenticated by the 2013 Tax Return. [See Appendix D-10.]

Petitioner delivered to Respondent's office a: Notice of Interest, Notice of Claims, Conveyances and Private Trust Arrangement with Special and Private Trust Indenture, Affidavit of Status, Securities and other Sundry documents which were received by Respondent's office January 26, 2015. [See Appendix E-1.

Upon receipt on January 26, 2015 of Petitioner's Notice of Private Status and Notice of Interest creating the Private Business Trust DONALD EUGENE MALLORY, Respondent's office was provided 30 days to rebut, refuse and/or disclaim Petitioner's status, right to claim Legal Title by Nature to Corporate Sole DONALD EUGENE MALLORY I.D. #385-58-XXXX and its property; right to convey legal title by nature to a Private Trustee and Co-trustee thereby creating Private Business Trust; right to retain and hold equitable title by nature to the Private Business Trust; and appointment of Trusteeship and Co-trusteeship to Respondent's office, etc. [See Appendix E-1 Notice of Interest, pp 7.]

On April 1, 2015 after failure to respond Petitioner caused to be delivered a Statement of Interest, Special Deposits, Notice of Deed, Securities and other Sundry papers demanding performance of the their duties as trustees and provided 20 more days in which to produce a full and private accounting of all assets and accounts of both public and private accounts. [See Appendix E1 & E2.]

Petitioner's Administrative Remedy Award against Kym L. Worthy was reported on the 2013 Income Tax Return and confiscated by the Respondent. The Income Tax Return filing and award was transferred to Respondent via Special Deposit into the Private Business Trust DONALD EUGENE MALLORY. [See Appendix F.]

Due to Respondent's refusal to provide full accounting of all assets and

accounts Petitioner served on Respondent a Notice of Claim demanding release and return of all Trust property. Petitioner has an interest in the Res. and trust property. [See Appendix F & F-Addendum.]

Respondent's refusal to return the Trust Res Property and RELEASE the Beneficiary from government warehousing, left no recourse but to initiate the Bill in Equity under 50 U.S.C. Sec. 4309(a) as an enforcement action to return property.

In Respondent's confirmance of the intent to keep Petitioner's private property, filed a Motion to Dismiss under 28 USC 1915 Sec. (e)(2)(B)(i) and/or Federal Rules of Civil Procedure, Rule 12(b)(6). [See Appendix A.]

The District Court adopted the Report and Recommendation of the Magistrate Judge denying Petitioner's Bill in Equity as frivolous, citing Petitioner is a Prisoner and member of some Sovereign Movement. See Appendix A.]

The United States Sixth Circuit Court of Appeals denied Petitioner's writ of certiorari. [See Appendix A.]

REASONS FOR GRANTING THE PETITION

The lower courts decision and opinion is erroneous and conflicts with Article III, Sec. 2, and the first, fifth, ninth, and fourteenth amendments of the U.S. Constitution.

The Constitution of the United States of America doesn't support the confiscation of its citizens property without the opportunity of due process of law to Redress his grievance and obtain just compensation if required.

Petitioner filed a Notice of Claim under oath in accord with 50 U.S.C. Sec. 4309(a) for the return of vested property as the Cestui Que Trust. The laws are clear, the rights of a Trust will be protected in equity. *Carstens v. Central Nat. Bank & Trust Co. of Des Moines*, 461 NW 2d 331 (Iowa 1990). Where equitable property interest may arise as the result of imposition of a resulting or constructing trust. *Jewell v. Jewell*, 602 S.W. 2d. 315 (1980).

To recover the private trust property transferred to and seized by the United States, Petitioner had to allege and prove: (1) that he is not an enemy, ally of an enemy, or foreign national; (2) that he has an interest, right or title in the vested property and is the true owner thereof, 50 U.S.C. Sec. 4309(a). In other words, he must as a prerequisite to the right to recover sustain the burden of proving that he is the real owner of the property or, as sometimes said, the beneficial owner. *LaDue & Co. v. Rogers*, 259 F.2d 905; *Beck v. Clark*, 88 F.S. 565. Petitioner met his burden, see Appendix A-F.

The established rule through-out the union circuits is that a Court which has taken jurisdiction and cognizance of a cause for any purpose will ordinarily retain jurisdiction. *In re Marriage of Langham and Kolde*, 153 Wash. 2d 553, 106 P. 3d 212 (2005), and decide all issues which are involved in the subject matter of the dispute between the litigants, and award relief which is complete. *Mogensen v. Mogensen*, 273 Neb. 208, 729 N.W. 2d 44 (2007); *In re*

Estate of Shaw, 2004 OK Civ. App. 38, 90 P. 3d 588 (Div. 2, 2004), and finally disposes of the litigation *Brtek v. Cihal*, 245 Neb. 756, 515 N.W. 2d 628 (1994), so as to accomplish full justice between the parties litigant, *Wilmont Homes, Inc. v. Weiler*, 42 Del. Ch. 8, 202 A. 2d 576 (1964).

Petitioner wasn't seeking judicial review for an administrative determination because the administrative remedy and the judicial remedy are each completely independent of each other; Congress has made this clear even to the extent of putting an "and/or" on the statute books. In no sense, then can the independent judicial remedy of 50 U.S.C. Sec. 4309(a) be said to be a judicial review of an administrative action. It is independent of any administrative action being taken. It requires the court to make a plenary, de novo adjudication of all the controverted issues as they would in any lawsuit between citizens. *Schilling v. Rogers*, 363 U.S. 666, 4 L.ed 2d 1478, 80 S.Ct 1288. The lower court erroneously and unconstitutionally applied administrative procedures and law to this case.

The finality and exclusivity of administrative relief didn't apply in this case. Unless of course, the *Cestui Que Trust* doesn't have the right to redress his grievance against the government for the confiscation of his private trust property and refusal to return it without just compensation because he is incarcerated and presumed member of some soveriegn movement of which wasn't proven. Legislative courts enforce statutes, therefore, anytime the court is enforcing a code or statute, it is an administrative hearing. Court's enforcing statues do not act judicially. *Thompson v. Smith*, 154 SE 579; *FRC v. GE*, 28 US 464; *Keller v. pE*, 261 US 428.

The lower court violated Petitioner's fundamental right to due process of the 14TH Amendment of the United States Constitution by refusing a equitable judicial hearing under 50 U.S.C. Sec. 4309(a).

In plain language the statute 50 U.S.C. Sec. 4309(a) allow any person not an enemy or ally of an enemy to sue the Attorney General in Federal court has been previously upheld in *Markham v. Cabell*, 326 U.S. 404, 40, 66 S.Ct. 193, 196, 90 L.Ed. 165. The suit under the Act was Petitioner's only remedy, limited by the provisions of 50 U.S.C. 4307(c), which was upheld in *Becker Steel Co. v. Cummings*, 296 U.S. 74, 79, 56 S.Ct. 15; 80 L.Ed. 54. And since Congress has demonstrated its intent to foreclose judicial review of vested property under the Act. The most extensive judicial scrutiny includes determination of jurisdictional or constitutional facts. The gist of this matter was whether or not petitioner is an enemy or ally of an enemy under the Act. As such it's obvious the issues are both jurisdictional and constitutional, which the court was required to provide not only a judicial determination of the facts but also a de novo judicial hearing under the Act, especially, since the suit was against the U.S. Government and governed by Article III.

The action to review wasn't a suit for the determinations of the Judge in his capacity of an administrative officer. In fact, there isn't a provision that application must be made for administrative relief before suit is brought. There is simply a requirement for the filing of a Notice of Claim of which the statute clearly distinguished from making an application for an administrative return, the later being optional. *Draeger Shipping Co. v. Crowley*, (D.C. NY) 49 F.S. 215; *Duisberg v. Crowley*, (D.C. NY 54 F.S. 365).

Even if there were new law that affects the incarcerated Cestui Que Trust. The newly-created rights which are of a legal nature will be enforced in courts of law, while such rights as are equitable in their nature must be enforced by suits in courts of equity. Hence, if the statute of the state has created new rights of action or grounds of defense which authorizes the blending together of legal and equitable rights and remedies in one pleading, while such pleading

will be proper in the courts of the state it cannot properly be entertained in a federal court. To permit it would be to disregard the distinction between legal and equitable rights and remedies, which is inadmissible. *Jewett Car. Co. v. Kirkpatrick Const. Co.*, 107 F. 622.

Equity will not suffer a wrong without a remedy. *In re Mossau*, 334 N.J. Super. 112, 756 A. 2d 1076 (Ch. Div. 2000); *Discover Bank v. Ownes*, 129 Ohio Misc. 2d. 7, 2004-Ohio 7333, 822 N.E. 2d 869 (Mun. Ct. 2004); *Crafts v. Pitts*, 161 Wash. 2d 16, 162 P. 3d 382 (2007), or as it is sometimes said, will not suffer a right to exist without a remedy. *Christus Health Southwest Texas v. Griffen*, 175 S.W. 3d 548 (Tex. App. Beaumont 2005) review denied (Oct. 27, 2006).

The statutory changes which most jurisdictions provide for the granting of legal and equitable relief by the same tribunal and abolish distinctions in the form of pleadings, the inherent differences between legal and equitable claims are still recognized. *Wellington v. Hotel Associates v. Miner*, 543 A. 2d 656 (R.I. 1988).

As for irregularities in form made by a Petitioner the court stated, technicalities will be disregarded. *Bump v. Stewart, Wimer & Bump*, P.C. 336 N.W. 2d 73 (Iowa 1983), especially to prevent strict rules from creating an injustice. *Murphy v. Murphy*, 698 N.E. 2d. 877 (Ind. Ct. App. 1988), where it stated, "the court is not restricted by which appears on the face of papers constituting memorials of the transaction; it will inquire into the real facts." *Kelly v. Intermountain Planned Parenthood, Inc.* 828 F.S. 788 (D. Mont. 1992).

The disregard for the established rule of law and equity in this case is a blatant violation of Petitioner Cestui Que Trust's constitutional protections and to allow the ruling, order, and judgment to stand will not only have a

devastating affect on this Cestui Que Trust Petitioner and those similarly situated, but will upset the very foundation of America's equitable and legal jurisprudence.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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