

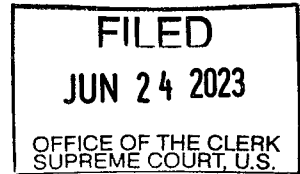
23-200

ORIGINAL

APPEAL NO. -

IN THE SUPREME COURT OF THE UNITED STATES

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BYUNGMIN CHAE  
Petitioner, Appellant

v.

JANET YELLEN, THE UNITED STATES SECRETARY OF THE  
TREASURY ALEJANDRO MAYORKAS, THE UNITED STATES  
SECRETARY OF THE HOMELAND SECURITY,  
THE UNITED STATES DEPARTMENT OF THE  
TREASURY, THE UNITED STATES DEPARTMENT OF  
THE HOMELAND SECURITY,  
AND THE UNITED STATES  
Respondents, Appellees

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

PETITION FOR WRIT OF CERTIORARI

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**QUESTION PRESENTED FOR REVIEW**

Which of the following mail articles are not subject to examination or inspection by Customs?

- A. Bona-fide gifts with an aggregate fair retail value not exceeding \$800 in the country of shipment
- B. Mail packages addressed to officials of the U.S. Government containing merchandise
- C. Diplomatic pouches bearing the official seal of France and certified as only containing documents
- D. Personal and household effects of military and civilian personnel returning to the United States upon the completion of extended duty abroad
- E. Plant material imported by mail for purposes of immediate exportation by mail

LIST OF ALL PARTIES

**PETITIONER:**

**BYUNGMIN CHAE**

**EXAMINEE FOR THE CUSTOMS BROKER LICENSE IN THE  
MONTH OF APRIL 2018**

**RESPONDENT:**

**JANET YELLEN, THE UNITED STATES SECRETARY OF THE  
TREASURY ALEJANDRO MAYORKAS, THE UNITED STATES  
SECRETARY OF THE HOMELAND SECURITY  
THE UNITED STATES DEPARTMENT OF THE TREASURY  
THE UNITED STATES DEPARTMENT OF THE HOMELAND  
SECURITY, AND THE UNITED STATES**

LIST OF RELATED PROCEEDINGS

1. **THE UNITED STATES COURT OF  
INTERNATIONAL TRADE COURT NO. 20-00316  
BYUNGMIN CHAE v. JANET YELLEN THE DEPARTMENT OF  
THE TREASURY, ALEJANDRO MAYORKAS, THE  
DEPARTMENT OF HOMELAND SECURITY AND THE  
UNITED STATES  
JUDGEMENT ENTERED: JUNE 6, 2022**
  
2. **THE UNITED STATES COURT OF APPEALS FOR  
FEDERAL CIRCUIT COURT NO. 22-2017  
BYUNGMIN CHAE v. JANET YELLEN THE DEPARTMENT OF  
THE TREASURY, ALEJANDRO MAYORKAS, THE  
DEPARTMENT OF HOMELAND SECURITY AND THE  
UNITED STATES  
JUDGEMENT ENTERED: APRIL 25, 2023**
  
3. **THE UNITED STATES COURT OF APPEALS FOR  
FEDERAL CIRCUIT COURT NO. 22-2017  
BYUNGMIN CHAE v. JANET YELLEN THE DEPARTMENT OF  
THE TREASURY, ALEJANDRO MAYORKAS, THE  
DEPARTMENT OF HOMELAND SECURITY AND THE  
UNITED STATES  
JUDGEMENT ON PETITION FOR PANEL REHEARING  
AND REHEARING EN BANC ENTERED: JUNE 12,  
2023**

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## TABLE OF CITED AUTHORITIES

### **CASES**

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### **STATUTES**

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19 U.S.C. § 1641(e)(3)	7

### **REGULATIONS**

19 C.F.R. § 111.11(a)(4)	6
19 C.F.R. § 111.16	6
19 C.F.R. § 145.2(b)(3)	1, 10, 11
19 C.F.R. § 145.37 (c)	2, 9, 10
19 C.F.R. § 145.38	10

## CITATIONS OF OPINIONS AND ORDERS

1. The opinion of the Court of International Trade Appeals appears on that court's web site as Slip Op. 22-59 as "Chae vs Secretary of the Treasury"  
  
<https://www.cit.uscourts.gov/content/slip-opinions-2022>
  
2. The order of the court of appeals for the federal circuit appears on that court's web site as Court No 22-2017 with the docket number 29 dated on April 25 2023  
  
<https://ecf.cafc.uscourts.gov/n/beam/servlet/TransportRoom>
  
3. The order of the court of appeals for the federal circuit appears on that court's web site as Court No 22-2017 with the docket number 35 dated on June 12 2023  
  
<https://ecf.cafc.uscourts.gov/n/beam/servlet/TransportRoom>

### BASIS FOR JURISDICTION

1. Byungmin Chae seeks to have the Supreme Court review a judgment of a panel of the United States Court of Appeals for the federal circuit , which was entered on April 25, 2023
2. Byungmin Chae timely filed a Petition for Writ of Certiorari, now pending before this Court.
3. Jurisdiction is conferred upon this Court to review the court of appeals' judgment by 19 U.S.C § 1641(b)(2).

### CONSTITUTIONAL PROVISIONS AND STATUES INVOLVED

1. 19 C.F.R. 145.2 (B) (3) states: Letter class mail known or believed to contain only correspondence or documents addressed to diplomatic missions, consular posts, or the officers thereof, or to international organizations designated by the president as public international organizations pursuant to the International Organizations Act. Mail, other than letter class mail, addressed to the designated international organizations is subject to Customs examination except where the organization certifies under its official seal that the mail contains no dutiable or prohibited articles. Any customs examination made shall, upon request of the addressee

international organization take place in the presence of an appropriate representative of that organization.

Byungmin Chae replies in particular on the exception clause.

2. 19 C.F.R. 145.37 ( C ) states:

Official government documents: Other mail articles addressed to the offices or officials of the U.S. government, believed to contain only official documents, shall be passed free of duty without issuing an entry. Such mail articles, when believed to contain merchandise, shall be treated in the same manner as other mail articles of merchandise so addressed.

Byungmin Chae replies in particular on the mail articles with the official documents of the government and/or the merchandise clause.

### **STATEMENT OF THE CASE**

This case involves the appeal of the administrative decision of the U.S. Customs and Border Protection (“CBP”) denying Plaintiff’s request for the credit for the question number 27 in the Customs Broker License Examination (“CBLE”) dated on April 25, 2018.

In reviewing the legal question in the CBLE, this Court



reviews the basis of Customs' decision to deny credit in accordance with the Administrative Procedure Act ("APA").

O'Quinn v. United States, 24 C.I.T. 324, 325 (2000).

Such a review ensures that the agency engages in reasoned decision-making in grading the exam.Id. For the reasons set forth in the brief below, the record lacks substantial evidence to support CBP's decision to deny Plaintiff credit for the question at issue in this matter. Therefore, Plaintiff requests that the Supreme Court to review the question number 27 of the Customs Exam administered on the April 25, 2018 and to award the Plaintiff with the credit for the question.

On April 25, 2018, Plaintiff sat for the CBLE in Flushing, New York. On May 18, 2018, Plaintiff was informed that he had received a score of 65% on the Exam and had therefore not achieved the requisite minimum passing score of 75%. Subsequently, on June 18, 2018, Plaintiff timely appealed thirteen of the questions from the April 2018 Exam, namely question numbers 2, 5, 24, 27, 28, 33, 39, 43, 50, 54, 57, 68, and 77. On August 23, 2018, Plaintiff received the written notification that he, along with other applicants of the April 2018 exam, received credit for three additional questions, namely questions 28, 66, and 68.

Because Plaintiff already had a correct answer to one of those questions, question 66, he received two additional correct answers, raising his score to 67.5%.

By way of the letter dated on August 23, 2018 Plaintiff was also informed that he did not receive credit for any of the questions originally appealed. On September 28, 2018, Plaintiff filed a timely appeal of eleven questions to the Assistant Commissioner, Office of Trade, as instructed by the CBP's letter. Specifically, Plaintiff appealed questions, 2, 5, 24, 27, 33, 39, 43, 50, 54, 57, and 77. On October 29, 2019, the CBP emailed Plaintiff a copy of a letter dated on May 23, 2019, granting his appeal on three questions (2, 24, and 54), but still leaving him short of a passing score.

Plaintiff's score was 71.25% and he still needed to require a score of 75% to pass. On October 30, 2019, Plaintiff asked the CBP how he could appeal the May 23, 2019, decision. Plaintiff was informed that he had no other recourse. Specifically, Plaintiff was told, "[t]here was no 3<sup>rd</sup> appeal." As a result of this false information from the CBP, Plaintiff took no immediate action, believing he had no further recourse. Contrary to this false

information, Plaintiff subsequently learned that the information provided by CBP was incorrect and that he could appeal to the Court of International Trade (“CIT”).

Consequently, on March 4, 2020, Plaintiff filed a petition with the CIT seeking the review of the previous denials of his appeals. Following motion practice, the Court of the International Trade possessed the jurisdiction as this case involved a challenge to the denial of the customs broker license by U.S. Customs and Border Protection and entered an order permitting Plaintiff one credit out of 5 questions on the day of June 6, 2022. Shortly after the announcement of the decision by the Court of International Trade the plaintiff filed the additional petition with the United States Court of Appeals for the Federal Circuit to further review the denials of the appeals on the day of July 11, 2022. Following the additional motion practices the Court of the Appeals for the Federal Circuit entered an order permitting plaintiff one credit out of 3 questions on the day of April 25, 2023.

However, the plaintiff would like to bring the issue of the credit from the question No. 27 on the April 2018 Customs Broker License examination to the attention of the Supreme Court

to diagnose and challenge the CBP's decision to deny the plaintiff's credit.

### REPLY ARGUMENTS

The denial of a broker's license will be overturned if the decision was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. Kenny v. Snow, 401 F.3d 1359, 1361 (Fed.Cir. 2005). A final administrative decision by the Secretary denying a Customs broker's license will be set aside if it is not supported by substantial evidence. Carrier v. U.S., 20 CIT 227, 228, Slip. Op.96-36 (Feb. 13, 1996).

A license may be denied if the applicant fails to meet certain basic requirements. 19C.F.R. § 111.16. One of the requirements is establishing that the applicant has sufficient knowledge of customs and related laws and regulations and procedures as evidenced by attaining a passing grade of 75% or higher on a written examination. 19 U.S.C. § 1641(b)(2). See also, 19 C.F.R. § 111.11(a)(4). However, "[t]he express objective of the customs broker license exam is to gauge an applicant's command of Customs' position on the relevant rules and regulations." Dunn-

Heiser v. U.S., 374 F.Supp.2d 1276, 1280 (CIT May 31, 2005).

The agency must have engaged in reasoned decision-making in grading the exam. O'Quinn v. U.S., 24 CIT 324, 325, 100 F.Supp.2d 1136, 1138 (2000).

**A. The Failure to Credit Plaintiff's Answers to the Challenged Question Is Not Supported by Substantial Evidence.**

In order for the findings of the Secretary to be upheld, they must be supported by substantial evidence. 19 U.S.C. § 1641(e)(3). "Substantial evidence" is more than a mere scintilla of evidence. Germescheid v. U.S., 19 CIT 706, 708-9, 888 F.Supp. 1197, 1200 (1995). It is that which a reasonable person would accept as adequate to support a conclusion.Id.

**1. Question 27**

Plaintiff appeals the denial of credit for his response to Question 27 of the April 2018 CBLE.

Question 27 states:

Which of the following mail articles are not subject to examination or inspection by customs?

- A. Bona fide gifts with an aggregate fair retail value not exceeding \$800 in the country of shipment
- B. Mail packages addressed to officials of the U.S Government containing merchandise
- C. Diplomatic pouches bearing the official seal of France and certified as only containing documents
- D. Personal and household effects of military and civilian

personnel returning to the United States upon the completion of extended duty abroad  
E. Plant material imported by mail for purposes of immediate exportation by mail

A. Plaintiff answered “B” on Question 27 on the exam. Customs’ official answer to Question 27 on the exam is “C”. Plaintiff contends there are multiple correct answers to this question. While answer “C” is accurate, Plaintiff’s answer, choice “B”, is also accurate under the following reasons.

1) **The Unavailability**

First, the question does not indicate where the mail packages are coming from like the CBP’s answer. The CBP’s answer choice C clearly indicates the country of origin “ official seal of France” and this is how the correct answer has to be to justify but the answer choice B has no country of origin like the correct answer and requires the presumption as claimed by Customs and Border Protection(CBP) that all packages described in the exam are all international outside of the U.S. territory, which you cannot find anywhere in the CFR 19 regulation and any question in the exam should not be based on the presumption but should be based on the facts of statements in the regulation. This is how the plaintiff

claims it is not clear if the mail packages quoted in the choice B of question no. 27 in the exam could be either domestic or international origin. If the CBP used the name of the country “France” in the answer choice C to demonstrate the diplomatic relationship with the United States they should have paid the same attention to the choice B of the question to identify the country of origin and clear the misunderstanding.

2) **The Inapplicability**

Second, in the answer choice B of the question 27 “the mail packages addressed to the officials of the U.S. government containing merchandise” are different from the one in the 19 CFR 145.37 (c) in nature on which the court of appeal for the federal circuit based its decision and here is the regulation 19 CFR 145.37 (c)

*Official Government documents.* Other mail articles addressed to offices or officials of the U.S. Government, believed to contain only official documents, shall be passed free of duty without issuing an entry. **Such mail articles**, when believed to contain merchandise, shall be treated in the same manner as other mail articles of merchandise so addressed.

As quoted in the decision of the court of the appeals for the federal circuit on page 12 the court agrees with the CIT that the regulations are sufficiently clear in the light of 10 CFR 145.2(b)3, 145.37(c) and 145.38. because the mail packages described in the 19 CFR 145.37 (C) are the ones which are believed to have only official documents but these packages are believed and discovered to contain merchandise and these packages shall be treated in the same manner as other mail articles of merchandise addressed.

But please take a close look at the highlighted part “such mail articles” as quoted above. These mail packages include both the official documents and merchandise.

However, the choice B of the question 27 did not include any official documents but just included the merchandise only. And this is why you can not apply the regulation of 19 CFR 145.37 (c).

3) **The Exception**

Thirdly, as noted previously in my statement to lower courts, the mail packages in the choice of the question 27 does not specify who



and what type of merchandise are included in the mail article.

Here is the regulation 19 CFR 145. 2 (B) (3).

(3) Letter class mail known or believed to contain only correspondence or documents addressed to diplomatic missions, consular posts, or the officers thereof, or to international organizations designated by the president as public international organizations pursuant to the International Organizations Act.

Mail, other than letter class mail, addressed to the designated international organizations is subject to Customs examination except where the organization certifies under its official seal that the mail contains no dutiable or prohibited articles. Any customs examination made shall, upon request of the addressee international organization, take place in the presence of an appropriate representative of that organization.

As noted in 19 CFR 145.2 (B) (3) above, mail articles addressed to the designated international organizations is not subject to the customs examination if the organization certifies the mail article has no dutiable or prohibited articles under its official seal.

For example, the U.S. ambassador to the United Nations, which is the international organization, is the official of the U.S. government and may contain some merchandise such as newspaper or magazines from other US ambassador offices worldwide in their mail packages either by in United Nations's own official certified seal or by such as the diplomatic pouch of the Department of the State for their record keeping or military intelligence purposes.

Based on the foregoing, there is no substantial evidence in support of the denial of Plaintiff's challenge to the denial of credit for his response to this question. Credit should be given for the question answered by Plaintiff where there are multiple correct answers amongst the choices. Refusing to provide Plaintiff credit for his answer to Question 27 is arbitrary, unreasonable, and capricious as Plaintiff has demonstrated (a) that the question was at best ambiguous, and (b) by his explanation that Plaintiff understands the CBP's position on relevant rules and regulations.

## CONCLUSION

For the foregoing reasons, the Court should grant Plaintiff's motion for Judgment on the Record and remand the case to the U.S. Customs and Border Protection with directions to allow credit for Plaintiff's answers to questions number 27 of the April 2018 Customs Broker License Examination.