

25-6737

NO:

FILED

AUG 25 2025

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

CLYDE PONTEFRAC - PETITIONER

VS.

UNITED STATES OF AMERICA, ET AL. - RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARY TO  
THE THIRD CIRCUIT COURT OF APPEALS

PETITION FOR A WRIT OF CERTIORARY

Clyde Pontefract, 13955-035

FCI Ashland

PO Box 6001

Ashland, KY 41105

2<sup>nd</sup>

9589-0710-5270-0106-1381-85

1<sup>st</sup>

9589-0710-5270-0106-1417-41

QUESTION PRESENTED FOR CERTIORARY

1. When a Constitutional Right is being denied against a federal prisoner of the First Amendment Access-to-Court claim and he ask for Equitable Relief, are the lower courts mandated to use the Zone-of-Interest test to determine Standing under the Administrative Procedure Act and 28 USC §1331 ?

(i)

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## Appendix's

- Appendix A = Pontefract Vs. Fed. Bureau Of Prisons, Civil Action No. 23-2569, U.S. District LEXIS 196438, October 31, 2023.
- Appendix B = Pontefract Vs. Fed Bureau Of Prisons, Docket No. 23-3142, U.S. App. LEXIS 31352, December 10, 2024.
- Appendix C = Pontefract's Appeal Brief of Civil Action No. 23-~~3142~~ to the Sixth Circuit Court of Appeals.

## TABLE OF AUTHORITIES

1. Air Courier Conf. Vs Postal Workers,  
498 US 517, 524 (1991)
2. Bieregu Vs Reno, 59 F.3d 1445 (CA3, 1995)
3. Bounds Vs Smith, 430 US 817, 822 (1977)
4. Chem. Serv. Vs Environmental Sys. Laboratory-Cincinnati,  
12 F.3d 1256, 1262 (CA3, 1993)
5. Cochran Vs Kansas, 316 US 255 (1942)
6. Ex parte Hull, 312 US 546 (1941)
7. Hagans Vs Lovine, 415 US 528, 537-39 (1974)
8. Jones Vs Brown, 461 F.3d 353, 358 (CA3, 1995)
9. Pinho Vs Gonzales, 432 F.3d 193, 200 (CA3, 2005)
10. USP Worldwide Forwarding Vs United States Postal Service,  
66 F.3d 621, 626 (CA3, 1995)

## STATUTES

11. 18 USC §3626
12. 28 USC §1331
13. 42 USC §1997e(a)

LIST OF CASES DIRECTLY RELATED TO THIS CASE

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

D Docket No 2024 U.S. App LEXIS 31352

Case No 23-3142

CLYDE PONTEFRACT Vs FEDERAL BUREAU OF PRISONS, et al.

December 10, 2024  
(See Appendix B)

UNITED STATES DISTRICT COURT  
FOR NEW JERSEY

Docket No 2023 U.S. Dist LEXIS 196438

Case No 23-2569

CLYDE PONTEFRACT Vs FEDERAL BUREAU OF PRISONS, et al.

October 31, 2023  
(See Appendix A)

JURISDICTIONAL STATEMENT

Plaintiff filed under 28 USC §1331 and the Administrative Procedure Act based on the United States Constitution of the First Amendment and Access to the Court and was Disssmissed Without Prejudice to Amend Complaint.

Pontefract Vs Fed. Bureau of Prisons, US District Court of New Jersey, Civil Action No. 23-2569. (US Dist. LEXIS 196438, For The US District Court for the District of New Jersey, October 31, 2023.) Appendix A

Plaintiff filed a timely Appeal that Affirmed the District Courts Order.

Pontefract Vs Fed. Bureau of Prisons, For The Third Circuit, Docket No. 23-3142. (US App LEXIS 31352, December 10, 2024.) Appendix B

Plaintiff filed a Request for Rehearing based on the Third Circuit's miss-application of Supreme and Third Circuit Court Opinions based on the Zone-of-Interest of a Constitutional Right.

Pontefract Vs BOP, et al., Case No 23-3142. Rehearing Granted.  
The Court Affirmed the Rehearing on June 9, 2025.  
(Rehearing opinion was exact copy of Direct Appeal.)

The jurisdiction of this Court is involked under 28 USC §1254(2).

CONCISE STATEMENT

Pontefract is a federal prisoner that was denied a Constitutional Right under the First Amendment of Access to the court by the Federal Bureau of Prisons to use the United States Postal Service properly. Pontefract asked for Equitable and Injunctive Relief through 28 USC §1331 and the Administrative Procedure Act. The courts of the Third Circuit denied him Equitable Relief by using the review of No-Agency-Action and never balanced the agencies inactions of his Constitutional Right with the Zone-Of-Interest test mandated by Air Courier Conf. Vs. Postal Workers, 498 US 517, 524 (1991).

## ARGUMENT

### INTRODUCTION

Pontefract is a federal prisoner who had tried to place Flat Rate Envelopes as legal mail going to a US Federal Court and a US Attorney using the FCI Fort Dix's legal and certified mail procedures. The Flat Rate Envelopes that were Certified has a Flat Rate Postage and Pontefract had placed stamps on the envelopes that satisfied this requirement. The Federal Bureau of Prisons (FBOP) or the local United States Post Office sent back these two Flat Rate Envelopes annotating different postage amounts twice. Even though Pontefract corrected the postage amounts twice and resent both envelopes each time with the proper postage. This had caused the missing of the deadline to file a motion about Pontefract's criminal conviction in which concerned police corruption that was verified by an investigation by the main US Attorney of the Western District of Louisiana, Mr Washington. As Pontefract being a federal prisoner with legal knowledge and experience being limited, this created added burdens for Pontefract because he could not receive any answers from neither of the two agencies about the Flat Rate Envelopes actual postage amounts and why they are different to the postal rates that were mailed. In other words, Pontefract had no proper procedures or avenues to Certify legal mail and fully mail to a court by using the United States Postal Service through the FBOP.

Pontefract felt that this violated his right as a prisoner to have access to the courts that is adequate, effective, and meaningful supported by Bounds Vs. Smith, 430 US 817, 822 (1977); Ex parte Hull, 312 US 546 (1941); and Cochran Vs Kansas, 316 US 255 (1942). To exercise this right under the First Amendment, Pontefract filed an Administrative Remedy with the FBOP. The FBOP claimed that the fault lied within the US Postal Service (USPS) and denied Pontefract all avenues to contact and place a grievance with the USPS. Pontefract's way of thinking as a federal prisoner was that he would solve the First Amendment violation by filing in a federal court under the Administrative Procedure Act (APA) and 28 USC §1331 asking for equitable and injunctive relief. The Third Circuit courts claimed that there was NO-Final-Agency-Action and as such, will not address the Constitutional Violation.

#### LOWER COURTS ACTIONS

The district court denied Pontefract's APA motion claiming that there was No-Final-Agency-Action saying, "review under the APA is not available." See Appendix A, page 3 (highlighted portion). There was no Constitutional evaluation determined under the Zone-of-Interest test. It even appears on record that a Zone-of-Interest was not used in any of the courts determinations.

Pontefract then filed an appeal asking if the APA "that contains an issue within a Zone-of-Interest of a Relevant Statute by federal agencies -- should the Prison Litigation Reform Act,

42 USC §1997, be part of the pre-screening?" Pontefract then asked; "If the Prison Litigation Reform Act is permissible in the pre-screening of a prisoners complaint, should there be a lessor standard then money damage claims with a process that helps all parties be within the Relevant Statute?" See Statement of Issues. Appx C , page(vi), In support Pontefract then explained that the Zone-of-Interest articulated in Air Courier Conf. Vs. Postal Workers, 498 US 517, 524 (1991) should of been used and analyzed during the pre-screening for standing. See both Summary of the Argument, page (viii) and Argument, § IV, Administrative Procedure Act, Page 7-9.

The Appeals Court did not discuss the Zone-of-Interest test of a relevant statute being supported by a First Amendment Access to the court claim. They only explained that because there was No-Final-Agency-Action there was no APA claim.

Pontefract then filed for a Rehearing supporting both his district court complaint and Appeal motions claiming that the Third Circuit Court of Appeals violated Hagans Vs. Lovine, 415 US 528, 537-9 (1974) explaining that when a Substantial Federal Question supported by previous Supreme Court precedence is raised, a controversy is supported when a constitutional right is claimed to be violated and Pontefract's constitutional right is supported by Bounds Vs. Smith, 430 US 817 (1977) and connecting cases, *supra*. Again Pontefract supported the Zone-of-Interest under the First Amendment Access to the Courts while reinforcing Air Courier and two Third Circuit opinions. Chem. Serv. Vs. Environmental

Sys. Laboratory - Cincinnati, 12 F.3d 1256, 1262 (CA3, 1993) and UPS Worldwide Forwarding Vs. United States Postal Service, 66 F.3d 621, 626 (CA3, 1995). None of the above legal issues were discussed and the Rehearing affirmed the district court a second time by claiming that there was No-Final-Agency-Action.

#### LEGAL ISSUE

As the Third Circuit Courts has not produced an equitable opinion based on a Constitutional Right by claiming that there was No-Final-Agency-Action, a federal agency could then deny ALL Claims under the United States Constitution and make the US Constitution superfluous for all federal prisoners based on the Third Circuit reasoning. Pontefract does not believe that this is the intent of Congress.

The Prison Litigation Reform Act of 1995, 42 USC §1997e(a), supports that a prisoner is protected to "insure the full enjoyment of such rights, privileges, or immunities," for equitable relief. This is also supported in 18 USC §3626 that protects prisoners federal rights. Pontefract supported this in his complaint with Jones Vs. Brown, 461 F.3d 353, 358 (CA3, 2006) and Bieregu Vs. Reno, 59 F.3d 1445 (CA3, 1995), MOL, page 12-13, Doc # 1 Yet the Third Circuit again never responded to the determination of a federal Constitutional Right under the Zone-of-Interest test against these cites. Again they were silent to Pontefract's case cites and rule of common law inregards to the Zone-of-Interest of a Constitutional Right.

This brings this Supreme Court request for remand mandating that the Zone-of-Interest must be applied to a Constitutional Right for an equitable decision. Pontefract did question this in his request for Rehearing that was Granted review along with the Final-Agency-Action. Pontefract cited Pinho Vs. Gonzales, 432 F.3d 193, 200 (CA3, 2005) in which there "was no hearing before an Immigration Judge ("IJ"), and no appeal to the BIA." The circuit court granted reviewability. But was not supported in Pontefract's appeal. The Third Circuit silently refuses to analyze Pinho in which Pontefract's facts are very similar. Pontefract had gone through all steps of the FBOP's grievance system with the FBOP making a claim that they were not responsible for Pontefract's Certified legal mail postage. The FBOP would not support in any way to work with the local post office on this issue and Pontefract's Certified mail to the local post office went unanswered. The Third Circuit never analyzed Pinho with Pontefract's First Amendment Constitutional Claim and his Right of access to the courts under Bounds to be adequate, effective and meaningful with access to the USPS.

The district court supported Pontefract with Leave to Amend, but without the Third Circuit properly analyzing during a PLRA pre-screening of a Constitutional Right with a Zone-of-Interest test, Pontefract is up against a very steep wall of common law. Pontefract has a legal right under the Constitution to correspond with the courts. When this is being denied for any reason without any avenues to address the legal right, an Equitable opinion by

the court must be opined and answered that includes reviewing his case cites. Because the lower courts has not performed this they have so far departed form the accepted and usual course of judicial proceedings as to call for an exercize of this Courts supervisory power. <sup>1</sup>

#### REASONS FOR GRANTING RELIEF

The lower courts applied the Wrong Legal Framework. Both the District and Appellate courts dismissed the action for lack of "final agency action," treating that procedural element as dispositive, thereby refusing to reach the substance of Pontefract's Constitutional Claims.

The Zone-of-Interest Was Required but Ignored. The courts failed to apply the Zone-of-Interest test, which is a theshold inquiry into whether the interest Pontefract seeks to protect are within the Zone-of-Interest Congress intended to safeguard under the APA. The Constitutional Right to access the courts undeniably falls within that zone.

Constitutional Rights Cannot be Procedurally Barred Without Substantive Review. Where a litigant asserts a well-pleaded constitutional violation, federal courts must reach the merits or at minimum evaluate prudential standing. To do otherwise invites a systemic denial of access to the judiciary in violation of Bounds.

This case Raises an Important, Recurring Question.

This case raises a critical and recurring issue in prisoner litigation whether procedural rules under the APA may override constitutional rights. Clarafying this is essential to the integrity of judicial review and federal equitable relief.

PRAYER FOR RELIEF

Pontefract respectfully requests that this Honorable Court:  
Ramand the matter to the District Court with instructions to perform the Zone-of-Interest analysis; or

In the alternative, grant certiorari to resolve the important federal question presented.

Respectfully submitted



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Clyde Pontefract, 13955-035  
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PO Box 6001  
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Date: August 25, 2025  
Resubmitted December 19 2025

# Appendix A

CLYDE PONTEFRACT, Plaintiff, v. FEDERAL BUREAU OF PRISONS, et al., Defendants.  
UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY  
2023 U.S. Dist. LEXIS 196438  
Civil Action No. 23-2569 (KMW) (MJS)  
October 31, 2023, Decided  
October 31, 2023, Filed

**Notice:**

**NOT FOR PUBLICATION**

**Editorial Information: Subsequent History**

Affirmed by Pontefract v. Fed. Bureau of Prisons, 2024 U.S. App. LEXIS 31352 (3d Cir. N.J., Dec. 10, 2024)

**Counsel** {2023 U.S. Dist. LEXIS 1}CLYDE PONTEFRACT, Plaintiff, Pro se, Joint  
Base MDL, NJ.

**Judges:** Hon. Karen M. Williams, United States District Judge.

**Opinion**

**Opinion by:** Karen M. Williams

**Opinion**

**OPINION**

**WILLIAMS, District Judge:**

This matter comes before the Court on the Court's *sua sponte* screening of Plaintiff Clyde Pontefract's complaint. (ECF No. 1.) As Plaintiff has now paid the applicable filing fee<sup>1</sup> and is a prisoner who seeks redress from the employees of a governmental entity, this Court is required to screen his complaint pursuant to 28 U.S.C. § 1915A and dismiss any claim which is frivolous, malicious, fails to state a claim for which relief may be granted, or seeks relief from an immune defendant. For the reasons set forth below, Plaintiff's complaint shall be dismissed without prejudice.

**I. BACKGROUND**

Plaintiff is a federal prisoner currently confined in PCI Fort Dix. (ECF No. 1 at 2.) Plaintiff seeks in his complaint to bring suit against the Warden of Fort Dix and the local post office which serves Fort Dix for issues he has had with various pieces of mail he has sent and received while at the prison. (*Id.* at 3-22.) Plaintiff's issues began in late 2021, following the denial of his certificate of appealability by the Fifth Circuit in his collateral challenge{2023 U.S. Dist. LEXIS 2} to his conviction. (*Id.* at 4.) Plaintiff sought to file a petition for rehearing, but his filing became delayed when his mailing of the petition was returned for insufficient postage twice. (*Id.* at 3-6.) Plaintiff filed grievances regarding this situation, but was told that the post office, and not the prison, determines postage rates and determines whether additional postage is needed. (*Id.* at 6-7.) In March 2022, Plaintiff mailed another

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document which was apparently never received by the paralegal service to which he mailed it. (*Id.* at 11.) In May 2022, Plaintiff mailed another package to the paralegal service, which was not received until August. (*Id.* at 13.)

Plaintiff also had issues with incoming mail. In October 2021, he received mail from the Fifth Circuit which he believes was not properly processed, though it is unclear in what way he believes the processing was improper. (*Id.* at 10.) Plaintiff also ordered a congressional report related to a 2003 statute from a paralegal service, but received a copy missing 78 pages. (*Id.* at 12.) When he complained, prison officials told him that the paralegal service must have sent an incomplete report and denied any responsibility for missing{2023 U.S. Dist. LEXIS 3} pages. (*Id.* at 12.) Plaintiff believes all of these actions violate his rights and are in violation of various BOP and Post Office policies. (*Id.* at 14-18.)

## **II. LEGAL STANDARD**

Because Plaintiff is a prisoner who seeks redress from employees of a governmental entity, this Court is required to screen his complaint pursuant to 28 U.S.C. § 1915A. Pursuant to the statute, this Court must *sua sponte* dismiss any claim that is frivolous, malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. *Id.* The legal standard for dismissing a complaint for failure to state a claim pursuant to 28 U.S.C. § 1915A is "identical to the legal standard employed in ruling on [Rule] 12(b)(6) motions." *Courteau v. United States*, 287 F. App'x 159, 162 (3d Cir. 2008).

In deciding a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6), a district court is required to accept as true all factual allegations in the complaint and draw all reasonable inferences from those allegations in the light most favorable to the plaintiff, see *Phillips v. Cnty. of Allegheny*, 515 F.3d 224, 228 (3d Cir. 2008), but need not accept as true legal conclusions couched as factual allegations. *Papasan v. Allain*, 478 U.S. 265, 286, 106 S. Ct. 2932, 92 L. Ed. 2d 209 (1986). A complaint need not contain "detailed factual allegations" to survive a motion to dismiss, but must contain "more than an unadorned, the-defendant-unlawfully-harmed-me{2023 U.S. Dist. LEXIS 4} accusation." *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009). A complaint "that offers 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action will not do,' and a complaint will not 'suffice' if it provides only "'naked assertion[s]' devoid of 'further factual enhancement.'" *Id.* [quoting *Bell Atlantic v. Twombly*, 550 U.S. 544, 555, 557, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007)]. "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Id.* (quoting *Twombly*, 550 U.S. at 570). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (quoting *Twombly*, 550 U.S. at 556). A complaint that provides facts "merely consistent with" the defendant's liability "stops short of the line between possibility and plausibility" and will not survive review under Rule 12(b)(6). *Id.* [quoting *Twombly*, 555 U.S. at 557]. While *pro se* pleadings are to be liberally construed in conducting such an analysis, *pro se* litigants must still "allege sufficient facts in their complaints to support a claim." *Mala v. Crown Bay Marina, Inc.*, 704 F.3d 239, 245, 58 V.I. 691 (3d Cir. 2013).

## **III. DISCUSSION**

In his complaint, Plaintiff seeks to raise federal civil rights claims against the Bureau of Prisons, the warden of Fort Dix, and the United States{2023 U.S. Dist. LEXIS 5} Post Office for his issues with mail while in prison. Plaintiff also states that he wishes to raise a challenge to his mail issues pursuant to the Administrative Procedure Act. Turning first to the APA, judicial review under the Act requires both that there be a final agency action made by the federal agency in question and that no

## Appendix A

other adequate remedy be available in a court of law. See, e.g., 5 U.S.C. § 704; *Wayne Land & Mineral Group LLC v. Del. River Basin Comm.*, 894 F.3d 509, 526 (3d Cir. 2018). Plaintiff's claims do not concern actual final actions by the agencies in question - the BOP and Post Office - and instead attacks discrete failures to live up to applicable regulations by persons employed by Fort Dix or the local Post Office. Therefore, because there is no final agency action at issue here, and because Plaintiff has other potential avenues for relief including federal civil rights claims, review under the APA is not available, and Plaintiff's APA claims are therefore dismissed without prejudice.

Turning to Plaintiff's civil rights claim, Plaintiff essentially raises two classes of claims - interference with his right to use of the mail, and interference with access to the courts. Although civil rights claims can be raised on such bases, he names as Defendants in this{2023 U.S. Dist. LEXIS 6} matter two federal agencies - the Post Office and BOP - and the Warden of Fort Dix, who Plaintiff fails to allege was in any way involved in the mail issues he experienced. Federal civil rights claims, however, cannot be brought against federal agencies. See *FDIC v. Meyer*, 510 U.S. 471, 476-77, 484-85, 114 S. Ct. 996, 127 L. Ed. 2d 308 (1994). Plaintiff's claims against the Post Office and BOP must therefore be dismissed.

Finally, as to the Warden, Plaintiff fails to plead any facts showing that the warden was in any way involved in his mail issues. A federal civil rights defendant must have personal involvement in the alleged wrong in order to be held liable, a claim may not be based solely on a defendant's role as a supervisor. See, e.g., *Chavarriaga v. N.J. Dep't of Corr.*, 806 F.3d 210, 222 (3d Cir. 2015) (citing *Rode v. Dellarciprete*, 845 F.2d 1195, 1207 (3d Cir. 1988)). In raising a claim against a supervisor, a Plaintiff must therefore normally plead either direct involvement in the alleged violation, or that a policy, practice, or custom put into place by the supervisor was the moving force behind the violations alleged. *Id.* Plaintiff has not pled any facts indicating that the Warden was involved in his mail issues, and has not identified any policy, practice, or custom imposed by the warden which caused the violations. Indeed, he identifies a number of prison policies in his complaint{2023 U.S. Dist. LEXIS 7} all of which he believes entitle him to more full use of the mail, suggesting that any violations arising from his mail issues were contrary to, rather than motivated by, the prison policies. As Plaintiff has not pled facts showing that the warden was personally involved in any wrongs, his claims against the warden must be dismissed without prejudice for failure to state a claim for which relief may be granted.

### **IV. CONCLUSION**

For the reasons expressed above, Plaintiff's complaint (ECF No. 1) is **DISMISSED WITHOUT PREJUDICE** in its entirety. An order consistent with this Opinion will be entered.

/s/ Karen M. Williams

Hon. Karen M. Williams,

United States District Judge

### **ORDER**

This matter having come before the Court on the Court's *sua sponte* screening of Plaintiff's complaint (ECF No. 1), the Court having screened the complaint pursuant to 28 U.S.C. § 1915A, and for the reasons set forth in the accompanying Opinion,

**IT IS** on this 31st day of October, 2023,

**ORDERED** that the Clerk of the Court shall re-open this matter for the purposes of this Order only; and it is further

## Appendix A

**ORDERED** that the Complaint (ECF No. 1) shall be filed in light of Plaintiff's payment of the filing fee; and it is further

**ORDERED** that Plaintiff's {2023 U.S. Dist. LEXIS 8} complaint (ECF No. 1) is **DISMISSED WITHOUT PREJUDICE** in its entirety; and it is further

**ORDERED** that Plaintiff is granted leave to file an amended complaint within thirty days; and it is finally

**ORDERED** that the Clerk of the Court shall serve a copy of this Order and the accompanying Opinion upon Plaintiff by regular mail, and shall **CLOSE** the file.

/s/ Karen M. Williams

Hon. Karen M. Williams,

United States District Judge

### Footnotes

1

Plaintiff mailed the fee to the Court several months ago, but records of the payment were not made available to the court until relatively recently as Plaintiff mailed the fee to a different vicinage and the payment was not attributed to this matter until early October 2023.

# Appendix B

CLYDE PONTEFRACT, Appellant v. FEDERAL BUREAU OF PRISONS; UNITED STATES POST OFFICE; UNITED STATES POST OFFICE, Supervisor, Fort Dix; WARDEN FORT DIX FCI  
UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

2024 U.S. App. LEXIS 31352

No. 23-3142

October 28, 2024, Submitted Pursuant to Third Circuit L.A.R. 34.1(a)

December 10, 2024, Opinion Filed

**Notice:**

NOT PRECEDENTIAL OPINION UNDER THIRD CIRCUIT INTERNAL OPERATING PROCEDURE RULE 5.7. SUCH OPINIONS ARE NOT REGARDED AS PRECEDENTS WHICH BIND THE COURT. PLEASE REFER TO FEDERAL RULES OF APPELLATE PROCEDURE RULE 32.1 GOVERNING THE CITATION TO UNPUBLISHED OPINIONS.

**Editorial Information: Prior History**

{2024 U.S. App. LEXIS 1}On Appeal from the United States District Court for the District of New Jersey. (D.C. Civil Action No. 1-23-cv-02569). District Judge: Honorable Karen M. Williams. Pontefract v. Fed. Bureau of Prisons, 2023 U.S. Dist. LEXIS 196438, 2023 WL 7180673 (D.N.J., Oct. 31, 2023)

**Counsel** CLYDE PONTEFRACT, Plaintiff - Appellant, Pro se, Joint Base MDL, NJ.

For FEDERAL BUREAU OF PRISONS, UNITED STATES POST OFFICE, Supervisor, Fort Dix, WARDEN FORT DIX FCI, Defendants - Non-Participatings: J. Andrew Ruymann, Esq., Office of United States Attorney, Trenton, NJ.

**Judges:** Before: BIBAS, FREEMAN, and NYGAARD, Circuit Judges.

**Opinion**

OPINION\*

PER CURIAM

Pro se appellant Clyde Pontefract appeals from the District Court's dismissal of his complaint without prejudice. We will affirm the District Court's judgment.

I.

Pontefract is a federal prisoner at FCI Fort Dix in New Jersey. He sued the Federal Bureau of Prisons (BOP), the warden of Fort Dix, and the supervisor of the Fort Dix post office, alleging that the defendants mishandled five of his mailings between October 2021 and August 2022:

First, in October 2021, Pontefract received time-sensitive legal mail from the Fifth Circuit Court of Appeals that was processed as regular mail rather than incoming legal mail. Second, in November and December 2021, copies of a time-sensitive motion that {2024 U.S. App. LEXIS 2} Pontefract wanted to file in the Fifth Circuit Court of Appeals were returned twice due to insufficient postage. Third, in March 2022, Pontefract mailed a Flat Rate Box to a paralegal service that contained

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## Appendix B

Pontefract's legal work, but the paralegal service never received the box. Fourth, on an unspecified date, Pontefract received a report that he ordered from the paralegal service that was missing 78 pages; he reordered the report and received the complete report. Finally, in May 2022, Pontefract sent a Flat Rate Envelope to the paralegal service that contained his military records, and the paralegal service did not receive the envelope until August 2022.

Pontefract alleged that these mailing issues violated his First Amendment right of access to the courts, the Administrative Procedure Act (APA), and various statutes and regulations governing the transmission of mail and the BOP's handling of prisoners' mail.<sup>1</sup> He requested declaratory and injunctive relief and reimbursement of his filing fees.

The District Court conducted a screening pursuant to 28 U.S.C. § 1915A, and it sua sponte dismissed Pontefract's complaint without prejudice, finding that he did not plausibly allege a claim under either the APA or 42 U.S.C. § 1983. Pontefract<sup>{2024 U.S. App. LEXIS 3}</sup> appealed.

II.

We have jurisdiction under 28 U.S.C. § 1291,<sup>2</sup> and we exercise plenary review over the District Court's dismissal of Pontefract's complaint under § 1915A. See *Durham v. Kelley*, 82 F.4th 217, 223 (3d Cir. 2023). Generally, a claim should survive dismissal if it is "facially plausible," which means that it contains sufficient factual allegations that, if accepted as true, allow the court to reasonably infer that the defendants are liable for the misconduct alleged. See *Clark v. Coupe*, 55 F.4th 167, 178 (3d Cir. 2022). We may affirm the District Court's judgment on any basis supported by the record. See *Hildebrand v. Allegheny County*, 757 F.3d 99, 104 (3d Cir. 2014).

III.

Pontefract argues first that because he paid his full filing fee, the District Court should not have screened his complaint pursuant to § 1915A. Pontefract is an incarcerated person who filed a civil action seeking redress from government entities. Thus, the plain language of § 1915A required the District Court to screen his complaint "as soon as practicable" and dismiss any portion of the complaint that was "frivolous, malicious, or fails to state a claim upon which relief may be granted." See 28 U.S.C. § 1915A(a), (b)(1). The District Court must conduct a § 1915A screening regardless of whether the plaintiff is proceeding in forma pauperis. See *Brown v. Sage*, 941 F.3d 655, 660 (3d Cir. 2019).

IV.

Pontefract challenges the District Court's dismissal of his APA claims against<sup>{2024 U.S. App. LEXIS 4}</sup> the BOP and employees of the BOP and United States Postal Service (USPS). Pontefract's complaint alleged that the defendants violated various USPS regulations and BOP program statements governing the processing of federal prisoners' mail, and that federal courts have jurisdiction over those claims under the APA. The District Court rejected Pontefract's APA claims in part because it concluded that there was no "final agency action at issue." See ECF No. 10 at 4. On appeal, Pontefract asserts that he *did* allege that there were final agency actions concerning both the BOP and USPS defendants. We address his claims against each agency in turn.

First, the District Court correctly determined that Pontefract did not adequately allege an APA claim against the BOP. Pontefract alleged that he filed a grievance about only the insufficient-postage issue, that he appealed the denial of that grievance to the regional director and then the "Administrator" at the BOP's "Central Office," and that he "received [a] final action from the [BOP's] Central Office."<sup>3</sup> Even if these statements sufficiently allege administrative exhaustion, they did not provide enough information for the District Court to determine<sup>{2024 U.S. App. LEXIS 5}</sup> whether it

## Appendix B

had any basis under the APA to exercise judicial review over the BOP's final response. See 5 U.S.C. § 706(2) (outlining grounds for judicial review of agency actions). Only one basis for judicial review might apply here: the court's ability to "hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law."<sup>4</sup> Without further context-specifically, the reasoning that the BOP's final decisionmaker provided for its rejection of Pontefract's appeal and some plausible explanation of why that decision was "arbitrary or capricious" or contrary to law<sup>5</sup>the District Court was unable to review the alleged final agency action. Under these circumstances, it was appropriate for the District Court to dismiss such a vaguely pleaded APA claim against the BOP.

Second, it is unnecessary to consider whether Pontefract identified a "final" agency decision (or failure to act) of the USPS, because Pontefract cannot bring his claims that USPS agents have failed to comply with USPS regulations under the APA.<sup>6</sup> His claims against USPS agents solely challenge the quality and efficiency of the postal<sup>7</sup> services provided to him. See ECF No. 1 at ¶¶ 79-85 (citing 39 U.S.C. §§ 101(d)-(e) & 401(2)). Jurisdiction to hear such claims lies exclusively with the Postal Regulatory Commission (PRC), with review by the D.C. Circuit. See *LeMay v USPS*, 450 F.3d 797, 799-800 (8th Cir. 2006).

### V.

Finally, we need not decide whether Pontefract can bring his access-to-courts claims under *Bivens*<sup>8</sup> or some other means, because even if he could, he has not stated a plausible claim. A prisoner's First Amendment right of access to courts requires only that he be provided the tools he needs to attack his sentence and challenge conditions of his confinement-these protections do not extend to the impairment of any other types of litigation. See *Lewis v. Casey*, 518 U.S. 343, 355, 116 S. Ct. 2174, 135 L. Ed. 2d 606 (1996). A prisoner plausibly alleges that the defendants inhibited his ability to present a past legal claim by showing that (1) he "lost a chance to pursue a 'nonfrivolous' or 'arguable' underlying claim" that challenged either his criminal sentence or the conditions of his confinement; and (2) there is no other available remedy than in the denial-of-access suit. See *Rivera v. Monko*, 37 F.4th 909, 915 (3d Cir. 2022); *Christopher v. Harbury*, 536 U.S. 403, 415, 122 S. Ct. 2179, 153 L. Ed. 2d 413 (2002); *Lewis*, 518 U.S. at 349. "The complaint must describe the underlying arguable claim well enough to show that it is 'more than mere hope,' and it must describe the 'lost remedy.'" See *Monroe v. Beard*, 536 F.3d 198, 205 (3d Cir. 2008).

Here, three of the five<sup>9</sup> alleged mail issues could not have constituted an access-to-courts issue, because they did not foreclose Pontefract from making any arguable, nonfrivolous claim challenging his sentence or prison conditions.<sup>10</sup> We presume that the remaining two mail issues were directly related to his efforts to challenge his federal criminal sentence in the Fifth Circuit. Even if Pontefract had been able to timely submit his proposed motion for reconsideration to the Fifth Circuit, that motion would not have persuaded the Fifth Circuit to reverse its denial of Pontefract's request to raise yet another collateral attack on his 2010 guilty plea and 2012 sentence.

### VI.

Because Pontefract presents no meritorious issues on appeal, we will affirm the District Court's judgment.

### Footnotes

\*

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This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

1

Specifically, Pontefract alleged that the "Post Office at Fort Dix" violated 39 U.S.C. § 101(e) and § 401(2).

2

Generally, an order is not yet appealable if it dismisses a complaint without prejudice, because the plaintiff may correct the deficiency. See *Borelli v. City of Reading*, 532 F.2d 950, 951 (3d Cir. 1976) (per curiam). But here, we will exercise jurisdiction because it appears from the record that Pontefract chose to stand on his complaint by appealing rather than filing an amended complaint. See *Frederico v. Home Depot*, 507 F.3d 188, 190-93 (3d Cir. 2007).

3

See ECF No. 1 at ¶¶ 35-41 (alleging grievance process for insufficient-postage issue); *id.* at ¶¶ 50-51, 55-56, 61, 63 (conceding that no grievances about the four other alleged mail issues reached a final BOP decisionmaker); ECF No. 1-1 at 12-15 (attaching some grievance and administrative appeal documents regarding insufficient-postage issue).

4

For reasons addressed below, Pontefract did not plausibly allege that the BOP acted contrary to his constitutional rights. Cf. 5 U.S.C. § 706(2)(B). Pontefract did not claim that the BOP acted "in excess of" its statutory authority or that it failed to observe procedural requirements. Cf. 5 U.S.C. § 706(2)(C)-(E).

5

Pontefract did not explain why the BOP's decision not to redress Pontefract's insufficient-postage issue was "not in accordance with law." BOP regulations state that "postage charges are the responsibility of the inmate," except in narrow circumstances that would not have applied to Pontefract's allegations. 28 C.F.R. § 540.21. Pontefract's complaint did not identify any other regulation or statute that would have required the BOP to resolve an insufficient-postage issue. To the extent that Pontefract cited BOP program statements regarding prison mail, those program statements alone "do not create entitlements enforceable under the APA." See *Robinson v. Sherrod*, 631 F.3d 839, 841-42 (7th Cir. 2011).

6

The judicial review provisions of the APA, 5 U.S.C. §§ 701 to 706, generally do not apply to the USPS's exercise of its powers, absent narrow exceptions that do not apply here. See 39 U.S.C. § 410(a); *Sears, Roebuck & Co. v. USPS*, 844 F.3d 260, 265, 427 U.S. App. D.C. 142 (D.C. Cir. 2016).

7

See *Egbert v. Boule*, 596 U.S. 482, 498-99, 142 S. Ct. 1793, 213 L. Ed. 2d 54 (2022) (holding that there is no *Bivens* claim for federal officials' alleged retaliation against a plaintiff's exercise of his First Amendment rights, and observing that the Supreme Court has "never held that *Bivens* extends to First Amendment claims" (quoting *Reichle v. Howards*, 566 U.S. 658, 663 n.4, 132 S. Ct. 2088, 182 L. Ed. 2d 985 (2012))).

8

First, the box of legal documents that the paralegal service never received was transmitted simply for "safekeeping," and Pontefract did not allege that these documents were related to any active litigation or that they were the only copies of the documents. Second, the report that Pontefract

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received with 78 pages missing was replaced with a full report, and Pontefract did not claim that this caused him to forfeit his ability to bring any claims based on the report. Third, Pontefract's documents about military service that arrived at the paralegal service 3 months after they were mailed were not alleged to be relevant to any legal action. Perhaps these were related to some prospective sentencing motion, but there was no arguable, nonfrivolous sentencing claim based on Pontefract's sentencing in 2012 that could have been raised only from May 2022 to August 2022.

# Appendix C

## UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

CLYDE PONTEFRACT,  
Appellee,

CASE NO: 23-3142  
US Dist 23-2569

v

APPEAL

UNITED STATES OF AMERICA, ET., AL,  
Appellant,

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- 15 Lewis V Casey, 518 US 343, 135 L Ed 2d 606, 116 S Ct 817  
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## EXHIBIT / APPENDIX

Exhibit A Page 1, Pontefract's BP-11 request.

Page 2, BP-11's response.

Page 3, BP-10's response.

Page 4, BP-9's response.

Exhibit B Certified Letter to Local United States Post Office.

Appendix AA Opinion from the District Court.

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## JURISDICTIONAL STATEMENT (Fed. R. App. P. 28(a)(4))

A. The District Court of New Jersey Dismissed WITHOUT PREJUDICE, case number 23-2569 on October 31 2023 at Docket Number 11.

The District Court's Complaint was based on statute 5 USC §701 et. seq. of the Administrative Procedure Act and the United States Coinstitution of the First Amendment with Subject Matter Jurisdiction of an Access-To-Court claim. This claim was based on statutes and Federal Code of Regulations not being followed by two Federal Agencies that adversely affected and aggrieved Pontefract. Final agency action was performed by the completion of all grievance steps within the Bureau of Prisons and the United States Post Office's non-response from Pontefract's Certified Mail request asking to solve the First Amendment and Access-To-Court claims.

B. The United States Court of Appeals for the Third Circuit has Jurisdiction from 28 USC §1291. The Final decision from the District Court was on November 1 2023.

Pontefract filed a Notice of Appeal on December 1 2023. Pontefract paid the filing fee for this appeal on March 12, 2024.

C. Pontefract received permission to file a brief on April 17 2024.

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## STATEMENT OF ISSUES (Fed. R. App. P. 28(a)(5))

One: Is Statute 28 USC §1915A the proper statute when the full filing fee was paid before docketing of the Complaint?

Two: When Fed. R. Civ. P. 12(b)(6) is used by the District Court during the pre-screening of a prisoners complaint of an Administrative Procedure Act under 5 USC § 701 et. seq., that contains an issue within a Zone-Of-Interest of a Relevant Statute by federal agencies, -- should the Prison Litigation Reform Act, 42 USC §1997, be part of the pre-screening?

Three: If the Prison Litigation Reform Act is permissible in the pre-screening of a prisoners complaint should there be a lessor standard then money damage claims with a process that helps all parties be within the Relevant Statute?

If a lessor standard is authorized --

Four: Please establish rules for the District Courts and Pontefract to use in the Third Circuit.

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### SUMMARY OF THE ARGUMENT (Fed. R. App. P. 28(a)(7))

Pontefract is asking the Appeals Court to clarify the Third Circuits jurisprudence concerning the pre-screening of prisoners federal complaints when they have fully paid the docketing fee from 28 USC §1915A.

Pontefract's second request to the Third Circuit Court of Appeals concerns pre-screening of a prisoners Administrative Procedure Act complaint under the Prison Litigation Reform Act. This request will extend to the "Meaning of a Relevant Statute" under 5 USC §702 and the Meaning of a "Final Agency Action" under 5 USC §704.

Pontefract as pro-se and a non-licensed lawyer could not fine case law on point inregards to these legal issues. The Third Circuit does not make clear as to the pre-screening of a fully paid filing fee. He ask the Court of Appeals to clarify this legal issue within the Third Circuit.

Pontefract also ask the Appeals Court to consider their jurisprudence concerning a prisoners filing of an Administrative Procedure Act claim under the Prison Litigation Reform Act while using the elements of a person suffering an agency action that adversely affected and aggrieved him within the meaning of a relevant statute, 5 USC §702, that is within the Zone-Of-Interest that is articulated by Air Courier Conf. V Postal Workers, 498 US 517 (1991), and determine a final agency action in the context from the Federal Bureau of Prisons and the United States Postal Office under Fed. R. Civ. P. 12(b)(6) through the Administrative Procedure Act.

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## ARGUMENT

### I. STANDARD FOR REVIEW

The first issue of this appeal addresses a pre-screening that the District Court used to dismiss Pontefract's APA complaint. Pontefract has two thoughts. One is that the District Court abused its discretion concerning case law of the Third Circuit. Second, in understanding that this case law is not strong, with my understanding as Pro Se, a de novo review from a Courts dismissal falls under Federal Rules of Civil Procedure 12(b)(6). Allah V Seiverling, 229 F.3d 220, 223 (CA3, 2000).

Accordingly, for Pontefract to avoid dismissal under Rule 12(b)(6), his APA civil complaint must set out sufficient factual matter that his claims are facially plausible for an Administrative Procedure Act claim. Ashcroft V Iqbal, 556 US 662, 678, 129 S Ct 1937, 173 L Ed 2d 868 (2009). In doing so, this Court accepts all factual allegations in Pontefract's APA complaint as true & construes those facts in the light most favorable to him. Fleisher V Standard Ins. Co., 679 F.3d 116, 120 (CA3, 2012). This Court will also construe Pontefract's Pro Se complaint liberally. Erickson V Pardus, 551 US 89, 94, 127 S Ct 2197, 167 L Ed 2d 1081 (2007). [1] This case was based on a Bivens claim. Pontefract, Pro Se, could not find any First Amendment Administrative Procedure Act claims within the Third Circuit to anchor this appeal. Because case law is not strong within the Third Circuit, Pontefract asks for a de novo

review & asks the Appeals Court to set standards for the District Court that allows a prisoners Administrative Procedure Act claim to be determined by the PLRA.

## II. THE FILING FEE WAS FULLY PAID

Pontefract had fully paid the \$402 filing fee. Under Grayson V Mayview State Hosp., 293 F.3d 103, 109-10, n. 10 (CA3, 2002), a per curium court analysis of 1915 A , 1997 e , & 1915(e)(2) that guides courts concerning prescreening from in forma pauperis motions by prisoners. In the Third Circuit, Grayson is distinguished from Pontefract because he had fully paid his filing fee without filing in forma pauperis. Grayson does support Pontefract's analysis that a fully paid filing fee should not be controlled by 1915(e)(2) by saying - "Although the language of 1915(e) does not expressly limit the provision's reach to in forma pauperis claims, we believe Congress intended it to be so limited." In support of this analysis, Pontefract found Simmons V Pennsylvania, 731 Fed Appx 160, 161, n. 2, (3rd Cir., 2018) in which supports Grayson's interpretation that 28 U.S.C. 1915 did not apply to someone who paid the full filing fee. In contradiction, the Simmons court basically made statements suggesting that if a prisoner does not understand law issues, the court may sua sponte dismiss the prisoners complaint. Pontefract feels that this prejudices him under an Administrative Procedure Act claim when he basically is

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asking for the courts expert analysis on his claimed violation.

Pontefract feels that this matters because he was prejudiced by the District Court when they applied the prescreening incorrectly as Pontefract did not file in forma pauperis. Grayson, in foot note 11, @ 293 F.3d 110, explains that 1915 A. (as explained within foot note 10) was a prescreening just for in forma pauperis court filings. The court then separated 1915 A. from 1915(e)(2) & 42 U.S.C. 1997 e. in their analysis. In support of Grayson on this legal issue within these two foot notes, the court used Benson V O'Brian, 179 F.3d 1014, 1016-17 (CA6, 1999) & McGore V Wrigglesworth, 114 F.3d 601, 608 (CA6, 1997)

In McGore, the Sixth Circuit claimed that the prescreening under 1915(e)(2) & 1915 A. must be applied to a prisoner even though he pays the filing fee without the filing of in forma pauperis. Yet in Grayson, the Third Circuit, with support from Benson, in foot note 10, suggest that a prisoner who does not file in forma pauperis is not subjected to 1915(e)(2) prescreenings. In contradiction. Benson, 179 F.3d 1016-17.

Grayson, while citing two Sixth Circuit opinions, had agreed that a prisoner that does not file in forma pauperis & pays the full filing fee, is not subjected to 1915 or 1915 A. for sua sponte dismissal. This leads Pontefract to understand that the District

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Court should not have prescreened his APA motion under 28 U.S.C. 1915 A. I ask this Court to clarify the 1915 & 1915 A. issues when a claimant pays the filing fee under an APA complaint with the below considerations. Pontefract has two more hurdles, dismissals under 42 U.S.C. 1997 e (c)(1) or Federal Rules of Civil Procedure 12(b).

### III. DISCUSSION OF 42 U.S.C. 1997 e (c)(1)

Starting this conversation, concerning if 1997 e (c)(1) could also be used to prescreen Pontefract's APA complaint, I use Grayson. As I discussed above, 28 U.S.C. 1915 A. nor 1915 could be used to prescreen a prisoners complaint when he has paid the filing fee & never filed in forma pauperis. I ask that the Third Circuit clarify the Thirds contradiction on these two prescreenings, as Pontefract had paid his filing fee. Grayson explained that 1997 e (c)'s screening was not a prescreening before the initial dismissal by the District Court, but that "42 U.S.C. 1997 e(c) is applicable throughout the entire litigation process." Grayson @ 293 F.3d 110-111, n. 11. Grayson used for support Shane V Fauver, 213 F.3d 113, 106 (CA3, 1999). Both of these cases was based on dismissals concerning Leave to Amend. Pontefract's claim is a little different. He filed an Administrative Procedure Act First Amendment claim. Pontefract feels that this is important because of the guidance of Bounds V Smith, 430 US 817 (1977). Bounds is a

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First Amendment Access to the Court opinion, & Pontefract could not find any support to equate an Access to the Court claim as a Conditions of Confinement claim or classified under the PLRA.

Explaining my thoughts on this legal issue, Pontefract's APA/Access-to-the-Court claim could not be considered classified directly as a prisons conditions complaint, but if so, only to the extent that the PLRA would apply only to the grievance system, so the court would have understanding to any Legal Issue brought to the court. Not as a way to dismiss a complaint under the APA. Section 1997e (a) states, "[n]o action shall be brought with respect to prison conditions under ... any other Federal Law, by a prisoner confined in any jail, prison, or other correctional facility, until such administrative remedies as are available are exhausted."

In support of this, Pontefract's complaint was labeled as a 28 USC § 1331, 5 USC § 701, et. seq., & 28 USC § 2201-02 complaint. Supporting this, paragraph one within foot note 1 of Pontefract's complaint, he cited five court opinions that addressed § 1331 & APA jurisdiction against the BOP & USPO. Pontefract cited the APA along with statutes & program statements & claimed that he suffered legal wrong & was adversely affected & aggrieved. See Complaint § IV(A)/Standing. Throughout his Complaint he cited facts that were related to these statutes. See Complaint § V(A)/Facts giving rise

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to this action, & § VI/Claims for relief... The same was performed against the United States Post Office. See Complaint § V(B) & VII. There was never any complaint under 42 USC § 1983 or any conditions of confinement claim. They were anchored in those statutes & being supported by the Constitution of the First Amendment through the Administrative Procedure Act.

This is important because of the District Court's dismissal of Pontefract's complaint when he was only trying to fix his First Amendment Right through the experience of the Federal Court. He had to do this because of the serious breakdown within the BOP & the USPO at Fort Dix, & their unwillingness to fix or even address his First Amendment & Access-to-the-Court claim.

Explaining, Lewis V Casey, 518 US 343 (1996) had recognized Pontefract's right to access-the-court. The Supreme Court acknowledged that the right was extended to the civil context but only to 42 USC § 1983. They left open other contexts by stating, "we felt compelled to justify even this slight extension of the right of access to the courts, [§ 1983] stressing the Civil Rights of prisons are important to America's Society." They never included the APA, but they definitely left this possibility open. If Pontefract understands this correctly, the Supreme Court left open an Access-to-the-Courts claim under the APA.

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In support of this thought, & in Pontefract's context, the Third Circuit has supported that "[t]he right of access to the courts must be adequate, effective, & meaningful, & must be freely exercisable without hinderance or fear of retaliation." Milhouse V Carlson, 652 F.2d 371 (CA3, 1981) (Internal cites & quotes ommitted).

Both of the above from Lewis & Milhouse has been supported in the Third Circuit, but only in the context of §1983. See Heleva V Walter, US Dist LEXIS 63477, @ 7 (M.D.PA., 2022) (Dismissed for failure to meet the prongs of a denial of a Court access claim); Thomas V Folino, US Dist LEXIS 74240, @ 9-10 (M.D.PA., 2022) (Dismissed for failure to meet the prongs of a denial of a Court access claim.); Livering V Karnes, US Dist LEXIS 17038, @ 7 (M.D.PA., 2021) (Dismissed for failure to meet the prongs of a denial of a Court access claim.) All three failed in meeting the injury requirement, & all three were filed as 42 USC § 1983 claims. Again, Pontefract's claim is different.

## IV. ADMINISTRATIVE PROCEDURE ACT

Pontefract's claim is an Administrative Procedure Act claim that strictly addresses the violations of statutes & anchored by the First Amendment with an Access-To-Court claim. As I understand it, the APA has to inflict a sufficiently concrete injury. In Pontefract's case, the concrete injury is applied to the "Legal Interest" test in which goes to the merits. This type of

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standing in Pontefract's case "the question of whether the interest sought to be protected by the complainant is arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question. Thus, the Administrative Procedure Act grants standing to a person 'aggrieved by agency action within the meaning of a relevant statute.' 5 USC § 702." Air Courier conf. V Postal Workers, 498 US 517, 523 (1991).

Pontefracts APA complaint met this standard. Air Courier supports that Pontefract's zone of interest lies within the statutes that were to be followed, in which denied him his First Amendment & Access-to-the-Court claims. See Air Courier, 498 US 523. The case law in other circuits supports this. See Town of Sherburne V Espy, 861 F. Supp 16, 18 (or LEXIS 8) (D. VT., 1994); National Air Traffic Controllers Ass'n V Pena, US Dist LEXIS 8258 @ 8 (6th Cir., 1996); Mount Evans Co V Magdigan, 14 F. 3d 1444, 1452 (CA 10, 1994); Federation for Am. Immigration Reform V Reno, 93 F. 3d 897, 905 (DOC, 1996)

Within the Third Circuit, their support concerning the "Zone of Interest" has not been applied in many contexts, but there were some. Chem Serv. V Environmental Monitoring Sys. Laboratory - Cincinnati, 12 F. 3d 1256 (CA3 1993); UPS Worldwide Forwarding V United States Postal Service, 66 F. 3d 621, 629 (CA3, 1995). I could also not find any case law in the District Courts that would

support an APA, Zone of Interest, First Amendment Access to the Court claim & especially within a prison context.

#### V. FINAL AGENCY ACTION

Pontefract claims that the District Court never properly analyzed Pontefract's APA motion, perhaps because of the lack of authority within the Circuit. The District Court also misconstrued the facts of Pontefract's APA motion. The Court claimed that there were never "actual final actions by the agencies in question - the BOP & Post office - & instead attacks discrete failures to live up to applicable regulations by persons employed by Fort Dix or the local Post Office." (Appx A; @ LEXIS 5) Pontefract abrogates this:

First, 5 USC § 704 mandates "final agency action." A final agency action within the context of the BOP is controlled under the APA. As I discussed earlier, Pontefract's APA complaint is not under the PLRA as a conditions of confinement case. Pontefract does support that he should follow the PLRA for purposes of the APA & this has been supported in Bernier V United States, US Dist LEXIS 33047, @ 17 & 22 (M.D.PA., 2022) & Landis V Wilson, US Dist LEXIS 189468, @ 26 (M.D.PA., 2021) (Aff'd, Landis V Wilson, US App LEXIS 16322 (3rd., 2021) (On other grounds)). Contrary to the District Court, pontefract did perform a grievance under the PLRA.

Pontefract claims that the BOP performed their "final agency

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action" within the BP-11 by their claims that the BOP is not at fault, & then they pushed the court access-to-court claim to the local Post Office without relief. The facts that Pontefract stated within his complaint supported that his APA claim was available under the PLRA, Ross V Blake, 578 US 632, 643-44 (2016) (See the rule of when an administrative procedure "operates as a simple dead end - with officers unable or consistently unwilling to provide any relief to aggrieved inmates.")

Pontefract claims that the BOP has made a final decision on the merits of Pontefract's claims. The BP-11 from Ian Connors, Administrative National Inmate Appeals from the BOP responded on September 29, 2022 (#1109040-A2). See Exhibit B Examining the BP-11, BP-10, & BP-9, the BOP does not address Pontefract's mail issues, & they supported the Wardens response that "[t]he Institutional Mail Room is not responsible for the determination of postage for outgoing inmate mail." The BOP then pushes Pontefract's mail issue to the United States Post Office (USPO).

The BOP has then road blocked PONTEFRAC FROM CONTACTING THE USPO. (See Complaint). Pontefract then tried to contact the local USPO through certified mails. (See Exhibit C). There was never any response from the USPO.

Pontefract believes that the BOP & USPO has given him the

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golden ticket, excuse me, the golden rule from Ross V Blake, 578 US 632, 643 (2016), when the BOP had denied relief & pointed to the USPO without a real procedure to contact them. Pontefract is a Federal Prisoner & has been blocked by unprofessional government employees of the BOP & USPO. He asked the court for help to the best of his abilities. I am held captive & kept from legal information that would help in writing legal motions. The BOP's law library does not have any examples of how to write them or form a motion that concerns Administrative Procedure Act claims. In short, if my district court motion was confusing to the court, I still should not be prejudiced because of improper form or content. Even so, a complaint filed under the APA does not fall under the same type of screening as full constitutional claims under Art. III standing or conditions of confinement claims. See Lujan V National Wildlife Federation, 497 US 871, 882-3 (1990) and Chem Serv. V Environment Monitoring Sys. Laboratory-Cincinnati, 12 F.3d 1256, 1262 (CA3, 1993).

Pontefract's first issue at the district court level was a motion to a court on his criminal conviction. He tried twice to mail out these motion(s) and each time he was notified of wrong postage with different amounts even though both were flat rate envelopes. During this process of legal mail Pontefract's other legal mail went through multiple violations from Regulations from both the Federal Bureau of prisons and the United States Post

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Office. These violations are caused by a failure by the Bureau of Prisons to block Pontefract from accessing the FCI Fort Dix's Mail Room or Post Office that Pontefract can not access or to file complaints or grievances. See District Court Complaint.

For these above reasons Pontefract PRAYS to this Court to establish Third Circuit jurisprudence concerning a prisoners pre-screening under the PLRA when the filing fee was fully paid and when the complaint is under an Administrative Procedure Act statute that concerns a relevant statute and its applicability under the Zone-Of-Interest test.

Pontefract PRAYS that his pre-screening was performed improperly by the district court under 28 USC § 1915A and under the Administrative Procedure Act and his Complaint is allowed to be reinstated or with permission to refile an amended complaint under this Courts jurisprudence from their opinion.

I declare under penalty of perjury that the foregoing is true and correct.

Date:  
Date:

Glyde Pontefract  
13955-035  
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JBMDL, NJ 08640

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FOOT NOTES

[1] This paragraph cited from Islaam V Kubicki,  
838 Fed Appx 657 (LEXIS 3, 3rd Cir, 2020)