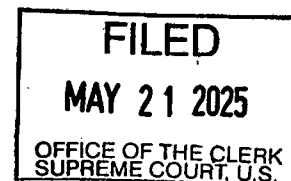


No. 25-7519



IN THE
SUPREME COURT OF THE UNITED STATES

FOUSSEINI TOUNKARA — PETITIONER
(Your Name)

vs.
GLACIER FISH AND SEABRIGHT
INSURANCE COMPANY — RESPONDENT(S)

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

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

FOUSSEINI TOUNKARA
(Your Name)

256 EAST 166TH STREET, APT 2B
(Address)

BRONX, NY, 1004566
(City, State, Zip Code)

(929) 240-7756
(Phone Number)

No. ____
In the
Supreme Court of the United States

FOUSSEINI TOUNKARA,
256 EAST 156TH STREET, APT. 2B
BRONX, NY 10456
(929) 240-7756
fousseinitoukara@yahoo.com
Petitioner, Pro Se
v.

Glacier Fish and Seabright Insurance Company,
P.O Box 91107
Seattle WA 98111
Phone: (206) 269-8550
Fax: (206) 269-8906

Director, Office of Worker's Compensation
200 Constitution Ave NW
Washington, DC 20210
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

Petitioner Fousseini Tounkara respectfully petitions for a writ of certiorari to review the judgment of the
United States Court of Appeals for the Ninth Circuit.

November 04, 2025

QUESTIONS PRESENTED

1. Whether a reviewing court may uphold an Administrative Law Judge's adverse credibility determination in a Longshore and Harbor Workers' Compensation Act case when that determination is unsupported by substantial evidence and contradicted by the preponderance of medical and testimonial proof.
2. Whether the Ninth Circuit's deference to an ALJ's credibility finding—despite lack of factual support and conflict with uncontroverted medical evidence—violates the Fifth Amendment and the statutory requirement that agency decisions reflect the entire record.
3. Whether a court of appeals may refuse to consider exculpatory medical and audio evidence solely because it was excluded from the administrative record where the exclusion resulted directly from the ALJ's procedural rulings.
4. Whether a reviewing court may affirm an administrative decision where the ALJ (1) denied Petitioner the right to present his case first; (2) cut off cross-examination of a vocational expert; (3) excluded a disputed allegation as "irrelevant" while still relying on it; and (4) returned Petitioner's pretrial exhibits before they could be admitted, ensuring they were not part of the record.

PARTIES TO THE PROCEEDING

Petitioner is Fousseini Tounkara, an injured longshore worker.

Respondent is Glacier Fish Company and Seabright Insurance Company, Office of Worker's Compensation Program.

TABLE OF CONTENTS

Questions Presented

Parties to the Proceeding

Table of Contents

Table of Authorities

Opinions Below

Jurisdiction

Constitutional and Statutory Provisions

Statement of the Case

Reasons for Granting the Writ

Conclusion

Appendices

TABLE OF AUTHORITIES

Cases:

Goldberg v. Kelly, 397 U.S. 254 (1970)

Richardson v. Perales, 402 U.S. 389 (1971)

Statutes & Regulations:

33 U.S.C. §§ 901–950

5 U.S.C. §§ 551–559

28 U.S.C. § 1254(1)

OPINIONS BELOW

The Ninth Circuit's unpublished order denying review is Appendix A.

The Benefits Review Board's decision is Appendix B.

The ALJ's decision and transcript excerpts are Appendix C.

Excluded audio evidence (USB) is Appendix D.

Correspondence regarding exclusion of evidence is Appendix E.

JURISDICTION

The Ninth Circuit entered judgment on February 20, 2025. Jurisdiction lies under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. amend. V (Due Process Clause)

Administrative Procedure Act, 5 U.S.C. §§ 551–559

Longshore & Harbor Workers' Compensation Act, 33 U.S.C. §§ 901–950

STATEMENT OF THE CASE

Petitioner, a career longshoreman, filed a claim under the Longshore and Harbor Workers' Compensation Act after sustaining a disabling injury during the course of his employment. The claim was supported by multiple treating physicians, objective medical evidence, and vocational assessments concluding that Petitioner was no longer capable of returning to gainful employment.

An Administrative Law Judge (ALJ) denied the claim, finding Petitioner's testimony not credible. This adverse credibility finding was not based on any misrepresentation, contradiction, or impeachment but rather on vague references to Petitioner's demeanor and supposed inconsistencies not supported by the record. The ALJ disregarded uncontroverted medical

opinions confirming disability and relied instead on a vocational expert (VE) whose testimony included a key factual allegation materially affecting the outcome.

Despite these procedural restrictions, the ALJ relied on the disputed VE testimony and adverse credibility finding to deny benefits.

Additionally, before the hearing, the ALJ denied the Petitioner's Motion for Summary Judgement based on a false claim by the defense attorney that the Petitioner had refused to undergo a vocational evaluation. This allegation was directly contradicted in Petitioner Motion for Summary Judgement, including a memorandum from the District Director. Further compounding the issue, the defense attorney provided a false tracking number regarding the scheduling of the evaluation. These actions prompted the Petitioner to file his motion for summary Judgement by the ALJ's July 11, 2019, deadline as outlined in the "Notice of Hearing and Pre-Hearing Order."

However:

1. The ALJ deprived Petitioner of his right to present his case first—as party initiating the claim—and allowed the Respondent to proceed first.
2. The ALJ abruptly terminated Petitioner's cross-examination of the VE before Petitioner could challenge or clarify the disputed allegation.
3. The ALJ excluded the VE's allegation from the claim, deeming it not relevant, and thereby refused to allow rebuttal or evidentiary clarification.
4. As a result, Petitioner was unable to introduce audio evidence that directly contradicted the VE's assertion.
5. The ALJ returned Petitioner's exculpatory pretrial exhibits before they could be formally introduced—not necessarily to opposing counsel, but in a manner that prevented their admission into the record.

Despite the procedural restrictions imposed on Petitioner, the ALJ relied on the disputed VE testimony and the credibility finding to deny benefits.

The Benefits Review Board affirmed. The Ninth Circuit denied review, holding that "The ALJ's

determination that claimant lacked credibility does not conflict with the clear preponderance of the evidence, nor is it inherently incredible or patently unreasonable." The Ninth Circuit further refused to consider the audio evidence because it was not included in the administrative record—despite the fact that it was excluded due to the ALJ's own rulings.

REASONS FOR GRANTING THE WRIT

This case raises pressing questions about the proper bounds of judicial deference to administrative adjudicators, especially when procedural barriers prevent a claimant from building a complete and fair evidentiary record.

1. Circuit Conflict on ALJ Credibility Findings: Federal appellate courts diverge on whether and when ALJ credibility determinations—especially those unsupported by evidence—are entitled to deference. Several circuits demand closer scrutiny when credibility is the sole basis for denying relief.

2. Undermining the Substantial Evidence Standard: The decision below permits ALJs to ignore consistent medical findings and instead base decisions on subjective impressions. This erodes the statutory requirement that findings be grounded in substantial evidence.

3. Violation of Due Process: Petitioner was denied a fair opportunity to challenge adverse testimony and introduce rebuttal evidence. The ALJ's procedural rulings effectively denied Petitioner the right to be heard and to confront evidence—core protections under the Fifth Amendment.

4. Record Manipulation and Exclusion of Key Evidence: By preventing introduction of evidence through procedural pretext—excluding the VE allegation, cutting off cross-examination, and returning exhibits—the ALJ distorted the factual record in a way that evaded appellate review.

5. Conflict with Supreme Court Precedent: The lower courts' refusal to address these procedural irregularities conflicts with *Richardson v. Perales*, 402 U.S. 389 (1971) and *Goldberg v. Kelly*, 397 U.S. 254 (1970).

6. Issue of National Importance: Administrative claimants across the country face procedural barriers that prevent full development of their claims. This case presents an opportunity for the Court to reaffirm the importance of due process in agency adjudications and establish limits on judicial deference to flawed administrative procedures.

CONCLUSION

For the foregoing reasons, this Court should grant the petition for a writ of certiorari to clarify the standard for judicial review of ALJ credibility findings and to determine whether due process is violated when a claimant is procedurally barred from introducing rebuttal evidence.

Respectfully submitted,

Fousseini Tounkara]

Petitioner, Pro Se

256 E. 166th Street,

Apt 2B

Bronx NY 10456

(929) 240-7756

fousseinitounkara@yahoo.com

Date: 11/04/2025

APPENDICES

Appendix A: Ninth Circuit Order

Appendix B: Benefits Review Board Decision

Appendix C: ALJ Decision & Transcript Excerpts

Appendix D: Excluded Audio Evidence (USB)

Appendix E: Correspondence Regarding Exclusion

CERTIFICATE OF COMPLIANCE

No. ____

In the

Supreme Court of the United States

FOUSSEINI TOUNKARA,

Petitioner,

v.

GLACIER FISH and SEABRIGHT INSURANCE COMPANY,

Respondents.

As required by Supreme Court Rule 33.1(h), I certify that this petition for a writ of certiorari contains fewer than 9,000 words, excluding the parts of the document that are exempted by Supreme Court Rule 33.1(d).

I further certify that this document complies with the typeface requirements of Rule 33.1(b) and the type style requirements of Rule 33.1(c). This document has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman, 12-point font.

Respectfully submitted,

Fousseini Tounkara

Petitioner

Executed on 11 / 04 / 2025

Fousseini Tounkara