

14-1051

Supreme Court, U.S.
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No. 14-_____

In the Supreme Court of the United States

CHRISTOPHER B. and RENEE G. JULIAN,

Petitioners,

—v—

UNITED STATES DEPARTMENT OF
AGRICULTURE, ET AL.,

Respondents.

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

PETITION FOR WRIT OF CERTIORARI

CHRISTOPHER B. JULIAN

PETITIONER, PRO SE

RENEE G. JULIAN (SPOUSE)

474 ORCHARD VIEW DRIVE

ARARAT, VA 24053

(980) 254-1295

CHRISTOPHER.B.JULIAN@GMAIL.COM

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QUESTIONS PRESENTED

1. Is a Racketeer Influenced Corrupt Organization (RICO) enterprise operating in and by a Federal Agency protected from civil suit for violation of the RICO act 18 U.S.C. § 1964(c) for violations of § 1961 and § 1962 (a-d) by sovereign immunity or by provisions of the Federal Tort Claims FTCA?

2. Should a court grant deference to an administrative agency's statutory interpretation in civil or criminal proceedings?

3. When a Federal Agency denies an appellant opportunity to present evidence of negligence, fraud, and discrimination, relevant to an agency decision, and judicial review is limited to review of the administrative record and the provisions of 5 U.S.C. § 706, have the administrative procedures in conjunction with the limits on judicial review not effectively violated the appellants' constitutional rights to due process and a jury trial not ?

PARTIES TO THE PROCEEDINGS

Christopher and Renee Julian, a married couple, are plaintiffs-appellants in the proceedings below.

Defendants in this action included the United States Department of Agriculture (USDA) as parent of the Farm Service Agency (FSA), National Appeals Division (NAD), and employer of seven Federal Defendants (1) James Rigney (FSA) loan officer; (2) Ronald Kraszewski FSA loan manager; (3) J. Calvin Parrish FSA State Executive Director; (4) Jerry L. King (NAD) Hearing Officer; (5) Roger Klurfeld NAD Director; (6) Christopher P. Beyerhelm USDA Deputy Administrator Farm Loan Programs;; and (7) Barbara Mclean FSA National FOIA/PA Specialist; along with one State employee, Director of Agricultural Mediation program at the University of Virginia, (1) Wanda Johnson.

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PETITION FOR A WRIT OF CERTIORARI

Petitioners Christopher B. and Renee G. Julian respectfully request this Court issue a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.



OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit affirming the district courts decisions is unpublished and reproduced in the appendix (at 1a). The district court's opinion granting summary judgment in favor of defendants is unpublished and reproduced in the appendix (at 3a). The district court's opinion dismissing defendants (the Enterprise) from criminal allegations for lack of subject matter jurisdiction is unpublished and reproduced in the appendix (at 17a).



STATEMENT OF JURISDICTION

The United States Court of Appeals for the Fourth District issued its Opinion and final Judgment on November 24, 2014 reproduced in the Appendix at (1a). This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).



STATUTORY PROVISIONS INVOLVED

Pertinent provisions of the Agriculture Farm Ownership Loan Program are reproduced in the Appendix (at 79a). The following pertinent provisions:

- 7 U.S.C. § 1923
- 7 CFR § 764.151



STATEMENT

A. Introduction

Petitioners Christopher B. and Renee G. Julian, former banking associates, gave up careers in banking with the surprise birth of their daughter, Seren, late in life.

The Julians moved to the country and set out to develop a farm winery business in a rural HUD zone. After having spent six years and their life savings on development, Petitioners were relegated by enactment of Dodd Frank legislation and Small Business Administration “SBA” program rules, to pursue the only financing left available to them, a USDA Farm Ownership Loan. When FSA denied the loan, Petitioners followed all Administrative grievance proceedings from mediation through Director review with FSA and NAD in an attempt at resolution.

Petitioners alleged numerous failures of the FSA to follow its own required procedures and alleged

encountering of numerous acts of negligence, fraud, discrimination, conspiracy, and other criminal acts including perjury, violations of the Fair Credit Reporting Act (FCRA), and inappropriate Freedom of Information Act (FOIA) disclosures.

Petitioners filed suit in Federal district court of Virginia Danville district as Pro-Se litigants on the jurisdictional basis of: U.S.C 58 § 1361.1. Plaintiffs are residents of the state of Virginia in the town of Ararat and the county of Patrick. 2. The USDA and its affiliates FSA, NAD and 7 Federal employees of USDA agencies and one state employee of the University of Virginia mediation program significantly compensated by the USDA/FSA were named for their participation in the enterprise.

The suit was filed with a civil cause of action under 18 U.S.C. § 1961, 62, 64, 68 for the multiple torts of an “enterprise.”

Petitioners demanded a jury trial and specifically asked the court for a jury to decide whether the agency followed its own regulations. The complaint included a request for judicial review of an Administrative Appeal. *See* Complaint relief (App.109a).

The District court denied plaintiff’s jurisdiction with regards to the RICO tort allegations, with their decision on March 24, 2014 (App 17a). The district court proceeded with judicial review on a request for summary judgment by defendants and upheld the agency’s use of Chevron deference for denying the loan application with its opinion on August 15, 2014 (App 3a). The District courts actions coalesced with agency appeal procedures to deny the Petitioners any opportunity to present relevant evidence that the

torts of negligence and fraud were major factors in the agency's loan denial. The Courts' granting of Chevron deference to the agency "enterprise", upholding the agency's decision has achieved the very objective of the RICO enterprise complained of eliminating damages caused by the torts and denying the opportunity for a jury to access the agency's actions.

Petitioners proceeded to appeal from the Federal Courts decisions through the Fourth Circuit Court of Appeals. The Fourth Circuit upheld the district courts rulings in their opinion on November 24, 2014 (App 1a).

This case presents important questions of administrative, civil, criminal, and constitutional law

1. Whether the enterprise of a RICO operating within a federal agency is entitled to sovereign immunity and protected by provisions of the Federal Tort Claims Act (FTCA)?
2. Whether the rights of Judicial review provide an appellant the right to file a civil suit relevant to the judicial review?
3. Whether the provisions of judicial review are an appropriate application of the private attorney general provisions.
4. Whether Federal Agencies are entitled to Chevron deference in their statutory interpretations or, of substantive regulations pursuant to statutory authority; when doing so allows the agency to avoid attaching damages for torts of the agency, its personnel, or an "enterprise"? (i.e Whether in a criminal context, a court should grant deference to an administrative agency's statutory interpretation.)
5. Whether Federal Agencies coalesce with the Judiciary performing

judicial review to violate constitutional rights when the agency denies presentation of relevant evidence and torts in their administrative procedures?

B. Statutory Support for Petitioners Case

18 U.S.C. § 1961(4) states an "enterprise" includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity;" Chapter 18 § 1964(c) States: "Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee, except that no person may rely upon any conduct that would have been actionable as fraud in the purchase or sale of securities to establish a violation of section 1962. The exception contained in the preceding sentence does not apply to an action against any person that is criminally convicted in connection with the fraud, in which case the statute of limitations shall start to run on the date on which the conviction becomes final."

18 U.S.C. § 1964(c) "Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee, except that no person may rely upon any conduct that would have been actionable as fraud in the

purchase or sale of securities to establish a violation of section 1962.”

28 U.S.C § 2675(a) States “An action shall not be instituted upon a claim against the United States for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, unless the claimant shall have first presented the claim to the appropriate Federal agency and his claim shall have been finally denied by the agency in writing and sent by certified or registered mail. The failure of an agency to make a final disposition of a claim within six months after it is filed shall, at the option of the claimant any time thereafter, be deemed a final denial of the claim for purpose of this section. The provisions of this subsection shall not apply to such claims as may be asserted under the Federal Rules of Civil Procedure by third party complaint, cross-claim, or counterclaim.” 28 U.S.C. § 2674 states: “The United States shall be liable, respecting the provisions of this title relating to tort claims, in the same manner and to the same extent as a private individual under like circumstances, but shall not be liable for interest prior to judgment or for punitive damages.”

5 U.S.C. § 702 “A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof. An action in a court of the United States seeking relief other than money damages and stating a claim that an agency or an officer or employee thereof acted

or failed to act in an official capacity or under color of legal authority shall not be dismissed nor relief therein be denied on the ground that it is against the United States or that the United States is an indispensable party. The United States may be named as a defendant in any such action, and a judgment or decree may be entered against the United States: Provided, That any mandatory or injunctive decree shall specify the Federal officer or officers (by name or by title), and their successors in office, personally responsible for compliance. Nothing herein

- (1) affects other limitations on judicial review or the power or duty of the court to dismiss any action or deny relief on any other appropriate legal or equitable ground; or
- (2) confers authority to grant relief if any other statute that grants consent to suit expressly or impliedly forbids the relief, which is sought."

5 U.S.C. § 703 "The form of proceeding for judicial review is the special statutory review proceeding relevant to the subject matter in a court specified by statute or, in the absence or inadequacy thereof, any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus, in a court of competent jurisdiction. If no special statutory review proceeding is applicable, the action for judicial review may be brought against the United States, the agency by its official title, or the appropriate officer. Except to the extent that prior, adequate, and exclusive opportunity for judicial review is provided

by law, agency action is subject to judicial review in civil or criminal proceedings for judicial enforcement.”

When a Federal Agency is accused of operating a RICO “enterprise” numerous conflicts in application of these statutes come into question. 1. Can a Federal Government Agency and its employees comprise a RICO Enterprise? 2. Is a RICO enterprise operated by a Federal government Agency protected by sovereign immunity? 3. Can the torts of a RICO “enterprise” be committed while acting within the scope of the Agency’s office or employment? 4. Are the Private Attorney General provisions of 18 U.S.C. § 1964(c) granting recovery of threefold damages, the cost of the suit, and reasonable attorneys fees considered punitive damages? 5. Is the United States Liable respecting the provisions of title 18 U.S.C. § 1964(c) relating to tort claims, in the same manner and to the same extent as a private individual under like circumstances? 6. Is an applicant alleging, unlawful denial of a loan application by a Federal Agency and a conspiracy and operation of a RICO enterprise to avoid financial damages not A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute? 7. Is it appropriate to require a Plaintiff alleging the operation of a racketeer Influenced corrupt organization by a Federal Agency be required to request permission from the agency operating the “enterprise”? 8. Is any form of judicial review proceeding “Adequate” when the appellant alleges the agency is operating a RICO Enterprise? 9. If judicial review is inadequate with the allegation of a RICO enterprise, is civil or criminal suit for judicial enforcement not appropriate?

C. *Chevron* Deference

In *Chevron U.S.A. Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 843-44 (1984). This Court addressed the issue of how courts should treat agency interpretations of statutes that mandated the agency to take some action. This court held that courts should defer to agency interpretations of such statutes unless they are unreasonable and where a statute is silent or ambiguous with regard to a particular issue, a court may not substitute its own construction of the statutory provision for a reasonable interpretation of the statute made by an administrative agency.

This Court established a two-step analysis for evaluating whether an agency's interpretation of a statute, it is entrusted to administer is lawful.

Chevron step 1 requires that the reviewing court determine "whether Congress has directly spoken to the precise question at issue." *Id.* at 842. "If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress." *Id.* at 842-43. Congressional intent may be discerned from the plain terms of the statute and by employing the traditional rules of statutory construction. *See id.* at 843 n.9.

Chevron step 2 requires that if the statute is silent or ambiguous, however, the reviewing court must decide at Chevron step 2 "whether the agency's answer is based on a permissible construction of the statute." *Chevron*, 467 U.S. at 843. A permissible construction of the statute is not necessarily the best interpretation of the statute or the interpretation

that the reviewing court would adopt if interpreting the statute in the absence of an existing agency construction. *Id.* at 843 n.11; *National Cable & Telecommunications Assn. v. Brand X Internet Services*, 545 U.S. 967, 980 (2005).

This Court clarified in *United States v. Mead*, 533 U.S. 218 (9th Cir. 2001) that not all agency interpretations of a statute qualify for *Chevron* deference. Only “when it appears that Congress delegated authority to the agency generally to make rules carrying the force of law, and that the agency interpretation claiming deference was promulgated in the exercise of that authority” does *Chevron* deference apply. *Id.* at 226-27. In interpreting *Mead*, the Ninth Circuit has treated “the precedential value of an agency action as the essential factor in determining whether *Chevron* deference is appropriate.” *Miranda-Alvarado v. Gonzales*, 449 F.3d 915, 922 (9th Cir. 2006) (emphasis in original). Specific examples of agency interpretations meriting *Chevron* deference identified by the Supreme Court include notice-and-comment rulemaking and formal adjudications. *Mead*, 533 U.S. at 230.

Other agency constructions, such as “interpretations contained in policy statements, agency manuals, and enforcement guidelines,” are “beyond the *Chevron* pale,” but may nonetheless merit some deference under the standard set forth in *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944). *Id.* at 235 (quoting *Christensen*, 529 U.S. at 587). Applying *Skidmore* deference, the weight accorded to such an administrative judgment “depend[s] upon the thoroughness evident in its consideration, the

validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control.” *Skidmore*, 323 U.S. at 140.

D. Constitutional Rights

Cornell University Law Schools online Legal Information Institute states the following on Due Process “The Constitution states only one command twice. The Fifth Amendment says to the federal government that no one shall be “deprived of life, liberty or property without due process of law.” The Fourteenth Amendment, ratified in 1868, uses the same eleven words, called the Due Process Clause, to describe a legal obligation of all states. These words have as their central promise an assurance that all levels of American government must operate within the law (“legality”) and provide fair procedures.”

Article III of the U.S. Constitution Section 1. States: “The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish.”

Section 2. States: “The trial of all crimes, except in cases of impeachment, shall be by jury.”¹

The Seventh Amendment to the constitution states: “In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of

¹ Emphasis added.

the United States, than according to the rules of the common law.”

5 U.S.C. § 301- Departmental regulations States: “The head of an Executive department or military department may prescribe regulations for the government of his department, the conduct of its employees, the distribution and performance of its business, and the custody, use, and preservation of its records, papers, and property. This section does not authorize withholding information from the public or limiting the availability of records to the public.”

7 CFR 11.2(a) “This part sets forth procedures for proceedings before the National Appeals Division within the Department. The Division is an organization within the Department, subject to the general supervision of and policy direction by the Secretary, which is independent from all other agencies and offices of the Department, including Department officials at the state and local level. The Director of the Division reports directly to the Secretary of Agriculture.”

28 U.S.C. § 455(a) states: “Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.”

28 U.S.C. § 455(b) states: “He shall also disqualify himself in the following circumstances:

- (b)(1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(b)(4) He knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

(b)(5) He or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(i) Is a party to the proceeding, or an officer, director, or trustee of a party;

[. . .]

(iii) Is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;"

Should a Court evaluating an agency's right to deference not consider these same questions? Should an agency's use of deference be disqualified? 1. In any proceeding in which the Secretary of Agriculture's impartiality might reasonably be questioned? 2. Where the Secretary has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding? 3. Where the Secretary has a financial interest in the subject matter in controversy or is a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding? 4. Where the Secretary is a party to the proceeding, or an officer, director, or trustee of a party? 5. Where the Secretary of Agriculture knows the agency has an

interest that could be substantially affected by the outcome of the proceeding. Should the agency be granted "Deference to substantially affect the outcome of any Civil or Criminal case or should the facts be presented to a jury and a reasonable interpretation of the law as promulgated in the Code of Federal Regulations "CFR" be made by them as so stated by Article III and the Seventh Amendment to the constitution?

Article III of the Constitution grants the right to a trial by jury. The jury makes decisions and findings of fact as to whether an individual is guilty of a crime or of breaking laws. The jury decides whether the Law is fair and just. Jury trial in civil cases is a 7th amendment right should deference in interpretation of the law not be left to the jurors for an interpretation by consensus of the defendant's peers and not some perverted corrupt, self-opinionated director of appeals who is protecting the system and powers in Government that be. A jury of peers will be able to see from the people's prospective.

Is each of these and more not, specifically designed to ensure judges operate within the law and provide fair unbiased application of the law and procedures? Are each of these not designed to ensure due process? All of these are applicable to judges applying, interpreting, and setting precedent, for the laws of this country; should they not also be applicable to the agency's that interpret the statutes and promulgate them into regulations with full force of the law and especially when the agency itself is the accused? Is it not a common right or reason that no agency should be a judge in its case?

E. Federal Rules of Evidence

The Federal Rules of Evidence Rule 401. Definition of "Relevant Evidence" States: "'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."

Rule 402. Relevant Evidence Generally Admissible; Irrelevant Evidence Inadmissible States: "All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, by Act of Congress, by these rules, or by other rules prescribed by the Supreme Court. Pursuant to statutory authority. Evidence which is not relevant is not admissible."

7 CFR 11.4(b) "The Federal Rules of Evidence, 28 U.S.C App., shall not apply to proceedings under this part. "A regulation promulgated by the Secretary for the proceedings of NAD.

The Secretary of Agriculture has promulgated rules for the operation of the National Appeals Division NAD, stating, "The Federal Rules of Evidence shall not apply" to NAD's Proceedings. The Agency with regards to Petitioners denied the presentation of evidence regarding specific grounds the agency gave for denial of a loan application. The agency proceeded to segregate the crimes from the damages caused by those crimes by insisting that evidence of torts not be presented in the administrative appeal but, follow the requirements of the FTCA 28 U.S.C § 2675(a). The damages caused by those crimes would be subjected to the limits of judicial review of administrative proceedings absent the evidence of

negligence, fraud, and discrimination. This is not fair procedure.

F. Agency Misinterpretation of Statutory Text

The agency proceeded to gain the Courts grant of *Chevron* deference to literally alter the promulgated law reading 7 CFR 764.151(b) (App.79a), as if it said "and" where in fact it says "or" effectively the court has granted the agency the opportunity to alter their promulgated law to eliminate damages caused by torts of the agency. The relevant law in this case granted, *Chevron* deference, 7 CFR 764.151(b) is published in the Code of Federal Regulations by the agency and says "Make capital improvements to a farm owned by the applicant for construction, purchase, or improvement of farm dwellings, service buildings "OR" other facilities and improvements essential to the farming operation. "'Emphasis added' the words and an or have very different conjunctive meanings in the English language and the constructs of legal meaning. It is not correct to substitute "and" meaning "inclusive of" with "or" meaning "alternatively". Such a substitutions makes no sense because no farm dwelling would ever be essential to a farming operation. What has happened to adhering to the letter of the law which in this case the letters are "or" not "and" Furthermore, the addition of alternatively other facilities and improvements to the farming operation is an expansion of the statute's provisions, an expansive addition to the legislative statute 7 U.S.C § 1923 (App.80a), which describes no such purpose for the use of direct loans funds and certainly was not intended to restrict capital

improvements by wording not found in the relevant statute.

The very clear legislative language of 7 U.S.C § 1923—Purpose of Loans (a) Allowed purposes

(1) Direct Loans States:

A farmer or rancher may use a direct loan made under this subchapter only for

(A) Acquiring or enlarging a farm or ranch;

(B) Making capital improvements to a farm or ranch. c. *See* 7 U.S.C § 1923 app. 80a for items

(C)—(E).

The Agency and the District Judge argue that Congress delegated the Secretary of Agriculture authority to define relevant terms necessary for the implementation of the program and the meaning of the statute 7 U.S.C § 1923 (B) is not “unambiguously clear” on Congress’s intent as to what is meant by “Capital Improvements” This term “Capital Improvements” has been around since the 13th century to mean improvements relating to or being assets that add to the long term net worth of a corporation (*see merriam-webster.com*).

If Congress had any intent for Capital Improvements to be limited to those that were essential to the farming operation it would certainly have known how to draft such legislation. Again no dwelling is essential to a farm. This is simply a fallacious argument as any capital expenditure to improve a capital asset “a farm or ranch” is by definition a capital improvement. There is no

ambiguity expressed by the statement at all and no justification for the agency to make such an argument to establish limitations on the types or kinds of assets to be improved on a farm or ranch.

The Agency and the Court have similarly argued that Congress intent was that Farm loans are only for the underprivileged. Consequently, the agency again is due significant deference to their interpretation of the Statute. See Memorandum Opinion of the Western District Court of Virginia at App.11a "Considering that Congress' intention in establishing the Farm Ownership Loan Program was "to aid the 'underprivileged' farmer" and therefore limiting the use of funds to only those dwellings which are modest, in size, cost and design, "and/or"² homes that adequately³ meet the family's needs" is consonant with that purpose." They have based this reasoning citing *Curry v. Block*, 541 F.Supp. 506, 511(S.D.Ga.1982).

However this simply is abuse of *Chevron* deference again overstating the emphasis of the use

² There are countless examples of the judiciary's scorn for the use of "and/or" in legal documents. In this case they've read the Farm Service Agency Handbook.(App.114a), to contain the or when none exists. How is it the court continues to ignore the Letter of the Law?

³ Petitioners were never allowed to argue the dwelling met our needs. The agency's choice of applying the rule altered after it had already been breached prevented such an argument. Petitioners could not concede the house was not modest "AND" met our needs but, could certainly have argued it met our needs though it was not modest.

of funds for "only the underprivileged" This is refuted in the plain language of the statute.

B. 7 U.S.C § 1923 (App.80a)

1.

(a) Allowed Purposes

(1) Direct Loans

A farmer or rancher may use a direct loan made under this subchapter only for-

- a. Acquiring or enlarging a farm or ranch;
- b. Making capital improvements to a farm or ranch;

(B)2(b) Preferences

- (1) Has a dependant Family;
- (2) To the extent practicable, is able to make an initial down payment on the farm or ranch; or
- (3) Is an owner of livestock or farm or ranch equipment that is necessary to successfully
- (4) carry, out farming or ranching operations.

How is "only the underprivileged" supported by the legislative intent that capital improvements can be made to enlarge a farm or ranch owned by the applicant? Are they indigent or "underprivileged" when they own the property? Has Congress stated a limit on the value of the farm? Is it legislative intent that, farm or ranch equipment already owned be of limited value or worn out? If it's only the "under-

privileged” why is the stated legislative preference for farmers who can make a down payment or already own a farm, ranch, or livestock?

The agency and the court have applied an unintended interpretation to *Curry v. Block*. The case merely pointed out the legislation intended to grant access to the underprivileged being those unable to get credit elsewhere not that it was only to apply to the poor and underprivileged. Consider the following excerpts from *Curry v. Block*.⁴

G. *Curry v. Block*

1. History of Federal Involvement in Agricultural Credit

“The federal government has been involved in extending agricultural credit for some 120 years. The first such involvement was initiated in 1863 with the passage of the Homestead Act; an act designed to provide farming opportunities for small-scale, family farmers—still a goal for federal intervention in agricultural credit.”

“Then, in 1935, the earliest predecessor to the FmHA, the Resettlement Administration, was created by Executive Order. This agency was authorized to make small loans to farmers with the goal toward helping families settle in the rural areas.”

“In 1972, the farmer loan program and the rural housing loan program were consolidated through

⁴ Emphasis added through out these excerpts to highlight relevant information.

an amendment to the Consolidated Farms Home Administration Act of 1961. This amendment changed the name of the 1961 Act to the Consolidated Farm and Rural Development Act and adopted provisions relevant to Rural Housing loans. It did not, however, change the nature of the farmer loan program; thus this program stands today basically as it has for almost half a century."

"In summary, federal intervention in agricultural credit shows a long history of farmer loans designed 'to aid the family farmer who cannot obtain credit from a different source.'"⁵

2. The Statutory and Regulatory Framework

"The Consolidated Farm and Rural Development Act as it existed in 1978 (and presently) is divided into four subtitles. The first three subtitles contain the substantive provisions of the Act while the fourth contains the administrative provisions.

Subtitle A, headed "Real Estate Loans," authorizes the Secretary to make or insure loans to eligible persons. "Those persons eligible for these loans include 'family farmers' unable to obtain sufficient credit elsewhere. 7 U.S.C.

⁵ Emphasis added to show just what this case defined as "underprivileged." A requirement of loan eligibility, Petitioners met as a direct consequence of congressional implementation of Dodd Frank Reg b. in 2011.

§ 1922.⁶ To insure repayment, the Secretary is directed to take such security interest (generally the land) 'as he may determine to be necessary.'"
7 U.S.C. § 1927.

3. Nature of the Program

"A court must look to the legislation as a whole in order to discern its statutory purpose." *Plaskolite, Inc. v. Baxt Industries, Inc.*, 486 F.Supp. 213, 216 (N.D.Ga.1980). An examination of the prefatory material reveals that the farmers loan program is a unique mixture of social welfare legislation and legislation carefully designed to supplement the business needs of high credit risk farmers."

In Summary

The Federal Government has been extending farm credit for over 120 years. The act was designed to provide farming opportunities for small-scale family farmers. The agency was authorized to make small loans to farmers with the goal toward helping families settle in rural areas. The Bankhead-Jones Farm Tenant Act did not change the nature of federal involvement in agricultural credit but was enacted to simplify and improve credit services to farmers and promote farm ownership. The Rural Development Act did not change the nature of the farmer loan program as it stands today basically, as it has for almost half century.

⁶ Petitioners met all the requirements of 7 U.S.C. § 1922.

Federal intervention in agricultural credit shows a long history of farmer loans designed to aid the family farmer who cannot obtain credit from a different source. Subtitle A authorizes the Secretary to make or insure loans to eligible persons for improving farms, Including buildings, land, water development, use, conservation, recreational uses, "facilities", and enterprises needed to supplement farm income. In fact the program is designed for a unique mixture of social welfare legislation and legislation carefully designed to supplement the business needs of high risk farmers.⁷

If the Agency intended for their promulgated law to enforce such a limitation on the use of funds for Capital improvement it could most certainly have been worded far better to express such limitations than by the use of the word "OR" "alternatively" together with the wording "other facilities and improvements essential to the farming operation." Which, clearly implies the agency believes there may be other uses for farm ownership funds congress did not specify in the legislative statute for which funds could be used if they are essential to the farming operation. But, construing this regulation to say that improvements to a dwelling may not be made that are not essential to the farm is purely an Agency abusing *Chevron* deference to avoid financial damages attaching to criminal torts.

If Congress wished to legislate some definition of underprivileged that must be met for a farmer to be

⁷ See *Curry v. Block*. As complete support of this summary.

eligible beyond the stipulation that applicant must not be able to obtain credit elsewhere, then Congress should have no problem making such changes to the statute to eliminate the courts perception that the program is a unique mixture of social welfare legislation and legislation carefully designed to supplement the business needs of high credit risk farmers.

H. No Agency Should be Judge in its Own Case

To quote Justice Scalia in NATIONAL LAW REVIEW, Dec. 4, 2014, "I doubt the Government's pretensions to deference. They collide with the norm that legislatures, not executive officers, define crimes. When King James I tried to create new crimes by royal command, the judges responded "the King cannot create any offence by his prohibition or proclamation, which was not an offence before." James I, however, did not have the benefit of *Chevron* deference. With deference to agency interpretations of statutory provisions to which criminal prohibitions are attached, federal administrators can in effect create (and uncreate) new crimes at will, so long as they do not roam beyond ambiguities that the laws contain [internal citations omitted]. . . . "

There are countless citations of Due process which all encompass the concept that fundamental fairness must remain part of the process. It is the right to hear and the right to be heard. Segregating the crimes from the damages they cause or the damages caused by the criminals perpetrating them, is a racket any American would find shocking of a Government Agency established to administer

legislative law, and a clear violation of the Constitutional right to Due Process.

The Secretary of Agriculture has established his own judicial process, one in which the Federal Rules of evidence do not apply. One in which crimes and the damages they cause are appealed in segregated proceedings, where *Chevron* deference is abused by USDA agencies, NAD, and the Secretary to create new crimes and dispose of current federal statutes at will, "so long as they do not roam beyond ambiguities the laws contain." Justice Scalia, NATIONAL LAW REVIEW, Dec. 4, 2014.

It is unquestionable, the drafters of the Constitution with the specificity with which they crafted the segregation of powers in Articles I, II, and III never envisioned an Executive branch of the Federal Government operating its own judicial processes where the federal rules of evidence are inapplicable, Segregation of crimes and the damages caused by those crimes could be forced down separate avenues for hearings and the executive branch would have the power to change laws at will in its' own defense. There is no valid logical reasoning on which to substantiate this as a fair, and equitable process for the hearing of a grievance. It's a perfect example of unilateral, unchecked Executive action and is precisely the danger that the Framers of the constitution sought to avoid in our constitutional system. It is precisely why the framers of the constitution found trial by jury so important as to place it in Article III of the constitution and expand its use in civil suit in the Seventh Amendment.

This is not Due Process, it's a Racketeering operation.

No jury in the United States would view such a racket by a Government Agency as a fair and impartial proceeding.



REASONS FOR GRANTING THE PETITION

- I. THIS COURT SHOULD GRANT REVIEW OF THIS PETITION BECAUSE IT HAS RELEVANT ELEMENTS OF EACH OF THE SUPREME COURTS GOVERNING RULES OF REVIEW FOR GRANTING CERTIORARI RULES 10 (A), (B), AND (C)**
 - a. The Federal District court has, and the Court of Appeals affirmed judicial proceedings far departed from the accepted and usual course of judicial proceedings, which call for an exercise of this Courts' decision and supervisory power.
 - b. The Federal Court's decision and the affirmation of the appellate court conflicts with this and other appellate court decisions as well as the decisions of this court on RICO.
 - c. This case asks multiple important questions of federal law that should be settled by this court.

II. THIS CASE AFFORDS THIS COURT AN EXCELLENT OPPORTUNITY TO ADDRESS WHETHER FEDERAL AGENCIES SHOULD BE ALLOWED *CHEVRON* DEFERENCE IN A CIVIL AND CRIMINAL CONTEXT

It questions the stability and foundation of the judicial system and the jury's responsibility to keep Governments laws just.

III. THIS CASE REPRESENTS A LONG-OVERDUE EFFORT TO UTILIZE THE PRIVATE ATTORNEY PRIVILEGES, GRANTED BY THE LEGISLATIVE AUTHORITY OF CONGRESS TO A PRIVATE CITIZEN WITH RICO

An effort to eliminate a RICO enterprise created, operated, and sustained by an executive branch of the Government. And an effort to resolve fundamental separation of power issues as the framers of the Constitution intended. It is an excellent opportunity for the court to address the proper use of the private attorney general provisions of RICO and other statutes.

IV. RELATION TO HISTORY AND THE IMPLICATIONS OF THIS CASE ON ITS CONTINUANCE

See: Pigford v. Glickman and Pigford II, Keepseagle v. Vilsack, Love v. Vilsack, Garcia v. Vilsack, David Cantu et al v. The United States. Bernardi v. Madigan. See the story of Grace Paxton and James Robertson, former Mississippi Supreme Court justice, See the story of Both Obregon and Salazar's families which filed discrimination complaints with the USDA, but say they never heard anything back.

The Federal District Court of Virginia, Danville Districts Judge Jackson L. Kiser dismissed allegations against Federal, State employees and the USDA alleging numerous torts, and the operation of a RICO enterprise for lack of subject matter jurisdiction, and for the plaintiff's failure to provide an alternative waiver of Sovereign Immunity. *See* Memorandum Opinion of the Western District court of Virginia (Aug 15, 2014) (App. 35-42a).

However, the Court proceeded with judicial review over Plaintiffs objection to the Courts Jurisdictional rights to proceed. The court however, granted the Agency significant *Chevron* deference with their interpretation of the relevant statute and promulgated agency rules thereby, reducing or eliminating the monetary damages caused by the criminal acts of the agency, its personnel, and the enterprise. The right to a jury trial in civil and criminal matters bound in the constitution and the separation of Judicial and executive powers have been usurped by *Chevron* deference wielded by a tyrannous, despotic, Government operated RICO enterprise in the executive branch of the U.S Government.

The Courts' actions effected consummation of the very Enterprise objective complained of in the complaint. This action segregated the crimes from the damages those crimes caused. (Plaintiffs Complaint September 16, 2013) (App.107a) "Plaintiff(s) allege "USDA et Al" has willfully ignored Plaintiff(s) challenges to avoid monetizing the torts committed in this case."

The Court's ruling on Jurisdiction in this matter is contrary to prior appeals court precedents and supportive rulings of this court. Petitioners found no Supreme Court precedent for a Federal Agency having ever been alleged of running a RICO enterprise, however, there is significant precedent to substantiate that a RICO enterprise does not have sovereign immunity and that RICO is applicable to governmental units, *See United States v. Angelilli*, 660 F.2d 23, 31-33 (2d Cir. 1981) "We view the language of 1961(4) as unambiguously encompassing governmental units, . . . and the substance of RICO'S provisions demonstrate a clear Congressional intent that RICO be interpreted to apply to the activities that corrupt public or governmental entities."), cert. denied, 455 U.S. 910 (1982); *See also G. Robert Blakely, The Civil RICO Fraud Action in Context: Reflections on Bennett v. Berg*, 58 NOTRE DAME L. REV. 237, 298-299 (1982) (Collecting decisions). In *Cianci*, 378 F.3d at 78-88, where the First Circuit affirmed the RICO convictions of the mayor of Providence, Rhode Island and associates who operated affairs of an associated-in-fact enterprise consisting of themselves, the city and its agencies and entities to enrich themselves, the court stated that "[a] RICO enterprise animated by an illicit common purpose can be comprised of an association-in-fact of municipal entities and human members when the latter exploits the former to carry out that purpose." That is precisely what the Secretary of Agriculture is doing with NAD, FSA, and the state mediation programs he has established.

Borrowing from the Words of Judge Rebecca R. Pallmeyer of the 7th Circuit Court of Appeals in

United States of America v. Lawrence E. Warner and George H. Ryan, Sr., 506 F.3d 517 (7th Cir. 2007) with alterations for relevance in underline. In arguing that Federal Agencies and federal and state employees, may not be considered “legal entities” under the racketeering statute, the Federal District Court miscast a straightforward issue of statutory interpretation into an issue of federalism. Br58. Their reliance on cases dealing with federalism or state sovereignty, such as *Alden v. Maine*, 527 U.S. 706, 748(1999) is misplaced. Nothing in RICO precludes the USDA from addressing corruption or infringes in any way on the legitimate functioning of Federal Government or on its sovereignty.

The District Court and the Court of Appeals have overlooked the fundamental principle that the racketeering enterprise, whether it be a legitimate business, governmental entity or association in fact, is merely the vehicle through which defendants conduct alleged racketeering activities. *See United States v. McDade*, 28 F.3d 283, 296 (3d Cir. 1995) (proper to charge Congressional committee as enterprise, since “major purpose of the RICO statute was to protect legitimate enterprises by attacking and removing those who had infiltrated them for unlawful purpose”)(citations omitted). To define a governmental unit as an enterprise does not impugn its employees or subjects, nor disadvantage the entity. *See also United States v. Long*, 651 F.2d 239, 241(4th Cir.1981); *United States v. Clark*, 646 F.2d 1259, 1261-67 (8th Cir 1981) *United States v. Altomare*, 625 F.2d 5 (4th Cir. 1980); (state prosecutor’s office constitutes an enterprise); *United*

States v. Baker, 617 F.2d 1060 (4th Cir. 1980) (sheriff's department constitutes enterprise).

A RICO operation run by a Federal agency affecting interstate commerce for unlawful purposes, in crimes against the very citizens the agency is legislatively obligated to assist is precisely the type of activity the civil provisions of RICO with private attorney general provisions were intended to address.

Can a Federal Government Agency and its employees comprise a RICO enterprise? Is a Government operated RICO enterprise protected by sovereign immunity?

There is a significant body of precedent supporting the interpretation of "enterprise" as including public and governmental entities and that there is no restriction upon the associations embraced by the definition of "enterprise" and that such "enterprises" are not protected by immunity. *See* the significant body citations in *United States of America v. Lawrence E. Warner and George H. Ryan, Sr.* at 74-75.

Can the torts of a RICO "enterprise" be committed while acting within the scope of the agencies office of employment?

28 U.S.C § 2675(a) makes it clear that the torts of negligence, fraud, wrongful acts, and omissions can be committed by Government employees while acting within the scope of office or employment. However, the damages assessed in a RICO suit are not damages for torts. Those damages are left for suit under 28 U.S.C § 2675(a). RICO "enterprise" damages are strictly defined in 18 U.S.C. § 1964(c) as

damages only for injuries to a plaintiffs business or property by reason of a violation of section 1962 as alleged in this case. The Petitioners suit was not brought under the FTCA, not brought for negligence, or fraud, but for the operation of an “enterprise” causing damages to the Petitioners business and property as defined by 18 U.S.C § 1964(c). *See* Mem of Opin WDCVA March 24, 2014. (App.37a) *See also Sedima, S.P.R.L. v. Imrex Co., Inc.*, 473 U.S. 479 (1985). “If the defendant engages in a pattern of racketeering activity in a manner forbidden by § 1962, and the racketeering activities injure the plaintiff in his business or property, the plaintiff has a claim under § 1964(c).”

See also the statements of dissent at 82 “In addition, the statute permits recovery only for injury to business or property. It therefore excludes recovery for personal injuries. However, many of the predicate acts listed in § 1961 threaten or inflict personal injuries—such as murder and kidnaping. If Congress in fact intended the victims of the predicate acts to recover for their injuries, as the Court holds it did, it is inexplicable why Congress would have limited recovery to business or property injury. It simply makes no sense to allow recovery by some, but not other victims of predicate acts, and to make recovery turn solely on whether the defendant has chosen to inflict personal pain or harm to property in order to accomplish its end.”

Is the United States Liable respecting the provisions of title 18 U.S.C § 1964(c) relating to tort claims, in the same manner and to the same extent as a private individual under like circumstances? Yes

according to 28 U.S.C § 2675(a) "The United States shall be liable, respecting the provisions of this title relating to tort claims, in the same manner and to the same extent as a private individual under like circumstances". But, this action falls within the prevue of both the ruling and the dissension in this court in *Sedima, S.P.R.L. v. Imrex Co., Inc.*, 473 U.S. 479(1985).

An action for the torts would be appropriate only after Petitioners and the courts resolve the issue of agency deference vs. jury trial in civil and criminal proceedings because the damages caused by those torts will only be fairly assessed if the full extent of the damages were monetized

Are the Private Attorney General provisions of 18 U.S.C § 1964(c) punitive damages? No these are criminal penalties for the operation of a criminal enterprise. Penalties specified by the legislature in the statute. *See* 18 U.S.C § 1964(c) "Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee," (emphasis added).

Petitioners would argue an applicant alleging unlawful denial of a loan application by a Federal Agency committing numerous torts and a conspiracy and operation of a RICO enterprise to avoid financial damages by the Agency is a Petitioner suffering legal wrong because of agency action, and adversely affected and aggrieved by agency action within the relevant constructs of 18 U.S.C. § 1964(c). Is such a

proceeding not specifically provided for in 5 U.S.C. § 702 “A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof. “And 5 U.S.C. § 703 “Except to the extent that prior, adequate, and exclusive opportunity for judicial review is provided by law, agency action is subject to judicial review in civil or criminal proceedings for judicial enforcement.”

See the comments of this Court on 5 U.S.C. § 702 providing this generalized approach in *Association of Data Processing Service Organizations v. Camp*, 397 U.S. 150, 153-4 (1970). This Court generalized the approach by interpreting the Administrative Procedure Act provision that “any person aggrieved” can seek judicial review as creating a right to appeal as a private attorney general.

There is no question with the DOJ defending the agency in this case and believed to have assisted in the conspiracy of denial there’s a prosecutorial gap to justify action in this case by a private citizen.

“The right to trial by Jury was of significant importance to the founding fathers of this country. America’s founders recognized that trial by jury in both criminal and civil cases offered unparalleled protection for their hard-won freedoms, both individually and collectively. In fact, the right to trial by jury was so important that the founders made it part of the supreme law of the land. Article III of the U.S. Constitution states: “The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury.”

Two years before the first musket was fired in America's War for Independence, a Boston lawyer wrote: representative government and trial by jury are the heart and lungs of liberty that lawyer—a passionate patriot by the name of John Adams—was not alone in his belief that trial by jury was a powerful defense against tyranny. "I consider trial by jury as the only anchor ever yet imagined by man, by which a government can be held to the principles of its constitution," a Virginia lawyer wrote around the same time. His name Thomas Jefferson.

In June of 1776, delegates of the Virginia Convention adopted a declaration of rights that included the following statement: "... In controversies respecting property, and in suits between man and man, the ancient trial by jury is preferable to any other, and ought to be held sacred." Less than one month later, representatives of all 13 colonies signed the Declaration of Independence, which cited "depriving us in many cases of the right to trial by jury"—a right granted to every British subject by Magna Carta in 1215—as one of the chief reasons for breaking with the King and Mother England. These and other royal abuses of power were front and center when the founding fathers gathered in Philadelphia to draft a national Constitution in 1787. They believed that the combination of an independent judiciary and the right to be tried by a jury of peers would protect Americans from whatever form tyranny might take. "The friends and adversaries of the plan of the [Constitutional] Convention, if they agree in nothing else, concur at least in the value they set upon the trial by jury; or if there is any difference between them it consists in this: the

former regard it as a valuable safeguard to liberty; the latter represent it as the very palladium of free government,” wrote Alexander Hamilton in the Federalist essays describing the proposed new constitution. I am not well versed in history, but I will submit to your recollection, whether liberty has been destroyed most often by the licentiousness of the people, or by the tyranny of rulers. I imagine, sir, you will find the balance on the side of tyranny. “Public opinion so strongly favored a Bill of Rights that the first congress proposed 12 constitutional amendments to the state legislature in 1789. Two of the ten amendments ratified spelled out jury trial rights not specifically described in the articles of the Constitution. The Sixth Amendment extended the rights of criminal defendants to a speedy and public trial, an impartial jury, and the ability to confront adverse witnesses and to the aid of counsel. The Seventh Amendment extended the right to a jury trial to civil cases. “In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.” Clearly, our founding fathers recognized the value of trial by jury in both criminal and civil cases offered unparalleled protection for our freedoms, both individually and collectively. Justice for all is a beautiful thing. This just wouldn’t be America without it.”⁸ Reproduced in

⁸ Copied in significant parts from a white paper with permission from the Georgia Civil Justice Foundation © 2006-2008.

significant part from a white paper on trial by jury at the Georgia Civil Justice Foundation, 2006-2008.

Chief Justice Harlan F. Stone said the juror “is voting on the justice of the law according to his own conscience and convictions and not someone else’s. The law itself is on trial quite as much as the case which is to be decided.”



CONCLUSION

Justice Louis Brandeis offered this view “Decency, security and liberty alike demand that government officials shall be subjected to the rules of conduct that are commands to the citizen. In a government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously. Our government is the potent, omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the government becomes a lawbreaker, it breeds contempt for the law; it invites every man to come a law unto himself. It invites anarchy. *United States v. Olmstead*, 277 U.S. 438 (1928).”

Petitioners respectfully request this petition for a writ of certiorari be granted to review the judgment and opinion of the Court of Appeals for the Fourth Circuit.

Respectfully Submitted,

CHRISTOPHER B. JULIAN

PETITIONER, PRO SE

RENEE G. JULIAN (SPOUSE)

474 ORCHARD VIEW DRIVE

ARARAT, VA 24053

(980) 254-1295

CHRISTOPHER.B.JULIAN@GMAIL.COM

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