

NO. 18-92

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In the Supreme Court of the United States

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DAVID V. PERRY,

*Petitioner,*

—v—

BRUCE KRIEGMAN,  
In His Capacity of Chapter 11 Trustee LLS America,  
*Respondent.*

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

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**REPLY BRIEF OF PETITIONER**

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AUGUST 30, 2018

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Honorable Justices of the Supreme Court:

Although various constitutional and unsettled issues of law are before the Court, acting at its own discretion, may I suggest that none outweighs the issue of unconstitutional vagueness surrounding the Ponzi Scheme and Ponzi Scheme Presumption. This all-important issue has been stressed by Petitioner from the very outset of this case.

Trustee continually fights to hinder the Court from discerning the truth about these matters. In view of his intense opposition a few previously stated facts may well be worthwhile repeating:

The late Justice Antonin Scalia stated clearly: "The Fifth Amendment provides that '[n]o person shall . . . be deprived of life, liberty, or property, without due process of law.' Our cases establish that the Government violates this guarantee by taking away someone's life, liberty, or property under a criminal law so vague that it fails to give ordinary people fair notice of the conduct it punishes, or so standardless that it invites arbitrary enforcement." *Kolender v. Lawson*, 461 U.S. 352, 357-358; *Johnson v. United States*, 135 S.Ct. 2551 (2015).

A close examination of our case exposes how the vague laws surrounding Ponzi Schemes have become an enabling mechanism for those appointed to positions of trust, most especially bankruptcy trustees, to abuse their immense court appointed powers to unjustly enrich themselves and their accomplices while arbitrarily depriving victims of due process in both their constitutional and fundamental human rights.

Also noteworthy is allowing the government department overseeing trustees to promote a covert plan designed to avoid due process in order to destroy what they viewed as an undesirable business. For them to have supervised a trustee who proceeded to follow that plan, is clearly unconstitutional. Trustee's acts and those of his accomplices may even constitute "Fraud Upon the Court." (09-06194-FPC11 Doc.2031).

To the best of my layman's ability, I will, within word limit capability, attempt response to some of Trustee's claims, most of which appear simply efforts to obfuscate the all-important constitutional issue of vagueness:

**CLAIM:** "No constitutional provisions, treaties, ordinances or regulations are involved in this case."

**RESPONSE:** False. The vague laws surrounding the definition of a Ponzi Scheme and the Ponzi Scheme Presumption deny due process and are without question unconstitutional. Such vague laws as applied in this case violate the 4th, 5th, 6th, 8th, 9th, and 14th Amendments, the United Nations Declaration of Human Rights ratified by the United States and numerous Supreme Court rulings. No national uniformity on this matter currently exists. Until proper definitions are determined by this Court, labeling a business a Ponzi Scheme and/or including the Ponzi Scheme Presumption as a basis for judgment is "vague"; such vagueness as already ruled by the Supreme Court automatically denies due process and constitutes violation of the United States Constitution. (Sup. Ct. R. 10c).

**CLAIM:** Declarations of Lenore Romney and Marie Rice were Stricken . . . Mr. Perry did not argue that

those decisions were incorrect before the Court of Appeals. As a result, he waived any issue regarding the courts' evidentiary rulings.

RESPONSE: False. Case: 15-35985 DktEntry:27 pg. 53-56, 45: Questions Being Raised on Appeal/What Do You Think The Originating Court Did Wrong?

"Failure to allow and consider other expert witness reports."

"Hall's and Trustee's other expert witnesses' testimony ruled to be given greater weight than all other experts and other expert testimony either not considered or improperly ruled on.

"The facts are emphasized by testimony of Lenore Romney, Marie Rice, along with admissions of the Trustee's own expert witnesses."

Petitioner further argued: "Trustee and his representatives had clear objective evidence in their own possession from Lenore Romney and Marie Rice, two well qualified independent experts, that LLS was not a Ponzi Scheme. In an unambiguous breach of fiduciary duties and in a conflict of interests, the Trustee concealed and fought to exclude this evidence from the lower court, all to his own unjust enrichment both politically and financially."

CLAIM: "The District Court found that Mr. Perry had received \$30,000 in transfers that were recoverable . . . Mr. Perry did not brief this issue before the Court of Appeals, and therefore waived it."

RESPONSE: False. 15-35985, DktEntry:27, Page 63: "That attempted claw back of funds from Appellant but never under his control, but contractually agreed

verbally solely between Mr. Layne and Mrs. Nelson, taken in good faith by Attorney Layne for services rendered, cannot be allowed by any present law."

CLAIM: Mr. Perry considered the investment opportunity in LLS America "too good to be true".

RESPONSE: An ongoing scandalously duplicitous attempt to mislead the courts, blatantly repeated over and over at every level, taking the quote totally out of context. What followed that partial quote? "But if it is really legitimate, and all the evidence so far is that it is, it is an opportunity of a lifetime."

CLAIM: Rather, Mr. Perry had "frequent conversations and correspondence especially with regard to possible fraud."

RESPONSE: Yet another attempt to mislead the court. I am 87 years old and have been investing for 60 years. I always discuss potential fraud in each and every investment made.

CLAIM: "Mr. Perry acknowledged that he is not entitled to offsets . . .

RESPONSE: Again, taken out of context

CLAIM: "In addition, other characteristics of a Ponzi scheme were clearly present, including artificially high rates of return, commingling of investor funds, the criminal indictment of Doris Nelson (who later pled guilty to wire fraud, mail fraud and international money laundering), insiders using investor funds for personal use, rolling over promissory notes (to avoid repayment of principal), numerous related entities with confusing and unjustifiable intercompany transfers, a purported legitimate business that

produces little or no profit, providing false or misleading financial statements to lenders, and paying bonuses or commissions to those that bring in new lenders.”

RESPONSE: Many of these so-called characteristics indicia of Ponzi Schemes are common practices in legitimate businesses. No one was ever convicted of running a Ponzi Scheme. Criminal Court Judge Whaley ruled: “. . . it seems to me that this indictment focus is on much later in your life, not the early period but in 2007, '8, '9, when the factors that were occurring earlier don't really forgive you. I mean, it's—at that point you were raising money based upon promises that you—and misrepresentations that you shouldn't have, and people lost a lot of money. So in looking at the nature and circumstances of the offense, it's a serious one. I don't see it the way the Government does . . .” pgs. 38, 39 “And if it's not a Ponzi, if I don't rule it's a Ponzi scheme . . .” pg. 9 “. . . if it's not a Ponzi scheme, that would be about right.” Pg. 13 Case 2:11-cr-00159-RHW Document 285.

Judge Whaley revealed he had experience with Ponzi Schemes. He refused to rule LLS a Ponzi Scheme.

Additionally, court appointed Examiner with knowledge of the hundreds of claims filed by individual lenders, with many months of full access to the owner, along with the books and records of the Debtor, and after spending hundreds of hours in investigation, concluded that the owner, Mrs. Nelson, was still an appropriate person to continue management. He mentioned no evidence whatsoever nor any indication that a Ponzi scheme might even exist. Not only did the Examiner then proceed to successfully

reorganize the business to the point where it was making millions of dollars, he clearly stated that the business was not only legitimate but also viable and profitable! 15-35985, DktEntry:27, 09-06194-FPC11 Doc. 240.

Furthermore, all findings in Bankruptcy and District Court related to LLS being a Ponzi Scheme were made under vague laws, thus unconstitutional. In addition, Trustee never revealed that he was working under the supervision of a Department that had a covert operation to destroy the payday loan business in America and that a key part of that operation was to equate legitimate payday loan businesses as Ponzi's.

From the trial in District Court, I charged Trustee with having "unclean hands" even though at that time the covert operation had not even been exposed. Trustee's involvement and illegal lack of disclosures is indicia of "fraud upon the court", which automatically voids all rulings.

CLAIM: "The record lacks any indication that Mr. Perry objected to the Motion for Partial Summary Judgment or participated in any way at the hearing on the Motion for Partial Summary Judgment."

"Mr. Perry's contention that service was faulty was rejected as unsupported by the record.

"Mr. Perry was served with process. Even if he had not been, he waived any service of process argument by failing to raise the issue in his answer or in a timely motion to dismiss."

RESPONSE: Statements again intended to mislead the Court as Trustee was well aware that two different processes of service (Perry/Spare) were not simply

defective but entirely fraudulent. Trustee's knowing use of fraudulent documents to deceive the court constituted "fraud upon the court."

Regarding the Ninth Circuit, it appears they did not review either the clear evidence submitted nor the rules governing fraudulent service. 15-35985, Dkt: 27, Pg. 38 (*See* exhibits).

Whenever any officer of the court commits fraud during a proceeding in the court, he is engaged in "fraud upon the court."

"A false, fraudulent, or perjurious declaration of service of process misuses the power of the court; it is an act done in the name of the court and under its authority for the purpose of perpetrating an injustice. *"Meadows v. Bakersfield Savings & Loan Assoc.*, (1967) 250 Cal. App. 2d 749, 753, 59 Cal. Rptr. 34, 37."

"Chaos would result if the legal community could not depend on the truthfulness of declarations of service of process . . . Service of process is . . . an indispensable element of due process of law." *Kappel v. Bartlett*, (1988) 200 Cal. App. 3d 1457, 1464, 246 Cal. Rptr. 815 (citing Judicial Council of Cal. com., 14 West's Ann. Code. Civ. Proc. (1973) ed.) 413.10, p. 541, and 2 Witkin, Cal. Procedure (3d ed. 1985) Jurisdiction, 84, p. 454).

"There is no question of the general doctrine that fraud vitiates the most solemn contracts, documents, and even judgments." U.S. Supreme Court: *United States v. Throckmorton*, 98 U.S. 61, 70.

CLAIM: "LLS America had been insolvent from its inception in 1997."

“The examiner concluded that as early as 1998, the debtor’s operations did not generate sufficient profits or cash flow to repay lenders . . .”

RESPONSE: False. One must have all the facts in order to “prove” anything. Trustee’s own expert witnesses admitted they did not have sufficient records to make those determinations. Nevertheless, Trustee presented suppositions as fact, knowingly and willfully making false statements to the court. 11-80299-PCW Ct. Rec. 130 pgs. 19-20, District Court Exhibits D-DP-235 and 241.

CLAIM: “No fourteen year look back period applied to him. A case becomes moot ‘when the issues presented are no longer ‘live’ or the parties lack a legally cognizable interest in the outcome.’”

RESPONSE: The rulings and determinations made in the original bankruptcy case and in other related adversary proceedings had a distinct bearing on Petitioner’s adversary case and form part of the substance of this appeal.

CLAIM: “The Court of Appeals certainly did not depart so far from the accepted and usual course of judicial proceedings as to call for review by this Court. Certainly, the Court of Appeals did not make any decision involving an important matter of federal law that conflicts with a decision of this Court.”

RESPONSE: The Court of Appeals upheld the rulings of the Bankruptcy and District Courts, both of which ignored the Scotus rulings and the unconstitutionality of vague Ponzi Scheme laws along with numerous stated violations of human rights. The Court of Appeals also ignored all issues regarding

fraud upon the court including but not limited to fraudulent service.

CLAIM: "Mr. Perry's belated argument regarding 'Operation Choke Point' was never brought before the District Court and cannot be raised now."

RESPONSE: Operation Choke Point was an illegal government operation which was kept secret from the public in order to defraud citizens of their property by denying due process. Trustee and his superiors were well aware of this operation and Trustee breached his fiduciary duty to reveal this conflict and immediately resign. Fraud upon the court has no statute of limitations. 09-06194-FPC11 Doc 2031.

Rule 60: This rule does not limit a court's power to:

- (2) grant relief under 28 U.S.C. § 1655 to a defendant who was not personally notified of the action; or
- (3) set aside a judgment for fraud on the court.

"A void judgment which includes judgment entered by a court which lacks jurisdiction over the parties or the subject matter, or lacks inherent power to enter the particular judgment, or an order procured by fraud, can be attacked at any time, in any court, either directly or collaterally, provided that the party is properly before the court, *Long v. Shorebank Development Corp.*, 182 F.3d 548 (C.A. 7 Ill. 1999).

"They are not 'voidable', but simply 'void'; and form no bar to a recovery sought, even prior to a reversal in opposition to them. They constitute no justification; and all persons concerned in executing such judgments

or sentences, are considered, in law, as trespassers.”  
*Elliot v. Piersol*, 1 Pet. 328, 340, 26.

“Judgment is a void judgment if court that rendered judgment lacked jurisdiction of the subject matter, or of the parties, or acted in a manner inconsistent with due process.” Rule 60(b)(4), 28 U.S.C.A.; U.S.C.A. Const. Amend. 5—*Klugh v. U.S.*, 620 F. Supp. 892 (D.S.C. 1985).

Res judicata consequences will not be applied to a void judgment which is one which, from its inception, is a complete nullity and without legal effect. *Allcock v. Allcock*, 437 N.E.2d 392 (Ill. App. 3 Dist. 1982).

CLAIM: “No error of fact or law was committed.”

RESPONSE: As Justice Scalia stated in the majority opinion and subsequently expounded on by Scotus in the Dimaya Case, vague law denies due process and is unconstitutional. As Petitioner stated before District Court, “Yes, the entire concept of what legally constitutes a ‘Ponzi Scheme’ requires full legal review at a higher level for the protection of any and all investors, as well as the public at large.” 2:12-cv-00668-RMP Doc 127 Pg. 20.

CLAIM: “Mr. Perry appears confused regarding why LLS America was able to generate a profit during bankruptcy.”

RESPONSE: Trustee admits LLS was a profitable business, it was in fact making millions in bankruptcy. Examiner stated profits were growing rapidly and that it should continue to do so when managed properly. Trustee had no justifiable reason for labeling it a Ponzi Scheme, then shutting it down while highly profitable and suing all investors other than to satisfy

the demands of Operation Choke Point or greed or both. In round numbers Trustee started with \$3,500,000, collected \$13,500,000 from victims, disbursed only \$4,500,000 to victims, while he and his accomplices have pocketed \$12,000,000. Trustee breached his fiduciary duties and had massive conflicts of interests with Operation Choke Point and as a result had no legal right to prosecute this case.

**CLAIM:** Certainly, the Court of Appeals did not make any decision involving an important matter of federal law that conflicts with a decision of this Court.

**RESPONSE:** Both District and Bankruptcy courts admitted that Ponzi Schemes (criminal) and good/bad faith clawbacks (civil) have no precise definitions. This Court has multiple rulings that vague laws both civil and criminal deny due process and are unconstitutional.

**CLAIM:** "Mr. Perry continues to rely on arguments and evidence that was never before the District Court."

**RESPONSE:** Trustee's deception in claims of matters not previously presented to the lower courts herein demonstrated. Similar deceptions are found in his other objections.

In finality, a few comments about Trustee's complaint: "Mr. Perry's briefing generally lacks citations to the record, or if citation to the record is made it is difficult or impossible to decipher what exactly is being cited, or why. Likewise, very few citations to statutes or cases are provided to support any legal proposition."

"Further, Mr. Perry failed to properly raise arguments below, and has generally failed to follow rules and procedures in this litigation."

RESPONSE: Interesting claims since Trustee vociferously and successfully opposed all my motions for appointment of counsel claiming, "Moreover, by representing himself during the trial, Mr. Perry showed he is capable of articulating his defenses." 15-35985 Docs. 8, 9 Later he contradictorily states: "Mr. Perry . . . does not understand the law." 15-35985, DktEntry:31.

Petitioner motioned each court to appoint pro bono counsel. I well understand I have no legal training other than my knowledge of the Bible. However, I have somehow lived 87 years and I've learned the difference between right and wrong.

In view of Trustee's argument and the constitutional importance of these issues to the public at large, if his contentions of ineptness have any merit, let such representation now at last be appointed.

In closing I should like to state that The United States Constitution is perhaps the most powerful legal document ever inspired by man. Its protections have granted all citizens freedom to pursue the life, liberty and happiness of which other nations can only dream. It has encouraged a system of free enterprise that in less than 200 years enabled the United States to become the strongest world power in human history.

As detailed in this case, the powers of our Constitution are being attacked by outside forces as never before. If the lower courts of our land ignore or sanction this attack by continuing to turn a blind eye

to constitutional violations and manifest injustices enabled by vague laws as such as the Ponzi Laws relied on in this case, they will be condoning and formalizing a blueprint that will result not only in the destruction of our Constitution but also the destruction of our nation.

Defendant prays, may the Supreme Court use its powers so majestically granted to ensure that justice for the downtrodden now at last prevails.

Respectfully submitted,

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