No. 19-5938

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

JASON BO-ALAN BECKMAN -- PETITIONER

vs.

UNITED STATES OF AMERICA -- RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Jason Bo-Alan Beckman
#15917-041 UNIT K-1
Federal Correctional Institution Sandstone
PO BOX 1000
Sandstone, MN 55072

QUESTION(S) PRESENTED

Can the Government circumvent Luis v United States, 578 U.S. ___, 136 S. Ct. 1083 (2016) protections by using a civil proceeding to freeze untainted assets --namely an errors and omissions policy-- a few months prior to initiating a criminal proceeding for the same acts as the civil case, preventing defendant exercising his right to choose criminal counsel.

Can an errors and omissions policy secured prior to the commencement of the charged acts, with untainted funds, be subject to an asset freeze order or criminal forfeiture when the primary purpose of the policy is to cover the representational expenses incurred and is payable directly to the attorney or firm?

Did the Eighth Circuit fail to adhere to Slack v McDaniel's, 529 U.S. 473 (2000), minimal requirements in denying --without discussion-- Beckman's Luis C.O.A. claim when every other circuit would, and has, disagreed with the district court's opinion?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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IN THE SUPREME COURT OF THE UNITED STATES

No._____

JASON BO-ALAN BECKMAN -- PETITIONER

-VS-

UNITED STATES OF AMERICA -- RESPONDENT

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

PETITION FOR WRIT OF CERTIORARI

Petitioner Jason Bo-Alan Beckman, respectfully requests that this Court issue a writ of certiorari to review a decision of the United States Court of Appeals for the Eighth Circuit.

I. Opinions Below

The opinion denying Beckman's Certificate of Appealability issued by the United States Court of Appeals is at Appendix A to the petition and is unpublished.

The opinions addressing Beckman's Petition for rehearing issued by the United States court of Appeals is at Appendix B to the petition and is unpublished.

The opinion denying Beckman's §2255 Motion issued by the United States District Court for the District of Minnesota is found at Appendix C to the petition and is available at 2018 U.S. Dist. Lex 33674.

II. Jurisdiction

The date on which the United States Court of Appeals denied Beckman's Certificate of Appealability was 3/05/2019.

A timely petition for rehearing was denied by the United States Court of Appeals on on 5/2/2019, and the Reconsideration was returned on 5/24/2019, copies of both appear at Appendix A.

An extension of time to file the petition for writ of certiorari was granted to and including August 22, 2019 on August 7, 2019 in Application No. **19A147.**

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

III. Constitutional and Statutory Provisions Involved

This case involves the Fifth and Sixth Amendments to the United States Constitution, as well as, 28 U.S.C. §§'s 2253 and 2255.

IV. Statement of the Case

In 2011 the Government used a Civil Freeze Order (SEC Action[1] No. 9; 2255 Motion[2] at 1) to effectively nullify Beckman's Sixth Amendment Right to the counsel of his choice. The freeze order was enforced against an Errors and Omission's policy, ("E&O") causing Beckman's then civil counsel to abandon him for fear of nonpayment. (2255 Motion at 3.) Beckman informed the Magistrate conducting his initial criminal appearance that the freeze order was preventing him getting his counsel of choice. (/Id. at 1-2.)

The Court appointed a single man C.J.A firm who had little to no experience with complex financial litigation. (/Id. at 2.) Beckman asked many times to let the E&O policy perform its function, he was repeatedly told by appointed counsel that getting the freeze order modified was a civil matter outside the scope of the CJA representation. (/Id.)

As shown below, Beckman, an innocent man[3], was forced to navigate the complex and extremely murky realm of insurance and forfeiture law while trying to protect, or at least preserve, his constitutional rights. He kept trying to jump through procedural hoops, but end up mostly splattering against them. Beckman has operated in the dark without the benefit of counsel of his choosing since the inception of his criminal proceedings.

A. The Policy and the Players

We pick up our story in the mid 2000's when Beckman's firm Oxford Private Client Group, (PCG) engaged as a Registered Investment Advisor with the broker dealer firm Western International Securities, Inc. (2255 Motion at 1.) As standard operating procedure, Western International added Beckman and his firm to their Errors and Omissions Insurance Policy. As the broker dealer, Western International, paid the policy premiums from untainted revenue generated by Oxford, PCG and maintained the

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1 - **SEC Action** refers to the civil action brought by the Government in March of 2011 against Beckman and others. District of Minnesota Case number 11-cv-574.

2 - **2255 Motion** refers to Beckman's original Motion to vacate his conviction and sentence filed under 28 U.S.C. §2255, filed with the U.S. District Court for Minnesota on docket number 16-cv-03344-MJD, Entry No. 1.)

policy through the relevant timeframes here. (2255 Motion at 3)(SEC Action No. 1 at 184)(noting that Beckman's company had generated no less than $511,000 from unrelated activities.) This policy carried a total coverage of three million dollars, and specifically provided coverage for Beckman's legal representation. (SEC Action No. 425-13, the "Policy" at 2-3 and 8.)

In both the civil and criminal charging documents the Government alleged that "from August 2006 and July 2019" Beckman "knowingly participated" in a "frauduelaent scheme that raised at least $144 million from close to a 1,000 victims." (SEC Action No. 1, at Part One)(Criminal Action[5] No. 162.) This scheme involved a "super duper" computer program that was developed and operated by UBS Diversified to trade foreign currency and generate targeted returns. The currency trading was purportedly handled by Crown Forex, a Swiss financial intermediary. Litigation, charges, and criminal cases started in 2010 and when the dust settled Beckman was the only person who presented a defense, took the stand and actively defended himself because he was innocent, had no idea what UBS Diversified, led by Trever Cook, had been up to, and had taken active steps to help his clients recover their losses. At sentencing the defense discovered that Cook and associates had plotted to murder Beckman because he had made such a nuisance of himself through global legal actions attaching Cook and his cohort's assets. (Criminal Action, No. 351, Government's 12/19/2012 Request for Evidentiary Hearing.)

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3 - Through the course of Beckman's §2255 proceedings, he was provided an affidavit by the architect of the scheme establishing, like Beckman had said all along, he was not part of the enterprise, only the patsy that the perpetrators of the scheme actively kept in the dark. (COA at __.)

4 - **COA** refers to Beckman's Petition for Certificate of Appealability, filed with the Eight Circuit Court of Appeals on Appeal No. 18-2032.)

5 - **Criminal Action** refers to the Criminal case that Beckman is collaterally attacking, U.S. District Court, for the District of Minnesota Docket 0:11-cr-00228-MJD-JJK.

The "amazing currency trading program" turned out to be a "partial modified Ponzi scheme" concocted by Cook and his accomplices. The Government's opening statement in Beckman's trial listed the primary players of the criminal enterprise as: "J. Pierron is an unindicted co-conspirator," the developer of the 'super-duper' software; "P. Kiley" a National Radio personality, who raised over 70% of the money injected into the scheme; "C. Pettengill" who the Government put on the stand; "Mr. Durand, who also raised a lot of money;" and "T. Cook, the hands on guy," and purported leader of the enterprise, who did not testify. (Criminal Action, Trial Transcript at 283.) Absent from the list was Beckman. The other accused at the defense table were listed, but Beckman's name was curiously not present on the prosecution's list. (/Id.)

In September of 2009, it became apparent Beckman had been duped by Cook and his fellow conspirators, Beckman then engaged Mr. Luger and his firm to recover his clients losses by securing assets of Cook and his cohorts from around the world. During this period Mr. Luger was able to get Beckman removed as a relief defendant in the 2009 civil action. Luger's firm brought the right resources, knowledge, and experience to successfully prove Beckman was a victim, not co-conspirator. Establishing that with the right counsel there is a reasonable chance of a different outcome. (2255 Motion at 121-122.) Luger and Beckman severed their relationship, after a billing dispute. This is important because Mr. Luger became the United States Attorney for Minnesota who supervised the prosecution team that took Beckman to trial and prosecuted his appeal. (/Id.)

In December of 2009 it was determined Beckman's efforts would not be enough to cover Beckman's clients losses and his legal expenses so a claim was filed with the E&O insurer. Attorneys David Hashmall and Grant Collins were engaged by the insurance company.

March of 2011 the Securities Exchange Commision, "SEC" instituted a civil enforcement action against Beckman in the U.S. District Court for the District of Minnesota. The matter was assigned to District Court Judge Davis, whom immediately issued a Freeze Order. (SEC Action, No. 9, 3-8-2011.) Due to the freeze order Mr. Hasmall moved to withdraw as he was concerned with non-payment, leaving Beckman without counsel. (2255 Motion at 3; SEC Action No. 28.)

July of 2011 saw Beckman indicted on related criminal charges. (2255 Motion at 1-2.) Judge Davis requested the criminal matter be reassigned to him as it related to the SEC action.

When asked at arraignment if Beckman could afford representation he reminded the Magistrate that the freeze order was still in place, and for that reason alone, he was unable to engage any counsel, let alone counsel of choice. (/Id. at 1-2.)

The record shows a Monsanto hearing, regarding nontainted assets available to cover representational costs, was never held. Instead, the Magistrate just told Beckman to keep him informed of the Status of the estate, and then appointed CJA Attorney Doug Altman, a one man operation with limited subject matter experience, to represent Beckman in a complex case that generated ten terabytes of discovery (the equivalent of 2.5 million 250 page books.) (/Id. at 2.) Many of the files were too unwieldy for the limited technology that Altman had and was familiar with. (/Id.)

Although Altman tried his best most of the 240 exhibits eventually presented were produced by Beckman: each night the defense team of Altman and Beckman would wait as late as 8:00pm for prosecution to email them a list of witnesses for the next day, beginning the ritual scramble to prepare for the next day. As a result Altman was unprepared to cross-examine key Government witnesses; failed to offer exculpatory evidence; and allowed improper inferences to remain on the record unchallenged.

Throughout the initial 45 days of trial preparation allowed by the district court and the eight weeks of trial, Beckman kept asking Altman to follow up on the Magistrate's instruction regarding the estate, specifically the E&O policy so that Beckman could get a fully equipped and knowledgeable firm onboard. Each time Altman said it was outside the range of his representation because the scope of C.J.A. appointment only extended to matters directly involving the criminal case and did not extend to matters of a civil nature. (/Id)(For a details of how drowned the defense truly was, see Appellate Counsel's Motion for Extension of Time outlining how overburden they were)(CA8, Direct Appeal No. 13-1162.)

June 2012, after an eight-week jury trial, Beckman was convicted on all counts; the Eighth Circuit affirmed Beckman's conviction and January, 2013 sentence of 30 years, and denied his petition for rehearing in June of 2015. (Direct Appeal United States v Beckman, 787 F.3d 476 (8th Cir. 2015)(Petition for Re'hring 2015 U.S. App. Lexis 10218.) This Ccurt declined to hear his Writ of Certiorari in October of the same year finalizing Beckman's criminal adjudication phase. (United States v Beckman, No. 14-10449, 136 S. Ct. 160, 2015 U.S. Lexis 6110 (2015).)

B. How the Questions were Raised and Treated Below.

1. Initial §2255 Motion and Responses

Initial 2255 Motion

Beckman filed a timely, albeit massive, Motion to Vacate his Sentence and Conviction under 28 U.S.C. §2255 raising --relevant here-- that he was denied his Sixth Amendment Right to the Effective Assistance of Counsel.

Beckman alleged the denial took two forms: First, that the district court's pre-indictment civil order freezing all of Beckman's assets, regardless of whether they were derived from his alleged offense, denied Beckman the financial wherewithal to engage counsel of his own choosing. (2255 Motion at 4);

Second, that CJA appointed Counsel was completely overwhelmed by the breadth and scope of the case, improperly refusing to challenge or request modification of the Freeze Order on scope of representation grounds. (/Id.)

Beckman specifically alleged that Mr. Altman neither saught to notify or ask the district court for help with the overwhelming mountain of evidence (2255 Motion at 3); nor made any efforts to modify the freeze order for access to the E&O policy, or other nontainted assets. (/Id.) In essence, Beckman was asking that Altman, and the district court, be held accountable for neither one requesting, or ordering, a Monsanto hearing.

Further, Beckman specifically noted that the Government had acknowledged Oxford Private Group, PCG Beckman's firm, had generated over $500K between 2005-2010 that was neither derived

from illegal operations or schemes of fraud, nor were the funds ill-gotten gains or tainted in any way. (/Id. at 3-4.)

Beckman spent considerable time in his §2255 Motion detailing the actual harms Altman's deficient performance caused. Further Beckman noted that with counsel of choice, Mr. Luger the outcome on the same set of facts, in a less stringent standard of evidence, was dismissed; not a conviction on all counts.

Government's Response

The Government responded, acknowledging that the E&O policy was "frozen by [the district] court in the SEC litigation," (Government's Response at 40, filed on 2255 proceeding.) While ignoring the effects of the freeze order, the Government zeroed in on the well cited fact that the Sixth Amendment "does not govern civil cases" because "in civil case, a constitutional right to counsel exists, if at all, only when an indigent party may lose his personal freedom if the action is lost." (/Id.) In its response the Government never refuted Beckman's facts regarding the E&O policy.

The Government hung their argument on the premise that since the Freeze Order was instituted in the SEC Civil proceeding and Altman had no representational obligation in Beckman's civil proceedings, there was no harm, no foul, constitutionally speaking. (See Response at 41)("Altman had no representation obligation in Beckman's civil proceedings, much less an obligation to render effective criminal representation.") This approach neatly ignored the white elephant in the room, the effect of the freeze order on Beckman's fundamental right to choose his own counsel.

The only response to Beckman's allegations that Altman's performance was subpar, was the submission of Altman's billing records. Basically, the Government said how can he be deficient? He billed us over 1,000 hours of preperation, trial and appeal time! They never specifically refuted any of Beckman's pages of allegations detailing Altman's prejudicial failures. In response all that was said was "Altman's billing records ... conclusively disprove Beckman's contention that Altman was negligent, forewent trial strategies thoughtlessly, and failed adequately to grapple with information that might have supported Beckman's defense." (/Id. at 53.)

Further, the Government never refuted Beckman's allegations regarding the E&O being paid for with untainted funds or how the effects of proper, fully funded and staffed representational team would have effected the trial's outcome.

Beckman's Traverse (Reply)

In his Traverse to the Government's response Beckman tied the civil and criminal cases together. Showing that the two actions, although different in requested relief, stemmed from the same operative facts and were seeking, and eventually received, essentially the same outcome of $144 million in disgorgement (civil & criminal) and 30 years of incarceration (criminal). (Beckman's Traverse at 36-38 filed on 2255 proceeding.)

Additionally, Beckman noted that the civil asset freeze order was "excessivly broad initially covering any and all assets without apparent limit." Continuing on to note that the order "extended to 'any insurance policies' for which any Defendant

and/or Related entity is a covered persons or beneficiary." Beckman noted the order "enjoined the Defendants from effecting the assets otherwise frozen in any way, including any insurance polices, however untainted, as well as those traceable to proceeds from the alleged violations. The injunction further restrained any 'persons,' including 'attorneys,' from attempting through any means by judicial redress or otherwise "affecting or on behalf of any of the Defendant, Relief Defendant, and or Related Entities, or any assets frozen pursuant to this order." (Beckman's Traverse at 38-39)(Quoting SEC Action No. 9, Judge Davis's Freeze Order, ppgs 3-10.)

Beckman pointed out that he was arguing about the effect of the civil action on his counsel of choice right not that Altman had obligations to represent Beckman in the civil matter, this apparently fell on deaf ears.

District Court's Decision

The District Court issued it's decision "Memorandum Opinion and Order" denying Beckman's §2255 Motion, without an evidentiary hearing, in late February, 2018. (See Appendix C.) This is the only dispositive opinion issued on Beckman's issues, as the reviewing courts only issued single line denial orders.

In a section titled "Grounds 1 and 8 - Denied Counsel of Choice," Judge Davis states "Petitioner further argues that counsel should have sought funds from an Error and Omissions Policy that Petitioner obtained as part of his business operations. Petitioner concedes, however, that such policy was frozen pursuant to Court Order in a related civil action. See SEC

v Beckman, Civ.No.11-574 [Doc. No. 9](D. Minn. 2011). In addition, Petitioner has failed to demonstrate that the insurance proceeds were wrongly withheld from Petitioner, or that counsel was ineffective because he failed to access such insurance proceeds. (Criminal Action, No. 695, Order Denying §2255 at 9-10.)

The lower court implied that because defense counsel had submitted "billing records" that "indicate[d] that defense counsel" had worked over 1,000 hours Altman had some how performed as the constitution intended. (/Id. at 10.)

The district court then moved on, never once getting to the heart of Beckman's claim that he had been denied his "counsel of choice" through the Government manipulating the court via a civil device locking Beckman out from an untainted, and nonforfeitable, asset specifically designed to protect Beckman's right to choose his own counsel.

2. Certificate of Appealability and Responses

Beckman filed a Petition for Certificate of Appealability raising two issues. First, the ineffectiveness of his counsel, specifically in three areas 1) The decision to freeze all assets, including the untainted E&O Policy, is contradictory to this Court's then just announced decision in United States v Luis, No. 14-419, 136 S. Ct. 1083, 194 L. Ed. 2d. 256 (2016); 2) The denial of Beckman's rights under Luis caused prejudice and the outcome of Beckman's trial would have been different; and 3) Counsel's representation failed under any standard of reasonableness.

Beckman also raised, for the first time a claim of actual innocence based on a just received affidavit from the leader of the criminal enterprise T. Cook.

A few months later the Eighth circuit, in a one line denial chose not to issue a certificate of appealability in direct conflict with the rest of its sister circuits. (See Appendix A.) Please see Section 5(C), infra., for a list of all circuit cases found inopposite to the Eighth's ruling.

3. Petition for Rehearing en banc and Responses.

Beckman reprised both his actual innocence and Luis claims providing more case law to support the claims. Additionally, he provided a complete list establishing that every other circuit would find the Panel's decision regarding the Luis issue debatable as all the other circuits have found inopposite to the panel's decision.

Choosing to procedurally bar because the en banc Petition was too long, instead of rule on the merits the Eighth Circuit denied Beckman's en banc request with out reaching the merits. (See Appendix B.)

In an attempt to have his Petition heard Beckman, within 28 days, condensed his petition and begged for the Circuit to reconsider and review his Petition on the merits. The clerk returned the Petition unfiled.

Ensuring he would not be procedurally barred on this Writ, Beckman requested and received permission to file this Writ on or before August 22, 2019. (See Appendix D.)

V. Reasons for Granting the Petition

A. Government Cannot Circumvent the Procedural and Constitutional Protections of Luis Under the Guise of a Civil Asset Freeze Order.

The Supreme Court has long made clear that the Sixth Amendment guarantees every criminal defendant the right to engage counsel of her own choosing when she has the means to do so. "The right to select counsel of one's choice is the root meaning of the Sixth Amendment right to counsel." United States v Gonzalez-Lopez, 548 U.S. 140. 147-48 (2006). The Supreme Court has further made clear that the federal courts cannot deprive a person of his constitutional right to choose his own counsel to represent him as a criminal defendant by freezing his assets that do not derive from his alleged offenses. (Luis, supra.)

Beckman's right to the counsel of his choice was abrogated by the Government's intentional use of a broad sweeping motion to freeze assets that included Beckman's E&O policy within its reach. Prosecution's motion ignored the fact that the Government had absolutely no property interest, superior or otherwise, in Beckman's E&O policy that was among many other untainted assets. The district court's order, as requested by the prosecution, specifically ignored whether the assets were tainted, or untainted; whether they could be forfeited, or were constitutionally untouchable. It just froze everything.

Taking the approach of Arnaud Amaury, a thirteenth century Roman Catholic Abbot when he said: "Kill them all! God will know his own," the district court and Government "froze it all" while ignoring Beckman's Sixth Amendment Right to his counsel of choice.

When allowed to exercise his choice Beckman's results were a dismissal (2009 civil case, supra). When Beckman was frozen out of making a choice, the result was a 30 year conviction.

1. Relevant Inquiry is not of Form, but of Effect.

In discussing the relative new legislative innovation of sentencing enhancements, Justice Gorsuch, writing for the majority in Haymond recently wrote that "The relevant inquiry is one not of form, but of effect --does the required judicial finding expose the defendant to a greater punishment than that authorized by the jury verdict?" (United States v Haymond, #17-1672, Slip Op. at 8, (June 26, 2019).) The same principle applies here when the Government can slap whatever label they wish on the process, but because constitutional imperatives are in play, the requisite inquiry must focus on the effect of the action, and not its label or mode of action.

Throughout the habeas proceedings below, Beckman kept putting the focus on A) that the freeze order swept far too broadly, B) a simple modification of the order would have allowed Beckman to access the E&O policy while 'protecting' the remaining assets if needed for restitution, and C) no one, not his appointed Counselor, the Government, or the district court, after being apprised of the effect of the freeze order, took any steps to protect Beckman's fundamental right to counsel.

The Government and district court, in response to Beckman's habeas allegations and claims, followed the same script his defense counsel did: 'the freeze order was a civil matter, NOT a criminal one' stating on that Beckman had no constitutional right

to representation in civil matters, while ignoring the effect of the order on Beckman's fundamental constitutional rights. This narrow view, using the 'form' to excuse the effect, is precisely what Luis and many other cases of this Court have repeatedly shot down.

Each of the actors specifically charged with protecting Beckman's constitutional rights, willfully turned a blind eye to the effect of the freeze order on Beckman's defense. By choosing "form" over "effect" as the basis of their inaction they doomed Beckman, an innocent man, to a 30 year sentence, about $150 million in restitution and/or forfeiture, as well as a discorgement order north of $144 million, which by itself is a direct contravention of settled law. (Kokesh v S.E.C., 137 S. Ct. 1635 (2017)(See Footnote 3, supra).)

(a) Government cannot use a label to avoid protections afforded Beckman by Constitution as delineated in Luis.

The fact that the Freeze Order was issued in the civil SEC Action rather than in the criminal action which followed does not spare it from its reach being unconstitutional. The proper inquiry here, is into the order's effect on Beckman's rights, not its timing or what "type" of action it arose in.

By not excluding untainted assets that might reasonably be needed to engage criminal counsel in the event of criminal proceedings -or- not conducting a Monsanto hearing once criminal proceedings were initiated the order impermissibly precluded Beckman from hiring his counsel of choice. (Luis at L. Ed. 2d. 270.)

If the Government can circumvent a criminal defendant's Sixth amendment right to engage counsel with his untainted assets simply by asking the court to "freeze it all" without recourse by the defendant because the freeze was civil and his appointed counsel's scope of work only included criminal matters would allow the Government to routinely nullify the Sixth Amendment entirely via a civil device.

At the very least when Beckman was arraigned, it was then incumbent on the lower court to either modify the freeze order freeing up the E&O policy, or conduct a full Monsanto hearing to determine what assets, if any, could be used to cover representational costs. (See Luis L. Ed. 2d. 274)(Thomas, concurring)("The Sixth Amendment protects a defendant's right to retain an attorney he can afford. It is no answer...that defendants rendered indigent by a pretrial asset freeze can resort to public defenders.")

(b) Civil and Criminal Cases were Heard By the Same Court, for the Same Alleged Acts.

Because District Court Judge Davis specifically requested the criminal case be transferred to his docket, supra, and Magistrate Keyes was made aware of the sweep of the civil freeze order, (/Id.), the failure for either to modify the Freeze order and/or conduct a Monstanto hearing is unexplainable.

Because of Beckman's repeated requests for Altman's intervention regarding the freeze order, Altman was very aware of how civil order was effecting the criminal case.

Because both actions were in the same court, the lack of a de minimus action by anyone sworn to protect Beckman's rights is troubling. Doubly so when the matter was brought to the attention in every court of review.

(c) The Results are the same no matter the label used. Beckman's constitutional right to counsel of his choice was voided by the freezing of untainted assets, namely the E & O Policy.

The fact that the policy had been frozen in the civil action in no way diminished Beckman's constitutional entitlement to access to that policy in the criminal action. The Sixth Amendment obligated Judge Davis to modify the Freeze Order.

In his §2255 Motion Beckman demonstrated how and why his insurance policy was wrongfully withheld from him. The Government conceded there was over $500K in untainted assets, separate from the E&O policy.

An unusual aspect in this case is that Beckman had previous counsel who, with the same operative facts, was able to get the matter dismissed. This establishes that with his counsel of choice Beckman was better served by a fully staffed and funded defense team comprised of subject matter experienced litigators than the single man CJA appointee foisted on him because no one charged with protecting Beckman's rights looked at the effect of the civil order, only recognized it was a civil matter, not a criminal matter which Altman had "no representation[al] obligation" to address. (Government Response at 41, supra.)

This form over effect approach ignores the Constitution's directive, that a defendant must have counsel otherwise "[l]eft without the aid of counsel he may be put on trial without a proper

charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, even though he have a perfect one... Without [the guiding hand of counsel] though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence." (Luis at L. Ed. 2d 262)(Quoting Gideon v Wainwright, 372 U.S. 355, 344-45 (1963))(Quoting Powel v Alabama, 287 U.S. 45 (1932).) This is the exact set of circumstances here because the Government was allowed to use a civil device to circumvent Beckman's Sixth Amendment protections.

Because the broad unrestrained use of a freeze order, although a civil device, has the same effect as the issue at question in Luis, following the Luis's Court's reasoning Beckman was denied his fundamental right to the counsel of his choice.

2. Whats' Yours? Whats' Mine? A Question of Property Rights.

In this present matter Beckman is focusing on the denial of the use of his E&O policy and its effects to his case, although he had numerous untainted funds and assets, the denial of the use of the E&O is the most constitutionally egregious and makes the least sense.

(a) Benefits that consist of a Promise to Perform, Cannot Be Considered Fungible.

Blacks Law, Tenth Edition defines "errors-and-ommissions" insurance as:

> An agreement to indemnify for loss sustained because of a mistake or oversight by the insured -- though not for loss due to the

> insured's intentional wrongdoing. (**INSURANCE ERRORS-AND-OMMISSIONS**, Black's Law Dictionary (10 ed. 2014).)

which cannot be transferred, conveyed, or otherwise given to another. To receive the indemnity one must be a named insured. There is no cash value, or other intrinsic value, on the promise to cover the costs of representation up to a cap with what is left over to pay towards anyone harmed by a mistake. Making an E&O Policy, and its benefits not a fungible commodity.

(b) No Applicable Property Interest Can Be Attached To The Policy Or Its Benefits. Therefore Neither the Policy, Nor Its Benefits, Can be Considered A Forfeitable Asset Under Any Theory of Property Rights.

As fully discussed in Section (B), infra under any construction or view the Government cannot claim --and have it stick-- a superior interest in Beckman's E&O policy, therefore any concept of freeze to protect against "waste" is unavailing and cannot be the basis upon which to deny Beckman access to the Policy.

3. Luis's Four Factors Are Met

In Luis, this Court delineated a four part test to ensure that an accused's "Sixth Amendment Right to use her own "innocent" property to pay a reasonable fee for the assistance of counsel." (Luis at L Ed 2d 270.) Beckman's answers to those criterion are:

(a) Is the matter considered pre-trial, and not post a criminal Conviction?

Here, as established in the Statement of Case, from the first court proceeding on the criminal charges Beckman has been asking for access to his assets to secure his counsel of choice.

(b) Are The Assets At Issue Untainted? i.e. Were Fully Traceable, Legitimate Funds Used To Purchase And Maintain The E&O Policy?

In short yes, Beckman's E&O policy was initially purchased in the mid 2000s and then maintained, as is industry practice, by the Broker Dealer. This policy named Beckman and his firm as an additional insured, and was paid for by untainted, unrelated funds. These facts have never been contested.

(c) Was Beckman's Rights interfered with?

Yes, in his habeas petition Beckman listed the numerous ways his right to counsel of choice was interfered with and the negative impacts such interference had on his case.

(d) Was the asset previously subjected to forfeiture?

No. As established in the section below, the policy is not forfeitable under any theory of property law.

4. But for the Unconstitutional Freeze Order There Is a Reasonable Probability That The Outcome of Beckman's Trial Would Have Been Different.

(a) Civil Outcome Established Baseline of Criminal Outcome.

As noted in the previous pages, in 2009 Beckman was listed as a relief defendant in a civil proceeding based on the same core operative facts at issue here. Mr Luger, Beckman's counsel of choice, with a fully staffed team was able to get the truth out and have Beckman dismissed from the case.

Forced into using a CJA appointed attorney Beckman got thirty years and $144 million in discorgement instead of the acquittal a properly funded defense effort generated.

(b) Sixth Amendment Prohibits The Civil Order Due To Its Effect.

"Deprivation of the right to counsel of the defendant's choice is complete when the defendant is erroneously prevented from being represented by the lawyer he wants." (Luis at 268)(Quoting Gonzalez-Lopez 548 U.S. at 148.) "Nor do the interests in obtaining payment of a criminal forfeiture or restitution order enjoy constitutional protection. Rather, despite their importance, compared to the right to counsel of choice, these interests would seem to lie somewhat further from the heart of a fair, effective criminal justice system." (/Id.)

"The Sixth Amendment is generally designed to elicit truth and protect innocence," (Luis at 269). However, if that right is interfered with, as it was in Beckman's case, then our entire justice system is reduced to the whims of the Government and their choice of which label to apply to whom and when to apply it.

Thus, Certiorari is warranted because the Eighth Circuit's and the District Court's ruling is contrary to this Court's jurisprudence.

B. The Representational Benefits Of Untainted E & O Policies Are Not Subject to Forfeiture Under Any Theory Of Property Rights or Doctrine of Law.

Anyone who purchases, or due to industry standards is required to purchase, an E&O policy does so to ensure they have representation if they need it. This pure duty to defend is the purpose of any E&O Policy. As with any policy of this type Beckman never did, nor never would "touch" the money used to pay the lawyers. This is proven when after all the dust settled, the government's only benefit from securing the freeze order against Beckman's policy was to ensure he was left with a CJA attorney as they did not receive, no try to obtain, one penny from the policy.

The purpose of a freeze order is to protect assets from waste and provide them to the alleged victims if a conviction is secured. What happened here was the prevention of Beckman from choosing competent counsel to defend himself. Even though Beckman is not well versed in property or insurance law, He posits the following as logical and "common" sense arguments to the question presented:

1. Policy Representational Benefits Cannot Be Attached.

As discussed in Section A(2) above, neither the policy nor its benefits are fungible in any sense of the word. The rights and privileges conferred by the policy is not transferable, cover explicitly named entities or persons, and only accrue at a well-defined point in time or triggering event, such as the initiation of a legal action.

Once the triggering event occurred in the case of the policy here: a claim is filed, any payouts or funds are strictly limited to what is permissible in the policy for specific services and only with the approval of the insurance carrier.

Mr. Beckman had no authority, no right to funds, no control or property interest in the proceeds. All he had control over was when and whether to file a claim, and at that point he was but a "passenger on the bus" owned, operated, and driven by the insurance carrier. Therefore there was nothing to attach, freeze, or forfeit.

In fact a review of the policy, filed on the SEC Action at Document No. 425-13, discussed who has these rights:

> The Underwriters shall have the right and duty to defend, subject to and as part of the limit of liability, any **Claim** first made against an **Assured** during the **Policy Period** ... and reported in writing to the Underwriters pursuant to the terms of the policy for any actual or alleged **Wrongful Act** for which coverage is afforded by this policy (/Id.)(Emphasis in the original.)

This clause established that it is the Underwriters, **not** Mr. Beckman who has the authority and control over the distribution of proceeds related to his defense. Neither the Underwriters, nor the Insurance Policy, or even the Policy owner were named parties, therefore this policy had no fungible value in which property rights could, or would attach for seizure.

2. A Question of Property Rights.

Referencing the Caplin & Drysdal (491 U.S. 617) and Monsanto (491 U.S. 600) decisions this Court in Luis "acknowledged that whether property is forfeitable or subject to pretrial restraint

under Congress' scheme is a nuanced inquiry that very much depends on who has superior interest in the property at issue." (Luis at L. Ed. 2d. 266)(citations omitted.)

(a) Superior Interest does not Apply to any E&O policy.

Because there are no attachable property rights in an E&O policy, there can be no "relation back provision" nor any form of a lien to attach to the policy by the Government. Therefore, no party in a criminal case can have superior interest in the policy. The only entities who have any interest, once a policy has been activated, are the underwriters, the insurance company, and the appointed firm.

(b) Neither Future Executory nor Contingent Interests can be applied to an E&O Policy.

Because the E&O policy is in the control of the Underwriters, has no fungible value, and the only 'contingent' benefit is a named insured filing a claim (and thus passing authority over the issue to the Underwriters), there can be no contingent or future interests available for seizure.

(c) Possessory Interest does not apply to E&O policies.

In any errors and omissions policy there is nothing to posses, but the option to file a claim. Nothing more, nothing less is available. With no fungible interest to pass, all one can claim is that they, assuming they are a named insured, can file a claim and say "here you go, run with the claim" to the Underwriters and/or insurance company.

Because, per the insurance policy, the insurance company or the underwriters hire attorney firms, negotiate and pay said firms directly for legal services, and have the only say on any possible payouts. Mr. Beckman can not be said to have ANY property interest which the Government might be able to seize.

3. A Policy Purchased and Maintained With Untainted Funds, Cannot All of a Sudden be Said to Be Tainted Because its Benefits are used.

It is not contested that the policy was purchased and maintained by the Broker-Dealer Western International Securities from funds traceable to legitimate and legal sources of income by Oxford (PCG)'s activities. This was acknowledged in both the SEC civil case (SEC Action No. 1 at 184) and the habeas proceeding (Government Response at 40.).

Simply activating a policy by filing a claim, does not somehow magically convert a policy's status from being an untainted asset to being a tainted one.

Therefore under any theory of criminal forfeiture as explained in Caplin & Drysdale, Monsanto, or now Luis it cannot be, nor has the policy been, considered a tainted asset.

4. In a Criminal Context the Very Purpose of An E & O Policy Provides the Means to Protect the Sixth Amendment Right To Counsel of Choice.

As fully discussed in Section A, supra., Luis makes it clear that "insofar as innocent (i.e. untainted) funds are needed to obtain counsel of choice, we believe that the Sixth Amendment prohibits the court order that the Government seeks." (Luis at 269.)

The same can be said here, separate from whether or not the policy itself, or its benefits were attachable, the Government should not have been able to freeze the very untainted asset that Beckman needed to secure his counsel of choice.

(a) With policy in place other assets are left available for attachment as substitute assets.

A reasonable person would ask: If a criminal defendant --whom the government claims caused $144 million in damages-- has an E&O policy in place to secure representation, while leaving other assets untouched, why would the Government interfere with the policy? When an accused's Sixth Amendment right is secured by an E&O policy, leaving the rest of the assets available for seizure it is a win for the victims, a win for the accused, and a win for the Courts. Common sense would ask: Why not take advantage of the policy? If the Government persisted in having the policy froze, is there another reason to have the policy frozen beyond the possibility of waste?

In the end the old adage of 'the proof is in the pudding' is applicable here, even though they froze Beckman out from using his policy, the Government never once attempted to actually seize or otherwise forfeit the policy. Beckman posits this is because they could not.

Thus, making any freeze order locking Beckman out from his E&O policy illegal and unconstitutional, warranting this Court to issue Certiorari on this novel question.

C. The Eighth Circuit's Denial of Beckman's Certificate of Appeal Is Entirely At Odds With Slack v McDaniel, 529 U.S. 473 (2000) As Well As With Every Other Circuit.

1. The District Court's Treatment of Beckman's Counsel of Choice Argument Seriously Undermined Beckman's Fundamental Sixth Amendment Right.

As is well explained in Section A, supra. Beckman's right to the counsel of his choice, a foundational part of his fundamental Sixth Amendment Right to effective counsel, was ignored by the district court via the expediency of claiming Beckman's rights were not as issue because the freeze occurred in a civil case. This "form" over "effect" handling of Beckman's rights does not comport with this Court's precedence.

(a) Luis v United States came out in the middle of Beckman's §2255 proceeding.

Fully vindicating Beckman's primary proposition in his counsel of choice claim, this Court's decision in Luis established that Beckman's claim fell right in with Luis, and the Sixth Amendment's coverage.

Both the District Court and the Eighth Circuit ignored this very salient point, despite it being clearly and fully explained.

2. The Eighth Circuit Abrogated Their Supervisory Duties When They Issued A One Line Denial Of Beckman's Certificate of Appeal Application, Thereby Endorsing, Without Comment, The District Court's Decision.

By issuing a one line denial to Beckman's Certificate of Appeal petition the Eighth Circuit surrendered its supervisory duties as required by Slack v McDaniel's "reasonable jurists" standard. (See Slack v McDaniel, 529 U.S. 473, 476 (2000).)

When a district court, and then the appellate court, allows a per se denial of an accused Sixth Amendment Right to remain unchecked our system of justice is diminished.

The following section established that the Eighth Circuit's handling of Backman's claim in contrary to every other circuit.

3. Every Circuit Has interpreted Luis's Counsel of Choice Claims Opposite to the District Court's Ruling.

While many Circuits ultimately denied the following particular defendant's claim, based on the facts in that case, each Circuit's reasonings and line of logic was the exact opposite of Beckman's district court; The following four cases are examples of the various Circuit's rulings regarding claims:

In United States v Marshall, the Fourth Circuit found that the pretrial restraint of legitimate untainted assets needed to retain counsel of choice violated the Sixth Amendment. However, because Marshal already had his counsel of choice, and that counsel had accepted a CJA appointment there was no violation. (/Id. 754 Fed. Appx. 147 (4th Cir. 2018).) Here, CJA counsel was forced on Beckman, despite his protests. This contrasts sharply with the success of his previously chosen counsel's performance.

The Third Circuit held in United States v Thomas that Luis does not apply if the defendant did not need the restrained assets to retain counsel. (/Id. 750 Fed. Appx. 120 (3rd Cir. 2018).) In Beckman's case, it was well established that he needed access to, at minimum, his E&O policy, otherwise his right to counsel would be nullified.

In United States v Jones, the Seventh Circuit addressed a question of how to apply Luis in a case were there was restrained

tainted property and untainted property had the restraints lifted. Holding to the precepts of Luis the Seventh determined the lower court had correctly applied the law. (/id. 844 F.3d 636, (7th Cir. 2018).) Here in Beckman's case his District Court just froze everything regardless of its class, traceability, or status.

The Fifth Circuit addressing the application of a prior restitution order on untainted assets needed for counsel concluded that if the assets were not already subject to lien vis a vis the restraining order Scully would, under Luis, have a right to them for his counsel of choice. But, since that was not the facts of Scully's case the lower court's decision was affirmed. (See United States v Scully, 882 F.3d 549 (5th Cir. 2018).) Here, however, Beckman's assets were under no such prior restitution order, therefore, according to the Fifth Circuit, Luis would have prevented the blanket freeze order Beckman's district court issued.

4. Beckman Met Slack v McDaniel's Standard for the Eighth Circuit to Issue C.O.A.

As established in the petition above "[j]urists of reason would disagree with the district court's resolution of [Beckman's] constitutional claim[]," especially because the E&O policy aspect makes it a novel claim which is "adequate to deserve encouragement to proceed further." Thus, meeting this Court's low threshold for an appellate court to issue C.O.A. (See Miller-El v Cockrell, 537 U.S. 322, 327 (2003)(Citing Slack v McDaniel 529 U.S. at 484).)

As show in the subsection above many jurists would, and have, disagreed with Beckman's district court's handling of his Luis claim, making the Eighth Circuit's single line denial contrary to this Court's jurisprudence warranting the issuance of Certiorari.

VI. Conclusion

"Truth, Lord Eldon said, is best discovered by powerful statements on both sides of the question. This dictum describes the unique strength of our system of criminal justice. The very premise of our adversary system is that partisan advocacy on both sides of a case will best promote the ultimate objective: that the guilty be convicted, and the innocent go free" (McMann v Richardson, 397 U.S. 759, 771 N. 14 (1975)), in the proposition of such debate however, when one is silent the other wins the day just by speaking a word, a word that may serve their ends and not that of truth or justice.

"The Sixth Amendment to the U.S. Constitution denies the Government unchecked power to freeze a defendant's assets before trial simply to preserve and secure potential forfeiture upon conviction." (Luis at 278.) In this case, there was successful pre-trial efforts to freeze assets using "take it all, and we will sort it out later" civil device by the Government. The district court, granted the Government's request precisely on such grounds. In doing so, the court abandoned its role as the neutral arbiter ensuring the constitution is upheld. This resulted in the effective muzzling of the defense, violating Beckman's fundamental right to effective counsel of his choice.

If allowed to stand, this precedence will be used by the Government to chip away at the very foundational protections our system of justice is supposed to rely upon to ensure a fair and just proceeding effecting ANY criminal case where civil and criminal modes of action could intersect.

For the foregoing reasons Mr. Beckman respectfully moves the Court to grant review of this matter.

RESPECTFULLY SUBMITTED this 21 day of August, 2019.

Jason B. Beckman

Jason Bo-Alan Beckman,
Petitioner pro se
15917-041 Unit K2
FCI Sandstone
PO Box 1000
Sandstone, MN 55072