No. 19-_____

IN THE

Supreme Court of the United States

IN RE: MELBA L. FORD

Petitioner,

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

PETITION FOR A WRIT OF CERTIORARI

MELBA L. FORD
In propria persona
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November 6, 2019

THREE QUESTIONS of FIRST IMPRESSION PRESENTED FOR REVIEW

Question 1.

Does a defendant in an IRS/DoJ civil forfeiture proceeding have a constitutionally protected, due process right to counsel?

Question 2.

Even if there is no constitutional right to counsel for defendants in a civil forfeiture case, when assistance of counsel is sought by unrepresented litigants who cannot afford it, is a court required to provide factual and legal reasons when denying such motion?

Question 3.

When a circuit panel denies motions for assistance of counsel without providing a scintilla of justification, then blocks reconsideration and appeal to the *en banc* circuit, does the panel violate litigants' rights to due process of law?

PARTIES TO THE PROCEEDING

Melba L. Ford,

Petitioner In Propria Persona

Respondents

The Honorable 9th Circuit

(Judges involved in, or to become involved in

Appeal 18-17217, *United States v. Ford*)

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JURISDICTION

The Supreme Court has jurisdiction under 28 U.S.C. §1651(a) to issue Writs of Certiorari to compel a circuit panel to follow its own precedent by a.) appointing assistance of counsel, or b.) by alternatively, evaluating both the likelihood of litigants' success on the merits and their ability to articulate claims in light of the complexity of the legal/factual issues involved, and by c.) allowing litigants ability to move for reconsideration or for access to the *en banc* Circuit to appeal any summary denial of relief.

STATEMENT OF THE CASE

In the Ninth Circuit, a court "may request an attorney to represent any person unable to afford counsel", pursuant to 28 U.S.C. § 1915(e)(1). The decision to appoint such counsel is within "the sound discretion of the court and is granted only in exceptional circumstances." *Franklin v. Murphy, 745 F.2d 1221, 1236 (9th Cir.1984).* So, the power to appoint counsel does exist, in certain circumstances.

And in the Ninth Circuit, a finding of exceptional circumstances when a litigant seeks assistance of counsel requires, on a case by case basis, at least 1.) an evaluation of the likelihood of the plaintiff's success on the merits and 2.) an evaluation of the plaintiff's ability to articulate his claims "in

light of the complexity of the legal issues involved." *Wilborn v. Escalderon, 789 F.2d 1328, 1331 (9th Cir.1986)* (quoting *Weygandt v. Look, 718 F.2d 952, 954 (9th Cir.1983)).*

That said, as I have repeatedly claimed under oath, I am an eighty-one year old American, too poor to afford counsel, after years of IRS theft of my property, and liens on the rest. But, I am not a "pauper" and the forfeiture case against me is not criminal, so representation under §1915 is not an option for me.

Nevertheless, I NEED COUNSEL to help me understand, marshal and correctly present the array of complex factual and legal issues (many shown below) which seem to me to preclude the imminent seizure of my home.

RELEVANT LITIGATION HISTORY

On **July 26, 2019**, I filed a motion for appointment of assistance of counsel [See 18-17217, Docket Entry 18] to help defend me from the layered government-initiated scheme to steal my home using falsified IRS digital records and falsified paper documents derived therefrom.

On **August 28, 2019**, a panel of the 9th Circuit summarily denied my motion for appointment of assistance of counsel without a word of explanation. [See Appx. 1., or 18-17217, Docket

Entry 23]. The panel made no pretense of evaluating the likelihood of my success on the merits, or of evaluating my ability to articulate my claims in light of the extreme factual and legal complexity of the government program, (which appears to be using falsified, IRS digital and paper records to attack me). The panel also denied me ability to move for reconsideration or seek relief from the *en banc* Ninth Circuit. Thus, I have no remedy other than certiorari.

Accordingly, since the Ninth Circuit panel's actions appear to have violated binding Circuit precedent, thus has "departed from the accepted and usual course of judicial proceedings", (per *Wilburn* and *Weygandt*, etc., cited above), I request the Justices of this Court exercise their "supervisory power", (per S.Ct. Rule 10(a)), to resolve the three questions "of first impression" arising from the Panel's denial to me of assistance of counsel, i.e.,

1.) Do unrepresented litigants have a right to appointed assistance of counsel in complex civil forfeiture cases?
2.) Should a court evaluate with specificity the likelihood of an unrepresented litigant's success on the merits and her ability to articulate/ present the complex factual and legal issues related to a civil forfeiture?
3.) When a Panel denies without explanation a request for appointed counsel, then blocks reconsideration or access to the *en banc* Circuit, do they violate a litigant's right to due process of law?

BACKGROUND

IRS institutionally falsifies digital records to justify criminal and civil prosecutions of income tax "non-filers"

IRS-supplied evidence appears to prove IRS invariably uses computer fraud to enable the Service to enforce the income tax on those who don't voluntarily self-assess, i.e., those whom IRS labels "non-filers". The discovery of that surreptitious program to falsify digital and paper records to justify criminal prosecutions and property seizures has earth-shattering implications, which are dispositive to my case.[1]

More specifically, as mentioned below, IRS never prepares substitute income tax returns on any of the multiple conflicting dates shown in the Service's all-controlling digital records, and paper "Account Transcripts" or "Certifications" derived therefrom.

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[1] Since Congress cannot authorize the commission of crime to enforce the law, (see *Olmstead v. United States,* 277 U.S. 438, 483, (1928), the incomparable dissent of Brandeis, J.), yet since IRS appears to invariably falsify federal records to justify civil forfeitures and criminal prosecutions of "non-filers", as it did concerning me and 2003, Congress imposed no duty upon me requiring IRS' commission of record falsification to enforce. Hence, I owe no deficiency to the Treasury.

But proving a negative in the context of summary judgment, (the FAILURE of IRS to prepare the documents to which reference is made in their falsified records), requires an evidentiary expertise far beyond mine, an 81-year-old unlearned laywoman. And, every lawyer knows that.

Restated, PROVING the absence of an act to contest a summary judgment motion, (i.e., IRS' failure to prepare a substitute income tax return on any date shown in IRS' digital and paper records), is virtually impossible for an unstudied layperson.

So, I NEED COUNSEL, and I correctly requested it. But, I have been summarily denied that assistance by the Circuit. Such denial violates my right to due process of law.

ANOMALIES & MISREPRESENTATIONS

The facts listed next seem to raise insuperable barriers to the seizure of my property. If the Government were to prove me wrong about the facts shown, I would concede my error. But, the Department of Justice literally ignores and will not address anything I raise, lumping and labeling every fact issue shown here as "tax-defier arguments".[2]

[2] The core issues listed here have been repeatedly raised elsewhere to no effect by victims of the IRS record falsification program. In **Appendix 2.**, I list dozens of

- The Commissioner of IRS has repeatedly stated the income tax is voluntary.[3]

- IRS has repeatedly conceded 6020(b) does not pertain to income taxes.[4]

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cases and appeals, including paid petitions to this Court, wherein these issues were raised, but never adjudicated.

[3] For SEVEN examples:

-- "Each year American taxpayers voluntarily file their tax returns and make a special effort to pay the taxes they owe." Johnnie M. Walker, IRS Commissioner, 1971, Internal Revenue 1040 Booklet. And

--"Our tax system is based on individual self-assessment and voluntary compliance." Mortimer Caplin, IRS Commissioner, 1975 Internal Revenue Audit Manual. And

--"The IRS's primary task is to collect taxes under a voluntary compliance system." Jerome Kurtz, IRS Commissioner, 1980 Internal Revenue Annual Report. And

--"... Encourage and achieve the highest possible degree of voluntary compliance... " Harold M. Browning, IRS District Director, Hawaii, 1984. And

--"Let's not forget the delicate nature of the voluntary compliance tax system... " Lawrence Gibbs, IRS Commissioner, *Las Vegas Review Journal*, May 18, 1988. And

--"We don't want to lose voluntary compliance... We don't want to lose this gem of voluntary compliance." Fred Goldberg, IRS Commissioner, *Money* magazine, April, 1990. And

--During testimony before the Eighty-Third Congress in 1953, Dwight E. Avis, head of the Alcohol and Tobacco Tax Division, Bureau of Internal Revenue, testified before the Ways and Means Committee, "Let me point this out now: Your income tax is 100 percent voluntary tax, and your liquor tax is 100 percent enforced tax. Now, the situation is as different as night and day."

- No government-produced document, sworn declaration, or Treasury Delegation Order expressly claims 6020(b) applies to income taxes. For example, TDO 5-2 does NOT expressly state that 6020(b) applies to income tax. [That deliberate vagueness allows judges to simply presume 6020(b) applies to income taxes, when it likely doesn't.]

- On February 10, 2017, government lawyers initiated their forfeiture case against me, seeking to seize my fully-paid-for home. [See 17-00187, E. D. of Cal., Doc. 1, Complaint]

- During discovery, DoJ Tax Division head, (Principal Deputy Assistant Attorney General Richard E. Zuckerman), provided IRS manuals proving that no summary record of assessment

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[4] In Section 5.1.11.6.7 of IRS' Internal Revenue Manual, ("IRM", the "Bible" to IRS employees), IRS claims that said authority is limited to "**employment, excise and partnership taxes**". [Link here: http://www.irs.gov/irm/part5/irm_05-001-011r-ont01.html, scroll down to 5.1.11.6.7 "IRC 6020(b) Authority".] The limitation on the authority to perform substitute returns to only employment, partnership and excise matters is precisely confirmed in the Revenue Officer's Training Manual, Unit 1, Page 23-2: "The IRM restricts the broad delegation shown in figure 23-2... to employment, excise and partnership tax returns because of constitutional issues."

was calculated, prepared and signed by an IRS employee with duly delegated authority, and no substitute income tax return was prepared concerning me and the year he targeted: 2003.

- Instead, the IRS manual citations Zuckerman provided prove that IRS used its Sun MicroSystems platform (upon which IRS once ran its "Automated Substitute For Return" program until suddenly suspending it in September 2017)[5] to calculate the "deficiency" I supposedly owe, and to prepare unsigned documents [6] he and all government-paid attorneys would later claim were **prepared**

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[5] See Zuckerman-supplied IRM 5.18.1.6.1 (Re: ASFR Dummy TC 150), et seq., for stunning proof the ASFR program is wholly automated, run by computers, complete with place-holding "dummy returns" that do not exist in reality, etc.

[6] Mr. Zuckerman's subordinate, Jonathan Hauck, admitted in an email to me that IRS computers determined my tax liability, and that IRS COMPUTERS prepared a "30 day letter", a.k.a. Letter 2566, and a "90 day Letter", a.k.a. Letter 3219, neither of which was signed, although one bore the name "Jan Sinclair". [See 17-00187, Docket Entry 34, Motion, Pg. 9, Hauck February 8, 2018 email, 4th ¶], wherein Mr. Hauck wrote"

> "I believe I have explained that no paper 1040 was filled out for you by some individual IRS worker. Your tax liability was determined by a computer, hence the "Automated" part of the ASFR acronym.

and signed by an authorized human **on "February 26, 2007"**.[7]

- Restated, Tax Division Head Richard Zuckerman provided incontrovertible internal procedural documentation from IRS proving the Service used its Sun MicroSystems (SMS) Computer to calculate/assess the supposed "deficiency amount" the attorneys claim I owe in income taxes, and that said SMS Computer generated on July 11, 2007 multiple unsigned documents concerning me and 2003, which Mr. Zuckerman stated in his filings were prepared by a "duly authorized delegate of the Secretary on Feb. 26, 2007". [See Footnote 7 for citation to one such Zuckerman claim.]

- The IRM segments Mr. Zuckerman provided prove that one of the key documents IRS' SMS computer prepared on July 11, 2006 was an unsigned "Letter 2566" issued over the name of a "Jan Sinclair", but which the computer back-dated to "July 24, 2006".

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[7] For one example of Zuckerman's false claim in 17-00187, See Doc. 35-2, Statement of Undisputed Facts, in Support of Summary Judgment, ¶48, pg. 8; "a duly authorized delegate of the Secretary of the Treasury signed an assessment" concerning me and 2003 on "Feb. 26th, 2007".

- To conceal the fact no human *ever* prepared and signed either a substitute income tax return or a summary record of assessment in INCOME TAX matters related to me, and to conceal the fact IRS uses adjunct databases to falsify its actionable, all-controlling Individual Master File (IMF) records,[8] (thus creating the impression a duly authorized IRS human prepared/signed substitute income tax returns and summary records of assessments, when they didn't), Mr. Zuckerman presented to the Court in my case a Form 4340 Certificate. [See 17-cv-00187, Docket Entry 35-8, February 16, 2018]

- Said Certificate shows multiple contradictory dates upon which Mr. Drozd could presume that 1.) a substitute **income tax** return had been prepared, (when one wasn't), and that 2.) a summary record of assessment had been prepared/signed by a human, (when one wasn't).

[8] IRS uses either the Sun MicroSystems database or the Audit Information Management System database to insert into the targeted annual "module" of its all-controlling Individual Master File software, data reflecting IRS' pretended preparation of substitute income tax returns, which never occur, and IRS' pretended preparation of signed summary records of assessment, which don't exist.

- Incredibly, neither "Jan Sinclair", nor the July 24, 2006 date are shown on the unsigned "Letter 2566" mentioned in the Form 4340 Certificate DoJ proffered to justify summary judgment(!), despite DoJ's later claim: "On July 24, 2006, Jan Sinclair...certified that she intended the electronic data in taxpayer's account to constitute a valid substitute return under I.R.C. §6020(b)". [See 18-17217, Dkt. Entry 29, Pg. 16 of 53, First Full ¶, third Sentence.]

- Restated, neither "Jan Sinclair" nor the date July 24, 2006 (when she supposedly prepared an assessment and a "6020(b) certification"), appear in the Account Transcript or Form 4340 Certificate proffered to support summary judgment(!). The SMS computer created the document, wrongly dated it, and pretended to append an electronic signature of Jan Sinclair.

- Knowing that for a summary record of assessment to be valid, it must be signed by an appropriate officer, I reiterated my discovery request for a sworn, signed copy of the "substitute income tax return" shown in both the IRS Account Transcript and the Form 4340 Certificate as supposedly having been prepared on "08-14-2006."

- But Mr. Zuckerman responded via email on February 8, 2018: "The document locator number associated with that document appears to be an ASFR dummy return DLN", and "When the IRM states 'dummy return', I understand it is referring to an electronic place-holder. There is no dummy return that can be printed or produced."

- During discovery, I asked repeatedly for signed copies of both the "return" that the Account Transcript showed IRS supposedly "received" on July 11, 2006, (IRS labels that date as the "Return Received Date") and the "substitute tax return prepared by IRS" on "08-14-2006". But, I was flatly told by Zuckerman via email dated February 22, 2018 that: "there are no documents that are responsive to these two requests."

- In other words, no document exists dated "July 11, 2006", that supports IRS' claim it received a return on that claimed "Return Received Date". Nor does any document exist that was dated "08-14-2006", as shown by IRS in both the Form 4340 Certificate and the Account Transcript as supposedly when a substitute tax return was prepared by IRS.

- The Certificate and Transcript proffered by DoJ to support summary judgment were fabricated to conceal the computer fraud used to falsify IRS underlying all-controlling digital records.

- To further his desired seizure of my home, Mr. Zuckerman procured the testimony of a pseudonym-d IRS revenue officer, having him declare under oath that a "duly authorized delegate of the Secretary of the Treasury made timely assessments" against me concerning 2003 on "02/26/2007".[9] No such thing exists. [See Record 17-cv-00187, All]

- Despite the fact no signed summary record of assessment appears in the record [See 17-cv-00187 Record, All], and despite the fact that Judge Drozd knew Mr. Zuckerman provided, via discovery, irrefutable evidence that the SMS Computer prepared unsigned, wrongly dated "30 day" and "90 Day" letters on July 11, 2007, (which Mr. Zuckerman claimed were prepared/signed by a duly authorized human on February 26, 2007), and despite the fact no "substitute tax return" was prepared by IRS on "08-14-2006", as falsely shown in both the proffered Account Transcript and Form 4340

[9] See 17-cv-00187, Doc. 35-4, Declaration of "K.M.", Pg. 5, ¶ 30, for the unknown-named Revenue Officer's claim.

Certification, The Hon. Judge granted summary judgment against me while reiterating Zuckerman's claim: "a duly authorized delegate of the Secretary of the Treasury signed an assessment" concerning me and 2003 on "Feb. 26th, 2007".[10]

- To dispose of contradicting Internal Revenue Manual (IRM) evidence provided by Zuckerman in discovery, Judge Drozd held that IRM procedural documentation provided by Zuckerman in discovery was "not evidence" Drozd could review. [See 17-cv-00187, Drozd Order denying Rule 59/60 Relief, Doc. 87, pg. 4.]

- To dispose of the repeated claims over the years by the multiple Commissioners of IRS concerning the voluntary nature of the income tax, Mr. Drozd held that the Commissioner's claims were "unpersuasive". [See 17-cv-00187, Drozd Order denying Rule 59/60 Relief, Doc. 87, pg. 3, 3rd ¶, 2nd sent.]

- No substitute income tax return was prepared or signed by a human being on July 11, 2006, on July 24, 2006, on August 11, 2006 or on

[10] See Drozd Order, September 28, 2018, [Docket 17-cv-00187, Doc. 70, Pg. 4, Last Snt., Pg. 5, Table, Line 6] No such document exists.

February 26, 2007. None appears in the record. [See 17-cv-00187 record, All.]

- No signed assessment appears in the record, in violation of Treasury Regulations binding on the Service, [11] and multiple holdings of various courts.[12]

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[11] "Again, as we remarked almost 50 years ago, Treasury regulations 'are binding on the Government as well as on the taxpayer.' *Brafman v. United States*, 384 F.2d 863, 866 (5th Cir. 1967). Indeed, '[w]here the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures.' 'This is so even where the internal [agency's] procedures are possibly more rigorous than otherwise would be required.'" *Romano-Murphy v. CIR*, No. 13-13186, 11th Cir, March 7, 2016, citing *Morton v. Ruiz*, 415 U.S. 199, 235 (1974)

[12] In *Brafman* v. United States, The Hon. John Minor Wisdom of the Fifth Circuit invalidated an assessment not signed by the proper official, under this analysis:

> "Mrs. Brafman contends, however, that no valid assessment was made on July 23, 1956, because the assessment certificate was not signed.... The Treasury Regulations set forth the procedures governing the assessment process: The District Director shall appoint one or more assessment officers, and *the assessment shall be made by an assessment officer signing the summary record of assessment.* The summary record, through supporting records, shall provide identification of the taxpayer, the character of the liability assessed, the taxable period if applicable, and the amount of the assessment.... *The date of the assessment is the date the summary record is signed by an assessment officer.* * * * Treas. Reg. § 301.6203-1 (1955) (emphasis added.)

If I were wrong, either on the facts above, or on their meaning, I would concede my error. But, again, the Department of Justice ignores the outrageous factual anomalies outlined above, viciously writing them off as merely "tax-defier arguments". And no judicial officer has ever adjudicated these concerns, whether in civil cases or on appeal. [See Appendix 2 for details.]

I contend that the institutionalized falsification of IRS digital and paper records to reflect the pretended preparation of substitute income tax returns, which do not exist and which were never prepared, (which falsification invariably precedes attack on "non-filers"), ***provides irrefutable support to the Commissioners' claims*** that 26 U.S.C. 6020(b) does not apply to income tax, and that filing of returns is truly voluntary. But, I need help to present the proof of the fraud and non-existent documents.

ANOMALOUS CIRCUIT ACTIONS

On **July 11, 2019** I filed my Emergency Motion to Stay Briefing [See 18-17217, Docket Entry 15] in my appeal pending my application to this Court to remove my appeal here. The Circuit refused to rule on my emergency motion, forcing me, an unlearned laywoman, to file a rushed brief.

On **July 26, 2019**, pursuant to the Briefing Schedule set by the Court on June 26, 2019, [18-17217, Docket Entry 14), I rushed my rough Brief on Appeal to the Circuit. [Docket Entry 17.]

On **July 26, 2019**, I also filed my motion for counsel to be appointed to assist me. [18-17217, Docket Entry 18]

On **August 16, 2019**, DoJ Attorney Anthony Sheehan filed a "streamlined request" for extension of time to file the Government's answering brief. [18-17217, Docket Entry 19]. He did not serve me his "request".

On **August 16, 2019**, a deputy clerk entered this in the docket: "Streamlined request [19] by Appellee USA to extend time to file the brief is not approved because it is unnecessary. The briefing schedule is stayed." [18-17217, Docket Entry 20] But, no judge had issued a stay; my motion for extension had been ignored. [See Record, All]

On **August 28, 2019**, someone issued an unsigned "order" denying 1.) appointment of counsel to help me, and denying 2.) any opportunity to file for reconsideration of the bald denial of counsel, and denying 3.) any opportunity to seek relief in the *en banc* Circuit of the denial of counsel, and purporting to 4.) deny my long-mooted motion to stay briefing,

but granting the DoJ's unserved streamlined request, which the Clerk had held "unnecessary", (since, she had declared, a stay was supposedly already in place). [18-17217, Docket Entry 23]

ARGUMENT

Question 1. Does a defendant in an IRS/DoJ civil forfeiture case have a constitutionally protected, due process right to counsel?

No circuit has ever determined whether appointment of counsel in civil forfeiture cases is mandated by the rights of defendants. So, the issue of whether or not justice REQUIRES appointment of counsel in civil forfeitures initiated by the Government should be decided now.

I contend that when judicial branch lawyers compel unlearned defendants to fight alone against executive branch lawyers wielding the might and leverage of the world's most powerful government, such setting is a manifest injustice. And, since there is minimal distinction between civil property forfeiture actions and criminal prosecutions,[13] there

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[13] From my preliminary research, the three "elements" the government must prove in §7203 "willful failure to file" prosecutions are: 1.) A person was required to file (proven by gross income), but 2.) Failed to file a return, and 3.) Willfulness. Those seem almost identical to the elements the government must prove in civil forfeiture cases, like I am experiencing: 1.) A person was paid X amount (triggers a duty to file), 2.) Supposedly knew of a duty to

is NO arguable difference in the justification for appointed counsel to assist defendants in either type of action.

In *Gideon v. Wainright, 372 U.S. 375, (1963)* the Supreme Court held that the Sixth Amendment's guarantee of counsel is a fundamental right essential to a fair (criminal) trial. In overturning *Betts v. Brady, 316 U.S. 455, (1942)*, in which the Court had held that the refusal to appoint counsel for an indigent defendant charged with a felony in state court did not necessarily violate the Due Process Clause of the Fourteenth Amendment, Justice Black stated that "reason and reflection require us to recognize that in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured of a fair trial unless counsel is provided for him."

He further wrote that the "noble ideal" of "fair trials before impartial tribunals in which every defendant stands equal before the law with government attorneys. . . cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him."

As I have contended in my Opening Brief on Appeal in 18-17217, [Docket Entry 17, Pg. 6, Issue VII], I now contend here that Justice Black's

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file, and 3.) Did not file a return. I contend that appointment of counsel is mandatory when the government can either destroy a person's liberty or their life-time investment in property. There is no difference.

rationale in *Gideon* applies with equal force to my case and to all civil actions initiated by government-paid attorneys to justify seizures of private property. It is especially apropos when, as here, explicit, non-conclusory claims are made that the attempted seizure is based on falsified government records knowingly used by every involved government-paid attorney.

Since there is virtually no difference in the elements necessary to secure a government victory in either a civil forfeiture or criminal prosecution, Justice Black's rationale applies with equal force to both types of prosecution. Without appointment of assistance of counsel, there will never be "a fair trial before an impartial tribunal, where every civil defendant stands equal before the law with government attorneys." If "a poor woman has to face her accusers without a lawyer to assist her," all men and women of good will realize such litigation is a farce, a mockery of the litigants' right to due process, especially in the evidentiary crucible of summary judgment.

I am now presenting that never-before adjudicated issue of first impression, and I request the Court fulfill its moral obligation to me, a poor woman haled before the court, to provide assistance of counsel so I can "'stand equal before the law with government attorneys."

Question 2. Even if there is no constitutional right to counsel for defendants in a civil forfeiture case, when assistance of counsel is sought by unrepresented litigants who cannot afford it, is a court required to provide factual and legal reasons when denying such motion?

Federal courts are empowered by statute to appoint counsel when circumstances justify it.

Section 1915 of Title 28 of the United States Code authorizes a court to request an attorney to represent a party in a civil action who is proceeding in forma pauperis. The decision to appoint counsel for a civil rights litigant rests with the discretion of the trial court. *McBride v. Soos, 594 F.2d 610, 613 (7th Cir. 1979); Heidelberg v. Hammer, 577 F.2d 429, 431 (7th Cir. 1978).*

And, only when the denial of counsel results in "fundamental unfairness impinging on due process rights" will a denial of counsel be overturned. *La Clair v. United States, 374 F.2d 486, 489 (7th Cir. 1967).*

Every Circuit that has written on the subject agrees. For example, in the 7th, "a court's discretion is to be guided by a consideration of all the circumstances of the case and particular emphasis is to be placed upon 'certain factors' that have been recognized as highly relevant to a request for

counsel." *Maclin v. Freake, 650 F.2d 885, 887 (7th Cir. 1981).*

Foremost among the "certain factors" that an appointing court must consider in the 7th Circuit is an analysis of the merits of the indigent litigant's claim from both a factual and legal standpoint. *Maclin* makes clear that a court need not appoint counsel when it considers the litigant's chances of success to be extremely slim. *Id.* at 887.

"In addition to the merits of a case, the 7th holds that a court may consider any of a number of factors. Among these factors are the complexity of the legal issues presented and the capability of the litigant to recognize and present the issues, the complexity and conflicting nature of the facts, the ability of the litigant to investigate his case, and the relative substantive value of the claims presented. Because each case is unique, a decision to appoint counsel can be made only after the proper legal principles have been applied to the facts presented in each case." *Id.* at 888. But, I request that it be noted, an analysis MUST be made.

And, as also noted above, the Ninth Circuit also recognizes that the decision to appoint counsel is within "the sound discretion of the court and is granted only in exceptional circumstances." *Franklin v. Murphy, 745 F.2d 1221, 1236 (9th Cir.1984).* The finding of exceptional circumstances when a litigant seeks assistance of counsel requires at least 1.) an

evaluation of the likelihood of the plaintiff's success on the merits and 2.) an evaluation of the plaintiff's ability to articulate his claims "in light of the complexity of the legal issues involved." *Wilborn v. Escalderon, 789 F.2d 1328, 1331 (9th Cir.1986) (quoting Weygandt v. Look, 718 F.2d 952, 954 (9th Cir.1983))*. Again, I request it should be noted, an evaluation MUST be made.

I contend that the refusal of the Circuit panel to provide even a shred of reasoning for its denial of my request for appointment of assistance of counsel, despite the complexity of the layered digital, document and attorney fraud being used to justify the theft of my property, and despite my overtaxed ability to battle multiple government-paid attorneys' relentless efforts to defraud me, is a blatant violation of precedent set in all circuits, including that of the Ninth.

Question 3. When a circuit panel denies motions for assistance of counsel without providing a scintilla of justification, then blocks reconsideration and appeal to the *en banc* Circuit, does the panel violate litigants' rights to due process of law?

I claim that the Ninth Circuit denial of my request for assistance of counsel, [See Appx. 1.], without providing a hint of explanation, or any sign that an evaluation occurred, standing alone, resulted in "fundamental unfairness impinging on (my) due process rights". [See *LaClair v. United States, 374*

F.2d 486, 489 (7th Cir. 1967), for persuasive authority.]

But, when the panel destroyed my right to seek reconsideration or *en banc* review of its bald decision, it annihilated my right to due process of law in such a blatant departure "from the accepted and usual course of judicial proceedings, as to call for an exercise of this Court's supervisory power" per Supreme Court Rule 10(a).

I respectfully request the Justices of this Court intervene, to end the ongoing farce and mockery of justice occurring in the Ninth Circuit Court of Appeals.

RELIEF REQUESTED

In this case of first impression, I respectfully request the Court find that there is no arguable difference between civil forfeiture cases and criminal prosecutions, although defendants' rights to appointment of assistance of counsel could/would be grounded on the Fifth Amendment due process clause rather than on the Sixth Amendment.

Further, I respectfully request the Court hold that appointment of counsel for defendants is mandatory in civil forfeitures initiated by the Government.

Alternatively, if the Court denies I have a **RIGHT** to counsel as a defendant in a civil forfeiture case, I move this Court to order any judge adjudicating a motion for appointment of counsel, whether in a district or circuit proceeding, to analyze and present a thorough evaluation of the merits of

the unrepresented litigant's claim from both a factual and legal standpoint, including, minimally 1.) an explicit, detailed evaluation of the likelihood of the litigant's success on the merits and 2.) an evaluation of the litigant's ability to articulate her claims "in light of the complexity of the legal issues involved."

Finally, I request the Court find that, when the Ninth Circuit panel denied my request for assistance of counsel, without a hint of explanation, then blocked any motion for reconsideration or for access to the *en banc* circuit, such action was a "fundamental unfairness impinging on (my) due process rights", and a "manifest departure from the accepted and usual course of judicial proceedings, as to call for an exercise of this Court's supervisory power."

I and all others similarly situated desperately need assistance of Counsel. Please address that need now.

It is respectfully presented,

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