NO.

IN THE

SUPREME COURT OF THE UNITED STATES

TAIWAN WIGGINS & DALANTE ALLISON,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COUR OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

I

WHERE A DEA AGENT STOPS TWO AIR TRAVELS, WHO HAD BEEN CLEARED, TO BOARD THEIR FLIGHTS, AND TAKES FROM THEM (IN A WARRANTLESS SEIZURE A SUM OF MONEY: CAN THE GOVERNMENT IN A CIVIL FORFEITURE CASE REQUIRE THEM TO PROVE LAWFUL POSSESSION BEFORE THE GOVERNMENT PROVES THE PROPERTY WAS LAWFULLY SEIZED FROM THEM?

II

GIVEN ***SIMMONS V. UNITED STATES,*** **390 U.S. 377 (1968)**, IN WHICH THIS COURT RULED ONE DOES NOT HAVE TO SURRENDER ONE CONSTITUTIONAL RIGHT TO ASSERT ANOTHER: IF THAT IS SO CAN THE DISTRICT COURT DISMISS THE CLAIMS FILED BY THESE CLAIMANTS BECAUSE THEY FAILED TO PROVE THEIR LAWFUL POSSESSION OF THE MONIES TAKEN FROM THEM?

III

CAN THE DISTRICT COURT STRIKE A DULY FILED "CERTIFIED CLAIM" FILED IN A CIVIL FORFEITURE CASE SIMPLY BECAUSE THE CLAIMANTS ASSERTED THEIR FIFTH AMENDMENT RIGHT TO REFUSE TO ANSWER ANY QUESTIONS THE ANSWER TO WHICH THEY BELIEVED MIGHT INCRIMINATE THEM?

STATEMENT OF RELATED PROCEEDINGS

There are no related cases or proceedings that Counsel is aware of. This case involved an isolated incident.

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[1] ***United States v. One Residence and Attached Garage of Anthony J. Accardo*, 603 F. 2d 1231, at 1234 (1979).** Also see ***United States v. $506,231.00 in U.S. Currency*, 125 F. 3d 442 (7th Cir. 1997).**

Appendix:

TABLE OF AUTHORITIES

OTHER RELEVANT RULES AND AUTHORITIES

To the Honorable, the Chief Justice and Associate Justices

of The Supreme Court of the United States:

The Petitioners, Taiwan Wiggins and Dalante Allison, respectfully prays that a Writ of Certiorari be issued to review the judgment of the Sixth Circuit Court of Appeals, originally filed in this case on July 30, 2019.

OPINIONS BELOW

The Opinions centralized below are the ones reported as ***United States of America v. $31,000.00 in U.S. Currency*, 872 F. 3d 342 (6th Cir. 1972)** and ***United States v. $31,000.00 in U.S. Currency,* 774 Fed Appx. 288 (6th Cir. July 30, 2019)**, which is dubbed herein as ***United States of America v. $31,000.00 in U.S. Currency No. II***. Actually, it affirmed the District Court's Opinion, reported as ***United States of America v. $31,000.00 in U.S. Currency, et al.*, 2018 WL 2336814**.

Next, we have in this somewhat convoluted scenario, the Sixth Circuit's Opinion rendered in ***United States of America v. $31,000.00 in U.S. Currency,* 872 F. 3d 342 (6th Cir. 2017)**, which had reversed the District Court's original Opinion in ***United States of America v. U.S. Currency, et al,* 2016 WL 5661608**. This opinion actually should have settled the standing issues here. Well, obviously that was not to be.

STATEMENT OF THE GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED

The judgment of the Federal Court of Appeals was rendered on July 30, 2019. This Petition is being seasonably filed under favor of **28 U.S.C., §1254(1)**. In the wake of this Court's Order the time was extended for doing so for sixty days.

CONSTITUTIONAL AND STATUTORY PROVISIONS

The principle provisions of the United States Constitution involved in this case are the search and seizure clause of the Fourth Amendment and the self-incriminating clause of the Fifth Amendment. Likewise relevant here is the due process clauses of the Sixth and Fourteenth Amendments. The pertinent text of these reads as follows:

AMENDMENT IV:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENT V:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT VI:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

AMENDMENT XIV:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law

> which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Given the essence of the Sixth Circuit's Opinion, despite its earlier opinion that these Claimants had the requisite standing to contest the Government's effort to forfeit their money (***U.S. v. $31,000.00 in U.S. Currency*, 872 F. 3d 342 [6th Cir. 2017]**), the Court was prevailed upon by the Government to believe what could not be done in ***Simmons v. United* States, 390 U.S. 377 (1968)**. There, as this Court saw it, the Government, or even the Courts below, could not require an individual to give up one constitutional right in order to assert another.

Here, the Court made it clear that the Government cannot seize private property and compel the person in possession to prove lawful possession. What complicates the issues here is that in the first ***U.S. v. $31,000.00 in U.S. Currency*** case, the Sixth Circuit ruled, indeed compellingly so, that these Claimants had the requisite standing. Indeed, there it was explicitly said:

> We find the District Court erred by dismissing Wiggins and Allison's Claim due to that standing . . . where, as here, the Claimants make a verified claim of ownership and not mere possession [that's good enough].

872 F 3d 342, at 355.

The problem, as we see it, starts with the completely unnecessary statement made in that Opinion, which is really a dictum. This to the effect that:

> We have no doubt that the lawyers of the United States Attorney's Offices within the Sixth Circuit have the capacity to draft useful interrogatories that will either confirm a claimant's interest in the res or expose the futility of the claim. They do not need our hand on the scale.

Id., at pp. 355-356. Thus it happened, despite the Court's finding, we had all the standing we need. The Government then filed these various interrogatories that ask virtually the same questions we had dealt with in the first ***$31,000.00*** case. Simply put, we were asked to prove lawful possession. Again, the District Court dismissed the case in the wake of our assertion of the Fifth Amendment to virtually the same question. See ***U.S. v. $31,000.00 in U.S. Currency*, 2018WL2336814**. On appeal from that ruling the Court, that is the Sixth Circuit, abandoned the same position it had taken the first time we dealt with this question. Indeed, despite our argument that "the law in this case" was the finding by this Court that we had the requisite standing required to compel the Government to first prove not only that these DEA agents actually were federal law enforcement officers, but that these monies were lawfully seized.

Again, the Sixth Circuit in its Opinion (referred to above), rejected our thinking based on its earlier ruling (in ***$31,000.00 I***) that we had standing, and ruled it was inapplicable to the new set of interrogatories. And that our failure to answer this new set of questions, relative to the source of the money taken from them (on the basis of the Fifth Amendment) was dispositive against us. We contend this is a ruling that cannot survive meaningful scrutiny.

In all these cases where the State seeks out the federal Government to forfeit monies through the federal Court, in exchange for 20% of the money (a fee, if you please), as was said in the case of ***U.S. v. $506,231.00 in U.S. Currency*, 125 F.3d 442 (7th Cir. 1997)**, a point there made really says it all.

STATEMENT OF THE FACTS

The facts here are straightforward. Both Wiggins and Allison were at the airport in Cleveland getting ready to fly to Orange County, California. They each had prior felony drug convictions. Once they were cleared by the TSA officers to board their flights, they were accosted by these DEA agents. Now, *there are significant material disputes about what exactly happened*, but essentially, both were approached, separately, while in the airport. DEA agents state the encounters were "consensual," and that they both "consented" to the search of their effects that resulted in the DEA taking $43,000.00 in U.S. currency from them ($33,000.00 from Wiggins and $10,000.00 from Allison). Wiggins and Allison categorically *deny* that these were consensual encounters. This fact the District Court totally ignores in its rote and typical (for them and most Courts) gospelization of the officer's version of the facts. From the DEA's version of these events, there were some inconsistencies in their account of where the money came from. Of course, there are always "inconsistencies" when the Government is suggesting you're a criminal so they can take your money. Here, however, keep in mind there was never even an allegation that they were then and there involved in any criminal activity, or even suspected of being so involved.

The Government filed its civil *in rem* forfeiture complaint. In response to which Wiggins and Allison filed Verified Claims, and they both asserted absolute ownership interests in the money. They also both claimed that the searches were illegal and unconstitutional. This fact the Court, and the Government, would brazenly, yet simply, ignore. The Court held a status conference and a scheduling order was put in place. *Prior* to the expiration of the discovery deadline, the Government moved to dismiss their claims because, as the Government saw it, they did no more than make "a naked assertion of ownership". The District Court agreed and struck

Wiggins' and Allison's Claims. They appealed, and prevailed. See ***U.S. v. 31,000.00 in US Currency,* 872 F.3d 342 (2017)**.

Of course, it is a fact we recognize, as did this Court, that in challenging this forfeiture action we did what we had to - - *i.e.*, show these Claimants had actual standing. The irreducible constitutional minimum of standing only requires (1) an "injury in fact," defined as the "invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical;" (2) "a causal connection between the injury and the conduct complained of;" and (3) a likelihood "that the injury will be redressed by a favorable decision." ***Lujuan v. Defenders of Wildlife*, 504 U.S. 555 (1992)**. In a case like this, that means the claimant must have a colorable ownership, possessory, or security interest in at least a portion of the defendant property. See ***United States v. $515,060.42 in U.S. Currency,* 152 F.3d 491, 497 (6th Cir. 1998)**.

Originally the Sixth Circuit Court forthrightly, and aptly, agreed in ***United States v. $31,000.00 in U.S. Currency*, 872 F. 3d 342 (6th Cir. 2017)**, we had the requisite standing. We view that august declaration as being the "law of the case", and as such it should be impervious to assailments by the Government and the Court in this case. Obviously, counsel believes, and arguably has persuaded the District Court to believe, Congress fully intended when it enacted CAFRA, that when it is coalesced and utilized (as they see it) along with the Rules of Civil Procedure, they actually trump any due process rights the Wigginses and Allisons of the world have. And, this is so especially if they have aged prior convictions and have any failures to pay their income taxes seasonably. Stated another way, for them (*i.e.*, people of that ilk) to be able to make a meaningful Claim, and have any hope of succeeding, they must first prove they had lawful possession. Meaning, they must first prove that not only was the money lawfully acquired, but

that they had paid their taxes on that money. If it were otherwise, why did the Government even mention their failure to pay taxes in their quest for this money?

II

What seems most clear here is the Government's insistence that its *entitlement* to responses to their Interrogatories trumps even the Claimant's Fifth Amendment. This raw contention is due in no small measure to the fact that counsel simply fails to realize that what is adjudicated in a judicial forfeiture case, or proceeding, is the Government's right to the property *not* the Claimants'. So postured, it seems clear here the Court was not required to rotely deal with the issue, and simply resolve it, in the Government's favor. For sure, whether the Government could invoke its right to the forfeiture of the defendant property requires the Government to prove its case. If the Government failed to do so, then the property simply cannot be forfeited - - whether the Claimant is the owner or not. Indeed, possession would suffice.

So postured, it is also clear enough here that ownership of the defendant property is not even an issue in determining the question as to whether the Government has a right to forfeit this money. This follows because the law, as written, puts the burden of proof on the Government to prove the property, deemed the *res*, is forfeitable. Well, if that is so, how then can the Government change the law - - indeed, midstream?

ARGUMENTS RELIED ON FOR ALLOWANCE OF WRIT

The federal law governing civil *in rem* forfeiture actions gives the Government authority to seize items it suspects were used in furtherance of criminal activity and to commence civil *in rem* proceedings against the property without charging the property's owner with a crime. See ***United States v. $17,900.00 in U.S. Currency*, 859 F. 3d 1085, at 1087 (D.C. Cir. 2017)**, explaining the practice of civil forfeiture. See also ***Leonard v. Texas*, 137 S. Ct. 847, at 848-849**

(2017). Federal agents and entities have significant latitude to pursue these claims, from special discovery provisions written into the governing rules to a burden of proof that is lower than required in standard criminal cases.

While all that is certainly true, do understand in this case the Government is yet to recognize that prior to their seizure these two travelers had done absolutely nothing to attract these officers to them. For sure, they were *not* acting suspiciously. They were simply headed for their gate, having been cleared (by the TSA agents) to board. At that point, for sure, these officers lacked anything that could even possibly be likened to a reasonably articulable suspicion that either one of them had done anything that gave rise to a basis for them to be stopped. With that being so, clearly the "investigators" representing not TSA agents, but the Government, were on a frolic of their own. It follows, given both petitioners adamantly deny they consented to their luggage being searched, that issue cannot be resolved on the basis of arguments.

Still, with all that being so, and with all that aside, how can it be that in a case where it cannot be said the petitioners lacked the requisite standing, they can nonetheless be *required* to not only prove lawful acquisition of the property, but to also surrender certain of their constitutional protections in order to do so? What this finding does is make it clear that the Court below was prone to credit, in the Government's favor, the legal and procedural maneuvers the Government seems to employ, almost with impunity. Indeed, clearly without even slowing down to tell us how the State lost its jurisdiction over this property. This as though it really is beside the point. It also ignores of our belief, which we now express, that the Court below seems clearly to be saying that even the provisions of the Constitution, and the due process clauses of the Fifth Amendment, are no match for the force that is mustered here by the Government. This type of thinking is flawed to the hilt.

Perhaps the most significant issue discussed below, in our judgment, involves the invocation of the Fifth Amendment by these petitioners. This was done in response to various interrogatories related to how they obtained possession of the monies they were laying claim to. Surely the utilization of the Fifth Amendment Right is a legitimate reason for refusing to answer certain questions, and we do recognize that it is being said that one cannot rest solely on denials to avoid all questions put to them in interrogatories. But, as Hamlet said sometimes there is a "rub". And, here we recognize it was this Court in **Simmons v. United States, 390 U.S. 377, 394 (1968)** that said: "In these circumstances, we find it intolerable that one constitutional right should have to be surrendered in order to assert another." **Id., at p. 394.**

In our view, the question here asks: Did the Court really mean it when it found it to be intolerable in ***Simmons,*** where the conflict involved a clash between the Sixth Amendment and the Fourth, for him to have to waive one Right to assert the other? Again, the conflict here is between the Fourth and the Fifth, with the Fifth being the stronger (in our Judgment). This being so, because it is augmented by the *taking clause and a due process clause*. In this case the imbalance that seems to be present in that comparison, should be deemed to be overwhelming in favor of the Fifth Amendment.

ARGUMENT NO. I

"PROPERTY OF PRIVATE CITIZENS SIMPLY CANNOT BE SEIZED AND HELD IN AN EFFORT TO COMPEL THE POSSESSOR TO 'PROVE LAWFUL POSSESSION'."[1]

(A)

Granted the assertion of the Fifth Amendment under oath regarding the sources and origin of the currency involved in this case is a factor the Court below should have considered in ruling

[1] ***United States v. One Residence and Attached Garage of Anthony J. Accardo*, 603 F. 2d 1231, at 1234 (1979).** Also see ***United States v. $506,231.00 in U.S. Currency*, 125 F. 3d 442 (7th Cir. 1997).**

on the petitioners' Motion. However, as has been observed in ***United States v. $141,770.00 in U.S. Currency*, 157 F. 3d 600 (8th Cir. 1998)**, in a forfeiture action under **§881,** of the **United States Code**, the Government bears the burden of establishing probable cause to connect the property to drug trafficking. Also see ***United States v. $39,873.00*, 80 F. 3d 317, 318 (8th Cir. 1996)**. Also, it is a fact that establishing a connection to general criminality is simply not enough. ***United States v. $191,000.00 in U.S. Currency*, 16 F. 3d 1051, 1071-72 (9th Cir. 1994)**. No one disputes that thesis, or would dare do so.

Thus, even when one draws all reasonable inferences in favor of *the non-moving party*, still for the Government to prevail here, it would have to establish the money came from drug trafficking and/or some type, or kind, of illegal activity.

(B)

For sure, various critical factors in this regard are, both, present and absent in this case. First off, the Government's evidence simply does not compel the conclusion that the currency came from, or could be related to, a drug transaction. For sure, as well, no reasonable trier-of-fact could find otherwise. With that being so, the Government's arguments here translate into the naked and unclad assertions that the invocation of the petitioners' Fifth Amendment privilege not only leaves the Government's evidence unchallenged, it further suggests the Court should draw a factual inference (against these petitioners) from the assertion of the privilege that is dispositive of any and all rights they might otherwise have - - even those given and granted them by our Constitution, if one can believe that.

So, let's be clear here. First off, the fact that the petitioners rely on their Fifth Amendment privilege does not help the respondents. This because the "facts" they have relied on in support of their Motion are insufficient to carry the ultimate burden of proof. Further, as shown elsewhere,

and known to be the law, all reasonable inferences are to be construed in favor of the non-moving party. Thus, the Court must assume the trier-of-fact may conclude that while the assertion of the Fifth Amendment privilege may provide some support for the concession that the currency came from any other than lawful source, the evidence is insufficient for any fair-minded person to conclude it came from drugs.

Further, it is a given the Government is not entitled to an adverse inference from petitioners' assertion of their Fifth Amendment privilege. For sure, it was in ***United States v. Real Property Known as Rural Route 1, etc., et al*, 24 F. 3d 845 (6th Cir. 1994)**, our Circuit soundly rejected the use of an adverse inference instruction in a civil forfeiture action. In so doing, it was noted by this Court in ***Austin v. United States*, 509 U.S. 602 (1993)**, that it understood forfeitures can be a form of punishment. This very real idea undercuts the Government's belief that a civil forfeiture action should not be viewed in the same light as a traditional forfeiture proceeding. For sure then, since this matter had yet to reach the trial stage, the use of an adverse inference on the summary judgment motion was inappropriate. Simply put, the Sixth Circuit failed to reckon with not only the Fourth and Fifth Amendment issues involved, but also any of the due process issues that were worthy of consideration. Also, we do know that nowhere is it written counsel must first prove the property taken from his clients was lawfully done before he can compel them to prove they were not first victimized by the search.

(C)

Additionally, it is worth repeating, in dealing with a summary judgment motion, as was the cases here, the inferences drawn from the underlying facts must be viewed in the light most favorable to the party opposing the motion. See ***Matsushita Elec. Industries Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986)**. With that being so, the Sixth Circuit almost summarily rejected our

argument that an adverse inference from petitioners' assertion of their Fifth Amendment rights simply was not appropriate. It rejected our argument that the negative thinking arguments by the Government were still wrong and bad. This because there are a myriad of sources that petitioners (such as Taiwan Wiggins and Dalante Allison), could have obtained the money found in their possession. Thus, it follows in light of the Government's sparse evidence (related to ancient convictions and tax filing failures and the like), the Court nonetheless ruled in favor of the Government's motion. Given then that there may well have been a source from Claimants' funds other than drug trafficking, it follows the Government did not sustain its burden. This because, simply put, such proof this is not so does not exist. It really is that simple. As to this being so, one need not look past the cliché: "the proof is in the pudding."

ARGUMENT NO. II:

THE IMPOSITION OF THE SANCTION OF DISMISSAL OF A CLAIM MADE IN A FORFEITURE CASE SOLELY BECAUSE THE CLAIMANT EXERCISED HIS FIFTH AMENDMENT PRIVILEGE AND FAILED TO EVEN ATTEMPT TO PROVE LAWFUL POSSESSION OF THE "*RES*," CANNOT BE DEFENDED IN LAW, LOGIC OR COMMONSENSE.

Here, we rely on an insuperable, impervious, constitutional tenet. It declares that if the initial seizure is invalid under Fourth Amendment principles, then any subsequent search and/or arrest is also invalid in any practical sense. This is invariably so, in our belief, regardless of the quality of the Government's evidence that the illegal stop and/or search produced. This would be so however sound the search might have been. The point being, the search is still illegal if that evidence was found on the basis of the determination it was a Fourth Amendment violation.

If the above contention made here is viable (as we believe it is), then there is no way it can be the law that even before a person (here the petitioners) can contest the seizure of their property,

they must first prove lawful possession. This, of course, is what we are being told in the Court's Opinion, the one being challenged here.

First off, in our view, given ***Baxter v. Palmigiano,* 425 U.S. 308 (1976)**, a case we also rely on, although the inferences based on the assertion of one's Fifth Amendment privilege are permissible, the inference supplied when pitted against the final judgment of dismissal, without regard to the other "evidence", clearly exceeds constitutional bounds. This because it would unduly penalize a proper use of the privilege. Here the point being, as the District Court seems so willing to ignore the issue as to the lawfulness of the seizures cannot be resolved without any testimony being heard and the appropriate resolutions made.

Let's be very clear here. The Fifth Amendment provides that "no person shall be compelled" in any . . . case to be a witness against himself . . . [indeed] the privilege protects the individual from being compelled to answer questions put to him in any proceedings . . . where . . . the answer might incriminate him". See ***LaSalle Bank Lakeview v. Seguban*, 54 F. 3d 387 (7th Cir. 1995)**. The upshot of this reality then is what it shows. It shows, indeed mightily so, that the warped beliefs of the law enforcement officers in this case, and those of the DEA investigators (as they are labeled in their agency) to the contrary, notwithstanding, it simply is not a fact that the Wigginses and Allisons of the world, because they have records for drug convictions, and have failed to file their taxes, are not cloaked with probable cause.

Also, we do concede that discovery, not unlike cross-examination, does minimize the possibility that a judgment will be predicated on incomplete, misleading, or arguably false and fabricated evidence. And, we concede that needs to be protected against. But, that only comes into play here once the Government survives a Motion to Suppress and For the Return of Illegally Seized Property, and at least tentatively proves the "*res*" is forfeitable. Cf., ***Taylor v. Illinois*, 484**

U.S 400, at 411-412 (1988). In citing ***Taylor***, we believe (as this Court did) it was plain enough that absent evidence of unlawful conduct, criminal sanctions may not be imposed. ***Taylor v. Louisiana*, 370 U.S. 154 (1962).**

If there is one thing here that is not in dispute, it is the fact that Ohio has established a procedure for instituting forfeiture actions under the State law. See **Revised Code of Ohio, §2981.01 et. al.** Indeed, while that is clear enough, it also makes clear that despite the format and scheme it created, there was nothing done therein that bars the head of any of the police entities in this State (*e.g.*, the various Sheriff Departments, Police Departments, and State Highway Patrols) from seeking to take advantage of the Government's equal sharing programs. Of course, and for sure, that was not done here willy-nilly. What makes this so clear is it does not provide for notice to the people involved in any seizure made in the name of the State. Given no charges are contemplated in connection with those seizures, why is it the Government has yet to purge any of this property - - especially the money?

ARGUMENT NO. III:

WHERE THE CLAIMANTS, IN A CIVIL FORFEITURE CASE FILE VERIFIED CLAIMS THAT SATISFY THE STATUTORY REQUIREMENT OF 18 U.S.C., §984(a)(4)(A) AND SUPPLEMENTAL RULE G(5)(A), THEIR CLAIMS CANNOT WITH IMPUNITY BE DEEMED INSUFFICIENT BECAUSE THEY REFUSE TO WAIVE THEIR FIFTH AMENDMENT RIGHTS AS TO HOW THEY CAME INTO POSSESSION OF THE MONIES SAID TO BE FORFEITABLE TO THE GOVERNMENT.

Let's consider here, ***Boyd v. United States*, 116 U.S. 616 (1886).** There, in our judgment points were made that cannot be overcome by the Government here. These show that the Court, on the Government's Motion, had ordered the Claimant to produce invoices related to their acquisition of the property involved in the lawsuit. When it was offered as evidence at the trial,

Boyd, himself objected on the grounds that as the Claimant, he could not be compelled, in a forfeiture case, to produce *any* evidence. As the Court there saw it: they had to reckon with the fact (and did) that the Fourth Amendment of the Constitution, and of that portion of the Fifth Amendment which declares that "no person shall be compelled in any criminal case to be a witness against himself," *and* likewise with the fact "that a compulsory production of private books and papers of the owner of goods sought to be forfeited in such a suit is compelling him to be a witness against himself, within the meaning of the Fifth Amendment to the Constitution, and is the equivalent of a search and seizure," - - within the meaning of the Fourth Amendment. **Id., at 634-635**. Also see ***Coffey v. United States*, 116 U.S. 436, at 443 (1886)**.

While ***Boyd v. United States***, may have been nudged out of this counsel's list of the five most important cases decided by the Supreme Court in its history, it is nonetheless everlasting. This is so because of the effect it had by illuminating, not only, our Fourth and Fifth Amendment rights in ***Mapp v. Ohio*, 367 U.S. 643 (1961)**, ***Beck v. Ohio*, 379 U.S. 89 (1964)**, and ***Doyle v. Ohio,* 426 U.S. 610 (1976)**, but showing that these agents (including DEA agent Harper, who is centralized in the case) are not above the law - - they simply think that they are.

This is particularly so in this case, which culminated inside Cleveland Hopkins Airport after the petitioners had been cleared to go. Both were (in our judgment) then illegally arrested. Granted it may be said they were merely seized, well even that was illegal. Granted, too, we really need a finding of fact from the Court, based on sworn testimony (not pontifications) as to whether this was an arrest which required probable cause, or was it a mere consensual encounter? Yet, we do not have either. Our Court obviously felt no hearing was required because of agent Harper's findings. ***Ante*, p. 3**. We believe that was wrong too.

The reason that we do not know, despite the apparent lack of the necessary determinations as to what the true facts are here, is because the Court summarily (despite our protest) ruled that the assertion of the Fifth Amendment to various Special Interrogatories provided the Government the right to trump not only "the law of the case" (as expressed in ***United States v. $31,000.00 in U.S. Currency*, 872 F.3d 342 [6th Cir 2017]**), but the petitioners' Fourth and Fifth Amendment rights. It is also being said that this was so despite what some of us truly believed had been conclusively addressed in ***Boyd v. United States***, and its progeny. Again, as we read the ***Boyd*** Court's decision, and apply its sagacious thinking here that propels its thrust even into certain hoods in Cleveland (as it did), some Clevelanders still truly rejoice. This because the officers responsible for ***Mapp v. Ohio*, 367 U.S. 643 (1961)** and ***Beck v. Ohio*, 379 U.S. 89 (1964)**, were a part of that discredited "goon squad" that operated as they saw fit on the eastside of Cleveland. Back then, they truly believed the Wigginses and Allisons of the world (and our City was full of them) had no rights the police were bound to respect. Some of them, not unlike the DEA agent in this case (*i.e.*, Joseph Harper and that well known Charlatan, agent Lee Lucas, one of Cleveland's own) are actually unreal. Here, note in passing, how Lucas was glorified once for his tactics.[2] See ***United States v. Henderson*, 2007 WL 1115194**; ***United States v. Novaton*, 271 F.3d 968, at 987-989, 1005-1007 (11th Cir. 2001)**.

Well, the Supreme Court gave us ***Mapp*** and ***Beck***, as did our local Court of Appeals, shortly thereafter. See ***State v. Thompson*, 1 Ohio App 2d 533 (8th Dist. 1965)** and ***State v. Dotson*, 43 Ohio App 31 (8th Dist. 1974)**. These cases also involved the same heralded Cleveland police unit. As we see it, now it is this Court's turn to tell off these DEA agents. In so doing, they should be

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[2] Also see **Caniglia, J., "Informant Lies About Drug Deals," *Plain Dealer*, December 20, 2007; Turner, K., "DEA agent indicted on perjury, civil rights charges; pleads not guilty," *Cleveland Plain Dealer*, May 13, 2009;** and ***United States v. Bernal-Obeso*, 989 F.2d 333 (9th Cir. 1993)**.

told the thinking of the Supreme Court, first expressed (by Justice Thomas) in ***Leonard v. Texas*, 137 S. Ct. 847 (2017)**, is on its way. Indeed, we see there his thoughts were being magnified, as these should be. Our reading of ***Timbs v. Indiana*, 586 U.S. ___ (2019),** signals this is so. In any event, no longer should the DEA be able to act on these frolics on their own. For clearly, might does not make right.

Indeed, this seems clearly to be so since Justice Thomas, hardly a civil libertarian, made the point of telling those who were paying attention, that he would have gone even further than the Court did in ***Timbs***. As he put it, he would have reached the same result, but by still another route. The one he talked about in ***Leonard v. Texas***. So, it's on its way - - in our judgment. And that truly is a good thing. This follows because it truly makes sense to believe, as we do, that the right of the very best amongst us are only as secure as those of the vilest, most reprehensible are protected. And, some of us already know the difference between right and wrong.

CONCLUSION

The Government is clearly contending that all Claimants needs to state where, when, and how, they acquired the seized assets to which they asserted they have an entitlement to. This almost sounds like they are suggesting that the burden is on these Claimants to prove their money is not subject to forfeiture. Clearly the Government seems to have forgotten that **18 U.S.C. § 983(c),** which as amended by the **Civil Asset Forfeiture Reform Act of 2000**, specifically states:

> In a suit or action brought under any civil forfeiture statute for the civil forfeiture of any property ... the burden of proof is on the Government to establish, by a preponderance of the evidence, that the property is subject to forfeiture ... [and] ... if the Government's theory of forfeiture is that the property was used to commit or facilitate the commission of a criminal offense, or was involved in the commission of a criminal offense, the Government shall establish that there was a substantial connection between the property and the offense.

Obviously then, the Government's apparent attempt to shift the burden of proof to these Claimants is misplaced and contrary to the plain meaning of the text of **18 U.S.C. §983(c).**

Also, it is worth noting these claimants are not defendants. No one is accusing, or saying they committed any crimes, the defendant is the cash. And, in this case there is no proof it was, or it can be, related to any type of criminal activity. So, what on earth is it that makes the Government entitled to take it from these claimants/petitioners?

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the forgoing Petition for Writ of Certiorari was mailed to the office of Justin E. Herdman, U.S. Attorney located at 801 West Superior Avenue, Suite 400, Cleveland, Ohio 44113 on this 9th day of December, 2019.

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