No. _____

In the
Supreme Court of the United States

SAMSON PRIMM,
Petitioner,
v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

I. WHETHER ONE WHO HAS THE REQUISITE STANDING TO MOVE TO SUPPRESS BASED ON CONTENTIONS, WHICH IF VALIDATED SHOW HIS FOURTH AMENDMENT RIGHTS WERE VIOLATED, MUST FIRST PROVE HIS POSSESSION WAS LAWFUL?

II. WHEN THE APPEALS COURT RULES, IN A FORFEITURE CASE THEN ON APPEAL THAT THE APPELLANT, HAS TITLE III STANDING: DOES THAT RULING BECOME "THE LAW OF THE CASE" AND AS SUCH CAN IT BE IGNORED BY THE DISTRICT COURT (FOLLOWING A REMAND) WITH IMPUNITY?

III. WHETHER, GIVEN THE *ONUS* IS ON THE GOVERNMENT TO PROVE FORFEITABILITY, AND THE LAWFULNESS OF ANY AND ALL SEARCHES AND SEIZURES, CAN THE DISTRICT COURT, AS A CONDITION PRECEDENT TO PROVIDING THE CLAIMANT A HEARING ON HIS MOTION TO SUPPRESS, REQUIRE HIM TO SURRENDER HIS FIFTH AMENDMENT RIGHTS.

PARTIES TO THE PROCEEDING

Petitioner SAMSON PRIMM was the Claimant - Appellant below. Also below, listed as Defendants were: $107,900.00 U.S. CURRENCY SEIZED ON JUNE 17, 2016; $57,999.00 U.S. CURRENCY SEIZED ON AUGUST 18, 2016; $99,500.00 U.S. CURRENCY SEIZED ON MARCH 20, 2016.

Respondent UNITED STATES OF AMERICA was Plaintiff - Appellee below.

STATEMENT OF RELATED PROCEEDINGS

There are no related cases or proceedings that Counsel is aware of. This case involves three (3) isolated searches - - two (2) in Cuyahoga County, Ohio and the other in Lorain County, Ohio.

TABLE OF CONTENTS

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 Petitioner, Samson Primm, 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 November 6, 2019.

OPINIONS BELOW

***United States v. $99,500.00, et al*,** the Opinion centralized in this Petition, is reported as **2019 WL 578347**, is **Appendix "A"** herein. **Appendix "B**," the Memorandum and Order of the District Court, is reported as **339 F. Supp. 3d 690 (2018)**. **Appendix "C"** shows ***United States v. $99,500.00 in U.S. Currency*, 2018 WL 2336909**. **Appendix "D"** herein is also report for the District Court as **699 F. Appx 542 (6th Cir. 2017)**. Lastly, we have **2017 WL 57295** attached herein as **Appendix "E**."

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

The judgment of the Federal Court of Appeals was rendered on **November 6, 2019**. This Petition is being seasonably filed under favor of **28 U.S.C. § 1254(1)**. With this being so, it follows the due date of February 4, 2020 is being met.

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

Here, the facts will show the Government contended in the District Court that simply because the Petitioner here exercised his Fifth Amendment right of silence with reference to certain Special Interrogatories and to the various requests for documents. He forfeited his right to even contest the seizure of this property but the property as well. The warrantless searches were made in connection with various traffic arrests. For sure, as we contended in the District Court, as we do here, that any one reading the Motion for Summary Judgment, would be impressed with its author's utter gall. This because it gave off the flawed impression (arguably adopted by the District Court) that Appeals Court could (as it did) ignore the edict that barred them making credibility determinations. As they saw it, this would forbid the Court from weighing the evidence in dealing with Motions for Summary Judgment. See ***Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133, at 150 (2000)**. This case thus tells us the conclusory allegations that cluttered the Motion and the Government's arguments made in therein should have been rejected.

Also, it is almost unbelievable that the trial Court could (as it would) use as a Discovery sanction the outright dismissal of a forfeiture claim - - as was done here. Indeed, this was done (arbitrarily) here. This is so despite the fact that at all times, even before the Government literally muscled these seizures away from the various State Courts, that each of them literally passed through. This follows given all seizures made here were in the name of our State. Thus, by that act

alone, it is undeniable that jurisdiction had already automatically vested in the Courts of the State of Ohio. See **Revised Code of Ohio, § 2935.23** and ***State v. Jacobs*, 137 Ohio St. 363 (1940)**.

Likewise, ignored by the Courts below is the fact that nowhere is it written, indeed anywhere, that when Congress enacted CAFRA it literally trumped the taking clause of the Fifth Amendment, the prohibition against illegal searches and seizures of the Fourth Amendment, the right to challenge illegal searches and seizures in the District Courts. And, we know as a fact the Supreme Court had decreed. See ***One 1958 Plymouth Sedan v. Pennsylvania*, 380 U.S. 363 (1965)**. Then, there is the wisdom one gets from the irrefutable thesis that the Government cannot seize private property and compel the person from whim it was taken to prove lawful possession. ***United States v. The Residence and Attached Garage of Anthony Accardo*, 603 F.2d 1231 (7th Cir. 1979)**.

Likewise, here we have the awesome fact that the Sixth Circuit, early on, had categorically found that Samson Primm had the requisite standing needed to make the claim for his seized property. It did so when it reversed the previous case involving Mr. Primm. Indeed that case is formally reported as ***United States v. $99,500.00 in U.S. Currency*, 699 F. Appx 542 (6th Cir. 2017)**. See **Appendix "B" at App. p. 41**.

Here, of course, as a part of its all-out onslaught, indeed in that: where there is a will, there surely is a way, scenario the Government ultimately prevailed here. Indeed, the fact that the Government would argue and even convinced the District Court this time

around, as it did, that Primm lacked the standing required could overcome what we were contending was "the law of the case," was a shock to us. In taking that position, the fact that it was something, off handedly said by the Court, that was being relied on simply does not make sense. Here, reference is to what clearly was a dictum[1] expressed in ***United States v. $31,000.00 in U.S. Currency*, 872 F.3d 342 (6th Cir. 2017)**, despite being off handed its effect was just short of being amazing. Yet that nonsense prevailed here. Hopefully just for now. This follows because it has to be that one does not have to prove the type of standing require to contest a forfeiture in order to complain they were victimized by an illegal search. Thus, it hardly makes sense the Sixth Circuit could simply reject its previous finding (made in its first opinion) that Samson Primm did in fact have the requisite Title III Standing "at the pleading stage". Simply put, in the opinion referred to – that is the first opinion in this case, here is what the court says but not at any other stage - - which is the effect of the Ruling here made. Be all that as it may, in its first Opinion in this case here is what the Court said:

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[1] Here, reference is to this the following remark, which if left unsaid, as should have bene the case, makes no sense at all. Here, it was unnecessarily said: 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. ***United States v. $31,000.00 in U.S. Currency*, 872 F.3d 342, 334-335 (6th Cir. 2017)**.

> For Article III standing in civil forfeiture cases, 'a claimant must have a colorable ownership, possessory or security interest in at least a portion of the defendant property'. . . However, as a matter of first impression, **this court held in *$31,000.00 in U.S. Currency* that a verified claim of ownership is sufficient to satisfy Article III at the pleading stage.** . . . **Thus, Primm's claim asserting sole ownership of the cash that is the subject of this forfeiture action sufficiently alleged Article III standing**.

***United States v. $99, 500.00 U.S. Currency*, 699 F. Appx 542 (2017)**. See **Appendix D, at p. App. 44**.

STATEMENT OF THE FACTS

Let's be very clear here, the District Court's various Orders made below, those which caused us to lodge a second appeal is what causes us to be here. Indeed, what is exposed here is still another all-out effort by the Government to avoid being required to prove anything. Indeed, not merely that it lacks any proof whatsoever that the property seized by local law enforcement officers (here **in the name of the State of Ohio**), can be forfeited to the Government with impunity. The sole purpose being, in our judgment, to enrich, both, their coffers. Our belief here is whenever this case gets before a fact finder, certain things will be clear. One being that it is not so, as these law enforcement officers seems clearly to believe, that it is a fact that the Samson Primms of the world have no rights the Government and its minions are bound to

respect. Then, it will be made clear that in this situation, their belief this is so, is simply wrong.

Granted, the ease with what they have so far been able to defy our Courts, is actually unreal. This reference is to the fact that while the Sixth Circuit, as far back as 2017, sought to make it clear to those of us who were constantly getting beat up by the attorneys in our District, who seem clearly to believe that "the taking clause" of the Fifth Amendment **and** the Fourth Amendment itself, could no longer be, and would no longer be, ignored in our Circuit. For sure, their warped belief had been the Government could seize private property, with or without probable cause to do so, and compel the person from whom it was seized to prove lawful possession. Indeed, despite our contentions to the contrary, this argument had become a staple in these situations.

Yet, despite the Opinions in ***United States v. $31,000.00 in U.S. Currency*, 872 F.3d 342 (6th Cir. 2017)**, and that Court's earlier Opinion in this case. See **Appendix "A."** Thus, it is now clear the Government obviously still believed there had to be a way they could get around having to prove anything. This warped belief came to fruition when the Sixth Circuit reversed its stance in ***United States v. $31,000.00 in U.S. Currency***. It was then proclaimed these Claimants had to prove lawful possession to have Title III standing again. See ***United States v. $31,000.00 in U.S. Currency*, 774 F. Appx 288, at 292-293 (6th Cir. 2019)**. Thus, as the Appeal Record here shows, obviously spurred on by certain nonsensical rulings conjured up for the District Court,

it has somehow convinced itself Primm really does not have standing. And because this was so, his assertion of his Fifth Amendment right to questions put to him (likewise in certain Special Interrogatories), they could not only void his claims, his assertions of the Fifth Amendment empowered it to enter judgment for the Government. For sure, we dispute that it was proper to do so.

Indeed, the Court (the same Judge that did so in the ***$31,000.00*** case being referred to on appeal here), the Court there resorted to the same nonsensical rhetorical nonsense. There, as was done here, it ignored what to us seems most clear. Our belief is that once this Court found that Samson Primm had the requisite standing in the previous case, that fact became "the law of the case." To be sure, the Court below, in another segment of nonsense, wrote for this Court that our belief that the Sixth Circuit's decision (- - on the standing issue, as it was postured in its decision in "***$99,500.00 in U.S. Currency*****," at 699 F. Appx at 643**), was the "law of the case," was simply misplaced. See **Appendix D, at App. p. 44**.

If nothing else, our belief is that this Court's previous standing ruling, truly sufficed to establish the colorable interest in the property under siege here. For sure, this follows for the purposes of Article III standing. See *e.g.*, ***United States v. $304,980.00 in U.S. Currency*****, 732 F.3d 812, 818 (7th Cir. 2013)** and ***United States v. All Funds on Deposit, etc.*****, 783 F.3d 607 (7th Cir. 2015)**. This follows all the more so given we already know this is so, indeed because of the "law of the case" doctrine itself. For if it works at all,

surely it works in a situation like we have. Indeed, because we are dealing with the same issue - - *i.e.*, Title III Standing. For, how can it be that Title III Standing existed in the pleading stage, as the Court held, but not when the issue is summary judgment?

ARGUMENTS RELIED ON FOR ALLOWANCE OF WRIT

The Civil Asset Forfeiture Reform Act of 2000 (known as CAFRA) and **18 U.S.C., §983**, applied to all *In Rem* forfeiture actions, which this is, that were lodged after August 23, 2000. These actions are also governed by the Supplemental Rules. See **18 U.S.C. § 983(a)(4)(A)**, which permitted the Appellant to claim his interest here in all his property that was seized in these searches. Granted, the Rules allow the Government at any time after the Claim was filed to file submit what is described as Special Interrogatories. And, it could move to strike the claim which was done. Indeed, the Government in a previous Motion, which was rendered against us by the District Court, this Court in the appeal that was taken actually ruled (in our favor) that Samson Primm had the requisite standing to challenge the forfeiture. See ***United States v. $99,500 in U.S. Currency*, 699 F. Appx 542 (6th Cir. 2017)**. Actually, this ruling is "the law of the case" - - this case. And, of course, the Supreme Court had already made it clear, as had the Fourth Amendment itself that one with standing to lodge a Motion for the Return of Illegally Seized Property (see ***Mapp v. Ohio*, 367 U.S. 643 [1961]** and ***Beck v. Ohio*, 376 U.S. 89 [1964]**), could also avail themselves of that tactic in

forfeiture cases. See ***One 1958 Plymouth Sedan v. Pennsylvania*, 380 U.S. 170 (1965)**.

Of course, the police around here, especially when dealing with people from Cleveland's hoods are convince that most of its inhabitants have no rights the Cleveland police are bound to respect and this is especially so since they truly believe anyone of them found in possession of a large sum of money or other valuables and the like, fall under the ambit of their false beliefs that the Government can seize their valuables and then compel them to prove lawful possession. See ***United States v. The Residence and Attached Garage of Anthony Accardo*, 603 F.2d 1231 (7th Cir. 1979)**, and its lineal descendant, ***United States v. $506,231.00 in U.S. Currency*, 123 F.3d 442 (7th Cir. 1976)**. Indeed, what is worse here is the Government seems clearly to have somehow been able to convince the Court below that this Court's ruling that Samson Primm has "Title III" standing (in ***United States v. $99,500.00 in U.S. Currency*, at 543**), for us was some sort of mirage. For sure, it was not, as we are contending, "the law of the case" - - of this case. For the Court to make that argument is the type of audacity up with which we, and surely this Court, will not put.

In taking this position an aspect of our thesis here flows from what we believe is the fact that the District Court Judge here adjudicated in these forfeitures cases is not the Claimant's right to the property, but the Government's entitlement to it. And, as to this, let's be clear that possession, even if it were naked and unclad (clearly not the case here) was at least some *prima facia* evidence of some kind of rightful ownership or

title. See ***Northern Pacific Co. v. Lewis*, 162 U.S. 366, at 372 (1896)**. Also, on longer should we believe, because of the finding made here, that:

> With respect to Article III standing, a claimant must demonstrate a legally cognizable interest in the defendant property. A property interest less than ownership, such as a possessory interest, in sufficient to create standing.

United States v. Currency $267,961.07, 916 F.2d 1104, at 1107 (6th Cir. 1990).

Indeed, this must be so because unless this Court rejects the thesis expressed by, and deemed dispositive here, the Title III standing the Sixth Circuit relied on in reversing this case the first time it reviewed this case, indeed when it credited the thinking expressed in ***United States v. $31,000.00 U.S. Currency*, 872 F.3d 342, at 351 (6th Cir. 2017)**.

ARGUMENT NO. I:

THE GRANT OF A MOTION FOR SUMMARY JUDGMENT, *IN* A FORFEITURE CASE, FOR THE LACK OF TITLE III STANDING, BECAUSE OF THE CLAIMANT'S EXERCISE OF HIS FIFTH AMENDMENT RIGHTS AND FOR A FAILURE TO PROVE LAWFUL POSSESSION, CANNOT BE DEFENDED IN LAW, LOGIC OR COMMONSENSE.

The Government will be making the argument that the invocation of Claimant's Fifth Amendment privilege leaves the Government's evidence unchallenged, and further asserts the Court should draw an adverse inference from the assertion of the privilege. First, the fact that the Claimant relies on his Fifth Amendment privilege does not help the Government. This is because the facts relied on in support of the Motion are insufficient to carry its burden of proof. Further, it cannot even be disputed that all reasonable inferences are to be constructed in favor of the nonmoving party. Thus, the Court must assume that while the assertion of the Fifth Amendment privilege may provide some support for the concession that the Defendant currency came from an other than lawful source, the evidence is insufficient to conclude it came from drugs. Further, the Government is not entitled to any adverse inferences from Claimant's assertion of his Fifth Amendment privilege. Here, as well, our Court in ***United States v. Real Property Known as Rural Route 1, Box 137- B. Cutler Ohio*, 24 F.3d 845 (6th Cir. 1994)**, clearly and

soundly rejected the use of an adverse inference instruction in a civil forfeiture action. In doing so, it noted that: the U.S. Supreme Court's forfeiture action ruling in ***Austin v. United States*, 509 U.S. 602 (1993)** should be viewed in the same light as a traditional forfeiture proceeding. Further, since this matter had yet to reach the trial level, the use of an adverse inference on this Summary Judgment Motion would be inappropriate.

Additionally, as has been repeated a number of times throughout this pleading, in a Summary Judgment Motion, all inferences drawn from the underlying facts must be viewed in the light most favorable to the party opposing the Motion. See ***Austin v. United States*, 509 U.S. 602 (1993)**. If then the Court is inclined to reject our argument and find that an adverse inference is created by Claimant's assertion of his Fifth Amendment rights is appropriate, still the Court must draw those inferences that are favorable in the light most favorable to Claimant. First off, let's be clear here. As we read **Rule 26(b)(1) & (b)(5)**, it limits the scope of discovery to matters "not privileged." This we read to mean there can be no provision in our Rules which authorizes this Court to sanction a party for asserting a valid claim of privilege. The point here that the Government misses (in its all-out zeal to prevail counsel to protect these agents from being held accountable for their misdeeds), has really blinded them from reality. Simply put, the reality here is that "federal employees are informed by statutes . . . [and the like] as to what they can and cannot do in connection with their employment." ***Scarbeck v. United States*, 317 F. 2d 546, 556 (D.C. Cir. 1962)**.

The upshot of this unassailable point is that it shows the Government has no right to obtain information from the Claimant that is protected by his privilege against self- incrimination. With this being so, the Claimant did not violate any Discovery Rules when he asserted the Fifth Amendment in response to these interrogatories. So postured, the Court lacks any power to sanction him for his refusal to be badgered by the Government.

Among the other issues that must be resolved (hence barring summary judgment here) include: (a) whether the forfeitures sought would violate the excessive fines clause of the Eighth Amendment and the taking clause of the Fifth Amendment; (b) whether the various seizures were lawfully made; (c) whether any of these monies can be connected to an offense - - indeed a drug offense; (d) whether in the absence of any proof, whatsoever, that any of these monies were connected, even slightly to any drug offense (even slightly, or otherwise). Here, as well, the Court is constrained to put the Government to its proof. This follows given the Sixth Circuit has already ruled (with reference to these monies) that the Claimant has all the standing required;[2] and (e) we know that whether the original seizure made here by the DEA, as distinguished from the State officers was lawful, is clear enough.

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[2] ***United States v. $99,500.00 in U.S. Currency*, 699 F. Appx 542 (6th Cir. 2017)**. See **Appendix D, App. p. 41**.

ARGUMENT NO. II:

GIVEN THE COURT MADE THE CATEGORICAL FINDING THAT SAMSON PRIMM INDEED HAD TITLE III STANDING, WHICH WAS SUFFICIENT TO SURVIVE THE GOVERNMENT'S CHALLENGE AND INDEED SAID SO, THE CONCLUSION THAT WHEN THAT STANDING WAS CHALLENGED IN A MOTION FOR SUMMARY JUDGMENT IT WAS DEEMED TO BE INSUFFICIENT, SIMPLY PUT CANNOT SURVIVE MEANINGFUL SCRUTINY.

Let's be perfectly clear here, again "the law of the case doctrine" is significant as is the Sixth Circuit's Opinion in ***United States v. $99,500 in U.S. Currency*, 699 F. Appx 542 (6th Cir. 2017)**, which we dub ***$99,500 in U.S. Currency* (No I)**. Also, there is no dispute that on the issues related to the Claimant's standing they have been resolved in his favor. And, while counsel would believe that we lack any right of silence here, although the Constitution provides otherwise, their negative argument does not work here. Thus, while it appears the Government believes that Congress, when it enacted CAFRA, thought otherwise, their negative arguments fail. For when read in the light of other Legislation, and the "Rules of Procedure" literally are trumped not only by the "taking" clause of the Fifth Amendment and its right of silence, but the Fourth Amendment; as well as, by the Supreme Court's pronouncement in ***One 1958 Plymouth Sedan v. Pennsylvania*, 380 U.S. 693 (1965)**, as well. Indeed,

when it did that, if counsel-opposite is right, it must be that the Government is really saying, not only, must a person whose property was seized from him actually prove he has standing (which was done here), he must also prove lawful possession.

Of course, aside from the fact that with the standing issues having already been resolved against the Government, and the Constitution's prohibition expressed in the Fifth Amendment's taking clause, the right of silence in that same amendment; as well as, the Fourth Amendment's illegal search prohibitions inapplicably here. Clearly then, the question then is: can what the Government is arguing possibly be right? Of course, that simply cannot be so.

What truly magnifies the incomprehensibleness of the Government's stance here, especially when read in light of the Court's finding that Primm did in fact have Title III Standing is these quotes from its first Opinion in this matter. Here, the Court wrote in its Opinion, **Appendix "A," fn 2, at App. p. 9**:

> Although Primm makes a cursory argument that the facts relied upon by the United States in support of its motion for summary judgment on the issue of standing were insufficient to carry its burden of proof, we do not reach this issue, as Primm never met this threshold burden of establishing Article III standing.

The fact that this footnote, when read in light of this quote, adds to our confusion, shows the Court seems to clearly have been shooting from the hip, otherwise, it would have explained what it meant when it wrote on

the same page as the above quote, that ". . . although the district court struck Primm's conclusory assertions of ownership, the district court did not draw any adverse inferences as a result of Primm's invocation of his right against self-incrimination." How can it be that we are supposed to understand what the Court would have us take from those quotes?

ARGUMENT NO. III:

GIVEN THE SUPREME COURT HAS NOTED IT IS, AS IT SURELY WOULD BE, AN ". . . INTOLERABLE THING THAT ONE CONSTITUTIONAL RIGHT [HERE THE FOURTH AMENDMENT] SHOULD HAVE TO BE SURRENDERED IN ORDER TO ASSERT ANOTHER [*I.E.*, THE FOURTH AMENDMENT]" (*SIMMONS V. UNITED STATES*, 390 U.S. 377, 394 [1968]), SURELY SOMETHING IS WRONG WITH THAT PICTURE.

Distilled, the facts here show, that despite the facts that the Government in all of its previous filings in the various federal Courts, and indeed in the State Courts which have addressed these various issues, all made necessary because the various seizures here were made in different cities. Likewise, while two (2) were in Cuyahoga County, Ohio, one (1) was in Lorain County, Ohio. There has never been any doubt that all of the seizures here were from Samson Primm. Indeed, in the Appellate Brief filed in the Sixth Circuit, the Government recounted, in boring detail, how it came into possession of all of the property it seized from Mr. Primm. Indeed, in its Appellate Brief, counsel's effort

in doing so, while it did clutter the Record in our judgment, was misdirected, as it will be here. This follows because on the question of standing, which counsel does not turn on when and how Samson Primm acquired these assets, the law is clear. The Government cannot seize private property and then require the person found in possession to prove lawful possession. See ***United States v. The Residence and Attached Garage of Anthony Accardo*, 603 F.2d 1237 (7th Cir.1972)**, and ***United States v. $506,231.00 in U.S. Currency*, 123 F.3d 442 (7th Cir. 1976)**.

So postured, our belief is that at least at the pleading stage, the person from whom the property was seized, especially when no other possible claimant could even exist, that at the pleading stage, where we surely are, the assertion of the Fifth Amendment should be with impunity. Arguably, we suppose if that were done at the trial stage, perhaps a negative inference may be feasible. See ***Braxton v. Palmigiano*, 435 U.S. 308, 317-318 (1976)**. The point here being made, at least hopefully, is that the evidentiary stage and the pleading stage are different. Also see ***United States v. U.S. Currency*, 626 F.2d 11, 16 (6th Cir. 1980)**.

A reversal here is required.

CONCLUSION

As an aspect of the contentions here, our belief is we had every right to assert the Fifth Amendment here. Do understand, from our perspective, there are no contentions even possible here, none whatsoever (not

even any unrealistic ones) that someone other than Samson Primm would ever claim this property. Nor can it be said his claims are not genuine. Also, and this is a fact by the District Court and the Sixth Circuit seem clearly to have ignored the fact that the statutes, which the Government relied on in crafting these Interrogatories, cannot possibly do what no mere statutes could ever do - - that is, literally trump a constitutional amendment. Yet, this is what they would be doing if they would be doing, if they compelled a claimant, in a forfeiture case, to deal with what would be the "Hobson Choice" Primm faced. Simply put, can he be asked, with impunity, to choose between asserting his Fifth Amendment privileges against self-incrimination or forego his right to challenge the lawfulness of the arrest and seizures here.

Respectfully submitted,

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