No. 21-601

IN THE

Supreme Court of the United States

October Term 2021

Michael B. Ellis and Robert A. McNeil

Petitioners,

On Petition for a Writ of Certiorari
to the United States Circuit Court of Appeals
for the D.C. Circuit
Appealing COA Causes 20-5033 & 20-5034:
Ellis & McNeil v. Amy Berman Jackson, et al,
Pursuant to
Supreme Court Rules 13.3, 10 & F.R.C.P. 60(b)(6)

PETITION FOR A WRIT OF CERTIORARI

Michael B. Ellis
In propria persona
5052 NECR 2020
Rice, Texas 75155
(903) 326-6263

Robert A. McNeil
In propria persona
729 Grapevine Hwy #148
Hurst, Texas 76054
(713) 806-5199

October 18, 2021

TWO QUESTIONS PRESENTED FOR REVIEW

Question 1:

Do courts of appeal nationwide exhibit a pattern and practice of refusing to adjudicate EVERY issue presented by the Class of disrespected, unrepresented litigants filing appeals arising from the underlying institutionalized IRS record falsification program, and from the open support thereof by involved U.S. district judges?

Question 2:

Did the Circuit Court of Appeals fail to carry its de novo burden to prove, in support of Judge Kelly's holding, that Congress' enactment of the Anti-Injunction Act stripped courts of power to review the institutionalized falsification of IRS records concerning targeted Americans?

PARTIES TO THE PROCEEDING

Michael B. Ellis & Robert A. McNeil

Petitioners In Propria Persona

The United States Court of Appeals for the District of Columbia Circuit

Respondent

TABLE OF AUTHORITIES

Cases

Statutes

Rules

Publications

TABLE OF CONTENTS

APPENDIX

JURISDICTION

Under Supreme Court Rule 10, when "a United States court of appeals has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such departure by a lower court", it would "call for an exercise of this Court's supervisory power". Hence, when a petition such as this relates extensive, explicit allegations of misconduct occurring in the Courts below, the Supreme Court can invoke its supervisory jurisdiction.

On August 27, 2021, the Circuit issued orders denying our petitions for panel rehearing and for rehearing en banc. (See 20-5033/20-5034, Dkt. Nos. #1911839 & #1911842) This Court thus also has jurisdiction pursuant to SC Rule 13.3.

Further, since the denial of appellate relief was issued on June 1, 2021 by the D.C. Circuit COA using the wrong standard of review in order to avoid adjudicating EVERY issue raised on appeal, (all "legal" issues) and since "Fraud vitiates everything, judgments as well as contracts," [1] the "judgments" issued by the Circuit can never be "final." They remain forever subject to Rule 60(b)(6) motions, and can be adjudicated in this Court.[2]

STATEMENT OF THE CASE

As their penultimate goal, Petitioners seek to terminate the pattern and practice of courts of appeal nationwide destroying the due process rights of the Class of disrespected, unrepresented litigants

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[1] *United States v. Throckmorton*, 98 U.S. 61, 1878.

[2] Litigants suffering misconduct during the course of an appeal by officers of a COA cannot be compelled to raise a Rule 60(b)(6) motion in that forum. It would never be adjudicated.

complaining of the underlying IRS record falsification program, and the open support thereof by involved district court judges.[3]

For yet another example of that pattern, in consolidated appeals 20-5033 and 20-5034, *Ellis & McNeil v. Jackson, Cooper, Srinivasan, et al.*, in the United States Court of Appeals for the District of Columbia Circuit, that Court has once again used the wrong standard of review, without identifying it, to avoid adjudicating EVERY issue Petitioners raised.

The pattern practiced by courts of appeal nationwide, is also destroying access by victims of the institutionalized IRS record falsification scheme *to this Court,* since by avoiding full discussion of EVERY legal issue raised, the involved judges cynically leave "nothing to appeal". **Question 1.** is thus of obvious "imperative public importance" justifying "deviation from normal appellate practice".

Restated, the U.S. Court of Appeals for the District of Columbia Circuit is "open for business", accepting filing fees, issuing briefing schedules, etc. But disrespected, unrepresented litigants alleging explicit, non-conclusory, well-pled allegations of

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[3] Please see (1.) the recently filed Petition of Mr. Greg. A. Darst, 21-5785, docketed on September 27, 2021, originating from his filing of a *Coram Nobis* Motion in the Middle District of Florida, (13-cr-181 and 21-cv-1292), and arising through the Eleventh Circuit (21-12485), and see (2.) the newly filed Petition of Mr. Ebenezer Howe, originating in an ongoing forfeiture in the U.S. District Court of Idaho (2:19-cv-421) and arising through the Ninth Circuit, (9th Appeal: 21-35682), and see (3.) Petitioners' recently filed request for writ originating from D.C.D.C. (18-mc-00011) arising through the U.S. Circuit Court of Appeals for the D.C. Circuit, (D.C. Circ. Appeal: 21-5132).

fraud involving officers of the Court at the district level, have no access to "adequate, effective, meaningful" appellate relief.

Their statutory right has been reduced to a mere parody. Attorneys who swore an oath to protect the due process rights of their fellow Americans are gutting them. Petitioners further contend that the refusal of COA judges to identify the standard of review used, in order to avoid adjudicating EVERY issue raised on appeal, is a tacit, screaming concession the involved judicial officers know their denial of appellate relief is improper / fraudulent.

Hence, this Court is the ONLY forum that can adjudicate the antinomian pattern and practice of courts of appeal nationwide, pursuant to S.C. Rules 13.3, 10(a) and FRCP 60(b)(6).

In **Question 2.**, we seek determination whether the Circuit failed to carry its *de novo* burden to prove, as Judge Kelly held, that the Anti-Injunction Act stripped courts of power to review the institutionalized falsification of IRS records concerning targeted Americans.

Introduction

As sketched below, (Pgs. 5-7), IRS' surreptitious program to falsify digital and paper records concerning those labeled "non-filers", is an ongoing assault on the due process rights of those who have noted and rely on

multiple public statements by various IRS Commissioners that "The income tax is voluntary".[4]

Sadly, during litigation to enjoin the institutionalized falsification of federal (IRS) records concerning victims, the due process rights of disrespected, unrepresented Class litigants have again been gutted, this time by involved U.S. district court judges.

To add insult, after the filing of numerous fully-paid appeals seeking meaningful appellate relief from the underlying IRS record falsification program and from the open support thereof by involved district judges, a conscience-shocking pattern and practice has emerged:

> **No issue raised in ANY appeal by the litigants has been adjudicated.**

Beginning in 2015 during the leadership of Mr. Merrick Garland, then Chief Judge of the U.S. Circuit Court of Appeals for the District of Columbia, with the active assistance of Mr. P. Sriniinvasan, (now-Chief Judge), courts of appeal started issuing denials of appellate relief in Class cases while refusing to adjudicate EVERY issue raised, including EVERY legal question. The "orders" of denial used the wrong standard of review without identifying it, (clear error

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[4] Here are just two of many examples: "*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. Goldberg confirmed the 1953 SWORN testimony of Dwight E. Avis, head of the Alcohol and Tobacco Tax Division of the Bureau of the Internal Revenue before the House Ways and Means Committee of the Eighty-Third Congress: "*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.*"

rather than *de novo*) and were issued over the names of judges who LIKELY had no involvement in the appeals, as shown below.

Appellants contend that the pattern of issuing appellate "orders" that adjudicate no legal issue raised on appeal, is a failure of the judges to carry their de novo burden to substantiate/prove correct outlandish claims of district judges (such as Judge Kelly in this appeal). It is also a tacit admission the involved appellate judges cannot refute their victims' legal arguments, so the proponents of the scheme resort to simply defrauding their courts and their unrepresented victims.

Since no case involving fraud on the Court, BY THE COURT SYSTEM, has ever been adjudicated, this is a case of first impression, as well as of national significance.

Backstory: IRS' Record Falsification Program

The following FIVE facts are incontrovertible, confirmed in public records and in multiple sworn Declarations by Co-Petitioner/Forensic Accountant, Mr. Robert A. McNeil, which are incorporated fully by reference herein as support for this Petition.[5]

a. Multiple IRS Leaders/Commissioners have conceded that the income tax is "voluntary". [See Footnote 4 for two of many examples.]

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[5] Please see the invariable systemic record falsification of IRS records shown in the Declarations of Petitioner/Forensic Accountant McNeil concerning two American victims of the IRS program, 1.) U.S.D.C. for Idaho, *U.S. v. Howe* 19-421, Doc. 61-1, 2.) *U.S. v. Darst*, 13-cr-181 (Doc. 119-1) or 21-cv-1292, (Doc. 2-1). The systematic fraud never varies, hence is institutionalized.

b. IRS has repeatedly conceded that the core statute supposedly authorizing preparation of substitute tax returns, 26 U.S.C. §6020(b), does NOT apply to income tax.[6]

c. Protections written into IRS' core software ("IMF") precisely support the twin concessions in a. and b. above, i.e., IRS' published procedural manuals reveal that the IMF software will "unseat"/reject any attempt to enter alleged deficiency amounts supposedly owed by a "non-filer", unless the IMF software for that given year is first made to reflect IRS' pretended receipt of a return from the targeted victim.[7]

d. So, to justify attacking "non-filers" via non-judicial liens/levies or via criminal prosecutions and civil litigation, IRS first INVARIABLY and repeatedly falsifies its core, controlling annual

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[6] The authority to perform substitutes for return is discussed in the Internal Revenue Manual §5.1.11.6.7, which shows that such authority is limited to matters involving "**employment, excise and partnership taxes**", and does not include the income tax. [Link here: http://www.irs.gov/irm/part5/irm_05-01-011r-cont01.html, scroll down to 5.1.11.6.7 "IRC 6020(b) Authority".] The Privacy Impact Assessment IRS issues concerning 6020(b) precisely confirms that limitation. [Link here: http://www.irs.gov/pub/irs-pia/auto_6020b-pia.pdf] In the Revenue Officer's Training Manual, (Unit 1, Page 23-2) the Commissioner concedes: "The IRM restricts the broad delegation shown in figure 23-2 (6020(b))... to employment, excise and partnership tax returns ***because of constitutional issues***". Emphasis added.

[7] See, for example, the sworn Decl. of Robert A. McNeil, [See 2:19-cv-421-CWD, Doc. 61-1, Declaration of Forensic Accountant Robert A. McNeil.] presenting IRS' published manuals detailing precisely how IRS employees bypass the security protections written into IRS' all-controlling Individual Master File software.

digital records (known as the Individual Master File) concerning victims for each targeted year to falsely reflect

1. IRS' receipt from those IRS labels "non-filers" of ***1040A*** returns supposedly filed for each year on claimed dates, and to falsely reflect

2. The preparation by IRS of substitute tax returns for all targeted years on yet other claimed dates, despite the fact no substitute income tax returns are ever signed/prepared by IRS concerning "non-filer" victims on any date, let alone those shown in IRS' falsified digital records, and paper "certifications"/ "transcripts" derived therefrom.

The existence of the invariable sequence of actions committed to falsify the annual records of IRS' controlling software concerning those IRS labels "non-filers"[8] provides incontrovertible support for the Commissioners' multiple public claims the income tax is voluntary.[9]

As a necessary corollary to those facts, since Congress could never impose a duty upon Americans requiring a Government agency to enforce by

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[8] The sworn Declaration of forensic accountant Robert McNeil included in U.S. Dist Ct for the Idaho Dist, cause 2:19-cv-421 as Doc. 61-1 is proof the falsification of IRS records is not an isolated incident. In every case involving targeted "non-filers", it is IRS' invariable, institutionalized mode of attack.

[9] It is not Petitioners who claim the income tax is voluntary. It is the top administrators of the Internal Revenue Service. [See Footnote 4 above, for two examples.]

committing crime (falsifying federal records),[10] so-called "non-filers" owe nothing to the Treasury.

ARGUMENT

Question 1.

Do courts of appeal exhibit a pattern and practice of refusing to adjudicate EVERY issue presented by the Class of disrespected, unrepresented litigants filing appeals arising from the underlying institutionalized IRS record falsification program, and from the open support thereof by involved U.S. district judges?

Notice Requested

Petitioners respectfully request Justices of this Court judicially notice, pursuant to FRE 210, the following public record facts, all confirmed by resort to records easily accessible to the Justices.

A. Notice Orders Dismissing FOURTEEN Appeals without adjudicating ANY issue raised

Petitioners request the Justices notice the dismissals of FOURTEEN consecutive fully paid appeals by victims of the underlying IRS record falsification program, and of the open support thereof by involved district judges. Notice is also requested of the fact that not once did the involved circuit judicial officers

[10] In *Olmstead v. United States*, 277 U.S. 438, in Justice Brandeis' incomparable dissent, he explained: "When these unlawful acts were committed, they were crimes only of the officers individually. The Government was innocent, in legal contemplation, for *no federal official is authorized to commit a crime on its behalf*".

identify the standard of review used. Nor was any issue raised in any appeal adjudicated. The orders are incorporated fully herein by reference:

- USCA, D.C. Circ. 15-5035 *Ellis v. Comm'r*,
- USCA, D.C. Circ. 16-5233 *McNeil v. Comm'r*,
- USCA, D.C. Circ. 16-5308 *DePolo v. Ciraolo*,
- USCA, D.C. Circ. 17-5054 *Crumpacker v. Ciraolo*,
- USCA, D.C. Circ. 17-5055 *McGarvin v. McMonagle*,
- USCA, D.C. Circ. 17-5056 *Podgorny v. Ciraolo*,
- USCA, D.C. Circ. 17-5057 *DeOrio v. Ciraolo*,
- USCA, D.C. Circ. 17-5058 *Dwaileebe v. Martineau*,
- USCA, 9th Circuit 18-17217 *Ford v. US*,
- USCA, 8th Circuit 19-2985 *Kurz v. US*,
- USCA, 9th Circuit 21-35125 *Howe v. US*,
- USCA, 9th Circuit 21-70662 *Howe v. David C. Nye.*
- USCA, D.C. Circ. 20-5033 *Ellis v. Jackson, et al.*
- USCA, D.C. Circ. 20-5034, *Stanley v. Lynch, et al.*

B. Notice Proceedings in *U.S. v. Ford*, 17-00187

Petitioners request the Justices notice that during discovery in the forfeiture case *U.S. v. Ford*, 17-00187, unrepresented [11] Defendant Melba Ford secured from the IRS incontrovertible evidence proving that *no assessment was prepared/signed by a duly authorized representative of the Secretary* on any date concerning her and the year in question, (2003). Instead, IRS produced irrefutable evidence in discovery that IRS' Sun Microsystems computer automatically created every relevant document concerning her alleged liability. Thus, none were signed by a duly authorized delegate of the Secretary

[11] Her motions for appointment of counsel, both at the district level and on appeal, were viciously denied without explanation.

of the Treasury. [See *Ford* sworn Brief on Appeal, 18-17217, Dkt. Entry 17, pg. 24]

Moreover, IRS provided evidence in discovery proving that no substitute income tax return was prepared on any date shown in IRS' falsified digital and paper documents concerning Ms. Ford.

The Justices are requested to also notice that in *Ford*, The Hon. District Judge Dale Drozd entered into the record his "finding" that "a duly authorized delegate of the Secretary" "prepared an assessment" concerning Ford and 2003 on "Feb. 26th, 2007" (See Drozd holding, 17-00187, Doc. 70, Order Granting Summary Judgment, Pg. 5, line 9, et seq.), when no evidence supported his finding, [See Record, All], and in derogation of evidence provided by IRS controverting his "finding"/fabrication.

C. Notice Proceedings in Ninth Circuit Appeal, *Ford v. U.S.*, 18-17217

As requested above, Petitioners also request the Justices notice Ms. Ford's appeal to the Ninth Circuit, (18-17217), which was denied while ignoring EVERY issue she raised, i.e., the Panel ignored the extensive, incontrovertible evidence supplied by the IRS and presented by Ms. Ford proving the Service's Sun Microsystems computer auto-generated all documents supporting the Government's case.

D. Notice the outcome of recent Ninth Circuit appeals by Mr. Ebenezer K. Howe IV (21-35125 and 21-70662)

Petitioners request the Justices notice that the Ninth Circuit denied two appeals filed by Mr. Howe, (cited above), while offering incoherent, un-intelligible

explanations in what appear to be deliberate violations of his due process right to meaningful access to courts.

E. NOTICE the pattern and practice was initiated under the leadership of then-D.C. COA Chief Judge Merrick Garland.

The Justices are requested to notice that the first Class appeal dismissed without identifying the standard of review, in order to avoid adjudicating EVERY legal issue raised, occurred in 2015 in the United States Circuit Court of Appeals for the District of Columbia Circuit, under the leadership of Mr. Merrick Garland, then Chief Judge.

Specifically, now-Chief Judge Srinivasan either himself wrote, or directed the Clerk to produce the "order" denying relief in appeal 15-5035, *Ellis v. Commissioner*. Mr. Srinivasan is supposedly a tax expert, but he used the wrong standard of review, refused to adjudicate EVERY issue raised on appeal, and issued the "order" over the names of Circuit judges who likely had NOTHING to do with it.[12]

Thus, under the leadership of Mr. Garland, Mr. Srinivasan appears to have been personally involved in the pattern and practice of defrauding his Court and the Class of disrespected, unrepresented

[12] In denying appellate relief in 15-5035, Mr. Srinivasan claimed The Hon. Janice Rogers Brown as a panel member. Ms. Brown, an outstanding jurist and excellent author, excoriated IRS misconduct in other appeals, [See her dissent in In Re: Long-Distance Telephone Service Federal Excise Tax Refund Litigation, USCA 12-5380(2014).] It is VERY likely she had NOTHING to do with the "order" issued over her name, especially since the standard of review was wrong. She has since resigned from the bench.

litigants, victimized first by the IRS record falsification program, then by involved district judges.

F. Notice is requested of "orders" dismissing D.C. COA cases 20-5033 and 20-5034 without addressing any issue raised.

The Justices are requested to notice the reprehensible pattern of refusing to identify the applied standard of review, and refusing to adjudicate EVERY issued raised on appeal, occurred once again in the recent dismissal orders in consolidated appeals under consideration in this Petition, D.C. COA causes 20-5033 and 20-5034, *Ellis & McNeil v. Jackson, Cooper, Srinivasan, et al.*

Question 1. Summary

Public record evidence is irrefutable. In FOURTEEN consecutive appeals, courts of appeal nationwide have refused to adjudicate EVERY issue raised on appeal by the Class of disrespected, unrepresented litigants suffering from the underlying IRS record falsification program, and from the open support thereof by involved district court judges.

Moreover, since that pattern does not occur in cases involving represented litigants, the practice demonstrates a *vicious class-based animus and un precedented assault on the rights of unrepresented Americans.*

Question 2.

Did the Circuit Court of Appeals fail to carry its *de novo* burden to prove, as Judge Kelly held, that the Anti-Injunction Act stripped courts of power to review the institutionalized falsification of IRS records concerning targeted Americans?

As the foremost and core issue raised by Petitioners in a fully paid appeal from The Hon. District Judge Timothy Kelly's dismissal, pursuant to Rule 12(b)(1) and 12(b)(6), of their suits to enjoin IRS from falsifying the digital and paper records concerning them, your Petitioners contended that Mr. Kelly erred by holding:

> *"Even if it is true that IRS employees merely make SFRs appear to exist,"* (when they don't), *"Plaintiffs still seek to enjoin the process by which the* (false) *appearance is created and through which tax deficiencies are then assessed and collected."* [See 20-5033, Doc. 1874990, Appellants' Brief on Appeal, pg. 11, First Sent., citing Kelly Mem., Doc 26, Pg. 6, Fnl. Sent.]

By so doing, Petitioners contended on appeal that Mr. Kelly had violated every applicable precedent concerning government misconduct in the history of United States jurisprudence, including:

a. Justice Brandeis' celebrated holding in *Olmstead v. United States;*[13]

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[13] "The Eighteenth Amendment has not, in terms, empowered Congress to authorize anyone to violate the criminal laws. And Congress has never purported to do so. The terms of appointment of federal prohibition agents do not purport to

b. Unanimous nation-wide precedent that government agents cannot fabricate evidence to "frame" victims, (e.g. fabricating the appearance IRS received 1040A returns from non-filers, that alleged deficiencies are owed, etc.), in order to justify initiating criminal and civil prosecutions;[14]

c. The universally-agreed precept that ALL prosecutors are imputed by law to know that "exculpatory information" exists in the records of the Agency prosecuting the case, and are REQUIRED to present evidence of falsified IRS records to grand juries and income tax Defendants in "willful failure to file" cases; [15]

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confer upon them authority to violate any criminal law. Their superior officer, the Secretary of the Treasury, has not instructed them to commit crime on behalf of the United States. It may be assumed that the Attorney General of the United States did not give any such instruction." *Olmstead v. United States*, 277 U.S. 438, Brandeis, J., dissent.

[14] "All courts that have directly confronted the question agree that the deliberate manufacture of false evidence contravenes the Due Process Clause". *Whitlock v. Brueggemann*, 682 F.3d 567, 585 (7th Cir. 2012), cert. denied 133 S.Ct. 981 (2013). Judicial agreement on the subject includes ten circuits, and none departs from the rule, stated succinctly: "Anyone who acts on behalf of the government should know that a person has a constitutional right not to be 'framed.'" *Devereaux v. Abbey*, 263 F.3d 1070 (9th Cir. 2001).

[15] See *United States v. Beers*, 189 F.3d 1297, 1304 (10th Cir.1999) "[i]nformation possessed by other branches of the government, including investigating officers (of investigative agencies), is typically imputed to the prosecutors of the case' for *Brady* purposes; *United States v. Jennings*, 960 F.2d 1488, 1490 (9th Cir. 1992) '[t]his personal responsibility cannot be evaded by claiming lack of control over the files ... of other executive branch agencies'. Thus, a defendant's due process right to a fair

d. The Clean Hands Doctrine, which forbids courts from granting ANY relief to litigants committing fraud[16]

e. The "government integrity rationale" per *Herring v. United States*, 129, S.Ct. 695 (2009),(Ginsburg, J dissenting), [17]

f. The "imperative of judicial integrity",[18] and

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trial is violated when any Government actor, agent or agency withholds material evidence favorable to the defendant, irrespective of personal knowledge of a prosecuting attorney."

[16] "The governing principle has long been settled. It is that a court will not redress a wrong when he who invokes its aid has unclean hands. The maxim of unclean hands comes from courts of equity. But the principle prevails also in courts of law. Its common application is in civil actions between private parties. Where the Government is the actor, the reasons for applying it are even more persuasive." *Ibid*, 484. [Emphasis added.] "[T]he objection that the plaintiff comes with unclean hands will be taken by the court itself. It will be taken despite the wish to the contrary of all the parties to the litigation. ***The court protects itself***." *Olmstead v. United States*, 277 U.S. 438, unrivaled dissent, Brandeis, J, emphasis added.

[17] Judge Kelly posited that Congress can pass a law, the AIA, that shields criminal acts of an agency from judicial review, (such as fabricating by fraud the appearance of liabilities, where none exist by law, etc.). Congress has no such power.

[18] "This rejection of 'the imperative of judicial integrity,' *Elkins v. United States,* 364 U. S. 206, 364 U. S. 222 (1960), openly invites '[t]he conviction that all government is staffed by . . . hypocrites[, a conviction] easy to instill and difficult to erase." Paulsen, The Exclusionary Rule and Misconduct by the Police, 52 J.Crim.L.C. & P.S. 255, 258 (1961). **When judges appear to become 'accomplices in the willful disobedience of a Constitution they are sworn to uphold,'** *Elkins v. United States, supra* at 364 U. S. 223, **we imperil the very foundation of our people's trust in their Government on which our democracy rests.**" *See On Lee v. United*

g. The Supreme Court's holding in *Hazel-Atlas Glass Co v. Hartford-Empire Co.*, 322 U.S. 772 concerning fraud on courts by attorneys.[19]

But instead of determining *de novo* whether Judge Kelly's legal conclusion that the Anti-Injunction Act stripped courts of power to review the institutionalized falsification of federal records concerning IRS-targeted Americans, (de novo review of legal issues is required by Circuit precedent),[20] the Circuit denied appellate relief with these twenty words:

> "Appellants have not shown that the district court erred in concluding that their claims are barred by the Anti-Injunction Act."

We had no such burden.

Petitioners contend that since Judge Kelly did not resolve any factual issues, the applicable standard of review was *de novo*, not clear error, as inferred by the Circuit. Thus the burden on appeal was not on the appellants, but on the judges... who failed.

States, 343 U. S. 747, 343 U. S. 758-759 (1952) (Frankfurter, J., dissenting). [Emphasis added.]

[19] "Every element of the fraud here disclosed demands the exercise of the historic power of equity to set aside fraudulently begotten judgments. This is not simply a case of a judgment obtained with the aid of a witness who, on the basis of after-discovered evidence, is believed possibly to have been guilty of perjury. Here, even if we consider nothing but Hartford's sworn admissions, **we find a deliberately planned and carefully executed scheme to defraud," (by attorneys/officers of the court), "not only the Patent Office but the Circuit Court of Appeals.**" [Emphasis added.]

[20] See *Herbert v. National Academy of Sciences,* 974 f. 2d 192, (D.C. Cir. 1992), citing *Hohri v. United States*, 782 F.2d 227 (D.C.Cir. 1986).

THREE Reasons for Granting Petition

These three reasons justify granting this Petition:

Reason 1. The pattern and practice of involved COA judges violates the Evarts/Judiciary Acts and the rights of litigants to meaningful access to courts.

Reason 2. The practice is producing utter chaos in district courts.

Reason 3. Congress can pass no law restricting the power of courts to review agency programs to falsify records.

We will review the reasons in the order shown.

Reason 1. The pattern and practice of involved COA judges violates the Evarts/Judiciary Acts and the rights of litigants to meaningful access to courts.

The independence and impartiality of the judiciary is under open assault. In 1891, Congress enacted the Evarts Act, establishing courts of appeal to ensure litigants received justice, if they feel aggrieved by actions of district judges. Even today, the courts of appeal claim their existence ensures the independence and impartiality of the judiciary.[21]

A stated goal of the creation of appellate courts was to make the judiciary self-policing. It hasn't.

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[21] See website of U.S. Courts, Courts of Appeal: https://www.uscourts.gov/educational-resources/educational-activities/us-courts-appeals-and-their-impact-your-life#:~:text=The%20appeals%20process%20

The pattern and practice of courts of appeal nationwide, as proven by review of the orders incorporated herein and cited above, matches the antinomian practice established in 2015 by the U.S. Court of Appeals for the D.C. Circuit under the aegis of Mr. Merrick Garland, with the direct involvement of now-Chief Judge "Sri" Srinivasan.[22]

That pattern and practice of courts of appeal is an overt effort to destroy the reason d'etre for creating appellate courts. It is also eviscerating the due process rights of the Class of unrepresented victims complaining of the underlying IRS record falsification program, and of the open support thereof by involved district judges.

Importantly, such pattern and practice does NOT occur in cases involving represented litigants. Hence the practice by Circuit judges Merrick Garland and Padmanabhan Srinivasan is an invidious, class-based assault on the due process rights of unrepresented Americans. That practice must be stopped.

Reason 2. Pattern and Practice of COAs is causing Unimaginable Chaos in District Courts.

The pattern and practice is empowering district judges to violate the due process rights of litigants in nearly unthinkable manners. Because district judges know unrepresented litigants have no access to

[22] As noted above, Mr. Srinivasan denied appellate relief in 15-5035 by causing to be issued an 'order' using the wrong standard of review, which addressed no issue raised on appeal, and which listed as signatories two Judges who likely had nothing to do with his 'order' (such as the talented Hon. Janice Rogers Brown, she of exquisite integrity and unexcelled writing skill!).

meaningful appellate relief, the judges are writing and speaking gibberish,[23] fabricating facts,[24] and

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[23] Three examples prove the point. In a Ninth Circuit case, the Hon. Judge Brennan held: *"Lastly, respondent argument that purported falsified his tax records is unavailing."* [See *U.S. v. Torrance*, 18-1631, Doc. 54, pg. 2, 2nd ¶, errors in orig.]
For a second example, during a hearing on October 8, 2020 in *U.S. v. Torrance* [Case 18-1631], a shocked, tongue-tied Magistrate (Peterson) blurted:

> "The issue you are – your points are about the answer to the question. Whether they are – the IRS is indeed correct that you owe money. Whether they are indeed correct whether they have – the specific amounts at issue, and I don't know if any of those are – are correct. You know, who knows? I don't know. That information certainly isn't before me. You are alleging a large conspiracy falsification issue." [See Hearing Transcript, Doc. 69, Pg. 22, Line 13, et seq.]

For a third example, please see Eighth Circuit case *Kurz v. U.S.*, 19-310. In dismissing Mr. John Kurz' case wherein he alleged IRS' institutionalized falsification of records damaged him, the late Hon. District Judge Shaw fabricated: "Mr. Kurz's Rule 60 motion alleges that the government ... perpetrated a fraud upon the Court by reducing Mr. Kurz to a 'standard tax-defier'." [19-310, Doc. 61, Pg. 4, 2nd Full ¶, 1st sent.] Kurz filed no such gibberish. In income tax cases against unrepresented litigants, district judges are becoming aware their victims have only physical access to appellate courts, but NOT to adequate, effective, MEANINGFUL appellate relief.

[24] Three examples will prove the point. First, the Honorable Judges Jackson and Cooper colluded to fabricate a false version of relief sought by Class victims, to bring their cases within the prohibitions of the Anti-Injunction Act, in order to obstruct the jurisdiction of their courts over the underlying IRS record falsification program damaging their victims. [See Briefs in COA causes 20-5033 and 5034.]
Second, in the ongoing litigation concerning a Coram Nobis Motion filed by Mr. Greg Darst in the Middle District of Florida, The Honorable Mary S. Scriven justified her "termination" of his motion and conversion of it into a §2255 petition by claiming as justification "internal administrative procedures of the Middle District of Florida". No such procedures exist. §2255

violating every applicable precedent, *with the assistance of involved Circuit judges.*[25]

Reason 3. Congress can pass no law stripping the judiciary of power to review record falsification programs of Government agencies.

Every American knows Congress has no power to authorize the commission of crime to enforce laws, nor to strip courts of power to review crimes systematically committed against Americans.

Judge Kelly and involved Circuit judges failed to prove that Congress stripped courts of power to review the commission of felonies by an agency of the Government, when Congress enacted the Anti-Injunction Act. This Court dare not support such

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petitions can only be filed by those in custody, which ended for Mr. Darst nearly seven years ago.

Third, in an ongoing forfeiture case in the U.S. District Court for the District of Idaho, 19-421, *U.S. v. Howe*, The Hon. Magistrate Candy Dale fabricated a 'finding', then entered it into the record, that IRS supposedly prepared assessments concerning Mr. Howe on September 12, 2016, despite the fact that no evidence such assessments exist appears in the record before her bench, (See Record, All). The lawlessness engendered by the pattern and practice of COAs nationwide is unimaginable.

[25] See for example, Mr. Howe's appeal [9th Cir., 21-35125] of The Hon. Judge David C. Nye's repeated, point-blank refusals of Howe's motions seeking to compel production, pursuant to FRCP Rule 12(b)(1), of the summary record of assessments supposedly prepared by IRS on September 12, 2016. In that appeal, the Ninth Circuit allowed Judge Nye to ignore and violate Ninth Circuit precedent authorizing Rule 12(b)(1) factual attacks on false complaint allegations per *Safe Air for Everyone v. Meyer*, 373 F. 3d 1035 - Court of Appeals, 9th Circuit 2004.

blatant injustice as that advanced by the twenty words of the Court of Appeals in denying appellate relief to your Petitioners.

Finally, the Court should grant this petition because the use by the panel below of the clear error standard, in deliberate violation of binding Circuit precedent mandating *de novo* review, is a screaming, tacit admission by all involved lawers that they are defrauding their courts and Petitioners.

Final Note

By the open speaking of the truth, we would commend ourselves to the consciences of lawyers with integrity. Let us make common cause to restore the separation of powers, the independence of the judiciary and the Rule of Law. It is long overdue.

Relief Requested

Petitioners request the Court use its unquestioned power pursuant to SC Rules 13.3, 10 and FRCP Rule 60(b)(6) to:

1. Confirm the pattern and practice of courts of appeal nationwide refusing to adjudicate EVERY issue raised by the Class of disrespected unrepresented litigants complaining of the IRS record falsification program, and the open support thereof by involved district judges; to

2. Confirm that pattern began in 2015 in the United States Circuit Court of Appeals for the District of Columbia Circuit under the leadership of Mr. Merrick Garland, with direct

involvement of Mr. Padmanabhan Srinivasan; to

3. Terminate that pattern and practice pursuant to the Court's unquestioned supervisory power described in SCR 10(a), and pursuant to Rule 60(b)(6); to

4. Hold that the involved judges in D.C. Circuit appeals 20-5033 and 20-5034 failed to carry their de novo burden to prove Congress' enactment of the Anti-Injunction Act shielded from judicial review the commission of criminal acts by IRS employees/officers; and to

5. remand those appeals for actual adjudication, pursuant to binding precedent of the Circuit Court of Appeals for the D.C. Circuit.

Finally, Petitioners request the Court order any further relief it finds just and equitable, under these most difficult and absolutely extraordinary circumstances.[26]

Respectfully submitted,

Michael B. Ellis
In propria persona
5052 NECR 2020
Rice, Texas 75155
(903) 326-6263

Robert A. McNeil
In propria persona
729 Grapevine Hwy
#148
Hurst, Texas 76054
(713) 806-5199

[26] Petitioners, unlearned all, don't pretend to know the correct procedure for presenting their cases. They will amend their filings under the direction of the Court, if deemed necessary.

Verification/Declaration

Comes now Michael B. Ellis and Robert A. McNeil, each declaring under penalty of perjury, pursuant to 28 U.S.C. §1746, that "All the facts stated in the foregoing **"PETITION FOR WRIT OF CERTIORARI....."** are absolutely true and correct to the very best of my knowledge and belief, that I have personal knowledge of almost every fact alleged, that they are material, admissible and that I am competent to testify thereto. Hence, every fact stated above, and every inference derived therefrom, is absolutely true and correct, and that I am presenting this Declaration under penalty of perjury.

So HELP ME GOD.

Executed on October 18, 2021

Michael B. Ellis

Robert A. McNeil