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No. 21-628

IN THE
Supreme Court of the United States
October Term 2021

IN RE: Ebenezer K. Howe, IV

Petitioner,

On Petition for a Writ of Certiorari
to the Ninth Circuit Court of Appeals
to REMOVE 21-35682 Pursuant to
Supreme Court Rule 11

PETITION FOR A WRIT OF CERTIORARI

Ebenezer K. Howe, IV
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October 13, 2021

ORIGINAL

TWO QUESTIONS PRESENTED FOR REVIEW

Question 1:

- A. 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 U.S. district judges, and
- B. does the pattern/practice violate the independence and impartiality of the judiciary, and the due process rights of appellants to meaningful access to courts?

Question 2:

Do U.S. district judges have power to deny explicit, sworn §455 recusal motions directed to magistrates committing acts of apparent misconduct in support of a party? ¹

¹ In this case, the apparent misconduct of Magistrate Candy W. Dale is literally case-dispositive, as shown below, Question 2, Pg. 10

PARTIES TO THE PROCEEDING

Ebenezer K. Howe, IV,

Petitioner In Propria Persona

The Ninth Circuit Court of Appeals

Respondent

TABLE OF CONTENTS

	Page
TWO QUESTIONS PRESENTED FOR REVIEW..i	
PARTIES TO THE PROCEEDING	ii
TABLE OF AUTHORITIES	v
JURISDICTION	1
STATEMENT OF THE CASE	1
Introduction.....	2
Current Pending Litigation	3
ARGUMENT	6
THREE Reasons for Granting Petition.....	12
 Reason 1. The independence and impartiality of the judiciary is under open assault.....	12
 Reason 2. Pattern and Practice of COAs is causing Unimaginable Chaos in District Courts.....	13
 Reason 3. District judges have no authority to deny recusal motions directed to magistrates.	15
Relief Requested.....	15

APPENDIX

APPENDIX A -	U.S. District Court for the District of Idaho Order August 9, 2021.....	a
APPENDIX B -	U.S. Court of Appeals for the Ninth Circuit Order April 15, 2021	e
APPENDIX C -	U.S. Court of Appeals for the Ninth Circuit Order March 11, 2021.....	g

TABLE OF AUTHORITIES

Cases

<i>Crumpacker v. Ciraolo-Klepper</i> , 17-5054, D.C. Circuit.....	7
<i>DeOrio v. Ciraolo-Klepper</i> , 17-5057, D.C. Circuit.....	7
<i>DePolo v. Ciraolo-Klepper</i> , 16-5308, D.C. Circuit.....	7
<i>Dwaillebe v. Martineau</i> , 17-5058, D.C. Circuit.....	7
<i>Ellis v. Comm'r.</i> , 15-5035, D.C. Circuit.....	7, FN 12
<i>Ford v. USA</i> , 18-17217, 9 th Circuit.....	7, 8
<i>Howe v. USA</i> , 21-35125, 9 th Circuit.....	7, 8, FN 15
<i>Howe v. The Hon. David C. Nye</i> , 21-70662, 9 th Circuit.....	7, 8
<i>Kurz v. U.S.</i> , 19-310.....	FN 13
<i>Kurz v. U.S.</i> , 19-2985, 8 th Circuit.....	7
<i>McGarvin v. Ryan O. McMonagle</i> , 17-5055, D.C. Circuit.....	7

<i>McNeil v. Comm'r</i> , 16-5233, D.C. Circuit.....	7
<i>Olmstead v. United States</i> , 277 U.S. 438.....	FN 9, FN 15
<i>Podgorny v. Ciraolo-Klepper</i> , 17-5056, D.C. Circuit.....	7
<i>Safe Air for Everyone v. Meyer</i> , 373 F. 3d 1035, 9th Circuit, 2004	FN 15
<i>USA v. Ebenezer K. Howe IV</i> , 19-421,	11, FN 3, FN 6, FN 7, FN 14
<i>USA v. Ebenezer K. Howe IV</i> , 21-35682	
.....	1, 3, 15, FN 2
<i>USA v Ford</i> , 17-00187	7, 8, 9
<i>U.S. v. Torrance</i> , 18-1631	FN 13
Statutes	
26 U.S.C. §455.....	i, 2, 10, 11
26 U.S.C. §6020(b)	5, FN 5
28 U.S.C. §1254(1)	1
28 U.S.C. §2101(e)	1
Evarts Act	11

Rules

FRCP 12(b)(1)	FN 15
SCR 10(a)	2, 15
SCR 11.....	2,3

Publications

Internal Revenue Manual §5.1.11.6.7.....	FN 5
<i>Money</i> magazine, April, 1990	FN 4
Revenue Officer's Training Manual, (Unit 1, Page 23-2).....	FN 5

JURISDICTION

Under Supreme Court Rule 11, "when a case is of such imperative public importance as to justify deviation from normal appellate practice and to require immediate determination in this Court", it has unarguable power to remove a pending appeal for decision here. 28 U.S.C. §2101(e) and 28 U.S.C. §1254(1).

This is such a case.

STATEMENT OF THE CASE

Currently pending in the Ninth Circuit is my appeal, 21-35682. It concerns two issues. First, I seek termination of the pattern and practice of courts of appeal which refuse to adjudicate **EVERY** issue raised by disrespected, unrepresented litigants complaining of the IRS record falsification program and the open support thereof by involved district judges, (as exemplified by past denials of relief in fully-paid appeals I filed in the Ninth Circuit, as shown below).

Further, since the pattern practiced by courts of appeal nationwide also destroys access by victims of the institutionalized IRS record falsification scheme *to this Court*, (by leaving "nothing to appeal"), **Question 1.** is of obvious "imperative public importance" justifying "deviation from normal appellate practice". So, although I have raised the issue concerning the pattern and practice of courts of appeal in my pending Ninth Circuit appeal, that Circuit will likely ensure the question remains unadjudicated unless this Court removes the issue

from the Ninth pursuant to SCR 10 and 11, and acts on it.²

Simply stated, resolving Question 1 alone, i.e., confirming existence of the pattern and practice of the Ninth Circuit and others nationwide, then terminating it, justifies removal per SCR 11, and exercise of this Court's supervisory power per SCR 10(a).

In **Question 2.**, I am appealing the recent order³ of The Hon. David C. Nye in denying my sworn §455 Motion to Recuse which I directed to the Honorable Magistrate Candy W. Dale in the underlying ongoing forfeiture case against me, 2:19-cv-421.⁴ District judges have no such authority.

Introduction

As sketched below, IRS' record falsification program is an ongoing assault on the due process rights of those Americans who rely on public statements by various IRS Commissioners that "The income tax is voluntary".⁵ Sadly, the due process rights of Class litigants have been further gutted by involved

² See Ninth Circuit appeal 21-35682, Brief on Appeal arising from the underlying ongoing forfeiture case in the District of Idaho, cause 2:19-cv-421.

³ See Appx. Pg. a

⁴ See U.S. Dist. Ct., Dist of Idaho, 19-cv-421, Doc. 76 for full details, sketched briefly below, (at **Question 2.**, pg. 10, infra.)

⁵ Here is one of many examples: In 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, he said: "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."

U.S. district court judges during litigation, both civil and criminal.

To add insult, after the filing of numerous fully-paid appeals seeking meaningful relief in forfeiture and criminal cases, a conscience-shocking pattern and practice has now emerged. Not one issue raised in ANY appeal by the disrespected, unrepresented Americans has ever been adjudicated. That is, courts of appeal refuse to address EVERY issue raised when unrepresented litigants pay for appellate relief from the IRS record falsification program, and from the open support thereof by involved district judges.

Current Pending Litigation

This is a highly unusual case, concerning procedural issues of first impression. As noted above, since my Ninth Circuit appeal 21-35682 is currently pending, and the questions I have raised there (and here) remain undecided, removal is authorized by SCR 11. Confirming the existence of such practice, and terminating it is also effectively within the power of this Court via Supreme Court Rule 10(a).

Backstory: IRS' Record Falsification Program

The following SIX facts are incontrovertible, and confirmed in a Declaration by forensic accountant, Mr. Robert A. McNeil, which is incorporated fully by reference herein as support for this Petition. [See 2:19-cv-421-CWD, Doc. 61-1, Declaration of Forensic Accountant Robert A. McNeil.]

- a. For the past two years, I have been undergoing a forfeiture case in which all involved government-paid attorneys are attempting to “acquire” my

property to satisfy alleged income tax deficiencies they claim I supposedly owe for years 2005-2006 and 2008-2013.

- b. Multiple IRS Leaders/Commissioners have conceded that the income tax is “voluntary”. [See Footnote 4 for two of many examples.]
- c. 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
- d. IRS’ core software (“IMF”) is built to precisely support the two concessions in b. and c., i.e., IRS procedural manuals reveal that the IMF software will prevent any attempt to enter alleged deficiency amounts supposedly owed by a “non-filer”, unless the IMF software for that given year is first falsified to reflect IRS’ pretended receipt of a 1040A return from the targeted victim, and IRS’

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_05-001-011r-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.

pretended preparation of a substitute income tax return, on another claimed, false date.⁷

- e. IRS repeatedly falsified its core, controlling digital (Individual Master File) records concerning me for each year 2005-2006 and 2008-2013, to make the targeted IMF annual record concerning me for each listed year falsely reflect
 1. IRS' receipt from me of 1040A returns that I supposedly filed, (even though I have also been labeled by IRS as a so-called "high income non-filer"(!) and I never filed a 1040A return in my life); and to falsely reflect
 2. The preparation by IRS of substitute tax returns for all said year 2005, 2006 and 2008-2013 by IRS, despite the Service's provision via FOIA of evidence proving no substitute income tax returns were prepared by IRS concerning me on any date, let alone those shown in IRS records concerning me.

In short sum, the systematic, invariable falsification of federal records concerning me⁸ for each year 2005, 2006 and 2008-2013 supports the

⁷ See Sworn Decl. of Robert A. McNeil, [See 2:19-cv-421-CWD, Doc. 61-1, Declaration of Forensic Accountant Robert A. McNeil.] presenting IRS' internal manuals, including precisely how IRS employees bypass the security protections written into IRS' own software.

⁸ The sworn Declaration of forensic accountant Robert McNeil included in 2:19-cv-421 as Doc. 61-1 is proof the falsification of IRS records concerning me is not an isolated incident. In every case involving targeted "non-filers", it is IRS' invariable mode of attack. Hence it is an "institutionalized" program.

Commissioners' claims the income tax is voluntary.⁹ That is, since Congress never imposed a duty upon Americans which requires the falsification of records by a Government agency to enforce,¹⁰ I owe nothing to the Treasury. *Ipso facto*, the United States is not a creditor, and its "Notices of Lien" filed in Idaho are useless.

ARGUMENT

Question 1.

- A. 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 open support thereof by U.S. district judges, and
- B. does such pattern violate the independence and impartiality of the judiciary, and the due process rights of the litigants to meaningful access to courts?

Notice Requested

I respectfully request Justices of this Court judicially notice the following facts, all of which can be confirmed from publicly available records.

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

¹⁰ In *Olmstead v. United States*, 277 U.S. 438, Justice Brandeis' incomparable dissent explained that our Government cannot commit crime: "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*". [Emph. added.]

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

First, I request the Justices notice orders dismissing TWELVE 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 one issue raised in any of the appeals was adjudicated. These TWELVE 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. USA*,
- USCA, 8th Circuit 19-2985 *Kurz v. USA*, and
- USCA, 9th Circuit 21-35125 *Howe v. USA*.
- USCA, 9th Circuit 21-70662 *Howe v. The Hon. David C. Nye*.

[A reader cannot discern what issues were raised in the appeals, since none were mentioned, let alone adjudicated.]

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

I request the Justices notice that in the forfeiture case *U.S. v. Ford*, 17-00187, unrepresented¹¹ Defendant Melba Ford secured from IRS during discovery incontrovertible evidence

¹¹ Her motions for appointment of counsel, both at the district level and on appeal, were denied.

proving that no assessment was signed by a duly authorized representative of the Secretary on any date concerning her and the year in question, 2003, in direct contradiction of the key Government complaint allegation. Instead, IRS provided evidence an IRS computer automatically created every relevant document concerning her alleged liability, none of which were signed by a duly authorized delegate of the Secretary of the Treasury. [See Ford Brief on Appeal, 18-17217, Dkt. Entry 17, pg. 24]

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 overwhelming evidence controverting his case-dispositive finding was presented by Ms. Ford.

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

I also request the Justices notice Ms. Ford’s appeal to the Ninth Circuit, (18-17217), which was denied without adjudicating any issue she raised, i.e., the Panel ignored without comment 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, thus no duly authorized delegate of the Secretary signed anything on any date shown in the falsified IRS records concerning Ms. Ford.

D. Notice the Outcome of my appeals to the Ninth Circ. in 21-35125 and 21-70662

I request the Justices notice that the Ninth Circuit denied two appeals I have filed, (listed above and reproduced as Appxs. B and C, *infra*), while offering incoherent, un-intelligible “explanations” in apparent deliberate violation of my due process right to meaningful access to courts.

E. Notice: The outcome of Direct Appeal is Pre-Determined against me.

Finally, I request the Justices notice that the outcome of any prospective direct appeal I make to the Ninth Circuit is ALREADY PRE-DETERMINED, as proven by the Ninth Circuit appeals mentioned above, as well as by the record of all TWELVE appeals cited above. No issue I raise will ever be adjudicated; unless this Court intervenes.

That is, direct appeal will be denied without addressing the case-dispositive fabrication by the Hon. Magistrate Dale, (See **Question 2.**, *infra*), just as the Ninth Circuit denied relief to Ms. Ford concerning a similar fabrication by The Hon. Judge Dale Drozd in 17-00187. Existence of that pattern and practice is incontestable.

F. Notice Justice Kagan’s Failure to Review Ninth Circuit conduct in *Ford*

I request the Justices notice that Ms. Ford filed an Application to this Court, (#18A1104 dated April 26, 2019), which appears to have been refused by Justice Kagan, without comment. (Ms. Ford lost her home as the result, but there is no evidence

Justice Kagan or any judicial officer reviewed her Application.)

Question 1 Summary

It cannot be denied; evidence is irrefutable. Courts of appeal nationwide refuse to adjudicate EVERY issue raised on appeal from 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.

Since that pattern does not exist in cases involving represented litigants, it is a vicious invidious class-based assault on the due process rights of disrespected, unrepresented Americans. It must be terminated.

It appears to be an open assault on the impartiality and independence of the judiciary by rogue members of the judiciary itself, as well as an attack on the due process rights of appellants affected by the practice and pattern.

Question 2.

Do U.S. judges have the power to deny explicit, sworn §455 recusal motions directed to magistrates committing acts of apparent misconduct in support of a party?

A. NOTICE my sworn §455 Motion to Recuse The Hon. Magistrate Dale

I request the Justices notice that I moved for recusal of the Hon. Magistrate Dale, (while presenting the following explicit, non-conclusory

SWORN allegations *supported by the record*, under penalty of perjury). The record shows she has

- a. Blocked the proper resolution of the forfeiture case against me since December 13, 2019 by refusing for nearly TWO YEARS to compel IRS/DoJ to present the signed summary records of assessment for each year in question, the existence of which is baldly claimed by the Government in its Complaint: "A duly authorized delegate of the Secretary of the Treasury made timely federal tax assessments against Mr. Howe for ... 2011-2013, on 'September 12, 2016'.

And The Hon. Magistrate

- b. Fabricated that "The IRS issued timely federal tax assessments against Howe for unpaid federal income taxes for tax years...2008-2013". [See 19-421, Report & Recommendation, Doc. 47, Pg. 3, 1st Full ¶, 1st Sentence], when no record evidence supports that finding, (See Record, All).

And the Hon. Magistrate

- c. Entered her fabrication in the federal record of a case (the forfeiture suit) to support the Government, thus, she has
- d. A personal interest in assisting the issuance of a judgement against me, i.e., to conceal her own arguable misconduct.

B. Notice Nye Denial of §455 Motion to Recuse Dale

I request the Court also notice The Hon. Judge Nye's ORDER [See 19-421, Doc. 78, Appx. A, pg. a] denying my §455 MOTION [See 19-421, Doc. 76] to

recuse Magistrate Dale, and that said order does not address any issue I raised. Thus, Judge Nye mirrors the pattern and practice of circuit courts nationwide.

Magistrate Dale had nothing to do with the denial by Judge Nye of my motion to recuse her.

THREE Reasons for Granting Petition

No similar case concerning a pattern and practice of courts of appeal has ever been raised in the history of this Nation. The following three reasons justify granting my Petition.

Reason 1. 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.¹²

The pattern and practice of the Ninth Circuit and other circuits, 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.¹³

¹² 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>

¹³ As noted above, Mr. Srinivasan denied appellate relief in 15-5035 by issuing an ‘order’ using the wrong standard of review in

That pattern and practice of courts of appeal is destroying the reason appellate courts were created. It is also, once again, eviscerating the due process rights of the Class of disrespected, 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 is an invidious, class-based assault on the due process rights of the unrepresented.

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

The practice is also empowering district judges to violate the due process rights of litigants in almost unthinkable, outrageous manners. Because district judges know unrepresented litigants have no access to meaningful appellate relief, the judges are writing and speaking gibberish,¹⁴ fabricating facts,¹⁵ and

order to avoid addressing EVERY issue raised on appeal, which were solely legal issues. He listed as signatories on his “order” two Judges who likely had nothing to do with it, (such as the talented Hon. Janice Rogers Brown, she of exquisite integrity and unexcelled writing skill!). And he sent his “order” to me via the U.S. mail.

¹⁴ 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) stated:

“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

violating every applicable precedent, *with assistance of involved Circuit judges.*¹⁶

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. District judges involved in income tax cases against unrepresented litigants are becoming aware their victims have no access to appellate relief.

¹⁵ As noted above and the record of 19-421 incontrovertibly proves, The Hon. Mag. Candy Dale literally fabricated, then entered her fabrication into the record, to wit: that IRS supposedly prepared assessments concerning me on September 12, 2016, despite the fact that no such assessments appear in the record before her bench, (See Record, All). Moreover, for two years, Mag. Dale has blocked my motions seeking to compel the IRS to present their (phantom) assessments, and she is aware of sworn declarations and supporting evidence provided by the IRS that no such assessment was ever made by a duly authorized delegate of the Secretary of the Treasury.

¹⁶ See for example, my appeal [9th Cir., 21-35125] of Judge Nye's repeated, point-blank refusals of my 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.

¹⁶ *Olmstead v. United States*, 277 U.S. 438.

Reason 3. District judges have no authority to deny recusal motions directed to magistrates.

Finally, the Court should grant this petition to ensure district judges are reminded that, even when dealing with disrespected, unrepresented litigants, a judge's power is not unlimited.

No source authorizes district judges to deny well-pled, non-conclusory recusal motions directed to magistrates committing acts such as fabricating case-dispositive facts, falsifying the federal record of cases, obstructing the due administration of justice, etc. Clearly, granting this petition would help judicial officers realize the contours and limitations of their power, despite its obvious breadth.

Relief Requested

I request the Court use its unquestioned power pursuant to Rule 11 to

1. Remove my Ninth Circuit appeal 21-35682 to this Court; to
2. Confirm the pattern and practice of courts of appeal nationwide refusing to adjudicate **EVERY** issue raised by the Class of unrepresented litigants complaining of the IRS record falsification program, and the open support thereof by involved district judges; to
3. Terminate that pattern and practice, pursuant to the Court's unquestioned supervisory power recognized in SCR 10(a); and to
4. Hold that district judges have no power to deny well-pled motions to recuse, when directed to magistrates.

Finally, I request the Court order any further relief it finds just and equitable, under these most difficult, extraordinary circumstances.

Respectfully submitted,

Ebenezer K. Howe IV

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Verification/Declaration

Comes now Ebenezer K. Howe IV, 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 13, 2021

Ebenezer K. Howe IV
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