No. 21-628

IN THE

Supreme Court of the United States

October Term 2021

IN RE: Ebenezer K. Howe IV, *Petitioner* and Ninth Circuit Court of Appeals Cause 21-35682 With Declaration & Evidence in Support

RULE 44 PETITION FOR REHEARING

SIX ISSUES Not PREVIOUSLY PRESENTED

Ebenezer K. Howe, IV
In propria persona
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December 14, 2021

SIX NEW GROUNDS PRESENTED FOR REVIEW VIA RULE 44 PETITION

The issuance on December 8, 2021 by the Ninth Circuit of a "final order" denying relief in appeal 12-35682, cured any procedural defect justifying this Court's denial of relief on December 6, 2021 in 21-628.

More importantly, I respectfully request the Court consider the following SIX "substantial grounds not previously presented" to justify entertaining my Original Petition:

1. I contend Justices have a mandatory, non-discretionary duty to entertain petitions arising from well-pled allegations of "deliberately planned, carefully executed schemes to defraud"[1] involving attorneys

2. I request Justices of this Court notice that no Justice appears to have been involved in the recent denial of relief to me in this Court. [Appendix A]

3. I request Justices notice my offer to the District Court in 19-421 that I will end my defense in the case 48 hours after IRS/DoJ produces the four identified documents for

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[1] The language quoted is from this Court's seminal holding concerning attorney fraud, in *Hazel-Atlas Co. v. Hartford-Empire Co.*, 322 U.S. 238, 245.

each year reflected in IRS records concerning me.

4. I request Justices notice the Ninth Circuit's recent denial of appellate relief in its customary fashion: without addressing ANY issue raised, [Appendix B].

5. I request the Justices notice my appeal of the denial by Judge Nye of my §455 motion directed to Magistrate Dale appears to fit within the "collateral order exception".

6. Finally, I request Justices notice the Ninth Circuit's new threat to sanction me, but without identifying any appeal, document or argument I have EVER submitted that is supposedly 'frivolous'.

Restated summary: I contend the Circuit's issuance of the "order" denying relief dated December 8, 2021 and the SIX grounds newly presented herein justifies my filing of this Rule 44 Petition and triggers the apparent duty of Justices to entertain my Original Petition, as respectfully suggested below.

PARTIES TO THE PROCEEDING

Ebenezer K. Howe, IV,

Petitioner In Propria Persona

The Ninth Circuit Court of Appeals

Respondent

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JURISDICTION

The issuance on December 8, 2021 by the Ninth Circuit of its 'final order' denying relief cured the procedural defect inferred in the order denying certiorari issued by Clerk Harris on December 6, 2021.[2] Additionally the SIX "new" grounds presented herein for the first time, justify the filing of this Rule 44 Petition for Rehearing, and justify a decision to entertain my Original Petition.

STATEMENT OF THE CASE

No "more important" case will ever arise to this Court; its outcome will impact every American.

As detailed in my Original Petition, I discovered that the IRS repeatedly, in an invariable sequential manner, falsifies records concerning those the Service labels income tax "non-filers" to justify instituting liens, levies and forfeiture cases against their property, as well as to initiate criminal prosecutions.[3]

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[2] Of course, this Court had jurisdiction by virtue of 28 U.S.C. §2101(e) and 28 U.S.C. §1254(1) even without a final order from a court of appeals, contrary to Mr. Harris' 'order'.

[3] For specific example, IRS' controlling digital records concerning me and 2011 falsely reflect that the Service

A. Supposedly received from me, (a so-called "high income non-filer"!) a signed 1040A return on the "Return Received Date" of "November 5, 2015," that IRS

B. Supposedly prepared substitute income tax returns concerning me on "November 30, 2015," that IRS

C. Supposedly referred said "returns" to the IRS' Examinations Division on "11-13-2015," and that IRS

D. Supposedly prepared a summary record of assessment on September 12, 2016.

From inception of the forfeiture case against me two years ago, I have repeatedly sought to compel the Government to produce four case-dispositive documents reflected as existing in IRS records concerning me. [See Footnote 3 above for details.]

Of particular interest is the "summary record of assessment" for each year which Magistrate Dale held to exist, despite the fact no record evidence supports her claim. [See 19-421 Record, all.]

But, under a variety of pretexts, the Hons. Magistrate Dale and Judge Nye have repeatedly blocked my requests for the Government produce the four documents, thus providing IRS TWO YEARS to create documents to support its falsified digital records and paper certifications concerning me.

Relevant Litigation History

In October of 2019, the Government filed a complaint in the U.S. District Court in Idaho containing this material dispositive falsehood:

> "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'". [See 19-421, Doc.1 Complaint, Pg. 5, ¶22.]

The IRS had previously provided me incontrovertible evidence proving that no duly authorized delegate

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NO such documents exist, as IRS-provided evidence proves. That fraud is repeated for each year in question.

prepared or signed any assessment on the date claimed, nor on any other date.

To buttress the Government's complaint allegations, but without a shred of evidence before her, Magistrate Dale held:

> "The IRS issued timely federal tax assessments against Howe for unpaid federal income taxes for tax years...2008-2013". [See 19-421, Doc. 47, R&R and Order, Pg. 3, 2nd Sentence.]

No such assessments existed when she entered her fabrication. [See Record, all.] And, for OVER TWO YEARS, I have asked the Court to support Magistrate Dale's "finding" (and prove the Government has clean hands in this forfeiture), by presenting to me and to the Court the four documents identified above (Footnote 3) for each year in question.

But for TWO YEARS the Hons. Magistrate Dale and Judge Nye have delayed, denied and obstructed every request I have made to either secure those documents, [4] or to secure the Government's dispositive concession that IRS falsified its annual records concerning me to justify initiating the case.

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[4] The Judges claimed under a variety of pretexts that my requests were supposedly "premature," that the parties supposedly needed more discovery, that my Summary Judgment motion was "untimely" since the judges had not set a discovery timetable, etc.

I have repeatedly represented to the Court below IRS-provided evidence proving no such documents exist.[5] But Judges Dale and Nye have blocked the just, speedy inexpensive adjudication of this case, while repeatedly blaming me for seeking to delay its outcome.

On August 8, 2021, I filed a sworn §455 Motion directed to Magistrate Dale, seeking her recusal due to her case-dispositive fabrication, her refusal to compel the government to provide the documents reflected in IRS' falsified records, her habitual denigration of me and my simple requests for the four documents, etc.

On August 9, 2021, Judge Nye denied my §455 Motion (without explanation).

On August 12, 2021, I filed an appeal to the Ninth Circuit in 21-35682 to determine whether judges have the authority to deny §455 motions directed to magistrates. I also requested adjudication of two other issues:

1. Do courts of appeal, including the Ninth, practice a pattern of refusing to address EVERY issue raised on appeals filed by disrespected, unrepresented litigants complaining of the underlying IRS record falsification program, and the open support thereof by U.S. district judges?

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[5] Hence, the Government has no standing to secure relief in a court of equity. See 19-421, Doc. 88, Renewed Emergency Motion for Summary Judgment, with incontrovertible Statement of Facts and evidence appended thereto.

2. Since district judges are aware of the pattern and practice, is such setting a violation of the Judiciary Act, the Rule of Law and the due process rights of victims?

Pursuant to the pattern and practice of courts of appeal, the Ninth Circuit Clerk denied relief in 21-35682 without addressing any issue raised. [See Appendix B, Order of December 8, 2021).

And, instead of adjudicating the key question I raised, whether district judges have power to adjudicate §455 Motions directed to magistrates, the 9th Circuit substituted a question I did not raise, (while completely ignoring the other two questions concerning its antinomian pattern and practice).

The Circuit claimed it supposedly lacked jurisdiction in 21-35682 because a "motion to disqualify a judge is not final or appealable." [See Appendix B] However, I did not request adjudication of a refusal of a judge to recuse. I sought adjudication whether a district judge has the power to obstruct a well-pled recusal motion directed to a magistrate. That is a question of 'first impression" in the Circuit.

SIX Grounds Not Previously Presented

New Ground 1.

Do Justices have a mandatory duty to entertain cases presenting "deliberately

planned, carefully executed schemes to defraud"[6] involving attorneys?

Article III of the Constitution bestows on this Court judicial Power that "shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States," etc. The desired outcome of the exercise of the equitable power has been explained: "[A] court of equity has unquestionable authority to apply its flexible and comprehensive jurisdiction in such manner as might be necessary to the **right administration of justice between the parties**." *Hecht Co.* v. *Bowles,* 321 U. S. 321, 329 (1944) [Emph. added]

Further, this Court has taught that exercise of equitable power is justified

> "whenever a party who, as actor, seeks to set the judicial machinery in motion and obtain some remedy, or **has violated conscience, or good faith, or other equitable principle**, in his prior conduct. [T]hen the doors of the court will be shut against him *in limine.*" *Keystone Driller Co., v. General Excavator Co.*, 290 U.S. 240, (1933). [Emp. Added]

In *Olmstead v. United States,* [7] Justice Brandeis applied the principles of equity to the criminal law, thus developing a doctrine of "judicial integrity":

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[6] The language quoted is from this Court's holding in Hazel-Atlas Co. v. Hartford-Empire Co., 322 U.S. 238, 245.

[7] 277 U.S. 438, (1928), Brandeis, J., dissenting.

> "When the government, having full knowledge, sought, through the Department of Justice, to avail itself of the fruits of these acts in order to accomplish its own ends, ***it assumed moral responsibility*** for the officers' crimes...Will this Court by sustaining the judgment below sanction such conduct [by] the Executive?"

In sum, "equitable" power is grounded on conscience. It is to be used to produce the "right administration of justice between parties." And by refusing to exercise the equitable power of this Court when Government agents are falsifying records to enforce the law, Justices assume moral responsibility for such misconduct. So, Justice Brandeis' challenging words in his *Olmstead* dissent ring true:

> "In a government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously. Our Government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example."

Should Justices ignore "deliberately planned, carefully executed schemes to defraud"[8] involving attorneys, thus ignoring their equitable duty of conscience to engage it, they are imperiling the Republic.

<u>"Supervisory Power" Vindicates Judicial Integrity and the Consciences of Justices</u>

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[8] Per this Court's holding in *Hazel-Atlas Co. v. Hartford-Empire Co.*, 322 U.S. 238, 245.

Not long after *Olmstead*, this Court discovered its "supervisory power" over inferior courts. See *McNabb v. United States*, 318 U.S. 332 (1943). That power is a pure creation of the Court.

McNabb involved the conviction of defendants for murder on the basis of statements procured after their arrest, but before they were brought to a magistrate. The Supreme Court reversed the convictions by invoking supervisory power. Although *McNabb* does not cite *Olmstead*, the spirit of Justice Brandeis' dissent is pervasive.

Since the Government has been exposed secretly falsifying digital and paper records concerning thousands of Americans similarly situated to justify incarcerating them and stealing their property, *in plain view of involved judicial officers in the lower courts*, "justice" in income tax litigation involving unrepresented "non-filers" has devolved into show trials by force, not by law.[9]

Duty in THIS case: An absolute moral compulsion to exercise supervisory power.

The protection of the integrity of the judicial system has now become the sole rationale for the exercise of the supervisory power "discovered" in *McNabb* and expressly mentioned in S.C. Rule 10(a). Although this Court reminds litigants its power to grant certiorari is discretionary,[10] the conduct of judicial

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[9] See, for exasperating example, the currently pending Petition in this Court of Ms. Melba Ford, 21-784, arising from the Eastern District of California, through the Ninth Circuit.
[10] See Rule 10(a).

officers at the district and intermediate appellate levels, in open support of the underlying, institutionalized IRS record falsification program, is raising a countervailing principle.

Justices of *this* Court have a mandatory, non-discretionary moral duty, imposed by conscience and empowered by law, to either exercise their supervisory power in cases involving "deliberately planned, carefully executed" attorney schemes to defraud, or take personal moral responsibility for those acts. That mandatory moral duty of conscience should be "discovered" today, just as "supervisory power" was discovered in 1944.

New Ground 2.

Justices of this Court are requested to notice that no Justice appears to have been involved in the recent denial of relief by Clerk Harris' "order" dated December 6, 2021. [Appendix A] That is, there is no evidence that a Justice reviewed my Original Petition.

From sources publicly available, it appears trusted law clerks of the Justices screen all newly filed petitions, then designate only a tiny fraction as "cert-worthy". But, as shown in **New Ground 1.**, supra, I contend that, just as Justices discovered in 1943 their "supervisory power", [11] Justices should now discover a narrowly tailored but mandatory duty to entertain petitions relating explicit allegations that government-paid attorneys are involved in

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[11] See *McNabb v. United States*, 318 U.S. 332 (1943).

"deliberately planned, carefully executed schemes to defraud" courts and litigants.[12]

Accordingly, I contend the Court should consider ending the practice of allowing law clerks, even those greatly trusted, to determine "cert-worthiness" without involvement of Justices, when petitioners present allegations of "deliberately planned, carefully executed schemes to defraud" involving attorneys.

New Ground 3.

I request Justices notice my repeated offer to the District Court in 19-421 that I will end my defense 48 hours after IRS/DoJ produces the four identified documents for each year reflected in IRS records concerning me.

I have offered to withdraw my defense after IRS/DoJ provides the four signed documents IRS records concerning me reflect as existing. [13] [The four documents are listed by name in Footnote 3]

It is not me who is delaying the just, speedy inexpensive resolution of the forfeiture case against me.

New Ground 4.

Justices are requested to notice the Ninth Circuit's recent denial of appellate relief in an

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[12] Quoting this Court's seminal holding in *Hazel-Atlas Co. v. Hartford-Empire Co.*, 322 U.S. 238@245.

[13] See 19-421, Doc. 109, Emergency Motion to Suspend/ Terminate Discovery, pg. 2,

"order" without addressing any issues raised, [Appendix B].

As noted above in Relevant Litigation History, [Pg. 2], I request the Justices notice that the Circuit has once again denied me relief, this time in the appeal underlying this Petition. But, pursuant to the pattern and practice of Courts of appeal dismissing appeals arising from the IRS record falsification program and open support thereof by District judges, the Circuit addressed NONE of the issues I raised.[14]

Disrespected, unrepresented litigants only have physical access to courts of appeal, not to adequate, effective, meaningful appellate relief.

New Ground 5.

The appeal of Judge Nye's denial of my §455 recusal motion directed to Magistrate Dale appears to fit within the "collateral order exception" to the rule against interlocutory appeals.

To briefly reiterate, I filed my appeal of Judge Nye's denial of the §455 recusal motion I directed to Magistrate Dale.[15]

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[14] Accordingly, we must disregard the Circuit order as useless.

[15] She fabricated the existence of summary records of assessment when no evidence supports her "finding", entered her fabrication into the federal record of a case in violation of 18 U.S.C. §1001, has delayed for 2 years, along with Judge Nye, the speedy resolution of this case using a variety of pretexts, and she has endlessly attacked me personally.

The "collateral order doctrine" refers to a narrow exception authorizing interlocutory appeals when rights that will be irretrievably lost in the absence of an immediate appeal. See *Abney v. United States,* 431 U. S. 651, 431 U. S. 660-662 (1977).

To fall within the collateral order exception, an order must satisfy three conditions. It must (1.) "conclusively determine the disputed question," (2.) "resolve an important issue completely separate from the merits of the action," and (3.) "be effectively unreviewable on appeal from a final judgment." *Coopers & Lybrand v. Livesay,* 437 U. S. 463, (1978).

I contend the denial by Judge Nye of my recusal motion directed to Magistrate Dale fits those requirements.

First, he conclusively terminated a recusal motion that he has no authority to do, a conclusive determination of that disputed question.

Second, his decision denying my recusal motion without participation of the magistrate to whom the motion was directed, resolved an important issue completely separate from the merits of the forfeiture.

Third, Judge Nye KNOWS his unauthorized decision to terminate my §455 motion will NEVER be reviewed on appeal, since he KNOWS no appellate relief exists, other than the form thereof, for litigants complaining of the underlying IRS record falsification program, and his open notorious support thereof. For proof of that outrageous evisceration of my right to access meaningful appellate relief, we

need look no further than the Circuit Order denying relief in 21-35682 (which, as always, failed to address ANY of the issues raised on appeal).

New Ground 6.

As quoted below, I request Justices notice the Ninth Circuit's threat in its latest Order to sanction me, but without identifying any appeal, document or argument I have EVER submitted that is supposedly "frivolous".

For two years, I have been seeking to litigate the refusal of the Hon Dist. Judges Dale and Nye in 19-421 to compel the Government to prove it has standing, by producing the four simple core documents reflected to exist in IRS' [repeatedly falsified] records concerning me for each year in question. [See Footnote 3, above.]

But despite the fact the Ninth Circuit has NEVER adjudicated ANY issue I have ever raised on appeal, nor EVER identified ANY issue I have raised as frivolous, that Court has just held:

> "[A]ppellant is advised that *further* frivolous interlocutory appeals or writs arising from the same district court action may result in sanctions, including a pre-filing review order." [Appendix B, pg. 2, Emph. added]

Since

a. no Circuit judge has ever held as "frivolous" any appeal, writ, document or argument I have ever filed, and since

b. the Circuit did not identify any frivolous issue I presented in 21-35682,

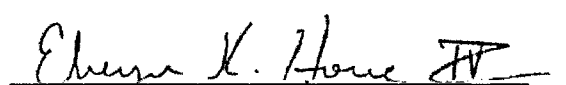
I respectfully request the Justices instruct the Circuit to identify with particularity any appeal, any filing or any frivolous argument I have ever presented ANYWHERE in ANY CASE in my efforts to compel Magistrate Dale and Judge Nye to cease obstructing the just, speedy and inexpensive resolution of the forfeiture case against me.

Relief Requested

After noting the issuance on December 8, 2021 by the Ninth Circuit of its final order denying relief in 21-35682, (without addressing any issue raised), and considering the SIX "substantial grounds not previously presented" noted herein, I request the Court reconsiders its denial of relief and entertains my Original Petition pursuant to the Justices' mandatory duty (discovered now) and to its supervisory power (discovered in 1944), and provide the relief I respectfully requested therein.

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

Respectfully submitted,



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Verification/Declaration

Comes now Ebenezer K. Howe IV, with personal knowledge of the admissible facts related above and competent to testify thereto, pursuant under penalty of perjury pursuant to 28 USC §1746, that the facts stated in the foregoing **"Rule 44 Petition for Rehearing"** are absolutely true and correct to the very best of my knowledge and belief, So HELP ME GOD.

Executed on December 14, 2021

By:

Ebenezer K. Howe IV

Ebenezer K. Howe IV

CERTIFICATE OF COUNSEL

No. 21-628

EBENEZER K. HOWE IV,
Unrepresented Petitioner

v.

THE NINTH CIRCUIT COURT OF APPEALS,
Respondent

As required by Supreme Court Rule 44.1, I present herein an intervening circumstance (Issuance by the Ninth Circuit of an order denying appellate relief in 21-35682), and six "substantial grounds not previously presented," justifying the filing of this Rule 44 Petition and this Court's entertainment of my Original Petition."

I certify that this Rule 44 Petition for Rehearing is presented in good faith and not for delay.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 14, 2021.

Ebenezer K. Howe IV

Ebenezer K. Howe IV