

No. \_\_\_\_\_

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IN THE  
**Supreme Court of the United States**

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Frank L. Amodeo,  
Petitioner,

v.

United States of America,  
Respondent.

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On Petition for a Writ of Certiorari to the  
United States Court of Appeals  
For the Eleventh Circuit

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**PETITION FOR A WRIT OF CERTIORARI**

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November 19<sup>th</sup>, 2021

## QUESTIONS PRESENTED

1. This Court holds that when a judgment is void as a matter of law, the judgment never existed. Correspondingly, a petitioner may challenge the judgment at any time. The Eleventh Circuit adopted the opposite rule when it affirmed the district court's denial of the Coram Nobis petition predicated on laches foreclosing the relief.

*Does the doctrine of laches apply to a jurisdictional challenge that if proven, renders the judgment void?*

2. This court and the rule of the majority Circuit Courts hold that a court must decide the merits of an incompetent's claims or defenses unless the incompetent's interests are adequately represented by a licensed attorney. The Eleventh Circuit adopted a contrary rule when it affirmed the district court's denial of Mr. Amodeo's Coram Nobis petition without appointing counsel.

*Does due process require a court to appoint an attorney to assist with developing an incapacitated litigant with developing claims prior to adjudicating the merits?*

3. Mr. Amodeo raised a challenge in the 11th Circuit questioning the district court's jurisdiction to issue an October 8, 2008, preliminary order of forfeiture. The district court denied the challenge based on laches. The Eleventh Circuit District court on appeal departed from the standard rule that a jurisdictional challenge cannot be forfeited or waived and found Amodeo had waived (abandoned) the claim.

*Can an appellant abandon a jurisdictional claim or must the appellant court examine the lower court's jurisdiction on its own?*

## **PARTIES TO THE PROCEEDINGS AND RULE 29.6 STATEMENT**

The caption contains the names of all the parties to the proceedings. Petitioner is not a corporation.

## **RELATED PROCEEDINGS**

No related proceedings.

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## **PETITION FOR A WRIT OF CERTIORARI**

The Petitioner, Frank Amodeo, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit that held the doctrine of laches could foreclose a jurisdictional challenge to a judgment.

### **OPINION BELOW**

The Eleventh Circuit unpublished decision under review is USA v. Frank Amodeo, Case No. 19-10960, consolidated with case No.18-12845 (November 30, 2020) and is reproduced as Appendix (“App.”) (App. 1). The United States Court of Appeals for the Eleventh Circuit denied Mr. Amodeo’s motion for rehearing or modification on July 26, 2021, reproduced as (App. 3). The district court’s opinion dismissing Mr. Amodeo’s Coram Nobis petition was made on May 25<sup>th</sup>, 2018 in case No.6:08-cr-176-Orl-28GJK. (App.21).

### **JURISDICTION**

The Eleventh Circuit denied a timely motion for rehearing (App. 3) on July 26, 2021. This Court has jurisdiction under 28 U.S.C. §1254(1). Under Rules 13.1, 13.3, and 30.1 of the Rules of this Court, the petition for a writ of certiorari was due to be filed on or before October 24, 2021. On August 25, 2021, Petitioner timely filed his Petition Seeking Extension of time up until and including November 23, 2021 in which to file his Petition for a Writ of Certiorari (App. 28). Petitioner’s extension request was granted on September 13, 2021 (App. 4), making this Petition for a Writ of Certiorari due on or November 23, 2021, therefore timely.

## STATUTORY PROVISIONS INVOLVED

A. 18 U.S.C. Code §1915 states:

(a)

(1) Subject to subsection (b), any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees or security therefor, by a person who submits an affidavit that includes a statement of all assets such prisoner possesses that the person is unable to pay such fees or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that the person is entitled to redress.

(2) A prisoner seeking to bring a civil action or appeal a judgment in a civil action or proceeding without prepayment of fees or security therefor, in addition to filing the affidavit filed under paragraph (1), shall submit a certified copy of the trust fund account statement (or institutional equivalent) for the prisoner for the 6-month period immediately preceding the filing of the complaint or notice of appeal, obtained from the appropriate official of each prison at which the prisoner is or was confined.

(3) An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.

(b)

(1) Notwithstanding subsection (a), if a prisoner brings a civil action or files an appeal in forma pauperis, the prisoner shall be required to pay the full amount of a filing fee. The court shall assess and, when funds exist, collect, as a partial payment of any court fees required by law, an initial partial filing fee of 20 percent of the greater of—  
(A) the average monthly deposits to the prisoner's account; or  
(B) the average monthly balance in the prisoner's account for the 6-month period immediately preceding the filing of the complaint or notice of appeal.

(2) After payment of the initial partial filing fee, the prisoner shall be required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. The agency having custody of the prisoner shall forward payments from the prisoner's account to the clerk of the court each time the amount in the account exceeds \$10 until the filing fees are paid.

(3) In no event shall the filing fee collected exceed the amount of fees permitted by statute for the commencement of a civil action or an appeal of a civil action or criminal judgment.

(4) In no event shall a prisoner be prohibited from bringing a civil action or appealing a civil or criminal judgment for the reason that the prisoner has no assets and no means by which to pay the initial partial filing fee.

(c) Upon the filing of an affidavit in accordance with subsections (a) and (b) and the prepayment of any partial filing fee as may be required under subsection (b), the court may direct payment by the United States of the expenses of (1) printing the record on

appeal in any civil or criminal case, if such printing is required by the appellate court; (2) preparing a transcript of proceedings before a United States magistrate judge in any civil or criminal case, if such transcript is required by the district court, in the case of proceedings conducted under section 636(b) of this title or under section 3401(b) of title 18, United States Code; and (3) printing the record on appeal if such printing is required by the appellate court, in the case of proceedings conducted pursuant to section 636(c) of this title. Such expenses shall be paid when authorized by the Director of the Administrative Office of the United States Courts.

(d) The officers of the court shall issue and serve all process, and perform all duties in such cases. Witnesses shall attend as in other cases, and the same remedies shall be available as are provided for by law in other cases.

(e)

(1) The court may request an attorney to represent any person unable to afford counsel.

(2) Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that—

(A) the allegation of poverty is untrue; or

(B) the action or appeal—

(i) is frivolous or malicious;

(ii) fails to state a claim on which relief may be granted; or

(iii) seeks monetary relief against a defendant who is immune from such relief.

(f)

(1) Judgment may be rendered for costs at the conclusion of the suit or action as in other proceedings, but the United States shall not be liable for any of the costs thus incurred. If the United States has paid the cost of a stenographic transcript or printed record for the prevailing party, the same shall be taxed in favor of the United States.

(2)

(A) If the judgment against a prisoner includes the payment of costs under this subsection, the prisoner shall be required to pay the full amount of the costs ordered.

(B) The prisoner shall be required to make payments for costs under this subsection in the same manner as is provided for filing fees under subsection (a)(2).

(C) In no event shall the costs collected exceed the amount of the costs ordered by the court.

(g) In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

(h) As used in this section, the term “prisoner” means any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program.

**B. 18 U.S.C. 3000(6)(a)(2)(B) states in it's pertinent part:**

(a) CHOICE OF PLAN.—Each United States district court, with the approval of the judicial council of the circuit, shall place in operation throughout the district a plan for furnishing representation for any person financially unable to obtain adequate representation in accordance with this section. Representation under each plan shall include counsel and investigative, expert, and other services necessary for adequate representation. Each plan shall provide the following:

(1) Representation shall be provided for any financially eligible person who—

- (A) is charged with a felony or a Class A misdemeanor;
- (B) is a juvenile alleged to have committed an act of juvenile delinquency as defined in section 5031 of this title;
- (C) is charged with a violation of probation;
- (D) *is under arrest, when such representation is required by law;*
- (E) *is charged with a violation of supervised release or faces modification, reduction, or enlargement of a condition, or extension or revocation of a term of supervised release;*
- (F) *is subject to a mental condition hearing under chapter 313 of this title;*
- (G) is in custody as a material witness;
- (H) *is entitled to appointment of counsel under the sixth amendment to the Constitution;*
- (I) *faces loss of liberty in a case, and Federal law requires the appointment of counsel; or*
- (J) is entitled to the appointment of counsel under section 4109 of this title.

(2) Whenever the United States magistrate judge or the court determines that the interests of justice so require, representation may be provided for any financially eligible person who—

- (A) is charged with a Class B or C misdemeanor, or an infraction for which a sentence to confinement is authorized; or
- (B) *is seeking relief under section 2241, 2254, or 2255 of title 28.*

**C. Rule 17 of the Federal Rules of Civil Procedure states in pertinent part:**

(b) CAPACITY TO SUE OR BE SUED. Capacity to sue or be sued is determined as follows:

- (1) for an individual who is not acting in a representative capacity, by the law of the individual's domicile;
- (2) for a corporation, by the law under which it was organized; and

(3) for all other parties, by the law of the state where the court is located, except that:

- (A) a partnership or other unincorporated association with no such capacity under that state's law may sue or be sued in its common name to enforce a substantive right existing under the United States Constitution or laws; and
- (B) 28 U.S.C. §§754 and 959(a) govern the capacity of a receiver appointed by a United States court to sue or be sued in a United States court.

(c) MINOR OR INCOMPETENT PERSON.

(1) *With a Representative.* The following representatives may sue or defend on behalf of a minor or an incompetent person:

- (A) a general guardian;
- (B) a committee;
- (C) a conservator; or
- (D) a like fiduciary.

(2) *Without a Representative.* A minor or an incompetent person who does not have a duly appointed representative may sue by a next friend or by a guardian ad litem. The court must appoint a guardian ad litem—or issue another appropriate order—to protect a minor or incompetent person who is unrepresented in an action.

**D. All Writs Act, 28 U.S.C. § 1651**

The All Writs Act states that:

- (a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.
- (b) An alternative writ or rule nisi may be issued by a justice or judge of a court which has jurisdiction.

## STATEMENT OF THE CASE

In June 2008, the State of Florida declared Frank Amodeo incapacitated and that incapacity judgment remains in effect until the present (App. 6). In August 2008, the United States indicted Mr. Amodeo with various tax related crimes, (App. 7), all while Mr. Amodeo was in-patient at Harvard-affiliated Mclean Pavilion mental health hospital. (App. 9).

In September 2008, a magistrate accepted a change-of-plea from Amodeo (App.8). At the change of plea hearing, unbeknownst to the magistrate and Mr. Amodeo, Mr. Amodeo's attorney, Harrison Slaughter, had a conflict of interest. (App. 10) (Doc 101). Furthermore, the court had ordered Mr. Amodeo to take an improper psychotropic medication regime. (App. 11). A mistaken regime that continued through sentencing. (Id).

In October 2008, despite knowing Mr. Amodeo lacked the capacity to contract or sue, the government entered into a consensual Preliminary Order of Forfeiture. (App 12). At the time of the POF signing, Mr. Amodeo lacked both unconflicted counsel, and the capacity to contract, yet the district court entered the POF without notice to or approval by either the guardian or guardianship court. (App. 10) (App. 11) (App.12).

In May 2009, Amodeo's counsel still had not revealed his conflicts of interest, thus remained Amodeo's counsel (App. 10). The United Stated Probation Office however, had discovered that the improper prescription was making Amodeo sicker and ordered Amodeo to stop taking the psychotropic medication. Prior to sentencing

the improper medication reached toxic levels in Amodeo's blood. (App. 11). Despite these continuing constitutional defects, the district court accepted the guilty plea (App. 13) and entered a judgment against Amodeo that included 270 months in prison and a 181 million-dollar forfeiture. (App.15).

The indictment, plea agreement, and preliminary order of forfeiture are very detailed but do not match. (App. 7) (App.12) (App.13). Furthermore, none of three essential documents include the forfeiture of the stock in representing the ownership of specific corporations; hence, the jurisdictional defect that gave rise to the *coram nobis* petition. *Id.*

In 2013, under BOP auspices, the State of Florida conducted a "Suggestion of Capacity Evaluation of Amodeo. (App. 16). The State of Florida concluded, and the BOP agreed that Mr. Amodeo remained incapable of among other things, contracting or suing. *Id.*

In 2015, the State of Florida appointed a substitute guardian, Charles Rahn, a retired police officer. (App.17). After investigating the documents, the lawyers, and the facts, Mr. Rahn disaffirmed the plea agreement and the POF. (App.18).

Thereafter, Mr. Rahn brought (on Amodeo's behalf) a petition for a writ of *coram nobis* meant to have the district court recognize that the POF was void for want of jurisdiction, because the assets weren't identified in the indictment or plea agreement. (App. 19). Further, asserting that the POF was void because under Florida Contract of law – which governs interpretations of Preliminary Orders of Forfeiture – the plea was either void *ab initio* because of the guardians' disaffirmance.

At first, the district court *sua sponte* converted the coram nobis petition into a § 2255 motion. (App. 20). After Amodeo submitted numerous filings arguing the challenge to the final portion of a judgment are incognizable under §2255, the district court recognized the motion as a true and correct coram nobis, then the district court, effectively reconverted the proceedings from §2255 and ruled in the coram nobis action. (App. 21)

The district court, however, avoided chose not to address the merits, instead it found that the coram nobis' jurisdictional challenges were foreclosed by the doctrine of laches. *Id.* And because of that "laches" conclusion, the district court did not have to appoint counsel to assist the incapacitated Amodeo or his non lawyer guardian; the laches ruling also foreclosed the need for counsel. (*Id.*)

Amodeo appealed (App. 22). Amodeo sought appointment of appellate counsel, and the appellate court appointed counsel because Amodeo was incapacitated and because his guardian Charles Rahn was not an attorney. (App.23), (App. 24).

Nevertheless, the Eleventh Circuit ultimately concluded that the District court did not abuse its discretion when it did not appoint the incapacitated Amodeo an attorney – but only because the doctrine of laches foreclosed the relief. (App. 1).

The Eleventh Circuit did however comment that Amodeo's appointed counsel had abandoned the laches challenge. (App. 1 at pg. 2). What that means is that the appeals court did not exercise its duty to *sua sponte* examine the jurisdiction of the previous courts, whose orders gave rise to the appeal.

The Eleventh Circuit panel affirmed the district courts dual departure from governing authority. (App.1). The en banc did not require rehearing. (App. 3), this petition ensued.

## **REASONS FOR GRANTING THE PETITION**

In 2008 and until the present, the State of Florida declared Frank Amodeo incapacitated and appointed a guardian over Mr. Amodeo person and property (App. 6) (March 2021 order forming a 3 person guardianship committee, which includes Charles Ran, a retired police officer who served as Mr. Amodeo's guardian since 2015). In 2008, despite Mr. Amodeo's inability to contract or sue, the United States entered into two contracts with Mr. Amodeo: the plea agreement and the consensual preliminary order of forfeiture. (App. 12), (App.13). A forfeiture, which under applicable state law is void since the government entered into the agreement, knowing Amodeo was incapacitated. The PFO is governed by state contract law. *See Bradley v. United States*, 409 Fed. Appx. 308 (11<sup>th</sup> Circuit 2011). And the federal court is bound to interpret the PFO- Contract using the law of the forum State (here, that is, Florida). *Id.*

In 2017, Amodeo, through his guardian, brought a writ of coram nobis to obtain relief from the void judgment (App. 19) and Amodeo's guardian sought appointment of counsel. (App. 1). The district court refused to either grant relief or appoint counsel. (App.1) Instead the district court reached into an armamentarium of ancient procedures and interposed the doctrine of laches, thereby avoiding both a merit

determination on the invalidity and voidness of the PFO and the need to appoint counsel. (App. 21). The Court of Appeals upheld the decision, which brought the Eleventh Circuit into conflict with its sibling circuits on when due process requires a court to provide counsel for an incompetent civil litigant.

Most of the Court of Appeals conclude that a district court must not decide the merits of an incompetent litigant's claims prior to appointing counsel. The Eleventh Circuit rejected that majority rule by affirming the district court's effective merits ruling against counsel-less Amodeo. (App. 1). This Court should resolve the circuit conflict of whether fairness and due process require the appointment of an attorney to assist a counsel-less incompetent prior to the district court's merits decision.

This Court holds that a void judgment is not merely erroneous but does not exist at law. *United Student Aid Funds Inc. v. Espinosa*, 559 U.S. 260 (2010).

The circuits are conflicted on whether the passage of time makes a void judgment valid; since 1963, at least 7 circuits say no, and the Eleventh Circuit says it may. (App.1).

Amodeo challenged the district court order as void as a matter of law since (1) the district court lacked jurisdiction over the res and (2) governing law held the forfeiture orders void not merely voidable. The district court did not address the jurisdictional claim; instead inserting a time bar, that is laches. The Eleven Circuit affirmed that decision and put itself in conflict the other federal circuit to have decided the question.

1. This Court holds that when a judgment is void as a matter of law, the judgment never existed. Correspondingly, a petitioner may challenge the judgment at any time. The Eleventh Circuit adopted the opposite rule when it affirmed the district court's denial of the Coram Nobis petition predicated on laches foreclosing the relief.

A position that is contrary to this court's decisions culminating in *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260 (2010) and in conflict with the majority of the federal circuits, which hold that the "passage of time cannot lend validity to a judgment that is otherwise void. See, e.g., *Precision Etehingsand Findings, Inc. v. LGP Cem. Ltd*, 953 F.2d 21, 23 (1<sup>st</sup> Cir. 1992); *Bloodworth Bond Shipyard v. M/V Caribbean Wind*, 841 F.2d 646, 649 (5<sup>th</sup> Cir. 1988); *In re Center Wholesale*, 759 F.2d 1440, 1447 (9<sup>th</sup> Cir. 1985); *V.T.A. Inc. v. Airco, Inc.* 597 F.2d 220, 224 (10<sup>th</sup> Cir. 1979); *Taft v. Donellan Jerome, Inc.*, 407 F.2d 807, 808 (7<sup>th</sup> Cir. 1969) (entertaining jurisdictional challenge 13 years after final judgment); *Crosby v. Bradstreet, Ca*, 312 F.2d 483 (2d Cir. 1963) (vacating void judgment 30 years after judgement was entered); *Austin v. Smith*, 312 F.2d 337, 343 (D.C. Cir. 1962). In all, seven circuits have adopted the opposite rule from that of the Eleventh. This Court's holdings suggest the Eleventh's rule is wrong, e.g. *United Student Aid Funds Inc. v. Espinosa*, 559 U.S. 260 (2010), citing two authoritative and procedure guides.

In sum, the Eleventh Circuit has it wrong and its departure from the established rule bodes badly for the goal of certainty and uniformity in the law; not to mention that the Eleventh Circuit rule crushes due process and fundamental fairness for Mr. Amodeo. This Court should grant the writ, bring the Eleventh Circuit into line with its sibling courts, and erase any doubt that a judgment that is void has never existed at law and is without force and effect.

Hence, that void judgment may be challenged at any time – since neither procedural defect nor the statute of limitations can make a void judgement valid. Similarly, the passage of time, nor the consent of the parties, non-procedural default can provide jurisdiction where none existed. See. E.g., *Arbough v. Y. & H. Corp*, 546 U.S. 500 (2006).

To the extent, the Eleventh Circuit relied upon Amodeo's attorney oversight in not presenting the question on appeal, then the Eleventh clashes with the rule of this Court and every other circuit. All of which hold that jurisdictional challenge cannot be forfeited, waived or abandoned. See e.g., *United Student Aid Funds Inc. v. Espinosa*, 559 U.S. 260 (2010); *Arbough v. Y & H. Corp*, 546 U.S. 500, 514 (2006); *United States v. Cotton*, 535 U.S. 625, 630 (2002).

Simply, Mr. Amodeo's claim sounded in subject-matter jurisdiction thus the Eleventh circuit needed to address the jurisdictional claim regardless of counselor error.

In sum, the district did not have the authority to alter or amend the Preliminary Order of Forfeiture, specifically in the absence of any third-party claim. The law specifically provides that the Preliminary Order of Forfeiture becomes the Final Order of Forfeiture. Fed. Crim. Pr. Rule 32.1 (2008). The existing record and the extent facts show that the district court acted beyond its lawful authority, therefore Mr. Amodeo's Coram Nobis challenge raised a subject-matter jurisdiction challenge that was not subject to the defense of laches.

This Court should grant this certiorari in order to correct the Eleventh Circuits erroneous rule of law, resolve the circuit split, and protect Mr. Amodeo's rights to a fair hearing and due process of law.

2. **This court and the majority of the Circuit's hold that a court must not decide the merits of an incompetent's claims or defenses unless the incompetent's interests are adequately represented by a licensed attorney. The Eleventh Circuit adopted a contrary rule when it affirmed the district court's denial of Amodeo's Coram Nobis petition prior to appointing counsel.**

In Amodeo's appeal, the Eleventh Circuit's precise holding runs afoul of the rule in most of the federal circuit courts of appeals; that, when an uncounseled litigant appears in federal court, the court must either appoint counsel to represent the incompetent (or to represent the incompetent's non-lawyer guardian) or the court must avoid making an adverse merits ruling, adverse to the incompetent litigant.

The Eleventh and all circuits recognize that a non-lawyer guardian (or next friend or other representative) may not litigate an action before the bar without a licensed attorney. *Kennedy v. Secretary of Health and Human Resources*, No. 90-1009V at n.17 (Fed. Cir. 2011); citing (*Devine v. Indian River County School Bd.*, 121 F.3d 576, 582 (11<sup>th</sup> Cir. 1997).

It is undisputed that in the district court proceedings, the district court did not appoint counsel and, instead, chose to allow Mr. Amodeo's State of Florida appointed guardian, Charles Rahn, a retired police officer, serve not only as Amodeo's representative, but also effectively as Amodeo's attorney. (App 2). That is the district court denied Mr. Rahn's request to appoint an attorney. (App. 2) to protect Mr. Amodeo (the ward's) interests.

A decision the appellate court upheld because, in the light of laches, the district court's decision did not prejudice Amodeo. (App. 1). But that overlooks that laches is necessarily a fact intensive inquiry. Hence, entails investigation and record development activities within the province of an attorney, a trained practitioner, not a retired police officer and an incompetent litigant.

The foundation of several of this Court's decisions require the appointment of counsel to assist an incapacitated litigant before a district court reaches a definitive judgment that either forecloses a merits determination or adjudicates the merits. See, e.g., *Christeson v. Roper*, 574 U.S. 373 (2015) (holding that a prisoner should have the opportunity to establish extraordinary circumstances justify exceptional relief, such as equitable tolling, "and is entitled to the assistance of substitute counsel in doing so" when the litigant is otherwise entitled to counsel).

Similarly, this Court rejected the idea that an incompetent habeas corpus petitioner was entitled to an indefinite stay of habeas proceeding. *Ryan v. Gonzalez*, 568 U.S. 57, 77 (2013); *Carter v. Tibbals*, 518 F. App'x 441 (2013). But notably, in both cases the incompetent litigant had the timely assistance of appointed counsel. And what these cases show is that incompetency alone does not necessarily stay a proceeding or require habeas counsel, but counsel is only not required when the record permits a fair adjudication of the merits without further fact development, that is, due process permit the court to allow an incompetent litigant to proceed without attorney assistance, but only when a counseled--record conclusively resolves the matter. Notably, a majority of the federal circuits explicitly echo this Court's

proposition that when an incompetent litigant was without representation “the court was without authority to reach the merits of those claims.” *Berrios v. N.Y.C. Housing Authority*, 569 F.3d 130, 134 (2d Cir. 2009); *Gardner ex rel. Gardner v. Parson*, 874 F.2d 131, 140 (3d Cir. 1989); see *Elliot v. Carcieri*, 608 F.3d 77, 94 n.15 (1<sup>st</sup> Cir. 2021); *Adelman v. Craves*, 747 F.2d 986, 989 (5<sup>th</sup> Cir. 1984).

Like Mr. Roper, Mr. Amodeo was entitled to counsel –albeit based on different statutes – in order that the attorney would investigate the facts, research the law, and present any viable claims to the court including a defense that the doctrine of laches did not apply to a challenge that a judgment was void because the issuing court lacked jurisdiction. See, e.g., *Schmid v. McCauley*, 825 F.3d 398 (7<sup>th</sup> Cir. 2016) (Easterbrook J.) The district court should have appointed Mr. Amodeo an attorney to properly represent his interests before the bar. *See Id.* This Court should grant the writ in order to resolve the conflict between circuits, and the Eleventh Circuit’s departure from the ordinary and established judicial practice to eliminate the Eleventh’s tension with this Court’s decisions.

3. **Mr. Amodeo raised a challenge in the 11<sup>th</sup> Circuit questioning the district court’s jurisdiction to issue an October 8, 2008 preliminary order of forfeiture. The district court denied the challenge based on laches. On appeal, the Eleventh Circuit District Court departed from the standard rule that a jurisdictional challenge cannot be forfeited or waived, and found Amodeo had waived (abandoned) the claim. *United States v. Amodeo*, 916 F.3d. 967, 971 (11<sup>th</sup> Circ. 2019).**

The Eleventh Circuit had a duty to examine the district court’s jurisdiction before addressing on the merits of the appeal. It is the duty of the appeals court to examine the basis of our jurisprudence independently and to dismiss any case in which

jurisdiction does not affirmatively appear in the record. *Mansfield, C+L. M. Ry. Co. v. Swan*, 111 U.S. 379, 382 (1884).

An appellate court must first consider the matter of our own jurisdiction. *Amodeo, 916 F.3d. at 971 (11<sup>th</sup> Circ. 2019)*.

## CONCLUSION

Fundamental fairness and constitutional due process require that a mentally – incompetent litigant receive attorney assistance before a district court makes a definitive ruling on the merits of the incompetent's claims. A position supported by this Court's decisions and the rule in at least 7 circuits, the Eleventh Circuit adopts the opposite rule. This court should grant the writ and resolve the conflicts between The Eleventh Circuit should have eca The Eleventh Circuit begged the question to whether Mr. Amodeo's was entitled to the appointment of counsel. Thereafter, it must have examined the jurisdiction of each court below it since if any of those courts lacked jurisdiction, then the appeals court's jurisdiction is limited to declaring the judgment void for want of the prior court having jurisdiction.

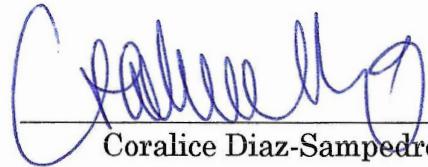
The Eleventh Circuit avoided the question by presuming that laches (mere passage of time) could make a void judgment valid. A premise which far departs from the established and ordinary rule of this Court and the rule of the majority of the circuit courts to have addressed the issue.

This Court's rulings suggest that a legally void judgment never issued at law, (which indicates a challenge to a judgment for voidness) can never be time barred. A position taken by most circuits to have decided the question. Here, the Eleventh

Circuit takes the opposite view and holds that an illegal or void judgment can be made valid by the mere passage of time.

This Court should grant the writ and correct the Eleventh Circuit's rule in order to preserve uniformity and certainty in the law.

**Respectfully submitted this 19th day of November, 2021.**



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