


CASE NO. 21-925

**IN THE SUPREME COURT OF THE
UNITED STATES**

**Adolfo S. Montero,
Petitioner**

v.

**United States,
Respondent**

Supreme Court, U.S.
FILED

MAR 21 2022

OFFICE OF THE CLERK

**On Writ of Certiorari to the United States
Court of Appeals for the Fifth Circuit**

Petition for Rehearing en Banc

**Proceeding Pro Se
Adolfo S. Montero
1215 Canyon Maple Rd.
Pflugerville, Texas 78660
(512) 670-7675**

QUESTIONS FOR REVIEW

1. Same as in the original Petition for Certiorari.

LIST OF PARTIES AND RULE 29.6
STATEMENT

Corporate Statement

Same as in the original Petition for Certiorari.

List of Parties

Same as in the original Petition for Certiorari.

ii
TABLE OF CONTENTS

QUESTIONS FOR REVIEW	i
LIST OF PARTIES AND RULE 29.6 STATEMENT	i
TABLE OF CONTENTS	ii
TABLE OF APPENDICES	iii
TABLE OF AUTHORITIES.....	iv
OPINIONS BELOW	1
JURISDICTION	1
STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED	2
CONCISE STATEMENT OF THE CASE	2
REASONS FOR GRANTING THE WRIT.....	8
CONCLUSION	11

TABLE OF APPENDICES

Refer to the appendices from the original Petition
for Certiorari.

iv
TABLE OF AUTHORITIES

Same as in the original petition, plus:

Statutes

26 CFR §31.3401(a)-3.....	Fn8,Fn11,Fn15,Fn22
26 CFR §31.3402(f)(2)-1	5

Cases

<u>Brushaber v. Union Pacific R. Co.</u>	
240 U.S. 1 (1916)	3,Fn5-6,4,Fn9,5,6,8,9
<u>South Carolina v. Baker</u>	
485 U.S. 505 (1988).....	Fn7
<u>Pollock v. Farmers Loan Trust Co.</u>	157 U.S. 429
(1895).....	Fn7,5
<u>Southern Pac Co v. Lowe</u>	
247 U.S. 330 (1918).....	Fn7,5
<u>John Stanton v. Baltic Mining Company</u>	
240 U.S. 103 (1916).....	Fn7,5
<u>Stella Flint v. Stone Tracy Company</u>	
220 U.S. 107 (1910).....	Fn7,5
<u>U.S. v. Crawford</u>	372 F.3d 1048
(9th Cir. 2004).....	4,Fn10
<u>United States v. Michael A. Sussmann</u>	
Criminal Case No. 21-582 (CRC)	Fn14
<u>Hodges v. State</u>	500 So.2d 1273
(Ala. Crim. App. 1986).....	Fn17
<u>New York Life Ins Co v. Fletcher</u>	Ex, 6 S.Ct. 837
117 U.S. 519, 29 L.Ed. 934 (1886).....	Fn18
<u>Gondeck v. Pan American World Airways, Inc.</u>	382
382 U.S. 25 (1965)	7,Fn19,10,12

OPINIONS BELOW

Same as in the original Petition for Certiorari. Emphasis here is on the **misrepresentations and Fraud by the lower courts**, likely being intentionally overlooked (*tacit approval*) by the Supreme Court judges if they did in fact review the original petition for Certiorari themselves rather than having some legal aides do the work for them.

JURISDICTION

Timing Prerequisites

The original Petition for Certiorari was timely filed, so not at issue for rehearing. **Rule 44** for Rehearing states a time limit of **25 days** "*after entry of the judgment or decision*". The Petition for Certiorari was denied on **2/22/2022**. Calculating 25 days as per Rule 30.1 results in 3/19/2022 which lands on a Saturday. As per Rule 30.1 since the last day of the period lands on a Saturday, the deadline is extended to Monday **3/21/2022**, as reflected by the Certified Mail Post Mark, thus this Petition for Rehearing is filed timely. Petitioner even checked with the clerk of the court to ensure 3/21/2022 was the correct deadline for filing.

Statutory jurisdiction is the same as before for the original Petition for Certiorari. Rule 44 extends the original jurisdiction to cover the Petition for Rehearing.

2
STATUTES AND CONSTITUTIONAL
PROVISIONS INVOLVED

Same as in the Petition for Certiorari.

CONCISE STATEMENT OF THE CASE

The petition for rehearing is presented in good faith and not for delay. There is no death penalty or other similar outcome that is currently being delayed by this court's review of the Petition for Certiorari or this court's review of the Petition for Rehearing en banc. Rule 44 dictates that the grounds must be limited to "*intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented.*"

Rule 44.3 also states "*The Clerk will not file any response to a petition for rehearing unless the Court requests a response. In the absence of extraordinary circumstances, the Court will not grant a petition for rehearing without first requesting a response.*"

Federal courts generally all follow the same Rules under FRCP¹, FRCrP², FRE³, and FRAP⁴. The guidance under FRAP Rule 35(a) states: "*[...] An en banc hearing or rehearing is not favored and ordinarily will not be ordered unless: (1) en banc consideration is necessary to secure or maintain uniformity of the court's decisions; or (2) the proceeding involves a question of exceptional*

¹ Federal Rules of Civil Procedure

² Federal Rules of Criminal Procedure

³ Federal Rules of Evidence

⁴ Federal Rules of Appellate Procedure

importance."

Supreme Court Rule 44 is not currently reflective of FRAP Rule 35(a), which seems strange since the grounds in Rule 35(a) seem perfectly applicable to the Supreme Court rehearing process in order to support the interests of justice. Under FRAP Rule 35(a)(1), rehearing would be warranted to **re-establish the uniformity in United States court decisions (at all levels)** regarding correct interpretation⁵ of the 16th amendment as per the Brushaber⁶ ruling and all other similar authorities⁷ cited in the Petition for Certiorari. Under FRAP Rule 35(a)(2), rehearing would be warranted since it is a matter of **exceptional importance to castigate Fraud in the lower courts** if the judicial system is to remain credible and functional, as well as for the protection of all litigants from corrupted judges. The 5th Circuit court was **completely silent** on any commentary regarding why they denied Petitioner's motion for Reconsideration. The 5th Circuit also refrained from providing any comments or justification in support of their unjust decision to dismiss the appeal. The District Court stated several **misrepresentations** in their furtherance of the court Fraud, in addition to pretending that the Brushaber Supreme Court authority is somehow "*Frivolous*". **To date, Petitioner has not heard**

⁵ As per the original Petition and the very lengthy court record, courts below are in several instances **Fraudulently** claiming the Brushaber holding to state **the opposite of what it factually states**.

⁶ Brushaber v. Union Pacific R. Co., 240 U.S. 1 (1916)

⁷ South Carolina v. Baker, 485 U.S. 505 (1988), Pollock v. Farmers Loan Trust Co., 157 U.S. 429 (1895), Southern Pac Co v. Lowe, 247 U.S. 330 (1918), John Stanton v. Baltic Mining Company, 240 U.S. 103 (1916), Stella Flint v. Stone Tracy Company, 220 U.S. 107 (1910)

any valid counterarguments (*or opposing authorities*) to the multiple Supreme Court authorities presented, all harmonizing with the still standing Brushaber Supreme Court authority. The perceived situation thus far (*for anyone reading the court record*) is one where all court levels (*from the District Court all the way to the Supreme Court*) are **conspiring** to keep the Brushaber authority and the CFR “*deeming*” proviso⁸ suppressed or hidden⁹ from the general public for fear of losing the perpetuity of ill-gotten Federal revenue.

Moving on to Rule 44 requirements, Petitioner could not find a definition for “*intervening circumstances*” in the Supreme Court decisions, but did find a definition in a 9th Circuit decision under Crawford¹⁰. One **intervening event** since the time of filing the Petition for Certiorari is that of the IRS getting more brazen with the Fraud scheme by changing Petitioner’s W-4 from a complete exemption from **voluntary withholding**¹¹ to a **mandatory withholding** program without any legitimate legal basis or justification in response to Petitioner’s reply indicating he is not a statutory “*employee*” as per the IRS’ own records, and that he is not involved in any Federally privileged activity **subject to an excise**

⁸ 26 CFR §31.3401(a)-3

⁹ Not in the sense that the Brushaber opinion itself is inaccessible to legal search engines, but in the sense that its ramifications are not promulgated or highlighted as contravening the current (*intentionally misleading*) IRS **propaganda** regarding Federal taxation of remuneration for services.

¹⁰ U.S. v. Crawford, 372 F.3d 1048 (9th Cir. 2004) : *Intervening circumstances, in the case law, means intervening events.*

¹¹ As the only known statutory means to avoid entering a voluntary contractual agreement enabling the “*deeming*” proviso of 26 CFR §31.3401(a)-3.

tax as per the authority in Pollock, Brushaber, Stanton, Lowe, and Flint. The IRS also completely avoided a legally responsive answer to Petitioner's question raising the issue that nothing to his knowledge has legally changed in his role at Dell from 2021 to 2022 to explain why **the IRS allowed the full exemption from withholding for tax years 2010 through 2021 (12 tax years in total), yet disallowed it for 2022**. The only direct references in the CFR to **mandatory withholding** are related to rollover distributions or supplemental wage payments over 1 million dollars¹². The one indirect reference in 26 CFR §31.3402(f)(2)-1(g)(2)(i) has a requirement for the IRS to prove there was a "*materially incorrect statement*" in the W-4 as per section (A), or that the payee is "*not entitled to claim a complete exemption from withholding*" as per section (B).

The other intervening event is the departure of Justice Stephen G. Breyer and the focus on the Supreme Court nominees for the vacant position. Having justices appointed by a well-known corrupt politician¹³ (*i.e. Joe Biden*) **does not promote public trust in the Supreme Court**. It also helps to support the perception that corruption is currently tolerated at all levels of government – inclusive of

¹² 26 CFR § 31.3405(c)-1 + 26 CFR § 31.3402(g)-1(a)(2) + 26 CFR § 31.3402(n)-1(b) + 26 CFR § 31.3402(p)-1(b)(ii) + 26 CFR § 1.403(b)-7(b)(4) + 26 CFR § 1.402(c)-2(b)(3) + 26 CFR § 1.401(a)(31)-1(b)(1)

¹³ It has been all over the news how the Biden family has been taking bribes through his son Hunter Biden. The videos of Hunter Biden would be admissible as court evidence as well as the paperwork linking him to the Ukraine and China payouts.

(<https://www.nytimes.com/2022/03/16/us/politics/hunter-biden-tax-bill-investigation.html>)

the Supreme Court. The **Durham probe** into Hillary Clinton is also establishing a court record¹⁴ replete with examples of corruption at the highest government levels.

This perception that corruption can permeate even the most sacred and previously trusted bodies of our government supports the Rule 44 requirement on *“other substantial grounds not previously presented”*. Upon initial filing of the Petition for Certiorari, Petitioner was hopeful that the clear language in the CFR authorities regarding the *“deeming”* proviso¹⁵ and its harmonization with the Brushaber Supreme Court authority would finally put an end to the **contortions** performed by all Federal courts generally in avoiding a proper rebuttal response to those **sound authorities**. The original petition did not go so heavily into the corruption factor since Petitioner was still giving the benefit of the doubt to the Supreme Court justices in upholding their oath of office¹⁶ to protect the Constitution (*despite political pressures*) as originally exemplified by Justice White in Brushaber. Petitioner suspects that Justices of the Brushaber time period were much less likely to sway based on political favors or other corrupt practices. The supporting evidence in the Petition (*along with a very extensive court record in Petitioner’s journey through the lower courts*) is more than enough

¹⁴ United States v. Michael A. Sussmann, Criminal Case No. 21-582 (CRC)

¹⁵ 26 CFR §31.3401(a)-3

¹⁶ <https://www.supremecourt.gov/about/oath/oathsofoffice.aspx>: “I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same;”

grounds to warrant Certiorari, thus the lack of Supreme Court action and **remedy** to correct clear evidence of Fraud in the lower courts **amounts to tacit approval of the Fraud**. By granting tacit¹⁷ approval to Fraud in the lower courts, the Supreme Court Justices themselves become accomplices¹⁸ to the Fraud scheme (*or at least liable for inexcusable negligence*).

If all of the foregoing is mistakenly or intentionally deemed as failing to meet the requirements of Rule 44, the authority in Gondeck¹⁹ states that ultimately **"the interests of justice" can override** the need to follow Rule 44 too strictly.

*We are now apprised, however, of 'intervening circumstances of substantial * * * effect,'* justifying application of the established doctrine that 'the interest in finality of litigation must yield where the interests of justice would make unfair the strict application of our rules.' United States v. Ohio Power Co.,*

¹⁷ Hodges v. State, 500 So.2d 1273 (Ala. Crim. App. 1986) : 'Additionally, sufficient corroboration of the testimony of an accomplice may be furnished by a **tacit admission by the accused**, by the **suspicious conduct of the accused**, and the **association of the accused with the accomplice**, or by the defendant's **proximity and opportunity to commit the crime**.'

¹⁸ New York Life Ins Co v. Fletcher, Ex, 6 S.Ct. 837, 117 U.S. 519, 29 L.Ed. 934 (1886) : The fraud could not be **perpetrated by the agent alone**. The aid of the plaintiff or the insured, either **as an accomplice or as an instrument**, was **essential**. If she was an accomplice, then she participated in the fraud [...] She says that she and her husband signed the application without reading it, and without its being read to them. That of itself was **inexcusable negligence**.

¹⁹ Gondeck v. Pan American World Airways, Inc, 382 U.S. 25, 86 S.Ct. 153, 15 L.Ed.2d 21 (1965)

If upholding and protecting the Constitution and castigating Fraud in the lower courts is not in the “*interests of justice*”, then it must be true that the only justice that truly matters is whatever political favors are owed in return for holding a seat in the Supreme Court as a Justice (*or allegiance to whoever pulls the government strings rather than allegiance to the Constitution*). Because no court has been able to explain how Petitioner’s authorities are flawed (*especially Brushaber and all other SCOTUS decisions in the same vein*), the only remaining logical conclusion is that Petitioner is indeed correct in his reading of the authorities cited and corruption is the only reason that the courts are not **upholding those authorities**. Petitioner is not an unreasonable man, and would welcome an honest discussion and/or clarification of where his authorities might be flawed by the normal court process of looking into the details of the statutory construction and the historical itemization of events and court decisions leading up to and following the Brushaber holding.

REASONS FOR GRANTING THE WRIT

Petitioner spoke with the clerk of the court shortly after the Petition for Certiorari was denied. According to the clerk, the petition was fully reviewed by the judge panel and not just legal aides working for the Justices²⁰. The en banc rehearing petition is being timely filed to ensure the full panel of Justices is keenly aware and fully cognizant of the

²⁰ This does seem improbable if the intake of cases is so large that the Justices cannot practically look at all of them without some pre-filtering done by legal aides.

Fraudulent misrepresentations of the **Brushaber** holding and the many other instances of Fraud captured in the court record during Petitioner's dealings with the courts below (*as well as the IRS*). If legal aides did the preprocessing of the petition for the initial sorting and filtering, they should not have flagged the petition as being in the same vein as the threadbare "*wages are not income*" cases²¹. That would truly be a complete waste of this court's time and resources since statutory "*wages*" as defined in the IRC are purposely defined as taxable income. As shown by the extensive court record, the courts below clearly ignored the "*deeming*" CFR authority requirement that a **signed voluntary withholding contract/agreement must be in effect** before non-taxable remuneration can be legally "*deemed*" to be statutory "*wages*" in the same category as the narrow definition of "*wages*" found in IRC §3401(a). This legal agreement/contract operates as the perfect **proviso** to avoid the **Constitutional infirmity** that would result if all remuneration was considered to be subject to a direct tax rather than being applied as an **excise tax** (*as per the Brushaber holding that Constitutional limitations regarding Federal taxation powers were not nullified by the 16th Amendment*).

To this end (*of avoiding any legal discourse of the "deeming" proviso*), lower courts Fraudulently pretend through **intentional misrepresentations**

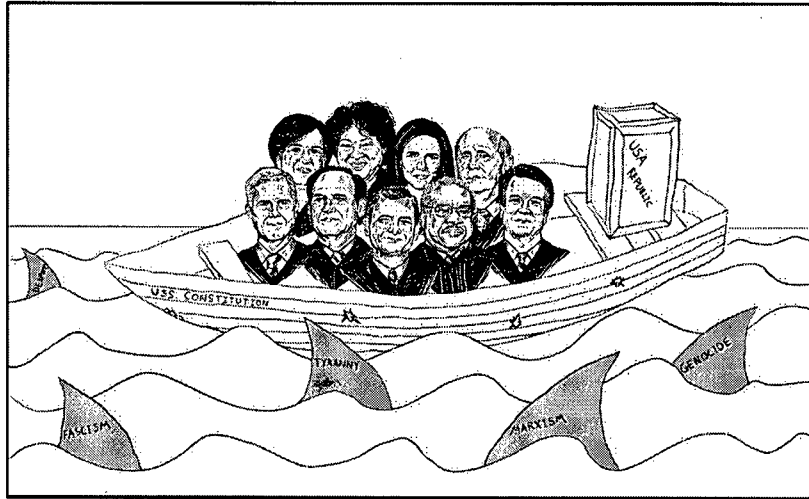
²¹ In order to easily discard it as a pointless waste of the court's time since the "*wages are not income*" fallacy has already wasted too many court resources. The instant case turns on remuneration being legally "*deemed*" to be taxable when it otherwise does not fall within the scope of the definition for statutory taxable "*wages*" under IRC §3401(a).

that Petitioner is yet another litigant claiming the ludicrous “*wages are not income*” fallacy.

If redressing clear evidence of Fraud is not in the “*interest of justice*” as per the foregoing Gondeck authority, the only **logical explanation** left is that there must be some other corrupt influence on the Justices (*or their legal aides*) dictating and commanding that the Fraudulent “*deeming*” scheme²² should be blocked from creating any court precedent at all costs.

The visual analogy is that of the image shown further below. The fundamental law in the Constitution is what keeps the United States of America afloat and protects its cargo from sinking into the shark infested waters that have killed and maimed other countries. For other countries that have already drowned in corruption and tyranny, their path ultimately leads to appalling scenarios like Venezuela where citizens have to eat out of garbage cans. History also shows that there are no limits to how far unregulated dictators can stray, as easily proven by Hitler’s Holocaust. The Supreme Court Justices were originally devised by the Founding Fathers to safeguard this boat, keeping the Republic afloat, rather than poking new holes into the boat. Most important of all, when the boat finally sinks for lack of safeguarding by the designated stewards, we all sink together (*including the Justices and their progeny*).

²² 26 CFR §31.3401(a)-3



Still on the boat analogy, someone would have to be **extremely delusional** to think that a global dictatorship would be a good thing, regardless of short-term personal gains. Allowing the Constitution to fall under the false pretext/pretense of some presupposed benevolent global governance would be a quick path to realize the hard life lesson that **there is no honor amongst thieves**. Any short-term gains would turn into a definite loss in the long-term (*up to and including the loss of life, e.g. gas chambers in the Holocaust*).

CONCLUSION

If there was accidental error by the legal aides in pre-screening the original petition by automatically assuming it was a "*wages are not income*" clone, then please excuse all the strong language about corruption.

However, if the Justices are fully cognizant of the

content and still refused to grant Certiorari, then all of the reprimanding language is well deserved.

Technically speaking, the original petition was not lacking in having enough grounds to grant Certiorari. The issues raised met all of the requirements for granting Certiorari by the Supreme Court. Also technically speaking, there is precedent from the Gondeck ruling to emphasize that serving the "*interests of justice*" can provide some judicial discretion around the application of Rule 44.

Should the Court deny the Petition for Rehearing, it will be captured permanently in the court record that the Justices did personally tacitly approve all of the Fraud disclosed in the original complaint as well as all of the Fraudulent misrepresentations carried out in the courts below. There are clear claims of Constitutional **Due Process violations** where **lower courts** are involved in **collusion to obstruct justice through Fraud**, yet no corrective action was taken by the Supreme Court and no remedy has been provided. For all of the foregoing reasons, the Petition for Rehearing should be granted.

Respectfully Submitted,



3/20/2022

Adolfo Sandor Montero, Pro-Se
1215 Canyon Maple Rd.
Pflugerville, Texas 78660
(512) 670-7675

RULE 44 CERTIFICATE

Pursuant to Rule 44, I hereby certify that the foregoing PETITION FOR REHEARING EN BANC is filed in good faith and not for delay. I also certify that the content is restricted to the grounds specified by Rule 44 and the SCOTUS authority in Gondeck¹.

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

Executed on 3/21/2022.



Adolfo Sandor Montero, Pro-Se
1215 Canyon Maple Rd.
Pflugerville, Texas 78660
(512) 670-7675

¹ Gondeck v. Pan American World Airways, Inc. 382 U.S. 25, 86 S.Ct. 153, 15 L.Ed.2d 21 (1965)