23-5706

Darrell D. Smith,
Petitioner,

v.

United States of America,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
The United States Court of Appeals
For the Eighth Circuit

PETITION FOR WRIT OF CERTIOARI

Submitted By:

Darrell Smith, #16355-029
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PO Box 1000
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Submitted September 27, 2023

QUESTION PRESENTED

The question presented here is, "can the courts prosecute (indict, try and sentence) indigent Companies without legal representation?" Without legal representation, the Constitutional rights of the Company, and the Companies' former manager, are violated when no attorney is present to challenge (1) the faulty basis of "fraud" leveled against the Companies in order to (2) illegally seize Company assets to (3) meet, yet challenged, unmet claims of restitution against the former manager, claims challenged in a §2255[1] approved for review by Judge Strand, (4) wherein, under duress and threat of additional loss of liberty (being sent back to county jail resulting in loss of FSA credits), the former manager was forced to represent the Companies for prosecution, (5) wherein the untained assets, intended to pay legal expenses, of the Companies, and former manager, were seized to meet the yet challenged, unmet claims of restitution, and (6) the Companies were treated, in all respects, like "persons", yet, based on the ruling in "California Men's Colony II" were not afforded "representative counsel" as afforded "natural persons."

Constitutional violations result from lack of appointment of legal representation for indigent Companies. Appointment of counsel for indigent Companies differ from Circuit to Circuit based on interpretations of "Rowland v. California Men's Colony II,"506 U.S. 194 192 S Ct (1993). Courts in the 9th, 3rd, 5th, 6th and 7th Circuits ruled that indigent Companies **could not be prosecuted without legal representation.** However, in this case, the Northern District of Iowa indicted the Companies, seized their assets, and the assets of the former manager, appointing the incarcerated former manager to represent the Companies or face additional prison time, refusing to appoint legal representation for the Companies - even though the former manager, Smith, was challenging his indictment in "approved for review" §2255. Although the Companies were given a "Certificate of Appealability", the Eighth Circuit denied the right to appeal due to lack of legal representation - **a Catch 22** - take all the assets to pay for representation - then demand the Companies hire representative counsel, or appeal denied.

1. See Appendix C, Doc. No. 21, Judge Strand's Order approving review of Smith's §2255 in case no. CR-17-2030, listed as case no. 20-cv-02105, decided August 25, 2023.

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PARTIES TO THE PROCEEDING

Petitioner, defendant-appellant is Energae L.P. and I-Lenders, LLC, being represented at sentencing by Darrell D. Smith, former C.F.O. of I-Lenders, LLC (Energae L.P.'s General Partner) being currently imprisoned at Duluth, Minnesota Federal Prison Camp.

Respondent is the United States of America, appellee. Under this Court's Rule 12.6, Darrell Smith, company representative, is the defendant-appellant in associated criminal case number CR-17-2030, N. District of Iowa, 2018.

Associated Government Parties:

1. Mr. Martin J. McLaughlin, Asst. U.S. Attorney: marty.mclaughlin@usdoj.gov, United States District Court for Northern Iowa, 111 7th St. S.E. Box 1, Cedar Rapids, Iowa 50423

2. Mr. Timothy Vavricek, Asst. U.S. Attorney: tim.vavricek@usdoj.gov, United States District Court for Northern Iowa, 111 7th St. S.E. Box 1, Cedar Rapids, IA 50423

RELATED PROCEEDINGS

United States v. Energae L.P. & I-Lenders, LLC, No. 22-3076, U.S. Court of Appeals for the Eighth Circuit, Judgment entered April 20, 2023.

United States v. Energae L.P. & I-Lenders, LLC No. CR-20-2007, N. Dist. of Iowa, Judgment Entered September 22, 2022.

United States v. Darrell D. Smith, No. CR-17-2030, N. Dist. of Iowa, Judgment Entered September 15, 2018.

United States v. Darrell D. Smith, No. CR-16-2002, No. Dist. of Iowa, Judgment Entered December 14, 2016.

Darrell D. Smith v. U.S., §2255 filed reference Case No. CR-17-2030, N. Dist. of Iowa, §2255 Assigned Case No. 20-cv-02105-LTS, 2020.

Darrell D. Smith v. U.S. "Coram Nobis" filed reference Case No. CR-16-2002, N. Dist. of Iowa, Case No. Not Yet Assigned, Filed August 2023.

Darrell D. Smith v. Eischen, Warden, §2241, Case No. 23-0357, Reference "Brady Violation" in 8th Circuit Court of Appeals case, U.S. v. Darrell Smith, Case No. 18-3222, 2019, challenging Class II and non-counting of jail-time time credits.

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Rowland v California Men's Colony, Unit II Men's Advisory Council
506 US 194, 121 L Ed 2d 656, 113 S Ct 716, No. 91-1188, 1993

"...despite the Dictionary Act's general rule, an artificial entity such as an association is not a "person" for purposes of §1915, and thus, only a natural person may qualify for treatment in forma pauperis under §1915...Kennedy, J. dissented, expressing the view that, while it was an apprpriate form of analysis for the Supreme Court to attempt to uncover significant practical to include §1915, the court did not succeed in this attempt, becuase as the opinion of Thomas, J., illustrated, the broad definition of "person" preferred pursuant to the Dictionary Act, was not inconsistent with a commonsence, workable implementation of §1915..."

Monell v. Dept. of Social Services of the City of New York
436 US 658 56 L Ed 2e 611 98 S Ct, No. 75-1914, 1978

"...every **person** who...subjects or causes to be subjected...to deprivation of **any rights**, privileges, or immunities...shall be liable...municipalties [**artificial entities**] could assert no "reliance claim"...on the assumption they could **violate constitutional rights indefinitely**..."

Fourth Amendment to the Constitution

"The right **of the people** to be secure in their **persons**...against unreasonable searches and seizures, shall not be violated [i.e., the seizure of Company and personal assets intended to pay for legal representation, Luis v. U.S. (2016)]

Fifth Amendment to the Constitution

"No person shall be held to answer for a[n] infamous crime...nor be deprived of life, liberty, **or property, without due process of law**..."

Sixth Amendment to the Constitution

"In all criminal prosecutions, the accused shall enjoy...to **have the Assistance of Counsel for his defense** [Please note that Judge Souter, in arguing that §1915 did not apply to "artificial entities" justifies his opinion because §1915 uses the term "**he**", yet, here in the Sixth Amendment no court would deny that "**his defense**" applies equally to Companies as it does to natural persons.]

U.S. v. JB Tax Professionals, Inc.
E. Dist. of Lousiana, LEXIS 161807, No. 13-127 (2013)

"...[appointment of counsel for indigent Companies is] **an unsettled area of law**..."

U.S. v. Human Services Associates
216 F. Supp. 3d LEXIS 146009, No. 16-CR-0018, 2016

"...HSA **cannot appear in court without legal representation**..."

U.S. v. Energae LP & I-Lenders LLC
N. Dist. of Iowa, Case No. CR-20-2030, 2016. Order from Judge Strand:

"...I agree that the prudent course is to allow...the objections Smith filed in Document 41 [probation "dismissed" Smith's objections despite proof of inaccuracy]"

CITATIONS OF OFFICIAL AND UNOFFICIAL REPORTS OF OPINIONS ENTERED IN THIS CASE

U.S. v. Energae LP & I-Lenders, LLC
N. Dist. of Iowa, Case No. CR-20-2007, 2020. Document #42 Order from Judge:

"See e.g., U.S. v. Certain Real Property, 381 F. Supp. 3d 1007, 1008 E.D. Wis. 2018 ("This rule applies even if the corporation is owned by only a few closely related individuals or by a single person who seeks to appear on behalf of the corporation"); Simitar Entm't, Inc. v Silva Entm't, Inc., 44 F. Supp. 2d 986, 990 (D. Minn. 1999)("Even sole shareholders of of corporations are prohibited from representing such corporations pro se."

The judge quotes these cases, yet does not appoint counsel to represent the Companies? This doesn't make sense.

U.S. v. Energae LP & I-Lenders, LLC
N. Dist. of Iowa, Case No. CR-20-2007, 2020, Document #17, from Prosecutor:

"Given the impending trial-related deadlines, and the fact that the government is also requesting that the USMS transport Smith back to Iowa, the government would request the status conferences be held at the earliest possible date and before Mr. Smith would depart for Iowa."

This is a "not-so veiled threat" to "sentence" Smith to more time in prison through the loss of FSA credits being transported back to county jail while serving time at Forrest City Low Correctional Facility. FSA credits are lost when inmates are transferred back to jail (28 CFR §523.41(c)(4)(i)-(v))

OPINIONS BELOW

Petitioner respectfully prays that a Writ of Certiorari issue to review the judgment(s) below:

For the 8th Circuit Court of Appeals, Case No. 22-3076, issued April 20, 2023. The opinion appears at **Appendix A** to the petition and appears to be unpublished (Smith sees no indication that the decision was "published" or "unpublished.")

The opinion of the Northern District of Iowa, Case No. CR-20-2007, issued September 21, 2022, appears at **Appendix B** to the petition, being listed as Document #143, Case No. CR-20-2007, and appears to be unpublished (Smith sees no indication that the decision was "published" or "unpublished").

JURISDICTIONAL STATEMENT

The judgment against the Companies was entered April 20, 2023 by the 8th Circuit Court of Appeals, with Justices Erickson, Melloy and Stras presiding. The justices ruled that although the District Court issued a certificate of appealability, they would not hear the appeal without appointment of representative counsel. Because the district court seized the assets of the Companies and the assets of Darrell Smith, assets intended to pay for legal representation, neither Smith nor the Companies had resources to hire representative counsel for the Companies. Smith's petition seeks to review this judgment entered April 20, 2023 in case number 22-3037.

Jurisdiction of the district court was based on 18 USC §3621, as Appellants were charged with an offense against the laws of the United States. The Court's jurisdiction is based on 28 USC §1291, which provides for jurisdiction over a final judgment from the United States Appellate Court. Final judgment was entered April 20, 2023. The Supreme Court of the United States has authority to review a sentence imposed under the U.S. Sentencing Guidelines pursuant to 18 USC §3742.

STATEMENT OF THE CASE, REASONS FOR GRANTING WRIT

Each year, hundreds of business people, and their businesses, are indicted, tried and sentenced. The business person's assets are sometimes seized, the assets of the business seized, and, once bereft of financial support, the court appoints counsel for the business person. However, the courts are undecided as to whether indigent businesses should also have appointed counsel. The 3rd, 5th, 9th, 6th and 7th Circuits ruled that indigent Companies **could not** be indicted tried and sentenced without appointed counsel. In this case against the Companies, Energae LP and I-Lenders, LLC, the Northern District of Iowa did something different - they indicted the Companies **without legal representation**, appointing instead the Comapnies' former C.F.O., Darrell Smith, while incarcerated to represent the Companies. Smith was "literally" forced to go along with the indictment or face additional jail-time and prison time (despite false assurances from the government as being otherwise). Smith appealed the indictment, plea agreement and sentencing to the 8th Circuit Court of Appeals. The 8th Circuit **denied Smith's right to appeal, contradicting the District Court's assurances that Smith could appeal this case**, claiming that they, the 8th Circuit, "were not authorized" to hear Smith's appeal due to "California Men's Colony" - Smith needed to hire legal counsel to represent the Companies in order to file an appeal. Smith objected to their denial telling the 8th Circuit that, in violation of Luis v. U.S., the government seized Smith's personal assets intended to pay legal counsel for the Companies and himself - an untainted $120,000 IRA, seized **after** the Companies were indicted in 2020 (violation of 4th & 5th Amendments, "seizure" and "due process").

Like all such indictments against indigent Companies, multiple Constitutional violations against persons and Companies can occur when no representative counsel is present:

1. The government wrongly claimed that Smith still owed $1 million on a $2.4 million wire fraud claim. Smith challenged this $1 million in "restitution"

through a filed §2255 in his personal wire fraud case, case number CR-17-2030, showing that Claimants actually received $2.6 million cash back, along with $2.5 million in tax benefits, and assigned stock values. The Companies were charged with a "wire fraud" crime in order to seize remaining Company assets to pay the $1 million in remaining restitution Smith did not owe and was challenging. A "false" claim of restitution is a violation of MVRA rules - a "Constitutional violation" (18 USC §3663(a), §3664(f)(i)(A) & §3664(e));

2. The government put in writing that Smith would "not serve additional time in prison" if he went along with the indictment of the Companies. But, Smith was already incarcerated, serving a sentence he was challenging, earning "First Step Credits" for "good behavior." The prosecutor threatened to send Smith back to county jail to face Company charges if he did not plead guilty - during Covid lockdowns - the government would send a "private plane" to pick Smith up and transport Smith back to Cedar Rapids jail - Covid in Cedar Rapids jail was significantly worse, as reported by the press. Regardless, for every month in county jail Smith would have lost 15 days of FTC credits - **extending his prison time** (28 C.F.R. §523.41(c)(4)(i)-(v)). The loss of FSA credits equalled a longer sentence. Loss of FSA Credits for the alledged "crime of a company" is a Constitutional violation (loss of liberty without due process - 5th Amendment);
3. The government used the testimony of one Claimant, Christine Kuznicki, who provably lied under oath. Smith objected to these lies, the Judge denied Smith's objections. Promoting a lie as "true" is a Constitutional violation when such lies impact the finances of individuals and Companies ("Poisonous Tree");
4. After being appointed to represent the Companies, Smith requested "discovery". The "discovery" showed that hundreds of lies had been told by Claimants and the government wrongly acted on these lies. Smith filed multiple objections to these lies - the Court denied all of Smith's objections. Denial of objections to what is provably true is a violation of the Fourth Amendment of "due process" - a Constitutional violation (5th Amendment).

There were **multiple** Constitutional violations Smith could point to reference the wrongful indictment of the Companies[1] - but, Smith is not a licensed attorney, he did not know how to go about representing the Companies in a criminal matter - especially since Smith was incarcerated having no access to proper legal knowledge, presentation, or pertinent case law. For example, the 8th Circuit ruled that Companies could be indicted for the fraudulent actions of their officers - but, **only if it is shown the Company financially benefited** from those wrong actions (U.S. v. Richmond, 700 F.2d 1183, 8th Circuit (1995)). The government was never held to account to prove that the Companies financially benefited given that burden of proof is on the government. In fact, the opposite is true, the Claimants financially benefited from their investments in the Companies from 2009 through 2013 - demanding, receiving and using USDA approved tax credits on their tax returns. Only after the Claimants had received all the tax benefits, then received all their cash back, did they file a claim of "fraud" against Smith nearly five years after their last investment. Only one $70,000 investment by one of the ten Claimants fell within the "five-year statute" of limitations. And this investor, Bill Burger, who invested this amount in early 2013 requested, received and used a $180,000 tax credit -$110,000 more than his investment. Yet, Burger received $110,000 cash back in 2015. The government claimed he only received $20,000 back at sentencing.

Licensed, representative counsel could have put forth arguments to counter wrongful Claimant and government claims. Smith put forth these arguments, but the Judge rejected every written objection Smith made. These "wrongful" Constitutional violations are played out every year in America against indigent Companies - Companies made indigent by government action. Without proper legal representation for indigent Companies, this government is no better than a totaltarian regime. Indeed the ruling Judge in the Monell v. Dept. of Social

Services, N.Y.C., stated that Companies **as persons**, should be held liable for claims of liability. In this case, the Supreme Court ruled:

> "...municipalities could assert no "reliance claim" as having arranged their affairs on an assumption that they could violate constitutional rights indefinitely..."

And so it is when indigent Companies are indicted and not appointed representative counsel - the government, the courts, are free to abuse seized Company assets in any manner they choose without being called to proper legal account.
In this case against the Companies, the Companies were (1) not treated as "persons" for liability purposes, (2) had their assets stripped without recourse, assets owned by all shareholders, not just the 10 Claimants, (3) received no legal assistance having all objections denied, (4) and Smith claims that the indictment itself was based, in-part, on provable false testimony by one of Claimants against Smith. Smith does not believe that the Supreme Court intended that the "California Men's Colony II" case be used to deprive Companies, and their representatives, of Constitutional rights. Smith asks that the Court limit the ongoing legal abuses brought upon Companies by the California Men's Colony II ruling (violation of the 6th Amendment, "right to counsel").

In essence, the 8th Circuit "hides behind" the cloak of "California Men's Colony II" to deny Smith the right to appeal - and, yet, allows the district court to treat the Companies as "persons" in all the respects of "personhood", save for right of appealability. A person can be (1) prosecuted, (2) sentenced, (3) assets seized, and (4) lied about - but, enjoys legal representation. A Company is also subjected to prosecution, sentencing, asset seizure, and false claims, which cannot be challenged in the 8th Circuit, because as the Appellate Court states, "they don't have the authority" to appoint counsel. Yet, Judge Green, in the heretofore cited HSA case states he, as a district judge, "has **inherhent authority** to appoint counsel" for indigent Companies. If the court treats a Company, in all respects, as "persons", should it not enjoy appointed counsel when indigency results from government action?

INTRODUCTION

On September 15, 2018, Judge Linda R. Reade sentenced Darrell D. Smith to 175 months in prison, reference case number CR-17-2030, for wire fraud and identity theft. From 1986 thorugh 2015 Smith was a licensed stock broker, being licensed in multiple States to invest on behalf of clients as a "registered investment advisor." At sentencing, the Court ruled that Smith had made $2,405,409.68 in "unauthorized investments" on behalf of ten prior investment clients (the "Claimants"), out of a total of approximately $48 million invested in renewable energy companies. The investments were made into Energae L.P, and I-Lenders, LLC, acting as Energae's "General Partner." Smith was the C.F.O. of I-Lenders from 2013 to the time of his indictment on January 29, 2016. The $2,405,409.68 in investments for the Claimants were made between 2009 and 2013, for which the Claimants received Kls each year disclosing their invested amounts and the amount of tax benefits allocated to them annually. From 2009 through 2014, the Claimants requested and received approximately $2.5 million back in tax benefits (tax credits as awarded by the USDA, and allocated "tax losses" from I-Lenders, LLC). One of the Claimants, Joan Priestley, was vying for control of the Companies, claiming that Smith was mismanaging her investment in the Companies and mismanaging the Companies. All of Energae's investors were "accredited investors" per the signed acknowledgment, as Energae was a "504 offering" as registered with the SEC. Although Smith had never received any commission on the investments made in the Companies, he was the Companies' largest investor, investing nearly $2 million of his own money and time in the Companies. The Companies owned partial ownership in three renewable energy produciton companies (1) Permeate Refining, LLC, a waste-to-ethanol production company located in Hopkinton, Iowa, (2) BFC Electric and Gas, LLC, a biogas-to-electricity conversion company located in Cedar Rapids, Iowa and (3) Greenbelt Resources, Inc., ("GRCO") a publicly traded ethanol production company who built modular ethanol plants, one plant build being the Stan Mayfield Biorefinery built in association with the University of Florida.

To make good on her claim of mismanagement, Priestley got to herself other previous Company managers, and some investors, to file claims of mismanagement. Priestley and her associates filed three receivership acitons against Smith and the Companies beginning in 2013, the last of which was successful in 2016 when Smith was indicted by the federal government for failure to pay $500,000 in past due payroll tax dollars they claimed Permeate Refining owed them from 2009 through 2012. Smith was not in charge of Permeate at that time, but was working with those who were financially responsible to bring financial balance to a difficult waste-to-ethanol project. The reason Smith took over "management" as C.F.O. of I-Lenders in early 2013 was to remove the bad management from Permeate and buy-out Randy Less' controlling interest in Permeate. To assert her claims of mismanagement, Priestley joined with previous managers, Jerry Krause, Todd Hylden, Osmund Jermeland, Dennis Roland, Richard Armstrong, and Randy Less - all of which had provably stolen money from the Companies, stolen assets, lied to investors regarding Permeate's production readiness, and had worked with engineers who had presented fraudulent proformas to induce investors to invest in Permeate - Smith being the largest investor. It is hard to say who convinced whom - but, clearly these previous managers spoke with Priestley, and lied to her regarding Smith's management intent. Priestley was a savvy investor, having a net worth in the $22 to $25 million range and she began to "spin" investment stories of her own to the government, filing, in addition to the receivership action, a class-action lawsuit against Smith and his former broker-dealer, Multi-Financial. Multi-Financial met with Smith asking that Smith fight Priestley's "false claims"; but, Smith would not, choosing instead to work with Multi-Financial to settle the claims. The class-action Claimants, who later became government Claimants, received $2.6 million cash from Smith and his insurer in 2015. Thus, the Claimants had not only received all their invested cash back, but, they had also requested, received and used tax benefits in excess of their investments. They had been promised approximately 24 million shares of GRCO, from 2009 through 2015, worth approximately $1.68 million at the

time of their award. Altogether, the Claimants received over $7 million return on their "unauthorized" investments of $2.4 million depending on how and when you value the 24 million GRCO shares assigned to the Claimants. At GRCO's trading high of $.25 a share in 2016, the 24 million GRCO had a trading value of $6 million. But, only Priestley could take advantage of this "trading price", given her direct ownership and holding of 20 million GRCO shares, 10 million of which had been given to her by Smith under an agreement. The 14 million other GRCO assigned shares to Claimants (10 million to Priestely + 14 million assigned = 24 million GRCO shares) had been seized by the government, being part of a 57.5 GRCO share seizure in 2013 - seized at the prompting of Priestley who was telling the government that Smith was planning on selling the shares for his own financial gain versus assigning them to all qualified shareholders as promised. The bottom line here is that the very seizure of the GRCO shares in 2013 helped justify Priestley's claims that Smith was defrauding investors. The seizure, however, was done under false pretenses, and they were held by the Government, even as they are still held, under varying, constantly changing theories of fraud by Smith, eventually leading to the indictment of the Companies, and the government's desire to sell the 57.5 million GRCO to meet unmet claims of $1 million remaining restitution - a claim Smith challenges as being "false" in his §2255 filing in the wire fraud case. Because of the government seizure the Claimants couldn't sell their assigned GRCO shares - assigned well before Smith was indicted - and this Constitutional violation of holding GRCO helped create the very "unauthorized investment" claims against Smith.

The bottom line is that the government's indictment of Smith (1) stopped the forward progress made by the Board of Advisors, (2) allowed Priestley to advance her claims of receivership and control over the Companies, (3) allowed Less to take back Permeate assets (gross worth, possibly $11 million including land and buildings, (4) allowed Krause, Permeate's C.F.O., to get away with his theft of the Permeate's money and its vodka business, and (5) allowed Priestley, through her

receivership action to advance an "alternative invesment" strategy to investors. This "alternative strategy" was admitted by her business partner, Richard Armstrong, under 2016 Grand Jury testimony. Between 2008 and 2010 Armstrong, working with Osmund Jermeland and Todd Hylden, defrauded Energae investors of nearly $3 million in an algae growing scheme. Armstrong proferred false proformas. Now Armstrong was working with Priestley, claiming Smith was the "fraud"; to establish a fish growing operation in South Carolina, wherein Armstrong would, once again, grow algae to feed the fish. In 2018 Priestley told one of the Board of Advisors she thought this was a "wonderful idea" and GRCO shares should be reallocated to Armstrong's new, envisioned trading platform. Once Priestley received receivership control, following Smith's indictment, she asked investors, in a receivership letter,to "reconsider their earlier lost investment assets in algae," and this despite Armstrong's delivery of fraudulent proformas in 2008 & 2010.

The problems between Smith and the government began in 2015 when the government, following proffer sessions, asked Smith, through his counsel, to plead guilty to (1) failure to pay Permeate's payroll taxes, (2) wire fraud and (3) identity theft. Smith told his counsel the following - all of which the government ignored:

1. Smith was not guilty of the tax payment failure. It was Krause, Permeate's CFO, who had paid himself $250,000 when taxes were due, stolen Permeate's vodka business, and was lying to the government to protect himself. Smith later learned Krause signed a "cooperation" agreement with the government if he agreed to "lie" about Smith. Krause was more than happy to do this;
2. Less had stolen over $1 million from the Companies and was guilty of the tax problem - but, the government called him to testify before the Grand Jury telling provable lies about Smith and inventing a story that Smith had agreed to pay Permeate's past due taxes in 2011;
3. Contrary to government "PSI tales", it was Smith who got Krause to pay taxes and tried to keep Krause from bankrupting Permeate, as he openly advocated doing;

The government claimed the opposite - that it was Krause who was partially paying the back due taxes and Smith was trying to prevent him from paying them;

4. Smith had an agreement with the IRS to pay the back-due taxes by January 2016, and had scheduled buying-out Less ownership control of Permeate on January 22, 2016 - an agreement which called for paying the back-due taxes;
5. That all investors had signed 504 investment agreements - including the Claimants, agreeing to invest in the Companies in exchange for tax benefits. Each Claimant had their own investment story, and Smith was not out defrauding or lying to investors, but, rather working to save Energae investments.

Smith heard nothing from his counsel regarding these emailed claims. Thus, on January 22, 2016, Smith signed a buy-out agreement with Less; Less received the remainder of the approximate $600,000 he was demanding. One week later, on January 29, 2016, Smith was on his way to the IRS, riding with Doug Palmer, the Advisory Board chairman,when Smith was arrested by the government for failure to pay the back-due taxes. The three-crime charges were not on the indictment sheet - just the tax charge - a crime for which Smith was not guilty. Immediately following the arrest, Priestley filed for complete receivership control of the Companies. Judge Porter, in Polk County receivership case number EQCE077590, Priestley v. Smith, et.al., Polk County, Iowa (2015), granted Priestley's request allowing Priestley to appoint a five-person receivership team which she hand-picked. These five receivers owned 3% of Energae's outstanding shares, while the Advisory Board, who was advising Smith, owned 73% of the shares, having a net worth in excess of $200 million, and two investment supports worth over $1 billion. These five "receivers" claimed they were "unbiased", when, in fact, they were part the class action lawsuit Priestley filed against Smith. Priestley acted as their "secretary" sending out over 12 letters to investors between March 2016 and November 2016 accusing Smith of fraud. Due to an intervening action by the Advisory Board, it was not until November 2016 that Judge Porter realized his error - putting a restraining order against Priestley, dismissing the five receivers, and hiring

attorney Tom Flynn, the Advisors' "receiver" of choice. Following the restraining order, in February 2017, Priestley signed an agreement with Smith claiming she would stop telling lies about him. But, her lies were only getting going following the government's indictment of Smith for wire fraud in April 2017.

To handle the tax problem, Smith hired Mike Battle, a D.C. attorney to represent him. Within four months of representation Battle rang up a legal bill of $720,000 for the $500,000 Permeate tax problem, for which Battle was paid $420,000. Battle advised Smith to plead guilty to the tax charge, and if so, the government would leave Smith alone on the other charges. Thus, by June 2016, Smith signed a plea agreement, signing a Stipulation of Facts which Smith told Battle was all lies - yet Battle advised that Smith had to "agree to the government's version of events." In August 2016, prior to sentencing in the tax case, Battle called Smith telling him, that, afterall, the government wanted to charge Smith with wire fraud and identity theft - that the charges would "run concurrent" if Smith agreed to cooperate against the Companies' USDA tax attorney in San Francisco. Smith agreed to cooperate and plead guilty, but advised it was not this attorney in San Francisco causing problems, but it was Priestley, Roland, Krause, Less, Jermeland, Hylden and Armstrong - all former Company managers and associates, filling their own pockets - lying to investors, provably stealing money, and lying to the government. However, to handle these extra charges, Battle wanted Smith to pay him an additional $200,000. Smith told Battle if he corrected his billing on the $720,000, he would. In November 2016, after many failed payment demands, Battle called Smith telling him that the government had dropped their "wire fraud and identity theft" charge demand. When asked why, Battle stated, "probably not enough evidence." Battle also gave Smith a copy of the tax PSI - Smith filed objections with Battle regarding the false claims in the PSI - but, Battle entered none of the objections. On Decmeber 14, 2016, Judge Strand sentenced Smith to 13 months in prison for failure to pay Permeate's taxes, citing the PSI's false claims for sentencing justification.

However, in March 2017, prior to Smith's release from county jail for the tax charge, Battle called Smith stating, that afterall the government was going to charge Smith with wire fraud and identity theft. Battle again demanded that Smith pay him $200,000, and if not, Battle would no longer communicate with Smith. Smith then fired Battle and hired another attorney.

As before with Battle, Smith agreed to plead guilty to the wire fraud and identity theft - even though (1) the Energae offering was a registered 504 SEC offering, carrying a 3-year statute of limitations for fraud claims given that 504s are only for "accredited investors", not the general public, (2) Smith's SEC attorney, Conrad Lysiak informed Smith that his investment activit on behalf of Claimants was not "wire fraud" as he had argued this very issue for another broker in Arkansas and won, and (3) Smith never stole anyone's identity having signed authorizations from each investor to invest in Energae and choose investments for them as a "registered investment advisor" (RIA). Smith was out of money and did not want to drag investors through Court - although, now, given all the lies told about Smith, and the government's continued reliance on these lies, Smith again hopes for his "day in court" reference his filed §2255 in wire fraud case, and the Coram Nobis recently filed in the tax case, case number CR-16-2002.

In September 2018, Judge Reade then sentenced Smith to 175 months in prison, claiming Smith still owed $1 million in restitution, and referred to the multiple lies told about Smith at sentencing as "compelling." She also charged Smith with obstruction of justice for helping Christine Kuzncicki, who later became a Claimant against Smith, file a claim form for promised GRCO shares with Company Receiver Tom Flynn. Smith has challenged all these charges in his §2255. Given that Judge Reade did not make the tax and wire cases "concurrent" as promised, but, instead, added 18 months onto Smith's sentence for "Class II", the tax crime

being listed as a "prior felony", Smith filed an Appeal at the Appellate Court. However, the Appellate Court ruled against Smith stating there was no "indictment nexus" between the tax crime and the wire fraud crimes. Smith learned later that the government committed a "Brady violation" by not giving the Appellate a copy of the three-crime indictment/plea agreement offerred Smith in 2015, or the same offering given attorney Battle in 2016. The government withheld this vital sentencing information, and Smith has since filed a §2241 in Minnesota Court, case number 23-0357, Smith v. Eischen, reasserting these claims and violation. (the Appellate case was case number 18-3222, U.S. v. Smith, 8th Circuit, 2019).

In May 2020, while under Covid-19 lockdown, Smith was preparing his §2255 to for the wire fraud case, when he received notice that the government was charging the Companies with wire fraud, and wanted to sell the 57.5 million GRCO assets the government seized from the Companies in 2013, to meet the $1 million in yet ummet restitution claims. The government threatened to send Smith back to county jail to stand trial for the Companies if he did not agree to act as the Company representative. Even though attorney Tom Flynn was paid approximately $300,000 as a "receiver" for the Companies, the state government allowed Flynn to quit this position, and the federal government, having the absolute right to reappoint him, refused to do so. Instead the government appointed Smith - an incarcerated individual fighting the wrong charges against him - and now this new, Smith claims, false charge against the Companies - a charge based on provably false claims made by Christine Kuznicki, one of the ten Claimants against Smith. Kuznicki's lies are provable. To avoid being sent back to county jail, Smith agreed to sign a plea agreement, but retain his right to appeal following sentencing. In the plea agreement the government claimed that Smith's payments to Kuznicki, only three of which they listed in 2015, were "luring." Smith asked that the word "luring" be removed since Kuznicki had provably been receiving payments from Smith over a ten year period - not just $4,500 in payments in 2015 which the government labeled

as "wire fraud". Kuznicki also claimed that her $161,000 investment in the Companies nearly ruined her financially, failing to tell the government that because of Smith's financial intervention on her behalf, her $1.8 million in land holdings in Alaska and Idaho were still solvent. Smith informed the government that Kuznicki had committed medicare fraud on her claim form against Smith - revealing a medical claim she filed which the State of Idaho, failing to tell Idaho state she was actually worth $1.8 million - not broke. The government ignored all this information in indicting the Companies for claims of restituion they were aware that Smith was challenging.

Smith filed multiple objections on behalf of the Companies. Judge Strand denied all of Smith objections. The objections had mainly to do with "discovery" and the provable lies told to the Court about Smith. The Companies were sentenced on September 22, 2022. Smith was given the right to appeal the sentence. However, when Smith appealed to the 8th Circuit, the 8th Circuit ruled that they could not hear the appeal because the Companies had no legal representation. Smith advised the 8th Circuit that the district court had violated Luis v. U.S., taking Smith's untained $120,000 IRA, money designated to pay legal fees, after the Companies were indicted in May 2020. The taking of his money was no conicidence relative to its "timing." The 8th Circuit refused to even hear about this Constitutional violation against Smith and the Companies, claiming they had "no authority to appoint legal counsel" for Companies due to the California Men's Colony II case. This, then, is a Catch-22 - indict a Company, appoint a non-attorney to represent the Companies, take all the Company and the Company representative's assets, sentence the Companies, and then deny the ability to appeal because the Company representative was "not an attorney." Isn't this what this Country's revolution was fought over - "taxation without representation?"

ARGUMENT

PETITIONER'S WIRE FRAUD CONVICTIONS SHOULD BE REVERSED BECAUSE COMPANIES WERE SENTENCED WITHOUT LEGAL REPRESENTATION.

1. HSA Case - "Cannot Appear in Court Without Legal Representation"

In the U.S. v. Human Services Associates ("HSA"), LLC, case, W. Dist. of Michigan, Southern District, 216 F. Supp. 3d LEXIS 146009, No. 16-CR-0018 (2016), Judge Green ruled that HSA could "[not] appear in court without legal representation." Other district and Circuit Cours in the 9th, 3rd, 5th and 6th Circuits agree with Judge Green. In the HSA case, Judge Green ruled the following:

> "...In light of the fact that HSA cannot appear in court without legal representation, and in light of its apparent indigency (given the government's seizure of assets), the court will **exercise its inherent authority** to appoint counsel. The court is unaware of any attorney volunteering to take the case pro bono, however. Nor is it inclined to ask an attorney to represent HSA wilthout compensation, as the U.S. **could pursue any available** [and legally unchallenged] **remedy against HSA**, in parallel civil forfeiture case. But, given the parties' stipulation to realize seized HSA funds for the purpose of compensating appointed counsel, the court need not decide whether to light Diogenes' lamp to engage in a search for counsel willing to represent HSA gratis..."

Judge Berrigan, in U.S. v. JB Tax Professional Services, Inc., E. Dist. of Louisiana, LEXIS 161807, No. 13-127 (2013) ruled that appointing counsel for indigent Companies was "**an unsettled area of law.**" In this case against the Companies, in Document number 43 (**Appendix C**) signed by Sean Berry, Acting U.S. Attorney, Mr. Berry stated the following (page 2):

> "...the government cannot find any precedent that addresses a situation such as this one, that is, a case in which the corporation is a criminal defendant and a responsible corporate official seeks to lodge objections [without legal representation]..."

Mr. Berry states, "as a general historic rule, at least in civil cases, is that a corporation may only appear in federal courts through licensed counsel." Mr. Berry then argues that given the "uniqueness" of this case, that Smith, as the responsible "defacto" official, should be allowed to file objections. So, let's follow this logic: (1) Based on California Men's Colony II, corporations may only appear in court with licensed counsel, (2) licensed counsel can only file objections, but (3) we, the government, are going to "overlook" these "general rules" and go ahead

and appoint Smith as the "corporate representative", not appoint counsel for the Companies, allow Smith to file all the objections he wants because we know that the Judge is going to deny all of Smith's objections, regardless of their credibility, and the Appellate Court is going to deny Smith's right to appeal any wrongful appointment, asset seizure, or Constitutional violations because Smith needs an attorney to file an appeal? Isn't this reasoning nothing more than a "kangaroo decision" for a "kangaroo court" - one might as well slap on six-shot guns, throw a rope around the nearest tree and hang the Company, because this is not "real Court" but, rather, a "hangin'?" Mr. Berry then cited an obscure Iowa State case, that would "authorize" the federal court to appoint Smith as the "defacto" officer of the Company - Arney v. Brittain & Co., 185 Iowa 114, 171 N.W. 697 (1919). Iowa was barely a "state" in 1919, and they had to reach back that far to "authorize Smith" to represent the Companies and deny the Companies representative counsel? Obviously, the "Arney" case has nothing to do with appointing counsel for indigent Companies, thus, to use it as a "basis" for denying the Companies the right to appointed counsel is a leap in logic. The final point about Mr. Berry's argument is that he calls the California Men's Colony precedent a "general rule." The 8th Circuit Court did not use the term "general rule" at all, but, rather let fly an absolute rule, "we don't have the authority" to hear the case against the Companies due to the lack of appointed counsel. Yet, Judge Green, in the HSA case contradicts the 8th Circuit's ruling stating "the court will exercise its **inherent authority to appoint counsel**...". The district Judge in Michigan has "inherent authority" to appoint counsel, but the 8th Circuit has "no authority" to appoint counsel?

2. Unlike HSA, Abuse of Company Money Prevented Funding for Legal Representation

There are similarities between the HSA case and this case against the Companies. Like HSA, prior to indictment, the Companies had money. But, that money was abused by the very Claimants seeking to indict Smith. The following sources of money were "abused" by Company officers - Priestley being one - but, instead of going after

these "abused assets" to pay for legal counsel, the government went after what was left of the Company asset pile: (1) 57.5 million in GRCO shares the government had improperly seized from Smith's bank holding account in 2013 (which Smith had removed to his brief case for distribution to authorized investors), and (2) the remaining USDA tax credits issued for the benefit of investors (as high as $26.5 million to be used to "restart" Permeate once Randy Less was bought out). The "abused assets" they could have went after to pay legal fees on behalf of the Companies

1) Smith's $120,000 Untainted IRA: These funds of Smith were designated to pay legal fees. Instead of allowing Smith to use these these funds to pay attorneys, the government seized the money, preventing it from being paid, and then indicted the Companies, cashing out the $120,000 sending the proceeds to Claimants who were owed no restitution, violating Luis v. U.S., violating Smith's constitutional right to counsel of choice;
2) Over $4 Million Paid Out Through Abuse by Priestley and Receivers: Smith gave the government a list of attorneys and what they were paid by Priestley and her receivership board - some of the money was used up by the Intervenors and some was abused and spent by Priestley and her accomplices. The list of abused payouts is provable and long. For example, Priestley and Dennis Roland captured $720,000 of Company assets, paying themselves and not the payroll taxes for Permeate for which the money was intended. Roland was not due any of this money, nor was the attorney due money that represented Priestley and Roland in this matter, attorney Ray Stefani. The government could have easily researched these amounts and pulled abused funds back in for Company-legal fees; Priestley filed, or helped file, three receivership actions against the Companies - defending against these actions cost Intervening investors significant amounts. The last of the three receivership actions, Polk County, Iowa case number EQCE077590, cost investors over

$1 million lost legal fees, and unnessary accounting expenses. The government could have challenged this flagrant waste of investor assets;

3) About $300,000 Spent By Tom Flynn, Company State-Apointed Receiver: The federal government allowed State-Appointed Reciever, attorney Flynn, to quit as receiver following indictment of the Companies. Flynn petitioned the State judge for release, and was "granted release." The federal government complained to Smith that Flynn's expenditure of Company assets produced no value for shareholders, but did nothing to legally appoint Flynn to continue to represent the Companies - the appiontment power, for which, they had "inherent authority" to issue;

4) Priestley's Five-Person Receiver Group Wasted About $300,000: In order to prove wrong-doing by Smith, the five-person receiver group, along with Priestley, who were dismissed with a "restraining order", expended unnecessary Company assets with attorneys and accountants - all the work of which was later rejected by replaced receiver Flynn. The government could have culled these assets back given the proven "misrepresentations" using the restraining order as evidence;

5) Randy Less Stole Over $1 million From Investors: Instead of going after Randy Less for his provable theft of Company assets, the government went after Smith. Smith invested $2 million of his own money, Less invested nothing but "investor fraud." With the approval of the Advisory Board, Smith was paid back $110,000 (over time) reference a provable loan he gave Energae to help them when they started. Less and Krause also stole $190,000 from investor Max Mitchell, using this money to buy a home. The government blamed this "house transaction" on Smith, yet, when they learned the truth, did nothing to Less. The government could have culled provable theft by Less back-in to the Companies to pay for legal representation. Instead, Less demanded the receiver return to him all Permeate assets after Smith's indictment;

6) Jerry Kruase, Permeate's CFO, Stole Vodka and $250,000 from Investors: Instead of paying the taxes that were due, Krause paid himself. He then signed an agreement with the government to finger Smith. The vodka business he stole is still operating today. Smith sued, but Priestley's receiver group dropped the suit. The government

could have culled this money back from Krause.

Altogether, stolen, "tainted", abused Company, investor assets added up to $6 million. Instead of working to make the provable "abusers" pay, the government went after Smith, asking Smith to cooperate against the only attorney trying to help investors - the USDA CRADA attorney - why? Because Priestley made false claims about him too.

3. Similarities/Differences Between HSA Case and Companies' Case

The case against the Companies, is like the HSA case in other respects:

1) Like HSA, the Companies Were **MADE** Indigent In-Part By Government Actions:

As described above, the Companies had money prior to the abuse by receivers and the indictment of the Companies. HSA also had money. But, unlike HSA, the government did not "seize" Company assets that were being abused, but, instead worked with the abusers to go after Smith. Judge Green ordered that a portion of HSA's seized assets be used to pay for legal representation of HSA, otherwise, he said, HSA could "not be indicted." Instead of going after the recievers, the government seized 57.5 million GRCO shares, registered in Company names, not Smith's name, in 2013. The seizure of the shares was based on a "government raid" of Smith's home, Smith's office, the banks, Energae's office and Permeate's office. The approved search warrant had the the name "Elite Sales" listed on it. Elite Sales was a Less-feedstock partner and was provably cheating the Companies, giving watered-down feedstock and charging full price. Elite stated they had "FBI connections", and so a "raid" was ordered. The government continued to hold the GRCO shares - and this holding created complaints against Smith who had assigned the shares to shareholders. The government "changed" their reason for holding the shares from "Elite Sales" to "fraud by Smith" without a court order. The government then indicted the Companies wanting to use the sale proceeds of the GRCO to meet wrongful unmet claims of restitution, but, not to pay for Company representative counsel.

Because Smith could not assign the GRCO shares, as promised, investors "revolted", resulting in Priestley's claims, receivership action and loss of confidence in Smith. Representative counsel could have pointed to all these "abuses" in representing the Companies. Smith tried to do this, but the Court rejected all of Smith's objections. Is this "standard" or "normal" representation?

2) Like HSA, the Government Indicted Company Manager(s): When both the manager of the Company, and the Company, are indicted, the financial difficulties associated with defending against lies becomes doubly difficult. Without proper legal representation the government need only to "threaten" to seek capitulation from management. Thus, even though the Supreme Court called "Companies" "non-persons" in California Men's Colony II, the government treats the Companies as "persons" in all respects reference (1) seizing their assets, (2) filing claims, (3) indicting, and (4) putting out press releases as if the Company were normal, living "criminals", damaging all Company shareholders, whether criminally liable or not. If the government is going to treat Companies "as persons" in all these same "person"-respects, then should it not be afforded representative counsel?

3) Like HSA, the Government(s) Captured Both Personal and Corporate Assets: Priestley's five hand-picked receivers acted as "agents for the Court" spending Company assets to prove wrong doing by Smith, but not represent the financial wellness of all 350 shareholders. Their "abuse" of Company assets allowed the State of Iowa to take back $2.3 million in audited "R&D" tax credits from investors - further aggrivating shareholder complaints. State R&D tax credits are issued based on the premise that federal R&D credits are valid. Legal counsel for the USDA testified that the Agricultural Research Division of the USDA had the authority to issue tax credits. Instead, once the Companies were indicted, the State sent Smith a letter, while he was incarcerated, asking Smith to acquiesce and "give up" shareholders claim to the $2.3 million. Without legal representation, then, Smith was attacked four different ways: (1) from the federal government, (2) the State government, (3) Priestley's receivers acting for the court, and (4)

from Smith's broker-dealer, Multi-Financial. Multi-Financial asked Smith to give them information that would have absolved Multi-Financial, and Smith's, insurer of financial liability. Smith would not do this because it was Multi-Financial's OSJ (Office of Supervisory Jurisdiction) that got Smith inolved in this mess in 2006 - founding GRCO, then their associate suggesting that Energae be founded to assist GRCO. The OSJ made numerous financial errors - leaving Smith "holding the financial bag." Instead, Smith worked to help settle the class-action claims. As a result, Multi-Financial tied-up all of Smith's brokerage accounts, forcing Smith to pay all Multi's legal bills in settling the claims. These "multi-faceted" attacks could have been better defended to the courts with Company representative counsel. The government's seizure of Smith's IRA, with Pershing's "full cooperation" ("Pershing" was the transfer agent for all Multi-Financial accounts), as Smith complained, without a proper court order, resulted in Smith not being financially able to defend himself or the Companies, in violation of Luis v. U.S. It is common practice for the government to attack Companies and managers from multiple attack points. Without qualified legal counsel, it is impossible to defend against such attacks;

4) Companies Had to Defend Against Court-Appointed Receivers, Unlike HSA: Judge Green appointed HSA counsel - it was a "clean appointment", stating an company indictment would not stand without Court-appointed counsel. The Companies had "no such luck" - being attacked by Priestley's hand-picked receivers. The receivers "seized" Smith's corporate account - draining it of assets - money, again, slated for attorney fees (per recorded jail-house telephone calls). They got Smith's bank, Titonka Savings Bank, to drain Smith's personal account reference about $20,000 - claiming they were "unauthorized deposits", even though deposits occurred before the receivers were given authority. The "bank mess" is much worse, reference Priestley's receivers' actions, than described here. The bottom line is that representative counsel could have brought all this out in court when defending the Companies.

Despite the similarities between HSA and the Companies, HSA, the company, was afforded legal representation. And, unlike HSA, the Companies were significantly disadvantaged reference attacks from (1) receivers, (2) the State of Iowa in cooperation with receivers, (3) Smith's broker-dealer Multi-Financial, and (4) the federal government working with Priestley and her hand-picked receivers (Smith's "pre-trial home detention" was revoked due to complaints brought to the federal government by Priestley's hand-picked receivers, with Priestley supplying tainted and wrong information to the Judge reference Smith's pre-trail actions). Yet, despite all these legal disadvantages, the provable misuse and theft of Company assets, the Compies were not afforded legal counsel.

If the Court cares to listen to the "sentencing transcript" of the Companies, taking place on September 22, 2022, you will hear Priestley, yet again, "indict" Smith and explain to the court that her and Roland's "theft" of $720,000 of Company money - money intended to pay federal back-due payroll taxes - $250,000 of which Priestley's receivers allowed Roland to pay himself - was "somehow justified." Because, Priestley explains, Roland was due "back wages." Roland was fired in April 2015 - he was due no back wages before this date, or after this date. Yet, the receivers allowed him to phony up some hand-written arbitration agreement and be awarded this sum. The only saving grace in all this was that Judge Porter realized his error and placed a restraining order against Priestley, dismissing her hand-picked receivers in November 2016. In February 2017 Priestley then signed an agreement with Smith attesting she would stop lying about Smith (Polk County case number EQCE077590, Priestley v. Smith, et.al., (2015)).

4. Company Is A "Person" in "Monell" Case, Not a "Person" in "California Men's Colony II"

In a seemingly contradictory ruling, in Monell v. Dept. of Social Services

of the City of New Yor, 436 US 658 56 L Ed 2e 611 98 S Ct No. 75-1914 (1978), the Supreme Court ruled that "artificial entities", such as municipal corporations, are "persons" for claims of liability. Yet, in the California Men's Colony II case, "artificial entities" are not persons. In Monell, the Court reasoned that if the Dept. of Social Services were not a "person" subject to liability claims under USCS §1983, then, as "non-persons" these "artificial entities" could pick-and-chose which Constitutional provisions they would violate, ruling:

> "...Every person who under color of any statute, ordinance, regulation, custom, or usage, of any state or territory or District of Columbia, subjects or causes to be subjected, any citizen of the U.S. or other person...to deprivation of any rights, privileges, or immunities...shall be liable to the party injured...municipalities could assert no "reliance claim" as having arranged their affairs on an assumption that they could violate constitutional rights indefinitely..."

Smith asserts that not appointing counsel to indigent Companies - especially those Companies made indigent by government action - violates the "principal" of the Monell decision, allowing governments to "violate indefinitely" the Constitutional rights of indigent Companies without recourse from the Companies.

5. U.S. Government - "Artificial Entity" - A "Person"

Likewise, in Irvin v. U.S., 148 F. Supp. 25, LEXIS 3969 (1957), the U.S. Government, acting as an "artificial entity", was listed as the "insured person" on an insurance policy. The U.S. was sued due to the reckless driving of a postal worker. The government tried to argue that they were "not a person" for liability purposes and immune from prosecution, despite the fact that postal insurance policy listed the government otherwise - as an "insured person." The Supreme Court ruled that the government was liable as an "insured person."

6. Mukakush Caliphate - "Fictitious Creation" To Avoid Criminal Responsibility

The Court could have defined "California Men's Colony" in the same vain as how the New Jersey State Court defined "Mukakush Caliphate of Amexem" - that is, an "artificial invention designed to escapte personal responsibility." In this case, Mukakush Caliphate of Amexem v. State of N.J., 790 F Supp 2d 241 LEXIS 51187,

No. 11-1317 (2011), the incarcerated petitioner set-up an "artificial entity" whereby to challenge the Constitutional veracity of his incarceration. Likewise, "California Men's Colony II" was also a group of incarcerated individuals trying to get the government to pay for a lawsuit against itself for violation of prisoner rights. Whether the prisoners' claims were legitimate or not, the courts took this "California Men's Colony II" decision, blossoming it into a green light for violating Companies' constitutional rights as "non-persons." Judge Kennedy, arguing in opposition to the "California Men's Colony" majority position, quoted the Dictionary Act §1 USC §1, stating it was not ambiguous:

> "...in determining the meaning of any Act of Congress, unless the context indicates otherwise, the word "person" includes corporations, companies, associations, firms, partnerships, societies and joint stock companies, as well as individuals..."

Judge Kennedy's prediction that the "California Men's Colony" decision would lead to abuse of corporate "persons", has proven true. Smith does not believe that the Supreme Court intended California Men's Colony to be the "license" whereby governments can "rape" Companies of their assets, and then demand that Companies hire legal counsel to get their assets back - or object to the government's seizure. This idea of forcing attorneys to represent indigent Companies "pro bono" is abusive - no attorney is going to give "his entire legal attention" to a case wherein he is not being compensated. Smith's argument with Mike Battle is a prime example. Battle demanded $200,000 extra - Smith didn't pay it, so Battle's lies cost Smith an additional three years in prison. The "law of Moses" (Deut 25:4), states do not "muzzle the mouth of the ox when it treads grain." If Moses gives "food compensation" to an animal for plowing, surely the goverment should render paid legal representation to indigent Companies, especially those Companies whose assets have been sezied, or potentially misrepresented by the government?

7. UNIMEX Case - Company Indicted - Assets Seized - Case Remanded, 9th Circuit

In the case U.S. v. UNIMEX, Inc., 991 F.2d 546, LEXIS 7779, Case No. 91-50230, 9th Circuit Court of Appeal (1993) the government had seized all of UNIMEX's assets following its indictment for money laundering. UNIMEX contended that it was prohibited from defending itself because it was denied due process under the Fifth Amendment and its right to counsel under the Sixth Amendment. The 9th Circuit Court of Appeals reversed UNIMEX's conviction, ruling that its rights to counsel under the Sixth Amendment and to Due Process under the Fifth Amendment were violated by the forfeiture of all of its assets because UNIMEX was unable to afford counsel for the trial. Judge Kleinfeld ruled the following:

> "...UNIMEX was not represented by counsel in its trial. All of its assets had been seized prior to trial. Based upon affidavits and such additional evidence as it might present...much or all of its assets were untainted by crime, UNIMEX sought return of $100,000 of the $2,000,000 seized, to retain counsel. The motion was denied without an evidentiary hearing. Without money UNIMEX could not retain counsel. Counsel could not be appointed for it under the Criminal Justice Act, because it is a corporation...UNIMEX could not **lawfully have some lay director or shareholder defend it in court**...UNIMEX may have other shareholders who put honest money into it...the practical effect of a combination of laws and rules was to prohibit UNIMEX from defending itself, so the proceeding was unfair, and the verdict unreliable..."

And likewise, the Companies - the government never proved that the purchase of the 57.5 million seized GRCO was purchased with "tainted money" or Claimant "unauthorized investment funds." No, to the contrary, Smith gave the government recorded deposit proof of his own investments and associated purchases of GRCO stock - Smith assigned the GRCO stock to honest investors, including Government Claimants **at their written request** (copies of which the government has retained), not keeping a single GRCO share for himself. The GRCO share assignments were completed long before Smith's indictment, and emailed multiple times to Company managers. Smith awarded the GRCO shares to try and "save the Companies." In State and Federal documents it was Priestley who was making false claims about GRCO share awards. In the case against the Companies, the Judge ignored the Constitutional violations cited by the UNIMEX judge, held no evidentiary hearings, appointing Smith to represent the Companies at a "mock trial" and "mock sentencing."

CONCLUSION

For the foregoing and following reasons, Smith requests that the Court grant this petition for Writ of Certiorari:

1. Indicting, trying and sentencing indigent Companies without legal representation is a Constitutional violation in multiple Circuits, but not in the 8th Circuit, creating a "split" among Circuits as to indictment of indigent Companies;
2. In some criminal and civil instances Companies are considered "persons", but, in other criminal and civil instances, "not persons". The inconsistency of Circuit Court rulings relying on "California Men's Colony" has promoted uncertainty and allowed government officials to work with citizens to dismantle Company assets without proper legal oversight;
3. Indicting indigent Companies without proper legal representation allows the government to seize Company assets owned by multiple shareholders, and award those assets to shareholders who may be unworthy of such distributions, given lies and unchallenged illegalities. Without proper legal representation to challenge lies and misrepresentations, shareholders are held hostage to the whims of over-zealous government prosecutors and more savvy investors;
4. Without proper legal representation, Companies can be forced into indigency by ruthless, savvy investors who seek to control Company assets, hiding behind cloaks of "government righteous indignation" in order to enrich themselves at the expense of shareholders who are not as legally savvy;
5. Appointing non-legal representatives to "stand-in" for Companies while the Companies are indicted, forcing that individual to "act as an attorney" to stand for trial on behalf of the Companies, i.e., (1) calling witnesses, (2) researching legal arguments, (3) interviewing witnesses, (4) requesting subpoened information - all things that attorneys do, but without the advantage of years of legal training, is unreasonable, and, in Smith's view, Unconstituional.

Smith would ask the Court to:

1. Overturn the lower Court's indictment of the Companies and appoint legal counsel for the Companies, should the government choose to go forward, again, with a subsequent indictment; and, but, if not,
2. Define the "legal boundaries" by which Courts can and cannot apply "California Men's Colony II" decision when indicting, trying and sentencing indigent Companies - especially indigent Companies whose assets have been seized to meet unmet claims of restitution, and for which govrnment action has contributed to the indigency of the Companies; and, but, if not,
3. Order the Appellate Court to hear Smith's arguments on behalf of the Companies given that the district court appointed Smith to represent the Companies allowing Smith to (a) file objections and (b) file an Appeal if necessary.

Respectfully submitted,

Date SEPTEMBER 6, 2023

By _____
Darrell Smith, #16355-029
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FOOTNOTES

1. Other potential Constitutional violations argued at the Appellate Court -

   1. "Poisonous Tree Claim" - Priestley stole 85,000 pages of Company documents - by her own admission (bragging). She then became "secretary" for the five hand-picked receivers acting as a "State agent". She communicated, with all 10 government Claimants, "poisoning" the tree, and acting as a "quasi-FBI" agent in "interpreting" documents and iducing investors to complain. The record is replete with all this - it is not a question of "did she or didn't she" - she did, by her own admission. U.S. v. Sheldon, 997 F 3d 749, 7th Circuit (2021) calls her actions a "Constitutional violation;"

   2. "False Representation of Company Asset Distribution" - the PSI against the Companies briefly mentions Priestley's receivership action, and the subsequent appointment of Tom Flynn, but fails to mention Priestley's dismissal or the "restraining order" placed against her. The "restraining order" should have disqualified any future claim she made about Smith to the federal government, but, the PSI doesn't mention it. The PSI only states that the government took the 57.5 million GRCO shares, without mentioning any of the sordid details that went with it - it does not mention Priestley's involvement/ claims that prompted the government to raid Smith's business, taking the shares in 2013, and not returning them despite receiver Flynn's demands;

   3. "Unsubstantiated Claims of Financial Benefit to the Companies" - briefly mentioned in this write-up, reference U.S. v. Richmond 700 F. 2d 1183, 1195 No. 7, 8th Circuit, 1983. It is the government's responsibility to prove the Companies financially benefited from the "unauthorized investments" - the fact is, the investors requested, received and used tax credits for their "unauthorized investments" four years prior to their claim - after they had received all their money back and they were "in the clear" of any potential IRS audit. These are the things that "savvy investors" do, not honest Claimants. Regardless, the government didn't prove the Companies financially benefited; it is more likely their investments were "stolen" by the very Company managers the government used as "witnesses" against Smith - being false testimony;

   4. "Inconsistenties in Kuznicki's Claims" - briefly mentioned in this document, but argued more fully before the Appellate Court. In the PSI the government claimed that Smith "decieved Kuznicki" without providing a single document or page of proof validating this deception. The proof is that Kuznicki deceived the government, signing authorized investments in the Company - not through Smith, but, faxing them from Idaho to previous Company managers. Other deceptions are mentioned in this document.

   5. "Recusal" - as if all the above were not enough, in documents 80, 120 and 133 in the case agaisnt the Companies, Smith requested that the Judge recuse himself given his well-documented involvement as an "attorney", before he became a judge against Smith, for "Alliant Energy", going in, under court order and draining Permeate's account to meet a debt Alliant Energy claimed that BFC Gas & Electric, LLC, a Permeate subsidiary, owed them. Judge Strand later became Permeate's judge reference the taxes. The amount of money that Alliant Energy took from Permeate; based on their $362,289.06 claim, was enough to prevent Permeate from paying their taxes. Allaint's misreprentations combined with BFC's former owners misrepresentations resulted in Permeate losing $7 million on BFC, and shutting down Permeate. Smith quotes Williams v. Pennsylvania, No. 15-5040, 2016, Supreme Court, as basis for recusal.