

23-6145

No. _____

FILED

OCT 13 2023

OFFICE OF THE CLERK
SUPREME COURT, U.S.

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Daniel Eric Salley — PETITIONER
(Your Name)

VS.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals For The Seventh Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Daniel Eric Salley
(Your Name)

P.O. Box 3000-McCreary, Pine Knot, KY 42635
(Address)

Pine Knot, KY, 42635
(City, State, Zip Code)

(Phone Number)

RECEIVED

OCT 24 2023

OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTION(S) PRESENTED

Whether a college graduate and successful businessman owner of a small accounting firm, after prevailing in several audits at the Internal Revenue Service for his clients and subsequently being charged with bank robbery and attempted murder of federal officers in a 15 count indictment and having his personal and business property seized and retained by the Government and after insisting on representing himself and consequently being found incompetent to stand trial because of a mental disease or defect (delusional disorder) and committed to the custody of the Attorney General for hospital-~~izat~~ization and treatment, can be time barred from bringing an action for the return of the equivalent of all his property and the payment of all his restitution out of his Treasury Offset Program (TOP) account, even though he filed motions within and outside the statute of limitations for such return and payment and even though the Order of commitment of January 31, 2003 has never been vacated or set aside to this day as commanded by 18 U.S.C. § 4247(e)?

LIST OF PARTIES

☒ All parties appear in the caption of the case on the cover page.

☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

Daniel E. Salley v. United States of America, No. 22-2477 (7th Cir. 2022)
No. 1:21-cv-6246 (Dist. Ct.).

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Soldal v. Cook County, Illinois	Pg. 5 at 1
Gates v. City of Chicago	5 at 1
United States v. Jacobsen	5 at 1
United States v. Silva	5 at 1
United States v. Sims	5 at 1
United States v. Unit No. 7 & Unit 8 of Skop in Grove Condominiums	5 at 1

STATUTES AND RULES

18 U.S.C. § 4247(e)	4, 5 at 1
28 U.S.C. § 2401(a)	5 at 2
28 U.S.C. § 2241	4 at 13, 5 at 2, 11, 13
18 U.S.C. § 2113(a) & (d)	4 at 5-7
18 U.S.C. § 1113, -1114	6
18 U.S.C. § 1203	6
18 U.S.C. § 111(a)(1) & (2)	6-7
18 U.S.C. § 113 - 114	6
18 U.S.C. § 924(c)	5
18 U.S.C. § 924(c)(1)(A)(i)	7
18 U.S.C. § 924(c)(1)(A)(ii)	6
18 U.S.C. § 4241(c)	9
18 U.S.C. § 4247(d)	9
F.R.C.P. 60(b)(5)	11
28 U.S.C. § 2255	12-13, 16
Circuit Rule 22.2	13
28 U.S.C. § 1291	14

OTHER

Treasury Offset Program	5 at 3
-------------------------	--------

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	5
CONCLUSION.....	6

INDEX TO APPENDICES

- APPENDIX A United States Court of Appeals For The Seventh Circuit. (4 pages)
- APPENDIX B United States District Court For The Northern Dist. of Illinois
Eastern Division (Chicago) (2 pages)
- APPENDIX C United States Court of Appeals For The Seventh Circuit, (En banc
denial) (1 page).
- APPENDIX D F.B.I. sketch of Apartment
- APPENDIX E Administrative Offset Notice
- APPENDIX F Financial Litigation Agent's debt letter

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

☒ reported at 2023 U.S. App. Lexis 11840; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was ~~7-17-2023~~ 5-15-23

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: 7-17-2023, and a copy of the order denying rehearing appears at Appendix C.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fifth Amendment

Fourteenth Amendment

28 U.S.C. § 2401(a)

5 C.F.R. § 2418.1

5 C.F.R. § 2418.9(c)

5 C.F.R. § 901.8

STATEMENT OF THE CASE

See 16 page attachments below

Statement Of The Case

In 1998 Mr. Salley started a business called Tax Research & Resolution. In that same year, Mr. Salley became an authorized Electronic Filer through the Treasury Department's Electronic Filing Program which granted him a licence to perform Electronic Filing of taxes in all 50 states.

In 2000, the Internal Revenue Service began an unusual number of audits against clients of Tax Research & Resolution, mostly public servants clients such as teachers, a grade school principal, police and correctional officers and public health care workers, just to name a few. Mr. Salley attended all the audits, answered and asked questions until he determined that the audits were frivolous. Mr. Salley was never accused of any improprieties. What Mr. Salley did not know was that the Regional Directors and various managers of the IRS got bonus money based on the amount of taxes collected for a particular area.

In late 2000 or early 2001, Mr. Salley was put under 24 hour surveillance by the U.S. Treasury Dept., the Federal Bureau of Investigation (F.B.I.), and the Central Intelligence Agency (C.I.A.) (before the election) after Mr. Salley resisted several attempts by various undercover agents to intimidate and threaten him in public and several concealed attempts to force him out of business. See F.B.I., Treasury Dept., and C.I.A. surveillance files.

In early to mid 2001, Wingspan Bank, a bank that Mr. Salley shared three checking accounts with his mother, Estella Salley, and

used for his business for several years suddenly and mysteriously stopped cashing his third party Treasury and cashier's checks for no apparent reason. Mr. Salley suspected that the F.B.I. asked the bank to do that off the record and considered that the last straw because he had more than \$80,000.00 in checks he could not cash to get his fees from his client's amended taxes for previous years and turn the rest over to the clients as he had done for years.

In August 2001, Mr. Salley decided to force the government to pay him his fees indirectly so he decided to take the money from a bank knowing that the government would have to pay the bank back because of the Federal Deposit Insurance Corporation's (FDIC) insurance that Mr. Salley was aware the bank had. Mr. Salley did this twice because the proceeds from the first time Mr. Salley did this did not cover all his checks. Mr. Salley did not want to hide the fact that he did this therefore, he wore no disguises. He also knew that the F.B.I. still had him under 24 hour surveillance and were fully aware of the takings, among others, ment to drive him to that point.

In August 2001, Iva Saffold, who was Mr. Salley's secretary, moved into a loft in Down Town Chicago, Il. at 1301 S. Wabash #301 with the assistance of City, State, or Federal Agents because her credit would not allow her to rent, lease, nor purchase such property without substantial assistance from a co-signer. Mr. Salley was her sole support before she got a job as an accountant. Ms. Saffold was angry at Mr. Salley for not marrying her so she began working for law enforcement (local or federal) as a confidential

informant and finally lured Mr. Salley to 1307 S. Wabash #301 where it was planned that Mr. Salley would be murdered by law enforcement personnel. Because Mr. Salley was arrested on January 2, 2000, and convicted for misdemeanor domestic battery for issuing corporal punishment to his two oldest children for their whereabouts being unknown after dark, the plotters knew that Mr. Salley could be killed without question while in handcuffs, if he would surrender without putting up a fight, for violating the court's order against possessing a gun. Mr. Salley understood that the law of self preservation superseded the court's order.

On August 28, 2001, Task Force Member Joseph Airheart knocked on apartment #301 at 1307 S. Wabash using a ruse of being a delivery person with several agents hid from the peephole view. Mr. Salley thought the knock was strange because no one was supposed to know of the existence of the loft less know of his being there so he approached the door with two of his guns. When Mr. Salley saw Mr. Airheart break character and wave to the other federal Task Force Members to get back, he knew who they were and said within himself; "if you all want to fight over this money then, lets go!" Mr. Salley proceeded to open the door while Mr. Airheart simultaneously began walking in saying, "Mr. Salley, I have a package for you." Mr. Salley then put his hand on Airheart's chest and put the 44 caliber gun to his head and said, "I don't think so!" Instead of Mr. Airheart grabbing Mr. Salley's gun or gun hand to protect himself, he leaned back and announced, "he's got a gun!" after which, Mr. Salley turned and filed into the loft but turned to face the agents so that he wouldn't get shot in

the bag with the bullet back to their headquarter, broke open the sealed evidence plastic bag and switched the bullet to one recovered from the scene of the shootout that came from Mr. Salley's 44 caliber Bulldog gun and put the unresealable evidence bag along with the switched bullet into a new evidence bag, sealed it and sent it to the Illinois State Crime Lab. The Crime Lab Technician cried foul and documented the opened bag when he received it. See Airheart's medical Report and Doctor's Notes 2001; see also the Illinois State Crime Lab Report and the Technician's Notes 2001; see also the trial testimony of the Illinois State Crime Lab Technician, the Surgeon who operated on Airheart and the F.B.I. agent's testimony who, among others, intercepted the bullet in the first sealed evidence bag October 5-20, 2005 trial; See also the F.B.I. forensics report of the scene of the shootings. See F.B.I. sketch of apartment in Appendix D.

On September 19, 2001, the grand jury of the Northern District of Illinois returned an indictment charging Mr. Daniel E. Salley with armed bank robbery (18 U.S.C. §§ 2113 (a) & (d)) and using a firearm in connection with a crime of violence. (18 U.S.C. § 924(c); CR6).

Between 8-28-2001 and 9-25-2001, the government and law enforcement executed several search warrants and subpoenas and seized and interfered with or otherwise stopped Mr. Salley from having access to bank accounts, credit card accounts, and any financial support etc. so Mr. Salley was not able to hire a lawyer of choice nor an investigator nor any of the things needed to fight his case. See CR # 208 at 2-48.

On November 7, 2001, Mr. Salley fired his original trial counsel, John Meyers, because he didn't object, like Mr. Salley wanted him to, to the government's request to exclude time under the Speedy Trial Act.

On November 9, 2001, John Meyers, filed a motion to have Mr. Salley evaluated to determine his competency to stand trial. (CR 15; 11-14-01 RT 2-3) Mr. Salley was then evaluated by a Bureau of Prisons psychologist. The psychologist found that Mr. Salley was competent to stand trial and make decisions regarding his case. (See Dr. Preston's Report P. 8.) United States v. Salley, 246 F. Supp. 2d 970, 972 (N.D. IL. 2003)

On March 21, 2002, the grand jury of the Northern District of Illinois returned a superseding indictment charging Mr. Salley with: count one-attempting to kill Chicago Police Officer Airheart while he was attempting to help FBI agents arrest Mr. Salley (18 U.S.C. §§ 1113, 1114); counts two, five, seven, and ten-firing a gun during a crime of violence (18 U.S.C. § 924 (c)(1)(A)(iii)); count three-assaulting, resisting, opposing, impeding, intimidating, or interfering with Airheart while he was assisting FBI agents (18 U.S.C. §§ 111 (a)(1) & (2)); count four-holding Airheart hostage in order to prevent the FBI from entering the apartment that he was in (18 U.S.C. § 1203); count six-attempting to kill FBI Agent Kissinger (18 U.S.C. §§ 113, 114); counts eight and nine-assaulting, resisting, opposing, impeding, intimidating, or interfering with FBI agents while

they were performing their official duties (18 U.S.C. §§ 111 (a) (1) & (2)); count 11-possession of a firearm after being convicted of a misdemeanor crime of domestic violence (18 U.S.C. § 922 (g) (9); count12-armed bank robbery on August 17, 2001, (18 U.S.C. §§ 2113 (a) & (d)); and counts 13 and 15-brandishing a gun during the commission of a crime of violence. (18 U.S.C. § 924 (c) (1) (A) (ii); Cr22.)

On April 4, 2002, Mr. Meyers filed a motion to withdraw as Mr. Salley's counsel due to a irreconcilable breakdown in the attorney-client relationship. (CR26) The court granted this motion on April 10, 2002 and appointed Kent Carlson to represent Mr. Salley. (4-10-02 RT 4-6.)

On April 26, 2002, Mr. Salley filed a motion to proceed pro se with the appointment of standby counsel. (CR 29.) The court denied this motion because Mr. Salley would not answer the court's questions as part of the colloquy waiving his right to counsel. Mr. Carlson then asked for a new competency evaluation. The court denied this request as well. (4-29-02 RT 4-12.)

On May 23, 2002, Mr. Carlson filed a motion to withdraw as counsel. The court held a hearing on the motion on May 29, 2002. At that time, Mr. Salley lectured court. (5-29-02 RT 3-4.) United States v. Salley, supra, 246 F.Supp. 2d at 973. The court then continued the hearing. (5-29-02 RT 7.)

On June 5, 2002, due to the court's concern that the

original mental health evaluation of Nov. 14, 2001, did not address whether Mr. Salley could adequately cooperate with counsel, the court concluded that Mr. Salley needed to be sent back for a further evaluation to make this determination. However, Mr. Salley refused to speak to the psychologist. United States v. Salley 246 F. Supp. 2d at 973; CR 66.

The court then ordered a second evaluation which was conducted by a different psychologist. She concluded that Mr. Salley had delusional thinking which would hinder his rational understanding of the proceedings and ability to assist counsel. Therefore, she concluded that Mr. Salley was not competent to stand trial. United States v. Salley, 246 F. Supp. 2d 970, 973 (N.D. IL. 2003) (CR 66).

The government then asked to have Mr. Salley evaluated again by a psychologist and a psychiatrist that it had hired. The court granted this request. (9-25-02 RT 2-4, 7.) The psychologist and psychiatrist who wrote the report and later testified could not tell whether Mr. Salley was delusional. However, he concluded that Mr. Salley was competent to stand a provisional trial.

On October 31, 2002, the court held a competency hearing. (10-31-02 RT.)

On January 31, 2002, the court issued an order and a published decision which was docketed on February 3, 2003. The court concluded that Mr. Salley lacked the capacity to

cooperate with counsel. Therefore, the court committed Mr. Salley to the custody of the Attorney General for treatment in a suitable facility. The court ordered that he be returned to the court after 90 days and that a report be given to the court about whether Mr. Salley had been restored to competency. United States v. Salley, supra, 246 F. Supp. 2d at 980. (CR 66)

This order of commitment was never vacated or set aside. It is impossible that Mr. Salley's commitment order was ever vacated or set aside while he was still subject to hospitalization all the way to and through trial as indicated by the docket of his criminal case.

Mr. Salley filed a timely notice of appeal on February 10, 2003, pursuant to F.R.A.P. 4(b) (CR 67)

On March 7, 2003, the court ordered that Mr. Salley's evaluation period would actually began when he arrived at the Federal Medical Center at Butner, North Caralina and end on June 20, 2003. (CR 69)

On May 21, 2003, Mr. Salley's appointed appellate counsel filed Mr. Salley's appellate brief # 03-1455 wherein he brought to the appellate court's attention three issues: 1) that Mr. Salley was required to be afforded the opportunity to testify, to present evidence, to subpoena witnesses on his behalf and to confront and cross-examine witnesses at the competency hearing, (18 U.S.C. §§ 4241 (c); 4247 (d)) and that

the district court may have denied Mr. Salley these rights (Appeal Brief # 03-1455 at 32), 2) it was also pointed out that the district court failed to appoint a new attorney to represent Mr. Salley's interest in being found competent and that that meant he was constructively denied counsel at a critical stage of the trial process in violation of U.S. v. Cronin, 466 U.S. 648, 659, 80 L.Ed. 2d 657, 104 S.Ct. 2039 (1984) because Mr. Salley's then counsel advocated a position (that Mr. Salley was incompetent) that was directly contrary to that of Mr. Salley's. id at 28-34, 3) it was pointed out that the district court placed the burden of proof on the wrong party when it found that Mr. Salley had the burden to prove that he was incompetent to stand trial, instead of requiring the government to prove that Mr. Salley was competent. id at 35-40.

On July 15, 2003, the Seventh Circuit Court of Appeals granted a motion that was filed against Mr. Salley's orders to suspend the briefing schedule and announced that the district court had jurisdiction to conduct some kind of hearing. (CR 78). That is the reason the court allowed a provisional trial.

On Sept. 3, 2003, the court appointed Paul Wagner as additional counsel for Mr. Salley and also granted the government's oral motion to permit Dr. Ronald Roesch to reinterview Mr. Salley. (CR 85).

On Sept. 26, 2003, a competency hearing was held and continued.

On Nov. 14, 2003, a competency hearing was held and

concluded and the Court concluded or estopped that Mr. Salley was competent to stand trial and ordered the parties to submit a brief memorandum of law concerning among other things. the advisability of appointing a mental health advisor to the court during a provisional trial as was recommended by Dr. Dietz and Dr. Roesch in their October 12, 2002 Report. See Dietz and Roesch Report 10-12-02 at 10-12. See also Mem. Op. and Ord. at 12-13 (CR96)

The district court kept Mr. Salley under the hospitalization of the Attorney General all the way up to trial. See CR 103, 104, 107, 109, 111, 117, 120, 125, 126, 127, 129, 130, 131, 132.) Mr. Salley has never been discharged from hospitalization to this day, as commanded by 18 U.S.C. § 4241 (e)

On October 3, 2005, a provisional trial began. (CR 152)

On October 25, 2005, Mr. Salley was found guilty on all 15 counts. (CR 175)

On February 9, 2006, the district court entered a second judgment without jurisdiction because the first judgment of 1-31-2003 had not been vacated or set aside to this day.

On March 16, 2009, Mr. Salley filed a Rule 60 (b) (5) motion in the middle District of Florida, which the Court characterized as a §2241 petition and transferred the case to the Northern District of Illinois, where it was designated

case # CV09-4057 and was assigned to Judge Shadur. Judge Shadur treated the motion as to vacate pursuant to § 2255 which, as he memornadized, should have been assigned to the sentencing judge, judge Andersen. See CV09-4057, CR 6-8, 14-15. CV09-4057 was eventually reassigned to judge Andersen. See CV09-4057, CR 17. This reassignment was caused by the Executive Committee of the Northern District of Illinois who treated the motion as one to vacate pursuant to § 2255. See CV09-4057; Memorandum dated August 27, 2009.

On August 11, 2009, the United States Court of Appeals for the Seventh Circuit also treated the motion in case # CV09-4057 as a collateral attack pursuant to § 2255 rules and subject to Circuit Rule 22.2 governing successive petitions pursuant to § 2255. See 09-2932 (U.S.C.A.) dated 8-25-09.

On July 29, 2009, Judge Andersen denied the motion that had been reassigned to Mr. Salley's criminal case, CR01-0750, CR. 191

On October 15, 2009, Judge Andersen denied the same motion again dressed as case #CV09-4057, CR.17.

On September 16, 2011, Mr. Salley filed a petition for Writ of Habeas Corpus § 2241 etc. in the United States District Court District of Arizona (Tucson Division) where it was designated case # IV11-00586. ER1-4

On October 20, 2011, Mr. Salley filed a Memorandum of Law and a Motion to Return the Equivalent of Property Seized by the Government. CR 5-6.

On November 10, 2011, Mr. Salley filed an Evaluation of Property. CR.8.

On January 31, 2012, the court denied the Motion for the Return of Property and the Petition for Writ of Habeas Corpus and granted the Application to Proceed In Forma Pauperis and declined to issue a certificate of appealability, which Mr.

Salley never requested.

On February 13, 2012, the district court denied the Petition's Motion for Reconsideration and again, denied to issue a certificate of appealability even though one is not required and Mr. Salley did not request one.

On May 17, 2012, Mr. Salley filed the "Notice Of Appeal Pursuant To 28 U.S.C. § 1291 From A Denial Of A 28 U.S.C. § 2241 Habeas Corpus Motion And Request For A Briefing Scheduling" but the district court construed the notice as a request for a C.O.A. which is jurisdictionally barred and precludes review of the judgment appealed from in a § 2241 proceeding. The notice was designated case # 12-16202.

On August 30, 2012, Mr. Salley filed a circuit approved pre-printed Informal Brief, Certificate of Appealability, and other papers and exhibits. It was mailed with a Delivery Confirmation #0306 2400 0003 2086.3546 delivered on 9-1-12. To date, the clerk of the Appeals Court has not docketed the brief nor motions nor the proof of service.

On September 25, 2012, Mr. Salley mailed a request for a docket sheet and status to see if the Informal Brief had been entered.

On October 2, 2012, the U.S. Court of Appeals for the Ninth Circuit in only a two judge panel denied the request for a C.O.A. that Mr. Salley never made.

On or about June 26, 2013, the Government ordered the United States Penitentiary (USP) Tucson, Arizona prison officials to confiscate all of Mr. Salley's legal and business documents, sift through them and to take out all business and certain legal documents. See Bureau of Prisons (BOP) Administrative Remedies # 688132-FI-R1; 910947-FI; 835875-A1; 905577-R1; See also CR # 208 at 50-75. All financial and business documents etc. were seized and never returned. Id.

Between 2015 and 2018, Mr. Salley completed the administrative remedy aspect of and filed a federal tort claim against the Government in the U.S. Dist. Ct. in Martinsburg, West Virginia concerning a large federal payment that Mr. Salley understood was sent to the BOP from the U.S. Treasury Dept. for him as the payee but was not posted to his Trust Fund (Commissary) Account. The Court denied the claim on procedural grounds stating that Mr. Salley did not file a response to the Magistrates Report on time. When Mr. Salley produced a certified mail receipt, # 7008 1140 0003 9611 8131 dated 2017 Jul 17 AM 10 15 Exhibit (G) sent to the U.S. Dist. Ct. N. Dist. of West Virginia, 217 W. King St, Martinsburg, West Virginia 25401. Exhibit A, 21 of 24 and stamped receipt proving that his response was timely, the Court disregarded the receipt. See Appendix G.

In, 2018, Mr. Salley filed a writ of mandamus in the Supreme Court # 18-7939 directed at the appellate court and the district court in West Virginia and the 4th Circuit court of Appeals' affirmance.

On 2-13-2019, the government finally acknowledged the federal

payment by sending Mr. Salley a notice of Intent to Offset the payment. See Appendix E & F.

In 2021, Mr. Salley was informed by the clerk of court in the Northern District of Illinois Eastern Div. (Chicago) that a plea of guilty was entered on his behalf in between 2003 and 2005. See CR #188. Mr. Salley then filed a motion to vacate, set aside, or correct a sentence (28 U.S.C. § 2255(1), (4)). See 21-CV-6246. Mr. Salley filed this because he was not aware that such a plea had been entered on his behalf and without his consent.

The record is aware of the other dates of procedures involved in this case which are that on 5-18-2021 Mr. Salley filed his Motion For The Return Of All Properties Etc. CR #208. And, also in 2021 Mr. Salley filed a motion for the Government to return all seized TOP funds that are over the debts he owes. Id. at 224.

REASONS FOR GRANTING THE PETITION

- ① It is a deprivation of A United States citizen's property rights guaranteed to him by the Fifth and Fourteenth Amendments to the Constitution by: (1) the Government not returning his property or the equivalent it seized and retained during his criminal proceedings and thereafter; and (2) Treasury Officials not applying Federal payments made directly to or seized by the Treasury Offset Program (TOP).

A seizure occurs of property where there is some meaningful interference with an individual's possessory interest in that property. *Soldal v. Cook County, Illinois*, 121 L. Ed. 2d 450, 113 S. Ct. 538, 544 (1992) [Quoting *United States v. Jacobsen*, 466 U.S. 109, 113, 80 L. Ed. 2d 85, 104 S. Ct. 1652 (1984)]. See also *Gates v. City of Chicago*, 623 F.3d 389, 401 (7th Cir. 2010).

Forfeiture of property as a criminal punishment of its owner cannot occur unless the owner is first convicted of a crime. This reasoning is a cornerstone of our system of justice, a basic tenet of the concept of due process. *United States v. Unit No. 7 & Unit 8 of shop in Grove Condominium*, 853 F.2d 1445, (7th Cir. 1988) 1449.

In general, seized property must be returned after criminal proceedings have terminated. *United States v. Silva*, 26 Fed. Appx. 544, n.3 (7th Cir. 2001). In this case, the criminal proceedings have never terminated.

On January 31, 2003, the court issued an order and a published decision which was docketed on February 3, 2003. The Court concluded that Mr. Salley was incompetent to stand trial because he suffered from a mental disease or defect (delusional disorder). Therefore, the court committed Mr. Salley to the custody of the Attorney General for hospitalization and treatment. See *United States v. Salley*, 246 F. Supp. 2d at 980. (CR. 66).

This Order of Commitment was never vacated or set aside. It is impossible that Mr. Salley's commitment order was ever vacated or set aside while he was still subject to and kept under hospitalization all the way to and through trial as indicated by the docket of his criminal case. See CR 103, 104, 107, 109, 110, 117, 120, 125, 126, 127, 129, 130, 131, 132. Mr. Salley has never been discharged from hospitalization to this day, as commanded by 18 U.S.C. § 4247(e).

The Government argued and the Appeals Court affirmed that although the Government did seize Mr. Salley property, business and personal, per *Sims United States v. Sims*, 376 F.3d 705, 708-09 (7th Cir. 2004), Mr. Salley

had six years pursuant to 28 U.S.C. § 2401(a) to seek the return of all his business and personal property as well as the application of a federal payment to his outstanding federal debt. See Brief of the United States (Br.) at 7-8; See also Seventh Circuit Order dated 5-15-2023, no. 22-2662 at 2-3. Title 28 United States Code, Section 2401(a) states in part "...every civil action commenced against the United States shall be barred unless the complaint is filed within six years after the right of action first accrues. The action of any person 'under legal disability' or beyond the seas at the time the claim accrues may be commenced within three years after the disability ceases." 28 U.S.C. § 2401(a). In addition, Mr. Salley first filed his claim in open court on 3-22-02 and then again in a motion filed after a Writ of Habeas Corpus was filed (§ 2241) in the United States District Court District of Tucson Arizona where it was designated case # 11-586. See CR # 25, and 208 at 1-3; Civ. Dec. 5-8 (Tucson).

Clearly, the January 31, 2003 Court Order of hospitalization and treatment were never vacated or set aside therefore, Mr. Salley is not time barred by the six year statute of limitations. It follows that the Seventh Circuit was without jurisdiction to affirm the denial of the right to the return of the equivalent of all of Mr. Salley's business and personal property. The Government is also without jurisdiction to retain the equivalent of Mr. Salley's property. If the Government is allowed to seize and retain the property of citizens in violation of clearly established law then that would indicate a change in the form of government we once knew from a Republican/Democratic form to a communistic form.

② Federal law allows agencies to refer debts to the United States

Program, to post was in March 12, 2018 but did not acknowledge the much larger payment, that was not posted but was being held in a ledger or Journal account, that the February 13, 2019 "Notice of Intent To Offset" had already conceded was made. See Exhibit F in Appendix F, (letter from the FBI).

The Financial Management Service has unlawfully withheld and unreasonably delayed the full lump sum payment to all the creditor agencies (Justice Dept., Education Dept. and the Border Patrol) and has unlawfully withheld and unreasonably delayed the disbursement of any remaining payment to the payee, Mr. Salley.

Therefore, this Court should remand this case with instructions to order the Government to return the equivalent of all Mr. Salley's business and personal property after an evaluation of that property is determined. In addition, this Court, in remanding this case should further instruct the lower court to order the Financial Management Service to release the Federal payment and pay the creditor agencies listed above in full and to disburse any remaining payment to the payee, Mr. Salley.

I solemnly affirm under penalty of perjury that the above statements and claims are true, right, and accurate to the best of my knowledge and belief so help me God and that this brief was mailed to the court with prepaid postage on 10-12-2023 by depositing it in Unit 1-A mail box at McCreary U.S.P., Pine Knot, KY.

Sign: Daniel Eric Salley
Date: 10-12-2023

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Daniel Eric Salley

Date: 10-12-2023