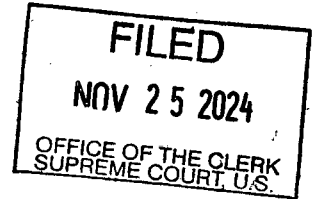


No. **24-6055**

**ORIGINAL**



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

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**SANDRA LEE BART,**

**Pro Se Petitioner,**

**v.**

**UNITED STATES OF AMERICA,**

**Respondent.**

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**ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED  
STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT**

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**PETITION FOR A WRIT OF CERTIORARI**

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## QUESTIONS PRESENTED

1. Whether Fraud on the Court occurred when the Government's Motion for Protective Order and the Order were considered valid even though they were not procedurally applied to Petitioner because Petitioner was not named nor served; thereby depriving Petitioner of Due Process Rights and the opportunity to object to redaction of important discovery and witnesses and denying Petitioner the compulsory process for obtaining witnesses and evidence in her favor to present a complete defense in violation of the Compulsory Process Clause of the United States Constitution, Amendment VI.

2. Whether Petitioner's rights from illegal seizure of assets by a Government agency were violated when the Motion and Order of Forfeiture For Substitute Property did not comply with the stipulations in the Debt Collection Act of 1982 and the Debt Collection Improvement Act of 1996 and conflicted with 21 U.S.C. 853(p).

## TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED FOR REVIEW.....	i
TABLE OF CONTENTS.....	ii
TABLE OF APPENDICES.....	v
TABLE OF CITED AUTHORITIES.....	vi
INTRODUCTION.....	1
OPINIONS BELOW.....	2
JURISDICTION.....	2
CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS AT ISSUE.....	2
STATEMENT OF THE CASE.....	3
ISSUE I. – FRAUD ON THE COURT.....	4
A.) Background.....	4
B.) The Motion and Protective Order Were Not Served.....	4

## **TABLE OF CONTENTS – Continued**

	<b>Page</b>
C.) Due Process Rights Were Violated.....	4
D.) Court-Appointed Defense Attorney Complied With Invalid Order...	5
E.) The District Court and Appeals Court Decision is Predicated on Misunderstanding of the Governing Law.....	6
F.) Fraud On The Court is Applicable To This Case.....	7
G.) Violation of the Compulsory Process Clause.....	9
 <b>ISSUE II. – THE ORDER OF FORFEITURE FOR SUBSTITUTE PROPERTY DOES NOT COMPLY WITH STATUTES</b>	
A.) Background.....	10
1.) District Court Failed to Request Jury Determination Of Forfeiture.....	10
2.) No Motion for Preliminary Order of Forfeiture was Filed.....	11
3.) Forfeiture was Imposed Jointly and Severally.....	11
4.) The Offset to be Seized as Substitute Property was Done Illegally.....	12
5.) Protection From Illegal Offset is Afforded by the Debt Collection Act of 1982 and the Debt Collection Improvement Act of 1996.....	13
B.) Government Motion for Preliminary Order of Forfeiture for Substitute Property Does Not Comply With Statutes.....	15

## TABLE OF CONTENTS – Continued

	Page
1.) The Motion to Receive Offset Funds Pursuant to 21 U.S.C. 853(p) is Illegal.....	15
2.) <i>United States v. Smith</i> Not Applicable.....	15
3.) The United States Supreme Court Reasoning Regarding 853(p).....	16
REASONS FOR GRANTING THE WRIT.....	16
A.) The Decisions of the District Court and the Eighth Circuit Court of Appeals Conflict With Longstanding Governing Law and the United States Constitution of Due Process And a Fair Trial.....	16
B.) The Eighth Circuit's Decisions Are Wrong.....	17
C.) The Questions Presented Are Important and Recurring Ones That Warrant the Court's Review.....	19
D.) This Case is an Ideal Vehicle for Deciding the Questions Presented.....	20
CONCLUSION.....	20

# TABLE OF APPENDICES

Page 2

APPENDIX A - JUDGMENT OF THE UNITED STATES  
COURT OF APPEALS FOR THE EIGHTH CIRCUIT,  
DATED JULY 17, 2024.....1a

APPENDIX B – ORDER OF THE UNITED STATES  
DISTRICT COURT FOR THE DISTRICT OF MINNESOTA,  
DATED MARCH 19, 2024.....2a

APPENDIX C - ORDER OF THE UNITED STATES COURT  
OF APPEALS FOR THE EIGHTH CIRCUIT, DATED  
SEPTEMBER 19, 2024.....7a

APPENDIX D - MANDATE OF THE UNITED STATES  
COURT OF APPEALS FOR THE EIGHTH CIRCUIT,  
DATED SEPTEMBER 26, 2024.....8a

APPENDIX E – PETITIONER’S DOCUMENT.....9a

## TABLE OF CITED AUTHORITIES

	Page
<b>CASES</b>	
<i>Bearden v. Georgia</i> , 461 U.S. 660, 666 (1983).....	16
<i>Bewig v. United States</i> (E.D. Mo., Oct. 20, 2010).....	8
<i>Bose Corp. v. Consumers Union, Inc.</i> , 466 U.S. 485, 501 (1984).....	7
<i>Brown v. United States</i> , 138 S. Ct. 468, 468 (2017).....	11
<i>Bulloch v. United States</i> , 763 F. 2d 1113, 1121 (10 <sup>th</sup> Cir. 1085).....	8
<i>Chambers v. Mississippi</i> , 410 U.S. 284, 302 (1973).....	9
<i>Hazel-Atlas Glass Co. v. Hartford-Empire Co.</i> , 322 U.S. 238, 251 (1944).....	10
<i>Holmes v. S. Carolina</i> , 547 U.S. 319, 324 (2006).....	9
<i>Honeycutt v. United States</i> , 137 S. Ct. 1626, 1635 (2017).....	11, 16
<i>Landscape Props., Inc. v. Vogel</i> , 46 F. 3d 1416, 1422 (8 <sup>th</sup> Cir. 1995).....	8
<i>Peithman, Jr. ET AL. v. United States</i> 589 U.S. ____ (2019).....	11, 12
<i>United States v. Chittenden</i> , 138 S. Ct. 447, 447-48 (2017).....	11
<i>United States v. Scheffer</i> , 523 U.S. 303, 315 (1998).....	9
<i>United States v. Smith</i> , 656 F. 3d 821, 827 (8 <sup>th</sup> Cir. 2011).....	15
<i>Washington v. Texas</i> , 388 U.S. 14, 22, (1967).....	9



## TABLE OF CITED AUTHORITIES – Continued

	Page
<b>STATUTES</b>	
18 U.S.C. 981a(1)(C).....	10, 11, 12, 13
21 U.S.C. 853(a)(1).....	10, 22, 11, 12
21 U.S.C. 853(p).....	15, 18, 19
28 U.S.C. 1655.....	12
31 U.S.C. 3716(a).....	13, 19
31 U.S.C. 3720A(b).....	13
<b>FEDERAL RULES OF CRIMINAL PROCEDURES</b>	
Fed. Rule 32.2.....	10
Fed. Rule 49(a) and (d).....	2, 4, 10, 18
Fed. Rule 60(d)(3).....	1, 3, 7
<b>FEDERAL REGULATIONS</b>	
31 C.F.R. 285.4(f)(iii).....	14
31 C.F.R. 285.5(d)(3)(ii).....	13, 14, 19
<b>MINNESOTA GENERAL RULES OF PRACTICE</b>	
Rule 5.01.....	4

## TABLE OF CITED AUTHORITIES – Continued

	Page
Rule 115.04.....	4
Rule 355.01.....	4
<b>OTHER AUTHORITIES</b>	
United States Constitution, Amendment V.....	2
United States Constitution, Amendment VI.....	2, 10
Debt Collection Act of 1982.....	3, 13, 18
Debt Collection Improvement Act of 1996.....	3, 13, 18

## INTRODUCTION

The Order of the United States District Court of Minnesota and affirmed by the Eighth Circuit Court of Appeals necessitates the exercise of the United States Supreme Court's supervisory power so as to foreclose a troubling form of overreach and power.

Important federal questions have been decided in a way that conflicts with relevant decisions of this Court and Federal and State Rules. The right of notification of notices, motions, and orders has been totally ignored by the District Court and Eighth Circuit Court of Appeals. The Rules require all parties to be served so that defendants are assured the opportunity to object. Therefore, it is of the utmost importance for the United States Supreme Court to stop the departure from the accepted and usual course of judicial proceedings and grant certiorari so that Government doesn't circumvent due process by not notifying defendants nor serving motions and court orders as required by law.

The District Court Order denying Petitioner's Motion to Set Aside a Judgment for Fraud on the Court per Rule 60(d)(3) and granting the Government's Motion for Preliminary Order of Forfeiture for Substitute Property require review by this Court to protect individuals' rights to notification which affects thousands of defendants' due process.

## **OPINIONS BELOW**

The United States Court of Appeals for the Eighth Circuit issued its Order affirming the United States District Court and denying a petition for rehearing on September 19, 2024. The Order is found in the Appendix C.

## **JURISDICTION**

The United States Court of Appeals for the Eighth Circuit issued its Order denying rehearing and affirming the judgment of the United States District Court of Minnesota on September 19, 2024.

The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1), since the Petitioner was a party to a criminal case in which judgment was rendered and affirmed by the Court of Appeals.

## **CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS AT ISSUE**

U.S. Constitution, 5<sup>th</sup> Amendment

No person shall be...deprived of life liberty,  
or property without due process of law...

U.S. Constitution, 6<sup>th</sup> Amendment

In all criminal prosecutions the accused shall...have  
compulsory process for obtaining witnesses in his favor...

Federal Rules of Criminal Procedure 49(a) and (d)

Each of the following must be served on every party:  
any written motion...court orders (per 49(a))

## STATEMENT OF THE CASE

This case presents the opportunity to address a new question of exceptional importance concerning basic principles of law; namely, whether a notice, motion, or order that are not served on a party are valid. The Appellate Court affirmed the District Court decision, relative to the above, denying Defendant's Motion to Vacate and Set Aside Judgment and Sentence pursuant to 60(d)(3) basing its decision that no fraud occurred because they considered the Motion and Protective Order as valid even though it had not been procedurally applied to the Defendant.

The starting point for this issue turns on the question of the validity of a Motion and Order that is not served on a party. This will be discussed in Issue II of this Petition. The Appellate Court also affirmed another District Court decision in the same order, relative to the above, granting the Government's Motion for Preliminary Order of Forfeiture for Substitute Property basing its decision that the Defendant need not receive notification which violates the Debt Collection Act of 1982 and the Debt Collection Improvement Act of 1996 enacted by Congress specifically to protect defendants from unlawful seizure. This matter will be discussed in Issue III of this Petition.

## **ISSUE I. - FRAUD ON THE COURT**

### **A.) Background**

The Government filed the Motion for Protective Order on June 30, 2015, naming only Wilian Socrate Cabrera ("Cabrera") as defendant (Doc. 15). The Government conferred only with Cabrera's defense counsel who did not object to the proposed order. The District Court subsequently filed the Protective Order on July 1, 2015 (Doc. 17). Petitioner, Sandra Lee Bart, ("Bart") was not named in the Motion nor Order.

Bart was not indicted until November 18, 2015 in a Superseding Indictment.

### **B.) The Motion and Protective Order Were Not Served**

Minn. Gen. R. Prac. Rule 355.01, Rule 115.04, Rule 5.01; and Federal Rules of Criminal Procedure Rule 49(a) and (d) require that all motions and orders "shall be served on all parties." The above-indicated motion and order were not served on Bart. Because they were not properly applied procedurally, the Order cannot be valid as to Bart.

### **C.) Due Process Rights Were Violated**

Because Bart was not served, she could not confer with the Government, Prosecutor as required and had no opportunity to object to the Motion and Order depriving her of her due process rights.

Bart had no knowledge that the Motion or Order even existed because the U.S. District Court of Minnesota Criminal Docket for the case (#0:15-cr-00190-DSD-LIB-3) does not list the Motion (Doc. 15) nor Protective Order (Doc. 17). Had they applied to Bart, they would be indicated on the Court Docket for the case. (See Court Docket, Appendix E).

The District Court denied Bart's motion (and the Appeals Court affirmed) because "Bart did not challenge the protective order or seek judicial exception to its requirements." (See Appendix B, page 3 of 5)  
Bart could not challenge nor seek judicial exception to its requirements

because she had no knowledge of the Order and no idea it even existed.

#### **D.) Court-Appointed Defense Attorney Complied With Invalid Order**

The Government gave discovery to the court-appointed defense attorney unredacted, presumably because the Protective Order did not pertain to Bart. In a surprising and detrimental action, the court-appointed defense attorney illegally redacted all the Government's discovery before giving to Bart. The

usual and legal protocol for redaction is (a) the Government, who has requested redaction, is to file a notice that redacted and unredacted discovery is being provided to the opposing party and (b) the Government then provides two versions of the discovery, redacted and unredacted, to the opposing party. This was not done.

The defense attorney even overstepped the scope of the invalid protective order by redacting all information including possible defense witnesses who were not victims and redacting large blocks of information rendering the discovery unreadable and useless.

**E.) The District Court and Appeals Court Decision is Predicated on Misunderstanding of the Governing Law**

The denial of Bart's Motion was based upon the erroneous conclusion that "this information was subject to a protective order and permitted to be redacted by defense counsel before showing it to Bart". (See Appendix B, page 3 of 5).

The District Court and Appeals Court are mistaken to conclude that the Order was valid. An Order that did not name Bart, had not been served, and that Bart had no opportunity to object to cannot be valid. Because the Order did not appear on the docket for the case, Bart had no way of knowing it even existed. Bart was prevented from fully and fairly defending herself at trial.

It is only the District Court and Appeals Court opinion that the Protective Order was valid and that opinion has not been substantiated by any legal precedent. There is no statute or rule stating that an order may apply to any future defendants named in a superseding indictment even if they have not been named in the order because doing so would deprive future defendants



of an opportunity to object to orders filed prior to being named a defendant.

Subsequent defendants would have to abide by the orders without any

recourse, depriving them of their rights as Bart has been in this instant case.

Opposing parties could hurriedly pass orders to deprive a later-named

defendant of constitutional rights.

The U.S. Supreme Court can correct "a finding of fact that is predicated on a misunderstanding of the governing law." (quoting *Bose Corp. v.*

*Consumers Union, Inc.*, 466 U.S. 485, 501 (1984)).

If allowed to stand, this decision would conflict with the decision of the

United States Supreme Court. It would also set a precedent that motions and

orders need not be served on defendants—causing a loss of Due Process

Rights for many defendants nationally. Serving of a motion is an important

part of due process and notification is a constitutional requirement.

#### **F.) Fraud On The Court is Applicable To This Case**

Under 60(d)(3), Fraud on the Court, a judgment may be set aside when

there has been harm to the integrity of the judicial process by an officer of

the court. Bart's court-appointed defense attorney, an officer of the court,

redacted discovery without a valid Protective Order depriving Bart of

significant and important evidence and potential witnesses all of which

would have influenced the jury in making its determination. The outcome

most definitely would have been different had Bart not been impeded in the investigation of her case. As per *Landscape Props., Inc. v. Vogel*, 46 Fed. 1416, 1422 (8<sup>th</sup> Cir. 1995) and not as a right to credit given to her.

"Fraud on the Court, though not easily defined, can be characterized as a scheme to interfere with the judicial machinery performing the task of impartial adjudication as by preventing the opposing party from fairly presenting his case or defense."

Bart was prevented from exhibiting fully her case. She was deprived of her Due Process Rights and a fair trial as guaranteed by the Fifth and Fourteenth Amendment of the United States Constitution. (See *Bewig v. United States* (E.D. Mo., Oct. 20, 2010).

When the judicial machinery has been tainted by an officer of the court, the interest of justice will only be served if the court vacates the conviction. (See *Bullock v. United States*, 763 F. 2d 1113, 1121 (10<sup>th</sup> Cir. 1985))

The argument put forth by Bart is based on the fact that the Protective Order was not valid because it was not procedurally applied to Bart. The Government, District Court, and Defense Attorney knew or should have known that the Motion and Protective Order did not name Bart, was not served on Bart, Bart had no knowledge of it nor opportunity to object, was not a part of the Court Docket, and was, therefore, invalid. Defense Counsel did not comply with a valid order.

A superseding indictment begins anew with a new Grand Jury. A new defendant is not merely added on to the original indictment. All involved, previous defendants and new, are named in the superseding indictment. It stands to reason then that any previous motions or orders should be modified to be served upon any new defendant named in the superseding indictment. Bart was not named in the original indictment. She was only named in the superseding indictment nearly six months later.

The invalid Protective Order deprived Bart of a meaningful opportunity to present a complete defense (*Holmes v. Carolina*, 547 U.S. 1319, 1324 (2006)).

#### **G.) Violation of the Compulsory Process Clause**

Exclusion of defense evidence, as it was when all names and important information were redacted in the discovery, can "significantly undermine fundamental elements of the [defendant's] defense." (*United States v. Scheffer*, 523 U.S. 303, 315 (1998)).

"Few rights are more fundamental than that of an accused to present witnesses in his own defense." (*Chambers v. Mississippi*, 410 U.S. 284, 302 (1973)). The Government must reveal the identity of witnesses. (See *Washington v. Texas*, 388 U.S. 14, 22, (1967)). Bart, as these cases

demonstrate, could not present a complete defense when she was deprived of

important defense evidence and witnesses as guaranteed by the 6<sup>th</sup> Amendment of the United States Constitution.

For the Government, the District Court, the Appeals Court, and the court-appointed defense attorney to consider the Protective Order valid when it did not name Bart and was not served as per regulations and Federal Rule 49 is erroneous. As stated in *Hazel-Atlas Glass Co., v. Hartford-Empire Co.*, "No fraud is more odious than an attempt to subvert the administration of justice."

## **ISSUE II. THE ORDER OF FORFEITURE FOR SUBSTITUTE PROPERTY DOES NOT COMPLY WITH STATUTES**

### **A.) Background**

Prior to the Government's Motion for Preliminary Order of Forfeiture for Substitute Property, the District Court of Minnesota made numerous legal errors affecting Bart's rights regarding forfeiture as follows:

#### **1.) District Court Failed to Request Jury Determination of Forfeiture. -**

Because Bart had been tried before a jury, the District Court must determine before the jury begins deliberations whether either party requests that jury be retained to determine the forfeitability if a guilty verdict is returned. (See Federal Rule of Crim. Procedure Rule 32.2(5)(A)). The District Court did not do so.

2.) No Motion for a Preliminary Order of Forfeiture was Filed - Once again, Bart had no knowledge and no opportunity to object to the forfeiture.

3.) Forfeiture was Imposed Jointly and Severally - Joint and Several conflicts with the United States Supreme Court decisions decided in *Honeycutt v. United States*, 137 S. Ct. 1626, 1635 (2017), *United States v. Chittenden*, 138 S. Ct. 447, 447-48 (2017), and *Brown v. United States*, 138 S. Ct. 468, 468 (2017). The Second, Third, Fourth, Ninth, Tenth, and Eleventh Circuits have all vacated forfeiture cases where joint and several had been ordered and though Bart has raised the issue through appeal, the Eighth Circuit has refused to do so.

The Government has conceded that the rationale of *Honeycutt* applies equally to 981(a)(1)(C) as it does to 853(a)(1) and so stated in its brief for the United States in opposition to *Peithman, Jr. ET AL., v. United States*, 589 U.S. \_\_\_\_ (2019) cert denied:

"the government has since acknowledged in this Court and in various lower courts that *Honeycutt*'s reasoning rejecting joint and several liability also extends to forfeiture orders under Section 981(a)(1)(C) as well as 853(a)(1).

The Government confessed the error solely so as not to have the Supreme Court intervene. Unfortunately the argument at this time is foreclosed because it has not been disturbed by the Supreme Court.

However, Justice Sotomayor, dissenting from denial of certiorari, (*Peithman v. United States*) stated:

“Because the Government now concedes that the rationale of Honeycutt applies equally to 981(a)(1)(C) as it does to 853(a)(1), I would grant the petition for certiorari, vacate the judgment below, and remand the case to allow the Eighth Circuit to reconsider its decision in light of the Government’s concession.”

Bart’s forfeiture was pursuant to 981(a)(1)(C) and, as the Government conceded in *Peithman*, jointly and severally should not have been ordered.

The Government has continued its illegal pursuit of joint and several forfeiture by offset reductions of Bart’s Social Security Income and Federal Tax Refunds.

4.) The Offset to be Seized as Substitute Property was Done Illegally - The Department of the Treasury is to collect only delinquent debts owed to federal agencies by administrative offset. Bart was not delinquent.

Therefore, the offset is illegal.

The first offset reduction of Bart’s Social Security Income was done August 23, 2023. Once again, Bart was not notified of the offset. Bart then filed on October 23, 2023 a Motion to Vacate and Set Aside U.S. Treasury Offset Pursuant to 28 U.S.C. 1655 which allows any defendant not so personally notified may, at any time within one year, request relief (District Court Doc. 400).

Per 31 U.S.C. 3720A(b), before a federal agency refers a debt to the Treasury Department under TOP (Treasury Offset Program), it must:

- (1) notify the debtor that the agency plans to refer the debt to the Treasury Department for the offset of federal payments;
- (2) give the debtor at least 60 days to present evidence that all or part of the debt is not past-due or not legally enforceable;
- (3) consider any evidence presented by the debtor and determine that the debt is past due and legally enforceable; and
- (4) make reasonable efforts to collect the debt.

The federal agency did not notify Bart nor give an opportunity to present evidence that she is not past-due as required by U.S.C. 3720A(b)

The offset process, as mandated by the Congressional Acts, must be followed before a Federal Agency refers a debt to the Treasury Department and the debtor must be given an opportunity to make a written payment agreement.

Bart had a forfeiture payment plan, never had been delinquent nor overdue, and had received no notice and, therefore, no opportunity to request administrative review as per 31 U.S.C. 3716(a) and 31 CFR 285.5(d)(3)(ii).

The offset constitutes illegal seizure of Bart's assets.

5.) Protection from illegal offset is afforded per the Debt Collection Act of 1982 and the Debt Collection Improvement Act of 1996 - These Congressional Acts stipulate in Section 3(B) "the head of the agency has

reviewed the claim and determined that such claim is valid and "overdue" and

Section (C) "the head of the agency has sent a written notice to the

individual informing such individual that the payment is overdue." (The

head of the agency did not do so. Had he/she done so, the offset would not

have been done because Bart had never been overdue. And, once again,

Bart did not receive a notice.

In its Order denying Bart's Motion, the District Court erroneously

quoted C.F.R. 285.4(f)(iii) that "[n]on-receipt of the notices... shall not

impair the legality of the administrative offset." (Doc. 404, pg. 3 of 3,

12/04/23). C.F.R. 285 only applies to past-due debt and does not apply to

Bart because she was not past due.

The District Court has transmogrified the regulation and interpreted it

erroneously as explained in the following:

The C.F.R. 285.4 is titled "Offset of Federal benefit payments to collect,

past-due legally enforceable nontax debt." Section (a)(1) of this regulation

re-enforces this requirement of past-due stating "....to collect delinquent

nontax debt owed to the United States."

The regulation is not applicable to Bart because Bart has never been late,

past-due, nor delinquent. Bart explained in a Motion to Reconsider (Doc.

405) that the District Court was mistaken to use C.F.R. 285.4 as a basis for



its denial. The District Court, however, denied Bart's Motion for

Reconsideration (Doc 406, 01/03/2024).

**B.) Government Motion for Preliminary Order of Forfeiture For Substitute Property Does Not Comply With Statutes**

1.) The Motion to receive offset funds pursuant to 21 U.S.C. 853(p) is illegal. - The Government cannot use 21 U.S.C. 853(p) as grounds for

forfeiture of substitute assets because a court can only order substitute

forfeiture per 853(p) upon the Government providing evidence of a

purposeful act or omission done by the defendant to transfer or conceal the

assets. The Government never provided such evidence and failed to meet its

burden of proof because Bart has never transferred or concealed any tainted

assets; therefore, the District Court should not have granted the

Government's motion.

**REASONS FOR GRANTING THE WRIT**

2.) *United States v. Smith* not applicable - The District Court based its decision, which the Appeals Court affirmed on *United States v. Smith*, 656

F. 3d 821, 827 (8<sup>th</sup> Cir. 2011). That case has no application to Bart's case

because the confiscated property in *Smith* had been obtained directly or

indirectly as the result of the violations. Bart's Social Security Pension and

Income Tax Refunds have no nexus to the offense nor were acquired as a

result of criminal activity as required by 21 U.S.C. 853(p).

3.) The United States Supreme Court reasoning regarding 853(p) – The Supreme Court reasoned that Congress contemplated situations in which the tainted property would be beyond the Government’s reach and allowed for forfeiture “only from the defendant who initially acquired the property and who bears responsibility for its dissipation. Permitting the Government to force other co-conspirators to turn over untainted substitute property would allow the Government to circumvent Congress’ carefully constructed scheme.” And if joint and several liability is followed, then it renders futile 853(p). (*Honeycutt v. United States*, 137 S. Ct. 1626 (2017))

The Eighth Circuit wants two bites of the apple; to order joint and several forfeiture and also order substitute property of untainted assets which the Supreme Court in *Honeycutt* stated was not permissible.

### **REASONS FOR GRANTING THE WRIT**

#### **A. The Decisions of the District Court and the Eighth Circuit Court of Appeals Conflict With Longstanding Governing Law and the United States Constitution of Due Process and a Fair Trial.**

The Rules, Regulations and Statutes demand that notices, motions, and orders must be served on all parties so that they are aware of their opportunities to object and appeal. Due Process forbids fundamentally unfair or arbitrary government actions (*Bearden v. Georgia*, 461 U.S. 660,

666 (1983). Government should not be allowed to broaden statutes and ignore the burden of proof when required.

It is of the utmost importance to call attention to material matters of law or fact that have been overlooked, misinterpreted, or departed from the accepted and usual course of judicial proceedings by the District Court and Appeals Court and to call upon the United States Supreme Court to exercise its supervisory power when the guarantee of Due Process and Fair Trial are being denied.

The service of motions is the most important part of due process and a constitutional requirement of notification.

#### **B. The Eighth Circuit's Decisions Are Wrong**

The decision to deny Baff's Motion regarding Fraud on the Court conflicts with long-established Rules, Regulations, and this Court's holdings regarding due process and a fair trial.

If the Eighth Circuit decision that there was a valid Protection Order is permitted to stand, it would set a precedent that motions and orders need not be served on all parties as the Rules and Statutes stipulate shall.

Further, opposing parties could rush through motions and orders prior to a superseding indictment and then claim that those orders, filed prior to the

superseding indictment, were valid to defendants not named on the order and who had no opportunity to object or have knowledge of them.

It would also set a precedent that orders and motions need not appear on a court docket or be served.

A defendant would have no knowledge, as Bart did not, to object to the Order.

The Eighth Circuit ignored Federal Rules of Criminal Procedure 49(a) and (d) which states motions and orders must be served on every party. To allow this to continue will deprive hundreds of defendants nationally their constitutional rights.

The Eighth Circuit's affirming the District Court's granting of the Government's Motion for Preliminary Order of Forfeiture for Substitute Property conflicts with Federal Regulations, 21 U.S.C. 853(p), the Debt Collection Act of 1982, and the Debt Collection Improvement Act of 1996.

There was absolutely no reason Bart was not notified of the offset. Bart had the same address for 50 years, the Courts had record of her address upon release from Federal Prison, she had been receiving and sending communications to the Minnesota Marshals Service, and had been mailing forfeiture payments to the Minnesota Marshals Service for three years indicating her residential address.

The Circuit Court should not have permitted failure by the government to inform Bart of the offset. Once again, this would set a precedent that notification is not mandatory.

Because Bart never had the opportunity to dispute the offset reduction of her Social Security Income nor the opportunity to request administrative review as per 31 U.S.C. 3716(a) and 31 C.F.R. 285.5(d)(3)(ii) and because 21 U.S.C. 853(p) cannot be used as grounds for forfeiture of substitute assets as explained in this petition, the Supreme Court review is necessary to protect defendants from illegal seizure of assets.

**C. The Questions Presented Are Important and Recurring Ones That Warrant the Court's Review.**

As this Petition has proven, the Eighth Circuit has not notified nor served

Bart several times as follows:

- 1.) Did not ask defendant if determination by jury of forfeiture is requested.
- 2.) Preliminary Order of Forfeiture never issued nor served.
- 3.) Defendant not named on nor served Motion for Protective Order.
- 4.) Defendant not named on nor served Protective Order.
- 5.) Defendant not notified of intent to offset.

Because this abuse of statutes and regulations that require notification and service has occurred five times in this single case, there is no doubt that

these illegal actions have been perpetrated on numerous defendants depriving them of their Constitutional Rights and Due Process and is a recurring problem that needs to be addressed by this Court.

**D: This Case is an Ideal Vehicle for Deciding the Questions Presented.**

The question of whether or not an order is valid when it has not been procedurally applied to a defendant is of the utmost importance to protect Due Process Rights.

This case is also an opportunity for the Court to protect individuals from illegal seizure by addressing the issue of the Government's Forfeiture for Substitute Property that violated statutes and rules and is inapplicable due to there being an order for joint and several forfeiture.

**CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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