

No. 24-6055

IN THE
SUPREME COURT OF THE UNITED STATES

SANDRA LEE BART,

Pro Se 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 REHEARING

Sandra Lee Bart, Pro Se
6254 Gale Drive
Seven Hills, Ohio 44131
216-407-8103
sandra.bart47@yahoo.com

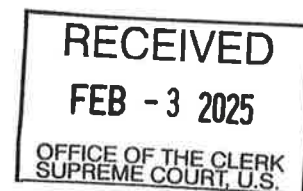


TABLE OF CONTENTS

	Page
TABLE OF CONTENTS.....	i
TABLE OF CITED AUTHORITIES.....	ii
INTRODUCTION.....	1
STATEMENT OF THE CASE.....	2
REASONS WHY THE REHEARING SHOULD BE GRANTED FOR ISSUE I.....	2
I. REHEARING AND REVIEW IS WARRANTED BECAUSE PETITIONER’S DUE PROCESS RIGHTS WERE VIOLATED BY THE ABUSE OF DISCRETION NUMEROUS TIMES.....	2
REASONS WHY THE REHEARING SHOULD BE GRANTED FOR ISSUE II.....	6
II. REHEARING AND REVIEW IS WARRANTED BECAUSE PETITIONER’S DUE PROCESS RIGHTS WERE VIOLATED BY ILLEGAL SEIZURE OF MONEY NOT AUTHORIZED BY 21 U.S.C. 853 AND BY VIOLATIONS OF THE CONSTITUTION OF THE UNITED STATES.....	6
CONCLUSION.....	13

TABLE OF CITED AUTHORITIES

	Page
CASES	
<u>Haines v. Kerner</u> , 404 U.S. 519, 520 (1972).....	2
<u>Honeycutt v. United States</u> , No. 16-142, 581, U.S. ____ (2017).....	6, 7, 10
<u>Williams v. Kullman</u> , 722 F. 2d at 1050.....	2
<u>United States v. Bajakajian</u> , 524 U.S. 321, 324 (1998).....	11
<u>United States v. Shakur</u> , 671 F. 3d 979 (8 th Cir. 2012).....	12
<u>United States v. Swanson</u> , 394 F. 3d, 520 (7 th Cir. 2005).....	12
<u>United States v. Surgent</u> , E.D.N.Y. (Aug. 17, 2009).....	10

STATUTES

21 U.S.C. 853.....	1, 2, 6, 7, 8, 9, 10, 12
--------------------	--------------------------

RULES

Supreme Court Rule 44.....	1
----------------------------	---

Cited Authorities

	Page
Federal Rules of Criminal Procedures Rule 32.2(b).....	12
Federal Rules of Criminal Procedures Rule 49(a) and (d).....	5
Minn. Gen. R. Prac. Rule 5.01.....	4
Minn. Gen. R. Prac. Rule 115.04.....	4
Minn. Gen. R. Prac. Rule 355.01.....	4
United States Supreme Court Rule 29.3.....	5

AMENDMENTS OF UNITED STATES CONSTITUTION

IV Amendment.....	11
V Amendment.....	1, 5
VIII Amendment.....	11

MISC.

American Bar Association, Standard 11-6.2 Protective Orders.....	3
--	---

INTRODUCTION

Pursuant to Supreme Court Rule 44, Petitioner respectfully petitions this Court for rehearing of its January 10, 2025 Order denying the Petition for Writ of Certiorari in this case. The basis for this Petition for Rehearing are substantial grounds not previously presented.

The substantial ground not previously presented regarding Issue I of Petition for Writ of Certiorari is the abuse of discretion by the lower Courts in denying Petitioner's Motion by disregarding all Rules, Statutes and court procedures to be followed when issuing a protective order and ignoring all required legal proceedings which serve to protect and enforce individual rights and liberties as stipulated by the Fifth Amendment to the United States Constitution and known as Due Process.

The substantial ground not previously presented regarding Issue II of Petition for Writ of Certiorari is the judicial overreach of seizure of Petitioner's untainted Social Security Income and Income Tax Refunds by the illegal and incorrect application of 21 U.S.C. 853 by the Government in its Motion for Preliminary Order of Forfeiture for Substitute Property because, per the statute, only property is to be forfeited not money.

As set forth more fully below, Certiorari should be granted to resolve the unconstitutional actions and to correct the due process violations inherent in allowing the Order and Petitioner's conviction to stand.

Because this petition is being filed pro se, the Court is being requested to review with a lenient eye, allowing a borderline case to proceed (*Williams v. Kullman*, 722 F.2d at 1050) and for this petition to be held to less stringent standards than one drafted by lawyers (*Haines v. Kerner*, 404 U.S. 519, 520 (1972)).

STATEMENT OF THE CASE

The Petition for Writ of Certiorari (the "Petition") was filed on November 25, 2024. In that Petition, Petitioner Sandra Lee Bart ("Bart"), asserted three grounds related to Fraud on the Court, the Government Failed to Meet Its Burden of Proof, and the Substitute Forfeiture Has No Nexus to the Offense. This Petition for Rehearing does not address those grounds. However, the facts related to 21 U.S.C. 853 made in the Petition at pages 15-16 are relative background.

REASONS WHY THE REHEARING SHOULD BE GRANTED FOR ISSUE I.

**A. REHEARING AND REVIEW IS WARRANTED BECAUSE
PETITIONER'S DUE PROCESS RIGHTS WERE VIOLATED BY
THE ABUSE OF DISCRETION NUMEROUS TIMES.**

Because the Courts considered the Protective Order valid as to Bart, abuse of discretion occurred when laws and legal proceedings regarding the issuance of a protective order were totally ignored.

The American Bar Association (“ABA”) Standard 11-6.2 Protective Orders, states (a) after the affected person has been heard:

(b) Before issuing a protective order under subsection (a), the court should balance the potential harm of disclosure to any person or entity against the potential prejudice that the proposed order would cause to a party or affected person. The court should issue a protective order only if the potential harm of disclosure is greater than the prejudice caused by the proposed protection, and should impose only those redactions that are reasonable and necessary in relation to an articulated harm.

Because the protective order was issued prior to Bart being indicted, the court did not give any consideration to the potential prejudice caused to Bart versus the potential harm of disclosure. There was no meaningful review by the Court as required.

Had the Court given the required consideration to the potential harm of disclosure, it would have found that none existed because Bart did not know the government witnesses from the Dominican Republic, did not live in their country, did not speak Spanish, and was not their employer contrary to the only person named in the Order, Wilian Socrate Cabrera, who spoke Spanish, knew the government witnesses, and lived in the same country. Had the Court conducted a meaningful review as required regarding Bart, it

would have been obvious to the Court that there would be no harm of disclosure and no need for redactions to the evidence given to Bart. The redactions that were ultimately done did cause considerable harm to Bart in the presentation of her case at trial because pertinent evidence was redacted keeping Bart from fully presenting a defense.

Contrary to the protective order stipulating only government witness' names were to be redacted, all Spanish names were redacted even though they were not witnesses for the Government. This deprived Bart of possible defense witnesses and evidence.

Abuse of discretion occurs when a court does not apply the correct law or erroneously interprets the law. "A trial court by definition abuses its discretion when it makes an error of law." (Koon v. United States, 518 U.S. 81, 100 (1996). The District Court erroneously interpreted that the Protective Order was valid to Bart but did not then serve Bart as required by the following Rules and Statutes:

Minn. Gen. R. Prac. Rule 355.01 "....every document filed with the court shall be served on all parties...."

Minn. Gen. R. Prac. Rule 115.04 "No motion shall be heard until the moving party pays any required motion filing fee, serves the following documents on all opposing counsel and self-represented litigants...."

Minn. Gen. R. Prac. Rule 5.01 "....every written motion.... shall be served upon each of the parties." (also 5.01(c)(2)).

United States Supreme Court Rule 29.3 Filing and Service of Documents – “served on each party to the proceeding.”

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

“Each of the following must be served on every party: any written motion....” (Court Orders are to be served per Rule 49(d))

Because the Court refused to recognize the above laws and procedure, Abuse of Discretion clearly occurred.

It is also an abuse of discretion when a court makes a decision but there is no record to support it. This was the situation when the District Court, in its Order denying Bart’s Motion, stated that the evidence was subject to protective order and redaction prior to showing it to Bart merely because the Government said the Order was valid to Bart; but no legal record to support that statement was given (Appendix B of Writ of Certiorari, District Court Doc. 418, page 3 of 5). The District Court committed an error and the result has caused harm to Petitioner depriving her of Due Process and a fair trial as guaranteed by the Fifth Amendment of the United States Constitution.

Due Process of Law requires fair and orderly administration of justice in the courts and essential to the concept is the right a person has to be notified of legal proceedings against him and the opportunity to be heard.

Abuse of Discretion has been committed by the lower courts for (a) not following procedures to review if the Protective Order would be prejudicial

and harmful to Bart, (b) did not abide by numerous statutes and rules as indicated above, and (c) determined the Order to be valid without substantial legal reason for the interpretation.

**REASON WHY THE REHEARING
SHOULD BE GRANTED FOR ISSUE II.**

**A. REHEARING AND REVIEW IS WARRANTED BECAUSE
PETITIONER'S DUE PROCESS RIGHTS WERE VIOLATED BY
ILLEGAL SEIZURE OF MONEY NOT AUTHORIZED BY 21 U.S.C.
853 AND BY VIOLATIONS OF THE CONSTITUTION OF THE
UNITED STATES.**

The application of 21 U.S.C. 853 is not applicable because the statute only permits seizure of property not money and for numerous other reasons explained in this Petition for Rehearing.

The following grounds are all relative to the fact that the statute and comments in *Honeycutt v. United States* all refer to property not to money.

The statute stems from the Comprehensive Drug and Prevention Control Act and the Controlled Substance Act and intended to be a drug statute and tool to combat the two most serious crimes; namely, Racketeering and Drug Trafficking offenses. Specifically, 21 U.S.C. 853 applies for Federal drug offenses such as drug trafficking, manufacturing, distribution, and

possession with intent to distribute. Bart's conviction had nothing to do with any of these offenses and was not a drug offense.

Statute 853(p) is only applicable to tainted property and limits forfeiture to property derived from proceeds the defendant "obtained" as the result of the crime. It is wrong to allow the forfeiture of Bart's untainted Social Security Income and Income Tax Refunds which were not derived from proceeds of the criminal violation or used to facilitate such violation and are not tainted property.

Bart's Forfeiture Order (District Court Doc. 224, January 13, 2017) ordered her to pay a personal money judgment forfeiture jointly and severally with a co-defendant. As the United States Supreme Court stated in *Honeycutt v. United States*, No. 16-142, 581, U.S. ____ (2017), the statute 21 U.S.C. 853 limits forfeiture to property defendant obtained as the result of the crime and joint and several liability renders futile 853(p) because 853 allows for the forfeiture of substitute property only from the defendant who initially acquired the property and who bears the responsibility for its dissipation. Therefore, 853(p) is not applicable in this instant case and cannot be used to acquire substitute assets from Bart whose money forfeiture is joint and several and because no property is involved.

Congress limited forfeiture to tainted property from a defendant who initially acquired the property and this limitation is incompatible with joint and several. Congress did not authorize this remedy to seize money. The Courts have ignored the word property that is stated numerous times in 21 U.S.C. 853 and the fact that there is no mention of money in the statute.

There is no statute or authorization from Congress regarding “money judgment.” A forfeiture of money from a defendant is once again judicial overreach. Substitute Forfeiture can only seize “property” as stated in 21 U.S.C. 853 as follows:

(a) PROPERTY SUBJECT TO CRIMINAL FORFEITURE

Any person convicted of a violation....shall forfeit to the United States....

- (1) any property constituting or derived from, any proceeds obtained, directly, or indirectly, as the result of such violation;
- (2) any of the person’s property used, or intended to be used, in any manner or part, to commit,.... such violation;

(p) FORFEITURE OF SUBSTITUTE PROPERTY

(1) IN GENERAL

Paragraph (2) of this subsection shall apply, if any property described in subsection (a) as a result of any act or omission of the defendant---

The statute defines the meaning of term property as follows:

(b) MEANING OF TERM "PROPERTY"

Property subject to criminal forfeiture under this section includes---

(1) real property, including things growing on, affixed to, and found in land; and

(2) tangible and intangible personal property, including rights, privileges, interests, claims, and securities.

As noted above, there is no mention of money only property to be forfeited and the property has to be constituted or derived from any proceeds obtained as the result of the crimes. Bart's Social Security Income and Income Tax Refunds are not derived from proceeds of the crimes.

To obtain an order forfeiting substitute property, the Government must prove, by a preponderance of evidence, the identity, value, and unavailability of the property "involved in" the offense or conviction. Since there was no property involved, this was not and could not be proved by the Government. The Government should not be permitted to illegally seize Bart's untainted funds pursuant to 853 because the funds are not property as defined by the statute. Per the statute, a defendant can only be ordered to forfeit *property* actually acquired as a result of the crime or used in the crime. Only property derived from proceeds obtained as the result of the crime or property used in any manner in the commission of the crime can be subject to substitute forfeiture. Obviously, Social Security Income and

Income Tax Refunds (a) are not property and (b) were not derived from the crime or used in the commission of the violation; and, therefore, should not be seized.

As in *United States v. Sargent*, E.D.N.Y., (Aug. 17, 2009), if a money judgment is entered, there is no property ordered forfeited.

Joint and several liability is inconsistent with the Controlled Substances Act, 21 U.S.C. 853 in which both (a) and (p) must be satisfied. (*Honeycutt v. United States*, 581, U.S. (2017)).

It is necessary for the United States Supreme Court to stop this judicial overreach of money judgment forfeiture since the Supreme Court stated that joint and several does not apply to 21 U.S.C. 853.

Statute 21 U.S.C. 853 is not applicable to Bart because the statute applies only to tainted *property* obtained as the result of the crime or derived from the crime which Social Security Income and Income Tax Refunds are not *property* resulting or derived from the crime. A defendant cannot forfeit property never received.

“Permitting the Government to force other co-conspirators to turn over untainted substitute property would allow the Government to circumvent Congress’ carefully constructed statutory scheme.” (*Honeycutt v. United States*, No. 16-142, 581, U.S. (2017)). Had Congress wanted the statute to

include money as a substitute forfeiture, it would have stipulated so. It did not. Congress very clearly stated only property obtained by defendant can be forfeited.

This judicial overreach and abuse of discretion should not be allowed for forfeiture for crimes not relative to racketeering, drug trafficking, money laundering. Forfeiture for wire fraud is for fraud only involving financial institutions or if the wire fraud was crucial or central to the fraudulent scheme. As previously indicated, Bart's convictions did not involve the indicated serious crimes and the mail fraud was not crucial or central to the fraudulent scheme, merely incidental. The overreach of seizure of Social Security Income and tax refunds is contrary to Forfeiture's punitive goal.

The Order for Substitute Forfeiture also violated the Eighth Amendment of the United States Constitution regarding the excessive fines clause and requirement to ascertain whether any harm had been committed. Bart's forfeiture was grossly disproportional to the gravity of the offense (*United States v. Bajakajian*, 524 U.S. 321, 324 (1998) and no harm was committed.

The Order for Substitute Forfeiture violated the Fourth Amendment of the United States Constitution as well because the Government failed to provide proper notification of forfeiture, resulting in unlawful seizure. There was no Preliminary Order of Forfeiture so that Bart could object to the

initial forfeiture and no notification of the offset of Bart's Social Security Income and Income Tax Refunds neither. The Supreme Court should dismiss the Forfeiture Order on this ground alone since 32.2(b) was not followed. (*United States v. Shakur*, 671 F. 3d 979 (8th Cir. 2012))

Besides the illegal joint and several liability, only actual gains are forfeitable and this was not calculated in Bart's forfeiture. (*United States v. Swanson*, 394 F. 3d, 520 (7th Cir. 2005))

Also, the statute of limitation for forfeiture is five years. The Forfeiture Order by the District Court (Doc. 224) was filed January 13, 2017. The Order for Forfeiture for Substitute Property was issued March 20, 2024 (Doc. 418) more than 7 years later exceeding the statute of limitation. It is unfair to continually subject a defendant to illegal seizures under the guise of forfeiture orders.

In summary, Rehearing and Review are necessary for Issue II because 21 U.S.C. 853 does not apply, as the United States Supreme Court has stipulated, regarding joint and several; 853 applies only to property forfeiture and not to money forfeiture; the Fourth and Eighth Amendments of the United States Constitution have been violated; and the judicial overreach is a concern for all defendants who are subjected to unlawful seizure of their money as they try to rebuild their lives.

Petitioner respectfully requests that certiorari be granted to consider these two very important issues.

CONCLUSION

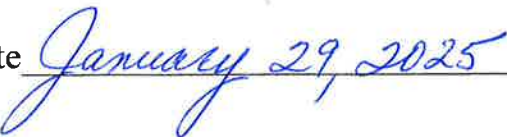
For the foregoing reasons, Petitioner prays that this Petition for Rehearing be granted.

Respectfully submitted,

Sandra Lee Bart,
Pro Se Petitioner
6254 Gale Drive
Seven Hills, Ohio 44131

(216) 407-8103
sandra.bart47@yahoo.com

_____

Date _____

CERTIFICATE OF GOOD FAITH

The undersigned hereby certifies that this petition for rehearing is restricted to the grounds specified in Rule 44.2 of the Rules of the Supreme Court and is presented in good faith and not for delay.

January 29, 2025
(Date)

Sandra Lee Bart
Sandra Lee Bart, Pro Se
Petitioner

No. 24-6055

IN THE
SUPRME COURT OF THE UNITED STATES

SANDRA LEE BART, Pro Se Petitioner,

VS.

UNITED STATES OF AMERICA, Respondent.

CERTIFICATE OF COMPLIANCE

As required by Supreme Court Rule 33.1(h), I certify that the document contains 2675 words, excluding the parts of the document that are exempted by Supreme Court Rule 33.1(d).

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

Executed on January 29, 2025

Sandra Lee Bart
(Signature)

No. 24-6055

IN THE
SUPREME COURT OF THE UNITED STATES

SANDRA LEE BART, Pro Se Petitioner,

VS.

UNITED STATES OF AMERICA, Respondent.

PROOF OF SERVICE

I, Sandra Lee Bart, do swear or declare that on this date, January 29, 2025, as required by Supreme Court Rule 29 and Rule 12.3, I have served the enclosed PETITION FOR REHEARING on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope/package containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid.

The names and addresses of those served are as follows:

Clerk of the Supreme Court of the United States
1 First Street, N.E.
Washington, D.C. 20543-0001

Solicitor General of the United States
Department of Justice, Room 5616
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001

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

Executed on January 29, 2025

Sandra Lee Bart
(Signature)

Sandra Lee Bart
6254 Gale Drive
Seven Hills, Ohio 44131

January 29, 2025

Clerk
Supreme Court of the United States
1 First Street, N.E.
Washington, D.C. 20543

In Re: Petition for Rehearing
No. 24-6055

To the Clerk:

Enclosed are one original and 10 copies of the Petition for Rehearing and Certificate of Good Faith, the Proof of Service and the Certificate of Compliance, dated January 29, 2025.

Because I have been approved by the United States Supreme Court to proceed In Forma Pauperis recently (November 2024), a Motion to file In Forma Pauperis for the Rehearing has not been included as my financial status has remained the same. However, should it be necessary to reapply for In Forma Pauperis status again, please contact me and I will send the requested information forthwith.

If there are any questions or a need of any other information or copies, please feel free to contact me at the indicated information below.

Thank you for your attention to this matter.

Sincerely,



Sandra Lee Bart,
Pro Se Petitioner

Phone: (216)-407-8103

Email: sandra.bart47@yahoo.com

Enclosures