

24-6244

USAP8 No. 24-1247

Case Number

24-6244

IN. THE

SUPREME COURT OF THE UNITED STATES

Darrell Smith  
Petitioner,

v.

United States of America,  
Respondent

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

PETITION FOR WRIT OF CERTIORARI

Submitted By:

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FILED

AUG 07 2024

OFFICE OF THE CLERK  
SUPREME COURT U.S.

ORIGINAL

### Question(s) Presented

The questions presented here concern whether "Rowland v. California Men's Colony II" should be modified, clarified, or further addressed to answer the following questions:

1. Can companies, stripped of untainted assets, be prosecuted without representative counsel?
2. Do companies qualify for the same "representative counsel" protective rights offered individuals under "Luis v. U.S." wherein untainted assets, designated to pay legal fees, are stripped from the companies, preventing the companies from hiring representative counsel in criminal matters?
3. Can "Rowland" be "weaponized" in a criminal matter to deny companies constitutional rights of due process and representative counsel?

### Parties to the Proceedings

Petitioner is Darrell D. Smith, former Company manager, an inmate at the Federal Prison Camp, Duluth, Minnesota, who was forced to represent the Companies, Energae LP, and I-Lenders.

Respondent is the United States of America, represented by Asst. U.S. Attorney Timonth Vavricek.

### Related Proceedings

The initial criminal proceeding against Energae LP and I-Lenders LLC was brought by the U.S. as Case No. 20-CR-2007, U.S. v. Energae LP and I-Lenders LLC, N.D. of Iowa, 2020, with sentencing Sept. 22, 2022.

Smith filed Direct Appeal Case No. 22-3076, 8th Cir. (2023), but the 8th Cir. refused to hear the case due to "lack of appointed counsel." Smith argued violation of "Luis v. U.S." as the government stripped both Smith and the Companies of money needed to hire counsel, also allowing Claimants against Smith to provably steal needed representation monies from the Companies.

Smith then filed a §2255, Case Number 6:23-cv-02085-LTS arguing the lack of representative counsel violated Company due process rights. Judge Strand refused to hear the §2255 claiming Smith "needed counsel" to argue a §2255 - a "catch 22."

Smith appealed the §2255 denial to the 8th Circuit, Case NO. 24-1247, U.S. v. Energae, LP and I-Lenders, LLC, and again, the 8th Circuit ruled they could not hear the case without representative counsel. Smith made attempts, again, to obtain counsel, but was unsuccessful. Smith now files this request for Writ of Certiorari with the Supreme Court.

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### Exhibit 2

Proof of Judge Strand's former financial involvement with the company, Permeate Refining, LLC, owned by Energae LP and I-Lenders LLC. Then attorney Strand, in 2012, became "Judge Strand" in 2015, and became Smith's judge for failure to pay past-due payroll taxes. Judge Strand was also the Judge for Energae LP and I-Lenders LLC, Case No. 20-CR-2007, N.D. of Iowa, (2022) and Smith's \$2255 in both the tax case, 16-CR-2002 (\$2255 Case No. C18-2083-LTC, N.D. of Iowa (2018)). He was Judge over over Smith's \$2255 in the wire fraud case 17-CR-2030( \$2255 case number C20-2105-LTS, N.D. of Iowa, (2024)). This month Judge Strand denied all of Smith's claims in the \$2255 case, and Smith is now arguing recusal at the Appellate level.....(ix),18

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Proof of the "Restraining Order" against Priestley and the five receivers that Priestley's legal counsel requested be appointed to represent the Companies. Priestley crafted 14 letters to shareholders, lying in each one of them to shareholders, creating a "poisonous tree" under which Smith was indicted. This Exhibit includes one of the letters Priestley wrote to shareholders. She was allowed to contact all ten Claimants and lie to them. Judge Strand ruled in his \$2255 denial that Smith did not adequately argue that poisoned lies mattered before the court.....21,22

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## Introduction

In 2020, Energae LP and I-Lenders LLC were prosecuted without legal representation. The government appointed Darrell Smith, a former manager of the Companies, to represent the Companies during the prosecution, agreeing to a plea, and final sentencing in September 2022. However, during this process, Smith requested that counsel be appointed to represent the Companies given that the government had seized all the assets of Smith and the Companies preventing them from hiring legal counsel. Smith had submitted a \$2255 in wire fraud case number 17-CR-2030, U.S. v. Smith (2018), claiming innocence, and now the government was coming after the Companies to seize assets which they claimed were owed for restitution, \$1,056,909 on a \$2.4 million "unauthorized investment" claim involving ten Claimants, even though the government had received subpoenaed information showing they had received \$2.6 million back in cash, not including the over \$4.5 million in stock and tax benefits. In denying Smith's requests that the Companies were innocent, the government used Rowland v. California Men's Colony II, 506, U.S. 194 192 S.Ct. as a "weapon" to deny all of Smith's objections and deny the following due process rights:

1. Denied the Companies legal representation during prosecution, coercing Smith to stand in for the Companies;
2. Stripped Smith and the Companies of assets needed to defend themselves violating Luis v. U.S. 478 136 S.Ct. 1083 (2016);
3. Violated multiple other due process constitutional rights:
  - a) Through improper use of "search and seizure," the government created the very fraud they claimed Smith was committing;
  - b) Past courts have ruled that the government had to prove that seized assets were "tainted" - no such proof was required by the court;
  - c) Unlike Rowland, the Companies had an operation history, paid taxes,



had over 350 shareholders who were denied their due process rights of representation to object to the seizure of assets assigned to qualified shareholders long before either Smith or the Companies were indicted;

- d) As explained herein, Judge Strand, who presided over the cases against Smith and the Companies, was "attorney Strand" in 2011/2012 whose financial actions against the Companies not only helped cause the failure of non-payment of payroll taxes in 2012 (for which Smith was charged in criminal case 16-CR-2002, U.S. v. Smith, N.D. of Iowa, 2016)), but whose legal actions against the Companies precipitated the financial failure of the Companies. In 2016, "attorney Strand" became "Judge Strand" and presided over Smith's tax-based criminal case. Judge Strand also presided over the §2255 filed in the tax case, C18-2083-LTS, and, more recently, presided over the §2255 Smith filed in the wire fraud case against Smith, Case No. 17-CR-2030, U.S. v. Smith, N.D. of Iowa (2017). Judge Strand denied both of Smith's §2255 filings. When Smith discovered that "attorney Strand" was, in fact, "Judge Strand," following sentencing in the wire fraud case, Smith asked that Judge Strand recuse himself. Smith explained in the §2255 filed in the tax case that due to Strand's actions as legal counsel for Alliant Energy, the taxes went unpaid. Later, in document 83, case number 20-CR-2007, U.S. v. Energae, LP. and I-Lenders, LLC (the subject of this Supreme Court matter), Smith asked that Judge Strand recuse himself. In document 84, Judge Strand refused. When, in late 2022, prior to the sentencing of the Companies, Smith received direct proof that it was "attorney Strand" that debited Permeate's account for \$362,289.06, resulting in Permeate's inability to pay payroll taxes of the same amount in 2012, Smith filed

document number 133 providing Judge Strand with this direct proof (listed as Exhibit 2, herein), again asking Judge Strand to reconsider his denial, Judge Strand again denied reconsideration.

In the history of court filings, there has never been a more clear-cut case for recusal than this, yet, Judge Strand denies his former involvement with, and against, the Companies as "attorney Strand;"

- e) The main claimaint against Smith, and the Companies, Joan Priestley, was allowed to "poison the witness and Claimant tree" against Smith by personally contacting all Claimants acting as the "receivership secretary" for the five receivers she was allowed to hand-pick. When Judge Porter, in the State matter, explained herein, realized that Priestley and the five receivers were (a) lying to investors and (b) abusing company capital, he dismissed them and placed restraining orders against them, appointing a new receiver, attorney Tom Flynn. But, the damage had been done, and the federal government went ahead and used all the lies and Claimants that Priestley had polluted as evidence against Smith and the Companies. There has never been a more clear case of a "poisoned tree" than the facts presented here;
- f) The government violated CAFRA guidelines when they seized Company stock and refused to return it in a timely manner, depriving honest shareholders of what was rightly theirs and helping create the very fraud they were trying to prove;
- g) The Court violated rule 43, holding a plea hearing against the Companies via video conference;
- h) The Court violated Rule 11 in coercing Smith to plead guilty on behalf of the Companies or face additional time "behind bars;"
- i) The Court refused to consider "new evidence" proving that Kuznicki, the Claimant against the Companies, was, in fact, by hers and the government's own words, **not a Claimant** (email communication, grand jury

questioning, and letters written by a Company director who had direct communication with Kuznicki, wherein, Kuznicki told the director she was not a Claimant against Smith). Smith received all this "new information" in August 2022, well after Smith had been coerced into pleading guilty, some of which was received after Company-sentencing.

j) There were multiple other constitutional violations against Smith and the Companies - the main violation being the abuse of MVRA rules and regulations, allowing Claimants to lie under oath about what they invested and what they got back.

Smith filed objections to these due process violations, but, Judge Strand denied all the objections, questioning the fact as to whether Smith even had the legal right to file an objection since the Companies had no representative counsel and the Court refused to appoint counsel for the Companies. Instead of appointing counsel, the Court allowed the appointed company reciever, Tom Flynn, an attorney, to quit as the company representative after (a) the Companies were indicted and (b) after Flynn had expended the remaining \$300,000 of company assets on his own legal fees.

Thus, in Northern Iowa, the Companies were indicted without legal representation, and honest shareholders were deprived of their constitutional rights. There is **conflict among the Circuits**, with all other Circuits, other than Iowa, ruling that **Companies cannot even appear in Court without licensed counsel**. That did not happen in this case against the Companies. Smith and the Companies were stripped of their assets necessary to defend themselves, and former managers were allowed to "rape" the Companies of assets needed to defend the honest shareholders. Due to these constitutional failures, Smith asks the High Court to weigh-in in answering the three questions posed of it herein:

1. Can companies, stripped of untainted assets, be prosecuted without representative counsel;

Multiple circuits have ruled that Companies cannot be prosecuted without legal representation. This is not true in the Northern District of Iowa. The Northern District of Iowa prosecuted these two Companies, Energae LP, and I-Lenders LLC, for crimes they say were committed by a former director of the Companies, Darell Smith. Smith was stripped of his untainted assets designated to defend himself and the Companies, and the Companies were stripped of their assets (in a seizure in September 2013, the 60 million shares of GRCO that were never returned and which became as "asset" subject of this case against the Companies). Smith was stripped of a \$120,000 IRA, designated to pay legal expenses (an untainted asset), just after pleading guilty to wire fraud (a plea of guilt which Smith is now challenging via a \$2255), preventing Smith from paying legal expenses for his own attorney, Brown, and preventing Smith from access to the funds to defend the Companies, should that become necessary. It did become necessary in 2020 when the Companies were charged in order to seize the GRCO assets to pay restitution claims for which Smith had proof was not owed. Smith was forced by Northern District of Iowa to "stand-in" for the Companies, and the Companies were denied representative counsel. While some circuits quote Rowland as their basis for NOT PROSECUTING companies, the Northern District of Iowa quoted Rowland as the basis for PROSECUTING THE COMPANIES. The Northern District of Iowa quoted an archaic Iowa State case as the basis for appointing Smith as the "stand-in" to represent the Companies, forcing Smith to plead guilty or be "shipped back to Iowa" to stand trial for the Companies, with Smith losing First Step Act Credits due to a "writ transfer;"

2. Do Companies qualify for the same "representative counsel" protective rights offered individuals under "Luis v. U.S." wherein untainted assets, designated to pay legal fees, are stripped from the companies, preventing the companies from hiring representative counsel in criminal matters?

In Luis v. U.S. 578 136 S.Ct. 1083 194 L.Ed 2d 256 (2016), the Court ruled that Luis could not be stripped of her untainted assets needed to defend herself against criminal charges. Does this same "constitutional" protective right extend to Companies?

3. Can "Rowland" be "weaponized" in a criminal matter to deny companies constitutional rights of due process and representative counsel?

In this case against the Companies, "Rowland" was "weaponized" to deny the companies, and their honest shareholders, the same constitutional rights afforded individuals resulting in the following constitutional rights' violations.

1. Judge Strand refused to consider direct evidence as to his former involvement as "attorney Strand" helping cause the Companies' non-payment tax failure, and then became "Judge" over Smith and the Companies for failing to pay the past due taxes;
2. The main Claimant against the Companies, and Smith, Joan Priestley, was allowed unfettered access to "poison the tree" against Smith, other Claimants and the information supplied the government, with Priestley acting as a "quasi-federal agent" on behalf of the company. She provably lied under oath about what she authorized as investments, what she got back, and what she told others, including the federal government, yet all her material lies were accepted as true;
3. A plea agreement for the Companies was done via video conference in

violation of Rule 43;

4. The Court ignored newly discovered evidence proving that neither Smith, nor the Companies, were guilty of the wire fraud claimed by Christine Kuznicki, in violation of 28 USC §2255(h)(1), refusing to even consider this new information because the Companies had no representative counsel at sentencing;
5. The Court allowed the violation of Rule 11, allowing a plea agreement that was coerced to be legitimized, despite evidence to the contrary;
6. There were multiple other constitutional violations as presented herein against the Companies and its honest shareholders, any one of which, if properly considered, would cause this case against the Companies to be remanded and representative counsel be appointed to represent these violations before the honest Court.

Smith asserts that without clarification from the Court as to the legal limits of "Rowland,", then prosecutors and Courts have "unlimited" power to do as they please - even as the Court noted could happen in *Monell v. Dept. of Social Services, N.Y.* (cited herein) wherein the Court ruled that if cities were not "persons" liable under 28 USC §1983, then, unlimited financial abuses could occur by "representatives" of the cities, or municipalities. The same is true here - the difference is that the abuses have already occurred and Smith seeks supplication from the High Court to intervene.

In addition to all this, the Circuits are "wandering aimless" on this issue - not knowing when to appoint counsel for Companies, especially Companies that have been ignominiously stripped of their remaining assets needed to represent the honest shareholders and their honest investments.

### Opinions Below

Smith is a federal inmate with limited access to published Court opinions. Smith has no knowledge of whether the Court decisions made in these case(s) are published or unpublished.

### **Jurisdictional Statement**

The jurisdiction of the District Court of Northern Iowa is based on 18 USC §3621. The Court's jurisdiction is based on 28 USC §1291 which provides jurisdiction over a final judgment from the United States Appellate Court. Final judgment was entered June 6, 2024 after Smith was unable to obtain counsel to represent the Companies. The Supreme Court of the United States has authority to review a sentence imposed under U.S. Sentencing Guidelines pursuant to 18 USC §3742.



## Statement of the Case

Courts in the Third, Fifth, Sixth, Seventh and Ninth Circuits ruled that Companies could not be prosecuted without legal representation. However, the Northern District of Iowa dispensed with "company due process" requirements and prosecuted Energae LP and I-Lenders LLC without legal representation. The courts in the other circuits cited Rowland v. California Men's Colony II as the basis for **not prosecuting** companies without legal representation, while the Northern District of Iowa cited Rowland as the basis for **not providing the Companies with legal representation**. Thus, "Rowland" becomes the basis for "ala carte" reasoning awarding the courts and the government legal license to violate due process rights of Companies by "picking and choosing" which legal path to follow to achieve whatever end the prosecution is seeking.

### District Court

The Companies were prosecuted because of the "wire fraud" claims made against Darrell Smith in U.S. v. Smith, CR-17-2030, N. Dist. of Iowa (2018). Smith continues to fight these wire fraud claims through a \$2255. However, at sentencing, the government claimed Smith invested \$2,405,409.68 for ten Claimants without their authorization. They claimed Smith still owed these Claimants \$1,056,909.68 in restitution. They indicted the Companies and "invented" a claim of additive fraud committed by Smith against one of the ten Claimants, C. Kuznicki, claiming that Smith's payments to Kuznicki, made over a ten year period, were "luring," citing the last three payments of \$1,500 each as the basis for "wire fraud" (\$4,500 total out of \$90,000 in payments to Kuznicki over ten years), with one of the three payments falling within the five year statute of limitations. The government then used this "fraud" as the basis to (a) seize Smith's assets intended to pay for legal representation and seize remaining Company assets intended for the same. Without funds

to pay for legal representation, Smith could not defend himself (pay for his attorney), or pay for defense of the Companies. Despite the claim the government made against the Companies that Smith still owed \$1,056,909.68, the government recieved through subpoenaed information, and from Smith, proof that the Claimants were owed nothing:

1. From 2009 through 2015, the Claimants received back \$2.6 million cash on their \$2.4 million investment, not including the \$320,000 they took from Smith and his brother - money intended to pay legal expenses, or the undisclosed \$330,000 additionally paid to Priestley;
2. From 2009 through 2014, the Claimants requested, recieved and used \$3.3 million in tax benefits, well above their invested capital;
3. They received uncalculated million of dollars back in stock assignments and sales, some of the shares of which the government seized from the Companies under wrongful seizure claims.

Altogether the Claimants received back over \$7 million in returns on \$2.4 million investment. Much of the \$3.3 million in tax benefits came from Smith transferring what he owned to these investors, with Smith taking no money out of the Companies for himself, being the Companies' largest investor. The bottom lines are that (a) the Claimants were not owed \$1,056,909.68, (b) they suffered **no loss**, and (c) the government has been ongcing in willingly ignoring what the Claimants received back. The Claimants even provably lied under oath about what they invested and what they got back - yet, Judge Strand recently ruled these lies "were not stated well-enough" by Smith, rejecting Smith's "poisonous tree" claim as a \$2255 argument.

Thus, not only (a) is the basis for the wire fraud against the Companies false and unchallenged due to lacking legal representation, but (b) the Claimants were provably owed no money mitigating the

reason the Companies were charged with wire fraud in the first place.

Throughout the prosecution of the Companies Smith motioned that Judge Strand consider all the "due process" violations Smith mentions in the **Introduction** to this case, but, he denied all the motions. Smith does not believe it is right that the Northern District of Iowa can use "Rowland" as a weapon to deny Companies rights to due process. Smith does not believe that the Supreme Court of the United States intended Rowland be converted from its singular question as to whether an association is classified as a "person" to benefit from court-appointed counsel under 28 USC §1915. Rowland says nothing about whether a company made indigent by government actions can be prosecuted in court without legal representation.

The question as to whether a company can be prosecuted without legal representation becomes equally important to Rowland due to the conflict that still exists among the Circuits on this issue. In the JB Tax professional case, cited later, the Judge ruled that this question is "an undecided area of law." In the KSA case, the Judge ruled that a company cannot even show up in court without an attorney. In the Ninth Circuit that court ruled that UNIMEX shareholders who had invested "honest money," had due process rights that caused the Appellate Court there to throw out the prosecution of the Companies. They also ruled that the government's seizure of untainted assets that had no direct link to any committed fraud, should be returned and used for hiring legal counsel. As explained further along, the court allowed those who were stealing money from the Companies keep it, and prosecuted Smith who had invested everything, giving back everything and more. It is the unchallenged lies about Smith and the Companies that is troubling.

## Appellate Court

Following the sentencing of the Companies on September 22, 2022, Smith filed a direct appeal asking that the Eighth Circuit consider all the constitutional violations committed against the Companies, filed under case number 22-3076, 8th Circuit (2022). The Eighth Circuit refused to hear the case citing Rowland v. California Men's Colony, claiming this was a "general rule," but did not cite the specific circumstances this general rule applied, and counsel could be appointed to represent the Companies. Smith then filed a "Writ of Certiorari" with the Supreme Court asking for consideration and a hearing. The Supreme Court denied to hear the case, under case number USAP8-22-3076.

Smith then went back to the District Court level filing a \$2255 since there was no legal counsel to represent the Companies, Smith considered this a constitutional violation. The District Court ruled that Smith could not file a \$2255 without counsel. Smith asked for reconsideration given that the government and the court prosecuted the Companies without counsel - so how could they now deny a \$2255 claiming that Smith needed counsel? Smith then appealed this denial to the Eighth Circuit. And, again, the Eighth Circuit stated they couldn't hear the case because the Companies lacked legal counsel. Smith now files this second Writ of Certiorari claiming that using Smith as a "surrogate representative" of the Companies to violate the Companies, and Smith's constitutional rights, is a direct due process violation.

## Reasons for Granting Writ of Certiorari

When the Supreme Court voted a 5-4 ruling in Rowland v. California Men's Colony II, in 1993, that "associations" did not qualify for court-appointed counsel, citing 28 USC §1915, Smith does not believe that the Court intended that this ruling be "weaponized" as a basis for denying companies, and their representative shareholders, their constitutional rights. Once one due process violation is allowed, even if it is a companies', then all constitutional rights for companies, and their representative shareholders, remain unprotected.

Without further clarification from the High Court as to the "limits" of Rowland regarding prosecuting Companies without legal representation, then honest shareholders who invested in the companies will be denied due process, and the Courts will remain in conflict over the following:

1. Third, Fourth, Fifth, Sixth Seventh and Ninth Circuits have ruled that companies cannot even appear in court without representative counsel, let alone be prosecuted. The District Court in Northern Iowa not only prosecuted the Companies without legal representation, but, they cited "Rowland" as their basis for disallowance of legal representation. Thus, "Rowland" becomes the basis for either (a) denying companies legal representation, or (b) not prosecuting companies due to lack of legal representation. As stated, in the JB Tax Professionals case, the Judge stated this is an "unsettled area of law;"
2. Without clarification from the Court, District Courts can strip Companies of their assets with no regard to the constitutional rights of the companies - legal representation would at least make the process more fair;

3. Without clarification, there is nothing to stop District Courts, and aggressive prosecutors, from "inventing" crimes against companies, where no crime is present. Companies are at the "mercy" of the prosecutor with no checks-and-balances in place to help define the limits of this "mercy;"
4. Without clarification, investments by honest shareholders are held "hostage" by District Courts, wherein "Claimants against management," whether justified or not, take precedence over honest investors. In this case against the Companies, many of the Claimants were provably dishonest - and the prosecutor acted as their "attorney," while he disregarded legitimate financial claims made by management, on behalf of honest shareholders, challenging the truth of the claims with hard evidence, versus the "speculation" presented by the prosecutor on behalf of Claimants. In the UNIMEX case, cited herein, the 9th Circuit ruled that the constitutional rights of honest shareholders should be taken into account;
5. Without proper clarification, then the "management" that is left, once a prosecution is began against the companies, and former managers, are able to wantonly "strip" companies of remaining assets, further eroding shareholder value, and further depriving honest shareholders of the money they honestly invested in the Companies. In this case, not only were the Claimants against Smith engaged in stealing remaining Company assets, but, the receiver they helped elect mismanaged assets and brought no value to the Companies, enriching themselves, but not the honest shareholders;
6. Without proper clarification, then former managers, like Smith, who are incarcerated, have no choice but to plead guilty in order to avoid additive stress, having inadequate training and access to

legal documents that would prove innocence. In Smith's case, the prosecutor threatened to return Smith to county jail to represent the Companies, having no legal representation, but, having to spend an unwarranted amount of time on "writ" wherein Smith would be denied First Step Act credits, extending Smith's time behind bars, and limiting Smith's access to prerelease custody;

7. Without legal representation, any lie told by any Claimant, or individual, remains unchallenged, and the financial values of honest shareholders are harmed as are their constitutional rights. In this case, the receiver, attorney Tom Flynn, was allowed to "quit" the Companies after expending all the remaining assets of the Companies for his legal fees, and Smith, an incarcerated individual, was forced to represent the Companies instead;
8. Without legal representation, unscrupulous shareholders and Claimants deprive honest shareholders of financial values due them;
9. Without legal representation, former incarcerated managers are denied access to documents that would prove innocence;
10. Without representation, then the High Court's decisions in prior cases involving companies becomes a "mixed-bag" of "pick-and-choose" the claim of "person." In *Monnell v. Dept. of Social Services*, N.Y. 436 US 658 56 L.Ed. 23 6111, 98 S.Ct. No. 75-1914 (1978), the Court ruled a "company" is a "person" for liability purposes, but in *Rowland* the Circuit Courts determine a company is **not a person**, for criminal complaints, and honest shareholders are unduly stripped of invested assets. If a company is a "person" in one instance where money and shareholders are involved for a §1983 claim, it would seem that a company would **remain a person** for a criminal complaint.

Without representative counsel, violations against the Companies

are limitless. In this case, the Judge against the Companies was a former attorney (prior to becoming Judge) whose decisions as an attorney helped prompt the financial failure of the Companies in 2011/2012. When this was brought to the Judge's attention, he refused to recuse himself. Without legal representation to point out these "weaknesses" then the sky is the limit for story telling and constitutional violations against honest shareholders.



ARGUMENTS FOR THE CASE

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## ARGUMENTS

### Question 1: Can companies, stripped of untainted assets, be prosecuted without representative counsel?

Multiple circuits have ruled that companies cannot be prosecuted without legal representation. But, in the Northern District of Iowa, the Companies, in this case, were prosecuted without legal representation, and the "legal basis" for prosecuting the Companies was Rowland v. California Men's Colony Advisor II 113 S.Ct. 716, 719 (1993). As the Court is well aware, "California Men's Colony II" was a group of prisoners trying to get the government to pay for their legal representation in a 28 USC §1983 tort claim, a "Bivens" claim relative to "conditions of confinement." The Court ruled that an "Association," such as California Men's Colony II was not a "person" as defined under 28 USC §1915, and therefore, did not qualify for court-appointed counsel. However, this ruling (a) left "unanswered" as to whether legitimate Companies, with legitimate shareholders, and a legitimate history of revenue production, fell into the same "legal gray area" as the California Men's Colony II association. In dissenting with the Court's 5-4 opinion, Judge Kennedy quoted the Dictionary Act §1 USC §1 which seems clear on the face of it as to whether a "legitimate" company is a person or not for constitutional-rights purposes:

"...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 companies, as well as individuals..."

Judge Souter stated that the "Dictionary Act" left a "caveat" for §1915 using the word "person;" that is, "**unless the context indicates otherwise.**" Thus, he reasoned that §1915 was intended for "natural persons," not associations or companies. However, legitimate companies **do consist** of "**natural persons**" who invested honest money seeking an honest return on their investment. In this case, without representative counsel, wea-

ponizing Rowland violated the rights of Smith and shareholders vis-a-vis:

1. **Companies Were Made Indigent By Asset Seizure:** In violation of Luis v. U.S. 578 136 S.Ct. 1083, 194 L Ed 2d 256 (2016), the government (a) seized Smith's personal assets intended to pay for legal expenses for himself and the Companies, (b) seized corporate assets under false seizure claims in 2013, stock that could have been properly assigned to qualified shareholders, or portions of which that belonged to the Companies could have been converted to pay for legal expenses, and (c) following Smith's indictment, allowed receivers and company managers to abuse money, enrich themselves and serve as false witnesses against Smith. One of the Claimants, Priestley, worked with another company manager to pay themselves \$720,000, not owed them, through false representations. The receiver, initially guided by Priestley, abused over \$500,000 of additional company assets; Priestley's friend and Company CFO stole over \$250,000. Randy Less stole over \$1 million. The government held none of these people to account. Smith filed multiple motions that these abused funds be recaptured to represent the interests of 340 honest shareholders who did not complain but were financially harmed by these wrong actions, which were denied. Through asset seizure the government helped create the fraud claims against Smith. Legitimate Companies have these problems, and "Rowland" becomes the "excuse" by which the government and courts can deny companies due process and legal representation;
2. **Tax Filing Status:** "California Men's Colony" had no tax filing history. The Companies had been operational since 2008, and the Companies they bought into since the 1990s. California Men's Colony could be construed as a "scam" for free government representation.

The New Jersey District court, recognized such an "artificial scam" created for various government representation interests in Murkakush Caliphate v. State of N.J. 790 F. Supp 2d LEXIS 51187, NJ Civ. No. 11-1317 (2011), denying the inmate access to "free counsel" through what they termed a "fictitious creation." The court could have equally separated "California Men's Colony" into its own category, separate from legitimate corporations with tax filing histories;

3. **Rowland Had No Honest Shareholders:** Certainly, California Men's Colony had "association members," but beyond the singular filing to the Supreme Court, their sole functional, combined historical experience was a filing to the Supreme Court. Beyond that experience, they did not exist. The Companies' honest shareholders had invested over \$50 million from 2006 through 2016, had filed taxes, and became the subject of government inquiries following misrepresentations made to shareholders by Joan Priestley and her "gang" of five receivers. The Companies had 340 honest shareholders who did not complain, but whose constitutional rights were abused when the ten shareholders (the Claimants) were permitted by the court to lie under oath, make false financial claims, and the Companies had no recourse for legal representation since the government stripped Smith/Companies of assets. "Rowland" is an excuse to abuse Companies' Sixth Amendment.

In the U.S. v. UNIMEX, Inc. 9991 F.2d 546, LEXIS 779, case no. 91-50230, 9th Cir. (1993), the court ruled that seizure of corporate assets that affected honest shareholders should be a consideration for appointing counsel to Companies made indigent through seizure of corporate assets. The court remanded the case, because, like Smith, they forced a former company representative of UNIMEX to "stand-in" for

UNIMEX while they stripped UNIMEX of its assets, prosecuting UNIMEX without legal representation. The 9th Circuit ruled:

"UNIMEX was not represented by counsel in its trial. All of its assets had been seized prior to trial. Based upon affidavits of 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...**"

This case is no different than the case against the Companies. The 9th circuit ruled it was **not lawful** to have a company manager "stand-in" for the Company. In the case against the Companies, Smith was forced to plead guilty on behalf of the Companies or face additional prison time as discussed later. What they did to Smith and the Companies in the Northern District of Iowa would have been considered unlawful in the 9th Circuit - it is only reasonable - why is it not unlawful everywhere? Why is this not important that all Companies, in every state, enjoy equal protection under all the laws of due process in the U.S.?

In the 7th circuit case, U.S. v. Human Services Associates ("HSA"), LLC, LEXIS 146009, 216 F. Supp. 3d, case no. 16-cr-0018 (W.D. of Michigan, S.D., 2016), Judge Greene ruled that a Company could not even enter an appearance in court unless it was represented by counsel:

"...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 without compensation, as the U.S. could pursue any available 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 Greene went on to rule that a portion of the seized HSA assets should be used to appoint counsel to represent HSA. This case, too, is no different than the case against the Companies. The owners of HSA were charged with wire fraud. The government claimed the owners - the sole owners, a husband and wife team, defrauded medicare clients and owed the government money from this fraud. The government seized HSA's assets, effectively putting HSA out-of-business, leaving HSA no money left to defend itself or its owners. But, even in this stark reality, Judge Greene ruled that the government could not prosecute HSA for crimes allegedly committed by their two owners, without appointing HSA, the company, legal representation. HSA had but two shareholders. The Companies had over 350 that were defrauded by the government's wrongful seizure of Company assets. How much more, then, do the rights of these defrauded shareholders matter in the eyes of the court?

In the 3rd district court, U.S. v. J.B. Tax Professional Services Inc., LEXIS 161807, case no. 13-127 (E.D. of Louisiana, 2013), Judge Berrigan ruled that whether to appoint counsel for indigent Companies or not is an "unsettled area of law" ruling:

"...the government argues that JB Tax has no lawful interest in the assets restrained because it has none that are ultimately separable from Ms. Arias. However, the government has not shown that Ms. Arias abused the corporate form in this case. Moreover, assuming that she did, the government provides no authority for the idea that abuse of the corporate form can nullify a corporations' constitutional right to due process and counsel. See Ne. Georgia Radiological Assoc. P.C. v. Tidwell, 670 F. 2d 507, 512 (5th Cir. 1982) ("A corporation is 'person' who possesses...due process rights.") With respect to this criminal case, Ms. Arias is JB Tax's codefendant and shareholder. **She is entitled to have her interests represented in both capacities...** however, the Court is mindful of the need for JB Tax to have representation during this proceeding. The court's authority to appoint **counsel pro bono under these circumstances is an area of unsettled law.** See U.S. v. El-Mezain, 664 F.3d 467, 578 (5th Cir. 2011), as revised (Dec. 27, 2011) ("We express no opinion on the district court's inherent to appoint trial counsel for an unrepresented corporation.") cert. denied, 133 S.Ct. 525, 184 L.Ed. 2d 338 (2012) 2013

U.S. Dist. LEXIS 19) and cert. denied 133 S.Ct. 525, 184 L.Ed 2d 338 (2012). Nevertheless, in the interests of justice the Court will order that such an appointment take place. See Rivera, 912 F. Supp. at 637. Peter Strasser has indicated his willingness to undertake JB Tax's representation pro bono. Therefore, Peter Strasser will be appointed."

"In the interests of justice" counsel was appointed for JB Tax "pro bono." This "thin line" of legal justification is all that stands between the miscarriage of justice and the just award of due process rights to a corporate entity. However, had no Peter Strasser come forward to represent the legal interests of JB Tax, then, the 5th Circuit has ruled in previous cases cited, that the corporate entity could not enter an appearance in court through anything other than representative counsel. What is equally important in the JB Tax case is the "legal reasoning" that must be applied before a corporate's assets are seized. The Judge ruled that there must be some "tie-in" between the "illegal activities" of the corporate official and the assets seized, and the burden to prove this tie-in is on the government. This was never done in this case, representing yet another violation of the Companies' constitutional rights. Additionally, in this case, Smith is challenging the court's interpretation of Smith's illegal acts via a §2255, now under appeal.

Rowland specifically addresses whether an association can be declared indigent under §1915. The argument here, however, is not about indigency, but, rather if a corporation can be prosecuted without legal representation - this is area "of unsettled law" referred to by JB Tax Professional case. There must be cogent limits placed on Rowland, especially when the government is allowed to violate all the constitutional rights of a corporate entity and use Rowland as the excuse to do it - seize assets and force a plea agreement "or else" more jail time.

The bottom line is that these courts have ruled:

1. A company cannot appear in court without legal representation (HSA case);
2. Honest shareholders who invested money in corporations also have legal rights which the court should consider especially since the assets seized from the company had no relative connection to the fraudulent activity of the company manager whom the government prosecuted for fraud (UNIMEX case);
3. It is an "unsettled area of law" that corporations must be represented in court prior to seizure of assets through the association of criminal activities of its managers. Despite this "unsettled area," the Judge in the JB Tax case appointed counsel for JB Tax Professionals but only because the attorney volunteered "pro bono." The Judge ruled that it was the opinion of the court that corporations had to be represented by counsel in court;
4. There is a world of legal difference between the artificial entity "California Men's Colony II" formed specific for the purpose of having the government pay for a lawsuit against itself to protect the prisoner's right to conditions of confinement, and the history of the Companies wherein (a) honest shareholders invested honest money over a long period of time, (b) the corporations produced products over that time period, (c) the corporations had a history of tax filing, and (d) the corporations could prove fraud by other company managers, but were prevented from making that case because they lacked representative counsel. And, unlike Rowland, the Companies were prosecuted having no legal representation in court for itself or the subsequently financially damaged shareholders. And, unlike Rowland, no inmate, like Smith, was forced to stand-in for Companies or forced to sign plea agreements.



Question 2: Do companies qualify for the same "representative counsel" protection offered individuals under "Luis v. U.S." wherein untainted assets, designated to pay legal fees, are stripped from the companies, preventing the companies from hiring representative counsel in a criminal matter?

In Luis v. U.S., 478 136 S.Ct. 1083 194 L.Ed 2d 256 No. 14-419 (2016), the Court ruled that the government could not seize untainted assets designated to pay legal fees. However, the Court has made no similar "protected representation right" for companies. Just as was done in Luis, the government froze Smith's single remaining asset - his \$120,000 IRA, being untainted funds designated to pay legal expenses, preventing Smith having access to the funds to pay his attorney(s). The freeze occurred **BEFORE** Smith was sentenced, and after Smith was discussing the transfer of the money, over recorded jailhouse telephone calls, with his attorney. The government still has copies of these recorded calls, and if they released them, it would prove Smith's point. Instead of allowing Smith access to the funds to pay his attorney, the government invented a story, not supported by the recorded calls, that Smith was transferring the money to his brother to avoid potential restitution payments. But, clearly, the government was fully aware that no restitution was owed the Claimants, having received subpoenaed data proving the Claimants had received more than \$2.6 million cash (alone) on their \$2.4 million claim - a claim that was provably falsified and inflated by Claimants. Instead of following standard M.V.R.A. accounting guidelines, Claimants were allowed to submit claims on pieces of paper, with limited supporting data, or data that was purposefully tainted and inflated, and, at sentencing, the government allowed Claimants to lie claiming Smith still owed them \$1,056,909.68. Because Smith's attorney went unpaid during this entire process, he refused to challenge the provably wrong financial claims of the Claimants. Thus, by violating "Luis v. U.S." a host of other "down-line" due process

rights were also violated - one of those "down-line" due process rights being the wrongful conviction of the Companies to meet claims of restitution which was provably not owed. Not only did the government seize Smith's untainted assets designated to pay attorneys, but the government (a) seized Company assets that could have been designated for attorney expenses, and (b) allowed Claimants and former managers to, essentially, rape the Companies financially, enrich themselves and act as wrongful witnesses against Smith.

On September 9, 2013, the government raided the businesses based on a false financial claim filed by a product supplier to the Companies - Elite Sales and Service owned and managed by Steve Bakker. Bakker was cheating the Companies on feedstock supplies, watering down feedstock and charging full price, and claiming he had a "friend at the FBI" if the Companies did not meet his "financial black-mail" demands. Sure enough, on September 9, 2013, the government raided the Company offices taking with it over 60 million shares of GRCO (Greenbelt Resources, Inc.) stock, valued at the time, at over \$3 million. By 2016 the value of 60 million shares had risen to over \$15 million. The Companies (a) had no access to the seized stock, (b) could not liquidate any asset to pay legal fees, (c) could not assign GRCO shares to investors to whom they were designated, and (d) the seizure itself created questions of fraud, helped along, of course, by the Claimants who were seeking to manage the businesses for themselves to the hurt of honest investors - one Claimant in particular leading their "fraud-claim" effort - Joan Priestley. The raid, and subsequent asset seizure caused the following:

1. **Helped "Cause" and Propel Fraud Claims Against Smith:**

Even though Smith had purchased the 60 million GRCO shares with his own invested capital, and assigned all those shares to others, Smith

was subsequently prevented from splitting the GRCO shares, as promised, to qualified investors. All ten Claimants were promised GRCO shares, and the only person that received her "portion" was Joan Priestley, having been gifted 10 million GRCO by Smith. On her own, Priestley purchased another 10 million and became the single largest individual shareholder of GRCO, and thus, her financial interest in making certain GRCO's value grew "to her liking." But, because investors were denied their "fair share," "rumblings" of fraud by Smith became "facts of fraud," "facts" which were fictitious and invented. Prior to the seizure of stock, no investments in the Companies were considered "unauthorized" - it was only after the seizure that Priestley hit on the idea of "unauthorized" investments and began communicating with other investors to join her in this claim;

2. **The Government Violated CAFRA Guidelines and Proved No Connection Between Purchased GRCO Shares and "Unauthorized Investments;"** Since Smith (a) purchased most of the 60 million GRCO shares with his own money, and (b) assigned all the shares to others, keeping none for himself, the government did not try to prove that Smith was trying to personally profit from the purchase of GRCO shares. But, when they were asked to return the shares in 2014, they refused, saying, now, instead of investigating the false claims of Elite Sales, they were now investigating claims of fraud. This "switching" reasons for holding a legally purchased, and investor-assigned asset, is a violation of CAFRA. The problem with CAFRA violations is that since the Companies were prevented from legal representation, claims of illegal search and seizure were presented by Smith, but ignored by the Court since Smith was not a licensed attorney;

**3. Without Legal Representation for the Companies, The Government Was Free to Ignore Provable Financial Crimes Against Honest Shareholders:**

Without legal representation, Company assets, that could have been used to represent the honest shareholders, were drained by dishonest managers who were working with the government to retain Company control and were used as "witnesses" against Smith:

- a. Priestley, and her hand-picked five receivers, drained over \$200,000 from the Company, following Smith's indictment, trying to prove Smith committed fraud, even though the State Court dismissed Priestley and the receivers for fraudulent acts of their own (see Exhibit 3);
- b. The receiver that replaced Priestley, attorney Tom Flynn, continued to work with Priestley's legal counsel, burning through over \$300,000 of remaining Company assets. After the money was gone, he quit following the indictment of the Companies;
- c. Priestley and Roland stole over \$720,000 claiming they were owed this money due to back "un-paid" wages - a fraudulent claim;
- d. Jerry Krause, the Companies CFO, and the government's chief witness against Smith, stole over \$250,000 from the Companies and was not prompted by the government to return that money;
- e. Randy Less stole over \$1,000,000 from investors through lies, misrepresentations, and theft - Less being the majority owner of the Companies prior to Smith, and honest investors, tried to buy him out;
- f. Priestley's wrongful claims cost honest investors \$4 million in legal claims to try and defend against her takeover attempts based on lies and misrepresentations to investors.

The bottom line is that there were "plenty" of "tainted assets"

the government could have "gone after" to claw-back and pay for legal counsel to represent the Companies. Instead, they went after (a) Smith's untainted IRA, designated to pay legal fees and (b) Company assets - GRCO shares - designated to legitimate shareholders long before the government indicted Smith for crimes. By "misapplying" "Rowland," prosecutors and District Courts are allowed to seize Company assets at will, answering to their own conscience, but not having to answer to any qualified limits that need to be placed on "Rowland" to prevent abuse like this of other companies in the future. Companies should have the same constitutional protections provided individuals under Luis.

**Question 3: Can "Rowland be "weaponized " in a criminal matter to deny companies constitutional rights of due process and representative counsel?**

When a company is prosecuted without representative counsel any number of constitutional violations can and do occur. A corporation is formed based on state, federal and contract law. In *InJago v. Van Curen* 454 U.S. 14, 102 S.Ct. 31 34 70 L.Ed. 13 (1981), the Court ruled that "contract" law brings with it certain "liberty interest" claims for corporations, or constitutional rights:

"Principles of contract law naturally serve as useful guides in determining whether or not a constitutionally protected property interest exists..."

Smith contends that these "property interests" extend to honest shareholders in corporations who are affected when a government indicts a company and uses "Rowland" as the weapon to deny that company representative counsel. These "protected rights are further explained in *First National Bank of Boston v. Bellotti*, 435 U.S. 765, S.Ct. 1407 55 L.Ed. 2d 707 (1978), wherein the Court ruled:

"A corporation is a "person" who possesses fourteenth amendment due process rights..."

It seems then that a corporation, acting under "contract law" and as a "person" that has due process rights, having honest shareholders who invested honest money, is due representative counsel. If a corporation is indicted, tried and sentenced without representative counsel, then that prosecution should not stand. The District Court was allowed to violate the following due process claims challenged by Smith; but, all were denied by the Court when motions for consideration were filed by Smith on behalf of the Companies:

1. **Recusal of Judge Strand:** In document 82, Smith requested that Judge Strand recuse himself, in the original criminal case against the Companies, case number 20-CR-2017, U.S. v. Energae, L.P. et. al. In document 84 Judge Strand ruled that he would not recuse himself. When Smith received written proof of Judge Strand previous involvement with the Companies from Smith's former attorney, Brown, Smith filed a reconsideration for recusal in document 133, giving proof. Judge Strand denied reconsideration despite the proof. The essence of this recusal claim was that in 2011/2012 Judge Strand was "attorney" representing the legal interests of Interstate Power and Light, a full owned subsidiary of Alliant Energy. The Companies had an energy production agreement with Alliant Energy through its subsidiary BFC Electric. Alliant (IPL) claimed that BFC owed it \$362,289.06 in overpayment of energy production from 2009. BFC had countersued Alliant Energy for \$2 million for underpayment of energy production for years 2002 through the date of the countersuit filing. The Companies (Permeate) received all its fuel-conversion waste through the rail site at BFC. Because BFC was being mismanaged, the Companies stepped in to purchase BFC in 2011. This "purchase" required working out an agreement with Alliant Energy (IPL) to set-aside the

\$362,289.06 in debt, and in exchange, BFC would drop their \$2 million claim against IPL. At a recorded meeting between Alliant Energy and Permeate staff, which Smith, as Permeate's main investor, attended, Alliant assured Permeate they would cancel the debt ("let bygones be bygones"). Then "attorney Strand" was listening in as Alliant's counsel to the meeting via phone, but did not physically attend the meeting. Because of these "debt forgiveness" assurances, the Companies went ahead and signed a purchase agreement for BFC. But, instead of forgiving the debt, Alliant's counsel (Strand) requested the Court issue a summary judgment against BFC, and in favor of IPL, against BFC. The requests for summary judgment began directly following the Companies' purchase of BFC. Requests were sent to the wrong address - BFC's old legal address, not Permeate's addresses - new addresses which Alliant Energy demanded via email, and which BFC's old owners communicated to Alliant (Sp. Shupp) in multiple signed documents which remain available. Because Permeate received none of the requests for summary judgment, Permeate did not attend court hearings on the matter. Because Permeate failed to respond, the Judge awarded judgment in favor of IPL. In March 2012, Smith received a telephone call from Alliant's Shupp demanding immediate payment of the \$362,289.06 in payment. Alliant, with attorney Strand's signature, debited Permeate's account for \$362,289.06. Because of the "forced" payments to Alliant, Permeate did not meet their payroll tax bills for 2012 - an amount that equalled the payments taken by attorney Strand. In 2016, under criminal case number 16-CR-2002, attorney Strand had become "Judge Strand," and Smith's judge regarding Permeate's tax payment failure. Judge Strand sentenced Smith to 13 months imprisonment relying on false information contained in the PSI. Smith did not realize that "attorney Strand" and "Judge Strand" were one

and the same person until a few weeks before Smith was sentenced in the wire fraud case, case number 17-CR-2030, a case Smith continues to challenge via §2255 (20-cv-2105). Upon advice from attorney Brown, Smith filed a §2255 in the tax case<sup>1</sup>, following sentencing in the wire case requesting that Judge Strand recuse himself. Judge Strand appointed Smith attorney Bishop, but only allowed Bishop to argue the timeliness of the filing in the tax case, given that the §2255 was filed outside the 12-month time limit. Judge Strand denied Smith's §2255 in the tax case. Smith has recently requested that the 8th Circuit, in case number 24-2148, Smith v. Eischen, D. of Minn., approve a second or successive §2255 in the tax case, based on this recusal argument. The bottom line is that if you review documents contained in Exhibit 2, you will see ample proof of Judge Strand's former involvement with the Companies. If there were ever a justified case for recusal this is it - and yet, without legal representation, the Companies were forced to accept Judge Strand's denial of the recusal request. The 8th Circuit refused to even hear the recusal request because the Companies did not have legal counsel at the District Court level - a catch 22;

2. **Poisonous Tree Claim:** Joan Priestley, one of the Claimants against Smith in the wire fraud case, desired control of the Companies, and she lied to the Court, under oath, about **everything** that she and others, wanting control, had to do with the Companies. She lied about her "unauthorized investments." Over 90% of all the "evidence" the government used against Smith was given the government by Priestley and interpreted by Priestley for the purpose of "proving" Smith's guilt. Priestley, was, in fact, a "quasi-federal agent" acting on behalf of the government to advance her own personal

1. The §2255 filed in the tax case, 16-CR-2002, U.S. v. Smith, was registered as case number C18-2083-LTS, Smith v. U.S. N.D. of Iowa (2018).



financial goals. In U.S. v. Shelton, 997 F.3d 749, 7th Cir. (2021), five government employees were charged with theft of government property. One of the employees acted as an informant against the other four, one of the four being Shelton. While three of the four pled guilty, Shelton took her case to court and lost. She was given a long sentence while the "real" thieves were given short terms. The 7th Circuit overturned her conviction ruling that the informant was acting as a "quasi-government" agent without approved search warrants. In the same way, Priestley and her five-hand picked receivers were collecting information from investors, lying to investors, sending investors 14 letters that contained provable lies. Priestley would then send her "findings" to the federal government and the government was more than willing to believe her lies. The government added stories of their own in working with a State of Iowa investigator, Sue Fagan who was also working with Priestley and four previous Company managers who had stolen company property. Priestley engaged in the following wrongful "quasi-government" acts:

- a) All the discovery against the Companies and Smith came from Priestley and her hand-picked receivers. They were all lies;
- b) Priestley sued the Companies under state case EQCE077590, Polk County, Iowa, Priestley v. Smith, et. al. (2015), winning receivership of the Companies when the federal government indicted Smith. Acting as the receiver secretary she (a) contacted all Claimants helping convince them to file financial claims against Smith, (b) worked with Dennis Roland to steal \$720,000 from the Companies to enrich themselves - money that was intended to pay back-due federal taxes, (c) worked with the Companies' CFO, Jerry Krause, assisting him in the theft of the Companies' vodka

business, dismissing the lawsuit the Companies had against Krause, even while Krause was pocketing over \$250,000 from the Company to help expand his theft of the vodka business, and (d) worked with Rick Armstrong who had defrauded the Company of over \$3 million in false algae-production claims, telling investors that the algae business he started was still viable "if only." The government bought-into all this and even used statements from Armstrong as proof that Smith was acting with criminal intent;

c) Judge Porter in case number EQCE077590 realized his mistake in appointing Priestley and the five receivers, and dismissed them putting restraining orders against them. But, despite this dismissal and restraining order, the Office of Probation still used false statements from Krause and Priestley in their PSIs as evidence that Smith was a criminal. They "boldly" cited this State case against Smith, but failed to tell the Court that Priestley and her five receivers were dismissed with a restraining order;

It is disturbing that the federal government used so many Priestley-generated lies to make claims against Smith - and they are still doing this without even blinking in Smith's §2255, case 20-cv-2105. In U.S. v. Parson, 599 F. Supp. 2d 592, LEXIS 15125, Case 3:2007-10, W. Dist. of Penn. (2009), the Judge ruled that evidence gathered against Parsons had to be tossed because separating "lies from fiction" was impossible given the multitude of lies told about Parsons. In the same way, the government has continued to profer Priestley's lies, and ignore what is true;

3. **Violation of Rule 43:** Rule 43 states that plea agreements cannot be handled via video conference. In Smith's case, because of "covid,"

the plea agreement "acceptance" was held via video conference without consent from Smith. In U.S. v. Williams, 641 F.3d 758, 764 6th Cir. (2011), the Judge ruled:

"The plain language of Rule 43 requires all parties to be present for a defendant's plea and that a defendant cannot consent to plea via video conference..."

This interpretation was further affirmed in U.S. v. Bethea, 888 F. 3d 864, 867, 7th Cir. (2018). The plea agreement, consented to by Smith was held over the telephone. Smith was not aware of video conference rules. There are no exceptions in Rule 43, 5 and 10 that provide for plea agreements to be held over a telephone. This is further evidence that without clarification, "Rowland" can be used as a legal weapon against those unsophisticated in court rules;

**4. Violation of 28 USC §2255(h) (1) - Newly Discovered Evidence:**

28 USC §2255(h) (1) states:

"...newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable fact finder would have found the movant guilty of the offense..."

Smith discovered such evidence in an email the prosecutor sent to Smith's former attorney in 2017 stating the following (Exhibit 4):

"I am not including...authorized transfers to Energae...or any folks that now state they ratified transfers...for example, Christine Kuznicki..."

Smith did not receive a copy of this email until after the Companies were sentenced on September 22, 2022, despite Smith requesting all email communication between his former legal counsel and the prosecutor as early as 2019. When this email was submitted to Judge Strand as "evidence" for overturning Smith's conviction via Smith's filed §2255 in the wire fraud case, case number 20-cv-2105, Judge Strand, in document number 63<sup>2</sup>, ruled that the above email was referring to restitution payments not authorized transfers. This

2. Judge Strand makes multiple misstatements throughout this document; one claiming MultiFinancial "filed a complaint against Smith" - a Priestley lie

"type" of ruling is typical of Courts that purposefully overlook the facts, the context, and the exact wording. The fact is that (a) Kuznicki told the business manager (Howlett) not once, but, twice, that she was not a Claimant against Smith, (b) Howlett sent a letter to the Court describing these conversations, (c) Judge Reade ignored the letter at sentencing, (d) Kuznicki was contacted by Priestley being convinced to file claims against Smith, and (e) Kuznicki admits under Grand Jury testimony that she was in contact with FBI agent Scott Irwin who urged her to call the company and demand her invested money back, (f) Kuznicki signed authorized investments in the Companies, (g) Kuznicki gave Smith authorization to invest on her behalf which she admitted to under Grand Jury testimony reference the trust agreement she signed, (h) Kuznicki had been receiving investment payback for 10 years - all of which the prosecutor, the Court and the office of Probation ignored with Kuznicki lying on her claim form writing that she probably received back \$4,500, not the ±\$90,000 actually received. The office of probation claimed that Kuznicki recieved **nothing back** from her investments. Smith detailed his investment history with the Kuznicki family in the originally filed 385-documentary in the \$2255 case for the wire fraud. Despite all this evidence, the Court still accepted Kuznicki as a viable Claimant against Smith and the Companies. Overlooking facts, forcing plea agreements foisted on incarcerated individuals made to represent the legal interests of the Companies and honest shareholders, further underscores the need for competent legal counsel to represent Companies in situations like this;

5. **Forced Plea Agreement:** Without due process protection for Companies, the government, as they did to Smith, can force any former company

manager to bend to the will of the government, despite the lack of proven criminal guilt, forcing these managers to "plea," on behalf of Companies, to any set of invented charges no matter how ridiculous the charge. Such was the case for Smith.<sup>3</sup> In document 17, case 20-CR-2007, this threat was clearly written:

"...given the impending trial-related deadlines, and the fact that the government is also requesting that USMS transport Smith back to Iowa, the government would request the status conference [to determine if Smith is going to plead guilty to avoid a trial] be held at the earliest possible date and **before Smith would depart for Iowa...**"

In order for Smith to avoid up to a year's loss of FSA credits, he **had to plead guilty**, or be transported back to Iowa to stand trial for the Companies having (a) no access to legal documents, (b) no representative counsel, (c) no money to call witnesses, take depositions - to do all those things necessary to conduct a fair trial, given that Smith was incarcerated. Under BOP Policy CFR §52341(c)(4)(iii), the BOP denies FSA credits to inmates out "on writ;"

"temporary transfer to the custody of another government agency does not constitute successful participation in EBRR programming or productive activities..."

Loss of FSA credits amounts to **more time behind bars**, and decreased time on prerelease custody. Common sense teaches that threatening Smith with loss of FSA credits in order to obtain a "plea of guilt" is coercion. In U.S. v. Newbert, F.Supp. 2d 182, Case No. 1980199, D. of Main, aff'd, 504 F.3d 180, 1st Cir. (2007), ruled that plea agreements formed under coercion were not valid - ruling this is especially true where individuals are already incarcerated. Appointed representative counsel may have helped stem these abuses;

6. **Multiple Other Constitutional Violations:** Even with legal representation it is difficult to get a fair hearing. But without such protection, fairness is impossible. Other constitutional violations

3. Coerced plea agreements are a violation of Rule 11.

are impossible to avoid without legal representation. Some of these violations have been previously covered: (a) search and seizure of Company assets using fraudulent claims from a corrupted feedstock supplier, (b) violation of CAFRA rules in not returning seized assets when requested; (c) ignoring subpoenaed data showing that the ten Claimants against Smith recieved back \$2.6 million cash for their \$2.4 million investment well before Smith was indicted - with this amount not including \$330,000 in additional cash payments received by Priestley yet remaining undisclosed, (d) Brady violations wherein the government has this subpoenaed data showing the cash payments, but, refuses to submit it to the court at sentencing, instead allowing Claimants to lie under oath without challenging those lies, (e) not holding former Company managers to account for their theft of Company assets, but, instead using these managers to invent lies about Smith, (f) using "letters" from other Company managers (GRCO and RWE) who were defrauding honest shareholders, as a basis for claiming Smith was "not honest" in his dealings with investors or statements to investors, (g) ignoring the fact that Priestley, and her five hand-picked receivers, were dismissed and were issued a temporary restraining order - and yet, the federal government still used these receivers' lies, and Priestley's lies, as a basis for claiming Smith was guilty, and (h) allowing Claimants to violate MVRA rules, invent investments, without proof, that did not happen, not file valid claim forms, yet still assert that they are "Claimants" simply because the government said they were Claimants.

There is no end to the potential due process violations when legal counsel is not present to curb some of these violations. Companies should be due equal due process rights when honest shareholders are affected.

## Conclusion

Smith would kindly request that the Supreme Court consider clarifying Rowland, and under what circumstances that indigent Companies, especially companies made indigent by seizure of company assets, can be prosecuted in court without legal representation. As stated, in this case, the government seized both Smith's money and the Company assets intended to pay for legal services, and then forced Smith, under threat of spending more time behind bars, to represent the Companies while being prosecuted. Smith was left with no choice but to agree to the government's wrong claims of fraud in order to seize Company assets to pay claims of restitution that the government **was well aware** was not owed. Every conceivable wrong against due process rights was committed when the Companies were prosecuted.

Additionally troubling is the effect of prosecution of Companies on the shareholders who invested honest money and had no representation in court. The court can take a "laissez faire" attitude and represent that if shareholders want the assets that bad, then they can come forward and pay for legal services needed to retain the assets and defend the Companies. However, these shareholders had already spent over \$4 million fighting Priestley's takeover claims, and the government was wrongly siding with Priestley and her group of unqualified managers and investors. When the government takes sides in a battle for company ownership, investors step back in order to avoid getting in trouble. And, this is exactly what happened in this case. The Board of Advisors, operating the Companies prior to the government, stepping in, were funding a rework of Company production assets.

Priestley and her cadre of underfinanced managers and investors were stealing from the Board of Advisors, and the government was supporting their wrong doing by going after Smith. Priestley was simply a "pawn" who had invested in the Companies, being caught up in a larger scheme of theft, and she couldn't tell whose side was right. So, she chose the wrong side and began inventing imaginative lies which the government chose to listen to regarding Smith and the Board of Advisors.

But, this is what happens when "Rowland" becomes unhinged and unrepentant and aggressive prosecutors are allowed to have a field day in creating intrigue and fraud where none exist. And, so, history and truth will write this legacy whether the Court decides to step in, or not, and define the "limits" to which a District Court can proceed in applying "Rowland."

It is simply legal insanity where an incarcerated former manager, still fighting the innocence of his own convictions is forced to represent a Company from prison, or face additional prison time. And the basis for this coercion is Rowland. Then the manager, Smith, files a Direct Appeal and a \$2255 to get the High Court to look at what went on here, and both the Circuit Court and the High Court (previously) refuse to even consider the due process violations against the Companies, Smith, and the unrepresented shareholders because no legal counsel is present. Smith prays the Court will take this case and set the limits upon which Rowland can be used to prosecute indigent Companies who are (1) innocent, (2) have their assets stripped, (2) have an incarcerated former manager to represent the Companies, despite having no previous



experience, and (4) allow the final Company reciever, Tom Flynn, an attorney, having been paid \$300,000 to represent "honest shareholders" quit following the indictment of the Companies.<sup>4</sup> All these circumstances seem too "convient" to even suggest ignorant mistakes by the Court. The lack of appointed representation was purposeful, disregarding the interests of honest shareholders, victimizing individuals that became "prey."

Signed this

Day of

OCTOBER

Year of

2024

Signed By

Darrell Smith #16355-029  
Federal Prison Camp  
PO Box 1000  
Duluth, MN 55814

4. See Exhibit 5, Document 17, wherein US Atty Deegan Jr. states "Flynn intends to withdraw," when in fact, the federal court allowed him to withdraw. It was all a concerted effort to deny representative counsel for the Companies, denying honest shareholders their right to be heard.