No. 03-6327

ORIGINAL

In The Supreme Court of the United States
October Term, 2002

In re JOHN WILLIAM BENSON

Supreme Court, U.S.
FILED
SEP 0 3 2003
OFFICE OF THE CLERK

On Petition for Writ of *Habeas Corpus* to the
United States District Court, District of Utah

PETITION FOR
A WRIT OF *HABEAS CORPUS*

TO: the Honorable Stephen Breyer, Justice of the United States Supreme Court and Circuit Justice of the Tenth Circuit, in Chambers

COMES NOW Petitioner, John William Benson, *pro se*, and respectfully Petitions for a Writ of *Habeas Corpus*, pursuant to U.S. Const., Art. I, § 9, Cl. 2, and 28 U.S.C. § 2241 (to the extent that they may differ), as provided in Rules 20 and 22, Rules of the Supreme Court of the United States, for the reasons set forth herein.

DATED: 3 September 2003

Respectfully submitted,

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QUESTIONS PRESENTED

Whether the criminal procedures designed to effect the orderly review of criminal proceedings are outweighed by a defendant's right not to have his or her person seized under the Fourth Amendment for trial or imprisonment, without probable cause, where these procedures have been so perverted and extended as to deny any effective review for possibly seven years of restraint on the defendant's liberty, including possibly two to four years of imprisonment before the issues presented herein are given a meaningful hearing..

Whether, when the abusive enforcement of a criminal statute renders the summary collection of taxes unconstitutional, the urgency of immediate review is so compelling as to outweigh the delay required for the petitioner to raise his issues to any court pursuant to 28 U.S.C. § 2255.

Whether, in a criminal prosecution where there have been extraordinary circumstances, including irreparable loss – actual denial of a defendant's federally protected rights that cannot be eliminated by his defense against a single prosecution – injunctive or declaratory relief is proper to stop the prosecution and the execution of any sentence thereto.

Whether, when there has been bad faith and harassment – official lawlessness – in the enforcement of a criminal statute, a federal appeals court has interlocutory jurisdiction to hear and determine the propriety of immediate, interlocutory relief and grant it, if deemed proper, including enjoining the criminal prosecution because of the perversion of the very process that is supposed to provide vindication, and because of the need for speedy and effective action to protect constitutional rights.

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may differ, and pursuant to Rules 20 and 22, Rules of the Supreme Court.

CITATION OF OPINIONS

The Order of the District Court is unreported and unpublished.

PERTINENT CONSTITUTIONAL, STATUTORY AND REGULATORY PROVISIONS ARE SET FORTH IN APPENDIX "A" ATTACHED HERETO.

STATEMENT OF FACTS

I and five other defendants were indicted on 15 April 1998, on one count of conspiracy to defraud the United States for the purpose of impeding, impairing, obstructing, and defeating the lawful functions of the Internal Revenue Service (IRS) of the Treasury Department in the ascertainment, computation, assessment, and collection of the revenue, that is, income taxes (18 U.S.C. § 371); and 69 counts of conspiracy to commit offenses against the United States, specifically, to willfully aid and assist in, procure, counsel, and advise the preparation and presentation to the Internal Revenue Service of tax returns which were false and fraudulent as to material matters, in violation of Title 26, United States Code, Section 7206(2).

In the course of pre-trial litigation, I and other defendants filed numerous motions challenging the indictment and the charges thereto. The district judge denied each of such motions. We filed interlocutory appeals with the Tenth Circuit Court of appeals on 24 March 1999, and again on 25 April 2001. The Tenth Circuit denied interlocutory jurisdiction in both appeals. See *United States v. Ambort*, 193 F.3d 1169 (10th Cir. 1999), *cert. denied*, 528 U.S. 1190 (2000) ("*Ambort I*"); *United States v. Ambort*, 2002 U.S. App. LEXIS 14956 (10th Cir.), *cert. denied*, 2002 U.S. Lexis 9149, 91 U.S.L.W. 3399 (2002) ("*Ambort II*") (unpublished).

Trial by jury was held from 6 May 2003 to 16 May 2003. A guilty verdict was brought in by the jury, on 16 May 2003, and the trial court allowed me to stay on release under conditions pending sentencing.

SUMMARY OF REASONS FOR GRANTING THE WRIT

Despite the subsequent trial and conviction, the indictment fails to charge an offense, and thus cannot provide probable cause under the Fourth Amendment to seize my person and hold me for trial or to imprison me.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

JOHN WILLIAM BENSON, ERNEST GLENN AMBORT Plaintiffs, v. UNITED STATES OF AMERICA, and the INTERNAL REVENUE SERVICE, Defendants.	**UNITED STATES' MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION** **Civil No. 2:02-CV-1215 TC**

Pursuant to Fed.R.Civ.P. 12(b)(1) the United States, through undersigned counsel, hereby moves this Court to dismiss for lack of subject matter jurisdiction all claims by plaintiffs in the above-captioned matter.