20-05113

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IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

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JOHN WORTHINGTON,

APPELLANT,

v.,

ONDCP et al

APPELLEES.

_____

On Appeal from the United States District Court
For the District of Columbia
(No. 1: 19-cv-00081) (Hon. Amy Berman Jackson)

PETITION FOR REHEARING EN BANC

BY: S/ JOHN WORTHINGTON

JOHN WORTHINGTON
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INTRODUCTION AND RULE 35(b) STATEMENT

Pursuant to Federal Rule of Appellate Procedure 35, John Worthington expresses a belief, based on studied circuit history of Rule 7 (b), and previous U.S. District Court of Appeals for the District of Columbia rulings in, Cohen v. Board of Trustees 819 F.3d 476 (2016), and, in Texas v. United States, 798 F.3d 1108 (2015), that the panel decision is contrary to decisions of the United States Court of Appeals for the District of Columbia and the U.S. Supreme Court cases identified below.

Worthington also request the full court to accept review because the trial court did not have jurisdiction in an APA case without a final agency action as required by the longstanding United States Court of Appeals for the District of Columbia precedence in City of New Orleans v. SEC, 137 F.3d 638, 639 (D.C. Cir. 1998)**,** and, the U.S. Supreme Court cases identified below**.**

The Panel did not adhere to well established precedent established in Rule 7(b), and allowed the United States Department of Justice to get away with not answering legal allegations at the trial court and

also enabled the government attorney to add legal arguments to a motion for summary affirmance.

The panel also allowed U.S. District Court Judge Amy Jackson Berman, to make arguments for the United States Department of Justice in a stark reversal of D.C. Circuit precedent and Rule 7 (b).

It is of great public importance to be free of federally funded law enforcement looting mechanism's and Rico Act revenue generation schemes. Society needs law enforcement accountability now more than ever. The panel had a golden opportunity to do so and failed.

The **'Level playing field"**[1] provisions of Rule 7 (b), were ignored and judicial canons were violated, when the trial court Judge made arguments for the United States Department of Justice. It is not the function of the District Court judges to make arguments on behalf of the litigants, and save them from **"distinct appellate repercussions"** for **"backhanding"** arguments that should have **"doomed"** their case.

[1] D.D.C. Local Rule 7(b). The rule "is a **docket-management tool** that facilitates efficient and effective resolution of motions by requiring the prompt joining of issues," Fox v. American Airlines, Inc.,389 F.3d 1291, 1294 (D.C.Cir.2004), and judicious enforcement of the rule "ensures * * * that litigants argue their causes on a **level playing field**," id. at 1295 (quoting English-Speaking Union v. Johnson, 353 F.3d 1013, 1021 (D.C.Cir.2004)

The panel ruling was an obvious radical departure from circuit precedence and Rule 7 (b) and the "decades" old use of its "**docket-management tool.**"

This unprecedented ruling compels the attention of the full Court, because the panel decision conflicts with D.C. Circuit and U.S. Supreme Court precedent and shatters the integrity of the Court of Appeals for the District of Columbia.

STATEMENT

John Worthington filed a complex combined complaint over the actions of two multi-jurisdictional drug task forces in Washington State in 2007.

Worthington alleged the task forces raided him and did not provide a notice of intent to seize his property as is required by law.

In addition, Worthington made allegations one of the drug task forces WestNET, was using its non-entity distinction illegally under the Rico Act to collect monies from Worthington and the public.

Worthington also challenged the constitutionality of the ongoing Office of National Drug Control Policy and U.S. Department of Justice policy to use state and local law enforcement to seize medical

marijuana "summarily" as contraband without due process of state law, which the drug task forces agreed to operate under.

The United States Department of Justice filed a motion to dismiss and Worthington responded with 45 pages and over 2000 exhibits in response. The United States Department of Justice filed a three page reply brief and left most of the arguments unaddressed.

Rather than enforce circuit precedence and Rule 7 (b), Judge Amy Berman Jackson ignored Rule 7 (b) and made arguments for the United States Department of Justice, and tilted the **"level playing field"** in favor of the United States Department of Justice.

Worthington v. ONDCP et al was not played on a **"level playing field,"** and the "**docket management tool"** used for **"decades"** in this circuit, was left in the shed. This case was played on Cripple Creek.

The Circuit panel in Worthington v. ONDCP et al, consisting in part of Judges Millet and Pillard, both with a long history of being judicial enforcers of the 7(b) "**docket management tool"** and protectors of the **"level playing field,"** broke from their previous pattern of enforcement and protection practices, and let the United States Department of Justice escape application of the Rule 7 (b).

When past litigants Cohen and Texas faced the **"level playing field"** and circuit duo of Judges Millard and Pillett[2], they felt the cold steel application of Rule 7 (b), the "**docket management tool,"** and the cold hard surface of the **"level playing field."**

Cohen and Texas were informed this has been happening in this circuit for **"decades."** Quote: "Rules are rules, and basic fairness requires that they be applied evenhandedly to all litigants. Rule 7(b) (or its materially identical predecessor, Local Rule 108(b)) has been in force for nearly three decades, see Graetz v. District of Columbia Public Schools, Civ. A. No. 86-293, 1987 WL 8527, at *1 (D.D.C. March 3, 1987)."

Furthermore, Judge Millet Wrote: "We have repeatedly held, moreover, that a material failure to follow the rules in district court can "**doom"** a party's case. See, e.g., Geller v. Randi, 40 F.3d 1300, 1303–1304 (D.C. Cir. 1994) ("When Geller failed to respond, he conceded a violation of Rule 11 under Local Rule 108(b) [Local Rule 7(b)'s predecessor]; he cannot now argue the merits of his Rule 11 defense."); Frito-Lay, Inc. v. Willoughby, 863 F.2d 1029, 1033–1034 (D.C. Cir. 1988) (failure to designate and reference triable facts under

[2] The honorable Cornelia T.L. Pillard and Patricia A. Millet.

Federal Rule of Civil Procedure 56(c) and Local Rule 108(h) was fatal to appellant's opposition to motion for summary judgment)

Judge Millet wrote further: Texas's tactical choice in district court has **"distinct appellate repercussions"** as well. We are "a court of review, not one of first view," United States v. Best, 961 F.2d 964, 1992 WL 96354, at *3 (D.C. Cir. 1992) (unpublished), so we rarely entertain arguments on appeal that were not first presented to the district court, see, e.g., Pettaway v. Teachers Ins. & Annuity Ass'n of America, 644 F.3d 427, 437 (D.C. Cir. 2011) (refusing to consider claim that district court violated a local rule because appellant failed to make that argument before the district court). And "**we can find no instance when we made an exception"** to that rule because the party's chosen strategy of "**backhanding"** the issues in district court "**backfired**."

Here, the litigant United States Department of Justice did not face the same cold steel application of Rule 7(b), the "**docket management tool"** and cold surface of the **"level playing field,"** and escaped accountability for horrible public policy and violations of Rico Act statutes, when its case should have been **"doomed."**

The United States Department of Justice decision to **"backhand"** issues did not **"backfire,"** because Judge Jackson broke precedence to make new arguments not made by the United States Department of Justice and the circuit panel allowed even more new arguments in the contested motion for summary affirmance.

WestNET should have been stopped from using awful public policy to use federal tax dollars to loot citizens who try and grow medical marijuana should have been halted in 2020.

WestNET should have been stopped from being used as a legal entity to collect revenue as Rico Act organization.

A true **"level playing field"** might have stopped violations of law and constitutional rights, but this "**level playing field**" in Worthington v. ONDCP et al, tilted too far towards the United States Department of Justice, and Cripple Creek.

The State of Washington and the U.S. Department of Treasury are running illegal revenue collecting mechanisms through entities which were never meant to function as a legal entity. They have done so knowingly so they could pay for employees and other task force expenditures. They never came close to the "**level playing field.**"

On more than one level, the federal government had checks and balances to stop WestNET from being used as a legal entity, but the WestNET executive board, comprised of federal, state and local members failed at every level on purpose, so they did not have to go back to component members to get task force funding.

Worthington tried to stop this illegal behavior and bad public policy but the D.C. Circuit buried it.

The **"decades old"** circuit **"docket management tool"** was not applied in Worthington v. ONDCP et al and this case was not conducted on a **"level playing field."** The United State Department of Justice escaped accountability and now WestNET can continue its Rico Act revenue collection scheme and the public looting policy can continue on Worthington and the public at large.

This unprecedented ruling compels the attention of the full Court, because it is of public importance and would protect the integrity of this circuit, which assisted this case to the unpublished abyss.

REASONS FOR GRANTING REHEARING EN BANC

In this case of exceptional importance, the panel improperly overruled Circuit precedent, and severely undermined the integrity of

what many people feel is the second highest court in America. Supreme Court Justices are regularly picked from this circuit. En banc review is necessary to preserve circuit precedence and its nationwide prestige as a court of honor.

The United States of America should not be funding and participating in Rico Act revenue schemes against the public, and this circuit should not be trying to bury this conduct in an unpublished ruling.

If there is going to be such a blatant and repugnant departure from circuit precedent, the panel should publish that decision or the full court should inspect the departure from Rule 7 (b), the **"docket management tool"** and protect the **"level playing field,"** this circuit has traditionally maintained.

I. THE PANEL'S DECISION IMPERMISSIBLY OVERRULED CIRCUIT PRECEDENT BASED IN COHEN v. BOARD OF TRUSTEES 819 F.3d 476 (2016), AND TEXAS v. UNITED STATES, 798 F.3d 1108 (2015), UPHOLDING RULE 7(b).

This Court's precedent resolves this case. The United States Department of Justice failed to answer legal arguments presented by Worthington. The Circuit panel in Worthington v. ONDCP et al, consisting of Judges Millet and Pillard, the same judicial enforcers of

Rule 7 (d), the **"docket management tool"** and protectors of the **"level playing field"** in the cases above**,** broke from their previous pattern of enforcement and protection practices, and let the United States Department of Justice escape the **"docket management tool"** and **"level playing field"** of Rule 7 (b).

The panel ruling conflicts with previous rulings on April 22, 2016, in Cohen v. Board of Trustees 819 F.3d 476 (2016), August 18, 2015, in Texas v. United States, 798 F.3d 1108 (2015),(citing Wannall v. Honeywell, Inc., 775 F.3d 425, 428 (D.C.Cir.2014) (citing Hopkins v. Women's Div., Gen. Bd. of Global Ministries, 284 F.Supp.2d 15, 25 (D.D.C.2003), Union v. Johnson, 353 F.3d 1013, 1021(D.C.Cir.2004).

A panel of this Court may not abandon Circuit precedent unless a Supreme Court decision "'effectively overrules'" or "'eviscerate[s]'" that precedent. Nat'l Inst. of Military Justice v. Dep't of Def., 512 F.3d 677, 684 n.7 (D.C. Cir. 2008).

The Supreme Court has not overruled or eviscerated Cohen v. Board of Trustees 819 F.3d 476 (2016), and Texas v. United States, 798 F.3d 1108 (2015).

Here, the panel clearly abandoned the ruling in Cohen v. Board of Trustees 819 F.3d 476 (2016), and in Texas v. United States, 798

F.3d 1108 (2015),(citing Wannall v. Honeywell, Inc., 775 F.3d 425, 428 (D.C.Cir.2014) (citing Hopkins v. Women's Div., Gen. Bd. of Global Ministries, 284 F.Supp.2d 15, 25 (D.D.C.2003), Union v. Johnson, 353 F.3d 1013, 1021 (D.C.Cir.2004), and the "**level playing field."**

This unprecedented ruling compels the attention of the full Court.

II. THE PANEL'S DECISION IMPERMISSIBLY OVERRULED CIRCUIT PRECEDENT BASED IN CITY OF NEW ORLEANS v. SEC, 137 F.3d 638, 639 (D.C. Cir. 1998) AND PUB. CITIZEN, INC. v. FERC, 839 F 3.d 1165, 1171 (D.C. CIR. 2016)

This Court's precedent resolves this case. The United States Department of Justice did not answer Worthington request for a final federal agency action to invoke 28 U.S.C. 2401.Judge Amy Berman Jackson also did not answer that jurisdictional impediment either. Judge Jackson did not have jurisdiction to make a ruling on the federal APA ruling without a final agency action.

A panel of this Court may not abandon Circuit precedent unless a Supreme Court decision "'effectively overrules'" or "'eviscerate[s]'" that precedent. Nat'l Inst. of Military Justice v. Dep't of Def., 512 F.3d 677, 684 n.7 (D.C. Cir. 2008)

The Supreme Court has not overruled or eviscerated City of New Orleans v. SEC, 137 F.3d 638, 639 (D.C. Cir. 1998) or Pub. Citizen, Inc. v. FERC, 839 F.3d 1165, 1171 (D.C. Cir. 2016)**,** the other circuit rulings enforcing this decades old precedence.

The jurisdictional predicate of final agency action must exist at the time the petition is filed. City of New Orleans v. SEC, 137 F.3d 638, 639 (D.C. Cir. 1998) (per curiam).

Here, the only jurisdiction Judge Jackson possessed was jurisdiction to order a writ to require a final agency action[3], which is what Worthington was requesting. Instead of exercising the only jurisdiction the court had, the court took hypothetical jurisdiction under the federal APA and dismissed the case without a verified final federal agency action. Judge Jackson made a great glove save on the **"level playing field"** and Worthington was denied justice.

III. THE PANEL'S DECISION IMPERMISSIBLY OVERRULED U.S. SUPREME COURT PRECEDENT BASED IN NATIONAL PARK HOSP. ASS'N v. DEP' OF INTERIOR 538 U.S. 803, 808 (2003).

The U.S. Supreme Court precedent also resolves this case. Rehearing by the full court is necessary to ensure that this case is consistent with the Supreme Court ruling in Nat'l Park Hosp. Ass'n v.

[3] Worthington made such a request but like most of his arguments, it was ignored by the United States Department of Justice and Judge Jackson.

Dep't of Interior, 538 U.S. 803, 808 (2003), requiring a final federal agency action under the APA.

The trial court did not identify a final federal agency action to which jurisdiction could be claimed. The trial court then ignored the requested writ to force a final federal or state final agency action, and improperly took jurisdiction to classify an act committed under state law as a final federal agency action.

A court is not to substitute its judgment for that of the agency," FCC v. Fox Television Stations, Inc., 556 U. S. 502, 513 (2009) (internal quotation marks omitted), but instead to assess only whether the decision was "based on a consideration of the relevant factors and whether there has been a clear error of judgment," Citizens to Preserve Overton Park, Inc. v. Volpe, 401 U. S. 402, 416 (1971).

It is a "foundational principle of administrative law" that judicial review of agency action is limited to "the grounds that the agency invoked when it took the action." Michigan v. Envtl. Prot. Agency, 576 U.S. (2015). If those grounds are inadequate, a court may remand for the agency to do one of two things: First, the agency can offer "a fuller explanation of the agency's reasoning at the time of the agency action." Pension Benefit Guaranty Corporation v. LTV Corp., 496 U.

S. 633, 654 (1990) (emphasis added). See also Alpharma, Inc. v Leavitt, 460 F. 3d 1, 5–6 (CADC 2006) (Garland, J.) (permitting an agency to provide an "amplified articulation" of a prior "conclusory" observation (internal quotation marks omitted)). This route has important limitations. When an agency's initial explanation "indicate[s] the determinative reason for the final action taken," the agency may elaborate later on that reason (or reasons) but may not provide new ones. Camp v. Pitts, 411 U. S. 138, 143 (1973) (per curiam). Alternatively, the agency can "deal with the problem afresh" by taking new agency action. SEC v. Chenery Corp., 332 U. S. 194, 201 (1947) (Chenery II). An agency taking this route is not limited to its prior reasons but must comply with the procedural requirements for new agency action.

The functional reasons for requiring contemporaneous explanations apply with equal force regardless whether post hoc justifications are raised in court by those appearing on behalf of the agency or by agency officials themselves. See American Textile Mfrs. Institute, Inc. v. Donovan, 452 U. S. 490, 539 (1981) ("[T]he post hoc rationalizations of the agency . . . cannot serve as a sufficient predicate for agency action."); Overton Park, 401 U. S., at 419

(rejecting "litigation affidavits" from agency officials as "merely 'post hoc' rationalizations").

Here, neither the United States Department of Justice nor Judge Jackson could take a position for the federal agency in Worthington v. ONDCP et al. Worthington's APA claims were not under the ambit Of the APA until there was a final federal agency action.

The U.S. Supreme Court ruling in Nat'l Park Hosp. Ass'n v. Dep't of Interior, 538 U.S. 803, 808 (2003), and the other U.S. Supreme Court rulings did not permit jurisdiction without a final agency action and the precedence of that ruling needs to be protected by the full court.

CONCLUSION

Worthington respectfully requests the full court to promptly grant rehearing en banc for Worthington v. ONDCP et al..

Respectfully submitted this 23rd day of November 2020.

BY:**S:/ JOHN WORTHINGTON**

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the requirements of Federal Rule of Appellate Procedure 32(a) (7)(B) because it contains 3733 words according to the count of Microsoft Word. This brief also complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a) (6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2007, in 14-point Times New Roman font.

BY: // JOHN WORTHINGTON

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Certificate of Service

I hereby certify that on the 23rd day of November, 2020, I will mail to the Clerk of Court by U.S. Certified Mail, and then send a notification of such filing to the following by US certified Mail to:

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BY: // JOHN WORTHINGTON

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Judicial Canon 2 A.

Final Score

Hall of Justice league 30 Worthington nil

ADDENDUM

CERTIFICATE AS TO PARTIES. RULINGS UNDER REVIEW, AND RELATED CASES

Pursuant to Circuit Rule 28(a) (1), Plaintiff-Appellant hereby certifies as follows:

A. Parties and Amici Curiae

Plaintiffs-Appellants ("Plaintiff") is John WorthingtonDefendants-Appellees ("Defendants") are the United States of America, Office of National Drug Control Policy (ONDCP), U.S. Department of Justice (U.S.D.O.J.)

The defendants are also Jovita Carranza and the U.S. Treasury Department, which is in custody of the asset forfeiture account WestNET member agencies agreed to a federal equitable sharing agreement, which contains or has contained, unlawfully obtained debts using the unlawful entity WestNET. The U.S. Treasury Department is the culpable agency for the current and past appointed or assigned treasurer of the equitable asset sharing account under the command and control of O.N.D.C.P., U.S.D.O.J. Jovita Carranza and the U.S. Treasury Department is a "person," as that term is defined pursuant to Section 1961(3) of RICO. WestNET is an "enterprise" as that term is defined pursuant to Section 1961(4) of RICO.

The defendants are also Matthew George Whitaker, Jeffery Felten-Green, and the Bureau of Justice Assistance office of programs, which funded by ONDCP and are under the command and control of the multi-jurisdictional drug task forces TNET WestNET and the DEA. Defendant Whitaker is also in custody of the asset forfeiture and money laundering section, a separate account under the equitable sharing agreement signed by WestNET member entities under the command and control of ONDCP, U.S.D.OJ , which contains or has contained, unlawful revenues collected using the unlawful entity WestNET. The U.S. Department of Justice is the culpable Agency for the current and past elected, appointed or assigned employees who held total control over the existence and finances of the unlawful entity WestNET. The Office of National Drug Control Policy is the executive branch responsible for the conspiracy to "summarily" destroy medical marijuana without statutory or constitutional due process. Matthew George Whitaker, the U.S. Department of Justice, Jeffery Felten-Green, the Bureau of Justice Assistance office of programs, the Office of National Drug Control Policy, is a "person," as that term is defined pursuant to Section 1961(3) of RICO.

WestNET is an "enterprise" as that term is defined pursuant to Section 1961(4) of RICO.

The defendants are also numerous John and Jane Does under O.N.D.C.P., U.S.D.O.J command and control, who took part in the collection of monies and assets and who; spent said monies obtained by the sales of said assets for a period of at least 17 years; and seized medical marijuana without statutory or constitutional due process. Obtaining the identity of the seizing individual would be unduly burdensome and impracticable until the law enforcement agencies comply with the due process requirement to give notice of seizure. This complaint would proceed against them under the Bivens v. Six Unknown Named Agents, 403 U.S. 388 (1971). John and Jane Does is a "person," as that term is defined pursuant to Section 1961(3) of RICO and the other claims herein. WestNET is an "enterprise" as that term is defined pursuant to Section 1961(4) of RICO.

No Amici Curiae was filed at the trial court.

B. Ruling Under Review

Appellant appeals from the Court of Appeals for the District of Columbia November 12, 2020 Opinion and Order granting

Defendants' Motion for Summary Affirmance, and denying the motion to strike and for sanctions.

C. Related Cases.

Plaintiff is only aware of a case in U.S. Tax Court 9026-19W which has similar Evidence and is against the actions of WestNET, but alleges IRS violations.

Respectfully submitted this 23rd Day of November, 2020.

BY :/ JOHN WORTHINGTON

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20-5113 **September Term, 2020**

1:19-cv-00081-ABJ

Filed On: November 12, 2020

John Worthington,

Appellant

v.

United States Office of National Drug Control Policy, et al.,

Appellees

BEFORE: Millett, Pillard, and Rao, Circuit Judges

ORDER

Upon consideration of appellant's brief and the supplements thereto; the motion for appointment of counsel; the motion for summary affirmance, the opposition thereto, and the reply; and the motion to strike and for sanctions, the opposition thereto, and the reply, it is

ORDERED that the motion for appointment of counsel be denied. In civil cases, appellants are not entitled to appointment of counsel when they have not demonstrated any likelihood of success on the merits. It is

FURTHER ORDERED that the motion to strike and for sanctions be denied. It is

FURTHER ORDERED that the motion for summary affirmance be granted. The merits of the parties' positions are so clear as to warrant summary action. See Taxpayers Watchdog, Inc. v. Stanley, 819 F.2d 294, 297 (D.C. Cir. 1987) (per curiam).

The district court correctly concluded that appellant's claims are barred by either sovereign immunity, see FDIC v. Meyer, 510 U.S. 471, 475 (1994), or the statute of limitations, see 28 U.S.C. § 2401(a). The district court further correctly concluded that appellant did not show that equitable tolling was warranted, see Jackson v. Modly, 949 F.3d 763, 778 (D.C. Cir. 2020), or that he was entitled to prospective equitable relief, see NB ex rel. Peacock v. District of Columbia, 682 F.3d 77, 82 (D.C. Cir. 2012).

In addition, the district court did not abuse its discretion in denying appellant's motion for reconsideration, see Ciralsky v. CIA, 355 F.3d 661, 671 (D.C. Cir. 2004), or his

United States Court of Appeals

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No. 20-5113 **September Term, 2020**

motion for recusal, see SEC v. Loving Spirit Found. Inc., 392 F.3d 486, 493 (D.C. Cir. 2004); see also Liteky v. United States, 510 U.S. 540, 555 (1994).

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Manuel J. Castro
Deputy Clerk