

Court with the MANDATE to address the evidence in the United States Supreme Court settled case of *Porter v. Aetna Cas. & Sur. Co.*, 370 U.S. 159 (1962), citing multiple other U.S. Supreme Court supporting cases in their decision.

1. This court certainly has jurisdiction to settle this dispute. The very prima facie evidence lies in the Appeals Court's remand of this issue TO this court for adjudication which would presumably eliminate any alleged jurisdictional challenge elements on this issue.

2. Judge Watanabe addresses the "Anti-Injunction Act" and "collection of any tax" and the hearsay and presumptive "individual's federal taxes", all of which have never been proven on the record or are in evidence, and do not make plaintiff's disability compensation "taxes" to be collected, federal or otherwise. Had this "Act" barred plaintiff from proceeding, why didn't the Appeals Court raise this and make that determination earlier? Plaintiff has repeatedly pointed out that the previously denied elements of his lawful and constitutional position on the very assessment itself, and other issues, are still in the adjudication process in U.S. Court of Federal Claims, and will directly impact this issue when due process is finally provided, or a Grand Jury is summoned to directly address these issues.

3. Judge Watanabe states on P. 6, bottom...

"The IRS defendants argue that the government can ultimately prevail - meaning that the levy on plaintiff's bank account was proper because federal law allows the IRS to levy

the veterans' benefits in question.”

This would ONLY be true if said funds can lawfully be levied, but this is proven to be in error herein, primarily in *Porter*, supra, supported by Congressional intent and other Supreme Court cites in *Porter*, discussed below, thus the government clearly cannot prevail in this issue apart from fraud on the court by the Department of Justice, and Judge Watanabe.

5. Judge Watanabe states in his Recommendation...P. 7, last paragraph...

“This is where the IRS defendant’s arguments and the Tenth Circuit’s order remanding this issue collide.... The IRS Defendants argue that the language ‘payable to’ is the key to unraveling this question and indeed it is.”

It must be glaringly obvious that this is obfuscation and a “straining at a nat and swallowing a camel” in grasping at straws to focus entirely on the “payable to” tap dancing to the exclusion of far more powerful mitigating and exculpatory evidence being completely ignored and withheld from adjudication. Judge Watanabe apparently seeks to overturn the Appeals Court’s remand and MANDATE by delving into “word-smithing” and semantic legalese in the stated statutes and court cases which claims were already clearly ruled against in *Porter*. Isn’t this rising to the level of suppression of evidence and obstruction of justice thus far?

Judge Watanabe and both defendants failed to address the clear, relevant evidence presented by

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plaintiff, and by the Appeal's court, in *Porter*. Judge Watanabe is providing clear evidence of a conflict in past court rulings and statutes mentioned, and the stated statutes and cases in *Porter*. If so, this issue is apparently going to have to go to the U.S. Supreme Court once again if it is not lawfully adjudicated via due process in this court, or addressed by a Grand Jury.

RELEVANT SITES FROM *PORTER*, *supra*

6. *Porter* clearly states that **ALL** veteran's compensation payments are exempt from levy of any kind, before AND AFTER receipt, contrary to lower court or statute sites, the misleading, obfuscating discussion regarding "payable to" notwithstanding. Every cited case or statute in defense of claims that defendant IRS, supported by defendant Wells Fargo Bank, can levy any and all veterans' disability funds *after* "payable to" disability account by the U.S. government, conflicts with *Porter*...

"Disability benefits paid by the United States... deposited are exempted from attachment by 38 U.S.C. § 3101(a) when the deposits are readily available as needed for support and maintenance, actually retain the qualities of money, and are not permanent investments. Pp. 370 U. S. 159-162." (Emphasis added throughout).

Plaintiff points out that this language is very clear and unambiguous. The quote states that "disability benefits...are exempt from attachment by 38 U.S.C. when the deposits are readily available as needed..." Plaintiff's disability funds are in this plain category. Judge Watanabe

claims that said funds ARE available to defendant IRS to levy for alleged, (but denied³), taxes claimed due. This is in conflict with *Porter*...

“This case raises the question of whether benefits paid by the United States Veterans' Administration retain their exempt status under 38 U.S.C. § 3101(a), 38 U.S.C.A. § 3101(a)1 **after being deposited in an account...**”

The *Porter* court goes on to clarify this very issue...

“Respondent... in an effort to satisfy its judgment attached a checking account and two accounts... which had been established by... funds received from the Veterans' Administration as disability compensation due the petitioner. The District Court, on motion, held all three of the accounts exempt under the statute. 185 F.Supp. 302. Respondent appealed... and the Court of Appeals for the District of Columbia reversed in a divided opinion. 111 U.S.App.D.C. 267, 296 F.2d 389. Certiorari was granted **in view of the importance of the question in the administration of the Act.** 368 U.S. 937, 82 S.Ct. 384, 7 L.Ed.2d 337. **We agree with the District Court that the funds involved here are exempt under the statute; therefore we reverse the judgment below.**”

³ This case along with denied due process issues in previous rulings are now in the U.S. Court of Federal Claims. Said denial was a violation of due process of law and said cases await motions to vacate under Rule 60. These un-adjudicated and resisted issues are rising to the level of bringing this evidence to a Grand Jury, (Motion already filed and docketed in Federal Court under 18 & 42 U.S.C.) and under President Trumps National Emergency “Executive Order Blocking the Property of Persons involved in Serious Human Rights Abuse or Corruption” dated December 21, 2017.

Porter states clearly that the “funds received” which were already deposited as “payable to” plaintiff “are exempt” from levy of any kind. *Porter* continues...

“Since 1873 it has been the policy of the Congress to exempt veterans' benefits... as well as from taxation.² In 1933 in *Trotter v. Tennessee*, 290 U.S. 354, 54 S.Ct. 138, 78 L.Ed. 358, the Court had occasion to pass upon the exemptive provision of the World War Veterans' Act of 1924, 43 Stat. 607, 613. It held that the exemption spent its force when the benefit funds 'lost the quality of moneys' and were converted into 'permanent investments.' This distinction was adopted by the Congress when the Act was amended in 1935, 49 Stat. 607, 609, to provide, inter alia, **that such payments shall be exempt either before or after receipt by the beneficiary'** ...”

Judge Watanabe and defendants all seem to allege that *Porter* is void, or of no legal effect in this case and issue. This is an obvious violation of Title 38, and a contempt and disregard for *Porter* and supporting Supreme Court cited cases. Continuing in *Porter*...

“Thereafter in *Lawrence v. Shaw*, 300 U.S. 245, 57 S.Ct. 443, 81 L.Ed. 623 (1937), the Court held that bank credits derived from veterans' benefits were within the exemption, the test being whether as so deposited the benefits remained subject to demand and use as the needs of the veteran for support and maintenance required. It was noted that the allowance of interest on such deposits would not destroy the exemption.”

Certainly if bank credits (interest or other credits) deposited in the disability account are within the exemption of protected funds, and are obviously “payable to” the veteran, and received in his/her account, than it stands to reason using common sense that the original deposited funds “payable to” any disabled veteran, under 38 U.S.C., are also protected. Lastly, *Porter* declares...

“Since legislation of this type should be liberally construed, see *Trotter v. Tennessee*, supra, 290 U.S. at 356, 54 S.Ct. at 139 to protect funds granted by the Congress for the maintenance and support of the beneficiaries thereof, *Lawrence v. Shaw*, supra, 300 U.S. at 250, 57 S.Ct. at 445, **we feel that deposits such as are involved here should remain inviolate. The Congress, we believe, intended that veterans in the safekeeping of their benefits should be able to utilize those normal modes adopted by the community for that purpose—provided the benefit funds, regardless of the technicalities of title and other formalities, are readily available as needed for support and maintenance, actually retain the qualities of moneys, and have not been converted into permanent investments.**”

The Court’s statement of “regardless of the technicalities of title and other formalities” directly addresses the “payable to” title, or “formality,” and is further evidence in support of plaintiff’s claims. Plaintiff’s intentions... his basic points of argument on the foundational issues, may not be precise or specific as to “statutory” construction, but any jury in America could see the veil being raised to obfuscate the spirit of the issue. The constitution trumps statutes, and Supreme Court stare decisis trumps the lower courts, especially where they conflict with the Supreme

Court, which Judge Watanabe is bound to follow, but apparently is willfully fighting to ignore to deprive plaintiff of lawful rights, property, and survival as a human being.

7. It is clear what plaintiff desires in the way of relief for wrongful levy, and the exact cause of the ongoing injury, and how to provide remedy based on common decency, morality and justice, and on already pleaded *Haslip* Supreme Court case, and/or other just remedy within the law.

Does plaintiff have to spell out the obvious wrongs, or locate MORE statutes which protect his personal property, and point to common law rights and conscience mandates? The U.S. Constitution already does this in the due process clause, which is consistently being denied to plaintiff. The remedy type, and the obvious compensatory amount of remedy, can be easily addressed in *Haslip*, or other relevant cases the court has ready access to, even if it requires a jury⁽⁴⁾ to determine the facts and just remedy after hearing all the evidence of record.

If Judge Watanabe recommends this court ignore multiple standing and binding U.S. Supreme Court cases, ignoring the unequivocal evidence in *Porter*, and other cited cases, this is a fraud on the court⁽⁵⁾, and a failure to provide due process of law as required, and it (or any subsequent

⁴ Amendment VII: In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise reexamined in any court of the United States, than according to the rules of the common law.”

Plaintiff has clearly been denied his right to a jury trial in the past courts where the controversy is almost \$300,000... far more than \$20. When will this right be provided?

⁵ In *Bulloch v. United States*, 763 F.2d 1115, 1121 (10th Cir. 1985) "Fraud upon the court is fraud which is directed to the judicial machinery itself and is not fraud between the parties or fraudulent documents, false statements or perjury. ... It is where the court or a member is corrupted or influenced or

ruling) lends itself to a motion to vacate a void judgment at any time under Rule 60⁽⁶⁾ for lack of due process of law.

It appears this is a willful, wanton disregard for due process, a contempt of court process, and for Judge Watanabe's oath of office to defend the constitution and existing laws, and perhaps a contempt for all veterans receiving disability compensation, or challenge to unlawful levy by the defendant IRS and assisted in by defendant Wells Fargo Bank. How could anyone with a normal sense of justice and truth reviewing this case and evidence not see the unconscionable actions against plaintiff by the defendants and court officer?

Points of undisputed fact:

a) The U.S. government provides plaintiff proven of record service-connected veteran disability monthly payments which were being directly deposited in plaintiff's primary Veteran's Compensation account in defendant Wells Fargo Bank, which account is clearly marked for this specific purpose.

influence is attempted or **where the judge has not performed his judicial function** --- thus where the impartial functions of the court have been directly corrupted." Thus, a "fraud on the court" is a fraud designed not simply to cheat an opposing litigant, but to "corrupt the judicial process" or "subvert the integrity of the court." *Oxford Clothes XX, Inc. v. Expeditors Int'l, Inc.*, 127 F.3d 574, 578 (7th Cir. 1997); *Pumphrey v. K.W. Thompson Tool Co.*, 62 F.3d 1128, 1131 (9th Cir. 1995) (citation omitted); *Transaero, Inc. v. La Fuerza Area Boliviana*, 24 F.3d 457, 460 (2d Cir. 1994). (Emphasis added.)

⁶ No time limit applies to a motion under the Rule 60(b)(4) because a void judgment can never acquire validity through *laches*. See *Crosby v. Bradstreet Co.*, 312 F.2d 483 (2nd Cir.) cert. denied, 373 U.S. 911, 83 S.Ct. 1300, 10 L.Ed.2d 412 (1963) where the court vacated a judgment as void 30 years after entry. See also *Marquette Corp. v. Priester*, 234 F.Supp. 799 (E.D.S.C.1964) where the court expressly held that clause Rule 60(b)(4) carries no real time limit.

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b) Plaintiff also has a savings account clearly marked as “VA savings” which the bank requires as a monthly deposit from plaintiff’s VA account, which is directly attached to plaintiff’s compensation deposits.

c) Defendant IRS and Judge Watanabe, supported by defendant Wells Fargo Bank, allege there is statutory authority to levy any said veteran’s compensation AFTER it has been deposited, due to the original compensation being paid and allegedly, legally defined as “payable to,” and which excludes any compensation protection under the 38 U.S.C. exemption. Nowhere in 38 U.S.C. is there any limitation on this compensation, and certainly no words defined as “payable to” qualifying any deposits. No conflicting evidence to evade Congressional “policy” and intention on this issue can counter standing SCOTUS precedent.

d) Plaintiff’s compensation, after its “payable to” statutory deposit, is, quote... “readily available as needed for support and maintenance, actually retain the qualities of moneys, and have not been converted into permanent investments.” These are clear qualifications AFTER the “payable to” element has been extinguished and does NOT authorize any levy action.

e). The cited cases and statutes argued by Judge Watanabe clearly conflict with the still standing *Porter* case, and this creates a constitutional issue if *Porter* is ignored and discarded, and violates due process of law for plaintiff in disregarding *Porter’s* order regarding Title 38 Congressional and U.S. Supreme Court meaning and intent.

f) Defendant Wells Fargo Bank was presented with this evidence, but failed to address it. Wells Fargo should have done due diligence in researching this issue, especially where evidence has been presented multiple times, and yet repeatedly ignored, and yet stays defiant of the *Porter* precedent. Ignorance of the law is no excuse, especially AFTER notice of the evidence.

Nowhere is there evidence that an accomplice can be exonerated of assisting in the commission of a criminal act against veterans unless immunity for testimony is granted. Any “civil cause of action” has been made plain by plaintiff. Common sense should dictate that any proven criminal/illegal action which assists others in the same criminal action cannot be protected without standing evidence to suggest such a position. Does plaintiff actually have to prove with statutes or case cites that these are the facts in law? If so, he will gladly do so.

To promote such a position for defendant Wells Fargo Bank would mean anyone involved as an accomplice to a criminal or other type of tort or civil wrong would be free from prosecution. Is this the precedent this court and defendants are suggesting is a benefit to society, or even lawful? Why didn't Judge Watanabe delve a bit into researching some supporting case or statutory evidence for plaintiff on this element as he clearly did for defendants? Are the courts predisposed to denying obvious, of record, evidence of complicity, and defending defendants against plaintiff's claims?

g) Plaintiff has been defending his property in this issue for nearly 2 years, and as Judge Watanabe clearly stated on Pgs. 10-11... plaintiff is “being forced to defend against fraudulent

actions for a year...” (now two years) and, “the considerable time and effort in researching, and drafting of documents against this fraud costing him money and irreversible stress, pain and suffering he could ill afford, and the subsequent exacerbation of Plaintiff’s existing disabilities.”

Plaintiff adds that this has not improved, and he is now having further related issues of disability now being reviewed by the Veterans Administration, and asks... “what is two years of someone’s life under these conditions worth, especially where it is now proven conclusively that his...

“...claims against IRS Defendants that they have improperly levied the money in his bank account are baseless and fail as a matter of law...” (P. 11, top paragraph.)

...has been proven false and his claim is meritorious, just and true.

CONCLUSION

Plaintiff can’t make the relevant issue any plainer for this court proceeding. Standing behind conflicting case precedent or statutes does not mitigate *Porter*, or the other Supreme Court cases cited in *Porter*, or any other relevant case precedent that might be available but was not considered in the Judge’s research in this one-sided focus.

Plaintiff moves this court to disregard Judge Watanabe’s recommendations, based on the above, and based on justice and due process of law, and to adjudicate the *Porter* evidence, and to view

the pleadings in the spirit of intent, and not letter of the law alone. Anything less will merely prolong the process and provide more evidence of bias and prejudice against plaintiff, and for defendants illegal, corrupt cause which oppresses this, and likely countless other disabled veterans in these united States, which evidence is being propagated throughout the net.

To not follow the clear MANDATE by the Appeals Court merely eats up judicial economy and will only force plaintiff to appeal this decision once again to the Appeals Court, and appeal this issue to the U.S. Supreme Court once again, if necessary. This issue, and the other issues denied due process of law, will go to a Grand Jury, whether through plaintiff or through the thousands of others raising these issues and evidence in the future. The truth will prevail, sooner or later because it is so clearly of record for all to see.

Lady Justice seems to have been bribed and subverted on this issue for all veterans.

Respectfully submitted,

Dated: _____

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CERTIFICATE OF SERVICE

I, Jeffrey T. Maehr, do herein certify that I have sent a true and complete copy of this Reply to Recommendations to the following parties on February 27, 2018;

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