UNITED STATES DISTRICT COURT

DISTRICT OF COLUMBIA

JANET MARCUSSE,

Plaintiff,

v. Case No. ___________

BARACK OBAMA, PRESIDENT OF THE UNITED STATES,
ERIC HOLDER, ATTORNEY GENERAL OF THE UNITED STATES
TIMOTHY GEITHNER, SECRETARY OF THE TREASURY,
DOUGLAS SHULMAN, COMMISSIONER OF THE INTERNAL REVENUE SERVICE,
DONALD DAVIS, UNITED STATES ATTORNEY,
MICHAEL SCHIPPER, ASSISTANT UNITED STATES ATTORNEY,
MATTHEW BORGULA, ASSISTANT UNITED STATES ATTORNEY,
W. FRANCESCA FERGUSON, ASSISTANT UNITED STATES ATTORNEY,
ANDREW STROOT, GENERAL ATTORNEY, INTERNAL REVENUE SERVICE,

Defendants.

_____________________________________/

COMPLAINT FOR DECLARATORY RELIEF

I. STATEMENT OF RELIEF REQUESTED

COMES NOW Plaintiff, Janet Marcusse (hereinafter "Marcusse"), as a pro se prisoner, to request this Honorable Court to issue a Declaratory Judgment as to the question of whether or not she has ever been classified, profiled, or treated as, in any United States District Court, Circuit Court of Appeals, or U.S. Tax Court, a "belligerent", "unlawful belligerent", "unlawful combatant", "enemy combatant", "terrorist", "alien", or other similar label, and/or if such a classification is currently pending, including in secret ex parte proceedings.

II. STATEMENT OF CLAIMS MADE

1. Marcusse alleges the record demonstrates that such a classification, profile, or treatment has been previously used to authorize the process used in the United States District Court in the Western District of Michigan and in the Court of Appeals for the Sixth Circuit to deny her important rights under the First, Fourth, Fifth, Sixth, and Eighth Amendments to the Constitution of the United States of America, and to deprive her of her liberty, as detailed in the Statement of Facts (V) herein, except she lacks a remedy because she has never been officially notified of it.

In essence, all procedural protections normally afforded a defendant in a criminal process were withheld. This includes the process used in Case No. 1:04-cr-165-RBH for warrants, which were falsified and not sworn; for pretrial orders stating "permanent" detention; and for a 2005 trial where the charges were (a) made "not debatable" when witnesses and evidence were not permitted for a defense, including the "use" of admitted "bulk" bank records misrepresented by IRS "investigators" in "summary" exhibits, (b) removed from the jury's deliberation after being replaced with different charges after they were shown to be false, and (c) resubmitted for draconian sentences constituting "life". The process used on direct appeal in Case No. 05-2586 and 05-2668 was no different. Issues raised were stated by the court of appeals to have been "fully considered" in 2008, but admitted to have been "declined" consideration in 2009 when a petition for a recall of the mandate was denied. Physical abuse and assaults were also used for purposes of intimidation and retaliation.

2. Marcusse further alleges such a classification scheme is

currently being used to effectively bar her from seeking or obtaining habeas relief pursuant to 28 U.S.C. §2255 in the Western District of Michigan in Case No. 1:09-cv-913-RHB. Indeed, if Marcusse has in fact been so classified, according to the Supreme Court, any remedy for habeas relief lies in the District of Columbia rather than in the Western District of Michigan.

3. Marcusse also alleges this abuse of power is currently being used by the IRS to defend its fraudulent claims of "unreported income" from the Western District of Michigan as res judicata in litigation, which she filed in U.S. Tax Court in Washington, D.C., in Docket No. 14234-09, to contest not only the penalties demanded after the trial, but those fraudulent claims made at the trial. Given the withholding of all due process at the trial, on direct appeal, and currently in the habeas process, U.S. Tax Court would have its hands tied in the absence of a determination of this question, causing further damage to Marcusse. The U.S. Tax Court litigation is currently scheduled for trial on June 21, 2010.

4. Marcusse finally alleges that the process used to classify or profile her was arbitrary and capricious, abusively used for non-violent, white-collar allegations, but employed because she refused to plead guilty to charges, which were not supported by competent or reliable evidence. There is also evidence to show the defendants were set up in order to justify the use of such authority. Classifying such targets under the auspices of national security to employ the "Law of War" to deprive them of any defense, the meaningful assistance of counsel, and a jury determination of the facts is a gross abuse of Executive plenary power to detain under Article II of the Constitution. Marcusse alleges this scheme is localized to

the Western District of Michigan, Office of U.S. Attorney, primarily used in tax prosecutions to force plea agreements, and the reason she was never officially advised of the classification. This issue has again been raised in her §2255 brief, which the Western District of Michigan has refused to file, including even acknowleding receipt of it, since February 6, 2010, in spite of two mailings of it, the second by certified mail, and a motion to compel acknowledgment of receipt dated February 23, 2010, also sent by certified mail service.

III. JURISDICTION AND VENUE

In the interests of judicial economy and substantial justice, pursuant to 28 U.S.C. §§ 1331, 2201, and 1651, therefore, a declaratory judgment on this question is requested from the District of Columbia, and whatever other relief this Court may deem appropriate to be made applicable to the parties to this action.

IV. LIST OF PARTIES

PLAINTIFF:

Janet Marcusse
#17128-045
Federal Correctional Institution
501 Capital Circle, NE
Tallahassee, FL 32301

DEFENDANTS:

Barack Obama
President of the United States/Commander-in-Chief
1600 Pennsylvania Avenue, NW
Washington, D.C. 20500

Eric Holder
Attorney General of the United States
950 Pennsylvania Avenue, NW
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Timothy Geithner
Secretary of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

Douglas Shulman
Commissioner of the Internal Revenue Service
500 N. Capitol Street, NW
Washington, D.C. 20221

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330 Ionia Avenue, NW
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Washington, D.C. 20013

V. STATEMENT OF FACTS

1. On 8/2/01, Marcusse reported to law enforcement in Hudsonville, Michigan, that $1.5 million had been embezzled from a business account by a long-time friend and associate, Diane Boss, and her new husband, Wesley Boss. In turn, Det. Crumb reported the embezzlement to the IRS in Grand Rapids, Michigan.

2. Since 1998, Marcusse had been running Sanctuary Ministries, offering private placements in a managed stock investment program and other diversifications, with profits to be shared for the charitable goal of an alternative health clinic planned to be built at the MLC "Showcase Branson Project" in Missouri. On 9/11/01, Marcusse moved there, as previously advised to investors. $2 million was invested in MLC Development Int'l., Inc. ("MLC"), including $1 million in its

preferred stock.

3. In 1983, Marcusse was first licensed as an insurance agent, later adding securities licenses, such as Series 6, 63, 7, 22, and 24.

4. $12.2 million in investments were placed for the benefit of investors, with all receiving a deposit receipt from Sanctuary Ministries, and all signing investor contracts.

5. The Bosses ran Access Financial Group, Inc., a sales agency for Sanctuary Ministries, which was one of four. When their association was terminated, the Bosses took the bank and other records.

6. Robert Plaster, founder of Empire Gas & Oil, represented himself to Marcusse as CFO of MLC, that he was a good friend of John Ashcroft's and other influential politicians, and that his property in Branson West would be used for the Showcase project in a joint venture with the Lac Vieux Desert Tribe ("LVD") from Escanaba, Michigan, where a convention center, amusement park, and riverboat gambling was planned.

7. Suisse Security Bank & Trust ("SSBT"), the bank which custodied the managed stock program, had its license revoked on 3/5/01 by the Central Bank of the Bahamas. Previously, SSBT had been endorsed in writing twice by FBI Agent Gerard Forrester on Dept. of Justice letterhead. To the present day, millions in funds are still "missing" due to its former management, shareholders, and attorney, according to its Provisional Liquidator, Raymond Winder.

8. Federal prosecutors convened a grand jury in early 2002. Marcusse appeared in front of it on 5/22/02, but objected to the presence of IRS agents with it, refusing to present the books and records of Sanctuary Ministries, which had been formed as an unincorporated church.

9. Ass't. U.S. Attorney ("AUSA") Thomas Gezon, having mailed a subpoena for a show cause hearing to Marcusse by First Class mail service in Michigan only, according to the documents he filed in court, attested through the unsworn testimony of FBI Agent Samuel Moore that she had been served by "certified" mail, but "refused" it, thereby using this false and unsworn testimony to obtain an arrest warrant for her on 7/29/02 from Judge Bell for contempt of court, which is then sealed.

10. On 6/4/02, a fax had been sent to Agent Moore on MLC letterhead, advising him of Marcusse's contact information in Missouri, which at trial he admits he received, except he explains it was "strategy" not to arrest her at that time. Marcusse was located in the next office to MLC on the main highway, MO-13, in Branson West.

11. After Marcusse is arrested at home on 7/1/04, a Grand Rapids Press headline on 7/9/04 attests she was an "alleged scam ringleader" and "on the run for two years".

12. Also on 7/29/02, the Bosses file a motion to adjourn the civil litigation Marcusse had filed against them on 8/10/01 in which they claim, as the result of a "tentative" deal to plead guilty, the federal government would reimburse the investors from their assets being liquidated. On that basis, Marcusse withdraws the litigation, only to find when the liens are lifted on their assets, the Bosses cash them out to their maximum extent, keeping them, thereby permanently injuring the investors. The Bosses write a letter to investors, "confessing", but blaming Marcusse and advising them the contact information for federal officials to make claims against her. The Bosses also go to the media, where, on 8/25/02, the content of their motion to adjourn is reported.

13. Marcusse is highly critical of both the Bosses and the federal officials involved in this "investigation" in a newsletter to investors. A headline in the Grand Rapids Press on 9/28/02 states, "Investors get letter bashing inquiry; Authorities are investigating a firm accused of **losing** millions of dollars". AUSA Gezon is quoted in the article as stating he was "required by the rules not to comment", except he was "very disturbed" by the newsletter, "because it's not a good indication for their **victims** that their money has been well cared for" [emphasis added].

14. The CEO of MLC, 51-year-old Michael Carney, dies on 11/8/02. In July, 2002, according to Carney, a wire transfer of $25.5 million "disappeared" enroute, which was in payment of an oil contract due the investors that had been assigned to MLC to collect for them, given Plaster's connections, via a Power of Attorney from Robert Rydberg.

15. In response to Marcusse's inquiry as to what his intentions would be as to the investments placed in MLC, Plaster responds in a 11/15/02 letter that he had never had anything to do with MLC in any official capacity other than to sell land to it. The 2001 Annual Registration Report made for MLC with the Missouri Secretary of State names Plaster as on the Board of Directors. Plaster had also been paid $1 million of the $2 million invested in MLC by Carney.

16. The grand jury expires on 8/29/03, along with the "sealed" 7/29/02 arrest warrant against Marcusse, without its having voted to indict her. In 11/03, associate Dan Hammond, who had also moved to Branson West in 12/01, is told by the FBI they had been "victims" and would not be charged.

17. On 12/5/03, a "sealed" Criminal Complaint and sworn Affidavit

is filed by Agent Moore in which he alleges Marcusse had operated a "ponzi scheme".

18. On 7/1/04, Marcusse is arrested at home by FBI Agent J.R. Smith, who refuses to show her or her fiance an arrest warrant. She later learned he had used the expired 7/29/02 contempt warrant, however, at trial, Smith testifies he arrested Marcusse after there was an indictment from the grand jury. The grand jury indictment in Case No. 1:04-cr-165-RHB was not issued until 7/29/04.

19. Once Marcusse is transported to Michigan, arriving on 7/21/04, she is not permitted any evidence or witnesses at the preliminary/ detention hearings, and ordered held without bond based on AUSA Gezon's "flight risk" claim, as supported by his falsified and unsworn "failure to appear" contempt warrant.

20. A Grand Rapids Press headline on 8/5/04 labels Marcusse as a "rebellious scam figure".

21. Marcusse is assaulted and injured by another prisoner on 7/24/04, who had been fed the slander she was a "white supremacist". This prisoner also called her a "constitutionalist", which is a highly unusual label for a prisoner to use.

22. Marcusse has never been involved or associated with any "white supremacist" group, and no prisoner has cause to attack another for being a "constitutionalist".

23. Judge Bell, the trial judge, is quoted in the Grand Rapids Press on 3/5/05 as claiming "tax protesters" were the "start[]" of the conduct which led to the multiple murders of Judge Lefkow's family members on 2/28/05. On 3/10/05, it was released by police that a disfigured cancer victim, angry over being denied his day in court, had been responsible for the murders.

24. A "white supremacist" group had been initially suspected of the Lefkow murders. Tax protesting, however, was not part of any of the charges against Matthew Hale, its leader. On 4/26/05, Hale was sentenced to 480 months for the conspiracy solicitation of murder, after having been arrested on 1/8/03 for soliciting an undercover FBI informant to kill Judge Lefkow, which was described as a federal crime of "terrorism".

25. The 7/29/04 indictment charged 39 mail fraud counts, ranging in time from 10/21/99 to 3/23/01, and one count of conspiracy to commit mail fraud (Count 40), against 8 defendants, including the Bosses, who had never actually signed the plea agreement referred to by the media, or in their 7/29/02 motion to adjourn. The indictment alleged no investments were ever made by the defendants, who instead "spent" all of the money on themselves and others, or as distributions to investors. Once the charge was changed from "losing" money in investments, to that of conduct described as a ponzi scheme, prosecutors were able to secure an indictment.

26. No trial date was set until a superseding indictment was obtained on 10/29/04 in which 40 money laundering counts, one count of conspiracy to commit money laundering, one count of conspiracy to defraud the United States, specifically the Internal Revenue Service, and a $10 million money judgment, including substitute assets pursuant to "Title 21, United States Code, Section 853(p)", were added to the 40 counts in the 7/29/04 indictment. The conspiracy against the IRS alleged the defendants "failed to issue Forms 1099 or W-2, and failed to keep accurate and normal books and records". Not until after the trial did AUSA Gezon admit the evidence showed the sales associates operated "independently".

27. Co-defendant, 67-year-old George Besser, who had sold his home in Michigan in 2003, retiring to Mexico on his Social Security, was extradited from there on charges described as "conspiracy to distribute five kilograms of cocaine". Ignoring the Doctrine of Specialty, Judge Bell denies Besser's objections to the court's jurisdiction to pursue "ponzi scheme" charges against him. AUSA Gezon states on the record the drug references were an "error" made by "a clerk", as the case was "not about drugs".

28. Because Besser also argues he was "kidnapped" out of Mexico as a "drug dealer", Judge Bell finds he doesn't understand the charges against him and denies him the right to proceed pro se.

29. A 7/11/04 article in a Birmingham, U.K., newspaper reports Gurmail Sidhu, a Midland lawyer, had his home and office "raided" based on "drug trafficking" warrants regarding his clients. Computers and records were seized relating to Marcusse's companies, which Sidhu had set up to make transfers to MLC and other investments. These records were never provided to Marcusse under **Brady**, or submitted by prosecutors at trial. In spite of repeated requests for information, Sidhu ignores her, suggesting he was threatened in some manner.

30. On 11/9/04, at arraignment on the superseding indictment, when Marcusse objects to the improper "extradition" from Missouri, having learned the expired and unsworn warrant was used, the magistrate interrupts her to request she be removed, causing the U.S. Marshals to jump her so violently the leg is broken off the wood table where she had been sitting, she incurs multiple bruises, and she suffers a herniated disk in her back.

31. The pleadings Marcusse serves are not filed, or rejected from filing per court order, denying her access to the court, in spite of

a filed waiver of counsel. Thus, pleadings objecting to the Bosses as co-defendants, given their public confessions of guilt, including to the entire investor group, some of whom would likely be government witnesses at trial, and her having reported them to law enforcement; denial of the right to a speedy trial; selective prosecution protecting individuals, such as Plaster, whose friend John Ashcroft was now the U.S. Attorney General, and a man who had sponsored lavish Republican Party fund raisers at his Evergreen Crystal Palace; and the apparent set up of the prisoner assault on 7/24/04; are all ignored by the Court.

32. The denial of the right to a speedy trial results in at least one vital defense witness being permanently lost when Robert Rydberg suffers a fatal heart attack in January, 2005.

33. On 4/20/05, prosecutors file a motion to revoke the bond of codefendant, Donald Buffin, Jr., which is denied by the magistrate in a hearing on 4/29/05. Buffin had also requested to proceed pro se. On 5/11/05, however, in response to a motion prepared by AUSA Donald Davis, Judge Bell "seals" the motion and orders Buffin's bond revoked. AUSA Davis was not a prosecutor of record in this case. Buffin is placed in the drunk tank at Newaygo County Jail for six days, without shower or shave, including for the first two days of trial, until he agrees to allow attorney Ken DeBoer to represent him.

34. In or about April, 2005, Marcusse is told that AUSA Davis was profiling her as a "terrorist". AUSA Davis was prosecuting David and Sandra Husted for "conspiracy" failure to file a joint income tax return in an unrelated case, and the Husteds were told they would be profiled the same if they did not plead guilty. When Sandra Husted was housed in the same cell with Marcusse in Newaygo County Jail,

it was the first time they had ever met.

35. On 4/25/05, a motion in limine is filed by prosecutors requesting the defendants be denied any defense in which "statutes, codes, judicial decisions" are used, any evidence that the prosecutors or IRS investigators engaged in "fraud", any evidence that the "process by which the Defendants are before the Court is flawed", or any evidence the "government's implementation of the statutes is erroneous", all of which are granted by Judge Bell.

36. on 4/28/05, a motion for protective order filed by prosecutors is granted by Judge Bell, which restricts Jencks and **Brady** materials for the pro se defendants only, and orders all government exhibits to be returned at the close of the trial.

37. On 5/5/05, at the final pretrial hearing, Judge Bell orders an "anonymous" jury, due to "no fault of anybody here". He orders pictures to be taken of all witnesses, which allows for IRS agents to take their pictures at trial, asking them if they had paid their taxes or ever been audited. When asked if the defendants had to submit their exhibits in advance, Judge Bell responds "no", indicating they could wait until they put on their defense.

38. On 5/16/05, the first morning of trial, when Marcusse asks about the denial of some bank records as evidence for her, specifically in regards to the records held by Gurmail Sidhu, because her defense was intended to be "bank records show the money was invested with other individuals", Judge Bell responds that "whether or not the money that you allegedly may have had to invest was run off with a third party or a fourth party or someone else is really not the issue here", and she was to "focus" on the allegation that she and the others "fraudulently and deceitfully deceived other people, not that other people

deceived you, which may be the case. I imagine the government might concede that if you ask them." Judge Bell also admits he understands the charge to be a "ponzi scheme".

39. As noted in the Supreme Court case of **Hamdi v. Rumsfeld**, 542 US 507, 535 (2004), decided on 6/28/04, right before Marcusse was first arrested, "factual disputes at enemy combatant hearings are limited to the alleged combatant's acts."

40. When Marcusse objects to a trial in which she can't use her own bank records to defend herself, asking what type of court and source of law allows for such authority, as well as for Judge Bell's oath of office, he refuses to produce it, threatening to remove her from the trial. He also denies her the right to proceed pro se, make any objections, or cross examine witnesses. Court-appointed stand-by counsel, David Kaczor, is ordered to take over her defense, because, according to Judge Bell, she doesn't understand the charges.

41. In his opening statement, AUSA Schipper tells the jury the trial is about a "ponzi scheme", repeating the term at least 10 times in the first page of it alone. The Government's Trial Brief had described it as a "classic Ponzi scheme", repeating the term 9 times in the brief. The term, "ponzi scheme", was mentioned at least 116 times at trial.

42. In a Combatant Status Review Tribunal ("CSRT"), the government's evidence is granted the presumption that it is "genuine and accurate". Likewise, Marcusse was not allowed to object to any of the government's exhibits.

43. Prosecutors submit "bulk" bank record exhibits, to which Marcusse stipulates, under the condition she also be allowed to "use" them. The documents are placed in banker boxes as stage props in front of

the jury. IRS witness "investigators" submit one-page "summary" exhibits, which substantially misrepresent the underlying bank records by claiming no investments were made, however, Marcusse is never allowed to "use" the documents out of the "bulk" exhibits in her own defense.

44. GX-172, a "summary" exhibit, for example, purporting to "prove" $7.3 million in "Other Spending by Defendants", refers on its face to "bulk" bank record exhibits in support of four categories, such as "Foreign Wire Transfers" and "Domestic Transfers". When Marcusse questions the accuracy of Agent Flink's numbers, he tells her, "You'd have to look in--all those boxes right there."

45. Eighteen witnesses, including 17 investors, and 45 exhibits are presented before Marcusse is allowed to cross examine the first witness. This allowed for the entry of the key evidence needed by prosecutors, particularly that of tampered-with exhibits. Kaczor would not object to any of these exhibits, advising Marcusse he was not permitted to do so at this trial, however, he did state in closing arguments she had asked where the attachments were to her 6/99 newsletter (GX-31).

46. IRS Agent James Flink admits to Marcusse under cross examination in rambling, evasive responses that he "counted" no investment that did not match Government Exhibit 1 ("GX-1"), a "prime bank" debenture brochure, in the dozens of "summary" exhibits presented, which purported to prove the defendants "spent" $12.1 million on "themselves and others". This irrebuttable presumption is used by Agent Flink, as supported by tampered-with evidence, to limit the definition of an "investment" to a "nonexistent" product, thereby enabling him to ignore the $12.2 million in investments made. The jury is never

specifically advised of this improper construction of the term "investment".

47. GX-1, the "prime bank" debenture booklet, had been used with some investors before $400,000 in investor funds were seized on 5/15/99 and the defendants thereby advised about "prime bank" fraud. For the trial, GX-1 was tampered with prior to submission to add page numbers, remove the investor contracts referring to "High Yield Trading Programs", replacing it with the contracts belonging to the managed stock program at SSBT. This allowed for investor contracts signed in 1999 and later to appear as if they belonged to the earlier GX-1 program. Marcusse had previously objected to the entry of this exhibit at the preliminary/detention hearing on 7/28/04 for its irrelevancy to the witness who first invested on 10/25/99.

48. Investor newsletters from 6/99 (GX-31) and 10/99 (GX-33) were both tampered with before submission to remove their attachments. These newsletters announced a "new" program, the managed stock program at SSBT in Nassau, Bahamas. An attachment giving wiring instructions to an account there was removed from GX-31. The 10/99 newsletter specified the new program was not a "bank debenture" program, thereby advising investors the GX-1 product was no longer being used (GX-33). An attachment containing a flyer about the Bahamas program was removed from GX-33 before submission to the jury.

49. Six early investor witnesses, who had seen GX-1, are presented by prosecutors to verify it had been "promised" by the defendants.

50. New contracts, signed by all investors, are dismissed as "gobbledygook" by AUSA Gezon in his closing arguments.

50. In a CSRT, the government's evidence is determined under a very deferential "some evidence" standard. Under it the "focus" is

"exclusively on the factual basis supplied by the Executive to support its own determination". It "'does not require' a 'weighing of the evidence', but rather calls for assessing 'whether there is **any** evidence in the record that could support the conclusion'" [emphasis added]. See **Hamdi**, 524 US, at 527, 533. Likewise, GX-1 was plucked out of over 300 exhibits presented by prosecutors and made an irrebuttable presumption before the jury was even sworn. Judge Bell limited Marcusse's defense to only those witnesses or evidence that could address her representations about GX-1 (¶38), a product the admitted evidence proved, had it not been tampered with, was discontinued before the first mail fraud count on 10/21/99. The 10/99 newsletter (GX-33) was contained intact in Agent Moore's 12/5/03 Criminal Complaint and Affidavit.

51. As an "officer of the court", and after admittedly sharing with prosecutors all of Marcusse's anticipated defense exhibits, Kaczor withholds the "reams" of documents she had given him for use during her testimony, depriving her of the necessary support to her defense that at least $12.2 million in legitimate investments had been made. Further, Kaczor does not warn Marcusse in advance of her testimony of his intentions to withhold all of this evidence.

52. The CSRT process impedes or bars the meaningful assistance of counsel.

53. Marcusse was permitted only one "summary" exhibit for one investment, the SSBT stock investment program, except she was not allowed to attach the corresponding wire transfer documents in support. In a day and a half of testimony, Kaczor submits just 9 defense exhibits for her, in rebuttal of over 300 government exhibits.

54. When Kaczor does not submit her evidence, Marcusse files those

documents for which she has extra copies with the clerk of court as "evidence packs". She has them "certified", requesting Judge Bell provide her evidence to the jury. He ignores the bank record documents included, misstating the evidence as "newspaper articles" and other "irrelevant" documents, denying entry of the evidence at trial.

55. In his closing and rebuttal closing arguments, AUSA Gezon repeatedly calls Marcusse a "liar" based on the "evidence", using the "bulk" bank records as his props. Had all of Marcusse's evidence been submitted, allowing for prosecutors to object if they so desired, the jury would have at least seen the evidence existed.

56. Judge Bell denies subpoenas for 14 defense witnesses because their anticipated testimony regarding "alleged investments" was "irrelevant". Any witness about SSBT, regarding the "failure of certain Bahamian banks", was "wholly unrelated and irrelevant". FBI Agent Gerard Forrester, who had endorsed SSBT, was denied as his "existence" was claimed to be of "doubtful validity" by prosecutors. Certainly, with all of the resources available to the Dept. of Justice, it could have been stated with assurance whether or not a former agent "existed".

57. One defense witness permitted was arrested on a stale traffic warrant the weekend before his scheduled Monday appearance. Several investor witnesses were so intimidated by the IRS, they refused to testify. One former associate, who had not been charged, but who could have testified to the evidence tampering done to remove him as a sales associate, as well as to investments made directly into MLC as instructed, appeared, but AUSA Gezon stated on the record, if he testified, he would be charged, causing him to have no choice but to refuse to testify. A former attorney at the Dept. of Treasury, James Kramer-

Wilt, who provided advice on investments and research on investment advisors at the time he was employed by the federal government, could not be located to be served.

58. Out of the 29 witnesses Marcusse requested, she was only able to have 9 in rebuttal to 77 government witnesses. No witness was granted that was a direct witness to any investment.

59. CSRT procedures purported to offer detainees the right to call witnesses, however, Dept. of Defense data reveal their requests were routinely denied.

60. First requested as a defense witness, Robert Plaster was brought in as a last-minute government witness after numerous investors testified they knew MLC was an investment and that Plaster was part of MLC. Under Marcusse's cross examination, Plaster admits he kept $1 million out of a $1.2 million wire transfer to MLC, this being after Agent Flink had testified only $160,000 was placed in MLC, and it was not an investment. The $1 million kept by Plaster was out of a $1.2 million wire transfer handled by Gurmail Sidhu.

61. During closing arguments, Kaczor shows where, in the government's own witnesses and evidence, such as Plaster, it could be established at least $7.3 million in legitimate investments had been made.

62. In his rebuttal closing arguments, in response, AUSA Gezon withdraws the "ponzi scheme" charge from jury deliberation, and proceeds to reargue his case, alleging the defendants "promised" only the product in GX-1, thereby engaging in "misrepresentations" by not investing in it.

63. Judge Bell changes his jury instructions to suit, switching the "scheme to defraud" from a "ponzi scheme" to "honest services" fraud, described as the "right to decide how one's money is spent". The

money laundering counts were changed from the "unlawful activity", previously described as a "ponzi scheme", to "mail fraud", with 15 of these 20-year counts changed to "failure to file". He also "highlights" the government's evidence, by tying an exhibit to each count, admitting he's "never done this before".

64. Although listed as a "pro se" on the docket, Marcusse was not permitted to attend the jury instruction hearing, nor was she given a copy of the revised jury instructions before they were read to the jury.

65. In regards to these "failure to file" allegations, they were first made at trial for purposes of manufacturing motive in front of the jury. Agent Flink uses his misleading definition of an investment (¶46), so that his "summary" exhibits could ignore pass-through funds going into investments, which had been placed by the defendants as agents per investor contract, agreeing to diversification, instead claiming the funds were "unreported income". At least $2 million in pass-through funds were misrepresented as "unreported income". Other IRS witnesses presented "assessments" for the funds. Another $10 million was misrepresented as "spent". After the trial, $147,667 of pass-through funds are removed by AUSA Gezon from the Boss's unreported income before sentencing.

66. No unreported income claims or amounts were charged against Marcusse or Besser in the indictment, the two alleged "lead" defendants, yet $943,370 and $1 million in "unreported income" claims were made against them, respectively, at trial. This caused the amounts to be more than the amounts attributed to the Bosses, which had been divided, with $826,000 for Diane Boss and $475,000 for Wesley Boss.

67. In spite of Marcusse's testimony that the funds charged against

Besser had been invested for the benefit of investors, his court-appointed attorney, in closing arguments, stated that, while his client had not been charged with failure to file, if he had been, he would be "guilty". Besser did not testify. Kaczor reduced Marcusse's amount by the $600,000 she testified went into investments, but conceded the balance of $343,370 for "unreported income". These "stipulations" misrepresented the import of the jury instruction conference the defendants were not permitted to attend, were erroneous given the reliable evidence, and then were used by prosecutors and Judge Bell to insure guilty verdicts.

68. Marcusse could not respond to some of the amount charged against her for "unreported income" from 1998-2001, because GX-95, the "summary" exhibit used to allege it, provided no information whatsoever about part of the amount. It was not until she sued the IRS in U.S. Tax Court, that she received IRS Form 886-A, which provided a breakdown of the full amount. At trial, Agent Flink testified all of the $943,370 were funds she "got into her accounts and then spent", whereas in U.S. Tax Court litigation, General Attorney Andrew Stroot admitted Form 886-A shows Marcusse was the "payee" of "only $77,485.31 of the $943,370 in unreported income". Of this $77,485.31, bank records show $42,000 was paid to co-defendant, William Flynn.

69. At the jury instruction conference, defense attorneys had argued "failure to file" was not charged in the indictment, however, AUSA Gezon indicated it was the "nature" of the "conspiracy". Defense attorneys also argued that loans, pass-through funds, and gifts are not income. Judge Bell denied all of the requested changes to the gross income instruction made by the defense under the reasoning, "if I give that instruction with that in it, there would be no

criminal prosecution of them because it wouldn't be income".

70. Judge Bell directs the jury to find guilt on "failure to file", using the amounts charged in Count 40, conspiracy to commit mail fraud, where he states, "An individual with the gross amounts charged in the indictment is required by law to follow--to file an income tax return." Wesley Boss, for example, was charged in Count 40 with receiving "commissions" in the "approximate total amount of $173,758.13". These were funds paid to him in checks, all signed by his wife, Diane Boss. The Bosses pled guilty during the trial. The jury instructions also state only one "overt act" need be shown by a member to find guilt on any or all of the three conspiracy counts.

71. The "confession" letter sent by the Bosses to all investors, which had blamed Marcusse, is submitted as evidence at trial, Neither of the Bosses testify. In her motion to vacate filed on 9/25/06, Diane Boss states she was threatened with a 25-year sentence six days into the trial. Marcusse is denied any evidence regarding her civil litigation against the Bosses.

72. As soon as the jury renders the requisite guilty verdicts, the Grand Rapids Press reports on 6/15/05, "Federal prosecutors say [it] was a Ponzi scheme".

73. A military commission sits "as the triers of both fact and law". Likewise, the "intent to defraud" on the ponzi scheme charge was "not debatable", nor was it trusted to the jury to consider. Further, all objections at sentencing were not merely ignored, but blocked.

74. In the Pre-Sentence Report ("PSR"), the U.S. Probation Officer calculates "Guideline Provisions" at 13,920 months, a total offense level of 43, or "life", for the 5 defendants who finished the trial.

All of the middle-aged to elderly defendants were a Criminal History Category I. A 2004 Guidelines Manual is used, which for Marcusse, adds 16 years to the "recommended" sentence to total 300 months, instead of the 2000 Guidelines Manual used for Diane Boss, who received a 10-year sentence.

75. Marcusse is not allowed to make written objections to the PSR after she tells prosecutors she intends to take "exception" to it in its entirety due to its "fraud". The PSR admits it is not based on the trial, but instead on the Government's Trial Brief and interviews with federal officials. Marcusse is moved to another jail and all of her legal papers confiscated. A filing made for her, objecting to this, is ignored by Judge Bell. Marcusse instead files Rule 60(b) fraud claims, which are also all ignored for sentencing.

76. At Besser's sentencing, Judge Bell takes a "perverse pleasure" the defendants were "basically scammed" by others, but sentences the 67-year-old to 20 years on a crime he describes as a "ponzi scheme".

77. The withdrawal of the ponzi scheme charge by AUSA Gezon at trial before jury deliberation, but after the jury was sworn, should have constituted nolle prosequi or judicial estoppel.

78. On 10/28/05, Marcusse is sentenced to 25 years, after making numerous objections at the hearing, including to a trial in which the "intent to defraud" was "not debatable". U.S. Marshals standing next to her, bend back her fingers and thumbs, trying to break them. When she objects, asking Judge Bell to "make them stop hurting me", he tells her to be quiet, removing her when she refuses to silently endure this excruciating physical abuse. Her fingers and thumbs are still damaged to the present day.

79. A Grand Rapids Press headline on 10/29/05 labels Marcusse as a "defiant scam figure".

80. Physical abuse was routinely used in this case for purposes of intimidation and retaliation. Torture was a serious issue with the "enemy combatant" detainees.

81. Besser was offered a three-year "deal" if he would plead guilty, which he refused, stating he was innocent. Rumors were then spread about him at Newaygo County Jail that he was a "baby molester", causing possible risk of assault or even death.

82. During the month-long trial, Marcusse, Besser, and Jeffrey Visser, who were those defendants detained pretrial, were kept in the drunk tank up to 8 hours per day, in addition to the 8 hour trial. They were not allowed their legal materials, paper, pen, or even a mat upon which to rest. It was so bad, Besser suffered seizures. They were also kept in Newaygo County Jail, a distant jail, which required a 3-hour round trip, when Kent County Jail was less than 2 miles from the courthouse, thereby also interferring with meaningful assistance of counsel. When objection was made by Marcusse during the trial, Judge Bell claimed Kent County Jail was "full".

83. Marcusse dared not eat any of the food provided to her at breakfast during the trial for fear it was drugged, leaving it. One prisoner, Jennifer Hard, after eating Marcusse's breakfast, stated in a sworn affidavit she believed she had been drugged, because she went "crazy" and injured herself, breaking her toe and eyeglasses.

84. Prior to the sentencing hearing, a female U.S. Marshal, pulls 49-year-old Marcusse out of the cell by her hair, calling her a "whore". This was the same woman to have attacked Marcusse's hands at the sentencing hearing, along with U.S. Marshal, Steve Hetherington.

Hetherington, who also attacked Marcusse at the 11/9/04 arraignment, causing injury, was a member of the Homeland Security Taskforce, along with AUSA Donald Davis.

85. At sentencing, Kaczor pours Marcusse a glass of water, which causes all of the saliva in her mouth to immediately dissipate, choking her, and making it difficult for her to speak, thereby obstructing her right to give an allocution.

86. On direct appeal, another court-appointed attorney, Melvin Houston, is assigned to Marcusse, after Kaczor is appointed Senior Litigator for the Office of Public Defender. Houston acts to sabotage the appeal, grossly misrepresenting the facts and omitting vital issues for review in his proof brief. Marcusse objects on due process grounds, in addition to the Sixth Amendment, causing the Sixth Circuit to allow her to file a supplemental pro se brief, which the other appellants are later granted permission to join. Houston persists in these misrepresentations in his final brief, causing Marcusse to file a petition for writ of mandamus to strike his brief, but it is denied.

87. The Sixth Circuit panel ignores the issues in Marcusse's supplemental pro se brief in their 2/14/08 Opinion. In a Petition for Rehearing, Marcusse raises this as an issue, however, a 5/20/08 Order denies a rehearing, stating her issues had been "fully considered" in the 2/14/08 Opinion.

88. Marcusse's petition for writ of certiorari is denied by the Supreme Court on 10/6/08.

89. Marcusse files a Rule 60(b) attorney and court fraud petition, requesting the recall of the mandate of the Sixth Circuit. In its 5/14/09 Order, the panel now admits it had "declined" to consider

any of Marcusse's pro se issues in the 2/14/08 Opinion, because she had "representation" on appeal, but her "remedy" was to file a motion to vacate the **sentence** under 28 U.S.C. §2255, making no mention of an illegal conviction, or to file a civil rights action under 28 U.S.C. §1983. The Sixth Circuit ignores the facts she had obtained permission to file the pro se brief, that she raised the point her court-appointed attorney was substantially misrepresenting the facts and issues, and that the Sixth Circuit has at least a 40-year history of considering and responding to the issues raised in pro se briefs, if filed with permission, and where the individual is also represented by counsel.

90. A petition for writ of certiorari is denied by the Supreme Court on 10/5/09.

91. In this manner, a "ponzi scheme" is made the law of the case, and all of Judge Bell's decisions are made unreviewable. Marcusse had requested he recuse himself the first morning of trial, but he refused, and Kaczor refused to certify a motion under 28 U.S.C. §144.

92. There is no right to an appeal from a CSRT, and the Supreme Court has held if a defendant has no absolute right to an appeal, he has no constitutional right to effective assistance of counsel on appeal.

93. A motion to vacate both the convictions and sentences, listing the various issues to be raised, is filed on 10/6/09 in the Western Dstrict of Michigan in Case No. 1:09-cv-913-RHB, along with a motion for extension of time to file a brief in support of it. An extension of time is granted to 2/6/10. To date, however, the Memorandum in Support, which has been mailed twice, the first on 2/6/10, and the second by certified mail service, does not appear on the record. Further, as soon as Marcusse's motion to vacate was filed on 10/6/09,

she was listed as a "Restricted Filer".

94. CSRT procedures allow for the use of secret and/or ex parte evidence and proceedings.

95. In September, 2005, prior to Marcusse's 10/28/05 sentencing, Dawn TerMeer is housed in Marcusse's cell after TerMeer is arrested for making false statements to a firearms dealer and disposing of firearms to a felon and fugitive pursuant to 18 U.S.C. §922(a)(6), (d)(1) and (2), and §924(a)(2) in Case No. 1:05-cv-169. The "felon" and "fugitive" to whom TerMeer provided the firearms was David Paul Rendleman. Marcusse had never met TerMeer prior to her arrest.

96. In Rendleman's Sentencing Memorandum filed on charges of mail fraud in Case No. 1:03-cr-294-RHB, he claims, "Following his arrest in June, 2005, Mr. Rendleman informed federal authorities of an assassination plot on three judges: two Allegan judges and United States District Court Chief Judge Robert Holmes Bell. For the next several weeks Mr. Rendleman cooperated and truthfully informed the federal authorities of this plan by Dawn TerMeer, her husband, Gerald TerMeer, and others in the Allegan County area involved in the militia movement." No one else in addition to Dawn TerMeer is arrested, and TerMeer, who is severely speech and hearing impaired, tells Marcusse she was set up by Rendleman, who was the father of her oldest daughter. TerMeer is sentenced to five months by Judge Quist, demonstrating Rendleman's "assassination plot" hearsay was not used to charge or otherwise enhance her sentence, as usually is done in such circumstances.

97. Rendleman was arrested on 6/9/05, during Marcusse's trial, and was housed at Kent County Jail, which had room for him.

98. On or about 6/30/05, after her trial is over on 6/14/05, Marcusse

is moved from Newaygo County Jail to Calhoun County Jail and placed in solitary confinement. U.S. Marshal Steve Hetherington visits her on 7/7/05, making the allegation she had "threatened" Judge Bell when she made a phone call after the trial requesting "Pointman" go after "fat boy". As Marcusse advised Hetherington, and later the court in a filing on 8/29/05, the charge was "ludicrous", as Plaster was "fat boy", not Judge Bell. Plaster was so obese, he could not fit into the witness chair at trial, and a special chair had to be found for him. Missouri attorney, David Pointer, a witness requested in a 5/24/05 pleading for the trial, had advised Marcusse before the trial of Plaster's dreadful reputation, including being charged with firebombing his competition to Empire Gas & Oil. Pointer had also agreed he would pursue litigation against Plaster on behalf of the investors, no matter the outcome of the trial. Given the previous interference in which federal officials engaged in the Boss civil litigation, Marcusse had no interest in clearly stating on the recorded phone or outward mail, required to be left open, her request to have David Pointer proceed with this litigation.

99. Pointer subsequently withdrew his offer to sue Plaster on contingency.

100. No defendant charged in Marcusse's case has ever been a member of the militia.

101. Rendleman's Sentencing Memorandum further attests that he assisted the government in 2004 by helping them find two "fugitives", co-defendants Besser and Visser.

102. No family members were ever contacted by federal officials to locate these men, including the daughter of Besser's, whose address Besser listed with the United States Postal Service as his forwarding

address from the home he sold in Roseville in 2003, as well as with the Social Security Administration. Besser's daughter, Terri Magda, has lived at the same address for 17 years. Visser, and his wife, Beth, lived with his brother, Ron, in Zephryhills, Florida, where Jeff's two daughters attended public high school. Ron's address is listed in the investor list given federal officials in 2002 by the Bosses.

103. Virgil Boss (no relation to Wesley or Diane Boss), an associate, first meets Rendleman after Boss is arrested for failure to appear at the grand jury in May, 2004, when he is served a subpoena past the time stated to appear. Boss is detained at Newaygo County Jail for three weeks. Boss introduces Rendleman to Buffin after Marcusse is arrested on 7/1/04, as an individual who could provide assistance for a defense on federal charges. At trial, prosecutors use Buffin's pleadings, made on 8/19/04, 8/27/04, and 9/21/04, as provided to him by Rendleman, as evidence of "obstructionist" conduct and to justify alleging the "conspiracy" continued to the 10/27/04 date of the superseding indictment. Prosecutors further claim Marcusse gave the pleadings to Buffin to file. Marcusse had no part of any of Rendleman's pleadings.

104. Virgil Boss also introduces Rendleman to Besser and Visser via the telephone.

105. The 10/31/05 Sentencing Judgment for Marcusse orders, "The defendant shall not knowingly associate with persons holding anti-government views."

106. Shortly after Judge Bell enters the $10 million money judgment after the trial on 7/11/05, the amount of "missing" funds in SSBT was reported on 10/25/05 to have been reduced by $10 million.

VI. PRAYER FOR RELIEF

"The threshold question before us is whether the Executive has the authority to detain citizens who qualify as "enemy combatants." "The Government maintains that no explicit congressional authorization is required, because the Executive possesses plenary authority to detain pursuant to Article II of the Constitution. We do not reach the question whether Article II provides such authority". **Hamdi v. Rumsfeld,** 542 US 207, 516-517 (2004). "There is no bar to this Nation's holding one of its own citizens as an enemy combatant." **Id.,** at 519.

The Suspension Clause provides that, "The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it." U.S. Const., Art. I, § 9, cl. 2.

Given the foregoing Statement of Facts (V), the holdings of the Supreme Court in **Hamdi** and **Ex parte Quirin,** 317 US 1 (1942), and the Suspension Clause, Marcusse submits she has provided sufficient cause to make the showing that Executive plenary authority under Article II was abused against her, in order to deny her substantial rights, including her liberty, by the application of an improper classification. Because this authority was employed in the absence of official notice thereof, it continues to prevent her from meaningful access to the courts and a meaningful review of her claims.

Further, given the holdings in **Boumediene v. Bush,** 171 L Ed 2d 41 (2008), where it was held aliens designated as alleged enemy combatants and detained at Guantanamo Bay, have habeas corpus privilege, it is a travesty of justice to accord more by way of rights to the Guantanamo Bay detainees than to those citizens born in this Nation's

several States.

WHEREFORE, Marcusse requests this Honorable Court issue a Declaratory Judgment as to her question of whether or not she has ever been classified, profiled, designated, or treated as a "belligerent", "unlawful belligerent", "unlawful combatant", "enemy combatant", "terrorist", "alien", or other similar label, and/or if such a classification or designation is currently pending, including in secret ex parte proceedings.

Respectfully submitted,

Date: 4/20/10

Janet Marcusse, pro se
#17128-045
FCI Tallahassee
501 Capital Circle, NE
Tallahassee, FL 32301

VII. VERIFICATION

Pursuant to 28 U.S.C. §1746, I declare that the information herein upon which this Complaint is presented is true and correct.

Date: 4/20/10

Janet Marcusse

CERTIFICATE OF SERVICE

This is to certify that I have served a true and correct copy of the foregoing:

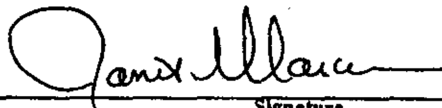
COMPLAINT FOR DECLARATORY RELIEF

MOTION TO PROCEED IN FORMA PAUPERIS

upon the following addresses, by placing same in a sealed envelope, bearing sufficient postage for delivery via the United States Postal Service, to:

Clerk of Court
United States District Court
1834 E. Barrett Prettyman
United States Court House
333 Constitution Avenue, NW
Washington, D.C. 20001-2802

and deposited it in the postal box provided for inmates on the grounds of the Federal Correctional Institution, Tallahassee, Florida, 32301, on this 20th **day of** April, 2010.



Signature

Janet Marcusse

Register No. 17128-045
Federal Correctional Institution
501 Capital Circle N.E.
Tallahassee, Florida 32301

Litigation is deemed FILED at the time it was delivered to prison authorities.
See Houston v. Lack, 487 US 266, 101 L Ed 2d 245, 108 S Ct 2379 (1988).