

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION

UNITED STATES OF AMERICA  
(Fictitious Plaintiff)

VS.

CASE # 10-00320-16-CR-W-DGK

Frank M. Alvarez  
(Real Party in Interest)

Motion to Dismiss Case for Absent Proof of Federal Jurisdiction

Comes now, Frank M. Alvarez, living breathing, flesh and blood, majority age and sound mind competent to state the matters set forth herein, do swear and affirm that the foregoing is true, correct, and complete not misleading with the 1<sup>st</sup> hand knowledge of the facts herewith. A natural born free state citizen, In Propria Persona, proceeding Sui Juris at Law, with Assistance Special pursuant to Declaration in compliance with Title 28 U.S.C. 1746 (1) "without THE UNITED STATES" under penalty of perjury, sworn to within the united states of America.

Defendant in error invokes "the Doctrine of Stare Decisis" for all filed motions when a court has once laid down a principle of law applicable to certain facts, it will adhere to that principle and apply it to all future cases where facts are substantially the same regardless of whether the parties are the same. Stare Decisis provides the means by which courts assure that the law will not merely change erratically, but presume that principle are found in Law rather than proclivities of individuals. "Any Departure of Stare Decisis "demands" Special Justification, Arizona v. Rumsey 467 US 203, 212, 81 L.Ed 2d 164, 104 S.Ct 2305 (1984); Justice Stevens, Oregon v. Kennedy, 456 US 667, 691, 692 n.34, 72 L.Ed 2d 416, 102 S.Ct 2083 (1982).

Defendant in error has and does, even now, hereby exercise my inalienable rights as an natural born free state citizen, to rescind to cancel, to Render Null void "Nunc Pro Tunc" both currently and retroactively to the time signing or verbally or invisibly contracting without full disclosure. That this "Federal Statute (Title 21)" does not operate upon the Undersigned, Private man, living soul.

Kwananaka v. Polblank, 205 U.S. 349, 353, 27 S.Ct 526, 527, 51 L.Ed 834

The UNITED STATES DISTRICT courts were "reorganized" and set by Act MARCH 3, 1911 (61<sup>st</sup> Congress Session III chap 231 pg. 1057 et seq. (Public Law # 475). The "Nature" of UNITED STATES DISTRICT courts is revealed in the Act §9: The district courts, as courts of Admiralty and as Court of Equity . . . . This UNITED STATES DISTRICT court was created by statute and codified as follows: Title 28 § 132 creation and composition of District courts (a) There shall be in each Judicial district a district court which shall be a court of record know as the UNITED STATES DISTRICT COURT for the district. (See Exhibit # 1-A)

28 U.S.C.A § 1331 et sec and the et sec "means" the whole section 133 is included. In 28 USCA § 1331 the "Jurisdiction" of this United States District Court is given as follows: § 1331 Federal question "The district courts shall have original jurisdiction of all "civil" actions arising under the Constitution, Laws, or Treaties of the United States (See exhibit # 1-B)

AS the jurisdiction of the United States District courts is "Civil only" their creation and jurisdiction are codified under Title 28 which is the "civil section" of the United States codes. Title 28 USC chapter 5 §§ 81-131 also makes it clear and factual that this is "Territorial Law" with confirmation supported by material found in the "Notes" to section 91. This chapter also declares that the Federal District courts are Administrative, legislative and non Judicial. Public Law 94-381 confirms that "UNITED STATES DISTRICT COURTS" are Admiralty courts under Article I, which changes the Federal Courts into Administrative courts under the Executive branch of the Federal Government "without" any constitutional Authority!

Mookini v. US, 303 US 201; Balzac v. Puerto Rico 258 US 298 In the Supreme court case Eric Railroad Co. v. Tompkins (1933), it was declared that there is no longer a national or general common Law and they (Inferior Courts) today operate "exclusively" under "Special Maritime" and Territorial Jurisdiction of the United States as defined at Title 18 USC § 7 (3) under Admiralty Civil Law Rules."

Rule 17.1 of the Supreme Court Rules clearly states that the supreme court is the "only" remaining United States which has True Article III" judicial character and has "original Jurisdiction over original actions at Law."

It is the "District Courts of the United States" that are authorized by Article III (Judicial) of the Constitution of the United States and put into force and effect by the 1st Congress Session I (1789) and published in the UNITED STATES STATUTES AT LARGE under the Title an act to establish the Judicial Courts of the United States. Section 9 of this Act states in Part: "And be it further enacted, that the district courts shall have, exclusively of the courts of the Several States, cognizance of all crimes and offenses that shall be cognizable under the authority of the United States, Committed within their respective districts, or upon the high seas; ... saving to suitors, in all cases, the right of a common Law remedy, where the common Law is competent to give it, ... And the trial of issues in fact in the district courts, in all causes except "civil" causes of Admiralty and Maritime". Jurisdiction, shall be by jury (see exhibits 2-D & 2-E) "Civil" causes of Admiralty and Maritime jurisdiction are normally by Summary Judgement (without a Jury) as admiralty and maritime causes come under "International Law" and are therefore a branch of the "Law of Nations."

In Section 3231 of USC Title 18, the District Courts of the United States shall have original jurisdiction, exclusive of the United States. (See exhibit #3)

Section 3 (Judicial) of the constitution of the United States provides for "only" two Jurisdictions for these courts to try any case in, (1) Common Law and (2) Maritime & admiralty. If Common Law is referred then this Defendant in Error has a right to face his accuser (Plaintiff) and Rule 17 of the Federal Rules of Civil Procedure states: a real party of interest has to be present in the courtroom in order for there to be a claims of injury or damages against the people. If Maritime or Admiralty jurisdiction is referenced then the (Plaintiff) must produce a signature of the said defendant upon an International Contract. In 1875 the 43<sup>rd</sup> Congress, Session II chapter 77 passed an Act to facilitate the disposition of cases in the Supreme court of the United States, and for other purposes stating that the Circuit Courts of the United States, in deciding causes of admiralty and Maritime Jurisdiction could impanel a of not less than five and not more than twelve persons, as in cases at common Law. (See exhibits 4-A & 4-B)

Admiralty Jurisdiction is made clearer as we deal with the "Law of the Flag". According to 4 USC chapter 1 § 1-3 and Executive order No-10834 August 21, 1959, 24 FR 6865; "a military flag" is a flag that "resembles" the regular flag of the United States, except that it has a yellow fringe, bordered on 3 sides. 4 USC § 1 notes end 34 op. Attorney General 483 (1925) states that placing of a fringe on the national flag... not controlled by statute but are within direction of President as commander in chief of the Army and NAVY. The law of the flag (found in Black Laws Dictionary), states a military flag "Does" result "Jurisdictional implications" when flown. (See Flag in said courtroom). Under what is called International Law, "The Law of the Flag", a ship owner (admiralty/maritime) who sends his vessel into a foreign port gives notice by his flag to all who enter into contracts with the shipmaster that he intends the law of the flag to regulate those contracts and that they must either submit to its operation or not contract with him or his agent at all." wherefore this Defendant in Error request the proof is cited on the record of Jurisdiction since the said court appears to have a military Nature under this fringed flag. Defendant in Error is seeking clarification of the Nature of this court considering the jurisdictional implications of the Military Flag as displayed in this said courtroom and there are "only 3"

options"

- (1) Is this court a military court?
- (2) Is this court a Maritil Law court?
- (3) Is this court a admiralty (Maritime court)?

As one can see (supra) there can be no doubt that the United States district court "Is proceeding in admiralty (Maritime Jurisdiction Chief Justice Roger Taney stated in the Dred Scott V. Sanford, 19 Howard (60US) 393, 451 (1856)." But in considering the question before us it must be borne in mind that there is "No Law" of Nations standing between the People of the United States of America and their Government, and interfering with their relation to each other. The powers of the Government, and rights of the citizen under it are positive and practical regulations plainly written down. The people of the United states have delegated to it certain enumerated powers, and forbidden it to exercise others. It has no power over the person or property of a citizen but what the citizens of the United States have granted and Laws or usages of other nations, or reasoning of statesmen or jurists upon relations of master and slave, can enlarge the powers of the Government, or take from the citizens the rights they have reserved"

Senate Report 94-204, Public Law 94-381 and Mackini v. US 303 US 201 (1938), makes it clear that a "District court of the United States" is a constitutional court vested with "Article III Judicial Power" and a /this United States District court is defined as a Territorial court created by statute under Article I (legislative). These facts also give notice that there are "No National Laws" that can be adjudicated in a "Territorial Administrative court". Hornbuckle V. Trombs 85 U.S. 648, 21 L. Ed. 966. our United states Constitution does not prohibit the creation of Federal courts outside of Article III, proving that this said court "THE UNITED STATES DISTRICT court" is not constitutional created.

As this case # 10-00320-16-CR-W-DGK is styled as a "Criminal Case", this United States District Court "cannot" claim Jurisdiction conferred upon it by Title 28 USC § 1331. The Subject of Jurisdiction has been adjudicated many times. Let the Record show and these cases be invoked pursuant to the Doctrine of stare Decisis

In all cases where life or liberty is affected by its proceeding the court "must" keep strictly within the limits of the Law authorizing it to take jurisdiction and to try the case, and to render judgment; and its action excess of these limitations is void - Re Banner, 151 US 242, 14 S. Ct. 323

It is the duty of every court of its own motion to inquire into the matter of a suit, irrespective of the wishes of the parties, and to be careful that it exercises no powers save those conferred by Law. - Minnesota V. Hitchcock, 185, US 373 22 S. Ct. 650

A court has no jurisdiction to determine its own jurisdiction, for a basic issue in any case before a tribunal is its power to act, and a court must have the authority to decide that question in the first instance. - Rescue Army V. Municipal court of Los Angeles, 171 P. 2d, 331 US 549, 912 E. 2d 1666, 67 S. Ct. 1409

Once Jurisdiction is challenged, the court "cannot" proceed when it clearly appears that the Court lacks jurisdiction, the court has no authority to reach merits, but, rather, should dismiss the action. - Melo V. US, 505 F 2d 1026

The Law provides that once state and Federal Jurisdiction is challenged, it must be proven. - Main V. Thiboutot, 100 S. Ct 2502

No Court official can deny these Truths due to the fact that Jurisdiction can be challenged at "Any time", even on Final determination!

It has been established in numerous Supreme Court case law that in order for proceedings to be sustained in a United States Court that the Jurisdiction of the Court depends upon the "citizenship" of the parties and the facts essential to support that Jurisdiction "Must Appear" somewhere in the record. It can no more clearly be stated that in order for Federal Jurisdiction to be sustained in a "United States District Court" against Defendant in Error, the citizenship "must" be determined and for Jurisdiction to stand Defendant in Error "must be" subject to the 14<sup>th</sup> Amendment of the United States "Corporate Federal Citizenship" (Sec. Corporate citizenship, 30 AM J. Rev. Ed Intox L. §126; United States V. Northwestern Express Stage & Transp. Co., 164 US 686, 41 L. Ed., 399, 17 S. Ct 206) let the record show that in order to be subject to the 14<sup>th</sup> Amendment citizenship jurisdiction and any Federal Corporate Rules, regulations, policy, or code (USC) that have not been legislated into "general applicability" and legal effect by Congress and Generally promulgated, defendant in Error must be a party to the Federal Corporate Government. It is necessary to ascertain which persons originally associated themselves together to form the Union know as the "United States of America" and who were afterwards admitted to the 14<sup>th</sup> Amendment citizenship. As early as 1804 it was enacted by Congress that any alien who had declared intent to become a citizen could be considered a citizen of the United States of America and entitled to all rights and privileges of the citizens of the several states of the union; upon taking the necessary oath (2 Stat at Large 292) this citizenship is of the United States of America and "not" the United States.

The historical Facts state in 1871 Congress incorporated the United States Government as a for profit commercial enterprise, in the Legislative Act of February 21, 1871 41<sup>st</sup> Congress Session III chapter 62 p. 419 and chartered a Federal Company entitled "United STATES AKA 'US Inc'", a "Commercial Agency", a Federal Corporation (28 USC § 3002 (15) (A)) originally designated as "Washington DC", located in the "District of Columbia" now defined in the (U.C.C) Uniform Commercial Code § 2-201 (1)

Nowhere on the Record nor on the Indictment is there any essential statement of Facts establishing this Defendant in Error citizenship, nor is there any Fact establishing that he knowingly, voluntarily nor intentionally submitted to the Jurisdiction of the Corporate Federal Government or the Corporate courts of the United States. Defendant in Error has never knowingly, voluntarily and intentionally taken or given any "Pledge or oath", nor signed "Any contract", understanding, agreement or instrument in "Any form" that has or does confer Jurisdiction over this Real Party in Interest based upon citizenship, nor has defendant in Error waived "Any rights" remedies or defenses, Statutorily or procedurally or otherwise that would have given jurisdiction to the United States District Court, or Federal Corporate Government to uphold jurisdiction in the instant matter based upon citizenship. The Government "Assumed Jurisdiction" over defendant in Error who violates his Due Process of Law rights and the requirement that citizenship must be established on the record somewhere. The Government failed to establish this by failing to state on the record and Indictment what the Defendant in Error "status" was before the court and failed to state on the record what the Government's status is (i.e. A corporation located in Washington DC?). The Federal Government cannot "Assume" jurisdiction but "Must" definitively establish the Fact on the record that the defendant in Error is subject to the United States founded upon citizenship under the 14<sup>th</sup> Amendment. It cannot do so!

Furthermore, the UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI WESTERN DIVISION and the Government officials are Noticed that, "unless" and until the Government rebut and refute the conclusions as to the law and fact to the contrary to establish affirmatively on the record that the Government and court have exercised any lawful jurisdiction in this matter case # 10-00320-16-CR-W-DGK, then these findings stand as lawful and legal evidence that the Government and the United STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI have acted in total absence of "ANY" Jurisdiction have committed actionable Fraud under "color of Law", and committed various acts chargeable under 18 USC § 241 "Conspiracy against Rights", § 242 "Deprivation of Rights under color of Federal Law, and § 1001"



"statements or entries generally," and Trespassed upon this natural born free state citizens constitutionally implemented rights as well as other rights guaranteed under Law (State and Federal).

With these Facts points and Law firmly in Place the Court must find that the Government officials have presided over and have acted in a cause over which it had no jurisdiction; Territorial Legislative, subject matter or personal. A jurisdictional challenge can neither be waived nor ignored. The Defendant in Error, Real Party in Interest, requests that this Court order the Government to Provide the following documents verifying the "United States" has or had at the time of the alleged violations of Federal statutory provisions; exclusive jurisdiction over the property or properties on which the alleged crimes were committed against the United States:

(1) A copy of the Grant from the legislative ceding the property or properties on which the alleged offenses occurred, pursuant to Article I § 8 clause 17, of the Constitution of the United States and 40 USC § 255 now codified 40 USC §§ 311, 312

(2) A copy of the Notice filed with Governors office of MISSOURI accepting exclusive territorial jurisdiction, pursuant to Title 40 USC § 311, 312 for 40 § 255

(3) This natural born free state citizen also request that this court order the Government to produce and Present evidence that Proves that section 841 of Title 21 USC and section 846 of Title 21 U.S.C. Statutes are not promulgated and have published implementing regulations in the Federal Register apply generally; specifically to this Natural born free state citizen, Real Party in Interest in a sovereign state of the union in order to prove subject matter Jurisdiction.

Defendant in Error further request that the Government answer the following Questions:

1) Whether the UNITED STATES DISTRICT COURT For the WESTERN DISTRICT OF MISSOURI is bound to adhere to the Contralling decisions of the Supreme Court where it is held that once a Federal Courts Jurisdiction is challenged, it must be proven to exist. Murray v. The Charming Betsy (1790) and whether the geographical locations mentioned in the instant indictment

(C)

have been proven to be or are known to be within the territorial jurisdiction of the Corporate United States, per 40 USC § 255?

2) Whether the several states of the Union (United States of America) is the True Plaintiff in the Action docketed as 10-00320-16-CR-W-DGK and whether this UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI IS a Court OF the United States as defined at 28 USC § 610 exercising Article III Judicial Powers, irrespective of its Title and the controlling decisions of the Supreme Court in Marini v. US 303, US 210 (1938); Balzac v. Porto Rico, 258 US 295 (1922); O'Donoghue v. US 289 US 516 (1933).

3) Whether the UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI, as an Article I territorial Court, as its name implies, per definition in 28 USC § et seq. and the Supreme Court has lawful authority to enforce territorial regulations of the United States, Article III § 3 clause 12 within a state and whether this said court (Supra) is bound to adhere to the definitions of terms in statutes that have been specifically provided by Congress for interpretation of said statutes, or if the Court has authority to ignore legislative definitions and construe the meaning of terms independantly?

These incorporated points and Law "cannot" be made any clearer that this motion should be Granted by Congressional Mandates!

The Constitution requires that this Motion be Granted Failure to Grant this motion will amount to the continued denial of Due Process of Law, as a Result of the Original violations usurpations of the Constitutional permissible authority and Treason to the Constitution, pursuant to Article III and 18 USC §§ 2381-2385 as well as violations of 18 USC § 241, 242 and 1001. This Motion has been Presented with "clean hands" and in "Good faith".

Upon receipt of this document, the Government must provide Point for Point Lawful rebuttals to the Facts in Law raised herein. Silence can only be equated with "Fraud" when there is a legal and moral duty to speak or when an inquiry left unanswered would be intentionally misleading U.S. V. Tweel, 550 F2d 287, 229.

"When the Proofs of Facts are Present, what need is there of words"

This COURT shall take Mandatory Judicial Notice of the Adjudged decision of the Supreme Court of the United States of the United States of America, United states V. Bishop 412 US 346, 360 (1973) states: "That if I have relied on prior decisions of the Supreme Court, I have a perfect Defense! for will fullness!"

Certificate of Service

I Frank M. Alvarez, the living, breathing, flesh and blood natural born free state citizen Sui Junis at Law Comes with this motion to Dismiss case for Absent proof of Federal Jurisdiction, being placed before this clerk of court of the United States District court for the western District of MISSOURI western Divison on this day of 24<sup>th</sup> and month of MAY in the year 2011.

Judge Greg KAYS  
400 E. 9<sup>th</sup> st  
K.C. Mo. 64106

Respectfully, without explicit reservations of all my rights without prejudice.

Chief Judge  
400 E. 9<sup>th</sup> st  
K.C. MO. 64106

Frank Alvarez  
Frank Alvarez.



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