

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)

AFFIDAVIT IN FACT AND TRUTH

"Indeed no more than affidavit is necessary to make Prima Facie.
(ASC) United States vs. Kis 658 F2nd 526,536 (7th Cir 1981) Cert. Denied,
50 U.S.L.W 21695, Ct March 22, 1982

Comes now, Frank M. Alvarez, the 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 1st hand knowledge of the facts herewith. A natural born free state citizen, Proceeding with Special Assistance pursuant to the Declaration in compliance with Title 28 U.S.C 1746(1) and under penalty of perjury sworn to within the United States of America.

By reason of the Aforementioned facts, I do hereby exercise my inalienable rights as a natural born free state citizen man upheld by various court decisions, to recind to cancel, and to Render Null Void, "Nunc Pro tunc", both currently and retroactively to the time signing or verbally or invisibly contracting, based upon the "Constructive Fraud" and misrepresentation upon me (Real Party in Interest) by this said Federal Court.

That whenever an officer of the court commits fraud during a proceeding in the court, he/she is engaged in "Fraud upon the court". (1)

That fraud upon the court "makes void orders" and judgements of the court. (1)

That, my secured Constitutional rights found in the 6th Amendment, to face my accuser(s) has been denied and deprived and therefore, also violates Title 18, 1346 defined as a "Scheme or Artifice to Defraud". Rule 17 Federal Rules Civil Procedure.

That, the Supreme Court has held that if a judge wars against the Constitution, or if he/she acts without jurisdiction, he/she has engaged in treason to the Constitution. (2)

That International Treaties, codified into law, are "Superior" to domestic law as stated by the Supreme Court. (3)

That, "All" law has to be certified as Constitutional by a state Supreme Court or the Supreme Court of the United States before it can be implemented.

That, if there is "No Remedy" there can be "no charges" of violating a law.

That, "Nothing" can be more material to the obligation that the means of enforcement. Without the remedy the contract may indeed in the sense of the Law, be said "not" to exist and its obligation to fall within the class of those moral and social duties which depend for their fulfillment wholly upon the will of the individual. (4)

That, as fact, that we are a De Facto nation, with De facto courts, with judges sitting under the rule of necessity and that we have "No Remedy" in these Courts.

That, 3 things are needed to be a nation under international Law. 1) De Jure money, 2) De Jure Law 3) a De Jure Army, of which we have none.

That, we are a De facto nation functioning under Martial Law with De facto civil system enforced through police power.

That According to the office of the Law Revision counsel code, United States house of Representatives, Title 21 is a non-positive law Title of the United States code, but in reality is a editorial compilation. (5)

That, Non-Positive Law Titles, such as Title 21, used in said said case (supra) to denote a criminal violation to the U.S. code are "Prima Facie" evidence of the law (1 USC § 204) and are presumed to be law, but are rebuttable by production of prior un-repealed Acts of Congress at variance with the code (5).

That, positive Law Titles are legal evidence of the Law and need "No" further Authoritative citation as prior Acts concerning those titles have been repealed. (5)

That, the function of the office of the Law Revision counsel is to maintain and improve the United States code, which is the official codification of Federal statutory Law. (6)

That Defendant in Error, is not registered nor has received "Any" benefits from "Any" Federal Agency regulating "controlled substances" and therefore the Federal Government lacks the jurisdictional basis. (7)

That the Supreme Court, in the Wickard v. Filburn case, stated that unregulated "others" exist "outside" the Jurisdiction of the administrative Agency and Defendant in Error is an innocent "other". (7)

That, Attorney Allison Margolin stated; "The precedent upon which the Federal Governments ability to govern interstate commerce, is presumed upon the fact that the Plaintiff in that case registered in a Federal Program, thusly the Wickard, basis for jurisdiction is inapplicable here. (8)

That to this day, no Federal Judge has ruled on this motion (Wickard V. Filburn) and others, or even addressed the issue never mind citing an "Authority" establishing Federal Jurisdiction over "Non Registrants". (8) There is no proof of Federal Jurisdiction in said case. (Supra)

That the undersigned has broken no law as prescribed in Title 21 of the alleged indictment of said case (5) (Supra)

That, the undersigned is not a party to "Any Contract" or "Agreement" to the Federal Corporate Government. (9)

That, there are no clauses in the Federal Corporate Governments constitution that subjects a "Private man" to any statutory / Admiralty Jurisdiction (11)

That, these Federal Statutes "do not" operate upon the Undersigned Private Man.

That, the United States by becoming a Corporator has laid down its Sovereignty and has taken on the character of a private citizen and it cannot exercise "any Power" which is not ordained or derived from the corporate charter. (12)

That, Federal Government is operating under a National Bankruptcy and National Emergency as declared in 1933 and the guaranteed freedoms and governmental procedures in behalf of the Defendant in Error have been abridged and breached. (13)

That, in said case (Supra), no indemnity bond to indemnify said actions by Fictitious Plaintiff as to "Any" Injury that may befall the undersigned has been posted. (14)

That, the alleged indictment handed down by the Jury Foreperson did not stipulate as they apply to or operate on the living Soul, Private Man. (15)

That, "All" "oaths of office" come under 22 CFR, "Foreign Relations", Sections 92.12-92.30 and "All" who hold public office come under Title 8 USC Section 1481, Loss of Nationality by native born or naturalized citizen. (16)

That, under Title 22 USC, Foreign Relations and Intercourse Sections 611-612, a Public official is considered a "Foreign Agent" and in order to hold Public office, the candidate "must file" a true and registration statement with the State Attorney General as a "Foreign Principle". (17)

That, the "Oath of office" requires the public official in his/her foreign state capacity to uphold the Constitutional form of Government or face consequences. (18)

That, said court has operated against this Living Soul, Private man, Sovereign, "without" Judicial Power given by Congress to Act. (19)

That, there has been, "No Proof of Jurisdiction" by the Asserter in Open Court or on the Record and said officials have been exercising authority "Outside" of designated clearly defined areas for a United States District Court. (20)

That, Public Law 94-381 states, 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 whatsoever! (21)

That, the Federal District Courts are administrative, legislative and Non-Judicial. (22)

That, title 28 U.S.C. is "Territorial Law" and this fact will be supported by material found in the "Notes" to Section 91. (23)

That, impersonating an Article III Judge is a Federal offense and by Public law, Statutes and the oath of office currently taken, is taken by "All" Federal Judicial Employees, verifying that there are "No" Judges in the United States District Court that have Article III Judicial Power.

That, the United States District Courts were "reorganized" and set by Act, March 3, 1911 (61st Congress Session III chap. 23 (pp. 1087 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 Courts of Equity. (24)

That, the Supreme Court "declared" that there is "No longer" a national or general common law and they (the inferior courts) today operate "exclusively" under "Special Maritime and Territorial Jurisdiction" of the United States as defined at 18 USC, 7 (3) under Admiralty Civil Law Rules which are contrary to common law indigenous to the Several states. (25)

That, in fact, court decisions disclose that they have "only" Admiralty and vice Admiralty capacities and in effect either accommodate "Private International Law" or serve as Administrative Law Courts. (26)

That, there are "No" Implementing regulations for 28 USC, 631-639; The Federal Magistrate Act, which is to say that Federal Magistrate Judges have "No Authority" in the Several states. "Power and duties were coextensive with limits of Judicial District in which he was appointed" (27)

That, the Supreme Court is the "only" remaining United States Court which has "True Article III Judicial character and under rule 17.1 of the Supreme Court rules, has original jurisdiction over original Actions of Law. (28)

That, the 1st Congress via Judicial Act of 1789 carried out Constitutional Intent. In this Act, original cognizance over admiralty and maritime affairs was vested in courts of the United States, exclusive of the Several States, with safe guard built in known as "the Saving Suits clause". Suits or parties to an action, could remove to common law jurisdiction where the common law was competent to provide a remedy. The saving to Suits clause is retained in the current United States Code. (29)

That, a District court of the United States is a "Constitutional Court" created or vested with Article III Jurisdictional Power and a United States District Court defines a "Territorial court". (21)

That, there are "No National Laws" that can be adjudicated in a Territorial Administrative Court. (21)

That, the Supreme Court of the United States has made "conclusive statements" that Federal Legislation applies "only" with the territorial jurisdiction of the United States unless a contrary intent. (31)

That the subject matter of chapter 5 of Title 28 USC "is" the Territorial Composition of Districts and Divisions by Counties as of January 1, 1945, of the courts named in Sections 81-131- which can "only" be the areas "subject to the Exclusive Jurisdiction of the United States / Federal Territory" (22)

That, these areas consist of places such as National Parks, military bases, Federal Buildings and Federal Courthouse (22)

That, the alleged crime in said case (Supra) "did not occur on or in these clearly defined Federal Areas/Territory" for it (alleged crime) to be classified as a federal crime. (22)

That, the "only" legislation since the 1st Judiciary Act on September 24, 1789 to create an Article III United States District Court is found in Section 91 of Title 28 USC which documents the change of territorial court to an Article III court without actually giving the court Article III Judicial Power. (22)

That, there are only Two True District Courts in the United States; one is found in Hawaii but it has no Article III Power and the other is stated in Chapter 5 of Title 28 USC in section 88 which is the District of Columbia (D.C.) (22)

That, vicinage corresponds to "Territorial Composition" and describes where jurors should come from. The area from where Article III court jurors are to be drawn is the "same" as the territorial composition of the Federal Court, from the federal territory within a district comprised of named counties. (22)

That, Federal Court jurors are being drawn from outside the Federal Territory and "any" Grand or Petit Juror that resides outside a federal territory and does not reside within the district can be successfully challenged as "unqualified". (22)

That, the "United States Constitution" does not prohibit the creation of Federal Courts outside of Article III. (32)

That, Federal Courts "do not extend" their Judicial Districts beyond Federal Territories. (22)

That, the Supreme Law of the land, the United States Constitution, is "contract Law" and it falls under the Uniform Commercial Code and if there is no contract with Authority, there is "No Authority" over Defendant in Error, Real Party in Interest.

That, "all Law is Contract". Every interchange between people is contract, but no law can compel anyone to contract.

That, under Common Law however, a contract "must be" knowingly voluntarily and intentionally entered into or it is unenforceable, full disclosure is a requirement by law!

That, the Supreme Court states that a Complaint is the initial document for charging a person with a misdemeanor or felony. (33)

That, "No Criminal Complaint" with an Affidavit from a probable cause hearing has been filed in this case (Supra) or returned in open Court or on the legal Docket. (33)

That, A complaint provides "the foundation for the neutral judgment by a Judicial officer that resort to further criminal process is Justified. (34)

That, if "the bill of Rights" is "Not Complied with", the court "No longer" has Jurisdiction to proceed. (35)

That, the 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 1st instance. (36)

That, Jurisdiction, once challenged is to be proven, "Not by the Court" but by the party attempting to assert jurisdiction. The burden of proof of Jurisdiction lies with the Asserter. (37)

When good faith requires an answer, it is the duty of the party receiving this Affidavit to answer or rebut all within a reasonable time. Otherwise he/she is persuaded to admit propriety of the facts found in the affidavit. If not answered point for point the truth is the order and this case against the natural born free state citizen man must be dismissed with Prejudice Immediately. Acquiescence or silence, when circumstances require an answer or rebuttal, a denial or other conduct, may amount to an admission. The time begins at the receipt of this Affidavit (10+3 Days

Memorandum of Law

1) *Bullock v. United States* 763 F.2d 115, 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 statement or perjury. It is where the court or a member is corrupted or influenced or influence is attempted or where the Judge has not performed his/her judicial function.

2) *Levine v. United States* 362 U.S. 610 80 S.Ct 1038 (1960)
"Justice must satisfy the appearance of Justice."

3) 49 Stat. 3097: Treaty Series 881 Convention on Rights and Duties of States 1945 IOIA (December 29, 1945): 59 Stat 669 Title 22 288-2886 U.S.C. (The United States relinquished every office to the United Nations)

4) *Van Haffman v. City of Quincy*, 4 Wall. 535, 552. The obligation of a contract is the law which binds the parties to perform their agreement.

5) Office of the Law Revision Code United States House of Representatives. (202-226-2411)

6) House Resolution No. 988, 93d Section 205 (c) (1)

7) *Wickard v. Filburn* 317, US 111, 129-131 (1942)

8) *United States v. Landa* (2004)

9) *Church of Scientology v. US Department of Justice*, 612 F.2d, 411 425, (1979)

10) *Hagens v. Lavine*, 415 US 533

11) *Kawananakoa v. Polybank*, 205 US 349, 353, 278 Ct 526, 527 511. Ed 834

12) *Bank of the United States v. Planters Bank of Georgia*, 6 L. Ed 9 wheat 244

13) Senate Report 93-549 (1973) 1st paragraph

14) State v. Batsou 17, S.E. 2d 511, 512, 513

15) Iselin v. La Costa 147 F.2d, 741, 745 (1945)

16) Article 6 clause 3; 22 CFR 92.12-92.30; Title 8 USC, 14181

17) United States International Organizations Immunities Act, Public Law 79-291, December 29, 1945 (Public Law 291-79th Congress Title 1 Section 2 (b))

18) Article 4 section 4 of the Constitution of the United States

19) Article 1 section 1 clause 1 of the Constitution of the United States

20) Article 1 Section 8 clause 17, 18 of the Constitution of the United States

21) Senate Report 94-204, Mookin v. US 303 US 201 (1938); BAIZA v Puerto Rico 258 US 298 (1922); Public Law 94-381

22) Title 28 USC chapter 5 sections 81-131

23) Den Zeller v. Rankin, 101 S.Ct. 2020 (1981)

24) 61st Congress Session III chap. 231 pp 1087, et seq; Public Law #475

25) Erie Railroad Co v. Tompkins (1938); Title 18 USC, 7 (c)

26) 5 USC, 701 et seq

27) United States v. Harden (1881 DC. No) 10 F. 822; United States v. Stern (1910 DC, A)

28) Rule 17.1 Supreme Court Rules

29) 1st Congress Judiciary Act of 1789

30) Title 18 USC, 3231 Title 28

31) United States v. Spelar 338 US 217, 222, 70 S.Ct. 10 (1949)

32) United States Constitution Article III

33) State v. Faltynowicz, 660 P.2d 368 (Wyo 1983)

35) Shanson v. Zerbst 304 US 458, 468

36) Rescue Army v. Municipal Court of Los Angeles, 171 P2d 8; US 549, 91 LEd. 1666, 67 S.Ct 1409

37) McNott v. GMAC, 298 US 178

Certificate of Service

I Frank M. Alvarez, the living, breathing, flesh and blood natural born free state citizen Sui Juris at Law comes with this Affidavit of fact and truth, being placed before this clerk of court of the United STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI WESTERN DIVISION on this DAY of 23rd and month of MAY in the year of 2011.

Judge Greg Keys
400 E 9th st
K.C. Mo. 64106

Without Explicit Reservations
of all my rights without Prejudice

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Frank Alvarez
Frank M. Alvarez



Chief Judge
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