

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)

In Re: Government's Response To Defendant Frank Michael Alvarez's
Motion To Dismiss For Violation of Due Process of Law

Comes now, Frank M. Alvarez, the flesh and blood, living soul of majority age and sound mind, competent to state the matters set forth herein do affirm that the foregoing is true, correct and complete not misleading with 1st hand knowledge of the facts here 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 errors motion is with sound basis in fact and Law and will be responded to on this wise:

Due Process of Law is primary and indispensable of individual freedom, Application of Gault 387 US 1 (1967), The Due Process clause was intended to guarantee procedural standards adequate and appropriate to protect, at all times, people charged with or suspected of crimes by those holding positions of power and authority, Chambers V. States, 309 US 227 (1946) Denial of Due Process of Law is to be tested by an appraisal of the totality of the facts in a given case, Betts V. Brady, 316 US 455 (1942), the facts which operate upon the question of "Due Process" in this case are:

(1)

- 1) There are no Constitutionally conferred Federal general powers to be exercised within the States of the Union;
- 2) Federal criminal statutes are generally applicable only within areas of Congress's exclusive legislative authority;
- 3) Federal courts are courts of limited jurisdiction and therefore, must in all cases, *sua sponte*, examine their jurisdiction to entertain a cause, as the presumption is that a cause without jurisdiction of Federal Court must be dismissed;
- 4) Courts enforcing Federal criminal statutes do not exercise judicial powers of the United States as established at Article III, but function in ministerial capacity, exercising administrative authority of Congress, Article IV, §3, over its exclusive territorial possessions.

The Due Process clause should protect an individual's liberty interest in not being subject to the binding judgments of a forum with which has established no meaningful contact, ties, or relation, International shoe Co. v. Washington, 326 US @ 319.

The facts, establish "prima facie" the unquestionable absence of any valid sworn complaint and affidavit of probable cause between the accused party and his alleged acts, and the United States District Court. No valid commercial documentation has been produced to show that any such sworn complaint or affidavit of probable cause has existed which is found in rules 3 and 4 in the Federal Rules of criminal Procedure. ①

① Exhibits - A - B - C

(2)

"If a judge does not fully comply with the Constitution, then his orders are void." In Re Sawyer, 124 US 200 (1888). "In such case, the Judge is engaged in an act or acts of treason." United States v. Will 449 US 200, 216 (1980); Cohens v. Virginia, 19 US @ 404.

Whoever, in any manner within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device, a material fact, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry shall be fined not more than \$10,000.00 or imprisoned not more than 5 years, or both." Title 18 USC § 1001.

When working within Federal rule of procedure, it is important to know that the rules preserve constitutionally secured rights. Authority for the Supreme Court to promulgate rules of procedure is at 28 U.S.C. 2072 (b) preserves rights: "(b) such rules shall not abridge, enlarge or modify any substantive right." Federal rules of civil and criminal procedure preserve constitutionally secured rights. Therefore, it is necessary to know and understand the three Amendments that govern Federal criminal prosecution. (Fourth, Fifth, and Sixth amendments)

We see at 28 U.S.C. 2072 (b) that Federal rules of procedure may not deprive anyone of substantive rights. In a manner of speaking, rights secured by the Fourth, Fifth, and Sixth Amendments are carved in stone, and they are cumulative, they are not independent or elective unless someone knowingly chooses to forfeit one of the specified rights. If one of the constitutionally secured rights is bypassed, administrative offices, including the Department of Justice and the U.S. attorney, and courts of the United States, lack or lose subject matter jurisdiction.
(3)

My concern is whether or not the Federal Rules of Criminal Procedure preserve this constitutionally secured right. I find that they do. Rule 3 of the F.R.Crim.P. is specific: "Rule 3. The Complaint "The Complaint is a written statement of the essential facts constituting the offense charged. It shall be made upon oath before a magistrate judge." We then go to Rule 4, "Arrest Warrant or Summons upon Complaint." Rules 3 through 9 of the Federal Rules of Criminal Procedure preserve the proper procedural sequence of the Fourth, Fifth and Sixth Amendments. If any portion of any of these rules, i.e. of any of the three amendments, is defective, Courts of the United States lose subject matter jurisdiction.

Federal criminal prosecution must begin with the affidavit of criminal complaint required by the Fourth Amendment and Rule 3 of the Federal Rules of Criminal Procedure. Without the affidavit of complaint, Courts of the United States do not have subject matter jurisdiction, so whatever ensuing verdict, judgment and/or sentence there might be is a nullity, it is void and should be vacated.

That the Supreme Court states that a complaint is the initial document for charging a person with a misdemeanor or felony, State v. Moorlung, 2005 CD 189, 705 N.W. 2d 819 (N.D. 2005) Cert. denied, 126 S. Ct. 2869, 165 L. Ed. 2d 962 (US 2006).

The government falsifies my previous motion by stating "... seems to argue that the complaint in his case was insufficient...". However the issue in fact is that there has not been proven that there is a complaint of which the defendant in error has brought forth in his motion.

(4)

The government is not rebutting my motion but creating a false answer and denying the motion as given.

The government has called me a criminal (page 3 of motion) which is prosecutorial misconduct because I'm innocent until proven guilty by Law.

No where have I expressed the terms the government has used "Sovereign citizen or a Redemption Theory.

Again this is a verbal onslaught and a defamation of my character by a bias and prejudice government attorney.

This issue can be solved easy by bringing forth a certified copy of the complaint and affidavit of probable cause.

Defendant has shown by his motion and exhibits that this district has filed complaints and affidavits of probable cause in pervious cases exactly like this one.

No complaint, No Affidavit of probable cause, then there is a violation of Due Process of Law and this case must be dismissed against this defendant with prejudice.

Previous motion # (230) and this response to the governments response to motion # (230) should be granted based upon superior court rules of the Supreme court which rulings become the Law of the Land.

Ignorance of the Law does not excuse misconduct in anyone, least of all in a Sworn officer of the Law. In re McCowan. 177 C. 43, 170 P. 1160 (1917)

(5)

It is the duty of the courts to be watchful for the constitutional rights of the citizens and against any stealthy encroachments thereon. Boyd v. U.S., 116 US 616 (1886)

Law in its regular course of administration through courts of Justice is due process. Keeper vs. Texas 139, U.S. 462 II sup ct. 577 35 L.ED 225

The essential elements of due process of Law are notice and opportunity to defend. Simon v. Craft, 182, U.S. 427, 436, 21 sup ct. 836, 45 L.ED 1165

Certificate of Service

I Frank M. Alvarez, the living, breathing, flesh and blood natural born free state citizen *Sei Junis* at Law comes with this *In Rei* Governments response to Defendant Frank Michael Alvarez's motion to Dismiss for violation of Due Process of Law, 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 13th and month of June in the year of 2011.

Judge Greg Kays
400 E. 9th st
K.C. no. 64106

Chief Judge
400 E. 9th st
K.C. no. 64106

Bruce Rhodes
U.S. Attorneys office
400 E 9th st.
K.C. no 64106.

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

Frank Alvarez
Frank Alvarez.

(6)