

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)

Administrative Judicial Notice

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 1<sup>st</sup> hand knowledge of the facts here with Title 28 USC 1746 (1) "without the United States" under penalty of perjury, sworn to within the United States of America.

(Issue #1)

Due Process of Law Violation

① The Due Process clause is 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 (1940)

② Based upon case # 10-00320-16-CR-W-DGK Defendant in Error has been openly denied his due Process found in the 5<sup>th</sup> Amendment and 14<sup>th</sup> Amendment, as to, there has "Never" been filed or shown to defendant any "Complaint" or "Affidavit of Probable Cause" in said case

(1)

③ 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:

(a) There are no Constitutionally conferred Federal general powers to be exercised within the States of the Union;

(b) Federal criminal statutes are generally applicable only within areas of congress's exclusive legislative authority;

(c) 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;

(d) 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.

④ 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.

(2)

⑤ Notification of legal responsibility is the 1<sup>st</sup> essential of due Process of Law.

(Connally v. General Construction Co. 269 US 385, 391)

⑥ The requirement of Due Process "must" be met before the court can properly assert in personam Jurisdiction.  
(Wells Fargo vs. Wells Fargo 556 F.2d 406, 416)

⑦ That if "The Bill of Rights" is not complied with, the court no longer has jurisdiction to Proceed  
(Johnson v. Zerbst 304 US 458, 468)

⑧ 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)

⑨ 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.

## Issue #2 (No complaint Filed)

⑩ 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.

See (EXHIBIT-A and B) (4)

2 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.

3 That the Supreme Court states that a complaint is the initial document for charging a person with a misdemeanor or felony, State v. Noorkun, 2005 VD 189, 705 N.W2d 819 (N.D. 2005) Cert. denied, 126 S. Ct. 2869, 165 L.Ed2d 902 (US 2006).

4 The want of a sufficient Affidavit, Complaint or information goes to the Jurisdiction of the court... And renders "All" proceedings prior to filing of a proper instrument "Void Ab initio"  
(22 C.J.S. Criminal Law Section 324 pg. 390)

### Issue #3 Defying the Constitution

- 1) In said case supra, the Government is openly defying and denying the Supreme Law of the Land, The U.S. Constitution.
- 2) Such willful action while serving in official capacity, violates Title 18 USC section 19:18 "Disloyalty and asserting the right to strike against the Government", and also deprives defendant in Error honest services.
- 3) This Denial is also a violation of Title 18 section 1346 "Definition" of "Scheme" or "Artifice to Defraud".
- 4) If a judge does not fully comply with the Constitution then his orders are void "In Re Sawyer 124, US 200 (188)
- 5) In such case the judge is engaged in an Act or acts of Treason. "Cohens v. Virginia 19 US @ 404; Pen Zeller v. Rankin, 101 S. Ct. 2020 (1981)
- 6) The Constitutional Requirement of Due Process of Law is indispensable.
- 7) In Criminal Cases, certain Constitutional Errors require automatic reversal. State v. Schmit 273 Minn. 78, 88, 139 N.W. 2d 800, 807 (1966)
- 8) The U.S. Constitution is the highest form of enacted Law in the U.S. So it is considered the "Blueprint" for all other Laws. If a provision of the United States Constitution applies to a particular legal matter, the provision supersedes any federal or state laws to the contrary. (N.B.)

⑨ Article VI (Pre Amble) section 3 states; This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made under the Authority of the United States SHALL BE THE SUPREME LAW OF THE LAND; and the Judges in every state shall be bound thereby any "Thing" in the Constitution or Laws of any state to the contrary notwithstanding... Judicial officers both of the United States and of the Several States, "Shall" be bound by "Oath" or affirmation to "Support this Constitution". (U.S.)

⑩ All laws which are repugnant to the Constitution are null and void. (Marbury v. Madison 5 U.S. 137, 174, 176)

⑪ An officer who acts in violation of the Constitution ceases to represent the Government.  
(Brookfield Construction Company v. Stewart 284 F. Supp. 94)

⑫ Where rights secured by the constitution are involved, there can be no rule making or legislation which would abrogate them.  
(Miranda v. Arizona 384 U.S. 436)

## Issue #4 Absent Proof of Federal Jurisdiction

- ① The government has fallen short when asked to show a certified documentation that this Court is an Article III court.
- ② No where on the record has the proper Jurisdiction been proven
- ③ The Supreme Court States in View of 40 USC Section 255, "no jurisdiction exists in United States to enforce federal criminal laws, . . . , unless and until a consent to accept jurisdiction over such lands is filed in behalf of the United States as provided in said Act? . . ." and fact that state has authorized government to take jurisdiction is immaterial. Adams v. United States (1943) 319 US 312, 81 L.Ed. 1421, 63 S.Ct 1122. (Quoted from U.S. Statute 40 USC 255, Interpretive Note, #14, citing the US Supreme Court).
- ④ Special provision is made in the constitution for the cession of Jurisdiction from the state over places where the Federal government shall establish forts or other military works, and it is only in these places, or in territories of the United States, where it can exercise a general jurisdiction.  
New Orleans v. United States, 35 U.S. (10 Pet.) 662 (1836)
- ⑤ The United States never held any municipal sovereignty, jurisdiction, or right of soil in Alabama or any of the new states which were formed. The United States has no constitutional capacity to exercise municipal jurisdiction sovereignty or eminent domain, with the limits of a state or elsewhere, except in the cases in which it is expressly granted. (Pollard v. Hagan, 44 U.S.C 213, 221, 223)



⑥ Title 18 U.S.C § 7 specifies that the territorial jurisdiction of the United States extends only outside the boundaries of lands belonging to any of the 50 states, and Title 40 U.S.C § 255 specifies the legal conditions that must be fulfilled for the United States government to have exclusive or shared jurisdiction within the area of lands belonging to the States of the Union.

⑦ "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.  
(Senate Report 94-204)  
(Maskini v. US 303 US 201 (1938))

The Federal Government derives its authority to prosecute Federal offenses pursuant to Article I Sect. 8 clause 17 and Article IV Sect. 3 clause 2 of the Constitution for the United States.  
(Republica v. Sweers, 1 US 41 (1779))

(See Exhibits. C)

## Conclusion

Defendant in Error invokes the Doctrine of Stare Decisis and the Supreme Court Ruling, United States v. Bishop 412 U.S. 346, 360 (1973) "that if I have relied on prior decisions of the Supreme Court, I have a perfect defense for willfulness."

Whereas, the facts and the Law contained herein are before this court; and whereas the facts and Law contained herein are the Truth; and whereas we hold said truth to be self Evident and whereas self evident truths are undisputed and incontrovertible, no oral argument is necessary, for no words can alter or overcome these truths; and whereas, truth is Sovereign, she comes from GOD and bears His message, from whatever quarter her great eyes may look down upon you. Psalms 117:2 For his merciful kindness is great towards us: and the truth of GOD endureth forever. Praise ye the LORD John 8:32 and ye shall know the truth and the truth shall make you free. Therefore this Court must perform its duty under the rule of Law do Justice Rectum Rogare and dismiss this case with Prejudice without delay for "Justice delayed is Justice denied!"

# Certificate of Service

I Frank. M Alvarez the living, breathing, flesh and blood, natural born free citizen Sui Juris at Law comes with this Administrative Judicial Notice 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 12<sup>th</sup> and month of July in the year of 2011

Judge Guey Kays  
400 E. 9th St  
K.C. Mo. 64106

Chief Judge  
400 E. 9th St  
K.C. Mo. 64106

Bruce Rhoades  
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Respectfully, without  
explicit reservations of  
all my rights under  
prejudices

Frank Alvarez  
Frank Alvarez