

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-CP-W-DGK

Frank M. Alvarez
(Real Party in Interest)

Mandatory Judicial Notice of Code of Federal Regulations

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 (D) "within the United States" under penalty of perjury, sworn to within the United States of America.

Defendant in Error demands that this Judicial Notice be brought forth and rebutted by the Government of this said case (Sopra). By consulting the Parallel Table of Authorities and Rules (CFR Index) (2008 ed) p. 809 of Title 21 USC § 841 and 846 is "Not listed". This supports the premise that the "code section" has no published authority in the Federal Register per 82 stat. 1274, or published implementing regulations in the Code of Federal Regulations (C.F.R. 5.1 and 8.5). Absent published authority and implementing regulations, there "must" be decisions "affirming" the necessity of legislative creation for an agency or department to have lawful Authority and there "Is Not"! "Pope v. Commissioner (6th Cir 1943) and State v. Pickney (Iowa) 276 N.W 2d 433, 436". An individual "cannot" be prosecuted for violating an Act "unless" he violates implementing regulations. "US v. Reinis, 794 F.2d 506, 508 (1986) US v. Murphy, 809 F.2d 1427 (1987)"

(b)

(1) Exhibit A

The Federal Statutory provisions under which movant was charged "have not" been "promulgated" in the Federal Register or the Code of Federal Regulations as "Required under 44 U.S.C. § 1505 et seq. and 5 U.S.C. § 601". Therefore, it is true that this Court "has no right" to try, prosecute or to adjudicate sanctions for violations of unpromulgated regulatory statutes. Thusly, these particular Federal statutory provisions, §§ 841, 846 of Title 21, lack the force and effect of Law and are misapplied beyond the parameters of Rule 54(c) - Acts of Congress, Federal Rules of Criminal Procedure.

In order for a contrary intent to be facilitated, "delegations of Authority" and Implementing regulations "must be Published" in the ²Federal Register, but were not for relevant statutes here at the time of the alleged Commission. There is a readily available method for discerning which statutes at large, and which statutes contained within the 50 Titles of the United States Code (USC), possess restricted application or general applicability to the several States and the population at large. This method is through consulting the Parallel Tables of Authorities and Rules, which begins at Page 773 of 2008 Index, Volume to the Code of Federal Regulation (CFR) and its authority is located at 1 CFR § 8.5(c).

The Administrative Procedure Act (APA) is located at 5 USC §§ 552 et seq. and the Federal Register Act (FRA) located at 44 USC § 1505, provides the means for determining which statutes in any given act of Congress are applicable within Federal Areas, and which statutes have "General Applicability". At 1505(c)(1) of Title 44 USC, you read that if a statute "is not Published in the Federal Register"; then the application of the statutory provision is restricted to Federal Agencies, or persons acting in their capacity as officers, agents or employees of the Federal Government. The A.P.A. and the F.R.A. must be read as part

(2)

of every congressional delegation of authority, unless specifically excepted. Those acts require "Publication", irrespective of an actual Notice, as a prerequisite to the "issuance" of a regulation making certain acts criminal. Administrative prescription "cannot" subject the "informed American National" to a criminal Prosecution.

(2) Exhibit BTC

While Ignorance of the Law is no excuse or defense, it is also true that a Law which has not been properly enacted and contains no implementing regulations (Title 21 - not positive law), is "Not a Law" of ^(#3) general applicability, and therefore, this defendant is Error "cannot be Guilty" of "any crime" against the "United States of America".

In Wolfson v. U.S. 492 F.2d 1386, 204 S. Ct 083 (1974),
"when regulation" are not Published" in the Federal Register, they give legal notice of their contents to all who may be affected thereby."

In Shafer v. US, 229 F.2d 194, cert denied, 76 S. Ct. 78, 351 US 931, the court stated: "The publication of a document in the Federal Register creates a rebuttable presumption of validity." (Refer to: Fed Reg Act, § 1 et seq, 44 USC § 301 et seq (Emphasis added))

Also, in U.S. v. Merksy, 361 US 431, 438, 4 L. Ed 2d 423 (1960), the Supreme Court stated: "once promulgated, these regulations called for by statute itself, have force of Law, and violations thereof incur criminal prosecution" (Emphasis added). The result is that neither the statute nor the Regulation is complete without the other, and only together do they have any force and effect. The construction of one necessarily involves the construction of the other

(3)

In the context of criminal prosecutions, "the rule of strict construction must be applied in the interpretation of an administrative regulation to which penal consequences attach under the statute authoring the promulgation of the regulation.

An Individual "Cannot" be prosecuted for violating a Statute, unless he violates an implementing regulation.

"U.S. v. Two Hundred Thousand Dollars, 596 F. Supp. 846 (S.D. Fla. 1984);
and specifically states at 1 CFR § 1, "All regulations must be published in the Federal Register to have applicability and legal effect. (emphasis added).

(#3 Exhibit D)

④

The United States v. Fox, 95 U.S. 670, 672 (1877) (Emphasized)
States, "an act committed within a state, whether for good or a bad purpose, or whether with honest or criminal intent, cannot be made an offense against the United States, unless it has some relation to the execution of a power from Congress or to some matter within the Jurisdiction of the United States."

The courts of the United States merely by virtue of this grant of Judicial power, and in the absence of legislation by Congress have no criminal powers whatsoever. The criminal powers of the Courts of the United States is wholly derived from the Statutes of the United States.

"Manchester v. Massachusetts, (39 US 240 (1890) & U.S. v. Flores, 289 US 137 (1932)." Acts of Congress as well as the Constitution "must unite" to give police powers to a particular Court. United States v. Bedford, 27 Fed. Cas. P. 91, 103, Case no. 15867 (1847) The Federal courts "only" have powers in matters involving an "offense against the United States" and nothing can be an offense against the "United States" unless it is made so by "Congressional Act" pursuant to the Constitution of the United States for the United States of America.

Title 21 is a nonpositive law of the U.S. code and is presumed to be law but are rebuttable by production of prior unrepealed Acts of Congress at variance with the code. (#4)

This notice must be granted and Defendant in Error must have his case "dismissed with prejudice" due to it not being promulgated in the C.F.R. as it has been proven by Fact and Law.

(#4 Exhibit E+F) (5)

Certificate of Service

I Frank M Alvarez, Living breathing, flesh and blood natural born free state citizen *Sui Juris* at Law comes with this Mandatory Judicial Notice of code of Federal Regulations. being placed before this clerk of Court of the United States District Court for the Western District of Missouri Western Division on this day 25th and month of August in the year 2011.

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

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

Bruce Rhoades
U.S. Attorney's Office
400 E. 9th St - Ste 5510
K.C. Mo. 64106

U.S. Justice Department
Eric Holder
950 Pennsylvania Avenue N.W.
Washington D.C. 20530-0001

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

Frank Alvarez
Frank Alvarez