

NaRicco T. Scott, Sui Juris
Citizen of Missouri State
C.C.A.
100 Highway Terrace
Leavenworth, KS 66048

In Propria Persona

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UNITED STATES DISTRICT COURT
JUDICIAL DISTRICT OF MISSOURI

UNITED STATES OF AMERICA)	
)	
Plaintiff	)	case no. 10-00162-01-23-CR-W-FJG
)	
v.	)	NOTICE OF MOTION AND
	)	MOTION TO DISMISS
NaRicco T. Scott	)	DUE TO ILLEGAL GRAND JURY
	)	PROCEEDINGS
Defendant	)	28 U.S.C. 1867;
	)	Rule 6(b) (2), Federal Rules
	)	of Criminal Procedure
)	

COMES NOW, NaRicco T. Scott, Sui Juris, Citizen of Missouri state, expressly not a citizen of the United States ("federal citizen"), and Defendant in the above entitled matter (hereinafter "Defendant"), to move this honorable Court to dismiss the instant case with prejudice, due to improper seating and improper conduct of the federal grand jury which issued the indictment on which the instant case is premised, and to provide formal Notice to all interested party(s) of same.

This honorable Court will please take formal judicial Notice of the fact that Defendant is not a bar-licensed attorney, and has not had the advantage(s) of formal education in an accredited law school. For this reason, Defendant must learn and digest the particulars of law and procedure independently, as time permits.

Therefore, this Motion is timely because the proper workings of the federal grand jury system have only recently been deciphered. The seven-day time limit for filing motions related to improper grand jury procedure(s) does not apply in the instant case, particularly when due process Rights guaranteed by the U.S. Constitution are at issue. Even with the statutory time limit, this Motion is timely because it is being filed as soon as possible after discovery of the rules according to which a federal grand jury is required to proceed. Moreover, related statutory provisions have only recently been unraveled to clarify the grounds and the precise manner in which this Motion is required to be prepared and submitted to this honorable Court.

The key provision which demonstrates that Defendant should have been notified of an investigation and proceedings, premised upon allegations of complaint prior to the grand jury having been convened, is found at Rule 6(b)(1) of the Federal Rules of Criminal Procedure, to wit:

- (1) Challenges. The attorney for the government or a defendant who has been held to answer in district court may challenge the array of jurors on the ground that the grand jury was not selected, drawn or summoned in accordance with law, and may challenge an individual juror on the ground that the juror is not legally qualified. Challenges shall be made before the administration of the oath to the jurors and shall be tried by the court.

By failing to properly notify the Defendant of allegations of complaint and intent to present matters to a grand jury for consideration, the United States Attorney effectively deprived Defendant of: (1) the Fourth Amendment Right to have access to affidavits of

complaint; (2) the Sixth Amendment Right to interview witnesses against him; (3) the Sixth Amendment Right to have the assistance of Counsel during the proceedings; and (4) the Right to challenge the jury selection process and/or the qualifications of individual jury candidates.

In the grand jury forum, prospective defendants enjoy Rights articulated in Rule 5.1(a), Federal Rules of Criminal Procedure, pertaining to preliminary examinations, to wit:

The Defendant may cross-examine adverse witnesses and may introduce evidence.

[Rule 5.1(a), Federal Rules of Criminal Procedure]

This Court will also please take formal Notice that the Federal Rules of Evidence, which are otherwise restrictive, do not apply to preliminary hearings or to grand jury proceedings. See Rule 1101(d) (2) and (3), Federal Rules of Evidence. Accordingly, the applicable elements of the common law and constitutionally guaranteed Rights are both preserved in these two forums. According to the U.S. Supreme Court's decision in *Blair v. United States*, 250 U.S. 273, 282 (1919), the grand jury retains common law powers and authority vested by common law of English-American lineage prior to the ratification of the U.S. Constitution. The reason for the preservation of the grand jury's traditional authority, with the exclusion provision at Rule 1101(d)(2), is found at 28 U.S.C. 2072, which conveys authority for the U.S. Supreme Court to promulgate rules for statutory courts of the United States, to wit:

(b) Such rules shall not abridge, enlarge or modify any substantive right. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.

Therefore, convening a grand jury in secret, without affording Defendant an

opportunity to challenge the jury selection process or the qualifications of the individual jurors, and to exercise Fourth and Sixth Amendment Rights to have access to the substance of complaints, to interview adverse witnesses, and either stand in Defendant's own stead or be represented by counsel, defaults the alleged indictment into an action ultra vires ab initio (without authority from the beginning). The entire grand jury array must be defaulted, therefore, and the indictment dismissed, pursuant to 28 U.S.C.

1867(d), to wit:

(d) Upon motion filed under subsection (a), (b), or (c) of this section, containing a sworn statement of facts which, if true, would constitute a substantial failure to comply with provisions of this title. . . . If the court determines that there has been a substantial failure to comply with the provisions of this title in selecting the grand jury, the court shall stay the proceedings pending the selection of a grand jury in conformity with this title or dismiss the indictment, whichever is applicable.

Where the instant case is concerned, the alleged indictment must be dismissed because the entire selection and seating process was conducted under the exclusive control of the United States Attorney, without the Defendant having had the opportunity to participate in the selection and qualification process, as prescribed by Rule 6(b)(1) of the Federal Rules of Criminal Procedure.

This, of necessity, defaults all members of the grand jury responsible for the alleged indictment, because a posteriori position does not afford the opportunity to correct an error which abridges the provisions of Rule 6(b)(1) of the Federal Rules of Criminal Procedure.

Defendant's Affidavit of Facts, as required by 28 U.S.C. 1867 (d), follows the PROOF OF SERVICE attending to this Motion.

REMEDY REQUESTED

Premises considered, Defendant moves this honorable Court to dismiss the indictment with prejudice, said dismissal being mandated by the operation of law.

VERIFICATION

Defendant hereby verifies, under penalty of perjury, under the laws of the United States of America, without the "United States", that the above statement of facts is true and correct, and all matters of law addressed herein are accurate and true, to the best of Defendant's current information, knowledge, and belief, so help me God, pursuant to 28 U.S.C. 1746 (1).

Executed on 08/29/11:

/s/ NaRicco T. Scott

NaRicco T. Scott, Sui Juris
Citizen of Missouri State

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PROOF OF SERVICE

I, NaRicco T. Scott, Sui Juris, hereby certify, under penalty of perjury, under the laws of the United States of America, without the “United States”, that I am at least 18 years of age and a Citizen of one of the United States of America, and that I personally served the following documents:

NOTICE OF MOTION AND MOTION TO DISMISS
DUE TO ILLEGAL GRAND JURY PROCEEDINGS:
28 U.S.C. 1867; Rule 6(b)(1),
Federal Rules of Criminal Procedure

AFFIDAVIT OF FACT:
28 U.S.C. 1746(1); 1867(d)

By placing said document(s) with exhibits in first class United States Mail, with postage prepaid and properly addressed to the following individuals:

Clerks office-Official Business
United States District Court
Western District of Missouri
6652 Courthouse
400 East Ninth Street
Kansas City, MO 64106

Executed on 08/29/11

/s/ NaRicco T. Scott

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UNITED STATES DISTRICT COURT FOR THE
JUDICIAL DISTRICT OF MISSOURI

UNITED STATES OF AMERICA)	
)	
Plaintiff	)	case no. 10-00162-01-23-CR-W-FJG
)	
v.	)	AFFIDAVIT OF FACTS:
	)	28 U.S.C. 1746(1), 1867(d)
NaRicco T. Scott)	
)	
Defendant)	
)	

COMES NOW, NaRicco T. Scott, Sui Juris, Citizen of Missouri state, expressly not a citizen of the United States (“federal citizen”), and Defendant in the above entitled matter (hereinafter “Defendant”), to submit this, Defendant’s AFFIDAVIT OF FACTS.

VERIFICATION

Defendant hereby verifies, under penalty of perjury, under the laws of the United States of America, without the “United States”, that the following statement of facts is true and correct, and all matters of law addressed herein are accurate and true, to the best

of Defendant's current information, knowledge, and belief, so help me God, pursuant to 28 U.S.C. 1746(1).

I am a Citizen of Missouri state, which is one of the several States party to the Constitution for the United States of America, as lawfully amended (hereinafter "U.S. Constitution).

I inhabit and live in Kansas City, Missouri state, on privately owned land which is not within any federal enclave or federal area, as ceded to the United States (federal government) in compliance with 40 U.S.C. 255. See also 18 U.S.C. 7(3).

As such, I am endowed by My Creator with certain unalienable Rights, and I am entitled to all Rights secured by the U.S. Constitution, particularly with respect to due process of law provisions articulated in the Fourth, Fifth, Sixth, and Seventh Amendments to said Constitution.

In sum: There is clearly---multiple---substantive due process violations, by the government. The government totally disregards and trashes the 4th, 5th, and 6th Amendments. The 5th Amendment guarantees that no person shall be deprived of life, liberty, or property, "without due process of law".

Therefore: "Defendant in error," asks the court to dismiss all charges against "Defendant in error," and return all property seized or attached.

Respectfully Submitted,

Sui Juris at law

NaRicco T. Scott, pro se

PROOF OF SERVICE

I, NaRicco T. Scott, hereby certify that I properly placed this Motion to Dismiss Due to illegal Grand Jury Proceedings, in an envelope, sealed and mailed it with First Class postage at Leavenworth, Kansas 66048, in CCA on August 29, 2011.

Servers Address: NaRicco T. Scott, pro se
100 Highway Terrace
Leavenworth, KS 66048

August 29, 2011