

TRULINCS 36087013 - HOODENPYLE, RONALD ROY - Unit: ENG-J-A

2011 JUL 11 PM 12:11

FROM: 36087013
TO: [REDACTED]
SUBJECT: Judicial Motion (part I)
DATE: 06/30/2011 07:27:29 PM

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
DENVER DIVISION

UNITED STATES OF AMERICA
Plaintiff/Respondent
v.

10 1457

Case # 09-cr-00013
Case # 10-cr-00595

RONALD ROY HOODENPYLE
Defendant/Petitioner

Affidavit

Verified

REQUEST THE COURT TO TAKE JUDICIAL NOTICE OF ADJUDICATIVE FACTS TO DISMISS FOR EVIDENCE OF PROSECUTORIAL MISCONDUCT AND FRAUD UPON THE COURT AS THIS COURT HAS NO JURISDICTION OVER CRIMINAL CASES ONLY CIVIL CASES

REQUEST THAT THE COURT RECOGNIZES

HAINES v. KERNER 404 US. 519, 30L. Ed. 652, 92 S.CT. 594 Reh den US 948, 302, Ed 2 of 819. 925, S. Ct., 963

1. Comes now, Ronald Roy Hoodenpyle, Sui Juris, unrepresented and hereby moves the court for dismissal of these cases with prejudice based upon evidence of court officials' prosecutorial misconduct.
2. Petitioner was indicted on or about 1/12/09, charged with one count of filing a false lien against a government employee, Title 18-1521 and failure to appear for service of sentencing, 18 USC 3146 (a)(2) & (b) (1)(A)(ii). The court acted beyond it's statutory constitutional authority. It constitutes fraud upon the court and its orders are void by operation of law.
3. Petitioner is currently incarcerated based on statements by the DOJ Matthew Kirsch, TIGTA agent William Frankel and the court by allowing false statements and misrepresentation before the grand jury which led to the petitioner's indictment and conviction.
4. The U.S. District Court Judge Marcia Krieger participated in denying the petitioner due process of law by not allowing such safeguards for the protection of individual rights secured by the Constitution 1787 and The Bill of Rights 1791. When the fraud was brought to the attention of the court, it was ignored. This is established on the court record.
5. The court and the prosecution participated in denying the petitioner to confront the accusers before the grand jury, denying my constitutional rights of the Fifth Amendment to face my accusers from the very beginning. The petitioner is not to be tried under statutory rules and regulations by his declaration as a Sovereign American, a non-corporate subject. This court has failed to address this from the beginning.
6. The court, through judge Krieger, allowed the prosecutor and the TIGTA Agent Frankel to cover up evidence to the grand jury by false and misleading statements and concealing the truth before the grand jury, to attain an indictment.
7. The government cannot overcome the presumption of the perjury committed by Frankel and U.S. Attorney Matthew Kirsch by their actions before the Grand Jury. The presumption now exists of the misconduct and misleading statements that were presented to the jury under oath. The Grand Jury foreman asked U.S. Attorney Matthew Kirsch, "Did Mr. Pryor do anything to Mr. Hoodenpyle to cause him to go after him?". Mr. Kirsch answered and said "I will excuse myself and let Mr. Frankel answer the questions". Agent Frankel, under oath, was asked the same question. His answer according to the Grand Jury transcript was, he stuttered and said "NO". This is recorded on page 10 of the grand jury transcript that is filed in the U.S. District Court and the Tenth Circuit Court of Appeals. This was a false statement, and by his answer has committed perjury and violated my rights to due process.

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8. The Prosecutor and agent Frankel knew that the petitioner had multiple meetings, complaints dating back to April 2007, May 5, 2008, December 17, 2008, and a Bivens lawsuit filed into the U.S.D. Court in and around the end of December 2008. This action contains 16 Counts of Federal and State violations of the law and of the Constitution and their own I.R.S. Codes. They never mentioned any of the meetings, letters or violations that the I.R.S. Agent Michael Pryor had committed against the petitioner. This is misrepresentation and hiding evidence to get an indictment. See: EXHIBIT (A)

9. Agent Frankel and the U.S. Attorney had used many of my documents that were confiscated at my residence and had the letters and documents that were in their possession before the petitioner was arrested and indicted. This evidence was never mentioned and therefore they withheld evidence from the Grand Jury. The Supreme Court has ruled that where the Grand Jury process is abused and the accused objects to the indictment before the trial, the indictment should be dismissed where there is showing that the abusing party "Substantially influenced the Grand Jury decision to indict (id78) The petitioner both verbally and by filing court documents into the court record of this violation notified the court of violations of my Due Process of Law. This was ignored by the court and violated my Constitutional rights by not dismissing this case. This testimony before the Grand Jury had a direct negative effect and substantially influenced the jury's decision to indict. See: (U.S. v Merchawick 475 U.S. 66, 74, 1986).

10. If everything that might influence a jury must be disclosed, this is the only way a prosecutor could discharge his Constitutional duty that he swore to abide by, is to allow complete discovery of his files as a matter of routine practice (See: U.S. v Agurs. 427, U.S. 97, 107, 49, Led 2d 342, 96 Sc-2392). The prosecutor withheld these facts and continued to prosecute petitioner.

11. Judge Krieger was notified of these violations that were committed against petitioner's Due Process, including perjury that is on the record of the grand jury transcripts Judge Krieger said to the petitioner " they are not on trial, You are." this was evidence that the judge was involved in violation of her oath of office. A crime was brought to her attention and was ignored. This is Fraud upon the Court and violation of the Due Process clause of the Constitution. this makes the judges order void by Operation of law.

12. The petitioner filed a Negative Averment on the Judge for her violations that was recorded in the court record. A default judgement was entered on the court via U.S. Certified Mail by (4) notary presentments by a Colorado licensed notary and there was no response. Knowing that the Negative Averment was perfected, the judge should have recused herself immediately after the first notice of default was served into the court record. By continuing, she was biased and prejudiced, and any order the judge made was void ab initio. (See: Taylor v OGrady 888 F. 2d 1189 1989).

13. The Judge stated on the record that this was an Article III Court yet continued to proceed in a court that denied my Constitutional rights and conducted the court in a legislative Article I tribunal... Article I tribunals are really akin to administrative agencies: At the present time, Article I courts include territorial courts, certain courts in the District of Columbia, court marshal courts, and legislative courts. Ms. Lorrie Lunnon was in the court room and has testified to the judges comment that it was an Article III court, but proceeded in an administrative, Admiralty Maritime jurisdiction that does not have jurisdiction over a native born American, non- corporate citizen. See: EXHIBIT (B).

14. These courts are created by statute, as opposed to one created by the Constitution .. also termed (in federal law) Article I courts.

15. Judge Krieger has stated that this was an Article III court and this would mean she is an certified Article III Judge. This is not possible as Article III Section 1 of the Constitution it states: The judicial powers of the U.S. shall be vested in one superior Courts and in such inferior court, as the Congress may from time to time ordain or establish. The judges, both of the Supreme and inferior courts shall hold their offices during good behavior, and shall at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office. This means no income tax paid. The judge must be properly insured and bonded, and the judge may have properly posted the personal Fidelity bond required for the judge to be in office which is paid directly out of their compensation or salary. This is in direct opposition of Article III Section 1 of the Constitution.

16. During trial the petitioner had chest pains and high blood pressure and was unable to continue in the trial on closing arguments because of being hospitalized that night. Petitioner was unable to attend the trial the following morning. Judge Krieger entered into the courtroom and stated "I did not want this trial to continue, such people need to be put in jail". This is irrefutable evidence that the judge was biased and prejudiced towards the petitioner, See: EXHIBIT (C).

17. During the evening before closing arguments, the counsel and the government both agreed to use the Colorado Revised Statutes for what they were going to use for sentencing, 38-52-201. The judge changed the words that were agreed

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on and added to that statute. It is on the brief filed on the Court of Appeals by counsel Gary Fielder. The judge had no authority to change the jury instructions after it was agreed by both parties. The judge stepped off the bench and practiced law illegally, once again showing bias and prejudice. The statute on which the petitioner was acquitted in the lower court is the same statute that was used in the federal court for sentencing. The Petitioner was acquitted by a jury in the lower State court of the same charges brought by the Federal court. I believe that this is double jeopardy and this case should be dismissed.

18. It is common knowledge that the government obtains a 99% conviction in federal criminal cases. One's rights must be exercised where truth and justice prevails and perjury, sedition, treason, fraud upon the court, bias, and prejudice are not acceptable.

19. The petitioner invokes his rights as a united States citizen of the Republic, with all the benefits of not being targeted and manipulated by the very government obligated to protect the People.

20. The petitioner invokes the maxim of law that notice to agent is notice to principal, notice to principal is notice to agent.

21. The court and the government officials are bound to obey the laws and the Constitution of 1787 or they will be in opposition to it. This is warring against the Constitution, which is perjury, sedition and treason.

22. Such crimes are also a violation of federal statutes and constitute criminal activity by agents of the government. While the government has a right to prosecute vigorously, its officers and officials do not have the right to violate the laws they swore to uphold and especially the Constitution they made an oath to abide by.

23. Petitioner is being held to a plea agreement that was obtained by false promises and misinformation by assistance of counsel. She stated that she would talk with the DOJ to see about having two sentencing levels on the plea agreement reduced, and stated that she would get back to me regarding that the first of the week. She later called my wife and told her that I had signed the plea agreement so it couldn't be changed; "he already signed the paper". This amounted to ineffective counsel and voids my plea contract.

24. Petitioner had accepted the plea agreement under the assumption that the court had lawful authority over criminal jurisdiction. The petitioner has now obtained facts that confirm that the U.S. District Court has jurisdiction only over CIVIL CASES, not criminal. Therefore, this court has no authority or jurisdiction over petitioner.

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FROM: 36087013

TO: [REDACTED]

SUBJECT: judicial notice II

DATE: 06/30/2011 07:27:46 PM

25. The petitioner has notified that Ronald Roy Hoodenplye, who has now occupied the office of Executor of RONALD ROY HOODENPYLE Estate, and has terminated any further use by any and all parties or agencies and are not entitled to make any intrusions upon the RONALD ROY HOODENPYLE Estate, this will be in violation from the date filed in the California State Registrar's office in California. This order puts a permanent roadblock beginning on March 24th, 2011, in the path of any and all that would use my name as a SURETY. That property cannot be touched or used by anyone other than Ronald Roy Hoodenplye, the authorized representative. Included is a judicial notice of fault to the parties listed in this affidavit of colateral estoppel. Any persons or agencies that use my name will be involved in security fraud and violation of other federal and state laws and will be prosecuted to the fullest extent of the law.

26. The U.S. District Court has acted in excess of its statutory authority and beyond the scope of its Constitutional grant of authority to preside over criminal cases 09-cr-00013 and 10-cr-00095. Therefore, without authority of either the Constitution of 1787 or the authority of Congress, petitioner seeks dismissal due to fraud and lack of subject matter jurisdiction.

27. Petitioner invokes what the Supreme Court Justices have repeatedly said: "Federal Courts are courts of limited jurisdiction. They possess only that power authorized by the Constitution and Statute which is not to be expanded by judicial decree. It is presumed that a cause lies outside this limited jurisdiction" (See KOKKONEN v. LIFE INS. CO. OF AMERICA, 511 U.S. 375, 377, 128 L. Ed. 2d 391, 114 S. Ct. 1673, 1994).

28. Petitioner's challenge of jurisdictional questions have no time limit on procedural default and can never be forfeited or waved. Correction is mandatory, whether the error was raised in District Court or not (See: U.S. v. COTTON 5335 US 625, 630, 122 S. ct., 1781, 152, L. Ed. 2d 860, 2003).

29. Petitioner requests that the court forward a copy of the Judicial Motion of Adjudicative Facts to Dismiss for Evidence of Prosecutorial Misconduct and Fraud Upon the Court once it is prepared and sent to the office of Eric Holder, U.S. Attorney General, Washington, D.C., within 24 hours in order that the statutory authority for agents of the government be investigated and pursued vigorously.

30. The Federal Courts are Courts of limited jurisdiction. They cannot be courts of general jurisdiction. They are empowered to only hear such cases as are within the judicial powers of the United States as defined in the Constitution, and have been entrusted to them by a jurisdictional grant of Congress. They can only hear CIVIL CASES and have no authority or jurisdiction in petitioner's cases 09-cr-00013 or 10-CR-00595, for these are criminal cases and this territorial court has no jurisdiction in criminal cases. The U.S. District Court has no jurisdiction in these cases and must dismiss with prejudice. according to Title 28-132, there shall be in each judicial district a court of record known as the United States District Court for The District. Jurisdiction of the United States District Court Title 28 U.S.C.A. 1331 et. seq [See: EXHIBIT (1A) (1B) (2A) (2B) (2C) (2D) (2E) (3) (4A) (4B)].

31. When a District Court did "not have subject matter jurisdiction over the underlying action... [its] process(es) [are] void and an order of [punishment] based [thereupon] ... must be reversed." SEE: STEEL CO. 523 U.S. at 94-95. U.S. Cath. Conf., 487 U.S. at 77; WILLY v. COASTAL CORP., 503 U.S. at 139 ("[T]he [punishment] order itself should fail with a showing that the court is without authority to enter a decree."). The USDC of Colorado has no lawful jurisdiction whatdover. Federal Court possesses no lawful jurisdiction over these cases (See: Hudson v. Goodwin 11 U.S. at 33-34; See: U.S. v. Wiltberger 18 U.S. 76, 95-105, 1820).

32. ("When ... A court of the United States undertakes, by it's process ... to punish a man ... [respecting] an order which that court has no authority to make the order irself, being without jurisdiction, is void and the order punishing is equally void (EX PARTE FISK, 113 U.S. 713, 718, 1885).

33. Petitioner is requesting immunity from prosecution and retaliation for witnesses identified, and that all attempted threats and collections against the petitioner be immediately dismissed, and that all evidence of harrassment and threats of the government in this case be brought forward.

34. The challenge of jurisdiction was entered into the record that petitioner is One of We the People, who is a natural living flesh and blood Sovereign, Common-Law Citizen. See EXHIBIT (E)

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VOID JUDGEMENT

35. The petitioner has put evidence into this court that in case 09-cr-00013 and 10-cr-00595 that the order by the court is void judgement, and has no legal force or effect, the validity of which may be asserted by any party whose rights are affected at any time of any place whether directly or collaterally from its inception, a void judgement continues to be absolutely null. It is incapable of being confirmed, ratified, or enforced by any matter or to any degree.

36. A judgement is "VOID" ... if court that rendered judgement ... acted in a manner inconsistent with due process (SEE KLUGH v. U.S.D.C.S.C. 610 F. SUPP. 892 , 901).

37. When providing for relief from Void Judgment is applicable, relief is not discretionary matter, but is mandatory (See: ORNER v SHALALA, 30 F. 3d 1397. COLORADO 1994).

38. Judgment entered where court lacked jurisdiction, or that were otherwise entered in violation of Due Process of law, must be set aside (See: JAFFE and ASHER v VAN BRUNT , S.D.N.Y. 1994. 158 F.R.D.278).

40. There has been a notification to the court, prosecution and numerous parties and agencies. When these agencies refuse to acknowledge these violations, they themselves become a party to the crime of those violations.

41. The Supreme Court of the United States ruled: If the court is without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void, and form no bar to recovery sought, even prior to a reversal in opposition to them. They constitute no justification and all persons concerned in executing such judgments are void (See: ELLIOTT v PIERSOL 1 PET. 328, 340, 26 U.S).

42. Any judge or Attorney who does not report a crime that that has been brought to their attention and fails to report that crime as required by law, may themselves be guilty of treason. See: 18 U.S.C. Section, 2382 under Federal law. These are the laws that all court officers have sworn to uphold, yet these rules and the Constitution have been repeatedly ignored to get convictions in a court that can only hear " CIVIL CASES", not "CRIMINAL".

43. The challenge of jurisdiction was entered into the court record that the petitioner was One of We the People, am a natural living flesh and blood Sovereign, Common Law Citizen, a Citizen for the freely associated Compact States of the Constitutional Republic and Colorado Republic do hereby place You, my servants (public, quasi public, and franchise person), on NOTICE IN LAW that ANY ACTION you take under COLOR OF LAW. (statute, code, regulation, custom or usage of any state) which is contrary to the Constitutional Laws of 1787 and The Bill of Rights 1791 will be cause for legal action against you for unlawful DEPRIVATION of my rights.

44. The government will be in violation of Article IV, Section 4, which states : The United States shall guarantee to every State in the Union a Republic Form of Government, and shall protect each of them from invasion: and on application of the legislature, or of the Executive (when the legislature cannot be convened) against domestic violence.

45. The Government Officials and the Court were aware of my declaration that was filed at the County Clerk and Recorders Office, Colorado Springs, Colorado and at the Secretary of State's Office, Denver, Colorado. These documents were filed on June 29, 2007, Registered numbers, 207087232 through 207087238 that were presented in the court record, State , Federal and International Agencies, numerous State Courts and the Supreme Court of United States. This document is Noticed to this Court as an Affidavit of Truth and Fact and filed into the record as a JUDICIAL NOTICE OF ADJUUDICATIVE FACT, as the petitioner's declaration as One of We the People, a flesh and blood living soul and not an artificial person of the UNITED STATES CORPORATION, whose rights are secured by the Constitution of 1787 and the Bill of Rights 1791. See: EXHIBIT (F)

JUDICIAL NOTICE

A Judicially noticed fact that must be one that is either (1) generally known within the territorial jurisdiction of the trial court or (2), capable of accurate and ready determination, by resort to sources whose accuracy cannot reasonably be questioned. FRE201(d).

THIS DOCUMENT IS NOT INTENDED TO THREATEN, HARRASS OR INTIMINATE BUT IS MY REMEDY IN LAW.

PRAYER FOR RELIEF

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Wherefore, premises considered, Petitioner moves this court for:

1. An order dismissing this case for prosecutorial misconduct;
2. A referral to the Office of Eric Holder, Attorney General of the United States for investigation of the violations that were committed in false misrepresentations, covering and hiding evidence to the Grand Jury, committing perjury and intimidation of witness(es) in this case;
3. An immediate order to cease and desist the illegal activities of agents and prosecutors in this case, including retaliation, retribution, threats, and actions of the government;
4. The immediate dismissal of any actions by the government against the witness(es) identified in this motion with prejudice;
5. Sanctions against the employees of the government who are deemed to have violated their oaths of office, and statutory authority as determined by the court;
6. For such other and further relief as is deemed just and proper by this Court.

Unsworn declaration under penalty of perjury, 28 USC 1746(1), as an affidavit of truth.

Date: June 30, 2011

By: Ronald Roy Hoodenpyle
Ronald Roy Hoodenpyle
Executor of the Estate
36087-013
9595 W Quincy Avenue
Littleton, CO 80123

Cc United States District Court
Tenth Circuit Court Of Appeals
Supreme Court of United States Chief Justice
Administrative Office of the United States Courts
Republic United States America
Bureau of Prisons
U.S. Congressman Doug Lamborn