BRIEF #1

PUBLIC LANDS BELONG TO THE STATES, NOT THE FEDERAL GOVERNMENT

These briefs were written by David R. Hinkson

United States Department of Interior Board of Land Appeals

DOUGLAS E. NOLAND	)	
	)	
Appellant	)	
	)	
vs.	)	**CO 92-1B 3833**
	)	**CMC-202302**
Bureau of Land Management	)	
	)	
Respondent	)	
_____	)	

NOTICE OF APPEAL

1

Please take notice that DOUGLAS E. NOLAND, hereby appeals to the Bureau of Land Management, United States Department of the Interior, from the whole decision of RICHARD TATE, District Manager dated November 22, 1993. Such decision was served on appellant on November 30, 1993. A copy of which is attached hereto as exhibit "A".

This appeal is taken on the grounds that:

ARGUMENT A
THE UNITED STATES GOVERNMENT DOES NOT HAVE THE RIGHT TO OWN OR CONTROL PUBLIC LANDS WITHIN A SOVEREIGN STATE

The United States Government has no jurisdiction over the Mining Claims in question. Under the equal footing doctrine, Colorado entered into the Union on equal footing. When Colorado entered into the Union on equal footing, the U.S. Government had no legal right to required Colorado to sign said enabling act, in which Colorado agreed to disclaim the unappropriated lands. Texas which was part of the same original territory as Colorado, never surrender any of her lands, prior to Statehood. Nowhere in the United States Constitution was the United States Government given the authority or right to claim or maintain jurisdiction over any territory not specifically addressed in the United States Constitution.

In **Utah Division of State Lands v. U.S., 482 US 193, (1987)** on Page 169 the Supreme Court stated as follows:

> "When the 13 Colonies became independent from Great Britain, they claimed title to the lands under navigable waters within their boundaries as the sovereign successors to the English Crown. Id., at **15, 38 L Ed 331, 14 S Ct 548**. Because all subsequently admitted States enter the Union on an "equal footing" with the original 13 States, they too hold title to the land under navigable waters within their boundaries upon entry into the Union. **Pollard's Lessee v Hagan, 3 How 212, 11 L Ed 565 (1845)."**

The court further stated on Page 170:

"Thus, under the Constitution, the Federal Government could defeat a prospective State's title to land under navigable waters by a prestatehood conveyance of the land to a private party for a public purpose appropriate to the Territory."

The court further stated on Page 177:

"...we find it inconceivable that Congress intended to defeat the future States' title to all such land in the western United States. Such an action would be wholly at odds with Congress' policy of holding this land for the ultimate benefit of the future States. In sum, Congress did not definitely declare or otherwise make very plain either its intention to reserve the bed of Utah Lake or to defeat Utah's title to the bed under the equal footing doctrine. Accordingly, we hold that the bed of Utah Lake passed to Utah upon that State's entry into statehood on January 4, 1896. The judgement of the Court of Appeals is reversed.

A State obtains title to the land underlying a navigable water upon its admission to the Union unless Congress' intention to convey the land to a third party during the territorial period "was definitely declared or otherwise made very plain, or was rendered in clear and especial words, or unless the claim confirmed in terms embraces the land under the waters of the stream."

The United States Government never declared or reserved any public lands in the Acts of Statehood for Colorado or other western states. The U.S. Government further failed to claim any of the unappropriated lands of Colorado, in any prestatehood Congressional Act. And the Property Clause of the United States Constitution Article 1 ' 8, clause 17, did not authorize reservation of large blocks of Land in created states. "The federal government, under U.S. Constitution article 1 ' 8, clause 17, can exercise exclusive jurisdiction over land in a state only where the land is acquired for one of the purposes mentioned, which included needful forts, dockyards and defense purposes. It is obvious that the reason the United States Government never addressed unappropriated lands in the acts of statehood is because, because it would have been unconstitutional and illegal. The U.S. Government attempted to illegally acquire lands by ratification of state Consent. If the power to keep or claim public lands was not specifically given by the United States Constitution, then this power can not be exercised or ratified by the Consent of the States.

In **New York v. United States 120 L Ed 2d 120 (1992) on page 154** the court address the ratification or Consent of authority which is not specifically granted in the United States Constitution, the court stated as follows:

"Where Congress exceeds its authority relative to the States, therefore, the departure from the constitutional plan cannot be ratified by the "consent" of state officials. An analogy to the separation of powers among the Branches of the Federal Government clarifies this point. The Constitution's division of power among the three Branches is violated where one Branch invades the territory of another, whether or not the encroached-upon Branch approves the encroachment.

In **Buckley v. Valeo, 424 US 1, 118-137, 46 L Ed 2d 659, 96 S Ct 612 (1976),** for instance, the Court held that the Congress had infringed the President's appointment power, despite the fact that the President himself had manifested his consent to the statute that caused the infringement by signing it into law. See **National League of Cities v Usery, 426 US, at 842, n 12, 49 L Ed 2d 245, 96 S Ct 2465**.... Congress cannot be expanded by the "consent" of the governmental unit whose domain is thereby narrowed, whether that unit is the Executive Branch or the States."

The United States has never lawfully claimed the unappropriated lands of Colorado, and for the State of Colorado to grant these lands in the "Enabling Act" would be "void and inoperative". Therefore the United States Government lacks Jurisdiction and ownership over the public lands in question, and must promptly surrender all public lands to the real and legal owners of the Sovereign States. In **New York v. United States 120 L Ed 2d 120 (1992) on page 137** the Supreme Court further stated:

"...If a power is delegated to Congress in the Constitution, the Tenth Amendment expressly disclaims any reservation of that power to the States; if a power is an attribute of state sovereignty reserved by the Tenth Amendment, it is necessarily a power the Constitution has not conferred on Congress. See **United States v Oregon, 366 US 643, 649, 6 L Ed 552, 66 S Ct 438 (1946); Oklahoma ex rel. Phillips v Guy F. Atkinson Co., 313 US 508, 534, 85 L Ed 1487, 61 S Ct 1050 (1941)**. It is in this sense that the Tenth Amendment "states but a truism that all is retained which has not been surrendered." **United States v Darby, 312 US 100, 124, 85 L Ed 609, 61 S Ct 451, 132 ALR 1430 (1941).** As justice Story put it, " this amendment is a mere affirmation of what, upon any just reasoning, is a necessary rule of interpreting the constitution. Being an instrument of limited and enumerated powers, it follows irresistible, that what is not conferred, is withheld, and belongs to the state authorities.... Congress exercises its conferred powers subject to the limitations contained in the Constitution."

State officials thus cannot consent to the enlargement of the powers of Congress beyond those enumerated in the United States Constitution, as was found in the states enabling acts. Further the United States Government has never had jurisdiction, to tax or regulate the private lands found within the boarder of the Sovereign State of Colorado. Therefore, the United States Government cannot legally own or control the public lands in the western states or the State of Colorado. The Federal Government only has the right to Control land as described in Article 1 '8 Clause 17 of the United States Constitution, which allows for "needful forts magazines and dockyards". Therefor the remaining public lands not held in accordance with Article 1 '8 Clause 17 of the United States Constitution, hereinafter belong to the State of Colorado.

BRIEF #2

THE FEDERAL GOVERNMENT HAS NO JURISDICTION INSIDE A SOVEREIGN STATE EXCEPTING INTERSTATE COMMERCE) UNITED STATES DISTRICT COURT DISTRICT OF NEVADA

UNITED STATES OF AMERICA)
Plaintiff,)
vs.) **AWA Docket No. 93-20**
OTTO BEROSINI,)
Defendant.)
_____)

Date of Hearing: 6/24/94
Time of Hearing: 9:30 A.M.

MOTION TO DISMISS

COMES NOW, the Defendant, OTTO BEROSINI, and moves this Court for an Order dismissing the Complaint, for violations of **7 U.S.C. ' 2131, 2140, 2134, et al. and Title 9, Code of Federal Regulation, et al. '1.1, '2.100 (a), '2.100 (a), '3.134 (a)(b), '2.40, '2.75 (b)(1), '2.40, '3.128, '2.1 (a), '3.125 (c)(d), '3.130, 3.131 (c), 3.127 (b), et al.**

This Motion is made and based upon the grounds that the citation does not state facts sufficient to constitute an offense against the United States of America; that the United States District Court is without jurisdiction because the offense, if any, is cognizable in the District Court for the State of Nevada and/or Arizona; and that the United States Department of Agriculture conducted a search without probable cause and seized property without due process in violation of the Fourth Fifth and Fourteenth Amendment of the United States Constitution.

And the United States Department of Agriculture, Secretary of Agriculture further failed to consult with the Secretary of Transportation before promulgating the standards governing animals in transportation as described in 7 USC 2145, therefore the regulations charged in the complaint are null and void.

This Motion is further made and based upon the records herein, the Points and Authorities hereto, the affidavits herewith, and such argument as may be entertained by the Court at the time of the hearing of the Motion.

OTTO BEROSINI
IN PROPER PERSON
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(702) 389-6146

I

POINTS AND AUTHORITIES - STATEMENT OF CASE

The Defendant is the owner of certain animals which are used to entertain the public. The Defendant is engaged in the business of entertaining the public at specific destinations, under long-term contracts. The Defendant has transported his animals and personal property intra-state and interstate on occasion when contracted. The Defendant does not continually travel, but in-fact seasonably relocates, for extended periods of time. And only travels with his personal property across the State Lines, incidental to travel, and is not involved in Interstate Commerce, as described by 7 USC '2131. The transportation of the Defendant, property further does not effect such commerce or the free flow thereof, or create any burdens upon such commerce. As an example, Defendant worked and lived in Arizona for approximately eight months and at no time during this period involved himself, in any activity, which could be described as interstate commerce. After traveling back to Nevada, the Defendant has at no time been involved in interstate commerce.

On March 19, 1993, the United States Department of Agriculture, caused a Complaint to be filed against Defendant, alleging, a violation of **7 USC et al and Title 9, C.F.R., Sections et al.** No inspections of Defendants, animals were ever conducted during a period of time in which the Defendant was involved in interstate commerce.

II

ARGUMENT

A.

THE UNITED STATES HAS NO LEGISLATIVE AUTHORITY OVER PRIVATE PROPERTY IN ANY STATE, NOT INVOLVED IN INTERSTATE COMMERCE.

In 7 USC 2131, the Congress addresses its statement of policy, concerning the power it was the bestowing upon the United States Department of Agriculture under 7 USC 2131.

Congress states as follows:

> "The Congress finds that animals and activities which are regulated under this Act [7 USCS ''2131.] are either in interstate or foreign commerce or substantially affect such commerce or the free flow thereof, and that regulation of animals and activities as provided in this Act is necessary to prevent and eliminate burdens upon such commerce and to effective regulate such commerce, in order
> (2) to insure the humane treatment of animals during transportation in commerce."

It is apparent that the Congressional intention was to regulate only animals in transportation which were also involved in interstate commerce. The Defendant, transported his personal property, and was not engaged in interstate commerce, because the act of commerce or employment started when the Defendant, arrived at his destination. Therefore the Defendant only transported his private property without engaging in commerce, with the intent of engaging in commerce upon arriving in Arizona. Therefore the US Department of Agriculture did not have authority under interstate commerce to proceed in issuing a complaint, and the complaint should be dismissed. Further if U.S. Department of Agriculture could prove that the Defendant, was involved in interstate commerce, while transporting his personal property, the act of interstate commerce must have started and stopped at some definable point in location and/or time. The key point in this case, is that the Defendant, arrived in Arizona and never proceeded to travel or relocate for a period of over eight months, therefore commerce would have terminated upon the arrival or destination. Further when the Defendant traveled back to Nevada, eight months later, the interstate commerce would have ended upon arrival at the destination. It is apparent that the United States Department of Agriculture would have us believe that their interstate commerce power extends forever, crossing all time and space, which it does not.

In the **A.L.A. Schecter Poultry Corp. v. United States, 295 U.S. 495, 55 S.Ct. 837 (1935)** the US Supreme Court ruled as follows:

> "NIRA permitted "codes" to be promulgated by industry groups, which "codes" had effect of law. Schecter officials indicted for violating "code" for acts occurring inside NYC. Court held NIRA unconstitutional on delegation of powers on grounds that the acts in question did not involve interstate commerce. Congress has no power over local activities once the act of commerce is terminated. If the commerce clause were construed to reach all enterprises and transactions which could be said to have an indirect effect upon interstate commerce, the federal authority would embrace practically all the activities of the people, and the authority of the state over its domestic concerns would exist only by sufferance of the federal government. Indeed, on such a theory, even the development of the state's commercial facilities would be subject to federal control," Id., at 546."

If the Defendant, were to ship a commodity, in interstate commerce, and then proceeded to engage in a new activity or new employment not involving interstate commerce, the original shipment and consequent employment activity weather originally intended or not, becomes two distinct and separate activities. So far as the transported commodity is concerned, if the Defendant, then operates his business in a purely local manner, without engaging in further interstate commerce in another state, or across state lines, he is subject only to regulation of the state, and would not have to maintain a license issued the Department of Agriculture. In the United States, there are two separate and distinct jurisdictions, such being the jurisdiction of the States within their own territorial boundaries and the other being federal jurisdiction. Broadly speaking, state jurisdiction encompasses the legislative power to regulate, control and govern real and personal property, individuals and enterprises within the territorial boundaries of any given State.

In contrast, federal jurisdiction is extremely limited, with the same being exercised only in areas external to state legislative power and territory.

The legal effect of the United States Constitution was to declare each new State a separate and independent sovereign over which there was no other government of superior power or jurisdiction. This was clearly shown in **M'Ilvaine v. Coxe's Lessee, 8 U.S. (4 Cranch) 209, page 212, (1808), where the Court held:**

> "This opinion is predicted upon a principle which is believed to be undeniable, that the several states which composed this Union, so far at least as regarded their municipal regulations, became entitled, from the time when they declared themselves independent, to all the rights and powers of sovereign states, and that they did not derive them from concessions made by the British king. The treaty of peace contains recognition of their independence, not a grant of it. From hence it results, that the law of the sovereign states, and as such were obligatory upon the people of such state, from the time they were enacted"

It is a well established principle of law that all federal "legislation applies only within the territorial jurisdiction of the United States unless a contrary intent appears"; **see Caha v. United States, 152 U.S. 211, 215, 14 S.Ct. 513 (1894); American Banana Company v. United Fruit Company, 213 U.S. 347, 357, 29 S.Ct. 511 (1909); United States v. Bowman, 260 U.S. 94, 97, 98, 43 S.Ct. 39 (1922); Blackmer v. United States, 284 U.S. 421, 437, 52 S.Ct. 252 (1932); Foley Bros. v. Filardo, 336 U.S. 281, 285, 69 S.Ct. 575 (1949); United States v. Spelar, 338 U.S. 217, 222, 70 S.Ct. 10 (1949)**

The U.S. Department of Agriculture does not have the authority to regulate activities, which extend into the territorial limits of the states. This was perhaps stated best in **Caha v. United States,** supra, where the Supreme Court stated as follows:

> "The laws of Congress in respect to those matters do not extend into the territorial limits of the states, but have force only in the District of Columbia, and other places that are within the exclusive jurisdiction of the national government," 152 U.S., at 215.

The Defendant is not conducting interstate commerce and is only subject to the regulation by the state. The Supreme Court in **Carter v. Carter Coal Co., 298 U.S. 238, 56 S.Ct. 855 (1936)** states as follows:

> "One who produces or manufactures a commodity, subsequently sold and shipped by him in interstate commerce, whether such sale and shipment were originally intended or not, has engaged in two distinct and separate activities. So far as he produces or manufactures a commodity, his business is purely local. So far as he sells and ships, or contracts to sell and ship, the commodity to customers in another state, he engages in interstate commerce.
> In respect to the former, he is subject only to regulation by the state; in respect to the latter, to regulation only by the federal government," Id., at 303.

Therefore when the Defendant arrives in Arizona and proceeds to stay there permanently he is subject only to regulations by the State of Arizona. The U.S. Department of Agriculture does not have validity to act within the jurisdiction of the state, and create a criminal indictment, by invading the jurisdiction of the state. Congress simply lacks the constitutional power to penalize; **United States v. Jin Fuey Moy, 241 U.S. 394, 36 S.Ct. 658 (1916).**

The attempted prosecution of Defendant, further is null and void because the power to enforce activities concerning the licensing of animals and the attempted forced hiring of animal vets goes, beyond power of Congress under the commerce clause and is therefore null and void.

B

THIS COURT IS WITHOUT JURISDICTION BECAUSE, IF AN OFFENSE OCCURRED, IT IS ONLY COGNIZABLE IN THE DISTRICT COURT OF THE STATE OF NEVADA

Within the States of the American Union, the United States has power to acquire jurisdiction over such crimes as may be committed thereon via the operation of Article 1 ' 8, clause 17 of the U.S. Constitution. This clause requires that, for the United States to acquire jurisdiction within any State, the Government must first purchase the property and possess title to the same. Once this condition precedent is fulfilled, the State may, by a legislative act, cede to the United States jurisdiction over such property, and such cession may be made either before or after the United States acquires title to the property. However, failing the State's legislative cession of jurisdiction, the property in the States remains within the jurisdiction of the State. Therefore, any crimes committed on such property under which the jurisdiction has not been ceded to the United States must be prosecuted by the State and not the United States.

In **People v. Gerald, 40 Misc.2d 819, 243 N.Y.S.2d 1001 (1963)**, the "State was held to have jurisdiction of an assault at a U.S. post-office since the defendant did not meet his burden of showing presence of federal jurisdiction; and because a defendant failed to prove title and jurisdiction in the United States for an offense committed at a customs station, State jurisdiction was upheld in **People v. Fisher, 97 A.D.2d 651, 469 N.Y.S.2d 187 (A.D. 3 Dept., 1983)**." Therefore the U.S. District Court, has no jurisdiction over the case against Defendant, and, this case must be prosecuted in the State Court of Nevada, if a crime has been committed in State jurisdiction. See: **Puerto Rico v. Shell Company, 302 U.S. 253, 82 L.Ed. 235, 58 S.Ct. 167.**

C

THE REGULATION OF THE DEFENDANTS ANIMALS HAS NO NEXUS WITH INTERSTATE COMMERCE.

When the U.S. Department of Agriculture attempts to enforce, Statutes and/or Regulations, which provide animal protection via the registration of animals, and mandated criminal penalties for failure to conform, inside the boundaries of a sovereign state, this statutory scheme is unconstitutional and violates the 10th Amendment of the United States Constitution. Congress has no such express powers over animals and the act is unconstitutional, because this law, does not statutorily connect happy or unhappy animals with interstate commerce. Furthermore the rights of animals are not protected under the United States Constitution, and there is no nexus between commerce and travel or transportation of private property, which is not being sold or transported in commerce and interstate commerce.

This whole statutory scheme, based on regulating animals in travel, lacks nexus to the interstate commerce, especially when the interstate commerce ceases, and could therefore be described as null and void. Further the attempt by the US Department of Agriculture to permanently regulate via, licenses and fees, in a sovereign state, between parties involved in intrastate commerce, does not constitute interstate commerce, therefore the federal government has no authority.

Any federal statutory scheme is null and void in connection with permanent ongoing control within a state or involving intrastate commerce, and must be surrendered or stopped immediately. In **United States v. Steffens (The Trade-Mark Cases), 100 U.S. 82 (1879)** the Supreme Court states as follows:

"If it is not so limited, it is in excess of the power of Congress. If its main purpose be to establish a regulation applicable to all trade; to commerce at all points, especially if it is apparent that it is designed to govern the commerce wholly between citizens of the same State, it is obviously the exercise of a power not confided to Congress," 100 U.S., at 96, 97.

Therefore the attempted regulation of animals, which are not involved in interstate commerce, in a sovereign state, is not a power confided to Congress. And the Defendant should not be required to maintain obtain permits while not involved in interstate commerce. If Defendant does transport animals and/or property across the state line in interstate commerce the need for a permit would cease to exist, after the commerce ends, or when the activity changes. The licensing and other regulations must bear some nexus with the interstate commerce, and in this case they do not. In **United States vs. Alfonso Lopez, Jr., 2 F.3d 1342 (1993).** the Court ruled that even if a governmental conviction might be sustained if the government alleged offense had no nexus to commerce, the defendant would still be entitled to a reversal of conviction, since indictment did not allege any connection to interstate commerce. Therefore any conviction would be null and void.

D

THE PROPERTY OF THE DEFENDANT HAS BEEN TAKEN WITHOUT DUE PROCESS IN VIOLATION OF THE 5TH AND 14TH AMENDMENT OF THE UNITED STATES CONSTITUTION

When the US Department of Agriculture trespassed on the Defendants, property, without a search warrant, without statutory authority, and took Defendants property without due precess, and further attempted to prosecute Defendant, under Complaint #AWA Docket No. 93-20, in violation of the separation of powers, under the guise of interstate commerce, they violated the Defendants Due Process rights. In **Lynch et al. v. Household Finance Corp. 405 US 552 (1972)** the Supreme Court stated as follows:

"Such difficulties indicate that the dichotomy between personal liberties and property rights is a false one. Property does not have rights. People have rights. The right to enjoy property without unlawful deprivation, no less than the right to speak or the right to travel, is in truth a "personal" right. Whether the "property" in question be a welfare check, a home, or a saving account. In fact, a fundamental interdependence exists between the personal right to liberty and the personal right in property...That rights in property are basic civil rights has long been recognized. J. Locke. Of Civil Government 82-85 (1924); J. Adams, A Defence of the Constitutions of Government of the United States of America, in F. Coker. Democracy, Liberty, and Property 121-132 (1942); 1 W. Blackstone, Commentaries *138-140. Congress recognized these rights in 1871 when it enacted the predecessor of ' '1983 and 1343 (3). We do no more than reaffirm the judgement of Congress today."

In **Lynch et al. v. Household Finance Corp.,** Supra, the District Court found that access to funds held in a savings account was not different from simple ownership of money. Thus garnishment of that account did not infringe personal rights.

Mrs. Lynch, however, alleged that because of the garnishment she was unable to pay her rent on time and encountered difficulty maintaining her family on a minimally adequate diet. These allegations were found to be true, and the court found Mrs. Lynch's personal property had been profoundly effected by garnishment of her savings.

In the Defendants case, Complaint #AWA Docket No. 93-20, clearly is a detailed assault of the Defendants rights over a three or four year period. It is plain that the Defendant, has had difficulty in making a living and/or maintaining the support needed to provide for his family, thus his very livelihood has been taken.

The Plaintiffs agents have repeatedly attacked the Defendant, and re-issued the permits overlooking the very accusations in an ongoing game. 18 USC '241 Conspiracy against right of citizens states as follows:

"If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured - They shall be fined not more than $10,000 or imprisoned not more than ten years, or both; and if death results, they shall be subject to imprisonment for any term of years or life."

It is apparent that the Plaintiffs have taken property without due process in violation of the federal law, and have destroyed the ability of the Defendant, to support his family and have further violated the Defendants' Civil Rights.

When the Plaintiff created total federal jurisdiction in a sovereign state, under the guise of interstate commerce they violated the separation of powers as outlined in the 10th Amendment of the United States Constitution, and exceeded their authority, which violated the Defendants Fourth, Fifth and Fourteenth and Tenth Amendment Constitutional guaranties of a Republican form of Government.

The first ten amendments were adopted to secure common-law rights of the people against invasion by federal government. U.S.C.A. Const. Amends. 1-10, while the Fourth and Fifth Amendments limit only federal action, not state or individual action. U.S.C.A. Const. Amends. 4,5. Whenever a federal officer or agent exceeds his authority, he no longer represents the government and loses protection of sovereign immunity from suit. "Action against federal officers and local police officer for invasion of plaintiffs' constitutional rights by imprisonment, search of premises, and seizure of property did not "arise under constitution or law of the United States" and federal court had no jurisdiction. Federal court of equity will intervene to keep agents of federal government within bounds of their lawful powers, but this does not lend validity to remedy at law against officers exceeding their powers. **Bell vs. Hood 71 F. Supp. 813**

All the Plaintiffs agents in this case have violated the Defendants, Fourth and Fifth Amendment rights, and the Federal Court has no jurisdiction to hear these arguments. Therefore this case must be prosecuted in State District Court, and this case in not cognizable in Federal Court.

III
SUMMARY

1. The legal effect of the Declaration of Independence was to make each new State a separate and independent sovereign over which there was no other government of superior power or jurisdiction. This was clearly shown in **M'Ilvaine v. Coxe's Lessee,** supra.
2. There is no United States legislative, municipal or eminent domain jurisdiction unless exclusive legislative jurisdiction is ceded specifically and separately. **Orme v Atlas Gas & Oil Co.,** supra.
3. "(The Police power) belonged to the States when the Federal Constitution was adopted extends to the entire property and business within their jurisdiction." **N.W. Fertilizing Co. vs. Hyde Park Co, supra.**

IV
CONCLUSION

Therefore Interstate Commerce does not encompass all aspects of transportation and must be defined, and addressed as to when it starts and when it stops.

And because the Defendant is not involved in interstate commerce, and the charges are null and void, are Arbitrary and Capricious and should be dismissed.

Respectfully Submitted:

OTTO BEROSINI
IN PROPER PERSON

BRIEF #3

THE FEDERAL GOVERNMENT CANNOT SEIZE OR LIEN PROPERTY INSIDE A SOVEREIGN STATE

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA	)	
Plaintiff,	)	
	)	
vs.	)	**Case No. CR-S-94-101-PMP(RLH)**
	)	
Michael Louis Hutton	)	
Defendant.	)	
_____	)	

MOTION TO DISMISS

COMES NOW, the Defendant, Michael Louis Hutton, and moves this Court for an Order dismissing the Complaint, for violations 18 U.S.C. ' 111 - Assault Upon a Federal Officer; 18 U.S.C. ' 924 (c) - Use of a Deadly Weapon in the Commission of a Crime of Violence.

This Motion is made and based upon the grounds that the Criminal Indictment, does not state facts sufficient to constitute an offense against the United States of America; that the United States District Court is without jurisdiction because the offense, if any, is cognizable only in the District Court for the State of Nevada; because the Internal Revenue Service, and/or its agents, were not operating within the scope of their legal authority and had no valid legal court order, or judgment; and the Plaintiffs agents further trespassed in violation of state and federal law; and attempted to take private property without due process, in violation of the Fourth, Fifth, and Seventh Amendment and Article Four of the United States Constitution; therefore the Plaintiffs agents were in fact exceeding their official capacity and lost their standing as federal officers; therefore the Defendant did not assault federal officers acting within their lawful authority; and the Plaintiffs agents wrongfully trespassed, arrested, imprisoned, and incarcerated the Defendant, in a scheme which violated the 10th Amendment of the United States constitution, because the federal government has exceeded their authority relative to the states.

This motion is further based on the fact that the officers FRANK NOLDEN and LUDDIE TALLEY were not acting within their lawful authority as agents of the United States Government. They did not have proper-delegated authority through the Executive branch of the United States Government, therefore they were acting outside their authority, and the Defendant did not assault federal officers acting in their official capacity. The Defendant is not guilty of violating 18 U.S.C. ' 111.

This motion is further based on the fact that the Defendant was not involved in interstate commerce as described in 18 USC 924 (b), and had in fact not conducted any felony activities while being involved with interstate commerce, therefore the Defendant cannot be charged with 18 U.S.C. 924 (c).

Further this motion is based on the fact that Plaintiffs, agents, failed to properly identify themselves, when they flashed a badge without allowing the Defendant time to read the print.

Thus Defendant was not given the opportunity to verify that Plaintiffs, agents were in fact federal officers, and the Defendant was exercising his Constitutional right to protect private property, a right which is protected and authorized by the United State Constitution and the Constitution for the Sovereign State of Nevada. In summary the Defendant files this motion for dismissal, based on the fact that the Defendant is not guilty of assaulting federal officers, the Defendant was protecting private property.

This Motion is further made and based upon the records herein, the Points and Authorities hereto, the affidavits herewith, and such argument as may be entertained by the Court at the time of the hearing of the Motion.

Michael Louis Hutton

POINTS AND AUTHORITIES
I
STATEMENT OF CASE

The Defendant is the owner of certain truck, which was used for personal transportation. The Defendant is not involved in Interstate Commerce. The Defendants, property further does not effect such commerce or the free flow thereof, or create any burdens upon such commerce. On March 31, 1994, Frank NOLDEN (also known as Frank Stine), and LUDDIE TALLEY arrived at 1694 Sherwin Lane, Las Vegas, Nevada, at about 11:20 a.m., the Defendant, answered a knock on the door.

Two men in white shirts and ties and a third man who appeared to be the driver of a tow-truck, which was parked on the said driveway behind the truck belonging to Defendant.

One of the men asked Defendant, to pay money that was supposedly owed to the United States Government.

The Defendant told the men he did not owe said money, at this point the men produced their identification for just an instant, but not long enough to allow the Defendant to read any of the information.

The Defendant then informed said agents that they were trespassing and pointed to the trespass signs which were plainly posted, and then asked them to leave. They would not leave, and he then read the agents, the following from Nevada Revised Statutes (NRS) 207.200 concerning trespass.

The agents, nodded their heads in affirmation and motioned the tow truck driver, with his finger, to proceed with the towing of said truck.
The Defendant then asked the agents to leave again and leave the truck alone, and they continued to remove Defendants truck.

Defendant, moved away from the door to the left and returned with a rifle in hand, and escorted agents off the property, and proceeded to call the non-emergency number at Metropolitan Police to notify the Clark county Sheriff and to report the trespass incident and that so called "IRS" agents tried to steal Defendants property.

II
ARGUMENT
A.
THE PLAINTIFF'S AGENTS EXCEEDED THEIR AUTHORITY BY TRESPASSING UPON THE DEFENDANTS PROPERTY, AND ATTEMPTING TO TAKE PRIVATE PROPERTY WITHOUT DUE PROCESS, IN VIOLATION OF ARTICLE FOUR, AMENDMENT FIVE, AND SEVEN, OF THE UNITED STATES CONSTITUTION

The Plaintiffs and/or its agents, were not operating under statutory authority when they trespassed, and attempted to take private property. At all times the Plaintiffs, and their agents, have failed to prove or show that they had a court order allowing private property to be seized, and Defendant had no prior notice of the intent to seize property, and no opportunity to be heard. The right to be free from unreasonable searches, and seizures is a common law right. **Entich v. Carrington, 1765, 19 How.St.Tr. 1029; Boyd v. United States, 1886, 116 U.S. 616, 624-632, 6 S.Ct 524, 29 L.Ed. 746.** The common law right of due process is found in the Seventh Amendment of the United States Constitution, which provides as follows:

> "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trail by jury **shall be preserved**, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law."

When the Plaintiff's agents, take property without due process, they have canceled the right of trial by jury, as was guaranteed in the Seventh Amendment of the United States Constitution. The Plaintiffs agents therefore were acting in violation of the Seventh Amendment of the United States Constitution, when they attempted to seize Defendant property without due process. The right to jury trial and/or due process exists in actions by United States. **Damsky v. Zavatt, C.A.N.Y. 1961, 289 F.2d 46.** shall be preserved.

The Plaintiffs agents, violated the Defendants common law right to a jury trail as guaranteed in the Seventh Amendment of the United States Constitution. The phrase "common law" includes all suits in which legal rights are determined. Burns Bros. v Cook Coal Co., C.C.A.N. J. 1930, 42 F.2d 109.

In cases of seizures under revenue laws, Federal District Court sits as court of common law, and trial must be by jury. The Sarah (1823) 21 US 391, 5 L Ed 644; Confiscation Cases (1869) 75 US 507, 19 L Ed 481; Morris's Cotton (1869) 75 US 507, 19 L Ed 481; Cans v United States (1912) 226 US 172, 57 L Ed 174, 33 S Ct 50; Pengra v Munz (1887, CC Or) 29 F 830; United States v Yamoto (1931, CA9 Hawaii) 50 F2d 599; Carithers v District of Columbia (1974, DIST Col App) 326 A2d 798; Damsky v Zavatt (1961, CA2) 289 F2d 46. Therefore the Defendant is entitled to protection under Amendment Seven of the United States Constitution.

When the Plaintiffs, agents, invaded and/or trespassed on the Defendants private property without jurisdiction and/or due process, they denied the Defendant a republican form of Government as is guaranteed in Article Four, Section Four of the United States Constitution, which states as follows:

> "The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against **Invasion**;.."

The actions of the Plaintiffs agents were an invasion, which deprived the Defendant of liberty and property without due process of law.

The invasion of Defendants rights also violated of Fifth Amendment due process guarantee, by depriving the Defendant of liberty and property. The Fifth Amendment of the United States Constitution, provides as follows:

> "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, **nor be deprived of life, liberty, or property, without due process of law**; nor shall private property be taken for public use without just compensation." Emphases provided.

The Plaintiffs agents violated the Defendant rights to be secure in their persons against seizures. The Plaintiffs agents, seized private property without due process and further violated the Fourth Amendment of the United States Constitution, which states as follows:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and **seizures**, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing" Emphases provided.

It is well established that personal property can not be seized without due process, and the warrantless entry and/or invasion onto the defendant's property clearly violated the Fourth Amendment of the United States Constitution, because the Plaintiff agents, did not have a lawful right to enter upon defendant's property to initiate a seizure or trespass (***posted with no trespass signs***) or to slip notices under the door. The Plaintiffs agents, further did not have a lawful right to trespass on the defendant's property to arrest the defendant, and the Plaintiffs agents, were acting beyond their scope without proper authority. This activity was described as tyranny in **United States v. Lee, 106 U.S. 196, 1 S.Ct. 240 (1882),** where the United States claimed ownership via a tax sale some years earlier, the court stated as follows:

> "No man in this country is so high that he is above the law. No officer of the law may set that law at defiance with impunity. All the officers of the government, from the highest to the lowest, are creatures of the law and **are bound to obey it**. It is the only supreme power in our system of government, and every man who by accepting office participates in its functions is only the more strongly bound to submit to that supremacy, and to **observe the limitations** which it imposes upon the exercise of the authority which it gives," 106 U.S., at 220. Shall it be said... that the courts cannot give remedy when the citizen has been deprived of his property by force, his estate seized and converted to the use of the government without any lawful authority, without any process of law, and without any compensation, because the president has ordered it and is officers are in possession?
>
> If such be the law of this country, it sanctions a **tyranny** which has no existence in the monarchies of Europe, nor in any other government which has a just claim to well-regulated liberty and the protection of personal rights," 106 U.S., at 220, 221." Emphases provided.

In **Lynch v. Household Finance Corp. 405 U.S. 538 (1972)** on page 544 the Supreme Court provides as follows:

"Equality in the enjoyment of property rights was regarded by the framers of that Amendment as an essential pre-condition to the realization of other basic civil rights and liberties which the Amendment was intended to guarantee.; Shelley v. Kraemer, 334 U.S. 1, 10. See also. Buchanan v. Warley, 245 U.S. 60. 74-79; H. Flack. The Adoption of the Fourteenth Amendment 75-78. 81 90-97 (1908)" Emphases provided.

Supreme Court further stated on page 545 as follows:

"And the rights that Congress sought to protect in the Act of 1871 were described by the chairman of the House Select Committee that drafted the legislation as "**the enjoyment of life and liberty**, with the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety." **Cong. Globe. 42d Cong., 1st Sess., App69 (1871)** (Rep. Shellabarger, quoting from **Corfield v. Coryell, 6 F. Cas. 546, 551-552** (No. 3230 (CCED Pa.))." Emphases provided.

The right to liberty and the personal right in property are both basic civil rights, which are protected by the due process clauses of the United States Constitution. The Supreme Court further stated in **Lynch v. Household Finance Corp** supra, on page 552 as follows:

"Such difficulties indicate that the dichotomy between personal liberties and property rights is a false one. **The right to enjoy property without unlawful deprivation, no less than the right to speak or the right to travel,** is in truth a "personal" right, whether the "property" in question be a welfare check, a home, or a savings account. In fact, a fundamental interdependence exists between the personal right to **liberty and the personal right in property.** Neither could have meaning without the other. That rights in property are basic civil rights has long been recognized. J. Locke, Of Civil Government **82-85 (1924);** J. Adams, A Defense of the Constitutions of Government of the United States of America, in F. Coker, Democracy, Liberty, and Property 121-132 (1942); 1 W. Blackstone, Commentaries *138-140. Congress recognized these rights in 1871 when it enacted the predecessor of " 1983 and 1343 (3). We do no more than reaffirm the judgment of Congress today." Emphases provided.

Amendment Five of the United States Constitution specifically protected Defendant due process rights. The Supreme Court address the fact that the Fifth and Fourteenth Amendments of the United States Constitution, was to Guarantee the right of due process, and this right is a civil right which was to be guaranteed. If the right to own personal property is a basic civil right than the taking of private property without due process is further a civil right violations. One of the settled principles of our Constitution has been that these Amendments protect only against invasion of civil liberties by the Government whose conduct they alone limit." **Cf. Burdeau v. McDowell, 1921, 256 U.S. 465, 41 S.Ct. 574, 65 L.Ed. 1048, 13 A.L.R. 1159; Weeks v. United States, 1914, 232 U.S. 383, 34 S.Ct. 341, 58 L.Ed. 652, L.R.A.1915B, 834, Ann.Cas. 1915C, 1177; Hall v. United States, 9 Cir., 1930, 41, F.2d 54; Brown v. United States, 9 Cir., 1926, 12 F.2d 926.**

Therefore the Plaintiffs agents, in exceeding their authority, violated the protected and guaranteed civil rights of Defendants, the Republican form of government, the right to due process, the right to liberty and property without unlawful deprivation, and failed to preserve the right to trial by jury as is guaranteed in the Seventh Amendment of the United States Constitution.

The Federal Government and/or its agents must vacate its wrongful activity as perpetrated against the rights and liberties of the Defendant.

B

THE DEFENDANT WAS NOT INVOLVED IN INTERSTATE COMMERCE AND IS THEREFORE NOT GUILTY OF 18 U.S.C. ' 924 (c)

The Plaintiffs agents were not acting with authority and had no jurisdiction, therefore there was no federal crime. When Congress passed 18 USCS ' 924 (b), which address 18 USCS ' 924 (c) it provided for firearms violations, which involved interstate commerce. Since there was no federal jurisdiction and no interstate commerce, Defendant is not guilty of violating, 18 USCS ' 924 (b) which provides as follows:

"...Whoever, with intent to commit therewith an offense punishable by imprisonment for a term exceeding one year, or with knowledge or reasonable cause to believe that an offense punishable by imprisonment for a term exceeding one year is to be committed therewith, ships, transports, or receives a firearm or any ammunition in **interstate or foreign commerce** shall be fined not more than $10,000, or imprisoned not more than ten years, or both." Emphases provided

The Plaintiffs agents, were not operating under the authority of the federal government and Defendant was not involved in Interstate Commerce, and therefore this statute does not apply to Defendant.

Plaintiffs and/or Plaintiffs agents, have attempted to use 18 USCS ' 924 (b) and 18 USCS ' 924 (c), beyond the power as authorized under the commerce clause of the United States Constitution. Plaintiff and/or its agents have not established or provided any connection or nexus, between interstate commerce, and the actions of Defendant. Therefore the charge against the Defendant, alleging violations of 18 USCS ' 924 (c) has no nexus with commerce, as is null and void. In US v. Lopez, 2 F3rd 1342 (5TH Cir., 1993), Mr. Lopez was convicted of violating section 922(q), a gun violation on school property. The court reversed Mr. Lopez's conviction, on the grounds that the federal governments regulation of firearms under section 922(q) was unconstitutional, because it went beyond the power of Congress to legislate or control. The court stated as follows:

"After pleading not guilty, Lopez moved to dismiss the indictment on the ground that section 922(q) "is unconstitutional, as it is beyond the power of Congress to legislate control over our public schools." His brief in support of the motion further alleged that section 922(q) "does not appear to have been enacted in furtherance of any of those enumerated powers" of the federal government. The district court denied the motion, concluding that section 922(q) "is a constitutional exercise of Congress' well-defined power to regulate activities in an[d] affecting commerce, and the 'business' of elementary, middle and high schools ... affects interstate commerce." Lopez thereafter waived his right to a jury trial and was tried to the bench upon stipulated evidence. The court found Lopez guilty and sentenced him to six months' imprisonment to be followed by two years' supervised release. Lopez now appeals his conviction and sentence.

Lopez's sole objection to his conviction is his constitutional challenge to section 922(q); he does not otherwise contest his guilt. **We now reverse**." Emphasis provided.

In the instant case, the federal government must prove a connection and/or nexus to commerce, by proving that the Defendant, used a Deadly Weapon in the Commission of a Crime of Violence, as charged in 18 USCS ' 924 (c) while involved in interstate commerce. If the commerce cannot be proved the Plaintiff and/or its agents have no constitutional authority to charge plaintiff with violations of 18 USCS ' 924 (c).

Congress cannot regulate or control firearms after commerce ends. In **US v. F.J. Vollmer & Co.,_Inc., 1 F3rd 1151 (7th Cir., 1993)** the court addresses the jurisdiction of the federal government, concerning guns in commerce. The court states on page 1516 as follows:

"...Although the defendants' argument seems persuasive on its face, we agree with other courts that have considered the issue that BATF's authority **extends to the first domestic sale** of a firearm imported for government use." Emphases provided.

The Defendant was simply protecting private property against unauthorized agents who were attempting to steal his truck, and was not involved in interstate commerce. The power of the federal government is found in the commerce clause, and the activities of the Defendant did not involve interstate commerce, therefore the actions of the Plaintiffs agents were an intrusion upon an area of state authority, and the activity of the Plaintiffs violated the Tenth Amendment, which guarantees the separation of powers.

The U.S. Government, does not have validity to act within the jurisdiction of the state, and create a criminal indictment, while invading the jurisdiction of a sovereign state. Congress simply lacks the constitutional power to penalize. **United States v. Jin Fuey Moy, 241 U.S. 394, 36 S.Ct. 658 (1916).**

It is plain that Congress was not allowed jurisdiction in the State of Nevada except were the United States Constitution allowed. The Plaintiffs agents, were not acting in an official capacity or commerce. Plaintiffs agents were violating, the United States Constitution, by attempting to legislate outside of their ten square miles area. Article One Section 8 of the United States Constitution provides as follows:

"The Congress shall have the power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;...To exercise exclusive Legislation in all Cases whatsoever, over such District (**not exceeding ten Miles square**)..." Emphases provided.

The Supreme Court has ruled that commerce cannot extent beyond certain limitations because if the commerce clause were construed to reach all enterprises and transactions, the federal authority would embrace practically all the activities of the people, and the authority of the states. Once the act of commerce is terminated the federal government loses jurisdiction. In the **A.L.A. Schecter Poultry_Corp. v. United States, 295 U.S. 495, 55 S.Ct. 837 (1935)** the US Supreme Court addressed the starting and stopping point of commerce. The Supreme Court stated as follows:

"NIRA permitted "codes" to be promulgated by industry groups, which "codes" had effect of law. Schecter officials indicted for violating "code" for acts occurring inside NYC. Court held NIRA unconstitutional on delegation of powers on grounds that the acts in question did not **involve interstate commerce**. Congress has no power over local activities once the act of commerce is terminated. **If the commerce clause were construed to reach all enterprises and transactions which could be said to have an indirect effect upon interstate commerce, the federal authority would embrace practically all the activities of the people, and the authority of the state over its domestic concerns would exist only by sufferance of the federal government.** Indeed, on such a theory, even the development of the state's commercial facilities would be subject to federal control," Id., at 546." Emphases provided.

If the Defendant, was not involved in interstate commerce, and the federal officers acted without statutory authority, in representing the Federal Government, the Defendant would only be subject to the jurisdiction of the state District Court of Nevada.

In **_People v. Gerald, 40 Misc.2d 819, 243 N.Y.S.2d 1001 (1963),** the "State was held to have jurisdiction of an assault at a U.S. post-office since the defendant did not meet his burden of showing presence of federal jurisdiction; and because a defendant failed to prove title and jurisdiction in the United States for an offense committed at a customs station, State jurisdiction was upheld in **People v. Fisher, 97 A.D.2d 651, 469 N.Y.S.2d 187 (A.D. 3 Dept., 1983)."**

Therefore the U.S. District Court, has no jurisdiction over the case against Defendant, and, this case must be prosecuted in the State Court of Nevada, if a crime has been committed in State jurisdiction. See: **Puerto Rico v. Shell Company, 302 U.S. 253, 82 L.Ed. 235, 58 S.Ct. 167.**

C
WHEN A FEDERAL OFFICER EXCEEDS HIS AUTHORITY HE NO LONGER REPRESENTS THE FEDERAL GOVERNMENT AND HAS NO AUTHORITY.

The Fourth Amendment did not create a new right, but merely gave a pre-existing common-law right constitutional protection from invasion by the Federal Government. The Fourth and Fifth Amendments limit federal action. **Twining v. New Jersey, 1908, 211 U.S. 78, 29 S.Ct. 14, 53 L.Ed. 97; Spies v. Illinois, 1887, 123 U.S. 131, 8 S.Ct. 22, 31 L.Ed. 80; Barron v. Baltimore, 1833, 7 Pet. 243, 32 U.S. 243, 8 L.Ed. 672.**

The Fourth and Fifth Amendment of the United States Constitution limit Federal Action, and when a Federal Officer goes beyond or exceeds his Constitutional authority, he does not represent the Federal Government, and further loses the protection of sovereign immunity from suit. **Bell vs. Hood 71 F. Supp. 813; Land v. Dollar, 1947, 330 U.S._, 67 S.Ct 1009; Ickes v. Fox, 1937, 300 U.S. 82, 97, 57 S.Ct. 412, 81 L.Ed. 525; Phila, Co. v. Stimson, 1912, 223 U.S. 605, 619-620, 32 S.Ct. 340, 56 L.Ed. 570; Tracy v. Swartwout, 1936, 19 Pet. 80, 35 U.S. 80, 95, 9 L.Ed. 354.**

Therefore the Plaintiffs agents, were in fact not representing the United States Government and had no sovereign immunity, therefore the Defendant is not guilty of assaulting a federal officer, because plaintiffs agents were not federal officers acting within the their scope of authority, and the Defendant is not guilty of violating, 18 U.S.C. ' 111 - Assault Upon a Federal Officer and/or 18 U.S.C. ' 924 (c).
Congress and the United States Constitution never granted the Plaintiffs agents the right to seize property without due process. In **Federal Trade Commission v. Raladam Co., 283 U.S. 643, 51 S.Ct. 587 (1931),** the Supreme Court addressed the fact that official powers cannot be extended beyond the official grant of power, the court stated as follows:

"Official powers cannot be extended beyond the terms and necessary implications of the grant. If broader powers be desirable, **they must be conferred by Congress**. They cannot be merely assumed by administrative officers; **nor can they be created** by the courts in the proper exercise of their judicial functions," 283 U.S., at 649.

If the Federal Officers were not in fact acting within their scope of lawful authority as federal officers and did in fact violate the civil rights of the Defendant they are guilty of violating 18 USCS ' 241 which provides as follows:
"Conspiracy against rights of citizens.
If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of **any right or privilege secured to him by the constitution or laws of the United States,** or because of his having so exercised the same; or
-
They shall be fined not more than $10,000 or **imprisoned** not more than ten years, or both; and if death results, they shall be subject to imprisonment for any term of years or for life."

The Plaintiffs actions further violated 42 U.S.C '1983 and its jurisdictional counterpart, 28 U.S.C. '1343 (3). Therefore when Plaintiffs agents, exceeded the authority as authorized by the United States Constitution, in violation of the Tenth Amendment of the United States Constitution, they were operating without statutory

authority, and were not federal officers. Therefore the Defendant is not guilty of assaulting federal officers, acting within their official capacities.

The Defendant was only exercising a protected constitutional right, to protect private property. Therefore the Defendant did not violate 18 U.S.C. ' 111 or 18 U.S.C. ' 924 (c), as charged.

D

THE TAKINGS OF PRIVATE PROPERTY WITHOUT DUE PROCESS DOES NOT HAVE NEXUS, WITH ANY ACTIVITY AUTHORIZED BY THE UNITED STATES CONSTITUTION

When the U.S. Government attempts to seize, private property, without due process, and mandate criminal penalties for protecting those rights, the U.S. Government has created a scheme to seize private property, inside the boundaries of a sovereign state, this scheme is unconstitutional and violates the 10th Amendment of the United States Constitution because Congress has no such express powers, and cannot seize private property without due process. This scheme, based on the collection of taxes by forced entry, threats of violence and intimidation, lacks nexus to the powers authorized by the United States Constitution, and the jurisdiction of the Federal Government in these collection activities is illegal, unconstitutional, arbitrary and capricious. A federal scheme that attempts to create permanent ongoing jurisdiction in a state, beyond that authorized by the U.S. Constitution, must be surrendered or stopped immediately.

The forced collection and or taking of property without due process has no nexus with constitutionally approved activities, and violates the Tenth Amendment of the United States Constitution and is null and void. In **New York v. United States 120 L Ed 2d 120 (1992)** on page 154 the court address Congress exceeding its authority relative to the States the court stated as follows:

"Where Congress exceeds its authority relative to the States, therefore, the departure from the constitutional plan cannot be ratified by the "consent" of state officials. An analogy to the separation of powers among the Branches of the Federal Government clarifies this point. The Constitution's division of power among the three Branches **is violated where one Branch invades the territory of another, whether or not the encroached-upon Branch approves the encroachment.** In Buckley v. Valeo, 424 US 1, 118-137, 46 L Ed 2d 659, 96 S Ct 612 (1976), for instance, the Court held that the Congress had infringed the President's appointment power, despite the fact that the President himself had manifested his consent to the statute that caused the infringement by signing it into law. See National League of Cities v Usery, 426 US, at 842, n 12, 49 L Ed 2d 245, 96 S Ct 2465.... Congress cannot be expanded by the "consent" of the governmental unit whose domain is thereby narrowed, whether that unit is the Executive Branch or the States." Emphases Provided.

The United States Government has invaded the territory of the Sovereign State of Nevada, and this activity is illegal whether or not the State of Nevada approved the encroachment. In **New York v. United States 120 L Ed 2d 120 (1992) on page 137** the Supreme Court further stated:

"...If a power is delegated to Congress in the Constitution, the Tenth Amendment expressly disclaims any reservation of that power to the States; if a power is an attribute of state sovereignty reserved by the Tenth Amendment, it is necessarily a power the **Constitution has not conferred on Congress.** See **United States v Oregon, 366 US 643, 649, 6 L Ed 552, 66 S Ct 438 (1946); Oklahoma ex rel. Phillips v Guy F. Atkinson Co., 313 US 508, 534, 85 L Ed 1487, 61 S Ct 1050 (1941).**

It is in this sense that the Tenth Amendment "states but a truism **that all is retained which has not been surrendered**." **United States v Darby, 312 US 100, 124, 85 L Ed 609, 61 S Ct 451, 132 ALR 1430 (1941).** As justice Story put it, " this amendment is a mere affirmation of what, upon any just reasoning, is a necessary rule of interpreting the constitution. Being an instrument of limited and enumerated powers, it follows irresistible, that what is not conferred, is withheld, and belongs to the state authorities.... Congress exercises its conferred powers subject to the **limitations** contained in the Constitution." Emphases Provided.

When the government goes beyond the powers enumerated in the United States Constitution and takes property without due process, they have gone beyond the limitations contained in the United States Constitution in violation of the Tenth Amendment. Therefore the Plaintiffs were acting outside of their statutory authority, without proper nexus with an approved constitutional activity, and these activities are arbitrary, capricious, null, void and inoperable.

E
THIS COURT IS WITHOUT JURISDICTION BECAUSE, IF AN OFFENSE OCCURRED, IT IS ONLY COGNIZABLE IN THE DISTRICT COURT OF THE STATE OF NEVADA

In the United States, there are two separate and distinct jurisdictions, such being the jurisdiction of the States within their own territorial boundaries and the other being federal jurisdiction. Broadly speaking, state jurisdiction encompasses the legislative power to regulate, control and govern real and personal property, individuals and enterprises within the territorial boundaries of any given State. In contrast, federal jurisdiction is extremely limited, with the same being exercised only in areas external to state legislative power and territory. The legal effect of the Declaration of Independence was to make each new State a separate and independent sovereign over which there was no other government of superior power or jurisdiction. This was clearly shown in **M'Ilvaine v. Coxe's Lessee, 8 U.S. (4 Cranch) 209 (1808),** where it was held:

"This opinion is predicated upon a principle which is believed to be undeniable, that the several states which composed this Union, so far at least as regarded their municipal regulations, became entitled, from the time when they declared themselves independent, to all the rights and powers of sovereign states, and that they did not derive them from concessions made by the British king. The treaty of peace contains a recognition of their independence, not a grant of it. From hence it results, that the laws of the several state governments were the laws of sovereign states, and as such were obligatory upon the people of such state, from the time they were enacted," 4 Cranch, at 212."

It is a well established principle of law that all federal "legislation applies only within the territorial jurisdiction of the United States unless a contrary intent appears"; **see Caha v. United States, 152 U.S. 211, 215, 14 S.Ct. 513 (1894); American Banana Company v. United Fruit Company, 213 U.S. 347, 357, 29 S.Ct. 511 (1909); United States v. Bowman, 260 U.S. 94, 97, 98, 43 S.Ct. 39 (1922); Blackmer v. United States, 284 U.S. 421, 437, 52 S.Ct. 252 (1932); Foley Bros. v. Filardo, 336 U.S. 281, 285, 69 S.Ct. 575 (1949); United States v. Spelar, 338 U.S. 217, 222, 70 S.Ct. 10 (1949)**

The U.S. Government does not have the authority to regulate activities which extend into the territorial limits of the states. This was perhaps stated best in **Caha v. United States**, supra, where the Supreme Court stated as follows:

"The laws of Congress in respect to those matters do **not extend** into the territorial limits of the states, but have force only in the District of Columbia, and other places that are within the exclusive jurisdiction of the national government," 152 U.S., at 215." Emphases provided.

Therefore the legal right to take private property under court order could have only been accomplished by State District Court.

F

THE FEDERAL OFFICERS DO NOT HAVE STATUTORY AUTHORITY TO ACT AS COLLECTORS FOR THE HEAD OF THE DEPARTMENT, US TREASURY AND/OR CONGRESS

The Plaintiff agents did not have statutory authority from Congress to be appointed by the director of IRS, and the director of the IRS did not have Statutory Authority from the Congress to be appointed by the U.S. Treasury. Therefore the Plaintiffs agents were acting without Statutory Authority, and are exceeding their authority. In **United States v. Smith, 124 U.S. 525, 533, 8 S.Ct. 595 (1888)** the Supreme Court address the issue, concerning the definition of federal officer:

"The constitution ... declares that 'the congress may by law vest the appointment of such inferior officers as they think proper in the president alone, in the courts of law, or in the heads of departments.' **There must be, therefore, a law authorizing the head of a department to appoint_clerks** of the collector before his approbation of their appointment can be required. No such law is in existence. Our conclusion, therefore, is that ... clerks of the collector .... are not appointed by the head of any department within the meaning of the constitutional provision." Emphases provided.

The U.S. Congress failed to grant Plaintiffs, proper statuary delegated authority authorizing the collection and remittance of taxes, and the Plaintiffs agents did not have statutory authority or jurisdiction to seize property or collect moneys inside a sovereign state. Therefore the Plaintiffs agents did not have proper-delegated authority from Congress to act for the United States Government, and again were not federal officers.

III

SUMMARY

1. The United States Government took property without due process, and failed to preserve the right of "Common Law Jury Trial" as is guaranteed in the Seventh Amendment of the United States Constitution.
2. When federal officers, exceed their statutory authority and act beyond, the powers granted by the Congress or the United States Constitution, the federal officers, are no longer federal officers.
3. When a Federal Officer loses his federal authority the activity loses federal standing and/or jurisdiction and becomes a matter cognizable only in State District Court.

4. The Plaintiffs agents, wrongfully imprisoned Defendant, without proper jurisdiction, in violation of the Defendants, rights as protected by Article Four and Five and the Fourth, Fifth and Seventh Amendment of the United States Constitution, causing the Defendant to suffer of violation of his civil rights.

IV

CONCLUSION

The Defendant is not guilty of the violating any activity which falls under the jurisdiction of the United States Government, and was only protecting his personal property as authorized by the United States Constitution. The right to protect personal property is a protected right as found in the United States Constitution, and charges against the Defendant are null and void, are Arbitrary and Capricious and should be dismissed.

Respectfully Submitted:
Michael Louis Hutton

Brief 4

JUDGES, DISTRICT ATTORNEYS AND SHERIFFS WHO FAIL TO ACQUIRE A BOND AS REQUIRED BY NEVADA STATE LAW HAVE NO LEGAL STATUTORY AUTHORITY TO PROSECUTE OR ARREST)

ARGUMENT A

THE ACTIONS OF COUNTY OFFICIALS WHICH HAVE RESULTED IN THIS CASE AGAINST THE PLAINTIFFS ARE NULL AND VOID BECAUSE THE OFFICIALS ARE WITHOUT AUTHORITY, HAVING FAILED TO COMPLY WITH EXPLICIT, MANDATORY STATUTORY PREREQUISITES TO OFFICE.

JAMES BIXLER of the Justice Court did not file a bond as required by NRS 4.030 which provides as follows:

"4.030 Oath and bond of justice of the peace. Each justice of the peace elected or appointed in this state shall, before entering upon the duties of his office:
-
2. Execute a bond to the State of Nevada, to be approved by the board of county commissioners, in the penal sum of not less than $1,000 nor more than $5,000, as may be designated by the board of county commissioners. The bond shall be conditioned for the faithful performance of the duties of his office, and shall be filed in the office of the county clerk..."

"258.020 Oath and Bond. Each constable elected or appointed in this state shall, before entering upon the duties of his office:
1. Take the oath prescribed by law.
2. Execute a bond to the State of Nevada, to be approved by the board of county commissioners, in the penal sum of not less than $1,000 nor more than $3,000, as may be designated by the board of county commissioners, which bond shall be conditioned for the faithful performance of the duties of his office, and shall be filed in the county clerk's office."

"248.020 Election; term of office. Before entering upon the discharge of his duties, each Sheriffs shall:
1. Take the oath of office.
2. Give a bond to his county in the penal sum of not less than $10,000 nor more than $50,000, with two or more sureties, residing in his county, or by any qualified surety company, to be approved by the board of county commissioners, conditioned for the faithful performance of the duties of his office, unless a blanket fidelity bond is furnished by the county. The bond must be filed and recorded in the office of the county clerk of his county."
"250.030 bond.

1. Each county assessor, before entering upon the duties of his office, shall execute to the people of the State of Nevada, a bond in the penal sum of $10,000, with two or more sureties, to be approved by the board of county commissioners, and filed in the office of the county clerk, conditioned for the faithful performance of all the duties of his office required by law, unless a blanket fidelity bond is furnished by the county."

Attorney General's opinion 195 (12-2-1960) provided as follows:

"**Under NRS 245.170 and 252.060**, relating to the filling of vacancies in county offices and the office of district attorney, where the district attorney is elected at a general election other than the general election at which district attorneys are regularly elected, his term of office begins immediately upon the qualification as provided in this section, relating to the commencement of terms of elected officials.

CAROLYN C. CAMPBELL, of the District Attorneys office works under the authority of the Clark County, District Attorney, REX BELL, who was required by NRS 252.030 to file a bond. NRS 252.030 provides as follows:

"NRS 252.030 Bond. Unless a blanket fidelity bond is furnished by the county, before entering upon the duties of his office, the district attorney shall execute and file with the county clerk a bond to the county, conditioned for the faithful performance of his duties, the penalty of the bond to be fixed by the board of county commissioners."

Clark County, alleges that the "County has for years, provided a single blanket bond for all, "County Officers", as authorized by NRS 282.163. NRS 282.163 provides as follows:
"A blanket fidelity bond or blanket position bond may be furnished at county expense for all elected county officers except the county treasurer. This blanket bond must be in an amount not less than $10,000, and conditioned on the faithful performance of the respective duties of the several officers covered."

Clark County has further claimed that they are covered under a Commercial Crime Policy No. CBB-691603-93, Account No. 6916, as described in Exhibit "B", of the Defendants, State of Nevada, Opposition to Motion for Preliminary Injunction. The NRS 282.163, 282.080, and 282.010, requires a bond. A bond is described in "Blacks Law Dictionary", as follows:

"Official bond. A bond given by a public officer, conditioned that he shall well and faithfully perform all the duties of the office..."

Clark County, Commercial Crime Policy is not a bond, it is an insurance policy, which, only covers criminal acts, of the persons on the policies attached list (see attached list in policy). Insurance Policies, are contracts which cover specific items, which are found in the body of the policy or contract. The definition of insurance in the Blacks Law Dictionary is as follows:

"INSURANCE. A contract whereby one undertakes to indemnify another against loss, damage, or liability arising from an unknown or contingent event and is applicable only to some contingency or act to occur in future. Com. v. Provident Bicycle Ass'n, 178 Pa. 636, 36 A 197, 36 L.R.A. 589; Commonwealth v. Metropolitan Life Ins. Co., 254 Pa. 510, 98 A. 1072, 1073."

Not only does the Clark County, Commercial Crime Policy, not constitute a bond, but nowhere in the, Commercial Crime Policy does it cover the faithful performance of all the duties of the officers as is required by the NRS 282.163. The Commercial Crime insurance policy, offered as evidence by Clark County, is not a bond as required.

In addition, assuming that the Clark County, commercial crime policy did qualify as a bond, under Nevada Statutes the policy, (1) it is not made payable, and pledged, to the State of Nevada, as was required by NRS 282.290, (2) and 4.030, it further did not list the JAMES BIXLER or REX BELL, as covered in on the Policy, (3) and it was not approved by the Board of Commissioners as was required in NRS 282.080.

It addition, a bond was never recorded in the office of the County Clerk, as required NRS 282.080. Both Honorable JAMES BIXLER Justice Court Judge, and the office of District Attorney, CAROLYN C. CAMPBELL, have failed to provide a bond as required above. Attorney General's opinion 186 (1-30-1945) states as follows:

"Although law provides that term of justice of the peace shall begin on 1st Monday in January, term will not begin until justice of the peace actually qualifies for office. Thus where new justice of the peace does not qualify until January 12, old justice is entitled to compensation to that date."

Attorney General's opinion (5-6-1905) states as follows: "One who has been elected or appointed to the office of justice of the peace, or to any other office requiring a bond, must file an acceptable bond before he is qualified to act."

Attorney General's opinion 790 (7-29-1949) states as follows:

"This section requires public officers to take an official oath, and is applicable to game wardens, and a warden who has not taken the oath has no more authority to make arrests than a private person, even though he may be wearing a badge", Honorable JUDGE BIXLER and the District Attorneys office, must comply with NRS 282.080, as follows:

"282.080. Approval, filing and recording of official bonds.
The official bonds of officers shall be approved and filed as follows:
2. The official bonds of all county and township officers shall be approved by the board of county commissioners, and filed and recorded in the office of the county clerk of their respective counties,...."

NRS 282.080 specifically requires all Clark County Defendants, to acquire a bond, which is to be voted on and recorded in the appropriate location, and in the above officers case it was not. As is the settled law in this State, when the plain language of a statute makes the legislative intent clear, it is the duty of the Court to give effect to its express terms--the Court may not nullify the manifest intent by going beyond terms that are clear on their face.

Kern vs. Nevada Insurance Guaranty, 856 p.2d 1890, 1394 (Nev. 1993; Union Plaza Hotel vs. Jackson, 101 Nev. 733, 709 P.2d 1020, 1022 (1985; White vs. Warden, Nevada State Prison, 96 Nev. 634, 614 P.2d 536, 537 (1980); Woofter vs. O'Donnell, 91 Nev. 756, 542 P.2d 1396, 1400 (1975), overruled on other grounds, Nevada **Department of Prisons vs. Bowen, ___ Nev. ___ 745 P.2d 698 (1987).** The express terms of this State's laws require that certain government officials provide an official bond. The Nevada Statutes 282.010 clearly and unambiguously provide:

"1. Members of the legislature and all officers, executive, judicial and ministerial, **shall before entering upon the duties of their respective officers,** provide the official bond required by law, when such bond shall be required, and take and subscribe to the official oath.

2. All officers elected except Senators and Members of the Assembly, shall quality, and execute and deliver their official bonds when required, as provided in this section, prior to the Tuesday after the 1st Monday in January ensuring their election." (emphasis added).

In the event that these requirement could possible be misconstrued, the Nevada Revised Statutes 283.040 States provides as follows:

"1. Every officer becomes vacant upon the occurring of any of the following events before the expiration of the term:
(a) The death or expiration of the term;
(b) The removal of the incumbent from office;
(c) The confirmed insanity of the incumbent, found by a Court of competent jurisdiction;
(d) A conviction of the incumbent of any felony or offense involving a violation of his official oath of bond or a violation of NRS 241.040 or 293.1755;
(e) A refusal or neglect of the person elected or appointed to take the oath of office, as prescribed in NRS 282.010; or when a bond is required by law, his refusal or neglect to give such bond within the time prescribed by law." (emphasis added).

In Nevada, the Courts have consistently held that the use of the word "shall" presumptively indicates mandatory, rather than directory statutory terms and, therefore, creates a duty. **State vs. American Bankers Insurance Co., 106 Nev. 880, 802 P.2d 1276, 1278 (1990); Givens vs. State, 99 Nev. 50, 657 P.2d 97,100 (1983; overruled on other grounds. Telancon vs. State --Nev. --, 721 P.2d 764 (1986);Woofter vs. O'Donnell, supra.**

The intent of the legislature in this state, therefore, could not be more clearly stated: any official required to file a bond is simply unqualified and unauthorized to act unless and until he files an acceptable bond. The Attorney General of this State has, in fact, so determined. 5 Op. Att'y Gen. 6 (1907) (where required, filing of an acceptable bond is a condition precedent to qualification to act.)

The Plaintiffs acknowledge that most jurisdictions still approve of the de facto doctrine, under which the acts of a person actually performing the duties of an office under color of title are valid as to the public and as to interested third parties. **See-- e.g., State vs. Whelan, 103 Idaho 651, 651 P2.d 916 (1982); Appleby vs. Belden Corp., 22 Ark. App. 243, 738 S.W. 2d 807 (1987).** Under the settled principles of statutory construction discussed **supra, the** de factor doctrine cannot apply in this State, because officials are required by statute to provide official bond, as required, before entering upon the duties of their office.

Even if the de facto doctrine were found to be generally applicable in Nevada, however, it would not reasonably apply in this case, the Court of Appeals for the District of Columbia explained in **Andrade vs. Lauer, 729 P.2d 1475, 1497099 (D.C. Cir. 1984)** as follows:

"Applying the de facto officer doctrine would likely leave Plaintiffs seeking to challenge the regularity (and, even more important, the constitutionality) of the appointment of government officers without any remedy at all and would thus render the legal norms under which appellants are proceeding unenforceable.
. . . In feudal times, when the writ of quo warranto originated, public officers were similar to a form of property right, and a quo warranto action was like an action of ejectment, in which the only party who could bring a lawsuit was a claimant who sued to regain possession from one who was unlawfully in possession..... This Court has held that equity will not be barred from issuing an injunction to restrain invalidity appointed officers if the alternative remedy of quo warranto is inadequate.....The Court should avoid an interpretation of the de facto officer doctrine that would likely make it impossible for these Plaintiffs to bring their assumedly substantial constitutional claim and would render legal norms concerning appointment and eligibility to hold office unenforceable.

....The core purposes of the doctrine are served if a Plaintiff challenging government action on the ground that the officials taking that action improperly hold office meets two requirements. First, the Plaintiff must bring his action at or around the time that the challenged government action is taken.

Second, the Plaintiff must show that the agency or department involved has had reasonable notice under all the circumstances of the claimed defect in the official's title to office. This does not require that the Plaintiff perform any particular rituals before bringing suit, nor does it mandate that the agency's knowledge of the alleged defect must come from the Plaintiff. It does, however, require that the agency or department involved actually knows of the claimed defect. These two requirements adequately protect citizens' reliance on past government actions and the government's ability to take effective and final action--the two interests served by the de facto officer doctrine. Prohibiting attacks on government actions taken long before suit was filed protects those who have relied on those actions and avoids the chaos that might ensue if all of the actions taken by an official improperly in office for years were subject to invalidation.

Requiring that the government have actual knowledge of the defect claimed protects the government's ability to take effective and final action by enabling it to remedy any defects (especially narrowly technical defects) either before it permits invalidly appointed officials to act or shortly thereafter. Yet, while the two requirements protect the interests underlying the de facto officer doctrine, they do so without unduly interfering with other important interests that are equally worthy of protection: individuals' interests in having legal process available to redress specific legitimate claims and the public interest in enforcing legal norms governing appointment and eligibility to hold public office and exercise the powers of the state." (Footnote omitted).

See also **Olympic Federal Savings & Loan Association vs. Office of Thrift Supervision**, **732 F. Supp. 1883, 1195 96 (D.D.C. 1990)** (de factor doctrine did not transform unconstitutionally appointed director into officer). The impermissible effect of allowing de facto status in this case would be to frustrate the Defendants' constitutional claims and to render the legal norms established for office holding unenforceable and meaningless. The acts of the above officials are without legal effect since the officials are without legal authority to act, having failed to fulfill the statutory prerequisites to their offices.