

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

by David Roland Hinkson

**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 trial 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 trial 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. 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 extend 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. Schechter 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. Schechter 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 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 irresistibly, 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 statutory 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