



## 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. Schechter 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. 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."

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 whether 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 process, 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 judgment 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 is 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**