NO. 18-1583

In The
SUPREME COURT OF THE UNITED STATES
_____ Term, 2019

Lewis F. Carter,
Petitioner
vs.

United States of America,
Respondent

On Petition For Re-Hearing Under Rule 44

PETITION FOR RE-HEARING UNDER RULE 44

Lewis F. Carter
P.O. Box 186
Warsaw, Va. 22572

Oct. 20th, 2019

ISSUE PRESENTED

The district court lacked jurisdiction under Title 28 Section 2001 to order the defendant's home and property sold at I.R.S. auction, because the court failed to conduct the hearing that is required under Section 2001(b) that allows the court to take jurisdiction (under Sec. 2001) to issue an *Order for Sale*. *Due process* at law is violated because historically the right to *due process* includes the right of every defendant to appear at least once before the court, before the defendant's home and private property are ordered sold to enforce a court ordered judgment without conducting any required hearing in the court.

LIST OF ALL PARTIES TO THE CASE

The complete list of original defendants in this action in the district court includes:

1) Lewis F. Carter,
2) Mary Carter
3) Bobby Carter
4) Virginia Department of Taxation

PETITION FOR RE-HEARING - RULE 44

Petitioner timely submits this *Petition for Re-Hearing* in a final and desperate plea for *justice* and the *due process* at law the Petitioner is entitled to under 28 U.S.C. § 2001(b), before his family home, farm, and property are unlawfully sold at auction.

On March 22, 2019, district court judge M. Hannah Lauck, of the Eastern district of Virginia, Richmond Division, *ordered* that *summary judgment* be enforced against the defendant/petitioner's home, farm, and properties in Westmoreland County, Hague, Virginia, hereinafter "*Subject Property*", and be foreclosed upon; - ordering that the *Subject Property* was to be sold pursuant to Title 28 USC §§ 2001 and 2002.

However, neither Section 2001(a) or 2002 actually authorizes the court to *order* a sale of property.

Title 28 U.S.C. §□2001(b), the statute that was invoked by the district court itself to provide the statutory authority to *control* the legal process by which defendants' property was to be sold, specifically requires under Section 2001(b) that a "*hearing*" be conducted before the *Order* of the court to sell the *Subject Property* is issued; and only after "*notice to all interested parties* [of the scheduled hearing] *shall be given*".

> §□2001. Sale of realty generally
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> ...
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> (b) After a hearing, of which notice to all interested parties shall be given by publication or otherwise as the court directs, the court **may order the sale** of such realty or interest or any part thereof at private sale for cash or other consideration and upon such terms and conditions as the court approves, ...
>
> [emphasis added]

No such required *hearing* was ever held or conducted as required under this authorizing statute; - to provide the *due process* at law necessary for the district court to lawfully jurisdiction under Section 2001 to *order* the sale of property.

No *Hearing* was ever conducted (or *Noticed*) by the district court before it improperly issued the *Order for Sale,* which it improperly did without jurisdiction by failing to comply with the required *due process* requirement of conducting a *hearing* before ordering sale.

> "Federal courts are courts of limited jurisdiction. They possess only power authorized by Constitution and statute, which is not to be expanded by judicial decree. It is to be presumed that a cause lies outside this limited jurisdiction, and the burden of establishing the contrary rests upon the party asserting jurisdiction." *Kokkenen V. Guardian Life ins. Co. of America,* 511 US 375 (1994)

This is no new principle of constitutional law. The right to a prior hearing has long been recognized by this Court under the Fourteenth and Fifth Amendments. Although the Court has held that due process tolerates variances in the *form* of a hearing "appropriate to the nature of the case," *Mullane v. Central Hanover Tr. Co., 339 U.S. 306, 313,* and "depending upon the importance of the interests involved and the nature of the subsequent proceedings [if any]," *Boddie v. Connecticut, 401 U.S. 371, 378,* the Court has traditionally insisted that, whatever its form, opportunity for that hearing must be provided before the deprivation at issue takes effect. *E. g., Bell v. Burson, 402 U.S. 535, 542; Wisconsin v. Constantineau, 400 U.S. 433, 437; Goldberg v. Kelly, 397 U.S. 254; Armstrong v. Manzo, 380 U.S., at 551; Mullane v. Central Hanover Tr. Co., supra, at 313; Opp Cotton Mills v. Administrator, 312 U.S. 126, 152-153; United States v. Illinois Central R. Co., 291 U.S. 457, 463; Londoner v. City & County of Denver, 210 U.S. 373, 385-386.* See *In re Ruffalo, 390 U.S. 544, 550-551.* "That the hearing required by due process is subject to waiver, and is not fixed in form does not affect its root requirement that an individual be given an opportunity for a hearing *before* he is deprived of any significant property interest, except for extraordinaire. (*Hagar v. Reclamation Dist.*, 111 U.S. 701, 708 (1884))

> "Due process of law in each particular case means such an exercise of the powers of the government as the settled maxims of law permit and sanction, and under such safeguards for the protection of individual rights as those maxims proscribe for the class of cases to which the one in question belongs. A course of legal proceedings according to those rules and principles which have been established in our systems of jurisprudence for the enforcement and

protection of private rights. To give such proceedings any validity there must be a tribunal competent by its constitution - that is, by the law of its creation - to pass upon the subject-matter of the suit; and, if that involves merely a determination of the personal liability of the defendant, he must brought within its jurisdiction by service of process within the state, or his voluntary appearance. *Pennoyer v. Neff*, 95 US 733, 24 L.Ed. 565. Due process of law implies the right of the person affected thereby to be present before the tribunal that pronounces judgment upon the question of life, liberty, or property, in its most comprehensive sense; to be heard, by testimony or otherwise, and to have the right of controverting, by proof , every material fact which bears on the question of right in the matter involved. If any question of fact, or liability be conclusively presumed against him, this is not due process of law.

An orderly proceeding wherein a person is served with notice, actual or constructive, and has an opportunity to be heard and to enforce and protect his rights before a court having power to hear and determine the case. *Kazubowski v. Kazubowski*, 45 Ill.2d 405, 259 N.E.2d 282, 190. Phrase means that no person shall be deprived of life, liberty, property or of any right granted him by statute, unless matter involved first shall have been adjudicated against him upon trial conducted according to established rules regulating judicial proceedings, and it forbids condemnation without a hearing. *Pettit v. Penn*, La.App., 180 So.2d 66, 69. The concept of "due process of law" as it is embodied in Fifth Amendment demands that a law shall not be

> unreasonable, arbitrary, or capricious and that the means selected shall have a reasonable and substantial relation to the object being sought. *U.S. v. Smith*, D.C.Iowa, 249 F.Supp. 515, 516. Fundamental requisite of "due process" is the opportunity to be heard, to be aware that a matter is pending, to make an informed choice whether to acquiesce or contest, and to assert before the appropriate decision-making body the reasons for such choice. *Trinity Episcopal Corp. v. Romney*, D.C.N.Y., 387 F.Supp. 1044, 1084. Aside from all else "due process" means fundamental fairness and substantial justice. *Vaughn v, State*, 3 Tenn.Crim.App. 54, 456 S.W.2d 879, 883." Black's Law Dictionary pg. 500 (6th ed. 1990); accord, *U.S. Department of Agriculture v. Murry*, 413 U.S. 508 [93 S.Ct. 2832, 37 L.Ed.2d 767] (1973); *Stanley v. Illinois*, 405 U.S. 645 [92 S.Ct. 1208, 31 L.Ed.2d 551] (1972)

Additionally, the statutory authority of the district court that it invoked under Title 28 U.S.C. Section 2001 was further misused by the district court to order the federal Marshal's service to forcibly remove the defendants by unlawful *eviction,* without that specific authority to act (order *evictions)* being conferred by the invoked statute.

> "Courts are constituted by authority and they cannot go beyond that power delegated to them. If they act beyond that authority, and certainly in contravention of it, their judgments and orders are regarded as nullities; they are not voidable, but simply void, and this even prior to reversal."

> *Williamson v. Berry*, 8 HOW. 945, 540 12 L.Ed. 1170, 1189 (1850)

There is no authority provided under any part of Section 2001, to allow the court to *order* an *eviction* of persons from any property.

The district court has acted under *color of law* and in violation of the statute by misusing Section 2001 to exceed the limited and specific *power* actually granted within it, to *Order* a "*sale*" of a property after a *hearing* is conducted.

> "It is well established that federal courts are courts of limited jurisdiction, possessing only that power authorized by the *Constitution* and *statute*." *Hudson v. Coleman*, 347 F.3d 138, 141 (6th Cir. 2003)

The statute in question (28 USC § 2001) does not authorize the court to *order* an "*eviction*", and an *Order for Sale* cannot be lawfully issued before a *hearing* is conducted by the court.

Furthermore, Title 28 U.S.C. Sections 3202(b) and (c) specifically require that a *Notice* be served on all parties with an interest in the property before an *Order for Sale* is issued.

> **§□3202. Enforcement of judgments**
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> ...
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> (b) NOTICE.— On the commencement by the United States of an action or proceeding

under this subchapter to obtain a remedy, the counsel for the United States shall prepare, and clerk of the court shall issue, a notice in substantially the following form:

"NOTICE

"You are hereby notified that this [property] is being taken by the United States Government, which has a court judgment in [case docket number and jurisdiction of court] of $[amount] for [reason of debt].

...

"If you want a hearing, you must notify the court within 20 days after you receive this notice. You must make your request in writing, and either mail it or deliver it in person to the clerk of the court at [address]. If you wish, you may use this notice to request the hearing by checking the box below and mailing this notice to the court clerk. You must also send a copy of your request to the Government at [address], so the Government will know you want a hearing. The hearing will take place within 5 days after the clerk receives your request, if you ask for it to take place that quickly, or as soon after that as possible.

"At the hearing you may explain to the judge why you believe the property the Government has taken is exempt [For a default judgment:] or why you think you do not owe the money to the Government. [For a writ of execution:] If you do not request a hearing within 20 days of receiving this notice, your [property] may be sold at public auction and the payment used toward the money you owe the Government.

28 U.S. Code
§□3202. Enforcement of judgments

...

(c)SERVICE.— A copy of the notice and a copy of the application for granting a remedy under this subchapter shall be served by counsel for the United States on the judgment debtor against whom such remedy is sought and on each person whom the United States, after diligent inquiry, has reasonable cause to believe has an interest in property to which the remedy is directed.

No required legal service under Section 3202(c) of the *Notice* required under Section 3202(b), was ever given or made on any defendant or any person with an interest in the property in this case.

The *hearing* requirement is repeated under Title 28 USC § 3202(d), However, as no "*Notice*" was ever issued under subsection (c), all of the defendants and *parties of interest* in this action were deprived of the *due process* opportunity to seek a hearing under subsection (d) - *Hearing*.

§□3202. Enforcement of judgments

...

(d) HEARING.— By requesting, within 20 days after receiving the notice described in section 3202(b), the court to hold a hearing, ...

Title 28 USC § 3202(e), reemphasizes the point that there is supposed to be an opportunity for a hearing under this judgment enforcement *process* and that the sale of the property is <u>prohibited</u> "***before such hearing***".

> **§□3202. Enforcement of judgments**
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> ...
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> (e) SALE OF PROPERTY.— The property of a judgment debtor which is subject to sale to satisfy the judgment may be sold by judicial sale, pursuant to sections 2001, 2002, and 2004 or by execution sale pursuant to section 3203(g). If a hearing is requested pursuant to subsection (d), property with respect to which the request relates **shall not be sold before such hearing.**

NO required "*hearing*" has ever been conducted in the district court in this case and therefore the *Order* for the sale of the *Subject Property* violates the statutes and is not supported by them.

The requirement for judicial and legal *due process* in the courts is secured by the Fourth, Fifth, Sixth and Seventh Amendments to the Constitution of the United States of America. The Fifth Amendment controls conversion: "*No person shall be deprived of life, liberty or property without due process of law*".

The inventory of *due process* rights secured by the Constitution and Amendments mandate judicial *due process.* The legislative and/or executive branches cannot unilaterally or jointly exclude the judicial in order to deprive the American people of life, liberty or property, and the judiciary cannot act lawfully without a complete statutory basis that authorizes all of the acts undertaken.

The requirements of *due process at Law,* with respect to private property, have long been recognized as requiring that all parties with an interest in a property be provided an opportunity to meaningfully participate in legal actions affecting Title to the property, through *Notice,* legal *service, service of process,* opportunity to appear before the court at least once, and opportunity to be heard by the court at least once at a *hearing* conducted in the court, before any judicial action is taken against the property.

For more than a century the central meaning of procedural due process has been clear: "Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified." *Baldwin v. Hale, 1 Wall. 223, 233.* See *Windsor v. McVeigh, 93 U.S. 274; Hovey v. Elliott, 167 U.S. 409; Grannis v. Ordean, 234 U.S. 385.* It is equally fundamental that the right to notice and an opportunity to be heard "must be granted at a meaningful time and

in a meaningful manner." *Armstrong v. Manzo, 380 U.S. 545, 552*

The constitutional right to be heard is a basic aspect of the duty of government to follow a fair process of decision making when it acts to deprive a person of his possessions. The purpose of this requirement is not only to ensure abstract fair play to the individual. Its purpose, more particularly, is to protect his use and possession of property from arbitrary encroachment -- to minimize substantively unfair or mistaken deprivations of property, ... See *Lynch v. Household Finance Corp., 405 U.S. 538, 552*

If the right to notice and a hearing is to serve its full purpose, then, it is clear that it must be granted at a time when the deprivation can still be prevented. At a later hearing, an individual's possessions can be returned to him if they were unfairly or mistakenly taken in the first place. Damages may even be awarded to him for the wrongful deprivation. But no later hearing and no damage award can undo the fact that the arbitrary taking that was subject to the right of procedural due process has already occurred. "*This Court has not ... embraced the general proposition that a wrong may be done if it can be undone.*" *Stanley v. Illinois, 405 U.S. 645, 647.*

This requirement to provide *due process* is not a new principle of constitutional law. The right to a prior hearing has long been recognized by this Court under the Fourteenth and Fifth Amendments. Although the Court has held that due process tolerates variances in the *form* of a hearing "appropriate to the nature of the case," *Mullane v. Central Hanover Tr. Co., 339 U.S. 306, 313,* and "depending upon the importance of the interests involved and the nature of the subsequent proceedings [if any]," *Boddie v. Connecticut, 401 U.S. 371, 378,* the Court has traditionally insisted that, whatever its form, opportunity for that hearing must be provided before the deprivation at issue takes effect. *E. g., Bell v. Burson, 402 U.S. 535, 542; Wisconsin v. Constantineau, 400 U.S. 433, 437; Goldberg v. Kelly, 397 U.S. 254; Armstrong v. Manzo, 380 U.S., at 551; Mullane v. Central Hanover Tr. Co., supra, at 313; Opp Cotton Mills v. Administrator, 312 U.S. 126, 152-153; United States v. Illinois Central R. Co., 291 U.S. 457, 463; Londoner v. City & County of Denver, 210 U.S. 373, 385-386.* See *In re Ruffalo, 390 U.S. 544, 550-551.* "That the hearing required by due process is subject to waiver, and is not fixed in form does not affect its root requirement that an individual be given an opportunity for a hearing *before* he is deprived of any significant property interest, except for extraordinary.

"Due process of law implies the right of

> the person affected thereby to be present before the tribunal which pronounces judgment upon the question of life, liberty, or property, in its most comprehensive sense; to be heard, by testimony or otherwise, and to have the right of controverting, by proof, every material fact which bears on the question of right in the matter involved. If any question of fact or liability be conclusively presumed against him, this is not due process of law." Black's Law Dictionary 500 (6th ed. 1990); accord, *U.S. Department of Agriculture v. Murry*, 413 U.S. 508 [93 S.Ct. 2832, 37 L.Ed.2d 767] (1973); *Stanley v. Illinois*, 405 U.S. 645 [92 S.Ct. 1208, 31 L.Ed.2d 551] (1972)

> "Where a court failed to observe safeguards, <u>it amounts to denial of due process</u> of law, court is deprived of juris." *Merritt v. Hunter*, C.A. Kansas 170 F2d 739

Therefore, as the Petitioner has been wrongfully denied the opportunity to a ***hearing*** that he is entitled to by law before his property is sold, the Petitioner respectfully seeks further judicial review in this case for ***lack*** of jurisdiction of the court under Title 28 U.S.C. Section 2001 to issue an *Order for Sale*, for want of the required *due process* of a *hearing* conducted under mandate of 28 U.S.C. Section 2001(b).

> "Judgment is a "void judgment" if court that rendered judgment lacked jurisdiction of the subject matter, or of the parties, or acted in a manner inconsistent with *due process*." *Klugh v. U.S.*, D.C.S.C., 610 F. Supp. 892, 901.

It is now clear, an *Order of the district court* to sell the *Subject Property* cannot be *lawfully* issued or sustained under 28 U.S.C. § 2001 without the court providing an opportunity for, and conducting, a *hearing* in the court, which has never been done in this dispute.

Pursuant to FRCP Rule 60(b)(4) the district court, or any federal court, "*may relieve a party or its legal representative from a final judgment, Order, or proceeding*" if, inter alia, "*the judgment is void*." Fed.R.Civ.P. 60(b)(4). "*Generally, a judgment is void under Rule 60(b)(4) if the court that rendered it lacked jurisdiction of the subject matter, or of the parties, or if it acted in a manner inconsistent with due process of law*." Burke, 252 F.3d at 1263.

> "A court cannot confer jurisdiction where none existed and cannot make a void proceeding valid. It is clear and well-established law that a void order can be challenged in any court", *Old Wayne Mut. L. Assoc. v. McDonough*, 204 U. S. 8, 27 S. Ct. 236 (1907).

Plaintiff makes this *pleading* because the issuance of an *Order for Sale* by the district court without

first conducting any *hearing* in the court, is a violation of *due process*; is not supported in law; and was entirely ***improper*** for the district court to *Order*. The Defendant/Petitioner has never been given the *hearing* required under Section 2001(b).

> A court may not render a judgment which transcends the limits of its authority, and a judgment is void if it is beyond the powers granted to the court by the law of its organization, even where the court has jurisdiction over the parties and the subject matter. Thus, if a court is authorized by statute to entertain jurisdiction in a particular case only, and undertakes to exercise the jurisdiction conferred in a case to which the statute has no application, the judgment rendered is void. The lack of statutory authority to make particular order or a judgment is akin to lack of subject matter jurisdiction and is subject to collateral attack. 46 Am. Jur. 2d, Judgments § 25, pp. 388-89.

Petitioner now prays this court will ***GRANT*** this *Petition for Re-hearing* so that this Supreme Court may review, address, and correct the errors of the lower district court that were made when it issued its *Order for Sale* in violation of Title 28 U.S.C. Section 2001(b), without providing the required *due process* of conducting a *hearing* in the court.

Petitioner prays his *Petition* will be granted to provide Petitioner with the *due process of law* that he is entitled to under the cited statutes, of at least one *hearing* in the district court before any *property* is *ordered* sold, by the district court.

Respectfully submitted,

Lewis F. Carter, *pro se*
P.O. Box 186
Warsaw, Va. 22572

APPENDIX

Statutes invoked and or cited:

Title 28 U.S.C.

§□2001. Sale of realty generally

(a) Any realty or interest therein sold under any order or decree of any court of the United States shall be sold as a whole or in separate parcels at public sale at the courthouse of the county, parish, or city in which the greater part of the property is located, or upon the premises or some parcel thereof located therein, as the court directs. Such sale shall be upon such terms and conditions as the court directs. ...

§□2001. Sale of realty generally

...

(b) After a hearing, of which notice to all interested parties shall be given by publication or otherwise as the court directs, **the court may order the sale** of such realty or interest or any part thereof at private sale for cash or other consideration and upon such terms and conditions as the court approves, if it finds that the best interests of the estate will be conserved thereby. Before confirmation of any private sale, the court shall appoint three disinterested persons to appraise such property or different groups of three appraisers each to appraise properties of different classes or situated in different localities. No private sale shall be confirmed at a price less than two-thirds of the appraised value. Before confirmation of any private sale, the terms thereof shall be published in such newspaper or newspapers of general circulation as the court directs at least ten days before confirmation. The private sale shall not be

confirmed if a bona fide offer is made, under conditions prescribed by the court, which guarantees at least a 10 per centum increase over the price offered in the private sale.

§□2002. Notice of Sale of realty

A public sale of realty or interest therein under any order, judgment or decree of any court of the United States shall not be made without notice published once a week for at least four weeks prior to the sale in at least one newspaper regularly issued and of general circulation in the county, state, or judicial district of the United States wherein the realty is situated. ...

§□3202. Enforcement of judgments

(a) ENFORCEMENT REMEDIES.— A judgment may be enforced by any of the remedies set forth in this subchapter. A court may issue other writs pursuant to section 1651 of title 28, United States Code, as necessary to support such remedies, subject to rule 81(b) of the Federal Rules of Civil Procedure.

(b) NOTICE.— On the commencement by the United States of an action or proceeding under this subchapter to obtain a remedy, the counsel for the United States shall prepare, and clerk of the court shall issue, a notice in substantially the following form:

"NOTICE

"You are hereby notified that this [property] is being taken by the United States Government, which has a

court judgment in [case docket number and jurisdiction of court] of $[amount] for [reason of debt].

"In addition, you are hereby notified that there are exemptions under the law which may protect some of this property from being taken by the United States Government if [name of judgment debtor] can show that the exemptions apply. Below is a summary of the major exemptions which apply in most situations in the State of [State where property is located]:

"[A statement summarizing in plain and understandable English the election available with respect to such State under section 3014 and the types of property that may be exempted under each of the alternatives specified in paragraphs (1) and (2) of section 3014(a) and a statement that different property may be so exempted with respect to the State in which the debtor resides.]

"If you are [name of judgment debtor], you have a right to ask the court to return your property to you if you think the property the Government is taking qualifies under one of the above exemptions [For a default judgment:] or if you think you do not owe the money to the United States Government that it says you do.

"**If you want a hearing, you must notify the court within 20 days after you receive this notice.** You must make your request in writing, and either mail it or deliver it in person to the clerk of the court at [address]. If you wish, you may use this notice to request the hearing by checking the box below and mailing this notice to the court clerk. You must also send a copy of your request to the Government at [address], so the Government will know you want a hearing. The hearing will take place within 5 days after the clerk receives

your request, if you ask for it to take place that quickly, or as soon after that as possible.

"At the hearing you may explain to the judge why you believe the property the Government has taken is exempt [For a default judgment:] or why you think you do not owe the money to the Government. [For a writ of execution:] If you do not request a hearing within 20 days of receiving this notice, your [property] may be sold at public auction and the payment used toward the money you owe the Government.

"If you think you live outside the Federal judicial district in which the court is located, you may request, not later than 20 days after your□[1]receive this notice, that this proceeding to take your property be transferred by the court to the Federal judicial district in which you reside. You must make your request in writing, and either mail it or deliver it in person to the clerk of the court at [address]. You must also send a copy of your request to the Government at [address], so the Government will know you want the proceeding to be transferred.

"Be sure to keep a copy of this notice for your own records. If you have any questions about your rights or about this procedure, you should contact a lawyer, an office of public legal assistance, or the clerk of the court. The clerk is not permitted to give legal advice, but can refer you to other sources of information."

(c)SERVICE.— A copy of the notice and a copy of the application for granting a remedy under this subchapter shall be served by counsel for the United States on the judgment debtor against whom such remedy is sought and on each person whom the United States, after diligent inquiry, has reasonable cause to believe has an interest in property to which the remedy is directed.

(d) HEARING.— By requesting, within 20 days after receiving the notice described in section 3202(b), the court to hold a hearing, the judgment debtor may move to quash the order granting such remedy. The court that issued such order shall hold a hearing on such motion as soon as practicable, or, if so requested by the judgment debtor, within 5 days after receiving the request or as soon thereafter as possible. The issues at such hearing shall be limited—

(1) to the probable validity of any claim of exemption by the judgment debtor;

(2) to compliance with any statutory requirement for the issuance of the post-judgment remedy granted; and

(3) if the judgment is by default and only to the extent that the Constitution or another law of the United States provides a right to a hearing on the issue, to—

(A) the probable validity of the claim for the debt which is merged in the judgment; and

(B) the existence of good cause for setting aside such judgment.

This subparagraph shall not be construed to afford the judgment debtor the right to more than one such hearing except to the extent that the Constitution or another law of the United States provides a right to more than one such hearing.

(e) SALE OF PROPERTY.— The property of a judgment debtor which is subject to sale to satisfy the judgment may be sold by judicial sale, pursuant to sections 2001, 2002, and 2004 or by execution sale pursuant to section 3203(g). If a hearing is requested pursuant to subsection (d), property with respect to which the request relates shall not be sold before such hearing.

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Orders of the district court appealed:

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

UNITED STATES OF AMERICA
Plaintiff,
v.

Civil No. 3:16cv674

Lewis F. Carter, et al.,
Defendants.

ORDER OF SALE

Having considered the United States' Motion for entry of order of sale, any opposition thereto, and the entire record of this proceeding, it is hereby ORDERED that:

1. The Internal Revenue Service, through its Properly Appraisal and Liquidation Specialist ("PALS"), is authorized under 28 U.S.C. §§ 2001 and 2002 to offer for sale at public auction and to sell the following real properties ('Real Properties') located in Westmorela11d
County, Virginia:

a. All that certain lot or parcel of land situated and being in Cople Magisterial District, Westmoreland County, Virginia at or near Threeway, together with a Fifty (50) foot right of way from said parcel to State Route No. 203, and more particularly bounded and described in accordance with a certain survey by Richard B. Allison, Jr., Certified Land Surveyor, dated June 22, 1988, a plat of which is attached hereto as a part of this deed and is to be recorded herewith, to which survey and plat reference is here made for a more particular and accurate description of the metes and bounds of said parcel of land and the fifty (50)foot right of way from same to the public road.

The major portion of the within conveyed parcel of land being a portion of the land conveyed unto Laxter L. Carter and Lora W. Carter, husband and wife, from Melvin Carter and wife by deed of June 4, 1980, and of record in the Clerk's Office of the Circuit Court of Westmoreland County, Virginia, in Deed Book 288 at Page 198; a small portion of the within conveyed parcel lying to the east of the "Original Property Line" as shown on said plat being a portion of a 42.96 acre parcel which was conveyed from Mildred D. Wilson, widow, by Deed of November 24,1976, and of record, as aforesaid, in Deed Book 263 at page 313, in which a one-half undivided interest was taken by Laxter L. Carter and Lora W. Carter, husband and wife, with survivorship' and a one-half undivided interest in which was taken by Grover L. Carter and Clara F. Carter, husband and wife, with survivorship; the said Clara F. Carter having died November 24,

1980, and the said Glover L. Carter having remarried.

b. All that certain lot or parcel of land situated and being in Cople Magisterial district, Westmoreland County, Virginia shown on a certain plat and survey as containing 0.1742 acres, more or less but conveyed in gross and not by the acre, and being further designated as a parcel, triangular in shape with the corners begin shown or designated as "A', "B", and 'C", on a certain survey and plat prepared by Richard B' Allison, Jr. and Associates' Land Surveyors, dated June 25th 1997, which is attached hereto and to be recorded simultaneously herewith to which plat reference is hereby made for more complete and accurate description of the above described parcel, it being the intent of this conveyance to indicate a lot line adjustment between the Grantor's property (Tax Map 60, Parcel 5) and the Grantees' property (Tax Map 60 Parcel 7F)with the triangular parcel containing 0.1742 becoming a part of Tax Map 60, parcel 7F indicating total acreage of 2.713 acres, all as shown on said plat; being a portion of the property that was conveyed unto Laxter L. Carter and Lora W. Carter, husband and wife, from Melvin Carter and wife by Deed of June 4, 1980, and of record in the Clerk's Office of the Circuit Court of Westmoreland County, Virginia, in Deed Book 288, at Page 198; and further being a portion of the property that was described as being conveyed by Deed of Record in Deed Book 263, at Page 313, in which a one half undivided interest was taken by Laxter L. Carter and Lora W. Carter, husband and wife, with

survivorship, and a one half undivided interest in which was taken by Grover L. Carter and Clara F. Carter, husband and wife, with survivorship; the said Clara F. Carter having died November 24, 1980, and the said Grover L. Carter having remarried'

c. The following five parcels of real property described as:

i. ALL THAT certain tract or parcel of land situate in Cople Magisterial District of Westmoreland County, Virginia, at Threeway, containing 42.96 acres, and more particularly bounded and described in accordance with that certain plat of survey dated 10/26/1976, made by J. Arthur Cooke, C.L.S., and entitled "Plat of Survey Showing the Otis E. Wilson Estate," with said plat appearing of record in the Office of the Circuit Court of Westmoreland County, Virginia in Deed Book 263 at Pages 314-316, to which plat reference is hereby made for a more complete and accurate description of the land hereby conveyed.

LESS AND EXCEPT such off-conveyances from the above-described 42.96 acre tract as are contained in the record chain of title to the said parcel in the aforesaid Circuit Court Clerk's Office, including those conveyances of certain lots or parcels of land to Lewis F. Carter, and Bobby R. Carter, respectively.

TOGETHER WITH all ways, easements, and appurtenances thereto belonging or in anywise

lawfully appertaining to the subject property; and SUBJECT TO any valid restrictions, conditions, or covenants as same may lawfully affect the property herein conveyed.

THIS BEING all of the rest and residue of the same and identical 42.96 acre tract of land conveyed unto Grantor and Laxter L. Carter, husband and wife, as tenants by the entirety with the right of survivorship as at common law, in two separate conveyances, to wit: a one-half (1/2) undivided interest in the said 42.96 was acquired by deed dated 11/24/1976 from Grover L. Carter and Clara F. Carter, husband and wife, which deed appears of record in the aforesaid Circuit Court Clerk's Office in Deed Book 263 at Page 313; and a one-half (1/2) undivided interest in the subject property then described as "about 40 acres, more or less, in gross" was acquired by deed dated 10/22/1997 from Grover L. Carter and Mary M. Carter husband and wife, which deed appears of record in the aforesaid Circuit Court Clerk's Office in Deed Book 478 at Page 657.

ii. ALL THAT certain lot or parcel of land situate in Cople Magisterial District of Westmoreland County, Virginia, at Threeway, and more particularly bounded and described as Parcel "B" containing an area of 1.439 acres, in accordance with that certain plat of survey dated February 21, 1978, made by Lloyd W. English, C.L.S., which plat appears of record in the Office of the Circuit Court of Westmoreland County, Virginia immediately preceding Deed Book 272 at Page 696; with

reference being here made to said 2/21/78 plat for a more complete and accurate description of the land hereby conveyed.

TOGETHER WITH all ways, easements, and appurtenances thereto belonging or in anywise lawfully appertaining to the subject property; and SUBJECT TO any valid restrictions, conditions, or covenants as same may lawfully affect the property herein conveyed.

THIS BEING the same and identical real property conveyed unto Grantor and Laxter L. Carter, husband and wife, as tenants by the entirety with the right of survivorship as at common law, in two separate conveyances, to wit: a one-half (1/2) undivided interest was acquired by deed dated 5/8/1978 from Grover L. Carter and Clara F. Carter, husband and wife, which deed appears of record in the aforesaid Circuit Court Clerk's Office in Deed Book 272? at Page 695; with a one-Half (1/2) undivided interest having been previously acquired by Grantor and Grantee, so that they held fee simple ownership of the subject property.

iii. ALL THAT certain lot or parcel of land situate in Cople Magisterial District of Westmoreland County, Virginia at Threeway, containing .50 of an acre, and more particularly bounded and described in accordance with that certain plat of survey dated May 12, 1980, made by Lloyd W. English, C.L.S., which plat appears of record in the aforesaid Circuit Court Clerk's Office attached to a deed in Deed Book 288 at Page 207; with reference being here

made to said 5/12/80 plat for a more complete and accurate description of the land hereby conveyed.

TOGETHER WITH all ways, easements, and appurtenances thereto belonging or in anywise lawfully appertaining to the subject property; and SUBJECT TO any valid restrictions, conditions, or covenants as same may lawfully affect the property here is conveyed.

THIS BEING the same and identical real property conveyed unto Grantor and Laxter L. Carter, husband and wife, as tenants by the entirety with the right of survivorship as at common law, in two separate conveyances, to wit a one-half(1/2) undivided interest was acquired by deed dated 6/4/1980 from Grover L. Carter and Clara F. Carter, husband and wife, which deed appears of record in the aforesaid Circuit Court Clerk's Office in Deed Book 288 at Page 207; with a one-half (1/2) undivided interest having been previously acquired by Grantor and Grantee, so that they held fee simple ownership of the subject property.

iv. ALL THAT certain lot or parcel of land situate in Cople Magisterial District of Westmoreland County, Virginia, on the north side of the main state road leading from Lyells toward Kinsale, known as State Route 203, and containing one and one-half (1 1/2) acres, more or less, in gross, and being the same tract of land which was conveyed to Grantor's predecessor in title by Ralph S. Thompson and wife, by deed Dated 8/27/57, of record in the aforesaid

Circuit Court Clerk's Office in Deed Book 158 at Page 68.

TOGETHER WITH all ways, easements, and appurtenances thereto belonging or in anywise lawfully appertaining to the subject property; and SUBJECT TO any valid restrictions, conditions, or covenants as same may lawfully affect the property herein conveyed.

THIS BEING the same and identical real property conveyed unto Grantor and Laxter L. Carter, husband and wife, as tenants by the entirety with the right of survivorship as at common law, by Deed dated 12/21/1966 from Melvin Carter and Girlie V. Carter, husband and wife, which deed appears of record in the aforesaid Circuit Court Clerk's Office in Deed Book 200 at page 555.

v. ALL THAT certain lot or parcel of land situate in Cople Magisterial District of Westmoreland County, Virginia, at Threeway, fronting 128.38 feet on the northern line of State Secondary Route 203, containing 33.76 acres, and more particularly bounded and described as "Parcel A" in accordance with that certain plat of survey dated May 12, 1980, by Lloyd W. English, C.L.S., of record in the Office of the circuit court of Westmoreland County, Virginia, attached to a certain in Deed Book 288 at page 198, et seq; with reference being here made to said plat for a more complete and accurate description of the land hereby conveyed.

LESS AND EXCEPT such off-conveyances from the above described 33.76 acres parcel as are contained in the record chain of title to the said parcel in the aforesaid Circuit Court Clerk's Office, including those conveyances of certain lots or parcels of land to Lewis F. Carter, and Ryan Christopher Carter, respectively.

TOGETHER WITH all ways, easements, and appurtenances thereto belonging or in anywise lawfully appertaining to the subject property; and SUBJECT TO any valid restrictions, conditions, or covenants as same may lawfully affect the property herein conveyed.

THIS BEING all of the rest and residue of the same and identical lot or parcel of land conveyed unto Grantor and Laxter L. Carter, husband and wife, as tenants by the entirety with the right of survivorship as at common law, by Deed dated 6/4/1980 from Mervin Carter and Girlie V. Carter, husband and wife, which deed appears of record in the aforesaid Circuit Court Clerk's Office in Deed Book 288 at page 198.

2. The Internal Revenue Service, or its representative, is authorized to have free access to the Real Properties and to take all actions necessary to preserve the Real properties, including but not limited to, retaining a locksmith or other person to change or install locks or other security

devices on any part of the Real Properties 30 days after the date of this Order until the deeds to the Real Properties are delivered to the ultimate purchaser(s).

3. The sale of the Real properties shall be free and clear of liens or interests of the defendants and of the United States.

4. The sale shall be subject to building lines, if established, all laws, ordinances, and governmental regulations (including building and zoning ordinances) affecting the Real Properties and any easements and restrictions of record" if any.

5. The Real Properties shall be sold by public auction to take place within Westmoreland County, Virginia, either on the premises themselves or at any other place in accordance with the provisions of 28 U.S.C. $$ 2001 and 2002.

6. The time and place for the sale of the Real Properties are to be announced by the Internal Revenue Service.

7. The sale of the Real Properties shall be advertised once each week for four consecutive weeks preceding the time fixed for such sale in a newspaper of general circulation in Westmoreland County, Virginia and by any other notice that the Internal Revenue Service deems appropriate. The notice(s) of sale shall contain a description of the Real Properties to be sold and shall contain the terms and conditions of sale in this order.

8. PALS shall set a minimum bid. No bid on the Real properties (except as to the United States) shall be accepted unless the same is accompanied by a certified or cashier's check or money order, for an amount between 5% and 20% of the amount of the minimum bid. Before being permitted to bid at the sales, bidders shall display to the Internal Revenue Service proof that they are able to comply with this requirement. No bids will be received from

any person who has not presented proof that if they are the successful bidder, they can make the deposit required by this order. If the minimum bid is not met or exceeded" PALS may, without further permission of this Court, and under the terms and conditions of this Order of Sale, hold a new public sale and may reduce the minimum bid.

9. The balance of the purchase price for the Real Properties shall be paid to the Clerk of Court within 45 days after the date the bid is accepted. Payment shall be by a certified or cashier's check, or money order. The Clerk shall place the deposit and the balance of the purchase price into the Court's registry. If the bidder fails to fulfill this requirement the deposit shall be forfeited and shall be applied to the costs of the sale with any balance remaining to be applied to Lewis Carter's unpaid tax liabilities. The Clerk shall distribute the deposit as directed by further order of this Court. The Real Properties shall again be offered for sale under the terms and conditions of this order or PALS may accept another bid.

10. No later than 25 days after the Clerk notifies the United States that the balance of the purchase price has been received the United States shall file a report of sale with the Court, together with a proposed distribution of proceeds consistent with paragraphs 12 and 13. If there are no objections to the proposed distribution within 20 days" then the Clerk of the Court is authorized to distribute the proceeds in accordance with the proposed distribution of proceeds, and the Internal Revenue Service will execute and deliver the deed(s) to the purchase(s).

11. After the distribution of the proceeds, the Westmoreland County Clerk shall proceed to record the deed(s) in favor of the purchaser(s). The responsibility for recording the deed(s) with the Westmoreland County Clerk, and the payment of all costs, fees, and taxes of whatever kind related to the recording of such deed(s), shall be borne by the purchaser(s) as a term and condition of the sale,

12. The proceeds from the sale by PALS of the Real Properties described in paragraph 1(a) and 1(b) shall be distributed in the following order:

a. First, to PALS in payment of the administrative expenses of sale;

b. Second to pay any unpaid real estate taxes;

The remaining sales proceeds shall be split into two equal shares representing Lewis and Mary Carter's interests in the property. Mary Carter's interest shall be distributed to her. Lewis Carter's interest shall be distributed as follows:

a. First to the Virginia Department of Taxation up to the outstanding balance of its liens recorded on 3/2/1998 and 12/30/1998;

b. Second to the United States up to the outstanding balance of its tax liens recorded on 2/13/2006 and 8/7/2009;

c. Third to the Virginia Department of Taxation up to the outstanding
balance of its lien recorded on 12/30/2008.

d. Fourth, to the United States up to the outstanding balance of its liens recorded or 4/13/2011, 6/24/2013, and 10/20/2014; and

e. Fifth, any remaining funds shall be distributed to Lewis Carter.

13. The proceeds from the sale by PALS of the Real properties described in paragraph 1(c) shall be distributed in the following order:

a. First to PALS in payment of the administrative expenses of sale;

b. Second to pay any unpaid real estate taxes;

The remaining sales proceeds shall be split into two equal shares representing Lewis and Bobby Carter's interests in the property. Bobby Carter's interest shall be distributed to him. Lewis Carter's interest shall be distributed as follows:

a. First to the Virginia Department of Taxation up to the outstanding balance of its liens recorded on 3/2/1998 and 12/30/1998;

b. Second to the United States up to the outstanding balance of its tax liens recorded on 2/13/2006 and 8/7/2009;

c. Third to the Virginia Department of Taxation up to the outstanding balance of its lien recorded on 12/30/2008;

d. Fourth, to the United States up to the outstanding balance of its liens recorded on 4/13/2011, 6/24/2013, and 10/20/2014; and

e. Fifth, any remaining funds shall be distributed to Lewis Carter,

14. Until the Real Properties are sold by the Internal Revenue Service Lewis, Mary, and Bobby Carter shall take all reasonable steps necessary to preserve the Real Properties (including all improvements, fixtures, and appurtenances) in their current condition, including maintaining a fire and casualty insurance policy on the real properties. They shall not commit waste against the Real Properties, nor shall they cause or permit anyone else to do so. Lewis, Mary, and Bobby Carter shall not do anything that tends to reduce the value or marketability of the Real Properties, nor shall they cause or permit anyone else to do so. Lewis, Mary, and Bobby Carter shall take no action which may tend to deter or discourage potential bidders from participating in the public auction such as recording any instrument publishing any notice, running newspaper advertisements, posting signs, or

making internet postings, nor shall they permit anyone else to do so.

15. All persons occupying the Real Properties shall vacate the properties within 30 days of the date of this Order, each taking with them his or her personal property (but leaving all improvements, buildings, fixtures and appurtenances to the Real Properties). If any person fails or refuses to vacate any of the Real Properties by the date specified in this Order, PALS is authorized to coordinate with the United States Marshal's Service to take all actions that are reasonably necessary to have those persons ejected. The United States Marshal's Service is authorized and directed to take any and all actions, including but not limited to the use of reasonable force, to enter and remain on the premises, which includes, but is not limited to, the land, buildings, vehicles, and any other structures located thereon, for the purpose of executing this Order. The United States Marshal's Service is further authorized and directed to arrest and/or evict from the premises any and all persons who

obstruct, attempt to obstruct, or interfere or attempt to interfere in any way with the execution of this Order.

16. Any personal property remaining on the Real Properties 30 days after the date of this Order is deemed forfeited and abandoned. The Internal Revenue Service is authorized to dispose of such personal property in any manner it sees fit, including sale, in which case the proceeds of the sale are to be applied pursuant to further order of this Court· Payment for the personal property shall be by a certified or cashier's check, or money order. The Clerk shall deposit the funds into the Court's registry.

17. This order of sale shall act as a special writ of execution and no further orders or process from the Court shall be required.

<signed>
M. Hannah Lauck
United States District Judge

Richmond, Virginia
Date: 3/22/2019

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

UNITED STATES OF AMERICA
Plaintiff,

v.

Civil No. 3:16cv674

Lewis F. Carter, et al.,
Defendants.

MEMORANDUM ORDER

This matter arises from the United States' efforts to foreclose on certain real properties and collect unpaid taxes, interest, and penalties from Defendants Lewis, Mary, and Bobby Carter. On September 12, 2018, the Court entered an order (the "Final Order") that awarded summary judgment to the United States, foreclosed the tax liens at issue, authorized the sale of the real properties subject to the liens, and dismissed the case with prejudice.[1] (ECF No. 91.) The United

[1] The September 12,2018 Memorandum Opinion, (ECF No. 90), issued

contemporaneously with the Final Order sets forth the factual and procedural history. The Court assumes familiarity with the September 12,2018 Memorandum Opinion.

States now moves the Court to amend the Final Order pursuant to Federal Rule of Civil Procedure 60(a) and enter an Order of Sale (the "Motion").[2] (ECF No. 92.)

Lewis Carter[3] ("Carter") objected to the Motion, (ECF No. 94), moving to dismiss it on the grounds that this Court lacks jurisdiction to enforce federal tax liens against property in Virginia (ECF No. 93). The United States replied. (ECF No. 95.) After the completion of full briefing on these motions, Carter filed a Notice of Appeal. (ECF No. 96.) The Clerk for the United States Court of Appeals for the Fourth

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[2] Alternatively, the United States seeks relief under Federal Rule of Civil Procedure 59(e). See *Zinkand v. Brown*, 478 F.3d 634, 637 (4th Cir. 2007) (holding Rule 59(e) motion may only be granted: "(1) to accommodate an intervening change in the law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice). Because the Court intended to authorize the sale of the real properties at issue, the Court finds it proper to address this matter in accordance with Rule 60(a).

[3] Although Mary and Bobby Carter remain as defendants in this case, the Court notes that only Lewis Carter signed the objection.

Circuit provided that, because this Court had a motion under advisement, the Fourth Circuit would "treat the notice of appeal as filed as of the date the district court disposes of such motion." (ECF No. 98.)

This matter is ripe for disposition. For the reasons stated below, the Court will grant the Motion, amend the Final Order, and enter an Order of Sale.

Pursuant to Rule 60(a), a "court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment [or] order. . . ." Fed. R. Civ. P. 60(a).[4] Rule 60(a)

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[4] Rule 601a; does not articulate a specific timeline by which a motion must be filed. See Fed. R. Civ. P60(a). But if a party files a notice of appeal a district court may correct an Error only with leave of the appellate court. *Id.*

However, as the Fourth Circuit has already recognized, an exception applies here. The United States moved to amend the final order through a Rule 60 motion filed within twenty-eight days of this Court's September 12, 2018 judgment. (ECF No. 92.) Carter filed his Notice of Appeal more than a month after the United States moved to amend, but before this Court decided the Rule 60 motion. @CF No. 96.) Federal Rule of Appellate Procedure 4(a) dictates that, in such a circumstance, the notice of appeal

does not allow a court to reconsider the underlying substantive issues. *Rhodes v. Hartford Fire Ins. Co.,* 548 F. App'x 857, 859 (4th Cir. 2013). A correction in accordance with Rule 60(a) can remedy "an inconsistency between the text of an order or judgment and the district court's intent when it entered the order or judgment." *Sartin v. McNair Law Firm, PA,* 756 F.3d 259, 265-66 (4th Cir. 2014). An amendment that "add[s] directions for carrying the judgment into effect" does not substantively affect the court's order, *Jones v. Bank Of N.Y. Mellon,* No. H-13-2414, 2017 WL3129805, at *1 (S.D. Tex. July 20, 2017) (concluding that a Rule 60(a) motion appropriately supplemented a foreclosure judgment with an Order of Sale).

To complete this foreclosure, the United States must conduct the sales, deposit the sales proceeds

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becomes effective upon the entry of an order disposing of the last such motion, but not before. Fed. R. App. P. a(a)(a)(vi); Rhodes,548 F. App'x at 858-59. (See a/so ECF No. 98 (&at the Notice of Appeal would be considered "filed as of the date the district court disposes of such motion").)

with the Court file sales reports, and then request that the Court distribute the sales proceeds in accordance with the parties' respective interests. See28U.S.C. §§ 2001(a), 2002 (providing procedures for court-ordered real property sales), In the Final order, however, the Court dismissed this matter with prejudice without retaining jurisdiction to allow the foreclosure to procced. (ECF No. 91.) As a result the United States cannot conduct the sales and take the steps necessary to complete the foreclosure because the Court no longer has jurisdiction over this case.

On September 12, 2018, the Court explained its ruling in favor of the United States, which directed the "foreclosure of the United States' tax liens against Lewis;" and "enter[ed] an order authorizing the United States to sell certain real property owned by Lewis. . . ."[5] *(Id)* In issuing the Final

[5] To ascertain its intent in entering the judgment at issue, a court may consider (contemporaneous documents, such as a memorandum opinion." *Rhodes* 548 F. App'x at 860.

Order, the court intended to allow the real property sales pursuant to the procedures set forth in 28 U.S.C. §§ 2001(a) and 2002.

To effectuate this intent the court will amend the Final order pursuant to Rule 60(a). In so doing the Court retains jurisdiction over this matter for purposes of facilitating the property sales in accordance with the procedures set forth in 28 U.S.C. §§ 2001 and 2002. The requested connection under Rule 60(a) does not amend the underlying substance but adds only the means by which the United States may effectuate the foreclosure.

Carter's motions and arguments to the contrary do not prevail.[6]

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[6] Defendant's Memorandum in Support of Motion to Dismiss, (ECF No, 93), is non-persuasive as a Response and cannot be treated as a Motion to Dismiss. *United States v. Aramony*, 166 F.3d 655, 661 (E.D. Va. 1999) (quoting *Christianson v. Colt Indus. Operating Corp.*, 486 U.S. 800, 815-16 (1988) ("A[s] most commonly defined, the doctrine [of the law of the case] posits that when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case."). In this memorandum Carter merely reiterates improper and unsuccessful arguments previously raised and denied. (See, e.g., Sept 12, 2018 Mem. Op. 27, ECF No. 90 (dismissing multiple

The Motion is therefore GRANTED, and the Order of Sale ENTERED.

The Court:

1) GRANTS the United States' Motion to Amend, (ECF No. 92);

2) AMENDS the September 12, 2018 Order to VACATE the Court's judgment of dismissal with prejudice so as to retain jurisdiction over this matter for purposes of facilitating the property sales in accordance with the procedures set forth in 28 U.S.C. §§ 2001(a) and 2002, (ECF No. 91);

3) AFFIRMS all other aspects of the Court's September 12, 2018 Order, (ECF No. 91);

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objections concerning subject Matter jurisdiction as "improperly duplicative, frivolous, and contumacious'); Sept. 18, 2017 Mem. Op. 10-11, ECF No. 36 (detailing the United States' long-standing authority to "impose and collect federal income tax" and "enforce . . . lien[s] for the nonpayment of tax by forcing the sale of real property").)

Furthermore, Carter's Objection to Plaintiff's Motion for Lack of Territorial Jurisdiction, (ECF No, 94), also amounts to a duplicative filing bereft of additional legal or factual support. The Court therefore finds the Objection improper and, to the extent such any finding would be necessary, the Objection will be denied.

4) OVERRULES Carter's Objection, (ECF No. 94);

5) DENIES Carter's Motion to Dismiss, (ECF No. 93); and,

6) ENTERS the Order of Sale separately thereafter.

The Clerk is directed to send a copy of this Memorandum Order and the Order of Sale to all counsel of record and to Lewis F. Carter, Mary Carter, and Bobby Carter at their addresses of record.

It is SO ORDERED.

<signed>
M. Hannah Lauck
United States District Judge

Richmond, Virginia
Date: 3/22/2019

CERTIFICATION OF LIMITED GROUNDS, THE PRESENCE OF A DISTINCT STATEMENT IN THE PETITION, AND OF GOOD FAITH

I, Lewis Carter, Petitioner *pro se,* certify that the attached *Petition for Re-Hearing* briefly and distinctly states the grounds for its submission to the court on page 1 of the *Petition,* in the single paragraph titled "Issue Presented".

I further certify the grounds argued in the *Petition* are limited to substantial grounds of both substantial and controlling legal effect, which statutes were in fact invoked by the district court in its *Orders* in this case, *i.e.*: Title 28 U.S.C. Section 2001.

I finally, do faithfully swear and certify that the *Petition for Re-Hearing* is presented now in good faith and under a final plea and prayer for American justice, and has not been submitted for any delaying purpose.

So sworn under penalty of perjury

Respectfully,

Lewis F. Carter, *pro se*
P.O. Box 186
Warsaw, Va. 22572