

19-5714

CASE NO. _____

ORIGINAL

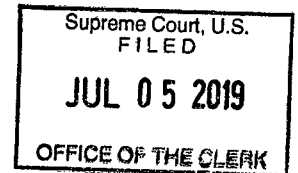
IN THE

SUPREME COURT OF THE UNITED STATES

Dianne Michele Carter - Petitioner

vs.

UNITED STATES OF AMERICA - RESPONDENT



**ON PETITION FOR A WRIT OF CERTIORARI TO
Court of Appeals for the Fourth Circuit
Case 18-2368**

PETITION FOR WRIT OF CERTIORARI

**Dianne Michele Carter
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Matthews NC 28106-3143
704-777-9558**

QUESTIONS PRESENTED

1. If the courts are to regard the Constitution and the Constitution is superior to any ordinary act of the legislature, is it the Constitution, and not such ordinary act, that must govern this case to which they both apply?
2. Is it constitutional for a judge to issue an order that service is to be in accordance with Rule 4 of the Federal Rules of Civil Procedure and then proceed with the case, issuing a Bench Warrant for the defendant's failure to appear, knowing that the plaintiff failed to effect service?
3. Is it constitutional for Commissioner of Internal Revenue to seek remedy, from a consumer who has no contract with Commissioner, which is inconsistent with the Internal Revenue Code of which the Commissioner must abide?

PARTIES TO THE PROCEEDING

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

1. Frank D. Whitney, Western District of NC
2. Harvie Wilkinson III, COA 4th Circuit
3. Henry F. Ford, COA 4th Circuit
4. Stephanie D. Thacker, COA 4th Circuit
5. Paul V. Niemeyer, COA 4th Circuit
6. Pamela A. Harris, COA 4th Circuit
7. Dennis W. Shedd, COA 4th Circuit
8. Commissioner of Internal Revenue

PROCEEDINGS IN FEDERAL COURT

2019 cv 000649	U.S. District for the District of Columbia Dianne Michele Carter vs Director U.S. Marshal Service	Pending
3:2019 cv 00104	U.S. District for the Western District of NC Dianne Michele Carter vs. Pellicane et al	Pending

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<i>Lyons v. St. Joseph Belt Railway Co.</i> , 232 Mo.App. 575, 84 S.W.2d 933, 944	12
<i>Manufacturing Co v. Holt</i> , 51 W.Va 352, 41 S.E. 351 - void judgment	10
<i>Marbury v. Madison</i> 5 U.S. 137 Supreme Court 1803	12
<i>Miranda v. Arizona</i> , 384 US 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966)	7
<i>Owen v. Independence</i> , 100 S.C.T. 1398, 445 US 622	13
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<i>U.S. v. Barter Systems of Grand Rapids</i> 557 F.Supp.698 info in Commissioner's possession	9
<i>U.S. v. Miller</i> , C.A.Mass., 463 F.2d 600, 602	12
<i>U.S. v Ohio Barge Lines, Inc.</i> , 607 F2d 624, 632	12
<i>United States of America v Dianne M. Carter</i> 3:16-cv-00673-FDW-DCK	9, 15
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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgments below.

OPINIONS BELOW

For Cases From Federal Court

The opinions of the United States Court of Appeals for the Fourth Circuit are unpublished and are:

Appendix A	Court of Appeals Judgment 18-2368 Doc 12
Appendix C	Court of Appeals Judgment 17-2364 Doc 26
Appendix C4	Court of Appeals Mandate 17-2364 Doc 28

The opinions of the United States District Court for the Western District of North Carolina appears at the following and are unpublished:

Appendix B	District Court Order Doc 41
Appendix D	District Court Show Cause Doc 25
Appendix E	District Court Bench Warrant Doc 34
Appendix F	District Court Order Use force Doc 30

BASIS FOR JURISDICTION

1. The entry of the judgment of the Fourth Circuit was filed April 8, 2019.
2. This court has jurisdiction under 28 U.S.C. Code § 1254 (1)
3. Article III § 2- The judicial Power to all cases, in Law and Equity, arising under this Constitution, the Laws of the United States and to Controversies to which the United States shall be a Party.
4. A citizens' suit is brought under a regulatory statute that includes a provision authorizing a private party to bring suit against government officials for violating statutes and regulations. *Sierra Club v. Peterson*.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Constitution of the United States of 1787

Article I § 10 - No State shall pass any Law impairing the Obligation of Contracts	10
Article III § 1 -The Judges ...shall hold their Offices during good Behaviour	13
Article III § 2 - The judicial Power shall extend to all Cases, in Law and Equity, arising ... under this Constitution, the Laws of the United States ... ; to Controversies to which the United States shall be a Party;	2
Article VI - This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made ... under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby,	6
Amendment I - Congress shall make no law respecting an establishment of religion	9, 10
Amendment IV - 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 the place to be searched, and the persons or things to be seized.	7, 9
Amendment V - No person shall be deprived of life, liberty, or property, without due process of law	7
Amendment XI - The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign Stat	8
Amendment XIV - Nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws	7

United States Code

Title 1 § 204 - Codes and Supplements as evidence of the Laws of United States - In all courts, ... and of each State, ... of the United States -- (a) United States Code. --The matter set forth in the edition of the Code of Laws of the United States current at any time shall, ... establish prima facie the laws of the United States, ... *Provided, however,* That whenever titles of such Code shall have been enacted into positive law the text thereof shall be legal evidence of the laws therein contained, in all the courts of the United States, the several States 9

Title 18 § 241 - conspiracy against rights Appendix J7, 9, 12

Title 18 § 242 - deprivation of rights under color of law Appendix J7, 9, 12

Title 26 §7602 - Examination of books and witnesses

(a)Authority to Summon, Etc. For the purpose of ascertaining the correctness of any return, making a return where none has been made, determining the liability of any person for any internal revenue tax or the liability at law or in equity of any transferee or fiduciary of any person in respect of any internal revenue tax, or collecting any such liability, the Secretary is authorized

c) Notice of Contact of Third Parties. (1) General Notice - An officer or employee of the Internal Revenue Service may not contact any person other than the taxpayer ... without providing reasonable notice in advance to the taxpayer that contacts with persons other than the taxpayer may be made 10

Title 28 § 455 - Disqualification of justice, judge, or magistrate judge

Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned 12

Federal Rules of Civil Procedure

Rule 4(e) - serving an individual	6
Rule 4(l) - proof of service must be made to the court	6
Rule 4(m) - time limit for service	6
Rule 5 - service	6

Other Authorities

Universal Declaration of Human Rights (UDHR) - Appendix M	15
Black's Law Dictionary Revised Fourth Edition page 1030 - LAW HATETH WRONG. Wing. Max. p. 563, max. 146; Finch, Law, b. 1, c. 3, no. 62	14

STATEMENT OF THE CASE

The purpose of this case is to challenge the lawfulness of Ms. Carter's arrest and confinement. On 12/21/17 Frank D. Whitney, judge signed a Show Cause ORDER mandating service of the ORDER in accordance with Rule 4(e) of the Federal Rules of Civil Procedure (FRCP). Appendix D1, D2, G. The ORDER was never served on Ms. Carter as required by the ORDER, or by any other means and Ms. Carter was not aware of the ORDER until after she was arrested on Feb 26 2018. Other FRCP violations: there was no affidavit proof of service made to the court as required by Rule 4(l); the court was required to, but failed to, dismiss the action against Ms. Carter, for lack of service, in accord with Rule 4(m); Rule 5a(1)(a) necessitates the ORDER be served because the ORDER states that service is required; Rule 5a(2) demands that a new claim be served on Ms. Carter under Rule 4 because she failed to appear - this was not done. Whitney lacked jurisdiction over the person. Instead of following the supreme Law of the Land, as mandated in Constitution Article VI, Whitney, under color of law, signed a BENCH WARRANT for Ms. Carter to be arrested. Appendix E.

The UNITED STATES OF AMERICA (USA) who initiated this case on behalf of Commissioner of Internal Revenue (Commissioner), admitted that they failed to serve the ORDER and issued a MOTION authorizing the United States Marshall Service (USMS) to take all reasonable steps necessary to execute the BENCH WARRANT that resulted from USA failure to serve the ORDER. Appendix H. Whitney signed the requested ORDER authorizing the USMS. Appendix F. On Feb 26 2018 at approximately 0430 hours, clothed with the colorable authority of the BENCH WARRANT and ORDER, USMS agents Thomas Pellicane, Barbara Yates, and approximately 4 unknown named agents of the USMS executed the BENCH WARRANT by breaking, entering and searching private property. The property is located in

Matthews NC and belongs to the Moorish Holy Temple of Science of the World / Moorish Science Temple of America Temple Trust (MHTSW/MSTA). Appendix K5, K6, K7. The USMS agents criminally shined bright lights, with guns drawn at Ms. Carter then searched, seized, handcuffed, waist-chained, ankle-shackled, arrested, imprisoned, questioned and kidnapped Ms. Carter in violation of Amendment IV. The USMS failed to Mirandize, *Miranda v Arizona*, and kidnapped Ms. Carter taking her to a jail cell located in the Western District Courthouse. Ms. Carter was charged with misdemeanor civil contempt non-arrest while she was indeed arrested for approximately 44 hours. Later that evening, the Office of Sheriff in Mecklenburg County North Carolina conspired with the USMS by accepting responsibility for the continued unlawful imprisonment of Ms. Carter. At the hearing of Feb 26 18, Ms. Carter informed Whitney of the unlawful break-in by USMS. Whitney paled, but neglected to prevent further injury to Ms. Carter, by imprisoning Ms. Carter in Mecklenburg County jail along with criminals, including Bianca Harrison PID 465002, who is purported to be a gang member charged with violating the RICO Act. This is conspiracy against rights and deprivation of rights under color of law. 18 U.S.C. § 241, 242. Appendix J. At the hearing, Whitney attempted to use the Fourth Circuit judgment to justify his actions and proceeded to read the ORDER for the record. Appendix K1 section 1, K10, K11. While reading only Appendix C2, Whitney overlooked Appendix C3 which states the judgment is effective upon issuance of the mandate - the mandate was issued Apr 10 2018. Appendix C4. Whitney acted prematurely and exceeded the scope of his duties at the agency. Whitney's oversight is another cause of Ms. Carter being arrested, is a violation of due process, equal protection of the laws and is unconstitutional. Amendments V, XIV. Reasonable people would surmise that Whitney has engaged in conduct prejudicial to the effective and expeditious administration of the business of the court; that

Whitney's actions conflict with the superior authority of the Constitution and are criminal; that in this case, Whitney is stripped of his official character and is subjected in his person to the consequences of his individual conduct; that Whitney engaged in acts of treason against the Constitution; that Whitney's conduct occurred outside of the performance of his official duties and would aid in substantial and widespread lowering of public confidence in the courts among reasonable people.

Ms. Carter was under constant stress, feared for her life and her Legal Abuse Syndrome Post Traumatic Stress Disorder (LAS PTSD) a psychic disorder and not a mental illness, was severely aggravated. This treatment of Ms. Carter constitute a violation of the Americans with Disabilities Act Amendments Act of 2008 (ADAAA), hereby invoking rights to safety under the ADAAA federal mandates. ADA violations circumvent 11th Amendment immunity and there is judicial liability for Administrative actions including actions against persons under the ADA. *Tennessee v. Lane*; *Forrester v. White*. This false arrest and imprisonment entitles Ms. Carter to monetary damages, as were granted in *Trezevant v City of Tampa*, an award of \$25,000 for 23 minutes of wrongful imprisonment.

When we left the house on Feb 26 2018, the USMS actors failed or refused to secure the house doors that they had busted open for entry. On Feb 27 2018, Pellicane, Yates and approximately 2 unknown named agents of the USMS again entered and searched the private property without permission, as if they owned it. They took Ms. Carter with them in handcuffs, waist-chained and ankles-shackled. They allowed an IRS agent to enter the house without permission. Again, USMS left the doors to the house unsecured which is the proximate cause of the house being burglarized as reported in Matthews NC Police Department Report

#20180228002. This is a separation of church and state violation protected by Amendment I and Amendment IV.

Ms. Carter is a minister, a creditor and a consumer with unalienable rights bestowed by her Creator and operates under the authority of the Holy Bible for personal, family or household purposes. Ms. Carter is federally protected by the Constitution, and prepared tax returns under a private contract with her clients. Commissioner bases its authority on 26 U.S.C. Internal Revenue Code (IRC) Appendix I. IRC is the agency's internal policy and not judicially enforceable. *Schweiker v Hansen*. IRC, in accord with 1 U.S.C. 204, establishes prima facie and not legal evidence of the laws of the United States. IRC has no enabling statute and is a non-positive law title of the code. Statutory authority is delineated in the enabling statute, thus IRC has no statutory authority. There is also no contractual obligation between Ms. Carter and Commissioner therefore there is nothing granting personal jurisdiction. Commissioner acted with no authority and initiated this case for unlawful purposes. All actions of the agency should be invalidated by this reviewing Court as it applies to Ms. Carter and Case 3:16-cv-00673-FDW-DCK.

The Western District Court exceeded its statutory authority and its agent, Whitney, exceeded the scope of his duties at the agency when he issued an ORDER compelling Ms. Carter, via injunction, arrest and imprisonment, to provide names, address, etc regarding Ms. Carter's clients. The ORDER violates the standards necessary for judicial enforcement and the authority of statute governing examination of books. Designated administrative procedures have not been followed and power given to the Commissioner has been overstepped. Appendix K1 Section 2 and K4, ; *Van Manen v. U.S.*; *U.S. v. Barter Systems of Grand Rapids*; 18 U.S.C. § 241, 242. Appendix J. Because Ms. Carter prepared taxes utilizing both a Preparer Tax

Identification Number and an Electronic Filer Identification Number, the information sought is within the possession of the Commissioner. Per *Van Manen v. U.S.*, such request requires a summons, the information sought must not be within the possession of the Commissioner and administrative steps required for issuing summons must be satisfied. According to 26 USC § 7602 (a) and (c), the legislative intent to summon is for ascertaining the correctness of any return and advance notice must be provided to the taxpayer regarding third parties. This was not the purpose regarding Ms. Carter therefore Commissioner's demand was for an improper purpose. Appendix, K1 Section 2.

Whitney ruled in favor of USA in want of personal jurisdiction over Ms. Carter. Whitney's ruling, a violation of the separation of church and state, impacted Ms. Carter's religious freedoms protected by Amendment I, and impaired Ms. Carter's right to contract, Article I § 10. This case is *coram non judice* and the judgment is void. *Manufacturing Co v. Holt*.

There are other parties liable for the injuries Ms. Carter sustained and payment of damages to be awarded. Reasonable people would surmise that their actions were done with criminal intent, knowing that what they did was unlawful, criminally negligent, reckless and performed with willful blindness. Each has taken an oath to defend the Constitution, are deemed to know the law and had it within their power to prevent further injury to Ms. Carter but failed or refused to do so:

Commissioner of Internal Revenue

Office of Governor in North Carolina - respondeat superior

Office of Sheriff in Mecklenburg County North Carolina who neglected to verify that the

arrest and imprisonment was in line with the Constitution before conspiring with USMS in the unlawful arrest and imprisonment of Ms. Carter.

Office of Mayor Town of Matthews NC - respondeat superior

Office of Chief of Matthews Police Department in North Carolina as respondeat superior.

Per the DECLARATION OF BARBARA YATES, Appendix L1, L2, Matthews Police

Department was aware on Jan 8 2018 that an unlawful arrest was going to be attempted and 3

Matthews policemen unlawfully accompanied her team to the house. On Feb 27 2018 while

Ms. Carter was being detained by Yates, Yates told Ms. Carter that when Yates went back to the

Matthews Police Department on Feb 26 2018 for their assistance in the arrest, Matthews Police

refused. However, Matthews Police had knowledge that a crime was about to be committed in

Matthews and they did nothing to prevent the arrest and imprisonment which makes them liable.

The below listed Fourth Circuit judges are also liable for the injuries Ms. Carter sustained and payment of damages to be awarded. Reasonable people would surmise that their actions

were done with criminal intent, knowing that what they did was unlawful, criminally negligent,

reckless and performed with willful blindness. Ms. Carter appealed to the Fourth Circuit

complaining that the subject civil lawsuit was ruled in lack of jurisdiction. In the interest of

justice, proper due diligence on their part could have rendered a different result: Harvie

Wilkinson III, Henry F. Floyd and Stephanie D. Thacker Harvie Wilkinson III, participated in

Case No. 17-2364, Appendix C, and Paul V. Niemeyer, Pamela A. Harris and Dennis W. Shedd,

participated in Case No. 18-2368. They could have discovered that jurisdiction was indeed

lacking and ruled accordingly.

The actions of all 6 judges constitute **actionable negligence**. Each judge had the power and the public duty to aid in preventing the commission of the wrongful acts ordered by

Whitney, which they would have discovered by reasonable diligence but neglected to do so. This neglect constitutes conspiracy against rights and deprivation of rights under color of law 18 U.S.C. 241, 242. Appendix J. The judges are liable for all damages caused by the wrongful acts.

The judges failed to exercise due care aiding in the injury and damages suffered by Ms. Carter. Their conduct falls below the standard established by law for the protection of others against unreasonable risk of harm pursuant to the precedent established in *U.S. v Ohio Barge Lines, Inc.*, 607 F2d 624, 632.

On 02/16/18, Wilkinson, Ford and Thacker decided Case # 17-2364. Appendix C1-C4. Ms. Carter petitioned for rehearing and the same judges, Wilkinson, Ford and Thacker denied the petition concerning their prior judgment. Pursuant to 28 USC § 455(a), these judges should have disqualified themselves from ruling on the Petition for Rehearing En Banc. This is a **conflict of interest**. Regard for one duty, their prior judgment, tends to lead to disregard of another, their duty to be objective and fair regarding the rehearing pursuant to the precedent established in *U.S. v. Miller*.

The actions of Wilkinson, Ford and Thacker constitute **malice in law**. They acted wantonly, doing what any person of reasonable intelligence would have known to be contrary to their duty, and purposely prejudicial and injurious to Ms. Carter. This intentional doing of wrongful acts without just cause is malice in law pursuant to the precedent established in *Lyons v. St. Joseph Belt Railway Co.*

All judges in this case have violated their oath to defend the Constitution and Ms. Carter has been injured because of it. Per *Marbury v. Madison*, the very essence of civil liberty consists in the right of every individual to claim the protection of the laws when she

has been injured. This defeats the doctrine of sovereign immunity which is inconsistent with the Constitution. Article III § 1 says Judges shall hold their Offices during good Behaviour. Per *Owen v. Independence*, officers of the court have no immunity, when violating a Constitutional right, from liability, for they are deemed to know the law.

REASONS FOR GRANTING

1. The Government has abused its power, squashed the Constitutional freedoms of Ms. Carter and their actions are sinister threats to the Bill of Rights.
2. As described herein, the Fourth Circuit decisions have so far departed from the accepted and usual course of judicial proceedings, in their sanctioning of such a departure by the Western District Court, as to call for an exercise of the one supreme Court's supervisory power.
3. The Constitution of the United States entitles Ms. Carter as a consumer and a creditor to protections of her personal, family and household goods. The acts of the defendants violate the Constitution, the laws of the United States and universal law.
4. As described herein, all federal actors failed to follow the Congressional intent of their authority, their oath to defend the Constitution of the United States and their administrative procedures.
5. "The two enemies of the people are criminals and government, so let us tie the second down with the chains of the Constitution so the second will not become the legalized version of the first."

Thomas Jefferson Papers
6. LAW HATETH WRONG.

CONCLUSION

As it applies to Ms. Carter and for the reasons stated, all of the judges mentioned have damaged Ms. Carter when they ruled contrary to the supreme Law of the Land, the laws of the United States and the UDHR. Appendix M. Their rulings exceed their authority and are notwithstanding in law. Ms. Carter respectfully moves this Court to invalidate all judgments of Case No. 3:16-cv-00673-FDW-DCK, provide appropriate relief including but not limited to \$10 million or the maximum allowed by law in monetary damages - actual, compensatory, punitive and imprisonment of the offenders for the unconstitutional federal crimes committed against Ms. Carter because of her exercise of individual, unalienable, constitutionally protected rights and the Universal Declaration of Human Rights.

I declare under the laws of the United States that everything stated herein is true and correct.

Executed on 22 August 2019


Dianne Michele Carter, Minister
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