UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 23-2137

United States of America

Plaintiff - Appellee

v.

Guillermo Borboa, also known as Omar Gabriel Borboa

Defendant - Appellant

Appeal from U.S. District Court for the District of Nebraska - Omaha
(8:05-cr-00024-BCB-1)

JUDGMENT

Before LOKEN, COLLOTON, and ERICKSON, Circuit Judges.

This appeal comes before the court on appellant's application for a certificate of appealability. The court has carefully reviewed the original file of the district court, and the application for a certificate of appealability is denied. The appeal is dismissed.

July 12, 2023

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

EXHIBIT "A"

APPENDIX B

name search on the prison library's computer on April 21, 2023. Filing 140 at 1. With his request for an extension, Borboa included a screenshot of the Court's Order that he claims he found online. Filing 140 at 2-3. Based on the dates included in his request, Borboa dropped his notice of appeal and request for extension in the prison mailbox on April 24 and his prison**{2023 U.S. Dist. LEXIS 3}** mailed it on April 27. Filing 140 at 1, 5.

There is a presumption that parties receive all documents sent to them, and the docket shows that the Clerk of Court mailed Borboa the Order on February 17, 2023. Filing 138 (Text Entry stating "Copy mailed to pro se party"); *see Nebraska Mach. Co. v. Cargotec Sols., LLC*, 762 F.3d 737, 742 n.4 (8th Cir. 2014) ("[T]he parties are presumed to have received all documents that were properly sent to them." (citing *Am. Boat Co. v. Unknown Sunken Barge*, 418 F.3d 910, 914 (8th Cir. 2005))); *Am. Boat Co.*, 418 F.3d at 913 (8th Cir. 2005) ("[T]he the clerk's docket entries are presumed correct in the absence of reliable evidence to the contrary[.]"). Nevertheless, based on the information Borboa provides in his request, the Court credits his claim that, for whatever reason, he never received the Order in a timely fashion. Furthermore, Borboa acted diligently by searching for information about his Motion on a computer and, after discovering it had been denied, acted expeditiously in mailing his notice of appeal. Therefore, Borboa has shown excusable neglect and the Court will extend the appeal deadline so that Borboa's notice of appeal is timely.

The remaining issue is whether Borboa may proceed *in forma pauperis* on his appeal. Rule 24 of the Rules of Appellate Procedure permit a party to proceed *in forma pauperis* without further authorization if the party was appointed counsel in his or**{2023 U.S. Dist. LEXIS 4}** her criminal case, the Court does not certify that the appeal is not taken in good faith, and a statute does not provide otherwise. Fed. R. App. P. 24(a)(3). Borboa had appointed counsel in his underlying criminal case, the Court will not certify this appeal as not taken in good faith, and no statute bars Borboa from having *in forma pauperis* status.2 Accordingly,

IT IS ORDERED:

1. Borboa's request to file his notice of appeal "out of time," Filing 140, is granted; and
2. Borboa may proceed on appeal *in forma pauperis*. Dated this 3rd day of May, 2023.

BY THE COURT:

/s/ Brian C. Buescher

Brian C. Buescher

United States District Judge

Footnotes

1

The Court construed Borboa's Motion as a habeas petition, so the rules governing appeals in civil cases apply. *See Mayle v. Felix*, 545 U.S. 644, 655, 125 S. Ct. 2562, 162 L. Ed. 2d 582 (2005) ("Habeas corpus proceedings are characterized as civil in nature."); Rule 11(b) of the Rules Governing Section 2255 Proceedings ("Federal Rule of Appellate Procedure 4(a) governs the time to appeal an order entered under these rules.").

2

The Prison Litigation Reform Act does not apply to habeas proceedings. *See Malave v. Hedrick*, 271

F.3d 1139, 1140 (8th Cir. 2001

APPENDIX C

APPENDIX D

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

NO. 2CM06523 PAGE NO. 1
THE PEOPLE OF THE STATE OF CALIFORNIA VS. CURRENT DATE 07/02/21
DEFENDANT 01: GUILLERMO EDUARDO BORBOA
LAW ENFORCEMENT AGENCY EFFECTING ARREST: LASD - COMPTON STATION PATROL

BAIL: APPEARANCE DATE	AMOUNT OF BAIL	DATE POSTED	RECEIPT OR BOND NO.	SURETY COMPANY	REGISTER NUMBER

CASE FILED ON 08/21/02.
COMPLAINT FILED, DECLARED OR SWORN TO CHARGING DEFENDANT WITH HAVING COMMITTED, ON OR ABOUT 07/04/02 IN THE COUNTY OF LOS ANGELES, THE FOLLOWING OFFENSE(S) OF:
COUNT 01: 529 PC MISD
COUNT 02: 148.9(A) PC MISD
NEXT SCHEDULED EVENT:
10/07/02 830 AM ARRAIGNMENT DIST COMPTON COURTHOUSE DIV 004

ON 10/07/02 AT 830 AM IN COMPTON COURTHOUSE DIV 004

CASE CALLED FOR ARRAIGNMENT
PARTIES: RONALD V. SKYERS (JUDGE) JOSE FLORES (CLERK)
KRIS MASSEY (REP) PAUL F. GUTHRIE III (DA)
DEFENDANT IS NOT PRESENT IN COURT, AND NOT REPRESENTED BY COUNSEL
NEXT SCHEDULED EVENT:
ARREST WARRANT ISSUED

10/07/02 ARREST WARRANT IN THE AMOUNT OF $10,000.00 BY ORDER OF JUDGE RONALD V. SKYERS ISSUED. (10/07/02).

ON 10/15/02 AT 830 AM IN COMPTON COURTHOUSE DIV 001

CASE CALLED FOR ARRAIGNMENT
PARTIES: COMR. MICHAEL KAUTZ (JUDGE) JACKIE GOOSEBERRY (CLERK)
BARBARA B. GIBBONS (REP) CHRISTIAN S. YUN (DA)
DEFENDANT DEMANDS COUNSEL.
COURT REFERS DEFENDANT TO THE PUBLIC DEFENDER.

PUBLIC DEFENDER APPOINTED. RANDALL MEGEE - P.D.
DEFENDANT IS PRESENT IN COURT, AND REPRESENTED BY RANDALL MEGEE DEPUTY PUBLIC DEFENDER
DEFENDANT STATES HIS/HER TRUE NAME AS CHARGED.
A COPY OF THE COMPLAINT AND THE ARREST REPORT GIVEN TO DEFENDANTS COUNSEL.
DEFENDANT WAIVES ARRAIGNMENT, READING OF COMPLAINT, AND STATEMENT OF CONSTITUTIONAL AND STATUTORY RIGHTS.
DEFENDANT PLEADS NOT GUILTY TO COUNT 01, 529 PC.
DEFENDANT PLEADS NOT GUILTY TO COUNT 02, 148.9(A) PC.
COURT ORDERS AND FINDINGS:
-THE COURT ORDERS THE DEFENDANT TO APPEAR ON THE NEXT COURT DATE.
BAIL SET AT $10,000.
NEXT SCHEDULED EVENT:
10/17/02 830 AM PRETRIAL HEARING DIST COMPTON COURTHOUSE DIV 004
NEXT SCHEDULED EVENT :

COMPLAINT, AND POSSIBLE DEFENSES TO SUCH CHARGES;
THE POSSIBLE CONSEQUENCES OF A PLEA OF GUILTY OR NOLO CONTENDERE, INCLUDING THE MAXIMUM PENALTY AND ADMINISTRATIVE SANCTIONS AND THE POSSIBLE LEGAL EFFECTS AND MAXIMUM PENALTIES INCIDENT TO SUBSEQUENT CONVICTIONS FOR THE SAME OR SIMILAR OFFENSES;
THE EFFECTS OF PROBATION;
IF YOU ARE NOT A CITIZEN, YOU ARE HEREBY ADVISED THAT A CONVICTION OF THE OFFENSE FOR WHICH YOU HAVE BEEN CHARGED WILL HAVE THE CONSEQUENCES OF DEPORTATION, EXCLUSION FROM ADMISSION TO THE UNITED STATES, OR DENIAL OF NATURALIZATION PURSUANT TO THE LAWS OF THE UNITED STATES.
COUNSEL FOR THE DEFENDANT JOINS IN THE WAIVERS AND CONCURS IN THE PLEA.
COURT FINDS THAT EACH SUCH WAIVER IS KNOWINGLY, UNDERSTANDINGLY, AND EXPLICITLY MADE;
THE DEFENDANT PERSONALLY WITHDRAWS PLEA OF NOT GUILTY TO COUNT 02 AND PLEADS NOLO CONTENDERE WITH THE APPROVAL OF THE COURT TO A VIOLATION OF SECTION 148.9(A) PC IN COUNT 02. THE COURT FINDS THE DEFENDANT GUILTY.
COUNT (02) : DISPOSITION: CONVICTED
COURT FINDS THAT THERE IS A FACTUAL BASIS FOR DEFENDANT'S PLEA, AND COURT

ACCEPTS PLEA.
NEXT SCHEDULED EVENT:
SENTENCING
STIPULATED THAT COMR. MICHAEL KAUTZ (JUDGE) MAY HEAR THE CAUSE AS TEMPORARY JUDGE.
AS TO COUNT (02):
SERVE 7 DAYS IN LOS ANGELES COUNTY JAIL
DEFENDANT GIVEN TOTAL CREDIT FOR 7 DAYS IN CUSTODY 0 ACTUAL CUSTODY AND 0 GOOD TIME/WORK TIME
DEFENDANT SHALL PAY A RESTITUTION FINE IN THE AMOUNT OF $100.00 TO THE COURT BY 05/13/03
TOTAL DUE: $100.00
COUNT (02): DISPOSITION: CONVICTED
REMAINING COUNTS DISMISSED:
COUNT (01): DISMISSAL IN FURTH OF JUSTICE PER 1385 PC
DMV ABSTRACT NOT REQUIRED
NEXT SCHEDULED EVENT:
05/13/03 830 AM RESTITUTION PAYMENT DIST COMPTON COURTHOUSE DIV 403

ON 08/06/03 AT 830 AM :

FINAL NOTICE BEFORE COLLECTION LETTER MAILED TO DEFENDANT
ON 08-06-03 FOR PAST DUE RESTITUTION FINE BALANCE OF $100.00.
NEXT SCHEDULED EVENT:
09/20/03 830 AM RESTITUTION PAYMENT DIST COMPTON COURTHOUSE DIV 403

ON 09/20/03 AT 830 AM IN COMPTON COURTHOUSE DIV 403

CASE CALLED FOR RESTITUTION PAYMENT.
PARTIES: NONE (JUDGE) NONE (CLERK)
NONE (REP) EVELIS M. DEGARMO ()
DEFENDANT IS NOT PRESENT IN COURT, AND NOT REPRESENTED BY COUNSEL
NEXT SCHEDULED EVENT:
06/09/05 830 AM RESTITUTION PAYMENT DIST COMPTON COURTHOUSE DIV 403

ON 06/09/05 AT 830 AM IN COMPTON COURTHOUSE DIV 403

CASE CALLED FOR RESTITUTION PAYMENT
PARTIES: NONE (JUDGE) NONE (CLERK)
NONE (REP) EVELIS M. DEGARMO ()
DEFENDANT IS NOT PRESENT IN COURT, AND NOT REPRESENTED BY COUNSEL
DEFENDANT FAILED TO PAY RESTITUTION FINE
PROBATION HAS EXPIRED BY OPERATION OF LAW
INELEGIBLE FOR EXPUNGEMENT
NEXT SCHEDULED EVENT:
PROCEEDINGS TERMINATED

ON 10/22/14 AT 530 AM :

CASE FILE DESTROYED.

07/02/21

I HEREBY CERTIFY THIS TO BE A TRUE AND CORRECT COPY OF THE ELECTRONIC DOCKET ON FILE IN THIS OFFICE AS OF THE ABOVE DATE.
SHERRI R. CARTER ,EXECUTIVE OFFICER/CLERK OF SUPERIOR COURT, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

BY A. Ramos, DEPUTY
A. RAMOS

Defined in Penal Code 529 PC, **false impersonation** (also called false personation) is a crime that involves using another person's name or identity to cause harm to that person or to gain an improper benefit. Prosecutors can charge this offense as either a misdemeanor or a felony.

APPENDIX E

United States Department of Justice
United States Marshals Service

BD

DETAINER
AGAINST SENTENCED PRISONER

UNITED STATES MARSHAL
Eastern DISTRICT OF California

TO:
North Kern State Prison
P.O. Box567
Delano, CA 93216-0567 INMATE COPY

DATE: 11/21/06
SUBJECT: BORBOA, Guillermo
AKA: ~~MUNOZ, Guillermo~~
CDC/BK#: F-49374
CASE #: ~~8:05CR24~~

Please accept this Detainer against the above-named subject who is currently in your custody. The United States District Court for the District of **Nebraska** has issued an **arrest warrant(s)** charging the subject with the commission of the following offense(s):

18 USC 3148 – Failure to Appear for Sentencing & Bail Violation

Prior to the subject's release from your custody, please notify this office at once so that we may assume custody if necessary. If the subject is transferred from your custody to another detention facility, we request that you forward our Detainer to said facility at the time of transfer and advise this office as soon as possible.

The notice and speedy trial requirements of the Interstate Agreement on Detainers Act **APPLY** to this Detainer because the Detainer is based on pending Federal criminal charges which have not yet been tried. Pursuant to the provision of the Interstate Agreement on Detainers Act (IADA), a person serving a sentence of imprisonment in any penal institution against whom a detainer is lodged (based on pending Federal criminal charges which have not yet been tried) must be advised that a Detainer has been filed and that the prisoner has the right to demand speedy trial on those charges. Accordingly, please advise the subject that a Detainer has been filed against him/her and that under the IADA, he/she has the right to demand speedy trial on the charges. If your office does not have an official form for such purposes, the statements contained in this Form below may be used.

INMATE COPY INMATE COPY

INSTRUCTIONS FOR COMPLETION OF STATEMENTS

1. Please read or show the following to the subject:

INMATE COPY

"You are hereby advised that a Detainer has been filed against you on 11/21/06 on the basis of Federal criminal charges filed against you in the U.S. District Court for the District of **Nebraska** a speedy trial under the Interstate Agreement on Detainers Act (IADA). Under the IADA, you have the right to be brought to trial within 180 days after you have caused to be delivered to the appropriate U.S. Attorney and the appropriate U.S. District Court, written notice of your request for a final disposition of the charges against you. Because the 180-day time limit may be tolled by virtue of delays attributable to you, you should periodically inquire as to whether your written notice of request for a final disposition of the charges against you has been received by the appropriate U.S. Attorney and the appropriate U.S. District Court. You are hereby advised that the 180-day time limit does not commence until your written notice of request for final disposition of the charges against you has actually been delivered to the appropriate U.S. Attorney and the appropriate U.S. District Court.
If you have any questions regarding the provisions of the IADA, you should contact your attorney or the U.S. Attorney for the District of **Nebraska.**

2. Please execute the following:

The foregoing was read to or by the subject and a copy of the Detainer was delivered to him on 4/25/07 (DATE)

Signed: _____

Title: CC1 GROUT

3. Please have the prisoner execute the following:

INMATE COPY

"I have read or have been read the above paragraph notifying me that a Detainer has been lodged against me and that I have the right to demand speedy trial on the charge(s). I (do) (do not) demand a speedy trial on the charges(s). I understand that if I do request a speedy trial, this request will be delivered to the Office of the United States Attorney who caused the Detainer to be filed. I also understand that my right to a speedy trial under the IADA is the right to be brought to trial within 180 days after my written notice of request for a final disposition of the charges against me has actually been delivered to the appropriate U.S. Attorney and the appropriate U.S. District Court. I further understand that the 180-day time limit may be tolled by any delays attributable to me, and that I must periodically inquire as to whether my written notice of request for a final disposition of the charges against me has been received by the appropriate U.S. Attorney and the Appropriate U.S. District Court. Finally, I understand that if at any time hereafter I desire to demand speedy trial and have not already done so, I can inform my custodian who will then cause the request to be forwarded to the appropriate U.S. Attorney."

CC1 GROUT

(Witness)

4-25-07

(Signature of Prisoner and date)

Please acknowledge receipt of this Detainer. In addition, please provide one copy of the Detainer to the prisoner, return one copy of the Detainer to this office in the enclosed self-addressed envelope, and, if the prisoner demands a speedy trial, forward the Detainer together with the Certificate of Inmate Status by registered or certified mail to the U.S. Attorney for the District of **Nebraska** and the U.S. District Court for the District of **Nebraska.**

INMATE COPY

If the prisoner does not demand a speedy trial at this time and further elects to demand a speedy trial on the charge(s) at a later date, you should obtain a new set of this Form USM-17 from the United States Marshal, have the prisoner complete the amended form, and follow the instructions contained in paragraph 4 above.

Your cooperation is greatly appreciated.

Very Truly Yours
Antonio C. Amado INMATE COPY
United States Marsha

By: _____
Susan M. Perry, Legal Technician
559-487-5573

RECEIPT
Date:
Signed:
By:
Title:

APPENDIX F

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

OMAR GABRIEL BORBÔA,
Plaintiff,

v.

Case No._____

UNITED STATES DISTRICT COURT OF NEBRASKA,

ONLY FOR REFERENCE TOO:

and

8:05CR24

UNITED STATES OF AMERICA,
Respondent.

MOTION FOR IMMEDIATE RELEASE DUE TO
COURTS LACK OF SUBJECT MATTER JURISDICTION

Subject-Matter Jurisdiction can never be waived or forfeited, **Auer v. Trans Union, LLC**, 902 F.3d 873, 877 (quoting **Gonzalez v. Thaler**, 565 U.S. 134, 141, 132 S.Ct. 641, 181 L.Ed.2d 619 (2012).

A criminal trial court action, like a civil action must occur in the Federal District Court having Subject-Matter Jurisdiction over the issue or injury that occurred within the courts territorial jurisdiction or inferred upon the court from Due Process under the Fifth Amendment to the United States Constitution. A Due process violation deprives the court of Subject-Matter Jurisdiction.

First, "subject-matter jurisdiction, because it involves a court's power to hear a case, can never beforfeited or waived." **United States v. Cotton**, 535 U.S. 625, 630, 122 S.Ct. 1781, 152 L.Ed.2d 860 (2002)(citing **Louisville & Nashville Railroad C. v. Mottley**, 211 U.S. 149, 53 L.Ed. 126 29 S.Ct. 42(1908)(holding that subject-matter jurisdiction can never be forfeited or waived and defects in jurisdiction require correction regardless of whether the error was raised).

Federal courts are courts of limited jurisdiction, and can hear only cases for which there has been a congressional grant or constitutional grant of jurisdiction. **Morrison v. Allstate Indem Co.** 228 F.3d 1255, 1260-61 (11th Cir. 2000).

The Eighth Circuit has noted that courts "may take judicial notice of

judicial opinions and PUBLIC RECORDS." **Stutzka v. McCarville**, 420 F.3d 757, 760 n. 2 (8th Cir. 2005).

Plaintiff, OMAR GABRIEL BORBOA, hereby states as "FACT" that this court could only obtain Subject-Matter Jurisdiction of him through a proper indictment returned by a Grand Jury of this District Court.

The Fifth Amendment to the Constitution of The United States verbatim is;

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

The Grand Jury for the United States District Court of Nebraska in January 2005 DID NOT (EMPHASIS ADDED) return an indictment on OMAR GABRIEL BORBOA.

The said Grand Jury DID return a TRUE BILL in Case No. 8:05CR24 for GUILLERMO BORBOA, a/k/a Omar Borboa.

OMAR GABRIEL BORBOA, is a living breathing person, OMAR GABRIEL BORBOA has NEVER been indicted by the GRAND JURY for the United States District Court for the District of Nebraska!!!

The individual whom was indicted by said Grand Jury was GUILLERMO BORBOA a/k/a Omar Borboa.

HOWEVER, the enclosed PUBLIC RECORDS will show and prove that the individual and person incarcerated in the Federal Bureau of Prisons at Federal Correctional Institution in Mendota, California is "NOT" GUILLERMO BORBOA, a/k/a Omar Borboa, but in "FACT" is the real in the FLESH "OMAR GABRIEL BORBOA, and NOT his brother GUILLERMO BORBOA, a/k/a Omar Borboa whom the GRAND JURY in the District Court of Nebraska in January 2005 indicted in Case No. 8:05CR24. (Emphasis Added).

JUDICIAL NOTICE REQUESTED AND REQUIRED

Enclosed herein is a "copy" of GUILLERMO EDUARDO BORBOA's "current" California drivers license - Issued on November 07, 2017 whom is the REAL person indicted by the GRNAD JURY on January 20th, 2005 and a/k/a Omar Borboa. (See Exhibit "A")

The reason the real in the flesh indicted GUILLERMO BORBOA is a/k/a "Omar Borboa" is from an Arrest on or about July 04, 2002 in the County of Los Angles, where GUILLERMO BORBOA told the Arresting Officer that he was Omar Borboa. The Arresting Office just happened to know the REAL Omar Gabriel Borboa and knew his suspect was lying to him. Thereupon, the officer at that time charged GUILLERMO BORBOA in violation of California Code 148.9; To-Wit:

> "(a) Any person who falsely represents or identifies himself or herself as another person or as a fictitious person to any peace officer listed in Section 830.1 or 830.2, or subdivision (a) of Section 830.33, upon a lawful detention or arrest or the person, either to evade the process of the court, or to evade the proper identification of the person by the investigating officer is guilty of a misdemeanor.

GUILLERMO BORBOA was also charged on the same date in Count 01, in violation of California Code 529 PC, for said false impersonation of claiming to be OMAR BORBOA. (See Exhibit "B") where GUILLERMO BORBOA was Arrested for said violations and assigned "Case No. 2CM06523 and was "FINGERPRINTED" by the Los Angeles Sheriffs Department in July 2002.

This court in the name of Justice owes OMAR GABRIEL BORBOA relief and TRUE Justice.

All this Honorable Court has to do is ORDER a copy or comparison of Omar Gabriel Borboa finger prints on RECORD here at Federal Correctional Institution under the NAME and in NAME only of GUILLERMO BORBOA and compare them to the fingerprints taken from the REAL GUILLERMO BORBOA by the Los Angles Sheriff's Department and see if they match! If they do NOT match then that should PROVE that the person incarcerated at FCI Mendota in Mendota, California is NOT GUILLERMO BORBOA a/k/a Omar Borboa who WAS indicted under Fifth Amendment Due Process by a Grand Jury in the District of Nebraska, and NOT OMAR GABRIEL BORBOA, Who is currently "illegally" incarcerate without any due process of law in violation to be charged of a crime.

Therefore, this court NEVER had Subject-Matter Jurisdiction over the real flesh and blood OMAR GABRIEL BORBOA. That is NOT who the Grand Jury indicted!!! The Grand Jury indicted GUILLERMO BORBOA a/k/a Omar Borboa a completely different person and individual.

The REAL OMAR GABRIEL BORBOA is falsely imprisoned under the name of GUILLERMO BORBOA. Who is FREE and on the streets. (As proven by said current State of California Driver's License).

There looks like a conspiracy to cover this very grave error up as

thusfar no one in the Federal Government wants to take responsibility for this Grave Error.

As a matter of "RECORD", on April 25, 2007 GUILLERMO BORBOA was incarcerated in the, "North Kern State Prison, P.O. Box 567, Delano, California 93216 - 0567, when C.O. 1, Grout served Guillermo Borboa with a United States Marshal DETAINER Against Sentenced Prisoner, (i.e. GUILLERMO BORBOA and at that TIME a/k/a GUILLERMO MUNOZ that had been issued on November 21, 2006. (See Exhibit "C")

Sometime after April 25, 2007 United States Marshals took custody of GUILLERMO BORBOA at North Kern State Prison and flew Guillermo back to Nebraska for a court appearance in Federal Court. However after arriving in Nebraska and being incarcerated, United States Marshals had a private meeting with GUILLERMO BORBOA after they saw that "he" did NOT match the photo of the GUILLERMO BORBOA a/k/a Omar Borboa. Whereupon the United States Marshals threatened GUILLERMO BORBOA with charges of "Perjury" for lying to them and claiming that he was GUILLERMO BORBOA. This is when the REAL TRUTH confronted them and they have covered it up thusfar. In the end the United States Marshals DID NOT take the REAL indicted GUILLERMO BORBOA a/k/a Omar Borboa into Federal Court and returned the REAL GUILLERMO BORBOA a/k/a Omar Borboa back to North Kern State Prison in California.

PLEASE TAKE NOTE: The REAL "OMAR GABRIEL BORBOA", in ALL the court appearances in the Federal Court in Nebraska NEVER lied to the Court when the Court asked the person in front of the court what their name was. Not once did OMAR "ever" state that his name was GUILLERMO BORBOA. The record will clearly show his answer was always OMAR BORBOA when the court did ask what his name was.

The court erronously "ASSUMED" the person in the court was GUILLERMO BORBOA - a/k/a Omar Borboa and was "just" responding to the a/k/a. Not ONCE did the Court investigate or ask for "PROOF" that the person in front of the Court was the REAL and ACTUAL GUILLERMO BORBOA a/k/a Omar Borboa and NOT the REAL and ACTUAL OMAR GABRIEL BORBOA whom in the past GUILLERMO BORBOA had claimed to be his brother, when in FACT he WAS NOT OMAR GABRIEL BORBOA.

This Court with the misinformation and "Cover-Up" by the United States Marshal Service perpetrated a FRAUD on the court and allowed the court to perpetrate a FRAUD upon itself.

In 2007 when the United States Marshals service realized that they had arrested the WRONG person in 2005-06 and taken that person to Court and under duress made an innocent man plead guilty to a Federal Charge that was not even the correct indicted person. Under threat that if he did NOT plead guilty he'd be given a LIFE SENTENCE,

What choice did he have? The Court turned DEAF ear to the FACT that he was NOT GUILLERMO BORBOA and went along with FRAMING the real OMAR GABRIEL BORBOA and NOT acknowledging there own mistake as can be clearly shown and prove by the Governments PRESENTENCE INVESTIGATION REPORT, which states there on as of October 31, 2005 in the heading for Case # 8:05Cr24, the following;

GUILLERMO BORBOA
(True Name - Omar Gabriel Borboa)

(See Exhibit "D") (Copy of the Front Page of the PSR)

This court must take Judicial Notice that in this Heading and caption, unlike the indictment, whereas the indictment charged (GUILLERMO BORBOA, a/k/a Omar Borboa, DOES NOT CLAIM that this person is Also Known As "Omar Borboa" but in FACT is the REAL "OMAR GABRIEL BORBOA".

The Sentencing Court was given a copy of this. Did the sentencing court STOP the proceedings? NO, it did not. When this PRESENTENCE INVESTIGATION REPORT was submitted to this Court and Judge SMITH CAMP was CLEARLY made aware of the FACT that the person standing in front of her in her court room was NOT, GUILLERMO BORBOA, a/k/a Omar Borboa, but in FACT the REAL OMAR GABRIEL BORBOA as stated thereon in said PSR then the COURT lost ALL SUBJECT-MATTER JURISDICTION.

This made the court aware that the REAL OMAR GABRIEL BORBOA that was in her court had NEVER been INDICTED by any Grand Jury for any Federal Crime!!!!! The Grand Jury Witnesses had ONLY heard evidence that GUILLERMO BORBOA, a/k/a Omar Borboa had committed said Federal Offense. The GRAND JURY had NOT accused or returned a TRUE BILL against OMAR GABRIEL BORBOA. But against a person also known as Omar Borboa who's real name is GUILLERMO BORBOA and to whom the Grand Jury DID return an indictment against, the said and indicted GUILLERMO BORBOA, a/k/a Omar Borboa.

SUBJECT-MATTER JURISDICTION - In Johnson v Zerbst, 304 U.S. 458, 58 S. Ct. 1019 (1938), the Supreme Court of the United States held; "violation of Due Process deprives a Court of Subject-Matter Jurisdiction."

Courts are constituted by authority and they cannot legally go beyond that power delegated to them. If they act beyond that authority, and certainly in contravention of it, their judgements and ORDERS are regarded as nullities. They are not voidable, but simply VOID, and this prior even to reversal (Emphasis Added). Old Wayne Mut. I. Assoc. v. McDonough, 204 U.S. 8, 27 S. Ct. 236 (1907).

[A]ny action by a court without Subject-Matter Jurisdiction is Ultra Vires and therefore VOID. United States v. Hartwell, 448 F.3d 707, 715 (4th Cir. 2006).

OMAR GABRIEL BORBOA has NEVER been indicted LEGALLY in conformity to the Constitutionally Required process as set forth in the Fifth Amendment to the United States Constitution as no Grand Jury in Nebraska in 2004-05 ever returnd a TRUE BILL for OMAR GABRIEL BORBOA.

Therefore, this court lacked any and all Subject-Matter Jurisdiction over the REAL born in the flesh OMAR GABRIEL BORBOA.

The Nebraska Federal Grand Jury only give this court legal Subject-Matter Jurisdiction over GUILLERMO BORBOA, a/k/a Omar Borboa a completely different person. an individual that the person currently incarcerated "illegally" (without due process of law) is not the targeted individual indicted by the Nebraska Federal Grand Jury.

It is true that the currently incarcerate in the flesh real OMAR GABRIEL BORBOA, was the individual that did plead guilty to indictment "8:05CR24" in 2005 under duress and out of Fear just to get released. As the court had proof that he was NOT GUILLERMO BORBOA pursuant to the PSR.

After the plea the court released the real OMAR GABRIEL BORBOA on bond and he ran. (Could you blame him? - The court was not giving him any Justice).

In 2007 when the United States Marshals had the REAL GUILLERMO BORBOA in custody from North Kern State Prison (See Exhibit "C") was a DETAINER issued under "18 USC 3148 - FAILURE TO APPEAR FOR SENTENCING & BAIL VIOLATION", however this was the REAL GUILLERMO BORBOA, a/k/a Omar Borboa and in FACT not the REAL Omar Borboa who had not comeback to court.

So, when the REAL GUILLERMO BORBOA signed the DETAINER at North Kern State Prison he was requesting a fast speedy trial for the charge of 18 USC 3146 for something the Real Guillermo Borboa had NEVER done.

All other court documents signed in case no. 8:05CR24 signature is signed "Omar Borboa", who was NOT the person indicted. Look at the court documents signed by Omar Borboa even when the court documents had the name GUILLERMO BORBOA, yet was signed Omar Borboa. But when you had the Real Guillermo Borboa at North Kern State Prison, Guillermo DID sign his name as GUILLERMO BORBOA and not as Omar Borboa. However, the real indicted GUILLERMO BORBOA got a two (2) point enhancement in his sentencing for violating 18 USC 3148 when it was NOT GUILLERMO BORBOA who did not show up for sentencing. As the real and indicted GUILLERMO BORBOA, a/k/a Omar Borboa never plead guilty to anything and legally the REAL Omar Gabriel Borboa was not required to appear for sentencing for a crime he had NEVER been indicted for.

It is now the judicial duty of the setting judge in the United States District Court For the District of Nebraska to CLEAR up this convoluted mix-up that the Honorable Judge Laurie Smith Camp FAILED to address and FAILED to confirm that she in FACT had the True and Real person indicted by the Nebreaska Federal Grand Jury in front of her in her court room. When said person DID NOT identify himself as GUILLERMO BORBOA to the court but in FACT from the record did identify himself as OMAR BORBOA. Which was in FACT supported finally by the submitted PRESENTENCE INVESTIGATION REPORT.

Another way or process that a "Court" looses Subject-Matter Jurisdiction over the accused/person is when the presiding Judge, Trial Judge, fails to enforce the law or Code and therefore allows unlawful activity by said Judge in violation of The Code of Judicial Conduct. Which Judge Smith Camp did in Case No. 8:05CR24 in failing to confirm that the "body" she had in her court in front of her was in FACT the said: GUILLERMO BORBOA, a/k/a Omar Borboa, and not in FACT the REAL in life flesh and blood born OMAR GABRIEL BORBOA. Whom the Grand Jury in of the Federal District Court of Nebraska HAD NOT indicted.

ARGUMENT

The proof by fingerprints will prove that the "Body" incarcerated in the Federal Bureau of Prisons at Federal Correctional Institution Mednota, at Mendota California is in FACT the REAL in person flesh being OMAR GABRIEL BORBOA and NOT the Nebraska Federally indicted GUILLERMO BORBOA, a/k/a Omar Borboa.

The currently incarcerated OMAR GABRIEL BORBOA is illegally and falsely incarcerated and was NEVER afforded legal process under the Fifth Amendment to the Constitution of the United States of America. Which is the prosecuting Governments duty to do and comply with. If they don't then any conviction is VOID and Ultra Vires, and done in all absents of Due Process and Constitutional Proceedure of the Fifth Amendment.

DEMAND

OMAR GABRIEL BORBOA, demands that this Court immediately ORDER the proper Law Enforcement Officers to obtain a Certified Copy of GUILLERMO EDUARDO BORBOA, D.O.B. 05/17/1983 from the RECORDS of the Los Angles Sheriffs Department in Los Angles, California from July 2002 and do a forensic comparrison to the Fingerprints of OMAR GABRIEL BORBOA, currently incarcerated as being GUILLERMO BORBOA, Reg. No. 31281-112 at FCI Mendota, Mendota, California 93640. If they "MATCH" then this

said "MOTION" before the Court should be immediately dismissed.

However, if they DO NOT MATCH then this is DOCUMENTED proof that the person incarcerated as, "GUILLERMO BORBOA, a/k/a Omar Borboa" is NOT - "GUILLERMO BORBOA, a/k/a Omar Borboa" whom the Federal Grand Jury Indicted in January 2005, but in "FACT" the real in the FLESH - OMAR GABRIEL BORBOA who has been illegally incarcerated since February 2013 as the wrong person. The individual who was NOT indicted by the Nebreska Federal Grand Jury!!!!

It is OMAR GABRIEL BORBOA's understanding as Plaintiff in this Motion that the Honorable Laurie Smith Camp is now deceased and any Subject-Matter Jurisdiction violation attributed to her actions is now attributal to the current Judge of this Court if said Judge does not intervien and correct the error and foreclose their libility.

RELIEF

For this Court to take immediate action on this filing, and ORDER the required investigation and proof by fingerprints to prove that the individual incarcerated at FCI Mendota, Mendota, California 93640 as GUILLERMO BORBOA, Reg. No. 31281-112 is NOT - GUILLERMO BORBOA, a/k/a Omar Borboa, but in FACT the REAL - OMAR GABRIEL BORBOA, D.O.B. 05-26-1979. (Please see Exhibit "E") (Which are copies of Of OMAR GABRIEL BORBOA's, California Drivers License, Omar Borboa's California Dept. of Corrections I.D. at Folsom State Prison in California, and Omar's current Federal Identification Card as "GUILLERMO BORBOA" at FCI Mendota, California.

Is NOT - GUILLERMO BORBOA, a/k/a Omar Borboa, but the REAL in the flesh OMAR GABRIEL BORBOA who was never indicted by the Federal Grand Jury in Nebraska for any Federal Crime and therefore should be released IMMEDIATELY. Pursuant to the fingerprint evidence and the very FACT supported by GUILLERMO BORBOA's November 07, 2017 issued California Driver's License with his photo.

For this immediate release Omar Gabriel Borboa shall ever pray, in which ever name the RELEASE has to be ORDERED in for said filer's immediate FREEDOM.

Respectfully Submitted,

_____

Omar Gabriel Borboa

This____day of January 2023.

APPENDIX G

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff/Appellee,

v.

Case No. 23-2137

GUILLERMO BORBOA,

RE: Dist. Ct. No. 8:05-cr-24

Defendant/Appellant.

Pro Bono Submission:

REASONS TO DETERMINE THIS COURT SHOULD GRANT A CERTIFICATE OF APPEALIBILITY

APPLICABLE FACTS FOR CONSIDERATION

The Subject-Matter Jurisdiction of federal courts is limited and the federal may exercixe only that jurisdiction which Congress has prescribed. Chris v. Tenet, 221 F.3d 648, 655 (4th Cir. 2000)(citing Kokkonen v. Guardian Life Ins. Co. of Am. , 511 U.S. 375, 377, 114 S.Ct.1673, 128 L.Ed.2d 391 (1994). Subject-Matter Jurisdiction is so limited that federal "[c]ourts have an independent obligation to determine whether Subject-Matter Jurisdiction exists, even when no party challenges it." Hertz Corp. v. Friend , 559 U.S. 77, 94, 130 S.Ct. 1181, 175 L.Ed.2d 1029 (2010)(internal citations ommitted). "No party can waive the defect, or consent to [subject-matter] jurisdiction. NO court can ignore the defect, rather a court, noticing the defect, must raise the matter on its own." Wisconsin Dep't of Corrections v. Schacht, 524 U.S. 381, 389, 118 S.Ct. 2047, 141 L.Ed.2d 364 (1988)(A challenge to Subject-Matter Jurisdiction can be raised at any time.

The United States District Court for the District of Nebraska in its May 01, 2023 ORDER ON CERTIFICATE OF APPEALABILITY clearly erred and mislead this court as to the TRUE filing of Petitioner Borboa's Motion.

On page two of said ORDER the court states:

> "As the Court explained in its Order, Borboa's 'Motion for Immediate Release' attacked the legality of his conviction and imprisonment and requested immediate release, so it was

properly construed as a 28 U.S.C. §2255 hapeas petition. Filing 138 at 1."

The above quote is misleading, untrue and circumvents the "meat" of what was actually filed. The district court was in error and contrary to established law cited within Borboa's Motion to arbitrarly construe said Motion as a 28 U.S.C. §2255 habeas petition.

Contrary to the district court assessment that Borboa was attacking the legality of his conviction, the full "title" of Borboa's Motion, [which the district court did not cite in full] was; "Motion For Immediate Release Due To Courts Lack Of Subject-Matter Jurisdiction".

Borboa, was not per se attacking the legality of the conviction. But in fact the trial courts Subject-Matter Jurisdiction to even try and/or sentence Borboa.

Courts are constituted by authority and they cannot legally go beyond that power delegated to them. If they act beyond that authority, and certainly in contravention of it, their ORDERS are regarded as nullities. They are not voidable, but simpley VOID. and this prior even to reversal. (Emphasis Added) Old Wayne Mut. I. Assoc. v. McDonough, 204 U.S. 8, 27 S.Ct. 236 (1907).

When a party suggest the absence of Subject-Matter Jurisdiction, even, "at this late stage of a case, the party questions not only the ORIGINAL conviction, but the POWER to sentece or reduce the sentence..." (See generally Cotton, 535 U.S. at 630; Steel Co. v. Citizens for Better Env't., 523 U.S. 83, 89, 118 S.Ct. 1003, 140 L.Ed. 2d 210 (1989).

> "This is because Subject-Matter Jurisdiction can 'never be forfeited or waived', it involves a courts power to hear a case. Cotton, 535 at 630. Any action by a court without Subject-Matter Jurisdiction is "Ultra Vires' and therefore void. Ruhrgas AG v. Marathon Oil Co., 526 U.S. 574, 583, 119 S.Ct. 1563 , 143 L.Ed.2d 760 (1999) (quoting Steel Co., 523 U.S. at 101-02)"

In Borboa's MOTION, by documented Exhibit's, Borboa proved to the district Court that the United States District Court for the District of Nebraska never had Subject-Matter Jurisdiction over the person and body of "Omar Gabriel Borboa"! (Emphasis Added)

Pursuant to the Fifth Amendment of the Constitution of the United States which the Federal Government and Federal Courts must adhere to, clearly states in part; "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a prsentment or INDICTMENT of a Grand Jury..."

The Grand Jury for the District of Nebraska returned indictment No. 8:05-cr-24 against, "Guillermo Borboa - a/k/a Omar Borboa, and Jhovannie Antonio Reyes.

Under application of the Fifth Amendment the district court by virtue of a Grand Jury indictment, (To:Wit; 8:05-cr-24), only had "Subject-Matter Jurisdiction" over the named persons and physcial bodies of Gulliermo Borboa and Jhovannie Antonio Reyes.

However, [and proven], the actual" person in custody and serving a sentence of 240 years consecutive to any State Sentence, is NOT "Guillermo Borboa", whom was indicted by the Federal Grand Jury in Nebraski in indictment 8:05-cr-24. But in "FACT" is the "real" "OMAR GABRIEL BORBOA", and NOT "Guillermo Borboa a/k/a Omar Borboa".

The Grand Jury in the District of Nebraska for the Federal District Court did NOT indict, "Omar Borboa or Omar Gabriel Borboa" OR "Omar Borboa - a/k/a Guillermo Borboa". (See Exhibit "A" - two pages, 8:05-cr-24 Indictment).

Enclosed herein and marked as Exhibit "B" is a full copy of Borboa's, "MOTION FOR IMMEDIATE RELEASE DUE TO COURTS LACK OF SUBJECT-MATTER JURISDICTION including eight (8) pages of Exhibits, with the Motion itself consisting of eight (8) pages for a total of sixteen (16) pages.

At pages 10 and 11 said Exhibits clearly shows that on July 04, 2002 Guillermo Eduardo Borboa was charged in violation of California State Code 148.9 (A) for falsely representing himself to a law enforcement officer as, "Omar Borboa". [As the charging L.A. Deputy Sheriff knew Omar Borboa personally and when Guillermo told the officer that he was "Omar Borboa" the LADS knew that was false so he charged Guillermo.

Which proves and supports the Nebraska Federal Grand Jury charging indictment of the "Defendant" being, "Guillermo Borboa - a/k/a Omar Borboa".

However, the Federal Bureau of Prison's and the Federal District Court in Nebraska under the Judgeship of the Honorable Federal District Judge Smith Camp [DECEASED] illegally and in violation of the Fifth Amendment to the Constitution of the United States incarcerated the "real" in person and physcial body of "Omar Gabriel Borboa".

Who was NEVER indicted by the Nebraska Federal Grand Jury in Case No. 8:05-cr-24 as a defendant.

These fact verified by drivers licenses and other supportive exhibits demand immediate Justice for the wrongful incarcerate Omar Gabriel Borboa. As the District Court of Nebraska failed to have Subject-Matter Jurisdiction over the individual person and physcial body of the real "Omar Gabriel Borboa".

Guillermo Eduardo Borboa and Omar Gabriel Borboa are TWO (2) different people. Even though Guillermo Borboa has been also known as Omar Borboa - that in itself does NOT make the real person Omar Borboa, Guillermo Borboa, to be arrested for, tried and convicted in the place of Guillermo Borboa who was indicted by the Federal Grand Jury,

ARGUMENT

A full review of Petitioner's, "Motion For Immediate Release Due To Courts Lack Of Subject-Matter Jurisdiction" was headed and styled as:

OMAR GABRIEL BORBOA,
Plaintiff,

v.

UNITED STATES DISTRICT COURT OF NEBRASKA,

and

UNITED STATES OF AMERICA,
Respondent.

On the last page of the Motion, (page eight (8)) the "Motion" was signed as "Omar Borboa", in persona, and not as "Guillermo Borboa, as Guillermo Borboa is NOT the individual/person imprisoned as proven by Exhibit "B" at page nine (9). [The current drivers license for the REAL Guillermo Borboa whom the Nebraska Federal Grand Jury did indict in case number 8:05-cr-24.

Exhibit "B" at page nine (9) clearly shows that it is a State of California drivers license issued on November 11, 2017 when the said Guillermo Borboa is currently incarcerated in a Federal Correctional Facility, and the drivers license photo does not match the Federal Prison identification of Exhibit "B" at page seventeen (17) which identifies the person in that picture identification as Guillermo Borboa.

However, if you compare the photo in the Federal ID on page seventeen (17) to the photo identifications on pages fifteen (15) and sixteen (16) of Exhibit "B" you can clearly see that number fifteen (15) is a State of California Dept. of Correction Identification for "O Barboa" [Omar Barboa]. Whereas number sixteen (16) is a State of California Drivers License for Omar Borboa.

Identifications in pages 15, 16, and 17 are ALL of the SAME person who is the real in flesh OMAR GABRIEL BORBOA. Which in cf to page nine (9) of Exhibit "B" of Guillermo Borboa's current State of California Drivers license is NOT a match in the photo of the currently incarcerated person as Guillermo Borboa.

When U.S. Marshalls arrested Omar Borboa as and for Guillermo Borboa they wrongly assumed that the REAL Omar Borboa was GUILLERMO BORBOA a/k/a Omar Borboa. So they had the wrong person and failed to verify identification through finger prints, that their arrestee was in fact Guillermo Borboa and not someone else.

A full review of [redacted] record will show that Omar Bo[redacted]a NEVER stated or claimed to be Guillermo Borboa! In fact Omar always informed the court that he was Omar Borboa and even the guilty plea agreement he was forced to sign in luie of a Life Sentence if he did not enter into said plea agreement is a nullity, as the Government made the plea bargin agreement with "Guillermo Borboa", yet said agreement does NOT have any signature signed by "Guillermo Borboa" but instead a signature of "Omar Borboa" whom the legal contract was not contracted with or for.

Therefore, the "Motion For Immediate Release Due To Courts Lack of Subject-Matter Jurisdiction was NOT filed per se by "Guillermo Borboa" to be considered as a "second" or successive §2255 Motion. But in fact filed by Omar Borboa an individual who has not been convicted of any federal crime or indicted by a Nebraska Federal Grand Jury for any Federal Crime.

Which therefore deprived the Federal District Court of Nebraska from having Subject-Matter Jurisdiction over the person and physical body of Omar Borboa!!!

JUDICIAL NOTICE: Petitioner INVOKES the following precedent **Supreme Court of The United States Case** as applicable to the question of **Subject-Matter Jurisdiction** over Omar Gabriel Borboa - incarcerated illegally on mistaken identy and deprived as a physcial person being Omar Gabriel Borboa of his Fifth Amendment Right to be indicted by a Grand Jury.

The floor or bases which deprived the United States District Court for the District of Nebraska in having Subject-Matter Jurisdiction is;

> "Tennesse v. Davis, 100 U.S. 257, 263-64, 25 L.Ed. 648, (1879) (Under Article III, Section 2 of the United States Constitution both civil and criminal cases are 'equally within the domain of the judicial powers of the United States, and there is nothing in the grant to justify an assertion that whatever power may be exerted over a civil case may not be exerted fully over a criminal one"

Therefore, if a Federal District Court lacks Subject-Matter Jurisdiction in a Civil Case the court must dismiss said case, pursuant to Davis supra cited above, then a district Court has to "Dismiss" a criminal case it does not have Subject-Matter Jurisdiction over.

Since any action by a district court that does not have Subject-Matter Jurisdiction over the Defendant legally in the form of Due Process and in compliance to the Fifth Amendment to the United States Constitution is Ulta Vires, Steel Co., 523 U.S. at 101-102. Then that court's ORDER's are simply VOID even prior to reversal. Old Wayne Mut. I. Assoc, v McDonough, supra. Lack of Subject-Matter Jurisdiction deprived the District trial court of POWER for any action against Omar Borboa, and therefore does not make Omar Borboa procedually applicable to §2255 dogma.

Pursuant to and in compliance with Davis, supra, the Nebraska District court was required to dismiss and discharge Omar Gabriel Borboa as a defendant in case number 8:05-cr-24. As the Grand Jury never made Omar Gabriel Borboa a defendant in said case or charge him in violation of any federal law, in order to give the Federal District Court Subject-Matter Jurisdiction over the person and physcial body of same.

The Supreme Court of the United States held in the case of; Gonzalez v. Thaler, 565 U.S. 134, 141, 132 S.Ct. 641, 181 L.Ed.2d 619 (2012) (Subject-Matter Jurisdiction can never be waived or forfeited).

Omar Gabriel Borboa would also like to point out to the Honorable Body of Jurist that he is ACTUALLY and FACTUALLY INNOCENT of any alleged offenses that Guillermo Borboa was indicted for by the Nebraska Grand Jury in case no. 8:05-cr-24.

At the time of the conviction of this case it **was settled law** at that TIME that a District Court MUST have Subject-Matter Jurisdiction over the case and the person(s) involved as defendants. If the trial court lacked Subject-Matter Jurisdiction over the action or over the defendant then the court sue sponta by law was suppose to dismiss the case or the defendant for lack of Subject-Matter Jurisdiction. In conformity to the Fifth Amendment to the United States Constitution of Due Process and Equal Protection of the "Accused" Constitutional Rights.

CONCLUSION

This filing of, "REASONS TO DETERMINE THIS COURT SHOULD GRANT A CERTIFICATE OF APPEALIBILITY", fully and clearly makes all of the Justices of this Honorable Court aware of the fact that the Federal Nebraska Grand Jury in 2005 indicted, Guillermo Borboa a/k/a Omar Borboa along with Jhovannie Antonio Reyes, with the real in flesh and blood Guillermo Borboa never being arrested or incarcerated on indictment 8:05-cr-24. Wherefore, the person and real physcial body of Omar Grabriel Borboa is currently incarcerated illegally in violation of his Fifth Amendment right of due process and equal protection!

Petitioner here and now gives this court and its Honorable Justices notice as he gave the Honorable U.S. District Judge Brian C. Buescher notice of the facts of his illegal incarceration and denial of Constitutional process from his initial filing in January/February 2023 of this year will deprive all aforementioned Justices of any an all judicial immunity when the REAL Guillermo Eduardo Borboa pursues legal action and damages for slander, false conviction upon his record, which is causing the real Guillermo E. Borboa undue hardships legally in obtaining bank loans, credit, employement, and other legal documentations due to the fact government files and

records these business access show that said "Guillermo Borboa" is in Federal prison serving 240 month sentence.

When the real Guillermo in the future would institute legal action as the REAL "Guillermo Borboa" that was indicted by the Nebraska Grand Jury on indictment 8:05-cr-24 was NEVER tried or plead guilty to said indictment.

THEREFORE, this court should **ORDER** an immediate hearing on the unconstitutional and current illegal imprisonment of Omar Gabriel Borboa, mistakenly arrested, convicted, and imprisoned as "Guillermo Borboa". Or in the alternative **ORDER** the Federal Bureau of Prisons to immediately release Omar Gabriel Borboa - known to the FBOP and incarcerated as Guillermo Borboa, and **ORDER** said conviction vacated.

For this Petitioner Shall ever pray!

Respectfully Submitted,

_____

Omar Gabriel Borboa

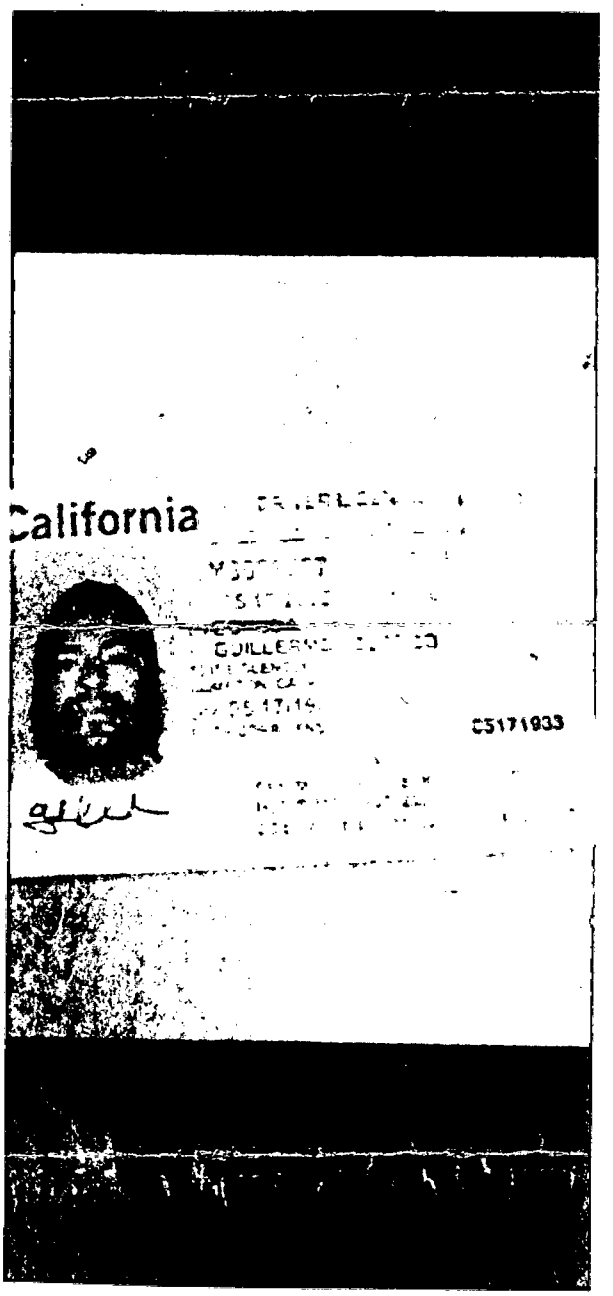
Guillermo Borboa
Reg. No. 31281-112

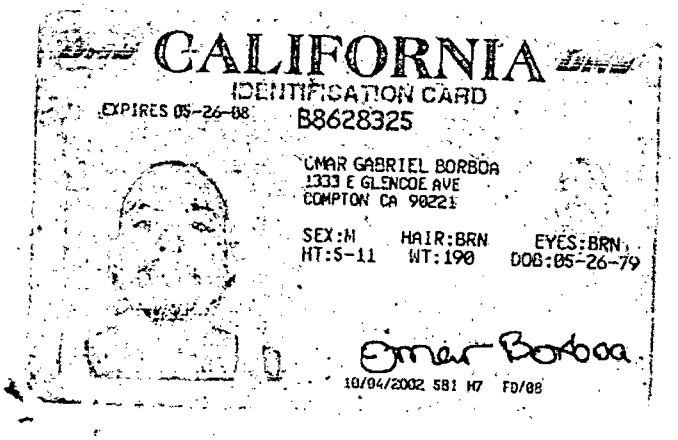
This 22 day of May 2023.

NOTICE:::::::

To sign this submission as, "Guillermo Borboa" would be fraud and forgery, As I am NOT Guillermo Borboa and I have never claimed to be Guillermo Borboa or known as Guillermo Borboa except through my Federal Prison ID which was forced upon me.

APPENDIX H


California
C5171933


CALIFORNIA
IDENTIFICATION CARD
EXPIRES 05-26-08
B8628325
OMAR GABRIEL BORBOA
1333 E GLENCOE AVE
COMPTON CA 90221
SEX:M HAIR:BRN EYES:BRN
HT:5-11 WT:190 DOB:05-26-79
Omar Borboa
10/04/2002 581 H7 FD/88