APPENDIX A

BEGINS ON NEXT PAGE

CASE NO. _____

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

QUAY PHIPPS,
PLAINTIFF

V.

UNITED STATES OF AMERICA,
DEFENDANT

PETITION FOR DISMISSAL OF ALL CHARGES
DUE TO LACK OF SUBJECT MATTER JURISDICTION

FILED PRO-SE PER HAINES V. KERNER,
404 U.S. 519-520 (1972)

QUAY PHIPPS, PRO-SE
REG. NO. 48706-112
FCI-TEXARKANA
P.O. BOX 7000
TEXARKANA, TX 75505

Here comes before you, Quay Phipps, federal inmate register number 48706-112, acting Pro Se and In Forma Pauperis, requesting lenity on an issue of subject matter jurisdiction. Congress has overreached their Article I; Section 8; Clause 3 power by subjecting real people and artificial persons not covered by said clause. The 10th Amendment clearly limits Congressional power(s) to those enumerated.

Article I: Section 8; Clause 3, clearly states (the power) to regulate Commerce with Foreign Nation, and among (the 50) States and the Indian Tribes; These enumerated entities are all artificial person(s), they are also governments, but not all types of governments, i.e. city, county, etc. The purpose of the Commerce Clause was for the founding fathers to establish a free market economy. The powers envisioned were to negotiate trade pact(s) with foreign Nations and to ensure the free flow of trade without interference from the 50 States or Indian Tribes, i.e. taxes or duties. The purpose being to get governments out of the way of the people and businesses.

This brings us to the Constitutional limitations of the 10th Amendment. Which is also very clear, "The powers not delegated to the United States (in this case Congress) by the Constitution, nor prohibited by it to the States (in this case they are) are reserved to the States respectively, or to the people." This is referred to as one of the enumeration clauses. Since the Commerce Clause only enumerates Foreign Nations, among States, and the Indian Tribes, Congress is denied the power or ability to regulate any other entity, i.e. people, business. Congress only

has the power to regulate those enumerated types of governments.

Although there have been numerous cases before the courts, they have described the power of Congress vis-a-vie the Commerce Clause, as plenary and only limited by the Constitution. As all power of any government flows from those governed, we must heed and abide by the limitations set forth by the Constitution. As the Constitution is a document of positive empowerment, the intent has been that although the powers may be vast, are still limited. The rulings of the court in cases like WICKARD v. FILLBURN and its ilk have made interpretations of Congressional power and reach beyond the limitations imposed by the Constitution and the Commerce Clause. As Clause 3 clearly states and limits Congress' power to regulate Foreign Nations, and among (the 50) States, and the Indian Tribes. As Filburn is none of these entities, the Commerce Clause does not apply to him or others like him including businesses, corporations, LLC, or non-profits, etc.

If Wickard and its ilk are to be taken at face value, it fundamentally alters our economic system. We are led to believe and as the Founding Fathers proclaimed, we have a free market system controlled by the consumer and governed by the law of supply and demand, but if Wickard and its ilk stand, we are there by defined as a communist or socialist economic system. Now if Wickard etc., were interpreted as contract cases, as they should be, the judgements remain the same. If on the other hand, we allow the government to control the economy, we bring into

question what do consumers (the people) actually control or even own. If a government controls its economy and can tell people what, when, where, and how they can sell or dispose of their property, is that property really theirs? What do people own? Their house or land, their vehicles, the food they grow or purchase, and what of the currency? Since we are led to believe that our currency is a fiat currency based on trust and the free market, what is the value of the dollar? What becomes of the stock markets, the commodities markets, the bond and T-bills markets? The markets and the economy would be in free fall.

This brings us to why Wickard etc. were decided the way they were. The evidence suggests it all depended on when these decisions were made (the timing). Ask ourselves "What was happening at the time?" The Great Depression was in full swing and FDR was president. He was trying to pack the courts so he could (unconstitutionally) expand federal powers. Before the Great Depression and FDR, our entire government had a lassez-faire attitude and disposition in line with the Constitution and the Founding Fathers. The results have harmed the Constitution, the economy, the people (consumers), and the country. The only solution is to place the limits of Article I, Section 8, Clause 3 on Congress to Foreign Nations, (the 50) States, and the Indian Tribes.

This is a motion on an issue of subject matter jurisdiction and therefore can be raised at any time and thus not subject to the Antiterrorism and Effective Death Penalty Act. Even if it were, the AEDPA is on its face and its execution

unconstitutional. It violates the First, Fifth, Eighth, and Fourteenth Amendments. Congress shall make no law... and to the petition the government for redress of grievance, First Amendment Therefore it violates the due process clause of the Fifth Amendment. By violating two amendments of the Bill of Rights, it is by definition an Eighth Amendment violation as cruel and unusual. It violates the equal protection clause of the Fourteenth because it only applies to inmates, those who are the most vulnerable and in most need of redressing of grievances.

In conclusion, the court has but two options. Remain with the status quo and bedamn the Constitution. Congress has unlimited power to do whatever it wants and the people from whom their power eminates are mere vassel to their lords and masters, serfs and slaves. Or the court can uphold and honor the clear intent, meaning, and definitions of the words so laboriously chosen by the Founding Fathers. The ultimate decision will have a grave impact either way. Will we have a free market or a communistic economy? Will the trust in the dollar be sacrificed in the name of power? Will the market survive if the government owns all commodities, businesses, and land in the country? Can we as a country based on the Constitution survive if this court rules that Article I, Section 8 and its limits do not exist and that Congress has no limits on its powers and can do whatever it wants? If the Constitution is to be followed, there is only one option for this court; it must rule that Congress' powers under the Commerce Clause is limited by the Constitution to Foreign Nations, among (the 50) States, and the Indian Tribes.

Name of Plaintiff: Quay Phipps

Plaintiff Number: 48706-112

vs.

Name of Defendant: United States Congress / Government

A-7

Order/mg/Order

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CRIMINAL MINUTES - GENERAL

Case No. SACR 10-00072-JVS Date June 26, 2023

Present: The Honorable **JAMES V SELNA, U.S. DISTRICT COURT JUDGE**

Interpreter None

Elsa Vargas	Not Present	Not Present
Deputy Clerk	*Court Reporter/Recorder*	*Assistant U.S. Attorney*

U.S.A. v. Defendant(s):	Present	Cust.	Bond	Attorneys for Defendants:	Present	App.	Ret.
Quay Phipps (Not Present)				Not Present			

Proceedings: **(In Chambers)** Order Setting Briefing Schedule on Defendant's Petition for Dismissal

The Court orders the government to file its response to defendant's petition for dismissal [Dkt No. 122], on or before July 12, 2023. Petitioner shall file any reply to the government's response on or before August 2, 2023.

This matter shall stand submitted on August 2, 2023 or upon the filing of the petitioner's reply whichever comes first.

Initials of Deputy Clerk eva

cc:

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CASE NO. SACR 10-00072-JVS

UNITED STATES, PLAINTIFF
v.
QUAY PHIPPS (48706-112), PRO SE DEFENDANT

REPLY TO GOVERNMENT'S RESPONSE
RE: DEFENDANT'S PETITION FOR DISMISSAL [Dkt No. 122]

Whereas:

(a) On an order dated June 26, 2023, Honorable Judge James V. Selna ordered the government to file its response to defendant's petition for dismissal on or before July 12, 2023;

(b) Honorable Judge James V. Selna ordered Pro Se Defendant Phipps to file any reply to the government's response on or before August 2, 2023;

(c) As of August 2, 2023, Pro Se Defendant Phipps has received no response from the government, a blatant violation of the Honorable Judge Selna's June 26, 2023 order;

(d) Pro Se Defendant Phipps, as ordered, hereby submits his reply to the government's (non-)response to defendant's petition for dismissal in accordance with Honorable Judge Selna's order on June 26, 2023.

Here comes before you one QUAY PHIPPS, Federal Inmate 48706-112, in reply to the Government's response to the Defendant's Motion to Dismiss:

"The glory of our American system of government is that it was created by a written constitution which protects the people against the exercise of arbitrary, unlimited power, and the limits of which may not be passed by the government it created, or any branch of it, or even the people who ordained it, except by amendment or changes of its provisions. "To what purpose," Chief Justice Marshall said in MARBURY v. MADISON (1 Cranch 137, 176, 2 LEd 60, 73), "are powers limited and to what purpose is that limitation committed to writing, if these limits may, at any time, be passed by those intended to be restrained?; The distinction between a government with limited and unlimited powers is abolished if those limits do not confine the persons on whom they are imposed, and if acts prohibited and acts allowed are of equal obligation."

The wise men who framed the constitution and the patriotic people who adopted it were unwilling to depend for their safety upon what, in the opinion referred to, is described as "certain principles of natural justice inherent in Anglo-Saxon character, which need no expression in constitutions or statutes to give them effect or to secure dependencies against legislation manifestly hostile to their real interest." They proceed upon the theory-the wisdom of which experience has vindicated-that the only safe guaranty against governmental oppression was to withhold or

As the government relies on the modern and expansive interpretation of Article I, Section 8, Clause 3 as its only response, it has completely ignored the issues that I raise. These precedents read more into the words "nation," "states," and "tribes." These three terms all refer to artificial persons -- instrumentalities of men to conduct public affairs. By reading anything more into these words, the government corrupts the clause's original intent. The Founding Fathers were free marketers, whether they be farmers, tavern keepers, or merchants. They adhered to the principles of supply-and-demand. A large reason they fought for independence was because King George III imposed restrictions upon free trade and prevented their access to markets. Hence, Article I, Section 8, Clause 3 as an evening of the playing field for all. Without this clause the existence of a free market is not possible. Without people and businesses in charge, it corrupts the supply-and-demand. The Tenth Article of the Amendment speaks directly to this clause, as Article I, Section 8, Clause 3 regulates only **artificial persons** (nations, states, and tribes), thus prohibiting this power to the states. Since these are the only entities Congress can regulate, all the other powers related to commerce are reserved to the People.

As a proof of this is that Article I, Section 8, Clause 3 has NO power to punish. This is because of inability to apply any form of punishment other than a fine. What more power than this does the government need? The States have the appropriate power to pursue crimes such as fraud or other types of commerce crimes since these crimes have to occur somewhere the proper jurisdiction is: the

state or states where the transgression occured. My alleged offense occurred in the city of Huntington Beach, California -- a Union State that has clear and unceded jurisdiction over land not owned by national government.

This jurisdiction is required by this court or any court to adjudicate cases before them. As it is clear that the matter before this court is outside its jurisdiction, no actual crime was committed. Not only was no crime committed, Congress has no power over people, the place, or to punish enumerated to them from Article I, Section 8, Clauses 3 and 18. The "Necessary and Proper Clause," Clause 18, gives no other clause any additional authority than the clause already has. If said clause omits the power to punish, then it must be understood that it is neither necessary nor proper, and thus be denied to Congress.

"The Constitution is a written instrument. As such its meaning does not alter. That which it meant when it was adopted it means now. Any other rule of construction would abergate the judicial character of this court and make it the reflex of the popular opinion or passion of the day. To determine the extent of the grant of power, we must, therefore, place ourselves in the position of the men who framed and adopted the Constitution, and inquire what they must have understood to be the meaning and scope of those grants" (SOUTH CAROLINA v. UNITED STATES, 199 US 437, 448-450, 1905).

restrict the power to oppress. They well remembered that Anglo-Saxons across the ocean had attempted, in defiance of law and justice, to trample upon the rights of Anglo-Saxons on this continent, and had sought, by military force, to establish a government that could at will destroy the privileges that inhere liberty. They believed that the establishment here of a government that could administer public affairs according to its will, unrestrained by any fundamental law and without regard to the inherent rights of free men would be ruinous to the liberties of the people by exposing them to the oppressors of arbitrary power. Hence the Constitution enumerates the powers which Congress and the other departments may exercise - leaving unimpaired, to the people, the powers not delegated to the national government nor prohibited by the state. That instrument so expressly declares in the Tenth Article of Amendments, "It will be an evil day for American liberty if the theory of a government outside the supreme law of the land finds lodgement in our constitutional jurisprudence. No higher duty rests upon this court (or any court) than to exert its full authority to prevent all violation of the principles of the Constitution" (DOWNES v. BIDWELL, 182 US 244, 380-382, 45 LEd 1088, 1901).

As all power originates from the people, it is most abhorrent to use a power that the people retain against them. It may be that nature hates a vacuum, but the nature of the construction of our Constitution is a vacuum, and the appointed guardian is the Courts. This important obligation is to protect the Constitution and thus the people from those who would usurp power, even if it is for the noblest of reasons. Even if we accept that the reasons may be of the highest virtue, it does not overcome that the act is Evil. No good will ever come from acts of Evil.

Defendant **QUAY PHIPPS, Pro Se,** implores the Court to reject the modern and expansive interpretation of Article I, Section 8, Clause 3 that attempts to fill a supposed vacuum and return to the original, intended meaning that these words meant to those who wrote them. By not doing so, consequences are dire, and would lead to the collapse of our free market economic system as pointed out in the original motion.

Therefore, the Court's only option to maintain a free market economic system is to **dismiss all charges.**

Respectfully submitted:

_____

QUAY PHIPPS, Pro Se Defendant

A-14

Govt Motion

E. MARTIN ESTRADA
United States Attorney
BENJAMIN R. BARRON
Assistant United States Attorney
Chief, Santa Ana Office
ANNE C. GANNON (Cal. Bar No. 214198)
Assistant United States Attorney
411 West Fourth Street, Suite 8000
Santa Ana, California 92701
Telephone: (714) 338-3548
Facsimile: (714) 338-3561
E-mail: anne.gannon@usdoj.gov

Attorneys for Plaintiff
UNITED STATES OF AMERICA

COPY

Rec'd
24 Aug 23

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. QUAY PHIPPS, Defendant.	No. SA CR 10-72-JVS EX PARTE APPLICATION FOR EXTENSION OF TIME TO FILE RESPONSE TO DEFENDANT'S PETITION FOR DISMISSAL AND SUPPLEMENTAL BRIEFING; DECLARATION OF ANNE C. GANNON

Plaintiff United States of America, by and through its counsel of record, Assistant United States Attorney Anne C. Gannon, hereby applies *ex parte* for an extension of time within which to file a response to defendant Quay Phipps's June 14, 2023 Petition for Dismissal of all Charges Due to Lack of Subject Matter Jurisdiction, August 3, 2023 request for summary judgment, and August 9, 2023 reply brief. The government's response was initially due on July 12, 2023. The government hereby requests an extension of time, until on or before August 21, 2023, for the government to file its response to defendant's recent filings.

STATEMENT RE NOTICE OF EX PARTE APPLICATION

Pursuant to Local Rule 7.19.1, the government is providing notice of this ex parte application to Defendant by serving him with the application. Defendant is an inmate at a federal penitentiary who is proceeding *pro se*, therefore, it is not feasible to notify him by telephone or fax. As a result, the government does not yet know whether Defendant has any objection to the *ex parte* order sought herein.

This ex parte application is based on the files and records in this case and the attached declaration of Anne C. Gannon.

Dated: August 16, 2023

Respectfully submitted,

E. MARTIN ESTRADA
United States Attorney

BENJAMIN R. BARRON
Assistant United States Attorney
Chief, Santa Ana Office

/s/
ANNE C. GANNON
Assistant United States Attorney

Attorneys for Plaintiff
UNITED STATES OF AMERICA

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND FACTUAL BACKGROUND

Defendant Quay Phipps is currently serving the 240-month sentence imposed upon a jury finding defendant guilty of Transportation of Child Pornography, in violation of 18 U.S.C. § 2252A(a)(1), (b)(1) and Possession of Child Pornography, in violation of 18 U.S.C. § 2252A(a)(5)(B), (b)(2). Defendant appealed the conviction to the United States Court of Appeals for the Ninth Circuit, where the conviction was affirmed in *United States v. Phipps*, No. 12-50222 (9th Cir. April 25, 2013). The Bureau of Prisons has calculated a projected release date of July 13, 2027. *See* https://www.bop.gov/inmateloc/, inmate register number 48706-112.

II. ARGUMENT

On August 14, 2023, defendant filed a Petition for Dismissal of all Charges Due to Lack of Subject Matter Jurisdiction (the "Petition to Dismiss"). On June 26, 2023, this Court ordered the government to file a response to the motion by July 12, 2023 and the defendant to file any reply by August 2, 2023.

The government apologized for missing the previous deadline and is requesting an extension of time. The basis for the government's request is set forth in the attached declaration. The request is based on assigned counsel confusing this case with another pro se, post-conviction motion that had a briefing schedule set the same week and focusing on an urgent mater concerning the erroneous early release of an inmate in another matter.

III. CONCLUSION

For all of the foregoing reasons, the government's *ex parte* application should be granted.

DECLARATION OF ANNE C. GANNON

I, Anne C. Gannon, declare as follows:

1. I am an Assistant United States Attorney ("AUSA") in the Central District of California.

2. I am assigned the responsibility of preparing the government's response to the June 14, 2023 Petition for Dismissal of All Charges Due to Lack of Subject Matter Jurisdiction ("Petition for Dismissal") and supplemental filings in *United States v. Quay Phipps*, Case No. SA CR 10-72-JVS.

3. On June 14, 2023, defendant filed the Petition for Dismissal. On June 26, 2023, the Court ordered that the government file a response on or before July 12, 2023 and the defendant file a reply on or before August 2, 2023. On August 3, 2023, defendant filed a request for summary judgment and on August 9, 2023 filed a supplemental reply brief. The government missed the court-ordered deadline for its response and hereby requests an extension of time, until on or before August 21, 2023, to file its response to defendant's recent filings.

4. The government requests an extension for the following reasons:

a. I failed to calendar the July 12, 2023 due date for the government's response to defendant's petition, in part, because of confusing the matter with another pro se, post-conviction motion. The same week that the Court set the briefing schedule in this matter, it also set a schedule in *United States v. Celso Hernandez*, SA CR 19-191-JVS, in which the pro se defendant was requesting early release. The government's response in that matter was due July 7, 2023.

b. During early July 2023, I was handling an urgent matter concerning the erroneous early release of a federal inmate. On July 5, 2023, I discovered that the Bureau of Prison released defendant Richard Hoon Chung over 500 days early due to an error in recording his surrender date, SA CR 15-4-CJC. Defendant Chung was sentenced to 33-month imprisonment for health care fraud. The matter required immediate attention and consultation with the Bureau of Prisons regarding whether defendant Chung could be returned to custody.

c. I realized that I had missed the July 12, 2023 filing deadline when defendant Phipps filed his request for summary judgment.

5. The defendant is presently in custody serving the 240-month sentence and has a projected release date of July 13, 2027.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this declaration is executed at Santa Ana, California, on August 16, 2023.

/s/ Anne C. Gannon

ANNE C. GANNON

A-19

CERTIFICATE OF SERVICE

I am a citizen of the United States and employed in Orange County, California. I am over 18 years of age, and I am not a party to the above-entitled action. My business address is the United States Attorney's Office, Ronald Reagan Federal Building and United States Courthouse, 411 West Fourth Street, Suite 8000, Santa Ana, California 92701.

I am employed by the United States Attorney for the Central District of California, who is a member of the Bar of the United States District Court for the Central District of California, at whose direction the service was made. On this date, **August 16, 2023**, I served a copy of the foregoing document(s), described as follows: **EX PARTE APPLICATION FOR EXTENSION OF TIME TO FILE RESPONSE TO DEFENDANT'S PETITION FOR DISMISSAL AND SUPPLEMENTAL BRIEFING; DECLARATION OF ANNE C. GANNON, and PROPOSED ORDER** in the following manner:

by placing the document in a sealed envelope, bearing the requisite postage thereon, and placing it for mailing via the U.S. Postal Service addressed as follows:

Quay Phipps
Reg No. 48706-112
FCI TEXARKANA
FEDERAL CORRECTIONAL INSTITUTION
P.O. BOX 7000
TEXARKANA, TX 75505

I declare under penalty of perjury that the foregoing is true and correct, executed on **August 16, 2023**, at Santa Ana, California.

/s/
Linda Lewis

CERTIFICATE OF SERVICE

I am a citizen of the United States and employed in Orange County, California. I am over 18 years of age, and I am not a party to the above-entitled action. My business address is the United States Attorney's Office, Ronald Reagan Federal Building and United States Courthouse, 411 West Fourth Street, Suite 8000, Santa Ana, California 92701.

I am employed by the United States Attorney for the Central District of California, who is a member of the Bar of the United States District Court for the Central District of California, at whose direction the service was made. On this date, August 16, 2023, I served a copy of the foregoing document(s), described as follows: **EX PARTE APPLICATION FOR EXTENSION OF TIME TO FILE RESPONSE TO DEFENDANT'S PETITION FOR DISMISSAL AND SUPPLEMENTAL BRIEFING; DECLARATION OF ANNE C. GANNON, and PROPOSED ORDER** in the following manner:

by placing the document in a sealed envelope, bearing the requisite postage thereon, and placing it for mailing via the U.S. Postal Service addressed as follows:

Quay Phipps
Reg No. 48706-112
FCI TEXARKANA
FEDERAL CORRECTIONAL INSTITUTION
P.O. BOX 7000
TEXARKANA, TX 75505

I declare under penalty of perjury that the foregoing is true and correct, executed on August 16, 2023, at Santa Ana, California.

/s/
Linda Lewis

A-20

E. MARTIN ESTRADA
United States Attorney
BENJAMIN R. BARRON
Assistant United States Attorney
Chief, Santa Ana Office
ANNE C. GANNON (Cal. Bar No. 214198)
Assistant United States Attorney
411 West Fourth Street, Suite 8000
Santa Ana, California 92701
Telephone: (714) 338-3548
Facsimile: (714) 338-3561
E-mail: anne.gannon@usdoj.gov

Attorneys for Plaintiff
UNITED STATES OF AMERICA

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. QUAY PHIPPS, Defendant.	No. SA CR 10-72-JVS [proposed] ORDER

The government's request for an extension of time to file a response to defendant Quay Phipps's June 14, 2023 Petition for Dismissal of all Charges Due to Lack of Subject Matter Jurisdiction, August 3, 2023 request for summary judgment, and August 9, 2023 reply brief is GRANTED, such that the response is now due on or before August 21, 2023 and any reply is due on or before September 18, 2023.

IT IS SO FOUND AND ORDERED this day of August 2023.

HONORABLE JAMES V. SELNA
UNITED STATES DISTRICT JUDGE

Applications/Ex Parte Applications/Motions/Requests

8:10-cr-00072-JVS USA v. Phipps
CASE CLOSED on 05/21/2012

A-22
CLOSED

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

Notice of Electronic Filing

The following transaction was entered by Gannon, Anne on 8/16/2023 at 12:53 PM PDT and filed on 8/16/2023

Case Name: USA v. Phipps
Case Number: 8:10-cr-00072-JVS
Filer: USA
Document Number: 127

Docket Text:
EX PARTE APPLICATION for Extension of Time to File File Response To Defendant's Petition For Dismissal And Supplemental Briefing Filed by Plaintiff USA as to Defendant Quay Phipps. (Attachments: # (1) Proposed Order) (Gannon, Anne)

8:10-cr-00072-JVS-1 Notice has been electronically mailed to:

Anne Caitlin Gannon anne.gannon@usdoj.gov, CaseView.ECF@usdoj.gov, USACAC.Civil@usdoj.gov, USACAC.Criminal@usdoj.gov, USACAC.SACriminal@usdoj.gov

H. Dean Steward deansteward7777@gmail.com, deansteward@fea.net

Melissa R Bobrow melissabobrow@yahoo.com

8:10-cr-00072-JVS-1 Notice has been delivered by First Class U. S. Mail or by other means BY THE FILER to :

The following document(s) are associated with this transaction:

Document description: Main Document
Original filename:C:\fakepath\SA10CR00072 2023-08-16 ACG EX PARTE APPLICATION FOR EXTENSION OF TIME TO FILE RESPONSE TO DEFENDANT'S PETITION FOR DISMISSAL.pdf
Electronic document Stamp:
[STAMP cacdStamp_ID=1020290914 [Date=8/16/2023] [FileNumber=36373537-0
] [b496ed81feb00e3cb32a8192e857f47db1e6588f5037c8c3fa878847f7a7ffeb71d
0ded071bfcc98c2a539a22eed470900e8df36ce227e582d2d7fbdeffc3d46]]
Document description: Proposed Order
Original filename:C:\fakepath\SA10CR00072 2023-08-16 ACG PROPOSED ORDER_2255_continue.pdf
Electronic document Stamp:
[STAMP cacdStamp_ID=1020290914 [Date=8/16/2023] [FileNumber=36373537-1
] [036e0872afe2a6ff4d385e131e334045a5f8221ea7bd4a28d3e6b51d4567fad8ed6
0aeb9a74cd3f606c5252b92e8b559748e41ec99731d2c4518a42bd2e09e7b]]

A-23

Judge Extension To Court

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. QUAY PHIPPS, Defendant.	No. SA CR 10-72-JVS ORDER [127]

Recd 24 Aug 23

The government's request for an extension of time to file a response to defendant Quay Phipps's June 14, 2023 Petition for Dismissal of all Charges Due to Lack of Subject Matter Jurisdiction, August 3, 2023 request for summary judgment, and August 9, 2023 reply brief is GRANTED, such that the response is now due on or before August 21, 2023 and any reply is due on or before September 18, 2023.

IT IS SO FOUND AND ORDERED
this 16th day of August 2023.

James V. Selna

HONORABLE JAMES V. SELNA
UNITED STATES DISTRICT JUDGE

DEFENDANT'S PRO SE MOTION TO VACATE EX PARTE ORDER [127]

Quay Phipps, Pro Se Defendant, moves the court for an order setting aside the ex parte order granted by this court on August 16, 2023, [Doc. 127].

Whereby:

(a) On June 14, 2023, Defendant Phipps filed a Pro Se Petition for Dismissal of All Charges Due to Lack of Subject Matter Jurisdiction;

(b) On June 26, 2023, Honorable Judge Selna ordered the government to file its response no later than July 12, 2023, and ordered the defendant to reply to the government's response no later than August 2, 2023;

(c) The government failed to comply with Judge Selna's order, neglecting and disregarding the unambiguous deadline;

(d) On August 3, 2023, Defendant Phipps filed a Pro Se Motion for Summary Judgment;

(e) On August 16, 2023, thirty-five (35) days after the deadline to file it's response, the government asked for an extension for no valid reason, citing that the Assistant United States Attorney neglected to "calendar" the deadline and "confused" the defendant's case with an entirely unrelated case;

(f) On August 16, 2023, without giving the defendant an opportunity to object to the government's motion, Judge Selna granted the government's ex parte motion and extended the government's deadline to August 21, 2023;

(g) On August 24, 2023, Defendant Phipps received notice of the

the order granting the government's ex parte motion.

As professional lawyers and officers of the court are held to a higher standard than a pro se defendant, Assistant United States Attorney Gannon, in her declaration of her Ex Parte Motion for Extension of Time, freely admits she failed to calendar the July 12, 2023 due date at 4.a of motion. Her excuses for this failure are irrelevant, especially since her request for said extension is dated August 16, 2023, more than thirty-five (35) days after the July 12 deadline, all the while a Motion for Summary Judgment was pending before the court, filed July 24, 2023 (Mailbox Rule), received by the court on August 3, 2023. This motion should be considered before any subsequent motion is considered, rendering AUSA Gannon's Ex Parte Motion moot. Had Phipps, as a Pro Se Defendant, been just one day late, let alone thirty-five days late, responding to a court order, the defendant's response would have been rejected as procedurally default.

From August 3, 2023, until August 15, 2023, a motion had been before the court unopposed, and the salient facts have never been questioned and completely corroborated. AUSA Gannon's declaration [Sec. 3] states the fact that she failed and acknowledges that the defendant met his obligation on time and fully, even filing a reply to the government's (non-)response. Yet AUSA Gannon's unprofessionalism, incompetence, and total lack of punctuality, she still has the mendicatorie to request an extension of time, 35 days late, asking for a second bite of the proverbial apple,

essentially saying her time is more valuable than the court's.

As to the ex parte nature of the motion, the defendant's whereabouts are known to both the government and the courts 24/7/365. Arranging a conference call with FCI Texarkana is little effort for an AUSA or a district judge, thereby preserving the defendant's rights and ability to object to the outrageous and blatant disregard of the government's frivolous motion. In AUSA Gannon's declaration, only the first seventeen (17) words are relevant at 4.a: "I failed to calendar the July 12, 2023 due date for the government's response to defendant's petition ... ". The rest of the AUSA's excuse is no better than "The dog ate my homework," or simply, "I was so busy, I could not properly execute my duties." Summary judgment is the prescribed and proper disposition for this type of situation, not a second bite of the proverbial apple. Even if AUSA Gannon petition is to be accepted, her request should have been executed August 4 or August 10, 2023, not twelve or six days later, again evidence of her valuing her time over the court's time.

At the very least, as a pro se litigant, Phipps is entitled to an explanation as to why his Motion for Summary Judgment was not acted on before the government's Ex Parte Motion filed thirteen days later. It seems the court only chooses to act on motions initiated by the government.

In conclusion, Pro Se Defendant Phipps most strongly objects to the government's Ex Parte Motion and the court's granting of said

motion. If overruled, Defendant Phipps takes exception to its order and requests leave to seek an interlocutory appeal. Furthermore, as a means acceptable to defendant, a ruling on the Motion for Summary Judgment with the facts as they stood on August 15, 2023.

As it stands, the appearance of bias is very palpable, as no explanation as to why the defendant's Motion for Summary Judgment has been ignored by the court. An excuse from the government equivalent to "The dog ate my homework" must be extremely offensive to the court, and a delay of over a month to seek redress of AUSA's failure is anything but due diligence.

For said reasons above, Pro Se Defendant Quay Phipps moves to vacate order [127], dated August 16, 2023.

_____

Quay Phipps, Pro Se Defendant

§ 2252A(a)(5)(B). Defendant's petition should be properly construed as a motion for relief pursuant to 28 U.S.C. § 2255. Whether reviewed as a § 2255 motion or a motion to dismiss for lack of subject matter jurisdiction, it is time barred and should be dismissed. If the Court denies the request to dismiss the petition, government requests additional time to file a response addressing more fully the merits of defendant's claims.

A. Petitioner Is Attacking His Conviction and Sentence, and § 2255 Is the Sole Remedy for Such Attacks

As noted above, defendant in his Petition for Dismissal of All Charges Due to Lack of Subject Matter Jurisdiction raises various arguments attacking, not the execution of his sentence, but the validity of his underlying convictions.

It is well settled that a motion under § 2255 is the primary avenue for federal prisoners in custody to attack their sentences and underlying convictions unless it is somehow inadequate or ineffective. 28 U.S.C. § 2255(e); see Lorentsen v. Hood, 223 F.3d 950, 953 (9th Cir. 2000) ("In general, § 2255 provides the exclusive procedural mechanism by which a federal prisoner may test the legality of detention."). Because defendant's claims are aimed at his convictions, they should be brought in a § 2255 motion.

Defendant's claim of lack of subject matter jurisdiction rests on evidence that could have been raised previously. In fact, defendant made, and the Court rejected, a pre-trial Constitutional challenge to the statutes claiming that he had a First Amendment right to possess and transport child pornography. (CR 15, 17.) Because petitioner has had an unobstructed opportunity to remedy any claim of Constitutional infirmity for the charged offenses, including

a challenge based on the Commerce Clause, relief under 28 U.S.C. § 2255 is not "inadequate or ineffective." As a result, this Court should construe petitioner's filing as a § 2255 motion.[2]

B. Defendant's Claim for Relief Is Time Barred

Section 2255 provides that a "1-year period of limitation" applies, and runs from the "date on which the judgment of conviction becomes final." 28 U.S.C. § 2255. A defendant's conviction becomes final at the latter of when his petition for a writ of certiorari with the United States Supreme Court is denied, or the 90-day period for filing such a petition elapses. Clay v. United States, 537 U.S. 522, 532, (2003); United States v. Garcia, 210 F.3d 1058, 1060 (9th Cir. 2000); S. Ct. R. 13.1. In this case, defendant's conviction became final on July 24, 2013 -- 90 days after the Ninth Circuit affirmed defendant's sentence.[3] Defendant did not file his petition until June 14, 2023, however -- almost a decade after his conviction became final. As a result, his motion is time-barred and should accordingly be dismissed.

Defendant is also not entitled to any equitable tolling of the limitations period that would render his untimely § 2255 motion timely. Although equitable tolling applies in the § 2255 context,

---

[2] Because defendant is proceeding pro se, the government would request that this Court advise defendant of its intent to re-characterize his filing as a § 2255 motion, "warn the [defendant] that this recharacterization means that any subsequent § 2255 motion will be subject to the restrictions on 'second or successive' motions, and provide the litigant an opportunity to withdraw the motion or to amend it so that it contains all the § 2255 claims he believes he has." Castro v. United States, 540 U.S. 375, 383 (2003). This will enable any subsequent § 2255 motions to be considered "successive" within the meaning of § 2255.

[3] Defendant did not file a petition for a writ of certiorari.

see United States v. Battles, 362 F.3d 1195 (9th Cir. 2004), defendant is not eligible for such tolling.

To be eligible, a prisoner must demonstrate two facts. First, there are "extraordinary circumstances beyond [the defendant's] control that make it impossible to file a petition on time." Calderon v. United States Dist. Court (Beeler), 128 F.3d 1283, 1288 (9th Cir. 1997), overruled in part on other grounds, Calderon v. United States Dist. Court (Kelly), 163 F.3d 530 (9th Cir. 1998) (en banc); accord United States v. Schwartz, 274 F.3d 1220, 1224 (9th Cir. 2001). Second, "the extraordinary circumstances were the cause of his untimeliness." Laws v. Lamarque, 351 F.3d 919, 922 (9th Cir. 2002) (quoting Spitsyn v. Moore, 345 F.3d 796, 799 (9th Cir. 2003) (internal quotation marks and citation omitted)). This is an onerous burden, and one the defendant bears. See United States v. Marolf, 173 F.3d 1213, 1218 n.3 (9th Cir. 1999); accord Corjasso v. Ayers, 278 F.3d 874, 877 (9th Cir. 2002) (noting the "high hurdle" of proving equitable tolling).

The Ninth Circuit has found equitable tolling to be applicable in only a narrow class of cases, none of which is implicated in this case. See, e.g., Corjasso, 278 F.3d at 878-79 (district court erroneously dismissed a "mixed" habeas petition and did not return documents to defendant that he would need to file timely habeas petition); Miles v. Prunty, 187 F.3d 1104, 1107 (9th Cir. 1999) (prison officials improperly handled habeas petition and caused it to be filed late); Lott v. Mueller, 304 F.3d 918, 922-25 (9th Cir. 2002) (prison officials denied defendant access to his legal files); Lamarque, 351 F.3d at 923-24 (defendant's mental incompetence).

The fact that defendant styles his request as a petition to dismiss for lack of subject matter jurisdiction does not change the result that defendant's claim is time barred. Defendant argues that because his claim asserts a lack of subject matter jurisdiction, the Antiterrorism and Effective Death Penalty Act (AEDPA) does not apply. In addition, defendant argues that the AEPDA is unconstitutional, a claim that has been rejected. See Felker v. Turpin, 518 U.S. 651, 664 (1996). In general, a motion to dismiss the indictment must be filed before trial. Fed.R.Crim.P. 12(b)(3). However, "at any time while the case is pending, the court may hear a claim that the indictment or information fails to invoke the court's jurisdiction or to state an offense." Id. A case is no longer "pending" within the meaning of Rule 12(b) after the judgment becomes final. U.S. v. Rios-Hernandez, 2013 WL 4857952, *1 (D. Nev. Sept. 10, 2013). The judgment affirming defendant's conviction has been final for almost a decade.

For all these reasons, this Court should dismiss defendant's petition as untimely.

C. This Court Should Deny Any Request for a Certificate of Appealability

As discussed above, none of defendant's claims has merit. Nor has defendant "made a substantial showing of the denial of a constitutional right" as to any of these issues, which is required if defendant is to obtain a certificate of appealability ("COA") in order to appeal this court's ruling. See 28 U.S.C. §§ 2253(c)(2), (c)(3). The government therefore requests that this Court deny any request for a COA.

IV. CONCLUSION

For the reasons noted above, defendant's petition should be dismissed. If this Court denies this motion, the government requests that this Court permit the government to file a response, including arguments that defendant's claims are procedurally defaulted, by October 16, 2023.

CERTIFICATE OF SERVICE

That I am a citizen of the United States and employed in Orange County, California; that my business address is the Office of United States Attorney, United States Courthouse, 411 West Fourth Street, Suite 8000, Santa Ana, CA 92701; that I am over the age of eighteen years, and am not a party to the above-entitled action;

That I am a member of the Bar of the United States District Court for the Central District of California and I served a copy of: GOVERNMENT'S MOTION TO DISMISS DEFENDANT'S PETITION FOR DISMISSAL OF ALL CHARGES DUE TO LACK OF SUBJECT MATTER JURISDICTION.

[ ]Placed in a closed envelope, for collection and interoffice delivery

[X] Placed in a sealed envelope for collection and mailing via United States mail

Addressed to:
Quay Phipps
Registration # 48706-112
FCI TEXARKANA
FEDERAL CORRECTIONAL INSTITUTION
P.O. BOX 7000
TEXARKANA, TX 75505

[ ] By hand delivery

[] By **e-mail** as follows:

[ ] By messenger as follows:

[ ] By federal express as

This Certificate is executed on **August 21, 2023**, Orange County, California.

I certify under penalty of perjury that the foregoing is true and correct.

/s/
Anne C. Gannon

The government's motion is based on the attached memorandum of points and authorities and the records and files in this case.

Dated: August 21, 2023

Respectfully submitted,

E. MARTIN ESTRADA
United States Attorney

MACK JENKINS
Assistant United States Attorney
Chief, Criminal Division

/s/
ANNE C. GANNON
Assistant United States Attorney

Attorneys for Plaintiff
UNITED STATES OF AMERICA

A-38

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CASE NO. SACR 10-00072-JVS

UNITED STATES, PLAINTIFF
v.
QUAY PHIPPS (48706-112), PRO SE DEFENDANT

REPLY TO GOVERNMENT'S MOTION TO DISMISS
DEFENDANT'S PETITION FOR DISMISSAL OF ALL CHARGES
DUE TO LACK OF SUBJECT MATTER JURISDICTION

Here comes before you one QUAY PHIPPS, Federal Inmate 48706-112, in reply to the Government's Motion to Dismiss Defendant's Petition for Dismissal of All Charges Due to Lack of Subject Matter Jurisdiction:

Assistant United States Attorney (ASUA) Anne Gannon, in her response, addressed only one issue raised by Pro Se Defendant Phipps, that of the Anti-Terrorist Effective Death Penalty Act (AEDPA). She cites FELKER v. TURPIN (518 US 651, 664, US Supreme Court, 1996), a case involving a Georgia death row inmate who made a second and successive Habeas Corpus petition, and does not even refer to a time limit, and therefore should be construed as non-responsive.

Next, AUSA Gannon suggests that the motion of subject matter jurisdiction should be construed as a motion onder 28-U.S.C.-§2255, saying that the defendant is testing the legality of his detention. The defendant is not contesting the legality of his detention, rather he is contesting the government's constitutional authority to pass and enforce laws that include punishmentand regulate real people via Article I, Section 8,

Clause 3. As a pro se defendant, Phipps knows not what proper instrumentality the court should use, but justice demands that when an unenumerated power is used by the government, it must be declared null and void. No other remedy is sufficient.

As that, the defendant took case to trial, preserving all rights including the First Amendment right to petition the government for a redress of grievance, of which Congress shall make no law. As §2255 is a law that Congress enacted, it is on its face and function a violation of the First Amendment. The insistence by the government's attorney that Defendant Phipps, or any other citizen for that matter, is time-barred to petition the government for redress of a grievance is unconstitutional and flies in the face of the First Amendment.

In that AUSA Gannon chose not to address any other issues raised in the defendant's original motion, one can presume that the Government agrees with the defendant's assertions. Any requests for more time should be denied for the simple reason that AUSA Gannon was already granted an ex parte motion to respond after missing her original deadline by thirty-five (35) days with the unprofessional excuse, "I forgot;" an excuse wholely unbefitting a doctorate of the law, no better than "The dog ate my homnework." That the court would even consider accepting this excuse while a motion for summary judgment was before the court shows unabashed bias against the defendant. Only upon receiving the defendant's motion for summary judgment was the AUSA reminded

of her professional obligation to the court. Then, AUSA Gannon requested an ex parte motion when the government and court undoubtedly know the whereabouts of the defendant, easily allowing a conference call to be arranged to preserve the defendant's rights to object to said motion, which the defendant did immediately upon receiving notice that the ex parte motion had been granted. The defendant has yet to receive a response to his motion for summary judgement or his objection to the government's ex parte motion, additional evidence of bias against the defendant.

In the United States Supreme Court landmark decision of VAN BROCKLIN v. ANDERSON (117 US 151, 167-168, US Supreme Court, 1886), still considered current law, "Upon admission of a state into the Union, the State doubtless acquires general jurisdiction, civil and criminal, for the preservation of public order and protection of persons and property throughout its limits except where it has ceded exclusive jurisdiction to the United States. The rights of local sovereignty, including the title in lands held in trust for municipal uses and in the shores of navigable waters below the highmark, in the State and not in the United States."

The Supreme Court of the United States has consistently upheld VAN BROCKLIN as valid case law throughout the nation's history, having never been overturned. Some of these cases include:

(a) UNITED STATES v. CITY OF DETROIT (355 US 466, 1958)

(b) UNITED STATES v. COUNTY OF FRESNO (97 SCT 699, 1977)

(c) QUEEN v. JORDAN (99 SCT 1139, 1979)

(d) WILL v. MICHIGAN DEPT. OF STATE POLICE (109 SCT 2304, 1989)

(e) NGIRAINGAS v. SANCHEZ (110 SCT 1737, 1990)

As the United States Supreme Court continues to uphold VAN BROCKLIN, this court has no choice but to also uphold VAN BROCKLIN and recognize that the United States Government has no jurisdiction in the alleged criminal activity of the defendant.

The question of subject matter jurisdiction is of such importance that both the United States Attorney and the courts are required to show that they have subject matter jurisdiction BEFORE any other action can be taken against a real person. A demand to show subject matter jurisdiction at any time by anyone should be of absolutely no inconvenience to any court officer as it should already be on record to preserve the legitimacy of the judicial process. AUSA Gannon and/or Judge Selna should be able to produce said subject matter jurisdiction with a simple document from the case file or court record to show that justice is being served. Anything less brings to the fore that our legal system is no longer one that our founding fathers would even recognize. One that is founded on the principle that one hundred (100) guilty should go free so that not one innocent person should be denied freedom. This applies to the defendant for the reason that without subject matter jurisdiction or the enumerated power to punish, the defendant is ACTUALLY INNOCENT of all charges levied

against him.

"Subject Matter Jurisdiction, because it involves a court's power to hear a case, can never be forfeited or waived. Consequently, defect in subject matter jurisdiction requires correction regardless of whether the error was raised in district court" (UNITED STATES v. COTTON, 535 US 625, 630, US Supreme Court, 2002). Federal courts are obligated under the Constitution because the due process rights secured under the Fifth Amendment require it to take notice sua-sponte as to wheather they have subject matter jurisdiction over the crime (constitutional authority) or not.

In ARBOUGH v. Y&H CORPORATION (546 US 500, US Supreme Court, 2006), the Supreme Court held that courts, including this one, have an independent obligation to determine whether subject matter jurisdiction exists even in absence of a challenge from any party.

When a power is enumerated in parts of Article I, Section 8, Clauses 6 and 10, it is presumed to be denied where it is not enumerated. Thus, under Clause 3, no power to punish exists. Without this power, Congress can not proscribe any criminal act, thus denying the Department of Justice (through United States Attorney's Office and the Courts) any jurisdiction whatsoever. Bring a citizen before a tribunal without jurisdiction, any and all findings are NULL AND VOID.

"Courts possess no jurisdiction over crimes and offenses committed against the authority of the United States except what is given them by the power that created them, nor can they be invested with any such jurisdiction beyond what the power ceded to the United States by the Constitution authorizes Congress to use. Congress may provide for the punishment of counterfeiting the securities and current coin of the United States and may pass laws to define and punish piracies and felonies committed on the high seas and against the law of nations" (UNITED STATES v. HALL, 98 US 343, 345-346, US Supreme Court, 1879). Those are the limits the Constitution puts upon Congress in Article I, Section 8.

"The individual, in a proper case, can assert injury from the governmental action taken in excess of authority that federalism defines. [The defendant's] rights in this regard do not belong to a State" (BOND v. UNITED STATES, 131 SCT 2555, US Supreme Court, 2011). "The federal system rests on what might at first seem a counterintuitive insight, that 'freedom is enhanced by the creation of two governments, not one'" (ALDEN v. MAINE, 527 US 706, US Supreme Court, 1999).

Federalism also protects the liberty of all persons within a state by ensuring that law enacted in excess of governmental power can not control their actions. By denying any one government complete jurisdiction over all the concerns of public life, federalism protects liberty of the individual from arbitrary power. When government acts in excess of its lawful

power that liberty is at stake. The limit on that federalism entails are not therefore a matter of rights belonging to the States. States are n ot the sole intended beneficiaries of federalism (NEW YORK supra, 112 SCT 2408, 181). An individual has a direct interest in objecting to laws that upset the constitutional balance between the national government and the States where the enforcement of those laws cause injury that is concrete, particular, and redressable. Fidelity to principles of federalism is not for the state alone to vindicate. If the constitutional structures of our government that protect the individual liberty is compromised, as it has been in PHIPPS'S case, individuals who suffer justiciable injury may object. Just as it is appropriate for an individual in a proper case to invoke separation of powers or checks-and-balance constraints, so too may a litigant challenge a law as enacted in contravention of constitutional principles of federalism. That claim need not depend on the vicarious assertion of a state's constitutional interests, even if a state's constitutional interests are also implicated. The principles of limited national powers and state sovereignty are intertwined. While neither originate in the Tenth Amendment, both are expressed by it. Impermissible interference with state sovereignty is not within the enumerated powers of the national government (NEW YORK, 112 SCT 2408, US Supreme Court, 1992). An action that exceeds the national government's enumerated powers undermines the sovereign interest of the states (UNITED STATES v. LOPEZ, 514 US 549, US Supreme Court, 1995). The unconstitutional action can cause concomitant injury to persons.

in individual cases.

Justices Ginsburg and Breyer offer concurring opinions in the BOND decision: "Bond, like another defendant, has a personal right to be convicted under a constitutional valid law ... Due process ... is a guarantee that a man should be tried and convicted only in accordance with valid laws of the land."

Pro Se Defendant PHIPPS, like BOND, argues that the statute under which he was charged (18-USC-§2252A) exceeds Congress's enumerated powers and violates the Tenth Amendment. 18-USC-2252A exceeds Congress's powers to punish, and AEDPA as applied to 28-USC-§2255 and its arbitrary, nonsensical requirement that sets a time limit of one calendar year to protest a court's decision, is a blatant violation of Congress's enumerated powers, therefore is on its face unconstitutional as well.

Whatever the claim, success on the merits would require reversal of the conviction. "An offense created by [an unconstitutional law] is not a crime. ... A conviction under [such a law] is not merely erroneous, but is illegal and void and cannot be a legal cause of imprisonment" [Ex parte SIEBOLD, 100 US 371, 376, US Supreme Court, 1880). If a law is invalid, such as 18-USC-§2252A and AEDPA, and is applied to the criminal defendant's conduct, THE DEFENDANT IS ENTITLED TO GO FREE.

AUSA Gannon bemoans the length of time it has taken Phipps to

comprehend this small but important aspect of the Constitution. AUSA Gannon, having spent eight to twelve years under guided curriculum, instructors, mentors, etc., yet must rely on inventing jurisdiction to gain a fraudulent conviction of one who the courts have denied at every step of the process the protections the Constitutions guarantees to ALL citizens. To commit a fraud and then claim that the victim of the fraud takes too long to discover said fraud is the height of hubris. That she does this under the cover of authority is beyond the pale and it is tyranny at its most basic form. Not only is the defendant's conviction now questionable, but every federal inmate within the Bureau of Prisons, over 150,000 of them, are likely being imprisoned for unconstitutional laws that exceed the enumerated powers of Congress, most of which are charged under Article I, Section 8, Clause 3. This is not a minor infraction, but a massive deprivation of the rights of the people who actually empower this and every government. A national government that usurps the power of the people is the most despicable form of tyranny.

Without the aforementioned eight to twelve years of guidance, such as what a law school provides, including several years understanding archaic language, much of which is written in Latin, a common person cannot be held to a one year limitation on redress of issues, especially when the law is supposed to be understandable by the common man, not simply a class of elite citizens who have the money and connections to be formally

educated in law. Any time limit, therefore, is an antithesis of justice.

Laws are merely the tools a society uses to achieve justice and ensure liberty. When the legislative, executive, or judicial branches use the law the undermine justice and liberty, their own legitimacy is questioned. The supreme law of the land should be respected by the three branches of government and the people until one (or more) of the branches usurp powers that are not theirs to exercise. That is exactly what has happened by the United States Attorney's Office and the District Court in this case and cases throughout the country with the modern, expansive interpretation of Article I, Section 8, Clause 3. The government has taken a power to keep OTHER GOVERNMENTS (i.e. Foreign Nations, States, and Native Tribes) from interfering in free market economy and has perversely twisted the intended meaning of this document so that it can enforce unconstitutional laws against private citizens, holding us hostage in antiquated prisons throughout the country.

The Supreme Court has declared that the Constitution is a written document whose meaning does not change (MARBURY v. MADISON 1 Cranch 137, 2 L.ed 60). Yet in its lack of wisdom and its power grab, we now have a modern and expansive interpretation of Article I, Section 8, Clause 3, that flies in the face of the founding fathers' original intent of the Constitution. The current Supreme Court of 2023 is composed of individuals who

share and respect the view of the Constitution's original meaning, having consistently ruled that the words of the Constitution were chosen deliberately, carefully, and must be interpreted without bias.

For these reasons, the Court must dismiss all charges levied against PRO SE DEFENDANT PHIPPS, and release him from federal custody.

Quay Phipps, Pro Se Defendant

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CRIMINAL MINUTES - GENERAL

Case No. 8:10-cr-00072-JVS Date February 12, 2024

Present: The Honorable **JAMES V SELNA, U.S. DISTRICT COURT JUDGE**

Interpreter

Elsa Vargas	Not Present	Not Present
Deputy Clerk	*Court Reporter/Recorder*	*Assistant U.S. Attorney*

U.S.A. v. Defendant(s):	Present	Cust.	Bond	Attorneys for Defendants:	Present	App.	Ret.
	NOT				NOT		

Proceedings: **[IN CHAMBERS] Order Regarding Petition for Dismissal [122] and Request for Section 2241 Request for Statutory Interpretation [133]**

Petitioner Quay Phipps ("Petitioner"), a federal prisoner proceeding pro se, filed a petition for dismissal of all charges due to lack of subject-matter jurisdiction, which the Court construes as a motion for relief under 28 U.S.C. § 2255. (Pet., Dkt. No. 122.) Petitioner filed a supplemental brief on August 9, 2023. (Supplemental Brief, Dkt. No. 126.) The Government opposed the Petition and moved to dismiss as time-barred. (Opp'n, Dkt. No. 129.) Petitioner filed his reply. (Reply, Dkt. No. 131.)

On December 14, 2023, this Court informed Petitioner that the Court intended to recharacterize the Petition as his "first" § 2255 motion. (Order, Dkt. No. 132.) In its Order, the Court granted Petitioner leave to file an amended § 2255 motion, with instructions that Petitioner's filing will be construed as an initial § 2255 motion. (Id.) On February 7, 2024, Petitioner filed a request to have his Petition construed as a § 2241 request for statutory interpretation. (Request, Dkt. No. 133.)

For the following reasons, the Court **DENIES** the Petition for Dismissal of all Charges. Because the Court construes the Petition as a § 2255 Motion, the Court **DENIES** Petitioner's Request to construe the Petition as a § 2241 Request for Statutory Interpretation.

I. BACKGROUND

On April 7, 2010, a federal grand jury returned a two-count indictment charging Petitioner with one count of transportation of child pornography under 18 U.S.C. § 2252A(a)(1)

and one count of possession of child pornography under 18 U.S.C. § 2252A(a)(5)(B). (Dkt. No. 1.) On November 2, 2011, a four-count superseding indictment charging Petitioner with one count of transportation of child pornography under 18 U.S.C. § 2252A(a)(1) and three counts of possession of child pornography under 18 U.S.C. § 2252A(a)(5)(B) was filed. (Dkt. No. 43.) On January 5, 2012, a jury returned guilty verdicts on all four counts. (Dkt. No. 79.) On May 7, 2012, the Court sentenced Petitioner to 240-months' imprisonment on count one and 120-months' imprisonment on each of counts 2, 3, and 4, all to be served concurrently, a lifetime term of supervised release, and a special assessment of $400. (Dkt. No. 101.) Petitioner's judgment was entered on May 10, 2012. (Dkt. No. 102.) Petitioner appealed his conviction, claiming that 1) the trial court violated his Fifth Amendment right against double jeopardy when it denied his motion to dismiss the possession counts; 2) the trial court erred when it denied his motion to dismiss the indictment because Petitioner has a First Amendment right to view child pornography; 3) the trial court abused its discretion when it admitted written stories found on Petitioner's digital storage devices describing sexual acts with minors; 4) the trial court violated Petitioner's due process rights when it allowed Petitioner to be prosecuted for unconstitutional laws; and 5) the trial court erred when it denied Petitioner's Rule 29 motion because the evidence was insufficient to show that Petitioner transported child pornography. (Dkt. No. 119.) On April 25, 2013, the Ninth Circuit rejected all five of Petitioner's challenges and affirmed his conviction. (Id.)

II. LEGAL STANDARD

"Pro se habeas petitioners occupy a unique position in the law." Brown v. Roe, 279 F.3d 742, 745 (9th Cir. 2002). "Prisoners are often unlearned in the law. . . . Since they act so often as their own counsel in habeas corpus proceedings, we cannot impose on them the same high standards of the legal art which we might place on the members of the legal profession." Price v. Johnston, 334 U.S. 266, 292 (1948), overruled on other grounds by McCleskey v. Zant, 499 U.S. 467 (1991). Accordingly, the Court construes Plaintiff's claims liberally, giving careful consideration to each of his claims.

Section 2255 provides:

> "A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States . . . may move the court which imposed the sentence to vacate, set aside or correct the sentence."

28 U.S.C. § 2255(a).

A one-year limitations period applies to § 2255 motions. 28 U.S.C. § 2255(f). There are four possible commencement dates for the limitations period, the latest of either: (1) the date on which the judgment becomes final; (2) the date on which an impediment to filing created by the government is removed, (3) the date on which the Supreme Court recognizes a new constitutional right, retroactively applied on collateral review; or (4) the date on which the factual predicate for the claim could have been discovered through the exercise of due diligence. Id.

III. DISCUSSION

A. Petition Construed as a 28 U.S.C. § 2255 Motion

The Government argues that Petitioner's Motion should be construed as a 28 U.S.C. § 2255 motion, which is untimely because the applicable one-year statute of limitation has run. (Opp'n at 2.) In his Petition for Dismissal, Petitioner argues that the Court lacks subject-matter jurisdiction because Congress "overreached their Article I, Section 8, Clause 3 power by subjecting real people and artificial persons not covered by said clause." (Pet. at 1.) Specifically, Petitioner argues that he is "contesting the government's constitutional authority to pass and enforce laws that include punishment and regulate real people via Article I, Section 8, Clause 3." (Reply at 1–2.) Petitioner also argues that "§ 2255 is a law that Congress enacted, it is on its face and function a violation of the First Amendment." (Id. at 2.) In essence, Petitioner is challenging the legality of the statutes under which he was convicted. Thus, the Petition for Dismissal must be construed as a 28 U.S.C. §.2255 motion. "Prisoners may not attempt to evade habeas procedural requirements . . . by characterizing their claims as seeking some other type of relief." Bogovich v. Sandoval, 189 F.3d 999, 1002 (9th Cir. 1999). Section 2255 "provides the exclusive procedural mechanism by which a federal prisoner may test the legality of detention." Harrison v. Ollison, 519 F.3d 952, 955 (9th Cir. 2008) (quoting Lorentsen v. Hood, 223 F.3d 950, 953 (9th Cir. 2000)). Because Petitioner argues that the laws under which he was sentenced are unconstitutional due to Congress overreaching its power under the Commerce Clause, his Petition falls within the province of § 2255.

Because Petitioner is proceeding pro se and the Court will recharacterize the Petition as his "first" § 2255 motion, the Court was required to inform Petitioner that it intends to recharacterize the Petition as his "first" § 2255 motion. See Castro v. United States, 540 U.S. 375, 383 (2003) ("The limitation applies when a court recharacterizes a pro se litigant's motion as a first § 2255 motion. In such circumstances the district court must notify the pro se litigant that it intends to recharacterize the pleading, warn the litigant that this recharacterization means that any subsequent § 2255 motion will be subject to the restrictions on 'second or successive' motions, and provide the litigant an opportunity to withdraw the motion or to amend it so that it

contains all the § 2255 claims he believes he has."); United States v. Seesing, 234 F.3d 456, 464 (9th Cir. 2000) ("When presented with a pro se motion that could be recharacterized as a 28 U.S.C. § 2255 motion, a district court should not so recharacterize the motion unless: (a) the pro se prisoner, with knowledge of the potential adverse consequences of such a recharacterization, consents or (b) the district court finds that because of the relief sought that the motion should be recharacterized as a 28 U.S.C. § 2255 motion and offers the pro se prisoner the opportunity, after informing the prisoner of the consequences of recharacterization, to withdraw the motion. Under either scenario, the pro se prisoner has the option to withdraw the motion and file one all-inclusive 28 U.S.C. § 2255 motion within the one-year statutory period."). Thus, on December 14, 2023, this Court informed Petitioner that the Court intended to recharacterize the Petition as his "first" § 2255 motion. (See Order.) In its Order, the Court granted Petitioner thirty days to amend his motion so that it includes all of his § 2255 claims or withdraw his motion. (Id.) On February 7, 2024, Petitioner filed a request to have this Court construe his Petition as a § 2241 request for statutory interpretation. (See Request.) The Request merely repeats the arguments made in the original Petition to this Court. (Compare id. ("[A]s Petitioner challenges or questions the legality of the statute as applied to him, specifically, whether the statute allows a conviction by subjecting real people and artificial people in violation of Article I, Section 8, Clause 3 of the United States Constitution, thereby acting without jurisdiction."); id. ("Petitioner also invokes that a lack of subject matter jurisdiction can never be waived and can be raised at any time and anywhere . . . ."); id. ("Petitioner invokes the power of the Court to say what the law is first . . . ."); with Pet. at 1 ("Congress has overreached their Article I; Section 8; Clause 3 power by subjecting real people and artificial persons not covered by said clause."); id. at 3 ("This is a motion on an issue of subject matter jurisdiction and therefore can be raised at any time and thus not subject to the Antiterrorism and Effective Death Penalty Act.").) However, for the reasons discussed above, the Court declines to characterize the petition as a § 2241 request for statutory interpretation and instead construes the Petition as a § 2255 motion. Moreover, Petitioner consented to construing his Petition as a § 2255 motion. (See Request ("If this Court deems that his Petition cannot be changed to a § 2241, then Petitioner . . . allow[s] his Petition to be construed as a § 2255 so that this question can be addressed by the Court.").) Because the pro se Petitioner was given the opportunity to withdraw or amend the pleading to state all then-available claims and did not withdraw the pleading, the Court will construe his present Petition, as filed, as a § 2255 motion.

B. Limitations Period

The Government argues that Petitioner's claim for relief is time-barred. (Opp'n at 2–6.) Section 2255 provides that a "1-year period of limitation" applies and runs from the "date on which the judgment of conviction becomes final." 28 U.S.C. § 2255(f). "The Supreme Court has held that a conviction is final in the context of habeas review when 'a judgment of

conviction has been rendered, the availability of appeal exhausted, and the time for a petition for certiorari elapsed or a petition for certiorari finally denied.'" United States v. Schwartz, 274 F.3d 1220, 1223 (9th Cir. 2001) (quoting Griffith v. Kentucky, 479 U.S. 314, 321 n.6 (1987)). In this case, Petitioner's judgment was entered on May 10, 2012. (Dkt. No. 102.) Petitioner appealed to the Ninth Circuit, which affirmed the conviction on April 25, 2013. (Dkt. No. 119.) Petitioner did not appeal the Ninth Circuit's decision to the Supreme Court. Thus, Petitioner's judgment became final on July 24, 2013, which was 90 days after the Ninth Circuit's decision. Petitioner filed his Petition on June 14, 2023. (Pet.) Because Petitioner filed his Petition for Dismissal almost a decade after his conviction became final, his § 2255 petition is untimely. Petitioner argues that the Antiterrorism and Effective Death Penalty Act (AEDPA) is unconstitutional (Pet. at 3–4), but that claim has already been rejected by the Supreme Court in Felker v. Turpin, 518 U.S. 651, 664 (1996). Therefore, the Petition should be dismissed as untimely unless equitable tolling applies.

C. Equitable Tolling

Equitable tolling of the limitations period applies to § 2255 motions. See United States v. Battles, 362 F.3d 1195, 1197 (9th Cir. 2004). For equitable tolling to apply, a Petitioner must establish (1) that "extraordinary circumstances" beyond the Petitioner's control made it impossible to file a petition on time and (2) that the extraordinary circumstances were the cause of the Petitioner's untimeliness. Spitsyn v. Moore, 345 F.3d 796, 799 (9th Cir.2003) (internal quotation marks and citation omitted).

"[T]he threshold necessary to trigger equitable tolling [under § 2255] is very high, lest the exceptions swallow the rule." Miranda v. Castro, 292 F.3d 1063, 1066 (9th Cir. 2002). "Thus, as the Ninth Circuit has recognized, equitable tolling will be justified in few cases." Coleman v. Allison, 223 F. Supp. 3d 1035, 1058 (C.D. Cal. 2015), aff'd sub nom. Coleman v. Sherman, 715 F. App'x 756 (9th Cir. 2018); see also Waldron-Ramsey v. Pacholke, 556 F.3d 1008, 1011 (9th Cir. 2009) ("To apply the doctrine in 'extraordinary circumstances' necessarily suggests the doctrine's rarity, and the requirement that extraordinary circumstances 'stood in his way' suggests that an external force must cause the untimeliness, rather than, as we have said, merely 'oversight, miscalculation or negligence on [the petitioner's] part, all of which would preclude the application of equitable tolling.'").

Petitioner fails to argue that equitable tolling applies. (See generally Pet.; Supplemental Brief; Reply; Request.) Under the law, Petitioner must show that some extraordinary circumstance inhibited his ability to file on time. This he does not do. Here, Petitioner does not explain why he waited to file his Petition for nearly a decade after the Ninth Circuit affirmed his conviction. (See generally Pet.; Supplemental Brief; Reply; Request.) Thus, the Court finds that nothing extraordinary stood between Petitioner and the filing of his Petition on time. Equitable tolling does not apply. Accordingly, the Petition is dismissed as untimely.

IV. CONCLUSION

For the foregoing reasons, the Court **DENIES** the Petition for Dismissal of all Charges. Because the Court construes the Petition as a § 2255 Motion, the Court **DENIES** Petitioner's Request to construe the Petition as a § 2241 Request for Statutory Interpretation.

IT IS SO ORDERED.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CASE NO. SACR 10-00072-JVS

UNITED STATES, PLAINTIFF
v.
QUAY PHIPPS (48706-112), PRO SE DEFENDANT

NOTICE OF APPEAL AND
REQUEST FOR CERTIFICATE OF APPEALABILITY

Defendant Quay Phipps hereby notifies the District Court for the Central District of California of his appeal to the February 12, 2024 ruling for the following reasons:

(1) The District Court refused to construe Defendant's motion as a motion under §2241 rather than §2255;

(2) A challenge to subject matter jurisdiction is not time-barred and is allowed to be raised anytime;

(3) The Court erroneously declared the defendant's motion for summary judgment moot after the government failed to respond in a timely manner;

(4) The Antiterrorism and Effective Death Penalty Act (AEDPA) which the Court claims to time bar a defendant's motion for relief to a one year limitation is unconstitutional.

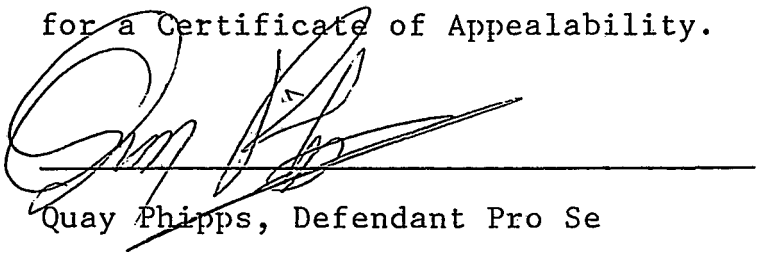
Per Circuit Court Rule 3-2, no FRAP 12(b) Representation Statement is required, as Defendant Phipps is proceeding Pro Se.

Per Circuit Court Rule 4-1, Defendant Phipps "may appeal to this court without prepayment of fees and costs or security therefor and without filing the affidavit required by 28-U.S.C.-§1915(a)" as he was originally appointed counsel by the district court, and is

therefore eligible for indigent status.

Per Circuit Court Rule 10-3.2(b), no transcripts will be ordered, as the District Court will provide the complete record ("clerk's record") of the case.

This Notice of Appeal shall also serve as the defendant's request for a Certificate of Appealability.



Quay Phipps, Defendant Pro Se

This document will be placed in the prison's outgoing mail system on February 28, 2024.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CASE NO. SACR 10-00072-JVS

UNITED STATES, PLAINTIFF
v.
QUAY PHIPPS (48706-112), PRO SE DEFENDANT

MOTION FOR LEAVE
TO PROCEED PRO SE IN A
DIRECT CRIMINAL APPEAL

Per Circuit Court Rule 4-1, Defendant Quay Phipps asks the Court for leave to proceed pro se.

Defendant Phipps knowingly, intelligently, and unequivocally waives the right to counsel. He is apprised of the dangers and disadvantages of self-representation on appeal. Self-Representation would not undermine a just and orderly resolution of the appeal.

_____

Quay Phipps, Defendant Pro Se

This document will be placed in the prison's outgoing mail system on February 28, 2024.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CASE NO. SACR 10-00072-JVS

UNITED STATES, PLAINTIFF
v.
QUAY PHIPPS (48706-112), PRO SE INCARCERATED DEFENDANT

NOTICE OF RETURNED MAIL AND
REQUEST FOR EQUITABLE TOLLING

Defendant Quay Phipps hereby notifies the District Court for the Central District of California of certified mail returned to sender ("Not Deliverable As Addressed; Unable to Forward").

Defendant Phipps placed his NOTICE OF APPEAL AND REQUEST FOR CERTIFICATE OF APPEALABILITY in the outgoing prison mailbox on February 28, 2024. He mailed the document CERTIFIED MAIL (Tracking Number 9589-0710-5270-0678-6961-06) and received his postmarked certified mail receipt on February 29, 2024. The attached copies returned to Phipps show the documents to have been postmarked on February 29, 2024 and March 15, 2024 (Shreveport, LA) in multiple mailing attempts.

On April 1, 2024, Phipps received a copy of the undeliverable mail during mail call for his housing unit.

Phipps hereby requests the District Court grant equitable tolling to file his NOTICE OF APPEAL AND REQUEST FOR CERTIFICATE OF APPEALABILITY. Phipps includes the original, unedited documents he mailed February 28, 2024.

Quay Phipps asserts that all the foregoing information is true under penalty of perjury. This document will be placed in the prison's outgoing mail system on April 3, 2024.

Quay Phipps
Pro Se Incarcerated Defendant
Reg. No. 48706-112
FCI Texarkana
P.O. Box 7000
Texarkana, TX 75505

Office of the Clerk
United States Court of Appeals for the Ninth Circuit
Post Office Box 193939
San Francisco, California 94119-3939
415-355-8000

Molly C. Dwyer
Clerk of Court

DOCKETING NOTICE

Docket Number:	24-2196
Originating Case Number:	8:10-cr-00072-JVS-1
Short Title:	United States of America v. Phipps

Dear Appellant/Counsel

The Clerk's Office of the United States Court of Appeals for the Ninth Circuit has received a copy of your notice of appeal and/or request for a certificate of appealability.

No briefing schedule will be set until this court and/or the district court determines whether a certificate of appealability (COA) should issue.

Absent an emergency, all subsequent filings in this matter will be stayed pending a determination on the certificate of appealability.

All subsequent letters and requests for information regarding this matter will be added to your file to be considered at the same time the cause is brought before the court.

The U.S. Court of Appeals docket number shown above has been assigned to this case. You must indicate this Court of Appeals docket number whenever you communicate with this court regarding this case. Motions filed along with the notice of appeal in the district court are not automatically transferred to this court for filing. Any motions seeking relief from this court must be separately filed in this court's docket.

A-61

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAR 7 2025

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA, Plaintiff - Appellee, v. QUAY PHIPPS, AKA Quay Alan Phipps, Defendant - Appellant.	No. 24-2196 D.C. No. 8:10-cr-00072-JVS-1 Central District of California, Santa Ana ORDER

Before: GRABER and JOHNSTONE, Circuit Judges.

The request for a certificate of appealability is denied because appellant has not shown that "jurists of reason would find it debatable whether the [28 U.S.C. § 2255 motion] states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *see also* 28 U.S.C. § 2253(c)(2); *Gonzalez v. Thaler*, 565 U.S. 134, 140-41 (2012).

Any pending motions are denied as moot.

DENIED.