

No. _____

In The
Supreme Court of the United States

— ♦ —
PETER K. STERN,

Petitioner,

vs.

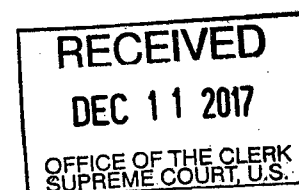
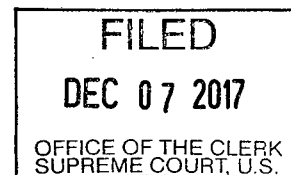
UNITED STATES OF AMERICA,

Respondent.

— ♦ —
**On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Fourth Circuit**

— ♦ —
PETITION FOR WRIT OF CERTIORARI

— ♦ —
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QUESTIONS PRESENTED FOR REVIEW

1.

Whether the United States Court of Appeals for the Fourth Circuit and District Court materially erred and turned a blind eye and deaf ear on what constitutes clear and uncontrovertible proof positive of actual and factual innocence of the Petitioner on Counts 1, 3, 4, 5, 6, and 7 when the District Court repeatedly denied the trial jury the opportunity to see and hear clearly exculpatory evidence thereby giving rise to a series of structural Constitutional violations requiring this Court to assume authority over the case and ORDER reversal of the wrongful convictions complained of by the Petitioner, with prejudice, and substantiating Petitioner's ongoing claims of systemic prejudice and bias on the part of the trial Court, rendering the underlying convictions null and void, ab initio.

2.

Whether the District Court materially erred when it disregarded the ruling of the Supreme Court in *Stern v. U.S.*, 543 U.S. 1097, 125 S.Ct. 988, 160 L.Ed. 996 (2005) and resentenced the Petitioner to 124 months confinement making the resentencing illegal and substantiating Petitioner's ongoing claims of systemic personal animus as well as prejudice and bias on the part of the trial Court, rendering the underlying convictions null and void, ab initio.

QUESTIONS PRESENTED FOR REVIEW –
Continued

3.

Whether the United States Court of Appeals for the Fourth Circuit and District Court materially erred in refusing to allow the Petitioner a timely, full and fair access to the courts by denying him a timely hearing required by 28 U.S.C. §2255 on his Motion and remand to the District Court for a full, fair and unbiased hearing on the merits of the Petitioner's claims therein, or, in the alternative, overturn the convictions with prejudice based on the multitude of undisputed claims in his pleadings.

4.

Whether the Petitioner was wrongfully convicted in Count 2 of the Superseding Indictment in the face of the fact that there is no required implementing Regulation under 26 C.F.R. supporting 26 U.S.C. §7212 thereby depriving the trial court of subject matter jurisdiction.

5.

Whether the Petitioner was wrongfully convicted of Counts 1 and 3 in the absence of subject matter jurisdiction over Petitioner's acts involving Comptrollers Warrants done prior to the September 30, 1996 enactment of 18 U.S.C. §514 pursuant to clearly stated Congressional intent.

QUESTIONS PRESENTED FOR REVIEW –
Continued

6.

Whether or not, with all due respect, the Supreme Court is willing to fulfill its contract with the American people and their individual Oath of Office and protect the common man and able to fully exercise its supervisory authority over the inferior courts in question, the United States Court of Appeals for the Fourth Circuit and the United States District Court for the Western District of North Carolina, which are openly acting in outright defiance and contempt of well-established law and Supreme Court precedent and grant the Petitioner the relief set forth herein or, by failing to do so, be deemed a toothless and ineffective entity perpetrating a sham and ongoing fraud on the American People and shirking its duty to uphold its individual and collective Oath of Office to protect and defend the Constitution, and the Bill of Rights.

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PETITION FOR A WRIT OF CERTIORARI

COMES NOW the Petitioner, Peter K. Stern, Pro Se, to respectfully file this PETITION FOR WRIT OF CERTIORARI to review the opinions and judgments of the United States Court of Appeals for the Fourth Circuit on the following grounds:

This Petition is timely based upon the order of the United States Court of Appeals for the Fourth Circuit filed October 3, 2017 denying Petitioner's Motion for clarification and to Recall the Mandate on the Judgment and deliver a full and clear explanation of their denial of the Petitioner's attempts to obtain a Writ of Error Coram Nobis.

OPINIONS BELOW

The opinions of the United States Court of Appeals for the Fourth Circuit dated October 3, 2017, September 25, 2017, July 25, 2017 and prior opinions are reproduced in the Appendix at App. 1-3.

The District Court's opinions dated 12/15/2011 and 12/15/2017 are reproduced in the Appendix at App. 4-11.

JURISDICTIONAL STATEMENT

This Court has Jurisdiction pursuant to 28 U.S.C. §1254(1). The judgment of the United States Court of Appeals for the Fourth Circuit sought to be reviewed

was entered October 5, 2017. The petition is timely under 28 U.S.C. §2101 and Supreme Court Rules 13.1 and 13.3 because it is being filed within 90 days after a denial of a timely petition for rehearing.

This Honorable Court has authority pursuant to Article III Section 3, Clause 1 of the United States Constitution.

This matter is before this Court on Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit on the grounds that the United States Court of Appeals for the Fourth Circuit has entered a decision that is in direct conflict with decisions of the Supreme Court and other Courts of Appeals and flies in the face of the Constitution and Bill of Rights and in so doing has ratified, sanctioned and condoned wrongful and Constitutionally repugnant decisions of the lower Court, the United States District Court for the Western District of North Carolina that are in direct conflict with decisions of this Court and other Courts of Appeals and this conduct flies in the face of the Constitution and Bill of Rights that has departed so far from the accepted and usual course of judicial proceedings as to hold the System of Justice up to ridicule in the public eye and call for the exercise of this Court's supervisory power.



**STATUTORY/CONSTITUTIONAL
PROVISIONS INVOLVED**

1 C.F.R. §8.5(a):

8.5 Ancillaries.

The Code shall provide, among others, the following-described finding aids:

(a) Parallel tables of statutory authorities and rules. In the Code of Federal Regulations Index or at such other place as the Director of the Federal Register considers appropriate, numerical lists of all sections of the current edition of the United States Code (except section 301 of Title 5) which are cited by issuing agencies as rulemaking authority for currently effective regulations in the Code of Federal Regulations. The lists shall be arranged in the order of the titles and sections of the United States Code with parallel citations to the pertinent titles and parts of the Code of Federal Regulations.

5 U.S.C. §558:

Imposition of sanctions; determination of applications for licenses; suspension, revocation, and expiration of licenses.

(a) This section applies, according to the provisions thereof, to the exercise of a power or authority.

(b) A sanction may not be imposed or a substantive rule or order issued except within jurisdiction delegated to the agency and as authorized by law.

26 U.S.C. §7805:

(a) Authorization – Except where such authority is expressly given by this title to any person other than an officer or employee of the Treasury Department, the Secretary shall prescribe all needful rules and regulations for the enforcement of this title, including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue.

28 U.S.C. §2255:

(a) 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, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

(b) Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the United States attorney, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto. If the court finds that the judgment was rendered without jurisdiction, or that the sentence imposed was not authorized

by law or otherwise open to collateral attack, or that there has been such a denial or infringement of the constitutional rights of the prisoner as to render the judgment vulnerable to collateral attack, the court shall vacate and set the judgment aside and shall discharge the prisoner or resentence him or grant a new trial or correct the sentence as may appear appropriate.

44 U.S.C. §1510:

(a) The Administrative Committee of the Federal Register, with the approval of the President, may require, from time to time as it considers necessary, the preparation and publication in special or supplemental editions of the Federal Register of complete codifications of the *documents* of each agency of the Government having general applicability and legal effect, issued or promulgated by the agency by publication in the Federal Register or by filing with the Administrative Committee, and are relied upon by the agency as authority for, or are invoked or used by it in the discharge of, its activities or functions, and are in effect as to facts arising on or after dates specified by the Administrative Committee.

(b) A codification published under subsection (a) of this section shall be printed and bound in permanent form and shall be designated as the "Code of Federal Regulations." The Administrative Committee shall regulate the binding of the printed codifications into

separate books with a view to practical usefulness and economical manufacture. Each book shall contain an explanation of its coverage and other aids to users that the Administrative Committee may require. A general index to the entire Code of Federal Regulations shall be separately printed and bound.

Constitutional Provisions

4th Amendment: The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

5th Amendment: 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 offense to be twice put in jeopardy of life or limb; nor shall be compelled 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.

6th Amendment: In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial,

by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

STATEMENT OF THE CASE

The Petitioner was charged and convicted on a 7 count Superseding Indictment in Case #2:99 cr 0081 in District Court and sentenced to 151 months confinement.

The Petitioner subsequently moved to set aside the sentence under the *U.S. v. Booker*, 543 U.S. 220, 125 S.Ct. 738, 160 L.Ed.2d 621 (2005) decision and prevailed in *Stern v. U.S.*, 543 U.S. 1097, 125 S.Ct. 988, 160 L.Ed. 996 (2005).

The Supreme Court's decision ruled the maximum sentence at 57 months. The United States Court of Appeals for the Fourth Circuit ruled likewise in *U.S. v. Stern*, 164 F.App'x 306 (2006).

The District Court contemptuously disregarded the rulings of the superior courts controlling it and re-sentenced the Petitioner to 124 months.

The Petitioner timely filed a Petition under 28 U.S.C. §2255 and when, after the §2255 Petition languished unanswered and disregarded by District Court

for a period of about 8 months, and when he was denied access to sufficient legal resources at the FPC Edgefield facility and was unable to do the necessary legal work to support that action, withdrew the §2255 Petition for cause so as to preserve his rights and not subsequently be found to be trying to enter a second or successive §2255 Petition. The Petitioner subsequently petitioned the District Court to reinstate the §2255 Petition when the Government opened the door by arguing the facts of the conviction after the Petitioner moved the District Court for early termination of supervised release.

The District Court denied all of the Petitioners filings and issued the final ORDER of December 15, 2011 not received by the Petitioner until February 24, 2012.

Petitioner subsequently filed for a Writ of Error Coram Nobis in District Court which the District Court denied.

The Petitioner appealed from that denial and the 4th Circuit denied the appeal without comment.

At no time has the Government answered, denied, defended or otherwise rebutted the Petitioner's allegations and claims for relief. [Italics added for emphasis]

From the outset of the underlying trials and in his §2255 Petition, the Petitioner has maintained a claim of actual and factual innocence with respect to 6 of the 7 counts in the Indictment as set forth in the original Petition.

Counts 4 through 7 were directly attacked at trial and attacked on Constitutional grounds in Ground 45, Pages 205-208 of the original §2255 Petition made a part hereof by reference as if fully reproduced herein verbatim by reference and supported by the unchallenged Affidavit of Russell Dean Landers, Exhibit 32 of the original §2255 Petition, made a part hereof by reference as if fully reproduced herein verbatim by reference stating that Landers was solely responsible for the acts complained of and that the Petitioner was not.

From the outset of his §2255 Petition, the Petitioner has maintained a claim of actual and factual innocence with respect to Counts 1 and 3 in the Indictment as set forth in the original Petition.

Counts 1 and 3 of the Indictment were attacked at trial and attacked on Constitutional grounds in Ground 9, Pages 97-106 of the original §2255 Petition made a part hereof by reference as if fully reproduced herein verbatim by reference and supported by the unchallenged Exhibit 22 of the original §2255 Petition, made a part hereof by reference as if fully reproduced herein verbatim by reference.

Count 2 of the Indictment was attacked on statutory and Constitutional grounds in the original §2255 Petition in Grounds 6, 10, and 26 of the Petition made a part hereof by reference as if fully reproduced herein verbatim by reference.

At all times relevant, the United States Court of Appeals for the Fourth Circuit and District Court has operated as a rogue extra-judicial entity, ignoring the

clear and unequivocal law applying to this case and the mandate of superior courts governing the United States Court of Appeals for the Fourth Circuit and District Court and ruling case law applicable to this case thereby violating the protections guaranteed the Petitioner by the Constitution and Bill of Rights.

The Petitioner argues there is clear and undisputable evidence of egregious Constitutional violations and abuse of discretion, personal animus and prejudice and bias, denial of timely and meaningful access to the courts on the part of the United States Court of Appeals for the Fourth Circuit and District Court. These violations are undeniable and of sufficient weight as to compel the instant Court to overrule the United States Court of Appeals for the Fourth Circuit and the United States District Court for the Western District of North Carolina, asking the convictions on Counts 1, 2, 3, 4, 5, 6, and 7 be overturned with prejudice because the District Court failed to grant the Petitioner a full and fair hearing on all of the issues set forth in his §2255 Petition.

The Petitioner alleges that the conduct complained of constitutes a wrongful judicial lynching of the Petitioner's Rights guaranteed by the Bill of Rights, enforced by the Constitution.

The standard of review in this matter is articulated in *In Re Grand Jury Subpoena*, 341 F.3d 331, 334 (4th Cir. 2003) allowing this Court to review factual findings and the application of legal principles as well as *U.S. v. Godwin*, 272 F.3d 659, 670 (4th Cir. 2001)

and *U.S. v. Weaver*, 282 F.3d 302, 313 (4th Cir. 2002) requiring this Court to review the Petitioner's claims of abuse of discretion on evidentiary claims.

Schlup v. Delo, 513 U.S. 298, 317, 115 S.Ct. 851 (1995), establishes the Constitutional gateway to have the claim considered on its merits. *Id.* at 315, 115 S.Ct. 851 (citing *Herrera v. Collins*, 506 U.S. 390, 404, 113 S. Ct. 853, 122 L.Ed.2d 203 (1993)).

The instant Court may determine in a habeas corpus proceeding the constitutionality of the conviction under which the Petitioner was convicted and irrespective of the stage or any other relief available to the Petitioner, discharge the conviction if the proceedings prove to be based on no law, *Minnesota v. Barber*, 136 U.S. 313, 34 L.Ed. 455, 10 S.Ct. 862 (1890), which in this case by clearly stated Congressional intent is uncontestable.

REASONS FOR GRANTING THE WRIT

The Petitioner opens the discussion by stating that he relies on long standing precedent and asks this Court to take Judicial Notice that as has repeatedly been ruled by various courts, Pro Se litigants such as the Petitioner is in these matters, and their pleadings are to be given lenient consideration, and the Petitioner's pleadings are to be construed liberally and held to less stringent standards than those drafted by lawyers. If the instant Court can reasonably read the Petitioner's pleadings to state a valid claim upon which the Petitioner could prevail, this Court should allow

the case to move forward upon its merits, despite the Petitioner's failure to cite proper legal authority, confusion of legal theories, poor syntax, and Petitioner's unfamiliarity with pleading requirements. *U.S. v. Emmanuel*, 288 F.3d 644, 650 (4th Cir. 2002) citing *Haines v. Kerner*, 404 U.S. 519, 30 L.Ed.2d 652, 92 S.Ct. 594 (1972); *Boag v. MacDougall*, 454 U.S. 364, 70 L.Ed.2d 551, 102 S.Ct. 700 (1982).

WITH RESPECT TO COUNT 2

The Petitioner asserts the claim that there must be an implementing regulation, in harmony with the statute and Code section allegedly violated, in order for the court to have subject matter jurisdiction to prosecute criminal offenses classified in Part I, Chapter 75 of the Internal Revenue Code, and prosecution must preserve substantive rights secured by the Fourth, Fifth and Sixth Amendments.

Absent an implementing regulation in harmony with the statute and Code section allegedly violated, and in the event procedure does not preserve substantive rights secured by the Fourth, Fifth, and Sixth Amendments, the court lacks subject matter jurisdiction to prosecute criminal offenses classified in Part 1, Chapter 75 of the Internal Revenue Code.

"For Federal tax purposes, the Federal Regulations govern." *Lyeth v. Hoey*, 1938, 305 U.S. 188, 59 S.Ct. 155, 83 L.Ed. 119 (1938), quoted in *Dodd v. U.S.*, 223 F.Supp. 785 (D.N.J. 1963), which goes on to state

that the implementing regulation, 26 C.F.R. §20.2056(b)-4(c) has to be consistent with the statute.

“ * * * Construction may not be substituted for legislation’, *U.S. v. Missouri P.R. Co.*, 278 U.S. 269, 277, 49 S.Ct. 133, 136, 73 L.Ed. 322 (1929). Another rule often overlooked in construing a revenue statute is that in a doubtful situation the taxpayer is entitled to the benefit of the doubt. As was said by the court in *U.S. v. Merriam*, supra, 263 U.S. at page 188, 44 S.Ct. at 71, 68 L.Ed. 240, 29 A.L.R. 1547 (1923): ‘If the words are doubtful, the doubt must be resolved against the government and in favor of the taxpayer,’” quoted in *Busse v. C.I.R.*, 479 F.2d 1147 (1973).

To support the assertion that it is mandatory for implementing regulations to be promulgated by the Secretary (Commissioner in past times), we look to *California Bankers Assn. v. Schultz*, 39 L.Ed.2d 812 at 820:

“Because it has a bearing on some of the issues raised by the parties, we think it important to note that the Act’s civil and criminal penalties attach only upon violation of regulations promulgated by the Secretary; if the Secretary were to do nothing, the Act itself would impose no penalties on anyone.”

In *U.S. v. Murphy*, 809 F.2d 1427 at 1430 (9th Cir. 1987), following California Bankers Association rationale, the court said:

"The reporting act is not self-executing; it can impose no reporting duties until implementing regulations have been promulgated."

In *U.S. v. Reinis*, 794 F.2d 506 at 508 (9th Cir. 1986) the court said:

"An individual cannot be prosecuted for violating this Act unless he violates an implementing regulation. The result is that neither the statute nor the regulations are complete without the other, and only together do they have any force. In effect, therefore, the construction of one necessarily involves the construction of the other."

U.S. v. Mersky, 361 U.S. 431, 4 L.Ed.2d 423, 80 S.Ct. 459 (1960), agreed with in *Lyeth v. Hoey*, *supra*.

At no time did the Government allege that the Petitioner violated any part of 27 U.S.C.

The Federal Register Act, particularly 44 U.S.C. §1505(a), *infra*, the Administrative Procedures Act (5 U.S.C. §§552 & 553) and the Internal Revenue Code (26 U.S.C. §§6001 & 7805(a)) all require the Secretary of the Treasury to promulgate regulations for Internal Revenue Code sections that materially affect anybody liable for or liable for collecting taxes imposed by internal revenue laws of the United States. The core requirement to promulgate regulations, or provide direct written notice of liability under internal revenue laws, is codified at 26 U.S.C. §6001.

(2) *Limitations – (i) Incorporation by reference in the Federal Register. Matter which is*

reasonably available to the class of persons affected thereby, whether in a private or public publication, will be deemed published in the Federal Register for purposes of subparagraph (1) of this paragraph when it is incorporated by reference therein with the approval of the Director of the Federal Register. The matter which is incorporated by reference must be set forth in the private or public publication substantially in its entirety and not merely summarized or printed as a synopsis. Matter, the location and scope of which are familiar to only a few persons having a special working knowledge of the activities of the Internal Revenue Service, may not be incorporated in the Federal Register by reference. Matter may be incorporated by reference in the Federal Register only pursuant to the provisions of 5 U.S.C. 552(a)(1) and 1 C.F.R. Part 20.

(ii) Effect of failure to publish. Except to the extent that a person has actual and timely notice of the terms of any matter referred to in subparagraph (1) of this paragraph which is required to be published in the Federal Register, such person is not required in any manner to resort to, or be adversely affected by, such matter if it is not so published or is not incorporated by reference therein pursuant to subdivision (i) of this subparagraph. Thus, for example, any such matter which imposes an obligation and which is not so published or incorporated by reference will not adversely change or affect a person's rights. [Italics added for emphasis]

Per the last sentence of Rule 6(c)(1) of the Federal Rules of Criminal Procedure, "The indictment or information shall state for each count the official or customary citation of the statute, rule, regulation or other provision of law which the defendant is alleged therein to have violated."

The Sixth Amendment to the Constitution of the United States secures the defendant's right "to be informed of the nature and cause of the accusation." Where Congress has imposed the duty of promulgating implementing regulations for taxing and liability statutes classified in the Internal Revenue Code in order to inform those subject to or responsible for collecting any given tax imposed by internal revenue laws of the United States (26 U.S.C. §§6001 & 7805(a)), identification of applicable regulations is mandated to satisfy requirements of Rule 6(c)(1) of the Federal Rules of Criminal Procedure and the Sixth Amendment for an indictment or information to be valid.

Where tax crimes are concerned, the antecedent matter is whether or not an act or omission is contrary to obligations and duties imposed by law. For example, consider 26 U.S.C. §7212, attempts to interfere with administration of internal revenue laws. The Internal Revenue Service agent or officer responsible for submitting an affidavit of complaint in a probable cause hearing conducted by a magistrate (See 28 U.S.C. §3045, Rules 3 & 4 of the Federal Rules of Criminal Procedure and Fourth Amendment mandates, *infra*) would be required to affirmatively identify his regulatory authority for administering any given internal revenue law and demonstrating how the defendant

failed to perform a duty prescribed by regulation or otherwise interfered with the officer or agent's duty. Per ruling case law cited *supra*, general allegations that reference a naked penalty statute, without also disclosing regulations that establish standing of the complaining party and obligations of the defendant, whether affirmative or prohibitive, are wholly inadequate. See *Warth, et al. v. Seldin, et al.*, 422 U.S. 490 at 498. Standing is the threshold issue to establish subject matter jurisdiction and must affirmatively appear in record.

Per 5 U.S.C. §553(d), "*The required publication or service of a substantive rule shall be made not less than 30 days before its effective date.*"

This mandatory statement is related back to 5 U.S.C. §552(a)(1)(D). See *U.S. v. \$200,000 in U.S. Currency*, *supra*, at page 866. See also, Reporter's Note 2, Administrative Law and Procedure, Key 382, "For agency statement or requirement to be considered a valid 'rule,' three conditions must be satisfied: 'rule must be within the agency's granted power, it must be issued pursuant to proper administrative procedures, and it must be reasonable as a matter of due process.'" Also see *Rowell v. Andrus*, 631 F.2d 699 (10th Cir. 1980), holding that 5 U.S.C. §§552 & 553 specifically require, in explicit terms, "the publication of proposed rules as opposed to their mere filing in the Office of Federal Register."

The above conclusively demonstrates that for federal courts to have subject matter jurisdiction for prosecution of offenses prescribed by internal revenue laws

of the United States, the information or indictment must recite or otherwise identify implementing regulations for taxing, liability and penalty statutes.

To answer the question, consult the Parallel Table of Authorities and Rules, published in the Index volume of the Code of Federal Regulations or available as a PDF document on the Government Printing Office web page. This finding aid, and its standing as prima facie evidence that warrants judicial notice (Rule 201(b) & (d) and Rules 902(5) & (10), Federal Rules of Evidence), is authorized by 44 U.S.C. §1510.

The Parallel Table of Authorities and Rules was one of the Index ancillary finding aids that resulted from an attorney filing a writ of mandamus to compel the Office of the Federal Register to comply with requirements of 44 U.S.C. §1510(b) by producing a comprehensive Index that is useful and reliable. See *Cervase v. Office of the Federal Register*, 580 F.2d 1166 (3d Cir. 1978). The purpose of the Code of Federal Regulations, including a comprehensive index and ancillary finding aids such as the Parallel Table of Authorities and Rules, according to the Third Circuit ruling, is to prevent executive agencies from operating under “secret law” by providing clear and adequate notice to those subject to federal regulation of one kind or another.

To assure accuracy of the Parallel Table of Authorities and Rules and other ancillary finding aids included in the Index of the Code of Federal Regulations, the Director of the Office of the Federal Register published general regulations for maintaining them at 1

C.F.R. Part 6. Additionally, particulars concerning the Parallel Table of Authorities and Rules are specified at 1 C.F.R. 8.5(a):

8.5 Ancillaries.

The Code shall provide, among others, the following-described finding aids:

(a) Parallel tables of statutory authorities and rules. In the Code of Federal Regulations Index or at such other place as the Director of the Federal Register considers appropriate, numerical lists of all sections of the current edition of the United States Code (except section 301 of Title 5) which are cited by issuing agencies as rulemaking authority for currently effective regulations in the Code of Federal Regulations. The lists shall be arranged in the order of the titles and sections of the United States Code with parallel citations to the pertinent titles and parts of the Code of Federal Regulations.

Through their respective representatives (liaison officers, certifying officers, etc.), each agency is responsible for maintaining accuracy of matter published in the Federal Register and the Code of Federal Regulations. See particularly 1 C.F.R. Chapter 1, Subchapter E, concerning preparation, transmittal, and processing of documents. Given the responsibility of the agency, the agency bears the burden of proof in the event that the Parallel Table of Authorities and Rules and other ancillary finding aids included in the Code of Federal Regulations are in error.

The Petitioner shows that with respect to 28 U.S.C. §7212, this section is supported only by 27 Parts 170, 270, 275, 290, 295.

At no time has the Petitioner conducted business which falls under the scope and purview of Title 27 nor has the Government asserted such a claim.

26 U.S.C. (1986 I.R.C.)

Per 1 C.F.R. §8.5(a), *supra*, regulations promulgated under authority of 5 U.S.C. §301 do not have to be classified in the Parallel Table of Authorities and Rules. Regulations and other administrative rules promulgated under authority of 5 U.S.C. §301 are applicable exclusively to government agencies and personnel; they do not have general application. The only regulations listed in the Parallel Table of Authorities and Rules for criminal Code sections 26 U.S.C. §7201-7212 are from Title 27 of the Code of Federal Regulations.

Title 27 of the Code of Federal Regulations is under Bureau of Alcohol, Tobacco and Firearms (ATF) administration, not Internal Revenue Service administration. Per 5 U.S.C. §558(b), an agency may enforce only provisions for which it has administrative authority:

558. Imposition of sanctions; determination of applications for licenses; suspension, revocation, and expiration of licenses

(a) *This section applies, according to the provisions thereof, to the exercise of a power or authority.*

(b) *A sanction may not be imposed or a substantive rule or order issued except within jurisdiction delegated to the agency and as authorized by law.*

By way of Treasury Order #120-01 of June 6, 1972, the Secretary of the Treasury **segregated** ATF from the Internal Revenue Service, and thereafter ATF regulations were classified in Title 27 of the Code of Federal Regulations and have since been under exclusive ATF jurisdiction.

The requirement to publish implementing regulations for all statutes that have general effect, including penalty statutes, is affirmatively stated in 44 U.S.C. §1505(a):

1505. Documents to be published in Federal Register

(a) *Proclamations and Executive Orders; documents having general applicability and legal effect; documents required to be published by Congress. There shall be published in the Federal Register –*

(1) *Presidential proclamations and Executive orders, except those not having general applicability and legal effect or effective only against Federal agencies or persons in their capacity as officers, agents, or employees thereof;*

(2) *documents or classes of documents that the President may determine from time to time have general applicability and legal effect; and*

(3) *documents or classes of documents that may be required so to be published by Act of Congress.*

For the purposes of this chapter every document or order which prescribes a penalty has general applicability and legal effect. [Italics added for emphasis]

Implementing regulations for the Internal Revenue Code are mandated by 5 U.S.C. §552(a) and 26 U.S.C. §§6001 & 7805(a).

The Parallel Table of Authorities and Rules, authorized by 44 U.S.C. §1510, creates the rebuttable presumption that the Internal Revenue Service does not have regulatory authority to prosecute penalty statutes classified as 26 U.S.C. §§7201-7212. Per ruling case law previously cited, statutes and implementing regulations must both be in evidence to establish the basis of criminal conduct.

Substantive rights secured by the Constitution of the United States are cumulative; one does not cancel or substitute for another. Thus, the Fourth, Fifth and Sixth Amendments must be considered to answer this question.

When properly applied, Rules 3 through 6 of the Federal Rules of Criminal Procedure preserve original intent of the Fourth, Fifth and Sixth Amendments.

Since 28 U.S.C. §2072(b) prohibits rules promulgated by the Supreme Court from abridging substantive rights, Federal Rules of Criminal Procedure must be understood in the context of the Fourth, Fifth and Sixth Amendments.

Per Rule 3:

"The complaint is a written statement of the essential facts constituting the offense charged. It shall be made upon oath before a magistrate judge."

Rule 4(a) then specifies:

"If it appears from the complaint, or from an affidavit or affidavits filed with the complaint, that there is probable cause to believe that an offense has been committed, a warrant for the arrest of the defendant shall issue" Rule 4(c)(1) specifies that the warrant "shall describe the offense charged in the complaint" Per the Sixth Amendment, the warrant, if not attached to a copy of the original complaint, must be adequate to inform the defendant of the "nature and cause of the accusation."

Authorization for complaints arising under internal revenue laws is codified at 18 U.S.C. §3045:

3045. Internal revenue violations

Warrants of arrest for violations of internal revenue laws may be issued by United States magistrate judges upon the complaint of a United States attorney, assistant United States attorney, collector, or deputy collector

of internal revenue or revenue agent, or private citizen; but no such warrant of arrest shall be issued upon the complaint of a private citizen unless first approved in writing by a United States attorney.

Rule 6(b)(1) is useful for understanding proper process:

(b) Objections to Grand Jury and to Grand Jurors

(1) Challenges. The attorney for the government or a defendant who has been held to answer in the district court may challenge the arrant of jurors on the ground that the grand jury was not selected, drawn or summoned in accordance with law, and may challenge an individual juror on the ground that the juror is not legally qualified. Challenges shall be made before the administration of the oath to be jurors and shall be tried by the court. [Italics added for emphasis]

All elements of the offense, including applicable statutes and implementing regulations, must be affirmatively established in an original complaint submitted to a magistrate in a probable cause hearing, per the Fourth & Sixth Amendments, Rules 3 & 4 of the Federal Rules of Criminal Procedure, and 18 U.S.C. §3045. Per Rule 8, joinder of offenses and defendants, a grand jury may expand an original complaint to include additional offenses and/or defendants, but the original complaint a grand jury considers must be against “a defendant who has been held to answer in

the district court.” If this weren’t the case, a defendant’s attorney wouldn’t be entitled to challenge grand jury array and qualifications of prospective jurors “before the administration of the oath to be jurors and shall be tried by the court.”

Inferior courts, including district courts of the United States and United States District Courts, have no inherent jurisdiction. Jurisdiction of first-level courts is established by sufficiency of pleadings. A party seeking to invoke jurisdiction of inferior courts bears the burden of establishing that such jurisdiction exists. See *Scott v. Sandford*, 60 U.S. 383 (1856); *Security Trust Company v. Black River National Bank*, 187 U.S. 211 (1902); *McNutt v. General Motors Acceptance Corp.*, 298 U.S. 178 (1936); *Insurance Corporation Ireland v. Compagnie Des Bauxites De Guinee*, 456 U.S. 694 (1982), and *Matt T. Kokkonen v. Guardian Life Insurance Company of America*, 128 L.Ed.2d 492 (1994).

The unescapable conclusion is abundantly clear. The prosecution under 26 U.S.C. §7212 was without jurisdiction and as a consequence, the conviction on Count 2 must be ruled null and void, ab initio, and the conviction overturned with prejudice.

AS PERTAINS TO COUNTS 4, 5, 6, AND 7

With respect to the Affidavit of Russell Dean Landers filed with the §2255 petition and all subsequent pleadings, the Petitioner contends that since in said Affidavit Russell Dean Landers directly confessed to each and all of the acts allegedly ascribed to the

Petitioner and unequivocally absolved the Petitioner from knowledge and participation in any of the essential elements of the offense, the Affidavit is thus totally exculpatory. This was and is squarely before the District Court and makes the claims of the Petitioner a justiciable issue of Constitutional magnitude based on actual and factual innocence claimed.

The Affidavit was generated to place on the record exculpatory direct testimony by Russell Dean Landers that was repeatedly denied the jury by the trial Court. See Trial Docket 120, 121, 122, 123.

The unchallenged Affidavit, the highest level of evidence, and properly before this court under F.R. Cv. P. Rule 12(b)(6) and Rule 56(c), clearly demonstrates that the Petitioner did not commit the acts accused and convicted of in Counts 4 through 7 of the Indictment and therefore constitutes a credible showing that is well past any threshold test and of sufficient weight to allow this Court to reach the merits of the Petition.

This is especially true since the record of the trial reflects attempts by the Petitioner to have the trial court issue a Subpoenā or Writ of Habeas Corpus Ad Testificandum for Russell Dean Landers were summarily denied, creating a clear violation of the Due Process Clause of the 5th Amendment, *U.S. v. Kelly*, 35 F.3d 929, 936 (4th Cir. 1994), and constitutes plain error and abuse of judicial discretion, see *U.S. v. Langley*, 62 F.3d 602, 605 (4th Cir. 1995); *U.S. v. Ellis*, 121 F.3d 908, 914 (4th Cir. 1997). The fact that the District Court did not reach this conclusion but summarily

denied the Petitioner's pleadings exacerbates the violation. *Kelly*, supra, *Ellis*, supra.

This is particularly important in light of the fact that *the only trial testimony on this subject was uttered by the Government's witness, Deputy Marshall Forrest Howard* who on the stand and under Oath, when questioned about the threatening documents stated "No, Sir. I do not know who dropped them in the mailbox." ***TT Page 455, Lines 16 through Page 456, Line 4.***

The postmark on the envelope was from the Dunn/Erwin, NC area where Mr. Landers resided, 330 miles East of Franklin, NC where the Petitioner lives.

It is clear that essential elements of the offense in Counts Four through Seven were not proven and the trial jury was clearly denied exculpatory testimony.

Had Russell Dean Landers been allowed to offer his material testimony, the jury would not have returned a guilty verdict on Counts Four through Seven, making this error reversible since it affects a substantial Right of the Appellant. *Williams v. Great Southern Lumber Co.*, 277 U.S. 19, 72 L.Ed. 761, 48 S.Ct. 417 (1928).

WITH RESPECT TO COUNTS 1 AND 3

These Counts were predicated on the Government's claim with respect to a document known as a Comptrollers Warrant.

The Petitioner asserts the claim that this Court must take mandatory judicial notice of the record of Congress and its unequivocally stated Congressional intent with respect to what constitutes criminal behavior under Title 18 U.S.C. with respect to the instruments referred to in the Superseding Indictment pursuant to F.R. Civ. P Rule 44(a)(1) and F.R. Evid. Rule 201.

The Petitioner asks the Court to take mandatory judicial notice of the official Congressional publication consisting of the record of THE COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS of the U.S. Senate Hearing on S.1009, July 17, 1996 lodged as Exhibit #20 in the original §2255 Petition and made a part hereof by reference as if fully reproduced herein by reference and on the record and before the Court and unopposed since the date of filing of the original 28 U.S.C. §2255 Petition.

The Actual and Factual Innocence claim is therefore asserted with respect to Counts One and Three, an alleged violation of 18 U.S.C. §286 and 18 U.S.C. §1344 which by unequivocal and expressly stated Congressional intent was not applicable to the acts attributed to the Petitioner. This Court cannot ignore this irrefutable fact.

At Ground 9 of the original §2255 Petition, made a part hereof by reference as if fully reproduced herein verbatim by reference, the Petitioner clearly demonstrates that at the time of the alleged offense with respect to that count, the Petitioner's behavior in July of 1996 was not criminal in nature under Title 18 of the

U.S. Code and did not become so until September 30, 1996, when PL 104-208, 110 Stat 3009 established 18 U.S.C. §514 passed by Congress. This was well past the time of the acts complained of.

The Petitioner contends that Exhibit #20 in his original Petition, the record of THE COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS of the U.S. Senate Hearing on S.1009, July 17, 1996, repeatedly makes clear that there was no criminal law in place to place the behavior in Counts 1 and 3 within the scope and purview of Title 18 U.S.C. See *Report at Page 1, Page 2, Page 11, Page 22, and Page 24.*

The trial Court was without subject matter jurisdiction since it cannot cobble together jurisdiction when Congress explicitly states there is no crime.

Multiple attempts to enter this undeniable and powerful exculpatory exhibit at trial for the jury to see were repeatedly denied by the trial judge, and the denial enforced under extortionate threats of sanctions against the Defense Counsel for attempting to enter it into evidence.

The District Court, as a direct result, acted as an arm of the prosecution to guarantee conviction, and this obviously exculpatory evidence was wrongfully withheld from the jury.

The Petitioner contends that the withholding of the exculpatory evidence from the jury constitutes impermissible conduct by the District Court, is evidence of an undeniable prejudicial and plain error and from

this arises an obvious, clear and undeniable personal animus on the part of the District Court judge and clear abuse of judicial discretion.

When taken in context with the impact on the Petitioner's defense which resulted in the Petitioner being denied "a meaningful opportunity to present a complete defense" which implicates violations of the Due Process Clause of the *Fifth Amendment* and is also rooted in the Compulsory Process or Confrontation Clause of the *Sixth Amendment*. See *Holmes v. South Carolina*, 547 U.S. 319, 126 S.Ct. 1727, 1731, 164 L.Ed.2d 503 (2006), and postured the court to favor the prosecution such as to insure a conviction. *U.S. v. Newsome*, 322 F.3d 328, 334 (4th Cir. 2003) citing *U.S. v. Castner*, 50 F.3d 1267, 1272 (4th Cir. 1995) to a point where for this court to leave this unaddressed and corrected would "seriously affect [] the fairness, integrity or public reputation of the judicial proceedings." *U.S. v. Gray*, 405 F.3d 227, 243 (4th Cir. 2005), cert. denied, 126 S.Ct. 275 (2005) in *U.S. v. Cardwell*, 03-4585 (4th Cir. Dec. 30, 2005).

"No court has a right to imprison a citizen who has violated no law, even if exercised by a court under guise and form of law and such an act is subversive of the right of the citizen as if were exercised by a person not clothed with authority." Ex Parte Siebold, 100 U.S. 371, 25 L.Ed. 717 (1879). [Italics added for emphasis]

The instant Court may consider the constitutionality of the conviction under which the Petitioner was convicted and irrespective of the stage or any other

relief available to the Petitioner, discharge the conviction if the proceedings prove to be based on no law, *Minnesota v. Barber*, 136 U.S. 313, 34 L.Ed. 455, 10 S.Ct. 862 (1890), which in this case by clearly stated Congressional intent, is the undisputable factual setting and constitutes want of jurisdiction and a fundamental and structural error.

The Petitioner argues that he has successfully established the requirement as to whether “[the] petitioner [has made] a ‘substantial showing’ when he demonstrates that his petition involves issues which are debatable among jurists of reason, that another court could resolve the issues differently, or that the issues are adequate to deserve to be adjudicated on their merits”, since the acts and omissions of the District Court and subsequently the Fourth Circuit Court of Appeals complained of in the Petitioner’s pleadings, are replete on the record of this case, and fly in the face of well-established precedent case law that is res judicata on the subject matter and other courts have obviously and often found differently than the District Court did in this action.

The Petitioner further contends that the District Court materially erred in denying the Petitioner’s request for reinstatement of his 28 U.S.C. §2255 Petition and the subsequent motions.

The Petitioner contends equitable tolling must be applied from the outset and any presumption of a procedural bar deemed void, ab initio, since this series of claims clearly rises to a level of a Constitutional claim.

Murray v. Carrier, 477 U.S. 478, 496, 106 S.Ct. 2639, 91 L.Ed.2d 397 (1986).

The Petitioner contends and asserts the claim that no reasonable, fair and unbiased jurist would ignore claims of this magnitude and that “[a] petitioner makes a ‘substantial showing’ when he demonstrates that his petition involves issues which are debatable among jurists of reason, that another court could resolve the issues differently, or that the issues are adequate to deserve to be adjudicated on their merits.”

The Petitioner contends that he has more than fulfilled the underlying test. 529 U.S. at 484 (quoting *Barefoot*, *supra*, at 893, n. 4).

The §2255 action has both criminal and civil aspects. *O’Brien v. Moore*, 395 F.3d 499, 505 (4th Cir. 2005).

The Petitioner shows that his original §2255 Petition sets forth clear and undeniable claims of FRAUD in the factum which the Petitioner re-alleges herein and which permeates the entire proceedings as set forth at Ground 3 of the original §2255 Petition beginning at Page 58 and continuing through Page 76 and Petitioner refers the Court to those pleadings and supporting Exhibits for elaboration and incorporates them herein by reference as if fully reproduced herein verbatim by reference.

It is a long-standing matter of well settled law that there is no statute of limitations on fraud. Once the Badges of Fraud appear, “in any manner,” the Court

has no other path open to it other than to proceed on that issue “without further investigation as to the materiality” and to “vitiate the judgment.” *Great Coastal Exp. v. International Broth., etc.*, 675 F.2d 1349, 1353-54 (4th Cir. 1982), citing *Hazel Atlas Glass Co. v. Hartford Empire Co.*, 322 U.S. 238, 64 S.Ct. 997, 88 L.Ed. 1250 (1944).

The Petitioner contends that the Petitioner labors under “concrete and continuing injury other than the now-ended incarceration or parole” that exists in the form of deprivation of rights and the enduring stigma and the clouding of his reputation in the community that exists as a result of the collateral consequence of the conviction. *Spencer v. Kemna*, 523 U.S. 1, 7, 118 S.Ct. 978, 140 L.Ed.2d 43 (1998). The injury is sufficient to maintain this action and give the Petitioner standing before the Court.

It cannot be denied that the Petitioner has repeatedly set forth compelling and sound factual proof of the predicate core Constitutional issues and that the evidence and proof is of sufficient weight to have the original Petition heard in full by the Court under the concept of equitable tolling.

The Petitioner reminds the instant Court that his original Petition was before District Court for a period of 8 months while he labored under the crushing constraints of a clearly illegal and thusly unconstitutional sentence of 124 months imposed in direct conflict with the findings of the United States Supreme Court wherein this Court ruled that the maximum sentence

should be no more than 57 months. *Stern v. U.S.*, 543 U.S. 1097, 125 S.Ct. 988, 160 L.Ed. 996 (2005).

This unreasonable delay was in direct conflict with the applicable controlling Statute, 28 U.S.C. §2255(b) which states in relevant part:

“(b) Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served on the United States attorney, grant prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto.”

The governing thrust of the language “shall” is that the Rule is mandatory and imperative, yet the District Court chose to ignore that material duty.

Of equal importance is that the District Court failed to “grant prompt hearing thereon,” thereby depriving the Petitioner of timely and meaningful access to the courts.

As a matter of record is that at no time did the Government deny, rebut, defend against nor take exception to the claims in the Petitioner’s §2255 and subsequent pleadings.

Petitioner asserts the claim that this further cements his claims of prejudice and bias on the part of the District Court and that of the failure of the 4th Circuit to correct the District Court’s misbehavior and grant the Petitioner the relief he deserves.

The Petitioner contends that the United States District Court for the Western District of North Carolina, an inferior court, ran rogue when it failed to follow the clear directions of the Supreme Court and United States Court of Appeals for the Fourth Circuit with respect to a 57 month sentence being the limit to be applied. A day longer than 57 months was and remains illegal and unconstitutional on its face.

The ancient Maxim of "Justice delayed is justice denied" aptly applies in this case since the District Court and subsequently the Fourth Circuit Court of Appeals could have and should have immediately granted the relief sought in the original §2255 Petition and released the Petitioner from the illegal sentence.

◆

CONCLUSION

The Petitioner contends that the facts and record of the predicate acts and or omissions complained of establish the Petitioner's circumstances as clearly being a situation where it would be unconscionable to enforce the limitations period and that if enforced, gross injustice would result. *Harris v. Hutchinson*, 209 F.3d 325, 330 (4th Cir. 2000).

The Petitioner respectfully Petitions this Court to find in his favor to the extent that the Petitioner has set forth clear and unequivocal claims of Constitutional violations and grant the Petitioner the relief sought in the form of an ORDER granting the Writ of Certiorari to the United States Court of Appeals for the

Fourth Circuit herein on the grounds that “reasonable jurists would find both the District Court’s and the United States Court of Appeals for the Fourth Circuit assessment of the constitutional claims debatable or wrong.” citing *Slack v. McDaniel*, 529 U.S. 473, 120 S.Ct. 1595, 146 L.Ed.2d 542 (2000) based upon the fact that the Petitioner has established sufficient foundational clear and convincing ultimate evidence and claims to support this conclusion.

“By enacting AEDPA, using the specific standards the Court had elaborated earlier for the threshold test, Congress confirmed the necessity and the requirement of deferential treatment for those appeals deserving of attention . . .” citing *Miller-El v. Cockrell*, 537 U.S. 322, 338 (2003).

The Petitioner contends that the record establishes and he has abundantly demonstrated that the circumstances of this case are extraordinary in many aspects and warrants granting this Petition.

A scrutiny of the United States District Court for the Western District of North Carolina’s and United States Court of Appeals for the Fourth Circuit’s record will demonstrate that there cannot be any argument that the Petitioner did not “pursue[ing] his rights diligently.” *Pace v. DiGuglielmo*, 544 U.S. 408, 418, 125 S.Ct. 1807, 161 L.Ed.2d 669 (2005). The record is replete with the many filings in that regard.

The Petitioner asserts the claim that the District Court has repeatedly and demonstrably exhibited clear and undeniable ongoing personal animus as well

as bias and prejudice, acting as an arm of the prosecution against Petitioner and denied Petitioner a fair trial as well as continued to deny Petitioner access to post-conviction relief.

Further, for the reasons set forth above, the Petitioner asks the instant Court to conclude that in the interests of justice, fair play, and preserving the reputation and integrity of the system of justice in the eyes of the public, that the Petitioner has set forth sufficient evidence and compelling Constitutional grounds for the instant Court to assume jurisdiction over this case and grant this Petition and ORDER the Writ of Certiorari sought hereby to issue forthwith or, in the alternative, ORDER the convictions overturned and the record expunged, in its entirety.

DATED: December 7, 2017

Respectfully submitted,

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