22-0068

ORIGINAL

No. 22-____

In the Supreme Court of the United States

Perry Adron McCullough,

Petitioner,

v.

David F. Levi, George L. O'Connell, Phillip A. Tablert, Jeffrey J. Lodge, D/B/A: UNITED STATES OF AMERICA,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

Perry Adron McCullough
Petitioner Propria Persona.
c/o: P.O. Box 14442
Long Beach, California [90853A]
Phone #: (562) 685-3179

JULY 19, 2022
SUPREME COURT PRESS ♦ (888) 958-5705 ♦ BOSTON, MASSACHUSETTS

QUESTIONS PRESENTED

Ex-prisoner seeks Tort claim for monetary damages and restoration of his second amendment rights; due to prosecutor's default of failure to prove jurisdiction. The claimant had his case dismissed, the "Government" claiming it had no merit or substance. Meanwhile, the claim is replete with admissible evidence, and the USA lacking any.

THE QUESTIONS PRESENTED ARE:

1. During the collateral attack against Jurisdiction as this Petitioner has done by his U.S. District Court action against US. Attorney's who previous prosecuted him, can a prosecutor legally escape answering the "Acccardi Doctrine" if a Court simply calls Petitioner's filings "frivolous" or "gibberish" or "meritless" with no signed Affidavit or other substantive basis?

2. Do so-called U.S. Attorney's have plenary unlimited authority against a "transient foreigner" and "stateless person" [as defined in 28 U.S.C. § 1332(d), 4 U.S.C. § 110(d)]?

3. Do so-called U.S. Attorney's have authority to refuse to answer proof of authority or "jurisdiction" giving lawful power to prosecute an individual man or woman?

4. What authority does a Federal Court have to deny a sincerely motivated litigant be denied his day in court, for because of being too successful or other meritless reasons?

5. If a litigant has made a prima facie case, and the Prosecutor has chosen to go silent, as was done herein, what is the remedy for Petitioner to proceed with a Tort claim for monetary damages if he is being blocked by a meritless and void order?

6. Can the USDC get away with violating its own rules of procedure, FRCP Rule 52; when issuing a Findings and Recommendation from Magistrate, the rule says it must contain Findings of Fact and Conclusions of Law; and/or that a Motion to Dismiss must contain an accompanying Affidavit. Can either of these rules being violated mean a Petitioner should have their case re-opened?

PARTIES TO THE PROCEEDINGS

Petitioner

- Perry Adron McCullough
  c/o: P.O. Box 14442
  Long Beach, California [90853A]

Respondents

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  D/B/A: UNITED STATES OF AMERICA
  501 I Street, Suite 10-100
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  2500 Tulare Street, Suite 4401
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- Jeffrey J. Lodge
  ATTORNEY FOR THE UNITED STATES
  ASSISTANT UNITED STATES ATTORNEY
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  Fresno, California 93721

LIST OF PROCEEDINGS

United States Court of Appeals for the Ninth Circuit

No. 22-15393

Perry Adron McCullough, *Plaintiff-Appellant, v.* David F. Levi, George L. O'Connell, Phillip A. Tablert, Jeffrey J. Lodge, D/B/A: UNITED STATES OF AMERICA, *Defendant-Appellees*

Date of Final Order: April 21, 2022

United States District Court for the Eastern District of California

No. 2:21-cv-00127-TLN-JDP

Perry Adron McCullough, *Plaintiff v.* George L. O'Connell, David F. Levi, Phillip A. Tablert, Jeffrey J. Lodge, D/B/A: UNITED STATES OF AMERICA, Defendants

Date of Final Order: February 14, 2022

United States Court of Appeals for the Ninth Circuit

No. 98-80147

In Re: PERRY A. McCULLOUGH

Date of Order to Show Cause: March 4, 1998

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OPINIONS BELOW

The Order on Petitioner's *"Complaint of Federal Question Pursuant to 28* U.S.C. § 1331; 48 C.F.R. Ch. 1,53.228 *Demand for Proof of Personal Jurisdiction and Subject-Matter Jurisdiction"*, in the United States District Court for the Eastern District of California (hereinafter "USDC-Civil") is reproduced at App.3a-4a. The Report/Findings and Recommendation's of United States Magistrate Judge is reproduced at App.5a-7a. The Decision/Order from United States Court of Appeals for the Ninth Circuit is unreported and reproduced at App.1a-2a.

JURISDICTION

The Judgment of the Ninth Circuit was entered on April 21, 2022. (App.1a). The U.S. SUPREME COURT will find this case is properly within it's authority, under to review the decision from a Federal Court on Direct Review and 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The constitutional provisions and statutes involved are set forth in the appendix to this petition are:

(1) U.S. Constitution, Fifth Amendment, Due Process clause (App.13a)

(2) U.S. Constitution, Fourteenth Amendment, Equal Protection Clause (App.13a)

(3) U.S. Constitution; Separation of Powers (Articles I, II, III in particular: Article I, Section 7; United States Constitution Article II, Section 1, Clause 1; Article II, Section 2, Clause 2; U.S. Constitution, Article III) (App. 14a-20a)

(4) U.S. Constitution, Second Amendment (App. 13a)

(5) Statutes involved are 28 U.S.C. § 3002; Chapter 48, 48 Stat. 112, 113 (1933); Title 5 U.S.C., Sec. 556(d); as well as Federal Rules of Civil Procedure (App.21a-34a)

INTRODUCTION

Now Comes Aggrieved Party (U.C.C. § 1-201(2)) Petitioner Perry-Adron: McCullough©™, Sui Juris, Secured Party (U.C.C. § 9-105), Adult (NON-MINOR), NON-PERSON (U.C.C. § 1-201 (27)), NON-RESIDENT, NON-DEBTOR (28 U.S.C. § 3002(4)), NON-CORPORATED, NON-FICTION, NON-SUBJECT, NON-DEFENDANT (U.C.C. § 1-201(14), NON-PARTICIPANT in any government programs, a Living flesh-and-blood man standing on the land/ground, NOT A U.S. CITIZEN NOR FEDERAL RESIDENT, and moves in this action only and always as a "Restricted Appearance" (Federal Rule E(8)). Petitioner herein is also the Holder-In-Due-Course (U.C.C. § 3-302(A)(2) of all papers, collateral, and documentation (U.C.C. § 5-102(6)) of the "Entity" *Cestui Que Vie* trust and Corporate Fiction: PERRY ADRON MCCULLOUGH©™ and is the priority security interest holder of said Corporate Fiction Entity/Name. Petitioner is a "transient foreigner" without legal domicile as defined in 28 U.S.C. § 1332 (d), 4 U.S.C. § 110(d)]. Petitioner herein declares his "person" to be "stateless person" and outside any/all general jurisdiction of the federal government (The Party and his status/capacity listed *supra* will be hereinafter referred to as "Petitioner").

Petitioner's status stated herein is replicated in his Uniform Commercial Code (UCC) financing statement, filing numbers 20152118675 and 20162005667 in the Colorado Secretary of State Office. Attached to said UCC's are an *Affidavit of Specific Negative Averment* rebutting all presumptions of jurisdiction in cause # 89-00251-01, 5-89-251-EJG, and 2:89CR00

251-01 (hereinafter "89-00251-01") IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA and any/all derivatives. Petitioner has recorded a *Legal Notice and Demand with Definitions,* declaring his status and rights with relation to the UNITED STATES OF AMERICA; and other related matters.

STATEMENT OF THE CASE

A. Factual and Procedural Background

The Petitioner's record was untainted until the fated day of June 9, 1989: no convictions, crimes, violence or malicious behavior. For 23 years, he owned a respected real-estate development company based in Lake Tahoe. The "UNITED STATES OF AMERICA") demolished his life's achievements. Meanwhile, Reagan/Bush Administration's "War on Drugs" was at it's all-time peak. Federal, State, and Local law enforcement set up "Drug Task Forces" as an enforcement priority.

On a Friday in 1989, the Petitioner was arrested. He was sent into a perpetual state of angst where he was held in jail for 62 days until later arraigned in Federal Court on 10 charges of a 24-count Indictment related to drug trafficking bearing the signature of "DAVID F. LEVI, United States Attorney" and other perpetrators/collaborators.

McCullough was told he was charged with of a total of ten drug-trafficking offenses, including a conspiracy count, and of conducting a continuing criminal enterprise, a grandiose offense, dubbed the

"drug kingpin statute". The prosecution piled on tedious charges, such as four counts of 21 U.S.C. 843(b), Unlawful Use of a Communication Facility; which is just using a "phone" in the act, and two "Aiding and Abetting" related counts. *See United States v. McCullough*, No.89-cr-00251.1/CR-S-89-251-EJG.

David F. Levi issued a nation/worldwide press release where Petitioner was publicly accused of being the kingpin of a drug organization following an investigation termed "reverse sting"; 19 people were arrested. McCullough's mugshot as the "mastermind" of the "Deep Snow Gang" made the news in New York, where news broke to McCullough's Father.

The prosecutorial misconduct abounded from the start and led the petitioner down a quest for the facts and left him with a burning tenacity to rectify the injustice. Only five of the arrestees were named in the Indictment for CR-S-89-251-EJG; therefore, 13 people were arrested but completely unrelated to MCCULLOUGH'S Indictment.

Upon arrest, all of his bank accounts had the entire funds seized. His right to a Speedy Trial was continually denied (The trial didn't occur until fifteen months later). George L. O'Connell was an active U.S. attorney on the case, and continued the case onward toward the plaintiff's conviction.

Subsequent to the Petitioners arrest, contrary to the Eight Amendment, the Petitioner wasn't afforded an opportunity to post reasonable bail.

There does not exist a signed Indictment or original charging instrument. The version in the docket has a blank line that isn't signed by any Grand Jury Foreperson. *See* Indictment for Cause #89-00251-01.

An affidavit on record was from both the Prosecutor and (what appears to be a court officer, Bob Kellum) dated July 24, 1991, which confirms volume 1, 2, and 3 of the court files were lost. McCullough nor his associates were ever found to be trafficking drugs to the area. McCullough, nor any of the arrestees were ever found to supply or trafficking any cocaine. They were "set up" to buy from undercover Task Force agents. It was only out of honoring a friendship that he even was "caught up" in the situation by one of his close friends imploring for help. Glen Miller complained to McCullough that if he didn't find a source of cocaine for the mafia, he would be dead or have trouble with them. In a request to save his friends life, McCullough acted solely when the Task Force agents posed as the Mafia and threatened them to find a source to supply them with cocaine. And for this, petitioner served over 26 years and 5 years probation for one entrapment transaction.

Investigators continued violating § 241 and 242 by planting a handgun (25 caliber, unowned by him) under his seat during Petitioner's arrest, which was never introduced at Trial, was never was fingerprint tested, yet this was used to enhance his sentencing, as per the Federal sentencing guidelines.

Petitioner was allowed to pursue a "vicarious entrapment defense", until the end of the Trial; Yet the Judge, U.S. District Court Judge Edward J. Garcia, instructed the jury to ignore the entrapment defense and directed the jury to deliver a verdict whilst discounting all of McCullough's defenses. In July 1990, a jury convicted McCullough of all 10 of the counts, the conspiracy count, and of conducting a continuing criminal enterprise. His personal property was forfeited,

including an airplane, two automobiles and three properties. The district court sentenced McCullough to 380 months' imprisonment followed then by an additional five years of supervised release.

Petitioner began to pursue the appellate court process on numerous issues. On 12/30/1992, the court prohibited the accused appointment of counsel of his choice on further appeal matters, perhaps to prevent any liability from misdoings.

McCullough crafted his own appeal which on July 14 1994, the United States Court of Appeals for the Ninth Circuit overturned his own and serious CCE "drug kingpin" conviction, even though his attorney on record signed his name to it, in order to allow it to get past the 1992 prohibition.

In 1994, Petitioner got the United States Court of Appeals for the Ninth Circuit to reverse the conspiracy portion of the conviction, as well as the forfeiture judgment based on that conviction.

On or about August 11, 1995, Judge Edward J. Garcia corrected its own Judgment and Sentence by issuing its First AMENDED JUDGMENT IN A CRIMINAL CASE and dropped the more serious Continuing Criminal Enterprise charge.

In 1996, McCullough sought post-conviction relief in the criminal case based upon ineffective assistance of trial counsel and appellate counsel, and the prosecutorial abuse from the United States' use of McCullough's ex-wife as a witness. *See United States v. McCullough*, No. 89-cr-00251 at Dkt. Nos. 627, 676-1. This request for relief was combined with a civil habeas proceeding under 28 U.S.C. § 225. McCullough recovered his property from forfeiture (all untainted

from any drug money, since McCullough was never a dealer or supplier of cocaine).

B. The Show Cause Order

On March 4, 1998, the U.S. Court of Appeals issued an Order titled ORDER TO SHOW CAUSE (hereinafter "1998 ORDER") in case no. 98-80147 that according to the Court, prohibited any other filings from McCullough or only with special conditions. The NINTH CIRCUIT'S order stated:

> *"Respondent's practice of burdening this court with meritless litigation justifies careful oversight of respondent's future litigation in this court:"*

and the Petitioner reversed to 4/27 of those times in the Court of Appeals (and some wins in In Rem courts, or in motions at the District Court level).

Winning 4/27 cases on appeal is statistically high in litigation. In contrast, approximately 95% of Federal Appeal cases are affirmed, and perhaps even less successful reversal rates for those directed against the U.S. "Government". Whereas, this petitioner's rate of reversal success is 15%; a threefold improvement towering over the national average in the federal courts which is at a 5% reversal rate. Petitioner has also had a plethora of *motions* granted in his favor, such as on 8/21/1991, 2/24/1992, 12/30/1992, 3/4/1994, 7/14/1994, etc.

The 1998 ORDER goes on to say:

> "The Supreme Court has recognized that every paper filed with the Clerk of this Court, no matter how repetitious or frivolous, requires

> some portion of the institution's limited resources."

The order goes on to instruct:

> "The court will review respondent's submissions and determine whether they merit further review and whether they should be filed . . . "

On March 19, 1998, Petitioner objected to the order in *RESPONDENT'S COMPLIANCE WITH COURTS ORDER TO SHOW CAUSE,* which was filed to "SHOW CAUSE". Good cause being shown, the Show Cause Order is VOID and has no legal force and effect. Since full proof of Jurisdiction, *especially in personam* jurisdiction, its clear proof was never presented on record with the court, therefore said order is VOID. "A rule to the effect that a court which has no personal jurisdiction over a defendant may not issue an in personam judgment or decree against him." *Pennoyer v. Neff*, 95 U.S. (1878).

What was the legal basis or justification for this 1998 Order? No valid reason as it's not like he filed meritless or frivolous filings, in fact the OPPOSITE — they're replete with legitimate claims and real evidence. Petitioner asserts that the ban on filing cases as others normally are permitted, was only because he was WINNING CASES, and causing them potential liability, like paying money in a Tort for damages.

Despite his successes, the Ninth Circuit denied 8 petitions filed by McCullough. From 2001 to 2009, the plaintiff was denied his appeals as "lack[ing] of merit" and "insubstantial." In 2011 on his ninth attempt, the appeal "was able to proceed" (leading to reduced sentence).

On December 23, 2014, the Trial Court, by and through the signature of WILLIAM B. SHUBB, United States District Judge, corrected its sentence by issuing a SECOND AMENDED JUDGMENT for McCullough. The amended judgment resulted in a 2-level reduction pursuant to change in sentencing guidelines and a reduce sentence to 328-month, however, petitioner had served 356 month resulting in the petitioners immediate release an excess of revised guidelines. McCullough was deceived into serving 6 additional months of halfway house. We're not arguing this issue on appeal, merely mentioning it to show indicia of larger conspiracy of consistent violations of Petitioner's rights.

Plaintiff served 26 years 4 months and 21 days in federal prison.

C. Status Change

Upon release from prison, petitioner, in his Sui Juris capacity, took affirmative action to undo fraud involving his birth name to regain all of his personal rights. At the time of Petitioner's birth, an "Application for a Social Security Card, Form SS-5" was fraudulently induced, which he now has been Accepted for Value. Discharge of his Birth Registration Documents were perfected in accordance with House Joint Resolution 192 of June 5, 1933 and U.C.C. § 1-104 & U.C.C. § 10-104, as well as Chapter 48, 48. STAT 112). Petitioner Registered his claim over his Person and its Birth Certificate with the Secretary of Treasury to open a Treasury Direct Account. By doing so, Petitioner re-vesting to Grantor Title of all property in accordance with 26 C.F.R. § 1.676A-1, to include any and all Power of Attorney under 26 C.F.R. § 601.503, which were displaced due to fraudulent inducements to transact business and nondisclosure of material facts

and legal ramifications. It has been found and determined that the Application for Birth Registration, the live Birth Report, and issuance of a "Certificate of Live Birth" are all one of the same insured "Security Instruments" as articulated in U.C.C. Article 8, Section 103 & 105, and don't have any "Authorized Signatures" thereon (Article 2, Sec. 401) and are fraudulent and "Counterfeit Securities" further warranting the return thereof.

Since discovering said fraud, Perry-Adron: McCullough has rescinded all contracts with all Court(s) be they "STATE" and/or Federal; and rescinded known or unknown involvement with any/all Government program(s) set forth with any/all Government Agencies; and does not rely on and/or accept anything from the Government nor the "UNITED STATES OF AMERICA" entity. Petitioner filed public notice of these declarations and assertions with the Colorado Secretary of State; constructive notice for any/all parties under file #20152118675 as of 12/312015; and file #20162005667 as of 1/20/2016. Said UCC constituted constructive notice to George L. O'Connell; and David F. Levi. (*See* COMPLAINT Exhibits). These Respondents legally agreed and are bound to allow McCullough's record to stand as an undisputed material fact for any/all matters.

D. Private Administrative Process

Petitioner McCullough filed his private administrative process/remedy to the Clerk of the Court via UNITED STATES DISTRICT COURT; EASTERN DISTRICT OF CALIFORNIA SACRAMENTO DIVISION; via a series of "AFFIDAVIT OF NOTICE" filings for Rescission of his Signature on all court proceedings, and Discharge of the Accounts associated with his Corporate Fiction tradename, PERRY ADRON

MCCULLOUGH. Said AFFIDAVIT OF NOTICE filings have been accepted and filed by the CLERK as of November 15, 2017; November 27th, 2017; November 29th, 2017; and November 30th 2017 *See* EXHIBITS F to the COMPLAINT.

As of January 4th, 2021, and/or the date of Petitioners filing this Complaint, Petitioner has received no notice from either Prosecutor or his/her agent(s) nor any Court official that Case/Cause/Res No. 2:89-CR00251-01 and all derivatives has been discharged, set off, settled and closed, nor is the Petitioner cognizant of any court order vacating the Judgment and dismissing the charging instrument.

In June 2019, following vast research, petitioner exercised his right to his due process rights and demanded proof of jurisdiction be shown on the court's record.

E. Negative Averment Affidavit

On 6/29/2019, Petitioner filed a private administrative process using Constructive Notice of "AFFIDAVIT OF SPECIFIC NEGATIVE AVERMENT" (hereinafter "ASNA") on Public Record. Said notice was published in official State's Record system for Public Filings and for Commercial Transactions. and out of necessity to secure certain rights, titles, and interests. In addition, Petitioner's ASNA rebuts all presumptions of jurisdiction with persons named on page 4 of 10 in enumerated point #11, such as UNITED STATES OF AMERICA, UNITED STATES ATTORNEYS OFFICE, UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA, and ALL SUB-AGENCIES AND DIVISIONS OF THE ABOVE (which includes David F. Levi and George L.

O'Connell whom as Prosecutors were "Officers of the Court"), which Petitioner herein alleged in his COMPLAINT, was constructive and actual notice to the recipients. Said document is 10 full pages of text, with 28 unique enumerated points, and 85 additional indented points.

The Maxim of Law that "an Unrebutted Affidavit is Truth" is also codified in the rules of procedure. Non-Rebutted Affidavits are Prima Facie Evidence in the Case. "Indeed, no more than (Affidavits) is necessary to make the *Prima Facie* Case." *U.S. v. Kis* (7th Cir. 1981). *Cert Denied*, 50 U.S. LW. 2169; S. Ct. March 22, 1982. "Uncontested Affidavit taken as true in support of Summary Judgment." *Seitzer v. Seitzer*, 80 Cal. Rptr. 688 Since the Record of the Parties shows that parties shows no rebuttal on record, let it be the tacit admission of both Defendants to the stipulated facts throughout all of Petitioners Notices.

F. Federal Question Action Filed

On January 22, 2021, Petitioner Perry-Adron: McCullough filed, In The UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA, civil division, a Petition titled a "Complaint of Federal Question Pursuant to 28 U.S.C. § 1331; 48 C.F.R. Ch.1, 53.228 Demand for Proof of Personal Jurisdiction and Subject-Matter Jurisdiction" ("hereinafter "COMPLAINT"), against Defendants David F. Levi and/or successors; and George L. O'Connell and/or successors; c/o the U.S. Attorney's Office; both in private and personal capacity (hereinafter, "DEFENDANTS"). Amongst the Exhibits, included ASNA, records showing proper use of the (Chapter 48 C.F.R. CH. 1, 48. STAT 112, 53.228) Remedy to Commercial Discharge and Release Liens on his Person

from said lien placed on him from said Prosecutor and his charges; and records showing petitioner has become holder-in-due-course (UCC § 3-302(a) (2)) over said cause/accounts.

On petitioner's USDC Civil Cover Sheet, he selected "PERSONAL PROPERTY #370 Other: "Fraud" as the case category; and "Fraud vitiates the most solemn contracts, documents, and even judgments." *U.S. vs. Throckmorton*, 98 U.S. 61. Therefore, it is outside of any court discretion to lay claim as to any Rule 12(b) "Failure to State a Claim to Which Relief Can be Granted" decision as said decision would, be outside the jurisdiction of the court.

McCullough is challenging Jurisdiction and raising new allegations: fraud and inducement, racketeering, conspiracy to interfere with his civil rights, deprivation of civil rights under color of law, and dozens of other criminal charges under Title 18. McCullough's action here is a *collateral attack* and thus an exception to any claim of *res judicata.*

"There are limited exceptions to res judicata that allow a party to attack the validity of the original judgment, even outside of appeals. These exceptions—usually called collateral attacks—are typically based on procedural or jurisdictional issues, based not on the wisdom of the earlier court's decision but its authority or on the competence of the earlier court to issue that decision." [https://en.wikipedia.org/wiki/Res judicata]

Petitioner's formal COMPLAINT claims that the prosecutor and the court lacked personal and subject-matter jurisdiction over the man Perry Adron McCullough at the time of the original charging

instrument, rendering the judgment, the first amended judgment and the second amended judgment void. Prosecutors charged a corporate entity as a scheme to generate a profit rather than the living breathing man himself. Prosecutors have an oath of office to uphold the constitutional rights of the accused, yet they're concealing key information about the nature and cause of the action–within petitioner's claim is that these "criminal courts" are operating as part of a servicing the debt in conjunction with the Receivership in a U.S. Bankruptcy and that the "Government" has monetized and collateralized the people's Birth Certificates and creating security instruments with this Petitioner's name on them, that they sell to investors for a profit (removing their immunity as per the Clearfield Doctrine).

The Petitioner demands to discover if this indeed happened in his case specifically, and if so, Petitioner alleges that Prosecutors lack impunity because of the commercial motive and gains from their fraud.

Once the court ratifies the fact that Prosecutor acted without lawful authority (jurisdiction) being proven on the court's record, petitioner seeks the court's declaration that their actions constituted Criminal acts in violation of numerous Federal Crimes codified in Titles 18: (*See* COMPLAINT), and an infringement of his right to bear arms (2nd Amendment), amassing a tally of damages sustained by said violations, with demand for over $17 Billion to make him whole, and the return of his second amendment rights. Relief is being requested: any "failure to state a claim" argument is wrongful and the continuation of the ongoing conspiracy to interfere with his civil rights and deprivation of said rights under color of law.

Petitioner DECLINED the jurisdiction of United States Magistrate Judge (also demanded an Article III Judge).

G. Motion to Dismiss filed

On March 25, 2021, the Defendants, by/through two named Assistant and Acting United States Attorney's, filed MOTION to DISMISS, along with Memorandum of Points and Authorities. U.S. Attorney Jeffrey J. Lodge (hereinafter "LODGE") claims in his Motion to be acting on behalf of the United States as opposed to Defendant's David F. Levi and George O'Connell; and moves to dismiss the petitioner's action with prejudice for failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(6).

In the Memorandum of Points and Authorities (hereinafter "MPA"), LODGE acknowledges that McCullough seeks relief for his damages, and that he claims that the criminal court that convicted him lacked jurisdiction. LODGE admitted to that McCullough alleges that the United States Attorney's Office charged him as a "'corporate fictional government-created entity,' not as a living man". However, LODGE asserts "This Court should dismiss the action because it consists of sovereign-citizen gibberish and fails to plead anything close to a cognizable claim under Fed. R. Civ. P. 8(a)."

See BLACKS LAW 6th & 9th Edition: "cognizable:

Burton's Legal Thesaurus. William C. Burton. "gibberish:

Collins English Dictionary (Complete and Unabridged 2012 Digital Edition):" gibberish"

> Dismissal under Rule 12(b)(6) can be based on the lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory . . . The complaint must be construed in the light most favorable to the plaintiff . . . and that . . .

Despite Petitioner's prima facie case, the Defendant's Motion to Dismiss is touted as legitimate when the UNITED STATES/LODGE have NO AFFIDAVIT'S ATTACHED nor exists any affidavit's in support of their jurisdiction, in the record.

Still from LODGE's MPA:

> The Plaintiff has failed to state a cognizable claim. Plaintiff's largely incoherent and tedious Complaint is lifted directly from the debunked sovereign citizen script. The federal courts uniformly dismiss such cases as and no more than inane gibberish. *See United States v. Studley* (9th Cir. 1986) ("utterly meritless").

At the end, they include a patently false assertion that: "The criminal judgment is *res judicata* and the claims to set it aside must be dismissed."

Credible legal scholars know: "Jurisdiction can be challenged at any time, even on final determination." *Basso v. Utah Power & Light Co.* (1946). It is U.S. Supreme Court Precedent to honor this Doctrine (*see* more on the Accardi Doctrine, in *Unanswered Jurisdiction Issues*).

LODGE says (in unsworn argument) in his MOTION TO DISMISS that Petitioner's claim is not cognizable. "A cognizable claim or controversy is one

that meets the basic criteria of viability for being tried or adjudicated before a particular tribunal. The term means that the claim or controversy is within the power or jurisdiction of a particular court to adjudicate." No one has testified nor has any affidavit been attached to LODGE's MOTION TO DISMISS from anyone with any knowledge about the issues being debated.

The Prosecutor has stated: 'Moreover. McCullough cannot state a cognizable claim to challenge his criminal judgment in this civil proceeding." This is not true. McCullough's claim is viable and capable of being adjudicated and is within the power of this court to adjudicate.

The Petitioner timely filed 12-page OBJECTION TO MOTION TO DISMISS, using LODGE's own words to make his case that jurisdictional challenge was indeed expressed in the COMPLAINT; and that demand for proof of jurisdiction is indeed the seminal issue.

McCullough's right to have this case heard is supported by the First Amendment of the U.S. Constitution. It's a protected right under the combination of the First, Fifth, and Fourteenth Amendments. Denial of petitioner's right to the Court's would be a denial of McCullough's equal protection rights under the U.S. Constitution.

In LODGE's MOTION to DISMISS, it remains unclear whether the prosecutor believes Petitioner is a citizen or a non-citizen, as in one place he admits one and in another he indicates the other. Nowhere in McCullough's COMPLAINT does he claim or use the phrase "sovereign-citizen", nor identify as such. Instead of guilt-by-association name-calling, Plaintiff defers back to the dozens of laws and issues laid out on the

face of his Complaint as well as his unrebutted Affidavits on Public record, filed with the Secretary of State, filed in the case. Petitioner asks this court to seek the facts based upon the records and evidence filed into Petitioner's COMPLAINT, and see through the Prosecutor's strawman argument of association with a demonized group or theory as it's choice of tactic here.

The Prosecutor's claim is NOT supported by any EVIDENCE, and is only based on the following insults: "frivolous" and "utterly meritless". Meanwhile, LODGE's arguments are supported by no witness or certified documents, hence they themselves are lacking merit. A challenge to jurisdiction is inextricable and integral to the judicial process that it could never be frivolous. The defendants, the magistrate and the judge are all wrong.

H. Unanswered Jurisdictional Issues

From Defendants' MOTION to DISMISS, it is shown that Plaintiff and Defendants therefore do not disagree that his case rests on the Jurisdictional issues that are now before this court. *"Once jurisdiction is challenged, the court cannot proceed when it clearly appears that the court lacks jurisdiction, the court has no authority to reach merits, but, rather, should dismiss the action." Melo v. U.S.* (1974) *"The law provides that once State and Federal Jurisdiction has been challenged, it must be proven." Main v. Thiboutot* (1980). *"Jurisdiction can be challenged at any time* and *"Jurisdiction, once challenged, cannot be assumed and must be decided." Basso v. Utah Power & Light Co.* (1946).

UNITED STATES OF AMERICA, David F. Levi and/or successor, George O'Connell and/or successor,

LODGE, and any other alleged agent have been quiet and refused to answer any/all requests about jurisdiction. Jurisdiction, once challenged, is to be proven, not by the Court, but by the party attempting to assert jurisdiction, the burden of proof of jurisdiction lies with the asserter. The Court is only to rule of the sufficiency of the proof tendered, *see McNutt v. GMAC (*1936). The origins of this doctrine of law may be found in *Maxfield's Lessee v. Levy*, 4 U.S. (1797).

I. Magistrate's Findings and Recommendations

On 11/10/2021, the Court issued FINDINGS AND RECOMMENDATIONS (hereinafter "F&R") recommending that the Motion to Dismiss be granted and the case be dismissed with prejudice. The order was signed by Magistrate Judge Jeremy D. Peterson (hereinafter "Magistrate Peterson") in which he asserted that petitioner's complaint is "frivolous". Magistrate Peterson referred the case to Judge Troy L. Nunley and with Objections to the F&R due within 14 days.

The Magistrate's F&R states:

> "Dismissal under Rule 12(b)(6) is proper when the complaint . . . lacks a cognizable legal theory. . . " *Sommers v. Apple, Inc.* (9th Cir. 2013).

As far as the case law cited *supra* (*Neitzke v. Williams, United States v. Lorenzo, Robinson v. United States*); these cases are inapposite scenarios than the Petitioner's claims, so careful attention to the details is merited and necessary.

Among the main arguments, the Magistrate and LODGE insist that Petitioner's case is *"meritless"*.

This Petitioner is now incorporating the definition of the word *merits, substantive,* and *evidence See* Black's Law Dictionary and Bouvier's

The correct pleading language from the Petitioner that was similar to the above quotes are as follows:

> Specifically, before a private individual can be charged and convicted with a crime, the government official or agency must prove jurisdiction. <u>These Courts have no jurisdiction over a living man or woman</u>. When the judge and the prosecutor use trickery to cause the living man or woman to believe he/she is actually the defendant, <u>those public officials have breached their fiduciary duties, and breached their contract (oath of office) with the public, and are subject to legal actions</u>."– FROM COMPLAINT

Petitioner's COMPLAINT stated '<u>These Courts</u> have no jurisdiction over a living man or woman . . . " The Key word that changes the meaning conveniently omitted: "These . . . ? *!!! <u>These</u>* refers to Court's that are noted in the Constitution are considered "Inferior Courts".

It's clear from Petitioner's public record filings that his allegiance and nationality as stated on his UCC filings, is to the republic of California (common law, unincorporated) and it's evident he welcomes being governed by the *proper* courts, and when they address the proper party and follow all the laws.

During the Trial/Sentencing court, the Petitioner's property was charged: that is his registered private property and copyrighted name PERRY ADRON MCCULLOUGH©, a corporate fiction. Petitioner has

rescinded his signatures, discharged any/all adhesion, constructive, express, or implied contracts, or hidden contracts of any kind, and has perfected his remedy to escape and exit from any/all contracts from "the government", the "UNITED STATES OF AMERICA", etc. through associated commercial redemption actions.

Petitioner Perry-Adron: McCullough filed his *"MEMORANDUM OF THE LAW AND OBJECTIONS TO 'FINDINGS AND RECOMMENDATIONS THAT DEFENDANTS' MOTION TO DISMISS BE GRANTED'."*

Throughout this time, Petitioner was emailing the Defendants Attorneys to get their consent to times, dates, and discovery proposals, emails that were delivered, yet ignored.

Petitioner sent a final email to LODGE on January 20th at 11:44 AM, stating:

> "I would appreciate if you would cooperate with me . . . If you fail to participate, I will prepare our proposals on behalf of both of us, and send you a copy. If within ten (10) days there is no objection, . . . and by your silence you hereby agree that it will be binding as if you expressly signed it."

Petitioner's day at court was continually vacated.

J. Magistrate's Findings & Recommendations Adopted Case Dismissed and Petitioner Sought to Appeal

On 2/14/2022, District Court Judge Troy L. Nunley ordered that the proposed F&R are adopted, the Defendants' motion to dismiss is GRANTED and the case dismissed *with prejudice* thus closing the case.

The United States District Court for The Eastern District of California found that the F&R were "supported by the recorded and by proper analysis." Subsequent JUDGMENT was signed on 2/15/2022.

Then on 3/14/2022, Petitioner then timely filed NOTICE OF APPEAL to the U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT (hereinafter "NINTH CIRCUIT") for these decisions, both as to Order Adopting Findings and Recommendations and the Judgment entered. USCA CASE #2245393 was generated on 3/16/2022.

On 3/16/2022, Petitioner received a notice from the NINTH CIRCUIT, confirming they had received the Notice of Appeal with docket #22-15393, and that:

> *"The appeal will be reviewed by the Court to determine whether it will be permitted to proceed. Do not file a brief until/unless directed by the Court to do so. Briefing schedule will be set by future court order only if the Court determines that the appeal should be allowed to proceed."*

K. Why the 1998 Show Cause Order is Void:

The NINTH CIRCUIT attached the 24-year old ORDER TO SHOW CAUSE filed on March 4, 1998, in the Ninth Circuit; case no. 98-80147 which stated:

> *"Respondent's practice of burdening this court with meritless litigation justifies careful oversight of respondent's future litigation in this court" and that "This court faces the same problems of limited resources in handling its large volume of appellate litigation" and "This court has the inherent power to restrict*

> *a litigant's ability to commence abusive litigation" and that "This court's records reflect that, since 1989, respondent Perry A. McCullough has initiated the following litigation in this Court:"*

Petitioner has also prevailed at in rem trials (of his currency) (which will be discussed more below), and the in rem "wins" out of the ones he's attempted to litigate aren't in the statistics. This is likely the reason he is getting so much resistance from the government: it was abuse of power and violation of human rights.

The 1998 Ninth Circuit order goes on to say:

> "This court has the inherent power to restrict a litigant's ability to commence abusive litigation . . . respondent's failure to comply with the order shall result in any new appeal(s) . . . being dismissed . . . "

The order goes on to instruct:

> "The court will review respondent's submissions and determine whether they merit further review and whether they should be filed . . . "

Yet filed into the Ninth Circuit case # 98-80147, on March 19, 1998, a record exists stating:

1. "this Respondent has never intentionally filed for relief which he did not believe had merit."
2. "None of the judges who have reviewed any of this Respondent's appeals or petitions has ever stated that the issues raised were 'frivolous.'"

3. That the Ninth Circuit cited cases it deems similar yet are in fact inapposite, along with other court records show that Petitioner is NOT a vexatious litigant who had ALL of their petitions rejected, nor are his filings meritless.

"The last case cited by the Court's OSC is *Sassower v. Sanverie* (2nd Cir. 1989) (affirming injunction against filing of frivolous, vexatious and harassing suits without prefiling review), should not apply to the Respondent. Respondent McCullough has merely resisted the government's attempts to over-prosecute him for conduct which this Court has previously determined he should not have been prosecuted for."—RESPONDENTS COMPLIANCE

"Unlike McDonald, McCullough has had considerable success with his appeals. McCullough's direct appeal consolidated 90-10577, 91-10204, 91-10581, 92-10141, 92-10597 which resulted in the reversal of McCullough's primary conviction of Continuing Criminal Enterprise, and reversal of the related criminal forfeiture of all his assets under 21 U.S.C. § 853. Please see Court's December 30, 1992 order and Memorandum decision of July 14, 1994. Petitioner also responded in 92-15350 initially based on double jeopardy following the decision in *United States v. $405,089.23 U.S. Currency et al.*, 33 F.3d 1210 (9th Cir. 1994)."–RESPONDENTS COMPLIANCE

Petitioner has also prevailed at an in rem trial of his currency in the Central District of California on December 5, 1994:

> "Appeal 94-55783, The government failed to provide Constitutionally required notice and 94-55783 was an appeal from Judge Hatter's denial of McCullough's Fed. R. Crim. Proc., Rule 41(e) Motion for return of the property . . . Judge Tashima determined that there was no probable cause for the seizure, but only after six years of litigation has ensured. *See* Case # CV 93-1971 AWT. Any waste of judicial resources lies at the prosecutor's door-step—not McCullough's."

From, RESPONDENTS COMPLIANCE:

> "Appeal 95-10380 is designated in the Court's OSC (3/4/98) as "affirmed" but because the District Court allowed the jury to convict McCullough of CCE and Conspiracy, but it held the Conspiracy sentence in abeyance pending outcome of McCullough's direct appeal of the CCE. (a practice NOW DIS-AVOWED by the U.S. Supreme Court in *Rutledge v. United States*. (1996))."

Since Petitioner keeps winning his cases, and is at least paying the filing fees for all the ones he does not win, what is the real issue?

Therefore, the 1998 pre-filing order is VOID as it relates to a jurisdictional challenge; and since jurisdiction has been challenged and the Prosecutor's have gone silent; it has no force and effect.

L. Motion to Vacate 24-year Old Pre-Filing Order

Then on April 4, 2022, the Petitioner filed a MOTION TO VACATE PRE-FILING ORDER, OR IN THE ALTERNATIVE LEAVE TO PROCEED ON APPEAL; which moved the court to do just so:

> McCullough's Motion to Vacate argues that Cover Page of the Complaint in case #2:21-cv-00127-TLN-JDP clearly states its demand for proof of jurisdiction. The COMPLAINT clearly restated the seminal issue in question at page 14:
>
> "The claim is that the UNITED STATES DISTRICT COURT EASTERN DISTRICT OF CALIFORNIA did not have personal jurisdiction and subject-matter jurisdiction to precede against Perry-Adron: McCullough from the beginning and said claim can be granted a relief in which is outlined throughout this jurisdictional federal question."

Therein, the Petitioner cited to six Supreme Court opinions supporting the law that "it is the petitioner's right to challenge jurisdiction, and it is the plaintiff/prosecutor's duty to prove that it exists." (*see* COMPLAINT, p. 12, L 21-22). Those cases state that the plaintiff must *"put the facts of jurisdiction . . . on the record."* COMPLAINT p12-13, L1, L14, L17-18. *See Main v. Thiboutot* (1980); *Hagans v. Lavine*, 415 U.S. 533; *Owen v. City of Independence* (1980) *Butz v. Economou* (1978); and, *Bivins v. Six Unknown Named Narcotics Agents* (1971).

The Petitioner/Appellant also showed that "A *court cannot confer jurisdiction where none exists and cannot make a void proceeding valid. It is clear and well established law that a void order can be challenged at*

any time." Old Wayne Mutual Law Association v. McDonough (1907).

Appellant's 8 page argument is corroborated by numerous cases that highlight his jurisdictional challenge. The plaintiff was subsequently demonized and proceeded to file a MOTION TO DISMISS. The defendants claimed that "[t]he Court should dismiss the action [142:21-cv-00127-TLNJDP] because it consists of "sovereign-citizen gibberish" and fails to plead anything close to a cognizable claim under Fed. R. Civ. P. 8(a)."

Petitioner vigorously asserts his full due process rights, and asserts that the 24-year old pre-filing order is in violation of his due process rights, his right to equal protection, and his access to the courts to seek justice.

While the defendants disingenuously say that Petitioner's claim is "sovereign citizen gibberish," they quote the plaintiffs claim at page 14 of the Complaint in their Motion to Dismiss, in direct contradiction to their claim that the Complaint if "frivolous".

By quoting from the Complaint, the defendants cannot genuinely claim that the issues are something other than what is clearly stated therein.

Nowhere present in the defendants' MOTION TO DISMISS, lies the claim that jurisdiction was conspicuously established in criminal trials 33 years ago nor is there an entry in the clerk's record citing the required jurisdictional statements without which the resulting judgment is void *ab initio.*

"Jurisdiction. A power constitutionally conferred upon a judge or magistrate, to take cognizance of, and

decide causes according to law, and to carry his sentence into execution . . . An inferior court has no jurisdiction beyond what is expressly delegated. Courts of inferior jurisdiction must act within their jurisdiction, and so it must appear upon the record." BOUVIER'S LAW DICTIONARY, REVISED EDITION (1856), Vol. 1, p. 701-702.

The UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA is an "inferior court." The United States Constitution, Article III, § 1, states *"The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish,"* As an "inferior court" the UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA can exercise only its "expressly delegated" jurisdiction, to which it failed.

The Appellant solicited the defendants to state what expressly delegated" statute or constitutional authority it provided to the district court in the case of *United States of America v. Perry Adron McCullough*, Cause # CR S 89-00251 (and it's associated cause numbers) to no avail despite opportunities provided to them in in Exhibits A H of Petitioner's COMPLAINT. Aforementioned Exhibits solidify that a Private Administrative Procedure was conducted prior to filing the Complaint wherein jurisdiction was presented in the form of a negative averment. The defendants opted to not respond; their indifference to the facts tacitly established *res judicata,*

Defendants MOTION TO DISMISS in the civil case does not state any statutory or constitutional authority for the district court to prosecute PERRY

ADRON MCCULLOUGH, or Perry Adron McCullough. The magistrate's F&R does not cite any jurisdictional authority for the criminal prosecution in 1989-1990, nor does it address the plaintiff jurisdictional question.

The Magistrate merely accepted the defendants' allegation that Perry Adron McCullough's "theory [is] that the law does not apply to him." Findings at p.1. The Magistrate "recommed[ed] that the defendant's motion to dismiss be granted, with prejudice, because plaintiffs complaint is frivolous," *Id*, And, "Plaintiff cannot proceed on his theory that the district court lacked jurisdiction to charge him with a crime," *Id*, at p.2.

M. The District Court Violated Their Own Rule (FRCP Rule 52) in It's so-called "Fact Finding Investigation"

The district court accepted the F&R, without proper statement of facts and conclusions of law required by Fed. R. Civ. P. Rule 52. and are "clearly erroneous" as per Rule 52(a)(6), because the question of proper jurisdiction was again ignored. In addition, the court never lent its weight to any witness or certified document, and ignored the docketed affidavits already filed in the USDC court's record.

> "*Where jurisdiction does not appear on the face of the record of the case the defendant had a right to ask by what authority the court proceeded to prosecute him*," *Hagans v. Lavine*, 415 U.S. 533.

On April 21, 2022; before PAEZ, RAWLINSON, and WATFORD, the United States Court of Appeals for the Ninth Circuit issued an ORDER dismissing Petitioner's attempt to file an Appeal to have his

USDC case reversed. The court's one page order simply stated:

> This court has reviewed the notice of appeal filed March 14, 2022 in the above-referenced district court docket pursuant to the pre-filing review order entered in docket No, 98-80147. Because the appeal is so insubstantial as to not warrant further review, it shall not be permitted to proceed."

The Ninth Circuit, Magistrate Judge Peterson, and Judge Nunley are wrong: a simple reading of the definitions of the words they've used proves this. For instance, the ONLY comment included explaining their decision, that Petitioner's appeal is *"so insubstantial."* *See* "Substance" in BOUVIER'S LAW DICTIONARY 6TH EDITION: "SUBSTANCE, evidence"

Defendant's response is devoid of any exhibits of evidence attached, thus it has no substance, and it is therefore the one that is *insubstantial.* In contrast, Petitioner's COMPLAINT is full of Exhibits and evidence. Access to the court's is necessary for the free exercise of one's Constitutional rights to due process—this right exists even long after the conviction and even after the disposition of a criminal cause of action.

Plaintiff/Appellant Perry-Adron: McCullough, based his challenge to the district court's jurisdiction on the plethora of Supreme Court cases cited in his Complaint stating that where jurisdiction for the court to proceed is missing from the record that the resulting judgment is void and must be vacated. The Complaint was dismissed in error, and an appeal to a higher court is the proper method to determine that issue.

Once the court ratifies the fact that Prosecutor has acted without lawful authority, Petitioner seeks the court's declaration that their actions constituted Criminal acts in violation of numerous Federal Crimes codified in Titles 18 (*See* COMPLAINT) totaling a specific tally of the damages sustained by said violations, with a demand for over $17 Billion to make him whole, and the return of his second amendment rights. Relief is being requested so any "failure to state a claim" argument is absolutely illicit and the continuation of the ongoing conspiracy to interfere with his civil rights. Petitioner has alleged 30 counts of "Conspiracy Against his Civil Rights" and 30 counts of "Deprivation of Rights Under Color of Law" and wishes his day in court to prove it.

N. Unanswered Jurisdictional Issues Remain

As the Plaintiff it was the Prosecutor's responsibility to prove its alleged jurisdiction, without legally sufficient proof existing on the record, where a judge arbitrarily states the court has jurisdiction, he is violating the defendant's right to due process, equal protection of the law, and separation of powers.

Therefore, each of all the elements of jurisdiction was in fact never "proven" as the law requires.

The responses from Lodge's Motion to Dismiss and the Magistrate's Findings am merely attorney statements. "Statements of counsel in brief or in argument am not facts before the court and am therefore insufficient for a motion to dismiss or for summary judgment." *Trinsey v. Pagliaro*, D.C. Pa. 1964, 229 F.Supp. 647.

The court issued its subsequent order based on:

1. The hearsay statements by its attorney Jeffrey J. Lodge in his Motion to Dismiss, without an accompanying Affidavit.
2. The Magistrate's Findings and Recommendations, which are defective in that they did not follow the rules of evidence and did not include a proper statement of facts and conclusions of law, as required by Rule 52(a)(6).
3. Without the weight of the prima facie case in Petitioner's favor, as indicated by an inspection of the Exhibits part of his COMPLAINT
4. Without requiring said Defendants' to be compelled to answer for the Jurisdictional Proof being placed onto this or any other court's record, proving in personam and other jurisdictional nexus' that gave the prosecutors authority in the first place.

"The law provides that once the State and Federal jurisdiction has been challenged, it must be proven." *Main v. Thiboutot (*1980);

"Once jurisdiction is challenged, it must be proven." *Hagans v. Lavine (*1974);

"Where there is absence of jurisdiction, all administrative and judicial proceedings are a nullity and confer no right, offer no protection, and afford no justification, and may be rejected upon direct attack." *Thompson v. Tolmi,* 2 Pet. 157, 7 L.Ed. 381; *Griffith v. Frazier* (1814)

"No sanctions can be imposed absent proof of jurisdiction." *Standard v. Olsen,* 74 S. Ct, 768; Title 5 U.S.C. § 556 and 558(b);

> "The proponent of the rule has the burden of proof." Title 5 U.S.C. § 556(d);
>
> "Jurisdiction can be challenged at any time, even on final determination." *Basso v. Utah Power & Light Co. (*1946)
>
> "When jurisdiction challenges the act of a Federal or State official as being illegal, that official cannot simply avoid liability based on the fact that he is a public official." *[United States v. Lee, 106 US. 196].*
>
> "Jurisdiction, once challenged, is to be proven, not by the Court, but by the party attempting to assert jurisdiction, the burden of proof of jurisdiction lies with the asserter. The Court is only to rule of the sufficiency of the proof tendered" *see McNutt v. GMAC (*1936). The origins of this doctrine of law may be found in *Maxfield's Lessee v. Levy* (1797).

The Prosecutor has the duty to place all fact(s) of jurisdiction upon the record as a necessary requirement of due process of law. A Court "cannot confer jurisdiction where none exists and cannot make a void proceeding valid." *Gowdy v. Baltimore and Ohio R.R. Company (*1943)].

The unrebutted public record of Petitioner's ASNA and his AFFIDAVIT OF NOTICE with the DISTRICT COURT; and record of the court in case #UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA 2:21-CV-00127-TLN-JDP; show silent and tacit acquiescence of Defendants named herein; and any/all agents of UNITED STATES OF AMERICA; therefore, they are in default to stipulated facts. His/her default was by

choice, and comprises his/her agreement to be bound by the admitted facts for purposes of summary judgment, decision, or other determination.

As has been shown with case law precedent herein, lawful challenge to jurisdiction is far from frivolous and can be brought up at any time, regardless of time transpired.

The crux of the Defendant's defense and the Court's reasons for dismissing Petitioner's claim is that it is what they call "frivolous".

To demand proof of Jurisdiction is far from frivolous, and the purpose is blatant: to recoup sufficient monetary compensation to facilitate enjoyment his remaining life with abundance to heal the pain and grievance from being wrongfully imprisoned for 26+5 years. It has a purpose, therefore, it is NOT FRIVOLOUS. *See* frivolous in BLACKS LAW DICTIONARY 1st, 6th, or 9th Editions.

O. The Accardi Doctrine was Violated

The U.S. Supreme Court has provided a law or doctrine that gives the Petitioner a legal remedy for the Prosecutor's failure to comply; it is called the "Accardi Doctrine", which states that "A Government Agency [being the prosecutor] must . . . scrupulously observe rules of procedures which it has established, and when it fails to do so, its action cannot stand, and courts will strike it down." *United States ex. rel., Accardi v. Shaughnessy*, 347 U.S. 260; *United States v. Heffner*, 420 F.2d 809.

Attorney LODGE's statements a) aren't sworn testimony as a witness; and b) if were sworn under

oath, don't fit the Rules of Evidence. The Prosecutors nor their attorney has not submitted any EVIDENCE.

The Prosecutor's through their Attorney's unsworn statements are in contrary to certified and authenticated records accepted, stamped, and filed with the Secretary of State of Colorado showing that the State of Colorado says that there are Two Distinct entities one a Corporate Fiction and one a living breath human being (*see: Legal Notice & Demand, all Exhibits*)

> "In legal prosecution, all legal requisites must be complied with to confer jurisdiction on the court in criminal matters, as district attorney cannot confer jurisdiction by will alone." *People v. Page* (1998)
>
> "The prosecutor is not a witness; and he should not be permitted to add to the record either by subtle or gross improprieties. Those who have experienced the full thrust of the power of government when leveled against them know that the only protection the citizen has is in the requirement for a fair trial." *Donnelly v. Dechristoforo* (1974).

"In determining whether such rights were denied, we are governed by the substance of things and not by mere form" *Simon v. Craft* (1901) ID . . . " An attorney for the plaintiff cannot admit evidence into the court. He is either an attorney or a witness . . .Where there are no depositions, admissions, or affidavits the court has no facts to rely on for a summary determination. . . . " *Trinsey v. Pagliaro*, D.C. Pa. 1964.

P. Due Process Clause of Fifth Amendment Violated

Petitioner's due process right was violated under the Fifth Amendment to the U.S. Constitution. It is Petitioner's Due Process right to contest certain issues on Appeal; and this is the right of a Defendant *even if they entered an unconditional guilty plea.* Therefore, Petitioner has an unconditional right to Due Process. The 1998 pre-filling order is a violation of Petitioner's Fifth Amendment right to due process. Since a rule of Procedure cannot abrogate a constitutional right, the Advisory Committee's note on Rule II specify that Rule II(a)(2) "has no application" and shouldn't be interpreted as either broadening or narrowing procedures for its application. [18 U.S.C. App., at 912]

Q. The Prosecutors, D/B/A: Us Attorney's Office, Judges, and Magistrates All Had a Fiduciary and Ministerial Duty as Public Officers and This Was Violated

All public officials in receipt of a question about their delegated authority to act are required by their Oath of Office to answer. Notification of legal responsibility is "the first essential of due process of law."

All government actors operate in a fiduciary/ trustee capacity in particular, an in specific, in a courtroom situation, the court case itself is a trust; the named defendant, which is always a fictional entity in ALL CAPITAL LETTERS, is the trust itself. All public officials . . . . are under ministerial duty . . .and "Being Fiduciaries, the ordinary rules of evidence are reversed." *Butz v. Economou* (1978), *Davis v. Passman* (1979, US).

> "[The law will protect an individual who] . . . in the prosecution of a right does everything which the law requires him to do, and

> he fails to attain his right by the misconduct or neglect of a public officer, the law will protect him". *Lyle v. Arkansas*, 9 Howe 314, 13 L.Ed 153, *Duluth & Iron Range Co. v. Roy* (1889)
>
> "It is a maxim of the law, admitting few if any exception's, that every duty laid upon a public officer for the benefit of a private person is enforceable by judicial process." *Butterworth v. U.S. ex rel. Hoe* (1884)

R. Void Judgments or Orders Have No Effect

The 24-year old Pre-filing Order shows legal invalidity, and given the pleadings herein and other records including the Charging Instruments and Judgments against McCullough are VOID. *Ripley v. Bank of Skidmore* (Mo. 1947)

REASONS FOR GRANTING THE PETITION

Defendants' fundamental rights should not be able to be violated by the one word dismissive excuses answers: "frivolous" "meritless" "insubstantial"; when the definitions of said words don't align here. The Supreme Court should recognize that instances, where clearly the Defendant has a prima facie case and where the other side has remained silent on all facts, introduced no new evidence related to proof of jurisdiction, that the Petitioner should be allowed to have his day in court and his fundamental rights asserted and recognized.

The ruling of the NINTH CIRCUIT and the DISTRICT COURT is in conflict with the Constitutional issues raised herein. Such matters and holdings regarding jurisdiction such as the Acccardi Doctrine are indeed stare decisis and res judicata.

CONCLUSION

After timely objecting and always preserving his right to Appeal, this Petitioner has exhausted his remedies. Now that all other remedies are exhausted, the only remedy available is for the U.S. Supreme Court, as the court of last resort, to intervene and protect Petitioner's rights.

Petitioner has made a *prima facie case from his evidence in Exhibits to his COMPLAINT.* It is the burden of the party's he is suing, to respond, and having already gone silent in the private administrative process, was their choice and with full intention to tacitly agree to the certified record of UCC filings, Affidavit of Notice, and ASNA [Affidavit of Specific Negative Averment] the ASNA rebutting presumptions of in personam jurisdiction over this Petitioner, and related issues.

Petitioner based his jurisdictional challenge on the countless of Supreme Court cases cited in his Complaint stating that where jurisdiction for the court to proceed is missing from the record that the resulting judgment is void and must be vacated. The Complaint was dismissed in error, and an appeal to a higher court

is the proper method to determine that issue. Additionally, the 1998 pre-filing order, for reasons stated in this petition, is also void.

Respectfully submitted,

Perry-Adron: McCullough
Petitioner Propria Persona.
c/o: P.O. Box 14442
Long Beach, California [90853A]
(562) 685-3179

JULY 19, 2022

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