

**United States District Court
Eastern District of Oklahoma**

FILED

FEB 13 2006

**WILLIAM B. GUTHRIE
Clerk, U.S. District Court**

By: *[Signature]*
Deputy Clerk

United States of America	)	Judge White
Plaintiff)	
v.	)	CASE NO. CR 05-43 WH
)	
Jimmy C Chisum	)	Motion to Stay Sentencing
Accused Pro Per	)	Pending the Supreme Court
	)	Consideration of Cirtiorari
	)	On Collateral Issue Appeal
	)	EMERGENCY INVOKED
)	

Comes now the defendant, Jimmy C. Chisum, a living man in his proper person, and moves this court for an EMERGENCY STAY of the sentencing, pending the action of the Supreme Court on Certiorari.

Jurisdiction

Rule 23 of the Supreme Court gives the trial Court the first opportunity to stay its own proceedings at this stage pending the outcome of the certiorari. A stay of proceeding is within the discretion of the Court. As a result of the change in the procedural posture of the case since the original appeal was filed, the Motion for Stay is refiled herewith.

Factual and Procedural Background

1. On November 17, 2005, defendant filed notice of Appeal with the Clerk at EDOK on Collateral Issue.
2. On November 29, 2005, 10th Circuit Court of Appeals denied the Defendant's Emergency Motion for Stay and dismissed the Appeal for lack of Jurisdiction. The Emergency Motion was denied primarily on the ground that it was untimely and dismissed the Appeal on the ground that it was premature as there was no basis for a

collateral order appeal.

3. Although the Notice of Appeal was filed more than 10 days before trial, which divested this Court of its Jurisdiction under the "collateral order doctrine", the Motion for Stay became necessary when this Court concluded on Wednesday, November 23, 2005, the day before Thanksgiving that it was going to proceed to trial the following Monday, November 28, 2005. This procedural maneuver by this Court provided no time for the Defendant to "timely" seek an Emergency Stay with the 10th Circuit.

4. The Defendant timely filed a Motion for the 10th Circuit to Reconsider it's denial of the Emergency Motion for Stay which the 10th Circuit denied on December 29, 2005.

5. On January 13, 2006, defendant submitted petition for Certiorari to the United States Supreme Court, along with Emergency Motion for Stay.

6. On January 20, 2006, the Supreme Court docketed the petition for certiorari.

7. On January 30, 2006, the Emergency Motion for Stay was returned to defendant with an instruction to provide more specificity with regard to the status of the case in the trial court.

8. The Petition for Writ of Certiorari has been docketed with the Supreme Court sub nom *Chisum v. United States of America*, at Docket Number 05-8839. The UNITED STATES OF AMERICA has been given until February 27, 2006 to file a response to the petition.

CAUSE for Motion

8. Defendant contends that irreparable damage could and would be done to his First Amendment religious free exercise, petition, association and redress and that record, created by the prosecution itself, more than amply establishes that this prosecution was

taken to chill the Defendant's exercise of these rights, and not simply a violation of his rights. The former (chilling) entitles him to collateral appeal relief. *United States v. P.H.E., Inc.*, 965 F.2d 848 (10th Cir. 1992). The latter (violating) does not. *United States v. Ambort*, 193 F.3d 1169 (10th Cir. 1999)

9. The trial Court has the discretion to grant stay of all further proceedings pending the outcome of the Supreme Court action on the Certiorari. Because the status of the case in this court has changed since the filing of the Notice of Appeal and the subsequent Petition for a Writ of Certiorari in the Supreme Court, Rule 23 of the Supreme Court Rules requires that the Defendant seek relief from the trial court before seeking a stay from the Supreme Court.

10. Knowing there is no particular time schedule for the action of the Supreme Court after it receives the Government response, defendant could actually be sentenced and incarcerated, serving a sentence in a case that should have never gone to trial, let alone a verdict of guilt been found, with the imposition of a sentence pending. Should the Certiorari be denied there will be ample opportunity for this Court and UNITED STATES OF AMERICA to impose sentence. The damage to business and livelihood is permanent.

11. Alternatively if the Supreme Court accepts jurisdiction and concludes that the 10th Circuit should hear the Defendant's collateral order appeal, then the trial and verdict would be void and if sentence imposed, then the Defendant would have been incarcerated by a court and a judicial officer, and prosecutor who proceeded in "complete absence of jurisdiction".

12. Defendant has reason to believe the Supreme Court will decide to accept the petition for certiorari from the Supreme Court precedent on the same or similar issues as stated in

the petition for Certiorari attached as Exhibit 1.

13. Defendant has reason to believe the Supreme Court will decide the certiorari in defendant's favor and Order the 10th Circuit to hear the merits of Defendant's first Amendment Collateral issue Appeal originally filed with in the 10th November 17, 2005.

14. The Supreme Court order for the 10th Circuit to accept jurisdiction will make the trial a nullity, and restore defendant to his position **before** the Court proceeded to trial pending the outcome of the Merits of the Appeal in the 10th Circuit.

15. Justice will not be served and the Defendant will be irreparably harmed, leaving him with virtually no remedy to correct the error, by sentencing and incarcerating the Defendant and then being forced to release the Defendant should the Supreme Court accept jurisdiction and decide in the Defendant's favor. On the other hand no one will be prejudiced by delaying sentencing pending disposition of the Petition for Writ of Certiorari.

16. No prejudice or injury will befall the UNITED STATES OF AMERICA by the granting of the stay. However, additional irreparable injury to the Defendant's rights, business, reputation, bodily and religious liberty will occur if the trial Court proceeds to sentencing before final disposition of the Petition for Writ of Certiorari.

17. No danger to the public will be created by granting the Stay of sentencing pending the action of the Supreme Court on the Certiorari. The Plaintiff has failed to present any evidence that the Defendant poses a danger to the community, or public at large; and there is no evidence that the continued status quo would create a flight risk. In fact the evidence and the record reflect just the opposite. Defendant/appellant has to be available to exercise his rights in the Supreme Court and the 10th Circuit.

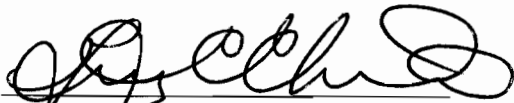
19. Defendant thinks it reasonable to maintain the status quo of probationary release on bond during the time the certiorari remains pending. This status does the minimum damage to Defendant rights, liberty, and property rights while allowing the court a modicum of assurance that the defendant will continue to appear as further proceedings dictate.

20. The EMERGENCY IS INVOKED in a simple sense of urgency; should the trial Court deny the stay then the Defendant must proceed to the 10th Circuit for a stay and finally the Supreme Court again in the limited time before sentencing.

Relief sought

WHEREFORE; defendant moves the court for an order staying the sentencing of defendant to not less than 30 days after the outcome of the Certiorari in the Supreme Court, and any needed 10th Circuit procedures preserving and protecting defendant's rights so that no further irreparable damage is done.

Respectfully submitted, this 11th day of February, in the year of our LORD 2006.



Jimmy C. Chisum, living man
Defendant/movant

CERTIFICATE OF SERVICE

Jimmy C. Chisum does hereby certify that I have served upon the UNITED STATES OF AMERICA a copy of this Emergency Motion for Stay of Sentencing by Express Mail, Postage paid this 11th day of February, 2006 and addressed to Jeffrey Gallant, Assistant United States Attorney, 1200 W. Okmulgee, Muskogee, Oklahoma, 74401.

A handwritten signature in black ink, appearing to read "J. Chisum", written over a horizontal line.

NO.

In the Supreme Court of the United States

Jimmy C. Chisum

PETITIONER,

v.

United States of America

RESPONDENT.

On Petition for Writ of Certiorari to
United States Court of Appeals
In and for the Tenth Circuit

Petition for Writ of Certiorari

Jimmy C. Chisum*
c/o 48412 N. Black Canyon Hwy #356
New River, Arizona 85087
(623) 465-5068

*PETITIONER, IN PROPRIA PERSONA

QUESTIONS PRESENTED FOR REVIEW

1. Whether the District's Court's pretrial order denying the Petitioner's Pretrial Motion to Dismiss was a "final decision" and thus, granted the Court of Appeals jurisdiction of the Petitioner's Appeal to review the District Court's order denying the Motion?

THE PARTIES

The only parties are those who appear in the caption of the case.

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When the Court of Appeals dismissed the Petitioner’s appeal from the District Court’s Pretrial Order denying the Petitioner’s Pretrial Motion to Dismiss the Indictment, in which the Petitioner asserted First Amendment defenses, the Court of Appeals decided an important federal question in a way that conflicts with relevant decisions of this Court.	2
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STATUTES AND REGULATIONS

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MISCELLANEOUS

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First Amendment to the Constitution of the United States	1

The Petitioner, Jimmy C. Chisum (Chisum or Petitioner), hereby Petitions for this Court for its Writ of Certiorari to review the judgment of the United States Court of Appeals, In and for the Tenth Circuit entered in this action on November 29, 2005.

OPINIONS OF THE COURTS BELOW

The Decisions of the United States District Court and the Court of Appeals are unpublished and are in Appendix A.

JURISDICTION

The Court of Appeals entered its Order and Judgment on November 29, 2005, dismissing the appeal for lack of jurisdiction. (App., Pg. A-1). The Petitioner timely filed a Motion for Reconsideration which was denied on December 23, 2005 (App., Pg. A-4). The jurisdiction of this Court to review the judgment of the Court of Appeals by writ of certiorari is invoked under the provisions of 28 U.S.C. § 1257.

STATUTORY PROVISIONS INVOLVED

The following constitutional provisions and statutes are involved in this case. The text of each provision is found in Appendix B. First Amendment to the Constitution of the United States and 28 U.S.C. § 1291.

STATEMENT OF THE CASE AND FACTS

1. On April 14, 2005, the Petitioner was charged in a four count indictment, which purported to allege that the Petitioner violated 18 U.S.C. § 2 (Aid and Abet) and 26 U.S.C. § 7201 (Tax Evasion). (App. Pg. A-5)

2. The Petitioner filed several pretrial motions including a Motion to Dismiss in which, *inter alia*, and underlying First Amendment grounds that the offenses the Petitioner was alleged to have committed were in violation of his religious freedoms. (App., Pg. A-8)

3. The Court denied those motions orally on September 22, 2005 and the written order was filed on September 23, 2005. (App. Pg. A-22).

4. The Petitioner filed his Notice of Appeal November 17, 2005. (App., Pg. A-24).

5. When the judge of the District Court indicated that he would continue to proceed towards the trial, scheduled to commence on November 28, 2005, the Petitioner filed and Emergency Motion for Stay with the Court of Appeals. (App., Pg. A-26).

6. On November 29, 2005, the Court of Appeals entered it's Order and Judgment denying the Motion for Stay and dismissed the appeal for lack of jurisdiction. (App., Pg. A-1). The Petitioner timely filed a Motion for Reconsideration. (App., A-4) which was denied on December 23, 2005.

REASONS FOR GRANTING WRIT & ARGUMENT

When the Court of Appeals dismissed the Petitioner's appeal from the District Court's Pretrial Order denying the Petitioner's Pretrial Motion to Dismiss the Indictment, in which the Petitioner asserted First Amendment defenses, the Court of Appeals decided an important federal question in a way that conflicts with relevant decisions of this Court.

The trial court's Pre-trial Order denying the Petitioner's Pretrial Motion to Dismiss was a "final decision" within the meaning of 28 U.S.C. 1291. *Abney v. United States*, 431 U.S. 651 (1977) (pretrial order rejecting claims of former jeopardy, constitutes "final decision" and thus satisfies the jurisdictional prerequisites of §1291). In the instant case, the Petitioner's Motion to Dismiss addressed claims that the indictment infringed upon his First Amendment rights. The Tenth Circuit itself has held that a pretrial order denying a pretrial Motion to Dismiss on First Amendment grounds is a final decision. Thus, a notice of appeal filed from the denial of the motion satisfies the jurisdictional requirements of § 1291. *U.S. v. P.H.E., Inc.*, 965 F.2d 848 (10th Cir., 1992). As the Tenth Circuit held like the Double Jeopardy Clause, the First Amendment affords scant protection unless it is understood to include "a right not to be tried". *United States v. Hollywood Motor Car Co., Inc.*, 458 US 263, 267 (1982) (per curiam) (citing *United States v. MacDonald*, 435 US 850, 860-61 (1978)). It is a right, "which must be upheld PRIOR to any judicial

process if it is to be enjoyed at all,” *id.*, (quoting 435 US at 861), and is a “right effectively unreviewable on appeal from a final judgment.” *id.* (quoting *Coopers & Lybrand v. Livesay*, 437 US 463, 468 (1978)). As such, a pre-trial order denying a pre-trial Motion to Dismiss is a “final decision” and is appealable under 28 U.S.C. § 1291. Therefore, on November 17, 2005, when the Petitioner filed his Notice of Appeal, the district court was divested of its jurisdiction to proceed to trial on the indictment until final disposition of the appeal. *Id.*

The Petitioner understands that he has the initial burden of establishing the legal and factual basis for such a right. *United States v. Ambort*, 193 F.3d 1169, 1172 (10th Cir. 1999). As this Court has noted, “§ 1291 requires courts of appeals to view claims of a ‘right not to be tried’ with skepticism, if not a jaundiced eye.” *Digital Equip. Corp. v. Desktop Direct, Inc.*, 511 U.S. 863, 873 (1994). However, the burden cannot be met when the trial court denies the motion “out of hand” with the label of “frivolous” and without affording the Petitioner the opportunity to present any evidence. The Court of Appeal’s compounded the error by refusing to accept jurisdiction, because it did not acknowledge the existence of a First Amendment claims at all.

While not as artfully crafted as an attorney, the objections were delineated in the motion to dismiss and are fully deserving of the both court’s consideration on their merits. In this case, neither court seemed to be interested in affording the Petitioner a less stringent standard than an attorney in pleading his claims in the Motion to Dismiss, contrary to this Court in *Haines v. Kerner*, 404 U.S. 519 (1972).


In it’s November 29, 2005 Order and Judgment (App., Pg. 1), the Court of Appeals also intimated that the Petitioner’s Motion for Stay was untimely. Questions of subject matter jurisdiction are never untimely. The only reason at all for the Motion for Stay was that the district court had concluded that it was still going to proceed to trial on November 24, 2005, a week after the Notice of Appeal was filed.

In his Motion for Reconsideration, the Petitioner urged the Court of Appeals to reexamine the Motion to Dismiss in light of the First Amendment claims, and that, if there was any doubts as to the underlying jurisdiction and merits to the appeal, the Court of Appeals should defer its consideration of the jurisdictional question and reexamine it after submission of the briefs on the merits of the appeal. Cf. *Farr v. United States*, 990 F.2d 451, 455 n.1 (9th Cir., 1993). *Careau Group v. United Farm Workers*, 940 F.2d 1291, 1293 (9th Cir. 1991). See also *Rosales v. United States*, 824 F.2d 799, 803 (9th Cir. 1987) ("A court may rule on the subject matter jurisdiction question, **if the jurisdictional facts are not intertwined with the merits.**"). In this case, the jurisdictional facts turn on whether there are First Amendment grounds raised in the Petitioner's pre-trial Motion to Dismiss the indictment, sufficient to invoke the Court of Appeals jurisdiction from the District Court's pre-trial order denying the Motion to Dismiss.

CONCLUSION

Accordingly, and for the foregoing reasons, this Court should issue its Writ of Certiorari to the United States Court of Appeals, In and for the Tenth Circuit, vacate the Order and Judgment and remand this action to the Tenth Circuit with instructions to accept jurisdiction of the appeal seeking of the District Court's pre-trial order denying the Motion to Dismiss the indictment and for further proceedings not inconsistent with the opinion of this Court.

RESPECTFULLY SUBMITTED this 19th day of January, 2006.


Jimmy C. Chisum
c/o 48412 N. Black Canyon Hwy #356
New River, Arizona 85087
(623) 465-5068
Petitioner, In Pro Per

APPENDIX A

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APPENDIX A

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United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

November 29, 2005

Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JIMMY C. CHISUM,

Defendant-Appellant.

No. 05-7124
(D.C. No. 05-CR-43-W)
(E.D. Okla.)

ORDER AND JUDGMENT

Before **KELLY, LUCERO, and TYMKOVICH**, Circuit Judges.

Jimmy C. Chisum moves for an emergency stay of his criminal trial for income tax evasion, which was set to begin on November 28, 2005. The motion was not filed in this court until November 28. The basis of his motion is that the Tenth Circuit should resolve before trial his interlocutory appeal from the district court's orders denying his pretrial motions. Notwithstanding the untimeliness of his motion, because we conclude that we have no jurisdiction over the underlying appeal, we dismiss the appeal and deny the emergency motion for stay.

Mr. Chisum's notice of appeal asserts that the district court's denial of his pre-trial motion to dismiss the case for failure to allege a crime, to state a charge, or to issue a target letter violates his right to freely exercise his religion and his

right to due process, and subjects him to involuntary servitude under the Thirteenth Amendment.

Appellate jurisdiction over the underlying appeal is a prerequisite for this court's consideration of a stay pending appeal. *Desktop Direct, Inc. v. Digital Equip. Corp.*, 993 F.2d 755, 756-57 (10th Cir. 1993). This court has an independent duty to examine its own jurisdiction in the first instance. *Maier v. EPA*, 114 F.3d 1032, 1036 (10th Cir. 1997). We have jurisdiction over "appeals from all final decisions of the district courts of the United States." 28 U.S.C. § 1291. A decision is considered final under this section when it "ends the litigation on the merits and leaves nothing for the court to do but execute the judgment." *Gray v. Baker*, 399 F.3d 1241, 1244 (10th Cir. 2005) (quotation marks omitted). Clearly, the district court's orders have not ended the litigation and are not final.

Interlocutory review of non-final decisions is warranted for a "small class [of cases] which finally determine claims of right separable from, and collateral to, rights asserted in the action, too important to be denied review and too independent of the cause itself to require that appellate consideration be deferred until the whole case is adjudicated." *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 546 (1949). "To establish jurisdiction under the collateral order doctrine, defendants must establish that the district court's order (1) conclusively determined the disputed question, (2) resolved an important issue completely

separate from the merits of the case, and (3) is effectively unreviewable on appeal from a final judgment.” *Gray*, 399 F.3d at 1245. It does not appear that the district court’s order in this case concerned issues separate from the merits of the criminal trial, thus it is not a reviewable interlocutory order. We need not reach the other two prongs of the collateral order test. *See Magic Circle Energy 1981-A Drilling Program v. Lindsey (In re Magic Circle Energy Corp.)*, 889 F.2d 950, 954 (10th Cir. 1989) (noting that this court need not address all prongs of the test if any one is not satisfied).

Because we conclude that the district court’s denial of Mr. Chisum’s motion is not a final decision nor an appealable collateral order, we must dismiss this appeal for lack of jurisdiction. We therefore deny the emergency motion for stay.

The appeal is **DISMISSED** and the motion for emergency stay is **DENIED**.

Entered for the Court
PER CURIAM

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

No. 05-7124

JIMMY C. CHISUM,

Defendant - Appellant.


ORDER

Filed December 23, 2005

Before **KELLY, LUCERO**, and **TYMKOVICH**, Circuit Judges.

Appellant's motion for reconsideration is denied.

Entered for the Court
CLERK, COURT OF APPEALS

by: 
Deputy Clerk

FILED

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA**

APR 14 2006

WILLIAM B. GUTHRIE
Clerk, U.S. DISTRICT COURT

By _____
Deputy Clerk

UNITED STATES OF AMERICA,)
)
Plaintiff,)
v.)
)
JIMMY C. CHISUM,)
)
Defendant.)

SEALED

No. CR-05- **43-WH**

INDICTMENT

The Federal Grand Jury charges:

COUNT ONE

[26 U.S.C. §7201 and 18 U.S.C. §2 -- Tax Evasion]

From on or before January 1, 1997, to on or about March 25, 2002, within the Eastern District of Oklahoma, and elsewhere, the defendant, **JIMMY C. CHISUM**, did willfully attempt to evade and defeat individual income taxes due and owing by Brian F. Chadsey and Mitzi P. Chadsey to the United States of America for the calendar year 1997 by committing various affirmative acts of evasion, including causing to be prepared false income tax returns, utilizing trusts, concealing assets and income by maintaining bank accounts and off shore accounts in nominee names, and by attempting to obstruct the Internal Revenue Service during an audit of Brian F. Chadsey and Mitzi P. Chadsey.

All in violation of Title 26, United States Code, Section 7201 and Title 18, United States Code, Section 2.

COUNT TWO

[26 U.S.C. § 7201 and 18 U.S.C. § 2 -- Tax Evasion]

From on or before January 1, 1998, to on or about March 25, 2002, within the Eastern District of Oklahoma, and elsewhere, the defendant, **JIMMY C. CHISUM**, did willfully attempt to evade and defeat individual income taxes due and owing by Brian F. Chadsey and Mitzi P. Chadsey to the United States of America for the calendar year 1998 by committing various affirmative acts of evasion, including causing to be prepared false income tax returns, utilizing trusts, concealing assets and income by maintaining bank accounts and off shore accounts in nominee names, and by attempting to obstruct the Internal Revenue Service during an audit of Brian F. Chadsey and Mitzi P. Chadsey.

All in violation of Title 26, United States Code, Section 7201 and Title 18, United States Code, Section 2.

COUNT THREE

[26 U.S.C. § 7201 and 18 U.S.C. § 2 -- Tax Evasion]

From on or before January 1, 1999, to on or about March 25, 2002, within the Eastern District of Oklahoma, and elsewhere, the defendant, **JIMMY C. CHISUM**, did willfully attempt to evade and defeat individual income taxes due and owing by Brian F. Chadsey and Mitzi P. Chadsey to the United States of America for the calendar year 1999 by committing various affirmative acts of evasion, including causing to be prepared false income tax returns, utilizing trusts, concealing assets and income by maintaining bank accounts and off shore accounts in nominee names, and by attempting to obstruct the Internal Revenue Service during an audit of Brian F. Chadsey and Mitzi P. Chadsey.

**All in violation of Title 26, United States Code, Section 7201 and Title 18,
United States Code, Section 2.**

COUNT FOUR

[26 U.S.C. §7201 and 18 U.S.C. §2 -- Tax Evasion]

From on or before January 1, 2000, to on or about March 25, 2002, within the Eastern District of Oklahoma, and elsewhere, the defendant, **JIMMY C. CHISUM**, did willfully attempt to evade and defeat individual income taxes due and owing by Brian F. Chadsey and Mitzi P. Chadsey to the United States of America for the calendar year 2000 by committing various affirmative acts of evasion, including causing to be prepared false income tax returns, utilizing trusts, concealing assets and income by maintaining bank accounts and off shore accounts in nominee names, and by attempting to obstruct the Internal Revenue Service during an audit of Brian F. Chadsey and Mitzi P. Chadsey.

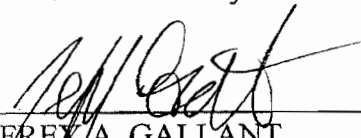
**All in violation of Title 26, United States Code, Section 7201 and Title 18,
United States Code, Section 2.**

A TRUE BILL:



FOREMAN OF THE GRAND JURY

SHELDON J. SPERLING
United States Attorney



JEFFREY A. GALLANT
Assistant United States Attorney

Jimmy C. Chisum
48412 N Black Canyon Hwy #356
New River, Arizona 85087

**United States District Court
Eastern District of Oklahoma**

FILED
AUG 22 2005
WILLIAM B. GUTHRIE
Clerk, U.S. DISTRICT COURT
By _____
Deputy Clerk

United States of America	)	Judge West
)	
v.	)	CASE NO. 05-6187M <i>CR05-43-w15</i>
)	
Jimmy C Chisum	)	MOTION TO QUASH
Accused Pro Per	)	Indictment and Warrant
	)	for lack of Jurisdiction
)	

The accused, Jimmy C Chisum, Pro Per moves the court for an order to quash the indictment issued from Eastern District of Oklahoma for Tax Evasion to revoke the Warrant issued thereon.

JURISDICTION

The accused was forcibly taken by U S Marshals and brought to the Jurisdiction of the Court. Subject matter Jurisdiction of the Warrant and Indictment are challenged hereby as is the authority to hold the accused in absence of Due Process. Any Court has the jurisdiction to correct its own error.

The UNITED STATES DISTRICT COURT is or appears to be a court of limited territorial jurisdiction incapable of acting by Article III judicial Powers within the State of Oklahoma's sovereign territory.

Exhibit 1

"Knowledge will forever govern ignorance; and people who mean to be their own governors, must arm themselves with the power which knowledge gives." James Madison

"Government is like a fire, useful in the fireplace, but if it gets out of its place, it will consume everything you own," by George Washington.

1818: U.S. v. Bevans, 16 U.S.336.

Establishes two separate jurisdictions within the United States Of America: 1. The "federal zone" and 2. "the 50 States". The I.R.C. only has jurisdiction within the "federal zone". ***"The exclusive jurisdiction which the United States have in forts and dock-yards ceded to them, is derived from the express assent of the states by whom the cessions are made. It could be derived in no other manner; because without it, the authority of the state would be supreme and exclusive therein," 3 Wheat., at 350, 351.***

VENUE

The accused was forcibly brought, however illegally, to the UNITED STATES DISTRICT COURT for Arizona venue by U S Marshals. The Accuse voluntarily or by agreement, coerced under menace of further unlawful incarceration, with the Arizona district intentionally enters this venue for the peaceful redress of grievance to quash the error of the court and fraudulent indictment. Forcible removal from one's liberty with guns and in chains does a lot to create or extort a venue for the ordering agency or court. Accused does not concede that the United States District Court has any lawful venue outside the federal zone other than interstate commerce.

PARTIES

The United States of America appears to be a Foreign Corporate or artificial entity of unknown origin and location that has no standing before the Court and no Jurisdiction over the Accused within the sovereign territory of the State of Oklahoma.

USC 5; NY v. United States 505 US 124, 137;

Exhibit 2

Accused is a native born Oklahoma and American citizen currently found at home within the State of Arizona and without the United States of America. Accused has chosen to make Jesus Christ His KING and guide. You can not serve two masters and the price of denying Jesus is far greater than any price Accused sworn servant government could exact. In America today the servant conspires to rule over the citizen the Supreme Court has repeatedly acknowledged as the master and sovereign.

CAUSE OF ACTION

The Indictment issued out of the Eastern District of Oklahoma, Federal zone, at the request of U S Attorney, allegedly on behalf of Internal Revenue Service in the name of the United States of America is **facially void**.

Accused has been deprived of due process in that he was never notified by target letter that he was the target of a criminal investigation by Internal Revenue Service; thus denying Accused the due process right to apply to testify to the Grand Jury or address possible criminal matters. Accused was even denied the right to see or read warrant or indictment until his arrival in court more than 12 hours after arrest then had it taken away by US Marshals and not returned for 3 more days. And accused was not Mirandised at any time except in part as Magistrate Duncan tried to convince accused to accept inadequate council.

Exhibit 3

After seeing the papers for a few minutes they were taken away by U S Marshals who refused to return them for use in court the same day.

Accused was forced to prepare for detention hearing with a dull 3" pencil and borrowed paper. And forced to conduct himself in court in chains though supposedly innocent until proven guilty with no papers, notes, or other aids. It is impossible to have an adequate hearing in an adequate place at an appropriate time when forced to prepare without access to law library or research records. Does the United States of America need the advantage of depriving Accused of due process or reasonable treatment in order to create the illusion it is acting properly or has a chance of winning? The cruel but usual treatment this accused received between arrest on Thursday night and discharge on Tuesday would get news coverage in Iraq. Reckless endangerment comes to mind. 6 strip searches in 4 days while presumed innocent is certainly not due process; and is an extreme violation of this accused's free exercise of his faith.

REASONS FOR QUASH

LACK OF SUBJECT MATTER JURISDICTION

Both the Eastern District of Oklahoma and the District of Arizona lack subject matter jurisdiction to publish and sustain this indictment. Only by force of chains and guns can a constitutional government in a nation of laws get away with these actions. No law and no fact witness means there is no subject matter jurisdiction.

The Accused believes that the US Attorney committed fraud on the Grand Jury and on this Court in order to obtain the Indictment and Warrant. How many Grand Juries were needed to finally convince one to indict? By the time involved it appears to be 4 or 5 grand juries. Accused is convinced this is at a minimum abuse of the grand jury process and procedures; and more likely Fraud upon the Grand Jury to trick them into the indictment and fraud upon the Court in want or excess of authority. Dixon v Commissioner 9th Cir January, 2003, says in essence that anyone dealing with the IRS must be wary of fraud by the service. The accused follows that advise and brings it to the court to vigorously refuse to be drawn as an essential cover-up of fraud on the Grand Jury and on the Court. In Dixon the Court of Appeals saw through the fraud and sanctioned the IRS attorneys; that fraud cost the government some 2 billion dollars and two very deserving attorneys their positions as litigators before the tax court for life; and the government did not appeal or seek certiorari to the Supreme Court.

Subject matter jurisdiction depends on both elements being present and in this case neither appears to be present and the proof of fraud is guarded by the prejudicial rule that seals the Grand Jury record. Who was the competent witness to establish the jurisdiction before the grand jury; and what Statute and Regulations were violated? 26 USC 7201 has no published regulation so only one part is present; and the Supreme Court doctrine requires both Statute and regulation to have force of law. 18 USC 2 has

no published regulation according to CFR finding tables and thus has no force of law.

Accused suggests an in camera review.

DEFECT ONE

FAILURE TO ALLEGE A CRIME: VOID ON ITS FACE

The indictment fails to state a crime and is facially void. The U S Supreme Court in: *United States v Mersky*, 361 US 431 (1960) "***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, , , , ,***"

Where the indictment shows no regulation there is no crime. VOID ON ITS FACE!

26 U. S. C. 7201 does nothing by itself it can have FORCE of law only when accompanied by properly established by regulations. In the case of 7201 according to CFR finding tables. There are no regulations cross referenced and therefore the Secretary has chosen not to give this section force of law. Indictment and warrant based on that indictment are facially void and must be quashed or dismissed. Excerpt from CFR finding table:

Exhibit 4

DEFECT TWO

NO LAW BROKEN

The indictment fails to state or allege any law broken or violated by any of the acts of the accused. No regulation means no force of law. CID agent testified in court at Arizona that there was nothing illegal about trusts; and that tax avoidance is legal.

The cumulative exercise of multiple rights provided for or protected by the federal and state Constitutions and laws cannot be turned into a crime because accused home-schools his grandchildren or has strong Christian beliefs or original intent Constitutional beliefs. The right to contract protected by Article 1 Section 10 Clause 1, added to the right to privacy and due process can not be converted to a crime because Accused disavowed SS as the mark of the beast and the number of his name. 1st Amendment!

DEFECT THREE

DENIAL OF DUE PROCESS

Accused was not notified at any time that he was the target of an IRS Criminal Investigation as required by law.

Due process requires the opportunity to face and cross exam the accuser and all Witnesses in every step of the Process. *Goldberg v Kelley*

STATEMENT OF THE LAW

In the criminal tax case *US v Gritzer* (1987) the Supreme court declared that confusion could not bring the government justification in their prosecution...;.. and that the people have a right to rely on what they are told by government.

"(A) statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law." Connally v General Construction Co., 269 US 385, 391 (1926).

This verifies the need for verifiable current oath of office by all the servant employees. Throughout the Administrative process each and every federal employee failed and refused to comply with the law repeatedly calling Supreme Court decisions and Constitutional limitations frivolous. In *US v Lanier* (1997) 000 US 1717 the Supreme court reaffirmed this doctrine of American jurisprudence;

"fair warning of what the law intends" and "neither the statute nor a good many of their constitutional references delineate the range of forbidden conduct with Particularity".... "a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning or differ as to its application". In the civil sphere, we have explained that qualified immunity seeks to insure that defendants ***"reasonably can anticipate when their conduct may give rise to liability"***.

Everything in this case from 26 USC 7201 without the legally required regulations to the rules of court as declared by magistrate Duncan are too complex for the average citizen to understand and apply and therefore imposes no penalty. According to the

Arizona Court only those with super educations and licenses as titles of nobility can hope for justice before the UNITED STATES DISTRICT COURT. Such confusion can not bring the Accused to be subject to prosecution for a crime against a non tax.

Beginning with Railroad Company v Hecht, October 1877 ***“as against the government the work “shall,” when used in statutes, is to be construed as “may” unless a contrary intention is manifest”***.

The Supreme Court for the United States has repeatedly stated that mandatory language in the law must work for the people as voluntary and against the government as mandatory wherever a Constitutional Right is involved. That ruling has been followed and repeated at least five times. RR v Hecht has never been overturned. IRS asserts everything in the regulations unsupported by law is mandatory for Accused but obeying the Public Law is optional for the foreign agents of the United States of America in exact rebellion against the consistent rulings of the US Supreme court. IRS is in rebellion against the clear intent of Congressional mandate for “Plain English rules”, and tries to cover-up the tyranny, terrorism, and treason.

IRS IS NOT A SUPER LEGALATURE OR BEYOND THE RULE OF THE SUPREME COURT AND ALSO CAN NOT ADD TO STATUTES AT LARGE WHAT CONGRESS DID NOT CLEARLY INTEND. Gould v Gould 245 US 151 specifically states “in the interpretation of statutes levying taxes it is the established rule not to extend their implication beyond the clear import of the language used, or to enlarge their operation so as to embrace matters not specifically pointed out. In case of doubt they are interpreted most strongly against the government and for the people” Thompkins v Erie RR 1938 agrees.

United States v. Calamaro, 354 U.S. 351, ruled; “In construing federal revenue statutes, the Supreme Court gives no weight to Treasury regulation which attempts to add to statute something which is not there.”

Internal Revenue manual 4.10.7.2.9.8 (05-14-1999): “Importance of Court Decisions

1. ***“Decisions made at various levels of the court system are considered to be interpretations of tax laws and may be used by either examiners or taxpayers to support a position.***
2. ***“Certain court cases lend more weight to a position than others. A case decided by the U.S. Supreme Court becomes the law of the land and takes precedence over decisions***

*of lower courts. The Internal Revenue Service must follow Supreme Court decisions.
For examiners, Supreme Court decisions have the same weight as the Code."*

"It is apparent that a constitutional prohibition cannot be transgressed indirectly by the creation of a statutory presumption any more than it can be violated by direct enactment. The power to create presumptions is not a means of escape from constitutional restrictions." Bailey v. Alabama, 219 U.S. 219, 239. [357 U.S. 513, 527].

"Words used in the statute are to be given their proper significance and effect." Washington Market Company. V. Hoffman, 101 US 112, 115

In Gregory v Halvering, 293 US 456 (1935) states it is the right even the duty of every citizen to so orient his affairs as to pay a minimum tax owed even when that is zero.

In Flora v US 362 US 145 (1960) the supreme court states that the income tax is voluntary. The accused volunteered everything required by law and oriented his affairs to pay not one dollar more, preferring the free exercise of his religion (First Amendment).

The Supreme Court has acknowledged that this is a Christian Nation founded on Christian Principles. In *HOLY TRINITY CHURCH v. UNITED STATES*, The Supreme Court of the United States arrived at the following conclusion:

*"These and many other matters which might be noticed, add a volume of unofficial declarations to the mass of organic utterances that **this is a Christian nation.**"*
Public law 97-280 recognizes **"our national need to study and apply the teachings of the Holy Scriptures."**

And for peaceful redress as originally intended by the framers of the bill of rights added to further limit and define the powers of the central government. Accused made an informed choice to believe the Supreme Court. INTERNAL Revenue Manuel (IRM) 4.10.7.2.9.8 (05-14-98) obligates IRS to follow Supreme Court decisions.

In 1895 the Supreme Court said it was unconstitutional to tax the income of the citizen at home. Both the Chadseys and Chisum are Citizens at home.

The original intent of the 16th amendment as stated by President Taft in the

Congressional record was to make a permanent tax on Corporations and the Federal Government. The definition of employer and employee in the public salary tax act agree, as does 26 USC 3401. King Jesus said in Matt 17; then are the children free from the tax. Pollack agrees you can not tax the income of the citizen at home.

From Stanton v. Baltic Mining, 240 US 113 (1916); Brushaber v. Union Pacific RR Co. 240 US 1 (1916); Evans v. Gore, 253 US 245 (1920); Peck v Lowe 247 US 165 (1918); and Eisner v Macomber, 252 US 189 (1920) after passage of the 16th amendment the Supreme Court made it clear that the amendment had created no new taxing power and brought no new items to be subject to the tax. Citizens at home were still immune from income tax.

In 1913, Straton's Independence, Ltd v Howbert 231 US 399 while reviewing the Corporate Tax Act the Supreme Court carefully and succinctly declared it was not in fact an Income Tax but an Excise on the privilege of the Corporate Franchise and a privilege of certain excise taxable activity merely measured by the income. **Exhibit 5**

Neither the Chadseys or Chisum are engaged in any Corporate Franchise privilege or excise taxable activity. No taxable Income equals = no tax = no crime.

The indictment and warrant are fraudulent. In 1916, 1919 and other rulings the Supreme Court made sure to explain that the definition of income in the 16th amendment and income tax laws was and must be the same as under the 1909 Corporate Tax Act. The profit from Corporate privilege used in excise taxable activity.

Article 1 Sec. 10 Clause 1 of the U S Constitution clearly states there can be no law to impair the Obligation of Contract. The trusts mentioned are simple contracts with general and specific obligations. NO law means No law.

The citizen's rights to obligate themselves by contract cannot be infringed even by the policy of a "rogue agency" "wholly out of control", even for alleged tax purposes.

The right to follow any lawful vocation and to make contracts is as completely within the protection of the Constitution as the right to hold property free from unwarranted seizure, or the liberty to go when and where one will. One of the ways of obtaining property is by contract. The right, therefore, to contract cannot be infringed by the legislature without violating the letter and spirit of the Constitution. Every citizen is protected in his right to work where and for whom he will. He may select not only his employer, but also his associates. COPPAGE v. STATE OF KANSAS, 236 U.S. 1 (1915).

United States v. Calamaro, 354 U.S. 351, ruled; "In construing federal revenue statutes, the Supreme Court gives no weight to Treasury regulation which attempts to add to statute something which is not there."

Internal Policy of an Administrative Agency cannot bring new items subject to taxation when the 16th amendment to the Constitution was incapable of doing so.

It is impossible to evade a tax never laid by Congress nor owed by the Citizens at home. There is no crime in the free exercise of rights and religion. The indictment fails.

DELEGATION OF AUTHORITY IS ESSENTIAL

The "National interest" quoted by congress in writing the statutes at large or "public law" is the interest of "WE the people". The people are the Nation; not the "foreign corporation" United States seated in Washington, D.C.. (New York v United States, 505 US 144, 1992). And in Alder v Maine (1999) the Supreme Court clarified that the States are not mere corporate divisions of the Federal enterprise but separate and sovereign republic States. Oklahoma and Arizona are not "territories" but a separate sovereign republic state with full sovereign rights over all the territory within the borders published in the approved "equal state" constitution. There is no constitutionally delegated authority for the United States (foreign Corporation) or United States of America a foreign state to defeat the title to land within the borders and the Supreme Court agreed in Utah v US 1987. What part of inconceivable does IRS not understand? What part of all does DOJ not understand?

Without Federal ownership of land or Interstate Commerce there can be no jurisdiction for the United States District Court, United States attorney, or Federal Grand Jury to bring or sustain a charge against the accused.

N. Y. v. U. S. 505 U. S. 124 “The Constitution created a government of express limited authority and if the power is not expressly delegated does not exist...”

And....power delegated to one branch of government cannot be assumed by another branch even with consent.

Congress was never delegated the power to lay or collect a tax upon the free exercise of the right or cumulative exercise of multiple rights by a citizen at home; the Pollack decision of 1895 made it clear that the income of the citizen at home was not the subject or object for income taxation.

Exhibit 5

IRS and the Executive Branch have no taxing power whatsoever delegated in the Constitution and are openly committing fraud on the Court and the people just as the 9th Circuit warned of in Dixon v Commissioner January 2003.

Delegation of Authority is essential, America is a nation of laws; no man or agency is so high as to be above the law. There is no delegated authority for this indictment or warrant and both are brought and executed by fraud upon the court.

The Senate declared the IRS a “rogue agency” “wholly out of control” in its 1997 report. The General Accounting Office in its 1996 and all subsequent reports has stated that the IRS is broken beyond repair and could not in fact prove that it have ever properly assessed a tax on anyone. There was no tax to evade.

“Property rights are among the most sacred of rights secured by the American limited Constitutional government; and the first right of the people trespassed when the government seeks to leave it’s constitutional confinements” (Thomas Jefferson 1804).

Congress could not delegate this taxing authority to the IRS because it never had the authority in the first place and would violate separation of powers doctrine in N. Y. v.

U. S. 505 US 124, 137 *"the constitution created a Federal Government of limited powers"* Gregory v Ashcroft, 501 U.S. 452, 457 (1991); and while the Tenth Amendment makes explicit that *"the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people,"*... *"all is retained that is not surrendered,"* US v Darby, 312 US 100, 124(1941).

Where there is no delegated power there can be no crime. **Exhibit 56 R**

The Supreme Court has properly defined income and taxation. There is no tax for Chadsey or Chisum to evade the indictment is void based on fraud upon the court by the accuser.

All power comes from God to the people.

"We the people grateful to Almighty God for our liberties" liberties is how God delegated a little of His power to His elect; the power to the people. The State Constitutions is how the people delegated a part of their sovereignty, power and liberty to government. "Governments are instituted among to serve the just needs of the governed." Declaration of Independence, 1776.

The States then delegated a portion of the power received from the people to the Federal Government by the U. S. Constitution. The Congress then by Statutes by Large delegate appropriate portions of the Federal power to particular agencies.

New York v US at page 157 the court further states;

"... if a power is delegated to Congress in the Constitution, the Tenth Amendment expressly disclaims any reservation of that power to the States; if a power is an attribute of State Sovereignty reserved by the Tenth Article of amendment, it is necessarily a power the Constitution has not conferred on Congress....."

It is in this sense that the Tenth Amendment "states but a truism that all is retained which has not been surrendered."..... As JUSTICE STOREY put it, "... this amendment is a mere affirmation of what, upon any just reasoning, is a necessary rule of interpretation the Constitution. Being an instrument of limited and enumerated powers, it follows irresistibly, that what is not conferred, is withheld, and belongs to the State authorities....Congress exercises its conferred powers subject to the limitations contained in the Constitution."

United States, and United States of America are foreign corporations or states with respect to Oklahoma and Arizona just as it was to New York. *Adler v. Maine* 2001 the Supreme Court elaborates that the states are not mere corporate subsidiaries of the federal government but are separate and sovereign in their own right.

It is a well established principal of law that all federal "legislation applies only within the territorial jurisdiction of the United States unless a contrary intent appears"; see *Caha v. US*, 152 US 211, 214 14 S. Ct. 513 (1894).

"The laws of Congress in respect to those matters do not extend into the territorial limits of the States, but have force only in the District of Columbia, and other places that are within the exclusive jurisdiction of the national government," 152 US 215.

1995: *U.S. v. Lopez*, 000 U.S. U10287.

Establishes strict limits on the constitutional power and jurisdiction of the federal government inside the 50 States.

"We start with first principles. The Constitution creates a Federal Government of enumerated powers. See U.S. Const., Art. I, 8. As James Madison wrote, "[t]he powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite." The Federalist No. 45, pp. 292-293 (C. Rossiter ed. 1961).

1938: *Hassett v. Welch*, 303 U.S. 303.

Ruled that disputes over uncertainties in the tax code should be resolved in favor of the taxpayer.

"In view of other settled rules of statutory construction, which teach that... if doubt exists as to the construction of a taxing statute, the doubt should be resolved in favor of the taxpayer..."

Exh 7

This constitutionally mandated division of authority "was adopted by the Framers to ensure protection of our fundamental liberties."

Neither the Chadseys nor Chisum were involved in Interstate Commerce nor were any of the acts alleged performed on land owned the United States or United States of America. Neither the Chadseys nor Chisum are residents doing business in or

with the United States or United States of America foreign states or corporations.

CONCLUSION

The United States District Court is without subject matter jurisdiction to bring or sustained the indictment and warrant without the United States and within the several sovereign States. The United States of America has no delegated authority for the actions taken to defraud the grand Jury or the Court into this charge.

Therefore, for all the stated and supported by all the attached there is no subject matter jurisdiction for the indictment or the warrant.

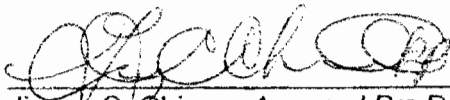
RELIEF SOUGHT

Wherefore, the accused moves this court to quash and dismiss the indictment and warrant and immediately release the accused to his liberty.

And such other relief as the courts deems appropriate.

Accused would suggest sanctioning the agents, attorneys and their agencies sufficient to alter the behavior and restore Constitutional order. \$50,000 per day for all the wrongful interference in the liberties of Chadsey and Chisum would be just a start toward justice.

Respectfully submitted, all rights reserved



Jimmy C. Chisum, Accused Pro Per

Attachments accompany the motion.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 JIMMY C. CHISUM,)
)
 Defendant.)

Case No. CR-05-43-WH

FILED

SEP 23 2005

WILLIAM B. GUTHRIE
Clark, U.S. District Court

By: _____
Deputy Clerk

ORDER

This matter came on for pretrial conference on September 22, 2005. The Court orally ruled on all pending motions and hereby memorializes those rulings.

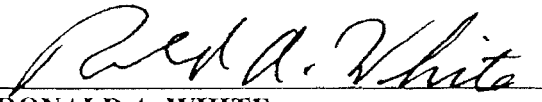
The defendant's notice and demand for nature and cause (#5) is DENIED. The motion of the defendant to quash indictment and warrant for lack of jurisdiction (#6) is DENIED, but the government shall file a bill of particulars within two weeks. The motion of the defendant for extension of time to file motions (#19) is DENIED, but the Court is open to a request for reconsideration (preferably joined by stand-by counsel Mr. Knorr).

The motions for findings of fact and conclusions of law (##20 & 28) are DENIED. The motion to dismiss the indictment for failure to allege a crime (#21) is DENIED. The motion to strike plea (#22) is DENIED. The motion for reconsideration of defendant's identity (#29) is DENIED.

The motion of the government for hearing to determine whether defendant voluntarily, knowingly and intelligently waived right to counsel (#12) is GRANTED and such a hearing was conducted, where it was concluded defendant had so waived counsel at this time. The motion of the government to determine competency of defendant (#27) is GRANTED in the sense that the

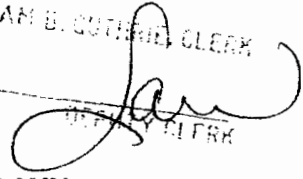
Court made such determination and found the defendant competent, without the need for psychiatric or psychological examination under 18 U.S.C. §4241.

ORDERED THIS 23rd DAY OF SEPTEMBER, 2005.



RONALD A. WHITE
UNITED STATES DISTRICT JUDGE

United States District Court
Eastern District of Oklahoma

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF OKLAHOMA
05 NOV 17 PM 3:15
WILLIAM B. GUTHRIE, CLERK
BY  CLERK

United States of America)
Plaintiff)
v.)
Jimmy C Chisum)
Accused Pro Per)

Judge White
CASE NO. CR 05-43 WH
NOTICE OF APPEAL
COLLATERAL ISSUE
FIRST AMENDMENT free
Exercise of Religion

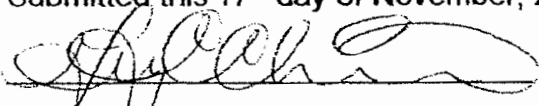
ACCUSED'S NOTICE OF APPEAL

Accused Jimmy C. Chisum, in propria persona hereby give notice of appeal from the decisions of judge White accumulative on all the defense motions based on the ground that it is in violation of defendant's free exercise of his religion.

The decisions concerning motions with first amendment issues have been denied on September 23, 2005 and motion to reconsider denied on 17 November, 2005.

The basis of appeal is the denial of free exercise of religion under the first amendment, involuntary servitude under the 13th amendment, denial of due process, and willful violation of rights and rules.

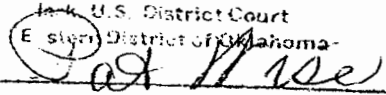
Submitted this 17th day of November, 2005 AD


Jimmy C. Chisum, Pro Per

I hereby certify that the annexed instrument is a true and correct copy of the original on file in my office.

ATTEST:

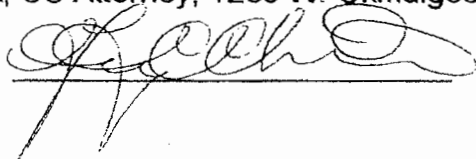
WILLIAM B. GUTHRIE

U.S. District Court
Eastern District of Oklahoma
BY 
Deputy Clerk

DATED Nov. 18, 2005

CERTIFICATE OF SERVICE Notice of Appeal 11-17-05

A copy of this notice of appeal has been served upon the United States attorney by first class mail, postage paid and addressed to Jeffrey Gallant, AUSA, US Attorney, 1200 W. Okmulgee, Muskogee, Oklahoma 74401.



A handwritten signature in cursive script, appearing to read "Jeffrey Gallant", is written over a horizontal line.

17 Nov 2005

United States Court of Appeals
Tenth Circuit

COURTS OF THE UNITED STATES

NOV 21 2005

FOR THE TENTH CIRCUIT

United States of America)	
Plaintiff/Appellee	)	case no. _____
)	
v.	)	Appellant Emergency
	)	Motion to Stay Procedure
Jimmy C. Chisum	)	in District Court
Defendant/ Appellant	)	Eastern District of
Propria Persona	)	Oklahoma
)	

Defendant appellant hereby moves the Tenth Circuit in its supervisory role of the USDC EDOK to immediately stay all procedures in the District Court.

On 23 August, 2005, after acknowledging the challenge to jurisdiction, Magistrate Judge West USDC, EDOK proceeded to arraignment without ever addressing the Due Process or Jurisdictional challenge. West has no authority delegated in 28 USC to arraign Felonies, an article III power.

On September 22, 2005, at pre trial conference, after acknowledging the challenge to jurisdiction Judge White proceeded to other matters without proof of jurisdiction; or due process, then ruled all the Law and case history from US Supreme Court frivolous. No proof of Jurisdiction was ever provided, and Jurisdiction was not decided other than to call Supreme Court Authorities frivolous.

All 7 due process, or Jurisdictional motions by defendant based on Religion, Constitution, Statute, code, and Supreme Court authority were termed frivolous with no explanation, and both motions for finding of facts and conclusions of law were summarily denied as frivolous.

The court ordered a bill of particulars and then did not hold the prosecution to the standards of particulars. Jurisdiction does not appear on the face of the pleadings nor on the indictment nor in the Bill of Particulars. The railroad has left the station.

On 17 November, 2005 Appellant filed with the Clerk of the USDC, EDOK the Notice of appeal by collateral issue related to first amendment issues and rights.

On 18 November, 2005 Lisa from the Clerk's office called Standby Council Steven Knorr to notify him that Judge white wanted to see authorities why the proceeding should be stayed.

On 19 November, 2005 Appellant express mailed authorities to EDOK, and telephoned offering to fax authorities but was not provided fax number.

On 21 November, 2005 Judge white received the authorities including US v PRE INC from the 10th Cir.

On 22 November, 2005 Appellant received telephonic information that Judge White had decided the authorities

were not sufficient to persuade him to postpone trial scheduled for 28 November, 2005.

On 22 November, 2005 Appellant received by US Mail the docket sheet which had been forwarded to 10th Cir with Notice of Appeal. Appellant has not received 10th Cir case number, and will submit Pro Per docketing statement later today by separate mail.

If trial proceeds the 1st amendment issues will certainly have been abused and trampled, may be compromised, or lost all together; thus further depriving Appellant of his first amendment rights to free exercise and to redress.

Wherefore Appellant respectfully asks this honorable court to immediately stay all proceedings in CR 05-43 WH in the USDC, EDOK.

Respectfully Submitted this 24th day of November, 2005, all rights reserved and all liberties granted by almighty God defended.


Jimmy C. Chisum, Propria Persona
Appellant

Jimmy C. Chisum
c/o 48412 N. Black Canyon Hwy #356
New River, Arizona 85087
(623) 465-5068

FILED
United States Court of Appeals
Tenth Circuit

Appellant, In Pro Per

DEC 18 2005

Clerk

In the United States Court of Appeals
In and for the Tenth Circuit

United States of America)	
	)	No. 05-7124
Plaintiff/Appellee)	
	)	ON APPEAL FROM THE
v.	)	UNITED STATES DISTRICT COURT
	)	EASTERN DISTRICT OF OKLAHOMA
Jimmy C. Chisum)	
	)	District Court No. 05-CR-43-W
Defendand/Appellant)	
)	

MOTION TO RECONSIDER

The Appellant moves this Court for its Order Reconsidering its November 29, 2005 Order and Judgment. The grounds for this motion are that the court incorrectly concluded that the Plaintiff's appeal did not involve grounds for an appeal under the "collateral order doctrine".

Though not as artfully crafted as an attorney, the first amendment objections to the prosecution were delineated in the Plaintiff's motion to dismiss and are fully deserving of this Court's consideration on their merits. The Motion is attached hereto and marked as Exhibit A. Thus, the denial of the Motion to Dismiss clearly falls within the ambit of those circumstances that would entitle the Plaintiff to seek an appeal under the "collateral order doctrine".

That the original Motion for Stay "appears" to be untimely is irrelevant. At the moment the Notice of Appeal was filed, even under the "collateral order doctrine" the trial court was divested of its subject matter jurisdiction to proceed on the merits of the case, until this Court's final disposition of the merits of the Plaintiff's appeal. It was only when it became clear that the trial court was proceeding forward with the trial that made the filing of the Motion for Stay necessary. The appearance of untimeliness of the Motion was only exacerbated by the decision to proceed with the trial and the intermediate Thanksgiving holiday.

More importantly, jurisdiction or the lack thereof, is jurisdiction, and no matter how untimely the Motion for Stay may have appeared to be, it was the filing of the Notice of Appeal that prohibited the trial court from proceeding. Even if the Court currently fails to see the underlying merits supporting Plaintiff's capacity to proceed with an appeal under the "collateral order doctrine", because this Court's jurisdictional conclusions are inextricably intertwined with the merits of the appeal, the more prudent course is to defer this Court's consideration of the jurisdictional question and reexamine the jurisdiction after submission of the briefs on the merits of the appeal. Cf. *Farr v. United States*, 990 F.2d 451, 455 n.1 (9th Cir., 1993). *Careau Group v. United Farm Workers*, 940 F.2d 1291, 1293 (9th Cir. 1991). See also *Rosales v. United States*, 824 F.2d 799, 803 (9th Cir. 1987) ("A [trial] court may hear evidence and make findings of fact necessary to rule on the subject matter jurisdiction question prior to trial, if the jurisdictional facts are not intertwined with the merits."). The same would hold true in this Court.

Accordingly, and for the foregoing reasons, this Court should stay all further proceedings in the trial Court and should this Court ultimately accept jurisdiction and proceed on the merits of the appeal, this Court must order the trial Court to vacate the verdict of guilt.

RESPECTFULLY SUBMITTED this 12th day of December, 2005.



Jimmy C. Chisum
c/o 48412 N. Black Canyon Hwy #356
New River, Arizona 85087
(623) 465-5068
Appellant, In Pro Per

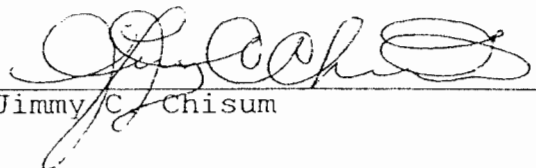
CERTIFICATE OF SERVICE

I, Jimmy C. Chisum, certify that a copy of the Motion for Reconsideration was served upon the Appellee mailing the same in a plain envelope postage pre-paid on December 14, 2005, Jeffry A. Gallant, Assistant United States Attorney, 1200 West Okmulgee, Muskogee, Oklahoma 74401, Attorney for Plaintiff/Appellee

I further certify, that the original and four (4) copies of the Motion were mailed to this Court on December 14, 2005.

Dated

Dec 12, 2005



Jimmy C. Chisum

APPENDIX B
STATUTORY PROVISIONS

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CONSTITUTIONAL AUTHORITIES

Constitution of the United States of America

First Amendment, Constitution of the United States of America

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

STATUTORY PROVISIONS

United States Code

Sec. 1291. Final decisions of district courts

The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292(c) and (d) and 1295 of this title.