No. 03-9977

In the
Supreme Court of the United States

In re John Philip Ellis, Sr.

Verified Petition (Application) for the Issuance of a
Writ of Habeas Corpus under the Common Law of England Which Is the
Applicable Law in Force in the State of Florida,
A **Perfect Right** Exercised by a Citizen and Inhabitant of Florida

* * * The Petitioner is **Unlawfully** Incarcerated * * *
This Petition is Entitled to Preference

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OFFICE OF THE CLERK
SUPREME COURT, U.S.

John Philip Ellis, Sr., sui juris
in care of Reg. No. 53601-004, Unit E
FEDERAL PRISON CAMP
P.O. BOX 699
ESTILL, SC 29918-0069

Grievances and Issues Presented

Grievances

The instant Petition presents six (6) main grievances and issues to the Court. They are:

1. Failure of a UNITED STATES DISTRICT COURT (USDC) to recognize and **honor** the true character, capacity, and standing of the Petitioner (Reason to Grant the Petition I. and Appendix IV.).

2. Failure of the USDC to uphold the Petitioner's **perfect right**, as a Citizen and Inhabitant of Florida, to adjudication of an alleged violation **arising under** a "Law of the United States" in an Article III Court by a jury of his peers before a justice or judge exercising the **judicial Power** of the United States (Reason II. and Appendix V. - Exhibit E - 2).

3. Failure of the USDC to have a **valid** indictment upon which to proceed against the Petitioner (Reason III. and Appendix II.).

4. Failure of the USDC to seat Grand or Petit jurors who were the Petitioner's peers (Reason IV. and Appendix IV. - Exhibit D - 1).

5. Failure of the USDC to act **in Law** while deceptively purporting to proceed under a "Law of the United States." The USDC may have acted wholly **commercially**, without proper disclosure to the Petitioner, all to the detriment of the Petitioner (Reason V. and Appendix III.).

6. Failure of the United States to be a party to the case (Reason VI. and Appendix V. - Exhibit E - 2).

Issues

I. Can UNITED STATES OF AMERICA (USA*), acting through a UNITED STATES DISTRICT COURT (USDC), other than with force of arms, make a Citizen and Inhabitant of the State of Florida, the constitutional Republic, **involuntarily become** (or be treated as) a "citizen of the United States," a person **subject to** the **jurisdiction thereof** (and **liable for** the public Debt of the United States) without violating the Citizen's Thirteenth Amendment right under the Constitution for the United States of America of 1789 C.E. (the Constitution)?

Does USA* "lawfully" force a Citizen and Inhabitant of Florida to waive any rights under the common law as secured by his State's Constitution and Laws or the Federal Constitution?

II. Did Congress confer either the full or at least partial **judicial Power** of the United States (Article III of the Constitution) upon a USDC **by a statute**?

Are constitutionally secured rights lawfully protected in a USDC, and is a USDC lawfully constrained by the Constitution?

Why is a USDC **secretive** about disclosing its lawfully delegated authority, power, and jurisdiction?

III. Is a **valid** indictment **not** a jurisdictional requirement (if an indictment is not knowingly and expressly waived) for prosecuting an American State Citizen for a felony or infamous crime in a USDC located in one of the fifty (50) independent Republic States?

Is a found indictment's **return in open court** to a Magistrate **not** a **jurisdictional requirement** in order to evidence the creation of a **valid** indictment and the jurisdiction for a USDC?

Does a USDC acquire "criminal jurisdiction" over cases **arising under** a "Law of the United States" in any manner other than by indictment?

IV. How do "**residents**" (aliens) in a State (citizens of the United States) qualify to "lawfully" judge the **Citizens** of the State when the residents themselves do not know of, possess, or enjoy all the rights of the Citizens?

V. Does a USDC derive jurisdiction under any agreement or contract (intended, implied, parol, written, tacit, construed or constructed by the Court) and/or by the "Defendant's" purported "acceptance" (in any manner) of any "benefit(s)" offered by the United States?

Does the USDC apply "criminal penalties" through "private law" in a "civil matter" adjudicated therein?

Are the "sections" of the UNITED STATES CODE the "private law" of USA*?

VI. What conclusive, certified documentary evidence is there that shows that USA* lawfully exists and identifies where it is located or what its geographical boundaries are?

Can the United States or any agency, instrumentality, or subsidiary, agent, employee, officer, or servant thereof violate the Law of Nations or the Constitution with either **absolute** or **qualified** immunity from prosecution?

List of Parties

The Petitioner:

John Philip Ellis, Sr.

incarcerated at:

in care of reg. no. 53601-004
FEDERAL PRISON CAMP
POST OFFICE BOX 699
ESTILL, SC 29918-0699

The Respondents:

UNITED STATES OF AMERICA
and
ATTORNEY GENERAL OF THE UNITED STATES

Represented by:

THE SOLICITOR GENERAL OF THE UNITED STATES
THEODORE B. OLSEN
DEPARTMENT OF JUSTICE
950 PENNSYLVANIA AVE., N.W. ROOM 5614
WASHINGTON, D.C. 20530-0001

Statement of the Case

In the month of July, in the year 1995, the UNITED STATES DEPARTMENT OF THE TREASURY - INTERNAL REVENUE SERVICE (IRS) - CRIMINAL INVESTIGATION DIVISION (CID) launched an unlawful investigation (IRS-CID investigation) of John Philip Ellis, Sr., and of certain common-law Trusts (non-grantor trusts) which were created by **private contracts.** The Trusts are lawful. The Trusts are recognized as lawful associations of people under the Laws of Florida. The IRS-CID investigation centered mainly on International Asset Protection Trust and American Asset Protection, though numerous other like trusts were also involved. John Philip Ellis, Sr., was a party to all of the trusts.

During the early part of the IRS-CID investigation, IRS-CID SPECIAL AGENT ANDREW SCHMIT (SCHMIT) seized certain certified documentary evidence and other information in raids on the Petitioner's domicile and on the two places where he worked. In the information SCHMIT seized were copies of several Affidavits which had been filed in the public records of Okeechobee, Martin, and Palm Beach Counties in Florida evidencing the fact that the Petitioner **chose not to be a "person" subject to** the jurisdiction of the United States under the Fourteenth Amendment to the Constitution or otherwise. Having seized, and being in possession of these Affidavits and other documents, and possessing certain other information, SCHMIT knew or should have known that neither John Philip Ellis, Sr., nor any of the trusts

After a six (6) week long "trial", on August 17, 2001, the "homage jury" found JOHN PHILIP ELLIS, SR., guilty of two of the six counts of the purported **INDICTMENT** (counts one and two). Immediately after the "homage jury" delivered its "verdict," the USDC-SDOF again seized John Philip Ellis, Sr., and re-incarcerated him in the FDC-Miami, even though John Philip Ellis, Sr., was not named on the **INDICTMENT** nor was he subsequently named on the "Judgement In A Criminal Case." (Appendix III. - Exhibit C - 6)

On January 25, 2002, JOHN PHILIP ELLIS, SR., was sentenced to one hundred twenty-six (126) months of incarceration, assessed a payment of two hundred (200) FEDERAL RESERVE dollar denominated NOTES, and given three (3) years of supervised release.

On March 28, 2003, John Philip Ellis, Sr., was removed from FDC-Miami and transferred to the COLEMAN FEDERAL CORRECTIONAL COMPLEX and placed in the "Low" security prison there (FCC-Coleman).

On July 7, 2003, John Philip Ellis, Sr., was removed from FCC-Coleman and transferred to the FEDERAL PRISON CAMP in Estill, South Carolina (FPC-Estill), where he remains **unlawfully** incarcerated.

Since August 18, 2001, John Philip Ellis, Sr., in comity with the United States and acting **honorably** commercially, has attempted to exhaust all available **legal** remedies, only to be denied, "procedurally defaulted," **dishonored**, or ignored at every step. The Petitioner has worked continuously and diligently to

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 04-80181-CIV-HUCK/WHITE
CASE NO. 99-8145-CR-HUCK

FILED by _____ D.C.
MAR 18 2004
CLARENCE MADDOX
CLERK U.S. DIST. CT.
S. D. OF FLA.

JOHN PHILIP ELLIS, SR.

Movant,

v.

UNITED STATES OF AMERICA,

Respondent.
_____/

CLOSED CIVIL CASE

ORDER OF SUMMARY DISMISSAL

THIS CAUSE is before the Court on Movant John Philip Ellis, Sr.'s Verified Petition and Presentment for: (1) Correction of Errors (2) Immediate Release of the Petitioner (3) Full Discharge of Charges and Judgment Liability (4) Closure of the Case [Case No. 04-80181, DE #1], filed on February 27, 2004[1] [hereinafter "the Verified Petition"], and Verified Bill of Equity and Verified Notice of Default, Verified Notice of Fraud upon the Jury, Verified Notice of Fraud upon the Court, Verified Notice of Fraud upon John Philip Ellis, Sr., Verified Declaration of the Non-Existence of the Defendant, Verified Declaration of the Non-Existence of the Plaintiff, and Request for an Emergency Evidentiary Hearing [Case No. 99-8145, DE #713], filed on March 8, 2004 [hereinafter "Verified

[1] A *pro se* prisoner's motion to vacate sentence or petition for writ of habeas corpus is deemed to be filed on the date that it was signed, executed, and delivered to prison officials, for purposes of the one-year limitations period prescribed in the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). *Adams v. United States*, 173 F.3d 1339 (11th Cir. 1999). However, the movant did not sign and date the pleading itself, but instead signed and dated (on February 22, 2004) one of the exhibits. Therefore, because it is not clear when the movant signed, executed and delivered to prison officials the petition, the Court deems it filed as of the date it was received by the Clerk of Court, on February 27, 2004.

Exhibit C

Scanned Image - 9:04CV80181 Document 3 page 1 Fri Mar 19 00:00:00 2004

Bill"].[2] The Court has reviewed the Verified Petition, the Verified Bill, supporting memoranda, the record, and all pertinent portions of the underlying criminal case file. The movant has filed *pro se*.

BACKGROUND

The movant was charged by Indictment with conspiracy to defraud the United States by impeding the collection of income taxes (Count 1), obstruction of justice (Count 2), and four counts of evasion of reporting requirements, in violation of 31 U.S.C. §§5313, 5322(a) and 5342(a)(3), and 18 U.S.C. §2 [DE #1]. He proceeded to trial *pro se*, with appointed back-up counsel, and was found guilty as charged as to Counts 1 and 2 following a jury verdict [DE #457]. On January 24, 2002, the movant was sentenced to 60 months in prison as to Count 1 and 66 months as to Count 2, the terms to run consecutively, followed by three years of supervised release [DE #585]. The movant appealed, and the judgment was *per curiam* affirmed. *Koch, et al. v. United States of America*, No. 02-10662 (11th Cir. June 30, 2003). No petition for writ of certiorari was filed, and the judgment subsequently became final.[3] Although the movant also filed a motion for judicial notice with the Eleventh Circuit Court of Appeals, the motion was *per curiam* dismissed as improperly brought. *Ellis v. United States of America*, No. 03-11418 (11th Cir. March 3, 2004).

In his "Verified Petition," the movant alleges a number of claims, including challenges to the Court's subject matter jurisdiction and the validity of the indictment, a claim for ineffective assistance

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[2] The movant incorporates the Verified Bill into the Verified Petition for purposes of 28 U.S.C. §2255. The Verified Bill is properly verified pursuant to Rule 2, Rules Governing Section 2255 Proceedings for the United States District Courts.

[3] The Supreme Court has stated that a conviction is final when a judgment of conviction has been rendered, the availability of appeal exhausted, and the time for a petition for certiorari has lapsed or a petition for certiorari finally denied. *Griffith v. Kentucky*, 479 U.S. 314, n. 6 (1986).

Scanned Image - 9:04CV80181 Document 3 page 2 Fri Mar 19 00:00:00 2004

of counsel, as well as a host of civil claims based on the movant's theory that the Court was entering into a commercial transaction with the movant when it rendered the judgment in the underlying action.

The Court notes that the movant does not cite to any provision of 28 U.S.C. §2255 in his "Verified Petition." However, in his Verified Bill, the movant requests that this Court incorporate his allegations therein as part of his 28 U.S.C. §2255 motion, if his Verified Petition is so construed. Because the relief that the movant requests includes claims that challenge his sentence, the Court will deem the movant's Verified Petition, as amended by his Verified Bill, to be a motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. §2255.

LEGAL STANDARD

Pursuant to 28 U.S.C. §2255,

> [a] prisoner in custody under sentence of a court. . .claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

However, despite this broad language, violations of federal law are cognizable under §2255 only if they involve a "fundamental defect" causing a "complete miscarriage of justice." *Davis v. United States*, 417 U.S. 333, 346 (1974). Relief under §2255 is "reserved for transgressions of constitutional rights and for that narrow compass of other injury that could not have been raised on direct appeal and would, if condoned, result in a complete miscarriage of justice." *Richards v. United States*, 837 F.2d 965, 966 (11th Cir. 1988) (internal citation omitted).

Moreover, a court may dismiss a motion attacking a sentence without notice to the United

Scanned Image - 8:04CV80484 Document 3 page 3 Fri Mar 19 00:00:00 2004

States attorney if "the files and records of the case conclusively show that the prisoner is entitled to no relief." 28 U.S.C. §2255. In addition, a hearing is not required "on patently frivolous claims or those based on unsupported generalizations or those affirmatively contradicted by the record." *Holmes v. United States*, 876 F.2d 1545, 1553 (11th Cir. 1989) (quoting *United States v. Guerra*, 588 F.2d 519, 521 (5th Cir. 1979)); *see also Anderson v. United States*, 948 F.2d 704, 706 (11th Cir. 1991) (no evidentiary hearing required where the record conclusively shows that the defendant is not entitled to relief); *Machibroda v. United States*, 368 U.S. 487, 495 (1962) (a hearing is not required where a defendant's claims are based solely on "conclusory, or palpably incredible" allegations); *Tejada v. Dugger*, 941 F.2d 1551, 1559 (11th Cir. 1991) (a petitioner is not entitled to habeas corpus relief when his claims are merely conclusory allegations that are unsupported by specifics or wholly incredible in the face of the record).

ANALYSIS

The movant makes a number of allegations that encompass jurisdictional, constitutional, procedural and contractual claims. A review of the "Verified Petition" shows that "the files and records of the case conclusively show that the prisoner is entitled to no relief." 28 U.S.C. §2255; Rule 4 of the Rules Governing §2255.

First, the movant alleges that he has "conclusively determined that the Court *is not* a Court exercising the *judicial* Power of the United States." The movant's contentions are not supported by the record, and are without merit. The Court takes judicial notice that it is indeed a federal court, and has been duly authorized under the Constitution and laws of the United States to hear cases and controversies brought under 28 U.S.C. §2255, 31 U.S.C. §§5313, 5322(a) and 5342(a)(3), and 18 U.S.C. §2. The Court finds that it had subject matter jurisdiction of the case when the judgment at