[redacted]

No. _____

03-9383

IN THE

SUPREME COURT OF THE UNITED STATES

Rodney Eugene Smith — PETITIONER
(Your Name)

VS.

UNITED STATES OF AMERICA RESPONDENT(S)

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

The petitioner asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed *in forma pauperis.*

[ ] Petitioner has previously been granted leave to proceed *in forma pauperis* in the following court(s):

_____

_____

[✓] Petitioner has **not** previously been granted leave to proceed *in forma pauperis* in any other court.

Petitioner's affidavit or declaration in support of this motion is attached hereto.

Completed under protest as the Petition is for true habeas corpus as a matter of right and no charge be made upon Petitioner.

Rodney Eugene Smith
(Signature)

Supreme Court U.S.
FILED
MAR 9 2004

QUESTIONS/GRIEVANCES PRESENTED

As an American State Citizen, the following are just some of the acts which may have violated Petitioner's unalienable Rights as secured and guaranteed by the Constitution for the United States of America 1789 A.D. and the Articles in Amendment thereto of 1791 A.D., in particular Amendments 4, 5, 6, 7, 8, 9, and 10.

1. Are Internal Revenue Service Agents Congressionally mandated "Laws Enforcement Officer," and if they are not, was Petitioner's Rights violated when said Agents filed complaints, and sought warrants without permission of the United States Attorney and Congressionally mandated Law? See C.F.R. 60.1 and 60.2, 26 C.F.R. 1.274-5T(k)(6)(ii), and Public Law 105-206.

2. Did the Prosecuting Attorney violate Petitioner's Rights when it failed to get permission from the U.S. Department of Justice to prosecute; in particular Form 9131?

3. Did Magistrate Judges fail to protect Petitioner's Rights when they neglected to abide by 28 C.F.R. 60.1 and 60.2, and Federal Rules of Criminal Procedure 41(a)?

4. Did the Magistrate Judges violate Petitioner's Right to due process of law when they "arraigned" and "plead" for Petitioner, without his consent, in an Article I court setting, and without authority of F.R.CR.P. Rules 5(c) and 10, and Title 28 USC, § 636?

5. Did Judge Faber, sitting as judge in an Article I court, violate Petitioner's Rights to due process of law when he allowed the Magistrate judges to "arraign" and "plead" for Petitioner?

6. Was Petitioner violated when he was brought to trial in an Article I court not possessing **judicial Power** on an indictment not "returned in open court by the grand jury foreperson before a magistrate judge" pursuant to F.R.CR.P. 6(f) and also no concurrence form or record of the return appears on the public record in violation of Title 28 USC, § 753(b)?

7. Was Petitioner violated when he was arraigned, tried, and convicted in a United States District Court (Article I court) not possessing the **judicial Power** of an Article III Court as mandated by the Constitution and Congress?

8. Was Petitioner violated when Congressionally mandated implementing regulations along with the statutes were not on the charging instruments, thus the Grand Jury and Petit Jury were not properly informed of the alleged charges? See Title 44, § 1505-10.

9. Was Petitioner's 4th Amendment Right violated when Federal Agents presented my wife an invalid search and seizure warrant as there was no affidavit attached to the warrant so she could determine what was to be searched or seized? Furthermore, was the warrant illegally obtained?

10. Was Petitioner's Rights violated when the corporate existence of the "United States" was challenged by Affidavit and no response was received?

11. Petitioner was not charged with "Laws of the United States" (statutes), but "codes" which are not law. Were due process of law and Rights violated?

12. Did Petitioner have a Right to records which are to be maintained by the Clerk of Court for a period of 10 years and be available for public access pursuant to Title 28 USC, § 753(b)?

13. Were Petitioner's Rights and due process of law denied for alleged "trust relationship," agreement or contract with the United States?

IN THE
SUPREME COURT OF THE UNITED STATES

VERIFIED EMERGENCY PETITION FOR WRIT
OF HABEAS CORPUS OR WRIT OF PROHIBITION TO
THE PRIVATE SIDE OF THE COURT OR IN THE ALTERNATIVE
AN APPROPRIATE WRIT GRANTING RELIEF OF GRIEVANCE

OPINION

Petitioner Notices the Honorable Court of the following "Habeas Corpus as a Matter of Right" which were presented to the UNITED STATES DISTRICT COURT, Appellate Court, West Virginia Circuit Court, and the West Virginia State Supreme Court, but was denied a remedy each time.

The UNITED STATES DISTRICT COURT (USDC) and the Appellate Court apparently have no authority to hear a Habeas Corpus as a Matter of Right as the District Court converted the writ to a Title 28, § 2241 statutory habeas corpus without Petitioner's consent and denied the 2241. The Habeas Corpus as a Matter of Right was appealed to the Circuit Court and again was denied.

Therefore, Petitioner requests the Honorable Supreme Court examine not only the process and pleadings of the record, but also the facts and evidence presented herein.

The IRS Agents who brought the "criminal charges" against Petitioner, are not "law enforcement officers" but investigative agents for an alleged agency of a corporate entity "United States" which has legislative power to compel performance upon the letter of its "statute(s)" upon all persons subject to its jurisdiction. The only due process its legislative courts recognize is the right to be heard on the facts of the case.

The corporate Plaintiff in this controversy has made an unproven conclusion of law that Petitioner is among those persons subject to its jurisdiction, and has abandoned his status in Article IV, § 4 of the Constitution guaranting a Republican form of government. Furthermore, Petitioner claims

his "status" as "Ambassador" or "Public Minister" as noticed in the Attached Apostilles. See Appendixs A and B.

Petitioner claims his guaranted, fundamental and unalienable rights stemming from both the National and State Constitutions to full due process of law in all criminal actions against me, meaning I am only subject to judicial power, not legislative power.

Wherefore, Petitioner seeks the protection of this Supreme Court from the excessive zeal of a corporate government, trusting this Honorable Court will assume a neutral stance of Law and provide the remedy Petitioner seeks praying the Court considers the fact that a court which lacks subject matter and/or in personam jurisdiction cannot render a valid judgment.

The Opinions follow:

The opinion of the United States Court of Appeals appears at Appendix C and affirmed the judgment of the District Court. Petitioner was not presented the written opinion.

The UNITED STATES DISTRICT COURT FOR SOUTHERN WEST VIRGINIA dismissed with prejudice Petitioner's Writ of Habeas Corpus. See Appendix D The district court, without consent of Petitioner, construed his Writ of Habeas Corpus as a Matter of Right into a Statutory Habeas Corpus under Title 28, § 2241.

The STATE OF WEST VIRGINIA denied Petitioner's appeal from the Raleigh County Circuit Court, West Virginia. See Appendixs E and F.

The only U.S. courts available in my detention area are Article I courts, which have no authority to entertain True Writ of Habeas Corpus. See page 26.

STATEMENT OF THE CASE

On December 7, 2000, Petitioner was arrested by West Virginia State Police and immediately turned over to IRS agents. IRS agents and other Federal agents then searched and seized property from Petitioner's house and the land without a valid search and seizure warrant in possession. The agents held my wife, Bonnie Lee Smith, hostage for some six (6) hours. The search warrant presented her contained no Affidavit detailing what was to be searched and seized. See Appendix G.

Petitioner was released on personal appearance Bond, and appeared before Magistrate Feinberg for arraignment, a violation of Federal Rules of Criminal Procedure Rule 5(c).

Petitioner challenged the "corporate existence" of the United States on December 26, 2000 to which no response was ever received. See Appendix H.

All proceedings were "Accepted for Value" and later change to "Accepted for Value Conditionally upon showing proof of claim (jurisdicition). See Appendix I-1 through I-29).

The Article III requirement that I be tried in an Article III Court was challenged along with various violations of due process procedures, violations of Congressionally mandated statutes governing the IRS and government acts and actions, all to no avail. See Appendixs I-1 through I-27, the filing of May 21, 2001 as Appendix J.

Petitioner refused to participate in trial proceedings. When asked by the Court to question witnesses or make comments or attend side bar conferences, I steadfastly stated that "I would be glad to participate upon showing proof of claim" or words to that effect.

The jury found me guilty and when the Court pronounced sentence, I refused the sentence as "Conditions of Acceptance were not met." See Appendix K.

On October 21, 2002, a VERIFIED EMERGENCY PETITION to ARREST JUDGMENT for LACK OF SUBJECT MATTER JURISDICTION with INCORPORATED MEMORANDUM OF LAW was filed citing the core requirement of F.R.CR.P. Rule 6(f). See Appendix L.

On November 4, 2002 and Addendum to Emergency Petition was filed. See Appendix M.

On November 7, 2002, the district court responded with an "Order and Notice" wherein the court offered to Petitioner the opportunity to have the Emergency Petition be re-characterized as a 2255 motion or rule on the merits of the motion (assumed to be the Emergency Petition) as filed. See Appendix N.

A response was filed November 25, 2002 to the court's offer wherein it was requested to have the motion (assumed to be the Emergency Petition) ruled on the merits. See Appendix N-1

On January 2, 2003, Petitioner filed a "Notice to the Court" defining the term "merits of the case." See Appendix O.

In a "Memorandum Opinion and Order" filed January 13, 2003, the court ruled that the Emergency Petition was construed to be a 2255 motion in violation of the agreement Petitioner had with the court. See Appendix P.

Petitioner appealed to the 4th Circuit Court of Appeals and was again denied in an UNPUBLISHED and unsigned "alleged order." See Appendix Q.

On June 25, 2003, Petitioner sent a letter to the Prosecuting Attorney requesting certified copies of Prosecutive Memoranda authorizing my prosecution from the Department of Justice. See Appendix R.

A "Request for Production of Documents Pursuant to Federal Rules of Civil Procedure Rule 34" was filed July 17, 2003 for Petitioner. See Appendix S.

On July 22, 2003, the district court denied the Request for Production of Documents stating it lacked subject matter jurisdiction or a legally cognizable ground to grant motion. See Appendix S-1.

August 7, 2003, Petitione filed a "Motion for Order Compelling Disclosure and for Appropriate Sanctions." See Appendix S-2

On August 21, 2003, the district court again re-charaterized the July 22, 2003 filing as a 2255 motion without Petitioner's consent. See Appendix S-3.

A "Petition for Redress of Grievance as Guaranteed by the Constitution for the United States of America" was filed August 21, 2003 . See Appendix T.

On September 2, 2003 Petitioner filed a "Notice for Proof of Jurisdiction." See Appendix U.

On September 9, 2003, the court filed a "Memorandum Opinion and Order" in response to the "Motion to Compel" of August 7, 2003, and for reconsideration (assumed to be the Petition for Redress of Grievance) and again, using the same wording, construed the filing as a 2255 motion without Petitioner's consent. See Appendix V.

On September 22, 2003 Petitioner filed a response to September 9, 2003 Memorandum and Order in which Petitioner called the court's order off point and frivolous. See Appendix W.