

Handwritten: 1:07-cv-02099-EGS
Signature: [Handwritten Signature]
 3/31/08

RECEIVED

**UNITED STATES DISTRICT COURT
 FOR THE
 JUDICIAL DISTRICT OF COLUMBIA**

NANCY MAYER WHITTINGTON, CLERK
 U.S. DISTRICT COURT

CLAYTONIUS LEWIS,

Petitioner/Plaintiff,

vs.

GONZALES, et. al.,

Respondent(s)/Defendant(s).

§
§
§
§
§
§
§
§
§
§
§

No. 1:07-CV-2099 - EGS

**MOTION FOR RECONSIDERATION
 OF ORDER ON
 MEMORANDUM AND OPINION**

COMES NOW, Claytonius Lewis, pro-se, in want of counsel, and respectfully moves this court to reconsider it's decision of January 10, 208. Dismissing Petitioner's Habeas Corpus Application. This Court ruled in it's Memorandum Opinion that Petitioner's relief existed in filing a \$2255, to challenge a judgment of conviction. Petitioner clearly challenges the condition of which he was [is] incarcerated. Outlined in his Memorandum of Law w/ Incorporated Points & Authorities. Additionally, attached to the original filing Petitioner included an Administrative and Quasi-Judicial Notice [Show Cause] for this Court t issue to the Respondent's placing the burden upon them to Show Cause why the Writ should not issue.

ARGUMENT

Counsel for Petitioner failed ab initio to raise or challenge the fact that the Federal Statutory Provisin under which the Petitioner was charged was never enacted by Congress, unpromulgated in the Federal Register and possessed no public implementing authority in the Federal Code of Regulation. The Petitioner would like

the record to reflect that the Federal Statutory Provisions under which he is charged, are in fact commercial regulatory statutes have not been promulgated in the Federal Register or the Code of Federal Regulations, as required under 44 U.S.C. §1505, et. seq., and 5 U.S.C. §601. Therefore, it is arguable that the court has jurisdiction to adjudicate sanctions for violations of unpromulgated regulatory statutes. The Petitioner thus advances with supporting authorities that no documentation can be shown that the enumerated subsections under which the accused party is charged, have published regulations, thus, these Federal Statutory Provisions under which the Petitioner is charged, lack the force and effect of law, when misapplied beyond parameters of Rule 54(c) - Acts of Congress, of Federal Rules of Criminal Procedure.

2.

In Foley Brothers v. Filardo, 336 U.S. 281 (1949), the high court stated, " It is well established as a principle of law, that all federal legislation applies only within the territorial jurisdiction of the (federal) United States unless contrary intent appears." In order for a contrary intent to be facilitated, delegations of authority and implementing regulations must be published in the Federal Register.

3.

Fortunately, there is a readily available method for disclosing which Statutes at Large, and which statutes contained within the 50 Titles of the United States Code, possess either restricted application or general applicability to the several States and the population at large. This method is through consulting the Federal Tables of Authority and Rules.

4.

In Morning v. Family Publications Service, Inc., 411 U.S. 356, 369 (1973). In the framework of criminal prosecution, unclarity

in the statute or a regulation issued thereunder, is, enough to resolve doubts in favor of the defendant.

5.

There are fatal defects in the Government's charging instrument: the defense counsel was ineffective in failing to raise or challenge the self-evident and self-declaring defect in the government's charging instrument. The Petitioner argues that an indictment which fails to allege all of the elements of the alleged offense is defective and must be dismissed, where one of the elements is crucial and is in fact in sine qua to the legitimate application of the subsequent charged offense. The charging of the Petitioners offense to an alleged violation of the Federal Interstate Commerce Statute, otherwise Federal Subject Matter Jurisdiction is missing. See, United States v. Pupo, 841 F.2d 1235, the Petitioner argues that an indictment fails to appraise the accused party of what he must be prepared to defend against. Accordingly, an allegation of Interstate Commerce is jurisdiction and as such is an essential element in appraising the Petitioner of the Grand Jury's authority to indict. The Constitutional rights of an accused are violated when modification, at trial or by Court of Appeals acts to broaden the charge contained in the indictment, such modification contradict the very purposes of the Fifth Amendment Grandd Jury requirements. See, United States v. Strone, 361 U.S. 212, 4 L.Ed.2d 252, 80 S.Ct. (expressing similar views). The failure of the government to include in the indictment any charge that the Petitioner's conduct affected Interstate of Intrastate, or any commerce was not cured by the citation of the Statutes. In the sufficiency of an indictment it is the statement of facts in the pleading rather than the Statutory Citation that is controlling. See, United States v. Wuco, 535 F.2d 1225 (9th Cir. 1976). It is elementary that every ingredient of the crime must be charged in the bill, with a general reference note provisions of the statute being insufficient. See, Hale v. United States, 89 F.2d (4th Cir.) and United States v. Berlin, 472

F.2d 1002, 1007 (2nd Cir. 1973), also United States v. Beard, 414 F.2d 1014, 1017 (3rd Cir.) This indictment can be sustained even if the government alleged and proved that the offense had a nexus to commerce. See, United States v. Lopez, at F.3d 1342.

6.

It is in this sense that the Tenth Amendment state but a truism "that all is retained which has not been surrendered." United States v. Darby, 312 U.S. 10, 124, 85 L.Ed. 609, 61 S.Ct. 451, 132 ARL 1430 (1941). As Justice Story put it, "... this amendment is a mere affirmation of what, upon any just reasoning is a necessary rule of interpreting the Constitution. Being an instrument of limited and enumerated power, that what is not conferred is withheld and belongs to the States authority," 3.j. Story Commentaries on the Constitution of the United States 752 (1833). The argument this Petitioner brings to this court is the Federal Government did not have jurisdiction over the geographical location wherein the alleged prohibitive activity took place, in land, which was never ceded to the United States, the interstate commerce element becomes essential to establish jurisdiction and prove every element of the offense. Applying the rationale of the Supreme Court in United States v. Mechanik, 475 U.S. 66, 70, 106 S.Ct. 938, 941, 89 L.Ed.2d 50 (1989) and United States v. Hooker, 841 F.2d 1225, like the decision in Hooker cannot be applied here because the court did have no jurisdiction to try the Petitioner on a count which failed to expressly allege an effect on inter or intra-state commerce. Jurisdiction is lacking if the indictment did not allege a federal crime, by means of a connection with interstate commerce. This action by the prosecutor, would certainly deprive the Petitioner the basic protection, which the guaranty of the intervention of a Grand Jury was designed to secure. For the Petitioner could then be convicted on the basis of charges not found by and perhaps not even presented to the Grand Jury, which indicted him.

7.

There is no Amendment to the Constitution ratified by three-fourths of the sovereign states to provide for nationwide jurisdiction and application of which the party is charged.

8.

The undersigned committed no violations of the Federal Interstate Commerce Clause Statute, nor do the Federal Statutory Provisions under which he is indicted contain language which could interpose a commerce nexus. Thus, there is no showing of Federal Subject Matter Jurisdiction.

9.

The locus in quo where the alleged prohibitive acts of the undersigned took place is a geographical location not within the legislative territorial or admiralty jurisdiction of the Federal Government.

WHEREFORE, the court should be compelled to find it does has jurisdiction in this instant matter, finding that the Petitioner committed no prohibitive acts within the legislative jurisdiction of the Federal United States, or within the reach of interstate commerce, therefore the Petitioner is unlawfully incarcerated and detained in violation of his secured Constitutional rights by way of judgment of the Court in want of jurisdiction.

THEREFORE, the must be released and discharged from Federal custody. In allowing the Government to address this argument presented, it should issue a **SHOW CAUSE ORDER** addressing why it should not issue a writ.

Date: February 25, 2008

Respectfully submitted

Christopher Lewis

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

To all to whom these presents shall come. Greeting:

By virtue of the authority vested in me by the Archivist of the United States, I certify on his behalf,
the seal of the National Archives of the United States, that the attached reproduction(s) is a true and
copy of documents in his custody.



SIGNATURE <i>Richard Hunt</i>	
NAME Richard Hunt	DATE 10/05/06
TITLE Director Center for Legislative Archives	
NAME AND ADDRESS OF DEPOSITORY The National Archives Washington, D.C. 20408	

*U.S. GPO: 1988-442-221/89075

NA FORM 14007A (10-86)

Union Calendar No. 138

80TH CONGRESS
1ST SESSION

H. R. 3190

[Report No. 304]

IN THE HOUSE OF REPRESENTATIVES

APRIL 24, 1947

Mr. ROBSON introduced the following bill; which was referred to the Committee on the Judiciary

APRIL 24, 1947

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

A BILL

To revise, codify, and enact into positive law, Title 18 of the United States Code, entitled "Crimes and Criminal Procedure".

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That Title 18 of the United States Code, entitled "Crimes
4 and Criminal Procedure", is hereby revised, codified, and
5 enacted into positive law, and may be cited as "Title 18,
6 U. S. C., §—", as follows:

367

1 international extradition, including the fees of the com-
 2 missioner, shall be certified by the judge or commissioner
 3 before whom the hearing shall take place to the Secretary
 4 of State of the United States, and the same shall be paid
 5 out of appropriations to defray the expenses of the judiciary
 6 or the Department of Justice as the case may be.

7 The Attorney General shall certify to the Secretary
 8 of State the amounts to be paid to the United States on
 9 account of said fees and costs in extradition cases by the
 10 foreign government requesting the extradition, and the
 11 Secretary of State shall cause said amounts to be collected
 12 and transmitted to the Attorney General for deposit in the
 13 Treasury of the United States.

CHAPTER 211.—JURISDICTION AND VENUE

Sec.

- 3231. District courts.
- 3232. District of offense—Rule.
- 3233. Transfer within District—Rule.
- 3234. Change of venue to another district—Rule.
- 3235. Venue in capital cases.
- 3236. Murder or manslaughter.
- 3237. Offenses begun in one district and completed in another.
- 3238. Offenses not committed in any district.
- 3239. Threatening communications.
- 3240. Creation of new district or division.
- 3241. Jurisdiction of offenses under certain sections.
- 3242. Indians committing certain offenses; acts on reservations.
- 3243. Jurisdiction of State of Kansas over offenses committed by or against Indians on Indian reservations.

14 § 3231. DISTRICT COURTS

15 Offenses against the United States shall be cognizable
 16 in the district courts of the United States, but nothing in
 17 this title shall be held to take away or impair the jurisdiction
 18 of the courts of the several states under the laws thereof.

Union Calendar No. 138

80TH CONGRESS
1ST SESSION

H. R. 3190

[Report No. 304]

A BILL

To revise, codify, and enact into positive law,
Title 18 of the United States Code, entitled
"Crimes and Criminal Procedure".

By Mr. ROSSION

APRIL 24, 1947

Referred to the Committee on the Judiciary

APRIL 24, 1947

Committed to the Committee of the Whole House on
the State of the Union and ordered to be printed

PASSED HOUSE
AMENDED

MAY 12 1947

APPENDIX "II"

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

To all to whom these presents shall come. Greeting:

In virtue of the authority vested in me by the Archivist of the United States, I certify on his behalf, by the seal of the National Archives of the United States, that the attached reproduction(s) is a true and correct copy of documents in his custody.



SIGNATURE <i>R. I. Hunt</i>	
NAME Richard Hunt	DATE 10/12/06
TITLE Director Center for Legislative Archives	
NAME AND ADDRESS OF DEPOSITORY The National Archives Washington, D.C. 20408	

*U.S. GPO: 1996-442-221/880

NA FORM 14007A (10-86)

THE SENATE OF THE UNITED STATES

: MAY 14, legislative day, APRIL 21), 1947

Reported twice and referred to the Committee on the Judiciary

Reported by Mr. Wiley, with amendments.

Reported with amendments.

AN ACT

To revise, codify, and enact into positive law, Title 18 of the United States Code, entitled "Crimes and Criminal Procedure".

- 1 Be it enacted by the Senate and House of Representa-
- 2 tives of the United States of America in Congress assembled,
- 3 That Title 18 of the United States Code, entitled "Crimes
- 4 and Criminal Procedure", is hereby revised, codified, and
- 5 enacted into positive law and may be cited as "Title 18,

" as follows:

80TH CONGRESS
1ST SESSION

H. R. 3190

IN THE SENATE OF THE UNITED STATES

MAY 13 (legislative day, APRIL 21), 1947

Read twice and referred to the Committee on the Judiciary

AN ACT

To revise, codify, and enact into positive law, Title 18 of the United States Code, entitled "Crimes and Criminal Procedure".

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That Title 18 of the United States Code, entitled "Crimes
4 and Criminal Procedure", is hereby revised, codified, and
5 enacted into positive law, and may be cited as "Title 18,
6 U. S. C., §—", as follows:

471

Date	Statutes at Large				U. S. Code	
	Chapter	Section	Volume	Page	Title	Section
1946—July 10—	547	-----	60	524, 525	18	641
July 24—	606	-----	60	656	18	409-411
Aug. 2—	735	-----	60	789	18	408e
Aug. 14—	964	“ 3	60	1064	7	1026

* Only the provisions amending section 52 of Act July 22, 1937, ch. 517, title IV, 50 Stat. 581, 582.

Passed the House of Representatives May 12, 1947.

Attest:

JOHN ANDREWS,

Clerk.

tion
521
503,
e, 504
361
647
97a
641e
682
590a
344
420g,
420h
101
647
87
473,
474
282a
469
119
590a
294
90a
50c
62b
97b
18a
11a,
108
18a
ota
1a-
1-1
te,
te,
le
of


APPENDIX “III”

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

To all to whom these presents shall come. Greeting:

By virtue of the authority vested in me by the Archivist of the United States, I certify on his behalf,
under the seal of the National Archives of the United States, that the attached reproduction(s) is a true and
correct copy of documents in his custody.



SIGNATURE 	
NAME Richard H. Hunt	DATE 10/19/05
TITLE Director	
NAME AND ADDRESS OF DEPOSITORY Center for Legislative Archives The National Archives Washington, D.C. 20408	

*Copy for
Printer*

Copy for Printer

Calendar No. *1675*

80TH CONGRESS
1ST SESSION

H. R. 3190

REPORT NO. *1620*

IN THE SENATE OF THE UNITED STATES-

MAY 18 (legislative day, APRIL 21), 1947

Read twice and referred to the Committee on the Judiciary

*Reported by Mr. Wiley, with amend-
ments.*

JUN 14 48 LEG. DAY JUN 1 48

AN ACT

Reported with amendments.

To revise, codify, and enact into positive law, Title 18 of the United States Code, entitled "Crimes and Criminal Procedure".

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 *That Title 18 of the United States Code, entitled "Crimes*
- 4 *and Criminal Procedure", is hereby revised, codified, and*
- 5 *enacted into positive law, and may be cited as "Title 18,*

367

1 international extradition, including the fees of the com-
 2 missioner, shall be certified by the judge or commissioner
 3 before whom the hearing shall take place to the Secretary
 4 of State of the United States, and the same shall be paid
 5 out of appropriations to defray the expenses of the judiciary
 6 or the Department of Justice as the case may be.

7 The Attorney General shall certify to the Secretary
 8 of State the amounts to be paid to the United States on
 9 account of said fees and costs in extradition cases by the
 10 foreign government requesting the extradition, and the
 11 Secretary of State shall cause said amounts to be collected
 12 and transmitted to the Attorney General for deposit in the
 13 Treasury of the United States.

CHAPTER 211.—JURISDICTION AND VENUE

Sec.

3231. District courts.

3232. District of offense—Rule.

3233. Transfer within District—Rule.

3234. Change of venue to another district—Rule.

3235. Venue in capital cases.

3236. Murder or manslaughter.

3237. Offenses begun in one district and completed in another.

3238. Offenses not committed in any district.

3239. Threatening communications.

3240. Creation of new district or division.

3241. Jurisdiction of offenses under certain sections.

3242. Indians committing certain offenses; acts on reservations.

3243. Jurisdiction of State of Kansas over offenses committed by or
 against Indians on Indian reservations.

14 § 3231. DISTRICT COURTS

15 Offenses against the United States shall be cognizable
 16 in the district courts of the United States, but nothing in
 17 this title shall be held to take away or impair the jurisdiction
 18 of the courts of the several states under the laws thereof.

The district courts of the United States shall have
 original jurisdiction, exclusive of the courts of the

LINE TYPE

471

Date	Statutes at Large				U. S. Code	
	Chapter	Section	Volume	Page	Title	Section
1946—July 10—	547		60	524, 525	18	641
July 24—	606		60	656	18	409-411
Aug. 2—	735		60	789	18	408e
Aug. 14—	964	3	60	1064	7	1026

* Only the provisions amending section 52 of Act July 22, 1937, ch. 517, title IV, 50 Stat. 581, 582.

Passed the House of Representatives May 12, 1947.

Attest:

JOHN ANDREWS,

Clerk.

1947
Act
ITALIO

1947—Apr. 16	39	—	61	52	18	413
May 16	73	—	61	97	18	74
June 21	111	—	61	134	18	24
June 23	120	204	61	159	2	253

(7.5) (3) (5) (3) (5 1/2) (4) (5)

80TH CONGRESS
1ST SESSION

RECEIVED
MAR 31 1908

AN ACT

To revise, codify, and enact into positive law,
Title 18 of the United States Code, entitled
"Crimes and Criminal Procedure".

MAY 13 (Legislative day, April 21), 1947

Read twice and referred to the Committee on the
Judiciary

*Reported by Mr. Wiley,
with amendments.*

Reported with amendments.

Wiley

APPENDIX "IV"

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

To all to whom these presents shall come. Greeting:

By virtue of the authority vested in me by the Archivist of the United States, I certify on his behalf,
the seal of the National Archives of the United States, that the attached reproduction(s) is a true and
copy of documents in his custody.



SIGNATURE	
<i>Aloha South</i>	
NAME	DATE
ALOHA SOUTH	<i>Oct. 13, 2005</i>
TITLE	
ASSISTANT BRANCH CHIEF, NWCTB	
NAME AND ADDRESS OF DEPOSITORY	
The National Archives Washington, D.C. 20408	