Docket No. 07-8418

SUPREME COURT of the United States

Jimmy Clayton Chisum

Petitioner, in propria persona
an unrepresented individual

v.

united States of America

Respondent

MOTION/PETITION for REHEARING

Rule 44.2

Intervening Circumstances
and

Other Substantial Grounds not Previously Presented

Jimmy Clayton Chisum, en esse
ID# 84388-008
Federal Prison Camp La Tuna
PO Box 8000
Anthony, Texas 88021

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SIGNIFICANT ISSUES NOT PREVIOUSLY RAISED

1. Whether equal justice under law and judicial integrity are compromised or destroyed when the inferior Appellate Courts are in conflict concerning Petitioner's Constitutionally protected right to Due Process and challenges to Federal jurisdiction?

2. Whether petitioner was wrongly convicted and sentenced when there is no specific statute alleged for imposing a direct tax without apportionment upon the property called labor of a citizen at home within the state of Oklahoma?

3. Whether it is inadequate counsel when appointed appellate counsel failed and refused to represent or advocate the rights, and sincerely held beliefs of the petitioner, favoring rather to argue local interpretation over the statutes passed by Congress, and the precedents of the Supreme Court?

4. Whether it is plain error on part of the Tenth Circuit Court of Appeals when the decision plainly shows that the entire record from teh trial court was ignored in making and writing the decision upholding conviction and sentencing enhancements in violation of the Sixth Amendment?

Table of Authorities Cited

Legal citations

LIST OF Attachments / Appendices

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Certificate of Compliance

Peritioner herewith certifies that this petition for rehearing is in Compliance with Rule 44.2. This Motion is taken in good faith, trusting in justice, and not for delay.

There are significant intervening controlling circumstances that interfered with petitioner earlier raising multiple significant legal issues for the Court's consideration.

Most of the intervening circumstances, at least 51 days was directly caused by the legal process and how inmates are treated for transfer and hearings. Being deprived of the ability to research, write, or address the court intervenes and controls the ability to address significant issues detailed herein that were not able to be raised previously due to the circumstances of transit and temporary incarceration in transfer center and County Jail.

Certified this 11th day of March, 2008 in good faith and good conscience with full awareness of the penalties for perjury and 28 USC 1746.

Jimmy Clayton Chisum, en esse
propria persona petitioner
Federal Inmate # 84388-008
Federal prison Camp La Tuna
PO Box 8000
Anthony, Texas 88021

Docket No. 07-8418

Supreme Court of the United States

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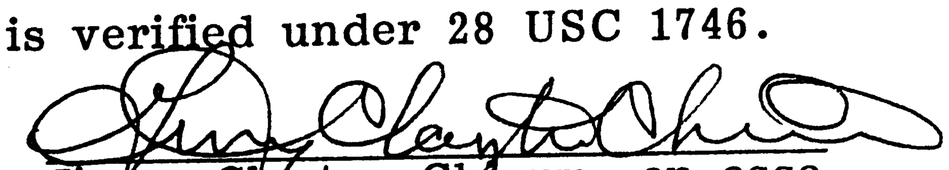
Certificate of Service

Inmate Petitioner hereby certifies that the Motion/Petition for Rehearing has been served upon the Respondent by first class mail, postage paid, and addressed to

Solicitor General of the United States
Room 5614
Department of Justice
950 Pennsylvania Ave. N.W.
Washington, D.C. 20530-0001

and deposited into the institution internal mail system this 11th day of March, 2008.

Persuant to Rule 29 this certification is verified under 28 USC 1746.



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Supreme Court of the United States

Jimmy Clayton Chisum
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Certificate of Mailing

Inmate petitioner hereby certifies that the Motion for Reconsideration was deposited into the internal mail system of the institution on March 11, 2008, first class postage paid, and addressed to the office of the Clerk, Supreme Court of the United States, 1 First St. NW, Washington, D.C.

Done and certified under 28 USC 1746 this 11th day of March, 2008.

Jimmy Clayton Chisum, en esse
propria persona, petitioner
Inmate ID# 84388-008
Federal Prison Camp La Tuna
PO Box 8000
Anthony, Texas 88021

Docket No. 07-8418

Supreme Court of the United States

Jimmy Clayton Chisum
unrepresented petitioner

v.

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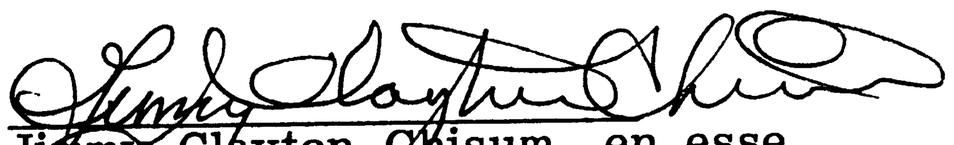
Certificate of a Party unrepresented by Counsel

Petitioner hereby certifies that this motion for rehearing is restricted to the grounds specified in Rule 44 Paragraph 2 and is presented in good faith and not for the purpose of delay.

Certified under penalties for perjury as explained in 28 USC 1746.

Prepared and signed this 11th day of March, AD 2008.



Jimmy Clayton Chisum, en esse
propria persona petitioner, an
unrepresented party
Inmate ID# 84388-008
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Significant Issue No. 1

Affidavit of Petitioner

Petitioner honorably assevers that all the facts and law stated herein are true and correct to the best of his knowledge and ability, with full recognition of the penalties in man's and God's law for lying; my yeas are yeas, I lie not. Affidavit is chosen in part because all the records are not available to petitioner and the law resources to inmates are poor at best.

EQUAL JUSTICE?

Substantial disagreement exists between the Appelllate Circuits concerning Due Process in challenging the extant of Federal Jurisdiction. A plethora of smaller questions will only be mentioned in passing due to the importance of the substantive rights this honorable Court has often defended. Sadly this supervisory court's decisions do not make it to the trial court, at least in Eastern District of Oklahoma, based on Tenth Circuit 1990 decision in Collins, 972 F2d. 619 which is locally interpreted in trial court to mean that all challenges to federal jurisdiction are "frivolous and foreclosed". On every occasion where precedents of this court were raised by defendant/petitioner those decisions were called frivolous and of no effect. Appendix D, E, F, G1, G2, G4

IN direct Conflict is the Ninth Circuit decision in Perlaza , 439 F3d 1149 which agrees with the plain and unambiguous language of Congress in the Administrative Procedures Act, 5 USC 552 et seq; and this court's 200 plus years of consistent starre decisis; stating that once jurisdiction is challenged it must be proven on the record, and no administrative or judicial process can legitimately continue absent proof and decision. The Ninth went on boldly to declare that in a criminal case the proof would have to be before a jury and beyond a reasonable doubt.

Factually, petitioner challenged the federal agency jurisdiction more than 100 times in the Administrative proceedings with never a shred of evidence being presented of substantive law "directly traceable to Congress taxing powers in Article I". Jurisdiction was challenged in Motion to Quash or dismiss prior to

arraignment, and at every succeeding hearing or appearance, without exception all the way to resentencing. The Docket sheet (attached) clearly shows the frequency of the inquiry, and the judicial determination that all those motions were frivolous.

There is not one fact, or statute on the record, presented by the Respondent to prove or verify jurisdiction. Appendix E, H

By this Court's interpretation, the proof should be exceedingly easy; simply introduce the proof of federal ownership of the property in question, 1203 Strong, McAlister, Oklahoma; or the nexus to interstate commerce. Of course cession by Oklahoma has not been done to award the United States the jurisdiction; and there was no allegation in the case concerning interstate commerce. Or respondent and the court could resort to the other stare decisis of this court and show the goods manufactured, transported and sold under corporate franchise in some excise taxable activity; but again no accusation of such activity exists where the Tenth Circuit has created an environment to say that all the Supreme Court decisions on the subject of limited federal jurisdiction are frivolous and foreclosed, at least before Judge White in his "personal interpretation". Appendix H

This destinct difference is meritorious of this court's time and effort to provide uniform and equal protection under law.

In the Ninth the jury must be persuaded beyond a reasonable doubt and in the Tenth no proof, even preponderence is needed; it is a free pass of assumption in prejudice. Appendix G1, G2, G3, G4

ANOTHER inequality exists when trial court declares, and attorneys agree that only local interpretation has any effect; neither the letter of the law so often emphasized by this court, nor the court's consistent decisions mean what they say or say what they mean in direct conflict to Zedner, 2006. It is a fairy tale to think that there can be equality of law and justice when only local interpretations matter. Appendix G1, G2, G3

The limits to federal territorial jurisdiction were challenged using Constitution; Article 1, section 8, Clause 17 (1,8,17) and Article 4 Section 3; Statutory limits

contained in 1 USC § 204, 4 USC § 72, and Supreme Court precedent. All were declared frivolous, and all challenges foreclosed, based on local interpretation of Collins, supra. Appendix E, G1, G2, G4, H

Personal jurisdiction was challenged using Declaration of Independence, US Constitution, Supreme Court precedent, and 26 USC 7343 definition of person subject to the tax, and of course the lack of "a specific statute, directly traceable to Congress' powers of taxation in Article 1" for a direct tax upon the property called labor of the individuals named in the indictment. No evidence, not even preponderence was ever asked of the prosecutor despite repeated demands from defendant. Appendix E, H

Subject matter jurisdiction was challenged for a direct tax without apportionment within the sovereign territory of the state called Oklahoma. No statute, constitutional provision, or precedent was ever asked of the prosecutor, yet the court declared it was "convinced I have jurisdiction", repeatedly calling this honorable court frivolous and foreclosed on the subject of jurisdiction. Appendix E, G1, G2, H

Another significant conflict exists wher the Eighth Circuit, agreeing with Supreme Court decisions, said that federal authority can not be expanded by statute, regulation, policy, or alteration of definitions by agents and agencies in their case called IN RE Young, 141 F3d. 854 (1998) but the Tenth at least as interpreted by trial court says that federal authority is not subject to challenge and tremendously expands federal authority in court decisions and prejudicial jury instructions. No preponderence is needed with White's personal prejudiced definitions and assumptions of definitions and authority "by my interpretation and understanding all those challenges are frivolous and foreclosed". Again directly conflicting with this court's decision in US v Hill, 123 US 681, 686 (1882).

2. Wrongful Conviction, and unconstitutional enhancements without a specific law, Hill, supra, is the normal way of doing business in the 10th Circuit and EDOK. Taxation without representation is where we are legally in this case.

The statutes passed by Congress within its power to tax do not impose a direct tax on labor; that is done by judicial error, and unethical prejudice within the 10th Ckt. and EDOK. Appendix G1, G2

26 USC 7201, charged in the indictment is not a "Specific statute directly traceable to Congress authority to tax", but only a general provision for a penalty for "anyone made liable" for a tax "imposed by this code". Appendix E, H

There is no statute imposing a direct unapportioned income tax on the labor and wages of any of the people named in the case. 19 CFR 351.102 defines direct tax as on labor, wages, salaries, etc. Appendix E, F, H

There is no properly promulgated regulations in 26 CFR for a tax on labor, or the"property one has in his labor"; Butchers Union, 111 US 746 (1882) that would satisfy this court's requirements in Mersky, 361 US 431(1960); " absent a regulation the statute would do nothing" or 26 USC 7801, 6001, 6011, and 6012.

No regulation was alleged in the indictment or proven before the jury to create the nexus. Perlaza, supra

No specific liability statute was alleged in the indictment, or proven before the jury beyond a reasonable doubt. Appendix C

No regulation, or specific statute was alleged or provided in the Bill of Particulars submitted after motions hearing.

US Attorney Manuel 94-6000 expressly does not delegate anyone the power to investigate 26 USC tax crimes 7201-7201.

Internal Revenue Service Special agents are not law enforcement officers according to 26 USC and its regulations in 26 CFR. 27 CFR for Alcohol, Tobacco and Firearms is where law enforcemnt authority exists due to the excise taxable activity.

This court in Cheek, 498 US 192 (1991) declared that sincerely held beliefs required a judgment of acquittal, but trial court simply instructed the jury that defendant was wrong about his beliefs. Appendix E, H

Petitioner was convicted without Constitutional or Statutory authority to collect or enforce an alleged income tax on th e labor and wage of another citizen at home

within Oklahoma. Defendant was convicted erroneously without law, regulation, or Constitutional authority.

Eisner v Macomber, 252 US 189 (1920); "Congress cannot by any definition it may adopt conclude the matter, since it can not by legislation alter the Constitution, from which alone it derives its power.." Appendix E, H

US v Ballard, 535 F2d. 400, 404 (8th Cir. 1976): "Gross income, and not gross receipts is the foundation for income tax"... "total sales, less the cost of goods sold"... " the general term income is not defined in the Internal Revenue Code".

10th Ckt. as interpreted by District court in jury instruction "section 61(a) defines gross income"... "income tax is not voluntary". Both are completely prejudicial to ensure conviction when coupled with the court's declaration in pre-trial conference "I really can not order the prosecutor not to lie to the jury", and the later jury instruction to adopt the lies and misstatements of prosecutor in his power point presentation for closing argument to rival "Razzle Dazzle from the Movie Chicago are conduct unbecoming the judiciary, and sheds a very dim light on judicial integrity. Appendix G3

Doyle v Mitchell Bros., 247 US 179, 183 (1918) on the 16th Amendment "the legislative purpose was not to tax property as such or the mere conversion of property, but to tax the conduct of busines in corporations..." 26 USC 83(a) also exempts the conversion of property labor to property money in a fair exchange, yet judge's prejudice and litigation in favor of the prosecution was so grossly in error that he twice ruled on defense motions to recuse; first declaring that the Motion was not valid because it was not an affidavit, and that the later motion by affidavit was frivolous and would be unfair to turn this case over to another judge. Conduct unbecoming the court destroys all illusions of integrity and fairness.

All of prosecution's jury instructions were adopted by the court and none of defense, allegedly because of form. The obvious sold our prejudice of the court and malicious prosecution of the plaintiff in want or excess of statutory

or Constitutional authority is sincerlely believed to be collusion or conspiracy to silence a voice calling for freedom from excessive bureaucratic regulation by the very agency that House Speaker Gingrich called "the world's largest terror organization" because of proven taxpayer abuse, just before passage of the Paperwork Reduction Act of 1995, and the Taxpayer Bill of Rights II in 1996. In 1996 the General Accounting Auditor testified before Congress that the IRS was too messed up to be fixed, and that it could not prove any tax had ever correctly been assessed. Appendix E, H

There was no assessment alleged in the indictment or presnted and proven before the jury beyond a reasonable doubt and even Collins. supra, at 631 declares that deficiency or assessment is an essential element; but not by White's personal local interpretation to expand taxationand federal authority beyond any challenge or question. Appendix C, G3, G4, I

Sentencing hearing contains 30 express declarations of sixth amendment violations of finding facts that increase the sentencing guideline range by preponderence only, on evidence never presented at trial. These unconstitutional enhancements raised the statutory maximum as defined by this court from 6 months to 121 months. After the sentence was overturned on a 2 point technicality of law, in resentencing hearing the judge told the prosecutor "lets not forget he was convicted of 39 thousand, we enhanced him to 9.6 Million", a direct sixth amendment violation confession on the record. Appendix G4, I, J

This court has ducked and dodged the issue of putting teeth in its own decisional precedent such that inferior courts throughout the federal system and federal bureaucrats throughout the government will actually have some simblance of truth and integrity in the oath they have sworn.

This conviction and every day of its sentence is tyranny to silence dissent.

Congress has on many occasions done all that is in its power to reign in the "rogue agency wholly out of control" (Trent Lott, 1997) and control the "autonomy unto itself with no regard for law or people" (Senator Touzin, 1996)

ranging from Privacy Act in 1974, Administrative procedures act, Paperwork Reduction Act 1984, Tax simplification 1986, Taxpayer Bill of Rights I and II, PRA 1995, And finally Restructuring and Reform Act of 1998; all of which were declared frivolous by trail court on the record. Appendix E, H

Another grand chasm of differnce between the circuits is that in the 10th and EDOK none of the law representing defendants sincere beliefs, or the Supreme Court precedents can be discussed before or shown to the jury while in the 5th, 7th and 9th Circuits during the time of this prosecution defendants were found not guilty by juries who did hear the rule of law stated in the Judicial Notices in this case but barred from teh jury, and misrepresented in jury instruction.

3. **INADEQUATE COUNSEL** in the court of Appeals, appointed by the court over pro se objections willfully and intentionally argued the government and inferior trial court position in "local interpretation" such that "there is no law that can be read like that it is all local interpretation in this Circuit" against the petitioner he was hired to represent. This is sicerely believed to be Conflict of interest as stated in Cuyler v Sullivan, 446 US 335 (1980). Appendix J

There were more than 20 letters exchanged between counsel and Appellant during the briefing process. On every occasion Counsel argued local interpretation over the rule of law in unambiguous language of Statutes, Constitution, and Stare decisis; culminating in the malpractice of writing a "hybrid Brief" and poorly stating Petitioner's sincerely held beliefs and carelessly failing to point the 10th Ckt. to the pretrial and trial record to see the continuous advocacy of the rule of law over the corruption of "local interpretation"relying on Zedner, 164 L.Ed.2d 749 (2006), US v Lanier, 520 US 259, and Connolly, 269 US 385 (1926) presented in Motions, hearings, and Judicial notices (attached). 10th Ckt Docket and Appendix H

One result of inadequate counsel which this court has said can be worse than no counsel at all, and in this case certainly is was that the Tenth Circuit was never pointed to nor did it ever review the record. Inadequate or malpracticing counsel

Motioned 3 times to withdraw because of his inadequacy and inability to communicate with the Appellant/Petitioner. Petitioner sought his removal as inadequate, but all were ignored in the federal railroad called the Tenth Circuit.

Appointed Counsel continuously argued that all the Supreme Court Authority in the Apprendi, 530 US 466 (2000) to Cunningham, 166 L.ED.2d. 856 (2006) line of decisions were frivolous because of Tenth Circuit and "local interperation" against the plain language of the Constitution and resjudicata of this court.

Appointed Counsel argued against Appellant an the Speedy trial issue decided in Zedner, supra, though the Secret indictment defeating petitioner rights as stated in Test v US, 1976, dated April 14, 2005 was not served until August 12, 2005, Arraignment occurred 23 August, 2005 and Trial did not begin until 28 November, 2005. Counsel parroted the prejudice of trial judge "all those challenges are frivolous and foreclosed in this Circuit by Collins, supra. Appendix G1, G2, G4, J

The complete defense provided by Congress in PRA 1995, and the mandatory acquittal based on sincerely held beliefs in Cheek, supra were not even considered, much less argued. Again inadequate if not directly malpractice worthy of disbarment.

Appellant filed a Motion to supplement and enlarge the brief which was denied, as the Tenth Circuit is closed to unrepresented citizens of right who might upset the status quo of "all challenges to jurisdiction are frivolous and foreclosed" in this Circuit. Appendix G1. G2, G4, H

Whether the inadequate representation, over objection by appellant, was the direct or proximate cause of plain error and judicial misconduct is unknown, but certainly gives an impression of lack of judicial integrity in the 10th ckt..

4. **PLAIN ERROR BY THE TENTH CIRCUIT in denial of due process** for a full and complete review of the record from the trial court in a pro se appeal. The Tenth provides pro se forms; but closes the court in favor of inadequate counsel with no knowledge of the rule of law in tax cases and relies only upon "local interpretations". Appendix B

The Tenth Circuit relied on obsolete, self serving inferior precedent to ignore and rebel against the clear and unambiguous language in the resjudicata of this honorable court. Not one page of the record was reviewed.

The record was shipped to storage months before briefs were filed and never retrieved. This error of prejudicial failure to examine the record resulted in plain error in the Circuit decision that it did not consider challenges to the indictment raised only at sentencing when the Docket from the EDOK clearly shows that the challenges began within 10 days of service of the indictment, and continued unrelenting all the way to sentencing both orally and in writing. Appendix B, F

Plain error is a denial of due process and makes the whole judgment void and ineffective. The tenth has no right to blaim the appointed counsel, who had repeatedly confessed his inadequacy in his motions to withdraw. The fact that counsel could not convince the client that "local interpretation" made the whole rule of law and case history of this court frivolous and foreclosed does not relieve the Circuit of its responsibility to review the record, at least the Docket sheet, which gives some 40 examples of motions, hearings, and rulings concerning challenges to indictment and jurisdiction (attached). Appendix F, H

Plain error occurred in relying on obsolete inferior appellate decision to call Congress and this court "frivolous and foreclosed" in the trial court in complete want of authority, but both Appeal and Judicial Complaint were covered up by the Tenth in ignoring the record to uphold conviction and unconstitutional sentencing enhancements. Appendix A

Collins, supra is off point and obsolete authority in this case being concerned with the removal of a pro hoc vice attorney, and whether it resulted in inadequate Counsel for that Appellant. The removal was upheld and the circuit ruled that it did not deprive defendant of adequate defense. The Circuit never had authority to declare challenges to jurisdiction, indictment, or rule of law frivolous or forecloses so any such interpretation of their decision is void shedding a very disparaging light upon the judiciary. A legal nullity void from its inception is your terms.

Collins is further obsolete and ineffective because Congress amended the language of PRA and the Circuit has not revisited the issue; this court may have the first impression duty on that issue. AND even further because of this court's consistent Res Judicata on the subject of challenging jurisdiction as seen in Gregory, 501 US 452 (1991) and continuously through FMC v SC State Ports, 535 US 743 (2002) where state sovereignty and individual rights have withstood federal invasion, and challenges are not foreclosed but consistently granted.

CONCLUSION

Wherefore this petitioner moves the court in its suprevisory constitutional role to reconsider and rehear the petition for Certiorari and for relief;

Reverse and remand the decision of the Tenth Circuit with instruction that the indictment be dismissed and the government barred from prosecuting this natural individual for a direct tax on labor without apportionment and the requirements of uniformity among the corcuits concerning the constitutional limitations of federal authority within the states; or in the alternative for constitutional sentencing.

Prepared and executed this 11 the day of March, AD 2008 with full allegiance to truth and sincere beliefs, honoring and respecting the rule of law in 28 USC 1746, and Jesus command to lie not.

Jimmy Clayton Chisum, en esse
unrepresented petitioner
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