IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Case No. 08-20585
	:	
PETER HENDRICKSON,	:	
	:	
Defendant.	:	

MOTION TO VACATE AND DISMISS

Peter Hendrickson respectfully moves the Court to vacate his conviction and sentence and dismiss the charges in the matter of Case No. 08CR20585. This motion is based on two independent subject-matter defects which have deprived the Court of jurisdiction *ab initio*; on the fact that one of these defects also resulted in the trial jury never issuing a verdict on an element of the offense charged; and on the fact that the trial in this case was tainted by the commission of a fraud upon the court; all as set forth below.

The Court is authorized and required to vacate judgments and sentences made in connection with proceedings conducted in the absence of jurisdiction and/or tainted by fraud:

> "[A void judgment is one that] has been procured by extrinsic or collateral fraud, or entered by a Court that did not have jurisdiction over subject matter or the parties."

Rook v. Rook, 353 S.E. 2d 756 (Va. 1987);

> "[D]enying a motion to vacate a void judgment is a per se abuse of discretion."

Burrell v. Henderson, et al., 434 F.3d 826, 831 (6th CA 2006);

> "[A] court must vacate any judgment entered in excess of its jurisdiction."

Jordon v. Gilligan, 500 F.2d 701 (6th CA, 1974);

> "If the trial court was without subject matter jurisdiction of defendant's case, his conviction and sentence would be void *ab initio.*"

State v. Swiger, 125 Ohio.App.3d 456, (1998);

> "[S]ubject-matter jurisdiction, because it involves a court's power to hear a case, can never be forfeited or waived. Consequently, defects in subject-matter jurisdiction require correction regardless of whether the error was raised in district court."

United States v. Cotton, 535 U.S. 625, 630 (2002).

BACKGROUND AND BRIEF STATEMENT OF THE ISSUES

Peter Hendrickson was held to trial in October of 2009 on charges that he had violated the federal statutory provisions codified at 26 U.S.C. § 7206(1).[1] Mr. Hendrickson's indictment alleged various acts, but it contained no allegation that he was a person whose acts were or could be within the scope of this statute, nor any language substantially (or even remotely) similar to that of the charged offense statute in this respect. No evidence purporting to prove that Mr. Hendrickson was within the class of actors subject to this statute has ever been presented or alluded to throughout the course of proceedings in this case.

As will be shown below, there IS only a limited class of actors within the scope of 26 U.S.C. § 7206(1). Someone not within that class does not and cannot violate the provisions of the statute regardless of the content of, or his belief about, any return, statement or other document he makes and subscribes. Consequently, the indictment against Mr. Hendrickson failed to state an offense and failed to invoke the Court's jurisdiction. Further, since knowledge of an element requiring proof by the government and consideration and determination by the triers of fact was kept from both the Grand and petit juries, both the indictment and the trial verdict are invalid.

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[1] *§ 7206. Fraud and false statements*
Any person who—
(1) Declaration under penalties of perjury
Willfully makes and subscribes any return, statement, or other document, which contains or is verified by a written declaration that it is made under the penalties of perjury, and which he does not believe to be true and correct as to every material matter;

The case against Mr. Hendrickson suffers from additional jurisdictional defects. Whenever the United States or its agents come to the view that a filed return is incorrect (false) the Secretary of the Treasury is required by statute to create and subscribe his own contrary returns asserting what he believes to be correct, and thereby defining, articulating and verifying a claim as to what is allegedly false and against which the allegedly errant filer can have offended, pursuant to 26 U.S.C. § 6020(b). No such returns have been created.

By its decision not to contest Mr. Hendrickson's returns the government has tacitly agreed that Mr. Hendrickson's returns are accurate and correct. Consequently the Court has been without jurisdiction either due to the unmet statutory mandate or because no actual offense has been meaningfully defined and alleged, or both.

Additionally, and as an independent issue, the government's failure to produce the contrary returns of its own required by 26 U.S.C. § 6020(b) when of the view that filed returns are not accurate or correct constitutes evidence that its assertions in seeking the indictment and throughout trial that it or the IRS is of a view contrary to what Mr. Hendrickson says on his returns were deliberate falsehoods. These falsehoods meet this Circuit's five-point test for constituting a judgment-voiding fraud upon the court.

ARGUMENT

A. The Meaning Of "Person" In The Charges Against Mr. Hendrickson Is Limited; The Indictment Against Him Made No Allegation Or Reference To Him As Such A "Person"; No Evidence Appears In The Record That Mr. Hendrickson Is Such A "Person"; And The Court Therefore Has Never Had Jurisdiction.

1. The meaning of "person" relevant to the charges against Mr. Hendrickson is limited to those in the class illustrated by the enumeration at 26 U.S.C. § 7343.

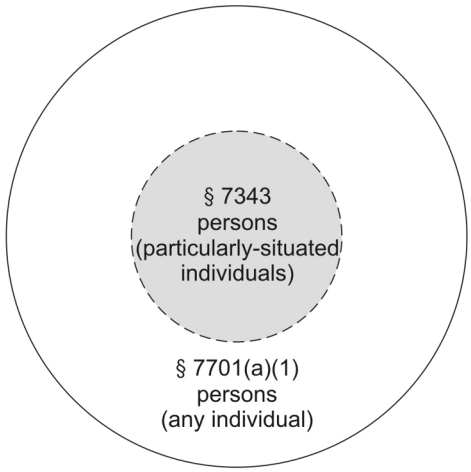
At 26 U.S.C. § 7343, a special definition of "person" is provided for purposes of Chapter 75, in which is found the offense charged in this case:

§ 7343. Definition of term "person"
The term "person" as used in this chapter includes an officer or employee of a corporation, or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

This statute identifies by illustration a distinctly expressed subclass of particularly-situated persons to whom the offense can apply, being anyone under a duty to make and subscribe federal tax documents on behalf of another person.[2] Individuals within this subclass are thus particularly-situated individuals distinguished *from within* the broad class "individual" given as a generally-applicable meaning of "person" as laid out at 26 U.S.C. § 7701(a)(1):

§ 7701. Definitions
(a) When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof—
(1) Person
The term "person" shall be construed to mean and include an individual, a trust, estate, partnership, association, company or corporation.

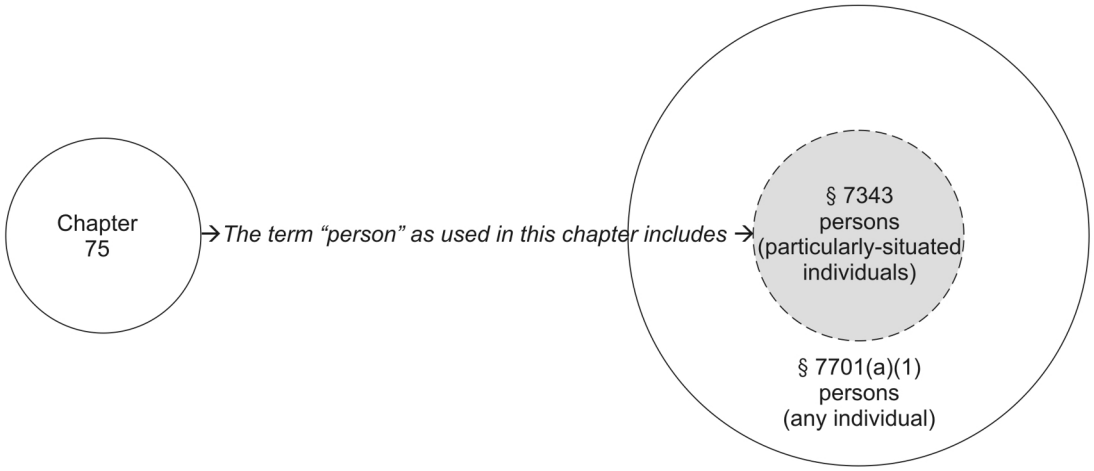
The following diagram illustrates the relationship of the distinctly-expressed definition to the more general one:



[2] The use of the term "includes" in § 7343 means that the subclass of particularly-situated individuals is not confined to those enumerated. See 26 U.S.C. § 7701(c). The term expands relevant "personhood" to others not listed but similarly-situated. The subclass remains a subclass, however-- no individual is a relevant "person" if not particularly-situated as are those enumerated. *Mobley v. CIR*, 532 F.3d 491 (6th Cir. 2008); *Helvering v. Morgan's, Inc*., 293 U.S. 121 (1934); *Saginaw Bay Pipeline Co. v. United States*, 338 F.3d 600 (6th Cir. 2003); *Brigham v. United States*, 160 F.3d 759 (1st Cir. 1998); *United States v. The Schooner Betsey and Charlotte*, 8 U.S. 443 (1808), *Montello Salt Co. v. Utah*, 221 U.S. 452 (1911).

Section 7343 must be construed as an override of § 7701(a)(1) under the express provisions of 26 U.S.C. § 7701(a) itself. Under those provisions, the more general construction of "person" (relevantly, "any individual") only applies "w*here not otherwise distinctly expressed or manifestly incompatible with the intent"* of the statutory structure. Where an alternative IS distinctly expressed, and the general "any individual" construction IS manifestly incompatible with the statutory structure, the alternative construction is dictated. Here, both standards are met.

Because those individuals within the subclass illustrated by § 7343 are already among the class "person" in § 7701(a)(1) ("any individual"), and yet are distinguished *from within that class* for purposes of the offense statute, § 7343 is unmistakably a distinctly-expressed *alternative* (more restricted) definition:



Further, those within the class illustrated by § 7343 are only *some* of those within the class of persons defined at § 7701(a)(1), and not *all* of those in that broader class (else § 7343 would be irrationally superfluous and redundant).[3] Therefore Congress could only have intended

[3] If § 7343 individuals are NOT a subclass of § 7701(a)(1) "individuals"-- either due to being the whole of § 7701(a)(1) "individuals" or being outside some hidden meaning of that term-- then § 7701(a)(1) "individual" itself cannot and does not mean "any individual". This might shift the basis for the insufficiencies of the indictment, the government's evidentiary failures and the Court's lack of jurisdiction, but it would mend none of them.

§ 7343 to distinguish a narrower subclass from among those in the broader class, for purposes of the statutes in Chapter 75. It is manifestly incompatible with that intent to read the meaning of "person" as used in Chapter 75 as not *excluding* the "any individual" meaning of § 7701(a)(1).

Further still, any variance from construing § 7343 as the sole definition applicable to the offense statute would not only be in obvious conflict with the express terms of both § 7343 and § 7701(a), but would also be at odds with well-settled law. The U.S. Supreme Court has repeatedly emphasized that courts should interpret statutes in such a way as to favor specific provisions over general ones. *Corley v. United States*, 129 S.Ct. 1558, 1568 (2009). *Accord Crawford Fitting Co. v. J. T. Gibbons, Inc.*, 482 U.S. 437, 445 (1987); *Kepner v. United States*, 195 U.S. 100, 125 (1904) ("It is a well-settled principle of construction that specific terms covering the given subject-matter will prevail over general language of the same or another statute which might otherwise prove controlling"). The 6th Circuit expresses the same principle even more broadly: "[W]e are not at liberty to put our gloss on the definition that Congress provided by looking to the generally accepted meaning of the defined term." *Tenn. Prot. & Advocacy Inc. v. Wells*, 371 F.3d 342 (6th Cir. 2004).

Nor can one provision prudently be read to create conflict or make another provision superfluous. *Corley*, 129 S.Ct. at 1566, 1568; *United States v. Menasche*, 348 U.S. 528 (1955).

That "person" is relevantly limited as argued above is well-settled law. In *Mueller v. Nixon*, 470 F.2d 1348 (6th Cir. 1972), the Sixth Circuit analyzes the meaning of "person" under the language and structure of 26 U.S.C. § 6671(b), which is identical in all respects to that of § 7343. The Court recognizes that the special definition of "person" in the § 7343 language is the only valid definition of the term. Its analysis is careful and detailed, and merits quotation at length:

> [A]ppellant also disputes whether he could legally be held to be such a person under Sec. 6671(b) of the Internal Revenue Code, and therefore liable under 26 U.S.C. Sec. 6672, which contains this definition:
>
> > *(b) Person defined.-The term "person", as used in this subchapter, includes an officer or employee of a corporation, or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.*
>
> This language does not by its specific words apply to appellant Mueller. He clearly was not an officer or employee of the corporation which owed these taxes. The government concedes this but claims that under settled case law the courts have expanded this definition to include someone who by a contract is given the full power of control associated with the powers of a corporate officer. In this respect the government relies upon *Pacific National Insurance Co. v. United States*, 422 F.2d 26 (9th Cir.), cert. denied, 398 U.S. 937, 90 S.Ct. 1838, 26 L. Ed.2d 269 (1970), and *United States v. Graham*, 309 F.2d 210 (9th Cir. 1962). This court has dealt with this same statute (and cited the Pacific National Insurance case) in *Braden v. United States*, 442 F.2d 342 (6th Cir. 1971). It does not appear, however, that we have passed on the question of interpreting the statutory definition of a "person" to include persons actually in control of a corporation, although only as de facto officers.
>
> The definition of "person" employed by Congress is not phrased in terms of exclusion. The language, "The term 'person' . . . includes an officer or employee of a corporation, or a member or employee of a partnership," is exemplary in nature. On this point we agree with the following language of the Ninth Circuit:
>
> > The definition of "persons" in section 6671(b) indicates that the liability imposed by section 6672 upon those other than the employer is not restricted to the classes of persons specifically listed-officers or employees of corporations and members or employees of partnerships. "[B]y use of the word 'include[s]' the definition suggests a calculated indefiniteness with respect to the outer limits of the term" defined. *First National Bank In Plant City, Plant City, Florida v. Dickinson*, 396 U.S. 122, 90 S.Ct. 337, 24 L.Ed.2d 312 (1969). As we said in *United States v. Graham*, 309 F.2d 210, 212 (9th Cir. 1962): "The term 'person' does include officer and employee, but certainly does not exclude all others. Its scope is illustrated rather than qualified by the specified examples." *Pacific National Insurance Co. v. United States*, supra 422 F.2d at 30. (Footnotes omitted.)

Mueller v. Nixon, 470 F.2d 1348 (6th Cir. 1972)

The Court finds Mueller to be a "person" solely because his *particular situation* placed him within the class illustrated by the enumerated list in the special "person" definition. The *Mueller* Court plainly holds that the language in § 7343 provides the discrete and comprehensive

meaning of the term "person", explicitly endorsing the Ninth Circuit position that "[The] scope [of the term "person"] is illustrated … by the specified examples [in §§ 6671(b) or 7343]," and independently declaring that "The language [of the two statutes] is exemplary in nature." (Emphasis added.) Neither of these statements (nor the analyses in which they appear) would make any sense if relevant "persons" were simply anyone from among the "any individual" class of § 7701(a). Were relevant "persons" simply (or possibly) anyone from among the "any individuals" of § 7701(a), neither the "scope" of §§ 6671(b) or 7343, nor the "exemplary" nature of the sections would be of any interest or meaning in these cases or any others (and neither of these sections would exist in the first place).

In 1999, the Third Circuit applies the same careful and rational respect for the plain words of the law to §7343 directly. The Court faced a challenge by defendant Thayer to his qualification as a "person" subject to a Chapter 75 charge in *United States v. Thayer*, 201 F.3d 214 (3rd Cir. 1999). After discussing the Supreme Court's reasoning in applying the identical definition of "person" found in 26 U.S.C. § 6671(b) in *Slodov v. United States*, 436 U.S. 238 (1978), the Court concludes:

> [F]or purposes of [26 U.S.C.] § 7202, the term "person" is defined by identical language. See I.R.C. § 7343 ("The term 'person' as used in this chapter [I.R.C. ch. 75, encompassing §§ 7201-44] includes an officer or employee of a corporation, or a member or employee of a partnership, who, as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs."). *Therefore*, Thayer, as the president and majority owner of MIS and ELOP, was properly charged and convicted as a "person" under § 7202."

United States v. Thayer, 201 F.3d 214 (3rd Cir. 1999) (emphasis added).

There appears to be no case law whatever in conflict with the conclusion that the language of § 7343 is the exclusive and limiting definition of "person" relevant to Chapter 75 and therefore to the charges in Mr. Hendrickson's case. Faced with the challenge to report on any such contrary case law in response to Mr. Hendrickson's pre-trial motion on this issue, the

government was unable to do so, citing instead to inapposite cases in which the “person” subject sometimes doesn’t even appear at all, or if it does, is addressed out of the context of the issue presented here and with no analysis whatever.

In fact, one of the cases cited by the government, *United States v. Condo*, 741 F.2d 238 (9th Cir. 1984), not only fails to support the effort to find language of any kind contrary to Mr. Hendrickson’s position but actually supports Mr. Hendrickson’s argument, instead. The *Condo* Court's comments related to Condo's "person" argument reads as follows:

> [Condo's] assertion that 26 U.S.C. §7343 only applies to business entities and their employees ignores the word "includes" in the statute delineating the class of persons liable. The word "includes" expands, not limits, the definition of "persons" to these entities.

United States v. Condo, 741 F.2d 238 (9th Cir. 1984) (emphasis added).

At first glance, this two-sentence disposal appears to adopt the fallacy of §7343 being a "supplement" of an (unidentified) external definition. However, aside from the fact that a fallacy remains a fallacy even had the *Condo* Court embraced it, the Court does not, in fact, do so. On the contrary, the Court's use of the term "delineating" makes clear that it recognizes the definition at §7343 as the exclusive definition of "person" for purposes of Chapter 75. "Delineating the class of persons liable" does not mean "supplementing" or "expanding" *some other* class or definition, it means "establishing or identifying the class."

Consequently, even the awkward expression that follows the plain acknowledgement of §7343 as being THE definition of "persons" as the term is used in Chapter 75 – just as Congress says it is – must be seen as merely a hastily-rendered, mildly confused reference to the "limited expansion" effect of "includes" (the “calculated indefiniteness” alluded to by the Ninth Circuit in *Pacific National Insurance Co. v. United States*), which allows the class delineated in § 7343 to be expanded to things not listed but which share the characteristics of those enumerated. Further,

the *Condo* court was in no way responding to a coherent argument concerning § 7343 in any event. As the Court describes Condo's argument on this subject: "He asserts that the sixteenth amendment only allows taxing income from "sources" (entities and monopolies created by law), not persons."

In short, like all the others cited by the government in its vain effort to muster a challenge to Mr. Hendrickson's position from any quarter, the *Condo* ruling DOESN'T support a reading of the "person" provision contrary to Mr. Hendrickson's. Instead, it is irrelevant to the substance of Mr. Hendrickson's argument generally; contains no analysis whatever; and what little it DOES say on the subject supports Mr. Hendrickson's position, just as does the language in the law and all precedential case-law in which the matter is given direct and meaningful consideration.

2. In light of the foregoing, the Court has always lacked jurisdiction in this case, and must vacate Mr. Hendrickson's conviction and dismiss the charges.

> "We determine whether a district court had subject matter jurisdiction in a criminal case by looking at the indictment or information. "To confer subject matter jurisdiction upon a federal court, an indictment need [] charge a defendant with an offense against the United States in language similar to that used by the relevant statute." *United States v. Jacquez-Beltran*, 326 F.3d 661, 662 n.1 (5th Cir. 2003)."

United States v. Scruggs, No. 11-60564 (5th Cir. 2012).

The indictment against Mr. Hendrickson contains no reference or allegation whatsoever to his being a "person" relevant to the charges brought, nor contains any language remotely similar to that of the charging statute in this respect. Indeed, the charging statute is not quoted at all, and neither the common word nor the legal term "person" makes any appearance in the indictment. See docket #3.

Nor was relevant "personhood" alleged by reference or otherwise. In pre-trial proceedings in which Mr. Hendrickson challenged the indictment on this point, the government and trial court argued that particular "personhood" was irrelevant to the charges, thereby

admitting that allegations in that regard were not even implied by the character of the indictment. See docket #36 and #70.

Because particular "personhood" *is* an element of an offense under the charged statute, the lack of this allegation means no actual federal offense was charged. The court has thus been without jurisdiction *ab initio*:

> "Federal criminal jurisdiction is limited to cases involving activities specifically made criminal by either the Federal Constitution or Congress."

U.S. v. Corona, 934 F.Supp. 740, affirmed in part 108 F.3d 565 (5th CA 1997); and

> "[I]t is well established that federal courts are courts of limited jurisdiction, possessing only that power authorized by the Constitution and statute."

Hudson v. Coleman, 347 F.3d 138, 141 (6th Cir. 2003).

It is not a federal crime under 26 U.S.C. § 7206(1) for someone not a "person" within the meaning of the term as used in the statute to make and subscribe any return, statement or other document, regardless of its contents or his beliefs. Indeed, recognizing that relevant "personhood" is a threshold jurisdictional issue and that Mr. Hendrickson is not a § 7343 "person", the District Court itself has already expressly agreed that it would be bereft of jurisdiction if "the definition set forth at § 7343 is … a "distinct [] express[ion]" [overriding the "any individual" of 26 U.S.C. § 7701(a)(1)]." See docket #70, page 39.

As has been shown, the definition set forth at § 7343 *is* a distinct expression narrowing "any individual" to "particularly-situated individuals" and it is manifestly incompatible with the statutory structure to read § 7343 any other way. Mr. Hendrickson was not charged with being such a particularly-situated individual; was not proven to be such a particularly-situated individual; and, in fact, is *not* such a particularly-situated individual; therefore no actual federal offense was alleged. Further, the question of whether Mr. Hendrickson was within a class subject to the charges brought was clearly never considered or determined by a Grand Jury.

The indictment in this case was incomplete and invalid and the courts have been without jurisdiction over the matters involved in the charges. Mr. Hendrickson's conviction and sentence are void, and they must be vacated:

> "[S]ubject-matter jurisdiction, because it involves a court's power to hear a case, can never be forfeited or waived. Consequently, defects in subject-matter jurisdiction require correction regardless of whether the error was raised in district court."

United States v. Cotton, 535 U.S. 625, 630 (2002); *Accord Jordon v. Gilligan*, 500 F.2d 701 (6th CA, 1974) ("[A] court must vacate any judgment entered in excess of its jurisdiction."); *State v. Swiger*, 125 Ohio.App.3d 456, (1998) ("If the trial court was without subject matter jurisdiction of defendant's case, his conviction and sentence would be void *ab initio.*"); *Burrell v. Henderson, et al.*, 434 F.3d 826, 831 (6th CA 2006) ("[D]enying a motion to vacate a void judgment is a per se abuse of discretion."). Such is the law here in Michigan:

> "A "void" judgment, as we all know, grounds no rights, forms no defense to actions taken thereunder, and is vulnerable to any manner of collateral attack (thus here, by habeas corpus). No statute of limitations or repose runs on its holdings, the matters thought to be settled thereby are not *res judicata*, and years later, when the memories may have grown dim and rights long been regarded as vested, any disgruntled litigant may reopen old wounds and once more probe its depths. And it is then as though trial and adjudication had never been."

Fritts v. Krugh, Supreme Court of Michigan, 92 N.W.2d 604, 354 Mich. 97 (1958).

B. **The Offense Element Issue Of Mr. Hendrickson's Personhood Relevant To The Charges Was Never Considered and Determined By The Jury, Making The Trial Outcome Invalid Under The Fifth and Sixth Amendments.**

The issue of "personhood" relevant to the charges in this case necessarily rests on fact issues of one kind or another. The court may not find, and the jury may not be instructed or be led to assume, that relevant "personhood" is self-evident. This is true however "person" is defined, and particularly so where a specialized definition of the term "person" is provided for purposes of the criminal statute being charged.

Fact issues in a criminal trial such as the one conducted in this case are to be determined by the jury, not by the Court. Thus, an articulation, attempted proof, and informed determination by the jury of fact issues in regard to Mr. Hendrickson's relevant "personhood" is required for a valid trial outcome. *Sullivan v. Louisiana*, 508 U.S. 275 (1993); *United States v. Gaudin*, 515 U.S. 506 (1995).

There was no articulation, attempted proof, and informed determination by the jury of fact issues in regard to Mr. Hendrickson's relevant "personhood"-- indeed, the entire issue was kept from the jury's consideration. Mr. Hendrickson was denied due process and his jury never issued a verdict on this element of the alleged offense, rendering the conviction invalid. *California v. Roy*, 519 U.S. 2, 7 (1996).

C. The Court Has Been Without Jurisdiction Due To The Failure Of The United States To Define And Articulate, And Thus Cognizably Allege, An Actual Offense In Regard To Mr. Hendrickson's Returns.

1. The government is required by statute to create and subscribe its own contrary returns when alleging that those previously filed are required and are false, whether willfully or otherwise.

When the United States is of the view that sufficient "income" has been received to cause returns to be required, and that those filed are "false", it is required by statute to create its own contrary returns, per 26 U.S.C. § 6020(b)(1):

> (1) Authority of Secretary to execute return:
> If any person fails to make any return required by any internal revenue law or regulation made thereunder at the time prescribed therefore, or makes, willfully or otherwise, a false or fraudulent return, the Secretary shall make such return from his own knowledge and from such information as he can obtain through testimony or otherwise.

"Shall" in statutes is mandatory. *Lexecon, Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 35 (1998) ("The mandatory 'shall' … normally creates an obligation impervious to judicial discretion.") Per this statutory prescription, when the government chooses to contest,

dispute or disregard what it alleges is an offensive return, § 6020(b) lays out the mandatory manner in which it is authorized and obligated to do so.

2. The government's failure to create and subscribe returns contrary to Mr. Hendrickson's deprives the Courts of jurisdiction in regard to those returns.

Like the government's failure to put any witness on the stand to testify that Mr. Hendrickson's returns were false, its failure to make returns pursuant to § 6020(b) constitutes an admission that the government has actually recognized Mr. Hendrickson's returns as being correct. Correct returns are not false returns. A complaint under 26 U.S.C. § 7206(1) only charges a valid federal offense when "falseness" of a material matter is meaningfully (and challengeably) alleged. *United States v. Peters*, 153 F.3d 445, 461 (7th Cir. 1998). Here, both the government and Mr. Hendrickson agree that, as a matter of law, no "subscribing to false returns" offense has occurred.

The mere seeking of an indictment by government attorneys does not remediate or supersede the government having declined to dispute Mr. Hendrickson's returns. Such an action amounts to an empty accusation, in regard to which there actually is no accuser; it is an exercise of form but is devoid of substance. The missing substantive element defining and cognizably articulating an offense is the making of a return by which someone attests to the government's beliefs, and makes its claims and accusations in a challengeable manner. Absent this element, nothing has been lawfully alleged that can have been legally violated.

Since there was no federal crime, the federal courts are, and have always been, without jurisdiction in this case. *U.S. v. Corona*, 934 F.Supp. 740, 108 F.3d 565 (5th CA 1997); *Hudson v. Coleman*, 347 F.3d 138, 141 (6th Cir. 2003); *Steel Co. v. Citizens for Better Environment*, 523 U.S. 83 (1998). Mr. Hendrickson's conviction must be vacated. *State v. Swiger*, 125 Ohio.App.3d 456, (1998); *Burrell v. Henderson, et al.*, 434 F.3d 826, 831 (6th CA 2006); *Jordon*

v. Gilligan, 500 F.2d 701 (6th CA, 1974); *United States v. Cotton*, 535 U.S. 625, 630 (2002).

D. Mr. Hendrickson's Conviction Was Accomplished By A Fraud Upon The Court, Rendering That Conviction Void.

The government's failure to make § 6020(b) returns is an unambiguous admission that it is NOT of the view that Mr. Hendrickson's returns are "false or fraudulent". Thus, its assertions to the contrary in its case against Mr. Hendrickson constituted fraud upon the court.

Not only did the government purport to a view of Mr. Hendrickson's returns as "false" by way of the indictment it sought from the Grand Jury and presented to the Court, but it had the trial court expressly instruct Mr. Hendrickson's petit jury that prosecution documents admitted into evidence without witnesses reflected an IRS "view" that his returns were false. See Trial Transcript, Vol. 2, p. 267 and Vol. 3, p. 437:

> *"I have now received into evidence these exhibits that the witness is receiving to which contain the conclusion that remuneration which Peter Hendrickson received from Personnel Management, Inc. constituted wages to Mr. Hendrickson. This evidence has been admitted only for the purpose of establishing that the IRS was of the view that – I'm sorry. That the Internal Revenue Service was of the view that Personnel Management, Inc.'s payments to Mr. Hendrickson constituted wages and that this view was communicated to Mr. Hendrickson."*
>
> *"This evidence was admitted only for the purpose of establishing that they were of the view, as I had previously instructed you, that IRS was of the view that these payments, the payments from Personnel Management, Incorporated to Mr. Hendrickson constituted wages and that this view was communicated to Mr. Hendrickson."*

However, if the IRS really IS of a view contrary to what appeared on Mr. Hendrickson's returns, it is required under 26 U.S.C. 6020(b) to make its own returns declaring its contrary assertions and claims. The agency's failure to make such returns means that what was represented to the Grand Jury, the Court and Mr. Hendrickson's trial jury is NOT the IRS's "view". As will be shown, this was a deliberate misrepresentation calculated to mislead.

Fraud is *"Anything calculated to deceive another to his prejudice and accomplishing the*

purpose, whether it be an act, a word, silence, the suppression of the truth, or other device contrary to the plain rules of common honesty." 23 Am. J2d Fraud § 2. The 6th Circuit puts it this way:

> "Accordingly, cases require a party seeking to show fraud on the court to present clear and convincing evidence of the following elements: "1) [conduct] on the part of an officer of the court; that 2) is directed to the judicial machinery itself; 3) is intentionally false, willfully blind to the truth, or is in reckless disregard of the truth; 4) is a positive averment or a concealment when one is under a duty to disclose; and 5) deceives the court."

Johnson v. Bell, 605 F.3d 333, 339 (6th Cir. 2010); (quoting *Carter v. Anderson*, 585 F.3d 1007, 1011–12 (6th Cir. 2009)).

The government's misrepresentations were those of officers of the court, directed to the judicial machinery itself. They were intentionally false positive averments, calculated to deceive the Grand Jury, the trial Court judge, and the trial jury into believing that the IRS held a view that it does not. That this was done because the government expected to benefit thereby is self-evident; there is no other reason for the making of a false assertion, and especially one untestable by defense examination of any witness holding this purported "view".

Plainly, the purpose of this fraud was to induce the jury toward the easy path of fallaciously concluding "from authority" that Mr. Hendrickson had received "wages" instead of laboring to come to its own conclusions. This corrupt seduction was all the more powerful considering the dearth of actual fact evidence presented in trial and the complicated definitional instructions given as to the meaning of "wages". The jury was instructed not to take these assertions of an "official view" that Mr. Hendrickson's returns were false as evidence of that very thing, but this was merely closing the barn door after the cows were long gone. There was no reason to make the untestable and false assertions in the first place other than to improperly influence the jury, and they must be presumed to have done so. See *Connecticut v. Johnson*, 460

U.S. 73, 84-85 (1983): "Because a conclusive presumption eases the jury's task, "there is no reason to believe the jury would have deliberatively undertaken the more difficult task" of evaluating the evidence []. *Sandstrom*, 442 U.S. at 526, n. 13."

A judgment induced by fraud is void. Mr. Hendrickson's conviction should be vacated.

> "[A void judgment is one that] has been procured by extrinsic or collateral fraud, or entered by a Court that did not have jurisdiction over subject matter or the parties."

Rook v. Rook, 353 S.E. 2d 756 (Va. 1987).

> "We think, however, that it can be reasoned that a decision produced by fraud on the court is not in essence a decision at all, and never becomes final."

Kenner v. C.I.R., 387 F.2d 689, (7th CA, 1968);

> "[D]enying a motion to vacate a void judgment is a per se abuse of discretion."

Burrell v. Henderson, et al., 434 F.3d 826, 831 (6th CA 2006).

CONCLUSION

As is made clear in the foregoing, there is no rational manner in which the existence of 26 U.S.C. § 7343 can be interpreted except as the sole definition of the class of individuals qualifying as "persons" relevant to the offense conduct with which Mr. Hendrickson was charged. Otherwise, § 7343 must be inescapably, inexplicably and impermissibly superfluous (or "includes" must be given a meaning and effect completely contrary to well-settled law, and the definition of person" at 26 U.S.C. § 7701(a) must be held *not* all-inclusive and exclusive of anyone not enumerated as in § 7343—which would still return us to the inescapable conclusion that § 7343 is the sole definition relevant to "persons" for purposes of Chapter 75).

Mr. Hendrickson was never alleged to be a person within the class defined by § 7343 either in the indictment or otherwise (nor proven to be). Therefore, no actual federal offense was charged (and none proven), and the courts have been without jurisdiction *ab initio*.

Further, the fact element of relevant "personhood" was kept from the knowledge and consideration of both the Grand and petit juries. No effort was made in trial to prove that Mr. Hendrickson was in this class. Because the juries in the case were denied knowledge of an element of the offense and no evidence proving that element was presented, the indictment and verdict in the case are both inherently invalid.

Further still, Mr. Hendrickson's returns are (and were at time of trial) acknowledged as accurate and correct by the agency responsible for making such determinations on the government's behalf. Accurate and correct returns are manifestly not "false" as to any material matter; thus, no actual federal offense has occurred on this ground as well, and again, the courts are, and have been, without jurisdiction in this matter.

Finally, as has been shown, the government made deliberate, repeated prejudicial misrepresentations throughout trial as to the "view" of the Internal Revenue Service, without any legitimate purpose and in a plain effort to induce a jury conclusion concerning an element of the charged offense based on a fallacious "resort to authority" rather than by impartial consideration of actual fact evidence. Thus, the proceedings have been fatally tainted by a fraud upon the court.

In light of these defects of jurisdiction and process, Mr. Hendrickson moves the Court to vacate his conviction and dismiss the charges in this case, and to afford him such other relief as the Court may find proper.

_____/__/__

Peter E. Hendrickson, in propria personam