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 persona