

United States Courts  
Southern District of Texas  
FILED

APR 05 2017

David J. Bradley, Clerk of Court

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

UNITED STATES OF AMERICA,

Petitioner,

v.

JOHN B. TROWBRIDGE,

Respondent.

CIVIL ACTION NO. 16-mc-2688

**MOTION TO WITHDRAW TAG-END ORDER IN OSC**

The instant cause is an alleged at-law civil proceeding between petitioner and respondent, the prosecution of which is the exclusive responsibility of petitioner and participation in which on the part of respondent is strictly voluntary.

Notwithstanding the above legal facts, the instant order to show cause (Document 2) is evidence that the Court:

1. has adopted the cause of petitioner as the Court's own by prosecuting sua sponte this action via order on page 2 thereof, that respondent comply with petitioner's demands and produce the documents described in the petition, before respondent has had the opportunity to be heard, in contravention of Rules 7(a)(2), 8(d)(2), and 12(a)(1)(A)(i) of the Federal Rules of Civil Procedure, effectively defeating the purpose and nature of the legal system; and
2. represents that the Court has the capacity, as given by the U.S. Constitution, to take territorial jurisdiction in Harris County, Texas, and command the conduct of respondent and direct the disposition of respondent's property.

Whereas, (a) it is reasonable to presume that there is no plausible object behind the Court's order in the last paragraph of the instant OSC that respondent bring with respondent to the hearing of this matter the documents described in the petition, other than to seize and tender said documents to petitioner, (b) the Court's aforesaid order obviates the need or opportunity for respondent to be heard and supersedes the express purpose of the court process to which it is appended (the instant OSC), by ordering respondent to comply with the Internal Revenue Service summons prior to determination of whether, after a hearing of the matter, respondent needs to be ordered "to comply with the Internal Revenue Summons," *id.*, and (c) there is no provision of the U.S. Constitution that gives the Court the capacity to take territorial jurisdiction over person or property in Harris County, Texas: The aforesaid order would operate to deny respondent due process of law.

#### **DUE PROCESS OF LAW**

The essence of due process of law is constitutional authority; to wit:

Due process of law . . . refers to that law of the land which derives its authority from the legislative powers conferred upon Congress by the Constitution of the United States, exercised [by executive and judicial officers] within the limits therein prescribed . . . *Hurtado v. California*, 110 U.S. 516, 3 Sup. Ct. 111, 292 (1884).

Congress have limited legislative power over the Union; to wit:

It is clear that Congress, as a legislative body, exercise two species of legislative power: the one, limited as to its objects, but extending all over the Union: the other, an absolute, exclusive legislative power over the District of Columbia. . . . *Cohens v. Virginia*, 19 U.S. 264, 434 (1821).

Executive and judicial jurisdiction being co-extensive with the legislative power of Congress, *Chisholm v Georgia*, 2 U.S. 419, 435 (1793), *Osborn v. Bank of United States*, 9 Wheat., 738, 808 (1824), Federal courts are courts of limited jurisdiction; to wit:

As we have repeatedly said: 'Federal courts are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute . . .'" Rasul

v. Bush, 542 U.S. 466, 489 (2004) (quoting *Kokkonen v. Guardian Life Ins. Co. of America*, 611 U. S. 375, 377 (1994) (citations omitted)). . . .

The limited legislative power of Congress over the Union consists of power of personal and subject-matter legislation, U.S. Const, Art. I, § 8, cl. 1–16, thereby giving Federal judges the capacity to take personal and subject-matter jurisdiction in the same geographic area; to wit:

As regards all courts of the United States inferior to this tribunal, two things are necessary to create jurisdiction, whether original or appellate. The Constitution must have given to the court the capacity to take it, and an act of Congress must have supplied it. Their concurrence is necessary to vest it. . . . It can be brought into activity in no other way. *The Mayor v. Cooper*, 73 U.S. (6 Wall.) 247, 252 (1867).

Whereas, the law of the land, the U.S. Constitution, confers upon Congress no power of territorial legislation over persons or property anywhere in the Union, Federal judges have no capacity to take territorial jurisdiction over persons or property anywhere in the Union; to wit (Underline emphasis added.):

[W]ithin any state of this Union the preservation of the peace and the protection of person and property are the functions of the state government. . . . The laws of congress in respect to those matters do not extend into the territorial limits of the states, but have force only in the District of Columbia, and other places that are within the exclusive jurisdiction of the national government [sic]. *Caha v. U.S.*, 152 U.S. 211, 215 (1894).

The several States of the Union are not, it is true, in every respect independent, many of the right [sic] and powers which originally belonged to them being now vested in the government created by the Constitution. But, except as restrained and limited by that instrument, they possess and exercise the authority of independent States, and the principles of public law to which we have referred are applicable to them. One of these principles is that every State possesses exclusive jurisdiction and sovereignty over persons and property within its territory. . . . *Pennoyer v. Neff*, 95 U.S. 714, 722 (1878).

[95 U.S. 714, 723] [T]he exercise of this jurisdiction [over those domiciled within its limits] in no manner interferes with the supreme control over the property by the State within which it is situated. *Penn v. Lord Baltimore*, 1 Ves. 444; *Massie v. Watts*, 6 Cranch 148; *Watkins v. Holman*, 16 Pet. 25; *Corbett v. Nutt*, 10 Wall. 464.

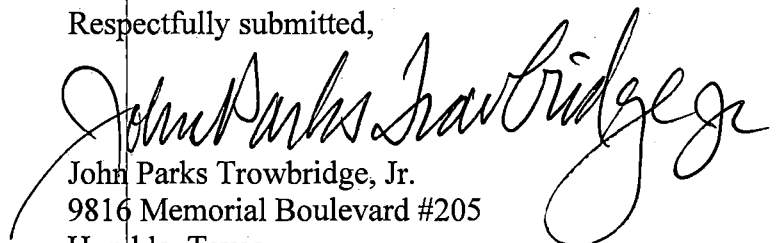
Notwithstanding that "every State possesses exclusive jurisdiction and sovereignty over persons and property within its territory," *Pennoyer, supra*, the instant OSC contains an order purporting to take territorial jurisdiction over person and property, i.e., respondent and the documents described in the instant petition belonging to respondent, in a geographic area in which no district judge has the capacity to do so, Harris County, Texas.

### CONCLUSION

Whereas, there is no procedural or constitutional authority for the aforesaid order in the last paragraph of the instant OSC, and said order would operate to deny respondent due process of law: Respondent requests that Court withdraw said order.

Date: April 4, 2017

Respectfully submitted,

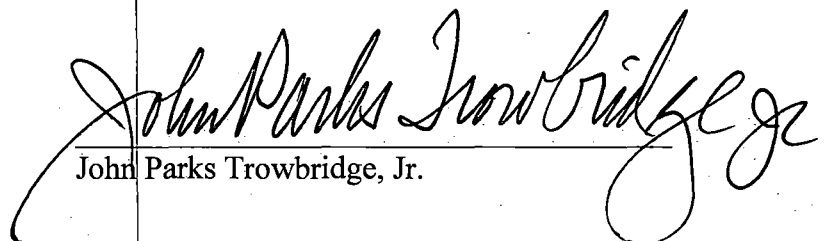


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### CERTIFICATE OF SERVICE

I hereby certify that on April 4, 2017, I served a complete copy of MOTION TO WITHDRAW TAG-END ORDER IN OSC by FedEx overnight courier on the following parties:

LEWIS A. BOOTH  
Special Assistant  
United States Attorney  
8701 S. Gessner, Ste. 710  
Houston, Texas 77074



John Parks Trowbridge, Jr.