

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO, SANTA FE

MAY 16 2007

William H. Payne
Arthur R. Morales
Plaintiffs

MATTHEW J. DYKMAN
CLERK

v

CIV NO 97 0266 SC/DJS

Lieutenant General Kenneth A. Minihan, USAF
Director, National Security Agency
National Security Agency
Defendant

MANDATORY JUDICIAL NOTICE and
authorities for void judgment

MANDATORY JUDICIAL NOTICE and authorities for void judgment

1 COMES NOW, plaintiffs Morales and Payne to place this court on judicial notice of authorities of motion to vacate judgment in CIV NO 97 0266 SC/DJS.

2 To be valid and enforceable, a judgment must be supported by three elements:

- (1) the court must have jurisdiction of the parties;
- (2) the court must have jurisdiction of the subject matter; and
- (3) the court or tribunal must have the power of authority to render the particular judgment.

If the requirements for validity are not met, a judgment may be subject to avoidance. ¹

3 Any judgment rendered by a court which lacks jurisdiction, either of the subject matter of the parties, or lacks inherent power to enter the particular judgment, or entered an Order which violated due process or was procured through extrinsic or collateral fraud, is null and void, and can be attacked at any time, in any court, either directly or collaterally, provided that the party is properly before the court. ²

4 Such a judgment is void from its inception, incapable of confirmation or ratification, and can never have any legal effect. ³

5 A void judgment must be dismissed, regardless of timeliness if jurisdiction is deficient. ⁵

6 When rule providing relief from void judgments is applicable, relief is mandatory and is not discretionary. ⁴

7 The passage of time, however great, does not affect the validity of a judgment ⁶ and cannot render a void judgment valid. ⁷

8 The limitations inherent in the requirements of due process of law extend to judicial, as well as political, branches of the government, ⁸ so that a judgment may not be rendered in violation of those constitutional limitations and guaranties. ⁹

9 A court may not render a judgment which transcends the limits of its authority, ¹⁰ and a judgment is void if it is beyond the powers granted to the court by the law of its organization, even where the court has jurisdiction over the parties and the subject matter. ¹¹

1 See *Peduto v. North Wildwood* (DC NJ) 696 F Supp 1004, *aff'd* (CA3 NJ) 878 F.2d 725; *In re Doe* (NM App) 99 NM 517, 660 P.2d 607; *Tice v. Nationwide Life Ins. Co.*, 284 Pa Super 220, 425 A.2d 782.

2 See U.S.Const.Amdt. V; F.R.Civ.P. 60(b)(4); CR 60(b)(5); State cases: *Lindgren v. Lindgren*, 58 Wash.App. 588, 596, 794 P2d 526 (1990), *rev.den.*, 116 Wash.2d 1009, 805 P2d 813 (1991); *Brenner v. Port of Bellingham*, 53 Wash.App. 182, 188, 765 P2d 1333 (1989) (motions to vacate under CR 60(b)(5) are not barred by the 'reasonable time' or the 1-year requirement of CR 60(b)"); *Mid-City Materials, Inc. v. Heater Beaters Custom Fireplaces*, 36 Wash.App. 480, 486, 674 P2d 1271 (1984); *Matter of Marriage of Leslie*, 112 Wash.2d 612, 618-19, 772 P2d 1013 (1989) (doctrine of laches does not bar attack of void judgment) (citing *John Hancock Mut. Life. ins. Co. v. Gooley*, 196 Wash. 357, 370, 83 P2d 221 (1938) (additional cite omitted); *In re Marriage of Ortiz*, 108 Wash.2d 643, 649, 740 P2d 843 (1987); *Dike v. Dike*, 75 Wash.2d 1, 7, 448 P2d 490 (1968); *Bresolin v. Morris*, 86 Wash.2d 24, 245, 543 P2d 325 (1975); *Cockerham v. Zikratch*, 619 P2d 739 (Ariz.1980); *State ex rel Turner v. Briggs*, 971 P2d 581 (Wash.App.1999); *Ward v. Terriere*, 386 P2d 352 (Colo. 1963); *Matter of Marriage of Hampshire*, 869 P2d 58 (Kan.1997); *Matter of Marriage of Welliver*, 869 P2d 653 (Kan.1994); *In re Estate of Wellis*, 983 P2d 279 (Kan.App.1999); *B & C Investments, Inc. v. F & M Nat'l. Bank & Trust*, 903 P2d 339 (Okla.App.Div.3 1995); *Graff v. Kelly*, 814 P2d 489 (Okla.1991); *Capital Federal Savings Bank v. Bewly*, 795 P2d 1051 (Okla.1990); *Wahl v. Round Valley Bank*, 38 Ariz. 411, 300 P. 955 (1931); *Davidson Chevrolet, Inc. v. City and County of Denver*, 330 P2d 1116, *cert.den.*, 79 S.Ct. 609, 359 US 926, 3 L.Ed.2d 629 (Colo.1958); *Tube City Mining & Milling Co. v. Otterson*, 16 Ariz. 305, 146 P. 203 (1914); *Lange v. Johnson*, 204 NW2d 205 (Minn.1973); *People v. Wade*, 506 N.W2d 954 (Ill.1987); *State v. Blankenship*, 675 NE2d 1303 (Oh.App.Dist.9 1996); *Hays v. Louisiana Dock Co.*, 452 NE2d 1383 (Ill.App.Dist.4 1983); *People v. Rolland*, 581 NE2d 907 (Ill.App.Dist.4 1991); *Eckles v. McNeal*, 628 NE2d 741 (Ill.App.1993); *People v. Sales*, 551 NE2d 1359 (Ill.App.Dist.2 1990); *In re Adoption of E.L.*, 733 NE2d 846 (Ill.App.Dist.1 2000); *Irving v. Rodriguez*, 179 NE2d 145 (Ill.App.Dist.2 1960); *People ex rel Brzica v. Village of lake Barrington*, 644 NE2d 66 (Ill.App.Dist.2 1994); *Steinfeld v. Haddock*, 513 US 809 (Ill.1994); *Dusenberry v. Dusenberry*, 625 NE2d 458 (Ind.App.Dist.1 1993); *Rook v. Rook*, 353 SE2d 756 (Va.1987); *Mills v. Richardson*, 81 SE2d 409 (N.C.1950); *Henderson v. Henderson*, 59 SE2d 227 (N.C.1950); *State v. Richie*, 20 SW3d 624 (Tenn.2000); *Crockett Oil Co. v. Effie*, 374 SW2d 154 (Mo.App.1964); *State ex rel Dawson v. Bomar*, 354 SW2d 763, *cert.den.*, ___ US ___ (Tenn.1962); *Underwood v. Brown*, 244 SW2d 168 (Tenn.1951); *Richardson v. Mitchell*, 237 SW2d 577 (Tenn.App.1950); *City of Lufkin v. McVicker*, 510 SW2d 141 (Tex.Civ.App.1973); Federal cases: *Klugh v. U.S.*, 620 F.Supp. 892 (D.S.C. 1985); *Rubin v. Johns*, 109 F.R.D. 174 (D.Virg.Is.1985); *Triad Energy Corp. v. McNeill*, 110 F.R.D. 382 (S.D.N.Y. 1986); *Millikan v. Meyer*, 311 US 457, 61 S.Ct. 339, 85 L.Ed.2d 278 (1940); *Long v. Shorebank Development Corp.*, 182 F.3d 548 (CA7 1999).

3 See *Stidham v. Whelchel*, 698 NE2d 1152 (Ind.1998); *Thompson v. Thompson*, 238 SW2d 218 (Tex.Civ.App. 1951); *Lucas v. Estate of Stavos*, 609 NE2d 1114, *rehng.den.*, *trans.den.*, (Ind.App.Dist.1 1993); *Loyd v. Director, Dept. of Public Safety*, 480 So2d 577 (Ala.Civ.App.1985); *In re Marriage of Parks*, 630 NE2d 509 (Ill.App.Dist.4 1991); *Lubben v. Selective Service System Local Bd. No.27*, 453 F.2d 645, 14 A.L.R.Fed. 298 (CA1 1972); *Hobbs v. U.S. Office of Personnel Mgmt.*, 485 F.Supp. 456 (M.D.Fla.1980); *Holstein v. City of Chicago*, 803 F.Supp. 205, *recon.den.*, 149 F.R.D. 147, *aff'd*, 29 F.3d 1145 (N.D.Ill.1992); *City of Los Angeles v. Morgan*, 234 P2d 319 (Cal.App.Dist.2 1951).

4 See *In re Marriage of Markowski*, 50 Wash.App. 633, 635, 749 P2d 745 (1988); *Brickum Inv. Co. v. Vernham Corp.*, 46 Wash.App. 517, 520, 731 P2d 533 (1987); *Orner v. Shalala*, 30 F.3d 1307 (Colo.1994).

5 See *Mitchell v. Kitsap County*, 59 Wash.App. 177, 180-81, 797 P2d 516 (1990) (collateral challenge to jurisdiction of pro tem judge granting summary judgment properly raised on appeal) (citing *Allied Fidelity Ins. Co. v. Ruth*, 57 Wash.App. 783, 790, 790 P2d 206 (1990)); *Jaffe and Asher v. Van Brunt*, 158 F.R.D. 278 (S.D.N.Y.1994).

6 See State ex rel. Smith v. Sixth Judicial Dist. Court, 63 Nev 249, 167 P.2d 648 (ovrld in part on other grounds by Poirier v. Board of Dental Examiners, 81 Nev 384, 404 P.2d 1); Monroe v. Niven, 221 NC 362, 20 S.E.2d 311.

7 See State ex rel. Smith v. Sixth Judicial Dist. Court, 63 Nev 249, 167 P.2d 648 (ovrld in part on other grounds by Poirier v. Board of Dental Examiners, 81 Nev 384, 404 P.2d 1); Columbus County v. Thompson, 249 NC 607, 107 S.E.2d 302.


8 As to persons and agencies bound by due process, see 16A Am.Jur.2d, Constitutional Law §§ 742, 821-824.

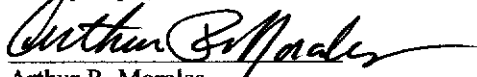
9 See Hanson v. Denckla, 357 US 235, 2 L.Ed.2d 1283, 78 S.Ct. 1228, reh den 358 US 858, 3 L.Ed.2d 92, 79 S.Ct. 10; Ladner v. Siegel, 298 Pa 487, 148 A 699, 68 ALR 1172.

10 See Royal Indem. Co. v. Mayor, etc., of Savannah, 209 Ga 383, 73 S.E.2d 205; Spencer v. Franks, 173 Md 73, 195 A 306, 114 ALR 263; Road Material & Equipment Co. v. McGowan, 229 Miss 611, 91 So.2d 554, motion dismd 229 Miss 630, 92 So.2d 245; Howle v. Twin States Express, Inc., 237 NC 667, 75 S.E.2d 732; Fitzsimmons v. Oklahoma City, 192 Okla 248, 135 P.2d 340; Robertson v. Commonwealth, 181 Va 520, 25 S.E.2d 352, 146 ALR 966; Reburg v. Lang, 239 Wis 381, 1 N.W.2d 759. The courts of a state may render only such judgments as they are authorized to do under the laws of the state. Mosely v. Empire Gas & Fuel Co., 313 Mo 225, 281 SW 762, 45 ALR 1223.

11 See People ex rel. Arkansas Valley Sugar Beet & Irrigated Land Co. v. Burke, 72 Colo 486, 212 P. 837, 30 ALR 1085; People v. Wade, 116 Ill 2d 1, 107 Ill Dec 63, 506 N.E.2d 954; Gray v. Clement, 296 Mo 497, 246 SW 940; Ex parte Solberg, 52 ND 518, 203 NW 898; Russell v. Fourth Nat'l Bank (Ohio) 102 Ohio St 248, 131 NE 726; Hough v. Hough (Okla) 772 P.2d 920; Farmers' Nat'l Bank v. Daggett (Tex Com App) 2 S.W.2d 834; State v. Turner, 98 Wash.2d 731, 658 P.2d 658; Shopper Advertiser, Inc. v. Wisconsin Dep't of Revenue, 117 Wis 2d 223, 344 N.W.2d 115.

Respectfully submitted,


William H. Payne
13015 Calle de Sandias NE
Albuquerque, NM 87111


Arthur R. Morales
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Date: 5/11/07

Pro se litigants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing MOTION TO VOID JUDGMENT FOR LACK OF JURISDICTION was mailed to LTG Keith B. Alexander, Director, National Security Agency, 9800 Savage Road, Fort George G. Meade, MD 20755-6000, Jan Elizabeth Mitchell, Assistant US Attorney, 201 3rd ST NW, ABQ, NM 87102 and foialo@nsa.gov by email this Friday May 11, 2007.


5/11/07