

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

FILED  
UNITED STATES DISTRICT COURT  
DISTRICT OF NEW MEXICO

William H. Payne  
Arthur R. Morales

07 JUL 26 AM 11:38

Plaintiffs

v

CIV NO 97 0266 SC/DJS

CLERK-ALBUQUERQUE

MCA/LFG

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

Defendant

Federal Rule of Civ. P. 60(b)(4)

MOTION TO VOID ORDER OF REFERENCE FOR LACK OF JURISDICTION

I. INTRODUCTION

1 Right to file to void judgment or order under Federal Rule of Civ. P. 60(b)(4) allows

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 Docket of CIV NO 97 0266 SC/DJS shows that on 05/16/2007 plaintiffs elected to file Motion to Set Aside Judgment as is their right under the Federal Rules of Civil Procedure. Motion was properly docketed on May 16, 2007.

3 Minute order of clerk MATTHEW J. DYKMAN transfers case from judge Vazquez on June 6, 2007. See docket entry 86.

4 Judge Vazquez issues ORDER OF REFERENCE on June 14, 2007, 8 days after she was removed from case containing the threat

[i]mposition of sanctions, including censure, striking pleadings, imposition of fines and/or incarceration of the Plaintiffs. ...

See docket entry 87.

5 Petitioners file MOTION TO VOID JUDGMENT FOR LACK OF JURISDICTION on June 16, 2007 from Bozeman, MT in reponse to Vazquez ORDER OF REFERENCE both by certified return receipt requested mail and by Internet. Motion is not docted until June 21, 2007. See docket entry 91.

Petitioners had filed of extension of time to file in case because of vacations on June 12, 2007.

So Vazquez intentionally and maliciously filed ORDER OF REFERENCE knowing petitioners would not be available.

PACER docket accessed through wireless Internet in Bozeman revealed Vazquez' treachery.

7 Judge Armijo apparently granted petitioners' MOTION TO VOID JUDGMENT FOR LACK OF JURISDICTION

MIME-Version: 1.0

From: cmecfb&#064;nmcourt.fed.us

To: cmect&#064;nmcourt.fed.us

Message-Id: <1002835&#064;nmcourt.fed.us>

Bcc: jan.mitchell&#064;usdoj.gov, USANM.ECFCivil&#064;usdoj.gov, craig.larson&#064;usdoj.gov, mcacmect&#064;nmcourt.fed.us, djacmect&#064;nmcourt.fed.us

Subject: Activity in Case 1:97-cv-00266-MCA-DJS Payne, et al v. Minihan, et al Minute Order

Content-Type: text/plain\*\*\*NOTE TO PUBLIC ACCESS USERS\*\*\* You may view the filed documents once without charge. To avoid later charges, download a copy of each document during this first viewing.U.S. District Court District of New Mexico - Version 3.0

Notice of Electronic Filing

The following transaction was entered on 6/15/2007 3:37 PM MDT and filed on 6/15/2007

Case Name: Payne, et al v. Minihan, et al

Case Number: 1:97-cv-266 <http://ecf.nmd.uscourts.gov/cgi-bin/DktRpt.pl?144231>

Filer:

WARNING: CASE CLOSED on 10/27/1999

Document Number: 88

(No document attached)

Docket Text:

MINUTE ORDER STRIKING [87] Order of REFERENCE Due to case being assigned to District Judge Armijo. by Judge Martha Vazquez THIS IS A TEXT ONLY ENTRY. THERE ARE NO DOCUMENTS ATTACHED. (lmg)

1:97-cv-266 Notice has been electronically mailed to:

Jan Elizabeth Mitchell jan.mitchell&#064;usdoj.gov, USANM.ECFCivil&#064;usdoj.gov, craig.larson&#064;usdoj.gov

1:97-cv-266 Notice has been delivered by other means to:

William H Payne

13015 Calle de Sandias, NE

Albuquerque, NM 87111

in an enveloped postmarked June 18, 2007.

Annotation THERE ARE NO DOCUMENTS ATTACHED appears to indicate that judge Armijo has voided Vazquez threat.

No copy of the order was included in the envelope. Proper rules of practice have not been followed, a necessary act has been omitted.

8 June 21, 2007 Armijo threatens petitioners [see BASIS OF MOTION for petitioners' reponse].

[t]he imposition of sanctions, including but not limited to, censure, striking pleadings, and imposition of fines.  
...

9 Chief magistrate judge Lorenzo Garcia issues ORDERTO SHOW CAUSE filed July 6, 2007.

Garcia instructs peititioners

Payne and Morales are directed to file their written responses and supporting affidavits no later than July 25, 2007.

10 Judge M Christina Armijo writes in Order filed 6/21/07 [Docket entry 89]

ORDER OF REFERENCE

THIS MATTER is before the Court sua sponte.1

Matter before the court is to void judgment CIV NO 97 0266 SC/DJS and properly process criminal complaint affidavit included in reply, not attack and threaten petitioners.

A court is authorized by statute to entertain jurisdiction in a particular case only, and undertakes to exercise the jurisdiction conferred in a case to which the statute has no application, the judgment rendered is void.

11 Judge M Christina Armijo writes in Order of Reference filed 6/21/07 [Docket entry 89]

This case was dismissed by the District Court on October 27, 1999 [Doc. 73], and the dismissal was affirmed by the Tenth Circuit Court of Appeals on December 13, 2000 [Doc. 80]. On May 16, 2007, pro se Plaintiffs William H. Payne and Arthur R. Morales filed pleadings in this case [Docs. 81, 82], seeking to set aside the Judgment previously entered [Doc. 73], or otherwise seeking to re-open this case.

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.

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

Statement "or otherwise seeking to re-open this case." violates void judgment rules because, from Federal Rule of Civ. P. 60(b)(4) standpoint, a case based on a voidable judgment is never closed. See Downes' statement in See docket entry 91.

Res judicata does not apply to a void judgment motion.

Further, plaintiffs filed to void judgment in CIV NO 97 0266 SC/DJS specifically because it did not violate judge Downes, Garcia, Brown, and Scotts voidable, but not yet void judgments.

Judges Downes [3 cases] and Bensen [2 cases] have voidable judgments because of subject matter jurisdiction.

Judges Garcia, Scott, Conway, and Hansen voidable judgments because of constitutional violations.

Voidable judgment are, however, not void.

10 Judge M Christina Armijo writes in Order filed 6/21/07 [Docket entry 89]

The Court now issues this Order of Reference directing that the district's Chief Magistrate Judge, Lorenzo F. Garcia, issue a report and recommendation on the Motion to Void Judgment for Lack of Jurisdiction Directed to District of New Mexico, Santa Fe Chief Judge Martha Vazquez [Doc. 81]. Further, the Chief Magistrate Judge shall determine whether the Plaintiffs' filing of pleadings in this case constitutes a violation of the federal injunction previously entered prohibiting William H. Payne and Arthur R. Morales from filing new lawsuits or re-asserting claims which have

---

1This matter was assigned to The Honorable M. Christina Armijo because the former trial judge, the Honorable Santiago Campos, is deceased.

---

previously been dismissed (Arthur R. Morales and William H. Payne v. Theodore C. Baca, et al, CIV 01-634, (Docket No. 61).2 Judge Garcia may undertake whatever legal analysis he deems necessary and may conduct hearings to determine if

there is a violation of the injunction and, if so, to recommend the imposition of sanctions, including but not limited to, censure, striking pleadings, and imposition of fines. Judge Garcia shall issue his Report and Recommendation to the Court in accord with the requirements of 28 U.S.C. § 636(b)(1).

SO ORDERED this 21st day of June, 2007, in Albuquerque, New Mexico.

An opportunity for a hearing before a competent and impartial tribunal on proper notice is one of the essential elements of due process of law.

## II. BASIS OF MOTION

11 Judge M Christina Armijo Order of Reference filed 6/21/07 [Docket entry 89] is voidable for reasons of

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.

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

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

A court is authorized by statute to entertain jurisdiction in a particular case only, and undertakes to exercise the jurisdiction conferred in a case to which the statute has no application, the judgment rendered is void.

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.

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

A void judgment must be dismissed when brought before a court, regardless of timeliness, if jurisdiction is deficient under Federal Rule Civ. P. 60(b)(4).

*Res judicata* does not apply to a void judgment motion.

An opportunity for a hearing before a competent and impartial tribunal on proper notice is one of the essential elements of due process of law.

### III. ISSUES

12 Judge Lorenzo Garcia was a defendant in New Mexico 12 person jury trial CV 2000-10278 which was fraudulently removed to federal court and are voidable.

13 Judge William Downes was a defendant in New Mexico 12 person jury trial CV-2001-06293 and CV 2001-05900 both of which were fraudulently removed to federal court and are voidable.

14 Judge Brown was a defendant in New Mexico 12 person jury trial CV 2002-03425.

15 Title 18 crimes have been committed against plaintiffs with all evidence in writing in court records by New Mexico chief judge Parker, Wyoming chief judge Downes, Utah chief judge Benson, and New Mexico judges Conway, Hansen, Garcia, Scott, Brown and Vazquez in their attempts to avoid monetary settlement for wrongs done us by Sandia National Laboratories.

16 Title 18 § 241 and 242 criminal complaint affidavits [See appendix A] have been filed with appropriate military authority under Title 18 § 4 on July 24, 2007.

17 MOTION TO VACATE JUDGMENTS FOR LACK OF JURISDICTION UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA MANDATORY JUDICIAL and NOTICE AND AUTHORITIES TO VOID JUDGMENT UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA were submitted on July 24, 2007 under a new action unavailable to us in New Mexico.

1

<http://www.prosefights.org/nmlegal/dcvoid/dcvoid.htm#motion>

2

<http://www.prosefights.org/nmlegal/dcvoid/dcvoid.htm#notice>

### IV RELIEF SOUGHT

18 Void Judge M Christina Armijo Order of Reference filed 6/21/07 [Docket entry 89] for reasons given in II. BASIS OF MOTION.

19 Recuse all judicial officers in New Mexico.

20 Issue NO CONTACT ORDER preventing all judicial officers in New Mexico or the emmisaries from approaching closer than 100 feet from

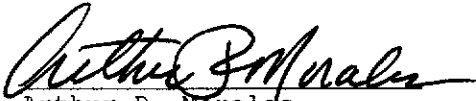
plaintiffs.

21 Transfer CIV NO 97 0266 SC/DJS to UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA for proper void judgment motion processing and settlement.

Respectfully submitted,



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



Arthur R. Morales  
465 Washington St SE  
Albuquerque, NM 87108

Date: 7/25/07

Pro se litigants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing MOTION TO VOID JUDGMENT FOR LACK OF JURISDICTION was emailed Jan Elizabeth Mitchell, Assistant US Attorney, 201 3rd ST NW, ABQ, NM 87102 at jan.mitchell@usdoj.gov, and DIR NSA at foialo@nsa.gov.

W H Payne  
Signed

7/25/07  
Date

CRIMINAL COMPLAINT AFFIDAVIT

Below individuals violated in writing in court records of Title 18 USC 241 and 242 by denying right to New Mexico paid for 12 person state jury trial lawsuits, or by denying right of jury trial guaranteed inviolate by 7<sup>th</sup> Amendment to US Constitution and 28 USC Rule 38, or by denying petitioners civil rights to file documents in court or represent themselves pro se.

These Title 18 felony violation of law are defined:

§ 241. Conspiracy against rights

If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or

If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured— They shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill, they shall be fined under this title or imprisoned for any term of years or for life, or both, or may be sentenced to death.

and

§ 242. Deprivation of rights under color of law

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse, or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this

title, or imprisoned for any term of years or for life, or both, or may be sentenced to death.

Counts SUPPORTED BY WRITTEN EVIDENCE OF GUILT TAKEN FROM COURT FILES

1 Judge James A Parker

Charge 1

New Mexico 12 person jury trial lawsuit CV 2000-10278 is removed to federal court without mandatory verification by assistant US attorney Phyllis A Dow on 11/27/2000.

New Mexico CV 2000-10278 is given federal case number 00cv01677. It is assigned to judge William F Downes by New Mexico chief judge James A Parker on 03/27/2001.

Parker denies civil right of complainant Payne to 12 persons jury trial New Mexico CV 2000-10278.

Parker violates § 241. Conspiracy against rights in writing in court record.

Charge 2

New Mexico 12 person jury trial lawsuit CV 2000-10289 is removed to federal court on without mandatory verification by assistant US attorney Raymond Hamilton on 11/08/2000.

New Mexico CV 2000-1028900 is given federal case number 00cv1574. Case is reassigned from judge Martha Vazquez to to judge William F Downes by New Mexico chief judge James A Parker on 03/27/2001.

Parker denies civil right of complainants Morales and Payne to 12 persons jury trial New Mexico CV 2000-1028900.

Parker violates § 241. Conspiracy against rights in writing in court record.

Charge 3

New Mexico 12 person jury trial lawsuit CV-2001-03118 is removed to federal court without mandatory verification by French law firm and private attorney Christina E Anaya representing state defendant Judge Ted Baca on 06/04/2001.

New Mexico CV 2001-03118 is given federal case number 01 cv 0634. New Mexico chief judge James A Parker recuses all judicial officers of the District of New Mexico; and reassigns the case to the Hon. William F. Downes, Chief U.S. District Judge District of Wyoming on 06/12/2001.

Parker denies civil right of complainants Morales and Payne to 12 persons jury trial New Mexico CV 2001-03118.

Parker violates § 241. Conspiracy against rights in writing in court record.

Charge 4

New Mexico 12 person jury trial lawsuit CV 2001-06293 is removed to federal court without mandatory verification by assistant US attorney Michael H Hoses.

New Mexico CV 2001-6293 is given federal case number 01 CV 1198. New Mexico chief judge issues ORDER OF RECUSAL by Chief Judge James A. Parker and reassigns case to Chief Judge Dee V. Benson for the District of Utah on 10/25/2001.

Parker denies civil right of complainants Morales and Payne to 12 persons jury trial New Mexico CV 2001-6293.

Parker violates § 241. Conspiracy against rights in writing in court record.

Charge 5

New Mexico 12 person jury trial lawsuit CV 2001-05900 is removed to federal court without mandatory verification by assistant US attorney Michael H Hoses.

New Mexico CV 2001-05900 is given federal case number 01 cv 1132. New Mexico chief Judge James A. Parker orders that all judicial officers of the District of New Mexico recuse in this action, and this case is reassigned to the Honorable Dee V Benson, Chief United States District Judge for the District of Utah on 10/24/2001.

Parker denies civil right of complainants Morales and Payne to 12 persons jury trial New Mexico CV 2001-05900.

Parker violates § 241. Conspiracy against rights in writing in court record.

2 Judge William F Downes

Charge 1

Downes dismisses 00cv01677 on 05/30/2003 thus denying petitioner Payne right of jury trial guaranteed inviolate by 7<sup>th</sup> Amendment to US Constitution and 28 USC Rule 38.

Downes violates § 241. Conspiracy against rights in writing in court record.

Charge 2

On 11/18/2004 ORDER issued by District Judge William F. Downes striking pltf's affidavit [121-1] and directing the Clerk of Court to refuse acceptance of any further pleadings w/out leave of the Chief Judge ....

Downes violates § 241. Conspiracy against rights in writing in court record.

Charge 3

Downes dismisses 00cv157 on 05/30/2002 thus denying petitioner Payne right of jury trial guaranteed inviolate by 7<sup>th</sup> Amendment to US Constitution and 28 USC Rule 38.

Downes violates § 241. Conspiracy against rights in writing in court record.

Charge 4

District Judge William F. Downes dismisses jury trial demand lawsuits on 09/17/2004 grants injunctive relief and prohibiting pltfs William Payne and Arthur Morales from initiating a civil action in the U.S. District Court on 08/18/2004.

Morales and Payne were denied right of jury trial guaranteed inviolate by 7<sup>th</sup> Amendment to US Constitution and 28 USC Rule 38.

Downes violates § 241. Conspiracy against rights in writing in court record.

3 Judge Dee Vance Benson

Charge 1

Dee V Benson terminates federal lawsuit number 01 CV 1198.  
Newwith prejudice on 10/04/2004 without demanded jury  
trial.

Petitioners were denied right of jury trial guaranteed  
inviolate by 7<sup>th</sup> Amendment to US Constitution and 28 USC  
Rule 38.

Benson violates § 241. Conspiracy against rights in writing  
in court record.

Charge 2

District Judge Dee V. Benson terminates 01 cv 1132  
w/prejudice on 10/04/2004 without demanded jury trial.

Complaintants were denied right of jury trial guaranteed  
inviolate by 7<sup>th</sup> Amendment to US Constitution and 28 USC  
Rule 38.

Benson violates § 241. Conspiracy against rights in writing  
in court record.

4 Judge John Edwards Conway

Charge 1

Conway dismisses jury trial lawsuit No. 92-1452 (Sealed) on  
8/25/94.

Complainant Payne's right of jury trial guaranteed  
inviolate by 7<sup>th</sup> Amendment to US Constitution and 28 USC  
Rule 38 has been violated.

Conway violates § 241. Conspiracy against rights in writing  
in court  
record.

5 Judge C Leroy Hansen

Charge 1

Judge C. LeRoy Hansen ORDER denied jury trial demand on 01/06/1998 in federal lawsuit 97 cv 350.

Complainant Morales was denied right of jury trial guaranteed inviolate by 7<sup>th</sup> Amendment to US Constitution and 28 USC Rule 38.

Morales is member of Hispanic minority class

Hansen violates § 242. Deprivation of rights under color of law and § 241 and Conspiracy against rights in writing in court record.

Charge 2

Judge C. LeRoy Hansen dismisses 97 cv 350 with prejudice 97 cv 350 on 12/29/1999.

Complainant Morales was denied right of jury trial guaranteed inviolate by 7<sup>th</sup> Amendment to US Constitution and 28 USC Rule 38.

Morales is member of Hispanic minority class

Hansen violates § 242. Deprivation of rights under color of law and § 241 and Conspiracy against rights in writing in court record.

7 Judge Lorenzo Garcia

Charge 1

Magistrate Judge Lorenzo F. Garcia dismisses 1 New Mexico federal jury trial lawsuit 99-270 on 11/30/1999

Complainant Payne was denied right of jury trial guaranteed inviolate by 7<sup>th</sup> Amendment to US Constitution and 28 USC Rule 38.

Garcia violates § 241. Conspiracy against rights in writing in court record.

Charge 2

On July 6, 2007 respondent magistrate judge Lorenzo Garcia threatened, "[C]ontempt sanctions may include censure, imposition of monetary fines and incarceration ..." for petitioners pursuing void judgment motion and right of jury trial guaranteed inviolate by 7<sup>th</sup> Amendment to US Constitution and 28 USC Rule 38.

Garcia violates § 241. Conspiracy against rights in writing in court record.

7 Judge Robert H Scott

Charge 1

Judge Robert H Scott dismisses CV 2002-03425 jury trial lawsuit on July 8, 2002.

Complainants Morales and Payne were denied right of jury trial guaranteed inviolate by 7<sup>th</sup> Amendment to US Constitution and 28 USC Rule 38.

Scott violates § 241. Conspiracy against rights in writing in court record.

Charge 2 Judge Scott took away petitioner Morales' right to represent himself pro se guaranteed by Tenth Amendment to the US Constitution.

Morales is member of Hispanic minority class

Scott violates § 242. Deprivation of rights under color of law and § 241. Conspiracy against rights in writing in court record.

8 Former judge Kenneth G Brown

Charge 1

Judge Kenneth G Brown dismisses CV 2001-07994 jury trial lawsuit with prejudice on May 16, 2002.

Complainant Payne was denied right of jury trial guaranteed inviolate by 7<sup>th</sup> Amendment to US Constitution and 28 USC Rule 38.

Brown violates § 241. Conspiracy against rights in writing in court record.

Charge 2

Judge Brown took away petitioner Payne's right to represent himself pro se guaranteed by Tenth Amendment to the US Constitution.

Brown violates § 241. Conspiracy against rights in writing in court record.

9 Judge Martha Vazquez

Charge 1

Judge Vazquez threatened "[i]mposition of sanctions, including censure, striking pleadings, imposition of fines and/or incarceration of the Plaintiffs ... "  
on 6/14/2007 when complainants filed reply to assistant US attorney response in void judgment action which exercising their civil right.

This violates § 242. Deprivation of rights under color of law and § 241 and Conspiracy against rights in writing in court record since Morales is a member of minority class.

VERIFICATION

SUBSCRIBED, SWORN TO and ACKNOWLEDGED before me this day of

3/21/07  
Arthur R Morales Arthur R Morales

SUBSCRIBED, SWORN TO and ACKNOWLEDGED before me this day of

7/24/07  
William H Payne W H Payne

Verification

Under penalty of perjury as provided by law, the undersigned certifies pursuant to 28 USC section 1746 that material factual statements set forth in this pleading are true and correct, except as to any matters therein stated to be information and belief of such matters the undersigned certifies as aforesaid that the undersigned verily believes the same to be true.

Notary Public Carolyn Parker



OFFICIAL SEAL  
CAROLYN PARKER  
NOTARY PUBLIC-STATE OF NEW MEXICO

My commission expires: 3-11-2010