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Sheila Terese, Wallen, Sui Juris  
c/o General Delivery  
Arivaca [zip code exempt]  
ARIZONA REPUBLIC

In Propria Persona

Under Protest, Necessity, and  
by Special Visitation Only

UNITED STATES DISTRICT COURT  
JUDICIAL DISTRICT OF ARIZONA

UNITED STATES OF AMERICA,	)	Case No. 95-484-WDB
	)	
Plaintiff,	)	NOTICE AND DEMAND
	)	TO DISMISS FOR LACK
v.	)	OF CRIMINAL JURISDICTION
	)	
Sheila Terese, Wallen,	)	28 U.S.C. 1359;
	)	FRCP Rules 9(b),
Defendant.	)	12(b)(1),(2), 12(h)(3)
_____	)	

COMES NOW Sheila Terese, Wallen, *Sui Juris*, Citizen of Arizona state and Defendant in the above entitled matter (hereinafter "Defendant"), to demand an immediate dismissal of the instant criminal case, with prejudice, for lack of criminal jurisdiction to proceed in the first instance, either over the subject matter or over the Person or property of the Defendant, and to provide formal Notice to all interested parties of same. Defendant hereby incorporates by reference all authorities cited in Exhibit "A": Federal Criminal Jurisdiction, and in Her MEMORANDUM OF LAW IN SUPPORT OF CHALLENGE TO CRIMINAL JURISDICTION OF THIS COURT [i.e. There is none.], Rules 301, 302: Federal Rules of

Evidence, as if all were set forth fully herein.

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KNOW ALL BY THESE PRESENTS:

I, Sheila Terese, Wallen, Sui Juris, and Defendant in the above entitled matter, hereby demand that this territorial (legislative) tribunal dismiss the instant criminal case with prejudice because it lacks exclusive jurisdiction over the exact geographical location where the alleged criminal activity mentioned in the indictment is alleged to have taken place. I was not arrested in any fort, magazine, arsenal, dockyard, "needful building", or other federal enclave within the Arizona Republic, nor was My Person or My private property situated within any of the aforementioned federal areas (a/k/a the federal zone).

A very recent U.S. Supreme Court decision, dated April 26, 1995, addressed the issue of exclusive legislative jurisdiction of the Congress, and the powers of the federal government. Justice Thomas, in a concurring majority opinion in U.S. v. Lopez, 115 S.Ct. 1624 (1995), 131 L.Ed.2d 626, very clearly says:

Indeed, on this crucial point, the majority and Justice Breyer [dissenting] agree in principle: the Federal Government has nothing approaching a police power. Id. at page 64.

Justice Thomas went on to discuss "a regulation of police" at page 86, wherein he stated as follows:

U.S. v. DeWitt, 76 U.S. 41, 9 Wall. 41, 19 L.Ed 593 (1870) marked the first time the court struck down a federal law as exceeding the power conveyed by the commerce clause. In a 2 page opinion, the court invalidated a nationwide law prohibiting all sales of naphtha, and illuminating oils. In so doing, the court remarked that the commerce clause "has always been understood as limited by its terms; and as a

virtual denial of any power to interfere with the internal trade and business of the separate states." Id. at page 44.

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The law in question was "plainly a regulation of police," which could have constitutional application only where Congress had exclusive authority, such as the territories. Id. pp. 44-45.

Earlier in the text, Justice Thomas, Id. at page 85, said, "Even before *Gibbons*, Chief Justice Marshall, writing for the Court in *Cohens v. Virginia*, 19 U.S. 264, 6 Wheat 264, 5 L.Ed 257 (1821), noted that Congress had no general right to punish murder committed within any of the states," and that Congress could not punish felonies generally. However, Congress could enact laws for places where it enjoyed plenary powers, for instance, over the District of Columbia, and whatever effect ordinary murders, or robbery, or gun possession might have on interstate commerce was irrelevant to the question of Congressional power.

The first Federal Criminal Act did not establish a nationwide prohibition against murder and the like. See Act of April 30, 1790, Chapter 9 [1 Stat. 112]; rather, only when committed in United States territories and possessions, or on the high seas. With the single exceptions of treason and/or counterfeiting, and notwithstanding any of the effects which murder, robbery, and gun possession might have on interstate commerce, Congress understood that it could not establish nationwide prohibitions.

Justice Thomas summed up his opinion dramatically with the statement quoted in part herein:

If we wish to be true to a Constitution that does not cede a police power to the Federal Government ....

(1) "All federal crimes are statutory." Doble, "Venue and Criminal Cases in the United States District Court," Virginia Law Review, 287, 289 (1926). "...[O]n the other hand, since all Federal Crimes are statutory and all criminal prosecutions in the Federal territorial courts are based on Acts of Congress," Federal Rules of Criminal Procedure Rule 26, in "taking of testimony," notes of Advisory Committee on Rules, paragraph 2.

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(2) Rule 54, Application and Exception, paragraph (c), Federal Rules of Criminal Procedure, "Act of Congress" includes any act of Congress locally applicable to and in force in the District of Columbia, in Puerto Rico, in a territory or in an insular possession.

(3) There is no presumption in favor of jurisdiction, and the basis for jurisdiction must be affirmatively shown. *Hanford v. Davis*, 16 S.Ct. 1051, 163 U.S. 273, 41 L.Ed. 157 (1896).

(4) See exact wording of Article I, Section 8, Clause 17, Constitution for the United States of America, which grant of authority does not extend over every square inch of the 48 contiguous Union States.

(5) In principle, the exclusive legislative jurisdiction of the federal government is not addressed to subject matter, but to geographical location. See *U.S. v. Bevans*, 16 U.S. (3 Wheat) 336 (1818).

(6) It is axiomatic that the prosecution must always prove territorial jurisdiction over a crime in order to sustain a conviction therefor. *U.S. v. Benson*, 495 F.2d 475 at 481 (1974).

The jurisdictional challenge issue can never be waived by the Accused, nor acquiesced by the Accused, in the absence of a positive showing upon the record that jurisdiction was clearly and unambiguously established.

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(7) Without proof of the requisite ownership or possession by the United States, the crime has not been made out. U.S. v. Watson, 80 Fed. Supp. 649 (1948, E.D. Va.). Only in America can we be forced into the status of subjects of a foreign corporation by fiat legislation, and the stroke of a CEO's pen, at the point of a gun, and thereby be immediately divested of standing in judicio, and declared to be debtors and enemies of our own government.

(8) In criminal prosecutions, where the federal government is the moving party, it must not only establish ownership of the property upon which the crime was allegedly committed, but it must also produce documentation that the state has ceded to it jurisdiction over that property. It was held by the U.S. Supreme Court in the case of Fort Leavenworth Railway Co. v. Iowa, 114 U.S. 525 at 531 (1885):

Where lands are acquired without such consent, the possession of the United States, unless political jurisdiction be ceded to them in some other way, is simply that of an ordinary proprietor.

(9) No jurisdiction exists in the United States to enforce federal criminal laws until consent to accept jurisdiction over acquired lands has been published and filed in behalf of the United States, as provided in 40 U.S.C. 255, and the fact that

the state authorized the government to take and exercise jurisdiction was immaterial. See *Adams v. United States*, 319 U.S. 312, 63 S.Ct. 1122, 87 L.Ed. 1421 (1943).

(10) All courts of justice are duty-bound to take judicial notice of the territorial extent of jurisdiction, although those acts are not formally put into evidence, nor in accord with pleadings. *Jones v. U.S.*, 137 U.S. 202, 11 S.Ct. 80 (1890).

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(11) Where a federal court is without jurisdiction of the offense, judgment of conviction of the court and/or the jury is void ab initio, on its face. *Bauman v. U.S.*, 156 F.2d 534 (5th Cir. 1946).

(12) Federal criminal jurisdiction is never presumed; it must always be proven; and it can never be waived. *U.S. v. Rogers*, 23 Fed. 658 (D.C., W.D. Ark., 1885).

(13) The federal courts are limited both by the Constitution and by Acts of Congress. *Owen Equip. & Erection Co. v. Kroger*, 98 S.Ct. 2396, 437 U.S. 365, 57 L.Ed.2d 274 (1978).

(14) The jurisdiction of federal courts is defined in the Constitution at Article III for judicial courts; in Article I for legislative courts; and in Article IV for territorial courts. Some courts created by Acts of Congress have been referred to as "Constitutional Courts," whereas others are regarded as "Legislative Tribunals." *O'Donoghue v. U.S.*, 289 U.S. 516 (1933), 77 L.Ed 1356, 53 S.Ct. 74; *Mookini v. U.S.*, 303 U.S. 201 at 205 (1938), 82 L.Ed 748, 58 S.Ct. 543.

(15) Legislative court judges do not enjoy Article III guarantees; "inherently judicial" tasks must be performed by

judges deriving power under Article III. See *U.S. v. Sanders*, 641 F.2d 659 (1981), cert. den. 101 S.Ct. 3055, 452 U.S. 918, 69 L.Ed 422.

The United States District Court creation and composition were accomplished by Acts of Congress on June 25, 1948 [62 Stat. 895], and November 13, 1963 [77 Stat. 331], currently codified at 28 U.S.C. 132; and the jurisdiction thereof, previously demonstrated herein, i.e. Chapter 85 of Title 28, lists civil, admiralty, maritime, patent, bankruptcy, etc., and does not once list, mention, or describe any criminal jurisdiction. It just is not there, so don't bother looking for it!

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(16) Acts of Congress creating the United States District Courts do not vest said territorial tribunals with any criminal jurisdiction; these courts have only such jurisdiction as is conferred upon them by Act of Congress under the Constitution. See *Hubbard v. Ammerman*, 465 F.2d 1169 (5th Cir., 1972), cert. den. 93 S.Ct. 967, 410 U.S. 910, 35 L.Ed.2d 272.

(17) The United States District Court is not a court of general jurisdiction, and has no other power bestowed upon it except as prescribed by Congress. See *Graves v. Snead*, 541 F.2d 159 (6th Cir., 1976), cert. den. 97 S.Ct. 1106, 429 U.S. 1093, 51 L.Ed.2d 539.

(18) It is apparent that the United States District Court for the District of Arizona was created and established under 28 U.S.C. 132, and its jurisdiction is defined and limited by Chapter 85 of Title 28, United States Code.

(19) The courts of appropriate jurisdiction for violations of Title 18 U.S.C. are designated at Section 3231, specifically naming them as "district courts of the United States" [sic].

(20) There is a distinct and definite difference between a "United States District Court" and a "District Court of the United States". The words "District Court of the United States" commonly describe constitutional courts created under Article III of the Constitution, not the legislative courts which have long been the courts of the Territories. See *International Longshoremen's & Warehousemen's Union v. Juneau Spruce Corp.*, 342 U.S. 237 at 241 (1952), 72 S.Ct. 235, 96 L.Ed. 275, 13 Alaska 536.

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(21) The term "District Court of the United States" commonly describes Article III courts or "courts of the United States", and not legislative courts of the territories. See *American Insurance Co. v. 356 Bales of Cotton*, 1 Pet. 511 (1828), 7 L.Ed 242; *International Longshoremen's and Warehousemen's Union v. Wirtz*, 170 F.2d 183 (9th Cir., 1948), cert. den. 336 U.S. 919, 93 L.Ed. 1082, 69 S.Ct. 641, reh. den. 336 U.S. 971, 93 L.Ed 1121, 69 S.Ct. 936.

(22) Though the judicial system set up in a territory of the United States is a part of federal jurisdiction, the phrase "court of the United States" when used in a federal statute is generally construed as not referring to "territorial courts." See *Balzac v. Porto Rico*, 258 U.S. 298 at 312 (1921), 42 S.Ct. 343, 66 L.Ed. 627. In *Balzac*, the High Court stated:

The United States District Court is not a true United States



court established under Article III of the Constitution to administer the judicial power of the United States therein conveyed. It is created by virtue of the sovereign congressional faculty, granted under Article IV, Section 3, of that instrument, of making all needful rules and regulations respecting the territory belonging to the United States. The resemblance of its jurisdiction to that of true United States courts in offering an opportunity to nonresidents of resorting to a tribunal not subject to local influence, does not change its character as amere territorial court.

[emphasis added]

The distinction within the dual nature of the federal court system is also noted in Title 18 U.S.C. 3241, which states that the United States District Court for the Canal Zone shall have jurisdiction "concurrently with the district courts of the United States, of offenses against the laws of the United States committed upon the high seas."

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This distinction is the reason why federal jurisdiction over prosecutions is more than a technical concept; it is Constitutional requirement. See U.S. v. Johnson, 337 F.2d 180, aff'd 383 U.S. 169 (1966), 86 S.Ct. 749, 15 L.Ed.2d 681, cert. den. 87 S.Ct. 44, 134, and 385 U.S. 846, 17 L.Ed.2d 77, 117.

(23) Besides the recent Lopez decision, it is interesting to note that at least two other courts, i.e. United States District Courts, have come to the same or similar conclusions. See U.S.A. v. Wilson, Stambaugh, Skott, Ketchum, Braun, and Ballin, Case No. 94-CR-140 (March 16, 1995) (U.S.D.C. Wisconsin); and U.S. v. Kearns, Case No. SA-95-CR-201 (October 6, 1995) (U.S.D.C., Texas).

(24) Interestingly enough, in a bankruptcy case in the U.S. Bankruptcy Court, Middle District of Pennsylvania (Chapter 13),

Case No. 5-94-00839, titled In re: Francis Patrick Farrell v. IRS/BATF, the alleged debtor sued out a compulsory counterclaim against the IRS/BATF after the alleged creditor submitted its proof of claim.

The counterclaim showed an extent of corruption unparalleled in American history, to which agencies of the federal government will often resort, specifically by placing a "T-Code" on someone's Individual Master File ("IMF").

In this way, the IRS/BATF used Admiralty and Maritime forfeiture laws to deprive a State Citizen of property and assets, and to mis-classify Him as a "high level narcotics trafficker." This occurred on November 17, 1995! Why? See U.S. v. Good, 114 S.Ct. 492 at 502, footnote 2 (1993).

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#### SUMMARY

The United States District Courts have no criminal jurisdiction whatsoever to prosecute a State Citizen within one of the 50 States of the Union which comprises the United States of America, until and unless Congress says so. Until and unless the federal government can prove ownership over said geographical land mass, particularly that parcel of land which is the private real property of the Defendant, the United States District Courts have no criminal jurisdiction whatsoever within the 50 Union States. Not a single Act of Congress vests the United States District Courts, as distinct from District Courts of the United States, with anything but "civil" authority. There is absolutely no criminal jurisdiction vested in said territorial tribunals.

#### REMEDY DEMANDED

Therefore, Defendant hereby demands that this Article IV legislative tribunal establish exclusive jurisdiction by producing certified documents consisting of the following:

(a) Documentation showing "United States" (federal government) ownership of each and every geographical location mentioned in the instant indictment, wherein the alleged criminal activity took place;

(b) Documentation from the Arizona Legislature which provides evidence of a cession by Arizona state surrendering jurisdiction to the "United States" (federal government) over the same geographical location as stated in (a) above;

(c) Documentation pursuant to Title 40 U.S.C. 255, wherein the "United States" (federal government) accepted jurisdiction to the same geographical location as stated in (a) above, or, documentation showing concurrent jurisdiction with Arizona state over the geographical location as stated in (a) above;

(d) Alternatively, absent the requisite documentation, Defendant hereby demands that this United States District Court vacate the jury's guilty verdict and dismiss the instant case with prejudice and in the interests of justice.

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Executed on August 13, 1996

/s/ Sheila Wallen

Sheila Terese, Wallen, Sui Juris  
Citizen of Arizona state

/s/ Paul Andrew Mitchell

Paul Andrew, Mitchell, B.A., M.S.  
Counselor at Law, federal witness,  
and Citizen of Arizona state

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Exhibit "A": Federal Criminal Jurisdiction

It is a well established principle of law that "all federal legislation applies only within the territorial jurisdiction of the United States unless a contrary intent appears"; see *Caha v. United States*, 152 U.S. 211, 215, 14 S.Ct. 513 (1894); *American Banana Company v. United Fruit Company*, 213 U.S. 347, 357, 29 S.Ct. 511 (1909); *United States v. Bowman*, 260 U.S. 94, 97, 98, 43 S.Ct. 39 (1922); *Blackmer v. United States*, 284 U.S. 421, 437, 52 S.Ct. 252 (1932); *Foley Bros. v. Filardo*, 336 U.S. 281, 285, 69 S.Ct. 575 (1949); *United States v. Spelar*, 338 U.S. 217, 222, 70 S.Ct. 10 (1949); and *United States v. First National City Bank*, 321 F.2d 14, 23 (2nd Cir., 1963). And this principle of law is expressed in a number of cases from the federal appellate courts; see *McKeel v. Islamic Republic of Iran*, 722 F.2d 582, 589 (9th Cir., 1983) (holding the Foreign Sovereign Immunities Act as territorial); *Meredith v. United States*, 330 F.2d 9, 11 (9th Cir., 1964) (holding the Federal Torts Claims Act as territorial); *United States v. Cotroni*, 527 F.2d 708, 711 (2nd Cir., 1975) (holding federal wiretap laws as territorial); *Stowe v. Devoy*, 588 F.2d 336, 341 (2nd Cir., 1978); *Cleary v. United States Lines, Inc.*, 728 F.2d 607, 609 (3rd Cir., 1984) (holding federal age discrimination laws as territorial); *Thomas v. Brown & Root, Inc.*, 745 F.2d 279, 281 (4th Cir., 1984) (holding same as *Cleary*, supra); *United States v. Mitchell*, 553 F.2d 996, 1002 (5th Cir., 1977) (holding marine mammals protection act as territorial); *Pfeiffer v. William Wrigley, Jr., Co.*, 755 F.2d 554, 557 (7th Cir., 1985) (holding age discrimination laws as territorial); *Airline Stewards & Stewardesses Assn. v. Northwest Airlines, Inc.*, 267 F.2d 170, 175 (8th Cir., 1959) (holding Railway Labor Act as territorial); *Zahourek v. Arthur Young and Co.*, 750 F.2d 827, 829 (10th Cir., 1984) (holding age discrimination laws as territorial); *Commodities Futures Trading Comm. v. Nahas*, 738 F.2d 487, 493 (D.C.Cir., 1984) (holding commission's subpoena power under federal law as territorial); *Reyes v. Secretary of H.E.W.*, 476 F.2d 910, 915 (D.C.Cir., 1973) (holding administration of Social Security Act as territorial); and *Schoenbaum v. Firstbrook*, 268 F.Supp. 385, 392 (S.D.N.Y., 1967) (holding securities act as territorial). But, because of statutory language, certain federal drug laws operate extra-territorially; see *United States v. King*, 552 F.2d 833, 851 (9th Cir., 1976). The United States has territorial jurisdiction only in Washington, D.C., the federal enclaves within the States, and in the territories and insular possessions of the "United States". However, it has no territorial jurisdiction over non-federally owned areas inside the territorial jurisdiction of the States within the American Union. And this proposition of law is supported by literally

hundreds of cases.

As a general rule, the power of the United States criminally to prosecute is, for the most part, confined to offenses committed within "its jurisdiction". This is born out simply by examination of Title 18, U.S.C. Section 5 which defines the term "United States" in clear jurisdictional terms. Section 7 contains the fullest statutory definition of the "jurisdiction of the United States" [sic]. The United States District Courts have jurisdiction of offenses occurring within the "United States", pursuant to Title 18, U.S.C., section 3231.

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Examples of this proposition are numerous. In *Pothier v. Rodman*, 291 F. 311 (1st Cir., 1923), the question involved whether a murder committed at Camp Lewis Military Reservation in the State of Washington was a federal crime. Here, the murder was committed more than a year before the U.S. acquired a deed for the property in question. Pothier was arrested and incarcerated in Rhode Island and filed a Habeas Corpus petition seeking his release on the grounds that the federal courts had no jurisdiction over an offense not committed in U.S. jurisdiction. The First Circuit agreed that there was no federal jurisdiction and ordered his release. But, on appeal to the U.S. Supreme Court, in *Rodman v. Pothier*, 264 U.S. 399, 44 S.Ct. 360 (1924), that Court reversed; although agreeing with the jurisdictional principles enunciated by the First Circuit, it held that only the federal court in Washington State could hear that issue. In *United States v. Unzeuta*, 35 F.2d 750 (8th Cir., 1929), the Eighth Circuit held that the U.S. had no jurisdiction over a murder committed in a railroad car at Fort Robinson, the state cession statute being construed as not including railroad rights-of-way. This decision was reversed in *United States v. Unzeuta*, 281 U.S. 138, 50 S.Ct. 284 (1930), the court holding that the U.S. did have jurisdiction over the railroad rights-of-way in Fort Robinson. In *Bowen v. Johnson*, 97 F.2d 860 (9th Cir., 1938), the question presented was whether jurisdiction over an offense prosecuted in federal court could be raised in a petition for Habeas Corpus. The denial of Bowen's petition was reversed in *Bowen v. Johnston*, 306 U.S. 19, 59 S.Ct. 442 (1939), the Court concluding that such a jurisdictional challenge could be raised in a Habeas Corpus petition. But, the Court then addressed the issue, and found that the U.S. both owned the property in question and had a state legislative grant ceding jurisdiction to the United States, thus there was jurisdiction in the United States to prosecute Bowen. But, if jurisdiction is not vested in the United States pursuant to statute, there is no jurisdiction; see *Adams v. United States*, 319 U.S. 312, 63 S.Ct. 1122 (1943).

And the lower federal courts also require the presence of federal jurisdiction in criminal prosecutions. In *Kelly v. United States*, 27 F. 616 (D.Me., 1885), federal jurisdiction of a manslaughter committed at Fort Popham was upheld when it was shown that the U.S. owned the property where the offense occurred

and the state had ceded jurisdiction. In *United States v. Andem*, 158 F. 996 (D.N.J., 1908), federal jurisdiction for a forgery offense was upheld on a showing that the United States owned the property where the offense was committed and the state had ceded jurisdiction of the property to the U.S. In *United States v. Penn*, 48 F. 669 (E.D.Va., 1880), since the U.S. did not have jurisdiction over Arlington National Cemetery, a federal larceny prosecution was dismissed. In *United States v. Lovely*, 319 F.2d 673 (4th Cir., 1963), federal jurisdiction was found to exist by U.S. ownership of the property and a state cession of jurisdiction. In *United States v. Watson*, 80 F.Supp. 649 (E.D.Va., 1948), federal criminal charges were dismissed, the court stating as follows:

Without proof of the requisite ownership or possession of the United States, the crime has not been made out. 80 F.Supp., at 651.

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In *Brown v. United States*, 257 F. 46 (5th Cir., 1919), federal jurisdiction was upheld on the basis that the U.S. owned the post office site where a murder was committed and the state had ceded jurisdiction; see also *England v. United States*, 174 F.2d 466 (5th Cir., 1949); *Krull v. United States*, 240 F.2d 122 (5th Cir., 1957); *Hudspeth v. United States*, 223 F.2d 848 (5th Cir., 1955); and *Gainey v. United States*, 324 F.2d 731 (5th Cir., 1963). In *United States v. Townsend*, 474 F.2d 209 (5th Cir., 1973), a conviction for receiving stolen property was reversed when the court reviewed the record and learned that there was absolutely no evidence disclosing that the defendant had committed this offense within the jurisdiction of the United States. And in *United States v. Benson*, 495 F.2d 475 (5th Cir., 1974), in finding federal jurisdiction for a robbery committed at Fort Rucker, the court stated:

It is axiomatic that the prosecution must always prove territorial jurisdiction over a crime in order to sustain a conviction therefor. 495 F.2d, at 481.

In two Sixth Circuit cases, *United States v. Tucker*, 122 F. 518 (W.D.Ky., 1903), a case involving an assault committed at a federal dam, and *United States v. Blunt*, 558 F.2d 1245 (6th Cir., 1977), a case involving an assault within a federal penitentiary, jurisdiction was sustained by finding that the U.S. owned the property in question and the state involved had ceded jurisdiction. In *In re Kelly*, 71 F. 545 (E.D.Wis., 1895), a federal assault charge was dismissed when the court held that the state cession statute in question was not adequate to convey jurisdiction of the property in question to the United States. In *United States v. Johnson*, 426 F.2d 1112 (7th Cir., 1970), a case involving a federal burglary prosecution, federal jurisdiction was sustained upon the showing of U.S. ownership and cession. And cases from the Eighth and Tenth Circuits likewise

require the same elements to be shown to demonstrate the presence of federal jurisdiction; see *United States v. Heard*, 270 F.Supp. 198 (W.D.Mo., 1967); *United States v. Redstone*, 488 F.2d 300 (8th Cir., 1973); *United States v. Goings*, 504 F.2d 809 (8th Cir., 1974) (demonstrating loss of jurisdiction); *Hayes v. United States*, 367 F.2d 216 (10th Cir., 1966); *United States v. Carter*, 430 F.2d 1278 (10th Cir., 1970); *Hall v. United States*, 404 F.2d 1367 (10th Cir., 1969); and *United States v. Cassidy*, 571 F.2d 534 (10th Cir., 1978).

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Of all the circuits, the Ninth Circuit has addressed jurisdictional issues more than any of the rest. In *United States v. Bateman*, 34 F. 86 (N.D.Cal., 1888), it was determined that the United States did not have jurisdiction to prosecute for a murder committed at the Presidio because California had never ceded jurisdiction; see also *United States v. Tully*, 140 F. 899 (D.Mon., 1905). But later, California ceded jurisdiction for the Presidio to the United States, and it was held in *United States v. Watkins*, 22 F.2d 437 (N.D.Cal., 1927), that this enabled the U.S. to maintain a murder prosecution; see also *United States v. Holt*, 168 F. 141 (W.D. Wash., 1909), *United States v. Lewis*, 253 F. 469 (S.D.Cal, 1918), and *United States v. Wurtzbarger*, 276 F. 753 (D.Or., 1921). Because the U.S. owned, and had a state cession of jurisdiction for, Fort Douglas in Utah, it was held that the U.S. had jurisdiction for a rape prosecution in *Rogers v. Squier*, 157 F.2d 948 (9th Cir., 1946). But, without a cession, the U.S. has no jurisdiction; see *Arizona v. Manypenny*, 445 F.Supp. 1123 (D.Ariz., 1977).

The above cases from the U.S. Supreme Court and federal appellate courts set forth the rule that in criminal prosecutions, the government, as the party seeking to establish the existence of federal jurisdiction, must prove U.S. ownership of the property in question and a state cession of jurisdiction. This same rule manifests itself in state cases. State courts are courts of general jurisdiction and in a state criminal prosecution, the state must only prove that the offense was committed within the state and a county thereof. If a defendant contends that only the federal government has jurisdiction over the offense, he, as proponent for the existence of federal jurisdiction, must likewise prove U.S. ownership of the property where the crime was committed and state cession of jurisdiction.

Examples of the operation of this principle are numerous. In Arizona, the State has jurisdiction over federal lands in the public domain, the state not having ceded jurisdiction of that property to the U.S.; see *State v. Dykes*, 114 Ariz. 592, 562 P.2d 1090 (1977). In California, if it is not proved by a defendant in a state prosecution that the state has ceded jurisdiction, it is presumed the state does have jurisdiction over a criminal offense; see *People v. Brown*, 69 Cal. App.2d 602, 159 P.2d 686 (1945). If the cession exists, the state has no jurisdiction; see *People v. Mouse*, 203 Cal. 782, 265 P. 944

(1928). In Montana, the state has jurisdiction over property if it is not proved there is a state cession of jurisdiction to the U.S.; see *State ex rel Parker v. District Court*, 147 Mon. 151, 410 P.2d 459 (1966); the existence of a state cession of jurisdiction to the U.S. ousts the state of jurisdiction; see *State v. Tully*, 31 Mont. 365, 78 P. 760 (1904). The same applies in Nevada; see *State v. Mack*, 23 Nev. 359, 47 P. 763 (1897), and *Pendleton v. State*, 734 P.2d 693 (Nev., 1987); it applies in Oregon (see *State v. Chin Ping*, 91 Or. 593, 176 P. 188 (1918) and *State v. Aguilar*, 85 Or.App. 410, 736 P.2d 620 (1987)); and in Washington (see *State v. Williams*, 23 Wash.App. 694, 598 P.2d 731 (1979)).

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In *People v. Hammond*, 1 Ill.2d 65, 115 N.E.2d 331 (1953), a burglary of an IRS office was held to be within state jurisdiction, the court holding that the defendant was required to prove existence of federal jurisdiction by U.S. ownership of the property and state cession of jurisdiction. In two cases from Michigan, larcenies committed at U.S. Post Offices which were rented were held to be within state jurisdiction; see *People v. Burke*, 161 Mich. 397, 126 N.W. 446 (1910) and *People v. Van Dyke*, 276 Mich. 32, 267 N.W. 778 (1936); see also *In re Kelly*, 311 Mich. 596, 19 N.W.2d 218 (1945). In *Kansas City v. Garner*, 430 S.W.2d 630 (Mo.App., 1968), state jurisdiction over a theft offense occurring in a federal building was upheld, and the court stated that a defendant had to show federal jurisdiction by proving U.S. ownership of the building and a cession of jurisdiction from the state to the United States. A similar holding was made for a theft at a U.S. missile site in *State v. Rindall*, 146 Mon. 64, 404 P.2d 327 (1965). In *Pendleton v. State*, 734 P.2d 693 (Nev., 1987), the state court was held to have jurisdiction over a DUI ("driving under the influence") committed on federal lands, the defendant having failed to show U.S. ownership and state cession of jurisdiction.

In *People v. Gerald*, 40 Misc.2d 819, 243 N.Y.S.2d 1001 (1963), the state was held to have jurisdiction of an assault at a U.S. Post Office since the defendant did not meet his burden of showing presence of federal jurisdiction; and because a defendant failed to prove title and jurisdiction in the United States for an offense committed at a customs station, state jurisdiction was upheld in *People v. Fisher*, 97 A.D.2d 651, 469 N.Y.S.2d 187 (A.D. 3 Dept., 1983). The proper method of showing federal jurisdiction in state court is demonstrated by the decision in *People v. Williams*, 136 Misc.2d 294, 518 N.Y.S.2d 751 (1987). This rule was likewise enunciated in *State v. Burger*, 33 Ohio App.3d 231, 515 N.E.2d 640 (1986), in a case involving a DUI offense committed on a road near a federal arsenal.

In *Kuerschner v. State*, 493 P.2d 1402 (Okla.Cr.App., 1972), the state was held to have jurisdiction of a drug sales offense occurring at an Air Force Base, the defendant not having attempted to prove federal jurisdiction by showing title and



jurisdiction of the property in question in the United States; see also *Towry v. State*, 540 P.2d 597 (Okla.Cr.App., 1975). Similar holdings for murders committed at U.S. Post Offices were made in *State v. Chin Ping*, 91 Or. 593, 176 P. 188 (1918), and in *United States v. Pate*, 393 F.2d 44 (7th Cir., 1968). Another Oregon case, *State v. Aguilar*, 85 Or.App. 410, 736 P.2d 620 (1987), demonstrates this rule. And finally, in *Curry v. State*, 111 Tex. Cr. 264, 12 S.W.2d 796 (1928), it was held that, in the absence of proof that the state had ceded jurisdiction of a place to the United States, the state courts had jurisdiction over an offense.

Therefore, in federal criminal prosecutions, the government must prove the existence of federal jurisdiction by showing U.S. ownership of the place where the crime was committed and state cession of jurisdiction. If the government contends for the power criminally to prosecute for an offense occurring outside "its jurisdiction", it must prove an extra-territorial application of the statute in question as well as a constitutional foundation supporting the same. Absent this showing, no federal prosecution can be commenced for offenses committed outside "its jurisdiction", i.e. the federal zone.

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#### PROOF OF SERVICE

I, Sheila Terese, Wallen, Sui Juris, hereby certify, under penalty of perjury, under the laws of the United States of America, without the "United States," that I am at least 18 years of age, a Citizen of one of the United States of America, and that I personally served the following document(s):

NOTICE AND DEMAND TO DISMISS  
FOR LACK OF CRIMINAL JURISDICTION:  
28 U.S.C. 1359; FRCP Rules 9(b),  
12(b)(1),(2), 12(h)(3)

by placing one true and correct copy of said document(s) in first class United States Mail, with postage prepaid and properly addressed to the following:

Office of the United States Attorney  
110 South Church Avenue, Suite 8310  
Tucson [85701]  
ARIZONA REPUBLIC

Attorney General

Department of Justice  
10th and Constitution, N.W.  
Washington  
DISTRICT OF COLUMBIA

Solicitor General  
Department of Justice  
10th and Constitution, N.W.  
Washington  
DISTRICT OF COLUMBIA

Executed on: \_\_\_\_\_

/s/ Sheila Wallen

\_\_\_\_\_  
Sheila Terese, Wallen, *Sui Juris*  
Citizen of Arizona state

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