

1 L. Daniel Smith
2 *In Propria Persona*
3 C/o: 1314 South Grand Boulevard Suite 2-128
4 Spokane [99202]
5 Washington State, USA

6 UNITED STATES DISTRICT COURT
7 FOR THE EASTERN DISTRICT OF WASHINGTON
8 (Hon. Rosanna Malouf Peterson)

9 **In Re:**) **No. CV-11-340-RMP**
10)
11 SEARCH WARRANTS) **NOTICE TO TAKE JUDICIAL**
12) **NOTICE OF PLAIN AND**
13) **PREJUDICIAL ERRORS**
14)

15 COMES NOW Movant, L. Daniel Smith, *in propria persona*,
16 preserving all rights and waiving none, to file this, the above
17 captioned NOTICE TO TAKE JUDICIAL NOTICE OF PLAIN AND
18 PREJUDICIAL ERROR, and states the following:

19 On April 2, 2012, the Court entered an "ORDER ADDRESSING
20 MOTIONS", ECF No. 45, which contained several plain and
21 prejudicial errors and are set forth in part below.

22 **RE: THE COURT'S ANALYSIS ON STANDING**

23 1) **ERROR**: The Court erred at ECF No. 45 pg 2 line 21 when it
24 wrote "Mr. Smith argues that neither the 'United States of
25 America' nor the 'United States' is a proper party in this
26 civil action... ECF No 37 at 2."

27 **CORRECTION**: Nowhere did Movant argue that "United States"
28 is not a proper party, but rather *contrary*. See ECF No. 37

1 pg. 5 lines 5-12; and ECF No. 39 pg. 11 lines 11-20; and
2 pg. 14 line 1 ("U.S. Department of Justice could easily
3 dispose of the entire question by ... *appearing as United*
4 *States*"), and elsewhere throughout ECF Nos. 37 and 39.
5 United States *is* a proper party, which is why Movant served
6 the United States to begin with.

7
8 **RESULT OF ERROR:** The Court's general analysis, being based
9 upon a broad misstatement of the fundamental issue
10 presented for decision, misrepresents and obfuscates
11 Movant's *actual* argument, and results in plain and
12 prejudicial error.

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14 2) **ERROR:** The Court erred at ECF 45 pg 3 lines 5-12 when it
15 wrote: "In that notice [of appearance], Mr. Parisi refers
16 to the government alternatively as the United States or the
17 United States of America."

18 **CORRECTION:** Mr. Parisi appears purporting to represent the
19 "UNITED STATES OF AMERICA" [*sic*] as indicated by the
20 caption of his notice and uses the words "United States"
21 (without America) properly when referring in the body of
22 his notice to the Department at which he is employed
23 ("United States Department of Justice"), and to his
24 position as an Attorney for United States in the signature.
25 Mr. Parisi therefore, does *not* refer to "the government"
26 alternatively as the United States or the United States of
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1 America" but merely alleges the Respondent, "UNITED STATES
2 OF AMERICA" [sic], is "the government". Regardless of what
3 Mr. Parisi alleges about the entity he purports to
4 represent, allegations do not a fact make.

5 **RESULT OF ERROR:** The Court's misstatement of the facts at
6 ECF No. 45 pg. 3 lines 5-12 misrepresent and obfuscate
7 Movant's *actual* argument and result in plain and
8 prejudicial error.
9

10 3) **ERROR:** The Court erred when it attempted to convert "a
11 term" into "a party", or *legal* "entity" at ECF No. 45 pg. 3
12 lines 13-19.

13 **CORRECTION:** Movant's argument was *not* whether or not the
14 "United States" and "United States of America" are "terms"
15 [sic] which may be used interchangeably. See Movant's ECF
16 No. 39 pg. 9 at line 22. There can be little argument the
17 "terms" are interchangeable *in common parlance*. Surely
18 this Court knows the difference between "a term" and "a
19 party" and a "legal entity"?
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22 **RESULT OF ERROR:** The Court's use of non-binding *dicta* at
23 ECF No. 45 pg. 3 lines 13-19 misrepresents and obfuscates
24 Movant's *actual* argument and results in plain and
25 prejudicial error.
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27 4) **ERROR:** The Court erred at ECF No. 45 pg. 4 lines 1-13 when
28 it wrote: "Moreover, when an individual brings a motion

1 seeking return of property seized by the United States of
2 America, the United States may respond.”

3 **CORRECTION:** In this instant case, the “United States of
4 America” did not seize any property and the “United States”
5 did not respond.

6 **RESULT OF ERROR:** The Court’s one-hundred-eighty degree
7 reversal of Movant’s argument at ECF No. 45 pg. 4 lines 1-
8 13 misrepresents and obfuscates Movant’s *actual* argument
9 and results in plain and prejudicial error.

10
11 5) **ERROR:** The Court erred at ECF No. 45 pg. 4 lines 1-13 when
12 it stated Movant claimed to *not* be pursuing an action
13 against the “United States”.

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15 **CORRECTION:** Movant served the United States through the
16 Unites States Attorney’s Office, an agency of the United
17 States Department of Justice, executive department of the
18 United States federal government. Movant was *obviously*
19 pursuing an action against the United States and Movant
20 nowhere stated the contrary.

21
22 **RESULT OF ERROR:** The Court’s statements at ECF No. 45 pg. 4
23 lines 1-13 misrepresent and obfuscate Movant’s *actual*
24 argument and results in plain and prejudicial error.

25 **SUMMARY RE: THE COURT’S ANALYSIS ON STANDING**

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27 Given every point touched upon by the Court regarding
28 standing was based upon misrepresentation of the *actual* argument

1 presented for decision, the Court's conclusion must necessarily
2 be plain and prejudicial error. In addition, the Court erred in
3 finding for Respondent where there were no facts admitted into
4 in evidence in support of Respondent standing. Respondent bore
5 the sole burden of proof of standing. The Court erred when it
6 proffered "evidence" for Respondent where Respondent failed to
7 meet the burden of proof of standing for itself. See 28 U.S.C.
8 §§ 454-455. The Court erred in allowing *dicta* to control the
9 judgment when the very point was presented for decision. The
10 Court erred in making an arbitrary and capricious ruling without
11 any findings of fact or genuine conclusions of law. The Court's
12 errors are plain and prejudicial.
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15 **RE: THE COURT'S ANALYSIS ON CALLOUS DISREGARD**

16 6) **ERROR:** The Court erred at EFC No. 45 pg. 6 lines 19-21 when
17 it wrote "the government does not appear to have displayed
18 callous disregard for the Movants." However, callous
19 disregard was shown *and unrebutted* in the original Motions
20 by Movant's allegations of intentional inclusions and
21 omissions by Ms. Borden in her affidavits which were
22 material to the finding of probable cause. In addition, it
23 was shown *and unrebutted* that all searches were predicated
24 upon information illegally derived in the first instance by
25 a warrantless GPS search, and intentionally and repeatedly
26 admitted into evidence by Ms. Borden to obtain voluminous
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1 *ex parte* search and seizure warrants, all in violation of
2 the Fourth and Fifth Amendments to the Constitution for the
3 United States of America. See ECF No. 21. In addition, it
4 was shown *and un rebutted* that seventy-eight (78) sealed
5 postmarked parcels were seized prior to the issuance of
6 their warrants, all in violation of the Fourth and Fifth
7 Amendments to the Constitution for the United States of
8 America. See ECF No. 25. Respondent failed to answer a
9 single Motion. Unrebutted allegations must be accepted as
10 true. Callous disregard is well established and
11 deprivation of constitutional right, even for an instant,
12 is irreparable harm. See ECF No. 15 at 31 and ECF Nos. 20,
13 25 and 30.

16 7) **ERROR:** The Court erred in not hearing Movants numerous
17 Motions as the spirit of justice would so require. Had the
18 Court taken into consideration the numerous unrebutted
19 allegations (as it did when it granted Ms. Borden's *ex*
20 *parte* search and seizures without any adversarial probable
21 cause hearing), it would have seen plainly the callous
22 disregard to which it has turned a blind eye.

24 8) **ERROR:** The Court erred in not taking into account a Grand
25 Jury *already failed* to return an indictment over six months
26 ago, of which Mr. Parisi and Ms. Borden *willfully* omitted
27 at the February 2, 2011, hearing. See ECF No. 44 at 2.

1 Such omission is fraud for not having disclosed what should
2 have been disclosed and shows further callous disregard for
3 the rights of Movants.

4 9) **ERROR:** The Court erred in showing partiality to the
5 Respondent. Movant respectfully requests the Honorable Ms.
6 Peterson to declare for the record whether or not she is
7 independent and impartial in this case.
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9 Pursuant to Rule 60 (a) and (b) (3), the Court, of its own
10 volition, may correct a mistake arising from an omission, or
11 relieve a party of a judgment for misconduct of opposing party,
12 a mistake (error), newly discovered evidence, or any other
13 reason for which correction or relief may be justified. The
14 Court ought to exercise its equitable jurisdiction where justice
15 so requires.
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18 DATED this 6th day of April, 2012 A.D.:

19 Respectfully submitted,
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23 By: _____

24 L. Daniel Smith
25 *In Propria Persona*
26 C/o: 1314 South Grand Blvd.
27 Suite 2-128
28 Spokane [99202]
Washington State, USA

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I caused a true and correct copy to
3 be served by hand and/or by mail to:

4 U.S. Attorney's Office
5 Eastern District of Washington
6 Thomas S. Foley U.S. Courthouse
7 920 West Riverside Avenue
8 Spokane, WA 99201

9 Respectfully submitted,

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11 L. Daniel Smith
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