

May 10, 2014

TO:

AUSA C. Blanton  
111 East Broadway Street  
Del Rio, TX 78840

SUBJECT: Response To Letter From Thaddeus C. Cleveland, Patrol Agent In Charge,  
Sanderson Station Dated May 5, 2014

Dear Mr. Blanton,

I received border patrol agent Cleveland's letter on May 8, 2014. I am sure border patrol agent Cleveland sent you a copy of the letter in hopes to have charges filed against us.

Border patrol agent Cleveland espousing federal US codes has less force and effect than toilet paper on my property. Border patrol agent Cleveland is either under the false delusion that he and his subordinates are operating within a federal zone or he is criminally acting under the color of law.

Espousing USC 8, which are rules, do not any have force and effect within the boundaries of Texas and violate private property rights. These rules (not statutory laws at large) lined out in Section 1357(a)(3) and 1357(e) are made by the **US Attorney General and Not US Congress**. Those rules apply to immigration naturalization service agents only. Nowhere was the federal government granted authority or jurisdiction on private property or to interfere with any citizens within the boundaries of Texas. The rules are attempting to grant the federal government an authority it does not possess.

**When we first moved to the area, border patrol agent Cleveland's predecessor border patrol agent Rodriguez tried to obtain a written agreement from me to allow his agents on my private property. I declined.** Interestingly enough, I was present when border patrol agent Black, who was Mr. Rodriguez second in charge at the time, admitted that he, also, refused to sign an agreement allowing border patrol access to his ranch up RR 349. The border patrol supervisors are aware they do not have jurisdiction on private property. Everything comes down to one point and that is *proving jurisdiction!*

***Brady v. U.S., 397 U.S. 742, 748,(1970)** "Waivers of Constitutional Rights, not only must they be voluntary, they must be knowingly intelligent acts done with sufficient awareness."*

Just as border patrol agent Cleveland copy furnished you in his letter threatening me with arrest, border patrol agent Rodriguez also copy furnished your predecessor Ciro Moyer, AUSA in a letter threatening me with arrest for not relinquishing my God given rights.

I will compare the response letter we sent to AUSA Ciro Moyer dated February 2009 with this letter we are sending you. Just as I am sure border patrol agent Cleveland included you in his letter hoping to have criminal charges preferred against me, Ernest Rodriguez, sent a copy of his

letter to us as well as your predecessor for obviously the same reason. In Rodriguez's letter he attempted to intimidate and threaten us for not giving up our property rights to his armed thugs. *(Please note further down in this letter the historical events involving border patrol and my family to emphasize our distrust and refusal to give up our God given rights to armed thugs!)*

Mr. Cleveland quoted USC Title 8 claiming the right to trespass on private property within 25 miles of the border. That federal code only applies to federal lands where federal government has jurisdiction such as Big Bend, Fort Huachuca, and so forth. That is of course only if the state legislatures ceded jurisdiction to those federal lands. Either that or a contract between the federal government and the property owner exist. I have no such contract with the federal government. I have made it clear I will not enter into contract with the border patrol. US Code, Title 8 does not apply to private property or within the boundaries of the state where jurisdiction by the Texas legislature has not been ceded. Which again, was the reason Mr. Rodriguez tried obtaining a written agreement between the property owners and border patrol. To my knowledge, to this date none of the property owners in Terrell County have signed the agreement.

The attempt to justify trespassing on private property through the use of USC 8 was, also, used by Mr. Rodriguez in his letter when he attempted to violate our rights. Mr. Moyer, AUSA, never responded contradicting our response that US Code, Title 8 only applies where the federal government has jurisdiction. But then how could he? *Ubi non est condendi auctoritas, ibi non est parendi necessitas. Where there is no authority to enforce, there is no authority to obey. Dav. 69*

In the response letter sent to Mr. Moyer, AUSA, in Del Rio I included about 134 Supreme Court and Applet Court Decisions. Those court decisions state that two things have to occur for the federal government to have jurisdiction (a list of those same court decisions are include at the end of this document).

First the federal government has to show they own the property, that they purchased the land. However, that is not enough according to the courts. Owning the property does not grant the federal government jurisdiction.

The second thing that must also be in place according to the courts is the state legislatures **must then also cede jurisdiction** to the federal government for that property.

The state of Texas only ceded jurisdiction to the federal government from the center of the river to the riverbank. The center of the river is where the boundary line between Texas and Mexico is defined according to the *Hidalgo Treaty*. The Texas legislature could not grant jurisdiction any further because it was private lands to which they had no jurisdiction. Most of the lands within Terrell County at the time were segregated out by land grant/patent. As I stated in the letter to Moyer, there is no documentation showing that Texas ceded jurisdiction to the federal government on my property nor proof that it holds deed to my property. Article 1, Section 8, Clause 17 of the US Constitution, also, states the federal jurisdiction is where the state legislatures ceded jurisdiction. **Jurisdiction within the boundaries of a state is not an authority or privilege granted to the federal government or federal agency or the US Congress.**

**Texas Code of Criminal Procedures, Sec. 1.04. TERRITORIAL JURISDICTION.**

(a) This state has jurisdiction over an offense that a person commits by his own conduct or the conduct of another for which he is criminally responsible if:

(1) either the conduct or a result that is an element of the offense occurs inside this state;

**Art. I, § 8, cl. 17 of the U.S. Constitution**, which defined federal jurisdiction as follows:

*"To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings."*

*Defendant convicted of a fishing offense occurring on federal property, the land being owned by U.S., but there being no proof of cession of jurisdiction pursuant to state law. Court held that cession of jurisdiction by Governor pursuant to statute was essential to transfer jurisdiction, thus state court had jurisdiction here. Curry v. State, 111 Tex. Cr. 264, 12 S.W.2d 796 (1928).*

Schwalby claimed interest in real property alleged to be owned by U.S., for which a cession of jurisdiction existed. Suit commenced for trespass and Schwalby prevailed. On appeal, court held that jurisdiction within U.S. depended on title, and here the U.S. had only partial title; **jurisdiction of state court upheld. United States v. Schwalby, 8 Tex. Civ. App. 679, 29 S.W. 90 (1894)**

*Defendants employed by U.S. government at El Paso International Bridge were prosecuted by state for assault with intent to rape. Because the U.S. Immigration Building at the bridge was only leased to the U.S., court held state court had jurisdiction. Garcia v. State, 169 Tex.Cr.R. 30, 331 S.W.2d 53 (1959)*

There is no evidence that the Texas legislatures ceded jurisdiction to private lands nor is there any evidence that the federal government acquired permission from the land owners. The courts have already ruled that a primary cannot give a secondary an authority it itself does not have. The US Congress cannot give a secondary an authority to violate property rights because it itself was not granted that authority. Please note the 134 various Supreme Court and Applet court decisions concerning **jurisdiction** at the end of this document validating this statement. Those court decisions are not exhaustive as there is more case law available on this issue.

*"The state citizen is immune from any and all government attacks and procedure, **absent contract.**" see, Dred Scott vs. Sanford, 60 U.S. (19 How.) 393 or as the Supreme Court has stated clearly, "...every man is independent of all laws, except those prescribed by nature. He is not bound by any institutions formed by his fellowmen **without his consent.**" CRUDEN vs. NEALE, 2 N.C. 338 2 S.E. 70*

**Marbury v. Madison, 5 US 137, (1803)** "The Constitution of these United States is the supreme law of the land. Any law that is repugnant to the Constitution is null and void of law."

**Miranda v. Arizona, 384 U.S. 436, (1966)** "Where rights secured by the Constitution are involved, there can be **no rule making or legislation**, which would abrogate them."

**Norton v. Shelby County, 118 U.S. 425, (1886)** "An unconstitutional act is not law; it confers no rights; it imposes no duties; affords no protection; it creates no office; it is in legal contemplation, as inoperative as though it had never been passed."

**Miller v. U.S., 230 F.2d. 486,489** "The claim and exercise of a Constitutional right cannot be converted into a crime."

**Brady v. U.S., 397 U.S. 742, 748, (1970)** "Waivers of Constitutional Rights, not only must they be voluntary, they must be knowingly intelligent acts done with sufficient awareness."

**Cooper v. Aaron, 358 U.S. 1, 78 S.Ct. 1401 (1958)**. "No state legislator or executive or judicial officer can war against the Constitution without violating his undertaking to support it." The constitutional theory is that we the people are the sovereigns, the state and federal officials only our agents."

## LAND PATENT/LAND GRANT

We hold our properties by land grant/patent. The Texas government made no reservation when it relinquished authority over our private properties. Our acceptance as Assigns is on file with the Terrell County Land Records.

All the western states within the Union of States (**with the exception of the Republic of Texas**) granted their unappropriated lands to the dispossession of the United States as a condition of statehood. Then, as people acquired land, under various acts of Congress the President signed the patents securing the patented rights to the patent holders and their heirs and assigns forever. Our land patent however did not fall under the United States Government, but was issued by the state of Texas with no reservations.

**Summa Corp. v California, 466 US 198**, In that 1980's case the court noted that they had ruled and ruled and ruled and they were not going to rule again, the Land Patent is supreme title to land. The case was one where California was granted the tidewater lands in the California Republic Constitution and therefore California went after a family's land, which land was secured under patent on an old Spanish Land Grant. This land patent case that speaks mostly about the supremacy clause of the Constitution, which clause states that Treaties are supreme law even over a State's foundational Constitution.

"'Land' is not restricted to the earth's surface, but extends below and above the surface. Nor is it confined to solids, but may encompass within its bounds such things as gases

*and liquids. A definition of 'land' along the lines of 'a mass of physical matter occupying a space' also is not sufficient, for an owner of land may remove part or all of that physical matter, as by digging it up and carrying away the soil, but would nevertheless retain as part of his 'land' the space that remains. Ultimately ... 'land' is simply an area of three dimensional space, its position being defined by natural or imaginary points located by reference to the earth's surface. 'Land' is not the fixed contents of that space, although, as we shall see, the owner of that space may well own those fixed contents. Land is immovable, as distinct from chattels, which are moveable; it is also, in its legal significance, indestructible. The contents of the space may be physically severed, destroyed or consumed, but the space itself, and so the 'land', remains immutable."*  
**Peter Butt, Land Law 9 (2nd ed. 1988)** Reprinted in *Black's Law Dictionary, Seventh Edition*

**The Land Patent is permanent and cannot be changed by the government after its issuance.**

*"Where the United States has parted with title by a patent legally issued and upon surveys made by itself and approved by the proper department, the title so granted cannot be impaired by any subsequent survey made by the government for its own purposes."* **Cage v. Danks, 13 La. Ann 128**

*The Land Patent is the only form of perfect title to land available in the United States.* *Wilcox v. Jackson, 38 US 498; 10 L.Ed. 264*

*A grant of land, made Patent, is a public law standing on the books of the State and is notice to every subsequent purchaser under any conflicting sale made afterward.*  
**Wineman v. Gastrell, 53 FED 697, 2 US App. 581**

*"Where the United States has parted with title by a patent legally issued and upon surveys made by itself and approved by the proper department, the title so granted cannot be impaired by any subsequent survey made by the government for its own purposes."* **Cage v. Danks, 13 La. Ann 128**

*"Patents are issued (and theoretically passed) between sovereigns and deeds are executed by persons and private corporations without those sovereign powers".* **Leading Fighter v. County of Gregory, 230 n. w. 2d 114, 116 (1975)**

*"A patent regularly issued by the government is the best and only evidence of a perfect. The actual patent should be secured to place at rest any question as to validity of entries".*  
**Young v. Miller, 125 so. 2d 257, 258 (1960)**

*"The land patent is the highest evidence of title and is **immune from collateral attack**"*  
**Raestle v. Whitson, 582p. 2d 170,172 (1978)**

*"Neither a town nor its officers have any right to appropriate or interfere with private property."* **Mitchell v. city of Rockland -15 me. 496**

There are some individual within the federal government who has attempted to demonize those landowners who hold their land by patent/grant. However, the federal government itself has currently been obtaining patents on lands it is purchasing within Texas. A patent was even issued for the border patrol station in Sanderson, Terrell County, Texas a few years ago.

The Texas Supreme Court and Applets Courts have continually ruled favorable for the land patent holder and recognize their property rights here in Texas is superior even over the Texas government. That is one reason the federal government wants to ensure they own their property by patent.

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*It is clear under Severance v. Patterson (No.09-0387, Reargued on April 19, 2011) that a right of property (land) ownership, once ceded and relinquished by the Republic and/or State via a Land Grant, cannot be co-opted by an agency of the State **unless, consented to by the owner** (which does not include taxation). **Severance v. Patterson, 345 S.W.3d 49 (Tex. 2011) Argued November 19, 2009 Reargued April 19, 2011***

Remember any federal rules that violate the land patent is a collateral attack. Mr. Cleveland and the border patrol must **Prove Jurisdiction**. The quoting of federal rules within the boundaries of Texas is not proof of jurisdiction. Those rules cannot and do not apply to a land patent/grant.

## **CONSITUTION FREE ZONE**

February 3, 2013, Mr. Cleveland informed me that I live in a Constitutional Free Zone. According to Mr. Cleveland the federal government has claimed there is a 100-mile Constitution Free Zone from the border going inland. That zone may apply on federal lands or areas of federal jurisdiction, but it has no force and effect within the boundaries of Texas. The Texas Constitution, Article 1, Bill of Rights cannot be suspended. Not even if the Texas Legislature (not the Texas governor nor the US president have this authority) calls martial law. The Constitutional Free Zone is not based on law, but a bureaucrat's opinion. That opinion **violates the republican form of government** established by the founders of the US government and the Texas government.

### ***TEXAS CONSTITUTION, Article 1***

*Sec. 28. SUSPENSION OF LAWS. No power of suspending laws in this State shall be exercised except by the Legislature.*

*Sec. 29. PROVISIONS OF BILL OF RIGHTS EXCEPTED FROM POWERS OF GOVERNMENT; TO FOREVER REMAIN INVIOLETE. To guard against transgressions of the high powers herein delegated, we declare that everything in this "Bill of Rights" is excepted out of the general powers of government, and shall forever remain inviolate, and all laws contrary thereto, or to the following provisions, shall be void.*

*TEXAS GOVERNMENT CODE, Chapter 557, SEDITION, SABOTAGE, AND COMMUNISM, SUBCHAPTER A. SEDITION*

*Sec. 557.001. SEDITION. (a) A person commits an offense if the person knowingly: (3) participates, with knowledge of the nature of the organization, in the management of an organization that engages in or attempts to engage in an act intended to overthrow, destroy, or **alter the constitutional form of government of this state** or of any political subdivision of this state by force or violence.*

The first plank of communism is the **abolition of private property rights in land and application of all rents of land to public purpose**. By claiming the border patrol can come onto my property whenever they feel like it, is advocating government authority over landowners' property rights. Thus promoting communism within the boundaries of Texas, but also violating land patents/grants. Land patent/grants is recognized by international law as the highest authority.

**HISTORICAL FACTS/ABUSE BY BORDER PATROL:**

I sent a certified letter to Mr. Cleveland's supervisor on February 23, 2014. I informed Chief Patrol Agent John J. Smietana, Jr., that we would be filing against Mr. Cleveland, not as his duties as a border patrol agent, but as a member of the Terrell County Groundwater Conservation District board. I wanted the acknowledgement made so we did not get falsely kidnapped or held hostage as Steve Forest, Candidate for Terrell County Sheriff, was by Mr. Cleveland and his subordinates interfering with an election and intimidating a political candidate. A copy furnished of the letter was, also, sent to the FBI, Criminal Prosecutions at the Office of the Texas Attorney General, and Kirby Dendy at the Texas Department of Public Safety.

In the same certified letter sent to Chief Smietana, I demanded the name of the border patrol agent that stopped Kelly McNeil coming out of my gate last year. The unknown agent informed Mr. McNeil, who was doing odd jobs for us, not to associate with us because we were criminals. This is more than just interfering with a contract or defamation of character. This is aggravated official misconduct and aggravated official oppression. The agent was in uniform, on duty and armed. I found out about this incident in December 2013.

I reminded Chief Smietana, that I was still within the statutes of limitation to file on border patrol agent Collier for his illegal traffic stop along with his accomplices from February 3, 2013. That I was still going to filing. That incident also involved Mr. Cleveland. The reason given for the illegal stop against me? As a citizen of Terrell County I was traveling between Dryden and Sanderson, which border patrol, considers suspicious activity. If you are not aware, there are only two towns in Terrell County, these same two.

***THE TEXAS CONSTITUTION, Article 1, Sec. 9. SEARCHES AND SEIZURES*** *The people shall be secure in their persons, houses, papers and possessions, from all unreasonable seizures or searches, and no warrant to search any place, or to seize any person or thing, shall issue without describing them as near as may be, nor without probable cause, supported by oath or affirmation.*

**TEXAS CODE OF CRIMINAL PROCEDURE**, Chapter 1 Art. 1.06. **SEARCHES AND SEIZURES**. *The people shall be secure in their persons, houses, papers and possessions from all unreasonable seizures or searches. No warrant to search any place or to seize any person or thing shall issue without describing them as near as may be, **nor without probable cause supported by oath or affirmation**. Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.*

**TEXAS PENAL CODE**, Chapter 39, Sec. 39.03. **OFFICIAL OPPRESSION**. (a) *A public servant acting under color of his office or employment commits an offense if he:*

- (1) *intentionally subjects another to mistreatment or to arrest, **detention**, search, seizure, dispossession, assessment, or lien that he knows is unlawful;*
- (2) *intentionally **denies or impedes another in the exercise or enjoyment of any right, privilege, power, or immunity, knowing his conduct is unlawful;***

The supreme courts have already held that suspicion is not an articulate probable cause. To use the excuse of suspicion is to show criminal intent on the part of the border patrol agent to violate the rights of people! That act is also official misconduct and official oppression. Suspicion is not an articulated probable cause.

The officer must be able to articulate more than an "*inchoate and unparticularized suspicion or 'hunch' of criminal activity.*" **Terry v. Ohio** (1968) 392 U.S. 1, 27 [20 L.Ed.2<sup>nd</sup> 889, 909]

*"A hunch may provide the basis for solid police work; it may trigger an investigation that uncovers facts that establish reasonable suspicion, probable cause, or even grounds for a conviction. A hunch, however, is not a substitute for the necessary specific, **articulable facts** required to justify a **Fourth Amendment** intrusion." Italics added; **People v. Pitts** (2004) 117 Cal.App.4<sup>th</sup> 881, 889; quoting **United States v. Thomas** (9<sup>th</sup> Cir. 2000) 211 F.3<sup>rd</sup> 1186, 1192.*

*Observing defendant sitting in a parked motor vehicle late at night near the exit to a 7-Eleven store parking lot, with the engine running, despite prior knowledge of a string of recent robberies at 7-Elevens, held to be not sufficient to justify a detention and patdown. **People v. Perrusquia** (2007) 150 Cal.App.4<sup>th</sup> 228*

In addition, border patrol does not meet the requirements in accordance with the Texas Transportation Code to make traffic stops. The border patrol agents do not meet the training requirements required by the Texas Transportation Code. Also, the agency is not certified to have officers make those stops as defined in the code. Second border patrol agents are not peace officers within the boundaries of Texas. Collier was attempting to impersonate a peace officer when he made that stop with no jurisdiction, no authority, no standing. Collier also refused to provide ID when demanded of him.

**TEXAS CODE OF CRIMINAL PROCEDURE, Chapter 2. GENERAL DUTIES OF OFFICERS Art. 2.122. (c) A customs inspector of the United States Customs Service or a border patrolman or immigration officer of the United States Department of Justice is not a peace officer under the laws of this state**

*"The right of a citizen to travel upon the public highways and to transport his property thereon, by horse-drawn carriage, wagon, or automobile is not a mere privilege which may be permitted or prohibited at will, but a common right which he has under his right to life, liberty, and the pursuit of happiness." **Slusher v. Safety Coach Transit Co., 229 Ky 731, 17 SW2d 1012, and affirmed by the Supreme Court in Thompson v. Smith 154 S.E. 579.***

During this incident on February 3, 2013, I called 911 and told them I was on my way in. I was followed by a large parade of border patrol vehicles. When I arrived, I called the 911 operator and informed him I was outside. At this point, a hispanic border patrol supervisor, whose name was hidden by the way he stood, came running up to my automobile. He proceeded to scream in a loud aggressive voice "show me both hands." I informed the individual that I was on a 911 call and interference with a 911 call was a felony. The hispanic supervisor claimed he was not interfering with a 911 call as he again proceeded to scream in a loud and aggressive voice "show me both your hands". The individual was obviously not in control of his emotions or he would have noticed that one hand was holding a phone to my ear, while the other was resting in plain view on my automobile window ledge.

The hispanic senior supervisor continued screaming for several minutes to include such statements as "we can either end this the easy way or the hard way" as he demanded I get out of my automobile. I remained calm, reminding him he had no jurisdiction and we were not in a federal zone. I told him he might as well start shooting because I was not getting out of my automobile. Deputy Howard then walked up to my window. He introduced himself and we shook hands. Deputy Howard remained calm and never lost composure, which cannot be said of any of the border patrol agents. The other agents were in array around my van with M4s with the safeties off.

I kept reminding the hispanic border patrol supervisor that he did not have jurisdiction. The hispanic supervisor kept demanding I get out of my van, because he claimed he was going to arrest me and take me to a federal magistrate in Del Rio. His intent was to transport me across county lines without authority or jurisdiction. I, again, informed him I was not going to get out of my automobile. During this whole time, my six large dogs, which were traveling with me, were reacting, in my defense, to the actions and emotions of the agents.

Numerous times I demanded to know from the hispanic border patrol supervisor if he was the Officer of the Day or the Officer in Charge for the Shift. His answer "They (border patrol) are all officers of the day and all in charge. Basically he gave a "none answer" and refused to answer. The hispanic border patrol supervisor claimed that since Deputy Howard and I had to introduce ourselves, that I obviously wasn't from the county. He implied that I was lying about being from Terrell County to which Deputy Howard stated that, although, we had never met, he knew of me. Border patrol agent Collier had already run my van's license plates before he

stopped me and knew who I was before he made the stop. Collier even used my name after they blocked me on US Highway 90 (*Senior Supervisor Comacho had previously informed me that border patrol agents were directed not to interfere with me or my family and that only a senior supervisor can talk with us. We are not unknown to the border patrol. For the record Camacho was one of the agents involved in attempting to plant drugs on my property as well as involved in the border patrol SWAT team against me when I was a guest in Clyde Autry's car on RR 349, these incidents are elaborated further down in this document*).

The hispanic border patrol supervisor informed me that they were going to charge me with Failure to Yield to an Emergency Vehicle. I stated that the federal magistrate could not hear a State Class C Traffic Misdemeanor (*which is a ticket only offense and not an arrest offense*). Also, the border patrol vehicles do not qualify as emergency vehicles under State Code. Additionally, Yield does not mean Stop. I had pulled over to the shoulder of the road several times, but none of the border patrol vehicles passed. I, then, asked Deputy Howard if he observed me not yielding and Deputy Howard stated he had not observed me committing a crime. Deputy Howard had been behind the long parade of border patrol vehicles following me into Sanderson. The border patrol agents do not meet the requirements or the training under the Texas Commercial Transportation Code to make any traffic stops. They are not peace officers within the boundaries of Texas.

It was obvious that the hispanic senior supervisor has no understanding of the Texas Transportation Code or Texas law in general.

Original Jurisdiction for a Class C Misdemeanor is in the local Justice of the Peace or municipal court! Nowhere else has jurisdiction and definitely not in a federal magistrate court in another county. The use of the Failure to Yield to an Emergency Vehicle was **the only fabrication of a crime the hispanic senior supervisor could come up with** since traveling from Dryden to Sanderson is not an illegal or suspicious activity. The hispanic border patrol supervisor failed to address the fact that I had been denied the exercise of my right to travel unmolested by a public servant who asserted an authority he did not have.

*TEXAS PENAL CODE, Chapter 37, Sec. 37.09. TAMPERING WITH OR FABRICATING PHYSICAL EVIDENCE.*

- (a) A person commits an offense if, knowing that an investigation or official proceeding is pending or in progress, he:
- (2) makes, presents, or uses any record, document, or thing with knowledge of its falsity and with intent to affect the course or outcome of the investigation or official proceeding.

*TEXAS PENAL CODE, Chapter 39, Sec. 39.03. OFFICIAL OPPRESSION. (a) A public servant acting under color of his office or employment commits an offense if he:*

- (1) intentionally subjects another to mistreatment or to arrest, **detention**, search, seizure, dispossession, assessment, or lien that he knows is unlawful;
- (2) intentionally **denies or impedes another in the exercise or enjoyment of any right, privilege, power, or immunity**, knowing his conduct is unlawful; or

*TEXAS CODE OF CRIMINAL PROCEDURE, Chapter 2. General Duties of Officers  
Art. 2.122. (c) A customs inspector of the United States Customs Service or a border  
patrolman or immigration officer of the United States Department of Justice is not a peace  
officer under the laws of this state*

*TEXAS CODE OF CRIMINAL PROCEDURE, Chapter 37,  
Sec. 37.11. IMPERSONATING PUBLIC SERVANT. (a) A person commits an  
offense if he:*

- (1) impersonates a public servant with intent to induce another to submit to his  
pretended official authority or to rely on his pretended official acts; or*
- (2) knowingly purports to exercise any function of a public servant or of a public  
office, including that of a judge and court, and the position or office through which  
he purports to exercise a function of a public servant or public office has no lawful  
existence under the constitution or laws of this state or of the United States.*

If an official report has been made by the hispanic border patrol supervisor on Failure to Yield, then Texas Penal Code, Chapter 37, Sec. 37.10 will also apply.

On March 12, 2014 I sent another certified letter to Chief Smietana. This time I demanded the name of the border patrol agent that tried to kill me with his vehicle on RR 349. The agent or agents in the border patrol vehicle on March 6, 2014 at about 5:46 a.m. pulled up behind me as I was traveling north, tailgated me, then as I approached a curve put on his/her bright lights, to include the spotlights, thus blinding me. I almost lost control of my truck, blinded, I had to slam on my breaks. I could see neither the road nor the curve. I consider this act attempted murder with a vehicle and not road rage.

*TEXAS PENAL CODE, Chapter 39, Sec. 39.02. ABUSE OF OFFICIAL CAPACITY. (a)  
A public servant commits an offense if, with intent to obtain a benefit or with intent to or  
defraud another, he intentionally or knowingly:*

- (2) **misuses government property**, services, personnel, or any other thing of value  
belonging to the government that has come into the public servant's custody or  
possession by virtue of the public servant's office or employment.*

*TEXAS PENAL CODE, Chapter 19. Criminal Homicide, Sec. 19.02. MURDER.*

*(b) A person commits an offense if he:*

- (3) commits or **attempts to commit a felony, other than manslaughter**, and in the course  
of and in furtherance of the commission*

To date, Chief Smietana has not responded to my certified letters nor has any supervisor spoken to my wife or I on these incidents. I will therefore now file against those agents as unknown border patrol agents, but will include Chief Smietana and Mr. Cleveland as Respondent Superiors.

*TEXAS PENAL CODE, Chapter 7. CRIMINAL RESPONSIBILITY FOR CONDUCT OF  
ANOTHER, Subchapter A. Complicity*

*Sec. 7.01. PARTIES TO OFFENSES. (a) A person is criminally responsible as a party to an offense if the offense is committed by his own conduct, by the conduct of another for which he is criminally responsible, or by both.*

*(b) Each party to an offense may be charged with commission of the offense.*

*(c) All traditional distinctions between accomplices and principals are abolished by this section, and each party to an offense may be charged and convicted without alleging that he acted as a principal or accomplice.*

*TEXAS PENAL CODE, Chapter 38, Sec. 38.05. HINDERING APPREHENSION OR PROSECUTION.*

*(a) A person commits an offense if, with intent to hinder the arrest, prosecution, conviction, or punishment of another for an offense or, with intent to hinder the arrest, detention, adjudication, or disposition of a child for engaging in delinquent conduct that violates a penal law of the state, or with intent to hinder the arrest of another under the authority of a warrant or capias, he:*

*(1) harbors or conceals the other;*

*(2) provides or aids in providing the other with any means of avoiding arrest or effecting escape; or*

*(3) warns the other of impending discovery or apprehension.*

## **ADDITIONAL HISTORY WITH BORDER PATROL**

On October 29, 2008 border patrol agents Shane Jahn and Fernando Sanchez told me, in no uncertain terms; that they could go anywhere they wanted and could do anything they wanted to include breaking my fence. In front of me the two then pushed down, jumped up and down on my fence causing damage. Their tones and actions were abusive, threatening, and hostile. Both were armed. During this incident there were about 10 border patrol agents physically watching this act. For the record I was unarmed. I am also a 100% Disable Veteran.

On January 31, 2009, a group of border patrol agents appeared at my property gate. Their nametags were covered and when requested they refused to show ID or identify themselves. Border patrol agent Jahn was amongst them. The group wanted on the property to look for a backpack of drugs. The agents claimed a group of transients' had crossed my property the night before. One agent's response as why this group would leave a backpack of drugs: ***a group of transients had been apprehended several miles west of my property a few weeks earlier carrying backpacks with drugs.*** I asked if the agents had searched the 16 miles prior to my property or any other property and they claimed they did not. The incident happened on a Saturday, two days before I was going to give the Grand Jury Foreman with my criminal complaints. This was information I had already informed the County Judge, County Clerk and several other officials. It was common knowledge; I had made no secret of this fact.

My dogs held the border patrol agents at bay, refusing them access to our property. Shortly afterwards my wife and I observed two agents walking on the adjoining property to the north, heading east along the fence. One was the border patrol agent Jahn. These two individuals

walked eastward along the fence line. A few minutes later those individuals came back past riding on ATVs. **The other agent had a large dark backpack on his back.** There appeared to be a lot of effort to try and access my property to look for a backpack as if they already knew they would find something. That same day, one of the border patrol supervisors, Rush Carter, informed me that the **border patrol considers my wife and I as the enemy.** This statement has been documented in various certified letters to our elected officials as well as Mr. Moyer, AUSA, and never been refuted despite the multiple letters that were sent out referencing Rush Carter statement. Rush Carter's statement is now a matter of fact. This was the incident that border agent Rodriguez was claiming I had interfered with his subordinates that he alluded to Mr. Moyer, AUSA in his letter.

In Fall 2008, as I was traveling home, one of the bridge was damaged due to the storms, I was forced to back track RR 2400. A border patrol agent in a vehicle stopped me. The agent was taken back by the large dog in my car and even made a statement about my dog. I informed the agent he was not a peace officer, he had no jurisdiction and that I was going home. The vehicle followed me with his bright lights on. The agent would only turn the lights off when on coming traffic came, but would turn it on again after the car passed. He tailgated me the whole way. I filed a complaint with the Sheriff who refused to do anything.

On February 19, 2010, a border patrol agent stopped a car I was a guest in as we traveled up RR 349. I was running for County Commissioner at the time. The agent admitted he had recognized the car, the owner of the car and he had recognized me before he made the stop. The owner of the car's son was running for County Judge at the time. A border patrol swat team was called out against us after the stop. I was in the car sitting, while my host was standing outside the car. The border patrol swat team had the car surrounded, safety's off and their fingers were on the triggers. Deputy Adams showed up and kept trying to get me to reach under the seat and grab my side arm. I refused. I am sure the purpose of this stop was not only to intimidate me, but was an excuse to kill me had I reached for my side arm. My side arm was out of sight and under the seat at the time. Deputy Adams does not have the integrity to be trusted. He was one of the "Irion County five" deputies that stopped cars and stole the owner's guns. Those lawfully owned guns never made it to the evidence room of the Irion County sheriff's department. Deputy Adams became a witness for the state in order to avoid going to jail along with his four partners. Deputy Adams as a thief should never have been allowed to keep his peace officer's license. During this incident border patrol agent Comacho claimed that border patrol has a right to stop automobiles to see if they are stolen even though there is no theft report. I pointed out to Comacho that the agent that stopped us had already admitted to recognizing Clyde Autry and his car before the stop. There is no federal authority to stop cars within Texas to see if it stolen. Even Texas peace officers cannot arbitrarily stop a car traveling for a preemptive check.

Shortly after that incident my wife was traveling up RR349 in the dark when two border patrol vehicles attempted to stop her. My wife called 911, who got a Pecos County Deputy to show up. One of the border patrol agents made a threat against my wife's life, by saying if she didn't stop in the future, border patrol would throw spikes out to stop her and she would be killed. My wife was running for Texas state senator at the time. She filed an online report to the Texas Rangers hotline.

Border patrol agent Baker and another agent whose nametag was obscured were caught trespassing on my property. On the other side of my north fence was a third border patrol agent, Sanchez who did \$2,000 damage to my front fence, was waiting for the first two agents. Both Baker and Sanchez pulled their guns on me. I was on my property, riding my tractor. When I demanded to see everyone's Identification Cards, they all refused.

Unfortunately there are more incidents, but you get the point. Since my wife and I are considered enemies by border patrol agents. Border patrol agents have already maliciously damaged our fence. Committed multiple criminal acts to include trying to plant drugs on our property. They are not now or ever allowed access to our property. **SHOW JURISDICTION!**

A sheriff is the highest elected official in the county. He must have a warrant to go onto private property. Border Patrol are not peace officers within the boundaries of Texas. Border patrol cannot have a higher authority than the elected officials within Terrell County and the sheriff.

***TEXAS CODE OF CRIMINAL PROCEDURE, Chapter 2. General Duties of Officers Art. 2.122. (c) A customs inspector of the United States Customs Service or a border patrolman or immigration officer of the United States Department of Justice is not a peace officer under the laws of this state***

Border patrol cannot give itself jurisdiction or authority over private property. Nor can the sheriff give them that jurisdiction, since it is not his to give. There is enough court rulings stating a Primary cannot give a Secondary an Authority it itself does not have. Prove that Congress has jurisdiction on my private property. Prove Congress has the jurisdiction so it is able to then delegate that authority to border patrol. **PROVE JURISDICTION!**

Just because Congress enacts a law does not mean it is lawful. **Jurisdiction must be proved.** Mack vs. Brady found Congress exceeded its authority under Article 1, section 8 of the United States Constitution, thereby impermissibly encroaching upon the powers retained by the states pursuant to the Tenth Amendment. In every case the Tenth Amendment has been upheld. The order of precedence is "We The People" followed by the "States" and on the bottom is the "Federal Government".

**Mr. Cleveland** has threatened me with arrest for not willfully giving up my rights under Texas Constitution and Texas Statute. Just as Mr. Rodriguez threatened me with arrest. This is a Terroristic Threat communicated through the US mail made to intimidate my wife and I. **Mr. Cleveland** is using his official position to deny us our rights under the law. This violates

*TEXAS PENAL CODE, Chapter 39, Sec. 39.03. OFFICIAL OPPRESSION. (a) A public servant acting under color of his office or employment commits an offense if he:*  
*(2) intentionally denies or impedes another in the exercise or enjoyment of any right, privilege, power, or immunity, knowing his conduct is unlawful;*

*He who defies a [\*105] decision interpreting the Constitution knows precisely what he is doing. If sane, he hardly may be heard to say that he*

knew not what he did. Of course, willful conduct cannot make definite that which is undefined. But willful violators of constitutional requirements, which have been defined, certainly are in no position to say that they had no adequate advance notice that they would be visited with punishment. **When they act willfully in the sense in which we use the word, they act in open defiance or in reckless disregard of a constitutional requirement which has been made specific and definite.** When they are convicted for so acting, they are not punished for violating an unknowable something. **SCREWS ET AL. v. UNITED STATES, No. 42, SUPREME COURT OF THE UNITED STATES, 325 U.S. 91; 65 S. Ct. 1031; 89 L. Ed. 1495; 1945 U.S. LEXIS 2096; 162 A.L.R. 1330, October 20, 1944, Argued, May 7, 1945, Decided**

When a Citizen challenges the acts of a federal or state official as being illegal, that official cannot just simply avoid liability based upon the fact that he is a public official. In **United States v. Lee, 106 U.S. 196, 220, 221, 1 S.Ct. 240, 261,** the United States claimed title to Arlington, Lee's estate, via a tax sale some years earlier, held to be void by the Court. In so voiding the title of the United States, the Court declared:

"No man in this country is so high that he is above the law. No officer of the law may set that law at defiance with impunity. All the officers of the government, from the highest to the lowest, are creatures of the law and are bound to obey it. It is the only supreme power in our system of government, and every man who by accepting office participates in its functions is only the more strongly bound to submit to that supremacy, and to observe the limitations which it imposes upon the exercise of the authority which it gives.

"Shall it be said... that the courts cannot give remedy when the citizen has been deprived of his property by force, his estate seized and converted to the use of the government without any lawful authority, without any process of law, and without any compensation, because the president has ordered it and his officers are in possession? If such be the law of this country, it sanctions a tyranny which has no existence in the monarchies of Europe, nor in any other government which has a just claim to well-regulated liberty and the protection of personal rights."

**See Pierce v. United States ("The Floyd Acceptances"), 7 Wall. (74 U.S.) 666, 677**

**("We have no officers in this government from the President down to the most subordinate agent, who does not hold office under the law, with prescribed duties and limited authority"); Cunningham v. Macon, 109 U.S. 446, 452, 456, 3 S.Ct. 292, 297** ("In these cases he is not sued as, or because he is, the officer of the government, but as an individual, and the court is not ousted of jurisdiction because he asserts authority as such officer. To make out his defense he must show that his authority was sufficient in law to protect him... It is no answer for the defendant to say I am an officer of the government and acted under its authority unless he shows the sufficiency of that authority"); and **Poindexter v. Greenhow, 114 U.S. 270, 287, 5 S.Ct. 903, 912**

**WHEREAS, officials and even judges have no immunity (See, Owen vs. City of Independence, 100 S Ct. 1398; Maine vs. Thiboutot, 100 S. Ct. 2502; and Hafer vs. Melo, 502 U.S. 21; officials and judges are deemed to know the law and sworn to uphold**

*the law; officials and judges cannot claim to act in good faith in willful deprivation of law, they certainly cannot plead ignorance of the law, even the Citizen cannot plead ignorance of the law, the courts have ruled there is no such thing as ignorance of the law, it is ludicrous for learned officials and judges to plead ignorance of the law therefore there is no immunity, judicial or otherwise, in matters of rights secured by the Constitution for the United States of America. See: **Title 42 U.S.C. Sec. 1983.***

*"When lawsuits are brought against federal officials, they must be brought against them in their "individual" capacity not their official capacity. When federal officials perpetrate constitutional torts, they do so ultra vires (beyond the powers) and lose the shield of immunity." Williamson v. U.S. Department of Agriculture, **815 F.2d. 369, ACLU Foundation v. Barr, 952 F.2d. 457, 293 U.S. App. DC 101, (CA DC 1991).***

*"Personal involvement in deprivation of constitutional rights is prerequisite to award of damages, but defendant may be personally involved in constitutional deprivation by direct participation, failure to remedy wrongs after learning about it, creation of a policy or custom under which unconstitutional practices occur or gross negligence in managing subordinates who cause violation." **Gallegos v. Haggerty, N.D. of New York, 689 F. Supp. 93 (1988).***

## TRESPASSING

*TEXAS PENAL CODE, Chapter 30, Sec. 30.05. CRIMINAL TRESPASS. (a) A person commits an offense if the person enters or remains on or in property of another, including residential land, agricultural land, a recreational vehicle park, a building, or an aircraft or other vehicle, without effective consent and the person:*

- (1) had notice that the entry was forbidden;*
- (A) oral or written communication by the owner or someone with apparent authority to act for the owner;*
- (B) fencing or other enclosure obviously designed to exclude intruders or to contain livestock;*
- (C) a sign or signs posted on the property or at the entrance to the building, reasonably likely to come to the attention of intruders, indicating that entry is forbidden;*

Please note that A, B, and C above all apply.

Mr. Cleveland does not believe I should be upset over his armed subordinates trespassing on my private property. Mr. Cleveland is aware of the criminal acts and attempts committed by border patrol agents against my family and I. Mr. Cleveland claims we have no right to protect our property and that those aggravated trespassers have a right to shoot our dogs in self-defense. It is a well-known fact within Terrell County that we have a large number of dogs on our property. These dogs are there for our protection and guard our livestock by keeping predators, criminals and trespasser away. These dogs are also our extended family members. It is not uncommon for several of the dogs to travel with us when we go out. Without jurisdiction the crossing of my

property is criminal trespass. To claim a right to murder my dogs whose purpose is protection shows intent to commit a crime.

However, this is not the only time border patrol has interfered with my dogs. When I lived at the other end of my property. The border patrol would race back and forth on the easement just in front of where we were domiciled, trying to get the dogs agitated and to jump the fence. One time it got so bad, my friend John Hagan, called border patrol agent Black at home. He informed Black to get his agents off my fence line. There were multiple border patrol vehicles racing back and forth. Black first denied his people were on the fence, but when John let Black know I was on the line listening. Black kept trying to say there was no one out there, but John said yes there is. Black made some phone calls and within 5 minutes the vehicles took off. The agents were not looking for tracks, windows were up, it was dusk and they had been traveling quickly back and forth, gunning their engines, honking their horns, etc. Prior to talking with John, I had called Rule of Law Radio to inform Randy Kelton and the world what the agents were doing outside my gate. One handicapped old man is no match for ten men in their twenties and thirties that are well armed and with the intent for blood.

***'Where a dog is lawfully kept for the purposes of protection a trespasser cannot maintain an action for an injury if he come in the way of the dog.'*** [Because:] *If the dog must be so confined that under no circumstances can he attack or injure a trespasser, then he may as well be dead, and the rule results in this, that no dog capable of defending property can be lawfully kept by any person. [T]he mere keeping of a ferocious dog, knowing him to be such, for the purpose of defending one's premises, is not in itself unlawful. And when injury follows from one so kept, the manner of his confinement and the circumstances attending the injury are all to be considered in determining the owner's liability. ... There was nothing unusually or unnaturally vicious about the dog in question. He would, it seems, attack and bite any stranger who insisted upon forcing his way to the locality he was set to guard. Beyond that, it does not appear that he was of a vicious nature, or dangerous to mankind. ... In my judgment the keeping of those dogs was not an unlawful act\*, and their confinement was all that could be required./\* They were securely chained within a space into which no stranger was invited to come; where he would have no business to go, and through which none could be reasonably expected to wander. Can it be said that, under such circumstances, the defendant was maintaining a nuisance in his back yard? It [was] but a danger, maintained on his own premises and in a locality upon which the plaintiff had neither invitation nor license to enter, and against which the defendant owed no duty to plaintiff either to protect or warn him."*  
**Woodbridge v. Marks, 45 N.Y.S. 156, 160, 17 App. Div. 139 (1897).**

***"It would be ludicrous to hold that someone is liable because his watchdog failed to discriminate between an inadvertent trespasser on the property and one who is there bent on criminal activity."*** **Bramble v. Thompson, 264 Md. 518; 287 A.2d 265 (MD 1972)**

***"The ownership and possession of property confer a certain right to defend that possession, [including] a defense of it which [by necessity] results in the destruction of***

*the means used to invade and interfere with that possession."* *People v. Kane*, 142 N.Y. 366, 37 N.E. 104 and 131 N.Y. 111

*People v. Cifarelli*, 115 Misc. 2d 587, 588; *People v. Malausky*, 127 Misc. 2d 84 (City Ct., Rochester, 1985); *People v. Hogan*, 172 Misc2d 279 (1997); *People v. Dietze* (75 NY2d 47); *People v. Scott*, 79 N.Y.2d 474, 583 N.Y.S.2d 920 (1992)

("property rights reflect society's explicit recognition of a person's authority to act [ in a manner that ] may appear bizarre or //even offensive//" [in certain areas called "private property"]

## CONCLUSION

**My voracity has never been challenged by any one that has ever known me throughout my professional career. I have had special intelligence, special weapons, and special operations assignments. My wife and I have never gone out of our way to interfere with the actions of anyone. The border patrol agents, knowing who we are and where we live, have always come to us with ill-intent. I am handicapped and am of an age that I do not, nor have I ever, act in an irrational manner. With that having been said, I will use the extent of the Law to protect my family, property, animals, and self from any and all threats.**

**To be threatened by someone who has voice control over armed individuals and accused of things that he does not have first hand knowledge of is more than ludicrous. My wife's and mine lack of trust and faith in the integrity of these self-same agents has been earned over an almost nine year period of time. Please, if you would make an appointment with us and, possibly, some of the other landowners here, you will find that this story, like all others, has two sides.**

**The bottom line is still NO JURISDICTION.**

## JURISDICTION

### THE TEXAS CONSTITUTION

#### **ARTICLE 1. BILL OF RIGHTS Sec. 1. FREEDOM AND SOVEREIGNTY OF STATE.**

Texas is a free and independent State, subject only to the Constitution of the United States, and the maintenance of our free institutions and the perpetuity of the Union depend upon the preservation of the right of local self-government, unimpaired to all the States.

**Sec. 19. DEPRIVATION OF LIFE, LIBERTY, ETC.; DUE COURSE OF LAW.** No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land.

**Sec. 28. SUSPENSION OF LAWS.** No power of suspending laws in this State shall be exercised except by the Legislature.

Sec. 29. PROVISIONS OF BILL OF RIGHTS EXCEPTED FROM POWERS OF GOVERNMENT; TO FOREVER REMAIN INVIOATE. **To guard against transgressions of the high powers herein delegated, we declare that everything in this "Bill of Rights" is excepted out of the general powers of government, and shall forever remain inviolate, and all laws contrary thereto, or to the following provisions, shall be void.**

**Texas Code of Criminal Procedures, Sec. 1.04. TERRITORIAL JURISDICTION.** (a) This state has jurisdiction over an offense that a person commits by his own conduct or the conduct of another for which he is criminally responsible if:

(1) either the conduct or a result that is an element of the offense occurs inside this state;

**Art. I, § 8, cl. 17 of the U.S. Constitution**, which defined federal jurisdiction as follows:

"To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings."

Since the ratification of the present U.S. Constitution, the U.S. Supreme Court and all lower courts have had many opportunities to construe and apply this clause of the Constitution. The essence of all these decisions manifests a legal principle that the States of this nation have exclusive jurisdiction of property and persons located within their borders, excluding such lands and persons residing thereon which have been ceded to the United States.

**United States v. Bevans, 16 U.S. (3 Wheat.) 336 (1818)**, "The exclusive jurisdiction which the United States have in forts and dock-yards ceded to them, is derived from the express assent of the states by whom the cessions are made. It could be derived in no other manner; because without it, the authority of the state would be supreme and exclusive therein," *Id.*, at 350-51.

"What, then, is the extent of jurisdiction which a state possesses? **"We answer, without hesitation, the jurisdiction of a state is co-extensive with its territory; co-extensive with its legislative power,"** *Id.*, at 386-87.

The Court in *Bevans* thus established a principle that federal jurisdiction extends only over the areas wherein it possesses the power of exclusive legislation, and this is a principle incorporated into all subsequent decisions regarding the extent of federal jurisdiction. To hold otherwise would destroy the purpose, intent and meaning of the entire U.S. Constitution.

**Commonwealth v. Young, Brightly, N.P. 302, 309 (Pa. 1818)**, "The legislation and authority of congress is confined to cessions by particular states for the seat of government, and purchases made by consent of the legislature of the state, for the purpose of erecting forts. The legislative power and exclusive jurisdiction remained in the several states, of all territory within their limits,

not ceded to, or purchased by, congress, with the assent of the state legislature, to prevent the collision of legislation and authority between the United States and the several states."

**People v. Godfrey, 17 Johns. 225, 233 (N.Y. 1819)**, "To oust this state of its jurisdiction to support and maintain its laws, and to punish crimes, it must be shown that an offense committed within the acknowledged limits of the state, is clearly and exclusively cognizable by the laws and courts of the United States. In the case already cited, Chief Justice Marshall observed, that to bring the offense within the jurisdiction of the courts of the union, it must have been committed out of the jurisdiction of any state; it is not (he says,) the offence committed, but the place in which it is committed, which must be out of the jurisdiction of the state."

**New Orleans v. United States, 35 U.S. (10 Pet.) 662, 737 (1836)**, "Special provision is made in the Constitution for the cession of jurisdiction from the States over places where the federal government shall establish forts or other military works. And it is only in these places, or in the territories of the United States, where it can exercise a general jurisdiction."

**New York v. Miln, 36 U.S. (11 Pet.) 102 (1837)**, "If we look at the place of its operation, we find it to be within the territory, and, therefore, within the jurisdiction of New York. If we look at the person on whom it operates, he is found within the same territory and jurisdiction," *Id.*, at 133.

**Pollard v. Hagan, 44 U.S. (3 How.) 212 (1845)**, "We think a proper examination of this subject will show that the United States never held any municipal sovereignty, jurisdiction, or right of soil in and to the territory, of which Alabama or any of the new States were formed," *Id.*, at 221.

"[B]ecause, the United States have no constitutional capacity to exercise municipal jurisdiction, sovereignty, or eminent domain, within the limits of a State or elsewhere, except in the cases in which it is expressly granted," *Id.*, at 223.

"Alabama is therefore entitled to the sovereignty and jurisdiction over all the territory within her limits, subject to the common law," *Id.*, at 228-29.

**Fort Leavenworth R. Co. v. Lowe, 114 U.S. 525, 531, 5 S.Ct. 995 (1885)**, "The consent of the states to the purchase of lands within them for the special purposes named, is, however, essential, under the constitution, to the transfer to the general government, with the title, of political jurisdiction and dominion. 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. The property in that case, unless used as a means to carry out the purposes of the government, is subject to the legislative authority and control of the states equally with the property of private individuals."

**Surplus Trading Co. v. Cook, 281 U.S. 647, 50 S.Ct. 455 (1930)**, "[T]he state undoubtedly may cede her jurisdiction to the United States and may make the cession either absolute or qualified as to her may appear desirable, provided the qualification is consistent with the purposes for which the reservation is maintained and is accepted by the United States. And,

where such a cession is made and accepted, it will be determinative of the jurisdiction of both the United States and the state within the reservation," *Id.*, at 651-52.

**S.R.A. v. Minnesota, 327 U.S. 558, 563-64, 66 S.Ct. 749 (1946)**, "In the absence of some such provisions, a transfer of property held by the United States under state cessions pursuant to Article I, Section 8, Clause 17, of the Constitution would leave numerous isolated islands of federal jurisdiction, unless the unrestricted transfer of the property to private hands is thought without more to revest sovereignty in the states. As the purpose of Clause 17 was to give control over the sites of governmental operations to the United States, when such control was deemed essential for federal activities, it would seem that the sovereignty of the United States would end with the reason for its existence and the disposition of the property. We shall treat this case as though the Government's unrestricted transfer of property to non-federal hands is a relinquishment of the exclusive legislative power."

In June 1957, the United States government published a work entitled **Jurisdiction Over Federal Areas Within The States: Report of the Interdepartmental Committee for the Study of Jurisdiction Over Federal Areas Within the States, Part II**, and this report is the definitive study on this issue. Therein, the Committee stated:

"The Constitution gives express recognition to but one means of Federal acquisition of legislative jurisdiction -- by State consent under Article I, section 8, clause 17... Justice McLean suggested that the Constitution provided the sole mode for transfer of jurisdiction, and that if this mode is not pursued, no transfer of jurisdiction can take place," *Id.*, at 41.

"It scarcely needs to be said that unless there has been a transfer of jurisdiction (1) pursuant to clause 17 by a Federal acquisition of land with State consent, or (2) by cession from the State to the Federal Government, or unless the Federal Government has reserved jurisdiction upon the admission of the State, the Federal Government possesses no legislative jurisdiction over any area within a State, such jurisdiction being for exercise by the State, subject to non-interference by the State with Federal functions," *Id.*, at 45.

"The Federal Government cannot, by unilateral action on its part, acquire legislative jurisdiction over any area within the exterior boundaries of a State," *Id.*, at 46.

"On the other hand, while the Federal Government has power under various provisions of the Constitution to define, and prohibit as criminal, certain acts or omissions occurring anywhere in the United States, it has no power to punish for various other crimes, jurisdiction over which is retained by the States under our Federal-State system of government, unless such crime occurs on areas as to which legislative jurisdiction has been vested in the Federal Government," *Id.*, at 107.

**Caha v. United States, 152 U.S., at 215**, "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."

**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

**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**

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)).

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 D.U.I. 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), a case involving a D.U.I. offense committed on a road near a federal arsenal.

In *Kuerschner v. State*, 493 P.2d 1402 (Okl.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 (Okl.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. 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.**

Since Mr. Cleveland involved you in this matter, I demand that jurisdiction be proven. Last fall I talked with FBI agent Jackson in Del Rio. I had provided FBI agent Jackson some information concerning allegations made by the former County Judge Leo Smith of criminal misconduct. FBI agent Jackson informed me that he had spoken with the federal prosecutor there in Del Rio. The prosecutor refused to take the case because he claimed he had no jurisdiction. It would not surprise me if that federal prosecutor was you.

In addition to this letter sent to you, I will be forwarding copies to various offices to ensure this matter is not buried with me under it. I will, also, be filing my criminal sworn affidavits with the grand jury in the county of original jurisdiction. Mr. Cleveland's letter has motivated me to finish my sworn affidavits. Please, feel free to contact me on this matter.

Sincerely,

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**Jan Patrick Baker**  
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CC

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