

Appendix 8

Noll v. Lodge, 2:02-CV-87-BLW (D. Idaho)

Clifford L. Noll
715 N. 13th Street
Coeur d'Alene, Idaho
Ph. (208) 765-4562

U.S. COURTS
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REC'D _____ FILED _____
CAMERON S. BURKE,
CLERK. IDAHO

IN THE UNITED STATES SUPREME COURT

12080

Clifford L. Noll,)
) Petitioner)
))
) vs.)
))
Edward J. Lodge,)
) Respondent.)
_____)

Case No **CIV 02-0087-N** LMB

**PETIRION FOR WRIT OF
HABEAS CORPUS**

JURISDICTION

Petitioner, Clifford L. Noll, is a free Inhabitant of Idaho.
Respondent, Edward J. Lodge, is a U.S. District Court judge for the District of Idaho.
Petitioner's liberties are being unlawfully restrained by the Respondent.
Petitioner is not currently in prison.

**FIRST GROUND UPON WHICH PETITIONER CLAIMS HIS LIBERTIES ARE
BEING UNLAWFULLY RESTRAINED.**

Denial of due process. Petitioner's property (home, money, other real estate) has been seized, and sold, by Internal Revenue Service agents without a court ordered levy of attachment or other lawful court process. No tax has been assessed to the Petitioner by the United States. The United States has not filed a suit against Petitioner for the recovery of any tax. The Petitioner has no contacts, ties, or relations with the Federal Government.

Petitioner is without financial resources because of the seizure and has been unable to contract for legal representation, thereby being forced to file his various complaints pro se. Petitioner has filed suit under the Constitution and laws of the United States in the U.S. District Court for the District of Idaho, NOLL v. UNITED STATES, CIV 97-0145-N-EJL, for the return of his property and damages. Edward J. Lodge has refused the suit stating that the United States can not be sued in the U.S. District Court for constitutional violations without the express permission of the United States, and the United States has not granted permission, therefore, he dismissed the action. Said dismissal violates the Petitioners right to redress under the First Amendment and right to hold private property under Fifth Amendment.

SECOND GROUND UPON WHICH PETITIONER CLAIMS HIS LIBERTIES ARE BEING UNLAWFULLY RESTRAINED.

Second denial of due process. Petitioner has filed a Bivens action, NOLL v. PETERSON, et al., CIV 01-0002-N-EJL, against the individual agents that have seized and sold his property without a court order. Edward J. Lodge, as U.S. District Court Judge, has dismissed the Bivens action stating that IRS agents can not be held personally responsible, no matter how many of the Inhabitant's civil rights they may have violated, so long as the agents claim that they were collecting a federal tax. Said dismissal is a second violation of Petitioner's right to redress under the First Amendment and the right to hold private property under the Fifth Amendment.

THIRD GROUND UPON WHICH PETITIONER CLAIMS HIS LIBERTIES ARE BEING UNLAWFULLY RESTRAINED.

Third denial of due process. Upon the Petitioners objection to the dismissal of CIV 97-0145-N-EJL, Edward J. Lodge instructed the Petitioner to file an appeal with the Ninth Circuit Court of Appeals. The Petitioner filed the appeal, Case No. 98-35396, pro se. The Ninth Circuit Court dismissed the appeal saying that the appeal was frivolous and without merit and sanctioned the Petitioner \$2,000.00 for filing the appeal. There is no notice in the rules for appellate procedure that indicate that a pro se litigant can be sanctioned for errors in his process.

FOURTH GROUND UPON WHICH PETITIONER CLAIMS HIS LIBERTIES ARE BEING UNLAWFULLY RESTRAINED.

Unlawful search and seizure. IRS agents have taken it upon themselves to seize the Petitioner's home, and other rental real estate, and sell it without a court order. The Federal Debt Collections Procedures Act, 28 USC §3001, et seq. requires that the United States acquire a court ordered levy of attachment prior to seizure of private property for any tax claim. The property subject to the Writ of Attachment must be seized by a U.S. marshal and turned over to the custody of the court that issued the Writ. The property seized from the Petitioner has not been turned over to the U.S. District Court because the United States has not filed a tax suit against the Petitioner nor applied for a Writ. Said unauthorized seizure violates the Petitioners rights under the Fourth and Fifth Amendments. Edward J. Lodge refuses to hear any suit regarding unlawful IRS actions until the tax claim is paid in full and a refund applied for and refused.

FIFTH GROUND UPON WHICH PETITIONER CLAIMS HIS LIBERTIES ARE BEING UNLAWFULLY RESTRAINED.

Second count of unlawful search and seizure. IRS agents sent a letter to U.S. Bank, a private national banking institution, demanding that U.S. Bank seize some \$2,923.35 from the Petitioners savings account without a court order. Petitioner repeatedly notified U.S. Bank not to seize his money without showing a U.S. District Court Writ of Attachment. U.S. Bank refused to provide a lawful Writ but seized the Petitioners money and turned it over to the agent making the demand. The Petitioner sued U.S. Bank, CIV 01-0002-N-EJL, for the return of his money and damages in the U.S. District Court for the District of Idaho. Edward J. Lodge dismissed the claim stating that, because the Bank had seized the money for the IRS, it was immune from suit in any court. Edward J. Lodge then ordered the Petitioner to pay some \$2,700.00 in legal fees to the bank. Said dismissal violates the Petitioners right to be free from unwarranted search and seizure of personal effects under the Fourth Amendment and seizure of property without due process under the Fifth Amendment and denies the Petitioner remedy at law in violation of the First Amendment.

SIXTH GROUND UPON WHICH PETITIONER CLAIMS HIS LIBERTIES ARE BEING UNLAWFULLY RESTRAINED.

Fourth denial of due process. Petitioner filed an appeal with the Ninth Circuit Court of Appeals, CV01-35623, regarding the Bivens action, CIV. 01-0002-N-EJL, dismissed by Edward J. Lodge. The Ninth Circuit Court of Appeals refused to review the

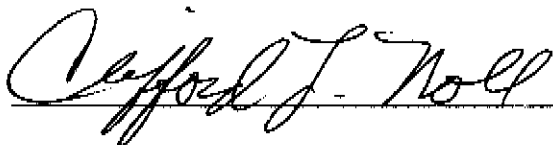
appeal stating that the Petitioner had failed to pay the \$2,000.00 sanction from the last time he attempted to protect his constitutional guarantees through the U.S. court system. The court of appeals stated that it would not consider another appeal from the Petitioner, for any reason, until the sanction was paid in full. In fact, \$2,000.00, of the \$2,923.35 seized from the Petitioner's bank account, was alleged to have been taken for the expressed purpose of paying said civil penalty sanction some 6 months prior to the date of the appeal.

Further Petitioner sayeth naught.

DECLARATION UNDER PENALTY OF PERJURY

The undersigned declares under penalty of perjury that he is the petitioner in this action and that he has read this petition and that the information contained in this petition is true, and correct to the best of his knowledge and belief.

Respectfully submitted this 22nd day of February



Clifford L. Noll

Clifford L. Noll
715 N. 13th Street
Coeur d'Alene, Idaho
Ph. (208) 765-4562

IN THE UNITED STATES SUPREME COURT

Clifford L. Noll,)	
)	Case No. _____
Petitioner)	
)	
vs.)	CERTIFICATE OF SERVICE
)	(HABEAS CORPUS)
Edward J. Lodge,)	
)	
Respondent.)	
_____)	

I hereby certify that I served a copy of the foregoing Petition for Writ of Habeas Corpus upon Edward J. Lodge by mailing a copy to him, postage prepaid, in an Envelope addressed to him in care of the U.S. District Court House, 550 W. Fort St., Boise, Idaho 83724 and an additional copy mailed to John Ashcroft, Attorney General of the United States, in care the U.S. Dept. of Justice, 950 Pennsylvania Ave. N.W., Washington D.C. 20530

Clifford L. Noll date Feb 22, 2002
Process server

U.S. COURTS

2002 JUN 28 A 10:38

REC'D. ...
CAY ...
FBI ...

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

CLIFFORD L. NOLL,)	
)	
Petitioner,)	Case No. CV02-0087-N-BLW
)	
vs.)	ORDER
)	
EDWARD J. LODGE,)	
)	
Respondent.)	
_____)	

This case was reassigned to this Court to consider whether Petitioner's Petition for Writ of Habeas Corpus is subject to summary dismissal. Pursuant to 28 U.S.C. § 2243, the Court now reviews the Petition to determine whether it is appropriate to issue an order to Respondent to show cause why the relief sought in the Petition should not be granted.

ORDER - 1

Title 28 U.S.C. § 2243 requires a federal court to dismiss a habeas corpus action where it appears from the petition that the petitioner is not entitled to relief. In this matter, it appears that Petitioner has been the subject of tax collection efforts by the United States Internal Revenue Service (IRS) for several years. Petitioner and his wife have filed various federal court actions to assert that they do not owe the taxes, that the IRS has no authority to collect taxes, and various other claims which have been unsuccessful.¹ Here, Petitioner asserts that Judge Lodge has deprived him of property without due process by failing to allow his various lawsuits to proceed. The Petition admits that Petitioner is not in custody.

Petitioner's Petition fails to state the essential elements required for a habeas corpus action as set forth in 28 U.S.C. § 2241, *et seq.* For example, Petitioner is not being held in illegal detention, confinement or custody, by Judge Lodge or anyone else. Accordingly, issuance of a writ of habeas corpus would not be an appropriate remedy.

Rather, it is clear that Petitioner is attempting to again bring his taxation claims in an inappropriate manner. The subject of the Petition is recovery of personal and real


¹See *Noll v. Peterson*, CV01-002, dismissed 9/21/01, appeal dismissed 3/12/02; *Noll v. United States*, 165 F.3d 916 (9th Cir. 1998) (CV97-145) (imposing a \$2,000 sanction for filing a frivolous appeal); *Noll v. United States*, CV99-590. This is by no means an exhaustive list.

property, which is not a proper subject in a habeas corpus proceeding. A review of the allegations in this matter and Petitioner's previous filings convinces the Court that amendment or conversion in this action would be futile. As a result, this action shall be dismissed.

ORDER

NOW THEREFORE IT IS HEREBY ORDERED that Petitioner's Petition for Writ of Habeas Corpus (Docket No. 1) is DISMISSED.

DATED this 27th day of June, 2002.



B. LYNN WINMILL
CHIEF UNITED STATES DISTRICT JUDGE

ja

United States District Court
for the
District of Idaho
June 28, 2002

* * CLERK'S CERTIFICATE OF MAILING * *

Re: 2:02-cv-00087

I certify that a copy of the attached document was mailed or faxed to the following named persons:

Clifford L Noll
715 N 13 St
Coeur d'Alene, ID 83814

Chief Judge B. Lynn Winmill
 Judge Edward J. Lodge
 Chief Magistrate Judge Larry M. Boyle
 Magistrate Judge Mikel H. Williams

Cameron S. Burke, Clerk

Date: 6-28-02

BY: 
(Deputy Clerk)