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Attorneys for Defendants

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
CENTRAL DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

DONALD BALL, DUSTIN HEARD,
NICHOLAS SLATTEN, PAUL SLOUGH,
AND EVAN LIBERTY,

Defendants.

**DEFENDANTS' MOTION FOR
FINDING OF NO PROBABLE CAUSE
DUE TO ABSENCE OF SUBJECT
MATTER JURISDICTION AND
LACK OF VENUE PURSUANT TO 18
U.S.C. §§ 3261 ET SEQ.**

Case No.:

Magistrate Judge Paul M. Warner

Defendants, jointly through counsel, and pursuant to Fed. R. Crim. P. 5.1 and 18 U.S.C. §§ 3261 *et seq.*, respectfully move this Court to order that there is no probable cause to believe that the Government has subject-matter jurisdiction to prosecute this matter and that there is a lack of venue in Washington, DC where the Indictment issued.

In support of this motion, Defendants state as follows:

1. Pursuant to Fed. R. Crim. P. 5.1 and 18 U.S.C. §§ 3261 *et seq.*, this Court has the power and obligation to determine whether there is probable cause to believe the Government has jurisdiction to prosecute these Defendants.

2. Under 18 U.S.C. §§ 3261 *et seq.*, the Government may only prosecute Defendants if they are Federal employees or contractors whose employment “relates to supporting the mission of the Department of Defense overseas.”

3. Defendants’ employment did not relate to supporting the mission of the Department of Defense overseas. Accordingly, there is no probable cause to believe that there is jurisdiction here.

4. With respect to venue, Defendants have all been first arrested in Utah, not the District of Columbia. Therefore under 18 U.S.C. § 3238, venue does not lie in the District of Columbia. A sham arrest of an alleged joint offender does not change this conclusion and, even if venue somehow was created, it was at best mere “manufactured” venue. Accordingly, there is no probable cause to believe that the venue element of the Indictment is supported.

5. In support of this motion, Defendants submit their Memorandum of Law in Support of Defendants’ Motion For Finding Of No Probable Cause Due To Absence Of Subject Matter Jurisdiction And Lack Of Venue Pursuant To 18 U.S.C. §§ 3261 *et seq.*


WHEREFORE, Defendants respectfully request that this motion be granted and that the Court find that there is no probable cause to believe that there is jurisdiction and that there is no probable cause to believe that the venue element of the Indictment is supported. A proposed order is attached.

Dated this 8th day of December 2008

Respectfully submitted,

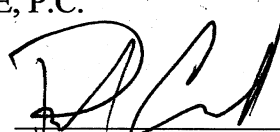
HATCH, JAMES & DODGE, P.C.

By:



Brent O. Hatch

By:



Paul G. Cassell

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of December 2008, I caused a true and correct copy of the foregoing to be served as indicated on the following persons at the following addresses:

Via Hand Delivery and Electronic Transmission:

Office of the United States Attorney
185 South State Street, Suite 400
Salt Lake City, Utah 84111

Kenneth C. Kohl, Esq.
United States Attorney's Office
for the District of Columbia
555 Fourth Street, N.W.
Washington, D.C. 20001



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**[PROPOSED] ORDER REGARDING
DEFENDANTS' MOTION FOR
FINDING OF NO PROBABLE CAUSE
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[PROPOSED] ORDER

Upon Consideration of Defendants' Motion for Finding of No Probable Cause Due to Lack of Subject Matter Jurisdiction and Lack of Venue Pursuant to 18 U.S.C. §§ 3261, *et seq.*, the arguments in support thereof and any opposition thereto

It is HEREBY ORDERED that Defendants motion is GRANTED.

Magistrate Judge Paul M. Warner
United States Magistrate Judge