

IN THE  
UNITED STATES COURT OF APPEALS  
FIRST CIRCUIT

---

CARL ERIC OLSEN,	*	
in propria persona,	*	
	*	
Petitioner-Appellant,	*	07-2310
	*	
v.	*	
	*	
UNITED STATES DISTRICT COURT,	*	Motion for Judicial Notice
	*	Pursuant to
Respondent-Appellee.	*	Federal Rule of Evidence 201(d)

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**MOTION FOR JUDICIAL NOTICE  
PURSUANT TO FEDERAL RULE OF EVIDENCE 201(d)**

On September 21, the Petitioner filed a motion for reconsideration of the orders in Carl Eric Olsen v. United States, No. 07-1883, requiring the Petitioner to submit a memorandum in support of an application for certificate of appealability. This Court has not ruled on that motion.

A similar motion for reconsideration was filed in the United States District Court for the Western District of Arkansas in *United States of America v. Rev. Tom Brown*, Criminal No. 5:94cr50030, and Civil No. 07-5037. On November 13, 2007, the United States District Court granted this motion.

Pursuant to Federal Rule of Evidence 201(d), the Petitioner moves this Court to take Judicial Notice of the attached copies of the "Request for Reconsideration" filed on October 9, 2007, and the "Order" filed on November 13, 2007, in the United States District Court for the Western District of Arkansas in *United States of America v. Rev. Tom Brown*, Criminal No. 5:94cr50030, and Civil No. 07-5037.

Respectfully submitted this 23<sup>rd</sup> day of November, 2007.

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CARL ERIC OLSEN, IN PROPRIA PERSONA  
130 E Aurora Avenue, Des Moines, IA 50313-3654  
515-288-5798

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing motion for judicial notice was mailed by first class mail on this 23<sup>rd</sup> day of November, 2007 to the following respondent:

MARGARET D. MCGAUGHEY  
Assistant United States Attorney  
100 Middle Street Plaza  
East Tower Sixth Floor  
Portland, Maine 04101-4100

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CARL ERIC OLSEN  
130 E Aurora Avenue  
Des Moines, IA 50313-3654  
515-288-5798  
IN PROPRIA PERSONA

U. S. DISTRICT COURT  
WESTERN DISTRICT ARKANSAS  
FILED

OCT 09 2007

CHRIS R. JOHNSON, CLERK

BY

DEPUTY CLERK

1 Rev. Tom Brown, *in propria persona*  
First Church of the Magi  
2 P.O. Box 2827  
Fayetteville, Arkansas 72702  
3 <http://www.firstchurchmagi.org>  
revtombrown@hotmail.com  
4 (479) 521-5470

5 **UNITED STATES DISTRICT COURT**  
6 **WESTERN DISTRICT ARKANSAS**  
7 **FAYETTEVILLE DIVISION**

10 Rev. Tom Brown, *in propria persona*, )  
11 )  
Plaintiff, )  
12 )  
13 )  
14 vs. )  
15 )  
United States of America, )  
16 )  
Defendant )

Criminal No. 5:94cr50030  
Civil No. 94-5034  
Civil No. 07-5037

17 **Request for**  
18 **Reconsideration**  
19 **Notice of**  
20 **Plain Error of Law**  
21 **And**  
22 **Plain Error of Fact**

1 **Introduction**

2  
3 Plaintiff, Rev. Tom Brown, comes to this Court to notify the Court of  
4 its Plain Error of Fact, its Plain Error of Law and to respectfully request  
5 that this Court reconsider its latest "Order" of September 27, 2007 for the  
6 following reasons:

7  
8 1. On September 24, 2007, Plaintiff filed a "Notice of Appeal" of this  
9 Courts "Order" listed as docket #241 of this case. That Order denied  
10 Plaintiff's motion for Writ of Corum Nobis under section 1651 and a Writ of  
11 Habeas Corpus under section 2241 with prejudice. Plaintiff did not file a  
12 motion for "Certificate of Appealability", Plaintiff filed a "Notice of  
13 Appeal".

14 A Notice of Appeal invokes an appeal as a matter of right. A  
15 Certificate of Appealability is a statutorily mandated requirement necessary  
16 to allow an appeal. There are vast differences between them.

17 Plaintiff never requested a Certificate of Appealability. Plaintiff  
18 never suggested to this Court that the Court has jurisdiction to inhibit,  
19 prohibit, or in any other way to obstruct justice in this matter by  
20 exercising gate keeping powers over the appeal of this case to the 8th  
21 Circuit Court of Appeals.

22 Since this Court has misconstrued the "Notice of Appeal" as a motion  
23 for a Certificate of Appealability, this Court has made a Plain Error of  
24 Fact. That Plain Error of Fact has materially prejudiced Plaintiff's ability  
25 to obtain review of that "Order". Plaintiff respectfully requests that this  
Court recognize that Plain Error of Fact and correct the record in accordance

1 with the true fact that Plaintiff filed a Notice of Appeal and process that  
2 Notice of Appeal in accordance with law.

3  
4 2. This Court claims jurisdiction to inhibit, prohibit and obstruct an  
5 appeal of this matter by denying a Certificate of Appealability by citing the  
6 provisions of 28 U.S.C. section 2253(c)(2). However, a simple reading of  
7 that statute shows that the statute does not empower this Court with that  
8 jurisdiction. In fact, the statute as cited by this Court is totally  
9 irrelevant to the adjudication of a motion under section 1651 or 2241. The  
10 relevant plain language of the statute is:

11  
12 **28 U.S.C. section 2253: Appeal**

13 (a) In a habeas corpus proceeding or a proceeding under section 2255  
14 before a district court, the final order shall be subject to review, on  
15 appeal, by the circuit court of appeals for the circuit in which the  
16 proceeding is held.

17 (c)(1) Unless a circuit justice or judge issues a certificate of  
18 appealability, an appeal may not be taken to the court of appeals from-

19 (A) the final order in a habeas corpus proceeding in which the  
20 detention complained of arises out of process issued by a State court;

21 or

22 (B) the final order in a proceeding under section 2255.

23 (2) A certificate of appealability may issue under paragraph  
24 (1) only if the applicant has made a substantial showing of the denial  
25 of a constitutional right.

1 As it is clear from the record of the filing of the original Motion for  
2 Writ of Habeas Corpus under sections 1651 and or 2241, section (a) - as cited  
3 above - applies to this Plaintiff and establishes a statutory right for  
4 review of the appeal of the Writ of Habeas Corpus under sections 1651 and/or  
5 2241 by a panel of the 8th Circuit Court of Appeals.

6 As section (c)(1) applies only as described in subsection (A) or (B),  
7 section (c)(1) and its subsection do not apply to this Plaintiff or to this  
8 motion because the appeal filed by Plaintiff is not described by subsection  
9 (A) or (B) because:

10 a. That section does not establish an authority for this Court to  
11 issue a Certificate of Appealability in this case because the "detention  
12 complained of arises out of a process issued by a State court" (c)(1)(A).

13 Plaintiff is complaining of a detention that arose of out a "process  
14 issued by" this federal court, therefore section (c)(1)(A) does not apply to  
15 this Plaintiff or to this motion.

16 b. As stated above, Plaintiff has made a motion under section 1651  
17 and 2241 and neither of those are section 2255. Therefore since section  
18 (c)(1)(B) applies only to an appeal of section 2255, it does not apply to  
19 this motion under sections 1651 and 2241.

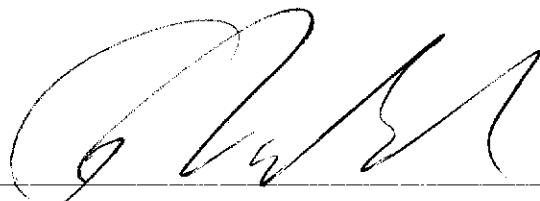
20 Therefore, as none of the statute as written by Congress empowers this  
21 Court to inhibit, prohibit or obstruct this Plaintiff from the right to a  
22 full adjudication, briefing, submission of argument and evidence in support  
23 by the 8th Circuit Court of Appeals in this matter, this Court has made a  
24 Plain Error of Law.

25 Since this Court has made a Plain Error of Fact, and a Plain Error of

1 Law in issuing the "Order" of September 27, 2007, Plaintiff respectfully  
2 requests that this Court reconsider its Order and bring its Order within the  
3 bounds of the Law as written by Congress and interpreted by the several  
4 federal district and appellate courts.

5  
6 Respectfully Submitted by:

7  
8  
9 Signed \_\_\_\_\_



10 Rev. Tom Brown, *in propria persona*

11 First Church of the Magi

12 P.O. Box 2827

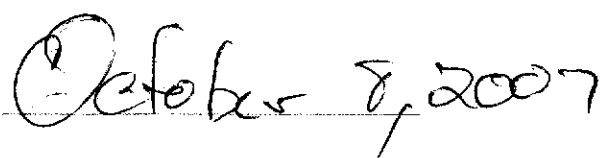
13 Fayetteville, Arkansas 72702

14 [revtombrownh@hotmail.com](mailto:revtombrownh@hotmail.com)

15 <http://www.firstchurchmagi.org>

16 (479) 521-5470

17  
18 Date \_\_\_\_\_



19  
20 Certificate of Service:

21 I affirm under penalty of perjury that on the date indicated above, I, Rev.  
22 Tom Brown placed true copies of this Document in the U.S. Postal Service,  
23 first class postage prepaid, addressed to the U.S. Attorney in Ft. Smith  
24 Arkansas and the Clerk of the Court, Western District of Arkansas,  
25 Fayetteville Division, or hand delivered, as indicated by my signature above.

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS  
FAYETTEVILLE DIVISION

UNITED STATES OF AMERICA

PLAINTIFF/RESPONDENT

v.

Criminal No. 5:94cr50030  
Civil No. 07-5037

REV. TOM BROWN

DEFENDANT/PETITIONER

**ORDER**

By order entered September 18, 2007, this Court adopted the Report and Recommendation of the United States Magistrate Judge and denied and dismissed the petitioner's 28 U.S.C. § 1651/2241 petition. (Docs. 236, 241 .) Petitioner filed a notice of appeal from this order and the notice was also filed as a motion for a certificate of appealability. (Docs. 242, 243.) On September 27, 2007, the Court denied the motion for a certificate of appealability. (Doc. 244.)

Currently before the Court is Petitioner's **Motion for Reconsideration (Doc. 248)**. In this motion, petitioner correctly points out that he was not required to seek a certificate of appealability because he filed his petition under 28 U.S.C. § 1651/2241. See 28 U.S.C. § 2253(c)(1); Sugarman v. Pitzer, 170 F.3d 1145, 1146 (D.C. Cir. 1999); United States v. Baptiste, 223 F.3d 188, 189 n.1 (3<sup>rd</sup> Cir. 2000).

Accordingly, Petitioner's **Motion for Reconsideration (Doc. 248)** is **GRANTED** and the **Motion for Certificate of Appealability**

(Doc. 243) and Order denying such motion (Doc. 244) are hereby ordered **WITHDRAWN**.

IT IS SO ORDERED this 13th day of November, 2007.

/s/ Jimm Larry Hendren  
JIMM LARRY HENDREN  
UNITED STATES DISTRICT JUDGE