

No. 11-7910

In The
Supreme Court of the United States

—◆—
ALBERT LEO BERRETTINI, JR.,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

—◆—
**On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Third Circuit**

—◆—
PETITION FOR WRIT OF CERTIORARI

—◆—
ALBERT LEO BERRETTINI, JR.
c/o: Michael Berrettini
144 Desmond St.
Sayre, PA 18840
570-888-8694

QUESTIONS PRESENTED

- 1) DOES ANY COURT HAVE JURISDICTION (AUTHORITY) TO HOLD A TRIAL, OR TO HOLD AN INDIVIDUAL FOR TRIAL, BASED UPON AN INVALID INDICTMENT?
- 2) DOES ANY COURT HAVE JURISDICTION (AUTHORITY) TO HOLD A TRIAL, OR TO HOLD AN INDIVIDUAL FOR TRIAL, BASED UPON AN INVALID/FAULTY ARREST WARRANT?
- 3) DOES THE U.S. DISTRICT ATTORNEY HAVE THE AUTHORITY TO REPRESENT THE INTERNAL REVENUE SERVICE (I.R.S.) OR TO PROSECUTE ON THE BEHALF OF THE I.R.S., ABSENT A SIGNED, DATED AND SWORN ASSIGNMENT DECLARING WITH SPECIFICITY WHAT THE U.S. DISTRICT ATTORNEY IS AUTHORIZED TO PROSECUTE ON THEIR BEHALF BASED UPON I.R.S. FINDINGS IN THEIR SYSTEM OF RECORDS AS DUE AND OWING IN VIOLATION OF THEIR INTERNAL REVENUE CODE?
- 4) IS THE U.S. DISTRICT ATTORNEY, IN VIOLATION OF THE FOREIGN AGENT REGISTRATION ACT, WHEN HIS ALLEGED REPRESENTATION IS ON BEHALF OF FOREIGN AGENTS, EMPLOYED BY FOREIGN AGENCIES, ORGANIZATIONS, ASSOCIATIONS, OPERATIONS, POWERS, OR AUTHORITIES?

QUESTIONS PRESENTED – Continued

- 5) DOES THE U.S. ATTORNEY MANUAL BIND THE U.S. DISTRICT ATTORNEY TO CERTAIN POWERS AND AUTHORITIES AS THEREIN SPECIFIED OR IS THE U.S. ATTORNEYS MANUAL SET OUT SUGGESTED GUIDELINES WHICH THE U.S. DISTRICT ATTORNEY MAY DISREGARD AT HIS WILL AS FRIVOLOUS?
- 6) DOES THE U.S. DISTRICT ATTORNEY AND THE U.S. DISTRICT COURT JUDGE HAVE THE UNBRIDLED POWERS AND AUTHORITIES TO DISREGARD AT THEIR WILL, THE BASIC FUNDAMENTAL CONSTITUTIONAL PROVISIONS, PROTECTIONS, LIMITATIONS AND THE LAWS OF THE UNITED STATES MADE IN PURSUANCE THEREOF, OR IS THE CONSTITUTION THE ANCIENT CHAINS PASSED DOWN FROM GENERATION TO GENERATION TO BIND DOWN THE SAME FROM ACTING, RULING OR ADJUDGING WITH DESPOTIC DISREGARD TO U.S. CONSTITUTIONAL PROVISIONS AND LIMITATIONS UPON ITS DELEGATED POWERS AND AUTHORITIES, AND INCLUDING BUT NOT LIMITED TO THE RESPECTIVE LIMITATIONS ACCORDING TO THE LAWS MADE IN PURSUANCE THEREOF?
- 7) DOES THE U.S. DISTRICT ATTORNEY AND THE U.S. DISTRICT COURT JUDGE HAVE THE UNBRIDLED POWERS AND AUTHORITIES TO DISREGARD AT THEIR WILL, THE

QUESTIONS PRESENTED – Continued

BASIC AND FUNDAMENTAL INTERNATIONAL HUMAN RIGHTS OF MAN?

- 8) DOES THE U.S. DISTRICT ATTORNEY AND THE U.S. DISTRICT COURT JUDGE HAVE THE UNBRIDLED POWERS AND AUTHORITIES TO RECKLESSLY DISREGARD AT THEIR WILL INTERNATIONAL DUTIES AND TREATY OBLIGATIONS OF THE UNITED STATES AND AT THEIR WILL AND SOLE DISCRETION COMMIT ACTS WHICH CLEARLY CONSTITUTE CRIMES AGAINST HUMANITY BECAUSE THEY WANT TO?
- 9) DO THE U.S. DISTRICT ATTORNEY AND THE U.S. DISTRICT COURT JUDGE HAVE THE LUXURY OF IMMUNITY WHEN ACTING BEYOND THEIR DELEGATED POWERS, AUTHORITIES AND WHICH SAID ACTS ARE WELL OUTSIDE AND WELL BEYOND, “WHILE DURING GOOD BEHAVIOR?”
- 10) DOES THE U.S. CONSTITUTION ALSO PROTECT STATE CITIZENS WHO ARE NOT NECESSARILY CITIZENS OF THE UNITED STATES, I.E. CITIZENS OF THE DISTRICT OF COLUMBIA?
- 11) IS A STATE CITIZEN, AS A MATTER OF LAW, AUTOMATICALLY, EX POST FACTO, A U.S. CITIZEN (I.E. A CITIZEN OF THE DISTRICT OF COLUMBIA?)

QUESTIONS PRESENTED – Continued

- 12) DOES THE U.S. DEPARTMENT OF JUSTICE HAVE SUPERIOR AUTHORITY OF STATE CITIZENS, RESIDING IN THEIR RESPECTIVE STATES AND HAVING NO BUSINESS IN THE TERRITORIAL JURISDICTIONS OF THE FEDERAL GOVERNMENT, NOR RESIDING WITHIN THE 10 MILE BY 10 MILE JURISDICTION OF THE FEDERAL CORPORATIONS SEAT OF GOVERNMENT, THE DISTRICT OF COLUMBIA?
- 13) DOES THE U.S. DISTRICT ATTORNEY AND THE U.S. DISTRICT COURT JUDGE HAVE THE UNBRIDLED POWERS AND AUTHORITIES TO DISREGARD AT THEIR WILL THE RIGHT OF A PARTY TO CONTRACT, OR TO PROSECUTE THIRD PARTIES TO A CONTRACT, ABSENT THE PARTY-CORPORATION UNDER CONTRACT BEING NAMED AS A PARTY, AND IF SO WHERE IS THE NEXUS CONNECTION?
- 14) DOES THE U.S. DISTRICT ATTORNEY AND THE U.S. DISTRICT COURT JUDGE HAVE THE UNBRIDLED POWERS AND SUPERIOR AUTHORITIES OVER GRAND JURY INVESTIGATIONS?
- 15) DOES THE U.S. DISTRICT ATTORNEY AND THE U.S. DISTRICT COURT JUDGE HAVE THE UNBRIDLED POWERS AND SUPERIOR AUTHORITIES OVER GRAND JURY INVESTIGATIONS, SO AS TO HAVE AUTHORITY TO BYPASS PUBLIC INVOLVEMENT?

QUESTIONS PRESENTED – Continued

- 16) DOES THE U.S. DISTRICT ATTORNEY AND THE U.S. DISTRICT COURT JUDGE HAVE THE UNBRIDLED POWERS AND SUPERIOR AUTHORITIES OVER GRAND JURY INVESTIGATIONS OF RECORD TO DENY INFORMATION TO THE ACCUSED SO AS TO DISREGARD AT THEIR WILL THE FUNDAMENTAL AND ANCIENT MANDATES REGARDING CERTAIN REQUIREMENTS OF THE RIGHTS OF THE ACCUSED IN THAT, IF THE ACCUSED IS NOT NOTIFIED, IF HE FINDS OUT ABOUT THE GRAND JURY INVESTIGATION ON HIS OWN, AND SO REQUEST, THE ACCUSED MAY TESTIFY, PRESENT EVIDENCE, BRING WITNESSES ON HIS BEHALF, OBTAIN COUNSEL, OTHER EXPERTS AND THE LIKE DURING A GRAND JURY INVESTIGATION AND UPON REQUEST BE PROVIDED WITH THE EXCULPATORY EVIDENCE AGAINST HIM?
- 17) DOES THE U.S. ATTORNEY OR AUSA HAVE AUTHORITY TO ISSUE COMPLAINTS, INDICTMENTS AND THE LIKE ABSENT THE SAID DOCUMENTS FIRST BEING SWORN, SIGNED AND CERTIFIED RECORDS OF GRAND JURY INVESTIGATIONS, REQUIREMENTS AND/OR ELEMENTS OF THE WARRANT, ARREST PROCESS?
- 18) DOES THE U.S. ATTORNEY OR AUSA HAVE THE RIGHT OR THE AUTHORITY TO WITHHOLD EXCULPATORY EVIDENCE FROM A DEFENDANT AND DENY THE DEFENDANT

QUESTIONS PRESENTED – Continued

THE RIGHT TO TESTIFY BEFORE THE GRAND JURY, PROVIDE EVIDENCE, WITNESSES, ETC.?

- 19) DOES THE U.S. ATTORNEY OR AUSA HAVE THE POWER OR AUTHORITY TO DENY A DEFENDANT A TRUE AND CORRECT ARREST WARRANT, WITH DEFENDANT'S NAME SPELLED CORRECTLY AND CONTINUE AS IF THERE WERE NO ERRORS WITH THE ARREST WARRANT?
- 20) DOES THE U.S. ATTORNEY OR AUSA HAVE THE POWER OR AUTHORITY TO DENY A DEFENDANT THE EVIDENCE AGAINST HIM, EVEN WHEN REQUESTED FOR THE SAME, INCLUDING *JENKS* EVIDENCE AND DENY A DEFENDANT THE RIGHT TO KNOW WHAT THE EVIDENCE IS AGAINST HIM AND THE RIGHT TO PROPERLY PREPARE A DEFENSE AGAINST THE SAME?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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[See: Constitutional and Statutory Provisions
pages typed]

**IN THE SUPREME COURT
OF THE UNITED STATES**

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.



OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is unpublished.

The opinion of the United States district court appears at Appendix B, to the petition and is unpublished.



JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was June 16, 2011.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: July 11, 2011, and a copy of the order denying rehearing appears at Appendix C.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).



**CONSTITUTIONAL AND
STATUTORY PROVISIONS INVOLVED**

CONSTITUTIONAL

- 1) Universal Declaration of Human Rights
- 2) International Treaties of the United States
- 3) American Convention On Human Rights
- 4) United Nations Laws
- 5) The Constitution for the Sovereign State of Colorado
- 6) The Constitution for the Sovereign State of Pennsylvania
- 7) The Constitution for the Sovereign United States of America

STATUTORY

- 1) United States Code (U.S.C.) as applicable
- 2) 22 U.S.C.A. 611 & 611(c)(1)(iv)
- 3) 22 U.S.C.A. 612
- 4) 22 U.S.C.A. 613
- 5) 18 U.S.C.A. 219 & 951
- 6) 18 U.S.C. 1621

- 7) 5 U.S.C. 552
- 8) 44 U.S.C. 1505(a)

CASE LAW

- 1) United States v. Lee Huen, 118 F 442, 445) and Mossew v. United States, 266 F 18, 22
- 2) Lisk v. Hara, 143 N.E. 545, 546.
- 3) People v. Quanstrom, 53 N.W. 165, 166, 93 Mich. 254, 17 L.R.A. 723
- 4) U.S. v. Throchmorton, 98 U.S. 61, at page 65
- 5) Cohen v. Virginia, 6 Wheat 264, 5 L Ed. 257 (1821)
- 6) U.S. v. Will, 449 US 200, 66 L. Ed. 392, at page 406.
- 7) Robinawitz v. Kennedy, 376 U.S. 605, 11 L. Ed. 2d 940
- 8) Mackin v. U.S. (117 U.S. 384, et al,)
- 9) Early v. Winn, 109 N.W. 633, 640; 129 Wis. 291., Maxey v. U.S., 207 F 327, 331, and Lee v. Stanfill, 186 S.W. 1196, 1198
- 10) Capital Traction Company v. Hoff, 174 U.S. 1.
- 11) Thompson v. Utah, 170 U.S. 343
- 12) Marbury v. Madison, 5 U.S. (2cranch) 137, 180, (1803)

- 13) *Miranda v. Arizona*, 3384 U.S. 436, 491, 86 S. Ct 1602
- 14) *Burgett v. Texas*, 389 U.S. 109
- 15) *Argersinger v. Hamlin*, 407 U.S. 25 (1972)
- 16) *Brooms Maxims* 297, 729; *Cowper's Reports* 343; 2 *Communi Blanco or Common Bench* 501; 5 *Scott's New Reports* 558; 10 *Mass.* 276; 38 *Fed.* 800

Relevant portions of the Constitutional and Statutory Provisions appear at Appendix D.



**OTHER IMPORTANT INTERNATIONAL
MATTERS THIS HONORABLE
SUPREME COURT SHOULD CONSIDER**

Docket numbers from the Federal District Trial Court for this Honorable Supreme Court to consider concerning the International law and legal matters thereof and as below shown, to wit:

[DOCKET NO. 171]; [DOCKET NO. 199]; [DOCKET NO. 201]; [DOCKET NO. 202]; [DOCKET NO. 203]; [DOCKET NO. 354]; [DOCKET NO. 401];

The crime of genocide –

Support for the inclusion of the crime of genocide is virtually universal. Establishing an international criminal court where such crimes could be tried is felt by many to be an important reason for establishing the Court. Punishing the crime of genocide has been

on the agenda of the United Nations since its formation.

Although crimes qualifying as genocide have been perpetrated since the earliest history of humankind, the term “genocide” is relatively new. It is said to combine the Greek *genos*, which means race or tribe, and the Latin *caedere*, which means killing, and was coined to describe the Nazi activity in occupied Europe. Following the extermination of many Jews and members of other groups deemed undesirable by the Nazis in the Second World War, the Charter of the Nürnberg Tribunal recognized “persecutions on political, racial, or religious grounds” as one of two categories of crimes against humanity, and established the principle of individual criminal responsibility for such crimes. As early as 1946, the United Nations General Assembly unanimously affirmed the principles of international law recognized by the Charter and Judgment of the Nürnberg Tribunal (the Nürnberg principles). In 1948, it adopted the Convention on the Prevention and Punishment of the Crime of Genocide, which defined genocide and proclaimed it a crime against international law, “whether committed in time of peace or in time of war.” It was in the resolution adopting that Convention that the United Nations General Assembly first considered the establishment of an international criminal court. The General Assembly recognized that there would be an increasing need for an international judicial organ to try “certain crimes” under international law.

There is broad agreement to use the wording of the Genocide Convention in the draft statute for the Court. Article 5 of the draft statute has been taken directly from the Convention:

“ . . . Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- killing members of the group;
- causing serious bodily or mental harm to members of the group;
- deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- imposing measures intended to prevent births within the group;
- forcibly transferring children of the group to another group.

The following acts shall be punishable:

- genocide;
- conspiracy to commit genocide;
- direct and public incitement to commit genocide;
- attempt to commit genocide;
- complicity in genocide.”

The crime of aggression

There is support for the inclusion of the crime of aggression in the Court's jurisdiction, and there is opposition. Part of the debate centers on finding an acceptable definition of the crime of aggression. While arguments to include aggression center on its extreme gravity and international repercussions, arguments against its inclusion center on the lack of a sufficiently precise definition. Another part of the debate focused on the role of the Security Council in this regard. Pursuant to Article 39 of the UN Charter, the Security Council "shall determine" the existence of an "act of aggression." Consequently, the issue is inseparably linked to the role of the Security Council in the maintenance of international peace and security. It has been a difficult task to find an acceptable way to reflect in a balanced manner the responsibility of the Security Council, on the one hand, and the judicial independence of the Court, on the other.

The Nürnberg Tribunal condemned a war of aggression in the strongest terms: "To initiate a war of aggression . . . is not only an international crime; it is the supreme international crime differing only from other war crimes in that it contains within itself the accumulated evil of the whole." It held individuals accountable for "crimes against peace," defined as the "planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing. . . ." When the United

Nations General Assembly unanimously affirmed the Nürnberg principles in 1946, it affirmed the principle of individual accountability for such crimes.

Early efforts in the United Nations to create an international criminal court were set aside while the international community set out to define aggression. In 1974, the United Nations General Assembly adopted a definition of aggression. It defined aggression as necessarily being the act of a State, and described the specific actions of one State against another which constitute aggression. In its work on the draft Code of Crimes against the Peace and Security of Mankind, the United Nations International Law Commission, echoing the Nürnberg Tribunal, also concluded that individuals could be held accountable for acts of aggression. The Commission indicated the specific conduct for which individuals could be held accountable – initiating, planning, preparing or waging aggression – and that only those individuals in positions of leadership who order or actively participate in the acts could incur responsibility. Its definition focused on individual accountability rather than on the rule of international law which prohibits aggression by a State.

The difficulty, according to some, lies in framing a workable definition of aggression which would apply to a wide range of situations. The definition must be precise enough for individuals to know what acts are prohibited; and it must be general enough to cover a wide variety of acts which may occur in the future, and which may not yet have been conceived of.

It must also describe the magnitude of the violation of the prohibition of the use of force contained in Article 2 of the UN Charter that would constitute the crime of aggression for which individuals may be held responsible and punished.

Some States are of the view that excluding aggression would leave a significant gap in the Court's jurisdiction. Another reason supporting its inclusion is also one of the strongest reasons put forward for creating the Court: to break the cycle of impunity. To hold individuals accountable for war crimes or crimes against humanity while granting impunity to the architects of the conflict in which those crimes occurred is not justifiable. Others also hope that holding individuals responsible for the crime of aggression will act as a deterrent, and that by deterring an aggressor from beginning a conflict that may lead to a conflagration, the attendant war crimes and crimes against humanity might therefore also be prevented. Some also believe that it would be retrogressive to adopt a statute that does not include the crime of aggression 50 years after Nürnberg recognized such conduct as an international crime.

Some of those seeking a way to include aggression have proposed lessening the need for a definition by allowing the determination of an act of aggression to rest with the Security Council. The argument is, if States commit aggression for which individuals can be held accountable, then the Security Council should determine whether an act of aggression has been committed by a State and the Court should determine

whether an individual was responsible for that act. This proposal elicits a concern regarding Security Council involvement which is also heard in other contexts: linking the work of the Court to the Security Council may lead to politicization of the Court. Some States are concerned regarding any connection between the Security Council and the Court.

The draft statute contains two options concerning the definition of aggression. One possible definition lists the specific acts for which an individual in a position of responsibility could be held accountable for aggression. The following acts would constitute the crime of aggression under this definition: planning, preparing, ordering, initiating, or carrying out an armed attack, or the use of force, or a war of aggression, or a war in violation of international treaties or agreements, by a State, against the territorial integrity of another State, against the provisions in the UN Charter.

A second possible definition provides a list of acts constituting aggression, which includes the following:

- invasion or attack by the armed forces of a State of the territory of another State, or military occupation, or annexation of territory by the use of force
- bombardment by armed forces of a State against the territory of another State
- the blockade of ports or coasts of a State

- the use of armed forces of a State which are within the territory of another State in violation of the terms of an agreement between those States
- a State allowing its territory to be used by another State for an act of aggression against a third State
- a State sending armed bands, groups, irregulars or mercenaries to carry out grave acts of armed force against another State. Consideration of the definition of aggression will continue at the Conference in Rome.

War crimes

The draft statute enumerates four different categories of war crimes. The first two categories apply to international armed conflicts and are largely based on well-established principles of international law. There is broad support for their inclusion:

A Grave breaches of the four Geneva Conventions of 12 August 1949.

B. Other serious violations of the laws and customs applicable in international armed conflicts (largely derived from the Hague law, limiting the methods of waging war).

The third and fourth categories of war crimes apply to armed conflicts not of an international character. These categories are drawn from Common Article 3 of the 1949 Geneva Conventions and the

Second Additional Protocol to the four Geneva Conventions, respectively. The inclusion of these two provisions is still being debated.

C. In case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949 (which bars specified acts committed against persons taking no active part in the hostilities).

D. Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law (based largely on the Second Additional Protocol to the four Geneva Conventions).

A. Grave Breaches of the Geneva Conventions

The four Geneva Conventions of 1949 extend special protections to certain categories of persons – wounded and sick in armed forces in the field; wounded, sick and shipwrecked members of armed forces at sea; POWs; and civilians during wartime. The ICC draft statute enumerates “grave breaches” as “any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:

- wilful killing;
- torture or inhuman treatment, including biological experiments;
- wilfully causing great suffering, or serious injury to body or health;

- extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
- compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;
- wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;
- unlawful deportation or transfer or unlawful confinement; and the taking of hostages.”

B. Other serious violations of the laws and customs applicable in international armed conflicts

As noted previously, these provisions are derived largely from the Hague law. The list is quite extensive, and largely consists of rules of warfare recognized since the turn of the century or before, but also takes into account more recent developments in international humanitarian law. It enumerates as crimes such acts as:

- targeting civilians;
- targeting buildings devoted to art or science;
- killing combatants who have laid down their arms and surrendered;
- declaring that no quarter will be given;
- pillaging;

- using a flag of truce or other flag or insignia falsely, resulting in death or serious injury;
- rape, sexual slavery, enforced prostitution, enforced pregnancy, enforced sterilization, and other forms of sexual violence;
- using civilians or other protected persons to protect specific locations from military attack;
- intentional starvation of civilians as a method of warfare.

Proposals have been made to include the following acts: the transfer by an occupying power of civilians into or out of certain territories; the use of particular weapons, such as poison or poisoned weapons, gas weapons, chemical weapons and bacteriological weapons; the use of anti-personnel mines, blinding laser weapons and nuclear weapons; and “outrages upon personal dignity, in particular humiliating and degrading treatment,” or, more specifically, rape, sexual slavery, enforced prostitution, enforced pregnancy, enforced sterilization, and any other form of sexual violence also constituting a grave breach of the Geneva Conventions.

C. In the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions

Article 3 which is common to all four Geneva Conventions applies specifically to armed conflicts

not of an international character. It sets out protection for those not taking an active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat (out of the combat) by sickness, wounds, detention or any other cause. It enumerates four categories of prohibited acts:

- violence, murder, mutilation, cruel treatment and torture;
- outrages upon personal dignity, in particular humiliating and degrading treatment;
- the taking of hostages;
- the passing of sentences and carrying out of executions without due process.

D. Other serious violations of the laws and customs applicable in armed conflicts not of an international character

This category is largely derived from the second Protocol Additional to the Geneva Conventions of 1949, which specifically protects victims of non-international conflicts. In large part, this section of the draft statute resembles the text regarding, serious violations of the laws and customs applicable in armed conflict in section B above, but applies to non-international conflict. It would prohibit acts such as:

- attacks directed against civilian populations, or non-combatants, or against buildings or

other targets bearing the emblem of the Geneva Conventions;

- attacks directed against buildings dedicated to art or science, or monuments;
- pillaging a town or place, even when taken by assault;
- committing outrages upon personal dignity, in particular humiliating and degrading treatment;
- rape, sexual slavery, enforced prostitution, enforced pregnancy, enforced sterilization, and other forms of sexual violence also constituting a serious violation of article 3 common to the four Geneva Conventions;
- using children under the age of 15 in armed forces;
- displacing the civilian population for reasons related to the conflict;
- physical mutilation or medical or scientific experiments of persons in the power of another party to the conflict;
- killing or wounding treacherously an adversary;
- declaring that no quarter will be given;
- destroying or seizing property when not necessary.

Proposals have been made to include provisions prohibiting using starvation of civilians as a method

of warfare, intentionally launching an attack knowing that such an attack would cause loss of life or injury to civilians, and slavery and the slave trade.

Crimes against humanity

The definition of crimes against humanity in article 5 of the draft statute is based on the Nürnberg Charter and takes into account subsequent developments of international law, particularly relating to the recent ad hoc international criminal tribunals. Proposals for the definition of crimes against humanity include acts which would constitute such a crime when committed in a widespread and/or systematic manner, and/or on a massive scale, and/or on specified grounds.

The definition of crimes against humanity contained in the Nürnberg Charter included the requirement that the prohibited acts be committed in connection with crimes against peace or war crimes. A decision has yet to be made as to whether the definition of crimes against humanity contained in the Statute will also include such acts when committed in peacetime. In this regard, the Yugoslavia Tribunal stated, "It is by now a settled rule of customary international law that crimes against humanity do not require a connection to international armed conflict."

According to the draft statute, the definition of this crime would include the following prohibited acts:

- murder;
- extermination;
- enslavement;
- deportation or forcible transfer of population;
- torture;
- rape or other sexual abuse of comparable gravity, or enforced prostitution;
- persecution against a group on political, racial, national, ethnic, cultural or religious (and possibly gender) grounds;
- enforced disappearance of persons;
- other inhumane acts causing serious injury to body or to mental or physical health;
- detention, imprisonment or deprivation of liberty in violation of international law.

In the draft statute, *extermination* is defined as including the infliction of conditions of life calculated to bring about the destruction of part of a population.

Torture may be defined as it is in the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984, which requires that the acts be committed by a public official. Or torture may be defined as the intentional infliction of severe pain or

suffering, but excluding pain and suffering arising only from lawful sanctions.

The increasing number of forced disappearances of persons throughout the world prompted the United Nations General Assembly to adopt, in 1992, the Declaration on the Protection of All Persons from Enforced Disappearance. Under the Declaration, the term enforced disappearance also covers situations when persons are arrested, detained or abducted against their will by or with the approval of a State or a political organization, followed by a refusal to acknowledge that abduction has taken place and the denial of information on the fate of those abducted, thereby placing them outside the protection of the law.

Crimes against United Nations and associated personnel

Concern for the safety of United Nations and associated personnel has escalated since the early 1990s, as peacekeepers, humanitarian workers and civilian staff of the United Nations and its agencies increasingly face threats and are targeted for kidnapping or murder.

On 9 December 1994, the United Nations General Assembly adopted the Convention on the Safety of United Nations and Associated Personnel, which sets out the respective rights and duties of States parties, and of United Nations and associated personnel, and affirms individual criminal responsibility for attacks against such personnel. The Convention

itself does not, however, provide any protection or guarantee that perpetrators will be brought to justice. There is, therefore, a need to include crimes against United Nations and associated personnel in the jurisdiction of the International Criminal Court.

Other categories of crimes

Terrorism

In the draft statute, the crime of terrorism is defined in three paragraphs:

- Undertaking, organizing, sponsoring, ordering, facilitating, financing, encouraging or tolerating acts of violence against another State directed at persons or property and of such a nature as to create terror, fear or insecurity in the minds of public figures, groups of persons, the general public or populations, for whatever considerations and purposes of a political, philosophical, ideological, racial, ethnic, religious or such other nature that may be invoked to justify them;
- Offenses under six listed conventions, such as the Convention for the Suppression of Unlawful Seizure of Aircraft and the International Convention against the Taking of Hostages;
- An offence involving the use of firearms, weapons, explosives and dangerous substances when used as a means to perpetrate indiscriminate violence involving death or serious bodily injury to persons or groups of

persons or populations or serious damage to property.

For more information, please contact:

Development and Human Rights Section
Department of Public Information
Room S-1040
United Nations
New York, NY 10017
Tel.: (212) 963-0499 or 963-1786
Fax: (212) 963-1186
E-mail: mcguffie@un.org or vasic@un.org



STATEMENT OF THE CASE

1) In the 1993-1994 time frame, I saw and answered an ad in a trade journal to purchase a book titled “Tax Free – How the Super Rich Do It.” I think the author was Don Turner and it was advertised for sale by a commodity trader with whom I was familiar.

2) The content of the book explained that through the use of pure trusts and domestic and international business corporations’ income could be deferred and/or greatly reduced. Consequently, I met with a man, Paul Harris, who explained the program and was able to set up the trust and corporations. Also present at these meetings was an attorney, George Cooper, who assured me everything was legal. Tax law and Supreme Court decisions were talked about and they were also explained in the book.

3) After the trusts were created, I became an agent of a domestic corporation that put in place consulting and lease agreements with Bert's Pharmacy. This money flowed through a holding company to an international business corporation where I had access to, but not ownership of the money. According to the plan laying out what the money could be used for and proper and legitimate business expense, investment, or deferred compensation for later years. Foreign bank accounts were provided along with credit cards. The group that started this organization of members (TOWER) stressed that whenever money was brought back into the U.S. it must be claimed and taxes paid.

4) As I recall, around 1998, two members were indicted for tax evasion. I heard they had used their credit cards for personal use, not business and failed to claim that money as taxable. To obtain reduced sentences, these individuals agreed to testify against the organizers of TOWER, Paul Harris, Les Rutherford, and Bob Bedford (tax attorney).

5) At this time, the offices of the organizers were raided by armed federal agents while the organizers were out of the country at a business meeting. Besides terrifying their wives, the agents confiscated computers and all records of all the members.

6) The IRS began investigating and indicting members of TOWER and I assume successfully since the DOJ has a win rate in excess of 98%. The organizers were also indicted, with charges of 25-30 violations each and went to trial in the spring of 2003 or 2004.

As I recall, one was convicted of 2 charges and the others with 3 charges (aiding in filling out improper agreements or tax forms. I believe). At no point was the program itself found to be illegal.

7) The state of Colorado revoked the TOWER Foreign Corporate Charter in 2001, yet they continued to do business with me for about seven more years, with the knowledge of AUSA Samuelson, who continued investigations before indicting my wife and I in 2007. I was unaware that the TOWER Foreign Corporate Charter was revoked until my researchers found this during my trial.

8) I continued to participate in the program, being convinced it was legal and also because I had followed the program and did everything by the book. I thought I had nothing to fear, but then I was visited in September 2005 by the IRS-CID with a subpoena for the records of the business corporation. Since they were not my corporation, I had no records and directed the IRS to my accountant who may have them.

9) The IRS investigated for over two years, questioning friends, workers, going to the Bahamas for bank records, etc. Then my wife and I were arrested, shackled and transported 90 minutes to separate holding cells where we were given a copy of the indictment 5 minutes before a court appearance. We were charged with Conspiracy to Defraud the U.S., filing false information on tax forms and not properly filling out a treasury form (me only). My wife was charged because we filed our taxes jointly and she signed as

an agent of a corporation (even though she never did anything else).

10) At the time of our arrest, I had deferred approximately \$350,000 over a period of about 10 years. In 2001 and 2002, I borrowed against this amount to remodel the pharmacy and to help build a new home and was making timely payments on the loans. Also during these years, I was paying well in excess of \$100,000 in taxes per year. which I hope demonstrates I was not and am not a tax evader or cheat.

11) After arrangement and various hearings and numerous pleadings filed (affidavits, motions, etc. proclaiming our innocence and challenging certain aspects of jurisdiction all based in law) we were brought to trial on February 24, 2010. At trial, I proceeded pro se since I could not find any attorney willing to sign a contract agreeing to protect our secured rights in the Constitution.

12) During the trial, the prosecutor said that all of my legitimate deductions were fraud and that sham corporations were employed. Every time I tried to introduce evidence into the record, the prosecutor objected and the judge sustained. I could not introduce letters, emails, business meetings (minutes), or corporate charters. Before the jury goes to deliberation, both sides are allowed to give the judge the controlling law for the case. I gave the judge information on 5 U.S.C. 552 and 44 U.S.C. 1505(a) showing that unless a law is published in the Federal Registry it does not apply to the general public, only

the military and government agents and agencies. When I handed these to the judge, he handed them back to me saying, "We won't be using these."

13) On the second day of jury deliberation they came back with a hung jury and the jury was sent back with instructions to come to a verdict. Then late Friday night returned not guilty on Conspiracy to Defraud and guilty on everything else.

14) Within two weeks of conviction. I filed for an appeal based on the following: **1)** my arrest warrant was never signed by a judge or under oath or affirmation; **2)** our indictment was never signed by either the Grand Jury Foreman or U.S. Attorney (I tried at least 6 times to get a copy of the indictment with the certified signatures so I could call the Grand Jury Foreman to testify); **3)** the IRS never had a 9131 form filled out (necessary before going to the Grand Jury); **4)** the U.S. Attorney never had a letter of authorization from the DOJ to proceed with the case; **5)** the US Attorney never had a letter of assignment from the IRS to proceed with prosecuting the case on the behalf of the IRS; and **6)** I believe my case record shows that I suffered acts deemed Crimes Against Humanity and was denied my basic and fundamental International Human Rights, which are supposed to be secured by every civilized nation on Earth. I believe that the United States of America, including the US Prosecutors and US Courts must also recognize and are indeed bound to these Internationally recognized Human Rights of all mankind through International Treaty Obligations and the local state and

Federal Constitutions. Numbers 3, 4, and 5 were discovered through the use of Freedom of Information Act Request to the Justice Department and the IRS.

15) The Third Circuit Court of Appeals rejected my appeal and I filed for reconsideration and they have now denied the reconsideration so I am attempting to take it to the Supreme Court.

16) My wife was sentenced to 6 months house arrest and 24 months house supervised release even though the judge admitted she had little or no involvement. I was sentenced to 27 months incarceration with 3 years supervised release. I was not allowed to remain free pending appeal and self surrendered on November 3, 2010 at McKean Federal Correctional Institution.

17) I want, to emphasize to the Supreme Court that everything I did was in the true belief of its legality based on information I obtained from paid professionals (3 attorneys and 1 accountant) and had nothing to do with my practice of pharmacy. Bert's Pharmacy was started in April 1948 by my father and has served our area communities with honor and integrity for over 63 years. To my knowledge, we have never had any deficiency reported on any pharmacy inspection and the pharmacy continues to support 9 families and numerous local churches and charities and the Pharmacy's DEA License was just renewed in July. Also, I have never had any trouble with any other law enforcement agency, not even a speeding ticket. My sister, Elizabeth McKinery is the supervising pharmacist and has been since October 2010 since

I was unable to renew my license with my current conviction and have returned all my licensing information to the board as directed.



**OTHER FACTS WORTHY OF BEING STATED
FOR THIS HONORABLE SUPREME COURT**

1) Mr. Berrettini was detained prior to trial, for a 30 day and no longer, alleged 3rd psychiatric evaluation. While detained he was held in state jails and Federal facilities with other Criminally Convicted General Population prisoners and/or inmates, in contradiction to his basic and fundamental Internationally protected Human Rights, prior to his own trial, which is prohibited under International Laws, Treaties and the like, after having passed two prior evaluations, along with his wife, Mary Ann Berrettini.

2) Further Crimes Against Humanity and Basic Human Rights Violations suffered by both Mr. Berrettini and his family was the enforced disappearance of persons, such as when the B.O.P lost Mr. Berrettini for weeks and even months at a time, whereby his family had no contact with him, no way of knowing where he was, or if Mr. Berrettini was even alive. All this happened while during acts constituting deportation or forcible transfer of population under the guise of a 30 days maximum detainment for a mental evaluation, whereby Mr. Berrettini was transferred all over, to multiple states for five months, prior to the B.O.P. and new evaluators issuing another report

stating that Mr. Berrettini was of sound mind and able to represent himself in his trial and further stating that he was a model prisoner who kept to himself and caused no trouble.

3) Mr. Berrettini was denied a blanket in a New York State Prison, while during freezing weather conditions and left to die, while prison guards had thick winter coats, gloves and frost breath protruding from their mouth, when breathing in front of Mr. Berrettini's solitary confinement jail cell.

4) Mr. Berrettini spent much of his days pleading and negotiating with guards for basic necessities such as toilet paper, in reckless disregard of his basic and fundamental Human Rights.

5) Mr. Berrettini was also denied other basic necessities such as being made to take showers and when done, asked for a towel and was told: "There is no towel for you, use your dirty clothes."

6) Mr. Berrettini, having never even received a minor traffic citation in his entire life, was and has been mentally and physically tortured under these circumstances, being exposed to such environments as convicted criminal inmates brutally fighting and brutal bloody stabbings, all of which such said brutal environments Mr. Berrettini has never and is not accustomed to.

7) Once Mr. Berrettini was released from his five (5) month detainment for a 30 days and no longer, third

mental evaluation, it took him nearly a year to recover from both the mental and physical damages resulting from the Crimes Against Humanity, degrading treatments, denial of basic necessities such as toilet paper, towels, blankets in freezing weather, and the torture of being held in solitary confinement for days and weeks at a time without just cause for such inhumane treatment while in the sole care, custody and control of the Bureau Of Prisons (B.O.P.), including Mr. Berrettini's forced disappearances for which his family knew nothing of his whereabouts, or if he was even alive for weeks and months at a time. Mr. Berrettini's whereabouts were completely missing from the B.O.P. website for tracking inmates, his court appointed attorney also had no idea on many occasions of Mr. Berrettini's whereabouts, and neither did the B.O.P upon multiple phone inquiries.



REASONS FOR GRANTING THE PETITION

Reasons for granting the petition are as follows:

- 1) Petitioner was found not guilty on the charge of **“Conspiracy to Defraud The United States,”** which makes the other remaining charges civil, not criminal.
- 2) Petitioner's charges had no Nexus Connection to prosecute the charges absent implementing Regulations and are not published in the Federal Registry. Absent implementing Regulations published in the Federal Registry the stated charges do not apply to

the general public, but rather, only the military and government agents and agencies.

- 3) Petitioner never had criminal intent to knowingly commit any crimes, which is evidenced by the “Not Guilty” verdict handed down by the Petit Jury at trial on the charge of **“Conspiracy to Defraud The United States.”**
- 4) Absent the Nexus Connection of **“Conspiracy to Defraud The United States,”** i.e. the criminal link to the civil charges. The U.S. Attorney has no jurisdiction, or authority to prosecute IRS Civil Matters, the IRS has civil authority to handle all IRS related civil matters, not the US Attorney’s office.
- 5) Petitioner and his family have been punished enough, in that petitioner was denied his basic and fundamental International Human Rights and was a victim of Crimes Against Humanity, by the hands of the Assistant U.S. Attorney and Judge James F. McClure, who held petitioner in General Population with convicted criminals before trial or guilty finding, including the B.O.P disappearance for months at a time, moved to multiple states, held in state jails, not federal jails, well beyond the 30 days maximum time allowed for a defendant to be detained for a psychiatric evaluation.
- 6) Petitioner was defrauded and entrapped by the Assistant U.S. Attorney. While prosecuting other TOWER Members and conducting ongoing and continuing investigations upon

petitioner and others, caused other TOWER Members and even their wives to continue to do business with petitioner, while no actual foreign corporation legally existed any longer as a result of the Colorado based TOWER Organization's having no valid Foreign Corporate Charter on file with the Secretary of State in Colorado. The Secretary of State in Colorado revoked the TOWER foreign corporate charter in June 2001 and without my knowledge continued business with my corporations until I was Indicted and arrested in 2007. This was entrapment and fraud upon petitioner by the Assistant U.S. Attorney, who obviously needed additional time to entrap petitioner, under false and fraudulent pretenses. AUSA Samuelson had to know about this because when I found out late in my trial, I attempted to seat a witness to state what he found on a public based Colorado Secretary of State Web Server. AUSA Samuelson flew out of his chair, continually interrupting me and preventing my witness from getting this on the record. AUSA Samuelson had prior knowledge of this important factor, or should have known that it isn't legal, nor is it ethical to do this in order to obtain another conviction.

- 7) AUSA Samuelson, not having an Assignment from the IRS to prosecute on their behalf, nor an authorization letter from the DOJ to prosecute the case and having gone into the FBI attempting to prevent them from investigating matters turned in by Petitioner, told the FBI to: "stand down because this is an

IRS matter.” AUSA Samuelson, absent the above authority, is representing foreign powers and agents absent a mandatory Foreign Agent Registration and Statement on file to represent said foreign Power, Agency, Organization, Association or its agents who are required to have on file the same pursuant to the Foreign Agents Registration Act.

- 8) Most importantly, to right the long train of abuses throughout this case. To right the wrongs, frauds, extortion, strong arm tactics, false imprisonment (both, before and after the trial), to right the Crimes Against Humanity, to right the International Human Rights that have been trespassed upon, to right the fraud through deception, to right the entrapment, to stop and prevent any further torture upon me, Albert Leo Berrettini, Jr., from continuing. It has gone on long enough. Any and all points have been made clearly.



CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

ALBERT LEO BERRETTINI, JR.

Date: December 9, 2011

Refiled: February 10, 2012

APPENDIX A

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 10-1924

UNITED STATES OF AMERICA

v.

ALBERT LEO BERRETTINI, JR.
a/k/a Lee Berrettini
(M.D. Pa. No. 4-07-cr-00422-001)

UNITED STATES OF AMERICA

v.

MARY ANN BERRETTINI
(M.D. Pa. No. 4-07-cr-00422-002)

Albert Leo Berrettini, Jr.; Mary Ann Berrettini,
Appellants

On Appeal from the United States District Court
for the Middle District of Pennsylvania
(D.C. Nos. 4-07-cr-00422-001 and 4-07-cr-00422-002)
District Judge: Honorable Christopher C. Conner

Submitted Pursuant to Third Circuit LAR 34.1(a)
April 11, 2011

Before: FISHER, JORDAN and COWEN,
Circuit Judges.

(Filed: June 16, 2011)

OPINION OF THE COURT

FISHER, *Circuit Judge.*

Albert Berrettini was convicted of ten counts of criminal tax offenses, including filing false individual and corporate income tax returns and filing a false treasury form. For the reasons stated below, we will affirm.

I.

We write exclusively for the parties, who are familiar with the factual context and legal history of this case. Therefore, we will set forth only those facts necessary to our analysis.

In 1994, Albert Berrettini (“Berrettini”) and his wife became involved in the “Tower” scheme, where clients moved money to foreign bank accounts and shell corporations and then repatriated the money using debit cards, “scholarships,” and “loans.” As their primary source of income, the Berrettinis owned and operated Bert’s Pharmacy. The pharmacy made payments to Matrixx, their shell corporation, under the pretext of consulting and other fees. Despite a lack of evidence that Matrixx provided any goods or

services, Berrettini created false invoices purporting services rendered. The money continued to flow through this elaborate scheme until the Berrettinis would finally “borrow” the money back and make some low-interest payments to one of their own offshore accounts, financing their business and a new home. From 1996 to 2005, the Berrettinis filed tax returns that failed to report income and claimed false deductions totaling \$624,338, resulting in a criminal tax liability of \$242,513.

On October 25, 2007, the Berrettinis were charged with eleven counts of tax offenses: conspiracy to defraud the United States by filing false individual income tax returns in violation of 18 U.S.C. § 371 (Count 1); filing false individual income tax returns and false corporate tax returns for both a foreign corporation and a United States corporation in violation of 26 U.S.C. § 7206(1) (Counts 2-10); and filing a false treasury form in violation of 31 U.S.C. § 5314 (Count 11). Prior to trial, proceeding *pro se*, Berrettini filed numerous frivolous motions and requests, including a challenge to the District Court’s jurisdiction to hear the case.¹ The District Court ordered a psychiatric examination of Berrettini. The report concluded that Berrettini could understand the nature and consequences of his legal situation and that he could work with counsel. Despite plenty of time and

¹ Although Mr. and Mrs. Berrettini were tried together, this appeal pertains to Albert only. Thus, we present the facts relevant to Albert Berrettini’s appeal.

financial resources, Berrettini did not retain counsel. Thus, the District Court appointed counsel for him and rescheduled his trial, clarifying that Berrettini could replace him with counsel of his own choosing.

In April 2009, the District Court granted Berrettini's request for a continuance to retain counsel, and Berrettini further delayed trial by claiming a physical condition that was later determined to be unfounded. Against the District Court's advice, Berrettini decided to proceed *pro se*, and the District Court appointed standby counsel. The jury convicted Berrettini and his wife of Counts Two through Eleven. The District Court sentenced Berrettini to 27 months' imprisonment to be followed by a term of supervised release of three years, a fine of \$7,500, and special assessments of \$1,000. Berrettini filed a timely notice of appeal.

II.

Berrettini makes a number of challenges, only some of which are legally cognizable. He clearly challenges the District Court's jurisdiction. To give Berrettini the benefit of the doubt as a *pro se* litigant, we also review the sufficiency of the evidence.

We first address jurisdiction. Berrettini argues that he is not subject to federal jurisdiction. On the contrary, Berrettini was charged with federal crimes, and the District Court had subject matter jurisdiction pursuant to 18 U.S.C. § 3231. We have jurisdiction pursuant to 28 U.S.C. § 1291.

We construe Berrettini's brief to challenge the sufficiency of the evidence. Because standby counsel preserved this issue at trial, we exercise plenary review. *United States v. Lee*, 612 F.3d 170, 178 (3d Cir. 2010). However, the "standard of review is highly deferential." *Id.* (quoting *United States v. Bornman*, 559 F.3d 150, 152 (3d Cir. 2009)). When reviewing sufficiency of the evidence, we ask "whether there is substantial evidence that, when viewed in the light most favorable to the government, would allow a rational trier of fact to convict." *Id.* (quoting *Bornman*, 559 F.3d at 152). "We do not weigh evidence or determine the credibility of witnesses in making this determination." *United States v. Gambone*, 314 F.3d 163, 170 (3d Cir. 2003) (quoting *United States v. Beckett*, 208 F.3d 140, 151 (3d Cir. 2000)). "[W]e examine the totality of the evidence, both direct and circumstantial. We must credit all available inferences in favor of the government." *Id.* (citations omitted).

In the light most favorable to the government, the evidence indicates that Berrettini filed multiple false tax returns, utilizing a sophisticated international tax evasion scheme. The government presented ample evidence to conclude that Berrettini filed tax returns that were: (1) false as to a material matter; (2) signed under penalties of perjury; (3) not believed to be correct as to every material matter; and (4) with the intent to violate the law. 26 U.S.C. § 7206(1). In sum, the government presented substantial evidence

that supports Berrettini's conviction.² We will therefore affirm the District Court.

III.

For the foregoing reasons, we will affirm the judgment and sentence of the District Court.

² Berrettini makes numerous frivolous arguments that we reject: that the government must produce a valid contract in order to prosecute; that Berrettini's rights under the Speedy Trial Act were violated because the government failed to comply with American Bar Association standards; that Berrettini was before the District Court under threat, duress, and coercion; that Berrettini has yet to see the indictment against him; that the government violated the clean hands doctrine; that the prosecutor lacked authorization to prosecute his case; that the prosecutor has committed treason, sedition, and other high crimes and misdemeanors; that the prosecutor suppressed and withheld information from Berrettini; that the District Court judge was biased and prejudiced against Berrettini; that the prosecutor tampered with witnesses and the jury; and that the jury members were prejudiced because Berrettini saw them associating with Internal Revenue Service and Treasury Department agents.

Berrettini makes only a fleeting reference to his sentence in his brief, asking us to “[r]everse and [d]ismiss” it. (Appellant's Op. Br. at 20.) Because he has not “substantively argued” that point, he has “abandoned and waived that issue on appeal.” *Mitchell v. Cellone*, 389 F.3d 86, 92 (3d Cir. 2004) (internal quotation marks omitted). Even if he had raised it properly, however, we would find no error in his below-guidelines-range sentence.

APPENDIX B

UNITED STATES DISTRICT COURT
MIDDLE District of PENNSYLVANIA

UNITED STATES) **JUDGMENT IN A**
OF AMERICA) **CRIMINAL CASE**

v.) Case Number:

ALBERT LEO) 4:07-CR-0422-01

BERRETTINI, JR.) USM Number:

) 14614-067

Stephen F. Becker

(stand-by)

Defendant's Attorney

THE DEFENDANT:

pleaded guilty to count(s) _____

pleaded nolo contendere to count(s) _____
which was accepted by the court.

was found guilty on count(s) 2, 3, 4, 5, 6, 7, 8, 9, 10,
after a plea of not guilty. & 11 of the Indictment

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Date Offense Ended</u>	<u>Count</u>
26:7206(1)	Filing False Tax Return for Foreign Corporation	09/19/2002	2
26:7206(1)	Filing False Tax Return for Foreign Corporation	09/25/2003	3

App. 8

26:7206(1)	Filing False Tax Return for Foreign Corporations	09/17/2004	4
26:7206(1)	Filing False Corpo- rate Tax Return	09/19/2002	5
26:7206(1)	Filing False Corpo- rate Tax Return	09/19/2003	6

(See Page 2 for Additional Counts of Conviction)

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- The defendant has been found not guilty on count(s)
1 of the Indictment
-
- Count(s) _____ is are dismissed on the
motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court and United States attorney of material changes in economic circumstances.

September 29, 2010
Date of Imposition
of Judgment

S/ Christopher C. Conner
Signature of Judge

CHRISTOPHER C. CONNER,
U.S. DISTRICT JUDGE

Name and Title of Judge

September 29, 2010

Date

ADDITIONAL COUNTS OF CONVICTION

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
26:7206(1)	Filing False Corporate Tax Return	09/20/2004	7
26:7206(1)	Filing False Income Tax Return	10/18/2002	8
26:7206(1)	Filing False Income Tax Return	10/23/2003	9
26:7206(1)	Filing False Income Tax Return	10/15/2004	10
31:5314	Filing False Treasury Form	08/18/2003	11

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: Twenty-seven (27) Months. (*see below)

(*) This term consists of twenty-seven (27) months on each of Counts 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11, all such terms to be served concurrently.

X The court makes the following recommendations to the Bureau of Prisons:

The Court recommends that the defendant be placed in a facility in close proximity of Sayre, PA.

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district:

at _____ a.m. p.m. on _____.

as notified by the United States Marshal.

X The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

x before 2 p.m. on November 3, 2010

as notified by the United States Marshal.

as notified by the Probation or Pretrial Services Office.

x the defendant is to contact the United States Marshal's Office no later than three days prior to the above date to be notified of the place of confinement.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: Three (3) years. This term consists of one (1) year on each of Counts 2, 3,4, 5, 6, 7, 8, 9, and 10, and a term of three (3) years on Count 11, all such terms to run concurrently.

(See Page 5 for additional conditions of supervised release.)

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests hereafter, as determined by the court.

X The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse *(Check if applicable.)*

X The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. *(Check if applicable.)*

- X The defendant shall cooperate in the collection of DNA as directed by the probation officer (*Check if applicable.*)
- The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense. (*Check if applicable.*)
- The defendant shall participate in an approved program for domestic violence. (*Check if applicable.*)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;

- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance, or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;

- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history of characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) the defendant shall notify the Court of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay restitution, fines, or special assessments.

**ADDITIONAL SUPERVISED
RELEASE TERMS**

1. The defendant shall not incur new credit charges or open additional lines of credit without the approval of the probation officer, unless the defendant is in compliance with the installment schedule for payment of restitution, fines, or special assessment.

2. The defendant shall provide the probation officer with access to any requested financial information.

3. The defendant shall cooperate with the Internal Revenue Service in the collection of taxes due and owing.

4. The defendant shall cooperate with the Internal Revenue Service in the collection of all taxes, penalties, and interest due and owing, as determined by the Internal Revenue Service. The defendant shall also file any and all business and personal tax related returns in a timely and accurate manner.

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 1,000.00 (\$100	\$ 7,500.00	\$ N/A
	on each of Counts 2, 3, 4, 5, 6, 7, 8, 9, 10, & 11)		

The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

- The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
-----------------------------	---------------------------	-----------------------------------	--------------------------------------

TOTALS \$ _____ \$ _____

- Restitution amount ordered pursuant to plea agreement
\$ _____
- The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6, may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- The court determined that the defendant does not have the ability to pay interest, and it is ordered that:

- the interest requirement is waived for the
x fine restitution.
- the interest requirement for the
 fine restitution is modified as follows:

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A** Lump sum payment of \$ 1,000 due immediately, balance due
- not later than _____, or
 in accordance C, D, E, or F below;
or
- B** Payment to begin immediately (may be combined with C, D or, F below); or
- C** Payment in equal _____ (*e.g., weekly, monthly, quarterly*) installments of \$ _____ over a period of _____ (*e.g., months or years*), to commence (*e.g., 30 or 60 days*) after the date of this judgment; or
- D** Payment in equal _____ (*e.g., weekly, monthly, quarterly*) installments of \$ _____ over a period of _____ (*e.g., months or years*), to commence _____ (*e.g., 30 or 60 days*) after release from imprisonment to a term of supervision; or

- E** Payment during the term of supervised release will commence within _____ (*e.g., 30 or 60 days*) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F** Special instructions regarding the payment of criminal monetary penalties:

During the time of imprisonment, the fine is payable every three months in an amount, after a telephone allowance, equal to 50 percent of the funds deposited into the defendant's inmate trust fund account. In the event the fine is not paid in full prior to commencement of supervised release, the defendant shall, as a condition of supervised release, satisfy the amount due in monthly installment of no less than \$100, to commence thirty (30) days after release from confinement.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several

Defendant and Co-Defendant Names and Case Numbers (*including defendant number*), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

The defendant shall pay the cost of prosecution.

The defendant shall pay the following court cost(s):

The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 10-1924

UNITED STATES OF AMERICA

v.

ALBERT LEO BERRETTINI, JR.
a/k/a Lee Berrettini
(M.D. Pa. No. 4-07-cr-00422-001)

UNITED STATES OF AMERICA

v.

MARY ANN BERRETTINI
(M.D. Pa. No. 4-07-cr-00422-002)

Albert Leo Berrettini, Jr.; Mary Ann Berrettini,
Appellants

On Appeal from the United States District Court
for the Middle District of Pennsylvania
(D.C. Nos. 4-07-cr-00422-001 and 4-07-cr-00422-002)
District Judge: Honorable Christopher C. Conner

Present: McKEE, *Chief Judge*, SLOVITER,
SCIRICA, RENDELL, BARRY, AMBRO,
FUENTES, SMITH, FISHER, CHAGARES,

JORDAN, HARDIMAN, GREENAWAY, Jr.,
VANASKIE, and COWEN,* *Circuit Judges.*

SUR PETITION FOR REHEARING
WITH SUGGESTION FOR REHEARING EN BANC

The petition for rehearing filed by Appellant, Albert Leo Berrettini, having been submitted to all judges who participated in the decision of this court, and to all the other available circuit judges in active service, and a majority of the judges who concurred in the decision not having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court en banc, the petition for rehearing is hereby DENIED.

BY THE COURT:

/s/ D. Michael Fisher

Circuit Judge

Dated: July 11, 2011

MB/cc: Albert Leo Berrettini, Jr.

Mary Ann Berrettini

Wayne P. Samuelson, Esq.

* Judge Cowen's vote is limited to panel rehearing only.

APPENDIX D

**CONSTITUTIONAL AND STATUTORY
PROVISIONS INVOLVED**

CONSTITUTIONAL

1) Universal Declaration of Human Rights

a) Article 3

Everyone has the right to life, liberty and security of person.

b) Article 4

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

c) Article 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

d) Article 12

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

e) Article 13

(1) Everyone has the right to freedom of movement and residence within the borders of each state. (2) Everyone has the right to

leave any country, including his own, and to return to his country.

f) Article 17

(1) Everyone has the right to own property alone as well as in association with others.

(2) No one shall be arbitrarily deprived of his property.

g) Article 18

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

h) Article 19

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

i) Article 20

(1) Everyone has the right to freedom of peaceful assembly and association. (2) No one may be compelled to belong to an association.

2) International Treaties of the United States

a) Department of State Document(s) No: 7277

3) American Convention On Human Rights

a) Chapter I establishes the general obligation of the states parties to uphold the rights set forth in the Convention to all persons under their jurisdiction, and to adapt their domestic laws to bring them into line with the Convention.

b) Chapters VI, VII, VIII, and IX contain provisions for the creation and operation of the two bodies responsible for overseeing compliance with the Convention: the Inter-American Commission, based in Washington, D.C., United States, and the Inter-American Court, headquartered in San José, Costa Rica.

4) United Nations Laws

a) Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

b) Articles 1-33

c) Charter of the United Nations

5) The Constitution for the Sovereign State of Colorado

a) Art. II. Section(s):11, 12, 13, 14, 15, 16, 17, 18

b)

6) The Constitution for the Sovereign State of Pennsylvania

Art. 1. Section(s):

**Section 8.
Security From Searches and Seizures**

The people shall be secure in their persons, houses, papers and possessions from unreasonable searches and seizures, and no warrant to search any place or to seize any person or things shall issue without describing them as nearly as may be, nor without probable cause, supported by oath or affirmation subscribed by the affiant.

**Section 9.
Rights of Accused in Criminal Prosecutions**

In all criminal prosecutions the accused hath a right to be heard by himself and his counsel, to demand the nature and cause of the accusation against him, to meet the witnesses face to face, to have compulsory process for obtaining witnesses in his favor, and in prosecutions by indictment or information, a speedy public trial by an impartial jury of the vicinage; he cannot be compelled to give evidence against himself, nor can he be deprived of his life, liberty or property, unless by the judgment of his peers or the law of the land. The use of a suppressed voluntary admission or voluntary confession to impeach the credibility of a person may be permitted and shall not be construed as compelling a person to give evidence against himself.

Section 10.
Initiation of Criminal Proceedings; Twice in Jeopardy; Eminent Domain

Except as hereinafter provided no person shall, for any indictable offense, be proceeded against criminally by information, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war or public danger, or by leave of the court for oppression or misdemeanor in office. Each of the several courts of common pleas may, with the approval of the Supreme Court, provide for the initiation of criminal proceedings therein by information filed in the manner provided by law. No person shall, for the same offense, be twice put in jeopardy of life or limb; nor shall private property be taken or applied to public use, without authority of law and without just compensation being first made or secured.

Section 11.
Courts to Be Open; Suits Against the Commonwealth

All courts shall be open; and every man for an injury done him in his lands, goods, person or reputation shall have remedy by due course of law, and eight and justice administered without sale, denial or delay. Suits may be brought against the Commonwealth in such manner, in such courts and in such cases as the Legislature may by law direct. 8

7) The Constitution for the Sovereign united States of America

a) Preamble

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

b) Article III - The Judicial Branch - Section 1 - Judicial powers

The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time *ordain* and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behavior, and shall, at stated Times, receive for their Services a Compensation which shall not be diminished during their Continuance in Office.

c) The Fourth, Fifth, Sixth & Ninth Amendments

TITLE 5 > PART I > CHAPTER 5 > SUBCHAPTER II
> § 552

**§ 552. PUBLIC INFORMATION; AGENCY
RULES, OPINIONS, ORDERS, RECORDS, AND
PROCEEDINGS**

(a) Each agency shall make available to the public information as follows:

(1) Each agency shall separately state and currently publish in the Federal Register for the guidance of the public –

(A) descriptions of its central and field organization and the established places at which, the employees (and in the case of a uniformed service, the members) from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;

(B) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(C) rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(D) substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of

general applicability formulated and adopted by the agency; and

(E) each amendment, revision, or repeal of the foregoing.

Except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published in the Federal Register and not so published. For the purpose of this paragraph, matter reasonably available to the class of persons affected thereby is deemed published in the Federal Register when incorporated by reference therein with the approval of the Director of the Federal Register.

(2) Each agency, in accordance with published rules, shall make available for public inspection and copying –

(A) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(B) those statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register;

(C) administrative staff manuals and instructions to staff that affect a member of the public;

(D) copies of all records, regardless of form or format, which have been released to any person under paragraph (3) and which,

because of the nature of their subject matter, the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records; and

(E) a general index of the records referred to under subparagraph (D);

unless the materials are promptly published and copies offered for sale. For records created on or after November 1, 1996, within one year after such date, each agency shall make such records available, including by computer telecommunications or, if computer telecommunications means have not been established by the agency, by other electronic means. To the extent required to prevent a clearly unwarranted invasion of personal privacy, an agency may delete identifying details when it makes available or publishes an opinion, statement of policy, interpretation, staff manual, instruction, or copies of records referred to in subparagraph (D). However, in each case the justification for the deletion shall be explained fully in writing, and the extent of such deletion shall be indicated on the portion of the record which is made available or published, unless including that indication would harm an interest protected by the exemption in subsection (b) under which the deletion is made. If technically feasible, the extent of the

TITLE 44 > CHAPTER 15 > § 1505

§ 1505. DOCUMENTS TO BE PUBLISHED IN FEDERAL REGISTER

(a) Proclamations and Executive Orders; Documents Having General Applicability and Legal Effect; Documents Required To Be Published by Congress. There shall be published in the Federal Register –

(1) Presidential proclamations and Executive orders, except those not having general applicability and legal effect or effective only against Federal agencies or persons in their capacity as officers, agents, or employees thereof;

(2) documents or classes of documents that the President may determine from time to time have general applicability and legal effect; and

(3) documents or classes of documents that may be required so to be published by Act of Congress.

For the purposes of this chapter every document or order which prescribes a penalty has general applicability and legal effect.

(b) Documents Authorized To Be Published by Regulations; Comments and News Items Excluded. In addition to the foregoing there shall also be published in the Federal Register other documents or classes of documents authorized to be published by regulations prescribed under this chapter with the approval of the President, but comments or news items of any character may not be published in the Federal Register.

(c) Suspension of Requirements for Filing of Documents; Alternate Systems for Promulgating, Filing, or Publishing Documents; Preservation of Originals. In the event of an attack or threatened attack upon the continental United States and a determination by the President that as a result of an attack or threatened attack –

- (1) publication of the Federal Register or filing of documents with the Office of the Federal Register is impracticable, or
- (2) under existing conditions publication in the Federal Register would not serve to give appropriate notice to the public of the contents of documents, the President may, without regard to any other provision of law, suspend all or part of the requirements of law or regulation for filing with the Office or publication in the Federal Register of documents or classes of documents.

The suspensions shall remain in effect until revoked by the President, or by concurrent resolution of the Congress. The President shall establish alternate systems for promulgating, filing, or publishing documents or classes of documents affected by such suspensions, including requirements relating to their effectiveness or validity, that may be considered under the then existing circumstances practicable to provide public notice of the issuance and of the contents of the documents. The alternate systems may, without limitation, provide for the use of regional or specialized publications or depositories for documents, or of the press, the radio, or similar mediums of general communication. Compliance

with alternate systems of filing or publication shall have the same effect as filing with the Office or publication in the Federal Register under this chapter or other law or regulation. With respect to documents promulgated under alternate systems, each agency shall preserve the original and two duplicate originals or two certified copies for filing with the Office when the President determines that it is practicable.
