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Alan S. Richey #30578  
P.O. Box 1505  
Port Hadlock, WA 98335  
Telephone: (253) 222-7485  
Attorney for Defendant, Michael Quiel

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

**Michael Quiel,**  
  
Petitioner/Movant,  
  
vs.  
  
**USA,**  
  
Respondent.

No. CV 16-01535-PHX-JAT (MHB)  
CR-11-02385-PHX-JAT

**QUIEL’S OBJECTION TO  
GOVERNMENT’S RESPONSE TO  
COURT ORDER**

Petitioner Michael Quiel (“Quiel” or “Movant”), by and through undersigned counsel, files this objection to the Government’s Evidence filed as a Response to Court Order. (Doc. 35.) This Court ordered the U.S. to “provide evidence that at least one attorney participating in the underlying criminal matter...was duly appointed under the Appointments Clause... and swore the statutorily-required oath.” (Doc. 34.) The evidence is wholly inadequate to comply with the Appointments Clause and to comply with this Court’s Order.

1 **FACTS**

2 On June 26, 2018, this Court ordered the U.S. to “provide evidence that at  
3 least one attorney participating in the underlying criminal matter was duly  
4 appointed under the Appointments Clause and that the attorney swore the  
5 statutorily-required oath to faithfully execute his or her duties.” (Doc. 34.) This  
6 Court referenced the recent Supreme Court decision in *Lucia v. SEC*, No. 17-130,  
7 2018 WL 3057893 (2018), which confirmed that an officer of the United States  
8 must be duly appointed pursuant to the Appointments Clause. (Doc. 34.)

9 On July 2, 2018, the U.S. filed a response to the order. The U.S. concluded  
10 that “Department of Justice Tax Division Trial Attorneys Stockwell and Edelstein  
11 who handled the Criminal Case were duly appointed officers of the United States  
12 when they represented the United States and in all legal proceedings therein.”  
13 (Doc. 35 at 5.) In support of its conclusion, the U.S. filed as evidence  
14 “Appointment Affidavits” for Timothy J. Stockwell dated 10/20/2006 (Doc. 35-1)  
15 and for Monica N. Bellapralu dated 10/02/2006 (Doc. 35-3), as well as letters to  
16 Timothy J. Stockwell dated 1/4/2009, and to Monica B. Edelstein dated 12/1/2009.  
17 The U.S. presented no other evidence.

18 The “Appointment Affidavits” are all typed except for the signatures and  
19 title. The letters are all typed except for the signatures and stamped dates.

20 Mr. Quiel files this objection based on the facts and arguments herein.  
21  
22

1 **ARGUMENT**

2 The U.S. argues alternate theories of the authority and positions that  
3 Stockwell and Edelstein held in appearing on behalf of the U.S. in the criminal  
4 case against Mr. Quiel. The U.S. concludes that they were “duly appointed  
5 officers of the United States.” (Doc. 35 at 5.) Yet in its discussion, the U.S. only  
6 claims that Stockwell and Edelstein were “designated counsel” (Doc. 35 at 4),  
7 “two attorneys designated to represent the United States” (Doc. 35 at 4), and “Trial  
8 Attorneys.” (Doc. 35 at 4). The U.S. further confuses the matter by citing  
9 alternative statutes and regulations dealing with how Stockwell and Edelstein  
10 received authority. The U.S. further makes giant assumptions of fact and law that  
11 do not correspond with the evidence provided.

12 The U.S. also completely fails to address the inadequate oaths of office.

13 The U.S. bears the entire burden of proof, which it must meet by a  
14 preponderance of the evidence. *McNutt v. GMAC*, 298 U.S. 178, 189 (1936).

15 **1. Authenticity**

16 First, Mr. Quiel objects on the grounds of authenticity. Fed.R.Evid. 901. The  
17 U.S. provided no authentication for its Exhibits—Doc. 35-1, 35-2, 35-3, or 35-4.  
18 Two letters contain irregularities giving cause for challenge. (Doc. 35-2 and 35-4).

19 There is no way to know when the letters were created and where they have  
20 been. Some things that make the letters suspicious include the following. The dates  
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22

1 on the letters have been stamped. The letter for Stockwell has a date stamp of  
2 “JAN – 4 2009.” (Doc. 35-2). The letter for Edelstein has a date stamp of “DEC -1  
3 2009.” (Doc. 35-4). Further, upon close review, the dates on both letters have  
4 different fonts—the month and day are in a different font than the year, making it  
5 even more suspicious of fraud.

6 Mr. Quiel and his counsel have seen letters identical to these (except for  
7 names and dates), and the dates were typed with the same font as the letter, not  
8 with a date stamp. Attached is a letter the U.S. provided in another U.S. District  
9 Court case. The letter was signed December 23, 2008, less than 2 weeks prior to  
10 the letter for Stockwell.<sup>1</sup> It demonstrates the discrepancies in the U.S.’ evidence.

11 **2. No Office Identified or Held**

12 Second, the evidence does not demonstrate that Stockwell or Edelstein were  
13 officers of the U.S. The U.S. erroneously concluded that “Department of Justice  
14 Tax Division Trial Attorneys Stockwell and Edelstein who handled the Criminal  
15 Case were duly appointed officers of the United States when they represented the  
16 United States and in all legal proceedings therein.” (Doc. 35 at 5.)

17 The Appointments Clause provides that the President may nominate and  
18 appoint certain officers with the advice and consent of the Senate, but that

19 \_\_\_\_\_  
20 <sup>1</sup> Unlike the Stockwell and Edelstein letters, this letter was signed by the actual  
21 Deputy Assistant Attorney General with it ccd to the actual Assistant Attorney  
22 General, not people “Acting” in those offices.

1 “Congress may by law vest the appointment of such inferior officers, as they think  
2 proper, in the President alone, in the courts of law, or in the heads of departments.”  
3 U.S. Const. Art. II, Sec. 2. “Any appointee exercising significant authority  
4 pursuant to the laws of the United States is an ‘Officer of the United States,’ and  
5 must, therefore, be appointed in the manner prescribed by Section 2, Cl. 2 of the  
6 Article.” *Buckley v. Valeo*, 424 U.S. 1, 126 (1976). “The Appointments Clause also  
7 promotes public accountability by identifying the public officials who appoint  
8 officers.” *Edmonds v. U.S.*, 520 U.S. 651, 660 (1997). What cannot be done  
9 directly, limited by the Appointments Clause, cannot be done indirectly.  
10 *Fairbanks v. U.S.*, 181 U.S. 283, 294 (1901). In *Buckley*, as in *Lucia*, the Supreme  
11 Court explained that “‘officers of the United States’ does not include all employees  
12 of the United States....Employees are lesser functionaries subordinate to officers of  
13 the United States.” *Buckley*, 424 U.S. at 126, n.162.

14 The U.S. cites 28 U.S.C. § 515(a) and 28 C.F.R. § 0.13(a) for its authority  
15 (Doc. 35 at 3)<sup>2</sup>, which is also the only law cited in the letters. (Doc. 35-2 and 35-4).  
16 28 U.S.C. § 515(a) specifically provides, “The Attorney General or any other

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17 <sup>2</sup> The U.S. also cites as authority 28 U.S.C. §§ 510, 516, 517, 518(b), and  
18 Fed.R.Crim.P. 1(b). The U.S. wrongly attempts to extend or broaden the  
19 authorization *ex post facto*, but the letters themselves only specifically list 28  
20 U.S.C. § 515(a) and 28 C.F.R. § 0.13(a). Further, Sections 516, 517 and 518 do  
21 not extend authority to trial attorneys, but to officers of the DOJ, further illustrating  
the U.S.’ position that Stockwell and Edelstein must be officers and not just  
employees. Only Section 510 allows the delegation of authority to an employee.

1 officer of the Department of Justice, or any attorney specially appointed by the  
2 Attorney General under law, **may**, when **specifically directed** by the Attorney  
3 General....” (emphasis added).<sup>3</sup> 28 C.F.R. § 0.13(a)<sup>4</sup> provides in relevant part,  
4 “Each Assistant Attorney General and Deputy Assistant Attorney General is  
5 authorized to exercise the authority of the Attorney General under 28 U.S.C.  
6 515(a), in cases assigned to, conducted, handled, or supervised by such official.”

7 A simple analysis shows that neither the statute nor regulation establish any  
8 office whatsoever. 28 U.S.C. Sections 503, 504 to 507A, 541, 542, and 543, begin  
9 by identifying the Title to the Office authorizing for appointment according to the  
10 Appointments Clause and then to be filled. There is no Office of Trial Attorney,  
11 Department Attorney, or Honor Attorney established. The U.S. does not say, and  
12 the two letters do not list any office. In fact, the two letters do not refer to  
13 Stockwell or Edelstein as Trial Attorney, Department Attorney, or Honor Attorney,  
14

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15 <sup>3</sup> The term “may” does not mean “shall.” *See Marrama v. Citizens Bank of*  
*Massachusetts*, 549 U.S. 365, 370 (2007).

16 <sup>4</sup> Although the U.S. cites 28 C.F.R. § 0.13(a) for authorization, it is a different  
17 regulation which assigns authority to the Deputy Attorney General to “exercise the  
18 power and authority vested in the Attorney General to take final action in matters  
19 pertaining to: (i) The appointment, employment, pay, separation, and general  
20 administration of personnel, including attorneys.” 28 C.F.R. § 0.15(b)(1). That  
21 authority may be vested in the Associate Attorney General when the attorney or  
law student is pay grade GS-15 and below. 28 C.F.R. § 0.19(a)(1). The U.S. did  
not disclose the pay grade of Stockwell and Edelstein, so it is unclear whether the  
Deputy Attorney General or the Associate Attorney General had authority for their  
hiring.

1 but rather only as a full time federal employee. Therefore, based on the letters,  
2 there is no office that Stockwell or Edelstein were appointed to.

3 The person signing the letters for Stockwell and for Edelstein does not  
4 claim to hold any of those specific positions referenced by regulation to appoint  
5 Stockwell or Edelstein to any alleged office. *See* Note 4 above. The U.S.  
6 erroneously alleged, “In the Criminal Case at issue here, one of the Tax Division’s  
7 Deputy Assistant Attorney General designated counsel to represent the United  
8 States in any legal proceeding, civil or criminal, in the District of Arizona or in any  
9 other judicial district.” (Doc. 35 at 4). The U.S. then admits that it was “the **Acting**  
10 Deputy Assistant Attorney General.” (Doc. 35 at 4, emphasis added). The letters  
11 purporting to “appoint” Stockwell and Edelstein were signed by Ronald A. Cimino  
12 as Acting Deputy Assistant Attorney General. (Doc. 35-2 and 35-4). The letters  
13 also include “cc: John A. DiCicco Acting Assistant Attorney General.” (Doc. 35-2  
14 and 35-4).<sup>5</sup>

15 An Assistant Attorney General must be appointed pursuant to 28 U.S.C.  
16 §506, and he must have a commission recorded under seal by the government after  
17 the commission is signed by the President. 5 U.S.C. § 2902. A Deputy Assistant

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18 <sup>5</sup> There is no office created for an “Acting Deputy Assistant Attorney General” or  
19 for an “Acting Assistant Attorney General.” For someone to serve in an “acting”  
20 capacity in an office arises under 5 U.S.C. § 3345. An acting Assistant Attorney  
21 General operates under that authority. There appears to be no corresponding  
22 authorization for an acting Deputy Assistant Attorney General. See also Note 1  
23 above.

1 Attorney General (“DAAG”) does not appear to be an office created by Congress,  
2 and the U.S. provided no evidence that such an office exists. The U.S. failed to  
3 show that a DAAG (or especially an acting DAAG) is specifically authorized to  
4 appoint other officers and to what specific offices.

5 Attached hereto is Exhibit A, the Tax Divisions Organization Chart, found at  
6 <https://www.justice.gov/tax/tax-division-organization-chart>. The chart shows  
7 Ronald A. Cimino as “Acting Deputy Assistant Attorney General.” It also shows  
8 John A. DiCicco as “Deputy Assistant Attorney General.” Toward the top of the  
9 chart, it states that the chart is “as of January, 2009.” The bottom states, “Last  
10 Updated: 04/29/2010 10:21,” and also “Updated April 6, 2015.”

11 It appears from the evidence that Mr. Cimino was never appointed as a  
12 Deputy Assistant Attorney General but was merely “Acting” in that office for  
13 possibly 6 years or more. There is also no evidence that Mr. DiCicco was ever  
14 appointed as Assistant Attorney General, or even acting in that office. The DOJ’s  
15 website shows that as of January 2009, Mr. DiCicco was a Deputy Assistant  
16 Attorney General, not the office indicated on the letters; however, from the two  
17 letters, he was allegedly “Acting” Assistant Attorney General for at least 11  
18 months. Mr. DiCicco could not hold two public offices for 11 months. Further,  
19 anyone appointed under the authority of Mr. DiCicco would no longer hold office,  
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1 at least not after 210 days.<sup>6</sup> Based on the evidence, it appears those authorizing the  
2 letters were not properly appointed themselves; the authorization via the letters  
3 were *ultra vires*, thus making them invalid. Further, any authorization allegedly  
4 granted by the letters would not have been valid in 2011 when Stockwell and  
5 Edelstein allegedly represented the U.S. in charging and prosecuting Mr. Quiel.

6 “An office is a public station conferred by the appointment of Government.  
7 The term embraces the idea of tenure, duration, emolument and duties fixed by  
8 law.” *Metcalf v. Mitchell*, 269 U.S. 514, 520(1926), citing *U.S. v. Hartwell*, 6  
9 Wall 385, 393 (1868). “Where an office is created, the law usually fixes its  
10 incidents, including its terms, its duties, and its compensation.” *Id.* When the law  
11 “is silent as to their term of office, they can presumably be appointed for a term not  
12 exceeding that of the officer appointing them.” *De Castro v. Board of*  
13 *Commissioners*, 322 U.S. 451, 462 (1944); see also *Kalaris v. Sec. of Labor*, 697  
14 F.2d 376, 397 (D.C. Cir. 1983) (inferior officers “serve...at the discretion of their  
15 appointing officer”).

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17 <sup>6</sup> The law requires that in event of a vacancy of an office where appointment is by  
18 the President with advice and consent of the Senate, an acting officer may only fill  
19 that position for 210 days or up to 300 days when a new President is inaugurated. 5  
20 U.S.C. §§ 3345, 3346. Non-delegable acts after that time period are void *ab initio*.  
21 Because Mr. Quiel does not know, and the U.S. failed to state, what “offices”  
22 Stockwell and Edelstein were appointed to, Mr. Quiel argues that this time  
limitation is applicable, holding any appointment or authorization by Mr. DiCicco  
(and by extension Mr. Cimino), void *ab initio*.

1           Whatever “office” Stockwell and Edelstein allegedly held, which the U.S.  
2 failed to specify, it is also unclear what the terms, duties, and compensation were.  
3 The U.S. generally alleges, “the Acting Deputy Assistant Attorney General for the  
4 Tax Division conferred authority for counsel to conduct matters including those  
5 undertaken in this case, such as filing an indictment and litigating the case through  
6 and during trial and in post-trial activities.” (Doc. 35 at 4-5).

7           However, the letters are not so extensive in their wording as the U.S. claims.  
8 It is important to note that the letters never use the word “appoint” or any  
9 derivative thereof; they only use the words, “employed” and “assigned” (Doc. 35-2  
10 and 35-4); “employed” and “assigned” are not synonymous with “appoint.”

11           As far as duties, the letters use the words “grand jury proceedings and  
12 proceedings before United States Magistrate Judges,” and “filing an information,  
13 presenting an indictment, and entering into a plea agreement.” (Doc. 35-2 and 35-  
14 4). The letters purport that the employed attorneys may “represent the United  
15 States ... in the District of Arizona or in any other judicial district.” (Doc. 35-2 and  
16 35-4). There is also no time limit on their service.

17           Assuming *arguendo* that the letters really are appointments to an office  
18 (albeit an undisclosed office), then the letters allege an appointment to all 94  
19 judicial districts and a life-time tenure. (Doc. 35-2 and 35-4). The letters further  
20 purport, “You are authorized by the Tax Division to conduct such business on  
21

1 behalf of the United States that United States Attorneys are authorized to conduct.”  
2 (Doc. 35-2 and 35-4). This purports to grant Stockwell and Edelstein the same  
3 authority as a United States Attorney. Such is a serious violation of the  
4 Appointments Clause, attempting to grant Stockwell and Edelstein the same or  
5 greater authority than the Attorney General himself or a U.S. Attorney, yet both of  
6 those offices require appointment by the President with advice and consent of the  
7 Senate. 28 U.S.C §§ 503 and 541. It is unclear, and the U.S. does not state, how an  
8 Acting Deputy Assistant Attorney General can grant a trial attorney for the DOJ  
9 the same authority as a U.S. Attorney.

10 Based on the evidence provided by the U.S., neither Stockwell nor Edelstein  
11 were appointed to any office when they prosecuted Mr. Quiel. Further, the letters  
12 allegedly granting them authority raise significant violations of the Constitution.<sup>7</sup>

### 13 **3. No Valid Oath of Office.**

14 This Court ordered the U.S. to produce evidence “that the attorney swore the  
15 statutorily-required oath to faithfully execute his or her duties.” (Doc. 34). An oath  
16

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17 <sup>7</sup> “No man [or woman] in this Country is so high that he [or she] is above the law.  
18 No officer of the law may set that law at defiance with impunity. All Officers of  
19 the Government, from the highest to the lowest, are creatures of the law, and are  
20 bound to obey it.” *United States v. Lee*, 106 U.S. 196, 220 (1882). It is a crime to  
21 impersonate an officer of the United States when one was not granted such  
22 authority 18 U.S.C. Section 912. The following phrase is applicable to the U.S. in  
this matter: *ignorantia juris no excusat*.

1 of office is required for every “individual” working for the U.S., both employees as  
2 well as officers. 5 U.S.C. § 3331.

3 The U.S. never addressed this except to state that it provided “Appointment  
4 Affidavits containing an Oath of Office.” (Doc. 35 at 5). These alleged  
5 “Appointment Affidavits containing an Oath of Office” are clearly deficient.

6 First, the alleged oath of Stockwell was signed on October 20, 2006 and  
7 shows a “position” of “Trial Attorney.” (Doc. 35-1). There is no appointment that  
8 corresponds with the October 20, 2006 oath, particularly not to an office or even  
9 employee of “Trial Attorney.” More certainly, the oath cannot correspond to the  
10 letter with a stamped date of “Jan 4, 2009” (Doc. 35-2), because the oath in the  
11 affidavits specifically swears “faithfully discharge the duties of the office on which  
12 I am **about to enter**.” (Doc. 35-1 and 35-3, emphasis added). The “about to enter”  
13 must correspond with a position entered on or about October 20, 2006, not over 26  
14 months later on January 4, 2009. Further, as argued above, the letter appointed  
15 Stockwell to no office; it merely confirms he was only an employee. Assuming  
16 *arguendo* that the letter appointed Stockwell to an office on or about January 4,  
17 2009, (Doc. 35-1) then there is no oath of office associated with said appointment.

18 Similarly, the “Appointment Affidavit” of Edelstein was signed October 2,  
19 2006 (18 days before Stockwell) and shows a “position” of “Honors Attorney.”  
20 (Doc. 35-3). Like Stockwell, the oath cannot correspond to the letter with a  
21

1 stamped date of “Dec 1, 2009” (Doc. 35-3), because the oath specifically states it  
2 corresponds to a position entered on or about October 2, 2006. And, like  
3 Stockwell, the letter appointed Edelstein to no office but affirmed that she was  
4 only an employee. Assuming *arguendo* that the letter appointed Edelstein to an  
5 office on December 2, 2009 (Doc. 35-3), then there is no oath of office signed on  
6 or about December 2, 2009 that could be associated with that appointment,  
7 especially because the oath indicates a “position” of “Honors Attorney” (Doc. 35-  
8 3), but the letter says she is an attorney. (Doc. 35-4).

9 As further evidence that the oaths are not valid, in 2006, Albert Gonzales  
10 was the U.S. Attorney General under President Bush. In January 2009, Michael  
11 Muckasey was U.S. Attorney General until January 20, 2009, when Barak Obama  
12 became President, and eventually Eric Holder was appointed U.S. Attorney  
13 General.

14 Therefore, based on the evidence provided by the U.S., neither Stockwell  
15 nor Edelstein had a valid oath of office when they prosecuted Mr. Quiel.

### 17 CONCLUSION

18 Based on the foregoing, the U.S. failed to provide evidence that any  
19 attorney, including but not limited to Timothy Stockwell and Monica Edelstein,  
20 who represented the U.S. in the underlying criminal case against Mr. Quiel, were  
21  
22

1 duly appointed under the Appointments Clause and swore the required  
2 corresponding oath of office. Because the U.S. failed to meet its burden of proof,  
3 this Court must dismiss the underlying criminal case based on the lack of subject  
4 matter jurisdiction.

5 Respectfully submitted this 18th day of July, 2018.

6 /s/ Alan S. Richey  
7 Alan S. Richey, WSBA #30578  
8 P.O. Box 1505  
9 Port Hadlock, Washington 98339  
10 *Attorney for Michael Quiel*

11 CERTIFICATE OF SERVICE

12 I certify that on July 18th, 2018, I electronically filed the foregoing with the  
13 Clerk of Court using the CM/ECF system, which will send notice of electronic  
14 filing to all counsel of record in this case.

15  
16 By: /s/ Alan S. Richey  
17  
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22



U. S. Department of Justice

Tax Division

Deputy Assistant Attorney General

Washington, D.C. 20530

December 23, 2008

Charles A. O'Reilly, Esquire  
Trial Attorney  
U.S. Department of Justice  
Tax Division  
Western Criminal Enforcement Section  
Washington, D.C. 20530

Dear Mr. O'Reilly:

As an attorney for the United States who is employed full time by the Department of Justice and assigned to the Tax Division, you are hereby authorized to represent the United States in any kind of legal proceeding, civil or criminal, including grand jury proceedings and proceedings before United States Magistrate Judges, in the Northern District of Oklahoma or in any other judicial district. You are authorized by the Tax Division to conduct such business on behalf of the United States that United States Attorneys are authorized to conduct, including such matters as filing an information, presenting an indictment, and entering into a plea agreement. This authority is granted pursuant to 28 U.S.C. § 515(a) and 28 CFR § 0.13(a).

You may file a copy of this letter with the Clerk of the District Court as evidence of your authorization to represent the United States.

Sincerely,

A handwritten signature in cursive script that reads "John A. Marrella / ran".

JOHN A. MARRELLA  
Deputy Assistant Attorney General

cc: NATHAN J. HOCHMAN  
Assistant Attorney General  
Tax Division

## TAX DIVISION ORGANIZATION CHART



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The Tax Division's organization chart displays the hierarchy of the Office of the Assistant Attorney General as of January, 2009.

Acting Assistant Attorney General: John A. DiCicco,

Deputy Assistant Attorneys General:

- VACANT, Deputy Assistant Attorney General;

Offices Assigned:

[Office of Legislation, Policy and Management](#)  
[Office of Training and Career Development](#)  
[Office of Management and Administration](#)

- Ronald A. Cimino, Acting Deputy Assistant Attorney General;

Sections Assigned:

[Criminal Enforcement Sections](#): Northern, Southern, Western  
[Criminal Appeals and Tax Enforcement Policy Section](#)

- Gilbert S. Rothenberg, Acting Deputy Assistant Attorney General;

Sections/Offices Assigned:

[Appellate Section](#)  
[Office of Review](#)



- John A. DiCicco, Deputy Assistant Attorney General;

Sections Assigned:

Civil Trial Sections: Northern, Eastern, Central, Southern, Southwestern and the Court of Federal Claims

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Last Updated: 04/29/2010 10:21

*Updated April 6, 2015*

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