

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

In re MASAO YONAMINE,

Petitioner,
vs.

ANN M. DONNELLY, Judge,
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
UNDER DOCKET No.18-cv-4325 (AMD),

Respondent.

ON PETITION FOR A WRIT OF MANDAMUS PURSUANT TO 28 USC Sec.2241(a)
(c)(3), ALL WRITS 28 USC Sec.1651(a), 28 USC Sec.2403(a)(b)

PETITION FOR A WRIT OF MANDAMUS

Masao Yonamine 88A7233
Petitioner Pro se
Otisville Corr. Facility
P.O.BOX 8
Otisville , NY 10963

QUESTION PRESENTED

POINT I

PETITIONER'S PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 USC 2241(a)(c)(3) SUBMITTED AGAINST THE PERSON(S) WHO HOLDS PETITIONER IN WHAT PETITIONER CLAIMS THAT HE IS UNLAWFULLY DETAINED OR IN CUSTODY RESTRAINED OF HIS PERSONAL LIBERTY IN VIOLATION OF THE CONSTITUTION OR LAWS OR TREATIES OF THE UNITED STATES, BY PURSUING THE VALIDITY OF THE JURISDICTION OF HIS DETENTION TO OBTAIN HIS LIBERTY PURSUANT TO UNITED STATES CONSTITUTION Art.III Sec.2 cl.(2) and UNITED STATES CONST.Art.1, Sec.9 cl.(2) IS THE PROPER APPLICATION ?

POINT II

MAY A FEDERAL COURT ENTERTAIN AND DETERMINE THE MERIT OF A STATE PRISONER'S APPLICATION FOR HABEAS CORPUS RELIEF FROM A VOID JUDGMENT, ILLEGALLY IN CUSTODY RESTRAINED OF HIS PERSONAL LIBERTY IN CONTRAVENTION OF THE CONSTITUTION OR LAWS, OR TREATIES OF THE UNITED STATES, EVEN THOUGH PRISONER EXHAUSTED A FORMERLY AVAILABLE STATE REMEDY AND THERE IS NOW NO STATE REMEDY AVAILABLE?

LIST OF PARTIES

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

TABLE OF CONTENTS

	Page No.
UNITED STATES DISTRICT COURT'S DECISION	1
UNITED STATES SUPREME COURT'S DECISION	1
OPINION BELOW	1
JURISDICTION	2
Reason for not making application to the Dist. Court in which the Applicant is hold	2-4
QUESTION PRESENTED (POINT I & POINT II)	(i), 4
PETITIONER'S BACKGROUND	5
Petitioner's Direct Appeal; Petitioner Fed. Writ on direct appeal; Petitioner's Application for State Writ under CPLR Art.70. Referring to see Petitioner's Declaration in Support for Petitioner's Writ of Habeas Corpus under 2241 & 1651(a) dated 7/25/18, submitted to the Dist. Court for (E.D.N.Y.) Docket No. <u>18-cv-04325 (AMD)</u>	5
Reason for requesting to issue a WRIT OF MANDAMUS	6
WHEREFORE	7
DECLARATION under the penalty of perjury.	7

INDEX TO APPENDICES

APPENDIX A C Dist. Court's Memorandum & Order Aug.13/18, Yonamine v. Gerbing
Dkt.No.18-cv-4325 (AMD) Writ of Habeas Corpus under 28 USC Sec.2241(a)(c)
(3) & 1651(a), transferred to the 2d Cir.Court for permission as a suc-
cessive habeas under 2244(b)(3)(A).

APPENDIX D, U.S.SUP. Court's denial dated Oct.1/18, for a petition for an
Extraordinary Writ under 28 USC 2241 & 1651(a) In re Masao Yonamine #17-9468
APPENDIX E, U.S.SUP.Court's denial dated 1/8/18 for a petition under 28 USC
2241(a)(c)(3), In re Masao Yonamine #17-6939. And denied Rehearing on March
19/2018, In re Masao Yonamine #17-6939 see APPENDIX F.

APPENDIX 1-2 U.S.Ct.of Appeals 2d Cir.'s denial Order 9/26/17, Dkt.# 17-2354
APPENDIX 3-5 U.S.Dist.Ct. EDNY's (Memo/Order) Aug.1/17, Dkt.#17-cv-4453 (AMD).
APPENDIX 6-7 U.S.Ct. of Appeals 2d Cir.'s denial Order 2/21/17 Dkt.#16-4245
APPENDIX 8-10 Dist.Ct. SDNY's (Transfer Order) 12/20/16, Dkt.#16-cv-9537 (CM)
APPENDIX 11 State of New York Ct. Appeals' denial Motion to Appeal 10/20/16
APPENDIX 12-13 App.Div.2nd.Dept.'s Decision & Order 6/22/16 Dkt.#2015-08037
APPENDIX 14 App.Div.2nd.Dept.'s denial Order 5/31/16 Dkt.#2015-08037 Index No.
3018/14 Motion for Stay & Recognizance.

APPENDIX 15-18 Sup.Ct. New York County of Dutchess's Order dismissal petition
7/7/15 for a Writ Art.70 (CPLR), Index No.3018-2014, Yonamine v. Connolly

APPENDIX 19-20, Indictment No.7840/86, 12/4/86 People v. Yonamine

APPENDIX 21, Commitment After sentence 7/12/88, People v. Yonamine

APPENDIX 22 Jury's Note Court's 2 Requesting ONLY: Please bring in testimony
of Dobson (EMT) relating to positioning of car as he witnessed it.

APPENDIX 23 Jury's Note Court's 3 Requesting: Please reread testimony of Mr.
Washington, Officer McPartland, Mrs. Gregoretti, Mr. Dobson.

APPENDIX 24-30, Petitioner's trial transcript minutes June 15/88, page 363,
502,503,504,505,506,507 describing trial judge's error of the jury's Note

APPENDIX 31 Complaint-Follow up 12/4/86 Interview Report of Ms.Mary Russo in-
dicating that: THE BEIGE automobile appeared to loose control of his car
and cut off the taxi.

INDEX TO APPENDICES CONTINUE

APPENDIX 32 Complaint-Follow up 12/4/86 Interview Report of Ms. Joan Braccia, indicating the positioning of the cars.

APPENDIX 33 Property Clerk's Invoice #C639592 Crosman Airgun model 1760/20 177 caliber pellet fund in deceased trunk veh. Plate #7979BSB (John Cote's veh.).

APPENDIX 34 Interview Report of Nathan Washington indicating that: yellow cab in the roadway heading W/B on Queens Blvd. cut off a beige auto 4dr. forc it to the curb causing the beige auto to smash into several parked cars.

TABLE OF AUTHORITIES

CASES	Page No.
Love v. Menifee, 333 F.3d 69, 73 (2d Cir. 2003)	3
Triestman v. United States, 124 F.3d 361, 377 (2d Cir.1977)	3
U.S. v. Haley, 371 US 18, 83 S.Ct.11	6
Baltimore & O.R.Co. v. United States, 279 US 718, 785	6
Ex parte Hans Neilsen Petitioner. 131 US 176, 9 S.Ct. 672, 33 L.Ed.118	6
Johnson v. zerbst, 304 US 458 (1938) at 468	6
Fay v. Noia, 372 US 391, at 407-408	6
Ex parte Republic of Peru, 318 US 578	7

STATUTES

Sections	Page No.
28 USC Sec.2241(a)(c)(3)	1,2,3,4,6
28 USC Sec.1651(a)(b)	1,2,4,6
28 USC Sec.2243	1,2,3
28 USC Sec.2244(b)(3)(A)	1,2
28 USC Sec.2403(a)(b)	2
28 USC Sec.2242	2
28 USC Sec.2254	2,3
5 USCA Sec.702	6
5 USCA Sec.706.2(B)(C)(D)	6
28 USCA Sec.1746	7

NEW YORK STATUTES

New York Statutes	Page No.
Civil Practice Law & Rule (CPLR) Art.70	2,5
Criminal Procedure Law (CPL) Sec.310.30	5
Criminal " " " Sec.260.20	5
McKinney's Cons. Laws of New York, Book 1, STATUTES Sec.171	5
McKinney Penal Law Sec.125.25	5

UNITED STATES CONSTITUTION

U.S. CONSTITUTION Art. III Sec.2, cl.(2)	2,4
U.S. CONSTITUTION Art.I Sec.9, cl.(2)	2,4
U.S. " 14th Amend.	5
U.S. " 5th "	6
U.S. " 6th "	6
U.S. " 8th "	6

NEW YORK STATE CONSTITUTION

Petitioner mentioned State/Fed. Const. right of due process of law and equal protection of the laws	6
---	---

UNITED STATES DISTRICT COURT'S DECISION

The United States District Court, Eastern District of New York States, ANN M. DONNELLY, Judge, under Docket No.18-cv-4325 (AMD) (Yonamine v. Gerbing) issued a Memorandum & Order dated Aug.13/18, filed in the Clerk's Office on Aug.14/18, and transferred Petitioner's petition for a Writ of Habeas Corpus pursuant to 28 USC Sec.2241(a)(c)(3) and All Writs pursuant to 28 USC Sec. 1651(a)(b) dated July 25, 2018 without conducting a hearing pursuant to 28 USC Sec.2243 to the 2d Cir.Court Dkt.#18-2416 to pursue Petitioner's Writ as a successive habeas relief. (See appended hereto as APPENDIX A-C Court's Memo).

UNITED STATES SUPREME COURT'S DECISIONS

On October 1, 2018, this Court denied Petitioner's petition for an Extraordinary Writ pursuant to 28 USC Sec.2241(a)(c)(3) and 28 USC Sec.1651(a) dated June 12, 2018, In re Masao Yonamine Docket No.17-9468 without opinion. (See APPENDIX D).

On January 8, 2018, this Court denied Petitioner's petition for a Writ of Habeas Corpus pursuant to 28 USC Sec.2241(a)(c)(3) dated 11/17/17, In re Masao Yonamine Docket No.17-6939, without opinion; Also, on March 19/2018, denied petition for Rehearing. (See APPENDIX E & F both denial the WRIT & REHEARING).

OPINIONS BELOW

The U.S.Court of Appeals for the 2d Cir. Ct. on 9/26/17, Present: RAYMOND J. LOHIER, Jr.,CHRISTOPHER F.DRONEY, Cir.Judges, JED S.RAKOFF, Dist. Judge, denied Petitioner's Writ pursuant to 28 USC 2241(a)(c)(3), from a Memorandum & Order dated 8/1/17, issued by DONNELLY, Judge,EDNY-Bklyn, Dkt. No.17-cv-4453, to obtain permission pursuant to 28 USC 2244(b)(3)(A) to pursue Petitioner's Application for a WRIT OF Habeas Corpus relief as a successive petition. The opinion from the 2d Cir.Ct. see APPENDIX 1-2 Dkt.#17-2354. The opinion from the Dist. Ct., Judge DONNELLY, Aug.1/17, Dkt.#17-cv-4453 see APPENDIX 3-5.

The 2d Cir.Court on Feb.21/17, Present: AMALYA L.KEARSE, PETER W.HALL, DENNY CHIN, Cir, judges, denied Petitioner's Writ under 2241(a)(c)(3), from a Transfer Ordered 12/20/16 issued by the U.S.Dist. Court SDNY, Judge COLLEEN McMAHON for permission to pursue petitioner's Application pursuant to 2244(b) (3)(A). The opinion for the 2d Cir. see APPENDIX 6-7 Dkt.#16-cv-4245 2/21/17. The opinion of the Dist.Ct. Dkt.#16-cv-9537 (CM) 12/20/16 see APPENDIX 8-10.

The State of New York Court of Appeals Present: Hon. JANET DiFIORE, denied Petitioner's Motion for leave to appeal from the Appellate Div.2nd. Dept.'s Affirmation of petitioner's Application pursuant to Art.70 (CPLR) WRIT OF HABEAS CORPUS and a denial of the Application for STAYING and Recognizance (See APPENDIX 11 Mo.No.2016-788 decided Oct.20/16, People ex rel. Yonamine v. Connolly); See APPENDIX 12-13 Appellate Div.2nd.Dept.'s Decision Jun.22/16, Dkt.#2015-08037 & opinion affirming the lower court dismissing the proceeding, and, also see APPENDIX 14 denial Motion on May 31/16 Dkt.#2015-08037 for STAY and Recognizance with no papers having been filed in opposition. And see APPENDIX 15-18 opinion of the Sup. Court of the State of New York, County of Dutchess, Judge GRELLER's Decision/Order July 7/15, Index No.3018/2014, In the Matter of the Application, Yonamine v. Connolly, dismissing Petitioner's Application for a Writ without conducting a hearing.

JURISDICTION

The jurisdiction of this Court is invoked by Petitioner according to Art. III Sec.2, cl.(2) of the U.S. Constitution; U.S. Const.Art.I, Sec.9,cl.(2); 28 USC Sec.2241(a)(c)(3); 28 USC Sec.2243; All Writs 28 USC Sec.1651(a); 28 USC Sec.2403(a)(b); & ect..

Pursuant to 28 USC Sec.2242, the "reasons for not making application to the district Court in which the applicant is hold,"pursuant to 28 USC Sec.2254 or 28 USC Sec.2244(b)(3)(A) for an application as a successive habeas relief

is no longer available to obtain adequate relief and is not applicable in petitioner's case. And the proper Application for Petitioner's claim is under 28 USC Sec.2241(a)(c)(3), submitted to the Dist. Courts "within theirs respective jurisdiction" and, said Dist. Court has declined to conduct a hearing pursuant to 28 USC Sec.2243 to determine of the substance of Petitioner's claim, whether petitioner was/is unlawful convicted, sentenced, detained or in custody restrained of his personal life & liberty in violation of the U.S.Constitution, from unlawful judgment of New York State's Courts, where petitioner had exhausted all available remedies in the State Courts and Fed. Courts. Thereby, justify the granting of a WRIT OF MANDAMUS to compel the Dist. Court to adjudicate petitioner's Application under 28 USC Sec.2241 (a)(c)(3),because, extraordinary circumstances exist to review of the unlawful conviction to warrant for this Honorable Court to exercise its discretionary power, and that, adequate relief cannot be obtained in any other form or from any court(s) or judge(s) as Petitioner had submitted his Application for Writ of Habeas Corpus relief in both State & Federal Courts under 28 USC Sec.2241.

For Example, First, the 2d Cir. Court has held that Sec.2254 is inadequate or ineffective only when "failure to allow for collateral review would raise serious constitutional question," not merely when a petitioner is procedurally barred from filing an application. Love v. Menifee, 333 F.3d 69, 73 (2d Cir. 2003), (quoting Triestman v. United States, 124 F.3d 361, 377 (2d Cir.1997)). See. e.g., appended hereto as APPENDIX A-C, Dist. Court's Memorandum & Order dated Aug.13/18, under Dkt.#18-cv-4325 (AMD), DONNELLY, Judge, where the Dist.Court mislabel Petitioner's petition under 2241(a)(c)(3) and circumvented by transferring petitioner's writ to the 2d Cir. Court to pursue permission as a successive habeas relief pursuant to 28 USC Sec.2244(b) (3)(A) without conducting a hearing pursuant to Sec.2241(5) & 2243 as law and

justice require, to determine of the substance of the petitioner's Writ and to determine whether petitioner was/is unlawful convicted, sentenced, and detained or in custody in violation of the Constitution, or laws or treaties of the United States. Thereby, the Dist. Court's action/inaction were systematically deviated from within responsive jurisdiction and deviated from the language of the adequacy and constitutional of the 28 USC 2241. Thus, precluded resort to Petitioner's Writ which amounted to unconstitutional 'suspension' of the Writ of Habeas Corpus pursuant to the U.S. Const. Art.1, Sec.9, cl.(2).

Second, the appropriate Application in Petitioner's case is pursuant to 28 USC Sec.2241(a)(c)(3) because, his petition for a Writ of Habeas Corpus relief was submitted against the person(s) who holds Petitioner in which Petitioner claims that he is unlawful detained or in custody restrained of his personal liberty in violation of the constitution or laws or treaties of the United States, by pursuing the validity of the jurisdiction of his detention to obtain his liberty pursuant to United States Const. Art.III Sec.2,cl.(2) and U.S. Constitution Art.1, Sec.2,cl.(2).

PLEASE, see both QUESTION PRESENTED (POINT I & POINT II) in this Petition for a Writ of Mandamus for which Petitioner respectfully request the Court to see attached hereto a copy of Petitioner's DECLARATION IN SUPPORT FOR A PETITION OF WRIT OF HABEAS CORPUS UNDER 28 USCA Sec.2241 & 28 USCA Sec.1651(a) Docket No.18-cv-04325-(AMD) dated 7/25/18, submitted to the Dist. Court, at page 2, paragraph 4-8 in support Petitioner's (QUESTION PRESENTED POINT I); in respect to support Petitioner's (QUESTION PRESENTED POINT II), please see at page 8 paragraph 9-20, in order for this Court to have a final determination by reviewing petitioner's record of the claimed of the validity of the jurisdiction of his unlawful conviction pursuant to the provision of the constitu-

tionality of the statutory statutes of New York States. Based, on the language of the construction, interpretation, and mandatory provision of the statutes pursuant to the Criminal Procedure Law (CPL) Sec.310.30 & 260.20 in conformity with McKinney's Cons. Laws of New York, Book 1, STATUTES, Sec.171. Where, the trial judge lost its jurisdiction (subject-matter jurisdiction and person jurisdiction) in the course of the mode of procedure, during jury deliberation by failed to abide the language of mandatory provision of the statute (CPL 310.30) in disclosing a Jury's Note, deprived petitioner's life & liberty without due process of law, contrary to the 14th Amendment rights of the U.S. Const.. As consequent, thereby, the following proceeding render void in respect to petitioner's conviction is void, his sentence is void,his detention is void, pursuant to McKinney Book 1 STATUTES Sec.171, supra, as well others relevant statutory statutes without limit to cited by petitioner, which provides mandatory provisions as enacted by the LEGISLATURE intent that the trial court must follow the language of the construction, interpretation, and mandatory provision of the statutes. SEE, Clear substantial evidence of the failure to disclose a jury's note (APPENDIX 22) by the trial judge as appeared on the face of the trial record. See, appended hereto as APPENDIX 24-30 transcript of trial record.

PETITIONER'S BACKGROUND: Petitioner was indicted in New York, Queens County under Ind.No.7840/86 charge with 2 counts of 2nd. degree murder (Penal Law Sec.125.25). The jury, acquitted one count and the other count convicted of 2nd. degree murder, and he was sentenced to 25 years to life imprisonment. See APPENDIX 19-20 Indictment & APPENDIX 21 Commitment after sentence 7/12/88.

Petitioner's Direct Appeal; Petitioner, Fed. Writ on direct Appeal; Petitioner's Application for State Writ under CPLR Art.70. PLEASE, see Petitioner's DECLARATION IN Support for a Petition of Writ of Habeas Corpus

under 28 USCA Sec.2241 & 28 USCA Sec.1651(a), Docket No.18-cv-04325 (AMD)
submitted to the Dist. Court at page 1-2 paragraph 2-3.

In regard of the Court's DECISION & ORDERS from the Federal Court WRITS and State Court's Decision & Orders of the WRITS, please see appended hereto all of the Decision/Orders as APPENDIX A-F & 1-18.

For the reasons mentioned above, Petitioner respectfully request the Court pursuant to 28 USC Sec.1651(a), 5 USCA Sec. 702 & 5 USCA Sec.706.2(B)(C)(D), and accordingly with U.S. v. Haley, 371 US 18, 83 S.Ct. 11, Baltimore & O.R.Co. v.United States, 279 U.S. 781,785 with cases cited therein, to issue a WRIT OF MANDAMUS to compel the U.S. Dist. Court for (E.D.N.Y.) to adjudicate petitioner's petition according to 28 USC Sec.2241(a)(c)(3)'s language for its refusal to comply with said statute Sec.2241 pursuant to 5 USCA Sec.706.2(B)(C)(D). Because, Petitioner's case involves Trial Court's jurisdiction with respect to(subject-matter jurisdiction and person jurisdiction) see for reference, Chicago B. & Q.R.Co. v. City of Chicago, 166 US 226 at 234-236, and see APPENDIX 27-28 preserved for appellate review, which affected the validity of the jurisdiction of the Petitioner's conviction, for which said conviction is void, and that involves Petitioner's life & liberty is at stake, in violation of his State/Fed.Const. right of due process of law and equal protection of the laws (through the 5th, 6th,8th,14th Amends. of the U.S. Constitution).

For Example, "The judgment of conviction pronounced by a court without jurisdiction is void, and one imprison thereunder may obtain release by Habeas corpus." (See Ex parte Hans Neilsen Petitioner, 131 US 176, 9 S.Ct. 672, 33 L.Ed. 118, Johnson v. Zerbst, 304 US 458 (1938) at 468, Fay v. Noia, 372 US 391, at 407-408).

Therefore, Mandamus is appropriate here to issue if relief cannot be obtained by appeal or pursuant to 28 USC Sec.2241(a)(c)(3) & (b) because, ade-

quate relief cannot be obtained in any other form or from any other court(s) or judge(s). (See APPENDIX A-F & 1-18 Court's Decisions/Orders), thereby, in this situation this Court has a power and jurisdiction to issue a WRIT OF Mandamus directed to the Dist. Court to adjudicate petitioner's petition under 2241(a)(c)(3). E.g. as in the case *Ex parte Republic of Peru*, 318 U.S. 578 583, 63 S.Ct. 793, 796-797, 87 L.Ed. 1014 (1943) (where this Court invoked and exercised its jurisdiction by left the Circuit Court not be involved in its jurisdiction).

WHEREFORE, Petitioner prays that the Writ of Mandamus should granted from unlawfully detained as law and justice require.

DECLARATION UNDER THE PENALTY OF PERJURY

Petitioner is incarcerated. Petitioner's WRIT OF MANDAMUS dated 10/28/18 is placed in the prison Mail system on 10/28/18 to be mailed via US POSTAL SERVICE VIA PRIORITY MAIL EXPRESS EK 606036645 US as proof of service by mail.

Dated: Otisville New York
Oct. 28, 2018

CC: ANN M. DONNELLY, Judge
U.S. Dist. Court for (E.D.N.Y.)
225 CADMAN PLAZA EAST
Brooklyn, NY 11201

BARBARA D. UNDERWOOD, Atty. General
Div. of Appeals & Opinion
Office of the Atty. General
28 LIBERTY St., NY, NY 10005-1400

RICHARD A. BROWN, Queens County Dist. Atty.
125-01 Queens Blvd., Kew Gardens NY 11415

SOLICITOR GENERAL OF THE UNIT STATES
Room 5616, Dept. of Justice
650 Pennsylvania Ave., N.W.
Washington, DC 20530-0001

KATHLEEN G. GERBING, Superintendent
Otisville Correctional Facility
57 Sanitorium Rd., P.O.BOX 8
Otisville, NY 10963

Respectfully submitted,



Masao Yonamine 88A7233
Petitioner Pro se
Otisville Corr. Facility
P.O.BOX 8
Otisville, NY 10963

I declare, certify, verify, or
state under penalty of perjury
pursuant to 28 USCA 1746, that
the foregoing is true & correct
EXECUTED DATED: Oct. 28, 2018



Masao Yonamine 88A7233