Case No.
IN THE UNITED STATES
SUPREME COURT

ISRAEL CARL ISBELL,

Petitioner,

v.

STEVE MERLAK, WARDEN,

Respondent.

PETITION FOR WRIT OF CERTIORARI FROM THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PRO SE PETITION

Israel Carl Isbell, Petitioner, Pro Se
Registration No. 15929-026
Federal Correctional Institution - Elkton
P.O. Box 10
Lisbon, Ohio 44432
No e-mail or phone no. available

QUESTIONS PRESENTED

Since there is only one (1) issue to present to this Court i.e., that of primary jurisdiction and comity, all four (4) questions are related to that issue; are blocked in Argument I; and are answered seperately within the aurgument. The questions are as follows:

QUESTION ONE: At what point is a sovereign's intent to waive primary jurisdiction assessed, and how is that intent assessed?

QUESTION TWO: Is there a presumption of intent assigned at the moment the inmate is transferred?

QUESTION THREE: After transfer of primary custody is complete, can the original sovereign reacquire primary jurisdiction by claiming mistake?

QUESTION FOUR: What of the inmates rights if primary custody is transferred after the start of his sentence but prior to its completion, shouldn't that sentence be deemed to be satisfied and uneforceable?

LIST OF PARTIES

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

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1 Appendix - C was found on the the inmate electronic law library, Petitioner does not possess any other District Court opinion regarding 4:16-CV-1883 as his Motion for production and issunace of the record on appeal was denied.

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES (Cont.)

STATUTES; COURT RULES; AND OTHER AUTHORITIES

OPINIONS BELOW

The Opinions of the United States Court of Appeals for the Sixth Circuit are UNPUBLISHED, but can be found at Isbell v. Merlak, 2018 U.S. App. LEXIS 11262 (5/1/2018); Rehearing and en banc denied by Isbell v. Merlak, 2018 U.S. App. LEXIS 18573 (7/6/2018).

The District Court opinion of the first Rule 60(b) is Isbell v. Merlak, 2017 U.S. Dist. LEXIS 93414 (N.D. Ohio). Petitioner does not not know the cite of the second Rule 60(b) denial, nor does he possess such.

JURISDICTIONAL STATEMENT

The date on which the United States Court of Appeals for the Sixth Circuit decided my case was May 1, 2018. A timely petition for Panel rehearing and en bamc hearing was denied on July 6, 2018.

This petition was filed in September, 2018, as such, this petition for Writ of Certiorari is timely, and this Court has jurisdiction to hear this case pursuant to 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

This Petition presents questions of law concerning the Doctrines of primary jurisdiction and comity as defined and decided by this Court in Ponzi v. Fessenden, 258 U.S. 254 (1922) and its progeny.

Petitioner MOVES this Honorable Court to GRANT Certiorari review in this case pursuant to S. Ct. R. 10(a) and (c) where, in the pages that follow, Petitioner will show that review should granted where he can show a "Circuit split;" and a departure from the well established doctrines of primary jurisdiction and comity accorded in Ponzi, supra.

This petition also presents questions of law concerning the filing of detainers, and the effect (if any) a detainer has on maintaining a sovereign's primary jurisdiction once the sending (and primary) sovereign releases their prisoner to the receiving sovereign, not on "loan" for prosecution, but so that the prisoner can serve the receiving sovereign's judgment against him. This petition will also show a departure in stare decisis by the Sixth Circuit.

To lay the foundation, Petitioner will lay out the procedural history of how this case came to this Court in the Statement Of Facts that follows. For purposes of clarity to this Court, Petitioner will hereinafter be called "Isbell."

STATEMENT OF FACTS (PROCEDRUAL HISTORY)

9/3/2009: Isbell was arrested by the Pekin Police Department ("PPD") in Pekin, Ill. for unlawful delivery of a controlled substance in Tazewell County ("TC") Case No. 09-CF-523 ("523").

9/17/2009: Isbell appeared in State Court for a Bond Reduction hearing for Case 523, reduction was GRANTED; Isbell posted the bond and was released from custody.

10/1/2009: While on bond for case 523, Isbell was rearrested by the PPD for the possession of child pornography in TC Case No. 09-CF-585 ("585"). Isbell's bond for case no. 523 was NOT revoked, and a bond was set in case no. 585. Isbell did not post that bond and remained in the primary jurisdiction of the State of Illinois.

11/4/2009: A federal complaint was filed against Isbell in Case No. 09-mj-06057-JAG. A writ of habeas corpus ad prosequendum ("WHCAP") was filed regarding Isbell, temporarily "borrowing" him from the State of Illinois for the federal prosecution.

11/5/2009: Isbell appeared in State Court for a hearing on TC cases 523 and 585, and in lieu of the forthcoming federal indictment, the State DISMISSED case 585. See Exhibit "A." Additionally, at the request of Isbell, the State REVOKED his bond in case 523 so that he would remain in the primary jurisdiction of the State. Upon the conclusion of the State proceeding, Isbell was placed in temporary federal custody pursuant to the aforementioned writ.

11/18/2009: A federal indictment was filed against Isbell in Case No. 1:09-CR-10122-MMM-JAG ("10122").

11/23/2009: A second WHCAP is filed for Isbell's custody for the federal prosecution.

11/24/2009: Isbell was formally arraigned in case no. 10122; he pled "not guilty" to the charge of the receipt of child pornography and was remanded to the custody of the United States Marshal's ("USMS").

12/16/2009: A superceding indictment was filed in case no. 10122 charging Isbell with the original count of receipt; and an additional count of possession of child pornograhpy.

12/18/2009: Isbell was arraigned on both counts in case no. 10122; pled not guilty; and was remanded to the custody of the USMS.

2/8/2010: While under temporary federal custody pursuant to the federal writ (or "WHCAP"), Isbell appeared in State Court for a second bond reduction hearing for case no. 523, reduction was again GRANTED, and the bond that had been REVOKED was REINSTATED. This bond reinstatement had the effect of releasing Isbell from the primary jurisdiction of Illinois, and into the primary jurisdiction of the United States ("U.S."). See Exhibit "B."

3/5/2010: Isbell, now in primary federal jurisdiction, appeared in federal court for case no. 10122 for a change of plea hearing where he entered a plea of guilty to count 1 of the indictment. A sentencing hearing was set for June 25, 2010, and Isbell was remanded to the custody of the USMS.

5/17/2010: While awaiting federal sentencing, Isbell had a FINAL predispositional appearance in State Court for TC case no. 523 where he entered into a fully negotiated plea agreement with the State of Illinois, where he negotiated for the following terms:

a.) a STAYED Mittimus i.e., sentence and custody order which was to take effect on June 26, 2010. This agreement assured that Isbell would not be in the primary custody or jurisdiction of the State of Illinois, nor be serving the Illinois sentence at the time of his federal sentence. Illinois then filed a detainer against the imposed but stayed sentence; and

b.) a concurrent State sentencing order to what would then be a previously imposed i.e., legally effected federal sentence. See Exhibit "C."

6/25/2010: Isbell was sentenced in the Central District of Illinois before the Honorable Judge Michael M. Mihm to a term of 180 months followed by a term of lifetime supervised release. During the hearing, a "mini-hearing" was held to determine which sovereign would have the lawful primary jurisdiction over Isbell at the conclusion of the proceedings. It was admitted that the U.S. would. The following exchanges took place between the Hon. Judge Mihm ("The Court"), and the Assistant United States Attorney ("AUSA") Kirk D. Shoenbein ("Mr. Shoenbein"): [1]

The Court: Where will he serve his sentence first?

Mr. Schoenbein: He will go to the Bureau Of Prisons Ibelieve.

The Court: Federal Bureau Of Prisons?

Mr. Schoenbein: Correct.

The Court: To be followed by the State Court sentence.

Mr. Schoenbein: If this Court ordered consecutive sentences, he would be discharged from the BOP [] ...Illinois Department of Corrections [("IDOC")] would have a detainer on him. []

The Court: Okay. But as I undersatnd it, you're saying that he will serve his federal sentence first under these circumstances.

Mr. Schoenbein: If he's sentenced today he will [(This is the AUSA acknowledging the primary jurisdiction of the United States)].

The Court: Okay. []

The Court: THE BOTTOM LINE IS, HE"S GOING TO SERVE HIS FEDERAL SENTENCE FIRST. And since that's the case, and since the State Court order says that that sentence in State Court, although it occurred on -- in May, does not become effective until tomorrow, I'M NOT GOING TO SAY ANYTHING ABOUT CONSECUTTIVE OR CONCURRENT because as far as I'm concerned, under these very bizarre circumstances, this ends up being the first sentence, and then the State Court can do whatever they want. (emphasis added).

1 The USMS were present during the ENTIRE federal sentencing hearing with two (2) Marshal's.

With the AUSA and the USMS present in open court, and with the District Court's understanding (as well as the AUSA's understanding) that Isbell was in the exclusive custody and primary jurisdiction of the United States, and therefore would "...serve his federal sentence first[,]" the District Court made the following oral pronouncement:

> The Court: Pursuant to the Sentencing Reform Act, the Defendant is hereby committed to the custody of the Bureau Of Prisons for a period of 180 months.[2]

Isbell was then remanded to the custody of the USMS and "received" into federal custody to await transportation to a designated federal facility (triggering 18 U.S.C. § 3585(a)). Since Isbell was in the exclusive and primary jurisdiction of the U.S. when he was federally sentenced, his federal sentence was not subject to the commencement by the BOP's authority to decide when a federal sentence commences, but was governed by 18 U.S.C. § 3585(a), which states in pertinent part that:

> A sentence to a term of imprisonment commences on the date the defendant is received in custody awaiting transportation to, or arrives voluntarily to commence service of sentence at, the official detention facility at which the sentence is to be served.

Indeed, the BOP itself comments on 18 U.S.C. § 3584(a) and its predecessor § 3568 in its Sentence Computation Manual; Program Statement 5880.30 Ch.8(b):

> Therefore, a person who is sentenced by a [federal] court to a concurrent sentence, OR IN THE CASE OF A 'SILENT' SENTENCE, BEGINS TO SERVE THAT SENTENCE IMMEDIATELY, if such a person is in EXCLUSIVE CUSTODY. (ephasis added).

The record supports that Isbell was in the exclusive and primary jurisdiction of the federal authorities on the date he was federally sentenced. Moereover, Isbell was "received" at the Tazewell County Justice Center ("TCJC"), the "jail" of his confinement "to await transportation to the place at which his federal sentence was to be served [on June 25, 2010."] Further, the federal sentence was "silent" regarding the relationship i.e., whether the federal sentence would run concurrently with, or consecutively to the State Court sentence that was imposed (but not effected) on May 17, 2010; triggering the presumption of a consecutive sentence under 18 U.S.C. § 3584(a).

2 The entirety of the "mini-hearing" to determine primary jurisdiction is found in U.S. v. Isbell, 1:09-CR-10122 (C.D. of Ill. - June 25, 2010 sentencing hearing, Doc. #50 Pages 43-51; and 80 and 81).

7/12/2010: The USMS, on the authority of the Bureau Of Prisons ("BOP"), issue a (negligent) order for the release of Isbell to the IDOC to serve his State sentence. See Exhibit "D."

7/22/2010: Isbell, while still serving the federal sentence is "actually released" to IDOC to begin serving his UNRELATED State sentence. There was no agreement between the two (2) sovreigns which would allow the United States to maintain its primary jurisdiction over Isbell e.g., a request for temporary custody by Illinois; and, as a consequence, primary jurisdiction was transferred from the United States, to the State of Illinois. See: Exhibit "E."

12/1/2010: Via a telephone call with his Appellate counsel, Isbell (while in state custody) spoke with Mr. Rafael E. Lazaro (counsel) concerning his custody status. Mr. Lazaro "advised" Isbell concerning three (3) possible remedies, and, under "the advice of counsel," Isbell pursued all three (3) remedies. See Exhibit "F."

12/14/2010: On the "advice of counsel," Isbell filed a State post-conviction motion in case no. 523.

On or about 12/20/2010, Isbell, on the "advice of counsel," requested a Nunc Pro Tunc designation from the Designation and Sentence Computation Center ("DSCC") in Grand Prairie, Texas. Poignantly, Isbell did not retain a copy of this request, but he avers that along with this request, he sent the DSCC copies of his State and federal judgments and transcripts.

1/19/2011: The BOP (through the DSCC) denied Isbell's request for a Nunc Pro Tunc designation admitting that Isbell's federal sentence was silent and therefore consecutive to his previously imposed (but not effected) state court sentence; also, they cited 18 U.S.C. § 3584(a) in their reasoning for denial. See: Exhibit "G."

7/12/2011: Isbell, while housed within the IDOC, was writ out by the State from the State for a court appearance in a post-conviction proceeding regarding TC case no. 523. The fact that the State court writ Isbell out from the IDOC and NOT the federal authorities, shows that Illionois recognized its primary sovereignty over him. See: Exhibit "H."

7/28/2011: In an attempt to cover up their loss of jurisdiciton over Isbell, the DSCC reverses their prior decision to deny Isbell the requested Nunc Pro Tunc designation by falsely claiming in a DOJ document to the USMS that "[t]he United States District Court that sentenced [Isbell] recommended that the federal sentence run concurrent with [his] State sentence." This is an abuse of discretion. This document was secured through an FOIA request and received on or about May 17, 2017. See: Exhibit "I."

8/3/2011: Isbell is retrieved by the U.S. from IDOC and imprisoned in the BOP without jurisdiction; without the Due Process of Law; and without a valid judgment and committment document as the valid judgment rendered on 6/25/2010 was satisfied when federal authorities released him (negligently) to Illinois while he was still serving the federal sentence; not temporarily or "on loan," but to serve the other sovereign's judgment against him.

5/26/2015: After years of collecting documents in "piecemeal" fashion through numerous FOIA requests, Isbell initiates the BOP Administrative Remedy Process.

7/26/2016: Isbell filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241 relying on (inter alia) the Sixth Circuit's holding in Thompson v. Bannan, 298 F.2d 611, 611, 615 (6th Cir. 1962) (holding that "[t]he surrender to another state while the prisoner is serving a sentence is equivalent to a pardon...[i]n such a case the judgment of conviction is satisfied and there is no continuing jurisdiction."), in the United States District Court for the Northern District of Ohio. This case was assigned to the Honorable James G. Carr and given the Case No. 4:16-CV-1883.

11/10/2016: The Honorable James G. Carr sua sponte denied the petition without an order to show cause being issued arguing that Isbell had been surrendered to Illinois authorities to face a "pending state case." (Doc. 3 of Isbell v. Merlak, 4:16-CV-1883, at Page ID# 96).

5/30/2017: After finally receivng the Court's denial (or notice thereof) in Janurary of 2017, and realizing that Judge Carr made an erroneous finding of fact in denying his 2241 petition, Isbell filed his first Motion for relief from judgment pursuant to Fed. R. Civ. P. 60(b); Isbell asserted that Judge Carr made a "clearly erroneous finding of fact" in finding that "[t]he U.S. Marshal subsequently transported [Isbell] to the Tazewell County, Illinois Sheriff's Department for a pending state case." In fact, there was no pending state cases, or any pending cases at all. Ref. Exhibit "C."

6/15/2017: Judge Carr again denied Isbell relief. (Doc. 6 & 7).

7/13/2017: Isbell filed his second Motion for Relief from judgment pursuant to Fed. R. Civ. P.60(b) asking 1.) reconsideration of the first denial; and 2.) Isbell addressed other issues e.g., erroneous findings of fact and misapplication of the law inter alia, that were not addressed or raised in the 2241 denial. (Doc. No. 8).

8/14/2017: While awaiting a ruling on Document No. 8, Isbell filed an Notice of Appeal to the Sixth Circuit Court of Appeals challenging the denial of the first Rule 60(b). This Appeal was filed as No. 17-3835.

9/18/2017: The District Court again denied relief on his second Rule 60(b) Motion, and at the same time, Judge Carr denied him pauper status for the appeal of the first Rule 60(b) Motion (17-3835).

10/16/2017: Isbell filed an appeal with the Sixth Circuit on the second denial on the Rule 60(b) Motion; this appeal was filed as appeal no. 17-4088.

In November of 2017, the District Court denied pauper status for appeal No. 17-4088; Isbell filed a Motion to consolidate the appeals, which the Sixth Circuit GRANTED; a Motion for the appointment of counsel; and a MOtion to proceed in forma pauperis on appeal.

12/24/2017: Isbell filed a Motion for bond pending the appeal with the Sixth Circuit.

In January 2018, the Sixth Circuit asked Isbell to submit his Appellant brief on or before March 12, 2018.

In February 2018, Isbell filed his Appellant brief.

5/1/2018: The Court of Appeals for the Sixth Circuit DISMISSED Isbell's Appeal; Isbell timely filed a Petition for a Panel rehearing and hearing enbanc.

7/6/2018: The Court of Appeals for the Sixth Circuit DENIED rehearing.

In September of 2018, Isbell timely filed an petition for Writ of Certiorari.[3]

This concludes Isbell's Statement Of Facts.

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[3] Isbell has submitted the Appeals Court dismissals/denials, but cannot present to this Court the District Court's rulings or his filings as he was not in the habit of keeping copies of these back then, and the District Court denied Isbell's Motion for the production and issuance of the Record on Appeal.

Argument I

UNDER THE RULES OF COMITY, AT WHAT POINT IS A SOVEREIGNS INTENT TO WAIVE PRIMARY JURISDICTION ASSESSED? IS THERE A PRESUMPTION OF INTENT ASSIGNED AT THE MOMENT THE INMATE IS TRANSFERRED? AFTER TRANSFER OF PRIMARY CUSTODY IS COMPLETE, CAN THE ORIGINAL ARRESTING SOVEREIGN REACQUIRE PRIMARY JURISDICTION BY CLAIMING "MISTAKE," OR WILL SAID SOVEREIGN BE HELD TO A NEGLIGENCE STANDARD? FINALLY, WHAT OF THE INMATES RIGHTS IF PRIMARY CUSTODY IS TRANSFERRED AFTER THE START OF HIS SENTENCE BUT PRIOR TO ITS COMPLETION, SHOULDN'T THAT SENTENCE BE DEEMED SATISFIED AND UNENFORCEABLE?

Almost a century ago, this Honorable Court first announced The Common Law doctrines of primary jurisdiction and comity in Ponzi v. Fessenden, 258 U.S. 254 (1922). The Ponzi Court reasoned that:

> The forbearance which courts of co-ordinate jurisdiction, administered under a single system, exercise towards each other, is a principle of comity, with perhaps no higher sanction than the utility which comes from a concord; but between State Courts and those of The United States, it is something more. It is a principle of Right and of Law, and therefore, of necessity, **IT LEAVES NOTHING TO DISCRETION OR MERE CONVENIENCE.** These courts do not belong to the same system, so far as their jurisdiction is concurrent; and although they coexist in the same space, they are independent, and have no common superior. They exercise jurisdiction, it is true, within the same territory, but not in the same plane, and when one takes into its jurisdiction a specific thing, **THAT RES IS AS MUCH WITHDRAWN FROM THE JUDICIAL POWER OF THE OTHER, AS IF IT HAD BEEN CARRIED PHYSICALLY INTO A DIFFERENT TERRITORIAL SOVEREIGNTY.** Quoting Covell v. Heyman, 111 U.S. 176 (1884) (emphasis added).

In Ponzi Supra, the Federal District Court first took custody of Ponzi, he then pled guilty; was sentenced to imprisonment; and was detained under United States authority to suffer the punishment imposed. Until the end of his term and his discharge, no State Court could assume control of his body without the consent of The United States (id at 261); and the doctrines of Primary Jurisdiction; Comity; and the Primary Sovereign were established.

It is now well settled in law that Primary Jurisdiction is vested in the Sovereign that first arrests the Defendant until that sovereign relinquishes its priority over a defendant. U.S. v. Cole, 416 F.3d 894, 897 (8th Cir.

2005); Weekes v. Fleming, 301 F.3d 1175 (10th Cir. 2002); Thomas v. Whalen, 962 F.2d 358 (4th Cir. 1992); Roche v. Sizer, 675 F.2d 507 (2nd Cir. 1982); and U.S. v. Elledge, 2013 U.S. Dist Lexis 173388 (Mid. Dist. Tenn. 2013). And the "sovereign with primary jurisdiction continues to have jurisdiction until some AFFIRMATIVE ACT relinquishes it." Lewis v. Warden, 2017 U.S. Dist. LEXIS 76543 (Dist. N.H. 2017) (emphasis added) relying on Cole Supra.

The lower Courts agree that primary jurisdiction can be relinquished by operation of law, see Hopkins v. Holland, 2013 U.S. Dist. LEXIS (E.D. KY 2013); Johnson v. Gill, 2018 U.S. App. LEXIS 3950 (9th Cir. 2018); Jimenez v. Warden, 147 F.Supp. 2d 489 (D. Mass. 2008); U.S. v. Collier, 31 Fed. Appx. 161 (6th Cir. 2002); and Shaughnessy v. U.S., 150 Fed. Appx. 800 (10th Cir. 2005). However, they disagree and the circuits are split over how that operation of law applies.

In Johnson Supra, the Court recognized only three (3) ways primary custody is transferred: 1.) When the sentence expires; 2.) When the charges are dismissed; and 3.) When the prisoner is allowed to go free.

In Hopkins Supra; Jimenez Supra; Cole Supra; and Stephens infra, these Courts recognized four (4) ways for primary custody to be transferred: 1.) Bail release; 2.) Dismissal of the pending charges; 3.) Parole release; and 4.) Expiration of the sentence.

In Collier Supra; Shaughnessy Supra; Weekes Supra; and Stephens (again infra), it has been recognized that primary jurisdiction can be lost or transferred by voluntarily relinquishing it to another sovereign.

It makes sense to believe that a sovereign may waive their primary jurisdiction just as a sovereign may waive any other right.

It's also worth noting at this point that it is well established that if an inmate is "loaned" to another sovereign via writ of Habeas Corpus Ad Prosequendum, there is no effect on the original sovereign's primary jurisdiction

over the inmate. See Ponzi Supra; U.S. v Cole, 416 F.3d 894 (8th Cir. 2005); Hopkins Supra; Commodore v. Walton, 2014 U.S. Dist. LEXIS 4574 (So. Dist. IL 2014); Jimenez Supra; and Lewis v Warden, 2017 U.S. Dist. LEXIS 76543 (D. DH 2017) as the receiving state is simply borrowing the inmate from the sending sovereign, and must therefore return him when the purpose of the writ is satisfied.

At bar, the Sixth Circuit erroneously held that:

> Despite the Federal Government mistakenly [and negligently] releasing Isbell to the Illinois Department of Corrections, the Federal Government did not relinquish custody because Isbell was not released on bail; his charges were not dismissed; he was not granted parole; and his sentence had not expired.[1] Additionally, when Isbell was released into the custody of the Illinois Department of Corrections, a Federal detainer was filed[2] ensuring that he would eventually be returned to Federal custody... In any event, this Court has previously held that when a prisoner is mistakenly transferred to another jurisdiction, the original jurisdiction does not waive the right to imprison the prisoner for his conviction. Stroble v. Egeler, 547 F.2d 339, 340 (6th Cir. 1977) (internal citations omitted).(Isbell v. Merlak, 2018 U.S. App. LEXIS 11262 (6th Cir.5/1/2018).

However, Stroble id simply does not apply. Let us examine the facts as compared with the interpretation of Stroble v. Egeler, 547 F.2d 339, 340 (6th Cir. 1977) which is the basis of both the District Court and the Appellate Court's denial of relief.

To get a good factual basis, we need to review Stroble v. Egeler, 408 F.Supp. 360 (E.D. of Mich. 1976) where we learn that Stroble was arrested in New York (who as a result, obtained primary jurisdiction); he was then

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1. In short, the Sixth Cicuit indicates that The United States did not lose its primary jurisdiction over Isbell by "Operation of Law." (see above). However, what was not addressed was whether there was a voluntary affirmative act which resulted in a transfer of primary jurisdiction.

2. As argued in Weekes, Supra (and its progeny), the filing of a detainer is evidence that the sovereign filing the detainer does not have primary jurisdiction, and the sovereign with physical custody does. Moreover, this holding also conflicts with the Sixth Circuit's own holding in United States v. Green, 654 F.3d 637, 647 (6th Cir. 2011) (following Harris v. Hunter, 170 F.2d 552, 553 (10th Cir. 1948). (Holding that a detainer indicates waiver of jurisdiction absent an affirmative showing to the contrary i.e., where there is a detainer, there is a PRESUMPTION of waiver.)

"loaned" to Michigan pursuant to the Interstate Agreement on Detainers ("IAD"); as a result of the loan to Michigan, New York maintained its primary jurisdiction over Stroble. After Michigan tried and convicted Stroble, Michigan authorities mistakenly started his sentence and sent him to prison in M.D.O.C. (Jackson) to serve his Michigan sentence. Stroble argued that when Michigan removed him from Jackson after his Michigan sentence had started running; and then sent him back to New York, he was released from Michigan's authority to enforce his sentence. However, Stroble's position is porous in that he was NEVER in Michigan's primary custody (according to Ponzi), he was being loaned to Michigan by New York who in fact (and by operation of law) had the primary jurisdiction of him.

Accordingly, it was impossible for Michigan to take any act to lose jurisdiction it never had, and that is why the holding of Stroble, Supra, does not apply to Isbell's case.

The Sixth Circuit in Stroble held that:

> The Appellant's contention that Michigan waived its right to imprison the Appellant on the murder conviction when its authorities returned him to New York after he began serving the life sentence in Michigan through administrative mistake is without merit.
> Stroble v. Egeler, 547 F.2d 339, 340 (6th Cir. 1977).

If we remove the viscosity of the vague and ambiguous language, and if read in context and correctly, we learn that THE ADMINISTRATIVE MISTAKE WAS THAT STROBLE WAS SENT TO A MICHIGAN PRISON (JACKSON) AND BEGAN SERVING HIS MICHIGAN SENTENCE before he was returned to New York, his being returned to New York was not the administrative mistake;[3] he was on loan from New York after all.

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3. The Sixth Circuit's holding in Stroble, while it was a good holding, it used vague and ambiguous language which has allowed the interpretation utilized by the District Court and the Sixth Circuit in Isbell v. Merlak, 17-3835/17-4088; 2018 U.S. App. LEXIS 11762 (6th Cir. May 1, 2018). But this interpretation as applied to the facts of Isbell's case violates this Court's holding in Ponzi, Supra. Accordingly, both the District Court and the Appellate Court have not only misapplied their own Circuit Law, but also this Court's precident in Ponzi and its progeny.

So, while this Court does not normally review errors by the Appellate Court, this Court should at least be aware that when the 6th Circuit Court of Appeals indicated:

> In any event, this Court has previously held that when a prisoner is mistakenly transferred to another jurisdiction, the original jurisdiction does not waive the right to imprison the prisoner for his conviction. Isbell v. Merlak, Appeal Nos. 17-3835/17-4088, May 1, 2018 (citing Stroble (6th Cir. 1977) supra)

What they erroneously believed was the holding was in fact not the holding at all; Stroble was never "mistakenly transferred to another jurisdiction." While on loan from New York he was mistakenly transferred to M.D.O.C.. As such, the 6th Circuit misconstrued the ambiguous language in Stroble Supra, and their decision is an abuse of discretion based upon a "mistake of law."

AT WHAT POINT IS A SOVEREIGNS INTENT TO WAIVE PRIMARY JURISDICTION ASSESSED AND HOW IS THAT INTENT ASSESSED?

In Cannon v. Deboo, 2009 U.S. Dist. LEXIS 20595 (N.D. Wis. 2009), after the inmate was loaned to The United States for presecution, he was returned to the state (who was the primary sovereign) and the writ of habeas corpus was terminated. 18 months later on May 17, 2002 the U.S. Marshal's Service requested the petitioner's designation to a federal facility. No writ was issued for this purpose. Although State authorities do not appear to have protested the petitioner's designation to a federal facility without a writ, they did not indicate the petitioner had completed his state sentence; and approximately 6 weeks later, the Federal Bureau of Prisons ("BOP") discovered that the petitioner had been erroneously designated to the federal facility and returned him to state custody (id at 2).

The Cannon Court determined that the State of Michigan erroneously remitted the petitioner to federal authorities without a writ, but nothing on the record demonstrates, or even suggests that state officials indicated to federal authorities that the petitioner had completed his state sentence (id at 7).

The petitioner at bar humbly disagrees with the Cannon Court. In Cannon, the State had primary jurisdiction, the very act of releasing their prisoner to another sovereign without an active Writ of Habeas Corpus, was in fact an affirmative act which should have transferred primary jurisdiction. In, Stephens v. Sabol, 539 F. Supp 2d 489 (Dist. of Mass. - 2008), the Court reasoned that because:

> Florida permitted The United States to take physical custody of Stephens without the use of a writ which would have maintained its primary jurisdiction. It thus voluntarily, if mistakenly allowed The United States to take primary jurisdiction over Stephens.

See also BOP program statement 5880.28 defining exclusive federal custody as custody obtained without the use of a restrictive writ. In Cannon Supra, the BOP obtained Cannon without a writ, and thus obtained primary custody. (See Pope v. Perdue (infra) controlling 7th Circuit precident on issue).

IS THERE A PRESUMPTION OF INTENT ASSIGNED AT THE MOMENT THE INMATE IS TRANSFERRED?

In Johnson v. Gill, 2018 U.S. App. LEXIS 3950 (9th Cir. 2018) the petitioner was arrested by the state of Texas, thereby establishing the State's primary jurisdiction over the petitioner. The federal government borrowed the petitioner several times via Writs of Habeas Corpus. On August 7, 2000, the Dallas County Sheriff's Department "mistakenly transferred Johnson to the Marshals Service." The Marshal's subsequently returned Johnson to Dallas authorities; approximately 90 days later, the Sheriff's Department again informed the Marshals Service that Johnson had completed his state sentence, and on December 14, he was again transferred to the Marshals Service. This was also a mistake. Johnson remained with federal authorities until February (2001) when he was taken to the Texas Dept. of Criminal Justice.

The Court held that:

> Such a case requires an exercise of comity between sovereigns and turns on whether the sovereign with primary jurisdiction intended to surrender its priority upon transfer or merely transferred

> temporary control of the defendant to the federal government [(i.e., the other sovereign)]. Because a state's transfer of temporary control of the defendant 'extends no further than it is intended to extend' and a state that mistakenly transferred a prisoner to the federal government lacked intent to surrender primary jurisdiction, such a mistaken transfer does not constitute a relinquishment of primary custody.

In a circuit split that's in opposition to Johnson, Supra, Isbell brings this Court's attention to Pope v. Perdue, 889 F.3d 410 (7th Cir. 2018), decided 90 days after the 9th Circuit's decision in Johnson Supra. The 7th Circuit reached the opposite conclusion. In Pope id, the Illinois State authorities arrested Pope, thus establishing primary custody. While in Illinois primary custody, the federal government "borrowed" the defendant via Writ of Habeas Corpus. On August 24, 2009, the Illinois Court sentenced him to five years imprisonment on the same charge. Two months later, Pope was removed from the Illinois facility to a federal one. Approximately 9 months later, he was returned to the State of Illinois.

The Pope Court held that:

> In the absence of evidence that the transferring sovereign intended to maintain custody, WE **PRESUME** that the sovereign intended to relinquish it. This presumption promotes clarity for inmates, jailers, and courts. Clarity here is particularly important for prisoners who's rights may depend on the sovereign under whose jurisdiction they are subject.
> (Citing Stephens v. Sabol, 539 F.Supp. 2d 489, 496 (D. Mass. 2008). (emphasis added).

In supporting its decision, the Court went on to "Reject Pope's contentiion that the absence of a writ of Habeas Corpus Ad Prosequendum indicates that Illinois intended to transfer primary custody," the Court indicated three times that:

> The transfer itself is the only compelling evidence of Illinois' intent, and that evidence weighs in favor of finding that Illinois intended to relinquish primary custody... We presume that Illinois intended to relinquish custody... when Illinois transferred Pope without any indication that the state intended to maintain custody... Illinois transferred Pope to federal authorities after his state sentence without any indication that it intended to maintain primary custody. In doing so it transferred primary custody to federal authorities.

Additionally, the Tenth Circuit Court in Weekes v. Fleming, 301 F.3d 1175, 1178-81 (10th Cir. 2002) and Harris v. Hunter, 170 F.2d 552, 553 (10th Cir. 1948); and importantly for Isbell, the Sixth Circuit in Green Supra (relying on the 10th Circuit's holding in Harris Supra), recognized that authorities could waive their primary jurisdiction and "are **PRESUMED TO HAVE DONE SO IN THE ABSENCE OF AN AFFIRMATIVE SHOWING TO THE CONTRARY.**" Green at 647.

Also, in Stephens Supra, the factual predicate is almost exactly the same as is found in Johnson Supra. There the State of Florida authorities erroneously informed the Marshals that Stephen was finished serving his Florida sentence, then they mistakenly released him to federal custody.

The Stephens Court upheld the transfer of primary custody where Florida released the inmate to federal authorities, and federal authorities obtained custody without a writ, in opposition to the holding in Johnson.

At bar, a similar situation developed, the State of Illinois arrested Isbell, thereby obtaining primary custody, the federal government borrowed him by Writ of Habeas Corpus. However, at some point Isbell made bond, and as a result, he was then transferred to federal primary jurisdiction while his criminal cases proceeded; after sentencing, he was taken into custody by the Federal Marshals who subsequently transferred him to a state facility and released him into state custody (without the use of a Writ of Habeas Corpus).

In spite of the 6th Circuits holding in Green Supra, holding "that authorities are **PRESUMED** to have waived primary jurisdiction in the absence of an affirmative showing to the contrary," (emphasis added) both the District Court, and the 6th Cir. allowed the government to claim the transfer was a "mistake," thus going against their own precident in Green. This begs the question, if there were no "mistake," could it be said that The United States had intended to maintain its primary jurisdiction over Isbell when they transferred him to Illinois?

To be clear, the 6th Circuit determined that a detainer (see appendix) filed by the Marshals Service more than a year after the transfer of primary custody occurred supported an intent to maintain custody. (Ref. Exhibit "I").

However, that position also causes an additional pickle for the 6th Circuit, as that position causes further Circuit splits with Weekes Supra, and its progeny in the 10th Circuit, and Pope Supra in the 7th Circuit, and Stephens, Supra in the 1st Circuit.

In Weekes id, Idaho initially arrested Weekes, thereby establishing they had primary jurisdiction. Idaho subsequently allowed The United States to take exclusive physical custody of Mr. Weekes without presenting either a written request for temporary custody or a Writ of Habeas Corpus Ad Prsequendum.

The Weekes Court recognized that there was:

> A **PRESUMPTION** of a change in primary custody based upon the affirmative acts of the two sovereigns. Specifically, that Idaho lodged a detainer expressly noting that his state sentence was concurrent and requesting Mr. Weekes return upon completion of his sentence. Thus affirmatively showing its relinquishment of Mr. Weekes to the federal primary custody.

See also Wise v. Chester, 424 Fed. Appx. 726 (10th Cir. 2011) "Use of detainers indicate that sovereign did not have [primary] custody."

This makes sense because the sovereign with primary jurisdiction would not need to file a detainer, it has primary jurisdiction over the defendant.

Also, at bar, a second affirmative act supporting a loss of primary jurisdiction was the governments retroactive Nunc Pro Tunc designation.

AFTER TRANSFER OF PRIMARY CUSTODY IS COMPLETE CAN THE ORIGINAL SOVEREIGN REACQUIRE PRIMARY JURISDICTION BY CLAIMING MISTAKE?

In Johnson Supra, the state twice gave up primary jurisdiction of Johnson, the Marshals Service twice returned the prisoner back to the State of Texas even though they acquired physical custody of him without a Writ of Habeas Corpus—the benchmark for retaining primary custody. The Ninth Circuit upheld

the "mistake" and allowed Texas to maintain primary jurisdiction.

However in Stephens Supra, when the state gave up primary jurisdiction by virtue of a "mistake," the court held that "it ma[de] no difference that Florida's relinquishment of jurisdiction was accidental. It was an affirmative act, that, without more, would be sufficient to relinquish jurisdiction. In this area, courts have consistantly held executives to a negligence standard" (relying on Vega v. United States, 493 F.3d 310, 319 (3rd Cir. 2007); and U.S. v. Martinez, 837 F.2d 861, 865 (9th Cir. 1988)). The Stephens Court went on to say that "Florida's act of relinquishing jurisdiction when Stephens had not yet been resentenced was clearly negligent and the court will hold it to the plain import of its actions."

This precident was also followed in Lewis Supra, where "the State of Michigan 'released' Lewis to the USMS ... the respondent attempts to evade the consequences of Lewis' release by characterizing it as a 'mistake.' However, even if Lewis' release was erroneous it was an 'affirmative act,' that without more, would be sufficient to relinquish [primary] jurisdiction." (id at 4).

At bar, the BOP also attempts to evade the consequences of their action by claiming a "mistake," and reacquiring primary jurisdiction. The problem is, just as found in Lewis, the transfer of custody was an affirmative act, that the Marshals released Isbell to a state facility and transferred custody. And just as in Lewis, even if it was in error, it was a negligent act and the government must be held accountable.

Further, there are additional reasons to refuse to allow sovereigns to reacquire jurisdiction. As presented by U.S. v. Mason, 2012 U.S. Dist. LEXIS 70980 (D. VT 2012). "The court... declines to adopt and apply a rule that requires a detailed inquiry into the intent of the transferring sovereign when it otherwise validly releases a prisoner into the federal government's custody and the federal government accepts him." Sovereigns should not have

to guess or worry if they have primary jurisdiction only to have another sovereign strip primary jurisdiction from them by claiming "mistake" after the fact.

On that same line of thought in U.S. v. Mason, 2012 U.S. Dist. LEXIS 70980 (D. VT 2012) the court indicated that it "declines to adopt and apply a rule that requires a detailed inquiry into the intent of the transferring sovereign when it otherwise validly releases a prisoner into the federal government's custody and the federal government accepts him. Doing so would be in tension with the 'Bright Line' rules that govern prisoner custody."

Also, the Court in Stephens Supra, held that:

> This decision does not contravene the principles of comity on which this area of law is founded... to the contrary, it reinforces them. Permitting Florida to rescind its decision to surrender jurisdiction over Stephens would badly erode the current Bright Line dictating which sovereign has jurisdiction over the prisoner. A sovereign asserting mistake would have the prerogative to transfer the prisoner or take other actions that might offend the receiving state. Moreover, the receiving sovereign would arguably be entitled to the costs of maintaining the prisoner during the mistaken period.

Finally, this Court held a hundred years ago in Ponzi Supra, that "A PRINCIPLE OF COMITY... LEAVES NOTHING TO DISCRETION OR MERE CONVENIENCE." (id at 260-261) Quoting Covell Supra. Which would indicate that once a sovereign transfers primary custody, it can't reacquire it by simply alleging "mistake," as doing so would obliterate the incandescent Bright Line dictating which sovereign has jurisdiction over the prisoner for the sake of "convenience," brought on by negligence.

WHAT OF THE INMATES RIGHTS IF PRIMARY CUSTODY IS TRANSFERRED AFTER THE START OF HIS SENTENCE BUT PRIOR TO ITS COMPLETION, SHOULDN'T THAT SENTENCE BE DEEMED TO BE SATISFIED AND UNEFORCEABLE?

The first thing that must be considered is the inmate's Due Process Rights. If a sovereign mistakenly releases an inmate to another sovereign, and the error is discovered weeks, months, or years later, and the inmate is returned to the first sovereign, under what process was the second sovereign holding

the inmate? They had neither warrant; detainer; writ; or a seemingly valid judgement and commitment from the sending sovereign during the time of his temporary detention with the receiving sovereign. If we apply this to Johnson Supra, he was released from Texas then sent back by the Marshals two weeks later without ever triggering his federal sentence. Under what authority did the Marshal's restrain Johnson's liberty (if not there own) during this time? In short, can a sovereign claim jurisdiction to arrest and hold an inmate only to deny said jurisdiction based on someone elses "mistake?"

Secondly, defendants have a due process right to know who is holding them and why. The defendant's rights should not be infringed upon based upon a negligent act or "mistake." The Stephens Court went on to reason that:

> Allowing recission would also unnecessarily harm inmates. For a period of time after a transfer, a prisoner would reasonably be uncertain as to whether he was subject to the jurisdiction of the first or second sovereign. That would obscure the rights he had. For example, the extent of process available at a disciplinary hearing, or what civil rights suits might lie, or how to seek post conviction relief. And prisoners have a fundemental right to know who is holding them and why. See U.S. Const. Amend. V and XIV. id at 496.

Third, Sixth Circuit precident in Thompson v. Bannan, 298 F.2d 611, 615 (6th Cir. 1962) holds that "[t]he surrender to another state while the prisoner is serving a sentence is EQUIVALENT TO A PARDON...[I]N SUCH A CASE THE JUDGEMENT OF CONVICTION IS SATISFIED AND THERE IS NO CONTINUING JURISDICTION." (emphasis added). See also (relying on Thompson, Supra) Shields v. Beto, 370 F.2d 1003, 1005 (5th Cir. 1962); United states ex rel. Tyler v. Henderson, 453 F.2d 790, 794 (5th Cir. 1971); Helm v. Jago, 589 F.2d 1180, 1181 (6th Cir. 1979); Wright v. Attorney Genderal of the United States, 1992 U.S. Dist. LEXIS 13404 (S.D. N.Y. 1982); and Wright v. Fahey, 2009 U.S. Dist. LEXIS 6017 (E.D. of Virginia 2009).

This logic is based in part on the very premise of comity i.e., "when one sovereign takes into its jurisdiction a specific thing, that res is as much

withdrawn from the judicial power of the other." Ponzi, Supra at 260-61. Once primary jurisdiction is transferred, the original sovereign's jurisdiction to enforce its judgement is lost as that inmate is "WITHDRAWN FROM THE JUDICIAL POWER OF [THE ORIGINAL SOVEREIGN]." id at 260-61 (emphasis added). Moreover, in cases like the one at bar, once Isbell's consecutive federal sentence began, it couldn't be stopped so that he could serve his state sentence. See Weekes, Supra (quoting White v. Pearlman, 42 F.2d 788, 789 (10th Cir. 1930))(holding that "a federal sentence must generally be served continuously [the exception being that it is somehow] interrupted by... some fault of the prisoner and he cannot be required to serve it in installments." See also Shaughnessy, Supra. Neither could Isbell's federal sentence be legally allowed to run concurrent while he was serving his federal sentence. See 18 U.S.C. §3585(b) (disallowing double sentencing credit for state and federal sentences). This is exactly the situation the language in Thompson, Supra, was discussing.

In summary, there simply is no way for the sovereign to reacquire jurisdiction over the inmate once it is lost, and at bar, the federal government is holding the petitioner without due process of law. Where it has lost jurisdiction and the "JUDICIAL POWER" (accord Ponzi) to enforce its judgement and commitment. And lastly, the government in this case does not proffer any evidence whatsoever that the U.S. intended to maintain its primary jurisdiction.

CONCLUSION AND PRAYER FOR RELIEF

Isbell realizes that it may seem repugnant to justice to see a rightly convicted and sentenced person obtain release in this way, it must be equally as repugnant to justice to violate a persons Due Process rights, and this Court's well established precident for the sake of "mere convenience," all in an effort to avoid the consequences of the actions of authorities acting under the color of law.

Finally, the mistaken transfer of custody was done WITHOUT input or action on the part of Isbell, he should not be the one made to suffer as a result of the negligent (but affirmative) acts of the Department Of Justice i.e., the BOP and the USMS; and this Court has held that:

> [t]here is no higher duty of a court, under our constitutional system, than a CAREFUL processing and adjudication of petitions for writs of habeas corpus, for it is in such proceedings that a person in custody charges that error; NEGLECT; or evil purpose has resulted in his unlawful confinement and that he is deprived of his freedom contrary to law. Harris v. Nelson, 394 U.S. 286, 292 (1969)(emphasis added).

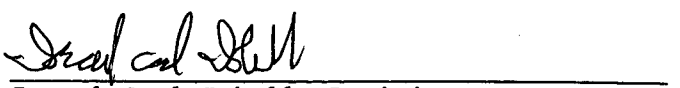
WHEREFORE THE PETITIONER, Israel Carl Isbell, pro se, PRAYS that this Court GRANT Certiorari to answer the foregoing questions of law in the interest of justice, where he has shown that the issues and questions presented "indicate the character of the reasons the Court considers" under Supreme COurt Rule 10(a) and (c); under Rule 10(a) where he has shown that the "United States Court of Appeals [for the Sixth Circuit] has entered a decision [that not only is in conflict with their own precident, but also] in conflict with the decision of another United States Court of Appeals [(namely, the 9th Circuit)] on the same important matter[,]" namely the PRESUMPTION of a waiver of jurisdiction as Green, supra (6th Cir. 2011); Weekes, supra (10th Cir. 2002); Pope, supra (7th Cir. 2018), as opposed to the NON-PRESUMPTION found in Johnson, supra

(9th Cir. - Circuit splitting decision); and under Rule 10(c) where the Sixth Circuit "has decided an important federal question [(namely that of comity and primary jurisdiction)] in a way that conflicts with the relevant decisions of this Court [(namely Ponzi, supra)]."

Isbell also PRAYS that this Court REVERSE the decision of the Sixth Circuit and GRANT him any other relief that is just and equitable under the law.

Dated this the 10 day of September, 2018.

Respectfully Submitted under the penalty of perjury pursuant 28 U.S.C. § 1746:



Israel Carl Isbell, Petitioner, pro se
Registration No. 15929-026
Federal Correctional Institution - Elkton
P.O. Box 10
Lisobn, Ohio 44432