

No. 15-mj-651-JWF

No. 16-cr-6029-DGL-JWF

USA v. Barnes et al.

IN THE SUPREME COURT OF THE UNITED STATES

In re ANDRE BARNES

Petitioner.

PETITION FOR WRIT OF PROHIBITION
AND/OR WRIT OF MANDAMUS

Andre L. Barnes
Defendant Pro se
4 Court Street
Geneseo, NY 14454

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ARGUMENT

I. No Probable Cause

A. The defendant property must be released pending any further forfeiture proceeding.

B. The Fourth Amendment protects from unreasonable seizure

II. Unauthorized Service of Process

A. A defendant will be immune from arrest & civil forfeiture who has been compelled into a district court by an unauthorized process.

B. A federal court cannot initiate in rem or quasi in rem action - when the property is already in the custody of a state court with competent jurisdiction.

ARGUMENT cont.

III. Lack of In Personam Jurisdiction

- A. The district court has never obtained jurisdiction over petitioner's person by valid indictment.
- B. Under the Fifth Amendment a defendant cannot be prosecuted for charges based on evidence that was not put before the grand jury.

IV. Lack of Prize Jurisdiction

- A. When a seizure occurs on land it is a civil action, not a criminal proceeding. A seizure on land does not apply to admiralty.
- B. There is no common law Piracy; a seizure by attachment of a neutral vessel in local waters is not within the cognizance of prize court.

V. Lack of Subject Matter Jurisdiction.

- A. Federal Courts created by statute have no jurisdiction but as such as the statute confers.
- B. 28 U.S.C. § 1333 Admiralty jurisdiction includes only maritim matters or subjects and may not be extended to non-maritime matters on the ground of convenience or because a particular case involves both maritime & non-maritime matters.

PETITION FOR WRIT OF PROHIBITION

AND/OR MANDAMUS

QUESTIONS PRESENTED FOR REVIEW

1. Is petitioner entitled to immediate relief, including prohibition from this Court, to protect the privilege of a Loyal Citizen and Natural Person from being compelled to respond to Federal Court's libel and complaint for attachment executed against his own person without cause and barred by the Fourth and Fifth Amendments ?
2. Does the Fourth Amendment protect from unreasonable seizure in forfeiture of property proceedings ? (pgs. vii, 6-9)
3. Does the district court err in concluding that once probable cause was determined by the fact that an indictment was returned, defendant could not challenge the propriety of the seizure for return of the res where forfeiture was not adopted by allegation of criminal forfeiture in the indictment ? (pg. 8)
4. Is a defendant charged with an Offense against the Law of Nations entitled to the provisions of the Fifth Amendment's Grand Jury Clause ?(18)
5. Can an in rem action be brought and proceeded against a Natural Person ? (pgs. 6-7,25,26,30)
6. Is the district court required to take judicial notice of a defendant's identity and status as a Natural Person in a challenge to in rem or quasi in rem jurisdiction ?

7. Is the district court required to take judicial notice of a defendant's citizenship and domiciliary upon admission of the party in a question of prize capture ? (pg. 27)

8. Does the citizenship of the alleged victim's go to the question of jurisdiction in a court sitting in admiralty where the victim's injuries occur on land ? (pg. 29)

9. Can the district court proceed as a court of admiralty and also as a court under the common law simultaneously in one action ? (pg. 26)

10. Must the district court take judicial notice of the facts that form the statutory jurisdictional basis of the federal action before proceeding to the merits ? (pgs. vi, 31)

11. Is the failure of the district court to dismiss this action and the inability of the United States Court of Appeals to compel immediate dismissal of an in rem action in admiralty/prize court of the type of extraordinary circumstance correctable by prohibition or mandamus ?

RELIEF SOUGHT

Petitioner prays for writ of Prohibition and/or Mandamus directed to the district court of the United States for the Western District of New York and to the Hon. Judge David G. Larimer of the district court, directing and commanding these respondents to immediately release the defendant ANDRE BARNES and to dismiss this/these action(s) for lack of federal jurisdiction and to preserve the privilege against unreasonable seizure and the privilege against having to respond in any way to federal court's forfeiture suit in rem and complaint in admiralty and prize jurisdiction as to petitioner as announced in this Court's decision in 443 Cans of Frozen Egg Product, 266 US 172, 57 L.Ed 174, 33 S.Ct. 50.

UNAVAILABILITY OF RELIEF IN OTHER COURTS

No other court can grant the relief sought by this petition because only the Supreme Court is invested with the power to issue a writ of Prohibition on a district court proceeding as an admiralty court in excess of its jurisdiction.

1. On 02/06/2018 the United States District Court for the Western District of New York denied petitioner's request for Bail, Bond or Immediate release of the defendant ANDRE BARNES. A copy of this order is attached in the Appendix p. 54-56
2. A motion for reconsideration was denied by the district court on 7/25/2018. A copy of the of this order is attached in the Appendix 57-59

3. On 12/22/2017 the District Court denied defendant's Pro se petition for a writ of prohibition against respondent Assistant U.S. Attorney Melissa M. Marangola on the grounds that because an indictment had been returned, petitioner's remedy could only lie through judgment on the merits and direct appeal. A copy of this Order is attached hereto in the Appendix. 49 - 50

4. On May 21, 2018 the District Court denied petitioner ANDRE BARNES' petition for habeas corpus relief on the grounds that the Petitioner had not alleged his detention was in violation of the Constitution. A copy of this Order is attached hereto in the Appendix. 51 - 53

It is presumed that a defendant res is not entitled to the provisions of the 5th Amendment of the Constitution; furthermore that when a res is charged with acts of rebellion, belligerancy or war against the United States and in violation of the Law of Nations, such defendant res and any party having interest in such res shall have the right to writ of habeas corpus suspended. U.S. Const. art I, § 9(2).

It must be noted herein, that, the petitioner ANDRE BARNES, is not a maritime vessel nor any other form of property or "thing" that may be considered a res and have a Title subject to forfeiture but a Natural Person and citizen and domiciliary of the United States and the State of New York. A copy of petitioner's Certificate of Live Birth is attached hereto in the Appendix. 68 - 69.

Under the Fourteenth Amendment's equal protection clause, the phrase "no person" applies both to natural and artificial persons.

(See **Natural Person**)

5. On July 25, 2018 the District Court scheduled a Trial on the merits as to the pleadings instruments herein. A copy of the this Order is attached hereto in the Appendix. 60

6. On October 11, 2018, the District Court denied petitioners motion to dismiss alleging that the pleadings failed to state a cause of action as the face of the instruments failed to allege a basis for the federal court's jurisdiction and that there were no set of facts within the record that would bring the claim(s) within the original jurisdiction of the federal court. The district court dismissed the motion(s) without addressing the jurisdictional facts. A copy of the Order is attached hereto in the Appendix. 76 - 87

UNSUITABILITY OF ANY OTHER FORM OF RELIEF

No other form of relief will be sufficient to be free from unreasonable seizure and also not to be deprived of life, liberty and property without due process of law or preserve the ability to seek review in the lower court decision because a writ of prohibition will not issue to a district court proceeding in a case of admiralty and maritime cognizance in which it has no jurisdiction after the wrongful prosecution has reached its final conclusion.

In the case of One 1958 Plymouth Sedan v. Pennsylvania 380 U.S. 693 702, 14 L.Ed. 2d 170, 85 S.Ct 1246 (1965), this Court announced that the right to be free from unlawful seizure applies to forfeiture proceedings; In Mullane v. Central Hanover Bank & Trust Co. 399 US 306, 314, 315, 94 L.Ed 865 (1950) this Court held that no person shall be deprived life, liberty or property without due process of law.

In Steel Co. V. Citizens for a Better Environment 523 U.S. 83

140 L.Ed.2d 210 (1998), this Court required that the lower courts are required to determine the jurisdictional questions before proceeding to the merits. Rule 12(h) of the Fed.R.Civ.P requires an allegation of facts to show jurisdiction in the district court to be a prerequisite to a trial on the merits of an action.

Subjecting the petitioner to the burdens of suit on the theory that petitioner will ultimately prevail on the merits essentially nullifies the Due Process requirement recognized in Pennoyer v. Neff 95 U.S. 714, 24 L.Ed. 565 (1887). ("[T]here must be a tribunal competent by its constitution—that is by the laws of its creation—to pass upon the subject-matter of the suit").

As a result this Court has understood the phrase "court of competent jurisdiction" as a reference to a court with an existing source of subject matter jurisdiction. Ex Parte Phenix Ins. Co. 118 U.S. 610 7 S.Ct. 25, 30 L.Ed. 274 (1886), provides an example. "Where there appears on the face of the proceedings that a district court has no jurisdiction of an admiralty case, the case is one for writ of prohibition!"

LIST OF PARTIES IN COURT BELOW

1. ANDRE BARNES [Petitioner] (Defendant)
2. HON. DAVID G. LARIMER [1st Respondent] (Trial Court Judge) (W.D.N.Y.)
3. MELISSA M. MARANGOLA [2nd Respondent] (Prosecuting Attorney/AUSA)
4. CRAIG R. GESTRING [3rd Respondent] (Attorney for the Lien/Libel)
also an AUSA W.D.N.Y.

TABLE OF AUTHORITIES CITED

<u>Cases</u>	<u>Page No.</u>
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<u>Adams v. United States</u> (1976 ED NY) 433 F.Supp 578.	11
<u>Allen v. McCurry</u> 449 U.S. 90, 96 101 S.Ct. 411, 66 L.Ed. 2d 308 (1980)	16
<u>Arbaugh v. Y&H Corp.</u> 126 S.Ct. 1235, 1237 163 L.Ed 2d 1097 (2006)	31
<u>Ashe v. Swenson</u> 397 U.S. 436, 445, 90 S.Ct. 1198 25 L.Ed. 2d 469 (1970)	16
<u>Cohens v. Virginia</u> (1821) 6 Wheat 264, 5 L.Ed 257	30
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<u>Ex Parte Dorr</u> 44 U.S. 103, How 103, 11 L.Ed 514 (1844)	12
<u>Ex Parte Phenix Ins Co.</u> 118 U.S. 610 7 S.Ct. 25 30 L.Ed 274 (1886)	VI, 14
<u>Ford v. United States</u> 273 U.S. 593, 602 47, S.Ct. 531, 71 L.Ed. 793 (1929)	19
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<u>Giordenello v. United States</u> 357 U.S. 480, 78 <u>S.Ct. 1245</u> (1958)	8
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<u>Mossman v. Higginson</u> 4 Dall 12, 1 L.Ed 720 (1980)	27
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<u>The Brig Ann</u> 9 Cranch 289, 3 L.Ed. 734 (1812)	<u>14</u>
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<u>Thyssen Steel Corp. v. Federal Commerce & Navigation</u> <u>Co.</u> 274 Supp. 18 (S.D.N.Y. 1967)	<u>13</u>
<u>United States v. Cox</u> 342 F.2d 167 (1965)	<u>19</u>
<u>United States v. Furlong</u> (1820) 18 US 184, 5 <u>Wheat 184 5, L.Ed. 64</u>	<u>19</u>
<u>United States v. John Kelso Co. (D.C.)</u> 86 Fed. <u>304</u> (1898)	<u>30</u>
<u>United States v. Panza</u> 381 F.Supp 113 (1974)	<u>19</u>

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<u>United States v. Stephen Jones # 15-cr-6058-DGL</u>	
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<u>United States v. Weed, 5 Wall 62, 18 L.Ed 531 (1867)</u>	25
<u>United States v. Winchester 25 L.Ed. 479, US</u>	
<u>372 (1879)</u>	25
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JURISDICTIONAL STATEMENT

This Court has jurisdiction of to issue the requested writ under 28 U.S.C § 1651(a) and Supreme Court Rule 20.

CITATION OF LOWER COURT DECISIONS

The decision of the United States District Court for the Western District of New York are set out in the written orders attached to this petition on pages 76 -- 87 of the Appendix, as noted above.

CONTROLLING PROVISIONS, STATUTES, AND REGULATIONS

The Fourth Amendment of the United States Constitution provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrant shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Supplemental Rules for Certain Admiralty and Maritime Claims C(2) provides that In an action in rem the complaint shall be verified on Oath or solemn affirmation. It shall describe with reasonable particularity the property that is subject to the action and state that the property is within the district or will be while the action is pending.

In actions for the enforcement of forfeitures for a violation of any statute of the United States the complaint shall state the place of seizure and whether it was on land or on navigable waters, and contain such allegations as may be required by the statute pursuant to which the action is brought.

Supp.R. for Certain Admiralty and Maritime Claims C(3)(a) provides that the court must review the complaint and any supported papers. If the condicitions for an in rem action appears to exist, the court must issue an order directing the clerk to issue a warrant for the arrest of vessel or other property that is the subject of the action.

The **Fifth Amendment** of the United States Constitution provides:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of Grand Jury, nor shall be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use, without just compensation.

The Fifth Amendment protects a defendant from being tried for charges that have not been returned by the grand jury.

Rule 7(c) of the Fed.R.Crim.P requires an indictment to be subscribed to by an attorney for the government.

STATEMENT OF THE CASE AND
GOVERNING FACTS

1. That, my name is Andre Barnes; I am a Natural Person, born in the City of Rochester, County of Monroe, State of New York on March 30th, 1976 to parents Gregory Barnes and Shirley Ann Williams. A copy of my Certificate of Live Birth is attached in the Appendix 68-69
2. That, I am a citizen and domiciliary of the United States and of the State of New York; my current residence is at 4 Court Street, Geneseo New York 14454 at the Livingston County Jail where I am detained in the custody of the U.S. Attorney General by Order of a U.S. Magistrate Judge on 02/06/2018, and upon review of that Order of Detention by a United States District Judge on 07/25/208; however, I do not consent to allow the federal court to change my domiciliary for the purpose of creating federal jurisdiction that would otherwise not exist. A copy of the Orders of Detention, attached in the Appdx. 51-56
3. That, I do not consent to the Federal Courts jurisdiction over my person in relation to Complaint # 15-mj-0651 by FBI Task Force Agent Brian K. Tucker, nor in relation to the supplemental Indictment # 16-cr-6029 brought by Assistant U.S. Attorney Melissa M. Marangola; and I also do not consent to be identified as any form of personality or alter ego nor do I consent to be assumed to be a maritime vessel or any other form of property that can be considered *ens legis* to be a *res* for the purpose of creating *in rem* jurisdiction that would otherwise not exist and subject to forfeiture and condemnation proceedings.

4. That, while serving a New York State prison term in the Northern District of New York after being found guilty by trial jury in state court of assaulting a local citizen and domiciliary on lands at a local venue within the County of Monroe, State of New York; a U.S. Magistrate Judge for the Western District of New York issued a Writ of habeas corpus ad prosequendum as to me, compelling my appearance before his court; where I was served by hand, with what appears to be a libel and complaint (Qui Tam) and whereafter a warrant and in rem arrest was executed and returned against my person, in part for the same set of facts and events that I was serving a State prison term for.

5. That, the libel charged a forfeiture pursuant to Title 18 U.S.C. § 1594 and criminal complaint pursuant to 18 U.S.C. § 1591 Peonage, Slavery and Trafficking in Persons (See Chpt. 77 U.S. Code) in violation of the Law of Nations.

6. That the libel & complaint was brought by an FBI Task Force Officer Brian K. Tucker and not the United States Attorney or Asst. ~~the complaint~~

7. That, the complaint & affidavit attached was not verified by Oath or solemn affirmation of the Affiant; did not give a description of the property that was subject of the seizure & forfeiture, did not state whether the seizure occurred on land or the high seas or on navigable waters of the Western District of New York where the property was brought, did not allege a flag under which the defendant vessel sailed, nor that the property was in the district or would be while the action was pending; the complaint was not based upon the personal knowledge of the Affiant nor was supported by any other

(7. Cont.) other evidentiary proofs, and, did not give the names of the alleged victims of the alleged trafficking nor their citizenry and domiciliary. There were no sworn affidavit of any these alleged unlawfully trafficked persons to support the claim.

8. That, after appearing before the Magistrate Court, I was returned to state prison, out of the jurisdiction of the district court pending the action and was subsequently re-detained by the U.S. Marshal upon completion of my state prison term.

9. That, I do not appear in the related actions voluntarily, but by force, threat of violence and coercion of legal sanction. I appear solely in protest of my detention and prosecution on the grounds that the court is without jurisdiction over my person based upon the lack of service of process and absence of any facts or circumstance that would bring the related matters alleged within the original exclusive jurisdiction of the district court for the Western District of N.Y.

10. The Magistrate has denied me prompt post-arrest hearing as to contest my detention until I became Indicted, afterwhich he then determined I was no longer required post-arrest release of the res for which the court has apparently designated me as the res or "thing" because no property was taken from me or obtained from me that could or would be subject to in rem arrest, forfeiture and condemnation proceeding other than myself, the Natural Person of the defendant.

11. That, I do not consent to be assumed a thing or a res or any any form of property to create an in rem jurisdiction that otherwise does not exist. (even if the allegations were true)

12. That, I have been denied by the district court, both a writ of prohibition and writ of habeas corpus on the grounds that because a "thing" does not have constitutional rights, the defendant vessel did not raise a constitutional violation caused by its detention; and also because, an enemy vessel captured on U.S. navigable waters commiting Piracy is a belligerant who's right of writ of habeas corpus may be suspended.

13. I have requested that the district court take judicial notice of my status, that I am a Natural Person appearing before the court, and have requested the court to take judicial notice that I am a United States citizen, domiciled to the State of New York. I have admitted into the record my Certificate of Live Birth and other material proofs of my domiciliary, including a Finger Print Response and legal mail addressed to me at my home in Rochester, NY. A copy of these admission are attached hereto the Appendix. 69-73

14. The district has refused to take judicail notice of my status and domiciliary, claiming such information is not found in the record and in open court; the District Court Judge has stated, he does not know what it means for the defendant to be identified as a Natrual Person as opposed to an artificial person and simply agrees that the the defendant is a "Person" without further designation.

15. That I ANDRE BARNES, am not the Owner of a maritime vessel, the Master of any maritime vessel nor a Seaman employed for service aboard any maritime vessel and; I ANDRE BARNES am not a maritime vessel. The matters alleged herein do not occured upon any navigable waters but wholly upon land.

16. That, I ANDRE BARNES was captured on land within the State of New York in relation to matters that bare no maritime nexus nor any relation to any form of maritime activity.

17. That, I do not derive any revenue from an interstate or international source, I am not in commercial contract with the complainant Brian K. Tucker nor the United States in its Coporate form. I have not violated any Municipal Laws of the United States, and, I have not committed any act in violation of the Law of Nations such as those charged in the pleadings herein.

18. That, the district court has refused to take judicial notice of the statutory and constitutional basis for which the court excercises jurisdiction over the subject matter herein.

19. That, the libel and complaint alleges a civil forfeiture and Piracy which are unquestionably Admiralty & Maritime causes of action that need no designation as pursuant to Rule 9(h) Fed.R.Civ.P.

20. That, a writ of prohibition issued by this court is the only remedy for relief for petitioner from the district court exercising a admiralty and prize jurisdiction over the petitioner that it does not have.

The District Court refuses to grant special appearance and dragoons general appearance forcing petitioner to answer to impossible allegations of Piracy, belligerancy, and slavery without the fact of a maritime vessel, maritime contract nor fact of maritime capture.

ARGUMENTS

I. No Probale Cause

The defendant property must be released pending any futher forfeiture action.

A. The Fourth Amendment protects from unreasonable seizue in forfeiture proceedings Boyd v. United States 116 US 616 [29 L.Ed 746, 6 S.Ct 524].

All seizure by the government must comport with U.S. Const. Amend. IV which require no Warrant shall issue but upon probable cause.

Subject to a few well defined exceptions (not applicable herein), searches and seizures conducted wthout prior judicial determination of probable cause is per se unreasonable.

Supp. R. for Certain Admiralty and Maritime Claims C(3)(a) provides that the court must review the complaint and any supported papers. If the conditions for an in rem arrest appear to exist, the court must issue an order directing the clerk to issue a warrant for the arrest of vessel or othe property that is subject to the action.

The civil forfeiture statute, 18 U.S.C.S. § 981(a)(1)(C), provides for forfeiture of property actually traceable to the specific crime alleged. Such property may become part of a criminal sentence puruant to 28 U.S.C.S. § 2461(c).

A civil forfeiture action is an in rem action brought directly against property that is alleged to be forfeited.

Brian K. Tucker FBI Task Force Agent who is [not] a U.S. Attorney for the Government has Brought an in rem against ANDRE BARNES, who is not a property subject to be forfeit but a Natural Person.

Because the defendant is not a property, neither real nor tangible or intangible, the conditions for an *in rem* arrest did not exist at the time the court issued order directing the clerk to issue a warrant for the arrest of the defendant and such conditions still do not exist.

When the Government seizes property under the civil statute 18 U.S.C.S. § 981, but then chooses to proceed criminally, it must meet two statutory requirements within 90 days of a claim being filed to avoid having to return the property: (i) obtain a criminal indictment containing an allegation that the property is subject to forfeiture; and (ii) take the necessary steps to preserve its right to maintain custody of the ^A as provided in the applicable criminal forfeiture statute 18 USCS § 983(a).

A criminal forfeiture proceeding is an *in personam* action, meaning that it is brought against a criminal defendant personally, and is limited to his property interest. Fed. R. Crim. P. 32.2(c). It is to be distinguished from a civil forfeiture proceeding, which is again, an *in rem* action brought directly against a property alleged to be forfeitable.

In a criminal forfeiture action, the [Government] claims to have superior title in the specific property subject to forfeiture. Such claim is consistent with the long-recognized common law "taint theory" under which title to property involved in a violation giving rise to forfeiture is said to vest immediately in the Government upon the commission of the illegal act.

Again, because the defendant ANDRE BARNES is not himself a property, there is no Title for which he can forfeit to the government.

A review of the Government's indictment returned against the defendant on March 31, 2016, clearly reveals that the Goverment does not allege any criminal forfeiture against the defendant. See Appendix 31-34

A review of the libel and complaint affidavit will show the complaint to be insufficient to demonstrate probale cause pursuant to Supp. R. for Cer. Adm & Mar Cl. C(3) as is does not allege any property to have been used in the violation of the Laws of the United States, and is not verified under Oath or solemn affirmation and thus confers no jurisdiction upon the magistrate to issue an order and fails to satisfy the Fourth Amendment. See U.S. v. \$84,740. U.S Currency 900 F.2d 1402.

The district court has denied the defendant release on the grounds that an indictment has been returned against the defendant property however, the district court errs in that decision; See United States v. Kaley 579 F.3d 1246 (2009) ("The district court erred in concluding that once probable cause was determined by the fact that an indictment was returned, defendant had to show the assets were not forfeitable by establishing the crime had not occurred. But the purpose of the hearing would not be to determine guilt of innocence but to determine the propriety of the seizure. The district court's rulings were reversed for a post-indictment evidentiary hearing.)

This is consistant with the common law ruling this Court gave in Giordenello v United States 357 U.S. 480, 78 S.Ct. 1245 (1958) and to Rules 3 & 4 of F.R.Crim. P. governing criminal complaints as they are to be read in compliance with the 4th amend. & withstand indictments.

Thus because the defendant has been seized pursuant to an unlawful and unauthorized rem arrest, the defendant must be released and the forfeiture action must be dismissed.

The government's failure to verify the complaint in an in rem action deprives the district court of jurisdiction over the property.

If a court does not have jurisdiction over the res from the beginning of a lawsuit, a claimant should not be required to file a claim and answer. If a claimant does not have a legal duty to appear and defend a lawsuit, it follows, therefore, that the claimant cannot be detained and forced to waive legal rights by be compelled to answer.

* Because a forfeiture under the the general provisions of 18 U.S.C.S. § 1594 is undoubtably related to an alleged maritime vessel, it is thus unquestionably within the admiralty and maritime jurisdiction cognizance (see Court Docket Pending Counts & Complaints); and as such, where there has been no seizure, capture nor arrest of a vessel, the court proceedings thereto are without jurisdiction and is a matter properly before this court for relief by writ of prohibition and or mandamus to be issued upon the lower court, enjoining and arresting the proceeding.

Such other and further relief this Court deem necessary and appropriate.

II. Unauthorized Service of Process

A defendant will be immune from arrest & civil forfeiture who has been compelled into a district court by an unauthorized process.

Lamb v. Schmitt 1932, 52 S.Ct. 317, 285 U.S. 222, 76 L.Ed. 720.

B. In American jurisprudence, the arrest of the res is a jurisdictional prerequisite and not simply a procedural device for obtaining jurisdiction. In absence of an arrest of the res, a decree in rem cannot be rendered against the res. Admiralty proceedings contemplate the arrest of the res. Fed.R.Civ. Supp. C(3), C(2).

Again, although the petitioner ANDRE BARNES is not a maritime vessel nor any other form of property and cannot be subject to an in rem arrest or attachment and forfeiture & condemnation proceeding; the petitioner addresses the matters herein as they have been charged.

The petitioner ANDRE BARNES, at the time the complaint related arose (9/22/2015) was not within the Western District of New York where this action was brought but in the Northern District of N.Y serving a State prison term at the Ogdensburg Correctional Facility based on the same set of events complained of, and was compelled to appear before the magistrate judge in the District Court for the Western District of New York by an extra-territorial writ of habeas corpus ad prosequendum, to be served not with a criminal indictment brought by the Federal Goverment (Rule 7(c) F.R.Crim.P.) but a libel and complaint by FBI Task Force Agent Brian K. Tucker qui tam.

The defendant's appearance before the district court in the instance was unauthorized as a matter of law and thus service of process of the action is invalid.

A federal court cannot initiate an in rem or quasi in rem action when the property is already in the custody of a state court with competent jurisdiction. Princess Lida of Thurn & Taxis v. Thompson 305 U.S. 456, 466, 59 S.Ct. 275, 83 L.Ed. 285 (1983).

See

Courts, §§ 662, 672 - exclusive or concurrent jurisdiction - suits in rem or quasi in rem - control over res

Under the doctrine of prior exclusive jurisdiction, a federal court does not assume in rem or quasi in rem jurisdiction if a state court has previously assumed jurisdiction over the same res.

This principle likewise applies to the common law writ; See Pursuant to 28 U.S.C.A. § 2241 Power to Grant Writ under section 2241(c)(5). The writ of habeas corpus shall not extend to a prisoner unless it is necessary to bring him into court to testify or for trial.

In re Thaw 172 f. 288 (1908)

This provision has been found to contemplate that writs of habeas corpus "ad testificandum" may be issued upon a State prisoner for the purpose of securing the presence of the state prisoner to testify before a grand jury or at trial in contrast to writs of habeas corpus ad prosequendum which proposes a pending criminal charge in which if the prisoner be a ward of the state may not issue. See Adams v, United States 423 F.Suup. 578.

See also Ex parte Dorr 44 U.S. 103, 3 How 103, 11 L.Ed. 514 (1844) "Neither the Supreme Court (no disrespect), nor any other court of the United States, or judge thereof, can issue a habeas corpus to bring up a prisoner, who is in custody under a state sentence or execution of a state court, for any purpose other than to be used as a witness."

The proper method would be for the federal court to lodge a detainer against the defendant at his state correctional facility, then to proceed by the Interstate Agreement on Detainers; the defendant would then have the option of appearing voluntarily, Art. III (a) or to be compelled by the Prosecutor pursuant to Art. IV(c) who would then have 120 days to complete trial against the defendant.

Because the defendant did not appear before the District Court to be arraigned on a prosecutor indictment, in rem jurisdiction will not attach and the defendant will be immune to civil arrest & forfeiture magistrate's writ was unauthorized. Lamb v. Schmitt 285 U.S. 222, L.Ed. 720, 52 S.Ct. 317.

The civil forfeiture statute 18 U.S.C.S. § 981(h) does not authorize extra-territorial service of process.

Nor does the common law writ of habeas corpus 28 U.S.C.S. § 2241(c) authorize extra-territorial grant but only to the court's "respective jurisdictions."

(see appdx. 74-75 for writ ad testificandum expl.)

Supp. Rule C(2) requires that the plaintiff allege in its complaint that the vessel involved is within the jurisdiction of the court or will be during pendency of the suit, and does not contemplate vessel's being brought within jurisdiction by process of court issuing to owners who are not subject to court's jurisdiction. See

Thyssen Steel Corp. v. Federal Commerce & Navigation Co. 274 Supp. 18

"To suggest that a defendant may be compelled to bring property into a jurisdiction as a means of preserving it as security to satisfy a plaintiff's claim is to put the cart before the horse or to put the barge before the tug. The plaintiff must 1st establish his claim before seeking such extraordinary relief."

Supp.R. E(3)(a) provides: Process's in rem & of maritime attachment shall be served only within the district.

Again, defendant reiterates that the petitioner ANDRE BARNES is not a maritime vessel nor owner of any like vessel and no property has been taken from him or seize in connection to allegations of a violation of the laws of the United States nor breach maritime contract. The petitioner only addresses these matters as they have been charged and proceeded. The District Court has initiated and maintains a civil in rem action against the petitioner who is a living and breathing soul (person) and the court has not given notice to the petitioner of any forfeiture attachment and condemnation proceeding as required by the Due Process Clause.

An in rem action against a vessel is distinctly an admiralty proceeding within the exclusive jurisdiction of the federal courts. In order to invoke Supp.R.Certain Adm. & Mar. Cl. C to arrest a vessel a plaintiff must have a valid maritime claim against the defendant's vessel.

Since Pennoyer v. Neff 95 U.S. 714, 732-33 24 L.Ed. 565 (1877) it is held, the notice requirement of the Due Process Clause does not vary depending on whether the proceeding is in rem or in personam. If the proceeding requires the court to issue a determination adjudicating personal rights, the court must establish jurisdiction over the parties.

The matters herein involve no vessel, no cargo, no contract, no tort, no owner, claimant, master or seaman, and calls for no declaration of the law of the sea and thus cannot be maintained in rem.

In the Case of The Brig Ann 9 Cranch 289, 3 L.Ed. 734

Chief Justice Marshall stated: "In order to constitute and perfect a proceeding in rem it is necessary that the "thing" should actually or constructively be within the reach of the court."

Notwithstanding the fact again, that the petitioner ANDRE BARNES is not a maritime vessel; because the defendant was haled into the district court by an unauthorized extra-territorial service of process, the defendant is immune to such service and the court lack in rem jurisdiction.

A court proceeding in admiralty without jurisdiction is a case for writ of prohibition. Ex Parte Phenix 7 S.Ct. 25, 30 L.Ed. 274 supra.

III. Lack of In Personam Jurisdiction

The District Court has never obtained jurisdiction over petitioner's person by way of valid indictment.

C. Under the Fifth Amendment a defendant cannot be prosecuted for crimes based on evidence that was not put before the grand jury.

Ex Parte Bain, 121 US 1, 30 L.Ed. 849, 7 S.Ct.781 (1887).

The district court rulings to maintain these proceedings against the petitioner have put great emphasis on the Superseding Indictment returned against the defendant on March 1, 2018 (attached).

The defendant asserts that the superseding instrument is insufficient to confer jurisdiction over his person, not only on its face but is also a fraud on the court by fact.

The petitioner was originally indicted by the district court grand jury on March 31, 2016 to a 4 COUNT Indictment. This grand jury was impaneled 11/16/2015. (attached in appendix).

Petitioner demonstrated to the court by admission of a Monroe County Jail Census and his criminal history NY DCJS that petitioner was unquestionably incarcerated during the dates alleged in COUNTS 1-3 of the original indictment and thus it was factually impossible for him to have committed the acts alleged in those COUNTS.

Petitioner was charged alone in COUNT 4 with committing Sex Trafficking in the Western District of New York of an "Adult Victim 1" occurring in or about May 2013.

Because the petitioner was at the time of arraignment, serving a State prison term for assault against an adult woman at local motel occurring in May 2013, and because those circumstances alluded to allegation of common law pandering and public prostitution; petitioner pleaded Double Jeopardy as to Count 4 of the indictment under Ashe v. Swenson 397 U.S. 436, 445, 90 S.Ct. 1189 25 L.Ed. 2d 469 (1970); by way of Res Judicata/non-party Claim Preclusion See Taylor v. Sturgell 553 U.S. 880 892 128 S.Ct. 2161, 171 L.Ed. 2d 155 (2008); and to the Full Faith & Credit Clause 28 U.S.C.S. § 1738. See Allen v. McCurry 449 U.S. 90, 96 101 S.Ct. 411, 66 L.Ed. 2d 308 (1980).

The district court has refused to address petitioners claim of double jeopardy, hindering interlocutory appeal, as to do such would be to acknowledge an action in personam, where the Government's indictment alleges human trafficking which unquestionably brought in rem under the cognizance of prize jurisdiction. (Petitioner is not a vessel nor owner or master of nor seaman)

Before addressing petitioner's motion(s) to dismiss the original indictment, the Goverment filed a 7 COUNT Superseding Indictment on March 1, 2018, totally reconstructing the oringinal indictment.

* This Grand Jry was impaneled 10/31/2017.

Petitioner asserts that this superseding instrument is insfficient to confer in personam jurisdiction as a matter of law (Rule 7(c)) but furthermore is also a fraud on the court.

Notwithstanding the fact that the indictment charges Piracy and fails to allege that the events occurred while aboard a maritime vessel See United States v. Furlong (1820) 18 US 184, 5 Wheat 184 5 L.Ed. 64, nor the fact that it fails to give the names of the alleged victims See United States v. Tomasetta, 429 F.2d 978, 980-81 (1970)(finding indictment insufficient for failing to name the victim of an extortion count, the location of the alleged threat, and the means by which the treat was made).

But, what must be noted is that, in contrast to the Original Indictment the superseder is not signed by the attorney for the government, nor co-signed and attested by the grand jury foreperson, and is further not attested to by file-stamp by the Clerk of court as required by Rule 7(c) of the Fed.R.Crim.P.

There is no authority that says that absence of the signature of the attorney for the government is not fatal. See United States v. Cox 342 F.2d 167 (1965); United States v. Panza 381 F.Supp. 113. (1974)

** However, the failure to sign in this case is miniscule to the following fact; NONE of the alleged victims ever appeared and gave testimony before the October 2017 (impaneled) that returned the superseding indictment. Only FBI TFO Agent ^A appeared and testified before this this grand jury as to his unsworn libel and complaint- (Brian Tucker) . It is not possible for this Grand Jury to have returned an indictment as to Six individual victims who's testimony they did not hear, which of course is why it is not signed by the AUSA, Grand Jury Person on Clerk of the Court. At least 3 of the alleged victims gave testimony before a Grand Jury impaneled November 2014 investigating an entirely different matter altogether. See United States v. Stephen Jones # 15-CR-6058-DGL; Grand Jury File No. 2014 R 00267.

The petitioner cannot be tried on the Superseding Indictment herein, where none of the alleged victim's testimony was heard by such jury and the COUNTS therein related as to those victims are not COUNTS that have been carried over from the original indictment. Constructive amendments to an indictment without returning before a Grand Jury is per se violation of the Grand Jury Clause of the Fifth Amendment. See Ex Parte Bain, 121 US 1 30 L.Ed. 849 7 S.Ct. 781

Habeas corpus - Fifth Amendment, jurisdictional - indictment cannot be changed without resubmission to grand jury - trial on changed indictment, void.

- * The declaration of article V of the Amendments to the Constitution, that "No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury," is jurisdictional; and no court of the United States has authority to try a prisoner without indictment or presentment in such cases.
- : The indictment here referred to is the presentation to a proper court, under oath, by a grand jury, duly impaneled, of a charge describing an offense against the law for which the party charged may be punished.
- : When this indictment is filed with the court no change can be made in the body of the instrument by order of the court, or by the prosecuting attorney, without resubmission of the case to the grand jury. And the fact that the court may deem the change immaterial, as striking out or surplus words, makes no difference, The instrument as thus changed, is no longer the indictment of the grand jury which presented it.

- Upon an indictment so changed the court can proceed no farther. There is nothing (in the language of the Constitution) which the prisoner can "be held to answer" A trial on such an indictment is void. There is nothing to try.
- According to principles long settled in this court the prisoner, who stands sentenced to the penitentiary on such trial, is entitled to his discharge by writ of habeas corpus.

Because of the nature of the offense charged; Peonage, Slavery, and Trafficking in Persons is an offence against the Law of Nations the district court has suspended my right to writ of habeas corpus under the pretense that petitioner is a threat to U.S. Commerce. There is no cause for petitioner's detention & prosecution because notwithstanding the fact that is legally & factually impossible for the petitioner to have committed the offenses charged (no vessel) but both the libel and complaint and the subsequenting indictment thereto are void instruments and thier claims are a nullity.

Petitioner refused to enter a plea against the indictment on the grounds that the complaint was insufficient to confer jurisdiction upon the magistrate court to bind petitioner over to the trial court thus, his consent to in personam jurisdiction to the trial court could not be be dragooned by forcing him to plead. I.e Ford v. United States 273 U.S. 593, 602, 47 S.Ct. 531, 71 L.Ed. 793 (1927); in this case a plea whther forced or volunteered is to no avail as to conferring jurisdiction because the indictment is a void instrument in itself.

"If it lies within the province of a court to change the charging part of an indictment to suit its own notions of what it ought to have been, or what the grand jury would have probably made it if their attention would have been called to suggested changes, the great importance which the common law attaches to an indictment by a grand jury, as a prerequisite to a prisoner's trial for a crime, and without which the Constitution says 'no person shall be held to answer,' may be frittered away until its value is almost destroyed. ... Any other doctrine would place the rights of the citizen, which were intended to be protected by the constitutional provision, at the mercy or control of the court or prosecuting attorney; for, if it be once held that changes can be made by the consent or order of the court in the body of the indictment as presented by the grand jury, and the prisoner can be called upon to answer to the indictment as thus charged, the restriction which the Constitution places upon the power of the Court, in regard to the prerequisite of an indictment, in reality no longer exist." *Ex parte Bain* supra. (121 US at 10, 13). Quoted in Russell v. United States 369, U.S. 749, 765, 82 S.Ct. 1038, 8 L.Ed. 2d 240 (1962)

* After appearing before the Trial Court Judge, and pointing out to the court that COUNT 3 appeared defective and that COUNT 7 was beyond the statute of limitations; The prosecutor produced a 9th COUNT ~~1st and 2nd~~ Superseding Indictment again materially altering the charges without returning before the grand jury. (See Appdx. 31-48)

The allegations herein are that of an offense against the Law of Nations and the Municipal Laws of the United States and therefore within the cognizance of admiralty and maritime; wherefore petitioner prays to this Honorable Court for a writ of prohibition.

IV. Lack of Prize Jurisdiction

When a seizure occurs on land it is a civil action, not a criminal proceeding. A seizure on land does not apply to admiralty.

There is no common law Piracy; a seizure by attachment of a neutral vessel in local waters is not within the cognizance of prize court.

D. Any person may, at his peril, seize for a forfeiture to the government, and if the government adopt his seizure, and the property is condemned, he is justified. The seizure herein has not been adopted by the government pursuant to an indictment alleging forfeiture.

Again, the petitioner ANDRE BARNES is not a vessel subject to an in rem action and no property had been seized belonging to petitioner alleged to be used in a crime against the Laws of the United States; petitioner only addresses these matters as they have been charged and by the mode of proceeding in which they are being adjudicated.

In 443 Cans of Frozen Egg Product v. United States 226 U.S. 172, 180-183, 33 S.Ct. 50 (1912), this Court held "A seizure on land does not apply to admiralty."

In Manro v. Almeida (1825) 23 US 473, 10 Wheat 473, 6 L.Ed. 369 it was held that a lien attachment resulting in capture of a neutral vessel in local waters was a civil remedy which could not be merged with a criminal prosecution for Piracy.

FBI Task Force Agent Brian Tucker's libel and complaint alleges statutory rape, assault and trafficking in persons in the Western District of New York, however, Tucker does not allege whether these events occur on lands or navigable waters of the State of New York.

"The complaint alleges a capture within the territorial jurisdiction of this country, and, therefore a violation of its neutrality. It is not then a case of ordinary belligerant capture, involving the rights of war, and requiring the cognizance of prize court."

Prize jurisdiction is confined to captures *jure belli*. Piracy is not a felony at common law. Manro v. Almeida 23 US 473, 10 Wheat supra.

The Felonies Clause is textually limited to conduct on the High Seas. U.S. Const. Art. I § 8 cl. 18.

The petitioner has not been captured on the high seas committing acts of Piracy and Peonage, nor war or belligerancy against the United States or Law of Nations.

Thus, Tucker's libel and seizure fall within the civil side of the common~~s~~ court and not that of prize jurisdiction and cannot be merged to an criminal proceeding alleging Piracy, Peonage and Belligerency which must occur upon the high seas.

"A plea alleging a seizure for a forfeiture as a justification should not only state the facts relied on to establish the forfeiture but aver that thereby the property became, was actually forfeited, and was seized as forfeited." Gelston et al. v Hoyt 3 Wheat 246, 4 L.Ed 381.

In the Case of The Sarah, 8 Wheat (US) 391, 396, 5 L.ed 644,645

This Court determined that by the act constituting the judicial system of the United States, the district courts are courts both of common law and admiralty jurisdiction. In the trial of all cases of seizure on land, the court sits as a court of common law. In cases of seizure made on waters navigable by vessels of ten tons burthen and upwards, the court sits as a court of admiralty and that these two tribunals are as disisntinct from the other as if they were vested in different tribunals.

Where the court in this case was sitting as a court of admiralty under the pretense that the libel charging the seizure to have been made on water; and when it was shown that the seizure was in fact made on land, its jurisdiction ceased.

The direction of a jury, in a case where the libel charged a seizure on water, was irregular, and any proceeding of the court, as a court of admiralty, after the fact that the seizure was made on land appeared, would have have been a proceeding without jurisdiction.

Thus because Tucker's libel and complaint alleges seizure to occur simply in the "Western District of New York" without alleging whether it be on land or navigable water it is facially insufficient, it cannot be determined whether the claim is properly before the admiralty court or must be proceeded only under the common law jurisdiction of the court and as we just have learned; these two tribunals are seperate and cannot be joined in one action.

Petitioner had requested a more definit statement of the complaint on the ground of this ambiguity Rule 12(e) F.R.Civ.P. Dist. Ct. denied.

The facts of the matter are, that Brian Tucker's seizure did occur on land, ^{but} _{at} the Courthouse for the United States District Court where the petitioner was handed the libel & complaint, and, then was seized and arrested by the Marshals to be later returned to State custody.

Tucker's libel and complaint for forfeiture against the petitioner was based upon allegation of piratical aggression and injury against citizens from the Western District of New York, none of who themselves have initiated complaint.

Because the alleged victim's injuries occur upon lands in the general territory of the state, Brian Tucker is beyond the statutory scope of his FBI Police duties in initiating this action; if TFO Tucker want to bring 3rd party complaint pursuant to Rule 14(c) F.R.Civ.P. he must allege and produce a maritime contract and allege petitioner's conduct have a nexus to such contract otherwise Tucker's seizure and forfeiture allegation are not cognizable in either admiralty nor in prize court.

However, what is most certain is that, whether Tucker's seizure and forfeiture allegation occur on land or navigable waters of the Western District of New York; Brian Tucker's libel and complaint cannot under either circumstance be merged with the criminal proceeding as to the trial for the criminal indictment herein alleging violation of Chapter 77 of the United States Code - Peonage, Slavery and Trafficking in Persons where that indictment does not allege a criminal forfeiture of any maritime vessel which must occur on the High Seas in the exclusive jurisdiction of the admiralty court.

I.E. see The City of Mexico 28 Fed. Rep. 148 (1886)

"If any proceeding (say in prize) were now pending, and it should appear that it was not a case of prize, but one of violation of any of the United States involving fine or forfeiture, it would be the duty of this court to dismiss the libel for prize; but also to permit a new libel for forfeiture or fine (as the case may be) and vice versa."

U.S. v. Weed, 5 Wall 62; The Watchful. 6 Wall 91.

"But these libels, although against the same vessel, found under peculiar circumstances, are in no way based upon the same cause of action. The libel for prize (18 § U.S.C.S. 1591) is founded upon the law of nations, and depends for proof upon the facts of her acts upon the high seas; the libel for forfeiture (§ 1594) is for the violation of a municipal ^A and depends on a set of facts and circumstances entirely different from that of piratical aggression. The offenses charged are separate and distinct, and the cause of action is in nowise the same." The City of Mexico supra.

Thus because Brian Tucker's libel alleges forfeiture as to events occurring on land i.e the Gates Motel; it cannot then be merged with the trial of the criminal prosecution of indictment alleging Peonage, Slavery and Human Trafficking. See United States v. Winchester 25 Led. 479, 99 US 372 (1879), "The admiralty jurisdiction of the District Court extends to seizures on navigable waters, not to seizure on land."

Wherefore, the action(s) herein are not that of a case such as The Sally (1805) 2 Cranch US 405, 2 Le.d 320, where the seizure and forfeiture has been made against the Slave Trade; it is also not an Executive seizure and Tucker's forfeiture claim has not been adopted by the government by allegation of criminal forfeiture in an indictment. Thus Tucker's seizure and forfeiture claim is not properly before the district court sitting in admiralty in this case and must therefore be dismissed or remanded bck to the magistrate's court. HOWEVER; it is also because that the criminal indictment herein is a supplemental action, subsequenting from the same set of facts as Tucker's libel & complaint relating to a seizure on land; and where TFO Agent Brian Tucker's testimony as to his libel and complaint before the Grand Jury forms the basis of several COUNTS of the pendant criminal indictment; the criminal indictment is likewise not properly before court sitting in admiralty, where there is no allegation in the indictment of a criminal seizure and forfeiture of a res occurring on the high seas.

Without the arrest of a vessel, there can be no prosecution for Peonage, Slavery and Human Trafficking in violation of the Law of Nations which can only arise on the high seas. There has been no service of process and a trial on the indictment would be without jurisdiction. Confiscation Cases (United States v. Clarke) (US) 20 Wall 92, 112, 22 L.Ed. 320 324.

Wherefore petitioner ANDRE BARNES (who is not a vessel) prays to this court to issue a writ of prohibition as to this complaint concerning an on land siezure and to the district court as to the indictment subsequenting from those same set of facts.

V. Lack of Subject Matter Jurisdiction

Federal Courts created by statute have no jurisdiction but as such as the statute confers.

28 U.S.C. § 1333 Admiralty jurisdiction includes only maritime matters or subjects and may not be extended to non-maritime matters on the ground of convenience or because a particular case involves both maritime and non-maritime matters.

E. With the exception of the Supreme Court, federal courts have no jurisdiction except as conferred by statute. Therefore, any person asserting a claim in federal court must demonstrate a statutory basis invoking the courts jurisdiction.

The Supreme Court has required that the lower courts are to establish the facts that create federal jurisdiction before proceeding to the merits of a case and may not proceed under an assumed or hypothetical jurisdiction.

Assuming the petitioner ANDRE BARNES to be a maritime vessel, and to proceed against the defendant in an action in rem is as hypothetical as it gets...

The petitioner has submitted his Birth Certificate to be admitted into evidence, and has requested that the court take judicial notice that he is a Living and Breathing Person (Natural Person), appearing in propria persona (in one's own self), and, has requested that the court take judicial notice of his citizenry & domiciliary pursuant to Hodgson v. Bowerbank 5 Cranch 303, 3 L.Ed. 108; see also Mossman v. Higginson 4 Dall 12, 1 L.Ed. 720 (1800) (the citizenship

of the defendants could only be judicially known by the admission of the parties.) The petitioner has also requested that the court take judicial notice of the citizenship and domiciliary of the alleged victims and to take notice of the location where thier injuries are said to have occured.

The district court has refused to take judicial notice of these very relevant and material facts as to the question of jurisdiction in this case and is instead proceeding to the merits when the Supreme Court has particularly instructed it against doing just this.

The United States as a party comes into court on the same level as any other citizen and can no more maitain an action than that could a private citizen. Jurisdiction in the federal court is dependant upon the subject matter of the case action or status of the parties to it, not the merits of the case.

The subject matter herein is common law pandering & public prostituition the parties to the dispute are citizens of the same state; if the government wants to claim a 3rd party interest in the matter, it must demonstrate that the matters occured upon navigable water and is no way related to matters between the parties occurring on land.

The court herein is sitting as a court of admiralty pursuant to 28 U.S.C. § 1333, the court has refused to take judicial notice of that fact to. Notwithstanding the fact the crime alleged is that of an offence against the Law of Nations which must occur on the high seas but under the statute, navigablity is a question of fact that must exist to proceed to a trial on the merits in such a court.

See

Admiralty, § 72- jurisdiction - personal injuries.

Injuries not occurring upon the the navigable waters of the United States are outside the maritime and admiralty jurisdiction of the Federal courts.

Trial, § 144-- questions of fact - navigability.

Navigability is a question of fact.

"Now, the judicial power in case of admiralty and maritime jurisdiction, has never been supposed to extend to contracts made on land and to be executed on land. But if the power of regulating commerce can be made the foundation of jurisdiction in its courts, and a new and extended admiralty jurisdiction beyond its heretofore known and admitted limits, may be created on water under that authority, the same reason would justify the same exercise of power on land.

Besides, the jurisdiction of this Act of Congress does not depend on the residence of the parties. And under admiralty powers conferred on the District Court, they are authorized to proceed in rem or in personam in the cases mentioned in the law although the parties concerned are citizens of the same state. If the lakes and waters concerning them are within the admiralty and maritime jurisdiction, as conferred by the Constitution, then undoubtedly this authority may be lawfully exercised, because this jurisdiction depends on place and not upon the residence of the parties.

But if the admiralty jurisdiction is confined to tide water, the courts of the United States can exercise over the waters in question nothing more than ordinary jurisdiction in cases of common law and equity. And in cases of this description they have no jurisdiction, if the parties are citizens of the same state. This being an express limitation in the grant of judicial power, no Act of Congress can enlarge it, And if the validity of the Act of 1845 depended upon the power to regulate commerce it would be unconstitutional, and could confer no authority on the District Court". The Propeller Genesee Chief et al

v. Fitzugh et al. 12 HOWARD 443 13 L.Ed. 1068.

The contract in question in this instance would be that of a contract of a local panderer and public prostitute, made on land and to be executed on land; if the federal government wants to bring claim for breach of this contract, it ^A demonstrate 3rd party standing pursuant to Rule 14(c) F.R.Civ.P bearing a maritime nexus like any other party invoking the jurisdiction of the federal court. Otherwise the court cannot proceed to prosecute the petitioner in admiralty for a crime against the law of nations and the 13th amendment for actions occurring wholly on land, and against cocitizens of his home state under 28 U.S.C. § 1333.

"The corporation (municipal) shall have full power and authority to erect houses of correction, penitentiary and to punish all public prostitutes, and such as lead a notoriously lewd or lascivious course of life."

Cohens v. Virginia (1821) 6 wheat. 264, 5 L.Ed. 257.

In United States v. John Kelso Co. (D.C.) 86 Fed. 304 (1898), the distirct court held that a corporation is incapable of entertaining a criminal intention; that being an artificial creation, without animate body or mind, and thefefore from its very nature, could never be guilty of certain crimes such as bigamy, perjury, rape, murder, and other offense which readily suggest themeselves to the mind and crimies such as these could only be committed by natrual persons and not corporations.

Likewise in the case herein; human trafficking under the Felonies Clause could only be committed by or through use of a maritime vessel and require capture of such vessel on the high seas.

** The Government's Original Indictment charged 4 COUNT of Sex-Trafficking in the Western District of New York under prize jurisdiction pursuant to the Confiscation Act.

The Superseding Indictment expanded the prosecution to include a COUNT of Transporting by Automobile to the State of New Jersey for Purposes of Prostitution, which is an act under the common law. The A cannot have it both ways, the jurisdictions cannot be joined in the same action. The court has refused to take judicial notice of the jurisdictional statute for which forms the basis of the case Arbaugh v. Y&H Corp.

126 S.Ct. 1235, 1237, 163 L.Ed 2d 1097.

The facts of the matter is that the district lacks jurisdiction both under the common law (18 U.S.C. § 3231) & in admiralty (28 U.S.C § 1333) the jurisdiction & venue for the Transporting Count would be somewhere in the general territory of New Jersey; and Trafficking in the navigable waters of the W.D.N.Y not beyond the high water mark arises under the common law involving citizen of the same state.

Court's created by statute have no jurisdiction but such as is conferred by the Act of its creation. As far as the confiscation Act's conferring ability to seize enemy property on land; A ridiculous address to the matters herein; the defendant is not enemy property; prosecution for forfeiture & condemnation for Peonage, Slavery and Trafficking in Persons require a fact of piratical capture on high sea and arrest of a vessel for forfeiting.

A trial in prize court in admiralty in this matter is indeed one under an assumed and hypothetical jurisdiction which is proceeded ultra vires. Petitioners prays for prohibition on the court from proceeding in this action in rem against his person as a prize capture.

CONCLUSION

Petitioner has been seized pursuant to the Special Provisions of the Supplemental Rules for Admiralty or Maritime & Asset Forfeiture Rule C; and is being detained pending forfeiture and condemnation prosecution.

Petitioner is a Natrual Person who has been substituted for an admiralty fiction and is awaiting trial in a criminal prosecution in rem, for an Offense against the Law of Nations occuring on public land pursuant to a void indictment(s).

It has been the jurisprudence of the Supreme Court to issue the writ of prohibition to the district court to restrain the admiralty from taking jurisdiction over things occuring on land; WHEREFORE, petitioner prays to this Highest Court of the Land and Sea, for the relief requested of writ of prohibition or mandamus and direct the district court of the United States for the Western District of New York to dismiss the action(s) filed in that court against petitioner with prejudice, immediately and without condition.

Dated: October 26th, 2018

Respectfully submitted,



Andre Barnes
Livingston County Jail
4 Court Street
Geneseo, NY 1445
Defendant Pro se

Declaration Under Penalty of Perjury

I declare under the penalty of perjury that I am the Petitioner, I have read this Petition for a Writ of Prohibition and/or Writ of Mandamus, and the information in this petition is true and correct. I understand that a false statement of material fact may serve as the basis for the prosecution of perjury.

Executed at Geneseo, New York on the 26th day of October 2018

Andre Barnes

Andre Barnes

CERTIFICATE OF SERVICE

I Andre Barnes certifies that 10 copies of the foregoing Petition for Writ of Prohibition and/or Writ of Mandamus has been serviced by mail to the Clerk of the Supreme Court of the United States, located at: 1 First Street NE, Washington DC, 20543.

Dated: October 26th, 2018

Andre Barnes

Andre Barnes
4 court street
Geneseo, New York 14454

Sworn to before me

this 26th day of October 2018

Peter N. Pagano JR.

Notary Public

PETER N. PAGANO
No. 01PA094175
Notary Public, State of New York
Qualified in Livingston County
My Commission Expires July 16, 2018
PETER N. PAGANO JR.
10-26-18