

18-7380

No.

IN THE

Supreme Court of the United States

RICARDO GLOVER,

Petitioner,

v.

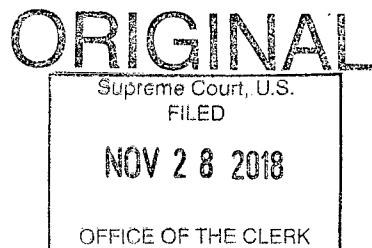
STATE OF WISCONSIN,

Respondent.

**On Petition For Writ Of Certiorari
To The Wisconsin Court of Appeals, District II**

PETITION FOR WRIT OF CERTIORARI

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QUESTION(S) PRESENTED

In 1879, the Honorable Justice Strong speaking for this Court in *Ex parte Commonwealth of Virginia*, 100 U.S. 339 (1879), stated that “when a prisoner is held without any lawful authority, and by an order beyond the jurisdiction of an inferior ... court to make, this court will, in favor of liberty, grant the writ, not to review the whole case, but to examine the authority of the court below to act at all.” *Id.* at 343. Today, nearly 150 years after *Virginia* was decided by this Court, again a question of jurisdiction and deprivation of liberty is before it.

The jurisdictional and constitutional questions presented are:

Whether a person is deprived of their liberty when they are forcefully brought before a court in chains and shackles by the prosecution, the prosecution does not file its timely mandatory and jurisdictional accusatory instrument (complaint, information or indictment) on the court against the person charging him or her with a crime known to law to invoke the court’s subject-matter jurisdictional power to act at all and proceed, the court at the prosecution’s request places a **\$10,000.00** cash bond on the person and subsequently the person is convicted in the same course of proceedings where the court lacked jurisdiction at the outset to act at all and proceed thereafter.

LIST OF PARTIES

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

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INTRODUCTION

This is a case involving citizens' basic Constitutional rights to due process of law and equal protection of the law under the Fourteenth Amendment at the outset of the criminal proceedings against them. Here, Ricardo Glover ("Glover") was arrested without a warrant and jailed, and on next day the prosecution brought him before a Wisconsin circuit court¹ in **chains** and **shackles** for his constitutional and jurisdictional initial appearance hearing.

At this due process and equal protection, initial appearance hearing the prosecution did not file its' timely mandatory and jurisdictional accusatory instrument (complaint, information or indictment) against Glover charging him with an offense known to law to invoke the state circuit court's subject-matter jurisdictional powers to act at all. The prosecution informed the state circuit court

¹ A Wisconsin circuit court is actually a trial court; Glover will refer to hereinafter as "state circuit court."

that there were no charges filed against Glover, however, the prosecution requested that the state circuit court place a bond on Glover to hold him for further investigation, a non-existence offense and the state circuit court set a **\$10,000.00** bond on Glover without its subject-matter jurisdictional powers being invoked.

Subsequently, Glover was convicted in the same case and a Judgment of Conviction was entered against him for 45-years imprisonment and he was remained incarcerated from that initial appearance hearing where the prosecution failed to file its timely mandatory and jurisdictional accusatory instrument (complaint, information or indictment) against him at that moment charging him with an offense known to law to invoke the state circuit court's subject-matter jurisdictional powers to act at all.

All courts below, state and federal have refused to answer the fundamental constitutional and jurisdictional question presented to this Court. However, the Wisconsin Supreme Court held in *In re Carlson*, 176 Wis. 538, 186 N.W. 722 (Wis. 1922), regarding how to invoke a Wisconsin circuit court's subject-matter jurisdiction at the beginning to hear a criminal case, the court said “[w]e shall not discuss the matter further than to say that, in order to invoke the jurisdiction of the court, there must be before the court a complaint, information, or indictment which charges some offense known to law.” 176 Wis. at 548, 186 N.W. at 725. This Court held in *Mansfield, C. & L.M.R. Co. v. Swan*, 111 U.S. 379 (1884), the court said that “[t]he requirement that jurisdiction be established as a threshold matter ... is ‘inflexible and without exception.’” *Id.* at 382. This Court also held that “[w]ithout jurisdiction the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause.” *Ex parte McCardle*, 7 Wall. 506, 514, 74 U.S. 506, 514 (1868). The Wisconsin Supreme Court held in *State v. Lamp*, 26 Wis.2d 646, 133 N.W.2d 349 (Wis. 1965), the court said “[i]f the defendant is correct that no offense is charged then the court had no jurisdiction to proceed to judgment.” 26 Wis.2d at 648, 133 N.W.2d at 351 (citing *In re Carson*,

(1922), 176 Wis. 538, 547, 186 N.W. 722, 725) (“Jurisdiction to try and punish for a crime cannot be acquired otherwise than in the mode prescribed by law. A formal accusation is essential for every trial of a crime. Without it the court acquires no jurisdiction to proceed, even with the consent of the parties.”). This Court has held that relief “will lie only in case the judgment under which the prisoner is detained is shown to be absolutely void for want of jurisdiction in the court that pronounced it, *either because such jurisdiction was absent at the beginning, or because it was lost in the course of the proceeding.*” *Frank v. Mangum*, 237 U.S. 309, 327 (1915) (emphasis added).

The foregoing precedents by this Court and Wisconsin Supreme Court held that a state circuit court at the outset of the criminal proceedings against person is powerless without a complaint, information, or indictment filed on it by the prosecution against the person charging him or her with some offense known to law, and the only function remaining to the state circuit court when no complaint, information, or indictment is filed invoking its’ subject-matter jurisdiction to act and proceed thereafter is announcing the fact and dismissing the case. In addition, the state court cannot grant the prosecution an extension of time, or continuous of proceeding² so that the prosecution can attempt to invoke its subject-matter jurisdiction at a later time against the person because it has no subject-matter jurisdiction to act at all, proceed and enter a Judgment of Conviction against the person therein.

As the above precedents held that a formal mandatory written and jurisdictional accusatory instrument (complaint, information or indictment) is essential to invoke a state circuit court’s subject-matter jurisdiction at the outset to act and proceed, without a mandatory and jurisdictional accusatory instrument, complaint, information or indictment the state circuit court acquires no jurisdiction to proceed, even with the consent of the parties. Where a state circuit court does act and proceed at the outset

² This is because the state circuit court’s subject-matter jurisdictional power has not been invoked for it to act at all and proceed, it is powerless.

against the person without the mandatory and jurisdictional accusatory instrument (complaint, information, or indictment) filed on it invoking its subject-matter jurisdiction it acquires no jurisdiction to proceed and enter a Judgment of Conviction against the defendant, a deprivation of liberty has occurred.

In *Ex parte Commonwealth of Virginia*, 100 U.S. 339 (1879), this Court stated “when a prisoner is held without any lawful authority, and by an order beyond the jurisdiction of an inferior … court to make, this court will, in favor of liberty, grant the writ, not to review the whole case, but to examine the authority of the court below to act at all.” *Id.* at 343. The questions on the fundamental and threshold principles of subject-matter jurisdictional law has never been answered, although, Glover, a layman (*pro se*) litigant has asked both sets of courts, state and federal for an answer, however, all courts have refused to answer the questions. This case presents important fundamental questions on the threshold principles of subject-matter jurisdictional law and the deprivation of liberty.

OPINIONS BELOW

The opinion and order of the Wisconsin Court of Appeals, District II (Pet. App. 1a-5a) is unreported. The order of the Wisconsin Supreme Court denying petition for review (Pet. App. 6a) is also unreported.

JURISDICTION

The order of the Wisconsin Supreme Court denying petition for review was entered on October 9, 2018 (Pet. App. 6a). This Court has jurisdiction under 28 U.S.C. § 1257(a)

UNITED STATE CONSTITUTION AND OTHER PROVISIONS INVOLVED

The Due Process Clause and Equal Protection Clause of the Fourteenth Amendment, Section 1 and 5 of the Fourteenth Amendment to the United States Constitution, provides:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provision of this article.

Article VII, Section 8 of the Wisconsin Constitution – **Circuit court: jurisdiction** (1989-1990), provides:

Except as otherwise provided by law, the circuit court shall have original jurisdiction in all matters civil and criminal within this state and such appellate jurisdiction in the circuit as the legislature may prescribe by law. The circuit court may issue all writs necessary in aid of its jurisdiction.

Wisconsin Statute § 753.03 – **Jurisdiction of circuit courts** (1989-1990), provides:

The circuit courts have the general jurisdiction prescribed for them by article VII of the constitution and have power to issue all writs, process and commissions provide in article VII of the constitution or by the statutes, or which may be necessary to the due execution of the powers vested in them. The circuit courts have power to hear and determine, within their respective circuits, all civil and criminal actions and proceedings unless exclusive jurisdiction is given to some other court; and they have all the power, according to the usages of courts of law and equity, necessary to the full and complete administration of justice, and to carry into effect their judgments, orders and other determinations, subject to review by the court of appeals or the supreme court as provided by law. The courts and the judges thereof have power to award all such writs, process and commissions, throughout the state, returnable in the proper county.

STATEMENT OF THE CASE

On May 29, 1989, Shelly B. stated to Racine Police Officers that while she and her brother-in-law (Ricardo Glover) were returning from Kenosha to Racine looking for her mother, Glover parked his vehicle and touched her crotch and chest area while they were in his car. (Pet. App. 7a).³ However, Shelly B. told Sgt. Grayhart of the Racine Police Department that no sexual conduct or contact took place by Glover. Subsequently, police took Shelly B. to Racine St. Luke's Hospital

³ This petition is verified and signed pursuant to 28 U.S.C. § 1746, I, Ricardo Glover declare under penalty of perjury that the facts contained in this petition are true and correct

Emergency Room, Doctor G.L. Brown attending physician observed and talked with Shelly B. while the police were present, he reported that,

A female involved in an assault, which she was supposed to be taken over to her grandmother's home [in Kenosha County] by her brother-in-law.

When they could not find her grandmother there, they were returning to patient's sister's home [in Racine County] so she could spend the night. Then the brother-in-law took her to a bridge and, she states, **attempted to sexually molest her, getting very close to her, placing his hands on her crotch and on her chest.** When he could not get her jumpsuit off easily, apparently aborted his attempt to molest her and decided that he did not want her talking about it, so he took a torn towel and tied her hands together behind her back, told her that she wasn't going to be able to tell anybody about this and proceeded to stop on a bridge overlying a river with several feet of water in it, threw her off the bridge approximately 15-20 feet to the water below. **Patient was able to untie her hands and escape.**

(Pet. App. 7a). (Emphasis added). However, the prosecutor's very own witnesses, Michael Blalke and Cruz Jamaillo testified under oath contradicting Shelly B.'s statement and testimony about being thrown off a bridge and "untangling" her hands from behind her back, climbing out of the water with her hands freely and escaping, because both, Mr. Blake and Mr. Jamaillo stated under oath that when Shelly B. "appeared" in their home her hands were "tied" behind her back and Mr. Jamaillo was the one who "untied" her hands from behind her back. (Pet. App. 7a).⁴ When Shelly B. stated and testified that, she "untied" her hands from behind her back and climbed out of the water using her hands and went to seek help was a fabrication as both witnesses testified under oath. *Id.*

The only way the incident could have occurred is that Shelly B. walked into the water with her hands freely ("untied") and walked out of the water with someone assisting her in "tying" her hands behind her back when she was wet. In addition, Officer Frances Vitacco testified that he saw footprints leading from the river, that they were somewhat small and thin, similar to that of a small person and

⁴ If Glover would have **tied** Shelly B.'s hands behind her back and threw her off a bridge into water and she untied her hands from behind her back, climbing out of the water with her hands freely and escaping, her hands would not have been **tied** behind her back when both, Mr. Blake and Mr. Jamaillo saw her and **untied** her hands. Shelly B. fabricated her stories to get Glover falsely arrested.

photographed them as well, meaning he believed them to be Shelly B.'s footprints. However, no one ever asked what size were Shelly B.'s feet? Shelly B. had large feet and she was big for her age, Officer Vitacco did observe "small and thin" footprints, but not Shelly B.'s footprints. This can be further proved because, Officer Vitacco testified that he observed the same size footprints, however, Shelly B. testified that she lost one of her shoes and her eye-glasses in the water when she landed, so with this understanding one foot would make a different imprint than the other foot, because one shoe is off her foot and the other shoe is on her foot, which Officer Vitacco did not testify that he observe two entirely different footprints. As the evidence clearly revealed, Glover did not throw Shelly B. off a bridge.

Dr. Brown's observation and discussion with Shelly B., surrounding the facts of the alleged incident continued, he reported further that Shelly B. stated:

She scraped up her leg during the fall, landed primarily on her bottom. Absolutely denies any pain at this point. Seems to be in relatively good spirits. **Is able to describe the incident consistently between those interviewers and relative good detail.... Patient absolutely denies that any actual sexual contact took place.**

(Pet. App. 7a). (Emphasis added). From Shelly B.'s statements alone to Dr. Brown and Racine police, without any investigation *id.*, police made a deliberate plan to arrest Glover without a warrant. Subsequently, at 6:00 a.m., on May 29, 1989, Racine police made a warrantless arrest of Glover, placing him in custody and did not release him from their custody.

Shelly B. made another statement to police and signed it while Glover was in Racine police custody, informing police that her initial statement was fabricated. The signed statement of Shelly B. contradicts her initial statement to Dr. Brown and Racine police to get Glover arrested, and shows that Glover was warrantlessly arrested and jailed falsely, in fact, it shows the untruthfulness of Shelly B. (Pet. App. 8a-10a). On the same date, May 29, 1989, Officer Cindy Cros of the Kenosha Police Department reported that Shelly B. informed her that while she was spending the night in Racine at her sister's home, her sister is married to Glover, that she was

awaken at approximately 1:00 a.m. by Glover on this date and was driven back to Kenosha to her residence by Glover; nobody was home at Shelly B.'s residence except her grandmother. Shelly B. was held with a knife against her throat by Glover and ordered to take her clothes off or she would be killed. She complied and she lay on top of her mother's bed with Glover on top of her naked. Shelly B. **"states that intercourse did not occur but Glover ejaculated on the sheet."** (Pet. App. 9a, emphasis added). As the examination of the bedsheets revealed: **"[n]o semen was detected on the panties, leggings or bedsheet."** (Pet. App. 19a-20a). Shelly B. was untruthful once again. No first-degree sexual assault occurred in this case. Glover undisputedly has shown that he was warrantlessly arrested and jailed falsely.

1. Here, Glover has been arrested and jailed without a warrant; police did not release him from their custody. The due process clause and equal protection clause of the Fourteenth Amendment and Wisconsin Legislature's mandatory, nondiscretionary language commanded what ***shall*** take place next:

A) Glover has been arrested and jailed without a warrant, and in police custody, the Legislature mandated under Wis. § 968.04(1)(a) (1989-1990) – *Warrant or summons on complaint*, provides in relevant part: "When an accused has been arrested without a warrant and is in custody ... no warrant ***shall*** be issued and the complaint ***shall*** be filed forthwith with a judge." This law is inflexible and without exception, because the complaint must be timely filed to invoke a state circuit court's subject-matter jurisdiction to act and proceed. Without the complaint the circuit court acquires no jurisdiction to act and proceed, even with the consent of the parties.

B) Since Glover has been arrested and jailed without a warrant, when Glover is brought before the judge or court, the Legislature mandated under Wis. § 970.01(2) (1989-1990) – *Initial appearance before a judge*, provides: "When a person is arrested without a warrant and brought before a judge, a complaint ***shall*** be filed forthwith." This law is inflexible and without exception, because the complaint must be timely filed at the defendant's initial appearance to invoke the state circuit court's

subject-matter jurisdiction to act and proceed. Without complaint the circuit court acquires no jurisdiction to act and proceed, even with the consent of the parties.

C) When Glover is brought before the judge or court for his initial appearance, the Legislature mandated under Wis. § 970.02(1)(a) (1989-1990) – *Duty of a judge at the initial appearance*, which provides: “At the initial appearance the judge **shall** inform the defendant: Of the charge against him and **shall** furnish the defendant with a copy of the complaint which **shall** contain the possible penalties for the offenses set forth therein. In the case of a felony, the judge **shall** also inform the defendant of the penalties for the felony with which the defendant is charged.” This law is inflexible and without exception, because the complaint must be timely filed, at that moment to invoke the state circuit court’s subject-matter jurisdiction to act and proceed thereafter. Without complaint the circuit court acquires no jurisdiction to act and proceed, even with the consent of the parties.

D) When Glover is at his initial appearance the judge or court can only set bond on him for **charged** offense known to law, the Legislature mandated under Wis. § 970.02(2) (1989-1990) – *Duty of a judge at the initial appearance*. The judge **shall** admit the defendant to bail in accordance which ch. 969.” (Emphasis added). This law is inflexible and without exception, because the complaint must be timely filed, at that moment to invoke the state circuit court’s subject-matter jurisdiction to act and proceed, to set bail on the defendant for the offense known to law that he is **charged** and proceed thereafter. Wisconsin Chapter 969 (1989-1990), Bail And Other Conditions Of Release provides:

Wis. § 969.02(1) – **Release of defendants charged with misdemeanors.** A judge may release a defendant charged with a misdemeanor without bail or may permit him to execute an unsecured appearance bond in an amount specified by the judge.

Wis. § 969.03(1) – **Release of defendants charged with felonies.** A defendant charged with a felony may be release by the judge without bail or upon the execution of an unsecured appearance bond or the judge may in addition to require the execution of an appearance bond or in lieu thereof impose one or more of the following conditions which will assure appearance for trial.

The Fourteenth Amendment's due process protection and equal protection are also enforced by Wisconsin Legislation. In addition, the Fourteenth Amendment itself prohibits any state from taking action which would deny to any person within its jurisdiction the equal protection of the laws. The promise of equal protection of the laws is not limited to the enactment of fair and impartial legislation, but necessary extends to the application of these laws. The basic principle was stated long ago in *Yick Wo v. Hopkins*, 118 U.S. 356, 373-374 (1886):

Though the law itself be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discrimination between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution.

E) The criminal complaint, Wis. § 968.01(2) (1989-1990) ("The complaint is a written statement of the essential facts constituting the offense charge."). The criminal complaint has several functions:

1. At the initial appearance hearing, the state "circuit court's subject-matter jurisdiction attaches when the complaint is filed ... the circuit court lacks criminal subject-matter jurisdiction only where the complaint does not charge an offense known to law." *State v. Aniton*, 183 Wis.2d 125, 129, 515 N.W.2d 302, 303 (Wis. App. 1994). "Criminal subject[]matter jurisdiction is the 'power of the court to inquire into the charged crime, to apply the applicable law and to declare the punishment.'" *Aniton*, 183 Wis.2d at 129, 515 N.W.2d at 303 (citation omitted). Subject-matter jurisdiction is not waivable, and may be raised despite guilty plea. *Id.*

2. At the initial appearance hearing, "[t]he complaint is the statutory procedure for acquiring personal jurisdiction over the defendant." *State v. Smith*, 131 Wis.2d 220, 238, 388 N.W.2d 601, 609 (Wis. 1986). "The critical relationship between the complaint and personal jurisdiction is indicated by the constitutional purpose for personal jurisdiction. Personal jurisdiction assures that the defendant has a sufficient relationship to the jurisdiction exercising authority and that the defendant has notice of the charge. The notice function is accomplished by requiring a complaint to include the essential facts constituting the offense charged." *Smith*, 131 Wis.2d at 239, 388 N.W.2d at 609-610.

3. At the initial appearance hearing, the "complaint at this point need not contain all the allegations of fact which if would be necessary to convict. The text to be applied at this stage is the same as that which is required for issuance of a warrant: *** enough information [shall] be presented to the commissioner to enable him to make the judgment that the charges are not capricious and are sufficiently supported to justify bringing into play the further steps of the criminal process." *Jaben v. United states*, (1965), 381 U.S. 214, 224, 85 S.Ct.

1365, 1371 ... The face of the complaint and any affidavits annexed thereto must recite probable cause for the defendant's detention." *State ex rel. Cullen v. Ceci*, 45 Wis.2d 432, 442, 173 N.W.2d 175, 179 (Wis. 1970).

2. On May 30, 1989, the prosecutor forcefully brought Glover before a state circuit court for an initial appearance in **chains** and **shackles** from his warrantless arrest and detention by police on May 29, 1989 pursuant to the Fourteenth Amendment's due process clause and equal protection clause, and its enforcements, Wis. §§ 968.04(1)(a) and 970.01(2) and 970.02(1)(a), *In re Carlson*, *supra*, *Mansfield, C. & L.M.R. Co. v. Swan*, *supra*, *McCardle*, *supra*, and *State v. Lamp*, *supra*. (Pet. App. 11a-17a, 114a-116a).

The case is called by the state circuit court, "**State versus Ricardo Glover**," *id.*, however, the prosecutor did not file her timely written mandatory and jurisdictional accusatory instrument, complaint, information or indictment at that moment against Glover charging him with some offense known to law to invoke the state circuit court's subject-matter jurisdiction according to law to hear the case against Glover, to act and proceed. *Id.*⁵ It is noted that the prosecutor stated that Glover "gave police a false identification." (Pet. App. 13a). However, this was totally hearsay and totally untrue by the prosecutor and was meant to make Glover look bad, because Glover was never charged with given the police a false identification or obstruction of justice.

Without the timely written mandatory and jurisdictional accusatory instrument, complaint, information or indictment filed on it at that moment, the state circuit court at beginning to invoke its subject-matter jurisdiction to hear a case against Glover

⁵ Here, at the beginning, initial appearance hearing (Pet. App. 11a-17a) – Initial Appearance) the prosecutor's failure to clear this jurisdictional hurdle by filing a complaint, information or indictment against the Glover on the circuit court at the beginning can never be "harmless" or "waived" by a court. *Torres v. Oakland Scavenger Co.*, 487 U.S. 312, 317 n.3 (1988) ("a litigant's failure to clear a jurisdictional hurdle can never be 'harmless' or waived by a court."); see also *State v. Rezazadeh*, 1979 Wisc. App. LEXIS 3458, *3 (Wis. App. 1979, unpunished opinion) ("The defect being jurisdictional, the proceedings are void *ab initio*. Prejudice to the defendant need not be shown. Because the proceedings are void, the judgment of conviction and sentence appealed from must be vacated. They are beyond the jurisdiction of the court."). (Pet. App. 11a-17a – Initial Appearance and Pet. App. 21a – Judgment of Conviction).

was powerless to act (set bail) and to proceed to a hearing tomorrow, *id.*, the requirement that jurisdiction be established as a threshold matter is inflexible and without exception, the state circuit court acquired no subject-matter jurisdiction to act and proceed, even had the parties consented, only function remaining to the state circuit court was that of announcing the fact and dismissing the case against Glover for lack of jurisdiction pursuant to *Carlson, Mansfield, C. & L.M.R. Co. v. Swan, McCardle, and Lamp*. The prosecutor told the state circuit court without filing her timely written mandatory and jurisdictional accusatory instrument, complaint, information or indictment at that moment against Glover to invoke its subject-matter jurisdiction to act (set bail) and proceed that this is not her case and the prosecutor's case who it was informed her that there are no charges filed at this time,⁶ asking the circuit court to set a unconstitutional and unlawful bond on Glover of **\$50,000.00**, where no charges exist against him. (Pet. App. 12a-13a, 16a).⁷

The circuit court acted and set a **\$10,000.00** cash bond on Glover for "further investigation" to hold him in jail, proceed further with no offense charged known to law and without its subject-matter jurisdiction being invoked⁸ (no crime charged existed to inquire into and to apply law) to scheduled a hearing thereafter, *id.*, all which were contrary to law, violated Glover's Fourteenth Amendment rights to due

⁶ The state circuit court lacked subject-matter jurisdiction at the beginning [initial appearance of May 30, 1989], in Racine Case No. 89-CF-402, no timely written mandatory and jurisdictional accusatory instrument, complaint, information or indictment was filed to invoked its subject-matter jurisdictional powers to act and proceed.

⁷ There was no written mandatory and jurisdictional accusatory instrument, complaint, information or indictment filed against Glover at the beginning [initial appearance] charging him with some offense known to law, (Pet. App. 11a-17a), "such ... is void and the defect is not waived by a guilty plea. The trial court does not have jurisdiction to act in such a matter." *Rezazadeh, supra*, 1979 Wisc. App. LEXIS 3458, *3. Criminal subject-matter jurisdiction cannot be conferred upon the court by consent. *Kelly v. State*, 54 Wis.2d 475, 479, 195 N.W.2d 457, 459 (Wis. 1972). Nor can subject-matter jurisdiction be waived. *Id; see also State v. Aniton*, 183 Wis.2d 125, 129, 515 N.W.2d 302, 303 (Wis. App. 1994) (Subject-matter jurisdiction is not waivable, and may be raised despite guilty plea).

⁸ The circuit court had no jurisdiction at the beginning to act at all in this case, nor to place a **\$10,000.00** bail on Glover to hold him in jail because he was not charge with an offense known to law under Wis. § 970.02(1)(a), Wis. § 970.02(2), Wis. § 969.02(1) and Wis. § 969.03(1). (Pet. App. 11a-17a – Initial Appearance).

process of law and equal protection of the law, and his statutory rights as well which are enforced by Legislature's Wis. §§ 968.04(1)(a), 970.01(2) and 970.02(1)(a).

The circuit court acquired no jurisdiction at the beginning of this case to act at all and proceed thereafter, because its subject-matter jurisdictional power was not invoked at the beginning by the prosecution in filing a timely mandatory and jurisdictional accusatory instrument (complaint, information or indictment) at that moment as required by law, (Pet. App. 11a-17a), thus, the Judgment of Conviction entered against Glover is unlawful, unconstitutional, and jurisdictionally defective, void pursuant to the mandates of the United States Supreme Court in *Mansfield, C. & L.M.R. Co. v. Swan, supra, and McCordle, supra*, and Wisconsin Supreme Court in *Carlson, supra*, and *Lamp, supra*, (Pet. App. 21a). The Supreme Court held that relief "will lie only in case the judgment under which the prisoner is detained is shown to be absolutely void for want of jurisdiction in the court that pronounced it, either **because such jurisdiction was absent at the beginning**, or because it was lost in the course of the proceeding." *Frank v. Mangum, supra*, 237 U.S. at 327, emphasis added. Clearly, in this case the subject-matter jurisdiction of the circuit court "was absent at the beginning." (Pet. App. 11a-17a).

3. On February 22, 1990, Glover was sentenced to 45-years imprisonment in Racine Case No. 89-CF-402, the very same case therein where the subject-matter jurisdiction of the state circuit court "was absent at the beginning." (Pet. App. 11a-17a – Initial Appearance and Pet. App. 21a – Judgment of Conviction).

4. On Glover's direct appeal, which established the law of the case, the Wisconsin court of appeals stated regarding Glover's subject-matter jurisdictional challenge that:

Glover states that the trial court lacked jurisdiction because the first time he appeared in Racine County circuit court, no criminal complaint [information] or indictment was filed against him accusing him of a crime and a one-day continuance for further investigation and the filing of a complaint.

State v. Glover, 1992 Wisc. App. LEXIS 263, *13. The Wisconsin court of appeals did not base its decision on either case law or statutory law pertaining to the

fundamental and threshold principles of subject-matter jurisdictional law. *Id.* The Wisconsin court of appeals' decision was an arbitrary one, because it was left to one's judgment or choice, rather decided on well-established principles of subject-matter jurisdictional law. *Id.*⁹

5. On Glover's habeas corpus appeal the Seventh Circuit denied Glover's subject-matter jurisdictional claims stating the same as the state court of appeals. *Glover v. McCaughtry*, No. 95-2304, 132 F.3d 36, 1997 WL 744589, *9 (7th Cir. 1997) (unpublished order). However, in *United States v. Shannon*, 94 F.3d 1065 (7th Cir. 1996), the Seventh Circuit in a brief discussion on criminal complaints, acknowledged the functions of a criminal complaint in Wisconsin, the Seventh Circuit stated that a "complaint is a written statement of the essential facts constituting the offense charged ... Because the complaint in Wisconsin and other jurisdiction is the initial charging instrument in a felony proceeding." *Id.* at 1087-89. Glover is actually innocent and has been diligently pursuing his constitutional claims for years. The Seventh Circuit has recognized Glover's many attempts for relief and his attempts lead to him being fined by the Seventh Circuit.

6. In 2017 – 2018, Glover returned to the Wisconsin court of appeals that rendered the original decision on his direct appeal, that decision established the law of the case. Glover respectfully asks the state court of appeals to reconsider his subject-matter jurisdictional claims and disregard the law of the case in the interest of justice, because the decision was clearly erroneous and would work a manifest injustice if it remained.¹⁰ In addition, the decision contains dicta language. (Pet. App. 22a-60a – Glover's initial brief; Pet. App. 61a-71a – State of Wisconsin's response

⁹ The state circuit court had no subject-matter jurisdictional power to act at all to grant the prosecution a "continuance," because its subject-matter jurisdictional power had not been invoked at that moment according to law. The state circuit court acted and proceeded without its subject-matter jurisdictional powers being invoked and denied Glover due process of law and the equal protection of the law, the deprivation of his liberty.

¹⁰ "[T]hat decision would undoubtedly work a 'manifest injustice,' such that the law of the case doctrine does not apply." *Agostini v. Felton*, 521 U.S. 203, 236 (1997).

brief; and Pet. App. 72a-85a – Glover’s reply brief). However, the Wisconsin court of appeals denied Glover’s claims (Pet. App. 1a-5a).

The Wisconsin court of appeals stated “[e]ven if we were somehow convinced that the jurisdictional issues were new, we are unpersuaded that the interest of justice justify setting aside the law of the case Glover had a full and fair opportunity to raise his jurisdictional objections, and we rightly concluded that the circuit court had jurisdiction.” (Pet. App. 4a). The Wisconsin court of appeals decision was the same as it was on Glover’s original direct appeal, *id.*, which established the law of the case, it did not base its decision on either case law or statutory law pertaining to the fundamental and threshold principles of subject-matter jurisdictional law. *Id.* The Wisconsin court of appeals decision was an arbitrary one, because it was left to one’s judgment or choice, rather decided on well-established principles of subject-matter jurisdictional law. Glover sought review of the state court of appeals’ decision in the Wisconsin Supreme Court, (Pet. App. 86a-113a) and the Wisconsin Supreme Court denied review of the same. (Pet. App. 6a).

7. Glover submitted below declarations and affidavits stating that if he has lied that the circuit court lacked subject-matter jurisdiction at the beginning [initial appearance of May 30, 1989], in Racine Case No. 89-CF-402, the State should inform the Court that Glover has lied in his pleadings and in his affidavit, show the Court that subject-matter jurisdiction was properly invoked at the beginning [initial appearance of May 30, 1989] pursuant to *Carlson, supra, Mansfield, C. & L.M.R. Co. v. Swan, supra, McCardle, supra*, and *Lamp, supra* by the filing of the written mandatory and jurisdictional accusatory instrument, complaint, information or indictment and ask that the present case be dismissed. In addition, if Glover has lied he should be charged with perjury. (Pet. App. 114a-116a).

REASONS FOR GRANTING THE PETITION

I. THE WISCONSIN COURT OF APPEALS, DISTRICT II’S DECISION CONFLICTS WITH DECISION BY THE UNITED STATES SUPREME COURT, OTHER STATE COURTS AND UNITED STATES COURT OF

APPEALS DECISIONS REGARDING THE FUNDAMENTAL AND THRESHOLD PRINCIPLES OF SUBJECT-MATTER JURISDICTIONAL LAW.

By refusing to require all state circuit courts to observe the limits of their powers and to inquire into their jurisdiction over an action, even if neither party raises the questions, the Wisconsin court of appeals stands in conflict with this Supreme Court, other state courts and United States court of appeals decisions on the fundamental and threshold principles of subject-matter jurisdictional law.

1. All courts below must never forget, that “[o]nly the jurisdiction of the Supreme Court is derived directly from the Constitution. Every other court created by the general government derives its jurisdiction wholly from the authority of Congress.” *Kline v. Burke Constr. Co.*, 260 U.S. 226, 234 (1922). “Congress, having the power to establish the court, must define their respective jurisdiction.... Courts created by statute can have no jurisdiction but such as the statute confers.” *Sheldon v. Sill*, 49 U.S. (8 How.) 441, 448-449, 12 L.Ed. 1147 (1850). This Court has stated,

“[C]ourts which are created by written law, and whose jurisdiction is defined by written law, cannot transcend that jurisdiction. It is unnecessary to state the reasoning on which this opinion is found, because it has been repeatedly given by this Court; and with decision hereto rendered on this point, no member of the bench has, even for an instant, been dissatisfied.”

Ex parte Bollman, 4 Cranch 75, 93, 2 L.Ed. 554 (1807).

In *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83 (1998), this Court refused to endorse the “doctrine of hypothetical jurisdiction,” where the courts below “assumed” that they had jurisdiction to decide an action, without actually inquiring into their jurisdictional powers. This Court reinforced and reaffirmed two of its historical cases, it stated “[w]ithout jurisdiction the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause,” *Steel Co.*, 523 U.S. at 94 (1998) (quoting *Ex parte McCardle*, 7 Wall. 506, 514, 19 L.Ed. 264 (1868)), and that “[t]he requirement that jurisdiction be established as a threshold matter ... is ‘inflexible and without exception.’” *Steel Co.*, 523 U.S. at

94-95 (quoting *Mansfield, C. & L.M.R. Co. v. Swan*, 111 U.S. 379, 382 (1884)). This Court also stated in *Steel Co.*, that doctrine of “hypothetical jurisdiction” is an unlawful one. *id.* at 94, and “[h]ypothetical jurisdiction produces nothing more than a hypothetical judgment.” *Id.* at 101. “[S]ubject-matter jurisdiction involves a court’s power to hear a case, can never be forfeited or waived.” *See United States v. Cotton*, 535 U.S. 625, 630 (2002).

In *Arbaugh v. Y & H Corp.*, 546 U.S. 500 (2006), this Court stated that “courts, including [Supreme] Court, have an independent obligation to determine whether subject-matter jurisdiction exists, even in the absence of a challenge from any party.” *Id.* at 514. And in *Kontrick v. Ryan*, 540 U.S. 443 (2004), this Court stated that “[a] litigant generally may raise a court’s lack of subject-matter jurisdiction at any time in the same civil action, even initially at the highest appellate instance … and the court should raise the question *sua sponte*.” *Id.* at 455.

This Court then stated in *Bowles v. Russell*, 551 U.S. 205 (2007), that court has “no authority to create equitable exceptions to jurisdiction requirements.” *Id.* at 214. In *Bowles*, the Petitioner had been denied a writ of habeas corpus by the Northern District of Ohio, but was told by the district court that he had seventeen days to file a notice of appeal. *Id.* at 206-208. Contrary to the district court’s instructions, however, the Federal Rules of Appellate Procedure only provided a period of fourteen days to file a notice of appeal. *Id.* Thus, when the Petitioner file his notice of appeal on the sixteenth day following the district court’s decision, the Sixth Circuit held that it lacked jurisdiction to hear the appeal, and the Supreme Court affirmed. *Id.* This Court made it clear to all courts below that they cannot grant a “continuous” or “extend the time” for filing of a mandatory and jurisdictional instrument beyond its prescribed mandatory time limitation period. *Id.* at 212.

In 2010, this Court in *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260 (2010) stated that “a void judgment is one so affected by a fundamental infirmity that the infirmity may be raised even after the judgment becomes final.” *Id.* at 270. This Court also stated in *Espinosa* that to collaterally attack a judgment as void

because of a jurisdictional defect, relief is available “only for the exceptional case in which the court that rendered judgment lacked even an ‘arguable basis’ for jurisdiction.” *Id.* at 271.

2. In *United States v. Shannon*, 94 F.3d 1065 (7th Cir. 1996), the Seventh Circuit in a brief discussion on criminal complaints, acknowledged the functions of a criminal complaint in Wisconsin, the Seventh Circuit stated that a “complaint is a written statement of the essential facts constituting the offense charged ... Because the complaint in Wisconsin and other jurisdiction is the initial charging instrument in a felony proceeding.” *Id.* at 1087-89. “[A]ny attempt to waive this jurisdictional issue in a plea agreement would have been ineffectual because a defendant cannot confer jurisdiction on a court by way of plea agreement.” *United States v. Vega*, 241 F.3d 910, 912 (7th Cir. 2001).

3. **Other state courts.** In Ohio state criminal courts, the prosecutions commence criminal proceedings against the accused, mandating that a criminal complaint shall be filed, Ohio Criminal Rule 3 (“The complaint is a written statement of the essential facts constituting the offense charged.”). “[A] defect that deprives a court of subject matter jurisdiction cannot be waived by an accused. The absence of the criminal complaint cannot be waived by a plea of no contest or even guilty, since any conviction resulting from an invalid complaint is a nullity.” *See e.g., Ohio v. Bishop*, 1993 Ohio App. LEXIS 5799, *2 (Ohio App. 1993, unpublished) (*citing, State v. Green*, 48 Ohio App.3d 121, 548 N.E.2d 334 (Ohio 1988); *State v. Miller*, 47 Ohio App.3d 113, 114, 547 N.E.2d 399, 401 (Ohio 1988) (In the absence of a sufficient formal accusation, a court acquires no jurisdiction whatsoever, and if it assumes jurisdiction, a trial and conviction are a nullity ... the complaint is the jurisdictional instrument of the municipal court.”). The State of Ohio, uses a criminal complaint as its initial charging instrument as Wisconsin. *See e.g., State v. Sharp*, 2009 Ohio 1854, 2009 Ohio App. LEXIS 1561 (Ohio App. 2009), where the Ohio Court of Appeals stated:

“In the absence of a sufficient formal accusation, a Court acquires no jurisdiction whatsoever, and if it assumes jurisdiction, a trial and conviction are a nullity ... The complaint is the jurisdictional instrument of the municipal court.”

Sharp, 2009 Ohio 1854, ¶14, 2009 Ohio App. LEXIS 1561, **5. “A court’s subject matter jurisdiction is invoked by the filing of a complaint.” *See Id.* “The filing of a valid complaint is therefore a necessary prerequisite to a court’s acquiring jurisdiction.” 2009 Ohio 1854, ¶14, 2009 Ohio App. LEXIS 1561, **5-6. “We review the determination of subject matter jurisdiction *de novo*, without any deference to the trial court.” **Sharp**, 2009 Ohio 1854, ¶14, 2009 Ohio App. LEXIS 1561, **6. The **Sharp** court further stated that,

“[T]he defense of subject-matter jurisdiction can never be waived ... The absence of the criminal complaint cannot be waived by a plea of no contest or even guilty, since any conviction resulting from an invalid complaint is a nullity. *State v. Bishop*, (1993), Clark App. No. 3070, 1993 Ohio App. LEXIS 5799, unreported. The question of subject matter jurisdiction is so basic that it can be raised at any stage before the trial court or any appellate court, or even collaterally in subsequent and separate proceedings.

* * * * *

[I]f the complaint were not properly filed, the convictions are void *ab initio* for want of subject matter jurisdiction, as the jurisdiction of the Mount Vernon Municipal Court was never invoked. Further, appellant is not barred from raising the issue at this stage in the proceedings, as subject matter jurisdiction cannot be waived.”

Sharp, 2009 Ohio 1854, ¶15 & ¶17, 2009 Ohio App. LEXIS 1561, **6, **7.

“A court can acquire no jurisdiction to try a person for a criminal offense unless he has been charged with the commission of the particular offense and charged in the particular form and mode required by law. If that is wanting, his trial and conviction is a nullity, for no person can be deprived of either life, or property without due process of law.” *See e.g., People v. Walley*, 21 Misc.2d 623, 626, 202 N.Y.S.2d 859, 862-863 (New York 1959); *see also Stewart v. State*, 41 Ohio App. 351, 353-354, 181 N.E. 11, 12 (Ohio Ct. App. 1932, unpublished) (same); *Morse v. People*, 43 Col. 118, 122, 95 P. 285-287 (Colorado 1908) (same) (*quoting Dykeman v. Budd*, 3 Wis.

640, 643 (Wis. 1854)). In *Ohio v. Hightower*, 1979 Ohio App. LEXIS 11490 (Ohio court of appeals–1979) (unpublished opinion), the court stated:

“The purpose of a complaint is to inform the defendant of the crime of which he is charged.... [A] complaint must be filed in order to ‘invoke’ the ‘jurisdiction’ of a court... subject matter jurisdiction must be conferred by law... Now we must inquire as to whether that jurisdiction was properly invoked.”

Id. “It is important at the outset to define the question before [the Court].” *Renico v. Lett*, 559 U.S. 766, 772 (2010). The important fundamental questions of jurisdiction and of a person’s liberty is, whether a person is deprived of their liberty when they are forcefully brought before a court in chains and shackles by the prosecution, the prosecution does not file its timely mandatory and jurisdictional accusatory instrument (complaint, information or indictment) on the court against the person charging him or her with a crime known to law to invoke the court’s subject-matter jurisdictional power to act at all and proceed, the court at the prosecution’s request places a \$10,000.00 cash bond on the person and subsequently the person is convicted in the same course of proceedings where the court lacked jurisdiction at the outset to act at all and proceed thereafter.

The Wisconsin court of appeals’ decisions states that a citizen of the United States can be arrested without a warrant and jailed without any investigation, then brought before a state circuit court from that warrantless arrest and detention by the prosecution in chains and shackles for a constitutional and jurisdictional initial appearance, at this constitutional and jurisdictional initial appearance the prosecution does not file its timely mandatory constitutional and jurisdictional accusatory instrument (complaint, information or indictment) against the citizen at that moment according to law charging the citizens with an offense known to law, the prosecution makes a demands the state circuit court to set a cash bail on the citizen for no offense known to law that is charged, the state circuit court without its subject-matter jurisdictional power being invoked sets a cash bond on the citizen and the citizen is subsequently convicted from the initial proceeding. The Wisconsin court of appeals stated: “we rightly concluded that the circuit court had jurisdiction.” (Pet. App. 4a);

State v. Glover, 1992 Wisc. App. LEXIS 263, *13. The Wisconsin court of appeals decision was an arbitrary one, because it was left to one's judgment or choice, rather than decided on well-established principles of subject-matter jurisdictional law, it did not base its decision on either case law or statutory law pertaining to the fundamental and threshold principles of subject-matter jurisdictional law. *Id.*

This Court's intervention is warranted to determine the fundamental and threshold principles of subject-matter jurisdictional law that have not been answered below by the state and federal courts, intertwined with the basic notation of liberty of the citizens' fundamental rights to due process of law and equal protection of the law under the Fourteenth Amendment. Glover and others asks this Court to grant review.¹¹ In *Virginia, supra*, this Court stated "when a prisoner is held without any lawful authority, and by an order beyond the jurisdiction of an inferior ... court to make, this court will, in favor of liberty, grant the writ, not to review the whole case, but to examine the authority of the court below to act at all." 100 U.S. at 343.

Glover and others (*pro se*) litigants' also asks the Court to reaffirm its decisions on *pro se* pleadings due to the passing of time for the courts below. "A document filed *pro se* is 'to be liberally construed,' ... however inartfully pleaded, must be held to less stringent standard than formal pleading drafted by lawyers." See *Estelle v. Gamble*, 429 U.S. 97, 106 (1976); see also *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) ("A document filed *pro se* is 'to be liberally construed,' ... however inartfully pleaded, must be held to less stringent standard than formal pleading drafted by lawyers.").

¹¹ The Constitution of the United States is afforded to all, no matter how many years have gone by. On January 25, 2016, this Court decided an issue in a case, where the case was over 50-years old. *Montgomery v. Louisiana*, 136 S.Ct. 718, 723 (2016) ("Petitioner Montgomery was 17 years old in 1963, when he killed a deputy sheriff in Louisiana. The jury returned a verdict of 'guilty without capital punishment,' which carried an automatic sentence of life without parole. Nearly 50 years after Montgomery was taken into custody, this Court decided that mandatory life without parole for juvenile homicide offenders violates the Eighth Amendments prohibition on 'cruel and unusual punishments.'").

CONCLUSION

The petition for a writ of certiorari should be granted.

Dated at Oshkosh, Wisconsin, this 28th day of November, 2018.

Respectfully submitted,



Ricardo Glover
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VERIFICATION

Pursuant to 28 U.S.C. § 1746, I, Ricardo Glover declare under penalty of perjury that the foregoing is true and correct. Executed on this 28th day of November, 2018.



Ricardo Glover – Declarant
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