

No. 18-8357

IN THE
SUPREME COURT OF THE UNITED STATES

RICHARD ANTHONY WILFORD
Petitioner,

v.

WARDEN, FCI-MCKEAN, et al,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR WRIT OF CERTIORARI

ORIGINAL

Supreme Court, U.S.
FILED

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QUESTION(S) PRESENTED

In this case, the Government is holding an individual in federal prison based upon receiving a judgment of a district court that falsely recites an indispensable requisite fact necessary for the right of that court to proceed in the cause and enter judgment against the individual to deprive him of his liberty. In a Federal criminal court, the record must affirmatively show the plea of the accused person as a conditioned precedent, before that court can render judgment allowing the government to detain him in prison. The writ of habeas corpus pursuant to 28 U.S.C. § 2241 confers authority to district courts to grant habeas corpus, within their respective jurisdictions, for the release of a prisoner held by an improper exercise of jurisdiction.

Petitioner filed his pro-se §2241 claim in the district of confinement, alleging that he is being detained unlawfully by the government based on a judgment of a court having acted without its jurisdiction. The district court did not consider the petition as what it was intended for and dismissed it for lack of jurisdiction. The Third Circuit granted summary affirmance, finding no substantial question being presented in the appeal.

The Question Presented is:

Whether the dismissal for lack of jurisdiction of a federal prisoner's pro se petition for the writ of habeas corpus against the governmental custodian violated the Constitutional privilege of habeas corpus.

PARTIES TO THE PROCEEDINGS

The Parties to the proceedings are named in th caption.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Richard Anthony Wilford, pro-se, respectfully petitions this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit.

OPINIONS BELOW

The opinion of the Third Circuit (Pet. App. 1a-3a) is reported at 733 Fed. Appx. 27 (unpublished). The district court opinion (Pet. App. 10a-16a) is available at 2018 U.S. Dist. LEXIS 42757 (W.D. PA 2018).

JURISDICTION

The Third Circuit issued its opinion on July 31, 2018, and denied panel rehearing and rehearing en-banc on October 4, 2018 (Pet. App. 7a - 9a). This Court has jurisdiction pursuant to 28 U.S.C. §1254(1).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

Article-I, § 9, Cl.2 of the United States Constitution provides:

The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

United States Constitution Amendment V provides in relevant part that:

No person shall be held ..., without due process of law.

The true constitutional habeas corpus provision pursuant to 28 U.S.C. § 2241 provides in relevant part:

§2241(a) writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions.

§2241(c) The writ of habeas corpus shall not extend to a prisoner unless-

- (1) He is in custody under or by color of the authority of the United States or is committed for trial before some court thereof; or
- (2) He is in custody for an act done or omitted in pursuance of an Act of Congress, or an order, process, judgment or decree of a court or judge of the United States; or
- (3) He is in custody in violation of the Constitution or laws or treaties of the United States:

STATEMENT OF THE CASE

This case presents the important question of whether a United States District Court has jurisdiction to hear and decide a true Constitutional habeas corpus petition brought pursuant to 28 U.S.C. §2241 by an imprisoned pro se litigant who is challenging the legality of his detention by the U.S. Government, in that court's judicial district, notwithstanding the pendency of direct appeal of conviction of another court, and presenting claims involving official reliance upon materially false factual recital in the judgment of another court which acted with a want of jurisdiction.

1. As a result of the criminal prosecution employed against Petitioner, Richard Anthony Wilford, in the U.S. District Court of Maryland in case # ELH-11-258; 1:11-CR-00258, the Government obtained a judgment to which it executed against Petitioner by imprisoning him in its custody at FCI-Mckean in the Western judicial district of Pennsylvania. The written judgment obtained by the government falsely recites that Petitioner "was found guilty on Count 1 after a plea of not guilty." Pet. App. 20a. The judgment document was signed by U.S. District Judge Ellen L. Hollander even though the record of the case omits the indispensable fact of a duly entered plea to the indictment by or for Petitioner. Pet. App. 27a-49a. A defendant's plea of not guilty to an indictment is a necessary fact essential to the jurisdiction of the court to proceed with a valid trial and enter a judgment of law. Federal Rules of Criminal Procedure require that a judgment must set forth "the plea" of the defendant. Fed.R.Crim.P. 32(k)(1).

The "Judgment" in the document used as authority by the Government to execute the sentence and commit and detain Petitioner in its custody at FCI McKean since September of 2014. A person imprisoned in the custody of the United States claiming that his detention is in violation of the Constitution or laws or treaties of the United States is entitled to apply for the writ of habeas corpus pursuant to §2241, against the entity holding him in custody, in a court having territorial jurisdiction over the custodian. §2242.

2. On about December 2016, after unsuccessfully exhausting BOP administrative remedies, Mr. Wilford filed his initial pro se petition for writ of habeas corpus under §2241 in the Western Judicial District of Pennsylvania in case number 16-CV-273 ERIE, **FN-1** challenging the lawfulness of his detention in the custody of the Government at FCI McKean.

On September 15, 2017, Petitioner filed his Second Amended Complaint (ECF-30.1) where he reiterated his intended habeas claim as being challenge to the legality of his detention in the custody of the Government based on the judgment of the another court which acted with a want of jurisdiction to render such judgment, Pet. App.- 51a , not making any challenges to guilt or innocence.while

FN-1 The Government filed its Response and the Magistrate judge entered a final judgment and memorandum opinion ordering the petition to be dismissed. (ECF Nos. 22,23). The memorandum opinion and order and judgment were vacated. (ECF-29).

requesting for his immediate release. The Judgment order arose out of circumstances from the U.S. District Court of Maryland where the court the record fails to affirmatively show that the court read the indictment to Mr. Wilford in order for his understanding of the true nature of the cause and to provide him with due opportunity to enter his plea to the indicted charge; the record is void of a showing of his plea as an indispensable requisite fact of the record for the jurisdiction of the trial court to proceed with trial and render judgment. Pet. App. 53a .

The Great Writ of Habeas Corpus must remain open to afford a person detained under colour or by authority of the United States a full hearing to test the legality of his/her detention, as the writ shall not be suspended unless as specified by the Constitution. §2241(a), (c)(3); Article I, § 9, Clause-2.

The Government filed its Response (with exhibits) (ECF-32) asserting that Petitioner's claims were construed as making challenge to the lack of arraignment, thus, being challenge to the validity of his conviction or sentence, id., while at the same time acknowledging his claim was that the "trial court lacked jurisdiction over his prosecution." id. at p. 1, par. 3. Mr. Wilford's §2241 petition clearly states that his habeas filing is specifically intended for inquiry into the lawfulness of the Executive function of the Government in exercising jurisdiction to hold him in restraint of his liberty and that any information speaking to trial proceedings are only intended as background information and not to be wrongfully construed as making challenges to conviction or sentence. Pet. App. 55a .

The Magistrate Judge filed its Report and Recommendation (R&R) on March 14, 2018. Pet. App. 11a . **FN-2** The Magistrate Judge construed Petitioner's habeas filing as "attacking the validity of the judgment issued by the District Court for the District of Maryland, not how the BOP is 'carrying out' or 'putting into effect' that judgment. Pet. App. 14a . The Magistrate Judge further concluded that because the judgment was not final, there were no basis to consider if the case is an unusual one which would fall with the savings clause under a §2255 motion and referred further consideration until after conviction becomes final, and recommended that the court dismiss Wilford's amended petition for writ of habeas corpus for lack of jurisdiction. Pet. App. 15a . The District Judge accepted the R&R , Pet.-App. 18a, notwithstanding Wilford's timely objections and ordered for the petition to be dismissed for lack of jurisdiction. (ECF-39).

3. On appeal a three judge panel of the Third Circuit granted the Government's motion for summary affirmance, holding in an unpublished opinion, that Wilford's argument that he is actually challenging the execution of sentence and not his conviction is unconvincing. Pet. App.-

3a. The court wrote that under the explicit terms of 28 U.S.C. § 2255, a §2241 petition cannot be entertained by a court unless a §2255 motion would be "inadequate or ineffective." Pet. App. 3a . The court relied in part on Cradle V. U.S. ex rel. Minor, 290 F.3d 536, 538 (3rd Cir.-2002), reasoning that a petitioner has to demonstrate some limitation of scope or procedure which would prevent a §2255 proceeding from providing him a full hearing and adjudication on his unlawful detention claim. Pet. App. 3a . Notably, §2255(e) states "... , unless it also

FN- 2 The Magistrate's R & R did not take into account that Petitioner's habeas claim was against the custodian and raised the claim of a want of jurisdiction in the trial court. The court made note of his lack of subject-matter jurisdiction filing in the trial court. Pet. App. 15a, N-2.

appears that the remedy by motion is inadequate or ineffective to test the legality of his detention." It does not specifically state that the petitioner has to show or demonstrate its inefficacy. *id.* Nonetheless, the Third Circuit found there to be no substantial question presented in the appeal. Pet. App. 3a .

The Third Circuit didn't comment on de novo consideration of Petitioner's habeas claims as a pro se litigant for liberal construction. Court are to adhere to the established principle that a pro se litigant who is not trained in the science of law is unable to properly and thoroughly articulate his/her argument and pleadings accurately against the Government. Greenlaw V. U.S., 554 US 237 (2008). The panel plainly did not address liberal construction of Petitioner's pro se pleading to be construed as the intended claim against the custodian holding him in its custody in reliance on a judgment of a court that's claim to have acted without jurisdiction. The Third Circuit I.O.P. states that the court may take summary action "... if it clearly appears that no substantial question is present." *id.* at 10.6. The question of jurisdiction is always examinable collaterally. Thompson V. Whitman, 18 Wall 457, 468.

REASONS FOR GRANTING THE WRIT

I. **THIS CASE PRESENT AN IMPORTANT QUESTION ON THE SCOPE OF THE JURISDICTION OF A CUSTODIAL FEDERAL DISTRICT COURT TO CONSIDER A FEDERAL PRISONER'S §2241 PETITION FOR THE WRIT OF HABEAS CORPUS CHALLENGING THE LEGALITY OF HIS DETENTION BASED ON A JUDGMENT OF ANOTHER COURT**

A. Federal Courts are Split Over Whether a Federal Prisoner Must First File a §2255 Motion in the Sentencing Court Before Making Application in the Custodial Court Pursuant to a True Constitutional Habeas Corpus Provision of Title 28 U.S.C. § 2241

The question at the center of this case -- whether a custodial court has jurisdiction to consider a federal prisoner's writ of habeas corpus §2241 petition for inquiry into the lawfulness of his detention, without first seeking relief under §2255 motion in the court that entered the judgment -- requires definitive resolution by this Court. Federal courts are courts of limited jurisdiction deriving their power from the Federal Constitution and Congress. There are two federal statutes, 28 U.S.C. §§ 2241 & 2255, that confers federal jurisdiction over habeas petitions filed by federal prisoners. The core habeas corpus action is a prisoner challenging the authority of the entity detaining him. §2242.

Circuit Courts are divided on the issue and a question of federal law exist as to call for an exercise of this Court's supervisory powers to act. S.Ct. Rule-10(a). It is a basic and well-established principle that a §2241 petition is for a "writ employed to bring a person before a court most frequently to ensure that the party's imprisonment or detention is not illegal." Boumediene V. Bush, 553 US 723, 737 (2008). The Federal Constitution, Article I, §9, Clause 2, provided explicit recognition of our law concerning the Writ of Habeas Corpus. United

States district courts was originally granted the power to issue writs of habeas corpus agreeable to the principles and usages of law for purposes of an inquiry into the cause of commitment. See First Judiciary Act of 1789, Chapter 20, § 14, 1 Stat. 81, 82; superseded by Act of 1867, Ch. 28, 14 Stat. 385; superseded by 28 U.S.C. § 2241. Congress has granted federal courts, within their respective jurisdictions, the power to grant habeas applications by persons claiming to be held in custody of the United States in violation of the Constitution or laws or treaties of the United States. §2241(a), (c)(3).

Ever since Congress enacted §2255 in 1948 as a habeas corpus substitute to allow for collateral review of the sentence of federal prisoners in the trial court, that section, rather than §2241, has been the usual avenue for federal prisoners challenging the lawfulness of their conviction and sentence. In a leading case addressing habeas corpus substitution, United States V. Hayman, it was explained that a §2255 motion replaced traditional habeas corpus for federal prisoners with a process that allowed the prisoner to file a motion in "the sentencing court on the ground that his sentence was, inter alia, 'imposed in violation of the Constitution or laws of the U.S.'" 342 US 205, 207, N-1 (1952). It directed claims not to the custodial court but instead to the sentencing court. §2255

Some lower federal courts, as a result of the enactment of §2255, feel bound to rule that custodial district courts lacks the jurisdiction to entertain a federal prisoner's §2241 petition unless it is shown that a §2255 motion is "inadequate or ineffective" as set forth in the savings clause. §2255(e). See Jiminian V. Nash, 243 F.3d 144, 145 (2nd Cir. 2001)

(§2255 not inadequate or ineffective when there were second or successive limitations); Cradle V. U.S., 290 F.3d 536, 539 (3rd Cir. 2002)(§2255 not "inadequate or ineffective" when 1-year statute of limitation expired); Abdullah V. Hedrick, 392 F.3d 957, 959 (8th Cir. 2004) (same); U.S. V. Suratt, 797 F.3d 240, 253 (4th Cir. 2015) (a federal prisoner must bring a §2241 petition within the scope of the "savings clause" of §2255(e) or the district court must dismiss for lack of jurisdiction).

In Hayman, the Court considered the provisions of §2241 notwithstanding the new enactment of §2255. 342 US at 206. Hayman had filed a §2255 motion claiming ineffective assistance of counsel which was denied by the district court. The court of appeals, questioning the adequacy of and constitutionality of §2255, directed for that motion to be dismissed so that Hayman could file a § 2241 petition for a writ of habeas corpus. In overturning that decision, the Court expressed that because the district court's ruling on a §2255 motion allowed for compelled production of the prisoner, §2255 was neither "inadequate or ineffective." id. at 222-223. The Court further confirmed the right of a prisoner to have the continued availability of the writ when it stated "in a case where the §2255 procedure is shown to be 'inadequate or ineffective,' the Section provides that the habeas corpus remedy shall remain open to afford the necessary hearing." id.

In Swain V. Pressley, the Court again considered the "inadequate or ineffective" language as a safety-valve and inquired whether the "availability" of a collateral habeas remedy was adequate to test the legality of the detention complained of. 430 US 372, 382-383.(1977). The Swain case involved a prisoner's challenge to the Constitutionality of a provision of the District of Columbia Code that channeled prisoners

collateral attacks to the local Superior Court. id...Notably, in both Hayman and Swain, the Court inquired into the "availability" of the habeas corpus remedy in making its decision concerning the inadequacy or ineffectiveness of the substitute habeas remedy. Thus, expressing that the substitute habeas remedy must, at the time, be "available" to the prisoner "to afford the necessary hearing" in order to "test the legality of a person's detention." Hayman at 223; and Swain at 381.

A federal prisoner who is challenging his/her conviction or sentence are authorized to file a §2255 motion in the jurisdiction where they were tried or sentenced. However, the "orderly administration of criminal law precludes considering such motion absent exceptional circumstances," during the pendency of a direct appeal. See §2255 Rule-5 Advisory Committee's Note; U.S. V. Silla, 2017 U.S. Dist. LEXIS 185734 (D. MD 2017) (§2255 premature during pendency of direct appeal); McIvery V. U.S., 307 F.3d 1327, 1331 N-1 (11th Cir. 2002) ("collateral claims should not be entertained while direct appeal is pending"); Walker V. Conner, 72 Fed. Appx. 3, 4 (4th Cir. 2003) (observing §2255 motion is premature when direct appeal is pending). The Third Circuit stated in a precedent decision that a §2255 motion is inadequate or ineffective only where the petitioner demonstrates that some limitation of scope or procedure would prevent a §2255 proceeding from affording him a full hearing and adjudication of his wrongful detention claim. Cradle 290 F.3d at 538; See also In Re Dorsainvil, 119 F.3d 245, 251. (3rd Cir 1998) ("...it must follow that it is the same 'complete miscarriage of justice' when... makes the collateral remedy unavailable. In that unusual circumstance the remedy afforded by §2255 is 'inadequate or ineffective...')." The scope of §2255 does not reach claims against the custodian in execution of a judgment. "it is the efficacy of the remedy." Cradle, id. at 538-539. In such a case, as in Wilford's, §2241 is proper.

In Mr. Wilford's case, the Third Circuit erred by failing to recognize there were no challenges at the time for a §2255 motion as being authorized for him to apply for habeas relief in the court that pronounced the judgment, to afford him a full hearing to test the legality of his detention. Petitioner's case is important and proper for the Court to confirm the principle that the writ of habeas corpus shall remain available to persons imprisoned for a prompt and efficacious remedy for inquiry into the constitutionality of his detention, in a court having jurisdiction to entertain his application and grant the writ, notwithstanding the possibility of a future substitute habeas remedy becoming available once judgment is final. See §2255(f) (1-year limitation runs from day judgment becomes final); Clay V. U.S., 537 US 522 (2003). Lacking further guidance from this Court, lower courts have been struggling to conduct the proper review to analyze a pro se petitioner's §2241 application for writ of habeas corpus against a custodial entity.

Furthermore, the Circuit Courts are conflicted as to what constitutes a proper claim by a federal prisoner who is challenging the legality of his/her detention pursuant to §2241. In Preiser V Rodriguez, the Court held that a prisoner's challenge to the very fact or duration of his confinement, when seeking immediate release from that confinement is the heart of habeas corpus. 411 US 475, 484, 498-500 (1973). The Preiser Court noted that a focus of a writ of habeas corpus - ad subjiciendum - is to inquire into illegal detention with a view to an order releasing the prisoner, id. at 484, as oppose to challenges against conviction or sentence. Even after Preiser, circuit courts are not uniform in this area of habeas jurisprudence as to what is meant by the "execution" of the prisoner's sentence for cognizance pursuant to §2241.

For example: in Muniz V. Sabol, 517 F.3d 28, 34-35 (1st Cir. 2008)(a § 2241 petition is proper because prisoner's challenge to delayed transfer sought relief from manner sentence executed); in U.S. V. Jalili, 925 F.2d 889, 893 (6th Cir. 1991)(a challenge to place of imprisonment, not fact of federal conviction, properly brought under §2241); in Woodall V. FBOP, 432 F.3d 235, 243-244 (3rd Cir. 2005)(a §2241 claim proper because prisoner's challenge to regulations concerning half-way-house placement); in Deroo V. U.S., 709 F.3d 1242, 1244-45 (8th Cir. 2013)(a § 2241 claim proper because prisoner's challenge to Bureau Of Prisons use of expunged record concerned manner sentence executed); in Robinson V. Sec'y, 2018 U.S. LEXIS 22766 (11th Cir. 2018)("pursuant to §2241 a prisoner may bring an action... if the prisoner is in custody in violation of the Constitution..."); and in Thompson V. Choinski, 525 F.3d 205, 209 (2nd Cir. 2008) (a §2241 claim proper because prisoner challenge condition of confinement).

The Third Circuit has held that a federal prisoner's challenge to "some aspect of the execution of the sentence" may proceed under §2241. Coady V. Vaughn, 251 F.3d 480, 481 (3rd Cir. 2001). However, the Third Circuit has also found the "precise meaning of 'execution of the sentence' to be hazy." Woodall, 432 F.3d at 242. In Woodall, the court acknowledged the divergence in the circuits concerning what constitutes a proper §2241 challenge to "execution" of sentence and stated that the "resolution of this issue is far from clear." *id.* at 242. In discussing the circuit split, the Third Circuit sided with the Second, Sixth, Ninth, and Tenth Circuits and determined that the "execution" mean to "put into effect" or "carry-out." *id.* at 243. Petitioner's §2241 claims seems to have been appropriate. Pet. App. 55a.

It is critically important to have clarity on the scope of a custodial court's jurisdiction to consider a federal prisoner's claims pursuant to the true constitutional provision of §2241 for writ of habeas corpus. Without further guidance from this Court, a federal prisoner cannot know the proper remedy for or scope of his Constitutional protection, nor can federal custodial courts be clear and uniform as to what is a proper habeas corpus claim under §2241 to test the legality of a prisoner's detention, although, the judgment has yet to become final. As federal custodial courts continues to dismiss prisoner's §2241 habeas corpus petitions for lack of jurisdiction because of the divergence on the meaning of "execution" of the sentence, the need for this Court to speak grows daily more urgent.

B. Decisions of This Court Have Recognized The Writ of Habeas Corpus as Being the Proper Remedy for Denials of Due Process of Law.

The Due Process Clause of the Fifth Amendment prohibits the Government from depriving an individual of his life, liberty or property without due-process of law. U.S. Const. Amend. V. There is nothing novel in the fact that today habeas corpus in the federal courts provides a mode for the redress of denials of due process of law, to persons imprisoned. "Vindication of due process is precisely its historic office." Fay V. Noia, 372 US 391, 402 (1952). This case presents an important step in the effort to maintain unipared the principles of habeas corpus with that of the Fifth Amendment of the U.S. Constitution; according to the principles and usages of law. A criminal judgment of a court against one, without reading the indictment to the accused for his opportunity to be heard/defend and for his opportunity to put the matter in issue by his plea/answer thereto, is not due process of law, and is void for want of jurisdiction.

A written Judgment of Conviction is the document used by the Bureau of prisons ("BOP") as authority to commit and detain the prisoner. It memorializes the record of the issuing court by its recital of the most essential steps taken from the initial pleadings thru pronouncement of the sentence in a judicial proceeding.

In federal criminal proceedings, due process of law requires that an accused person shall plead or be ordered to plead, or in a proper case that a plea of not guilty be filed for him, before his trial can rightfully proceed. Crain V. U.S., 162 US 625.(1896). Constitutional safeguards for the protection of persons charged with offenses are not to be disregarded in order to inflict punishment by imprisonment. Ex Parte Quirin, 317 US 1, 25 (1942); Frank V. Mangum, 237 US 309, 331-332 (1915) (courts must take into consideration the entire proceedings to ensure no deprivation of life or liberty without due process). Mr. Wilford's §2241 petition raised the claim concerning the judgment relied upon by the entity which he is detained, contains the material false fact of the pleadings. Pet.App. 53a. Principles of fundamental fairness protects a person from imprisonment based upon a judgment rendered in violation of due process of law.

This court has previously explained that the pleadings of the parties are essential to a civil or criminal case as a judicial proceeding, for the purpose of the probabtion of a matter of fact in issue between the parties to be judicially ascertained, in the mode prescribed by law, before lawful judgment. Tucker V. U.S., 151 US 164, 168-169. In Dowdell V. U.S., the Court wrote that the prisoner must answer, or, standing mute, the court must cause a plea of not guilty to be entered into the record to make up an issue; if not, "there can be no valid trial had, and any judgment

is a nullity," 221 US 325 (1911), as there is a want of jurisdiction.

The question at the center of this matter concerns whether the government entity detaining Petitioner has valid legal authority to do so based on its use or reliance upon a judgment of a district court that falsely recites an indispensable fact which is necessary to the jurisdiction of the court who rendered it. Due Process Clause protects individuals from deprivation of his/her liberty based on official reliance upon materially false or inaccurate facts. U.S. Const. Amend. V.; Meachum V. Fanu, 427 US 215, 228-229 (1976). This Court has made clear that the Due Process Clause by its own force forbids the Government from depriving a person of their liberty by imprisonment without full compliance with the requirements of the Clause. Fanu, is at 224. Thus, the jurisdiction of that court questioned.

In two well-known decisions by the Court, it was held that a defendant could not be deprived of his liberty based on government reliance or use of material false or inaccurate facts. In Townsend V. Burke, 334 US 736 (1948), the sentencing court mistakenly assumed that the defendant had been convicted on several charges when in fact he had been acquitted or those charges had been dropped. The Court held that "the prisoner was sentenced on the basis of assumptions... which were materially untrue. Such result, whether by careless or design is inconsistent with due-process of law..." id. at 741. The Townsend Court further noted that the "judgment was predicated on misinformation or misreading of the court records, a requirement of 'fair play' which a prisoner deserves." id.

In the second case, U.S. V. Tucker, 404 US 443 (1972), the defendant was sentenced based on two prior convictions that had been obtained in violation of his right to counsel. *id.* at 447. The Court held that official reliance upon "misinformation of a Constitutional magnitude" violates due process of law. *id.* at 447-448.

Relying on Townsend and Tucker, the Third Circuit reversed a denial of habeas corpus in Bibby V. Tard, 741 F.2d 26 (3rd Cir. 1984). The Third Circuit concluded that Bibby had not received a "full and fair" hearing and found it to be the sentencing court's written statement of reasons itself that created the factual dispute... *id.* at 31. The court noted that the statement of reasons "becomes part of the judgment of conviction as a document of major importance." *id.*

Holding a person in federal prison based upon a judgment which is written falsely and does not comply with full compliance of the law, will expose citizens of our Country to oppressive and arbitrary forms of Governmental action which our Constitution has forbidden from its founding. It has been said that a person can only be held in prison "pursuant to 'the' (e.g., one) judgment." Magwood V. Patterson, 561 US 320, 130 S. Ct. 2788, 2808 (2010). (Kennedy, J., Dissent). A criminal judgment is defined by reference of the definition of a "Judgment of Conviction" set out at Federal Rules of Criminal Procedure Rule-32(k)(1) which requires the element of "the plea, verdict and findings, and adjudication and sentence." Fundamental principles of law requires that a judgment be on matters put in issue by the parties upon the pleadings, to be lawful.

Deal V. U.S., 508 US 129, 132 (1993). The Federal Bureau of Prisons Policy Statement 5880.30, §XIV adopted Rule-32 verbatim.

It is important for the public to know whether a person imprisoned may file for the writ of habeas corpus pursuant to §2241 in a case he is being held in custody by the Government on use of a judgment that falsely recites the indispensable fact of a plea and where the record of the issuing court omits such fact. By virtue of the U.S. district court's general equity jurisdiction they could enjoin a party from enforcing or executing a void judgment. Simon V Southern R. Co., 236 US 115, 122-123 (1915). Without disputing that premise the court of appeals nonetheless held there to be no substantial question presented in the appeal. Pet. App. 3a . Only this Court can make the ultimate constitutional judgment as to Petitioner's habeas corpus claim.

Moreover, it is basic that a prisoner in custody may have a judicial inquiry "into the very truth and substance of the cause of his detention," Walker V. Johnston, 312 US 275, 284-285 (1941), as the question whether he shall be imprisoned is always distinct from the question of guilt or innocence and therefore a separate question which may be decided in a separate court - namely the custodial court having jurisdiction over the parties. The Third Circuit has held in U.S. V. Crusco, 536 F.2d 21 (3rd Cir. 1976), a denial of due process to be "a manifest injustice as a matter of law." Federal district courts does have jurisdiction to entertain a federal prisoner's petition pursuant to §2241 claiming to be in custody in violation of due process of law.

C. The Third Circuit Erred by Failing to Recognize Petitioner's Pro Se Habeas Corpus Claims to Include a Want of Jurisdiction in the Sentencing Court.

It is well-established in the federal courts that when jurisdiction is challenged it must be prove. In Anglo-American jurisprudence it has been observed and maintained that a writ of habeas corpus is the remedy in all manner of illegal detention, for removing the injury of unjust and illegal confinement. Fay V. Noia, 372 US at 400. Thus, where a prisoner under a conviction or sentence of another court makes a claim of want of jurisdiction in such court, the custodial court has jurisdiction to give relief on habeas corpus. Montgomery V. Louisiana, 577 US ___, 136 S.Ct. 718 (2016). It is an equally well settled rule in jurisprudence, that the jurisdiction of any court exercising authority over the subject may be inquired into in every other court, when the proceeding in the former are relied upon, and brought before the latter, by a party claiming benefit of such proceeding. Williamson et ux. V. Berry, 8 HOW 495, 540.

The Third Circuit granted summary action in favor of the Government to affirm the District Court's ruling to dismiss Petitioner's pro-se §2241 petition for habeas corpus, having found no substantial question presented in the appeal, although, his pro-se claim was one of a want of jurisdiction. Pet. App. 53a. **FN-3** "The traditional rule has been that a writ of habeas corpus will

FN-3 Third Circuit I.O.P. at 10.6 requires that "it clearly appear" no substantial question is present, but in Petitioner's case it made no determination as to whether it was clear to the court or not. The question of jurisdiction is always examinable.

be granted for the release of a prisoner jailed pursuant to an improper exercise of jurisdiction." Brown V. U.S., 508 F.2d 618, 633 (3rd Cir. 1974) citing ExParte Seibold, 100 US 371, 375 (1880). In Ex Parte Neilsen, the Court wrote that when a prisoner is held under a judgment of a court made without authority of law, the proper tribunal will issue a writ of habeas corpus to look into the record so far as necessary to ascertain that fact, and if it is found to be so, will discharge the prisoner. "It is a principle that a decision of such a tribunal, in a case clearly without its jurisdiction, cannot protect the officer who executes it." Schlesinger V. Councilman, 420 US 738, 747 (1975).

This Court has explained that where a judgment flows from "proceedings" which "was not a judicial proceeding because lawful authority was not present," "the proceeding "could therefore not yeild a judgment." See McIntyre Machinery V. Nicastro, 564 US 873 (2011) citing Burnham V. Superior Court of Cali., 495 US 604, 608-609 (1990). It was also said by this Court: "the record must affirmatively show all of those indispensable requisites which are necessary to the vality of the record as a judicial proceeding," Dowdell V. U.S., 221 US 325. (1911), and that "the record must affirmatively show that the accused did plead to the charge." *Id.* The court and the jury, not separately but together, constitute the appointed tribunal which alone, under the law, can try the question of crime, "the commisiion of which by the accused is put in issue by a plea of not guilty." Schick V. U.S., 195 US 65, 82 (1901). There are some things so vital in thier character that they may not be legally done or omitted in a criminal prosecution, even with consent of the accused. "This is abundantly established by authority." *id.* The record of the trial court omits the requisite plea to the cause of action.

Upon an indictment in a criminal case, the accused must be afforded an opportunity to enter his plea to that indictment as a necessary fact of the record for the right of the court to proceed with a constitutional jury trial. The only judgment known to law is the judgment entered upon the records of the issuing court. Hill V. U.S., 298 US 460, 464 (1936). Although, the judgment imports verity when collaterally assailed, the omission of the record of an essential fact of the plea as an indispensable step for the court's jurisdiction to render such judgment, impeaches it. The indictment, the plea, the judgment, and the sentence are essential elements to a complete record. The Court has set forth the rule that a writ of habeas corpus searches the record and places a duty on the court to explore the foundations, and pronounce them true or false. Hill, at 467. A person is imprisoned on account of the judgment, and if that judgment be void or in excess of the power of the court to render, the writ of habeas corpus provides him a right of remedy to be discharged out of custody. Hill, 465; McNally V. Hill, 293 US 131, 138, N-4 (1934). It is well settled in this Court that habeas corpus is proper for release of a prisoner where there is no authority to hold him under the judgment. ExParte Wilson, 114 US 417, 421 (1885) (citing cases).

The lack of a manatory constituent part of judicial powers renders the district court powerless and the act of proceeding in the cause to judgment amounts to a want of jurisdiction. The Government has no authority to execute or enforce a void judgment of a court without power to enter such judgment. The abundance of authority shows there being a substantial question presented whenever an imprisoned person, as Mr. Wilford, makes a \$2241 claim of a want of jurisdiction which reaches the Circuit Court.

It is important for the public to feel secure in that the Constitution of the United States protects an individual against the irresponsible or arbitrary exercise of power by any branch of the national government. It is in the province and duty of the judicial department to determine in case regularly brought before them, whether the powers of any branch of the government have been exercised in conformity to the constitution; and if they were not, to treat their acts as null and void. Kilbourn V Thompson, 103 US 168. The authorities provides that the remedy by writ of habeas corpus is proper when there is a claim of want of jurisdiction. The fact of an accused person's plea is necessary to the power of the trial court to act. Dowdell, id., Schick, id, as a condition precedent. Hamilton V. Alabama, 368 US 52 (1961). Therefore, if any judgment whatever be given by persons who had no commission to proceed against the person condemned, it is void and cannot be legally forced or executed, by any entity of the federal Government.

This Court should grant certiorari in Petitioner's case to clarify that the U.S. courts cannot act in a manner to cripple or limit the authority conferred upon it by the Constitution and Congress to issue the writ of habeas corpus by overlooking a pro-se prisoner's claim concerning the want of jurisdiction, whether there has been a technical commitment or not.

The Third Circuit erred by not recognizing that Petitioner's pro-se habeas corpus claims pursuant to the true Constitutional provision of §2241 was not making an intended challenge to conviction or sentence, but was intended as claims concerning him being under

duress of imprisonment - in the custody of the United States in violation of the Constitution or laws or treaties thereof - based on a judgment of another court acting with a want of jurisdiction. Every person within the borders of the U.S. has the privilege to petition for the Great Writ Of Habeas Corpus, for inquiry into his/her detention seeking immediate release, as the writ of right conferred by the Constitution, Article-I, §9, Cl. 2, and Congress, Judiciary Act of 1789, Ch. 20, §14, 1. Stat. 81-82; superseded by Act of 1867, Ch. 28, 14 Stat. 385; superseded by Title 28 U.S.C. § 2241.

In the case of an imprisoned person who petitions the custodial court for the writ of habeas corpus pursuant to §2241 challenging the legality of his detention, it is a new and independent suit by the prisoner to enforce a civil right that's claimed against those who are holding him in custody - "the judicial proceeding, under it is not to inquire into the criminal act which complained of, but the right to liberty notwithstanding the act." Fay 372 Us at 423, N-34. It is not a proceeding in the original action." id. Manifestly, authorities show that a new and independent suit may be brought in a Federal district court, which is bound to act within its jurisdiction and afford redress to a prisoner to enjoin the government from executing the judgment of a court having acted with a want of jurisdiction. Simon V Southern R. Co., 236 US at 122-123.

It is important for the public and courts to be clear as to the jurisdiction of a custodial court to issue writs of habeas corpus agreeable to the principles and usages of law, whether there has been a technical commitment or not. Frank V. Mangum, 237 US 309

(Habeas corpus will lie in the Federal court in behalf of a person held in custody under a conviction of crime in the case the judgment under which the prisoner 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 proceedings). *Id.* It is firmly established that if the court which renders a judgment had no jurisdiction to render it, the judgment is null and void, and if the defendant be imprisoned under and by virtue of it may be discharged from custody on habeas corpus. Ex Parte Neilsen, 131 US 176, 182.

The Third Circuit erred by failing to see that Petitioner's claim was within the power of the District Court to hear - where he was not merely protesting that the conviction or sentence erroneous but contended that the judgment used against him violated the Constitution and was void, being entered by a court without jurisdiction. Seibold, at 376-377. Where the judgment is unauthorized by law, and therefore void, the prisoner may be released from imprisonment on habeas corpus without reversal of judgment. In Re Bonner, 151 US 142. The Court should grant petition for certiorari in this case and do as justice appertains, or alternatively, grant, vacate and remand for habeas corpus consideration in accordance with the law. Despite the action of the trial court the absence of jurisdiction may appear on the face of the record, Neilsen, *id.* at 183, and the remedy of habeas corpus may be needed to release the prisoner from a punishment manifestly without jurisdiction to pass judgment. Bowen V Johnston, 306 US 16, 26 (1939).

II THE DECISION OF THE LOWER COURT AMOUNTS TO AN UNCONSTITUTIONAL TEMPORARY SUSPENSION OF THE WRIT OF HABEAS CORPUS.

The Privilege of The Writ of Habeas Corpus Shall Not be Suspended, Unless When in Cases of Rebellion or Invasion. Art. I, §9, Cl. 2.

The Third Circuit held Petitioner's Constitutional §2241 habeas corpus claims to be "unconvincing" and that he had not shown the substitute remedy of a §2255 motion "would be inadequate or ineffective to raise a challenge to his judgment and conviction." Pet. App. 3a . It is a fundamental tenet of law that a person being held in restraint of his/her liberty under or by colour of the United States in violation of the Constitution or laws of the U.S. has a right to petition the federal custodial court for the writ of habeas corpus, 28 U.S. C. § 2241(a), (c)(3), for inquiry into the lawfulness of his/her detention. Section 2241 of title 28 is a true constitutional provision for habeas corpus relief, while §2255 is a substitute habeas remedy to be filed in the sentencing court for challenges to conviction and sentence. Congress provided for federal prisoners to challenge the legality of their detention, as oppose to conviction or sentence, pursuant to §2241, which confers the power to Federal district courts within their respective jurisdictions to grant habeas applications by persons making challenge to their dentention. The Statue traces its ancestry to the first grant of Federal-court jurisdiction: Judiciary Act of 1789, Ch. 20, §14, 1 Stat. 82; Act of 1867, Ch. 28,

14 Stat. 385. Rasul V. Bush 542 US 466 (2004) citing Felker V Turpin, 518 US 651, 659-660 (1996).

Federal courts are authorized to consider the merits of the claim of prisoner seeking judicial inquiry into the constitutionality of their detention in the custody of the U.S., within the territorial jurisdiction of that court pursuant to §2241. Braden V. Judicial Circuit Court of Kentucky, 410 US 484, 495 (1994)(the language of §2241(a) requires nothing more than that the court issuing the writ have jurisdiction over the prisoner's custodian). Where the petition for the writ of habeas corpus is against the custodian in the territorial jurisdiction of a Federal district court of other than the one that sentenced the prisoner, seeking inquiry into the legality of his detention, a §2255 motion seems neither adequate or effective to test the legality of the applicant's detention. Specifically, in the case of there being claims of want of jurisdiction in the sentencing court, and custodial claims isn't in §2255's scope, §2241 seems to be the proper remedy.

Petitioner's case presents the important question whether the dismissal of his petition for the writ of habeas corpus under §2241 by the lower Federal court should be regarded as a suspension of the Great Writ within the meaning of the Constitution. Swain, 430 US at 381. Petitioner filed his pro se §2241 habeas application in the U.S. District Court for the Western District of Pennsylvania and the District Court dismissed his petition for lack of jurisdiction citing that he did not show §2255 to be "inadequate or ineffective," Pet. App. 15a, without proper apprehension of his jurisdictional challenge or regard to the availability

on an open efficacious remedy to test the legality of his detention. And no consideration that the claim is against the custodian holding him. This Court has repeated what has before been so truly said of the Federal writ: "there is no higher duty than to maintain it unimpaired, and unsuspended, save only in the case specified in our Constitution." Fay, 372 US 400 (citations omitted). The Court has recently reminded us that "the privilege to the writ of habeas corpus shall not be suspended..." Jennings V. Rodriguez, ___ US ___, 200 L.ed. 2d 122 (2018).

The Third Circuit's action in Petitioner's case of relying on the unavailable substitute §2255 remedy in its decision against him, should be viewed as erroneous as a matter of law, in obstructing his ability to "a prompt and efficacious remedy" of habeas corpus. Fay, *id.* at 401-402. The Third Circuit should also observed that courts within the Fourth Circuit adhere to the rule the §2255 motions are not available to prisoners while a direct appeal is pending. §2255, Rule-5 Advisory Committee's Note; Walker V Conner, 72 Fed. App'x 3, 4 (4th Cir. 2003); U.S. V. Silla, 2017 U.S. Dist. LEXIS 185734 (D. MD 2017). Moreover, the Third Circuit did not make any consideration for exceptional circumstances involving Petitioner's pro-se claims.

Where new proceedings are instituted by a prisoner to enforce a civil right pursuant to §2241 and is not a proceeding in the original action, and involves a claim of want of jurisdiction of another court, it is proper in the court having jurisdiction over the custodian as an independant cause of action against those holding him in their custody, Fay, *id.* at 423, N-34, which should not be denied.

In a landmark circuit decision, the Third Circuit explained that the habeas corpus remedy shall remain open to afford the necessary hearing. In Re Dorsainvil, 119 F.3d at 249-250. The Dorsainvil court further explained the necessity of an assesment of the "availability" of an efficacious habeas corpus remedy for inquiry into the legality of a person's detention. *id.* citing Hayman and Swain. The Third Circuit's decision in Petitioner's case may be seen as a deviation from precedent rulings of this Court as well as it own. S. Ct. Rule-10(a) and (c).

Constitutional safeguards for criminal defendants should not be disregarded for the purpose of inflicting punishment through imprisonment by the government. It must never be forgotten that the Great Writ of Habeas Corpus is the precious safeguard of personal liberty and is not to be suspended or impaired for the possibility of a latter consideration by substitute means in the sentencing court; or impaired or suspended by overlooking a pro-se prisoner's intended claim of a want of jurisdiction of another court and dismissing the petitioner's §2241 petition. The Suspension Clause , Art. I, § 9, Cl. 2, protects individuals against abuses for protection of the rights of the detained by means consistent with the essential design of the Constitution. Boumediene V. Bush, 553 US 723, 745-46 (2008). Congress has taken care throughout our Nation's history to preserve the writ and its functions. Indeed, most of the major legislative enactments pertaining to habeas corpus have acted not to contract the writ's protection but to expand it or hasten resolution of prisoner's claims, not to delay or frustrate it. *id.* at 773-775.

Federal courts of appeals have jurisdiction of appeals from U.S. district courts pursuant to 28 U.S.C. § 1291. The Third Circuit should have reviewed the District Court's dismissal of Mr. Wilford's habeas corpus §2241 petition for lack of jurisdiction de-novo. Ballentine V. U.S., 486 F.3d 806, 808 (3rd Cir. 2007). The Petitioner's (Wilford) pro se habeas corpus petition should have been liberally construed, as seeking relief under the only statute available to him. Bennett V. Soto, 850 F.2d 161, 163 (3rd Cir. 1988). If a §2255 motion was not available at the time, the District Court had jurisdiction over the §2241 habeas petition filed by Petitioner and should not have dismissed it, Soto, id, as to impair or suspend the remedy.

Imprisoned pro-se habeas litigants deserve for their filings to be liberally construed as to do substantial justice. Ericson V. Pardus, 551 US 89, 94 (2007); Fed.R.Civ.P. Rule-8(e); Castro V. U.S., 540 US 375 (2003); Haines V. Kerner, 404 US 519, 520(1972) (pro se complaints held to less stringent standards than formal papers drafted by lawyers); U.S. V. Otero, 502 F.3d 331, 334 (3rd Cir. 1972) (pro se habeas filings to be construed liberally). In considering an imprisoned pro se litigant's habeas corpus filing, courts should not be allowed to permit technical pleading requirements to defeat the vindication of any constitutional rights which the petitioner alleges, however inartfully, to have been infringed. Federal courts should not sidestep their judicial obligation to assert jurisdiction in a habeas properly before it. "A federal court has a virtually unflagging obligation to assert jurisdiction where it has that authority." Reyes Mata V. Lynch, 135 S. Ct. 2150 (2015).

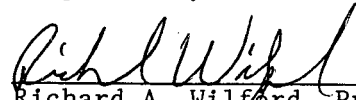
It is important that a pro se litigant who is held in prison by the government, having no training in the science of law, have his or her habeas corpus petition construed liberally according to its intended claim in order to do substantial justice, as oppose to constuing away the possibility of a prompt and full hearing in the custodial court for the benefit of the Government, "the ritchest, most pwoerful, and best represented litigant" in the courts. Greenlaw 554 US, at 244.

This Court should grant certiorari in this case to answer the important question whether the actions of the lower court constituted an unconstitutional suspension of the Great Writ of habeas corpus. Alternatively, the Court should grant, vacate and remand the case so that the lower court may do as justice appertains.

CONCLUSION

For the forgoing reasons, the petition for writ of certiorari should be granted, or the case should be remanded for proper habeas corpus proceeding.

Respectfully Submitted,


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