

No. \_\_\_\_\_

**19-6738**

IN THE  
SUPREME COURT OF THE UNITED STATES

WILLIAM ARDAS SARINGAR

(Your Name)

PETITIONER

**ORIGINAL**

vs.

LORIE DAVIS-DIRECTOR,  
TDCJ-INSTITUTIONAL DIVISION

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

FILED  
OCT 30 2019

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

WILLIAM ARDAS SARINGAR, CID-#1092348

(Your Name)

J, V, ALLRED UNIT, 2101 FM 369 NORTH

(Address)

IOWA PARK, TEXAS 76367

(City, State, Zip Code)

N/A

(Phone Number)

## QUESTION(S) PRESENTED

1. When does the fundamental constitutional right to be tried by a court of competent jurisdiction cease to operate as a right, or is forfeited by a party, thereby transmogrifying an otherwise VOID judgement into a valid one?
2. Is the constitutional right to be tried by a court of competent jurisdiction, as is guaranteed by Article III, § 2, cl. 1 of the United States Constitution, and the due process of, due course of, and equal protection of the law clauses of the Fifth and Fourteenth Amendments of the United States Constitution, ever subject to forfeiture, waiver, and/or nullification pursuant to, a procedural statute of limitations, such as 28 U.S.C. § 2244(d)(1) or any other procedural bar and/or default mechanism?
3. When there is proof that a trial court lacked lawful subject-matter jurisdiction at the time of trial, can the expiration of the one-year statute of limitations of 28 U.S.C. § 2244(d)(1) be invoked to transmogrify the VOID judgement for want of lawful jurisdiction into a valid judgement, or be used to negate the constitutional right that protects citizens against unlawful prosecution?
4. Is due process violated when a court summarily dismiss a valid and substantiated claim of defect in subject-matter jurisdiction of the trial court without holding a hearing on the merits of the claim, despite evidence of state impediment to timely raising these claims, by enforcing the one-year statute of limitation of 28 U.S.C. § 2244, when jurisdiction involves a court's power to hear and decide a matter and where the lack of jurisdiction renders a judgement Void ab initio depriving it of any legal protections?
5. Can the expiration of a statute of limitations confer jurisdiction upon a court where none existed to begin with, and if not, can the expiration of a statute of limitations be invoked to deny relief to a party convicted by a court that was without jurisdiction to hear and decide the case in the first place?

## LIST OF PARTIES

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

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

## TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED .....	
STATEMENT OF THE CASE .....	
REASONS FOR GRANTING THE WRIT.....	
CONCLUSION.....	

## INDEX TO APPENDICES

APPENDIX A: Order Denying Motion For Rehearing or Rehearing En Banc, United States Court of Appeals--Fifth Circuit

APPENDIX B: Order Denying Certificate of Appealability and Motion To Proceed In Forma Pauperis.

APPENDIX C: Order Accepting Findings, Conclusions, And Recommendation of the United States magistrate Judge

APPENDIX D: Findings, Conclusions, And Recommendation of The United States Magistrate Judge

APPENDIX E: Texas Court of Criminal Appeals "white card" denial dismissing Petitioner's T.C.Cr.Pro. art. 11.07 without written order.

APPENDIX F: State's Response To Application For Writ Of Habeas Corpus; filed during State habeas proceedings.

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Arbaugh v. Y. & H. Corp., 126 S.Ct. 1235 (2006)	8
Ashcroft v. Iqbal, 129 S.Ct. 1937 (2009)	8
Barefoot v. Estelle, 463 U.S. 880 (1983)	9
Bland v. Cali. Dept. of Corrections, 20 F.3d 1469 (9th Cir. 1994)	7
Capron v. Noorden, 2 Cranch 126, 2 L.Ed. 229 (1804)	7
Ex parte McCordle, 7 Wall. 506, 19 L.Ed. 264 (1886)	10
Faye v. NOIA, 372 U.S. 391, 83 S.Ct. 822	10
First United Methodist Church v. U.S. Gypsum Co., 882 F.2d 862 (4th Cir. 1989)	9
Frank v. Mangum, 237 U.S. 309 (1915)	12
Greater Southern v. Jones, 177 U.S. 449 (1900)	12
Hill v. United States, 368 U.S. 424 (1962)	12
Klugh v. United States, 616 F.Supp. 882 (1985)	10
Long v. Shorebank Developement Co., 182 F.3d 548 (CA7 1999)	7, 10
Luben v. Selective Serv. Systems, 453 F2d 645 (CA1 1972)	7
Mansfield, C. & L.M.R., Co. v. Swan, 111 U.S. 379 (1884)	7
Marin v. State, 851 S.W.2d 275 (Tex. Crim. App. 1993)	8
Schlesinger v. Reservist Comm., 418 U.S. 208 (1974)	11
Slack v. McDaniel, 529 U.S. 473 (2000)	9
Steel Co. v. Citizens For a Better Enviroment, 118 S.Ct. 1003 (1998)	4, 410, 12
Steinfeld v. Hoddick, 513 U.S. 809 (1994)	10
Stone v. Powell, 96 S.Ct. 3037 (1976)	12
United States v. Baicum, 80 F.3d 539, cert. denied, 117 S.Ct. 204 (1996)	7, 8
United States v. Cotton, 122 S.Ct. 625 (2002)	4, 8
United States v. Richardson, 418 U.S. 166 (1974)	11
STATUTES AND RULES	
28 U.S.C. § 2244(d)(1)	4-6, 9
OTHER	
USCA Art. 3, § 2, cl. 1	4
USCA 5th Amendment	
USCA 14th Amendment	

IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

**For cases from **federal courts**:**

The opinion of the United States court of appeals appears at Appendix A-B to the petition and is

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

The opinion of the United States district court appears at Appendix C-D to the petition and is

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

**For cases from **state courts**:**

The opinion of the highest state court to review the merits appears at Appendix E-F to the petition and is

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

The opinion of the \_\_\_\_\_ court appears at Appendix \_\_\_\_\_ to the petition and is

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

## JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was July 1st, 2019:

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: August 05, 2019, and a copy of the order denying rehearing appears at Appendix (A).

An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No.   A  .

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was April 11, 2018. A copy of that decision appears at Appendix (E).

A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No.   A  .

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

### **United States Constitution, Art. iii, § 2, cl. 1**

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their authority.

### **UNITED STATES CONSTITUTION, FIFTH AMENDMENT**

No person shall be...deprived of life, liberty, or property without due process of law:...

### **UNITED STATES CONSTITUTION, FOURTEENTH AMENDMENT**

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 any person within its jurisdiction the equal protection of the laws.

### **28 U.S.C. § 2244(d)(1)**

(d)(1) A 1-year period of limitation shall apply to an application for writ of habeas corpus by a person in custody pursuant to the judgement of a State court.

## STATEMENT OF THE CASE

The case underlying this petition is an action concerning the constitutional due process right of U.S. citizens, in criminal cases, to be tried by a court of competent jurisdiction, and, whether, or not, this constitutional right can be negated, waived, forfeited, or nullified pursuant to the expiration of a statute of limitation; such as, 28 U.S.C. § 2244(d)(1), or any other procedural bar/default mechanism.

The primary constitutional concern presented herein relates strictly to the interpretation of Article III, § 2, cl. 1 of the United States Constitution, the due process, due course, and equal protection of the law clauses of the Fifth and Fourteenth Amendments of the United States Constitution, and a long and venerable line of cases decided by this Court concerning subject-matter jurisdiction; primarily, STEEL CO. v. CITIZENS FOR A BETTER ENVIRONMENT, 118 S.Ct. 1003, 1012 (1998) and UNITED STATES v. COTTON, 122 S.Ct. 1781, 1782 (2002).

Petitioner Sarringar (here and after), presented newly discovered documentary evidence in a subsequent state habeas application proving unequivocally that the state trial court lacked and was never vested with lawful subject-matter jurisdiction at the time of trial. This newly discovered evidence supporting Sarringar's constitutional claim of "void judgement for lack of subject-matter jurisdiction" had been intentionally withheld from Sarringar by state prosecutors on more than one occasion, despite several written request for this information (Sarringar's §2254 Appendix of Exhibits Ex. H-I). This information was only discovered after a special ruling and order from the Texas Attorney General concerning a private citizens PIA request which forced the State to release and disclose this concealed information (§ 2254 Appendix of Exhibits Ex. G, J, & K). Thus, establishing Sarringar's assertion of exceptional circumstances, by way of state impediment, that prevented timely addressing these constitutional claims and in the pursuit of justice require 'equitable tolling/ equitable exception' to prevent a miscarriage of justice.

The State in their response during state habeas proceedings never denied, refuted, or challenged Sarringar's factual allegation that the trial court was without subject-matter jurisdiction at the

(Statementment of the Case cont'd.)

time of trial. The State's only contention was that the factual basis of Sarringar's claims were discoverable before he filed his first state habeas action, therefore the habeas application should be denied pursuant to the procedural default rule of the Texas Code of Criminal Procedure, Article 11.07 § 4. However, the State did acknowledge the newly discovered evidence in stating that Sarringar "presents a list which he alleges is evidence that fifty cases were heard by the grand jury on the day he was indicted" and "the secretary sheet from the [grand jury] proceeding regarding this case for the proposition that no witnesses were call" (State's Response in state habeas proceedings pgs. 3 and 5).

The Texas Court of Criminal Appeals denied Sarringar's subsequent habeas application pursuant to the procedural default mechanism of T.C.Cr.Pro. art. 11.07 § 4 without holding a hearing on the merits of the claim and without written order based on the findings of the trial court. Leaving the merits of these jurisdictional claims unadjudicated.

The United States Federal District Court for the Northern District of Texas, Wichita Falls Division denied Sarringar's 28 U.S.C. § 2254 petition for habeas corpus by invoking the one-year statute of limitation procedural default rule of 28 U.S.C. § 2244(d)(1), also without a hearing on the merits of whether the trial court had jurisdiction to adjudicate the case from the start. The District Court held:

"...a lack of subject-matter jurisdiction based on a defective indictment or other grounds could not have been waived in Sarringar's original criminal case. However, by bringing these grounds in the instant habeas petition, he is not challenging this Court's jurisdiction. His habeas petition remains subject to AEDPA's statute of limitations, which bars it as untimely."

This ruling of the District Court rests entirely upon its outright rejection of this Court's decisions that jurisdiction is fundamental and its absence cannot be ignored, and this Court's ruling that defects in subject-matter jurisdiction can never be forfeited or waived, that the defect must be considered and corrected when fairly in doubt, regardless of whether error was raised in district court, because subject-matter jurisdiction involves a court's power

adjudicate and decide a matter, and where the trial court lacked jurisdiction the judgement is 'VOID ab initio'; it is not voidable but simply void, without any legal affect or respect whatsoever. The decision of the district court further defies this Court's holding that "every federal appellate court has a special obligation to satisfy itself not only of its own jurisdiction, but also that of the lower courts in a case under review. A requirement so significant this Court has emphasized that, "if the record discloses that the lower court was without jurisdiction this Court [S.Ct.] will notice the defect. Although the parties make no contention concerning it. [When the lower federal court] lack[s] jurisdiction, we have jurisdiction on appeal, not of the merits but merely for the purpose of correcting the error of the lower court in entertaining the suit."(brackets in original).

The United States Court of Appeals for the Fifth Circuit denied Sarringar's 'Request for Certificate of Appealability' and 'Motion For Rehearing or Rehearing En Banc'.

The summary dismissal of Sarringar's subject-matter jurisdictional claims, without a hearing on the merits is a denial of due process, and is in direct conflict with decisions made by this Court and other federal district and circuit courts. A meritorious jurisdictional claim/challenge deserves and require full consideration and a ruling on the merits. It should not be summarily dismissed, because jurisdiction is inflexible and without exception, and for a court to pronounce upon a law's meaning or constitutionality when it has no jurisdiction to do so is, by very definition, an ultra vires act.

Sarringar now seeks review of the Circuit Court's order denying Certificate of Appealability and review of the Federal Court's ruling that defects in subject-matter jurisdiction can be forfeited, waived, and/or nullified pursuant to the procedural one-year statute of limitations of 28 U.S.C. § 2244(d)(1), without consideration of the merits of the jurisdictional issue, despite evidence of exceptional circumstances. This Court should

Herein, lies a constitutional question of law that deserves a definitive answer:

"WHEN DOES THE ABSOLUTE CONSTITUTIONAL RIGHT TO BE TRIED BY A COURT OF COMPETENT JURISDICTION CEASE TO EXIST/OPERATE, THEREBY TRANSMOGRIFYING A VOID JUDGEMENT INTO A VALID JUDGEMENT?"

## REASONS FOR GRANTING THE PETITION

THE QUESTIONS PRESENTED ARE OF  
EXTRAORDINARY NATIONAL IMPORTANCE  
THAT THE LOWER COURTS WILL NOT  
FURTHER ANALYZE

It is well established law, that a judgement rendered by a court lacking jurisdiction is absolutely VOID ab initio and a void judgement can be attacked at any time and there is no statute of limitations. See Long v. Shorebank Developement Co., 182 F.3d 548 (CA7 1999). A VOID judgement is one which, from its inception, was a complete nullity and without legal effect. Lubben v. Selective Service Sys., 453 F.2d 645, 649 (CA1 1972), and U.S. v. Baucum, 80 F.3d 539, 540-43, cert. denied, 519 U.S. 879, 117 S.Ct. 204 (1996).

This Court has repeatedly held that the requirement that jurisdiction be established as a threshold matter "spring[s] from the nature and limits of the judicial power of the United States" and "is inflexible and without exception." Mansfield, C. & L.M.R., Co. v. Swan, 111 U.S. 379, 382, 4 S.Ct. 510, 511, 28 L.Ed. 462 (1884). This Court's insistence that jurisdiction appear begins, at least, as early as 1804, when it set aside a judgement for the defendant at the instance of the losing plaintiff who had himself failed to allege the basis for federal jurisdiction. Capron v. Noorden, 2 Cranch 126, 2 L.Ed. 229 (1804)

In this case the jurisdiction of the trial court is called into question and is proven to be lacking. The State in their only response during state habeas proceedings never denied, refuted, or challenged Sarringar's factual allegations as to the trial court's lack of jurisdiction by way of rebuttal, essentially admitting to those allegations. See Bland v. California Dept. Of Corr., 20 F.3d 1469, 1474 (9th Cir. 1994). Therefore, whether or not the trial court had lawful jurisdiction is settled by the record, which clearly shows the trial court in this case never obtained lawful jurisdiction of the subject-matter, rendering the judgement of conviction absolutely VOID for want of subject-matter jurisdiction.

The issue to be settled by this Court is when does the constitutional right to be tried by a court of competent jurisdiction cease to operate, or is forfeited and does a void judgement become

This Honorable Court has ruled, "subject-matter jurisdiction cannot be forfeited or waived and should be considered when fairly in doubt. Ashcroft v. Iqbal, 129 S.Ct. 1937, 566 U.S. \_\_\_, 173 L.Ed.2d 868, 879 (2009) In United States v. Cotton, 535 U.S. 625, 630, 122 S.Ct. 1781, 1782, 152 L.Ed.2d. 1097 (2008), this Court held "Defects in subject-matter jurisdiction can NEVER be forfeited or waived, and require correction regardless of whether error was raised in district court", "Because subject-matter jurisdiction involves a court's power to hear a case, it can never be forfeited or waived." Cotton, at 1782 (emphasis added); Ashcroft, *supra*; Arbaugh v. Y & H Corp., 126 S.Ct. 1235 (2006); United States v. Baucum, 117 S.Ct. 204 (1996)

The rulings of both the State's highest court and the federal district court redefines this Court's definition of 'never' and is contrary to clearly establish precedent that without jurisdiction a judgement is void. However, both court's have used a procedural bar to dismiss a jurisdictional issue that this court has already ruled can never be waived or forfeited.

According to Texas Courts "forfeiture" and "procedural default" are synonymous; both refer to the loss of a claim or right for failure to insist upon it by objection, request, motion or some other behavior calculated to exercise the right in a manner comprehensible to the systems impartial representative, usually the trial judge". Marin v. State, 851 S.W.2d 275, 279 (Tex. Crim. App. 1993). Furthermore, a "statute of limitations" is a procedural device that operates to limit the remedy available from an existing cause of action. Therefore, to invoke a procedural default rule to dismiss and/or deny a meritorious lack of jurisdiction claim is to declare that the party has forfeited his right to be tried by a court of competent jurisdiction and that a judgement that is void for want of lawful jurisdiction becomes valid by the expiration of a statute of limitations.

This question is of national importance and has not been definitively answered by this Court:

Does the expiration of a statute of limitations confer jurisdiction upon a court where none existed?  
Does the expiration of a statute of limitations transmogrify a void judgement into a valid one?

This Court holds plenary power to address this issue, to expound upon

its reasoning and determination that defects in subject-matter jurisdiction can NEVER be forfeited or waived. Does this Court's definition of 'NEVER', turn on other provisions of law such as a statute of limitations or other procedural mechanisms design to limit ones remedies in a cause of action? A statute of limitations is not a statute of repose, which is absolute. First United Methodist Church v. United States Gypsum Co., 882 F.2d 862, 865-66 (4th Cir. 1989).

Because the right to be tried by a Court of competent jurisdiction is absolutely fundamental, this Court should define when this right is forfeited pursuant to a procedural default/bar, such as the expiration of a statute of limitations.

## H.

### THE FEDERAL CIRCUIT'S DECISION CONFLICTS WITH MANY DECISIONS OF THIS COURT, OTHER CIRCUITS AND ITS OWN PRECEDENTS

The Circuit Court's denial of Sarringar's request for Certificate of Appealability and Motion For Rehearing conflicts with the precedent set by this Court in Barefoot v. Estelle, 463 U.S. 880, 883 (1983), and Slack v. McDaniel, 529 U.S. 473, 483-84 (2000). Also 28 U.S.C. §2253(c)(2).

Sarringar did show a substantial denial of his constitutional right to be tried by a court of competent jurisdiction. Sarringar supported his claim with ample documentary proof showing the trial court's lack of jurisdiction, warranting a certificate of appealability. Furthermore, Sarringar's § 2254 habeas corpus was denied on procedural grounds pursuant to 28 U.S.C. § 2244(d)(1) one-year statute of limitations, which is a procedural device used to bar litigation or operates to limit the remedy available from an existing cause of action. See First United Methodist Church v. U.S. Gypsum Co., 882 F.2d 862, 865-66 (4th Cir. 1989).

A certificate of appealability must be issued if a ground was dismissed by the district court on procedural grounds, if petitioner meets the Barefoot standard as to the procedural question, and shows, at least, that jurist of reason would find it debatable whether the grounds of the petition at issue states a valid claim of a constitutional right. Slack v. McDaniel, *supra* at 483-84.

Sarringar presented an argument that supports that reasonable jurist could debate whether or not the district court's ruling is

valid by the passage of time or the expiration of a statute of limitations?

Sarringar's contention is that he should have his jurisdictional claims heard on the merits, or in the alternative, an evidentiary hearing should have been held to determine if, ~~in fact~~ the trial court was without lawful subject-matter jurisdiction at the time of Sarringar's trial, because lack of jurisdiction renders the entire judgement void and would require Sarringar's immediate release from an unlawful confinement based on unlawful conviction.

The summary dismissal of Sarringar's jurisdictional claims is a denial of due process and a threat to the public at large. To allow lower courts to summarily dismiss valid and meritorious jurisdictional claims without a hearing on the merits or an evidentiary hearing to determine if the claim is substantiated, would allow rogue prosecutors to conceal certain jurisdictional information, as in the case at bar, until the expiration of the AEDPA statute of limitations, conferring jurisdiction upon the Court where none existed and transmogrifying void judgements into valid ones.

It is well established, that jurisdiction before an action is fundamental to our system of government, that sovereignty resides in the people, and the state may only exercise those powers given to it by law. Courts may only exercise those powers granted them and even those powers may be exercised only when the power to act is properly invoked. Without jurisdiction a court cannot proceed at all in any case, jurisdiction is the power to declare law, when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause. U.S.C.A. Const. art. 3, § 2, cl. 1; Steel Co. v. Citizens For A Better Environment, 118 S.Ct. 1003, 1012 (1998); Ex parte McCardle, 7 Wall. 506, 514, 19 L.Ed. 264 (1886).

It is also well settled that "a judgement of conviction obtained without jurisdiction over the defendant or subject matter of a case is void. Klugh v. United States, 616 F.Supp. 882, 901 (1985); Faye v. NOIA, 372 U.S. 391, 83 S.Ct. 822.; Amer. Corpus Juris Secundum § 1785. A void judgement is one that is a complete nullity and without legal effect, it can be attacked at any time, either directly or collaterally. See Steinfeld v. Hoddick, 513 U.S. 809 (1994); Long v. Shorebank Developement Corp., 182 F.3d 548 (7th Cir. 1999).

contrary to clearly established federal law as decided by this Court, in that defects in subject-matter jurisdiction can never be waived or forfeited. The district court's ruling suggest that the passage of time or the expiration of a statute of limitations validates a judgement that was void from its inception for want of lawful subject-matter jurisdiction. If jurisdiction vests a court with power to hear and adjudicate a matter, It's absence voids any judgement rendered by that court. Therefore the judgement of the trial court is absolutely void in this instance and has no legal authority or protections; and therefore cannot be protected by a statute of limitations or any other procedural default mechanism.

Sarringar's constitutional claims deserved "equitable tolling" and "equitable principal" because the record shows that he diligently pursued his rights throughout the entire judicial process in this case. The delay in raising these grounds rest solely on the shoulders of the prosecution in this case who refuse to answer pre-trial motion, appeal motion and post-conviction motions filed by Sarringar pro se. This State impediment requires tolling in the pursuit of justice and to avoid a grave miscarriage of justice. Sarringar does not contend that he should have never been prosecuted but that he should have been prosecuted within the confines of the law and the protections afforded to him a citizen of the United States and the State of Texas.

Furthermore, the decision of the Circuit Court conflicts with other circuits in that jurisdiction must be proven on the record. In this case Sarringar presented ample evidence of the trial court's lack of jurisdiction which results in a null and void judgement. However, the merits of Sarringar constitutional claims have not been ruled upon on the merits. Whether or not the trial court had lawful jurisdiction is a fundamental question of constitutional magnitude. These type of claims goes to the very heart of the judicial system of the United States. The statutory and constitutional elements of jurisdiction are an essential ingredient of separation and equilibration of powers, restraining the courts from acting at certain times, and even restraining them from acting permanently regarding certain subjects. See United States v. Richardson, 418 U.S. 166, 179, 94 S.Ct. 2940, 2947-48, 41 L.Ed.2d 678 (1974); Schlesinger v. Reservists Comm. To Stop the War, 418 U.S. 208, 227, 94 S.Ct. 2925, 2935, 41 L.Ed.2d 704 (1974). For a

court to pronounce upon the meaning or the constitutionality of a state or federal law when it has no jurisdiction to do so is, by very definition, for a court to act ultra vires. Steel Co. v. Citizens, supra 1016.

Lastly, on every writ of error or appeal, the first and fundamental question is that of jurisdiction, first of this court, and then the court from which the record comes. This question the Court is bound to ask and answer for itself, even when not otherwise suggested, and without respect to the relations to the parties to it. Greater Sthrn. Fire Proof Hotel Co. v. Jones, 177 U.S. 449, 453, 20 S.Ct. 690, 691-92 (1900). Sarrigar contends that at the very least, he deserves to have his constitutional claims decided on the merits and not summarily dismissed pursuant to a procedural rule, where jurisdiction is fundamental and its absence cannot be ignored. Stone v. Powel, 96 S.Ct. 3037, 3040 (1976), Hill v. United States, 368 U.S. 424, 428 (1962); and Frank v. Mangum, 237 U.S. 309, 326 (1915).

### **CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: \_\_\_\_\_