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IN THE

SUPREME COURT OF THE UNITED STATES

ARTHUR JONES, JR. — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

FOURTH CIRCUIT COURT OF APPEALS

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

PETITION FOR WRIT OF CERTIORARI

Arthur Jones, Jr. # 95635-071
(Your Name)

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Berlin, NH 03570
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

- I. WHETHER THE PRIOR EXCLUSIVE JURISDICTION RULE SHOULD HAVE PRECLUDED THE DISTRICT COURT AND THE APPELLANT COURT FROM EXERCISING JURISDICTION OVER THE SAME RES TO DEFEAT OR IMPAIR THE STATE COURT'S JURISDICTION?
- II. WHETHER THE DISTRICT COURT LACK THE AUTHORITY TO ISSUE THE WRIT OF HABEAS CORPUS AD PROSEQUENDUM BECAUSE IT WAS THE FUNCTIONAL EQUIVALENT OF A HABEAS CORPUS AD FACIENDUM ET RECIPRENDUM WHICH PASSED OVER THE JURISDICTION LINE OF DIVISION BETWEEN THE STATE AND FEDERAL SOVEREIGNTIES?
- III. WHETHER THE UNITED STATES SUPREME COURT IS OBLIGATED TO EXAMINE THE SUFFICIENCY OF JONES' SPECIAL PLEA TO THE JURISDICTION PURSUANT TO HIS FEDERAL RULE OF CIVIL PROCEDURE 12(b)(1) MOTION HE FILED IN THE APPEALS COURT REGARDING ITS LACK OF SUBJECT MATTER JURISDICTION ON THE BASIS THAT THE PRIOR EXCLUSIVE JURISDICTION RULE DISABLED THE COURTS OF THE UNITED STATES FROM EXERCISING THEIR JURISDICTION OVER HIM AND THIS CAUSE OF ACTION UNDER REVIEW?
- IV. WHETHER THE APPEALS COURT'S PREMATURE ADSUDICATION OF JONES' CLAIMS HAVE RENDERED THE APPEALS COURT JUDGMENT VOID FOR LACK OF SUBJECT MATTER JURISDICTION BECAUSE JONES WAS DENIED THE RIGHT TO BE HEARD AND AN OPPORTUNITY TO ANSWER TO THE GOVERNMENT'S REPLY BRIEF?

QUESTION(S) PRESENTED Cont.,

- V. WHETHER THE POTENTIAL FOR WRIT OF CERTIORARI DENIAL AND THE UNWILLINGNESS OF THE APPEALS COURT TO AFFORD JONES A REMEDY AGAINST THE DISTRICT COURT'S INVALID AND FOREIGN PROCESS OF ILLEGALLY SEIZING HIM AND THIS CAUSE OF ACTION FROM THE COMPETENT JURISDICTION OF THE STATE COURT SHOULD PROVIDE JONES A REMEDY IN THE STATE COURT TO BE DEVESTED FROM THE JUDGMENT OF THE DISTRICT COURT THAT HAD NO POWER TO ENTER THE JUDGMENT ?

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:

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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 to the petition and is

☐ reported at N/A; 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 B to the petition and is

☐ reported at N/A; 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 _____ 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 23, 2021.

☐ 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: September 27, 2021, and a copy of the order denying rehearing appears at Appendix C.

☐ 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).

The record discloses that the lower court was without jurisdiction pursuant to the Prior Exclusive Jurisdiction RULE.

Therefore, this Court should notice the defect. Hence, this Court only have jurisdiction to correct the error of the lower court in entertaining this cause under review. See United States v. Corrick, 298 U.S. 435, 440 (1936).

☐ For cases from state courts:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ 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

STATEMENT OF THE CASE

In February of 1997, Jones was arrested and initially charged by the State authority with this Case of armed robbery and felony murder pursuant to South Carolina Code 16-11-330 and 16-3-10 that occurred at a local truck Stop. Ms. Wilson, Assistant United States Attorney (AUSA), and Mr. Wizenhofer, Federal Agent, on behalf of the Federal government, interfered with the State authorities investigation into this Cause of action by inserting themselves in lock step with the State authorities investigators. On April 14, 1999, Ms. Wilson, AUSA, by way of her superior Ms. Josey, USA, sought and had a Federal Grand Jury return an indictment against Jones. Count one of the indictment charged robbery in violation of 18 U.S.C. §1951 and Count two charged felony murder by firearm in violation of 18 U.S.C. §§ 924(b)(1) and (j). On April 14, 1999, Ms. Wilson, AUSA, sought and did have Magistrate Judge R. Carr issue a Writ of Habeas Corpus Ad Prosequendum (WHCAP) to take Jones from the prior exclusive jurisdiction and custody of the State court to be prosecuted for the then pending State charges in Federal court. On April 21, 1999, the US Marshal Service lodged a detainer against Jones to take him from the Clarendon County Sheriff's Department on behalf of the district court. The detainer clearly outlined the focus of the federal prosecution which was substantially the same cause of action that was then pending prosecution in the state court. On April 29, 1999, Jones was again arrested by the US Marshal Service by order of the district court, while Jones was still in the prior exclusive jurisdiction of the state court for this cause. Subsequently, on that same day Jones was arraigned on the initial state then pending cause of action in the district court before Magistrate Judge Carr. On June 1, 1999, after Jones was indicted in both jurisdictions for substantially the same charges for over forty-five (45) days, the State court "DISMISSED" and somehow "REMANDED" Jones' state criminal prosecution to federal court. On March 3, 1999, Jones was convicted in the district court for this instant cause of action.

REASONS FOR GRANTING THE PETITION

The Fourth Circuit Court of Appeals Failure in its special obligation to satisfy itself not only of its own jurisdiction, but also that of the lower court in this cause for review at bar, is so out of line with normal judicial standards, that the Supreme Court should exercise its supervisory power to correct or take care to ensure that the Circuit Court and the lower court has not used the judicial power of the United States in Jones' case where it does not extend, because the prior exclusive jurisdiction rule precluded the exercise of the Circuit Court and lower court's jurisdictional power. "The Supreme Court will be more favorably disposed to grant certiorari to review the decision of a United States Court of Appeals if it "has so departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of [the Supreme] Court's supervisory powers." See Supreme Court Rule 10. Considerations Governing Review on Certiorari. Comment on Supreme Court Rule 10.

The Fourth Circuit Court of Appeals decision has so departed from over one (1) hundred years of accepted and usual course of judicial proceedings, which is the "doctrine of law too long established to require a citation of authorities, that, where a Court has jurisdiction, it has a right to decide every question which occurs in the cause. . . . Where the jurisdiction of a court, and the right of a plaintiff to prosecute his suit in it, have once attached, that right cannot be arrested or taken away by proceedings in another court. These rules have their foundation, not merely in comity, but on necessity. . . . Neither can one take the property from the custody of the other by replevin or any other process, for this would produce a conflict extremely embarrassing to the administration of justice." See Freeman v. Howe, 16 L.Ed 749, 751, 24 How 450 (1861). Therefore, the Supreme Court should exercise its supervisory power to correct

or take care to ensure that the Fourth Circuit Court of Appeals and the lower court shall not use the judicial power of the United States in Jones' case to which the prior exclusive jurisdiction rule precluded the exercise of the Circuit Court and lower court's jurisdiction in this cause at present.

In Jones' case at bar, as demonstrated by the prima facie evidence (record), the state court first took Jones and the subject matter under review. See Exhibits A-1, A-2, C-1, D-1, E-1, F-1, F-2, H-1, J-1 and K-1. However, the district court did not permit the state court to exhaust its remedy to attain which it assumed control, because the district court took Jones and this cause from the state court for its purpose by an invalid and foreign process of issuing its Writ of Habeas Corpus Ad Prosequendum (WHCAP) which, in all reality, functioned as an unlawful Writ of Habeas Corpus Ad Faciendum et Recipiendum (WHCFAR). Since the state court had taken jurisdiction of Jones and this cause at bar, first, Jones and this cause of action was as much withdrawn from the judicial power of the district court that prosecuted this cause of action pursuant to the prior exclusive jurisdiction rule. The Fourth Circuit Court of Appeals has sanctioned the departure from the prior exclusive jurisdiction rule by the district court when it ignored all of Jones' jurisdictional challenges.

Because Jones' jurisdictional question (claim) is an important one, "the United States Supreme Court will grant certiorari to review a judgment of a United States Court of Appeals" that has simply ignored the challenge to its prior exclusive jurisdiction preclusion. See Hagans v. Lavine, 415 U.S. 528, 530, 94 S.Ct. 1370, 39 L.Ed.2d 577 (1974).

"... Federal courts have an independent obligation to ensure that they do not exceed the scope of their jurisdiction, and therefore they must raise and decide jurisdictional questions that the parties either overlooked or elected not to press. See Arbaugh, *Supra*, at 514, 126 S.Ct. 1235, 163 L.Ed.2d 1097." See Henderson v. Shinsek, 13 S.Ct. 1197, 179 L.Ed.2d 159 (2011) (omissions added). "Accordingly, subject matter delineations must be policed by the courts on their own initiative even at the highest level. See Steel Co., 523 U.S. at 94-95, 140 L.Ed.2d 210, 118 S.Ct. 1003, Fed Rule Civ. Proc. 12(h)(3)." See Rohrgus AG v.

Marathan Oil . . . , 143 L.Ed.2d 760 (1999). If the record discloses that the lower court was without jurisdiction this Court will notice the defect, although the parties make no connection concerning it. When the lower federal court lacks jurisdiction, the Supreme Court 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. See *United States v. Corrick*, 298 U.S. 435, 440 (1936).

The Supreme Court frequently grants certiorari to resolve jurisdictional controversies. Among the many cases falling within this category are those involving the jurisdiction of the federal district courts. See *Bruner v. United States*, 343 U.S. 112 (2004). "In a court that selects its docketed cases on the basis of the general importance of the issues they present, jurisdictional questions tend to get short shrift." See *K. Mart Corp. v. Cartier, Inc.*, 485 U.S. 176, 191 (1988). "Because of the potentially broad impact of the Court of Appeals' decision and because of the importance of the jurisdictional questions, we granted the Government's petition for a writ of certiorari." See *United States v. Hohri*, 482 U.S. 64, 68 (1987). "Questions of jurisdiction, of course, should be given priority - since if there is no jurisdiction there is no authority to sit in judgment of anything else. See *Steel Co.*, *Supra*, at 93-102, 140 L.Ed.2d 210, 118 S.Ct. 1003." See *Vermont Air v. U.S. ex rel. Stevens*, 529 U.S. 767, 778-79 (2000).

This Court should grant certiorari to resolve the jurisdictional conflict in this instant cause under review, because the district court was precluded to exercise its jurisdiction over Jones and this cause pursuant to the prior exclusive jurisdiction rule. Therefore, due to the importance of the jurisdictional questions presented by Jones and because it appears from the record (exhibits) that the lower court was without jurisdiction in this cause, this Court should grant certiorari.

ARGUMENT

I. WHETHER THE PRIOR EXCLUSIVE JURISDICTION RULE SHOULD HAVE PRECLUDED THE DISTRICT COURT AND THE APPELLANT COURT FROM EXERCISING JURISDICTION OVER THE SAME RES TO DEFEAT OR IMPAIR THE STATE COURT'S JURISDICTION ?

Jones contends that the prior exclusive jurisdiction rule precluded the district court and the Appeals Court for the Fourth Circuit from exercising their jurisdiction in this quasi in rem criminal case sub judice, to defeat or impair the state court's jurisdiction. The jurisdiction of the state court had first attached over Jones and this criminal action at bar, to the exclusion of those other courts belonging to the United States.

Historically speaking, the Supreme Court of the United States as to this very issue have long decided that, "[t]he very point was involved in the decision in Hagan v. Lucas, 10 Pet., 400, where it was expressly held that property held by a Sheriff under an execution from a state court could not be taken in execution by a Marshal of the United States by virtue of final process upon a judgment in Federal court. Mr. Justice McLean, delivering the opinion of the court, said: "Had the property remained in the possession of the Sheriff under the first levy, it is clear the marshal could not have taken it in execution, for the property could not be subject to two jurisdictions at the same time. The first levy, whether it were made under the federal or state authority, withdraws the property from the reach of the process of the other." - - - But if the same goods may be taken in execution at the same time by the marshal and the Sheriff, does this special property vest in the one, or the other, or both of them? No such case can exist; property once levied on remains in the custody of the law, and it is not liable to be taken by another execution in the hands of a different officer, and especially by an officer acting under a different jur-

isdiction. . . . The forbearance which courts of co-ordinate jurisdiction, administered under a single system, exercise towards each other, whereby conflicts are avoided, by avoiding interference with the process of each other, is a principle of comity. . . . but between State Courts and those of the United States, it is something more. It is a principle of right and law and, therefore, of necessity. It leaves nothing to discretion or mere convenience. These Courts do not belong to the same system, so far as their jurisdiction is concurrent; and although they co-exist in the same space, they are independent and have no common superior. They exercise jurisdiction, it is true, within the same territory but not in the same plane; and when one takes into its jurisdiction a specific thing, that res is as much withdrawn from the judicial power of the other, as if it had carried physically into a different territorial sovereignty. To attempt to seize it by a foreign process is futile and void. The regulation of process, and the decision of questions relating to it, are part of the jurisdiction of the Court from which it issues. . . . The principle which defines the boundaries of jurisdiction between the judicial tribunals of the States and of the United States, the application of which effectually prevents their confusion, was set forth and vindicated in the judgment of this Court in *Ableman v. Booth*, 21 How., 506 [69 U.S., XVI., 169]. It was there said by Chief Justice Taney, p. 516 [173], "That the sphere of action appropriated to the United States is as far beyond the reach of the judicial process issued by a State judge or State Court as if the line of division was traced by landmarks and monuments visible to the eye. . . . They know that the prisoner is within the dominion and jurisdiction of another government, and neither the writ of habeas corpus nor any other process issued under State authority can pass over the line of division between the two sovereignties. . . . No judicial process, whatever form it may assume, can have any lawful authority outside of the limits of jurisdiction of the Court or judge by whom it is issued; and any attempt to enforce it beyond those boundaries is nothing less than lawless violence." See Covell v. Heyman, 111 U.S. 176, 181-183, 28 L.ed 390 (1884).

In February of 1997, Jones was first arrested, indicted and retained by the Sheriff's Department through process issued by the State Court of South Carolina in this criminal case

at bar, pursuant to this quasi in rem criminal proceeding. See Exhibits A-1 and A-2. The first levy, being the state authority, withdrew Jones and this criminal action from the reach of the process of the district court and the Appeals Court belonging to the United States. Since Jones remained in the continual custody of the Clarendon County Sheriff's Department under the first levy, "it is clear the marshal could not have taken" Jones "in execution, for" Jones "could not be subjected to two jurisdictions at the same time." However, on April 14, 1999, Jones was again indicted for this criminal case sub judice, but only this time, he was indicted in the federal district court. See Exhibit C-1. Additionally, on April 14, 1999, the federal Magistrate Judge Robert S. Carr issued a Writ of Habeas Corpus Ad Prosequendum (WHCAP), so that the marshal could take Jones in execution of the WHCAP from the Sheriff's Department for trial in the district court on the then pending state court action now before this Court. See Exhibits D-1 and E-1. Thus, it is apparent from the record, Jones was subjected to both the federal and state courts' jurisdictions for this same or similar criminal action at precisely the same time.

The record demonstrates that District Court Judge David C. Norton, Assistant United States Attorney (AUSA) Mr. Kittrell and Defense Attorney Mr. Cobb and Mr. Haley debated whether Jones' criminal case sub judice could go back to the state court from whence it came as follows:

"The Court: I am not so sure you can go back in State Court after being tried in federal Court.

Mr. Cobb: Two Sovereigns.

The Court: I know. But it works one way. I don't know if it works the other way.

Mr. Kittrell: My understanding is they cannot go back.

The Court: I don't think they can either.

Mr. Kittrell: We have come this far and they can't go back."

See Exhibit H-1.

Ms. Wilson, AUSA, on direct examination of her star witness Kevin Lamont John-

son also acknowledged that Jones' Criminal Case Sub Judge was initially the state court's criminal prosecution that could result in the death penalty if this case was to go back to the state court as follows:

“ Q. And if these charges were to somehow go back to the state you could actually face the death penalty, could you not ?

A. Yes. ”

See Supporting Papers, TR. Vol. II, pg. 114.

District Judge Honorable Margret B. Seymour in regards to this criminal action sub judge stated as follows :

“ Petitioner [Jones] was indicted on one charge of interference with commerce by threat or violence, in violation of 18 U.S.C. § 1951 (Count 1); and use of a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. § 924(C), (j), and 18 U.S.C. § 2 (Count 2). These were the same charges for which petitioner [Jones] had been arrested and detained in state court. Petitioner's [Jones] state charges were dismissed on June 1, 1999. ”

See Exhibit J-1, lines 10-15 (Brackets and bold emphasis added by Jones).

On June 1, 1999, the state court having suffered this cause of action being taken away from it by the district court, dismissed this cause of action against Jones and declared this action “REMANDED” to federal court. See Exhibits F-1 and F-2. Jones' state court and district court criminal cases were so similar or the same that the Federal Bureau of Prisons (BOP) credited him the approximately two (2) years and four (4) months of jail time he spent in the continual custody of the Sheriff's Department which includes the approximate forty-five (45) days he was in the temporary custody of the district court pursuant to the WHCAP. See Exhibit K-1, pg. 2.

“ In order for the doctrine to apply, and for the court to be without jurisdiction, all of the following must be true: (1) the state court action must be an action in rem or quasi in rem; (2) the federal action must be in rem or quasi in rem, under the law of the forum state; and (3) the state action must have asserted jurisdiction over the res. ”

See Seitz v. Fannie Mae, 909 F.Supp.2d 490, 496 (E. D. VA. 2012). "On the other hand, if two suits are in rem, or quasi in rem, so that the Court, or its officer, has possession or must have control of the property which is the subject of the litigation in order to proceed with the cause and grant the relief sought the jurisdiction of the one Court must yield to that of the other. We have said that the principle applicable to both Federal and State Courts that the Court first assuming jurisdiction over property may maintain and exercise the jurisdiction to the exclusion of the other." See Princess Lida v. Thompson, 305 U.S. 456, 466, 83 L.ed 285 (1939).

In Jones' case sub judice, the State Court and Federal Court Criminal action against him were actions quasi in rem, because both criminal actions were brought against Jones personally by way of charging Jones with state and federal crimes. Moreover, the State Court Criminal Action commenced in February of 1999, which was approximately two (2) years and four (4) months prior to the commencement of this same or similar criminal action against Jones in Federal Court on April 14, 1999. See Exhibits A-1, A-2, C-1, D-1 and E-1. Although the Federal Court Criminal action against Jones commenced on April 14, 1999, which was long after the State Court's criminal action commenced against Jones, the State Court retained its prior exclusive jurisdiction over Jones and the res until June 1, 1999, when it "DISMISSED" this criminal action and "REMANDED" it to Federal Court. See Exhibits F-1 and F-2. Therefore, by all accounts, the prior exclusive jurisdiction doctrine should apply to Jones' criminal action sub judice.

Since Jones and this criminal action was "taken in execution at the same time by the marshal and the Sheriff," did Jones and this criminal action "vest in the one, or the other, or both of them? NO such case can exist;" Jones, once levied on remained in the custody of the Sheriff, and he was not liable to be taken by the marshal in execution as the hands of a different officer; and especially an officer acting under Federal jurisdiction as was the case here. See Covell, 111 U.S. at 181.

"The converse of the rule is equally true, - that where the jurisdiction of the state Court has first attached, the Federal Court is precluded from exercising its jurisdiction over

the same res to defeat or impair the state court's jurisdiction. ²² See Kline v. Burke Construction Co., 260 U.S. 266, 43 S.Ct. 79, 67 L.Ed. 226 (1922). ²³ "The chief rule which preserve our two systems of courts from actual conflict of jurisdiction is that the court which first takes the subject matter of the litigation into its control, whether this be person or property, must be permitted to exhaust its remedy to attain which it assumed control, before the other court shall attempt to take it for its purpose... and when one takes into its jurisdiction a specific thing, that res is as much withdrawn from the judicial power of the other..." ²⁴ See Ponzi v. Fessenden, 258 U.S. 254, 260-261, 66 L.Ed 607 (1922).

The court first assuming jurisdiction over property may maintain and exercise that jurisdiction to the exclusion of the other... We have no thought that it does. Princess Linda means that the second court seeking to interfere is without jurisdiction to do so. See Crawford v. Courtney, 451 F.2d 489, 491 (4th Cir. 1971). ²⁵ "When a state court and a court of the United States may each take jurisdiction of a matter, the tribunal where jurisdiction first attaches holds it, to the exclusion of the other, until its duty is fully performed and the jurisdiction involved is exhausted; and this rule applies alike in both civil and criminal cases. Freeman v. Howe, 24 How. 450 [16: 749]; Buck v. Colbath, 3 Wall. 334 [18: 257]; Taylor v. Taintor, 16 Wall. 366 [21: 287]; Ex parte Crouch, U.S. 178 [28: 690]. ²⁶ See Harkrader v. Wadley, 172 U.S. 148, 164, 43 L.Ed 399 (1893).

In Jones' Case sub Judice, the state court and the federal court are courts of coordinate jurisdiction. The federal court, in this criminal action had a duty to avoid this jurisdictional conflict with the state court, by avoiding interference with the process of the state court. However, since this is a matter that involve the jurisdictional conflict between the state court and the courts of the United States, ²⁷ "[I]t is a principle of right and of law and, therefore, of necessity. It leaves nothing to ²⁸ the 'discretion or mere convenience' ²⁹ of the courts belonging to the United States; because those courts do not belong to the same system, so far as their jurisdiction is concurrent. Therefore, since the state court first took into its jurisdiction Jones and this criminal action, See Exhibits A-1, A-2, F-1 and F-2, the res was and still is as much withdrawn from the judicial power of the federal courts, "as if it had been

Carried physically into a different territorial Sovereignty. ³³ See Covell, 111 U.S. at 182, 183.

³⁴ To attempt to seize it by foreign process is futile and void... For the reason stated, we hold that, the state court having acquired jurisdiction of the subject matter and taken possession of the property more than four months before the adjudication in bankruptcy, it must be allowed to remain in control of the same, and to dispose of it under its own decrees. ³⁵ See Frazier v. Southern Loan & T. Co., 99 F. 707, 712, 715 (4th Cir. 1900) (omissions added). ³⁶ To attempt to seize it by a foreign process is futile and void. [] This principle is applicable here, for whether the Sheriff were armed with a writ from a state court or with a distress warrant from a county treasurer, this property was as much withdrawn from his reach as if where beyond the territorial limits of the state. ³⁷ See Ex parte Tyler, 749 U.S. 164, 187, 37 L. ed. 689 (1893).

In Jones' case sub judice, the district court seized Jones and this criminal cause of action by a foreign process. While Jones was in the prior exclusive jurisdiction of the state court for this criminal case at bar, See Exhibit A-1 and A-2, Jones was indicted by a federal Grand Jury for this same or similar criminal case. See Exhibit C-1. Simultaneous to Jones being federally indicted, the federal magistrate judge at the bequest of Ms. Wilson, AUSA, issued a WHCAP so that the marshal, now armed with that WHCAP, could take unlawful custody of Jones for the initial state court then pending criminal case. See Exhibit D-1. As duly noted, the marshal seized Jones from the Clarendon County Sheriff's Department for this criminal case sub judice that was on process in the state court at that point in time. See Exhibit E-1. The state court's jurisdiction was not exhausted on April 14, 1999, or when the marshal actually seized Jones from the Sheriff's Department or when Jones was arraigned for this case on or about April 29, 1999, in the district court; because the state court's prior exclusive jurisdiction continued over Jones and this criminal case until June 1, 1999, when the state court somehow "DISMISSED" and "REMANDED" this criminal action to the district court. See Exhibits F-1 and F-2. Therefore, "[t]he regulation of process, and the decision of questions relating to" Jones' criminal case sub judice "are part of the jurisdiction of the" state court of South Carolina "from whence it issued", and not of, any Court of the United States. See Covell; 111 U.S. at 183.

It is apparent from the record in this criminal action sub judice that the Courts of the United States crossed over the clearly defined jurisdictional boundary line of the Judicial tribunals of the State of South Carolina and the United States. The sphere of action appropriated to the State of South Carolina is far beyond the reach of the Judicial process issued by the Federal Judges of the district and Appellant Courts as if the lines of division was traced by landmarks and monuments visible to the eye. *Id.* at 183.

In Jones criminal case at bar, speaking of the procedure in his criminal case that involves the WHCAP issued under the district Court's authority that admitted the duty of the officer of the state, holding Jones at that time as a prisoner under process, to return the fact and show his warrant. But no return was made and the federal magistrate Judge or court was not judicially apprised that Jones was in custody under the authority of the State court, and that they cannot proceed further. However, the WHCAP issued by the magistrate Judge acknowledged that Jones was in the custody of the Sheriff's Department and the marshal's detainer against Jones indicated the State Criminal Charges as the object of the federal Court's inquiry. Therefore, the district court should have known that Jones was a prisoner within the dominion and jurisdiction of another government, "and that neither the writ of habeas corpus nor any other process issued under " their authority "can pass over the line of division between the two Sovereignities. " Jones was in the "dominion and exclusive jurisdiction of the" State court. "No judicial process, whatever form it may assume, " by the courts of the United States, "can have any lawful authority outside of the limits of the jurisdiction of the court or judge by whom it is issued. " Therefore, the enforcement of the judicial process of the district court and the Appellant Court beyond their jurisdictional boundary "is nothing less than lawless violence. " *Id.* at 183.

In sum, the state court's jurisdiction first attached over Jones and this criminal action sub judice. Therefore, the state court held Jones and this criminal action to the exclusion of the courts of the United States. Hence, for all the reasons stated, herein, it should be concluded that the courts of the United States took, by

foreign process, Jones and this Criminal action from the State Court. Thus, the Courts of the United States lack subject matter jurisdiction over Jones and this Criminal action pursuant to the prior exclusive jurisdiction rule.

II. WHETHER THE DISTRICT COURT LACK THE AUTHORITY TO ISSUE THE WRIT OF HABEAS CORPUS AD PROSEQUENDUM BECAUSE IT WAS THE FUNCTIONAL EQUIVALENT OF A HABEAS CORPUS AD FACIENDUM ET RECIPENDUM WHICH PASSED OVER THE JURISDICTION LINE OF DIVISION BETWEEN THE STATE AND FEDERAL SOVEREIGNTIES?

Jones contends that the district court lacked the authority to issue its Writ of Habeas Corpus Ad Prosequendum (WHCAP), because it was the functional equivalent of a Writ of Habeas Corpus Ad Faciendum Et Recipiendum (WHCFER). Contrary to popular belief, Jones was not taken from the State Court pursuant to the WHCAP for some other offenses not on process issued by the State Court. The district Court actually took Jones and this cause of action sub Judice from the State Court and tried him on the same information in the same manner as he would have been tried in the state court. As a result, the removal of Jones and this cause of action from the State Court violated the sovereignty of South Carolina who, thereby, in this instance, was forced into forfeiting its jurisdiction over Jones and this cause of action by REMANDE[ING] it to the district court.

"In neither case was there a legitimate use of a writ of habeas Corpus ad prosequendum, which issues "when it is necessary to bring a person who is confined for some other offense before the issuing Court for trial." Black's Law Dictionary 709 (6th ed. 1990). " See Jackson v. United States, 1997 U.S. App. LEXIS 13955, pg. 7 (6th Cir. 1997). "A court issues a Writ of Habeas Corpus ad Prosequendum when it is necessary to bring a person who is confined for some other offense before the issuing Court for trial. See generally Corbo v. United States, 364 U.S. 611, 81 S.Ct. 338,

5 L.Ed. 2d 329 (1961); *Ex Parte Bollman*, 8 U.S. (4 Cranch) 75, 2 L.Ed. 554 (1807).²⁰ See *United States v. Cogdell*, 585 F.2d 1130, 1136 n.3 (D.C. 1977).²¹ "A Court issues a writ of 'habeas corpus ad prosequendum' when it is necessary to bring a person who is confined for some other offense before the issuing Court for trial."²² Black's Law Dictionary (6th ed. 1990).²³ See *Pena v. United States*, 2003 U.S. Dist. LEXIS 18611, FN 2 (N.Y. Oct. 16, 2003).

"In contrast to a detainer, a writ of habeas corpus ad prosequendum is issued by a Court "when it is necessary to bring a person who is confined for some other offense before the issuing Court for trial."²⁴ Black's Law Dictionary (6th ed. 1990).²⁵ See *Buhl v. Lappin*, 300 F. Supp. 2d 374, 381 (3rd Cir.).

In Jones' case sub judice, the district court issued the WHCAP to bring him, who at that time was confined at the Clarendon County Sheriff's Department, not for some other offense, but for this cause of action that he was then indicted for in the state court.

In February of 1997, Jones was arrested by state authority for an alleged armed robbery and murder that occurred at a local truck stop in which the clerk was killed. See Exhibit A-1 and A-2. On April 14, 1999, approximately two (2) years and four (4) months later, Jones was charged again in the district court for this cause of action involving the armed robbery of the truck stop and the killing of the clerk during such time this cause of action was still pending prosecution in the state court. See Exhibit C-1. On April 14, 1999, the district court issued its WHCAP to bring Jones from the state court for trial on this criminal action now before this court. On April 29, 1999, the marshal in execution of the WHCAP, filed a detainer against Jones for this then pending state court case, before bringing Jones to the district court to be arraigned for this then pending state court criminal cause of action. See Exhibit E-1. At that precise moment in time, Jones was charged with this cause of action in both the state and federal courts and Jones was subjected to the jurisdiction of both the state and federal courts for this cause of action at bar. On June 1, 1999, approximately forty-five (45) days later, the state court "DISMISSED" this cause of action and "REMANDED" it to the federal court. See Exhibit F-1 and F-2. Previously Jones has demonstrated by the admission of the district court, Mr. Kittrell and Ms. Wilson,

AUSA, and other judicial and reliable sources that this cause of action sub judice was initially the state court's criminal case. See pages 3-4. Now, as the record demonstrates, the district court issued its WHCAP to bring Jones from the state court, not for "some other offense," but for this cause of action presently before this court. Therefore, the district court's WHCAP unlawfully functioned as the equivalent of a WHCFR, because the WHCAP facilitated the removal of Jones and this cause of action sub judice from the state court to the district court.

The WHCAP would have been necessary and lawfully used in the removal of Jones from the Clarendon County Sheriff's Department, in order to prosecute him in the district court for this cause of action sub judice, if the state court would have not first exercised its jurisdiction over Jones and this cause of action in a separate and on going criminal proceeding. See Exhibits A-1, A-2, C-1, D-1, E-1, F-1, F-2, H-1 and J-1. Now, under those set of facts, which does not exist in Jones' case at bar, would have made the district court the proper jurisdiction and the WHCAP lawfully issued. See Ex Parte Bollman and Ex Parte Swartwout, 2 Led 554, 4 Cranch 75, 98.

On the other hand, "[t]he common writ ad faciendum et recipiendum" could issue if Jones, who at the time was being prosecuted in the state court, desired to remove this cause of action sub judice to the district court. In such a case which does not exist in this instance, the WHCFR would be the proper writ, because under such a writ both Jones (body) together with the cause (armed robbery and felony murder) could lawfully and legally be removed from the state court to the district court. *Id.* However, since Jones was not wanted by the district court for prosecution on some other offenses not on process of the state court, the WHCAP is inapplicable in this instance.

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If sustained the federal court tries the case -- in this instance to a jury -- on the same information and in the same manner as it would be tried in the state court. In short this is nothing more than a process to remove a criminal case from the state to federal court. . . . " See Ex Parte Dierks, 55 F.2d 371, 1932 U.S. Dist. LEXIS at .

In Jones' case sub judice, after he and this cause of action were removed from

the State court to the district court pursuant to a WHCAP that functioned as a WHCFR and a federal indictment that charged Jones again with the offenses of armed robbery and felony murder that was then pending in the State court, he was tried and convicted in federal court on the same information and in the manner as it would have been tried in the State court. For example, Jones alleged self incriminating statement made to state law enforcement agents was used at the trial to convict Jones of murder. See Trial Transcripts (T.T.) Volume . II, pg. 182-183, attached to this Writ of Certiorari. According to this government's witness, Chester McFadden, South Carolina Law Enforcement Agent, testified that Jones allegedly made the self incriminating statement in February of 1997. The entire government's witness list who were called to testify at the trial were all the State court's witnesses. As far as Jones can recall, the government never called one federal agent to testify and did not introduce any new evidence to prosecute this case sub Judice. See T. T. Vol. I and II. The Transcripts, Vol. I and II, consist of the entire State court case presented in federal court. It is not even arguable that it is not the State court case. Therefore, from the record of this cause of action sub Judice, the WHCAP operated as the functional equivalent of a WHCFR, because it was used to facilitate the removal of Jones and this cause of action from the State court.

"The argument is pressed on us that the removal of the case would violate the sovereignty of the State of Colorado and prevent the state from trying persons charged with the violations of its laws." See Ex Parte Dierks, 55 F.2d 371, 1932 U.S. Dist. Lexis at .

In Jones' case presently before this Court, his argument that he hopes to press upon the Honorable Justices of the Court is that the removal of Jones and this cause of action "violated the sovereignty of South Carolina" and prevented the state from prosecuting him, who was first charged in the State court with the armed robbery and felony murder violations. Again, the State court was compelled to "Dismiss" and "Remand" this cause of action sub Judice to federal court. See Exhibits F-1 and F-2. Because Jones was in the dominion and prior

exclusive jurisdiction of the state court for this criminal action at bar, "the writ of habeas Corpus [ad prosequendum] nor any other process issued under " federal authority could have " passed over the line of division between the " state and federal sovereignties. Since Jones was first charged with said offenses pursuant to the laws of the state, that tribunal alone could have **punished** him. See Covell v. Heyman, 111 U.S. at 183. However, in Jones' case, contrary to the decision of this Court in Covell along with a line of cases dating back well over one (1) hundred years ago, the district court issued the WHCAP to pass over the line of division between the state and federal sovereignties to bring Jones from the prior exclusive jurisdiction of the state court to its court to punish Jones for the state crimes of armed robbery and felony murder. See Exhibits A-1, A-2, C-1, D-1, E-1, F-1, F-2 and J-1.

" There can be no conflict of jurisdiction. The judges and officers of the state and federal courts are in duty bound by their oath to observe and respect each others' jurisdiction, and the United States Constitution, and the laws made there under, are supreme and binding on both. " See Ex Parte Dierks, 55 F.2d 371, 1932 U.S. Dist. Lexis at .

In Jones' case presently before the Court, there is a conflict of jurisdiction. The district court failed to avoid this jurisdictional conflict with the state court, because it interfered with the process of the state court. It is a matter of principle and, therefore, of necessity conferred on the district court that because the state court took Jones and this cause of action sub judice into its jurisdiction first, that res is as much withdrawn from the judicial power of the district court. See Covell, 111 U.S. at 182 .

" In the final analysis both administer the same laws, whether they be enactment of the national Congress or of the state legislator. . . . " We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the Constitution. . . . " " See Ex Parte Dierks, 55 F.2d 371, 1932 U.S. Dist. Lexis at 14.

In a criminal case that involved a seven (7) year old juvenile and four adults who robbed and shoot a pizza deliveryman in Charleston, West Virginia, the state court prosecutor initially filed a juvenile proceeding against T.M., the juvenile, in state court.

However, the state court eventually dismissed that action. But just two (2) days prior to that action being dismissed, the government initiated their juvenile proceedings against T.M. by filing a Criminal information in federal court that charged the juvenile with violating the Hobbs Act and using and carrying a firearm during the robbery and shooting of the pizza deliveryman. In a separate filing, the government certified, as required by 18 U.S.C. § 5032, that the district court could properly exercise jurisdiction over T.M.'s case on two grounds: (1) the State "refuses to assume jurisdiction" over T.M., etc. On April 21, the state court dismissed the juvenile proceedings against T.M. on the basis of the state prosecutor's representation that juvenile jurisdiction over T.M. had ended. T.M. was then transferred to federal custody. T.M. moved to dismiss for lack of subject matter jurisdiction. The district court granted the motion, concluding that the state court had not refused jurisdiction over T.M. The Court of Appeals held that, "the government properly certified that the state court was no longer asserting jurisdiction over T.M.'s juvenile proceedings, the district court erred in refusing to assume jurisdiction over the government's case against T.M." See United States v. T.M., 413 F.3d 420, 422-425 (4th Cir. 2005).

In Jones' case sub judice, the obvious distinction between T.M. and himself is that Jones is not a juvenile; therefore, 18 U.S.C. § 5032 does not apply to Jones. However, Jones was initially charged in the state court with this alleged armed robbery and felony murder violations. Although 18 U.S.C. § 5032 does not apply in this cause of action sub judice, the spirit of the prior exclusive jurisdiction rule embodies § 5032. Meaning, both § 5032 and the prior exclusive jurisdiction rule precludes, in this instance, the district court exercising jurisdiction over Jones and this same or similar cause of action that the state court had first assumed jurisdiction over. Therefore, in recognizing that jurisdiction limitation of the district court in T.M.'s case, the government charged T.M. with the Hobbs Act robbery and firearm shooting offense in an information and held its hand until the state court officially dismissed its case against T.M.. Shortly thereafter, T.M. was taken into federal custody.

As it relates to Jones, however, the government indicted Jones with the Hobbs

Act robbery and felony murder with a firearm while the state court was exercising its prior exclusive jurisdiction. The district court issued its WHCAP, thereby, bringing Jones from the state court to the district court to be arraigned and prosecuted for the initial state court charges that was still pending prosecution in the state court. The state court continued to assert its jurisdiction over Jones and this cause of action sub judice, although, the district court interfered with its proceeding. Hence, the point is, in this instance, as it was discovered in the case of T.M., the district court and Appeals Court recognized that the state charges of robbery and the firearm related offenses and the Hobbs Act and firearm related offenses were the same offenses. Therefore, Jones was charged with the same offenses at the same time in two separate jurisdictions.

Lastly, "Congress has no general right to punish murder committed within" the State of South Carolina, but in Jones' case at bar, the district court took a local truck stop murder out of the proper jurisdiction of the state court where it exclusively belong and punished Jones for such a violation of the state's law in federal court. The alleged murder had no connection to interstate commerce or any other federal interest. See United States v. Morrison, 520 U.S. 598, 617, L.ed.2d 658, 120 S.Ct. 1740 (2000).

In sum, the WHCAP was the functional equivalent of a WHCFR that passed over the jurisdiction line of division between the state and federal sovereignties. Therefore, the courts belonging to the United States lack subject matter jurisdiction over Jones and this cause of action under review.

III. WHETHER THE UNITED STATES SUPREME COURT IS OBLIGATED TO EXAMINE THE SUFFICIENCY OF JONES' SPECIAL PLEA TO THE JURISDICTION PURSUANT TO HIS FEDERAL RULES OF CIVIL PROCEDURE 12(b)(1) MOTION HE FILED IN THE APPEALS COURT REGARDING ITS LACK OF SUBJECT MATTER JURISDICTION ON THE BASIS THAT THE PRIOR EXCLUSIVE JURISDICTION RULE DISABLED THE COURTS OF THE UNITED STATES FROM EXERCISING

THEIR JURISDICTION OVER HIM AND THIS CAUSE OF ACTION UNDER REVIEW?

Jones respectfully asserts that the Justices of the United States Supreme Court have an independant special obligation to not only satisfy this Court of its own jurisdiction in this cause of action sub judice, but also that of the lower courts in this same cause under review. Jones made a special plea in the Appeals Court pursuant to his Opening Brief and a Fed. R. Civ. Pro. 12(b)(1) motion that was followed by a petition for rehearing and rehearing en banc, to reconsider his claim that it and the district court lack subject matter jurisdiction over him and this cause of action. The Appeals Court was able to avoid this jurisdictional question or its lack of jurisdiction by misconstruing Jones' Rule 12(b)(1) motion to dismiss for lack of subject matter jurisdiction as a preliminary motion to dismiss the indictment. At this stage of the proceedings, Jones cannot and did not make any attempt to dismiss his indictment. See Federal Rule of Civil Procedure 12(b)(1) Motion. Therefore, this Court is bound by its own prior rulings spanning well over one (1) hundred years ago, but often cited in today's judicial rulings, to examine the sufficiency of Jones' plea to the jurisdiction. In observation of this Court's special duty to the law, it would be sure to take care that neither the Appeals Court nor this Court shall use the judicial power of the United States in this case to which the prior exclusive jurisdiction rule applies to preclude the courts of the United State from exercising their jurisdiction over Jones and this cause of action at bar.

This Court observed that "[t]he true question is, not what either of the parties may be allowed to do, but whether this Court will affirm or reverse a judgment of the Circuit Court on the merits, when it appears on the record, by a plea to a jurisdiction, that it is a case to which the judicial power of the United States does not extend." See Mansfield, C. & L. M. R. Co. v. Swan, 111 U.S. 379, 384, 28 L.Ed 462 (1884) (Brackets and alteration added). Jones has previously demonstrated the United States Courts' lack of jurisdiction.

Jones asserts that "[t]he course of the court is, ... to reverse" the judgment of the Appeals Court "for want of jurisdiction" in this case sub judice, because from the record, Jones, has shown that the Appeals Court and the district court lacked subject matter jurisdiction pursuant to the applicable prior exclusive jurisdiction rule which precluded the Courts of the United States from exercising their jurisdiction over Jones and this cause of action sub judice. See Mansfield, C. & L.M.R. Co. v. Swan, 111 U.S. at 384.

"Usually where a court has no jurisdiction of a case, the correct practice is to dismiss the suit, but a different rule necessarily prevails in an appellate court in cases where the subordinate court was without jurisdiction and has given judgment or decree for the plaintiff, or improperly decreed affirmative relief to a claimant. In such a case, the judgment or decree in the court below must be reverse, else the party which prevailed there would have the benefit of such judgment or decree, though rendered by a court which had no authority to hear and determine the matter in the controversy." Id. at 385.

In Jones' case presently before this Court, the district court was without jurisdiction. The correct practice was for this case to be dismissed. As it presently stands, the judgment in the courts below must be reverse or else the government which prevailed there would have the benefit of "such judgment or decree, though rendered by a court which had no authority to hear and determine the matter in the controversy." Id. at 385.

"In Grace v. Ins. Co., 109 U.S., 278 [x xvii., 932], it is true that this Court passed upon all questions in the case affecting its merits, although it reversed the judgment be- cause the jurisdiction of the Circuit Court was not apparent; but it was thought convenient and proper to do so, in that case, because the record itself made it probable that its omission of statements necessary to show jurisdiction was inadvertent." Id. at 386.

In Jones' case sub judice, he has not presented any questions to this Court affecting the merits. Jones adverted the lower courts lack of subject matter jurisdiction over him and this cause of action under review from his intentional admission within his "JURISDICTIONAL STATEMENT" pursuant to his Opening Briefs which was necessary to show the Appeals Court that it lack jurisdiction over him and this case as follows:

District Court Jurisdiction :

The district court from which this appeal is taken did not have original jurisdiction of this action pursuant to 18 U.S.C. §3231. In particular, jurisdiction under this statute was improper because it was either forfeited, waived or ceded to the district court by the state court of South Carolina.

Court of Appeals Jurisdiction :

This Court has no jurisdiction over this appeal. In particular, jurisdiction is improper because this appeal is from a final judgment/order rendered and entered in the United States District Court for the District of South Carolina, Charleston Division, who obtained its jurisdiction from the forfeited, waived or ceded act by the state court of South Carolina. ³³

See Opening Briefs.

Furthermore, Jones followed up his intentional admission of statement that the district court and Appeals Court lack subject matter jurisdiction with arguments made to the Appeals Court. *Id.* Thus, from Jones' case, the want of jurisdiction appears affirmatively from the record. See *Mansfield, C. & L.M.R. Co. v. Swan*, 111 U.S. at 384.

³⁴ "It is of course settled that this Court must consider, whenever the question is raised or when though not raised by counsel, the jurisdiction of the lower federal courts as well as the jurisdiction of this Court. *Mansfield, C. & L.M.R. Co. v. Swan*, 111 U.S. 379, 382, 23 *Led* 462, 463, 4 *S.Ct* 516. ³⁵ See *Oklahoma v. United States Civil Serv. Com.*, 330 U.S. 127, 146, 91 *L.Ed* 794 (1947) (Emphasis added by Jones).

In Jones' case presently before this Court, since it is settled by this Court that it must consider the question raised that the courts of the United States lack jurisdiction over Jones and this cause of action, this Court should grant Writ of Certiorari. Otherwise, it would

unsettle the long standing principle and right, therefore, of necessity that the district Court and Appeals Court may not exert the use of judicial power of the United States in Jones' case where it does not extend, because the prior exclusive jurisdiction rule disabled the lower Courts from exercising their jurisdiction over Jones and this cause of action.

"No party need assert the defect. No party can waive the defect or consent to jurisdiction. *Insurance Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 709, 72 L.Ed.2d 499, 102 S.Ct. 2099 (1982); *People's Bank v. Calhoun*, 102 U.S. 256, 260-261, 26 L.Ed 101 (1880). No Court Can ignore the defect; rather a court, noticing the defect, must raise the matter on its own. *Insurance Corp. of Ireland*, *supra*, at 702, 72 LEd 2d 499, 102 Sct 2099; *Mansfield, C. & L.M.R. Co. v. Swan*, 111 U.S. 379, 389, 28 L.Ed 462, 4 Sct 510 (1884)." See Wis. Dept. of Corrections v. Schacht, 524 U.S. 381, 389, 141 L.Ed. 2d 364, 118 S.Ct. 2047 (1998) (Emphasis added by Jones).

In Jones' case sub judice, the Appeals Court ignored the prior exclusive jurisdiction defect as the record in this case demonstrates. Undoubtedly, the Appeals Court noticed the defect, because Jones raised the prior exclusive jurisdiction defect not only within both of his appeal briefs, but he raised this jurisdiction defect by Fed. R. Civ. Pro. 12(b)(1) motion. As it relates to Jones' Fed. R. Civ. Pro. 12(b)(1) motion, the Appeals Court ignored the prior exclusive jurisdiction defect by construing Jones' said motion as a preliminary motion to dismiss the indictment. In response to the Appeals Court misconstruing Jones' Fed. R. Civ. Pro. 12(b)(1) motion and dismissing it, Jones filed a timely petition for rehearing and rehearing en banc which resulted in a failed attempt to encourage the Appeals Court to please reconsider its lack of jurisdiction over Jones and this cause of action under review. The Appeals Court "[was] not only impowered, but obligated," in Jones' case sub judice, "to reconsider its subject matter jurisdiction, either upon request or sua sponte," because Jones questioned the Appeals Court failure to make any attempt to establish its jurisdiction over him and this cause under review. See Ohnmacht v. Commercial Credit Grp., Inc., 2017 Bankr. Lexis 3814 (E. D. N.C. Nov. 3, 2017).

In Jones' case presently before this Court, "[i]t is a principle of right and of law

and, therefore, of necessity " that when the state court took "into its jurisdiction" Jones and this cause under review, "that res is as much withdrawn from the judicial power of the " Appeals Court "as if it had been carried physically into a different territorial sovereignty. " See *Covell v. Heyman*, 111 U.S. at 182 . Therefore, the Appeals Court out of necessity should have dismissed Jones' case for want of jurisdiction. The failure of the Appeals Court to dismiss Jones' case for want of jurisdiction carried the Court "beyond the bounds of authorized judicial action and thus offends fundamental principles of Separation of power . " See *Steel Co. v. Citizens For Better Env.*, 523 U.S. 83, 94, 140 L.Ed.2d 210, 118 S.Ct. 1003 (1997). Now, "the only remaining function to the Court " in Jones' case presently before it "is that of announcing the fact and dismissing the cause." *Id.* at 94 .

In sum, the Justices of the United States Supreme Court should exercise their independent special obligation to not only satisfy this Court of its own jurisdiction in this cause of action under review, but also that of the lower courts, because Jones has made a special plea to the jurisdiction that the Appeals Court simply ignored.

IV. WHETHER THE APPEALS COURT'S PREMATURE ADJUDICATION OF JONES' CLAIMS HAVE RENDERED THE APPEALS COURT JUDGMENT VOID FOR LACK OF SUBJECT MATTER JURISDICTION BECAUSE JONES WAS DENIED THE RIGHT TO BE HEARD AND AN OPPORTUNITY TO ANSWER TO THE GOVERNMENT'S REPLY BRIEF ?

Jones contends that the Appeals Court lack subject matter jurisdiction over this immediate cause of action, because the district court did not give Jones a right to be heard and an opportunity to answer to the government's affirmative defense in favor of dismissing Jones' case. Therefore, the record in this cause of action before this Court at present is inadequate and unfit for adjudication on the merits.

On September 13, 2007, Jones filed a motion to Set Aside Judgment ~~pur-~~

suant to Fed. R. Civ. Pro. 60(d)(3) and on January 16, 2019, he filed a Petition for Writ of Audita Querela pursuant to Title 28 U.S.C. § 1651(a). After the district court allowed Jones' Rule 60(d)(3) motion to lie dormant for approximately four (4) years and his Writ of Audita Querela to lie dormant for approximately two (2) years, the district court allowed the government to respond to the Motion and Petition. On January 29, 2021, the district court recharacterized Jones' motion and petition as motions to Set Aside Judgment before dismissing this action on the basis of the government's motion or its argument for dismissal.

"Ripeness is an issue of subject matter jurisdiction. *South Carolina v. United States*, 912 F.3d 720, 730 (4th Cir. 2019) (citation omitted). "The ripeness doctrine is drawn both from Article III limitations on judicial power and from prudential reasons for refusing to exercise jurisdiction... This threshold consideration is designed to prevent the courts, through avoidance of premature adjudication..." See *Ballantyne Villa Parking, LLC v. City of Charlotte*, 818 Fed. Appx. 198, 202 (4th Cir. 2020) (omissions added). From this requirement courts developed the doctrine of ripeness. Its basic rationale is to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements. See *Abbott Labs v. Gardner*, 387 U.S. 136, 148, 87 S.Ct. 18 L.Ed.2d 681 (1967). The doctrine of ripeness prevents judicial consideration of issues until a controversy is presented in "clean-cut and concrete form." See *Miller v. Brown*, 460 F.3d 312, 318-19 (4th Cir. 2006), see also *Rescue Army v. Municipal Court*, 331 U.S. 549, 584, 19 L.Ed 1666 (1947).

In Jones' case presently before this Court, the government submitted its reply brief on January 26, 2021, arguing for dismissal on procedural grounds. Three days later and prior to receiving the government's reply brief through the institutional mail system, the district court had granted the government's motion to dismiss Jones' petition and motion without ever considering allowing Jones to answer to the government's motion to dismiss or reply brief. Therefore, Jones was not given an opportunity to present his claim in a "clean-cut and concrete form."

The government in its reply brief took the position that Jones "was prosecuted for violations of 18 U.S.C. § 1951 . . . 18 U.S.C. § 924(c) and § 924(j). . . Thus, whether or not he was indicted in both jurisdictions or prosecuted in either one, or both, does not affect the jurisdiction of the district court. In Mr. Jones Case, of course, the State Court of South Carolina dismissed its murder and robbery charges after he was federally indicted." See Government's Response to Defendant's Motion to Expedite And Petition For Writ of Audita Querela Under 28 U.S.C. § 1651 (a), pg. 11, lines 1-4 and 13-16 (Comissions added by Jones).

After the government responded as noted above, it became apparent to Jones that his issue in its "Clear-cut concrete form" ¹⁵ is prior exclusive jurisdiction. The government admitted that the "State of South Carolina dismissed its murder and robbery charges after he was federally indicted." Id. However, Jones was federally indicted for the same or similar offenses of armed robbery and murder as were then pending prosecution in the state court. See Exhibits A-1, A-2, C-1, D-1, E-1, F-1, F-2, H-1, Supporting Papers, TR. Vol. II, pg. 114, J-1 and K-1. Now, "where the jurisdiction of the state court has attached, the federal court is precluded from exercising its jurisdiction over the same res to defeat or impair the state court's jurisdiction." See Kline v. Burke Construction Co., 260 U.S. 226, 229-230, 43 S.Ct. 79, 69 L.Ed 226 (1922). Nevertheless, the district court failed to allow Jones to present his "clear-cut and concrete form" prior exclusive jurisdiction issue in response to the government's assertion. Furthermore, because the district court did not allow Jones to answer the government's reply brief, Jones was unable to argue that the Supreme Court of the United States rejected the practice of law of dismissing a case, such as Jones' case for want of jurisdiction when it can only be denied on the merit if the claims are not frivolous. See Bell v. Hood, 327 U.S. 678, 682-83, 40 L.Ed 939 (1946). However, Jones was not given the right to be heard and an opportunity to respond to the government's reply brief before the district court entered judgment in favor of the government.

In sum, Jones raised this issue of ripeness in the Court of Appeals by way of both of his Appellate Briefs and a Petition for rehearing and rehearing en banc. The Appeals Court, nevertheless,

failed to give any judicial consideration to Jones' issue of ripeness. Hence, the Appeals Court lack jurisdiction over this immediate cause of action, because Jones issues were unripe for judicial review.

V. WHETHER THE POTENTIAL FOR WRIT OF CERTIORARI DENIAL AND THE UNWILLINGNESS OF THE APPEALS COURT TO AFFORD JONES A REMEDY AGAINST THE DISTRICT COURT'S INVALID AND FOREIGN PROCESS OF ILLEGALLY SEIZING HIM AND THIS CAUSE OF ACTION FROM THE COMPETENT JURISDICTION OF THE STATE COURT SHOULD PROVIDE JONES A REMEDY IN THE STATE COURT TO BE DEVESTED FROM THE JUDGMENT OF THE DISTRICT COURT THAT HAD NO POWER TO ENTER THE JUDGMENT ?

Jones contends that if this Court should deny him Writ of Certiorari after the Appeals Court Unwillingness to afford him any remedy against the district court's invalid and foreign process of illegally seizing him and this cause of action from the competent jurisdiction of the state court, he should be allowed a remedy in the state superior court or supreme court to be divested from the judgment of the district court. Otherwise, no remedy would exist for Jones in this matter at present.

"We agree with Mr. Justice Grier, in *Peck v. Jenness*, 7 How. 604, 625. "It is a doctrine of law too long established to require citation of authorities, that where a court has jurisdiction, it has a right to decide every question which occurs in the cause... and that where the jurisdiction of a court, and the right of a plaintiff to prosecute his suit in it, have once attached, that right cannot be arrested or taken away by proceedings in another court. Neither can one take the property from the custody of the other by replevin, or any other process; for this would produce a conflict extremely embarrassing to the administration of justice. "... Chief Justice Marshall observed: "Any intervention of a State authority which, by taking the thing seized out of the possession of the officer of the United States, might obstruct the exercise

of this jurisdiction, would, unquestionably, be a violation of the act; and Federal Court having cognizance of the seizure, might enforce a redelivery of the thing by Attachment or other summary process against the parties who should divest such a possession. . . .²² See Freeman v. Howe, 16 L. Ed 749, 751, 24 How. 450 (1861)

In Jones' case sub judice, the state court had jurisdiction over him and this cause of action presently before this Court from February of 1997, to June 1, 1999. See Exhibits A-1, A-2, F-1, F-2 and J-1. Therefore, the district court could not have taken Jones and this cause of action away from the state court by an invalid and foreign process of issuing a Writ of Habeas Corpus Ad Prosequendum (WHCAP). Now, Chief Justice Marshall, from the facts of Jones' case at bar, would conclude that the district court obstructed the exercise of the state court then pending jurisdiction over Jones and this cause under review; because after the district court took Jones and this cause of action at bar from the state court, see Exhibits C-1, D-1 and E-1, the state court in response dismissed this cause of action and declared it "REMANDED TO FEDERAL COURT".²³ See Exhibits F-1 and F-2. Justice Marshall would also conclude such actions by the district court to be a violation of the act. The remedy for such a violation, howbeit, before adjudication, is enforcement of redelivery of Jones to the state court. See Freeman v. Howe, 16 L. Ed at 752.

On the other hand, "[I]f the officer of the United States who seizes, or the Court which awards the process to seize, has jurisdiction of the subject-matter, then the inquiry into the validity of the seizure belongs exclusively to the Federal Courts. But if there be no jurisdiction in the instance in which it is asserted, as if a marshal of the United States, under an execution in favor of the United States against A, should seize the person or property of B, then the state Courts have jurisdiction to protect the person and the property so illegally invaded."²⁴ . . . No doubt, if the Federal Court had no jurisdiction of the case, the process would be invalid, and the seizure of the property illegal, for which the aggrieved party is entitled to his remedy. But the question is, which tribunal, the Federal or State, possesses, the power to determine the question of jurisdiction or validity of the

process... for in every case the question of jurisdiction could be made; and until the power was assumed by the state court, and the question of jurisdiction of the Federal Court was heard and determined by it, it could not be known whether in the given case it existed or not. . . it belong to the Federal courts to determine the question of their own jurisdiction. . . " *Id.* at 750.

In Jones' case sub judice, unlike the example given by the Chancellor, which was determined to be remedial error, there is no doubt from the record that the federal court had no jurisdiction of Jones and this cause of action. Therefore, the process in this cause of action is invalid and the seizure of Jones is illegal, upon which Jones may not have any remedy, contingent, however, upon whether this Court will grant Writ of Certiorari. Jones, according to the law, is entitled to a remedy, but the question is, which tribunal, the Federal or state, possesses the power to determine the question of jurisdiction or validity of the process. This Court opined that, "in every case the question of jurisdiction could be made; and until the power was assumed by the state court, and the question of jurisdiction of the Federal court was heard and determined by it, it could not be known whether in the given case it existed or not. " *Id.* However, in Jones' case, the state court assumed power or jurisdiction over him and this cause of action under review. See Exhibits A-1, A-2, F-1 and F-2. Jones presented the question of jurisdiction to the Appeals Court and now to this Court on the basis that the prior exclusive jurisdiction rule precluded the courts of the United States from exercising their jurisdiction over Jones and this cause of action now before this Court. The Appeals Court, upon repeated request, will not hear and determine its jurisdiction over Jones and this cause of action. Jones filed a Fed. R. Civ. Pro. 12(b)(1) motion for lack of subject matter jurisdiction in the Appeals Court in this case, and the Appeals Court misconstrued the Rule 12(b)(1) motion as a preliminary motion to dismiss the indictment. Jones then filed a timely Petition for rehearing and rehearing en banc, praying that the Appeals Court would reconsider its lack of jurisdiction, only to have the Appeals Court deny that petition as well. Now, if this Court should deny Jones Writ of Certiorari, effectively, Jones would have no remedy to question the jurisdiction or the validity of the process

in this case.

With that in mind, this Court should take note that it Opined that, "... he may pursue in any tribunal, State or Federal, having jurisdiction over the parties and subject matter. And, vice versa, the same principle protects the possession of the property while thus held, by process issuing from state courts, against any disturbance under process of the courts of the United States. . . . " See Byer v. McAuley, 149 U.S. 608, 614, 37 L.Ed 867 (1893) (omissions added). " But when the two suits have substantially the same purpose and the jurisdiction of the courts is concurrent, the one whose jurisdiction and process are first invoked by filing of the bill is treated as in constructive possession of the property and is authorized to proceed with the cause. . . . Jurisdiction thus attaches upon the filing of the bill of complaint in court, at least where process subsequently issue in due course. . . . " See Penn General Casualty Co. v. Pennsylvania, 294 U.S. 189, 196, 79 L.Ed 850 (1935) (omissions added).

In Jones' case sub Judice, the state court acquired jurisdiction over Jones and the same substantially cause of action long before the district court took Jones and this case from the state court. See Exhibits A-1, A-2, C-1, D-1, E-1, F-1, F-2 and J-1. Since the state court's jurisdiction over Jones and the subject matter was competent at the time the district court took Jones from the state court, Jones should be allowed to pursue a remedy in the state court against the invasion of its jurisdiction by the district court.

In sum, if this court should deny Jones Writ of Certiorari after the Appeals Court refusal to hear and determine its jurisdiction over Jones and this cause of action at bar, Jones should be allowed to pursue a remedy in the state court against the judgment of the district court for lack of subject matter jurisdiction. Otherwise, Jones will be without a remedy for the invasion of the state court's jurisdiction by the district court upon invalid process to seize Jones and this cause of action from the state court. Had the state Superior Court and/or Supreme Court were made aware of the district court's jurisdictional invasion by invalid and foreign process, those courts would have had an obligation to enforce the redelivery of Jones to the state court.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Arthur Jones, Jr.

Date: December 2, 2021