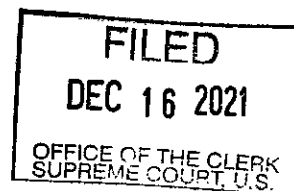


No. **21-6880**

ORIGINAL

In The
Supreme Court of The United States



In re

Allen "F" Carlton

Petition For writ Of mandamus In Aid Of Habeas Corpus Relief

Allen "F" Carlton # 1123880
Connally Unit
899 Fm 632
Kenedy, Tx. 78119

Questions Presented

- (1) Whether an Individual Circuit Judge of The U.S. Court Of Appeals has original Habeas Corpus Jurisdiction over a second or successive habeas petition. Filed by a state prisoner who was unable to obtain leave from the U.S. Court of Appeals to file a second or successive petition in the district court.

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List of Parties

Petitioner :

Allen "F" Catton #1123880
Connally Unit
899 FM 632
Kenedy, Tx. 78119

Respondents :

- (1) Chief Judge Owen
600 S. maestri Place
New Orleans, La. 70130
- (2) Judge Willet
600 S. maestri Place
New Orleans, La. 70130
- (3) Judge Ho
600 S. maestri Place
New Orleans, La. 70130
- (4) Judge Smith
600 S. maestri Place
New Orleans, La. 70130
- (5) Judge Haynes
600 S. maestri Place
New Orleans, La. 70130
- (6) Judge Stewart
600 S. maestri Place
New Orleans, La. 70130

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List Of Parties

Respondents:

- (7) Judge Oldham
600 S. Maestri Pl.
New Orleans, La. 70130
- (8) Judge Davis
600 S. Maestri Pl.
New Orleans, La. 70130
- (9) Judge Southwick
600 S. Maestri Pl.
New Orleans, La. 70130
- (10) Judge Elrod
600 S. Maestri Pl.
New Orleans, La. 70130
- (11) Judge Jones
600 S. Maestri Pl.
New Orleans, La. 70130
- (12) Judge Jolly
600 S. Maestri Pl.
New Orleans, La. 70130
- (13) Judge Jones
600 S. Maestri Pl.
New Orleans, La. 70130

List Of Parties

Respondents:

(14) Judge Garza
600 S. maestri Pl.
New Orleans, La. 70130

(15) Judge Weiner
600 S. maestri Pl.
New Orleans, La. 70130

(16) Judge Graves
600 S. maestri Pl.
New Orleans, La. 70130

(17) Judge Higginbotham
600 S. maestri Pl.
New Orleans, La. 70130

(18) Judge Dennis
600 S. maestri Pl.
New Orleans, La. 70130

(19) Judge King
600 S. maestri Pl.
New Orleans, La. 70130

(20) Judge Demoss
600 S. maestri Pl.
New Orleans, La. 70130

List Of All Proceedings In State and Federal Courts

- (1) Court: Texas Court Of Criminal Appeals
Nature of Proceeding: Petition For writ of Habeas Corpus
Docket Number: 65,590-22
Caption: Ex Parte Allen "F" Calton
Judgment Date: 7-12-17
- (2) Court: U.S. Supreme Supreme
Nature of Proceeding: Petition For writ of Certiorari
Docket Number: No. 20-5125
Caption: In re Allen "F" Calton
Judgment Date: 10-5-20
- (3) Court: U.S. Court Of Appeals Fifth Circuit
Nature of Proceeding: Original Petition For writ of Habeas Corpus converted to a motion For Leave To File Successive petition.
Docket Number: No. 21-10295
Caption: In re Allen "F" Calton
Judgment Date: 4-26-21

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Opinions Below

The opinion and order of the U.S. Court of Appeals Fifth Circuit dated 4-26-21. Establishing that neither of the individual 'Circuit Judges' of the Fifth Circuit would exercise his or her original habeas corpus jurisdiction under the power and authority of 28 U.S.C. § 2241 filed originally and directly with an individual 'Circuit Judge' of the court. To which petitioner calls into question and seeks relief from in this writ of mandamus proceeding appears at Appendix "A" to the petition and is unpublished. See Petitioner's Affidavit In Support of His Petition For writ of mandamus [Hereafter referred to as "App."] at Appendix "A" app. p. 1-3.

Jurisdiction

The Jurisdiction of This Court is invoked under 28 U.S.C. § 1651

Constitution and Statutory Provisions Involved

Article III

Section 1. The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The Judges, both of the Supreme Court and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.

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Section 2. The judicial power shall extend to cases in law and equity, arising under the Constitution, the law of the United States, and treaties made, under their authority.

Remaining Part of §2 Deleted

14th Amendment

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

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

Remaining Parts Of This Amendment Deleted

5th Amendment

No person shall be held to answer for a Capital or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces or in the militia, when in actual service in time war or public danger; nor shall any person be subject for the same offence to be twice put jeopardy of life or limb, nor shall

be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

28 U.S.C. § 1651 (2021) Appendix "B" app. p. 4

28 U.S.C. § 2241 (2021) Appendix "C" app. p. 5

28 U.S.C. § 2244 (2021) Appendix "D" app. p. 6-7

28 U.S.C. § 2254 (2021) Appendix "E" app. p. 8-9

Statement Of Pertinent Facts on mandamus

- (1) On 2-23-21 Catton signed his Original Jurisdiction Petition For Writ of Habeas Corpus Under 28 U.S.C. § 2241 and forwarded the same to an individual 'Circuit Judge' that was filed by the clerk on or about 2-26-21. As confirmed by U.S. Court of Appeals Fifth Circuit Deputy Clerk Claudia N. Farrington. See Affidavit Appendix In support of His Petition For writ of mandamus [Hereafter referred to as "App"] at Appendix "F" app. p. 10 Also see Appendix "G" app. p. 11 - SO for a copy of the Section 2241 Petition.
- (2) On 4-26-21 a quorum of The Fifth Circuit U.S. Court of Appeals converted Catton's Original Jurisdiction Petition For writ of Habeas Corpus Under 28 U.S.C. § 2241 that was filed with an individual 'Circuit Judge' into a motion For Authorization to file a successive Section 2254 application and denied leave. See Appendix "A" app. p. 1-3
- (3) On 5-3-21 Catton forwarded his Demand Letter To The Circuit Judge To Exercise Original Habeas Jurisdiction under § 2241

and transfer the case. See Appendix "H" app.p. 51-63

(4) On 5-10-21 Deputy Clerk Claudia N. Farrington responded to Calton's 5-3-21 dated Demand Letter TO The Circuit Judge¹ TO Exercise Original Habeas Jurisdiction And Transfer The Case. And informed Calton that the case would not be transferred to the District Court in light of the Court's order on 4-26-21. That the case was closed and that there was no recourse in this type of case. The Court has issued its final order. See Appendix "I" app.p. 64

Reasons For Granting mandamus Relief

I Standard of Review On mandamus

The remedy of mandamus is a drastic one, to be invoked only in extraordinary situations. See *Bankers Life and Cas. Co v Holland* 346 U.S. 379, 382-385 (1953). Under the All Writs Act, 28 U.S.C. § 1651(a), a federal court may issue writ of mandamus only when necessary or appropriate in aid of their respective jurisdiction jurisdiction. See *Allied Chemical Corp. v Daiflon, Inc* 449 U.S. 33, 34 (1980). As this Court has observed, the writ "has traditionally been used in the Federal Courts only" to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so. See *Will v U.S.* 389 U.S. 90, 95 (1967). This Court has not limited the use of mandamus by an unduly narrow and technical understanding of what constitutes a matter of "jurisdiction." *Id.* at 95. The fact still remains that only exceptional circumstances amounting to a judicial 'usurpation of power' will justify the invocation of this extraordinary remedy. *Id.* or when a clear abuse of discretion is demonstrated. See *Bankers Life Cas. Co.* 346 U.S. at 384. As a means of imple-

menting the rule that the writ will issue only in extraordinary circumstances, this court has set forth various conditions for its issuance. Among these are that the party seeking issuance of the writ have no adequate means to attain the relief he desires. See *Roche v Evaporated Milk Assn.* 319 U.S. 21, 26 (1943). And that he satisfy the "burden by showing that his right to issuance of the writ is clear and indisputable". See *Bankers Life and Cas. Co.* 346 U.S. 473, 484. Specifically, a court must find three requirements before a writ will issue: (1) "the party seeking issuance of the writ must have no other adequate means to obtain the relief he desires, (2) the petition must satisfy the burden of showing that the right to the writ is clear and undisputable (3) even if the first two prerequisites have been met, the issuance court in the exercise of its discretion, must be satisfied that the writ is appropriate under the circumstances. See *Cheney v U.S.D.C. for Dist. of Columbia* 124 S.Ct 2576, 2587 (2004). This court made clear that these hurdles, however demanding are not insurmountable. Eg. federal courts have issued the writ to restrain a lower court when its actions would threaten the separation of powers by embarrassing the executive arm of the government. *Id.* at 2587. To establish entitlement to mandamus relief, Catton must establish that the Circuit Judge had a legal duty to perform a non-discretionary act. Catton made a demand by letter to the 'Circuit Judge' to exercise jurisdiction over his original jurisdiction petition for writ of Habeas Corpus under 28 U.S.C. § 2241. See Appendix "G" app. p. 11-50. Cf. *Stoner v Massey* 586 S.W.2d 843, 846 (Tex. 1979) ("To establish entitlement to mandamus relief, the relator must establish that the trial court had a duty to perform a non-discretionary act, relator made a demand for their performance and the court refused to perform"). Although the writ of mandamus is a discretionary one, this court made

clear that courts of law in considering petitions for the writ are guided by principles comparable to those provided by a court of equity. See *ex rel Greathouse v Bern* 289 U.S. 352 (1933). When looked at in the framework of these relevant factors noted above Catton has established his entitlement to this court issuance of mandamus relief below.

II The U.S. Supreme Court Possesses Mandamus Jurisdiction To Compel The 'Circuit Judge' To Exercise Original Habeas Jurisdiction

The U.S. Supreme Court possesses mandamus jurisdiction as a superior court to that of the individual 'Circuit Judges' of the U.S. Court of Appeals Fifth Circuit. The Supreme Court and all courts established by act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law. See *In re Hot-Aed, Inc* 471 F.3d 320, 322 (5th Cir 2007) (citing 28 U.S.C. § 1651(a)). The jurisdiction of this court as defined in Art. III § 2 of the constitution is either "original" or "appellate". Hence its statutory authority to issue writs of prohibition or mandamus to the lower Federal tribunals and judges thereof can be constitutionally exercised in so far as such writs are in aid its original jurisdiction. Cf *Ex Parte Peru* 38 U.S. 578, 582 (1943) ("Hence its statutory authority to issue writs of prohibition or mandamus to district courts can be constitutionally exercised in so far as such writs are in aid of its appellate jurisdiction") (citing *Marbury v Madison* 5 U.S. 137, 173-180 (1803); *Ex Parte Siebold* 100 U.S. 371 (1880)). Under the statutory provisions, the jurisdiction of this court to issue commonlaw writ in aid of its appellate jurisdiction has been consistently sustained the historic use of writs of prohibition and mandamus directed by an appellate court to an inferior court has been to exert the revisory appellate power over the inferior court. *Id.* at 583. The writs thus afford an expeditious and effective means of con-

forming the inferior court to lawful exercise of its prescribed jurisdiction, or of compelling it to exercise its authority when it is its duty to do so. *Id.* at 583. The Common Law writs like equitable remedies may be granted or withheld in the sound discretion of the court. *Id.* at 584 (cases cited). These writs will also enable this court. *Id.* at 584 (cases cited). These writs will also enable this court to accelerate its own undoubted reviewing authority where, under exceptional circumstances, actual and not undefined interests of justice so required. Cf. *In re Chetwood* 165 U.S. 443; *Whitney v Dick* 202 U.S. 132; *Adams v U.S.* 317 U.S. 269. Finally the All Writs Act 28 U.S.C. § 1651 has served since its conclusion, in substance, in the original Judiciary Act as a "legislatively approved source of procedural instruments designed to achieve the national ends of the law". See *Harris v Nelson* 394 U.S. 286, 299 (1969) (citing *Price v Johnston* 334 U.S. 266, 282 (1948)). In light of the same this Court should reasonably exercise its mandamus jurisdiction to compel the individual 'Circuit Judge' to exercise jurisdiction over Catton's Original Jurisdiction Habeas Corpus Petition under 28 U.S.C. § 2241 filed therewith. In *Price v Johnston*, *supra* this court held explicitly that the purpose and function of the All Writs Act was to supply the courts with the instruments needed to perform their duty, as prescribed by the Congress and the Constitution, provided only that such instruments are "agreeable to the usages and principles of law, extend to habeas corpus proceedings. See *Harris* 394 U.S. at 299-300.

III. Catton Has No Alternative means of Relief Other Than mandamus

Since mandamus jurisdiction has been established above this court must now determine whether Catton has stated a claim for mandamus relief. See *Walcott v Sebelius* 635 F.3d 751, 768 (5th Cir 2011). Mandamus, in short does not create or expand duties but merely enforces clear, non-discretionary duties already in existence. *Id.* at 768. This

Court first resolves the question whether Calton has an adequate remedy at law for the alleged harm caused by the 'Circuit Judge's' actions. Under the "No alternative means of Relief" prong on mandamus review, Calton must show that he has no alternative means of relief. There is no other remedy at law to compel the 'Circuit Judge' to exercise original habeas corpus jurisdiction on the petition Calton filed therewith. Accordingly Calton has established he has no other adequate remedy at law other than this Court exercising its mandamus jurisdiction. To Compel an individual 'Circuit Judge' of the U.S. Court of Appeals Fifth Circuit To Exercise Original Habeas Jurisdiction on the Petition Calton filed originally and directly with a judge of the Court in chambers

IV The Right To Issuance of The Writ Is Clear and Indisputable

This Court having reasonably determined that Calton has satisfied the first prerequisite to mandamus relief, now the question must be addressed. Whether Calton had a clear right to relief sought. Under the "Right To Issuance of The writ Is Clear and Indisputable" prong for mandamus relief. Calton must satisfy the burden of showing that his right to issuance of the writ is clear and indisputable. Under this prong of mandamus relief Calton concedes that the writ shall not issue here unless Calton establishes that the 'Circuit Judge's' failure to exercise jurisdiction over the original jurisdiction Petition For writ of Habeas Corpus filed originally and directly therewith represented a clear abuse of discretion. See Cheney 124 S.Ct at 2587. To ascertain whether the 'Circuit Judge' as an inferior federal forum to this Court has abused its discretion this Court as the Superior Court makes its own independent inquiry whether the 'Circuit Judge's' refusal on 4-26-21 to exercise original habeas jurisdiction over Calton's petition was in error. The individual 'Circuit Judges' of the U.S. Courts of Appeals power

to grant the extraordinary writ is very broad. See *Oragene v Ridge* 389 F.3d 92, 100 (4th Cir 2004) (section 2241 Confers jurisdiction on "any Circuit Judge" within their respective jurisdictions") (Citing 28 U.S.C. § 2241(a)); *Trevino-Casares v U.S. Parole Comm.* 992 F.2d 1068, 1070 n.4 (10th Cir 1993) (A 'Circuit Judge' acting individually, has the authority to grant such habeas relief if the petitioner's custodian is located within the circuit, in which case the Circuit Judge order "shall be entered in the records of the district court of the district wherein the complained restrained of is held") (Citing 28 U.S.C. § 2241(a)). As this court recently noted the general habeas corpus statute continues to confer habeas jurisdiction on individual 'Circuit Judges' even post AEDPA. See *Boumediene v Bush* 533 U.S. 723, 777 (2008) ("In § 2241 [2000 ed] Congress confirmed the authority of 'Any Justice' or 'Circuit Judge' to issue the writ"); *INS v St. Cyr* 533 U.S. 239, 305 (2001) ("Federal Courts have been authorized to issue writs of Habeas Corpus since the enactment of the Judiciary Act of 1789 and § 2241 of the Judicial Code provides that federal judges may grant the writ of Habeas Corpus on the application of a prisoner held in custody in violation of the constitution or law or treaties of the United States"). Also see 305 n.35 ("§ 2241 descends directly from § 14 of the Judiciary Act of 1789 and the 1867 Act. See Act of Sept. 24, 1789, ch. 20 § 14, 1 Stat. 82; Act of Feb 5, 1867, ch. 28, 14 Stat. 385. Its text remained undisturbed by either AEDPA or IIRIRA"). Section 2244(b) as a mere jurisdiction stripping statute simply removed jurisdiction from the district court and changed the tribunal to file a successive habeas petition to that of a 'Circuit Judge' or Any Justice of this court. If leave cannot be obtained from the U.S. Court of Appeals to file a successive petition in the district court. See *Hamdan v Rumsfeld* 548 U.S. 557, 576 577 (2006) ("We have explained that unlike other intervening

changes in law, a jurisdiction conferring or jurisdiction stripping statute usually takes away no substantive right but simply changes the tribunal that is to hear the case") (Citing *Hallowell v Commons* 239 U.S. 506, 508 (1916); *Boumediene* 553 U.S. at 777 ("In §2241 [2000ed] Congress confirmed the authority of 'Any Justice' or 'Circuit Judge' to issue the writ"). The Fifth Circuit made clear long ago that an individual 'Circuit Judge' has jurisdiction to entertain original for writ of habeas petitions. See *Zimmerman v Spear* 565 F.2d 310, 316 (5th Cir 1977) ("Individual Judges do have jurisdiction to entertain original petition for writ of habeas Corpus. Fifth Circuit Rule 25.2.2 Filings in original Proceeding also makes clear petitions for second and successive habeas corpus petitions can be filed with an individual 'Circuit Judge'. See U.S. Court of Appeals Fifth Circuit Rule 25.2.2 ("Filing users may be required to file case-initiating documents in original proceedings, e.g. mandamus, petitions for second and successive habeas corpus relief, petitions for review, etc. in paper format. Subsequent documents may be filed electronically and in paper format as prescribed by the clerk")

The language in the Judiciary Act of 1789 was preserved essentially intact in every habeas statute since 1789. See George L. Longsdorf *The Federal Habeas Acts Original and Amended* 13 F.R.D. 407 (1953) (Collecting Statutes). The General Habeas statute was not amended by the AEDPA. See 533 U.S. at 305 n.25 (noting §2241 descends directly from §14 of the Judiciary Act of 1789 and the 1867 Act. Its text remained undisturbed by either AEDPA or IIRIRA). Indistinguishable from the Courts of the United States with exception of the intermediate Appellate Courts. Individual 'Circuit Judges' or chambers have been afforded the power and authority to issue the writ for federal prisoners since 1789 and state prisoners

Since 1867. Thus when read together the Judiciary Acts of 1789 and 1867 are to be considered by individual 'Circuit Judges' at chambers as containing a substantive power to him or her to issue the writ of Habeas Corpus notwithstanding 28 U.S.C. § 2244(b) having stripped the U.S. District Courts of jurisdiction. When preauthorization to file has not been obtained from the U.S. Court of Appeals to file a second or successive petition. See *Ex parte Bollman* 8 U.S. 75, 94 (1807) ("The 14th section of the Judiciary Act [Laws U.S. Vol. 1, p. 58], has been considered as containing of substantive grant this power"); Also see *Id.* at 96 (noting that the first sentence of the 14th section of the Judiciary Act of 1789 vests every court in the United States with power to issue writs of habeas corpus and the second sentence vests such power in every justice or judge of the United States"). Cf *Id.* at 107 ("Let it be remembered that I am not disputing the power of the individual judges, who compose this court to issue the writ of habeas corpus We may in our individual capacities, or in our circuit courts, be susceptible of powers merely ministerial") Also see *St. Cyr* 533 U.S. at 305 ("Federal Courts have been authorized to issue writs of habeas corpus since enactment of the Judiciary Act of 1789, and § 2241 of the Judicial Code provides that Federal Judges may grant the writ of habeas on the application of a prisoner held in custody in violation of the constitution or law or treaties of the United States"); *Boumediene* 553 U.S. at 777 ("In § 2241 [2000 ed] Congress confirmed the authority of 'Any Justice' or 'Circuit Judge' to issue the writ")

As Justice Douglas made clear:

"What courts may do is dependent on statutes, save as their jurisdiction is defined by the constitution. What federal judges may do, however, is a distinct question. See *Paris v Davidson* 405 U.S. 34, 48 (1972) (Douglas, J. concurring in result)"

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thority to protect constitutional rights of individuals is inherent in the authority of Federal Judges, conformably with Acts of Congress. The mandate in Art. I § 9, the "Privilege of the writ . . . shall not be suspended must mean that its issuance, in a proper case or controversy, is an implied power of any federal judge". Id at 48. Justice Douglas continued: "We have ruled that even without Congressional statutes enforcing constitutional rights, federal judges have authority to enforce the federal guarantee". Id at 48 (citing *Fay v New York* 332 U.S. 261, 283, 285, 293 (1947); *Katzenbach v Morgan* 384 U.S. 641, 647 (1966)). Is this Lipservice By Justice Douglas? The opinion and order handed down by a quorum of the Fifth Circuit suggests so. See Appendix "A" app. p. 1-3.

The U.S. Supreme Court made clear long ago when judges are called upon in an individual capacity. They have a ministerial duty to act. Cf *Bollman* 8 U.S. at 107 ("We may in our individual capacities, or in our circuit courts, be susceptible of powers merely ministerial, and not inconsistent with our judicial characters"). Additionally Congress has made the exercise of original habeas jurisdiction a ministerial duty. See 28 U.S.C. § 2254(a) ("A circuit Judge shall entertain a habeas application for a person in state custody in violation of the constitution or laws or treaties of the United States"). Also see "shall"; Merriam-Webster's Dictionary (2006) (defining 'shall' as used as an auxiliary to express a command"). Further at common law habeas corpus is a writ of right: it issues immediately upon showing of some ground for its issuance. See Goodard, *The prerogative writs*, 32 N.Z.L.J. 199, 214 (1956); Dicey, *Law of The Constitution* 211 (6th ed 1902); *Ex Parte Burton* 3 Cranch 448 (1806); *Bollman*, *supra*. Although 28 USC § 2244(b)(2) pre-

cludes the filing of a second or successive petition originally or directly with the district court without prior approval from the U.S. Court of Appeals. See 28 U.S.C. § 2244(b)(2). The provision, however, has not repealed individual 'circuit Judge's' authority to entertain original habeas petitions. Cf. *Felker v Turpin* 518 U.S. 651, 660-661 (1996) ("Interpreting Title 103 of AEDPA to not strip this Court the power to entertain original habeas corpus petitions"). It bears repeating even after the enactment of the AEDPA in 1996. Congress in 2000 made clear that a 'circuit Judge' still maintained the power and authority under 28 U.S.C. § 2241 remained intact. See *Boumediene* 553 U.S. at 777 ("In § 2241 [2000ed] Congress confirmed the authority of 'Any Justice' or Circuit Judge' to issue the writ")

As this Court made clear when it addressed the issue of whether it could exercise its original habeas jurisdiction in light of the jurisdiction stripping statute section 2244(b). This Court noted that AEDPA's 'gate-keeping' amendments to section 2244 merely "informed its consideration of original habeas petitions and was applicable to only applications filed in the district court. See *Felker* 518 U.S. at 662-663. This Court rested its conclusion that AEDPA has not repealed its authority to entertain original habeas petitions on the fact that no provision of Title I mentions the Supreme Court's authority to entertain original habeas petitions. Id. at 660. Likewise no provision of Title I mentions a 'Circuit Judge's' authority to entertain original habeas petitions. The AEDPA goes no further than amending F.R.A.P. Rule 22(a) via section 103 of the act to bar considerations original habeas petitions in the Court of appeals. See *Felker* 518 U.S. at 660-

661 ("Section 103 amends the Federal Rules of Appellate Procedure to bar consideration of original habeas petitions in the Courts of appeals"). However, section 2241(b) will allow any individual 'circuit Judge' to transfer the petition to a district court of competent jurisdiction. In compliance with section 103 and F.R.A.P. Rule 22(a) bar on original petitions to be resolved in the Court of Appeals. See *Boumediene* 553 at 778 ("The statute accommodates the necessity for fact-finding that will arise in some cases by allowing the appellate 'judge' or 'justice' to transfer the case to a district of competent jurisdiction, who institutional capacity for factfinding is superior to his or her own") (citing 28 U.S.C. § 2241(b)); *Concalves v Reno* 144 F.3d 110, 118 (1st Cir 1998) (Noting "the Court of Appeals ordinarily may not consider original writs of habeas corpus but instead will refer such petitions to the appropriate district court") (citing F.R.A.P. Rule 22(a)). Section 2241(a) affords a 'circuit Judge' power and authority to issue the writ. Despite F.R.C.P. Rule 22(a) prohibits and bars resolution of habeas petitions in the Court of Appeals. The statutes can coexist due to section 2241(b) provides the 'circuit Judge' to transfer the petition for resolution in the district court. Thus both F.R.A.P. Rule 22(a) and Section 2241(a) can be regarded as effective. See *Ruckelshaus v Monsanto Co.* 467 U.S. 986, 1018 (1984) ("where two statutes are capable of co-existence, it is duty of the courts, absent a clearly expressed Congressional intention to the contrary, to regard each as effective" (internal quotation marks omitted)). Thus making clear an individual 'circuit Judge' of the Fifth Circuit erred by not exercising original habeas jurisdiction and transferring the petition callon filed therewith under 28 U.S.C. § 2241. Cf *In re*

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Davis 130 S.Ct. 1, 2 (2009) ("using original habeas jurisdiction to transfer petition to a Federal District Court for evidentiary hearing on actual innocence and adjudication on the merits if appropriate")

Congress when it enacted the AEOPA failure to make reference to 'Circuit Judges' original habeas jurisdiction under Section 2241 is particularly significant. Given the historic use of a 'Circuit Judge's' original habeas jurisdiction under Section 2241 as a means of reviewing unlawful restraint in violation of the constitution or laws or treaties of the United States. Cf. *Chison v Roemer* 501 U.S. 380, 396 n.23 (1992); Also see *Barapind v Reno* 72 F.Supp2d 1132, 1143 (E.D. Cal 1999) ("Section 2241 is not expressly referenced in § 2244"). Since no express language is contained in the AEOPA curtailing a 'Circuit Judge's' ability to entertain original habeas petitions filed originally therewith under Section 2241 and since no express Congressional intent is expressed by Congress on the 'Circuit Judges' jurisdiction under Section 2241. Any repeal of such jurisdiction by implication is prohibited. See *Branch v Smith* 538 U.S. 254, 273 (2003). If Congress in exercise of its jurisdiction stripping and conferring power its possessed since the ratification of the Constitution. Did not adequately express its intent to strip 'Circuit Judge's' original habeas jurisdiction under Section 2241. Such original habeas corpus jurisdiction remains intact and the individual 'Circuit Judge' of the Fifth Circuit erred when he or she did not exercise original habeas jurisdiction with the petition Carter filed therewith. See e.g. *Natural Gas Pipeline of America v Energy Gathering Inc.* 2 F3d 1397, 1407 (5th Cir 1993) ("Congress has the power to abrogate a lower court's inherent authority")

although it must adequately express its intent to do so") (citing *Chambers v. Nasco Inc.* 111 S.Ct. 2223, 2234 (1991)). Title 28 U.S.C. § 2244(b)(3) merely creates a gatekeeping mechanism for the consideration of second or successive applications in the district court. Section 2244(b) in general addresses second or successive habeas petitions. Section 2244(b)(3)'s "gatekeeping" system for second petitions does not apply to a 'circuit Judge's' consideration of habeas petitions because it applies to applications "filed in the district court". Cf. *Felker* 518 U.S. at 662 (section 2244(b) addresses second or successive habeas petitions. Section 2244(b)(3)'s "gatekeeping" system for second petitions does not apply to our consideration of habeas petitions because it applies to applications filed in the district court") (citing 28 U.S.C. § 2244(b)(3)(A)). In light of Congress's confirmation of a 'circuit Judge's' authority under Section 2241 to issue the writ. See *Boumediene* 553 U.S. at 777 ("In § 2241 [2000 ed.] Congress confirmed the authority of 'Any Justice' or 'circuit Judge' to issue the writ"). Thus the rationale that section 2244(b)(3)'s gatekeeping system does not apply to this court's consideration of habeas petitions. Should apply with equal or greater force to a 'circuit Judge's' consideration of habeas petitions filed originally and directly therewith. Thus this Court following 'Felker' can conclude no less for the individual 'circuit Judge' as it concluded for itself that Congress neither explicitly nor by implication repealed the 'circuit Judge's' grant of jurisdiction in section 2241 to issue writs to persons in state custody which the 'circuit Judges' have had since 1867. Cf. *Conzelmann* 144 F.3d at 113 ("We conclude, following 'Felker' that Congress neither explicitly nor by implications repealed the grant of jurisdiction in § 2241 to issue writs").

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to persons in federal custody which the Federal Courts have had since 1789"). As this Court made clear. Repeals by implication are not favored. See *Ex Parte Yenger* 75 U.S. 85, 105 (1869) ("Repeals by implication are not favored and the continued exercise of original habeas jurisdiction was 'repugnant' to a prohibition on review by appeal of Circuit Court habeas judgments). The Individual 'Circuit Judges' of the Fifth Circuit U.S. Court of Appeals in an individual capacity at chambers were not at liberty to except from jurisdiction over Carlton's Original Jurisdiction Habeas Petition under 28 U.S.C. § 2241 filed directly and originally with an individual 'Circuit Judge' of the court, when said petition was not excepted by law. Cf. *Yenger* 75 U.S. at 102 ("We are not at liberty to except from habeas corpus jurisdiction any cases not plainly excepted by law"); *Felker* 518 U.S. at 660-661 (Noting that "no provisions of Title I mentions our authority to entertain original habeas petitions" and the statute "makes no mention our authority to hear habeas petitions filed as original matters in this court"). Implications from statutory text or legislative history are not sufficient to repeal habeas jurisdiction; instead, Congress must articulate specific and unambiguous statutory directives to effect repeal. See *St. Cyr* 533 U.S. at 299 (Citing *Yenger* 75 U.S. at 105 ("Repeals by implication are not favored. They are seldom admitted except on the ground of repugnancy; and never, we think, when the former act can stand together with the new act"). In traditionally sensitive areas . . . the requirement of a clear statement assures that the legislature has in fact faced, and intended to bring into issue, the critical matters involved in the judicial decision." See *Gregory v Ashcroft* 501 U.S. 452, 461 (1991) (internal quotation marks and citations omitted); *United States v Nordic Village, Inc* 503 U.S.

30, 33 (1992) ("waivers of the Federal Government's sovereign immunity, to be effective, must be 'unequivocally expressed'"); *Atascadero State Hospital v Scanlon* 473 U.S. 234, 242 (1985) ("Congress may abrogate the state's constitutionally secured immunity from suit in federal court only by making its intention unmistakably clear in the language of the statute"); See also Eskridge and Frickey, *Quasi-Constitutional Law: Clear Statement Rules as Constitutional Lawmaking*, 45 *Var. L. Rev.* 593, 597 (1992) ("The Court . . . has tended to create the strongest clear statement rules to confine Congress's power in areas in which Congress has the constitutional power to do virtually anything")

V The 'Circuit Judge' must Exercise Jurisdiction Conferred Thereon

The jurisdiction bestowed upon individual 'Circuit Judges' at chambers cannot be declined once invoked by a petitioner. E.g. the Supreme Court when expounding on the exercise of jurisdiction stated: "We have no 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 *New Orleans Public Service Inc. v Council of the City of New Orleans* 109 S.Ct. 2506, 2513 (1989) (Citing *Cohens v Virginia* 19 U.S. 264, 404 (1821)). In other words the Court made clear that any 'Circuit Judge' at chambers is bound to proceed to judgment and afford redress in every case to which jurisdiction extends. Such authority or duty in any case in favor of another jurisdiction. Id. at 2513 ("The Court of the United States are bound to proceed to judgment and afford redress to suitors before them in every case to which their jurisdiction extends. They cannot abdicate their authority or duty in any case in favor of another jurisdiction") (Citing *Chicot v Sherwood* 148 U.S. 529, 534 (1894)). Callon by calling upon an individual 'Circuit Judge' having jurisdiction

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under section 2241, Art. III and Inherent Authority since 1789 and 1867 cannot be properly withheld on the petition Carlton filed therewith. Cf *Id.* at 2513 ("When a federal Court is properly appealed to in a case over which it has by law jurisdiction The right of a party plaintiff to choose a federal court where there is a choice cannot be properly be denied") (citing *Willcox v Consolidated Gas Co.* 212 U.S. 19, 40 (1909)). It is axiomatic that Federal Forums must exercise the judicial functions and the same is no longer open to discussion, but is settled beyond question by the decisions of this Court. See *Marbury v Madison* 5 U.S. 137, 173 (1803); *Andrews v Hovey* 124 U.S. 694. Further an individual 'Circuit Judge' is is not free to extend or restrict jurisdiction conferred thereon by §2241. Cf *Sibbach v Wilson and Co.* 312 U.S. 1, 10, 61 S.Ct 422, 425 (1941) (Observing "that federal Courts in adapting rules, were not free to extend or restrict the jurisdiction conferred by statute.") Such a caveat applies a fortiori to any effort to restrict by rule the judiciary power of the United States described in Article III of the Constitution. Cf *Willy v Coastal Corp.* 112 S.Ct 1076, 1079 (1992) ("Federal Courts are not free to extend by rule the judicial power of the United States described in Article III of the constitution") Cf *Vulcan Materials Company v City of Tehuacana* 238 F3d 382, 390 (5th Cir 2001) ("Unless there is a legitimate reason to abstain, federal courts cannot abdicate their authority or duty in any case in favor of another jurisdiction"). In 1868, the Supreme Court described the individual 'Circuit Judges' habeas jurisdiction in these terms: "This legislation is the most comprehensive character. It brings within the habeas corpus jurisdiction of any court and every judge every possible case of deprive-

tion of liberty contrary to the National Constitution, treaties or laws. It is impossible to widen this jurisdiction. See *Ex parte Mc Cardle* 6 Wall 318, 325-326 (1868). Although it may be true that the writ of habeas cannot issue but where it is necessary for the exercise of the jurisdiction of a Federal Judge issuing it, yet the term 'jurisdiction' means the whole jurisdiction of Federal Judges. Federal Judges by Art. III have jurisdiction in criminal cases of constitutional magnitude, which is not taken away by any statute, it is a writ necessary for the exercise of jurisdiction by the Federal Judges. Cf *Bollman* 8 U.S. at 78 ("But admitting, for argument, that a writ of habeas corpus cannot issue but where it is necessary for the exercise of the jurisdiction of the court issuing it, yet the term 'jurisdiction' means the whole jurisdiction given to the court, and as this court has by the constitution jurisdiction in criminal cases, which jurisdiction is not taken away by any statute, it is a writ necessary for the exercise of its jurisdiction"). When properly called upon an individual 'Circuit Judge' may and must exercise jurisdiction to examine and determine the rights of Catton who is restrained illegally of his personal liberty. Cf *Ex rel Turner v Williams* 194 U.S. 279, 295 (1905) (Brewer, J. concurring) ("The Courts may and must, when properly called on by the petition for writ of habeas corpus to examine and determine the rights of an individual restrained of personal liberty to be discharged"). Under the constitution an individual 'Circuit Judge' at chambers has original habeas jurisdiction and that jurisdiction must be exercised and if proper grant relief on the writ. See *Marbury* 5 U.S. at 163 ("The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury. One of the first duties

of government is to afford that protection . . . and with every right, there must be a remedy"). The judicial power of an individual 'Circuit Judge' must be exercised and cannot be constitutionally retracted. Due to only Congress has the power to expand or retract federal jurisdictional power, see *Murphy v. Uncle Bens Inc* 168 F3d 734, 741 (5th Cir 1999) (Only Congress may expand or retract the limits of federal jurisdictional power) (citing *United Gas Line Co. v. Whitman* 595 F2d 323, 330 (5th Cir 1979) (citing *Ex Parte McCordle* 74 U.S. 506 (1869)). E.g. "When jurisdiction is conferred a court may not decline to exercise it." See *Union Pac. RR v Bhd. of Locomotive Eng'rs* 558 U.S. 67, 71 (2009) (citing R. Fallon, J. Manning, D. Meltzer and O. Shapiro, Hart and Wechsler's *The Federal Courts and The Federal System* 1061-1062 (6th ed 2009)). The first sentence of subsection (a) of § 2241 states: "Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts, and any 'Circuit Judge' within their respective jurisdictions". In *Felker*, *supra*, the Supreme Court noted that "section 14 of the First Judiciary Act, i.e. the Judiciary Act of 1789 is the direct ancestor of 28 U.S.C. § 2241" 518 U.S. at 659 n.1 section 14 provided:

"That all the before mentioned Courts of the United States, shall have power to issue writs of scire facias, habeas corpus, and all other writs not specially provided for by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the principles and usages of law. And that either of the justices of the Supreme Court, as well as the judges of the district courts, shall have power to grant writs of habeas Corpus for the purpose of an inquiry into the cause commitment—provided. That writs of habeas Corpus shall in no case extend to prisoners in gaol, unless they are in custody, under or by colour of the authority of the United States, or are committed for

trial before some court or the same, or are necessary to be brought into court to testify. See Act of Sept. 24, 1789 ch. §14 Stat. 81-82. Congress greatly expanded the scope of federal habeas corpus in 1867, authorizing federal courts and Federal Judges to grant the writ, "in addition to the authority already conferred by law," in all cases where any person may be restrained of his or her liberty in violation of the constitution, or of any treaty, or law of the United States". See Act of Feb. 5 1867 Ch. 28, 14 Stat. 385. This language from the 1867 Act is the direct ancestor of § 2241 (c)(3), which states "the writ of habeas corpus shall not extend to a prisoner unless . . . he is in custody in violation of the constitution or laws or treaties of the United States"

The Power to establish jurisdictional resides with congress. See *Luna v Holder* 637 F3d 85, 100 (2d Cir 2011) (citing *Iavorski v INS* 232 F3d 129, 133 (2d Cir 2002)). The general rule that "when jurisdiction is conferred administrative agencies directed by congress to adjudicate particular controversies may not decline, to exercise it also holds for 'circuit Judges'. Cf *Id* at 100 ("The general rule when jurisdiction is conferred, a court may not decline to exercise it also holds for administrative agencies directed by Congress to adjudicate particular controversies") (citing *Union Pac. RR Co.* 130 S.Ct at 590. Thus this court should reasonably find that an individual 'Circuit Judge' of the Fifth Circuit erred by not exercising jurisdiction of Callon's Original Jurisdiction section 2241 petition filed therewith. Cf *Union Pac. RR Co.*, supra (Held "an administrative agency cannot contract its own jurisdiction, either by regulations or decisions in litigation proceedings"). This is so because the 'Circuit Judge' failed to conform, or confine itself; to the jurisdiction Congress gave it. E.g. In '*Union Pacific*', the court found that "congress vested in the National Railroad Adjustment Board [NARB] jurisdiction to adjudicate certain grievances of railroad employees." *Id.* and that "congress

gave the Board no authority to adopt of rules of jurisdictional dimension" regarding the adjudication of such grievances. See Union Pac. RR Co. 130 S.Ct at 597. This Court concluded that "by refusing to adjudicate cases on the false premise that it lacked power to hear them, the NRAB panel failed 'to conform, or confine itself,' to the jurisdiction Congress gave it" *Id* at 599 (quoting 45 U.S.C. §153 First (g)). As this Court made clear long ago 'Circuit Judges' have had the jurisdictional power to grant the writ of Habeas Corpus since the Judiciary act of 1789 §14 now codified in 28 U.S.C § 2241. See *New York v Eno* 155 U.S. 89, 93 (1894) (Reiterating that "the Court held that Congress intended to invest the courts of the Union and the Justices and Judges thereof with power, upon writs of habeas Corpus to restore liberty to any person within their respective jurisdictions who is held in custody by whatever authority in violation of the constitution or any law or treaty of the United States"). Also see *Boumediene* 553 U.S. at 777 ("In § 2241 [2000 ed] Congress confirmed the authority of 'Any Justice' or 'Circuit Judge' to issue the writ"); *St. Cyr* 533 U.S. at 305 (2001) ("Federal Courts have been authorized to issue writs of Habeas Corpus since the enactment of the Judiciary Act of 1789 and § 2241 of the Judicial Code provides that federal judges may grant the writ of Habeas Corpus on the application of a prisoner held in custody in violation of the constitution or law or treaties of the United States"). The 'Circuit Judges' Original Habeas jurisdiction under 28 U.S.C § 2241 remains intact Post AEDPA. See *Id* at 305 n.25 ("§ 2241 descends directly from § 14 of the Judiciary Act of 1789 and the 1867 Act Its text remained undisturbed by either AEDPA or IIRIRA")

VI This Court should Reasonably Exercise Its mandamus Discretion

Applying the above principles to the case sub judice, and

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based on Calton's extraordinary showing under the above relevant prongs. This Court should reasonably conclude that issuance of the writ, though discretionary, is appropriate under the present circumstances. See *In re U.S. 397 F.3d 274, 286* (5th Cir 2005) (citing *Cheney* 124 S.Ct at 2587). Although the Supreme Court has repeatedly stated that issuance of the writ of mandamus lies in large part with discretion of the court. See *Helstoki v Meador* 442 U.S. 500, 504 (1979). After a comprehensive examination of the record presented herein. The Court should reasonably conclude that exercise of its mandamus jurisdiction is warranted here. This is so due to the scope of discretion is, however, circumscribed by the purpose for which the writ is sought. *U.S. v Denson* 603 F.2d 1143, 1146 (5th Cir 1979). Although the writ of mandamus is a discretionary one, this Court made clear that courts of law in considering petitions for the writ are guided by principles comparable to those provided by a court of equity. See *U.S. ex rel Greathouse v Dern* 289 U.S. 352 (1933); *U.S. ex rel Jimp v Inkes* 117 F.2d 769 (D.C. Cir 1940). In many cases the writ has been issued to exact an inferior court's performance of its duty with little or no discussion of discretion or judgment on balancing of factors. See e.g. *In re Simmons* 247 U.S. 231 (1918); *Estate of Whitlock v Commissioner* 547 F.2d 506, 510 (10th Cir 1976); *Hartland v Alaska Airlines* 544 F.2d 992, 1001-02 (9th Cir 1976); *In re Rodgers* 537 F.2d 1196 (4th Cir 1976); *Schmidt v Fuller Brush Co.* 527 F.2d 532 (8th Cir 1975); *ACF Industries, Inc. v Gunn* 384 F.2d 15 (5th Cir 1967); *U.S. v Nebbia* 357 F.2d 303 (2d Cir 1966). In such cases the appellate court is not merely correcting an evident error; it is also performing its duty to supervise the action of an inferior court. See *U.S. v Denson* 603 F.2d 1143, 1147 (5th Cir 1979) (citing *La Buy v Howes Leather Co.* 352 U.S. 249, 259-60 (1957)). Absent the availability of mandamus

relief in the instant case, the 'Circuit Judge's' abuse of discretion and failure to carry out its ministerial duty of exercising original habeas jurisdiction over Catton's Section 2241 petition. The assumption of broad discretion by this Court in exercise of its mandamus jurisdiction in deciding whether or not to issue mandamus here would be almost equivalent to granting the 'Circuit Judge' the right to violate Art. I § 9 cl. 2; Art. III, the 5th amendment and both clauses of the 14th amendment of the U.S. Constitution and 28 U.S.C. § 2241. It should be noted that this Court has interpreted to make the equal protection guarantee of the 14th amendment applicable to the Federal Government. See *Bolling v. Sharpe* 347 U.S. 497 (1954) (The D.C. School Segregation Case). Which in turn establishes exceptional circumstances exist that warrants this Court to exercise its discretion to afford mandamus relief because without such relief Catton will be permanently deprived of his unalienable right to the writ of habeas corpus guaranteed by Art. I § 9 cl. 2; Art. III, the 5th amendment and both clauses of the 14th amendment of the U.S. Constitution and 28 U.S.C. § 2241. In light of the 'Circuit Judge's' clear abuse of discretion in failing to exercise original habeas jurisdiction on the Section 2241 petition filed therewith. This Court as it and other appellate courts have responded in dealing with such situations on mandamus afforded relief as if the applicant had a right to issuance. Cf. *U.S. v. Wenson* 603 F.2d 1143, 1147 (5th Cir. 1979) ("While relatively few cases have considered the problem in terms of principle, the Supreme Court and other appellate courts have responded to the application for the writ in such circumstances almost as if the applicant had a right to issuance"). Cf. *In re Hot-Hed Ins.* 477 F.3d at 323 n.3 ("when the writ of mandamus is sought from an appellate court to confine a trial court to lawful exercise of its prescribed authority the court should issue the writ almost as

a matter of course") (Citing *In re Reyes* 814 F.2d 168, 170 (5th Cir 1987) (Quoting *Schlagenhauf v Holder* 379 U.S. 104 (1964))). In light of the same this Court's duty with minimal margin for judgment to supervise and correct the actions of the 'Circuit Judge' has been evident since this Court's decision in *La Buy v Howes*, supra. The "La Buy" court made clear this court not only has the ability to correct the 'Circuit Judge's' egregious conduct and abuse of discretion constituting an evident error of law on its face. But more importantly this court should reasonably perform its duty to supervise the "object unreasonable" actions of the 'Circuit Judge' in failing to exercise original habeas jurisdiction over the section 2241 petition Calton filed therewith. See *La Buy* 352 U.S. at 259-60. Also see Appendix "F" app.p. 10; Appendix "G" app.p. 11-50. Thus this Court should reasonably find that it is its duty to issue a writ of mandamus in the instant case. Cf. *U.S. v Oerson* 588 F.2d 1112, 1133 (5th Cir 1979). And since mandamus is an equitable remedy a court of equity has power to shape its remedy to make it more just or effective. See *Ex parte U.S.* 242 U.S. 27 (1916). And to ensure Calton receives the relief he seeks herein. This Court has recognized that Federal Courts have the power within limits, to formulate procedural rules not specifically required by the Constitution or the Congress. See *United States v Hasting* 461 U.S. 499, 505 (1983).

Conclusion - Prayer

Wherefore, premises considered, Calton respectfully prays and moves this court for mandamus relief. Because all requirements for mandamus relief have been fulfilled, this court should conditionally grant Calton's mandamus petition and issue an order directing an individual 'Circuit

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Judge at Chambers of the U.S. Court of Appeals Fifth Circuit exercise original habeas Jurisdiction on "Petitioner's original Jurisdiction writ of Habeas Corpus petition Under 28 U.S.C. § 2241" under the power conferred to individual 'Circuit Judge' under 28 U.S.C. § 2241. An individual 'Circuit Judge' should be further ordered to issue the writ of Habeas Corpus petition filed originally therewith and transfer the same to a District Court of competent Jurisdiction for hearing and relief if appropriate.

The petition For writ of mandamus should Be Granted

Respectfully Submitted,

Allen "F" Calton

Verification - Certification

I declare under the penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing facts are true and correct and are based on personal knowledge

Executed on 9-2-21
date

Allen "F" Calton
signature