

## APPENDIX

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MIDDLE DISTRICT OF FLORIDA  
OCALA DIVISION

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CLERK, U.S. DISTRICT COURT  
MIDDLE DISTRICT OF FL  
OCALA, FLORIDA

James-Martin: Graham  
A Private Man

Petitioner,

v.

Case No. 5:21-CV-00369-WFJ-PRL

WARDEN, KATHY LANE  
F.C.I. COLEMAN - LOW

JUDGE, LISA GODBY WOOD,  
AUSA, MARCELA C. MATEO,  
AUSA, GREGORY E. GILLULY JR.,  
JUDGE, BENJAMIN W. CHEESBRO.  
In their Individual  
and Official Capacities

Respondent(s),

In Re: U.S. District Court  
Case No. 2:17-CR-00002-LGW-BWC  
Sworn under 28 U.S.C. § 1746(1)

Exhibit A

PETITION FOR WRIT OF HABEAS CORPUS  
( Pursuant to 28 U.S.C. § 2241 )

TO THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA

COMES NOW, Petitioner, James-Martin: Graham, sui juris, brings this petition to this Honorable Court, seeking a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241, on the ground that he is unlawfully detained and restrained of his liberty by Warden, Kathy Lane, who was allegedly given that authority by Judge, Lisa Godby Wood, AUSA - Marcela C. Mateo, AUSA - Gregory E. Gilluly Jr, and Magistrate Judge, Benjamin W. Cheesbro, in their individual capacities as officers of the court.

THE PARTIES - PERSONAL INFORMATION

1.       **Petitioner, James-Martin:** of the Family of Graham, hereinafter, ("Graham"), sui juris, is a private man, bringing this petition, by Special Appearance, not by general appearance, as declarant, deposes and states under the penalty of perjury WITHOUT the STATUTORY "United States" and from WITHIN the Constitutional United States of America (the Union States), that the foregoing document is true, correct, and made with petitioner's firsthand knowledge, pursuant to 18 U.S.C. § 1746(1). Petitioner reserves **ALL** of his rights and waives **NONE** without prejudice, by submitting this Petition for a Writ of Habeas Corpus.
2.       **Respondents, Warden Kathy Lane,** is a warden of the F.C.I. Coleman - LOW Correctional Facility located at 846 N.E. 54 Terrace, P.O. Box 1021 Coleman, Florida 33521-1021. Respondent(s) Judge Lisa Godby Wood, AUSA Marcela C. Mateo, AUSA Gregory E. Gilluly Jr., and Magistrate Benjamin W. Cheesbro, are officers of the United States District Court for the Southern District of Georgia. All respondents acted under color of law in their individual capacities as officers of the court, located at 801 Gloucester St, Brunswick, Ga 31520.
3.       Petitioner, is being unlawfully detained and restrained of his liberty at the F.C.I. Coleman - LOW Correctional Complex at 846 N.E. 54 Terrace, P.O. Box 1031 Unit B-2 in Coleman, Florida 33521-1021. Petitioner was issued Federal Inmate Registration Number 21927-021.
4.       Petitioner was illegally sentenced by the U.S. District Court, Southern District of Georgia under Case No. 2:17-CR-00002-LGW-BWC and sentenced on January 23, 2017, which lacked subject-matter jurisdiction. Because petitioner took an alleged plea bargain, petitioner was not allowed to file for appeal.
5.       Petitioner was convicted of violating 18 U.S.C. § 2252A(A)(5)(b), without verifiable evidence, in violation of the Fourth Amendment to the

Constitution for the United States of America. **NO SUBPOENAS or FEDERAL SEARCH WARRANTS** were ever introduced into evidence, that would have gave probable cause for any other warrants to issue.

**DECISIONS AND ACTIONS BEING CHALLENGED**

6. Petitioner **IS NOT** challenging the validity of a federal judgment of conviction or sentence which are generally raised in a 28 U.S.C. §§ 2255, or 2254 proceeding.

7. Petitioner **IS** challenging the **FACT** that the United States District Court for the Southern District of Georgia, Brunswick Division, **had no subject-matter jurisdiction** over the case, therefore causing petitioner's unlawful detainment and restraint.

8. The belief put forward by the U.S. Federal Government ("United States"), regarding U.S.D.C. Case No. 2:17-CR-00002-LGW-BWC, is that under the commerce clause **Article I. §8. cl. 3.**, that they can "punish" felonious crimes. The contention, which "almost" everyone believes, is that if a person transports, or causes to be transported, anything across State lines, is "interstate commerce", then that activity can be regulated through imposition of felonious crime statutes. **This is simply not true.**

9. Petitioner will show, in his case, how this was accomplished through the manipulation of the law, and will show how Congress has written the "law" to allow this un-constitutional end to be achieved through obfuscation, how ignorance of the Law is being used against petitioner to achieve this.

10. By Mr. Graham reserving his inalienable rights, he is engaging the Government's fiduciary duty to act in accordance to the constitutional protections against Government's interference with Mr. Graham's private rights or life.

11. Since no legislator is granted the right to enact statutes against Mr. Graham's inalienable Rights, there can be NO statute conferring authority upon any public servant, to compel any performance "upon" or "from" Mr. Graham, as such it would be a trespass against Mr. Graham's inalienable rights.

12. The assertions that follow herein document specific actions of the ~~Federal Government ("United States") and the District Court for the Southern~~ District of Georgia.

#### FACTS OF THE CASE

13. Petitioner Graham, is a "national" of the "United States of America", and a citizen of the Union state of Georgia, was illegally seized of his liberty taken/kidnapped from his **private abode** without probable cause or warrant, valid or otherwise, a FBI "NIT" (Network Investigative Technique) search warrant, in violation of petitioner's Fourth Amendment right to be secure in his home, which is located at: c/o 106 George Lane, which is located in the Union state called Georgia, in the city called Brunswick, Zip Code Exempt See U.S.P.S Domestic Mail Manual DMM 602 1.3 e.2. Petitioner Graham was living on private property other than Federal territory which was "private" and never ceded to the Federal Government. The "United States of America" is a collection of states (THE 50 UNION states) united under the Constitution for the United States of America that excludes the statutory Federal Government ("United States").

14. On or about 2017, Petitioner was arrested for allegedly violating 18 U.S.C. § 2252A(A)(5)(b). A bench trial was subsequently held where petitioner, a lay-person unschooled in law, not knowing of the Constitutional issues presented herein, of which were never explained by his appointed counsel, unknowingly pled guilty, not knowing that the Court never had subject-matter jurisdiction over his case. Therefore, this petition for a Writ of Habeas Corpus follows under 28

U.S.C. § 2241.

15. For the forgoing reasons shown below, Petitioner Graham is (f)actually innocent of committing a felonious federal crime and unlikely the "United States district court" had subject-matter jurisdiction. The Supreme Court explained that:

"In a criminal case we have said that a person convicted in a court without jurisdiction over the place of the crime could be released from restraint by habeas corpus." **United States v. Williams**, 341 U.S. 58, 66-67 (1951) (citing **Bowen v. Johnson**, 306 U.S. 19, 27 (1939)).

#### INTRODUCTION

16. Although Petitioner is not an eloquent writer, and unschooled in law, he can read and understand when the wool is being pulled over his eyes. The cases cited in this petition are spot on. It is not based on any Sovereign Citizen propaganda, the Uniform Commercial Code, nor any alleged invalidity of the Title 18 U.S.C. Rather it will show the reader the law, as it is written.

A) The "United States" (Federal Government) can no more prosecute felonies as necessary and proper under the guise of regulating interstate commerce than they can prosecute felonies that occur on their own lands as necessary and proper without a ceding and acceptance of jurisdiction (unless the land is purchased by the consent of the particular state). If they could, jurisdiction would not need to be ceded and accepted, as provided for under Article I. § 8. cl. 17, U.S. Constitution.

B) The "United States" cannot "punish" felonious crimes as necessary and proper where the power to "punish" is not delegated in the Constitution, because it is enumerated in four other provisions (which enumeration proves it is delegated), and the Tenth Amendment states that undelegated powers are reserved to the People [Prosperity "Petitioner"]. As the Supreme Court has stated again and again, "Enumeration presupposes

something not enumerated."

C) The United States District Courts do not have jurisdiction over the place of the crime just because it is alleged to have occurred within their respective Judicial Districts. This is proven by Title 40 U.S.C. § 3112(c) [Federal jurisdiction], which states: "Presumption. It is conclusively presumed that jurisdiction has not been accepted until the Government accepts jurisdiction over land as provided in this section."

D) Without cession of jurisdiction, or the delegated (enumerated) power to "punish", the Federal Courts do not have subject-matter jurisdiction, i.e., no "Offense against the laws of the United States" has been made out. Title 18 U.S.C. § 3231.

E) Almost all federal crimes codified under Title 18 U.S.C., Title 21 U.S.C., and Title 26 U.S.C., including "interstate commerce" and R.I.C.O. crimes, are written to occur on lands where the 50 Union states have ceded territorial jurisdiction (exclusive legislation) to the Federal Government. The crimes written to occur outside of these areas, for example, counterfeiting and felonies committed on the high Seas, must be supported by a constitutional foundation such as the power to punish.

#### GROUND FOR CHALLENGE IN THIS PETITION

##### **GROUND ONE**

**The Complaint/Information or Indictment Fails To Charge An Offense Against The Laws Of The United States Because No Jurisdiction Has Been Ceded Or Accepted Over The Place Where The Criminal Activity Is Alleged To Have Occurred.**

##### **SUPPORTING FACTS**

17. Petitioner Graham contends that he was **not** arrested within the territorial jurisdiction of the United States; and that his Fourth and Fifth

Amendment rights were violated by the purported lack of jurisdiction.

18. Congress has no delegated power or authority to provide for the punishment of felonies under their power to regulate interstate commerce among the several Union States. The power to regulate being the power to prescribe rules. Congress can provide for the punishment of felonies among the several ~~Union States where the power to punish has been delegated by enumeration in~~ the Constitution, and where they have exclusive or concurrent jurisdiction. Also; when a felony or misdemeanor is committed within the land under the concurrent or exclusive jurisdiction of the United States (Federal Government), and is completed in another like place, Congress defines that activity as "interstate commerce".

19. Utilizing the people's ignorance of the LAW, Congress refers to places subject to their jurisdiction as the "United States." For example, Title 18 U.S.C. § 5, which defines the term "United States" for all of that title, states that:

"The term "United States," as used in this title in a territorial sense, includes all places and waters, continental or insular, subject to the jurisdiction of the United States [Federal Government].

20. Remember, the Supreme Court has stated that, "It is true that the criminal jurisdiction of the United States [Federal Government] is in general based on the territorial principle." The territorial places subject to the jurisdiction of the United States are defined at Title 18 U.S.C. § 7, Special Maritime and Territorial jurisdiction of the United States defined, and includes:

(3) Any lands, reserved or acquired for the use of the United States, and under the exclusive or concurrent jurisdiction thereof, or any place purchased or otherwise acquired by consent of the legislature of the State.

21. Notice that this provision is identical in scope to **Article I, § 8, cl. 17**, in the U.S. Constitution. The definition Congress has provided us,



defining the "United States," together with the special maritime and territorial jurisdiction of the United States defined, completes the full statutory definition of the United States. The several Union States are not even mentioned. If the several Union States were already subject to the jurisdiction of Congress, section 7(3) would be superfluous. Likewise, 40 U.S.C. § 3112, ~~would be superfluous as well.~~

22. In many Title 18 U.S.C. statutes, dealing with the "Crimes and Criminal Procedure" of the Federal Government, we see a definition of "State" or that certain crimes must occur in or affecting "interstate commerce." For example, the following Racketeering statutes contain definitions of "racketeering activity," "enterprise," "State," and also make specific reference to "interstate commerce":

(a) "racketeering activity" has the meaning set forth in section 1961 of this title [18 U.S.C. §1961]; and

(b) "enterprise" includes any partnership, corporation, association, or other legal entity and any union or group of individuals associated in fact although not a legal entity, **which is engaged in, or activities of which affect, interstate or foreign commerce. 18 U.S.C. § 1959**

(2) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, any political subdivision, or any department, agency, or instrumentality thereof." **18 U.S.C. § 1961**

23. In other Title 18 U.S.C. statutes we see no reference to the "United States" nor to "State." For example, Title 18 U.S.C. §§ 641, 642, relating to theft or embezzlement of public money, property or records; and tools and materials for counterfeiting purposes; respectively. The essential ingredient of those two provisions is that each carries a sentence of up to ten years imprisonment, i.e., they are felonies generally, **confer** "only in these [ceded] places" **U.S. v Morrison**, 529 U.S. 598 (2000). The Supreme Court has continuously explained that:



"Legislation is presumptively territorial and confined to limits over which the lawmaking power has jurisdiction. All legislation is prima facie territorial." **New York Central R. Co. v. Chisholm**, 268 U.S. 29, 32-32 (citations and internal quotation marks ommitted)

24. Another Supreme Court decision rendered twenty-seven years later states that:

"The cannon of construction which teaches that legislation of Congress, unless a contrary intent appears, is meant to apply only within the territorial jurisdiction of the United States is a vaild approach whereby unexpressed congressional intent may be ascertained. Words having universal scope, such as 'every contract in restraint of trade', 'Every person who shall monopolize'. etc., will be taken as a matter of course to mean only everyone subject to such legislation, not all that the legislator subsequently may be able to catch." **Steele v. Bulova Watch Co.**, 344 U.S. 280, 290 (1952) (citations ommitted) [Confer "any person", 21 U.S.C. § 901 et seq., Drug Crimes]

25. Nearly 60 years after **Steele**, supra, the Supreme COurt again explained that:

"It is a longstanding principle of American law that legislation of Congress, unless a contrary intent appears, is meant to apply only within the territorial jurisdiction of the United States. When a statute gives no clear indication of an extraterritorial application, it has none." **Morrison v. National Australia Bank LTD**, 177 L.Ed.2d. 535, 547 (2010).

26. Congress has clearly defined the territorial jurisdiction of the United States (Federal Government) at Title 18 U.S.C. § 7, pursuant to the limits imposed upon them by the Constitution. Also, the definition of "Extraterritorial" is defined as, "Beyond the geographic limits of a particular jurisdiction." **Black's Law Dictionary 8th Ed. p. 625**. For an excellent example of a statute that gives a clear indication of its extraterritorial application see 18 U.S.C. § 470, "Counterfeit acts committed outside the United States."

27. Petitioner avers that the Court had no subject-matter jurisdiction over the charged offense as the alleged crime was committed on land other than Federal territory.

28. Proceeding from this point, petitioner will show how Congress, acting



in concert with the Supreme Court, conspired together, so that the usurpation of the Union State's sovereignty and jurisdiction could be (and was) achieved.

29. Legislating to reach a constitutional end (although void for vagueness), Congress and the Supreme Court have completely obfuscated that constitutional end. This has been done in order to fundamentally alter our constituted, lawful, form of government, usurp the sovereignty and jurisdiction of the Union States, and deprive petitioner of his inherent, inalienable, rights secured under the Constitution. This is also big business. By prosecuting petitioner for crimes under the guise that a federal crime has been committed, Congress is able to filter away an untold amount and is able to filter away from the States billions of dollars each year.

30. The Commerce Clause Article I, § 8, cl. 3, U.S. Constitution power does not grant Congress the ability to "punish" felonies by implication. This is because the power to "punish" felonies is **united** with cession of territory, i.e., whoever has sovereignty (territorial jurisdiction) over the land. Because the Framers did not delegate to Congress, by enumeration, (See Kansas v. Colorado, 206 U.S. 46, 87 (1907)) the power to "punish" under the commerce clause, jurisdiction must be ceded as provided under Article I, § 8, cl. 17, of the U.S. Constitution. The "United States district courts", the Legislative Article IV courts, proceed under the assumption that a crime such as the petitioner's alleged crime has been committed on federal land under the concurrent or exclusive jurisdiction of Congress. The law is written that way because those are the **places** where they have jurisdiction over crimes. Not over the private property which is part of the 50 Union States which Petitioner Graham had allegedly committed his crime. Of course, if petitioner Graham would bring this up, the Government will refuse to admit it without further investigation. They will even continue to put forth the lie that they really

have power to "punish" felonies under the commerce clause and they really are the constitutional "district courts of the United States" ordained and established under Article III. **They are NOT** and the Petitioner knows they have no such power. Yet in order to uphold the fraud, they continue to conceal the truth at all costs.

#### THE COURTS

31. Thomas Jefferson, Founding Father, Creator & signer of the Declaration of Independence, and former President of the United States, stated regarding the courts, that:

"At the establishment of the Constitution, the judicaury bobbies were supposed to be the most helpless and harmless members of the government. Eperience, however, soon showed in what way they were to become the most dangerous; that the insufficiency of the means provided for their removal gave them a free-hold and irresponsibility in office, that their decisions, seeming to concern individual suitors only, pass silent and unheeded by the public at large, that these decisions nevertheless became law by precedent, sapping by little and little the foundations of the Constitution and working its change by construction before any one has preceived that that invisible and helpless worm has busily employed in consuming its substance, in truth, man is not made to be trusted for life if secured against all liability to account.---Thomas Jefferson to A Coray, 1823, ME 15:486, "The Writings of Thomas Jefferson" (memorial edition), Lipscomb & Bergh, editors; and that

This member of the government ... has proved that power of declaring what the law is, **ad libitum**, by sapping and mining, slyly, and without alarm, the foundations of the Constitution, can do what open force would not attempt."--Thomas Jefferson to Edward Livingston, 1825, ME 16:114, "The writings of Thomas Jefferson" (memorial edition), Lipscomb Bergh, editors."

32. In the Federal judicial system there are two typed of criminal courts. Constitutional courts "ordained and established" under **Article III**, of the U.S. Constitution, via **Article I, § 8, cl. 9**, which are inferior to the Supreme Court, and "legislative" courts created under **Article I, § 8, cl. 17**, and **Article IV, §3, cl. 2**: The courts created under **Article I, § 8, cl. 17** and **Article IV, § 3, cl. 2**, are also referred to as "congressional" and/or "territorial" courts. The Supreme Court explained that:

"The Constitution nowhere makes reference to "legislative courts." The power given Congress in Article I, § 8, cl. 9, "To constitute Tribunals inferior to the Supreme Court," plainly relates to the "inferior courts" provided for in Article 3, § 1; it has never been relied on for establishment of any other tribunals."

"The concept of a legislative court derives from the opinion of Chief Justice Marshall in *American Ins. Co. v. Canter*, (U.S.) 1 Peter 511, 78 L.Ed. 242, dealing with courts established in a territory."

"These Courts, then, are not constitutional Courts, in which the judicial power conferred by the Constitution on the general government, can be deposited. They are incapable of receiving it. They are legislative Courts, created in virtue of the general right of sovereignty which exists in the government, or in virtue of that clause [Article IV, § 3, cl. 2] which enables Congress to make all needful rules and regulations, respecting territory belonging to the United States." *Glidden v. Adanok*, 370 U.S. 530, 543-544 (1962).

33. Every federal court not created under Article III of the U.S. Constitution is a legislative court. Their subject-matter jurisdiction is limited to matters occurring within the concurrent or exclusive (territorial) jurisdiction of the "United States" (Federal Government). Their subjects of jurisdiction are defined by statutes created by Congress for these courts. Because legislative courts are not constitutional courts created under Article III, they are incapable of extending the judicial power under that Article to the subjects of jurisdiction enumerated there in section 2 (although they are exercising legislative judicial power). The Supreme Court in *Glidden*, supra, speaks of Congress' power to assign specified jurisdiction to administrative agencies and "tribunal[s] having every appearance of a court and composed of judges enjoying statutory assurances of life tenure and undiminished compensation." *Id* at 550.

34. Constitutional Courts on the other hand, are authorized to extend the judicial power under Article III of the U.S. Constitution to the subjects of jurisdiction enumerated there in section 2. This includes all felony offenses against the laws of the United States occurring within the territorial (legislative) jurisdiction of any particular Union State where the power to

"punish" has been delegated, by enumeration, in the Constitution. It also includes all misdemeanor offenses against the laws of the United States, occurring within the territorial (legislative) jurisdiction of any particular Union State, if the alleged conduct is connected to the execution of a delegated power. If Congress enacts a law in excess of the limitations imposed by the Constitution, ~~these courts will strike it down as unconstitutional. Likewise,~~ these courts should also strike down as unconstitutional any law carried out in such a way so as to reach a prohibited (unconstitutional) end, regardless of whether the law is constitutionally valid on its face (as written). As the Supreme Court explained:

"Constitutional power is merely the first hurdle that must be overcome in determining that a federal court has jurisdiction over the particular controversy [or case]. It is a fundamental precept that federal courts are courts of limited jurisdiction. The limits upon federal jurisdiction, whether imposed by the Constitution or Congress, must be neither disregarded nor evaded." **Owen Equipment & Erection Co. v. Kroger**, 427 U.S. 365, 372, 374 (1978).

#### GROUND TWO

**The Trial Court Was Without Subject-Matter Jurisdiction Under 18 U.S.C. § 3231.**

#### SUPPORTING FACTS

35. The United States District Court for the Southern District of Georgia only presumed it had subject-matter jurisdiction over petitioner's case. Allegedly according to that Court, the alleged crime was committed at 106 George Lane in Brunswick, Georgia. That property is **private land**, property **NOT** belonging to the "United States" (Federal Government), nor was it ceded to the "United States" (Federal Government). The United States District Court for the Southern District of Georgia is an Article IV legislative Court which **ONLY HAS** subject-matter jurisdiction over crimes committed on Federal territories, or land ceded and accepted. It had absolutely no jurisdiction over land *lex loci delicti*, i.e., the 50 Union states, or *lex domicilii*, Mr. Graham's home.

*Graham's home.*



36. As can be seen, the term "district courts of the United States" is standing alone, without qualification, in the Jurisdiction and Venue provision for federal crimes in Title 18 U.S.C.:

"The district courts of the United States shall have original jurisdiction, exclusive of the courts of the States, of all offenses against the laws of the United States."

"Nothing in this title shall be held to take away or impair the jurisdiction of the courts of the several States under the laws thereof." 18 U.S.C. § 3231

37. The following legal maxims, i.e., doctrines of law (cannons of construction), state that:

"**Expression unius est exclusion alterius.** The mention of one is the exclusion of another, i.e., when certain persons or things are specified in a document, an intention to exclude all others from its operation may be inferred."

"**Expressum facit cessare tacitum.** What is expressed makes what is silent cease, i.e., where we find an express declaration we should not resort to implication." **The Law Dictionary Copyright (c) 2002 Anderson Publishing Co.**

38. In other words, the mention of the "district courts of the United States" as specified in 18 U.S.C. § 3231, intentionally excludes the "United States district courts", which we are not to resort by implication. The definition of "district courts of the United States" in Title 28 U.S.C. § 451, which includes the term "United States district court" in that definition, does not make those courts applicable to the term "district courts of the United States" in Title 18 U.S.C. § 3231. Confer, "As used in Title 28 U.S.C. § 451.

39. The definition of "district court of the United States" as used in Title 28 U.S.C. § 451 also includes the "United States district court" for the territory of Puerto Rico in that definition. Congress uses both terms interchangeably throughout Title 28 U.S.C. which is in and of itself, if not for the sole purpose, to sow confusion, defies logic. If the term, words, or phrase "district courts of the United States, as used in Title 18 U.S.C. § 3231 included the "United States district courts" in Title 28 U.S.C., it would not



have been necessary for Congress to state, "As used in this title". Congress would have presumably stated, "As used in all titles" or more easily omitted the the, "As used in this title" language altogether. It is elementary that all of the words used in a legislative act are to be given force and meaning, otherwise they would be superfluous having been enough to have written the act without the words. The Supreme Court explained that:

"It is our duty to give effect, if possible, to every clause and word of a statute. [D]escribing this rule as a cardinal rule of statutory construction [A] statute ought, upon the whole, to be so construed that , if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant. we are thus reluctant to treat statutory terms as surplusage in any setting." **Duncan v. Walker**, 533 U.S. 167, 174 (2001) (citations omitted)

40. If indeed the United States District Court for the Southern District of Georgia's Brunswick Division is an Article IV legislative court (in a criminal action), as opposed to an Article III Constitutional Court, that would mean that the judge(s), Judge Lisa Godby Wood, could not lawfully render a judgment against Petitioner without violating Mr. Graham's due process rights under the **Fifth Amendment, U.S. Constitution**, unless the civil action or crimes (misdemeanors and felonies alike) occur in **land** under the concurrent or exclusive legislative (territorial) jurisdiction of the United States (Federal Government). However, this would allow Congress to control the court and punish felonious crimes under the guise of regulating interstate commerce, usurping the sovereignty and jurisdiction of **the Union States**, in a scheme that condones the exercise of an undelegated power to "punish" by the Executive branch (Article III courts) from interfering with the encroachment on the sovereignty of the **several Union States** and the outright violation of Petitioner Graham's inalienable rights.

41. The Supreme Court, explaining that the authority granted to legislative courts is judicial power, but is not that judicial power granted by



§ 1 and defined by § 2 of Article III of the Constitution; but rather is derived from the property clause, stated that:

"[J]udicial power apart from that article [Article III, U.S. Constitution] may be conferred by Congress upon legislative courts, as well as upon constitutional courts, is plainly apparent from the opinion of Chief Justice Marshall in **American Ins. Co. v. Bales of Cotton**, 1 Per. 511, 546, 7 L.Ed. 243, 256, dealing with the territorial courts.

"The jurisdiction," he said, "with which they are invested, is not a part of that judicial power which is defined in the 3rd article of the Constitution, but is conferred by Congress, in the execution of those general powers which that body possesses over the territories of the United States."

That is to say (1) that the courts of the territories (and, of course, other legislative courts) are invested with the judicial power, but (2) that this power is not conferred by the third article of the Constitution, but by Congress in the execution of other provisions of that instrument.

Congress cannot vest any portion of the judicial power granted by § 1 and defined by § 2 of the third article of the Constitution in courts not ordained and established by itself." **Williams v. United States**, 289 U.S. 553, 566 (1933).

42. Under the property clause, Article IV, § 3, cl. 2, Congress has the authority over **their own** territories "or other property." Congress can also, under the exclusive legislation clause, Article I, § 8, cl. 17," ... exercise like Authority over all places purchased by the Consent of the Legislature of the State;" and also over all places where concurrent (by the terms of the cession) or exclusive jurisdiction has been ceded.

43. Congress can provide for the adjudication of crimes in legislative courts if they **occur on their own property** within any ONE OF the Union States, where they have concurrent or exclusive jurisdiction. Petitioner Graham had the right to be tried in a Constitutional Article III court for an alleged crime that allegedly occurred on land where jurisdiction has not been ceded or relinquished to Congress through consent to purchase. This right cannot be knowingly and intelligently waived by Petitioner Graham or petitioner's attorney

on petitioner's behalf because petitioner cannot vest jurisdiction on a court even by pleading guilty. The Supreme Court has stated that:

"[C]ases are legion holding that a party may not waive a defect in subject-matter jurisdiction or invoke federal jurisdiction simply by consent. This must be particularly so in cases in which the federal courts are entirely without Article III power to entertain the suit."  
**Pennsylvania v. Union Gas Co.**, 491 U.S. 1, 26 (1989)(citing cases).

44. ~~**Hertz Corp v. Alamo Rent-A-Car**, 16 F.3d. 1126, 1131 (11th Cir. 1994)~~("Subject-matter jurisdiction can never be waived or conferred by the consent of the parties.")(quoting **Latin Am. Property & Gas. Ins. Co. v. Hi-Lift Marina, Inc.**, 887 F.2d. 147, 1479 (11th Cir 1989)); **Fitzgerald v. Seaboard Sys. R.R., Inc.**, 760 F.2d. 1249, 1250 (11th Cir. 1985)("It is a well known fact that parties cannot confer jurisdiction upon the federal courts."); **Love v. Tutlington**, 733 F.2d. 1562, 1564 (11th Cir. 1984)("it is an established principle of law that subject-matter jurisdiction cannot be created or waived by agreement of the parties."); **Eagerton v. Valuations, Inc.**, 688 F.2d. 1115, 1118 (11th Cir. 1983)("It is well established that subject-matter jurisdiction cannot be waived or conferred on a court by consent of the parties.").

45. The current Judiciary Act is the first and only Judiciary Act to establish "United States district courts" in the Union States. Every Judiciary Act prior to the current one established "district courts of the United States" and only within the Union States. With the exception of the current Judiciary Act, "United States district courts" were traditionally created by either congressional legislation establishing a Federal Territory, by legislation later enacted by Congress, or the legislature of and for a particular Federal Territory. Our current Judiciary Act creates "United States district courts" for not only Federal Territories, but also the several 50 Union States.

46. Even if the "United States district courts" in the Union States are constitutional courts "ordained & established" under Article III, of which there

is no proof that they are, unless we consider the location where they sit as the only possible proof (which is not proof positive), this does not explain the difference in the "phraseology" of the two distinctly different terms describing the courts as continuations of existing law, i.e., "United States district courts" and "district courts of the United States."

47. ~~Obviously Congress could have established "district courts of the~~ United States" instead of "United States district courts." This would have rendered it unnecessary to define the "United States district courts" as "district courts of the United States" at 28 U.S.C. § 451, which also limits those definitions to that particular title of the United States Code by statating "as used in this Title." Congress could have then easily defined the term "district court of the United States," as used in 28 U.S.C., to include Article III "district courts" established in each of the judicial districts and the "United States district court" for either the District of Columbia, Puerto Rico, or both. Provided , however, that section 132 stated that:

"There shall be in each judicial district, except the judicial district of Puerto Rico, a district court of the United States which shall be a court of record oeRdained & established under Article III."

48. Congress could add the Judicial District of Columbia to that expression if they did not wish to establish an Article III "district court of the United States" there. How much simpler would that have been? It would have also resolved the statutory ambiguity surrounding the two courts. Especially as the ambiguity relates to the criminal statute at 18 U.S.C. § 3231. Obviously Congress could have amended the Judiciary Act codified in Title 28 U.S.C. to establish Article III "district courts of the United States". However, they have not done so, even after more than 69 years. The purpose of the "United States district courts" is clear. This was not some mistake, this was done purposefully.

49. It is reasonable to draw the conclusion that this was done to cover something up. Petitioner Graham will go out on a limb here and state that the reason was to usurp the sovereignty and jurisdiction of the Union States by exercising an undeligated power to "punish" under the guise of regulating "interstate commerce." It is much easier for Congress to control judges who ~~are dependent on their will than those who are free from control and domination~~ of the other branches of government, because the latter receive constitutional guarantees of lifetime tenure and undiminishable salary, as opposed to statutory grants of these benefits, which are not guaranteed.

50. The proposition just offered should really come as no surprise when we consider it. It appears there has always been an attempt to control the courts. This is no stretch of the imagination considering Thomas Jefferson and James Madison's statements, via the Kentucky Resolutions and Virginia Resolutions that as early as 1798 the Federal Government was already attempting to enlarge its powers beyond the limits imposed upon them by the Constitution. That is only 11 years after its ratification. Not to mention the Thomas Jefferson letters stating that they soon learned how the courts would be the most dangerous, sapping the foundations of the Constitution, by declaring what the law is *ad libitum* (at pleasure). How far do you think the Federal Government has been able to enlarge their powers beyond the limits imposed upon them by the Constitution after 231 years, more than two centuries---especially when the People no longer understand the Constitution (our Supreme Law) and the limits imposed on the Federal Government under it? How about as far as punishing felonies under the guise of regulating interstate commerce?

51. In order to alleviate any doubt as to the true status of our current "United States district courts" as either legislative or constitutional courts, Petitioner Graham would like to present for the Court's consideration the



Federal Rules of Civil Procedure which limit the reach of not only felonious "interstate commerce" violations, but also "misdemeanor "interstate commerce" violations, to lands under the concurrent or exclusive legislative jurisdiction of the "United States" (Federal Government). Although the limitation to punish felonious "interstate commerce" violations is proof that **no such power exists under the Constitution to do within the 50 Union States, the key here is the** limitation to punish misdemeanor violations affecting "interstate commerce." If the "United States district courts" were Article III constitutional courts then they would be able to adjudicate misdemeanor cases occurring within the legislative (territorial) jurisdiction of the several 50 Union States pursuant to any of the enumerated powers delegated to them, regardless of the absence of the punishing power or cession of jurisdiction. This is explained in detail further into Title 18 U.S.C.

"The district courts of the United States shall have original jurisdiction, exclusive of the Courts of the States, of all offenses against the laws of the United States."

"Nothing in this title shall be held to take away or impair the jurisdiction of the courts of the several States under the laws thereof." Title 18 U.S.C. § 3231.

52. The Supreme Court stated in **Mookini v. United States**, 303 U.S. 201, 205 (1938) "We have often held that vesting a territorial court with jurisdiction similar to that vested in the District Courts of the United States does not make it a "District Court of the United States." The definition of "district court of the United States," in Title 28 U.S.C. 451, which includes not only the "United States district courts" in the Union States but also the undeniably legislative "United States district court" for the Judicial District of Puerto Rico in that definition, does not make those courts applicable to the term "district courts of the United States" in Title 18 U.S.C. § 3231, which term, standing alone, and without further qualification, commonly describes only the constitutional courts established under Article III. Confer, As used

in this title," 28 U.S.C. § 451. This is clearly another obfuscation attempt by Congress to fraudulently conceal the Article III "district courts of the United States," and to create the false impression that they have been re-defined as, replaced by, and/or rendered synonymous with, the "United states district courts."

53. ~~It is axiomatic that the term "district courts of the United States"~~, as used in 18 U.S.C. § 3231, is referring to Constitutional courts "ordained & established" under Article III. The term "courts of the States" is referring to not only courts in the Union States, but also those on federal property under the concurrent or exclusive legislative (territorial) jurisdiction of the Federal Government within them, like the District of Columbia, for example, an those within federal territories, like Puerto Rico. The term "courts of the several States includes every non-federal Union State Court within each of the several 50 Union States. The Supreme Court explained that:

"[U]ntil 1875 Congress refrained from providing the lower federal courts with general federal question jurisdiction. Until that time, the state courts provided the only forum for vindicating many important federal crimes. Even then, with exceptions, the state courts remained the sole forum for trial of federal cases not involving the required jurisdictional amount, and for the most part retained concutent jurisdiction of federal claims property within the jurisdiction of the lower federal courts."

"It was never the legislative nor judicial view, therefore, that trial and decision of all federal questions were reserved for Art III judges. Nor, more particularly, has the enforcement of federal criminal law been deemed the exclusive province of federal Art III courts. **Vrey early in our history, Congress left the enforcement of selected federal criminal laws to state courts** and to state court judges who did not enjoy the protections prescribed for judges in Art III." **Palmore v. United States**, 411 U.S. 389, 410-411 (1973).

54. The Court should clearly see from this Supreme Court opinion that at one time Union State courts were adjudicating certain federal civil and criminal cases that occurred within each of their particular legislative (territorial) jurisdictions. Keep in mind, however, that all of the Union

States today, except for the original thirteen, were an one time federal territories. Therefore, it was not necessary for Congress to provide Article III courts rather than legislative courts. That said, Petitioner Graham would like to elaborate further regarding the term "district courts of the United States" as used in the jurisdiction provision at 18 U.S.C. § 3231. Petitioner ~~would also like to propose for the Courts consideration the possibility that~~ the current "United States district courts" are, in reality, the legislative "courts of the States" in that same provision. The Fifth Circuit citing the Supreme Court, and the Ninth Circuit, regarding the rules of statutory construction, stated that:

"In construing statutes, words are to be given their natural, plain, ordinary and commonly understood meaning unless it is clear that some other meaning was intended, and where Congress has carefully employed a term in one place and excluded it in another, it should not be implied where excluded."

"by the same reasoning, words in statutes should not be discarded as "meaningless: and "surplusage" when Congress specifically and expressly included them, particularly where words are excluded in other sections of the same act." **United States v. Wong Kim Bo**, 472 F.2d. 720, 722 (5th Cir. 1972).

55. As can be seen, the term "district courts of the United States" is standing alone in 18 U.S.C. § 3231, without further qualification and, as such, historically describes constitutional courts created under Article III. Since that term is not qualified further by definition to specifically include any of the "United States district courts," that silence compels us to adopt the ordinary and commonly understood meaning of that term, phrase, or those words. The Supreme Court, in *pari materia*, explained that:

"The term "interest" is not specifically defined in the RICO statute. This silence compels us to "start with the assumption that the legislative purpose is expressed by the ordinary meaning of the words used." **Russell v. United States**, 464 U.S. 16, 21 (1983)(citation omitted).

56. AS Petitioner has shown, the term "district court of the United

States", as used in the criminal jurisdiction statute (18 U.S.C. § 3231), can only be given its ordinary meaning because "United States district courts" are clearly not included in that term. Because Congress has not defined the term "district courts of the United States" at 18 U.S.C. § 3231 to include "United States district courts," as was done for Title 28 U.S.C. § 451, see, "As used in this title", ~~those courts cannot be made applicable to that particular provision~~ of Title 18 U.S.C. Confer, United States v. King, 119 F.Supp. 398 (9th Cir. D.C. Alaska, 3rd Div. 1954), This title, as used in said section 451, must refer to Title 28." The Supreme Court's view regarding the "Rule of Lenity" as a cannon of statutory construction, states that:

"If the legislative intent is unclear, doubt will be resolved in favor of the defendant. In this context the rule of lenity may be no more than a restatement of the ancient maxim that criminal statutes are to be strictly construed."

"[T]he court has frequently emphasized, the touchstone of the rule of lenity is statutory ambiguity." Supreme Court Annotations, 62 L.Ed.2d. 827, Rule of Lenity.

### GROUND THREE

**The Alleged Criminal Statute Violated Exceeds The Power Of Congress As Applied To Petitioner's Conduct, Because It Violates Petitioner's Due Process Rights Secured By The Fifth Amendment, and Encroaches On The Sovereignty And Jurisdiction Of The State In Violation Of The Tenth Amendment And The Fundamental Principles Of Federalism.**

### SUPPORTING FACTS

57. The Tenth Amendment reserves all powers not delegated to the "United States" (Congress/Federal Government), to the States respectively, or to the People. Because the power to "punish" is not delegated, by enumeration, in aid of Congress' commerce clause power, the places wherein Congress can regulate interstate commerce, through the imposition of felonious criminal statutes is limited by the Constitution.

58. The Supreme Court has stated time and time again that, "The Federal Government has, nothing approaching a police power. See U.S. v. Lopez, 514 U.S.

549, 584-85 (1995). This is because, "The police power of the State **was NOT** surrendered when the People of the 50 Union States conferred upon Congress the general power to regulate commerce with **foreign** nations and between the several Union States. See Patterson v. Kentucky, 97 U.S. 501, 505 (1879). "Police Power" is defined as:

"The inherent power of the government to exercise reasonable control over persons in the interests of the general security, health, safety, morals, and welfare except where legally prohibited [such as on Petitioners private land] (as by constitutional provision." Cf Article I, § 8, cl. 17. Webster's Third New International Dictionary, unabridged (1981), p. 1,754.

59. Obviously Congress has no jurisdiction within any ONE OF the 50 Union States except where it has been obtained through consent to purchase the land or where jurisdiction has been ceded over land they own. This is why they cannot exercise a police power. The Supreme Court, clearly showing that the "police power" is analogous to the suppression of "violent crime," stated that:

"Indeed, we can think of no better example of the police power, which the Founders **denied** the National Government [Federal Government] and reposed in the States, than the suppression of violent crime."

"The Constitution ... **withhold(s)** from Congress a plenary police power." [W]e always have rejected readings of the Commerce Clause and the scope of federal power that would permit Congress to exercise a police power and noting that **the first congress did not enact nationwide punishments for criminal conduct under the Commerce Clause.**"

"Until this Court replaces its existing Commerce Clause jurisprudence with a standing more consistent with the original understanding, we will continue to see Congress approaching state police powers under the guise of regulating commerce. **United States v. Morrison**, 529 U.S. 598, 618 (2000).

60. Petitioner Graham can obviously draw a very reasonable conclusion that a violent crime falls within the meaning of a felony, which would be defined as a "serious crime" usually punishable by imprisonment for more than one year. Petitioner's alleged crime however was computer related and non-violent contrary to what the Government would conclude. Title 18 U.S.C. also defines violent crime as:

"The term "crime of violence" means---

(a) an offense that has an element the use, attempted use, or threatened use of physical force against the person or property of another, or

(b) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against another person or property of another may be used in the course of committing the offense." 18 U.S.C. § 16, Crime of violence.

61. Mr. Graham's alleged crime involved the use of a computer. There were no physical victims, therefore section (a) and (b) do not apply.

62. Now that we know a violent crime is a felony (but obviously **not all felonies**), we can see that the "police power," which was withheld from the Federal Government, is the power to punish felonies (or enact other legislation in excess of, and inconsistent with, their delegated and enumerated powers). And as petitioner has already shown, "the Federal Government has nothing approaching a police power *Lopez*, supra, because they have no jurisdiction. It should be noted that although Congress has made many non-violent crimes felonies, this does not change the limitations imposed by the Constitution upon the exercise of the police power.

63. Because the Union States are not "territories" belonging to the Federal Government ("United States"), nor is Mr. Graham's private home or life, they have no territorial jurisdiction (general jurisdiction) over the place where the crime occurs, and therefore the Federal courts do not have subject-matter jurisdiction to hear the prosecution of the alleged criminal offense. The term "jurisdiction" means" "... the court's statutory or constitutional power to adjudicate the case," and objections to subject matter jurisdiction may be raised at any time". The Federal courts have **zero** "statutory or constitutional power" (subject-matter jurisdiction) to adjudicate (See *U.S. V. Cotton*, 535 U.S. 625, 630 (2002); *Henderson v. Shinaeki*, 131 S.Ct. 1197 (2011)) felonious criminal cases if the crime occurred outside of the territorial places

(geographical locations) under the concurrent or exclusive legislative jurisdiction of the "United States" (Federal Government). The Supreme Court has explained that:

""[S]ubject-matter jurisdiction, because it involves a court's power to hear a case, can never be forfeited or waived. Consequently, defects in subject-matter jurisdiction require correction regardless of whether the error was raised in district court." **United States v. Cotton**, 535 U.S. 625, 630 (1002).

64. Again, if the felonious crime has not occurred in these places, the Federal courts have zero subject-matter jurisdiction to adjudicate the prosecution of the alleged criminal offense sua sponte. The courts are then constitutionally required to correct the "defect" in jurisdiction. They have to let Petitioner Graham go! The Federal courts are **obligated** under the Constitution, because the due process rights secured under the **Fifth Amendment** require it, to take notice **sua-sponte (on their own motion)** as to whether they had subject-matter jurisdiction over the crime (constitutional authority), or not. If the felony prosecution is not pursuant to a crime where the power to "punish" has been delegated, by enumeration in the Constitution, then the crime must have occurred within land under the concurrent or exclusive legislative (territorial) jurisdiction of the Federal Government ("United States") in order for the federal courts to have subject-matter jurisdiction to adjudicate the case.

65. In Petitioner Graham's case, the alleged crime was committed at 106 George Lane, located in Brunswick, Georgia, a "place" that is private property not part of any "United States" Federal Government (territories) and not ceded to the Federal Government. Therefore the Court lacked subject-matter jurisdiction.

P R A Y E R

66. For the reasons shown above, the U.S. District Court for the Southern District of Georgia, lacking subject-matter jurisdiction of the case, that this manifest injustice, the "defect", be corrected. Petitioner Graham Prays that:

(A) This Honorable Court, because the Court did not have subject-matter jurisdiction over his case, issue a Writ of ~~Habeas C~~ commanding Warden Kathy Lane to produce the body of the Petitioner before this court at a time and place to be specified in that Writ, on the grounds that petitioner is unlawfully detained and restrained of his liberty;

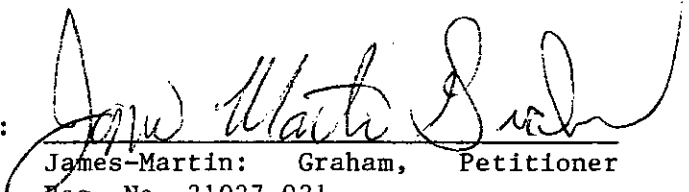
(B) This Honorable Court conduct a hearing and inquiry into the cause of the petitioner's detention;

(C) Following the hearing, Petitioner Graham be immediately ordered discharged from detention and restraint described in this application.

Executed this 12 day of July, 2021.

Respectfully submitted,

By:

  
James-Martin: Graham, Petitioner  
Reg. No. 21927-021  
F.C.I. Coleman - LOW  
P.O. Box 1031 Unit B-2  
Coleman, Florida 33521-1031  
Proceeding, Pro se  
Special and Private



## CERTIFICATE OF SERVICE

I, James-Martin: Graham, certify that the foregoing is true, correct and made with my firsthand knowledge pursuant to the penalty of perjury, 28 U.S.C. § 1746(1), that on the date affixed below, I did place into the prison mailing system: (1) Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241, enclosed in an envelope that was addressed to the United States District Court for the Middle District of Florida, Ocala Division located at 207 Northwest Second Street Ocala, Florida 34475. I mailed this petition to the Clerk of the Court's attention via U.S.P.S. Priority Mail with tracking # 9114 9023 0722 4732 1026 16. Said mail article contained the proper amount of First Class United States Postage affixed thereto.

It appears that the parties to this action are registered with the CM/ECF Electronic Docketing System, therefore I request service by that method as well, as I am proceeding pro se.

Execute this 12 day of July, 2021.

Respectfully submitted,

By: 

James-Martin: Graham #21927-021  
F.C.I. Coleman - LOW  
P.O. Box 1031 Unit B-2  
Coleman, Florida 33521-1031  
Proceeding, Pro se

**Exhibit B**

MIME-Version:1.0

From:cmecf\_flmd\_notification@flmd.uscourts.gov

To:cmecf\_flmd\_notices@localhost.localdomain

Bcc:

--Case Participants: Magistrate Judge Philip R. Lammens

(chambers\_flmd\_lammens@flmd.uscourts.gov), Judge William F. Jung

(chambers\_flmd\_jung@flmd.uscourts.gov)

--Non Case Participants:

--No Notice Sent:

Message-Id:&lt;21403804@flmd.uscourts.gov&gt;

Subject:Activity in Case 5:21-cv-00369-WFJ-PRL Graham v. Warden, FCC Coleman - Low  
Order no pdf

Content-Type: text/html

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.

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U.S. District Court

Middle District of Florida

**Notice of Electronic Filing**

The following transaction was entered on 10/20/2021 at 6:05 PM EDT and filed on 10/20/2021

Case Name: Graham v. Warden, FCC Coleman - Low

Case Number: 5:21-cv-00369-WFJ-PRL

Filer:

Document Number: 3(No document attached)

**Docket Text:**

**ENDORSED ORDER** dismissing Petition. Petitioner seeks relief under 28 U.S.C. section 2241, but in fact this Petition seeks relief from the conviction and sentence imposed, in other words Petitioner seeks a section 2255 remedy. The Petition is serving a sentence at FCI Coleman Low, which was imposed after a guilty plea in the Southern District of Georgia. This 2241 Petition seeks his release from custody. The Petition is frivolous. It states several frivolous grounds in support of its main contention that the District Judge in S.D. Ga. had no subject matter jurisdiction. First, the Petitioner contends that the crime, which happened in Brunswick Georgia, did not occur on federal land or land reserved to the federal government. Rather it happened on private, non-federal land. Second, the Petition argues that federal jurisdiction did not extend to the crime charged, and that the concept of federalism blocks the assertion of federal criminal law in this matter. The Petition states no legally cognizable grounds under 28 U.S.C. 2241, and if one could construe any part of the Petition as non-frivolous, it clearly seeks relief reserved to Petitions under 28 U.S.C. 2255, which must be brought in the District of

**sentencing. The face of the Petition and this record conclusively show that Petitioner is not entitled to relief as prayed for. The Clerk will close this file. Signed by Judge William F. Jung on 10/20/2021. (Jung, William)**

**5:21-cv-00369-WFJ-PRL Notice has been electronically mailed to:**

**5:21-cv-00369-WFJ-PRL Notice has been delivered by other means to:**

---

**James Martin Graham**

21927021

COLEMAN LOW

FEDERAL CORRECTIONAL INSTITUTION

Inmate Mail/Parcels

P.O. BOX 1031

COLEMAN, FL 33521

Petitioner's Copy

FILED

APPEAL TO THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

FROM THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA  
OCALA DIVISION

2021 NOV 10 PM 2:27

CLERK OF DISTRICT COURT  
MIDDLE DISTRICT OF FL  
OCALA DIVISION

James-Martin: Graham  
A Private Man

Exhibit C-1

Petitioner, Appellant,

Appeal No.

v.

In Re: U.S. District Court  
Case No. 2:17-CR-00002-LGW-BWC  
Sworn Under 28 U.S.C. § 1746(1)

WARDEN, KATHY LANE,  
F.C.I. COLEMAN - LOW

JUDGE, LISA GODBY WOOD,  
AUSA, MARCELA C. MATEO,  
AUSA, GREGORY E. GILLULY JR.,  
JUDGE, BENJAMIN W. CHEESBRO  
In Their Individual  
and Official Capacities

NOTICE OF APPEAL IN REGARDS  
PETITION FOR WRIT OF HABEAS CORPUS  
CASE NO: 5:21-CV-00369-WFJ-PRL

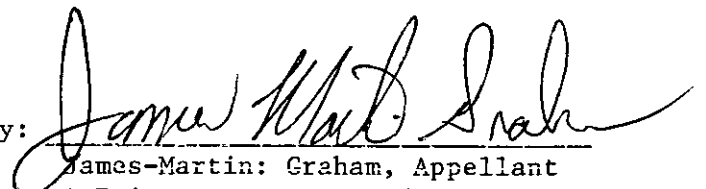
Respondent(s),

NOTICE OF APPEAL

COMES NOW, James-Martin: Graham, sui juris, as Appellant, hereby appeals to the United States Court of Appeals for the Eleventh Circuit, from the Order of the United States District Court, Middle District of Florida, Ocala Division entered on Oct 20, 2021, denying Petitioner's Motion for a Writ of Habeas Corpus under 28 U.S.C. § 2241, and requests the Appellate Court to reverse the decision of the District Court, and overrule the denial of the District Court's denial of Petitioner's Motion for a Writ of Habeas Corpus.

Executed this 26 day of October, 2021.

By:

  
James-Martin: Graham, Appellant  
A Private Man, Proceeding Pro se

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APPEAL TO THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

FROM THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA  
OCALA DIVISION

James-Martin: Graham  
A Private Man

Exhibit C-2

Petitioner, Appellant,

Appeal No.

v.

In Re: U.S. District Court  
Case No. 2:17-CR-00002-LGW-BWC  
Sworn Under 28 U.S.C. § 1746(1)

WARDEN, KATHY LANE,  
F.C.I. COLEMAN - LOW

JUDGE, LISA GODBY WOOD,  
AUSA, MARCELA C. MATEO,  
AUSA, GREGORY E. GILLULY JR.,  
JUDGE, BENJAMIN W. CHEESBRO  
In Their Individual  
and Official Capacities

NOTICE OF APPEAL IN REGARDS  
PETITION FOR WRIT OF HABEAS CORPUS  
5:21-CV-00369-WFJ-PRL

Respondent(s),

PRAECIPE FOR RECORD

To: Clerk of the Court  
207 Northeast Second Street  
Ocala, Florida 34475

You are hereby requested to prepare and make up a transcript of the record in your Court in the above entitled cause as to denial of Petition for a Writ of Habeas Corpus, to be used on Appeal to the United States Court of Appeals for the Eleventh Circuit, including a **placita** for each term of the court, all pleadings, all Orders, all papers and records, the Notice of Appeal and Certificate of Service thereof, this Praecipe and Certificate of Service thereof, and all Motions, Orders, and stipulations that may have been made relative to the preparation of said record, together with your certificate that

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the same is a complete transcript of all proceedings had in your Court in said cause.

Executed this 26 day of October, 2021.

By: 

James-Martin: Graham, Appellant

Reg. No. 21927-021

A Private Man

F.C.I. Coleman - LOW

P.O. Box 1031 Unit B-2

Coleman, Florida 33521-1031

By Special visitation, not general

## Exhibit C3

## CERTIFICATE OF SERVICE

I, James-Martin: Graham, certify that the foregoing is true, correct and made with my firsthand knowledge pursuant to the penalty of perjury, 28 U.S.C. § 1746(1), that on the date affixed below, I did place into the prison mailing system: (1) NOTICE OF APPEAL; and (1) PRAECIPE FOR RECORD, to the Clerk of the Court, enclosed in an envelope that was addressed to the United States District Court - Middle District of Florida - Ocala Division, 207 Northwest Second Street, Ocala, Florida 34475. Said mail article contained the proper amount of First Class United States Postage affixed thereto.

It appears that the parties to this action are registered with the CM/ECF Electronic Docketing System, therefore I request service by that method as well, as I am proceeding pro se.

Execute this 26 day of October, 2021.

Respectfully submitted,

By: 

James-Martin: Graham #21927-021  
F.C.I. Coleman - LOW  
P.O. Box 1031 Unit B-2  
Coleman, Florida 33521-1031  
Proceeding, Pro se

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA  
OCALA DIVISION

James-Martin: Graham  
A Private Man

Petitioner,

Exhibit C-4

v.

Case No. 5:21-CV-00369-WFJ-PRL

WARDEN, KATHY LANE,  
F.C.I. COLEMAN - LOW

In Re: Appeal to the Eleventh  
Circuit Court of Appeals

JUDGE, LISA GODBY WOOD,  
AUSA, MARCELA C. MATEO,  
AUSA, GREGORY E. GILLULY JR,  
JUDGE, BENJAMIN W. CHEESBRO.

In Re: U.S. District Court  
Case No. 2:17-CR-00002-LGW-BWC  
Sworn under 28 U.S.C. § 1746(1)

In their Individual  
and Official Capacities

Respondent(s),

**MOTION TO PROCEED IN FORMA PAUPERIS  
REQUEST FOR A FEE WAIVER**

**COMES NOW**, Petitioner, James-Martin: Graham, sui juris, proceeding pro se, a Federal Florida State prisoner, currently incarcerated at the Coleman - LOW Correctional Complex, in Coleman, Florida, appearing, by Special Visitation, and not generally.

**PLEASE TAKE NOTICE**, that upon the Affidavit In Support, submitted by James-Martin: Graham, sworn the date of signing, a motion will be made at the term of this court, for an order, permitting Appellant to pursue this action In Forma Pauperis, pursuant to 28 U.S.C. § 1915, upon the ground that Appellant has insufficient income and/or property to enable him to afford to pay the costs, fees, and expenses to pursue this action in regard to the denial of his Petition for a Writ of Habeas Corpus filed pursuant to 28 U.S.C. § 2241.

Appellant Graham seeks a waiver of all fees and costs associated with

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Appellant Graham seeks a waiver of all fees and costs associated with this appeal, and believes he is entitled to one because the filing fee does not apply to these types of Habeas Corpus petitions under Title 28 U.S.C. 2241 because it is not a "civil action" subject to the filing fee requirements under the Prison Reform Litigation Act ("P.L.R.A."). Even though the fees do not apply, the Court's procedures require that appellant apply for in forma pauperis status. **See Enclosed Affidavit In Support**, made part hereof.

The landmark case in which all others seem to be based is out of the Third Circuit which states:

"[W]hen the PLRA is read as a whole, it is apparrent that Congress did not intend for the statute, Title 28 U.S.C. 1915, to apply to habeas corpus proceedings. For the foregoing reasons, we ahall conclude that the filing fee requirement of the PLRA set forth in 28 U.S.C. 1915(b) do not apply to habeas corpus petitions or to appeals from the denial of such petitions. See Santana v. United States, 98 F.3d. 752, 756 (3rd Cir. 1996).

Likewise, numerous other circuits have held the same. See Skinner v. Wiley, 355 F.3d. 1293 (11th Cir. 2004) stating:

"We, like several other circuits, have held that the PLRA does not apply to habeas corpus petitions because (1) habeas petitions are not traditional civil actions; (2) Congress designed the PLRA to reduce frivolous civil actions from prisoners' and (3) the Antiterrorism and Effective Death Penalty Act (AEDPA), which affests habeas petitions and motions to vacate, was enacted two days after the PLRA. See Anderson v. Singletary, 111 F.3d. 801, 803-805 (11th Cir. 1997)(holding that the PLRA's filing fee provisions does not apply to 2241 petitions); Walker v. O'Brien, 216 E.3d. 626, 633-34, 636-37 (7th Cir 2000) (holding that the PLRA does not apply to 2241 and 2254 petitions); Blair-Bey v. Quick, 331 U.S. App. D.C. 362, 151 F.3d. 1026, 1040-42 (D.C. Cir. 1998) (holding that PLRA filing fee provisions do not apply to habeas corpus petitions); Davis v. Fachtel, 150 F.3d. 486, 490 (5th Cir. 1999) (holding that the PLRA does not apply to 2241 petitions).

As Appellant cas see from the Court Rules, Petitioner is required to submit certain documentation even though the PLRA provision under Title 28 U.S.C. 1915, nor the filing fee to appeal apply to Appellant in a habeas corpus proceeding.

**RELIEF REQUESTED**

For the above foregoing reasons Mr. Graham Prays that this Honorable Court Grant his motion to proceed In Forma Pauperis, and allow him to proceed by waiving all fees and costs, and for such other relief as this Court may deem just and proper.

---

Executed this 26 day of October, 2021.

Respectfully submitted,

By: 

James-Martin: Graham #21927-021  
Proceeding, Pro se  
F.C.I. Coleman - LOW  
P.O. BOX 1031 Unit B-2  
Coleman, Florida 33521-1031  
By Special Visitation, not general

FILED

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA  
OCALA DIVISION

2021 NOV 10 PM 2:26

James-Martin: Graham  
A Private Man

Petitioner,

**Exhibit C-5**

v.

Case No. 5:21-CV-369-WFJ-PRL

WARDEN, KATHY LANE,  
F.C.I. COLEMAN - LOW

In Re: Appeal to the Eleventh  
Circuit Court of Appeals

JUDGE, LISA GODBY WOOD,  
AUSA, MARCELA C. MATEO,  
AUSA, GREGORY E. GILLULY JR,  
JUDGE, BENJAMIN W. CHEESBRO.  
In their Individual  
and Official Capacities

In Re: U.S. District Court  
Case No. 2:17-CR-00002-LGW-BWC  
Sworn under 28 U.S.C. § 1746(1)

Respondent(s),

**AFFIDAVIT OF POVERTY  
IN SUPPORT OF PETITION TO PROCEED IN FORMA PAUPERIS  
( Pursuant to 28 U.S.C. § 1915 )**

RECEIVED

2021 NOV - 1 PM 3:16

I, James-Martin: Graham, Appellant, proceeding pro se, bring this Affidavit In Support of my Motion to Proceed In Forma Pauperis Request for a Fee Waiver in the above captioned case. I am a Federal Florida State prisoner, currently incarcerated at the Coleman LOW Correctional Facility in Coleman, Florida. I am appearing by Special Visitation, not generally.

In support of my motion to proceed without being required to pay for fees, costs, or give security therefore, I depose and state that because of my poverty I am unable to pay for the costs of said proceeding or to give security therefore. I believe that I am entitled to a fee waiver pursuant to the citations cited in my motion, and that I am entitled to redress.

1. I declare that the responses which I have made below are true,

correct, and made with my firsthand knowledge pursuant to the penalty of perjury, 28 U.S.C. § 1746(1);

2. I am presently unemployed;

3. I have not received, within the past twelve months, any funds from any of the following sources:

- (a) Business, profession, or self-employment;
- (b) Rent Payments, interest, dividends;
- (c) Pensions, annuities, or life insurance payments;
- (d) Inheritances;
- (e) Any form of public assistance;
- (f) Any other sources.

4. I have from time to time received a small gift from my family members at home to purchase commissary items at the prison store, usually not more than \$20;

5. I currently have \$ 764 in my prison trust fund account;

6. I do not own any cash, money, gold, silver, savings, or checking accounts other than my prison trust account;

7. I do not own any assets, real estate, stock, bonds, notes, automobiles, or other valuable property (inclusive of ordinary household items) that can be converted to cash;

8. There are no persons who are dependent upon me for their support;

9. I have enclosed by way of attachment hereto, my institutional trust accounting statement for the past (6) six months, certified by the appropriate institutional officer showing all records, expenditures, and balances during the last six month period;

10. I can remit a financial statement if one is needed, provided that the Clerk of the Court furnish me with said statement;

I declare that I am the Plaintiff/Appellant in this case and declare that I am unable to pay for the costs and/or fees associated with this appeal or proceedings and that I am entitled to a fee waiver and entitled to the relief requested.

**VERIFICATION**

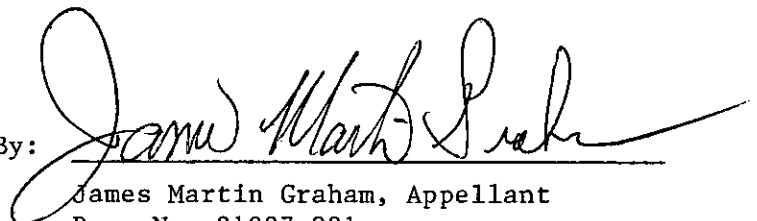
I, James-Martin: Graham, sui juris, Appellant, certify that the foregoing is true, correct, and made with my firsthand knowledge pursuant to the penalty of perjury, 28 U.S.C. § 1746(1).

I understand that making this affidavit In Support does not excuse me from litigating this case, and that it is still my responsibility to serve the Respondent(s) unless the Appellant is proceeding pro se. Therefore, I ask for service to be made through the CM/ECF Electronic Docketing System, as I am proceeding pro se at this time.

Executed this 26 day of October, 2021.

Respectfully submitted,

By:



James Martin Graham, Appellant  
Reg. No. 21927-021  
F.C.I. Coleman - LOW  
P.O. Box 1031 Unit B-2  
Coleman, Florida 33521-1031  
By Special Visitation, not general

Exhibit C-6

## CERTIFICATE OF SERVICE

I, James-Martin: Graham, certify that the foregoing is true, correct and made with my firsthand knowledge pursuant to the penalty of perjury, 28 U.S.C. § 1746(1), that on the date affixed below, I did place into the prison mailing system: (1) MOTION TO PROCEED IN FORMA PAUPERIS; (1) AFFIDAVIT OF POVERTY IN SUPPORT, enclosed in an envelope that was addressed to the United States District Court for the Middle District of Florida, Ocala Division located at 207 Northwest Second Street Ocala, Florida 34475. Said mail article contained the proper amount of First Class United States Postage affixed thereto.

It appears that the parties to this action are registered with the CM/ECF Electronic Docketing System, therefore I request service by that method as well, as I am proceeding pro se.

Execute this 26 day of October, 2021.

Respectfully submitted,

By: 

James-Martin: Graham #21927-021  
F.C.I. Coleman - LOW  
P.O. Box 1031 Unit B-2  
Coleman, Florida 33521-1031  
Proceeding, Pro se

APPEAL TO THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

James-Martin: Graham  
A Private Man

Appeal No. 21-13842-E

Petitioner, Appellant,

v.

Exhibit C-7

WARDEN, KATHY LANE,  
F.C.I. COLEMAN - LOW

JUDGE, LISA GODBY WOOD,  
AUSA, MARCELA C. MATEO,  
AUSA, GREGORY E. GILLULY JR.,  
JUDGE, BENJAMIN W. CHEESBRO  
In Their Individual  
and Official Capacities

Respondent, Appellee,

In Re: U.S. District Court  
Case No. 5:21-CV-00369-WFJ-PRL  
Sworn Under 28 U.S.C. § 1746(1)  
Pursuant to Penalty of Perjury

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or call 1-800-222-1811.

APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA - OCALA DIVISION  
OF ITS DENIAL OF PETITIONER'S 28 U.S.C. § 2241  
PETITION FOR A WRIT OF HABEAS CORPUS

A P P E L L A N T ' S   B R I E F

COMES NOW, Appellant, James-Martin: Graham ("Graham"), sui juris, bringing this Appeal to this Honorable Court seeking an order reversing the decision of the United States District Court for the Middle District of Florida - Ocala Division's denial of Petitioner's/Appellant's Petition for a Writ of Habeas Corpus brought under 28 U.S.C. § 2241, on the grounds that Petitioner Graham is unlawfully detained and restrained of his liberty by Warden, Kathy Lane of the F.C.I. Coleman - LOW Security Correctional Facility, who was allegedly given that power by Judge Lisa Godby Wood, AUSA Marcela C. Mateo, AUSA Gregory E. Gilluly Jr, Magistrate Judge Benjamin W. Cheesbro, and unknown others, et al, where the Respondent(s), and the Federal Government lacked all subject-matter jurisdiction over the case.

**CERTIFICATE OF INTERESTED PERSONS  
AND CORPORATE DISCLOSURE STATEMENT (CIP)**

COMES NOW, James-Martin: Graham, sui juris, bringing this Certificate of Interested Persons to the Eleventh Circuit pursuant to Rule 26.1-1(a) requiring the appellant or petitioner to file a Certificate of Interested Persons and Corporate Disclosure Statement (CIP) within 14 days after the date the case or appeal is docketed in this court, and include a (CIP) with every motion, petition, brief, answer, response, and reply filed. Likewise, appellees, intervenors, respondents, and all other, parties to the case or appeal must file a CIP within 28 days after the case or appeal is docketed in this court.

The parties are as follows:

* U.S. DISTRICT COURT - S.D. GEORGIA -	U.S.A. Corporation
* ALLEN, RICHARD O. Esq	- former U.S. Corp Public Pretender
* BAKER, Jr., STAN	- U.S. Dist. Corporate Judge
* CHEESBRO, BENJAMIN W.	- U.S. Corporate Magistrate Judge
* CHRISTINE, BOBBY L.	- former U.S. Attorney
* DAVIDS, JUSTIN G.	- Assistant U.S. Corporate Attorney
* DURHAM, JAMES D.	- former First Asst U.S. Attorney
* ESTES, DAVID H.	- Acting U.S. Corporate Attorney
* Federal Bureau of Investigation	- U.S. Federal Corporation
* Georgia Bureau of Investigation	- U.S. Federal Corporation
* GILLULY, Jr., GREGORY E.	- Assistant U.S. Corporate Attorney
* Glynn Cty Police Department (Ga)	- U.S. Corporation
* Graham, James-Martin:	- Private man <b>NON-CORPORATE Appellant</b>
* Lane, Kathy	- Warden F.C.I. Coleman - LOW
* Liberty Cty (Ga) Sheriff's Office	- U.S. Corporation
* MATEO, MARCELA C.	- Assistant U.S. Corporate Attorney
* RAFFERTY, BRIAN T.	- former U.S. Attorney



* SINGH, CHANNELL V.	- Assistant U.S. Corporate Attorney
* STUCHELL, JAMES C.	- Assistant U.S. Corporate Attorney
* TARVER, EDWARD J.	- former U.S. Attorney
* WOOD, NON LISA GODBY	- U.S. Dist. Corporate Judge

No publicly traded company or corporation has an interest in the outcome of this case or appeal.

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<p><b>ISSUE I.</b> The complaint / information or indictment failed to charge an offense against the laws of the United States because no jurisdiction has been ceded or accepted over the <u>place</u> where Mr. Graham's alleged criminal activity is alleged to have occurred.</p>	
<p><b>ISSUE II.</b> The trial court was without subject-matter jurisdiction under 18 U.S.C. § 3231.</p>	
<p><b>ISSUE III.</b> The alleged criminal statute allegedly violated by Mr. Graham exceeds the power of Congress as applied to defendant/petitioner's conduct, because it violated the petitioner's Due Process Rights secured by the Fifth Amendment, and encroaches on the sovereignty and jurisdiction of the State in violation of the Tenth Amendment and the fundamental principles of Federalism.</p>	
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Statement of Jurisdiction

This is an appeal from a final decision of the United States District Court For The Middle District of Florida - Ocala Division in a case where the court denied the petitioner's Petition for a Writ of Habeas Corpus. This Court has jurisdiction over the appeal. See 28 U.S.C. § 1291.

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Statement of Oral Argument

The Appellant does not request oral arguments at this time.

THE PARTIES TO THE ACTION - PERSONAL INFORMATION

1. APPELLANT. James-Martin: Graham, hereinafter ("Graham"), sui juris, a Private Man, brings this Appeal by Special Appearance, not by general, as declarant, deposes and states under the penalty of perjury WITHOUT the STATUTORY "United States" and from WITHIN the Constitutional 50 Union states of the United States of America, that the foregoing is true, correct, and made with Appellant's firsthand knowledge, pursuant to 28 U.S.C. § 1746(1). Appellant reserves ALL of his inalienable rights and waives NONE without prejudice, by submitting this Appeal.

2. RESPONDENT'S. Warden Kathy Lane, is the warden of the F.C.I. Coleman - LOW Correctional Facility located at 648 N.W. 54 Terrace, P.O. Box 1021, Coleman, Florida, 33521-1021. Respondent(s) Judge Lisa Godby Wood, AUSA Marcela C. Mateo, AUSA Gregory E. Gilluly Jr, and Magistrate Judge Benjamin W. Chesebro, in their Individual and Official Capacities are officers of the United States District Court for the Southern District of Georgia, Brunswick Division located at 801 Gloucester Street, Brunswick, Georgia 31520.

3. CUSTODY STATUS. Appellant, is being unlawfully detained and restrained of his liberty at the F.C.I. Coleman - LOW Correctional Complex, located at 846 N.E. 54 Terrace, P.O. Box 1031 Unit B-2 in Coleman, Florida 33521.

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

A) DID THE COMPLAINT / INFORMATION OR INDICTMENT FAIL TO CHARGE AN OFFENSE AGAINST THE LAWS OF THE "UNITED STATES" WHERE NO JURISDICTION HAD BEEN CEDED OR ACCEPTED OVER THE PLACE WHERE MR. GRAHAM'S ALLEGED CRIMINAL ACTIVITY IS ALLEGED TO HAVE OCCURRED?

B) , WAS THE TRIAL COURT WITHOUT SUBJECT-MATTER JURISDICTION UNDER 18 U.S.C. § 3231?

C) DID THE ALLEGED CRIMINAL STATUTE ALLEGEDLY VIOLATED BY MR. GRARAM EXCEED THE POWER OF CONGRESS AS APPLIED TO PETITIONER'S / DEFENDANT'S CONDUCT WHERE IT VIOLATED THE PETITIONER'S DUE PROCESS RIGHTS SECURED BY THE FIFTH AMENDMENT, AND ENCROACH UPON THE SOVEREIGNTY AND

JURISDICTION OF THE UNION STATE OF GEORGIA IN VIOLATION OF THE TENTH  
AMENDMENT AND THE FUNDAMENTAL PRINCIPLES OF FEDERALISM?

STATEMENT OF THE CASE

4. The underlying cause of action is a child-pornography case originating in the United States District Court for the Southern District of Georgia, where the Court acting without subject-matter jurisdiction, sentenced Mr. Graham to 188 months of confinement, in which the Government failed to submit into the Record bona-fide evidence: (1) any documentation showing ownership by the United States (Federal Government) over the place where the criminal activity is alleged in the complaint/indictment to have occurred, and (2) Any cession and acceptance of jurisdiction as required under Article 1, § 8, cl. 17 and 40 U.S.C. § 3112. Mr. Graham on July 12, 2021, submitted a 28 U.S.C. § 2241 Petition for Writ of Habeas Corpus challenging his unlawful detention and restraint of his liberty based upon the fact that the sentencing court had no Jurisdiction to hear the case and was subsequently denied. Mr. Graham challenges that denial.

COURSE OF PROCEEDINGS

5. Petitioner was illegally sentenced by the U.S. District Court, Southern District of Georgia under Criminal Case No. 2:17-CR-00002-LGW-BWC and sentenced on January 23, 2017, which lacked all subject-matter jurisdiction over the case.

6. Appellant was alleged to have violated Federal territorial law 18 U.S.C. § 2252A(A)(5)(b), without verifiable bona-fide evidence, in violation of the Fourth Amendment to the Constitution for the United States of America, and the Constitution of the Union State of Georgia. **NO SUBPOENAS or FEDERAL SEARCH WARRANTS** have ever been introduced at trial into evidence.



The Federal Government and the District Court of Georgia did not have jurisdiction over the place where Mr. Graham has allegedly committed his crime. Further the Union State of Georgia erred when it gave the case to the Federal Government because subject-matter jurisdiction can never be waived or conferred by consent of the parties. ~~The Federal Government only has jurisdiction over its own territories or land~~ that was ceded and accepted by the Federal Government, notwithstanding Mr. Graham's private property.

#### Statement of the Facts

7. See Course Proceedings above.

#### Standard of Review

8. This Court reviews constitutional errors de novo. **U.S. v. Williams**, 527 F.3d. 1235, 1239 (11th Cir. 2008), and denial of § 2241 petitions pursuant to **Brown v. Keller**, 651 F.3d. 1227, 1291 (11th Cir. 2011).

#### SUMMARY OF ARGUMENT - INTRODUCTION

9. Appellant Graham is actually innocent of committing a felonious criminal crime because the Federal Court **did not** have territorial (legislative) jurisdiction over [t]he [p]lace wherein the criminal activity alleged to have occurred. Simply put, no matter how far outside the record the Federal Government goes, it is impossible for it to prove Mr. Graham committed a felony offense against the laws of the United States, unless the alleged criminal activity Mr. Graham is said to have committed occurred over **land** under the concurrent or exclusive territorial (legislative) jurisdiction or pursuant to a provision in the United States Constitution where the power to "**punish**" has been

delegated, by enumeration. The Federal Government's power under a grant of concurrent jurisdiction is limited by the terms of the cession.

"Actual Innocence" means factual innocence, not mere legal insufficiency. In other words, the Government is not limited to the existing record to rebut any showing that petitioner might make." **Bousley v. U.S.**, 523 U.S. 614, 623-24 (1998).

10. Selling drugs is illegal in many countries. Like Australia and China, for example. This does not make a defendant guilty of Australian or Chinese crime. The same proposition is true of federal crimes. Unless a defendant commits the criminal activity within some place under their exclusive or concurrent jurisdiction, or pursuant to a provision of the Constitution where the power to "punish" [i]s [d]elegated by enumeration, Mr. Graham has not committed a felonious federal crime. The only exception is that they can prosecute misdemeanor crimes if it has some relation to the execution of a delegated power. Again, if the Federal Government had the inherent power to punish felonies, there would be no need for jurisdiction to be ceded or to delegate, by enumeration, the power to "punish".

"In criminal cases we have said that a person convicted by a court without jurisdiction over the place of the crime could be released from restraint by habeas corpus." **U.S. v. Williams**, 341 U.S. 58, 66-67 (1951)(citing **Bowen v. Johnson**, 306 U.S. 19, 27 (1939)).

11. If the Federal Government really could exercise an undelegated and implied power to "punish" under the commerce clause, then why do the F.R.Cr.P. ("Federal Rules of Criminal Procedure") limit their territorial reach to prosecute felonious "interstate commerce" crimes and misdemeanor offenses as if the courts are legislative courts?<sup>1</sup> Perhaps the skeptics (Federal Government)

---

1. Article I court. Legislative court. A type of federal legislative court that is not bound by the requirements of or protected under U.S. Const. Art III, § 2, and that performs functions similar to those of an administrative agency, such as issuing advisory opinions. U.S. Art. I, §8. **Black's Law Dictionary**, Fourth Pocket Edition, page 47.

Territorial court. A U.S. court established in a U.S. territory (such as the Virgin Islands) and serving as both a federal and state court. The

could show Mr. Graham where In The Law it proves Appellant Graham is wrong? If they could do that then they will have accomplished something even the federal judges and U.S. Attorneys, which hold Masters and Doctorates in Law have not been willing or able to do. The only answer they have been able to muster so far is that the Supreme Court told them they could exercise the power.

Appellant Graham has news for them, judge made law (precedent) does not trump the Constitution if their opinions are in conflict with that instrument.

However, the Supreme Court **told them NO SUCH THING!** Even if the Supreme Court did, they cannot legislate for Congress who alone holds that power and, more importantly, has not legislated that way. Neither has the Constitution been amended, delegating, by enumeration, the power to **define** and "punish" felonies committed in interstate commerce.

"In a government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously. Our government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by example. Crime is contagious. If the Government becomes the lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy. To declare that in the administration of the criminal law the end justifies the means---to declare that the Government may commit crimes in order to secure the conviction of a private criminal--- would bring terrible retribution, Against that pernicious doctrine this Court should resolutely set its face." **Olmstead v. United States**, 277 U.S. 438, 485 (1928)(dissenting opinion).

12. Of major significance is the fact that, since the enactment of our current Judiciary Act, people, like Mr. Graham, are being continually found guilty of Federal crimes they are not guilty of committing, and/or of which the current "United States district courts" have no authority to judge. For example, "interstate commerce" and "firearms" crimes. For the law to be effective, jurisdiction must exist.

13. The U.S. District Court for the Southern District of Georgia,

---

CONTINUED: Constitution authorizes Congress to create such courts. U.S. Const. Art. IV, § 3, cl. 2. **Black's Law Dictionary**, Eighth Edition, page 384.

Brunswick Division did not have jurisdiction of the offenses alleged in the indictment against Mr. Graham as the alleged offenses took place on private land not owned by or ceded to the Federal Government ("United States"). In essence, the Federal Government's jurisdiction effectively stopped at Mr. Graham's property line.

14. ~~The Supreme Court explained that, "jurisdiction is power to declare~~ the law, and when it ceases to exist, the only function remaining to the [tribunal] is that of announcing the fact and dismissing the cause," and that, "[W]ithout jurisdiction the court cannot proceed at all in any cause".<sup>2</sup>. As the Article III "circuit court of the United States" for the District of Massachusetts stated:

"A question has been made by the learned counsel for the prisoner, as to the jurisdiction of the court. This is, in its nature, a preliminary question; for if the court have not jurisdiction of the offense alleged in the indictment, it would be superfluous to proceed in the inquiry relative to the guilt or innocence of the prisoner. The objection rests on the terms of the cession, by the commonwealth to the United States, of the ground occupied for a navy yard." U.S. v. Travers, 28 F.Cas. 204 (1814).

15. Legislative courts, such as the United States District Court for the Southern District of Georgia's Brunswick Division (non Article III courts) had no subject-matter jurisdiction over Mr. Graham's case, or cases that occur outside of Federal Territories or other property under the concurrent or exclusive jurisdiction of the Federal Government. Article III courts, on the other hand, are simply authorized to take jurisdiction of subject-matter. They extend the judicial power of the United States to all cases and controversies arising under the Constitution and Laws of the United States occurring within the several Union States, including the high seas. This, of course, is qualified by the

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2. *Union Pacific R.R. v. Brotherhood*, 275 L.Ed.2d. 428, 445 (2009), citing *Steele Co. v. Citizens for Better Env.*, 523 U.S. 83, 94 (1998), quoting *Ex parte McCardle*, 7 Wall 506, 514, 74 U.S. 506 (1869); see also *Ruhrgas A.G. v. Marathon Oil*, 526 U.S. 574, 577 (1999).

limitations on the powers granted contained in the Constitution. As the Supreme Court recently stated, "[A] law beyond the power of Congress, for any reason, is no law at all." **Carol Anne Bond v. United States**, 131 S.Ct. 2355 (2001)(internal quotation marks ommitted). Keeping in mind, the Supreme Court has stated that:

"A Juduciary free from control by the Executive and the Legislative is essential if there is a right to have claims decided by judges who are ~~free from potential domination by the other branches of government.~~"  
**U.S. v. Will**, 449 U.S. 200, 217-18 (1980).

16. Mr. Graham cannot be free from control of the Executive and Legislative branches of the Federal Government if the courts Mr. Graham are being prosecuted in are legislative courts (**non Article III courts**), and the prosecutor(s) are from the Executive branch of the Federal Government. The union of legislative and judicial powers is pronounced to be, in the words of Mr. Madison, "The very definition of tyranny," **Federalist No. 47**, or as Thomas Jefferson says "Precisely the definition of a despotic government." (**Notes on Virginia, 195**).

17. The Supreme Court established the general principle that parties like Mr. Graham's to a case or controversy in a federal forum are entitled to have the cause determined by judges with salary and tenure guarantees under Article III. The **Marathon** Court cataloged three limited exceptions to that general principle: territorial courts, military tribunals, and "public rights" cases. **Northern Pipeline v. Marathon Pipeline**, 458 U.S. 50, 64-70 (1982).

18. In this cause of action involving an alleged criminal defendant like Mr. Graham, **Article III** protections should have been most zealously regarded because Mr. Graham's individual liberty was at stake and the Legislative and Executive branches are currently making **federal** criminals of people just like like Mr. Graham who have committed no federal crimes. Justice Douglas of the Supreme Court, in a dissenting opinion, emphasized this important function of Article III when he wrote:

"The safeguards accorded Art. III judges were designed to protect the litigants with unpopular or minority cases or litigants who belong to despised or suspect classes; Kurland, The Constitution and the Tenure of Federal Judges: some notes from History, 36 U. Chi. L. Rev. 665, 698 (1969)(life tenure of Federal Judges "not created for the benefit of the judges but for the benefit of the judged."). Palmore v. U.S., 411 U.S. 389, 412 (1973).

19. The Ninth Circuit, enunciating that non-Article III judges can prosecute criminal cases under Article I, § 8, cl. 17 stated that:

"When Congress legislates with respect to the District of Columbia and the federal enclaves, it acts as a state government with all powers of a state government." See Paul v. United States, 371 U.S. 245, 263 (1963).

"In Palmore at 390-91 the Supreme Court established "whether a defendant charged with a felony under the District of Columbia Code may be tried by a judge who does not have protection with respect to tenure and salary under Art. III of the Constitution." Id at 390. The Court held that under clause 17 Congress could provide that such a defendant could be tried before a non-Article III judge [a judge who does not have protection with respect to tenure and salary under Art. III of the Constitution]. Id at 390-91.

"[C]ause 17 does not distinguish between the District of Columbia and other enclaves. See Paul at 263 ("The power of Congress over the federal enclaves that come within the scope of Art. I, § 8, cl. 17, is obviously the same as the power over Congress over the District of Columbia"). Under clause 17 Congress acts as a State government with total legislative, executive and judicial power." Palmore, 411 U.S. at 397.

"Thus, the requirement of Article III are consistent with the establishment by Congress of non Article III courts to enforce federal criminal laws in special geographic areas where, pursuant to clause 17, it functions as a state government." See Marathon Pipeline, 102 S.Ct. at 2874 (emphasizing Congress' unique power under Article I, § 8, cl. 17 to legislate in certain geographic areas).

20. In the preceeding citations, you will note that under Article I, § 8, cl. 17, Congress operates as a "State" government within the District of Columbia and their own territories not yet Union States? That's why the definition of "State" in the Federal Rules of Criminal Procedure Rule 1(b)(9), does not list any of the several 50 Union States? And that under positive law at Title 28 U.S.C. § 2072(b), "All laws in conflict with such rules shall be of

no further force or effect after such rules have taken effect? It is because "Commerce ... is regulated by prescribing rules."<sup>3</sup> "What is this power? It is the power to regulate, that is, to prescribe the rule by which commerce is to be governed." **Gibbons v. Ogden**, 9 Wheat 1, 189-90, 196 (1824), and the Constitution does not delegate the power to "punish" felonies under the commerce clause. ~~This also explains why the alleged legislative "United States district courts"~~ are sitting throughout the several 50 Union States instead of Article III "district courts of the United States." The Government's **presumption** as Mr. Graham has previously stated is that his alleged felonious "interstate commerce" crime has occurred on Federal land under the concurrent or exclusive jurisdiction of Congress. If that has not occurred on such land then there was no felonious federal crime. Only the Union State could prosecute such crimes--- if they so legislated, however the State of Georgia dropped the case and asked the Federal Government, knowing full well that the State of Georgia could not confer jurisdiction upon the Federal Government, asked the Federal Government if they wanted to pick up the case. See U.S.D.C. Middle Dist. of Florida No. 5:21-CV-369-WFJ-PRL, Doc. 1, pg.15, ¶.43 through pg.16, ¶.44. Neither the State nor the parties can confer jurisdiction upon the federal court, either by waiver or agreement.

### A R G U M E N T S

21. Congress has established a total of 13 Circuits and numerous judicial districts throughout each of the Union States. Federal statutes codified in Title 28 U.S.C., create a United States court of Appeals and a "United States district court", in each Circuit and judicial district. Of major significance

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3. Commerce, undoubtedly ... is regulated by prescribing rules for carrying on that intercourse. What is this power? It is the power to regulate; that is, to prescribe the rule by which commerce is to be governed. **Gibbons v. Ogden**, 9 Wheat 1, 189-90, 196 (1824)(Chief Justice Marshall).

is the fact that the judicial districts throughout the Union States are not the same as the judicial District of Columbia or the judicial district of Puerto Rico, because Congress does not have exclusive jurisdiction<sup>4</sup>. over all the land within the Union States like they do over the District of Columbia and Puerto Rico. The District Columbia was ceded by Maryland and Virginia to Congress under the Constitution for the United States of America and Puerto Rico is a territory not admitted as a Union State.

22. Mr. Graham can only speculate that Congress created these judicial districts in order to more easily identify places (**land**) where a federal crime is committed. This also enabled Congress to establish limits on the geographical boundaries applicable to each "United States district court" in civil actions and criminal cases wholly within those judicial districts. In other words, the "United States District" being the places within a judicial district under their exclusive or concurrent jurisdiction (territorial jurisdiction). However, **only Article III "district courts of the United States"** are authorized under the Constitution to extend the judicial power of the United States to **civil controversies** and criminal cases occurring within any judicial district where jurisdiction has not been obtained through consent to purchase or cession.

23. It is apparent that the establishment of these judicial districts only helped to further the ruse<sup>5</sup>. that Congress has nationwide jurisdiction to punish Mr. Graham along with all the other We the People under the commerce clause when

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4. **Exclusive jurisdiction.** That power which a court or other tribunal exercises over an action or over person to the exclusion of all other courts. That forum in which an action must be commenced because no other forum has the jurisdiction to hear and determine the action. **Black's Law Dictionary**, 6th Ed., page 564.

5. **Ruse.** A wily subterfuge. Syn see **TRICK**. Webster's Ninth New Collegiate Dictionary (1991), page 1,032.



they do not. Take for example, drug crimes. There is nothing stopping a Union States from criminalizing the transportation of drugs in or out of its territory. Instead, the Union States have criminalized drug possession and sales. We do not need the Federal (Central) Government to police the entire country, under the guise of regulating interstate commerce, because criminals ~~are capable of committing a felonious crime in one Union State and then escaping~~ to another Union State. The Framers never delegated such power to the Federal Government. Instead, the Constitution provides that:

"A person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the Crime." Article IV. § 2, cl. 2, U.S. Constitution.

24. In order to pull off this fraud that Congress can punish felonies under the guise of regulating interstate commerce, the United States Attorneys indict as if the entire judicial districts in each of the Union States were actually under the exclusive or concurrent jurisdiction of the Federal Government. Mr. Graham knows they are not because the Federal Government does not own the private land where Mr. Graham is alleged to have committed a federal crime, within its judicial district. The Federal Government also insist that their is an implied power to "punish" under the commerce clause and can be utilized as necessary and proper to the execution of not only that power but all of their powers. That is not merely subterfuge, but rather, malicious fraud.

25. Before proceeding further, here is what the power to "punish" actually is. The enumerated power to "punish" delegated in the Constitution is a grant of power to punish felonies nationwide. This is very apparent in Article I, § 8, cl. 10, (the High Seas clause), by simply reading the clause without the word Piracies: "To define and punish ... felonies ... ". Keep in mind that the power to punish felonies is united with whoever is sovereign over the land. This

power was not surrendered except in 3 Constitutional provisions: (1) Counterfeiting; (2) Piracies; and (3) Felonies committed on the high seas, and offenses against the Law of Nations, and Treason.<sup>6.</sup>

26. The proposition most often advanced is that the power of Congress to regulate "interstate commerce" contains an implied power to "punish" and can be ~~utilized whenever they deem it "necessary and proper"~~. Mr. Graham will prove otherwise and show this Court what the United States (Federal Government) does not want Mr. Graham and We the People to know and has hidden from the People for so long.

27. Implication of the power to "punish" under the commerce clause, by and through the necessary and proper clause, is **not favored nor appropriate**. Congress cannot grant themselves jurisdiction or an undelegated power to "punish" felonies, pursuant to their delegated power to regulate interstate commerce, whether they deem it "necessary and proper" because jurisdiction "cannot be acquired tortuously by desseisin of the State,<sup>7.</sup> and because "it [is] a fundamental precept that the rights of sovereignty are not to be taken away by implication."

28. As Chief Justice Marshall stated, "It is a rule of construction, acknowledged by all, that the exceptions from a power mark its extent," **Gibbons v. Ogden**, 9 Wheat 1, 189-191 (1824).

29. In other words, the fact that the power to "punish" has been

6. Article I, § 8, cl. 6; Article I, § 8, cl. 10; Article III, § 3, cl. 2.

7. **Fort Leavenworth R.R. v. Lowe**, 114 U.S. 525, 538-39 (1885)

**Tortious.** wrongful, of the nature of a tort. **Black's Law Dictionary**, 6th Ed., pg. 1,489.

**Disseisin.** Dispossession; a deprivation of possession; a privation of seisin; a usurpation of the right of seisin and possession, and the exercise of such powers and privileges of ownership as to keep out or displace him to whom these rightfully belong. **Black's Law Dictionary**, 6th Ed., p. 472.

**Seisin.** Possession of real property under claim of freehold estate. **Black's Law Dictionary**, 6th Ed., p. 1,358.

delegated, by enumeration, in other provisions of the Constitution, yet it has not been delegated by enumeration, under the commerce clause, is proof on its face that it is a power not delegated to Congress in aid of their commerce clause powers. A very recent Supreme Court opinion by Chief Justice Roberts himself, clearly states that:

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~~"The enumeration of powers is also a limitation of powers, because~~  
"[t]he enumeration presupposes something not enumerated." The Constitution's express conferral of some powers makes it clear that it does not grant others. And the Federal Government "can exercise only the powers granted to it."

"If no enumerated power authorizes Congress to pass a certain law, that law may not be enacted, even if it would not violate any of the express prohibitions in the Bill of Rights or elsewhere in the Constitution." National Federation of Indep. Bus. v. Sebelius, 183 L.Ed.2d. 450, 465-466 (2012)(citations omitted).

30. In 2016, Defendant, Graham unwittingly entered a plea of guilty and was subsequently sentenced on January 23, 2017, to the alleged violation of 18 U.S.C. § 2252A(A)(5)(b). Upon it being revealed that the District Court had no subject-matter jurisdiction, Mr. Graham on July 12, 2021, filed a Petition for a Writ of Habeas Corpus under § 2241 with the United States District Court Middle District of Florida - Ocala Division on the ground that the District Court lacked jurisdiction over the Defendant, as well as subject-matter jurisdiction involved in this cause of action. Mr. Graham contends that the crime alleged against him was committed on private Union State property not belonging to, ceded to, nor a part of United States (Federal Government) territories, therefore was an alleged State crime, involving a local defendant, local police, and a purely local situation, therefore the Title 18 statute alleged to have been violated cannot be applied to activities that are connected with interstate commerce. Defendant Graham also asserts that the federal Court's intervention into the case that should have been brought in an Article III, Union State Court, raises significant questions of interference with the Ninth and Tenth Amendments to the United States Constitution and to the due process rights of

Mr. Graham.

"[I]t is axiomatic that the prosecution must **always prove territorial jurisdiction** over a crime in order to sustain a conviction therefor, and thus territorial jurisdiction and venue are "essential elements" of **any offense** in the sense that the burden is on the prosecution to prove their existence." **United States v. White**, 611 F.2d. 531, 536 (CA5, 1980)(citations omitted).

31. On October 20, 2021, the U.S. District Court - Ocala denied Graham's Petition for a Writ of Habeas Corpus, filed pursuant to 28 U.S.C. § 2241, (**see Doc 3**), wherein the Court failed to resolve the matter and dismissed it as being frivolous, failing to **first review the facts as presented** or address "all claim(s) for relief" that the Petition contained. See **Clisby v. Jones**, 960 F.2d. 925 (11th Cir. 1992) where a "claim for relief" is any allegation of a violation of the Constitution. Id at 936. The Court shall take Judicial Notice of the **LAWFUL NOTICE OF THE FACTS STIPULATED IN CONNECTION WITH THIS PLEADING** filed into this case, made part hereof by reference as part of the Court's record. The Court shall take Judicial Notice of its own record in habeas proceedings. **McBride v. Sharpe**, 25 F.3d. 962, 969 (11th Cir. 1994), and Federal Rules of Evidence 210(b) "a court may take judicial notice of its own records and that of inferior courts". Id.

32. Further, the Court states in its denial of Oct 20, 2021, that Mr. Graham "seeks relief from conviction and sentencing imposed, in other words petitioner seeks a section § 2255 remedy". This is patently untrue and is clearly the Court Judge's [o]pinion not based on any facts of record or law and baseless speculation. The Petitioner is well aware that seeking relief from conviction and sentencing is not cognizable under § 2241. **[I]f** this Court had [r]ead Mr. Graham's Petition at all it would have noted at **page 2 of the Petition, specifically at paragraphs 6 and 7**, wherein it states "¶6 Petitioner is NOT challenging the validity of the Federal judgment of conviction

or sentence which are generally raised in 28 U.S.C. § 2255 or § 2254 proceedings." Mr. Graham clearly brought this Petition to this Court on ~~Con-~~  
**stitutional grounds** averring that the trial court lacked subject-matter jurisdiction over the case "therefore causing Petitioner's unlawfull detention and detainment." **see §7 (Doc 1) at pg. 2.**

33. [I]f the Court had bothered to read Petitioner's pleading, it would have seen that Mr. Graham is entitled to the relief sought where he clearly alleged "detailed factual allegations" of constitutional dimension that were evidenced by Supreme Court citations which to this very day still have standing therein. Wherein, Mr. Graham's Habeas Corpus Petition, filed pursuant to Title 28 U.S.C. § 2241, he challenges: (1) that the complaint/information of indictment fails to charge an offense against the laws of the "United States" (Federal Government) because no jurisdiction has been ceded or accepted over the place where the alleged criminal activity is alleged to have occurred, (2) that the trial Court is without subject-matter jurisdiction under 18 U.S.C. § 3231, and (3) that the alleged criminal statute allegedly violated exceeds the power of Congress as applied to Mr. Graham's conduct, because it violates his "due process" rights secured by the Fifth Amendment, and encoroaches on the sovereignty and jurisdiction of the Union State of Georgia in violation of the Tenth Amendment. **Please refer to Petitioner's Petition for a Writ of Habeas Corpus (Doc 1)** for full argument datails, made part hereof by reference specifically at pages 4 through 25, at paragraphs 15 through 65 where the Petitioner submitted the Petition based on actual innocense as well as lack of subject-matter jurisdiction.

34. The Court and or government has failed to resolve Petitioner's claim(s) or to submit into the record any ~~Bona-fide~~ evidence to establish its position, or its denial, other than a non binding **"opinion"**. It has failed

to provide: (1) Any documented evidence showing ownership by the "United States" (federal Government) over the place where Graham's criminal activity is alleged to have occurred in the complaint/indictment, and (2) And cessions and acceptance of jurisdiction as required under **Article I, §8, c. 17**, and 40 U.S.C. 3112.

Petitioner **objects** to this, as well as the Court's severe and blatant lack of factually based evidence, "findings" which clearly appear to be lacking, for the record, where it is clearly Judge Jung's "[O]pinion".

35. Should Petitioner file an extra-ordinary "Writ of Mandamus" with the Supreme Court to compell the U.S. District Court in Ocala just to force it to deal with Petitioner's Habeas Corpus petition? Perhaps?

#### CONCLUSION

36. As the U.S. District Court in Ocala has failed to review the evidence presented to it within Petitioner Graham's Petition for a Writ of Habeas Corpus filed pursuant to 28 U.S.C. § 2241 and has failed to base its findings and/or its denial on any facts of law, or to rebut Petitioner's claim(s) one for one, but rather based its denial on an opinion, it is this Petitioner's prayer that this Honorable Court will:

(A) resolve the issue(s) and claim(s) presented and remand to the U.S. Disrtrict Court - Ocala Division with instructions that the manifest-injustice, the "defect", be corrected;

(B) Declare that the trial Court lacked subject-matter jurisdiction which was violative of Mr. Graham's Constitutional rights and order that it issue the writ of Habeas Corpus commanding F.C.I. Coleman - LOW Warden Kathy Lane to produce the body of the Petitioner before the Court at a time and place to be specified in the Writ, on the grounds that the Petitioner is unlawfully being detained and restrained of his liberty;

(C) Order the U.S. District Court - Ocala Division to conduct a hearing and inquiry into the cause of the Petitioner's detention;

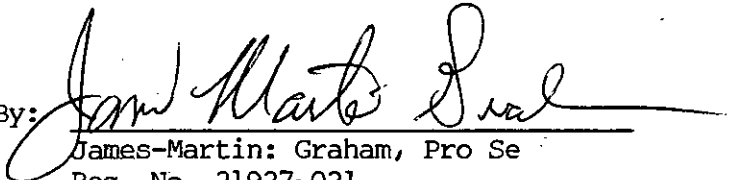
(D) Following the hearing, order the U.S. District Court - Ocala Division to discharge and release Petitioner from his confinement, detainment, restraint, and restore his liberty, followed by the expungement of his Court record.

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(E) Any other relief that this Honorable Court deems just and proper.

Executed on this 10 day of Nov, 2021.

Respectfully submitted,

By: 

James-Martin: Graham, Pro Se  
Reg. No. 21927-021  
F.C.I. Coleman - LOW  
P.O. Box 1031 Unit C-1  
Coleman, Florida 33521-1031  
Special and Private

# Exhibit C-8

## CERTIFICATE OF SERVICE

I, James-Martin: Graham, certify that the foregoing is true, correct and made with my firsthand knowledge pursuant to the penalty of perjury, 28 U.S.C. § 1746(1), that on the date affixed below, I did place into the prison mailing system: (1) **APPELLANT'S BRIEF** Case No. **21-13842-E** enclosed in an envelope that was addressed to the United States Court of Appeals for the Eleventh Circuit, 56 Forsyth Street Atlanta, Georgia 30303. Said mail article contained the proper amount of First Class United States Postage affixed thereto. Said Appellant's Brief was mailed in a U.S. Postal Service Priority mailer containing Tracking Number: 9114 9023 0722 4732 1026 23.

It appears that the parties to this action are registered with the CM/ECF Electronic Docketing System, therefore I request service by that method as well, as I am proceeding pro se.

Execute this 10 day of Nov, 2021.

Respectfully submitted,

By: 

James-Martin: Graham #21927-021  
F.C.I. Coleman - LOW  
P.O. Box 1031 Unit B-2  
Coleman, Florida 33521-1031  
Proceeding, Pro se



UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

Exhibit C-9

James-Martin: Graham  
a Private man, pro se

Petitioner,

v.

CASE NO. 21-13842-E

WARDEN, KATHY LANE,  
F.C.I. COLEMAN - LOW

JUDGE, LISA GODBY WOOD,  
AUSA, MARCELA C. MATEO,  
AUSA, GREGORY E. GILLULY JR,  
JUDGE, BENJAMIN W. CHEESEBRO.

In their Individual  
and Official Capacities

Respondent(s),

Special and Private

LAWFUL NOTICE OF THE  
FACTS STIPULATED IN CONNECTION WITH THIS PLEADING

By. 

James-Martin: Graham, Petitioner

Reg. No. 21927-021

By Special Visitation, not general  
Proceeding, Pro Se. all Rights Reserved

F.C.I. Coleman - LOW

P.O. Box 1031 Unit B-2

Coleman, Florida 33521-1031

FACTS STIPULATED IN CONNECTION WITH THIS PLEADING

The following facts are hereby stipulated by the Movant in connection with this pleading and the Movant's legal relationship with the U.S. government, this court, and Movant's attorney, who is an officer of the court, whose duty is due first to the court rather than his client, inclusively referenced herein as (the government). Pursuant to F.R.Cv. P Rule 8(b)(6), a failure to deny these facts as the Movant has submitted them, point-for-point, within 10 days of the Respondent's receipt of this pleading shall constitute an affirmative admission of the truthfulness moving forward. ANY denials and rebuttals must be ink signed under the penalty of perjury by any person denying, and that the person denying must have firsthand knowledge of the facts indicated, as Movant attests to herein.

At all times in the past, present, and future, James-Martin: Graham reserves ALL Rights and waive or consent to waive none in relation to any government, government body, or government representative. Movant instead insists on ABSOLUTE equity and equality in relation to any and every government, government body, and government representative.

LEGAL REQUIREMENTS IMPOSED UPON RESPONDENT

Pursuant to the Administrative Procedures Act 5 U.S.C. § 556(d) and 26 U.S.C. § 7491, you as the moving party asserting a position contrary to the Movant's, or to the facts or laws documented herein, have the burden of showing the facts and statements made are false, and you must satisfy the following requirements of evidence in your challenge:

- (a) Must conform completely with the laws and judicial president;
- (b) Must be admissible ~~bona-fide~~ evidence;
- (c) Everything movant presents must be rebutted, point-for-point;
- (d) All Code citations must be certified true and enacted into positive

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law.

(e) Respondent must prove that every citation of the Code cited is individually a positive law, which is the ONLY type of admissible, non-presumptive evidence having to do with written law.

If your evidence is from a witness, then that witness must agree on a notarized affidavit to be financially liable for making a false statement and an address where that witness can be served with legal process must be provided in case litigation becomes necessary because of his/her misrepresentation. The notarization must include the full legal name of the witness, a copy of their passport or other legal identification, e.g., drivers license, and the address where the witness can be served with legal process if they make false statements.

If the Respondent's evidence relates to the alleged liability of the movant who does not maintain a domicile on federal property, then any court citations must come from a state court because:

(a) The Supreme Court in Erie Railroad v. Tompkins, 304 U.S. 64 (1938) that there is no federal common law in a state of the Union;

(b) The Rules of Decision Act, 28 U.S.C. § 1652 says that the law to be applied in the courts is state law not federal law, and especially when the domicile of the Defendant is on state property and not on federal property;

(c) F.R.Cv.p. Rule 17(b) states that the capacity to sue or be sued is based on the domicile of the Defendant. If that domicile is in a state and not on land ceded to the federal government or under the general federal jurisdiction, then no federal statute or federal jurisdictional precedent may be cited as an authority in the case.

If the Respondent positively refuses to either sign or take personal responsibility in writing for every point in his rebuttal he/she will be

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held liable for any false statements contained therein.

How ironic it is that anyone from the government would insist on calling anything "truth" that absolutely no one conspicuously will claim legal responsibility for. How ironic also is it that the government' would base all of its positions against allegedly "frivolous" positions that it can't and won't take personal responsibility for, even though the Movant who argue against their unofficial position can and are held legally accountable for making "frivolous" arguments in the court and having their case dismissed. The Govmnt's assertion that the Movant's position is "frivolous" would equate to hearsay under the Hearsay Rule Federal Rules of Evidence 802 and amount essentially to "political propaganda" and "false commercial speech" unless and until they are authenticated and the authors are identified and held liable for their dubious and deliberate usage of deceptive statements therein.

Federal Courts have repeatedly said that no one may rely upon the statements of public servants in forming a reasonable belief.

#### SIGNIFICANCE OF CERTAIN RESPONDENT'S STATEMENTS

Governments are notorious for LYING to the public with impunity, as documented in:

Lies The Government Told You: Myth, Power, and Deception in American History, By: Judge Andrew Napalitano

Reading law: The Interpretation of Legal Texts, Supreme Court Justice Antonin Scalia and Bryan A. Gardner.

As a result of the above, the Movant must take care to constrain the nature of the government's FACTUAL response(s) and claim(s) are verified under the penalty of perjury with the full legal birth name and address where he/she may be served with legal process for LYING.

In addition, the First Amendment gives the Movant a right to communicate with the government as he sees fit. Included within that right is the right

Special and Private

to define the meaning and significance of certain words and actions, which are "symbols" that communicate an intention on the government's part. Therefore Movant is compelled to define all words and phrases that may be used by either side in this action in order to avoid the sin of presumption and avoid being injured by any presumptions. Consequently, for the purposes of this action and government's response(s) to it, the following shall conclusively apply:

(a) Any issues raised in this action that the government remains silent on, do not specifically address point-for-point, or do not explicitly rebut point-for-point shall constitute an admission and an estoppel in pais for all future litigation on this subject. This is a requirement of F.R.Cv.P. Rule 8(b)(6), which says that failure to deny (with evidence rather than opinion) shall constitute an admission. Cf. Baxter v. Palmigiano, 425 U.S. 308, 317-18, (1976); Doe v. Glanzer, 232 F.3d. 1258 (9th Cir 11/17/2000).

Any use of the word "frivolous" in the government's response shall mean "correct and truthful". Movant has a protected First Amendment right to communicate with the government as Movant sees fit. This means that the government must communicate with Movant in a language that he understands and defines. If the people who speak Spanish are entitled to an interpreter in court, then Movant is entitled to a similar "interpreter". Movant's "language" does not include the word "frivolous" or any variation thereof commonly used by the legal profession. Those wanting to contest anything Movant says or has put into writing as incorrect must express exactly what is incorrect and do so under the Rules of Evidence (not hearsay) established above only using legally admissible evidence consistent with that identified above. The word "frivolous" therefore equates to hearsay.

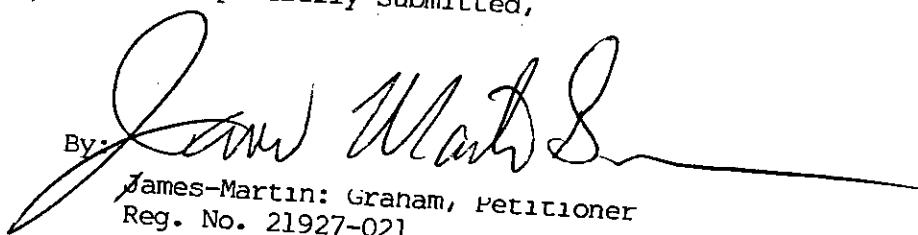
The expression of a personal or agency opinion rather than providing legally admissible evidence under the penalty of perjury supporting

the government's position shall constitute an admission of the truthfulness of everything not rebutted with such legally admissible evidence. Movant is not interested in self-serving "opinions", "agency propaganda", or agency "policy", but only facts and law that are relevant and admissible in a legal proceeding involving the issues raised herein. As such, ~~self-serving agency "rhetoric"~~ only proves that the government is administering the "public trust" as a "sham trust" for its own benefit as "trustee" and not for the benefit of the public who the trust was created to serve. The Supreme Court has declared that we are a "Society of Law and not men". Marbury v. Madison, 5 U.S 137; 1 Cranch 137, 2 L.Ed. 60 (1803). This means that we are NOT a "Society of Policy", because "policy" is NOT law, except in a monarchical or dictatorial form of government that is anathema to our system of republican government.

Executed this 10 day of Nov 20 21.

Respectfully submitted,

By:

  
James-Martin: Graham, Petitioner  
Reg. No. 21927-021  
By Special Visitation, not general  
Proceeding, Pro Se. All Rights Reserved  
F.C.I. Coleman - LOW  
P.O. Box 1031 Unit B-2  
Coleman, Florida 33521-1031

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

\_\_\_\_\_  
No. 21-13842-E  
\_\_\_\_\_

Exhibit D

\_\_\_\_\_  
JAMES MARTIN GRAHAM,  
\_\_\_\_\_

Petitioner - Appellant,

versus

FCC COLEMAN - LOW WARDEN,

Respondent - Appellee.  
\_\_\_\_\_

\_\_\_\_\_  
Appeal from the United States District Court  
for the Middle District of Florida  
\_\_\_\_\_

ORDER:

James Graham, a federal prisoner, seeks leave to proceed *in forma pauperis* ("IFP") to appeal the dismissal of his 28 U.S.C. § 2241 habeas corpus petition. The district court dismissed Graham's § 2241 petition because it attacked the validity of his conviction and sentence, rather than its execution, so his claims were not properly raised in a § 2241 petition. Because Graham seeks IFP status, his appeal is subject to a frivolity determination. *See* 28 U.S.C. § 1915(e)(2)(B). An action is frivolous if it is without arguable merit in law or fact. *See Napier v. Preslicka*, 314 F.3d 528, 531 (11th Cir. 2002), *overruled on other grounds by Hoever v. Marks*, 993 F.3d 1353 (11th Cir. 2021) (en banc).

Graham cannot raise an issue of arguable merit on appeal from the district court's dismissal of his § 2241 petition. Graham could not proceed under § 2241 based on the "saving clause" in 28 U.S.C. § 2255(e), because he did not demonstrate that a § 2255 motion to vacate was inadequate

or ineffective to test his claims that the trial court lacked jurisdiction over his criminal prosecution or that the statute under which he was convicted was unconstitutional, as both of these claims were cognizable in a § 2255 motion. See 28 U.S.C. § 2255; *McCarthan v. Dir. Of Goodwill Indus.-Suncoast, Inc.*, 851 F.3d 1076, 1081 (11th Cir. 2017) (en banc) (stating that a § 2255 motion is the exclusive mechanism for a federal prisoner to seek collateral relief, unless he can satisfy the “saving clause” in § 2255(e)). Furthermore, Graham failed to properly invoke § 2255(e)’s saving clause because he was not challenging the execution of his sentence, the sentencing court was not unavailable in the sense that it had been dissolved, and no practical considerations prevented him from filing a § 2255 motion, as his initial § 2255 motion still was pending when he filed his § 2241 petition. See *id.*; *Antonelli v. Warden, U.S.P. Atlanta*, 542 F.3d 1348, 1352 (11th Cir. 2008).

For these reasons, this Court finds that Graham cannot raise a nonfrivolous issue on appeal and DENIES his motion for leave to proceed IFP.

/s/ Adalberto Jordan  
UNITED STATES CIRCUIT JUDGE