

22-6332
No. _____

IN THE SUPREME COURT OF THE UNITED STATES

In re James Dow Vandivere
Petitioner

ORIGINAL

Supreme Court, U.S.
FILED

NOV 01 2022

OFFICE OF THE CLERK

PETITION FOR WRIT OF HABEAS CORPUS

Pursuant 28 U.S.C. § 2241(c)(3)
Guaranteed pursuant to 18 U.S.C. § 4247(g)

Ref: District Court Case

No. 5:15-hc-02017-D

Type Case: Civil Pursuant
18 U.S.C. § 4248

This court's jurisdiction is found at 28 U.S.C. § 1651

QUESTIONS PRESENTED FOR REVIEW

1. Is Petitioner entitled to immediate Requested Relief when the originating party offers no claim(s) of De facto injury, presents no "Case" or "Controversies(s)", federal question or jurisdictional statement in his "Opening Brief that would give him standing to invoke the Art. III jurisdiction of the District Court?" [See: Exhibit "C"] [D.E.-1]
2. Is Petitioner entitled to immediate Requested Relief from this court when Petitioner was civilly committed by an Art. III District Court that was in want of any jurisdiction when opening party was without standing to invoke the jurisdiction of the Court? [Please see attached declaration]
3. Did this courts position change towards not endorsing "the doctrine of hypothetical jurisdiction" by a federal district court? When that court was in want of proper jurisdiction of the matter before it, this court should grant the petition and cause the immediate unconditional release of the petitioner. [see exhibit B]

HC-1

Supreme Court, U.S.

NOV 8 2022

OFFICE OF THE CLERK

UNAVAILABILITY OF RELIEF IN OTHER COURTS

No other court can grant the relief sought by this petition because:

1. On 12/21/2018, the United States District Court for the Eastern District of North Carolina denied Petitioner's motion pursuant Fed. R. Civ. P. 60(b)(4). Issues were lack of standing and jurisdictional challenges.
[D.E. 132] [See Exhibit "F"]
2. On 4/10/2019, the Fourth Circuit Court of Appeals Affirmed District Courts Denial of 12/21/2018 in a *per curium*, unpublished decision, [D.E. 143], Issues, same as above.

[Fourth Circuit Doc. #19-6015]

UNSUITABILITY

No other form of relief will be sufficient to protect the rights of the petitioner or preserve the ability to seek review of the lower court's decisions in this court because no other forms of relief, such as appeal or petition for certiorari from final judgment are available, e.g., in *Steel Co. v. Citizens*, 523 U.S. 83, this court rejected the "doctrine of hypothetical jurisdiction", stating "that doctrine carries the courts beyond the bounds of authorized judicial action and thus offends fundamental separation-of-powers principles. This court has held that, without proper jurisdiction, a court cannot proceed at all, but can only note the jurisdictional defect and dismiss the suit." [Id. 220]

Relief Sought

Petitioner respectfully prays the court grants his petition based on the merit of the questions presented in this petition and issue a writ of Habeas Corpus, pursuant to 28 U.S.C. §2241(c)(3), to be unimpaired pursuant to 18 U.S.C. § 4247(g) directed to:

1. R. Ramos, Warden, Butner FCI-1,
2. Current United States Attorney General;
3. James C. Dever III, United States District Court Judge, Raleigh, N.C.

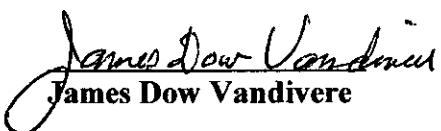
Directing and commanding these respondents to immediately and unconditionally "DISMISS" the action with prejudice, District Court, Civil Action, Docket No. 5:15-hc-02017-D, against this Petitioner, for lack of federal jurisdiction.

[Please refer to the attached declaration for additional facts, with exhibits, in support of the questions presented.]

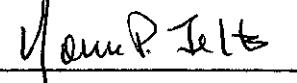
Conclusion

For these reasons, the Court should GRANT this petition for writ of Habeas Corpus and command respondents to immediately cause the unconditional release of this Petitioner.

Signed this 18th day
of Oct., 2022


James Dow Vandivere

Witnessed this 18th day
of OCTOBER, 2022



NORMAN P. FELTS

I declare under penalty of perjury that the foregoing Petition is true, correct, and documented. I have executed this Petition on Oct 18 2022, at Butner FCI, P. O. Box 1000, Butner N.C. 27509.

No. _____

DECLARATION IN SUPPORT FOR WRIT OF HABEAS CORPUS

1. DECLARATION OF James Dow Vandivere

1. My name is James Dow Vandivere I am over 18 years of age. I reside at Butner, FCI-1, P.O. Box 1000, in Butner, N.C. 27509, a Federal Correctional Institution. I am fully competent to make this Declaration and I have personal knowledge of all the facts stated in this Declaration are true, correct, and documented;
2. I am the petitioner in this matter. I make this declaration in support of my petition for Writ of Habeas pursuant to 28 U.S.C. § 2241(c); as provided for pursuant to 18 U.S.C. § 4247(g);
3. It should be noted that this petitioner is not an attorney. Petitioner had no other choice but to represent himself in *pro se* because over 400 attorneys were contacted by friends , family, my sponsor and myself with offers but all declined.

4. Attached to this declaration as Exhibits "A" through "F" are true and correct copies of pertinent Fed.R.Civ.P rules, pertinent Supreme Court well-settled holdings and district court orders contrary to these rules and decisions.

5. In *U.S. v. Comstock*, 560 U.S. 126 (2010), this Court ruled that Congress had the authority to enact the Adam Walsh Act (AWA) under the necessary and proper Clause of the Constitution, Art. I Sec. 8, cl. 8. The Court continued:

"We do not reach or decide any claim that the statute or its application denies equal protection of the laws, procedural or substantive due process, or any other rights guaranteed by the Constitution. Respondents are free to pursue claims on remand and any other they have preserved." [Exhibit "A"]

This decision was made 12 plus years ago. Much harm has taken place since. The time is ripe for the court to re-visit the statute again to see if indeed its application denies equal protection of the laws, procedural and substantive due process, and other rights guaranteed by our Constitution.

First and most importantly, the Act as currently applied, suspends the Standing Doctrine, Jurisdictional Doctrine and Ripeness Doctrine just to mention a few.

6. In *Spokeo*, 578 U.S. 330 (2016), this court stated "[it] is settled that Congress cannot erase Art. III's standing requirements by statutorily granting the right to sue to a plaintiff who would not otherwise have standing." "In no event... may Congress abrogate the Art. III minima."

Furthermore this court has held “It is well-established that federal courts are courts of limited jurisdiction and are “Presumed to lack jurisdiction in a particular case unless the contrary affirmatively appears. “[*Kokkonen*, 511 U.S. 375, 377].

7. Then in *Steel* 523 U.S. 83 this court declined to endorse the doctrine of hypothetical jurisdiction[.]” That doctrine carries the courts beyond the bounds of authorized judicial action and thus offends fundamental separation-of-power principles. This Court has held that, without proper jurisdiction, a court cannot proceed at all but can only note the jurisdictional defect and dismiss the suit. “For a court to pronounce upon a law’s meaning or constitutionality when it has no jurisdiction to do so is, by very definition, an ultra vires act,” [See Exhibit “B”]
8. In *Clapper*, 568 U.S. 398 this court held “Article III of the Constitution limits federal Courts’ jurisdiction to certain “Cases” and Controversies”. “As we have explained,” [n]o principle is more fundamental to the judiciary’s proper role in our system of government than the Constitutional limitation of federal court jurisdiction to actual cases or controversies.” *DaimlerChrysler*, 547 U.S. 332, 341 (2006)
9. “One element of the case-or-controversy requirement” is that plaintiffs “must establish that they have standing to sue,” *Id.* At 342, *Lujan*, 504 U.S. 555, 560.
10. “The Art. III doctrine that requires a litigant to have “standing” to invoke the power of a federal court is perhaps the most important of these doctrines. [*Allen*, 468 U.S. 737 at 751]

11. "The requirement of the standing, however, has a core component derived directly from the Constitution. A plaintiff must allege personal injury fairly traceable to the defendant's [Petitioner/Respondent] allegedly unlawful conduct and likely to be redressed by the requested relief. [454 U.S., at 472]
12. The party wanting to invoke federal jurisdiction bears the burden of establishing the three elements of standing, [FW/PBS, 493 U.S. 215, 231]. The first element is an indispensable part of Plaintiff's case. First and foremost the Plaintiff must have suffered an "injury-in-fact". Which is concrete and particularized, not conjectural or hypothetical. [Quoting Los Angeles, 461 U.S. 95 at 102] without the first element, the other 2 are irrelevant.
13. [See: Exhibit "C" D.E. #1;]
A review of this document will show; Document is VOID of Claim of De facto Injury, Federal Question, or Jurisdictional Statement. Without an injury claim there is no "Case" or "Controversy". Thus the threshold matter of establishing standing cannot be shown. Without standing, the party seeking to invoke the court's Art. III jurisdiction has not met his burden to sue. [See Fed. R. Civ. P. Rule 8(a)]
14. Without standing, the only jurisdiction the court would have is hypothetical and should not have proceeded at all other than announce the fact and dismiss the suit. To do otherwise is by very definition an ultra vires act.

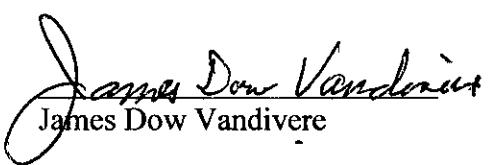
For these reason the court should GRANT the petition for Habeas Corpus.

LIST OF PARTIES IN COURT BELOW

1. James Dow Vandivere [Petitioner]
2. R. Ramos, [Warden, Butner FCI-1]
3. Current United States Attorney General
4. James C. Dever III, [U.S. District Court Judge] [Raleigh, N.S.]

Signed this 19th day
of October, 2022

Witnessed this 18th day
of OCTOBER, 2022


James Dow Vandivere


NORMAN P. FELTS

I declare under penalty of perjury that the foregoing information contained in this declaration in support of my petition for Writ of Habeas Corpus is true, correct, and documented. I have executed this petition on Oct 19 2022, at Butner FCI-1 P.O. Box 1000, Butner, N.C. 27509

Dear Justice Thomas,

11/22/2022

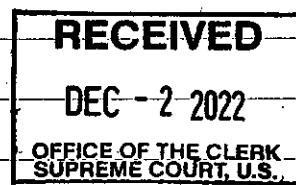
Please take Notice.

I am not a Lawyer,

My access to typewriters and copier is limited. The
HC Petition and Declaration was prepared by a friend
using a Word Processor outside the institution. I
pray that you will heed the need to revisit the
Adam Walsh Act to address how it's being applied
and the harm this application is doing.

I am 74 years old. I am 1 of 44+ others committed
under this Act. Most residents here are at least 50 yr.
old and some are as old as 80+. Many are wheelchair
confined. Others can hardly get around. Most pose
no threat to anyone — yet — we must stay here

for years and years.



I have exhausted all other means available to address the Main issue, which is the Gov's failure to establish any of the 3 elements required to claim Standing in order to envoke the Art. III jurisdiction of the Dist. Court. [See: Exhibit 3]. The court assumed hypothetical jurisdiction that of which this court has rejected. [See: Exhibit "B"]

Without Standing there can be no "case" or "controversy" as mandated by the Constitution. The Dist. Court has summarily denied 60(b)(6) challenges and 12(b)(6) challenges without explanation as commanded by Fed.R.Civ.P. Rule 52(a). The 21th Cir Court of appeals did the same thing. I now bring the issue to you and I pray that you will agree and cause the unconditional release of this petitioner.
Thank you

EXHIBIT "A"

We do not reach or decide any claim that the statute or its application denies equal protection of the laws, procedural or substantive due process, or any other rights guaranteed by the Constitution. Respondents are free to pursue those claims on remand, and any others they have preserved.

EXHIBIT "B"

Steel, 523 U.S. 83

(b) This Court declines to endorse the “doctrine of hypothetical jurisdiction,” under which several Courts of Appeals have found it proper to proceed immediately to the merits in question, despite jurisdictional objections at least where (1) the merits question is more readily resolved, and (2) the prevailing party on the merits would be the same as prevailing party were jurisdiction denied. That doctrine carries the courts beyond the bounds of authorized judicial action and thus offends fundamental separation-of-powers principles. In a long and venerable line of cases, this Court has held that, without proper jurisdiction , a court cannot proceed at all, but can only note the jurisdiction defect and dismiss the suit. See, e.g., *Capron v Van Noorden*, 2 Cranch 126, 2L Ed 229; *Arizonans <*pg. 221> for Official English v Arizona*, 520 US 43, 73, 137 L Ed 2d 170, 117 S Ct 1055. *Bell v Hood*, *supra*; *National Railroad Passenger Corp. v National Assn. of Railroad Passengers*, 414 US 453, 456, n 13, 38 L. Ed. 2d 646, 94 S Ct 690; *Norton v Mathews*, 427 US 524, 531, 49 L Ed 2d 672, 96 S Ct 2771; *Secretary of Navy v Avrech*, 418 US 676, 678, 41 L Ed 2d 1033, 94 S Ct 3039; (per curium); *United States v Augenblick*, 393 US 348, 21 L Ed 2d 537, 89 S Ct 528; *Philbrook v Glodgett*, 421 US 707, 721, 44 L Ed 2d 525, 95 S Ct 1893; and *Chandler v Judicial Council of Tenth Circuit*, 398 US 74 86-88, 26 L Ed 2d 100, S Ct 1648, distinguished. For a court to pronounce upon a law’s meaning or constitutionality when it has no jurisdiction to do so is, by very definition, an ultra vires act.

(c) Respondent lacks standing to sue,. Standing is the “irreducible constitutional minimum” necessary to make a justifiable “case” or “controversy” under Art. III, § 2. *Lujan v Defenders of Wildlife*, 504 US 555, 560, 119 L Ed 2d 351, 112 S Ct 2130. It contains three requirements: injury in fact to the plaintiff, causation of that injury by the defendant’s complained-of conduct, and a likelihood that the requested relief will redress that injury.

Exhibit "C" D.E.-1

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:15-HC-

UNITED STATES OF AMERICA,)	
Petitioner,)	
)	
v.)	<u>CERTIFICATION OF A</u>
)	<u>SEXUALLY DANGEROUS</u>
JAMES DOW VANDIVERE,)	<u>PERSON AND PETITION</u>
Register Number 99078-011,)	
Respondent.)	

The United States of America, by and through the United States Attorney for the Eastern District of North Carolina, hereby submits the attached Certification of a Sexually Dangerous Person pursuant to Title 18 U.S.C. § 4248(a).

Based on the above, the United States hereby petitions the Court to commit the Respondent to the custody of the Attorney General, pursuant to 18 U.S.C. § 4248(d).

Respectfully submitted, this 29th day of January, 2015.

THOMAS G. WALKER
United States Attorney

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EXHIBIT "D"

Standing

[4] "Standing to sue is a doctrine rooted in the traditional understanding of a case or controversy." *Spokeo*, *supra*, at ___, 136 S. Ct. 1540, 194 L. Ed. 2d 635. "The law of Article III standing, which built on separation-of-powers principles, serves to prevent the judicial process from being used to usurp the powers of the political branches." *Clapper v Amnesty Int'l USA*, 568 U.S., 398, 408, 133 S. Ct. 1138, 185 L. Ed. 2d 264 (2013). Our standing doctrine accomplishes this by requiring plaintiffs to alleg[e] such a personal stake in the outcome of the controversy as to...justify [the] exercise of the court's remedial powers on [their] behalf." *Simon v Eastern K. Welfare Rights Organization*, 426 U.S. 26, 38, 96 S. Ct. 1917, 48 L. Ed. 2d 450 (1976) (internal quotation marks omitted). To establish Article III standing, the plaintiff seeking compensatory relief must have "(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo*, *supra*, at ___, 136 S. Ct. 1540, 194 L. Ed. 2d 635. "Absent such a showing, exercise of its power by a federal court would be gratuitous and thus inconsistent with the Article III limitation." *Simon*, *supra*, at 38, 96 S. Ct. 1917, 48 L. Ed. 2d 450.

[5] Our standing decisions make clear that "'standing is not dispensed in gross.'" *Davis v Federal Election Comm'n*, 554 U.S. 724, 734, 128 S. Ct. 2759, 171 L. Ed. 2d 737 (2008) (quoting *Lewis v Casey*, 518 U.S. 343, 358, n. 6, 116 S. Ct. 2174, 135 L. Ed. 2d 606 (1996); alteration omitted). To the contrary, "a plaintiff must demonstrate standing for each claim he seeks to press and for each form of relief that is sought." *Davis*, *supra*, at 734, 128 S. Ct. 2759, 171 L. Ed. 2d 737 (internal quotation marks omitted); see, e.g., *DaimlerChrysler*, *supra*, at 352 126 S. Ct. 1854, 164 L. Ed. 2d 589 ("[A] plaintiff must demonstrate standing separately for each form of relief sought"); *Friends of the Earth, Inc. v Laidlaw Environmental Services (TOC), Inc.*, 528 U.S. 167, 185, 120 S. Ct. 693, 145 L. Ed. 2d 610 (1983) (a plaintiff who has standing to seek damages must also demonstrate standing pursue injunctive relief). The same principle applies when there are multiple plaintiffs. At least one plaintiff must have standing to <*pg. 71> seek each form of relief requested in the complaint. Both of the parties accept this simple rule. 3

EXHIBIT "E"

SUBJECT MATTER JURISDICTION

Subject matter jurisdiction in the United {2021 U.S. Dist. LEXIS 5} States District Courts exists in one of two circumstances: (1) when a **federal question** is presented, or (2) when there is diversity of citizenship between the parties and the amount in controversy exceeds \$75,000, 28 U.S.C. § 1331, 1332. If jurisdiction is premised upon a federal question, the plaintiff must **“assert a substantial federal claim,”** *Lovern*, 190 F.3d at 654 (quoting *Davis*, 856 U.S. at 650).

Exhibit 5

D.E. 132

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:15-HC-2017-D

UNITED STATES OF AMERICA)
Petitioner,)
v.) ORDER
JAMES DOW VANDIVERE,)
Respondent.)

On June 15, 2018, James Dow Vandivere filed a motion to set aside judgment [D.E. 119].

On September 26, 2018, Vandivere filed a motion to compel [D.E. 128]. The motions [D.E. 119, 128] lack merit and are DENIED

SO ORDERED. This 21 day of December 2018.

J. Dever
JAMES C. DEVER III
United States District Judge