Supreme Court, U.S.
FILED
DEC 14 2022
OFFICE OF THE CLERK

No. 22A571

IN THE
SUPREME COURT OF THE UNITED STATES

In re ANDRE BARNES
Petitioner,

V.

UNITED STATES OF AMERICA
Respondent.

APPLICATION FOR ISSUANCE OF A
CERTIFICATE OF APPEALABILITY
(Fed. R. App. P. 22 (b))

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TABLE OF AUTHORITIES CITED

Constitution, Statutes, Regulations and Rules

RELIEF SOUGHT

Petitioner Andre Barnes, respectfully moves this court for a cerificate of Appealability within the meaning of section 2353 (c) of Title 28 of the United States code and Rule 22 (b) of The Federal Rules of Appellate Procedure.

GROUNDS FOR APPLICATION

On Setember 14th, 2021 Petitioner filed motion to vactate his conviction and sentence from Judgment of the United States District Court for the Western District of New York on the grounds that the sentence was imposed in violation of Article III of the constitution the court was without jurisdiction to impose such sentence; and the sentence is subject to collateral attack because:

1. Violation of the warrant clause

Petitioner was arrested by warrant issued pursuant to an affidavit that is not based upon probable cause and is not sworn to under the penalty of perjury or otherwise "oath" therefore conferring no jurisdiction on the Magistrate to issue the arrest warrant violating the probable cause proscription of the Fourth Amendment of the constitution of the United States made applicable to the citizens of the states through the Fourteenth Amendment.

2. Violation of the Grand Jury Clause

Petitioner was originally indicted by federal Grand Jury for 4 counts of criminality. After putting forth evidentiary facts negating the allegations of the 4 counts, the Attorney for the Government dismissed the indictment superseding it with a 7-count indictment and thereafter, amended it again into a 9-count second superseding Indictment without resubmission to the Grand Jury violating the proscription of the Indictment clause of the Fifth Amendment of the constitution of the United states made applicable to the state citizens through the Fourteenth Amendment.

3. Void Judgement and commitment order

The caption of the Indictment identifies the court as the "district court of the United States" for the Western District of New York. The caption of the Judgement & commitment order, identifies the Court as the "United States District Court" for the Western District of New York.

therefore, the Judgement is void on its face. The U.S.D.st.Ct. W.D.N.Y. is not a court of criminal jurisdiction and does not have jurisdiction to enter criminal judgements & commitment orders for convictions on indictment returned in the district court of the United States. The Judgment violates the proscritions of Article III, sec I, and the Due Process and Equal Protection Clauses guaranteed to the citizens through the Fourteenth Amendment, not ommitting the seperation of powers.

4. Lack of Subject Matter Jurisdiction

There is no statutory nor constitutional basis for neither the district court of the United States for the Western District of New York or the United States District Court (W.D.N.Y.) to exerise sujeect SP Matter jurisdiction in the lower proceedings.

Petitioner is a citizen and resident of the state of New York, the alleged actual injured parties are all citizens and residents of the state of New York, the alleged criminal events arise in the general territory of the state of New York, therefore, the federal courts cannot exercise original jurisdiction, exclusive of the courts of the state of New York based on these criminal events. There is no preemption proscribed under the Act(s) of Congress, nor is abrogation provided for by the statutes charged. Congress does not occupy the field in the area of the conduct which forms the matter of this case.

Wereforre, both federal courts [sic] in the lower proceedings are usurping authority beyond the limitations imposed on the federal courts by Article III section 2, and are proceeding against the petitioner in violation of the Privileges and Immunities clause of Art. IV, Sec. 2 of the constitution of the United States and further in Violation of the Due Process and Equal Protection clause provisions guaranteed to the citizens of the states through the Fourteenth Amendment. And further violates the seperation of powers.

Procedural Status of Case

An application to the judges of the Supreme Court for a certificate of appealability is appropriate at this time because:

1. The U.S.D.St.Ct.W.D.N.Y. entered a final appealable judgement in this matter on February 14th 2022 denying Petitioner relief on his motion to vacate under 28 U.S.C. 2255

2. Petitioner desires to appeal this judgment as is authorized by section 2253(a) of Title 28 of the United States code. However, Section 2253(c)(1) and Appellate Rule 22(b)(1) requires a certificate of appealability as a precondition of proceeding with the appeal.

3. A timely notice of appeal directly to the Supreme court was filed in this matter 3/10/2022.

4. Petitioner filed to the district court in a prompt fashion for the issuance of a certificate of appealability in this matter. It does not appear that petitioner is required to file request for the certificate in the district court by the Appellate Rules of the second circuit.

5. On 2/14/2022 the U.S. D.St. Ct. W.D.N.Y., in the same orde[illegible] it denied petitioner's Motion to vacate, it also denied petitioner a certificate of appeability. The distric[illegible] stated that petitioner failed to show a substantia[illegible] constitutional right.

Procedural Status of Case Continued

he U.S. District Court denied Petitioners motion before he had opportunity to file his Reply to the government Answer "memer- lum. Petitioner requested extension on the grounds that he was olunterily indisposed in the special Housing Unit (SHU) without access his legal files. The F.B.O.P also had a 14-Day national prison :kdown based on violent gang war during this interval. Notwithstand- ; that the court granted the government a 60 day extension to swer petitioner's motion it denied petitioner's extension request.

A copy of Petitioner's motion to vacate under 28 U.S.C. 2255; The Govern- ents answer; The District Court order denying the motion. The order of e U.S. Court of Appeals (2nd cir.) denying Petitioner's direct appeal; e previous order of the court of Appeals in favor of the Petitioner calling its mandate in support of the District Courts denial of petitioner's rit of habeas corpus under 28 U.S.C. 2241 in related case Barnes v. Salina 9-cv-6015 (Now USCA2 # 19-284)

If permissable Petitioner requests that this motion be Joined with he above-mentioned related case and put before Associate Supreme ourt Justice Sotomayor, Sonia Hon.

A Jurisdictional statement pursuant sup. ct. R. 18.3 is forthcoming.

Petitioner request this action be construed into Petition for Writ of habeas corpus or in the alternative Writ of Mandamas, or Certiorari pending appellate judgment pursuant 28 U.S.C. 2101 (e) sup. ct. R 11.

ARGUMENT IN SUPPORT OF ISSUANCE OF CERTIFICATE OF APPEALABILITY

I. Petitioner Has Raised Substantial Showing of Denial of Constitutional Right In Issue Violation of Warrant Clause Claim.

The Warrant Clause of the Fourth Amendment Unambiguously proding o warrant shall but upon probable cause, supported by oath or ffirmation... applies equally to arrest as well as search warrants, ne inviolability of the accussed personal liberty or home is to be leterminded by the facts and not by rumor, suspicion or guess work. No arrest or search warrant shall be issued unless the judge has irst been furnished with fact under oath. If the facts afford the legal basis for the arrest or search warrant, the accused must take the consequences. However, equally there must be consequences or the accuser to face. If the sworn accusation is based on fiction, he accuser must take the chance of punishment for perjury. Hence, ne necessity of a swern statement of facts, because one cannot be onvicted of perjury for having a belief, though his belief is utterly nfounded in fact and law. The finding of the legal basis or conclusion of probable cause from the exhibited facts is a judicial function, and it cannot be delegated by the judge to the accuser Veeder vs. United States 252 Fed. 414 164 C.C.A. 338, United States vs. Kelih (D.C.) 2, 72 Fed. 484.

Notwithstanding the fact that the accusatory instrument facially isn't sworn to under oath, however, by the complaining officer's own trial testimony, it would be impossible to assign perjury to it...

ing the trial at cross-examination, the Complaining Office testified
t he did not attach any sworn statement of facts to his complaint;
t he did not obtain any sworn affidavits from any 3rd party witness
g. alleged victims) and impliedly could not be held to the consequences
perjury based on his complaint, the officer goes on to testify that
: complaint is based on his opinion which he surmises based on past
vestigations, and further, that he does not specifically recall any
.rson requesting that he have the petitioner arrested.

Groh vs. Ramirez 540 U.S. 551, 124 S.ct 1284, 157 L.Ed 2d 1068 (2004)
Supreme Court recently affirmed that every warrant must meet the
virement of the warrant clause, and be based upon probable cause
pported by oath or affirmation. Clearly this arrest warrant is not.

complaint not based on probable cause confers no jurisdiction on the
gistrate to issue an arrest warrant and entitles such person so
rested by warrant not supported by oath or affirmation to habeas
rpus relief. U.S ex rel King vs Cookey (N.D.N.Y.) 32 F.2d 793 (1929);
ce vs. Ames 180 US 371, 21 S.ct. 406, 45 L.Ed 577 (1901)
Paste Lane 6 F.ed 34 (1881).

en in the case of a trial conviction subsequeating from insufficint or
fective complaint & warrant, entitles the prisoner to discharge by
-it of habeas corpus Whiteley vs. Warden of Wyo. Pen. 401 US 560,
L.ed 2d 306, 91 S.ct. 1031 (1971)

The Government and District Court Claim the Petitioner Should be procedurally barred from raising this Federal Question hereafter, because he failed to raise it on direct appeal.
However, the Government and District court both are wrong because petitioner did address the jurisdictional difficulty with 28 U.S.C. 1291 of raising this 4th Amendment claim in his direct appeal at his "Jurisdictional statment" to the U.S. Court Appeals for the Second Circuit in his appeal brief explaining there, that [because] the District court declared that the complaint & Warrant #15-mj-651 was "not" before the court in the lower proceeding (USA vs. Barns #16-CR 6029) and emphatically refused to make any Judicial determination on the record as to the constitutionality of the Arrest Warrant, therefore, there were no Orders in the record relating to the warrant that were ripe for appellate review. citing Abney vs. United States 431 U.S 651 52 L.ed 651 (1977); Dibella vs. United States 369 U.S 121 82 S.Ct 654 9 L.ed 2d 614 (1967) "The right to appeal in a criminal case is purely a creature of statute". Hence, Petitioner was jurisdictionally barred from raising the claim on direct appeal by the "Rule of Finality" proscription of 28 USC 1291,
and there are no orders in the record that would otherwise meet the requirements of the "collateral order Doctrine" exception, Cohen vs. Benefical Loan Corp 337 U.S. 541, 69 S. Ct. 1221, 93 L.ed 1528 (1949) [If] the petitioner could have raised the claim of defective complaint & warrant on direct appeal, he would have raised it under Giordenello vs. United States 357 U.S 480, 2 L. Ed 2d 1503, 78 S. Ct 1245 (1958)

Thus, Petitioner did not raise this Federal Question on direct appeal because there was no appealable order, ergo, as a matter of law, he could not. Petitioner raised this claim by Habeas Corpus 28 USC 2241 Barnes vs. Salina #19-284

The warrant clause secures an individual's right against unreasonable seizure and seach and it is declared to be indispensable to the citizen's full enjoyment of personal security, personal liberty and private property.

Stare decis holds that notwithstanding trial conviction, an individuals constitutional liberty interest relates back to the time of his arrest and those rights cannot be extinguised by dragooning or usurption, (Fed. R. C. V. P. 15(c))

A defective accusatory instrment implicates the entire lower proceedings) rendering them null & void. See Weeks vs. United States 216 F. 292 (1914) "There can be no conviction or punishment for a crime without formal accusation. A court can acquire no jurisdiction to try a person for a criminal case unless he has been charged with the commission of the particular offense and charged in the particular form and mode required by law. If that is wanting, his trial and conviction is a nullity, for no person can be deprived of either life, liberty or property without due process of law.

The problem herein is that Petitioner's status before the court is not that of the individual citizen (but) something "else". The fact that petitioner appears in the legislative U.S. Dist Ct. W.D.N.Y. as a party defendant necessarily consequences that petitioner does not appear in the capasity of "idividual" citizen but "something" lacking personal rights and civil liberties as those concerned in the Bill of Rights and those similarly incorperated into the Fourteenth Amendment.

However, petitioner is a state citizen by record of the case and appears herein Pro se or otherwise in propria persona, for the purposes of collateral attacking the integrity of the lower proceedings and request that this Federal Question be transfered to the supreme court of the United States pursuant to Art. III, Sec. I, Cl. 1.

II Petitioner has raised substantial Showing of Denial of Constitutional Right with violation of Grand Jury Clause Claim

The Fifth Amendment of the U.S. Constitution provides: No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury." This provision is applicable to the citizens of the states through the Due process Clause of the Fourteeth Amendment.) (e.

(Petitioner is an African-American or otherwise Negro, and therefore derives no personality nor privilege of citizenship from the 5th Amendment (e.g. Dred Scott vs. Sanford) thus he reises this Due Process Claim under the 14th Amendment.) (e.g. Afroyim vs. Rusk 387 U.S 253, 18 L.Ed 27757 (1968)

The indictment here referred to is the presentment to the proper court under oath, by a grand jury duly impaneled of a charge desciding an offense against the laws for which the party may be charged. When this indictment is filed with the court no charges can be made in the body of the instrument by order of the court or by the prosecuting Attorney without resubmission of the case to the Grand Jury.

Petitioner contends that such a change in the indictment without resubmission occurs herein.

After dismissing all 4 counts of the original Indictment, the Government returned a 7-count superseding Indictment. At the arraignment the court advised the prosecuting attorney that count 3 was duplicitous because it spanned from September 2012 through May 2013 and the witness therein "C.B." went from being a minor person to an adult in the same count up until that point in the prosecution, the witness "C.B." had always been claimed to be an adult, thus the court advised that if the Assistant United States Attorney (A.U.S.A.) wanted to present "C.B." as a minor in the case the count must be split in two (2), the (A.U.S.A.) concluded the arraignment by declaring there would be "no additional discovery in the case."

The (A.U.S.A.) thereafter split the counts in two-parts, and further manufacturing an additional count returned before the court with a 9-count second superseding Indictment serving upon petitioner at arraignment.

Where, the dates and times of the related events in at 9 counts of the 2nd superder appeared on their face to be base upon witness's testimonies given before previous grand juries that were impaneled and convened in some counts "years" before this 2nd superseding grand jury was ever impaneled. And those grand juries that head these testimonies voted not to indict the petitioner base on the testimonies, then it does not follow that this new grand jury would vote to indict on those testimonies unless the witnesses changed their stories.

Furthermore, where the first two indictments were supported by grand jury session minutes matching the dates the indictments returned, and furthermore still, Where the original indictment was attested to by the original signature of the grand jury foreman, the signature of the (A.U.S.A) and attested by the stamp of the clerk of the court and the 2nd superseding Instrument was not signed by the foreman nor stamped by the clerk and bared the mere typewritten name of the (A.U.S.A) petitioner asked "Where then is the Grand jury minutes for this indictment?" The indictment claims these persons are known to the grand jury so, if the witnesses appeared and change their previous testimonies it would entitle petitioner to discovery of the new testimonies for impeachment purposes. (e.g. Brady vs. Maryland

The prosecutor made the changes in the body of the indictment at the advice of the Court, the court did not order the (A.U.S.A) to produce a copy of the grand jury session minutes for discovery at the request of the petitioner and the (A.U.S.A) declares the instrument lacks original signature and stamp because it was filed electronically. The (A.U.S.A) does not claim to have resubmitted the case to the grand jury when making the new Counts.

So, Petitioners question for the court is, [w]ithout the signature of the foreman attesting the act of the grand jury and stamp attestation by the clerk of court [How] does the attorney for the government evidence that this 2nd superseding was returned by the grand jury or that the (A.U.S.A) did not just simply manufacture this instrument using a microsoft word program and

Forward a copy of this modified version to the Court electronically as so claimed by the prosecutor, without ever having presented the new changes and additional Counts to the grand jury?

In respects to "Actual Innocence."
The 2nd superseding Indictment claims 3 minor victims, and 2 adults. Of the 3 minors, only (two) of them ever appeared before the grand jury, however, only (one) of them appeared before a grand jury investigating this case (USA VS. Barnes 16-CR-6029).
The minor witness "G.R." (Count 7) did not appear before the grand jury, whatsoever, however, the complaining officer's 302 summary, records that "G.R." told investigators and (A.U.S.A.) that petitioner never caused her to engage in a commercial sex act, nor did she claim such before the petit jury at the trial. Wherefore, petitioner is "actually innocent" of that Count concerning "G.R." (Count 7)

The witness "C.B." of Counts 5&6 grand jury testimony in Support of these Counts is based in whole, on the witness's testimony given in on entirely different investigation altogether and in no place in the testimony does the witness name the petitioner.

"G.B." testified before the grand Jury in the case of 15-CR-6058 United States Vs. Stephen Jones in 2014, some 4 years before the 2nd superseding indictment returned. Concidently the same prosecutor and complaining officer conducted this other investigation leading to the arrest and convictions of (two) seperate individuals (unrelated) based on this one same grand jury testimony.

When C.B. appeared and gave this same narrative on direct testimony at the trial of the petitioner, the petitioner Pro se, on cross-examination asked "C.B." didn't you already tell that same story to the grand jury about the guys "Martin" & "Jones", "C.B." admitted to this fact on the witness stand under oath. The (A.U.S.A.), upon this revelation, interjected that the testimonial evidence is admittedly "carried over" from the Stephen Jones case dating back years prior. The (A.U.S.A.) did not impeach her and court did not impeach the witness based on this fact of perjured testimony.

Facebook records in discovery show that petitioner began a dialoge with "C.B." in March 2013 when C.B was 18 yrs of age. (It must further be duly noted, that discovery shows that it was "C.B." who posted an advertisement in the escort section of "backpage.com" using her own personal E-mail to promote minor person "GR" of Count-7 at a time when petitioner was incarcerated, It was this ad that caused "C.B." to meet and promted her to begin cooperative "work with the complaining officer F.B.I. T.F.O. Brian Tucker and the (A.U.S.A.) Who have now entrapped at least (4) individuals based on this single grand-jury (1) testimony] F.B.I. T.F.O. Tucker's 302 Summary, records that "C.B." claims to first begin escorting in 2013 at the age of 18 yrs old "No one" is responsible for having trafficked "C.B." as a minor.) The witness "C.B." did not appear before the grand jury investigating the matter of U.S.A Vs. Barnes # 16-CR-6029 Whatsoever, the (A.U.S.A. has Knowing manufactured Count 5&6 of the 2nd Superseding Indictment. Petitioner is "actually innocent" thereto.

ount 4 claims petitioner trafficked minor person "J.O." n March 2012 and May 2013. Notwithstanding that, J.O. turned yrs. in May 2013, at the trial a Homeland Security Investigator ppeared and gave testimony about his investigation where O." was trafficked as a minor in March 2012.
he U.S. agents investigation lead to the arrest and conviction f a local adult male, other than the petitioner. Upon cross-xamination when petitioner Pro Se asked "did the name of the etitioner come up anywhere in his investigation?" The U.S. Agent tates "No," This Investigative Report was turned over to the efense as part of discovery, as to why the (A.U.S.A.) chose to charge etitioner with this event is incomprehensible outside of malice.

J.O." did not appear before the 2nd superseding grand Jury but a revious jury, no reasonable grand juror would vote to indict the etitioner based on "J.O.'s" testimony because her testimony does ot relate to the petitioner, his name does not appear in it "J.O.'s" testimony before the grand jury is base solely upon her elationship with codefendant Christopher N. Johnson Jr. Wherefore etitioner's "hands" are clean" concerning the 3 minor persons f the indictment.

As for the remaining adults, of the three only (one) ever filed riminal complaint against petitioner (with local police) and appeared before a federal grand jury that actually voted to ndict petitioner based on the testimony.
The witness "C.S" of Count 9 of the 2nd superseder was formerlly "AV1" of Count-4) of the original Indictment, Which was properly signed, attested to and supported by session minutes.
Petitioner pleads "Foil Faith and Credit" Art. IV Section 1 based n Count 9 (Originaly Count 4). (As opposed to 28 U.S.C. 1738)

etitioner was previously convicted in New York County Court
y jury trial of Assault in the 2nd degree in relation to "C.S."
nd the events of Count-9. "C.S" Federal grand jury testimony
ives the same narrative of the events of her state grand jury
estimony in People Vs. Andre Barnes* 2013-0596.)

lew York State has a transactional approach" to claim preclusion
nd "non-party claim preclusion" (e.g. Taylor Vs. Sturgell 553 US 880,
28 S.ct 2161 171 Led 2d 155. [If] the United States claims it appears
not) as a general government (but) as a "Sovereign" a'la "Dual Sovereignty,"
hen Article IV, Sec 1 Full Faith credit clause, requires this 2nd
overeign must impeach the jurisdiction of the 1st Sovereign (State)
, the prior proceedings to withstand the constitutional claim. In this
ase, the federal sovereign and/or government undoubtedly cannot
laim original, exclusive jurisdiction impeaching the original
urisdiction over the events already adjudicated in state court. (NY. CPL
0.20)

owever this is a moot point because the prosecution dismissed Count 4
? the original indictment and manufactured the 2nd Superseding
ndictment (including Count-9 without resubmission to the Grand Jury.

pon an indictment so changed, the court can proceed no farther, There
s nothing (in the language of the constitution) which the prisoner can
e held to answer" "A trial on such indictment is void. There is nothing
o try.

ccording to the principles long settled in this court (U.S. Supreme) the
risoner who stands sentenced to the penitentiary on such trial is
ntitled to his discharge by writ of habeas corpus." Ex Parte Bain
21 U.S. 1, 30 L.Ed 849 (1887).

The Grand Jury Clause is jurisdictional and no court of the United states has authority to try a prisoner without indictment or presentment in such cases."

The problem herein is that, the United States District Court for the Western District New York Is [n]ot a "court of the United States."

It is firmly established that the United States District Courts are exempt from the constitutional requirement of an indictment United States, ex rel. Toth Vs. Quarles 350 United States 1176, S.Ct. 1 100 L.Ed. 8 (1955), and it is further mantained that the legislative United States District Courts do not afford any Bill of Rights protection whatsoever including those rights incorperated in the 14th Amendment. Reid Vs. Covert 354 United States. 1, 16 (1957).

The question of whether this indictment has been returned by the grand jury or is manufactured by the prosecuter is not answered in the lower proceedings and has again been avoided here by the Government and the District Court in its address to this motion to vacate.

Wherefore, because the question of the validity of the indictment arises under the Constitution it then qualifies as a "Federal Question" thus petitioner requests Judicial inquiry by the Supreme Court pursuant to Article III Sec. 1.

III Petitioner Has Raise Substantial Showing of Denial Of Constitutional Right In Void Judgment Order Claim.

A void order is one entered by a court without having jurisdiction enter such an order. The order which results is necessarily a llity which has no force, effect, or validity, and may be disegarded or collatarally attacked.

:titioner contends and asserts that the Judgment order comm-ing him to federal prison in this case is void and unenforcable ; a matter of law, his imprisonment thereunder violates his nstitutional liberty and Due process interest and petitioner entitled to discharge from such imprisonment by writ of Habeas orpus. Ex Parte Sicbold 100 US 371, 25 L.ed 717 119, 82 L.Ed. 1416 (1); or in the alternative by writ of Mandamus auman vs. United States 557 F. 2d 650 (9th Cir 1977) (28 U.S.C. 1651)

ARGUMENT

ıe Federal Rules of Civil Procedures 10 (a) requires: Every pleading ust have a caption with the name of the Court, case title, a file umber, and a Rule 7 (c) Signature.

ıe caption of the "Indictment" herein identifies the court as the 'strict court of the United States" for the Westren District of lew York

ıe caption of the "Judgment in a Criminal case" Order describes ıe Court where petitioner was tried and convicted in as the ıited States District Court" for the Westren District of New York.

etitioner contends and asserts that the differences in the hraseology describing the courts in the captions of these two gal instruments makes the latter one, "Judgment" and commitment der, void on its face for jurisdictional defect.

le Federal Rules of Evidense - Title XI advises us on the differences the phraseology and varying provisions between the district ourts of the United States" and the "United States District Courts", mphatically and unambiguously advising us that these varying phrases and rovisions do not in terms describe the same courts and when escribing the court, these term cannot be used interchangebly.

le term "district courts of the United states" (as captioned on the ndictment) without further qualification includes only those district ourts established by congress in the states under Article III of the onstitution and pursuant to 28 U.S.C. 451 Which are "Constitutional ourts."

e term "United States District Courts" on the otherhand, are the courts reated by Congress in the exertion of powers [other] than those proscibed Article III. The United States Courts include the "Bankruptcy Courts" Bankruptcy Act (Art. I) 28 U.S.C. 2075). "The U.S. Court of Claims" rt. I). "The Military Courts" (Art. I), and the "Territorial Courts" ated by congress under Article IV, Sec. 3, Cl. 2, which collectively e "Legislative Courts."

The United States District Court for the District of Columbia however, is made an Article III Court at 28 U.S.C. 132.)

Under 18 U.S.C. 3231 the district courts of the United States shall have original jurisdiction, exclusive of the courts of the states, of all offenses against the United States.

The U.S. D. St. Ct. W.D.N.Y. is not a district court of the United States within the meaning of the criminal jurisdiction statute 18 U.S.C. 3231. The United Stated District Courts are generally not courts of criminal jurisdiction, the extent of criminal rules as they apply to the United States District Courts are limited to proceedings to punish for criminal contempt arising in its courts.

otherwise, the legislative courts created by Congress in the exertion of powers other that) those proscribed in Article III cannot be deposited the judicial power conferred on the general government by the Constitution, The legislative courts are "incapable of receiving it." American Ins Co. vs. 356 Bales of Cotton 1 Pet. 511, 7 L. ed. 243, Fed. Cas. No. 302

The U.S. Distict. W.D.N.Y. is not created under Article III by the Judiciary Act but under the Bankruptcy Act and Art, I.

In Stern Vs. Marshall 564 U.S. 462, 484, 131 S, Ct. 2594, 180 L.Ed 2d 475, 494 (2011) the U.S. Supreme Court held that congress could not transfer to the Bankruptcy courts any matter which from its nature, the subject of a suit at the comman law, or in equity, or in admiralty simply because a proceeding may have some bearing on bankruptcy case e.g. 18 U.S.C. 1594 (c)" F. Forfeiture")
The Bankruptcy Act does not pusport to provide for criminal trials the legislative courts for offenses against the United States otherwise would offend the Bill of Attainder Clause (Art. I, sec, 9, Cl.3)

herefore, the United States District Court for the Western District f New York is not a Court of criminal jurisdiction and may not enter Judgment & Commitment orders for trial convictions on Indictments rising in the district court of the United States for the Western istrict of New York, hence Judgment order is void for jurisdictional effect and petitioner is entitled to discharge by Habeas Corpus. < Parte Siebold 100 US 371, 25 L.Ed 717

The question of whether the districts courts of the United States and he United States District Courts are the same courts (?) is not nswered by the courts in the lower proceedings, thus petitioner requests this Federal Question be judicially determined by the Supreme court pursuant Art. III, sec 1.

(Note: In applications for a writ of habeas corpus, if it appears that there has been a judgment of conviction, the only question to be considered is not whether the judgment was erroneous, but whether the court had jurisdiction to try the issue and to render judgment.

* A conviction and sentence for a criminal offense cannot be collaterally attacked in habeas corpus proceedings for error and irregularities not affecting the jurisdiction. But, if a person is restrained of his liberty under an order or judgment which is void for want of jurisdiction, habeas corpus will lie.)

Petitioner Has Raised Substantial of Denial of constitutional Right in lack of subject matter Jurisdiction claim.

The question of subject matter jurisdiction is not subject to waiver in every case the court must have jurisdiction over the subject matter to enter judgment

The U.S. Supreme court has advised the district courts that subject matter jurisdiction is a threshold qustion which once raised must be determind before proceeding to the merits. steel Co Vs. Citizens for a Better Envr't 523 U.S. 83, 118, S.ct 1003 140 L.Ed. 2d 210 Advising, When the district court, proceeds to the merits (i.e. trial) before finding the basis for subject matter jurisdiction, it then proceeds under "Hypothetical Jurisdiction" and necessaily in violation of due process as this practice allows the lower courts to usurp jurisdiction proceeding vita vires, Which only goes to frustate the process and multiply the proceeding because consequently the court's judgment likewise is hypothetical, and amounting to nothing more than an advisory opinion however neeessarily it is a nullity.

Petitioner Claims the trial Court was without subject matter jurisdiction in the lower proceeding because (1) The criminal events arise in the general territory of the state (2) Petitioner and the alleged injured parties, (victims) are all citizens and residents of same said state, and (3) The Petitioner alleged criminal conduct does not arise under the Act (s) of congress for which is imprisoned, nor any other Act of congress.

lith respects to his claim of lack of subject matter jurisdiction, etitioner expressly requests that his claims not be construed by the Court nto a challenge to the Dormant Commerce Clause as they have been by the ourts in the lower proceedings, and in no way does petitioner challenges ongress's regulatory power over interstate and foreign commerce. n all the history of the federal courts since the 1st Judiciary Act (1789), here has never been a "Jurisdictional Statement" that read: "this Court has urisdiction pursuant to the commerce clause", and it never will...

s the U.S. Supreme Court recently made clear in United States Vs. Cotton 35 U.S. 625, 630, 152 L.Ed 2d 860, 122 S.Ct. 1781 (2002), the matter of risdiction has to do only with the court's "statutory or constitutional power adjudicate the case"!

e Supreme Court of the United States is the only court directly created by e constitution, (Art. III, Sec. I) With the exception of the Supreme Court deral courts have no jurisdiction except as conferred by statute, erefore, any party (including the TFO, and AUSA) asserting a claim in deral court must demonstrate a statutory jurisdictional basis.

ubject-matter jurisdiction in every federal criminal prosecution me's from 18 U.S.C. 3231... That's the beginning and the end of the risdictional inquiry." Id (quoting Hugi Vs. United States, 164 F.3d 378, 380 th Cr. 1999) So lets start there..

Statutory Basis

3 U.S.C 3231 provides The district courts of the United States
all have original jurisdiction, exclusive of the courts of the states,
? all offenses against the laws of the United States,

thing in this title shall be held to take away or impair the
risdiction of the courts of the several states under the laws thereunder

t is settled that by the provision "Nothing in this title shall be held to
ke away or impair the jurisdiction of the courts of the several states", that
rts presume that the federal statutes do no abrogate, preempt, or
pose obligations on the states or the citizen subjects thereof.
his presumption was just recently affirmed by the U.S. Supreme Court in
rol Anne Bond Vs. United States 134 S.Ct 2077 189 L.Ed. 2d (2014) (On the
estion of the balance between state and federal criminal jurisdiction)
hus precedence holds that in the ordinary case, when a criminal event
rises in the general territory of a state, jurisdiction of the criminality
elongs to the state, and federal jurisdiction to exclude the exercise of
tate jurisdiction cannot be invoked. This position is well fortified by the
ollowing authorities: United States Vs. Bevans, 3 Wheat 336 4 L.Ed 404;
t. Leavenworth R. Co. Vs. Lowe, 114 U.S. 525 5 Sup. Ct. 995. New Orleans Vs. U.S.,
et 662, 737 see also People Vs. Kobryn 294 NY 192 61 N.E 2d 441 (1945)

Title 18 of the United States Code proscribes the territorial jurisdiction
? the federal courts and unambiguously provides that this jurisdiction
rises "out of the jurisdiction of any state." (18 U.S.C 7)

lence, "It is not the crime commited that makes it an offense
gainst the laws of the United States, but the place where it is commited."
eople Vs. Godfrey 17 Johns 225.

Thus, the federal courts in all criminal cases must find their basis for jurisdiction within the confines of 18 U.S.C. 3231 which prescribes criminal jurisdiction to the "districts courts of the United States" and there is nothing extra ordinary in this case that would allow Congress to circumvent the limitations placed on the federal Courts (Art. III) by transferring the case to a United States District Court pursuant to the commerce Clause nor the Bankruptcy Clause where there is no preemption declared, Congress may not abrogate the state's sovereign immunity under these Article I powers.

Petitioner reminds the court of the wisdom of the Sterns Vs. Marshal court holding that Congress may not withdraw from the Article III courts any matter which, from it nature, is the subject of a suit at the common law, or in equity, or in admiralty; consequently even all cases of "Prize jurisdiction" which were formerly exclusive to the United states District Courts pursuant to 10 U.S.C. 8852, have been transferred to the Article III Courts under admiralty and Maritime jurisdiction (28 U.S.C. 1333.)

While petitioner would rather avoid a commerce clause discussion in the same area as subjects of jurisdiction so as to not be misconstrued it would appear to be unavoidable in this case because of the text of the particular criminal statute herein.

Offense

federal criminal statute 18 U.S.C. 1591 (a) Charges that whoever knowingly, in or affecting interstate or foreign commerce, or in the special maritime and territorial jurisdiction of the United States...

etitioner contends most contrary to the Government's position
hat the word "or" the statute does not provide an (option) for
e government to choose the basis for jurisdiction, such as in the sense
"either" interstate commerce "or" the special maritime & terri-
orial jurisdiction of the United States whereby, allowing the government
transfer jurisdiction of the case to the United States District Court
the basis of its commerce authority, but in this instance in the text, the
ord (or) means "otherwise" and the statute must find its jurisdictional
asis under 18 U.S.C. 7 - (or) "out of the jurisdiction of any state", which is
nsistant with 18 U.S.C. 3231 which gives criminal jurisdiction to the
strict courts of the United states (Art. III courts)

twithstanding that the theory of "Protective Jurisdiction" has long been
ejected Textile Workers Union v. Lincoln Mills 353 US 448, 77 S.Ct 912, 1 L.ed 2D 292 (1957)
he statute 18 U.S.C. 1591 is not jurisdictional in itself and its commerce
ement grants no license for congress to transfer a case arising
ereunder to a non-Article III court. based on its effect on
nterstate commeree.
his point is clarified in United States v. Martin, 147 F.3d 529 (7th
ir 1998) Where it held, "A link to interstate commerce may be esse-
ial to congress's substantive authority U.S. v. Lopez (1995) but
he existence of regulatory power differs from the subject-matter
urisdiction of the courts. The nexus with interstate commerce which
ourts frequently call the "jurisdictional element", is simply one of the
ssential elements of [the offense] Although courts frequently call it
he jurisdictial element of the statute, it is jurisdictial only in the short-
and sense that without that nexus there could be no federal crime...
t is not jurisdictional in the sense that it affects a courts subject-
natter jurisdiction, i.e., a court's constitutional or statutory power to
djudicate a case, here authorized by 18 U.S.C. 3231".

onsistant with the courts findings in Martin 147 F.3d 529 Supra. he limitations of this particular statute which has been made part of congress's regulatory scheme under the "Trafficking Victims rotection Act" was addressed in Mojsilovic v. Bd of Regents for the Univ. f OKla. 841 F.3d 1129 (10th Cir 2016)

Where the court held that the (TVPRA) was not enacted under the 13th Amendment, it was enacted under Congress's Clause powers, in Article I, sec. 8, cl. 3.

8 U.S.C. 1591 (a) proscribes sex trafficking in or affecting interstate r foreign commerce." The predecessor statute of the TVPRA was nacted under Congress's Commerce Clause powers. that source of ongressional authority is significant because Congress may not- brogate state's sovereign immunity pursuant to its Article I power over commerce." "The 11th Amendment restricts the judicial power nder Article III, and Article I cannot be used to circumvent the con- stitutional limitations placed upon federal jurisdiction. Thus even if Congress had intended to abrogate sovereign immunity in the TVPRA, it had no authority to do so under the Commerce Clause."

In Printz v. United states (199 U.S.) 138 L.ed 914 177 S.Ct 2365 it was held that the residuray and inviolable sovereignty retained by the States is reflected throught text of Federal constitution, including privileges and immunities clause in Art. IV § 2 Which Clause speaks of protecting the citizens of the states. (14th Amend.)

In United states v. Hollingsworth 783 F 3d 556 (2015) the court advised, that a simpler question be asked before assuming federal jurisdiction; whether or not the criminal event arose in a geog- raphic area where "no State's operates as sovereign?"

It is beyond doubt that the state of New York operates as soveveign

ver its own general terreritory, see New York V. United States 505 -
.S. 144, 159 at 188 (1993) "[S]tates are not mere political subdivisions
f the United States." See also People V. Kobryn 294 NY 192 61 NE 2d
-41 (1945)

lotwithstanding the fact that petitioner's conduct herein, if demurred,
vould only amount to pandering, promoting and/or solicitation and
not) to that of "trafficking" under the state's law, however, the ter-
torial jurisdiction limitations of the statute 18 U.S.C. 1591 (a) is
gain outlined in the United States code at 18 U.S.C. 2426 (Repeat -
ffenders) 18 U.S.C. 2426 (b) In this section -

1) the term "prior sex offense conviction" means a conviction for an
offense - (A) under this chapter, chapter 109 A, chapter 110 or section
1591 [18 U.S.C.S 2421 et seq., 2241 et seq. 2251 et seq or "1591]".

(B) Under State law for an offense consisting of conduct that
would have been an offense under a chapter referred to in subpara
graph (A) if the conduct had occurred within the special maritime
of the United States.

Wherefore, the statute 1591 (a) is subject to the Judiciary power of
Article III and criminal jurisdiction statute 18 U.S.C. 3231 which must
be commited "outside the jurisdiction of any state" at 18 U.S.C. 7 -

See also U.S. V. Jackalow 66 U.S. 484 17 L. Ed 225 (1862) "There is a proviso which declares that nothing in the section shall be construed to deprive any particular state of its jurisdiction over the offense, when committed within the body of a county, or authorize the courts of the united states to try such offenders after conviction or acquittance for the same offense in a state court,"

In many of the states prescribing offenses against the laws of the united states, there is an express limitation excluding offenses committed within the jurisdiction of a state. The Acts of April 30, 1790 ch. 9 (1 Stat., 114), and March 3 1825, ch 65 (4 stat., 115) are of this description.

"Under these statutes the question presented in this case could not arise as the offense could not be committed within the limits of the state."

And such is the same in this case under the TVPRA of 2003.

Question; Where the district courts of the united states have original jurisdiction over offenses against the laws of the united states under

18 U.S.C. 3231.

What then is the statutory basis of the united states District Court's jurisdiction in criminal cases?

However, in respect to the Constitutional limitations placed upon the courts in regards to this particular Act of Congress...

Comstitutional Basis

The Non detention Act 18 U.S.C. 4001 provides;
(a) No citizen shall be imprisoned or otherwise detained by the United states except pursuant to an Act of Congress.

This Act governs the control and management of Federal penal and correctional institutions.

Petitioner is detained and imprisoned in the united states Penitentiary for violating the Trafficking Victims Protection Act of 2000, proscribed in the united states Code at Title 22 (Foreign Relations & Intercourse) Chp. 78. (18 U.S.C. 1591)

By its purposes and findings - 22 U.S.C. 7107, The Trafficking Victims Protiction Act criminalizes and aims to prevent the transnational crime of Human Trafficking slavery and slave-like practices. The Act arises under international law" (not domestic where it is enected under the "Foreign Commerce clause" 22. U.S.C. 7101 (b) (23)(24) See United States V. Baston 818 F.3d 651 (2016 CA 11 Fla)

Petitioner asserts and contends that, because his criminal conduct arises in the general territory of New York (W.D.N.Y.) where he is a citizen and resident, and that the persons injured by his criminality are also citizens and residents of New York his criminal conduct then cannot arise under the TVPA of 2000 as a matter of law and he is entitled to discharge by habeas corpus pursuant to the Non detention Act of 1971 See Padilla V. Rumsfield 352 F.3d 695 (2003) Hamdi V. Rumsfield U.S. 507 (2004) 18 U.S.C. 4001 (a).

rsuant to its purposes and findings, the Trafficking Victims
otection Act does not preempt or supplant state law in proscribing,
d policing local prostitution, nor international sex trafficking
Y PL 230.10 et.seq; 230.34)

e 22 U.S.C. 7107 History; Promoting effective state enforcement.
) Relationship among Federal and state Law.,
thing in this Act, The Trafficking Protection Act of 2000,
he Trafficking Victims Reauthorization Act of 2003 and 2005

1) may be construed to treat prostitution as a valid form
mployment under Federal law; or

2) shall preempt, supplant or limit the effect of any state or
Federal criminal law.

b) Model state criminal provisions. In addition to any model
tate antitrafficking statutes in effect on the date of the
nactment of this Act, the Attorney General shall facilitate
he promulgation of a model state statute that -

1) furthers a comprehensive approach to investigation and
prosecution through modernization of state and local
prostitution and pandering statutes.

It is only in the extraordinary circumstance when the government invokes extraterritorial jurisdiction under 18 U.S.C. 1596 that the TVPA arises in the general territory of a state, 18 U.S.C. 1596 (a)(2) gives an extraterritorial effect to 18 U.S.C. 1591,

This generally only occurs when the perpetrator is a foreign or otherwise "stateless person" who has taken up habitual residence in the united states and is "terrorizing" the citizen population. e.g. see Bastion V. United States 137 S.Ct. 850 (March 2017) otherwise the TVPA only arises "out of the jurisdiction of any state."

Notwithstanding the fact that there are statutes and sections of the TVPA that particularly proscribe the Act to be aimed at Foreign Persons who play a significant role in sex trafficking" e.g. see 22 U.S.C. 7108, and is enforced by the President pursuant to the provisions of the "International Emergency Economic Powers Act" 50 U.S.C. 1701 [1702] and though petitioner is (not) an "International Person" (i.e. see Kobei V. Royal Dutch Petro. Co. II 621 F.3d 111 (2009)), there is however, special provision within the TVPA that clearly establishes that criminal violations of the Act [must] be prosecuted in the Article III Courts and is subject to the jurisdiction thereunder and whereby making petitioner immune by privilege of his citizenship. (14th Amend.)

Congress created a private right of civil action for victims of trafficking under the Trafficking victims Protection Act at 18 U.S.C. 1595. Section 1595 became effective on December 19 2003. See Ditullio V. Boehm 662 F. 3d 1091 (2011)

The TVPA'S civil remedy provides that a victim may recover damages and reasonable attorney fees in a civil action against the perpetrator under 18 U.S.C. 1595.

18 U.S.C. 1595 Civil Remedy provides:

(a) An individual who is a victim of a violation of this chapter [18 U.S.C.S 1581 et. seq.] may bring civil action against the perpetrator in an appropriate district court of the United states and may recover damnages and reasonable attorney fees.

see also section (d) In any case in which the Attorney General of a state has reason to believe that an interest of the residents of that state has been or is threatened or adversely affected by any person who violates section 1591 [18 USCS § 1591], the attorney general of the state, as parens patriae, may bring a civil action against such person on behalf of the residents of the state in an appropriate district court of the United states to obtain appropriate relief.

Ergo, because the Trafficking Victims Protection Act is not nacted under the 13th Amendment but under the commerce lause, a victims civil complaint thereunder (1595) may not claim ederal Question 28 U.S.C. 1331 as the jurisdictional basis or the civil action see e.g United States V. Morrison 529 U.S. 598, 618, 120 S.Ct. 740, 146 L.Ed. 2d 658 (2000) also Nattah V. Bush 541 F. Supp 223 (2008) herefore, the claim could only then arise under the diversity ursdiction" provision of Article III, sec. 2, Cl 1 at 28 U.S.C. 1332,

herefore, the "citizenship of the parties" material to the courts ubject matter jurisdiction under the TVPA (commerce is not) odgson V. Bowerbank 9 U.S (5 Cranch) 303, 303 3 L.Ed 108 (1809) ossman V. Higginson 4 U.S (4 Dall.) 12, 14 1 L.Ed 720 4 Dall 12 (1800)

o while in a case like United States V. Baston 818 F.3d 651 supra here the perpetrator Baston was an illegal reentry non resident lien, he was thus subject to general federal jurisdiction in the strict wherever he was apprehended, in which case was in the ate of Florida, a Florida person or "any" other state citizen ould have complete diversity from Baston and thus both the criminal uit and consequenting civil suit resulting from the conviction ould be maintained in the district courts by the provisions f Article III.

Contrarily however, in the case of the Petitioner herein, it cannot. (See Controversies, Art. III, sec. 2, cl. 1.)

ne Birth Cerificate of the Petitioner and at least ~~and at least~~ B. the certificates of (3) of the
ix injured persons were entered into the record of the case at trial in the
ower proceedings. Petitioner testified under oath that he was a citizen
nd resident of the state of New York, the court has also stated that
etitioner is citizen of the state on the record, The Birth Certificates
f the (3) injured persons show that they were all born in the state
f New York.

Therefore, petitioner is not subject to "general federal jurisdiction"
Fed.R.Civ.P. 4(K)(2) but, subject to the general jurisdiction of the
courts of the state, there is no diversity, thus the civil action must be
ried in the state court.

Ergo, if the victims herein where to bring claim against the peti-
tioner based on this conviction, as it is provided to them under
the TVPA' civil remedy feature (1595), their suits would fail for lack of
subject matter jurisdiction under Article III and 28 U.S.C. 1332 and they
would have no remedy, otherwise.

Thus, it is elementry, that if the civil action under the TVPA (1595)
must fail for lack of subject matter jursdiction, then the criminal
suit (1591) must likewise fail for the same reason less the Act
be bifurcated which it is not.
Hence, where there can be no controversy herein, there can be no
case.

The State's Attorney General suit would also fail for lack of diversity)
28 U.S.C. 1332

In Conclusion, petitioners criminal conduct of victimizing other local citizens of the state where he was born and resides, if true, by any means whether it be by force, fraud, coercion on mere solicitation, cannot arise under the Trafficking Victims Protection Act of 2000, it is a legal impossibility.

Petitioner is not subject to criminal prosecution in the courts of the united states based on the conduct herein and petitioner is entitled to discharge from his imprisonment hereto by writ of habeas corpus pursuant the Non detention Act of 1971. 18 U.S.C 4001(a) 28 U.S.C. 2241. 28 U.S.C. 1651.

The basis for subject matter jurisdiction has not been established in the record in the lower proceeding and the lower courts are incapable of receiving an original petition for writ of habeas corpus to discharge the petitioner.
Thus, where the lower courts have emphetic lly refused to declare the basis for their own jurisdiction or admit lack thereof and dismiss the case, petitioner request the Question be transfered to the supreme court for constitutional testing and issuance of the necessary writ pursuant 28 U.S.C. 1651 in aid of appellate jurisdiction or by writ of certiorari pending judgment by the U.S. Court of Appeals for the 2nd Circuit. 28 U.S.C. 7101 (e) Sup. Ct. R. 11.

V. Petitioners showing is not only substandial, It is Sufficient to merit Further Review by this Court

LAW-OF-THE-CASE-DOCTRINE

Effect of Prior Appellate Judgment

The law of the Case Doctrine "ordinarily "forecloses relitigation of issues expressly or impliedly decided by the ppellate Court. United States v. Quinteri 1217, 1229 (2nd Cir 2007)

erein, the Goverment's Attorney and District Court both decidely ave foregone any attempt to put Petitioner's claim in dispute by videncing material facts or by referring to places in the record hat would go to contradict the claim but both rely solely upon the earlier Judgment of the U.S. Court of Appeals for the 2nd Circuit in 19-27 United States V. Johnson 852 F. Appx 559 (2021) which affirmed he District Courts conviction as a mearis of claiming "the matter has already been decided" such as in the way of issue preclusion.

Notwithstanding that the Government and District Court both admit that Petitioner's claims hereto were not directly addressed in the Appellate order in question, and is merely "assumed" by them that the court of Appeals considered the merits of Petitioner's claims when rendering judgment; the governments and District Courts faith and reliance on the preclusive

ffect of this Appeallate Judgment is however, grossly misplaeed ecause (1) The Judgment contradicts the Appellate Courts earlier rder in related case Barnes V. Salina # 19-284 and most nportantly (2) The Court of Appeals Judgment affirming the District ourt's conviction is void.

"Every federal appellate court has a special obligation to satisfy itself not only of its own jurisdiction, but also that of the lower courts in a cause under review, even though the parties are prepared to concede the issue". Steel Co. V. Citizens for a Better Environment 523 U.S. 83, 140 L.Ed 2d 210 (1998) (Petitioner does not concede).

28 USC 1291 provides: The Courts of Appeals shall have jurisdiction of appeals of all final decisions of the district Courts of the United states, the United states District Court for the District of the Canal Zone, the District Court of Guam, the District Court of the Virgin Islands except where a direct review may be in the Supreme Court.

The very first sentence of the Appellate order declares, "This is a direct appeal from the Judgment of the "United States District Court" for the Western District of New York"; thus, rendering the Judgment Void on its face.

The Appellate Court thereafter, goes on to give its advisory opinion "as if" it were indeed presiding over an appeal from the Judgment of a criminal "trial by a legislative Court," (see Bill of Attainder) and noticeably avoiding to address any of the Constitutional claims or otherwise federal Questions raised therein, even applying a statutory approach to the question of Venue as opposed to a Constitional testing.

The Appellate Judgment never states the statutory basis for the lower court's jurisdiction nor the basis for its own jurisdiction and construes petitioner's defensive claim into a challenge to the commerce Clause, though the Court does not go on to claim that

it has jurisdictin based on the Commerce Clause, only that Petitioner's conduct effected Commerce. (see Appendix - Appellate Judgment *19-271 CR.)

The Courts of Appeals do not have jurisdiction over appeals from the the final decisions of the Legislative courts created by congress under Article I. Northern Pipeline Construction. Co. V. Marathon Pipeline Co. 488 U.S. 50, 66 102 S. ct 2858, 73 L. ed 2d 598 (1982)

28 U.S.C. 1291 does not provide the Courts of Appeals for the 2nd circuit with jurisdiction of appeals from final decisions of the United States District Court for the Western District of New York

(2) The Appellate order affirming trial conviction, contradicts the previous order of the Court of Appeals in related case,

Petitioner filed Petition(s) for Writ of habeas corpus pursuant to 28 U.S.C. 2241 (a) based on the same issues claim herein. The U.S. D. St. Ct. W.D.N.Y. received the petition(s) construing the final one into a motion to vacate under 28 U.S.C. 2255, and thereafter denying the petition for [sic] failure to make a constitutional showing. (see Barnes v. U.S. Marshel OF Salina *19-CV-6015-Appendixed The 2nd Circuits Court of Appeals issued a Mandate in support of the District court's denial of the writ, dismissing Petitioner's appeal thereto for failure to request a certificate of appealability, see Barnes V. Salina *19-284 (Appx.) Petitioner Moved the Court to Recall the Mandate on the grounds of Fraud upon the Court" e.g see Patterson V. Haskins 470 F.3d 645 661 (2003). Asserting that the United States District Court W.D.N.Y. could not receive a petition for habeas corpus applied for under 28 U.S.C. 2241 (a) to construe it into a motion (2255) because it

was not a "dirtrict court of the United States" within the meaning of the statute 2241 (a) and requesting the Court of Appeals take jurisdiction of the petition pursuant 28 U.S.C. 1651 (a) in aid of appellate jurisdiction. i.e. See Ojeda Rios V. Wigen 683 F. 2d 196. 200 n.3 (CA2 1998)

The Court of Appeal concurred with Petitioner overturned the District Courts Order denying the writ and reinstated the Petition for habeas corpus before the Court of Appeals as an original proceeding pursuant the All writs Act 28 U.S.C. 1651 (a), 28 U.S.C. 2241 (a) (Exhibit 5)

Wherefore, because the Court of Appeal agrees that the U.S. Dist.Ct W.D.N.Y. is "not" a district court of the United States within the meaning of 28 U.S.C. 2241 (a) it then cannot thereafter enter a order that would support the position that the U.S. D.St.Ct W.D.N.Y. is a district court of the United States within the meaning of the criminal jurisdiction statute 18 U.S.C. 2241 (a) it then cannot thereafter enter a order that would support the position that the U.S. D.St.Ct W.D.N.Y. is a district court of the United states within the meaning of the criminal jorsdiction statute 18 USC 3231 able to hold trials and enter criminal judgment and commitments for violation of the laws of the United States. (28 U.S.C. 451)

Thus, the two Appellate order are conflisting, and where the order in Barnes V. Salina # 19-284 in favor of the Petitioner comes before the other in USA V. Johnson # 19-271 Cr the LAW-of-The-Case-Doctrine would be in favor of the Petitioner. United States V. Quinteri 1217 1228 Supra. Ergo, "the mather has already been decided."

ithout jurisdiction, a court cannot proceed at all in any cause jurisdiction is power to declare law, when jurisdiction ceases exist, the only function remaining to the court is that of annou- ing the fact and dismissing the case." Steel Co V. Citizens for a etter Envr't 523 U.S. 83, 118 S.Ct. 1003 Supra.

ie integrity of the Courts in the lower proceedings appear to be ompromised by absolute usurped power and they have proven to e incapable of determining the basis of their own jurisdiction or dmitting the lack thereof and vacating judgement on these rounds; therefore, because related case Barnes V. U.S. Marshal F Salina U.S.C.A 2 # 19-284 is pending certiorari before the Supreme Court based on these same issues (i.e. lack of subject matter juris- iction by the 3-Judge Panal to receive a petition for habeas corpus 28 U.S.C. 2241(a); 1651(a) see Rios V. Wigen 683 F.2d 196 Supra) Petitioner request these actions be enjoined and transferred to the Supreme Court by Certiorari pending Appellate Judgment pursuant 28 U.S.C. 1254, 28 U.S.C. 2101(e) to ensure constitutional testing of the Federal Questions raised herein and most importantly competent juris- diction to decide the claims. Steel Co. V. Citizen's 118 S.Ct. 1003 Supra.

VI Petitioner has satisfied All Procedural Prerequisites for Action by This Court. As shown in the Supporting Affidavit of Andre Barnes Petitioner has satisfied all of the procedural prerequisites to action by this court for a certificate of Appealability.

1. The Petitioner has filed a timely notice of appeal.

2. The Petitioner promptly applied for a certificate from the district court prior to applying for a certificate from this court.

3. The Petitioner has made more than a good faith effort to conform this Application to all of the requirements set out in Appellate Rule 22 and 2nd Circuit Rule 24.1

4. The Petitioner has served all parties to the action with a copy of this application and supporting papers, as is shown in the attached Certificate of Service.

The Petitioner has also supplied this court with the complete record of the district court's action on the district court application and will supply this court with any additional materials or argument that it deems necessary for a prompt resolution of this Application.

CONCLUSION

For the reasons stated above, Petitioner and Appellant Andre Barnes [name of petitioner] respectfully requests that this court issue the requested Certificate of Appealability on all of the issues set forth in this Application.

Dated: October 27th 2022

Andre Barnes Pro Se.

S/ Andre Barnes

Thomson U.S.P.

P.O. Box 1002

Thomson, IL 61285

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Thurgood Marshall U.S. Courthouse 40 Foley Square, New York, NY 10007 Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Docket Number(s): 22-658

Caption [use short title]

BARNES v. United States of America

Motion for: Appendix of Appellant-Petitioner Andre' Barnes on Request for a Certificate of Appealability

Set forth below precise, complete statement of relief sought:

Seek to be granted a certificate of Appealability so that I may appeal to this court a denial of a motion to vacate conviction by the District Court W.D.N.Y. under 28 U.S.C. 2255

RECEIVED
MAY - 4 2022
OFFICE OF THE CLERK
SUPREME COURT, U.S.

MOVING PARTY: Andre' Barnes Pro Se OPPOSING PARTY: United States of America

[ ] Plaintiff [ ] Defendant

[X] Appellant/Petitioner [ ] Appellee/Respondent

MOVING ATTORNEY: Andre' Barnes Pro Se OPPOSING ATTORNEY: Melissa M. Marangola

[name of attorney, with firm, address, phone number and e-mail]

Allenwood U.S.P.
P.O. Box 3000
White Deer, PA 17887

100 State Street
Suite 500
Rochester, NY 14614

Court- Judge/ Agency appealed from: U.S. Dist. Ct. W.D.N.Y. Hon. David G. Larimer

Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1):
[X] Yes [ ] No (explain):

Opposing counsel's position on motion:
[ ] Unopposed [ ] Opposed [X] Don't Know

Does opposing counsel intend to file a response:
[ ] Yes [ ] No [X] Don't Know

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUCTIONS PENDING APPEAL:

Has this request for relief been made below? [ ] Yes [ ] No

Has this relief been previously sought in this court? [ ] Yes [ ] No

Requested return date and explanation of emergency:

Is oral argument on motion requested? [ ] Yes [ ] No (requests for oral argument will not necessarily be granted)

Has argument date of appeal been set? [ ] Yes [ ] No If yes, enter date:

Signature of Moving Attorney:

Andre Barnes Date: 4/21/2022 Service by: [ ] CM/ECF [X] Other [Attach proof of service]