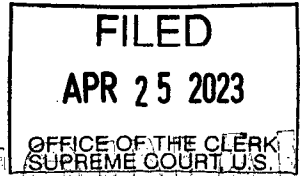


23-5685

No. _____



ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

In Re BOBBY RICHARDSON — PETITIONER
(Your Name)

ON PETITION FOR A WRIT OF MANDAMUS

PETITION FOR WRIT OF MANDAMUS

BOBBY RICHARDSON
(Your Name)

FBI BERLIN / P.O BOX 9000
(Address)

BERLIN, N.H 03570
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

IS PETITIONER ENTITLED TO IMMEDIATE RELIEF, INCLUDING MANDAMUS FROM THIS COURT, TO COMPEL THE LOWER COURT(S) TO ADJUDICATE PETITIONER'S FED. R. CIV. P 12(b)(1) MOTION WHICH IS A NON-DISCRETIONARY DUTY OF THE LOWER COURT(S) TO ESTABLISH THEIR JURISDICTION OVER THE SUBJECT-MATTER.

LIST OF PARTIES

☐ All parties appear in the caption of the case on the cover page.

☒ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

JOSEPH N. LAPLANTE- UNITED STATES DISTRICT JUDGE (FIRST CIRCUIT)
CHIEF JUDGE BARRON- UNITED STATES COURT OF APPEALS (FIRST CIRCUIT)
CIRCUIT JUDGE HOWARD- UNITED STATES COURT OF APPEALS (FIRST CIRCUIT)
CIRCUIT JUDGE GELPI- UNITED STATES COURT OF APPEALS (FIRST CIRCUIT)

RELATED CASES

BOBBY RICHARDSON V. ROBERT HAZLEWOOD, WARDEN (CASE NO. 20-CV-1134-JL)
BOBBY RICHARDSON V. ROBERT HAZLEWOOD, WARDEN (NO. 21-1716, 1ST CIR. APP)

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF MANDAMUS

Petitioner respectfully prays that a writ of mandamus issue.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix B to the petition and is

☒ reported at BOBBY RICHARDSON V FCI BERLIN, WARDEN, 21-1716; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

The opinion of the United States district court appears at Appendix A to the petition and is

☒ reported at BOBBY RICHARDSON V FCI BERLIN, WARDEN, 20-CV-1134; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

[] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was NOVEMBER 15, 2022.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: JANUARY 18, 2023, and a copy of the order denying rehearing appears at Appendix C.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

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

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

CONSTITUTIONAL PROVISION

“Article III of the United States Constitution, clause 2 provides: The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States and treaties made, or which shall be made, under their authority: - to all cases affecting Ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction, to which the United States shall be a party; to controversies between two or more states; between a state and citizens of another state; - between citizens of different states -; between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens, or subjects . . . In all cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as law and fact, with such regulations as Congress shall make. The trial of all crimes . . . shall be held in the state where the said crimes shall have been committed.” U.S. CONST., ART. III, § 2 (omissions added)

STATUTORY PROVISION

Rule 12. Defenses and objections: when and how presented, motion for judgment on the pleadings, consolidating motions, waiving defenses, Pre-trial hearing

(b). every defense to a claim for relief in any pleading must be asserted in the responsive pleading(s) if one is required. But a party may assert the following defenses by motion:

(1). Lack of subject-matter jurisdiction

STATEMENT OF THE CASE

On November 23, 2020, Petitioner filed a petition for a writ of habeas corpus pursuant to TITLE 28 U.S.C. § 841(a) (Count two). Petitioner's claim consist of "New exculpatory evidence" responsive to a police CAD-REPORT that establish the existence of a "Drug-Violation" that occurred on August 06, 2008 at 9:59:30 PM at Petitioner's place of business. The same case number assigned to the CAD-REPORT and/or "Drug-Violation" is the same case number that was assigned to the certificate of analysis identifying the substance at issue in Count Two. The uncontroverted fact that Petitioner was arrested on August 06, 2008 at 1:04:13 PM and remained in custody is evidence of both the officer's perjury about the sequence of events and [his] innocence, as [he] was in custody at the time registered on the police CAD-REPORT and therefore could not have been selling heroin to a C.I., since the heroin must have come into police custody at the logged time, post-arrest time. See § 2241

On March 31, 2021, Petitioner filed a petition pursuant to Fed R. Civ. P. 12(b)(1) for lack of subject-matter jurisdiction, where there is no case or controversy pursuant to the standing requirement of ARTICLE III, § 2 of the United States Constitution, responsive to TITLE 28 U.S.C. § 841(a) (Count two). More importantly, the rule require the court to order the party bringing the subject-matter before the court, I.E, the government to establish the court's subject-matter jurisdiction. On the contrary, on June 24, 2021, the District Court ordered the magistrate judge to conduct a "Fact-Finding" responsive to Petitioner's 12(b)(1) motion. Within [her] "fact-finding", the magistrate did not dispute Petitioner's jurisdictional facts but held the following:

“Mr. Richardson's new evidence consist of a CAD-Report that establish the existence of a "Drug-Violation" that occurred on August 06, 2008 at 9:59:30 P.M., at Richardson's place of business. The case number assigned to the said "Drug-

is the same case number that appears on the certificate of analysis identifying the substance at issue in count two. The uncontroverted fact that Mr. Richardson had been arrested at NOON, on August 06, 2008 and remained in custody at that time and there is no incident report generated by Police data base, in support of the government's theory of a morning controlled buy''' See Magistrate Judge's Report & Recommendation, Appx - A (omissions added)

In addition, the magistrate judge made the recommendation to "...deny Mr. Richardson's Fed. R. Civ. P. 12(b)(1) motion without addressing the merits of his jurisdictional argument" and deem Mr. Richardson's Fed. R. Civ. P. 12(b)(1) motion as addendum to [his] 28 U.S.C. § 2241 petition." (omissions added) See Appx - A. Thus, dismiss his claim for want of § 2255(e) savings clause. Id

On August 17, 2021, the District Court erred when the Court adopted the Report & Recommendation of the magistrate judge, thus, abandon its non-discretionary duty to first satisfy itself of subject-matter jurisdiction before addressing the merits of [his] claim. See Appx - A

On September 01, 2021, Petitioner filed a timely Appeal before the United States Court of Appeals (1st Cir), challenging the District Court's decision and simultaneously, filing a Second Fed. R. Civ. P. 12(b)(1) motion, this time before the said Appellate court.

On October 01, 2021, the Appellate Court proceed to follow the letter of the law, pursuant to Fed. R. Civ. P. 12(b)(1), by ordering the government to respond to the pleadings no later than October 29, 2021. Moreover, the government elected not to establish the court's subject-matter jurisdiction, Instead A.U.S.A. - Seth R. Aframe made the following remarks, via, letter:

⁶⁶ I am writing to inform you that the warden was never served in this matter and did not participate in the proceedings before the United States District Court. Therefore, the warden is not a party to this appeal and will not participate in the First Circuit proceedings." See Appx - D

on November 15, 2022, [Appx. 13 months later], the Appellate court adopted the decision of the District court without first establishing subject-matter jurisdiction, holding:

"The District court concluded, based on the specific claims pressed and Richardson's prior habeas relief, that Richardson could not rely upon 28 U.S.C. § 2241 and the 28 U.S.C. § 2255(e) Savings clause to bypass the gatekeeping provisions of 28 U.S.C. § 2255(h). See United States v. Barrett, 178 F.3d 34, 38, 49-50 (1st Cir. 1999) (discussing "saving clause"); see also Trenkler v. United States, 536 F.3d 85, 98-99 (1st Cir. 2008) (same). Richardson shows no error in the District court's ruling. We note that other courts including the Fourth, already have denied filings by Richardson's pressing indistinguishable claims. All pending motions [Fed. R. Civ. P. 12(b)(1)] to extent not mooted by the foregoing are denied." (Brackets Added) APPX-B

On November 22, 2022, Petitioner filed for a Petition for Re-hearing and Rehearing en banc, addressing the Appellate panel's error in law, by not noticing the jurisdictional defect of the District court and/or satisfying itself of subject-matter jurisdiction prior to making a ruling. In addition, the same panel made a determination as to petitioner's § 2241 motion not invoking the Savings clause pursuant to § 2255(e) and dismissed [his] Fed. R. Civ. P. 12(b)(1) Motion as moot. Not only is Petitioner's Fed. R. Civ. P. 12(b)(1) motion is Non-Discretionary that warrant a response to the jurisdictional question, more so, Petitioner asked the same panel to reconsider its decision whereas, the same panel is in conflict with Supreme

6.

Court precedence in Steel Co v. Citizens for Better Env't, 523 U.S. 94-95 (1998), in which two of the three judges relied upon the Steel Co. Court just two months prior to the denial of Petitioner's pleadings, namely, August 18, 2022, holding:

“As such before we consider any merits issues, we must begin by addressing the “threshold matter of whether we have subject-matter jurisdiction over these claims.” See EFREOM V. MCKEE, 2022 U.S. App. LEXIS 23026.

Essentially, the same panel of judges followed the rule of law when deciding the McKee case (above) but decided to abandon Supreme Court precedence, juxapose to its own ruling when deciding the Richardson case. As a result, Petitioner was denied Petition for Rehearing and Rehearing EN Banc, on January 18, 2023. APPX - C.

Both the District and Appellate court failed in their special obligation pursuant to the Judicial ARTICLES OF THE Constitution [ART. III] that gives federal courts limited jurisdiction over CASES or controversies to which the United States shall be a party. The lower courts did not address Petitioner's Special Plea to the LOWER COURT'S lack of subject-matter jurisdiction pursuant to Federal RULES of civil procedures [12(b)(1)] that have been promulgated and amended by acts of Congress and the Supreme Court.

REASONS FOR GRANTING THE PETITION

I. THE WRIT WILL AID THE COURT'S APPELLATE JURISDICTION WHICH INCLUDES THE SUPREME COURT'S EXERCISE OF ITS GENERAL SUPERVISORY CONTROL OVER THE FEDERAL COURT SYSTEM.

“The clearest traditional office of mandamus ... has been to control jurisdictional excess, whether the lower court has acted without power or has refused to act when it had no power to refuse.” 16 Charles Alan Wright, et. al., Federal Practice and Procedure § 3933 (3d. ed) [hereinafter Wright & Miller]... In addition, “the traditional use of writ ... in the federal courts has been to confine [the court against which mandamus is sought], to a lawful exercise of its prescribed jurisdiction.” Cheney, 542 U.S. at 380... Also see Roche v. Evaporated Milk Assn, 319 U.S. 21 (1943).

The Petitioner contends that the writ of mandamus should issue to control jurisdictional excess when both the District and Appellate Court for the First Circuit refuse to adhere to its NON-Discretionary duty to satisfy itself of subject-matter jurisdiction, when it had no power to refuse. see IN RE GEE, 941 F.3d 153, 159 (5th Cir 2019)

As previously discussed in the statement of the case, the Lower court(s) adopted the Report & Recommendation of Magistrate Judge Andrea Johnstone, Holding:

“... deny Mr. Richardson's Fed. R. Civ. P 12(b)(1) motion without addressing the merits of [his] jurisdictional arguments” and deem Mr. Richardson's Fed. R. Civ. P 12(b)(1) motion as an addendum to [his] 28 U.S.C § 2241 Petition (omissions added)”
See APPX-A.

As a consequence, the lower court(s) acted without power when it had no power to refuse to satisfy itself of subject-matter jurisdiction [12(b)(1) motion].

In conjunction to the NON-DISCRETIONARY duty of the Lower court(s), the supreme court has long established that a petitioner may raise, "The objection that a federal court lacks subject-matter jurisdiction, see Fed. R. Civ. P. 12(b)(1), may be raised by a party, or by a court on its own initiative, at any stage in the litigation; even after trial and the entry of judgment. Rule 12(h)(3) instructs: whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject-matter, the court shall dismiss the action" See Kontrick v. Ryan, 540 U.S. 443, 455, 125 S.Ct. 906, 157 L.Ed.2d 867 (2004); Also see, Arbaugh v. Y&H Corp., 546 U.S. 500, 506, 163 L.Ed.2d 1097, 126 S.Ct. 1235 (2006). Furthermore, Subject-matter jurisdiction is appropriately dealt with by means of a motion to dismiss under Fed. R. Civ. P. 12(b)(1)... See Goodman v. United States, 185 Fed. Appx 725, 727 (2006)

More importantly, when Petitioner filed [his] Fed. Rule Civ. P. 12(b)(1) motion stating to the Lower court(s) that there is no case or controversy as required by Article III Standing, the "[F]ederal courts are under an independent obligation to examine their own jurisdiction, and (ARTICLE III) Standing is perhaps the most important of [the Jurisdictional] doctrines. See FW/PBS, Inc. v. City Dallas, 493 U.S. 215, 231, 110 S.Ct. 596, 107 L.Ed.2d 603 (1990) (Omissions Added). Subsequently, it was the NON-DISCRETIONARY duty of the lower court(s) to order the government "[t]o... establish a case or controversy under ARTICLE III,... whereas, the Plaintiff

[government] must establish standing." see ARIZ. Christian Sch. Tuition org. v. Winn, 563 US 125, 132, 131 S Ct 1436, 179 L Ed 2d 523 (2011) (omissions and Brackets added). Thus, when the Appellate Court (First Circuit) ordered the Government to Establish standing, the government refused, by stating the following:

"I am writing to inform you that the warden was never served in this matter and did not participate in the proceedings before the United States District Court. Therefore, the warden is not a party to this appeal and will not participate in the First Circuit proceedings." SEE APPX-D

Therefore, in the absence of Article III standing [NOT addressing Petitioner's 12(b)(1) motion and/or the Government's refusal to establish Article III standing], the lower court(s) has, "no power to declare the law." see Steel Co. v. Citizens for a Better Env't, 523 US 83, 94 118 S Ct 1003, 140 L Ed 2d 210 (1998) (quoting Ex parte McCordle, 74 US 611 (1868)). Thus, mandamus should only issue to exercise Supervisory control over the lower court(s) jurisdictional excess.

II. EXCEPTIONAL CIRCUMSTANCES WARRANT THE EXERCISE OF THE COURT'S DISCRETIONARY POWERS

Petitioner can demonstrate irreparable harm unless the court acts by writ whereas, this matter can not be properly litigated through normal appellate means. Moreover, the claim

of irreparable harm involves a request that the court act in order to enforce Article III standing and/or preserve the court's ability to act on a petition for certiorari. The assertion being that a failure to act will somehow deprive the court of this power.

On November 23, 2020, Petitioner filed a TITLE 28 U.S.C. § 2241 petition responsive to his actual innocence claim pursuant to TITLE 28 U.S.C. § 841(a) (Count Two). Subsequently, on March 31, 2021, Petitioner filed a motion pursuant to FED. R. CIV. P. 12(b)(1) for lack of subject-matter jurisdiction, whereas, the cause is not a "case or controversy" within the meaning of ART. III § 2 of the United States Constitution.

More importantly, if a District Court has two motions pending before its court, namely, a motion that goes to the merits [§ 2241] and a motion that goes to subject-matter jurisdiction [12(b)(1)], well settled jurisdictional law establishes that "... before we consider any merits issues, we must begin by addressing the threshold matter of whether we have subject-matter jurisdiction over these claims." See EFREM V. MCKEE, 2022 US App. Lexis 23026; quoting STEEL CO. V. CITIZENS FOR BETTER ENV'T, 523 US 94, 95 (1998). In layman's terms, before the District Court can address the merits of [his] § 2241 petition, the District Court must FIRST satisfy itself of subject-matter jurisdiction [12(b)(1)].

STANDARD OF REVIEW

"To decide whether a 12(b)(1) motion is a facial or factual challenge, a court must determine whether the motion disputes the complaint's allegations regarding subject-matter jurisdiction."

Torres-Negron v. JEN Records, L.L.C., 504 F.3d 151, 162 n.8 (1st Cir. 2007). If the 12(b)(1) motion disputes the subject-matter allegations,

then it challenges the factual basis for subject-matter jurisdiction. Id. Under a factual challenge, ⁶⁶ "the allegations have no presumptive truthfulness and ... the court has discretion to allow affidavits, documents and even a limited evidentiary hearing to resolve disputed jurisdictional facts." Mercado - Arocho, 455 F. sup 2d at 18 (citations omitted). The analysis changes depending on whether the challenged facts would also decide issues relating to the merits of the case. Torres - Negron, 504 F.3d at 163. If the challenged facts do involve the merits of the case, the court must use a summary judgment standard and dismiss ⁶⁷ "only if the material jurisdictional facts are not in dispute and the moving party is entitled to prevail as a matter of law." Id. (quoting Trentacosta v. Frontier Pac Aircraft Indus., 813 F.2d 1553, 1558 (9th cir. 1987)). Furthermore, ⁶⁸ "The part[y] asserting jurisdiction has the burden of demonstrating the existence of Federal jurisdiction." Acosta - Ramirez v. Banco Popular de Puerto Rico, 712 F.3d 14, 20 (1st cir. 2013).

In Petitioner's case sub judice, District Court Judge Joseph Laplante did not follow the prescribed jurisdictional Rule 12(b)(1), which require ⁶⁹ "the part[y] asserting jurisdiction, namely, the government has the burden of demonstrating the existence of Federal jurisdiction." Id. (omissions added). Consequently, Judge Laplante ordered magistrate Judge Andrea Johnstone to conduct a ⁷⁰ "fact-finding", which similarly applies to the summary of judgment standard, i.e., ⁷¹ "If the challenged facts do involve the merits of the case, the court must use a summary judgment standard and dismiss ⁷² "only if the material jurisdictional facts are not in dispute and the moving party is entitled to prevail as a matter of law." Id. However, the District Court elected to address Petitioner's Fed. R. Civ. P. 12(b)(1) motion, sua sponte, by way of, magistrate Johnstone's jurisdictional fact-finding, Holding:

12.

“
Mr. Richardson's new evidence consist of a CAD-Report that establish the existence of a “Drug-violation” that occurred on August 06, 2008 at 9:59:30 P.M at Richardson's place of business. The case number assigned to the “Drug-violation” is the same case number that appears on the certificate of analysis identifying the substance at issue in Count Two. The uncontroverted fact that Mr. Richardson had been arrested at NOON, on August 06, 2008 and remained in custody at the time of the said “Drug-violation” and there is no incident report generated by P.P.D in support of the government's theory of a morning controlled buy.” See Magistrate Judge's RER, APPX-A.

More importantly, the magistrate Judge's fact-finding does not dispute Petitioner's 12(b)(1) motion and/or Jurisdictional challenge. In fact, the same fact-finding support Petitioner's Jurisdictional claim and establish the legal basis that the Federal District court lacks jurisdiction over the subject-matter, where there is not a “case or controversy” within the meaning of Article III § 2 of the United States Constitution. Thus, when there is no jurisdiction over the subject-matter or Petitioner's Jurisdictional facts are not in dispute, “the moving party [Petitioner] is entitled to prevail as a matter of law.” Id. (Brackets added).

Thus, the mischaracterization of Petitioner's 12(b)(1) motion, deemed to be an addendum to [his] § 2241 motion (without addressing the merits), ruthfully violated Petitioner's legal process to a colorable Jurisdictional challenge. Consequently, the District Court's designation of a rule [“savings clause”] as going to a court's subject-matter jurisdiction can have important consequences.

The Supreme Court has held that, "branding a rule [§ 2255(e) savings Clause] as going to a court's subject-matter jurisdiction alters the normal operation of our adversarial system. Indeed, as we have described, this designation changes the method of review applied to a motion to dismiss. [12(b)(1)]." See Henderson, 562 U.S. at 434 (Brackets added). Speaking to the operation of our adversarial system, the District Court relied upon the controverted facts used against Petitioner during trial, in support of [its] want of savings clause jurisdiction. However, all parties who initiated the said controversy as to Bobby Richardson, namely, the Petersburg Police Chief for the state agency, U.S.A.O.-Richmond (Prosecuting Agency), E.O.U.S.A (Parent Agency) and the ATF Disclosure Division, collected, located and provided the uncontroverted records to Petitioner that establish the basis to [his] claim; which include, ACTUAL INNOCENCE (COUNT TWO), FALSE ARREST, ILLEGAL SEARCH & SEIZURE, TAMPERING WITH EVIDENCE, FALSE DOCUMENTS and THE SUPPRESSION OF EXCULPATORY EVIDENCE, et al.

This Court should exercise [its] general supervisory control because "Jurisdiction... is not defeated as [District & Appellate] Court seem to contend by the possibility that the averments [§ 2241] might fail to state a cause of action on which Petitioner could actually re-

¹ On August 16, 2017, USAO-EDVA sent 36 pages of potentially responsive documents from Richardson's case file to EOUSA for final processing each party made a declaration under the penalty of perjury responsive to this process. See Bobby Richardson v. U.S. Department of Justice, et al., 2018 U.S. Dist. Lexis 166086 (D.C. 2018).

Cover. For it is well settled that the failure to state a proper cause of action [§ 2241] calls for a judgment on the merits and not for a dismissal for want of jurisdiction [12(b)(1)]. Whether the Complaint [§ 2241] states a cause of action on which relief could be granted is a question of law and just as issues of fact it must be decided after and not before the court has assumed jurisdiction [12(b)(1)] over the controversy. If the court does later exercise its jurisdiction [12(b)(1)] to determine that the allegation in the Complaint [§ 2241] do not state a ground for relief, then dismissal of the case would be on the merits [§ 2241] not for want of jurisdiction [12(b)(1)]. ⁹⁹ See Bell v. Hood, 90 L Ed 939, 327 US 678, 682 (1946) also see; Swafford v. Templeton, 185 US 487, 493, 494, 46 L Ed 1005, 22 S.C. 783; Blinderup v. Pathe Exch, 263 US 291, 305-308, 68 L Ed 308, 314, 315, 44 S.C. 96 (omissions and Brackets added).

The reason for this is that the court must assume jurisdiction via, Petitioner's 12(b)(1) motion, to decide whether the allegations in [this] 2241 motion state a cause of action on which the court can grant relief as well as to determine issues of fact arising in the controversy.

INABILITY TO ACT ON PETITION FOR CERTIORARI

As the Supreme Court pointed out in Baker v. Carr 369 US 186, 198 L Ed 663, 674, 82 S.C. 691 (1962), there is a significant difference between determining whether a cause over which a court has subject-matter jurisdiction is "justiciable." Id. In Baker v. Carr, supra, this court noted that a Federal District Court lacks jurisdiction over the subject-matter (1) if the cause does not "arise under" the Federal Constitution, laws, or treaties (or fall within one of the other enumerated categories of ART III;

or (2) if it is not a "case or controversy" within the meaning of that phrase in ART III; or (3) if the cause is not one described by any jurisdictional statute.

No other forms of relief will be sufficient to preserve the ability to seek certiorari review of the lower court(s) decision in this court because the final judgment from the lower court(s) are inadequate in this case. The supreme court of the United States announced that "[E]very 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 case under review', even though the parties are prepared to concede it." Mitchell v. Maurer, 293 U.S. 237, 244, 79 L. Ed 338, 55 S. Ct 162 (1934). Thus, if the record discloses that the lower court(s) was without jurisdiction this court will notice the defect and [we] have jurisdiction on appeal, not of the merits [§ 2241] but merely for the purpose of correcting the jurisdictional error of the lower court in entertaining the suit. See United States v. Corrick, 298 U.S. 435, 440, 8 L. Ed 1263, 56 S. Ct 829 (1936). This constitutes the essential duty and special obligation for federal courts to establish its subject-matter jurisdiction.

Consequently, the lower court's refusal to follow established jurisdictional law by satisfying itself that [it] has jurisdiction over the subject-matter [12(b)(1) motion] before addressing Petitioner's § 2241 petition, alters the normal operation of the appellate process, where this court can not address the merits of [this] § 2241 motion because of the jurisdictional error of the lower court(s) in entertaining the suit.' Id. As a result, Petitioner is under constant subjection to irreparable harm of being unlawfully convicted and imprisoned under the order of the District and Appellate court (1st Cir.), who had no authority to adjudicate this cause of action pursuant to TITLE 28 U.S.C. § 841(a)(count two).

For the foregoing reasons, this court should exercise its supervisory control over the jurisdictional excess of the Lower Court(s).

III. Adequate Relief cannot be obtained in any other Court

No other court beside the Supreme Court is capable of granting the relief needed. Where the District and Appellate court for the First circuit simply refuse to address Petitioner's 12(b)(1) motion when it had no power to refuse. Subsequently, the District court used controverted facts to deny Petitioner's § 2241 motion. Thereafter, the Appellate court affirmed the District court ruling and dismissed [his] 12(b)(1) motion as moot. As a consequence, the determination of the lower court is not reviewable on certiorari because the lower court(s) did not have establish Jurisdiction to decide [his] § 2241 motion, which deprive the Supreme Court of certiorari review of the merits of Petitioner's § 2241 claim. The extraordinary writ of mandamus should issue because the irreparable harm involves a request that this court must act in order to preserve the court's ability to act on a petition for certiorari and the assertion being that a failure to act will somehow deprive the court of this power. more importantly, the clearest traditional office of mandamus has been to control Jurisdictional excess to a lawful exercise of [its] prescribed Jurisdiction. Thus, there is no other adequate relief in any other court because if the District and Appellate court is without subject-matter Jurisdiction and the Supreme Court is deprived of [its] certiorari review, then all sister circuits lack subject-matter Jurisdiction also.

The Jurisdictional excess of the lower court(s) falls into the category of being egregious where the Appellate court recognize it has the duty of satisfying [itself] and the District Court of subject-matter Jurisdiction, by ordering the government to respond to the pleadings. However, the Appellate court changed its tone when the government made the following remarks, via, letter, stating:

“

...the warden was never served in this matter and did not participate in the proceedings before the United States District Court. Therefore, the warden is not a party to this appeal and will not participate in the First Circuit proceedings.

”
ings. See Appx-D

After the response of Assistant United States Attorney (“AUSA”) Seth Aframe, the Appellate Court simply abandon [its] non-discretionary duty to establish subject-matter jurisdiction for [itself] and the District Court. More importantly, the remarks (letter) made by the “AUSA” has some serious implications in response to the normal operation of our adversarial system. Moreover, you will find several examples (below):

(1). The District Court did not order AUSA Seth Aframe to respond to Petitioner's 12(b)(1) motion which is non-discretionary.

(2). The Appellate Court recognize the jurisdictional excess of the District Court by ordering the government to respond to the pleadings.

(3). Upon information and belief, the government simply do not agree with the position of the District Court whereas, when ordered to respond to the pleadings by the Appellate Court, the government elected to separate [itself] from the District Court by stating “...the warden... did not participate in the proceedings before the United States District Court and will not participate in the First Circuit proceedings”

See Appx-D

(4). The Appellate court simply abandon [its] duty to police the jurisdictional excess of the lower court and dismissed Petitioner's 12(b)(1) motion as moot and adopted the ruling of the District court, thus, dismissing Petitioner's § 2241 motion for the want of § 2255(e) savings clause, via, controverted facts.

More importantly, it's imperative for Petitioner to explain to this court, by way of a brief legal synopsis, responsive to the manner in which Petitioner acquired the uncontroverted records and the nature of the same records presented to the District & Appellate court pursuant to his claim.

The uncontroverted records relied upon by Petitioner was first processed by Paralegal Specialist Ann S. Helms with the United States Attorneys Office ("USAO") in the Eastern District of Virginia, Richmond Division. In [her] capacity as FOIA contact for USAO EDVA (Richmond Division), Ms. Helms used a system called Legal Information Office Network system ("LIONS"). LIONS is a case management database that allows each USAO to maintain, track, and report information on their workload. Information available on LIONS include file number, district and appellate court case numbers, defendants name, a list of all defendants in the case, the disposition for all defendants, investigating agency, agent's name, lead charge as well as case status. Based on the information contained in LIONS, Ms. Helms determined that Petitioner's case file had been archived, so Ms. Helms conducted a search of its contents on May 15, 2017 and located several local police reports and reports prepared by the Bureau of Alcohol, Tobacco, and Firearms ("ATF") that referenced some, but not all of the case numbers identified by Petitioner. After completing the review, Ms. Helms forwarded the responsive documents to EOUSA's FOIA and Privacy staff on August 16, 2017, for final processing. By letter dated on August 16, 2017, EOUSA notified Petitioner that a search for records in the USAO for the Eastern District of Virginia ("USAO/VAE") has revealed that all potentially responsive records originated with the Bureau

of Alcohol, Tobacco, Firearms, and Explosives ("ATF"). Accordingly, per Department of Justice Regulation 28 C.F.R § 16.4 and 16.42, EOUSA referred the said records to the ATF by letter dated August 16, 2017 for its review and direct response to Petitioner.

Subsequently, on September 15, 2017, ATF released in part the referred records responsive to Petitioner's FOIA request. The release, consist of 34 pages released and 2 pages¹ released in full, withheld information pursuant to Exemptions (b)(6) and (b)(7)(C).

The FOIA suit against the government is the FOURTH PHASE of Petitioner's FOIA process. Moreover, the fourth phase addresses the government's role in relation to the possession of controverted and uncontroverted Records obtained from the arresting officer(s) of the Petersburg Police Department ("P.P.D").

The First Phase of the FOIA process involves the city of Petersburg ("P.P.D") executing an illegal search warrant, namely, a computerized search was executed on August 06, 2008 at 1:30 P.M. Subsequently, a handwritten search warrant Affidavit was approved 1 hour and 5 minutes after the search was conducted, on August 06, 2008 at 2:35 P.M. See § 2.241, Exhibit L¹M. On or about November 23, 2009, Petitioner submitted a FOIA request to "P.P.D" pursuant to Virginia Freedom of Information Act, VA. Code § 2.2-3706. On or about July 27, 2011, the city of Petersburg Police Department, office of the Police chief provided Petitioner with the following FOIA documents:

- (1). Computer-Aided-Dispatch ("CAD-REPORT") - (Event I.D: 2008-042443) → on August 06, 2008 at 13:04:13 PM, Richardson was arrested at 2020 South Sycamore St., Petg, VA
See § 2241, Exhibit C
- (2). Computer-Aided-Dispatch ("CAD-REPORT") - (Event I.D: 2008-042444) → on August 06, 2008 between 13:05:10 - 13:22:01, Petersburg Fire Department (E5) arrived / performed EMS duties. See § 2241, Exhibit C
- (3). Incident Report - (Case # 08-013748) → This incident report give a description of the crimes involved and the property recovered pursuant to a search & seizure that occurred on August 06, 2008 at 13:35 at 2020 S. Sycamore St., Petg, VA.
See § 2241, Exhibit C

(4). Computer-Aided-Dispatch ("CAD-Report") → 25 Computer-Aided-Dispatch from the years of 2005-2011 for the location of 2020 South Sycamore Street and/or near proximity to the said location. See § 2241, Exhibit C

The Second Phase of the FOIA process involves the Commonwealth of Virginia Department of Forensic Science. Pursuant to Virginia Code § 2.2-3703, Petitioner made a FOIA request responsive to certificate of Analysis, FS Lab # C08-19739.

(1). On or about December 12, 2014, the Department of Forensic Science provided Petitioner with a certificate of Analysis dated January 26, 2009 and May 14, 2009. See § 2241, Exhibit F.

The Third Phase of the FOIA process also involves the Commonwealth of Virginia Department of Forensic Science. Pursuant to Virginia Code § 2.2-3703, Petitioner made a FOIA request responsive to certificate of Analysis, FS Lab # C08-15450.

(1). On or about June 11, 2015, the Department of Forensic Science provided Petitioner with a certificate of Analysis dated October 14, 2008 and May 19, 2009. See § 2241, Exhibit P.

The legal synopsis of the Four phase FOIA process (above) will now compare and separate fact from falsehood by using the uncontroverted evidence gathered from the office of the Police Chief and the Commonwealth of Virginia Department of Forensic Science, against the controverted facts used by the government, et. al, in the wrongful prosecution of Petitioner in violation of Article III § 2 of the United States Constitution. In addition, the legal synopsis will also show this Court the assigned exhibits that's attached to Petitioner's pleadings, where the District and Appellate Court had a sufficient amount of prima facie evidence to contrast the controverted from the uncontroverted and only determine that there's no case or controversy pursuant to Article III Standing. Furthermore, the evidence speak to the egregious action of the lower court(s) to allow police corruption and prosecutorial misconduct to go unnoticed and/or overlooked.

BULLETIN POINT(S)

- (1). On December 04, 2008, special Agent Todd R. Fleming of A.T.F adopted state evidence from P.P.D pursuant to Incident Report / Case # 08-013748, responsive to a search and seizure at 2020 South sycamore St, Petg, Va. see Appx-E.
- (2). On January 07, 2009, a Federal Grand Jury returned an 8-count indictment pursuant to Case # 08-013748 and/or evidence as a result of the search & seizure at 2020 South sycamore St, Petg, Va. See Doc. No 9.
[Counts 1, 3 and 4-9]

CONTROVERTED FACTS (para. 1 & 2)

USAO-Richmond Division did not provide Petitioner with an official copy of Incident Report (Case # 08-013748), referenced to in First Phase, id at 20. The government, et.al, utilize the information from the same incident report by typing similar information on false incident reports and using a black maker to conceal the case no. section of the false incident reports. Subsequently, the false reports was issued to Petitioner inside his Pre-trial Discovery.

UNCONTROVERTED FACTS

Department of Forensic Science → On or about October 14, 2008, a lab analysis was performed responsive to FS Lab # COB-1540. The same evidence was performed while in the custody of P.P.D and was assigned to case No. 08-013748, responsive to the search & seizure, on August 06, 2008 at Petitioner's place of business. See THIRD PHASE, id at 21.

The 7-page incident reports are false, where the same report have a computerized print-out date of August 1996 as to the year the report was printed from P.P.D data base. However, Petitioner was arrested on August 06, 2008, some 12 years after the reports was first generated. Furthermore, the same incident report was never filed with P.P.D. See § 2241, Exhibit D & Exhibit J, pgs. 19-25.

(3). On January 07, 2019, Petitioner received a Federal indictment from the Grand Jury pursuant to TITLE 28 U.S.C. § 841(a) (Count Two) for distribution of 25 packets of heroin in exchange for \$500.00 in U.S. currency. More importantly, TITLE 28 U.S.C. § 841(a) (Count Two) is the basis of Petitioner's 12(b)(1) jurisdictional challenge and his § 2241 actual innocence claim. See Doc # 9.

Controverted Facts (para. 3)

USAO - Richmond Division provided Petitioner with a copy of the certificate of Analysis (Fs Lab # C08-19739) pursuant to TITLE 28 U.S.C. § 841(a) and/or the 25 packets of heroin. Consequently, the government, et. al, used a black marker and removed the case number from the lab report that was generated by "P.P.D" Computer-Aided-Dispatch ("CAD-Report") system. This prevented Petitioner from knowing the case number assigned to the evidence and/or TITLE 28 U.S.C. § 841(a) (Count Two), by the Petersburg Police Database. More notably, Certificate of analysis, Fs Lab # C08-19739 was not performed under the watch of the Petersburg Bureau of Police. To be specific, Petitioner was indicted as to count two on January 07, 2009, by a Federal Grand Jury (above). Consequently, the lab analysis was performed on January 26, 2009, i.e., 53 days after P.P.D turned its case over to the government, via, criminal complaint, on December 04, 2008 (See Doc # 1) and 19 days after a Federal Grand Jury returned [its] on January 07, 2009. See § 2241, Exhibit F, (Fs Lab # C08-19739)

UNCONTROVERTED FACTS

According to the City of Petersburg Police Department, Office of the Police Chief, the evidence turned over to USAO - Richmond Division was responsive to Incident Report (Case No. 08-013748) and/or the search & seizure at 2020 South Sycamore Street, Petg, VA. Furthermore, the evidence provided by the Office of the Police Chief (see Third Phase, Id at 21) does not mention anything about the distribution of heroin involving 25 packets in exchange for \$500.00. More importantly, Special Agent Todd R. Flemings of A.T.F, make no mention of the distribution of heroin inside [his] criminal complaint. See Appx-E

Department of Forensic Science

On or about December 14, 2014, the Department of forensic science provided Petitioner with a unredacted version of certificate of Analysis, FS Lab# C08-19739. It was determined that "P.P.D" assigned the evidence responsive to TITLE 28 USC § 841(a) (COUNT TWO) to CASE NO. 08-013781. See § 2241, EXHIBIT F
Computer-Aided-Dispatch ("CAD" REPORT)

According to the Petersburg Police Data base, CASE NO. 08-013781 / FS Lab# C08-19739 and/or TITLE 28 U.S.C § 841(a) (COUNT TWO), pertains to a "DRUG-VIOLATION" that occurred on August 06, 2008 at 21:59:30 (9:59:30 P.M.) at the location of 2020 South Sycamore street, Petg, Va. See § 2241, EXHIBIT C, pg. 4 (EVENT I.D 2008042540). More importantly, Petitioner was arrested on August 06, 2008 at 1:04:13 P.M. and a search warrant executed on his place of business on August 06, 2008 at 1:30 P.M. Therefore, the "Drug-violation" that occurred on August 06, 2008 at 21:59:30 (9:59:30 P.M.), does not pertain to Petitioner's arrest and/or search & seizure at his place of business, where Petitioner was arrested and remained in custody some 9 hours prior.

Upon information and belief, the government, et.al, redacted the case numbers from all discovery material to include; incident reports and lab reports to conceal and controvert the true-nature of the evidence derived from the Petersburg Police Data-base. In doing so, this enabled the government, et.al, to controvert CASE NO. 08-013781 by giving the appearance that the alleged controlled buy occurred on August 06, 2008 between 11:00 AM - 12:00 PM, giving the appearance that the alleged controlled buy was pursuant to Petitioner's arrest and search and seizure of [his] place of business.

More importantly, if the government, et.al, would not have controverted the evidence responsive to CASE NO. 08-013748 and/or elected not to withhold the same evidence, Petitioner would have discovered the following (PRE-TRIAL):

- (1) On August 06, 2008 at 21:00 (9:00 P.M.), an unknown officer with P.P.D. went into the Petersburg Property room and removed some unknown property that was seized, via, search & seizure (CASE NO. 08-013748). See § 2241, EXHIBIT J, pg. 2, para. 84.

(2). Approximately, 1 hour after the property was removed from Petersburg Police property room (August 06, 2008 at 9:00 P.M.); Detective Jason D. Sharp, subsequently went to the Petersburg Police station and/or Radioed in a false controlled buy involving 25 packets of heroin that allegedly occurred on August 06, 2008 at 9:59:30 P.M. see § 2241, Exhibit C, pg 4, EVENT I.D # 2008042540

(3). A total of \$2,020.00 in U.S currency was seized from the search & seizure pursuant to case No. 08-013748 and the same currency was placed inside the police property room. See § 2241, Exhibit J, pg 2, Item NO. 006, 005, 007, respectively.

(4). On or about August 18, 2008, Detective Jason D. Sharp of "P.P.D." filed a incident report (case No. 08-013748) pursuant to the \$2,020.00 in U.S currency seized from Petitioner's business responsive to a search & seizure. See § 2241, Exhibit C, Incident report (Case No. 08-013748).

(5). The government, et. al, controverted the \$2,020.00 in U.S currency seized from Petitioner's place of business pursuant to Case No. 08-013748 (above) by way of the government's exhibit list introduced and used at trial. To be specific, the government, et. al, provided a receipt from "P.P.D." in the amount of \$1,520.00 in the form of Exhibit # 12, responsive to the seized currency from Petitioner's place of business, in re of search & seizure (case No. 08-013748). Thus, the government, et. al, subtracted \$500.00 in U.S currency from the original \$2,020.00 seized and placed that same \$500.00 in U.S currency under Exhibit # 12, in the form of alleged controlled buy money (Case No. 08-013781). See case 3:09-cr-00015-JR document 23, Item Nos 11-12.

In closing, this court will also find a more detailed version of Petitioner's undisputed facts presented to the United States Court of Appeals for the First Circuit, which further place emphasis upon the lower court(s) non-discretionary duty to adjudicate Petitioner's Fed. R. Civ. P 12(b)(1) motion. The government can not and will not make a jurisdictional challenge, in light of the fact that Petitioner's uncontroverted evidence derived from "P.P.D.", the same agency the government adopted its case and evidence from.

Not only does the uncontroverted facts highlight police corruption & prosecutorial misconduct, that affect the public at large, more so, the district & appellate court has a fundamental duty to examine its jurisdiction and the court(s) failure to do so extends beyond a "mere jurisdictional error" or mere failure to spot a jurisdictional issue. The lower court(s) seem to misconstrue or misinterpret the importance of subject-matter jurisdiction [12(b)(1) motion]. For example, the District court held the following in response to subject-matter jurisdiction (12(b)(1)):

"Mr. Richardson's self-styled "motion to dismiss" (Doc. 5) seeks to dismiss his conviction on count 2, based on his arguments that fabricated evidence relating to the controlled buy stripped the Eastern District of Virginia of jurisdiction over count 2. Mr. Richardson has not established a gateway claim of actual innocence or otherwise properly invoked this court's savings clause jurisdiction, this court lacks jurisdiction to grant the relief requested in his "motion to dismiss..." (omissions added) See APPX A (Magistrate Judge RER), Subtitle, "Motion to Dismiss Indictment and Conviction (Doc. 5), pgs. 12-13.

The District Court seem to suggest that, by Petitioner [§ 2241] motion not invoking § 2255(e) that diminishes the district court's subject-matter jurisdiction, which rests on 28 U.S.C § 1331 because the claim arises under federal law. Sections 2241 and 2255 deals with remedies; neither one is a jurisdictional clause. (Jurisdiction to resolve claims under § 2255(e) savings clause, which technically are motions in the criminal prosecution, comes from 18 U.S.C § 3231. Furthermore, "... Substantive shortcomings [savings clause] do not affect subject-matter jurisdiction. See *Bell v. Hood*, 327 U.S. 678, 90 L.Ed 939, 66 S.Ct 773. (1946) (Brackets added).

This Court should only issue mandamus to control jurisdictional excess where the Federal courts simply do not have subject-matter jurisdiction nor a person cannot constitutionally be convicted of a crime that does not exist at the time of the alleged conduct.

For the reasons stated, this court should instruct the Appellate Court to Vacant its order and remand the case back to the District court to answer [his] Fed. R. Civ. P 12(b)(1) motion.

CONCLUSION

The petition for a writ of mandamus should be granted.

Respectfully submitted,

Bobby Richardson

Date: SEPTEMBER 25, 2023