

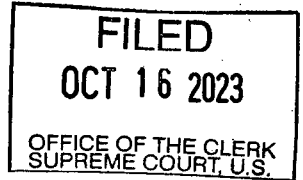
23-5930

No. _____

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES



BRENT DOUGLAS COLE — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR ~~LEAVE TO APPEAL AND EXTEND TIME~~

TO: THE SUPREME COURT OF THE UNITED STATES

FROM: THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR LEAVE TO APPEAL AND EXTEND TIME,
or ALTERNATIVELY FOR WRIT OF HABEAS CORPUS

IN PRO SE: BRENT D. COLE, REG. No. 71911-097

(Your Name)

P. O. BOX 1000 (FCI SANDSTONE)

(Address)

SANDSTONE, MN 55072

(City, State, Zip Code)

No PHONE - N/A

(Phone Number)

QUESTION(S) PRESENTED

1 1) THE USCA 7TH CIR. ISSUED AN ORDER OF NON-INVOLVEMENT FOR THE U.
S. ATTORNEY FROM WISCONSIN, AND HELD MY OBJECTION TO BE A MOTION,
3 DENIED IT INSTEAD OF ORDERING THE U.S. ATTORNEY FROM CALIFORNIA,
WHO HAS BEEN LITIGATING THIS CAUSE SINCE OCT. 2014 TO RESPOND, THUS
5 RENDERING IT AN ADVERSARIAL PROCEEDING WITH NO ADVERSARY, AND THE
JUDGES AS "BOTH JUDGE AND PARTY, ARBITER AND ADVOCATE IN THE SAME
7 CAUSE." AND VIOLATING THE PRINCIPLE "THAT A JUDGE MUST NECESSARILY
BE FREE FROM ALL BIAS AND PARTIALITY." INLAND STEEL CO. V. NLRB,
9 109 F.2D 9, 20, 1940 U.S. U.S. APP. LEXIS 4879 (CA 7TH CIR.).

TO "CAUSE TO CEASE FOR A TIME" OR "FAIL TO MEET OBLIGATIONS" IS
11 TO 'SUSPEND', WHICH WAS THE EFFECT OF THE COURT'S COURSE OF ACTION.
I HAVE URGED THAT THERE IS NO SHOWING OF JURISDICTION ON THE FACE
13 OF THE RECORD AND THAT THE TRIAL COURT WANTONLY CIRCUMVENTED THE
NECESSARY PROCESS FOR REMOVING A PRISONER TO A JURISDICTION NOT THE
15 SAME, THE WRIT AD PROSEQUENDUM, SUSPENDING THE PRIVILEGE 9/18/2014,
VIOLATING ART I, §9, CL.2, AND THE NORTHWEST ORD., ART.2 (1787).

17 DID SAID COURT DENY THE APPELLANT DUE PROCESS OF LAW, AND/OR AP-
PEAL, AND/OR ART I, §9, CL.2, U.S. CONST., AND/OR SAID COMPACT?

19 RESTATED: WAS THE USDC EASTERN DIST. OF CALIF. WITHOUT SUBJECT
20 MATTER JURISDICTION AND/OR APPELLANT DIVESTED OF HIS ENTITLEMENTS?

23 2) THE APPELLANT WAS CONVICTED OF ASSAULT PER 18 USC §111(A) & (B),
AFTER BEING ACQUITTED ON STATE CHARGES FOR THE SAME INCIDENT FOR
25 SUBSTANTIALLY THE SAME CHARGES, ASSAULT ON AN OFFICER, WHICH OCCUR-
RED WITHIN THE EXCLUSIVE TERRITORIAL JURISDICTION OF CALIFORNIA. I
27 WAS MORTALLY WOUNDED, SHOT FIVE (5) TIMES WITHIN TWELVE SECONDS OF
OFFICERS DRAWING THEIR GUNS ON ME FIRST AND FIRING SEVENTEEN (17)
29 BULLETS AT ME. IT IS A MATTER OF RECORD THAT MR. HARDIN DREW HIS
GUN ON ME WHILE MINE WAS STILL HOLSTERED IN ITS EXTERNAL HOLSTER.
32 I HAD MADE NO THREATS OR PROVOCATIONS. DISTRICT ATTORNEY CLIFFORD
NEWELL "CLEARED THE INVOLVED OFFICERS IN THE BRENT COLE SHOOTING
34 INCIDENT OF ANY CRIMINAL LIABILITY, ... AND HAS FILED CRIMINAL CHAR-
GES AGAINST BRENT COLE. ..." SERGEANT MATT WHITING ID#: 12888, 10/
36 30/2014. THERE WAS NO JUDICIAL HEARING OR WITNESS TESTIMONY.

DID THE PANEL JUDGES LIBEL THE APPELLANT IN THEIR ORDER ON 6/28/23?

LIST OF PARTIES

[X] 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:

- 1) The United States of America, and its following agencies:
- 2) R. D. Keys, Warden of OXFORD FCI;
- 3) UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA.

RELATED CASES

- 1) Cole v. Keys, No. 22-3018, UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT, Judgment issued June 28, 2023. "PETITION FOR REHEARING; WITH SUGGESTION FOR REHEARING EN BANC AND CERTIFICATION OF FEDERAL QUESTION TO THE SUPREME COURT". Rehearing DENIED was entered August 18, 2023.
- 2) Cole v. Keys, No. 20-cv-453-wmc, U.S. District Court For The Western District Of Wisconsin, Judgment entered October 11, 2022
- 3) United States v. Cole, No. 2:19-cv-02274-WBS-DB, U.S. District Court For The Eastern District of California. The said court is employing my \$2255 Motion continuously as a dilatory tactic. There has been failure and/or refusal to adjudicate since 11/9/19. Said court is suspending the Privilege in violation of Art I, §9.
- 4) United States v. Cole, No. 2:14-cr-00269-WBS-DB, U.S. District Court For the Eastern District Of California. Judgment entered September 10, ECF 156.
- 5) United States v. Cole, No 2:15-cv-00251-GEB, U.S. Dist. Court For the Eastern Dist. of Calif. Judgment on Feb. 20, 2015, ECF 68.
- 6) United States v. Cole, No. 2:14-mj-00212-EFB, U.S. Dist. Court For the Eastern Dist. of Calif. This was an irregular procedure used to deny me due process of law by circumventing the necessary writ ad prosequendum, requirements for preliminary hearing, indictment, notice and opportunity to be heard. A complaint was proffered by FBI Agent Forristel supported solely by hearsay, and I was held to answer for an infamous crime without bail or process.

- 6) (cont.) Unwanted Counsel was forced upon me in absentia. ECF 7, 10/1/14. Solicitor McCoy obtained endorsement of his indictment by concealing the law and facts, then coercing the Grand Jury to endorse it without any witness testimony or investigation. This docket no. was closed 10/2/2014, and claimed under 2:14-cr-00269.
- 7) People v. Cole, No. F14-00267, Superior Court of California For The County of Nevada. Nolle prosequed Sept. 25, 2014, in absentia Cole per the direct command of AUSA McCoy using the Federal court's processes to defeat the State court's jurisdiction, violating 18 USC § 3231 and the Prior Exclusive Jurisdiction Doctrine.
- 8) People v. Cole, No. M14-00388, Superior Court Of California For The County Of Nevada. Judgment entered May 15, 2018, DISMISSED.
- 9) United States v. Cole, No. 2:15-CV-01062-KJN, 05/11/2015, U.S. District Court For The Eastern District Of California, ECF 79, a "petition for a writ of mandamus", mutilated by declaring it to be a 42 U.S.C. §1983 claim, which was incapable of providing remedy and thus a clear display of bias. It was dismissed for inability to pay the filing fee. Judgment was entered Sept. 1, 2015.
- 10) U.S. v. Cole, No. 15-10313, U.S. Court of Appeals (USCA) For the Ninth Circuit (9th Cir.), interlocutory merged with direct.
- 11) U.S. v. Cole, No. 15-10459, USCA 9th Cir., opened 09/15/2015, Counsel was forced upon me over my demand to self represent, thus vitiating the proceedings. Judgment was entered May 21, 2018.
- 12) Cole V U.S., No 15-6826, USCA 9th Cir., from ECF 79 mutilation. DISMISSED per Rule 42-1 by the Clerk, 3/21/2016.
- 13) U.S. v. COLE, No. 19-10019, USCA 9th Cir., Issue: Biased judge. The appeals court refused to hear claiming lack of jurisdiction.

IN THE SUPREME COURT OF THE U.S.: All Captioned COLE v. U.S.

- 14) Cole v. U.S., No. 16-5966, Certiorari denied October 31, 2016.
- 15) NO. 18-5579, PETITION FOR WRIT OF MANDAMUS, DENIED 10/1/2018.
- 16) No. 18-6283, Cert. Denied, Nov. 13, 2018.
- 17) No. 19-8148, Cert. denied April 27, 2020.
- 18) No. 20-7567, Certiorari denied April 19, 2021, 141S Ct 2250, 209 L Ed 2d 568, 2021 U.S. LEXIS 2071.

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NOTICE IS HEREBY GIVEN THAT I HAVE BEEN TRANSFERRED TO A MEDICAL FACILITY, AND WILL NOTIFY THE COURT AS SOON AS I AM ABLE TO.	

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APPENDIX B: **USCA 7TH CIR. FINAL JUDGMENT, AFFIRMED JUNE 28, 2023.**

APPENDIX C : **SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF NEVADA, NOLLE PROSEQUI (ACQUITTAL), 09/25/2014.**

APPENDIX D : **USDC FOR THE WESTERN DISTRICT OF WISCONSIN, OPINION AND ORDER, ECF 10 AND JUDGMENT, ECF 11, 10/11/2022, DISMISSED WITH PRJUDICE, AND "DISMISSING THIS CASE."**

APPENDIX E : **CERTIFIED COPY OF THE NORTHWEST ORDINANCE, JULY 13, 1787, FROM THE NATIONAL ARCHIVES AND RECORDS ADMINISTRATION.**

APPENDIX F : **MOTION FILED 02/06/2023, ECF 14, No. 22-3018, AND ORDER GRANTING ECF 14 FILED 02/07/2023, ECF 15;**

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APPENDIX I : **U.S. DISTRICT COURT CLERK'S RESPONSE, OCT. 11, 2023; "NOTICE OF APPEAL", 10/10.2023, AND "PROOF OF SERVICE".**

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI OR APPEAL

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below,
or appeal.

OPINIONS BELOW

☒ For cases from federal courts: FINAL ORDER

The opinion of the United States court of appeals appears at Appendix A to the petition and is "ORDER" JUNE 28, 2023 (7TH CIR.)

☒ reported at 2023 U.S. APP. LEXIS 16353 (7TH CIR.); 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 D to the petition and is "OPINION AND ORDER" OCTOBER 11, 2022.

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

☒ For cases from state courts: "SUPERIOR COURT OF CALIFORNIA FOR THE COUNTY OF NEVADA (Nevada City)

The opinion of the highest state court to review the merits appears at Appendix C to the petition and is "M-6 MINUTES" NOLLE PROSEQUI

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

This ruling goes to the sufficiency of evidence: Acquittal.

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

[X] THIS CASE IS FROM FEDERAL COURTS:

THE DATE ON WHICH THE UNITED STATES COURT OF APPEALS
DECIDED MY CASE WAS JUNE 28, 2023.

[X] A TIMELY PETITION FOR REHEARING WAS DENIED BY THE UNITED
STATES COURT OF APPEALS ON AUGUST 18, 2023, AND A COPY OF THE
ORDER DENYING REHEARING APPEARS AT APPENDIX ~~H~~

THE JURISDICTION OF THIS COURT IS SOUGHT UNDER THE ACT ESTAB-
LISHING THE U.S. CIRCUIT COURTS OF APPEALS, MARCH 3, 1891,
26 STAT. 826, CHAP. 517. : "BE IT ENACTED":

"SEC. 5. THAT APPEALS OR WRITS OF ERROR MAY BE TAKEN FROM THE
DISTRICT COURTS OR FROM THE EXISTING CIRCUIT COURTS DIRECT TO
THE SUPREME COURT IN THE FOLLOWING CASES:

IN ANY CASE IN WHICH THE JURISDICTION IS IN ISSUE; IN SUCH
CASES THE QUESTION OF JURISDICTION ALONE SHALL BE CERTIFIED TO THE
SUPREME COURT FROM THE COURT BELOW FOR DECISION. ...

IN CASES OF CONVICTION OF A CAPITAL OR OTHERWISE INFAMOUS CRIME.

IN ANY CASE THAT INVOLVES THE CONSTRUCTION OR APPLICATION OF
THE CONSTITUTION OF THE UNITED STATES.

IN ANY CASE IN WHICH THE CONSTITUTIONALITY OF ANY LAW OF THE
UNITED STATES, OR THE VALIDITY OR CONSTRUCTION OF ANY TREATY
MADE UNDER ITS AUTHORITY IS DRAWN INTO QUESTION.

IN ANY CASE IN WHICH THE CONSTITUTION OR LAW OF A STATE IS
CLAIMED TO BE IN CONTRAVENTION OF THE CONSTITUTION OF THE
UNITED STATES. ...

SEC. 6. THAT THE CIRCUIT COURTS OF APPEALS ESTABLISHED BY THIS
ACT SHALL EXERCISE APPELLATE JURISDICTION TO REVIEW BY APPEAL
FINAL DECISION IN THE DISTRICT COURT IN ALL CASES OTHER THAN
THOSE PROVIDED FOR IN THE PRECEEDING SECTION OF THIS ACT,....."

28 U.S.C. § 2106. DETERMINATION "THE SUPREME COURT OR ANY OTHER CT.
OF APPELLATE JURISDICTION MAY AFFIRM, MODIFY, VACATE, SET ASIDE
OR REVERSE ANY JUDGMENT, DECREE, OR ORDER OF A COURT LAWFULLY
BROUGHT BEFORE IT FOR REVIEW, AND MAY REMAND THE CAUSE AND DI-
RECT THE ENTRY OF SUCH APPROPRIATE JUDGMENT, DECREE, OR ORDER,
OR REQUIRE SUCH FURTHER PROCEEDINGS TO BE HAD AS MAY BE JUST
UNDER THE CIRCUMSTANCES."

§2107 PROVIDES THAT TIME TO FILE SHALL BE 60 DAYS. "[T]ime as to
all parties shall be 60 days from such entry if one of the
parties is -- (1) the United States;" 28 U.S.C. §2107(b).

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

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

Cognizance is "n. (14c) 1. A court's right and power to try and determine cases; JURISDICTION." Black's Law Dictionary, 10th ed:

"cognizable, adj. (17c) 1. Capable of being known or recognized."

Merriam-Webster's Collegiate Dictionary 11th Ed. defines cognizance:

"n (14c) 1: a distinguishing mark or emblem 2a: KNOWLEDGE, AWARENESS b: NOTICE, ACKNOWLEDGEMENT 3: JURISDICTION, RESPONSIBILITY [and] cognizable adj. (ca 1662) 1: capable of being judicially heard and determined 2: capable of being known."

Because an offense that is committed in an Exclusive territorial (Legislative) jurisdiction of any of the several (50) Union States is not an offense against the United States unless the power to punish was specifically granted with an enumerated power, and some relation thereto is proved, there can be no jurisdiction of felony. Only misdemeanors are cognizable within concurrent jurisdiction. 18 U.S.C. 111 was not cognizable by a federal court in this cause.

18 U.S.C. §3231 cannot convey jurisdiction unless there is a cognizable crime. The "district courts of the United States" are specified, not the "United States District Courts" (USDC). COLE denies that said two names are the same court[s]", and denies that the latter USDC is a Constitutional court under Article III.

On Sept. 18, 2014, the processes of the United States District Court For the District Of Eastern California were used to impair and defeat the State court's jurisdiction and to circumvent the necessary writ ad prosequendum at the command of federal agencies. None of the requisit jurisdictional facts were ever alleged or decided.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article (Art) 3 confers Original jurisdiction of specified classes of cases on the Supreme Court, and Appellate jurisdiction of all other cases subject to conditions imposed by Congress. See *supra* p. 2 L. 10-36, 26 Stat. 826, and L. 38-46, 28 USC §§ 2106, & 2107. 18 USC § 3231 grants jurisdiction of cognizable U. S. offenses to the district courts of the United States and prohibits Federal courts from impairing or defeating the jurisdiction of the States' courts. The jurisdiction is "in issue" and the lower courts refuse to examine it.

The validity and construction of the Treaty and prior-engagement, the Northwest Ordinance (NW Ord.), Art. 2, Appx. E, which is made valid against the United States by Art VI, cl. 1-2, U. S. Const., is drawn into question; this case is over a conviction of an infamous crime; and the constitutionality of 28 USC § 2255 is drawn into question as well as the construction and application of the Constitution of the United States and the said Act of March 3, 1891. The Wisconsin District court has refused to process the "NOTICE OF APPEAL", which is attached as APPENDIX I with the Clerk's letter. I seek an Appeal.

STATEMENT OF THE CASE

The panel decision of the USCA 7th Cir., ORDER, 6/28/2023, Appx.A, conflicts with the decisions of the U.S. Supreme Court & 7th Cir, emaciating habeas corpus, stare decisis, and violating the Treaty formed by the prior Engagement called the Northwest Ordinance (NW Ord.), attached hereto as APPENDIX E, the ARTICLES relevant here:

"It is hereby ordained and declared by the authority aforesaid, That the following articles shall be considered as articles of compact between the original states and the people and states in the said territory, and forever remain unalterable unless by common consent, to wit:

Article the First. No person, demeaning himself in a peaceable and orderly manner, shall ever be molested on account of his mode of worship or religious sentiments in the said territory.

Article the Second. The inhabitants of the said territory shall always be entitled to the benefits of the writ of habeas corpus, and of the trial by jury; of a proportionate representation of the people in the legislature, and of judicial proceedings according to the course of the common law; all persons shall be bailable unless for capital offences, where the proof shall be evident or the presumption great; all fines shall be moderate, and no cruel or unusual punishments shall be inflicted; no man shall be deprived of his liberty or property but by the judgment of his peers, or the law of the land; and should the public exigencies make it necessary for the common preservation to take any person's property, or demand his particular services, full compensation shall be made for the same; — and in the just preservation of rights and property it is understood and declared, that no law ought ever to be made, or have force in the said territory, that shall in any manner whatever interfere with, or affect private contracts or engagements bona fide and without fraud previously formed.

Article the Third. Religion, morality and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged. The utmost good faith shall always be observed towards the Indians; their lands and property shall never be taken from them without their consent; and in their property, rights and liberty, they shall never be invaded or disturbed, unless in just and lawful wars authorized by Congress; but laws founded in justice and humanity shall from time to time be made, for preventing wrongs done to them, and for preserving peace and friendship with them." [Bold emphasis added, 4-6 omitted]

"Be it ordained by the authority aforesaid, That the resolutions of the 23rd of April, 1784, relative to the subject of this ordinance, be, and the same are hereby repealed and declared null and void.

DONE by the UNITED STATES in CONGRESS assembled, the 13th day of July, in the year of our Lord 1787, and of their

1 sovereignty and independence the 12th."

3 I have been denied due process of law, ab inito, for 9 years,
5 by continuously being denied an opportunity to be heard, in a mean-
7 ingful manner and at a meaningful time, a requisit for due process.

9 "It is well settled that pro se litigants are not held to the
11 stringent standards applied to formally trained members of the
13 legal profession, and that, accordingly, we construe pro se
15 complaints liberally." Caldwell v. Miller, 790 F.2d 589, 595,
17 1986 U.S. App. LEXIS 25053 (7th Cir).

19 "The district court erred in dismissing his pro se com-
21 plaint without allowing him to present evidence on his claims.
23 ... [3]... [W]e conclude that he is entitled to an opportunity
25 to offer proof." Hanes v. Kerner, 404 US 519, 520-21 (1972).

27 "The District Court dismissed the complaint without taking any
29 evidence. ...[3a]... [T]he Due Process Clause of the Fourteenth
31 Amendment affords a prisoner certain minimum procedural safe-
33 guards before disciplinary action may be taken against him."
35 Huges v. Rowe, 449 US 5, 9-10, 66 L Ed 2d 163 (1980).

37 Neither District court ever held an evidentiary hearing or allowed
39 me to present evidence on my claims or obtain discovery or compel a
41 witness in my favor. Unwanted counsel was forced upon me over my
43 demand that I wished to plead and manage my own cause. The court
45 ordered me to be held in Total separation at the initial appearance.
47 The cause was brought by irregular procedures before the federal
49 trial-court, and ipso facto is not a "case", thus not justiciable.

51 Muskrat v. U.S., 219 US 346, 356-57: I was denied my entitlements
53 pursuant to the Northwest Ordinance (NW Ord.), Art.2 (July 13, 1787),
55 "to proceedings according to the course of the common law" and "to
57 the benefits of the writ of habeas corpus", for all offenses to be
bailable except for capital offenses, and to NOT BE subjected to
"cruel and unusual punishments," etc., 'Supreme Law of the Land':

 "All Debts contracted and Engagements entered into, before the
Adoption of this Constitution, shall be as valid against the
United States under this Constitution, as under the confederation.
[C1.2:] This Constitution, and the Laws which shall be
made in Pursuance thereof; and all Treaties made, or which
shall be made, under the authority of the United States, shall
be the supreme Law of the Land; and the Judges in every State

1 shall be bound thereby, any Thing in the Constitution or Laws
2 of any State to the Contrary notwithstanding." [Bold added]
3 The Constitution of the United States, Article VI, cl. 1-2.

5 The Nevada County, California D.A. issued a fraudulent warrant
7 for "murder" and the State court instituted felony charges for as-
9 sault on an officer without a judicial hearing on an information,
11 then incarcerated me without bail, denied the requisits to defend.
13 There was no impartial investigation. There was a white-wash-cover-
15 up made by NCSO Russell GREENE, who had molested me Jan. 26, 2014
17 and instituted criminal charges for lawful exercise of my Second
19 Amendment right using a Bill of Attainder, case no. M14-0388, It was
21 his comrade in the R.I.C.O. enterprise, FBI Agent Andrew FORRISTEL,
23 Who made certain that there was no gunpowder residue tests made, and
25 no competent forensic analysis done, expecially no balistics analy-
27 sis and no examination of the bullet holes in my clothing. They
29 concealed witness Christopher DONEGAN, and the CHP investigation of
31 the shooting, including the CHP Valley Division Critical Incident
33 Officer Hardin Report #14-201-003.pdf, which was concealed until
35 after trial. FORRISTEL filed a perjured affidavit on March 1, 2019
37 to continue to conceal witnesses and documents to provide grounds to
39 defeat my Rule 33 Motion For A New Trial. Appx.10 of the Appellant's
41 Appendix in the 7th Cir. Appeal is a copy of the fraudulent warrant
43 filed in said CHP investigation. A FOIA request returned a redacted
45 copy with both officers' initial interviews 100% REDACTED. The trial
47 court has refused to allow me to have discovery, or rule on my motion
49 to release a copy of these initial statements unredacted.

51 On Sept. 24, 2014, Mr. FORRISTEL abducted me from the State's
53 custody, standing trial on state felony charges, using the unlawful
55 process of the Federal Court to circumvent the writ ad prosequendum.

1 FBI Agent FORRISTEL proffered a criminal complaint with his hearsay
3 only affidavit as the sole evidence to institute a federal prosecution
5 tion for an infamous crime without an indictment in violation of the
7 Fifth Amendment's requirement for due process, and prohibition against
9 holding a person to answer for an infamous crime without indictment.
11 The court was prohibited by law from accepting a criminal complaint
13 from any person who is not a United States Attorney, and prohibited
15 from accepting this complaint by F.R.Crim.P. Rule 7, and by the 5th
17 Amendment. The district court thus divested me of my entitlement to
19 the benefits of the writ of habeas corpus, arising under the prior
21 Engagement of the NW Ord., Art.2, in breach of Treaty per Art.VI, U.
23 S. Const. The court suspended the Privilege in violation of Art. I,
25 §9, cl.2, and divested me of my entitlement to proceedings according
27 to the course of the common law, denied me bail, and **denied me the**
29 **right to plead and manage my own cause personally.** The writ ad pro-
31 sequendum is necessary for removing a prisoner into the proper juris-
33 diction for trial. Carbo v. United States, 364 US 611, 614-620, 5 L
35 ED 2d 329 (1961). The required hearing wherein the venue and jurisdic-
37 tion could be challenged was thus circumvented. No showing of it is
39 on the face of the proceedings and the lower courts have steadfastly
41 refused to examine the USDC Eastern District of California's jurisdic-
43 tion, which is a statutorily legislated court by 28 U.S.C. §132(a):
45 An Article I court by definition. See "legislative court" under
47 court, Black's Law Dictionary Deluxe Tenth Edition, p.434. No pre-
49 liminary examination was done, as required when instituted by complaint.

51 "The respective Colonies are entitled to the common law of Eng-
53 land, and more especially to the great and inestimable privilege
55 of being tried by their peers of the vicinage, according to that
law." 1 Journals of Congress, 28. [¶] The Ordinance of 1787 dec-
lared that the inhabitants of the Northwest Territory should

1 "Always be entitled to the benefits of the writ of habeas corpus,
3 and of the trial by jury," "and of judicial proceedings according
5 to the course of the common law." 1 Charters and Constitutions,
431." Capital Traction Co. v. Hof, 174 US 1, 6-7, 43 LED 873 (1899).
[Congress unanimously resolved this Oct. 14, 1774 in Dec. of Right.

7 "[A]t common law, the writ was available (1) to compell adherence
9 to prescribed procedures in advance of trial; (2) to inquire
11 into commitment not pursuant to judicial process; (3) to inquire
whether a committing court had proper jurisdiction. ...

13 The fact is that in defining the scope of Federal collateral
15 remedies the Court has invariably engaged in statutory inter-
pretation, construing what Congress has actually provided,
rather than what it constitutionally must provide. ...

17 A doctrine that allowed transfer of the historic habeas cor-
pus jurisdiction to an Article 1 court could raise separation
of powers questions, since the traditional Great Writ was lar-
19 gely a remedy against executive detention." Swain v. Pressley,
430 US 372, 384-86, 51 L ED 2d 411, 97 S Ct 1224 (1977).

21 The USCA 7th Cir. has denied me an adversarial proceeding, failed to
23 adhere to precedent, and sat the bench as both judge and party in
25 the same cause. This displayed bias and denied me due process:

27 "Any departure from precedent demands special justification
29 founded by law rather than the proclivities of individuals."
Vasquez v. Hillary, 474 US 254, 264-65, 88 LEd2d 598.

31 "The principle is aptly stated in People v. Naimark, 154 App.
33 Div. 760, 139 N.Y.S. 418, 420, where it is said: "****The first
35 idea in the administration of justice*** is that a judge must
necessarily be free from all bias and partiality. He cannot be
37 both judge and party, arbiter and advocate in the same cause.
Mankind are so agreed in this principle that any departure
from it shocks their common sense and sentiment of justice."

39 And the fact that the court's judgment may be justified on the
the merits does not obviate the requirement of a fair trial. As
41 was said in Union Pacific R. Co. v. Syas, 8 Cir., 246 F. 561,
at page 568: "****But no judgment is just, if not obtained by
43 due process of law; otherwise, courts could enter judgments
without trial. ***" Inland Steel Co. v. NRLB, 109 F.2d 9, 20,
45 1940 U.S. App. LEXIS 4879, No. 6837 (CA 7th Cir.).

47 "[A] judgment is void...if the parties or if [the court] acted
49 in a manner inconsistent with due process of law. Vol. 11
Wright and Miller, Federal Practices and Procedure at 198,
200;" Textile Banking Co. v. Rentschler, 657 F.2d 844, 850,
51 1981 U.S. App. LEXIS 14216 (7th Cir.); Opening Brief, p. 21.

53 A "legislative court" is "incapable of receiving" Art 3 judicial
55 power. National Mutual Ins. v. Tidewater T. Co., 337 US 582, 593,
57 93 LED 1556 (1949). The District courts herein are Article 1 courts.

PROCEDURAL HISTORY

1
3 The United States District Court (USDC) Western Dist. of Wisconsin
5 (W. Dist. WI) entered judgment in favor of Respondent R.D. Keys on
7 10/11/22 without ordering a response, sitting as judge and party,
9 without hearing me asserting that FBOP is "justified" in punishing
11 for preventing serious injury to a person. No video of the incident
13 exists, and DHO ignored all evidence, facts, and justification.
15 The court misconstrued my assertion the court lacked jurisdiction, to
17 be: "Cole challenges the validity of his federal conviction." I said,
19 the court's judgment is void because the court lacked jurisdiction.
21 Ipso facto, I am in custody in violation of the Const. and laws.
23 DHO's refusal to hear my defense is a due process violation. Common
25 law prohibits my being punished for preventing injury to a person.
27 DHO did not deny or refute the fact Rooke's ribs were broken.
29 The due process violations are cognizable per §2241. Id., Swain. I
31 have challenged the constitutionality of 28 USC §2255 and AEDPA. I
33 should not have to prove the requirements thereof to challenge it.
35 The court uses the challenged statutes to preclude the challenge
37 and the dismissed the ground for challenge "with prejudice" and
39 states no reason for "prejudice". See I.D. Inland Steel, supra.
41 The court also mistakenly claims my § 2255 was untimely filed. See
43 id., Textile Banking Co., supra p.9 L.47-51. I was denied adversarial
45 proceedings in all of the lower courts by the judges sitting as both
47 judge and party, "arbiter and advocate in the same cause" in the 7th
49 Circuit, and having unwanted counsel forced upon me to deprive me of
51 my right to self represent, and to have my counsel of choice: Me.
53 My rights under the Constitution and my Entitlements under the NW
55 Ord., Art.2, Appx.E, have been divested, abridged, and violated.

USING A FICTION TO ESTABLISH JUDICIAL POWER

The USDC E. Dist. of CA was created by 28 U.S.C. §132(a) and is a statutorily legislated Article 1 court, "not Art 3." National Mutual Ins. v. Tidewater T. Co., 337 US 582, 593, 93 LED 1556(1949).

"[2] The term "District Court of the United States,"...describes the constitutional courts created under Article 3 of the Constitution." Mookini v. United States, 303 US 201, 205(1938).

18 U.S.C. §3231 conveys jurisdiction of crimes only to "District Courts of the United States. It conveys nothing to "United States District Courts For The [____] District." They are not the same. The former were created by 1 Stat.72-93, ch.xx, §§9-14 (1789) and the latter were created beginning in 1949 by said §132(a).

"[I]t is impermissible to use a fiction to establish judicial power, where, as a matter of fact, it does not exist. ...[T]he rule, springing from the nature and limits of the judicial power of the United States is inflexible and without exception, which requires this Court, of its own motion to deny its jurisdiction, and in the exercise of appellate power, in all cases where such jurisdiction does not affirmatively appear in the record." [Cite omitted]. Insurance Corp. v. Compagnie Des Bauxites, 456 US 694, 701, 72 L Ed 2d 492, 102 S Ct 2099 (1982).

Such jurisdiction does not affirmatively appear in the record. Using the fiction that the USDC E. Dist. Of CA is capable of receiving the Art 3 judicial power, or the fiction any Art 1 court received the judicial power for a cause that was not lawfully brought before the cognizance of the court, as is the case here, is impermissible. The Appeals Court is required to notice and take action to correct it.

"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." Arbough v. Y & H Corp., 546 US 500, 506, 126S Ct 1235, 163 L Ed 2d 1097 (2006).

"Where the court below has no jurisdiction of the case, in any form of proceeding, the course of this Court is to direct the cause to be dismissed,... The Court here will reverse the judgment or decree, and remand the cause, with directions to the court below to dismiss the proceeding." Morris v. United States, 8 Wall. 507, 512, 19 LED 481 (1869).

In PEOPLE v. GODFREY, the New York Supreme Court asserted:

"The jurisdiction of the courts of the United States must be derived under the eighth section of the first article and seventeenth paragraph of the Constitution of the United States, which gives to Congress "exclusive legislation over all places purchased by the consent of the legislature of the State in which the same shall be for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings." [¶] To oust this state of its jurisdiction to support and maintain its laws, and to punish crimes, it must be shown that an offense committed within the acknowledged limits of the state, is clearly and exclusively cognizable by the laws and courts of the United States. In the case already cited, Chief Justice Marshall observed, that to bring the offense within the jurisdiction of the courts of the union, it must have been committed out of the jurisdiction of any state; it is not the offense committed, but the place in which it is committed, which must be out of the jurisdiction of the state." 17 Johns. 225 (1819).

In this instance, the Respondent has conceded that every action which might or could be relevant occurred on B.L.M. managed land, which is conceded to be exclusive jurisdiction of California.

To bring the offense within the Federal courts' jurisdiction, "it must have been committed out of the jurisdiction of any state."

Respondent errs by claiming 18 U.S.C. §3231 makes it federal:

"Nothing in this title shall be held to take away or impair the jurisdiction of the courts of the several States under the laws thereof." 18 U.S.C. §3231, cl.2 (62 Stat.826,§1).

The principles of Public law control this issue, the first is:

"[E]very State possesses exclusive jurisdiction and sovereignty over persons and property within its territory."

"[2nd is that] [N]o State can exercise direct jurisdiction and authority over persons or property without its territory. [Story, Confl. L. ch.2 Wheat. Int. L., pt.2, ch.2 ("the laws of one state have no operation outside of its territory, except so far as is allowed by comity..."). See Shaffer v. Heitner, 433 US 186, 197, 53 L Ed2d 683, 97 S Ct 2569 (1977); Daimler AG v. Bauman, 187 L Ed 2d 624, 571 US 117, 2014 U.S. LEXIS 644 [citing Pennoyer v Neff, 95 US 714, 722-23 (1878) modified by Int. Shoe Co. v. Washington, 326 US 310, 66 S Ct 154, 90 LED 95 (1945)].

The Federal trial court had not jurisdiction to prosecute COLE..

DENIAL OF DUE PROCESS

THE MAIN REQUIREMENTS FOR DUE PROCESS ARE AN ADVERSARIAL PROCEEDING, NOTICE, AND AN OPPORTUNITY FOR BEING HEARD, BUT WAS DENIED. Hearing requires understanding, which requires that the judge[s] "must necessarily be free from all bias and partiality" and ipso facto "cannot be both judge and party". Also, "no judgment is just, if not obtained by due process of law;" id., Inland Steel Co., and requires an adversarial proceeding, where the facts are considered, and the law is adheared to. A Motion for an order of Non-involvement was filed by the U.S. Att'y in WI, ECF 14, 02/06/23. An ORDER granting it was filed the following day, without allowing me an opportunity to respond, ECF 15, Feb. 7, which I immediately filed an opposition to, requesting that the U.S. Attorney who has been litigating the case for over 9 years be required to reply. The USCA 7th Cir. issued an ORDER on Feb. 15, ECF 16, construing my OPPOSITION as a "Motion For Reconsideration", which it DENIED. See Appx. F and G. It made the panel both Judge and Party in the same cause violating the principle stated in id. Inland Steel, p.9 L.31-39, and the principle in id. Textile Banking L.47-51, Supra. There was no attempt to provide "spécial justification founded in law for the departure in precedent. Id., Vasquez, L.27-29, which precedents were stated in my Petition For Rehearing, p.14 L.13-19, and L.51-53. Note that id., Thornhill Pub. Co. provides that:

"No presumption of truthfulness attaches to the plaintiff's allegations, and the existance of disputed material facts will not preclude the trial court from evaluating for itself the merits of jurisdictional claims. Moreover, plaintiffs will have the burdon of proof that Jurisdiction does in fact exist." Id., p.14 L.37-53, Petition For Rehearing.

In short, The USCA 7th Cir. has denied me: Due Process, an appeal in an adversarial proceeding, and violated Art I, §9, cl.2.

REASONS FOR GRANTING THE PETITION

The Petitioner has been denied Due Process and a United States court of appeals has failed or refused to examine the jurisdiction of the trial court or the irregular and unlawful procedures by which the cause was brought before the cognizance of the United States District Court For the Eastern District Of California. The USCA for the 7th Cir. has failed to adhere to precedent, failed/refused to provide "special justification founded in law for departure in precedent," and ruled against upholding a valid Treaty/prior-Engagement that was established in 1774 by unanimous declaration of Congress. The appeals court has acted in a manner and so far departed from the accepted and usual course of judicial proceedings, and sanctioned such a departure by the lower courts as to call for an exercise of this Court's supervisory power; and the USCA courts have decided important questions of federal law contrary to the well settled decisions of this Court.

The Entitlements of the inhabitants to the benefits of writs of writs of Habeas Corpus and to proceedings according to the course of the common law, etc. made valid against the United States by Art VI of the Constitution of the United States and the Northwest Ordinance, Appx. E, Art.2, have been divested from them. The lower courts are not requiring that jurisdiction be affirmatively shown on the face of the proceedings and are attaining jurisdiction using "a fiction to establish judicial power, where, as a matter of fact, it does not exist." Id., Insurance Corp., Supra p.11 L.21-53.

The Appeals court has refused to certify the jurisdictional questions which the petitioner has raised to this Court, refusing also to examine or decide the issue. This court ought decide it.

RELIEF REQUESTED

The petitioner asserts that alleged crime he is convicted for could not have occurred as a matter of law, and he has been denied due process. The trial court was without jurisdiction. Premises considered he requests that he be granted leave to file an appeal from the U.S. Court Of Appeals For the Seventh Circuit to this Court, and an extension of time should be granted because he is being transfered to a different prison in the middle of litigation.

Alternatively, an extension of time should be granted for the Petitioner to file a Petition For Writ Of Certiorari.

CONCLUSION

Leave to file a direct appeal from the USCA 7th Cir. should be GRANTED and an extension of time for 60 days after being moved to a medical facility should be accorded.

Respectfully submitted,

Brent D. Cole

Date: September 25, 2023

CERTIFICATE OF COMPLIANCE

No.

BRENT DOUGLAS COLE, Petitioner

v.

UNITED STATES OF AMERICA, Respondent's

As required by Supreme Court Rule 33.1(h),
I certify that the Petition For Leave To Appeal And
Extend Time, or in the alternative, PETITION FOR
WRIT OF CERTIORARI contains 15 pages ^{typed} words,
excluding the parts of the petition that are exempted
by Supreme Court Rule 33.1(d).

I declare under penalty of perjury that the foregoing
is true and correct.

Brent D. Cole, #71911-097

Executed on October 15, 2023

Brent D. Cole, Petitioner

at Sandstone, Minnesota.