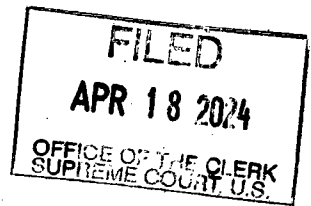


23-7382

No.

ORIGINAL



IN THE

SUPREME COURT OF THE UNITED STATES

IN RE JONES — PETITIONER
(Your Name)

VS.

— RESPONDENT(S)

ON PETITION FOR A WRIT OF MANDAMUS TO

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

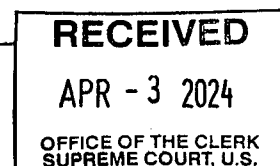
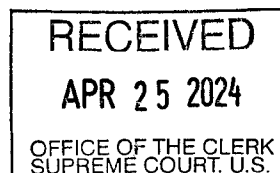
PETITION FOR WRIT OF MANDAMUS

Arthur Jones, Jr.
(Your Name)

FBI Bennettsville, P.O. Box 52020
(Address)

Bennettville, SC 29512
(City, State, Zip Code)

(Phone Number)



QUESTION(S) PRESENTED

WHETHER THE APPELLANT COURT ABUSED ITS DISCRETION WHEN IT FAILED TO ISSUE THE WRIT OF MANDAMUS TO THE DISTRICT JUDGE DIRECTING THE DISTRICT JUDGE TO VACATE JONES' CRIMINAL CONVICTIONS FOR LACK OF SUBJECT-MATTER JURISDICTION BECAUSE THE DISTRICT COURT'S ASSUMPTION OF JURISDICTION OVER THIS CAUSE OF ACTION MEETS THE EXCEPTIONAL CIRCUMSTANCES AMOUNTING TO A JUDICIAL USURPATION OF POWER ?

WHETHER THE WRIT OF MANDAMUS SHOULD ISSUE TO THE DISTRICT JUDGE TO COMPEL HIM TO SET ASIDE JUDGMENT(S) IN JONES' CRIMINAL CASE BECAUSE IT APPEARS FROM THE RECORD THAT THE DISTRICT COURT IN TAKING JONES FROM THE CUSTODY OF THE STATE AUTHORITIES TRANSCENDED ITS JURISDICTION ?

WHETHER THE WRIT OF MANDAMUS SHOULD ISSUE TO THE DISTRICT JUDGE TO COMPEL HIM TO DISMISS JONES' CRIMINAL CASE OF MURDER FOR LACK OF SUBJECT MATTER JURISDICTION BECAUSE THE DISTRICT JUDGE WRONGFULLY ASSUMED JURISDICTION OVER THIS THEN PENDING SAID CASE THAT WAS ORIGINALLY BROUGHT IN STATE COURT AND BECAUSE NO ACT OF CONGRESS COULD HAVE AUTHORIZED JONES' LOCAL MURDER STATE CASE TO BE TRANSFERRED FROM THE STATE COURT TO THE FEDERAL DISTRICT COURT ?

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:

RELATED CASES

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STATUTES AND RULES

Prior Exclusive Jurisdiction Rule

OTHER

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF MANDAMUS

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

OPINIONS BELOW

☒ For cases from **federal courts**:

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

[] reported at 2023 WL 8183313, at *1 (4th Cir. Nov. 27, 2023); 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 _____ to the petition and is

[] reported at _____; 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 27, 2023.

☒ 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: _____, 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. § 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

STATEMENT OF THE CASE

On February 11, 1999, Jones was originally arrested and subsequently charged for alleged crimes of armed robbery and murder involving a local truck stop and clerk in the State of South Carolina.

On April 14, 1999, Jones was federally indicted on the same criminal case that had been subjected to the prior exclusive jurisdiction of the State Court for two (2) years and four (4) months.

On April 14, 1999, the magistrate judge issued a Writ of habeas Corpus Ad Prosequendum (WHCAP) to the warden of the Clarendon County Sheriff's Department, demanding temporary custody of Jones to be prosecuted in the district court for this then pending State Court criminal case.

On April 21, 1999, the U.S. Marshal Service issued a detainer against Jones for the same then pending State Court criminal charges as mentioned in the federal WHCAP and federal indictment.

On April 29, 1999, Jones was rearrested by the U.S. Marshal Service and arraigned in the district court on the said criminal case while it was pending in the prior exclusive jurisdiction of the State Court.

On June 1, 1999, the State Court dismissed its criminal prosecution against Jones and "BEMANDED" this criminal case to the federal district court.

On November 3, 1999, Jones proceeded to a jury trial before David C. Norton, District Judge, and was found guilty.

On or about November 11, 2000, Jones' direct appeal was denied by the United States Court of Appeals for the Fourth Circuit.

REASONS FOR GRANTING THE PETITION

- i. There is No Federal Statutory Provision That Governs Jones' Claims
To Attain The Relief He Desires

The Supreme Court of the United States should grant Jones' petition for writ of mandamus, because Jones has no Federal Statutory Remedy that is an adequate means to attain the relief he desires. Jones' claims for relief are (1) the district court's assumption of jurisdiction over this cause of action when this said cause of action was pending in the prior exclusive jurisdiction of the State Court meets the exceptional circumstances amounting to a judicial usurpation of power, (2) the district court in taking Jones from the custody of the State Court transcended its jurisdiction and (3) the district judge wrongfully assumed jurisdiction over this then pending local murder of a truck stop clerk that was originally brought in State Court, because no Act of Congress could have authorize Jones' local murder State case to be transferred from the State Court to the Federal district Court. The lower courts have repetitively treated Jones' filings that raised these or similar claims as second and successive §2255 motions to prevent Jones from seeking the relief he desires, and because there is no Federal Statutory Provision that governs Jones' claims to attain the relief he desires.

On July 23, 2021, the Fourth Circuit dismissed Jones' appeal. United States v. Jones, 853 F.App'x 892 (4th Cir. 2021). On September 27, 2021, the Court of Appeals denied Jones' motion for rehearing and rehearing en banc - closing the door on the relief Jones still seeks to date. The Appeals Court construed Jones' appeal from the district court's denial of his Writ of Audita Querela pursuant to Title 28 U.S.C. §1651(a) as a successive §2255 motion. Therefore, since Jones has no legal remedy he is unable to seek the relief he desires for his prior exclusive

Jurisdictional Challenge to the district court's authority to adjudicate Jones' case. On January 24, 2022, the United States Supreme Court denied Jones' writ of certiorari. Jones v. United States, 142 S.Ct. 911, reh'g denied, 142 S.Ct. 1355 (2022) - Closing the door on the relief Jones still seeks to date. Hence, the Writ of Certiorari did not provide Jones with a legal remedy to seek the relief he desires for his prior exclusive jurisdictional challenge to the district court's authority to adjudicate Jones' case.

On November 30, 2023, the district court denied Jones' Fed. R. Civ. P. 60(b)(4) Motion and Fed. R. Civ. P. 12(b)(1) Motion that raised a challenge to the district court's lack of subject-matter jurisdiction, because the prior exclusive jurisdiction rule precluded the district court from exercising its jurisdiction over the alleged armed robbery of the local truck stop and murder of the clerk while those said criminal offenses were pending prosecution in the State Court. The denial of Jones' Fed. R. Civ. P. 60(b)(4) and Fed. R. Civ. 12(b)(1) Motions were predicated on those motions being construed by the district court as being a successive §2255 motion - closing the door on the relief Jones still seeks to date.

On November 27, 2023, the Fourth Circuit denied Jones' writ of mandamus to compel the district Judge to vacate Jones' criminal convictions for lack of subject matter jurisdiction because the prior exclusive jurisdiction precluded the district court from exercising its jurisdiction over the alleged armed robbery of the local truck stop and murder of the clerk - closing the door, again, on the relief Jones still seeks to date.

ARGUMENT

I. WHETHER THE APPELLANT COURT ABUSED ITS DISCRETION WHEN IT FAILED TO ISSUE THE WRIT OF MANDAMUS TO THE DISTRICT JUDGE DIRECTING THE DISTRICT JUDGE TO VACATE JONES' CRIMINAL CONVICTION FOR LACK OF SUBJECT-MATTER JURISDICTION BECAUSE THE DISTRICT COURT'S ASSUMPTION OF JURISDICTION OVER THIS CAUSE OF ACTION MEETS THE EXCEPTIONAL CIRCUMSTANCES AMOUNTING TO A USURPATION OF POWER?

Jones asserts that the Appellant Court abused its discretion when it failed to issue a writ of mandamus to the district Judge directing the district Judge to vacate Jones' criminal convictions, because the district Judge's assumption of jurisdiction amounts to usurpation of power. The law not only authorize the demanded action in, Jones', case, but requires that the district Judge vacate Jones' criminal convictions for the alleged violations of an armed robbery of a local truck stop and murder of the Store Clerk. The lawful duty imposed on the lower courts makes "clear and indisputable" the right to relief under the circumstances of Jones' criminal action.

"The Common-law writ of mandamus against a lower court is codified at 28 USC §1651(a) [28 USCS §1651(a)]: "The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." This is a "drastic and extraordinary" remedy "reserved for really extraordinary causes." Ex parte Fahey, 332 U.S. 258, 259-260, 91 L.Ed 2041, 67 S.Ct. 1558 (1947). . . . Although courts have not "confined themselves to an arbitrary and technical definition of 'jurisdiction,'" Will v. United States, 389 U.S. 90, 95, 19 L.Ed. 2d 305, 88 S.Ct. 269 (1967), "only exceptional circumstances amounting to a

Judicial 'Usurpation of power,'³³ *ibid.*, or a clear abuse of discretion,³⁴ *Bankers Life & Casualty Co. v. Holland*, 346 U.S. 379, 383, 98 L.Ed. 106, 74 S.Ct. 145 (1953), "Will justify the invocation of this extraordinary remedy," *Will*, 389 US, at 95, 19 L.Ed. 2d 305, 88 S.Ct. 269.³⁵ See *Cheney v. United States Dist. Court*, 540 U.S. 367, 380, 159 L.Ed. 2d 459, 124 S.Ct. 2576 (2004).

In Jones' Case Sub Judice, On February 11, 1997, Jones was originally arrested and subsequently charged for alleged crimes of armed robbery of a local truck stop and murder of the clerk in the State of South Carolina. See Exhibits A-1 and A-2. On April 14, 1999, Jones was federally indicted on the same criminal charges that had been subjected to the prior exclusive jurisdiction of the State Court for two (2) years and four (4) months. See Exhibit C-1. On April 14, 1999, the magistrate judge issued a writ of habeas Corpus ad prosequendum (WHCAP) to the warden of the Clarendon County Sheriff's Department, demanding temporary custody of Jones to be prosecuted in the district court for this then pending State Court criminal case. See Exhibit D-1. On April 21, 1999, the U.S. Marshals Service issued a detainer against Jones for the same then pending State Court criminal charges as mentioned in the federal WHCAP and federal indictment. See Exhibit E-1. On April 29, 1999, Jones was rearrested by the U.S. Marshals Service and arraigned in the district court on the said criminal case while it was pending in the prior exclusive jurisdiction of the State Court. See Docket (Doc) entry 4/29/1999. On June 1, 1999, the State Court dismissed its criminal prosecution against Jones and "REMANDED" this criminal case to the federal district court. See Exhibits F-1 and F-2. On November 3, 1999, Jones proceeded to a jury trial before David C. Norton, District Judge, and was found guilty.

The record before this Court demonstrates the district court's usurpation of power from the State Court of South Carolina. The district court took Jones and this criminal cause of action from the State Court while it was pending prosecution in the prior exclusive jurisdiction of that court. As a result, the jurisdiction of the State Court was defeated or impaired. See Exhibits F-1 and F-2.

cc
As the writ is one of "the most potent weapons in the judicial arsenal," *id.*, at 107, 19 L.Ed. 2d 305, 88 S.Ct. 269, three conditions must be satisfied before it may issue. *Kerr v. United States Dist. Court for Northern Dist. of Cal.*, 426 U.S. 394, 403, 48 L.Ed. 2d 725, 96 S.Ct. 2119 (1976). First, "the party seeking issuance of the writ [must] have no other adequate means to attain the relief he desires," *ibid.* a condition designed to ensure that the writ will not be used as a substitute for the regular appeals process, *Fohey, supra*, at 260, 91 L.Ed. 2041, 67 S.Ct. 1558. Second, the petitioner must satisfy "the burden of showing that [his] right to issuance of the writ is 'clear and indisputable.'" *Kerr, supra*, at 403, 48 L.Ed. 2d 725, 96 S.Ct. 2119 (quoting *Bonkers Life & Casualty Co., supra*, at 384, 98 L.Ed. 106, 74 S.Ct. 145). Third, even if the first two prerequisites have been met, the issuing court, in the exercise of its discretion, must be satisfied that the writ is appropriate under the circumstances. *Kerr, supra*, at 403, 48 L.Ed. 2d 725, 96 S.Ct. 2119 (citing *Schagenhauf v. Holder*, 379 U.S. 104, 112, n. 8, 13 L.Ed. 2d 152, 85 S.Ct. 234 (1964)). "See Cheney, 542 U.S. at 380-381.

A. There is NO Federal Statutory Remedy That Governs Jones' Claims

First, Jones, asserts that there is no adequate means to attain the relief he desires. On July 23, 2001, the Fourth Circuit dismissed Jones' appeal. United States

v. Jones, 853 F. App'x 892 (4th Cir. 2021). On September 27, 2021, the Court of Appeals denied Jones' motion for rehearing and rehearing en banc - closing the door on the relief Jones still seeks to date. The Appeals Court construed Jones' appeal from the district court's denial of his Writ of Audita Querela pursuant to Title 28 U.S.C. § 1651(a) as a successive § 2255 motion. Therefore, because Jones has no legal remedy he is unable to seek the relief he desires for his prior exclusive jurisdictional challenge to the district court's authority to adjudicate Jones' case. On January 24, 2022, the United States Supreme Court denied Jones' writ of certiorari. Jones v. United States, 142 S.Ct. 911, reh'g denied, 142 S.Ct. 1355 (2022) - closing the door on the relief Jones still seeks to date. Hence, writ of certiorari did not provide Jones with a legal remedy to seek the relief he desires for his prior exclusive jurisdictional challenge to the district court's authority to adjudicate Jones' case. On November 30, 2023, the district court denied Jones' Fed. R. Civ. P. 60(b)(4) Motion and Fed. R. Civ. P. 12(b)(1) Motion that raised a challenge to the district court's lack of subject-matter jurisdiction, because the prior exclusive jurisdiction rule precluded the district court from exercising its jurisdiction over the alleged armed robbery of the local truck stop and murder of the clerk while those said criminal offenses were pending prosecution in the state court. The denial of Jones' Fed. R. Civ. P. 60(b)(4) and Fed. R. Civ. P. 12(b)(1) motions were predicated on those motions being construed by the district court as being a successive § 2255 motion - closing the door on the relief Jones still seeks to date. On November 27, 2023, the Fourth Circuit denied Jones' writ of mandamus to compel the district judge to vacate Jones' criminal convictions for lack of subject matter jurisdiction because the prior exclusive jurisdiction precluded the district court from exercising its jurisdiction over the alleged armed robbery of the local truck stop and murder of the clerk - closing the door, again, on the relief Jones still seeks to date.

b. What is Jones' Legal Remedy To Challenge The District Court's Lack

Of Subject Matter - Jurisdiction Because The Prior Exclusive Jurisdiction Rule Precluded The District Court From Exercising Its Jurisdiction Over The Same Subject-Matter Pending At That Time In The State Court

cc

No doubt, if the Federal Court had no jurisdiction of the case, the process would be invalid, and the seizure of property illegal, for which the aggrieved party is entitled to his remedy. But the question is, which tribunal, the Federal or State, possesses, the power to determine the question of jurisdiction or validity of the process. . . for in every case the question of jurisdiction could be made; and until the power was assumed by the State Court, and the question of jurisdiction of the Federal Court was heard and determined by it, it could not be known whether in the give case it existed or not. . . it belong to the Federal courts to determine the question of their own jurisdiction. . . .²² See Freeman v. Howe, 16 Led 749, 752, 24 How. 450 (1861)

In Jones' Case Sub judice, the power to adjudicate the violations of the alleged Criminal Offenses of the armed robbery of the local truck stop and murder of the Clerk was assumed by the State Court. See Exhibits A-1, A-2, F-1 and F-1. However, the question of jurisdiction of the Federal Court is a question that the Federal Courts are unwilling to hear, because there is no Statutory provision that provides Jones with a remedy to raise this claim. Thus, Jones beseech the United States Supreme Court for a remedy that could provide him with the desire he seeks for the district court's lack of jurisdiction, because the prior exclusive jurisdiction rule precluded the district court from adjudicating the same alleged armed robbery of the local truck stop and murder of the same Clerk pending prosecution in the State Court at that time.

Second, Jones, asserts that the right to issuance of the writ is clear and indisputable, "because the relief requested by Jones is required by law and such relief cannot be granted in no other form.

The Fourth Circuit denied Jones' petition for writ of mandamus, because "[t]he relief sought by Jones is not available by way of mandamus." See Appendix A, pg. 2 (Brackets and alteration added). If the relief sought by Jones is not available by way of mandamus, as the Fourth Circuit would have it, then there is no other adequate means of obtaining the relief desired. A direct appeal is not available to Jones and nor is his initial Title 28 U.S.C. § 2255 at this stage of Jones' litigation available. The district court did not make it known that it exercised its jurisdiction over the same armed robbery of the local truck stop and murder of the same clerk at the same time the State Court had prior exclusive jurisdiction of those same offenses. The State Court did not make it known that it "DISMISSED" and "REMANDED" its criminal prosecution against Jones to the district court. See Exhibits C-1, F-1 and F-2. Therefore, Jones was unable to object to the use of the foreign process by both the district court and the State Court to have Jones prosecuted in the district court for the State Court offenses.

"

It will issue where the duty to be performed is ministerial and the obligation to act peremptory and plainly defined. The law must not only authorize the demanded action but require it; the duty must be clear and indisputable. See United States ex rel. McLennan v. Wilbur, 283 U.S. 414, 420, 51 S.Ct 502, 75 L.Ed. 1148 (1931).

"

It is settled that the writ of mandamus will issue to correct the action of subordinate or inferior courts or judicial officers, where they have

exceeded their jurisdiction, and there is no other adequate remedy.³³ See Ex parte, Commonwealth of Virginia, 100 U.S. 313, 329. Furthermore, "[t]he Court, reaffirming the doctrine of Viginia v. Rives, pointed out that to wrongfully devest the State of its right to prosecute in its own courts for crimes committed against its authority was a gross abuse of discretion, which, if not corrected by mandamus, could not be done in any other form."³⁴ See Ex parte Harding, 219 U.S. 363, 374.

³⁵ Whenever a Constitutional right has been denied, or a Judge has acted clearly beyond his jurisdiction, and there is no immediate remedy by a writ of error or appeal, the extraordinary writ of mandamus will issue to correct an error which, if left uncorrected, will cause confusion and complications so great that serious inconvenience to the courts and to the litigants will result therefrom.³⁶ See Matter of Simons, 247 U.S. 231, 69 L.Ed 1094.

³⁷ In other words, if the doctrine applies, it is legal error for a district court not to remand, dismiss, or stay federal proceedings on account of the state court's prior exercise of jurisdiction, and any decision on the merits must be vacated.³⁸ See Chapman v. Deutsche Bank Nat'l Trust Co., 651 F.3d 1039, 1044, n.1 (9th Cir. 2011).

In Jones' case sub judice, the law requires that the writ of mandamus should issue to correct the action of the district court, because the district court, for reason herein stated, exceeded its jurisdiction. There is no other adequate remedy for Jones, to seek the relief he desires other than a writ of mandamus. Furthermore, the district court wrongfully devested the state court of its right to prosecute in its own courts the alleged armed robbery of the local truck stop and murder of the clerk committed against its

Authority was a gross abuse of discretion," which, if not corrected by mandamus, could not be done in any other form. " There is no immediate remedy by writ of error or appeal for, Jones, to seek the relief he desires for his claim that the district court was precluded from exercising its jurisdiction over the same criminal said offenses that was pending in the prior exclusive jurisdiction of the state court, so without the availability of the writ of mandamus the district court's lack of subject matter jurisdiction will be left uncorrected.

Hence, because the prior exclusive jurisdiction doctrine applies, the district court's duty to dismiss Jones' criminal convictions for the alleged armed robbery of the local truck stop and murder of the clerk is "clear and indisputable." See Chapman, 651 F.3d at 1044, n.1.

Third, Jones, contends that the district court has no discretion but to dismiss Jones' convictions for the alleged armed robbery of the local truck stop and murder of the clerk. "[I]t is legal error for a district court not to remand, dismiss, or stay federal proceedings on account of the state court's prior exercise of jurisdiction, and any decision on the merits must be vacated." Id.

In sum, the Appellant Court abused its discretion when it failed to issue the writ of mandamus to the district judge to compel the district judge to vacate, Jones', criminal convictions because the district court's assumption of jurisdiction over this same then pending state court case amounts to usurpation of power.

WHETHER THE WRIT OF MANDAMUS SHOULD ISSUE TO THE DISTRICT JUDGE TO COMPEL HIM TO SET ASIDE JUDGMENT(S) IN JONES' CRIMINAL CASE BECAUSE IT APPEARS FROM THE RECORD THAT THE DISTRICT

COURT IN TAKING JONES FROM THE CUSTODY OF THE STATE AUTHORITIES
TRANSCENDED ITS JURISDICTION

Jones contends that the record discloses that the Federal district Court in taking him from the custody of the State authorities to prosecute him in that Court for the same criminal offenses of armed robbery and murder that were subjected to the prior exclusive jurisdiction of the State court transcended its jurisdiction.

The Supreme Court found that the Circuit Court had erroneously taken jurisdiction by removal from the state court of criminal prosecutions and the custody of the accused. Thus, the Supreme Court, indeed, issued its writ of mandamus, and therein directed the judge of the court below to remand the prisoners to the custody of the state officers, although its appellate jurisdiction had been invoked by the application for a writ alone. See Virginia v. Rives, 100 U.S. 313, 316, 323, 327, 329, 25 L.ed 667.

In Jones' case sub judice, the similarity of his case to that of Rives is that in both cases the Federal Courts erroneously took jurisdiction by removal from the state court of criminal prosecution and the custody of the accused. The difference in both cases is that Jones seeks a writ of mandamus to be issued to the district Judge to compel him to set aside his judgment(s) in Jones' criminal case for lack of subject matter jurisdiction. On the other hand, in, Rives, the writ of mandamus was sought to direct the judge of the court below to remand the prisoners to the custody of the State officers.

On February 11, 1997, Jones was originally arrested and subsequently charged for alleged crimes of armed robbery and murder involving a local truck stop and clerk

in the State of South Carolina. See Exhibits A-1 and A-2. Therefore, for the purpose of the prior exclusive jurisdiction rule the State Court's jurisdiction over Jones and of the said criminal offenses attached upon Jones' arrest. See In re Johnson, 167 U.S. 120, 17 Sup. Ct. 735, 42 L.Ed 103

On April 14, 1999, Jones was federally indicted on the same criminal case that had been subjected to the aforementioned prior exclusive jurisdiction of the State Court for two (2) years and four (4) months. See Exhibit C-1.

On April 14, 1999, the magistrate judge issued a writ of habeas corpus ad prosequendum (WHCAP) to the warden of the Clarendon County Sheriff's Department, demanding temporary custody of Jones to be prosecuted in the district court for this then pending State Court criminal case. See Exhibit D-1.

On April 21, 1999, the US Marshals Service issued a detainer against Jones for the same then pending State Court criminal charges as mentioned in the federal WHCAP and indictment. See Exhibit E-1.

On April 29, 1999, Jones was rearrested by the U.S. Marshals Service and arraigned in the district court on this said criminal case while it was pending in the prior exclusive jurisdiction of the State Court. See Doc.

On June 1, 1999, the State Court "DISMISSED" its criminal case against Jones and "REMANDED" this criminal case to the Federal district court. See Exhibits F-1 and F-2.

The record in this criminal action sub judice, demonstrates that Judge David C. Norton, Assistant United States Attorney (AUSA) Mr. Kittrell and defense

Attorneys Mr. Cobb and Mr. Haley Confirmed in an in Court debate that this Criminal action Originated from the State Court to Federal Court :

cc

The Court : I am not so sure you can go back in State Court after being tried in federal Court.

Mr. Cobb : Two Sovereigns.

The Court : I know. But it works one way. I don't know if it works the other way.

Mr. Kittrell : My Understanding is they Cannot go back.

The Court : I don't think they can either.

Mr. Kittrell : We have come this far and they Can't go back. ”

See Exhibit H-1.

Ms. Wilson, AUSA, on direct examination of her star witness, Kevin Lamont Johnson, also acknowledged that Jones' Criminal Case sub Judice was first in the dominion and control of the State Court as follows :

cc

Q. And if these Charges were to somehow go back to the state you could actually face the death penalty, could you not ?

A. Yes. ”

See Supporting Papers, TR. Vol. II, pg. 114.

The Honorable Margret B. Seymour, Judge of the District Court, found as a re-
levant Fact in regards to this Criminal action sub Judice as follows :

cc

These were the same charges for which Petitioner (Jones) had been arrested and detained in state Court. Petitioner (Jones) State Charges were dismissed on June 1, 1999. ”

See Exhibit J-1, lines 13-15 (Brackets added).

The record discloses that the district Court had erroneously taken jurisdiction by removal from the State Court of Jones' criminal prosecutions and the custody of him from the State authorities by way of interfering with this then ongoing State Criminal pending proceeding to the defeat or impairment of the State Court's Jurisdiction.

“

The writ being one of the modes provided by Congress for the exercise of our appellate jurisdiction, the question whether it should be issued in this case is not difficult of solution if, as contended by the Commonwealth of Virginia, the Circuit Court, in taking the prisoners from the custody of her authorities, transcended its jurisdiction. To review that action and set aside what was done under it, the writ is sought. . . It is well settled that the writ of mandamus will issue to correct the action of subordinate or inferior courts or judicial officers, where they have exceeded their jurisdiction and there is no other adequate remedy.” See Virginia v. Rives, 100 U.S. at 329.

In Jones' case sub judice, whether the writ should issue should be of no consequence, as the record supports Jones' contention that the district Court, in taking him from the custody of the State Court to prosecute him for this then pending State Court Criminal case of an armed robbery of a truck stop and murder of the clerk, transcended its jurisdiction. Thus, as it is settled law, the writ of mandamus “will issue to correct the action” of the district Court, where it has exceeded its jurisdiction and there is no other adequate remedy.

“

It follows from these views as to the meaning and purpose of the Act of Congress, that the removal of the prosecution in this case from the State to the Fed-

eral Court is unauthorized by it, and that the Order of the Circuit Court to the marshal to take the prisoners from the custody of the state authorities is illegal and void. *Id.*, at 336

In Jones' case Sub Judge, the removal of his criminal case from the State Court to federal court pursuant to an indictment that charged Jones with the same offenses of armed robbery of a local truck stop and murder of the Clerk that were at the time subjected to the prior exclusive jurisdiction of the State Court, the issuing of the WHCAP commanding that Jones be taken from the State authorities to be prosecuted in federal court for the same charges pending in State Court, the arrest of Jones by the US Marshals Service for the said charges and the federal arraignment of those said charges in the district court while such charges were pending in the State Court was unauthorized. Furthermore, the order of the district court to the marshals to take Jones pursuant to the WHCAP from the custody of the State authorities is illegal and void.

In sum, a writ of mandamus should issue to compel the Honorable David C. Norton, Judge of District Court, to set aside his judgement(s) in Jones' criminal case because it appears from the record that the district court, in taking him from the custody of the State authorities to be prosecuted for the same offenses subjected to the prior exclusive jurisdiction of the State Court, transcended its jurisdiction.

WHETHER THE WRIT OF MANDAMUS SHOULD ISSUE TO THE DISTRICT JUDGE TO COMPEL HIM TO DISMISS JONES' CRIMINAL CASE OF MURDER FOR LACK OF SUBJECT MATTER JURISDICTION BECAUSE THE DISTRICT JUDGE WRONGFULLY ASSUMED JURISDICTION OVER THIS THEN PENDING SAID CASE THAT WAS ORIGINALLY BROUGHT IN STATE COURT AND

BECAUSE NO ACT OF CONGRESS COULD HAVE AUTHORIZE JONES' LOCAL
MURDER STATE CASE TO BE TRANSFERRED FROM THE STATE COURT TO
THE FEDERAL DISTRICT COURT

Jones asserts that a writ of mandamus should issue by this Court directing the Honorable David C. Norton, presiding Judge of this Case, to dismiss Jones' case for lack of subject matter jurisdiction, because the district court wrongfully assumed jurisdiction over this then pending criminal case that was originally brought in State Court and because no Act of Congress could have authorized Jones' local murder state case to be transferred from the State Court to the Federal District Court.

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The prosecution is for the crime of murder, committed within her limits, by persons and at a place subject to her jurisdiction. The offense charged is against her authority and laws, and she alone has the right to inquire into its commission, and to punish the offender. Murder is not an offense against the United States, except when committed on an American vessel on the high seas, or in some port or haven without the jurisdiction of the State, or in the District of Columbia, or in the territories, or at other place where the National Government has exercise jurisdiction. The offense within the limits of a State, except where jurisdiction has been ceded to the United States, is as much beyond the jurisdiction of these Courts as though it had been committed on another continent. The prosecution of the offense in such a case dose not, therefore, arise under the Constitution and laws of the United States; and the Act of Congress which attempts to give the Federal Courts jurisdiction of it is, to my mind, a clear infraction of the Constitution. That instrument defines and limits the judicial power of the United States. See Virigina v. Rives, 100 U.S. at 336 (Emphasis add).

In Jones' Case at bar presently before the Court, the prosecution was for the crime of murder, committed within the limits of the State of South Carolina, allegedly by him and at a local truck stop which is subjected to the jurisdiction of the State of South Carolina. Therefore, South Carolina alone had the right to inquire into its commission, and to punish Jones.

The murder of the Clerk of the local truck stop is not an offense against the United States; because it was not committed on an American vessel on the high seas, or in some port or haven without the jurisdiction of the State, or in the District of Columbia, or in the Territories, or at other places where the National Government has exercise jurisdiction.

This offense of murder committed within the limits of the State of South Carolina was not committed in a place ceded to the United States. Therefore, this offense of murder is beyond the jurisdiction of the Federal district court as though it had been committed on another Continent.

The prosecution of this offense in, Jones, case sub judice, does not arise under the Constitution and laws of the United States.

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The Federal Court could not, in the first instance, have taken jurisdiction of the offense charged, and summoned a grand jury to present an indictment against the accused; and if it could not have taken jurisdiction at first, it cannot do so upon a removal of the prosecution to it. " Id. at 337.

In, Jones', case sub judice, the district court could not, in the first instance, have taken jurisdiction of the offense of murder as charged in Count 2 of the Indictment, and summoned a grand jury to present the indictment against

him, because the murder of the clerk of the local truck stop "is not an offense against the United States."³³ Therefore, if the district court could not have taken jurisdiction at first, it cannot do so upon the removal of Jones' prosecution to it.

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If a criminal prosecution of an offender against the laws of a State can be transferred to a Federal court, what officer is to prosecute the case? Is the attorney of the Commonwealth to follow the case from his county, or will the United States District Attorney take charge of it? Who is to summon the witnesses and provide for their fees? In whose name is judgment to be imprisoned, who is to enforce the sentence? If he is deemed worthy of executive clemency, who is to exercise it the Government of the State or the President of the United States? Can the Governor release from the judgment of a Federal court? These and other questions which might be asked, shows, as justly observed by the counsel of Virginia, the incongruity and absurdity of the attempted proceeding. Id. at 338.

In Jones' case at bar, presently before the Court, his criminal prosecution for murder of the clerk was an offense against the laws of the State of South Carolina that was transferred to the Federal district court pursuant to a process of indicting Jones for the same offense of murder that was subjected to the prior exclusive jurisdiction of the State court, issuing a WHCAP demanding that the State authorities give temporary custody of Jones to the Federal authorities so that Jones could be prosecuted in Federal court for a murder that violated State law, the arrest of Jones for the said criminal offense by the US Marshal while he was in the custody of the State authorities, the arraignment of Jones in Federal court for the said offense while the charges was subjected to the prior exclusive jurisdiction of the State court, and the

end result of the State Court "DISMISS[AL]" and "REMANDE[]" of Jones' murder charges to the Federal district Court. See Exhibits A-1 through F-2. Hence, in light of the questions put forth by the Counsel of Virginia previously stated above in relationship with the unlawful and void process used to transfer Jones' criminal prosecution of murder of the Clerk from the State Court to the Federal district court highlight the incongruity and absurdity of that process.

Now, it affirmatively appears of record that the Circuit court has taken jurisdiction of this case on removal from the state Court, when, as we held, no act of Congress authorized it do so. We cannot, in fidelity to the law, as declared in former cases, overlook this defect of jurisdiction in the court below or fail to express our inability to concur in the views of the learned court below upon this point. See Kentucky v. Powers, 201 U.S. 1, 36, 50 L.ed 633

In Jones' case sub judice, it affirmatively appears from the record that the Federal district court has taken jurisdiction of Jones' murder case on removal from the State court, when no Act of Congress authorized it do so. The question that Jones put before the Circuit Court was, will it in fidelity to the law, as declared in former cases, overlook this defect of jurisdiction in the court below or fail to express its inability to concur in the views of the learned court below upon this point?

CONCLUSION

For the reason(s) stated, Jones, request that this Court issue its writ of mandamus to compel the Honorable David C. Norton, Judge of District Court, to dismiss this cause for lack of subject matter jurisdiction.

CONCLUSION

The petition for a writ of Mandamus should be granted.

Respectfully submitted,

Arthur Jones, Jr.

Date: March 21, 2024