No. 24-5817

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

In re LASSISSI AFOLABI Pro se — PETITIONER
(Your Name)

vs.

WARDEN FORT DIX FCI — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

LASSISSI AFOLABI
(Your Name)

Federal Correctional Institution, P.O. Box 2000
(Address)

Joint Base MDL, NJ 08640
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

WHETHER § 2244(b)(1), (b)(2)'S BAR, WHICH EXPLICITLY REFERENCES ONLY § 2254, ALSO APPLIES TO A CLAIM BY A FEDERAL PRISONER WHO BRINGS A SUCCESSIVE CHALLENGE TO HIS CONVICTION UNDER §2255 ?

IF SO, DOES THE COURT OF APPEALS FOR THE THIRD CIRCUIT ERR BY AFFIRMING THE DISTRICT COURT'S JUDGMENT DISMISSING THE PETITION FOR LACK OF JURISDICTION WHEN THE PETITIONER HAS RAISED JURISDICTIONAL VIOLATION?

LIST OF PARTIES

[X] 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

Afolabi v. Warden, FORT DIX FXI,
2024 U.S. App. LEXIS 11863
No. 24-1174 Opinion filed May 16, 2024

Afolabi v. Knight,
2024 U.S. Dist. LEXIS 5840
Civil action No. 22-5633(CPO) Decided January 11, 2024

Afolabi v. Warden, Fed. Corr. Inst. Fort Dix,
142 S. Ct. 926; 210 L. Ed. 1014; 2021 U.S. LEXIS 3666; 90 U.S.L.W. 3039
No. 20-7816 Decided August 23, 2021

Afolabi v. Warden, Fed. Corr. Inst. Fort Dix,
141 S. Ct. 2687; 210 L. Ed. 2d 843; 2021 U.S. LEXIS 2721; 89 U.S.L.W. 3994
No. 20-7816 Decided May 24, 2021

Afolabi v. Ortiz,
2020 U.S. Dist. LEXIS 49148
Civ. No. 19-8802 Decided March 23, 2020

Afolabi v. United States,
581 U.S. 928; 137 S. Ct. 1604; 197 L. Ed. 2d 729; 2017 U.S. LEXIS 2533; 85 U.S.L.W. 3491
No. 16-8313 Decided April 17, 2017

TABLE OF CONTENTS

INDEX TO APPENDICES

TABLE OF AUTHORITIES CITED

STATUTES AND RULES

OTHER

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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 _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.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 May 15, 2024.

[ ] No petition for rehearing was timely filed in my case.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: July 17, 2024, 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

STATEMENT OF THE CASE

From October 2000 through September 2007, it is alleged that Lassissi Afolabi conspired with his ex-wife, Akouavi Kpade and others to obtain the forced labor of twenty four young girls from Togo and Ghana who had been brought to United States with fraudulently obtained visas. The girls, it is alleged range from 10 to 19 years old, were required to work at the hair braiding Salon up to fourteen hours a day, for six or seven days per week, and were forced to turn over all their earning including tips to the defendants.

FACTS AND PROCEDURAL HISTORY

a) As reminder, in this Case/Petition, in 2007, an individual ("not the government official ") was arrested early in the morning in his house, in East Orange, New Jersey and put in Jail. The Court must always refer to the context in which this case was presented to the public and above all, the District Court in 2007. (The Initial Indictment of the Appellant and co-defendants). The core of this case is "Bringing aliens into the United States in violation of the Immigration Reform and Control Act, 8 U.S.C. § 1324(a)(1)(A)(V)(i) and transporting an alien within the United States in violation of § 1324(a)(2)(B)(ii), 18 U.S.C. § 1546 and 2." The core of this case started in Africa, specifically, Togo and Ghana. This case involves bringing West African females, also referred to herein as "the girls" by obtaining Diversity Visas (DVs') fraudulently. The girls in this case had used those visas to enter into United States. The girls's passports were true and real, and were delivered to them by the official authorities of Togo and Ghana. The visas in their passports were given to them by the American Embassy. Neither their passports nor their visas were fake. When the girls arrived at JFK Airport, the U.S. Customs had let them through, entered the United States territory.

b) The Petitioner in this case, who has never played the lottery and never

involved in filing one, only picked up these girls at JFK Airport in New York after they entered in the country and transported them to his place where he lived. The Petitioner did not transport these girls across the borderlines into the United States. The Petitioner did not conspire with any mean with anyone to bring these girls into the United States. The Petitioner only gave them a place to stay so they could pursue and achieve their dreams.

c) On October 4, 2007, the federal grand jury sitting in Newark, New Jersey, returned an Indictment charging the Petitioner with conspiracy to harbor illegal aliens for the purpose of commercial advantage and private financial gain. On January 15, 2009, the same federal grand jury which had returned the first Indictment against the Petitioner and others on October 4, 2007, returned a superseding Indictment which charged the Petitioner with multiple charges. ("multi-object conspiracy count.").

The Petitioner pleaded guilty to three Counts of superseding indictment as follows:

(1) Count 11 - Conspiracy to commit force labor/trafficking document in violation of 18 U.S.C. § 371;

(2) Count 13 - Forced Labor in violation of 18 U.S.C. § 1589; and

(3) Count 23 - Traveling for Purpose of Engaging in Illicit Sexual Conduct, in violation of 18 U.S.C. § 2423(2).

d) In 2010, the District Court sentenced Petitioner to 292 months in prison for various offenses, including life supervised release, and register as sex offender. The Court also ordered the Petitioner to pay restitution of $3,949,140.80 with his co-defendants. The money which the Petitioner has never seen or used. He timely appealed on March 31, 2008. The Third Circuit affirmed the conviction and sentence in non-precedential decision filed December 16,

2011. United States v. Afolabi, 455 F. App'x 184, 187 (3d Cir. 2011).

e) After the Court of Appeals affirmed the judgment, the Petitioner moved the District to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255. The District court denied that motion on the merits, and the Court of Appeals denied certificate of appealability ("COA"). See C.A No. 16-1983. Next, while the Petitioner was incarcerated at Fort Dix FCI in New Jersey, he filed his first § 2241 petition, collaterally attacked his conviction and sentence. The District Court dismissed that petition for lack of jurisdiction, and the Court of Appeals summarily affirmed that judgment. See Afolabi v. Warden Fort Dix, 821 F. App'x 72, 74 (3d Cir. 2020) (per curiam). Later, the Petitioner applied for permission to file a second or successive § 2255 motion, but the Court of Appeals denied that application. See C.A. No. 21-3203, APPENDIX J. The Petitioner has exhausted all his Administrative Remedies BP-8, BP-9, BP-10, BP-11. See the answers of the Administrative Remedies -APPENDIX L. In 2022, again when the Petitioner was incarcerated in Fort Dix FCI, he filed a second § 2241 in the District court. On January 11, 2024, the District Court dismissed that case for lack of jurisdiction. on January 23, 2024, the Petitioner timely appealed. On May 16, 2024, with NOT PROCEDENTIAL, the Court of Appeals summarily affirmed that judgment. See C.A. No. 24-1174) (per curiam), APPENDIX A. On June 27, 2024, the Petitioner filed Petition for Rehearing en banc. On July 17, 2024, the Rehearing Court denied the Petition. See the Order APPENDIX C. Now, the Petitioner proceeds to this Court.

Summary of Argument

f) Does the federal prisoners collateral attacks on their sentences through habeas corpus proceedings?

¶ Section 2255 solved these problems by rerouting federal prisoners' collateral attacks on their sentences to the courts that had sentenced them. To

make this change of venue effective, Congress generally bared federal prisoners 'authorized to apply for relief by motion pursuant to' § 2255 from applying 'for a writ of habeas corpus' under § 2241. § 2255(e). But, in a provision that has come to be known as the saving clause, Congress preserved the habeas remedy in cases where 'the remedy by motion is inadequate or ineffective to test the legality of [a prisoner's] detention.' ibid."); Rumsfeld v. Padilla, 542 U.S. 426 (2004) ("Until Congress directed federal criminal prisoners to file certain postconviction in the sentencing courts by adding § 2255 to the habeas statute, federal prisoners could litigate such collateral attacks only in the district of confinement.").

g) The Petitioner asserts that 28 U.S.C. § 2244(b)(2) should not prevent the prisoners to collateral attack their conviction and sentence when the sentence imposed by the District Court violates the Constitution, or the laws of the United States. Thus, the District Court and the Court of Appeals erred not to resolve the jurisdictional issue raised by the Petitioner in this case.

REASONS FOR GRANTING THE PETITION

1. The reasons for this Court to grant this Petition is that "a state court or a United States Court of Appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

2. The Petitioner asserts that he is federal prisoner, not a state prisoner, or a state prisoner transferred to a federal institution and his 28 U.S.C. § 2241 Petition under §2255(e) has been dismissed based on § 2244(b)(2), and clarification is needed under 28 U.S.C. § 2244(b)(1) and (b)(2) procedure to resolve the issue. The writ will be in aid of the Court's appellate jurisdiction and that exceptional circumstances warrant the exercise of the Court's discretionary powers, because the Petitioner believes that adequate relief cannot be obtained in any other form or from any other court. See Rule 20.4(a)

3. In this instant Case/Petition, the Petitioner respectfully asks this Court to review his entire case, including Indictment, Superseding Indictment, Plea Agreement, all the court's transcripts and all filing documents related to this case in order to make a reasonable decision to help the Appellate courts.

4. The Petitioner contends that the Court of appeals for the Third Circuit affirming the District Court's decision dismissal of his Petition filed pursuant to § 2241 under § 2255(e) without hearing is unwarranted. See Sanders v. United States, 373 US 1, 17, 10 L Ed 2d 148, 83 S Ct 1068 (1963).

5. In the Petitioner's Petition, he has asserted that he is being held involuntary servitude by the Bureau of Prisons because his sentenced convicted under Title 18 USC. The Petitioner has raised four grounds in the application and the Court of Appeals of the Third Circuit erred not to conduct its ruling

based on the Petitioner's application in order to reach an unconstitutional ground.

6. While the Petitioner's Petition was pending in the District of Camden, New Jersey - where the Petitioner is confined, The Supreme Court of the United States has decided Jones v. Hendrix, 143 S. Ct. 1857 (2023). In Jones, the Supreme Court held that "Section 2255(e)'s saving clause preserves recourse to § 2241 in cases where unusual circumstances make it impossible or impracticable to seek relief in the sentencing court, as well as for challenges to detention other than collateral attacks on a sentence. But §2255(h) specifies the two limited conditions in which federal prisoners may bring second or successive collateral attacks on their sentences. The inability of a prisoner with a statutory claim to satisfy §2255(h) does not mean that the prisoner may bring the claim in a § 2241 Petition." Pp. 3-12.

7. On 09/06/2023, the District Court stated that "this Court has screened the Petition for dismissal and determined that dismissal without a limited answer and the record is not warranted." The District court then ordered the parties to submit a limited answer. See **the District Court's Limited Order -APPENDIX F.** On September 8, 2023, the Respondent asked the District court to dismiss the Petition for lack of subject-matter jurisdiction.

8. On October 10, 2023, the Petitioner filed a Reply, objecting to the Respondent's response. The Petitioner pointed out that the United States Supreme Court's decision in Jones v. Hendrix, should not bar him from pursuing his claims under § 2241 because he is being held in unlawful custody by the BOP, and that recourse could be pursued under the saving clause § 2255(e), and that his Petition presented jurisdictional concern.

9. The Petitioner also asked the District Court to transfer the case to the

appropriate Court, which has jurisdiction over this issue for further review, citing 28 U.S.C. § 2241(d). **See Page 1 and 2 of the Petitioner's Objection to the Appellee's Letter in the existing files.**

10. The Judge, in her opinion stated that the claims raised by the Petitioner in his Reply should be raised under § 2255 but instead of transferring the Petition to the appropriate court, she dismissed it for lack of jurisdiction, stating that, "as it does not appear that Appellant can satisfy the requirement of § 2244(b)(2)." See **District Court's Opinion and Order - APPENDIX B**

11. The Petitioner filed timely appeal. On Appeal, the Petitioner disagreed with the District Court, stating that, "That decision is unwarranted for a dismissal for lack of jurisdiction." The Court of Appeals transferred the Petition to the sentencing District court of Newark, New Jersey.

12. The Petitioner pointed out that "Before the holding of Jones v. Hendrix, 143 S. Ct. 1857 (2023), all the courts directed the prisoners to pursuit their executive § 2241 claims in the court of their confinements - that the prisoners had been followed. See Dorsainvil, 119 F.3d 245 (1997); see Bruce v. Warden Lewisberg. USP, 868 F.3d 170 (3d Cir. 2016)."

13. But, "Now in real life, we all understand that we dance on the rhythm of tom-tom or music, and when the rhythm changes, the dance also changes. Even if the dance changes, still, everybody's dance cannot be the same. That is common sense. Here, the United States Supreme Court has changed the rhythm of the old proceedings and this Court should review this case to make a good decision for the prisoners."

14. On the three-page letter sent by STEVEN G. SANDERS, Assistant United States Attorney, dated February 5, 2024, the Respondent stated that, "The District Court dismissed the prisoner's petition for a writ of habeas corpus

under 28 U.S.C. § 2241 for lack of subject-matter jurisdiction. Doc. No. 1-2 at 1. It did so because, after Jones v. Hendrix, 599 U.S. 465 (2023), the "saving clause," 28 U.S.C § 2255(e), no longer supplies jurisdiction to consider the legality of a prisoner's conviction or sentence based on a subsequent Supreme Court decision narrowing the statute of conviction." See **Page 2 and 3 of the** APPELLEE'S LETTER, dated February 5, 2024, **in existing files.**

15. The Petitioner strongly objects to the Respondent's argument. He asserts that the United States Supreme Court stated that "The saving clause might also apply when 'it is not practicable for the prisoner to have his motion determined in the trial court because of his inability to be present at the hearing, or for other reasons.'" 2 Hayman, 342 U.S., at 215, n. 23, 72 S. Ct. 263, 96 L. Ed. 232 (Internal quotation marks omitted).

16. Here, the Petitioner has argued that the United States Supreme Court has not defined "for other reasons." He has asserted that jurisdiction concern may be raised in order to satisfy the "saving clause." The Petitioner has also pointed out that because the majority relies on Ex parte Watkins, the Court of Appeals should analyze this holding of the Supreme Court: "At the founding, a sentence after conviction 'by a court of competent jurisdiction' was '"in itself sufficient cause"' for a prisoner's continued detention." Brown v. Devenport, 596 U.S. __, __, 142 S. Ct. 1510, 212 L. Ed. 2d 463 (2022) (slip op., at 8) (quoting Ex parte Watkins, 28 U.S. 193, 3 Pet. 193, 202, 7 L. Ed. 650 (1830)). The Petitioner has also pointed that, for example, if the courts eliminate a jurisdictional concern from the "saving clause", how the prisoners will demonstrate that the courts which have sentenced them are incompetent since there are many different jurisdictional powers given to the courts? The Petitioner has stated that, "The opportunity must be given to them to

demonstrate those claims anew." See Page 3, paragraph 2, 3 and 4 of the Petitioner's Objection To the Appellee's Letter in existing files.

17. The Petitioner has pointed out that, "Because the Appellee asked the District Court to dismiss the Petition for lack of subject-matter jurisdiction without further proceedings or transfer the Petition to appropriate Court, the District Court and the Appellee make it 'impracticable' for the Appellant to have his claims be heard and 'impracticable' for him to have relief." Citing, Fed. R. Civ. P. 23. THE LAW DICTIONARY, Copyright (c) 2002 Anderson Publishing Co. C., explains that, "a lawsuit initiated or defended by a person, who brings it or defends it for himself and on behalf of all other persons similar situated. If persons constituting a class are so numerous as to make it 'impracticable' to bring them all before the court, such of them, one or more, as will fairly insure the adequate representation of all may, on behalf of all, sue or be sued in certain instance, depending upon the character of the right sought to be enforced." Fed. R. Civ. P. 23." See Page 4 and 5 of the Petitioner's OBJECTION TO THE APPELLEE'S LETTER in the existing files.

18. Right after the Petitioner's objection to the Appellee's Letter, the Court of Appeals sent a letter to the Petitioner, granting him a motion to proceed in forma pauperis, stating that "the appeal will be submitted to a panel of this court for determination under 28 U.S.C. Section 1915(e)(2) as to whether the appeal will be dismissed as legally frivolous." See Court of Appeals's Letter - APPENDIX D

19. The Petitioner has pleaded the Court of Appeals not to dismiss his appeal as legally frivolous under 28 U.S.C. Section 1915(e)(2) because he is entitled to relief. The Petitioner has also asserted that the claims raise in his complaint are facts and true. He contends that the Court of Appeals should not dismiss his Petition because: "(a) on February 23, 2024, he has sent his

Objection to the Appellee's Letter, which means it is timely filed and no penalty should be used against him. (b) the allegation of poverty is true, not only the Government seized all of his money but the district court also ordered him to pay restitution of $3,949,140.80, with his co-defendants, and the BOP has been taking $25.00 every three months from his prison's account as IFRP payment regarding that restitution. (c) The Appellant contends that his appeal challenges the jurisdictional concern, which has become a dispute between the parties. (d) The Appellant contends that this court considers all his allegations as true and grants him relief." See **Page 1 and 2 of the Petitioner's Reply to the Court's Letter in the existing files.**

20. The Petitioner has also asserted that "the District Court of Camden, New Jersey dismissing his Petition for lack of jurisdiction without holding a hearing to determine the jurisdiction concern is unwarranted. The District Court erred not to hold a hearing to resolve the jurisdictional dispute between the parties before making its decision." The Petitioner states as follows:

> a district court entertaining a Rule 12(b)(1) motion to dismiss must first ascertain whether it 'presents a 'facial' attack or a 'factual' attack on the claim ... at issue, because that distinction determine how the pleading must be reviewed." Long v. Pennsylvania Transportation Auth., 903 F.3d 312, 320 (3d Cir. 2018) (quoting In re Schering Plough Corp. Intro/Temodar Consumer Class Action, 757 F.3d 347, 357 (3d Cir. 2014). When there is a facial attack on a claim a district court "must only consider the allegations of the complaint and documents referenced therein and attached thereto, in the light most favorable to the plaintiff." In re Schering Plough, 678 F.3d at 243 (quoting Gould Flecs., Inc v. United States, 220 F.3d 169, 176 (3d Cir. 2000)). On the other hand, if the defendant contests the truth of the jurisdictional allegations, there is a factual attack and the district court must hold a plenary trial to resolve any material factual dispute. Long, 903 F.3d at 320 (citing Constitution Party of Pa., 757 F.3d at 357); Schuchardt v. President of the U.S., 839 F.3d 336, 343 (3d Cir. 2016)). See also, Odie v. Knight, 2023 U.S. Dist. LEXIS 128867 CIV. No. 22-5249 (RMP) (3d Cir. 2023). See **Page 3 of the Petitioner's Reply to the Court's Letter in the existing files.**

21. The Petitioner has also pleaded the Court of Appeals to reverse the decision of the District Court of Camden, New Jersey, and hold a hearing to

resolve this issue. Otherwise, relief should be granted in the Appellant's favor. The Petitioner has also contended that the District Court for the District of Newark, New Jersey should respond to the issue of jurisdiction. See Page 3 and 4 of the Petitioner's Reply to the Court's Letter.

22. On May 16, 2024, with NOT PRECEDENTIAL, the Court of Appeals summarily affirmed the District Court's judgment. See C.A No. 24-1174) (PER CURIAM), APPENDIX - A. By affirming the District Court's judgment, the Court of Appeals stated that:

> A § 2255 motion is the presumptive means by which a federal prisoner can collaterally attack the legality of his conviction or sentence. See Okereke v. United States, 307 F.3d 117, 120 (3d Cir. 2002). A federal prisoner may instead proceed under § 2241 only if he demonstrates that a § 2255 motion would be "inadequate or ineffective to test the legality of his detention." 28 U.S.C. § 2255(e). While Afolabi's second § 2241 case was pending before the District court, the Supreme Court clarified that a § 2255 motion is "inadequate or ineffective" under § 2255(e) only (1) "where unusual circumstances make it impossible or impracticable to seek relief in the sentencing court," or (2) where the litigant is asserting a "challenge[] to detention other than [a] collateral attack[] on a sentence." Jones v. Hendrix, 599 U.S. 465, 478 (2023).
>
> We agree with the District Court that Afolabi's second § 2241 case was subject to dismissal for lack of jurisdiction, for neither of the two situations described in Jones is present in his case. See Voneida v. Johnson, 88 F.4th 233, 239 (3d Cir. 2023) (remanding with instructions to dismiss § 2241 petition for lack of jurisdiction in view of Jones).[2] Because this appeal does not present a substantial question, we will summarily affirm the District Court's judgment.[3] Afolabi's motion for appointment of counsel is denied, as the "interests of justice" do not require counsel appointment in this appeal. See 18 U.S.C. § 3006A(a)(2). See Opinion and Judgment of the Court of Appeals - APPENDIX A
>
> "[1] Afolabi does not need to obtain a COA to proceed with this appeal. See United States v. Cepero, 224 F.3d 256, 264-65 (3d Cir. 2000) (en banc), abrogated on other grounds by Gonzalez v. Thaler, 565 U.S. 134 (2012)." See Footnote, Page 3 of the Court of Appeals's opinion.
>
> "[2] In dismissing Afolabi's second § 2241 case, the District Court declined to exercise its discretion under 28 U.S.C. § 1631 to transfer the matter to our Court for treatment as another application for leave to file a second or successive § 2255 motion. That was not an abuse of discretion, especially since Afolabi's second § 2241 case raises the same claims that undergirded his application that we denied in C.A. No. 21-3203.
>
> [3] We have considered Afolabi's various arguments in support of this appeal and conclude that none has merit." See Page 4 of the Court of Appeals's Opinion and Judgment - APPENDIX A.

23. Here in this instant case/Petition, the Petitioner contends that the

Court of Appeals erred not to rule in Petitioner's favor since the sentencing District Court of Newark, New Jersey, has not responded to the alleged jurisdictional concern. See **Footnote, Page 1 of District Judge O'HEARN's Opinion** ("[1] The Court had ordered a limited answer on the issue of jurisdiction. (ECF No. 5.) [2] The Honorable Jose L. Linares presided over Petitioner's criminal case, United v. Afolabi, Crim. No. 07-785".

24. Defendant asserts that the UNITED STATES by and through its agent, the 'U.S. Attorney', lost its jurisdiction, once it failed to determine (prove) jurisdiction to hear this case at bar before proceeding with a plea/trial within the US District Court. (The U.S. District Court had an obligation to compel the United States to prove jurisdiction in the best interest of justice). BRIEF MEMORANDUM OF LAW, No. [23.].

25. Defendant contends that the question-challenging jurisdiction, was [NEVER WAIVED] by the defendant. It is well settled in the laws that when jurisdiction of the court and of the United States is challenged, thus "ONUS PROBANDI IS THE ACTOR". Onus probandi burden of proving the burden of proof: "The strict meaning of the onus probandi," is that, if no evidence is adduced by the party on whom the burden is cast, the issue must be found against him. DAVIS VS. ROGERS, 1 Houst (del) 44. "Where jurisdiction is challenged it must be proved." HAGAN VS. LAVINE, 415 u.s. 528 (1974). See BRIEF MEMORANDUM, No. [24.].

26. "A COURT CANNOT PROCEED AT ALL IN ANY CASE WITHOUT JURISDICTION BUT MUST ANNOUNCE THE fact and dismiss the cause." See EX PARTE MCCARDLE, 7 wall 506, 19 Led. 264.... Federal courts are not courts of general jurisdiction; they have only the power that is authorized by Article III of the constitution (their contract/compact) and statutes enacted by congress pursuant thereto. See

MARBURY VS. MADISON, 1 cranch 137, 173-180 2 L.Ed. 60 (1803). For that reason, every federal appellate court has a special obligation to "satisfy itself not only of its jurisdiction, but also that of the lower courts in a cause under review," even though the parties are prepared to concede it. MITCHELL VS. MAURER, 293 u.s. 237, 244, 79 L.Ed 338, 55 s.ct. 162 (1934).... "And if the record discloses that the lower court was without jurisdiction (SUCH AS IN THIS CASE) Appellate court will notice the defect, although the parties make no contention concerning it." BENDER VS. WILLIAMS PORT AREAS SCHOOL DISTRICT, 475 u.s. 534, 89 L.Ed 2d 501, 106 s.ct. 1326. When the lower federal court (and therefore the United States) lacks jurisdiction. APPELLATE HAVE JURISDICTION ON APPEAL, NOT OF THE MERITS BUT MERELY FOR THE PURPOSE OF CORRECTING THE ERROR OF THE LOWER COURT IN ENTERTAINING THE SUIT. See UNITED STATES VS. CORRICK, 298 u.s. 435, 440, 80 L.Ed. 1263, 56 D. VY. 829 (1936) See also SUMNER VS. MATA, 449 u.s. 539, 547-548 n.2, 66 L.Ed. 722, 101 s.ct. 764 (1981)....This obligation to notice defects in a court of appeals, regarding subject matter jurisdiction, assume a special importance when a constitutional question is presented. In such cases, we must go strictly to the standing requirements to ensure that our deliberations will have benefit of adversary presentation and full development of the relevant facts. THE COURT MUST BE MINDFUL THAT THE POWERS OF THE LEGISLATURE ARE DEFINED AND LIMITED AND THAT THOSE LIMITS MAY NOT BE MISTAKEN OR FORGOTTEN. The constitution of the United States of America has been written indeed with this, the very essence of the judicial duty. See MARBURY VS. MADISON, 5 u.s. 137, 176-178, 1 cranch 137 (1803). See also, BELL VS. MARYLAND, 378 u.s. 266, 224 (1964) (Douglas J. Concourring). BRIEF MEMORANDUM No. [25.]

27. Still, during the Petitioner's Appeal proceedings, the Supreme Court decided In re Bowe, Case No. 22-7871, 2024 US LEXIS 988 (Feb. 20, 2024). In re

Bowe, the government agrees with Bowe that §2244(b)(1) applies only to States prisoners. The Petitioner has brought Bowe to the Rehearing Court's attention, asking for clarification, that if the government agrees with bowe that § 2244(b)(1) applies only to states prisoners, "Thus, includes § 2244(b)(2)." The Petitioner pointed out that the panel decision conflicts with a decision of the United States Supreme Court, citing In re Bowe, Case No. 22-7871, 2024 US LEXIS 988 (Feb. 20, 2024); Jones v. United States, 36 F.4th 974, 982 (CA9 2002); In re Graham, 61 F.4th 433 (CA4 2023); Williams v. United States, 927 F.3d 427, 434 (6th Cir. 2019); Winarske v. United States, 913 F.3d 765, 768-769 (CA8 2019); In re Bourgeois, 902 F.3d 446, 447 (CA5 2018); In re Baptiste, 828 F.3d 1337, 1339-1340 (CA11 2016); United States v. Winkelman, 218 L. Ed. 2d 68 746 F.3d 134, 135-136 (CA3 2014); Gallagher v. United States, 711 F.3d 315 (CA2 2013); Taylor v. Gilkey, 314 F.3d 832, 836 (CA7 2002); Avery v. United States, 589 U.S. __, __, 140 S. Ct. 1080, 206 L. Ed. 2d 488 (2020)." See **Page 2 through 8 of 15 of the Petitioner's Petition for Rehearing en banc.** The Petitioner has also pointed out that

"[1] Insofar as Weber v. McGrogan, 939 F.3d 232, 239-40 (3d Cir. 2019), questions Batoff's jurisdictional analysis, Batoff nevertheless remains good law. See 3d Cir. I.O.P. 9.1 (providing that en banc consideration is required to overrule a prior panel's precedent opinion)." See **Footnote, Page 2 of 15 of the Petitioner's Petition for Rehearing en banc in the existing files.**

28. The Petitioner has pointed out that the Panel's statement is inaccurated and its judgment for affirming the District Court's decision is unwarranted because the District court concluded as follows:

> This Court finds that it is not in the interest of justice to transfer the Petition in the Third Circuit, as it does not appear that Petitioner can satisfy the requirements of § 2244(b)(2), and because he alleges that the Third Circuit has already denied his application to file a second or successive motion. (ECF No. 7, at 3); see generally In re: Afolabi, No. 21-3203, ECF No. 4 (3d Cir. 2021) (denying application). However, this Court's decision does not prevent Petitioner from seeking permission from the Third Circuit on his own.

29. The Petitioner has again pointed out that: (1) the rehearing in banc consideration is needed to reverse the panel's decision because "res judicata" does not apply to a federal prisoner in federal habeas corpus proceedings. Congress revised the Judicial Code and, with it, the federal habeas corpus statute, it rejected a proposed to apply res judicata principle to the federal habeas corpus proceedings. S. Rep. No. 1559, 80th Cong. 2d Sess. 9 (1948) (eliminating from original bill language adopting res judicata principle). (2) In an In re Bowe, 218 L. Ed. 2d 67; 2024 U.S. LEXIS 988; 92 U.S.L.W. 3206, the government agrees with Bowe that § 2244(b)(1) applies only to states prisoners. The Petitioner reasons that if § 2244(b)(1) applies only to States prisoners, then thus, includes §2244(b)(2). The Petitioner has pointed in details to the Rehearing Court to see how It is constructed, in order to review the District Court's decision based on § 2244(b)(2). See **Page 6, 7 of 15 of the Petitioner's Petition for Rehearing en banc in the existing files.** The Petitioner has also presented § 2244 **Finality of determination:**

(b)(1) A claim presented in a second or successive habeas corpus application under section 2254 [28 USCS § 2254] that was presented in a prior application shall be dismissed.

(2) A claim presented in a second or successive habeas corpus application under section 2254 [28 USCS § 2254] that was not presented in a prior application shall be dismissed unless-- ... and § 2244(b)(3)(A) Read: "Before a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application."

30. The Petitioner has pointed out that the relief sought cannot be simply

obtained in the District of his confinement (District Court of Camden, New Jersey) because the District Court of Camden, New Jersey is not his sentencing court and it does not located in the District in which the alleged crime was committed; that the sentencing court and the BOP violate the Rule 1, Rules Governing Section 2255 proceedings not to place him in right detention. See also, 28 U.S.C.S. § 2244(a) read as follows:

> § 2244(a) No circuit or district judge shall be require to entertain an application for a writ of habeas corpus to inquire into the detention of a person pursuant to a judgment of a court of a court of the United States if it appears that the legality of such detention has been determine by a judge or court of the United States on a prior application for a writ of habeas corpus, except as provided in section 2255 [28 U.S.C.S. 2255]. See the whole construction of the Statute on APPENDIX K

31. As you can see here that in this case, both § 2244(b)(2) and § 2244(b)(3) do not apply to the Appellant since he is a federal prisoner. The Petitioner has pointed out that, "more importantly, it becomes clear that the Appellant is being held in unlawful custody where release cannot be obtained because his is not a (sic) state prisoner to proceed his claims under § 2241. State prisoner proceeds under § 2241(c)(3) and Federal prisoners proceed under § 2255(h). See **Page 7 of 15 of the Petitioner's Petition for Rehearing en banc in the existing files.**

32. The Petitioner has pointed out that "Because the Appellant is a Federal prisoner, his path is to proceed in a Remedy under Section 2255 motion." See 28 U.S.C.S. 2255(h). As reminder, the Court of Appeals reasons that the Petitioner does not need to obtain a COA to proceed with this appeal. For that reason, the Petitioner has asserted that the District Court lacks jurisdiction.

Jurisdiction is lacking

In particular, Section 2255 provides:

> (a) A person in custody under sentence of a court established by Act of Congress claiming the right to be release upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such

sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

33. Under § 2255(h)(1), the Petitioner needs to demonstrate that, "newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense." Thus, the Petitioner has asserted that his sentence was imposed in violation of the Constitution or laws of the United States.

34. He has asserted that he is innocent for the charges against him. Specifically, he contends that he is innocent on the ground that his sentence was imposed under an ambiguous statute, which was not based on his guilty plea signed August 25, 2009, or based on neither the Indictment returned by the Grand Jury of Newark, New Jersey on October 4, 2007, or January 15, 2009 Superseding Indictment. For that reason, his guilty plea is constitutional invalid. See Count 23, which charged the Petitioner with "Traveling for the Purpose of Engaging in Illicit Sexual Conduct with S.X., in violation of 18 U.S.C. § 2423(b)."

35. After the Petitioner pleaded guilty on August 26, 2009, the Judge and the prosecutor applied ambiguous statute to convict and sentence him. That ambiguous statute has been applied throughout the Courts proceedings, which read: "Transportation of minor with Intent to Engage in Criminal Sexual Activity." This particular reading stands for 18 U.S.C. § 2423(a). Whereas the Petitioner's Plea Agreement reads as follows: "Traveling for Purpose of Engaging in Illicit Sexual Conduct (18 U.S.C. § 2423(b)).

36. The Petitioner contends that there has not been legitimate judgment in this case because that judgment was obtained through ambiguous statute, which

rendered his guilty plea invalid and void. Citing Hendreson v. Morgan, 426 U.S. 637 (1976) (quoting Smith v. O'Grady, 312 U.S. 329, 334 (1941)); Bousley v. United States, 523 U.S. 614, 618-19 (1998), he has pointed out that neither the judge nor the prosecutor or his lawyer told him about the nature of the charges or critical elements of the offense before pleaded guilty. See **Page 8, 9 of 15 of the Petitioner's Petition for Rehearing en banc.**

37. The Petitioner has pointed out that he had raised this claim before in his first § 2241 Petition; on March 23, 2020, at Camden, New Jersey. On page 7 and 8 of the U.S.D.J. NOEL L. HILLMAN's opinion clearly stated that:

> Both parties occasionally refer to petitioner's conviction as being for "Transportation of minor with intent to Engage in Criminal Sexual Activity", but "[b]y its unambiguous term, § 2423(b) criminalizes interstate travel for an illicit purpose. The actual age of the intended victim is not an element of the offense; criminal liability 'turns simply on the purpose for which [the defendant] traveled.'" United States v. Tykarsky, 446 F.3d 458, 469 (3d Cir. 2006) ((quoting United States v. Root, 296 F.3d 1222, 1231 (11th Cir. 2002) (alteration in original)). See also Plea Agreement, Afolabi No. 07-cr-0785 (D.N.J. Aug. 26, 2009) (ECF No. 122 at 1) ("traveling for the purpose of engaging in illicit sexual conduct with S.X. in violation of 18 U.S.C. § 2423(b) and 2") Therefore even Petitioner admitted facts that establish S.X.'s age, Petitioner's § 2423(b) conviction would stand even if S.X. was over 16. Petitioner has not pointed to a Supreme Court decision that invalidates his conduct; therefore, he has not demonstrated 'actual innocence' for the purposes of 2241.

38. As you can see here that the opinion of the U.S.D.J. NOEL L. HILLMAN is also unwarranted because the age of the girl is a critical element in this case, and the government suppresses that true evidence, by referring only to the age mentioned in the girl's fraudulent passport.

39. The Petitioner has pointed out that the Court of Appeals again by affirmed the District court's judgment was based only on In re Dorsainvil, 119 F.3d 245, 251-52 (3d Cir. 1997) ruling. The Petitioner has pointed to Bousley v. United States, 523 U.S. 614 (1998); United States v. Davis, (No. 18-431)(S. Ct. 2019); Montgomery v. Louisiana, 136 S. Ct. 718, 731 (2015) .... and has

respectfully demanded the Court of Appeals to re-examine his ambiguous statute claim de novo because the ruling in Jones v. Hendrix, 143 S. Ct. 1857 (2023) abrogated In re Dorsainvil, supra. See Page 9, 10, 11 of 15 of the Petitioner's Petition for Rehearing en banc.

40. The Petitioner has asserted that this ambiguous application of tatute throughout the Court proceedings can be seen from the record, in fact, the sentencing court has applied an ambiguous statute to convict and sentence him. His lawyer, the Prosecutor and the Judge have applied an ambiguous statute in this case is not simply an allegation but it is a fact and it is a violation of his federal constitution rights. He has asserted that this case presents an extraordinary circumstances which the Court must address.

41. Most importantly, in this instant case, since the conviction and sentence of the Petitioner have not been obtained based on neither the Indictment of the Grand Jury of Newark, New Jersey, nor on the true Plea Agreement signed by the Petitioner on August 25, 2009 and which the District Court proceeded on August 26, 2009, that is a perjury in part of the prosecutor. Thus, that misconduct of the Prosecutor cannot be ignored from the record and can be raised again because that ground has not previously heard and determined. See Price v. Johnson, 334 US 266, 287-293, 92 L ed 1351, 1370-1373, 68 S Ct 1049 (1948)

42. Defendant contends that the district court erred in not determining jurisdiction prior to entertaining the cause.

STANDARD OF REVIEW

The court's duty to resolve the jurisdiction of the court, regardless of who brings the action, the court must make a legal finding as to its authority to take venue and jurisdiction, before the court moves to entertain the cause before it. See, 20 Am Jur 2d 60, 377. "THE GENERAL RULE IS THAT A PROCEEDING

CONDUCTED OR DECISIONS MADE-BY A COURT ARE LEGALLY VOID WHEN THERE IS AN ABSENCE OF JURISDICTION OVER THE SUBJECT MATTER. A COURT DEVOID OF JURISDICTION OVER THE CASE CANNOT MAKE A DECISION IN FAVOR OF EITHER PARTY, CANNOT DISMISS THE COMPLAINT FOR FAILURE TO STATE A CLAIM, AND CANNOT RENDER A SUMMARY JUDGMENT. AS A DECISION WOULD BE ON THE MERITS OF THE ACTION. IT CAN ONLY DISMISS THE CASE FOR WANT OF JURISDICTION. HOWEVER, A COURT CAN SET ASIDE ORDERS IT MADE BEFORE THE WANT OF JURISDICTION WAS DISCOVERED, AND A JUDGMENT BY A COURT WITHOUT JURISDICTION OVER SUBJECT MATTER CAN BE SET ASIDE AND VACATED AT ANY TIME BY THE COURT THAT RENDERED IT." (In Part). BRIEF MEMORANDUM OF LAW, No. [22.]

43. The Appellant contends that the law provides that when implementing regulations are at variance with the statutory provision of which they are intended to promulgate that if they fail to give proper notice under the due process clause of the federal constitution or the "FAIR NOTICE", Doctrine, set out under UNITED STATES VS. NEVERS, 7 f.3d 59 (5th Cir. 1993). Administrative regulations in order to be valid must also be consistent with, and not contrary to, "The statute under which they are promulgated." UNITED STATES VS. LARIONOFF, 431 u.s. 864, at 973, 97 s.ct. 2150, at 2156, 53 L. Ed. 2d, 48 at 56. A regulation beyond the scope of, or out of harmony with, underlying legislation is a mere nullity, Id. At 873 n. 12, 97 s.ct. At 2156, n. 12., MANHATTEN GEN. EQUIP. CO. VS. CIR.., 297 u.s. at 134, 'NEEL VS. UNITED STATES, 266 f.supp. At 10. "To make this determination it is necessary for the court to square the regulations against the statute that it purports to implement, comparing the sphere of authority of each. WESTERN UNION TELEG. CO. VS. F.C.C., 541 f.2d. 346, 354 (3r=' cir. 1976), cert. Den. 429 u.s. 1029 (1977) and administrative regulation must be reasonably related to advancing the purpose

of the enabling legislation. MORNING VS. FAMILY P. SERVICES INC. 411 u.s. 356, 369 (1973). In the framework of criminal prosecution, unclarity in the statute or a regulation issued there under is enough to resolve doubts in favor of the defendant. UNITED STATES VS. MERSKY, 361 u.s. 431, 438 (1960). BRIEF MEMORANDUM No. [38.].

44. He has asserted that the Court should analyze how the Sentencing Court has used the constructions of the statutes for both Counts 13 and 23 to sentence him in order to know the true violation of the sentence imposed by the District Court, citing TITLE 18, Part 1, CHAPTER 117, Section 2423. See Page 12 of 15 of the Petitioner's Petition of the Rehearing en banc.

45. THE LEGITIMATE APPLICATION AND CHARGING OF AN OFFENSE VIOLATION OF TITLE 18, OF THE UNITED STATES CODE, MUST BE [CONNECTED] TO AN ALLEGED VIOLATION OF THE FEDERAL INTERSTATE COMMERCE STATUTE; OTHERWISE, FEDERAL SUBJECT MATTER JURISDICTION IS MISSING. See UNITED STATES VS. PUPO, 841 f.2d 1235.... The constitutional rights of an accused are violated when modifications, at trial/plea or by a court of appeals acts to broaden the charge contained in the indictment, such modifications (such as a court's use of the preamble in the "act" to enlarge or confer power) contradicts the very purpose of the Fifth Amendment. See UNITED STATES VS. STIRONE, 361 u.s. 212, 4 L.Ed 2d 252, 80 s.ct. See at 273. (Expressing similar view s). The failure of the government to include in the indictment any charge that the defendants conduct affected interstate or intrastate, or any commerce was not cured by the citation of the statutes. In the sufficiency of an indictment, it is the statement of facts in the pleading rather than the statutory citation that is controlling. see UNITED STATES VS. WUCO, 535 f.2d 1225 (9th cir. 1976) cert. Den. 429 u.s. 978, 97 s.ct. 488, 50 L.Ed. 2d 586 (1976). IT IS ELEMENTARY THAT EVERY INGREDIENT OF THE CRIME MUST BE CHARGED IN THE BILL, WITH A GENERAL

REFERENCE TO THE PROVISIONS OF THE STATUTE BEING INSUFFICIENT. See HALE VS. UNITED STATES, 89 f.2d (4th cir.) And UNITED STATES VS. BERLIN, 472 f.2d 1002, 1007 (2d cir. 1973); also UNITED STATES VS. BEARD, 414 f.2d 1014, 1017 (3rd cir. 1969). See BRIEF MEMORANDUM OF LAW No. [39.].

46. As you can see here that the indictment returned by the Grand Jury of Newark, New Jersey, on Count 23 contained the words "illicit Sexual Conduct." However, the words "illicit Sexual Conduct" were missing in the statute used by the prosecutor and the trial/sentencing court to convict and sentence the Appellant. The same applied to Count 13, which charged the Appellant with Forced Labor in violation of 18 U.S.C. § 1589. In United States v. Spinner, 180 F.3d 514 (3d Cir. 1999), this Court held that, "When, as in this case, an indictment fails to allege all elements of an offense, the defect may be raised by the court sua sponte. We have held that 'failure of an indictment sufficiently to state an offense is a fundamental defect ... and it can be raised at any time.'" Wander, 601 f.2d at 1259; see also Fed R. Crim. P. 12(b)(2), United States v. Beard, 414 F.2d 1014, 1015 (3d Cir. (1969) (quoting United States v. Mauszak, 234 F.2d 421, 423 (3d Cir. 1956). See also, United States v. Zanger, 848 F.2d 923, 925 (8th Cir. 1988).

47. The Petitioner has pointed out that if Congress wanted any statute to be used, outside of its territorial jurisdiction, such as anywhere or any place then it would have included the interstate commerce nexus that is required. "A Federal Statute intended to be enforced within the states exceeds congress commerce clause authority." The Appellant contends that an invalid, unconstitutional, or non-existing statue affects the validity of the "Charging Document", that is, the complaint, indictment or information. If these documents are void or fatally defective, there is no subject matter

jurisdiction since they are the basis of the court's jurisdiction; when an accused party is indicted under a not yet effective or in enacted statute, the charging document is invalid.

48. The Petitioner has pointed out that, according to the government, the alleged crime charged in indictment, Count 23, "Travel for the Purpose of Engaging in Illicit Sexual Conduct, pursuant to 18 U.S.C. § 2423(b) was committed in North Carolina. The Appellant contends that even if the Government wants to convict him on the original superseding indictment, it has to prove that the Appellant has committed "illicit sexual conduct." The Appellant urges the Court to analyze the construction of the Title 18 U.S.C. § 2423(b), which prosecutes only the Government Officials ("not an individual") and the "sexual act occurred in the special maritime and territorial jurisdiction of the United States. (2) To convict the Appellant on an attempt to commit this crime, it should be charged in indictment that the Appellant has violated "18 U.S.C. § 2423(e)". In fact, the Appellant was not be charged with § 2423(e). Thus, the Government cannot prove the Appellant has committed the offense charged in the indictment. The Petitioner has also asserted that "he is not guilty on all four Grounds raise in the applications. He also invoked the Memorandum and Exhibits I, II, and III. See **Page 11, 12, 13 and 14 of the Petitioner's Petition for Rehearing en banc in the existing files.**

49 By denying the Petitioner's Petition for Rehearing en banc, the Rehearing Court stated that:

> The petition for rehearing filed by Appellant in the above-captioned case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc is denied.

50. Here, The Panel and the Rehearing Court have not unanimously disagreed

with the Petitioner because Judge Scirica votes for panel rehearing. Thus, the Petitioner is pleading the Supreme Court to use its power to grant certiorari and review this case. "*Judge Scirica's vote is limited to panel rehearing." See Page 1 of the Rehearing Court's Order, SUR PETITION FOR REHEARING -APPENDIX C.

I

FEDERAL GOVERNMENT LACKED FEDERAL LEGISLATIVE, TERRITORIAL OR ADMIRALTY JURISDICTION IN OVER THE LOCUS QUO

51. Defendant contends that the 'U.S. ATTORNEY' misrepresented to the grand jury that the federal government lacked federal Legislative territorial, or Admiralty jurisdiction in over the Locus quo. The defendant argues that there is no presumption in favor of jurisdiction, where the basis for jurisdiction must be affirmatively shown on the face of the record. See HARTFORD VS. DAVIS. 16 s.ct. 1051 (1896). The exclusive Legislative jurisdiction of the federal government is not addressed in principle to subject matter, but to geographical Location. See UNITED STATES VS. BEAVENS. 16 U.S. (3 wheat) 336 (1818). It is automatic that the prosecution must always prove (Legislative, Territorial or Admiralty) jurisdiction over the geographical Location whereon the alleged prohibitive acts were purported to have been committed, otherwise a conviction could not be sustained. See UNITED STATES VS. BENSON. 495 F.2d 481 (1946). Federal criminal jurisdiction is never presumed; and must always be proven, and can 'never be waived'. See UNITED STATES VS. ROGERS. 23 F. 658 (D.C. Ark. 1885). IN CRIMINAL PROSECUTION WHERE THE FEDERAL GOVERNMENT IS A MOVING PARTY IT MUST NOT ONLY ESTABLISH OWNERSHIP OF THE PROPERTY WHICH THE CRIME(S) ALLEGEDLY OCCURRED, BUT THEY MUST ALSO PRODUCE DOCUMENTATION THAT THE STATE HAS CEDED THE JURISDICTION OF THAT PROPERTY TO THEM (ON VIEW OF THE SUPREME COURT) in fort LEAVENWORTH RAILROAD VS. IOWA, 114 U.S. 525 (1885). [No] jurisdiction

exists in the United States to enforce federal criminal Laws until CONSENT TO ACCEPT JURISDICTION OVER ACQUIRED LAND HAVE BEEN PUBLISHED and filed on behalf of the United States as provided and filed in 40 U.S.C.S255, and the fact that the state authorized the federal government to take and exercise jurisdiction was immaterial. See ADAMS VS. UNITED STATES, 319 U.S. 312, 63 Supreme Court 1122, 87 L. Ed. 1421 (1943). See Petitioner's BRIEF MEMORANDUM OF LAW, No. [1.]

52. The Petitioner contends that in this instant case/Petition, he is innocent for Count 11, which charged the Petitioner with conspiracy to commit force labor/trafficking document in violation of 18 U.S.C. § 371 because: (1) there has never been a human trafficking in this case because these girls have left their respective countries with the permission or knowledge of their parents; (2) there is not a crime committed against United States in part of the Petitioner; (3) there is not conspiracy between the Petitioner and any government official to let these girls in question entered the Unite d States.

53. As reminder, in this Case/Petition, in 2007, an individual ("not the government official ") was arrested early in the morning in his house, in East Orange, New Jersey and put in Jail. The Court must always refer to the context in which this case was presented to the public and above all, the District Court in 2007. (The Initial Indictment of the Appellant and co-defendants). The core of this case started in Africa, specifically, Togo and Ghana. This case involves bringing West African females, also referred to herein as "the girls" by obtaining Diversity Visas (DVs') fraudulently. These girls themselves were in complicity in the scheme with those who won the lotteries to change their names and ages, by using the winners's wives and children's names and ages to come in the United States. The girls's passports were true and real, and were delivered to them by the official authorities of Togo and Ghana. The visas in their passports were given to them by the American Embassy. Neither their

passports nor their visas were fake. When the girls arrived at JFK Airport, the U.S. Customs had let them through, entered the United States territory.

54. The Petitioner in this case, who has never played the lottery and never involved in filing one, only picked up these girls at JFK Airport in New York after they entered in the country and transported them to his place where he lived. The Petitioner did not transport these girls across the borderlines into the United States. The Petitioner did not conspire with any mean with anyone to bring these girls into the United States. The Petitioner only gave them a place to stay so they could pursue and achieve their dreams.

55. Here, as you can see that the alleged crime has been committed in Togo and Ghana and the Petitioner was not in the crime scene. The Petitioner has only picked up those girls in JFK Airport after entering the country with the permission of the U.S. Customs. The Petitioner contends that he is not a government official who let the girls entered the United States territory. Thus, they were no more illegal aliens for the Petitioner to be prosecuted for harbor illegal immigrants when he picked them up as the government claimed in the Indictment.

56. Defendant contends that the case relied upon by this court was the UNITED STATES VS. BEAVENS, SUPRA See BRIEF MEMORANDUM No. [7.].

57. As count 13, which charged the Petitioner with forced labor in violation of 18 U.S.C. § 1589, was not a crime committed across a states lines and should be prosecuted only by a state of New Jersey.

Note: there has been no complaint file against the Petitioner in part of the girls before the Petitioner was arrested. The superseding indictment was issued after the Petitioner spent more than 15 months in Jail cell.

II

THE FEDERAL GOVERNMENT CHARGING INSTRUMENTS ARE FATALLY DEFECTIVE

58. Defendant contends that the U.S. Attorney for the U.S. misrepresented the self-evident as self-declaring defects in the governments own charging instruments. The defendant argues that an indictment, which fails to allege all of the elements of the alleged offense, is defective and must be dismissed, where one of the elements is crucial and is in fact the sine-qua-non to the legitimate application of the subsequent charged offenses. BRIEF No. [39.]

59. It is alleged that "Count 23 charges that on March 4, 2006, in Essex County, in the District of New Jersey and elsewhere, **Lassissi Afolabi** did knowingly travel in interstate commerce from New Jersey to North Carolina for the purpose of engaging in illicit sexual conduct, that is, sexual contact, as that term is defined in 18 U.S.C. § 2246, with a person under the age of eighteen, namely S.X., which sexual contact would constitute a violation of Title 18, United States Code, Chapter 109A, in violation of Title 18, United States Code, Section 2423(b)." See Petitioner's PRESENTENCE INVESTIGATION REPORT (Superseding Indictment No. 07-00785), page 7, Paragraph 14.

60. As mentioned-above, the Petitioner contends that he is innocent of the charge because the indictment returned by the Grand Jury of Newark, New Jersey, on Count 23 contained the words "illicit Sexual Conduct." However, the words "illicit Sexual Conduct" were missing in the statute using by the prosecutor and the trial/sentencing court to convict and sentence the Petitioner.

61. THE LEGITIMATE APPLICATION AND CHARGING OF AN OFFENSE VIOLATION OF TITLE 18, OF THE UNITED STATES CODE, MUST BE [CONNECTED] TO AN ALLEGED VIOLATION OF THE FEDERAL INTERSTATE COMMERCE STATUTE; OTHERWISE, FEDERAL SUBJECT MATTER JURISDICTION IS MISSING. See UNITED STATES VS. PUPO, 841 f.2d 1235.... The constitutional rights of an accused are violated when modifications, at trial/plea or by a court of appeals acts to broaden the

charge contained in the indictment, such modifications (such ass a court's use of the preamble in the "act" to enlarge or confer power) contradicts the very purpose of the Fifth Amendment. See UNITED STATES VS. STIRONE, 361 u.s. 212, 4 L.Ed 2d 252, 80 s.ct. See at 273. (Expressing similar view s).

62. In United States v. Spinner, 180 F.3d 514 (3d Cir. 1999), this Court held that, "When, as in this case, an indictment fails to allege all elements of an offense, the defect may be raised by the court sua sponte. We have held that 'failure of an indictment sufficiently to state an offense is a fundamental defect ... and it can be raised at any time.'" Wander, 601 f.2d at 1259; see also Fed R. Crim. P. 12(b)(2), United States v. Beard, 414 F.2d 1014, 1015 (3d Cir. (1969) (quoting United States v. Mauszak, 234 F.2d 421, 423 (3d Cir. 1956). See also, United States v. Zanger, 848 F.2d 923, 925 (8th Cir. 1988).

III

FEDERAL GOVERNMENT FAILED TO ESTABLISH FEDERAL INTERSTATE COMMERCE NEXUS

63. Defendant contends that the 'U.S. Attorney' [FAILED] to inform the grand jury or the court that the federal statutory provision under which the defendant is charged failed to contain language of an interstate commerce [NEXUS]. The enumerated subsection under which the defendant is unlawfully incarcerated and detained of his liberty, possess no language, which could be construed as incorporating a commerce nexus. Thus, the language of the statute does not grant federal subject matter jurisdiction, nor grant formal notice to the accused party that an alleged violation of TITLE 18 ..., also invokes an uncharged violation of the federal interstate commerce statute, even though no prohibitive acts moved beyond the borders of the sovereign state or across state lines or international borders. THE FEDERAL GOVERNMENT DOES NOT HAVE A GENERAL POLICE POWER, THEREBY A LEGITIMATE APPLICATION OF OFFENSE MAY ONLY BE

APPLIED IF CONNECTED TO AN ALLEGED VIOLATION OF THE INTERSTATE COMMERCE STATUTE. BRIEF MEMORANDUM [29.]

64. DEFENDANT CONTENDS THAT WHERE THE INSTANT MATTER IS CONCERNED, THE 'U.S. ATTORNEY' HAD FAILED AB INITIO TO ESTABLISH THAT THE SO-CALLED PROHIBITIVE CONDUCT OF DEFENDANT MOVED BEYOND THE BORDERS OF THE SOVEREIGN STATE, THUS IN CLEAR ABSENCE OF A COMMERCE CHARGE, THE GOVERNMENT HAS FAILED TO ESTABLISH FEDERAL SUBJECT MATTER JURISDICTION OVER THE ALLEGED OFFENSE. BRIEF MEMORANDUM [30.]

65. Defendant contends that under our federal system, the "state possess primary authority for defining and enforcing the precise statutory language of the act in question to determine whether it applies solely within jurisdiction of the United States. THERE SIMPLY IS NO STATUTORY LANGUAGE EXPRESSLY STATING THAT THE ACT APPLIES "EXTRA JURISDICTIONALLY." This is particularly apparent from it review of the offense violation, mentions nothing in reference to interstate commerce. It should be noted that in other criminal acts congress statutory bases such acts upon its interstate commerce, powers: See 18 U.S.C. 659, 660, 842, 844, 875, 922, 1231, 1301, 1343, 1365, 1951, 1953, 1962, 1992, 2101, 2251, 2312, 2314, 2316, 2317, - 421, 2422, and 2423. In interpreting the "ACT", the courts have determined that it must be assumed that it is a taxing measure, for otherwise it would be no law at all. It is a mere act for the purpose of regulating it is beyond the power of congress and must be regarded as invalid, just like the "child labor Act" of congress was held to be, in BAILEY VS. DREXEL FURNITURE COMPANY, 259 u.s. 20, the opinion of the court delivered by Chief Justice Taft, in NIGRO VS UNITED STATES. 276 u.s.. BRIEF MEMORANDUM No. [29.],[30.] and [31.].

66. As here, the alleged charge with the Petitioner read as follows: "As to

Count 13, the violation involved the aggravated sexual abuse of P.H. by **Lassissi Afolabi**, in violation of Title 18, United States Code, Section 1589." See Petitioner's PRESENTENCE INVESTIGATION REPORT (Superseding Indictment No. 07-00785), Page 6, Paragraph 8.

67. The Petitioner contends that this alleged crime has not be committed across the states lines. The girl P.H. in question was not only 18 years old but was over 21 years old as required by the common law at that time and the sex activity between two adult cannot be prosecuted as a federal criminal crime. The rule 11 transcripts provided as (Exh. E) is a true testament that the Petitioner rejected the charges as to count 13, (forced labor with aggravated sexual abuse of P.H.), and count 23, (Traveling for the purpose of engaging in illicit sexual conduct with S.X.). See § 2246 Definitions for chapter and § 2241 Aggravated Sexual Abuse.

68. The Petitioner rejected those allegations during the prosecutions attempts to establish factual basis of the sexual abuse, See Exh. E at 37-41 and when there was no success, the court took a recess that allowed defense counsel, Mr. Mcgovern to mislead the Petitioner into admitting those two charges. he did not commit (Exh. E. at 42-45). Even at sentencing, there was dispute between the Judge and the Prosecutor regarding this section that P.H. was over 18 years old and could not apply to the Petitioner. The Petitioner has contends that he was coerced by his lawyer to obtain the factual basis of the charges. Those claims have never been heard and determined. See Davis v. United States, 417 U.S. 333 (1974). The Prosecutor also stated that Court 13 is particularly applies to H.P. See the Sentencing Transcript.

69. THE DEFENDANT NOTES TO THIS COURT THAT THE STATE JURISDICTION WHEREIN THE ALLEGED PROHIBITIVE ACTS OCCURRED HAS NEVER SURRENDERED ITS JURISDICTION TO PROSECUTE CRIMES TO THE FEDERAL GOVERNMENT IN DEALING IN ILLICIT OFFENSE

VIOLATIONS IN ANY OF THE GEOGRAPHICAL LOCATIONS MENTIONED IN THE INSTANT INDICTMENT WHEREIN THE ALLEGED CRIME TOOK-PLACE. With the abode limits of federal jurisdiction in mind, it is now necessary to consider the contemplated administrative proscription cannot subject the informed person to criminal prosecution. While ignorance of the law is no defense, it is conversely true that a law that has not been duly enacted into positive law, is not a law of general applicability and therefore, a person who does not comply with its provisions cannot be guilty of any crime. BRIEF No. [32.].

70. Defendant contends that the supreme court stated in UNITED STATES VS. WELDEN, 377 u.s. 95 (1964), that Under 1 U.S.C. 204(A), which provides that the United States Code establishes prima facie the laws of the United States and that when titles of the Code are enacted into positive law, the text thereof is legal evidence of the law contained therein, the very meaning of 'Prima Facie' is that the code cannot prevail over the statute at large when the two are inconsistent. If construction of a section of the United States Code, which has not been enacted into positive law, is necessary, recourse must be had in the original statutes themselves and a changed arrangement made by codifier without the approval of congress should be given no weight. STEPHAN VS. UNITED STATES. 319 u.s. 423 (1943) BEST FOODS VS. UNITED STATES. 147 f.supp. 749, 37 cust.ct.1 (1956); PEARL VS. MOTOR VESSEL BERING EXPLORER. 373 f.supp. 927 (1974). BRIEF No. [37.]

IV

TITLE 18 USC IS UNCONSTITUTIONAL CAUSING IMPRISONMENT TO BE FALSE

71. The Petitioner contends that the Court of Appeals erred not to review this case in order to reach an unconstitutional ground raises in the Application. He contends that he was not ("a government official") at the time

of alleged crimes and the Title 18 USC §§§ 371, 1589 and 2423(b) have been unconstitutional applied to him. The Petitioner contends that even if he was a government official, the government must prove that the alleged offenses or "act" mentioned in the indictment occurred in special maritime and territorial jurisdiction of the United States. See the construction of the full STATUTES §§ 1589, 2423 and a List of the Government Officials - APPENDIX L

72. Defendant contends that if congress wanted any statute to be used, outside of its territorial jurisdiction, such as anywhere or any place then it would have included the interstate commerce nexus that is required. "A Federal Statute intended to be enforced within the states exceeds congress commerce clause authority." To uphold the government's that it can bring criminal charges committed within a state is to convert congressional authority into a police power, which is only within the authority of the states. UNITED STATES VS. LOPEZ, No. 931260, (decided April 26th 1995). In MCCULLOUGH VS. MARILAND. 4 wheat 316 (1819), the federal government had to acknowledge that it can only exercise power granted to it. The enumerated presupposes not enumerated.... The constitution mandates that congress cannot crate or give itself plenary police powers over the state territories. Congress must operate within the framework of what the supreme court defines the law to be. See MARBURY VS MADISON., 1 cranch 137, 177 (1803). BRIEF MEMORANDUM [46.]

73. Defendant contends that where the instant matter concerned, the defendant committed [NO] violation of any properly enacted and duly promulgated federal law within the legislative jurisdiction of the federal United Sates, [NOR] within parameters defined under the implementing regulations for the federal sentencing provisions, thus, the sentencing provisions set out under 18U.S.C. 3551, 3553 thru 3559 does not apply to the accused. BRIEF MEMORANDUM [47.].

74. "If the court finds that the judgment was rendered without jurisdiction, or that the sentenced imposed was not authorized by law or otherwise open to collateral attack, or that there has been such a denial or infringement of the constitutional rights of the prisoner as to render the judgment vulnerable to collateral attack, the court shall vacate and set the judgment aside and shall discharge the prisoner or resentence him or grant a new trial or correct the sentence as may appear appropriate." 417 US 343.

75. Above all, the Petitioner respectfully demands that if this Court cannot proceed his Petition pursuant to § 2241 under § 2255(e), he is pleading this Court to proceed on his initial or original application for permission to file a second or successive § 2255 motion. See Rule 20.4(a).

CONCLUSION

The Petition for a writ of certiorari should be granted.

Respectfully Submitted

Lassissi Afolabi
Paralegal

October 9, 2024