24-7258

ORIGINAL

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term 2024

In re Paul Kenneth Cromar,
Petitioner.

PETITION FOR AN EXTRAORDINARY WRIT OF HABEAS CORPUS

On Petition for Writ of Certiorari
To the United States Court of Appeals
For the Tenth Circuit

Paul Kenneth Cromar #3871-081
(in *propria persona)*
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A. QUESTION PRESENTED FOR REVIEW

Does the federal district court possess the subject-matter jurisdiction required to conduct tax trials of American citizens to enforce IRS assessments of a "*non-apportioned direct tax on income under authority of the 16th Amendment*"?

If the federal district courts ***lack*** the *subject-matter jurisdiction* to enforce an IRS assessment of a "*non-apportioned direct tax*" under alleged authority of the 16th Amendment, does it also ***lack*** the *subject-matter jurisdiction* required to sentence a Petitioner/defendant after his conviction on charges of failing to pay, and attempting to evade and defeat, a "*non-apportioned direct tax under authority of the 16th Amendment*", that was operationally assessed by the IRS and claimed by the district court itself at trial to be the constitutional foundation for the *subject matter jurisdiction* of the court alleged taken over the criminal prosecution, trial, and conviction of the defendant? The federal personal income tax is **not** *constitutionally* authorized by the Constitution or the 16th Amendment as a *direct* tax without limitation, *i.e.*: a non-apportioned *direct* tax, so it **cannot** lawfully be laid, assessed, collected, or enforced by the federal courts under authority of any clause or Amendment of the U.S. Constitution because a "*non-apportioned **direct** tax on income*" is **not** a constitutionally authorized taxing *power* that is constitutionally granted for Congress to be authorized to write law that the federal courts can then lawfully take a fully granted s*ubject-matter jurisdiction* of the court under, to enforce a *direct* tax against an individual *person*, rather than against the *several states* as required by the Constitution and reaffirmed by this Court in *Moore et ux.*

B. PARTIES INVOLVED

The Petitioner, Paul Kenneth Cromar, is a *pro se* defendant who is serving a federal prison sentence as *Ordered* by the federal district court of Salt Lake City after his conviction in the U.S. district court on charges under IRC § 7201 of attempting to evade and defeat a "*non-apportioned direct tax on income authorized under the 16th Amendment*"; and under IRC § 7212(b) for attempting a failed rescue of his home and property (while Title was still in his name), which home and property were ordered *seized* and foreclosed on six years ago by this same federal district court, to pay a civil judgment for the **same** "*non-apportioned direct taxes on income under authority of the 16th Amendment*", that the Petitioner/Defendant was just criminally prosecuted for and convicted of, with the same ***fatal lack*** of *subject-matter jurisdiction* of the district court over the civil claims for "tax" made six years ago, that was **still *lacking*** in the Petitioner/Defendant's trial of the criminal charges this year.

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The Petitioner, PAUL KENNETH CROMAR, respectfully requests that the United States Supreme Court GRANT this Petition for An Extraordinary Writ of Habeas Corpus to finally resolve the question of whether or not there is a subject-matter jurisdiction of the federal courts that is granted to allow them to enforce at trial a non-apportioned direct income tax under alleged authority of the 16th Amendment, as claimed by the plaintiff United States and the district courts in trials of American citizens for income tax, rather than under authority of the *indirect* taxing powers of Article I, Section 8 clause 1, as held by this honorable U.S. Supreme Court in *Moore et ux v. United States,* 602 U.S. 572, (2024) and *Brushaber* in 1916. The district court ***fatally lacked*** subject-matter jurisdiction in the ***ultra vires*** criminal prosecution of the defendant in the federal district court, Salt Lake City, Case No.2:23-cr-00159, to adjudicating the criminal charges brought under authority of IRC §§ 7201 and 7212, to enforce the payment by the American citizen of a non-apportioned direct income tax that was alleged by the plaintiff United States' Indictment and Complaint to be owed by the Petitioner/Defendant under alleged authority of the 16th Amendment.

E. BASIS FOR JURISDICTION

This Court's jurisdiction is invoked pursuant to 28 U.S.C. §§ 2241 & 1651(a) and Article III of the Constitution. See also *People ex rel. Luciano v. Murphy*, 160 Misc. 573, 290 N.Y.S. 1011 and *Ex Parte Presnell*, 58 Okl.Cr. 50, 49 P.2d 232.

F. STATEMENT OF THE CASE

In May of 2024, the Petitioner was convicted in federal district court of Utah, Salt Lake City, under charges brought to the court by the plaintiff United States under alleged authority of the 16th Amendment to enforce against him charges under IRC § 7201 – *attempt to evade or defeat tax*; and IRC § 7212(b) – *attempting a failed rescue* of his "seized" property (his house and home). Defendant was convicted by a jury of his peers after the jury was *wrongfully* and ***erroneously*** instructed by the court to enforce the income tax law as a *"non-apportioned direct tax on all income under authority of the 16th Amendment"*, which directly **contradicts** this court's controlling holdings and the decisions taken in both the *Moore et ux v. United States* and *Brushaber v. Union Pacific R.R. Co* decisions.

Early in November, the Petitioner filed a 28 U.S.C. § 2241 petition for a Writ of Habeas Corpus in that federal district court of Utah, Salt Lake City, raising constitutional issues and claims about: (1) the constitutional fact that subject matter jurisdiction **cannot** be lawfully taken by a federal court to enforce a *"non-apportioned direct tax on income"* under alleged authority of the 16th Amendment; (2) because direct taxes **must** be apportioned to the States for payment as still required under Article I, Section 2, clause 3, and must be laid in proportion to the census as still required under Article I, Section 9, clause 4; and (3) income taxes are indirect taxes under Article I, Section 8 clause 1, which must be *uniform* in operation and application, and are **not** direct taxes under the 16th Amendment

relieved of all constitutional limitations imposed upon such direct taxation.

However, the § 2241 petition has been ignored by both the plaintiff United States and the district court, without argument in reply from the United States after service of the writ, and without the district court addressing the filing of the writ in any way other than to re-assign the civil action initiated thereunder to the same district court judge, Howard C. Neilson, who wrongfully confined the defendant to jail pending trial and sentencing, and who allowed the jury to convict the defendant for refusing to pay, and attempting to evade and defeat, a *non-apportioned direct tax on income under the 16th Amendment* that does **not** constitutionally exist, and **violates** this court's precedential decisions taken, and the Opinions written, in both the recent *Moore* decision, and the *controlling* 108 year old *Brushaber* and *Baltic Mining* case decisions as well.

G. REASONS FOR GRANTING THE WRIT

1. The question presented has national importance and major national significance attached to it.

Whether or not the federal personal income tax that is the subject of the 16th Amendment, is a *non-apportioned, unlimited,* ***direct*** *tax* on all of the "income" of every American citizen, regardless of where or how earned, or if the tax is an ***indirect*** tax that is only imposed on certain transactions, events, and activities that are subject to federal taxation by *Impost, Duty,* and *Excise,* under Article I, Section 8, is obviously a question of critical national importance and major

significance because the answer to that question, from this Supreme Court, either preserves the constitutional *Rights,* liberties, and fundamental freedom of *We the American People* as the true sovereign over our representative government, which is vested with **only the** limited powers granted to it to exercise by the U.S. Constitution and its Amendments; **or** it results in the virtual ***enslavement*** of *We the People* to a federal government of unlimited taxing power, which could thereby *enslave* the American people with a tax of 100% imposed on all of their earnings , redefied as federally taxable "*gross* income" under Sections 63 and 61, thus *destroying* the freedom, liberty, and *Rights* of the sovereign American people; which the federal government is supposed to *represent,* and **not** rob under the *guise* and *pretense* of federal taxation, enforced under *color of law,* - as *indirect* taxes do not tax the labor or *fruits of labor* of American citizens that are derived from the simple exercise of the citizen's *Right to Work* in the fifty states at a common occupation of their own choosing without the federal interference of a *direct* tax on all earnings that is neither *apportioned* nor *uniform,* - with respect to the taxation of the American citizens.

2. Statement of unavailability of relief in the federal district court

The Petitioner/defendant CROMAR originally filed his Petition for a Writ of Habeas Corpus with the same federal district court, Salt Lake City, that tried him and has confined him both before and after conviction, under a judgment that is **void** for lack of subject-matter jurisdiction of the district court, for want of a fully

granted constitutional authority to tax income directly and without limitation, as declared by the district court at the trial of the Defendant to be authorized under the Amendment, and which, was also the court's instruction to the jury before deliberations, given by Judge Neilson to guide the jury in its deliberation of the case.

The plaintiff United States has made no *objection* or reply to the filing of the Petition for the extraordinary writ of habeas corpus, and the district court itself failed for over a month to take any action at all on the filed writ, or within the record of the opened civil action (Case No: 2:24-cv-00857), other than to re-assign the civil action from the independent judicial review of the Honorable Ann Marie McIff Allen (to whom the case was originally assigned), to the same Judge, Howard C. Neilson, who has conducted the entire ***ultra vires*** criminal trial of the defendant **unconstitutionally** by adjudicating the criminal charges and conducting trial **without** first establishing the fully granted subject-matter jurisdiction of the district court that could lawfully be invoked or **taken by it,** over the criminal trial of the defendant for an alleged failure to pay a "*non-apportioned direct tax on all income*" under alleged authority of the 16th Amendment, as the case was argued and prosecuted by the plaintiff United States.

During the criminal trial of the defendant the district court refused for 9 months to address in any way at all the ***fatal lack*** of subject-matter jurisdiction of the district court under the 16th Amendment to tax *directly* or enforce such taxation against individual *persons,* rather than the fifty states. As stated the district court

and the bench have also refused to address the defendant's Petition for a Writ of Habeas Corpus that was filed in that court.

An Interlocutory appeal filed with the U.S. 10th Circuit Court of Appeals (Case No.: 24-4053) was summarily **denied** by that court without taking briefing arguments for lack of an *Order* of the district court in the criminal case that would allow the defendant to make an interlocutory appeal into the Circuit Court; and for an alleged failure to establish his entitlement to an injunction pending appeal.

Defendant CROMAR respectfully disagrees as the U.S. 10th Circuit Court of Appeals is one of the appellate courts that has ***rebelliously*** effectively **reversed** the Supreme Court's true holding in *Brushaber, i.e.*: that the federal personal income tax is an **indirect** tax under Article I, §8, and the Circuit is further ignoring this high court's most recent re-affirmation of that *Brushaber* decision, taken under *Moore et ux v. United States.* The 10th Circuit has **contradictorily** held for 34 years: "*that the 16th Amendment authorizes a non-apportioned direct income tax on United States citizens*", see *United States v. Collins,* 920 F.2d 619,629 (10th Cir. 1990). And that is what the U.S. Circuit Courts of Appeals all across the country have been enforcing since 1980. That ***fatal*** 10th Circuit Court **error,** and the federal courts' reliance on it within the 10th Circuit, should be terminated by the U.S. Supreme Court justices now.

3. Exceptional circumstances warrant the Court's exercise of its original jurisdiction over Mr. Cromar's Writ of Habeas Corpus

This Court's power to grant an extraordinary writ is very broad but reserved for exceptional cases in which "appeal is a clearly inadequate remedy." *Ex parte Fahey*, 332 U.S. 258, 260 (1947). The Court has the authority to entertain original habeas petitions. See *Felker v. Turpin*, 518 U.S. 651, 660 (1996).

The Petitioner's best hope for review of the ***ultra vires*** conduct of the district court and its void judgment now lies with this Court. His case presents exceptional circumstances that warrant the exercise of this Court's discretionary powers because the district court has **unconstitutionally** conducted the entire criminal trial of the defendant **without** establishing the subject matter jurisdiction of the court that can lawfully be taken by the court over the criminal charges, to allow it to have conducted a criminal trial of the defendant/petitioner, and to sentence the defendant on December 23rd, 2024, after conviction by a jury that was ***factually*** misled by the court's application of the income tax as a *non-apportioned direct tax on all income under the 16th Amendment.*

"The great writ of habeas corpus has been for centuries esteemed as the best and only sufficient defense of personal freedom." *Ex parte Yerger*, 8 Wall. 85, 95, 75 U.S. 85, 95 (1868). "[F]undamental fairness is the central concern of the writ of habeas corpus." *Strickland v. Washington*, 466 U.S. 668, 697 (1984). In *Harris v. Nelson*, 394 U.S. 286, 292 (1969), the Court stated the following regarding the

"Great Writ":

> There is no higher duty of a court, under our constitutional system, than the careful processing and adjudication of petitions for writs of habeas corpus, for it is in such proceedings that a person in custody charges that error, neglect, or evil purpose has resulted in his unlawful confinement and that he is deprived of his freedom contrary to law. This Court has insistently said that the power of the federal courts to conduct inquiry in habeas corpus is equal to the responsibility which the writ involves: The language of Congress, the history of the writ, the decisions of this Court, all make clear that the power of inquiry on federal habeas corpus is plenary.

The Petitioner's case presents the exceptional circumstances for which the "Great Writ" was intended to apply, *i.e.*: where an American citizen is unconstitutionally confined to a jail or prison, and who has had his freedom taken from him by a federal or state court ***lacking*** the subject-matter jurisdiction to detain, hold, and confine the man on the alleged constitutional basis of the charges laid.

4. The Supreme Court's decisions taken in *Moore et ux v. United States*, and in *Brushaber v. Union Pacific R.R. Co.*, are violated by the district court

In both *Moore et ux v. United States,* 22-800, June 20, 2024, and *Brushaber v. Union Pacific R.R. Co.* 240 US 1, (1916), this Supreme Court has consistently held, across the last 108 years of American history, that *"income taxes are **indirect** taxes".* And it has ruled that they are laid and collected under authority of Article I, Section 8, clauses 1 and 18; - which taxes do not need to be *apportioned to the States,* because, as an **indirect** tax, the income tax need only be *geographically uniform* in operation and therefore need **not** be *apportioned.*

However, both the federal district court of Utah in Salt Lake City and the U.S. 10th

Circuit Court of Appeals have held the **exact opposite** is true in the instant subject case (and for the last 34 years), *i.e.*: "*that the 16th Amendment authorizes a non-apportioned direct income tax on United States citizens*", see *United States v. Collins,* 920 F.2d 619,629 (10th Cir. 1990). This obvious, but as of yet, unaddressed **rebellion** of the lower courts, in the lower courts, both district and circuit, against the U.S. Constitution, the Supreme Court and its controlling decisions on this issue of the constitutional nature of the federal personal income tax, should be addressed, and **terminated** now by this honorable Supreme Court to restore the constitutional balance that has been altered by the *wrongful* and ***ultra vires*** enforcement of the income tax by the lower courts against American citizens for the last 50 years under the *wrongful* belief and ***erroneously*** held rulings of the lower Circuit courts "*that the 16th Amendment authorizes a* ***non-apportioned direct*** *income tax on United States citizens*" when it does **not.**

> **Black's Law Dictionary, Sixth Edition, P. 1522; *ultra vires*.** An act performed **without any authority to act on the subject.** *Haslund v. City of Seattle*, 86 Wash.2d 6O7, 547, P.2d 1221, 1230. Acts **beyond the scope of the powers** of a corporation as defined by its charter or laws of state of incorporation. *State ex rel. v. Holston Trust Company*, 168 Tenn. 546, 79 S.W.2d 1012, 1016. The term has a broad application and includes not only acts prohibited by the charter but **acts which are in excess of powers granted** and not prohibited and generally applied either when a corporation has no power whatever to do an act or when the corporation has the power but exercises it irregularly. *People ex rel. Barrett v. Bank Peoria*, 295 Ill. App. 543, 15 N.E.2d 333, 335. An act is ***ultra vires*** when corporation is **without authority to perform it under any circumstances or for any purpose**. By doctrine of ***ultra vires*** a contract made by a corporation beyond the scope of its corporate powers is unlawful. *Community Federal Sav. & Loan Ass'n of Independence, Mo. v Fields,* C.C.A. Mo., 128 F.2d 705, 708. ***Ultra vires*** act of municipality is one which is **beyond powers conferred upon it by law**. *Charles v. Town of Jeanerette, Inc.*, La.App, 234 So.2d 794, 798.

5. There are multiple circuit court splits where the lower courts have applied the Constitution differently, which has resulted in a dire state of national confusion.

Furthermore, action is needed now from this Supreme Court because every other Circuit Court of Appeals in the country has also joined in the seditious ***rebellion*** of the 9th and 10th Circuits and have also (all) ruled in a manner that blatantly and ***erroneously*** **reverses** this Supreme Court's true holdings and correct decisions taken in **both** the recent *Moore* decision, and the historical *Brushaber* and *Baltic Mining* decisions as well. The IRS' Frivolous Argument Positions publication, attached as Appendix I, documents the ***erroneous rebellious*** *precedents* that are being invoked and *wrongfully* substituted as *controlling* in the various Circuit Courts of Appeals all across the United States of America, **in place of** *Brushaber*, in order to effectively ***reverse*** the Supreme Court's true holding in *Brushaber* and declare, as the 10th Circuit Court has done in *Collins, supra,* and the district court has done in the instant subject criminal case in the Salt Lake City district court, *i.e.*: "*that the 16th Amendment authorizes a non-apportioned direct income tax on United States citizens*" **without** any *subjectivity* to any of the constitutional *limitations* that are **still** imposed on **all** of the granted taxing powers of the Constitution, - regardless of the adoption of the 16th Amendment, - whether the tax is the authorized *apportioned* direct tax (under Art. 1, §2, cl. 3 and Art. 1, §9, cl. 4), or the *uniform* indirect taxation, by *Impost, Duty,* or *Excise* (under Art. 1, §8, cl. 1).

None of the Circuit Courts of Appeals currently cite to the controlling *Brushaber* decision to allegedly establish the constitutional authority, and **specific** subject-matter jurisdiction of

the courts, both district and circuit, that can allegedly be lawfully taken by those courts to allow them to enforce the federal personal income tax as a "*non-apportioned direct tax on income*" and "*that the 16th Amendment authorizes a non-apportioned direct income tax on United States citizens*", **without** *subjectivity* to any constitutional *limitation.*

As stated, the U.S. 10th Circuit Court of Appeals cites to *United States v. Collins,* 920 F.2d 619,629 (10th Cir. 1990), **not** *Brushaber.* But additionally, within this ***rebellion*** of ***sedition*** being perpetrated by the various Circuit Courts of Appeals, we also have: the 11th Circuit citing to *Taliaferro v. Freeman*, 595 F. App'x 961, 961-63 (11th C. 2014); the 9th Circuit citing to *In re Becraft*, 885 F.2d 547 (9th Cir. 1989); the 8th Circuit citing to *Broughton v. United States*, 632 F.2d 706 (8th Cir. 1980) and to *Young v. Commissioner*, 551 F. App'x 229, 203 (8th Cir. 2014); and the 7th Circuit cites to *Lovell v. United States*, 755 F.2d 517, 518 (7th Cir. 1984). None of these cases actually cite any text from the *Brushaber Opinion,* they all just summarily (erroneously) declare that in *Brushaber* the Supreme Court said "*that the 16th Amendment authorizes a non-apportioned direct income tax on United States citizens*" **without** *subjectivity* to any constitutional *limitation* on the taxing power alleged granted thereunder.

And there are numerous other decisions, in every other Circuit in the country as well (see Appendix I), that have also made similar "*non-apportioned direct tax*" rulings that those courts cite to, instead of *Brushaber.* This obvious, but as of yet unaddressed **rebellion** of *sedition* that is now occurring in the lower district courts

and in every U.S. Circuit Court of Appeals in America, against the U.S. Constitution, against the Supreme Court itself, and against its controlling decisions on the true constitutional nature of the federal personal income tax, should be addressed and **terminated** by this Supreme Court today to restore fundamental freedom and liberty to the sovereign American people, because while the federal income tax is a tax that is relieved of both *apportionment* and *proportionate imposition,* it is **not** a **direct** tax on the *labors* and *fruits of labor* of the American People derived from the citizens simple exercise of their *Right to Work* at an occupation of common law of their own choosing, without federal interference or any *direct* taxation of the people or their labor or *fruits of labor* earned within the lands of the fifty states within which they work, **without** the enjoyment of any taxable federal privilege that would make their labors and *fruits of labor* taxable to the federal government because they are derived solely from the simple exercise of the American Citizen's *Right to Work,* which *Rights* and resultant *fruits of labor* are **not** subject to any federal *Impost, Duty,* or *Excise* tax or taxation under Article I, Section 8, that has been lawfully imposed on a federally *taxable* activity, transaction, *person*, or event subject to such ***indirect*** federal taxation by *Impost, Duty,* and or *Excise.*

6. The historical line of precedents that should have been applied by the district court

This case provides the Court with an opportunity to clarify the true constitutional nature of the federal personal income tax once and for all under a proper application of the Constitution's taxing powers under this Court's holdings and decisions taken in each of the *Moore, Brushaber,* and *Baltic Mining* decisions and

Opinions (and other cases too), wherein this Supreme Court has effectively **barred** the lower federal courts application and enforcement of the IRS' assessments of a *non-apportioned* **direct** tax on all sources of earnings (under Section 61 as "*gross income*") under alleged authority of the 16th Amendment to tax **directly** and **without** any limitation, which is the ***fraudulent*** "income tax" that the United States (IRS, DOJ, and federal courts) have been assessing and enforcing within their *defacto* operational practices for over 60 years – 45 years in the courts under erroneous *precedents* like *Collins, Becraft, Young, Broughton, Lovell and Taliaferro.*

This Supreme Court can certainly do this now because it has **already** recently ruled in *Moore* that "*income taxes are* ***indirect*** *taxes*", **not** direct; that they are authorized under Article I, Section 8, **not** the 16th Amendment; and that all direct taxes **must** still be *apportioned to the states* and imposed *proportionately* under the last census; - and are not relieved of those requirements by the 16th Amendment. Therefore the district court ***lacks*** the *subject-matter jurisdiction* required to try, convict, and sentence the Petitioner/Defendant based on an alleged failure to pay or evade (and defeat) a "tax" that is **not** constitutionally authorized, *i.e.*: the "*non-apportioned direct income tax*" that is assessed by the IRS under the ***erroneous*** belief that the 16th Amendment created the **un**limited authority to tax all *sources* of earnings **directly** and **without** *limitation,* allegedly as federally taxable *gross income* under Section 61 which is unconstitutional as applied to American citizens as an unlimited *direct tax* without basis in *Impost, Duty,* or *Excise* taxation.

However, this court's true precedential holdings that do apply are easy to find, even

after they have been disregarded and effectively discarded by the lower federal district and circuit courts for over 50 years. Here they are, resurrected from the dead by *Moore*:

> "... by the previous ruling [*Brushaber v Union Pacific R.R. Co.*] it was settled that the provisions of the Sixteenth Amendment conferred **no** new power of taxation but simply **prohibited** the previous complete and plenary power of income taxation possessed by Congress from the beginning from being taken out of the category of **indirect** taxation to which it inherently belonged ...." *Stanton v. Baltic Mining Co.*, 240 U.S. 103, 112-113 (1916)
>
> (emphasis added)

> "The subject matter of taxation open to the power of the Congress is as comprehensive as that open to the power of the states, though the method of apportionment may at times be different. "The Congress shall have power to lay and collect taxes, duties, imposts and excises." Art. 1, § 8. If the tax is a **direct** one, it **shall be apportioned** according to the census or enumeration. If it is a duty, impost, or excise, it shall be uniform throughout the United States. Together, these classes include every form of tax appropriate to sovereignty. *Cf. Burnet v. Brooks,* 288 U. S. 378, 288 U. S. 403, 288 U. S. 405; *Brushaber v. Union Pacific R. Co.,* 240 U. S. 1, 240 U. S. 12." *Steward Mach. Co. v. Collector*, 301 U.S. 548 (1937), at 581
>
> (emphasis added)

> "Whether the tax is to be classified as an "***excise***" is in truth not of critical importance. If not that, it is an "***impost***" (*Pollock v. Farmers' Loan & Trust Co.,* 158 U. S. 601, 158 U. S. 622, 158 U. S. 625; *Pacific Insurance Co. v. Soble,* 7 Wall. 433, 74 U. S. 445), or a "***duty***" (*Veazie Bank v. Fenno,* 8 Wall. 533, 75 U. S. 546, 75 U. S. 547; *Pollock v. Farmers' Loan & Trust Co.,* 157 U. S. 429, 157 U. S. 570; *Knowlton v. Moore,* 178 U. S. 41, 178 U. S. 46). A ***capitation* or other "*direct*" tax it certainly is not.**" *Steward Mach. Co. v. Collector*, 301 U.S. 548 (1937), at 581-2

> "The [income] tax **being an excise**, its imposition must conform to the canon of **uniformity**. There has been no departure from this requirement. According to the settled doctrine the uniformity exacted is geographical, not intrinsic. *Knowlton v. Moore, supra,* p. 178 U. S. 83; *Flint v. Stone Tracy Co., supra,* p. 220 U. S. 158; *Billings v. United*

States, 232 U. S. 261, 232 U. S. 282; *Stellwagen v. Clum,* 245 U. S. 605, 245 U. S. 613; *LaBelle Iron Works v. United States,* 256 U. S. 377, 256 U. S. 392; *Poe v. Seaborn,* 282 U. S. 101, 282 U. S. 117; *Wright v. Vinton Branch Mountain Trust Bank,* 300 U. S. 440." *Steward Mach. Co. v. Collector*, 301 U.S. 548 (1937), at 583

(emphasis added)

"***Duties*** and ***imposts*** are terms commonly applied to levies made by governments **on the <u>importation or exportation</u> of commodities**. Excises are "taxes laid upon the manufacture, sale or consumption of commodities within the country, upon licenses to pursue certain occupations, and upon corporate privileges ... ***the <u>requirement to pay</u> such taxes <u>involves the exercise of the privilege</u>*** *and if business is not done in the manner described no tax is payable...it is the privilege which is the subject of the tax and not the mere buying, selling or handling of goods.*" Cooley, Const. Lim., 7th ed., 680." *Flint v. Stone Tracy Co.,* 220 U.S. 107, 151, 31 S.Ct. 342, 349 (1911)

(emphasis added)

"The Sixteenth Amendment, although referred to in argument, has no real bearing, and may be put out of view. As pointed out in recent decisions, it **does <u>not extend</u> the taxing power to new or EXCEPTED subjects**, but merely removes all occasion which otherwise might exist for an apportionment among the states of taxes laid on income, whether it be derived from one source or another. *Brushaber v. Union Pacific R. Co.,* 240 U. S. 1, 240 U. S. 17-19; *Stanton v. Baltic Mining Co.,* 240 U. S. 103, 240 U. S. 112-113." *Peck & Co v. Lowe*, 247 U.S. 165 (1918), at 172-3

(EMPHASIS added)

"Moreover in addition the conclusion reached in the *Pollock* case did not in any degree involve holding that income taxes generically and necessarily came within the class of direct taxes on property, but on the contrary recognized the fact that **taxation on income** was in its **nature an excise** entitled to be enforced as such unless and until it was concluded that to enforce it would amount to accomplishing the result which the requirement as to apportionment of direct taxation was adopted to prevent, <u>in which case</u> the duty would arise to disregard form and consider substance alone and hence <u>subject the tax to the regulation as to apportionment</u> which otherwise as an excise would not apply to it." *Brushaber*, supra, at 16-17.

(emphasis added)

"The various propositions are so intermingled as to cause it to be difficult to classify them. We are of opinion, however, that the confusion is not inherent, but rather arises from the conclusion that the Sixteenth Amendment provides for a hitherto unknown power of taxation, that is, a power to levy an income tax which although direct should not be subject to the regulation of apportionment applicable to all other direct taxes. And the far-reaching effect of this **erroneous** assumption will be made clear by generalizing the many contentions advanced in argument to support it," *Brushaber*, supra, at 10-11

(emphasis added)

"But it clearly results that the proposition and the contentions under it, **if acceded to**, would cause one provision of the Constitution to **destroy** another; that is, they would result in bringing the provisions of the Amendment exempting a direct tax from apportionment into irreconcilable **conflict** with the general requirement that **all direct taxes be apportioned.** Moreover, the tax authorized by the Amendment, being direct, would **not** come under the rule of *uniformity* applicable under the Constitution to other than direct taxes, and thus it would come to pass that the result of the Amendment would be to authorize a particular *direct* tax **not** subject **either** to *apportionment* **or** to the rule of *geographical uniformity*, thus giving power to impose a different tax in one state or states than was levied in another state or states. This result, instead of simplifying the situation and making clear the **limitations on the taxing power**, which obviously the Amendment must have been intended to accomplish, would create radical and destructive changes in our constitutional system and **multiply confusion.**" *Brushaber, supra* at 12

(emphasis added)

"***Duties*** and ***imposts*** are terms commonly applied to levies made by governments **on the importation or exportation of commodities** . Excises are "taxes laid upon the manufacture, sale or consumption of commodities within the country, upon licenses to pursue certain occupations, and upon corporate privileges ... ***the requirement to pay such taxes involves the exercise of the privilege*** *and if business is not done in the manner described no tax is payable...it is the privilege which is the subject of the tax and not the mere buying, selling or handling of goods.*" Cooley, Const. Lim., 7th ed., 680." *Flint v. Stone Tracy Co.,* 220 U.S. 107, 151, 31 S.Ct. 342, 349 (1911)[1]

[1] Again, *Flint v. Stone Tracy Co.* is controlling and Constitutional law, having been cited and followed over 600 times by virtually every court in the country as the authoritative definition of the scope of power of the excise taxing power.

"The tax under consideration, as we have construed the statute, may be described as an **excise** upon the particular **privilege** of doing business in a corporate capacity, i.e., with the advantages which arise from corporate or quasi corporate organization; or, when applied to insurance companies, for doing the business of such companies. As was said in the *Thomas* Case, 192 U. S. supra, the **requirement to pay** such taxes involves the **exercise of privileges**, and the element of absolute and unavoidable demand is lacking. If business is not done in the manner described in the statute, no tax is payable.

If we are correct in holding that **this is an excise tax,** there is nothing in the Constitution requiring such taxes to be apportioned according to population." *Pacific Ins. Co. v. Soule,* 7 Wall. 433, 19 L. ed. 95; *Springer v. United States*, 102 U.S. 586, 26 L. ed. 253; *Spreckels Sugar Ref. Co. v. McClain*, 192 U.S. 397, 48 L. ed. 496, 24 Sup. Ct. Rep. 376." *Flint v. Stone Tracy Co.*, 220 US 107, 151-152 (1911)" *Thomas v. United States*, 192 U.S. 363 , 48 L. ed. 481, 24 Sup. Ct. Rep. 305

(emphasis added)

"Evidently Congress adopted the income as the ***measure*** of the tax to be imposed with respect to the doing of business in corporate form because it desired that the excise should be imposed, approximately at least, with regard to the amount of benefit presumably derived by such corporations from the current operations of the government. In *Flint v. Stone Tracy Co.* 220 U.S. 107, 165 , 55 S. L. ed. 107, 419, 31 Sup. Ct. Rep. 342, Ann. Cas. 1912 B. 1312, it was held that Congress, in exercising the right to tax a legitimate *subject* of taxation as a franchise **or privilege**, was not debarred by the Constitution from ***measuring*** the taxation by the total income, although derived in part from property which, considered by itself, was not taxable. It was reasonable that Congress should fix upon gross income, without distinction as to source, as a convenient and sufficiently accurate index of the importance **of the business transacted.**" *Stratton's Independence, Ltd. v. Howbert,* 231 U.S. 399, at 416 – 417 (1913)

(emphasis added)

"As **repeatedly** held, this did **not extend** the taxing power **to new subjects**, but merely removed the necessity which otherwise might exist for an apportionment among the states of taxes laid on income. *Brushaber v. Union Pacific R. R. Co.*, 240 U.S. 1 , 17-19, 36 Sup. Ct. 236, Ann. Cas. 1917B, 713, L. R. A. 1917D, 414; *Stanton v. Baltic Mining Co.*, 240 U.S. 103 , 112 et seq., 36 Sup. Ct. 278; *Peck & Co. v.*

Lowe, 247 U.S. 165, 172, 173 S., 38 Sup. Ct. 432." *Eisner vs. Macomber*, 252 U.S. 189 (1920), at pg. 205

(emphasis added)

7. The historical precedents controlling the requirement to establish subject matter jurisdiction before trial, and the consequences of a void judgment incurred by a court acting without that required jurisdiction are clear.

"It remains rudimentary law that "[a]s regards all courts of the United States inferior to this tribunal, two things are necessary to create jurisdiction, whether original or appellate. The **Constitution must have given to the court the capacity to take it**, and an act of Congress must have supplied it .... To the extent that such action is not taken, the power lies dormant." *The Mayor v. Cooper*, 6 Wall. 247, 252, 18 L.Ed. 851 (1868); accord, *Christianson v. Colt Industries Operating Co.*, 486 U.S. 800, 818, 108 S.Ct. 2166, 2179, 100 L.Ed.2d 811 (1988); *Firestone Tire & Rubber Co. v. Risjord*, 449 U.S. 368, 379-380, 101 S.Ct. 669, 676-677, 66 L.Ed.2d 571 (1981); *Kline v. Burke Construction Co.*, 260 U.S. 226, 233-234, 43 S.Ct. 79, 82-83, 67 L.Ed. 226 (1922); *Case of the Sewing Machine Companies,* 18 Wall. 553, 577-578, 586-587, 21 L.Ed. 914 (1874); *Sheldon v. Sill,* 8 How. 441, 449, 12 L.Ed. 1147 (1850); *Cary v. Curtis,* 3 How. 236, 245, 11 L.Ed. 576 (1845); *Mclntire v. Wood,* 7 Cranch 504, 506, 3 L.Ed. 420 (1813). *Finley v. United States*, 490 U.S. 545 (1989).

"... in a long and venerable line of our cases. "Without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause." *Ex parte McCardle, 7 Wall.* 506, 514 (1869). ... The requirement that jurisdiction be established as a threshold matter "spring[s] from the nature and limits of the judicial power of the United States" and is "inflexible and without exception." *Mansfield, C. & L. M. R. Co. v. Swan*, 111 U.S. 379, 382 (1884).

In a long and venerable line of cases, this Court has held that, without proper jurisdiction, a court cannot proceed at all, but can only note the jurisdictional defect and dismiss the suit. *See,* e. g., *Capron v. Van Noorden,* 2 Cranch 126; *Arizonans for Official English v. Arizona,* 520

U. S. 43, 73. *Bell v. Hood, supra; National Railroad Passenger Corp. v. National Assn. of Railroad Passengers,* 414 U. S. 453, 465, n. 13; *Norton* v. *Mathews,* 427 U. S. 524, 531; *Secretary of Navy* v. *Avrech,* 418 U. S. 676, 678 *(per curiam); United States* v. *Augenblick,* 393 U. S. 348; *Philbrook* v. *Glodgett,* 421 U. S. 707, 721; and *Chandler* v. *Judicial Council of Tenth Circuit,* 398 U. S. 74, 86-88, distinguished. For a court to pronounce upon a law's meaning or constitutionality when it has no jurisdiction to do so is, by very definition, an **ultra vires** act. Pp. 93-102 ... The statutory and (especially) constitutional elements of jurisdiction are an essential ingredient of separation and equilibration of powers, restraining the courts from acting at certain times, and even restraining them from acting permanently regarding certain subjects. See *United States v. Richardson,* 418 U.S. 166, 179 (1974); *Schlesinger v. Reservists Comm. to Stop the War,* 418 U.S. 208, 227 (1974). For a court to pronounce upon the meaning or the constitutionality of a state or federal law when it has no jurisdiction to do so is, by very definition, for a court to act **ultra vires**. *Steel Co., aka Chicago Steel & Pickling Co. v. Citizens for A Better Environment,* No. 96-643, 90 F.3d 1237 (1998)

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The Supreme Court has repeatedly told the federal judiciary it may not rely on a conclusive presumption to find against a defendant on an essential element of a cause of action. See *Sandstrom v. Montana,* 442 U.S. 510, 521-523, 99 S.Ct. 2450, 2458-2459 (1979); *Stanley v. Illinois,* 405 U.S. 645, 654-657, 92 S.Ct. 1208, 1214-1216 (1972); *Heiner v. Donnan,* 285 U.S. 312, 325-29, 52 S.Ct. 358, 360-362 (1932); Schlesinger v. *State of Wisconsin,* 270 U.S. 230, 46 S.Ct. 260 (1926); *Tot v. United States,* 319 U.S. 463, 468-69, 63 S.Ct. 1241, 1245-1246 (1943); *Vlandis v. Kline,* 412 U.S. 441, 446, 93 S.Ct. 2230, 2233 (1973); *Grupo Mexicano de Desarrollo S.A. v. Alliance Bond Fund, Inc.,* 527 U.S. 308, 318-19, 119 S.Ct. 1961, 1977 (1999), and *Jones v. Bolles,* 76 U.S. 364, 368 (1869).

"Federal courts are courts of limited jurisdiction. They possess only power authorized by Constitution and statute, which is not to be expanded by judicial decree. It is to be presumed that a cause lies outside this limited jurisdiction, and the burden of establishing the contrary rests upon the party asserting jurisdiction." *Kokkenen v. Guardian Life Ins. Co. of America,* 511 US 375 (1994)

A court may not render a judgment which transcends the limits of its authority, and a judgment is void if it is beyond the powers granted to the court by the law of its organization, even where the court has jurisdiction over the parties and the subject matter. Thus, if a court is authorized by statute to entertain jurisdiction in a particular case only, and undertakes to exercise the jurisdiction conferred in a case to which the statute has no application, the judgment rendered is void. The lack of statutory authority to make particular order or a judgment is akin to lack of subject matter jurisdiction and is subject to collateral attack. 46 Am. Jur. 2d, Judgments § 25, pp. 388-89.

"Subject-matter jurisdiction, because it involves a court's power to hear a case, can never be forfeited or waived. Consequently, defects in subject-matter jurisdiction require correction regardless of whether the error was raised in district court." *United States v. Cotton,* 535 U.S. 625, 630 (2002); *Accord Jordon v. Gilligan,* 500 F.2d 701 (6th CA, 1974) ("[A] court must vacate any judgment entered in excess of its jurisdiction."); *State v. Swiger,* 125 Ohio.App.3d 456. (1995) ("If the trial court was without subject matter jurisdiction of defendant's case, his conviction and sentence would be void ab initio."): *Burrell v. Henderson,* et al., 434 F.3d 826, 831 (6th CA 2006) ('[D]enying a motion to vacate a void judgment is a per se abuse of discretion.").

Black's Law Dictionary, Sixth Edition, P. 1574: **Void judgment**. One which has no legal force or effect, invalidity of which may be asserted by any person whose rights are affected at any time and at any place directly or collaterally. *Reynolds v. Volunteer State Life Ins. Co.*, Tex.Civ.App., 80 S.W.2d 1087, 1092. One which from its inception is and forever continues to be absolutely null, without legal efficacy, ineffectual to bind parties or support a right, of no legal force and effect whatever, and incapable of confirmation, ratification, or enforcement in any manner or to any degree. Judgment is a "void judgment" if court that rendered judgment lacked jurisdiction of the subject matter, or of the parties, or acted in a manner inconsistent with due process. *Klugh v. U.S.*, D.C.S.C., 610 F.Supp. 892, 901. See also Voidable judgment. Black's Law Dictionary, Sixth Edition, p. 1574.

"A void judgment is one that has been procured by extrinsic or collateral fraud or entered by a court that did not have jurisdiction

over the subject matter or the parties." *Rook v. Rook*, 233 Va. 92, 95, 353 S.E.2d 756, 758 (1987)
Judgment is a void judgment if court that rendered judgment lacked jurisdiction of the subject matter, or of the parties, or acted in a manner inconsistent with due process, Fed. Rules Civ. Proc., Rule 60(b)(4),28 U.S.C.A., U.S.C.A. Const." *Griffen v. Griffen*, 327 U.S. 220, 66 S. Ct. 556, 90 L. Ed. 635

A court cannot confer jurisdiction where none existed and cannot make a void proceeding valid. A void judgment which includes judgment entered by a court which lacks jurisdiction over the parties or the subject matter, or lacks inherent power to enter the particular judgment, or an order procured by fraud, can be attacked at any time, in any court, either directly or collaterally, provided that the party is properly before the court. See L*ong v. Shorebank Development Corp.*, 182 F.3d 548 (C.A. 7 Iii. 1999).

"A void judgment is a nullity from the beginning, and is attended by none of the consequences of a valid judgment. It is entitled to no respect whatsoever because it does not affect, impair, or create legal rights." *Ex parte Seidel,* 39 S.W.3d 221, 225 (Tex. Crim. App. 2001), *Ex parte Spaulding*, 687 S.W.2d at 745 (Teague, J., concurring).

The law is well-settled that a void order or judgement is void even before reversal", *Valley v. Northern Fire & Marine Ins. Co.*, 254 U.S. 348,41 S. Ct. 116 (1920)

"Denying a motion to vacate a void judgment is a per se abuse of discretion." *Burrell v. Henderson,* et al., 434 F.3d 826, 831 (6th CA 2006)

When rule providing for relief from void judgments is applicable, relief is not discretionary matter, but is mandatory, *Orner. V. Shalala*, 30 F.3d 1307 (Cob. 1994). Judgment is a void judgment if court that rendered judgment lacked jurisdiction of the subject matter, or of the parties, or acted in a manner inconsistent with due process, Fed. Rules Civ. Proc., Rule 60(b)(4),28 U.S.C.A., U.S.C.A. Const. Amend. 5 - *Klugh v. U.S.*, 620 F.Supp. 892 (D.S.C. 1985).

H. CONCLUSION

The Petitioner therefore respectfully requests that this Supreme Court GRANT the Petitioner's Petition for an Extraordinary Writ of Habeas Corpus to resolve the question of whether or not a subject matter jurisdiction of the federal district courts exists that can be lawfully taken by those courts to enforce assessments, deficiencies, claims, and liens, allegedly for and or securing a "*non-apportioned direct tax on income under the 16th Amendment*" **without** *subjectivity* to any constitutional limitation. The district court's claimed subject-matter jurisdiction does **not** *constitutionally* exist because the 16th Amendment does **not** authorize a *direct* tax on income, **only** an *indirect* tax on the income derived from federally taxable activities, transactions, events, and of certain *persons* involved in those federally taxable activities, transactions, and events. Therefore the district court has acted ***ultra vires*** in conducting a criminal trial and convicting the Petitioner and sentencing him to prison for refusing to pay a *non-apportioned direct income tax* for which there is **no** *subject-matter jurisdiction* of the federal courts that can lawfully be taken to enforce such tax, for ***lack*** of any constitutional grant of any such power to tax *directly* and **without** any *limitation.*

The Petitioner therefore submits that he has shown that the exceptional circumstances necessary to warrant both review and relief in this case are present within it. Adequate relief cannot be obtained in any other forum, or in any other *form*, or from any other court, as the plain and clear ***fatal lack*** of a granted

subject-matter jurisdiction of the federal courts is being **ignored** by that court and bench, and is actually being perpetrated (and sustained) by the U.S. 10th Circuit Court of Appeals, **which itself is the source** of the ***fatal*** **error** in the 10th Circuit courts.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I, Paul Kenneth Cromar, Petitioner, certify that this *Petition for Writ of Certiorari* was prepared on a personal computer (PC), running the Microsoft Windows 10 operating system, using the Microsoft Word software, using the 12-point Century Schoolbook font. Line spacing is at 1.5 lines. I further certify that the text of the submitted *Petition* has a total word count for the brief of 8,802 words, including the words of the precedential cites quoted in the brief, and also including the introductory tables and the indented court precedent quotations cited in the brief.

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