

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

FITZGERALD HORTON — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — 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

FITZGERALD HORTON
(Your Name)

FCI WILLIAMSBURG P.O. Box 340
(Address)

SALTERS, S C 29590
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

1. DID THE DISTRICT COURT ABUSE ITS DISCRETION WHEN IT FAILED TO ADDRESS THE PETITIONER'S CLAIM OF LACK OF SUBJECT MATTER JURISDICTION IN HIS MOTION TO REMAND?

LIST OF PARTIES

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

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LOCAL CHARGES
MAGISTERIAL DISTRICT JUDGE 32-2-51

DOCKET NO: MJ-32251-CR-DD00017-2012

CONT'D.

#	CHARGE	GRADE	DESCRIPTION	OFF. DATE	DISPOSITION
1	18 § 6312	§§ B F2	PHOTOGRAPH/FILM/DEPICT ON COMP. SEX ACT-CHILD	2/2/12	HELD FOR CT.
2	18 § 6312	§§ C1 F3	DISSEM PHOTO/FILM OF CHILD SEX ACTS	2/2/12	DISMISSED
3	18 § 6312	§§ D1 F3	CHILD PORNOGRAPHY	2/2/12	HELD FOR CT.
4	18 § 7512	§§ A F3	CRIMINAL USE OF COMMUNICATION FACILITY	2/2/12	HELD FOR CT.
5	18 § 7507.1	§§ A1 M3	INVASION OF PRIVACY-VIEW, PHOTOGRAPH, ETC PERSON W/OUT CONSENT	2/2/12	HELD FOR CT.
6	18 § 7507.1	§§ A2 M3	INVASION OF PRIVACY-PHOTOGRAPH, VIEW, ETC. INTIMATE PARTS OF OTHER PERSON	2/2/12	HELD FOR CT.
7-20	18 § 6312	§§ D1 F3	CHILD PORNOGRAPHY	2/2/12	HELD FOR CT.
21-37	18 § 7512	§§ A F3	CRIMINAL USE OF COMMUNICATION FACILITY	2/2/12	HELD FOR CT.

ARRESTING OFFICER PEIFER, DAVID C ARREST DATE 2/2/12

LOCAL CHARGES
MAGISTERIAL DISTRICT JUDGE 32-2-51

DOCKET NO: MJ-32251-CR-0000060-2012

#	CHARGE	GRADE	DESCRIPTION	OFF DATE	DISPOSITION
1	18 § 3125	§§ A7 F3	AGG. IND. ASSAULT-COMP. LESS THAN 13 YEARS OLD	1/29/2012	HELD FOR CT.
2	18 § 3126	§§ A7 F3	IND. ASSAULT PERSON LESS THAN 13 YEARS OF AGE	1/29/2012	HELD FOR CT.
3	18 § 4304	§§ A1 M1	ENDANGERING WELFARE OF CHILDREN- PARENT/GUARDIAN/OTHER COMMITS OFFENSE	1/29/2012	HELD FOR CT.
4	18 § 4304	§§ A1 M1	ENDANGERING WELFARE OF CHILDREN- PARENT/GUARDIAN/OTHER COMMITS OFFENSE	1/29/2012	HELD FOR CT.
5	18 § 6301	§§ A1i M1	CORRUPTION OF MINORS	1/29/2012	HELD FOR CT.
6	18 § 6301	§§ A1i M1	CORRUPTION OF MINORS	1/29/2012	HELD FOR CT.
7	18 § 6318	§§ A1 F1	UNLAWFUL CONTACT WITH MINOR-SEXUAL OFFENSES	1/29/2012	HELD FOR CT.
8	18 § 6318	§§ A1 F1	UNLAWFUL CONTACT WITH MINOR-SEXUAL OFFENSES	1/29/2012	HELD FOR CT.

ARRESTING OFFICER KELLY, JOHN E ARREST DATE 3/15/12

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 No. 17-2618; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

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

☐ reported at No. 12-228; 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 N/A to the petition and is

☐ reported at N/A; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the N/A court appears at Appendix N/A to the petition and is

☐ reported at N/A; 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 1/9/18.

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

PETITIONER RECEIVED 1/19/18 DENIAL ON 1/26/18. COMPOUND LOCKED DOWN 2/2/18 - 2/8/18.

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

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

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

☐ For cases from **state courts**:

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

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

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

AMENDMENT IX

THE ENUMERATION IN THE CONSTITUTION, OF CERTAIN RIGHTS, SHALL NOT BE CONSTRUED TO DENY OR DISPARAGE OTHERS RETAINED BY THE PEOPLE.

AMENDMENT X

THE POWERS NOT DELEGATED TO THE UNITED STATES BY THE CONSTITUTION, NOR PROHIBITED BY IT TO THE STATES, ARE RESERVED TO THE STATES RESPECTIVELY, OR TO THE PEOPLE.

ART. I, § 8 CL 17

THE CONGRESS SHALL HAVE POWER TO EXERCISE EXCLUSIVE LEGISLATION IN ALL CASES WHATSOEVER, OVER SUCH DISTRICT (NOT EXCEEDING TEN MILES SQUARE) AS MAY, BY CESSION OF PARTICULAR STATES, AND THE ACCEPTANCE OF CONGRESS, BECOME THE SEAT OF THE GOVERNMENT OF THE UNITED STATES, AND TO EXERCISE LIKE AUTHORITY OVER ALL PLACES PURCHASED BY THE CONSENT OF THE LEGISLATURE OF THE STATE IN WHICH THE SAME SHALL BE, FOR THE ERECTION OF FORTS, MAGAZINES, ARSENALS, DOCK-YARDS, AND OTHER NEEDFUL BUILDINGS; — AND

ART I, § 8 CL 18

TO MAKE ALL LAWS WHICH SHALL BE NECESSARY AND PROPER FOR CARRYING INTO EXECUTION THE FOREGOING POWERS, AND ALL ALL OTHER POWERS VESTED BY THIS CONSTITUTION IN THE GOVERNMENT OF THE UNITED STATES, OR IN ANY DEPARTMENT OR OFFICER THEREOF.

§ 1447(c) PROCEDURE AFTER REMOVAL GENERALLY

A MOTION TO REMAND THE CASE ON THE BASIS OF ANY DEFECT OTHER THAN LACK OF SUBJECT MATTER JURISDICTION MUST BE MADE WITHIN 30 DAYS AFTER FILING OF THE NOTICE OF REMOVAL UNDER SECTION 1446(a). IF AT ANY TIME BEFORE FINAL JUDGMENT IT APPEARS THAT THE DISTRICT

COURT LACKS SUBJECT MATTER JURISDICTION, THE CASE SHALL BE REMANDED.

AN ORDER REMANDING THE CASE MAY REQUIRE PAYMENT OF JUST COSTS AND ANY ACTUAL EXPENSES, INCLUDING ATTORNEY FEES, INCURRED AS A RESULT OF THE REMOVAL. A CERTIFIED COPY OF THE ORDER OF REMAND SHALL BE MAILED BY THE CLERK OF THE STATE COURT. THE STATE COURT MAY THEREUPON PROCEED WITH SUCH CASE.

§ 432. SUBJECT MATTER JURISDICTION AMERICAN JURISPRUDENCE 2D

SUBJECT MATTER JURISDICTION INVOLVES THE NATURE OF THE CAUSE OF ACTION AND THE RELIEF SOUGHT AND CAN ONLY BE CONFERRED ON A COURT BY LEGISLATIVE OR CONSTITUTIONAL ACT. STATE V. MEYERS, 72 HAW. 591, 825 P.2D 1062 (1992)

STATEMENT OF THE CASE

- 1 ON 2/2/12, PETITIONER'S ELEVEN YEAR OLD SON INFORMED HIM BY PHONE THAT THE POLICE WAS BANGING ON THE DOOR
- 2 LIEUTENANT DAVID C. PEIFER TOOK PHONE AND DIRECTED PETITIONER TO COME HOME AND THEN HE WOULD TELL PETITIONER WHAT THEIR PRESENCE WAS ALL ABOUT
- 3 PETITIONER ARRIVED AT HIS RESIDENCE APPROXIMATELY TWENTY MINUTES LATER
- 4 THE TWO UNIFORMED UPPER DARBY OFFICERS WHOM WERE POSTED ON EACH SIDE OF THE FRONT DOOR, FOLLOWED PETITIONER INTO HIS RESIDENCE LOCKING EACH OF TWO DOORS BEHIND THEM.
- 5 PETITIONER'S ELEVEN YEAR OLD SON, AND TWELVE YEAR OLD STEPDAUGHTER WERE SEATED SIDE BY SIDE ON LIVINGROOM SOFA, WITH ENLARGED EYES
- 6 FOUR PLAIN CLOTHED MEN WERE INSIDE, ONE IN LIVINGROOM AT DOOR INTO BASEMENT, TWO IN DINING ROOM, ONE SITTING BEHIND COMPUTER, THE OTHER STANDING IN FRONT OF COMPUTER AND ONE AT KITCHEN DOOR THAT LEADS TO OUTSIDE PATIO.
- 7 HE THAT STOOD IN FRONT OF COMPUTER TOOK PAPERS FROM HIM AND THE COMPUTER APPROACHED PETITIONER, IDENTIFIED HIMSELF AS LT. DAVID PEIFER, AND STATED THAT HE HAD A SEARCH WARRANT FOR THIS ADDRESS FOR THE SEIZING OF PETITIONER'S COMPUTER WITH ARES ON IT FOR THE POSSESSION OF CHILD PORNOGRAPHY
- 8 HE FLASHED ONE OF SEVERAL PAPERS APPROXIMATELY FOUR INCHES FROM PETITIONER'S EYES THAT REFLECTED ONLY THE RESIDENCE ADDRESS WITHIN THE TOP HALF INCH BORDER.
- 9 NOTHING MORE OF THE PAGE WAS SEEN, THE PAGE WAS COVERED BY OTHER PAPERS.
- 10 PEIFER SNATCHED THE PAPER AWAY AS PETITIONER REACHED FOR THE PAPER
- 11 NO OFFICIAL LOGO WAS ON THE PAPER IN TOP BORDER
- 12 PEIFER FLASHED AND SNATCHED A SECOND PAPER IN THE SAME MANNER
- 13 THE SECOND PAPER REFLECTED A WORD "BABY." IN CAPITAL BLOCK CASED LETTERS FILLED WITH YELLOW COLOR, AND A SOLID GREEN HORIZONTAL BAR UNDERNEATH THAT WORD, TITLE.
- 14 PEIFER ASKED PETITIONER IF HE HAD A LAPTOP COMPUTER
- 15 PEIFER TOLD PETITIONER THAT HE WAS NOT UNDER ARREST OR ANYTHING, BUT THEY HAD SOME QUESTIONS THEY WANTED TO ASK HIM DOWN IN HIS BASEMENT
- 16 PETITIONER SAID YEAH, RIGHT AFTER HE MAKE A PHONE CALL.
- 17 PETITIONER STEPPED FORWARD AND TO HIS RIGHT AND STARTED REACHING UP FOR THE WALL PHONE HANGING IN THE DOOR FRAME
- 18 PEIFER JUMPED FROM PETITIONER'S LEFT WHERE DIRECTED TO THE BASEMENT, ACROSS

PETITIONER'S FRONT TO PETITIONER'S RIGHT PUTTING HIMSELF BETWEEN PETITIONER AND PETITIONER'S HOUSE PHONE.

19 PEIFER GRABBED PETITIONER'S OUTREACHED RIGHT ARM AND TWISTED IT BEHIND PETITIONER TO THE SMALL OF HIS BACK AND SHOVED HIM OVER TO THE BASEMENT STAIR AS THE UNIFORMED OFFICERS RUSHED IN FROM PETITIONER'S LEFT, AND THE PLAIN CLOTHES CLOSED AT HIS RIGHT

20 PEIFER STATED "NOT RIGHT NOW, AFTER WE QUESTION YOU!"

21 PETITIONER WAS TAKEN DOWN INTO THE BASEMENT AS PEIFER HELD FAST TO THE PETITIONER'S ARM TWISTED BEHIND HIS BACK

22 PEIFER ASKED PETITIONER IF HE COULD RECORD AS HE RELEASED HIS WRIST.

23 PETITIONER SAID SURE

24 PEIFER STATED HIS INTRODUCTION OF THE TIME, ADDRESS, BASEMENT LOCATION ETC.

25 PEIFER STATED IN HIS INTRODUCTION THAT HE HAD TOLD PETITIONER THAT HE WAS NOT UNDER ARREST AND DID NOT HAVE TO ANSWER ANY QUESTIONS "ISN'T THAT RIGHT MR. HORTON

26. PETITIONER REBUTTED THAT STATEMENT BECAUSE THAT STATEMENT WAS NEVER MADE

27. PETITIONER HAD NOT BEEN MIRANDIZED SO HE AGREED TO THE INTERVIEW

28. QUESTIONS CONSISTED OF COMPUTER TYPE, PEER 2 PEER NETWORKS, SEARCH TERMS USED BY PETITIONER WHEN DOWNLOADING FILES

29. COMPUTER ANALYST CAME DOWN INTO THE BASEMENT AND INFORMED PEIFER OF DISCOVERY OF HOMEMADE VIDEOS SAVED ON THE COMPUTER APPROXIMATELY FIFTEEN MINUTES INTO THE INTERVIEW

30. PEIFER THEN CHANGED LINE OF QUESTIONING FROM POSSESSION AND DISTRIBUTION OF CHILD PORNOGRAPHY PURSUANT THE WARRANT TO THE PRODUCTION OF HOMEMADE VIDEOS.

31. PEIFER COMMENCED TO INQUIRE ABOUT VIDEO CAMERAS AND HOMEMADE VIDEOS IN A SECOND INVESTIGATION WITHOUT THE AUTHORIZATION IN A SEPERATE WARRANT

32. PETITIONER INVOKED HIS RIGHT TO REMAIN SILENT

33. PEIFER CONTINUED RECORDING AND QUESTIONING WITH SUBTLE QUESTIONS AND SUBTLE STATEMENTS

34. PEIFER STOPPED RECORDING AND QUESTIONING WHEN PETITIONER REPLIED THAT HE WAS ALREADY JAMMED UP

35. AFTER GOING UPSTAIR AND RETURNING PEIFER INFORMED PETITIONER THAT HE WAS PLACING PETITIONER UNDER ARREST
36. C.I.D. MEMBER PASANI SEARCHED AND CUFFED PETITIONER AS PEIFER MIRANDIZED HIM
37. PASANI REMOVED PETITIONER'S CELLULAR PHONE FROM PETITIONER'S COAT POCKET
38. PETITIONER WAS TAKEN OUT THROUGH BASEMENT BACK DOOR TO WAITING CRUISER
39. PETITIONER WAS ARRAIGNED ON 2/3/12 AND TAKEN TO DELAWARE COUNTY (DELCO) JAIL GEORGE W. HILL CORRECTIONAL FACILITY (GWHCF) IN THORNTON, PA.
40. ON 3/15/12, PETITIONER WAS TAKEN AND ARRAIGNED ON NEW CHARGES FROM IMAGES SEIZED FROM PETITIONER'S CELL PHONE
41. CELL PHONE HAD BEEN SEIZED WITHOUT PROBABLE CAUSE AND WITHOUT BEING PARTICULARIZED IN ANY WARRANT
42. CELL PHONE HAD BEEN ACCESSED AND PINEO THROUGH WITHOUT PETITIONER'S PERMISSION, OR AUTHORIZATION FROM THE SERVICE PROVIDER VIA A COURT ORDER
43. PETITIONER WAS SCHEDULED ULTIMATELY, FOR A PRELIMINARY HEARING ON 5/11/12
44. PETITIONER WAS PICKED UP BY THE FEDS ON 5/9/12 ON A WRIT WHILE WAITING ON HIS FIRST APPEARANCE; PRELIMINARY HEAR ON STATE OFFENSES FROM THE 2/2/12 SEARCH, AND 3/15/12 OFFENSES.
45. ON 6/6/13, A SUPERSEDING INDICTMENT CAME DOWN
46. COURT APPOINTED COUNSELED REFUSED TO CHALLENGE JURISDICTION AT PETITIONER'S REQUEST
47. AFTER CONVICTION AND SENTENCE, APPEAL BRIEF STATED THAT THE UNITED STATES HAD SUBJECT MATTER JURISDICTION BASED OFF OF 18 U.S.C. § 1321

REASONS FOR GRANTING THE PETITION

ISSUE

DISTRICT COURT ABUSED ITS DISCRETION WHEN IT DENIED APPELLANTS MOTION CHALLENGING JURISDICTION BASED ON ITS ERRONEOUS ASSESSMENT OF THE COMMERSE CLAUSE AND ITS APPLICATION WITHIN THE JURISDICTION OF THE SEVERAL STATES

FACTS OF CASE/ARGUMENT:

ON 1/5/12, THE LOCAL AUTHORITIES OF DELAWARE COUNTY (DELCO) PA. WERE INVESTIGATING AN I.P. ADDRESS BY WHICH A COURT ORDER TO THE CARRIER FOR SUBSCRIBER INFORMATION REVEALED FITZGERALD HORTON AS THE SUBSCRIBER, FOR ALLEGEDLY BEING IN VIOLATION OF LOCAL STATE STATUTES FOR POSSESSION AND DISTRIBUTION OF CHILD PORNOGRAPHY.

ON 2/2/12, A SEARCH WARRANT WAS PROCURED AND SERVED UPON HORTON'S RESIDENCE BY DELCO C.I.D WITH THE UPPER DARBY, P.D. HORTON, ABSENT AT THE TIME OF ENTRY WAS CALLED BY HIS TWO CHILDREN ARRIVED SHORTLY AFTER, WAS TAKEN TO THE BASEMENT OF HIS RESIDENCE WAS EXPRESSED QUESTIONED WITHOUT BEING MIRANDIZED. WHICH WAS RECORDED. HORTON INVOKED HIS RIGHT TO REMAIN SILENT, AND WAS PLACED UNDER ARREST MOMENTS LATER

DURING THE QUESTIONING HOMEMADE RECORDINGS WERE DISCOVERED IN OTHER AREAS OF THE COMPUTER OF THE BATHROOM REFLECTING THE RESIDENTS, INCLUDING THE TWO MINORS. A CELL PHONE WAS REMOVED FROM HORTON'S PERSON, WHICH WAS LATER SEARCHED WITHOUT A WARRANT. IMAGES WITH NO FACE IN FRAME WAS PINED FROM THE PHONE; BELIEVED TO BE HORTON'S STEPDAUGHTER (PORNOGRAPHIC IN NATURE)

CHARGES WERE FILED BY THE LOCAL AUTHORITIES ON 2/3/12 AND 3/15/12 AGAINST HORTON, WHO REMAINED IN CUSTODY AT THE DELCO JAIL. AWAITING HIS PRELIMINARY HEARING, SCHEDULED FOR 5/11/12.

ON 5/9/12 A FEDERAL INDICTMENT WAS RETURNED AGAINST MR. HORTON. OF WHICH HORTON NEVER DID SEE. AND ON 6/6/13, A SUPERSEDEDING INDICTMENT WAS HANDED DOWN FOR 18:2251(A) AND 2251(E); USING OR INDUCING A CHILD TO POSE FOR CHILD PORNOGRAPHY IMAGES, 18:2252(A)(2); DISTRIBUTION OF CHILD PORNOGRAPHY, AND 18:2252(A)(4)(B); POSSESSION OF CHILD PORNOGRAPHY. OF WHICH HORTON WAS LATER CONVICTED AFTER A TRIAL ON ELEVEN OF THIRTEEN COUNTS, AND SENTENCED 376 MOS.

MR. HORTON LEARNED THROUGH RESEARCH THAT THE SUBJECT MATTER HE WAS NOW SERVING A FEDERAL SENTENCE WAS NOT A CRIME AGAINST THE UNITED STATES OF AMERICA, BUT INDEED WAS A CRIME AGAINST THE STATE OF PENNSYLVANIA. THEREFORE CLEARLY DISPLAYING THAT THE FEDERAL COURTS WAS WITHOUT SUBJECT MATTER JURISDICTION OVER THE CONTROVERSY IN QUESTION.

THE DISTRICT COURT CLAIMED JURISDICTION BASED OFF OF § 1321, AND LATER DENIED HORTON'S 1447(C) MOTION / REMAND BY WRONGFULLY IMPLYING THAT THE FEDERAL GOVERNMENT HAVE ABSOLUTE JURISDICTION UNDER THE COMMERCE CLAUSE; § 3231; AND THE NECESSARY AND PROPER CLAUSE OF ARTICLE I § 8 CL 18; HOWEVER, MR. HORTON AVERS THAT THE COURT'S ASSESSMENT IS/WAS IN ERROR FOR THE FOLLOWING REASONS:

I. The framers of the Constitution delegated to congress the power to regulate commerce.

Article I § 8 cl 2 "To regulate commerce within foreign Nations, and among the several states, and with the Indian Tribes".

Regulate is defined in the Blacks Law Dictionary(third edition) as "The act or process of controlling by rule or restriction".

The powers to punish in regards to the commerce clause has not and was not delegated by the framers of the Constitution.

Pursuant to the 10th Amendment "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states are reserved to the states respectfully, or to the people".

The powers delegated to congress are as such:

Article 1, §8, cl 3, "To regulate Commerce with foreign Nations, and among the serveral states, and with the Indian Tribes"

Article 1 §8 cl 5 "To coin Money, regulate the value thereof, and foreign coin, and fix the Standars of weights and measures"

Article 1 §8 cl 6 "To provide for the Punishment of counterfeiting the securities and current coin of the United States"

Article 1 §8 10 "To define and punish Piracies and Felonies committed on the high seas, and offenses against the Laws of Nations"

Article III. §3 cl 2 "The congress shall have power to declare the Punishment of Treason, but no attainder or treason shall work corruption of Blood or Forfeiture except during the life of person attained"

Article IV §3 cl 2 "The Congress shall have power to dispose of and make all needful Rules and Regulations respecting the Territory or other property belonging to the United States; and nothing in this constitution shall be so construed as to Prejudice any claims by the United States, or of any particular State".

If congress desire to exercise it's authority outside the beforementioned articles, then it would have to do so under Article I Section 8, cl 17, which states the following:

Article I §8 cl 17 "To exercise exclusive legislation in all cases whatsoever, over such District (not exceeding ten miles square), as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like authority over

all places purchased by the Consent of the legislature of the state in which the same shall be, for the Erection of Forts, Magazines, Arsenals, dock-yards, and other needful Buildings-;

Pursuant to Article I §8 cl 18 congress has the authority to make all laws which shall be necessary and proper for carrying into Execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Although the commerce clause authorizes congress to regulate interstate commerce directly, it does not authorize congress to regulate state governments regulations of interstate commerce pursuant to the necessary and proper clause or enlarge the specific jurisdiction of federal courts in admiralty. Printz v. U.S. 521 U.S. 898 117 S.Ct. 2365 138 L.Ed 2d 914(1997)

Under the Commerce Clause, Congress has enacted Statutes Criminalizing certain acts and behaviors including:

- *arson(18 U.S.C.A §844(i))
- *interfering with the provision of reproductive health services(18 U.S.C.A §248)
- *carjacking(18 U.S.C.A §2119)
- *money laundering(18 U.S.C.A. §1956)
- *racketeering(18 U.S.C.A §§ 1951 et seq)
- *drug trafficking(21 U.S.C.A §841)
- *the possession of firearms by police officers convicted of domestic violence crimes(18 U.S.C.A. §§922 et seq)
- *the failure to pay child support(18 U.S.C.A. §228)
- *the manufacture or possession of semiautomatic assault weapons(18 U.S.C.A 922)

It is important to NOTICE that the above listed statutes or powers were not delegated by the framers in the Constitution, but was enactments of congress; to criminalize (punish) such federal statutes, the government(congress) must operate within the realm of ARTICLE I §8 cl 17, within the Pre-empted area.

All courts of the United States are statutory courts, i.e, courts of limited jurisdiction. Due process of law is predicated on statutes

of the United States that either compel or prohibit a given activity.

There is a need for all elements in order to establish subject matter jurisdiction. It is well established principle of law that all federal legislation applies only within the territorial jurisdiction of the United States. Foley Brothers v. Filardo (1948) 336 U.S. 281.

Congress may pass all laws which are necessary and proper for giving the most complete effect to this power, still the general jurisdiction over the place (of the crime) adhere to the territory as a portion of sovereignty not yet given away. United States v. Bevans 16 U.S.(3 wheat) 336 389 4 L.Ed 404(1818); Adams V. U.S. 319 U.S. (1943)..

The Supreme Court, quoting Justice Story's Commentaries on the Constitution in Peopole v. Godfrey, 'more than 65 years later, stated in leavenworth R.R. Co. that "if there has been no cession by the state of the place... the state jurisdiction remains complete and perfect."

The commerce clause did not abrogate the general police powers of the state; nor the powers reserved to them under the TENTH AMENDMENT, BOSTON & M.R.R. V. ARMBURG 285 U.S. 234, 52 S.Ct. 336 76 L.Ed 729(1932); Glenn v. Southern Express Co. 170 NC. 286 S.E. 136(1915) error dismissed, 245 U.S. 679, 28 S.Ct. 133 62 L.Ed 543 (1917); Lewis v. BT Inv Managers Inc 447 U.S. 27, 100 S.Ct. 2009 64 L.Ed. 2d 702 (1980).

The state can therefore regulate interstate commerce, provided that the state regulations do not conflict with federal laws. LAKE SHORE & M.S.R. Co. v. State of Ohio 173 U.S. 285 19 S.Ct. 465 43 L.Ed 702(1899).

The Federal Constitution's Commerce Clause only bars state police power when congress has pre-empted the area. American Can Co. v. Oregon Liquor Control Commission 15 Or App. 618, 517 P.2d 691 6 ENV'T Rep Cas (BNA)1350, 4 Env'tl. L. Rep 20218(1973).

Under the Federal drug laws codified at 21 U.S.C. §801 et seq, a "State" is any place subject to the jurisdiction of the Federal Government. In the several Union States these places are limited by the Constitution to lands under the exclusive or concurrent jurisdiction of the Federal Government.

It is these places where legislative courts have criminal jurisdiction (subject matter jurisdiction over crimes). Article III courts also have subject matter jurisdiction over crimes that occur on lands within the exterior territorial boundaries of any Union State under the concurrent or exclusive legislative (territorial) jurisdiction of the Federal Government("United States").

Even if the term "State of the United States" meant all of the several union States, it would be in conflict with the Federal Rules of Criminal Procedure ("FRCrP").

The words "any person" as used in the drug laws codified in Title 21 U.S.C. §801, et seq, do not literally mean any person in the world but, rather is limited by the above mentioned provisions within the territorial(legislative) jurisdiction of the United States(Federal Government).

Under positive law(Title 28 U.S.C. §2071(b)), the rules of procedure and evidence supersede all laws in conflict with them. Since the federal Rules of Criminal Procedure govern procedure in all criminal proceedings in the "United States district courts" and define "State" to include only the District of Columbia, and any commonwealth, territory, or possession of the United States, no federal crime has been committed which the federal courts can take cognizance of if the alleged criminal "interstate commerce", crime, or drug crime, occurs outside of those places.(RULE 1(a)(1)(1); RULE 1(b)(9);

If the definition of "State in the Federal Rules of Criminal Procedure included places not mentioned like the several union states for example, it would not have been necessary to define this term at all.

It would also not have been necessary to enact a statutory provision informing us that the rules of procedure supersede all laws in conflict with them. Several States has been used in other definitions of "State" (see , for example 18 U.S.C § 836, paragraph 4., yet has not been used in the definition of "State" in the Federal Rules Of Criminal Procedure, it should not be implied. see Wong kim Bo, supra at 722:

[W]here congress has carefully employed a term in one place and

excluded it in another, it should not be implied where excluded.

The same principle applies to the term "State of the United States", which term is also conspicuously absent from the definition of "State" in the Federal Rules of Criminal Procedure. The term "include" is a word of limitation and defined as:

(Lat. in claudere, to shut in, keep with in.) To confine within, hold as in an enclosure, take in, attain, shut up, contain, enclose, comprise, comprehend, embrace, involve. Term may, according to context, express an enlargement and have the meaning of "and" or "in addition to", or merely specify a particular thing already included within general words theretofore [up to that time] used. "including" within statute is interpreted as a word of enlargement or of illustrative application as well as a word of limitation. Black's Law Dictionary. Sixth Edition, page 763.

ADAMS V. UNITED STATES 319 US 312 (1943)..

The Tenth Amendment of the United States Constitution is very clear that the powers not delegated to the United States by the Constitution.... are reserved to the states respectfully, or to the people"

Unless and until NOTICE of acceptance of jurisdiction has been given, federal courts are without jurisdiction to punish under criminal laws of the United States an Act committed on lands acquired by the United States, where the applicable statute(Act of Oct 9, 1940, 40 U.S.C. §225) provides that the United States agencies and authorities may accept exclusive or partial jurisdiction over lands acquired by the United States by filing NOTICE with the Governor of the State, or by taking other similar appropriate actions, and that unless and until the United States has so accepted jurisdiction it shall be conclusively presumed that no such jurisdiction has been accepted.

To be specific, absent, (1) documentation showing ownership by the United States(Federal Government), over the exact geographical location(s), wherein the charging document alleges the criminal activity occurred, (2)evidentiary documentation showing a cession by the Legislator (s) of the particular Union States surrendering exclusive or concurrent jurisdiction over the same exact geographical location(s); or evidentiary documentation showing purchase by consent of Legislature of the particular Union State, and (3) documentation showing acceptance of jurisdiction by the United States(Federal Government), over the same geographical locations, the "United States District Courts" have no subject-matter jurisdiction over felony offenses where the power to "punish" is not enumerated(delegated) in the Constitution(assuming argendo they are Article III Courts)...

The State Statutes which authorizes the United States to take jurisdiction over land acquired by the United States within the state cannot confer jurisdiction upon federal courts to punish under criminal laws of the United States an act committed thereon, where at the time of the alleged offense notice of acceptance of jurisdiction contemplated by the Act of Oct 9, 1940, 40 U.S.C. § 225, had not been given..

The plaintiff respectfully state that the federal government did not and do not have jurisdiction of the allege subject matters because the allege crimes were not committed against the United States, in light of the fact that the United States had not accepted jurisdiction over the lands upon which the crime was committed and therefore the District Court was and is without jurisdiction to try and sentence the plaintiff..

There are two provisions in the United States Constitution under which Congress may create jurisdiction for the federal government to prosecute federal crimes on federal property: The Property Clause U.S. Const: art IV, §3 cl 2, and the Federal Enclave Clause U.S. Const art I §8 cl 17. The United States Supreme Court discussed these two provisions, and their interplay, in KLEPPE V. NEW MEXICO, the property clause state that congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States, U.S. Const, art IV, §3, cl 2.

The Supreme Court has given this clause and expansive reading and stated, unequivocally that the federal government doubtless has a power over its own property analogous to the police power of the several states, while the furthest reaches of the power granted by the property clause have not yet been definitively resolved, the Supreme Court has repeatedly observed that the power over the public land thus entrusted to Congress is without limitations. In short, Congress exercise the powers both of a proprietor and of a legislature over the public domain.

The federal Enclave clause provides congress with the power to exercise exclusive legislation in all cases whatsoever over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings.

In 1940, Congress acted to reverse the presumption of acceptance by amending 40 U.S.C.S §225(renumbered as 40 U.S.C.S. §3112, effective Aug 21 2002) to add a new provision; Unless and Until the United States has accepted jurisdiction over the lands hereafter to be acquired as foresaid, it shall be conclusively presumed that no jurisdiction has been accepted.. The critical phrase "hereafter to be acquired" establishes, within the context of the statute itself, the existence of the prior, opposite presumption.....

A person convicted by a court without jurisdiction over the place of the crime(subject matter) could be released from restraint by habeas corpus.

The Supreme Court also stated that, consent of the state legislature is by the very terms of the constitution.....a virtual surrender and cession of its sovereignty over the place." UNITED STATES V. WILLIAMS, 341 U.S. 58, 66-67 (1951); SURPLUS TRADING CO. V. COOK 281 US 647(1928)..

The federal courts do not have jurisdiction over a subject matter that occurs or transpires outside the territorial places (land) under the concurrent or exclusive jurisdiction of the federal government(United States).

18 U.S.C. §3231 does not authorize federal courts to take jurisdiction when there is no crime against the laws of the United States; 'Nothing in this title shall be held to have to take away or impair the jurisdiction of the courts of the several states under the laws thereof.'

Federal Rules Criminal Procedure Rule 1(a)(1), 1(b)(9), 26, and 54 .Rule 1 (a)(1)states that "these rules govern the procedure in all criminal proceedings in the United States district courts"; Rule 1(b)(9), Definitions. the following definitions apply to these rules, "State", includes the District of Columbia, and any commonwealth, territory, or possession of the United States"; Rule 26, Advisory committee Notes, Paragraph 2, states that "All Federal Crimes are statutory and all criminal prosecutions in the Federal Courts are based on acts of congress"; Rule 54(transferred, not repealed or abrogated), paragraph (c), states that, "As used in these rules the following terms have the designated meanings. 'Act of Congress' includes any act Congress locally applicable to and in force in the District of Columbia, in Puerto Rico, in a territory or in an insular possession".

Title 18 U.S.C., written to occur within the special maritime and territorial jurisdiction of the United States(federal government), unless a statute clearly conveys that it is meant to apply extr-territorially (which must be supported by a constitutional foundation, such as a power to punish)..

The United States is defined in a "territorial sense" at 18 U.S.C. §5, as places subject to their jurisdiction(which places are defined at 18 U.S.C. §7).

The "United State"(Federal Government) cannot adopt laws of the Union States under Title 18 U.S.C. §13, with respect to crimes committed in places, although they may be owned by the "United States"(Federal Government), that are not subject to its exclusive or concurrent jurisdiction.

If the "United States"(federal Government) already had concurrent jurisdiction over the several 50 Union States, it would be impossible for any One of the several Union States to cede concurrent jurisdiction to the Federal Government("United

states"). As revealed by Title 18 U.S.C. §13 "areas within federal jurisdiction are approved in section 7 [18 U.S.C. §7).

The government has charged the petitioner/appellant with felonious crimes pursuant to enumerated (delegated) powers where the power to punish is not delegated.

It is a longstanding principle of American Law that legislation of congress, unless a contrary intent appears, is meant to apply only within the Territorial Jurisdiction of the United States, Morrison v. National Australia Bank LTD, 177 Fed 2d 535 547 (2010).

§105 Territorial Limitations (American Jurisprudence;

The jurisdiction of a court is subject to territorial limitations; Its jurisdiction cannot extend beyond the territory belonging to the sovereignty on behalf of which it functions, and its jurisdiction can be further limited, by constitutional or statutory provisions, to only a part of the territory of the sovereignty to which it belongs. Oetjen v. Central Leather Co., 246 U.S. 297 38 S.Ct. 309, 62 L.Ed 726 (1918); Am Jur. 2d, United States §§ 61, 63; ; Am Jur. 2d, States, Territories and Dependencies §97.

§60 Power and Duty to determine jurisdiction;

A court has the power and duty to examine and determine whether it has jurisdiction of a matter presented to it . A court of general jurisdiction possess the authority to initially determine its own jurisdiction. Strother v. Day 279 S.W. 2d 785 (Ky, 1955); Carmichael v. Iowa State Highway Commission, 156 N.W. 2d 332 ((Iowa 1968); State ex rel. Jones v. Suster, 84 Ohio St. 3d 70, 1998- Ohio-275, 701 N.E.2d 1002 (1998).

It is a fundamental precept that federal courts are courts of limited jurisdiction, constrained to exercise only authority conferred by Article III of the Constitution and affirmatively granted by federal statute. IN RE BULLDOG TRUCKING, 147 F.3d 347, 352 (4th cir 1998); A federal court cannot assume jurisdiction exists. Rather, the plaintiff is required to specifically plead adequate facts in its complaint to sufficiently establish the court has jurisdiction. Norton v. Larney, 266 U.S. 511, 515-16 (1925).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Date: MARCH 26, 2018