

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

Josand Farmer — 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

Josand Farmer
(Your Name)

P.O. Box 340
(Address)

Salters SC. 29590
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

- 1) DID THE DISTRICT COURT VIOLATE THE PETITIONER'S SIXTH AMENDMENT RIGHTS WHEN IT IGNORED THE PETITIONER'S MOTION TO PROCEED PRO-SE DURING HIS SECOND OR SUCCESSIVE PROCEEDINGS.
- 2) DID THE DISTRICT COURT VIOLATE THE PETITIONER'S FIFTH AND SIXTH AMENDMENT RIGHT WHEN IT IGNORED THE PETITIONER'S CHALLENGE TO SUBJECT MATTER AND TERRITORIAL JURISDICTION..

LIST OF PARTIES

[] All parties appear in the caption of the case on the cover page.

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

- 1) Judge Louise W. Flanagan
- 2) Jennifer Wells
- 3) Seth Wood

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION	
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	
STATEMENT OF THE CASE	
REASONS FOR GRANTING THE WRIT	
CONCLUSION	

INDEX TO APPENDICES

APPENDIX A *Appeals Court Ruling*

APPENDIX B *District Court Ruling*

APPENDIX C

APPENDIX D

APPENDIX E

APPENDIX F

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

<u>U.S. v. Gonzalez</u>	578 Fed Appx 380 (4th cir 2014)
<u>Gonzalez v. Crosby</u>	545 U.S. 531, 125 S.Ct. 2641 162 L.Ed 2d 486 (2005)
<u>In Re Abu-Ali Abdur Rahman</u>	(6th cir appl Dec. 13, 2001/2004)
<u>Melo v. U.S.</u>	505 F.2d 1026 (8th cir 1974)
<u>Rosemont v. Lambert</u>	469 f.2d 416
<u>In Re Norfolk S. Ry Co.</u>	(May 15, 2014, 756 f.2d 282 (4th cir))
<u>Norton v. Larnery</u>	266 U.S. 511-16 (1925)
<u>Stuck v. Medical Examiners</u>	94 Ca 2d 751 211 P2d 889
<u>Main v. Thiboutot</u>	100 S.Ct 250
<u>United States v. Bevans</u>	16 U.S. (3 wheat) 336 389 4 L.Ed 404 (1818)

STATUTES AND RULES

18 U.S.C. §3231

Commerce Clause, delegated powers to regulate, not Power to punish

Ninth Amendment, The enumeration in the Constitution, of certain Rights, shall not be construed deny or disparage other retained by the people

Title 18 is restricted to lands purchased and owned by the United States subject matter transpire on such property renders the United States Jurisdiction

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~~E~~ to the petition and is

☒ reported at NO. 17-7100 / 5:16-cv-00565-FL; 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 5:16-cv-565-FL / 5:10-cr-271-F; 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 December 20, 2017

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

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

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

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

☐ For cases from **state courts**:

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

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

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

TENTH AMENDMENT: 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...

ARTICLE I §8 cl 17: The congress shall have power to lay and collect taxes, duties, imposts and exercise, to pay the debts and provide for the common defence and general welfare of the United States; but all duties imposts and excises shall be uniform throughout the United States;

* 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

ARTICLE I §8 cl 18 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.

§ 3231 District Courts: The district court of the United States shall have original jurisdiction, exclusive of the courts of the States, of all offenses against the laws of the United States.

Nothing in this title shall be held to take away or impair the jurisdiction of the courts of the several States under the laws thereof.

JURISDICTION

SUBJECT MATTER JURISDICTION

TERRITORIAL JURISDICTION

STATEMENT OF THE CASE

- 1) on February 18, 2010, an allege recorded phone call was made to the petitioner by an confidential informant seeking to purchase narcotics (by the local authorities)
- 2) allegedly the petitioner informed the informant that he did not have any narcotics, but allegedly provided the informant with a phone number, belonging to a person by the name of dorrian wingate.(as was testified to by Officer David Stancil of the Wilson Police Department, before the grand jury)
- 3) Based on officer David Stancil's testimony before the grand jury, the informant was able to purchase narcotics from dorrian wingate on February 18, 2010(the purchase was made at Dorrian Wingates mother home located Minchew Street)..
- 4) According to officer David Stancil's testimony ,several other purchases were made at the same residence through the assistance of the same confidential informant and local authorities.
- 5) Other than allegedly providing the informant with an phone number, the local officers testified that the petitioner was not present during any of the purchases at the wingates mother home on Minchew Street.
- 6) On 8/10/2010 the petitioner was wrongfully arrested by the local authorities with accompanying federal marshals.
- 7) Without the proper authority the federal government(prosecutor jennifer wells), wrongfully assumed jurisdiction over the above mentioned subject matters, which took place in the state of north carolina, being committed against the state of North Carolina.
- 8) The federal government did not file notice with the govenor of wilson North Carolina;seeking to acquire the land prior to the commencement of the allege subject matters.
- 9)- The federal government failed to purchase the land on which the allege crime transpired.
- 10) There was not transfere of deed of the propert from the private owner to the federal government prior to the commencement of the allege crime.
- 11) The petitioner was erroneously charged in a eight (8) count indictment,

he was only charged in counts One, Three, and Seven of the said indictment, Conspiracy.

AUTHORIZED SECOND OR SUCCESSIVE §2255

On March, 2011, the petitioner proceeded to trial contesting the listed offenses.

The petitioner was found guilty of each count he was charged in the eight count indictment.

The petitioner filed a notice of appeal, but his appeal was later denied. The petitioner filed a timely §2255 motion, in 2012, that was denied as well.

In 2015, the petitioner filed a 2244, §2255(h) motion to vacate and set aside sentence, seeking permission from the Honorable Fourth Circuit court of appeals.

On June 21, 2016, the appeals court authorized the petitioner to submit a second or successive §2255 motion in light of the Supreme Court decision in JOHNSON V. U.S. 135 S.Ct. 2551 (2015); WELCH V. U.S. 136 S.Ct. 1257 (2016); IN RE HUBBARD __F.3d__, No. 15-276, 2016 WL 3181417 (4th cir June 8, 2016).

Pursuant to Rule 22(d) the appeals court transferred to the district court with the order granting authorization, the petitioner's post conviction application.

On 6/26/2016 Attorney Stephen C. Gordon of the public defenders office was appointed to represent the petitioner. (see D.E. 274)

Without first introducing himself to the petitioner, who at the time was unaware of Mr. Gordon's appointment, attorney Gordon submitted an ill prepared, deficient second motion to vacate under §2255 (disregarding the already prepared and submitted §2255 forwarded to the district court by the appeals court).

In this second ill prepared §2255 motion to vacate or set aside sentence, attorney Gordon committed the following errors: (1) Counsel misspelled the petitioner's name; (2) Counsel in error listed the petitioner's place of confinement as being LEE COUNTY (JSP), which was incorrect, the petitioner was confined at Bennettsville FCI, located in SOUTH CAROLINA; (3) Counsel improperly listed irrelevant allege prior convictions that were not employed to trigger his career offender enhancement which was at issue, ignoring his challenge to the prior convictions that were employed to trigger such enhancement under §4B1.1 of the United States Sentencing Guidelines.

(see D.E. 275)

Upon discovering Mr. Gordons error, the petitioner moved to have Mr. Gordon removed from being his counsel. (see D.E. 283) ~~on D.E. 283~~.

After careful study of counsel's action/performance, the petitioner submitted a motion to the court desiring to proceed PRO-SE. (see D.E. 289) (11/07/2016)

The petitioner's motion went unanswered or addressed by the court, ~~but in 3/14/2017, the court issued an order to the public defenders office to~~ file a supplement to the \$2255 motion to vacate within 30 days showing cause why the motion should not be dismissed. (public defender's office failed to do so), and the petitioner despite motioning the court to proceed pro-se was not informed of such an order or provided with any motion through the U.S. MAIL.

On 3, 29, 2017 another attorney from the public defenders office submitted a motion to withdraw from being counsel on record.

The petitioner's motion to vacate set aside sentence was dismissed without first addressing the petitioner's motion to proceed pro-se in 11/07/2016) D.E. 289...

REASONS FOR GRANTING THE PETITION

1)- In regards to the petitioner's §2255 motion to vacate set aside sentence the petitioner provides the following reason that his request for the writ should be granted.

- a). The petitioner respectfully state that his right under the Sixth Amendment was infringed upon, when the court ignored his motion to proceed PRO-SE in his § 2255 proceedings.

The petitioner's request stemmed from discovering that his appointed counsel has filed a deficient supplemented §2255 motion.

The petitioner avers that he had a constitutional right to proceed pro-se. 28 U.S.C. §1654. Appearance personally or by counsel. In all courts of the United States the parties may plead and conduct their own cases personally or by counsel, as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein.

See 28 U.S.C. §1654 (in all federal courts "parties may plead and conduct their cases personally or by counsel") (emphasis added); Brasier v. Jeary, 256 F.2d 474 478 (8th cir) (under §1654, civil litigant had no right to appear pro-se and be represented by counsel at same time), cert denied, 358 U.S. 867 (1958).

CORNICE V. TERRY No. 97-3460 (8th cir 1999). This individual had a choice of representing himself or proceeding with incompetent counsel, he was not allowed to proceed with hybrid representation.

The Sixth Amendment of the United States Constitution, of course, provides a defendant with the right to assistance of counsel. Included within this right is the right of the defendant to waive counsel. This is implemented by 28 U.S.C. §1654 and Rule 44, Fed R.Crim P. and has been recognized by the Supreme Court in ADAMS V. U.S. ex rel. McCann 317 U.S. 269 275 279 63 S.Ct. 236 240 242 87 L.Ed. 268 (1942).

The short of the matter is that an accused, in the exercise of a free and intelligent choice, and with the considered approval of the court may ***waive his Constitutional right to assistance of counsel.

The Constitution does not force a lawyer upon a defendant.

While one may waive his right to counsel, "courts indulge every reasonable

presumption against waiver" of fundamental constitutional rights. JOHNSON V. ZERBST, 304 U.S. 458 464 58 S.Ct. 1019, 1023 82 L.ED. 1461(1938). Care is required to ascertain that a waiver is voluntarily and intelligently made.

The petitioner hereby state that he was deprived of such right, when the district court ignored his motion requesting to proceed ~~pro-se~~ in light of his ~~counsel's~~ deficient performance during the proceedings. (see statement of ease implemented within this writ)...

In conclusion the petitioner hereby state that in light of the facts and authorities listed in this petition, that said petition should be granted..

2)- In regards to the petitioner's 60(b)(4) motion challenging the court's jurisdiction, the petitioner providesd the following reason that his request for writ should be granted.

The petitioner respectfully avers that his FIFTH and SIXTH AMENDMENT rights were infringed upon when the district court improperly recharacterized his Rule 60(b) (4) motion seeking the dismissal of his indictment for lack of subject matter and territorial jurisdiction.

The petitioner's challenge in said motion was a challenge to the Court's jurisdiction to hear and adjudicate contorversy, the petitioner contends that when a challenge to the court's jurisdiction there is no discretion to ignore such a challenge.

The petitioner state that once a court is placed on notice, under any theory, be it procedurally proper or not, the court is obligated to take notice of same at that juncture in the continuing proceedings in the case.

All courts have an independant obligation to determine whether subject matter jurisdiction exists, even in teh absence of a challenge from any pary. ARBAUGH V. Y & H CORP, 546 U.S. 374 583(2006); RUGHEAS AG V. MARATHON OIL CO. 526 U.S. 374 583(1999);

It is a fundamental; precept that federal courts are courts of limited jurisdiction contained to exercise only authority conferred by Article III of the Constitution and affirmatively granted by federal statue. IN RE BULLDOG TRUCKING, 147 F.3d 347(4th cir 1998).

A federal court cannot assume jurisdiction exists. Rather the plaintiff is required to specifically plead adequate facts in its complaint/indictment to sufficiently

establish the court has jurisdiction. NORTON V. LARNERY, 266 U.S. 511-16 (1925).

Once jurisdiction is challenged, the court cannot proceed when it clearly appears that the court lack jurisdiction, the court has no authority to reach merits, but rather should dismiss the action. MELO V. U.S. 505 F.2d 1026 (8th cir 1974).

~~There is no discretion to ignore the lack of jurisdiction, the burden shifts to the court to prove jurisdiction. ROSEMOUND V. LAMBERT 469 F.2d 416;~~
IN RE NORFOLK S. RY. CO. (May 15, 2014 756 f.3d 282(4th cir)).

The petitioner concludes that once he challenged the courts jurisdiction, it must be proven to exist, jurisdiction cannot be assumed. STUCK V. MEDICAL EXAMINERS 94 Ca 2d 751 211 P2d 389; MAINE V. THIBOUTOT 100 S.Ct. 250; HAGANS V. LAVINE, 415 U.S. 553.

The petitioner conclude by stating that once he made a challenge to the court's jurisdiction(procedurally proper or not), the court was obligated to prove that jurisdiction existed, as have been instructed by the Supreme Court in . MAINE V. THIBOUTOT supra; Hagans v. Lavine supra, and in light of these facts the court should grant the requested writ...

The petitioner's claim challenged the jurisdiction of the federal court to entertain and allege crime(subject matter) committed on property not purchased by the United States pursuant to Article I §8 cl 17 and 18 of the United States Constitution.(9th and 10th Amendment)

The petitioner's claim states that the district court wrongfully implies that the federal government have absolute jurisdiction under the commerce clause; §3231; and the necessary and proper clause of Article I §8 cl18; however the petitioner's contends that is in error for the following reasons:

The Framers of the Constitution delegated to congress the power to regulate commerce.

Article I §8 cl2, To regulate commerce with 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 manufactur 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 Statues 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: 1-16-18