

No. 26-373

ORIGINAL

In The Supreme Court of the United States

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SUPREME COURT, U.S.

Antoine D. Johnson, MD,

v. *Petitioner,*

United States

Respondent.

On Petition for Writ of Certiorari
To The United States Court of Appeals
For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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In propria persona

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QUESTIONS PRESENTED FOR REVIEW

1. Will the Supreme Court of the United States stop the Ninth Circuit from *Assuming* Subject-Matter Jurisdiction?
2. Did the Ninth Circuit Court of Appeals "lend its power to assist or protect a fraud" (*Kitchen v. Rayburn*, 86 U.S. 254, 263 (1873)), by failing to address proof, showing the Government gained an unfair advantage through deceit?

PARTIES TO THE PROCEEDING

The parties to the proceeding in the United States Court of Appeals for the Ninth Circuit were Petitioner, Antoine D. Johnson, MD; and, Respondent, United States of America.

There are no corporate parties involved in this case.

DIRECTLY RELATED PROCEEDINGS

1. Second Petition for Writ of Error Coram Nobis in the United States District Court for the Western District of Washington at Tacoma. (*U.S. v. Johnson*, 3:09-cr-05703-DGE (W.D. Wash. August 6th, 2025)).
2. Appeal of order denying Second Petition for Writ of Error Coram Nobis, to the Ninth Circuit Court of Appeals. (*U.S. v. Johnson*, 25-5132: June 26th, 2026).
3. Motion for Panel Rehearing and Rehearing En Banc. (*U.S. v. Johnson*, 25-5132: July 6th, 2026).

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9. *United States v. Johnson*, Case No. 3:14-cv-06018-RBL (9th Cir.: 06/11/2015).

10. *United States v. Johnson*, Case No. 12-30129 (9th Cir.: 09/10/2013).

BASIS FOR JURISDICTION

The judgment of the Court of Appeals was entered on June 26, 2026. A petition for rehearing was filed on July 6, 2026. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

AUTHORITY

United States Constitution

Article III

Section 1.

The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

Section 2.

The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made,

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or which shall be made, under their authority;--to all cases affecting ambassadors, other public ministers and consuls;--to all cases of admiralty and maritime jurisdiction;--to controversies to which the United States shall be a party;--to controversies between two or more states;--between a state and citizens of another state;--between citizens of different states;--between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at

AUTHORITY- Continued

such place or places as the Congress may by law
have directed.

SUMMARY

Nearly twenty-eight (28) years ago, this Supreme Court rejected the Ninth Circuit practice of “‘assuming’ jurisdiction for the purpose of deciding the merits—the ‘doctrine of hypothetical jurisdiction,’” in *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83 (1998). (*Id.* @ 94).

This Court held: A “court may not decide cause of action before resolving whether court has Article III jurisdiction.” (*Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83 (1998)).

Three (3) years ago, this Court provided additional guidance, recognizing “several Courts of Appeals have revived the concept of hypothetical jurisdiction....” (*Waleski v. Montgomery, McCracken, Walker & Rhoads, LLP*, 143 S. Ct. 2027 (2023)). The Ninth Circuit’s response to that guidance, as evidenced by this case, looks like ... rebellion.

Also, “sufficient opportunity should be given to check and revise proceedings tainted with mistake, fraud, or illegality.” (*In re Broderick’s Will*, 88 U.S. 503, 504 (1874)). For complaints against fraud, this Supreme Court wrote it “will

scrutinize the conduct of the parties.” (*Marshall v. Holmes*, 141 U.S. 589, 599 (1891)).

Similarly, the Ninth Circuit Court of Appeals wrote: “Whenever an allegation is made that an attorney has violated his moral and ethical responsibility, an important question of professional ethics is raised. It is the duty of the district court to examine the charge, since it is that court which is authorized to supervise the conduct of the members of its bar.” (*Gas-A-Tron of Arizona v. Union Oil Co. of California*, 534 F.2d 1322, 1324 (9th Cir. 1976)).

Here, medical records in the care and control of the Federal Bureau of Prisons were presented to the Coram Nobis court. Such medical records categorically identify Petitioner’s mother and co-defendant - LaWanda A. Johnson, Ph.D. – as being a “patient” as that term is defined in 42 C.F.R. § 2.11 (see 42 U.S.C. § 290dd-2(g)).

When applied to the conduct of attorneys for the United States, those medical records also prove such attorneys made a false and fraudulent averment of jurisdiction; and, made an unauthorized disclosure and/or use of substance abuse treatment records for criminal investigation and prosecution of a *patient* and, *the person holding the records*.

Contrary to Supreme Court and Ninth Circuit precedent, the Coram Nobis court did not scrutinize the conduct of the attorneys for the United States; and, the Ninth Circuit Court of Appeals did not pass on that fraud upon the court allegation.

This appeal follows.

STATEMENT OF THE CASE

Background

The Coram Nobis court relies on a past ruling, *viz.*- “More than 10 years ago, the Court, in ruling on a 28 USC § 2255 motion filed by Lawanda Johnson, found the Court’s jurisdiction in this case was ‘not premised on the federal regulations relating to substance abuse treatment, and the government’s failure to obtain that court order before its investigation—even if it had merit—is not a jurisdictional issue.’” (DC Dkt 909: p5; lns 13-17).

The Coram Nobis court, however, seems to disregard a bedrock legal principle: “A court cannot address particular arguments or facts not brought to its attention.” (*Holguin-Hernandez v. United States*, 589 U.S. 169, 176 (2020)- J. Alito, with whom J. Gorsuch joins, concurring).

Plainly, that ruling does not particularly decide: *i*) jurisdictional facts, *viz.*- the validity of Plaintiff’s Article III standing requirements; nor, *ii*) “satisfaction of an essential element of a claim for relief” (*Arbaugh v. Y&H Corp.*, 546 U.S. 500, 514 (2006)), *viz.*- LaWanda Johnson’s

“patient” status as determined by the Federal Bureau of Prisons. (*Cf.* Case No. 3:14-cv-06000-RBL: Document 11; Filed 06/11/15, p5(lns19-23) – p6(lns1-5)).

“Ordinarily, judges may resolve factual disputes in the course of determining whether subject matter jurisdiction is proper.” (*Perttu v. Richards*, 605 U.S. 460, 472 (2025)). “But ... a court may not do so when the factual disputes are intertwined with the merits.” (*Id.*).

“On the subject-matter jurisdiction/ingredient-of-claim-for-relief dichotomy, this Court and others have been less than meticulous. ‘Subject matter jurisdiction in federal-question cases is sometimes erroneously conflated with a plaintiff’s need and ability to prove the defendant bound by the federal law asserted as the predicate for relief—a merits-related determination.’” (*Arbaugh* @ 511).

The more than 10-year ruling, and now the Coram Nobis court, appear to obscure the jurisdictional question by failing to explicitly consider threshold facts, *viz.*- Plaintiff’s Article III standing requirements; and, the “patient” status of LaWanda A. Johnson, Ph.D., as determined by the Federal Bureau of Prisons.

A “drive-by jurisdictional ruling” occurs “when some threshold fact has not been established.” (*Wilkins v. United States*, 598 U.S. 152 (2023)). Hence, the Coram Nobis court appears to rely on “a textbook ‘drive-by jurisdictional ruling’ that *Arbaugh* held ‘should be accorded no precedential effect.’” (*Wilkins* @ 160–61).

Statutory / Regulatory History

Federal regulations (*i.e.*, 42 CFR Part 2), relating to substance abuse treatment “that require or forbid some action by the plaintiff almost invariably satisfy both the injury-in-fact and causation requirements. So in those cases, standing is usually easy to establish” (*Food & Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367, 382 (2024)); or, disprove.

The “*Confidentiality of records statute*” (42 USC § 290dd-2), is “replete with directions to litigants that serve as ... preconditions to suit.” (*MOAC Mall Holdings LLC v. Transform Holdco LLC*, 598 U.S. 288, 297 (2023)). Congress provides direction regarding “Use of Records in Criminal, Civil, or Administrative Contexts” (42 USC §290dd-2(c)); which, include procedures and criteria “to criminally investigate or

prosecute patients" (42 CFR §2.65), "or the person holding the records." (42 CFR §2.66).

Congress appears to "make compliance with such rules 'important and mandatory.'" (MOAC @ 297: *cf.*, 42 USC § 290dd-2(g)- "to prevent circumvention or evasion thereof, or to facilitate compliance therewith"). "In short, a requirement which is clearly made a condition precedent to the right to sue must be given effect...." (*Fleisher Eng'g & Constr. Co. v. U.S., for Use & Benefit of Hallenbeck*, 311 U.S. 15, 18 (1940)).

"The Administrative Procedure Act contemplates judicial review of agency action 'except to the extent that ... statutes preclude judicial review.'" (*Tooahnippah v. Hickel*, 397 U.S. 598, 605 (1970)). Relevant here is 18 USC § 3625; which, specifies that the procedural requirements outlined in sections 554, 555, and 701 through 706 of Title 5 of the United States Code—which are part of the Administrative Procedure Act ("APA")—do not apply to actions taken under the subchapter in which § 3625 is included.

This means the "*patient*" status of LaWanda A. Johnson, Ph.D., as determined by the Federal Bureau of Prisons, is not subject to judicial review. In other words: Because the Federal

Bureau of Prisons determined LaWanda A. Johnson, Ph.D., was a "*patient*," neither federal prosecutors; nor, the Court can lawfully determine otherwise.

Procedural History

"Steel Co. held, jurisdiction generally must precede merits in dispositional order." (*Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 577 (1999)). Ergo, a motion under Federal Rule of Criminal Procedure, Rule 12(b)(2), "may be made at any time while the case is pending." (FRCrP 12(b)(2)- in pertinent part).

As an affirmative defense, such Rule 12(b)(2)¹ motion should go to the *trier-of-fact* "due to 'the manner in which the federal system distributes trial functions between judge and jury,' making it 'unnecessary' to consider 'the constitutional question.'" (*Perttu* @ 468-69).

Similarly, the Ninth Circuit pointed out, "resolution of material factual disputes [are] for

¹ Supreme Court found it "inconceivable" that Congress did not intend to have Rule 12(b)(2) govern in § 2255 actions. (*US v. Frady*, 456 U.S. 152, 186 (1982)). "Section 2255 was intended to be in the nature of ... coram nobis." (*Id.* @ 182).

trier of fact to decide.” (*Bowen v. Energizer Holdings, Inc.*, 118 F.4th 1134 (9th Cir. 2024)).

In this case, the continued use of hypothetical jurisdiction, appears to be authorized by the Ninth Circuit Court of Appeals, where: 1) the Coram Nobis court was not instructed to perform a Federal Rule of Criminal Procedure, Rule 12(b)(2) *Gaskill*² analysis; and, 2) such Court conducted no *Bowen* hearing to resolve material disputes regarding the validity of Plaintiff’s Article III standing requirements, and LaWanda Johnson’s “*patient*” status.

By failing to exercise a “threshold duty to examine their own jurisdiction” (*Waleski @ 2028*), the lower Courts in this matter allow grave miscarriages of justice, *viz.- i)* conviction of two innocent people, through false and fraudulent averment of jurisdiction under the Constitution; and, *ii)* unauthorized disclosure and/or use of substance abuse treatment records for criminal investigation and prosecution of a *patient* and, the *person holding the records*.

² “[i]f a plaintiff’s allegations of jurisdictional facts are challenged by the defendant, the plaintiff bears the burden of supporting the allegations by competent proof. The bill must be dismissed if the evidence in the record does not support the allegations as to jurisdiction[]” (*Thomson v. Gaskill*, 315 U.S. 442, 446 (1942)).

Further, Plaintiffs do not appear to have come before the District and Appellate courts with clean hands: Medical records from the Federal Bureau of Prisons; when, applied to 18 USC § 3625, prove federal prosecutors misrepresented the *patient*³ status of Petitioner's co-defendant, and mother, LaWanda A. Johnson, Ph.D.

³ "Patient includes any individual who, after arrest on a criminal charge, is identified as an individual with a substance use disorder in order to determine that individual's eligibility to participate in a part 2 program. This definition includes both current and former patients." (42 C.F.R. § 2.11- in pertinent part).

REASONS FOR GRANTING THE WRIT

I. The First and Fundamental Question is that of Jurisdiction.

We "approach the question of the District Court's jurisdiction to entertain this suit as an open one calling for a canvass of the relevant jurisdictional considerations." (*Hagans v. Lavine*, 415 U.S. 528, 533 (1974)).

"It is well ingrained in the law that subject-matter jurisdiction can be called into question ... by challenging the accuracy of the jurisdictional facts alleged." (*Gwaltney of Smithfield, Ltd. v. Chesapeake Bay Found., Inc.*, 484 U.S. 49, 68 (1987)).

"Accordingly, if a plaintiff's allegations of jurisdictional facts are challenged by the defendant, the plaintiff bears the burden of supporting the allegations by competent proof." (*Thomson v. Gaskill*, 315 U.S. 442, 446 (1942)). "The bill must be dismissed if the evidence in the record does not support the allegations as to jurisdiction...." (*Id.*).

The "jurisdiction of a federal court must affirmatively and distinctly appear and cannot

be helped by presumptions or by argumentative inferences drawn from the pleadings.” (*Norton v. Larney*, 266 U.S. 511, 515–16 (1925)).

“Moreover, because it is not ‘sufficient that jurisdiction may be inferred argumentatively from averments in the pleadings,’ it follows that the necessary factual predicate may not be gleaned from the briefs and arguments themselves. This ‘first principle of federal jurisdiction’ applies ‘whether the case is at the trial stage or the appellate stage’” (*Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 547 (1986)- internal citations omitted).

Pursuant to the Equal Protection Clause of the U.S. Constitution, the first principle of federal jurisdiction announced in *Bender* (supra.), is just as plenary here. But, regarding this Article III standing challenge, the Coram Nobis court ruled Petitioner “raised this argument, and variants of this argument, numerous times. The Court has rejected the argument each time.” (DC Dkt 909: p5; lns 12-13).

Plainly, the Coram Nobis court appears to glean from the “arguments themselves” (supra.); which, violates the first principle of federal jurisdiction announced in *Bender*. Also, the Coram Nobis court appears to take, wrongly, the

intimation of federal prosecutors in argument – i.e., their presumptive misrepresentation of LaWanda A. Johnson, Ph.D.’s “*patient*” status – “as evidence of a fact not appearing on the record.” (*Hussman v. Durham*, 165 U.S. 144, 150 (1897)).

If Article III standing does not “appear by the allegations of the bill or complaint, the trial court, upon having its attention called to the defect or upon discovering it, must dismiss the case, unless the jurisdictional facts be supplied by amendment.” (*Id.*).

To reiterate: The plaintiff bears the burden of establishing Article III standing as of the time the plaintiff brought the lawsuit, and of maintaining it thereafter. (*Carney v. Adams*, 592 U.S. 53 (2020)).

Hain Celestial Grp., Inc. v. Palmquist, 607 U.S. 421 (2026), informs the public: “In most cases, federal appellate courts assess the district court’s jurisdiction based on ‘the state of facts that existed at the time of filing.’” (*Id.* @ 428).

In this case, the Ninth Circuit did not review the Coram Nobis court’s *Hain* assessment; because, the Coram Nobis court never did one. To reiterate, that Court appears to rely, wrongly, on a ‘drive by jurisdictional ruling’; and,

argument. (Supra.). Yet, what is most bewildering, is that the Ninth Circuit Court of Appeals failed to give the Coram Nobis court; and, the public, any meaningful guidance on the first principle of federal jurisdiction.

"[C]ourts of appeals, not just the Supreme Court, clarify the law through their opinions." (*Henderson v. United States*, 568 U.S. 266, 278 (2013)). Because the Ninth Circuit provided no meaningful guidance on the first principle of federal jurisdiction in this matter: "It would be helpful, therefore, for this Court to exercise its responsibility to provide such guidance." (*McDaniel v. Sanchez*, 448 U.S. 1318, 1322 (1980)).

II. Yield Not to Temptation

"If the history of this Court teaches one lesson as important as any, it is the regretful consequences of straying off the clear path of its jurisdiction to reach a desired result." (*Burns v. State of Ohio*, 360 U.S. 252, 260 (1959)- J. Frankfurter, whom J. Harlan joins, dissenting). "This Court cannot justify a yielding to the temptation to cut corners in disregard of what the Constitution and Congress command." (*Id.*).

The Coram Nobis Court appears to have cut a corner; i.e., it did not determine Petitioner's Article III standing challenge by conducting a *Gaskill*, burden-shifting, Rule 12(b)(2) analysis. Instead, the Government was allowed to escape proving the validity of its jurisdictional factors; even though, "the plaintiff bears the burden of supporting the allegations by competent proof." (*Gaskill* @ 446).

Also, it is troubling that the Coram Nobis court did not construe the medical records acquired from the Federal Bureau of Prisons as evidencing "grave injustice." (Dkt 909: p5; ln19). Recall, under Public Law: "To qualify for residential substance abuse treatment, an inmate must be 'determined by the Bureau of Prisons to have a substance abuse problem'... 18 USC §§ 3621(e)(5)(B)(i), (ii)." (*Lopez v. Davis*, 531 U.S. 230, 236 n.2 (2001)).

The medical records show the Federal Bureau of Prisons determined LaWanda A. Johnson, Ph.D., had such problem; and thereby, was a "patient," before the Superseding Indictment (DC Dkt 80), was filed. Thus, the medical records prove, categorically, there was "an identity between the 'jurisdictional' issues and certain issues on the merits." (*Gulf Oil Corp. v. Copp Paving Co.*, 419 U.S. 186, 203 (1974)).

Under *Hain*, the inferior courts were required to "assess the district court's jurisdiction based on 'the state of facts that existed at the time of filing.'" (*Hain* @ 428). But those courts appear to have misapplied or failed to apply *Hain* to the medical records. Apparently, no court "reserv[ed] the jurisdictional issues until a hearing..." (*Gulf* @ 203), due to an abuse of discretion.

Cutting corners; i.e., not compelling the Government to support its factual jurisdictional allegations by competent proof, has created a coram non-judice risk. Without a valid disclosure / use ORDER under 42 USC § 290dd-2(b)(2)(C), neither the Coram Nobis court, nor the Trial court were legally constituted. (42 USC § 290dd-2(c); &, 42 CFR §§ 2.65 and 2.66(d)).

This is because, a lawfully authorized "Attorney for the government" (FRCrP 1(b)(1)), must ascertain a valid disclosure/use ORDER before such attorney may disclose/use substance abuse treatment records to criminally investigate or prosecute a "*patient*" or "*the person holding the records.*" (42 USC § 290dd-2(c); &, 42 CFR §§ 2.65 and 2.66(d)).

"Absent a proper representative of the Government as a petitioner in this criminal prosecution, jurisdiction is lacking." (*United States v. Providence J. Co.*, 485 U.S. 693, 708 (1988)). "Unless the court was legally constituted, the trial and condemnation were nothing, and were absolutely void." (*Carrington v. Merchants' Ins. Co.*, 33 U.S. 495, 516 (1834)).

III. The Imperative of Judicial Integrity.

"[T]he public fears arbitrary prosecution." (*Marinello v. U.S.*, 584 U.S. 1, 11 (2018)). If a federal statute bars a given prosecution, courts "must give effect to the clear expression of congressional will that in such a case 'no person shall be prosecuted, tried, or punished.'" (*Toussie v. U.S.*, 397 U.S. 112, 124 (1970)).

This case involves a deliberate effort of the prosecutor to circumvent or evade (*cf.* 42 USC § 290dd-2(g)), conditions precedent to the statutory liability published at 42 USC § 290dd-2(c). Without an ORDER under 42 USC § 290dd-2(b)(2)(C), such liability prohibits, *interalia*, the use and/or disclosure of "records" to criminally investigate or prosecute a "patient" or "the person holding the records." (42 CFR §§ 2.65 & 2.66).

Acts which degrade the judicial system include "fraud, misleading and lying to the Court." (*Chambers v. NASCO, Inc.*, 501 U.S. 32, 41-42 (1991)). Here, the record contains irrefragable evidence of actual fraud-in-fact, *viz.*- prosecutors knowingly misled the Court regarding the "patient" status of LaWanda A. Johnson, Ph.D.

"[A]n attorney's ethical duty to advance the interests of his client is limited by an equally solemn duty to comply with the law and standards of professional conduct; it specifically ensures that the client may not use false evidence." (*Nix v. Whiteside*, 475 U.S. 157, 168-69 (1986)). Importantly, an attorney has a "special duty ... to prevent and disclose frauds upon the court." (*Id.*).

Prosecutors in this case appear to have forsaken that special duty. "The prosecution almost certainly had access to [LaWanda Johnson's] medical file" (*Glossip v. Oklahoma*, 604 U.S. 226, 247 (2025)); because, they accepted her medical records from Federal Bureau of Prisons attorney Margaret Ogden. (DC Dkt 58).

The Bureau's medical records for LaWanda A. Johnson, Ph.D., show she is a "patient." Despite their knowledge of this truth, prosecutors introduced the willful falsehood that Ms.

Johnson was not a "patient." Such "willful falsehood imports fraud." (*Lord v. Goddard*, 54 U.S. 198, 209 (1851)).

Prosecutor behavior in this case apparently "involves a corruption of the truth-seeking function of the trial process." (*U.S. v. Bagley*, 473 U.S. 667, 680 (1985)). The "historic power of equity to set aside fraudulently begotten judgments, is necessary to the integrity of the courts, for tampering with the administration of justice in this manner involves far more than an injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public." (*Chambers* @ 44).

"If there be any one ground upon which a Court of Equity affords relief, it is an allegation of fraud, proved or admitted." (*Atkins v. N. & J. Dick & Co.*, 39 U.S. 114, 118 (1840)). Yet, in this case, neither the Coram Nobis court, nor the Ninth Circuit Court of Appeals appear to have performed any meaningful scrutiny of what the record demonstrates to be rogue prosecutors.

Petitioner's conviction looks like it was knowingly obtained through use of false evidence: Prosecutor's willful misrepresentation of LaWanda A. Johnson, Ph.D.'s "patient" status.

Under *Glossip*, “remand for vacatur of conviction and new trial [i]s warranted.” (*Id.* @ 226).

CONCLUSION

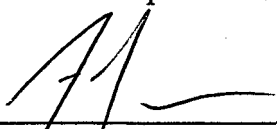
The plaintiff is “the master” of the complaint; and, controls what law it will rely upon to bring a suit. (*Royal Canin USA, Inc. v. Wulfschleger*, 604 U.S. 22, 35 (2025)). Here, the United States brought a criminal prosecution by filing an ORDER arising under 42 CFR § 2.66; and, the Confidentiality of records statute. (42 USC § 290dd-2).

Commensurate with the power to determine which substantive claims to bring against a defendant, is a requirement to show Article III standing; and, at all “successive stages of the litigation.” (*Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992)).

The United States has not shown, and cannot show Article III standing in this case, *viz.*- the record contains no ORDER under 42 CFR § 2.65. “Federal courts are all of limited jurisdiction, and their proceedings are erroneous, if the jurisdiction be not shown upon them.” (*Hain* @ 428).

Assumed jurisdiction in the Ninth Circuit
must be stopped. This Court's help is needed.

Respectfully,
August 14, 2026



Antoine D. Johnson, MD