

No. _____

**In The
Supreme Court of the United States**

In re JAMES F. SMYTHE,
Petitioner.

**PETITION FOR
AN EXTRAORDINARY
WRIT OF HABEAS CORPUS**

APPENDIX A

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CONSTITUTIONAL AND STATUTORY PROVISIONS

U.S. Const. Art. I, § 9, Cl. 2

The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

U.S. Const. Art. III, § 2, Cl. 1

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, 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.

U.S. Const. Art. III, § 2, Cl. 2

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.

First Amendment

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Fourth Amendment

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Fifth Amendment

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Sixth Amendment

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Eighth Amendment

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

5 U.S.C. §§ 701-706

§701. Application; definitions

(a) This chapter applies, according to the provisions thereof, except to the extent that—

(1) statutes preclude judicial review; or

(2) agency action is committed to agency discretion by law.

(b) For the purpose of this chapter—

(1) "agency" means each authority of the Government of the United States, whether or not it is within or subject to review by another agency, but does not include—

(A) the Congress;

(B) the courts of the United States;

(C) the governments of the territories or possessions of the United States;

(D) the government of the District of Columbia;

(E) agencies composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them;

(F) courts martial and military commissions;

(G) military authority exercised in the field in time of war or in occupied territory; or

(H) functions conferred by sections 1738, 1739, 1743, and 1744 of title 12; subchapter II of chapter 471 of title 49; or sections 1884, 1891–1902, and former section 1641(b)(2), of title 50, appendix; 1 and

(2) "person", "rule", "order", "license", "sanction", "relief", and "agency action" have the meanings given them by section 551 of this title.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 392; Pub. L. 103–272, §5(a), July 5, 1994, 108 Stat. 1373; Pub. L. 111–350, §5(a)(3), Jan. 4, 2011, 124 Stat. 3841.)

§702. Right of review

A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof. An action in a court of the United States seeking relief other than money damages and stating a claim that an agency or an officer or employee thereof acted or failed to act in an official capacity or under color of legal authority shall not be dismissed nor relief therein be denied on the ground that it is against the United States or that the United States

is an indispensable party. The United States may be named as a defendant in any such action, and a judgment or decree may be entered against the United States: Provided, That any mandatory or injunctive decree shall specify the Federal officer or officers (by name or by title), and their successors in office, personally responsible for compliance. Nothing herein (1) affects other limitations on judicial review or the power or duty of the court to dismiss any action or deny relief on any other appropriate legal or equitable ground; or (2) confers authority to grant relief if any other statute that grants consent to suit expressly or impliedly forbids the relief which is sought.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 392; Pub. L. 94-574, §1, Oct. 21, 1976, 90 Stat. 2721.)

§703. Form and venue of proceeding

The form of proceeding for judicial review is the special statutory review proceeding relevant to the subject matter in a court specified by statute or, in the absence or inadequacy thereof, any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus, in a court of competent jurisdiction. If no special statutory review proceeding is applicable, the action for judicial review may be brought against the United States, the agency by its official title, or the appropriate officer. Except to the extent that prior, adequate, and exclusive opportunity for judicial review is provided by law, agency action is subject to judicial review in civil or criminal proceedings for judicial enforcement.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 392; Pub. L. 94-574, §1, Oct. 21, 1976, 90 Stat. 2721.)

§704. Actions reviewable

Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review. A preliminary, procedural, or intermediate agency action or ruling not directly reviewable is subject to review on the review of the final agency action. Except as otherwise expressly required by statute, agency action otherwise final is final for the

purposes of this section whether or not there has been presented or determined an application for a declaratory order, for any form of reconsideration, or, unless the agency otherwise requires by rule and provides that the action meanwhile is inoperative, for an appeal to superior agency authority.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 392.)

§705. Relief pending review

When an agency finds that justice so requires, it may postpone the effective date of action taken by it, pending judicial review. On such conditions as may be required and to the extent necessary to prevent irreparable injury, the reviewing court, including the court to which a case may be taken on appeal from or on application for certiorari or other writ to a reviewing court, may issue all necessary and appropriate process to postpone the effective date of an agency action or to preserve status or rights pending conclusion of the review proceedings.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 393.)

§706. Scope of review

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall—

- (1) compel agency action unlawfully withheld or unreasonably delayed; and
- (2) hold unlawful and set aside agency action, findings, and conclusions found to be—
 - (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
 - (B) contrary to constitutional right, power, privilege, or immunity;
 - (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;
 - (D) without observance of procedure required by law;

(E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or

(F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 393.)

18 U.S.C. § 241

If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or

If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured—

They shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill, they shall be fined under this title or imprisoned for any term of years or for life, or both, or may be sentenced to death.

(June 25, 1948, ch. 645, 62 Stat. 696; Pub. L. 90-284, title I, § 103(a), Apr. 11, 1968, 82 Stat. 75; Pub. L. 100-690, title VII, § 7018(a), (b)(1), Nov. 18, 1988, 102 Stat. 4396; Pub. L. 103-322, title VI, § 60006(a), title XXXII, §§ 320103(a), 320201(a), title XXXIII, § 330016(1)(L), Sept. 13, 1994, 108 Stat. 1970, 2109, 2113, 2147; Pub. L. 104-294, title VI, §§ 604(b)(14)(A), 607(a), Oct. 11, 1996, 110 Stat. 3507, 3511.)

18 U.S.C. § 1201

(a) Whoever unlawfully seizes, confines, inveigles, decoys, kidnaps, abducts, or carries away and holds for ransom or reward or otherwise any person, except in the case of a minor by the parent thereof, when—

(1) the person is willfully transported in interstate or foreign commerce, regardless of whether the person was alive when transported across a State boundary, or the offender travels in interstate or foreign commerce or uses the mail or any means, facility, or instrumentality of interstate or foreign commerce in committing or in furtherance of the commission of the offense;

(2) any such act against the person is done within the special maritime and territorial jurisdiction of the United States;

(3) any such act against the person is done within the special aircraft jurisdiction of the United States as defined in section 46501 of title 49;

(4) the person is a foreign official, an internationally protected person, or an official guest as those terms are defined in section 1116(b) of this title; or

(5) the person is among those officers and employees described in section 1114 of this title and any such act against the person is done while the person is engaged in, or on account of, the performance of official duties, shall be punished by imprisonment for any term of years or for life and, if the death of any person results, shall be punished by death or life imprisonment.

(b) With respect to subsection (a)(1), above, the failure to release the victim within twenty-four hours after he shall have been unlawfully seized, confined, inveigled, decoyed, kidnapped, abducted, or carried away shall create a rebuttable presumption that such person has been transported in interstate or foreign commerce. Notwithstanding the preceding sentence, the fact that the presumption under this section has not yet taken effect does not preclude a Federal investigation of a possible violation of this section before the 24-hour period has ended.

(c) If two or more persons conspire to violate this section and one or more of such persons do any overt act to effect the object of the conspiracy, each shall be punished by imprisonment for any term of years or for life.

(d) Whoever attempts to violate subsection (a) shall be punished by imprisonment for not more than twenty years.

(e) If the victim of an offense under subsection (a) is an internationally protected person outside the United States, the United States may exercise jurisdiction over the offense if (1) the victim is a representative, officer, employee, or agent of the United States, (2) an offender is a national of the United States, or (3) an offender is afterwards found in the United States. As used in this subsection, the United States includes all areas under the jurisdiction of the United States including any of the places within the provisions of sections 5 and 7 of this title and section 46501(2) of title 49. For purposes of this subsection, the term "national of the United States" has the meaning prescribed in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)).

(f) In the course of enforcement of subsection (a)(4) and any other sections prohibiting a conspiracy or attempt to violate subsection (a)(4), the Attorney General may request assistance from any Federal, State, or local agency, including the Army, Navy, and Air Force, any statute, rule, or regulation to the contrary notwithstanding.

(g) Special Rule for Certain Offenses Involving Children.—

(1) To whom applicable.—If—

(A) the victim of an offense under this section has not attained the age of eighteen years; and

(B) the offender—

(i) has attained such age; and

(ii) is not—

(I) a parent;

(II) a grandparent;

(III) a brother;

(IV) a sister;

(V) an aunt;

(VI) an uncle; or

(VII) an individual having legal custody of the victim;

the sentence under this section for such offense shall include imprisonment for not less than 20 years.

[(2) Repealed. Pub. L. 108-21, title I, § 104(b), Apr. 30, 2003, 117 Stat. 653.]

(h) As used in this section, the term “parent” does not include a person whose parental rights with respect to the victim of an offense under this section have been terminated by a final court order. (June 25, 1948, ch. 645, 62 Stat. 760; Aug. 6, 1956, ch. 971, 70 Stat. 1043; Pub. L. 92-539, title II, § 201, Oct. 24, 1972, 86 Stat. 1072; Pub. L. 94-467, § 4, Oct. 8, 1976, 90 Stat. 1998; Pub. L. 95-163, § 17(b)(1), Nov. 9, 1977, 91 Stat. 1286; Pub. L. 95-504, § 2(b), Oct. 24, 1978, 92 Stat. 1705; Pub. L. 98-473, title II, § 1007, Oct. 12, 1984, 98 Stat. 2139; Pub. L. 99-646, §§ 36, 37(b), Nov. 10, 1986, 100 Stat. 3599; Pub. L. 101-647, title IV, § 401, title XXXV, § 3538, Nov. 29, 1990, 104 Stat. 4819, 4925; Pub. L. 103-272, § 5(e)(2), (8), July 5, 1994, 108 Stat. 1373, 1374; Pub. L. 103-322, title VI, § 60003(a)(6), title XXXII, §§ 320903(b), 320924, title XXXIII, § 330021, Sept. 13, 1994, 108 Stat. 1969, 2124, 2131, 2150; Pub. L. 104-132, title VII, § 721(f), Apr. 24, 1996, 110 Stat. 1299; Pub. L. 105-314, title VII, § 702, Oct. 30, 1998, 112 Stat. 2987; Pub. L. 108-21, title I, § 104(b), Apr. 30, 2003, 117 Stat. 653; Pub. L. 109-248, title II, § 213, July 27, 2006, 120 Stat. 616.)

18 U.S.C. § 2236

Whoever, being an officer, agent, or employee of the United States or any department or agency thereof, engaged in the enforcement of any law of the United States, searches any private dwelling used and occupied as such dwelling without a warrant directing such search, or maliciously and without reasonable cause searches any other building or property without a search warrant, shall be fined under this title for a first offense; and, for a subsequent offense, shall be fined under this title or imprisoned not more than one year, or both.

This section shall not apply to any person—

(a) serving a warrant of arrest; or

(b) arresting or attempting to arrest a person committing or attempting to commit an offense in his presence, or who has

committed or is suspected on reasonable grounds of having committed a felony; or

(c) making a search at the request or invitation or with the consent of the occupant of the premises.

(June 25, 1948, ch. 645, 62 Stat. 803; Pub. L. 104-294, title VI, § 601(a)(8), Oct. 11, 1996, 110 Stat. 3498; Pub. L. 107-273, div. B, title IV, § 4002(d)(1)(C)(iii), Nov. 2, 2002, 116 Stat. 1809.)

18 U.S.C. §§ 2510-2521

As used in this chapter—

(1) “wire communication” means any aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception (including the use of such connection in a switching station) furnished or operated by any person engaged in providing or operating such facilities for the transmission of interstate or foreign communications or communications affecting interstate or foreign commerce;

(2) “oral communication” means any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation, but such term does not include any electronic communication;

(3) “State” means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States;

(4) “intercept” means the aural or other acquisition of the contents of any wire, electronic, or oral communication through the use of any electronic, mechanical, or other device.[1]

(5) "electronic, mechanical, or other device" means any device or apparatus which can be used to intercept a wire, oral, or electronic communication other than—

(a) any telephone or telegraph instrument, equipment or facility, or any component thereof, (i) furnished to the subscriber or user by a provider of wire or electronic communication service in the ordinary course of its business and being used by the subscriber or user in the ordinary course of its business or furnished by such subscriber or user for connection to the facilities of such service and used in the ordinary course of its business; or (ii) being used by a provider of wire or electronic communication service in the ordinary course of its business, or by an investigative or law enforcement officer in the ordinary course of his duties;

(b) a hearing aid or similar device being used to correct subnormal hearing to not better than normal;

(6) "person" means any employee, or agent of the United States or any State or political subdivision thereof, and any individual, partnership, association, joint stock company, trust, or corporation;

(7) "Investigative or law enforcement officer" means any officer of the United States or of a State or political subdivision thereof, who is empowered by law to conduct investigations of or to make arrests for offenses enumerated in this chapter, and any attorney authorized by law to prosecute or participate in the prosecution of such offenses;

(8) "contents", when used with respect to any wire, oral, or electronic communication, includes any information concerning the substance, purport, or meaning of that communication;

(9) "Judge of competent jurisdiction" means—

(a) a judge of a United States district court or a United States court of appeals; and

(b) a judge of any court of general criminal jurisdiction of a State who is authorized by a statute of that State to enter orders authorizing interceptions of wire, oral, or electronic communications;

(10) "communication common carrier" has the meaning given that term in section 3 of the Communications Act of 1934;

(11) "aggrieved person" means a person who was a party to any intercepted wire, oral, or electronic communication or a person against whom the interception was directed;

(12) "electronic communication" means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic or photooptical system that affects interstate or foreign commerce, but does not include—

(A) any wire or oral communication;

(B) any communication made through a tone-only paging device;

(C) any communication from a tracking device (as defined in section 3117 of this title); or

(D) electronic funds transfer information stored by a financial institution in a communications system used for the electronic storage and transfer of funds;

(13) "user" means any person or entity who—

(A) uses an electronic communication service; and

(B) is duly authorized by the provider of such service to engage in such use;

(14) "electronic communications system" means any wire, radio, electromagnetic, photooptical or photoelectronic facilities for the transmission of wire or electronic communications, and any computer facilities or related electronic equipment for the electronic storage of such communications;

(15) "electronic communication service" means any service which provides to users thereof the ability to send or receive wire or electronic communications;

(16) "readily accessible to the general public" means, with respect to a radio communication, that such communication is not—

(A) scrambled or encrypted;

(B) transmitted using modulation techniques whose essential parameters have been withheld from the public with the intention of preserving the privacy of such communication;

(C) carried on a subcarrier or other signal subsidiary to a radio transmission;

(D) transmitted over a communication system provided by a common carrier, unless the communication is a tone only paging system communication; or

(E) transmitted on frequencies allocated under part 25, subpart D, E, or F of part 74, or part 94 of the Rules of the Federal Communications Commission, unless, in the case of a communication transmitted on a frequency allocated under part 74 that is not exclusively allocated to broadcast auxiliary services, the communication is a two-way voice communication by radio;

(17) "electronic storage" means—

(A) any temporary, intermediate storage of a wire or electronic communication incidental to the electronic transmission thereof; and

(B) any storage of such communication by an electronic communication service for purposes of backup protection of such communication;

(18) "aural transfer" means a transfer containing the human voice at any point between and including the point of origin and the point of reception;

(19) "foreign intelligence information", for purposes of section 2517(6) of this title, means—

(A) information, whether or not concerning a United States person, that relates to the ability of the United States to protect against—

(i) actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power;

(ii) sabotage or international terrorism by a foreign power or an agent of a foreign power; or

(iii) clandestine intelligence activities by an intelligence service or network of a foreign power or by an agent of a foreign power; or

(B) information, whether or not concerning a United States person, with respect to a foreign power or foreign territory that relates to—

- (i) the national defense or the security of the United States; or
- (ii) the conduct of the foreign affairs of the United States;

(20) “protected computer” has the meaning set forth in section 1030; and

(21) “computer trespasser”—

(A) means a person who accesses a protected computer without authorization and thus has no reasonable expectation of privacy in any communication transmitted to, through, or from the protected computer; and

(B) does not include a person known by the owner or operator of the protected computer to have an existing contractual relationship with the owner or operator of the protected computer for access to all or part of the protected computer.

(Added Pub. L. 90–351, title III, § 802, June 19, 1968, 82 Stat. 212; amended Pub. L. 99–508, title I, § 101(a), (c)(1)(A), (4), Oct. 21, 1986, 100 Stat. 1848, 1851; Pub. L. 103–414, title II, §§ 202(a), 203, Oct. 25, 1994, 108 Stat. 4290, 4291; Pub. L. 104–132, title VII, § 731, Apr. 24, 1996, 110 Stat. 1303; Pub. L. 107–56, title II, §§ 203(b)(2), 209(1), 217(1), Oct. 26, 2001, 115 Stat. 280, 283, 290; Pub. L. 107–108, title III, § 314(b), Dec. 28, 2001, 115 Stat. 1402; Pub. L. 107–273, div. B, title IV, § 4002(e)(10), Nov. 2, 2002, 116 Stat. 1810.)

18 U.S.C. § 3142(c)

(c) Release on Conditions.—

(1) If the judicial officer determines that the release described in subsection (b) of this section will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community, such judicial officer shall order the pretrial release of the person—

(A) subject to the condition that the person not commit a Federal, State, or local crime during the period of release and subject to

the condition that the person cooperate in the collection of a DNA sample from the person if the collection of such a sample is authorized pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135a); 1 and

(B) subject to the least restrictive further condition, or combination of conditions, that such judicial officer determines will reasonably assure the appearance of the person as required and the safety of any other person and the community, which may include the condition that the person—

- (i) remain in the custody of a designated person, who agrees to assume supervision and to report any violation of a release condition to the court, if the designated person is able reasonably to assure the judicial officer that the person will appear as required and will not pose a danger to the safety of any other person or the community;
- (ii) maintain employment, or, if unemployed, actively seek employment;
- (iii) maintain or commence an educational program;
- (iv) abide by specified restrictions on personal associations, place of abode, or travel;
- (v) avoid all contact with an alleged victim of the crime and with a potential witness who may testify concerning the offense;
- (vi) report on a regular basis to a designated law enforcement agency, pretrial services agency, or other agency;
- (vii) comply with a specified curfew;
- (viii) refrain from possessing a firearm, destructive device, or other dangerous weapon;
- (ix) refrain from excessive use of alcohol, or any use of a narcotic drug or other controlled substance, as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802), without a prescription by a licensed medical practitioner;
- (x) undergo available medical, psychological, or psychiatric treatment, including treatment for drug or alcohol dependency, and remain in a specified institution if required for that purpose;
- (xi) execute an agreement to forfeit upon failing to appear as required, property of a sufficient unencumbered value, including money, as is reasonably necessary to assure the

appearance of the person as required, and shall provide the court with proof of ownership and the value of the property along with information regarding existing encumbrances as the judicial office may require;

(xii) execute a bail bond with solvent sureties; who will execute an agreement to forfeit in such amount as is reasonably necessary to assure appearance of the person as required and shall provide the court with information regarding the value of the assets and liabilities of the surety if other than an approved surety and the nature and extent of encumbrances against the surety's property; such surety shall have a net worth which shall have sufficient unencumbered value to pay the amount of the bail bond;

(xiii) return to custody for specified hours following release for employment, schooling, or other limited purposes; and

(xiv) satisfy any other condition that is reasonably necessary to assure the appearance of the person as required and to assure the safety of any other person and the community.

In any case that involves a minor victim under section 1201, 1591, 2241, 2242, 2244(a)(1), 2245, 2251, 2251A, 2252(a)(1), 2252(a)(2), 2252(a)(3), 2252A(a)(1), 2252A(a)(2), 2252A(a)(3), 2252A(a)(4), 2260, 2421, 2422, 2423, or 2425 of this title, or a failure to register offense under section 2250 of this title, any release order shall contain, at a minimum, a condition of electronic monitoring and each of the conditions specified at subparagraphs (iv), (v), (vi), (vii), and (viii).

(2) The judicial officer may not impose a financial condition that results in the pretrial detention of the person.

(3) The judicial officer may at any time amend the order to impose additional or different conditions of release.

18 U.S.C. § 4001

(a) No citizen shall be imprisoned or otherwise detained by the United States except pursuant to an Act of Congress.

(b)

(1) The control and management of Federal penal and correctional institutions, except military or naval institutions, shall be vested in the Attorney General, who shall promulgate rules for the government thereof, and appoint all necessary officers and employees in accordance with the civil-service laws, the Classification Act, as amended, and the applicable regulations.

(2) The Attorney General may establish and conduct industries, farms, and other activities and classify the inmates; and provide for their proper government, discipline, treatment, care, rehabilitation, and reformation.

28 U.S.C. § 1361

The district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff.

28 U.S.C. §§ 1390-1413

28 U.S.C. § 1390. Scope

(a) Venue Defined.—

As used in this chapter, the term “venue” refers to the geographic specification of the proper court or courts for the litigation of a civil action that is within the subject-matter jurisdiction of the district courts in general, and does not refer to any grant or restriction of subject-matter jurisdiction providing for a civil action to be adjudicated only by the district court for a particular district or districts.

(b) Exclusion of Certain Cases.—

Except as otherwise provided by law, this chapter shall not govern the venue of a civil action in which the district court exercises the jurisdiction conferred by section 1333, except that such civil actions may be transferred between district courts as provided in this chapter.

(c) Clarification Regarding Cases Removed From State Courts.—

This chapter shall not determine the district court to which a civil action pending in a State court may be removed, but shall govern the transfer of an action so removed as between districts and divisions of the United States district courts.

28 U.S.C. § 1404. Change of venue

(a) For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought or to any district or division to which all parties have consented.

(b) Upon motion, consent or stipulation of all parties, any action, suit or proceeding of a civil nature or any motion or hearing thereof, may be transferred, in the discretion of the court, from the division in which pending to any other division in the same district. Transfer of proceedings in rem brought by or on behalf of the United States may be transferred under this section without the consent of the United States where all other parties request transfer.

(c) A district court may order any civil action to be tried at any place within the division in which it is pending.

(d) Transfers from a district court of the United States to the District Court of Guam, the District Court for the Northern Mariana Islands, or the District Court of the Virgin Islands shall not be permitted under this section. As otherwise used in this section, the term “district court” includes the District Court of Guam, the District Court for the Northern Mariana Islands, and the District Court of the Virgin Islands, and the term “district” includes the territorial jurisdiction of each such court.

(June 25, 1948, ch. 646, 62 Stat. 937; Pub. L. 87–845, § 9, Oct. 18, 1962, 76A Stat. 699; Pub. L. 104–317, title VI, § 610(a), Oct. 19, 1996, 110 Stat. 3860; Pub. L. 112–63, title II, § 204, Dec. 7, 2011, 125 Stat. 764.)

28 U.S.C. § 1746

Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form:

(1) If executed without the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)".

(2) If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)".

(Added Pub. L. 94-550, § 1(a), Oct. 18, 1976, 90 Stat. 2534.)

28 U.S.C. §§ 2241-2255

§2241. Power to grant writ

(a) Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions. The order of a circuit judge shall be entered in the records of the district court of the district wherein the restraint complained of is had.

(b) The Supreme Court, any justice thereof, and any circuit judge may decline to entertain an application for a writ of habeas corpus and may transfer the application for hearing and determination to the district court having jurisdiction to entertain it.

- (c) The writ of habeas corpus shall not extend to a prisoner unless—
- (1) He is in custody under or by color of the authority of the United States or is committed for trial before some court thereof; or
 - (2) He is in custody for an act done or omitted in pursuance of an Act of Congress, or an order, process, judgment or decree of a court or judge of the United States; or
 - (3) He is in custody in violation of the Constitution or laws or treaties of the United States; or
 - (4) He, being a citizen of a foreign state and domiciled therein is in custody for an act done or omitted under any alleged right, title, authority, privilege, protection, or exemption claimed under the commission, order or sanction of any foreign state, or under color thereof, the validity and effect of which depend upon the law of nations; or
 - (5) It is necessary to bring him into court to testify or for trial.

(d) Where an application for a writ of habeas corpus is made by a person in custody under the judgment and sentence of a State court of a State which contains two or more Federal judicial districts, the application may be filed in the district court for the district wherein such person is in custody or in the district court for the district within which the State court was held which convicted and sentenced him and each of such district courts shall have concurrent jurisdiction to entertain the application. The district court for the district wherein such an application is filed in the exercise of its discretion and in furtherance of justice may transfer the application to the other district court for hearing and determination.

- (e)
- (1) No court, justice, or judge shall have jurisdiction to hear or consider an application for a writ of habeas corpus filed by or on behalf of an alien detained by the United States who has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination.
 - (2) Except as provided in paragraphs (2) and (3) of section 1005(e) of the Detainee Treatment Act of 2005 (10 U.S.C. 801 note), no court, justice, or judge shall have jurisdiction to hear or consider any other action against the United States or its agents relating

to any aspect of the detention, transfer, treatment, trial, or conditions of confinement of an alien who is or was detained by the United States and has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination.

(June 25, 1948, ch. 646, 62 Stat. 964; May 24, 1949, ch. 139, § 112, 63 Stat. 105; Pub. L. 89-590, Sept. 19, 1966, 80 Stat. 811; Pub. L. 109-148, div. A, title X, § 1005(e)(1), Dec. 30, 2005, 119 Stat. 2741; Pub. L. 109-163, div. A, title XIV, § 1405(e)(1), Jan. 6, 2006, 119 Stat. 3477; Pub. L. 109-366, § 7(a), Oct. 17, 2006, 120 Stat. 2635; Pub. L. 110-181, div. A, title X, § 1063(f), Jan. 28, 2008, 122 Stat. 323.)

§2254. State custody; remedies in Federal courts

(a) The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.

(b)

(1) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that—

(A) the applicant has exhausted the remedies available in the courts of the State; or

(B)

(i) there is an absence of available State corrective process; or

(ii) circumstances exist that render such process ineffective to protect the rights of the applicant.

(2) An application for a writ of habeas corpus may be denied on the merits, notwithstanding the failure of the applicant to exhaust the remedies available in the courts of the State.

(3) A State shall not be deemed to have waived the exhaustion requirement or be estopped from reliance upon the requirement unless the State, through counsel, expressly waives the requirement.

(c) An applicant shall not be deemed to have exhausted the remedies available in the courts of the State, within the meaning of this section, if he has the right under the law of the State to raise, by any available procedure, the question presented.

(d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim—

- (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or
- (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

(e)

(1) In a proceeding instituted by an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court, a determination of a factual issue made by a State court shall be presumed to be correct. The applicant shall have the burden of rebutting the presumption of correctness by clear and convincing evidence.

(2) If the applicant has failed to develop the factual basis of a claim in State court proceedings, the court shall not hold an evidentiary hearing on the claim unless the applicant shows that—

(A) the claim relies on—

- (i) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or
- (ii) a factual predicate that could not have been previously discovered through the exercise of due diligence; and

(B) the facts underlying the claim would be sufficient to establish by clear and convincing evidence that but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

(f) If the applicant challenges the sufficiency of the evidence adduced in such State court proceeding to support the State court's determination of a factual issue made therein, the applicant, if able, shall produce that part of the record pertinent to a determination of the sufficiency of the evidence to support such determination. If the applicant, because of indigency or other reason is unable to produce such part of the record, then the State shall produce such part of the record and the Federal court shall direct the State to do so by order directed to an appropriate State official. If the State cannot provide such pertinent part of the record, then the court shall determine under the existing facts and circumstances what weight shall be given to the State court's factual determination.

(g) A copy of the official records of the State court, duly certified by the clerk of such court to be a true and correct copy of a finding, judicial opinion, or other reliable written indicia showing such a factual determination by the State court shall be admissible in the Federal court proceeding.

(h) Except as provided in section 408 of the Controlled Substances Act, in all proceedings brought under this section, and any subsequent proceedings on review, the court may appoint counsel for an applicant who is or becomes financially unable to afford counsel, except as provided by a rule promulgated by the Supreme Court pursuant to statutory authority. Appointment of counsel under this section shall be governed by section 3006A of title 18.

(i) The ineffectiveness or incompetence of counsel during Federal or State collateral post-conviction proceedings shall not be a ground for relief in a proceeding arising under section 2254.

(June 25, 1948, ch. 646, 62 Stat. 967; Pub. L. 89-711, § 2, Nov. 2, 1966, 80 Stat. 1105; Pub. L. 104-132, title I, § 104, Apr. 24, 1996, 110 Stat. 1218.)

§2255. Federal custody; remedies on motion attacking sentence

(a) A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of

the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

(b) Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the United States attorney, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto. If the court finds that the judgment was rendered without jurisdiction, or that the sentence imposed was not authorized by law or otherwise open to collateral attack, or that there has been such a denial or infringement of the constitutional rights of the prisoner as to render the judgment vulnerable to collateral attack, the court shall vacate and set the judgment aside and shall discharge the prisoner or resentence him or grant a new trial or correct the sentence as may appear appropriate.

(c) A court may entertain and determine such motion without requiring the production of the prisoner at the hearing.

(d) An appeal may be taken to the court of appeals from the order entered on the motion as from a final judgment on application for a writ of habeas corpus.

(e) An application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section, shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court which sentenced him, or that such court has denied him relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention.

(f) A 1-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of—

(1) the date on which the judgment of conviction becomes final;

(2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making a motion by such governmental action;

(3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

(g) Except as provided in section 408 of the Controlled Substances Act, in all proceedings brought under this section, and any subsequent proceedings on review, the court may appoint counsel, except as provided by a rule promulgated by the Supreme Court pursuant to statutory authority. Appointment of counsel under this section shall be governed by section 3006A of title 18.

(h) A second or successive motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals to contain—

(1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or

(2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

(June 25, 1948, ch. 646, 62 Stat. 967; May 24, 1949, ch. 139, § 114, 63 Stat. 105; Pub. L. 104–132, title I, § 105, Apr. 24, 1996, 110 Stat. 1220; Pub. L. 110–177, title V, § 511, Jan. 7, 2008, 121 Stat. 2545.)

29 U.S.C. §§ 701 et seq.

29 U.S. Code § 701. Findings; purpose; policy

(a) Findings

Congress finds that—

(1) millions of Americans have one or more physical or mental disabilities and the number of Americans with such disabilities is increasing;

(2) individuals with disabilities constitute one of the most disadvantaged groups in society;

(3) disability is a natural part of the human experience and in no way diminishes the right of individuals to—

(A) live independently;

(B) enjoy self-determination;

(C) make choices;

(D) contribute to society;

(E) pursue meaningful careers; and

(F) enjoy full inclusion and integration in the economic, political, social, cultural, and educational mainstream of American society;

(4) increased employment of individuals with disabilities can be achieved through implementation of statewide workforce development systems defined in section 3102 of this title that provide meaningful and effective participation for individuals with disabilities in workforce investment activities and activities carried out under the vocational rehabilitation program established under subchapter I, and through the provision of independent living services, support services, and meaningful opportunities for employment in integrated work settings through the provision of reasonable accommodations;

(5) individuals with disabilities continually encounter various forms of discrimination in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and public services;

(6) the goals of the Nation properly include the goal of providing individuals with disabilities with the tools necessary to—

(A) make informed choices and decisions; and

(B) achieve equality of opportunity, full inclusion and integration in society, employment, independent living, and economic and social self-sufficiency, for such individuals; and

(7)

(A) a high proportion of students with disabilities is leaving secondary education without being employed in competitive integrated employment, or being enrolled in postsecondary education; and

(B) there is a substantial need to support such students as they transition from school to postsecondary life.

(b) Purpose

The purposes of this chapter are—

(1) to empower individuals with disabilities to maximize employment, economic self-sufficiency, independence, and inclusion and integration into society, through—

(A) statewide workforce development systems defined in section 3102 of this title that include, as integral components, comprehensive and coordinated state-of-the-art programs of vocational rehabilitation;

(B) independent living centers and services;

(C) research;

(D) training;

(E) demonstration projects; and

(F) the guarantee of equal opportunity;

(2) to maximize opportunities for individuals with disabilities, including individuals with significant disabilities, for competitive integrated employment;

(3) to ensure that the Federal Government plays a leadership role in promoting the employment of individuals with disabilities, especially individuals with significant disabilities, and in assisting States and providers of services in fulfilling the aspirations of such individuals with disabilities for meaningful and gainful employment and independent living;

(4) to increase employment opportunities and employment outcomes for individuals with disabilities, including through encouraging meaningful input by employers and vocational

rehabilitation service providers on successful and prospective employment and placement strategies; and

(5) to ensure, to the greatest extent possible, that youth with disabilities and students with disabilities who are transitioning from receipt of special education services under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.) and receipt of services under section 794 of this title have opportunities for postsecondary success.

(c) Policy

It is the policy of the United States that all programs, projects, and activities receiving assistance under this chapter shall be carried out in a manner consistent with the principles of—

- (1) respect for individual dignity, personal responsibility, self-determination, and pursuit of meaningful careers, based on informed choice, of individuals with disabilities;
- (2) respect for the privacy, rights, and equal access (including the use of accessible formats), of the individuals;
- (3) inclusion, integration, and full participation of the individuals;
- (4) support for the involvement of an individual's representative if an individual with a disability requests, desires, or needs such support; and
- (5) support for individual and systemic advocacy and community involvement.

(Pub. L. 93-112, § 2, as added Pub. L. 105-220, title IV, § 403, Aug. 7, 1998, 112 Stat. 1095; amended Pub. L. 105-277, div. A, § 101(f) [title VIII, § 402(b)(2)], Oct. 21, 1998, 112 Stat. 2681-337, 2681-413; Pub. L. 113-128, title IV, § 402, July 22, 2014, 128 Stat. 1631.)

42 U.S.C. § 264(b)

(a) Promulgation and enforcement by Surgeon General

The Surgeon General, with the approval of the Secretary, is authorized to make and enforce such regulations as in his judgment are necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the States or possessions, or from one State or possession into any other State or possession. For purposes of carrying out and enforcing such

regulations, the Surgeon General may provide for such inspection, fumigation, disinfection, sanitation, pest extermination, destruction of animals or articles found to be so infected or contaminated as to be sources of dangerous infection to human beings, and other measures, as in his judgment may be necessary.

(b) Apprehension, detention, or conditional release of individuals

Regulations prescribed under this section shall not provide for the apprehension, detention, or conditional release of individuals except for the purpose of preventing the introduction, transmission, or spread of such communicable diseases as may be specified from time to time in Executive orders of the President upon the recommendation of the Secretary, in consultation with the Surgeon General,[1].

(c) Application of regulations to persons entering from foreign countries

Except as provided in subsection (d), regulations prescribed under this section, insofar as they provide for the apprehension, detention, examination, or conditional release of individuals, shall be applicable only to individuals coming into a State or possession from a foreign country or a possession.

(d) Apprehension and examination of persons reasonably believed to be infected

(1) Regulations prescribed under this section may provide for the apprehension and examination of any individual reasonably believed to be infected with a communicable disease in a qualifying stage and (A) to be moving or about to move from a State to another State; or (B) to be a probable source of infection to individuals who, while infected with such disease in a qualifying stage, will be moving from a State to another State. Such regulations may provide that if upon examination any such individual is found to be infected, he may be detained for such time and in such manner as may be reasonably necessary. For purposes of this subsection, the term "State" includes, in addition to the several States, only the District of Columbia.

(2) For purposes of this subsection, the term "qualifying stage", with respect to a communicable disease, means that such disease—

(A) is in a communicable stage; or

(B) is in a precommunicable stage, if the disease would be likely to cause a public health emergency if transmitted to other individuals.

(e) Preemption

Nothing in this section or section 266 of this title, or the regulations promulgated under such sections, may be construed as superseding any provision under State law (including regulations and including provisions established by political subdivisions of States), except to the extent that such a provision conflicts with an exercise of Federal authority under this section or section 266 of this title.

(July 1, 1944, ch. 373, title III, § 361, 58 Stat. 703; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Pub. L. 86-624, § 29(c), July 12, 1960, 74 Stat. 419; Pub. L. 94-317, title III, § 301(b)(1), June 23, 1976, 90 Stat. 707; Pub. L. 107-188, title I, § 142(a)(1), (2), (b)(1), (c), June 12, 2002, 116 Stat. 626, 627.)

42 U.S.C. § 1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

(R.S. § 1979; Pub. L. 96-170, § 1, Dec. 29, 1979, 93 Stat. 1284; Pub. L. 104-317, title III, § 309(c), Oct. 19, 1996, 110 Stat. 3853.)

42 U.S.C. § 2000dd

(a) In general

No individual in the custody or under the physical control of the United States Government, regardless of nationality or physical location, shall be subject to cruel, inhuman, or degrading treatment or punishment.

(b) Construction

Nothing in this section shall be construed to impose any geographical limitation on the applicability of the prohibition against cruel, inhuman, or degrading treatment or punishment under this section.

(c) Limitation on supersedure

The provisions of this section shall not be superseded, except by a provision of law enacted after December 30, 2005, which specifically repeals, modifies, or supersedes the provisions of this section.

(d) Cruel, inhuman, or degrading treatment or punishment defined

In this section, the term “cruel, inhuman, or degrading treatment or punishment” means the cruel, unusual, and inhumane treatment or punishment prohibited by the Fifth, Eighth, and Fourteenth Amendments to the Constitution of the United States, as defined in the United States Reservations, Declarations and Understandings to the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment done at New York, December 10, 1984.

(Pub. L. 109–148, div. A, title X, § 1003, Dec. 30, 2005, 119 Stat. 2739; Pub. L. 109–163, div. A, title XIV, § 1403, Jan. 6, 2006, 119 Stat. 3475.)

42 U.S.C. §§ 12101 et seq.

42 U.S.C. § 12101. Findings and purpose

(a) Findings

The Congress finds that—

- (1) physical or mental disabilities in no way diminish a person’s right to fully participate in all aspects of society, yet many people with physical or mental disabilities have been

precluded from doing so because of discrimination; others who have a record of a disability or are regarded as having a disability also have been subjected to discrimination;

(2) historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem;

(3) discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services;

(4) unlike individuals who have experienced discrimination on the basis of race, color, sex, national origin, religion, or age, individuals who have experienced discrimination on the basis of disability have often had no legal recourse to redress such discrimination;

(5) individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities;

(6) census data, national polls, and other studies have documented that people with disabilities, as a group, occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally;

(7) the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals; and

(8) the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably

famous, and costs the United States billions of dollars in unnecessary expenses resulting from dependency and nonproductivity.

(b) Purpose

It is the purpose of this chapter—

- (1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;
- (2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities;
- (3) to ensure that the Federal Government plays a central role in enforcing the standards established in this chapter on behalf of individuals with disabilities; and
- (4) to invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities.

(Pub. L. 101-336, § 2, July 26, 1990, 104 Stat. 328; Pub. L. 110-325, § 3, Sept. 25, 2008, 122 Stat. 3554.)

42 U.S.C. § 12102. Definition of disability

As used in this chapter:

(1) Disability

The term “disability” means, with respect to an individual—

- (A) a physical or mental impairment that substantially limits one or more major life activities of such individual;
- (B) a record of such an impairment; or
- (C) being regarded as having such an impairment (as described in paragraph (3)).

(2) Major life activities

(A) In general

For purposes of paragraph (1), major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning,

reading, concentrating, thinking, communicating, and working.

(B) Major bodily functions

For purposes of paragraph (1), a major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

(3) Regarded as having such an impairment

For purposes of paragraph (1)(C):

(A) An individual meets the requirement of "being regarded as having such an impairment" if the individual establishes that he or she has been subjected to an action prohibited under this chapter because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity.

(B) Paragraph (1)(C) shall not apply to impairments that are transitory and minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less.

(4) Rules of construction regarding the definition of disability

The definition of "disability" in paragraph (1) shall be construed in accordance with the following:

(A) The definition of disability in this chapter shall be construed in favor of broad coverage of individuals under this chapter, to the maximum extent permitted by the terms of this chapter.

(B) The term "substantially limits" shall be interpreted consistently with the findings and purposes of the ADA Amendments Act of 2008.

(C) An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability.

(D) An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

(E)

(i) The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures such as—

(I) medication, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies;

(II) use of assistive technology;

(III) reasonable accommodations or auxiliary aids or services; or

(IV) learned behavioral or adaptive neurological modifications.

(ii) The ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity.

(iii) As used in this subparagraph—

(I) the term “ordinary eyeglasses or contact lenses” means lenses that are intended to fully correct visual acuity or eliminate refractive error; and

(II) the term “low-vision devices” means devices that magnify, enhance, or otherwise augment a visual image.

(Pub. L. 101-336, § 3, July 26, 1990, 104 Stat. 329; Pub. L. 110-325, § 4(a), Sept. 25, 2008, 122 Stat. 3555.)

MISCELLANEOUS PROVISIONS

Habeas Corpus Act of 1867, Ch. 28, § 1

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the several courts of the United States, and the several justices and judges of such courts, within their respective jurisdictions, in addition to the authority already conferred by law, shall have power to grant writs of habeas corpus in all cases where any person may be restrained of his or her liberty in violation of the constitution, or of any treaty or law of the United States; and it shall be lawful for such person so restrained of his or her liberty to apply to either of said justices or judges for a writ of habeas corpus, which application shall be in writing and verified by affidavit, and shall set forth the facts concerning the detention of the party applying, in whose custody he or she is detained, and by virtue of what claim or authority, if known; and the said justice or judge to whom such application shall be made shall forthwith award a writ of habeas corpus, unless it shall appear from the petition itself that the party is not deprived of his or her liberty in contravention of the constitution or laws of the United States. Said writ shall be directed to the person in whose custody the party is detained, who shall make return of said writ and bring the party before the judge who granted the writ, and certify the true cause of the detention of such person within three days thereafter, unless such person be detained beyond the distance of twenty miles; and if beyond the distance of twenty miles and not above one hundred miles, then within ten days; and if beyond the distance of one hundred miles, then within twenty days. And upon the return of the writ of habeas corpus a day shall be set for the hearing of the cause, not exceeding five days thereafter, unless the party petitioning shall request a longer time. The petitioner may deny any of the material facts set forth in the return, or may allege any fact to show that the detention is in contravention of the constitution or laws of the United States, which allegations or denials shall be made on oath. The said return may be amended by leave of the court or judge before or after the same is filed, as also may all suggestions made against it, that thereby the material facts may be ascertained. The said court or judge shall proceed in a summary way to determine the facts of the case, by hearing testimony and the arguments of the parties interested, and if it shall appear that the petitioner is

deprived of his or her liberty in contravention of the constitution or laws of the United States, he or she shall forthwith be discharged and set at liberty. And if any person or persons to whom such writ of habeas corpus may be directed shall refuse to obey the same, or shall neglect or refuse to make return, or shall make a false return thereto, in addition to the remedies already given by law, he or they shall be deemed and taken to be guilty of a misdemeanor, and shall, on conviction before any court of competent jurisdiction, be punished by fine not exceeding one thousand dollars, and by imprisonment not exceeding one year, or by either, according to the nature and aggravation of the case. From the final decision of any judge, justice, or court, inferior to the circuit court, an appeal may be taken to the circuit court of the United States for the district in which said cause is heard, and from the judgment of said circuit court to the Supreme Court of the United States, on such terms and under such regulations and orders, as well for the custody and appearance of the person alleged to be restrained of his or her liberty, as for sending up to the appellate tribunal a transcript of the petition, writ of habeas corpus, return thereto, and other proceedings, as may be prescribed by the Supreme Court, or, in default of such, as the judge hearing said cause may prescribe; and pending such proceedings or appeal, and until final judgment be rendered therein, and after final judgment of discharge in the same, any proceeding against such person so alleged to be restrained of his or her liberty in any State court, or by or under the authority of any State, for any matter or thing so heard and determined, or in process of being heard and determined, under and by virtue of such writ of habeas corpus, shall be deemed null and void.

Judiciary Act of 1789, § 14

And be it further enacted, That all the before-mentioned courts of the United States, shall have power to issue writs of *scire facias*, *habeas corpus*,^(e) and all other writs not specially provided for by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the principles and usages of law. And that either of the justices of the supreme court, as well as judges of the district courts, shall have power to grant writs of *habeas corpus* for the purpose of an inquiry into the cause of commitment.—*Provided*, That writs of *habeas corpus* shall in no case extend to prisoners in gaol, unless where they are in custody, under or by colour of the authority of the United States,

or are committed for trial before some court of the same, or are necessary to be brought into court to testify.

Judiciary Act of 1789, § 35

And be it further enacted, That in all the courts of the United States, the parties may plead and manage their own causes personally or by the assistance of such counsel or attorneys at law as by the rules of the said courts respectively shall be permitted to manage and conduct causes therein. And there shall be appointed in each district a meet person learned in the law to act as attorney for the United States in such district, who shall be sworn or affirmed to the faithful execution of his office, whose duty it shall be to prosecute in such district all delinquents for crimes and offences, cognizable under the authority of the United States, and all civil actions in which the United States shall be concerned, except before the supreme court in the district in which that court shall be holden. And he shall receive as a compensation for his services such fees as shall be taxed therefor in the respective courts before which the suits or prosecutions shall be. And there shall also be appointed a meet person, learned in the law, to act as attorney-general for the United States, who shall be sworn or affirmed to a faithful execution of his office; whose duty it shall be to prosecute and conduct all suits in the Supreme Court in which the United States shall be concerned, and to give his advice and opinion upon questions of law when required by the President of the United States, or when requested by the heads of any of the departments, touching any matters that may concern their departments, and shall receive such compensation for his services as shall by law be provided.(a)

Approved, September 24, 1789.

The Magna Carta of John (1215), Cl. 39

Two Translations from Project Gutenberg¹—

(39) No freeman shall be taken or imprisoned or disseised or exiled or in anyway destroyed, nor will we go upon him nor send upon him, except by the lawful judgment of his peers or by the law of the land.

(39) No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way, nor will we proceed with force against him, or send others to do so, except by the lawful judgement of his equals or by the law of the land.

The Magna Carta of Edward (1297), Cl. 29²

(29) No freeman is to be taken or imprisoned or disseised of his free tenement or of his liberties or free customs, or outlawed or exiled or in any way ruined, nor will we go against such a man or send against him save by lawful judgement of his peers or by the law of the land. To no-one will we sell or deny of delay right or justice.

¹ <https://www.gutenberg.org/files/10000/10000-h/10000-h.htm>

² <https://www.archives.gov/files/press/press-kits/magna-carta/magna-carta-translation.pdf>

No. _____

**In The
Supreme Court of the United States**

In re JAMES F. SMYTHE,
Petitioner.

**PETITION FOR
AN EXTRAORDINARY
WRIT OF HABEAS CORPUS**

APPENDIX B

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No. 26-5166

**United States Court of Appeals
for the District of Columbia Circuit**

In Re JAMES F. SMYTHE,
Petitioner.

**COMBINED RULE 40 PETITIONS
FOR REHEARING & REHEARING EN BANC**

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Original Three Judge Panel

FRAP 40(b)(2) STATEMENT

The panel's July 20, 2026 final decision denying Mr. Smythe's petition for Writ of Mandamus mischaracterizes Mr. Smythe's Petition, contains a rather long list of manifest errors of law and fact, and creates local and national issues of continuity or uniformity by failing to consider, and or violating, several horizontal and vertical precedents (i.e. a *stare decisis* crisis). For these reasons, petition for rehearing is merited.

As elucidated herein, while the D.C. Circuit may have been well-justified in denying Petitioner Michael T. Flynn's "Emergency Petition for a Writ of Mandamus," its decision's "*ratio decidendi*" in that case arguably, and unnecessarily, leads to a fictitious conclusion of law that sets invalid precedent (quoting, respectively, *In re Flynn*, 973 F.3d 74, 77 (D.C. Cir. 2020); *Ramos v. Louisiana*, 140 U.S. 1390, 1404 (2020)). Viz., perfunctory and erroneous precedent that inappropriately guided the panel's decision in Mr. Smythe's case, and will continue to inappropriately guide the D.C. Circuit in "future cases" (quoting *Ramos v. Louisiana*, 140 U.S. 1390, 1404 (2020)). Accordingly, the panel followed D.C. Circuit precedent that Mr. Smythe now seeks to have overruled by the Court (viz., *In re Flynn*, 973 F.3d 74 (D.C. Cir. 2020)). For these reasons, petition for rehearing en banc is merited.

ARGUMENT

I. The Panel's Frivolous "Control" Invention

The Panel's primary justification for denying Mr. Smythe's Petition was that Mandamus "cannot be used to actually control the decision of a trial court." (Document No. 2183953, internal citations omitted). However, that is clearly not what Mr. Smythe's Petition for Mandamus sought in form or effect. For that reason, the Panel's July 20, 2026 decision contains both an error of law (i.e. misapplied precedent) and an error of fact (i.e. mischaracterization of Mr. Smythe's petition).

Moreover, the Panel granting Mr. Smythe's petition and ordering the relief it sought did not, as a matter of law, require any review of, or judgment on, any discretion exercised by Judge James E. Boasberg (viz., in his decision to deny Mr. Smythe's Petition for Writ of Habeas Corpus). To clarify, Judge Boasberg denied Mr. Smythe's Petition for Habeas Corpus relief on the sole basis that he [Judge Boasberg] does not believe Mr. Smythe to be "in custody." However, neither Article III nor any Statute grants Judge Boasberg the authority, discretion, or jurisdiction to he himself decide and apply his own personal opinion of an American's in-custody status. Especially not while interpreting the law, making legal conclusions, and issuing orders on behalf of the trial court. Asked rhetorically, since when do judges have, on their own accord, the authority or discretion to decide that incarcerated prisoners or unlawfully detained subjects are not actually incarcerated or detained (i.e. simply because the judge says so)?

1 The answer is never. Thus, as a simple matter of fact, the disqualifying
2 concern or condition of the “office of a writ of mandamus” being “enlarged to
3 actually control the decision of the trial court” is not an applicable, relevant, or
4 coherent concept in Mr. Smythe’s case (quoting *Bankers Life & Casualty Co. v.*
5 *Holland*, 346 U.S. 379, 383 (1953)). Accordingly, the “*de novo* examination” that
6 served as a sole and or necessary precondition in the Supreme Court’s
7 articulation of what actually effectuates the Writ of Mandamus having the legal
8 effect of controlling a trial court decision is also not an applicable, relevant, or
9 coherent concept in Mr. Smythe’s case (quoting *Platt v. Minnesota Mining & Mfg.*
10 *Co.*, 376 U.S. 240, 245 (1964)). Therefore, the panel’s citation of *In re Flynn*, 973
11 F.3d 74, 78 (D.C. Cir. 2020) as the controlling authority or relevant precedent in
12 Mr. Smythe’s case is a clear error of law.

13 **II. The Panel’s Over-Extended “Control” Interpretation**

14 As evidenced by *In re Flynn*, 973 F.3d 74 (D.C. Cir. 2020), the D.C. Circuit
15 selectively quoted and wrongfully construed *Platt v. Minnesota Mining & Mfg.*
16 *Co.*, 376 U.S. 240 (1964) to implicitly conclude that a Writ of Mandamus cannot,
17 in any circumstance whatsoever, be legitimately granted by the Supreme Court
18 or Court of Appeals to authorize or effectuate any consideration, review, or
19 supervision of any decision(s), holding(s), or interlocutory order(s) in any lawsuits
20 that are pending or awaiting final decision before any trial court.

21 However, the Supreme Court does not hold or imply in the majority, or
22 dissentingly opine or allude in the minority, such an absolute or extreme
23

1 conclusion (see *Marbury v. Madison*, 5 U.S. 137 (1803); *McClellan v. Carland*,
2 217 U.S. 268 (1910); *Bankers Life & Casualty Co. v. Holland*, 346 U.S. 379 (1953);
3 *Platt v. Minnesota Mining & Mfg. Co.*, 376 U.S. 240 (1964); *Cutter v. Wilkinson*,
4 544 U.S. 709 (2005)). Accordingly, when *In re Flynn*, 973 F.3d 74 (D.C. Cir. 2020)
5 is cross-compared with the Supreme Court's more rigid, strict, or orthodox
6 interpretation of the writs "traditional use," the only natural and reasonable
7 conclusion is that the D.C. Circuit collapsed, constrained, and or gutted the Writ
8 of Mandamus far beyond what is reasonably permitted by the Supreme Court's
9 controlling precedents and relevant jurisprudence (quoting in *Roche v.*
10 *Evaporated Milk Assn.*, 319 U.S. 21, 26 (1943)). Therefore, beyond blatantly
11 ignoring the critical distinctions between Mr. Smythe's petition and the D.C.
12 Circuit precedent it cited as authority, the panel committed another error of law
13 by selectively utilizing its over-extended interpretations that are self-evidently
14 extraneous and or inapplicable precedents. This constitutes the D.C. Circuit
15 acting in excess of authority or limitation, contrary to constitutional right, and to
16 the biased and harmful effect of frustrating Mr. Smythe's Constitutional Rights
17 (i.e. an egregious "abuse of discretion" (quoting 5 U.S.C. § 706(2))).

18 For example, counter to the Panel's blanket assertion that, as a universal
19 rule of law, the Writ of Mandamus, regardless of circumstance or context, can
20 never be granted or used to control the decision of a trial court, the Fifth Circuit
21 granted a petition for Writ of Mandamus to overturn the District Court for the
22 Eastern District of Texas's interlocutory order denying a motion to transfer venue
23

1 under 28 U.S.C. § 1404(a) (*In re Google LLC*, Case No. 25-40788 (5th Cir. 2026)).
2 In like manner, the Panel's blanket assertion that, as a universal rule of law,
3 petitioning for a Writ of Mandamus to challenge "the district court's denial" ...
4 "must be raised in an appeal from a final judgment in his case" also directly
5 contradicts the Fifth Circuit's above-cited ruling, and profoundly so (Document
6 #2183953, Case No. 26-5166). Therefore, the panel's decision contains further
7 errors of law. Viz., it misapplies Supreme Court and D.C. Circuit precedents (see
8 *Cutter v. Wilkinson*, 544 U.S. 709 (2005); *Capitol Services Management, Inc. v.*
9 *Vesta Corp.*, 933 F.3d 784 (D.C. Cir. 2019)).

10 CONCLUSION

11 Mr. Smythe's case cogently demonstrates that the D.C. Circuit considers the
12 writ of mandamus inapplicable, inappropriate, and or irrelevant in securing an
13 individual's constitutional rights from a trial court judge's unexplainable failure
14 or refusal to perform ministerial acts. This is evidenced by the panel effectively
15 refusing to "confine an inferior court to a lawful exercise of its prescribed
16 jurisdiction or to compel it to exercise its authority when it is its duty to do so"
17 vis-à-vis the Fifth Circuit granting the writ of mandamus to control the decision
18 of a trial court in enabling, guarding, and or enforcing a U.S. Corporation's
19 Statutory privilege of/to "proper venue" (quoting, respectively, *Roche v.*
20 *Evaporated Milk Assn.*, 319 U.S. 21, 26 (1943); 28 U.S.C. § 1391(a)(2)).

21 Therefore, the panel's final decision in Mr. Smythe's case—including the
22 decision's *ratio decidendi*—not only constitutes a mutually diverse and
23

1 “exceptional” portfolio of manifest errors of law and fact, but it also represents an
2 arbitrary or capricious departure from *stare decisis* that is “not in accordance
3 with law” and “contrary to constitutional right” (quoting, respectively, FRAP
4 40(b)(2)(D); 5 U.S.C § 706(2)). Viz., a historical abdication of Judicial Duty with
5 respect to Acknowledging Inalienable Personal Liberty(s) and Enforcing the Rule
6 of Law.

7 QUESTIONS OF EXCEPTIONAL IMPORTANCE

8 I.

9 Does the U.S. Court of Appeals for the District of Columbia Circuit consider
10 a U.S. Citizen’s incarcerated, prisoner, or in-custody status a discretionary
11 matter? To clarify, if the United States Marshals Service brought a Federal
12 Prisoner before the U.S. District Court for the District of Columbia for said
13 Prisoner to be heard on a legal matter as a Pro Se Party, is the U.S. Court of
14 Appeals for the District of Columbia Circuit of the opinion that the presiding
15 D.D.C. judge—own their own accord—has the authority to alter, modify, obstruct,
16 frustrate, or extirpate the merits, credibility, or validity of said Prisoner’s
17 pleadings and or case by declaring on record this Prisoner “is not in custody”? If
18 no, then the panel’s July 20, 2026 final decision denying Mr. Smythe’s petition
19 for Writ of Mandamus is untenable and must be overturned.

II.

Is the U.S. Court of Appeals for the District of Columbia Circuit of the opinion that ensuring proper venue under 28 U.S.C. § 1391 is a more critical, important, or noble cause than ensuring Constitutional Rights are protected from, or upheld against, a trial court judge's actions that are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law? If no, then the panel's July 20, 2026 final decision denying Mr. Smythe's petition for Writ of Mandamus is untenable and must be overturned.

III.

Does the U.S. Court of Appeals for the District of Columbia Circuit's interpretation of what constitutes sufficient cause for, or lawful use of, the Writ of Mandamus—as articulated in *In re Flynn*, 973 F.3d 74 (D.C. Cir. 2020))—deviate far enough from Fifth Circuit or Supreme Court interpretation, precedent, or jurisprudence to Constitute a Violation of Horizontal or Vertical *Stare Decisis*?

IV.

As presented by Mr. Smythe's case, does the U.S. Court of Appeals for the District of Columbia Circuit's blanket, *ipse dixit*, citing of *In re Flynn*, 973 F.3d 74 (D.C. Cir. 2020) to prohibit any/all appellate review of any/all interlocutory order or judgements issued by any/all trial courts deviate far enough from Fifth Circuit Supreme Court interpretation, precedent, or jurisprudence to Constitute a Violation of Horizontal or Vertical *Stare Decisis*?

1 **CERTIFICATE OF COMPLIANCE**

2 **FRAP 32, FRAP 40, and D.C. Cir. Rule 40(c)**

3 I, James F. Smythe, Pro Se Petitioner in this action, certify these Combined
4 Petitions for Rehearing and Rehearing En Banc comply with the form and length
5 requirements of the above-cited rules. This combined petition is 1,888 words in
6 total. A copy of the opinion of the panel from which rehearing and rehearing en
7 banc is being sought is attached and filed herewith.

8 **DECLARATION**

9 **28 U.S.C. § 1746**

10 I, James F. Smythe, Pro Se Petitioner in this action, declare under penalty
11 of perjury that the foregoing is true and correct to the best of my knowledge and
12 belief. Executed on July 23, 2026, at 52 Creek Road, Port Monmouth, NJ
13 07758.

14 Respectfully submitted,

15 

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22
23

**Additional material
from this filing is
available in the
Clerk's Office.**