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January 20, 2009

Staff Judge Advocate

"Meier, Michael W COL MIL USA FORSCOM" <michael.meier@us.army.mil>

Fort Carson, CO

cc: via Staff Judge Advocate to: DEPARTMENT OF THE ARMY

OFFICE OF THE JUDGE ADVOCATE GENERAL

Charles A. Cosgrove - General Attorney - Criminal Law Division

Rosslyn, Virginia

Subject: United States v. Robbin Long "Trackwell(3)"

Dear Staff Judge Advocate Colonel Michal W. Meier,

It is obvious that Charles A. Cosgrove is breaching the JAG's ART. 69(b) responsibilities to address the alleged lack of jurisdiction as "to modify the findings and sentence of a court-martial is a matter of command prerogative", ART. 60(c)(1). Thus it is back with you sir pursuant to ART. 64(a)(1)(A) & ART. 64(b)(1).

The Bill of Rights, the fundamentals of jurisdiction and its jurisprudence chain-of-command is law 12 federal jurors can relate to! Oath to Constitution, FM 27-10, Article VI Supreme Law, U.N. Treaty, Geneva, Nuremberg, Article III, Federal Question, USDC Original Jurisdiction! Meaning that Robbin Long was convicted in your Court without jurisdiction that prevented Robbin from presenting his reasonable doubt "Federal Question" subject-matter defense!

Sir, you now have command prerogative to address these raised concerns and I would appreciate it that you would not avoid the obvious like Charles A. Cosgrove chose to do! So I am looking forward to your REPLY, otherwise obtain a REAL answer from the JAG!

Sincerely,
s/ Byron L. Trackwell

Attached:

Cosgrove(2), Trackwell(2), Cosgrove(1), Trackwell(1), Robbin's Habeas Corpus



REPLY TO
ATTENTION OF:

DEPARTMENT OF THE ARMY
OFFICE OF THE JUDGE ADVOCATE GENERAL
1777 North Kent Street
Rosslyn, Virginia 22209-2194

December 31, 2008

Criminal Law Division


Mr. Byron L. Trackwell
Qatar Petroleum—Drilling
P.O. Box 100001
Dukhan, Qatar

Dear Mr. Trackwell:

I am responding to your letter of December 30, 2008, concerning Private Robin Long, review of his case under the Uniform Code of Military Justice, and a potential action against the United States in the Federal District Court of Colorado.

My previous letter to you of December 3, 2008 (copy enclosed) addresses all of your concerns.

Sincerely,


Charles A. Cosgrove
General attorney
Criminal Law Division

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December 30, 2008

DEPARTMENT OF THE ARMY
OFFICE OF THE JUDGE ADVOCATE GENERAL
Charles A. Cosgrove - General Attorney - Criminal Law Division
Rosslyn, Virginia
Via: Staff Judge Advocate
"Meier, Michael W COL MIL USA FORSCOM" <michael.meier@us.army.mil>
Fort Carson, CO

Subject: United States v. Robbin Long

Dear Charles A. Cosgrove,

In answer to your letter as attached, ART. 66 at this time is a violation of command prerogative. Therefore, forward this letter to the JAG for appropriate action!

Addressing the alleged lack of jurisdiction of subject court-martial as, "to modify the findings and sentence of a court-martial is a matter of command prerogative", ART. 60(c)(1), and thus designated by UCMJ by **ONE**: The Judge Advocate may address the alleged lack of jurisdiction by ART. 64(a)(1)(A) & ART. 64(b)(1); and/or **TWO**: The JAG may do so by ART. 69(b). Since the Staff Judge Advocate forwarded my letter of November 6, 2008 to the JAG, I take it that the Department of the Army has chosen ART. 69(b) to officially address my raised concerns that Robbin Long was convicted without jurisdiction.

Thus, I am looking forward to the JAG's documented review and action.

Sincerely,
s/ Byron L. Trackwell

Attached:

Letter from Charles A. Cosgrove.
Robbin Long's Federal Civil Right Habeas Corpus Complaint.



DEPARTMENT OF THE ARMY
OFFICE OF THE JUDGE ADVOCATE GENERAL
1777 North Kent Street
Rosslyn, Virginia 22209-2194

REPLY TO
ATTENTION OF:

December 3, 2008

Criminal Law Division

Mr. Byron L. Trackwell
Qatar Petroleum - Drilling
P.O. Box 100001
Dukhan, Qatar

Dear Mr. Trackwell:

I am responding to your letter of November 6, 2008 to The Judge Advocate General, concerning Private Robin Long. Your letter was sent to the Criminal Law Division, Office of The Judge Advocate General, because this office has special expertise in military criminal law and the Uniform Code of Military Justice (UCMJ).

I have read your letter carefully and understand your concerns. As you may know Private Long was found guilty in accordance with his pleas of violation of the UCMJ and was sentenced to reduction to Private (E1), confinement for 30 months and a dishonorable discharge. His case is pending action at the convening authority level who, at the very least, will reduce the sentence to conform to the pre-trial agreement. If the convening authority approves confinement for one year or more or the sentence to a punitive discharge, then, pursuant to Article 66, UCMJ, Private Long's case will be reviewed by the United States Army Court of Criminal Appeals (ACCA). He will be provided with a military appellate defense counsel at no expense to him. The ACCA is composed of experienced military judges who will weigh the evidence, determine whether the findings are legally correct and, if so, whether the sentence is appropriate. The court may set aside the findings and sentence or may reduce the sentence, but it cannot increase the punishment.


By the language of Article 69(b), UCMJ, any case reviewed pursuant to Article 66, UCMJ is not reviewable pursuant to Article 69(b), UCMJ.

The issue of court-martial jurisdiction over Private Long can be raised with both the convening authority, and the ACCA. However, any such issues should be raised in coordination with Private Long's defense counsel.

Given the established processes for review of this court-martial, it would be inappropriate for The Judge Advocate General to intervene in this case.

I trust this responds to your concerns.

Sincerely,


Charles A. Cosgrove
General Attorney
Criminal Law Division

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November 06, 2008

Judge Advocate General
Via: Office of the Staff Judge Advocate
7086 Albanese Loop,
Building 6285
Fort Carson, CO 80913-4303
United States of America

Subject: United States v. Robbin Long

Dear Judge Advocate General:

Robbin Long was convicted in a court-martial that did not have subject-matter jurisdiction over the defendant, thus the court-martial did not have jurisdiction over Robbin Long! This is very well explained by federal law within the attached pleading!

According to UCMJ Art. 69(b), the sentence in a court-martial case may be set aside by the Judge Advocate General on the grounds of lack of jurisdiction over the accused!

I therefore urgently request the Judge Advocate General on an emergence basis, set aside the illegal conviction of Robbin Long.

Sincerely
s/ Byron L. Trackwell

P.S. As of yet I have not had the pleasure of meeting Robbin Long and thus my actions are only pursuant to my U.S. Army oath to defend the United States Constitution, regardless how difficult that will be!

Attached:
Robbin Long's Federal Civil Right Habeas Corpus Complaint

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

No. _____

ROBBIN LONG
Plaintiff

v.

MR. PETE GEREN – Secretary of the Army
Defendant

ON A PRAYER FOR REDRESS
DUE TO AN UNCONSTITUTIONAL
COURT-MARTIAL OVERSEEN
BY THE OFFICES OF THE DEFENDANT

A FEDERAL CIVIL RIGHT HABEAS CORPUS COMPLAINT

Robbin Long, Plaintiff
Naval Consolidated Brig Miramar
P.O. Box 452136
San Diego, CA 92145-2136

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

No. _____

ROBBIN LONG
Plaintiff

v.

MR. PETE GEREN – Secretary of Army
Defendant

**ON A PRAYER FOR REDRESS DUE TO AN UNCONSTITUTIONAL
COURT-MARTIAL OVERSEEN BY THE OFFICES OF THE DEFENDANT**

Three years ago, the plaintiff, Robin Long, fled to Canada rather than fight a war in Iraq that he deemed unconstitutional, immoral and illegal. On July 15th, 2008 the Canadian government forcibly returned the plaintiff to U.S. military jurisprudence and on September 13, 2008 at Fort Carson was sentenced to 15 months of confinement and a dishonorable discharge. This military jurisprudence action without constitutional dimensional subject-matter jurisdiction has set a very chilling illegal precedent against all soldiers that the “Bill of Rights” they are defending does not apply to them which is contrary to fundamental constitutional and federal jurisdictional codes. To allow the executive branch’s court-martial of Robbin Long to stand is stealing the “Bill of Rights” of the plaintiff, a precedent that violates the civil rights of every soldier currently serving in the military and disrespects the historic sacrifices of all U.S. soldiers.

MOTION FOR A “BILL OF RIGHTS” TRIAL BY JURY

The Framers of the Constitution considered the right to jury trial important. In the Sixth Amendment they provided for jury trials in criminal cases. In the Seventh, they provided for such trials in civil suits where the amount contested exceeds twenty dollars. The amount

contested is the actual damages the plaintiff has suffered due to the ongoing wrongful incarceration that exceeds twenty dollars in today's terms and is a claim¹ for Monetary Relief! The plaintiff's stolen essential liberty, to have had an impartial federal jury determine his fate is explained by USSC Case Law why it was such a terrible unconstitutional loss².

This habeas corpus complaint establishes that original jurisdiction of the United States case against the plaintiff to have been with this honored Court from day one. FRCvP 38(b), the Sixth & Seventh Amendments and 28 U.S.C. § 1331 establishes that the USG was required to have "originally" raised their charges within this Court before an impartial federal jury! As this is a mixture of military criminal and federal civil law, the plaintiff motions for a jury trial with a panel of 12, so motioned! The plaintiff in support of his habeas corpus complaint, states:

DELINEATIONS OF PARTIES AND JURISDICTIONAL STATEMENT

1. Plaintiff, Robin Long, is an enlisted member of the U.S. Army currently residing in prison and is a citizen of the USA.
2. Defendant, Mr. Pete Geren, Secretary of the Army, is the official of the U. S. government charged with the control and administration of all Army personnel and affairs wherever situated or assigned. He is sued in his official capacity.
3. This honored Court has the jurisdiction to grant redress by law and justice under:
 - a. 28 U.S.C. § 2241, "Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective

¹ *Teamsters v. Terry*, 494 U.S. 558 (1990) "The Court of Appeals affirmed, holding that the Seventh Amendment entitled respondents to a jury trial on their claim for monetary relief."

² *Duncan v. Louisiana*, 391 U.S. 145 (1968) "The guarantees of jury trial in the Federal and State Constitutions reflect a profound judgment about the way in which law should be enforced and justice administered. A right to jury trial is granted to criminal defendants in order to prevent oppression by the Government. Those who wrote our constitutions knew from history and experience that it was necessary to protect against unfounded criminal charges brought to eliminate enemies and against judges too responsive to the voice of higher authority. The Framers of the constitutions strove to create an independent judiciary, but insisted upon further protection against arbitrary action. Providing an accused with the right to be tried by a jury of his peers gave him an inestimable safeguard against the corrupt or overzealous prosecutor and against the compliant, biased, or eccentric judge." USSC Justice Byron White.

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. 28 U.S.C. § 1331 "The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States."
- c. 28 U.S.C. § 1343(a)(4) Civil Rights- "The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person to recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights."

ARGUING A FEDERAL CIVIL RIGHT HABEAS CORPUS COMPLAINT

4. The U.S. Constitution demands the duty to resist when a branch of government exceeds its delegated constitutional powers³ and a soldier's oath⁴ with constitutional dimensions is explicit to carry out that resistance. A resistance tied to the Constitution by the U.S. Army Field Manual (FM 27-10, 1956)⁵. Those constitutional dimensional forces deemed to the plaintiff that the Iraq war was unconstitutional, immoral, illegal and required resistance. A resistance with a defense that is constitutionally dimensional that challenges the legality of the Iraq war⁶.

5. The plaintiff expressed that the Iraq War was unconstitutional and thus his resisting was a civil disobedience offense protected by the First Amendment⁷. Its defense is a civil matter arising

³ "The hydraulic pressure inherent within each of the separate Branches to exceed the outer limits of its power... must be resisted. Although not 'hermetically' sealed from one another, the powers delegated to the three Branches are functionally identifiable." *INS v. Chadha*, 462 U.S. 919, 951(1983). See *id.*, 944-51; *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 64-66 (1982) (plurality opinion); *Bowsher v. Synar*, 478 U.S. 714, 721-727 (1986).

⁴ To solemnly swear to support and defend the Constitution of the United States against all enemies, foreign and domestic demands a person of conscience who believes an order is unconstitutional &/or illegal to refuse that order.

⁵ U.S. Army's Field Manual 27-10 states by Chapter 1, Section I(7)(b), "under the Constitution of the United States, treaties constitute part of the supreme Law of the Land by U.S. Const. art. VI, cl. 2. In consequence, treaties relating to the law of war have a force equal to that of laws enacted by the Congress. Their provisions must be observed by both military and civilian personnel with the same strict regard for both the letter and spirit of the law which is required with respect to the Constitution and statutes enacted in pursuance thereof."

⁶ The legality of an order sending men to participate in an 'undeclared war' may be raised by someone, to whom such an order has been directed, see *Mottola v. Nixon*, 464 F.2d 178, 179 (9th Cir. 1972). *Holtzman v. Schlesinger*, 484 F.2d 1307, 1315 (2d Cir. 1973) (service members with "orders to fight," have STANDING to challenge legality of military activities).

⁷ In the USSC case of *Texas v. Johnson*, 491 U.S. 397 (1989), the Court mentioned the importance of protecting free speech, especially speech that is unpopular or offensive to others. It said, "If there is a bedrock principle underlying the First Amendment, it is that government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable."

under our Constitution and should have had the civil right judicial procedure for “jurisdictionally” and “originally” presenting that defense before a federal impartial jury, see ¶ 3b supra & U.S. Const. art. III, §2, cl. 1⁸. Article III did not delegate judicial power to the Executive Branch’s CM of the plaintiff, thus it was an illegal self-incriminating CM that violated the Due Process of the Fifth Amendment as the plaintiff was unable to present jurisdictionally his subject-matter constitutional dimensional defense pursuant to UCMJ art. 32(b)⁹.

6. The plaintiff’s resistance is deeply rooted in a preponderance of federally presented constitutional law that has not been jurisdictionally resolved. As with the disputed subject CM, a similar encroachment of the second branch onto the third is what gives constitutional dimensions to the plaintiff’s subject-matter defense. In February & March of 2003 the upcoming Iraq war was alleged unconstitutionally illegal by military soldiers, their Parents & Congresspersons: John Conyers, Dennis Kucinich, Jesse Jackson, Sheila Jackson Lee, Jim Mcdermott, José E. Serrano, and **74 Concerned Law Professors** by their amici curiae Brief in Support, see *Doe v. Bush*, 323 F.3d 133 (1st Cir. 2003). The Article I Judge in *Doe v. Bush* violated Article III jurisdiction the day after the president’s March 17, 2003 DOW to Iraq¹⁰ when *Doe v. Bush* became a USSC ripened Case of such imperative public importance “drastically” affecting Ambassadors, other public Ministers and Consuls to the United Nations, yes an Article III violation¹¹ and according to

⁸ 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”.

⁹ A soldier’s right to “present anything he may desire in his own behalf either in defense or mitigation”, is per UCMJ art. 32(b).

¹⁰ The president’s Declaration of War (DOW) to Iraq broke a grassroots promise! Alexander Hamilton by The Federalist No. 69 wrote in New York on Friday, March 14, 1788, “The president is to be commander-in-chief of the army and navy of the United States. In this respect his authority would be nominally the same with that of the king of Great Britain, but in substance much inferior to it. It would amount to nothing more than the supreme command and direction of the military and naval forces, as first General and admiral of the Confederacy; while that of the British king extends to the DECLARING of war and to the RAISING and REGULATING of fleets and armies, all which, by the Constitution under consideration, would appertain to the legislature.” See U.S. Const. art. I, §8, cl. 11.

¹¹ *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U. S. 50 (1982) (Congress may not give away Article III “judicial” power to an Article I judge).

[(28 U.S.C. § 1291) & (U.S. Const. art. III, §2, cl. 2) and the instructions of USSC Rule 11],¹² the USSC was required to docket and stopped the second branch 48-hr rush to war encroachment onto the federal judiciary that would have removed the USSC original jurisdictional federal question which is the plaintiff's reasonable doubt defense that the war in Iraq is unconstitutional.

7. The plaintiff's defense was prevented by the CM encroachment on this Court that took away the plaintiff's Sixth Amendment Substantial Right to have jurisdictionally presented before a federal impartial jury his reasonable doubt defense with legislated¹³ instructions for discerning, see UCMJ art. 51(c)(2)¹⁴ & UCMJ art. 51(c)(4)¹⁵.

8. The preponderance of this reasonable doubt constitutional dimensional defense¹⁶ requires conscientious judicial independence as according to the USSC in *Powell v. McCormack*, 395 U.S. 486 (1969), "Our system of governments requires that federal courts on occasion interpret the

¹²The three authorities in summary state, the USSC was required to do a direct review (per 28 U.S.C. § 1291) as it had original jurisdiction (by U.S. Const. art. III, §2, cl. 2) on *Doe v. Bush*, a case of such imperative public importance (see USSC Rule 11) affecting Ambassadors, other public Ministers and Consuls to the United Nations.

¹³"In republican government the legislative authority, necessarily, predominates." The Federalist No. 51 (J. Cooke ed. 1961), 350 (Madison). See also id., No. 48, 332-334. This theme continues to influence the Court's evaluation of congressional initiatives. E.g., *Metropolitan Washington Airports Auth. v. Citizens for the Abatement of Aircraft Noise*, 501 S.Ct. 252, 273-274, 277 (1991).

¹⁴ UCMJ art. 51(c)(2) "if there is a Reasonable Doubt as to the guilt of the accused, the doubt must be resolved in favor of the accused and he must be acquitted."

¹⁵ UCMJ art. 51(c)(4) "the burden of proof to establish the guilt of the accused beyond a Reasonable Doubt is upon the United States."

¹⁶ The 107th Congress via the 2002 H. J. Res. 114 could not and did not delegate to the president the exclusive right of the Congress to Declare War and the 108th Congress abdication of responsibility to protect that right was not an approval of the president's March 17, 2003 DOW to Iraq. When blended political war powers fails to uphold the Constitution and the third branch does nothing, then the danger becomes unchecked! *Clinton v. City of New York*, 524 U.S. 417, 452 (1998), (Kennedy, J., concurring) ("That a congressional cession of power is voluntary does not make it innocuous. The Constitution is a compact enduring for more than our time, and one Congress cannot yield up its own powers, much less those of other Congresses to follow. Abdication of responsibility is not part of the constitutional design."); cf. *New York v. United States*, 505 U.S. 144, 182 (1992) ("The Constitution's division of power among the three branches is violated where one branch invades the territory of another, whether or not the encroached-upon branch approves the encroachment."). In *Wayman v. Southard*, 23 U.S. (10 Wheat.) 1 (1825) Justice Marshal noted, "It will not be contended that Congress can delegate... powers which are strictly and exclusively legislative." The principal function of the tripartite separation of powers is to protect individual liberty by providing a "safeguard against the encroachment or aggrandizement of one branch at the expense of the other." *Buckley v. Valeo*, 424 U. S. 1, 122 (1976) (per curiam); *Mistretta v. United States*, 488 U. S., at 380-382 (1989). See The Federalist No. 51, p. 349 (J. Cooke ed. 1961) (J. Madison) (separation of powers confers on each branch the means "to resist encroachments of the others"); 1 K. Davis, *Administrative Law* § 1.09, p. 68 (1958) ("The danger is not blended power[:] [t]he danger is un-checked power").

Constitution in a manner at variance with the construction given the document by another branch. The alleged conflict that such adjudication may cause cannot justify the court's avoiding their constitutional responsibility.” Responsibility to ensure the Fifth Amendment “Due Process” and the Fourteenth Amendment “Equal Protection Clause” provides every person the equal protection of the laws regardless of race, gender, religion, age, previous condition of servitude, physical limitation and national origin and the fact that Robbin Long’s previous condition of servitude as an enlisted U.S. Army Soldier does not give the right to a non-judicial court-martial to steal the stated Substantial Right of the plaintiff. This violates Federal Rules of Evidence 103(a) as the stated Substantial Right of the plaintiff has been affected.

9. The *sua sponte* authority of the CM to have dismissed the plaintiff’s CM due to lack of subject-matter jurisdiction is explicit by UCMJ art. 34(a)(3)¹⁷ upon the convening authority and at that level, ignorance of the law was no excuse for the CM to have continued the judicial environment that was unable to provide intellectual counseling and thus the plaintiff’s loss of essential liberties was not an intellectual relinquishment of them, see Military Case Law¹⁸.

10. The United States did not establish jurisdiction prior to proceeding with their allegations against the plaintiff as the CM did not have subject-matter jurisdiction. To decide a case, a court must have a combination of subject-matter plus *personam* or *locum* jurisdiction. By far the most important federal subject-matter jurisdiction is the established federal question that confirms

¹⁷ UCMJ art. 34(a)(3), Before directing the trial of any charge by general court-martial, the convening authority shall refer it to his staff judge advocate for consideration and advice. The convening authority may not refer a specification under a charge to a general court-martial for trial unless he has been advised in writing by the staff judge advocate that a court-martial would have jurisdiction over the accused and the offense.

¹⁸ UNITED STATES, Appellee v. Joseph K. AVERY, Jr., Specialist U.S. Army, Appellant No. 96-1157/AR Crim. App. No. 9500062 United States Court of Appeals for the Armed Forces; Argued October 27, 1999; Decided April 14, 2000. “waiver of fundamental constitutional rights must be knowingly and intelligently rendered; courts indulge every reasonable presumption against such waiver and do not presume acquiescence in relinquishment of these rights; waiver of fundamental rights must be an affirmative action, not merely a failure to object.” See also, *U.S. v. Bertelson*, 3 M.J. at 315, 317(C.M.A. 1977).

before this honored Court that the CM action against the plaintiff must be dismissed, see FRCvP 12(h)(3)¹⁹. This Court has the (only jurisdiction)²⁰ over the allegations of the United States against the plaintiff by the federal question subject-matter jurisdiction and *locum* jurisdiction as Fort Carson is within the territorial jurisdiction of this Court.

11. The plaintiff's only defense is the established constitutional dimensional defense of reasonable doubt that challenges the president who has complete authority over the plaintiff's CM²¹. A conflict of law that is unable to provide a fair and impartial judicial environment. Military jurisprudence is staffed by the JAG, Convening Authority, Staff Judge-Advocate, Military Judge, Trial Counsel, Assistant Trial Counsel, Defense Counsel, Assistant Defense Counsel, Investigating Officer, Selected Officers as jury if so chosen, and other Legal Officers with a chain of command to the president and the only defense the plaintiff has is a constitutional dimensional reasonable doubt defense that challenges the president's alleged unconstitutional abuse of his War Powers! How then may this Court believe that the plaintiff was able to receive a fair and impartial trial within the court-martial controlled by the president? This has robbed the plaintiff's "valued right to have his trial completed by a particular tribunal" as to be "able, once and for all, to conclude his confrontation with society through the verdict of a tribunal he might believe to be favorably disposed to his fate." *Wade v. Hunter*, 336 U.S. 684, 689, 690 (1949) & *U.S. v. Jorn*, 400 U.S. 470, 486 (1971) respectively.

12. The conflict of the president's war power with the plaintiff's essential liberties was only jurisdictionally discernable in the federal judiciary²². Consider two centuries of USSC Case Law

¹⁹ FRCvP 12(h)(3) states, "If the court determines at any time that it (**the CM of the plaintiff**) lacks subject-matter jurisdiction, the court (**This Court**) must dismiss the action."

²⁰ Military jurisdiction over the offense did not delegate subject-matter jurisdiction to the CM of the plaintiff.

²¹ UCMJ art. 18 "general courts-martial have jurisdiction to try persons subject to this chapter for any offense made punishable by this chapter and may, under such limitations **as the President may prescribe.**"

²² The Federal Question Cases are linked to the Supreme Court's right to declare congressional laws unconstitutional.

on that subject. *Duncan v. Kahanamoku*, 327 U.S. 304, 335 (1946) (Murphy, J., concurring) (quoting *Ex parte Milligan*, 71 U.S. 2, 120-21 (1866)). As the Supreme Court noted in a different era, “‘war power’ cannot be invoked as a talismanic incantation . . . Even the war power does not remove constitutional limitations safeguarding essential liberties.” *United States v. Robel*, 398 U.S. 258, 264 (1967), emphasis added.

JURISDICTION BY HABEAS CORPUS

13. “[T]he writ of habeas corpus occupies a position unique in our jurisprudence, the consequence of its historical importance as the ultimate safeguard against unjustifiable deprivations of liberty.” *Schlesinger v. Councilman*, 420 U.S. 738, 752 (1975). The purpose of the writ of habeas corpus here is to provide the remedy by the prayed for redress infra in compensation for restraints on liberty, and for this reason, a person requesting the writ is required to be in “custody.” *Hensley v. Municipal Court*, 411 U.S. 345 (1973); *Peyton v. Rowe*, 391 U.S. 54 (1968); *Jones v. Cunningham*, 371 U.S. 236 (1963) and the plaintiff is in custody serving an alleged unconstitutional sentence that is a restraint on the liberty of the plaintiff “not shared by the public generally.” *Jones*, 371 U.S. at 240 and petitioning by 28 U.S.C. § 2241 for review is appropriate, see *Aguayo v. Harvey*, 476 F.3d 971, 975-76 (D.C.Cir. 2007). *Alhassan v. Hagee*, 424 F.3d 518, 521-22 (7th Cir. 2005). The habeas petitions from the military’s wrongful restraint of liberty will not be entertained by the federal courts until all available remedies within the military court system have been exhausted. *Councilman*, 420 U.S. at 758; *Noyd v. Bond*, 395 U.S. 683, 693 (1969); *Gusik v. Schilder*, 340 U.S. 128 (1950). They have already been exhausted since the plaintiff contends the military courts are without jurisdiction to have judged the plaintiff from day one besides the plaintiff chooses not to go through the slow process through the Army and Military Court of Appeals as in *United States v. Sergeant Kevin Benderman* (2005), the

military appealing process was still in progress well after Sergeant Kevin Benderman had completed his 15-month sentence.

14. 28 U.S.C. § 2241 is the timely and jurisdictional avenue for the prayed for redress. The remedy sought by the plaintiff, while rare, is appropriate as it militates against abstention of judicial procedures for guaranteeing substantial fundamental constitutional rights and thus that abstention is subject to this Court's collateral attack under 28 U.S.C. § 2241 and because AEDPA does not apply to petitions under 28 U.S.C. § 2241, pre-AEDPA standard govern this Court's review and determinations of law are reviewed de novo and findings of fact are presumed to be correct. *Hoyle v. Ada County*, 501 F.3d 1053, 1059 (9th Cir. 2007). *Burns v. Wilson*, 346 U.S. 137, 144 (1953) has provided a limited scope of review that is clarified in *Calley v. Callaway*, 519 F.2d 184, 203 (5th Cir. 1975) that, "Military court-martial convictions are subject to collateral review by federal civil courts on petitions for writs of habeas corpus where it is asserted that the court-martial acted without jurisdiction, or that substantial constitutional rights have been violated, or that exceptional circumstances have been presented which are so fundamentally defective as to result in a miscarriage of justice...the military must accord to its personnel the protections of basic constitutional rights essential to a fair trial and the guarantee of due process of law." All of the *Calley* criteria are met within the plaintiff's complaint for conducting habeas review. In *Parisi v. Davidson*, 405 U.S. 34, 46 (1972) Justice Douglas noted, "I agree with the Court's view that habeas corpus is an overriding remedy to test the jurisdiction of the military to try or to detain a person." As the Supreme Court stated over thirty years ago; the federal courts may grant the writ "within their respective jurisdictions." 28 U.S.C. § 2241(a). While the Act speaks in terms of "a prisoner" (28 U.S.C. § 2241(c)), the term has been liberally construed to

include members of the armed forces who have been unlawfully detained, restrained, or confined. *Schlanger v. Seamans*, 401 U.S. 487, 489 (1971).

WHY THIS COURT SHOULD AUDIT PLAINTIFF'S COURT-MARTIAL

15. U.S. Const. art. I, §8, cl. 9 allows Congress to create the military courts, but the manner of how judges are appointed required by U.S. Const. art. III, §1 and U.S. Const. art. II, §2, cl. 2 is not followed. Court-Martial judges are military officers who obey orders from their convening authority,²³ are not appointed for life and not congressionally vested. Our Framers wanted that mechanism to ensure judicial independence in constitutional dimensional cases, to ensure that “traditional ways of conducting government ... give meaning to the Constitution,” *Mistretta, v. United States*, 488 U.S. 361, 401 (1989) and that the “the balance” between the branches that “already has been struck by the Constitution itself” is maintained. *Public Citizen v. United States Dept. of Justice*, 491 U.S. 440, 486 (1989) (Kennedy, J., concurring).

16. Jurisdiction is the power to say what the law is and thus must stay exclusively with the civilian federal courts when subject-matter issues arise under our Constitution, so jurisdiction within the military requires strict limitation, under the doctrine of avoidance of constitutional questions. See *Indus. Union Dept. v. American Petroleum Inst.*, 448 U.S. 607, 646 (1980) (“A construction of [a jurisdictional] statute that avoids [an] open-ended grant [of legislative authority] should certainly be favored.”). Thus, Military jurisdiction to have convicted the plaintiff is challenged and requires judicial review. “[W]hen a Government official’s determination of a fact or circumstance ... is dispositive of a court controversy, federal courts

²³ July 28, 2005 Transcript Quotes Ending Sergeant Kevin M. Benderman’s Second Trial: MJ: [D]o you consent to your defense counsel arguing that if I find confinement is appropriate, that, in lieu of any confinement, to award you a bad conduct discharge? ACC: Yes, ma’am. MJ: Then, at this time, court is closed for deliberation on sentence. [The Judge by circumstantial evidence conferred with the convening authority by phone and received her orders and broke her sworn agreement!] [After about 15 minutes of deliberation] MJ: Sergeant Kevin M. Benderman, this court sentences you to be reduced to E1, to be confined for 15 months, and to be dishonorably discharged from the service.

generally do not hold determination unreviewable. Instead, federal judges traditionally proceed from the ‘strong presumption that Congress intends judicial review’” *Gutierrez de Martinez v. Lamagno*, 515 U.S. 417, 424 (1995). Jurisdictional power by court-martial was delegated by the Legislative to the Executive and has no link to jurisdiction as set down by Article III so this congressional delegation of power to the Executive is not “unbounded, and it is the duty of a reviewing court to determine whether the course followed by the [convening authority] is consistent with its mandate from Congress.” *Atchison, Topeka & Santa Fe Ry. v. Wichita Bd. Of Trade*, 412 U.S. 800, 806 (1973) and that jurisdiction has properly been evaluated to maintain congressional “principal of law and rules of evidence generally recognized in the trial of criminal cases in the United States district courts.” 10 U.S.C. § 836. Which are **neutral decision makers**; rules of evidence used in criminal trials in the federal district courts; inadmissibility of hearsay; the right to have all evidence [**jurisdictionally**] considered; the right against double jeopardy; and the right to collateral review of one’s conviction.

PLAINTIFF’S PRAYED FOR REDRESS

17. The 42 U.S.C. § 1983²⁴ redress is that the U.S. Army releases the plaintiff immediately, honorably discharges Robbin Long, that his Dress Uniform is presented to him as to show America that America’s Military is truly voluntary and righteous!

CONCLUSION

18. The 14th Amendment enforces The Bill of Rights by Civil Rights, an enforceable right, which if interfered with by another gives rise to this action for injury, see 18 U.S.C. §§ 241, 242; 28 U.S.C. § 1443 & 42 U.S.C. §§ 1981, 1983, 1985, 1986, 1988(a) & prohibits the discrimination

²⁴ 42 U.S.C. § 1983, "Every person who, under color of any statute, ordinance, regulation, custom, or usage 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!"

of the plaintiff due to his previous condition of servitude as an enlisted U.S. Army soldier. This discrimination was completed by the United States conducting an unconstitutional court-martial that illegally convicted the plaintiff, a blatant encroachment on this Court that prevented the plaintiff's federal question constitutionally dimensional reasonable doubt defense before an impartial federal jury; an unconstitutional theft of the plaintiff's liberty as an individual!

The principal function of the tripartite separation of powers is to protect individual liberty by providing a "safeguard against the encroachment or aggrandizement of one branch at the expense of the other." *Buckley v. Valeo*, 424 U. S. 1, 122 (1976) (per curiam); *Mistretta v. United States*, 488 U. S., at 380-382 (1989). See *The Federalist No. 51*, p. 349 (J. Cooke ed. 1961) (J. Madison) (separation of powers confers on each branch the means "to resist encroachments of the others").

19. The claim that the United States had no jurisdiction to court-martial the plaintiff to begin with requires an answer pursuant to FRCvP 8(d) and 28 U.S.C. § 2072(a)(b). In *Doe v. Bush* the averment that the 2003 Iraq War is contrary to the Constitution of the United States of America, IS waiting for a jurisdictional USSC answer on the merits; until then the reasonable doubt answer is TRUE! Reasonable doubt as America is waiting on the USSC Case that was raised²⁵ on March 13, 2003 and finalized by the DOW on March 17, 2003!

²⁵ The Appellate 1st Circuit Judge Lynch's March 13, 2003 ruling defined the 2002 H. J. Res. 114 as one with narrowed limits and further explained what it would take to ripen *Doe v. Bush*, that ruling is quoted, "The week after his September 12 (2002) speech at the United Nations, President Bush proposed language for a congressional resolution supporting the use of force against Iraq. Detailed and lengthy negotiations between and among congressional leaders and the Administration hammered out a revised and much narrower version of the resolution... to evaluate this claim now ... We would need to assume that the Security Council will not authorize war, and that the President will proceed nonetheless."

WHEREFORE, the plaintiff prays from this honored Court **1)** This Court encourages the defendant by ADR to immediately release the plaintiff from jail, or **2)** This Court on an emergency basis orders the release of the plaintiff and/or grants the ¶ 17 relief and/or orders the plaintiff's court-martial stricken from the record! **Otherwise-3)** As previously motioned supra, the plaintiff motions for a jury trial with a panel of 12, so motioned! and **4)** Such other and further relief as this Court shall deem proper.

Respectfully submitted.

DECLARATION UNDER PENALTY OF PERJURY

The undersigned below declares under penalty of perjury under the laws of the United States of America that the undersigned is a natural born U.S. citizen and the plaintiff in the above action & has read that action & states that the information contained therein is true and correct.

PROOF OF SERVICE

Original and required copies of this FEDERAL CIVIL RIGHT HABEAS CORPUS COMPLAINT will be filed with this Court on a date to be mentioned, the specific date to be stamped by this honored Court. Officially serving the Complaint on the defendant(s) will be by a method and time pursuant to FRCvP 4 and/or the Rules of this Court to the defendant(s) as stated below and left:

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