No. 18-6661

IN THE

SUPREME COURT OF THE UNITED STATES

BRYAN CHRISTOPHER — PETITIONER

vs.

UNITED STATES OF AMERICA — RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PETITION FOR REHEARING

BRYAN CHRISTOPHER SAMUEL
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Federal Correctional Institution-
Gilmer
P.O. Box 6000
Glenville, WV 26351-6000

QUESTIONS PRESENTED

1. Whether the demonstration that the laws under which a criminal prosecution of the litigant are unconstitutional, in which the Commerce Clause does not license the United States Government to reach, legislate, and create any criminal prohibitions based on conduct that substantially affects interstate commerce is not within the language of the Clause, not the intention of the Framers of the instrument, or of the people adopting the Constitution, requires this Court to take notice of litigant's deprivation of his liberty based on the prosecution under such unconstitutional law?

2. Whether, in such circumstances, the case should be remanded to the district court to have the Government answer the 28 U.S.C. § 2255 motion, where the district judge jumped the gun and used case law not in concurrence with this Court's case that show the violation of Petitioner's due process clause rights from the very beginning the purported federal criminal prosecution against him?

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR REHEARING

(Sup. Ct. R. 44.2)

Petitioner presents its petition for a rehearing of the above-entitled cause, and, in support thereof, respectfullyshows:

Grounds for Rehearing

A rehearing of the decision in the matter is in the interest of justice because:

1. On January 7, 2019, this Court denied the petition for writ of certiorari.

2. The denial of the petition came as a surprise to petitioner. Petitioner attempted to fully brief the crucial issues in the case, but because of the time constraints placed on him, when he never received from the court of appeal its opinion of July 31, 2018, denying him the certificate of appealability and dismissing the appeal until the mandate of the court of appeals was received, and petitioner had to look up the circuit court's decision on the electronic law library computer at the prison, and cut short petitioner's time to research, prepare, and submit the petition to this Court within the 90-day limitation period of Rule 13.1, Supreme Court Rules, and was prejudicial to him in his ability to research the issues more fully, until now.

3. Petitioner was not granted any opportunity to distinguish this case from other cases addressing the similar circumstances, such as the premise that the Constitution, in limiting the powers of Congress, does not enumerate the matters involved in the case for federal legislation and creation of federal proscriptions for enforcement in a nationwide manner, as was argued in the district court in the collateral attack the district court did not order an answer to be given by the

Government to the 28 U.S.C. § 2255 motion, and to the Memorandum In Support thereof, as is the usual norm in such a case, in order to give the Government first crack at the constitutional and jurisdiction issues of first impression.

4. This case contains several crucial factual distinctions that deserve a comparative analysis of the actual powers Congress has under the Commerce Clause, as Justice Thomas has continuously stressed that this Court "ought to temper" its "Commerce Clause jurisprudence," **United States v. Lopez**, 514 U.S. 549, 601 (1995) (Thomas, J., concurring), "with a standard more consistent with the original understanding" "of Congress' powers and with this Court's early Commerce Clause cases." **United States v. Morrison**, 529 U.S. 598, 627 (2000)(Thomas, J., concurring).

5. One case that illustrates the original, and only, understanding of the power of Congress under the Commerce Clause is **In re Debs**, 158 U.S. 564 (1895), where Justice Brewer, delivering the opinion for the Court, and after mentioning what the powers are limited under our Constitution to Congress, said that the Government could use "physical force" to "execute on every foot of American soil the powers and functions that belong to it," id., at 578-79, with regard to the powers actually enumerated in the Constitution, and observing:

> "Among the powers expressly given to the national government are the control of interstate commerce and the creation and management of a post-office system for the nation. Article I, section 8, of the Constitution provides that "the Congress shall have power. ... Third, to regulate commerce with foreign nations and among the several states, and with the Indian tribes. ... Seventh, to establish postoffices and postroads."
>
> "Congress has exercised the power granted in respect to interstate commerce in a variety of legislative acts. Passing by all that legislation in respect to commerce by water, and considering only that which bears upon railroad interstate transportation (for this is the specific matter involved in this case) these acts may be noticed: First, that of June 15, 1866 (14 Stat. at L. 66) carried into the Revised Statutes as section 5258, which provides:
>
> "Whereas, the Constitution of the United States confers upon Congress, in express terms, the power to regulate commerce among the several states, to establish postroads, and to raise and support armies: Therefore, Be it enacted by the Senate and House of Representatives of the United States of

America in Congress assembled, That every railroad company in the United States whose road is operated by steam, its successors and assigns, be, and is hereby, authorized to carry upon and over its roads, boats, bridges, and ferries all passengers, troops, government supplies, mails, freight, and property on their way from any state to another state, and to form continuous lines for the transportation of the same to the places of destination." ...

"Under the power vested in Congress to establish postoffices and post-roads, Congress has, by a mass of legislation, established the great post-office system of the country, with all its detail of organization, its machinery for the transaction of business, defining what shall be carried and what not, and the prices of carriage, and also prescribing penalties for all offenses against it.

"Obviously these powers given to the national government over interstate commerce and in respect to the transportation of the mails were not dormant and unused. Congress had taken hold of these two matters, and by various and specific acts had assumed and exercised the powers given to it, and was in the full discharge of its duty to regulate interstate commerce and carry the mails. ...

"As, under the Constitution, power over interstate commerce and the transportation of the mails is vested in the national government, and Congress by virtue of such grant has assumed actual and direct control, it follows that the national government may prevent any unlawful and forcible interference therewith. ...

"The entire strength of the nation may be used to enforce in any part of the land the full and free exercise of all national powers and the security of all rights entrusted by the Constitution to its care. The strong arm of the national government may be put forth to brush away all obstructions to the freedom of interstate commerce or the transportation of the mails. ...

"The national government, given by the Constitution power to regulate interstate commerce, has be express statute assumed jurisdiction over such commerce when carried upon railroads. It is charged, therefore, with the duty of keeping those highways of interstate commerce free from obstruction, for it has always been recognized as one of the powers and duties of a government to remove obstructions from the highways under its control."

Debs, supra, 158 U.S., at 579-580, 580-581, 582, 586 (in relevant parts).

6. This is consistent with not only the "original understanding" but the only true understanding of the powers of Congress in regard to the Commerce Clause, as was stated by Mr. James Madison as is the

> "material object of this power was the relief of the States which import and export through other States from the improper contributions levied on them by the latter ... to load the articles of import and export, during the passage through their their jurisdiction, with duties which would fall on the makers of the latter and the consumers of the former."

The Federalist No. 42 (J. Madison).

Cf., e.g., Oklahoma Tax Comm'n v. Jefferson Lines, Inc., 514 U.S. 175, 179-80

(1995)(discussing the Commerce Clause's "purpose of preventing a State from retreating into economic isolation or jeopardizing the welfare of the Nation as a whole, as it would do if it were free to place burdens on the flow of commerce across its borders").

7. After all, as Justice Thomas correctly pointed out:

> "The Constitution ... does not support the proposition that Congress has authority over all activities that "substantially affect" interstate commerce. The Commerce Clause does not state that Congress may "regulate matters that substantially affect commerce with foreign Nations, and among the several States, and with the Indian Tribes." ... Clearly, the Framers could have drafted a Constitution that contained a "substantially affects interstate commerce" Clause had that been their objective."

Lopez, supra, 514 U.S., at 587-88 (Thomas, J., concurring).

8. But it was not their objective, merely because: "The Federal Gvoernment has nothing approaching a police power," **id.**, at 584-85 (Thomas, J., concurring), and was made clear with this Court emphasizing that "the police power is controlled by 50 different States instead of one national sovereign," **Nat'l Fed'n Indep. Bus. v. Sebelius**, 132 S.Ct. 2566, 2578 (2012)(citing The Federalist No. 45 (J. Madison)), and this Court has continuously instructed, time and again:

> "In our constitutional structure, the federal government's powers are supposed to be "few and defined," while the powers reserved to the States "remain ... numerous and indefinite." The Federalist No. 45, p. 328 (B. Wright ed. 1961)(Madison); **McCulloch v. Maryland**, 4 Wheat. 316, 405, 4 L. Ed. 579 (1819)."

Artis v. District of Columbia, 138 S.Ct. 594, 199 L.Ed.2d 473, 497 (2018).

9. This Court's admonition that "amendment may not be substituted for construction, and ... a court may not exercise legislative functions to save [a] law from conflict with constitutional limitation," **Yu Cong Eng v. Trinidad**, 271 U.S. 500, 518 (1926)(quoted in **Lowe v. S.E.C.**, 472 U.S. 181, 212 (1985)(White, J., with whom Burger, C.J., and Rehnquist, J., join, concurring), is more controlling when the "amending" is attempted on a constitutional provision, as it would appear the Court has done with the majority of Commerce Clause-based federal laws,

in permitting criminal laws that define conduct that "substantially affects interstate commerce" to remain on the books, where the language of the Commerce Clause contains no express, much implied, language permitting Congress to use it as a license to "define" and "punish" activities and matters that "substantially affect" interstate commerce, and is contrary to the "original understanding" and intent for which the Framers, and the people adopting the Constitution, limited the power to regulate interstate commerce upon the general government, especially considering it is only the people who made the Constitution, and only the people can unmake it, **Cohens v. Virginia**, 6 Wheat. 264, 389 (1921), and, as James Madison wrote:

> "[I]t is from them that the constitutional charter, under which the several branches of government hold their power, is derived, it seems strictly consonant to the republican theory to recur to the same original authority, not only whenever it may be necessary to enlarge, diminish, or new-model the powers of government, but also whenever any one of the departments may commit encroachments on the chartered authorities of the others."

The Federalist No. 49 (J. Madison).

10. In finding, as it did in **Lopez**, that this Court "ha[s] identified three broad categories of activity that Congress may regulate under its commerce power," **id.**, 514 U.S., at 558-59 (citations omitted, naming the three activities), the Court has forgotten what it once declared that:

> "[T]he Constitution itself is in every real sense a law—the lawmakers being the people themselves, in whom under our system all political power and sovereignty primarily resides, and through whom such power and sovereignty primarily speaks. It is by that law, and not otherwise, that the legislative, executive, and judicial agencies which it created exercise such political authority as they have been permitted to possess."

Carter v. Carter Coal Co., 298 U.S. 238, 296 (1936).

11. To this day, the people have not conferred upon Congress, and much less to this Court, any power to enlarge the regulatory powers under the Commerce Clause to reach the "three broad categories of activity" this Court inferred, incorrectly, that "Congress may regulate under its commerce power," **Lopez**, supra,

merely because their has been no "properly passed constitutional amendment," U.S. Term Limits, Inc., 514 U.S. 779, 838 (1995), conferring upon Congress any power to expand its Commerce Clause authority to so reach those "three broad categories of activity" this Court has erroneously thought Congress had the power over, and, as this Court has correctly observed:

> "It is dictum in rebuttal to a counterargument. And it is unnecessary dictum even in that respect. Is the Court having once written dicta calling a tomato a vegetable bound to deny that it is a fruit forever after?
> "To the contrary, we have written that we are not necessarily bouond by dicta should more compete argument demonstrate that the dicta is not correct."

Kirtsaeng v. John Wiley & Sons, Inc., 133 S.Ct. 1351, 1368 (2013)(citations omitted).

12. Not even stare decisis can control this case, since the Court has made clear:

> "Although '"the doctrine of stare decisis is of fundamental importance to the rule of law[,]" ... [o]ur precedents are not sacrosanct.' ... '[W]e have overruled prior decisions where the necessity and propriety of doing so has been established.'"

Hurst v. Florida, 136 S.Ct. 616, 623 (2015)(citations omitted).

13. With the judicial department's duty to say what the law is, Marbury v. Madison, 1 Cranch 137, 177 (1803), it is perplexing the circuit court let go the district court's erroneous observation that, in Tennessee.v. Davis, 100 U.S. 257 (1880), the Court quoting the Chairman of the Judiciary Committee, in stating, in part, "Congress had the power to give the right in criminal as well as in civil cases, because the 2d section of the 3d Article of the Constitution speaks of all cases in law and equity, and these comprehensive terms cover cover all," id., at 268, was not a holding by the Court, but merely an observation of what the Chairman opined, but the district court miscontrued it as a holding by this Court, as to the claim that, when applying the case law cited in the collateral motion's Memorandum, has more convincing arguments, based on this Court's findings and, in some circumstances, actual holdings, that the "inferior" federal courts are incap-

able of being conferred with "judicial Power" over cases that are criminal in nature, ever since Chief Justice Marshall stated that, in regard with the extent and limits of the "judicial Power" of the United States:

> "Had any doubt existed with respect to the just construction of this part of the section, that doubt would have been removed by the enumeration of those cases to which the jurisdiction of the federal courts is extended in consequence of the character of the parties."

Cohens, supra, 6 Wheat., at 383.

14. Because, as this Court has made clear, the "judicial Power" can only be given to the lower courts with "what the power ceded to the general government will authorize" Congress to confer on them, and that power must come from the people, **see United States v. Hudson**, 7 Cranch 32, 33 (1812), it is without question:

> "The Constitution must have given to the court the capacity to take it, and an act of Congress must have supplied it. **Their concurrence is necessary to vest it.**

Nashville v. Cooper, 6 Wall. 247, 252 (1868)(emphasis added); see also **Finley v. United States**, 490 U.S. 545, 548 (1989)(same).

15. Even more persuasive is this Court's discussion in **Williams v. United States**, 289 U.S. 553, 572-73 (1933), where the Court, in dividing the three types of cases and controversies to which the "judicial Power" extends, and is limited, to are the ones Chief Justice Marshall declared in **Cohens**, with the stipulation that, when the United States shall be a party, the United States can only be a party in a "controversy" and not in any criminal case, since the Court, in describing, in a case in which the "admiralty and maritime Jurisdiction" extends to, the Court described them as:

> "[T]wo of the nine separately enumerated **classes** of cases to which "judicial power" was extended by the Constitution and which thereby authorized grants by Congress of "judicial Power" to the "inferior" federal courts. The vast stream of litigation which has flowed through these courts from the beginning has done so on the assumption that, in dealing with a subject as technical as the jurisdiction of the courts, the Framers, predominently lawyers, used precise, differentiating and not redundant language."

Romero v. Int'l Term. Operat. Co., 358 U.S. 354, 364 (1959)(citations omitted).

16. Finally, in Steel Co. v. Citizens for Better Envn't, 523 U.S. 83 (1998), after discussing concisely the requirements that the "judicial Power" or jurisdiction of the federal courts may restrained "at certain times, and even restraining them from acting permanently regarding certain subjects," id., at 101, made the findings that:

> "Every criminal investigation conducted by the Executive is a "case," .... These are not, however, the sort of cases ... that Article III, § 2, refers to, since "the Constitution's central mechanism of separation of powers depends largely upon common understanding of what activities are appropriate to legislatures, to executives, and to courts." ... Standing to sue is part of the common understanding of what it takes to make a jusciable case. ...
>
> "The "irreducible constitutional minimum of standing" contains three requirements. ... First and foremost, there must be alleged (and ultimately proved) an "injury in fact"—a harm suffered by the plaintiff that is "concrete" and "actual or imminent, not 'conjectural' or 'hypothetical.'" ... Second, there must be causation—a fairly traceable connection between the plaintiff's injury and the complained-of conduct of the defendant. ... And third, there must be redressability—a likelihood that the requested relief will redress the alleged injury. ... This triad of injury in fact, causation, and redressability constitutes the core of Article III's case-or-controversy requirement, and the party invoking federal jurisdiction bears the burden of establishing its existence."

Id., 523 U.S., at 102-104 (citations omitted).

17. The distinction between the district court's erroneous conclusion, reciting what the Chairman of the Judiciary Committee said in Tennessee, supra, and what the Court did not hold in that case, and what the Court has said in the cases cited above, as to the proposition that criminal cases, per se, are not within the "judicial Power" of the United States, but only to such "Cases, in Law and Equity," in the conjunctive, arising under the Constitution or laws of the United States are, by definition, civil cases or suits at law, and not cases that are criminal in nature, since the case in Tennessee involved a criminal prosecution against a federal agent, while isn the performance of his duties for the Federal Government, who was charged with the murder of one of the persons he was in the act of either arresting or defending himself from, and charged in a State

court of law, with Congress having enacted a civil provision to have such a case, in either a civil or criminal case, charged against one of its own while in the performance of his work-related duties, to have the matter removed to a federal court for adjudication of the matter.

18. Another distinctive ground the district court did not fully address, and the court of appeals avoided, is the fact that the laws of the United States defining criminal offenses do not have enforceability within the territorial boundaries of a State, once it has gained statehood, and is not longer a territory, see, e.g., **Bird v. United States**, 187 U.S. 118, 124 (1902)(discussing how the territorial government, the Federal Government, is ousted from the area when the territory becomes a State), and **Shively v. Bowlby**, 152 U.S. 1, 48 (1894)(discussing that the United States is the only government that can impose its laws within a territory "so long as they remain in a territorial condition").

19. In this case, the United States suffered no injury at all, for it to complain of such, by the actions of Petitioner involved in allegedly possessing and distributing controlled substances, a matter not within the United States power to legislate over and create a federal criminal proscription, for enforcement in a nationwide manner, and much less for prosecution in an "inferior" federal court that is incapable of being vested with criminal jurisdiction, per se, in such circumstances.

20. In **Carter**, the Court, in ensuring that the States maintain their autonomy, it wrote:

> "As this court said in Texas v. White, ...,—"the preservation of the States, and maintenance of their governments, are as much within the design and care of the Constitution as the preservation of the Union and the maintenance of the National Government. The Constitution, in all its provisions, looks to an indestructible Union, composed of indestructible States." Every journey to a forbidden end begins with the first step; and the danger of such a step by the federal government in the direction of taking over the [police] powers of the states is that the end of the journey may find the states so despoiled of their powers, or—what may amount to the same thing—so relieved of the responsibilities which possession of the powers necessarily injoins,

> as to reduce them to little more than geographical subdivisions of the national domain. It is safe to say that if, when the Constitution was under consideration, it had been thought that any such danger lurked behind its plain words, it would never have been ratified."

Carter, supra, 298 U.S., at 295-96 (citation omitted, alteration added).

21. With Justice Thomas, quoting some of the above, making clear that the laws of the United States have to be "made in Pursuance" of the Constitution, and "must comply with two key structural limitations in the Constitution that ensure the the Federal Government does not amass too much power at the expense of the States," **Wyeth v. Levine**, 555 U.S. 555, 585, with the first structural limitation is "the Constitution's conferral upon Congress of not all governmental powers, but only discrete, enumerated ones," **ibid.** (citation omitted), and the power of regulating drugs of any kind not being within the enumeration of the powers conferred upon Congress, the statutory provisions charged in this case goes against the "letter and spirit of the Constitution," **Carter, supra**, 298 U.S., at 291 (citing **McCulloch v. Maryland**, 4 Wheat. 316, 421 (1819)), and presents this Court with "the responsibility ... to enforce the limits on federal power by striking down acts of Congress that transgress those limits," **Nat'l Fed'n, supra**, 132 S.Ct., at 2579-80 (citation omitted), such as it has been shown 21 U.S.C. §§ 841 and 846 to be, and requiring the striking down thereof.

22. Because the district court jumped the gun, and did not even order an answer to the collateral attack motion therein, in an analogous manner this Court has made certain that the lower courts be given a "first crack at deciding an issue," **Pliler v. Ford**, 542 U.S. 225, 237 (2004)(citation omitted), and especially when it ocmes to "constitutional objections," **Kemp v. Potts**, 475 U.S. 1068, 89 L.Ed.2d 610, 612 (1986)(Burger, C.J., with whom Rehnquist, J., joins, dissenting from the denial of certiorari), and have the case remanded to the district court with instructions to issue to the Government to answer the claims raised—claims

that assuredly demonstrate the deprivation and violation of constitutional rights throughout the prosecution of the case in the district court, of being charged under a federal criminal statute that, under the circumstances, violates the "substantive rules" the Constitution "set forth categorical constitutional guarantees that place certain criminal laws and punishments altogether beyond the [Government's] power to impose[, and] follows that when a [government] enforces a proscription or penalty barred by the Constitution, the resulting conviction or sentence is, by difinition, unlawful." **Montgomery v. Louisiana**, 136 S.Ct. 718, 729-730 (2016)(alteration added). In other words:

> "A conviction under an unconstitutional law "is not merely erroneous, but is illegal and void, and cannot be a legal cause of imprisonment."

Id., at730 (citation omitted).

23. The above is consistent with, and the case law cited, the opinion written by Justice Ginsburg, observing what this Court has always adhered in similar circumstances as those presented in this case:

> "Bond, like any other defendant, has a personal right not to be convicted under a constitutionally invalid law. ...
>
> "In this case, Bond argues that the statute under which she was charged, 18 U.S.C. § 229, exceeds Congress' enumerated powers and violates the Tenth Amendment. Other defendants might assert that a law exceeds Congress' power because it violates the Ex Post Facto Clause, or the Establishment Clause, or the Dur Process Clause. Whatever the claim, success on the merits would require reversal of the conviction. "An offence created by [an unconstitutional law]," the Court has held, "is not a crime." ... "A conviction under [such a law] is not merely erroneous, but is illegal and void, and cannot be a legal cause of imprisonment." ... If a law is invalid as applied to the criminal defendant's conduct, the defendant is entitled to go free.
>
> "For this reason, a court has no "prudential" license to decline to consider whether the statute under which the defendant has been charged lacks constitutional application to her conduct. And that is so even where the constitutional provision that would render the conviction void is directed at protecting a party not before the Court. ...
>
> "In short, a law "beyond the power of Congress," for any reason, is "no law at all." ... The validity of Bond's conviction depends upon whether the Constitution permits Congress to enact § 229. Her claim that it does not must be considered and decided on the merits."

Bond v. United States ("Bond I"), 131 S.Ct. 2355, 2367, 2368 (2011)(citations

omitted)(Ginsburg, J., with whom Breyer, J., joins, concurring).

24. And that is why this Court should adhere to the principles announced in **Rice v. Sioux City Cemetery**, 349 U.S. 70 (1954), when it comes to deciding whether to accept a case for review on certiorari, even if does not involve a case that has been certified by a circuit court of appeals on a federal question, where even Rule 10, Sup.Ct.R., provides that "[a] petition for a writ of certiorari will be granted only for compelling reasons," when the Court wrote:

> "A federal question raised by a petitioner may be "of substance" in the sense that, abstractly considered, it may present an intellectually interesting and solid problem. But this Court does not sit to satisfy a scholarly interest in such issues. Nor does it sit for the benefit of the particular litigants. ... "Special and important reasons" imply a reach to a problem beyond the academic or the episodic. This is especially true where the issues involed reach constitutional dimensions, for then there comes into play regard for the Court's duty to avoid decision of constitutional issues unless avoidance becomes evasion."

Id., 349, U.S., at 74 (citation omitted).

25. Considering that the case questions whether Congress has transcended its powers under the Commerce Clause to license itself to legislate over purported criminal conduct the Clause was not intended, by the Framers and the people who adopted it, **cf., e.g., Lake County v. Rollins**, 130 U.S. 662, 670 (1889) (discussing the requirement of construing the Constitution "to give effect to the intent of its framers, and of the people adopting it"), what Justice Harlan observed should be applied in this case, when considering whether to grant the petition for the writ of certiorari:

> "This Court's certiorari jurisdiction should not be exercised simply "for the benefit of the particular litigants," ... but instead for the "settlement of [issues] of importance to the public as distinguished from ... the parties.""

Sullivan v. Little Hunting Park, 396 U.S. 229, 250 (1969)(Harlan, J., with whom Burger, C.J., and White, J., join, dissenting)(citations omitted).

26. Unlike in **Sullivan, supra**, where the matter involved only a certain party-litigant, that involved the discrimination against a Black family from the

use of a private club's recreational facilities, since they were leasing a home from the owner who had membership privileges that could be transferred to such a lessee as the Black family, this case involves the "settlement of [issues] of importance to the public" in general across the Nation, as to whether the Commerce Clause, that contains no language, either express or implied, for it to give license to Congress as an excuse for rely on it for criminal legislation, and the case of Debs, supra, is a prime example of that constitutional principle that it cannot be used as authority for criminal legislation, where in the case of Debs the only thing the attorney for the Government sought from the court was an "injunction" against the strikers that obstructed the flow of the commerce of the mails via the railroads "among the several States," not criminal prosecution that case law from this Court infers the "inferior" federal courts—the district courts—cannot be conferred with "judicial Power" over criminal cases at all, under this Court's case law findings, since Marbury v. Madison to the present, in Steel Co., supra.

27. This case also presents circumstances for the exercise of its discretionary powers, understandably that require its duty to protect the rights of a person that is encompassed in the Federal Constitution, See, e.g., Pennsylvania v. Lebron, 518 U.S. 938, 950 (1996)(citation omitted)(Stevens, J., with whom Ginsburg, J., joins, dissenting)(discussing a federal courts' "primary role" "to protect the rights of the individual that are embodied in the Federal Constitution"), since it would involve not only this litigant, but the rights of every person in the Nation not to be charged, and prosecuted, under any federal law for which the conduct defined therein is nowhere within the Constitution for Congress to legislate over and create a federal criminal proscription therefore, and more than surpasses this Court's "Considerations Governing Review on Certiorari," under Rule 10, Sup.Ct.R.

28. Consider what this Court once said, when it comes to the powers actually conferred upon the United States Government, and the protections the Constitution is supposed to ensure against the Government exercising too much power:

> "The Constitution was ordained and established by the people of the United States for themselves, for their own government, and not for the government of the individual States. Each State established a constitution for itself, and in that constitution provided such limitations and restrictions on the powers of its particular government as its judgment dictated. The people of the United States framed such a government for the United States as they supposed best adapted to their situation, and best calculated to promote their interests. The powers they conferred on this government were to be exercised by itself; and the limitations on power, if expressed in general terms, are naturally, and, we think, necessarily applicable to the government created by the instrument. They are limitations of power granted in the instrument itself; not of distinct governments, framed by different persons and for different purposed. ...
>
> "But it is universally understood, it is part of the history of the day, that the great revolution which established the Constitution of the United States was not effected without immense opposition. Serious fears were extensively entertained that those powers which the patriot statesmen who then watched over the interests of our country, deemed essential to union, and to the attainment of those invaluable objects for which union was sought, might be exercised in a manner dangerous to liberty. In almost every convention by which the Constitution was adopted, amendments to guard against the abuse of power were recommended. These amendments demanded security against the apprehended encroachments of the general government—not against those of the local governments."

Barron v. The Mayor and City Council of Baltimore, 7 Peters 243, 247, 250 (1833).

29. Because the lower courts avoided, thus evaded, addressing the actual merits presented, and the Government was never given its opportunity to answer the collateral motion, the case should be remanded to the district court, with instructions for the Government to answer the constitutional and jurisdictional claims raised in this case.

30. A rehearing tightly and squarely focused on the distinction between this case, and the issues presented, and this Court's cases that are square with what has been presented by Petitioner, that this Court's own discussions show that Due Process Clause rights were violated in his prosecution for conduct not within the federal powers enumerated in the Constitution make the deprivation of his liberty a violation thereof. McIntyre Mach., Ltd. v. Nicastro, 131 S.Ct.

2780, 2786 (2011)(citations omitted)(the inferring that "[t]he Due Process Clause protects an individual's right to be deprived of ..., liberty, ..., only by the exercise of" constitutionally "lawful power.").

CONCLUSION

For the reasons just stated, Petitioner urges that this petition for a rehearing be granted, and that, on further consideration, reverse and vacate the judgments of the lower courts, and remand the matter to the district court with proper instructions for it to order an answer to the collateral motion from the Government.

Dated: 1/29, 2019.

Respectfully submitted,

Bryan C. Samuel

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Certificate of Good Faith by Petitioner

I, Bryan Christopher Samuel, Petitioner, pro se, certify that this Petition for Rehearing is presented in good faith and not for delay, and that it is restricted to the grounds in Supreme Court Rule Rule 44.2, in presenting in a more concise expoundment the grounds the time for the preparation of the original Petition was not provided Petitioner, because of the lower courts not informing him of its decision in a timely manner, and not even informing him of the circuit court's July 31, 2018, opinion, until he received the mandate from said court.

Bryan C. Samuel

BRYAN CHRISTOPHER SAMUEL, Petitioner pro se