CASE NO. _____

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**IN THE SUPREME COURT OF THE UNITED STATES**

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IN RE: LEIGH JESSE QUINTO, PETITIONER

v.

Kathy Laden, WARDEN, RESPONDENT

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**PETITION FOR WRIT OF HABEAS CORPUS**
**Before The Honorable Supreme Court Justice, Clarence Thomas**
Related Case No.: 06-20319-Cr-UU
Related 11th Cir. Case No.: 18-11753-B

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Leigh Jesse Quinto
Prisoner No. 64874-004
Federal Correctional Institution
Coleman Low
846 N.E. 54th Terrace
Coleman, Florida 33521

## QUESTIONS PRESENTED

1. Did the Supreme Court's decision in Bond v. United States, 131 S. Ct. 2355, 180 L. Ed. 2d 269, decided June 16, 2011 (hereinafter "Bond I"), establish a "new rule of constitutional law"?

2. If so, should the new rule of constitutional law announced in Bond v. United States, supra, be made retroactive to cases on collateral review?

## PARTIES TO THE PROCEEDINGS

PETITIONER, Leigh Jesse Quinto is currently a prisoner incarcerated at the Federal Correction Institution, Coleman Low, located at 846 N.E. 54th Terrace, Coleman, Florida 33521.

RESPONDENT, Kathy Laden, is the Warden of and over the Federal Correction Institution, Coleman Low, located at 846 N.E. 54th Terrace, Coleman Florida 33521.

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## PETITION FOR WRIT OF HABEAS CORPUS

## OPINIONS BELOW

***Second Or Successive § 2255(h)(2) Application.*** On April 26, 2018, Petitioner Quinto's Application For Leave To File A Second Or Successive Motion To Vacate, Set Aside Or Correct Sentence 28 U.S.C. 2255 was filed in the U.S. Court of Appeals for the Eleventh Circuit and was designated as Case No. 18-11753-C. *See: Appendix F.*

On May 17, 2018, the Court of Appeals for the Eleventh Circuit entered its Order denying Petitioner Quinto's Application for Second or Succeeding Motion for relief under 28 U.S.C. § 2255(h)(2). *See:* Appendix A. Said denial Order was issued pursuant to 28 U.S.C. § 2244(b)(3)(C). The 11th Circuit panel determined that "if" Bond v. U.S., 131 S. Ct. 2355, 180 L. Ed. 2d 269 (2011) was a new rule of constitutional law, this Supreme Court did not make, and has not had the opportunity to make Bond v. U.S. retroactive on collateral review, citing Tyler v. Cain, 533 U.S. 656, 663 (2001). ***See Appendix A.***

The issue raised in said Application For Leave To File a Second or Successive Motion was not raised by this Petitioner in any prior proceeding. See 28 U.S.C. s. 2244(b)(3)(A) & (B).

***Related Lower Court Proceedings, Orders & Decisions.***

***Trial & Conviction.*** Petitioner was investigated by local law enforcement for possession and sale of a controlled substance in the form of

cocaine powder. On May 9, 2006, Petitioner was arrested pursuant to a federal Criminal Complaint.

On May 19, 2006, this Petitioner, Leigh Jesse Quinto, was charged in two counts of an eight-count indictment. Count 1 of the indictment alleged that this Petitioner and five co-defendants engaged in a conspiracy, between 1991 through March 6, 2006, to possess with intent to distribute at least five (5) kilograms of cocaine, in violation of 21 U.S.C. § 841(a)(1) and § 846. Count 5 of said Indictment alleged that, on or about April 27, 2005, this Petitioner knowingly and intentionally distributed cocaine, in violation of 21 U.S.C. § 841(a)(1) (DE #7-cr).

On November 14, 2006, the trial jury found Petitioner not guilty on Count 1- conspiracy with intent to distribute five kilograms or more of powder cocaine, in violation of 21 U.S.C. § 846. The trial jury found Petitioner guilty, however, of possession with intent to distribute ten and a half (10.5) grams of powder cocaine to an undercover Hollywood Police Dept. detective in Hallandale Beach, Florida (Count 5), in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(C).

On February 9, 2007, Petitioner was sentenced to incarceration for a period of 240 months, followed by supervised release for a period of three years, a $500,000 fine, and a Court Assessment of $100. *See: Appendix B*

***Direct Appeal.*** A direct appeal from the conviction and sentence was timely filed in the Eleventh Circuit Court of Appeals. Appearing in pro se

capacity, Petitioner appealed both his conviction and sentence. On appeal, Petitioner argued that (1) the District Court lacked subject matter jurisdiction, (2) his Fifth Amendment right to a grand jury was violated, (3) his sentence was procedurally and substantively unreasonable, and (4) his Sixth Amendment right to effective assistance of counsel was violated.

On February 5, 2008, the United States Court of Appeals for the Eleventh Circuit affirmed Quinto's conviction and sentence in an unpublished opinion in Case No. 07-11011. The Court of Appeals rejected all Petitioner Quinto's arguments, save for his Sixth Amendment argument, which it declined to address because this Court had no opportunity to develop the relevant factual record. *See: Appendix C.*

Petitioner did not appeal the Appellate Court's February 5, 2008, decision to the U.S. Supreme Court within the 90 days allowed, pursuant to Supreme Court Rule 13(1). As a result, Petitioner's criminal conviction and sentence became final on May 6, 2008.

***First § 2255(a) Motion To Vacate.*** On December 2, 2008, Petitioner filed his first Motion to Vacate his sentence under Title 28 U.S.C. § 2255(a) and (b). Petitioner raised the following four (4) grounds for relief: (1) violation of Sixth Amendment right to effective assistance of counsel at trial (conflict of interest); (2) violation of right to have a United States District Court Judge (and not a Magistrate Judge) determine whether defendant could proceed pro se on appeal; (3) violation of Sixth Amendment right to counsel on appeal;

and (4) violation of federal constitutional right to effective assistance of counsel (trial attorney failed to properly object to the admission of highly prejudicial inadmissible "other crimes" evidence).

On January 20, 2011, the United States District Court for the Southern District of Florida denied this Petitioner's First 28 U.S.C. § 2255 Motion in Case No. 1:08-cv-23335-UU. *See: Appendix D.* The U.S. District Court denied this Petitioner a certificate of appealability on March 10, 2011.

***Appeal of First § 2255(a) Motion.*** On or about May 10, 2011, Petitioner timely filed his Request for CoA in the Eleventh Circuit Court of Appeals. On July 22, 2011, the U.S. Court of Appeals for the Eleventh Circuit denied Petitioner Quinto a certificate of appealability for his first § 2255(a) Motion) in Case No. 11-11098-C. The Eleventh Circuit cited Slack v. McDaniels, 529 U.S. 473 (2000) and 28 U.S.C. § 2253(c)(2) as grounds for the denial. *See Appendix E.*

The Eleventh Circuit Court of Appeals' decision was subsequently appealed to the Supreme Court of the United States via Petition for Writ of Certiorari. Case No. 11-514.

On November 28, 2011, said Petition for Writ of Certiorari was denied by this Supreme Court.

## JURISDICTION

This Court has jurisdiction to issue the requested Writ of Habeas Corpus pursuant to Title 28 U.S.C. § 1651(a) and Supreme Court Rule 20.

Petitioner has no other plain, speedy or adequate remedy pursuant to 28

U.S.C. § 2255(e).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

*Article I, Section 8, Clause 3 of the U.S. Constitution ordains that:*

> Congress shall have Power... To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes."

*Article I Section 8, Clause 18 of the U.S. Constitution ordains that:*

> Congress shall have Power...To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

*Article VI, Clause 2, of the U.S. Constitution ordains that:*

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby; any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

*Amendment X to the U.S. Constitution ordains that:*

> "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

***FEDERAL (DOMESTIC) STATUTES -***

*Section 903 of Title 21 of the United States Code* provides:

> "No provision of [the Controlled Substances Act] shall be construed as indicating an intent on the part of Congress to occupy the field in which that provision operates, including criminal penalties, to the exclusion of any State law on the same subject matter which would otherwise be within the authority of the State, unless there is a positive conflict between that provision of this title and that State law so that the two cannot consistently stand together."

*Section 801 of Title 21 of the United States Code* provides:

§ 801. Congressional findings and declarations: controlled substances

The Congress makes the following findings and declarations:
(1) Many of the drugs included within this subchapter have a useful and legitimate medical purpose and are necessary to maintain the health and general welfare of the American people.
(2) The illegal importation, manufacture, distribution, and possession and improper use of controlled substances have a substantial and detrimental effect on the health and general welfare of the American people.
(3) A major portion of the traffic in controlled substances flows through interstate and foreign commerce. Incidents of the traffic which are not an integral part of the interstate or foreign flow, such as manufacture, local distribution, and possession, nonetheless have a substantial and direct effect upon interstate commerce because—
(A) after manufacture, many controlled substances are transported in interstate commerce,
(B) controlled substances distributed locally usually have been transported in interstate commerce immediately before their distribution, and
(C) controlled substances possessed commonly flow through interstate commerce immediately prior to such possession.
(4) Local distribution and possession of controlled substances contribute to swelling the interstate traffic in such substances.
(5) Controlled substances manufactured and distributed intrastate cannot be differentiated from controlled substances manufactured and distributed interstate. Thus, it is not feasible to distinguish, in terms of controls, between controlled substances manufactured and distributed interstate and controlled substances manufactured and distributed intrastate.
(6) Federal control of the intrastate incidents of the traffic in controlled substances is essential to the effective control of the interstate incidents of such traffic.
(7) The United States is a party to the Single Convention on Narcotic Drugs, 1961, and other international conventions designed to establish effective control over international and domestic traffic in controlled substances.

*Section 841(a) of Title 21 of the United States Code* provides:

"Except as authorized by this title, it shall be unlawful for any person

knowingly or intentionally--
(1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance"

*Section 841(b)(1)(C) of Title 21 of the United States Code* provides:

"Except as otherwise provided in section 409, 418, 419, or 420, any person who violates subsection (a) of this section shall be sentenced as follows:
In the case of a controlled substance in schedule I or II... such person shall be sentenced to a term of imprisonment of not more than 20 years..."

*Section 2255(h)(2) of Title 28 of the United States Code* provides:

(h) A Second or Successive motion must be certified as provided in section 2244 [28 USC 2244] by a panel of the appropriate court of appeals to contain--

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

*Section 2255(e) of Title 28 of the United States Code* provides:

"(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."

***STATE (Local) STATUTES*** -

*Florida Comprehensive Drug Abuse Protection And Control Act (FCDAPCA),*

*Section 893.13(1)(a)(1)* provides:

"Except as authorized by this chapter and chapter 499, a person may not sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance. A person who violates this provision with respect to:

1. A controlled substance named or described in s. 893.03(1)(a), (1)(b),

(1)(d), ***(2)(a)***, (2)(b), or (2)(c)4. commits a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084."

## STATEMENT OF THE CASE

### *A. The Underlying Local Case.*

On or about April 27, 2005, this Petitioner sold 10.5 grams of powder cocaine to undercover Hollywood Police Department (Hollywood, Florida) Detective Mark Daly in Hallandale Beach, Florida. Despite the foregoing proven fact, Petitioner was not indicted or criminally charged with and convicted of violating the "Florida Comprehensive Drug Abuse Prevention and Control Act (FCDAPCA), § 893.01, et seq. Petitioner was subject to lesser criminal penalties for said offense under local Florida laws. In addition, Petitioner is not a *"habitual felony offender"* under the statutory laws of the State of Florida, § 775.084(a), and would not be subject to sentence enhancement for the aforesaid criminal violation of local State law.

### *B. The Conventions And Implementing Domestic Legislation.*

Respondent, United States of America, is a party to three or more United Nations multilateral treaties regarding controlled substances. See: 21 U.S.C. 801(7). The objective of these treaties was to establish and maintain a monopoly control enterprise over certain narcotic and psychotropic drugs.

Each party to said treaties was required to pass domestic legislation "[s]ubject to [each party's] constitutional limitations." *See:* 'Commentary on the Single Convention on Narcotic Drugs', 1961, by United Nations, Article 36, Paragraph 1, p. 427. *This was reiterated in the 1988 Convention, Article*

*2.* See also 'Commentary on the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances', 1988, by United Nations, Article 2, Paragraph 1, p.42 ("In carrying out their obligations under the Convention, the Parties shall take necessary measures, including legislative and administrative measures, in conformity with the fundamental provisions of their respective domestic legislative systems.").

The stated "purpose" of the 1988 Convention is found in Article 2, Scope of the Convention, Paragraph 1:

> "1. The purpose of this Convention is to promote cooperation among the Parties so that they may address more effectively the various aspects of illicit traffic in narcotic drugs and psychotropic substances having an international dimension. In carrying out their obligations under the Convention, the Parties shall take necessary measures, including legislative and administrative measures, ***in conformity with the fundamental provisions of their respective domestic legislative systems.***" (emphasis added)

This provision is officially explained in the Commentary as follows:

> "2.9 The sentence is a factual statement to the effect that parties are bound to take measures in order to introduce in the form they deem appropriate the kind of legislation that will satisfy the exigencies of the Convention. Such measures, whatever their nature or designation may be in the respective legal systems of the parties (they may consist of statutes, regulations or other formal enactments), are to be taken ***"in conformity with the fundamental provisions of [the Parties'] respective domestic legislative systems".*** This formula is to be understood as referring to the legislative organs and law-making process established in each State *by the basic law of the land.* It covers institutions as well as procedure.
>
> 2.10 Other provisions of the Convention contain similar phrases, to the effect that the measures that parties are required to adopt ***will assume various forms according to those parties' legal systems and that parties are free to exercise discretion regarding the implementation modalities of those measures.*** Such phrases can be

found, for instance, in article 3, paragraph 9, concerning the cautious use by a party of bail or pre-trial release "consistent with its legal system"; in article 3, paragraph 11, regarding the prosecution or punishment of offences "in conformity with [each Party's domestic] law"; or in article 9, paragraph 1, on close international cooperation "consistent with [the Parties'] respective domestic legal and administrative systems". These formulas should be distinguished from the safeguard clauses, which limit the obligations of parties in case of conflicting constitutional or legislative domestic rules by stipulating that the parties shall adopt certain measures ***"subject to", "to the extent permitted by", or "without prejudice to" the basic principles of their domestic legal systems.*** In some cases, both types of clauses are combined when a measure is required "if [the Party's] law so permits and in conformity with the requirements of such law".
*See:* Commentary on the United Nations Convention Against Illicit Traffic In Narcotic Drugs and Psychotropic Substances, Secretary-General of the United Nations, pgs. 43 and 44. (emphasis added)

Article 3, Offenses and Sanctions, Paragraph 1, subparagraph (c) was included in the 1988 U.N. drug treaty text as a "safeguard" provision:

"(c) Subject to its constitutional principles and the basic concepts of its legal system:

This 1988 U.N. Drug Treaty safeguard clause is officially explained as follows:

"3.65 The obligation of parties to create the offences listed in paragraph 1, subparagraphs (a) and (b), is unqualified, but ***subparagraph (c) opens with this "safeguard clause".*** This particular clause represents a narrowing of a similar clause used in article 36, paragraph 2, of the 1961 Convention, which refers to "the **constitutional limitations of a Party, its legal system and domestic law**". That phrase was not easy to interpret and the official commentary suggested that it referred to a State's basic legal principles and the widely applied concepts of its domestic law. Although some delegations at the Conference expressed dissatisfaction with the new language of the safeguard clause, the text commanded general acceptance."
*See:* Commentary on the United Nations Convention Against Illicit

Traffic In Narcotic Drugs And Psychotropic Substances 1988, U.N. Secretary General, pg. 72. (emphasis added)

In compliance with the safeguard clauses expressed in the U.N. Drug Treaties, Congress enacted *21 U.S.C. § 903* to recognize the constitutional principles of federalism and to recognize the implementation and enforcement of local laws of the several States as secured by the U.S. Constitution, Amendment X.

There is no positive conflict between the local laws of the State of Florida and the treaty based domestic laws of the United States. As such, the Supremacy Clause, Article VI, clause 2 of the U.S. Constitution, as the dispute settlement clause, is not applicable to Petitioner's case. Bourgoin v. Twin River Paper Co., et al., 2018 ME 77, Maine Supreme Court, Docket WB-16-433, decided June 14, 2018. "Field preemption" under pretext of legislative powers vested under Article I, Section 8 of the U.S. Constitution (commerce clause and necessary and proper clause) are expressly excluded from judicial interpretation. The U.S. Constitution, Amendment X (federalism) remains applicable to statutory interpretation and to enforcement.

***C. Local (State) Law And Federalism***

All of the principles of federalism are generally secured in the U.N. Drug Treaties and are intentionally recognized in the domestic Controlled Substance Act. (CSA) 21 U.S.C. § 903. Petitioner claims the right of standing to challenge the treaty-based implementing law, the Controlled Substance Act (CSA), under the principles of federalism and the Tenth Amendment to

the Constitution for the United States of America. The local laws of the State of Florida are sufficient to prosecute this Petitioner for possession, distribution and sale of 10 ½ grams of cocaine to a local law enforcement Detective. Standing of a criminal defendant to challenge a treaty-based federal (domestic) law was first recognized in Bond v. United States, 131 S. Ct. 2355, 180 L. Ed. 2d 269, decided June 16, 2011 ("Bond I").

> "Here she [defendant Carol Bond] asserts, for example, that the conduct with which she is charged is "local in nature" and should be left to local authorities to prosecute and that congressional regulation of that conduct "signals a massive and unjustifiable expansion of federal law enforcement into state-regulated domain." Record in No. 2:07–cr–00528–JG–1 (ED Pa.), Doc. 27, pp. 6, 19. The public policy of the Commonwealth of Pennsylvania, enacted in its capacity as sovereign, has been displaced by that of the National Government. The law to which petitioner is subject, the prosecution she seeks to counter, and the punishment she must face might not have come about if the matter were left for the Commonwealth of Pennsylvania to decide. Indeed, petitioner argues that under Pennsylvania law *the expected maximum term of imprisonment* she could have received for the same conduct was *barely more than a third of her federal sentence*." (emphasis added)

Petitioner claims the protective right to and benefit of the local laws of the State of Florida. Petitioner was federally sentenced to 240 months (20 years) and a $500,000 fine for possessing and selling 10½ grams of powder cocaine to a local police Detective in Hallandale Beach, Florida, all under pretext of the United States treaty-based domestic law. Petitioner's local act did not rise to mandatory felony sentencing status under Florida Revised Statute 893.135(1)b)(1) (28 grams or more....) The mandatory felony sentence for possession, delivery, and selling 28 grams or more of cocaine under local

Florida laws is three (3) years and a fine of $50,000. See: FCDAPCA § 893.135(1)(b)(1)(a).

Bond v. United States, 131 S. Ct. 2355, 180 L. Ed. 2d 269, decided June 16, 2011 (Bond I) announced a new retroactive rule of constitutional law in accordance with 28 U.S.C. § 2255(h)(2). At that time there was no Supreme Court precedence recognizing or denying the right of a criminal defendant to claim prudential standing and benefit of the powers reserved to the State by the Tenth Amendment.

> "There is *no basis in precedent or principle to deny petitioner's standing to raise her claims.* The ultimate issue of the statute's validity turns in part on whether the law can be deemed "necessary and proper for carrying into Execution" the President's Article II, §2 Treaty Power, see U. S. Const., Art. I, §8, cl. 18. This Court expresses no view on the merits of that argument. It can be addressed by the Court of Appeals on remand. The judgment of the Court of Appeals is reversed, and the case is remanded for further proceedings consistent with this opinion.
> *It is so ordered."*

The new rule of constitutional law announced in Bond I preceded the decision in Bond v. United States, 572 US ____, 134 S. Ct. 2007, 189 L. Ed. 2d 1 (2014) ("Bond II") where the reach of the treaty implementing statute was narrowed because the criminal prosecution under the treaty-based statute intruded into the powers reserved to the State. The conviction under the treaty implementing statute, 18 U.S.C. § 229, was vacated.

> "The question presented by this case is whether the Implementation Act also reaches a purely local crime: an amateur attempt by a jilted wife to injure her husband's lover, which ended up causing only a minor thumb burn readily treated by rinsing with

> water. Because our constitutional structure leaves local criminal activity primarily to the States, we have generally declined to read federal law as intruding on that responsibility, *unless Congress has clearly indicated that the law should have such reach.* The Chemical Weapons Convention Implementation Act contains no such clear indication, and we accordingly conclude that it does not cover the unremarkable local offense at issue here...."
>
> The Convention provides for implementation by each ratifying nation *"in accordance with its constitutional processes."* Art. VII(1), 1974 U.N.T.S. 331. As James Madison explained, the constitutional process in our "compound republic" keeps power "divided between two distinct governments." The Federalist No. 51, p. 323 (C.Rossiter ed. 1961). If section 229 reached Bond's conduct, it would mark a dramatic departure from that constitutional structure and a serious reallocation of criminal law enforcement authority between the Federal Government and the States. Absent a clear statement of that purpose we will not presume Congress to have authorized such a stark intrusion into traditional state authority.
> The judgment of the Court of Appeals is reversed, and the case is remanded for further proceedings consistent with this opinion.
> *It is so ordered." See:* Bond II, supra, ( emphasis added)

There is no clear statement that Congress intended any provision of the CSA to intrude into the traditional authority of the State. Quite to the contrary, 21 U.S.C. § 903, supra, clearly states that Congress did not intend to occupy the field to the exclusion of the State, including local criminal penalties, "unless there is a positive conflict between federal and State law." No such "positive conflict" exists between the federal CSA and the FCDAPCA.

In passing said domestic implementing legislation, Congress also relied upon its powers "[t]o regulate Commerce with foreign Nations, and among the several States..." (i.e., to regulate international and domestic - "interstate" - commerce). *See:* U.S. Constitution, Article I, Section 8, Clause 3.

Congress was not vested with the power to regulate commerce within the several States, i.e., "intrastate" commerce unless there was a clear conflict that gives rise to the preferential resolution under the Supremacy Clause. See: U.S. Constitution, Article VI, Clause 2. The power "to regulate Commerce with foreign Nations, and among the several States", i.e., the "Commerce Clause", (U.S. Constitution, Article I, Section 8, Clause 3), as well as each of the other enumerated powers granted must be interpreted to be in conformity with the "Necessary and Proper Clause" numerated in Article I, Section 8, Clause 18.

Under the limited scope of the U.N. Drug Treaties and domestic legislation, the CSA cannot be construed to be "necessary and proper" if it fails to recognize the contextual and express limitations that flow from the Constitution's presumption of dual federal-state sovereignty. "When a 'Law... for carrying into Execution' [one of the enumerated powers] violates the principle of state sovereignty... it is not a 'Law... proper for carrying [into] Execution' [the enumerated powers], and is thus, in the words of the Federalist, 'merely [an] act of usurpation' which 'deserves to be treated as such'." *See:* Printz v. United States, 521 U.S. 898, at 923-24 (1997), quoting Federalist Paper No. 33, at 201 (A. Hamilton).

In furtherance of the U.N. treaty objective to create a monopoly controlled drug enterprise, the signatory parties needed to establish or otherwise allow a licensed "oligopoly" to produce, export, import, manufacture, distribute, and

sell controlled substances for beneficial purposes. *See:* "Commentary on the Single Convention On Narcotic Drugs, 1961", U.N. Secretary-General, August 3, 1962, pg. 164; see also 21 U.S.C. § 801(1) and (7). This international and domestic control was further clarified in Article 12 of the 1988 Convention Against Trafficking Of Narcotic Drugs. Licensing, permitting, and regulatory controls over production, importing, exporting, distribution and sales of controlled substances was subject to each signatory party's constitutional powers, limitations, restraints, and in the case of the U.S. Constitution, the local powers reserved to each of the sovereign States. In the United States, that fundamental limitation must be construed to include the power reserved to the several States to license and regulate private businesses and occupations, such as drug manufacturing facilities, ; pharmaceutical distribution enterprises, hospitals, medical practitioners, etc. *See:* Commentary on the United Nations Convention Against Illicit Traffic In Narcotic Drugs And Psychotropic Substances 1988, U.N. Secretary General, pgs. 263 – 265.

In the case as presented, the State of Florida retains the principal and sovereign power to define, license and regulate legitimate drug trafficking businesses and professional practitioners operating within the State. See: FCDAPCA, § 893.02, Definitions, (12) hospitals, (13) laboratories, (15)(a) manufacturers, (19) Pharmacist, (23) practitioners. See also 893.06(1) and (2).

The local laws of the State of Florida also determine and regulate who may have actual or constructive possession of a controlled substance within the State of Florida.

FCDAPCA *893.13(6)(a):*

> (6)(a) It is unlawful for any person to be in actual or constructive possession of a controlled substance *unless* such controlled substance was lawfully *obtained from a practitioner or pursuant to a valid prescription or order of a practitioner* while acting in the course of his or her professional practice or to be in actual or constructive possession of a controlled substance *except as otherwise authorized by this chapter.* (emphasis added)

As a result of these contextual limitations that flow from the U.S. Constitution's presumption of dual federal-state sovereignty under Amendment X, the power vested in Congress "[t]o regulate Commerce with foreign Nations, and among the several States" is not to be so construed as to regulate commerce within the State, i.e., "intrastate" commerce. It is the State that retains the local power to license and regulate producers, manufacturers, distributors, sales, and users of controlled substances within the said State. The United States, on the other hand, can license international and "interstate" trafficking. See: FCDAPCA § 893.13(5) ("It is unlawful for any person to *bring into this state* any controlled substance unless the possession of such controlled substance is authorized by this chapter or *unless such person is licensed to do so by the appropriate federal agency.*") The intended "oligopoly" enterprises cannot exist or lawfully function without the laws of the State. It is the State that retains the

authority (jurisdiction) to regulate the "oligopoly" medical practitioners, hospitals, laboratories, and pharmacies who lawfully prescribe and distribute these same controlled substances to patients and users within the State. In other words, the regulation of the production, manufacturing, and distribution of controlled substances is "a subject of traditional State regulation", and since the "federal law neither prohibits nor requires what the State law forbids, state law prevails". *See:* 'Reading Law: The Interpretation of Legal Texts', Cannon 47, "Presumption Against Federal Preemption", by Antonin Scalia and Bryan A. Garner (2012), pg. 290.

The foregoing Constitutional principles and rules of interpretation are directly relevant to the instant case, in which the criminal conduct of which this Petitioner was arrested, prosecuted, convicted, and sentenced is "a subject of traditional State regulation". *See:* 21 U.S.C.§ 903; supra, see also Florida Revised Statute, 893.13(1)(a)(1); 893.135(1)(b)(1)(a).

The physical impossibility that impairs the ability of the global monopoly drug enterprise to distinguish between controlled substances manufactured and distributed in international and interstate commerce from controlled substances manufactured and distributed in "intrastate" commerce" does not give rise to any "necessary and proper" cause to evade or ignore the principles of federalism under the Tenth Amendment to the U.S. Constitution. *See:* 21 U.S.C. § 801(5). The physical act of trafficking a controlled substance over a national boundary or over State borders can and must be "differentiated"

under the fundamental law and the principles of federalism. It is the lawful or unlawful nature and extent of the case specific facts that distinguishes whether there is domestic (international or interstate) federal jurisdiction or local (intrastate) State jurisdiction. Without the case sensitive fact distinction, the Tenth Amendment and controlled substance statute 21 U.S.C. § 903 are effectively reduced to a dead letter. "Field preemption", without a positive conflict between domestic and local powers, would prevail in contravention of the law of the land.

On or about May 19, 2006, this Petitioner and five (5) other named defendants were Indicted in the U.S. District Court for the Southern District of Florida on Controlled Substances Act charges. Count I of said Indictment alleged that this Petitioner and others, "did knowingly and intentionally combine, conspire, confederate and agree" `to possess with intent to distribute five (5) kilograms or more of a mixture and substance containing a detectable amount of cocaine" in violation of 21 U.S.C. § 841(a)(1), § 841(b)(1)(A)(ii), and § 846. The jury found this Petitioner not guilty on Count I.

This Petitioner was, however, indicted and convicted by the same jury of distribution of 10.5 grams of powder cocaine in Broward County, Florida, in violation of 21 U.S.C. § 841(a)(1) and § 841(b)(1)(C). *See:* Indictment, Count 5. Said charged offense and conviction was the result of a joint federal-state joint task force operation designated as 'Operation Southern Exposure." See:

FCDAPCA § 893.09(1). Said task force operation agencies included, but were not limited to, undercover law enforcement officers of the Hollywood Police Dept. and the Federal Bureau of Investigation (FBI) that employed and used wiretap technologies and other surveillance techniques to assist local law enforcement actors. Petitioner was ultimately charged and convicted domestically (federally) of local possession with intent to distribute 10.5 grams of powder cocaine to one local law enforcement Detective, Mark Daly, of the Hollywood Police Dept., in Hallandale Beach, Florida.

In applying the interpretation rule of "strict construction", the amount of 10.5 grams of powder cocaine distributed and sold to local Detective Mark Daily, falls far below the federal felony sentencing statute's minimum triggering quantity. *See:* 21 U.S.C.§ 841(b)(1)(B)(ii) ("500 grams or more of a mixture or substance containing a detectable amount of-- (II) cocaine...").

Petitioner was, however, sentenced under 21 U.S.C. § 841(b)(1)(C). No specific quantity was specified in Count 5 of the Indictment or in said penal statute (841(b)(1)(C)). The sentencing statute states, in relevant part, that: *"In the case of a controlled substance in schedule I or II ... such person shall be sentenced to a term of imprisonment of not more than 20 years..."* See 21 U.S.C. § 841(b)(1)(C). Petitioner was sentenced to maximum incarceration under said treaty implementing statutes.

By contrast, as to Petitioner's local act and small quantity of the controlled substance at issue, FCDAPCA § 893.135(1)(b)1 proscribes, in

relevant part, that:

> "(b)1. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 28 grams or more of cocaine, as described in s. 893.03(2)(a)4., or of any mixture containing cocaine, but less than 150 kilograms of cocaine or any such mixture, commits a felony of the first degree, which felony shall be known as "trafficking in cocaine," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:
> a. Is *28 grams* or more, but less than 200 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of *3 years*, and the defendant shall be ordered to pay a *fine of $50,000."*

Petitioner's act of possession and sale of 10.5 grams of powder cocaine to a local detective in Hallandale Beach, Florida, was far below the federal treaty-based felony sentencing statute for 500 grams and far below the Florida sentencing law for possession and sale of 28 grams. Nevertheless, on February 9, 2007, Petitioner was sentenced to incarceration for a period of 240 months, followed by supervised release for a period of three years, a $500,000 fine, and a Court Assessment of $100. Petitioner's sentence, both incarceration and fine, would have been far more lenient under the local laws of the State of Florida.

Because Petitioner was shown to have only distributed 10.5 grams of powder cocaine to a local undercover detective, Petitioner would have most likely been prosecuted locally under FCDAPCA § 893.13(1)(a)(1).

> 893.13 Prohibited acts; penalties.-
>
> (1)(a) Except as authorized by this chapter and chapter 499, it is unlawful for any person to sell, manufacture, or deliver, a controlled substance. Any person who violates this provision with respect to:

1. A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4., commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Under the Florida Criminal Punishment Code, Petitioner's unlawful act would be a second (2nd) degree felony with a level 5 severity rating. *See:* Florida Criminal Punishment Code, pg. 60. Under the local laws of the State of Florida, the "maximum" sentence for unlawful possession and sale of 10.5 grams of powder cocaine is 15 years with a $10,000 fine. FRS 775.082 and 775.083(1)(b).

For purposes of comparative analysis under principles of federalism, Petitioner was sentenced to the federal statutory maximum term of incarceration of 20 years (21 U.S.C. 841(b)(1)(C)), whereas he would have faced a considerably lower statutory maximum term of incarceration of 15 years under the local laws of the State of Florida. See: FS § 775.082(3)(d)). Furthermore, Petitioner was sentenced as a "career offender" in the federal case, whereas Petitioner would not have met the necessary requisites to be sentenced as a "habitual felony offender" under FS 775.084(1)(a)) (See: Woods v. State, 807 So. 2d 727, 729 (Fla. 1st DCA 2002); see also Johnny Jones v. State of Florida, District Court of Appeals of Florida Third District, Case No. 3D04-607, January 2004). Petitioner was also sentenced in the instant federal case to pay a fine of $500,000, whereas under the local laws of the State of Florida Petitioner could have been sentenced to pay a maximum fine of $10,000 (50 times less than his federally-imposed fine!) (FRS

775.083(1)(b)).

Under federal law Petitioner's charged offense constitutes a "Class C" felony, as "the maximum term of imprisonment authorized is less than twenty-five years but ten or more years" (18 U.S.C. 3559(a)(3)), whereas under Florida State law Petitioner's charged offense would constitute "a felony of the second degree" (FCDAPCA 893.13(1)(a)(1)), punishable "by a term of imprisonment not exceeding 15 years" (FS 775.082(3)(d)). Petitioner would have been subject to a more lenient maximum term of incarceration had the offense been prosecuted under local State law.

Had Petitioner been charged and prosecuted by the State of Florida (as opposed to by the federal government), Petitioner would have most likely entered into a plea agreement, whereby he would have pled guilty to the instant offense involving 10.5 grams of powder cocaine in exchange for a significantly lesser sentence. In the instant federal case, however, Petitioner was not offered an opportunity to plead guilty to this offense involving 10.5 grams of powder cocaine (Count 5). The only offer that was presented by the prosecutor, Frank Tamen, through Petitioner's defense attorney, Fred Haddad, was that if Petitioner were to plead guilty to the charge of conspiracy to possess with intent to distribute 5-15 kilograms of cocaine (Count 1), the government would recommend a sentence of twenty (20) years' incarceration. Petitioner was forced to take his case to trial and to be found not guilty of the larger quantity.

In conclusion, these disparities (in both Petitioner's length of incarceration and fine imposed) couldn't have arisen, but for the federal government's dramatic intrusion upon the State of Florida's traditional criminal jurisdiction in contravention of the Tenth Amendment to the Constitution for the United States of America.

As shown by the records in Petitioner's case, in the year 2004, this Petitioner pled guilty to the local charge of possession of three (3) grams of a cocaine powder substance without a medical prescription. *See:* Aventura Police Incident Report, April 29, 2004. On March 11, 2005, this Petitioner was sentenced to one day of imprisonment and a $370.00 fine, under local law. FCDAPCA § 893.13(6)(a); see also Florida Criminal Penalty Code, pg. 60. This is presented herein to show that a quantity of less than 28 grams (one ounce) of a cocaine substance under the local law of Florida does not have a mandatory sentence or a mandatory fine. The fact that local law and sentencing might be more lenient toward a convicted party does not give cause or authority to violate the Tenth Amendment to the U.S. Constitution.

Secondly, there is no factual allegation in the Indictment of this Petitioner engaging in acts of international or interstate (domestic) trafficking and distribution, and there was no conspiracy to do so. As shown by the records in this case, Petitioner was found not guilty of distributing 5 kilograms or more of cocaine. Petitioner was found guilty of local possession of a small quantity of a cocaine powder substance that was distributed and

sold to a local City of Hollywood Police Department Detective. Petitioner was not charged with and no evidence was produced that showed beyond a reasonable doubt that this Petitioner engaged in interstate or international trafficking of controlled substances.

> "In *Bass*, we interpreted a statute that prohibited any convicted felon from "'receiving], possess[ing], or transport[ing] in commerce or affecting commerce . . . any firearm.'" *Id.,* at 337. The Government argued that the statute barred felons from possessing *all* firearms and that it was not necessary to demonstrate a connection to interstate commerce. *We rejected that reading*, which would "render[] traditionally local criminal conduct a matter for federal enforcement and would also involve a substantial extension of federal police resources." *Id.,* at 350. *We instead read the statute more narrowly to require proof of a connection to interstate commerce in every case,* thereby "preserv[ing] as an element of all the offenses a requirement suited to federal criminal jurisdiction alone." *Id.,* at 351."
> See: Bond v. United States, 572 US ____, 134 S. Ct. 2007, 189 L. Ed. 2d 1 (2014), quoting United States v. Bass, 404 US 336, at 350, 351 (1971) (emphasis added)

"Proof of...interstate commerce" was not presented or established by clear, convincing, evidence in Petitioner's case. When related to the 1988 U.N. drug treaty and to the clear intent of parties, the small quantity of cocaine powder substance in Petitioner's criminal case might have been legally brought into and distributed in the State of Florida under the "controlled delivery" provisions of said drug trafficking treaty.

> "1988 United Nations Convention Against Illicit Traffic In Narcotic Drugs And Psychotropic Substances, Article I, Definitions, Subparagraph (g):
>
> (g) "Controlled delivery" means the technique of allowing illicit or suspect consignments of narcotic drugs, psychotropic substances,

> substances in Table I and Table II annexed to this Convention, or substances substituted for them, to pass out of, through, or into the territory of one or more countries with the knowledge and under the supervision of their competent authorities, with a view to identifying persons involved in the commission of offences established in accordance with Article 3, paragraph 1 of this Convention."

"Controlled delivery" schemes include one or more parties to the 1988 U.N. Drug Convention who "legally" have possession or constructive possession of controlled substances and traffic those drugs to and in local markets within a State. The international and interstate trafficking is thus claimed to be authorized and "legal" by and under the treaty. The so-called legal and covert trafficking of controlled substances by the monopoly enterprise actor(s) might give rise to numerous relevant enforcement issues, but the targeted local actors cannot be said to have knowingly engaged in "illegal" international and interstate trafficking when that particular activity was effectively legal, allowed, and performed by or under the knowledge, consent, and control of the Drug Convention monopoly actors themselves. That becomes a double standard where the trafficking activity is purported to be legal while in actual international and interstate channels but only becomes illegal international and interstate commerce when possessed, sold, or otherwise consumed by local actors who are caught unaware of the monopoly enterprise's "controlled delivery" distribution scheme. In other words, the controlled substance was not involved in illegal trafficking in international and interstate commerce when in the possession or constructive possession of the domestic law enforcement agencies and its partners. It only

became illegal to possess, sell, or consume within (intrastate) under the laws of the State.

Under the current treaty-implementing scheme and enforcement regime, Congress did not intend to invade the powers reserved to the State of Florida, or to preempt local law. Current domestic (federal law) is clear. "No provision of this subchapter [the Controlled Substance Act] shall be construed as indicating an intent on the part of the Congress to occupy the field in which that provision operates, including criminal penalties, to the exclusion of any State law on the same subject matter which would otherwise be within the authority of the State, unless there is a positive conflict between that provision of [the CSA] and that State law so that the two cannot consistently stand together." *See:* 21 U.S.C. § 903 ('Application of State Law'). The federalism defense announced in Bond v. United States (Bond I) was not available at the time when this Petitioner's conviction became final on May 6, 2008.

This same federalism statute was further explained by Donald Verrilli, Solicitor General for the United States, in the "'Brief for the United States as Amicus Curiae", as filed in State of Nebraska and Oklahoma v. Colorado, U.S. Supreme Court, Case No. 144 Original. Said U.S. Amicus Brief states as follows:

> "The CSA does not preempt a 'State law on the same subject matter' as the CSA's control and enforcement provisions 'unless there is a positive conflict' between federal and state law 'so that the two

cannot consistently stand together'. 21 U.S.C. 903."
See: *'Brief for the United States as Amicus Curiae'* at 22, State of Nebraska and State of Oklahoma v. State of Colorado, 136 S. Ct. 1034 (2016), Docket No. 144 Original.
http://www.scotusblog.com/wp-content/uploads/2015/12/Original-No.-144-US-CVSG-Br..pdf

When State (local) laws and enforcement are not in positive conflict with federal (domestic) treaty implementing laws, local law has an enforcement and jurisdictional preference. See: Bourgoin, supra. Taking into account the foregoing facts and issues, the local laws of the State of Florida were and are sufficient to prosecute Petitioner's criminal conduct and to sentence this Petitioner when convicted. As the case records show, this Petitioner might have pled guilty to the possession and sale of 10.5 grams of a cocaine-based substance under State law. Petitioner could have reasonably expected a significantly more lenient sentence and fine.

In furtherance of the presumption of local criminal jurisdiction, Petitioner's prior cases involving only small quantities of controlled substances, were prosecuted under local law. On October 16, 1998, Petitioner was arrested by the Metro-Dade Police Dept. (Miami, Florida) for possession with intent to deliver approximately twenty (20) grams of a cocaine powder substance. Not being clearly under domestic (federal) authority, Petitioner was prosecuted by local authorities and was sentenced under local law. On June 15, 1999, Petitioner was again arrested by the North Miami Beach Police Dept. (N. Miami Beach, Florida) for possessing and selling one (1) gram of a cocaine powder substance. Petitioner was prosecuted by local

authorities. Petitioner pled guilty and was again sentenced under local law. And on April 29, 2004, this Petitioner was arrested by the Aventura Police Dept. (Aventura, Florida) for possession of three (3) grams of a cocaine powder substance. Petitioner pled guilty to the violation of local law and was sentenced under the same.

Finally, Petitioner's case record shows that one of the government's trial witnesses, Michael Schwartz, was factually recognized as the person who "introduc[ed] the undercover agents in this case to [Petitioner]." *See:* Movant/Appellant Quinto's Request For A Certificate of Appealability And Incorporated Memorandum of Law (11th Circuit), p. 5. Said prosecution witness (Michael Schwartz), was previously prosecuted locally (by the State of Florida) for trafficking in a cocaine substance. Michael Schwartz entered into a plea agreement and became a government informant. Operating in that informant capacity, Mr. Schwartz then introduced the local undercover agents to Petitioner. The case record again shows that the State (local) law was considered to be the prevailing authority for Tenth Amendment purposes and for challenges under Bond v. U.S. (Bond I and Bond II).

In the instant case, Petitioner Quinto submitted his Application to the Eleventh Circuit Court of Appeals under Title 28 U.S.C. 2255(h)(2), in which he raised one claim, namely, that Petitioner has prudential standing to challenge his treaty-based statute of conviction as being in contravention of the Tenth Amendment to the U.S. Constitution as applied to Petitioner's

case. In said Application, Petitioner relied on the Supreme Court decision in "Bond I", supra. The Court of Appeals denied said Application on the grounds that, "even if Bond announced a new constitutional rule, it was decided on direct appeal, and the Supreme Court did not have any occasion to decide whether to make the case retroactive on collateral review". In reaching said decision, the court cited Tyler v. Cain, 533 U.S. 656, 663 (2001). See: Appendix A. In denying said second or successive Application, Petitioner's remedy now lies solely with the Supreme Court, as "remedy by motion is inadequate or ineffective to test the legality of his detention". (see 28 U.S.C. 2255(e))

## REASONS FOR GRANTING THE PETITION

### *I. Prudential Standing.*

Petitioner has prudential standing to challenge the treaty-based statute of conviction as being in contravention of the Tenth Amendment, as applied to this Petitioner's case. The Tenth Amendment criminal defense was not available at the time when Petitioner's conviction and sentence became final on May 6, 2008. Prudential standing to claim benefit of local powers reserved to the States and as against treaty-based domestic criminal laws was first recognized on June 16, 2011. See "Bond I", supra.

Petitioner raised this sole claim in his Application for Leave to File a Second or Successive Motion under 28 U.S.C. 2255(h)(2). Petitioner's Application was subsequently denied by the Eleventh Circuit Court of

Appeals upon grounds that "the Supreme Court did not have any occasion to decide whether to make the case retroactive on collateral review." Tyler v. Cain, 533 U.S. 656, 663 (2001). See: Appendix A. Therefore, Petitioner's remedy now lies solely with the Supreme Court, as "remedy by motion is inadequate or ineffective to test the legality of his detention". (see 28 U.S.C. 2255(e))"

This Supreme Court is the only court that can decide whether Bond v. United States, supra, and the principles of federalism have retroactive effect on collateral review.

***II. Bond v. U.S. is a "new rule of constitutional law" under Teague v. Lane and Welch v. U.S.***

Pursuant to Title 28 U.S.C. s. 2255(h)(2), the Supreme Court ruling in "Bond I" constituted a "new rule of constitutional law", as it was held that there was "no basis in precedent or principle to deny petitioner's standing to raise her claims." Bond I, supra. "A case announces a new rule if the result was not dictated by precedent existing at the time defendant's conviction became final." See: Welch v. United States, 136 S. Ct. 1257; 144 L. Ed. 2d 387, at 399 (2016), quoting Teague v. Lane, 489 US 288, at 301 (1989).

***III. The "new rule of constitutional law" announced in Bond v. United States should be made retroactive by this Supreme Court.***

The Supreme Court decision in "Bond I" is a substantive rule which should apply retroactively. "A new rule is substantive rather than procedural

if it alters the range of conduct or the class of persons that the law punishes." See: Welch, supra, at 399, quoting Schriro v. Summerlin, 542 U.S. 348, at 353 (2004). "New substantive rules generally apply retroactively."

***IV. 28 U.S.C. 2255 proceeding is "inadequate of ineffective to test the legality" of this Petitioner's detention.***

Pursuant to Title 28 U.S.C. s. 2255(e), "remedy by motion is inadequate or ineffective to test the legality" of Petitioner's detention, as this Supreme Court has not explicitly made "Bond I" retroactive and has not since applied "Bond I" to a case on collateral review. Therefore, Petitioner's claim was held by the Eleventh Circuit Court of Appeals to not satisfy the statutory criteria for filing a second or successive motion under Title 28 U.S.C. § 2255(h)(2). See: Appendix A.

***V. The Issue Presented Raises Constitutional Issues of Paramount Importance.***

In light of the principle that Congress does not normally intrude upon the States' police powers, this Supreme Court should be reluctant to conclude that Congress meant to punish this Petitioner's local criminal conduct with a federal prosecution. The State of Florida's laws are not only sufficient to prosecute the local criminal conduct in Petitioner's case, there is no positive conflict between said domestic (federal) and local (State) law. There is no clear indication in 21 U.S.C. § 903 or elsewhere in the Controlled Substance Act (CSA) that Congress intended to abandon its traditional "reluctan[ce] to

define as a federal crime conduct readily denounced as criminal by the States". See Bass, supra, at 349. To the contrary, Congress, in compliance with the saving clause in the several treaties, enacted 21 U.S.C. § 903 to recognize the implementation and enforcement of local laws of the State as secured by the U.S. Constitution, Amendment X. Federal field preemption under pretense of the U.S. Constitution, Article I, Section 8, "commerce clause" and the "necessary and proper clause" are precluded by law.

The FCDAPCA, § 893.01, et seq. is not in conflict with the federal CSA. This Petitioner contends that he has standing to raise his Tenth Amendment (federalism) issue and that Petitioner's criminal sentence, restraint of liberty, and pecuniary fines would be significantly less under Florida laws.

## CONCLUSION

In conclusion, Petitioner, Leigh Jesse Quinto, had, and has, recognized Article III and prudential standing to challenge the treaty-based statute and criminal conviction upon Tenth Amendment (federalism) grounds. While implementing the several drug trafficking treaties under domestic law, the treaties did not authorize and Congress did not intend to usurp, occupy, or otherwise supplant the powers reserved to the several States by Amendment X. See: 21 U.S.C. § 903. The relevant treaties, federal Controlled Substance Act, and the laws of the State of Florida are not in conflict with each other. Field preemption, with the limited exception of actual and "positive conflict"

between the treaty based CSA and the FCDAPCA, is precluded by law. See: Bourgoin, supra.

This prudential standing right to claim protection and benefit under the powers reserved to the State of Florida was not recognized at the time when Petitioner's conviction became final on May 6, 2008 and was not available when Petitioner filed his first Motion to Vacate under 28 U.S.C. § 2255, on December 2, 2008.

The prudential right of a criminal defendant to claim benefit of the powers reserved to the State was first recognized on June 16, 2011, when this Supreme Court decided Bond v. United States, 131 S. Ct. 2355, 180 L. Ed. 2d 269. Said "Bond I" Supreme Court decision constituted a new rule of constitutional law, which should be made retroactive to cases on collateral review by this Supreme Court. See: 28 U.S.C. § 2255(h)(2).

"Petitioner raised this claim to protection and benefit of State law in his Application for Leave to File a Second or Successive Motion under 28 U.S.C. 2255(h)(2). However, said Application was subsequently denied by the Eleventh Circuit Court of Appeals on the grounds that "the Supreme Court did not have any occasion to decide whether to make the [Bond] case retroactive on collateral review". Therefore, Petitioner's remedy now lies solely with the Supreme Court, as "remedy by motion is inadequate or ineffective to test the legality of [Petitioner's] detention". See: 28 U.S.C. § 2255(e)."

Petitioner has no other plain, speedy or adequate remedy at law or in equity to obtain relief from the restraint of his liberties

**PRAYER FOR RELIEF UNDER HABEAS CORPUS**

Petitioner, Leigh Jesse Quinto, Petitions this Supreme Court to issue its Writ of Habeas Corpus to the Respondent Warden, Kathy Laden, commanding said Warden to show cause why Petitioner should not be granted standing to challenge his conviction and sentence upon grounds that his conviction and sentence is in contravention of Amendment X of the Constitution for the United States of America.

Dated this 26th day of October, 2018.

Leigh Jesse Quinto
Prisoner No. 64874-004
Federal Correctional Institution
Coleman Low
846 N.E. 54th Terrace
Coleman, Florida 33521