No. _____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

IN RE EDDIE TAYLOR

_____

SUPREME COURT RULE 21 MOTION FOR LEAVE
TO FILE UNTIMELY PETITION FOR A WRIT OF CERTIORARI

_____

Now comes Eddie Taylor ("Taylor"), pro se, to respectfully move this Honorable Court for leave to file an untimely petitoin for a writ of certiorari, and asks that this motion be held to less stringent standards than to lawyers, under this Court's standard in Haines v. Kerner, 404 U.S. 519, 520 (1972).

Supreme Court Rule 13.1, in part, provides that "a petition for a writ of certiorari to review a judgment in any case, ... is timely when it is filed with the Clerk of thie Court within 90 days after the entry of the judgment."

The United States Court of Appeals for the Sixth Circuit filed its ORDER affirming the district court's judgment on October 30, 2018, as reflected in a copy of the Appellate Court's Order set out in APPENDIX A to the accompanying Petition for Writ of Certiorari, making the petition timely, and due, on or about January 28, 2019.

Due to an institutional lock-down, from January 15, 2019 to January 24, 2019, no inmate had access to the law library, or to the typewriters for the preparation of their legal work during that time. The library is closed, all day on Saturdays, and is open only for certain hours the remaining days.

Because of his lack of the procedures and formulation of legal documents, Taylor must depend on a "writ-writer" to do his research and preparation of the

documents he would present to the courts and, on February 4, 2019, the "writ-writer" was placed in the Special Housing Unit ("SHU"), or the HOLE, for an investigation into what was later determined should have happened to him, but all his property, along with Taylor's legal work, which included the petition for writ of certiorari in progress, and it was not until Febrary 21, 2019 that the "writ-writer" was released from SHU, and then could continue to finish the drafting of the petition this motion is sought to file untimely, as is evidenced by the Declaration of the "writ-writer" attached to Taylor's Application to the Honorable Justice Sotomayor for the same leave sought in this motion to the full Court, as Taylor was informed by the Clerk of this Court must be done, as the copy of the rejecting letter instructs, attached to this Motion as an EXHIBIT.

The legal reasons for granting this motion is clear, as the Rules of this Court are not laws, per se, but, as this Court makes clear:

> "The procedural rules adopted by the Court for the orderly transaction of its business are not jurisdictional and can be relaxed by the Court in the exercise of its discretion when the ends of justice so require. This discretion has been expressly declared in several opinions of the Court."

Schacht v. United States, 398 U.S. 58, 64 (1970)(citations omitted).

In an earlier case, applying this same principle, in a per curiam opinion the Court admonished:

> "We have consistently ruled that the interest in finality of litigation must yield where the interests of justice would make unfair the strict application of our rules. This policy finds expression in the manner in which we have exercises our power over our own judgments, both in civil and criminal cases."

United States v. Ohio Power Co., 353 U.S. 98, 99 (1957)(citations omitted).

And, finally, because a prisoner is not in a position to exercise any ability to conduct investigations, do research, and prepare legal documents, when he has either little or no knowledge of how to proceed, the Court found:

> "Finally, it is not insignificant that this is a criminal case. When a litigant is subject to the continuing coercive power of the Government in the form of imprisonment, our legal traditions reflect a certain solicitude for his rights, to which the important public interests in judicial efficiency and finality must occasionally be accommodated. ... And procedural accommodations to prisoners are a familiar espect of our jurisprudence."

Stutson v. United States, 516 U.S. 193, 196, 197 (1996)(citations omitted).

Although this case, in the district court below, was a federal question civil case, where the complaint is that certain public official were the proximate of an alleged unconstitutional deprivation of Taylor's liberty, and was not for the purpose of obtaining monetary damages for such unconstitutional conduct by the defendants, but only asked for declaratory judgment as to the challenged Act of Congress that Taylor alleges is an unconstitutional law, thus a void or no law at all, the fact that Taylor was sentenced to a term of life imprisonment under an alleged unconstitutional law, this case presents issues of first impression, that rely on this Court's case law precedents, such as **Ex parte Siebold**, 100 U.S. 371 (1880), as relied on in **Montgomery v. Louisiana**, 136 S.Ct. 718, 729 (2016), on the contention that the Constitution, in limiting the powers of Congress, by enumerating the limited types of conduct Congress is empowered to legislate over and make criminal, establishes "substantive rules" that "set forth categorical constitutional guarantees that place certain criminal laws and punishments altogether beyond" the Government's "power to impose," **id.**, 136 S.Ct., at 729, such as the Controlled Substances Act is alleged to be beyond the power of Congress to enact, since the Commerce Clause, as intended by the Framers, is for the purpose of removing any obstructions from inhibiting the flow of commerce "among the several States," and not license for substantive criminal legislation by Congress.

Because of the novel manner the arguments are presented in the proposed petition for a writ of certiorari, accompanying this motion, set out arguments

and issues "involving principles the settlement of which is of importance to the public," **Powell v. Nevada**, 511 U.S. 79, 86 (1994), the Court is asked, in this situation, "take a case ... to reaffirm" and revist "settled law," and set this Nation in line with what the Framers intended under our Constitution, where the powers of the Federal Government are "few and defined," while those reserved to the States "remain ... numerous and indefinite." **The Federalist** No. 45, p. 328 (B. Wright ed. 1961). **See, e.g., Artis v. District of Columbia**, 138 S.Ct. 594, 614 (2018)(Gorsuch, J., with whom Kennedy, Thomas, and Alito, JJ., join, dissenting).

This is consistent with what Justice Thomas has been adamant about trying to convince this Court to do for many years: to revert to "the original understanding of Congress' powers and with this Court's early Commerce Clause cases," in order to halt "Congress" from "appropriating state police powers under the guise of regulating commerce," **United States v. Morrison**, 529 U.S. 598, 627 (2000)(Thomas, J., concurring), as the case of **In re Debs**, 158 U.S. 564 (1895) illustrates the purpose of the Commerce Clause is for, pointing out:

> "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."

Id., 158 U.S., at 581.

Not the regulation of the trafficking in drugs, that is nowhere subject for "federal power" legislation.

Wherefore premises considered, this motion should be granted, since the proposed certiorari petition "involv[es] principles the settlement of which is of importance to the public." **Powell, supra.**

After all, as the case in **Schacht** asked that the Court "grant certiorari despite the fact that the petition was filed 101 days after the appropriate pe-

riod for filing the petition," id., 398 U.S., at 64, Taylor submitted his less than 60 days "after the appropriate period for filing the petition," and leave to file untimely should granted, on the further premise pointed out by Justice Thomas, writing:

> ""[I]n our tripartite system of government," it is the duty of this Court to "say 'what the law is.'" ... This duty is particularly compelling in cases that present an opportunity to decide the constitutionality or enforceability of federal statutes in a manner "insulated from the pressures of the moment," and in time to guide courts and the political branches in resolving difficult questions concerning the proper "exercise of governmental power.""

Noriega v. Pastrana, 130 S.Ct. 1002, 1002 (2010)(citations omitted)(Thomas, J., with whom Scalia, J., joins, dissenting from denial of certiorari).

And that would include this case that will "guide courts and the political branches in resolving difficult questions concerning the proper 'exercise of governmental power.'" **Ibid.**

Dated: March 18, 2019.

Respectfully submitted,

Eddie Taylor

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NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

No. 18-3266

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Oct 30, 2018
DEBORAH S. HUNT, Clerk

EDDIE TAYLOR,	)	
	)	
Plaintiff-Appellant,	)	
	)	
v.	)	ON APPEAL FROM THE UNITED
	)	STATES DISTRICT COURT FOR
WILLIAM J. EDWARDS, et al.,	)	THE NORTHERN DISTRICT OF
	)	OHIO
Defendants-Appellees.	)	
	)	
	)	

ORDER

Before: SUTTON, DONALD, and THAPAR, Circuit Judges.

Eddie Taylor, a federal prisoner proceeding pro se, appeals the district court's judgment dismissing his federal civil rights complaint. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a).

In 1996, a federal jury convicted Taylor for possession with intent to distribute crack cocaine, in violation of 21 U.S.C. § 841(a)(1). The district court sentenced Taylor to life imprisonment, and we affirmed Taylor's conviction and sentence on direct appeal. *United States v. Taylor*, No. 96-4169, 1998 WL 109979, at *1 (6th Cir. Mar. 4, 1998) (per curiam).

In October 2017, Taylor filed a complaint against the two Assistant United States Attorneys who successfully prosecuted him, as well as the presiding federal judge from his trial. Taylor's complaint alleged that he is falsely imprisoned. To that end, he argued that the federal government lacked jurisdiction over his case because Congress exceeded its constitutional

authority under the Commerce Clause when it enacted § 841. He sought a declaratory judgment that § 841 was unconstitutional, a writ of mandamus compelling the defendants to take the requisite actions to have his convictions vacated, and reparations for the time he has spent imprisoned.

Because the defendants are employed by the federal government, and not the state government, the district court construed Taylor's complaint as asserting a *Bivens*[1] action. *See* 42 U.S.C. § 1983; *Parry v. Mohawk Motors of Mich., Inc.*, 236 F.3d 299, 306 n.1 (6th Cir. 2000). The district court dismissed the lawsuit sua sponte under 28 U.S.C. § 1915A, reasoning that Taylor's claim was barred by the doctrine announced in *Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994), which held that § 1983 claims, and later extended to include *Bivens* claims, that necessarily call into question a plaintiff's criminal conviction must be dismissed unless the plaintiff's conviction has been formally invalidated. *See Ruff v. Runyon*, 258 F.3d 498, 502 (6th Cir. 2001).

On appeal, Taylor challenges the district court's dismissal of his complaint, presenting five specific issues: (1) he was unconstitutionally prosecuted for conduct not within the province of the federal government; (2) the Commerce Clause does not permit Congress to enact criminal laws; (3) the district court lacked subject-matter jurisdiction over his criminal case; (4) this court should rule upon the merits of his arguments in the first instance; and (5) the Antiterrorism and Effective Death Penalty Act of 1996 is unconstitutional.

We review de novo a district court's dismissal of a prisoner's complaint pursuant to § 1915A. *Grinter v. Knight*, 532 F.3d 567, 571-72 (6th Cir. 2008). In assessing the dismissal of a complaint for failure to state a claim, we must construe the complaint in the light most favorable to the plaintiff and determine whether the complaint "contain[s] sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

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[1] *See Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971).

The pleadings of pro se petitioners are liberally construed and are held to a less stringent standard than those prepared by attorneys. *Martin v. Overton*, 391 F.3d 710, 712 (6th Cir. 2004).

The district court properly dismissed Taylor's complaint. A challenge to the fact or duration of one's confinement is cognizable only on habeas review and thus is not available in an action arising under either 42 U.S.C. § 1983 or *Bivens*. *See Presier v. Rodriguez*, 411 U.S. 475, 489, 494 (1973). And pursuant to *Heck*, a § 1983 or *Bivens* claim for damages, mandamus relief, or declaratory relief is not cognizable if it would necessarily imply the invalidity of a plaintiff's conviction or sentence, unless the plaintiff can show that the conviction or sentence has been set aside. *Heck*, 512 U.S. at 487; *see also Edwards v. Balisok*, 520 U.S. 641, 648 (1997); *Lanier v. Bryant*, 332 F.3d 999, 1005-06 (6th Cir. 2003); *Dewitt v. Adduci*, 62 F. App'x 532, 532 (4th Cir. 2003) (applying *Heck* to petitions for writs of mandamus). Taylor's constitutional challenge to § 841 necessarily implies that his conviction is invalid, and Taylor has not shown that his conviction has been set aside. Consequently, his claim arising under *Bivens* is barred by the doctrine announced in *Heck*.

Finally, Taylor argues that the district court violated his procedural due process rights by screening and dismissing his complaint under § 1915A. But the district court judge reviewed Taylor's claim before dismissing it, Taylor could have filed a motion to alter or amend the district court's judgment, and we have considered Taylor's briefed appeal. That more than satisfies procedural due process. *See Mathews v. Eldridge*, 424 U.S. 319 (1976).

Accordingly, we **AFFIRM** the district court's judgment.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

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