

No. _____

20-7567

IN THE

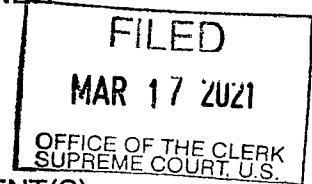
SUPREME COURT OF THE UNITED STATES

ORIGINAL

BRENT DOUGLAS COLE — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)



ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Pro per: BRENT DOUGLAS COLE, #71911097-K3
(Your Name)

P.O. BOX 1000, FCI SANDSTONE
(Address)

SANDSTONE, MN 55072
(City, State, Zip Code)

N/A
(Phone Number)

QUESTIONS PRESENTED

California instituted prosecution against the petitioner January 26, 2014 during a warrantless search and seizure without probable cause for a "welfare check." He was charged under unconstitutional legislative acts, Cal. Penal Code (P.C.) §§ 25850(a) and 25400(g)(1), and incarcerated for having exercised his second Amendment rights in a lawful and peaceable manner. He claimed the P.C. legislation was ex post facto law and violated the Second Amendment. See Appendix (Appx.) J. The state court refused to allow the constitutional challenge, claiming F.R.Civ.P. Rule 5.1 has no force in a state and that the determination as to what the law is must be made by a jury.

1. Did the court transgress its office to determine the law, repudiate its fiduciary duty, or the judge violate the oath required by Art. VI, cl. 3, U.S. Const.?

2. Are either or both of said legislative Acts illegal and void under U.S. law? Appx. J.

June 5, 2014, 4 months later, petitioner, a North Dakota citizen being prevented from working in his usual trades by being bound to CA to stand trial, was camping in a nearby wilderness area attending court hearings in M14-0388. He filed his Answer... and Affidavit, asserting his authority and privilege under 18 USC, §§ 6, 1961(10) [see p. 4], and Kotella v Wood, with a constitutional challenge of the P.C.s and service on CA A. G. Harris. See No. 2:14-cr-0269, ECF 216, filed 07/02/15, pp. 33, 43, 44, 61, and ECF 155, filed 09/08/15, p. 36, documenting the pleadings removed from the court file. Petitioner asserts Art. III, § 2, cl. 2 vests original exclusive jurisdiction over his person in the Supreme Court of the United States in this instance, because COLF is a public Minister while lawfully invoking and exercising the office under § 1961(10). Also, the state of California is the concealed party that instituted the suit against COLF, and the Eleventh Amendment only applies when a suit is filed against a state. The U.S.A. is also a state, which took over the suit and concealed California's participation. "In all cases affecting... public Ministers... and those in which a state shall be a party, the Supreme Court shall have original jurisdiction." Art. III, § 2, cl. 2, Appx. O, p. 11.

3. Was the petitioner a public Minister, while lawfully exercising authority statutorily under 18 U.S.C. § 1961(10), pursuant to Art. III, § 2, cl. 2, U.S. Const., subject of a right thereunder?

4. Is the jurisdiction over the suit against the petitioner vested by Art. III, § 2, cl. 2?

5. Is a violation of 18 U.S.C. § 1512(c) evinced by the removal of the ANSWER from the court file?

June 14, 2014, a BLM agent instigated an officer involved shooting incident in the wilderness camp upon COLE's return to it, inflicting mortal wounds. COLE was seized in the Intensive Care Unit of the Hospital June 17, 2014, and incarcerated without bail. State charges were instituted June 25, 2014 in FY-00267, Sept. 3, 2014, the Petitioner sent notice to the Federal District Court that he wished to present evidence and testimony to the Grand Jury of the removal of court records, attempted murder, and an ongoing RICO enterprise involving law enforcement officials. The letter and court clerk's documentation of it are ECF 155 filed 09/08/15, pp. 55-60

6. Was Pub. L. 91-453, § 404(c) and/or 18 U.S.C. § 3331 violated by failure to notify the Grand Jury?

7. Was Petitioner deprived of the equal protection of the laws in violation of the 14th Amend. § 1?

The Fourth Amendment forbids government agents and agencies exercising an unjust power, that is, making unreasonable searches and seizures, and requires a procedure be used to obtain a warrant from a detached judicial officer unless there are exigent circumstances. The Declaration of Independence asserts: "All Men" are endowed with "unalienable rights" and governments are instituted to secure these rights, "deriving their just Powers from the Consent of the Governed," "Unjust powers may not be granted or lawfully created. Natural law forbids it, Justice condemns it. This Court erred and used faulty logic and dictum deciding Verdugo - Urquidez. It sanctions extra-territorial interference by the Executive Branch. It debases the Rule of Law. It proliferates absolutism, tyranny, abuse of power, despotism, and carnage. These were magnified by Congress granting powers to the Executive Branch vested in them by the Constitution.

8. Did this Court err in its holding in Verdugo - Urquidez, 494 U.S. 259 (1990)?

9. Was the seizure of Petitioner while in state custody, and transport into a foreign jurisdiction an exercise of extra-territorial interference in violation of the First principles of jurisdiction, Art. III, § 2, cl. 3, the Tenth Amendment, and/or the Fifth Amendment?

The U.S.A.O. has claimed that 18 U.S.C. § 3331 conferred jurisdiction to the Federal District Court. The law requires the trial court to first ascertain that the Constitution permits jurisdiction and that the statutes conferring it do not negate it before exercising it. The Constitution Art. III, § 2, cl. 3 does not permit it, and § 3331 negates it.

10. Did the district court fail to ascertain requisite facts and proceed absent jurisdiction?

11. Was the Petitioner's entitlement to the benefits of the writ of habeas corpus under the Northwest Ordinance, Art. 3, abrogated by circumvention of the writ of prosequendum?

In criminal cases, the court has no cognizance of the legal rights of individuals without leave from the people forming a grand inquest, i.e., an indictment "of a Grand Jury", the word "of" meaning from, or owing to, Hannah v. Larche, 363 US 420, 442, 498, 507 (1960), P.21.

Without legal cognizance a court can not proceed without losing its jurisdiction over the cause because it would not be proceeding according to the regular course of judicial procedure.

The court had no indictment. There had been no fair hearing. There was only hearsay and a complaint from a field agent. The necessary writ ad prosequendum was by passed. Holding a detention hearing without evidence of corpus delicti being proffered first is not due process.

12. Was the suit against the Petitioner brought before the court by the regular course of judicial proceedings pursuant to law such that it is a "case" under Art. III, §2, cl. 2?

13. Did the magistrate proceedings comply with § 3041 and rules promulgated by this Court?

July 9, 2014, a conspiracy was agreed upon by the State and Federal Executive Branch Officials at a meeting in Nevada City, CA to institute a Federal prosecution and dismiss the State's without regard to law, rights, or venue facts. The Federal was commenced Sept. 18, 2014 by FBI agent FORISTEL soliciting a warrant without the venue and jurisdiction of the United States. Sept. 24, FORISTEL kidnapped COLE and carried him into a Foreign jurisdiction to stand trial for the same act and substantively commensurate charge that he was incarcerated without bail standing trial in the State for. Sept. 25, 2014, the state charges were nolle prosequied in absentia COLE at the request of D.A. FERGUSON acting at AUSA McCoy's behest. COLE was haled into the Federal Court without notice or citation, demanded his right to self-represent, counsel was forced upon him, with a consent decree that the issue of his counsel of choice, self representation, would be raised and addressed at the next court hearing. COLE was committed without bail and never given an opportunity to be heard in a meaningful manner or at a meaningful time.

The Federal prosecution was barred by the Double Jeopardy Clause of the Fifth Amendment. See pp. 6, 30, and Appx. F, and G. Denial of self-representation is structural error.

14. Is the Federal prosecution a violation of the Fifth Amendment Double Jeopardy bar?

15. Did the denial of self-representation constitute structural error?

16. Are the conspirators who planned and effected the conspiracy culpable?

17. Where the court officers are complicitous, can a fair hearing be reasonably expected?

"The Judiciary Act of 1789, Sept. 24, 1 Stat. 73, Chap. XX, An Act to establish the Judicial Courts of the United States." §1 established the supreme court with five justices and two terms. §25 provided for the settlement of Federal questions and disputes regarding validity of the laws, treaties, constitutions, and authorities of any State or the United States, or commissions held, or where decision is against the title, right, privilege, or exemption specially set up or claimed to be re-examined and reversed or affirmed in the Supreme Court of the U.S. upon a writ of error. And if the cause was once remanded before, the Court may proceed to a final decision of it, and award execution. This is an original action under Art. III, §2, cl. 2 because the State is a party. The Jurisdiction is vested in the Supreme Court to enforce rights. Certiorari is no remedy. Where there is a right there must be a remedy to enforce the right.

The Petitioner repeatedly attempted to file a Petition for Writ of Error in 2020 to challenge the State's court refusing to determine what the law is where the state law is claimed superior to the Constitution of the United States, and abrogated COLE's right to a trial and to an appeal. Also, the state court refused to obey F.R.C.P. 5.1.

The Clerk refused to accept it asserting there is no allowance in the rules for it. The Petitioner asserts that it is not within the power of the State to remove all remedy. This Court acknowledges, "[I]f no writ of error lies, the judgment may be final, in the sense that there may be no means of reversing it," *Montgomery v Louisiana*, 2016 U.S. LEXIS 862, headnote 12. The Petitioner and the People have a right not to be sub-judice ruined, despoiled and conquered by continuously being charged with the commission of a "crime" for exercise of a Constitutionally guaranteed right. There is a right not to be subjected to unlawful legislative acts.

18. Is 1 Stat. 85, ch. xx, §25 and/or its progeny valid law? Restated: What remedy and procedure may be utilized to obtain the function of §25?

COLE sent a letter to the Federal District court asking that the Grand Jury be notified that he wished to provide evidence and testimony of federal crimes and an ongoing RICO enterprise. The court did not notify the Grand Jury.

19. Was the failure to notify the Grand Jury a violation of Pub. L. 91-452 § 904(c) and/or denial of the equal protection of the laws? Amendment XIV, §1.

20. Was the lack of consent and/or defects in the referral orders and/or opening the federal court without the judges presence non waivable jurisdictional error?

21. Did the denial of self-representation or the denial of the benefits of the writ of habeas corpus required under the Northwest Ordinance, Art. 2 void the conviction?

Arraignment has been transformed from a crucial process into nothing but a meaningless formality for forcing the accused to plead to unverified criminal accusations. Unsubstantiated allegations are presumed to be facts, without a fair hearing. The essential questions are not examined. It is assumed that: 1) The crime alleged was committed, and, 2) Probable-cause exists to believe the accused committed the alleged crime without evidence of corpus delicti. Res judicata is falsely presumed. (See p. 32). Prosecution of every allegation made is almost assured. Arraignment is much more than this in proceedings according to the course of the common law. It is the process where meritless and haphazard prosecutions get dismissed, which is the process required by the Northwest Ordinance, Art. 2.

22) Does the current process, claimed to be a "sufficient" process, violate the requirements of the Northwest Ordinance that all persons who are inhabitants are entitled to proceedings according to the course of the common law and/or violate due process for not having dismissed the cause for failure to arraign?

23) Did the Federal court violate F.R. Crim. P. Rule 5.1 by abrogating the right to a preliminary hearing or due process of law by requisitioning an endorsement by the Grand Jury of the "Indictment" of the prosecutor without any evidence? See p. 33, esp. L. 17-37

24) Does Local Rules 302 and 303 violate the separation of Powers Doctrine and/or the right of the accused to have their case decided by an Article III judge?

25) Does the imposition of multiple magistrates to preside over various procedures violate the right of the accused to a (one) neutral and detached judge in the first instance and/or otherwise diminish fundamental fairness of criminal procedures to a lower standard than required in civil proceedings under Rule 16?

26) Did the trial judge decide the appeal of the issues decided by him? See § 47.

27) When a state has "Arraigned" and instituted a criminal charge, then fails to obtain a criminal conviction and dismisses the cause but refuses to acquit, has the state violated the law, constitution, and/or substantive rights?

28) Should the indictment be quashed because Federal prosecution was a puse that was intended to by pass the Speedy Trial Act under 18 U.S.C. § 3162? Appx. C, p. 12.

LIST OF PARTIES

All parties do not appear in the caption of the case on the cover page.

Yet, a list of all parties to the proceeding in the court whose judgment is the subject of this petition DO APPEAR in the caption of the case on the cover page. --

This seeming discrepancy is reconciled by recognizing that the initial cause was founded and pursued by the State of California, which state is the party which originated this prosecution using state legislations that declare the exercise of Second Amendment rights to be a crime, which COLE challenged as being unconstitutional. Said party conspired to change the venue and conceal its role, depriving COLE of his liberty and rights without due process by feigning a suit.

RELATED CASES

Related proceedings have occurred in four (4) courts : Superior Court Of The State Of California In And For The County Of Nevada (Sup. Ct. CA): Captioned:

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff -vs- BRENT DOUGLAS COLE:

1) Dkt. No, M14-000388, Jan. 27, 2014: Trial and appeal abrogated, May 25, 2018 motion to dismiss granted in absentia COLE. Supreme Court of California abrogated appeal;

2) Dkt. No, F14-00267, June 14, 2014 Officer involved shooting occurred; June 17 COLE was seized inside the Hospital ICU and incarcerated without bail in solitary; June 25, 2014, Felony complaint filed for Assault on Officers and Attempted murder; Sept. 25, 2014 the cause was nolle prosequed at D.A. FERGASON's request in absentia COLE; AUSA Michael McCoy directed all overt acts in both State and Federal Executive Branches.

United States District Court Eastern District Of California (USD, East CA):

Caption: UNITED STATES OF AMERICA, Plaintiff, v BRENT DOUGLAS COLE, Defendant;

3) Dkt. No. 2:14-mj-0212-EFB, 09/18/2014 prosecution commenced without indictment, notice, or citation in absentia COLE; 10/02/2014 Docket was closed;

4) Dkt. No. 2:14-cr-00269-GEB, 10/02/2014 opened with indictment of the prosecutor endorsed by an over borne Grand Jury. Verdict returned 2/11/2015. Final Judgment and Commitment, 9/10/2015;

5) Dkt. No. 2:15-cv-00251-GEB, 01/30/2015, ECF 42, 28 USC § 2255 Motion filed before trial. DISMISSED by ORDER, 02/20/2015, ECF 68, "Premature";

6) Dkt. No. 2:15-cv-01062-KJN, 05/11/2015, ECF 79, filed as Petition For a Writ of Mandamus. Pleading was mutilated by ORDER, 05/15/2015, ECF 80, declaring that ECF 79 be construed as a 42 USC, § 1983 claim, which was then DISMISSED for inability to pay the docket fee. It was a clear display of bias.

7) Dkt. No. 2:19-cv-02274-WBS-DB, 11/08/2019, ECF 216, § 2255 Motion: Pending;

United States Court of Appeals For The Ninth Circuit: Caption ↓ Dismissed 11/19/15

8) Dkt. No. 15-10313, USA, Plaintiff-Appellee, v. BRENT DOUGLAS COLE, Defendant-Appellant

9) Dkt. No. 15-10459, Judgment Affirmed May 21, 2018;

10) Dkt. No. 19-10019, interlocutory, DISMISSED 04/25/2019; Motion For rehearing DENIED 10/30/2019;

11) Dkt. No. 20-17203, DISMISSED Nov. 10, 2020;

SUPREME COURT OF THE UNITED STATES (SCOTUS), Caption:
BRENT DOUGLAS COLE, Petitioner vs. UNITED STATES OF AMERICA, Respondent:

12) Dkt. No. 16-5966, DENIED Oct. 31, 2016. Petition For Writ Of Certiorari;

13) Dkt. No. 18-5579, DENIED Oct. 1, 2018, Petition For Writ Of Mandamus;

14) Dkt. No. 18-6283, DENIED Nov. 13, 2018, Petition For Writ Of Certiorari;

15) Dkt. No. 19-8148, DENIED April 27, 2020, Petition For Writ Of Certiorari.

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APPENDIX C ORDER, Oct. 21, 2020, "OBJECTION OVERRULED" (DENIAL), U.S.D.C. Eastern Dist. of Calif., ECF 255, Nos.: 2:19-cv-02274-WBS-DB, 2:14-cr-0269-WBS-DB;
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DECLARATION OF INDEPENDENCE ii

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
☒ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix G to the petition and is a nolle prosequi in absentia, and

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
☒ is unpublished.

The ^{decree}~~opinion~~ of the Supreme Court of California court appears at Appendix P to the petition and is refusal to hear or refer appeal, and

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
☒ is unpublished.

JURISDICTION

☒ For cases from federal courts:

The date on which the United States Court of Appeals decided my case was December 15, 2020.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was ^{filed in} ~~denied by~~ the United States Court of Appeals on the following date: January 13, 2021, and a copy of the order denying rehearing appears at Appendix _____ is pending.
It took more than six months for the Appeals Court to respond in 19-10019.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___ A ___.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

"[1e][2b] We hold this Court has jurisdiction under § 1254(1) to review denials of applications for certificates of appealability by a circuit judge or a panel of a court of appeals. The portion of House v. Mayo ... is overruled." Hohn v. United States, 524 US 236, 253-265, 141 LEd 2d 242 (1998).

☒ For cases from state courts: Calif. instituted prosecution then Nolle Prosequied it. The Supreme Court of California abrogated the right of appeal: APPENDIX P, 2/25/2020.

The date on which the highest state court decided my case was Sept. 25, 2014.
F14-0267: A copy of that decision appears at Appendix G. Nolle prosequi in absentia COLE; M14-0388; May 25, 2018 in absentia COLE; A copy thereof is Appendix I.

☒ A timely petition for rehearing was thereafter denied on the following date: August 12, 2019, and a copy of the order denying rehearing appears at Appendix Q.

The Supreme Court of California refused to respond after refusing to review the appeal.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___ A ___.

There was no denial of the averment the Supreme Court had jurisdiction over appellate courts,

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

Petitioner repeatedly attempted to submit a petition for a writ of error during 2020. The SCOTUS Clerk asserts there is no provision in the rules for it. All remedy is removed. "[T]o take away all remedy, ... is not within the power of the State." Poindexter v. Greenhow, 114 US 270, 303 (1885).

THE CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, AND ORDINANCES INVOLVED

28 U.S.C. § 1254: "Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods: (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;"

The Judiciary Act of 1789, September 24, 1789, 1 Stat. 73, Chap. xx, An Act to establish the Judicial Courts of the United States.

"SECTION 1. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the supreme court of the United States shall consist of a chief justice and five associate justices, any four of whom shall be a quorum, and shall hold annually at the seat of government two sessions, the one commencing the first Monday of February, and the other the first Monday of August. ..."

SEC. 25. "And be it further enacted, That a final judgment or decree in any suit, in the highest court of law or equity of a State in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of, or an authority exercised under the United States, and the decision is against their validity; or where is drawn in question the validity of a statute of, or an authority exercised under any State, on the ground of their being repugnant to the constitution, treaties or laws of the United States, and the decision is in favor of their validity, or where is drawn in question the construction of any clause of the constitution, or of a treaty, or statute of, or commission held under the United States, and the decision is against the title, right, privilege, or exemption specially set up or claimed by either party, under such clause of the said Constitution, treaty, statute, or commission, may be re-examined and reversed or affirmed in the Supreme Court of the United States upon a writ of error, the citation being signed by the chief justice, or judge or chancellor of the court rendering or passing the judgment or decree complained of, or by a justice of the Supreme Court of the United States, in the same manner and under the same regulations, and the writ shall have the same effect, as if the judgment or decree complained of had been rendered or passed in a circuit court, and the proceeding upon the reversal shall also be the same, except that the Supreme Court instead of remanding the cause for a final decision as before provided, may at their discretion, if the cause shall have been once remanded before, proceed to a final decision of the same, and award execution. But no other error shall be assigned or regarded as a ground of reversal in any such case as aforesaid, than such as appears on the face of the record, and immediately respects the before mentioned questions of validity or construction of the said constitution, treaties, statutes, commissions, or authorities in dispute."

SEC. 35. "And be it further enacted, That in all courts of the United States, the parties may plead and manage their own causes personally or by assistance of such counsel or attorneys at law as by the rules of the said courts respectively shall be permitted to manage and conduct causes therein. And there shall be appointed in each district a meet person learned in the law to act as attorney for the United States in such district, who shall be sworn or affirmed to the faithful execution of his office, whose duty it shall be to prosecute in such district all delinquents for crimes and offences, cognizable under the authority of the United States, and all civil actions in which the United States shall be concerned, except before the supreme court in the district in which that court shall be holden.

[§ 35 cont.] And he shall receive as compensation for his services such fees as shall be taxed therefor in the respective courts before which the suits or prosecutions shall be. And there shall also be appointed a meet person, learned in the law, to act as attorney-general for the United States, who shall be sworn or affirmed to a faithful execution of his office; whose duty it shall be to prosecute and conduct all suits in the Supreme Court in which the United States shall be concerned, and to give his advise and opinion upon questions of law when required by the President of the United States, or when requested by the heads of any of the departments, touching any matters that may concern their departments, and shall receive such compensation for his services as shall by law be provided." The Judiciary Act of 1789, September 24, 1789, 1 Stat. 93, ch. xx, §35.

THE TREATY FORMED BY THE NORTHWEST ORDINANCE

"... It is hereby ordained and declared by the authority aforesaid, That the following articles shall be considered as articles of compact between the original States and the people and States in the said territory and forever remain unalterable, unless by common consent, to wit:

Art. 1. No person, demeaning himself in a peaceable and orderly manner, shall ever be molested on account of his mode of worship or religious sentiments, in the said territory.

Art. 2. The inhabitants of the said territory shall always be entitled to the benefits of the writ of habeas corpus, and of the trial by jury; of a proportionate representation of the people in the legislature; and of judicial proceedings according to the course of the common law. All persons shall be bailable, unless for capitol offenses, where the proof shall be evident or the presumption great. all fines shall be moderate: and no cruel and unusual punishments shall be inflicted. No man shall be deprived of his liberty or property, but by the judgment of his peers or the law of the land; and, should the public exigencies make it necessary, for the common preservation, to take any person's property, or to demand his particular services, full compensation shall be made to the same. And in the just preservation of rights and property, it is understood and declared, that no law ought ever be made, or have force in the said territory, that shall, in any manner whatever, interfere with or affect private contracts or engagements, bona fide, and without fraud, previously formed." Northwest Ordinance, July 13, 1787.

UNITED STATES STATUTES

16 Stat. at L.144, §16 brought forward by Comp. Stat. 1916, §3925, that:

"All persons within the jurisdiction of the United States shall have the same right in every state and territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind and no other." Buchanan v Warley, 245 US 60, 78, 62 LED 149 (1917).

18 U.S.C. §1961(10): "'Attorney General" includes... any Assistant Attorney General of the United States, or any agency of the United States so designated by the Attorney general to carry out the powers conferred on the attorney General by this chapter."

18 U.S.C. §6: "The term "agency" includes any ... authority, board, or bureau of the United States ... unless the context shows that such term was intended to be used in a more limited sense." See Rotella v Wood, 528 US 549 (2000):

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 (9th Cir.) Bar to double jeopardy where judge aborts without defendant's consent.

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In *Scott*, the United States Supreme Court held that 18 U.S.C. § 3731 does not bar the government's appeal "where the defendant himself seeks to have the trial terminated without any submission to either judge or jury as to his guilt or innocence." *Scott*, 437 U.S. at 101. A termination at the behest of a defendant, however, must be distinguished from a termination on the court's own initiative. *Scott*, 437 U.S. at 99. **"Where the judge, acting without the defendant's consent, aborts the proceeding, the defendant has been deprived of his 'valued right to have his trial completed by a particular tribunal.'" *United States v. Jorn*, 400 U.S. 470, 484, 27 L. Ed. 2d 543, 91 S. Ct. 547 (1971){1987 U.S. App. LEXIS 6} (citing *Wade v. Hunter*, 336 U.S. 684, 689, 93 L. Ed. 974, 69 S. Ct. 834 (1949)). This deprivation precludes retrial.**

Applying these principles, the magistrate's sua sponte termination of the trial in Govro's favor independent of factual guilt or innocence bars a retrial. After the defense rested, the magistrate stated that *State of Hawaii v. Moore*, 62 Haw. 301, 614 P.2d 931 (1980) required him to discharge Govro. He based this decision on his belief that the government could not prosecute without an absolute refusal to take an intoxilyzer test and Govro's later request for a test. Even though the magistrate refused to consider any of the government's evidence, that refusal and the termination of the case was not at Govro's election. Govro did not waive his "valued right to have his trial completed by a particular tribunal." *Scott*, 437 U.S. at 92; *Jorn*, 400 U.S. at 484. A retrial in this instance would permit the government a second attempt to convict Govro, which the Double Jeopardy Clause prohibits.

CONCLUSION

Because the Double Jeopardy Clause bars Govro's retrial, the judgment is reversed {833 F.2d 138} {1987 U.S. App. LEXIS 7} and remanded with instructions to dismiss the action. (9th Cir.)

United States v. Gouro, 833 F.2d 135, 137, 1987 U.S. App. LEXIS 153331

AMENDMENT V [1791] In Addition To The CONSTITUTION of The United States:

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

AMENDMENT II [1791]: A well regulated Militia being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

§ 7. Special maritime and territorial jurisdiction of the United States defined

The term “special maritime and territorial jurisdiction of the United States”, as used in this title, includes:

(1) The high seas, any other waters within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State, and any vessel belonging in whole or in part to the United States or any citizen thereof, or to any corporation created by or under the laws of the United States, or of any State, Territory, District, or possession thereof, when such vessel is within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State.

(2) Any vessel registered, licensed, or enrolled under the laws of the United States, and being on a voyage upon the waters of any of the Great Lakes, or any of the waters connecting them, or upon the Saint Lawrence River where the same constitutes the International Boundary Line.

(3) Any lands reserved or acquired for the use of the United States, and under the exclusive or concurrent jurisdiction thereof, or any place purchased or otherwise acquired by the United States by consent of the legislature of the State in which the same shall be, for the erection of a fort, magazine, arsenal, dockyard, or other needful building.

(4) Any island, rock, or key containing deposits of guano, which may, at the discretion of the President, be considered as appertaining to the United States.

(5) Any aircraft belonging in whole or in part to the United States, or any citizen thereof, or to any corporation created by or under the laws of the United States, or any State, Territory, district, or possession thereof, while such aircraft is in flight over the high seas, or over any other waters within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State.

(6) Any vehicle used or designed for flight or navigation in space and on the registry of the United States pursuant to the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies and the Convention on Registration of Objects Launched into Outer Space, while that vehicle is in flight, which is from the moment when all external doors are closed on Earth following embarkation until the moment when one such door is opened on Earth for disembarkation or in the case of a forced landing, until the competent authorities take over the responsibility for the vehicle and for persons and property aboard.

(7) Any place outside the jurisdiction of any nation with respect to an offense by or against a national of the United States.

(8) To the extent permitted by international law, any foreign vessel during a voyage having a scheduled departure from or arrival in the United States with respect to an offense committed by or against a national of the United States.

(9) With respect to offenses committed by or against a national of the United States as that term is used in section 101 of the Immigration and Nationality Act [8 USCS § 1101]—

USCS

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PETITION FOR WRIT OF HABEAS CORPUS - PAGE 7 OF 40 - LOLE v. U.S.

(A) the premises of United States diplomatic, consular, military or other United States Government missions or entities in foreign States, including the buildings, parts of buildings, and land appurtenant or ancillary thereto or used for purposes of those missions or entities, irrespective of ownership; and

(B) residences in foreign States and the land appurtenant or ancillary thereto, irrespective of ownership, used for purposes of those missions or entities or used by United States personnel assigned to those missions or entities.

Nothing in this paragraph shall be deemed to supersede any treaty or international agreement with which this paragraph conflicts. This paragraph does not apply with respect to an offense committed by a person described in section 3261(a) of this title [18 USCS § 3261(a)].

§ 13. Laws of States adopted for areas within Federal jurisdiction

(a) Whoever within or upon any of the places now existing or hereafter reserved or acquired as provided in section 7 of this title [18 USCS § 7], or on, above, or below any portion of the territorial sea of the United States not within the jurisdiction of any State, Commonwealth, territory, possession, or district is guilty of any act or omission which, although not made punishable by any enactment of Congress, would be punishable if committed or omitted within the jurisdiction of the State, Territory, Possession, or District in which such place is situated, by the laws thereof in force at the time of such act or omission, shall be guilty of a like offense and subject to a like punishment.

CONSTITUTION OF The United States, Article III, §2, clause 3:

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

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

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PETITION FOR WRIT OF CERTIORARI - PAGE 8 OF 40 - COLE V. United States

STATEMENT OF THE CASE

1
3 The Petitioner, hereafter COLE, humbly and honestly proffers this Petition as an
5 Offer of Proof, pro se, requesting that this Court liberally construe his pleadings in
7 light of *Hains v Kerner*, 404 US 519, 521 (1972), and the fact the F.B.I. has denied inmates
9 access to the regisits to prepare meaningful legal papers for a year using the COVID excuse.
11 The suit against COLE is the embodiment of traduement of justice. The alleged crime
13 of assault, for which COLE was convicted at age 60 for his first offense, and sentenced to 29 1/2
15 years incarceration, did not actually happen. Never has a fair hearing been held, or one
17 wherein the corpus delicti rule was satisfied. There exists no credible evidence of it.
19 The suit against COLE is the achievement of the July 9, 2014 conspiracy agreed upon
21 at N.C.S.O., Nevada City, CA by State and Federal Executive Branch Officials to
23 institute the Federal suit in a manner certain to convict while concealing the truth.
25 AUSA McCoy feigned the Federal suit with the complicity of judicial officers.
27 California has enforced its ability to preclude challenges to unlawful legislative
29 acts, ignore the Constitution and laws of the United States, abrogate the right to trial
31 and to appeal, refuse to perform judicial duties, and ignore Supremacy Clause regisits.
33 The Executive Branch has arrogated carte blanche for extra territorial interference
35 and a universal police power, *legibus solutus*, exempted from legal restrictions,
37 to itself. The jurisdiction is vested in this Court by Art. III 32, cl. 2. COLE has standing.
PETITION FOR CERTIORARI - PAGE 9 OF 40 - COLE v U.S.

The Court Was Without Lawful Cognizance

The ORDER appended to the accompanying IFP Motion, ECF 7, filed 10/01/2014, with the docket sheet of no. 2:14-mj-0212 EFB, and Appendix (Appx.) G and Appx. F, is positive proof the Federal District Court had not cognizance.

1.) Defendant was declared indigent and committed without indictment or hearing him, without notice or citation, and without testimony, evidence, or a fair hearing;

2.) Said ORDER was a breach of the consent decree magistrate CLAIRE issued in open court Sept. 25, 2014. She declared that COLE would be given the opportunity to pursue his demand that he be allowed to represent himself in accord with the Judiciary Act of 1789, §35 "at the next scheduled hearing."

See Docket, ECF 3. The Order forced unwanted "representation" upon COLE, abrogating his rights and stated demand to his counsel of choice, self-representation:

"Held: A trial court's erroneous deprivation of a criminal defendant's choice of counsel entitles him to reversal of his conviction. ... The Amendment requires "that a particular guarantee of fairness be provided - to wit, that the accused be defended by the counsel he believes to be best." United States v Gonzalez-Lopez, 548 U.S. 140, 146, 2006 U.S. LEXIS 5165.

3.) The cause was not brought before the cognizance of the court by the regular course of judicial procedure; The necessary writ ad prosequendum for removing a prisoner from a jurisdiction not the same to stand trial. Art. III, §2, cl. 2 bars jurisdiction. COLE's entitlement to the benefits of habeas corpus under the Northwest Ordinance, Art. 2 was denied.

1 4.) The court was improperly opened by a magistrate judge, not in obedience to any
3 order from the judge, without the consent of the accused, or "special designation", or
5 supervision by an article III judge. The magistrate judge changed with each proceeding,
7 thus denying the right to a neutral and detached judge in the first instance, and the
9 right to have his liberty decided by an Article III judge "free from potential
11 domination by other branches of government." The domination of the Article I magis-
13 trate judges by the executive branch is evidenced by unlawful commencement by an
15 information and arrest warrant issued without the venue and jurisdiction of the U.S.
17 "[There was] no authority for the practice pursued in this case, since the court was
19 not opened in obedience to any order from the judge. ... [N]or do we know of any auth-
20 ority under which a judge may open a court without his personal presence, unless
specially authorized to do so by statute," *United States v. Finnell*, 185 U.S. 236, 252.
22 Appx. H reveals that Judge Kimberly J. Mueller recused herself as her only act.

24 5.) The breach of contract committed by the court failing to perform its own promise
26 deprived the accused of due process of law by depriving him of his right to be heard and right
28 to locus standi. Either deprivation renders all subsequent proceedings fundamentally unfair.

30 6.) The charging of an infamous crime was not lawfully before the cognizance of the
32 court without an indictment. There was no credible evidence before the court. Only
34 a 'Pre trial Services Report' alleging a "crime of violence", Appx. N, and a hearsay affidavit,
36 proffered with the complaint were before the court. There was no basis of probable cause

38 or cognizance. See *Giordenello v. U.S.*, 357 U.S. 480, 2 LEd2d 1503 (1958). See p. 20, L. 32-38,
PETITION FOR CERTIORARI - PAGE 11 OF 40 - COLE V. U.S.

Arrogated Carte Blanche For Extraterritorial Interference

3 The imperialist ideology of Theodore Roosevelt was revived by the Bush adminis-

5 tration during 1989. The Bush regime arrogated to the Executive Branch a sweeping carte

7 blanche for extraterritorial interference in the internal affairs of sovereign states

9 in open defiance of international law. It ought to be dubbed the "Thornburgh Doctrine."

11 Its beginnings we exercised to institute election interference, a U.S. coup attempt, and

13 military provocations in flagrant violation of the Panama Canal Treaty in 1989, then the

15 CIA, Operation Blue Spoon. Dec. 20, 1989 the U.S. militarily invaded Panama, making false

17 claims that Manuel Antonio Noriega was a military dictator and indicted drug trafficker

19 who had declared his (imaginary) dictatorship to be in a state of war with the U.S.

21 Francisco Rodriguez was the legitimate President of Panama, of the U.S. recognized state,

23 source: ISBN: 0-943235-05-07; L.B. of Congress Cat. Card No. 91078005 EIR 91-007.
Civilian targets were bombed. Over 400 bombs were dropped on Panama City alone.

25 The U.S. blithely claimed the official death toll was just over 200. In reality, more

27 than 5000 innocent civilians, largely women and children, were consumed in the fires

29 of El Chorrillo or secretly buried in mass graves. A puppet regime was installed.

31 More than 10,000 civilians were incarcerated in concentration camps labeled

33 "prisoners of war". Sanctions and economic warfare left over 15,000 people homeless.

35 The new CIA and cartel connected president, Guillermo Endara, purged many thousands.

37 Noriega was kidnapped Jan. 3, 1990 and transported to the U.S. to be tried under its laws.

39 See George Bush, The Unauthorized Biography, @ Executive Intelligence Review 1992, pp. 524-539.
PETITION FOR CERTIORARY - PAGE 12 OF 40 - COLE v. U.S.

1 There was no evidence and no due process. There was only Bush's rhetoric
3 of Aug. 15, 1989 that he had the obligation "to kidnap Noriega", and his 7:20 AM
5 speech, Dec. 21, 1989, spouting absurd propaganda to rationalize. Thereafter, Panama
7 remained under direct U.S. military dictatorship and virtual martial law. Its
9 society, government, economy, and infrastructure has remained in shambles. These
11 aberrations are supposedly "justified" by furtherance of some vague claimed U.S.
13 interest; but in reality, are just lawless violence to further some personal or political
15 agenda: Simply the expression of the U.S. Government's claim to universal
17 extraterritorial jurisdiction to assert universal police power and attain a world
19 power legibus solutus, a superpower exempted from all legal restrictions. (Appx. L).
21 7.) This Court legitimized the Executive Branch's arrogation of this power by
23 its decision in United States v Verdugo - Urquidez, 429 US 259, 108 L Ed 2d 222,
25 110 S Ct 1056 (February 28, 1990), in violation of the principles of jurisdiction.
27 See Daimler AG v Bauman, 187 L Ed 2d 624, 2014 US LEXIS 644 (quoting Shaffer v
29 Heitner, 433 US, 197, 53 L Ed 2d 683 (1977)). This Court is circumscribed by 1 Stat.
31 ch. xx, § 16 by international law (laws of Nations) from granting such authority.
33 8.) The Executive Branch is now using this grant of Universal Police Power to
35 impose its will and a General Police Power upon the several states and the People in
37 violation of the Tenth Amend., Art. III, § 2, cl. 3, and Art. I, § 8, evinced by this suit.

1 9.) The USAO, claims that 18 U.S.C. § 3231 confers jurisdiction to the district court,

3 "Before deciding that federal jurisdiction exists, a federal court must satisfy itself not
5 only that the Constitution permit it, but also that Congress in the statutes conferring
6 jurisdiction has not expressly or by implication negated its existence." Am. Jur.
2d Federal Courts, § 581, p. 38, © 2007 citing Aldinger v Howard, 427 US 1 (1976).

8 The Const, Art. III, § 2, cl. 3 prohibits it, and the statute has expressly negated existence:

10 "Nothing in this title shall be held to take away or impair the jurisdiction of the courts
of the several states under the laws thereof," 18 U.S.C. § 3231, second sentence.

12 "Trial shall be held in the State where the said crimes shall have been committed;"
13 U.S. Const., Art. III, § 2, cl. 3. [BLM lands are within the State's territory.]

15 The decision was made, before the first uninvolved officer arrived at the scene of the
17 officer involved shooting, that COLE would be charged with crimes and the officers,
19 who had shot him five (5) times and at him 17 times, would be declared justified.

21 10.) The only uninvolved witness, Christopher DONEGAN, was immediately concealed.

23 The witnesses that he was handcuffed at the crime scene when the first unin-
25 volved officers arrived were also concealed, as were their police reports and the
27 C.H.P.'s independent investigation. The FBI and USAO filed a perjured affida-

29 vit on March 1, 2019, ECF 210, EXHIBIT B, to maintain this fraud on the court,

31 "No judicial process, whatever form it may assume, can have any lawful authority out-
33 side of the limits of jurisdiction of the court or judge by whom it is issued; and an
34 attempt to enforce it beyond these boundaries is nothing less than lawless violence,"
Ableman v. Booth, 21 How 506, 523-524, 16 LED 169 (1859).

36 The kidnappings of COLE and NORIEGA were both attempts to enforce jurisdiction beyond

38 its lawful boundaries to assert *legibus solutus* in violation of the Tenth Amendment.
PETITION FOR CERTIORARI - PAGE 14 OF 40 - COLE v. U. S.

Removal Of All Remedy For Enforcement Of Right - The Writ Of Error

11.) The Superior Court OF THE STATE OF California refuses to allow an accused to challenge the constitutionality of the legislative Acts under which they are charged. It refuses to abide by Fed. R. Civ. Proc. (FRCP) 5.1. It declares that the Duty to determine what the law is is incumbent upon the jury, and abdicates its Duty:

"It is emphatically the province and duty of the judicial department to say what the law is. ... If two laws conflict with each other, the courts must decide on the operation of each. ... [T]he court must determine which of these conflicting rules governs the case. This is the very essence of judicial duty." *Marbury v. Madison*, 1 Cranch 137, 177, 178, 2 LED 60 (1803).

COLE's rights to challenge the legitimacy of the legislative acts under which he was being prosecuted and deprived of liberty and property, to trial, and to appeal were abrogated by the state's agencies. COLE submitted a Petition to obtain remedy.

COLE asserts that 1 Stat. 85, ch. XX, § 25 is still valid law, albeit brought forward.

Inmates are denied access to most legal materials, including U.S. statutes. He is of the belief that only a Petition For Writ of Error filed as an original action in the Supreme Court Of The U.S. is able to provide remedy. The Clerk rejects it, asserting that S.C. Rules will not allow it. The District court and Appeals Court have refused to pass on this question and issue, or any jurisdictional issue or challenge. This removal of all remedy for enforcement is removal of the rights.

"The discrimination is made... to deprive him of that right,.... But that is not within the power of the State." *Poindexter v Greenhow*, 114 US 270, 303, 29 LED 185 (1885).

PETITION FOR CERTIORARI - PAGE 15 OF 40 - COLE v. U. S.

Denial of Equal Protection of Law

- 3 (a.) About Sept. 1, 2014, COLE heard there was an attempt to indict him on Federal charges. Sept. 3, 2014 he sent notice to the Federal District Court, as statutory Attorney General, that he wished to address the Grand Jury to present evidence and testimony of Federal crimes, which included removal of records from a court file, attempted murder, and a RICO style racketeering enterprise involving law enforcement officials.
- 15 ECF 155, filed 09/08/15 in USDC, Eastern Dist. of Calif., no. 2:14-cr-00369-CEB, pp. 55-60. The last two pages are the Clerk's acknowledgement of receipt and return, without giving the Grand Jury notice, evincing the deprivation of: (1) Constitutional rights to "have full and equal benefit of all laws and proceedings concerning personal liberty, personal security," 14 Stat. 176-7; (2) the right to "lay before any grand jury impaneled by any district court of the U.S., any evidence concerning any alleged racketeering violation of law," [See 18 USC § 3331 and Pub. L. 91-452]; (3) the right to "invoke the power of any such court to compel the production of evidence before any such grand jury," Pub. L. 91-452 § 904(c).
- 31 (b.) Sept. 24, 2014, FBI Agent FORRISTEL kidnapped COLE, seized all evidence and discovery, and carried him into a foreign jurisdiction. Sept. 25, 2014 the state prosecution was nolle prossed at D. A. Ferguson's request, in absentia Cole. Weeks later, COLE flooded the cell-block he was in T-5ep in, in protest of his papers being taken. One of the guards found some of them in a corner in the basement, including the letter, PETITION FOR CERTIORARI - PAGE 16 OF 40 - COLE v. U.S.
- 33
- 35
- 37
- 39

Effecting The Conspiracy - Concealing A Party - Circumventing Due Process

14) The MOTION FOR C. O. A., ECF 260, 12/11/20, asserts that "lack of consent and

defects in the referral order were non waivable jurisdictional errors." Also, magistrates

were dominated by executive and legislative branch agendas and agencies. They were

effecting the July 9, 2014 conspiracy against rights, using the court as a weapon.

The court was without venue or lawful cognizance in violation of 18 USC § 3041,

and without jurisdiction over subject matter or person. The numerous magistrates were

without consent, "special designation", or supervision by an Art. III judge, insuring that

the accused's rights had far less protection than any party in a civil case.

15) COLE was immediately deprived of his right to self-represent upon being haled

into court Sept. 25, 2014. No showing of jurisdiction has ever been made and the

regular and necessary procedure for removing a prisoner from a jurisdiction not the

same was wantonly circumvented, the habeas corpus writ and prosecution, see

Carbo v United States, 364 U.S. 611, 614-618, 51 Ed 2d 329 (1961), and 38 U.S.C. § 3241(c)(5)

et seq. COLE was deprived of his entitlements under the Northwest Ordinance, Art. 2,

"The inhabitants of the said territory shall always be entitled to the benefits of the

writ of habeas corpus, and of the trial by jury, and of judicial proceedings

according to the course of the common law. All persons shall be bailable, unless

for capital offenses, and no cruel and unusual punishments shall be inflicted.

No man shall be deprived of his liberty or property, but by the judgment of his

peers or the law of the land; ... " A Treaty and Prior Engagement valid under Art. VI.

Effecting the conspiracy depended upon concealing the role of California as a party.

PETITION FOR CERTIORARI - PAGE 17 OF 40 - COLE v. U.S.

1 16.) On Sept. 18, 2014, FBI Agent Andrew FARRISTEL solicited Magistrate-
3 Judge Edmond F. BRENNAN to commence a Federal prosecution against COLE
5 for the same act that he was incarcerated, standing trial in California for: An
7 overt act in furtherance of the conspiracy agreed to July 9, 2014. This was done
9 to change the venue, disregarding that it occurred without the jurisdiction of the
11 United States, and the court was prohibited from its exercise to impair or defeat
13 the State court's. 18 U.S.C. §§ 7, 13, 3261(b); Kline v Burke Construction Co., 260
15 US 226, 229-230; and Lewis v United States, 523 US 155, 159, 140 L Ed 2d 271 (1998):

17 "[A] court must ask (a) whether the accused's act or omission is made punishable
19 by any enactment of Congress, and (b) if so, whether the federal statutes
that apply to the act or omission preclude application of state statute;".
21 "The States possess primary authority for defining and enforcing the criminal
law." Brecht v Abrahamson, 507 US 619, 633-635, 123 L Ed 2d 653 (1993).

23 BLM land is within the territorial jurisdiction of the State and not ceded, see 18 USC § 13.

25 ACA is not applicable and 18 U.S.C. § 111 does not preclude application of state statute.

27 COLE denies that any affirmative showing of jurisdiction exists, and denies that

29 any court has inquired into the jurisdiction or venue of the trial court in this

31 instant. Prosecution was commenced in disregard of Fifth Amendment requirements

33 for Grand Jury indictment, double jeopardy, and deprivation of life and liberty without

35 due process. No notice, citation, or opportunity to be heard was afforded at a meaning-

37 ful time or manner, COLE's right to self-represent was abrogated, and counsel forced on him.

1. 17) 18 U.S.C. § 3261(b) prohibited commencement of Federal prosecution. The necessary writ of *prosequendum* was circumvented. *Carbo v. United States*, 364 U.S. 611, 614-620, 5 L.Ed.2d 329 (1961); *U.S. v. Moore*, 436 U.S. 340, 355 (1978).

7 This violated *COLE's* entitlement under the Northwest Ordinance, Art. 2 to the benefits of the writ of *habeas corpus*, bail for a non-capital offense, due process, and to not be subjected to cruel and unusual or excessive punishment.

13 "It is a well-settled rule, that the intent is presumed and inferred from the result of the action." *Kohler v. U.S.*, 342 U.S. 852, 853-54 (1951).

16 Effecting the July 9, 2014 conspiracy required that the venue and jurisdiction not be examined or contested. Abiding by the regular and necessary process for removing a prisoner from a jurisdiction not the same to stand trial would have provided opportunity to contest, and requirement to inquire into both.

24 "14. In all cases of conspiracy, the act of one conspirator, in the prosecution of the enterprise is evidence against all." *Logan v. United States*, 144 U.S. 263.

26 "HELD: Under 18 U.S.C. § 242, it is a criminal offense to willfully and under color of law deprive a person of rights protected by the Constitution or laws of the United States." *U.S. v. Lanier*, 520 U.S. 264.

30 This Court HELD unanimously in *Marbury v. Madison*, 1 Cranch 137, 176-180 (1803): "A legislative act contrary to the Constitution is not law; It is emphatically the province and duty of the judicial department to say what the law is." Those who apply the rule to particular cases, must of necessity expound and interpret that rule. If two laws conflict with each other, the courts must decide on the operation of each, so if a law be in opposition to the Constitution, if both the law and the Constitution apply to a particular case, the court must determine which of ~~the~~pg. 747 these conflicting rules governs the case. This is the very essence of judicial duty..."

38 PETITION FOR CERTIORARI - PAGE 19 OF 40 - *COLE v. U.S.*

18.) The Federal prosecution was commenced without an indictment by an affidavit and a complaint from an FBI Agent, who had no personal knowledge of his claims.

APPENDIX F is the Arrest Warrant issued and filed Sept. 18, 2014, to commence the prosecution in U.S.D.C. Eastern Dist. of Calif., no. 2:14-mj-00212-EPB, while the accused was incarcerated in W.B.C.F. Nevada City, CA on trial for the same act.

ECF 6. Page 2 claims the accused was arrested 9/25/2014 at "U.S. Marshals".

This begs the question as to how the accused got out of state custody into federal.

COLE proffers this as an offer of proof that the Federal court did not remove the state prisoner by the regular and necessary process, a writ of habeas corpus ad prosequendum, to bring him before the court to stand trial. The court lacked jurisdiction:

"[8] the express terms of the Constitution, the exercise of the judicial power is limited to "cases" and "controversies". Beyond this it does not extend, and unless it is asserted in a case or controversy within the meaning of the Constitution, the power to exercise it is nowhere conferred. A "case" was defined... to be a suit instituted according to the regular course of judicial procedure." *Muskrot v. U.S.*, 219 US 346, 356-57, 55 L Ed 246 (1911). (see also U.S. Constitution, Art. III, §2, cl. 1.)

"[I]t is the duty of this [Court] to see to it that the jurisdiction of the [District court]... is not exceeded." *Sumner v. Mata*, 449 US 539, n.2, 66 L Ed 2d 722 (1981).

19.) The state D.A. requested dismissal of case no. F14-00267 Sept. 25, 2014, at AUSA, Michael D. McCoy's direction, in absentia COLE, which was granted. *United States v. Gault*, 833 F.2d 135, 137, 1987 U.S. App. LEXIS 153331 (9th Cir.); "Where the judge, acting without the defendant's consent, aborts the proceeding, the defendant has been deprived of his 'valued right to have his trial completed by a particular tribunal.'" [Cites omitted] This deprivation precludes retrial."

PETITION FOR CERTIORARI - PAGE 20 OF 40 - COLE v U. S.

The Epitome of Fundamental Unfairness

3 20.) Almost every nefarious artifice imaginable was used to assure wrongful conviction,

5 preclusion of redress, and a sentence of death by incarceration in this instant. If

7 is the epitome of fundamental unfairness and detestable conduct by the court and its

9 officers. It evinces expanded use of the arrogated General Police Power exer-

11 cising *legibus solutus* in violation of Art. I, 38, the Tenth Amendment, and the 1st

13 principles of jurisdiction; - foundation of international law and the 'Rule of Law'.

15 21.) "The Constitution is explicit as respects the permissible accusatory process that the

17 Executive can employ against the citizen. ... Thus, when government agencies adjudicate

19 or make binding determinations which directly affect the legal rights of individuals, it is

21 imperative that those agencies use the procedures which have traditionally been associa-

23 ted with the judicial process. ... But in criminal cases, ... the court has no cognizance of

25 them, without leave from the people forming a grand inquest. "Hannah v. Larche, 363 US 420, 442, 498, 507, 4 LE2d 1307, 80 S Ct 1502 (1960).

27 Magistrate BRENNAN had no leave from the people forming a grand inquest when he

29 opened the court by commencing the prosecution without an indictment or cognizance.

31 "[y] Congress meant to preserve a litigant's right to insist on trial before an Article III

33 district judge insulated from interference with his obligation to ignore every thing but

35 the merits of a case. "Roell v. Withrow, 538 US 580, 588, 155 L Ed 2d 775 (2003).

37 "While we share important responsibilities with our esteemed Article I colleagues,

39 we must none the less "control the magistrate system as a whole, " [cite omitted].

41 A magistrate judge may enter a final order if: (1) the parties consent to the magis-

43 trate judge's authority, and (2) the district court specially designates the magis-

45 trate judge to exercise jurisdiction, [cite omitted], a jurisdictional concern. ...

47 We therefore reject California's contention that a district court may specially designate

49 a magistrate judge with jurisdiction through an ambiguous referral. "Ashker v.

51 Newsom, 968 F.3d 975, 2020 U.S. App. LEXIS 24339 (Lexis 11-157) (9th Cir.).

53 [This holding applies to ambiguous referrals of several magistrates on a suit by a local court rule.]

55 PETITION FOR CERTIORARI - PAGE 21 OF 40 - COLE v. U.S.

1 "Upon the trial judge rests the duty of seeing that the trial is conducted with solicitude for the essential rights of the accused." *Cyler v Sullivan*, 446 U.S. 335, 351, 64 L. Ed. 2d 333 (1980).

5 (a) Judge Shubb seems to assert, "Delegation to the magistrate judge is expressly allowed by 28 U.S.C. § 636." Appx. C, p. 2, L. 18-19. This condones ambiguous referrals without consent, or "special delegation," or oversight of an Art. III

11 judge (of multiple magistrate judges) of all criminal proceedings. F.R. Civ. R.

13 Rule 73 and 28 U.S.C. § 636 speak only of civil jurisdiction. The Constitution

15 Article III, § 2 distinguishes between criminal and civil jurisdictions by the

17 terms "cases" and "controversies" respectively. The rules of construction will

19 not admit the words having no purpose. Since a controversy is a civil case and a

21 clash of opposing views, and case is an action at law which includes criminal suits,

23 two jurisdictions are indicated and must be inferred. Criminal is not mentioned

25 except for misdemeanor crimes. U.S. Dist. Ct. Eastern Dist. of CA, Local Rule 303(b):

27 "Duties to be performed in criminal matters by a Magistrate-Judge Pursuant

29 to 28 U.S.C. § 636(a), (b)(1)(A), (b)(1)(B), (b)(3) or other law...

29 (6) Conduct of all proceedings contemplated by Fed. R. Crim. P. 1, 3, 4, 5,

31 5.1, 9, 40, 41 except 41(e) post-indictment information motions and Rule

33 41(f) motions in felony actions made at any time;...."

35 This Local Rule is a legislative Act instituted by the Judicial Branch in order

37 to expand the jurisdiction of its magistrate judges beyond what the Constitution

or Congress allows in violation of the separation of Powers Doctrine.

39 PETITION FOR CERTIORARI - PAGE 22 OF 40 - COLE v. U.S.

1 23) Rule 302 deprives an accused of their right to have their liberty decided by an Art.

3 III judge and their right to a neutral and detached judge in the first instance. It was

5 argued, and decided, in *United States v. Finnell*, 185 U.S. 336, 251 (1902) that :

7 "The opening of a court is a solemn judicial act and must be performed by the
9 judge in person, unless special authority is given by statute for its performance
by a subordinate officer." [Numerous citations were given that are not available in BOP].

11 The ambiguous referral of all criminal cases to whatever magistrate is available, with-

13 out consent, "special designation", or oversight, to open the court and commence

15 prosecutions for infamous crimes without cognizance, indictment, or a judicial

17 hearing deprives the accused of the protections that are accorded to the rights

19 of all parties in every civil case by FRCP Rule 16, 18 U.S.C. § 3041 was ignored.

21 The requirement of preliminary examination is circumvented by presenting

23 an indictment, of the prosecutor, to an overborne grand jury, demanding they

25 endorse the prosecutor's "indictment", and declaring that "the defendant is indicted";

27 which exempts them from conducting a preliminary hearing under FR.Crim.P. 5.1(a)(1).

29 The Grand Jury is deceived as to what the law is and what their duties and rights are.

31 No arraignment occurs, because the requisit questions are never asked or examined.

33 The required process is abrogated by the court declaring it is only to require a plea.

35 *Corpus delicti* and probable cause are assumed; It is assumed the crime occurred as

37 alleged, without inquiry, and res judicate presumed thereafter. Injustice is fixed.

1 Institution of The Suit By The State of California

3 (24) Jan. 26, 2014, employees of Nevada County Sheriff's Office (NC50) assaulted, seized, searched, and incarcerated the Petitioner, COLE, a North Dakota citizen, without just cause or warrant, charging him under Cal. Penal Codes (P.C.) §§ 25850(a) and 25400(a)(1), which legislate the lawful exercise of 2nd Amendment right to be "crimes" in Cal. Sup. Ct., No. M14-0388. 9 The court refused to perform its judicial duty to determine what the law is, insisting that 11 duty is incumbent upon the jury. It refused to recognize the validity of F.R. Civ. P. 13 Rule 5.1, or the requirement for oath under the Supremacy Clause, and bound COLE to stand trial. 15 (25) June 5, COLE filed his 'Answer and Affidavit' in open court, challenging legitimacy of P.C.s 17 under Art. I, §10, cl. 1 & Second Amend., claiming privilege under 18 USC, §§ 6, and 1961(10) 19 as statutory Attorney General. The pleading was ordered to be part of the court file and D.A. 21 Wilson ordered to respond by June 25. No response was made. The pleading was removed 23 from the court's file and concealed, evincing a crime under 18 U.S.C. § 1512(c). See pp. 25 4, Appx. D: p. 68 and Appx. J (this Petition). COLE was camping in a nearby wilderness area. 27 June 14, 2014, a BLM agent instituted an altercation before noon, fraudulently claiming 29 the area was closed to the public. At 3:00 P.M. he was in COLE's camp, stealing property, 31 and searching without a warrant with a C.H.P. officer. When COLE returned, the BLM Agent 33 instigated a shooting incident, shooting COLE five (5) times, and mortally wounding him. 35 43 C.F.R. § 644, Part 295, and § 8364.1, requirements for closure, were not complied with. 37 PETITION FOR CERTIORARI - PAGE 24 OF 40 - COLE v U.S.

1 No evidence of the "probable cause" for the initial detention was ever proffered.

3 On June 25, 2014, California filed a felony complaint against COLE for assault as F14-00267.

5 The prior exclusive state jurisdiction attached. COLE was incarcerated without bail.

7 in solitary confinement for an offense not capital in Nevada City standing trial.

9 26.) On July 9, 2014 numerous state and Federal Executive Branch Officials met at NCSO,

11 colluded, and agreed to a conspiracy to deprive COLE of his rights, change the venue

13 ignoring venue facts, constitutional mandates, and circumventing the necessary

15 writ of habeas corpus ad prosequendum, due process requirements, and speedy trial.

17 The Const. Art. III, § 2, cl. 3 requirement, "Trial shall be held in the state where the crimes

19 shall have been committed," and the Sixth Amend., "trial... of the state and district

21 wherein the crime shall have been committed," were violated by their conspiracy.

23 Judicial Officers were complicitous in effecting the judicial decisions of the

25 prosecutors' conspiracy, in disregard of fact and law. They refused to examine venue

27 thereafter. There has been failure/refusal to accept, or decline to allow, evidence proffered.

29 The judicial process was reduced to a sham and courts organized to convict by design.

31 There is no material difference between 2:14-cr-0269 and Lord v. Veazie, 8 How 251, 256 (1850).

27.)

33 "The practice of bringing feigned lawsuits into court was condemned by the Supreme

35 Court in the case of Lord v. Veazie, 8 How 251, 256, 12 L. Ed. 1067, 1069. ... Any deceit

37 is entirely inconsistent with that perfect directness and openness which should

39 characterize parties when they seek the intervention of their sovereign to adjust in

41 court their difficulties. Every agreement to practice such deceit is fraudulent, against

43 public policy, and void. "Van Horn v. Kittitas County, 113 F.1, 3, 1901 U.S.App. LEXIS 4684 (9th Cir.)

PETITION FOR CERTIORARI - PAGE 25 OF 40 - COLE v. U.S.

1 A STATE MUST ACQUIT OR CONVICT ONCE IT HAS INSTITUTED CHARGES

3 The State charges filed and served on the Petitioner were either genuine
5 or they were a ruse. The intent to commit abuse can be formed before or after a
7 prosecution is commenced, but which is of no significance to results. Once the
9 State has begun a prosecution it must acquit or convict. Any other rule would
11 encourage and reward corrupt practices and conspiracies, and violates justice.

13 "If, however, a defendant can establish collusion or a ruse... which is intended to bypass
15 the Speedy Trial Act, the district court should dismiss the indictment." United States v Burgueno, 1997 U.S. LEXIS 25332.

17 Appx. G is proof that the State's felony charges were nolle prosecuted in absentia COLE
19 on the same day he was haled into Federal court to effect the conspiracy proved
21 by the 'MOTION FOR C.O.A.', ECF 260, no. 2:14-cr-0269. Appx. H is the recusal
23 of Judge Kimberly J. Mueller upon being assigned to the suit 18 days after the
25 magistrates had unlawfully instituted it. Appx. I is the "dismissal" of the
27 misdemeanor charges which instituted this suit Jan. 27, 2014. The state
29 court has refused to acquit asserting that the Petitioner has failed
31 to prove his innocence. In essence it is conviction upon accusation.
33 The Supreme Court of California sanctioned this by abrogating right to appeal.
35 APPX. J is the complaint under two Bills of Attainder for which the court
37 has refused to allow the legitimacy to be challenged. Keeping arms is a "crime".

THE INTERLOCUTORY APPEAL

3 COLE'S § 8255 Motion is at issue. He asserts he is ACTUALLY INNOCENT. The alleged crime did not actually happen. COLE was assaulted. Then he defended.

7 (28) Dec. 15, 2030, the U.S.C.A. Ninth Circuit dismissed the appeal claiming:

APPENDIX A:

9 "A review of the record demonstrates that this court lacks jurisdiction over this appeal because the order challenged in the appeal is not final or appealable. See 28 U.S.C. § 1291. In re San Vicente Med. Partners Ltd., 865 F.2d 1128, 1131 (9th Cir. 1989) (order) (magistrate judge order not final or appealable); see also Branson v City of Los Angeles, 913 F.2d 334 (9th Cir. 1990) (denial of reconsideration of non-appealable order is itself not appealable). Consequently, this appeal is dismissed for lack of jurisdiction."

17 The dismissal: 1. Denies COLE his due process right to be heard to state his claims; 2. Presumes the magistrate's order is not dispositive of any issue;

21 3. Presumes the judge's order reaches no further than denial of a non-dispositive

23 magistrate-judge's order's reconsideration and involves no irreparable injury;

25 4. Fails to examine the jurisdiction of the magistrate-judge or the trial court;

27 5. Allows the trial court judge to hear and determine an appeal from the

29 decision of issues tried by him in violation of 28 U.S.C. § 47;

31 "No judge shall hear or determine an appeal from the decision of a

32 case or issue tried by him." Act of June 25, 1948, ch. 646, § 47.

32 "When federal jurisdiction is challenged, the plaintiff bears the burden

33 of showing why the case should not be dismissed." *Wingebago Tribe*

34 of *Nebraska v Kline*, 297 F. Supp. 2d 1291 (D. Kan., 2004). "Am. Jur. 2d,

Federal Courts (Vol. 1) § 587

35 There has been failure and/or refusal of the trial court and appeals court to adhere, PETITION FOR CERTIORARI - PAGE 27 OF 40 - COLE v. U.S.

Venue Is An Essential Fact Constituting The Offense Charged

30.) Where a charged offense was an act committed solely within the venue that is encompassed by exclusive jurisdiction over the geographic area, or the prior exclusive jurisdiction over person or res has attached, venue is an essential fact constituting the offense charged. It must be charged under the laws of the Government having jurisdiction, except where that Government's law is superseded by a superior law, which must explicitly state it supplants it.

The laws of a foreign State generally do not apply within a sovereign State.

The record is entirely lacking in evidence that the act occurred within the venue of the United States. There is no evidence that 18 USC § 111 supersedes state law.

"Just as 'Conviction upon a charge not made would be sheer denial of due process,' so is it a violation of due process to convict and punish a man without evidence of his guilt." Thompson v Louisville, 362 US 199, 206 (1960).

There is no evidence of the Essential fact of venue for § 111, the predicate of § 924(c).

"When a defendant is charged in more than one count, venue must be proper with respect to each count." U.S. v. Corona, 34 F.3d 876, 879, 1994 U.S.App. LEXIS 24120 (9th Cir.); see United States v. Johnson, 323 US 273, 276, 89 L Ed 236 (1944).

The record shows that all acts alleged occurred within the venue and jurisdiction of Calif.

"The judgment of conviction pronounced by a court without jurisdiction is void, and one imprisoned thereunder may obtain release by habeas corpus. A judge of the United States - to whom a petition for habeas corpus is addressed - should be alert to examine 'the facts for himself when if true as alleged they make the trial absolutely void.'" Pointer v. Texas, 380 US 400, 403, 13 L Ed 2d 923, 85 S Ct 1065 (1965).

1 31.) COLE denies that he has ever been afforded a meaningful opportunity to defend.

3 His right to choice of counsel was immediately abrogated, self-representation,

5 and unwanted counsel was forced upon him to stand in his place, "represent" him,

7 which abrogated his rights to be heard and abrogated his rights to participate in any

9 form or manner. This abrogated his right to determination of legal claims in an

11 adversary proceeding and his right to a formal examination of evidence: To trial.

13 "The fundamental conception of a court of justice is condemnation only after

15 an action and to render decrees without any hearing whatsoever is, in the very

17 nature of things, to convert the court exercising such an authority into an

19 of justice upon which the exercise of judicial power necessarily depends."

Hovey v Elliot, 167 U.S. 409, 414, 42 L. Ed. 215, 17 S. Ct. 841.

21 32.) The Federal trial court was complicitous, abinitio, and thereby made it -

23 self a principal in the conspiracy. All doubt of this conclusion has been extinguished

25 by the bias of the court in favor of the Government, demonstrated by granting every

27 motion filed by it without allowing time for the defendant to respond, and bias against

29 him by denying or failing to rule on motions from the defendant. Also, there has been

31 failure to accept proffers of evidence in to evidence, or deny entry, and failure to

33 respond to questions concerning important legal issues or in interpret or apply the law.

35 "[A] trial court must respond to questions concerning important legal issues." U.S. v.

37 Evanston, 651 F.3d 1080, 1086, 2011 U.S. App. LEXIS 13647 (9th Cir.), Bollenback v U.S.,

38 326 U.S. 607, 612, 90 L. Ed. 350 (1946); Georgia v Public Resource, Inc., 206 L. Ed. 2d 732, 2020 U.S. LEXIS 2529; "[T]he judiciary we assign the duty of..."

PETITION FOR CERTIORARI - PAGE 29 OF 40 - COLE v. U. S.

A Duty To Enforce The Rule of LAW

The decision was made before the first uninvolved officer arrived at the scene of the shooting that COLE would be charged and the involved officers declared to be "justified" in shooting him. The story and evidence made to effect that design. The only uninvolved witness, Christopher DONEGAN, was very hastily concealed, the story concocted, the perjuries developed, and "evidence" either arranged or concealed. No gunpowder residue test was allowed, or analysis of ballistics, because either would have proved the perjuries and the truth. It latter became necessary for FBI Agent FORRISTEL's purjured affidavit to be filed to conceal five witnesses and some police reports to get the Rule 33 Motion dismissed. The trial court demonstrated its complicity by refusing to accept the proof into evidence and assisting the USAO in continuing to conceal the CHP investigation. This Court described perfectly the circumvention of ad prosequendum concluding: "No judicial process, whatever form it may assume, can have any lawful authority outside of the limits of jurisdiction of the court or judge by whom it is issued; and an attempt to enforce it beyond these boundaries is nothing less than lawless violence." Ableman v Booth, 21 How 506, 523-524, 16 LED 169 (1859).

The kidnapping of COLE and NORIEGA were both attempts to enforce jurisdiction beyond its lawful boundaries, and lawless violence, to assert universal police power in violation of the Tenth Amendment. This Court's Duty is to enforce Rule of Law.

1 Entitled To Judicial Proceedings According To The Course Of The Common Law

3 The Prior Engagement named the Northwest Ordinance was enacted, wherein it

5 was declared by the Congress assembled, "That the following articles shall be considered

7 as articles of compact... and forever remain unalterable, unless by common consent,

9 "to wit: Art. 1. No person, demeaning himself in a peaceable and orderly manner,

11 shall ever be molested on account of his mode of worship or religious sentiments,...

13 Art. 2. The inhabitants of the said territory shall always be entitled to the

15 benefits of the writ of habeas corpus, and of the trial by jury, ... and of judicial

17 proceedings according to the course of the common law. All persons shall be

19 bailable, unless for capital offenses, ... All fines shall be moderate; and no

21 cruel and unusual punishments shall be inflicted. No man shall be deprived

23 of his liberty or property, but by the judgment of his peers or the law of

25 the land; ... " Northwest Ordinance, July 13, 1787. See page (p) 4, this Petition.

27 The Supreme Clause makes this Treaty "valid against the United States", Art. VI.

29 The entitlement to every benefit and right elucidated above has been annulled by

31 the practices and policies of the courts below. The courts below have willfully

33 made all of these promised benefits as empty as the sounding brass or clanging

35 bell. It seems the rules of this Court have removed all remedy for enforcement, even

37 though the Constitution, Art. III, § 2, cl. 2, has vested the Power and Duty in this Court.

39 The petitioner proffers APPENDICES P-V as evidence of this claim. He

41 has standing, has raised the relevant issues in the courts below, and they have

43 steadfastly refused to pass on the issues, and failed to attempt any remedy.

45 The process of arraignment being reduced to naught but a formality to plead exemplifies.

47 PETITION FOR WRIT OF CERTIORARI - PAGE 31 OF 40 - COLE V. U. S.

1 "MR. COLE: [T]here's been no arraignment in this case, purpose of an arraignment is to answer two questions: Number one, [W]as a crime actually committed? [N]umber two, [I]s there probable cause to believe the defendant committed that crime? [N] Neither question was asked or considered and it is certainly not answered." RT, p. 13, L. 1-7, May 9, 2014, Trial Rediness Hearing, CA.

7 "COURT: All right Mr. Wilson, do you wish to address that issue?" L. 10.

9 "MR. WILSON: No, other than the fact that the people filed a complaint..."

11 "MR. COLE: -- Could the District Attorney state for the record what the actual crime I committed was? Where is the victim? Where is the property damaged? Where is the criminal intent?" RT, p. 13, L. 15-16.

15 "COURT: All right, Mr. Cole, here is what I am going to do, because first of all I'm going to dismiss your motion for dismissal of criminal charges for lack of mens rea. It may be filed, but it is being dismissed. An arraignment sets forth, an arraignment is to have the defendant come before the court to have the charges read to the person, which was done. [In code, not in the English tongue], with respect to whether or not the crimes occurred, again that has to do with the jury making the determination, and so we are not here yet, and so the Court denies your motion to dismiss on that ground. Again, the jury will hear all of the evidence and will make that determination. The complaint properly sets forth a charge which is a California Penal Code charge, and it properly sets forth that you are the person accused of having committed it in this county and in this state, so that is all that is required for purposes of a complaint and the arraignment. The next document is entitled Juror's Duties and Rights, RT, pp. 13, L. 17-19, L. 1. See Appx. V, pp. 6-7.

30 The court then asserted in error that F.R.Civ.P. Rule 5, I does not apply to states, and

32 "we do not go by federal rules." This does not accord an accused with proceedings

34 according to the course of the common law. Jurors are deprived of their

36 prerogative rights as jurors and threatened by the court routinely. Jurors would

38 be incarcerated if they attempted to question the legitimacy of a C.R.C. definition.

1 No arraignment occurred in the state felony prosecution either. The
3 cause was an information instituted by the assistant D.A. filing a complaint based
5 on hearsay. No fair hearing was ever conducted. No evidence was ever proffered to the
7 court. No witness ever testified. There was never a full hearing or an arraignment.
9 There were three attempts to force a plea, and court appointed counsel entered a not guilty
11 plea on the third attempt, and refused to state the defendant's objections to the fact
13 that there was no credible evidence or testimony before the court of corpus delicti.
15 Arraignment is suppose to be the process for stopping unfounded claims from going to trial.
17 No arraignment ever occurred according to the course of the common law during
19 the course of the Federal proceedings either. A carefully crafted subterfuge was
21 employed using the unlawfully instituted process effected in 2:14-mj-0212 EFB
23 and F.R. Crim. P. 5.1 to bypass the required preliminary hearing which requires:
25 "If a defendant is charged with an offense, other than a petty offense, a
27 magistrate judge must conduct a preliminary hearing unless: (1) the
defendant waives the hearing; (2) the defendant is indicted;" Rule 5.1.
29 The last 3 things are waiver or misdemeanor, and are inapplicable. "Is indicted" is present
31 tense, and "is charged" also. Thus, "must conduct" was mandated, because there was
33 no indictment when the defendant was charged. The hurried requisitioning of
35 an indictment by having the prosecutor demand the Grand Jury endorse the one
37 he prepared, without any credible evidence, violates due process and Rule 5.1.

- 1 In short, no arraignment ever occurred in any of the proceedings in the lower courts because it was never shown that the alleged crime had occurred by any credible evidence. Only the hearsay of FBI Agent Forristel, who wrote the complaint, and is not evidence or a foundation for issuance of a warrant, was presented.
- 9 A failure to arraign is fatal to a prosecution. The Northwest Ordinance was breached. These were not proceedings by the regular course, nor by the course of the common law.
- 13 The conviction was not obtained by due process of law. The suit was not a "Case".
- 15 "It is true, if no writ of error lies, the judgment may be final, in the sense that there may be no means of reversing it. But if the laws are unconstitutional and void, the circuit court acquired no jurisdiction of the causes. The same logic governs a challenge to a punishment that the constitution deprives states of authority to impose. A conviction or sentence imposed in violation of substantive rule is not just erroneous but contrary to law and, as a result, void. It follows, as a general principle, that a court has no authority to leave in place a conviction or sentence that violates a substantive rule, regardless of whether the conviction or sentence became final before the rule was announced." Montgomery v Louisiana, 2016 U.S. LEXIS 868, 1937 Ed 2d 599, Hdnt. 12 - Invalid penalty - new rule - retroactivity, Cmlaw § 70.
- 26 28 If a writ of error does lie, and the rules of the Court will not allow it to be filed, then the rules of the Court must be changed to allow the remedy.
- 30 32 As this Court admits in Montgomery, if it will not admit a writ of error it has removed all remedy for reversing the judgment. The conviction without a trial in M14-0388 will result in an increased sentence if ever there is another charge. Petitioner has a right not to be convicted without trial.
- 38 39 PETITION FOR WRIT OF HABEAS CORPUS - PAGE 34 OF 40 - COLB v U.S.

1 The procedure for taking over the state prosecution was not according to the
3 course of the common law, and was not a regular course of judicial procedure, nor fair.
5 AUSA McCoy and FBI Agent FORRISTEL created the complaint and the indictment.
7 They solicited Magistrate judge BRENNAN to commence the prosecution by issuing an
9 Arrest Warrant based on a hearsay affidavit and complaint Sept. 18, FORRISTEL kidnapped COLE
11 and seized all evidence in his possession, destroying whatever he wished after carrying
13 him into a foreign jurisdiction Sept. 24. COLE was committed without bail in solitary
15 on FORRISTEL's hearsay affidavit, without a full hearing, Sept. 25.

17 On Oct. 2, 2014 McCoy presented FORRISTEL before the Grand Jury as the
19 only "witness" to the "crime", as determined by the two of them, concealing the law's

21 "The ranger identified himself as the police and directed whoever was down
23 there to identify themselves. Mr. Cole came out from the trees. Mr. Cole
25 identified himself as the person that the ranger had earlier contact with. Mr. Cole
27 indicated that this was his campsite, that these were his belongings, and that he
29 did not want law enforcement taking his things. The ranger removed a pair of
30 handcuffs from his duty belt. Mr. Cole backed up a little bit and took kind of
an aggressive stance. The ranger asked Mr. Cole if he was armed. Mr. Cole said
he was armed. In response to that, both of the law enforcement drew their
weapons. (ER 11-12)" Petition For Writ of Certiorary, no. 18-6283, p.12.
Hearsay "testimony" of FBI Agent ANDREW FORRISTEL before Grand Jury Oct. 2, 2014.

32 Although it is hearsay, and mostly conjecture to support the narrative to convict,
34 the essential fact that both officers drew their guns on COLE without provocation
36 while engaged in an amicable conversation is correct. That is an assault on COLE,

38 The law was concealed from the Grand Jury. A person being assaulted may defend.
PETITION FOR CERTIORARI - PAGE 35 OF 40 - COLE v UNITED STATES

1 As a matter of law a person being assaulted can not be guilty of assault. For a
3 person to be guilty under 18 USC, § 111 the Officers must be acting lawfully. If
5 they were not committing a war crime by having the bullets shown in Appx. K
7 in their guns and clips under 18 USC § 2441, Appx. M, they committed a war
9 crime when they drew their guns on COLE before he had reached for his,
11 because they had to ask to buy those bullets, which are designed to inflict
13 superfluous injuries. That was a war crime under § 2441 (c)(3) and
15 described in 2441 (d)(1)(E) as they conspired to injure and intentionally
17 caused serious bodily injury under (d)(1)(F). They were not acting lawfully.

19 On pages 13-14 the prosecutor, AUSA McCoy, after admonishing the Grand Jury the
21 question they were asking was not relevant evoked the very relevant response:

23 "GRAND JUROR: But it would be relevant [sic] -- in the fact that when
they pulled the arms he felt threatened and that is why he pulled his."

25 "PROSECUTOR: Yeah. Let me make this clear first of all. Your
role is to determine whether or not there's probable cause to believe
27 these crimes have occurred. [GRAND JUROR: I understand.] Not whether
or not he has defenses. Right? ... That's not your role to consider at
29 this point. It's whether or not elements --- and I'll go over the
elements crimes -- are satisfied and you believe there's probable cause
31 to believe that that crime was committed."

33 AUSA McCoy did not present any credible evidence to the Grand Jury, as the
35 hearsay he presented was not evidence, and all 3 witnesses were readily available.
37 He improperly instructed them of their role and wantonly concealed the law and facts.

1 This feigned suit, condemned by this Court in *Lord v Veazie* (1850), hides the truth.
3 Appx. P is the Supreme Court of California abrogating the right to appeal and to Counsel.
5 Appx. Q is DENIAL of acquittal after abrogating the rights to trial and vested rights.
7 Appx. R is the Order Dismissing Appeal from presumption of guilt on accusation without trial.
9 Appx. S is the letter attempting to obtain Assistance of Counsel not Counsel imposed as Master.
11 Appx. T is Petitioner's letter to SCOTUS Clerk Harris RE: Application and Writ of Error
13 Appx. U is Excerpt of Motion For Acquittal, California Case No. M14-00388, 08/09/2019.
15 The evidence speaks for itself. The July 9, 2014 conspiracy was about keeping
17 unconstitutional legislations in place, diminishing the legitimate authorities of the
19 United States, abrogating private rights, maintaining an ongoing criminal enterprise
21 and killing or disposing of an informant, the Petitioner, to protect the operation.
23 The removal of the writ of error as the lawful remedy for unconstitutional legislations,
25 practices, and decisions, established by the Act to establish the Courts of the United
27 States, and vested in this Supreme Court by Art. III, §2, cl. 2, by the absence of
29 a rule of this court, seems untenable because it is the removal of a remedy for the
31 enforcement of a right. But that is not within the power of the State.
33 "It is a settled and invariable principle, that every right when withheld, must
35 have a remedy, and every injury, its proper redress." *Marbury v Madison*, 1 Cranch
37 (54.5) 137, 147, 163, 2 LEd 60 (February term of 1803).
39 No other court is of competent jurisdiction to adjudicate the issues herein.

Issues Raised On Appeal By MOTION FOR REHEARING

1. COLE's due process right to state his claims on appeal was abrogated by denial of the appeal without allowing him to file a motion for C.O.A.

2. The record properly before the court was not sufficient to decide both of the questions required to be answered. Only Appendices B-E were cognizable.

"It is a constituent part of the judicial system, that the judge sees only with judicial eyes, and knows nothing respecting any particular case of which he is not informed judicially. ... The looseness which would be introduced into judicial proceedings, would prove fatal to the great principles of justice, if the judge might notice and act upon facts not brought regularly into the cause. Such a proceeding, in ordinary cases, would subvert the best established principles, and overturn those rules which have been settled by the wisdom of ages." *Herrera v Collins*, 506 US 390, 413, 122 L Ed 2d 203, 113 S Ct 853 (1993);

3. It is reasonable to infer that the trial court judge decided the appeal of the issue that was decided by him in the trial court, and the appeals court merely affirmed his decision. The record before the court was not sufficient to conclude it was without jurisdiction and the trial court's proper.

See *Steel Co. v Citizens For Better Env.*, 523 US 83, 94-95, 140 L Ed 2d 210 (1998).

The lower courts violated the Act of June 25, 1948, ch. 646, § 47 by so doing:

"No judge shall hear or determine an appeal from the decision of a case or issue tried by him." 28 U.S.C. § 47. (P.5).

The Supreme Court made it clear the Appeals Court has the duty

"to satisfy itself not only of its own jurisdiction, but also that of the lower court's in a cause under its review," "Id., *Steel Co.*

REASONS FOR GRANTING THE PETITION

1 The suit against the Petitioner was first commenced by the State of California,
3 that fact concealed, and a feigned Federal Suit instituted. This Court has condemned
5 such suits. Lord v Veazie, 8 How 251, 256 (1850). Further, it was begun for iniquitous
7 purposes without due process of law, without the venue and jurisdiction of the U. S.
9 This case involves principles, the settlement of which is of importance to
11 the rule of law and the protection of private rights:

13 (a) A U. S. Court of Appeals has violated 28 U.S.C. §47 by allowing the trial judge
15 to decide the appeal, without allowing the Appellant to state his claims, and
16 sanctioned such a departure by a lower court, as to call for an exercise of
this Court's supervisory power;

18 (b) the Supreme Court of California has abrogated the Petitioner's right to an
20 appeal, which sanctions the state courts' refusal to observe applicable
21 Federal law for challenging the constitutional validity of state legislative
Acts, i.e. F.R. Civ. P. 5.1, and U.S. Supreme Court rulings on judicial Duty;

23 (c) the court of Appeals and the trial court have failed and/or refused to
25 pass on the venue facts and jurisdiction of the trial court, which appear
26 nowhere in the record, except a claim by the U.S.A.O. that 18 U.S.C §3231
confers jurisdiction to the district court, which in fact, prohibits it.(#2);

28 (d) the proper remedy for "questions of validity or construction of the said
30 constitution, treaties, statutes, commissions, or authorities in dispute"
32 "... "may be re-examined and reversed or affirmed in the Supreme
Court of the United States upon a writ of error", under Art. III, §2, cl. 2,
"and those in which a State shall be a Party, the supreme Court shall
have original Jurisdiction." See 1 Stat. 85, ch. xx, § 25 [Const. needed]
34 The Clerk of the Supreme Court refuses to allow a Petition therefore, asserting
35 that there exists no allowance for filing a Writ of Error Petition within the Rules,
PETITION FOR CERTIORARI - PAGE 39 OF 40 - COLE v. U. S.

The proceedings below are in want of this Court's review. The Petitioner is entitled to be discharged from his unlawful incarceration on habeas corpus,

VERIFICATION

I am the Petitioner in this action. All facts alleged in the above Petition not otherwise supported by citations to the record, exhibits, or other documents are true of my own personal knowledge to the best of my belief and cognitive abilities:

So help me God.

CONCLUSION

For all of the reasons above stated, and many more not stated:
The Petitioner prays for leave to file a Petition For Writ Of Error.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Brent D. Cole

Date: March 8, 2021

Propria Persona

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Federal Correctional Institution

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