

No. 20-7567

IN THE
SUPREME COURT OF THE UNITED STATES

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 REHEARING

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)

Counsel BUCUR'S

QUESTION PRESENTED

The Framers recognized that, in the long term, structural protections against abuse of power were critical to preserving liberty. Bowsher v. Symar, 478 U.S. 714, 730, (1986). The “structural principles secured by the separation of powers protect the individual as well.” Stern v. Marshall, 564 U.S. 462, 483, (2011).

The question presented in this case is:

Whether the indictment in this case should have been dismissed because the structural protections of the grand jury designed to safeguard individual rights and liberties were compromised when the prosecution impermissibly interfered with the grand jury’s function guaranteed by the Fifth Amendment to act as an independent investigative body when the prosecution abruptly prevented a grand juror from asking a question the grand juror deemed relevant?

Did this interference impermissibly alter the structure of the grand jury by taking away the freedom given to the grand jury to pursue its investigation unhindered by external influence or supervision and to make its decision based on evidence it deems appropriate and to protect individual’s right of freedom and liberty? Is a constitutionally deficient Indictment structural error?

QUESTIONS PRESENTED

The evidence submitted speaks to the claims of collusion, and the lack of any call for interposition by the judicial department to the executive department to remove the Petitioner from the custody of the law of California; and to negate any claim that might, or could be made, that the cause was brought by the regular course of proceeding, *Id.*, *Dennison* at 104. The questions for this Court is, for certiorari, simply: 1):

- (1) Did the Federal District court have cognizance or subject-matter jurisdiction to hear and determine the cause brought before it in this instant, Sept. 2014?

"Moreover, courts, including this Court, have an independent obligation to determine whether subject-matter jurisdiction exists, even in the absence of a challenge from any party." *Arbaugh v. Y & H Corp.*, 546 US 500, 514, 163 L Ed 2d 1097, 126 S Ct 1235 (2006); *U.S. v Cotton*, 535 US 625, 630, 152 L Ed 2d 860 (2002).

"State court's grant of demurrer to criminal defendant at close of prosecution's case in chief during bench trial constituted acquittal under double jeopardy clause, since on demurrer trial court rules as a matter of law that prosecution's evidence is insufficient to establish defendant's actual guilt." *Smalis v. Pennsylvania*, 476 US 140, 106 S Ct 1745, 90 L Ed 2d 116 (1986); Const. of the U.S., LEXIS E, Former Proceeding as a Basis For Double Jeopardy, 2. Former Acquittal, a. In General, 154. By direction of Court; *Evans v Michigan*, 568 US 313, 185 L Ed 2d 124, "C6T" (2013).

The State of California has refused to grant an acquittal in No. M14-0388 asserting that the Petitioner has failed to "prove his innocence", creating a "conviction".

- (2) Does the ruling in *Id.*, *Smalis* constitute an acquittal in nos. M14-0388 and F14-0267?

"The requirement that a court have personal jurisdiction flows... from the Due Process Clause." *Insurance Corp. of Ireland*, 456 US, at 702, 72 L Ed 2d 492; *Ruhrgas AG*,

- (3) Was Due Process of law violated by lack of personal jurisdiction?

LIST OF PARTIES: All parties appear in the caption of the case on the cover page.

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STATEMENT OF REASONS FOR GRANTING CERTIORARI

The cause acted upon by the Federal District court in this instant is the epitome of the TAIL WAGGING THE DOG. The judicial Power of the United States does not extend to it because it is not a "Case" arising under the Constitution of the United States, Article III, Section 2, clause 1, and nowhere is the Power conferred. The cause brought before the court in 2014 was not brought "in subordination to the judicial department, where the rights of person and property are concerned," nor did it "consist[] only in aiding to support the judicial process and enforcing its authority, when its interposition for that purpose becomes necessary, and is called for by the judicial department." *Maskrat v. United States*, 219 US 346, 356-57, 55 L Ed 246, 31 S Ct 250 (1911); and see *Ex Parte Kentucky v Dennison*, 24 How. 66, 104, 16 L Ed 717 (1861): The Petitioner was not "charged by the regular course of judicial proceedings." "The executive authority of the state, therefore, was not authorized ... to make the demand" that the court institute a federal prosecution without an indictment to change the venue and defeat the State Court's prior exclusive jurisdiction, and effect the judicial decisions, made by collusion of Federal and State Executive Department Officials on July 9, 2014 at NCSD, to consummate their conspiracy against rights. Said lawless violence must not be sanctioned by this Court.

The removal of the prisoner from the custody of the law "in order to prosecute him in" "a jurisdiction not the same as that wherein the prisoner was confined" was NOT ORDERED by "the customary issuance of the writ ad prosequendum"; otherwise the judge would have been given NOTICE.

"[W]here the jurisdiction of the state court has first attached, the Federal Court is precluded from exercising its jurisdiction over the same res to defeat or impair the State court's jurisdiction. The forbearance... is a principle of right and law and therefore of necessity. It leaves nothing to discretion or convenience. ... "And the same rule applies where a person is in custody under the authority of the court of another jurisdiction." [Cite omitted]. "Kline v. Burke Construction Co., 260 US 226, 229-230, 67 L Ed 226 (1922).

"[T]he writ ad prosequendum was necessary to remove a prisoner in order to prosecute him in the proper jurisdiction where in the offense was committed." Carbo v United States, 364 US 611, 614-618, 5 L Ed 2d 329 (1961).

"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 L Ed 169 (1859).

"[W]here jurisdiction has attached to person or thing, it is - unless there is some provision to the contrary - exclusive in effect until it has wrought its function." Beavers v Houbert, 198 US 77, 85, 49 L Ed 950 (1905).

"Thus, as the law now stands," say this Court, "an individual who may be indicted for treason against the United States is beyond the power of the federal courts and judges, if he be in custody under the authority of a state." 3 How [103, 105, 11 L Ed 514], 56 103."

Taylor v Carryl, 20 How 583, 597, 15 L Ed 1028 (1858); Republic Nat. v United States, 506 US 80, 85, 121 L Ed 2d 474 (1992).

Concise Statement Of The Basis For Jurisdiction

- 1) The Court of Appeals For The Ninth Circuit has denied Petitioner's Motion For Rehearing With Suggestion For Rehearing En Banc, April 23, 2021, without having ever examined any of the jurisdictional deficiencies alleged. App. 1.
- 2) The Petitioner is a public Minister, who invoked his Privilege under 18 USC, §§ 6, and 1961 (10), to act as a statutory agency of the United States, attempted to lawfully protect private rights, and was assaulted and injured in his person and property for having attempted lawfully to perform his statutory duty as a Federal officer. A State instituted the suit against the Petitioner. The 11th Amendment applies only to suits instituted by citizens. Art. III, § 2, cl. 2, U.S. Const. thus confers the original Jurisdiction of this Case to this supreme Court, which is necessarily exclusive. Ames v. Kansas, 111 US 449, 464, 28 L Ed 482, 4 S Ct 437 (1884).
- 3) This Court has a duty to enforce the rule of law, hence its decisions, including the "requirement that jurisdiction be established as a threshold matter", which this Court has declared is "inflexible and without exception." Steel Co. v. Citizens For a Better Environment, 523 US 83, 94-95 (1998).
- 4) "When a Federal court is properly appealed to in a case over which it has by law jurisdiction, it is its duty to take such jurisdiction. ... The right of a party plaintiff to choose a Federal court where there is a choice cannot < * pg. 395 > be properly denied." England v. Louisiana Medical Examiners, 375 US 411, 415, 11 L Ed 2d 440, 84 S Ct 461 (1964).

"[A]bstention is a judge-fashioned vehicle for according appropriate deference to the "respective competence of the state and federal court systems." Louisiana P. & L. Co. v. Thibodaux, 360 US 25, 29, 3 L Ed 2d 1058, 1062 (1959).

The suite against Petitioner was devised by the collusion and deception of State and Federal Executive Branch officials agreeing to disseisin, and to outlaw, and destroy the Petitioner using deprivation of the due course and process of law, and false claims. Such a feigned suit was condemned in LORD v. VEAZIE, 8 HOW. 251, 256, 12 L. Ed 1067, 1069 (1850), and Van Horn v. Kittitas County, 112 F. 1, 3, 1901 U.S. App. LEXIS 4684 (9th Cir.). The several district court judges who have presided were ^{to} complicitous and/or failed "protect fundamental fairness or rights of Petitioner. Petitioner was denied his right to self-represent, his counsel of choice, and was condemned without being afforded an opportunity to be heard, while denied bail and the requisits to prepare his defense. The appeals court sanctioned the trial court's abuses, and has refused to examine jurisdiction after forcing counsel upon the Petitioner over his objections. Double jeopardy barred the cause. The State judge aborted the proceeding without the defendant's consent, "This deprivation precludes retrial." U.S. v. Govro, 833 F. 2d 135, 137, 1987 U.S. App. LEXIS 153331 (9th Cir.). Also, the court had no cognizance of the cause as it had no indictment. Hannah v. Larche, 363 US 420, 442, 498, 507, 4 L Ed 2d 1307, 80 S Ct 1502 (1960); Art. III, §2, cl. 1 precluded jurisdiction.

GROUNDS FOR REHEARING

Petition no. 20-7567, docketed 03/25/21, is largely about this court's rejection of a Petition For Writ of Error, because there is no provision within the Rules of this Court to allow one, according to the Clerk. Petitioner concurs; but, is of the belief a writ of error is the proper remedy; the statutes and law specify that recourse to this Court for redress must be had by a writ of error in this Court under three specific sets of circumstances. He is of the opinion this removes all remedy for the enforcement of the right not to be subjected under unconstitutional legislations, such as the California Penal Codes §§ 25850(a) and 25400(a)(1), which were used to disseise, outlaw, and destroy the Petitioner for having lawfully exercised his Constitutionally guaranteed rights under the Second Amendment. The Federal District court has been complicitous in effecting a conspiracy against rights devised and agreed upon by Executive Branch officials of both the State of California and the United States of America, and said court's officers have made themselves principals by exercising the authority of the court where it lacked subject-matter jurisdiction.

The court of Appeals has sanctioned this abuse of discretion and power.

1.) The executive departments can act only in subordination to the judicial.

(Ground 1, cont.) "[A]ccording to the principles... the executive department can act only in subordination to the judicial department, where the rights of person and property are concerned, and its duty in those cases consists only in aiding to support the judicial process and enforcing its authority, when its interposition for that purpose becomes necessary, and is called for by the judicial department. The executive authority of the state, therefore, was not authorized by this article to make the demand unless the party was charged by the regular course of judicial proceedings." Ex Parte Kentucky v Dennison, 24 How. 66, 104, 16 LEd 717 (1861).

"Kentucky v Dennison is the product of another time... Yet this decision has stood while the world of which it was a part has passed away." Puerto Rico v. Bransford, 483 US 219, 230, 97 L Ed 2d 187 (1987). See Florida v Georgia, 2018 U.S. LEXIS 4027; Texas v New Mexico, 2018 U.S. LEXIS 1518; Kansas v Nebraska, 191 L Ed 2d 1, 2015 U.S. LEXIS 1501; Harvey v Brewer, 605 F. 3d 1067, 1074, 2010 U.S. App. LEXIS 10822 (9th Cir.); Arizona ex rel Merrill v Turtle, 413 F.3d 683, 686, 1969 U.S. App. LEXIS 11744.

"[J]urisdiction was defined by the "principles of public law" that regulates the relationships among independent nations. The first of those principles was "that every State possesses exclusive jurisdiction and sovereignty over persons and property within its territory." The second was "that no State can exercise direct jurisdiction and authority over persons and property without its territory." Shaffer v Heitner, 433 US 186, 197, 53 L Ed 2d 683 (1977)." Daimler AG v Bauman, 571 US 117, 2014 U.S. LEXIS 644.

No necessity existed for interposition of the executive department, and it was not called for by the judicial department. The petitioner was not charged by the regular course of judicial proceedings. The executive departments of the USA and California interrupted the State prosecution and solicited a magistrate judge to issue an arrest warrant of the Federal District Court for a prisoner in the State's territory and custody to defeat the State court's jurisdiction and commence a federal prosecution for an infamous crime, to effect a conspiracy.

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2.) The entitlements of the Northwest Ordinance, Art. 2 (1787) were divested in breach of Treaty to convict; especially the right to proceedings according to the course of the common law: The questions required to be answered in the affirmative for an arraignment to have occurred were not asked prior to trial, nor were they asked before the Grand Jury by the prosecutor. One Grand Juror did raise the appropriate issue while FBI Agent FORRISTEL was on the stand as the only "witness" to the alleged "crime", when all actual witnesses were readily available. The Grand Juror was trying to determine if the "crime" alleged by the AUSA and the FBI agent did occur:

"PROSECUTOR: Only because of, you know, the facts, is it friendly or not. I know you have heard testimony from two of the other individuals in the vehicle with him that morning who indicated the nature of that conversation, because the agent has no firsthand knowledge of that, I don't think it's a relevant question, and I also don't know that he's the best witness. ..." (AUSA McCoy.)

"GRAND JUROR: But it would be relevant [sic] -- relevant in the fact that when they [officers] pulled the arms he felt threatened and that is why he pulled his." [The JUROR realizing this was the first provocation.]

"PROSECUTOR: Yeah. Let me make this clear first of all. Your role is to determine whether or not there's probable cause to believe these crimes have occurred." [Supreme Court No. 18-6283, pp. 13-14, Counsel BUCUR's Petition For A Writ Of Certiorari. See pp. 4-22 for detailed argument of the structural error evinced here. It vitiated all future proceedings.]

APPENDIX 2 is excerpts of the PETITION. The Prosecutor concealed the law as to what constitutes assault and battery, the facts, and the witnesses.

(GROUND 2, Cont.) Counsel was forced upon the Petitioner over his demand that he be permitted to self-represent in accord with 1 Stat. 92, ch. xx, § 35, and his stated demand that he not be represented by anybody, *ab initio*, at trial, and on appeal. Counsel BUCAR refused to comply with COLE's direction not to file a petition in this Court, insisting that she was morally obligated to file on the structural Grand Jury errors, and her petition argued that issue well, but did not evince the concealment of the law, evidence, and material facts by the prosecutor, or hearsay "testimony" of the alleged "crime" and "probable cause" of FBI Agent FORRISTEL. No credible evidence was presented to the Grand Jury, which was deprived of its prerogative rights as jurors, wrongly instructed as to their duties, and all witnesses of the alleged "crime" concealed from them. They were overborne by the prosecutor to endorse his "indictment," which was not "of" the Grand Jury, and they were not permitted to satisfy themselves of the veracity of the claims and alleged facts of prosecutors,

"[Agent FORRISTEL] A. They did. They both ended up hearing some rustling in the bushes and trees roughly in this area. [Not possible because it is mature forest and there are no bushes. He witnessed nothing.] ... When Mr. Cole came into the campsite, he identified himself as the person that the BLM ranger had earlier contact with. He indicated that this was his campsite, that these were his belongings, ..., (RT p. 12, L. 1-11) [9] [The BLM ranger asked Mr. Cole if he was armed. Mr. Cole said he was. In response to that, both of the law enforcement officers drew their weapons." Excerpts of Record, V. 1, CA 15-10459, p. 14; RT Oct. 2, 2014, Testimony of FBI Agent Andrew FORRISTEL, p. 11 L. 25-p. 12.]

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OFFER OF PROOF

What is proved by Agent FORRISTEL's testimony before the Grand Jury on Oct. 2, 2014, is that he testified that the two officers committed an assault and an illegal attempted arrest on COLE, as they did not inform him of intent, reason, or authority for arrest, and put him in fear for his life by suddenly threatening him with deadly weapons while he was amicably engaged in conversation with the BLM agent, and truthfully answering his questions. A person who is being assaulted can not be guilty of assault, as a matter of law. It is also evidence that COLE made no threats or provocations, and had no criminal intent, which is an essential element of 18 USC §111, and was not alleged in the indictment or at trial. However, the petit jury was secretly given instruction to assume criminal intent. Another essential element is, Officers must be acting lawfully, engaged in official duties. They were illegally attempting to arrest, which is neither acting lawfully nor engaged in official duties. Furthermore, an illegal attempted arrest is assault, as a matter of law, and invokes the protections of the Fourth Amendment. Mr. FORRISTEL's testimony and Mr. McCoy's statements to the Grand Jury evidence that the Jurors were not informed of the laws of assault and battery, or arrest. Also they were over borne by the prosecutor to endorse his agenda, and he misled them to do it.

APPENDIX 1 is the ORDER, 04/23/21, 9th Cir., Denying motion for rehearing.

APPENDIX 2 is excerpts of Counsel's Petition in No. 18-6283 S. Ct.

APPENDIX 3 is the Nevada County District Attorney's Open Records Act response:

- a) Email from FBI Agent FORRISTEL to D.A. Anna FERGUSON, Sept. 18, 2014;
- b) Arrest Warrant attachment to Email, U.S.D.C. CA Eastern Dist. No. 2:14-MJ-0212-EPB;
- c) Criminal Complaint attachment to Email, commencing Fed. prosecution by information;
- d) Affidavit of Andrew FORRISTEL attached to email: Only support for C) Complaint;
- e) Docket Sheet, CA Superior Ct. No. F14-0267: Details Exec. Branch. overt acts;
- f) Letter, Aug. 13, 2019, authenticating the above enumerated documents, 15pgs.

APPENDIX 4 is FOIPA Request No. 1466906-001 RESPONSE from the Executive Office for United States Attorneys direct from the U.S. Dept. of Justice, Federal Bureau of Investigation: Communications between Federal Agencies and State of Calif., Nevada County District Attorney's Office, redacted. 16 pages with 2 page authenticating letter and 2 pages code reference.

APPENDIX 5 is the Docket of No. 2:14-mj-0212, opened 09/18/2014, closed 10/02/2014 (2pgs.); WARRANT RETURN, ECF 6, 09/26/2014 (2pgs); and ORDER Forcing Counsel on the Defendant, ECF 7, 10/01/2014 (1pg.).

APPENDIX 6 is the Felony Complaint, June 25, 2014, No. F14-0267, for the same alleged acts June 14, 2014, and commensurate charges. Also, The 09/25/2014 prosecutor requested nolle prosequi in absentia COLE, obtained from the clerk of the Superior Court of California by COLE via U.S. Mail.

The EOUSA FOIPA request was received via U.S. mail April 29, 2021, Appx. 4, and five pages of repeated-appended messages (msgs.) were removed for readability.

Appx. 5 verifies the source of the Email attachments to Agent FORRISTEL's Email to

CA D.A. in Appx. 3. Appx. 6 proves the State Court's jurisdiction first attached.

There is some evidence the State prosecution was always intended to be a ruse;

but the collusion and overt acts are proved by the Docket Sheet in Appx. 3.

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ARGUMENT

The executive departments of the State and Federal Governments acted to effect their agenda and extra judicial scheme to change the venue, and not in subordination to the judicial department. The nolle prosequi invoked the bar to double jeopardy. The prior jurisdiction of the State prohibited the exercise of jurisdiction. If the State prosecution was only a ruse, such deception is condemned by precedent.

"It is only after the grand jury has examined the evidence that a determination ... can be made." Branzburg v Hays, 408 US 665, 701-702 (1972).

Counsel pointed out that Ninth Circuit precedent is contradictory to this courts decisions.

A ham sandwich could be indicted for genocide using the 9th's practices. No witness?

Concealment of the law and interference with the attempt to investigate vitiated all.

Fundamental fairness and the rule of law are threatened by the practices revealed.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Brent D. Cole

Pro per Petitioner Brent D. Cole

Date: May 7, 2021

Brent D. Cole, Reg. No. 21911097-K3

FLI Sandstone

P. O. BOX 1000

SANDSTONE, MN 55072

Certification Of Petitioner In Propria Persona

I Brent D. Cole, Petitioner, hereby certify that
this PETITION FOR REHEARING is presented
in good faith and not for delay.

Executed on May 7, 2021

At Sandstone, Minnesota

Brent D. Cole

This petition is restricted to the grounds specified
in Supreme Court Rule 44.2.