No. 21-510

ORIGINAL

In The Supreme Court of the United States

GIUSEPPE **VIOLA**,

Petitioner,

v.

JOHN **MACADOREY** WARDEN, ARIZONA STATE PRISON – YUMA, DESIGNATED AS A FEDERAL FACILITY BY **UNITED STATES** BUREAU OF PRISONS,

Respondents,

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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Petitioner *pro se*

QUESTIONS PRESENTED

Just over eleven years ago, on 10 March 2010, two distinct contemporaneous disputes, arising within different operating entities of the San Francisco holding company administered by the petitioner, converged tumultuously, resulting in the catastrophic loss of assets acquired over his six previous decades, and of his liberty.

He has since presented all manner of review, but only relatively recently has managed to consolidate the three principal bases upon which his custody rests. The matters presented span he spectrum of Arizona to federal criminal law, to the involuntary bankruptcy used as a proxy to seize all assets. None were afforded substantive review, but procedurally denied.

However, all shared two commonalities: all proceeded in self-representation, save for the Arizona direct appeal, denied despite the state constitutional right to do so, and that all three were absent of subject matter jurisdiction, thus voiding the dispositions rendered, notwithstanding vexatious appellate opinions, however forceful they were intended to seem.

Nevertheless, he has managed to terminate physical custody in the federal action, which now only consists of supervised release and restitution, upon state release. The involuntary bankruptcy has been reopened, which now can receive claims for assets, and the counterclaims filed therein on 11 October 2010. He also has shown the conflation of his identity with a distinct individual with the same surname.

Fortunately, in response to the COVID pandemic, Congress passed the CARES Act, an important provision of which affords relief through challenges to conditions of confinement under § 2241, which in one of its first judicial reviews, was held to also have necessarily afforded review of "the fact...of confinement" itself. This petitioner is eligible for release.

In sum, a matter of first impression exists for consideration on certiorari, to be decided upon issues split among the circuit courts; state and federal law; and these questions:

1) Whether jurisdiction exists for presentation of grounds for relief from all custody under § 2241, challenging conditions of confinement, where concurrent and consecutive sentences had been imposed by courts of both a state and the Government, but where the federal physical custody has terminated, leaving only its separate term of supervised release and restitution to begin upon state release.

2) Whether the confluence of the applicable statutes arrayed under the CARES Act, including 18 USC § 3624(c)(2) and 34 USC § 60541, as applied to those eligible inmates defined thereunder, provide as well for a challenge to "the fact...of confinement" itself, as a violation of Amendment VIII, thereby permitting presentations of actual innocence, as fully contemplated pursuant to 28 USC § 2241.

3) Whether this Court may issue the Writ directly in the full exercise of its plenary authority, provided through 28 USC §§ 1651 and 2241, in the exigent interests of justice.

TABLE OF CONTENTS

INDEX TO APPENDICES

TABLE OF AUTHORITIES

Supreme Court Cases

Court of Appeals Cases

TABLE OF AUTHORITIES (continued)

Other US Cases

State Cases

PETITION FOR A WRIT OF CERTIORARI

Giuseppe Viola respectfully petitions for a writ of certiorari to review the order of the United States Court of Appeals for the Ninth Circuit, in Viola v. Macadorey, *et al.*, No. 20-16654 (Thomas, Chief Judge, Bress, Circuit Judge). [Caption FRAP 41]

OPINIONS BELOW

The Memorandum Opinion of the Court of Appeals misperceived the appeal, as had the District Court, as arising under § 2254, and denied the grant of a Certificate of Appealability, which had not been requested, having instead filed under § 2241, challenging conditions of confinement under the provisions of the CARES Act. The Memorandum Opinion of the Court of Appeals denying the Petition for Rehearing was mistakenly disposed as a Motion for Reconsideration, and entered by a different panel. (McKeown, Bumatay, CJJ). Neither is known to be reported.

JURISDICTION

The Court of Appeals denied the appeal on 14 January 2021. The Court of Appeals denied a Petition for Rehearing, in full compliance with FRAP 35(b)(1)(A) & (B), entitled to circulation under 9th Cir. G. O. 5.4a, through a panel distinct from that of original disposition, on 10 February 2021. The provisions for filing during the COVID pandemic apply. This Court's jurisdiction applies under 28 USC. § 1254(1). The discretion of the Court is requested in aid of its jurisdiction to consider application of 28 USC § 1651 as it deems appropriate and necessary.

STATUTORY PROVISIONS INVOLVED

7 USC § 13a-2

> Preemption of state regulatory authority over field of commodity futures.

Cf.

> ARS § 13-2301(D)(4)(b)(xviii) – (xx) Definitions for ARS § 13-2310 Charges

And

> ARS § 44-1801(3) – (7); (12); (26) Definitions of futures terms contrary to 7 USC § 13a-2, defining them as securities
>
> ARS§ 47-8103(F), defined in § 9102(15)(a), is NOT a security or an asset.

STATEMENT OF THE CASE

This case began in response to the COVID pandemic, and the provisions of the CARES (Coronavirus Aid Relief and Economic Security) Act, passed by Congress, as Pub. L. No. 116-136, on 27 March 2020. One week later, Attorney General William Barr delivered a Notice thereunder to the Director of the Bureau of Prisons, to implement its relevant sections as expeditiously as possible to minimize the otherwise catastrophic effects which might befall the defined portions of those elderly and medically vulnerable incarcerated, where social distancing was virtually impossible, rendering them in grave, if not lethal danger.

The facility above noted, where the order of commitment for this petitioner recommended, and the Bureau of Prisons designated, for service of a federal term of 105 months, to be served concurrently with an undischarged term of two consecutive 18-year sentences from the State of Arizona, declared a lockdown in response to the first cases that appeared, on 6 May 2020, which continues presently.

A petition under § 2241 was filed on 4 June 2020 , closely following one of the first cases arising in response, treatise-like in its 74 page ruling on the issues involved. Martinez-Brooks, *et al.*, v. Easter & Carvajal, No. CV 20 – 00569 (MPS) (5/12/20).

The coronavirus is an especially rapid spreading viral agent, with spores of uncommon aptitude to bond with, and reproduce within human cardiopulmonary systems. Its nanometer size allows it to remain airborne easily, and can through convection, be readily transmitted within closed air spaces. Its properties include establishing its presence in many subjects in an asymptomatic state, allowing its carrier to remain unaware of his respiratory effluent having deleterious effects on those within his environment. The Center for Disease Control has, since the first case became known in the United States, issued regular guidelines for its management; chief among them is the necessary distancing to avoid excessive airborne transmission. *See*, Appendix, Martinez-Brooks et al., v. Easter & Carvajal, No. CV-00569 (MPS) (D CT 5/12/20), attached in whole. 74 pp.

These properties make the effects in custodial populations particularly at risk from infection, and the development within each individual, which is generally a function of that individual immune system. The proper name of the virus is SARS-CoV-2 virus, often written in medical shorthand as COVID-19.

When entering a vulnerable individual, its rapid reproductive mechanism generally forms impediments to that organs function.

For these reasons, the CDC has developed an ascending graded protocol, which identifies the co-morbidity factors that place those contracting the disease on a scale of likelihood of death. They are: elderly, defined as over 65 years of age; or a)

having chronic lung disease; b) immunocompromised status; c) severe obesity of 40 BMI or higher; d) diabetes; e) chronic kidney disease; f) chronic liver disease; and g) cardiac disease, including congestive heart failure (myocarditis or pericarditis).

The petitioner is in his 71st year and provably having undergone a pericardiectomy to correct idiopathic pericarditis, the inflammation of the outer protective sheath of the heart musculature, likely in response to the initial SARS outbreak in San Francisco in November 2002. His open heart thoracic surgery caused complications when the stainless steel wire used to hold the sternum bone, broke when in federal custody in Oakland, California, and protruded from the chest just above the diaphragm. *See*, Appendix F, Petition case file.

Access to relief under the CARES Act is properly placed through § 2241 in challenging conditions of confinement, and is thoroughly addressed in Martinez. Particularly insightful in his review, Judge Michael P. Shea of the District of Connecticut observed that challenges to conditions of confinement necessarily include challenges to "the fact... of confinement" itself, opening review to the underpinnings of the custody. *Id.* 34-36. *See*, also Appendix. Statement of the Case.

REASONS FOR GRANTING THE PETITION

I. THERE ARE CONFLICTS IN THE COURTS OF APPEALS ON THE QUESTIONS PRESENTED

A. The Courts of Appeals have reached conflicting decisions regarding whether 28 USC § 2241 is the appropriate statutory basis of review when a judgment of a state court is not the object of the challenge

We begin by establishing the veracity of the foundational assertion that custody or confinement, or restraint otherwise imposed in any lawful manner, must as a matter of federal due process, yield to review on petition for writ of habeas corpus, as provided under Art. I, § 10, and originally set forth read "[s]hall not be suspended, unless when in cases of rebellion or invasion the public safety may require it."

Here, the district court recommended, and the Bureau of Prisons thereby designated, the present state facility as a federal facility to effect commitment upon an undischarged state term, as contemplated under USSG § 5G1.3(b)(2) and BOP Policy Statement § 5160.04, as set forth in the § 2241 Petition, No. CV20-01107-PHX-DJH, p.1, ¶2, 6/4/20.

Unfortunately, the district court failed to read the petition beyond the second line of its third paragraph. There it would have found that since Jones v Cunningham, 371 US 236, 242 (1963) that review on habeas had recognized the custody

requirement to exist beyond simple present custody, and has evolved to include all manner of past, future, and multiple jurisdiction combinations.

Among others, these include as relevant here: When a current sentence was enhanced by an allegedly invalid prior conviction, Williams v. Edwards, 195 F. 3d 95, 96 (2nd Cir 1999); service of collateral sentence at the time of expiration when filing, Young v. Vaughn, 83 F. 3d 72, 78 (3rd Cir 1996); custody when filed is retained pending disposition, Carafas v. LaVallee, 391 US 234, 237 (1968); serving consecutive sentences may attack conviction yet to be served, Peyton v. Rowe, 391 US 54, 67 (1968); Peyton extended to those serving consecutive sentences challenging sentence already served, Garlotte v. Fordice, 515 US 39 41 (1995); service of consecutive sentences may challenge expired sentence, DeFoy v. McCullough, 393 F. 3d 439, 432 (3rd Cir 2005); and custody retained when prison term completed when yet subject to term of supervised release, Ojo v. INS, 106 F. 3d 680, 681 (5th Cir 1997).

While not exhaustive of the representative authorities on habeas custody jurisprudence, the above more than amply support the propriety of the subject petition, and the vacancy of the district court's dismissal, indeed after several corrective opportunities.

As a federal inmate with detached future obligations imposed both concurrent with an ongoing undischarged state term, most of the component cross relationships for habeas purposes described above have examples here. The § 2241 jurisdiction flows on the federal side directly from the situational circumstances in challenge to the Amdt. VIII matters, as do those non-state court judgment issues which address the current fitness of the facilities, or of the incarcerated; but another distinct source available, flows from constitutional challenges which emanate from the "savings clause" of § 2255, especially when addressing the "fact...of confinement", as found in Martinez, p. 34 – 36. A valid § 2241 petition must be considered, even absent a Certificate of Appealability (COA). *See*, Harrison v. Ollison, 519 F. 3d 952, 958 (9th Cir 2008). As is the case here, § 2241 petitions must be filed in the custodial rather than the sentencing district

The test as to whether the claim is properly brought under § 2241 turns on if the petition: (1) presents a claim of actual innocence, and (2) has not had an "unobstructed procedural shot" at presenting that claim. Stephens v. Herrera, 464 F. 3d 895, 898 (9th Cir 2006).

Because we assert the absence of subject matter jurisdiction in each of the three bases upon which the judgments were entered, and, indeed, a fourth in consideration of the alleged prior state charges of sale of unregistered securities in

reference to commodity investment contracts under exclusive federal jurisdiction, the enhancement mechanism must also be vacated.

This latter concept of subject matter jurisdiction, because it involves a court's power to hear a case, can never be forfeited or waived. Consequently, defects in subject matter jurisdiction require correction regardless of whether the error was raised in district court. *See*, US v. Cotton, 535 US 625, 630 (2002).

B. Appropriate usage of Certificates of Appealability (COAs)

In circumstances where a lapse of custody occurs in a target or concurrent cause, but continues relative to a proximate future cause, § 2241 is the appropriate statutory basis, even when that focus addresses a matter arising under state law. Two such Ninth Circuit authorities are illustrative of this situation.

In Stow v. Murashige, 389 F. 3d 880, 885-86 (9th Cir 2004), where Stow had filed under § 2254 in challenge to a potential double jeopardy for an imminent retrial, where in a multiple count trial, the foreperson had marked "not guilty" on the alternative versions of the principal charge. Writing for the Circuit court, Judge Paez *sua sponte* converted to § 2241 as the object charge had not resulted in a judgment of the Hawaii Superior Court, saving it for retrial on the charges.

In Wilson v. Belleque, 554 F. 3d 816, 821 (9th Cir 2009), Judge Jay Bybee, drawing from Murashige again converted from a § 2254 petition to § 2241 where Wilson, in accord with Oregon, converted the proceedings in a similar continuing custody situation pending retrial.

Here, the circumstances are again not unlike those in Stow and Wilson, if taken that the federal physical custody had terminated, as the state custody continued, and the custody provided constructively from the awaiting supervised federal release and its restitution also created both § 2255 and § 2241 grounds, all reviewable on direct federal constitutional violations of those custodial restraints while in constant COVID jeopardy.

Those exemplars as background, however, ignore the continuing existence of opinions split among the decisions of the circuit courts. One of the first among these is White v. Lambert, 370 F. 3d 1002, 1005 (9th Cir 2004), where, as a threshold matter the basic functionality of § 2241 v. § 2254 is addressed, asserting that the principal distinction is the presence of a relevant state court judgment in the latter. On the situation presented here, while seemingly straightforward, the circuits have decided in surprisingly stark contrast.

Essentially, the groupings form those of administrative decisions not the product of a state court judgment, in the first, a transfer for White from a Washington facility to a private institution in Colorado, emphasizing the existence of the state confinement, rather than where it was to be served, joining Cook v. New York St. Div. Parole, 321 F. 3d 274, 277-79 (2nd Cir 2003); James v. Walsh, 308 F. 3d 162, 166-67 (2nd Cir 2002); Coady v. Vaughn, 251 F. 3d 480, 484-86 (3rd Cir 2001); Walker v. O'Brien, 216 F. 626, 632-33 (7th Cir 2001); Crouch v. Norris, 251 F. 3d 720, 722-23 (8th Cir 2001); and Medberry v. Crosby, 351 F. 3d 1049, 1058-62 (11th Cir 2003).

Conversely, those circuits focusing on the act in question as clearly not a state court judgment in origin, include Montez v. McKinna, 208 F. 3d 862, 869-71 (10th Cir 2000); and Greene v. Tennessee DOC, 265 F.3d 369 (6th Cir 2001), most surprisingly, however, was the holding in White that he did not need to seek a COA in an equally deliberate determination, later to be overturned.

Perhaps the most insightful authority is that found in Hayward v. Marshall, first reviewed in a panel decision, 512 F.3d 536, later vacated *en banc* at 603 F. 3d 546 two years following in 2010, where another administrative disposition, in this case for release on parole of a California state prisoner, at first aligned with the COA exemption found in White, creating a similar compilation of cases found there as to COA requirement in this instance, with all but Walker in the affirmative.

At a minimum we have an *en banc* court overturning what was no doubt a well-reasoned decision, and at that, with Circuit Judge Berzon writing for them, four annexed a partial concurrence/dissent from their other seven colleagues whose majority opinion was drafted by Circuit Judge Kleinfeld, the quartet still not seeing the additional necessity of a COA in review of a parole decision.

In the end, it seems the most enduring legacy not only in Hayward, but more broadly across the range of habeas practice, of proper statute in selecting § 2241 v. § 2254; whether to secure a COA; and determining the district venue as to sentencing or custodial court, are found in the pithy observation of Judge Kleinfeld:

> "Habeas jurisdiction, more than most, is a maze of curlicues and cul-de- sacs, with nowhere near enough straight, clearly marked roads. Usable law needs to be clear enough so that people trying to do the right thing can." Hayward, at 554 (9th Cir 2010).

Here, that right thing is the most direct. In this context, it simply means that this petitioner has always asserted actual innocence, which will break the bonds of custody, showing to have been frustrated in bringing his claims. Above all, Martinez shows that others in the Second Circuit, and elsewhere among like-minded jurists, have achieved their life saving liberty; and that the equal protection of Amdt. XIV should provide likewise here, through § 2241

II. THE DECISION OF THE NINTH CIRCUIT IS ERRONEOUS

A .Standard of Review

A federal prisoner may file a habeas petition under § 2241 if the remedy provided by§ 2255 is "inadequate or ineffective to test the legality of his detention." This is called the "savings clause" or "escape hatch" of § 2255. 28 USC § 2255(e). *See*, also, Harrison, *supra*, at 956. A petitioner meets the escape hatch criteria where he

> "(1) makes a claim of actual innocence, and (2) has not had an unobstructed procedural shot at presenting that claim."
> Stephens, *supra*, at 878.

If a "Petition is a legitimate § 2241 petition brought pursuant to the escape hatch of § 2255 we must exercise our jurisdiction to hear it." *(emph. in orig.)*, Harrison, at 958-59 [referencing New Orleans Pub. Serv., Inc. v. Council of New Orleans, 491 US 350, 358 (1989)].

To establish innocence for the purposes of habeas relief, a petitioner

> "must demonstrate that, in light of all the evidence, it is more likely than not that no reasonable juror would have convicted him."
> Bousley v. US, 523 US 614, 623 (1998).

To demonstrate that an unobstructed procedural shot at presenting that claim was not allowed, "an intervening court decision must 'effect a material change in the applicable law' to establish unavailability. Alamaio v. US, 645 F. 3d 1042, 1047 (9th Cir 2011*) citing* Harrison at 960. *See*, also, *In re* Davenport, 147 F. 3d 605, 607 (7th Cir 1998)(holding that the Supreme Court decision in Bailey v. US, 516 US 137 (1995), effected a material change in the law..."

Actual innocence for each custody source follows:

B . Actual Innocence in the Federal Case

(N°. CR-10-0588 EJD (ND CA)

In the federal criminal proceeding, a lack of subject matter jurisdiction occurs where both the indictment and plea agreement derived therefrom acknowledged that the subject loan participation notes were all executed **after** thorough consultation on a face-to-face basis, and not through the instrumentality of the mails, thus outside of the applicability of the statutory element necessity of 18 USC § 1341, which requires the **execution** of any transaction under its authority, and not merely any subsequent derivative usage, as held in US v. Kann, 323 US 88, 95 (1944), US v. Parr, 363 US 370, 389 (1960), and US v. Maze, 414 US 375, 400 (1974). *See*, Appendix B, Indictment, 8/3/10, p. 2 ¶ 2, 4; p. 4, ¶ 8; p. 5.

However, all attempts at the successful presentation of this information to direct and collateral appellate review were stymied by the insistence on focusing to the presence of a plea agreement, and in the minds of the jurists involved, voided the merits of the argument, however substantive the subject matter jurisdictional issue may have been, or how the argument shadowed what would eventually become available a few years later. *See*, also, Settlement Communication, Appendix F.

Such matters can be challenged as to their constitutionality or jurisdiction without bar from any guilty plea. Class v. US, 583 US___, (2018). Therefore, the procedural shot of the proof needed to secure relief, has provided exactly that missing portion required to complete the actual innocence presentation.

C. Actual Innocence in the Arizona Case

(No. CR 1990 – 010323)(Maricopa County Superior Court)

The Arizona appellate court's references to futures contracts as securities in its Memorandum Decision, taken from the trial record and State's brief, without the input of the petitioner, as he had been denied the right to self-represent on appeal after having done so at trial, conflict with the intent of Congress to preempt the field of futures transactions, as expressly provided in general, under the Commodity Exchange Act (CEA), 7 USC § 1 et seq., as this court held in Commodity Futures Trading Commission (CFTC) v. Schor, 478 US 833, 836-37 (1986) and Merrill Lynch v. Curran, 456 US 353, 368 FN 40 (1982). *See*, Appendices A, D, and E.

The predecessor of the latter, Curran v. Merrill Lynch, 622 F. 2d 216 (6th Cir 1980), decided *in pari materia* with the more explicit Kelly v. Carr, 691 F. 2d 800, 805 (6th Cir 1980) under 7 USC § 13a-2, by virtually the same panel, within four days of each other, clearly established the bright line for preemption in the subject areas. Only general prosecutions are permitted to the states, but all those, such as here, that even so slightly enter the regulatory realm are preempted. 7 USC § 13a-2(7).

The State, in its indictment, used "artful pleading", as held in Lambert Run Coal v. Baltimore, Ohio R.R. Co., 258 US 377, 382 (1922), to assert claims involving futures contracts under the exclusive jurisdiction of the Commodity Exchange Act, and which *inter alia*, referenced such contracts as "securities," as defined under ARS § 44-1801, in specific conflict with that of the Act, and of authorities of the Supreme Court. The State lacked subject matter jurisdiction, and more recently recognized same in its passage of ARS § 47-8103(F) (1995), without having amended ARS § 44-1801, which had caused the earlier conflict. *See*, also, Coleman v. Johnsen, 690 Ariz Adv Rep 10, 6/13/14, as the source of the procedural obstruction.

See, No. CV 20-01107-PHX-DJH, Dkt. 8, Mtn. for Expansion of Record, 6/16/20, p. 7-8; *Also*, Its Appendix C, Item 9, RT, No. CR1990-010323(Mar. Cty.), Donald Hearing, 1/411, p. 7, ln 3-19, Plea Offer; Place of service of sentence

D. Actual Innocence in the Involuntary Bankruptcy to Seize Assets (N°. 10-30904 DM) (ND CA)

Here, the obligation of the bankruptcy court, as a threshold matter, was to have initially ascertained its subject matter jurisdiction under 11 USC § 303(b) of a petition submitted in involuntary bankruptcy, citing this Court's seminal opinion in Canute Steamship Co. Ltd. v. Pittsburgh & W. Va. Coal, 263 US 244, 248 (1923), on which decisions in the Ninth Circuit relied, as applied by *In re* Quality Laser Works, 211 B.R. 936, 941 (9th Cir BAP 1997):

> "A petition on Official Form N°. 5 is regular on its face if the boxes next to the preprinted essential allegations are checked and if the form is otherwise correctly completed." Quality Laser at 941 *citing* *In re* Kidwell, 158 B.R. 203, 209 (Bkr ED CA 1993).

Which was precisely the condition of the petition presented, both as to its failure to check the boxes at the lower left of Official Form 5, and for its numerous incorrectly entered facts, including the improper identification of the parties, and that both Kirsch and Wherco had been fully reimbursed, as outlined in the motion to proceed on appeal *IFP*, as well as to the personal successful history of this petitioner to so proceed on numerous previous occasions recognized under FRAP 24(a)(3). *See*, Appendix C, Bankruptcy Petition and Declaration.

Additionally, *In re* Caucus Distributors, Inc. 106 B.R. 890 (Bkr ED VA 1989), had been cited, the definitive historical treatise by Chief Judge Martin V.B. Bostetter, Jr., of the Bankruptcy Court of the Eastern District of Virginia, in which another proceeding involved the concurrent criminal and involuntary bankruptcy actions had occurred, which could raise the additional question of whether the involuntary petition used to seize assets retained its civil aspect under § 1915, or had through coordination, served as a proxy for an action in forfeiture as a matter of prosecutorial strategy.

It is also a comprehensive authority for the bar-to-joinder doctrine proscribing subsequent creditors from joining a petition representing a circuit split and which, as filed as to entities not in the name, nor under control of the petitioner, and as such, lacked jurisdictional sufficiency. *See*, Appendix F, Claims Register

Unfortunately, the district court on appeal from the bankruptcy court, both bifurcated the issues addressed *sua sponte*, and then following the docketing of the appeal, moved to divest the petitioner of *IFP* status, as the obstructive order here.

Subject matter jurisdiction cannot be waived, forfeited, or stipulated. US v. Cotton, 535 US 625, 630 (2002), thus establishing actual innocence, and grounds for vacating the judgments in both of the criminal actions, and the entry of the involuntary bankruptcy, as well as the renewal of the counterclaim dismissed improvidently by the bankruptcy court. Stern v. Marshall, ___US___, 131 S. Ct. 2594, 2605 (2011); Granfinanciera, S.A. v. Nordberg, 492 US 33, 50 (1989).

III. § 2241 AND CARES ACT CHALLENGES TO THE CONDITIONS AND FACT OF RESTRAINT ARE RECURRING ISSUES OF NATIONAL INTEREST THAT WARRANT THE COURT'S IMMEDIATE RESOLUTION

As briefly referenced above, but for the critical failure of the Supreme Court of Arizona to resolve this initiating matter in favor of the *ex post facto* guarantees provided under both state and federal constitutions, to thereby afford relief from the deprivation of proper state appellate and collateral review, which had prejudicially spawned both a derivative federal criminal, as well as an involuntary bankruptcy proceeding, used to seize all assets, including those not in the name, nor even under the direct control of the petitioner, a number of associated harms were visited upon him and his enterprises.

Perhaps chief among them was the crushing damages to the development of a hydrosolar energy system, which had been established to provide petroleum and emission free motive power for transportation applications, but capable of also being used in stationary or grid generation usages. The interrelated proceedings served to pace this special area of national importance into suspension, during a time of its particular necessity. *See*, Appendix F, Privileged Communication, p.3 cl.8, 9/8/2011.

The Court is likely to encounter numerous such CARES derivative petitions.

IV. SUMMARY

Those insults to the United States Constitution were further magnified by the usage of the name found in the ancient Arizona indictment, in a petition for involuntary bankruptcy, and then converted from a pending civil suit in the petitioner's name that arose from a controversy with a litigious client, operating with two grizzled bankruptcy practitioners who fancied themselves as prosecutors; and who coordinated their efforts with those in Arizona, together with an FBI Special Agent, conspiring among themselves to use a sealed indictment to effect extradition to Arizona, and to increase the bond set at $411,000, to $10 million.

But in the end, the Arizona prosecution should have been terminated at its inception, due, *inter alia*, to its age at over twenty years without meaningful efforts to pursue its indictment after its second year, and the preemption of its subject matter, where Arizona had sought to invade the area intended to be under the exclusive jurisdiction of Congress with charges that were artfully plead into state law terms in anything but allowed general application.

CONCLUSION

Calling upon the plenary authority of this Court, then, the petitioner prays that upon the relatively simple review of lack of subject matter jurisdiction in each of the component proceedings that make up this consolidation of legal misery, that this court:

1) Recognize the absence of jurisdiction in each, along with the several constitutional flaws, to wit:

   a) The Arizona charges relating to commodity futures, as discussed above, were preempted by the Commodity Exchange Act.

   b) The involuntary bankruptcy petition was void upon filing, without its proper completion, and failure to invoke the jurisdiction required by Congress.

   c) The federal action attempted to operate without the necessity of execution of agreements under the statutory elemental requirements of 18 USC § 1341.

2) That the court vacate, or order vacated, all orders arising from the several proceedings and order expungement of all derogatory record entries, resulting therefrom, including the offensive Arizona prior conviction alleged to enhance that present sentence to two consecutive 18 year sentences. *See*, Morgan v. US, 346 US 502 (1954).

3) Finally, to reinstate the counterclaim improvidently dismissed by the bankruptcy court, and arrange to expeditiously settle the damages incurred, for a sum not less than $3 billion.

4) If accomplished with due dispatch, the petitioner will still honor his offer to develop military applications of his energy system for the United States, and to establish a fund, paid into the US Treasury, for the general benefit of the American people, from the future proceeds of revenues from such technological developments.

Respectfully submitted this 7th day of July 2021.

/s/ **Giuseppe Viola**
Petitioner pro se