

21-5322  
No. \_\_\_\_\_

ORIGINAL

IN THE  
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.  
FILED  
JUL 28 2021  
OFFICE OF THE CLERK

André J. Twitty — 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 Tenth Circuit  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

André J. Twitty  
(Your Name) 18558-018

FCC-Coleman - 21SP-1  
(Address)

POB 033 Coleman FL, 33521-1033  
(City, State, Zip Code)

N/A  
(Phone Number)

RECEIVED  
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**QUESTION(S) PRESENTED**

(1)

Does 18 USC 13(a), The Assimilative Crimes Act, Confer [Jurisdiction] upon a federal Court to assimilate and alter the [elements] of an unconstitutional State Statute. To render it Constitutional?

(2)

Does the recent ruling of the State of Colorado Supreme Court, in People In The Interest of R.D. (Colo. 2020) Violate the First Amendment, and this Court's holding in Elorza v. United States?

(3)

Does the Supremacy Clause to the United States Constitution. Invalidate a State Statute, that is in Conflict with a federal law or a federal Constitutional Right?

(4)

Does the Fourth Amendment and the Fifth Amendment Void-For-Vagueness Doctrine Permit Someone to be Convicted under an Unconstitutional Statute?

**LIST OF PARTIES**

All parties appear in the caption of the case on the cover page.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

**RELATED CASES**

Williams v. United States, 327 U.S. 771 (1946)

Lewis v. United States, 523 U.S. 155 (1998)

Torres v. Lynch, 130 S.Ct 1619 (2010)

Eloris v. United States, 135 S.Ct 2001 (2015)

People In The Interest of R.D. 464 P.3d 717 (Colo. 2020)

United States v. Davis, 139 S.Ct 2319 (2019)

Montgomery v. Louisiana, 130 S.Ct 718 (2010)

Schad v. Arizona, 501 U.S. 624 (1991)

Johnson v. Fankell, 520 U.S. 911 (1997)

Gibbons v. Ogden, 22 U.S. 1 (1824)

Parrish v. State of Colorado, 78 F.3d 1473 (10<sup>th</sup> Cir. 1996)

United States v. State of Kansas, 810 F.2d 935 (10<sup>th</sup> Cir. 1987)

United States v. Patmore, 475 F.2d 752 (10<sup>th</sup> Cir. 1973)

United States v. Butler, 541 F.2d 730 (8<sup>th</sup> Cir. 1976)

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APPENDIX B *The pertinent Pages of the opening brief; the government's reply and defendant's response.*

APPENDIX C *The relevant Pages of the 1 Nov. 2019, Motions hearing Transcript*

APPENDIX D *The Relevant Pages of The People in The Interest of R.D. (Colo. 2020)*

APPENDIX E *The Motion To Dismiss Indictment, (5 Feb 2020)*

APPENDIX F

**TABLE OF AUTHORITIES CITED****CASES****PAGE NUMBER****STATUTES AND RULES**

Colorado Revised Statutes: 18-3-602(1), (b) 18-9-111(D)(@),  
18USC 13, 18USC 2201(a), 18USC 115, 18USC 1114, 18USC 3742, 28USC 1291

**OTHER**

(VI)

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 2021 U.S. APP. LEXIS 17762; 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 \_\_\_\_\_ 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 \_\_\_\_\_ 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 \_\_\_\_\_ court appears at Appendix \_\_\_\_\_ to the petition and is

[ ] 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 15 June 2021.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

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).

 **For cases from state courts:**

The date on which the highest state court decided my case was \_\_\_\_\_. A copy of that decision appears at Appendix \_\_\_\_\_.

A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

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. § 1257(a).

**CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

Please See Appendix "B". The Pertinent Pages of the opening brief; the government reply; and defendant's response.

Please See Appendix "C" the relevant Pages of the 1 Nov 2019, motions hearing transcripts

Please See Appendix "D" The relevant Pages of The People In The Interest of R.D. (Colo. 2020?)

Please See Appendix "E" The Motion To Dismiss Indictment, filed 5 February 2020.

### STATEMENT OF THE CASE

On September 19, 2019, Petitioner was arrested on the government's Superseding indictment. Which alleged that between January and September of 2018.

Petitioner made a Credible threat to another person, namely S. B. G.

"Intending S. B. G. to feel threatened" and in connection with the threat, repeatedly made any form of communication with that person, a member of that person's immediate family and someone with whom that person has or has had a continuing relationship, regardless of whether a conversation ensued.

The Superseding indictment inserted the elements of "Intending S. B. G. to feel threatened" which is neither contained in the State of Colorado Statute, 18-3-602(1)(b), nor the Colorado jury instructions. The government and the district Court added these [elements] to fix a Perceived "unconstitutionality" with the State Statute. See trial P. 18, 1NOV2019(attached)

"But my point was that this [Statute] on its face, if you don't read the mens rea into it, would have to be [unconstitutional]."

The government's attorney theorized at page 20 [exhibit ")] In re R.D. certainly [suggests] that the Colorado Supreme Court is going to take the exact same approach that the Supreme Court took in *Kloris* and, say as a matter of Statutory interpretation we are going to interpret [Subjective intent] into our State threat Statutes going forward." However, the Colorado Supreme Court did not do as the government had speculated. And held;

"we need[not] resolve today whether the test for true threats under the First Amendment, also requires consideration of the Speaker's [Subjective intent] to threaten the victim."

(See attached pages)

(i)

## STATEMENT OF THE CASE

Petitioner Contends, that not only was the State of Colorado Supreme Court's decision in [R. D.] contrary to this Court's holding in *Elaris v. United States*. But also violative of the United States Constitution, Supremacy Clause. Petitioner's Conviction rest solely on the assimilation of an unconstitutional State of Colorado Statute. Pursuant to 18 USC 13(a); The Assimilative Crimes Act. Despite the fact, the government argued below. The Act does not Prevent the assimilation of a State Statute. Even though it could have charged Petitioner under 18 USC 115 or 18 USC 22(a).

The Tenth Circuit held in its order [Appendix A] at LEXIS 8, Page 6  
= The Supreme Court has [not expressly] analyzed whether assimilation presents a [jurisdictional] issue. = The [F]ifth Circuit has taken the position that the [ACA bars] the assimilation of a State Statute. When Congress has enacted Federal legislation that cover approximately the same wrongful conduct. The Eighth Circuit held in *U. S. v. Howard*, 654 F.2d 522 2525 (8th Cir. 1981)

= In those cases Federal Prosecutors, by use of the ACA, attempted to redefine Federal Crimes by [adding] new [elements] to the crimes by use of State law. This is in clear violation of the ACA.

That Court referenced its holding in *U. S. v. Butler*, 541 F.2d 730 2737 (8th Cir. 1976)  
= Congress in enacting the ACA did not intend that the assimilation of State law was to depend on a Prosecutor's Selection of a Statute under which it would be easier to obtain a conviction. = We vacate the Judgment of Conviction for [lack of jurisdiction].

X

### REASONS FOR GRANTING THE PETITION

Petitioner respectfully request that this Honorable Court exercise its discretionary powers to resolve a conflict among the circuits. And clarify whether or not, the government may add elements to a (State Statute) not contemplated by a State legislature. And to reinforce the prohibition of the enforcement of Speculative or Vague laws that violate the Due Process clause and the Separation of Powers clause. And to prevent (Prosecutors and Judges) from acting as legislators in redefining Statutes to suit their interpretation of what the law should be. United States v. Davis, 139 S.Ct 2319 (2019)

Schad v. Arizona, 501 U.S. 624 (1991) Johnson v. Fankell, 520 U.S. 911 (1997) Despite the fact, that the lower held in Parrish v. State of Colorado a 78 F.3d 1473 (10th Cir. 1996) "we are (bound) by the State's interpretation of the language of its own statutes and the legislative intent behind them." It refused to follow this tenet in Petitioner's case.

And allowed the government to (add elements) to the State Statute. To fix the unconstitutionality of the State Statute.

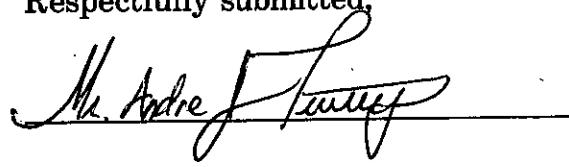
Finally, Petitioner relies on this Court's holding in DAVIS, 139 S.Ct 2319 (2019) That a Speculative possibility that a man's conduct violated the law should never be enough to justify taking his liberty. Thus, Petitioner request that this Honorable court issue a ruling. To prevent the prosecution and imprisonment of future defendants under the Constitutionally Vague State of Colorado law.

Respectfully Submitted  
M. J. Tapp

**CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 28 July 2021