21-7424

IN THE UNITED STATES SUPREME COURT

CASE NUMBER _____

From the Wyoming Supreme Court – Case No. S-21-0235

FILED
FEB 03 2022
OFFICE OF THE CLERK
SUPREME COURT, U.S.
ORIGINAL

Ismael Ruiz
Petitioner

vs.

STATE OF WYOMING
Respondent

PETITION FOR WRIT OF CERTIORARI

Attorney for Petitioner
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*** All Parties to this case appear in the above caption ***

QUESTION(S) PRESENTED

1. Can a State within the United States choose which federal laws and Constitutional provisions it wants to honor and which ones it does not want to comply with?

2. Can a State within the United States establish laws that violate the United States Constitution as well as the State's constitution?

3. Can a State within the United States choose to ignore the rulings of and show contempt for the United States Supreme Court?

4. Are state officials above the law; and can they state "I Don't Care What The Law Says" and "That Doesn't Apply To Us" while still receiving immunity from the Courts when litigants attempt to gain redress?

5. Can a State within the United States create laws that eliminate due process or render court rulings that violate due process?

6. Does Actual Innocence, with Evidence Definitively Confirming that Actual Innocence Divest the Trial Court of Jurisdiction to Render a Conviction?

7. Can a State within the United States deny or block a litigant access to the courts?

8. Can a State's Court System deny an individual the Constitutional and God-Given-Right to protect one's self against the illegal use of deadly physical force by an attacker who is mentally unstable due to the illicit use of stolen prescription drugs?

9. Can a State within the United States, which has a self-defense law, deny a litigant the legitimate use of that self-defense law as a defense in his criminal prosecution?

10. Can the Wyoming Supreme Court ignore its own precedents and court rules to provide the State Attorney General an unfair advantage such as refusing to recognize the State has conceded a filing by failing/refusing to contest and/or respond to it.

11. Can a State within the United States deny a defendant an appeal based upon the unconstitutional actions of a State Employee who works for the Public Defender's Office (or that State's equivalent)?

12. If counsel provides a defendant with inaccurate information, can the defendant be held accountable for counsel's inaccurate information and be denied his right to a direct appeal?

13. Does an irreconcilable conflict of interest result in a constructive denial of counsel that divests the trial court of jurisdiction to proceed any further in the case?

14. If a complainant files to have the case "quashed" because the charges are erroneous can the State Court continue the case to a conviction via coerced guilty plea without allowing the defendant his Constitutional Right to Confront the Witnesses against him because there is no longer a witness against him; and prevent him from learning that the alleged complainant admitted the charges were based upon lies?

LIST OF PARTIES

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

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CERTIFICATION OF SINCERITY

I swear that I am filing this Petition for Writ of Certiorari because I believe that I am entitled to relief as a matter of law; and I am not filing this petition to waste the Court's time. I make this affirmation by my own free will on this ~~27th~~ 3RD day of ~~JANUARY~~ FEBRUARY, 2022.

Ismael Ruiz, *Pro Se*

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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

[X] For case from the Wyoming Supreme Court, the highest **state court** in Wyoming:

The opinion of the Wyoming Supreme Court to review the merits, which it never did with a blanket denial, appears at **Appendix A** to the petition

[X] has been designated for publication but is not yet reported;

The opinion of the Wyoming Supreme Court for Rehearing appears at **Appendix B** to the petition

[X] is unpublished.

The opinion of the Wyoming Supreme Court for the Order Affirming the District Court's "Sentence on Probation Revocation," which is an indirectly related proceeding appears at **Appendix C** to the petition and

[X] reported at *Ruiz v. State of Wyoming*, 2020 WY 53; 461 P.3d 1248; 2020 Wyo. Lexis 56 (Wyo. 2020); Order Affirming the District Court's "Sentence on Probation Revocation"

JURISDICTION

[X] For cases from **state courts:**

The date on which the highest state court decided my case was **November 9th 2021**. A copy of that decision appears at **Appendix A**.

[X] A timely petition for rehearing was submitted; however, the Wyoming Supreme Court refused to even file Mr. Ruiz's timely Motion for Rehearing. The letter denying rehearing appears at **Appendix B**.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. United States' Constitutional Article 6. Debts, Supremacy, Oath ¶2, "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

2. United States' Constitutional Amendment 2 Right to bear arms, which, in part, encompasses the right to defend one's self against a deadly threat.

3. United States' Constitutional Amendment 5 Criminal actions Provisions concerning Due process of law clause, which, in part, encompasses the right to defend one's self at trial.

4. United States' Constitutional Amendment 6 Rights of the accused, which, in part, encompasses the right to defend one's self at trial.

5. United States' Constitutional Amendment 14 [Due Process Equal Protection.] Section 1 Citizenship Rights Not to Be Abridged by States. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

6. Wyoming Constitutional Article 1, §3. Equal political rights. "Since equality in the enjoyment of natural and civil rights is only made sure through political equality, the laws of this state affecting the political rights and privileges of its citizens shall be without distinction of race, color, sex, or any circumstance or condition whatsoever other than individual incompetency, or unworthiness duly ascertained by a court of competent jurisdiction."

7. Wyoming Constitutional Article 1, §6. Due process of law. "No person shall be deprived of life, liberty or property without due process of law."

8. Wyoming Constitutional Article 1, §8. Courts open to all; suits against state. "All courts shall be open and every person for an injury done to person, reputation or property shall have justice administered without sale, denial or delay. Suits may be brought against the state in such manner and in such courts as the legislature may by law direct.

9. Wyoming Constitutional Article 1, §9. Trial by jury inviolate. "The right of trial by jury shall remain inviolate in criminal cases."

10. Wyoming Constitutional Article 1, §10. Right of accused to defend. "In all criminal prosecutions the accused shall have the right to defend in person and by counsel, to demand the nature and cause of the accusation, to have a copy thereof, to be confronted with the witnesses against him, to have compulsory process served for obtaining witnesses, and to a speedy trial by an impartial jury of the county or district in which the offense is alleged to have been committed. When the location of the offense cannot be established with certainty, venue may be placed in the county or district where the corpus delecti [delicti] is found, or in any county or district in which the victim was transported."

11. Wyoming Constitutional Article 1, §11. Self-incrimination; jeopardy. "No person shall be compelled to testify against himself in any criminal case, nor shall any person be twice put in jeopardy for the same offense. If a jury disagrees, or if the judgment be arrested after a verdict, or if the judgment be reversed for error in law, the accused shall not be deemed to have been in jeopardy."

12. Wyoming Constitutional Article 1, §24. Right to bear arms. "The right of citizens to bear arms in defense of themselves and of the state shall not be denied."

13. Wyoming Constitutional Article 1, §37. Constitution of United States supreme law of land. "The State of Wyoming is an inseparable part of the federal union, and the constitution of the United States is the supreme law of the land."

14. Wyoming Statute §6-2-602. "Use of force in self defense; no duty to retreat." **(a)** "The use of defensive force whether actual or threatened, is reasonable when it is the defensive force that a reasonable person in like circumstances would judge necessary to prevent an injury or loss, and no more, including deadly force if necessary to prevent imminent death or serious bodily injury to the person employing the deadly force or to another person. As used in this subsection, necessary to prevent includes a necessity that arises from an honest belief that the danger exists whether the danger is real or apparent."

15. Wyoming Statute §6-2-602. "Use of force in self defense; no duty to retreat." **(e)** "A person who is attacked in any place where the person is lawfully present shall not have a duty to retreat before using reasonable defensive force pursuant to subsection (a) of this section provided that he is not the initial aggressor and is not engaged in illegal activity."

16. Wyoming Statute §6-2-602. "Use of force in self defense; no duty to retreat." **(f)** "A person who uses reasonable defensive force as defined by subsection (a) of this section shall not be criminally prosecuted for that use of reasonable defensive force."

STATEMENT OF THE CASE

This case is one in which the United States Constitution and the Wyoming Constitution have been disregarded as well as the right to protect one's self from physical harm up-to and including the threat of death. Despite Wyoming possessing a self-defense statute (W.S. §6-2-602) the state appears to only apply the statute when the defendant is politically connected, showing a discrimination against the financially dis-enfranchised and in the immediate case, the ethnically diverse. Though the Wyoming Public Defender's Office has a duty to protect their clients' rights, they seem to have a propensity to function more as a second prosecutor than a defense team when the State has no case to convict on by coercing guilty pleas from their clients. This has resulted in a multitude of innocent people, like Mr. Ruiz, becoming incarcerated for crimes they are either innocent of or are only guilty of a lesser offense.

The Wyoming Public Defender's Office's most common method of coercing guilty pleas is: segregation from outside support, with the statement that the Court will not accept the defenses proffered. The Wyoming Public Defender's Office has been allowing the prosecution to wantonly over-charge defendants and violate the applicable United States Supreme Court Rulings. Examples of this include the abuse of W.S. §6-2-201, where the statute provides a sentence for voluntarily releasing the kidnaping victim and an enhanced sentence for not voluntarily releasing the victim. In that statute, the defendants are being forced to prove that the aggravating factor did not occur contrary to the United States Supreme Court stating this is unconstitutional. Another example of this is W.S. §6-2-311, where the statute states: "Corroboration unnecessary. Corroboration of a victims testimony is not necessary to obtain a conviction for sexual assault." Wyoming forces convictions of defendants even when all the evidence shows innocence because this statute eliminates *due process* by imposing a presumption of guilt that makes no concession for proving innocence.

In the immediate case, the State of Wyoming has chosen to ignore the fact that pursuant to Wyoming Statute §6-2-602, Mr. Ruiz possessed a right to defend himself from severe bodily injury and possibly imminent death when his would-be assailant was actively trying to kill him with a knife. Instead of utilizing deadly physical force to defend himself as he was allowed to use under this statute, Mr. Ruiz only used a lightweight soft plastic laundry basket to deflect the assailant's knife slashes and subsequently attempted to flee the location despite it being his home residence and not hers. Statutorily, Mr. Ruiz was not obligated to flea; nor was he obligated to relinquish his home to his attacker, who was illegally under the influence of another person's (Mr. Ruiz's mother's) prescription psychotropic medications that she had stolen.

Mr. Ruiz now looks to this Court to overturn the Wyoming Supreme Court's erroneous ruling that disallows him a direct appeal due to counsel's errors and deliberately false information.

REASONS FOR GRANTING THE PETITION

This Court granting the immediate Petition for Writ of Certiorari would protect the rights of not only Mr. Ruiz, but of the citizens of Wyoming as well as innumerable visitors going to and passing through Wyoming. This will bring the State of Wyoming into compliance with the United States Constitution, the treaties the United States has entered into and ratified; and enforce the Supremacy Clause, while also supporting the laws of both Wyoming and the Federal Government. The Court hearing this case would serve a multitude of people.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

Ismael Ruiz

Date: ~~JANUARY 27TH~~ FEBRUARY 3RD 2022

Comes Now, Ismael Ruiz (Mr. Ruiz), *Pro Se*, and petitions this Court for a Writ of Certiorari in the above captioned case. In support of this petition Mr. Ruiz states as follows:

Question 1
Can a State within the United States choose which federal laws and Constitutional provisions it wants to honor and which ones it does not want to comply with?

AND

Question 2
Can a State within the United States establish laws that violate the United States Constitution as well as the State's constitution?

AND

Question 3
Can a State within the United States choose to ignore the rulings of and show contempt for the United States Supreme Court?

1. Pursuant to the Supremacy Clause, all department policies MUST comply with State and Federal Law. All State and Federal Law MUST comply with the individual State and Federal Constitutions. All State Constitutions MUST comply with the United States Constitution. The United States Constitution, United States Supreme Court Rulings and Treaties entered into by the United States Federal Government ARE THE "LAW OF THE LAND" and every other regulation and court ruling MUST submit to the supremacy of the "LAW OF THE LAND." Article 6, ¶ 2 of the United States Constitution states:

> United States' Constitutional Article 6. Debts, Supremacy, Oath ¶2, "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

2. Article 1, §37 of the Wyoming Constitution states:

> Wyoming Constitutional Article 1, §37. Constitution of United States supreme law of land. "The State of Wyoming is an inseparable part of the federal union, and the constitution of the United States is the supreme law of the land."

3. The Wyoming and United States Constitutions agree upon the Supremacy of the United States Constitution, MANDATING the United States Constitution, the United States Supreme Court's Rulings and the Treaties entered into by the United States, are the "Law of the Land."

4. "The government may not avoid the strictures of [the constitution] by deferring to the wishes or objections of some faction of the body politic." *American Civil Liberty Union of New Jersey v. Blok Horse Pike Regional Bd. Of Educ.*, 84 F.3d 1471, 1477-78 (3d Cir. 1996)(quoting City of Cleburne v. Cleburne Living Center, 473 U.S. 432, 448, 105 S. Ct. 3249 (1985). In light

5. See *CSX Transportation, Inc. V. Massachusetts Bay Transportation Authority*, 697 F. Supp. 2d 213; 2010 U.S. Dist. Lexis 27291 (Dist. MA, 2010), which states:

> The Supremacy Clause provides that the "Constitution, and the laws of the United States which shall be made in pursuance thereof . . . shall be the supreme law of the land, anything in the Constitution or laws of any State to the contrary notwithstanding." U.S. CONST. art. VI, cl. 2. Accordingly, courts have long recognized that federal law preempts contrary state enactments. Preemption comes in three forms: express preemption, field preemption, and conflict preemption. C*SX Transportation, Inc. V. Massachusetts Bay Transportation Authority*, 697 F. Supp. 2d 213; 2010 U.S. Dist. Lexis 27291 (Dist. MA, 2010).
>
> In this case, only conflict preemption is at issue. Conflict preemption occurs when compliance with both federal and state law is a physical impossibility or when the state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. *Fid. Fed. Sav. & Loan Ass'n v. de la Cuesta*, 458 U.S. 141, 152-53, 102 S. Ct. 3014, 73 L. Ed. 2d 664 (1982). In deciding whether a state law or public policy is preempted, the touchstone of the inquiry is congressional intent. *See O & G Indus., Inc., v. Nat'l R.R. Passenger Corp.*, 537 F.3d. 153, 160 (2d Cir. 2008).

6. Pursuant to the Supremacy Clause of the United States Constitution, federal law preempts contrary state enactments. *Boyz Sanitation Serv., Inc. v. City of Rawlins, Wyoming*, 889 F.3d 1189, 1198 (10th Cir. 2018). The purpose of Congress is "the ultimate touchstone" in every preemption case. *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485, 116 S. Ct. 2240, 135 L. Ed. 2d 700 (1996) (quoting *Retail Clerks International Asso. v. Schermerhorn*, 375 U.S. 96, 103, 84 S.

Ct. 219, 11 L. Ed. 2d 179 (1963)).

7. Preemption can be express or implied. *Boyz Sanitation*, 889 F.3d at 1198. When a statute contains an express preemption clause, as is the case with the FAAAA, courts "use ordinary principles of statutory interpretation to evaluate whether the state law falls within the scope of the federal provision precluding state action." *Id.* Courts "focus on the plain wording of the clause, which necessarily contains the best evidence of Congress' pre-emptive intent." *EagleMed LLC v. Cox*, 868 F.3d 893, 903 (10th Cir. 2017) (citing *Puerto Rico v. Franklin California Tax-Free Tr.*, 136 S. Ct. 1938, 1946, 195 L. Ed. 2d 298 (2016)). When the statute's language is plain, the court's inquiry into preemption "both begins and ends with the language of the statute itself." *Eagle Med*, 868 F.3d at 903 (citing *Puerto Rico*, 136 S. Ct. at 1946).

8. In *United States v. Supreme Court Of New Mexico*, 824 F.3d 1263; 2016 U.S. App. Lexis 10273 (10th Cir. 2016), which is directly on point, the Court stated:

> "The basic taxonomy of [the preemption] doctrine-which is based on the Constitution's Supremacy Clause, U.S. Const. art. VI, 2-is well-established: "Put simply, federal law preempts contrary state law." *Hughes v. Talen Energy Mktg., LLC*, U.S. , 136 S. Ct. 1288, 1297, 194 L. Ed. 2d 414 (2016); *see, e.g., Arizona v. United States*, ___ U.S. ___, 132 S. Ct. 2492, 2500-01, 183 L. Ed. 2d 351 (2012); *U.S. Airways, Inc. v. O'Donnell*, 627 F.3d 1318, 1324 (10th Cir. 2010). More specifically, among the "three types of preemption," *U.S. Airways*, 627 F.3d at 1324, the one relevant here is called conflict preemption. In that species of preemption, a state-law provision will be preempted if it conflicts with federal law, either because (1) "compliance with both federal and state regulations is a physical impossibility," *Arizona*, 132 S. Ct. at 2501 (quoting *Fla. Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142-43, 83 S. Ct. 1210, 10 L. Ed. 2d 248 (1963)), or because the provision (2) "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of" federal law, *id.* (quoting *Hines v. Davidowitz*, 312 U.S. 52, 67, 61 S. Ct. 399, 85 L. Ed. 581 (1941)); *accord Sprietsma v. Mercury Marine*, 537 U.S. 51, 64-65, 123 S. Ct. 518, 154 L. Ed. 2d 466 (2002); *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 372-73, 120 S. Ct. 2288, 147 L. Ed. 2d 352 (2000); *Skull Valley Band of Goshute Indians v. Nielson (Skull Valley)*, 376 F.3d 1223, 1240 (10th Cir. 2004); see also *Richard H. Fallon, Jr., et al.*, Hart and Wechsler's the Federal Courts and the Federal System 646 (6th ed. 2009)."
>
> Generally speaking, "[t]here is no federal pre-emption *in vacuo*, without a

> constitutional text or a federal statute to assert it." *P.R. Dep't of Consumer Affairs v. Isla Petroleum Corp.*, 485 U.S. 495, 503, 108 S. Ct. 1350, 99 L. Ed. 2d 582 (1988). Frequently, courts are called upon to discern the preemptive effect of the latter-federal statutes. *Choate v. Champion Home Builders Co.*, 222 F.3d 788, 791-92 (10th Cir. 2000) ("Congress has the power to preempt state law under . . . the Supremacy Clause. '[A]n agency's preemption regulations, promulgated pursuant to Congressional authority, have the same preemptive effect as statutes.'" (footnote omitted) (citation omitted) (quoting *Meyer v. Conlon*, 162 F.3d 1264, 1268 (10th Cir. 1998))); *Skull Valley*, 376 F.3d at 1240; *see also Emerson v. Kansas City S. Ry. Co.*, 503 F.3d 1126, 1127 (10th Cir. 2007).
>
> However, as most relevant here, the constitutional text itself may displace conflicting state law. *See Chy Lung v. Freeman*, 92 U.S. 275, 281, 23 L. Ed. 550 (1875) ("In any view which we can take of this [Wyoming] statute, it is in conflict with the Constitution of the United States, and therefore void.); *Crosby*, 530 U.S. at 373, 374 & n.8. *Compare De Canas v. Bica*, 424 U.S. 351, 355, 96 S. Ct. 933, 47 L. Ed. 2d 43 (1976) (considering the possibility that "the Constitution of its own force" may preempt state law), *superseded by statute on other grounds as recognized by Chamber of Commerce v. Whiting*, 563 U.S. 582, 590, 131 S. Ct. 1968, 179 L. Ed. 2d 1031 (2011), *with Keller v. City of Fremont*, 719 F.3d 931, 940 (8th Cir. 2013) ("In [*De Canas*,] the Supreme Court addressed the extent to which the Constitution preempts state and local laws . . . ."). In engaging in our preemption inquiry, we focus on "the terms of [the Wyoming Statutes and WDOC Policies], not hypothetical applications." *See Doe*, 667 F.3d at 1127; *cf. Green Mountain R.R. Corp. v. Vermont*, 404 F.3d 638, 644 (2d Cir. 2005) ("[W]hat is preempted here is the permitting process itself, not the length or outcome of that process *in particular cases*." (emphasis added)).

Question 4

Are state officials above the law; and can they state "I Don't Care What The Law Says" and "That Doesn't Apply To Us" while still receiving immunity from the Courts when litigants attempt to gain redress?

9. The State of Wyoming Officials regularly state: "I don't care what the law says" and "That doesn't apply to us" when Mr. Ruiz or other inmates apprise them of how their actions are violating the law (state and federal), Constitution (state and federal) and the Rights of the inmates and litigants. Unfortunate for Mr. Ruiz and others like him, the State of Wyoming, despite never denying the violations occurred, merely state they, as state officials, are immune from prosecution. Despite their actions fulfilling all the requirements to overcome qualified immunity, the Wyoming Federal District Court and State Courts dismiss the cases based upon

that erroneous application of immunity that they are not actually entitled to. The cases ultimately are dismissed on the unjust application of a "failure to state a claim" regardless of how legitimate the claims are and how much evidence is presented to support the validity of those claims because of that misplaced immunity. The courts have been inaccurately stating that the litigants have not presented a claim for which relief can be awarded and that no Constitutional claims were presented when First, Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendment Claims as well as ADA and Civil Rights Claims have been presented. For an example of this claim, Mr. Ruiz refers you to the following cases, where this is exactly what had been done:

a. *Rigler v. Lampert*, 248 F. SUPP. 3d 1224; 2017 U.S. Dist. Lexis 68599 (Case 2:15-cv-00154-SWS)

b. *Larson v. State of Wyoming*, 738 Fed. Appx. 599; 2018 U.S. App. Lexis 27076 (Case 1:16-cv-00244-ABJ). – Afterwards – Mr. Larson is currently litigating Case #28-553 on a "Motion for Breach of Contract Judgment" in relation to the breaches in his coerced criminal plea contract. Mr. Larson was also denied access in a Complaint for Declaratory Judgment.

> **§8. Courts open to all; suits against state.** All courts shall be open and every person for an injury done to person, reputation or property shall have justice administered without sale, denial or delay. Suits may be brought against the state in such manner and in such courts as the legislature may by law direct.

10. The Wyoming Attorney General (AG) known to apply the State's Immunity to violators when monetary damages are sought regardless of instances where the state actors have met the requirements for overcoming the potentially applicable qualified immunity and then relies upon 28 U.S.C. 1915 (e) (2) (B) (iii) to justify the summary dismissal when an award would be proper.

11. Wyoming places its offending state actors above the law by any means necessary even though pursuant to the United States Supreme Court, nobody is allowed to be above the law, not

even the President of the United States (POTUS) (See "In our system of government, as this Court has often stated, no one is above the law. That principle applies, of course, to a President) (See *Trump v. Vance*, 140 S. Ct. 2412; 207 L. Ed. 2d 907; 2020 U.S. Lexis 3552 (2020)).

> "No man in this country is so high that he is above the law. No officer of the law may set that law at defiance with impunity. All the officers of the government, from the highest to the lowest, are creatures of the law, and are bound to obey it." *Nixon v Fitzgerald*, 102 SCT 2690, 73 LED2D 349, 457 US 731 (1982); *United States v Lee*, 106 US [196,] 220, [27 L Ed 171, 1 S Ct 240] [(1882)]." 438 US, at 506, 57 L Ed 2d 895, 98 S Ct 2894; *Butz v Economou*, 98 SCT 2894, 57 LED2D 895, 438 US 478 (1978); *Davis v Passman*, 99 SCT 2264, 60 LED2D 846, 442 US 228 (1979). See also *Marbury v Madison*, 1 Cranch 137, 2 L Ed 60 (1803); *Scheuer v Rhodes*, 416 US, at 239-240, 40 L Ed 2d 90, 94 S Ct 1683, 71 Ohio Ops 2d 474.

12. Even the Wyoming Supreme Court (W.S.Ct.) has ruled in a like manner, but does not always follow its own precedents.

> What Mr. Justice Miller said in *United States v Lee*, *supra* (106 US 220, 221), needs repeating: "No man in this country is so high that he is above the law. No officer of the law may set that law at defiance with impunity. All the officers of the government, from the highest to the lowest, are creatures of the law, and are bound to obey it. *Malone v Bowdoin*, 82 SCT 980, 8 LED2D 168, 369 US 643 (1962). ***Cooney v. Park County*, 792 P.2d 1287; 1990 Wyo. Lexis 43 (Wyo. 1990)**. See also *United States v. Lee*, 106 U.S. 196, 220, 1 S. Ct. 240, 27 L. Ed. 171 (1882)("All the officers of the government from the highest to the lowers, are creatures of the law, and are bound to obey it.").

13. The Tenth Circuit Court of Appeals held the same stance in *Morgan, infra*, when it stated that pride and arrogance are the cause of men to inaccurately believe they are above the law.

> … The criminal law must supply a meaningful deterrent. Once properly charged and convicted, the law demands that *all* persons-no matter their station in life-be held to account for their actions. This is all the more so in a case involving political corruption, a serious offense which erodes the public's faith in the legitimacy of their government and its leaders. Accountability for such a serious offense calls for a significant punishment. And, as I explain below, I believe it calls for a punishment greater than the probationary sentence that Mr. Morgan received here. We need not celebrate Mr. Morgan's downfall in order to recognize that he must be held accountable for his proven misconduct. The public must have confidence that there are consequences when their leaders succumb to temptation. *United States Of America v. Morgan*, 635 Fed. Appx. 423; 2015 U.S. App. Lexis

19402 (10th Cir 2015).

14. Eleventh Amendment Immunity was created for the express purpose of allowing officials to perform their duties, when they perform them properly and within the parameters of the Constitution. It was not granted for the purpose of placing them above the law when they choose to deliberately violate the law or violate clearly established rights. The principles of accountability embodied in *Bivens*-that no official is above the law, and that no violation of right should be without a remedy-apply. *United States v Stanley*, 107 SCT 3054, 97 LED2D 550, 483 US 669 (1987). "The important lesson that Watergate established is that no President is above the law. It is a banality, a cliché, but it is a point on which many Americans ... seem confused." 119 Time, No. 24, p 28 (June 14, 1982). A majority of the Court shares this confusion. *Nixon v Fitzgerald*, 102 SCT 2690, 73 LED2D 349, 457 US 731 (1982).

> The 11th Amendment was not intended to afford them freedom from liability in any case where, under color of their office, they have injured one of the state's citizens. To grant them such immunity would be to create a privileged class free from liability from wrongs inflicted or injuries threatened. Public agents must be liable to the law, unless they are to be put above the law." *Old Colony Trust Co. v. Seattle*, 70 LED 1019, 271 US 426 (1926).

15. Many courts have applied an inapposite and incorrect understanding of the statement: "The King can do no wrong" to mean that the King [or in this case, the State of Wyoming] cannot be held accountable for his wrongful acts; when in fact the statement was intended to mean that "the King was not allowed to do wrong" (see 1 W. Blackstone, Commentaries *244, *Infra*) because his wrongs pervert the entirety of the nation and destroy not only the people's faith in their government, but also tear the country apart from within; and no country that has been torn apart from within has ever returned to viability.

> The first of these notions rests on the ancient maxim that "the King can do no wrong." See, e.g., 1 W. Blackstone, Commentaries *244. Professor Jaffe has argued this expression "originally meant precisely the contrary to what it later

> came to mean," that is, " 'it meant that the king must not, was not allowed, not entitled, to do wrong.' " Jaffe, 77 Harv. L. Rev., at 4 (quoting L. Ehrlich, Proceedings Against the Crown (1216-1377), p. 42, in 6 Oxford Studies in Social and Legal History (P. Vinogradoff ed. 1921), at p. 42); see also 1 Blackstone, supra, at *246 (interpreting the maxim to mean that "the prerogative of the crown extends not to do any injury"). In any event, it is clear that the idea of the sovereign, or any part of it, being above the law in this sense has not survived in American law. See, e.g., *Langford v. United States*, 101 US 341, 342-343, 25 L Ed 1010 (1880); *Nevada v. Hall*, 440 US 410, 415, 59 L Ed 2d 416, 99 S Ct 1182 (1979). *Seminole Tribe Of Florida v. Florida*, 116 SCT 1114, 134 LED2D 252, 517 US 44 (1996).

16. Unfortunately, this is becoming more and more evident in the United States with all the public protests complaining of the violations of citizens' rights up to and including wrongful death. The following is from *Gonzagowski vs. United States Of America*:

> "The Supreme Court's enlargement of the discretionary function exception reflects its presumption of absolute immunity as the default rule, imported from early British common law. See *United States v. Gaubert*, 499 U.S. at 324. This traditional interpretation of sovereign immunity's roots, however, may not be historically accurate and, what is more, this traditional interpretation, borrowed from Britain, is inapposite in the American system. As for its historical roots, American courts have long attributed the doctrine of sovereign immunity as an imported vestige from ancient British law. See, e.g., *Hill v. United States*, 50 U.S. 386, 389, 13 L. Ed. 185 (1850). The doctrine is rooted in the notion that the law flows from the sovereign king, who therefore must be above the law. American courts have long pointed to Blackstone and Coke to support the notion that sovereign immunity is rooted in the principle that "the King can do no wrong." William Blackstone, Commentaries on the Laws of England at 245 (1809)("Besides the attribute of sovereignty, the law also ascribes to the king in his political capacity, absolute perfection. The king can do no wrong . . . . The king, moreover, is not only incapable of doing wrong, but even of thinking wrong: he can never mean to do an improper thing: in him is no folly or weakness."). Under this [inaccurate] view, the king was not subject to suit, because he could do no wrong: whatever the king did was necessarily lawful. See, e.g., *Kawananakoa v. Polyblank*, 205 U.S. 349, 353, 27 S. Ct. 526, 51 L. Ed. 834 (1907)(Holmes, J.)("A sovereign is exempt from suit, not because of any formal conception or obsolete theory, but on the logical and practical ground that there can be no legal right as against the authority that makes the law on which the right depends."). This view also reflected the notion of the king's divine prerogative: "the theory of the divine right of kings lent support to the proposition that the king was above the law -- that he was in fact the law-giver appointed by God, and therefore could not be subjected to the indignity of suit by his subjects." George W. Pugh, Historical Approach to the Doctrine of Sovereign Immunity, 13 La. L. Rev. 476,

478-89 (1953). This extreme limitation on the Crown's liability, the theory goes, was thus "a direct and arguably necessary outgrowth of [Britain's] specific form of government." Mark C. Niles, Nothing but Mischief: The Federal Tort Claims Act and the Scope of Discretionary Immunity, 54 Admin. L. Rev. 1275, 1284 (2002).

This view, however, may not historically be accurate:

[T]his maxim was misunderstood even by Blackstone and Coke. . . . The maxim merely meant that King was not privileged to do wrong. If his acts were against the law, they were injuriae (wrongs). Bracton, while ambiguous in his several statements as to the relation between the King and the Law, did not intend to convey the idea that the King was incapable of committing a legal wrong. . . . Indeed, there appears to have been a considerable measure of redress obtainable. Borchard, supra, at 2 n.2. Similarly, [i]t is the prevailing view among students of this period that the requirement of consent was not based on a view that the King was above the law. "[T]he king, as the fountain of justice and equity, could not refuse to redress wrongs when petitioned to do so by his subjects." Indeed, it is argued by scholars on what seems adequate evidence that the expression "the King can do no wrong" originally meant precisely the contract to what it later came to mean. "[I]t meant that the king must not, was not allowed, not entitled, to do wrong[.]"Louis L. Jaffe, Suits against Governments and Officers: Sovereign Immunity, 77 Harv. L. Rev. 1, 3-4 (1963)(first quoting Williams Searle Holdsworth, A History of English Law at 8 (3d ed. 1944), and then quoting Ludwick Ehrlich, "Proceedings Against the Crown (1216-1377)," at 74, in 6 Oxford Studies in Social and Legal History (Vinogradoff ed. 1921)). Moreover, rather than offering no relief against the Crown, the ancient British legal system recognized the "petition of right," which allowed private civil claims against the king. Pugh, supra, at 479. The petition of right is by far the most famous of such procedures, and dates back to the reign of Edward I. . . . As the concept of governmental function expanded, English courts permitted suit against the government official or employee who had actually committed. the wrong complained of. Since in theory the king could do no wrong, it would be impossible for him to authorize a wrongful act, and therefore any wrongful command issued by him was to be considered as non-existent, and provided no defense for the dutiful subject. Pugh, supra, at 479-80.

Second, this view, based on the king's divine prerogative, is inapposite in the American political and legal system. Although the issue of sovereign immunity was debated at the Constitutional Convention and was mentioned in the Federalist Papers, this debate occurred in the context of the States' immunity for suit to collect war debts. See Pugh, supra, at 481; James Madison & Alexander Hamilton, The Federalist No. 81 at 567 ("Unless . . . there is a surrender of this immunity in the plan of the convention, it will remain with the States, and the danger intimated must be merely ideal. . . . [T]here is no color to pretend that the State governments would, by the adoption of that plan, be divested of the privilege of paying their own debts in their own way, free from every constraint but that which flows from the obligations of good faith."). Indeed, the first Supreme Court case on the matter rejected the wholesale importation of sovereign

immunity from the British common law, and noted that "the sovereignties in Europe, and particularly in England, exist on feudal principles," and so the King was not accountable to his subjects, but that "no such ideas obtain here; at the revolution, the sovereignty devolved to the people." *Chisholm v. Georgia*, 2 U.S. 419, 471-72, 1 L. Ed. 440, 2 Dall. 419 (1793). Shortly thereafter, however, the Supreme Court, pointing to the British common law and an expansive view of the Eleventh Amendment, adopted a version of sovereign immunity that was "significantly stronger and more absolute than that in England at the time, primarily because the petition of right, which had served to moderate the doctrine in Britain, was never made available here." Niles, supra, at 1287-88. See *United States v. Clarke*, 33 U.S. 436, 444, 8 L. Ed. 1001 (1834)(concluding that the United States was immune from civil liability).

This absolutist view of sovereign immunity, however, is generally inapposite in the United States. Whereas in Britain, sovereign immunity was a natural outgrowth of the fact that the courts were personifications of the king, the Constitution of the United States provides that Article III courts form a separate branch of government and are frequently called upon to adjudicate the other branches' acts, including acts attributable to the Executive. See, e.g., 5 U.S.C. 702 (allowing private suits against executive agencies and officials). Similarly, whereas the king's actions defined the law in Britain, "[l]aw in the United States is the product of the will of the people, either in the form of laws passed by their elected representatives, or in the Constitution, which is a permanent product of the same will." Niles, supra, at 1293. See *United States v. Lee*, 106 U.S. 196, 220, 1 S. Ct. 240, 27 L. Ed. 171 (1882)("All the officers of the government from the highest to the lowers, are creatures of the law, and are bound to obey it.").

Additionally, the application of sovereign immunity to protect our governments from liability misidentifies the true 'sovereign' in this country . . . . [A]t least as it relates to the federal government, there is no clearly analogous figure that wield the kind of power that was enjoyed by the crown in England, and which gave rise to its idiosyncratic concepts of governmental immunity. Niles, supra, at 1293. As the Supreme Court had noted before adopting its expansive immunity jurisprudence, the Framers consciously omitted the word "sovereign" from the Constitution. Chisolm v. Georgia, 2 U.S. at 454. A more just, accurate, and apposite sovereign immunity doctrine should note these differences between the United States' constitutional republic and the British monarchy from which the United States has imported the doctrine of sovereign immunity. This is not to say that some form of sovereign immunity has no place in federal law -- concerns about the separation of powers and smooth administrative functioning dictate that, in some instances, the United States should be immune. But a more just, apposite theory of sovereign immunity would not assume that the absolutist immunity principle is the default position. While the FTCA is perhaps the most clear federal expression of such a theory, the Supreme Court has tended to undermine this expression with its muddled view of the discretionary function exception, and so has reverted to the absolutist concept of sovereign immunity that the FTCA was meant to abolish. *Gonzagowski vs. United States Of America*, 495 F. Supp. 3d 1048; 2020 U.S. Dist. Lexis 158598 (Dist. N.M. 2020).

17. Quoted from WIKI regarding "Absolute Immunity":

> Absolute immunity is a type of sovereign immunity for government officials that confers complete immunity from criminal prosecution and suits for damages, so long as officials are acting within the scope of their duties ("Absolute Immunity". biotech.law.lsu.edu. Retrieved 2020-02-22.). The Supreme Court of the United States has consistently held that government officials deserve some type of immunity from lawsuits for damages (*Harlow v. Fitzgerald*, 457 U.S. 800, 806 (1982)), and that the common law recognized this immunity (*Harlow v. Fitzgerald*, 457 U.S. 800, 806 (1982)). The Court reasons that this immunity is necessary to protect public officials from excessive interference with their responsibilities and from "potentially disabling threats of liability." *Harlow v. Fitzgerald*, 457 U.S. 800, 806 (1982).
>
> Absolute immunity contrasts with qualified immunity, which applies only when certain officials violate clearly established constitutional rights or federal law ("Qualified immunity". LII / Legal Information Institute. Retrieved 2020-03-16.).
>
> In the United States, absolute civil immunity applies to the following people and circumstances: lawmakers engaged in the legislative process (*Imbler v. Pachtman*, 424 U.S. 409, 418 (1976)); judges acting in their judicial capacity (*Imbler v. Pachtman*, 424 U.S. 409, 418 (1976)); government prosecutors while making charging decisions (*Buckley v. Fitzsimmons*, 509 U.S. 259 (1993)); executive officers while performing adjudicative functions (See *Butz v. Economou*, 438 U.S. 478, 513-17 (1978)); the President of the United States (*Nixon v. Fitzgerald*, 457 U.S. 731 (1982)); Presidential aides who first show that the functions of their office are so sensitive as to require absolute immunity, and who then show that they were performing those functions when performing the act at issue (*Harlow v. Fitzgerald*, 457 U.S. 800, 802 (1982)); witnesses while testifying in court (although they are still subject to perjury)(*Rehberg v. Paulk*, 566 U.S. 356 (2012)); lawyers in certain circumstances related to fraud ("Connecticut Court Rules That Lawyers Can't Be Sued for Fraud". Insurance Journal. 2013-05-21. Retrieved 2020-02-22.

18. Quoted from WIKI regarding "Qualified Immunity":

> In the United States, qualified immunity is a legal principle that grants government officials performing discretionary functions immunity from civil suits unless the plaintiff shows that the official violated "clearly established statutory or constitutional rights of which a reasonable person would have known" (*Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)). It is a form of sovereign immunity less strict than absolute immunity that is intended to protect officials who "make reasonable but mistaken judgments about open legal questions" (*Ashcroft v. al-Kidd*, 563 U.S. 731, 743 (2011)), extending to "all [officials] but the plainly incompetent or those who knowingly violate the law" *Malley v. Briggs*, 475 U.S. 335, 341 (1986). Qualified immunity applies only to government officials in civil

> litigation, and does not protect the government itself from suits arising from officials' actions ("Qualified immunity". Legal Information Institute. Cornell Law School. Archived from the original on June 3, 2020. Retrieved June 4, 2020. "Qualified immunity only applies to suits against government officials as individuals, not suits against the government for damages caused by the officials' actions.").

19. The problem Mr. Ruiz and others like him face is that Wyoming picks and chooses when and for whom it wishes to enforce constitutional rights and for whom it wishes to merely go through the motions to a conviction, while violating the rights of the individual. Supporting this argument is that W.S.Ct. has stated in part: "Immunity of the state from suit does not afford relief against an unconstitutional statute or against a duty imposed on a state officer by statute, nor does it afford a state officer relief for trespassing on the rights of an individual even if he assumes to act under legal authority. It will not be permitted as a city of refuge for a state agency which deliberately violates the rights of an individual. Sec. 22, Art. 3 of the [Wyoming] Constitution authorizes provisions by general law for bringing suits against the state for all liabilities now or hereafter existing but it has no application to the case at bar; and if it did, it should be read in connection with Section 4 of the Bill of Rights providing that all courts be open in order that every person may seek redress for injury done in his lands, goods, person or reputation. If a state agency can deliberately trespass on and violate the rights of the citizen, and then be relieved from making restitution on the plea of nonliability of the state from suit, then the constitutional rights become nothing more than the tinkling of empty words. Such a holding would raise [State] administrative boards above the law and clothe them with an air of megalomania that would eternally jeopardize the rights of the citizen. (For general principle, See *U. S. v. Lee* (*Kaufman v. Lee*) 106 U.S. 196, 27 L Ed. 171; *Hopkins v. Agricultural College*, 221 U.S. 636, 55 L Ed. 890, 35 L. R. A., N. S. 248; *Drainage District v. Richardson*, 237 Mo. 49, 139 S.W. 576.

20. Then, that same court went on to contradict itself, stating: No suit can be maintained against the state until the legislature has made provision therefor. *Hjorth Royalty Company v. Trustees of University*, 30 Wyo. 309, 313, 222 P. 9.

> It is generally held, and almost without dissent, that a suit against an agency of the state engaged in a governmental function does not lie without the state's consent. *Harrison v. Wyoming Liquor Commission*, 63 Wyo. 13, 32, 177 P.2d. 397; *State Highway Commission v. Utah Construction Company*, 278 U.S. 194, 49 St. Ct. 104, 73 L. Ed. 262; Price v. State Highway Commission, 62 Wyo. 385, 167 P.2d. 309; *Utah Construction Company v. State Highway Commission*, 45 Wyo. 403, 19 P.2d. 951. *Ellis vs. Wyoming Game and Fish Commission*, 74 Wyo. 226; 286 P.2d 597; 1955 Wyo. Lexis 29 (Wyo. 1955).

21. In other words, if an individual case does not fall into one of the few specific circumstances in which the Wyoming Statutes waive immunity, there is no course of redress for the injured party. Mr. Ruiz, being an inmate in the Wyoming Department of Corrections (WDOC) faces the fact that the WDOC and its staff are NOT one of the extremely few circumstances in which redress is available, making it impossible for the Wyoming inmates to gain redress for deliberate and repeated violations of their rights. This affects every citizen of the United States because the Wyoming Court System's Public Defender's Office, exactly in a similar manner to the way that it was done for Mr. Ruiz, coerces defendants into accepting unwanted guilty pleas for which the State is incapable of gaining a conviction through trial (see Change of Plea/Sentencing Transcript, Page 16, Lines 16-20). If a person is not a local citizen who is politically connected, they are doomed to a conviction regardless of how unconstitutional it may be. Examples of this are: 1) Mr. Jack Rude, an Ohio man who had experienced a heart attack 4 days prior to the murder of his estranged daughter-in-law; and because he could not remember his whereabouts and actions on the date in question, Wyoming convicted he and his son of first degree murder and conspiracy to commit first degree murder when the physical evidence possessed by the Wyoming Courts clearly showed he was innocent. 2) Mr. Monte Sullivan, a man who was trying

to protect his girlfriend's kids by coercing her to report the sexual assault that the biological father had committed on one of the children, was convicted of the crime because the biological father was providing the local police chief with marijuana (the police chief's personal drug dealer). 3) Mr. Dennis Rigler (referenced above – the accusations were physically impossible for him to have committed). AND 4) Mr. Andrew Larson (referenced above – a person the trial court did not have jurisdiction to prosecute for whom the accusations were also physically impossible for him to have committed).

22. Yet, those who have actually committed crimes and were politically connected went unpunished and left to be a danger to other citizens, like Ms. Ingrid Louise Larson who can be connected to three people who died of questionable deaths such as Ingrid's mother (unexplained car crash when Ingrid was practicing the use of Mandrake), Wyoming Public Defender Ken Koski (who fell to his death in a rock climbing incident on a rock he was very familiar with; and Ingrid was a mountaineering instructor teaching people how to climb rocks, mountains and glaciers while in college), and Wyoming Public Defender's Office Investigator Mark Goldberg (who died of a massive heart attack, something that can be induced by the ingestion of Mandrake). Ingrid was a very close and personal friend with Wyoming Senior Assistant AG Meri V. Geringer (Former Governor Geringer's daughter), so she had special preference.

23. "Sovereign immunity has become more and more out of date, as the powers of the Government and its vast bureaucracy have increased." *Keifer & Keifer v Reconstruction Finance Corp.* 306 US 381, 390 et seq., 83 L ed 784, 789, 59 S Ct 516. "To give the agent immunity from suit is, to use the words of Mr. Justice Holmes: "a very dangerous departure from one of the first principles of our system of law. The general rule is that any person within the jurisdiction always is amenable to the law. If he is sued for conduct harmful to the plaintiff

his only shield is a constitutional rule of law that exonerates him. An instrumentality of government he might be and for the greatest ends, but the agent, because he is agent, does not cease to be answerable for his acts." *Sloan Shipyards Corp. v United States Shipping Board Emergency Fleet Corp. supra* (258 US pp. 556-567). No man or group is above the law. Nor is any beyond its protection. *Re Yamashita*, 327 US 1, dissenting opinion, 41, 90 L ed 499, 523, 66 S Ct 340. These truths apply equally to the Government. ... No man or group is above the law. All are subject to its valid commands. So are the government and the courts." *United States v. United Mine Workers Of America*, 91 LED 884, 330 US 258 (1947).

24. "[Wyoming's] actions make the discretionary function exception swallow the more general waiver and become the default doctrine. Though the Supreme Court has attempted to define what functions are discretionary and therefore not subject to liability; but [Wyoming] appears to have eliminated that definition and made every action a discretionary function. While seeking to address the difficulties that it had previously encountered in interpreting the exception, the [United States] Supreme Court also has imposed a presumption that any action which statute, regulation, or internal agency rules imbue with discretion is policy-driven, such that almost any act involving discretion will fall under the exception." See *United States v. Gaubert*, 499 U.S. at 324-25. The problem with this is that in Wyoming, this ruling has been misused as many of the WDOC's policies violate clearly established Constitutional Rights, with the officers arguing "I was only following policy" despite Nuremburg's ruling teaching us that individual people are responsible for their own actions and are obligated to refuse to commit crimes and violate other people's rights when ordered to do so by superiors. Unfortunately, when the WDOC is reminded of this, they state either "I don't care what the law says" or "That doesn't apply to us." Therefore, the U.S. Constitution, The Wyoming Constitution, the Bill of Rights, the Americans

with Disability Act, International Treaties entered into by the United States, and virtually every other law that protects the rights of people conveniently do not apply to Wyoming.

Question 5

Can a State within the United States create laws that eliminate *due process* or render court rulings that violate *due process*?

25. The 14th Amendment to the United States Constitution states:

> United States' Constitutional Amendment 14 [*Due Process* Equal Protection.] Section 1 Citizenship Rights Not to Be Abridged by States. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without *due process* of law; nor deny to any person within its jurisdiction the equal protection of the laws.

26. Article 1, §37 of the Wyoming Constitution states:

> Wyoming Constitutional Article 1, §6. *Due process* of law. "No person shall be deprived of life, liberty or property without *due process* of law."

27. Article 1, §3 of the Wyoming Constitution states:

> Wyoming Constitutional Article 1, §3. Equal political rights. "Since equality in the enjoyment of natural and civil rights is only made sure through political equality, the laws of this state affecting the political rights and privileges of its citizens shall be without distinction of race, color, sex, or any circumstance or condition whatsoever other than individual incompetency, or unworthiness duly ascertained by a court of competent jurisdiction."

28. Thus, The Wyoming and United States Constitutions agree on the necessity of *due process* and the necessity of equality under the law. Furthermore, since the United States Constitution is the Supreme Law of the Land, and the 14th Amendment of the United States Constitution says: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without *due process* of law; nor deny to any person within its jurisdiction the equal protection of the laws," the States, which are bound to adhere to the United States Constitution, cannot create

statutes that violate *due process*; nor can they render rulings that violate *due process*.

29. Mr. Justice Matthews, in *Yick Wo v. Hopkins*, 118 U. S. 356, 369, 30 L. ed. 220, 226, 6 Sup. Ct. Rep. 1064, speaking for the court of both the due process and equality clause of the 14th Amendment, said: ``These provisions are universal in their application, to all persons within the territorial jurisdiction, without regard to any differences of race, of color, or of nationality; and the equal protection of the laws is a pledge of the protection of equal laws." *Truax v. Corrigan*, 66 LED 254, 257 US 312 (1921).

30. The State of Wyoming has passed several statutes that, on their face or in the way they are applied, violate or eliminate *due process* and the related United States Supreme Court Rulings on the matter. The statutes seen most often by this writ-writer are (numerically) Wyoming Statutes §6-2-201, §6-2-311, and §6-2-602; the latter being the one abused in the immediate case.

31. Wyoming Statute §6-2-201 is Wyoming's kidnapping statute. In the statute there is a prescribed maximum sentence with an aggravating factor that enhances the sentences to much longer sentences. The prescribed sentence structure is §6-2-201 (c): "If the defendant voluntarily releases the victim substantially unharmed and in a safe place prior to trial, kidnapping is a felony punishable by imprisonment for not more than twenty (20) years." The aggravating factor's section, §6-2-201 (d), states: "If the defendant does not voluntarily release the victim substantially unharmed and in a safe place prior to trial, kidnapping is a felony punishable by imprisonment for not less than twenty (20) years or for life except as provided in W.S. 6-2-101." The Wyoming Courts, instead of following the decisions of the United States Supreme Court Rulings that mandate the aggravating factor be proven to the jury beyond a reasonable doubt, choose to default the sentencing structure to the latter aggravated sentence, §6-2-201(d) and will only give the defendant the standard sentence if he demonstrates to the Court beyond a doubt that

he did not commit the aggravating factor. The United States Supreme Court has repeatedly stated this is unconstitutional; but Wyoming keeps saying "I don't care what the law says."

32. Wyoming Statute §6-2-311 is part of Wyoming's sexual assault statutes. This statute states nothing more than: "Corroboration of a victim's testimony is not necessary to obtain a conviction for sexual assault." This statute unconstitutionally creates a presumption of guilt based upon nothing more than an accusation that cannot be overcome by any amount of evidence because there is absolutely no provision for a defense or evidence to overcome that presumption of guilt. A defendant is guilty upon accusation and *due process* is eliminated.

33. In the immediate case, Wyoming Statute §6-2-602, its self-defense statute, was eliminated by the defense counsel's statements to Mr. Ruiz that the Trial Court would not allow Mr. Ruiz to use that defense. Counsel, when Mr. Ruiz insisted that he wanted to use that affirmative defense because it was not only applicable, but appropriate and true, stated "I don't care." Counsel also stated that the jury would not care what the self-defense statute said because it was a small town in Wyoming. This was a conflict of interest (discussed in Question #12) that was ultimately used to coerce Mr. Ruiz to accept the unwanted guilty plea. At the second time that defense counsel presented the guilty plea contract stipulations that were considerably less advantageous than the first, he increased the pressure on Mr. Ruiz to accept the unwanted guilty plea. Ultimately, Mr. Ruiz succumbed to counsel's pressure and acquiesced to defense counsel's demands. Mr. Ruiz's guilty plea was neither voluntary nor knowing. Interestingly enough, defense counsel was previously a prosecutor, resulting in Mr. Ruiz facing a defense counsel working as a second prosecutor and amicus curiae.

> The Anders requirement is with reference to counsel acting as an advocate, not as an amicus curiae. *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493, reh. denied 388 U.S. 924, 87 S. Ct. 2094, 18 L. Ed. 2d 1377 (1967).

Question 6

Does actual innocence with evidence definitively confirming that actual innocence divest the trial court of jurisdiction to render a conviction?

34. Actual Innocence is so important in a case that it is one of the exceptions to toll the time limit in relation to AEDPA. It is as much offensive to justice as well as the conscience and the United States Constitution for an innocent man to be convicted as it is for a guilty man to go free.

35. In criminal law, Blackstone's ratio (also known as the Blackstone ratio or Blackstone's formulation) is the idea that: It is better that ten guilty persons escape than that one innocent suffer ("Commentaries on the laws of England". J.B. Lippincott Co., Philadelphia, 1893.) as expressed by the English jurist William Blackstone in his seminal work Commentaries on the Laws of England, published in the 1760s. The idea subsequently became a staple of legal thinking in Anglo-Saxon jurisdictions and continues to be a topic of debate. There is also a long pre-history of similar sentiments going back centuries in a variety of legal traditions. The message that government and the courts must err on the side of bringing in verdicts of innocence has remained constant.

36. The phrase was absorbed by the British legal system, becoming a maxim by the early 19th century (Re Hobson, 1 Lew. C. C. 261, 168 Eng. Rep. 1034 (1831) (Holroyd, J.)). It was also absorbed into American common law, cited repeatedly by that country's Founding Fathers, later becoming a standard drilled into law students all the way into the 21st century (G. Tim Aynesworth, An illogical truism, Austin Am.-Statesman, 18 April 1996, at A14). Specifically, it is "drilled into [first year law students'] head[s] over and over again." (Hurley Green, Sr., Shifting Scenes, Chi. Independent Bull., 2 January 1997, at 4.). Other commentators have echoed the principle. Benjamin Franklin stated it as: "it is better 100 guilty Persons should escape than

that one innocent Person should suffer" (9 Benjamin Franklin, Works 293 (1970), Letter from Benjamin Franklin to Benjamin Vaughan (14 March 1785)).

37. John Adams expanded upon the rationale behind Blackstone's Ratio when he stated: "It is of more importance to the community that innocence should be protected, than it is, that guilt should be punished; for guilt and crimes are so frequent in this world, that all of them cannot be punished....when innocence itself, is brought to the bar and condemned, especially to die, the subject will exclaim, 'it is immaterial to me whether I behave well or ill, for virtue itself is no security.' And if such a sentiment as this were to take hold in the mind of the subject that would be the end of all security whatsoever." This is currently being seen in the cities of the United States by the actions of the public in protest of the slaying of innocent people by law enforcement officers who then go without punishment or with minimal punishment.

38. The immediate precursors of Blackstone's ratio in English law were articulations by Hale (about 100 years earlier) and Fortescue (about 200 years before that), both influential jurists in their time. Hale wrote: "for it is better five guilty persons should escape unpunished, than one innocent person should die." Fortescue's De Laudibus Legum Angliae (c. 1470) states that "one would much rather that twenty guilty persons should escape the punishment of death, than that one innocent person should be condemned and suffer capitally." (Alexander Volokh, 1997).

39. Some 300 years before Fortescue, the Jewish legal theorist Maimonides wrote that "the Exalted One has shut this door" against the use of presumptive evidence, for "it is better and more satisfactory to acquit a thousand guilty persons than to put a single innocent one to death." (Alexander Volokh, 1997; 8. Moses Maimonides, The Commandments, Neg. Comm. 290, at 269-271 (Charles B. Chavel trans., 1967); and Goldstein, Warren (2006). Defending the human spirit: Jewish law's vision for a moral society. Feldheim Publishers. p. 269. ISBN 978-1-58330-

732-8. Retrieved 22 October 2010.). Maimonides argued that executing an accused criminal on anything less than absolute certainty would progressively lead to convictions merely "according to the judge's caprice" and was expounding on both Exodus 23:7 ("the innocent and righteous slay thou not") and an Islamic text, [Jami'] of at-Tirmidhi.

40. A vaguely similar principle, echoing the number ten and the idea that it would be preferable that many guilty people escape consequences than a few innocents suffer them, appears as early as the narrative of the Cities of the Plain in Genesis (at 18:23–32), (Alexander Volokh, 1997): "Abraham drew near, and said, "Will you consume the righteous with the wicked? What if there are fifty righteous within the city? Will you consume and not spare the place for the fifty righteous who are in it? (Genesis 18:23 , World English Bible (draft form)) ... What if ten are found there?" He [The Lord] said, "I will not destroy it for the ten's sake."" (Genesis 18:32 , World English Bible (draft form)).

41. The importance of actual innocence is clearly illustrated above by not only the Founding Fathers of the United States, but by those who preceded them by hundreds and even thousands of years. This is the foundation of the concept of a presumption of innocence with the Constitutional requirement of a finding of "guilt beyond a reasonable doubt" that our justice system was built upon. Verified actual innocence and evidence thereof should trump any and all procedural bars and result in the overturn of a conviction.

<u>Question 7</u>
Can a State within the United States deny or block a litigant's access to the courts?

AND

<u>Question 8</u>
Can a State within the United States deny a defendant an appeal based upon the unconstitutional actions of a State Employee who works for the Public Defender's Office (or that State's equivalent)?

AND

Question 9

If counsel provides a defendant with inaccurate information, can the defendant be held accountable for counsel's inaccurate information and be denied his right to a direct appeal?

AND

Question 10

Can the Wyoming Supreme Court ignore its own precedents and court rules to provide the State Attorney General an unfair advantage such as refusing to recognize the State has conceded a filing by failing/refusing to contest and/or respond to it.

42. The right to court access implicates the First Amendment (right to petition for redress – *Bounds v. Smith*, 430 U.S. 817, 828, 97 S. Ct. 1491, 52 L. Ed. 2d 72 (1977); and *Lewis v. Casey*, 518 U.S. 343, 349, 116 S. Ct. 2174, 135 L. Ed. 2d 606 (1996)), Fifth Amendment (rights of the accused in a criminal proceeding), Sixth Amendment (right to confront witnesses and have counsel for defense). The Sixth Amendment "right to counsel plays a crucial role in the adversarial system . . . , since access to counsel's skill and knowledge is necessary to accord defendants the ample opportunity to meet the case of the prosecution." *Strickland v. United States*, 466 U.S. 668, 694, 80 L. Ed. 2d 674, 104 S. Ct. 2052 (1984) (internal quotation marks omitted)) as well as the Fourteenth Amendment (right to equal treatment under the law)(see *Monroe v. Beard*, 536 F.3d 198, 205 (3d Cir. 2008)("Under the First and Fourteenth Amendments, prisoners retain a right of access to the courts."). Furthermore, court access cannot be denied based upon indigence "The Court held that the Sixth Amendment secures a right to court-appointed counsel in all federal criminal cases." *Johnson v. Zerbst*, 304 U.S. 458, 462-463, 58 S. Ct. 1019, 82 L. Ed. 1461 (1938). And in 1963, the Court applied this categorical rule to the States through the Fourteenth Amendment, stating ``that in our adversary system of criminal justice, any person hauled into court, who is too poor to hire a lawyer, cannot be assured a fair

trial unless counsel is provided for him." *Gideon v. Wainwright*, 83 SCT 792, 9 LED2D 799, 372 US 335 (1963). This right to an attorney extends to the direct appeal when the individual states create the right to an appeal. *Douglas v. California*, 83 SCT 814, 9 LED2D 811, 372 US 353 (1963).

> When counsel's constitutionally deficient performance deprives a defendant of an appeal that he otherwise would have taken – by e.g., failing to follow defendant's instruction to file or appeal or by failing to consult defendant about filing appeal in case in which there is reasonable probability that6, but for counsel's deficient failure to consult with him about appealing [defendant] would have timely appealed – reviewing court must presume[e] prejudice with no further showing form the defendant of the merits of his underlying claims. *Roe v. Flores-Ortega*, 528 U.S. 470, 484, 120 S. Ct.1029, 145 LED 2d 985 (2000).

43. Mr. Ruiz, as an inmate in the Sweetwater County Detention Center who had no access to a paid attorney and had no choice but be dependent upon the Wyoming Public Defender's Office for his defense, was cornered into accepting a Public Defender's Office Attorney. Unfortunate for Mr. Ruiz, the appointed defense attorney had no interest in providing him with a defense. This created a conflict of interests between Mr. Ruiz and his appointed defense counsel, leaving Mr. Ruiz constructively denied the assistance of counsel for his defense in violation of both his Fifth Amendment Right to a defense and his Fourteenth Amendment Right to equal protection under the law. After Mr. Ruiz was convicted, his defense counsel lied to him and stated he could not appeal his conviction in the immediate case, leaving Mr. Ruiz believing he had no right to appeal his new conviction.

44. Subsequent to this, Mr. Ruiz, still being indigent and now being further handicapped by an unconstitutional conviction, found himself again dependent upon the Public Defender's Office for assistance of counsel for his appeal of his Probation Revocation Hearing. Mr. Ruiz asked appointed appellate counsel if he could appeal his conviction that resulted in his probation revocation and appellate counsel lied to Mr. Ruiz by stating to him that he could not appeal his

conviction and then lied to the court by filing a knowingly fraudulent Ander's Brief in relation to Mr. Ruiz's probation revocation, when counsel was fully informed by Mr. Ruiz of the conflict of interest between Mr. Ruiz and trial counsel that resulted in the constructive denial of counsel at trial. Appellate counsel had the duty under the Constitution to raise this Sixth Amendment violation, but chose instead to further violate Mr. Ruiz's constitutional rights by filing a knowingly fraudulent Ander's Brief.

45. In the immediate case, the AG failed/refused to file a responsive pleading despite being apprised of the claims Mr. Ruiz was presenting. Subsequent to the AG's concession of Mr. Ruiz's claims by default, the W.S.Ct.chose to ignore its own rules and standing precedents from its own court, the federal courts and the U.S. Supreme Court to provide a ruling in favor of the AG despite Mr. Ruiz presenting constitutional claims as well as justification for his failure to file a timely appeal, which was actively obstructed by defense and appellate counsel, both of whom are employees of the Wyoming Public Defender's Office.

> Failure to timely file answer justifies default - Where the defendants failed to file an answer to a complaint within [20 days], then failed to show good cause, the court did not abuse its discretion in refusing to vacate the entry of default against them. *Halberstam v. Cokeley*, 872 P.2d 109 (Wyo. 1994).

46. The W.S.Ct. has standing precedents that if a litigant fails to respond to a pleading filed by their opposition, they have conceded the claims as true; thereby warranting W.S.Ct. rendering a ruling against them (see *Shayesteh v. Raty*, 404 Fed. Appx. 298; 2010 U.S. App. Lexus 25246 (10th Cir. 2010)); and negating their ability to later contest the claims presented by the opposition (see *Turrentine v. Mullin*, 390 F3d 1181, 1194 n.1 (10th Cir. 2004) citing *Abercrombie v. City of Catoosa, Okl.*, 896 F.2d 1228, 1231 (10th Cir. 1990); *United States v. Gonzalez-Jaquez*, 566 F.3d 1250 (10th Cir. 2009); *Neilson v. Ketchum*, 640 F.3d 1117 (10th Cir. 2011); *Anderson v. U.S.*

Dep't of Labor, 422 F.3d 1155, 1174 (10th Cir. 2005)).

47. The AG uses these rulings on a regular basis to defeat a litigant when they are merely a day or two late in their filing. Yet, when the AG fails to respond at all, the W.S.Ct. renders a ruling in favor of the AG's stance without having received any response from the AG despite the litigants presenting very real, cogent and justified claims. There are only two conceivable explanations: 1) ex-parte communication in which the AG presents their claims to the W.S.Ct.; or 2) the W.S.Ct. is showing an inherent prejudice against the litigants opposing the State. In either case, the Fourteenth Amendment is violated as due process can survive in neither circumstance, making the W.S.Ct.'s rulings vulnerable to overturn for just cause.

48. Wyoming Rules of Criminal Procedure, Rule 12 mandates the same thing.

> W.R.Cr.P., Rule 12. Pleadings and motions before trial; defenses and objections. "(g) Effect of failure to raise defenses or objections, or to make requests. Failure by a party to raise defenses or objections or to make requests which must be made prior to trial, at the time set by the court pursuant to subdivision (d), or prior to any extension thereof made by the court, shall constitute waiver thereof, but the court for cause shown may grant relief from the waiver."

49. Wyoming Rules of Civil Procedure, Rule 8 also mandates the same thing.

> W.R.C.P., Rule 8. General rules of pleading. "(b) Defenses; Admissions and Denials. (6) Effect of Failing to Deny. An allegation - other than one relating to the amount of damages - is admitted if a responsive pleading is required and the allegation is not denied." Therefore, the AG has admitted the legitimacy of Mr. Ruiz's claims; and therefore, Mr. Ruiz is deserving of relief.

50. The Uniform Rules of the District Courts of Wyoming, Rule 203 also mandates the same thing.

> "Default; dismissal for lack of prosecution. Rules text(a) Entry of default in accordance with Rule 55(a), W.R.C.P., must be made in all default matters. Defaults may be heard by the court at any convenient time. If no request for hearing is made within 90 days after service of process upon the defendant, the case may be dismissed by the court. Upon application to the court before the expiration of 90 days, and showing good cause, the time may be extended."

51. Wyoming Rules of Appellate Procedure also mandates the same thing but goes on to state that the party failing to respond "**shall not be heard**." See *Transatlantic Marine Claims Agency, Inc. V. Ace Shipping Corp., Div. Of Ace Young Inc.*, 109 F.3d 105, 108 (2d Cir. 1997); *Eichenblatt v. Kugel, Mayore Industries, Inc.*, 2018 U.S. Dist. Lexis 82731.

> Under W.R.A.P. Rule 7.11(b), "(b) When the party holding the negative has failed to file and serve a brief as is required by these rules, and the brief of the party holding the affirmative has been duly filed and served within the time required, the party holding the affirmative may submit the case, with or without oral argument, and the other party shall not be heard."

52. The Local Rules for the Federal District Court, Rule 7.1. states:

> "MOTIONS. (b) Motion, Response and Reply; Time for Serving and Filing; Length.. (2) Dispositive and Preliminary Injunction Motions. (A) Briefs. ... The Court may, in its discretion, consider the failure of a responding party to file a response within the fourteen (14) day time limit, or such other time limit as the Court may direct, as a confession of the motion."

53. United States District Court For The District Of Wyoming Local Civil Rules, Rule 55.1. Judgment By Default. states:

> "Upon a party's application for default judgment, the Clerk of Court shall make and file an entry of default as to any party in default in those instances where a separate request for entry of default has not been made prior to the application for default judgment."

54. Since Mr. Ruiz presented numerous meritorious arguments with evidence to support his claims, those claims that were left uncontested are admitted by the State of Wyoming as being true and correct; thereby deserving of judicial review, as well as remedy. See *Vanasse v. Ramsay*, 847 P.2d 993 (Wyo. 1993); however, the W.S.Ct. chose to arbitrarily render a ruling in favor of the AG's stance.

> "Summary dismissal for failure to file timely brief, absent excusable neglect - As a matter of practice, the Supreme Court summarily dismisses all cases in which the appellant fails to file a brief on the date due, even though it may be only one day late, unless the appellant is able to show excusable neglect, such as, failure in

the mail service." *Elliott v. State*, 626 P.2d 1044 (Wyo. 1981).

55. The W.S.Ct. appears to be doing anything to ensure that a conviction stands regardless of whether or not it is just. See Eric Alden, Senior Assistant Appellate Counsel for the Wyoming Public Defender's Office letter to inmate Donald Daves (WDOC #26524) dated January 19, 2011, where he wrote (in context):

> "I would like to offer you some hope but find that difficult to do with any honesty. Many people in this country believe that we have a justice system that has something to do with justice. Apparently you have been led to believe this in the past. I hate to disabuse you of that small comfort. We call this a justice system because that makes people feel good and believe that this country is something special. In fact, it is simply a punishment system.
>
> In my experience with the Wyoming Supreme Court, which is fairly extensive, they will do anything to avoid overturning even the smallest conviction. This attitude is similar to the Wyoming Legislature which will do anything possible to cause people to be convicted and incarcerated or worse. This attitude is derived from the Wyoming voters who will elect anyone who tells them people are evil. (They think this means *other* people until they find out, too late, it meant them.) The motives for these three groups are fear of being voted out of office by the Court, hatred and narcissism by the elected officials and stupidity by the voters."

56. The W.S.Ct. has denied all too many appeals that were justly deserving of overturn due to violations of the U.S. and Wyoming Constitutions and/or actual innocence.

Question 11

Can a State within the United States, which has a self-defense law, deny a litigant the legitimate use of that self-defense law as a defense in his criminal prosecution?

AND

Question 12

Can a State's Court System deny an individual the Constitutional and God-Given-Right to protect one's self against the illegal use of deadly physical force by an attacker who is mentally unstable due to the illicit use of stolen prescription drugs?

57. Wyoming Statute §6-2-602 is Wyoming's self-defense statute. In that statute the State of Wyoming Legislature has chosen to include the provisions that Mr. Ruiz "shall not have a duty to retreat before using reasonable defensive force" (see "(e)") when Mr. Ruiz possessed "an

honest belief that the danger exists whether the danger is real or apparent" (see "(a)") "provided that he [was] not the initial aggressor and is not engaged in illegal activity" (see "(a)"). Mr. Ruiz earnestly believed his life was in danger and rightfully so in light of the fact that his aggressor possessed a very sharp knife, with which she was attempting to slash him with, and the police had found that she had a second knife hidden in a location for easy retrieval in the event the first knife was taken from her. Wyoming Statute §6-2-602 goes on to state: ""A person who uses reasonable defensive force as defined by subsection (a) of this section shall not be criminally prosecuted for that use of reasonable defensive force" (see "(f)"). However, Mr. Ruiz's court appointed defense attorney refused to even consider defending Mr. Ruiz under Wyoming Statute §6-2-602, leaving Mr. Ruiz without any defense despite defense attorney being aware that Mr. Ruiz used very mild and limited force to protect himself and attempted to retreat twice. Furthermore, defense counsel, as well as local law enforcement, was informed by the alleged victim personally that she sustained her injuries when she fell on the concrete steps in her attempt to pursue Mr. Ruiz. Defense attorney had no excuse for refusing to defend Mr. Ruiz.

58. The Second Amendment encompasses the right to defend one's self and one's family from harm within "the right to keep and bear arms." Granted, the authors of the Second Amendment most likely never expected this right to include something as innocuous as a laundry basket. It is much more likely they were expecting a person to defend themselves with something much more deadly than a laundry basket; but regardless, a laundry basket is well within the parameters of the Second Amendment's verbiage.

Question 13

Does an irreconcilable conflict of interest result in a constructive denial of counsel that divests the trial court of jurisdiction to proceed any further in the case?

59. Due to Defense Counsel's conflict of interest he had no desire to defend Mr. Ruiz and

alternately coerced Mr. Ruiz to accept an unwanted guilty plea.

> A defense counsel working under the burden of a conflict of interest does not provide a defendant with the constitutionally required effective assistance of counsel in that counsel's loyalty is not undivided. (*U.S. v. Garcia*, 517 F.2d 272, 277-78 (5th Cir. 1975)), as the Constitution requires, thereby constructively denying petitioner of the assistance of counsel, as a defense counsel has the obligation to avoid even the appearance of a conflict (Petitioner is entitled to competent defense counsel who is free of conflict or even the appearance of conflict. *Johnson v. Zerbst*, 58 S. Ct. 1019 (1938) (See also U.S. Const. Amends. VI, XIV; Wyo. Const. Art, 1, §10).

60. The key point being argued is one of jurisdiction and according to *Johnson v. Zerbst*, 304 U.S. 458, 82 L. Ed. 1461, 58 S. Ct. 1091, where the court lost jurisdiction to try petitioner, Ruiz, when his counsel became embroiled in a conflict of interest. Zerbst says @459, "In all criminal prosecutions, the accused shall enjoy the right ... to have the assistance of counsel for his defense." The U.S. Supreme Court has held in *Cuyler*: "Thus, the Sixth Amendment does more than require the states to appoint counsel for indigent defendants. The right to counsel prevents states from conducting trials at which persons who face incarceration must defend themselves without adequate legal assistance." *Cuyler v. Sullivan*, 446 U.S. 335, 334, 100 S. Ct. 1708, 64 L. Ed. 2d 333, on remand 631 F.2d 14 (3rd Cir. 1980).

> Conflicted counsel and counsel that conceal critical information about a conflict of interest are in essence, no counsel at all, depriving Petitioner of right to counsel. In *Johnson v. Zerbst*, 304 U.S. 458, the Court said that "a court can lose jurisdiction since the Sixth Amendment may stand as a jurisdictional bar to a valid conviction and sentence depriving one of his life or his liberty. A court's jurisdiction at the beginning of a trial may be lost in the course of the proceedings due to failure to complete the court, or, in other words, the jurisdiction of the court to proceed becomes void." In their decision, the *Zerbst* Court taught that, "since the Sixth Amendment constitutionally entitles one charged with a crime to the assistance of counsel, compliance with this constitutional mandate entitles is an essential jurisdictional prerequisite to a [] court's authority to deprive an accused of his life or liberty."

61. Despite the United States Supreme Court Rulings, such as the above, the W.S.Ct. keeps ruling that a violation of the Sixth Amendment is not a jurisdictional argument. "The

overreaching test for effective assistance of counsel is whether the defendant's attorney subjected the prosecution's case to meaningful adversarial testing. Id." *Strickland v. Washington*, 466 U.S. 668, 686 (1984).

> "Defense counsel's performance was not only ineffective, but counsel abandoned the required duty of loyalty to his client; counsel did not simply make poor strategic or tactical choices; he acted with reckless disregard for his client's best interest, and apparently with the intention to weaken his client's case." See *Osborne v. Shillinger*, 861 F.2d 612 (10th Cir. 1988); *Harlow v. Murphy*, 2008 U.S. Dist. Lexis 124288 (D. Wyo. February 15, 2008)(Case#05-CV-039 B).

62. A Guilty plea is not knowing and voluntary when it is induced by counsel's faulty legal advice. *U.S. v. Streater*, 7 F.3d 1314, 1318. Counsel's conflict resulted in counsel giving Mr. Ruiz faulty advice through his attempts to coerce Mr. Ruiz to accept the unwanted guilty plea and forgo the trial that Mr. Ruiz wanted. Wyoming's Self Defense Statute would have probably resulted in Mr. Ruiz's acquittal

> "Petitioner alleging that his guilty plea was a result of ineffective assistance of counsel must show only that there exists a reasonable probability that result of plea process would have been different, absent counsel's misadvise; however, petitioner is not required to show that he probably would have been acquitted or would have received a shorter sentence at trial." *Hill v. Lockhart*, 877 F.2d 698 (8th Cir. 1989).

63. "Defense counsel's failure to investigate the facts is unconscionable and falls below the level of performance required by the 6th Amendment, counsel must make an effort to investigate." *House v. Balkcom*, 725 F.2d 608 (CA 11 Ga 1984), cert den, 469 U.S. 870, 83 L. Ed.2d 148, 105 S. Ct. 218 (1948). "Trial counsel's failure to understand defendant's factual or legal claims fails to provide performance within the competency expected from criminal defense counsel." *Young v. Zant*, 677 F.2d 792, 798 (11th Cir. 1982).

> "The assistance of counsel given an indigent defendant must be that of advocate rather than as amicus curiae, for the right of counsel means more than just having a person with a law degree nominally representing defendant and requires effective assistance of a single-minded counsel in research of the law and

> marshaling of arguments on defendant's behalf so that the defendant is provided the full consideration and resolution of matter of active advocate in behalf of his client." *People v. Gonzalez*, 47 N.Y. 2d 606419 (79); See also *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493, reh'g denied, 388 U.S. 924, 87 S. Ct. 2094, 18 L. Ed. 2d 1377 (1967).

64. When Mr. Ruiz informed his Appointed Appellate Counsel from the Wyoming Public Defender's Office that his trial counsel had a conflict of interest with him or refused to render assistance of an advocate and refused to investigate any defenses the defendant proffered, he filed a fraudulent *Ander's* Brief claiming the defendant presented no meritorious arguments and the Wyoming Courts base their decisions on that fraudulent *Ander's* Brief without giving any credence to the defendant's claims and without giving the defendant either a hearing or a replacement counsel to aid the defendant in preparing a brief to inform the court of what the actual claims are or to expand the record, even if the defendant asks for either a replacement attorney or a *Calene* Hearing. *Rodriquez v United States* stated:

> Counsel under [*Calene*] is doing less than the judge's law clerk (or a staff attorney) might do, and he is doing nothing at all in the way of advocacy. When a lawyer abandons the role of advocate and adopts that of *amicus curiae*, he is no longer functioning as counsel or rendering assistance within the meaning of the Sixth Amendment. See *Cronic*, 466 US, at 654-655, 80 L Ed 2d 657, 104 S Ct 2039. Since the apparently missing ingredient of the advocate's analysis goes to the very essence of the right to counsel, a lawyer who does nothing more than file a [*Calene*] brief is closer to being no counsel at all than to being subpar counsel under *Strickland.*
>
> A complete absence of counsel is a reversible violation of the constitutional right to representation, even when there is no question that at the end of the day the smartest lawyer in the world would have watched his client being led off to prison. See *Cronic*, *supra*, at 658-659, 80 L Ed 2d 657, 104 S Ct 2039; cf. *Rodriquez v United States*, 395 US 327, 23 L Ed 2d 340, 89 S Ct 1715 (1969).

65. When counsel's constitutionally deficient performance deprives a defendant of an appeal that he otherwise would have taken – by e.g., failing to follow defendant's instruction to file or appeal or by failing to consult defendant about filing appeal in case in which there is reasonable probability that, but for counsel's deficient failure to consult with him about appealing

[defendant] would have timely appealed – reviewing court must presum[e] prejudice with no further showing from the defendant of the merits for his underlying claims. *Roe v. Ortega*, 528 U.S. 470, 484 (2000).

66. Mr. Ruiz never waived his right to counsel at trial or on appeal and he wanted both a trial and an appeal.

Question 14

If a complainant files to have the case "quashed" because the charges are erroneous can the State Court continue the case to a conviction via coerced guilty plea without allowing the defendant his Constitutional Right to Confront the Witnesses against him because there is no longer a witness against him; and prevent him from learning that the alleged complainant admitted the charges were based upon lies?

67. The prosecution has a duty to pursue justice and not convictions; thereby requiring the prosecution to yield not only incriminating evidence to the defense, but also exculpatory evidence (see *United States v. Bagley*, 473 U.S. 677 (1985)), where Justice White, the Chief Justice and Justice Rehnquist, in concurrence with the judgment stated, "Our system of justice is animated by two seemingly incompatible notions: the adversary model, and the state's primary concern with justice, not convictions."). Worse than the prosecution withholding exculpatory evidence is when the defense counsel withholds exculpatory evidence from the defendant until after he has coerced that defendant into accepting an unwanted guilty plea (see *Hill v. Lockhart*, 474 U.S. 52, 59, 106 S. Ct. 366, 88 L. Ed. 2d 203 (1985)). In the immediate case, defense counsel did just that despite having received that exculpatory evidence considerably before coercing his client to accept the unwanted guilty plea. Defense counsel acted more like a second prosecutor than a defense counsel and with more zeal that the actual prosecutor to convict his own client.

> Counsel's "total failure to actively advocate his client's cause" and "repeated expressions of contempt for his client for his alleged actions" had effect of "provid[ing] [Petitioner] not with a defense counsel, but with a second

> prosecutor." *Rickman v. Bell*, 131 F. 3d 1150 (6th Cir. 1997), cert. denied, 523 U.S. 1133 (1998). See also *Sanders v. Clarke*, 856 F. 2d 1134 (8th Cir. 1988).

68. In the immediate case the alleged victim's, Promyce Aulger's (Ms. Aulger) original statement to the police at the time Mr. Ruiz was being arrested was that she had fallen down the concrete steps while chasing him.

> On occasion, errors in the affidavit may invalidate the warrant. An affiant seeking an arrest warrant violates the Fourth Amendment when she knowingly, or with reckless disregard for the truth, includes material false statements in a supporting affidavit or omits information that, if included, would prevent the warrant from lawfully issuing. *See Franks v. Delaware*, 438 U.S. 154, 171, 98 S. Ct. 2674, 57 L. Ed. 2d 667 (1978); *Beard v. City of Northglenn*, 24 F.3d 110, 114 (10th Cir 1994).

69. This was confirmed by the medical doctor's statement/report where his examination revealed that her injuries were consistent with a fall on concrete steps to a concrete sidewalk below (See Change of Plea/Sentencing Transcript, Page 16, Lines 8-15). The police report included the fact that Ms. Aulger was disoriented and confused, which was the result of the illicit use of psychotropic medications she had stolen from Mr. Ruiz's mother, the fact that she suffered psychiatric problems and the fall on the concrete steps just prior to their arrival that was witnessed by others. Mr. Aulger's fall on the concrete steps was conveniently omitted from the police report, so Ms. Aulger repeated the statement to defense counsel when she informed him that she wanted her complaint to be quashed because Mr. Ruiz was actually innocent. Defense counsel conveniently withheld this information from Mr. Ruiz until after he had coerced the unwanted guilty plea. Mr. Ruiz only learned of Ms. Aulger's attempt to quash her complaint and her admission of the fall during sentencing, which is memorialized in the sentencing transcripts at Page 13, Lines 7-11). Defense counsel withholding exculpatory evidence and refusing to investigate Mr. Ruiz's defenses is inconceivably inexcusable. Mr. Ruiz contends that defense

attorney withheld exculpatory evidence material to the defense in violation of *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963). The Third Circuit Court of Appeals found that:

> When the prosecution suppresses evidence favorable to the defendant that is material either to guilt or punishment, the defendant's due process rights are violated. Brady, 373 U.S. at 87. Included in this definition is exculpatory or impeachment evidence. *United States v. Bagley*, 473 U.S. 667, 676, 105 S. Ct. 3375, 87 L. Ed. 2d 481 (1985); *Giglio v. United States*, 405 U.S. 150, 154, 92 S. Ct. 763, 31 L. Ed. 2d 104 (1972). "[T]o establish a Brady violation requiring relief, a defendant must show that (1) the government withheld evidence, either willfully or inadvertently; (2) the evidence was favorable, either because it was exculpatory or of impeachment value; and (3) the withheld evidence was material." Lambert v. Blackwell, 387 F.3d 210, 252 (3d Cir. 2004) (citing *Banks v. Dretke*, 540 U.S. 668, 124 S. Ct. 1256, 157 L. Ed. 2d 1166 (2004)). Information is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. Lambert v. Beard, 633 F.3d 126, 133 (3d Cir. 2011) (quoting Bagley, 473 U.S. at 682). This showing, however, "does not require demonstration by a preponderance that disclosure of the suppressed evidence would have resulted ultimately in the defendant's acquittal . . . ." *Kyles v. Whitley*, 514 U.S. 419, 434, 115 S. Ct. 1555, 131 L. Ed. 2d 490 (1995). Rather, the touchstone of materiality is a "reasonable probability" of a different result . . . . The question is not whether the defendant would more likely than not have received a different verdict with the evidence, but whether in its absence he received a fair trial, understood as a trial resulting in a verdict worthy of confidence. A "reasonable probability" of a different result is accordingly shown when the government's evidentiary suppression undermines confidence in the outcome of the trial. *Id.* (quoting *Bagley*, 473 U.S. at 678).

70. A false statement provided by the police is much worse than one provided by a witness because the police, by their position of authority, are believed to be telling the truth in their reports; whereas a witness may be providing false testimony to serve a personal interest. A false statement is almost always material because of the amount of trust that is placed in police officers; and rightfully so, because if one doesn't trust the police, the entirety of society is on the brink of collapse.

> A false statement is material if it has a natural tendency to influence, or is capable of influencing, the decision of the decision-making body to which it was

addressed. *Neder v. United States*, 527 U.S. 1, 16, 119 S. Ct. 1827, 144 L. Ed. 2d 35 (1999) (quotations omitted).

WHEREFORE, Mr. Ruiz respectfully requests this Court grant his Petition for Writ of Certiorari in relation to the denial of his Petition for Permission to File a Late Direct Appeal. Mr. Ruiz further asks this Court to or overturn his illegal conviction, ordering his immediate release from his illegal constraints, or in the alternative remand the case back to the Wyoming Supreme Court with instructions; thereby saving the taxpayers the expense of an entire appeal that has already been conceded by the State of Wyoming.

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury pursuant to W.S. §6-5-301; 28 USC §1746; and 18 USC §1621 that the above information contained within the foregoing filing is true and correct to the best of my knowledge. I therefore place my hand as seal upon this document on the date below.

Ismael Ruiz

NOTARY

Subscribed and sworn as being true under the penalty of perjury pursuant to W.S. §6-5-301; 28 USC §1746; and 18 USC §1621 by Ismael Ruiz, before me this 3rd day of February, 2022. Said individual solemnly affirmed that he has firsthand knowledge of the facts contained herein and that the facts are true, correct and complete to the best of his knowledge, understanding and belief.

State of Wyoming)
) s.s.
County of Fremont)

LEE BLAKE - NOTARY PUBLIC
COUNTY OF NIOBRARA
STATE OF WYOMING
My Commission Expires 10/29/2023

Lee Blake
Notary Public

Lee Blake
My commission expires