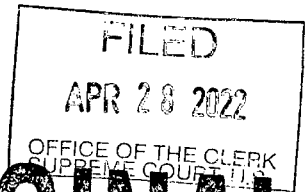


21-7819

No. _____



ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

Kevin Ray Smith — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals For The Eighth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Kevin Ray Smith, # 18847-030
(Your Name)

F.C.I. Hazelton, P.O. Box 5000
(Address)

Bruceston Mills, WV 26525
(City, State, Zip Code)

None
(Phone Number)

Questions Presented

1. Did petitioner have Article III standing to collaterally attack his federal criminal conviction, using 28 U.S.C. § 2255, relying on this Court's precedents, not overruled, that demonstrate the Government lacked Article III standing to charge conduct not within the precise subject-matter for nationwide federal police power enforcement?
2. Did the District court commit an abuse of discretion in not addressing, much less reaching, the merits presented in the motion under 28 U.S.C. § 2255, and dismissing the habeas corpus case where this Court's case law, presented to the district court, renders the federal conviction invalid and demonstrates a violation of petitioner's substantive due process rights?
3. Did the Court of Appeals abuse its discretion in also evading the constitutional and jurisdictional claims raised in the district court, in rubber-stamping an affirmance to the district court's dismissal instead of remanding the matter to the district court to address and reach the merits, where the Government did not even receive any order to answer the motion?
4. What remedy is available in this Court to right the wrongs committed against him by the Government to protect the rights of petitioner encompassed in the Federal Constitution, where this Court's precedents invalidate the federal conviction, and even the prosecution against petitioner, for conduct this Court's case law precludes the Government from applying the criminal laws in this case within the boundaries of a State, since no Article III court may sit in judgment thereunder, when sitting in a State, for conduct committed in a State, and such issues are of importance to the public?

Table of Contents

	Page
Opinions Below	1
Jurisdiction	1
Constitutional and Statutory Provisions Involved	2
Statement of the Case	3
Reasons for Granting the Petition	5
I. The Motion, Files, and Records of the Case Conclusively Show that the Petitioner is Entitled to Relief Under 28 U.S.C. § 2255	5
The Grounds Raised In The Petition Below	8
II. Jurisdiction Was Locking In The District Court Below	9
III. The Government, the District Court, the Court of Appeals, and Defense Counsel Failed to Protect Petitioner's Constitutional Rights	24
Conclusion	30

Index of Appendices

Appendix A	Court of Appeals ORDER denying Petition For Rehearing En Banc
Appendix B	Court of Appeals Judgment Denying Certificate of Appealability and Dismissing the Appeal

Appendix C District Court ORDER Dismissing 28 U.S.C. § 2255
Motion and Denying Issuance of Certificate
of Appealability

Appendix D United States Constitution, Article I, § 8

Appendix E United States Constitution, Article III, § 2

Appendix F United States Constitution, Article V

Appendix G United States Constitution, Amendment V

Appendix H United States Constitution, Amendment VI

Appendix I United States Constitution, Amendment VIII

Appendix J United States Code, Title 18, § 3231

Appendix K United States Code, Title 21, §§ 801 and 801a

Appendix L United States Code, Title 21, § 841

Appendix M United States Code, Title 21, § 846

Appendix N United States Code, Title 28, § 2255

Table of Authorities

	Page
<u>Barnes v. Gorman,</u> 536 U.S. 181 (2002)	29
<u>Bender v. Williamsport Area School Dist.,</u> 475 U.S. 534 (1986)	25
<u>Bond v. United States,</u> 572 U.S. 844 (2014)	15

<u>Carter v. Carter Coal Co.,</u> 298 U.S. 238 (1936)	14-15, 22
<u>Cohens v. Virginia,</u> 6 Wheat. 264 (1821)	9
<u>Collins v. Harker Heights,</u> 503 U.S. 115 (1992)	20
<u>Connick v. Thompson,</u> 563 U.S. 51 (2011)	26
<u>Danforth v. Minnesota,</u> 552 U.S. 264 (2008)	23
<u>Devila v. Davis,</u> 137 S.Ct. 2058 (2017)	7
<u>Devils v. United States,</u> 417 U.S. 333 (1974)	5-6
<u>Fontaine v. United States,</u> 411 U.S. 213 (1973)	8
<u>FW/PBS, Inc. v. Dallas,</u> 493 U.S. 215 (1990)	25
<u>Harlow v. Fitzgerald,</u> 457 U.S. 800 (1982)	26
<u>Harris v. Reed,</u> 489 U.S. 255 (1989)	19

Hurst v. Florida,

136 S.Ct. 616 (2015)

29

In re Debs,

158 U.S. 564 (1895)

16, 17, 17-18, 21

Keller v. United States,

213 U.S. 138 (1909)

14

Kirtsaeng v. John Wiley & Sons, Inc.,

133 S.Ct. 1351 (2013)

29

Kline v. Burke Construction Co.,

260 U.S. 226 (1922)

24-25

Lake County v. Rollins,

130 U.S. 662 (1889)

12, 15-16, 20

Lindhorst v. United States,

585 F.2d 361 (8th Cir. 1978)

8

Marbury v. Madison,

1 Cranch 137 (1803)

22-23, 28

Monaco v. Mississippi,

292 U.S. 313 (1934)

24

Montgomery v. Louisiana,

136 S.Ct. 718 (2016)

20, 29

Nat'l Fed'n Indep. Bus. v. Sebelius,

567 U.S. 519 (2012)

13, 13-14, 15, 21

<u>Natl Mutual Ins. Co. v. Tidewater T. Co.,</u>	
332 U.S. 582 (1949)	13
<u>New Orleans Pub. Serv. v. New Orleans,</u>	
491 U.S. 350 (1989)	27
<u>Oklahoma Tex Comm'n v. Jefferson Lines, Inc.,</u>	
514 U.S. 175 (1995)	16
<u>Powell v. Nevada,</u>	
511 U.S. 79 (1994)	5, 19, 24, 29
<u>Rangel-Reyes v. United States,</u>	
126 S. Ct. 2873 (2006)	27
<u>Rice v. Sioux City Cemetery,</u>	
349 U.S. 70 (1954)	24
<u>Romero v. Int'l Term. Operat. Co.,</u>	
358 U.S. 354 (1959)	10, 12
<u>Sabri v. United States,</u>	
541 U.S. 600 (2004)	21
<u>Schlup v. Delo,</u>	
513 U.S. 298 (1995)	20
<u>Screws v. United States,</u>	
325 U.S. 9 (1944)	28
<u>Slack v. McDaniel,</u>	
529 U.S. 473 (2000)	29

Steel Co. v. Citizens for Better Envt.

523 U.S. 83 (1998)

11, 13, 18, 19, 26

Strickland v. Washington,

466 U.S. 668 (1984)

7

Sullivan v. Everhart,

494 U.S. 83 (1990)

20

Superintendent v. Hill,

472 U.S. 445 (1985)

20

United States v. Brice,

488 U.S. 563 (1989)

7-8

United States v. Butler,

297 U.S. 1 (1936)

22

United States v. Debs,

64 F. 724 (N.D. Ill. 1894)

18

United States v. Fredy,

456 U.S. 152 (1982)

6

United States v. Hudson and Goodwin,

7 Cranch 32 (1812)

11-12

United States v. Morrison,

529 U.S. 598 (2000)

21

United States v. Pasquantino,

230 Fed. Appx. 255 (4th Cir. 2006)

6

	page
<u>United States v. Worrell,</u>	
2 U.S. 384 (Cir. Ct. D. Pa. 1798)	9
<u>Vermont ANR v. U.S. ex rel. Stevens,</u>	
529 U.S. 265 (2000)	9
<u>Walton v. Arizona,</u>	
497 U.S. 639 (1990)	25
<u>Williams v. United States,</u>	
289 U.S. 553 (1933)	10
<u>Wyeth v. Levine,</u>	
555 U.S. 555 (2009)	22
 Other Authorities	
Black's Law Dictionary	18
The Federalist No. 42 (J. Madison)	16

No. _____

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

The ORDER of the United States Court of Appeals denying the petition for rehearing en banc appears at Appendix A to the petition.

The Judgment of the United States Court of Appeals denying the application for a Certificate of Appealability, and outright dismissing the appeal, appears at Appendix B to the petition.

The ORDER of the United States District Court dismissing the 28 U.S.C. § 2255 petition for habeas corpus relief, and denying a Certificate of Appealability appears at Appendix C to the petition.

Jurisdiction

The date on which the United States Court of Appeals denied the petition for rehearing en banc was February 28, 2022, and appears at Appendix A.

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

Constitutional and Statutory Provisions Involved

United States Constitution, Article I, Section 8, is set out at Appendix D to the petition.

United States Constitution, Article III, Section 2, is set out at Appendix E to the petition.

United States Constitution, Article V, is set out at Appendix F to the petition.

United States Constitution, Amendment V, is set out at Appendix G to the petition.

United States Constitution, Amendment VI, is set out at Appendix H to the petition.

United States Constitution, Amendment VIII, is set out at Appendix I to the petition.

United States Code, Title 18, Section 3231 is set out at Appendix J to the petition.

United States Code, Title 21, sections 801 and 801a is set out at Appendix K to the petition.

United States Code, Title 21, Section 841 is set out at Appendix L to the petition.

United States Code, Title 21, Section 846 is set out at Appendix M to the petition.

United States Code, Title 28, Section 2255 is set out at Appendix N to the petition.

Statement of the Case

After being indicted, by a federal grand jury, on June 28, 2018, with conspiracy to knowingly distribute methamphetamine between December 2017 and March 2018, and distribution of methamphetamine on January 29, 2018, petitioner entered into a plea agreement and pled guilty, on March 25, 2019, to Count 1 of the indictment, the conspiracy charge. In the plea agreement, petitioner waived his right to a 28 USC § 2255, unless he alleges ineffective assistance of counsel or prosecutorial misconduct claims.

In a timely-filed § 2255 collateral motion, petitioner raised the following grounds: Ground One - Ineffective Assistance of Counsel, for failure to object to the Government's limits on federal power that precludes enforcement, by the federal Government, of its federal criminal laws within the territorial boundaries of the States; Ground Two - Ineffective Assistance of Counsel, for failing to object to lack of subject-matter jurisdiction in the Article III district court over drugs, as not being a "precise subject-matter" for federal "police power" enforcement in a nationwide manner; Ground Three - Ineffective Assistance of Counsel, in failing to challenge and object to an Article III district courts' jurisdiction over criminal cases, as the "judicial Power" of the United States is limited to "cases" and "controversies" of a civil nature, where the plaintiff, even if the United States, as a party, must allege and ultimately prove having sustained on

"actual injury," first and foremost, attributable to the defendant, and be redressable by the judicial proceedings; and Ground Four-Ineffective Assistance of Counsel, in counsel's failure to move for equitable estoppel against the Government, on the evidence that establishes Affirmative Misconduct, where the officers and agents of the Government pursued a federal criminal prosecution that, under the totality of the circumstances of this case, the Constitution precludes. The §2255 motion was forwarded to the District Court on August 25, 2021, and on August 31, 2021, the District Court issued its ORDER, Appendix C, dismissing the "Petition for Writ of Habeas Corpus ... in its entirety," and "that a certificate of appealability will not issue," without addressing any of the substantive grounds, all based on this Court's standing precedents that substantiate reasons why the relief should be granted in the Court below—that of vacatur of the unconstitutional federal criminal conviction, and dismissal of the indictment with prejudice, and an ORDER to have Petitioner released from custody that is in violation of the Constitution.

In his application to the Court of Appeals to issue a certificate of appealability, that Court, also not addressing the substantive grounds, denied issuance of the certificate of appealability, and outright dismissed the appeal—an appeal that, had the substantive grounds been addressed and reached in the appeals court would have resulted in the reversal of the void conviction and Petitioner's release.

Thus, this Petition to this Court is the result of the two lower courts evading the grounds and denying relief that Petitioner is entitled to.

Reasons For Granting The Petition

According to this Court's new Rule 10, "[a] petition for a writ of certiorari will be granted only for compelling reasons," Sup. Ct. Rule 10, July 1, 2019. As Mr. Justice Thomas, quoting a prior Supreme Court opinion, put it:

"As the Court has observed in the past, 'it is very important that we be consistent in not granting the writ of certiorari except in cases involving principles the settlement of which is of importance to the public as distinguished from that of the parties, and in cases where there is a real and embarrassing conflict of opinion and authority between the circuit courts of appeal.' ... We make poor use of judicial resources when, ... we take a case merely to reaffirm (without revisiting) settled law."

... "Of course, when there is a need for further factfinding or for proceedings best conducted in the lower courts, or where the ultimate question to be decided depends on debatable points of law that have not been briefed or argued, we regularly determine that the best course is to remand. ..."

"... As I explain below, at least one of those arguments provides a ground for decision, that would require only the application of settled law to the undisputed facts in the record before us."

Powell v. Nevada, 511 U.S. 79, 86-87, 87, 88 (1994) (citations omitted) (Thomas, J., with whom Rehnquist, C.J., joins, dissenting).

I. The Motion, Files, and Records of the Case Conclusively Show that the Petitioner is Entitled to Relief Under 28 U.S.C. § 2255.

As to the purpose, and reach, of 28 U.S.C. § 2255, this Court has made it clear:

"This history makes clear that § 2255 was intended to afford federal prisoners a remedy identical in scope to federal habeas Corpus ... the 'history of Section 2255 shows that it was

passed at the instance of the Judicial Conference to meet practical difficulties that had arisen in administering the habeas corpus jurisdiction of the federal courts. Nowhere in the history of Section 2255 do we find any purpose to impinge upon prisoners' rights of collateral attack upon their convictions. On the contrary, the sole purpose was to minimize the difficulties encountered in habeas corpus hearings by affording the same rights in another and more convenient forum."

Davis v. United States, 417 U.S. 333, 343-344 (1974) (citation omitted).

With the grounds raised in the District Court, set out, supra, of the limits the Constitution places on federal power, both as to the legislative limits and the limits on the "judicial Power" to only "cases" and "controversies" that the Framers listed, or "enumerated," in Article III, §2, as this Court has made clear, "[a] claim raised for the first time in a §2255 motion generally is not cognizable in federal court unless the petitioner demonstrates 'both (1) cause excusing his ... procedural default, and (2) actual prejudice resulting from the errors of which he complains.'" United States v. Resquantino, 230 Fed. Appx. 255, 259-260 (4th Cir. 2006) (citations omitted).

In a §2255 motion that alleges several errors in the trial court for which no contemporaneous objection was made, the Petitioner must show "cause excusing his procedural default" and "actual prejudice resulting from the errors." United States v. Frady, 456 U.S. 152, 168 (1982) (internal quotations omitted). Claims asserting ineffective assistance of counsel is properly raised in a §2255 motion and need not clear the procedural default bars.

In such claims of ineffective assistance of counsel, a petitioner must show, by a preponderance of the evidence, that (1) counsel's performance was seriously deficient; and (2) such deficient perfor-

mance prejudiced the petitioner by undermining the reliability of the judgment against him. Strickland v. Washington, 466 U.S. 668, 687 (1984).

To demonstrate prejudice, a petitioner must show "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id., 466 U.S. at 694.

Paraphrasing this Court's dicta, but relying on the opinion:

"The exhaustion requirement is designed to avoid the 'unseemly' result of a federal court 'upset[ing] [its own] conviction without' first according the... Court[] an 'opportunity to ... correct a constitutional violation.' ...

"... 'Just as in those cases in which a [federal] prisoner fails to exhaust... remedies, a habeas petitioner who has failed to meet the [federal] procedural requirements for presenting his federal claims has deprived the [federal sentencing] courts of an opportunity to address the merits of 'those claims in the first instance.' ...

"... A... prisoner may overcome the prohibition on reviewing procedurally defaulted claims if he can show "cause" to excuse his failure to comply with the [federal] procedural rule and "actual prejudice resulting from the alleged constitutional violation." ... To establish "cause"—the element of the doctrine relevant in this case—the prisoner must "show that some objective factor external to the defense impeded counsel's efforts to comply with the [federal] procedural rule." ... A factor is external to the defense if it "cannot fairly be attributed to" the prisoner. ...

"It has long been the rule that attorney error is an objective external factor providing cause for excusing a procedural default only if that error amounted to a deprivation of the constitutional right to counsel. ... An error amounting to constitutionally ineffective assistance is "imputed to the [Government]" and is therefore external to the prisoner."

Davila v. Davis, 137 S. Ct. 2058, 2064–2065 (2017) (in relevant parts, citations omitted, alteration and emphasis added).

Although a guilty plea waives all non-jurisdictional antecedent claims of constitutional error, both to known errors and undiscovered ones, United

II

Jurisdiction was lacking in the District Court Below

As this Court instructs:

"Questions of jurisdiction, of course, should be given priority—since if there is no jurisdiction there is no power to sit in judgment of anything else... 'Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause.'"

Vermont AIR v. U.S., ex rel. Stevens, 529 U.S. 765, 778 (2000) (citations omitted).

One of the first statements made, in regard to the powers granted to the Federal Government, by the Constitution, over crimes and the punishments thereof, was made by Circuit Justice Chase, when he stated:

"Upon the whole it may be a defect in our political institutions, it may be an inconvenience in the administration of justice, that the common law authority, relating to crimes and punishments, has not been conferred upon the government of the United States, which is a government in other respects also of a limited jurisdiction;..."

United States v. Warrall, 2 U.S. 384, 1798 U.S. App. LEXIS 39, *16 (Cir.

Ct. D. Pa., April, 1798).

Just 23 years later, in construing the portion of the Judicial Article, Art. III, §2, Chief Justice Marshall announced:

"Had any doubt existed with respect to the just construction of this part of the section, that doubt would have been removed by the enumeration of those cases the jurisdiction of the federal courts is extended in consequence of the character of the parties."

Cohens v. Virginia, 6 Wheat. 264, 383 (1821).

And to make certain that there be no misunderstanding of both the reach and limits of the "Judicial Power" of the courts of the Uni-

ted states, the Court instructed:

"We first direct attention to the carefully chosen words of §2, cl.1, Art. III, by that clause the judicial power is extended to all cases in law and equity arising under the Constitution, etc.; to all cases affecting ambassadors, other public ministers and consuls; and to all cases of admiralty and maritime jurisdiction. Then the comprehensive word "all" is dropped, and the enumeration continues in terms to apply to controversies (but not to "all") to which the United States shall be a party; to controversies between two or more states; etc. The use of the word "all" in some cases, and its omission in others, cannot be regarded as accidental, under the rule stated in an early case, ... and ever since fully accepted, that - "In expounding the Constitution of the United States, every word must have its due force, and appropriate meaning; for it is evident from the whole instrument, that no word was unnecessarily used, or needlessly added. The many decisions which have taken place upon the construction of the Constitution, have proved the correctness of this proposition; and shewn the high talent, the caution, and the foresight of the illustrious men who framed it. Every word appears to have been weighed with utmost deliberation, and its force and effect to have been fully understood."

Williams v. United States, 289 U.S. 553, 572-573 (1933) (citations omitted)

That there are exactly nine classes of cases to which the "judicial Power" is extended, and limited, it was made clear in a later case where the "admiralty and maritime jurisdiction" was involved, and inferred that cases "criminal" in nature is not within the "judicial Power" of the United States, this Court described the jurisdiction involved in that case thus:

"These provisions of Article 3 are two of the nine separately enumerated classes of cases to which "judicial power" was extended by the Constitution, and which, thereby, authorized grants by Congress of "judicial Power" to the "inferior" federal courts. The vast stream of litigation which has flowed through those courts from the beginning has done so on the assumption that, in dealing with a subject as technical as the jurisdiction of the courts, the Framers predominantly lawyers, used precise, differentiating and not redundant language.

Romero v. Int'l Term. Opreat Co., 352 U.S. 344, 344 (1956).

And if there exists any doubt that the "judicial power" of the United States does not extend to "criminal" cases, this Court drove the proverbial nail in that coffin, when it wrote:

"Much more than legal niceties are at stake here. The stability and (especially) constitutional elements of jurisdiction are an essential ingredient of separation and equalization of powers, restraining the courts from acting at certain times, and even restraining them from acting permanently regarding certain subjects."

Steel Co. v. Citizens for Better Envt't, 523 U.S. 83, 101 (1998) (citations omitted)

When it comes to "criminal" cases, "the enumeration of those cases the ju-

isdiction of the federal courts is extended in consequence of the character of

the parties," especially as to the United States being a party, the Steel Court

has made clear:

"Article III, § 2, of the Constitution extends the 'judicial power' of the United States only to 'Cases' and 'Controversies.' We have always taken this to mean cases and controversies of the sort traditionally amenable to, and resolved by, the judicial process. ... Such a meaning is fairly implied by the text, since otherwise the purported restriction upon the judicial power would scarcely be a restriction at all. Every criminal investigation conducted by the Executive is a 'case,' and every policy issue resolved by congressional legislation involves a 'controversy.' These are not, however, the sort of cases and controversies that Article III, § 2, refers to, since 'the Constitution's central mechanism of separation of powers depends largely upon common understanding of what activities are appropriate to legislatures, to executives, and to courts.'"

Id., 523 U.S. 102 (citations omitted).

That this Court "possesses jurisdiction derived immediately from the constitution, and of which the legislative power cannot deprive it" is commonsensical, when reading Article III, and its relevant sections -

United States v. Hudson and Goodwin, 7 Cranch 32, 33 (1812).

"All other courts created by the general government possesses no jurisdiction but what is given them by the power that creates them, and can be vested with none but what the power ceded to the general government will authorize them to confer." *Ibid.*, and that power is limited to "the nine separately enumerated classes of cases to which 'judicial power' was [limited] by the Constitution." *Rumery, supra* (emphasis added).

"Why not assume that the framers of the Constitution, and the people who voted it into existence, meant exactly what it says?" *Lake*

County v. Rollins, 130 U.S. 662, 670 (1889). That is why this Court has emphasized time and again, what it taught in *Lake County*:

"The object of construction, applied to a Constitution, is to give effect to the intent of its framers, and of the people in adopting it. This intent is to be found in the instrument itself, and when the text of a constitutional provision is not ambiguous the courts, in giving construction thereto, are not at liberty to search for its meaning beyond the instrument."

Ibid.

With the relevant key word being "enumerated" as to the "classes of cases" "inferior" Article III courts are limited to what this Court stated as to the Federal Government being "acknowledged by all to be one of enumerated powers," as to the objects of congressional legislation for application nationwide, the same applies to the "judicial power" of the United States, because "the enumeration of powers" in this case the "judicial power" is also a limitation of powers, because "the enumeration presupposes something not enumerated," as "criminal" cases not being in the enumeration of the sort of cases Article III, § 2, refers to,

Steel Co., supra, "If the Constitution's express conferral of some powers makes clear that it does not grant others," such as any authority upon Congress to confer "inferior" Article III tribunals with criminal jurisdiction. See, generally, Nat'l Fed'n of Indep. Bus. v. Sebelius, 567 U.S. 519, 534 (2012) (in relevant parts, citations omitted),

When faced with legislation that purports to confer federal courts with jurisdiction beyond the bounds of the Constitution, Mr. Justice Frankfurter provided a remedy the courts should use, saying:

"Of course every indulgence must be entertained in favor of constitutionality when legislation of Congress can fairly be deemed an exercise of the discretion, in the formulation of policy, given to Congress by the Constitution. But the cases to which jurisdiction may be extended under Article III to the courts established under it preclude any claim of discretionary authority to add to the cases listed by Article III or to change the distribution as between original and appellate jurisdiction made by that Article. ... But when the Constitution defined the ultimate limits of judicial power exercisable by courts which derive their sole authority from Article III, it is beyond the power of Congress to extend those limits. If there is one subject as to which this Court ought not to feel inhibited in passing on the validity of legislation by doubts of its own competence to judge what Congress had done, it is legislation affecting the jurisdiction of the federal courts. When Congress, on a rare occasion through inadvertence or generosity exceeds those limitations, this Court should not goodnaturedly ignore such a transgression of congressional powers."

Nat. Mut. Ins. Co. v. Tidewater T. Co., 337 U.S. 582, 655 (1949) (citation omitted) (Frankfurter, J., with whom Reed, J., concurs, dissenting).

And when it comes to enforcement of the laws, this Court perfectly made clear:

"The States thus can and do perform many of the vital functions of modern government—punishing street crime, running public schools, and zoning property for development, to name but a few—even though the Constitution's text does not authorize any

government to do so. Our cases refer to this general power of governing, possessed by the States but not the Federal Government, as the "police power."

Nat'l Fed'n, supra, 567 u.s., 535-536 (citation omitted),

Quoting one of its earlier cases, this Court pointed out that, when it comes to a general police power, what is required to confer upon Congress a national police power:

"Generally it may be said, in respect to laws of this character, that, though resting upon the police power of the state, they must yield whenever Congress, in the exercise of the powers granted to it, legislates upon the precise subject-matter, for that power, like all other reserved powers of the states, is subordinate to those in terms conferred by the Constitution upon the nation. 'No urgency for its use can authorize a state to exercise it in regard to a subject-matter which has been confided exclusively to the discretion of Congress by the Constitution.'"

Keller v. United States, 213 u.s. 138, 146 (1909) (quotation marks and citations omitted),

As to "discretion" of Congress to enact any legislation, this Court admonished:

"The ruling and firmly established principle is that the powers which the general government may exercise are only those specifically enumerated in the Constitution, and such implied powers as are necessary and proper to carry into effect the enumerated powers, whether the end sought to be attained by an act of Congress is legitimate, is wholly a matter of constitutional power and not at all of legislative discretion. Legislative congressional discretion begins with the choice of means and ends with the adoption of methods and details to carry the delegated powers into effect. The distinction between these two things—power and discretion—is not only very plain but very important. For while the powers are rigidly limited to the enumerations of the Constitution, the means which may be employed to carry the powers into effect are not restricted, save that they must be appropriate, plainly adapted to the end, and not prohibited by, but consistent with, the letter and spirit of the Constitution."

Carter v. Carter Coal Co., 298 u.s. 238, 291 (1936) (citation omitted),

"Thus, it may be said that to a constitutional end many ways

are open; but to an end not within the terms of the Constitution, all ways are closed." Ibid. (emphasis added).

Jumping forward, addressing the "Necessary and Proper Clause" of the Constitution, this Court pointed out:

"The power to 'make all Laws which shall be necessary and proper for carrying into Execution' the powers enumerated in the Constitution, Art. I, § 8, cl. 18, vests Congress with authority to enact provisions 'incidental to the [enumerated] power and conducive to its beneficial exercise.' ... Although the Clause gives Congress authority to 'legislate on that vast mass of incidental powers which must be involved in the constitution,' it does not license the exercise of any 'great substantive and independent powers' beyond those specifically enumerated. ... Instead, the Clause is 'merely a declaration, for the removal of all uncertainty, that the means of carrying into execution those [powers] otherwise granted are included in the grant.' ...

"As our jurisprudence under the Necessary and Proper Clause has developed, we have been very deferential to Congress's determination that a regulation is 'necessary.' We have thus upheld laws that are, 'convenient or useful' or 'conducive' to the authority's 'beneficial exercise.' ... But we have also carried out our responsibility to declare unconstitutional those laws that undermine the structure of government established by the Constitution. Such laws, which are not 'consistent with the letter and spirit of the Constitution,' ... are not 'proper [means] for carrying into Execution' Congress's enumerated powers. Rather, they are, 'in the words of The Federalist, 'merely acts of usurpation' which 'deserve to be treated as such.' ...

Nat'l Fed'n, supra, 567 U.S., 559 (citations omitted).

The foregoing arguments, and this Court's opinions, completely debunk the Government's assertion that "federal criminal legislation ... is authorized pursuant to Congress's power to regulate interstate commerce," Bond v. United States, 572 U.S. 844, 854 (2014), when applying this Court's instruction, in Lake County, supra, when it involves the Constitution: "to give effect to the intent of its framers, and of the

people in adopting it," 130 U.S. 670, when of the Framers expressed that the "very material object of this power" of the Commerce Clause is to remove impediments from the free flow of commerce by one State upon other States "from the improper contributions levied on them by the latter" on "the articles of import and export, during the passage through their jurisdiction, with duties which would fall on the makers of the latter and the consumers of the former." The Federalist No. 42 (J. Madison).

Explaining the Commerce Clause, and citing The Federalist No. 42, and its earlier opinions, this Court found that the Clause provided a measure of

"preventing a State from retreating into economic isolation or jeopardizing the welfare of the Nation as a whole, as it would do if it were free to place burdens on the flow of commerce across its borders that commerce wholly within those borders would not bear. The provision thus "reflect[s] a central concern of the Framers that was an immediate reason for calling the Constitutional Convention: the conviction that in order to succeed, the new Union would have to avoid the tendencies toward economic Balkanization that had plagued relations among the Colonies and later among the States under the Articles of Confederation."'"

Oklahoma Tax Comm'n v. Jefferson Lines, Inc., 514 U.S. 175, 179-180 (1995) (citations omitted).

More evidence of the Commerce Clause's purpose is to remove obstructions that impede the flow of interstate commerce is this Court's opinion in In re Debs, 158 U.S. 564 (1895). In that case, the example of combining two of Congress's expressly delegated powers worked to achieve the goal, in that case, desired by the Government, with Mr. Justice Brewer,

in the opinion for the Court, finding:

"Among the powers expressly given to the National government are the control of interstate commerce and the creation and management of a postoffice system for the nation. Article I, section 8, of the Constitution provides that "the Congress shall have power, ... Third, to regulate commerce with foreign nations and among the several States, and with the Indian tribes, ... Seventh, to establish postoffices and post roads."

Id., 158 U.S. 579.

On June 15, 1866, by an act of Congress, the National Legislature enacted legislation that made the railroads, officially, postroads for the interstate transportation of, inter alia, the mails.

When the members of the American Railway Union initiated a boycott against the Pullman Palace Car Company, and, effectively, interrupted the transportation of the mails, the Government's prosecutor, understanding that the "inferior" Article III Courts lack criminal case jurisdiction, applied for, and obtained, from the federal court an injunction against the strikers, to, in part, "to desist and refrain from in any way or manner interfering with, hindering, obstructing, or stopping any of the businesses as common carriers of passengers and freight between or among any states of the United States, ... and from in any manner interfering with, hindering or stopping any trains carrying the mail; ..." Id., 158 U.S. 570 (in relevant parts).

"This injunction was served upon the defendants - at least upon those who are here as petitioners. On July 17th the district attorney filed in the office of the clerk of said court an information for an attachment against the four defendants, officers of the railway union, and on August 1 a similar information against the other petitioners. A hearing was had before the circuit court,

and on December 14 these petitioners were found guilty of contempt, and sentenced to imprisonment in the county jail for terms varying from three to six months."

Id., 158 U.S. 572-573 (citation omitted).

In all the cases cited in United States v. Debs, 64 F. 724 (Cir. Ct. N.D. Ill. 1894), Circuit Judge Woods observed that, e.g.,

"reference is made to the 'Act to regulate commerce,' as amended by the act of March 2, 1889 (25 Stat. 855); and it is contended that by force of the provisions of that statute, passed in exercise of the power conferred on congress by the constitution 'to regulate commerce among the several states,' the National Control has been extended over the channels and agencies of interstate commerce, including railways as well as navigable waters, and that out of this legislation, whatever had been the rule before, has arisen by necessary implication the jurisdiction of the federal courts, in accordance with the principles of equity, to protect that commerce against interference or obstruction. The right of the federal government to obtain the injunction is also asserted upon the ground of property right in the mails."

Id., 64 F. 743.

Because an "injunction" is defined as: "A court order commanding or preventing an action," injunction, Black's Law Dictionary, Fourth Pocket Edition, 383 (1996 West Publ. Co., & Thomson Reuters publ. 2011), "To get an injunction, the complainant must show that there is no plain, adequate, and complete remedy at law and that an irreparable injury will result unless the relief is granted."

Ibid., Black's Law Dictionary.

Therefore, with the United States, in Debs, being the "complainant" against the strikers in that case, it follows:

"Standing to sue is part of the common understanding of what it takes to make a justiciable case."

Steel Co., supra, 523 U.S. 102 (citation omitted).

Citing standing decisions in this Court, as to requiring the United States, as the complainant in Debs, it pointed out:

"The 'irreducible constitutional minimum of standing' contains three requirements. . . . First and foremost, there must be alleged (and ultimately proved) an 'injury in fact'—a harm suffered by the plaintiff that is 'concrete' and 'actual or imminent, not 'conjectural' or 'hypothetical.' . . . Second, there must be causation—a fairly traceable connection between the plaintiff's injury and the complained-of conduct of the defendant. . . . And, third, there must be redressability—a likelihood that the requested relief will redress the alleged injury. . . . This triad of injury in fact, causation, and redressability constitutes the core of Article III's case-or-controversy requirement, and the party invoking federal jurisdiction bears the burden of establishing its existence."

Steel Co., 523 U.S. 102-104 (citations omitted).

In the Debs case, as Circuit Judge Woods set out in his opinion, from 64 F. 754 to 766, an explanation of the conduct of the defendants was more than sufficient to set forth the three "irreducible constitutional minimum of standing" requirements for the United States to have invoked federal jurisdiction to seek the injunction issued.

But, in this case, sub judice, on indictment charging a criminal matter, in an Article III court incapable of being conferred with "judicial power" over a criminal "case," as Steel Co. makes clear, 523 U.S. 102, and without, first and foremost, alleging that the United States has suffered any injury at all makes it incumbent upon this Court "to protect the rights of the individual that are embodied in the Federal Constitution," Harris v. Reed, 489 U.S. 255, 267 (1989) (citation omitted) (Stevens, J., concurring), where this case "involves] principles the settlement of which is of importance to the public," Powell, supra,

where Petitioner "does not advance procedural due process claims in this case," but "relies on the substantive component of the Clause that protects individual liberty against 'certain government actions regardless of the fairness of the procedures used to implement them.'" Collins v. Harker Heights, 503 U.S. 115, 125 (1992). Cf., e.g., Montgomery v. Louisiana, 136 S.Ct. 718, 729-730 (2016) (explaining the "categorical constitutional guarantees" prohibiting enforcement of criminal laws not within a government's power).

When a court of appeals does not reach the constitutional the district court avoided, and also did not address, much less reach, the constitutional and jurisdictional claims that invalidate the conviction, and this Court usually will not address such claims in the first instance, this Court reverses the judgment of the court of appeals and remand to the court of appeals, see, generally, Sullivan v. Everhart, 494 U.S. 83, 95 (1990) (citation omitted), "with instructions to remand to the District Court for further proceedings," Schlup v. Delo, 513 U.S. 298, 332 (1995). And, where, as in this case, the case presents constitutional questions, this Court should review the constitutional questions which are "necessary to the resolution of the case before the Court," Superintendent v. Hill, 472 U.S. 445, 450 (1985) (citation omitted).

Since this case presents issues of the correct interpretation of the Commerce Clause, as intended by the Framers and of the people adopting the Clause in the Constitution, Lake County, supra, as

Mr. Justice Thomas suggests, "this Court [should] reconsider its precedents," under the Commerce Clause cases cited herein, and Petitioner so "requests" this Court "to do so here," where, under the "original understanding of Congress' powers and with this Court's early Commerce Clause cases," United States v. Morrison, 529 U.S. 598, 627 (2000) (Thomas, J., concurring), this Court's "prior case law controls the outcome of this case," Sebelius v. United States, 551 U.S. 600, 611 (2007) (citations omitted) (Thomas, J., concurring), that the Clause's purpose, and the limits upon Congress thereunder, is for legislation to "Keep[ing] those highways of interstate commerce," even of drugs, which is a "precise subject-matter" NOT enumerated in the Constitution for the exercise of a federal "police power" enforcement, "free from obstruction," In re Debs, supra, 158 U.S., at 586, and because the Controlled Substance laws of Congress do just that—puts up obstructions on interstate commerce thereof—the instruction of this Court is clear:

"Our deference in matters of policy cannot, however, become abdication in matters of law. 'The powers of the legislature are defined and limited; and that those limits may not be mistaken, or forgotten, the constitution is written.' ... Our respect for Congress's policy judgments thus can never extend so far as to disavow restraints on federal power that the Constitution carefully constructed. 'The peculiar circumstances of the moment may render a measure more or less wise, but cannot render it more or less constitutional.' ... And there can be no question that it is the responsibility of this Court to enforce the limits on federal power by striking down acts of Congress that transgress those limits."

Nat'l Fed'n, supra, 567 U.S. 538 (citations omitted).

"The question is not what power the federal Government ought

to have but what powers in fact have been given by the people."

United States v. Butler, 297 U.S. 1, 63 (1936). And it is in the very

Constitution that expresses "what powers in fact have been given by the people," Butler, merely because,

"the Constitution itself is in every real sense a law—the lawmakers, being the people themselves, in whom under our system all political power and sovereignty primarily resides, and through whom such power and sovereignty primarily speaks. It is by that law, and not otherwise, that the legislative, executive, and judicial agencies which it created exercise such political authority as they have been permitted to possess. The Constitution speaks for itself in terms so plain that to misunderstand their import is not rationally possible. "We the People of the United States," it says, "do ordain and establish this Constitution. ..." Ordain and establish! Those are definite words of enactment, and without more would stamp what follows with the dignity and character of law. The framers of the Constitution, however, were not content to let the matter rest here, but provided explicitly—"This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; ... shall be the supreme Law of the Land; ..." The supremacy of the Constitution as law is thus declared without qualification. That supremacy is absolute; the supremacy of a statute enacted by Congress is not absolute but conditioned upon its being made in pursuance of the Constitution. And a judicial tribunal, clothed by that instrument with complete judicial power, and, therefore, by the very nature of the power, required to ascertain and apply the law to the facts in every case or proceeding properly brought for adjudication, must apply the supreme law and reject the inferior statute whenever the two conflict."

Carter, supra, 298 U.S. 296-297.

See, e.g., Wyeth v. Levine, 555 U.S. 555, 583-587 (2009) (same)

(Thomas, J., concurring), and Marbury v. Madison, 1 Cranch 137 (1803);

"It is also not entirely unworthy of observation, that in declaring what shall be the supreme law of the land, the constitu-

tion itself is first mentioned; and not the laws of the United States generally, but those only which shall be made in pursuance of the Constitution, have that rank."

Id., 1 Cranch, 180.

When faced with statutes claimed to be unconstitutional, this Court, in repeating what Mr. Justice Scalia once said under such circumstances:

"To hold a governmental Act to be unconstitutional is not to announce that we forbid it, but that the Constitution forbids it; and when, as in this case, the constitutionality of a [federal] statute is placed in issue, the question is not whether some decision of ours 'applies' in the way that a law applies; the question is whether the Constitution, as interpreted in that decision, invalidates the statute. Since the Constitution does not change from year to year; since it does not conform to our decisions, but our decisions are supposed to conform to it; the notion that our interpretation of the Constitution in a particular decision could take prospective form does not make sense. Either enforcement of the statute at issue ... was unconstitutional, or it was not; if it was, then so is enforcement of all identical statutes in other States, whether occurring before or after our decision; ..."

Danforth v. Minnesota, 552 U.S. 264, 286 (2007) (citation omitted) (Scalia, J., concurring)

Therefore, with no expressly enumerated power within the Constitution, or amendment thereto, by the People, authorizing Congress to regulate commerce in drugs—called Controlled Substances in Title 21 of the United States Code—in a nationwide fashion, as the Eighteenth Amendment once allowed for "intoxicating liquors" for beverage purposes, and Article III, §2, extending, and limiting, the "Judicial Power" only to actual cases and controversies, of a civil nature, as expressed in the phrase extending the "Judicial Power" to "Cases, in Law and Equity" in the conjuncture, and when the United States shall be a Party it is only

to controversies, "whether the United States be party plaintiff or defendant," Monaco v. Mississippi, 292 U.S. 313, 321 (1934) (citation omitted), especially where the United States cannot, first and foremost, allege, much less ultimately prove, having suffered any actual injury caused by defendant-petitioner, by possessing or distributing illicit drugs within a State the Constitution does not authorize the enforcement of federal criminal laws, especially where on "inferior" Article III tribunal cannot sit in judgment in criminal cases, this petition more than surpasses this Court's criteria of "involving principles the settlement of which is of importance to the public," and of thousands of convicted federal inmates, and defendants in the district courts in the 50 States, "as distinguished from that of the parties," - Petitioner and the Federal Government," Powell v. Nevada, supra, "especially, ... where the issues involved reach constitutional dimensions," and this Court should not bypass this case "to avoid decision of constitutional issues," because "avoidance becomes evasion." Rice v. Sioux City Cemetery, 349 U.S. 70, 74 (1954).

III. The Government, the District Court, the Court of Appeals, and Defense Counsel Failed to Protect Petitioner's Constitutional Rights.

This Court has observed that, under the provisions of § 2 of Article III, "the judicial power shall extend to certain designated cases and controversies." Kline v. Burke Construction Co., 260 U.S. 226, 233 (1922).

As this Court went on further to explain:

"The effect of these provisions is not to vest jurisdiction in the inferior courts over the designated cases and controversies, but to delimit those in respect of which Congress may confer jurisdiction upon such courts as it creates. Only the jurisdiction of the Supreme Court is derived directly from the Constitution. Every other court created by the general government derives its jurisdiction wholly from the authority of Congress. That body may give, withhold, or restrict such jurisdiction at its discretion, provided it be not extended beyond the boundaries fixed by the Constitution."

Id., 260 u.s., 233-234 (citations omitted).

This Court, in admonishing the lower courts, continues to apply the basic constitutional principles, when it comes to the limits the Constitution imposes on inferior Article III tribunals:

"Federal courts are not courts of general jurisdiction; they have only the power that is authorized by Article III of the Constitution and the statutes enacted by Congress pursuant thereto. ... For that reason, every federal appellate court has a special obligation to 'satisfy itself not only of its own jurisdiction, but also that of the lower courts in a cause under review,' even though the parties are prepared to concede it. ...

"This obligation to notice defects in a court of appeals' subject-matter jurisdiction assumes a special importance when a constitutional question is presented."

Bender v. Williamsport Area School Dist., 475 u.s. 534, 541, 541-42 (1986) (citations omitted).

Since "[t]he federal courts are under an independent obligation to examine their own jurisdiction, ... standing 'is perhaps the most important of [the jurisdictional] doctrines,' ... " FW/PBS, Inc. v. Dallas, 493 U.S. 215, 231 (1990) (citation omitted), and since "[t]rial judges are presumed to know the law," Welton v. Arizona, 497 U.S. 639, 653 (1990), it was incumbent upon the District Court, to be "under an independent obligation to examine [its] own jurisdiction," FW/PBS, Inc., supra, and

Judges, just as federal prosecutors, being lawyers, "are trained in the law and equipped with the tools to interpret and apply legal principles, understand constitutional limits, and exercise legal judgment." Connick v. Thompson, 563 U.S. 51, 179 L.Ed.2d 417, 429 (2011).

With prosecutors, they "have a special 'duty to seek justice, not merely to convict,'" *id.*, 179 L.Ed.2d, at 430 (citation omitted), and defense "lawyers have a 'duty to bring to bear such skill and knowledge as will render the trial a reliable adversarial testing process.'" Id., at 429-430 (citation omitted). Thus, the federal prosecutors, with such training as lawyers, and understanding constitutional limits, exercising legal judgment would have dictated not to pursue the federal criminal prosecution below, in the "inferior" Article III court that, under the totality of the circumstances of this case, lacked, and still lacks, the capacity to exercise criminal case jurisdiction, Steel Co., 523 U.S., at 102, especially for conduct that is not a "precise subject-matter" that the Framers expressly excluded in the Constitution for federal "police power" enforcement, and, therefore, said federal prosecutors "knew or reasonably should have known that the action [they] took within the sphere of official responsibility," of pursuing the underlying prosecution in said "inferior" Article III court, "would violate the constitutional rights of the" Petitioners. See, generally, Harlow v. Fitzgerald, 457 U.S. 800, 815 (1982) (quotation marks and citation omitted).

With judges, especially oath-bound federal judges, who are presumed to know the law, as well as constitutional limits that preclude Article III "inferior" tribunals from sitting in criminal cases under the circumstances

presented in this case, sub judice, this Court's admonition is clear:

"Our cases have long supported the proposition that federal courts lack the authority to abstain from the exercise of jurisdiction that has been conferred. For example: 'We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the Constitution.' ... 'If the courts of the United States are bound to proceed to judgment and to afford redress to suitors before them in every case to which their jurisdiction extends. They cannot abdicate their authority or duty in any case in favor of another jurisdiction.'"

New Orleans Public Serv. v. New Orleans, 491 U.S. 350, 358 (1989) (citations omitted),

With this Court's prior cases, still binding and supportive of the arguments presented in the courts below, and still urged upon this Court in order to grant review on certiorari, Mr. Justice Thomas can be said to have provided the argument to have this petition granted, and have this Court, in re-affirming its own prior cases that support this petition, consider the following:

"Petitioners, like many other criminal defendants, have done their part by specifically presenting this Court with opportunities to [re-affirm its standing precedents]. It is time for this Court to do its part.

"The Court's duty to resolve this matter is particularly compelling, because we are the only court authorized to do so. ... And until we do so, countless [federal] criminal defendants will be denied the full protection afforded by the Fifth and Sixth Amendments, ... There is no good reason to allow such a state of affairs to persist."

Rangel-Reyes v. United States, 126 S.Ct. 2873, 2874 (2006) (citation omitted) (Thomas, J., dissenting from denial of certiorari).

Mr. Justice Rutledge was very articulate, when expressing the duties and obligations of those entities who are oath-bound to uphold the Con-

stitution, when he admonished:

"Ignorance of the law is no excuse for men in general. It is less an excuse for men whose special duty is to apply it, and therefore to know and observe it.

"When they enter such a domain in dealing with the citizen's rights, they should do so at their peril, whether that be created by state or federal law, for their sworn oath and their first duty are to uphold the Constitution[s]."

Screws v. United States, 325 U.S. 91, 129-130 (1944) (Rutledge, J., concurring).

Chief Justice Marshall can be said to have given the basis for such adherence, to both Congress and the Courts, when his discussion in Marbury took on an admonishing tone:

"From these, and many other selections which might be made, it is apparent, that the framers of the constitution contemplated that instrument as a rule for the government of courts, as well as of the legislature.

"Why otherwise does it direct the judges to take an oath to support it? This oath certainly applies in an especial manner, to their conduct in their official character. How immoral to impose it on them, if they were to be used as the instruments, and the knowing instruments, for violating what they swear to support!

"Why does a judge swear to discharge his duties agreeably to the constitution of the United States, if that constitution forms no rule for his government? if it is closed upon him, and cannot be inspected by him?

"If such be the real state of things, this is worse than solemn mockery. To prescribe, or to take this oath, becomes equally a crime."

Marbury, supra, 1 Cranch, 179-180 (in relevant part).

With so many substantive rules having been violated by the Government in this case, and the district court ignoring such transgressions committed against petitioner, with the Court of Appeals also evading the jurisdictional and constitutional issues presented by petitioner in both courts below, and, therefore, having made more

than a "substantial showing of the denial of a constitutional right" and demonstrated "that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were 'adequate to deserve encouragement to proceed further,'" Slack v. McDaniel, 529 U.S. 473, 484 (2000) (citation omitted), "It follows, as a general principle, that a court has no authority to leave in place a conviction or sentence that violates a substantive rule," Montgomery, supra, 136 S. Ct. at 731 (citation omitted), where this case is a proper one for the "granting the writ of certiorari" because it "involves principles the settlement of which is of importance to the public." Powell, supra, 511 U.S. at 86 (citation omitted).

After all, "Is the Court having once written dicta calling a tomato a vegetable bound to deny that it is a fruit forever after?" Kirtsaeng v. John Wiley & Sons, Inc., 133 S. Ct. 1351, 1368 (2013).

"Although 'the doctrine of stare decisis is of fundamental importance to the rule of law,' our precedents are not sacrosanct. ... 'We have overruled prior decisions where the necessity and propriety of doing so has been established.'" Hurst v. Florida, 136 S. Ct. 616, 623 (2015) (quotations and citations omitted).

In this Petition, it is asked that this Court resurrect and reaffirm its precedents that this Court has not overruled, and "use any available remedy to make good the wrong done" to petitioner by the Government and the courts below, Barnes v. Gorman, 536 U.S. 181, 189

(2002)(citation omitted), and grant this petition for the writ of certiorari.

Conclusion

The petition for a writ of certiorari should be granted.

Dated: April 27, 2022.

Respectfully submitted,

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