

22-5822  
No. 1 2 3 4 5 6

**IN THE SUPREME COURT OF THE UNITED STATES**

ERIC S. RAY – PETITIONER

VS.

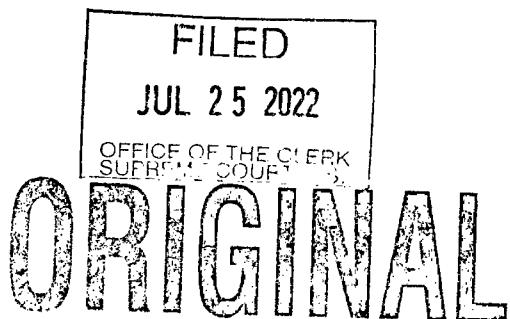
SCOTT CROW, DIRECTOR OF OKLAHOMA DEPARTMENT OF CORRECTIONS -

RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES FIFTH CIRCUIT COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI



Eric S. Ray  
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## QUESTIONS PRESENTED

1. Petitioner ask this Court for consideration on the narrow issue of jurisdiction relevant to two major points in this case.
  - I. The initial proceedings related to Interstate Agreement on Detainers Act, see question #5 below; and
  - II. The district and appellate courts failure to declare Certificate of Appeal-ability (COA).
2. Where it is shown that violation of 18 USCS § 3182, Interstate Agreement on Detainers Act, and Uniform Criminal Extradition Act by state and local authorities giving cause of action under 42 USCS § 1983 provides the edifice for liable party to maintain vested interest in the accused extradition/conviction, and where evidence exist that the states involved established barriers which negate that arrest, extradition, and subsequent conviction from being challenged, is it lawful to allow such continued denial of ones liberty?
3. Where state and federal law allows for right to writ of habeas corpus as it relates to Uniform Criminal Extradition Act and that right is purposefully denied in direct violation of said act, though the act is a summary process by nature, does the violation thereof amount to the Privilege of the Writ of Habeas Corpus being suspended as it relates to Art. I § 9 cl. 2 of the U.S. Constitution?
4. Is it lawful that interstate comity as it relates to 18 USCS § 3182, Interstate Agreement on Detainers Act, and Uniform Criminal Extradition Act allows that sister states rule on the actions of one another in terms of questions relevant to violations of the statutes associated with the state laws as defined and enacted by party states when the one subject to unlawful extradition has only the option of seeking redress in the state where he is illegally detained though the agencies and courts responsible for said violations are no longer accessible due the very acts for which relief is to be sought?
5. Absent an arrest report and where Fourth Amendment requires a judicial determination of probable cause as a prerequisite to extended restraint of liberty following a warrant-less arrest is the accused required to provide “details” of the arrest so as to purport quasi probable cause determination given a silent record and the Fifth Amendment Right Against Self-Incrimination?
6. Does a person arrested and held without bond on an out of state warrant have a right to a judicial determination of jurisdiction as a threshold matter in terms of subject matter and personal jurisdiction where the offense is alleged to have occurred on Indian land in the state of Oklahoma and involving tribe members?
7. Where one is held without bond pending interstate extradition proceedings as a result of unlawful intrastate transfer of custody is it lawful to extradite the accused without the issuance of an executive warrant or otherwise lawful arrest regarding the hold?

8. Where after arrest on misdemeanor charges in Ecter county Texas local authorities being aware of out of state warrants place holds in accordance wherewith though violate state and federal laws of extradition by neglecting to ensure that the accused received the procedural protections of the protocols associated with said laws by transferring the accused in what amounts to willful violation of said laws together with conspiratorial acts to violate the civil rights of the accused and where Ecter Co. continues to maintain a want related to the above mentioned misdemeanor charge is it fair, proper, or lawful to continue the denial of ones liberty after having perpetuated the abuse of process through trial and on direct appeal in the receiving state?

## **LIST OF PARTIES**

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

## **RELATED CASES**

- ◆ 1-13-2019 petitioner filed pretrial writ of habeas corpus under 28 U.S.C. 2241 in the United States District Court for Eastern of Oklahoma Case No.6:19-cv-16-JHP-KEW.  
Disposition: Writ was denied without prejudice on 1-15-2019.
- ◆ 5-2-2019 petitioner mailed writ of habeas corpus to trial judge (the Honorable Judge Brock) as directed by said judge in open court.  
Disposition: Writ was denied denied at trial on 5-16-2019.
- ◆ 5-20-2019 petitioner filed his second writ of habeas corpus under 28 U.S.C. 2241 in United States District Court for the Eastern District of Oklahoma Case No.6:19-cv-159-RW-KEW.  
Disposition: Writ was denied without prejudice on 1-??-2020.
- ◆ March 2020 petitioner sought Application For Certificate Of Appeal-ability in the Tenth Circuit Court of Appeals Case No.20-7010  
Disposition: COA denied June-2020.
- ◆ 11-2-20 petitioner filed suit under 42 U.S.C. 1983 in the United States District Court for the Eastern District of Texas Case No.4:20-cv-856. Disposition: Case pending.
- ◆ 12-16-20 petitioner filed under 42 U.S.C. 1983 in U.S. Dist. Ct. E. Okla.. Case No.6:20-cv-471. Disposition: Case pending.
- ◆ 1-12-2021 petitioner filed writ of habeas corpus under 28 U.S.C. 2241 in United States District Court for the Eastern District of Oklahoma Case No.5:21-cv-5008-PKH-MEF. Disposition: Ruled moot 5-4-2021.
- ◆ 6-14-2021 petitioner filed Application for Post-Conviction Relief in the McCurtain Co. Court, Okla. Case No. CF-2019-239. Disposition: Denied Relief 1-25-2022.

- ◆ 3-25-2022 petitioner filed Post-Conviction Appeal in the Oklahoma Court of Criminal Appeals in case No. PC-2022-285. Disposition: Appeal pending.

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### **TABLE OF AUTHORITIES CITED**

<b>CASE</b>	<b>PAGE NUMBER</b>
Gerstein v. Pugh, 420 US, at 114, 43 L Ed 2d 54, 95 S Ct 854	
Cuyler vs. Adams 449 US 433, 66 L Ed 2d 641, 101 SCT 703 (1981).	
United States v. Mauro, 436 U.S. 340, 98 S. Ct. 1834, 56 L. Ed. 2d 329 (1978	
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Younger v. Harris, 401 U.S. 37 (1971).	
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## STATUTES AND RULES

First Amendment of U.S. Constitution  
Fourth Amendment of U.S. Constitution  
Fifth Amendment of U.S. Constitution  
Sixth Amendment of U.S. Constitution  
Eight Amendment of U.S. Constitution  
Fourteenth Amendment of U.S. Constitution  
Interstate Agreement on Detainers  
Uniform Criminal Extradition Act  
Tex. Code Crim. Proc. Art. 51.13

## OTHER:

Rule 11. Certificate of Appealability;

(a) Certificate of appealability. *The district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant.* Before entering the final order, the court may direct the parties to submit arguments on whether a certificate should issue. If the court issues a certificate, the court must state the specific issue or issues that satisfy the showing required by 28 U.S.C. § 2253(c) (2). If the court denies a certificate, the parties may not appeal the denial but may seek a certificate from the court of appeals under Federal Rule of Appellate Procedure 22. A motion to reconsider a denial does not extend the time to appeal.

(b) Time to appeal. Federal Rule of Appellate Procedure 4(a) governs the time to appeal an order entered under these rules. A timely notice of appeal must be filed even if the district court issues a certificate of appealability.

HISTORY: Added March 26, 2009, eff. Dec. 1, 2009.

**IN THE SUPREME COURT OF THE UNITED STATES**  
**PETITION FOR WRIT OF CERTIORARI**

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

For cases from the federal courts:

- The opinion of the United State court of appeals appears at Appendix “A” to the petition and is unpublished.
- The opinion of the United State district court appears at Appendix “B” to the petition and is unpublished.

**JURISDICTION**

For cases from federal courts:

- The date on which the United States Court of Appeals decided this case was 4-25-22.
- No petition for rehearing was filed in this case.
- A sixty (60) day extension of time to file this petition for writ of certiorari was granted by the Clerk of this Court to correct multiple issues with the original writ on 8-4-22.
- The jurisdiction of this court is invoked under 28 U.S.C. § 1254(1).

**STATEMENT OF THE CASE**

The proposition below has the following six (6) questions answered as they relate to the proposition.

1. Of what legal right or privilege do you believe you were deprived in your case?
2. In the facts of your case, what happened to deprive you of that legal right or privilege and who made the error of which you complain?
3. List by name and citation any case or cases that are very close factually and legally to yours as examples of the error you believe occurred in your case.
4. How do you think you could now prove the facts you have stated in answer to Question No. 2, above? Attach supporting documentation.
5. If you did not timely appeal the original conviction, set forth facts showing how you were denied a direct appeal through no fault of your own.
6. Is this a proposition that could have been raised on Direct Appeal? Yes( ) No( ) Explain:

### **THE STATE LACKED JURISDICTION TO PROSECUTE**

1. U.S. Const. Amend. IV, V, VI, VIII, and XIV as well as Okla. Const. Art. II § 7, 17, 20, and 30. Also 18 U.S.C. § 1151, 1152, and 1153.
2. The alleged victim in this case, my estranged wife Donna K. (Emhoolah) Ray, is a full blooded Native American and enrolled member of the Choctaw Nation, as well as tribal allotment land holder. I have some degree of Indian blood and was raised by full blood Choctaw stepfather in tribal culture. The alleged offense was reported to have occurred in Indian Country, specifically the Choctaw Nation in what is known as the old Choctaw Community of Kulli, located at 831 Saint Marks Loop, Idabel, OK74745. These factors regarding personal and family ethnicity of myself and the alleged victim as well as location of the alleged offense deprive the state of jurisdiction to prosecute per 18 U.S.C. § 1151, 1152, and 1153 therefore voiding this conviction.
3. McGirt v. Okla., 140 S. Ct. 2452 (2020) and Bosse v. State of Okla., 2021 OK CR3. Also see attachment "A" (complex legal memorandum).
4. A review of the McCurtain County Sheriff's Office Incident Report will confirm the alleged victim's ethnicity and the location of the alleged offense, see Exhibit No.1. Also, it is well documented in this court that the alleged victim is an enrolled member of the Choctaw Nation and she stated on the preliminary transcript that the tribal police have conducted welfare checks at the home where said report was taken, thereby notifying the court of tribal jurisdiction. I request an evidentiary hearing.
5. This conviction was timely appealed.
6. This proposition was raised to all levels of appointed counsel, beginning in the state of Texas prior to the unlawful extradition as well as trial counsel and appellant counsel in the state of Okla.

## REASON FOR GRANTING THE PETITION

On every writ of error or appeal to the United States Supreme Court, the first and fundamental question is that of jurisdiction, first of the Supreme Court and then of the court from which the record comes; the Supreme Court is bound to ask this question and answer for itself, (1) even when the question is not otherwise suggested, and (2) without respect to the relation of the parties to the question; when the lower federal court lacks jurisdiction, the Supreme Court has jurisdiction on appeal, not of the merits, but merely for the purpose of correcting the lower court's error in entertaining the suit:

1. Recalling "a long and venerable line of our cases," *id.*, at 94, 140 L Ed 2d 210, 118 S Ct 1003, *Steel Co.* reiterated: "The requirement that jurisdiction be established as a threshold matter . . . is 'inflexible and without exception,'" *id.*, at 94-95, 140 L Ed 2d 210, 118 S Ct 1003 (quoting *Mansfield, C. & L. M. R. Co. v Swan*, 111 US 379, 382, 28 L Ed 462, 4 S Ct 510 (1884)); for "[j]urisdiction is power to declare the law," and "[w]ithout jurisdiction the court cannot proceed at all in any cause," 523 US, at 94, 140 L Ed 2d 210, 118 S Ct 1003 (quoting *Ex parte McCardle*, 7 Wall 506, 514, 19 L Ed 264 (1869)). The Court, in *Steel Co.*, acknowledged that "the absolute purity" of the jurisdiction-first rule had been diluted in a few extraordinary cases, 523 US, at 101, 140 L Ed 2d 210, 118 S Ct 1003, and Justice O'Connor, joined by Justice Kennedy, joined the majority on the understanding that the Court's opinion did not catalog "an exhaustive list of circumstances" in which exceptions to the solid rule were appropriate, *id.*, at 110, 140 L Ed 2d 210, 118 S Ct 1003. See *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94, 118 S. Ct. 1003, 140 L. Ed. 2d 210 (1998) (refusing to decide merits before resolving Article III jurisdictional questions "because it carries the courts beyond the bounds of authorized judicial action").
2. Absent a certificate of probable cause to appeal, federal appellate courts were without jurisdiction to consider the appeal. See *Fabian v. Reed*, 707 F.2d 147, 148 (5th Cir. 1983) (per curiam). Accord *May v. Collins*, 948 F.2d 162, 166 (5th Cir. 1991), cert. denied, 502 U.S. 1046 (1992); *McKibben v. Hopper*, 565 F.2d at 1317.
3. That practice has been explicitly authorized by Appellate Rule 22(b), which provides that [i]f no express request for a certificate [of appealability] is filed, the notice of appeal constitutes a request addressed to the judges.
4. Petitioner was never allowed consideration of a certificate of appealability in terms of having an indication of which specific issue or issues satisfy legal standard. Petitioner requires this mandate (COA) to indicate which specific issue or issues satisfy the legal standard.

5. 28 U.S.C. § 2253, as amended by AEDPA in 1996, establishes the COA requirement for section 2254 defines the applicable legal standard as requiring that an applicant for a COA make a substantial showing of the denial of a constitutional right, and specifies that a judge who issues a COA must indicate which specific issue or issues satisfy this legal standard.
6. Rule 11(a) of the Rules Governing Section 2254 CasesSee also Spencer v. United States, 773 F.3d 1132, 1138 (11th Cir. 2014) (en banc), cert. denied, 576 U.S. 1023 (2015) (Going forward, a certificate of appealability, whether issued by this Court or a district court, must specify what constitutional issue jurists of reason would find debatable. Even when a prisoner seeks to appeal a procedural error, the certificate must specify the underlying constitutional issue.).
7. Under Article III of the United States Constitution, Congress may never forbid federal courts in cases within their jurisdiction to reach independent conclusions as to whether a constitutional violation has occurred, but may under limited circumstances bar federal courts from imposing a remedy for constitutional violations they find. If this analysis correctly interprets Article III, it helps explain the Williams Courts careful treatment of section 2254(d), not as a constraint on the Courts power independently to say what the law is including by independently determining whether a state court decision of law that the federal court has jurisdiction to review is contrary to governing federal law but instead as merely a constraint on the power of the reviewing federal court to impose a remedy for any violation it independently finds.
8. Circumstances fitting within the Younger doctrine have never been at issue in this case for Interstate Extradition is a federal matter and attempts by state actors to unlawfully obtain custody of an accused while abusing its discretion through sham practices to obtain conviction in order to justify its actions as well as avoid civil and criminal liability. Thus, making this case far beyond the Younger abstention whenever it unduly fouls the due process protocols of congressional acts (18 USCS § 3182, Interstate Agreement on Detainers Act, and Uniform Criminal Extradition Act). Younger doctrine is nothing more than a smoke screen in this case.

## CONCLUSION

Wherefore, petitioner prays this Great and Honorable Court grant certiorari in this case.

Respectfully Submitted:

Date: 9/22/2022. /s/



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