No. 22-7714

ORIGINAL

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IN THE

SUPREME COURT OF THE UNITED STATES

George M. Lecco —— Petitioner

vs.

United States of America —— Respondent

On Petition for A Writ of Certiorari To

The United States Court of Appeals For The Fourth Circuit

Petition For Writ Of Certiorari

George M. Lecco, #02668-088
Petitioner pro se
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Questions Presented.

1. For federal prisoners, did the First Step Act of 2018 open the door to challenge the jurisdiction over the subject-matter of the sentencing court and the constitutional authority of the Federal Government to charge conduct not within the enumerated powers of Congress to regulate nationally, and prosecute in a Federal court that lacks jurisdiction over the crime and person charged?

2. In the case of federal laws being limited to within areas that are within the exclusive jurisdiction of the United States, are those laws enforceable within the boundaries of the territory of the States?

3. Are federal courts, and especially this Court, obligated to protect the constitutional rights of individuals before them and correct plain errors in the case and make good the wrongs done?

List of Parties

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

Related Cases

United States v. Lecco, 2007 U.S. Dist. LEXIS 6386, U.S. District Court for the Southern District of West Virginia. Judgment entered January 29, 2007.

United States v. Lecco, 2007 U.S. Dist. LEXIS 6617, U.S. District Court for the Southern District of West Virginia. Judgment entered January 29, 2007.

United States v. Lecco, 2007 U.S. Dist. LEXIS 9715, U.S. District Court for the Southern District of West Virginia. Judgment entered February 9, 2007.

United States v. Lecco, U.S. Dist. LEXIS 50340, 495 F. Supp. 2d 581, U.S. District Court for the Southern District of West Virginia. Judgment entered April 6, 2007.

United States v. Lecco, 2007 U.S. Dist. LEXIS 86934, U.S. District Court for the Southern District of West Virginia. Judgment entered November 27, 2007.

United States v. Lecco, 2008 U.S. Dist. LEXIS 3111, U.S. District Court for the Southern District of West Virginia. Judgment entered January 15, 2008

United States v. Lecco, 2009 U.S. Dist. LEXIS 38368, 634 F. Supp. 2d 633, U.S. District Court for the Southern District of West Virginia, Judgment entered May 4, 2009.

United States v. Lecco, 2009 U.S. Dist. LEXIS 38357, U.S. District Court for the Southern District of West Virginia. Judgment entered May 5, 2009.

United States v. Lecco, 2009 U.S. Dist. LEXIS 83905, U.S. District Court for the Southern District of West Virginia. Judgment entered July 16, 2009.

United States v. Lecco, 2009 U.S. Dist. LEXIS 79796, U.S. District Court for the Southern District of West Virginia. Judgment entered September 3, 2009.

United States v. Lecco, 2009 U.S. Dist. LEXIS 79799, U.S. District Court for the Southern District of West Virginia. Judment entered September 3, 2009.

United States v. Lecco, 2009 U.S. Dist. LEXIS 96231, U.S. District Court for the Southern District of West Virginia. Judgment entered October 15, 2009.

United States v. Lecco, 2009 U.S. Dist. LEXIS 106632, U.S. District Court for the Southern District of West Virginia. Judgment entered November 16, 2009.

United States v. Lecco, 2010 U.S. Dist. LEXIS 26945, U.S. District Court for the Southern District of West Virginia. Judgment entered March 22, 2010.

United States v. Lecco, 2010 U.S. Dist. LEXIS 33883, U.S. District Court for the Southern District of West Virginia. Judgment entered April 6, 2010.

United States v. Lecco, 2010 U.S. Dist. LEXIS 37174, U.S. District Court for the Southern District of West Virginia. Judgment entered April 14, 2010.

United States v. Lecco, 2010 U.S. Dist. LEXIS 38467, U.S. District Court for the Southern District of West Virginia. Judgment entered April 19, 2010.

United States v. Lecco, 2011 U.S. App. LEXIS 14445, 438 Fed. Appx. 187, U.S. Court of Appeals for the Fourth Circuit. Judgment entered July 13, 2011.

Lecco v. United States,

Lecco v. Adams, 2021 U.S. Dist. LEXIS 249065, U.S. District Court for the Northern District of West Virginia. Judgment entered November 29, 2021.

Table of Contents

Opinions Below	1
Jurisdiction	1
Constitutional and Statutory Provisions Involved	1
Reasons For Granting The Petition	12
The First Step Act of 2018 Changed The Rules For federal Prisoners	13
Federal Criminal Laws are Territorial In Their Enforcement And Do Not Extend Into The Territorial Boundaries of The States	25
It is Incumbent for This Court To Protect Petitioner's Constitutional Rights	27
Conclusion	29

Index to Appendices

Appendix A	Circuit Court Opinion
Appendix B	District Court Order

Table of Authorities Cited

Cases	Page Number
Ashwander v. Tennessee Valley Authority, 297 U.S. 288 (1936)	23
Barnes v. Gorman, 536 U.S. 181 (2002)	27
Boechler, P.C. v. Comm'r, 142 S.Ct. 1493 (2022)	15
Bostock v. Clayton City, 140 S.Ct. 1731 (2020)	14
Brownback v. King, 141 S.Ct. 740 (2021)	19-20
Burke v. City of Charleston, 139 F.3d 401 (4th Cir. 1998)	17
Clapper v. Amnesty Int'l USA, 568 U.S. 398 (2013)	15-16
Cohens v. Virginia, 6 Wheat. 264 (1821)	23-24, 25, 27
Collins v. Harker Heights, 503 U.S. 115 (1992)	22
Connecticut Nat'l Bank v. Germain, 503 U.S. 249 (1992)	14
Dobbs v. Jackson Women's Health Org., 142 S.Ct 2228 (2022)	16

Ex parte Bakelite,

279 U.S. 438 (1929) — 21

Finley v. United States,

490 U.S. 545 (1989) — 24

Fort Bend County v. Davis,

139 S. Ct. 1843 (2019) — 15

Harris v. Reed,

489 U.S. 255 (1989) — 27-28

In re Murchison,

349 U.S. 133 (1955) — 24

Insurance Corp. v. Compagnie Des Bauxites de Guinee,

456 U.S. 694 (1982) — 19

McIntyre Mach., Ltd. v. Nicastro,

131 S. Ct. 2780 (2011) — 22

McNabb v. United States,

318 U.S. 332 (1943) — 27

Menna v. New York,

423 U.S. 61 (1975) — 28

Nashville v. Cooper,

6 Wall. 247 (1868) — 24

Neder v. United States,

527 U.S. 1 (1999) — 28-29

New Orleans v. United States,

35 U.S. 662 (1836) — 26

Rhode Island v. Massachusetts,	
12 Pet. 657 (1838)	25-26
Rice v. Sioux City Cemetery,	
349 U.S. 70 (1954)	23, 24
Romero v. Int'l Term. Operat. Co.,	
358 U.S. 354 (1959)	22
Shively v. Bowlby,	
152 U.S. 1 (1894)	26
Sosa v. United States,	
2021 U.S. Dist. LEXIS 98260 (W.D. N.C. 2021)	16
Steel Co. v. Citizens For A Better Envn't,	
523 U.S. 83 (1998)	17-18, 20
United States v. Bevans,	
3 Wheat. 336 (1818)	25
United State v. Corrick,	
298 U.S. 435 (1936)	27
United States v. Cotton,	
535 U.S. 625 (2002)	20
United States v. Flores,	
289 U.S. 137 (1933)	25
United States v. Kess,	
2020 U.S. Dist. LEXIS 10598 (D. Md. 2020)	13-14
United States v. Lopez,	
514 U.S. 549 (1995)	12-13

Van Brocklin v. Anderson,
117 U.S. 151 (1886) 26

Vermont ANR v. U.S. ex rel. Stevens,
529 U.S. 765 (2000) 23

Williams v. United States,
289 U.S. 553 (1933) 21-22

Statutes and Rules

18 U.S.C. § 922(g)(1) 7, 11

18 U.S.C. § 924(c)(1)(A) 7, 11

18 U.S.C. § 1512 8, 11

18 U.S.C. § 1513 9, 11

18 U.S.C. § 2 9, 11

18 U.S.C. § 3582(c)(1)(A) 10, 12, 13

21 U.S.C. § 841 (a)(1) 10, 11

21 U.S.C. § 846 10, 11

28 U.S.C. § 1254(1) 1

Supreme Court Rule 13.1 12

Other

The Federalist No. 49 24

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 opinion of the United States Court of appeals appears at Appendix A to the petion and is reported at United States v. George M. Lecco, 2023 U.S. App. LEXIS 4591 (4th Cir Feb. 24, 2023).

The opinion of the United States district court appears at Appendix B to the petition and is unpublished.

Jurisdiction

The date on which the United States Court of Appeals, in this matter, decided my case was February 24, 2023.

No petition for rehearing was filed in my case on this matter.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

Constitutional and Statutory Provisions Involved

United States Constitution, Article I, § 8, provides:

(1) The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

(2) To borrow Money on the credit of the United States;

(3) To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

(4) To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

(5) To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

(6) To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

(7) To establish Post Offices and Post Roads;

(8) To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

(9) To constitute Tribunals inferior to the supreme Court;

(10) To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

(11) To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

(12) To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

(13) To provide and maintain a Navy;

(14) To make Rules for the Government and Regulation of the land and naval Forces;

(15) To provide for calling forth the militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

(16) To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

(17) To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;—And

(18) To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

United States Constitution, Article III, in relevant parts, provides:

Section 1: The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Section 2: The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between Citizens of different States,—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

United States Constitution, Article V provides:

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendment, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year one thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the First Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

United States Constitution, Article VI, in relevent parts, provides:

(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.

(3) The Senators and Representatives before mentioned, and the members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

<u>United States Constitution, Amendment I,</u> provides:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

United States Constitution, Amendment V, provides:

No person shall be held to answer for a capital, or otherwis infamus crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

United States Constitution, Amendment VI, provides

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witness against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

United States Constitution, Amendment VIII, provides:

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

United States Constitution, Amendment X, provides:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Statutory Provisions

Title 18 United States Code, § 922(g)(1), provides:

It shall be unlawful for any person — who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year; — to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

Title 18 United States Code, § 924(c)(1)(A), provides:

Except to the extent that a greater minimum sentence is otherwise provided by this subsection or by any other provision of law, any person who, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which the person may be prosecuted in a court of the United States, uses or carries a firearm, or who, in furtherance of any such crime, possesses a firearm, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime —

(i) be sentenced to a term of imprisonment of not less than 5 years;

(ii) if the firearm is brandished, be sentenced to a term of imprisonment of not less than 7 years; and

(iii) if the firearm is discharged, be sentenced to a term of imprisonment of not less than 10 years.

Title 18 United State Code, §1512, in relevant parts, provide:

(a)(1) whoever kills or attempts to kill another person, with intent to—

(C) prevent the communication by any person to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation, parole, or release pending judicial proceedings;

Shall be punished as provided in paragraph (3).

(3)(A) The punishment for an offense under this subsection is— in the case of a killing, the punishment provided in sections 1111 and

1112;

(K) Whoever conspires to commit any offense under this section shall be subject to the same penalties as those prescribed for the offense the commission of $\boxed{\text{which}}$ was the object of the conspiracy.

Title 18 United States Code, § 1513, in relevant parts, provide:

(a)(1) Whoever kills or attempts to kill anothe person with intent to retaliate against any person for—

(B) providing to a law enforcement officer any information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation, supervised release, parole, or release pending judicial proceedings,

shall be punished as provided in paragraph (2).

(2) The punishment for an offense under this subsection is—

(A) in the case of a killing, the punishment provided in sections 1111 and 1112; and

(B) in the case of an attempt, imprisonment for not more than 30 years.

Title 18 United States Code, § 2, provides;

(a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

(b) Whoever willfully causes an act to be done which if direc tly performed by him or another would be an offense against the United States, is punishable as a principal.

Title 21 United States Code, § 841, in relevant part, provides:

(a) Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally—

(1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance;

Title 21 United States Code, § 846, provides:

Any person who attempts or conspires to commit any offense defined in this subchapter shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

Title 18 United States Code, § 3582, in relevant parts, providess

(c) Modification of an imposed term of imprisonment. The court may not modify a term of imprisonment once it has beem imposed except that—

(1) in any case—

(A) the court, upon motion of the Director of the Bureau of Prisons, or upon motion of the defendant after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant's behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant's facility, whichever is earlier, may reduce the the term of imprisonment (and may impose a term of probation or supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment), after considering the factors set forth in section 3553(a) [18 U.S.C.S. 3553 (a)] to the extent that they are applicable, if it finds that—

(i) extraordinary and compelling reasons warrant such a reduction; or ... (emphasis added).

Statement of the Case

After a jury trial, petitioner was convicted pursuant to a twelve-count indictment, one count of conspiracy to distribute cocaine, in violation of 21 U.S.C. § 846; one count of use of a firearm in furtherance of drug trafficking, in violation of 18 U.S.C. § 924 (c)(1); two counts of possessing a firearm as a convicted felon, in violation of 18 U.S.C. § 922 (g)(1); four counts of distribution of cocaine, in violation of 21 U.S.C. § 841 (a)(1); one count of murder with a firearm during a cocaine conspiracy, in violation of 18 U.S.C. § 924 (c)(1)(A), (j); one count of witness tampering by killing, in violation of 18 U.S.C. § 1512 (a)(1)(C); one count of witness retaliation by killing, in violation of 18 U.S.C. § 1513 (a)(1)(B); and one count of conspiracy to destroy and conceal evidence, in violation of 18 U.S.C. § 1512 (k).

Petitioner was sentenced, on August 13, 2010, to three concurrent life sentences on Counts One, Ten and Eleven and concurrent term of ten years each on Counts Three and Four, concurrent terms of thirty years each on Counts Five, Six, Seven and Eight, and a concurrent twenty-year term on Count Twelve, all sentences to run concurrent with the aforementioned life sentences, and received a consecutive life sentence on Count Nine, and a consecutive 5-year term on Count Two.

On July 13, 2011, the Fourth Circuit affirmed the convictions and the sentences in this case on direct appeal. on December 12, 2011, this Court denied petitioner's writ of certiorari petition as to the matter above.

Sometime during the year 2021, a jail-house lawyer prepared a motion for petitioner, under 18 U.S.C. §3582(c), for compassionate release, for grounds different from the grounds presented in this petition for certiorari to this Court.

The District Court below denied said §3582(c) motion, and on December 13, 2021, a Motion to Alter or Amend said judgment, to prevent manifest injustice, and on July 28, 2022, the District Court below denied the §3582(c) motion, and the Fourth Circuit affirmed said denial on February 24, 2023.

Thus, this Petition to this Court is timely, under Sup. Ct. Rule 13.1, as to this matter in this Court.

Reasons For Granting The Petition

In a similarly parallel case, where the prisoner "challenged his conviction based on his claim that" the federal criminal offense "exceeded Congress' power to legislate under the Commerce Clause," United States v. Lopez, 514 U.S. 549, 552 (1995), in addressing the merits of this petition, sub judice, this Court follows what must be considered:

> "We start with first principles. The Constitution creates a Federal Government of enumerated powers. See Art. I, §8. As James Madison wrote: "The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite." The Federalist No. 45, pp. 292-293 (C. Rossiter ed. 1961). This constitutionally mandated division of authority "was adopted by the Framers to ensure protection of our fundamental liberties." ... "Just as the separation and independence of the coordinate branches of the Federal Government serve to prevent the accumulation of excessive power in any one branch, a healthy balance of power between the States and the Federal Government will reduce the risk of tyranny and abuse from either front.""

Ibid., 514 U.S., at 552 (citations omitted).

The First Step Act of 2018 Changed The Rules for Federal Prisoners

A Fourth Circuit District Court observed:

> "In December 2018, Congress significantly amended the compassionate release mechanism when it enacted the First Step Act of 2018 ("FSA"). ... As amended by the FSA, 18 U.S.C §3582(c)(1)(A) permits a court to reduce a defendant's term of imprisonment "upon motion of the Director of [BOP], or upon motion of the defendant after the defendant has fully exhausted all administrative rights to appeal a failure of the [BOP] to bring a motion on the defendant's behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant's facility," whichever occurs first. So, once a defendant has exhausted his administrative remedies, he may petition a court directly for compassionate release.
>
> "Section 3582(c) is titled "modification of an imposed term of imprisonment." Under §3582(c)(1)(A), the court, upon motion of the Director of BOP or the defendant, upon exhaustion of administrative

rights, may modify the defendant's sentence if, after considering the factors set forth in section 3553(a) to the extent that they are applicable," it finds that

"(i) extraordinary and compelling reasons warrant such a reduction;
"(ii) the defendant is at least 70 years of age, ..."

United States v. Gary Kess, Jr., 2020 U.S. Dist. LEXIS 10598, **6-7 (D. Md. June 17, 2020).

Noteworthy is the fact that the District Court, in Kess, supra, disregarded, and left out, the conjunctive word "or" between (i) and (ii), and begs pointing out; "This Court has explained many times over many years that when the meaning of the statute's terms is plain, our job is at an end. The people are entitled to rely on the law as written, without fearing that courts might disregard its plain terms based on some extratextual consideration." Bostock v. Clayton City, 140 S. Ct. 1731, 1749 (2020).

Accord, Connecticut Nat'l Bank v. Germain, 503 U.S. 249 (1992): "We have stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there. When the words of a statute are unambiguous, then, this first canon is also the last: 'judicial inquiry is complete.'" Id., at 253-254 (citation omitted).

By including the term "or" between subsections (i) and (ii) in section 3582(c)(1)(A), Congress provided two alternatives a defendant to seek relief in a district court.

The fact that Congress used the term "defendant" is noteworthy, since that term is defined as: "A person sued in a civil proceeding or accused in a criminal proceeding," Black's Law Dictionary, Fouth Pocket Edition, 212 (1996 West

Publishing Co., © Thomson Reuters, 2011), unlike the term "prisoner" used in 28 U.S.C. § 2255(a).

Also, because, in petitioner's Fed. R. Civ. P. 59(e) motion, the arguments presented constitutional and jurisdictional principles this Court has announced, this Court has made clear: "Unlike most arguments, challenges to subject-matter jurisdiction may be raised by the defendant "at any point in the litigation," and courts must consider them sua sponte." Fort Bend County v. Davis, 139 S. Ct. 1843, 1849 (2019)(citation omitted).

In a more recent case, this Court explained:

> "Jurisdictional requirements mark the bounds of a "court's adjudicatory authority." ... Yet not all procedural requirements fit that bill. Many simply instruct "parties [to] take certain procedural steps at certain specified times" without conditioning a court's authority to hear the case on compliance with those steps. ... These non-jurisdictional rules "promote the orderly progess of litigation" but do not bear on a court's power.
>
> "The distinction matters. Jurisdictional requirements cannot be waived or forfeited, must be raised by courts sua sponte, and, as relevant to this case, do not allow for equitable exceptions."

Boechler, P.C. v. Comm'r, 142 S. Ct. 1493, 1497 (April 21, 2022) (citations omitted).

The principle of what is required of a plaintiff, in this case, the United States, to invoke the jurisdiction of an Article III constitutional tribunal is very clear;

> "Article III of the Constitution limits federal courts' jurisdiction to certain "Cases" and "Controversies." As we have explained, "[n]o principle is more fundamental to the judiciary's proper role in our system of government than the constitutional limitation of federal-court jurisdiction to actual cases or controversies." ... "One element of the case-or-controversy requirement" is that plaintiffs "must establish that they have standing to sue." ...
>
> "The law of Article III standing, which is built on separation-of-

powers principles, serves to prevent the judicial process from being used to usurp the powers of the political branches.... In keeping with the purpose of this doctrine, "[O]ur standing inquiry has been especially rigorous when reaching the merits of the dispute would force us to decide whether an action taken by one of the other two branches of the Federal Government was unconstitutional."

Clapper v. Amnesty International USA, 568 U.S. 398, 408 (2013) (citations omitted).

As to moving a sentencing court, under Federal Rule of Civil Procedure 59(e), it has been noted:

"Regarding motions to alter or amend a judgment under Rule 59(e), the Fourth Circuit Court of Appeals has stated:

" A district court has the discretion to grant a Rule 59(e) motion only in very narrow circumstances: "(1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or to prevent manifest injustice," ... Furthermore, "Rule 59(e) motions may not be used to make arguments that could have been made before the judgment was entered." ... Indeed, the circumstances under which a Rule 59(e) motion may be granted are so limited that "[C]ommentators observe 'because of the narrow purposes for which they are intended, Rule 59(e) motions typically are denied.'"

Sose v. United States, 2021 U.S. Dist. LEXIS 98260, * 6 (W.D. N.C. 2021)

In his Rule 59(e) motion, petitioner argued that the grounds under-which his §3582(c) motion had been substantiated by this Court's announcement in Dobbs v. Jackson Women's Health Org., 142 S.Ct. 2228 (June 24, 2022), Justice Alito, for the Court, and, for purposes of this petition, paraphrasing: "It is time to heed the Constitution and return the issue of" crimes, in general, "to the people's elected representatives." ... That is what the Constitution and the rule of law demand." Id., 142 S.Ct., at 2243.

The Fourth Circuit, citing this Court's admonitions, has pointed out:

""""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.'" ... "And if the record discloses that the lower court was without jurisdiction [a reviewing] court will notice the defect, although the parties make no contention concerning it." ...

...

"The Supreme Court has articulated various rules which govern the justiciability of disputes. The standing requirement, "perhaps the most important" condition of justiciability, ..., ensures a litigant has a sufficient personal stake in an otherwise justiciable controversy such that the judicial process appropriately should resolve the controversy. ... While the Supreme Court has not defined standing "with complete consistency," ..., the irreducible constitutional minimum of standing requires: (1) that the plaintiff personally has suffered actual or threatened injury that is concrete and particularized, not conjectural or hypothetical; (2) that the injury fairly fairly can be traced to the challenged action; and (3) that the injury is likely to be redressed by a favorable decision from the court. ... Additionally, the standing inquiry invokes prudential considerations which "add to the constitutional minima a healthy concern that if the claim is brought by someone other than one at whom the constitutional protection is aimed, the claim not be an abstract, generalized grievance that the courts are neither well equipped nor well advised to adjudicate." ...

"Thus, "a plaintiff must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties," ... Moreover, even when a plaintiff satisfies the constitional requirements for standing, federal courts will not adjudicate a "'generalized grievance' shared in substantially equal measure by all or a large class of citizens ...," ... Finally, the plaintiff's complaint must fall within the zone of interests the statute or Constitution protects or regulates."

Burke v. City of Charleston, 139 F.3d 401, 404–405 (4th Cir, March 18, 1998) (citations omitted).

Just two weeks previously, this Court decided Steel Co. v. Citizens for a Better Environment, 523 U.S. 83 (March 4, 1998), where the "irreducible constitution minimum of standing" was determined, citing its own precedents, to "contain[] three requirements" 523 U.S., at 102.

> "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."

Id., 523 U.S., at 103-104 (citations omitted).

Any indictment must allege an offense "cognizable" under the authority of the United States, with the emphasis on the term "cognizable," the Court has written:

> "Circuit courts [, now district courts,] have exclusive cognizance of all crimes and offenses cognizable under the authority of the United States, except where the Acts of Congress otherwise provide, and concurrent jurisdiction with the district courts of the crimes and offenses cognizable in those courts. 1 Stat, at L. 79; R. S. sec. 629, p. 112.
>
> "Such courts possess no jurisdiction over crimes and offenses committed against the authority of the United States, except what is given to them by the power that created them; nor can they be invested with any such jurisdiction beyond what the power ceded to the United States by the Constitution authorizes Congress to confer, from which it follows that before an offense can become cognizable in the circuit court, the Congress must first define or recognize it as such, and ~~of~~ fix a punishment to it, and confer jurisdiction upon some court to try the offender, ...
>
> "Courts of the kind were not created by the Constitution, nor does the Constitution invest them with any criminal jurisdiction. Even the powers of an express character given to Congress upon the subject, embrace only a limited class of well known offenses. Congress may provide for the punishment of counterfeiting the securities and current coin of the United States, and may pass laws to define and punish piracies and felonies committed on the high seas, and offenses against the law of nations. Treason is defined by the Constitution, but it has never been decided that the offender could be tried and punished for the offense until some court is vested with the

power by an Act of Congress."

United States v. Hall, 98 U.S. 343, 345-346 (1879)(citation omitted).

The principle is simple, as this Court explained:

"The validity of an order of a federal court depends upon that court's having jurisdiction over both the subject matter and the parties. ...

"Federal courts are courts of limited jurisdiction. The character of the controversies [and cases] over which federal judicial authority may extend are delineated in Art. III, § 2, cl. 1. Jurisdiction of the lower federal courts is further limited to those subjects encompassed within a statutory grant of jurisdiction. Again, this reflects the constitutional source of federal judicial power: Apart from this Court, that power only exists "in such inferior Courts as the Congress may from time to time ordain and establish." Art. III, § 1.

"Subject-matter jurisdiction, then, is an Art. III as well as a statutory requirement; it functions as a restriction on federal power, and contributes to the characterization of the federal sovereign. Certain legal consequences directly follow from this. For example, no action of the parties can confer subject-matter jurisdiction upon a federal court. Thus, the consent of the parties is irrelevant, ..., principles of estoppel do not apply, ..., and a party does not waive the requirement by failing to challenge jurisdiction early in the proceedings. Similarly, a court, including an appellate court, will raise lack of subject-matter jurisdiction on its own motion. "[T]he rule, springing from the nature and limits of the judicial power of the United States is inflexible and without exception, which requires this court, of its own motion, to deny its jurisdiction, and, in the exercise of its appellate power, that of all other courts of the United States, in all cases where such jurisdiction does not affirmatively appear in the record.""

Insurance Corp. v. Compagnie Des Bauxites de Guinee, 456 U.S. 694, 701-702 (1982) (citations omitted)(emphasis added).

Because neither of the lower federal courts — district or appellate — can be shown to have addressed, and much less reach, the merits of the constitutional and jurisdictional grounds, that invalidate the convictions in this case,

"This Court has explained that the judgment bar was drafted against the backdrop doctrine of res judicata.... To "trigge[r] the doctrine of res judicata or claim preclusion" a judgment must be "'on the merits,'" ... Under that doctrine as it existed in 1946, a judgment is "on the merits" if the underlying decision "actually passes directly on the substance of a particular claim before the court.'""

Brownback v. King, 141 S.Ct. 740, 748 (2021)(Citations omitted).

Unlike in Ex parte Bain, 121 U.S. 1 (1887), "that the omission from the indictment was a 'jurisdictional' defect and thus required vacating... sentences,"

United States v. Cotton, 535 U.S. 625, 629 (2002),

"Bain's elastic concept of jurisdiction is not what the term "jurisdiction" means today, i.e., "the courts' statutory or constitutional power to adjudicate the case," ... This latter concept of subject-matter jurisdiction, because it involves a court's power to hear a case, can never be forfeited or waived. Consequently, defects in subject-matter jurisdiction require correction regardless of whether the error was raised in district court."

Id., 535 U.S. at 630 (citations omitted),

Then, in Steel Co., supra, this Court made it 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." Standing to sue is part of the common understanding of what it takes to make a justiciable case."

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

"Upon common understanding of what activities are appropriate" are clearly set out as to the limits Congress is restrained to in conferring on federal courts their power; this Court, in Ex parte Bakelite, 279 U.S. 438 (1929), pointed out:

> "While article 3 of the Constitution declares, in §1, that the judicial power of the United States shall be vested in one Supreme Court and in "such inferior courts as the Congress may from time to time ordain and establish," and prescribes, in §2, that this power shall extend to cases and controversies of certain enumerated classes, it long has been settled that article 3 does not express the full authority of Congress to create courts, and that other articles invest Congress with powers in the exertion of which it may create inferior courts and clothe them with functions deemed essential or helpful in carrying those powers into execution. But there is a difference between the two classes of courts. Those established under the specific power given in §2 of article 3 are called constitutional courts. They share in the exercise of the judicial power defined in that section, can be invested with no other jurisdiction, and have judges who hold office during good behavior, with no power in Congress to provide otherwise."

Id., 279 U.S. at 449.

In short, the district court below, being an Article III constitutional court, lacks the capacity to be conferred with criminal jurisdiction, when it sits within the State of West Virginia, and can be invested with jurisdiction only "to cases and controversies of certain enumerated classes," ibid., was strongly pointed out by this Court, writing:

> "We first direct attention to the carefully chosen words of §2, cl. 1, Art. 3. 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 "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 discussions which have taken place upon the construction of the Constitution, have proved the correct-

ness of this proposition; and shown the high talent, the caution, and the foresight of the illustrious men who framed it. Every word appears to have been weighed with the utmost deliberation, and effect to have been fully understood."")

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

Over two-and-a-half decades later, in a case involving "admiralty and maritime jurisdiction," this Court referred to such jurisdictions, 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 these 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. Operat. Co., 358 U.S. 354, 364 (1959) (citations omitted).

Pursuant to the Constitution, "[t]he Due Process Clause protects an individual's right to be deprived of life, liberty, or property only by the exercise of [constitutionally] lawful power." McIntyre Mach., Ltd. v. Nicastro, 131 S.Ct. 2780, 2786 (2011) (citation omitted).

Throughout this cause of action, "Petitioner, however, does not advance a procedural due process claim in this case. Instead, [s]he 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) (citation omitted).

"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," or never existed, ab initio, as in this case, sub judice, "the only function remaining to the court is that of announcing the fact and dismissing the cause."" Vermont ANR v. U.S. ex rel. Stevens, 529 U.S. 765, 778 (2000)(citations omitted).

In deciding whether to grant review of this case, under the questions presented, this Court once observed:

> "A federal question raised by a petitioner may be "of substance" in the sense that, abstractly considered, it may present an intellectually interesting and solid problem. But this Court does not sit to satisfy a scholarly interest in such issues. Nor does it sit for the benefit of the particular litigants.... "Special and important reasons" imply a reach to a problem beyond the academic or the episodic, for then there comes into play regard for this Court's duty to avoid decision of constitutional issues unless avoidance becomes evasion. Cf. the classic rules for avoidance stated by Mr. Justice Brandeis in Ashwander v. Tennessee Valley Authority, 297 U.S. 288, 341 [(1936)]."

Rice v. Sioux City Cemetery, 349 U.S. 70, 74 (1954).

In Ashwander, referred to, supra, it was stated:

> ""Considerations of propriety, as well as long-established practice, demands that we refrain from passing upon the constitutionality of an act of Congress unless obliged to do so in the proper performance of our judicial function, when the question is raised by a party whose interests entitle him to raise it.""

Ashwander v. T.V.A., 297 U.S. 288, 341 (1936) (citation omitted)(Brandeis, J., dissenting).

Chief Justice properly admonished:

> "The people made the constitution, and the people can unmake it. It is the creature of their own will, and lives only by their will. But this supreme and irresistible power to make or to unmake, resides only in the whole body of the people; not in any sub-division of them. The attempt of any of the parts to exercise it is usurpation, and ought

to be repelled by those to whom the people have delegated their power of repelling it."

Cohens v. Virginia, 6 Wheat. 264, 389 (1821).

Cf., e.g., The Federalist No. 49 (J. Madison)(same).

In Nashville v. Cooper, 6 Wall. 247 (1868), this Court admonished:

"As regards all courts of the United States inferior to this tribunal, two things are necessary to create jurisdiction, whether original or appellate. The Constitution must have given to the court the capacity to take it, and an act of Congress must have supplied it. Their concurrence is necessary to vest it."

Id., 6 Wall., at 252.

See, also, Finley v. United States, 490 U.S. 545, 548 (1989)(same).

Chief Justice Marshall settled the issue of the reach, and limits, of the federal courts, admonishingly declaring: "Had any doubt existed with respect to the just construction of this part of the section," Art. III, §2, "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, supra, 6 Wheat., at 383.

With all the foregoing Supreme Court substantiation that criminal cases are not within the cognizance of constitutional Article III "inferior" courts, in order "to perform its high function in the best way[,] 'justice must satisfy the appearance of justice,'" In re Murchison, 349 U.S. 133, 136 (1955)(citation omitted), by granting the petition for writ of certiorari in this case, where this Court applies the principle announced in Rice, supra, and not permit "avoidance" to become "evasion."

Federal Criminal Laws Are Territorial In Their Enforcement And Do Not Extend Into The Territorial Boundaries of The States

Again, Chief Justice Marshall made it a point to declare, "Congress has a right to punish murder in a fort, or other place within its exclusive jurisdiction; but no general right to punish murder committed within any of the states." Cohens, 6 wheat., at 426.

This is in accord with United States v. Bevans, where Chief Justice Marshall declared:

"To bring the offense [of murder] within the jurisdiction of the courts of the Union, it must have been commited in a river, etc., out of the jurisdiction of any state. It is not the offense committed, but the bay in which it is committed, which must be out of the jurisdiction of the state."

Id., 3 wheat. 336, 387-388 (1818)(emphasis added).

In United States v. Flores, 289 U.S. 137 (1933), this Court observed:

"It is true that in United States v. Bevans, ..., the prisoner, charged with murder on a warship in Boston Harbor, was discharged; as was one charged with manslaughter committed on a vessel on a Chinese river in United States v. Wiltberger, ... But the judgments were based not upon a want of power in Congress to define and punish the crimes charged, but upon the ground that the statute did not apply, in the one case, for the reasons that the place of the offense was not out of the jurisdiction of a state, and in the other, because the offense, manslaughter, was not committed on the high seas."

Id., 289 U.S., at 152 (1933)(citations omitted).

In Rhode Island v. Massachusetts, 12 Pet. 657 (1838), this Court pointed out:

"It follows that when a place is within the boundary, it is a part of the territory of a State; title, jurisdiction, and sovereignty, are inseperable incidents, and remain so till the State makes some cession. . . .

"This principle is embodied in the sixteenth clause of the eighth section, first article of the Constitution, relative to this district; forts, arsenals, dock yards, magazines, and uniformly applied to all acquisitions of territory by the United States, in virtue of cessions by particular States, or foreign nations."

Id., 12 Pet., at 733 (citing Bevans, supra).

In the case of properly acquired territories by the United States, that Government is "the only government which can impose laws upon them, . . . so long as they remain in a territorial condition." Shively v. Bowlby, 152 U.S. 1, 48 (1894) (citations omitted).

"Upon the admission of a State into the Union, the state doubtless acquires general jurisdiction, civil and criminal, for the preservation of public order and the protection of persons and property throughout its limits, except where it has ceded exclusive jurisdiction to the United States.

Van Brocklin v. Anderson, 117 U.S. 151, 167-168 (1886) (citations omitted).

Put another way, that ousts Congress' criminal laws in the States, in Van Brocklin it was pointed out: "The Articles of Confederation ceased to exist upon the adoption of the Federal Constitution; and the ordinance of 1787, like all Acts of Congress for the government of the Territories, had no force in any State after its admission into the Union under that Constitution." Id., 117 U.S., at 159 (citations omitted).

"Special provision is made in the Constitution for the cession of jurisdiction from the States over places where the federal government shall establish forts or other military works. And it is only in these places, or in the territories of the United States, where it can exercise a general jurisdiction." New Orleans v. United States, 35 U.S. 662, 737 (1836).

With no allegation, much less any evidence, that the present purported federal offense were committed within an area of exclusive jurisdiction of the United States, the convictions in this case cannot "stand without making the courts themselves accomplices in wilful disobedience" of the Constitution. McNabb v. United States, 318 U.S. 332, 345 (1943).

With all this Court's precedents supporting reversal of what may be viewed as void federal criminal convictions, "[i]t is clear, that Congress cannot punish felonies generally." Cohens, supra, 6 Wheat. 428.

This petition must be granted, and the convictions ordered vacated, with instructions to the district court to dismiss the bill of indictment, for want of jurisdiction in general. See, e.g., United States v. Corrick, 298 U.S. 435, 440 (1936)(citations omitted).

It Is Incumbent For This Court
To Protect Petitioner's Constitutional Rights

"Our conclusion is consistent with the "well settled" rule that "where legal rights have been invaded,... federal courts may use any available remedy to make good the wrong done."" Barnes v. Gorman, 536 U.S. 181, 189 (2002)(citation omitted).

"[T]he federal courts — and particularly this Court — have a primary obligation to protect the rights of the individual that are embodied in the Federal Constitution. ... Although some cases involving overly expansive interpretations of federally protected rights surely merit federal review, the interest in correcting such errors is necessarily secondary to the federal courts' principal role as protector of federally secured rights." Harris v. Reed, 489 U.S. 255, 267 (1989) (citation omitted) (Stevens, J., concurring).

And, just as a "State is precluded by the United States Constitution from haling a defendant into court on a charge; federal law requires that a conviction on that charge be set aside even if the conviction was entered pursuant to a counseled plea of guilty," Menna v. New York, 423 U.S. 61, 62 (1975), how much more should a federal conviction be set aside, when the Government "is precluded by the United States Constitution from haling a defendant into court on... charge[s]" for "precise subject-matter" not enumerated in the Constitution for nationwide federal police power enforcement, and prosecution in an Article III court lacking the capacity to be vested with criminal jurisdiction under the totality of the circumstances of this case.

Unlike the error at issue in Neder v. United States, 527 U.S. 1, 8 (1999), "a jury instruction that omits an element of the offense," the errors in this case, as pointed out, supra, "differs markedly from the constitutional violations we have found to defy harmless-error review. Those cases, we have explained, contain a "defect affecting the framework within which the trial proceeds, rather than simply an error in the trial process itself." ... Such errors "infect the entire trial process," ..., and "necessarily render a trial fundamentally unfair. ..." Ibid. (citations omitted).

In this case, the dicta in Neder is apropos under the circumstances presented:

> "Rule 52(a) of the Federal Rules of Criminal Procedure, which governs direct appeals from judgments of conviction in the federal system, provides that "[a]ny error, defect, irregularity or variance which does not affect substantial rights shall be disregarded." Although this Rule by its terms applies to all errors where a proper objection is made at trial, we have recognized a limited class of fundamental constitutional errors that "defy analysis by 'harmless error' standards." ... Errors of this type are so intrinsically harmful as to require automatic reversal (i.e., "affect substantial rights") without regard to their effect on the outcome."

Id., 527 U.S., at 7 (citations omitted).

The errors committed in this case, sub judice, fit the bill for "automatic reversal."

Conclusion

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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