No. _____

In The

Supreme Court of the United States

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Nathaniel Brian Verellen,
also called Nasaniyeli Wayani Weweleni
of the Cherokee Nation of Indians,

Petitioner,

– versus –

PEOPLE OF THE STATE OF MICHIGAN,

Respondent,

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On Petition For A Writ Of Certiorari
To The Michigan Supreme Court

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PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Did the State of Michigan erroneously redefine "registration plate" so as to unlawfully broaden and apply Michigan Traffic Code, MCL 257.256, License Plate Unlawful Use, to a presumptively valid tribal plate and, in so doing, decide an important federal question in a way that conflicts with relevant decisions of this Court, a United States court of appeals, another state court of last resort or treaty?

2. In requiring a "reciprocity agreement" with the Cherokee Nation of Indians, is the State of Michigan discriminating against the Nation in violation of the Indian Commerce Clause? Relatedly, is the State's requirement of a reciprocity agreement consistent with MCL 257.243?

3. Does the State of Michigan have inherent authority to deny an Indian tribe's sovereignty based solely on whether it is listed in the federal register? Has the name "Cherokee Nation" listed in the Federal Register been defined exclusively by Congress so as to be synonymous with anyone of several Cherokee Bands of the greater Cherokee Nation of Indians?

4. Did the State of Michigan violate the defendant's due process rights under the 4th, 5th, and 14th Amendments of the United States Constitution?

5. Did the State of Michigan lack probable cause for the arrest and property seizures?

6. Did absence of probable cause invalidate all evidence presented at trial as fruit of the poisonous tree under this Court's long-standing application of the Exclusionary Rule in *Mapp v. Ohio* and its progeny?

7. Did the State of Michigan's Motion in Limine unlawfully suppress Brady material? Did the Circuit Court of Appeals misapply the Brady standards in its application of *People v. Dimambro?*

8. Does the Doctrine of Corporation by Estoppel bar the State of Michigan from denying recognition of the Aniyvwiya Tribal nation for the Cherokee Nation of Indians?

PARTIES TO THE PROCEEDING AND CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 14.1 the following identifies all of the parties appearing here and in the court below:

> The Petitioner here is Nathaniel Brian Verellen, also called Nasaniyeli Wayani Weweleni, an enrolled member of the Cherokee Nation of Indians.
>
> The Respondent here and in all prior proceedings discussed herein is the People of the State of Michigan.

Pursuant to Rule 29.6, Petitioner states he is not a corporation but reserves judgment with respect to the Respondent in consideration of Title 28 U.S.C. § 3002(15)(A).

LIST OF PROCEEDINGS

Supreme Court of Michigan
No. 166362
People of the State of Michigan, *Appellee v.*
Nathaniel Brian Verellen, *Appellant.*
Date of Order: January 30, 2024

Michigan Court of Appeals
No. 365796
People of the State of Michigan, *Appellee v.*
Nathaniel Brian Verellen, *Appellant.*
Date of Order: September 29, 2023

Michigan Circuit Court of Appeals, St. Clair County
No. 22-001875-AR
People of the State of Michigan, *Appellee v.*
Nathaniel Brian Verellen, *Appellant.*
Date of Order: January 23, 2023

Michigan District Court – 72nd Judicial District
No. 22M00553ST
People of the State of Michigan, *Plaintiff v.*
Nathaniel Brian Verellen, *Defendant.*
Date of Judgment of Sentence: August 16, 2022

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INTRODUCTION

Petitioner, Nathaniel Brian Verellen, respectfully prays that a writ of certiorari issue to review the judgment of the Michigan Supreme Court to review the order of that Court which denied Petitioner's Application for Leave to Appeal, Docket No. 166362. Petitioner sought leave to appeal, pro se, the September 29, 2023, order from the State of Michigan Court of Appeals denying his leave to appeal the January 23rd, 2023, decision of the St. Clair County Circuit Court to affirm the conviction for alleged License Plate Unlawful Use, Improper License, and Driving Failure to Maintain Security (MCL §§ 257.256, 257.301 and 500.3102 respectively). Petitioner argued the lower courts embraced an interpretation of the Michigan license plate statute beyond its plain meaning to invalidate a tribal plate lawfully issued by the tribe. Petitioner further argued the district court improperly granted a motion in limine giving the state the advantage of excluding evidence which was Brady material. Finally, Petitioner argued that the stop by the officer on the second day was not a traffic stop but an arrest without probable cause rendering any evidence seized inadmissible to support the remaining two charges. The Circuit Court of Appeals granted oral argument but sustained the conviction and sentence while the Michigan Court of Appeals and the Michigan Supreme Court both denied leave to appeal the lower court's decision.

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ORDERS BELOW

The Order of the Michigan Supreme Court denying Petitioner's Application for Leave to Appeal is attached as App. 1. The Order of the Michigan Court of Appeals denying leave to appeal is attached as App. 2. The Order of the Circuit Court of Appeals denying appeal of the District Court's conviction and sentencing is attached as App. 3. The District Court Judgment of Sentence is attached as App. 12.

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JURISDICTIONAL STATEMENT

The Michigan Supreme Court's Order was entered on January 30, 2024. This Court's jurisdiction is invoked under 28 U.S.C. § 1257(a).

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STATUTORY PROVISIONS INVOLVED

The relevant Constitutional and statutory provisions and Rules involved are set forth within the Appendix herein, App. 18, infra.

♦ U.S. Const. Art. 1, § 8, cl. 3

♦ U.S. Const. Amend. 4 ♦ MCL 257.243

♦ U.S. Const. Amend. 5 ♦ MCL 257.50

♦ U.S. Const. Amend. 14 ♦ MCL 257.256

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STATEMENT OF THE CASE

On the afternoon of March 24, 2022, Petitioner was travelling in a 2010 Chevrolet Suburban and pulled into a gas station on Marine City Highway and King Road in Marine City Michigan. Sergeant Pechman, of the Michigan State Police, was following the Suburban for seven miles before activating his lights and followed him into the parking lot. Pechman expressed concerns over the validity of the license plate on the back of the truck bearing the title "Cherokee nation of Indians," the seal of the Aniyvwiya Tribal Estate, the license number G 7280, and references to the Treaties of Whitehall and Holston, 1730 and 1791 respectively (7 Stat. 39, July 2, 1791).

Petitioner produced his tribal identification authenticating his membership in, and the certificate of title of the truck issued by, the tribe to whom the truck had been exported[1] by the Michigan Secretary of State to the Cherokee Nation of Indians the previous year. Sergeant Pechman took images of the identifications, the certificate of title, the license plate, and a copy of what Pechman's police report lists as an "email from Federal government."[2]

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[1] Petitioner uses the term "exported" in specific legal parlance as governed by 15 CFR § 730 et. seq. and enforced by the United States Department of Commerce Bureau of Industry and Security through standard Form 7525 and by which the State of Michigan transferred title of the vehicle to the Cherokee Nation of Indians. *See* ***Brady Exhibit A*** *attached – App. 23.*

[2] This email is the first item probative of the Brady material Petitioner believes prosecution has suppressed from this Court. *See* ***Brady Exhibit B*** *attached – App. 26.*

The next morning, Sergeant Pechman sat and waited on Highway M29 for an hour in order to intercept Petitioner with intent to arrest him and impound the truck. The video and audio dashcam footage of the entire stop revealed the stop was executed at approximately 10:30 am at the intersection of Broadbridge Road and Highway M29. Sergeant Pechman acknowledged this as their second meeting, told Petitioner, while holding his tribal ID, "this means nothing," and then suggested he researched the recognition and validity of Petitioner's tribe. The remainder of the recorded conversations were omitted at trial because the prosecution hit pause stating he wanted to skip over those parts to avoid putting hearsay into the record. What was skipped over in trial from the video is crucial for two reasons which, as Petitioner will *argue* below, were demonstrative of certain *Brady* material suppressed by the State in this case.

Pechman wrote a Uniform Citation listing three misdemeanor charges aforementioned above and had the Suburban towed. Petitioner was not taken into custody and was allowed to leave the scene with his personal items.

Pechman stated in his report, and testified at trial, that he relied on his own "research" and upon consultation with the Michigan State Police legal department to establish probable cause for the arrest, but the only evidence offered at trial was a photo image of the plate, a driving record, and two minutes of a thirty-one-minute dashcam video of the stop on March 25th.

Pechman, at trial, averred that his investigation gave him reason to determine the tribe

was not federally recognized, the registration was unlawful, the plates were illegal and that Petitioner's identification "means nothing." But detrimental to the State's case is the clear absence of any evidence except certain opinion testimony by the State's sole witness, Sergeant Pechman. Pechman's initial police report was redacted and his trial testimony of his own "research" and investigation devolved under cross examination to uncertain recollections, unverifiable hearsay, and unsubstantiated opinions.

The website, www.thefirstnation.org[3], was a matter of easily verifiable public record which Sergeant Pechman claimed on the stand he visited [see TT pg. 42] only to walk it back a minute later to state he couldn't be sure which site he actually was on [see TT at 44]. Instead of explaining his research, Pechman's report merely states he consulted an "MSP legal advisor." His testimony at trial is devoid of any external authorities except an ambiguous reference to his own "research" which basically was a phone exchange with the State's MSP attorney [Trial Transcript, p. 42]:

> Q …what research did you do? I was just curious.
>
> A I contacted our legal department in Lansing.
>
> Q And what did they tell you?
>
> A They told me that that tribal nation was

[3] Due to technical difficulties the tribe's website was reformatted (see https://cnoi.life) but the original is currently preserved and accessible at https://web.archive.org/web/20221109004345/https://thefirstnation.org/.

> not a validly recognized group to where that plate would –- that would constitute that plate being valid, that that was not a valid plate.

… and a few clicks on the internet to an unidentified website [*Id*. at 44]:

> Q You don't remember the exact website you went to on that to do that research.
>
> A I don't remember --
>
> Q Not in the notes, okay.
>
> A -- at this time, no.

No witnesses, no documents, no authority, *and no verification* were ever admitted into evidence to support the hearsay opinion of an unidentified attorney (at least not in court) from a "legal department" and a specious recollection of going to the tribe's website when only a minute later we're not even sure which "tribe" he was actually researching.

Throughout both pretrial and the trial itself, Hon. Judge Hulewicz admitted he was not familiar with several issues upon which Petitioner relied. The judge fully acknowledged, on page 19 of the fifth pretrial appearance (lines 15-18), his lack of familiarity with an issue he'd never seen prior to this trial. He stated he researched laws in Minnesota and Oklahoma and also said he looked up 87 FR 4636 et. seq. and "determined that the United States Bureau of Indian Affairs does not recognize the tribe cited by the defendant," but offered little more than would be later provided by Sergeant Pechman as his justification for granting prosecution's motion in limine to exclude relevant evidence under MRE 403.

His reasoning was an erroneous finding of lack of federal "recognition" of the Aniyvwiya Tribal nation for the Cherokee Nation of Indians because he just didn't understand that all Aniyvwiya means in the native Cherokee language is "real people."

Judge Hulewicz basically fell into the same trap as Sergeant Pechman by saying he just "could not find" the Aniyvwiya on the list in the Federal Register when that list clearly includes "Cherokee Nation" as a recognized "tribe." [4]

Like Sergeant Pechman, Judge Hulewicz formed what was an admittedly unschooled opinion with zero authority brought into the record by prosecution to defend its motion in limine. Ironically, the only authority that was available was stricken under the judge's order, the self-authenticating record of the 1791 Treaty with the forty-one individual signatories who represented numerous tribes and bands of the larger Cherokee nation. Evidence the State of Michigan has recognized the nation issuing its license plate to Petitioner is still being suppressed by the State to this day.

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[4] Both the Congressional Findings on 25 USC § 5130 and the federal courts clearly state the list published annually by the Secretary of Interior is not mutually exclusive to the establishment of tribal sovereignty. (See *Bottomly v. Passamaquoddy Tribe,* 599 F.2d 1061, 1065 (1st Cir. 1979)).

REASONS FOR GRANTING PETITION

I. Lower Courts Erroneously Broadened MCL 257.256, Unlawful Lending or Use of a Registration Plate

The error on the part of the State of Michigan was in both the underlying reason for Sergeant Pechman's criminal investigation (which has been treated generously under the mantle of a traffic stop) and the precedent charge, MCL 257.256, License Plate Unlawful Use. Pechman admits under oath his sole reason for impeding Petitioner in his travels was his predetermined opinion the plates were invalid. [See TT at pg. 20 line 25] No documentary exhibits nor testimony were offered in evidence that verified this opinion. In a trial of guilt beyond a reasonable doubt, it is not even the accused's burden to prove the validity of his plates under the offense as charged. It is the opposite. The state must *prove they are invalid,* which is to say the state must prove a negative.

The State did not charge Petitioner with displaying "invalid" plates, "novelty" plates, or "bogus" plates. Nor did the State charge Petitioner with *failing to register* and concurrently *failing to display a registration plate*. On the contrary, the State accused Petitioner of unlawfully "lending" or having engaged in the unlawful "use" of a registration plate. By virtue of the charge employed the direct object of the accusation, the registration plate, is presumptively valid but for the standing of the party who has lent or is using that registration plate in question. By applying this statute to achieve its prosecution, the State arbitrarily broadened the definition of a "registration plate" beyond the enumerated definition in the Michigan statutes.

A. The Lower Courts Committed Reversible Error by Incorrectly Defining the Term "Registration Plate"

Due to the fact that the issue at trial was the alleged "invalidity" of the registration of the Suburban, there was no direct reference to the license plate as a "registration plate." It was merely presumed by both the State and the District Court that the metal instrument attached to the Suburban qualified as the necessary element of the alleged offense. Sergeant Pechman's entire focus was his inability to locate the record of the registration after requesting a search from dispatch through the LEIN system which is an acronym for Law Enforcement Information Network. None of this was raised in trial until Petitioner pressed the issue on cross-examination [see TT[5] pg. 42].

The prosecution merely asked Pechman if there was a computer system for checking license plates and the witness answered in the affirmative and then said ***this plate*** was not in ***that system***. Prosecution failed to lay any foundation for why, say, a local tribe like the Bay Mills Indian Community would need to have an Inter-Governmental LEIN Agreement with the State of Michigan before one of their tribal plates would even show up on his computer or in a search by dispatch. Then, the follow up question would have been to ask the witness ***what process is employed*** for a vehicle formerly in LEIN ***and then exported to a tribe out of state.***

Presumably, a state trooper would be a little more familiar than a regular municipal police officer

[5] Trial Transcript

with the standard export procedure which effectively moves the Manufacturer's Statement of Origin (MSO), which is the title as opposed to the "certificate" of title, from one "State" to another "state." Anyone who buys a new car and pays any attention to the sales process at the dealership knows that this is the process of transfer where the buyer *surrenders the MSO to the State at the point of sale and is subsequently issued a* ***certificate*** *of title.*

There is a very simple and logical reason why Sergeant Pechman could not locate the Suburban in the State LEIN system. It is because the State of Michigan transferred the MSO to the "Aniyvwiya Tribal-nation C/O Cherokee nation of Indians" in "Cherokee Country/Aniyvwiya" almost a year earlier.[6]

The issue of the definition of a "registration plate" *was* raised in both the briefs and oral argument before the Circuit Court of Appeals. In their answer brief, the State made an argument that the plate on Petitioner's Suburban was a "registration plate," an argument which Petitioner will address below in Part C of this portion of his brief. At oral argument, however, the State raised as a "novel fact pattern" the proverbial elephant in the room (or at least one of them). At pages 8-9, the State laid out its admission that it was broadening the definition of the term registration plate:

> MR. KOLESKI: I think the interesting question there is what the definition of a

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[6] This is the Brady material to which, under oath, another Michigan State police officer can confirm. Additionally, Petitioner could call to the stand a clerk from the Michigan Secretary of State who can also confirm this fact.

> registration plate is because the -- Defendant in his brief seemed to highlight the definition of registration and he pointed to maybe that it only means plates that are issued under the Motor Vehicle Code of the State of Michigan. Well, that can't be the case because registration plates issued by other states wouldn't be included in that definition.
>
> So, I think the definition of registration plate is actually something more broad and if you look at what the Defendant was doing in this case he was holding out this plate as a valid registration plate. He's saying it was issued to him by this tribe who has some sort of authority to issue these plates. It has its own unique registration number so it was something that was registered with this group and it's a plate that's affixed to his vehicle. The only issue with the plate is there's no reciprocity agreement with the State of Michigan, which makes it an unlawful use that he's holding this plate out as a valid plate when it's really not. So, I think although this might be a novel fact pattern I think it does fit under the statute.

Petitioner would submit what is the crucible before this Honorable Court is stated above quite aptly in the second paragraph of Koleski's oral argument, that the definition of a "registration plate" *is more broad*. Petitioner would argue he is in error.

B. MCL 257.256 Presumes Validity of the Certificate of Title, Registration and/or Plate in Question

The substantive elements of the offense are enumerated in subd. (1) to wit:

> A person shall not lend to another person, or knowingly permit the use of any certificate of title, registration certificate, registration plate, special plate, or permit issued to him or her if the person receiving or using the certificate of title, registration certificate, registration plate, special plate, or permit would not be entitled to the use thereof. A person shall not carry or display upon a vehicle any registration certificate or registration plate not issued for the vehicle or not otherwise lawfully used under the registration act.

What scant testimony Sergeant Pechman gave at trial in no way suggested Petitioner lent or knowingly permitted the use of a "registration plate" to another person, entitled or not to the use thereof as a "registration plate" which must be limited by the definition of "registration" in chapter 257 of the Michigan Vehicle Code:

MCL 257.50 "Registration" defined.

> "Registration" means a registration certificate, plate, adhesive tab, or other indicator of registration *issued under this act* for display on a vehicle." [emphasis added]

If the plate was issued by a tribe, *recognized or not*, then Petitioner cannot have carried nor displayed a "registration plate not issued for the vehicle or not

otherwise lawfully used under the registration act." If it was a "bogus" plate then it was no plate at all, let alone a registration plate. Further, if the plate was bogus, it could not be a plate being *unlawfully used* under the registration act because it was not created under the authority of said act.

If the plate was invalid, bogus, or fraudulent than the plate was not a "registration plate" under the above offense and the charges should have been MCL 257.215 and 257.225, *Operating an* ***un****registered vehicle* and ***failure to display*** *a registration plate.* By charging Petitioner with the statute on the citation, the State must prove Petitioner either lent that plate to a third party who unlawfully used it on a vehicle or, in the alternative, prove he was lent or given a registration plate issued for ***someone else's vehicle***.

Since the certificate of title clearly indicates its maker and issuer assigned the plate to correspond with the conveyance bearing VIN 1GNUKJE37AR128356, and that is the same VIN on the conveyance that was towed and impounded in this case, then MCL 257.256 cannot apply. The charging instrument is in stark contradiction with the State's case in chief which, as will be shown below, tosses out their entire case under the exclusionary rule.

C. MCL 257.243(1) Provides Further Support of Petitioner's Definition of "Registration Plate."

There is only one other reference to a "Registration Plate" in Michigan statutes that expands the definition of the term beyond that of MCL 257.50 and that is MCL 257.243. Mr. Koleski pointed this out in both his brief and his oral argument.

The State took issue with the argued application and limits Petitioner raised over this statute and Petitioner paid heed to its position to such degree he conceded in part in his Reply Brief. The State, however, has offered no convincing argument, comment, or case law to support the notion that the statute is directed at anything besides valid plates issued to one person and being unlawfully used by another. The State's reference to MCL 257.243(1) would actually apply to Petitioner's truck:

> …any foreign vehicle of a type otherwise subject to registration under this act may operate or permit the operation of the vehicle within this state without registering the vehicle in, or paying any fees to, this state if the vehicle at all times when operated in this state is duly registered in, and displays upon it a valid registration certificate and registration plate or plates issued for the vehicle in the place of residence of the owner.

The State presented no evidence to suggest the license plate on Petitioner's truck applies to MCL 257.256 because it makes the unsubstantiated claim that the tribe lacked title to execute a valid certificate of title. The State, instead, seeks to convince the Court to make the leap that (a) the license plate is *invalid,* and (b) an "invalid" plate is necessarily within the definition of a "registration plate." Recall Mr. Koleski's two criteria above for expanding the definition were predicated upon the Petitioner (1) "holding out this plate as a valid registration plate," and (2) "[t]he only issue with the plate is there's no reciprocity agreement with the State of Michigan."

So, to deal with Koleski's attempt to redefine

the statutory term in the order of his criteria, the first poses a contradiction in terms. To hold something out as "valid" that is in fact "invalid" in any form of writing is to present what in commercial paper terms is referred to as a "fictitious instrument" or in the more common vernacular…*a forgery.* There is simply no evidence in the record, nor in the records of the State of Michigan, that suggest the Cherokee Nation of Indians lacked authority to issue a registration plate for its own vehicles in the same manner as would any other state in this nation. So, that brings us to Mr. Koleski's second criterion, the absence of a reciprocity agreement. This was raised in Petitioner's brief and in oral argument, and in each case of Petitioner's request for the statutory authority that even requires a reciprocity agreement, the response was silence.

This puts the State back squarely in front of its original *catch-22,* as the State must prove a negative and it presented no evidence at trial to demonstrate it even had the probable cause to support that claim. As we shall revisit below, it has sought to suppress any evidence that would go to show the validity of the truck's export from the State of Michigan to the tribe. Recall, at trial, all the prosecution asked Sergeant Pechman was if there was a computer system for checking license plates and the witness answered in the affirmative and then just said ***this plate*** was not in ***that system***. Prosecution failed to lay any foundation for an expectation that the tribal plate would come up in the computer any more than a plate from Canada, Mexico, or Guatemala. The State also withheld the vehicle history with which, in the "hearsay" portion of the dashcam footage, Pechman referenced familiarity when he suggested the vehicle was still registered in Michigan even though, four

days later, his colleague would confirm was exported out of state.

II. The State Violated Federal Law and Petitioner's Due Process Rights

A. The Lower Courts' Broadening of MCL 257.243 and 257.256 are Void for Vagueness

The Due Process clauses of the United States Constitution and the Michigan Constitution require that the law provide predictability for all citizens. US Const, Am 14; Const 1963, art 1, § 17. An unambiguously drafted criminal statute affords prior notice to the citizenry of conduct proscribed. A fundamental principle of due process, embodied in the right to prior notice, is that a criminal statute is void for vagueness where its prohibitions are not clearly defined. Although citizens may choose to roam between legal and illegal actions, governments of free nations insist that laws give an ordinary citizen notice of what is prohibited, so that the citizen may act accordingly. If a person has to guess what a criminal statute means, or if the crime is not clearly defined, then this Court must dismiss the charges. See, e.g., *Grayned v City of Rockford*, 408 US 104 (1972).

The three governing statutes applicable in this case, MCL 257.256, the definition of "registration" in MCL 257.50, and the exemption clause in MCL 257.243(1), are all clear with no ambiguity in their plain meaning. The lower courts, by adopting the prosecution's broadened meaning of otherwise definitive terms generated a vague interpretation of said statutes, thereby turning the clear language and intent of the State Legislature on its head. This

misinterpretation exceeds legislative intent of said statutes and proceeding to prosecute according to such vagueness is arbitrary enforcement, and thus unconstitutional.

The Michigan Supreme Court has held there are at least three ways a penal statute may be found unconstitutionally vague:

> (1) failure to provide fair notice of what conduct is prohibited,
>
> (2) encouragement of arbitrary and discriminatory enforcement, or
>
> (3) being overbroad and impinging on First Amendment freedoms.

People v Lino, 447 Mich 567, 575-576; 527 NW2d 434 (1994). In Defendant's case, the first two criteria apply. The United States Supreme Court has further explained the vagueness doctrine:

> Although the doctrine focuses both on actual notice to citizens and arbitrary enforcement, we have recognized recently that the more important aspect of vagueness doctrine "is not actual notice, but the other principal element of the doctrine--the requirement that a legislature establish minimal guidelines to govern law enforcement." **Where the legislature fails to provide such minimal guidelines, a criminal statute may permit "a standardless sweep [that] allows policemen, prosecutors, and juries to pursue their personal predilections."** *Kolender v Lawson,* 461 US 352, 357-358 (1983) (emphasis added) (internal citations

omitted).

The Michigan Legislature provided the *statutory definition* of the word "registration" in MCL 257.50. (*See supra.* p. 10) While the State raised argument that MCL 257.243(1) suggests the term "registration plate" expands beyond the confines under the above section, that sister statute is one of a series of "exceptions" for "foreign vehicles" that would apply to Petitioner's truck. (*See supra.* p. 11) The State, however, erroneously broadened MCL 257.243 to add a requirement not in the statute at all, *a reciprocity agreement.*

Nowhere in any record of the lower courts was there cited an authority for requiring a reciprocity agreement and, if there were any logical place to add that requirement, it would be in MCL 257.243. Similarly, Koleski attempted to rewrite not only the definition of a registration plate but also the last sentence of MCL 257.256 to impute some sort of "catch all" net for anyone placing a purported plate on his vehicle as to somehow constitute a "use." This is not the plain meaning of the statute at all as MCL 257.256(1), from beginning to end, is about using a registration *issued by the state.* It is not even clear that Michigan courts would have jurisdiction over, say, a dealership just across the state lines who lent a dealer plate to a party who took a car out for a test drive and crossed over into Michigan.

> A person shall not carry or display upon a vehicle any registration certificate, registration plate not issued for the vehicle or not otherwise lawfully used under the registration act.

The terms "issued" and "lawfully used under" both refer specifically to instruments issued under the registration act for the simple reason that those are the only instruments subject to governance under the act in the first place. A Wisconsin plate is no more subject to a Michigan statute than would be one from Mexico or Canada. Similarly, the plate issued by the Cherokee Nation of Indians is not only exempt from the above clause by virtue of MCL 257.243, but the federal courts have ruled to demand a reciprocity agreement is in fact discrimination even by a State in whose boundaries the tribe is located. See *Prairie Band Potawatomi Nation v. Wagnon*, 476 F.3d 818, 823-825 (10th Cir. 2007).

This is a matter of settled law in the 10th Circuit as *Prairie Band* went before the Supreme Court which remanded the case back to the 10th Circuit for reconsideration in light of its decision in a companion case on fuel tax. See *Wagnon v. Prairie Band Potawatomi Nation,* 546 U.S. 95 (2005) (order for remand at 546 U.S. 1072-1073). The Supreme Court instructed the lower court to examine its decision in its entirety, paying heed to the Supreme Court's caution regarding the applicable scope of the interest-balancing test, promulgated in *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136 (1980).

In *Bracker,* the State of Arizona argued they may assess taxes on non-Indians engaged in commerce on the reservation whenever there is no express congressional statement to the contrary. Relying on Congress's broad power to regulate tribal affairs under the Indian Commerce Clause, Art. 1, § 8, cl. 3, this Court held that "is simply not the law" and that a state "is pre-empted even though Congress has

offered no explicit statement on the subject." *Id.* at 151. While Arizona did not prevail in the Court's application of a test which balances the State's regulatory interest in on-reservation conduct against the federal interest in encouraging tribal self-government, Kansas did prevail, leading to the remand of *Prairie Band II* back to the Court of Appeals.

The 10th Circuit found *Bracker* inapplicable in the case of motor vehicle titling because *Bracker* only applied where "a state asserts authority over the conduct of non-Indians engaging in activity on the reservation." See *Prairie Band,* 476 F.3d at 823 (quoting *Bracker* at 448 U.S. 144).

The 10th Circuit held, after supplemental briefs and rehearing on oral argument, that:

> "The conduct of non-Indians, whether on-or off-reservation, is not at issue here. Nor does this case merely concern the conduct of Indians off-reservation. The fact that motor vehicle titling and registration is a traditional government function…makes clear that the issue does not concern the location of any individual vehicle or residency of any individual driver, but the sovereign right to make equally enforceable and equally respected regulations in an arena free of discrimination. *Cf. Cabazon Band of Mission Indians v. Smith*, 388 F.3d 691, 699 (9th Cir. 2004) (finding proper comparison for assessing discriminatory application of emergency light bar regulation was between law enforcement

> agencies). Accordingly, we must no longer concern ourselves with the severity of the effect of the State's regulation on the Nation's sovereign interests, but determine whether the State's law discriminates against the Nation's right to make such regulations vis-a-vis other sovereigns. *See Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 148-49, 93 S.Ct. 1267, 36 L.Ed.2d 114 (1973)." *Prairie Band,* 476 F.3d at 823-824.

It is curious that Koleski and the lower courts would repeat the fallacy that Michigan law requires a reciprocity agreement when MCL 257.243 is not even a statute requiring reciprocal agreements between states and foreign sovereigns as was the case in *Prairie Band*. Comparing Kan. Stat. Ann. § 8-138a with MCL 257.243 shows clearly that while Kansas had a proviso for reciprocal quid pro quo between states, Michigan's law is a unilateral and blanket *exemption* that requires no such mutual recognition in return.

Koleski, in his argument in the Circuit Court, would have the definitive boundaries of the statutes expanding far beyond reason. The doctrine of *expressio unius est exclusio alterius* holds it fair to assume that, had the legislature intended other restrictions upon the right of action, it would have expressed the same in the statute. See Williams, Clifton, "Expressio Unius Est Exclusio Alterius", 15 Marq. L. Rev. 191, 194 (1931). 194, citing *Eliot v. Eliot,* 81 Wis. 295 (1892).

B. Petitioner was Denied a Fair Trial

The Michigan Rules of Evidence do state that the *absence of a record* is admissible under the exceptions to the hearsay rule under MRE 803 Subd. 7 and 10. But that door swings both ways the moment an officer of the court for the State of Michigan chooses to file a motion in limine subject to Rule 11.

It seems quite remarkable that a person in a truck on a roadside stop, bearing a license plate that is putatively issued by a tribe with the standing to claim intergovernmental immunities and privileges, would tender a copy of an email between the FBI CJIS Division and one of its tribal council members, specifically addressing the validity of the plates and identification in question, and the prosecution doesn't make the effort to follow up with that agent of government in the Justice Department. Does it not bear the need for inquiry that no one bothered to pick up a phone? Because, if someone did it is certainly ***not in the record***. That ***absence*** is equally as justiciable and cognizable as is the absence of record imputed by Sergeant Pechman's assertion that he just couldn't find the plate in the LEIN system.

C. State's Motion in Limine Suppressed Brady Material

Judge Hulewicz's reasoning articulated in his granting prosecution's motion in limine with respect to the issue of the admission of the Treaty of Holston is perplexing for the simple reason that at one point in the proceedings he readily admits he is in new territory and, doing the best he can, he errs on the side of making sure this material is excluded so as to not unnecessarily confuse the jury.

To be clear, the Court's reasoning for granting the motion in limine on this issue is grounded under MRE 403 and as justification it suggests admitting the treaty as evidence, for the jury, would be "confusing and irrelevant." [see 5th trial transcript at p. 21, line 7-8] But what is fascinating is how, only a few pages later, this whole issue is rendered moot when all parties concede a bench trial is preferable to a jury trial. [see *Id.* at pg. 28]. So, if all parties agreed to a bench trial, can someone explain how admitting the treaty as an exhibit would confuse the jury?

In this same portion of the transcript Judge Hulewicz is sincerely struggling to juxtapose issues of "recognition" and "reciprocity" when his very struggle is the fact that he is traversing into territory he may not venture as a judge for a district court in the State of Michigan…*a federal political question.* Justice Brennan made quite clear, in *Baker v. Carr*, 369 U.S.186, 216 (1962), the Court's necessary deference to Congress in determining whether Indians are recognized as a tribe, as it reflects familiar attributes of political questions while, at the same time, acknowledging that there is no blanket rule:

> "'It is for [Congress] . . and not for the courts, to determine when the true interests of the Indian require his release from [the] condition of tutelage,' . . . it is not meant by this that Congress may bring a community or body of people within the range of this power by arbitrarily calling them an Indian tribe. . . ." *United States v. Sandoval,* 231 U.S. 28." [7]

[7] This Court may recall its decision in *Sandoval* which

Did Mr. Koleski offer so much as an email from the Office of the Legal Advisor having made a determination on behalf of the Secretary of State that the United States is not empowered to entreat the Aniyvwiya Tribal nation as a signatory to the Treaty of Holston? Petitioner would suggest that no such letter has to date seen any ink from the State Department since the FBI email to the Aniyvwiya tribal council in 2014. This is because, the relevancy and application of the list of "recognized" tribes in 87 FR 4636 notwithstanding, no one in the Executive branch of the United States may sign such a document in light of the Congressional findings in Public Law 102-454, 108 Stat. 4791, Sec. 103(4) which states that, "a tribe which has been recognized [by Congress as enumerated in Sec. 103(3)] may not be terminated except by an Act of Congress."

Not even the "Cherokee Nation" in Oklahoma can pick and choose which Cherokee are and are not a part of that nation. See *The Cherokee Nation v. Nash et. al.,* 267 F. Supp. 3d 86 (D.D.C. 2017). If the judge had read the treaty, that he thought would "confuse the jury," he would have seen that the Treaty of Holston of 1791 was not between the United States and the "Cherokee Nation" in Oklahoma but rather between the United States and "the Undersigned Chiefs and Warriors of the Cherokee Nation of Indians, on the Part and Behalf of said Nation."

To "unrecognize" the parties to the treaty ***requires an Act of Congress***, which is why the Judge in *Cherokee Nation v. Nash* rendered an opinion that informed the State Department, the Justice

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repudiated the decision in *United States v. Joseph,* 94 U.S. 614 (1876), which held the Pueblos were not "Indians."

Department, the Department of Interior and, derivatively, the Bureau of Indian Affairs, which informed the tribal council in Oklahoma who had to do an about face, call a vote, and rewrite their own Constitution to be on par with a problematic truth of the record.[8]

Petitioner has referenced a correspondence between a member of his Tribal council and a representative of the Federal Bureau of Investigation whereby the validity of both the tribal identification and license plates were the subject matter. When one observes the dashcam video exchange between Sergeant Pechman and Petitioner, it is clear from Pechman's responses that he deems that email as irrelevant. But as the United States Supreme Court has ruled in *Brady vs. Maryland*, Sergeant Pechman doesn't get to make that decision any more than Mr. Koleski does. However, in this case that is exactly what Koleski opted to do on the record. On page 12 of the 5th trial pre-transcript reads a remarkable exchange between Mr. Koleski and Hon. Judge Hulewicz whereby the judge is trying to clarify just which items of evidence Koleski seeks excluded from the record regarding the title to the Chevy Suburban:

> COURT: All right. Did I misunderstand, are you also looking to exclude any reference to the title or – or not? That's what was in your written part, the title of the vehicle.
>
> MR. KOLESKI: Well, your Honor, as far as the title of the vehicle, I – I'm seeking to have that admitted. I think it's relevant to show what the defendant actually gave the

[8] https://www.npr.org/transcripts/1110422542

> officer that day. What I'm seeking to have excluded really is any evidence that this Aniyvwiya tribe has any authority to issue titles that are recognized by the State of Michigan. So, I think it's relevant to show what was handed to the officer and that it was not a valid Michigan registration. But I'm seeking to exclude any argument or testimony that that tribe is actually – has a valid authority to issue a registration in the State of Michigan.

Just so we're clear, the precedent offense is the unlawful use of an otherwise valid plate which, to be valid, must be "registered." Prosecution, in reality, was arguing as its case in chief two offenses for *failing to register* and *failing to procure a registration plate.* In order to prove its case, the State must prove the purported registration on the certificate of title, which it **does want admitted**, is invalid. But then in the same breath the State turns around and seeks to exclude **"*any evidence that this Aniyvwiya tribe has any authority to issue titles that are recognized by the State of Michigan.*"**

The Supreme Court holds that, under the careful prosecutor standard, a prosecutor has an affirmative duty to disclose evidence favorable to a defendant pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963). It applied this standard thirty years later in *Kyles v. Whitely*, 514 U.S. 419 (1995). In *Kyles,* the state withheld inconsistent statements made by an informant, statements made where he incriminated himself, inconsistent descriptions made by the eyewitnesses, and several other pieces of potentially exculpatory evidence. The Court further discusses the

standard in *United States v. Bagely*, 473 U.S. 667 (1985) of the reasonable probability of a different result and affirmed that "[t]he question is not whether the defendant would more likely than not have received a different verdict with the evidence, but whether in its absence he received a fair trial, understood as a trial resulting in a verdict worthy of confidence." *Kyles at 434.*

Kyles noted *Bagley's* touchstone of materiality is a "reasonable probability" of a different result and stated that "the adjective is important." *Id.* This holding in *Kyles* should be held in contrast with Judge West's erroneous application of that standard whereby "different result" became synonymous with "resulted in a different outcome" citing *People v. Dimambro,* 318 Mich. App. 204, 219 (2016) at App. 9. The State's motion in limine asked the Court to suppress the admission of any evidence that the "tribe has authority to issue titles recognized by the State of Michigan."

The Court noted that this test was not a sufficiency of the evidence test but rather that a "defendant need not demonstrate that after discounting the inculpatory evidence in light of the undisclosed evidence, there would not have been enough left to convict." *Id.* The Court noted that the evidence must be considered in whole, not piece by piece. Ultimately, the Court found that based on the evidence that was not brought to light, a reasonable juror could have found Kyles not guilty.

Petitioner was not afforded pretrial discovery by any normal standard in this case. To begin with, Petitioner still had no discovery by his fourth appearance in June and he had to submit a Freedom

of Information Act Request just to obtain the incident report which was redacted. He raised this issue at pretrial with the judge [See TT, 4th Appearance, pp 5-6] and, upon subsequent comparison to a new copy, found other portions redacted that were not in the first. While none of the redactions constitute Brady material *per se,* they show what the state is trying to protect is not hearsay at all, but rather *investigative data* on an ongoing case prior to trial in order to preserve its *probable cause* for the second stop. These redactions were to salvage the determination of probable cause that Pechman chose to defer when he called for in-house legal counsel that same day.

Remember, on the second day, Sergeant Pechman sat and waited for an hour to arrest a suspect for whom he believed he had established sufficient probable cause *after less than 24 hours of extensive research into a VIN for a truck which records at the impound lot and the Secretary of State would show had been properly exported <u>via standard customs form</u>*. And in that brief period, at warp speed, Pechman was researching over two centuries of treaty law, the intricacies of intergovernmental agreements and the internal political structure of a foreign sovereign by cutting through bureaucratic red tape and intimating communications lending him to "believe" in the instruments' invalidity.

Yet, at trial, it appears he went to the wrong website because someone in the legal department said they had seen this stuff before, and it was all bogus. What we do know, from his testimony at trial [TT at page 42], was that his "research" ***began with a call to the legal department***. Everything he does in his investigation from that point on is colored by the

advice he received from an officer of the court who is, nevertheless, not a ***court employee.*** We also know that one particular document, that was not provided nor disclosed in discovery, is nevertheless in the police report. And, ***more importantly,*** we have absolutely no inkling from Pechman's trial testimony and evidence submitted of the investigative process that confirms or denies the relevancy of that document as to Petitioner's standing as well as his state of mind: *a copy of the email between an Aniyvwiya tribal council member and the CJIS Division of the FBI.*

All we have in trial are two things. Sergeant Pechman could not locate the plate in a limited database, and he did some "research" *based on his seeking counsel from an officer of the court*. Like in *Kyles*, this prosecution withheld two key elements of Pechman's criminal investigation: (1) an email from a United States government agent confirming the validity of both the tribal identity cards and the license plates; and (2) a standard customs form through which title was transferred by the State of Michigan to the Cherokee Nation. That, combined with the computer record of the process of exporting the VIN from Michigan to the tribe would seriously have challenged the Court's specious findings that there existed no federal recognition. As for ***reciprocity***, that one is already a matter of record with the Michigan Secretary of State. *After all, Secretary of State Benson did surrender title to the Aniyvwiya.*

Whether the Petitioner would more likely than not have received a different verdict with that evidence is not the threshold standard of Brady material, but whether in its absence the accused

received a fair trial resulting in a verdict worthy of confidence. This test is not a sufficiency of the evidence test but rather that a "defendant need not demonstrate that after discounting the inculpatory evidence in light of the undisclosed evidence, there would not have been enough left to convict." *Id.* The evidence must be considered as a whole, not piece by piece.

III. The State's Lack of Probable Cause For Stop Excludes All Evidence For Derivative Charges

In the landmark case of *Mapp v. Ohio*, 367 U.S. 634 (1961) the Supreme Court ruled that the exclusionary rule, which prevents prosecutors from using evidence in court that was obtained by violating the Fourth Amendment to the U.S. Constitution, applied to the states via incorporation through the due process clause of the 14th Amendment. Justice Clark, writing for the majority, ruled that "all evidence obtained by searches and seizures in violation of the Constitution is, by that same authority, inadmissible in a state court." *Mapp* at 655. Clark famously wrote:

> "[O]ur holding that the exclusionary rule is an essential part of both the Fourth and Fourteenth Amendments is not only the logical dictate of prior cases, but it also makes very good sense. There is no war between the Constitution and common sense. Presently, a federal prosecutor may make no use of evidence illegally seized, but a State's attorney across the street may, although he supposedly is operating under the enforceable prohibitions of the same Amendment. Thus, the State, by

> admitting evidence unlawfully seized, serves to encourage disobedience to the Federal Constitution which it is bound to uphold." *Id*. at 657

Similarly, derivative evidence and testimony are usually excluded as fruit of the poisoned tree, a term coined by Justice Frankfurter in *Nardone v. United States,* 308 U.S. 338 (1939). The doctrine has been applied to unlawful arrests and derivative charges in *Wong Sun v. United States,* 371 U.S. 471 (1963) whereby "verbal evidence which derives so immediately from an unlawful entry and an unauthorized arrest…is no less the 'fruit' of official illegality than the more common tangible fruits of unwarranted intrusion." *Id*. at 486

The Court did not hold that all evidence is excluded simply because it would not have come to light but for the illegal actions of law enforcement but, rather, the more apt question in such a case is "whether, granting establishment of the *primary illegality*, the evidence to which instant objection is made has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint." *Id.* at 488 citing Maguire, Evidence of Guilt 221 (1959) (emphasis added). This crucible upon which this chain of events hinges is the ***legality*** and exploitation of the second investigatory stop executed on March 25th, whereby Sergeant Pechman's reasonable suspicion the previous day purportedly rose to the level of probable cause to execute an arrest.

On March 24th, Sergeant Pechman made a routine traffic stop based on reasonable suspicion of a registration offense. At trial Sergeant Pechman was

asked, with respect to the initial stop [see Trial Transcript p. 45 at line 10-16]:

> Q - … you said the reason for the stop was that you said you suspected the plates being invalid. Other than that, did you suspect me of committing any kind of felony?
>
> A – No.
>
> Q – You didn't have a call from anyone?
>
> A – No call.

No reasonable person can form the conclusion that between 1:00 pm the afternoon of the initial stop and 9:30 am the next morning Pechman had completed a remotely sufficient investigation of the formerly registered truck whose MSO had been legally exported to a consignee listed on a standard form, processed by the Michigan Secretary of State and in public record, as "Aniyvwiya Tribal-nation" on line 4a of that form and whose "COUNTRY OF ULTIMATE DESTINATION" was "Cherokee Country/Aniyvwiya" on line 7 of that same federal form. This Brady material the State could effectively exclude by its incredible motion in limine. We already know the "probable cause." It was a phone call with an attorney in the Michigan State Police. While the Michigan Courts do not seem to have wrestled with this issue yet, its sister jurisdiction in Illinois has. In *People v. Boyer,* 305 Ill. App. 3d 374 (1999), the Court made an important distinction on the application of the exclusionary rule with respect to "court employees."

A beat cop can rely on a court administrator. He can even rely on a judge. And if either of them proves

to be in error, well, they are a court employee so the fruit of that advice, even if later proven to be bad, is still valid admissible cause. But a prosecutor, or an attorney for MSP legal, does not enjoy the protection of that mantle because he is a part of the "competitive" process[9] of law enforcement. And as such, his bad advice, unlike a clerk or the judge, is not immune from the exclusionary rule. Sergeant Pechman called MSP Legal, and someone made a bad call, sent Pechman to the wrong website and Pechman ran with it.

IV. The Doctrine of Corporation by Estoppel Bars the State of Michigan From Denying Recognition of the Aniyvwiya Tribal Nation for the Cherokee Nation of Indians.

Under Michigan law, the doctrine of Corporation by Estoppel provides Petitioner an equitable remedy that would not even concern his tribe's "recognition." Even if, for argument's sake, one was to stipulate the party who received title and issued the plate was merely operating under an assumed name or association, the Secretary of State of Michigan is estopped from denying its "corporate" existence by virtue of having processed export of the title to the "Cherokee Nation of Indians." See *Durey Dev. v. Perrin*, 288 Mich. 143, 152-153 (Mich.Ct.App. 2010) (citing *Estey Mfg. v. Runnels*, 55 Mich. 130, 133 (Mich. 1884)).

This doctrine, though not cited directly, was a basis for the First Circuit's decision in *Bottomly* (See p. 6, fn. 4 Supra.). Mr. Bottomly endeavored to enforce a contingency contract he clearly entered into with the

[9] See *Boyer* at 379.

Passamaquoddy tribe *as a tribe* and then attempted to deny its recognition as a tribe when it invoked its immunity from suit as a sovereign. The First Circuit essentially employed the doctrine of Corporation by Estoppel when it held Bottomly could not have it "both ways" and thereby upheld the trial court's recognition of the Passamaquoddy's sovereign immunity notwithstanding its unresolved "status" as a "tribe" as opposed to an "ethnic association." *Bottomly v. Passamaquoddy Tribe,* 599 F.2d 1062-3.

Similarly, the State of Michigan erroneously sought a motion in limine which excluded "any evidence that this Aniyvwiya tribe has any authority to issue titles that are recognized by the State of Michigan" when Secretary of State Benson had already recognized the very opposite authority for the record when it surrendered the MSO to the tribe.

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CONCLUSION

The problem is, under *Baker v. Carr* and the Political Question Doctrine, Sergeant Pechman required *another reason* to stop the vehicle other than his erroneous opinion that he could determine the "validity" or "recognition" of the tribe who issued the license plate, particularly when the State of Michigan has already embraced a determination of validity in favor of the Petitioner. The State of Michigan must be estopped from denying its prior recognition of the tribe's municipal corporate existence when it transferred title to that tribe respectively.

Pechman may or may not have conducted a debatable amount of "research" but that is not what

he claimed as the basis for his decision to make the arrest the second day. He testified that he *relied* on an opinion of an MSP legal advisor that proved to be both an error in fact and, more importantly, ***an error in law***. He could not testify if he even went to the right website so even if MSP Legal or Sergeant Pechman *did* consult with some outside counsel, neither could even conclude they *were talking about* ***this tribe***.

We do not need to rely on the Brady material we know exists in order to impeach the sufficiency of the investigation. *None of the above parties have the authority to make the political determination that would be the purported foundation for the arrest because they do not have the Congressional authority to determine the sovereignty of the Aniyvwiya any more than any State Court does.*

The apprehension was illegal, and it is that illegal apprehension which Sergeant Pechman exploited to derive a second and third charge upon which he only formed the basis of the second day after the second stop.

This set of circumstances rendered the entire affair void for want of any probable cause of a crime, traffic or otherwise. As a result, all three charges were fruits of a tree poisoned by Pechman's reliance on erroneous legal opinion from a member of the State of Michigan's executive branch.

Therefore, your Petitioner requests this Honorable Court to grant this petition for certiorari herein and remand the conviction and sentence to the District Court to dismiss this case and vacate Petitioner's sentence respectively.

DATED: April 17, 2024

By: _____ _____

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