23-5112

Case No._____

IN THE SUPREME COURT OF THE UNITED STATES

MARK E. SELLS, *Petitioner,*

-vs-

UNITED STATES, *Respondent,*

To the Honorable Amy Coney-Barrett,

Associate Justice of the United States Supreme Court and,

Circuit Justice for the Seventh Circuit, and;

To the Honorable Neil M. Gorsuch,

Associate Justice of the United States Supreme Court and,

Circuit Justice for the Tenth Circuit

ON PETITION FOR A WRIT OF CERTIORARI

FOR: UNITED STATES TENTH CIRCUIT COURT OF APPEALS,

CASE No. 22-5114 ('En Banc' rehearing denied 6-5-23)

PETITION FOR WRIT OF CERTIORARI

Counsel for Applicant:

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PETITION TO UNITED STATES SUPREME COURT FOR CERTIORARI TO HEAR SELLS' APPEAL ON QUESTION(S):

Question #1: Did the Federal District Court and United States Tenth Circuit Court of Appeals, violate Article I, Article 4, Article VI, of the United States Constitution by enacting, applying, and givig 'effect' to a 'Judicial' law that negated and nullified United States statutory law legislated and passed by the United State Congress and signed into law by the President, with their ruling(s) making 'unreasonable application of United States Supreme Court law', and being 'contrary to other, long established United States Supreme Court law', as well as being in direct conflict with other 'circuit courts' precedent?

Question #2: Did the Federal District Court, N.D. Oklahoma, and the United States Tenth Circuit Court of Appeals violate Sells Right to 'Due Process' by enacting and applying a 'Judicial Law' [nullifying U.S. 'Statutory Law'] to re-characterize Sells' 'specific' motions, made under a 'specific' statute for 'specific' relief, into a motion under a 'general' statute for 'general' 'Habeas' relief, for the SOLE purpose of avoiding adjudication of Sells 'motions/claims' in which 'merit' was shown?

PARTIES TO PROCEEDING:

MARK E. SELLS, Petitioner,;

UNITED STATES, Respondent,;

and 'interested party' [in Opposition]: STATE of OKLAHOMA; who:

(has failed to respond to all filings of Sells, and has not made 'Entry of Appearance').

LIST OF RELEVANT PROCEEDINGS:

1. District Court, N. D. Okla., Order Denying Relief, dtd 12-13-2022, (Appendix 'B') in case no. '04-CR-57-TCK', ['*United States v. Sells*',] *on 'Motion Under 18 U.S.C. §3145(b); §3742(a)(3),(c)(1), To Vacate Washington County, Oklahoma's Illegal Detention Order In Washington County, Okla., Case # CF-2004-239'* ***(Dkt. #'s 65 & 66)***, *United States v. Sells, 463 F.3d 1148(10th Cir.2006)*[1] *Original conviction, by* Plea Agreement
2. Appellant's Appeal to U.S. 10th Cir., dtd 2-21-2023, 'United States v. Sells', appeal no. 22-5114, . Appendix 'A'.
3. U.S. 10th Cir. Order for 'Limited Remand' in '*United States v. Sells*', *appeal no. 22-5114*, dtd 3-17-23. Appendix '_E_'.
4. District Court, N. D. Okla., Order Denying 'Certificate of Appealability', dtd 3-31-2023, (Appendix '_H_') in case no. '04-CR-57-TCK', ['*United States v. Sells*',] on remand from U.S. 10th Cir., Order dtd 3-17-2023 [case no. 22-5114].

[1] Published Opinion – U.S. 10th Cir. Court of appeals, 2006

5. U.S. 10th Cir. Order referring Sells' 'Petition to Court to Hear appeal 'En Banc", to the three judge panel in '*United States v. Sells*', *appeal no. 22-5114*, dtd 3-20-23. Appendix '_K_'.
6. U.S. 10th Cir. Order, dtd 3-31-23, referring Sells' motions and 'opposition' to the three judge panel in '*United States v. Sells*', *appeal no. 22-5114*, without deciding these issues, tho relevant to the determination of the 'status'/classification, of Sells' appeal before the court. Appendix '_O_'.
    a. 'Appellant's Opposition to Court Order For Limited Remand, dtd 3-17-23', mailed on 3-27-2023; in 10th Cir. Appeal no. 22-5114
    b. 'Appellant's Motion to Vacate/Quash Order For Limited Remand, dtd 3-17-2023' mailed 3-27-2023; in 10th Cir. Appeal no. 22-5114
    c. 'Appellant's Motion to Stay District Court, N.D. Of Oklahoma's Ruling/Opinion on Issuance of a C.O.A. on Appellate Order (dtd 3-17-23) Upon Denial of Relief', mailed 3-30-2023; in 10th Cir. Appeal no. 22-5114
    d. 'Appellant's Motion to Appoint Appellate Counsel, to protect Sells' 'rights' from abuses by the 'Court', mailed 3-31-2023; in 10th Cir. Appeal no. 22-5114
    e. 'Appellant's Opposition to Court Order , dtd 3-31-23', mailed on 4-4-2023; in 10th Cir. Appeal no. 22-5114
7. U.S. 10th Cir. Order, dtd 4-4-23, referring Sells' motions and 'opposition' to the three judge panel in '*United States v. Sells*', *appeal no. 22-5114*,

without deciding these issues relevant to the determination of the 'status'/classification, of Sells' appeal before the court. Appendix 'M'

a. 'Appellant's Motion to Appoint Appellate Counsel, mailed 3-31-2023; in 10th Cir. Appeal no. 22-5114

8. U.S. 10th Cir. Order denying Certificate of Appealability and dismissing Sells appeal in '*United States v. Sells*', *appeal no. 22-5114*, dtd 5-3-23. Appendix 'A'.

9. U.S. 10th Cir. Order denying rehearing in 'United States v. Sells',# 22-5114, dtd 6-5-23. Appendix 'C'.

10. 'State of Oklahoma v. Mark Edwin Sells', CF-2004-239, (2006). Appellant filed for post-conviction relief[2] in Oklahoma, 4-29-21, in Washington County, OK. Relief Denied on 10-29-21. Appendix 'D'.

[2] based on *McGirt v. Oklahoma, 591 U.S. ___, 121 S.Ct. 2454 (2020)*

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Appendix 'F' State of Oklahoma v. Mark Edwin Sells, CF-2004-239, Order dtd,5-14-2021, stating 'Findings of Fact'

Appendix 'G' Sells Cherokee Tribal Membership & C.D.I.B.[3] card

Appendix 'H' Dist.Court, N. D. Okla., Order Denying 'C.O.A.

Appendix 'I' U.S. 10th Cir. Order, dtd 3-31-2023, referring Sells' 'Opposition to Order for Limited Remand, dtd 3-17-2023', to three-judge panel without first determining the type of motions Sells actually made and therefore whether or not 'remand' was needed or required.

Appendix 'J' U.S. 10th Cir. Order, dtd 4-4-2023, Denying Motion to Appoint Counsel.

Appendix 'K' U.S. 10th Cir. Order referring Sells' 'Petition to Court to Hear appeal 'En Banc", to panel dtd 3-20-23, rather than to full court.

Appendix 'L' U.S. 10th Cir. Order, dtd 4-3-2023, on Governments Motion to Dismiss.

Appendix 'M' U.S. 10th Cir. Order, dtd 4-4-23, referring Sells' motion to 'Stay Dist. Court, N.D. Okla., from ruling on C.O.A.

Appendix 'N' Sells 'Notice of Intent to Appeal'

Appendix 'O' U.S. 10th Cir. Order, dtd 4-11-2023, refering Sells' 'opposition' to the three judge panel, without first determining whether Sells filed Motionsunder 18 U.S.C. §§ 3145(b),3742(a)(3)(c)(1),or under 28 U.S.C. § 2254(a

[3] Dept. of Interior, Bureau of Indian Affairs [card] – 'Certified Degree Indian Blood'

TABLE OF AUTHORITIES CITED **On PAGE #'s**

United States Constitution:

OPINIONS BELOW

- District Court, N. D. Okla., Order Dismissing Sells' motion dtd 12-13-2022, (Appendix 'B') in case no. '04-CR-57-TCK'; unpublished
- U.S. 10th Cir. Court, Order for Limited Remand, dtd 3-17-2023; Judges Bacharach and Phillips; Appendix 'E'
- District Court, N.D. Okla., Order Denying C.O.A., dtd 3-31-2023, on 'remand'; Appndx 'H'
- U.S. 10th Cir. Order denying relief in '*United States v. Sells*', *appeal no. 22-5114*, dtd 5-3-23. Appendix 'A'. unpublished
- U.S. 10th Cir. Order denying rehearing.'United States v. Sells',# 22-5114, dtd 6-5-23. Appendix 'C'. unpublished
- 'State of Oklahoma v. Mark Edwin Sells', CF-2004-239, (2006). Post-conviction relief Denied on 10-29-21. Appendix 'D'.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1); as provided for in United States Supreme Court Rules, Rule(s) 10 (a)(c). The U.S. 10th Cir., has entered a decision in conflict with other Appellate Circuit decisions concerning 18 U.S.C. § 3145 (b), and 18 U.S.C. § 3742 (a)(3)(c)(1)); and in doing so, has 'so far departed from the accepted and usual course of judicial proceedings' by, [earlier] enacting, and [now] upholding and sanctioning a 'Judicial Law' in violation of the U.S. Constitution, that negates and nullifies U.S. Statutory law, and sanctions this 'departure' by a lower

court (U.S. Dist. Court, N.D. Okla.)(appndx 'B', 'H'); with the U.S. 10th Cir., deciding an important question of Federal law in a way that directly conflicts with multiple, relevant decisions of the United States Supreme Court, such actions giving this Court Jurisdiction.

- U.S. 10th Cir., decided my Appeal [#22-5114] on: 5-3-23 (Appndx 'A');
- Timely petition for re-hearing '*En Banc*' mailed/filed on: 5-12-23;
- U.S. 10th Cir., denied for 'En Banc' re-hearing on: 6-5-23(Appndx 'C')
- Notification of all parties, including 'interested party' [Oklahoma] have been made, as noted and sworn to in Certificate of Mailing at document(s) end.

Pro Se litigant requests the protection of *Haines v. Kerner, 404 U.S. 519-521, 92 S. Ct. 594, 30 L.Ed.2d 652 (1972);*

CONSTITUTIONAL and STATURORY PROVISIONS

United States Constitution:

Article 1, Sec. 1. [Legislative powers vested in Congress.]

"All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."

Sec. 8

"[The Congress shall have power ...] 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."

Article 4, Sec. 3, cl. 2

"The Congress shall have the Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United

States; and nothing in this constitution shall be so construed as to Prejudice any Claims of the United States, or any particular state."

Article 6, Par. 2,

"This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; ..., shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby,"

Amendment V

"No person shall be ..., nor be deprived of life, liberty, or property, without due process of law;"

Amendment VI

"In all criminal prosecutions, the accused shall enjoy the right to speedy and public trial, by an impartial jury of the State and district wherein the cyime shall have been committed, which district shall have been previously ascertained by law, ..."

Amendment VIII

"..., nor cruel and unusual punishments inflicted."

Amendment XIII

"Neither slavery nor involutary servitude, except as punishment for crime whereof the party shall have been duly convicted, shall exsist within the United States, or any place subject to their jurisdiction."

Amendment XIV

Section 1; "No State shall make or enforce and law which shall abridge the priviledges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."
Section 5; "the Congress shall have power to enforce, by appropriate lefislation, the provisions of this article."

The Declaration of Independence (The foundation for individual [American] 'rights). "we hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness."

18 U.S.C. § 1151

"means, (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government,"

18 U.S.C. § 1153(a)

"Any Indian who commits ... within the Indian country, shall be subject to the same law and penalties as all other persons committing any of the above offenses, within the **exclusive** jurisdiction of the United States." (emph. added)

18 U.S.C. § 3145(b),(c). § 3145 Review and appeal of a release or detention order

(b) "Review of a detention order. If a person is ordered detained by a magistrate [United States magistrate judge], or by a person other than a judge of a court having original jurisdiction over the offense and other than a Federal appellate court, the person may file, with the court having original jurisdiction over the offense, a motion for revocation or amendment of the order. The motion shall be determined promptly."

(c) "Appeal from a release or detention order. An appeal from a release or detention order, or from a decision denying revocation or amendment of such an order, is governed by the provisions of section 1291 of title 28 and section 3731 of this title [18 USCS § 3731]. The appeal shall be determined promptly." (emph. Added (b)(c)

18 U.S.C. § 3742(a)(3),(c)(1) § 3742. Review of a sentence

(a) Appeal by a defendant. A defendant may file a notice of appeal in the district court for review of an otherwise final sentence if the sentence:

(1) was imposed in violation of law;

(3) is greater than the sentence specified in the applicable guideline range to the extent that the sentence includes a greater fine or term of imprisonment, probation, or supervised release than the maximum established in the guideline range, ... or

(c) Plea agreements. In the case of a plea agreement that includes a specific sentence under rule 11(e)(1)(C) of the Federal Rules of Criminal Procedure:

(1) a defendant may not file a notice of appeal under paragraph (3) or (4) of subsection (a) unless the sentence imposed is greater than the sentence set forth in

such agreement; and

(d) Record on review. If a notice of appeal is filed in the district court pursuant to subsection (a) or (b), the clerk shall certify to the court of appeals:

(1) that portion of the record in the case that is designated as pertinent by either of the parties;

(e) Upon review of the record, the court of appeals shall determine whether the sentence:

(1) was imposed in violation of law;

(3) is outside the applicable guideline range, and

(B) the sentence departs from the applicable guideline range based on a factor that:

(i) does not advance the objectives set forth in section 3553(a)(2) [18 USCS § 3553(a)(2)]; or

(ii) is not authorized under section 3553(b) [18 USCS § 3553(b)]; or

(iii) is not justified by the facts of the case; or

(C) the sentence departs to an unreasonable degree from the applicable guidelines range, having regard for the factors to be considered in imposing a sentence, as set forth in section 3553(a) of this title [18 USCS § 3553(a)] and the reasons for the imposition of the particular sentence, as stated by the district court pursuant to the provisions of section 3553(c) [18 USCS § 3553(c)]; or

(f) Decision and disposition. If the court of appeals determines that;

(2) the sentence is outside the applicable guideline range and the district court failed to provide the required statement of reasons in the order of judgment and commitment, or the departure is based on an impermissible factor, or is to an unreasonable degree, or the sentence was imposed for an offense for which there is no applicable sentencing guideline and is plainly unreasonable, it shall state specific reasons for its conclusions and;

(A) if it determines that the sentence is too high and the appeal has been filed under subsection (a), it shall set aside the sentence and remand the case for further sentencing proceedings with such instructions as the court considers appropriate, subject to subsection (g);

(g) Sentencing upon remand. A district court to which a case is remanded pursuant to subsection (f)(1) or (f)(2) shall resentence a defendant in accordance with section 3553 [18 USCS § 3553] and with such instructions as may have been given by the court of appeals, except that:

(2) The court shall not impose a sentence outside the applicable guidelines range except upon a ground that:

(emph. added (a)(c)(d)(e)(f)(g))

25 U.S.C. § 1301 For purposes of this subchapter, the term···
(4) ""Indian" means any person who would be subject to the jurisdiction of the United States as an Indian under section 1153, title 18, if that person were to commit an offense listed in that section in Indian country to which that section applies."

25 U.S.C. § 1302

(f) "Nothing in this section affects the obligations of the United States, ..., to investigate and prosecute any criminal violation in indian country".

42 U.S.C. § 1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress ...

STATEMENT of the CASE

Facts Material to Consideration of Questions Presented

1. Sells is and was 'Native American' (Appendix 'G'; 25 U.S.C. § 1301(4); 18 U.S.C. § 1153(a)), at the time of the offenses Oklahoma convicted Sells of, with the Federal Court, N.D. Oklahoma, holding exclusive original jurisdiction over.
2. The 10th Circuit, by 'unilaterily' declaring that ALL requests for review of a 'state' sentence are 'habeas' requests (*Palma-Salazar v. Davis, 677 F.3d 1031 (10th Cir. 2012))*, and applying this precedent in the case at bar, *United States v. Sells, 04-CR-57-TCK, Appeal # 22-5114 (2023))*, disregarding the statute brought under and the U.S. Supreme Court's 'general/specific cannon'

regulating 're-characterization', has 'enacted' a 'Judicial Law', that nullifies and negates U.S. Statutory law, in violation of Article(s) 1, 4, and 6 of the U.S. Constitution, to deny Sells 'Due Process of Law'. U.S. Const., Amend V, IV, XIV

3. Sells filed 'specific' motions, requiring 'specific' circumstances, for 'specific' relief/review offered by those Statutes (18 U.S.C. § 3145 (b), and 18 U.S.C. § 3742 (a)(3)(c)(1)), which United States Supreme Court 'General/specific cannon'/precedent[4] says cannot be re-characterized into a 'general' 'habeas' request under 28 U.S.C. § 2254 (a).

4. Sells filed a lawful motion for review of his 'detention' (18 U.S.C. § 3145 (b) by Oklahoma[5] with the Federal District Court holding 'exclusive', 'original jurisdiction' over the offense (18 USC 1153(a); *McGirt v. Oklahoma, 591 U.S. ___, 121 S.Ct. 2454 (2020); Oklahoma v. Castro-Huerta, 597 U.S. ___, p. 10 & 11 (6-29-2022).*) under 18 U.S.C. § 3145 (b), which the Fed. Dist. Court denied on 12-13-2022, declaring Sells motion was an improperly filed Habeas request. The Fact that the District Court did NOT consider Sells motion(s) to be an actual 'Habeas' request requiring the Court to make C.O.A. determination, which it did NOT initially make because Sells did NOT file for Habeas relief. *Apppendix 'B','E','H'*

5. The 10th Cir. Ruling is 'contrary' to several other U.S. Circuit Court rulings, which state that 18 U.S.C. § 3145 (b) should be used BEFORE filing for 'Habeas' relief, when 'specific' circumstances apply that allow a person to file

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4 cited in argument

5 Washington County, OK., case 'CF-2004-239', made without 'subject-matter jurisdiction'.

under 18 U.S.C. 3145(b). See: ***Fassler v. United States,*** *858 F.2d 1016 (**5th Cir.** 1988), cert. denied, 493 U.S. 825, 110 S. Ct. 86, 107 L. Ed. 2D 52 (1989), cert. denied, 490 U.S. 1099, 109 S. Ct. 2450, 104 L. Ed. 2D 1004 (1989))*; ***Gon v. Gonzales,*** *534 F.Supp.2d 118 (**D.D.C.** 2008).* U.S. v. Torres, *86 F.3d 1029 (**11th Cir.** 1996);* U.S. v. Goforth, *546 F.3d 712 (**4th Cir.** 2008);* Fernandez-Alfonso, *813 F.2d 1571 (**9th Cir.** 1987);* United States v. Salerno, *481 US 739, 95 L Ed 2d 697, 107 SCT 2095 (1987)- stating 18 USC 3145 is 'valid' law.*

6. 18 U.S.C. 3145(c) gave Sells the statutory right to appeal the Dist. Court's denial of Sells' motion under 3145(b)(Appendix 'B'). Sells filed a timely 'Notice of Intent to Appeal on 12-13-2022. Appdx 'N'.
7. Sells also filed a lawful motion claiming violation of the terms of his Federal Plea Agreement in '04-CR-57-TCK', N.D. Okla., (2004), (*United States v. Sells, 463 F.3d 1148 (10th Cir. 2006)– Original conviction-via Plea Agreement),* under 18 U.S.C. § 3742 (a) and (c), which mandates [by statute] Appellate review.
8. 18 U.S.C. § 3742 (d) **requires** the District Court (N.D. Okla.) Clerk to certify to the Appellate court, the 'record' for Appellate review of Sells Federal Plea Agreement. The Fed. District Court, N.D. Oklahoma, did not do this. Appdx 'B'
9. 18 U.S.C. § 3742 (e), **requires** the Appellate Court make a determination if the sentence is:

(1) was imposed in violation of law;
(3) is outside the applicable guideline range, and:
(B) the sentence departs from the applicable guideline range based on a factor that:
(i) does not advance the objectives set forth in section 3553(a)(2) [18 USCS §

3553(a)(2)]; or

(ii) is not authorized under section 3553(b) [18 USCS § 3553(b)]; or

(iii) is not justified by the facts of the case; or

(C) the sentence departs to an unreasonable degree from the applicable guidelines range, having regard for the factors to be considered in imposing a sentence, ...

The 10th Circuit Court did not do this. Appdx 'A'

10. 18 U.S.C. § 3742 (f) **requires** the Appellate Court make a decision and 'disposition' of the appeal based upon its determination of the facts; either upholding the [in this case, NEW, modified] sentence, or remanding for re-sentencing (18 U.S.C. § 3742 (g)) in-line with the original Plea Agreement. The 10th Circuit Court did not do this. Appdx 'A'

11. To 're-characterize' Sells' motions into general 'Habeas' request(s), for the sole purpose of avoiding adjudication of Sells' claims, violates Sells right to 'Due Process of Law' under the VI and XIV Amendments of the U.S. Constitution, and U.S. Supreme Court law in *Haines v. Kerner, 404 U.S. 519-521, 92 S. Ct. 594, (1972),* as Sells' claims were cognizable and properly brought, with merit.

12. Oklahoma does not and did not have jurisdiction over 'Indians' [like Sells], on 'Indian Land' on the Eastern half of Oklahoma. *Oklahoma v. Castro-Huerta, 597 U.S. ___, p. 10 & 11 (2022)*; 25 U.S.C. § 1301(4); 18 U.S.C. § 1153(a)

ARGUMENT and AUTHORITY

I

This case is based upon **the unique circumstance created by the '*McGirt [v. Oklahoma*'] ruling,** and subsequent *Oklahoma v. Castro-Huerta, 597 U.S. ___, p. 10 & 11 (2022)* ruling, whereas, never before has a Federal Court held 'Exclusive Original Jurisdiction' over a 'State' conviction, and never before has 18 U.S. § 3145(b) allowed for 'specific' review of a 'state' prisoner's detention by a Federal District Court holding 'original jurisdiction'.

There is a HUGE Constitutional difference between **MOST** and **ALL**. To say that most incarcerated persons' 'motions' challenging '*the fact or duration of his confinement and seeks immediate release or a shortened period of confinement*' [of a 'State' sentence], are 'Habeas' requests, is to set 'precedent' (*Wilkinson v. Dotson, 544 U.S. 74, @ 79 (2005);*); *Preiser v. Rodrigueez, 411 U.S. 475, at 489, 93 S. Ct. 1827 (1973)),* following the U.S. Supreme Court's 'general/specific' cannon[6], whereas to state that **ALL** such 'motions' are 'Habeas' requests, is to enact a '**Judicial Law**' nullifying and negating U.S. Statutory law, in violation of Art. 1, 4, and 6, of the U.S. Constitution, as the U.S. 10th Cir. did in: *Palma-Salazar v. Davis, 677 F.3d 1031 (10th Cir. 2012).* See: *In re Cline, 531 F.3d 1249, 1253 (10th Cir. 2008); Gould v. Colorado, 45 F.App'x 835, 837 (10th Cir. 2002)(citing Montez v. McKinna, 208 F.3d 862, 867 (10th Cir. 2000). U.S. v. Wesley, 60 F. 4th 1277, 1288 (10th Cir. 2023); U.S. v. Fields, 823 F. app'x 587, 589 (10th Cir. 2020)(unpublished); U.S. v. McIntosh, 716 F. App'x 793, 796*

[6] These rulings set precedent based upon 28 U.S.C. § 2254 being a more 'specific' statute than the very 'general' 42 U.S.C. § 1983 statute; with these High Court's not considering the availability [at the time] of an even more 'specific' statute for relief/review of a 'State' conviction, such as 18 U.S.C. § 3145(b), not available until '*McGirt*'

(10th Cir. 2017)(unpublished); United States v. Harper, 545 F.3d 1230 (10th Cir. 2008); U.S. v. Patrick, 264 F. app'x 693 (10th Cir. 2008)(unpublished).

It is for Congress, and Congress alone, by the text they choose in writing the statute, to declare if other more specific statute's can be applied to seek review of a person's detention and confinement. *RADLAX Gateway Hotel, LLC v. Amalgamated Bank, 566 US 639 (2012)(J. Scalia quoting " Varity Corp. v. Howe, 516 U.S. 489, 519, 116 S. Ct. 1065, 134 L. Ed. 2d 130 (1996) (Thomas, J., dissenting)- "Congress has enacted a comprehensive scheme and has deliberately targeted specific problems with specific solutions."); Alexander v. Sandoval,532 U.S. 275, 287-288, (2001); (J. Scalia saying: "We find that Congress expresses its intent through text and structure"); Magwood v. Patterson, 561 U.S. 320, 334 (2010)(J. Thomas saying, [The Court may not] "replace the actual text with speculation as to Congress' intent").*

A.

The U.S. Tenth Circuit Court of Appeals, has 'enacted' a **'Judicial Law'** by stating "***In this circuit**, a prisoner who challenges the fact or duration of his confinement and seeks immediate release or a shortened period of confinement, **must** do so through an application for habeas corpus." (emph. added)-Palma-Salazar v. Davis, 677 F.3d 1031 (10th Cir. 2012).* The Tenth Circuit also makes 'unreasonable application' of '*In re Cline, supra*', *which said "[i]t is the relief sought, not the pleading's title, that determines whether the pleading is [seeking habeas relief]."* , in ruling to construe both of Sells' motions as improperly filed '*Habeas*' requests. This is in Constitutional error, violating Art. 1, and 4 of the Constitution. It [the court] should have said, ***"It is***

whether the statute [or court rule] used and Pled, is more specific than the 'Habeas' statute [22 U.S.C. § 2254], and challenges a 'state' sentence or length of confinement, that determines whether or not 'Habeas' relief is being sought". Using this 'all-inclusive' 'judicial law' to re-characterize (*Castro v. United States, 540 U.S. 375, 381 (2003))* my lawful, 'specific' motion for 'specific' relief under 18 U.S.C. § 3145(b), for review of my detention; and under 18 U.S.C. § 3742(a)(3)(c)(1) for 'specific' review of my Plea Agreement to see if it has been violated, by Oklahoma, which does not directly, or indirectly, "*challenges the fact or duration of his confinement and seeks immediate release or a shortened period of confinement" (Palma-Salazar v. Davis, supra)*, and thus cannot be 're-characterized' into a 'Habeas' request (*Wilkinson v. Dotson, 544 U.S. 74 (2005)(J. Scalia concurring))*, violates the U.S. Constitution, Articles 1, 4, and 6. The [10th Cir.] 'Court' cannot enact 'Judicial Law' 'for Congress' (*Wayman v. Southard, 23 U.S. 1, 6 L. Ed. 253(1825) saying "Congress may not delegate to courts, or to any other tribunal, powers which are strictly and exclusively legislative."*), especially when this 'Judicial Law' would ' *retard, impede, burden, or in any way control operations of valid laws enacted by Congress.*' *McCulloch v. Maryland, 17 U.S. 316, 4 L.Ed. 579 (1819).* The U.S. 10th Cir. cannot make 'laws', even in 'Indian Country'.[7] See: *U.S. Constitution, Art.1, Sect.1, and 8, and Art. 4.* This has been a foundational principle of American jurisprudence for 200 years. *McCulloch v. Maryland, 17 U.S. 316, 4 L.Ed. 579 (1819); Wayman v. Southard, 23 U.S. 1, 6 L. Ed. 253(1825).* The 'court' may not make 'de minimus' exceptions

[7] *Article 4,Sec. 3, cl. 2 "The Congress shall have the Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States;*

(*Alabama v. Bozeman, 533 US 146, 150 L Ed 2d 188, 121 S. Ct. 2079 (2001)),* or 'change' statutory law through 'judicial re-interpretation' (*Oklahoma v. Castro-Huerta, 597 U.S. ___, p. 10 & 11 (6-29-2022); Arizona v. California, 283 U.S. 423, 51 S. Ct. 522, (1931)),* but must follow statutory text. See: *Alexander v. Sandoval,532 U.S. 275, 287-288, (2001)(Opinion by J. Scalia); Central Bank of Denver, N.A. v. First Interstate Bank f Denver, 511 U.S. 164, 173 (1994).*

B

The U.S. Tenth Circuit Court, in 're-characterizing' Sells 'specific' motions into a 'general' Habeas statute requuiring a C.O.A.[8], ruled 'contrary to U.S. Supreme Court law' established over the last fifty years, as the 'general/specific' cannon regarding 'specific' statutes having precedence over more 'general' statutes, or court rules. The U.S. Tenth Circuit Court ruled 'contrary to U.S. Supreme Court law' in *Morton v. Mancari, [417 U.S. 535, 550-551, (1974)- saying "Where there is no clear intention otherwise, a specific statute will not be controlled or nullified by a general one, regardless of the priority of enactment";* **and** *"[8] The courts are not at liberty to pick and choose among congressional enactments, and when two statutes are capable of co-existence, it is the duty of the courts, absent a clearly expressed congressional intention to the contrary, to regard each as effective."; RADLAX Gateway Hotel, LLC v. Amalgamated Bank, 566 US 639 (2012)(Opinion by J. Scalia)- saying "[I]t is a commonplace of statutory construction that the specific governs the general", quoted from: Morales v. Trans World Airlines, Inc., 504 U.S. 374, 384, 112 S. Ct. 2031 (1992) (Opinion by J. Scalia).* Justice Scalia wrote this 'Opinion' in 2012 (*RADLAX Gateway*

[8] Certificate of Appealability; which they denied to avoid adjudication of Sells' claims. Appdx 'E','H','A"B'.

Hotel, LLC v. Amalgamated Bank), holding the more 'specific' statute relief (of any kind) is filed for under, MUST be given 'effect' and precedence over a 'more general' statute. With this Opinion, Justice Scalia solidified the 'general/specific' ruling in *Morton v. Mancari, supra, (1974),* into U.S. Supreme Court doctrine/'Cannon' that today governs ALL filings for relief of any kind. Sells filed a 'specific' motion, for 'specific' relief, allowed by statute:

> Since the statutory wording of Statute 18 U.S.C. § 3145(b) clearly allows:
>
> "any person" ordered "detained", by "***a person other than a judge of a court having original jurisdiction over the offense and other than a Federal appellate court***, the person may file, with the court having original jurisdiction over the offense, **a motion for revocation or amendment of the order**." (emph. added).

To qualifiy to file for relief under this statute a person must meet 'specific' criteria:

(1) be under a federal court's 'original jurisdiction';

(2) be 'detained' by "a person other than a judge of a court having original jurisdiction over the offense";

(3) The person 'detained' may file a motion for revocation of that order, with the Federal District Court holding 'original jurisdiction' over the offense.

These are very specific circumstances, for specific relief that does not apply to everyone, only those under a Federal court's 'original jurisdiction',allowing Sells to **choose** this 'specific' statute (*The Fair v. Kohler Die & Specialty Co., 228 U.S. 22, 25, 57 L.Ed.716, 33 S. Ct. 410 (1913)*) to seek 'specific relief' [review of his detention], over a 'general 'Habeas' statute [28 U.S.C. 2254]. The Supreme Court, Justice Scalia, in *RADLAX Gateway Hotel, LLC v. Amalgamated Bank, supra,* saying by quoting:

"Congress has enacted a comprehensive scheme and has deliberately targeted specific problems with specific solutions." Varity Corp. v. Howe, 516 U.S. 489, 519, 116 S. Ct. 1065, 134 L. Ed. 2d 130 (1996) (Thomas, J., dissenting); see also HCSC-Laundry v. United States, 450 U.S. 1, 6, 101 S. Ct. 836, 67 L. Ed. 2d 1 (1981) (per curiam) (the specific governs the general."

As the Supreme Court stated in *Oklahoma v. Castro-Huerta, 597 U.S. ___, p.11 (2022)*, the statutory language of a law must be followed and cannot be changed by a court, '*nor can a court speculate as to Congress' intent when it chose the wording of the statute*' (*Magwood v. Patterson, 561 U.S. 320, 334 (2010))*, but must apply the statute as written. See: *Oklahoma v. Castro-Huerta, 597 U.S. ___, p. 11 (6-29-2022);* It [*the 'Castro-Huerta'* court] also said 'the Federal government has 'ALWAYS' held 'exclusive', 'original jurisdiction' over 'Indians' on 'Indian Land in Oklahoma. See: 18 U.S.C. §§ 1151; 1153(a). Earlier Supreme Courts have said [a] Motion(s) can only be 're-characterized' where two (2) statutes both allow a person to file for relief, if the general/specific' cannon[9] is followed. See: *Wilkinson v. Dotson, 544 U.S. 74 @ 79 (2005);*

Sells made a 'specific' motion(s), for 'specific' relief, available only under 'specific' circumstance, that CANNOT be re-characterized into a motion for 'general' relief under 'general' circumstances, under a 'general' statute, like 28 U.S.C. § 2254(a) et seq. See: *RADLAX GATEWAY HOTEL, LLC v. AMALGAMATED BANK, 566 US 639 (2012); J. Scalia quoting Varity Corp. v. Howe, 516 U.S. 489, 519, 116 S. Ct. 1065, (1996) (Thomas, J., dissenting); Morales v. Trans World Airlines, Inc., 504 U.S. 374, 384, (1992); Morton v. Mancari, 417 U.S. 535, 550-551, (1974), HCSC-Laundry v.*

[9] *RADLAX GATEWAY HOTEL, LLC v. AMALGAMATED BANK, 566 US 639 (2012);Morales v. Trans World Airlines, Inc., 504 U.S. 374, 384, (1992)*; Morton v. Mancari, *417 U.S. 535, 550-551, (1974).*

United States, *450 U.S. 1, 6, 101 S. Ct. 836, 67 L. Ed. 2D 1 (1981) (per curiam) (the specific governs the general ").* The 'Judicial Principle' of *'stare decisis'* calls for Certiorari to be granted and the Supreme Court 'general/specific cannon to be followed, overturning this "judicial Law' the U.S. 10th Circuit has given 'effect' to. See: Neal v. United States, *516 U.S. 284, 133 L.Ed.2d 709, 116 S.Ct. 763 (1996).*

I also made a second, 'specific' motion under 18 U.S.C. § 3742(a)(3)(c)(1), claiming my Federal Plea Agreement had been violated by Oklahoma, by increasing the length of my incarceration while under 'exclusive' Federal 'original jurisdiction', to 546 months from the agreed upon 'no more than 30 months incarceration under Federal jurisdiction', by refusing to release me. (Appndx 'D') This is a 'specific' motion for 'specific' review/appellate oversight [**the review of the 'terms' my Federal Plea Agreement**] to see if my Plea Agreement has been violated by Oklahoma's refusal to release me. I did not ask for the Court to release me under this (my second) motion, which I made under statute 18 U.S.C. § 3742(a)(3)(c)(1), in my District Court filing. While my motions (2) **'caption'** may not have been explicitly clear due to my 'Pro Se' status, my Pleading, argument and authority made and cited, did make it 'explicitly' clear that two (2) motions had been made. As the 10th Cir. stated repeatedly to me (Appdx 'B') while trying to 're-characterize' my motions contrary to U.S. Supreme Court 'general/specific' precedent, *"[i]t is the relief sought, not the pleading's title, that determines whether the pleading is [seeking habeas relief]."* (In re Cline, *531 F.3d 1249, 1253 (10th Cir. 2008);*), and my Pleading made it **explicitly** clear that I had made a second motion for **review** of my Federal Plea Agreement to see if it had been

violated. The first motion was under 18 U.S.C. § 3145 (b) to revoke Oklahoma's illegal detetion order of me; but the second (2) motion was under 18 U.S.C. § 3742(a)(3)(c)(1) for review of my Federal Plea Agreement. I claimed, and still do, that the State of Oklahoma 'modified' the terms of Sells' federal plea agreement (*United States v. Lonjose, 663 F.3d 1292 (10th Cir. 2011))* by refusing to release Sells[10] while Sells **is and WAS** under 'exclusive' Federal 'original jurisdiction'. See: *Oklahoma v. Castro-Huerta, 597 U.S. __, p. 10 (6-29-2022).* Federal law, statutory and appellate, mandates appellate review and for a determination to be made as to whether or not my Plea Agreement has been violated. This [2nd] motion does not specifically, or implicitly ask for my release or change in the terms of my confinement, only for review of my Plea Agreement. This second motion for review of my 'Plea Agreement' should have been 'severed' (*United States v. Sells, 463 F.3d 1148 (10th Cir. 2006)*) from Sells first motion under 18 U.S.C. § 3145(b) if they were incompatible as filed, for review of both motions by the Federal District Court. It is irrelevant that I have completed the original 30 month sentence, **as,** under the Plea Agreement, the United States also has Obligations (see Sells' Fed. Plea Agreement in *'04-CR-57-TCK' N.D. Okla., 2004*; 25 U.S.C. § 1302(f)), which have not ended, and did **not end** upon me completing my agreed upon 30 months of incarceration. These obligations of the United States [Federal District Court, N.D. Oklahoma, and the U.S. Attorney's], are to see that I [per the plea agreement] serve **no more than 30 months incarceration** while under 'exclusive' Federal 'original jurisdiction', **EVER**, for any and all crimes that may have been committed on or about March 9/10/11, of 2004, under Federal

[10] Appendix 'D'

jurisdiction. *Hughes v United States, 138 S. Ct. 1765, 201 L. Ed. 2d 72, (US 2018).* The U.S. Supreme Court in *Oklahoma v. Castro-Huerta, 597 U.S. ___, p. 10 & 11 (6-29-2022)* said I have always been under 'exclusive' Federal 'Original jurisdiction', and U.S. Statutory law (18 U.S.C. § 3742(a)(3)(c)(1)) says I have the 'specific' Statutory right to file a motion for appellate review of my Federal Plea Agreement when I have substantial claim that it has been violated. Such as I (Sells) claim: in as I am still incarcerated by Oklahoma without 'subject-matter jurisdiction' (*Gonzalez v. Thaler, 565 U.S. 134, 132 S.Ct. 641 (2012); Henderson v. Shinseki, 562 U.S. 428, 435,131 S.Ct. 1197, 1202-1203 (2011); United States v. Cotton, 535 U.S. 625, 630, 122 S.Ct. 1781 (2002)).* Oklahoma violated my Plea agreement by extending the term of my incarceration to 546 months while under 'exclusive Federal original jurisdiction', which I hold to be in violation of the wording of my Federal Plea Agreement. *McGirt v. Oklahoma, 591 U.S. ___, 121 S.Ct. 2454 (2020);* 18 U.S.C. §1153(a). This means the United States has and had 'exclusive' jurisdiction and over me at the time of the alleged crime Oklahoma charged, convicted and detained me over (*Oklahoma v. Castro-Huerta, 597 U.S. ___, p. 10 & 11 (6-29-2022)*), and [the United States] has the obligation under 25 U.S.C. § 1302(f) to uphold my Federal Plea Agreement, and all U.S. Laws, such as my right to appellate review of my Plea Agreement, and [including] my civil rights in 'Indian territory'. The District Court and Tenth Circuit Appellate Court in 're-characterizing' this motion for review of my Federal Plea Agreement make 'unreasonable application of *Castro v. United States, [540 U.S. 375, (2003)(separate Opinion by J. Scalia, at 385-388),* , rule 'contrary to', violating Justice Scalia's

general/specific cannon in *RADLAX GATEWAY HOTEL, LLC v. AMALGAMATED BANK, 566 US 639 (2012); J. Scalia quoting Varity Corp. v. Howe, 516 U.S. 489, 519, 116 S. Ct. 1065, (1996) (Thomas, J., dissenting); Morales v. Trans World Airlines, Inc., 504 U.S. 374, 384, (1992)*; based upon *Morton v. Mancari, 417 U.S. 535, 550-551, (1974), and HCSC-Laundry v. United States, 450 U.S. 1, 6, 101 S. Ct. 836, 67 L. Ed. 2D 1 (1981) (per curium) (the specific governs the general ").* The Court's use 're-characterization' to authorize '*impermissible punishment*' (VIII Amend. U.S. Constitution) of Sells, far exceeding the agreed upon "no more than 30 months incarceration', to 546 months, this far exceeding Federal sentencing guidelines without explanation or circumstance for this 'excessive' upward departure. See: *Bell v. Wolfish, 441 U.S. 520, 535, and n 16, 99 S.Ct. 1861 (1979); Schall v. Martin, 467 U.S. 269, 104 S.Ct. 2403 (1984).*

In my Appeal to the 10th Cir. (22-5114) I made a second claim. My second claim was that the Federal District Court, N.D. Okla., had also, now, violated my Plea agreement by choosing (See: *Gon v. Gonzales, 534 F.Supp.2d 118 (D.D.C. 2008)-having the power to decide the claim either way)* to refuse to adjudicate my lawfully filed motions, thus choosing to leave me illegally incarcerated, thus modifying the terms of my Plea Agreement (*United States v. Lonjose, 663 F.3d 1292 (10th Cir. 2011)*) by increasing the term of my incarceration to 546 months, while still under 'exclusive' Federal 'original jurisdiction', which imposed 'additional' sentence. ***Hughes v United States, 138 S. Ct. 1765, 201 L. Ed. 2d 72, (US 2018)- 'Once the district court accepts the agreement, the agreed-upon sentence is the only sentence the court may impose';***

United States v. Jordan, F.3d 133 (10th Cir. 2017); U.S. v. Davis, 442 F,3d 1003 (CA7 Wis. 2006); FRCrP- Rule 11 (c).

D

The U.S. Tenth Circuit Court Ruled contrary to several other 'Circuits' in trying to 're-characterize 18 U.S.C. § 3145(b) into a habeas request, with those circuits holding 18 U.S.C. § 3145(b) should be used FIRST, before seeking 'habeas' relief. See: *Fassler v. United States, 858 F.2d 1016 (5th Cir. 1988), cert. denied, 493 U.S. 825, 110 S. Ct. 86, 107 L. Ed. 2D 52 (1989), cert. denied, 490 U.S. 1099, 109 S. Ct. 2450, 104 L. Ed. 2D 1004 (1989)); Gon v. Gonzales, 534 F.Supp.2d 118 (D.D.C. 2008). U.S. v. Torres, 86 F.3d 1029 (11th Cir. 1996); U.S. v. Goforth, 546 F.3d 712 (4th Cir. 2008); U.S. v. Gonzales, 852 F.2d 1214 (9th Cir. 1988); U.S. v. Accetturo, 623 F.Supp. 746 (D.N.J. 1985); U.S. v. Strong, 775 F.2d 504 (3rd Cir. 1985); U.S. v. Gladney, 265 F.Appx. 681 (9th Cir. 2008).* With this disparity between the U.S. Circuit Courts, the Supreme Court should grant Certiorari to unify the 'Rule of Law' amongst the Circuit Courts. While most Circuit Courts, regarding review of Federal cases, hold that 18 U.S.C. § 3145(b) should be used first (*Fassler v. United States, supra,)*, some like the U.S. 10th Circuit do not, or are not clear as to when 18 U.S.C. § 3145(b) should be used. Concerning review of a State sentence, there is no existing precedent, other than Sells' current case at bar, as until the '*McGirt*' ruling and subsequent '*Castro-Huerta*' ruling, the Federal Government has never held '**exclusive, original jurisdiction**' over a 'State' conviction, allowing for 18 U.S.C. § 3145(b) to be used, to file for review of a person's 'detention'.. With the 10th Cir. Ruling in the case at bar being contrary to the

Supreme Court's 'general/specific' cannon (*RADLAX GATEWAY HOTEL, LLC v. AMALGAMATED BANK, supra; Morales v. Trans World Airlines, Inc., supra;* Morton v. Mancari, *supra; Varity Corp. v. Howe, 516 U.S. 489, 519, 116 S. Ct. 1065, (1996); HCSC-Laundry v. United States, supra)* and making unreasonable application of *Castro v. United States, [540 U.S. 375, (2003),* Certiorari should be granted to set precedent for the circuit Courts in applying the 'general/specific cannon to this unique situation created by the *'McGirt v.[Oklahoma, supra]'* ruling and unique application of 18 U.S.C. § 3145(b) to these specific circumstances for the 'specific' relief the text of 18 U.S.C. § 3145(b) specifically targets, namely the Unconstitutional detention of a person and usurpation of a Federal Courts authority, which cannot be waived or abrogated. See: 25 U.S.C. § 1302(f).

The 10th Cir in ruling against Sells does not even follow their own prior ruling in *U.S. v. Jarvis 299 Fed. Appx. 804 (10th Cir 2008)- saying that "the narrower relief offered under the 'Bail Reform Act of 1984 (18 usc 3141-3156) should be used."* Also see: *U.S. v. Hart, 779 F.2d 575 (10th Cir. 1985)-saying "District Court may not decline to rule on motion".*

II

The second question is, whether "the Federal District Court, N.D. Oklahoma, and the United States Tenth Circuit Court of Appeals violate Sells Right to 'Due Process' bye enacting a 'Judicial Law' [nullifying U.S. 'Statutory Law'] to re-characterize Sells' 'specific' motions for 'specific' relief into a motion under a 'general' statute for 'Habeas' relief, **for the SOLE purpose of avoiding adjudication** of Sells

'motions/claims' in which 'merit' was shown?" This 're-characterization' deprived Sells 'Due Process of the Law' and 'Equal Protection of the law'. U.S. Constitution, Amendments: V, VI, XIV.

Both Courts [N.D. Okla., and U.S. 10th Cir. Court] **KNOW**, without ANY doubt[11], that I [Sells] am being held by Oklahoma without 'subject-matter jurisdiction' to do so (*Gonzalez v. Thaler, 565 U.S. 134, 132 S.Ct. 641 (2012); Henderson v. Shinseki, 562 U.S. 428, 435,131 S.Ct. 1197, 1202-1203 (2011); United States v. Cotton, 535 U.S. 625, 630, 122 S.Ct. 1781 (2002)*), which is 'SLAVERY' and is in violation of the XIII Amendment of the U.S. Constitution. Both Courts have gone to great lenghts to avoid adjudication of my [Sells] claims/motions, choosing to leave me 'enslaved' by and within Oklahoma.

A.

Sells first argues that 'merit' is shown, due to the fact that if no 'merit' existed, the District Court would have simply adjudicated the 'claim' as filed under 18 U.S.C. 3145(b), listed the facts and precedents showing that no 'merit' existed, and Denied relief to Sells; and on Sells 2nd motion under 18 U.S.C. 3742 (a)(3)(c)(1), the District Court, after receiving notice of Sells claim (via his filed motion) under 18 U.S.C. 3742(a)(3)(c)(1), would have followed statutory law in 18 U.S.C. 3742(d)(1), and certified to the court of appeals (1) "*that portion of the record in the case that is designated as pertinent by either of the parties;*", and allowed the U.S. 10th Cir.

[11] Sells' 'Indian' status (Appndx 'G'), circumstances and conviction is virtually identical to several other cases where the N.D. Okla., and 10th Cir. Court's have found the 'Indian' defendant as being 'held' unconstitutionally by Oklahoma without 'subject-matter jurisdiction'. See: *Deerleader v. Crow, 2021 WL 150014* ***(N.D. Okla. Jan. 15th 2021***; Graham v. White, No. 23-CV-0164-CVE-SH (N.D. Okla., Jun.22, 2023); *McGirt v. Oklahoma, 591 U.S. ___, 121 S.Ct. 2454 (2020)*

Court of Appeals to make the determinations it is required to make under statutory law 18 U.S.C. 3742 (d) and (e).

But, because 'MERIT' was shown and the District Court **did not want to release Sells**, it chose to apply a 'Judicial Law' it had enacted earlier in *Palma-Salazar v. Davis, 677 F.3d 1031 (10th Cir. 2012)*, violating Art. 1, Art. 4, and Art. 6 of the U.S. Constitution, to construe both of Sells' motions as 'Habeas' requests, and in doing so, choosing to rule 'contrary to United States Supreme Court Law in *RADLAX GATEWAY HOTEL, LLC v. AMALGAMATED BANK, 566 US 639 (2012); Morales v. Trans World Airlines, Inc., 504 U.S. 374, 384, (1992); Morton v. Mancari, 417 U.S. 535, 550-551, (1974). HCSC-Laundry v. United States, 450 U.S. 1, 6, 101 S. Ct. 836, 67 L. Ed. 2D 1 (1981) (per curiam) (the specific governs the general "; Varity Corp. v. Howe, 516 U.S. 489, 519, 116 S.Ct. 1065 (1996)*, to 're-characterize' Sells' motions, in order to avoid adjudicating Sells' claims and deny Sells 'Due Process of the Law' to have his claims heard and fairly adjudicated. *U.S. Constitution, Amend. V, VI, XIV; Haines v. Kerner, 404 U.S. 519-521, 92 S. Ct. 594, 30 L.Ed.2d 652 (1972).* Thus, the choices of the U.S. District Court and the U.S. 10th Cir. Court of Appeals, and the great lengths they went to, violating the Constitution and ruling contrary to Supreme Court precedent, prove the merit of Sells claims.

This has caused me great, irreparable, 'Harm' by leaving me illegally 'detained' by Oklahoma, depriving me of my right to 'Liberty' and 'the pursuit of happiness' (U.S. Declaration of Independence) without 'Due Process of Law'. See: Amendments, VI, XIII, XIV.This is a 'substantive' Due Process violation. *U.S. v. Salerno, 481 U.S. 739,*

at 746, 95 L.Ed.2d 697, 107 S.Ct. 2095 (1987) (Opinion by Ch. J. Rehnquist, with J. Scalia joining fully); Rochin v. California, *342 U.S. 165, 172 (1952);* Palko v. Connecticut, *302 U.S. 319, 325-326 (1931).*

B.

Merit exists because, (1) the text of statutory law 18 U.S.C. 3145(b) allows Sells, by his particular circumstances to file for the specific relief offered by this statute, (2) the Federal N.D. Court has 'exclusive' original jurisdiction' (18 U.S.C. § 1153(a), (3) Oklahoma has NO 'subject-matter juridsdiction'('*McGirt v. Oklahoma, 591 U.S. ___, 121 S.Ct. 2454 (2020);* and *Oklahoma v. Castro-Huerta, 597 U.S. ___, p. 10 & 11 (6-29-2022)*') over Sells (Appdx 'F', 'G'), (4) subject-matter-jurisdiction can NEVER be waived (*Gonzalez v. Thaler, 565 U.S. 134, 132 S.Ct. 641 (2012);Henderson v. Shinseki, 562 U.S. 428, 435,131 S.Ct. 1197, 1202-1203 (2011);United States v. Cotton, 535 U.S. 625, 630, 122 S.Ct. 1781 (2002)*), (5) the U.S. Is obligated by statutory law (25 U.S.C. § 1302(f) to uphold Sells' rights and cannot 'waive', abrogate, or decline to uphold U.S. Statutory law on 'Indian Land' for 'Indians'.

C.

While **most** requests for review of a 'State' sentence, made under a 'general' statute, such as 42 U.S.C. § 1983, or under [General] Federal Court Rules, where the 'State' held/holds 'original jurisdiction' over the offense, can be lawfully 're-characterized' as a request for 'Habeas' relief (*Wilkinson v. Dotson, 544 U.S. 74 (2005);Preiser v. Roriguez, 411 U.S. 475, 489 (1973)*), this is **NOT** the case here. The N.D. Okla. District Court and the U.S. Tenth Circuit, in order to 're-characterize' Sells' motion(s)

has made 'unreasonable application of U.S. Supreme Court law' in *Castro v. United States, [540 U.S. 375, **381**, 384-385 (2003)(separate Opinion by J. Scalia[12])*, in which the High Court said the practice of 're-characterization' should be used to **HELP** a Pro Se litigant to bring his claim before a court for adjudication. Here the Court 're-characterizes' for the sole purpose of avoiding adjudicating Sells claim as filed, choosing instead to apply a 'procedural bar' rather than simply adjudicating the merits of the claims. Sells motions under 18 U.S.C. § 3145(b), and 18 U.S.C. § 3742(a)(3)(c)(1), were cognizable claims as filed, with 'merit' shown, and the U.S. Supreme Court in *Haines v. Kerner, 404 U.S. 519-521, 92 S. Ct. 594, 30 L.Ed.2d 652 (1972),* saying:

"allegations such as those asserted by petitioner, however inartfully pleaded, are sufficient to call for the opportunity to offer supporting evidence. We cannot say with assurance that under the allegations of the pro se complaint, which we hold to less stringent standards than formal pleadings drafted by lawyers, it appears [404 US 521] "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v Gibson, 355 US 41, 45-46 (1957), 2 L Ed 2d 80, 84, 78 S Ct 99. See Dioguardi v Durning, 139 F.2d 774 (CA2 1944). [3] Accordingly, although we intimate no view whatever on the merits of petitioner's allegations, we conclude that he is entitled to an opportunity to offer proof."

When a court refuses to hear/adjudicate a claim for the sole purpose of having to grant relief, it is a clear violation of 'Due Process" and theV, VI, and XIV Amendments to the U.S. Constitution. *Mooney v. Holohan, 294 U.S. 103, **at 112** (1935)* saying "That requirement, in safeguarding the liberty of the citizen against deprivation through the action of the State, embodies the fundamental conceptions of

[12] Justice Scalia argued strongly against allowing this 'Judicial Practice' at all, or in the alternative, allowing a plantiff to have the right to 'insist' his motion be adjudicated as filed. Justice Scalia later solidified 'his' 'general/specific' cannon, in: *RADLAX GATEWAY HOTEL, LLC v. AMALGAMATED BANK, 566 US 639 (2012);*

Justice which lie at the base of our civil and political institutions. *Hebert v. Louisiana, 272 U. S. 312, 316, 317, 47 S. Ct. 103, 48 A.L.R. 1102" ; also saying @ 294 U.S. 113* "That Amendment[13] governs any action of a State, "whether through its legislature, **through its courts**, or through its executive or administrative officers." (emph. added) *Carter v. Texas, 177 U. S. 442, 447, 20 S. Ct. 687; Rogers v. Alabama, 192 U. S. 226, 231, 24 S. Ct. 257; Chicago, B. & Q. R. Co. v. Chicago, 166 U. S. 226, 233, 234, 17 S. Ct. 581." see also: Frank v. Mangum, 237 U. S. 309, 335, 35 S. Ct. 582 – saying 'It is only where an act or omission operates so as to deprive a defendant of notice, or an opportunity to present such evide4nce as he has, that it can be said that due process of law has been denied; Moore v. Dempsey, 261 U. S. 86, 90, 91, 43 S. Ct. 265.). Mooney [v. Holohan, supra]* also says "*Upon the state court, equally with the courts of the Uniion, rests the obligation to guard and enforce every right secured by that Constitution. Robb v. Connolly, 111 U.S. 624, 637, 4 S. Ct. 544 (1884)."*

D.

The 10th Cir. Ruling (Appdx 'J') violated Sells right to 'effective assistance of counsel' and 'Due Process of Law' by refusing to appoint '*Pro Se*' Sells Appellate Counsel [by Motion to Appoint](25 U.S.C. 175) to protect Sells 'Rights' against the concerted actions of the United States and the U.S. Tenth Circuit Court of Appeals [judges and clerks thereof] (Appdx 'O'), who through deliberate actions tried to 'force/railroad' Sells into accepting those Judges desire to avoid adjudicating Sells claims by prematurely declaring Sells claims were an improperly filed 'habeas' request, before

[13] XIV Amendment, U.S. Constitution

the status of Sells Appeal could be determined by a properly appointed 3-judge panel. They filed 'rapid-fire', motions and Court 'Order's to attempt to 'prejudice' the 3-judge panel that would decide the 'fate' of my [Sells] appeal, delaying mailing Sells his copies in some instances, attempting to prevent Sells from making 'timely response' (*Matthews v. Eldridge, 424 U.S. 319, 335 (1976)*, with the 10th Cir. Court Clerks office repeatedly stating that; ""Mr. Sells need not file anything further at this time."(Appdx 'E',' I ','M',) This is 'bad legal advice', beyond the 'scope' and 'authority' of the U.S. 10th circuit Court Clerks' office, and is contrary to the fact that Sells needed to file 'opposition' to these 'Order's', 'Response' to Motion(s), 'Objections to 'Order's' and Make Motions of Sells' own in 'Response'(FRAP-Rule 27 et seq.) to protect my rights to 'FAIR' adjudication of my claims. Sells [me] is 'Pro Se' and was at severe disadvantage in protecting, defending, and exercising my 'rights' against the concerted effort to prejudice and pre-determine my appeal at this 'crucial' stage of the proceedings. (Appdx 'E',' I ','M', 'J') *United States v. Cronic, 466 U.S. 648, 659, (1984); Strickland v. Washington, 466, U.S. 668, 685, 104 S. Ct. 2052, 2063,(1984).*

CONCLUSION

REASONS for GRANTING PETITION FOR CERTIORARI

Never before has a Federal Court held 'Exclusive Original Jurisdiction' **over** a 'State' conviction, and never before has 18 U.S. § 3145(b) allowed for 'specific' review of a 'state' conviction by a Federal District Court holding 'original jurisdiction'.

The U.S. Supreme Court determined 18 U.S.C. § 3145 (a)(b)(c) is 'valid' law (*United States v. Salerno, 481 US 739, 95 L Ed 2d 697, 107 SCT 2095 (1987)*) that can/should be

used to challenge the detention of 'anyone' ordered 'detained' by someone other than a judge of the District Court (or Appellate) holding 'original jurisdiction' over the offense the person is detained over, with many circuits holding 18 U.S.C. § 3145 (b) should be used first before 'Habeas' relief is sought, to avoid potential 'abuse' of the writ'. See; *Fassler v. United States, 858 F.2d 1016 (**5th** Cir. 1988), cert. denied, 493 U.S. 825, 110 S. Ct. 86, 107 L. Ed. 2D 52 (1989), cert. denied, 490 U.S. 1099, 109 S. Ct. 2450, 104 L. Ed. 2D 1004 (1989));* the U.S. Supreme court said: "once we have determined a statute's meaning, we **adhere to our** ruling under the doctrine of 'stare decisis'." *Neal v. United States, 516 U.S. 284, 133 L.Ed.2d 709, 116 S.Ct. 763 (1996).* (emphasis added). Even the 10th Circuit Court holds this viewpoint regardiing federal prisoner's (*Chandler v. Pratt, 96 Fed. Appx. 661, 662 (10th Cir. 2004)*-saying "a federal pretrial detainee must first exhaust other available remedies[,]"), only 'departing' from this holding to avoid adjudication of Sells' claim[s]. Sells, [me] holds that this applies as I am under 'exclusive' Federal 'original jurisdiction', and caselaw and precedent applying to federal prisoner's should and does apply to me, including that 'other' available remedies should be used first, before 'Habeas Corpus' is applied for. Especially remedies available under more 'specific' statutes like 18 U.S.C. 3145(b). *Chandler v. Pratt, supra.*

With this in mind, this Court should grant Certiorari to, (1) uphold 30 years of Supreme Court opinion by Justice Scalia, in which he solidified the *Morton v. Mancari, [417 U.S. 535, 550-551, (1974)]* ruling into Supreme Court '**Cannon**' of

'Statutory construction' that governs almost every application of 'Law' today; (2) to prevent the 10th Circuit from giving 'effect' to a 'Judicial Law' that would 'negate and nullify' U.S. Statutory law in violation of Article I and IV of the U.S. Constitution; (3) bring uniformity to the U.S. Circuit Courts regarding when, where and how, according to the 'text', 18 U.S.C. § 3145 (b) should/can be used, and when it MUST be followed, as the 10th Circuit ruling is contrary to other Circuit 'law' (*Fassler v. United States, supra);* (4) to clarify the 'judicial practice' of 're-characterization' with regard to applying it to ALL motions as 'Habeas' petitions, whether 1st or 2nd successive, and to clarify that 're-characterization' should ONLY be used to help a 'Pro Se' litigant to bring a 'cognizable', properly filed under the proper, [most specific] statute based upon circumstance(s) of the claim, giving voice and vindication to Justice Scalia's warnings in *Castro v. United States, [540 U.S. 375, (2003)* about causing Constitutional 'Harm', as the 10th Circuit Ruling has done to Sells; (5) to write 'Opinion' about the 'Due Process' violation of construeing and 're-characteracterizing' a 'specific' motion into a 'general' Habeas request, for the SOLE purpose of avoiding adjudication of the motions at bar, to avoid granting relief for the 'merit' shown; (6) Certiorari should be granted to clarify that motions under 18 U.S.C. § 3742 et seq. Cannot be construed as a 'Habeas' request, as this motion does not 'directly challenge a person's confinement or conviction, as itmerely calls for appellate review to determine if a Federal 'Plea Agreement' has been violated.

PLEADING

Sells Prays the Court grant Certiorari to Hear this case to correct these violations of the U.S. Constitution, application of Statutory Law, and to give guidance and uniformity to the Circuit Courts with regard to these issues, while addressing the 'Due Process' violations at 'bar'.

IT IS SO PETITIONED, AND PRAYED, THAT CERTIORARI BE GRANTED:

Mark E. Sells

8-16-23
Date

CERTIFICATE OF VERIFICATION

I swear under penalty of perjury under the law that the foregoing is true and correct to the best of my knowledge per Title 28 U.S.C.A. § 1746. I, Mark E. Sells, hereby certify the page count of this document is: 29 pages, per U.S. Supreme Court Rule 33 (2)(b) referencing Rule 33 (1)(d), exclusions allowed, which is under the 40 page limit. FRAP-Rule 33, 2(b); and complies with spacing and typeset requirements. 7,918 words max

Mark E. Sells

on: 8-16-23

NOTARY

Subscribed and sworn to before me this 16th day of August, 2023.

My Commission Number is: 23009468

My Commission Expires: 07-17-2027

NOTARY PUBLIC

NOTARY PUBLIC State of Okla.
LETISHA PANTOJA
Comm. # 23009468
Exp. 07-17-2027