

No: _____

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2023-2024

FILED
MAY 31 2024

OFFICE OF THE CLERK
SUPREME COURT, U.S.

LIONEL SCOTT ELLISON,

Petitioner,

-VS-

THE STATE OF MONTANA, et al.,

Respondents,

ON PETITION FOR REHEARING

BEFORE THE FULL COURT WITH CAUSE,

PER SUPREME COURT RULE 44.

PETITION FOR REHEARING

OF

PETITION FOR WRIT OF CERTIORARI.

CAUSE No: 23-6959

WITH MOTION FOR VACATUR, BASED ON MOOTNESS
UNDER ARTICLE III OF THE UNITED STATES CONSTITUTION;
AND VIOLATIONS OF THE AMERICANS WITH DIABILITIES ACT, AS
INCLUSIVE OF CONTINUED 1st AMENDMENT VIOLATIONS.

Lionel Scott Ellison, #3003002
% Montana State Prison
700 Conley Lake Road
Deer Lodge, Montana 59722

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QUESTIONS

- 1) Where Article III of the United States Constitution requires that Courts can only adjudicate live "cases" and "controversies"; and where here the Respondents have under the 'Rule of Law' waived the Petitioner's Constitutional violations claims, without dispute or argument, is it now proper for the Court to grant the attached 'Motion for Vacatur', in order to obey established 'Stare Decisis' herein? With this matter being a direct appeal from a State ruling.
- 2) Where Court precedence holds that without case or controversy, that the State court lacks jurisdiction or right to maintain a wrongful conviction, after the State has waived violation to the Petitioner's 5th and 14th Amendment rights prohibiting Double Jeopardy; waived Actual Innocence evidence; and waived three Malicious Prosecutor Misconduct/ 'Fraud upon the Court' claims; will the Court now grant the 'Motion for Vacatur', under Article III?
- 3) Based on the admitted unfair means by which the judgements were procured, in a contaminated state process of the merits, per State Rules of Procedure, is it not just, to grant 'Vacatur', at the risk of undermining the public confidence?
- 4) Where the lower courts have denied a Rule 60(b)/(d)(3) 'Motion for Relief from Judgement', as presented, and thusly improper, based on the Respondents admissions of misconduct and 'Fraud upon the Court', now justify 'Vacatur'?
- 5) Where the wrongful convictions, as waived, were obtained in violation of the American's with Disabilities Act (ADA), in both of the underlying criminal matters in the State court; and the pending 42 USC §1983 in the U.S. District Court; will the Court grant 'Vacatur', and order the default judgement against the Third Party defendants, including the Montana Attorney General, who ordered the State officials to destroy evidence and the Petitioner's ADA hearing aids, again based on the lack of 'case' or 'controversy' after default, as required under Article III of the United States Constitution?

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Arizonans for Official English v Arizona,520 US 43,70-71,117 S.Ct 1055(1997).	10
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Chapman v Doe,598 US __, __, 143 S.Ct 857,215 L.Ed.2d 184(2023)(Slip op., at3)	7,12
Clapper v Amnesty Int'l., USA,568 US 398,408, 133 S.Ct 1138(2013)	2
DaimierChrysler Corp. v Guno, 547 US 332,341, 126 S.Ct 1854, 164 L.Ed.2d 589(2006) .	4
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Duke Power Co. v Greenwood County, 229 US 259,267, 57 S.Ct 202,81 L.Ed. 178(1936) .	11
Gelbard v United States, 408 US 41,69, 92 S.Ct 2357(1972)	15
Great Western Sugar Co. v Nelson, 442 US 92,93-94, 99 S.Ct 2149,60 L.Ed.2d 735(1979) .	11
Grzegorczyk v United States, 142 S.Ct 2580,2584,213 L.Ed.2d 1128(2022)	12
Henson v Sanlander Consumer USA, Inc. 582 US 79,89, 137 S.Ct 1718(2017)	14
Kendall v Doster, 144 S.Ct 481, 217 L.Ed.2d 248(2023)	12
Murphy v Hunt, 455 US 478,481, 102 S.Ct 1181,71 L.Ed.2d 353(1982)	3
N.Y. State Rifle & Pistol Ass'n v City of New York, 140 S.Ct 1525,1526,(2020) .	10
Olmstead v United States, 227 US 438,485, 48 S.Ct 564(1928)	15
Payne v Biden, 144 S.Ct 480, 217 L.Ed.2d 248(2023)	12
Perez v Sturgis Pub. School, 143 S.Ct 859,865, 215 L.Ed.2d 95(2023)	14
Powell v McCormack, 395 US 486,496, 89 S.Ct 1944(1969)	8
Raines v Byrd, 521 US 811,818, 117 S.Ct 2312, 138 L.Ed.2d 849(1997)	3
Smith v Robbins, 528 US 259,269, 120 S.Ct 746(2000)	15
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Speech First, Inc. v Sands, 144 S.Ct 675, 218 L.Ed.2d 199(2024)	12
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U.S. Bancorp Mortgage Co., v Bonner Mall Partnerships, 513 US 18,115 S.Ct 386(1994) .	10
United States v Microsoft Corp. 584 US 236,240, 138 S.Ct 1186(2018)	11
United States v Munsingwear,Inc., 340 US 36,39, 71 S.Ct 104,95 L.Ed 36(1950) .	8,10

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United States v Sineneng-Smith, 140 S.Ct 1575, 1576-1577(2020)	. . .	15	
Uzuegbunam v Preczewski, 141 S.Ct 792,797-798(2021)	4	
Walling v James V Reuter, Inc.,321 US 671,676, 64 S.Ct 826,88 L.Ed.1001(1944)		8	
Wood v Milyard, 566 US 463,466, 132 S.Ct 1826(2012)	15	

Treatise:

S. Shapiro, K. Geller, T. Bishop, E. Hartnet,-- Supreme Court Practices, §19.5,
(11th ed. 2019) page 11

Moore's Federal Practice:

Update, Pub.410, Rel.222, June 2024.

Relief from Judgement-Time for Motion.

"In *Mandala v NTT Data, Inc.* 88 F.4th 353(2nd Cir 2023); the Second Circuit held that a vacatur motion seeking to rectify a pleading deficiency was cognizable under Rule 60(b)(6)'s catchall provision for relief for mistake, inadvertence, surprise, or excusable neglect, and thus the motion was not subject to the one year deadline for Rule 60(b)(1) motions."

Vol.12, Chap.60, Relief from Judgement or Order.

§60.20 Remedy Provided by 60(b) is purely procedural.

"Vacatur...is based on the unfair means by which the judgement was procured rather than the merits...on a contaminated process and review of the merits."

Vol.12, Chap.63 Judges inability to proceed.

§63.74 Remedies available. Vacatur in necessary include:

[2] The risk of injustice to the parties in the particular case, The risk of denial of vacatur will lead to unjust results in other cases.

The risk of undermining the public's confidence in the judicial process.

Vacatur is appropriate...to those rulings when judge should have recused.

...vacatur is required, whether or not there is actual bias...

n.6 Factors determining vacatur.

Liljeberg v Health Services Acquisitions Corp. 486 US 847,864, 108 S.Ct 2194,100 L.Ed.2d 855(1988)("We must continuously bear in mind that to perform its high function in the best was justice must satisfy the appearance of justice."

n.7 Constitutional violations require vacatur.

Williams v Pennsylvania, 579 US 1, 14-17, 136 S.Ct 1899,195 L.Ed.2d 1132(2016)(Structural error requires vacatur).

Vol. 23, §544.03, Requirements for re-hearing of Order Denying Certiorari.

"Supreme Court Rule 44.2 governs petitions for rehearing of orders denying Petitions for writ of Certiorari and Extraordinary writs. The grounds for rehearing under Supreme Court Rule 44.2 are severely limited. Rehearing will be granted only upon a showing of intervening circumstances of substantial controlling effect or other substantial grounds not previously presented.

In the
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

The opinions below constitute two related incidents, and the resultant State and Federal Proceedings, linked by the nexus of 'Bounty' monies offered by a Oregon Company on the Petitioner, who cites Rule 42- Consolidation requested. Each incident is hereafter referred to as §I, an attack on the Petitioner's family home, is waived by the State; and §II, concerns the car's trunk exploding and fire, while Petitioner was driving, and recorded on video. The Petitioner directly appeals the following:

***(1) The most recent proceeding was an opinion concerning both §I and §II, in the Montana Supreme Court, Ellison v Bludworth, Knudsen, Moody; Cause OP-23-0683; in a Petition for Writ of Habeas Corpus Relief, denied on December 19, 2023, for appeal.

§I: (a) The opinion in the Montana Supreme Court for review as reported: DA-20-0375, published as 2020 MT 324N, Ellison v State; on appeal from the 13th MT.Jud.Ct. for Post Conviction Relief, Dv-18-1629, denied on November 12, 2020. Originating from trial, DC-14-0614, State v Ellison. Ellison acquitted of Count I.

(b) The opinion of the U.S. District Court for Montana, for Habeas review, as reported in Cv-21-026-BLG-DLC-TJC, Ellison v Salmonsen, et al; denied on September 27, 2022: Appealed to the Ninth Circuit Court of Appeals, 22-35774, COA denied, en banc denied.

§II: (a) The opinion of the Montana Supreme Court for review as reported: DA-20-0100, published as 2020 MT 228N, Ellison v State; on appeal from the 13th MT.Jud.Ct. for Post Conviction Relief, DV-19-1330; denied on September 8, 2020. Originating from DC-07-0907, State v Ellison, [Exclusion of Bounty evidence shown in both §I and §II Petitions, and evidence of Actual Innocence, lack of probable cause shown].

(b) The opinion of the U.S. District Court for Montana, for review as reported; Cv 17-168-BLG-DLC-TJC, Ellison v Fletcher, et al, Habeas Relief denied on February 25, 2020; Appealed to the United States Court of Appeals for the Ninth Circuit, 21-35669, with Appellate Commissioner's request for COA denied.

(c) Judicial Misconduct Complaints 21-90024, 21-90025; 28 USC § 35i(a), Chief Justice Sidney Thomas, of Billings, Yellowstone County, Montana presiding; and later presided over appeal in CV-21-026-BLG-DLC-TJC, Ellison v Salmonsen, not as the Chief Justice, but with prior knowledge.

JURISDICTION

The United States Supreme Court has jurisdiction to review and grant this Petition to Re-hear the Original Petition for Writ of Certiorari, through Rule 44 of the Rules of the Supreme Court.

Jurisdiction to grant the Motion for Vacatur is granted to the United States Supreme Court, through the United States Constitution's Article III, which holds as controlling authority, that all matters as "case's" and "controversy's" can be adjudicated by the Courts. Where in the present case the State of Montana, as the Respondent has conceded to and waived five separate claims of Constitutional violations, and as such there is no contest or controversy to adjudicate.

The United States Supreme Court has granted to itself the authority to issue and grant a Motion for Vacatur, from its prior rulings in the Table of Authorities, citing Multiple cases granting Vacatur, through the 'Munsingwear' doctrine, established through United States v Munsingwear, Inc., 340 US 36, 71 S.Ct 104, 95 L.Ed.36(1950).

The Courts Jurisdiction also stems from the Fourteenth Amendment's Equal Protection Clause with the duties and obligations of all jurists to obey and apply Constitutional Right to each individual citizen, To maintain the dignity the "People" have granted the Court, and to protect the "People" from tyranny, as the most important jurisdiction.

"Standing and Mootness are both Jurisdictional doctrines that flow from Article III, and there is no mandatory "sequencing of jurisdictional issues."

Ruhrgas A.G. v Marathon Oil Co, 526 US 574, 584, 119 S.Ct 1563(1999).

Jurisdiction is also obtained through the American's with Disabilities Act, 42 USCS §§12101-12213, et seq.

Jurisdiction is also applicable per the related civil suit, filed under the following: 42 USC §1983; 18 USC §1964; 42 USC §1985; and 42 USC §1987(prosecution)

The whole of this appeals jurisdiction, is governed by 28 USC §2254(d)(Habeas).

CONSTITUTIONAL RIGHTS VIOLATED
AND
CONTROLLING STATUTES AND RULE OF PROCEDURE APPLICABLE
UNITED STATES CONSTITUTION:

ARTICLE III: CONTROVERSY REQUIREMENT

1st Amendment: RIGHT TO REDRESS, FREEDOM OF SPEECH, PROHIBITION OF RETALIATION.

4th Amendment: RIGHTS PROHIBITING UNREASONABLE SEIZURE.

5th Amendment: RIGHT TO DUE PROCESS, AND PROHIBITION OF DOUBLE JEOPARDY.

6th Amendment: RIGHT TO [COMPETENT] ASSISTANCE OF COUNSEL, [Trial and Appeal].

8th Amendment: RIGHT PROHIBITING CRUEL AND UNUSUAL PUNISHMENT.

14th Amendment: RIGHT AGAINST A STATE'S DEPRIVATION OF LIBERTY WITHOUT THE
DUE PROCESS OF LAW, LACK OF JURISDICTION, DENIAL OF
EQUAL PROTECTION.

MONTANA CONSTITUTION: ARTICLE II, DECLARATION OF RIGHTS.

§17, DUE PROCESS OF LAW; §24, RIGHTS OF THE ACCUSED; §25, DOUBLE JEOPARDY.

FEDERAL STATUTES:

15 USC §1. THE SHERMAN ANTI-TRUST ACT. [Conspiracy in restraint of Commerce].

15 USC §45. THE FEDERAL TRADE COMMISSION ACT. [Unfair Methods affecting Commerce
by Deceptive Practices].

18 USC §1501-1521. OBSTRUCTION OF JUSTICE. [§1519. Destruction...of records in
Federal matter].

18 USC §401. POWERS OF COURT. [Contempt of Court, by Montana, by MT. Atty. Gen.].

18 USC §1951. THE ANTI-RACKETEERING ACT [HOBBS ACT],

§1958. USE OF INTERSTATE COMMERCE FACILITIES IN THE COMMISSION OF
MURDER-FOR-HIRE.

§1951. INTERFERENCE WITH COMMERCE BY THREATS OR VIOLENCE.

18 USC §1961-1968, et seq. THE RACKETEERING INFLUENCED AND CORRUPT ORGANIZATIONS
ACT, [R.I.C.O.]

STATE STATUTES: [MCA] Montana Codes Annotated.

§45-7-207. TAMPERING WITH OR FABRICATING PHYSICAL EVIDENCE. [MT Waived evidence of]
§45-6-103, ARSON, [ACQUITTED OF AT TRIAL, §I], [Actual innocence in §I & §II].

§45-7-209, IMPERSONATION OF PUBLIC OFFICIAL. [MT Waived per MT.R.Evid. 901].

§45-7-103, CRIMINAL USE OF PUBLIC OFFICE OR POSITION [MT. Atty. Gen. & Cnty Pros.]

§45-7-210, FALSE CLAIM TO PUBLIC AGENCY, [County Prosecutors false probable cause].

§45-4-101, SOLICITATION, / §45-4-102, CONSPIRACY. [MT. Atty. Gen. order to destroy].

§45-5-201, ASSAULT, / §45-5-204, MISTREATING PRISONERS, / §45-5-221, MALICIOUS INTIM.

§45-5-302, KIDNAPPING, / §45-5-502, RAPE-SEXUAL ASSAULT

§45-5-201, PERJURY, / §45-7-206, TAMPERING WITH WITNESSES/ §45-7-208, TAMPERING WITH PUBLIC RECORDS OR INFORMATION.

§45-7-303, OBSTRUCTING JUSTICE./§45-5-102(1)(b) ATTEMPTED DELIBERATE HOMICIDE.

MONTANA RULES OF CIVIL PROCEDURE, 12(b), (h) & MT. RULES OF APPELLATE Pr. 12(2).

STATEMENT

The Petitioner asks that the Court and the Justices of this Supreme Court review this Petition for Writ of Certiorari, in that there is not a controversy to be decided, and that their is no actual case herein, based on the fact that the Respondents did in fact legally waive multiple issues, as shown in the Appendices. The Petitioner has shown that it has become a matter of politics in Montana to abide by the law.

This is documented in that the prior Montana Attorney General's office, under (D) Tim Fox, and through his Sr. Deputy, C. Mark Fowler, refused to argue or brief constitutional violations as claimed by the Petitioner. These claims being the Prosecutorial Misconduct claims that the State, as represented by Yellowstone County in Montana, lacked probable cause to prosecute; that these prosecutors committed 'Fraud upon the Court' perjury concerning the accepted fact that a Yellowstone County detective and the Petitioner's ex-wife had hired two Cartel gang members to Abduct, Torture, and Rape the Petitioner, using 'Bounty' monies offered by a Oregon Company.

Where the Cartel man, Carlos Molina, admitted to State officials at the Montana State prison, and by his own handwritten 'Note', that he was hired by the detective for \$50,000.00. Molina was a noted Sinaloa/ MS13 gang member. This is waived by the State., through the prior Montana Attorney General, during appeal 2020-MT 324N.

The State had previously conceded and waived that the Petitioner was wrongfully convicted under the Petitioner's Double Jeopardy Rights of the Fifth Amendment, after the Petitioner had been Acquitted at trial. A Yellowstone County Prosecutor herself waived the Petitioner's claim of Double Jeopardy violation, by refusing to brief or argue that claim, in Post-Conviction Dv-18-1629, Ellison v State.

These waivers by Montana, have been presented to the lower courts and ignored, as has the controlling authority of the Montana Rules of Civil Procedure, relative to waiver. Montana Rules of Civil Procedure 12(b),(h); and Montana Rules of Appellate Procedure 12(2), where the respondents are not "dissatisfied" with the claims by Ellison.

I. ARTICLE III OF THE U.S. CONSTITUTION, AND "CLEARLY ESTABLISHED" COURT CASELAW
ARTICLE III:

Section 1:

" The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. "

Section 2:

" The judicial power shall extend to all cases, in law and Equity, arising under this Constitution, the laws of the United States, Treaties made, or which shall be made, under their Authority; — to all cases affecting Ambassadors, other public Ministers and Consuls; — to all cases of admiralty and maritime Jurisdiction; — to Controversies to which the United States shall be party; — to Controversies between two or more States; — between a State and Citizens of another State; — between Citizens of different States; — between Citizens of the same State claiming lands under Grants of different States, and between a State, or Citizens thereof, and foreign States, Citizens or Subjects. "

The Office of the Montana Attorney General did legally concede and waive that the Petitioner is wrongfully convicted under the Double Jeopardy Clause of the Fifth Amendment, during the time that the prior (D) Timothy Fox held that office, through his Sr. Deputy Attorney General, C. Mark Fowler, as shown in Appendices C and D of the Petition 23-6959, Ellison v Montana, as was filed, in this Court.

The present Montana Attorney General, (R) Austin Knudsen, has chosen not to honor the waivers by the prior (D) Attorney General, which the (D) also waived the Actual Innocence evidence presented; waived 3 separate Malicious Prosecutorial Misconduct claims, including lack of probable cause to charge, and 'Fraud on the Court' by the Yellowstone County prosecutors representing the State of Montana.

These waivers occurred in the Post-Conviction proceedings in evidence in the Appendices C and D herein, leaving the Court without case or controversy to be adjudicated. And clearly established the 'Political' differences in this matter.

"In this way, "the law of Article III standing...serves to prevent the judicial process from being used to usurp the power of the political branches."
Spokeo v Robins, 578 US 330,338, 136 S.Ct 1540, 194 L.Ed.2d 635(2016);
Clapper v Amnesty Int'l. USA, 568 US 398,408, 133 S.Ct 1138(2013).

The "injury-in-fact" requirement under Article III of the Constitution has NOT been met which requires a plaintiff [Montana in the underlying case] to allege an injury that is both "concrete and particularized", as being held in the overview of Spokeo, with that judgement vacated and remanded as proper, which is requested here.

The State of Montana "violated his [like Ellison herein] statutory rights, not just the rights of other people" because of "personal interests" and animus by state government officials weaponizing the judicial system to escape criminal culpability for their misdeeds, and liability in the related civil action shown. See Spokeo at 337.

"Although the Constitution does not fully explain what is meant by "the judicial Power of the United States", Article III section 1, does specify that this power extends only to "Cases" and "Controversies", Article III, section 2. And "no principle is more fundamental to the judiciary's proper role in our system of government than the constitutional limitation of federal court jurisdiction to actual cases and controversies." Id at 337: Raines v Byrd, 521 US 811,818, 117 S.Ct 2312, 138 L.Ed.2d 849 (1997).

The U.S District Court, in Ellison's Petition for Writ of Habeas Corpus, did not have the Jurisdiction to deny a Habeas after being presented with the facts that there was no actual controversy after the State waived the five Constitutional violations. The Montana Supreme Court likewise was not at liberty to ignore the States waiver, and the fact that under Article III, there is no case or controversy, and thus then a 'Motion for Vacatur' is proper, and "confines the federal courts [and State Courts] to a properly judicial role."

The State of Montana has lacked Article III standing to maintain a wrongful conviction and illegal sentence of incarceration, without the jurisdiction to do so after the States concession and waiver of Double Jeopardy prohibition after the Petitioner was acquitted at trial. The Judicial branch of government can not be used as a weapon for the Executive branch of government to escape culpability. The Courts precedents as follows are clear, and precludes the State's continued attempts to violate the Petitioner's First Amendment Rights, to censor legal pleadings,; contacting attorneys; violating ADA law to keep the Plaintiff from contacting attorney's outside of Montana's jurisdiction.

"A case becomes moot— and therefor no longer a "Case" or "Controversy" for purposes of Article III— "when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." Already, LLC v Nike, Inc, 568 US 85,91, 133 S.Ct 721(2013); quoting Murphy v Hunt, 455 US 478,481, 102 S.Ct 1181, 71 L.Ed.2d 353(1982).

"Article III of the Constitution grants the Judicial Branch authority to adjudicate "Cases" and "Controversies." In our system of government, courts have "no business" deciding legal disputes or expounding on law in the absence of such a case or controversy." Id at 90; See *DaimlerChrysler Corp. v Cuno*, 547 US 332,341, 126 S.Ct 1854, 164 L.Ed.2d 589(2006).

"That limitation requires those who invoke the power of a federal court to demonstrate standing—a "personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief." Id at 90; *Allen v Wright*, 468 US 737,751, 104 S.Ct 3315, 82 L.Ed.2d 556(1984).

The Petitioner was acquitted of the crime of Arson, and all of the alleged elements of that crime. One of the elements being the alleged probable cause. But that probable cause was also the remaining Count II: Tampering [concerning Arson], But the State has waived that the State lacked probable cause, so thus Count II: is moot. The State did the same thing with the remaining Count IV: Impersonating a public official, and then refused to argue or brief it as under Rule 901, of the Rules of Evidence, that no one identified the Petitioner who called the Petitioner's employers, and stating that it was Detective Frank Fritz, and to fire the Petitioner.

Both Charges are thus legally waived. There is no "live" controversy, and no "personal injury fairly traceable to the defendant's [ELLISON'S] allegedly unlawful conduct" , and the State of Montana has "no business" deciding legal disputes or expounding on law in the "absence of such a case or controversy".

"We have repeatedly held that an "actual controversy" must exist not only "at the time the complaint is filed", but through "all stages" of the litigation." Id at 90-91; *Alvarez v Smith*, 558 US 87,92, 130 S.Ct 576,175 L.Ed.2d 447(2009).

The Petitioner has met this standard and principle as required under Article III. "A case becomes moot-- and therefore no longer a "Case" or "Controversy...when the issues presented are no longer 'live'...the

No matter how vehemently the parties continue to dispute the lawlessness of the conduct that precipitated the lawsuit, the case is moot as the dispute "is no longer embedded in any actual controversy about the plaintiff's particular rights." Id 91; *Alvarez*, *supra*, at 93, 130 S.Ct 576,175 L.Ed.2d 447.

And this principle is then also applicable to the related §1983 case herein, where the State has refused to dispute their criminal actions, and refused to answer that suit, and are thus in default, for the 'sum certain' amount as filed by Ellison.

"In determining whether nominal damages can redress a past injury, we look to forms of relief awarded at common law. Article III's restriction of judicial power to 'Cases' and 'Controversies' is properly understood to mean 'cases and controversies of the sort traditionally amenable to and resolved by the judicial process.'" *Uzuegbunam v Preczewski*, 141 S.Ct 2792,797,798(2021).

The State and Federal Courts of Montana have refused to recognize that there is no actual conflict with the State of Montana.

The Courts, have refused to recognize or apply the proper waiver holdings and refused to recognize State and Federal Rules of Civil and Appellate Procedure, where no actual controversy exists, and no dispute based on the States waiver of the five (5) constitutional violations, and violations of Montana Double Jeopardy law, and the Petitioner's right to a fair trial, after being acquitted by a jury.

The State's waiver's leave NO case or cause for the State to continue with a wrongful conviction, and illegal sentence. Thus just cause to vacate the matter, and grant the attached 'Motion for Vacatur', See 'Reasons' herein for controlling precedent.

II. THE PETITIONER IS LEGALLY DEAF, AND THE COURT HAS KNOWN THIS SINCE 2007, AND HAS CONTINUED TO VIOLATE THE PETITIONER'S CONSTITUTIONAL RIGHTS TO A FAIR TRIAL AS DEMANDED UNDER THE AMERICAN'S WITH DIABILITIES ACT.

The Petitioner Ellison was diagnosed with degenerative hearing loss, after many years in the Construction industry, beginning in his youth. The hearing loss percentage was greatly increased when he was driving a car to the muffler shop, and the trunk exploded while driving. This left the Petitioner 100% deaf, for days from the concussion of the blast. This occurrence is what the State claimed was also a criminal act, claiming that their probable cause was a video from a Avis Car Rental showing Arson. The States own video expert reviewed the video and could not find any cause to believe that Arson occurred. Which is a portion of this matter, where the 'Bounty' on the Petitioner is waived as true by the Montana Attorney General.

The State has known of this hearing loss since a hearing in district court, where the State admitted it did not know what caused the car fire, and did not know the value of the car. Both elements of that alleged crime, waived by the State, as unknown. These facts as waived leave no case or controversy either.

Since that time the Petitioner used hearing aids, and has shown that his hearing has steadily decreased to the 11% remaining. And Montana confiscated the Petitioner's hearing aids, so he can not go to court.

REASONS FOR GRANTING PETITION

(1) ARTICLE III, OF THE UNITED STATES CONSTITUTION, FORBIDS ADJUDICATION, WHERE NO CASE OR CONTROVERSY EXISTS, AND WHERE THE RESPONDENTS HAVE CONCEDED AND WAIVED THAT NO CRIME WAS COMMITTED, AND CONCEDED AND WAIVED THAT GOVERNMENT OFFICIALS HAVE COMMITTED 'FRAUD UPON THE COURT', TO COVER-UP FOR PREVIOUS GOVERNMENT INVOLVEMENT IN THE ABDUCTION, TORTURE AND RAPE OF AN AMERICAN CITIZEN. THE COURTS APPELLATE POWER TO CORRECT A WRONG SHOULD BE PROPER.

The Petitioner has shown confirming documentation that the prior Montana Attorney General's Office, under Democrat Timothy Fox, did waive that the Petitioner is wrongfully convicted under the Double Jeopardy Clause of the U.S. Constitution; wrongfully convicted under the Due Process Clauses of the Fourteenth and Fifth Amendments, after being acquitted at trial; as shown in Appendix C and D of this matter.

The Petitioner has shown that the Montana Attorney General's office did also concede and waive as true the new Forensic Science [DNA] evidence; and did waive that the Yellowstone County prosecutors representing the State, did knowingly commit 'Fraud upon the Court' with false probable cause, and perjury to cover-up for the criminal acts by the same official, and a County detective, who along with the Petitioner's ex-wife, did hire 2 Cartel gang members to Abduct, Torture and Rape the Petitioner, trying to extort the Petitioner to sign a release of liability for a Oregon Company, which was caught in 'Bond Fraud' for the theft of \$1,786,000.00.

The present Montana Attorney General's Office, under Republican Austin Knudsen, has refused to honor the prior waiver, and has in fact ordered the Warden at the Montana State Prison to destroy all of the Petitioner's evidence, to "ensure", that the Petitioner cannot file another "Criminal, civil or administrative case", to quote the directive emailed to Warden Salmonsen, by Knudsen, to silence and "chill" the Petitioner. This included the confiscation and destruction of the Petitioner's hearing aids, that the State refuses to replace. See Appendix to this Petition to Re-hear.

The Petitioner attaches a 'Motion for Vacatur' at this time, and seeks only that the Court grant the Motion in the Interest of Justice, where no wrong was committed by the Petitioner, as is waived by the State in both matters, and that the Montana Attorney General has conceded by default in the civil §1983 matter, as shown in the Appendices L, M, and N. of the original Petition for Certiorari.

"Per historical tradition, a court that is asked to exercise it's equitable authority to vacate a lower courts judgement must determine in essence, whether it is "most consonant to justice", for the judgement to "remain undisturbed" or be vacated." *South Springs Hill Gold Mining Co. v Amador Medean Gold Mining Co.*, 145 US 300, 301-302, 12 S.Ct 921, 36 L.Ed.712(1892).

The Petitioner simply asks for justice and that the court review this matter, in a "individualized, circumstance-driven fairness evaluation", as being the "hallmark of an equitable remedy." It is the Courts "common-law tradition of case-by-case adjudication", which "assumes that judicial decisions are valuable and should not be cast aside lightly." *Chapman v Doe*, 598 US____, 143 S.Ct 857, 215 L.Ed.2d 184(2023)(Slip op., at 3).

In this present matter there is no case to adjudicate between adversaries. And has such the Montana Supreme Courts refusal to adjudicate the merits, or to properly apply the proper Rules of Civil and Appellate Procedure, and the States waiver of the five (5) constitutional violations, including Double Jeopardy prohibition Actual Innocence, and 'Fraud upon the Court' perjury concerning the criminal acts against the Petitioner, are grounds for this Court to grant Vacatur herein, because Montana is making "Bad Law", as a precedent in defiance of the holdings of the United States Supreme Court.

The Question is simple, on whether the Petitioner has Article III standing to request vacatur of the underlying charges, and the States default? In relation to the continued violations of the American's with Disabilities Act, and the Codes of Federal Regulations, 28 CFR §35.178, and the whole of 28 CFR §35 et al.

This matter is 'Moot' by definition: Moot, adj. 2. Having no practical significance; hypothetical or academic < the question on appeal became moot once the parties settled their case>. (Black's Law Dictionary, Abridged Tenth Edition).

This matters issues have been settled between the opposing parties, as shown in the Post-Conviction proceedings, where under Rule 12(2) of the Montana Rules of Appellate Procedure, the State of Montana chose not to dispute, argue or brief the Petitioner's Claims, of Actual Innocence as proven by the Forensic Science [DNA] Findings evidence, and refused to dispute, argue or brief the three (3) Malicious Prosecutorial Misconduct claims presented by the Petitioner [Lack of Probable Cause to charge; 'Fraud upon the Court' Perjury and suppression of the overwhelming evidence that the Prosecutor was involved in the scheme by the County detective and the Petitioner's ex-wife to hire Cartel members to Abduct, Torture and Rape the Petitioner...using the \$50,000.00 'Bounty' monies paid out by the Oregon Company. This includes the Petitioner's Double Jeopardy Claim, that prohibits the conviction of the remaining two charges, as also waived by Yellowstone County, which terminates any dispute between the parties involved.

Thus without conflict, Vacatur is proper, where no case or controversy exists.

This brings the Court's prior decisions into this matter concerning Vacatur, and the Court's holdings under *United States v Munsingwear, Inc.*, 340 US 36,39, 71 S.Ct 104, 95 L.Ed.36 (1950), as cited repeatedly in the following cases as being 'Clearly Established' Supreme Court precedent. Justice Jackson concurring in:

"Mootness and vacatur are distinct concepts...the doctrine of mootness stems from Article III of the Constitution, which permits federal courts to adjudicate only "Cases" and "Controversies". Simply stated, a case is moot when issues presented are no longer 'live' or the parties lack a legal cognizable interest in the outcome."

Acheson Hotels, LLC v Laufer, 144 S.Ct.18,27, 217 L.Ed.2d 155(2023).

Powell v McCormack, 395 US 486,496, 89 S.Ct 1944 (1969)(Mootness thus justifies dismissal.)

"Vacatur is a different animal entirely. Vacatur is a remedy that erases a judgement that has been rendered. Here, the Court invokes a so-called Munsingwear vacatur : see ante, 3-4, a species of vacatur that we have sometimes applied to judgement in civil cases that have "become moot while on [their] way here or pending our decision on the merits." Id at 27; *United States v Munsingwear, Inc*, 340 US 36,39, 71 S.Ct 104, 95 L.Ed 36(1950).

"In fact some have described the power of the court to vacate a judgement as "shrouded in ancient lore and mystery." Advisory Committee's Note on Fed.Rule Civ.Proc. 60(b), 28 USC App.p.289. It seems plausible that our authority to vacate a lower court's judgement under Munsingwear arises from our "supervisory appellate power" to "make such disposition of a case as justice requires." *Walling v James V Reuter, Inc.* 321 US 671,676, 64 S.Ct 826, 88 L.Ed.1001(1944); As cited by Justice Jackson, Id 27-28.

The Court, through the Honorable Justice Jackson, has explained the need for a Munsingwear vacatur, arising from the Court's "supervisory appellate power" to make such disposition of a case as justice requires."

Justice in this case is to vacate charges which has taken away a man's liberty, which the former (D) Montana Attorney General, representing the Respondents agrees and is satisfied with the Petitioner's claims of wrongful conviction, as is the Yellowstone County prosecutor, Julie Mees, representing the State in Post Conviction where she forfeited, abandoned and waived that the Petitioner Ellison was wrongfully convicted under the Fifth Amendment's Double Jeopardy Clauses, and in violation of the Montana Double Jeopardy Statutes; MCA: §46-11-410 Multiple Charges, and also MCA: §46-11-503, Prosecution barred after acquittal.

The Montana Supreme Court has refused repeatedly to recognize the laws of this Court, and the laws of the State of Montana to maintain a wrongful conviction, not to punish the Petitioner for a crime allegedly committed, but maintain the false impression of justice to the public, to suppress exposure of the criminal acts by Yellowstone County government officials. Literally to aid and abet the criminal acts shown and admitted to by waiver.

This leaves the granting of the Motion for Vacatur, as the only just option for the Court, "because [vacatur] is rooted in equity, the decision whether to vacate turns on the conditions and circumstances of the particular case." Id at 28; Azar v Garza, 584 US __, __, 138 S.Ct 1790, 201 L.Ed.2d 118(2018).

"Likewise, I believe that a court's Munsingwear determination should involve a particular assessment of whether "the conditions and circumstances of the particular case" warrant vacatur of the lower court's judgement." Garza, 584 US at __, __, 138 S.Ct 1790, 201 L.Ed.2d 118(slip op., at 3).

The Petitioner believes that the present circumstances, do warrant that the Court grant Vacatur, in the name of justice, for surely the Court does not support State and County officials who orchestrate and cover-up the Abduction, Torture and Rape of American citizens. Is so then we as a People are no better than a Communist Country, who does not follow our democratic standards and principles, and then that our government has betrayed those values, and the 'Rule of Law' to ignore corruption.

The Court's vacatur rulings are consistent with the Court's "established practices" of vacating a judgement of a court below, "when mootness occurs through... the unilateral action of the party who prevailed in the lower court." Acheson at 26; *Arizonans for Official English v Arizona*, 520 US 43,70-71,117 S.Ct 1055, 137 L.Ed.2d(1997)

"The Munsingwear remedy, like its vacatur kin, developed from "this equitable tradition", *U.S. Bancorp Mortgage Co. v Bonner Mall Partnerships*, 513 US 18, 21-22, 115 S.Ct 386, 130 L.Ed.2d 233(1994).

"The equitable remedy of vacating prior opinions in cases that become moot is driven by the principle that a "party who seeks review of the merits of an adverse ruling, but is frustrated by vagaries of circumstance, ought not in fairness be forced to acquiesce in the judgement." *Bancorp*, 513 US at 25.

The Petitioner simple asks for fairness, and that the Court honor the State's waiver, that an innocent man is convicted and incarcerated, in the name of Justice, and that the Court's "equitable tradition" be upheld, and that the Court see that the Court's in Montana have refused to abide by law, in order to protect a few 'Bad actors' in the Government of Montana.

The Petitioner asks that the Court break Montana's "tradition" of corruption, that dates back to the time of Mark Twain, who stated that Montana is beautiful, if you can overlook the corruption.

The Petitioner asks that the Court follow it's existing precedent, that as: "Our ordinary practice in disposing of a case that has become moot on appeal is to vacate the judgement with directions to dismiss." *N.Y. State Rifle & Pistol Ass'n v City of New York*, 140 S.Ct 1525,1526,206 L.Ed.2d 798(2020): e.g. *Deakins v Monaghan*, 484 US at 204, 108 S.Ct. 523, 98 L.Ed.2d 529(1988); *United States v Munsingwear, Inc*,340 US 36,39-40, 71 S.Ct 104, 95 L.Ed. 36 (1950).

In reference to the related §1983 case presented, where the Montana Attorney General refused to answer the Petitioner's 'Third Party Complaint', and is thus in default, and has continued to refuse to answer the Petitioner's 'Request for Admissions', the Petitioner asks that the Court order the lower Courts on remand to grant the default motion in the district court, for the 'sum certain' amount. This is consistent with the Court in *N.Y. State Rifle & Pistol*, 140 S.Ct at 1527:

"On remand, the Court of Appeals and the District Court may consider whether petitioners may still add a claim for damages in this lawsuit with respect..." The judgement... is vacated, and the case is remanded for such proceedings as are appropriate."

Courts "must also take account of the public interest", when making a vacatur determination." Bancorp, 513 US at 26, which raises broader fairness concerns—such as "the orderly operation of the federal judicial system." Id 27, Acheson at 30.

The public must not be subjected to a government where government officials are allowed to hire illegal alien Cartel gangmembers to commit criminal acts for money offered by a large corporation. The public interest demands fair play, and the trust in the Court must never waiver, as it will if this present matter is allowed to exist without a just remedy.

That remedy can only be to grant the Motion for Vacatur.

The State has manipulated the Court's jurisdiction, that "it would be "strange" to "permit a plaintiff [Montana in the original criminal causes] to obtain a favorable judgement, take voluntary action that moots the dispute, and then retain the benefits of the judgement." Garza, 584 US at ___, 138 S.Ct 1790, 201 L.Ed.2d 118 (Slip op., at 3)"; Acheson at 30, as opined by Justice Jackson.

Justice Jackson continued to opine in concurrence, holding:

"To me, such first principles about the nature of the vacatur remedy, the design of our common-law system, and the scope of the appellate authority best inform how this court, and other Courts of Appeals should proceed when addressing a Munsingwear motion."

The Petitioner Ellison has proved an equitable basis for vacatur of the Montana Supreme Court decision, and the U.S. District Courts decision, not to grant relief where the State of Montana has waived any right to maintain the present wrongful conviction, which the State, is satisfied is wrongful and illegal and is unconstitutional, beyond those courts past practices and a citation in favor of this Munsingwear vacatur motion herein.

Justice Barrett opined the Acheson decision, which was vacated with a 9-0 unanimous decision.

"The judgement is vacated, and the case is remanded...with instructions to dismiss the case as moot." Id at 22.

"Our Munsingwear practice is well settled."

See United States v Microsoft Corp., 584 US 236,240, 138 S.Ct 1186, 200 L.Ed.2d 610(2018)(per curiam); Great Western Sugar Co. v Nelson, 442 US 92,93-94, 99 S.Ct. 2149, 60 L.Ed.2d 735(1979)(per curiam); Duke Power Co. v Greenwood County, 299 US 259, 267, 57 S.Ct. 202, 81 L.Ed.178(1936)(per curiam); see S.Shapiro,K.Geller,T.Bishop, E. Hartnett, Supreme Court Practice §19.5(11th ed 2019)"

Ellison has established that based on the State of Montana's legal waiver of multiple claims presented to the Court by the Petitioner, that the Petitioner has an "equitable entitlement of that remedy", to vacate the lower courts orders, which include the Ninth Circuit, US.District Court, and the Montana Supreme Court; where it must be noted that in each Court, a Billings, Montana jurist presided. That in the lower Montana Supreme Court that the Court remand this matter for the dismissal of all charges in both DC-07-0907 and DC-14-0614, State v Ellison. That in the U.S. District Court, the Court remands back that the default judgement be honored, and the 'sum certain' relief be awarded, do to the criminal acts by the present Montana Attorney General and the other 'Third Party Defendants' committed, by interfering with the processes of the United State Supreme Court, and the U.S. Mail service. Thus violating the First Amendment Rights of the Petitioner, and each Supreme Court Justice. And with the new evidence, violated the First Amendment Rights of the President of the United States, Joe Biden, to receive the Petitioner's request for a Presidential Pardon. See Appendix herein this Petition to Re-Hear.

The Petitioner asks that the Court be consistant in granting the Motion for Vacatur, based upon its granting that Motion in the following cases, as being a Fourteenth Amendment and Fifth Amendment Right:

- 1) Speech First, Inc. v Sands, 144 S.Ct 675, 218 L.ED.2d 199(2024);
- 2) Biden v Feds for Med. Freedom, 2023 U.S. Lexis 4899(2023);
- 3) Payne v Biden, 144 S.Ct 480, 217 L.ED.2d 248(2023);
- 4) Kendall v Doster, 144 S.Ct 481, 217 L.Ed.2d 248 (2023);
- 5) Acheson Hotels, LLC v Laufer, 144 S.Ct 18, 217 L.Ed.2d 248(2023);
- 6) Chapman v Doe, 143 S.Ct 857, 215 L.Ed.2d(2022)(equitable entitlement to vacatur);
- 7) Grzegorczyk v United State, 142 S.Ct 2580,2584, 213 L.Ed.2d 1128(2022)
(The Governments concession that Grzegorczyk's [Like Ellison here]...conviction is invalid, coupled with the Government's commitment to forgo reliance on the procedural bar, thus leaves little room for any result other than vacatur of (at least) that conviction and sentence).

It is thus proper to vacate the present causes in the U.S. District Court Habeas proceedings; and dismissing the underlying charges in State District and Supreme Court as being 'Moot', and lacking in 'Case' or 'Controversy'.

(2) THE AMERICANS WITH DISABILITIES ACT, AS CODIFIED BY CONGRESS, 42 USCS § 12101 THROUGH 42 USCS § 12213, HAS CONSISTANTLY BEEN VIOLATED THROUGHOUT THESE PROCEEDINGS, IN VIOLATION OF THE FIRST AMENDMENT RIGHTS OF THE PETITIONER, AND THE FACT THAT THE PETITIONER IS LEGALLY DEAF, AND THAT THE STATE OF MONTANA HAS CONSISTANTLY DONE SO TO OBSTRUCT JUSTICE, BY CONSPIRING TO DETER THE PETITIONER FROM ATTENDENCE WITH THIS COURT, AND THE LOWER COURTS, TO FREELY AND TRUTHFULLY TESTIFY, TO THE POINT OF PHYSICAL RETALIATION, AND THE ADMITTED DESTRUCTION OF THE PETITIONER'S HEARING AIDS, SO AS TO NOT FAIRLY ATTEND COURT.

The Petitioner cites the whole of the Congressional ADA statute, 42 USCS §12101 through 42 USCS §12213, that the State of Montana, through the Third Party defendants in the related 42 USC §1983 case, Ellison v Yellowstone County, et al,Cv 18-056-BLG -BMM-JTJ, and in the lower courts violate this law consistently. See the attached Medical documentation confirming that the Petitioner is extremely deaf, and that after the Montana Attorney General ordered the destruction of evidence, in email to Montana Atate Prison Warden, Jim Salmonsens. With the Warden's subordinate officer's Sgt. Susan Molendyke and others, destroying the Petitioner's two plastic 'Tote' of evidence against the State of Montana; and also the Petitioners ADA hearing aids.

This was done to "ensure" that the petitioner could no longer file a "criminal, civil, or administrative case.;" to quote the Montana Attorney General, Austin Knudsen, in his email and letter on official Montana Department of Justice letterhead, with Knudsen's badge on it. See the constant retaliation in App. I of Certiorai Petition.

The evidence destroyed consisted of undisputed and waived documentation and photos, confirming the fact that Yellowstone County officials hire members of the Mexican Cartel to injure, and or kill American Citizens for money paid by a Oregon Corporation, to escape culpability on that Corporation's documented 'Bond Fraud', and the theft of \$1,786,000.00 of the Ellison's bond on a construction project.

MSP Sgt. Molendyke, also destroyed a Petition for Writ of Certiorari, taken from the Prison internal mail system, violation multiple criminal codes. The Petitioner was immediately moved to another prison's custody. Violation of S.Ct.R. 29.2 and 36.1, to halt access to the Courts, where the prisons refuse to provide TTY phones.

The Court stands on the laws written by Congress, in stating:

"it is...our job to apply faithfully the law Congress has written" and "we cannot replace the actual text with speculation as to Congress intent". Perez v Sturgis Pub.School, 143 S.Ct 859, 865, 215 L.Ed.2d 95(2023); Henson v Sanlander Consumer USA, Inc., 582 US 79,89, 137 S.Ct 1718(2017)

The State of Montana's failure to provide reasonable access to the courts, for the Petitioner in State facilities, constitutes a violation of Title II of the Americans with Disabilities Act of 1990(ADA), and 28 CFR §35, et seq.(Deafness rules).

The ADA provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services." Tennessee v Lane, 541 US 509,513, 124 S.Ct 1978(2004).

The accommodations denied the Petitioner as a disabled deaf person are necessary for the Petitioner to be allowed the equal opportunity to understand what is occurring at every stage of the judicial proceedings. This has been denied to the Petitioner since 2007, when the 'Bounty' was placed on Ellison, and the court's of Montana used deceptive 'Bad Faith' practice to assist the Oregon Company as the record shows.

" Our cases have also held that Congress may abrogate the State's Eleventh Amendment immunity, to determine whether it has done so in any given case, we "must resolve two predicate questions: first, whether Congress unequivocally expressed it's intent to abrogate that immunity; and second, if it did, whether Congress acted pursuant to a valid grant of constitutional authority" Id at 517;

"The Act specifically provides: "A state shall not be immune under the eleventh amendment to the Constitution of the United States from an action in Federal or State Court of Competent jurisdiction for violation of this Chapter", 42 USC 12202", Id at 517; See also 28 CFR §35.178 (States do not have immunity when harming deaf persons access to the courts).

"Title II, like Title I, seeks to enforce the prohibition of irrational disability discrimination. But it also seeks to enforce a variety of other basic constitutional guarantee's, infringements of which are subject to more searching judicial review." Id at 522-523.

"These rights include some, like the right of access to the courts at issue in this case, that are protected by the Due Process Clause of the Fourteenth Amendment." Id at 523.

The State has undisputedly denied the same access to the Courts as other inmates who can hear, and use a phone. The Petitioner is legally deaf, with only 11% hearing in one ear, and for more than 8 years has been denied the use of a TTY phone, and it is now worse since the State confiscated the Petitioner's hearing aids, with no ability to speak to attorney's on the phone, because no prison facility has a TTY phone.

Congress ratified laws for the Court's to enforce, and the questions must be asked, 'Why have the lower courts not abided by law?'. Is it because State officials would rightfully be held accountable? Is this the government the courts condone?

How can the Court's maintain a conflict that does not exist between opposing parties? Surely the Court does not endorse government criminality, as 2 tiered law.

The Court has held that "it is monstrous, that the courts should aid and abet the lawbreaking police officer." *Gelbard v United States*, 408 US 41,69,92 S.Ct 2357. (1972); *Olmstead v United States*, 277 US 438,485,48 S.Ct 564(1928).

"A court is not at liberty, we cautioned, to bypass, override, or excuse a state's deliberate waiver...", *Wood v Milyard*, 566 US 463,466, 132 S.Ct 1826(2012).

But has the Supreme Court done that in this case? Or has any justice even seen the pleadings of this case, where "Relief is proper", *Smith v Robbins*, 528 US 259, 269, 120 S.Ct. 746(2000). Have biased clerks suppressed this from the justices, where the Party Presentation doctrine applies, *United States v Sineneng-Smith*, 140 S.Ct 1575, 1576-1577(2020). The Courts of Montana do not have jurisdiction to maintain a wrongful conviction, in a "sentence that violates the Double Jeopardy Clause", *Brown v Davenport*, 142 S.Ct 1510,n.1, 212 L.Ed.2d 463(2022).

The Rules of Civil and Appellate procedure, both State and Federal; and all of the above settled caselaw, and principles of law, "forecloses the controlling role the Ninth Circuit [The U.S. District Court, and the Montana Supreme Court] took on the case." The only extraordinary circumstances are that the lower courts have gotten away with maintaining the present convictions and sentences to aid and abet the the corrupt government officials, who committed crimes upon the Petitioner, without consequences, and the victim is imprisoned because the police found the Petitioner's DNA at his own home; and a detective called the Petitioner's employer's demanding that they fire him; and a car exploded while the Petitioner was driving right after a 'Bounty' was placed on him. All occurrences the State holds Petitioner faultless.

The Petitioner again asks for the relief of granting the Motion for Vacatur, in the underlying State DC-07-0907, DC-14-0614 cases and order default judgement in the related civil case in the U.S. District court.

Dated this 28th Day of May, 2024. LIONEL SCOTT ELLISON.



CERTIFICATE OF COMPLIANCE

WITH RULE 44

OF THE

UNITED STATES SUPREME COURT RULES

LIONEL SCOTT ELLISON,
Petitioner,

-vs-

THE STATE OF MONTANA, et al.,
Respondents.

As required by the Rules of the Supreme Court, Rule 33.2, I certify that this Petition for Re-hearing, under Rule 44, containing 15 pages, excluding the parts of the Petition that are exempted by Supreme Court Rule 33.1(d).

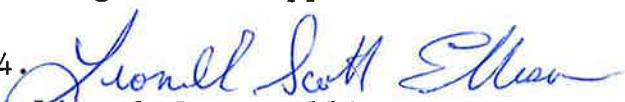
I certify that this Petition complies with Rule 44, by briefly and distinctly states grounds of other substantial grounds, that have not been presented before. These grounds are presented in the allotted 15 pages.

I certify that this Petition is presented in 'Good Faith', with the present grounds having been controlled by Congressional Statute, but could not be placed in the previous 'Questions' due to the one page limitation on Questions. These grounds are "substantial", by Congress.

* United States Supreme Court has allowed Motions for Vacatur, without having been a Rule of the Court. Motions are allowed under Rule 21. Rule 21(2)(b) states, "A motion to dismiss as moot (or suggestion of mootness), ... and any motion the granting of which would dispose of the entire case or would affect the final judgement... The Motion shall be served as required by Rule 29."

I certify to the best of my layman, prose ability, that I am abiding with the laws of the Court, and of Congress as applicable.

Dated this 28th day of May, 2024.


Lionel Scott Ellison, Pro se
pursuant to 28 USC § 1746.

CERTIFICATE OF COUNSEL

The Petitioner, Lionel Scott Ellison, hereby declares and certifies that he willingly comes before the Supreme Court of the United States, as a Pro se Petitioner, and at this time is not represented by counsel, and has asked to proceed In Forma Pauperis.

This Petition is presented in Good Faith, in that the Petitioner comes before the Court, for relief from the 'EXTRA-ORDINARY' grounds, that the prior deniable of Habeas relief, and violating Article III.

The Petitioner presents Congressional Criminal statutes as being controlling authority, concerning the actions by the Montana State Attorney General's Office, ordering the destruction of the Petitioner's legally mailed Petition for Writ of Certiorari, and other federally protected documentation under a standing Writ of Habeas Corpus ad Testificandum, issued by the U.S. District Court, for the District of Montana. The actions constitute criminal actions and Contempt of Court Order, as being Congressional binding Law.

The Petitioner submits this Petition solely to exercise his Constitutional Rights as guaranteed by the U.S. Constitution's First, Fourth, Fifth, Sixth, Eighth and Fourteenth Amendment Rights, which the Petitioner hereby claims are violated, and the 'Good Faith' cause for the Full Court to review this matter which demonstrates the 'Outrageous Government Conduct', which the Constitution forbids. And in which by denial of this Petition would give all State's Attorney General's precedent to violate Supreme Court and Congressional Statutes from this point forward, including ADA requirements.

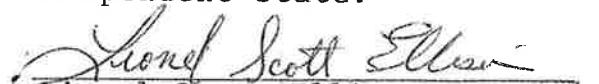
This would completely invalidate the Supremacy Clause, within Article VI, of the Constitution, in reference to Article III.

Thus, subsequently invalidate the 'Rule of Law'/stare decisis decisions which all states are bound to uphold, to maintain the States standing within the union and protection of the United States government, and it's monetary benefits.

For the Court to set this precedent would invalidate the Constitution of the United States, the U.S. Congress's authority over states.

With Montana then becoming a sovereign independent state.

Dated this 28th day of May, 2024.


Lionel Scott Ellison, Pro Se.

CERTIFICATE OF SERVICE

I, Lionel Scott Ellison, hereby certify that I have mailed a copy of this matters 'Motion for Vacatur', as a portion of the Petition to Re-hear this matter, into the custody of the Montana State Prison's internal mail system on this date, as prepaid postage.

In Good faith I am filing the foregoing above documents before the allotted 25 day deadline for filing, per Rule 44 of the Rules of this Court, with a copy of the above to Respondents; and one to each Justice.

Per Rule 29.3, the Petitioner also asks that the Court serve a copy to the Montana Attorney General, Austin Knudsen, as legal counsel for the respondents, and as a defendant in the related civil matter cited originally; to the following:

Austin Knudsen, Montana Attorney General
P.O. Box 210401
Helena, Montana 59620-1201

e-mail: Austin.Knudsen@mt.gov.

Based upon the Constitutionality of multiple Acts of Congress being at barr, and "drawn into question", 28 USC §2403(a) applies, and were participation of the Solicitor General of the United States should have been proper, and has not occurred.

The Petitioner has just learned that the Montana Prison system has censored the Petitioner's legal mailings to the Montana Attorney General requesting a signed waiver from his office, and censored this legal mail, including a request to President Joe Biden, for a Presidential Pardon, which documents the 'Fraud upon the Court' by the State's Highest Law Enforcement official, Austin Knudsen who ordered the Warden at the Montana State Prison to destroy all evidence of State wrongdoing and the Petitioner's hearing aids; an ADA violation also.

Dated this 28th day of May, 2024.


Lionel Scott Ellison,

pursuant to 28 USC§ 1746.

**Additional material
from this filing is
available in the
Clerk's Office.**