

23-7363 ORIGINAL  
No. \_\_\_\_\_

FILED

APR 03 2024

OFFICE OF THE CLERK  
SUPREME COURT OF THE UNITED STATES

IN THE

SUPREME COURT OF THE UNITED STATES

In re: Orin Kristich

— PETITIONER  
(Your Name)

William P. Johnson (Chief District Judge)  
Warden Gutierrez(U.S.P.T.)

vs.

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Tenth Circuit Court Of Appeals

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Orin Kristich

—  
(Your Name)

P.O. Box 7007 Marianna, F.L. 32447

—  
(Address)

Marianna, F.L. 32447

—  
(City, State, Zip Code)

N/A

—  
(Phone Number)

### **QUESTION(S) PRESENTED**

- (1) Whether The First Amendment applies to legal mail?
- (2) Whether The First Amendment applies to Mr.Kristich, and access to the court's by U.S. mail?
- (3) Whether The First Amendment applies to Mr.Kristich's Fifth Amendment Due Process rights with regards to §2255?
- (4) Whether these rights are clear and indisputable with regards to the United States Constitution?
- (5) Whether prison officials can violate these rights?
- (6) Whether The Fifth Amendment applies to legal mail, with regards to accessing the court's?
- (7) Whether the 10th Circuit Court of Appeals has abused its discretion in this case?

## **LIST OF PARTIES**

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

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

William P. Johnson (Chief District Judge)

Warden Gutierrez (U.S.P.T.)

Sarah J. Mase, AUSA

## **RELATED CASES**

- Case No. 23-2122, 10th Circuit Court of Appeals, Writ of Mandamus
- Case No. 1:22-CV-00569-WF-KRS, District Court, District of New Mexico, 28 U.S.C. § 2255
- Case No. 1:18-CR-02635-WJ-KRS-1, District Court, District of New Mexico, Criminal Case

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

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

**OPINIONS BELOW**

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

reported at Unknown; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

The opinion of the United States district court appears at Appendix N/A to the petition and is

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix \_\_\_\_\_ to the petition and is

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

The opinion of the \_\_\_\_\_ court appears at Appendix \_\_\_\_\_ to the petition and is

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

1.

## TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	9
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED .....	11
STATEMENT OF THE CASE .....	12
REASONS FOR GRANTING THE WRIT .....	14
CONCLUSION.....	15

## INDEX TO APPENDICES

APPENDIX A      Exhibit(s)    A-1 -- D

APPENDIX B      Exhibit(s)    1 - 3

APPENDIX C

APPENDIX D

APPENDIX E

APPENDIX F

## JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was December 7, 2023.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: January 24, 2024, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No.   A  .

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

For cases from **state courts**:

The date on which the highest state court decided my case was \_\_\_\_\_.  
A copy of that decision appears at Appendix \_\_\_\_\_.

A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No.   A  .

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

<u>CASES</u>	<u>PAGE</u>
Ex parte Jackson, 96 U.S. 727 (1877)	
Ex Rel. Milwaukee S.D. Pub. Co. v. Burleson, 255 U.S. 407 (1921)	
Harriman v. Interstate Commerce Commission, 211 U.S. 407 (1908)	
Thornburgh v. Abbott, 490 U.S. 401 (1989)	
Turner v. Safely, 482 U.S. 78 (1987)	
U.S. v. Delaware, 213 U.S. 366 (1909)	
Kensu v. Haigh, 87 F.3d 172 (6th Cir. 1996)	
Sallier v. Brooks, 343 F.3d 868 (6th Cir. 2003)	
Knop v. Johnson, 997 F.2d 996 (6th Cir. 1992)	

STATUTES AND RULES

28 C.F.R. § 540.2(c)

28 C.F.R. § 540.18(a)

Federal Rule Of Civil Procedure 8(e)

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

First Amendment Of The United States Constitution.

Fifth Amendment Of The United States Constitution .

28 C.F.R. § 540.2(c)

28 C.F.R. § 540.18(a)

## STATEMENT OF THE CASE

(1) Mr. Kristich filed a Writ of Mandamus with regards to the United States District Court (D.N.M.) not marking his legal mail "open only in the presence of the inmate." The Tenth Circuit Court of Appeals issued the Writ, however, denied the Writ. (Quoting In re: Orin Kristich) "Mr. Kristich now asks us to direct the district court to label future envelopes as legal mail as he requested. But he fails to identify authority requiring the district court to label his mail in any specific way. In short, Mr. Kristich has not shown that his right to relief on this point is clear and indisputable." However, the First Amendment was the authority found in Mr. Kristich's Writ. Wherefore, the Tenth Circuit's order created a Circuit split with regards to the First Amendment and legal mail.

On January 24, 2024, Mr. Kristich's construed document for panel rehearing was denied. Further, the Tenth Circuit said, "Mr. Kristich's petition for rehearing does not cite any such authority either." (Please see Mr. Kristich's petition where he clearly cited case law with regards to legal mail, and the Sixth Circuit's court approved opt-in system in which prison officials could open any mail sent to a prisoner unless the prisoner affirmatively requested that "privileged mail" be marked by the courts. The Tenth Circuit clearly did not read the petition or they would have known Mr. Kristich did make that request (please see Knop v. Johnson, 997 F.2d 996, 1012 (6th Cir. 1992)). As seen in Mr. Kristich's petition for panel hearing. In short, Mr. Kristich's right is clear and unquestionably

indisputable from the very first request to mark his mail as legal mail. (Please see (D.N.M.) Civil Docket for case no. 1:22-cv-00569-WJ-KRS, Docket text(s) nos. 3, 9, 39)(quoting Sallier v. Brooks, 343) "heightened concern with allowing prison official unfettered discretion to open and read an inmate's mail because a prison's security needs do not automatically trump a prisoner's First Amendment right to receive mail...."

(2) The 10th Circuit Court of Appeals "departed so drastically" from the principles and history of the United States Constitution as to constitute an abuse of discretion. Please see Sineneng-Smith, 590 U.S., 140 S. Ct. 1575, 206 L. Ed. 2d 866 (2020); Prude v. Meli, 76 F.4th 648 (Aug. 7, 2023).

Pursuant to 5 U.S.C. § 706 the 10th Circuit Court of Appeals abused its discretion.

REASONS FOR GRANTING THE PETITION

- (1) The Tenth Circuit Court Of Appeals created a Circuit split with regards to the First Amendment, and legal mail in this case.
- (2) Pursuant to this courts "Plain Error" doctrine an error has occurred in this case.
- (3) The error has affected Mr.Kristich's substantial rights Pursuant to The United States Constitution.
- (4) The error has seriously affected the fairness, integrity, and public reputation of these judicial proceedings.
- (5) The rights of the American people as a whole is at risk; with regards to The First Amendment.

## CONCLUSION

As a general matter the First Amendment means that our government has no power to restrict Mr.Kristich's right to redress grievances before the court(s) of the United States;regarding his legal mail. The First Amendment Of The United States Constitution has a long History in American Law, starting with the early settlement of the Colonies in 1641. The Tenth Circuit has now tried to diminish the "Historical Values", and "Principles" of the United States Constitution , and American society. Wherefore, this petition for a Writ Of Certiorari should be granted.

Respectfully submitted,

Orin Kristich

Name

Orin Kristich

Signature

4-4-2024

Date