

Doc No. \_\_\_\_\_

Original copy

24-5617

IN THE

ORIGINAL

SUPREME COURT OF THE UNITED STATES

EX Parte: KeSean Calvin Wilson, Pro Se Petitioner

FILED

SEP 16 2024

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

ON PETITION FOR AN  
ORIGINAL WRIT OF HABEAS CORPUS

Pursuant to Sup. Ct. R. 20.4, 28 U.S.C. § 2241, 2254 (b) (ii)

KeSean Calvin Wilson

#812224

LAKELand CORRECTIONAL Facility

141 First St.

Coldwater, MI 49036

by:

## QUESTIONS PRESENTED

- i. WAS KESEAN WILSON DENIED HIS FOURTEENTH AMEND. RIGHTS TO EQUAL PROTECTION AND SUBSTANTIVE DUE PROCESS, SINCE HE WAS SIMILARLY SITUATED TO AN INDIVIDUAL WITH NO RATIONAL BASIS FOR THE DIFFERENCE IN TREATMENT, AND WHERE THE STATE WAS WITHOUT AUTHORITY TO PUNISH HIS CONDUCT?
- ii. UNDER THE LENS OF U.S. CONST. TENTH AMEND., ARE THE SEVERAL STATES RESERVED THE POWER TO PUNISH THE ACTIVITY AND CONDUCT OF BANK ROBBERY?

i.

## LIST OF PARTIES

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

Warden Bryan Morrison

Michigan Department of Corrections

## TABLE OF CONTENTS

Jurisdiction.....	v
Constitutional and Statutory Provision Involved .....	vi
Statement of the case .....	vii
Statement for not filing in the district court .....	viii
Exceptional Circumstances.....	ix, x
No Adequate Relief in Any other form exist .....	xi
Reasons for Granting The Writ.....	xii, xiii
Conclusion.....	xiv

## INDEX TO APPENDICES

Appendix A	News article which establishes fact that State Prosecutor Mark Blumer was involved in a similarly situated case and conceded that it was a federal crime.
Appendix B	Criminal complaint of Kesean Wilson showing that prosecutor Mark Blumer authorized it.
Appendix C	Federal Court file of David Floyd Birdsall - who's similarly situated to petitioner - establishing the fact of the <b>insured status</b> of the credit union and all material facts needed to support petitioner's claims.

## TABLE OF AUTHORITIES

### **Cases:**

Fay v. Noia, 372 U.S. 391, 401-402 (1963) . . . . .	xi
Felker v. Turpin, 518 U.S. 651, 658-64; 135 L. Ed 2d 827; 116 S. Ct. 2333 (1996) . . . . .	viii
Harris v. Nelson, 394 U.S. 286; 89 S. Ct. 1082; 22 L. Ed 2d 281 (1969) . . . . .	xi
Hudspeth v. Melville, 127, F. 2d 373, 375 (10th Cir. 1941) . . . . .	xii
Jones v. Cunningham, 371 U.S. 236; 83 S. Ct. 373; 9 L. Ed 2d 285 (1963) . . . . .	xi
Peyton v. Rowe, 391 U.S. 54, 65-67 (1986) . . . . .	xi
New York v. United States, 505 U.S. 144, 177-178; 112 S. Ct. 2408; 120 L. Ed 2d 120 (1992) .	xii
Gonzalez v. Raich, 545 US 1, 18; 125 S. Ct. 2195; 162 L. Ed 2d 1 (2005). . . . .	xii
Willbrook v. Olech, 528 U.S. 562; 120 S. Ct. 1073; 145 L. Ed. 2d 1060 (2000) . . . . .	ix

### **Statutes:**

28 U.S.C. § 2241 . . . . .	v, ix
28 U.S.C. § 2244(b)(3)(B). . . . .	viii.
28 U.S.C. 2254 (b)(ii) . . . . .	x
MCL § 15.231 . . . . .	xiii

### **Other:**

U.S. Const. Tenth Amend. . . . .	viii, x, xii
U.S. Const. Art. I § 8, cls. 3,5,18. . . . .	xii
U.S. Const. Art. I §10 cl.1 . . . . .	x
Sup. Ct. R. 20.4(a) . . . . .	v, ix.

## **JURISDICTION**

**This court's jurisdiction is invoked under Sup. Ct. R 20.4(a), 28 U.S.C. § 2241 and its original habeas jurisdiction.**

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

**Art. I § 8 cl. 3,5 and 18 U.S. Const**

**Art. I § 10 cl.1 U.S. Const.**

**Tenth Amend. U.S. Const.**

**Fourteenth Amend. U.S. Const.**

**28 U.S.C. § 2241**

**28 U.S.C. § 2254(b)(ii)**

**MCL § 15.231**

## STATEMENT OF CASE

On October 10, 2012, Kesean Wilson entered the Jackson City County Credit Union while armed and robbed it. He was charged and later punished by the State of Michigan to serve 16 to 30 years - by way of a guilty plea. In 2017 he filed his first Federal habeas petition in the U.S. District Court for the Western District of Michigan. He did not raise any of the claims now presented in this petition.

In 2023, his Mother - Tinesha Walker - sent him a News article - through the prison e-mail system "Jpay" - See Appendix-A [REDACTED], this article presented adjudicative facts, i.e. it shows that Michigan's Chief Assistant Prosecutor Mark Blumer - the prosecutor who authorized the arrest and charging of Mr. Wilson - was involved in a similarly situated case. Petitioner had no prior knowledge of these facts as they were unrelated to his case. However, the news article prompted an investigation and subsequently the obtainment of the similarly situated individuals federal court file - which further presented the fact that the credit union in question was insured by the National Credit Union Administration. Petitioner is now incarcerated at the Lakeland Correctional Facility, the Warden of which is Bryan Morrison who holds him illegally by virtue of a void judgment of sentence/committment - issued by the 4th Judicial Circuit Court, Jackson, Michigan.

## Statement For Not Filing in District Court

I did not file in the district court because, (1) the U.S. Court of Appeals for the Sixth Circuit neglected to render a decision on my Motion for Authorization to file a second or successive habeas petition within the time frame of **28 U.S.C. § 2244(b)(3)(B)1**, (2) this Court does not require authorization to file an original habeas petition. See, **Felker v. Turpin**, 518 U.S. 651, 658-64; 135 L. Ed 2d 827; 116 S. Ct. 2333 (1996), and (3) the question of who has authority to punish the conduct and activity of bank robbery - under the lens of the **Tenth Amendment** - is one that should be decided by this Court<sup>2</sup> - and since there is no precise authority from this court on this question, my rights are better protected under this court's rationale.

---

1. It has been more than 90 days pass the date the court should have rendered a decision on my motion. See, **In re Kesean Calvin Wilson** case no: 24-1442
2. As this decision would alter the administration of criminal justice at the state level.

## EXCEPTIONAL CIRCUMSTANCES

This case is sufficiently "exceptional" to warrant utilization of this court's **Rule 20.4(a), 28 U.S.C. § 2241**, and its original habeas jurisdiction because, (1) the State of Michigan has deprived Mr. Wilson of his liberty by denying him **Equal Protection** of the laws where;

- (a) State Prosecutor Mark E. Blumer (P-24029) authorized the arrest and criminal complaint against Mr. Wilson and sought prosecution and punishment for his conduct of Armed Bank Robbery, See Appendix-B; and
- (b) Where, 3 months prior, ~~■~~ Mr. Blumer in the case of David Floyd Birdsall - an individual who Armed robbed the **Exact Same** credit union as Mr. Wilson, conceded to the fact that this was purely a federal offense and yielded his case to the Federal government, see Appendix-A, pg. 2 and Appendix-C
- (c) Subsequently, in the case of Mr. Birdsall, he was prosecuted and punished federally, after being originally charged in the state, See Appendix-C, in contrast, Mr. Wilson was punished by the state, despite being similarly situated.

Therefore, under the "Class of one" theory of the equal protection clause, Mr. Wilson's claim succeeds where (1) he is similarly situated to Mr. Birdsall and (2) there is no rational basis for the difference in treatment - especially, where the state has conceded to the fact that this is a federal offense. See **Willowbrook v. Olech**, 528 U.S. 562, 120 S. Ct. 1073, 145 L. Ed. 2d 1060 (2000).

Secondly, Mr. Wilson's Factual predicate is clearly distinguishable from cases that have drawn into question federal and state authority over punishment. For over 150 years, it has been argued and determined, under the lens of **U.S. Const. 5th Amend.**, and has never been questioned by a State Prisoner under the lens of **U.S. Const. 10th Amend.**<sup>3</sup>, mainly because those cases had a factual predicate of "subsequent" state prosecutions, not punishment by the State in the "First instance," these are undoubtedly "exceptional" circumstances. .

Finally, Mr. Wilson meets the exception under **28 U.S.C. § 2254(b)(ii)** because the actions of the State are so lawless, that if he was forced to commence his appellate process there it would only compound the illegality. Additionally, this Court in **Granberry**, among other cases, has held the exhaustion requirements "not rigid and fixed," especially since the convicting court in this case, is without jurisdiction.

---

<sup>3</sup> See e.g., **Barkus v. Illinois**, 359 U.S 121 (1959), additionally, **U.S. Const. Art. I Sec. 10, cl. 1**, "expressly" prohibits the states the power to coin money. therefore, it follows, the constitutional setting of the Federal Bank Robbery Act - **U.S. const. Art. I Sec. 8, cl. 5** - in light of the question before the court, ends all argument.

## NO ADEQUATE RELIEF IN ANY OTHER FORM EXIST

The circumstances of this case tests the principles accepted by this Court, i.e., habeas corpus "is not now and has never been a static, narrow, formalistic remedy; its scope has grown to achieve its grand purpose - the protection of individuals against erosion of their right to be free from wrongful restraints upon their liberty." *Jones v. Cunningham*, 371 U.S. 236; 83 S. Ct. 373; 9 L. Ed 2d 285 (1963).

Furthermore, the writ of habeas corpus is the fundamental instrument for safeguarding individual freedom against arbitrary and lawless state action. The very nature of the writ ~~of~~ demands that it be administered with the initiative and flexibility essential to insure that miscarriages of justice within its reach are surfaced and corrected. See *Harris v. Nelson*, 394 U.S. 286; 89 S. Ct. 1082; 22 L. Ed. 2d 281 (1969).

As Blackstone phrased it, habeas corpus is "the great and efficacious writ, in all manner of illegal confinement." As this court held in *Fay v. Noia*, 372 U.S. 391, 401-402 (1963), the office of the writ is "*to provide a prompt and efficacious remedy for whatever society deems to be intolerable restraints.*" See, *Peyton v. Rowe*, 391 U.S. 54, 65-67 (1968). As such, Mr. Wilson meets the demanding standards of **Rule 20.4(a)** where no other procedural form settles such matters in such a prompt and efficacious manner.

## REASONS FOR GRANTING THE WRIT

In the case at hand, the petitioner's activity of armed bank robbery substantially affects both interstate commerce<sup>4</sup> and the power to coin money<sup>5</sup> - rights delegated to congress by the constitution. As such, the state of Michigan has no state sovereignty, authority, or jurisdiction to prosecute and punish petitioner for such conduct.

As this court explained in *New York v. United States*, 505 US 144, 177-178,; 112 S. Ct. 2408; 120 L. Ed 2d 120 (1992), the question of whether an act is within Congress's enumerated powers "are mirror images of each other." 505 US at 156 ("If a power is delegated to Congress in the Constitution, the Tenth Amendment **expressly disclaims** any reservation of that power to the States).

Thus, the question of whether the State has sovereignty, authority, or jurisdiction to punish turns on the extent of Congress's enumerated powers. The Constitution makes clear that, only Congress has the power to punish conduct, which affects its enumerated powers. Art. I, § 8 cl. 3,5 and 18.<sup>6</sup>

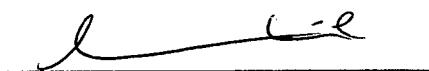
---

4. *Gonzalez v. Raich*, 545 US 1, 18; 125 S. Ct. 2195; 162 L. Ed 1 (2005); that is, Congress power to regulate within Lopez/Morrison's third category - activities that substantially affect interstate commerce - extends to individual instances of conduct with only a *de minimis* effect on interstate commerce so long as the class of activity regulated is economic or commercial in nature. See *Id.* at 17
5. Congress relied on its ability under the necessary and proper clause to pass laws in furtherance of its power to coin money. See *Hudspeth v. Melville*, 127 F. 2d 373, 375 (10th Cir. 1941).
6. In *Comstock*, this Court explained, the powers "delegated to the United States by the Constitution include those specifically enumerated powers listed in Article 1" - such as those conferred by the Commerce Clause - "along with the implementation authority granted by the necessary and proper clause" - Such as the authority to codify and punish federal crimes affecting interstate commerce. 560 US at 144 . . . "Virtually by definition," then, the authority to prescribe punishment for federal crimes is not a "power that the constitution reserved to the states..." *id.*

Finally, as it pertains to the new evidence in this case, Mr. Wilson had no prior knowledge of any of these facts as they were unrelated to his case. And he could not have, through the exercise of due diligence, discovered it because (1) he has no access to the internet - as it relates to the article - and (2) as a state prisoner he is not allowed the right to the **Freedom Of Information Act** - which is what his family used to obtain the federal court file of David Birdsall. See Mich. comp. Law § 15.231.<sup>7</sup> As such, Mr. Wilson is not guilty of the underlying state offense, and his restraint is in violation of the U.S.. Const.<sup>8</sup>

I declare under penalty of perjury that everything in this petition for habeas corpus is correct and true.

Executed On, Date: 8-20-2024

  
Signature

---

7. MCL § 15.231 reads in part: (1) This act shall be known and may be cited as the "Freedom of Information Act." (2) It is the public policy of this state that all persons, **except** those persons incarcerated in state or local correctional facilities, are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them . . .
8. As this court explained in **Chiafalo**, the Tenth Amendment is a mere affirmation of what, upon any just reasoning, is a necessary rule of interpreting the constitution..

## CONCLUSION

### RELIEF SOUGHT

Kesean Wilson now prays that ~~the Honorable~~ <sup>this court</sup> Grants this writ and the following:

- (a) Order him released on PR Bond pending a decision in this matter, and or;
- (b) Order his "immediate and speedy" unconditional release from the illegal restraint;
- (c) Order the U.S. Marshall Service to execute these orders and safely escort him off the state penal grounds
- (d) expunge his criminal record as it relates to this conviction
- (e) Dismiss case with prejudice.
- (f) Order oral arguments if necessary and appoint <sup>counsel</sup> ~~attorney~~ for that <sup>sole</sup> ~~one~~ purpose.

Date: 8-20-24

Respectfully submitted

  
\_\_\_\_\_  
Signature