

No. 24-5933 ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

FILED

OCT 31 2024

OFFICE OF THE CLERK
SUPREME COURT, U.S.

Garry David Gallardo

Petitioner

vs.

United States of America

Respondent

ON PETITION FOR A WRIT OF CERTIORARI
TO THE
United States Court of Appeals For The Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

Garry David Gallardo, Petitioner
#41571-080
Federal Correctional Institution
At Hazelton
P.O. Box 5000
Bruceton Mills, WV 26525

Questions Presented

1. In the Federal criminal cases, this petition presents for the Court to review, do the structural defects present in the criminal cases below warrant automatic reversal, where errors below were plain, affected petitioner's substantial rights, and seriously affected the fairness, integrity and public reputation of the judicial proceedings in a constitutional Article III court this Court's precedents more than establish the district court lacked both personal and precise subject-matter in the criminal proceedings ab initio.
2. Whether this Court should reverse, vacate, and remand to the courts below, to reverse the constitutionally infirm Federal criminal convictions to protect the rights of the petitioner that are that are embodied in the Federal Constitution, to make good the wrong done to petitioner by the Government and the courts below.

List of Parties

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

Related Cases

The cases related to this petition is set out in various parts of the appendix attached to this petition.

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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 judgments below.

OPINIONS BELOW

The opinion of the United States court of appeals appears at Appendix A to the petition and is, to petitioner's knowledge, unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is, to petitioner's knowledge, also unpublished.

JURISDICTION

The date on which the United States Court of Appeals decided my case was July 29, 2024.

As the Court of Appeals Order would render any attempt at rehearing futile, no petition for rehearing was filed.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The United States Constitution, Article I, §8, cl.3, in relevant part, provides: "The Congress shall have Power... To regulate Commerce with Foreign Nations, and among the several States, and with the Indian Tribes."

The United States Constitution, Article III, §1, in relevant part provides: "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. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour."

The United States Constitution, Article III, §2, in relevant part, provides: "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and 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 a Party;...."

The United States Constitution, Article V, in relevant part, provides: "The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the

Several States, shall call a Convention for proposing Amendments, which, in either case, shall be valid to all Intents and Purposes, as Part of this Constitution, etc."

~~The United States Constitution, Article VI, §§ 2 and 3, pro-~~
vides: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

"The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution;..."

The United States Constitution, Amendment VI, in relevant part, provides: "In all criminal prosecutions, the accused shall enjoy the right... to have the Assistance of Counsel for his defence."

The United States Constitution, Amendment VIII, provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted."

The United States Constitution, Amendment IX, provides:

"The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

The United States Constitution, Amendment X, provides:

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

Title 18, United States Code, § 3231, provides:

"The district courts of the United States shall have original jurisdiction, exclusive of the courts of the States, of all offenses against the laws of the United States.

"Nothing in this title shall be held to take away or impair the jurisdiction of the courts of the several States under the laws thereof."

Title 18, United States Code, § 2252(a)(1)(A)(B), relevant to this case, provides:

"(a) Any person who-

(1) knowingly transports or ships using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means including by computer or mails, any visual depiction, if-

(A) the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct;

and

(B) such visual depiction is of such conduct;...
shall be punished as provided in subsection (b) of this section."

Title 18, United States Code, § 2252A(2)(1)(2), relevant to this case,

provides:

"(a) Any person who—

(1) knowingly mails, or transports or ships using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means, including by computer, any child pornography;

(2) knowingly receives or distributes—

(A) any child pornography;... including by computer;...
shall be punished as provided in subsection (b)."

STATEMENT OF THE CASE

This saga of unconstitutional, thus unlawful, deprivation of liberty started in 1987, and continued in 2006, when petitioner was indicted, by the U.S. Attorney's office, on four counts of the act of mailing visual depictions, the producing of which involved the use of minors engaging in sexually explicit conduct, and which visual depictions are of such conduct, as to the first three counts; and for the same conduct as to the remaining count, the first three counts alleging the same date of

on or about March 2, 1987; and the remaining fourth count alleging on or about January 26, 1987, as the date of the commission of the offense. See Appendix C to the petition.

~~The district court pronounced the sentences as to the~~
first three counts to be six (6) years as to each count, and "recommended" said terms to run consecutively, without expressly ordering consecutive sentencing.

As to the Fourth count, the district court imposed a term of ten (10) years, to run consecutive to the first three terms, and suspended the term and imposed a term of five (5) years probation to run consecutive to the 6-year term of imprisonment. See Appendix D (relevant parts of sentencing transcript) to the petition.

In 2005, while on probation on the fourth count above referred, petitioner was taken into custody by the San Antonio Police, for using a computer in the St. Mary's University in San Antonio, Texas, on June 29, 2005. The district attorney rejected the case, and he was surrendered to Federal authorities, in September, 2005, and on March 15, 2006, petitioner was charged with possession of child pornography in Count One, as proscribed by 18 U.S.C. § 2252A (a)(5)(B), and receipt of child pornography in Count Two, as proscribed by 18 U.S.C. § 2252 (a)(2). The same images were involved in both counts. See Order Accepting Recommendation

of Magistrate Judge, at Appendix E to the petition, as to the granting in part and denying in part petitioner's motion pursuant to 28 U.S.C. § 2255.

On October 26, 2023, petitioner filed a Federal Rule of Civil Procedure 60(b) motion to reopen both of his collateral § 2255 motions, alleging, inter alia, that both the district and appellate courts erred in failing to examine the jurisdiction over the subject matter and person of petitioner (see law from this Court establishes the unconstitutional, thus unlawfulness of the underlying federal criminal convictions in both cases sub judice).

As David Baldecci, in his book *The Simple Truth*, wrote: "The man was in dire need of a little justice, and what better place for that than the highest court in the land? If you couldn't get justice there, where the hell could you get it?"

As has been observed, the federal courts "have a primary obligation to protect the rights of the individual that are embodied in the Federal Constitution." Harris v. Reed, 489 U.S. 255, 267 (1989) (Stevens, J., concurring). See also Burt v. Titlow, 571 U.S. 12, 15 (2013) (federal courts have a solemn responsibility to safeguard constitutional rights of individuals).

Reasons For Granting The Petition

Aside from the Federal courts having a primary obligation to protect the constitutional rights of individuals, Chief Justice Marshall admonished that "the province and duty of the judicial department to say what the law is," Marbury v. Madison, 1 Cranch 137, 177 (1803), and, by the same token to say what it is not.

What the law, that is the Constitution, does not say is that Congress may enact legislation for whatever they please, and Chief Justice Marshall pointed out quite emphatically: "The powers of the legislature are defined and limited; and that those limits may not be mistaken, or forgotten, the Constitution is written." Id., 1 Cranch at 176.

The constitutional principle is clear; "Affirmative words are often, in their operation, negative of other objects than those affirmed; and in this case, a negative or exclusive sense must be given to them, or they have no operation at all." Id., 1 Cranch 174.

It can honestly be said that Chief Justice Marshall stated the entire principle of a limited Federal Government in Marbury, but expoundment is appropriate in this petition, to illustrate the doctrine more fully.

As this Court put it bluntly: "The question is not what power the federal Government ought to have but what powers in fact have been given by the people." United States v. Butler, 297 U.S. 1, 63 (1936).

In Butler, *supra*, this Court emphasized:

"The Constitution is the supreme law of the land ordained and established by the people. All legislation must conform to the principles it lays down. When an act of Congress is appropriately challenged in the courts as not conforming to the constitutional mandate the judicial branch of the Government has only one duty, - to lay the article of the Constitution which is invoked beside the statute which is challenged and to decide whether the latter squares with the former."

Id., 297 U.S., at 62

Criminal Matters Is Not An Enumerated Power For
Regulation By Congress Within States

This Court has made clear that, as to criminal conduct, provisions of federal criminal law are restricted in their application. In Coke v. United States, 152 U.S. 211 (1894), a case involving perjury committed in Oklahoma, before it became a state on November 16, 1907, this Court observed:

"This statute is one of universal application within the territorial limits of the United States, and is not limited to those portions which are within the exclusive jurisdiction of the national government, such as the District of Columbia. Generally speaking, within any state of this Union the preservation of the peace and the protection of person and property are the functions of the state government, and are no part of the primary duty, at least,

of the nation. The laws of Congress in respect to those matters do not extend into the territorial limits of the states, but have force only in the District of Columbia, and other places that are within the exclusive jurisdiction of the national government."

Id., 152 U.S., at 215.

The above is in accord with what was stated, emphatically, by this Court, in a criminal case occurring in a territory belonging to the United States prior to statehood, writing:

"The offense with which the petitioner is here charged is alleged in the indictment to have been committed within that part of the Indian Territory, commonly known as Oklahoma, and it is alleged in the indictment that this is a district of country under the exclusive jurisdiction of the United States and within the jurisdiction of the District Court of Kansas."

Ex parte Lane, 135 U.S. 443, 447 (1890)

Although Kansas became a State in 1861, since Oklahoma was a territory of the United States within Kansas, the Federal Government had jurisdiction over the offense, as inferred by this Court, when it found:

"Oklahoma was not of this class of Territories. It had no legislative body. It had no government. It had no established or organized system of government for the control of the people within its limits, as the Territories in the United States have and have always had."

Id., 135 U.S., at 447-448.

Even in regard to Alaska, before it became a State on January 3, 1959, this Court's observations, prior to statehood of Alaska, is, also, in accord:

"By the act of March 3, 1899, it is provided 'that nothing herein contained shall apply to, or in any way affect, any proceeding or indictment now found or pending, or that may be found, for any offense committed before the passage of this act,' section 219. The act was in force at the time of the passage of the act of June, 1900. It constituted then and constitutes now the code of criminal law enacted for the territory, and the crimes there defined constitute the criminal causes of the the district court, by the act of June, 1900, is given 'general' jurisdiction. Necessarily, therefore, not only the criminal causes subsequent to the act of 1899, but, the criminal causes saved by it, are covered by its provisions. In other words, the tribunal provided by the act of 1900, whether it is newly created or an existing one continued, has jurisdiction of all criminal causes embraced by the provisions of the act of March 3, 1899."

Bird v. United States, 187 U.S. 118, 124 (1902).

As this case does not involve the commission of any federal crime within any territory of the United States, it follows:

"In McNulty v. Betty, 10 How. 72, 13 L. ed. 333, there was a transfer of sovereignty; a territory became a state, and it was held 'the territorial government ceased to exist and all authority under it, including the laws organizing its courts of justice, and providing for a revision of their judgments in this court [Supreme Court of the United States] by appeals or writs of error.' etc."

Id., 187 U.S., at 124 (citations omitted).

In a nutshell, as this Court has admonished, as to the limits of federal power over crimes only in the Territories, it is written:

"By the Constitution, as is now well settled, the United States, having rightfully acquired the territories, and being the only government which can impose laws upon them, have the entire dominion and sovereignty, national and

municipal, Federal and state, over all the territories, so long as they remain in a territorial condition."

Shively v. Bowlby, 152 U.S. 1, 48 (1894) (citations omitted).

Even in regard to the State of Florida, this Court made clear:

"Neither the act of Congress admitting the Territory of Florida, as a State, into the Union, nor the one organizing the District Court, within it, made any provision for the transfer into the District Court of the cases of Federal jurisdiction pending at the time in the territorial courts. Those cases were, therefore, left in the state in which they stood at the change of government, until the Act of Congress of the 22d February, 1847, Sess. Laws, ch. 17. That act provided for a transfer to the District Court, and also for a review of the judgments and final decrees on writs of error, or appeal, as the case might be, in the proper cases, to this court. It also provided for a review of the judgments or final decrees that had been rendered in Federal cases in the territorial courts after the change of government, upon the idea that this jurisdiction still continued. And when the District Court for the Southern District for the State of Florida was established by an act of Congress, 23d February, 1847 (Sess. Laws, ch. 20), the like transfer, was made to that court of all cases pending in that district, with like power to review, on writ of error or appeal, judgments and final decrees rendered by the territorial courts after the change of government."

Benner et al. v. Porter, 9 How. 235, 245 (1850).

And that is where the derivative term enumerate comes into play, when it comes to conferring upon the Federal Government only certain and limited powers, as this Court makes clear:

"In our federal system, the National Government possesses only limited powers; the States and the people retain the remainder. Nearly two centuries ago, Chief Justice Marshall observed that "the question respecting the extent of the powers actually granted" to the Federal Government, "is perpetually arising, and will probably continue to arise as long as our system shall exist."... Resolving this controversy requires us

to examine both the limits of the Government's power, and our own limited role in policing those boundaries.

"The Federal Government 'is acknowledged by all to be one of enumerated powers.'... That is, rather than granting general authority to perform all the conceivable functions of government, the Constitution lists, or enumerates, the Federal Government's powers.... The enumeration of powers is also a limitation of powers, because 'the enumeration presupposes something not enumerated.'... The Constitution's express conferral of some powers makes clear that it does not grant others. And the Federal Government 'can exercise only the powers granted to it'." Nat'l Fed'n of Indep. Bus. v. Sebelius, 567 U.S. 519, 533-535 (2012) (in relevant parts, citations omitted).

In short: "The powers of the general government are made up of concessions from the several states; whatever is not expressly given," in the enumeration of powers, "to the former, the latter expressly reserve." United States v. Hudson and Goodwin, 7 Cranch 32, 33 (1812).

As exploitation of minors, as a federal crime, is not a power conferred by the Constitution for nationwide regulation by the Federal Government by the people, it follows:

"This is a vital question; for nothing is more certain than that beneficent aims, however great or well directed, can never serve in lieu of constitutional power.

"The ruling and firmly established principle is that the powers which the general government may exercise are only those specifically enumerated in the Constitution, and such implied powers as are necessary and proper to carry into effect the enumerated powers. Whether the end sought to be attained by an act of Congress is legitimate is wholly a matter of constitutional power and not at all of legislative discretion. Legislative congressional discretion begins with the choice of means and ends with the adoption of methods and details to carry the delegated powers into ef-

fect. The distinction between these two things—power and discretion—is not only very plain but very important. For while the powers are rigidly limited to the enumerations of the Constitution, the means which may be employed to carry the powers into effect are not restricted, save that they must be appropriate, plainly adapted to the end, and not prohibited by, ~~but, consistent with, the letter and spirit~~ ~~it of the Constitution.~~ Thus, it may be said that to a constitutional end many ways are open; but to an end not within the terms of the Constitution, all ways are closed."

Carter v. Carter Coal Co., 298 U.S. 238, 291 (1936) (citation omitted).

It may be said that child pornography affects the Nation as a whole, along with other unenumerated criminal conduct, and this Court has rejected such assumptions by Congress saying:

"The proposition, often advanced and as often discredited, that the power of the federal government inherently extends to purposes affecting the nation as a whole with which the States severally cannot deal or cannot adequately deal, and the related notion that Congress, entirely apart from those powers delegated by the Constitution, may enact laws to promote the general welfare, have never been accepted but always definitely rejected by this Court. Mr. Justice Story, as early as 1816, laid down the cardinal rule, which has ever been followed—that the general government "can claim no powers which are not granted to it by the Constitution, and the powers actually granted, must be expressly given, or given by necessary implication."

In the Framers Convention, the proposal to confer a general power akin to that just discussed, was included in Mr. Randolph's resolutions, the sixth of which, among other things, declared that the National Legislature ought to enjoy the legislative rights vested in Congress by the Confederation, and "moreover to legislate in all cases to which the separate States are incompetent, or in which the harmony of the United States may be interrupted by the exercise of individual Legislation." The Convention, however, declined to confer upon Congress power in such general terms; instead of which it carefully limited the powers which it thought wise to entrust to Congress by specifying them, thereby denying all others not granted expressly or by necessary implication."

Id., 298 U.S., at 291-292 (citation omitted).

This Court, in Carter, supra, citing a 1907 case, provided the remedy is just such circumstance, writing:

"Replying directly to the suggestion advanced by counsel in Kansas v. Colorado, 206 U.S. 46, 89, 90, 51 L.ed. 956, 971, 972, 27 S.Ct. 655, to the effect that necessary powers national in their scope must be found vested in Congress, though not expressly granted or essentially implied, this Court said:

"But the proposition that there are legislative powers affecting the Nation as a whole which belong to, although not expressed in the grant of powers, is in direct conflict with the doctrine that this is a government of enumerated powers. That this is such a government clearly appears from the Constitution, independently of the Amendments, for otherwise there would be an instrument granting certain specified things made operative to grant other and distinct things. This natural construction of the original body of the Constitution is made absolutely certain by the Tenth Amendment. This amendment, which was seemingly adopted with prescience of just such contention as the present, disclosed the widespread fear that the National Government might, under the pressure of a supposed general welfare, attempt to exercise powers which had not been granted. With equal determination the framers intended that no such assumption should ever find justification in the organic act, and that if in the future further powers seemed necessary they should be granted by the people in the manner they had provided for amending that act."

"The general rule with regard to the respective powers of the national and the state governments under the Constitution, is not in doubt. The states were before the Constitution; and, consequently, their legislative powers antedated the Constitution. Those who framed and those who adopted that instrument meant to carve from the general mass of legislative powers, then possessed by the states, only such portions as it was thought wise to confer upon the federal government; and in order that there should be no uncertainty in respect of what was taken and what was left, the national powers of legislation were not aggregated but enumerated—with the result that what was not embraced by the enumeration remained vested in the states without change or impairment."

Id., 298 U.S., at 293-294.

And this Court was not finished, yet, but emphasized that the States would retain many of its antecedent powers, writing:

~~"The determination of the Framers Convention and the ratifying Conventions to preserve complete and unimpaired state~~
self-government in all matters not committed to the general government is one of the plainest facts which emerges from the history of their deliberations. And adherence to that determination is incumbent equally upon the federal government and the States. State powers can neither be appropriated on the one hand nor abdicated on the other. As this court said in Texas v. White, 7 Wall, 700, 725, 19 L. ed, 229, 237—"the preservation of the States, and the maintenance of their governments, are as much within the design and care of the Constitution as the preservation of the Union and the maintenance of the National Government. The Constitution, in all its provisions, looks to an indestructible Union, composed of indestructible States." Every journey to a forbidden end begins with the first step; and the danger of such a step by the federal government in the direction of taking over the powers of the states is that the end of the journey may find the states so despoiled of their powers, or what may amount to the same thing—so relieved of the responsibilities which possession of the powers necessarily enjoins, as to reduce them to little more than geographical subdivisions of the national domain. It is safe to say that if, when the Constitution was under consideration, it had been thought that any such danger lurked behind its plain words, it would never have been ratified."

Id., 298 U.S., at 295-296.

Chief Justice Marshall admonishingly wrote:

"If, then, the courts are to regard the constitution, and the constitution is superior to any act of the legislature, the constitution, and not such ordinary act, must govern the case to which they both apply.

"Those, then, who controvert the principle that the constitution is to be considered, in court, as a paramount law, are reduced to the necessity of maintaining that courts must close their eyes on the constitution, and see only the law.

"This doctrine would subvert the very foundation of all writs

ten constitutions. It would declare that an act which, according to the principles and theory of our government, is entirely void, is yet, in practice, completely obligatory. It would declare that if the legislature shall do what is expressly forbidden, such act, notwithstanding the express prohibition, is in reality, effectual. It would be given to the legislature a practical and real omnipotence, with the same breath which ~~professes to restrict their powers within narrow limits, it~~ is prescribing limits, and declaring that those limits may be passed at pleasure.

"That, if thus reduced to nothing, what we have deemed the greatest improvement on political institutions, a written constitution, would of itself be sufficient, in America, where written constitutions have been viewed with so much reverence, for rejecting the construction. But the peculiar expressions of the constitution of the United States furnish additional arguments in favour of its rejection.

...
"From these, and many other selections which might be made, it is apparent, that the framers of the constitution contemplated that instrument as a rule for the government of courts, as well as of the legislature.

"Why otherwise does it direct the judges to take an oath to support it? This oath certainly applies in an especial manner, to their conduct in their official character. How immoral to impose it on them, if they were to use as the instruments, and the knowing instruments, for violating what they swear to support!

...
"Why does a judge swear to discharge his duties agreeably to the Constitution of the United States, if that constitution forms no rule for his government? if it is closed upon him, and cannot be inspected by him?

"If such be the real state of things, this is worse than solemn mockery. To prescribe, or to take this oath, becomes equally a crime.

"It is also not unworthy of observation, that in declaring what shall be the supreme law of the land, the constitution itself is first mentioned; and not the laws of the United States generally, but those only which shall be made in pursuance of the constitution, have that rank.

"Thus, the particular phraseology of the constitution of the United States confirms and strengthens the principle, supposed to be essential to all written constitutions, that a law repugnant to the constitution is void; and that courts, as well as

other departments, are bound by that instrument."

Marbury, supra, 1 Cranch, at 178-180 (in relevant parts),

In Cohens v. Virginia, 1 Cranch 264 (1821), Chief Justice Marshall admonishingly put it:

"It is most true, that this court will not take jurisdiction if it should not; but it is equally true, that it must take jurisdiction, if it should. The judiciary cannot, as the legislature may, avoid a measure, because it approaches the confines of the constitution. ... With whatever doubts, with whatever difficulties, a case may be attended, we must decide it, if it be brought before us. We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the constitution."

Id., 1 Cranch, at 404.

"The accretion of dangerous power does not come in a day. It does come, however slowly, from the generative force of unchecked disregard of the restrictions that fence in even the most disinterested assertion of authority." Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 594 (1952)

"The great purposes of the Constitution do not depend on the approval or convenience of those they restrain." Everson v. Bd. of Educ., 330 U.S. 1, 28 (1947). As Chief Justice Warren said, "The provisions of the Constitution are not time-worn adages or hollow shibboleths. They are vital living principles that authorize and limit government powers in our Nation. They are the rules of government." Trop v. Dulles, 356 U.S. 86, 103 (1958).

Returning to Carter, supra, the admonition of the Constitution as law is clear:

"And the Constitution itself is in every real sense a law - the lawmakers being the people themselves, in whom under our system all political power and sovereignty, primarily resides, and ~~through whom such power and sovereignty primarily speaks. It~~ is by that law and not otherwise, that the legislative, executive, and judicial agencies which it created exercise such political authority as they have been permitted to possess. The Constitution speaks for itself in terms so plain, that to misunderstand their import is not rationally possible. "We the People of the United States," it says, "do ordain and establish this Constitution..." Ordain and establish! These are definite words of enactment, and without more would stamp what follows with the dignity and character of law. The Framers of the Constitution, however, were not content to let the matter rest here, but provided explicitly - "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; ... shall be the supreme Law of the Land;..." The supremacy of the Constitution as law is thus declared without qualification. That supremacy is absolute; the supremacy of a statute enacted by Congress is not absolute but conditioned upon its being made in pursuance of the Constitution. And a judicial tribunal, clothed by that instrument with complete judicial power, and, therefore, by the very nature of the power, required to ascertain and apply the law to the facts in every case or proceeding properly brought for adjudication, must apply the supreme law and reject the inferior statute whenever the two conflict."

Id., 298 U.S., at 296-297.

To be sure that the principles of Federalism not be mistaken, it was emphasized that:

"We start with first principles. The Constitution creates a Federal Government of enumerated powers. See Art. I, §8. As James Madison wrote: "The powers delegated by the proposed Constitution to the Federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite." The Federalist No. 45, pp. 292-293 (C. Rossiter ed. 1961). This constitutionally mandated division of authority "was adopted

by the Framers to ensure protection of our fundamental liberties."
... "Just as the separation and independence of the coordinate branches of the Federal Government serve to prevent the accumulation of excessive power in any one branch, a healthy balance of power between the States and the Federal Government will reduce the risk of tyranny and abuse from either front."
...

United States v. Lopez, 514 U.S. 549, 552 (1995) (citation omitted).

In a concurring opinion, Mr. Justice Thomas observed:

"We have said that Congress may regulate not only "Commerce among the several States," US Const. Art. I, § 8, cl. 3, but also any thing that has a "substantial effect" on such commerce. This test, if taken to its logical extreme, would give Congress a "police power" over all aspects of American life. Unfortunately, we have never come to grips with this implication of our substantial effects formula. Although we have supposedly applied the substantial effects test for the past 60 years, we always have rejected readings of the Commerce Clause and the scope of federal power that would permit Congress to exercise a police power; our cases are quite clear that there are real limits to federal power. ... Indeed, on this crucial point, the majority and Justice Breyer agree in principle: The Federal Government has nothing approaching a police power. ...

"The Constitution not only uses the word "commerce" in a narrower sense than our case law might suggest, it also does not support the proposition that Congress has authority over all activities that "substantially affect" interstate commerce. The Commerce Clause does not state that Congress may "regulate matters that substantially affect commerce with foreign Nations, and among the several States, and with the Indian Tribes." ... Clearly, the Framers could have drafted a Constitution that contained a "substantially affects commerce" clause had that been their objective. ...

...
"Our construction of the scope of congressional authority has the additional problem of coming close to turning the Tenth Amendment on its head. Our case law could be read to reserve to the United States all powers not expressly prohibited by the Constitution. Taken together these fundamental textual problems should, at the very least, convince us that the "substantial effects" test should be reexamined."

Id., 514 U.S., at 584-585, 587-588, 589 (in relevant parts, citations omitted) (Thomas, J., concurring).

"The status of Texas, it is said, is different: Texas, when she came into the Union, retained the dominion over the marginal sea which she had previously acquired and transferred to the National Government only her powers of sovereignty—her imperium—over the marginal sea." United States v. Texas, 339 U.S. 707, 713 (1950).

"The Republic of Texas was proclaimed by a convention on March 2, 1836. The United States and other nations formally recognized it. The Congress of Texas on December 19, 1836, passed an act defining the boundaries of the Republic." Ibid.

Thus, within the boundaries of the State of Texas, all jurisdiction remained in the State when she came into the Union, and is in accord with what this Court proclaimed:

"Upon the admission of a State into the Union, the state doubtless acquires general jurisdiction, civil and criminal, for the preservation of public order and the protection of persons and property throughout its limits, except where it has ceded exclusive jurisdiction to the United States."

Van Brocklin v. Anderson, 117 U.S. 151, 167-168 (1886) (citations omitted).

Citing an 1818 opinion, by Chief Justice Marshall, this Court made it clear, as to the boundaries of a state mark the limits of its jurisdiction, unless ceded, by the State, to the

Federal Government, pointing out:

"It follows that when a place is within the boundary, it is a part of the territory of a State; title, jurisdiction, and sovereignty, are inseparable incidents, and remain so till the State makes some cession. The plain language of this court in The United States v. Beards, 3 Wheat. 38, et seq., saves the necessity of any reasoning on this subject. The question is put by the court "What, then, is the extent of jurisdiction which a State possesses?" "We answer without hesitation, the jurisdiction of a State is co-extensive with its territory, co-extensive with its legislative power."

Rhode Island v. Massachusetts, 12 Pet. 657, 733 (1838).

This principle is referred to as the doctrine of "equal footing" among the States.

"The 'equal footing' clause has long been held to refer to political rights and to sovereignty. ... Some States when they entered the Union had within their boundaries tracts of land belonging to the Federal Government; others were sovereigns of their soil. Some had special agreements with the Federal Government governing property within their borders."

Texas, supra, 339 U.S., at 716 (citation omitted).

With Texas, it had total "political rights" and "sovereignty" over its lands within the State, until, much later, it then ceded certain areas of land within the State pursuant to Article I, § 8, cl. 17, and is in accord with this Court's observations: "Special provision is made in the Constitution for the cession of jurisdiction from the States over places where the Federal government shall establish forts or other military works. And it is only in these places, or in the territories of the

United States, where it can exercise a general jurisdiction. New Orleans v. United States, 10 Pet. 662, 737 (1836).

In Texas, supra, this Court, in addressing the "equal footing" clause, wrote:

"The 'equal footing' clause, we hold, works the same way in the converse situation presented by this case. It negatives any implied, special limitation of any of the paramount powers of the United States in favor of a State. Texas prior to her admission was a Republic. We assume that as a Republic she had not only full sovereignty over the marginal sea but ownership of it, of the land underlying it, and of all the riches which it held. In other words, we assume that it then had the dominium and imperium in and over this belt which the United States now claims. When Texas came into the Union, she ceased to be an independent nation. She then became a sister State on an 'equal footing' with all the other States."

Id., 339 U.S., at 717-718.

This is consistent with Van Brocklin, supra, that "the State doubtless acquires general jurisdiction, civil and criminal, throughout its limits, except where it has ceded exclusive jurisdiction to the United States," 117 U.S. 167-168.

Accord, New Orleans, supra, 10 Pet., at 737.

In another concurring opinion in this Court, it was appropriately made clear:

"When the States ratified the Federal Constitution, the people of each State acquiesced in the transfer of limited power to the Federal Government. They ceded only those powers granted to the Federal Government by the Constitution." The Federal Government and the States thus face dif-

ferent default rules; where the Constitution is silent about the exercise of a particular power[s], the Federal Government lacks that power and the States enjoy it."...

Chiafalo v. Washington, 140 S.Ct. 2316, 2333 (2020) (citations omitted) (Thomas, J., with whom Gorsuch, J., joins as to Part II, concurring in judgment).

Continuing in the discussion, and focusing on the Tenth Amendment to the Constitution, it was stated:

"As Justice Story explained, 'This amendment is a mere affirmation of what, upon any just reasoning, is a necessary rule of interpreting the Constitution. Being an instrument of limited and enumerated powers, it follows irresistibly, that what is not conferred, is withheld, and belongs to the state authorities.'... In other words, the Tenth Amendment 'states but a truism that all is retained which has not been surrendered,'... 'making clear that powers reside at the state level except where the Constitution removes them from that level,'..."

Id., 140 S.Ct., at 2334 (citations omitted) (concurring opinion).

Thus, the Constitution, and its amendments, state substantive rules that prohibit the Federal Government from crossing the lines and substantive rules the Framers drafted in the Constitution, and, as this Court makes clear:

"Substantive rules, then, set forth categorical constitutional guarantees that place certain criminal laws and punishments altogether beyond the State's power to impose. It follows that when a State enforces a proscription or penalty barred by the Constitution, the resulting conviction or sentence is, by definition, unlawful."

Montgomery v. Louisiana, 136 S.Ct. 718, 729-730 (2015)

Because sexual exploitation of minors, as defined by the statutory provisions in Title 18 of the United States Code, is not expressly provided for as a "precise subject-matter" by the terms of the Constitution for nationwide regulation, the Federal Government overstepped its constitutional boundaries in both of petitioner's underlying purported federal criminal cases, and it follows:

"Generally it may be said, in respect to laws of this character, that, though resting upon the police power of the state, they must yield whenever Congress, in the exercise of the powers granted to it, legislates upon the precise subject-matter, for that power, like all other reserved powers of the states, is subordinate to those in terms conferred by the Constitution upon the nation."

Keller v. United States, 213 U.S. 138, 146 (1909) (quotation marks and citations omitted).

Going back to Montgomery, supra, this Court admonishingly put it:

"A conviction under an unconstitutional law is not merely erroneous, but is illegal and void, and cannot be a legal cause of imprisonment. It follows, as a general principle, that a court has no authority to leave in place a conviction or sentence that violates a substantive rule, regardless of whether the conviction or sentence became final before the rule was announced."

Id., 136 S.Ct., at 730-731 (on relevant parts, citation omitted).

Thus, if the people did not confer upon the Federal Government, therefore upon Congress, the power to legislate over a "precise subject-matter" for nationwide regulation, such as sex-related offenses, or

even gun possession by felons, or controlled substance offenses occurring within a state, those laws are, therefore, unconstitutional when enforced within the states, which have their own means of regulating such conduct and their own courts of justice to enforce and punish such conduct.

As was made clear, by this Court: "It goes without saying that preventing and dealing with crime is much more the business of the States than it is of the Federal Government,..., and that we should not lightly construe the Constitution so as to intrude upon the administration of justice by the individual States," Patterson v. New York, 432 U.S. 197, 201 (1977) (citation omitted).

Also: "Our federal system recognizes the independent power of a State to articulate societal norms through criminal laws; but the power of a State to pass laws means little if a State cannot enforce them." Calderon v. Thompson, 523 U.S. 538, 556 (1998) (quotation marks and citation omitted).

Because the Federal Government is restricted to the enforcement of its criminal laws, as this Court interferred in Cabe, supra, "do not extend into the territorial limits of the States, but have force only in the District of Columbia, and other places that are within the exclusive jurisdiction of the national government," 152 U.S., at 215, it follows what this Court stated:

"But an act committed within a State, whether for a good or bad purpose, or whether, with an honest or criminal intent, cannot be made an offense against the United States, unless it have some relation to the execution of a power of Congress, or to some matter within the jurisdiction of the United States. An act not having any such relation is one in respect to which the State alone can legislate."

United States v. Fox, 95 U.S. 670, 672 (1878).

Not even the Commerce Clause, sitting alone, can authorize criminal legislation, unless coupled with another authorized power granted by the people in an amendment to the Constitution.

Illustrating such principle is this Court's opinion in Granholm v. Heald, 544 U.S. 460 (2005), observing, in regard to regulating alcoholic beverages nationwide:

"Before 1919, the temperance movement fought to curb the sale of alcoholic beverages one State at a time. The movement made progress, and many States passed laws restricting or prohibiting the sale of alcohol. This Court upheld state laws banning the production and sale of alcoholic beverages, ... but was less solicitous of laws aimed at imports. In a series of cases before the ratification of the Eighteenth Amendment the Court, relying on the Commerce Clause, invalidated a number of state liquor regulations."

"These cases advanced two distinct principles. First, the Court held that the Commerce Clause prevented States from discriminating against imported liquor. ...

"Second, the Court held that the Commerce Clause prevented States from passing facially neutral laws that placed an impermissible burden on interstate commerce. ...

"The ratification of the Eighteenth Amendment in 1919 provided a brief respite from the legal battles over the validity of state liquor regulations."

Id., 544 U.S. 476, 477, 484 (citations omitted).

And it was the explanatory opinion of the dissenters that

put the amendment requirement principle in proper perspective, when it was pointed out:

"Today many Americans, particularly those members of the younger generations who make policy decisions, regard alcohol as an ordinary article of commerce, subject to substantially the same market and legal controls as other consumer products. That was definitely not the view of the generations that made policy in 1919 when the Eighteenth Amendment was ratified or in 1933 when it was repealed by the Twenty-first Amendment. On the contrary, the moral condemnation of the use of alcohol as a beverage represented not merely the convictions of our religious leaders, but the views of a sufficiently large majority of the population to warrant the rare exercise of the power to amend the Constitution on two occasions. The Eighteenth Amendment entirely prohibited commerce in "intoxicating liquors" for beverage purposes throughout the United States and the territories subject to its jurisdiction. While §1 of the Twenty-first Amendment repealed the nationwide prohibition, §2 gave the States the option to maintain equally comprehensive prohibitions in their respective jurisdictions."

Id., 544 U.S., at 494-495 (Stevens, J., with whom O'Connor, J., joins, dissenting).

By amending the Constitution, an enumerating the nationwide restriction as to alcoholic beverages and its commerce, illustrative of the necessity of enumeration and specification of the powers of Congress by the people, this Court observed:

"But they were left to the discretion of Congress, subject only to the restrictions that they be not prohibited, and be necessary and proper for carrying into execution the enumerated powers given to Congress, and all other powers vested in the government of the United States, or in any department or officer thereof."

"And here it is to be observed it is not indispensable to the existence of any power claimed for the Federal government that it can be found specified in the words of the Constitution,

or clearly and directly traceable to some one of the specified powers. Its existence may be deduced fairly from more than one of the substantive powers expressly defined, or from them all combined. It is allowable to group together any number of them and infer from them all that the power claimed has been conferred. Such a treatment of the Constitution is recognized by its own provisions."

Knox v. Lee and Parker v. Davis; 79 U.S. 457, 534 (1871).

With the people having not empowered the national legislature with authority to legislate nationwide purported criminal legislation, since it has been made absolute that "The powers of the general government are made up of concessions from the several States; ... The judicial power of the United States is a constituent part of those concessions; ... Of all the courts which the United States may, under their general powers constitute, one only—the Supreme Court—possesses jurisdiction derived immediately from the constitution, and of which the legislative power cannot deprive it. All other courts created by the general government possess no jurisdiction but what is given them by the power that creates them, and can be vested with none but what the power ceded to the general government will authorize them to confer," Hudson, supra, 7 Cranch, at 33.

Criminal Case Jurisdiction Is Not Within The
Power of Congress To Confer Upon An Article
III Court Located Within The Several States

This part of the discussion must begin with the admonition

by Chief Justice Marshall, declaring:

"The people made the constitution, and the people can unmake it. It is the creature of their own will, and lives only by their will. But this supreme and irresistible power to make or unmake, resides only in the whole body of the people; ~~not in any sub-division of them. The attempt of any of the parts to exercise it is usurpation, and ought to be repelled by those to whom the people have delegated their power of repelling it.~~"

Cohens v. Virginia, 6 Wheat, 264, 389 (1821).

Compare, e.g., what James Madison pointed out:

"As the people are the only legitimate fountain of power, and it is from them that the Constitutional charter, under which the several branches of government hold their power, is derived, it seems strictly consonant to the republican theory to recur to the same original authority, not only whenever it may be necessary to enlarge, diminish, or new-model the powers of government, but also whenever any one of the departments may commit encroachments on the chartered authorities of the others."

The Federalist No. 49 (J. Madison)

When construing Article III, § 2, of the Constitution, in regard to the cases the inferior constitutional courts are limited to adjudicating, Chief Justice Marshall admonished: "Had any doubt existed with respect to the just construction of this part of the section, that doubt would have been removed by the enumeration of those cases the jurisdiction of the Federal courts is extended in consequence of the character of the parties." Cohens, supra, 6 Wheat, at 383.

In a later case, this Court broke it down to a more

understandable form, writing:

"We first direct attention to the carefully chosen words of §2, cl.1, Art. III. By that clause the judicial power is extended to all cases in law and equity arising under the Constitution, etc.; to all cases affecting ambassadors, other public ~~ministers and consuls; and to all cases of admiralty and maritime jurisdiction.~~ The the comprehensive word "all" is dropped, and the enumeration continues in terms to apply to controversies (but not to "all") to which the United States shall be a party; to controversies between two or more states, etc. The use of the word "all" in some cases, and its omission in others, cannot be regarded as accidental, under the rule stated in an early case, and ever since fully accepted, that - "In expounding the Constitution of the United States, every word must have its due force, and appropriate meaning; for it is evident from the whole instrument, that no word was unnecessarily used, or needlessly added. The many decisions which have taken place upon the construction of the Constitution, have proved the correctness of this proposition; and shown the high talent, the caution, and the foresight of illustrious men who framed it. Every word appears to have been weighed with utmost deliberation, and its force and effect to have been fully understood."

Williams v. United States, 289 U.S. 553, 572-573 (1933) (citations omitted),

In a case involving an inferior court's "admiralty" and "maritime" jurisdiction, this Court observed:

"These provisions of Article 3 are two of the nine separately enumerated classes of cases to which "judicial power" was extended by the Constitution and which thereby authorized grants by Congress of "judicial power" to the "inferior" federal courts. The vast stream of litigation which has flowed through these courts from the beginning has done so on the assumption that, in dealing with a subject as technical as the jurisdiction of the courts, the Framers, predominantly lawyers, used precise, differentiating and not redundant language."

Romero v. Int'l Term. Operat. Co., 358 U.S. 354, 364 (1959),

In Williams, supra, this Court made clear that only cases that are both in law and equity, in the conjuncture, does the "judicial Power" extend, as to the referenced enumerated parties. But when ~~the United States shall be a party it is only to some, not "all"~~ controversies, which is construed as cases "civil" in nature—not criminal at all.

And in Romero, supra, this Court found that there are only 9 classes of cases to which Congress is authorized to extend the "judicial Power" to, and none are "criminal" in nature.

As Alexander Hamilton, addressing both the legislative and the judicial power, pointed out:

"The plan of the convention declares that the power of Congress, or, in other words, of the national legislature, shall extend to certain enumerated cases. This specification of particulars evidently excludes all pretension to a general legislative authority, because an affirmative grant of special powers would be absurd as well as useless if a general authority was intended.

"In like manner the judicial authority of the Federal judicatures is declared by the Constitution to comprehend certain cases particularly specified. The expression of those cases marks the precise limits beyond which the Federal Courts, cannot extend their jurisdiction, because the objects of their cognizance being enumerated, the specification would be nugatory if it did not exclude all ideas of more extensive authority."

The Federalist No. 83 (A. Hamilton).

The admonition by Chief Justice Marshall is most relevant here, as to when an "inferior" constitutional court, if it sits in a State, when he wrote:

"It is most true that this court will not take jurisdiction if it should not; but it is equally true that it must take jurisdiction if it should. The judiciary cannot, as the legislature may, avoid a measure because it approaches the confines of the Constitution. We cannot pass it by because it is doubtful. With whatever doubts, with whatever difficulties, a case may be attended, we must decide it if it be brought before us. We have no more right to decline the exercise of jurisdiction which is given than to usurp that which is not given. The one or the other would be treason to the Constitution. Questions may occur which we would gladly avoid, but we cannot avoid them. All we can do, is to exercise our best judgment, and conscientiously to perform our duty."

Cohens, supra, 6 Wheat., at 404.

Because the question is whether a criminal act of Congress, which this Court has made clear do not extend the enforcement thereof, becomes unconstitutional when enforced within a State, this Court, relevant to this case, observed:

"To hold a governmental Act to be unconstitutional is not to announce that we forbid it, but that the Constitution forbids it; and when, as in this case, the constitutionality of a ... statute is placed in issue, the question is not whether some decision of ours 'applies' in the way that a law applies; the question is whether the Constitution, as interpreted in that decision, invalidates the statute. Since the Constitution does not change from year to year; since it does not conform to our decisions, but our decisions are supposed to conform to it; the notion that our interpretation of the Constitution in a particular decision could take prospective form does not make sense. Either the enforcement of the statute at issue ... was unconstitutional, or it was not; if it was, then so is enforcement of all identical statutes in other States, whether occurring before or after our decision; ..."

Danforth v. Minnesota, 552 U.S., 264, 286 (2008).

Therefore, relying on, and applying, this Court's standing case law, cited herein, the enforcement of federal criminal statutes within the States, such as the provisions involved in this case, ~~as well as all other federal criminal statutory provisions,~~ is an unconstitutional use of the "federal power" and renders all federal criminal convictions, pronounced by constitutional Article III "inferior" courts while sitting in the several States, void as a matter of law.

As this Court admonishingly declared:

"Questions of jurisdiction, of course, should be given priority—since if there is no jurisdiction there is no authority to sit in judgment of anything else... Even jurisdiction over the person (as opposed to subject-matter jurisdiction) 'is an essential element of jurisdiction of a district court,' without which the court is 'powerless to proceed to an adjudication.'"

Vermont ANR v. U.S. ex rel. Stevens, 529 U.S. 765, 778-779 (2000)

(citations omitted).

In relevant parts, this Court pointed out:

"The Constitution is a written instrument. As such its meaning does not alter. That which it meant when adopted, it means now... Those things which are within its grants of power, as those grants were understood when made, are still within them; and those things not within them remain still excluded."

South Carolina v. United States, 199 U.S. 437, 448-449 (1905)

(in relevant parts).

Thus, because the charged statutory federal crimes are not within the enumeration of "precise subject-matter" for en-

forcement within the States, see, Caha, supra, just as neither any other federal criminal conduct-felons possessing firearms, controlled substance, etc.—hundreds, if not thousands, of currently incarcerated federal prisoners are suffering deprivation of liberty

unconstitutionally—thus unlawfully—by the Federal Government.

As was observed by certain Justices of this Court:

"Even if punishment of the 'guilty' were society's highest value—and procedural safeguards denigrated to this end—in a constitution that a majority of the Members of this Court would prefer, that is not the ordering of priorities under the Constitution forged by the Framers, and this Court's sworn duty is to uphold that Constitution and not to frame its own. The procedural safeguards mandated in the Framers' Constitution are not admonitions to be tolerated only to the extent they serve functional purposes that ensure that the 'guilty' are punished and the 'innocent' freed; rather, every guarantee enshrined in the Constitution, our basic charter and the guarantor of our most precious liberties, is by it endowed with an independent vitality and value, and this Court is not free to curtail those constitutional guarantees even to punish the most obviously guilty. ... To sanction disrespect and disregard for the Constitution in the name of protecting society from lawbreakers is to make the government itself lawless and to subvert those values upon which our ultimate freedom and liberty depend. 'This history of American freedom is, in no small measure, the history of procedure,' and as Mr. Justice Holmes so succinctly reminded us, it is 'a less evil that some criminals should escape than that the Government should play an ignoble part.' ..."

Stone v. Powell, 428 U.S. 465, 523-524 (1976) (citations omitted) (Brennan, J., with whom Marshall, J., concurs, dissenting).

Reiterating its prior case law, as to jurisdiction of the Federal courts, this Court admonishes: "The requirement that jurisdiction be established as a threshold matter 'spring[s] from the

nature and limits of the of the judicial power of the United States" and is "inflexible and without exception."... Steel Co. v. Citizens for a Better Env't, 523 U.S. 83, 94-95 (1998) (citation omitted).

~~Continuing its discussion, the Court instructs:~~

"This Court's insistence that proper jurisdiction appear begins at least as early as 1804, when we set aside a judgment for the defendant at the instance of the losing plaintiff, who had himself failed to allege the basis for federal jurisdiction....

"[E]very federal appellate court has a special obligation to 'satisfy itself not only of its own jurisdiction, but also that of the lower courts in a cause under review,' even though the parties are prepared to concede it.... And if the record discloses that the lower court was without jurisdiction this Court will notice the defect, although the parties make no contention concerning it. [When the lower federal court] lacks[] jurisdiction, we have jurisdiction on appeal, not of the merits but merely for the purpose of correcting the error of the lower court in entertaining the suit.'..."

Id., 523 U.S., at 95 (citations omitted),

And now for the clincher by this Court:

"Much more than legal niceties are at stake here. The statutory and (especially) constitutional elements of jurisdiction are an essential ingredient of separation and equilibration of powers, restraining the courts from acting at certain times, and even restraining them from acting permanently regarding certain subjects.... For a court to pronounce upon the meaning or the constitutionality of a state or federal law when it has no jurisdiction to do so is, by very definition, for a court to act *ultra vires*.

"Having reached the end of what seems like a long front walk, we finally arrive at the threshold question: whether respondent, the plaintiff below, has standing to sue. Article III, § 2, of the Constitution extends the "judicial power" of the United States only to "Cases" and "Controversies." We have always taken this to mean cases and controversies of the sort traditionally amenable to, and resolved by, the judicial process.... Such a meaning is fairly implied by the text, since other-

wise the purported restriction upon the judicial power, would scarcely be a restriction at all. Every criminal investigation conducted by the Executive is a "case," and every policy issue resolved by congressional legislation involves a "controversy." These are not, however, the sort of cases and controversies that Article III, §2 refers to, since "the Constitution's central mechanism of separation of powers depends largely upon common understanding of what activities are appropriate to legislatures, to executives, and to courts," . . . "

Id., 523 U.S., at 101-102 (citations omitted),

The activity of the legislature—Congress—has been declared in Ex parte Bakelite, 279 U.S. 438 (1929), observing that "article 3 of the of the Constitution declares, in §1, that 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," and prescribes, in §2, that this power shall extend to cases and controversies of certain enumerated classes," and pointed out that courts "established under the specific power given in §2 of article 3 are called constitutional courts," and "share in the exercise of the judicial power defined in that section, can be invested with no other jurisdiction, . . . , with no power in Congress to provide otherwise." Id., 279 U.S., at 449 (in relevant parts, emphasis added),

Therefore, upon the arguments, and this Court's standing precedents, there can be no dispute that, in both cases against petitioner by the Government, there has been error, that is plain, affected petitioner's substantial rights, and implicated the fairness, integrity, and public reputation of judicial proceedings in

the inferior court below, see, United States v. Olano, 507 U.S. 725, 732 (1993), and Hicks v. United States, 137 S. Ct. 2000 (2017).

But, unlike in Hicks, where Justice Gorsuch found Hick's conviction won't be undone, ~~this petitioner's conviction is more~~ than required to be undone, because petitioner's "legal rights have been invaded," and there being a federal statute to be able to sue in this Court, by certiorari review, 28 U.S.C. § 2101, this Court should "use any available remedy to make good the wrong done" to petitioner by the Government, and the courts below, Bell v. Hood, 327 U.S. 678, 684 (1946).

As Justice Alito, writing for the Court, pointed out that "The Constitution makes no reference to abortion," Dobbs v. Jackson Women's Health Org., 143 S. Ct. 2228, 2242 (2022), neither does the Constitution makes reference to federal crimes involved in this case, or of any other federal criminal conduct committed within the States, thus, "It is time to heed the Constitution and return the issue of [crimes] to the people's elected representatives" in the State governments. "That is what the Constitution and the rule of law demand." Id., 142 U.S., at 2243.

And that is why this Court has instructed admonishingly: "The object of construction, applied to a Constitution, is to give effect to the intent of its framers, and of the people in adopting it," Leake County v. Rollins, 130 U.S. 662,

670 (1889), and they never intended, because they did not include "crimes" in Article I, §8, and much less "judicial power" on the "inferior" federal courts over criminal cases.

Conclusion

The petition should be GRANTED.

Dated: October 22, 2024

Respectfully submitted,

Garry David Gallardo

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Certificate of Service

I hereby certify that a copy of the foregoing petition, for a writ of certiorari was served, by first class mail, postage prepaid, on this 22nd day of October, 2024, on:

The Solicitor General
Of the United States
950 Pennsylvania Ave., N.W.
Room 5616
Washington, DC 20530-0001

Garry David Gallardo
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