

24-7326

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

ORIGINAL

FILED

MAY 04 2025

OFFICE OF THE CLERK
SUPREME COURT, U.S.

Desmond Alan Mackay — PETITIONER
(Your Name)

vs.

Peter Bludworth Et. AL. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Ninth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Desmond Alan Mackay; AO#3016684
(Your Name)

1252. E. Arica Rd.
(Address)

Eloy, Arizona 85131
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

- 1.) Does an Illegal Sentence overcome procedural Barriers?
- 2.) If any conviction obtained in violation of the United States Constitution is an illegal conviction, and a conviction of an innocent person is likewise an illegal conviction, then is an illegal conviction equitable with a claim of actual innocence?
- 3.) Does a Judge's advocacy for the Death Penalty, when not charged by the Prosecution, show Judicial Bias?
- 4.) Is a Judge able to attempt to influence the Prosecution without triggering Judicial Bias?
- 5.) Does any showing of Judicial Bias invalidate a conviction?
- 6.) What actions by a Judge show clear and convincing evidence of Bias against a Defendant?
- 7.) Does a State have the ability/authority to supercede/ignore Art. VI, cl. 2 of the Constitution?

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:

1.) Peter Bludworth; Warden having custody of the Petitioner when Habeas Corpus relief was first sought.

2.) Attorney General of the State of Montana; legal Representation for the State.

RELATED CASES

1.) State v. Mackay, No. DC-14-34, Twentieth Judicial District Court for the State of Montana. Judgment entered Oct. 29th, 2015

2.) Mackay v. Mont. Twentieth Judicial Dist. Court, No. OP-19-0178, Supreme Court of the State of Montana. Judgment entered Apr. 2nd, 2019

3.) State of Montana v. Desmond Alan Mackay, No. DA-19-0224, Supreme Court of the State of Montana. Judgment entered Apr. 8th, 2020

- Related Cases -
Continued -

- 4.) Mackay v. Bludworth, No. OP-23-0141,
Supreme Court of the State of Montana.
Judgment entered Mar. 14th, 2023
- 5.) Mackay v. Bludworth, No. CV-23-51-GF-
BMM - JTT, United States District Court,
District of Montana, Great Falls Division.
Judgment entered Dec. 5th, 2023
- 6.) Mackay v. Bludworth et. al., No. 23-4413.
United States Court of Appeals for the
Ninth Circuit. Judgment entered Feb. 7th,
2025.

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	XI.
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	IX.
STATEMENT OF THE CASE	pg. 2
REASONS FOR GRANTING THE WRIT	pg. 9
CONCLUSION.....	pg. 18
Proof of Service	pg. 19

INDEX TO APPENDICES

- 1.) APPENDIX A - Memorandum of the Ninth Circuit Court of Appeals, Petition For Rehearing, Ninth Circuits Mandate
- 2.) APPENDIX B - Opening Brief in the 9th Cir. by David Ness, Notice of Appeal, Pro Se Opening Brief originally filed
- 3.) APPENDIX C U.S. Dist. Court §2254 Habeas Petition Decision Dismissing Petition by U.S. Dist. Court.
- 4.) APPENDIX D Habeas Corpus Petition filed in the Montana Supreme Court & the Courts Response
- 5.) APPENDIX E Habeas Corpus Petition filed in Montana State District Court.
- 6.) APPENDIX F Letter from Defense Counsel encouraging Mackay to Dismiss his Direct Appeal
- 7.) Appendix G: Previous filings in the Montana Supreme Court and documents of Discovery
- 8.) Appendix H: Verbatim Copies of Constitutional and Statutory Provisions Involved.

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

- Aetna Life Ins. Co. v. Lavoie,
475 U.S. 813, 106 S.Ct. 1580, 89 L.Ed 2d 823 (1986) - pg. 10
- Berger v. United States, 255 U.S. 22,
41. S.Ct. 230, 65 L.Ed. 481 (1921) pg. 13
- Bousley v. United States, 523 U.S. 614, 118 S.Ct. 1604,
140 L.Ed 2d 828 (1998) pg. 12
- Caperton v. A.T. Massey Coal Co., 556 U.S. 868, 129 S.Ct.
2252, 173 L.Ed 2d 1208 (2009) pg. 10

STATUTES AND RULES

- U.S. Const. Amend. V. pgs. - 9, 10, 15, 16, 17
- U.S. Const. Amend. VI. pgs. - 9, 10,
- U.S. Const. Amend. XIV. pgs. - 9, 10, 15,
- U.S. Const. Amend. X. pgs. - 14.
- U.S. Const. Art. VI, Cl. 2. pgs. 14, 15, 16, 17
- 28 USC § 2254 pg. 13

OTHER

- Mont. Const. Art. II. § 20 (1) pg. 14
- Mont Const. Art. VII § 4 (1) pg. 14
- MCA § 3-5-301 (1) pg. 14
- MCA § 3-5-302 (1)(a) pg. 14
- MCA § 46-11-101 pg. 14 - **V**

- Table of Authorities -
Continued:

- Echavarria v. Filson, 896 F.3d 1118 (9th Cir. 2018)
... pg. 10
- Hurtado v. California, 110 U.S. 516,
41 S.Ct. 111, 28 L.Ed. 232 (1884) ... pgs. 16, 17
- In re Murchison, 349 U.S. 133, 75 S.Ct. 623,
99 L.Ed. 942 (1955). pg. 10
- Mackin v. United States, 117 U.S. 348,
6 S.Ct. 777, 29 L.Ed. 909 (1886) pg. 15
- Marshall v. Jerrico, Inc., 446 U.S. 238,
100 S.Ct. 1610, 64 L.Ed. 2d 182 (1980) ... pg 10.
- McCulloch v. Maryland, 17 U.S. 316,
4 Wheat 316, 4 L.Ed. 579 (1819) ... pgs. 14, 15,
16, 17.
- McQuiggin v. Perkins, 569 U.S. 383,
133 S.Ct. 1924, 185 L.Ed 2d 1019 (2013)
... pg 12.

- Table of Authorities -
Continued:

- Rippo v. Baker, 580 U.S. 285, 137 S.Ct. 905, 197 L.Ed. 2d 167 (2017), pg. 10.
- Trump v. Vance, 591 U.S. 786, 140 S.Ct. 2412, 207 L.Ed. 2d 907 (2020) . . . pg. 14.
- Turney v. Ohio, 273 U.S. 510, 47 S.Ct. 437, 71 L.Ed. 749 (1927), pg. 10
- United States v. Ameline, 409 F.3d 1073 (9th Cir. 2005), pg. 11.
- United States v. Atherton, 106 F.4th 888, (9th Cir. 2024), pg. 11.
- United States v. Butler, 297 U.S. 1, 56 S.Ct. 312, 80 L.Ed. 477, (1936), . . . pg. 17
- United States v. Bibler, 495 F.3d 621, (9th Cir. 2007), pg. 11.
- United States v. Paladino, 401 F.3d 471, (7th Cir. 2005), pg. 11.

- Table of Authorities -
Continued!

- Withrow v. Larkin, 421 U.S. 35, 95 S.Ct.
1456, 43 L.Ed. 2d 712 (1975) pg. 10

- Montana State Case Law -

State v. Montgomery, 2015 MT 151,
379 Mont. 353, 350 P.3d 77 pg. 14.

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 Mackay v. Bludworth,
☒ reported at 2025 U.S. App LEXIS 2843; 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 _____ 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.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was February 7, 2025.

☐ 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: March 3rd, 2025, and a copy of the order denying rehearing appears at Appendix A.

☐ 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).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution

- 1.) Fifth Amendment - Appendix H * Tenth Amendment - Appendix H
- 2.) Sixth Amendment - Appendix H
- 3.) Fourteenth Amendment - Appendix H
- 4.) Article I., § 9, Cl. 2 - Appendix H
- 5.) Article VI., Cl. 2 - Appendix H

Montana Constitution

- 6.) Article II. § 4 - Appendix H
- 7.) Article II § 17 - Appendix H
- 8.) Article II § 19 - Appendix H
- 9.) Article II § 20 - Appendix H
- 10.) Article II § 21 - Appendix H
- 11.) Article II § 24 - Appendix H

-Constitutional and Statutory Provisions -
Involved.

- United States Code Service (USCS.)

12.) 28 USCS § 2244 - Appendix H

13.) 28 USCS § 2254

STATEMENT OF THE CASE

On Mar. 5th, 2014, the Petitioner was arrested in Polson, Montana, on two charges of Assault with a Weapon, (Montana Code Annotated, "MCA", § 45-5-213(1)(a)) for striking Mr. Jesse Waugh and Mr. John Barrows (with a hammer.) The Petitioner and Mr. Waugh were employees of Mr. Barrows at Mr. Barrows' autobody business that he ran from his home garage. The Petitioner was also married to Mr. Barrows' daughter. Mr. Waugh had recently assaulted and robbed the Petitioner several weeks before, and had a lengthy history of similar attacks against the Petitioner, along with intimidation, extortion, verbal, physical, mental abuse, and threats of continued attacks in the future. Mr. Waugh is substantially larger and stronger than the Petitioner, who, at the time weighed 160 lbs. and stands 5'10". Mr. Waugh weighs in excess of 450 lbs. and stands around 6'03" tall. The Petitioner had been drinking several beers after the days work, when Mr. Waugh showed up at the residence/garage and made various threats toward the Petitioner. Mr. Waugh had left the garage with promises to return and attack the Petitioner. When the garage door to the autobody shop open several minutes later, the Petitioner believed

- Statement of the Case
Continued -

that Mr. Waugh had returned to make good on his threats, and the Petitioner retrieved a hammer from the work bench and "side-arm" struck the person entering the garage. Unfortunately, the person entering the garage was Mr. Barrows instead of Mr. Waugh. Mr. Barrows stood shorter than Mr. Waugh, so the hammer struck Mr. Barrows in the side of the head instead of the shoulder or chest as would have been the impact area on Mr. Waugh. Mr. Barrows was immediately knocked unconscious, and the Petitioner then struck Mr. Waugh, who had returned. Mr. Waugh only suffered superficial injuries, while Mr. Barrows remained unconscious and was taken to the hospital. Mr. Barrows passed away three weeks later.

The Petitioner made an initial appearance on Mar. 6, 2014, where his Bail was set at \$500,000.00 and he was read the two counts of Assault with a Weapon against him. One week later, District Court Judge Deborah Kim Christopher took up the case. She had the Prosecuting District Attorney Amend the Petitioner's charges to two counts of Assault With a Weapon and one count of Attempted Deliberate Homicide (MCA §§ 45-5-102(1)(a), 45-4-103(1)).

- Statement of the Case
Continued -

Judge Christopher then used the new charges to revoke the Petitioner's Bail citing the State of Montana's "Death Penalty" statute, (MCA § 46-9-102 (1)) even though the State was not seeking the death penalty. This occurred on Mar. 13th, 2014, and Mr. Barrows did not pass away until Mar. 20th, 2014. Pursuant to Mr. Barrows passing, the State Amended the Petitioner's Charges to one count of Deliberate Homicide (MCA § 45-5-102) along with a Weapons Enhancement charge; (MCA § 46-18-0221) and one count of Assault with a Weapon (MCA § 45-5-213 (1)(a)).

An Omnibus Hearing was held on Apr. 24, 2014, where District Attorney Mr. James Lapotka informed the Court that the State of Montana would not be pursuing the Death Penalty in the Petitioner's case (DC-14-34). On August 11th, 2014, the State again Amended the Petitioner's charges, dropping the Weapons Enhancement charge. After the Petitioner was evaluated at Montana's Mental Hospital in Warm Springs, the State offered the Petitioner a Plea Agreement on Apr. 28th, 2015. The Plea agreement reduced the Petitioner's charges to Mitigated Homicide (MCA § 45-5-103) and one count of

- Statement of the Case, Continued -

Assault With a Weapon. Both sentences to run concurrently. (40 yrs in prison instead of 120 yrs.) The Petitioner agreed to the plea. On June 18th 2015, Judge Christopher rejected the plea Agreement, again using the Death Penalty as her reason for doing so. On Aug. 3rd, 2015 the Petitioner moved the Montana Supreme Court to Disqualify Judge Christopher for Cause. The Montana Supreme Court Denied the Motion (Aug. 7, 2015) In response to Judge Christopher rejecting their plea Agreement, the State again Amended the Petitioner's charges to only one count of Mitigated Homicide on Sep. 13th, 2015. On Sep. 17th, 2015, the Petitioner plead Guilty to the State's Amended Charges. On 29th Oct, 2015 the Petitioner was sentenced to 40 yrs. in Montana's State Prison. Judge Christopher also added a 25-year Parole Restriction. On Dec. 1, 2015 the Petitioner filed for a Review of Sentence. Affirmed on Mar. 13, 2017. On Jan 19, 2016, the Petitioner filed a Notice of Appeal with the Montana Supreme Court. On Oct. 28, 2016, the Petitioner was told by Counsel to Dismiss his Direct Appeal. He did so.

- Statement of the Case, Continued -

On May 24, 2018, the Petitioner filed a Motion to Withdraw his Guilty Plea with the 20th Judicial District, Lake County, (original sentencing Court) The District Court reconsidered the Motion as a Petition for Post-Conviction Relief instead. (MCA § 46-21-101 et. seq.) Later that year, the Petitioner filed a Motion for Summary Judgement (Sep. 10th, 2018) on his Motion to Withdraw his Guilty Plea, since the 20th Judicial District Court had not responded in any way to him. The 20th Judicial District Court Denied both Motions on Mar. 28th, 2019.

The Petitioner Appealed to the Montana Supreme Court. The Petitioner also filed a Request for a Writ of Supervisory Control over his underlying proceedings with the Montana Supreme Court One week before the District Court made its decision. (Mar. 21, 2019). The Montana Supreme Court denied the Request on Apr. 3rd 2019 and the Petitioner's Appeal of his Guilty Plea Motion was denied on May 12, 2020.

- Statement of the Case Continued -

In September of 2022, the Petitioner filed an Original Petition for Habeas Corpus in the Ninth Judicial District Court of Montana, Toole County where he was housed at the time. The Ninth District Court Denied the Petition on Oct. 27th, 2022.

In February of 2023, the Petitioner filed an Original Petition for Habeas Corpus with the Montana Supreme Court. (Mackay v. Bludworth, 2023 Mont. LEXIS 310, 411 Mont. 393, 526 P.3d 713, 2023 WL 2760019). The Montana Supreme Court Denied the Petition on Mar. 14th, 2023.

On Aug. 28th, 2023 the Petitioner filed a Federal Petition for Habeas Corpus under 28 USCS § 2254 with the United States District Court, District of Montana, Great Falls Division. (Mackay v. Bludworth, 2023 U.S. Dist. LEXIS 216283, 2023 WL 8435033; Cause No.: CV-23-51-GF-BMM-JTJ) (Hon. Brian M. Morris presiding) The Hon. Morris Denied his Petition as Time-Barred per 28 USCS § 2244 on Dec. 5th, 2023, but Granted a Certificate of Appealability.

On Dec. 27, 2023, the United States Court of Appeals for the Ninth Circuit filed the Petitioner's timely filed/submitted Notice of Appeal.

- Statement of the Case, Continued -

(Mackay v. Bludworth, 2025 U.S. App. LEXIS 2843, 2025 WL 429898 (9th Cir. 2025); Cause No.: 23-4413) On Mar. 14, 2024, the Ninth Circuit Court Ordered Defense Counsel be Appointed to the Petitioner's case. On Mar. 19, 2024, Mr. David F. Ness of the Montana Federal Appellate Defenders Division was Appointed as Counsel to Defend the Petitioner. Mr. Ness filed a new Opening Brief on June 18, 2024. The Ninth Circuit Court of Appeals Affirmed the United States District Court's decision on Feb. 7, 2025. (Memorandum given Feb. 5th) The Petitioner did not receive the Court's decision until Feb. 17th, 2025, and promptly prepared a Petition for Rehearing, which he filed on Feb. 26th, 2025. The Ninth Circuit Court of Appeals ignored the Petition for Rehearing and gave a Mandate that Feb. 7th was final on Mar. 3rd, 2025. The Petitioner, Desmond Alan Mackay, now submits his Petition for a Writ of Certiorari to the United States Supreme Court.

REASONS FOR GRANTING THE PETITION

1.) The Petitioner, Desmond Alan Mackay is sitting in prison under an illegal Sentence / Conviction.

The proceedings occurring in his case at the State District Court level were tainted by his convicting judge, Deborah Kim Christopher (removed from the bench). Judge Christopher's words and actions exhibited bias against the Petitioner and deprived Mr. Mackay of his Constitutional Rights to a Fair Trial in a Fair Tribunal; (U.S. Const. Amend. VI) Due Process of Law in Substance and Procedure; (U.S. Const. Amend. V, XIV) Equal Protection of the Statutes and Constitutional guarantees put in place to ensure that he receive the same treatment as any other defendant and the opportunity to defend himself in court to an unbiased adjudicator that will render judgment and justice in accordance with the United State's elevated standards of jurisprudence. (U.S. Const. Amend XIV) Judge Christopher repeatedly attempted to steer the proceedings in the direction of the Death Penalty, even though this was never considered or charged by the State, who even went out of their way to put it on the record that

- Reasons For Granting -
the Petition Continued

the State was not seeking the Death Penalty. (See! Statement of the Case, Upg. 4; Omnibus Hearing on Apr. 24, 2014.) Due Process and Fair Trial Rights are inextricably intertwined, and a denial of one implicates the other. Echavarria v. Filson, 896 F.3d 1118 at 1128, 1129 (9th Cir. 2018) citing In re Murchison, 349 U.S. 133, 136, 75 S.Ct. 623, 625, 99 L.Ed. 942, 946 (1955); Caperton v. A.T. Massey Coal Co., 556 U.S. 868-888, 129 S.Ct. 2252, 2259-2266, 173 L.Ed. 2d 1208, 1217-1225 (2009); Withrow v. Larkin, 421 U.S. 35, 47, 95 S.Ct. 1456, 43 L.Ed. 2d 712 (1975); Aetna Life Ins. Co. v. Lavoie, 475 U.S. 813, 825, 106 S.Ct. 1580, 1588, 89 L.Ed. 2d 823, 835 (1986). See also: Tumey v. Ohio, 273 U.S. 510, 523, 532, 47 S.Ct. 437, 441, 444, 71 L.Ed. 749, 754, 759 (1927); Rippo v. Baker, 580 U.S. 285, 287, 137 S.Ct. 905, 907, 197 L.Ed. 2d 167, 168 (2017); Marshall v. Jerrico, Inc., 446 U.S. 238, 242, 100 S.Ct. 1610, 1613, 64 L.Ed. 2d 182, 188 (1980).

- Reasons For Granting The Petition Continued: -

A biased adjudicator deprives a defendant of their Constitutional Rights. Any sentence/conviction achieved in violation of the Constitution is an illegal sentence/conviction. United States v.

Atherton, 106 F.4th 888 at 893 (9th Cir. 2024) citing United States v. Bibler, 495 F.3d 621, 624

(9th Cir. 2007). An illegal sentence is invalid and is not able to be recognized by the Courts of the United States. Likewise, it is an illegal sentence to convict an innocent person. United States v. Ameline, 409 F.3d 1073 at 1081 (9th Cir. 2005)

citing United States v. Paladino, 401 F.3d 471 at 483 (7th Cir. 2005). The Petitioner argues that a sentence imposed in violation of the Constitution, and a conviction of an innocent person are both "miscarriages of justice" that must be "reconsidered in a constitutionally proper setting." Atherton, supra, 106 F.4th at 894. The United States has given prisoners who can prove their actual innocence

- Reasons For Granting The Petition Continued:

the ability to overcome "Time-bars" and procedural barriers in order to get their illegal sentences/convictions corrected. Bousley v. United States, 523 U.S. 614, 622, 118 S.Ct. 1604, 140 L.Ed. 2d 828 (1998); McQuiggin v. Perkins, 569 U.S. 383, 386, 133 S.Ct. 1924, 185 L.Ed 2d 1019 (2013).

The Petitioner argues that a judge repeatedly using/advocating for the Death Penalty in a non-Death Penalty cause shows judicial bias.

Judicial bias is Unconstitutional and invalidates a defendants proceedings, sentence, and conviction under that judge. An invalid sentence is an illegal sentence that can be/should be able to be corrected at any time regardless of history. (i.e.- proceedings upholding an illegal sentence are themselves invalid and illegal.) The Montana Supreme Court, United States District Court, District of Montana, and the Ninth Circuit Appellate Court have all failed to ~~follow~~ follow their own case law,

- Reasons For Granting the Petition Continued:

the Constitution of the United States, and the directives of the United States Supreme Court.

For example, when the Petitioner's initial District Court Defense Counsel, Mr. John Thomas Bartleson, attempted to correct for Judge Christopher's clear bias and prejudice by filing a "Motion to Disqualify Judge for Cause" on Aug. 3rd, 2015, the Montana Supreme Court, in direct violation of the United States Supreme Court's guidance in Berger v. United States, 255 U.S. 22 at 33, 41 S.Ct. 230, 233, 65 L.Ed. 481, 485 (1921), denied Mr. Bartleson's "Motion" as unfounded, and any supposed bias as "harmless". Additionally, as the Court can see from the cases cited so far, the Ninth Circuit Court of Appeals has failed to follow its own provisions and case law. The Petitioner argues that the Ninth Circuit Appellate Court erred when it upheld the United States District Court's procedural bar of his 28 USC § 2254 Habeas Corpus Petition. Additionally, all previous reviewing Courts have upheld an illegal and therefore Unconstitutional Sentence and Conviction.

- Reasons For Granting The Petition, Continued! -

2.) A second issue that Mr. Mackay would like to put before the United States Supreme Court is the State of Montana's refusal to obey Article VI, Clause II. of the United States Constitution; "The Supremacy Clause."

The State of Montana charges all crimes in its jurisdiction by "Information", and never by "Indictment". The Montana Constitution provides for this under Art. VII § 4(1) and Art. II. § 20(1), as does Montana Statute law under MCA § 3-5-301(1), MCA § 3-5-302(1)(a), and MCA § 46-11-101. See: State v. Montgomery, 2015 MT 151, 379 Mont. 353, 350 P.3d 77.

Powers are reserved to the States under the Tenth Amendment. However, the States have no power to supercede the Constitution or "in any manner control the operations of the constitutional laws enacted by Congress." Trump v. Vance, 591 U.S. 786, at 801, 140 S.Ct. 2412, 2425, 207 L.Ed. 2d 907, 920 (2020) citing McCulloch v. Maryland,

- Reasons For Granting The Petition, Continued: -

17 U.S. 316 at 436, 4 Wheat. 316, 436, 4 L.Ed. 579, 609 (1819). The Fifth Amendment provides that "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury,..." If, all felonious crimes punishable by a year or more in a State penitentiary are considered as either "Capital" or "Infamous" within the meaning of the Fifth Amendment of the Constitution,] Mackin v. United States, 117 U.S. 348 at 350-355,

6 S. Ct. 777-780, 29 L.Ed. 909-912 (1886).

Then, how is any State in the Union able to overcome the "Supremacy Clause" of Article VI., Clause II, when it expressly provides that the States, the Constitutions of the States, the laws made in the States, and the "Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding?" (U.S. Const. Art. VI. Cl. 2)

The Fifth Amendment and the "Supremacy Clause" were ordained and ratified long before any interpretation of the 14th Amendment's "application to the states" was considered. The Petitioner's arguing "principle is, that the constitution and the

- Reasons For Granting The Petition, Continued! -

laws made in pursuance thereof are supreme; that they control the constitution and laws of the respective States, and cannot be controlled by them." McCulloch v. Maryland, 17 U.S. 316 at 426, 4 L.Ed. 579, 606, 1819 U.S. LEXIS 320 (1819). Also see McCulloch at 17 U.S. 406, 429, 432, 433, 436. McCulloch held this Opinion, that the Constitution is "the Supreme law" of the United States and that the individual States may not overcome or supercede the Constitution's provisions before the Fifth Amendment was broken apart and treated as separate from the entire rest of the United States Constitution. See: Hurtado v. California, 110 U.S. 516, 4 S.Ct. 111, 28 L.Ed. 232 (1884).

It is not the 14th Amendment that applies the Constitution to the States, it is Article VI., Cl. 2. The 14th Amendment was not created until 100 years after the design of our Constitution and its Bill of Rights. There is no possible line

- Reasons For Granting The Petition, Continued -

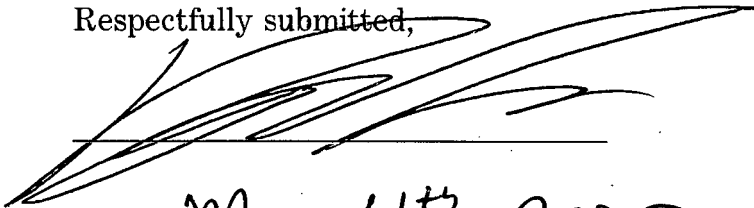
of reasoning where those who designed our Constitution in the 1780's had no intention of that Constitution to apply its provisions and protections to the States. Nor can it be, that the provisions of the Constitution were intended to apply ala-Carte to the States. (ie. - The Fifth Amendment's prohibition of self-incrimination applies, but not it's Due Process or Grand Jury protections.) See: McCulloch, *supra*, 17 U.S. at 405-406. Also: Hurtado v. California, Dissent by Justice Harlan, 110 U.S. 516 at 539-542.

The Constitution is "Supreme". Everything and everyone living within the borders of the United States of America is subject to its provisions and its protections, its restrictions on ~~try~~ tyranny and its expectations for the treatment of those who give it its power. "All legislation must conform to the principles it lays down." United States v. Butler, 297 U.S. 1 at 62-63, 56 S.Ct. 312, 318, 319, 80 L.Ed. 477, 486-487 (1936).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A large, stylized handwritten signature in black ink, written over a horizontal line.

Date: May 4th, 2025