

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

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**In the**  
**Supreme Court of the United States**

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RICKY DURHAM,

*Petitioner,*

v.

RICHARD ADAMS, WARDEN, EASTERN RECEPTION,  
DIAGNOSTIC AND CORRECTIONAL CENTER,

*Respondent.*

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**On Petition for a Writ of Certiorari to the  
Supreme Court of Missouri**

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**PETITION FOR A WRIT OF CERTIORARI**

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Kevin L. Schriener  
*Counsel of Record*  
LAW & SCHRIENER LLC  
213 South Bemiston Avenue, Suite 800  
Clayton, MO 63105  
(314) 721-7095  
[kschriener@schrienerlaw.com](mailto:kschriener@schrienerlaw.com)

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*Counsel for Petitioner*

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◆ (888) 958-5705 ◆

BOSTON, MASSACHUSETTS

**QUESTION PRESENTED**

Whether the Supremacy Clause of the United States Constitution preempted the State of Missouri from the prosecution of a criminal defendant for the killing of a postal worker performing their official duties when Congress enacted 18 U.S.C. § 1114 to address such crimes.

## LIST OF PROCEEDINGS

U.S. District Court, Eastern District of Missouri:

*United States v. Durham*, No. 87-190Cr(5)

(Feb. 24, 1988) (entering judgment of conviction  
after jury trial)

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Circuit Court of the City of St. Louis, Missouri:

*State v. Durham*, No. 871-1409A (Nov. 3, 1989)

(entering judgment of conviction after jury trial)

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Circuit Court of St. Francois County, Missouri:

*Durham v. Adams*, No. 23SF-CC00027

(Mar. 29, 2024) (denying habeas corpus relief)

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Missouri Court of Appeals, Eastern District:

*Durham v. Adams*, No. ED112802 (Jul. 15, 2024)

(denying habeas corpus relief)

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Missouri Supreme Court:

*Durham v. Adams*, No. SC100678 (Sept. 3, 2024)

(denying habeas corpus relief)

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## **PETITION FOR A WRIT OF CERTIORARI**

Petitioner Ricky Durham respectfully petitions for a writ of certiorari to review the judgment of the Missouri Supreme Court entered in this case.



## **OPINIONS BELOW**

The final judgment and mandate by the Missouri Supreme Court on September 3, 2024, denying petitioner's habeas petition is unreported. (App.1a). The July 15, 2024, order of the Missouri Court of Appeals, Eastern District, denying petitioner's state habeas petition is unreported. (App.3a) The March 29, 2024, judgment of the Twenty-Fourth Judicial Circuit (St. Francois County, Missouri) denying petitioner's petition for writ of habeas corpus is unreported. (App.5a).



## **JURISDICTION**

The Missouri Supreme Court issued its denial of petitioner's petition for writ of habeas corpus on September 3, 2024, and that ruling became final on that date. (App.1a). On October 29, 2024, Justice Kavanaugh granted Durham's application for an extension of time to file a petition for writ of certiorari to and including January 31, 2025. (Sup. Ct. No. 24A416) This Court has jurisdiction under 28 U.S.C. § 1257 to review this

Petition. This petition, postmarked January 31, 2025 is timely filed pursuant to Sup. Ct. R. 13.3.



## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

### **U.S. Const., Article VI, Clause 2**

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.

### **18 U.S.C. § 1114**

Whoever kills or attempts to kill any officer or employee of the United States or of any agency in any branch of the United States Government . . . while such officer or employee is engaged in . . . the performance of official duties . . . shall be punished . . . in the case of murder, a provided under section 1111.

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## INTRODUCTION

This case presents an important issue: whether the state's authority to prosecute and punish murder of or assault upon a federal officer performing his or her official duties was preempted because Congress, for good and clearly memorialized reason, assumed federal control of the law enforcement response to the murder or assault of a federal official while that official is carrying out the work of the federal government.

1. This question is of the utmost importance to Petitioner Ricky Durham as he is serving a state sentence of life without parole for killing Kenneth Clark, who was performing his work as a mail carrier for the United States Postal Service. Mr. Durham is serving his state sentence after having been previously convicted with Mr. Clark's murder in federal court. Mr. Durham was released from his federal sentence after serving thirty years in the Bureau of Prisons.

2. During the pendency of his state criminal proceedings, Mr. Durham made no challenge to the state's prosecution on the basis that § 1114 preempted the state from doing so. Mr. Durham, however, properly sought habeas relief on this issue in the Missouri state courts once he had been released to state custody. Although the Missouri Supreme Court and the Missouri Court of Appeals summarily denied Mr. Durham's habeas petitions, the Missouri Circuit Court did issue an opinion giving insight into the upper courts' rationale for denying relief. Specifically, the Circuit Court denied habeas relief based upon this Court's precedent in *United States v. Feola*, 420 U.S. 671 (1975), and

*Ladner v. United States*, 358 U.S. 169 (1958) finding that the legislative history of § 1114 did not reflect Congress's intent to preclude Missouri from punishing Mr. Durham for killing Mr. Clark in the exercise of his duties as a federal employee. The Circuit Court also premised its denial of habeas relief on this Court's recent decision in *Kansas v. Garcia*, 149 S. Ct. 791 (2020) finding that the mere fact that state laws overlap to some degree with federal criminal provisions does not make a case for conflict preemption. The Circuit Court's reliance on this cases was incorrect.



## STATEMENT OF THE CASE

### A. Legal background

This Court has never explicitly decided whether it was Congress's intent that § 1114 preempted the state criminal prosecution of the murder of a postal employee in the performance of their official duty. Both the Supremacy Clause, congressional intent, and legislative history leads to the conclusion that Mr. Durham is incarcerated for a crime that Missouri had no authority to prosecute him for.

1. The Supremacy Clause, U.S. Const. Art. VI, cl. 2, provides that federal law “shall be the supreme Law of the Land . . . any Thing in the Constitution or Laws of any state to the Contrary notwithstanding.” Apart from the Supremacy Clause itself, the provisions of the federal constitution and statutes central to this case are the Post Offices and Post Roads Clause, U.S. Const. Art. I, § 8, Cl. 7, establishing the vital role of the Postal Service as a component of the federal

government since the country's inception and the foundation of Congressional authority over and concern for postal service operations, and 18 U.S.C. § 1114, by which Congress provided for federal control of the investigation, charging, prosecution, and punishment of violent crimes against postal workers and other federal officials while performing their federal jobs.

2. The Supremacy Clause of the United States Constitution, U.S. Const. Art. VI, provides:

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 Law of any State to the Contrary notwithstanding.

*Id.* The Supremacy Clause thus prescribes a Constitutional choice of law rule that gives federal law precedence over conflicting state law: under that rule, state law is preempted if it "stands as an obstacle to the accomplishment and execution of the full purpose and objectives of Congress." *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941). Preemption occurs also when Congress has enacted statutes intended to occupy a field traditionally left to state control. *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947).

3. "It is a familiar and well-established principle that the Supremacy Clause, U.S. Const., Art. VI, cl. 2, invalidates state laws that 'interfere with, or are contrary to,' federal law." *Hillsborough County, Florida v. Automated Medical Laboratories, Inc.*, 471 U.S. 707,

712-13 (1985) (quoting *Gibbons v. Ogden*, 9 Wheat. 1, 211 (1824) (Marshall, C.J.); see also *Arizona v. United States*, 567 U.S. 387, 388-89 (recognizing the “clear rule” that under the Supremacy Clause “Congress has the power to preempt state law”).

4. Over the years, this Court has addressed the application of the Supremacy Clause in different areas of laws. In 1940, this Court held that pursuant to the Supremacy Clause, the Pennsylvania law governing the registration of aliens was superceded by the federal law governing the same topic, and that the Pennsylvania law was therefore invalid and could not be enforced by Pennsylvania. *Hines v. Davidowitz*, 312 U.S. 52 (1940). Also, this Court held that Congress had clearly expressed an intent to provide a comprehensive and uniform scheme for the regulation of all aliens. In the *Commonwealth of Pennsylvania v. Nelson*, 350 U.S. 497, 76 S.Ct. 477 (1955), the issue was whether the Federal Smith Act, which prohibits the knowing advocacy of the overthrow of the government of the United States by force and violence, supersedes the enforceability of the Pennsylvania Sedition Act, which proscribes the same conduct and under which the defendant, a member of the Communist Party, had been convicted in the Pennsylvania state courts. Again, this Court held that the federal law superseded the state law on the grounds that Congress had occupied the field to the exclusion of parallel state legislation, that the dominant interest of the federal government precludes state intervention.

In *Hamm v. City of Rock Hill*, 379 U.S. 306 (1964), this Court vacated the state convictions of African-Americans based upon federal law. The defendants were convicted of violating state trespassing laws, which is clearly within a state’s authority to determine what

constitutes a crime. The applicable federal law was the Civil Rights Act of 1964. This Court held that the Supremacy Clause prohibits the application of state law where there is a clear collision between state law and federal law or a conflict between federal law and the application of an otherwise valid state enactment. On certiorari, this Court vacated the judgments and ordered the charges dismissed.

In *Felder v. Casey*, 487 U.S. 131 (1988), this Court held that a state law requiring plaintiffs to file a notice of claim before suing government personnel was preempted because it presented an obstacle to filing suit on account of a civil rights violation under 42 U.S.C. § 1983. *Id.* at 152.

In the area of criminal law, this Court has held that state game laws, which provided criminal penalties, were precluded from application to the defendants by the Supremacy Clause of the United States Constitution because congressional legislative ratification of the agreement made its provisions the supreme law of the land. *Antoine et. ux. v. Washington*, 420 U.S. 194, 95 S. Ct. 944 (1975).

5. Congressional intent is “the ultimate touchstone” for determining whether federal law preempts state law in a given circumstance. See *Wyeth v. Levine*, 555 U.S. 555, 565 (2009), and *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996)). Congressional intent to assume control of the investigation, prosecution, and punishment of murder and manslaughter crimes against agents and employees of the federal government, as well as of threats to the performance of those agents’ and employees’ federal duties, is reflected in the legislative history of the present § 1114 and its predecessors. When Congress enacted 18 U.S.C. § 253 in 1934, the Attorney

General wrote to the chair of the Senate Committee on the Judiciary to endorse the legislation:

The need for general legislation . . . for the protection of Federal officers and employees . . . becomes increasingly apparent every day. The Federal Government should not be compelled to rely upon the courts of the States, however respectable and well disposed, for the protection of its investigative and law enforcement personnel.

H. Cummings, letter to Sen. H. Ashurst, Jan. 3, 1934, quoted in *Ladner v. United States*, 358 U.S. 169, 174 n.3 ((1958)). In *Ladner* this Court noted that the legislative history of § 253 consists “largely” of the Attorney General’s letter “recommending passage” of the bill and noting the need for both “protection of federal officers” and “prevent[ing] hindrance to the execution of official duty.” *Id.* at 175-76. Elsewhere the legislative history includes the following remark by Rep. Hatton Sumners:

MR. SUMNERS: May I suggest to the gentleman from Missouri that the Committee on the Judiciary went thoroughly into this matter. Considering existing law and what is the purpose of this bill, the committee felt that this was as far as the Federal Government should go in undertaking to withdraw exclusive jurisdiction from the state courts. Under existing activities of the Federal Government there are numerous employees which the judiciary committee felt it was not necessary to bring under Federal prosecution as distinguished from state prosecution.

78 Cong. Rec. 8127 (daily ed. May 5, 1934) (statement of Rep. Hatton Sumners). The legislative history of § 1114 thus provides uncontroverted support for finding that Congress intended to assure that individuals who murder or assault federal employees in the course of their work are prosecuted by federal prosecutors in federal courts and subjected to prompt, sure, and severe punishment if convicted. Nothing in the statute's history undermines or diminishes that support.

This Court observed in *Garcia*: “In surveying legislative history we have repeatedly stated that the authoritative source for finding the Legislature's intent lies in the Committee Reports on the bill, which 'represent the considered and collective understanding of those Congressmen involved in drafting and studying proposed legislation.'” 469 U.S. at 76. The report of the Senate Judiciary Committee on the bill that became § 1114 consisted principally of the Attorney General's letter and stated expressly that “[t]he purpose and need of this legislation are set out” in that correspondence. S. Rep. No. 568, 73d Cong., 2d Sess (1934), quoted in *Ladner v. United States*, 358 U.S. 169, 174 n.3 ((1958)). Congress proceeded to enact the statute thus endorsed by the Attorney General. The Attorney General's declaration of need for a mandate and mechanism by which the federal government could assume control of the law enforcement response to attacks on government workers in the exercise of their official duties was answered by that enactment.

The Attorney General's endorsement, incorporated as it was into the committee report on the bill, has probative value in determining what Congress intended by the enactment of § 1114. In *Ladner* this Court noted that the legislative history of § 253 consists “largely”

of the Attorney General’s letter “recommending passage” of the bill and noting the need for both “protection of federal officers” and “prevent[ing] hindrance to the execution of official duty.” *Id.* at 175-76. The remarks of Rep. Sumners, memorializing the House Judiciary Committee’s “thorough” consideration of how broadly the legislation should sweep in bringing the response to violent crimes against federal employees “under Federal prosecution as distinguished from state prosecution,” is probative of the same intent.

## **B. Factual and procedural background**

1. On May 7, 1987, Kenneth Clark, a United States mail carrier, was killed while on duty in the City of St. Louis, Missouri. The next day, Mr. Durham was arrested by the St. Louis Police Department on a warrant out of the City of St. Louis, Missouri. On May 8, 1987, the City of St. Louis charged Mr. Durham and Charles Durham by way of complaint with the first-degree murder of Kenneth Clark. On June 3, 1987, a St. Louis City grand jury returned an indictment charging Mr. Durham with first-degree murder. Specifically, the indictment charged, in relevant part, that:

[D]efendant Ricky Durham and defendant Charles Durham, in violation of Section 565.020.1, RsMo, committed the Class A felony of murder in the first degree, punishable upon conviction under Section 565.020.2, RsMo, in that on 7th day of May, 1987, in the City of St. Louis, State of Missouri, the defendant, Ricky Durham and defendant, Charles Durham after deliberation, knowingly killed KENNETH CLARK by shooting him.

(emphasis in original).

Mr. Durham posted bond and was released from custody pending trial.

2. On May 15, 1987, the United States District Court for the Eastern District of Missouri ("Eastern District") issued an arrest warrant for Mr. Durham charging him with the first degree murder of a postal employee. On August 7, 1987, federal law enforcement officers arrested Mr. Durham in the Reno, Nevada area. Mr. Durham was extradited back to St. Louis, Missouri. A federal grand jury indicted him on August 13, 1987 for the first degree murder of a United States Postal Service employee while performing his official duties in violation of 18 U.S.C. §§ 1111, 1114, and use of a firearm to commit a crime of violence in violation of 18 U.S.C. § 924(c). Specifically, the indictment charged, relevant to the murder, that:

On or about May 7, 1987, in the Eastern District of Missouri,

RICKY DURHAM,

the defendant herein, with premeditation and malice aforethought did murder Kenneth Charles Clark, a United States Postal Service Mail Carrier while the Mail Carrier was engaged in the performance of his official duties.

In violation of Title 18, United States Code, Sections 1111 and 1114.

(App.27a).

3. On January 15, 1988, Mr. Durham, after a jury trial in the Eastern District, was found guilty of first degree murder of a postal service employee while in the performance of his official duties and for using

a firearm in the commission of a crime. The federal court sentenced him to consecutive terms of life in prison for the murder and five years' imprisonment for the firearms violation. Mr. Durham was received by the Bureau of Prisons to serve his sentence. Mr. Durham's appeal of his conviction and sentence was unsuccessful.

4. After his federal conviction, the state filed a substitute information in lieu of the original indictment charging Mr. Durham, acting alone, with first degree murder. Specifically, that:

[Mr. Durham], in violation of Section 565.020. 1, RSMo, committed the class A felony of murder in the first degree, punishable upon conviction under Section 565.020.2, RSMo, in that on May 7, 1987, in the City of St. Louis, State of Missouri, the defendant after deliberation knowingly killed KENNETH CLARK by shooting him.

(emphasis in the original). (App.24a, 25a). On October 5, 1989, after a jury trial, Mr. Durham was convicted of first degree murder in state court. The trial court sentenced him to life without probation or parole, to be served consecutively to his federal sentence for the same offense. Mr. Durham appealed his state conviction. One of the points for relief Mr. Durham raised on appeal was that his state conviction was in violation of the double jeopardy clause. The Missouri Court of Appeals denied this point on appeal as well as Mr. Durham's other points. *See State v. Durham*, 822 S.W.2d 453 (Mo. App. E.D. 1991). Mr. Durham did not make a jurisdiction argument in his state appeal.

5. After being released from federal custody, Mr. Durham began serving his state sentence. Mr. Durham

sought habeas relief on this issue in the Missouri state courts. Missouri law provides that a writ of habeas corpus may be issued when a person is restrained of his or her liberty in violation of the constitution or laws of the state or federal government. *State ex rel. Nixon v. Jaynes*, 63 S.W.3d 210, 214 (Mo. banc 2001). The state Circuit Court denied relief finding that § 1114 did not preempt Missouri's criminal jurisdiction to charge Mr. Durham with first-degree murder. (App.5a). Similarly, the Missouri Court of Appeals and the Missouri Supreme Court denied relief. (App.1a, 3a). Durham now seeks release from his state sentence of life without parole that the Missouri courts have denied.



## **REASONS FOR GRANTING THE PETITION**

Because the federal government has exercised control over the prosecution of the murder of government employees performing their official duties, the Supremacy Clause preempts the state from prosecuting Mr. Durham for the same crime.

### **A. Congressional Intent to Preempt State Interference**

The provision for federal prosecution and punishment of persons who kill federal employees in the performance of their duties, and the clear indications in legislative history that this law was intended to assume control of and ensure adequate investigation, prosecution, and punishment of such crimes in order to protect the functioning of the federal government and the lives of its official personnel, indicates Congressional intent to preempt state interference in this area.

Further, Congressional intent to displace state law may be inferred where there is a federal interest so strong that a Congressional act “will be assumed to preclude enforcement of state laws on the same subject.” *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 219, 230 (1947). Again, the provision for federal prosecution and punishment of persons who kill federal employees in the performance of their duties, and the clear indications in legislative history that this law was intended to assume control of and insure investigation, prosecution, and punishment of such crimes to the satisfaction of the federal government in order to protect the functioning of that government and the lives of its official personnel, reflects Congressional intent to preempt state interference in this area—“however respectable and well disposed” the intent and capacity of some state law enforcement approaches might be.

The statute at issue in *Nelson*, 350 U.S. 497, made sedition against either Pennsylvania or the United States a state crime. This Court held that the federal Smith Act of 1940, which prohibited sedition against the United States government, preempted the Pennsylvania statute. *Id.* at 509. One critical consideration was the Court’s determination that Congress had intended to centralize investigative, prosecutorial, and punitive control of cases in which serious crime was alleged to have been committed against the federal government: “[E]nforcement of state sedition acts presents a serious danger of conflict with the administration of the federal program.” *Id.* at 505. Nor did it matter that enforcement of or punishment under state law might be more vigorous: “When Congress has taken the particular subject-matter in hand, coincidence is as ineffective as opposition, and a state law is not to be declared a help

because it attempts to go farther than Congress has seen fit to go.” *Id.* at 504 (quoting *Charleston & Western Carolina Rail Co. v. Varnville Furniture Co.*, 237 U.S. 597, 604 (1915)). This Court also recognized the inevitability of inconsistent enforcement and outcomes when the particular offensive conduct was prosecuted and punished in “[a] multiplicity of tribunals” pursuant to “a diversity of procedures.” *Id.* at 509. That analysis is apt for the consideration of Missouri law enforcement authorities to apply the state murder statute to the killing of a federal employee in the performance of his official duties.

In 18 U.S.C. § 1114, Congress made it a federal offense to kill or attempt to kill, *inter alia*, any officer or employee of the United States or a government agency while the employee is engaged in his official duties. By its enactment of § 1114, Congress ensured that the murder of federal employees in the course of or on account of their work would be punished by death or imprisonment for life. 18 U.S.C. §§ 1111, 1114. By legislating federal control of such homicides, Congress asserted its authority to commit the investigation, prosecution, and punishment of persons committing those crimes to the overriding control and superior resources of the federal law enforcement system.

The federal government arrested, prosecuted, and punished Mr. Durham pursuant to §§ 1114 and 1111. The government elected that course after the State of Missouri had formally initiated its own prosecution. By virtue of Supremacy Clause preemption, the state court was without subject matter jurisdiction with respect to the subsequent prosecution of Mr. Durham for the same conduct under state law. *See State ex rel. Laughlin v. Bowersox*, 318 S.W.3d 695, 698 (Mo. 2010)

(recognizing that “Missouri courts have subject matter jurisdiction over criminal cases under article V, section 14, of the Missouri Constitution . . . [b]ut no state, including Missouri, can grant subject matter jurisdiction to its courts to hear matters that federal law places under the ‘exclusive’ jurisdiction of the federal courts”) (citing and quoting *J.C.S. ex rel. Webb v. Wyciskalla*, 275, 253 n.6 (Mo. 2009)).

The state’s detention of Mr. Durham for the murder of Mr. Clark while he was performing his duties as a mail carrier employed by the federal government violates the Supremacy Clause of the United States Constitution, U.S. Const. Art. VI, and is illegal.

## **B. Elements of Preemption are Satisfied**

To satisfy the requirements of preemption, three elements must be met: (1) Congress must enact the federal statute; (2) has expressed a clear intent to preempt state law; (3) and has left no room for the state to supplement federal law. *Capital Cities Cable, Inc.*, 467 U.S. 691, 104 S.Ct. 2694 (1984). In addition, if the act of Congress . . . “touches a field in which the Federal interest is so dominate the Federal system will be assumed to preclude enforcement of State Laws on the same subject, . . . or if the goal sought to be obtained and the obligations imposed reveal a purpose to preclude State authority . . . preemption is mandated.” *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 219, 230 (1947); *see also Pacific Gas and Company v. State Energy Commission*, 461 U.S. 190, 230-240 (1983); *Capital Cities Cable, Inc., v. Crisp*, 467 U.S. 691 (1984). Mr. Durham has met these elements. When Congress enacted § 1111, *et seq.*, it expressed clear intent to exercise exclusive prosecutorial authority over crimes

against postal employees and there is no room for the state to supplement this law.

In Mr. Durham's case, while he was being prosecuted by the State of Missouri, the federal government exercised authority to prosecute him exclusively. The federal government's prosecution was tantamount to a removal pursuant to 28 U.S.C. § 1443 in substance and divested the state court of jurisdiction to subsequently try the case.

In *Butler v. King*, 781 F.2d 486 (5th Cir. 1986), the Fifth Circuit held that a state court loses jurisdiction to try a case when such a preemptive removal occurs. The states and the federal government are distinct political communities, drawing their separate sovereign power from different sources, each from the organic law that established it. However, when one sovereign exercises a superior power by removing the accused from the realm of the other's prosecution, thereafter prosecuting the accused under that superior power, then the first has been effectively deprived of the policy underlying the power to prosecute thereafter. This is precisely why, in the normal exercise of prosecutorial decision making discretion, one sovereign usually defers to the other. For example, as a matter of internal policy, the federal government will not normally pursue criminal charges against a defendant who has been prosecuted in a state court. *See Petit v. United States*, 361 U.S. 529, 531 (1960). The federal courts are given by statute original jurisdiction, exclusive of the courts of the states, of all offenses against the laws of the United States. 18 U.S.C. § 3231. Federal courts always have jurisdiction where a federal offense is charged, and in some instances, exclusive jurisdiction by removal from state court of criminal

prosecutions. Additionally, all of the elements of the offense of murder in the state court under Missouri law were included and incorporated in the federal elements of the offense. Both offenses required deliberation in the murder of the victim.

The continued confinement of Ricky Durham in the Missouri Department of Corrections violates the Supremacy Clause of the United States Constitution, U.S. Const. Art. VI, cl.2, and the doctrine of federal preemption that has arisen under that constitutional provision.

### **C. State Courts’ Rationales for Dismissal Do Not Comport with Supremacy Clause**

The state courts in denying Mr. Durham’s pre-emption argument relied upon this Court’s holdings in *Ladner* and *Feola*. Such reliance was misplaced. *Ladner* explicitly recognized that the purpose of § 1114 was “to assure the carrying out of federal purposes and interests”—i.e., like the federal anti-sedition laws at issue in *Nelson*, Congress enacted this statute to protect the ongoing ability of the federal government to function. 358 U.S. at 175-76. Nothing else in that opinion directly or indirectly addressed the issue of preemption under the Supremacy Clause. *Feola*, which took note of Congress’ understanding that § 1114 “insure[d] a federal forum” for the prosecution of individuals who would harm federal employees, actually lends clear support to Mr. Durham’s preemption claim:

Fulfillment of the congressional goal to protect federal officers required then, as it does now, the highest possible degree of certainty that those who killed or assaulted

federal officers were brought to justice. In the congressional mind, with the reliance upon the Attorney General's letter, certainty required that these cases be tried in the federal courts, for no matter how "respectable and well disposed," it would not be unreasonable to suppose that state officials would not always or necessarily share congressional feelings of urgency as to the necessity of prompt and vigorous prosecutions of those who violate the safety of the federal officer.

420 U.S. at 683-84.

The reliance on *Garcia* also was incorrect: the analysis of preemption in that opinion does not control the issue in this case. Furthermore, Mr. Durham is not relying on the notion that conflict preemption occurs whenever federal or state statutes overlap. Rather, his conflict preemption claim is this: the state's authority to prosecute and punish the murder of or assault upon a federal official performing his or her official duties was preempted because Congress, for good and clearly memorialized reason, assumed federal control of the law enforcement response to the murder or assault of a federal official while that official is carrying out the work of the federal government. *Garcia* stated that: "The Supremacy Clause gives priority to 'the Law of the United States,' not the criminal law enforcement priorities or preferences of federal officers." *Id.* at 807. That observation does not apply to the preemption analysis called for by Mr. Durham's claim. Section 1114 does not declare the "law enforcement priorities or preferences of federal officers." It is an unequivocal statute expressing the intention of Congress that intentional violent crimes

against federal government officials, committed while the victim is performing his or her federal government duties, be investigated, charged, prosecuted, and punished by the federal agents and prosecutors in federal courts before federal judges under the mandate of federal law.



## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Kevin L. Schriener  
*Counsel of Record*  
LAW & SCHRIENER LLC  
213 South Bemiston Avenue,  
Suite 800  
Clayton, Missouri 63105  
(314) 721-7095  
[kschriener@schrienerlaw.com](mailto:kschriener@schrienerlaw.com)

*Counsel for Petitioner*

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