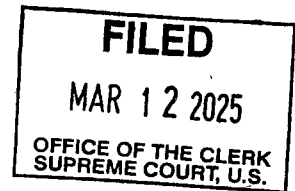


25-5271

No. 24-3611



ORIGINAL

In the
Supreme Court of the United States

Soleiman Mobarak - Petitioner,

Vs.

Jay Forshey - Respondent.

On Petition for a Writ of Certiorari to
The Sixth Circuit United States Court of Appeals

Petition for a Writ of Certiorari

Soleiman Mobarak
Petitioner, pro se
Noble Correctional Institution
15708 McConnelsville Road
Caldwell, Ohio 43724

Questions Presented

1. **Novel Issue:** Is the Actual Innocence Exception to a procedural bar limited to cases where petitioners are convicted, but actually innocent of crimes that *are* defined as offenses by existing statutes; or does the Actual Innocence Exception also apply to cases where petitioners are convicted of innocent acts that *are not* defined as offenses by statutes that existing at the time the acts were performed, and where there are no statutory "crimes" for which such petitioners could be said to be guilty?
2. **Novel Issue:** Is a judgment of a State court that is void and non-final, and never becomes final as a matter of State and Federal Law for want of subject matter jurisdiction, sufficient to trigger the AEDPA deadline for filing 28 U.S.C. § 2254 Petitions set out in 28 U.S.C. § 2244(d), where the plain language of 28 U.S.C. § 2244(d) specifically bases its one-year limitation on the finality of state-court judgments?
3. **Apparent Novel Issue:** Can the presumption of innocence that extends to every element of an offense, as set out in *Morrisette v. United States*, 342 U.S. 246 (1952), be rebutted and overcome by the presentation of evidence in a trial resulting in a jury verdict of guilty, despite the fact that there was no crime or offense defined by statute at the time the targeted acts were performed, and thus, no elements upon which to apply the presumption of innocence; or does the presumption of innocence for the non-criminalized acts remain?
4. Is it repugnant to the Constitution, treaties, and/or laws of the United States for a State to charge and convict a United States citizen, and deprive him of liberty and property, for acts that no statute within the state proscribed the acts for which he was charged, convicted, and deprived of liberty and property, until after the acts were performed?
5. Is it a direct or constructive violation of Article I, § 10, Cause 1, of the United States Constitution, for a State to arrest and indict United States citizens for acts that were innocent when performed for want of statutory proscription, then later try them under one or more newly amended or enacted prospective statutory provisions that criminalize the same acts after they were performed?

Parties

All Parties are listed in the caption

List of Related Proceedings

1. **Judgment and Opinion of the 6th Circuit Court of Appeals Sought to be Reviewed:**

Mobarak v. Forshey, 2024 U.S. App. LEXIS 31974, (6th Cir. December 16, 2024). **Appendix A:** Appx. pages 1-6

2. **Judgment and Opinion of the United States District Court, Southern District of Ohio, Eastern Division:**

Mobarak v. Warden Noble Corr. Inst., 2024 U.S. Dist. LEXIS 103675 (S.D. Ohio June 11, 2024). **Appendix B:** Appx. pages 7-12

3. **Ohio State Supreme Court Opinion in Mandamus, Appeal of Right:**

State ex rel. Mobarak v. Brown, Slip Opinion No. 2024-Ohio-221; 174 Ohio St. 3d 203 (January 25, 2024). **Appendix C:** Appx. pages 13-19

4. **Opinion of the 10th District Court of Appeals, Franklin County Ohio (Mobarak I')** (First Direct Appeal; Reversed the conviction and released the Petitioner):

State v. Mobarak, Court of Appeals of Ohio, Tenth Appellate District, Franklin County, No. 14AP-517, decided July 28, 2015. Citations: 2015-Ohio-3007; 2015 Ohio App. LEXIS 2916; 2015 WL 4554370. **Appendix D:** Appendix pages 20-24

5. **Opinion of the Ohio Supreme Court ("Mobarak II")** (State appealed *Mobarak I*; Ohio Supreme Court reinstated the Petitioner's conviction and returned him to prison):

State v. Mobarak, Supreme Court of Ohio, No. 2015-1259, Decided December 27, 2016. Citations: 150 Ohio St. 3d 26; 2016-Ohio-8372; 78 N.E.3d 832; 2016 Ohio LEXIS 3179. **Appendix E:** Appx. page 25

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

Petitioner Soleiman Mobarak respectfully prays that a Writ of Certiorari issue to review the judgment below.

OPINIONS BELOW

6th Circuit Court of Appeals; appears at Appendix A to the Petition; reported at *Mobarak v. Forshey*, 2024 U.S. App. LEXIS 31974, (6th Cir. December 16, 2024).

District Court, Southern District of Ohio, Eastern Division, appears at Appendix B to the Petition; reported at *Mobarak v. Warden Noble Corr. Inst.*, 2024 U.S. Dist. LEXIS 103675 (S.D. Ohio June 11, 2024).

JURISDICTION

- The United States Court of Appeals decided Petitioner's case on 12-16-24.
- No Petition for rehearing was timely filed in Petitioner's case.
- The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

**CONSTITUTIONAL PROVISIONS
AND STATUTES INVOLVED**

1. Article I, § 10, Clause 1, of the United States Constitution: No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

2. 28 U.S.C. § 2244(d): (1) A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of—

(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;

3. 28 U.S.C. § 2254 Appears at Appendix G.

4. Article IV, Section 3(B)(2): Courts of appeals shall have such jurisdiction as may be provided by law to review and affirm, modify, or reverse judgments or final orders of the courts of record inferior to the court of appeals within the district, except that courts of appeals shall not have jurisdiction to review on direct appeal a judgment that imposes a sentence of death.

5. Article IV, Section 4(B), Ohio Constitution: (B) The courts of common pleas and divisions thereof shall have such original jurisdiction over all justiciable matters and such powers of review of proceedings of administrative officers and agencies as may be provided by law.

6. Ohio Revised Code Section 1.42: Words and phrases shall be read in context and construed according to the rules of grammar and common usage. Words and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly.

7. Ohio Revised Code Section 2901.03: (A) No conduct constitutes a criminal offense against the state unless it is defined as an offense in the Revised Code.

(B) An offense is defined when one or more sections of the Revised Code state a positive prohibition or enjoin a specific duty, and provide a penalty for violation of such prohibition or failure to meet such duty.

8. Ohio Revised Code Section 2901.04: (A) Except as otherwise provided in division (C) or (D) of this section, sections of the Revised Code defining offenses or penalties shall be strictly construed against the state, and liberally construed in favor of the accused.

9. Ohio Revised Code Section 2901.11(A)(1): (A) A person is subject to criminal prosecution and punishment in this state if any of the following occur:

(1) The person commits an offense under the laws of this state, any element of which takes place in this state.

10. Ohio Revised Code Section 2925.03 Appears at Appendix H.

11. Ohio Revised Code Section 2925.11 Appears at Appendix I.

12. Ohio Revised Code Section 2931.03: The court of common pleas has original jurisdiction of all crimes and offenses, except in cases of minor offenses the exclusive jurisdiction of which is vested in courts inferior to the court of common pleas.

STATEMENT OF THE CASE

This case arises out of a 28 U.S.C. § 2254 Petition by a State prisoner held in violation of Due Process and other constitutional rights based on convictions for acts not defined as offenses by any Ohio Statute at the time the acts were performed.

The Franklin County Court of Appeals reversed Petitioner's conviction and released him; the State appealed, and the Ohio Supreme Court accepted jurisdiction, re-imposed the conviction on the basis of *State v. Shalash*, 148 Ohio St.3d 611 (2016), which created offenses, repugnant to the Constitution, and laws of the United States.

The crux of the District Court claims was no Ohio law criminalized possession or sale of "Spice" or "Bath Salts" when the acts were performed, Petitioner is actually innocent and has a right to be released from prison, as the State trial court lacked subject matter jurisdiction over crimes or offenses that did not exist under Ohio law.

Petitioner was charged with possessing and trafficking "Spice" and "Bath Salts" before any Ohio law proscribed such by coat-tailing the innocent acts in drug statutes over which Ohio's courts do have subject matter jurisdiction, but that did not grant subject matter jurisdiction over the not-yet-criminalized acts. Petitioner was also charged with Engaging in a Pattern of Corrupt Activity, the predicates of which were the same not-yet-criminalized acts. Thus, the entire case is based upon possessing and selling products that no Ohio law prohibited at that time.

Ohio law changed to criminalize possessing and selling the products only after Petitioner was indicted. The State used newly enacted law in Petitioner's trial; The

trial court overruled Petitioner's objection, stating the jury is smart enough to know the difference; and the new prospective law was used in a manner that had the effect of an unconstitutional ex post facto law. violate Article I, § 10, Clause 1, U.S. Const.

Petitioner, Unaware of 28 U.S.C. 2254 as a result of counsel saying there were no more avenues for relief, filed his Petition about eight years after the last State Court judgment, claiming exemption from the 28 U.S.C. § 2244(d) deadline as (1) the State judgment is void and not final, so it does not trigger the deadline, which triggers by finality of State judgments; and (2) he is actually and factually innocent, subject to the Actual Innocence Exception for want of statutory offense to have committed.

June 11, 2024, the District Court rejected Petitioner's argument (*Mobarak v. Warden*, 2024 U.S. Dist. LEXIS 103675 (S.D. Ohio June 11, 2024)), ignoring lack of finality and want of subject matter jurisdiction, holding (1) non-final State judgments are sufficient to trigger 28 U.S.C. § 2244(d)'s time limit, (2) to be subject to the Actual Innocence Exception, there must be a statutorily defined offense proscribing acts that Petitioner actually and factually did not commit; and (3) the Actual Innocence exception does not apply to acts which are not proscribed by statute defining offenses.

July 25, 2024, Petitioner timely filed a Notice of Appeal and Motion for Certificate of Appealability (COA) in the Sixth Circuit Court of Appeals.

Dec. 16, 2024, the Sixth Circuit Court of Appeals' rendered judgment denying Certificate of Appealability, (*Mobarak v. Forshey*, 2024 U.S. App. LEXIS 31974.

This case involves two Novel issues: (1) whether Petitioner is subject to the Actual Innocence Exception where, at the time the acts were performed, there were no statutorily provisions proscribing the acts? and (2) whether the 28 U.S.C. § 2244(d) deadline, which is based upon the finality of a State court judgment, can be triggered by a non-final State "judgment"?

innumerable individuals of their rights on a similar basis, one very important reason the United States Supreme Court should grant Certiorari and determine the critical issues in this case on their merits is because the Questions Presented for Review include two **novel issues** never before decided by the United States Supreme Court, relating to the effect of a state judgment, void for want of subject matter jurisdiction, and whether it, never becoming final, is sufficient to trigger the 28 U.S.C. § 2244(d) deadline; and whether the "Actual Innocence Exception" extends to acts actually performed but that are not defined as crimes or offenses when they are performed.

Certiorari should be granted and the claims should be decided without unnecessary delay as Ohio Supreme Court's judicial legislation, and the federal Court's refusal to grant relief, are dangerous to individual liberty; especially in cases such as Petitioner's where (1) he has already served more than a decade of a judgment rendered without a statutory crime or subject matter jurisdiction; (2) the novel issues may not come back up for years or decades, which would unconstitutionally rob Petitioner of liberty and property, and deprive him of any ability to benefit from any future decision; (3) the answers to the Questions Presented are easy and obvious answers that require immediate resolution to prevent further constitutional violations; and (4) the state and federal courts have already served as laboratories in which the issues received further study before being addressed by this Court, and those courts, save Ohio Supreme Court Justice Donnelly, have determined they are content with depriving Petitioner of 35 years of his life, and property, for acts that were not defined as crimes or offenses when performed.

Additionally, while Petitioner is not a former United States President, this case presents another example of how certain governmental units manipulate the law, even manufacture it, in order to target and imprison citizens who they do not like,

and who they seek to target and destroy without any legitimate or legal means.

Right now is the proper time for the United States Supreme Court to grant Certiorari, decide the critical Questions Presented herein, and curtail the theft of Petitioner's individual rights and liberty.

The First Novel Issue asks whether the "actual Innocence" exception extends to persons convicted, deprived of liberty and property, despite the lack of statutory provision defining the acts as crimes or offenses at the time the acts were performed, and the person is "actually innocent" for want of any offense to have committed.

It is well established and settled that (1) a judgment of conviction is void for want of subject matter jurisdiction where no statutes existed defining charged conduct as offenses when the acts were performed; and (2) State and Federal Courts are bound by U.S. Supreme Court precedent that have not been overruled, and which hold that judgments that are void for want of subject matter jurisdiction are subject to attack at any time, in any proceeding, where the void judgment is relevant to the proceeding. However, Federal Courts refuse to apply the Actual Innocence exception, despite its obvious application where there was no offense to have committed, simply because the United States Supreme Court has not ruled on the issue.

While the issues involving void judgments are well rooted in the law of the United States and the several States, the novel issue, whether the "Actual Innocence Exception" extends and applies to cases where the defendant is actually innocent for want of any statutorily defined crime(s) or offense(s) to commit is a novel issue that has not been raised before the United States Supreme Court, and involves an injury to Petitioner's person and property for which Petitioner is denied the same privileges and protections as other citizens and Federal habeas corpus petitioners. That the lack of statutorily defined offenses deprives courts of subject matter jurisdiction is

well established, but the lack of statutory proscription of particular conduct, and resulting lack of subject matter jurisdiction, has not been decided by the United States Supreme Court in relation to application of the "Actual Innocence Exception"; and, despite simple common sense that a lack of statutory proscription means a person cannot be anything other than actually innocent, the Federal District and Circuit Courts of Appeals refuse to apply the Actual Innocence Exception to instances where a petitioner is actually innocent because there is, or was at the time the acts were performed, no statutory crime or offense to commit, simply because the United States Supreme Court has not applied the Actual Innocence Exception to such cases.

The Court of Appeals' conclusion that individuals who engages in acts *not* proscribed by law are *not* "actually innocent" suggests every act is guilty even where no statutory proscription exists, despite the traditional use of the term "innocent acts", and contrary to the presumption of innocence that extends to every element of an offense. See *Morissette v. United States*, 342 U.S. 246 (1952); *Sandstrom v. Montana*, 442 U.S. 510 (1979)), which is impossible to rebut where no elements are defined by statute that the State might prove by proof beyond a reasonable doubt.

Substantive Due Process require that Ohio's trial courts have subject matter jurisdiction; The act or acts for which the State seeks to charge, convict, and deprive an individual of liberty and/or property, must be defined as offenses by one or more statutes that proscribe the act or acts. The concepts of "law and order" touted by judges and politicians include more than simply punishing criminals; it also includes protecting innocent citizens from being deprived of liberty and/or property in the absence one or more statutes proscribing and defining their conduct as offense(s).

Russell v. United States, 369 U.S. 749 (U.S. May 21, 1962), specifically refers to "charging documents" and applies to states, holding charging documents *must*

contain every elements of the offense(s) charged, which cannot be done where no statutory offense is defined by statute; and thus, the Indictment did not invoke the trial court's jurisdiction since "A Common Pleas Court has original jurisdiction in felony cases, and its jurisdiction is invoked by the return of an indictment". *Click v. Eckle* (1962), 174 Ohio St. 88, 89. "It is not enough that it have jurisdiction over the subject-matter of the complainant generally; it must have jurisdiction over the particular case, and if it have not, the judgment is void ab initiv. *Bradley v. Fisher*, 80 U.S. 335 (1872) (Footnote 7: *Mitchell v. Foster*, 12 Adolphus & Ellis, 472; *United States v. Arredondo*, 6 Peters, 709; *Walden v. Craig's Heirs*, 14 Id. 154.); Cf., *Sexton v. California*, 189 U.S. 319 (1903) (the existence of a state statute defining an offense provides subject matter jurisdiction, while an Indictment filed in the court invokes that jurisdiction.).

Yet, in Petitioner's case, there was no such statute proscribing his acts or defining them acts as offenses until after Petitioner was already indicted and in jail awaiting trial; and while other courts dismissed identical charges for lack of any statutory offenses, Petitioner's trial court insisted upon continuing, allowed a jury to find Petitioner guilty, then sentenced him to 35 years and forfeited private property.

In the United States where life, liberty, and property are cherished above all else, and protected by a Constitution that so many patriots sacrificed, suffered, and died to establish and protect, liberty and property cannot be deprived without statutes defining the individual's acts as crimes or offenses; and where no such statute(s) exist(s) at the time the acts are performed, the law of the land, requires that the individual can be nothing other than actually and factually innocent for want of a crime or offense to commit; and that the "actual Innocence" exception extend to cases where a Petitioner is deprived of liberty in the absence of one or more statutes

defining "charged" conduct as crimes or offenses at the time he performed the acts; and thus, Petitioner is not only "actually innocent" and "factually innocent", - not merely "legally innocent", - and subject to the "Actual Innocence Exception".

The Second Novel Issue is whether a State judgment that is void and not final, which results in an appeal also void for want of subject matter jurisdiction, can trigger the 28 U.S.C. § 2244(d) deadline despite the fact that 28 U.S.C. § 2244(d) specifically triggers by a final state judgment?

Contrary to the Magistrate's assertion that "Petitioner offers no objection to Respondent's calculation of when his conviction became final on direct review and the statute began to run" (*Mobarak v. Jay Forshey*, Warden, Noble Corr. Inst., 2024 U.S. Dist. LEXIS 72736, *13), the District Court Judge's acceptance thereof, stating "The Magistrate Judge accepted this calculation to which Petitioner had not objected in the Traverse" (*Mobarak v. Warden Noble Corr. Inst.*, 2024 U.S. Dist. LEXIS 103675, *3), and the Sixth Circuit Court of Appeals' acceptance thereof, Petitioner did object and alleged there was no deadline for want of final judgment in the State courts, and presented argument that showed (1) the void State trial court judgment never became final for want of subject matter jurisdiction; (2) the State Appeal lacked subject matter jurisdiction over the State appeals; and (3) 28 U.S.C. § 2244(d) specifically requires a final State court judgment and cannot be triggered by a nonfinal judgment.

— 28 U.S.C. § 2244(d) plainly states the deadline is triggered by finality of State court judgments. It necessarily follows that a void State court judgment, which, per State law never became final, cannot trigger the 28 U.S.C. § 2244(d) deadline. This is a Novel Issue as no United States Supreme Court decision mentions the subject.

The Court of Appeals should have issued a Certificate of Appealability:

Under 28 U.S.C. § 2253(c)(1)(B), the court should grant a COA for an issue raised in a § 2254 petition only if the Petitioner has made a substantial showing of the denial of a federal constitutional right. A petitioner satisfies this standard by demonstrating that reasonable jurists could disagree with the district court's resolution of his constitutional claims or that jurists could conclude that the issues raised are adequate to deserve further review. *Miller-El v. Cockrell*, 537 U.S. 322, 327, & 336 123 S. Ct. 1029, () (2003); *Slack v. McDaniel*, 529 U.S. 473, 484, () (2000). A petitioner is not required to show that the appeal will succeed to be granted a COA, and the court should not deny a COA merely because it believes that the Petitioner fails to demonstrate an entitlement to relief. *Miller-El*, 537 U.S. at 337.

Payne v. Bell, 2008 U.S. App. LEXIS 28507, *2 (6th Cir. August 5, 2008).

The pleadings below demonstrate that Petitioner “has made a substantial showing of the denial of a federal constitutional right” and has “satisfie(d) this standard by demonstrating that reasonable jurists could disagree with the district court's resolution of his constitutional claims or that jurists could conclude that the issues raised are adequate to deserve further review”.

Petitioner also made a “substantial showing” of “Actual Innocence”:

The Court of Appeals below relied on same language in *Mobarak v. Warden Noble Corr. Inst.*, 2024 U.S. Dist. LEXIS 103675, at *10-11 to deny the COA:

[A] credible claim of actual innocence “requires petitioner to support his allegations of constitutional error with new reliable evidence4whether it be exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence4that was not presented at trial,” *Schlup v. Delo*, 513 U.S. 298, 324, () (1995). But Mobarak admittedly provided no such evidence. He argues only “legal insufficiency,” not “factual innocence,” and that is inadequate to sustain his burden under *Perkins*. *Hubbard v. Rewerts*, 98 F.4th 736, 743 (6th Cir. 2024) (cleaned up). Jurists of reason therefore could not debate the district court's conclusion that Mobarak has not made a credible showing of actual innocence to overcome the limitations bar.

Mobarak v. Forshey, 2024 U.S. App. LEXIS 31974, *5-6 (6th Cir. December 16, 2024).

Although the “new reliable evidence” requirement should only apply to actually innocence claims for not having not committed a statutorily offense, Petitioner did

submit new reliable evidence to support his actual innocence: Justice Donnelly's concurring opinion in *Brown*, at ¶21, quoted below, stating Petitioner "is serving 35 years in prison for acts that were not criminalized when he committed them".

McQuiggin v. Perkins, 569 U.S. 383 (2013), cites *Sawyer v. Whitley*, 505 U.S. 333, 336 (1992): "to show 'actual innocence' one must show by clear and convincing evidence that, but for a constitutional error, no reasonable juror would have found Petitioner (guilty)". While *Sawyer* specifies evidence that was not presented at trial, its "clear and convincing evidence" standard relates specifically to the showing of "actual", and "factual innocence" by "clear and convincing evidence". Thus, evidence "must show that constitutional error 'probably resulted' in a miscarriage of justice"; Petitioner has easily done that in this case where *indisputable evidence* shows no statute defined petitioner's acts as offenses at the time the acts were committed.

The rejection of Petitioner's actual innocence claim to deny his Petition, then his COA, based upon "factual innocence, not legal innocence" also fails as "legal innocence" means a person may be guilty of an offense but evidence is insufficient to prove guilt, whereas "factual innocence" means that the accused actually did not commit a statutorily offense; and while the United States Supreme Court has not determined the issue, this necessarily includes where there is no statutory offense(s) to commit as it is impossible to be guilty of nonexistent offense.

Regarding Petitioner's "guilt", Ohio Supreme Court Justice Donnelly stated:

No person, however reprehensible his or her conduct is, should be subjected to criminal liability for committing an act that the law does not criminalize. Despite that principle, Soleiman Mobarak is serving 35 years in prison for acts that were not criminalized when he committed them. Ultimately, the issues that he raises here were resolved during his direct appeal. See *Mobarak II*, 150 Ohio St.3d 26, ¶, at ¶ 1. And that resolution limits the relief that this court may provide when reviewing the court of appeals' dismissal of Mobarak's petition for mandamus relief. See *State ex rel. LTV Steel Co. v.*

Gwin, 64 Ohio St.3d 245, 2490 (1992) ("[E]xtraordinary writs may not be used as a substitute for an otherwise barred second appeal or to gain successive appellate reviews of the same issue"). While I am not convinced by this court's reasoning supporting its determination that the trial court had jurisdiction over Mobarak's criminal case, I accept that this court has resolved the question Mobarak raises and that that resolution is dispositive here. The law is the law, even if it leads to repugnant results. As a result, I concur in judgment only.

Id., *Brown*, ¶21, Donnelly, J., concurring in judgment only (2024).

Justice Donnelly's based his well-reasoned "concurring dissent" on *State v. Mobarak*, 150 Ohio St.3d 26 (2016) ("*Mobarak II*"), mistakenly believing the law of the case doctrine and res judicata apply to void judgments; but since "in a criminal prosecution, the statute defining the offense is necessarily the law of the case," *Sorrells v. United States*, 287 U.S. 435, 450 (1932), is no "law of the case" where no statute exists defining the offense at the time the acts are performed; and "the law is the law" also means where there is no law there is no jurisdiction and no case.

"The law is the law", i.e., res judicata, does not apply to void judgments. See, e.g., *State v. Fischer*, 128 Ohio St. 3d 92, 100 (2010). However, even though the want of statutory offense deprived the State trial court of subject matter jurisdiction, the State courts still applied res judicata, and the federal Courts refused to grant relief contradictorily holding that the 28 U.S.C. § 2244(d) deadline is still triggered by the *finality* of the *non-final* void judgment, avoiding appearance of contradiction by avoiding analysis of the voidness of the State judgment, and holding the Actual Innocence Exception does not apply to a person who is convicted and imprisoned with no statutory crime to commit. See also, *Vallely v. Northern Fire & Marine Ins. Co.*, 254 U.S. 348, 353-354 (1920); *Elliott v. Lessee of Peirsol*, 26 U.S. (1 Pet.) 328, 340-341 (1828) (judgements void for want of jurisdiction "...form no bar to a recovery sought, even prior to a reversal, in opposition to them..." and "...may be inquired into in every

Court, when the proceedings of the former are relied on and brought before the latter..."); *Romito v. Maxwell*, 10 Ohio St. 2d 266 (1967); and is not subject to ordinary rules of pleading, as in *Patton v. Diemer*, 35 Ohio St. 3d 68 (1988); *Lincoln Tavern v. Snader* [1956], 165 Ohio St. 61, paragraph one of the syllabus, and *Westmoreland v. Valley Homes Corp.* [1975], 42 Ohio St. 2d 291; and *Williamson v. Berry*, 49 U.S. 495, 542-543 (1850), quoting *Latham v. Edgerton*, 9 Cowen, 227 (1828):

"The principle that a record cannot be impeached by pleading is not applicable when there is a want of jurisdiction. The want of it makes a record utterly void and unavailable for any purpose. The want of jurisdiction is a matter that may always be set up against a judgment when it is to be enforced, or when any benefit is claimed under it." See also, to the same point, *Fenton v. Garlick*, 8 Johns. 194; *Kilbourne v. Woodworth*, 5 Johns. 37; 19 Johns. 39; 6 Wend. 446. And in the case of *Rogers v. Diel*, 6 Hill, 415.

The Federal and State Courts' evasion of the facts that the Ohio courts lacked subject matter jurisdiction over not-yet-criminalized acts, the resulting voidness of Petitioner's judgment, the lack of finality of the void judgment, and the fact that Petitioner cannot be anything other than "Innocent" actually and "factually Innocent" without a criminal statute to violate, has the effect of Petitioner suffering previous injuries to his person and property for which there is no remedy, contrary to Due Process, anti-retroactivity clauses, etc., and "[t]he very essence of civil liberty":

The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury. One of the first duties of government is to afford that protection. ...

In the 3d vol. of his commentaries, p. 23, Blackstone states two cases in which a remedy is afforded by mere operation of law.

"In all other cases," he says, "it is a general and indisputable rule, that where there is a legal right, there is also a legal remedy by suit or action at law, whenever that right is invaded."

... it is a settled and invariable principle in the laws of England, that every right, when withheld, must have a remedy, and every injury its proper

redress."

The government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation, if the laws furnish no remedy for the violation of a vested legal right.

Marbury v. Madison, 5 U.S. (1 Cranch) 137, 162-165 (1803).

The mere fact that Petitioner is forced to argue he is entitled to be set free from incarceration for a conviction resulting from acts not defined as offenses when they were performed demonstrates erosion of "[t]he very essence of civil liberty", Due Process, and other rights, the Constitution and Bill of Rights were designed to protect.

Treating Petitioner's void and non-final "conviction" and judgment as "final" to trigger the 28 U.S.C. § 2244(d) deadline, and considering Petitioner not "actually" and "factually innocent" for "violating" then-non-existent criminal statutes, eviscerates Due Process, redefines Article I, § 10, Clause 1, and the Bill of Rights and reduces the Constitution to a blind, toothless watchdog with no sense of smell.

Returning to Justice Donnelly's Concurring Opinion, he also had this to say:

Mobarak's argument on this point originally carried the day, resulting in the unanimous reversal of his criminal convictions in the court of appeals on direct appeal. *State v. Mobarak*, (), 2015-Ohio-3007, ¶ 6-9 ("*Mobarak I*"). That decision was then overturned, however, based on our decision in *State v. Shalash*, 148 Ohio St.3d 611(). *State v. Mobarak*, 150 Ohio St.3d 26(), ¶ 1 ("*Mobarak II*"). In *Shalash*, this court acknowledged that controlled-substance analogs were not covered under the elements of R.C. 2925.03 at the time of Shalash's alleged criminal conduct. *Shalash* at ¶ 7. Even so, the court concluded that the Revised Code had criminalized the sale of controlled-substance analogs because R.C. 3719.013-a statute in R.C. Chapter 3719, which generally relates to the civil regulation of controlled substances-stated that controlled-substance analogs "shall be treated" the same as controlled substances for "any provision of the Revised Code." *Shalash* at ¶ 11, quoting R.C. 3719.013. While *Shalash* might be dispositive, I don't find it persuasive.

First, the majority opinion in *Shalash* ignored persuasive arguments that undermine its reasoning. One need only look at the Tenth District Court of Appeals' opinion explaining its judgment reversing Mobarak's conviction to

see how paper thin this court's reasoning in *Shalash* is. In its opinion, the Tenth District identified several reasons that weighed against incorporating the civil-regulation definition of controlled substances (which includes controlled-substance analogs) into the statutes criminalizing the sale or possession of controlled substances. *Mobarak I* at ¶ 7, citing *State v. Smith*, (), 2014-Ohio-5303. These reasons included the General Assembly's decision to incorporate only some of the definitions of terms in the civil controlled-substances laws into R.C. 2925.01, which defines terms applicable to drug offenses under R.C. Chapter 2925; the express statement in R.C. 3719.01 limiting the use of the definitions contained in that statute to R.C. Chapter 3719; and the lack of cross-references or any other indication in R.C. Chapter 2925 that the definitions relating to the classification of controlled substances for civil-regulation purposes apply to drug offenses set forth in R.C. Chapter 2925. *Mobarak I* at ¶ 7.

None of these concerns were addressed, let alone resolved, by this court in *Shalash*. Instead, this court relied on R.C. 3719.013, *Shalash* at ¶ 11, even though that civil-regulation statute did not provide any definition that applied to the elements of the criminal offenses at issue in that case or in this case. This court also reasoned that R.C. 3719.013 provided adequate notice of prohibited conduct, because it was "not a secret provision of the Revised Code" and was found in a chapter titled "Controlled Substances." *Shalash* at ¶ 11.

I simply don't buy it. In my view, the Tenth District's reasoning is more thorough and compelling than that of this court in *Shalash*. Further, if the General Assembly's incorporation of R.C. 3719.013 into R.C. Chapter 2925 was as obvious as the court in *Shalash* believed, I am left wondering why the General Assembly found it necessary to amend R.C. 2925.03(A)(1) and (2) so that the sale of controlled-substance analogs satisfied the elements of trafficking in drugs. 2012 Sub.H.B. No. 334.

Second, this court in *Shalash* disregarded our long-standing principles of statutory construction. Under R.C. 2901.04(A), sections of the Revised Code that define criminal offenses or penalties must be strictly construed against the state. This rule of construction has been part of this court's precedent for over 170 years. See *Hall v. State*, 20 Ohio 7, 15 (1851) (referencing the long-settled principle that penal laws are to be strictly construed and not extended by implication). As acknowledged by the court in *Shalash*, controlled-substance analogs were not "specifically proscribed" in R.C. Title 29 at the time of *Shalash*'s arrest and indictment. *Shalash*, 148 Ohio St.3d 611(), at ¶ 13. (And so too for *Mobarak*. See *Mobarak I*, 2015-Ohio-3007, at ¶ 9.) Yet, despite the clear absence of proscription within R.C. Chapter 2925 and the requirements of both R.C. 2901.04(A) and our caselaw for the strict construction of penal statutes, the court in *Shalash* went searching for a

statutory justification to criminalize the conduct that was at issue. And in doing so, this court, not the General Assembly, created the elements of the crime for which Mobarak was convicted.

Id., *Brown*, ¶16-20 (secondary citations omitted).

(It is interesting to note that Michael DeWine, currently governor of Ohio, as Attorney General, represented the State in *Mobarak II*, before the Ohio Supreme Court on which his close relative, (Richard) Patrick DeWine sat as a Justice on Petitioner's case in the Ohio Supreme Court.)

While Petitioner, *at first*, appeared to have a remedy where his first appeal, as *Mobarak I* reversed his void and illegal conviction, the State appealed and the Ohio Supreme Court took away that remedy in "*Mobarak II*", based on *Shalash*, which Ohio Supreme Court Justice Donnelly acknowledged (1) did not reach the issues of Petitioner's case, and (2) legislated from the bench when the Ohio Supreme "[C]ourt, not the General Assembly, created the elements of the crime for which Mobarak was convicted" (*Brown*, ¶ 20), which not only stole Petitioner's remedy, but also violates separation of powers and Due Process.

In addition to the "unanimous reversal of his criminal convictions in the Court of Appeals in *Mobarak I*, and the Ohio Supreme Court's "acknowledg(ment) that controlled-substance analogs were not covered under the elements of R.C. 2925.03 at the time of (Petitioner's) alleged criminal conduct", several Ohio trial courts dismissed identical cases prior to trial for want of statutorily defined criminal conduct. See, e.g., *State v. Smith*, 2014-Ohio-5303 (2014), affirming dismissal.

In *Brown*, ¶ 9, the Ohio Supreme Court also stated that "[T]he fact that a prior appeal was unsuccessful or even wrongly decided does not mean that it was not an adequate remedy", acknowledging by implication that *Mobarak II* was wrongly decided. To be sure, "adequate remedy" means one where justice is served, rather

than one where a court skews the law to "validate" an illegal conviction that is void for want of subject matter jurisdiction.

Thus, the only reason Petitioner remains in prison about a decade out of an illegal 35 years term, despite the obvious want of subject matter jurisdiction, is "the court in *Shalash* went searching for a statutory justification", and redefined statutory elements of crimes and offenses to criminalize the conduct that Ohio's General Assembly had not yet criminalized, "[A]nd in doing so, th[e] court, not the General Assembly, created the elements of the crime for which Mobarak was convicted"; the wrongly decided *Mobarak II* that "created" subject matter jurisdiction where there is none, and *Mobarak II* is wrongly considered the law of the case resulting in "The law is the law, even if it leads to repugnant results". One of the most important duties of the United States Supreme Court is to review and correct these types of "repugnant results" that offend the Great Constitution and laws of the United States.

Petitioner remains in prison, having committed no statutory offense, and without a remedy, in a situation the Constitution was designed to prevent.

The United States Supreme Court should accept jurisdiction of this very important matter affecting individual liberty and private property, and answer the questions presented herein, including the two novel, never-before answered questions

Issues Presented in this Case; and Timeliness of the Petition:

Although four critical Questions are presented, two are Novel Questions presented that relate to the effect of a state judgment that is void for want of subject matter jurisdiction, and whether it, never becoming final, is sufficient to trigger the 28 U.S.C. § 2244(d) deadline; and whether the "Actual Innocence Exception" extends to acts that are not defined as crimes or offenses at the time they are performed.

Although the United States Supreme Court could resolve these two Novel

Questions in general as they relate specifically to this Petitioner, to avoid re-litigation in similar cases, the United States Supreme Court should resolve those Questions in general and as they relate to all citizens. In either case, it essential that the United States Supreme Court consider whether convictions for acts not prohibited or defined as offenses under state law at the time they are performed (1) may be considered "final" so as to trigger the 28 U.S.C. § 2244(d) deadline to file 28 U.S.C. § 2254 petitions, and (2) whether a petitioner is actually (and factually) innocent, and the "Actual Innocence Exception" applies, where acts actually performed were not defined as crimes or offenses at the time they were performed.

Late 28 U.S.C. § 2254 petition: Petitioner was told by State Appellate Counsel that there were no more avenues of relief available. About eight years later, he filed a Federal 28 U.S.C. 2254 Petition, claiming two exemptions:

First: The 28 U.S.C. § 2244(d) deadline is triggered by the finality of the State Judgment, which has not occurred, and will never occur, as the State Judgment is void, and will never become final, because the State trial court lacked subject matter jurisdiction over the innocent acts that were not defined as offenses by any Ohio statute(s); Ohio law is that where the State trial court judgment is void for any reason, Ohio's Courts of Appeals lack subject matter jurisdiction, and Appellate Court Judgments in the direct appeals from void trial court judgments are void, and cannot trigger the 28 U.S.C. § 2244(d) deadline because void judgments are not final.

Second: Since the acts performed by Petitioner were not defined by any Ohio statute as an offense, or offenses, when the innocent acts were performed by Petitioner, Petitioner is actually innocent of having committed an offense, and should be excused from the late filing based upon the actual innocence exception.

Examination of the Novel Issues:

While the **Novel issues** are the crux of this Petition, in order to show Petitioner's right and need to assert and litigate these Issues, an examination of State Trial and Appellate Court Judgments, how they relate to these issues, and the law of Ohio, becomes necessary before the Issues can be fully examined.

The State Trial Court and Appellate Court Judgments Are Void for Want of Subject Matter Jurisdiction, and Never Became Final:

The Court of Appeals denied Petitioner a COA based on the 28 U.S.C. § 2244(d) deadline, and the lack of finality of Petitioner's State court judgment, stating:

"There is no authority supporting [the] argument that the AEDPA's statute of limitations does not apply *where a petitioner asserts that the trial court lacked subject matter jurisdiction.*" *Wells v. Harry*, No. 17-1476, 2017 U.S. App. LEXIS 27909, 2017 WL 9248730, at *2 (6th Cir. Nov. 15, 2017) (order). "To the contrary, even if a state court conviction is void under state law, the federal habeas statute of limitations still applies where, as here, Petitioner is in custody pursuant to that state court judgment." *Id.* (citing *Mackey v. Warden, Lebanon Corr. Inst.*, 525 F. App'x 357, 361 (6th Cir. 2013), abrogated on other grounds by *Crangle v. Kelly*, 838 F.3d 673 (6th Cir. 2016); *Frazier v. Moore*, 252 F. App'x 1, 5-6 (6th Cir. 2007)).

Mobarak v. Forshey, 2024 U.S. App. LEXIS 31974, *4-5 (6th Cir. December 16, 2024) (emphasis added to show Court of Appeals oversimplification of the issue; the issue is not mere a lack of subject matter jurisdiction, but that such lack precludes finality).

This issue is a **novel issue** as shown by the Court of Appeals' statement "There is no authority...", and by the lack of Supreme Court case law relating to the subject.

The Sixth Circuit Court of Appeals' statement that "There is no authority..." is certainly correct simply because the United States Supreme Court has not yet addressed the issue. However, it is obvious that a void State Judgment that never becomes final cannot trigger the 28 U.S.C. § 2244(d) deadline which specifically requires finality of State court judgments. Thus, this issue must be resolved in favor of Petitioner since he has no final state judgment as a matter of Ohio law.

Courts cannot add or subtract words, must give every word their plain and ordinary meaning unless a different meaning is provided by statute, and cannot construe a statutory provision where its language is plain and unambiguous.

28 U.S.C. § 2244(d) plainly and unambiguously states, in pertinent part:

(1) A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of—

(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review.

The 28 U.S.C. § 2244(d)(1)(A) deadline plainly and unambiguously triggers on “the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review”. Under Ohio and Federal law, a judgment rendered without subject matter jurisdiction is void ab initio and never becomes final and there is no time to seek review; and under Ohio law, upon which the relevant “finality” must be based, where an appealed judgment is not final for any reason (void or not), the Court of Appeals lacks subject matter jurisdiction over the appeal, has no authority to do anything other than announce its lack of jurisdiction and dismiss, rendering its judgment void and non-final.

Thus, Ohio law, upon which 28 U.S.C. § 2244(d)(1)(A) finality is based, precludes Petitioner’s judgment from having become, and ever becoming, final, which in turn prevents the 28 U.S.C. § 2244(d) deadline from triggering for want of final State court judgment and for want of “expiration of the time for seeking such review”.

In evidence hereof, the following shows the law of Ohio, which mimics Federal law, precluding the Petitioner’s judgment of conviction from becoming final:

Trial Court:

As shown above, especially in lengthy quotations of *Brown*, it is established

beyond argument that no Ohio statute defined Petitioner's conduct as crimes or offenses when he performed them. United State Supreme Court precedent shows lack of statutory proscription means lack of subject matter jurisdiction over any crime or offense. That should be the end of the matter, but yet it is not.

Like Ohio, no common law crimes or offences have been cognizable in the Federal courts since the passing of the Judiciary Act organizing the courts. See, e.g., *United States v. Holliday*, 70 U.S. 407, 515 (1866); R.C. 2901.03(A) "No conduct constitutes a criminal offense against the state unless it is defined as an offense in the Revised Code"; *State v. Smith*, 2014-Ohio-5303 (2014) (Petitioner's supplier) (Trial court properly dismissed defendant's charges alleging he trafficked in and possessed controlled substance analogs, because during the period when the crimes were allegedly committed, former R.C. 2925.03 and 2925.11 did not adequately state a positive prohibition on the sale or possession of controlled substance analogs.)

Smith is one of the related cases dismissed when the trial court recognized no offense was defined by statute; Petitioner and other indictees were store owners; Smith was their main supplier. Like some Arab store owners who were indicted, Smith's case was dismissed prior to trial; unlike some indictees, including Petitioner, other trial courts refused to dismiss and convicted. Petitioner, as well as *Shalash* (148 Ohio St. 3d 611 (2016)), et al., appealed to the Franklin County Court of Appeals, which resulted in reversal. The State appealed Smith's pre-trial dismissal to the Franklin County Court of Appeals, which affirmed dismissal (*Smith, supra*); the State appealed all of the cases to the Ohio Supreme Court, who refused jurisdiction over Smith's case, setting the supplier free, but accepted jurisdiction over the Arab/Arab-American store owner's cases, and reinstated their convictions without any statute defining their conduct as crimes or offenses.

The State is required to prove every element essential to an offense. *Sandstrom v. Montana*, 442 U.S. 510 (1979), but where there is no offense defined by statute, there are no elements (or offenses) to prove beyond a reasonable doubt; and the presumption of innocence extends to every element of an offense, - *Morissette v. United States*, 342 U.S. 246 (1952), - which cannot be rebutted where there is no offense defined by statute, and no elements upon which to apply this presumption.

Further, *Russell v. United States*, 369 U.S. 749 (1962), specifically refers to "charging documents", applies to states, and holds that the charging document must contain every elements of the offense, which is impossible where no statutory offense is defined by statute. Thus, the Indictment did not invoke the trial court's jurisdiction since "A Common Pleas Court has original jurisdiction in felony cases, and its jurisdiction is invoked by the return of an indictment"; and a non-offense is *not* a felony within such jurisdiction. *Click v. Eckle* (1962), 174 Ohio St. 88, 89. "It is not enough that it have jurisdiction over the subject-matter of the complainant generally; it must have jurisdiction over the particular case, and if it have not, the judgment is void ab initiv." *Bradley v. Fisher*, 80 U.S. 335 (1872) (Footnote 7: *Mitchell v. Foster*, 12 Adolphus & Ellis, 472; *United States v. Arredondo*, 6 Peters, 709; *Walden v. Craig's Heirs*, 14 *Id.* 154.); *Cf.*, *Sexton v. California*, 189 U.S. 319 (U.S. April 6, 1903):

"The constitutional requirement of definiteness is violated by a criminal statute that fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute. The underlying principle is that no man shall be held criminally responsible for conduct which he could not reasonably understand to be proscribed."

Bowie v. Columbia, 378 U.S. 347 (U.S. June 22, 1964).

Bowie contemplates an existing statute that fails to provide fair notice, but this "underlying principle ... that no man shall be held criminally responsible for conduct which he could not reasonably understand to be proscribed" obvious also applies

where no statute exists at all to provide constitutionally required "fair notice".

Ohio *pretends* subject matter jurisdiction exists over the non-offenses simply by citing R.C. 2931.03, which states "[t]he court of common pleas has original jurisdiction of all crimes and offenses...", but R.C. 2931.03 only provided jurisdiction over "crimes and offenses", thus depriving the courts of jurisdiction over non-crimes and non-offenses, especially where R.C. 2901.03 states:

(A) No conduct constitutes a criminal offense against the state unless it is defined as an offense in the Revised Code.

(B) An offense is defined when one or more sections of the Revised Code state a positive prohibition or enjoin a specific duty, and provide a penalty for violation of such prohibition or failure to meet such duty.

Thus, since no statutorily defined crimes or offenses existed when Petitioner performed the then-innocent acts, the acts were not "crimes and offenses", are not "felonies", and not only *not* within the jurisdiction provided by R.C. 2931.03, but specifically excluded from it thereby.

Since both R.C. 2901.03 and Federal Law abrogate common law offenses, it necessarily follows that both make the existence of statutes defining crimes and offenses essential to a court's jurisdiction over the subject matter of crimes and offenses. This has already been recognized by the United States Supreme Court:

No crimes except statutory. Common law crimes not punishable. Arizona, Penal Code, § 3; California, Penal Code (1899), § 6; Georgia, there appears to be no common law crimes; Indiana, 1 R.S. Ind. (1901), § 237; Montana, Code (1895), § 6; Nebraska, apparently none but statutory offenses; *Ohio, no common law offenses, Mitchell v. State*, 42 Ohio St. 383; Oklahoma, Stat. (1893), § 1838; North Dakota, Penal Code (1899), § 6801; Texas, Penal Code (1895), § 3.

New crimes should not be created by the court. *Wiltberger's Case*, 5 Wheat. 76, 96; *United States v. Sheldon*, 2 Wheat. (15 U.S.) 119; *United States v. Morris*, 14 Peters, 464, 475; *The Federalist*, No. 62."

Howard v. Fleming, 191 U.S. 126, 1903 U.S. LEXIS 1470, ****8 (Emphasis added).

The following positions are shown by the authorities to be impregnable.

1. In Ohio, as under the federal government (*U.S. v. Hudson*, 7 Cr. 32; *U.S. v. Coolidge*, 1 Wheat. 415; *U.S. v. Britton*, 108 U.S. 197), we have no common law offenses. No act, however atrocious, can be punished criminally, except in pursuance of a statute or ordinance lawfully enacted. This proposition was not established without prolonged discussion. In *Ohio v. Lafferty*, Tappan, 81 (1817), it was held in an able opinion by Judge Tappan, that common law crimes are punishable in Ohio; but Judge Goodenow, a member of this court under the former constitution, in his work entitled "Historical Sketches of the principles and maxims of American Jurisprudence, in contrast with the doctrines of the English common law, on the subject of crimes and punishments" (1819), completely refuted the soundness of that view, and it is now perfectly well settled that *Ohio v. Lafferty* is not law. *Key v. Vattier*, 1 Ohio, 132, 144; *Winn v. State*, 10 Ohio, 345; *Vanvalkenburgh v. State*, 11 Ohio, 404; *Allen v. State*, 10 Ohio St. 287, 301; *Smith v. State*, 12 Ohio St. 466, 469; *Knapp v. Thomas*, 39 Ohio St. 377, 385.

2. In order that this statement may not mislead, it is proper to say, that while the rule is well settled that a statute defining a crime and prescribing punishment therefor must be strictly construed (*Denbow v. State*, 18 Ohio, 11; *Hall v. State*, 20 Ohio, 1; *Shultz v. Cambridge*, 38 Ohio St. 659), ...

3. There being no common law crimes or punishment in Ohio, nor any such thing as "corruption of blood or forfeiture of estate" (Const. Art. 1, § 12), felony and feloniously are with us words without meaning, except as their import is fixed by statute. ...

Mitchell v. State, 42 Ohio St. 383 (Ohio January 1, 1884).

Ohio's criminal jurisdiction statute, R.C. 2901.11 provides in (A)(1) that a person is subject to criminal prosecution and punishment in this state if "the person commits an offense under the laws of this state, any element of which takes place in this state."

...

Because no element of R.C. 2925.03(A)(2) was committed in the State of Ohio, we conclude that the trial court improperly exercised jurisdiction over that crime and that Appellant's conviction and sentence for that crime must be vacated.

State v. Literal, 2009-Ohio-199 ¶11 and 14 (4th Dist).

Without a statute defining a crime or offense, there are no elements. Since no Ohio statute in effect at the time defined Petitioner's acts as criminal offenses, it is

impossible for Petitioner to have committed elements of non-existent offenses; it is *impossible* for Petitioner to have been charged with offenses that did not exist under the law at the time he was indicted; and it was *impossible* for the trial court to have had subject matter jurisdiction over the “felonies” Petitioner was convicted of where no such felonies existed under Ohio law when the acts were performed.

Brown; State v. Shalash; Mobarak I; and Mobarak II, show the Ohio Supreme Court ignored the fact that Petitioner’s acts were not proscribed by law at the time he performed them, and “found” (i.e., *legislated from the bench*) jurisdiction simply because the innocent acts were charged as “felonies”: “controlled-substance analogs were not specifically proscribed by R.C. Title 29 when Shalash (applied to *Mobarak II*) was arrested and indicted for selling them”; “Mobarak was charged with multiple felonies. *Mobarak I*, 2015-Ohio-3007, at ¶ 1. By virtue of the Ohio Constitution and R.C. 2931.03, the trial court had jurisdiction over Mobarak’s criminal case”.

Since there were no Ohio statutes proscribing Petitioner’s conduct when the acts were performed, per R.C. 2901.03, Petitioner’s “conduct (did not) constitute() criminal offense(s) against the state”; since Petitioner’s “conduct (did not) constitute() criminal offense(s) against the state, they did not constitute “crimes and offenses” under the meaning of R.C. 2931.03, and were not only *not* included in the grant of jurisdiction of felony “crimes and offenses” provided by R.C. 2931.03, but are specifically excluded from that grant of jurisdiction per the express language of R.C. 2901.03; and thus, the State trial court was expressly deprived of jurisdiction thereby.

The Ohio Supreme Court’s holding inherent in *Mobarak II*, that because the acts that no statutory provisions defined as offenses at the time alleged in the Indictment were charged as “felonies” (despite the lack of statute defining them as offenses) granted the State trial court jurisdiction, simply because they generally

have jurisdiction over felony offenses, is a legal absurdity that would, by decision, grant Ohio's trial courts near-omnipotent jurisdiction to punish innocent acts simply by charging them as felonies, despite any proscriptive statute. This is an end-run around the United States and Ohio Constitution, as well as Federal and Ohio law.

The dangerous and absurd decisions of the Ohio Supreme Court, which are repugnant to the Constitution, treaties, or laws of the United States, are absolutely precluded by the same, as well as Ohio law, and are direct and blatant violations of Due Process and the law of the land as exposed by the United States Supreme Court, which absolutely, without exception, holds that no conduct constitutes a criminal offense, and no individual may be punished therefor, unless it is defined as an offense by a state or federal statute.

The decisions of the Court of Appeals and the U.S. District Court to deny relief based upon the passage of time, the errant perception of finality of a State Court judgment that can never become final under State and Federal law, and that Petitioner is not "actually innocent" despite the lack of crime to commit, are also repugnant to the Constitution and laws of the United States, and allow Petitioner's extremely grievous injuries to pass through the Federal Court without remedy simply because the United States Supreme Court has not previously determined the issues.

Again, while the critical issues raised herein are based upon Federal law and the United States Constitution, it is necessary to examine the law of Ohio to determine the process that is due, and what rights have been violated by the State.

Jurisdiction of Ohio's Courts' of Common Pleas:

The Ohio Supreme Court attempts to grant Ohio's trial courts near-plenary, near-omnipotent, criminal jurisdiction contrary to Ohio's Constitution and law:

This court has held that "the court of common pleas is a court of general

jurisdiction, with subject-matter jurisdiction that extends to 'all matters at law and in equity that are not denied to it.'" *Bank of Am., N.A. v. Kuchta*, 141 Ohio St.3d 75, 2014-Ohio-4275, 21 N.E.3d 1040, ¶ 20, quoting *Saxton v. Seiberling*, 48 Ohio St. 554, 558-559, 29 N.E. 179 (1891). The "provided by law" qualification of Article IV means that there must be a statutory basis for jurisdiction. R.C. 2931.03 provides that basis, granting the courts of common pleas "original jurisdiction [over] all crimes and offenses, except in cases of minor offenses the exclusive jurisdiction of which is vested in courts inferior to the court of common pleas." Mobarak was charged with multiple felonies. *Mobarak I*, 2015-Ohio-3007, at ¶ 1 (listing charges). By virtue of the Ohio Constitution and R.C. 2931.03, the trial court had jurisdiction over Mobarak's criminal case.

State ex rel. Mobarak v. Brown, 2024-Ohio-221 ¶ 7 (2024).

However, Ohio Constitution, Article IV, § 4(B), Common Pleas Court, states:

(B) The courts of common pleas and divisions thereof shall have such original jurisdiction over all justiciable matters and such powers of review of proceedings of administrative officers and agencies as may be provided by law.

A plain reading of Article IV, § 4(B), Ohio Constitution, demonstrates that it only authorizes Ohio's Courts of Common Pleas to receive jurisdiction "*as may be provided by law*", but it provides no jurisdiction, per se, and the phrase "not denied to it" (by law) is very different, and in fact diametrically opposite of the Ohio Supreme Court's opinion that "the court of common pleas (has) subject-matter jurisdiction that extends to 'all matters at law and in equity that are not denied to it'". Such judicial expansion of jurisdiction is a form of tyranny that allows courts to "convict" individuals of "crimes and offenses" that are not defined as such by any statute.

Since Article IV, Section 4, of the Ohio Constitution creates Ohio's Courts of Common Pleas and empowers them to accept jurisdiction "*as may be provided by law*", Ohio's Courts of Common Pleas do not have near plenary jurisdiction of "all matters at law and in equity that are not denied to it." Rather, the grant of "jurisdiction *as may be provided by law*" means that all jurisdiction in Ohio's Courts of Common

Pleas, including subject matter jurisdiction, is granted and perfected by the enactment of legislation pertaining to subject matters specified in that legislation. The general grant of jurisdiction of felony and misdemeanor crimes offenses in R.C. 2931.03, per se, *does not* grant jurisdiction over the subject matter of acts not specifically defined by law as an offense, but only over acts specifically defined by one or more statute(s) as being a crime or offense.

1. The jurisdiction of the Court of Common Pleas is, by virtue of Section 4, Article IV of the Constitution of Ohio, fixed by statute.

...

The basis for the jurisdiction of the Court of Common Pleas, as, in fact, of all the courts in Ohio, is found in Section 1, Article IV of the Constitution. In regard to the Court of Common Pleas, specifically, Section 4, Article IV of the Constitution, provides:

"The jurisdiction of the Courts of Common Pleas, and of the judges thereof, shall be fixed by law."

As was said by Ranney, J., more than a century ago:

"The Constitution itself confers no jurisdiction whatever upon that court [Court of Common Pleas], either in civil or criminal cases. It is given a capacity to receive jurisdiction in all such cases, but it can exercise none, until 'fixed by law.'" *Stevens v. State*, 3 Ohio St., 453.

That this has generally been considered the law is evidenced by the following statement found in 14 Ohio Jurisprudence (2d), 584, Section 166:

"The Courts of Common Pleas are the constitutional courts of general original jurisdiction in Ohio, but they are capable of exercising only such jurisdiction as is conferred by the Legislature. The Constitution itself confers no jurisdiction whatever upon the Common Pleas Court, either in civil or criminal cases, but merely gives that court capacity to receive jurisdiction which shall be fixed by law. The Constitution declares that the jurisdiction of the Courts of Common Pleas, and of the judges thereof shall be fixed by law. This constitutional provision is not self-executing, but must be enforced by appropriate legislation, and in this sense, therefore, the jurisdiction of the Common Pleas Court can be said to be statutory."

State ex rel. Miller v. Keefe, 168 Ohio St. at 234, 236-237 (1958).

The courts of common pleas were established by the Ohio Constitution as courts of general jurisdiction in Ohio, but the Constitution itself limits their jurisdiction to that which is expressly conferred by the General Assembly, including jurisdiction to limit consideration of noneconomic damages. The Ohio Constitution, Article IV, Section 4(B) provides: "The courts of common pleas and divisions thereof shall have such original jurisdiction over all justiciable matters and such powers of review of proceedings of administrative officers and agencies as may be provided by law." In addition, Section 18 of Article IV provides: "The several judges of the supreme court, of the common pleas, and of such other courts as may be created, shall, respectively, have and exercise such power and jurisdiction, at chambers, or otherwise, as may be directed by law." The Supreme Court of Ohio has uniformly held that the provisions of Article IV are not self-executing. Rather, the jurisdiction of the common pleas courts is limited to whatever the legislature may choose to bestow. *Central Ohio Transit Auth. v. Transport Workers Union of America* (1988), 37 Ohio St. 3d 56 [524 N.E.2d 151]; *Seventh Urban, Inc. v. University Circle* (1981), 67 Ohio St. 2d 19 [21 Ohio Op. 3d 12, 423 N.E.2d 1070]; *State ex rel. Miller v. Keefe* (1958), 168 Ohio St. 234 [6 Ohio Op. 2d 18, 152 N.E.2d 113]." 146 Ohio Laws, Part II, 4027-4028.

State ex rel. Ohio Acad. of Trial Lawyers v. Sheward, 86 Ohio St. 3d 451 489 (1999).

In Ohio, the judicial power of authority flows, generally, from Section 1, Article IV of the Ohio Constitution. (Fn5) The jurisdictional foundation for courts of common pleas, however, is set forth specifically in Section 4(B) of Article IV, as follows:

"The courts of common pleas and divisions thereof shall have such original jurisdiction over all justiciable matters and such powers of review of proceedings of administrative officers and agencies as may be provided by law."

Thus, it can appropriately be said that courts of common pleas are "the constitutional courts of general original jurisdiction in Ohio." 22 Ohio Jurisprudence 3d, 46-47, Courts, Section 16; *State, ex rel. Heimann, v.. George* (1976), 45 Ohio St. 2d 231. So stating, however, does not answer the question herein presented. "The constitution itself confers no jurisdiction whatever upon that court [Court of Common Pleas], either in civil or criminal cases. It is given a capacity to receive jurisdiction in all such cases, but it can exercise none, until 'fixed by law.'" (Emphasis added.) *Stevens v.. State* (1854), 3 Ohio St. 453, at 455; *State, ex rel. Miller, v.. Keefe* (1958), 168 Ohio St. 234.

It is clear, therefore, that the power to define the jurisdiction of the courts of common pleas rests in the General Assembly and that such courts may exercise only such jurisdiction as is expressly granted to them by the

legislature. *Cincinnati v. Bossert Machine Co.* (1968), 16 Ohio St. 2d 76, certiorari denied, 394 U.S. 998; *Wolfrum v. Wolfrum* (1965), 2 Ohio St. 2d 237; *Jacobsen v. Jacobsen* (1956), 164 Ohio St. 413; *State, ex rel. Black, v. White* (1936), 132 Ohio St. 58; *Ellis v. Urner* (1932), 125 Ohio St. 246; *Hess v. Devou* (1925), 112 Ohio St. 1; and *Miller v. Eagle* (1917), 96 Ohio St. 106.

(Fn5; "The judicial power of the state is vested in a supreme court, courts of appeals, courts of common pleas and divisions thereof, and such other courts inferior to the supreme court as may from time to time be established by law." Section 1, Article IV of the Ohio Constitution.)

Seventh Urban, Inc. v. Univ. Circle Property Dev., Inc., 67 Ohio St. 2d 19, 21-23 (1981).

An act not specifically defined as an offense in Ohio is not a felony, and thus, not within the felony subject matter jurisdiction of Ohio's Courts of Common Pleas:

Ohio Revised Code § 2901.03, Common law offenses abrogate, states in pertinent part:

(A) No conduct constitutes a criminal offense against the state unless it is defined as an offense in the Revised Code.

(B) An offense is defined when one or more sections of the Revised Code state a positive prohibition or enjoin a specific duty, and provide a penalty for violation of such prohibition or failure to meet such duty.

Because Ohio is a code law state, only acts for which there is a positive prohibition and specific penalty are criminal offenses. See, e.g., *Charles Gruenspan Co. v. Thompson*, 2003-Ohio-3641 (8th Dist.). For example, no statute specifically criminalized an adult video storeowner's failure to take affirmative steps to keep juveniles from entering and purchasing videos. *State v. Tomaino*, 135 Ohio App. 3d 309 (Butler County), dismissed, 87 Ohio St. 3d 1475 (1999); and "Offense" must be construed, under R.C. 1.42, according to common usage: it means conduct violating a criminal statute, and no more. *Clinton v. Leis*, 56 Ohio App. 2d 30 (1st Dist. 1977).

Since Petitioner's acts were not defined as offenses until months after he was already Indictment and in jail awaiting trial, the trial court lacked jurisdiction over

the innocence acts, regardless of the "felony" label affixed to them because Ohio's Courts of Common Pleas only have criminal subject matter jurisdiction over statutory "crimes and offenses", not innocent acts:

R.C. § 2931.03, Jurisdiction of court of common pleas, in pertinent part:

The court of common pleas has original jurisdiction of all crimes and offenses, except in cases of minor offenses the exclusive jurisdiction of which is vested in courts inferior to the court of common pleas.

R.C. § 2901.04 Rules of construction demand strict construction and refer to prior offenses as "a violation of a section of the Revised Code" or "a substantially equivalent offense under an existing or former law, i.e., statute, of this state, another state, or the United States":

(A) Except as otherwise provided in division (C) or (D) of this section, sections of the Revised Code defining offenses or penalties shall be strictly construed against the state, and liberally construed in favor of the accused.

(C) Any provision of a section of the Revised Code that refers to a previous conviction of or plea of guilty to a violation of a section of the Revised Code or of a division of a section of the Revised Code shall be construed to also refer to a previous conviction of or plea of guilty to a substantially equivalent offense under an existing or former law of this state, another state, or the United States or under an existing or former municipal ordinance.

(D) Any provision of the Revised Code that refers to a section, or to a division of a section, of the Revised Code that defines or specifies a criminal offense shall be construed to also refer to an existing or former law of this state, another state, or the United States, to an existing or former municipal ordinance, or to an existing or former division of any such existing or former law or ordinance that defines or specifies, or that defined or specified, a substantially equivalent offense.

As does R.C. § 2901.11, Criminal law jurisdiction:

(A) A person is subject to criminal prosecution and punishment in this state if any of the following occur:

(1) The person commits an offense under the laws of this state, any element of which takes place in this state.

See also, *State v. Literal*, 2009-Ohio-199 (4th Dist.) (Trial court improperly

exercised jurisdiction over the offense of drug trafficking because no element of R.C. 2925.03(A)(2) was committed in Ohio). Thus, as a matter of law, and mere common sense and logic, if an act is not defined as an offense, a "person (cannot) commit() an offense under the laws of (Ohio)", simply because there are no "elements" regarding acts that are not defined as offenses.

Additionally, where there is no statute defining an offense, there is no venue, which, in Ohio, unlike Federal jurisdictions must be proven beyond a reasonable doubt just like the material elements of every offense. See, e.g., *State v. Foreman*, 166 Ohio St. 3d 204 (2021), which states:

"Under Article I, Section 10 and R.C. 2901.12, evidence of proper venue must be presented in order to sustain a conviction for an offense." *State v. Hampton*, 134 Ohio St.3d 447, 2012-Ohio-5688, 983 N.E.2d 324, ¶ 20. Although venue is not a material element of any criminal offense, *Draggo* at 90, it is a fact that must be proved at trial beyond a reasonable doubt, unless it has been waived by the defendant, *Headley* (6 Ohio St. 3d 475) at 477, citing *State v. Dickerson*, 77 Ohio St. 34, 82 N.E. 969, 5 Ohio L. Rep. 453 (1907), paragraph one of the syllabus. Therefore, a "conviction may not be had" if the state fails to prove beyond a reasonable doubt that the defendant committed the alleged offense or an element of the offense in the charging county. *State v. Nevius*, 147 Ohio St. 263, 71 N.E.2d 258 (1947), paragraph three of the syllabus; see also *Hampton* (6 Ohio St. 3d 475) at ¶ 19. The state need not prove venue "in express terms," provided that "all the facts and circumstances in the case" establish it. *Headley* at 477, citing *Dickerson* at paragraph one of the syllabus.

It is impossible to prove venue of a crime or offense, or a crime or offense itself, when there is no crime or offense defined by Ohio law as required by R.C. 2901.03.

Again, in "*Mobarak II*" the Ohio State Supreme Court reinstated Petitioner's conviction and sentences specifically pursuant to the "authority of *Shalash*" after expressly having admitted in *Shalash*, that "controlled substance analogs were not specifically proscribed when defendant was arrested and indicted for selling them". Ohio Supreme Court Justice Donnelly exposed the Ohio Supreme Court's legislation from the bench to reinstate Petitioner's convictions in *Brown*, stating the Ohio Supreme "court acknowledged that controlled-substance analogs were not covered

under the elements of R.C. 2925.03 at the time of Shalash's alleged criminal conduct" (*id.*, ¶ 16); "Instead, this court relied on R.C. 3719.013, *Shalash* at ¶ 11, even though that civil-regulation statute did not provide any definition that applied to the elements of the criminal offenses at issue in that case or in this case", (*id.*, at ¶ 17); "And in doing so, this court, not the General Assembly, created the elements of the crime for which Mobarak was convicted), (*id.*, at ¶ 19). Justice Donnelly then stated: "No person, however reprehensible his or her conduct is, should be subjected to criminal liability for committing an act that the law does not criminalize. Despite that principle, Soleiman Mobarak is serving 35 years in prison for acts that were not criminalized when he committed them." (*id.*, *Brown*, ¶ 21).

In order to make it appear as if the trial court had subject matter jurisdiction over innocent acts that no Ohio statute had yet defined as "crimes" or "offenses", the Ohio Supreme Court disregarded the rules of construction and broke boundaries of Ohio and Federal constitutional law to judicially redefine Ohio's criminal statutes and judicially legislate subject matter jurisdiction that was *not* "provided by law". The statement that "controlled-substance analogs were not specifically proscribed by R.C. Title 29" (*Id.*, *Shalash*), applied to Petitioners in *Mobarak II*, is a direct confession by the Ohio Supreme Court that no Ohio statute criminalized Petitioner's conduct at the time his acts were "committed"; and, per the supreme law of the land, as exposed by the United States Supreme Court, this statement is also a confession that the State trial court lacked subject matter jurisdiction over Petitioner's acts, that the judgment and sentence are void ab initio, that all state criminal proceedings and appeals thereafter are void ab initial for want of subject matter jurisdiction; that Petitioner is entitled to the relief requested; and that Petitioner's conviction and illegal incarceration are repugnant to the Constitution, treaties, or laws of the United States.

Ohio's Courts of Appeals Lack Subject Matter Jurisdiction Over Appeals from Non-Final Judgments, which Include Void Judgments :

Per well settled Ohio law, where a trial court's judgment is not final whether void, or valid, Ohio's Courts of Appeals lack subject matter jurisdiction pursuant to Article IV, § 3(B)(2), of Ohio's Constitution: "Courts of appeals shall have such *jurisdiction as may be provided by law* to review and affirm, modify, or reverse judgments or final orders of the courts of record inferior to the court of appeals within the district". See, e.g., *Green v. Bell*, 2023-Ohio-2601 (7th Dist.); *Murray v. Ace Painting of Akron*, 2022-Ohio-1045 (9th Dist.); *Cook v. Metro. Sewer Dist. of Greater Cin.*, 2022-Ohio-3245 (1st Dist.); *City of Girard v. Youngstown Belt Ry. Co.*, 2019-Ohio-5417 (11th Dist.); *Madfan, Inc. v. Makris*, 2015-Ohio-1316 (8th Dist.).

These Ohio Court of Appeals decisions rely on Article IV, §3(B)(2), Ohio Statutory law, as well as Ohio Supreme Court decisions:

We are obligated to raise sua sponte questions related to our jurisdiction. *Whitaker-Merrell Co. v. Geupel Constr. Co.* (1972), 29 Ohio St. 2d 184, 186, 280 N.E.2d 922. We find that the trial court's judgment entry fails to satisfy the requirements of Crim.R. 32(C), and that the trial court has therefore not issued a final appealable order. See, e.g., *State v. Earley*, 9th Dist.No. 23055, 2006 Ohio 4466. Therefore, we find that we do not have jurisdiction over this appeal. Section 3(B)(2), Article IV, Ohio Constitution; *State v. Tripodo* (1977), 50 Ohio St.2d 124, 127, 363 N.E.2d 719.

State v. Miller, 2007-Ohio-1353 (9th Dist.), ¶ 3. See, also, *State v. Fischer*, 128 Ohio St. 3d 92, ¶ 40 (2010); and *Romito v. Maxwell* (1967), 10 Ohio St.2d 266, 267-268. Void judgments are legal nullities, and are not "judgments or final order".

United States Supreme Court and Federal Law Relating to

Jurisdiction:

Where a Court has jurisdiction, it has a right to decide every question which occurs in the cause; and whether its decision be correct or otherwise, its judgment, until reversed, is regarded as binding in every other Court. But, if it act without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void; and form no bar to a recovery sought, even prior to a reversal, in opposition to them. They constitute no justification; and all persons concerned in executing such judgments or sentences, are considered, in law, as trespassers.

This distinction runs through all the cases on the subject; and it proves, that the jurisdiction of any Court exercising authority over a subject, may be inquired into in every Court, when the proceedings of the former are relied on and brought before the latter by the party claiming the benefit of such proceedings.

Id., *Elliott v. Lessee of Peirsol*, 26 U.S. (1 Pet.) 328, 340-341 (1828).

See also, *Vallely v. Northern Fire & Marine Ins. Co.*, 254 U.S. 348, 353-354 (1920):

Courts are constituted by authority and they can not go beyond the power delegated to them. If they act beyond that authority, and certainly in contravention of it, their judgments and orders are regarded as nullities. They are not voidable, but simply void, and this even prior to reversal. *Elliott v. Peirsol*, 1 Pet. 328, 344; *Old Wayne Mutual Life Association v. McDonough*, 204 U.S. 8.

See also, *Williamson v. Berry*, 49 U.S. 495, 542-543 (February 26, 1850):

Upon the point of looking into the jurisdiction of a court collaterally, when a right of property is claimed under its proceedings, we must add, that it prevails in New York just as it does in the courts of England and in the courts of the United States. In *Latham v. Edgerton*, 9 Cowen, 227¹, it is said, -- "The principle that a record cannot be impeached by pleading is not applicable when there is a want of jurisdiction. The want of it makes a record utterly void and unavailable for any purpose. The want of jurisdiction is a matter that may always be set up against a judgment when it is to be enforced, or

¹ *Latham v. Edgerton*, 9 Cow. 227, 1828 N.Y. LEXIS 13 (N.Y. Sup. Ct. August 1, 1828), ON ERROR from the C. P. of Delaware.

when any benefit is claimed under it." See also, to the same point, *Fenton v. Garlick*, 8 Johns. 194; *Kilbourne v. Woodworth*, 5 Johns. 37; 19 Johns. 39; 6 Wend. 446. And in the case of *Rogers v. Diel*, 6 Hill, 415, -- a case of ejectment, -- the chief justice ruled that the power of a court of chancery to order the real estate of an infant is derived entirely from the statute. Thus sustaining an objection collaterally to proceedings and a decree in chancery which were regular in form, but void in fact, on account of the Chancellor's not having jurisdiction or authority to make such a decree.

The operation of every judgment depends upon the jurisdiction of the court to render it. Though there may be jurisdiction for certain purposes in a cause, that jurisdiction may be exceeded in the judgment. And whenever the right to property is claimed to have been changed under a judgment or decree by a court, and it is set up as a defence in another court, the jurisdiction of the former may be inquired into. The rule is, that where a limited tribunal takes upon itself to exercise a jurisdiction which does not belong to it, its decision amounts to nothing, and does not create a necessity for an appeal. *Attorney-General v. Lord Hotham*, Turn. & Russ. 219.

Elliot v. Peirsol was a case based upon a Kentucky court having entered a judgment without statutory authority to do so; this is the same as what has occurred in Petitioner's case, except on a different subject. Ohio Courts of Common Pleas, Ohio's criminal courts, receiving only the capacity to accept jurisdiction "as may be provided by law", per Article IV, Section 4, Ohio Const., derive all jurisdiction from statute, including subject matter jurisdiction over crimes and offenses; jurisdiction over crimes and offenses is R.C. 2931.03(A) ("The court of common pleas has original jurisdiction of all crimes and offenses, except in cases of minor offenses the exclusive jurisdiction of which is vested in courts inferior to the court of common pleas."); which is limited by R.C. 2901.03, which abrogates common law crimes and offenses, leaving only statutory offenses, and removing non-statutory "crimes" and "offenses" from Ohio's Courts of Common Pleas' jurisdiction. In other words, because Petitioner's acts were not defined by any Ohio statute as "crimes" or "offenses" under the meaning of R.C. 2901.03, they were not "crimes and offenses" within the meaning of R.C.

2931.03(A), and thus, the State trial court did not receive subject matter jurisdiction over Petitioner's acts, and was specifically denied jurisdiction by these statutes, but severally and jointly. See also, *In re Bonner*, 151 U.S. 242, 255-258 (1898).

Additional evidence the State court lacked subject matter jurisdiction resides in Article I, § 10, Clause 1, of the United States Constitution, which states:

No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

While this case does not involve an actual ex post facto law designed to retrospectively ensnare citizens for acts that were innocent when performed, this case does involve a situation where Petitioner performed innocent acts, was indicted under existing statutes (that did not mention or criminalize the innocent acts), arrested and jailed, prior to those acts having been criminalized, then tried after the acts were criminalized. The new statutory provisions that were enacted; and which criminalized the acts after Petitioner performed the acts, after Petitioner was indicted, and while Petitioner was in jail awaiting trial, were used against Petitioner in his trial. This had the effect of trying and convicting Petitioner for crimes and offenses that did not exist in any Ohio law until after the acts had been performed; and thus, had the effect of retrospective statutes, despite the fact that the statutes themselves were prospective. Upon objection to the State relying on the newly amended statutes, the trial court overruled stating the jury was smart enough to know or understand the difference.

While this is not the quintessential ex post facto violation, the State's use of existing law to arrest, indict, and jail Petitioner, then convict him in a trial using provisions the newly amended or enacted after indictment, violated Article I, § 10,

Clause 1, of the United States Constitution, as if under to an actual ex post facto law.

The decision of the Ohio Supreme Court, which manufactures a bar to relief from a judgment entered without subject matter jurisdiction, which can never be or become valid or final, in order to enforce the void and illegal judgment and continue Petitioner's void and illegal 35-year deprivation of liberty and property, is repugnant to the Constitution and laws of the United States; and the Judgment of the Sixth Circuit Federal Court of Appeals precluding review of the Federal District Court's Judgment declining relief by holding the non-final void judgment sufficient to trigger the AEDPA Deadline, and refusal to apply the actual innocence exception to Petitioner who, lacking a crime or offense to have committed, cannot be anything there than "actually innocent", have the effect of depriving Petitioner of his right to remedy, as well as violating his Due Process rights, his right to be free from retroactive application of criminal statutes, and other constitutional rights.

Finally, this is the perfect time and perfect case for the united States Supreme Court to answer the critical Questions presented herein, and to determine the **Novel** issues by declaring that (1) a judgment that is void for any reason is not final, and is insufficient to trigger the 28 U.S.C. § 2244(d)/AEDPA deadline for filing 28 U.S.C. § 2254 Petitions, as it is specifically based upon the finality of the State court judgment; and (2) the Actual Innocence Exception extends to Petitioners who actually performed the acts forming the basis of their convictions, but who are actually and factually innocent of a crime or offense for the want of a criminal statute defining the otherwise innocent acts as crimes of offenses.

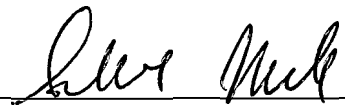
The Supreme Court of the United States should GRANT certiorari to review this grievous case, reverse the Decision Below and order the District Court to issue a Writ of Habeas Corpus compelling the State Court to vacate Petitioner's void and

illegal sentence. The United States Supreme Court decision in this case should also overrule the Ohio Supreme Court dangerous line of decisions argued herein that validate, retrospectively and otherwise, void judgments and deprive citizens of life, liberty, and property without, and in contravention of Due Process and other major Constitutional protections, which are repugnant to the Constitution, treaties, and/or laws of the United States. "[N]o court has jurisdiction to imprison a person or detain him in custody in violation of the Constitution." 1 W. Bailey, *Law of Habeas Corpus and Special Remedies* §25, p. 67 (1913).)

CONCLUSION

Wherefore, the Supreme court of the United States should Grant Certiorari and accept jurisdiction over this case and (1) declare Petitioner's conviction and sentences void ab initio for want of subject matter jurisdiction I the State trial court; (2) declare that the Actual Innocence Exception extends to Petitioners who actually performed the acts forming the basis of their convictions, but who are actually and factually innocent of any crime or offense for want of a criminal statute defining the otherwise innocent acts as crimes or offenses at the time they are performed; (3) declare that a judgment that is void under the law of a particular state cannot trigger the statute of limitations set out in 28 U.S.C. § 2244(d) for want of finality; and (4) issue a full and complete Opinion that declares the law of the land as it relates to the very important Questions and Issues presented herein.

Respectfully submitted,



Soleiman Mobarak
Petitioner