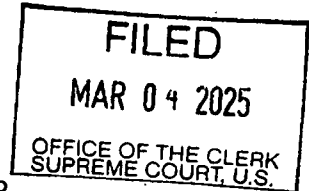


No. 24-6970

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



BRIAN KERRY O'KEEFE — PETITIONER
(Your Name)

vs.

THE STATE OF NEVADA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

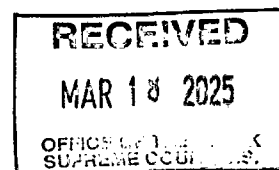
PETITION FOR WRIT OF CERTIORARI

Brian Kerry O'Keefe - Pro Se
(Your Name)

1200 Prison Road
(Address)

Lovelock, Nevada 89419
(City, State, Zip Code)

N/A
(Phone Number)



QUESTION(S) PRESENTED

1.

Whether the Supremacy Clause justifies a stay once the trial court had been provided fair notice that the competent federal CoA panel had exercised pretrial jurisdiction.

2.

Whether the state trial court's colloquy on April 26, 2012, resulting in no stay, demonstrates a sham prosecution to circumvent the CoA's guaranteed federal double jeopardy § 2241 pretrial appeal resulting in a conflict.

3.

Whether a state court of last resort maintains a certiorari constitutional duty to intervene if manifest injustice has occurred, by usurpation of federal appellate authority.

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

- O'Keefe v. Nevada, No. 13-6031 SUPREME COURT UNITED STATES. Judgment entered Oct. 15, 2013.
- O'Keefe v. Nevada, No. 14-6834 SUPREME COURT UNITED STATES. Judgment entered Jan. 12, 2015.
- O'Keefe v. Sheriff, No. 14-10093 SUPREME COURT UNITED STATES. Judgment entered Oct. 05, 2015.
- O'Keefe v. Warden, No. 18-5687 SUPREME COURT UNITED STATES. Judgment entered Oct. 29, 2018.
- O'Keefe v. Nevada, No. 21-7555 SUPREME COURT UNITED STATES. Judgment entered June 6, 2022.
-
- O'Keefe v. Sheriff, No. 12-15271 NINTH CIRCUIT COURT OF APPEALS. Judgment entered Feb. 09, 2015.
- O'Keefe v. Warden, No. 15-15514 NINTH CIRCUIT COURT OF APPEALS. Judgment entered July 27, 2016.
- O'Keefe v. Warden, No. 16-16491 NINTH CIRCUIT COURT OF APPEALS. Judgment entered Oct. 31, 2016.
- O'Keefe v. Warden, No. 17-17509 NINTH CIRCUIT COURT OF APPEALS. Judgment entered July 13, 2018.
- O'Keefe v. Warden, No. 18-16005 NINTH CIRCUIT COURT OF APPEALS. Judgment entered June 25, 2018.
- O'Keefe v. Warden, No. 18-16418 NINTH CIRCUIT COURT OF APPEALS. Judgment entered Mar. 19, 2019.
- O'Keefe v. Warden, No. 18-70294 NINTH CIRCUIT COURT OF APPEALS. Judgment entered Apr. 26, 2018.
- O'Keefe v. Warden, No. 19-17152 NINTH CIRCUIT COURT OF APPEALS. Judgment entered Aug. 06, 2020.
-
- O'Keefe v. Sheriff, No. 2:11-cv-02109 U.S. DIST. COURT Las Vegas, NV. Judgment entered Feb. 03, 2012.
- O'Keefe v. Warden, No. 3:14-cv-00471 U.S. DIST. COURT Reno, NV. Judgment entered Oct. 14, 2014.
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- O'Keefe v. Nevada, No. 61631 Nevada Supreme Court. Judgment entered June 13, 2013.
- O'Keefe v. Nevada, No. 58109 Nevada Supreme Court. Judgment entered May 10, 2011.
- O'Keefe v. Nevada, No. 53859 Nevada Supreme Court. Judgment entered Apr. 07, 2010.

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APPENDIX E	MEMORANDUM MOOTING STANDING OF GUARANTEED § 2241 APPEAL, NINTH CIRCUIT
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Castro v. UNITED STATES, 540 U.S. 375, 377 (2003)	5
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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

JURISDICTION

☒ For cases from **state courts**:

The date on which the highest state court decided my case was Dec. 03 2024.
A copy of that decision appears at Appendix C.

☒ A timely petition for rehearing was thereafter denied on the following date:
Dec. 24 2024, and a copy of the order denying rehearing
appears at Appendix D.

☐ An extension of time to file the petition for a writ of certiorari was granted
to and including _____ (date) on _____ (date) in
Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

UNITED STATES CONSTITUTIONAL FIFTH AMENDMENT (Nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb). 3, 4 .

UNITED STATES CONSTITUTION ARTICLE I, Section 9, Clause 2 (The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it).

The Habeas Corpus Act of 1867, Act of Feb. 5, 1867, ch. 28, § 1, 14 Stat. 385 (That the several courts of the United States, and the several justices and judges of such courts, within their respective jurisdictions . . . shall have power to grant writs of habeas corpus . . . ' 14 stat. 385'). 5 .

28 U.S.C. § 2241(a) (Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions). 3, 5 .

28 U.S.C. § 2252. Notice (Prior to the hearing of a habeas corpus proceeding in behalf of a person in custody of State officers or by virtue of State laws notice shall be served on the attorney general or other appropriate officer of such State as the justice or judge at the time of issuing the writ shall direct). 4 .

28 U.S.C. § 2253 (c)(3) (the certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2)). 3, 4, 5 .

U.S. Constitution 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 bound thereby, any Thing in the Constitution or Laws of any State to the contrary notwithstanding). 4 .

Oath or Affirmation Clause, U.S. Const., art. VI, cl. 3 (... all executive and judicial officers, of both the United States and of several states, shall be bound by Oath or Affirmation, to support this Constitution).

STATEMENT OF THE CASE

Actual innocence caused both a not guilty plea to the short forms charging a single count of murder and a refusal to all state deals ultimately resulting in two unsuccessful trials on the same offense, attaching a second jeopardy, yet no conviction was returned with a third trial set for June 11, 2012. The Sheriff's nearly three year continuous unlawful custody was aided by ineffective assistance of counsel who withdrew, failing to seek § 2241 habeas corpus interposition prior to the retrials - ("APPENDIX F and G"). Petitioner filed a pro se federal § 2241 habeas petition alleging the state's second trial violated the double jeopardy clause on December 29, 2011. The court's choice of laws to review whether § 2241 pretrial review of a double jeopardy claim being appropriate even without state appellate review because state provided no such right for interlocutory appeal caused the court's dismissal on procedural grounds without reaching the underlying constitutional claim on February 3 of 2012. Facing a heightened burden to satisfy the requirements of § 2253, as amended by AEDPA, petitioner motioned the appellate court for a CoA, unopposed by respondent, where the competent CoA panel issued the writ granting a CoA on a named double jeopardy violation under § 2253 (c)(2) certifying two issues: (1) whether the district court properly determined that the appellant's double jeopardy claim was unexhausted, and (2) whether appellant, as a pretrial detainee, was required to exhaust his claim in state court before filing his 28 U.S.C. § 2241 petition highlighting "COMPARE" with Braden v. 30TH JUDICIAL CIRCUIT COURT OF KY., 410 U.S. 484, 489-91 (1973) and White v. Lambert, 370 F.3d 1002, 1008 (9TH Cir. 2004) where the compare citation is used to indicate circuit splits or differing approaches of law - ("APPENDIX B"). The court's colloquy on April 26, 2012, allowing the trial to proceed at the State's insistence, demonstrates the court unconstitutionally shifted the force of the writ upon petitioner's beliefs, when the writ acted upon the Sheriff's ongoing unlawful custody requiring nothing from petitioner! ("APPENDIX A").

However, despite having no obligation, pro se petitioner again requested a stay at calendar call on June 5, 2012, based on fundamental fairness applying to the CoA noticed, denied by the trial court then raised as issue three on direct appeal no. 61631, where the Nevada Supreme Court omits federal law justifying their AFFIRMANCE on April 10, 2012 - ("APPENDIX H"). Petitioner then filed for certiorari on November 13, 2024 with the Nevada Supreme Court resurrecting the trial court's waiving and forfeiting the subject matter jurisdiction vested by § 2253 (c)(2) therefore constituting the conviction to be a void judgment, denied December 3, 2024 - ("APPENDIX C") with rehearing being denied on December 24, 2024 - ("APPENDIX D").

REASONS FOR GRANTING THE PETITION

1.) On April 26, 2012, state trial court lodged judicial admission in journal entries that fair notice was provided that the habeas litigation would continue with briefing schedule with the issued CoA satisfying the gatekeeping function - ("APPENDIX B"). see 28 U.S.C. § 2252; see e.g. Gonzalez v. Thaler, 565 U.S. 134, 132 S.Ct. 641, 652 (2012) (... a judge's issuance of a CoA reflects his or her judgment that the appeal should proceed and supplies the State with notice that the habeas litigation will continue). The situations in which pretrial or preconviction federal interference by way of habeas corpus with state criminal processes is justified involve the lack of jurisdiction under the Supremacy Clause, for the State to bring any criminal charges against the petitioner. see Braden v. 30th Judicial Circuit Court of Ky., 410 U.S. 484, 508 (1973). Moreover, the "Menna Court" held that a double jeopardy claim was distinguishable from the constitutional claims that would be waived under Tollett. see Menna v. New York, 423 U.S. 61, 62 (1975) (where the State is precluded by the Constitution from hailing a defendant into court on a charge, federal law requires that a conviction on that charge be set aside). The writ granting a Court acted solely upon the Sheriff holding O'Keefe in unlawful double jeopardy custody requiring nothing more from petitioner.

2.) The legal effect from notice imposed an automatic stay of proceedings pursuant the Habeas Act of 1867.

Subject-matter jurisdiction was vested. See § 2253 post AEDPA; see e.g., Barefoot v. Estelle, 463 U.S. 880, 892 n.3 (1983) (The Habeas Act of 1867, Act of Feb. 5, 1867, ch. 28 § 1, 14 Stat. 385, the first act empowering federal courts to issue a writ of habeas corpus for persons in state custody, imposed an automatic stay of any proceeding against such person pending such proceedings or appeal...); see Slack v. McDaniel, 529 U.S. 473, 475 (2000) (...AEDPA's present provision, which incorporate earlier habeas principles).

3.) On April 26, 2012, the court's colloquy ultimately improperly both treated and recharacterized § 2241 pre-trial writ as a § 2254 post conviction writ considering it a collateral attack when under no judgment, conflicting with decisions of circuit courts and this court - ("APPENDIX B"). See Castro v. United States, 540 U.S. 375, 377 (2003) ([A] court cannot so recharacterize a pro se litigant's motion ... unless the court informs the litigant of its intent to recharacterize,...); But see e.g., Stow v. Marshige, 389 F.3d 880, 887-88 (9th Cir. 2004) (habeas petition treated under § 2241, not § 2254, because petitioner not in custody under valid state court judgment of conviction); White v. Lambert, 370 F.3d 1002, 1005 (9th Cir. 2004) (recharacterization of § 2241 petition as § 2254 petition where petitioner challenged administrative decision...); Johnson v. Warden, 805 F.3d 1317, 1323 (11th Cir. 2015) (recharacterization of § 2241 petition as § 2254 petition proper because petitioner in custody under valid state court judgment of conviction). The conflict in the courts triggers Rule 10 (c).

4. Subject-matter jurisdiction can never be waived or forfeited and objections may be raised at any point.

see Gonzalez v. Thaler, 132 S.Ct. 641, 648 (2012). **CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Bruce L. O'Keeffe

Date: March 4, 2025