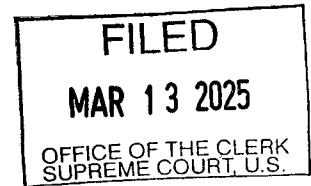


Doc No. 24-7134



IN THE

SUPREME COURT OF THE UNITED STATES

In re: Kesean Calvin Wilson, Pro Se Petitioner

# ON PETITION FOR AN Original Writ of Habeas Corpus

Kesean Calvin Wilson #812224  
Lakeland Correctional Facility  
141 First Street  
Coldwater, MI 49036

## QUESTIONS PRESENTED

- i. DOES THE DUAL SOVEREIGNTY RULE, AS APPLIED TO CONDUCT THAT SUBSTANTIALLY AFFECTS INTERSTATE COMMERCE AND THE POWER TO COIN MONEY, CONFLICT WITH THE TENTH AMENDMENT AND IS THE PETITIONER'S DETAINMENT UNLAWFUL?
- ii. WERE THE PETITIONER'S EQUAL PROTECTION RIGHTS UNDER THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION VIOLATED WHERE THE STATE SINGLED HIM OUT FOR PROSECUTION BASED ON HIS RACE?

## LIST OF PARTIES

All parties **do not** appear in the caption of the cover page. A list of all parties to the proceeding in the court whose action are the subject of this petition is as follows:

Warden

Michigan Attorney General

Michigan Department of Corrections

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## JURISDICTION

This Court's jurisdiction is invoked under Sup. Ct. R. 20.4(a), 28 U.S.C. § 2241 and its original habeas jurisdiction.

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Art. I, § 8 cls. 3,5,18. U.S. Const.

Art. I, § 10 cl. 1 U.S. Const.

Tenth Amend. U.S. Const.

Fourteenth Amend. U.S. Const.

28 U.S.C. 2254 (b)(ii)

## STATEMENT OF THE CASE

This case calls for an interpretation of the Tenth Amendment of the United States Constitution. The petitioner, Kesian Wilson committed a robbery of the Jackson City County Credit Union while armed. This credit union was insured by a federal agency - - the National Credit Union Administration (NCUA), and as such is a channel and instrumentality of interstate commerce. Finally, any robbery of the above credit union would also affect the Federal Government's power to coin money.

Nevertheless, the petitioner was prosecuted in the State of Michigan for this conduct. After exhausting his state remedies, he raised in the Sixth Circuit a claim that since his conduct substantially affects interstate commerce and the power to coin money, the Tenth Amendment and the Supremacy Clause bars the State from prosecuting it.<sup>fn1</sup>

In ruling on this claim, the Sixth Circuit, as have a number of jurisdictions, held, in part, that the petitioner's claim was without merit since the principle of Dual Sovereignty allows both the Federal and State Government to prosecute and punish the same conduct. However, this principle is in direct conflict with the Tenth Amendment, which makes clear that the States ceded the powers in question to the Federal Government at the formation of the Union and as such have no power to administer justice in this instance.

In conclusion, the petitioner's confinement is in violation of the United States Constitution and he must be released from custody.

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fn 1 The petitioner also presented evidence that the same prosecuting attorney who filed charges against him, in a separate case, agreed that the robbery of the credit union in question is in fact a federal crime. On this basis, prosecutor Mark Blumer dismissed the State Armed Robbery charges against David Birdsall, who robbed the same exact credit union just under three months prior, and yielded the case to the federal government.

The petitioner used these facts to establish an equal protection violation since, he was treated differently than Birdsall who is a white male. This claim was also denied.



## Statement for Not filing In District Court

In the case at hand, the petitioner did not file in the district court since the Sixth Circuit denied his motion for authorization to file a second or successive habeas petition.

## EXCEPTIONAL CIRCUMSTANCES

This case is sufficiently "exceptional" to warrant utilization of this court's Rule 20.4(a), 28 USC § 2241, and its original habeas jurisdiction since the petition goes toward the very authority of the State to try the petitioner - - where his conduct affects the power to coin money and interstate commerce, and where the United States Constitution has divested the State of any authority over such powers.

Under such circumstance, it would be manifestly unjust to allow the petitioner's conviction to stand. Finally, this case is "exceptional" since the state conceded that the conduct in question is exclusively federal and on that basis yielded the case of David Birdsall, a white male who also robbed the Jackson City County Credit Union less than three months prior to petitioner, and dismissed the State armed robbery case against him - - yet tried the petitioner.

## NO ADEQUATE RELIEF IN ANY OTHER COURT EXIST

In this case, the petitioner maintains that he has exhausted all available remedies as the Jackson County Circuit Court has in fact held, see Appendix, \_\_\_\_\_. In addition, the petitioner has even attempted to file a second or successive habeas petition which the Sixth Circuit denied.

In the alternative, if this Court were to find that the petitioner has an available remedy, it must find that he meets the exception under 28 U.S.C. §.2254 (b)(ii) since the actions of the state are so lawless that if he was forced to commence the appellate process there it would only compound the illegality, and the use of the 'dual sovereignty' rule to bar his claims results in a circumstance that exists "that render such process ineffective to protect. . ." his rights. *Id*

In closing, the very nature of the writ demands that it be administered with the initiative and flexibility essential to insure that miscarriages of justice within its reach are surfaced and corrected. See *Harris v. Nelson*, 394 US 286; 89 S Ct 1082; 22 L Ed 2d 281 (1969).

THE DUAL SOVEREIGNTY RULE, AS APPLIED TO CONDUCT THAT  
SUBSTANTIALLY AFFECTS INTERSTATE COMMERCE AND THE POWER TO  
COIN MONEY, CONFLICTS WITH THE TENTH AMENDMENT AND THE  
PETITIONER'S DETAINMENT IS UNLAWFUL

**Standard of Review.** In a case involving the division of authority between federal and state governments, the inquiries as to whether an act of the State is reserved to it by the Tenth Amendment or whether it invades the powers delegated to Congress in Article I of the Constitution, "are mirror images of each other." If a power is delegated to Congress in the Constitution, the Tenth Amendment expressly disclaims any reservation of that power to the States. *New York v. United States*, 505 US 144, 156; 112 S Ct 2408; 120 L Ed 2d 120 (1992).

**Introduction:**

In 2016, this court granted certiorari in *Puerto Rico v. Sanchez*, 579 US 59; 136 S Ct 1863; 195 L Ed 2d 179 (2016)<sup>fn2</sup> where Justice Ginsberg expressed that the dual sovereignty doctrine bears a fresh examination. Before this court is a case where the petitioner robbed a federally insured credit union, conduct that substantially affects interstate commerce and the power to coin money, and was tried by the State of Michigan.

Although the petitioner ~~did not~~ face a federal prosecution and was not subject to double punishment, when he raised a claim that the State lacked the authority to try and punish this conduct, since it involves three of Congress's delegated powers, his claims were denied by use of the dual sovereignty rule - - or the rule that the States and Federal Government have 'concurrent jurisdiction.' But can the States enjoy such jurisdiction over powers that it ceded to and are now exclusive to Congress under US Const, Art I , sec 8, cl. 3, 5, and 18?

The States have no jurisdiction at all over acts that are within the jurisdiction of Congress's

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fn 2 This rule continues to be called into question, although it has never been challenged in terms of the Tenth Amendment, see *Denezpi v. United States*, 596 U.S. 591; 142 S Ct. 1838; 213 L Ed 2d 141 (2022). As pointed out by the dissent in that case. ". . .that doctrine has no place in our constitutional order."

enumerated powers. Instead, "if a power is delegated to Congress in the Constitution , the Tenth Amendment expressly disclaims any reservation of that power to the States," New York, 505 US at 156. This distinct line between State and Federal jurisdiction is a 'separation of power; Bond v. United States, 564 US 211, 222-224; 131 S Ct 2355; 180 L Ed 2d 269 (2011).

When a petitioner raises a claim that the State exceeded the power granted to it by the Tenth Amendment, the proper standard is whether the power in question is delegated to Congress, *Id.*, not the standard involved in the dual sovereignty rule. Since the petitioner's conduct falls within the jurisdiction of the Federal Government the State cannot try or punish him since the authority to prescribe punishment for federal crimes is not a "power that the Constitution reserved to the State," *United States v. Comstock*, 560 US 126, 144; 130 S Ct 1949; 176 L Ed 2d 878 (2010).

## A. The Dual Sovereignty Rule Is Flawed And Inapplicable

To start with, the dual sovereignty rule is rooted in the Fifth Amendment Double Jeopardy clause and is used to determine whether subsequent State and Federal prosecutions violate double jeopardy, see *Gamble v. United States*, 587 US 678; 139 S Ct 1960; 204 L Ed 2d 322 (2019).<sup>fn3</sup> This test is inapplicable to the petitioner's claim.

The petitioner raised a claim that the State usurped powers delegated to the federal government in violation of the Tenth Amendment. As previously mentioned the test for a Tenth Amendment claim is not whether a separate sovereign is involved or whether the "offense" is the same, but whether the power in question is delegated to Congress, *New York*, 505 US at 156. As such the dual sovereignty test<sup>fn4</sup> should not have been applied to the petitioner's Tenth Amendment claims.

In addition, it is established that the Tenth "Amendment" is a mere affirmation of what, upon

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fn 3 "Sovereignty in this context does not bar its ordinary meaning. For whatever reason, the test the United States Supreme Court has devised to decide whether two governments are distinct for "double jeopardy purposes" "overtly" "disregards" common "indicia" of sovereignty - under that standard, the Supreme Court **"does not"** examine "the extent of control that one prosecuting authority wields over the other. *Puerto Rico v. Sanchez*, 579 US 59, 136 (2016), and by reason thereof, this court **"conceded"** that there is in fact and law a distinction between i.e., a "double jeopardy purpose" analysis, and an "isolated" Tenth Amendment claim review.

fn 4 In his dissenting opinion, Justice McLean points to a crucial fact that Courts seemed to have overlooked, that the ruling in *Fox v. Ohio*, 46 US 410, 440; 12 L Ed 213 (1847) was called into question by that court and a reargument was ordered. He reveals the following:

"I have the satisfaction to know, that . . . when this case was discussed by the Judges the last term that he attended the Supreme Court, and if I mistake not, one of the cases which was discussed by him in consultation, coincided with the views here presented. But at that time, on account of the diversity of opinion among the Judges present, and the absence of others, a majority of them being required by a rule of the Court, in constitutional questions, to make a decision, a reargument of the cause was ordered. I think the judgment of the State Court should be reversed." *Fox*, 46 U.S. at 434.

As such, the court in *Lanza* "cemented" a "enunciation" which was not thoroughly adjudicated, and made it a principle of law though it is repugnant to the constitution. This magnitude of judicial enlargement can not stand, and the constitution must prevail.

any just reasoning, is a necessary rule of interpreting the constitution," *Chiafalo v. Washington*, 140 S Ct 2316, 2336; 207 L Ed 2d 761 (2020). Looking at the claim at hand, and as a result the dual sovereignty rule, through the lens of the Tenth Amendment, it is clear that the State and Federal Government have distinct powers and cannot enjoy concurrent jurisdiction over powers which are withdrawn from the State and ceded to the Federal Government. Any contrary stance would be repugnant to the Constitution. As observed by the Court in *United States v. Williams*, 347 F Supp 3d 101 (11th Cir. 2018), "The separate sovereign exception runs afoul of core principles of federalism."

## **B. BANK ROBBERY AND CONGRESS'S ENUMERATED POWERS**

At the formation of the Union a number of powers were withdrawn from the States and ceded to the Federal Government, see *United States Term Limits v. Thornton*, 514 US 779; 115 S Ct 1842; 131 L Ed 2d 881 (1995). These powers include, the power over Commerce, the power to Coin Money, and to administer justice by way of the Necessary and Proper Clause, US Const, Art I, Sec. 8, cl. 3, 5, and 18.

These powers are exclusive to Congress and are entirely beyond the reach of the States.<sup>fn5</sup> It is also firmly established that bank robbery is economic activity that substantially affects interstate commerce,<sup>fn6</sup> as well as the power to coin money.<sup>fn7</sup> By definition then bank robbery is a Federal crime and **only** the Federal Government has the power to punish federal crimes<sup>fn8</sup> due to the Necessary and Proper Clause, *Comstock*, 560 US at 144.

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fn 5: States are expressly denied the power to coin money by US Const, Art 1, sec. 10. And the Federal Government's power to regulate interstate commerce is exclusive, see *Gonzales v. Raich*, 545 US 1, 29; 125 S Ct 2195; 162 L Ed 1 (2005) ("It is beyond peradventure that federal power over commerce is superior to that of the states to provide for the welfare or necessities of their inhabitants, however legitimate or dire those necessities may be.")

fn 6 *United States v. Spinello*, 265 F 3d 150, 159 (3rd Cir. 2001)

fn 7 *Hudspeth v. Melville*, 127 F 2d 273, 275 (10th Cir. 1941).

fn 8: The administration of a justice rests with the States **except** as Congress, acting within the scope of its enumerated powers, has created offenses against the United States, *Screws v. United States*, 325 US 91; 65 S Ct 1031; 89 L Ed 1495 (1945).

## C. SUPREMACY CLAUSE

As mentioned, to allow the States to exercise powers that have been withdrawn from it is in conflict with the Tenth Amendment. As such, US Const, Art VI, cl 2, which holds that the Constitution . . . shall be the supreme law of the land, would also be violated. And at the very least, the Federal Government possess a dominant interest in this field.

PETITIONER'S EQUAL PROTECTION RIGHTS UNDER THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION WERE VIOLATED WHERE THE STATE SINGLED HIM OUT FOR PROSECUTION BASED ON HIS RACE.

Standard of Review: Equal Protection violation based on race warrants strict scrutiny. JEB v. Ala. ex rel. TB, 511 US 127; 114 S Ct 1419; 128 L Ed 2d 89 (1994)

### Introduction:

As previously mentioned, the petitioner and David Birdsall were similarly situated at the charging stage, since they both robbed the same credit union within months of each other and were charged with State robbery charges by the same prosecutor, Mark Blumer. However, in the case of Birdsall, the State dismissed all charges on the basis that the crime was a federal one - - yet tried and punished the petitioner claiming it had "concurrent jurisdiction" to do so. The **only** difference between petitioner and Birdsall is that the petitioner is black and he is white.

Since the State singled the petitioner out for prosecution based on his race, his rights to equal protection of the law were violated.

### A. Strict Scrutiny

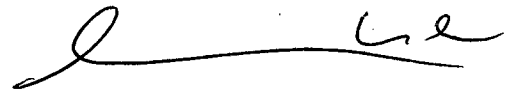
It is established that discrimination based on race is inherently suspect triggering "strict scrutiny," JEB v. Ala. ex rel. TB, 511 US 127; 114 S Ct 1419; 128 L Ed 2d 89 (1994). A strict scrutiny of the before mentioned facts warrants a finding that the petitioner was denied equal protection rights. Relief is warranted.



## CONCLUSION AND RELIEF SOUGHT

For the foregoing reasons, the petitioner moves this Court to grant the writ and unconditionally release him from custody.

3.13.25

A handwritten signature in cursive script, appearing to read "J. Lee", written in black ink.