

25-5457

No. _____

FILED

JUL 16 2025

OFFICE OF THE CLERK
SUPREME COURT, U.S.

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

BRIAN KERRY O'KEEFE

— PETITIONER

(Your Name)

VS.

THE EIGHTH JUDICIAL DISTRICT

— RESPONDENT(S)

COURT OF THE STATE OF NEVADA, et al.

ON PETITION FOR A WRIT OF CERTIORARI TO

THE SUPREME 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

(Your Name)

1200 Prison Road

(Address)

Love/ock, Nv- 89419

(City, State, Zip Code)

N/A

(Phone Number)

QUESTION(S) PRESENTED

(Fundamental Constitutional Error)

1)

Whether a conflict with "Braden's" § 2241(c)(3) pre-trial primary jurisdictional custody and "Gonzalez's" jurisdictional effect of CoA's estoppel by judgment, warrants this Court's "judicial review" where a state court of last resort misconstrued the antecedent FRAP 3 notice of appeal as pending and the purpose of fair notice by §§ 2243, 2252. (SEE APPENDIX B - Federal ORDER granting CoA); (SEE APPENDIX F - NOTICE OF APPEAL, FRAP 3, 4)

2)

Whether a state court of last resort can now here apply a state procedural bar to override an antecedent federal ORDER, attaching unwaivable § 2253(c)(2) colorable double jeopardy subject-matter jurisdiction, when they passed on said claim on direct appeal as issue three. (SEE APPENDIX A + ORDER OF AFFIRMANCE DIRECT APPEAL No. 61631)

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: THE STATE OF NEVADA, Real Party in Interest.

RELATED CASES

O'Keefe v. Nevada, No. 6631 Nevada Supreme Court Judgment entered 6/13/2013

O'Keefe v. Nevada, No. 13-6031 Supreme Court United States Judgment entered 10/15/2013

O'Keefe v. Sheriff, No. 2:11-cv-02109-GMK-VCF, U.S. Dist. Court Las Vegas Judgment entered 2/03/2012

O'Keefe v. Sheriff, No. 12-15271 Ninth Circuit Court of Appeals Judgment entered 2/09/2015

O'Keefe v. Sheriff, No. 14-10093 Supreme Court United States Judgment entered 10/05/2015

O'Keefe v. E.F.D.C., No. 89604 Nevada Supreme Court Judgment entered 12/03/2024

O'Keefe v. E.F.D.C., No. 24-6970 Supreme Court United States Judgment entered 6/16/2025

TABLE OF AUTHORITIES CITED

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<i>Braden v. 30th Judicial Circuit Court of Ky.</i> , 410 U.S. 484 (1973)	5
<i>Gonzalez v. Thaler</i> , 565 U.S. 134, 132 S.Ct. 641, 652 (2012)	5
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OTHER

Antiterrorism and Effective Death Penalty Act of 1996 - "*Slack*", "*Gonzalez*". 4, 5, 6

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APPENDIX D	ORDER DENYING REHEARING "NSC" NO. 89798 (5/20/2025)
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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 **federal courts**:

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

☐ reported at _____; or,

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

☐ is unpublished.

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

☐ reported at _____; or,

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

☐ is unpublished.

☐ For cases from **state courts**: *Nevada Supreme Court Direct Appeal AFFIRMANCE No. 66631
PASSED ON ISSUE THREE (3) raised.*

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 Eighth Judicial District - (trial) - court appears at Appendix E to the petition and is

☐ reported at _____; or,

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

☒ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

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

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was April 17, 2025.
A copy of that decision appears at Appendix C.

☒ A timely petition for rehearing was thereafter denied on the following date:
May 20, 2025, 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

U.S. Constitution Amendment V - "... nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb;

28 U.S.C. § 1291 - The courts of appeals shall have jurisdiction of appeals from all final decisions of the district courts of the United States . . . ;

28 U.S.C. § 2241 - Writs of habeas corpus may be granted . . . Power to Grant.

28 U.S.C. § 2241 (2)(B) - The writ of habeas corpus shall not extend to a prisoner unless he is in custody in violation of the Constitution or laws or treaties of the United States ;
• (see APPENDIX B - § 2241)

28 U.S.C. § 2251 - STAY OF STATE COURT PROCEEDINGS: (2)(1) Pending Matter - A justice or judge of the United States before whom a habeas corpus proceeding is pending may . . . or pending appeal stay any proceeding against the person detained in any State court . . . ;

28 U.S.C. § 2252 - NOTICE: Prior to the hearing of a habeas proceeding . . . 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.

28 U.S.C. § 2253 - APPEAL: (2) In a habeas corpus proceeding . . . the final order shall be subject to review, on appeal . . . (• see APPENDIX B at page 2).

28 U.S.C. § 2253 (2)(1) Unless a circuit justice . . . issues a certificate of appealability, an appeal may not be taken to this Court of appeals - ;

FRAP 3 Federal Rules of Appellate Procedure - Appeals as of Right - (2) Filing the Notice of Appeal

FRAP 4 Appeal as of Right Filed within time limits .

STATEMENT OF THE CASE

Brian O'Keefe (herein after "Petitioner") faced a short form information charging a single count of open murder, jury instructions, in accord with Schad v. Arizona, 501 U.S. 624, 644 (1991). Jury returned implied acquittal with first jeopardy terminating. Direct appeal (no. 53859) resulted in trial court instructional error AND insufficient evidence to support second-degree implied malice murder with new trial ordered where new prosecutors lodge new short form information on same offense. Second jeopardy attached when second jury was empaneled resulting from plain error caused by ineffective assistance of trial counsel despite trial ending in a mistrial. Petitioner's counsel then files motion based on wrong double jeopardy operative facts with Nevada Supreme Court denying discretionary double jeopardy appeal - then withdraws. Petitioner files for § 2241(c)(3) "Braden" relief with U.S. Clerk of Court starting conspiracy where § 2241(c)(3) petition filed as cause under § 2254. U.S. district court dismisses on procedural grounds and denies COA. Petitioner files FRAP 3,4 notice of appeal which was treated by Ninth Circuit COA merits-panel as application for COA, bestowed on 4/13/2012. Third trial, on same information, despite objections, commenced on 6/11/2012 ending in a conviction on 6/15/2012 where all courts relied on dockets reflecting cause as a 2254 action.

RELEVANT PROCEDURAL JURISDICTIONAL FACTS

1. Federal notice of appeal under FRAP 3,4 filed 2/08/2012, (see APPENDIX F).
2. Federal circuit panel decided appeal issuing order granting a COA, (see APPENDIX B), 4/13/2012.
3. State pre-third trial hearing where court provided actual-notice on 4/17/2012 (APPENDIX E).
4. State court sua sponte denies staying third trial on 4/26/2012, 6/5/2012, withdraws.
New hearing court relies on prior judge's decision and allows trial to proceed urged by state.
5. Petitioner convicted and sentenced while full briefing ongoing by post § 2253 granted appeal.
6. Nevada Supreme Court affirm issue 3 direct appeal no. 61631, (see APPENDIX A, page 2).
7. Pro-se certiorari sought with this Court preserving - No. 13-6031.
8. Pro-se state to U.S. certiorari sought, denied - Case No. 24-6970.
9. Pro-se writ of error denied on 4/17/2025, rehearing denied 5/20/2025 appealed now by certiorari.
10. State of Nevada's judicial actions "CONFLICT" with Braden, Gonzalez and Stack by this Court!

REASONS FOR GRANTING THE PETITION

1. In setting forth the preconditions for pretrial federal interference by way of habeas corpus with state criminal processes, by Congress intent, becomes justified when involving the lack of jurisdiction under the Supremacy Clause for the State to bring any information against the petitioner. See Braden, 410 U.S. 484, 508 (1973)
2. Petitioner invoked § 2241(c)(3) where this Court's precedent of Braden entitled attack on the State's second short form information charging the same statutory offense and the second-jeopardy that attached, regardless that the ultimate disposition was a hung jury.
3. Petitioner filed a timely notice of appeal - FRAP 3-4 - from an appealable § 2241(c)(3) final pre-trial order embodied with a colorable double jeopardy claim noted by this Court as an event of jurisdictional significance in that it confers jurisdiction on the federal court of appeals and divests the district court of its control over the subject-matter involved in the appeal - here in the case at bar- pretrial colorable double jeopardy claim, § 2241(c)(3). See, e.g., Griggs v. Provident Consumer Discount Co., 459 U.S. 56, 58 (1982) citing U.S. v. Hitchman, 587 F.2d 1357 (1979) (same); U.S.A. v. Dunbar, M.D., 591 F.2d 1180 (5th Cir. 1979) (same).
4. The competent Ninth Circuit CoA-merits panel, in accord with Stack v. McDaniel, 529 U.S. 473, 483 (2000), applied AEDPA and treated and "decided" the notice of appeal bestowing a CoA where the federal ORDER constituted an automatic injunction as "estopped by judgment." The purpose of §§ 2243, 2252 was satisfied and fair notice was provided that the exercise of jurisdiction over the § 2241(c)(3) pre-trial petition naming a colorable double jeopardy affirmative defense to the third prosecution fulfilling the gatekeeping function where the ORDER issued cited Gonzalez v. Thaler, 565 U.S. 134, 132 S. Ct. 641 at 652 (2012) (that a judge's issuance of a CoA reflects... judgment that the appeal should proceed and supplies the State with notice that the habeas litigation will continue), (see APPENDIX B). See Brown v. Ahern, 676 F.3d 899, 900-901 (9th Cir. 2012) (... effect as a direct injunction ...).

5. Nevada "again" produces another blunder, as they did with Slack v. McDaniel, supra by this Court. "Slack" concerned also a U.S. District Court's procedural error but made no attempt to make a showing of the denial of a Constitutional Right where this Court determined AEDPA governs the right to appeal, only by the issuance of a COA. Now from Nevada, comes Petitioner who did everything that was legally required, suffered a fundamental abuse of process caused by trial court IAC and ultimately provided the § 2241 (C)(3) writ ORDER, issued with a vested colorable double jeopardy claim named under § 2253 (C)(2), to the State trial court where the court imposed his decision that the competent Ninth Circuit COA-merits panel could not issue the COA despite this Court's precedents - Briden, Slack, Gonzalez - listed in the ORDER - APPENDIX B. His colloquy regarding ORDER manifests the need for guidance by this Court to exercise sound judicial review setting precedent!

CONCLUSION

The Nevada Supreme Court abused discretion placing a state procedural bar to mask the lack of jurisdiction manifested as prima facie evidence, attached as APPENDIX B!

The petition for a writ of certiorari should be granted, to protect the GREAT WRIT.

Respectfully submitted,

Brian R. O'Keefe

Date: July 16, 2025 Wednesday