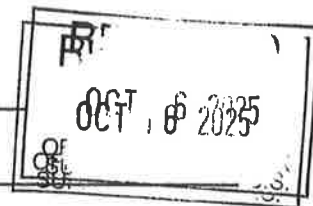
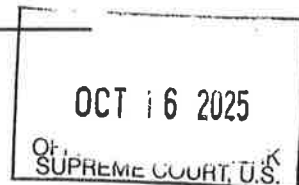


No. 25-5457



IN THE
SUPREME COURT OF THE UNITED STATES



BRIAN KERRY O'KEEFE - Petitioner

vs.

EIGHTH JUDICIAL DISTRICT COURT
OF NEVADA, CLARK County, et al. - Respondent

MOTION FOR LEAVE TO FILE
SUPPLEMENTAL
BRIEF IN SUPPORT
(Rule 15.8)

Brian Kerry O'Keefe

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Lovelock, NV. 89419

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October 6, 2025

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I.

(JUDICIAL REVIEW) "ISSUE OBLIGATED FOR REVIEW" (STANDING)

"It appears that the Ninth Circuit has not addressed whether § 2241 or § 2254 is the appropriate statute under which to consider a habeas petition when the petitioner was convicted and sentenced during the pendency of the federal case."

• (SCOTUS RULE 15.8) (New Case - Pending)

SEE No. 25-5623 Petition for certiorari filed 8/29/2025 docketed on 08/29/2025 Anderson v. Ross 2025 U.S. App. LEXIS 23746;

SEE No. 25-5457 Petition for certiorari filed 7/16/2025 docketed on 08/25/2025 O'Keefe v. EIGHTH JUDICIAL DIST. CT. of Nevada, related case!

A. "Judicial Review" - Invoke Marbury vs. Madison, 5 U.S. 137 (1803) (... it is "the province and the duty of the judicial department to say what the law is". Under this doctrine the U.S. Supreme Court and the highest courts of every state have assumed the power and responsibility to decide the constitutionality of the acts of the legislative and executive branches of their respective jurisdictions).

B. "Standing" - A party's right to make a legal claim or seek judicial enforcement of a duty or right. To have standing in federal court, a plaintiff must show (1) the challenged conduct has caused the plaintiff actual injury, and (2) the interest sought to be protected is within the zone of interests meant to be regulated by the statutory or constitutional guarantee in question.

II.

BAIL STATUS OF APPELLANT (INDIGENT)

The Petitioner-Appellant Brian Kerry O'Keefe ("O'Keefe"), was a pre-trial detainee still, after two state trials on the same statutory offense, housed under the custody of the Sheriff at the Clark County (Nevada) Detention Center at the time he mailed - "filed" - his pre-trial federal habeas petition invoking 28 U.S.C. § 2241(c)(3) custody on December 29, 2011; and his amended petition on January 26, 2012, following a retrial already held on August 23, 2010 to September 2, 2010, where a third trial was then, only, pending for June 11, 2012. O'Keefe filed and invoked § 2241(c)(3) jurisdiction where federal custody attached. U.S. District Court ultimately dismissed pretrial federal § 2241(c)(3) petition on procedural grounds of exhaustion without reaching the merits, then denied a certificate of appealability. O'Keefe filed timely notice of appeal which had written within the body - "Petitioner is in custody in violation of the Constitution or LAWS OR TREATIES OF THE UNITED STATES based upon a true colorable double jeopardy 5th Amendment violation. Petitioner has suffered thru two trials on the same statutory offense and is facing a third trial further violating the 5th Amendment." (emphasis added).

The competent Ninth Circuit COA-Merits Panel issued an order, after treating the notice of appeal as an application for a COA, granting a COA post AEDPA, naming a certified colorable double jeopardy violation under § 2253(c)(2) with two certified procedural questions to the district court: (1) whether the district court properly determined that appellant's double jeopardy claim was unexhausted, and (2) whether appellant, as a state pre-trial detainee, was required to exhaust his claim in state court before filing his 28 U.S.C. § 2241 petition, compare Braden v. 30th Judicial Circuit Court of Ky. 410 U.S. 484, 489-91 (1973).

III.

STATEMENT OF JURISDICTION

O'Keefe received confirmation that on August 25, 2025 the petition for a writ of certiorari in the above titled case (Re: Brian Kerry O'Keefe v. Eight Judicial District Court of Nevada, Clark County, et al. No. 25-5457) was filed on July 16, 2025 and placed on the docket August 25, 2025 as No. 25-5457.

On August 29, 2025 this court's clerk's office filed new case, certiorari, related to SCOTUS Rule 15.8 applicable. New case 25-5623 relates to case 25-5457 concerning pretrial § 2241(c)(3) habeas petitions ongoing during the pendency of another [unlawful] trial ending in conviction and sentence, effecting appeal?!?
See ante ¶ 1, "ISSUE OBLIGATED FOR REVIEW".

IV.

STATEMENT OF THE CASE

O'Keefe was tried a "third" time, subsequent an ORDER¹¹ issued and properly noticed to the state executive branch and state judicial branch on April 17, 2012, granting a COA on a colorable pre-trial federal question and violation of the double jeopardy clause of the U.S. Constitution's Fifth Amendment where the Habeas Corpus Act of 1867 provides an automatic stay of state proceedings. The AEDPA of 1996, amended Section 2253, as an act of Congress, where the requirement of a COA governs the right to appeal and must name a substantial deprivation of a federal constitutional right - here - namely, a double jeopardy violation. O'Keefe passed the two prong test when the U.S. District Judge dismissed my petition without reaching the merits. The COA process fulfilled the gatekeeping function where the state was in want of jurisdiction!

EN1 Great Writ Order granting COA, post AEDPA (§ 2253(c)(2)) pretrial.

V.

LEGAL ARGUMENT / DISCUSSION

(Purpose of §2241)

The related pending certiorari cases 25-5457 and 25-5623 were regarding 28 U.S.C. § 2241(c)(3) petitions "filed" by true state pre-trial detainees before any state court judgment and sentence imposed. Ultimately, both petitions were dismissed on procedural grounds concerning exhaustion or double jeopardy grounds and COA requests were denied to both pretrial petitioners.

True to the fact that both petitioners were convicted and sentenced before plenary consideration was accomplished, does not the standing of the Great Writ filed in the first instance hold any §2241 jurisdictional effect? see Braden v. 30th Judicial Circuit Court of Kentucky, 410 U.S. 484, 489-93 (1973). In an unpublished case² by the Ninth Circuit the holding announced was clear that a properly "filed" petition under 28 U.S.C. § 2241, in the first instance, that section continues to apply notwithstanding a change in custody; see also Canafas v. La Valle, 391 U.S. 234 (1968) (same).

O'Keefe avers the courts by this Court's lead, have answered the question imposed, that § 2241 continues throughout! Contrasting the two cases pending - 25-5457 with 25-5623, relevant dispositive actions occurred manifesting a disparity.

Where petitioner Anderson (25-5623) was convicted before the U.S. District Court completed her review, petitioner O'Keefe was not. Moreover, argued in the pending petition (25-5457), O'Keefe already suffered a second trial that ended in a mistrial. O'Keefe finished in the U.S. District Court and timely appealed where his notice of appeal was treated as an application for a COA and granted two months before his third trial occurred, over objection and with presentation and notice of the ORDER!

The entire purpose of AEDPA of 1996 by Congress' intent regarding section 2253 controls the issue for O'Keefe. As dictated by this Court in Gonzalez v. Thaler, 565 U.S. 134, 132 S.Ct. 641 at 652 (2012) (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). (emphasis added).

Additionally, the collateral order doctrine provides the appeal itself conferred jurisdiction divesting the state trial court of jurisdiction. see Griggs v. Provident Consumer Discount Co., 459 U.S. 56, 58 (1982); U.S.A. v. Dunbar, M.D., 591 F.2d 1190 (5th Cir. 1980) (same)

Once the competent Ninth Circuit COA - Merits Panel issued the COA disposing of the application for an appeal, the notice of appeal "FORM" was no longer pending. The gate keeping function was fully fulfilled where subject-matter jurisdiction was vested and personal jurisdiction over the defendant occurred when the Federal Officer - 9TH CIRCUIT COURT CLERK - perfected service of process to the state executive branch, on April 13, 2012, Sheriff Gillespie and the Attorney General. When O'Keefe got his mail on 4/17/2012, four days subsequent the issuance of the federal writ process, he was hauled into the state courtroom immediately and provided a copy to the courtroom marshall, dept. 17, who served the judge in his chambers. The state court screamed and complained that the Circuit Court COA - Merits panel could not do that - meaning issue Writ Order! Despite the Supremacy Clause, Suspension Clause and his Oath of Office, the court ordered the third trial would proceed. Hum ??? see Ableman v. Booth, 62 U.S. 506 (1868) (... after the return is made, and the state judge or court judicially apprised that the party is in custody [claim] and authority of the United States, they can proceed no further).

In O'Keefe's petition for certiorari (25-5457) APPENDIX ³ "A" manifests the Nevada Supreme Court disavowed the writ ORDER, and their obligation to "sub sponte" consider the want of subject-matter jurisdiction where primary and exclusive jurisdiction became vested in the United States Judicial Branch by AEDPA, Section 2253(c)(1)(2) and proper notice was given. O'Keefe suffered a third trial when the single claim presented was that the state's second trial on the same statutory offense violated the Fifth Amendment's double jeopardy clause. O'Keefe's COIT was issued on this ground and never heard. The Constitutional protection of U.S. Const., art. 1, § 2 and statutory protection of § 2253(c)(2) by an act of Congress was usurped! A colorable claim of double jeopardy was certified and the entire third trial is a nugatory proceeding. Ten U.S. Certiorari petitions and still no review! So much for the Great Writ or the integrity of the Courts. 4

VI.

CONCLUSION (2 Questions ante, page 3)

Answer the two certified questions in ORDER granting COIT! Grant request for certiorari review and exercise your "holding" of Marbury v. Madison, 5 U.S. 137 (1803) and provide sound judicial review and answer the question(s)! WAITED 13 YEARS NOW!

DATED this 6th day of October, 2025, Pursuant

28 U.S.C. § 1746.

Brian K. O'Keefe

Signature of Appellant

Brian K. O'Keefe

Print Name of Appellant

VII.

STATEMENT OF RELATED CASES - Certiorari No. 25-5623;

The issue raised in the State's Motion to Dismiss had been resolved in unpublished decision of *Glover v. Gillespie*, 11-16593 (9th Cir., decided December 19, 2012); [(Because Glover properly filed this petition under 28 U.S.C. § 2241 in the first instance, that section continues to apply notwithstanding his subsequent guilty plea. See *Stow v. Murashige*, 389 F.3d 880, 885 (9th Cir. 2004) (where petitioner "was not 'in custody pursuant to the judgment of a State court' at the time he filed his petition," § 2241 applied)].

VIII.

CERTIFICATE OF COMPLIANCE

As an incarcerated indigent prisoner, with no access to a typewriter, computer, has printed with legible letters. The approximate total number of words is 1750.

Respectfully Submitted,

Brian K. O'Keefe

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