25-6611 ORIGINAL

USA10 No. 24-1471

IN THE

SUPREME COURT OF THE UNITED STATES

JAMES E FRANTZ - PETITIONER

vs.

ANDRE STANCIL, EXEC DIR. COLO. DEPT. OF CO, and

THE ATTORNEY GENERAL OF THE STATE OF COLORADO
-RESPONDENT(S)

ON PETITION FOR WRIT OF CERTIORARI TO THE

UNITED STATES COURT of APPEALS for the TENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

James Frantz, CDOC #158702

Bent County Correction Facility

4D-364(d)

11460 County Road FF-75

Las Animas, CO 81054

QUESTION(S) PRESENTED

1) Did the District Court error by failing to recognizing substantive claims as cognizable under habeas corpus and failing to exercise its equitable authority to bypass the limitations of 28 USCS § 2244(d)? Then in turn not determining the merits of the constitutional violations inherent in the petitioner's substantive innocence claim?

2) Did the Court of Appeals for the Tenth Circuit error by denying the petitioner's application for a certificate of appealability by failing to recognized the District Court's error as presented above?

3) As it is not controversial that substantive actual innocence claims are cognizable under habeas corpus jurisprudence (*Hill v United States, Davis v United States, Jones v Hendrix*)[1], does the habeas court have a primary duty to resolve this issue of substantive actual innocence prior to any consideration of restrictions created in the Anti-terrorist and Effective Death Penalty Act (AEDPA)? Because a substantive claim of actual innocence is binary in nature, either true or false, does the court have an primary initial obligation to resolve the merits of the claim?

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1 *Hill*, 368 US 424, *Davis*, 417 US 333, *Jones*, 599 US 455

4) Given the holdings in *Herrera v Collins* 506 US 390, 404, 113 SCT 853 does the fundamental miscarriage of justice exception to see that federal constitutional errors do not result in the incarceration of innocent persons obligated the habeas court to review a substantive actual innocence claim on the merits?

5) Is there a statutory tension between the requirements of 28 USCS § 2243 and § 2244? Can the non-jurisdictional character of 2244(d)(1) supersede the mandate of Congress incorporated within 2243? Does the obligation of *Herrera* underpin a substantive duty within 2243? Does the "shall" command requiring summary judgments of law and justice control in the context of adjudicating a substantive claim of innocence which is itself a question of law? Does the law defining the substantive claim control over the law of § 2244?

5) If a court is presented with a substantive actual innocence claim in which, 1) the facts are not in dispute, and 2) the controlling law is to be construed as true absent credible contravention by the respondent, 3) then the liberty interests and substantive rights of the petitioner are a matter of this question of law. Is the court obligated to answer the question through a summary judgment pursuant to Rule 12 governing habeas corpus proceedings?

6) If true, a substantive claim would inherently incorporate constitutional and structural errors. In past precedent this Court has held that such errors require automatic reversal. In the post-AEDPA era does this still apply?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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TABLE OF AUTHORITIES CITED

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The Colorado Revised Statutes

Medical Practice Act (MPA) (see Appendix E)
§§ 12-240-101, et seq. C.R.S.

§ 12-240-102 Legislative declaration:

§ 12-240-117(3) Licensing

§ 12-240-121. Unprofessional conduct - definitions.

§ 12-240-125. Disciplinary action by board - rules.

§ 12-240-135. Unauthorized practice - penalties - injunctive relief.

Colorado Criminal Code

§ 18-1-104. "Offense" defined - offenses classified - common-law crimes abolished; (3) ... no conduct shall constitute an offense unless it is described as an offense in this code or in another statute of this state.

Title 24 Government - State

§ 24-1-122, Administrative Organization Act; (m), (I) Colorado Medical Board is an "agency," under Department of Regulatory Agencies.

§ 24-4-106. Judicial review. (1) In order to assure a plain, simple, and prompt judicial remedy to persons or parties adversely affected or aggrieved by agency

actions, the provisions of this section shall be applicable. (2) Final agency action under this or any other law shall be subject to judicial review as provided in this section. [District Attorneys are not "adversely affected or aggrieved" parties.]

Title 20 District Attorneys;

§ 20-1-102. Appear on behalf of state and counties. (1), (a) In all indictments, actions, and proceedings which may be pending in the District Court in any county within his District wherein the state or the people thereof or any county of his District may be a party; [but are not parties to actions by the BME].

Title 13 Courts

§ 13-25-106. Judicial notice of laws of other jurisdictions. (1) Every Court of this state shall take judicial notice of the common law and statutes of every state, territory, and other jurisdiction of the United States.

Unites States Service Code

*28 USCS § 2243*** 21, 32*

*28 USCS § 2244(d). ***21, 34*

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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 the **federal courts:**

The opinion of the United States Court of Appeals appears at Appendix D to the petition and is

reported at 2025 U.S. App. LEXIS 18112

The opinion of the United States district court appears at Appendix C to the petition and is reported at Case No. 1:24-cv-00799-LTB-RTG

For cases from the **state courts:**

The opinion of the highest state court to review the merits appears at

Appendix B to the petition and is reported at 2022 Colo. App. LEXIS 1870

Case No. 2021CA0395

The opinion of the Boulder County District court appears at Appendix A to the petition and is reported at Case No. 2010CR1900

JURISDICTION

For cases from the **federal courts:**

The opinion of the United States Court of Appeals decided the case and

Denied Motion for Certificate of Appealability, July 22, 2025.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: September 8, 2025, and a copy of the order denying rehearing appears at Appendix D

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

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Constitution, amendment 4, Probable Cause/Reasonable Seizures

U.S. Constitution, Amendment 5, Criminal actions—Provisions concerning—Due process of law and just compensation clauses.

U.S. Constitution, Amendment 6, Rights of the accused.

U.S. Constitution, Amendment 14, Section I.

STATEMENT OF THE CASE

June 24, 2011: People's Notice; the prosecution postulated their theory of culpability: The conduct of the medical intervention was to be discredited as "non-bona fide" by the testimony of C.R.E. 404(b) hearsay lay witnesses alleging un-charged "prior bad acts." (Case 2010CR1900, Court File pgs. 128-129)

August 12, 2011: Minute Order-District Court. Summary of Court's reasoning following a motions hearing. The Court adopted the prosecutions position of using hearsay testimony to determine a "valid medical intervention." (CF pgs. 213-221)

June 15, 2012 case number 2010CR1900, petitioner was convicted of count 1) § 18-6-401(1)(a), (7)(a)(iii) Child abuse knowingly or recklessly inflicting a serious bodily injury and count 2) § 18-3-405.3, Sexual assault on a child by one in a position of trust, pattern of abuse. Sentence, Count. 1: ten years, count 2: twelve years to life. These convictions were challenged in direct appeal (case number not known); convictions affirmed, certiorari denied. The convictions were also

challenged in collateral post-conviction appeals, 2021CA0059 and 2021CA0395, both denied as was certiorari review of each. (See application pg. 7)

REASONS FOR GRANTING THE WRIT

I was prosecuted and punished for conduct that is not criminal but is statutorily authorized and sanctioned devoid of any criminal liability.

The petitioner in this case is not an attorney or skilled in the practice of law and pursuant to *Haines v Kerner,* 404 U.S. 519, respectfully request that this Honorable Court, liberally construe this petition and apply any applicable law irrespective of whether the pro se litigant has mentioned it by name.

The facts are undisputed.

> As a licensed physician and co-custodian of his son KZF, Dr. Frantz performed the medical procedure of cryosurgery at his son's request to treat the cluster of warts on his left wrist. To obtain the desired results of a cure, Dr. Frantz used a compressed air cleaning device as the freezing vehicle for inducing the necessary tissue destruction. The required therapeutic tissue destruction produced the intermediate effect of a second degree burn. The health benefit of the treatment was the cure of the pathological condition of warts.

As a licensed physician my substantive right and privilege to practice medicine as I determine proper by the application of my professional qualifications and experience is inviolate absent an exclusively jurisdictional adjudication by the Colorado State Board of Medical Examiners (BME) to the contrary. No court has

the authority to deny, modify, or abridge this right nor to prosecute such authorized medical conduct as criminal, (See *Prouty v Heron,* infra).

THE CONTROLLING PRECEDENTS:

Supreme Court of the United States

Bordenkircher v. Hayes, 434 U.S. 357, 363, 98 S. Ct. 663, 54 L. Ed. 2D 604 (1978) held, "To punish a person because he has done what the law plainly allows him to do is a due process violation of the most basic sort, and for an agent of the State to pursue a course of action whose objective is to penalize a person's reliance on his legal rights is 'patently unconstitutional.'" (internal citations omitted) Such government actions constitute "exceptional circumstances."

Jones v Hendrix, 599 U.S. 455, 486, (Claims of innocence grounded in substantive law are cognizable under habeas corpus.)

Colorado Supreme Court:

Colorado State Board of Medical Examiners v. District Court of El Paso County, et al. 138 Colo. 227; 331 P.2d 502; 1958 Colo. LEXIS 195, 1958, A district court did not have jurisdiction to prohibit the State Board of Medical Examiners, a branch of the executive department, from carrying out its statutory functions, one of which was to grant or revoke licenses to practice medicine.
Disposition:
Rule Made Absolute.

Colorado Court of Appeals:

People v Prophet, 42 P.3d 61, 62, in substantive matters, a statutory enactment prevails over a conflicting supreme court rule*** Substantive law has been defined as the positive law that creates, defines, and regulates the rights and duties of the parties.

ERRORS IN JUDICIAL RULINGS:

10th Circuit Court of Appeals

Frantz v Stancil, 2025 U.S. App. LEXIS 18112 (unpublished)

Key Legal Holding; Mr. Frantz failed to establish actual innocence as a gateway to overcome the statute of limitations because his arguments went to legal innocence rather than factual innocence and were not supported by new evidence.

Federal District Court of Colorado, see argument below.

Colorado Court of Appeals Case No. 2021CA0395
On Appeal from the District Court's denial of the Crim. P. 35(c) motion.
Pg. 6. "A postconviction court shall summarily deny a Crim. P. 35(c) motion if the motion was successive. Pg. 8 "Consequently, Frantz is not entitled to relief on appeal."

Boulder Count District Court, Case No. 2010CR1900
ORDER Re: Petition For Postconviction Relief Pursuant To Crim. P. 35(C)
Pg. 3 "...the court does not need specific permission from the BME to prosecute behavior it deems to be a "non-bona fide medical intervention," and thus not a protected rendering of medical services under the MPA."

The Tenth Circuit Court of Appeals blatantly disregards the above controlling precedence of *Bordenkircher* and *Jones* neither acknowledging that substantive claims of innocence are cognizable under habeas corpus and are solely questions of law not new evidence; "what the law plainly allows."

The Federal District Court made these same erroneous legal rulings, see argument below.

The Boulder County District Court simply disregarded the MPA and the jurisdiction of the BME over all matters relating to the practice of medicine by licensed physicians. Judge Mulvahil failed to justify his reasoning with any supporting citation of authority. Although informed of the controlling statutes of

the MPA and the holding in *Colorado State Board of Medical Examiners v. District Court of El Paso County,* he was indifferent to the legal effect of these precedents.

The Colorado Court of Appeals did not acknowledge or address Judge Mulvahil's 35(c) analysis and his lack of supporting authority. The Appellate Court analysis was solely one based upon the Crim. P. Rule 35(c) procedures. The answer brief to this case Appellate Case 2021CA0395), page 29, stated "But Defendant was not prosecuted in this case for disciplining or licensing issues that would fall under the purview of the BME." The Court's judgment on procedural grounds ignored the indisputable and exonerating substantive law presented for review.

The paradigm of reviewing courts is heavily biased for the analysis of procedural errors under the assumption that the substantive issues have all been resolved at the trial level. The Boulder County District Court, the Colorado Court of Appeals, the Federal District Court, and the Tenth Circuit Court of Appeals all succumbed to this assumption in their analysis of the petitioner's substantive innocence claim. But substantive claims always supersede any procedural concerns. See *People v Prophet,* supra, and argument below. Substantive errors are structural defects in the trial process itself.

SUMMARY OF THE ARGUMENT

1) Claims of innocence grounded in substantive law are cognizable under habeas corpus. *Jones v Hendrix,* 599 U.S. 455, 486, quoting *Davis v United States*, 417 US 333, 342-347.

2) "What the law plainly allows" *Bordenkircher v Hayes*, 434 U.S. 357, 363, is recognition of a right given in substantive law. Such infringements are violations of "due process of the most basic sort," (Id.), constituting constitutional gravitas. This changes the application of the concept of "mere legal insufficiency" (*Bousley v United States*, 523 U.S. 614, 621) cited by the Habeas Court.

3) Substantive innocence are equally qualifying for the exercise of the Court's equitable authority to review such constitutional claims on their merits (Amendment 14). *Herrera v Collins*, "to see that federal constitutional errors do not result in the incarceration of innocent persons." 506 U.S., at 404, 113 S. Ct. 853, 122 L. Ed. 2D 203.

4) Substantive innocence claims are determination upon questions of law as the evidence is undisputed. (See, e.g. *Davis*, FRCP 57). This inquiry in turn must determine, a) what is the controlling law, b) is the conduct at issue consistent

with this law, c) what is the due process established for this determination, and d) which tribunal has the jurisdiction to conduct the adjudication?

5) Consequences arising from affirmation of the claim; a) the criminal trial was infected by structural errors, rendering all its actions from the onset a nullity, b) it is conclusive of ineffectiveness of trial counsel, c) all prior determinations on appellate review are moot as they are premised upon the invalid presumption of a legitimate criminal process which it was not, d) relief to be conferred should be unconditional as there does not exist a viable charging instrument to justify ongoing confinement.

6) As *Jones v Hendrix* holds that substantive claims of innocence are cognizable and the reasoning in *People v Prophet* juxtaposing procedural rules with substantive law applies in this case. This is not something that any of the courts presented with the petitioner's claim were willing to defer to, that of substantive innocence supported by the controlling statutes of the MPA. All of their rulings are strictly procedurally based, none address the substantive law.

A claim of actual innocence grounded upon substantive law, if true, exerts a stronger cause for habeas relief than a one of a procedural claim of "probable

innocence" (*Schlup v Delo,* 513 US 298). A substantive claim can establish exoneration whereas a procedural claim on its own cannot without further proceedings.

It is logically and judiciously incongruent that only procedural claims of "actual innocence" qualify for the Courts equitable discretion to "open the gateway" through the Anti-Terrorist and Effective Death Penalty Act (AEDPA) in order to adjudicate the constitutional merits raised. One cannot be less innocent because of "probable" innocence (*Schlup*) alleged by "new evidence" than one who has committed no criminal act (*Davis*). It is also incongruent with the 14th Amendment of equality under the law.

The paramount fundamental inquiry for the analysis for habeas relief is that of a "fundamental miscarriage of justice exception...to see that federal constitutional errors do not result in the incarceration of innocent persons." *Herrera v Collins*, at 404. Both *Davis* and *Bordenkircher* establish the Federal constitutional errors in the punishment of non-criminal conduct.

The fundamental question here is that of actual innocence. *Schlup v Delo*. 513 U.S. 298, provides a template to determine that question in the context of a procedural "new evidence" claim but not in the context of a substantive claim.

The instant case provides another dimension to cognizable substantive actual innocence claims, that of conduct that is not only condoned but necessarily encouraged for the health, welfare, and benefit to society, (See CRS § 12-240-102, Legislative Declaration to the Colorado Medical Practice Act (MPA.) The unique characteristics of the instant case have not been previously encountered by this Court.

The claim put forth through all of the petitioner's pleadings in the Colorado and Federal courts is that the conviction and punishment are in clear and direct violation of his constitutional substantive right to practice medicine as authorized by the Colorado Medical Practice Act (MPA); CRS § 12-240-101, et seq.

Any punishment that violates prescriptive substantive rights and substantive law through a criminal prosecution is inherently flawed by structural errors not the least of which is that of an absence of general and subject matter jurisdiction in the adjudicating criminal court.

All of the courts below, Colorado and Federal, failed to acknowledge the cognizability of this violation of substantive law and substantive rights. Nor did they acknowledge the intrinsic miscarriage of justice therein.

ASSERTIONS

1) The MPA is administrative law per Titles 12 and 24 of the Colorado revised statutes. As expressions of the legislature's police power, they are substantive law and they fall under the jurisdiction of the Executive Department of the State.

2) The Office of the District Attorney has no prosecutorial authority over the provisions of the MPA, see CRS § 20-1-102. Nor to declare any act of the practice of the authorized practice of medicine by a licensed physician as "non-bona fide" with innate criminal liability. "The power to define criminal conduct and to establish the legal components of criminal liability is vested with the general assembly." *Rowe v. People,* 856 P.2d 486 (Colo. 1993), *United States v Lanier,* 520 US 259, 267-268.

3)The District Court has no subject matter jurisdiction over the provisions of the MPA, nor to any adjudication of the allegations made by the prosecutor of a "non-bona fide medical intervention." See *Colo. St. Bd. Of Med. Examiners. v District Court,* 331 P.2d 502 (infra).

4) The courts only have appellate jurisdiction over the "final actions" of BME decisions, see CRS § 20-4-106.

5) The BME has sole and original jurisdiction to define, enforce and regulate the MPA, 331 P.2d @ 504.

6) CRS § 12-240-117(3) the authorized practice of medicine is not a penal statute. There is no criminal liability associated with unprofessional or substandard medical practice. See CRS § 18-1-104[2].

7) CRS § 12-240-117(3) creates a substantive right for licensed physicians which is constitutionally protected, see *Prouty et al. v. Heron,* 255 P2d 755 (infra).

The Implications Are:

One) the reviewing court is obligated to accept the plaintiff's claims as true unless they are disputed by the opposing party or are on their face absurd. As statements of objective law neither contravention can be true.

Two) in neither the respondent's "reply" nor the Magistrate's report and recommendation did either party address or attempt to dispute the inherent veracity of these legal assertions as expressed and delineated in the petitioner's application.

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2 Common-law crimes are abolished and no conduct shall constitute an offense unless it is described as an offense in this code or in another statute of this state,

Three) as *Bordenkircher v Hayes* (supra) so clearly articulates, that the punishment for doing what the law plainly allows is a due process violation of the most basic sort. The judicial inquiry for an assertion such as the petitioner's substantive claim need go no further than to verify the existence of the law that allows the conduct at issue. The very absence of addressing the petitioner' claims by the Colorado Courts to this fundamental constitutional right as to what the law plainly allows magnifies and perpetuates this implicit due process violation as held in *Bordenkircher* and the miscarriage of justice criteria held in *Herrera.*

ARGUMENT

Substantive Actual Innocence

*S*ubstantive as presented in this pleading is that which *Davis v United States* holds, [is when] a conviction and punishment are for an act that the law does not make criminal***[which] "inherently results in a complete miscarriage of justice"and "present[s] exceptional circumstances" (414 U.S. @ 346).

Bordenkircher v. Hayes, 434 U.S. @ 363 held, "To punish a person because he has done what the law plainly allows him to do is a due process violation

of the most basic sort," Such government actions constitute "exceptional circumstances."

A substantive right can be conferred in a prescriptive statute. The controlling features lies in the nature of the subject matter and the jurisdiction for adjudication. Prescriptive statutes do not fall in the class of criminal subject matter. In the case of a prescriptive right a substantive actual innocence claim is not procedural, it is solely a question of law.

Bordenkircher extends substantive law and rights to prescriptive statutes like the MPA by the inclusion of "what the law clearly allows." It is further defined in *United States v Goodwin*,

> "For while an individual certainly may be penalized for violating the law, he just as certainly may not be punished for exercising a protected statutory or constitutional right." [Internal citations omitted.] 457 U.S. 368, 372, 102 SCT 2485.

Rights conferred by the statutes of the MPA fall squarely within these axioms of law.

While both of these cases (*Bordenkircher* and *Goodwin*) can be distinguished by fact from the instant case, the above statements are axiom of law that apply at all time in all circumstances when asserting ones liberty interests and con-

stitutional rights conferred in substantive law. It is in this context that these cases support the one at bar.

The edict given in *Herrera v Collins*, 506 US @ 404, obligates the Court to adjudicate habeas claims with the focus on the potential of a miscarriage of justice:

"This rule, or fundamental miscarriage of justice exception, is grounded in the "equitable discretion" of habeas courts to see that federal constitutional errors do not result in the incarceration of innocent persons."

Claims of substantive actual innocence must be determined upon their merits in order to meet *Herrera's* miscarriage of justice obligation. To not do so is to court the possible failure to correct such a miscarriage and incarceration of an innocent person.

The simplicity of substantive law claims is that, if true, the establishment of a miscarriage of justice is met. Secondly, all substantive law claims necessitate a summary judgment as there is no evidentiary dispute and the resolution is a question of law. This makes 28 USCS § 2243 controlling over § 2244(d). This in itself distinguishes and excludes the analysis from the procedural issue presented as the criteria and standards of *Schlup v Delo*.

Identifying the nature of the law leads to two questions; one, what is the subject matter context and two, which tribunal has jurisdiction to make the primary determination? Prescriptive statutes are by definition of a civil nature, but in the instant case they are of administrative law, therefore a criminal trial court is devoid of subject matter jurisdiction to adjudicate these administrative issues in a criminal proceeding. This question of the prescriptive substantive right of licensed physicians is independent of the jurisdiction of a criminal trial court.

Magistrate Judge, the Honorable Richard T. Gurley, made the following conclusion in his report and recommendation to the District Court: "Plaintiff's unsupported argument that a court need not apply the 'new evidence' standard set forth in *Schlup* to the assertion of actual innocence as an equitable exception to the one-year limitation period is unavailing. The Court has located no authority providing an alternative standard" (pg. 11).

Importantly to this incomplete analysis by the magistrate is that of the holding in *Jones v Hendrix,* 599 U.S. @ 486 establishing substantive innocence claims as cognizable under habeas corpus law; clearly not recognized by the Magistrate Judge.

Additionally, the Court seemingly did not recognize or acknowledge the inclusion of *Bordenkircher v Hayes*, 434 U.S. 357, 98 S.Ct. 663, *United States v Goodwin*, 457 U.S. 368, 372, 102 SCT 2485, or *Perry v Sindermann*, 408 U.S. 593, 92 SCT 2694, 2697 in the habeas petition (pg.6) as relevant or supportive of the petitioner's assertion. Nor does it seem that the Court considered the holding in *Davis v United States*, 417 U.S. 333 as case law not relying upon the "new evidence" standard of *Schlup* in the consideration of substantive actual innocence claim, one incorporating "exceptional circumstances." That a substantive actual innocence claim is asserted in the petition is undeniable. It is the only "actual innocence" claim asserted.

This posture by the District Court would be dismissive of all substantive actual innocence claims, a position that is not defensible. As the instant case seems to be a post-AEDPA case of first impression invoking a substantive actual innocence claim, perhaps the Magistrate can be excused for his limited understanding and application to the concept of substantive innocence claims. It does not however make his conclusion judicially correct.

> *Davis v United States*, 417 US 333, 346, (1974); the appropriate inquiry was whether the claimed error of law was "a fundamental defect which inherently results in a complete miscarriage of justice," and whether "[i]t ... present[s] exceptional circumstances where the need for the

remedy afforded by the writ of habeas corpus is apparent." (*Hill v United States*, 368 US 424, 429)

The MPA is the controlling law defining the petitioner's medical conduct. It is not a penal statute, but a prescriptive one that confers a substantive right to practice medicine only circumscribed by the Colorado Medical Practice Act (MPA) and the Board of Medical Examiners' (BME's) authority to adjudicate, (*BME v McCroskey*, infra).

The controlling statutes are prescribed enabling ones which is protective against any charge of criminal conduct for any authorized medical conduct. (See Practice of Medicine Argument, below)

Only the BME has the sole and original jurisdiction to interpret and apply these statutes to the medical conduct at issue (*BME v DC,* supra, and *BME v McCroskey,* infra). The Courts of Colorado are limited to appellate jurisdiction (initiated by a party aggrieved by a final action of the BME: CRS § 24-4-106). They have no jurisdiction to make determinations of the bona fides of licensed physicians to the MPA or in anyway abridge or deny their right to practice (*Prouty v Heron*, infra).

The habeas court overlooked the established res judicata of Colorado jurisprudence that incontrovertibly establishes the MPA as the controlling law applicable to the adjudication of the conduct at issue.

The substantive law of Colorado and the state's res judicata unequivocally establishes that it is constitutionally, statutorily, and factually impossible to uphold the petitioner's criminal conviction founded upon the petitioner's authorized practice of medicine conduct. The trial court cannot resolve these "exceptional circumstances" in the criminal proceedings without running afoul of *Davis, Bordenkircher,* and *Goodwin* and his substantial constitutional rights.

Prosecuting non-criminal conduct results in a "complete miscarriage of justice," and "a fundamental defect" which fully meets all the cognizable criteria for habeas review and relief. Equitable discretion is equally applicable to substantive claims of innocence to open the "gateway" through AEDPA.

Indisputably, conduct that the law does not make criminal, let alone this prescribed law that authorized the specific conduct at issue, exceeds the requirement of "evidence of innocence so strong," *McQuiggin v Perkins,* 569 U.S. 383, 401 and is prima facia that of a "trial [not] free of nonharmless constitutional er-

ror," *Schlup,* 513 U.S.,at 316, and is unequivocally "what the law plainly allows," (*Bordenkircher*). It is the controlling law that no court can rebut or deny.

PRACTICE OF MEDICINE

The petitioner's substantive actual innocence claim has been unwavering assertion that the criminal prosecution and conviction was illegally and unconstitutionally contrived from an act that unequivocally constitutes the authorized practice of medicine by a licensed physician.

The controlling law is the Colorado Medical Practice Act (MPA), CRS § 12-240-101, et seq. These laws fall under the jurisdiction and control by the executive department of the state government in the ambient of "administrative law," not jurisdictionally empowered by the Colorado Constitution, Article VI § 9(1);[3] the district courts shall be trial courts of record with general jurisdiction, and shall have original jurisdiction in all civil, probate, and criminal cases, except as otherwise provided herein, and shall have such appellate jurisdiction as may be prescribed by law Article VI § 9 and Title 24 Colorado Revised Statutes. The only rel-

3 The district courts shall be trial courts of record with general jurisdiction, and shall have original jurisdiction in all civil, probate, and criminal cases, except as otherwise provided herein, and shall have such appellate jurisdiction as may be prescribed by law.

evant regulatory statutory provision is the authorized practice of medicine (CRS § 12-240-117 (3),

> All holders of a license to practice medicine granted by the board, or by the state board of medical examiners as constituted under any prior law of this state, shall be accorded equal rights and privileges under all laws of the state of Colorado, shall be subject to the same duties and obligations, and shall be authorized to practice medicine, as defined by this article 240 in all its branches.

This confers the substantive right to practice medicine upon qualified individuals. This statute eschews any criminal liability for any medical conduct compliant with the MPA of a physician holding an active license to practice. This substantive right has been upheld by the Colorado Supreme Court as also constitutionally protected by the due process clauses of both the Federal and State constitutions.

Prouty v Heron, 255 P2d 755, March 9, 1953:
First: Is the right to practice a profession, once legally granted, within the rights protected by the Constitutions of the United States and of the State of Colorado, which provide that no person shall be deprived of life, liberty or property without due process of law?

This question is answered in the affirmative.

The MPA specifically falls under the jurisdiction and control of the Colorado State Board of Medical Examiners (BME); CRS § 12-240-106. See *Colo. St. Bd. of Med. Exmn'r. v District Court*, (*BME v DC*) 331 P.2d 502 (1958).

> By law, therefore, the sole original jurisdiction to grant or revoke licenses to practice medicine in compliance with the regulatory provisions of such statute is vested in the State Board of Medical Examiners.***sole and exclusive original jurisdiction.

The substantive due process accorded licensed physician with respect to their practice of medicine under the MPA is given to the BME under CRS § 12-240-125, Only the BME can revoke this right and only the BME can make the necessary determinations whereby this action is required, (331 P.2d @ 504).

This enabling statute incorporates within it the presumption that the medical conduct of licensed physician is acting *a priori* in accordance with this authorization.

There is no presumption that non-compliance with § 12-240-117(3) inherently creates any criminal liability (see CRS § 18-1-104(3))[4] Compliance to the MPA is an absolute contravention to criminal liability. Criminal liability only attaches when proscriptive statutes specifically define a prohibited medical activity or procedure, (See, e.g. *United States v Lanier,* 520 US 259, 267-268, n 6, 137 L Ed 2d 432, 117 S Ct 1219 (1997)). Section 117(3) states this responsibility and consummate liabilities.

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4 (3) Common-law crimes are abolished and no conduct shall constitute an offense unless it is described as an offense in this code or in another statute of this state***

The same act cannot be both lawful and unlawful. That is the essence of the Court's holding in *United States v Jackson*, 390 US 570, cited in *Bordenkircher v Hayes*.

This statute that confers the substantive right to practice medicine necessarily establishes that all medical conduct which is not specifically prohibited in a proscriptive statute is *a priori* "authorized." By definition if such an act is defined as the practice of medicine in the MPA, even if the quality of that medical practice is substandard or unprofessional, it is never-the-less "authorized" and lawful.

To have it otherwise, that is to make substandard or unprofessional medical acts criminal would defeat the very raison d'etre of the Act. It would chill the very beneficial conduct the Act proposes to encourage and endorse for society. For a physician to be tenuous about possible criminally liable for allegations of substandard or unprofessional practice would introduce great hesitation in the provision of medical care. This is why there does not exist any general criminal statute defining "non-bona fide medical interventions" only ones that prohibit with great specificity those medical interventions that are prohibited.

Jurisdiction, analysis, and adjudication of the provisions of the MPA's prescriptive statutes and rights (i.e. the "authorized practice of medicine") differ

from that of criminal ones. By statute and constitutional grounds the specific due process procedures and tribunal jurisdiction over the MPA is distinct and not interchangeable with courts of law.

The only criminal liability established within the MPA is CRS § 12-204-135 concerned with the practice of medicine without a valid license. Non-compliance with the MPA by licensed physicians creates no per se criminal liability.

In the context of the authorized practice of medicine by a licensed physician, no adverse action can be taken without a due process hearing by the BME, (331 P.2d @ 504). The BME can only condemn "improper" or "unqualified" (i.e non-professional) medical acts. It cannot declare any medical conduct illegal. It can only refer for prosecution to the Office of the Colorado Attorney General that which is potentially prohibited, (§ 12-240-125 (d)).

APPLYING THE MPA

The law (§ 12-240-117(3)) is clear and unambiguous. Under Colorado law (CRS § 13-25-106) the courts "shall" take judicial notice of this law. They are obligated to defer to its contours and jurisdiction. This the courts did not do.

The habeas court failed to proceed with this substantive innocence claim. The habeas court failed to apprehend substantive right conferred upon the peti-

tioner by the application of the MPA to the substantial innocence claim. Additionally the habeas court failed to recognize that the only Colorado tribunal with the jurisdiction to adjudicate the medical conduct of a licensed physicians is the BME and not the trial court of Boulder County, Colorado. (*BME v DC*, supra).

Both the respondent and the magistrate raised the proper question of law pertinent to a correct analysis of the petitioner's actual innocence claim, but failed to address it; (as found on pg 12) "[H]ow to properly apply the Colorado Medical Practice Act is a legal argument not a factual showing."

Questions of law are cognizable under habeas corpus (Rule 12 and § 2243) and affirmed by the Supreme Court (*Jones v Hendrix*, supra). Such a determination of this question of law would establish the innocence of the petitioner. The MPA is the law that habeas court and the respondent choose to dismiss without justification, authority, or addressing the merits.

PRESIDENTIAL COLORADO RES JUDICATA

Federal courts under comity should defer to the jurisprudence of state courts. The habeas court failed to defer to this comity and therefore to understand the significance of the controlling statutes of the MPA and the supporting Colorado

jurisprudence, *Prouty et al. v. Heron,* supra and *Colo. State Board of Medical Examiners v District Court* (*BME v DC*), 138 Colo. 227, 331 P.2d 502 (1958):

> "It is well established that the General Assembly has power to enact laws regulating the practice of medicine, and in so doing may create within the Executive Department a board empowered to administer and enforce such laws,***"

The BME and not the courts nor the district attorneys, has the exclusive sole and original jurisdiction in the legal question of how to properly apply the MPA. Only the BME not the trial court can determine what constitutes a "valid medical intervention" (Court's characterization), The undisputed facts that the state wishes to prosecute as a criminal offense is prima facie and *a priori* the authorized practice of medicine and is not defined as an offense in any criminal statute (CRS § 18-1-104, *Rowe v People*, supra). The trial court does not have the authority to adjudicate this particular subject matter.

The trial court usurped the jurisdiction of the BME to adjudicate the issue of a "valid medical intervention." This is both a de facto and de jure direct interference with the statutory and constitutionally authority and mandate of the BME (CRS § 12-240-102) and as upheld by the Colorado Supreme Court, 331 P.2d @ 504. It violates of the separation of powers doctrine, (Art III, Colorado Constitution).

Colorado State Bd. Of Medical Examiners v McCroskey, 940 P.2d 1044, 1048,

> "Accordingly, once a person engages in the "practice of medicine" and is not otherwise exempt pursuant to § 12-36-106 [now § 12-240-107], that per son is subject to the authority of the Board and that person's conduct must conform with all of the statutory sections and administrative rules and regulations the board implements***"

The enabling statute creates the substantive and constitutional right for licensed physicians, (*Prouty*). The necessary presumption is that all licensed physicians are comporting with this statute until and unless the BME determines otherwise, "after due notice and a fair and impartial hearing" (*Prouty*). No court of law can deny or abridge this constitutional right or render any determination of the compliance of a licensed physician to the MPA. (Colorado Constitution Art. III, VI § 9, *Prouty*, *BME v DC*, supra.)

The petitioner's medical intervention is the subject matter the character of "conduct the law does not make criminal" (*Davis*); it is prescribed lawful conduct which imparts *a priori* prima facie substantive actual innocence prohibiting criminal liability and criminal prosecution, it is "what the law plainly allows."

As presented above, the Colorado Court of Appeals, even with the controlling law presented in the answer brief, failed to address this controlling substan-

tive law; answer brief, page 29, "But Defendant was not prosecuted in this case for disciplining or licensing issues that would fall under the purview of the BME."

Any medical conduct either not reviewed by the BME or not sanctioned for it, is necessarily that of the "authorized practice of medicine." The court of Appeals inexplicably failed to recognize this concession let alone address it, a failure of due process and equal protection (Amendment 14).

The right to practice medicine is conferred by substantive law. This makes it a cognizable claim under habeas corpus. The MPA is the controlling law with respect to "what the law allows." (*Bordenkircher*). Deprivation of this substantive right without the required due process is indicative of a violation of the petitioner's constitutional rights, (Id., *Prouty v Heron*, supra).

SUMMARY

The habeas court erred, first by the failure to recognize substantive innocence claims as cognizable, second by failing to recognize that this claim was one of a question of law equally cognizable and for which any "new evidence" is irrelevant to its adjudication. Third, that these overlooked substantive claims justify the application of the court's equitable authority to adjudicate the inherent constitutional claims on the merits thereby bypassing the limitations of 28 USCS §

2244(d). Fourth, the habeas court made no attempt to comply with the duty of comity and federalism by recognizing the res judicata of Colorado jurisprudence bearing directly and irrefutably upon the petitioner's substantive claim.

Any process that allows for the punishment of a statutory and constitutional protected activity (See e.g. United States v Goodwin, supra) is one that is structurally deficient and never harmless.

OTHER CONSTITUTIONAL STRUCTURAL ERRORS

A) Vindictive Prosecution

1) *United States v Goodwin*, 457 U.S. 368, 102 S.Ct. 2485, 73 LED2D 74, 76, Held, (a) In cases in which action detrimental to a defendant has been taken after the exercise of a legal right, the presumption of an improper vindictive motive has been applied only where a reasonable likelihood of vindictiveness existed. (internal citations omitted) @ 373; The presence of a punitive motivation, therefore, does not provide an adequate basis for distinguishing governmental action that is fully justified as a legitimate response to perceived criminal conduct from governmental action that is an impermissible response to noncriminal, protected activity. Motives are complex and difficult to prove. As a result, in certain cases in which action detrimental to the defendant has been taken after the exercise of a legal right, the Court has found it necessary to "presume" an improper vindictive motive.
2) *Bordenkircher v Hayes*, 434 U.S. 357, 98 S.Ct. 663, 669 (1978), Vindictive prosecution that penalizes a defendant for exercising his or her constitutional rights is a denial of due process.

B) Structural Defects-defined

3) *Neder v United States*, 527 U.S. 1827, 144 LED2D 35, 46, 119 SCT 1827, from the constitutional violations we have found to defy harmless-error review... Those cases, we have explained, contain a "defect affecting the framework within which the trial proceeds, rather than simply an error in the trial process itself." *Fulminante*, supra, at 310, 113 L Ed 2d 302, 111 S Ct 1246. Such errors "infect the entire trial process," *Brecht v Abrahamson*, 507 US 619, 630, 123 L Ed 2d 353, 113 S Ct 1710 (1993), and "necessarily render a trial fundamentally unfair," *Rose,* 478 US, at 577, 92 L Ed 2d 460, 106 S Ct 3101. Put another way, these errors deprive defendants of "basic protections" without which a criminal conviction is not reliable.

C) Absence of Jurisdiction

4) Ex *Parte Frederich*, 149 U.S. 70, "Habeas corpus should be limited to cases in which the judgment or sentence attacked is clearly void by reason of its having been rendered without jurisdiction, or by reason of the Court's having exceeded its jurisdiction.

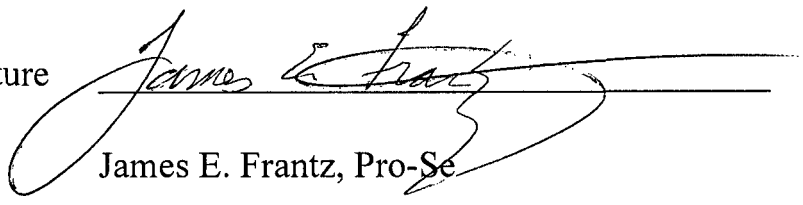
5) *People v Carbajal*, 198 P.3d 102, (Colo. 2008), A trial Court exceeds its jurisdiction not only when it acts without general jurisdiction, but also when it acts with general jurisdiction but contrary to statute.

Any conviction for conduct "that the law clearly allows" is "patently unconstitutional." (434 U.S. @ 669) Such a conviction violates Amendments 4, 6. and 14 (and possibly 8). No criminal trial proceeding contrived upon such a premise is legitimate nor can it be jurisdictional. Necessarily, it is a contradiction of the Fourth Amendment to be either "reasonable" or based in probable cause.

CONCLUSION

For the reasons previously listed, the Petition for a writ of certiorari should be granted.

Respectfully submitted this 5th day of December, 2025, and corrected petition re-submitted this 31st day of December, 2025

Signature 

James E. Frantz, Pro-Se