No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

BRADFORD METCALF,

PETITIONER,

VS.

UNITED STATES OF AMERICA,

RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI

to the Court of Appeals for the Sixth Circuit

PETITION FOR A WRIT OF CERTIORARI

Bradford Metcalf
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QUESTIONS PRESENTED

1) Is federal jurisdiction unlimited? When the government refused to assert jurisdiction, after Petitioner challenged it, did federal law dictate that the District Court lost jurisdiction over Metcalf's case?

2) Do ex parte communications destroy the integrity of a trial's proceedings? Did the trial judge's ex parte communications with the investigating agents in this case, cause a structural defect, by completely denying Petitioner due process?

3) Like Roe v. Wade, are firearms statutes a "States' Rights" issue? Is an unconstitutional statute null and void? Did the Second Amendment preclude any authority for federal firearms statutes?

LIST OF PARTIES

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

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IN THE SUPREME COURT OF THE UNITED STATES
PETITION FOR A WRIT OF CERTIORARI

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

OPINIONS BELOW

The opinion of the United States Court of Appeals appears at Appendix A to the petition and is unpublished.

The opinion of the United States District Court appears at Appendix B to the petition and is unpublished.

JURISDICTION

The date on which the United States Court of Appeals decided this case, was April 19, 2024.

No petition for rehearing was filed in this case.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1) The Second Article of Amendment to the Constitution of the United States---A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

2) The Due Process clause of the Fifth Article of Amendment to the Constitution of the United States---No person shall…be deprived of life, liberty, or property, without due process of law…

3) The Tenth Article of Amendment to the Constitution of the United States---The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

4) The Thirteenth Article of Amendment to the Constitution of the United States---Neither slavery nor involuntary servitude, except as punishment for crime whereof the party shall have been duly convicted, shall exist within the United States…

5) Federal Rules of Criminal Procedure, Rule 12(b)(2)---(b) Pretrial motions…The following must be raised prior to trial: (2) Defense and objections…(other than that it fails to show jurisdiction in the court…which objections shall be noticed by the court at any time during the pendency of the proceedings).

6) Rule 54 Application and exception---(c) Application of terms. As used in these rules the following terms have the designated meanings: “Act of Congress” includes any act of Congress locally applicable to and in force in the District of Columbia, Puerto Rico,…

7) 28 CFR §76.15 Ex parte communications---(a) *Generally*. The Judge shall not consult with any party, attorney or person (except persons in the office of the Judge) on any legal or factual issue unless

upon notice and opportunity for all parties to participate. No party or attorney representing a party shall communicate in any instance with the Judge on any matter at issue in a case, unless notice and opportunity has been afforded for the other party to participate...

STATEMENT OF THE CASE

INTRODUCTION

This was a Petition for a Writ of Error Coram Nobis brought by Petitioner Bradford Metcalf, challenging his criminal conviction for conspiracy and illegal weapons. Petitioner Metcalf has discovered evidence that was not available at the time of his trial and that demonstrates that he was wrongfully convicted. There were numerous other errors, not the least being the pervasive bias instilled into trial judge, Richard Alan Enslen, by **repeated ex parte communications** with the investigating federal agents involved in this case, denying Petitioner Metcalf **any** form of due process protections. This bias was ignored by the trial judge in numerous motions to recuse himself. It has also been continuously ignored by the Sixth Circuit Court of Appeals. It was impossible to know at the time exactly how biased the judge became from these ex parte communications. This newly presented evidence establishes that Petitioner Metcalf is/was entitled to a Writ of Error Coram Nobis, which is a writ designed to correct errors in a judgment that cannot be corrected through other means.

Petitioner Metcalf was involved with a militia group out of Battle Creek, Michigan. The man elected as commander, Ken Carter, made a number of ludicrous statements to an undercover

BATF agent about going to war with the US government, which dragged Petitioner Metcalf and his other codefendant, Randy Graham, into the conspiracy. There was no one murdered, injured, assaulted or threatened during the course of the alleged conspiracy (this was backed up by the admission of Judge Enslen at sentencing that there were **no victims** in this case). **All** statements made during the course of the "conspiracy" were protected by the First Amendment, as explained in THIS COURT'S case of Brandenburg v. Ohio, 395 U.S. 444 (1969), even the statements made by Ken Carter.

Trial ended in November of 1998 with convictions for all remaining non-dismissed charges.

The trial of Petitioner Metcalf was a **miscarriage of justice** before the trial ever began. The bias of trial judge Richard Alan Enslen permeated all proceedings, from pre-trial motions through every proceeding which followed. The extrajudicial source of this bias was, repeated **ex parte communications** with the investigating agents, before and during trial (see Question 2). Agent Jones admitted to having (at least) two (2) briefings of Judge Enslen, prior to any court hearing.

This excerpt also contains evidence of jury tampering by Judge Enslen. A grand juror mentioned that he had attended a Law Day Luncheon where Judge Enslen was the featured speaker. So, what are the chances of a person from Grand Rapids (the place of the grand jury) being at a Law Day Luncheon in Kalamazoo, and then ending up on Metcalf's grand jury---besides slim to none?

All subsequent judicial decisions were tainted by these **ex parte** communications.

REASONS FOR GRANTING THE WRIT

1) Federal jurisdiction is not unlimited. When the government refused to assert jurisdiction, after Petitioner challenged it, federal law dictated that the District Court lost jurisdiction over Metcalf's case.

> Please note: The issue of Metcalf's challenge to jurisdiction has NEVER been addressed by any court in the federal judiciary.

The one, and only, time Metcalf ever observed federal prosecutor AUSA Lloyd K. Meyer as speechless, was when Metcalf spent about twenty minutes at his sentencing, challenging jurisdiction to hear this case. When Metcalf pointedly asked Meyer exactly where he had jurisdiction, Metcalf looked over to Meyer only to see his mouth moving

like that of a fish out of water. And like that fish, there was no sound. The palms-up waving of his arms also indicated that Meyer had no answer. An hour later, Judge Enslen stated, "Mr. Meyer, I don't know what to say to you. The motions are untimely, but they are made...He's made a motion to dismiss for jurisdictional reasons...it's untimely." (See Appendix C, Transcript of Sentencing, P. 118, Lines 7-13).

The transcript of Metcalf's jurisdictional challenge (Sentencing Transcript P.5, L 11) is at Appendix D.

The problem with Judge Enslen's assistance to AUSA Meyer, beside his prosecution participation, lies with the fact that jurisdiction may be challenged at any point in the proceeding, as Metcalf had explained in his challenge, viz:

> ...If in any suit commenced in a District Court,..., it shall appear to the satisfaction of said District Court, at any time after such suit has been brought or removed thereto, that such suit does not really and substantially involve a dispute or controversy properly within the jurisdiction of said District Court, or that the parties to said suit have been improperly or collusively made or joined, either as plaintiffs or defendants, for the purpose of creating a case cognizable or removable under this chapter, the said District Court shall proceed no further therein, but shall dismiss the suit,...as justice may require...
> ...It is incumbent upon the plaintiff properly to allege the jurisdictional facts, according to the nature of the case...
>
> McNutt v. General Motors Acceptance Corp., 80 L Ed 1135, 1137 (1936)

> [3][41 The Act of 1875, in placing upon the trial court the duty of enforcing the statutory limitations as to jurisdiction by dismissing or remanding the cause at any time when the lack of jurisdiction appears, applies to both actions at law and suits in equity...Id. 1138
>
> ...The prerequisites to the exercise of jurisdiction are specifically defined and the plain import of the statute is that the District Court is vested with the authority to inquire at any time whether these conditions have been met. They are the conditions which must be met by the party who seeks the exercise of jurisdiction in his favor. He must allege in his pleading the facts essential to show jurisdiction. If he fails to make the necessary allegations, he has no standing...
>
> As he is seeking relief subject to this supervision, it follows that he must carry throughout the litigation the burden of showing that he is properly in court. The authority which the statute vests in the court to enforce the limitations of its jurisdiction precludes the idea that jurisdiction may be maintained by mere averment or that the party asserting jurisdiction may be relieved of his burden by any formal procedure. If his allegations of jurisdictional facts are challenged by his adversary in any appropriate manner, he must support them by competent proof. Id. @ 1141

Perhaps while Metcalf was reciting McNutt, above, Judge Enslen's mind was elsewhere, or maybe he was asleep, or having a mini-stroke (Judge Enslen’s cognitive decline was evidenced in his inability to keep names straight throughout the proceedings). The fact remains that Metcalf challenged jurisdiction at an appropriate point, in an appropriate manner and jurisdiction was not shown by AUSA Meyer to exist.

More recent U.S. Supreme Court case law supports the holding in McNutt:

> Objections to subject matter jurisdiction however, may be raised at any time. Thus a party, after losing at trial, may move to dismiss the case because the trial court lacked subject matter jurisdiction.
>
> Henderson v. Shinseki, 179 L Ed2d 159,166 (2011)
>
> and
>
> Objections to a tribunal's jurisdiction can be raised at any time, even by a party that once conceded the tribunal's subject -matter jurisdiction over the controversy.
>
> Sebelius v. Auburn Reg'l Med. Ctr., 184 L Ed2d 627, 6 637 (2013)

Clearly, Metcalf's unanswered challenge to jurisdiction of the district court **was** timely. The prosecutor's refusal to assert jurisdiction requires a dismissal of this case.

F.R.Cr.P. Rule 12 Pleadings and Motions Before Trial. Defenses and Objections

> (b) Pretrial Motions...The following must be raised prior to trial:
>
> (2) Defenses and objections based on defects in the indictment or information (other than that it fails to show jurisdiction in the court...which objections shall be noticed by the court at any time during the pendency of the proceedings);...

Rule 12 agrees that jurisdiction may be challenged at any time.

THIS COURT NEED NOT CONSIDER ANY FURTHER DISCUSSION ON JURISDICTION BECAUSE JURISDICTION WAS CHALLENGED AND NOT SHOWN

TO EXIST. THE GOVERNMENT DEFAULTED. AT THIS POINT, THIS CASE MUST THUS BE DISMISSED.

Although unnecessary to any continued challenge, the following is a part of Metcalf's jurisdiction challenge, made previously.

Territorial Jurisdiction

> Def: Territorial jurisdiction-1. Jurisdiction over cases arising in or involving persons residing within a defined territory. 2. Territory over which a government, one of its courts, or one of its subdivisions has jurisdiction.
>
> Black's Law Dictionary, Abridged Ninth Edition (2010)

Article 1, Section 8, Clauses 17, 18, Constitution of the United States state:

> "The Congress shall have power(17) to exercise exclusive legislation in all cases, whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings,-And(18) To make all laws which shall be necessary and proper for carrying into execution the foregoing powers..."

Territorial jurisdiction of the United States is only that which has been delegated to it by the Constitution. This argument demonstrates that, exactly.

Metcalf challenged territorial jurisdiction. The statutory citations from Westgroup's Federal Criminal Code book of 1998 demonstrate a lack of territorial jurisdiction in Metcalf's criminal case.

18 USC §5 United States defined

> The term "United States," as used in this title in a territorial sense, includes all places and waters, continental and insular, subject to the jurisdiction of the United States, except the Canal Zone.

It appears that federal jurisdiction only lies outside the jurisdiction of any of the States.

18 USC §7 Special maritime and territorial jurisdiction of the United **States defined**

> The term "special maritime and territorial jurisdiction of the United States," as used in this title, includes:
> (1)...when such a vessel is within the admiralty and maritime jurisdiction of the United States and **out of the jurisdiction of any particular State.**
> (3) Any lands reserved or acquired for the use of the United States and under the exclusive or concurrent jurisdiction thereof, or any place purchased or otherwise acquired by the United States by consent of the legislature of the State in which the same shall be, for the erection of a fort, magazine, arsenal, dockyard, or other needful building.

i.e., with the exception of federal enclaves within the States, themselves.

18 USC §3231 District Courts

> The district courts of the United States shall have original jurisdiction, **exclusive of the courts of the States,** of all offenses against the laws of the United States.
>
> Nothing in this **title shall be held to take away or impair the jurisdiction of the courts of the several States under the laws thereof.**

18 USC §3238 Offenses not **committed in any district**

> The trial of all offenses begun or committed upon the high seas, or elsewhere **out of the jurisdiction of any particular State...**

...again, there is **no** federal jurisdiction within the States themselves.

Interestingly,

18 USC §§1111-1114 Murder, Manslaughter, Attempt,

Protection of officers and employees of the United States all require §7's special maritime and territorial jurisdiction in order to be federal crimes. When there is a crime on a federal enclave within a State (but within *§7's* territorial jurisdiction), 18 USC §13 applies:

18 USC §13 Laws of States adopted for areas within federal jurisdiction

> (a) Whoever within or upon any of the places now existing hereafter reserved or acquired as provided in section 7 of this title, or on, above, or below any portion of the territorial sea of the United States **not within the jurisdiction of any State...**

We also had F.R.Cr.P. Rule 54, which stated that "State" only included federal territories and enclaves:

F.R.Cr.P. Rule 54 Application and exception

(c) Application of terms. As used in these rules the following terms have the designated meanings:
"Act of Congress" includes any act of Congress locally applicable to and in force in the District of Columbia, in Puerto Rico, in a territory or in an insular possession.
"State" includes District of Columbia, Puerto Rico, territory and insular possession.

but suddenly, when jurisdiction goes unchallenged (or in the case of Metcalf), a "State" takes on another meaning **at sentencing:**

18 USC §3559 Sentencing classification of offenses

(G) the term **"State"** means a State **of the United States, the District of Columbia, and a commonwealth, territory, or possession of the United States;...**

Two recent U.S. Supreme Court cases support the problem of a lack of territorial jurisdiction:

> The extraterritoriality cases cited by Court, ante, at 389, 161 L Ed2d at 656-6575(sic), do not support its new assumption. They restrict federal statutes from applying outside the territorial jurisdiction of the United States...
> Small v. United States, 161L Ed2d 651, 663 (2005)

and

> It is a "longstanding principle of American law 'that legislation of Congress, unless a contrary intent appears, is meant to apply only

> within the territorial jurisdiction of the United States.'"...When a statute gives no clear indication of extraterritorial application, it has none. Morrison v. National Australia Bank, 177 L Ed2d 535, 54-7(2010)

The statutes and recent case law indicate that the only federal jurisdiction lies outside of the territory of the States unless there is **a federal enclave within the boundaries of a State.**

(Former) 40 USC §255 pertained to the ceding of State jurisdiction to the federal government. Two U.S. Supreme Court cases perfectly demonstrate where there is, and is not, federal jurisdiction. Both cases refer to milk sales on federal reservations during World War II (1943). The facts in these two cases were identical, with the exception that one case clearly involved lands which had jurisdiction ceded to the federal government by the State; the other had not. This single difference produced exactly opposite results.

In Pacific Coast Dairies v. Department of Agriculture of California, 87 L Ed 761 (1943), jurisdiction had been ceded to the United States on a federal enclave.

In Penn Dairies v. Milk Control Commission of Pennsylvania, 87 L Ed 748 (1943), the enclave in question had merely been leased, with no jurisdiction ceded to the federal government.

In both cases, the States (California and Pennsylvania) had statutes which regulated the price of milk. The Court ruling in Pacific Coast Dairies stated that since jurisdiction had been ceded to the federal government, the State statutes had no

effect on the federal enclave. Because the land had only been leased to the federal government in Penn Dairies, the Pennsylvania statute allowed the State to penalize Penn Dairies for selling milk below the regulated price.

These cases demonstrate that the lack of, or presence of, federal jurisdiction is all about whether or not jurisdiction had been ceded to the federal government by the State. Without that ceded jurisdiction, the federal government has no authority within a State.

> If there has been no cession by the State of the place, although it has been constantly occupied and used under purchase, or otherwise, by the United States for a fort or arsenal, or other constitutional purpose, the state jurisdiction still remains complete and perfect.
>
> Fort Leavenworth R.R. v. Lowe, 29 L Ed 264, 269 (1885)

In 1943, the U.S. Supreme Court reaffirmed and clarified this holding. In view of former 40 USC §255, no jurisdiction existed in the United States to enforce federal criminal laws, unless and until consent to accept jurisdiction over lands acquired by the United States had been filed in behalf of the United States, as provided in the said section, and the fact that the State had authorized the government to take jurisdiction, was immaterial.

> Headnote 3 Federal criminal jurisdiction--effect of statute authorizing
>
> 3. That state statutes authorize the United States to take jurisdiction over land acquired by the United States within the state cannot confer jurisdiction upon Federal

courts to punish criminal laws of the United States an act committed thereon, where at the time of the alleged offense notice of acceptance of jurisdiction contemplated by the Act of Oct.9, 1940, 40 USC §255, had not been given.
[3] Since the government had not accepted jurisdiction in the manner required by the Act (40 USC §255), the federal court had no jurisdiction of this proceeding. In this view it is immaterial that Louisiana statutes authorized the government to take jurisdiction, since at the critical time the jurisdiction had not been taken.
Adams v. United States, 87 L Ed 1421, 1423 (1943)

Many “authorities” cite Wickard v. Filburn, 87 L Ed 122 (1942) as their authority to control all facets of human conduct under the commerce clause of the U.S. Constitution (Article 1, Section 8, Clause 3).

Wickard was the Secretary of Agriculture. Filburn was a farmer who was a participant in the activities of the Agricultural Adjustment Act. Filburn grew extra wheat to use as feed for his animals and for food. Filburn's sanction for overproduction was upheld by the U.S. Supreme Court.

It is easy to infer from Wickard that the federal government could regulate every facet of American life.

The prices of commodities which move across state lines are an intrinsic part of interstate commerce and the direct regulation of interstate commerce itself. Wickard @ 127
[7] It is well established by decisions of this Court that the power to regulate commerce includes the power to regulate the prices at which commodities in that commerce are dealt in and practices affecting such prices. Id @ 136
But even if appellee's activity be local and though it may not be regarded as commerce, it may still, whatever its

> nature be reached by Congress if it exerts a substantial economic effect on interstate commerce...Id @ 135

It would appear that nothing can escape the purview of Congress under the commerce clause. But a little digging into this case shows that **Filburn participated in a government program--from which he benefited---which the Court considered as no denial of Filburn's due process rights.**

> In its effort to control total supply, the Government gave the farmer a choice which was, of course, designed to encourage co-operation and discourage non-cooperation. The farmer who planted within his allotment was in effect guaranteed a minimum return much above what his wheat would have brought if sold on a world market basis...The farmer who produced in excess of his quota might escape penalty...by storing it with the privilege of sale without penalty in a later year to fill out his quota...he could also obtain a loan of 60 per cent of the rate for co-operators...on so much of his wheat as would be subjected to penalty if marketed. Id. @ 138

So, Filburn benefited from participation in the Act by:

1. A price high above market value for his wheat;
2. The ability to store his wheat for future sale;
3. The ability to get a loan on the stored wheat.

It is hardly a lack of due process for the Government to regulate that which it subsidizes. Id @ 138

Filburn not only had benefits, but also options.

Metcalf continues to categorically deny that the machinegun parts sets he possessed were actually machineguns. But

assuming arguendo, machinegun manufacture, except for a government entity, was banned in 1986 by the U.S. Congress, making any previously-not-registered machinegun contraband. Question: Does the possession of contraband fall under Congress' authority to regulate interstate commerce?

> The statute declares whiskey removed from permitted channels contraband subject to immediate seizure. This is within the police power of the State; and property so circumstanced cannot be regarded as a proper article of commerce.
> Hostetter v. Idlewild Liquor Corp., 12 L Ed2d 350, 356 (1964)

It seems to Metcalf that machinegun possession falls under the auspices of the Second Article of Amendment to the Constitution---an issue often raised by Metcalf, but never honestly addressed.

A final thought or two on the interstate commerce issue: Innumerable cases--since Wickard--have shown that Congress does not have authority over all economic activity. The aforementioned [Pacific Dairies/Penn Dairies] were decided a year **after** Wickard.

A more recent case, Jones v. United States, 146 L Ed2d 902 (2000), admits that all economic activity does not rise to the level of interstate commerce.

Consequently, the interstate commerce clause did not confer upon the government the jurisdiction to prosecute Metcalf.

The accusations against Metcalf in his indictment made no mention of any federal enclave upon which Metcalf allegedly

committed offenses against the United States. In fact, the only place where Metcalf was accused of anything, was at his residence at 22510 V Drive North, in Olivet, Michigan. This was a piece of property entirely within the jurisdiction of the State of Michigan. There was no accusation of Metcalf conducting any economic activity on that property. There was clearly no jurisdiction for the federal government to prosecute Metcalf for anything. Statutes in the State of Michigan prohibited Metcalf from conspiring to commit felonies, and also illegal weapons ownership. If Metcalf had actually committed those crimes, it was only within the jurisdiction of the State of Michigan to prosecute.

Interestingly, much of the statutory law which Metcalf has herein cited, has been transferred to other places (e.g., Rule 54, 40 USC §255, etc.), or rewritten, to further obfuscate the lack of federal jurisdiction within the jurisdictional boundaries of the States.

Personal Jurisdiction

Def: Personal jurisdiction-A court's power to bring a person into its adjudicative process; jurisdiction over a defendant's rights, rather than merely over property interests.
Black's Law Dictionary, Abridged Ninth Ed. (2010)

Again, assuming arguendo that even if the Western District of Michigan's U.S. District Court had had territorial jurisdiction to begin with, the court lost personal jurisdiction when it became incompetent to hear Metcalf's

case. The trial judge, in his repeated ex parte communications with the [investigating agents/prosecution witnesses], voided the competency of the court, thereby losing personal jurisdiction (see Question 2 for a deeper discussion of these ex parte communications).

Subject Matter Jurisdiction

Def: Subject matter jurisdiction-(1936) Jurisdiction over the nature of the case and the type of relief sought; the extent to which a court can rule on the conduct of persons or the status of things.
Black's Law Dictionary, Abridged Ninth Ed. (2010)

As well as not having subject matter jurisdiction because of a lack of territorial jurisdiction, the District Court lacked jurisdiction over the weapons charges because the federal legislature never had the constitutional authority to legislate firearms statutes under the constrictions of the Second Article of Amendment to the Constitution (see Metcalf's argument in Question 3).

The U.S District Court for the Western District of Michigan failed to examine jurisdiction of the subject matter.

> Courts have an independent obligation to determine whether subject matter jurisdiction exists, even when no party challenges it.
> Hertz Corp. v. Friend, 175 L Ed2d 1029, 1042 (2010) citing Arbaugh v. Y&H Group, 163 L Ed2d 1097 (2006)

And Judge Enslen did NOT make any determination as to whether or not his court had jurisdiction---even when it was challenged.

The District Court for the Western District of Michigan never had:

6. Territorial;
7. Personal or;
8. Subject matter

jurisdiction, in Metcalf's case.

2) Ex parte communications destroyed the integrity of the trial's proceedings. The trial judge's ex parte communications with the investigating agents in this case, caused a structural defect, by denying Petitioner due process.

Judge bias, caused by (the extrajudicial source of) **EX PARTE COMMUNICATIONS** with the investigating agents in this case, created a due process, structural error which can only be cured by the vacation of the charges against Metcalf.

"In fact, myself and another agent from Kalamazoo briefed Judge Enslen on two different occasions that they were targeting federal buildings and judges and we just wanted to be safe and let him know what was going on in this case."

FBI agent Robert Allen Jones confessing in grand jury proceedings that he had participated in ex parte communications with the trial judge. (See Appendix E, testimony of FBI agent Robert Allen Jones to the grand jury).

Not only was Jones' statement a lie to the grand jury, it demonstrates the potential damage done by his comments to both the grand jury and to the trial judge. This was not the only evidence of ex parte communications before and during trial.

Another example of Judge Enslen's ex parte communications came straight from his own mouth. The exchange happened at the end of trial but Judge Enslen stated the following incident happened before trial started (P. 1111, trial transcript, Lines 14-22, Appendix F):

"I listen to citizen's band radio when someone tells me to listen to it. On the first day of the pretrial I heard you call a guy—I can't even think of his name, a militia-type guy, and that guy told you , and you said, 'Uh-huh. We'll take care of the judges. We do that by our own trial.' You understand that, don't you, Mr. Metcalf

And you say, 'Yeah.'

I consider that a threat against me. Not from you, but you endorsed it."

First, here Judge Enslen's gibberish proved himself a liar and a crook. He most certainly did NOT hear any of this on a citizen's band radio. Those radios are NOT a communication medium allowed in the county jail where Metcalf was currently housed. The conversation was mostly one sided and was transmitted on a shortwave frequency. Those are two entirely different forms of broadcasting. Judge Enslen was given a tape---in all probability by the same FBI agent who admitted to having "briefed" the judge in his grand jury testimony. Second, Enslen conflated the entire statement to Metcalf, who most definitely

did NOT make that statement, nor does Metcalf remember saying, “Yeah.” Third, Enslen used the descriptor, “militia-type guy,” demonstrating his prejudice toward Metcalf, and anyone participating in a citizens’ militia. Fourth, he considered it a threat against himself which should have caused him to recuse himself. He could have done so without disturbing the trial at all---but he was bound and determined to see Metcalf in prison and did everything in his power to make that happen.

Since Judge Enslen did not come up with the actual audio tape he was speaking of, Metcalf could have no answer to the judge---and Enslen’s accusation was meaningless.

> **28 CFR §76.15 Ex parte communications**
> (a) Generally. The Judge shall not consult with any party, attorney or person (except persons in the office of the Judge) on any legal or factual issue unless upon notice and opportunity for all parties to participate. No party or attorney representing a party shall communicate in any instance with the judge on any matter at issue in a case, unless notice and opportunity has been afforded for the other party to participate...

This Court’s recent (November 13, 2023) Code of Conduct for Justices confirms that ex parte communications are extremely forbidden. But they have been for decades---even before Metcalf’s persecution.

This issue has been raised a multitude of times and NO court has even bothered to acknowledge it---neither the district courts, nor the appeals courts.

There was no way Petitioner could have known the degree to which the judge would be biased in Metcalf's case.

Some examples of bias:

1) NO evidence provided by Petitioner was allowed to be presented to the jury, including the documents supplied BY THE GOVERNMENT, which demonstrated Petitioner was not guilty of illegal weapons possession, while ALL of the prosecutor's "evidence," regardless of how immaterial, irrelevant or hearsay, was allowed into evidence.

2) After the prosecutor called for a break during Petitioner's examination of one of his witnesses, the prosecutor and a BATF agent proceeded into the foyer, where Petitioner's witness had retired. They then grilled and intimidated the witness. After Petitioner asked for a hearing, Judge Enslen responded with, "No harm done," even after the witness confessed that he was indeed very intimidated, and that his testimony may have been changed by the intimidation.

3) All of Petitioner's objections were overruled while the prosecutor's objections were all sustained.

4) Throughout trial, the judge's attitude toward Petitioner was that of derision. Metcalf was rarely allowed to finish a sentence without Judge Enslen interrupting.

3) Like Roe v. Wade, all firearms statutes are a "States' Rights" issue. All unconstitutional statutes are null and void. The Second Amendment precludes any authority for federal firearms statutes.

CRUIKSHANK

The Constitution of the United States (hereinafter, the Constitution) and six cases of the Supreme Court of the United States (hereinafter, the Supreme Court), demonstrate that Metcalf is ACTUALLY INNOCENT of the crimes of which he was charged.

Two of the more recent Second Amendment cases of the Supreme Court, District of Columbia v. Heller, 171 L. Ed2d 637 (2008) and McDonald v. City of Chicago, 177 L. Ed2d 894 (2010), both reaffirm the second article of amendment to the Constitution (hereinafter, the Second Amendment), to be an INDIVIDUAL RIGHT of the people to keep and bear arms.

During Metcalf's trial, he continually asserted that the Second Amendment is an INDIVIDUAL RIGHT. The trial judge nullified Metcalf's assertions by citing to the jury, the absurd 6th Circuit case of United States v. Warin, 530 F. 2d 103 (1976), which stated that the Second Amendment was actually a "state's right to form a militia."

NO SUCH ANIMAL

First, there is no such animal as a "state's right." A scouring of the Constitution will reveal that rights are only guaranteed to living, breathing human beings. Governmental entities (states,

courts, legislatures, the executive, et.al.) are only delegated powers and authorities. Nowhere in the Constitution, nor in any of its amendments, is there a **right** afforded to anything but a human being.

But, for brevity's sake, "states rights" will be used herein for the 10th Amendment.

Second, at no time in U.S. history was the notion of a "state's right to form a militia" ever postulated prior to the 1905 Kansas Supreme Court case of Salina v. Blaksley, 72 Kan. 230, 83 P. 619.

Metcalf was right all along and was convicted because the biased trial judge nullified Metcalf's defense with, as was later affirmed by this Court, the bad case law of the 6th Circuit. Metcalf asserts he would not have been convicted if the jury had not been mis-instructed.

The case of United States v. Miller, 83 L. Ed 1206 (1939), was effectively an ex parte proceeding because Miller was not represented. Since our system of law is adversarial based, the Miller Court should have appointed an attorney to represent Miller's (and the nation's) interests. The Miller Court consequently made bad decisions based upon incorrect information presented in the flawed ex parte proceeding (e.g. Miller's "sawed-off shotgun" was an example of military weapons, which were often used in the "trenches" during WWI). The Miller Court would have been more correct to cite United States v. Cruikshank, infra,

refusing review because there was no federal jurisdiction to hear the Miller case.

But the Miller Court did make some useful observations, especially in respect to Metcalf's case. On page 1 of Metcalf's indictment, the government stated that Metcalf was a "member of a militia..." Miller's reasoning fully exonerates Metcalf of his alleged crimes:

> ...that adequate defense of country and laws could be secured through the Militia---civilians primarily, soldiers on occasion...the signification attributed to the term Militia appears from the debates in the convention, the history and legislation of Colonies and States, and the writings of approved commentators. These show plainly enough that the Militia comprised all males physically capable of acting in concert for the common defense. "A body of citizens enrolled for military discipline." And further, that ordinarily **when called for service these men were expected to appear bearing arms supplied by themselves and of the kind in common use at the time.**
> Miller @ 1209, emphasis added

Those weapons in common use today would include 7.62mm NATO and .50 caliber fully automatic weapons, as well as destructive devices (e.g. grenade launchers) and sound suppressors (misnamed "silencers" by the Government), all weapons which Metcalf was accused of possessing, but none of which he actually had. Metcalf continues to maintain that the "weapons" he was accused of possessing were no weapons at all (per the evidence provided by the Government---but denied admission at trial by a very biased judge)---or were legal by

simple definition of the law. According to the Miller Court, Metcalf would have been fully within his rights to possess machineguns, suppressors and destructive devices. The federal statutes of which Metcalf was charged are unconstitutional**, as applied.**

The 2008 Heller case stated:

> Just as the First Amendment protects modern forms of communications... and the Fourth Amendment applies to modern forms of search...the Second Amendment extends prima facie, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding.
> Heller @ 651

Immediately following this statement, the Heller Court addressed the definitions of "to keep" and "to bear."

To keep:

> "'Keep arms' was simply a common way of referring to possessing arms, for militiamen and everyone else." (endnote 7)
> Heller @ 652, emphasis added

To bear:

> ...Justice Gins-<* pg. 653>burg wrote that "[s]urely a most familiar meaning is, as the Constitution's Second Amendment ...indicate[s]: 'wear, bear, or carry...upon the person or in the clothing or in a pocket, for the purpose of offensive or defensive action in a case of conflict with another person.'" ...We think that Justice Ginsburg captured the natural meaning of "bear arms."
> Heller @ 652, 653

Indeed, the government has already addressed the "carry-ability" of small arms by delineating the difference between

"small arms" and "destructive devices." A .50 caliber Browning machinegun is at the top of the carry-able curve, at 84 lbs---the largest of small arms. By the federal government's standard, any firearm larger than .50 caliber (excepting the 12 ga shotgun) is considered a cannon, and as such, is classified as a "destructive device" (something which currently requires "more," in a $200 transfer stamp and registration in the National Firearms Registry).

The **real crux of this matter** though, is that the cases of United States v. Cruikshank, 23 L. Ed 588 (1876) and Presser v. Illinois, 29 L. Ed 615 (1886) emphatically stated (and reiterated) that **there was (is) no jurisdiction for ANY federal firearms statutes.** The (2010) McDonald case again, reaffirms Cruikshank: That court reversed all of the convictions including those relating to the deprivation of the victims' right to bear arms. Cruikshank, 92 U.S., at 553, 559, 23 L. Ed 588 (1876). The Court wrote that the right of bearing arms for a lawful purpose "is not a right granted by the constitution" and is not "in any manner dependent upon that instrument for its existence." Id., at 553, 23 L. Ed 588.

> "The second amendment," the Court continued, "declares that it shall not be infringed; but this...means no more than that it shall not be infringed by Congress." Ibid. "Our later decisions in Presser v. Illinois, 116 U.S. 252, 265 [6 S. Ct. 580, 29 L. Ed 615] (1886), and Miller v. Texas, 153 U.S. 535, 538[14 S. Ct. 874, 38 L. Ed 812] (1894), reaffirmed that the Second Amendment applies only to the Federal Government." Heller, 554 U.S., at --, n.23, 128 S. Ct. 2783, 171 L. Ed2d 637
>
> McDonald v. Chicago, 177 L. Ed2d 894, 908 (2010)

The 1900 Supreme Court case of Maxwell v. Dow, 44 L. Ed 597 also cited Cruikshank:

> ...it was held that the Second Amendment to the Constitution, in regard to the right of the people to bear arms, is a limitation only on the power of Congress and the national government and not the states. It was therein said, however, that as all citizens capable of bearing arms constitute the reserved military force of the national government, the states could not prohibit the people from keeping and bearing arms, so as to deprive the United States of their rightful resource for maintaining the public security, and disable the people from performing their duty to the general government.
> Maxwell v. Dow, @ 603

Two of the more recent Supreme Court 2nd Amendment cases (Heller, 2008 and McDonald, 2010) cite Cruikshank. As we have seen, there can be NO constitutional federal firearms statutes. Does this portend a kind of firearms anarchy? Are ALL firearms statutes unconstitutional? Not at all! Most states already have the gun laws they want. Cruikshank "covered the bases" when the Court cited, City of New York v. Miln, 11 Pet. 139. Any firearms statutes must be passed at the municipal level---but must still pass constitutional muster.

The McDonald Court stated what Metcalf has asserted for over two decades, to no avail. It appears that it is up to this Court to tell Congress---again---that they may NOT infringe the right of the people to keep and bear arms.

It should be noted that an Amendment to any document trumps any contradictory clause in the original document. Therefore, the Second Amendment overrules any arguments against it, the "commerce," "general Welfare" or "necessary and proper" clauses preceding the Amendment, notwithstanding.

If the Constitution still has any force and effect, then **ALL** federal firearms statutes are unconstitutional. There was NO subject matter jurisdiction and Metcalf is ACTUALLY INNOCENT of the crimes-for which he was accused.

The most recent landmark Second Amendment case, New York State Rifle and Pistol Association v Bruen, 597 U.S. 1 (2022) was not needed here because Metcalf has made his point without it. The statutes used to convict Metcalf were/are unconstitutional **on their face.**

The Constitution's 10th Amendment comes into play with a proper application of Cruikshank. Article X---The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Like the holding overturning Roe v. Wade, any regulation of firearms must be done BY THE STATES.

CONCLUSION

1) When the AUSA refused to assert **jurisdiction**, both he and the District Court lost the authority to continue Metcalf's prosecution.

2) The extreme amount of bias of the trial court judge, through repeated **ex parte communications** with this case's **investigating agents**, could not have been foreseen, and caused a **structural defect** which can only be cured with a vacation of **ALL** of the charges against Metcalf.

3) The firearms issue is another right-to-life issue, and like the overturning of Roe v Wade, it is a **"states' rights"** issue. The benefit of the States being able to pass their own firearms legislation, is that a citizen may "vote with his feet." If one finds gun laws too oppressive in, say [New York/California/Illinois], he need only move to [Kentucky/Wyoming/or any other gun-friendly state]. If one feels intimidated by "too lax" gun laws, he can always move to Illinois or a coastal state. Problem solved. The Founders certainly understood the concept when they drafted and ratified the Second, Ninth and Tenth Amendments.

There is no other provision in the Constitution or its amendments which has the emphatic, "shall not be infringed" phrase. "...the right of the people to keep and bear arms SHALL NOT BE INFRINGED (period)", (not if a firearm once moved in "interstate commerce"), (not if one of "the people" had been previously convicted of a felony and since released), (not if someone thinks that the "general welfare" of the U.S. would be improved by banning firearms). SHALL. NOT. BE. INFRINGED. (period).

Metcalf's rights have been repeatedly violated in this prosecution:

> 1) The Second Amendment---"A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed;"
>
> 2) The Fifth Amendment---"...nor be deprived of life, liberty, or property, without due process of law..."
>
> 3) The Tenth Amendment---"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.
>
> 4) The Thirteenth Amendment---"Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States..."

For over 26 years, Metcalf has suffered incarceration for crimes which are not crimes at all. An unconstitutional statute is not valid law and the statutes with which Metcalf was charged were/are unconstitutional, as Metcalf has herein demonstrated. Petitioner Metcalf has had his 2nd, 5th, 10th and 13th Amendment rights violated by a biased judge who unlawfully and unethically ignored 28 CFR Section 76.15

Wherefore, Petitioner Metcalf requests this court to vacate his convictions and dismiss his indictment.

Respectfully submitted,

Dated: July___, 2024

_____

Bradford Metcalf
52725 W. 12 Mile Rd
Wixom, Michigan. 48393

IN THE

SUPREME COURT OF THE UNITED STATES

BRADFORD METCALF,

PETITIONER,

VS.

UNITED STATES OF AMERICA,

RESPONDENT.

PROOF OF SERVICE

I, Bradford Metcalf, do swear or declare that on this date, July___, 2024, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

Solicitor General of the United States
Room 5614
Department of Justice
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530-0001

I declare under penalty of perjury that the foregoing is true and correct.
Executed on July___, 2024

_____

Bradford Metcalf

NOT RECOMMENDED FOR PUBLICATION

No. 23-1749

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BRADFORD METCALF,	)	
	)	
Petitioner-Appellant,	)	
	)	ON APPEAL FROM THE UNITED
v.	)	STATES DISTRICT COURT FOR
	)	THE WESTERN DISTRICT OF
UNITED STATES OF AMERICA,	)	MICHIGAN
	)	
Respondent-Appellee.	)	

ORDER

Before: BOGGS, MOORE, and MURPHY, Circuit Judges.

Bradford Metcalf, a pro se federal supervised releasee, appeals the district court's order denying his petition for a writ of error coram nobis. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a). As discussed below, we construe Metcalf's appeal as a request for authorization to file a second or successive 28 U.S.C. § 2555 motion to vacate and we deny authorization.

In 1999, a jury found Metcalf guilty of conspiracy to commit various offenses against the United States, four counts of unlawful possession of a machine gun, unlawful possession of a firearm silencer, unlawful possession of a destructive device, and using and carrying a firearm during and in relation to a crime of violence. He was sentenced to a total term of 480 months in prison, to be followed by three years of supervised release. We affirmed. *United States v. Metcalf*, No. 99-1667, 2000 WL 924171, at *5 (6th Cir. June 28, 2000).

Metcalf then sought post-conviction relief through numerous filings in several judicial districts, including a motion to vacate his sentence under § 2255, which the district court denied. One filing was successful, which led to a vacatur of Metcalf's conviction for using and carrying a

firearm during and in relation to a crime of violence, resulting in a reduced total prison sentence of 360 months and the same three-year term of supervised release.

Metcalf began his three-year period of supervision on December 12, 2022. His supervised-release term is scheduled to expire on December 11, 2025.

In March 2023, Metcalf filed a petition for a writ of error coram nobis, arguing that "evidence that was not available at the time of his trial . . . demonstrates that he was wrongfully convicted," the judge who presided over his trial was biased against him, and the district court lacked "territorial" and "subject matter" jurisdiction. The district court denied the petition, concluding that none of Metcalf's arguments had merit.

"*Coram nobis* is an extraordinary writ that may be used to 'vacate a federal sentence or conviction when a § 2255 motion is unavailable—generally, when the petitioner has served his sentence completely and thus is no longer in custody.'" *Pilla v. United States*, 668 F.3d 368, 372 (6th Cir. 2012) (quoting *Blanton v. United States*, 94 F.3d 227, 231 (6th Cir. 1996)); *see Chaidez v. United States*, 568 U.S. 342, 345 n.1 (2013). A petitioner serving his term of supervised release "is still 'in custody' [and thus] not eligible for *coram nobis* relief." *United States v. Sferrazza*, 645 F. App'x 399, 404-05 (6th Cir. 2016) (quoting *United States v. Johnson*, 237 F.3d 751, 755 (6th Cir. 2001)); *see also United States v. Petlechkov*, 72 F.4th 699, 707 (6th Cir. 2023); *United States v. Sandles*, 469 F.3d 508, 517-18 (6th Cir. 2006). Because Metcalf is still serving his term of supervised release, he remains "in custody," and the district court should not have entertained the merits of his coram nobis petition. *See Sferrazza*, 645 F. App'x at 404-05.

Metcalf's petition is more appropriately characterized as seeking relief under § 2255. "If, in substance, a claim falls within the scope of § 2255(a), it should be treated as such regardless of any inventive captioning by" the petitioner. *Pilla*, 668 F.3d at 372 (cleaned up). Because Metcalf is still in custody, his claims necessarily fall within the scope of § 2255(a). *See id.* Indeed, his claims regarding his purported innocence, the trial judge's alleged bias, and the district court's lack of jurisdiction all attack the legality of his conviction, and therefore he must pursue those claims subject to the gatekeeping requirements of that statute. *See* 28 U.S.C. § 2255(h). We

therefore construe his appeal as a motion for authorization to file a second or successive § 2255 motion. *See In re Bowling*, 422 F.3d 434, 440 (6th Cir. 2005). That means he must make a prima facie showing that his claims rely on either "a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable" or "newly discovered evidence" that "would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense." 28 U.S.C. § 2255(h).

Metcalf has not met these requirements. He does not rely on a new rule of constitutional law. And although he purports to have new evidence showing that he was wrongfully convicted, he never identifies the evidence, much less shows that it establishes his innocence.

Accordingly, we **DENY** Metcalf's construed request for authorization to file a second or successive § 2255 motion.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens

Kelly L. Stephens, Clerk

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA, Plaintiff,	)	
	)	No. 1:98-cr-54
-v-	)	
	)	Honorable Paul L. Maloney
BRADFORD METCALF, Defendant.	)	

ORDER DENYING PETITION FOR WRIT OF ERROR CORAM NOBIS

Pending before the Court is Petitioner Bradford Metcalf's petition for a writ of error coram nobis (ECF No. 548). In 1999, a jury found Metcalf guilty of conspiracy to commit offenses against the United States (Count 1); four counts of unlawful possession of a machine gun (Counts 3, 4, 5, 8); unlawful possession of a firearm silencer (Count 6); unlawful possession of a destructive device (Count 7); and using and carrying a firearm during and in relation to a crime of violence, predicated on the Count 1 conspiracy offense (Count 12) (*see* ECF Nos. 55, 176). Before and during the course of trial, in which Metcalf represented himself, he filed numerous motions seeking dismissal of the indictment and challenging Judge Ensien's bias, who was the presiding judge (*see* ECF No. 553 at PageID.1261-62). Following the jury's guilty verdict, Judge Enslen sentenced Metcalf to a total term of imprisonment of 480 months as follows: Consecutive terms of 120 months on Counts 3, 4, and 5; 120 months on each of Counts 6, 7 and 8, to be served concurrently with each other and to Counts 1, 3, 4 and 5; a term of 60 months on Count 1 to be served concurrently with Counts 3, 4, 5, 6, 7 and 8; and 120 months on Count 12 to be served consecutively to all

other counts (ECF No. 231). Raising numerous issues on appeal, Metcalf challenged his conviction and sentence. *See United States v. Metcalf*, 221 F.3d 1136 (6th Cir. 2000) (table). The Sixth Circuit rejected all of Metcalf's arguments and affirmed his conviction and sentence. *See generally id.*

After filing various unsuccessful post-conviction motions for the next several years, in 2022, this Court granted Metcalf's successive motion to vacate his sentence pursuant to 28 U.S.C. § 2255, consistent with the Government's recommendation that Metcalf was entitled to relief.[1] Specifically, the Court vacated Metcalf's conviction as to Count 12, using and carrying a firearm during and in relation to a crime of violence, based on a new rule of constitutional law:

> [Metcalf] challenges his conviction of Count 12, using and carrying a firearm during and in relation to a crime of violence in violation of 18 U.S.C. § 924(c)(1). Petitioner relies on *United States v. Davis*, 139 S. Ct. 2319 (2019), a new rule of constitutional law that struck down § 924(c)'s residual clause definition of "crime of violence" as unconstitutionally vague. Petitioner's § 924(c) conviction in Count 12 was predicated on a "crime of violence" defined pursuant to the now-unconstitutional residual clause of § 924(c). Thus, the government does not oppose Petitioner's motion, and it agrees that Petitioner's Count 12 conviction should be vacated (*see* ECF No. 542) (citing *In re Franklin*, 950 F.3d 909, 911 (6th Cir. 2020) (per curiam) (holding that Davis announced a new rule of constitutional law that is retroactively applicable to cases on collateral review)).

(ECF No. 545 at PageID.1176). Upon vacating his conviction of Count 12, the Court's amended judgment reflected a sentence of 360 months' imprisonment (*see Amended Judgment*, ECF No. 546). Metcalf was released from custody on December 12, 2022. *See*

[1] The Sixth Circuit permitted Metcalf to file his successive § 2255 petition. *See In re Metcalf*, No. 22-1334 (6th Cir. June 21, 2022).

Find an Inmate, Fed. Bureau of Prisons, https://www.bop.gov/inmateloc/ (last visited July 18, 2023).

In March 2023, Metcalf filed the instant petition for a writ of error coram nobis (ECF No. 548). Metcalf argues that he "has evidence that was not available at the time of his trial and that demonstrates that he was wrongfully convicted," that Judge Enslen was biased against him and engaged in improper conduct, and that the Court "lacked jurisdiction" over him (*Id.* at PageID.1212). The Government opposes the motion (*see* ECF No. 553). Metcalf filed a reply to the motion, despite failing to receive leave from the Court (ECF No. 554). Nevertheless, the Court has reviewed and considered Metcalf's reply in adjudicating his motion. For the following reasons, Metcalf has failed to demonstrate that he is entitled to the extraordinary relief of a writ of error coram nobis.

"*Coram nobis* is an extraordinary writ that may be used to 'vacate a federal sentence or conviction when a [28 U.S.C.] § 2255 motion is unavailable—generally, when the petitioner has served his sentence completely and thus is no longer in custody.'" *Pilla v. United States*, 668 F.3d 368, 372 (6th Cir. 2012) (quoting *Blanton v. United States*, 94 F.3d 227, 231 (6th Cir. 1996)). The writ is so extraordinary that it is used only in "circumstances *compelling* such action to achieve justice." *United States v. Morgan*, 346 U.S. 502, 511, (1954) (emphasis added). "Coram nobis may be used only to review errors 'of the most fundamental character, that is, such as rendered the proceeding itself invalid.'" *Blanton*, 94 F.3d at 231 (quoting *Flippins v. United States*, 747 F.2d 1089, 1091 (6th Cir. 1984) (per curiam)). The Supreme Court has opined that "it is difficult to conceive of a situation in a

federal criminal case today where [a writ of *coram nobis*] would be necessary or appropriate." *Carlisle v. United States*, 517 U.S. 416, 429 (1996).

A petition for a writ of error coram nobis is not an opportunity for petitioners to raise issues that have already been adjudicated. *See, e.g.*, *Klein v. United States*, 880 F.2d 250, 254 n.1 (10th Cir. 1989) ("We note also that *coram nobis* relief is not available to litigate issues already litigated; it is reserved for claims which have yet to receive their first disposition."); *United States v. Addonizio*, 442 U.S. 178, 186 (1979) ("[T]he writ of *coram nobis* [i]s available to bring before the court that pronounced the judgment errors in matters of fact which had not been put in issue or passed upon and were material to the validity and regularity of the legal proceeding itself.") (internal quotation marks omitted); *United States v. Esogbue*, 357 F.3d 532, 535 (5th Cir. 2004) (noting that petitioners may not relitigate arguments already raised in § 2255 petitions).

In sum, courts may grant coram nobis petitions only when the petitioner demonstrates three elements: (1) an error of fact, (2) unknown at the time of trial, (3) of a fundamentally unjust character which probably would have altered the outcome of the challenged proceeding if it had been known. *Blanton*, 94 F.3d at 231 (citing *Flippins*, 747 F.2d at 1091). Moreover, the petitioner must also demonstrate the "existence of an ongoing civil disability" as well as "sound reasons for failure to seek appropriate earlier relief." *United States v. Castano*, 906 F.3d 458, 464 (6th Cir. 2018)

Beginning with Metcalf's claims that Judge Enslen was "biased," Metcalf has raised such claims several times, including on direct appeal (*see* ECF Nos. 196, 309, 315, 335); *see also Metcalf*, 221 F.3d at *3. The gist of Metcalf's argument is that Judge Enslen engaged in

"repeated ex parte communications with the investigating agents" and with a grand juror who allegedly was a guest at a Law Day luncheon where Judge Enslen was the speaker (*see* ECF No. 548 at PageID.1213). Every time Metcalf has raised claims regarding judicial bias, impartiality, or misconduct, such claims have been rejected, and the present petition is not an opportunity to relitigate such arguments. *See Klein*, 880 F.2d at 254 n.1. Moreover, Metcalf concedes that the alleged "ex parte communications" were known at the time of trial, making coram nobis inappropriate (*see* ECF No. 554 at PageID.1282). There is no evidence in the record substantiating Metcalf's claims of judicial bias, and therefore, this argument is rejected.

Second, regarding Metcalf's jurisdictional arguments, he claims that the Court lacked "territorial" and "subject matter" jurisdiction because he was not on federal property during the relevant conduct supporting his convictions and because his conduct was protected by the Second Amendment (*see* ECF No. 548 at PageID.1217). Again, Metcalf concedes that he has already raised these jurisdictional arguments, and therefore, the Court can once again reject them (*see id.*) ("After challenging this lack of jurisdiction at sentencing and explaining the above citations to jurisdictional challenges at any time, Metcalf was told by Judge Enslen that he thought Metcalf's challenge was 'untimely.'") (internal brackets omitted). Nevertheless, Metcalf's legal assertions are inaccurate. First, Metcalf needed not be on federal property in order to be convicted of his crimes. *See United States v. McCaskill*, 48 F. App'x 961, 961 (6th Cir. 2002) ("McCaskill first argues that the district court lacked subject matter jurisdiction over his offenses because they did not occur on federal territory . . .This argument is patently meritless. Federal courts have exclusive jurisdiction over offenses against

the laws of the United States under 18 U.S.C. § 3231, and the permission of the states is not a prerequisite to exercise that jurisdiction. . . . Moreover, Article I, Section 8 of the United States Constitution grants Congress the power to create, define, and punish crimes irrespective of where they are committed.") (internal citations omitted); *see also United States v. Jerram*, 7 F.3d 236, *1-2 (6th Cir. 1993) (table). Second, the Second Amendment does not protect the possession of unusually dangerous weapons, destructive devices, or silencers.[2] *See, e.g., District of Columbia v. Heller*, 554 U.S. 570, 627 (2008) (recognizing an "important limitation on the right to keep and carry arms": "the historical tradition of prohibiting the carrying of 'dangerous and unusual weapons'"); *N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2157 (2022) (Alito, J., concurring) (noting that the *Bruen* opinion did not "disturb[]" the "restrictions that may be imposed on the possession or carrying of guns" outlined in *Heller*); *United States v. Sredl*, No. 3:22-CR-71 RLM-MGG, 2023 WL 3597715, at *3 (N.D. Ind. May 23, 2023) ("[T]here is no Second Amendment right to possess dangerous and unusual weapons in the form of 'destructive devices' or 'any other weapon.'"); *United States v. McCartney*, 357 F. App'x 73, 76 (9th Cir. 2009) ("Silencers, grenades, and directional mines are not 'typically possessed by law-abiding citizens for lawful purposes,' . . . and therefore are not protected by the Second Amendment.").

Finally, Metcalf raises various arguments as to why the evidence was insufficient to convict him of his crimes, including that his speech was protected by the First Amendment and that the weapons he possessed were not illegal machineguns (*see* ECF No. 548 at

[2] Further, Metcalf has already raised this Second Amendment-related argument, and the Sixth Circuit has rejected it. *See In re Bradford Metcalf*, No. 09-1838 (6th Cir. May 18, 2010) (ECF No. 472 at PageID.428).

PageID.1214-16). Contrary to Metcalf's assertions, on direct appeal, the Sixth Circuit held that "[t]he summary of the evidence presented at trial . . . is ample support for a jury verdict that Metcalf deliberately associated himself with illegal weapons and instrumentalities of mass destruction and persons seemingly bent on using these tools for their infamous ends." *Metcalf*, 221 F.3d at *4. Further, Metcalf has offered no new information that there was an *error of fact*, unknown at the time of trial, that likely would have cause the jury to find him not guilty. Indeed, claims of new evidence—including Metcalf's claim that the machineguns he possessed have been "demilitarize[d]" (*see* ECF No. 554 at PageID.1279)—rather than claims of factual errors, are not cognizable when seeking a writ of error coram nobis. *See Moody*, 874 F.2d at 1577 ("[N]ewly discovered evidence affords no entree to [the] writ [of error coram nobis].").[3]

Metcalf has failed to meet his burden in showing that "extraordinary circumstances compel issuance of the writ [of coram nobis] to achieve justice." *Castano*, 906 F.3d at 464.

Accordingly,

IT IS HEREBY ORDERED that Metcalf's petition for a writ of error coram nobis (ECF No. 548) is **DENIED**.

IT IS SO ORDERED.

Date: August 3, 2023

/s/ Paul L. Maloney
Paul L. Maloney
United States District Judge

[3] Further, the Government points out that many of Metcalf's arguments are only relevant to some of his convictions, but not all of them (*see* ECF No. 553 at PageID.1276) ("The machineguns, silencer and destructive device were the subject of Counts 3 through 8 and a portion of Count 1. But the rest of count one stands on its own, as does Count 2. Metcalf does not explain what civil disability he could avoid through *coram nobis* relief where several convictions would remain even if this court agreed with his meritless Second Amendment claims."). Thus, as the Government contends, coram nobis is inappropriate in this case.

and lack of jurisdiction. With God Almighty as the ultimate judge, let him choose between us.

Thank you.

THE COURT: Are you finished?

MR. METCALF: That's it.

THE COURT: Okay.

Mr. Meyer, I don't know what to say to you. The motions are untimely, but they are made. If you want to respond to them, you have a right to respond to them. He's made a motion to dismiss for jurisdictional reasons, for lack of facts, for bias, prejudice, all sorts of things. It would be unfair of me not to let you respond if you want to. On the other hand, it's untimely.

MR. MEYER: That's what I would say, they are untimely and I would ask you to deny Mr. Metcalf's motions.

THE COURT: Do you want to say anything else?

MR. MEYER: Just one sentence, your Honor. Imagine that -- imagine the terror of Brad Metcalf at large in southwest Michigan with ready access to guns and explosives. That is what this case and this sentencing is about.

THE COURT: Assuming there is a motion before me -- and I don't know what to do about it. I took the written objections that we addressed earlier as being a

than that. I believe the Constitution is still in effect. The people of this country have become ignorant of their rights. Let's see if the judges have.

I have had my sentencing set three times; twice it has been rescheduled without any explanation whatsoever. It is now over six months since my conviction and I have been prejudiced in my ability to appeal. But in that six months I have had the opportunity to research an unanswered comment I made at trial. Jurisdiction of this Court is hereby challenged.

This defendant asserts this Court lacks jurisdiction to adjudicate the facts of this case. The lack of any one of the following jurisdictional claims negates the authority of this Court: Legislative, general, federal, subject matter, exclusive territorial and jurisdiction in personam. The so-called caselaw supports this. Jurisdiction, once challenged cannot be assumed and must be decided. Maine v. Thiboutot, 100 Supreme Court 250. "No sanction can be imposed absent proof of jurisdiction." Standard v. Olesen, 74 Supreme Court 768. "Federal jurisdiction cannot be assumed but must be clearly shown." Brooks v. Yawkey, 200 F.2d 633. "The law requires proof of jurisdiction to appear on the record of the administrative agency and all administrative proceedings." Hagans v. Lavine, 415 U.S. 533. "If any

you about the threats that were made to him by other members of the group that we picked up on the radio. I'm sure there are people out there that don't like him but I have no threats that I know of that have been made towards his life.

GRAND JUROR: Well, you haven't heard of any other things with the militia since their three boys here --

BY MR. MEYER:

Q Has Mr. Carter told you whether anyone's contacted him, threatened him, done anything?

A He said that he's had very little contact. We've been actively hoping that somebody would so he could tell us what's going on but people have been avoiding him.

GRAND JUROR: Didn't he bring this all from the group up north? Didn't he start this down here?

BY MR. MEYER:

Q Did Mr. Carter start the North America Militia?

A Yes. He was court-martialed from the old Michigan Militia and started this group on his own.

GRAND JUROR: I attended a Law Day luncheon in Kalamazoo where Judge Enslen was the speaker and he was in the company of a marshal because supposedly he had been threatened. Is that --

THE WITNESS: I'm not sure if it was a threat directly to Judge Enslen but they have made threats towards judges in particular. In fact, myself and another agent from

Kalamazoo briefed Judge Enslen on two different occasions that they were targeting federal buildings and judges and we just wanted to be safe and let him know what was going on with this case.

GRAND JUROR: I'm one of the new jurors so I wasn't here the first time but this Carter, did he have a -- did you break him down or did he -- and he decided to do the right thing after you offered the plea or before?

THE WITNESS: Mr. Carter seemed anxious to cooperate from the time we arrested him. I've arrested many people and I've listened to their cooperation and we didn't need to talk the him for a long amount of time or, obviously, we can't promise him anything but he seemed from the beginning that he wanted to work with us. He's married and he has several children and he seemed all along that he wanted to help us out.

BY MR. MEYER:

Q Are we allowed to, once a person's arrested and has a defense attorney, are we allowed to talk with the defendant without the attorney being present?

A Absolutely not. When I arrest someone they are under arrest or a situation that could be perceived as arrest and I'm interrogating them, I must give them an advice of rights and the FBI goes above and beyond what most local organizations do. Local police officers are allowed to just read it off of a card--I'm sure you've seen it on TV.

He explained what he was doing. He was detained for a period of time. I don't know how long.

From what I could see from the a distance, the marshal had every reason to be concerned for the safety of the jury. That's the mission I gave him. "Keep this jury safe." He did. He didn't arrest Mr. Ploehn. He may have intimidated him. That was not his reason for doing it.

He did write me a letter, and I understand in his letter his explanation, that it was pure coincidence, and probably it was. Things happen in a trial like this that people take seriously, and they take it seriously because of stuff we've heard on the tapes. I mean it was a serious response, "Somebody's following the jury."

I listen to citizen's band radio when someone tells me to listen to it. On the first day of the pretrial I heard you call a guy -- I can't even think of his name, militia-type guy, and that guy told you, and you said, "Uh-huh. We'll take care of the judges. We do that by our own trial. You understand that, don't you, Mr. Metcalf?"

And you say, "Yeah."

I consider that a threat against me. Not from you, but you endorsed it.

The only point is, should I be concerned about security? Yes, sir, I should be concerned about security. And that's why Mr. -- whatever his name was -- was stopped.

Appendix F