Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

UNITED STATES *v.* DISTRICT OF COLUMBIA, ET AL.

PETITION FOR MANDAMUS TO THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

No. 05–43. Argued June 16, 2018—Decided July 17, 2018

After the District of Columbia adopted a criminal code, it began prosecuting violators in Federal District Court. The United States objected because they believed that without an authorizing Act of Congress, Municipalities could not prosecute violations of their laws in federal court; they also believed that, even if the Municipalities had or did not need such authorization from Congress, federal supremacy meant that they could not prosecute offenses which are also criminal acts at the federal level (*e.g.* murder). The United States felt that allowing such prosecutions would, among other things, prevent federal prosecution of the same acts due to the Double Jeopardy Clause. After failing to obtain relief in the District Court, the United States petitioned this Court for a writ of mandamus directing the District Court to dismiss seven Municipal prosecutions and enjoin the District Court from hearing any new ones. This Court noted probable jurisdiction.

Held:

1. Municipalities may prosecute violations of their criminal laws in Federal District Court without Congressional authorization. Pp. 4–7.

(a) The Tenth Amendment reserves to Municipalities a "police power . . . 'to safeguard the vital interests of [its] people.'" *Energy Reserves Group, Inc.* v. *Kansas Power & Light Co.*, 459 U. S. 400, 410 (1983) (citation omitted). The power to make and enforce criminal laws, including by prosecution, is certainly among those powers. P. 4.

(b) Article III disallows Municipalities from creating courts of their own and the Fourteenth Amendment's Due Process Clause requires Municipalities to provide "due process of law in a federal district Court." The Article III Venue Clause states that the "trial of all crimes . . . shall be held in a federal district court." These facts together create

Syllabus

a strong presumption that Municipalities may prosecute in federal court. Pp. 4–5.

(c) None of the Federal Government's remaining arguments are strong enough to rebut the presumption. Pp. 5–7.

2. Federal supremacy does not preempt Municipalities from prosecuting criminal violations of their laws which also constitute federal criminal violations. Pp. 7–12.

(a) There is no express preemption claim here. Pp. 8–9.

(b) There is a "presumption against the pre-emption of [Municipal] police power regulations." *Cipollone* v. *Liggett Group, Inc.*, 505 U. S. 504, 518 (1992). Also, since the U. S. Code is adopted nearly wholesale from real life, where no such preemption has been inferred or expected from the general criminal laws of the Federal Government, field preemption is implausible. Unique federal interests in our platform are not sufficiently dominant to justify inferring non-express field preemption either. Pp. 9–10.

(c) The Municipal laws clearly do not conflict with federal law. Also, because we reject the Federal Government's asserted Double Jeopardy Clause problem, they do no impose a substantial obstacle to the execution of federal law either. Pp. 10–11.

3. Municipal prosecution of an offense under the laws of a Municipality would not, by consequence of the Double Jeopardy Clause, prevent federal prosecution of the same act under Federal law. Pp. 11–12.

HOLMES, C. J., delivered the opinion of the Court, in which MARSHALL, GORSUCH, O'CONNOR, and KAGAN, JJ., joined. BORK, J., filled a dissenting opinion. ROBERTS, WHITE, and STEWART, JJ., took no part in the consideration or decision of this case.

SUPREME COURT OF THE UNITED STATES

No. 05–43

UNITED STATES, PETITIONER *v.* DISTRICT OF COLUMBIA, ET AL.

ON PETITION FOR WRIT OF MANDAMUS TO THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

[July 17, 2018]

CHIEF JUSTICE HOLMES delivered the opinion of the Court.

In our constitutional structure, there are Federal institutions and Municipal institutions. While the latter are operated by several different Municipalities, there is only one Federal Government and so it is "incontestible that the Constitution establishe[s] a system of 'dual sovereignty'" in which one type of sovereign has nationwide jurisdiction, and the other local. *Printz* v. *United States*, 521 U. S. 898, 918–919 (1997) (quoting *Gregory* v. *Ashcroft*, 501 U. S. 452, 457 (1991)).[1] This case concerns the relationship between (and the powers of) two sovereigns: the United States and the District of Columbia.[2] The present controversy began when the District adopted a criminal code. Upon doing so, the District sought to begin prosecuting violators of its laws.

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[1] See also *Tafflin* v. *Levitt*, 493 U. S. 455, 458 (1990) (reciting the "axiom that, under our federal system, the [Municipalities] possess sovereignty concurrent with that of the Federal Government, subject only to limitations imposed by the Supremacy [Doctrine].").

[2] The District of Columbia, though originally the seat of government, was admitted as a Municipality with the adoption of the D. C. City Charter, Pub. L. 63–3 (2018).

Under the Constitution, however, "court[s cannot] be established by a Municipality." Art. III, §2, cl. 1. So the District brought its prosecutions in federal court instead.

The Federal Government soon objected. Allowing Municipal prosecutions in federal court, the Federal Government reasoned, would deprive the Federal Government of its ability to prosecute those same offenses. *Ex parte United States*, 5 U. S. ___, ___ (2018) (slip op., at 2). The Federal Government thus contends that, without an authorizing Act of Congress, Municipalities may not prosecute Municipal offenses in federal court and that even with such authorization, they may not prosecute offenses which are also covered by federal criminal law based on federal supremacy. We noted probable jurisdiction. 5 U. S. ___ (2018).

I

Before reaching the arguments in this case, it is necessary to go over some key procedural points. This case specifically involves seven Municipal prosecutions[3] and an unlimited number of potential future ones. All have been stayed pending resolution of this dispute. *Ex parte United States*, *supra*, at ___ (slip op., at 9). This case is before us as a petition for a writ of mandamus, and in granting the aforementioned stay, we already conclusively resolved two components of the three-part mandamus analysis in favor of the Federal Government. The only part remaining has to do with the merits. Therefore, in order to issue the writ, we must here find that the Federal Government's "right to issuance of the writ is clear and indisputable." *Cheney* v.

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[3] *District of Columbia* v. *Okmangeez*, 3:18–4742 (USDC 2018); *District of Columbia* v. *Vonotige*, 3:18–1241 (USDC 2018); *District of Columbia* v. *MinderMastI*, 3:18–7939 (USDC 2018); *District of Columbia* v. *CommanderFikri*, 3:18–6111 (USDC 2018); *District of Columbia* v. *SemperBeyond*, 3:18–1713 (USDC 2018); *District of Columbia* v. *SinisterFriggus*, 3:18–2352 (USDC 2018); *District of Columbia* v. *DarrenJMatthews*, 3:18–1324 (USDC 2018).

United States Dist. Court for D. C., 542 U. S. 367, 380–381 (2004). That is a high bar to meet, and that is so because it is meant to be. We have time and time again reaffirmed the extraordinary nature of mandamus relief. The remedy of mandamus "is a drastic one, to be invoked only in extraordinary situations." *Kerr* v. *United States Dist. Court for Northern Dist. of Cal.*, 426 U. S. 394, 402 (1976). See also *Will* v. *United States*, 389 U. S. 90, 95 (1967); *Bankers Life & Cas. Co.* v. *Holland*, 346 U. S. 379, 382–385 (1953); *Ex parte Fahey*, 332 U. S. 258, 259 (1947).

As we have oft-stated, the writ "has traditionally been used in the federal courts only 'to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so.'" *Will*, *supra*, at 95 (quoting *Roche* v. *Evaporated Milk Assn.*, 319 U. S. 21, 26 (1943)). If we conclude today federal courts lack jurisdiction to hear Municipal prosecutions without an authorizing Act of Congress, it would not immediately follow that the writ must issue. On the other hand, if we find that federal courts *do* possess such jurisdiction, we must deny the petition in that respect. Likewise, the same goes for the second issue before us: whether Municipalities may criminalize conduct also criminalized at the federal level. If we answer that question "yes," we will deny the petition in that respect; if we answer it "no," it is still not a given that we will issue the writ of mandamus.[4] In seeking this extraordinary relief, the Federal Government appropriately faces a steep climb.

Which is not to say that its technical victory is impossible, or even unlikely: only that it is immensely difficult based on the present stature of the case. Even so, if we do resolve the

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[4] As we have repeatedly emphasized, "it is important to remember that issuance of the writ is in large part a matter of discretion with the court to which the petition is addressed." *Kerr*, *supra*, at 403 (citing *Schlagenhauf* v. *Holder*, 379 U. S. 104, 112 n. 8 (1964)).

immediate questions of law in the Federal Government's favor, our reasoning will be binding on the lower courts by virtue of *stare decisis*.[5] This holds true even if the petition ends up being denied on procedural grounds. With this procedural information in hand, we turn now to the case at hand.

II

A

At the heart of this case is the Tenth Amendment, which reserves to the Municipalities many powers. Among those, we have long understood, is a "police power . . . 'to safeguard the vital interests of [the Municipality's] people.'" *Energy Reserves Group, Inc.* v. *Kansas Power & Light Co.*, 459 U. S. 400, 410 (1983) (quoting *Home Bldg. & Loan Assn.* v. *Blaisdell*, 290 U. S. 398, 434 (1934)). This power is broad. It also certainly includes the power to make criminal laws and enforce them, including by prosecution. Prosecution, after all, is meant to serve "the interests of all people in our society."[6]

The question, therefore, is not whether Municipalities may prosecute, it is whether they may do so in federal court. We approach this question mindful of the fact that Municipalities are constitutionally barred from creating courts of their own, *supra*, at 2, so denying them access to federal court would also mean preventing them from prosecuting altogether.[7] This fact, combined with the separate fact that Article III's Venue Clause "provides that the 'trial of all

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[5] Kastellec, The Judicial Hierarchy 4 (2016) ("Vertical *stare decisis* exists when courts are bound by the decisions of courts above them. In the U. S. federal system, there exists strict vertical *stare decisis*.").

[6] Vinegrad, The Role of the Prosecutor, 28 Hofstra L. Rev. 895, 903 (2000) (hereinafter Vinegrad).

[7] We further recognize that the Fourteenth Amendment prohibits a Municipality from "depriv[ing a] person of life, liberty, or property, without due process of law *in a federal district Court*." §1 (emphasis added). Many Municipal powers hinge on access to federal court.

crimes . . . shall be held in a federal district court,'" *Ex parte United States*, *supra*, at ___ (slip op., at 6) (citation omitted; alteration in original), creates a strong presumption that Municipalities may prosecute violations of their laws in federal court. To overcome this presumption, there must be a clear contrary command in the Constitution's text. We now address that issue.

B

The Federal Government and supporting briefs make three arguments in hopes of overcoming the strong presumption in favor of allowing Municipal prosecutions in federal court. None, however, are availing.

1

The first issue raised is the Constitution's statement that in all cases "in which a Municipality shall be Party, the supreme Court shall have original Jurisdiction." Art. III, § 2, cl. 2. This, it is suggested, means Municipalities cannot prosecute in federal court without Congressional approval[8] because otherwise they would be violating the Venue Clause. Cf. *United States* v. *TPR*, 5 U. S. ___, ___ (2018) (HOLMES, C. J., concurring) (slip op., at 3). This argument must fail for two reasons.

First, it is wrong on its face. When a Municipality acts as prosecutor, it is not "vindicat[ing] its own . . . interests" as it would in a civil proceeding. Tr. of Oral Arg. 9. The disposition of a criminal case will have no pecuniary effect on the Municipality, nor will it implicate the Municipality's sovereignty. Rather, when a Municipality acts as prosecutor, it is representing a "'client,' so to speak."[9] That client

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[8] Congress has the power to create exceptions to our "original Jurisdiction" and can direct that certain of those cases first be heard in a district court.

[9] Vinegrad 897.

"is the public."[10] Properly speaking, the Municipality is no more "Party" to a criminal prosecution than a lawyer is "Party" to a case he conducts.

A second supporting reason also renders this argument untenable. In sum, it would leave the Municipalities "legally dependent on national oversight" from Congress, contrary to the clearly defined structure of the American government.[11] As noted earlier, "[m]any Municipal powers hinge on access to federal court," *supra*, at 4, n. 7. It would be shocking in a federalist system for the basic powers of one sovereign to depend on the permission of another.

2

The next argument is that it would require creation of a federal cause of action by Congress for Municipalities to prosecute violations of their laws in federal court. In granting the stay application in this case, we acknowledged there is in fact a "strong school of thought and substantial legal authority" behind that proposition. *Ex parte United States*, *supra*, at ___ (slip op., at 5). At the same time, however, we recognized that this argument only works "assuming the Constitution does not itself authorize" prosecutions by Municipalities in federal court. *Ibid.* For that reason, it cannot refute the strong presumption already recognized; it could only work in its absence.

Moreover, the second reason refuting the previous argument applies here as well. If the Municipalities were wholly dependent on the Federal Government for access to federal court, they would be prevented from exercising much of their powers and there would be none of the federalism clearly contemplated in the Constitution.

3

The last plausible argument is that federal courts, even

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[10] *Ibid.* (emphasis deleted).

[11] Rakove, Original Meanings 170 (1997).

with Congressional authorization, could not hear cases under Municipal law because it would exceed the jurisdiction given under Article III. As an initial matter, it is indubitably clear that "Article III . . . set[s] forth the *exclusive* catalog of permissible federal-court jurisdiction." *Pennsylvania* v. *Union Gas Co.*, 491 U. S. 1, 39 (1989) (Scalia, J., dissenting). It does not follow from there, however, that federal courts are categorically barred from hearing Municipal cases.

It has long been accepted that federal court jurisdiction can be extended to claims under Municipal law. See, *e.g.*, 28 U. S. C. §1455; 28 U. S. C. §1442; *Seminole Tribe of Fla.* v. *Florida*, 517 U. S. 44, 76, n. 18 (1996). In real life, also, federal courts often sit in diversity and exercise jurisdiction to resolve State law claims. *Klaxon* v. *Stentor Elec. Mfg. Co.*, 313 U. S. 487, 496 (1941). We think it irrelevant for our present purposes that this is done with Congressional authorization. *Supra*, at 6. What it shows is that Article III jurisdiction (which Congress has no power to *expand*) can tolerate claims under law other than federal law, such as Municipal law. This argument therefore does not rebut the strong presumption already recognized.[12]

C

For the foregoing reasons, we hold that Municipalities may prosecute violations of their laws in federal court.

III

We next address the Federal Government's preemption claims. To recap, the Federal Government essentially argues that Municipalities may not prosecute offenses also criminalized at federal law due to federal supremacy. And to be sure, within our "constitutional design, [federalism]

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[12] Our analysis should not be taken to mean what it does not say. We simply recognize that Article III jurisdictional limits do not refute the presumption heretofore recognized.

adopts the principle that both the National and [Municipal] Governments have elements of sovereignty the other is bound to respect." *Arizona* v. *United States*, 567 U. S. 387, 398 (2012) (citing *Gregory* v. *Ashcroft*, 501 U. S. 452, 457 (1991); *U. S. Term Limits, Inc.* v. *Thornton*, 514 U. S. 779, 838 (1995) (Kennedy, J., concurring)). Moreover, the very "existence of two sovereigns [impels] the possibility that laws can be in conflict or at cross-purposes." *Id.*, at 398–399. In the case of such conflicts, naturally, federal law must prevail. After all, "[i]n our system of government, the federal authority, by virtue of its sovereignty, holds supremacy over the [Municipal] governments constituted within its jurisdiction." *United States* v. *City of Las Vegas*, 2 U. S. 4 (2016).

It is therefore clear that "Congress has the power to preempt [Municipal] law." *Arizona*, *supra*, at 399 (citing *Crosby* v. *National Foreign Trade Council*, 530 U. S. 363, 372 (2000); *Gibbons* v. *Ogden*, 9 Wheat. 1, 210–211 (1824)). Congress, of course, may do so by enacting a statute containing an express preemption provision. See, *e.g.*, *Chamber of Commerce of United States of America* v. *Whiting*, 563 U. S. 582, 592 (2011). Or it may do so in at least two other ways.

The first area of non-express preemption precludes Municipalities from "regulating conduct in a field that Congress, acting within its proper authority, has determined must be regulated by its exclusive governance." *Arizona*, *supra* (citing *Gade* v. *National Solid Wastes Management Assn.*, 505 U. S. 88, 115 (1992) (Souter, J., dissenting)). This intent can be inferred in multiple ways; first, from a regulatory framework "so pervasive . . . that Congress left no room for the [Municipalities] to supplement it"; and second, where there is a "federal interest . . . so dominant that the federal system will be assumed to preclude enforcement of [Municipal] laws on the same subject." *Rice* v. *Santa Fe Elevator Corp.*, 331 U. S. 218, 230 (1947). We call this area of

non-express preemption "field preemption."

Second, Municipal laws are non-expressly preempted when they conflict with federal law. *Crosby*, *supra*, at 372. The primary form of this preemption targets Municipal laws where "compliance with both federal and [Municipal] regulations is a physical impossibility." *Florida Lime & Avocado Growers, Inc.* v. *Paul*, 373 U. S. 132, 142–143 (1963). This type of preemption, however, also goes after Municipal laws which "stan[d] as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Hines* v. *Davidowitz*, 312 U. S. 52, 67 (1941). This second type of non-express preemption is called "conflict preemption."

In its case today, the Federal Government alleges both field preemption and conflict preemption. See Tr. of Oral Arg. 4, 5. We address each in turn.

A

When considering any preemption claim, we start with recognition of the longstanding "presumption against the pre-emption of [Municipal] police power regulations." *Cipollone* v. *Liggett Group, Inc.*, 505 U. S. 504, 518 (1992). This presumption is at its strongest when dealing with a claim of non-express preemption. See *Florida Lime*, *supra*, at 146–152; *Rice*, *supra*, at 236–237. We proceed with this understanding in mind.

First, it is hard to characterize the Federal Criminal Code (Title 18 of the U. S. Code) as "leav[ing] no room" for supplemental regulation. Also, given the fact that it was written in real life, where most criminal prosecution is done at the State level and where crime definitions—based on

Model criminal laws—substantially "overla[p]" between jurisdictions,[13] and adopted largely wholesale by our Congress,[14] without significant revision, it is difficult to infer Congressional intent to reserve exclusive government in this area. The aforementioned presumption against nonexpress preemption of Municipal police power statutes accentuates these facts.

Naturally, the Federal Government's field preemption case focuses more on the second method of establishing such Congressional intent: by asserting strong federal interests in prosecution of federally criminalized offenses. The Federal Government argues that permitting Municipal prosecution of analogous crimes would inhibit the Federal Government's ability to prosecute. Perhaps, for instance, crime victims would direct their complaints to City Attorneys instead of United States Attorneys; maybe federal time would be wasted investigating crimes which Municipalities decide to prosecute; possibly, City Attorneys would choose to prosecute offenses that United States Attorneys decide to exercise discretion not to. There are, however, checks on all of these things; and to the extent they remain problems, they are problems necessitated by federalism. One of the most crucial checks is the fact that a substantial number of crime complaints received by the Federal Government are complaints of misconduct by federal officers. Municipalities cannot prosecute those offenses.

Furthermore, field preemption requires more than strong federal interests: they must be *dominant* over Municipal ones. That is not the case here so the field preemption claim must fail.

B

The next claim is one of conflict preemption. As the

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[13] Wright, Sorting as a Sentencing Choice 1 (2006).

[14] The only major exception to wholesale adoption is Congress' direction that this Court invalidate inapplicable provisions of the U. S. Code.

Federal Government noted, for a conflict preemption claim to be successful, there must actually be a "conflict" between Federal and Municipal law. Tr. of Oral Arg. 5. When two laws require the same thing, as is the case with these "overlapping" criminal statutes, there can be no facial conflict. It is certainly possible (in fact, quite easy) to comply with both Federal and Municipal law in those circumstances.

The only question remaining is if the "overlapping" Municipal laws stand as an obstacle to the execution of their Federal counterparts. The Federal Government says that they do because of the Double Jeopardy Clause. Resolving this argument requires unpacking it first.

The Double Jeopardy Clause provides that "[n]o person shall be subject for the same offense twice." Amdt. V. However, we have long recognized that when a "defendant in a single act violates the 'peace and dignity' of two sovereigns by breaking the laws of each, he has committed two distinct 'offences.'" *Heath* v. *Alabama*, 474 U. S. 82, 88 (1985) (quoting *United States* v. *Lanza*, 260 U. S. 377, 382 (1922)). The Federal Government contends that this principle is inapplicable if both sovereigns prosecute in the same court. That, however, ignores the basis for the dual sovereignty doctrine. The dual sovereignty doctrine, in real life, does not focus on the fact that different *courts* are holding a person subject for an offense: it focuses on the fact that the person has committed "two distinct offences." *Ibid.* (internal quotation marks omitted; citation omitted). The doctrine applies in the same way here. Nothing in the Double Jeopardy Clause would prevent the Federal Government from prosecuting an offense analogous to one also being (or which already has been) prosecuted by a Municipality.[15] The conflict preemption argument thus fails.

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[15] If John Doe committed murder in Washington, D. C., in violation of the laws of the United States and the Municipality, both sovereigns would be able to separately prosecute him in federal court. It is an open

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Because we hold that the "Municipalities may prosecute violations of their laws in federal court," *supra*, at 7, that federal supremacy does not prevent Municipalities from prosecuting violations of their laws which are also criminalized at the Federal level (such as murder), and that the Double Jeopardy Clause does not prohibit the Federal Government from simultaneously or later also prosecuting those offenses under its laws, we deny the petition for a writ of mandamus.

It is so ordered.

JUSTICE ROBERTS, JUSTICE WHITE, and JUSTICE STEWART took no part in the consideration or decision of this case.

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question whether Congress can require consolidation of those proceedings.

SUPREME COURT OF THE UNITED STATES

No. 05–43

UNITED STATES, PETITIONER *v.* DISTRICT OF COLUMBIA, ET AL.

ON PETITION FOR WRIT OF MANDAMUS TO THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

[July 17, 2018]

JUSTICE BORK, dissenting.

This case requires us to decide whether federal courts have jurisdiction, absent Congressional authorization, to hear Municipal prosecutions. A person reading the majority opinion would not know that. They would think that "[a]t the heart of this case is the Tenth Amendment." *Ante*, at 4. They would think the question was simply whether "Municipalities may prosecute violations of their laws in federal court." *Ante*, at 5. That reframing of the question is meant to turn our attention to the Municipality when our focus should really be on the federal court. This is a jurisdictional case and it should begin and end with Article III. I respectfully dissent.

I

I begin with some history.

Cities, although their affairs now seem ubiquitous, were not always seen in such a positive light. As recently as February, 2017, this Court itself wrote: "The entire concept of states and local municipalities has plagued our country for years." *United States* v. *Las Vegas*, 2 U. S. 24 (2018). That was no exaggeration, either. City and State governments in this country have a long history of conflict with the Federal Government. The court system was no exception to this conflict. One need look no further than our archives to

see what I am talking about.

In *HelloAlex50* v. *Nevada*, No. 04P10 (2015), this Court was asked to enforce an order issued by the Federal District Court[1] concerning the Nevada Judicial System. The State of Nevada had created its own courts and its allies had begun transferring federal cases to Nevada court for trial. This was in clear defiance of the then-Constitution's rule that "the trial of all crimes . . . shall be held in the Federal Court." In response to the federal court order, Nevada officials declared they would continue to defy the Constitution until the Supreme Court told them to stop. A senior State official said the "State isn't gonna listen to you."[2] State judges accused the federal court judges of being "afraid of losing power" and said "you have no power over us as other judges."[3] Some even went so far as to say that they were not bound by the "U. S. Constitution"[4] and to threaten a "judicial war."[5]

The Nevada Secretary of State "proclaimed" the federal court order "void until the Supreme Court has voted"[6] and the Nevada Attorney General called it "tyranny[,] . . . corrupt and illegitimate."[7] She also claimed the power "as the Attorney General of Nevada . . . [to] voi[d the order]." Many other District Court orders issued.

The conflict reached its apex when Justice Sutherland of the Supreme Court issued an in-chambers order[8] to enforce the District Court injunctions. After State officials failed to comply, Justice Sutherland ordered the imprisonment of the State judicial leaders, Attorney General, Secretary of

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[1] See https://archive.froast.io/forum/168372977
[2] *Id.*, at 168374071.
[3] *Id.*, at 168374110.
[4] *Id.*, at 168374126.
[5] *Id.*, at 168374290.
[6] *Id.*, at 168374441.
[7] *Id.*, at 168375269.
[8] See https://archive.froast.io/forum/169768709

State, and Governor,[9] triggering the immediate collapse of the Nevada State. Congress then repealed the statutes allowing for State governments.

Two years later, when a new Constitution was ratified, reflecting a change in attitude, the American people authorized new political subdivisions: Municipalities. But, remembering well the conflict which caused the State system to fail, they chose specifically to prohibit Municipalities from creating courts of their own. Art. III, §2, cl. 1. This was purely a limitation on Municipal power and was not understood to form part of any "presumption[s]" benefitting them. *Ante*, at 5. Further, the requirement that all criminal trials take place in federal court was simply retained from the previous Constitution, under which there were no Municipalities. The provision was, as such, not understood to create a "presumption" that Article III jurisdiction included Municipal prosecutions, either.

II

Having dispelled the presumption which the majority builds its argument on, I believe it is now appropriate to consult the correct starting point: the Cases and Controversies Clause. Article III, §2 announces that the

> "judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States will be a party;—to Controversies between two or more Municipalities;—between a Municipality and Citizens of another Municipality;—between Citizens of different Municipalities;—between Citizens of the same Municipality claiming Lands

[9] See *id.*, at 169861464.

> under Grants of different Municipalities, and between a Municipality, or the Citizens thereof, and foreign States, Citizens or Subjects."

Nothing in there includes cases between a Municipality and its own Citizens because those cases are not *federal* questions. *Congress* could make it a federal question, a "Cas[e] . . . arising under . . . the Laws of the United States," by enacting authorizing legislation. It has not done so, however.

III

The Court's holding leaves many questions unanswered. Which rules apply to Municipal prosecutions: the Federal Rules of Criminal Procedure, or can the Municipalities pass their own rules which federal courts sitting for Municipal purposes have to apply? Are federal Sentencing Guidelines applicable? Does the Court Proceedings Act apply? These are all questions which we will have to answer now without any clear guidance from the text because the text did not contemplate this Court's holding. If we had left it to Congress to pass authorizing legislation, as the text *does* contemplate, we wouldn't have to worry about that.

I would grant the writ of mandamus; because the Court chooses not to, I respectfully dissent.