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Mesa County District Court Honorable Matthew D. Barrett, Judge Case No. 22CR371	
THE PEOPLE OF THE STATE OF COLORADO, Plaintiff-Appellee, v. TINA PETERS, Defendant-Appellant.	▲ **COURT USE ONLY** ▲ Case No. 24CA1951
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PEOPLE'S RESPONSE TO APPELLANT'S MOTION TO DETERMINE WHETHER THIS COURT HAS JURISDICTION

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 27 and C.A.R. 32, including all formatting requirements set forth in these rules. In addition, the undersigned certifies that the brief complies with the word limit set by this Court.

It contains 3,649 words.

/s/ Nora Passamaneck

Introduction

Tina Peters asks this Court to rule that it lacks jurisdiction over her appeal. Specifically, she asserts: (1) the President of the United States has issued a pardon that vacates the judgment of conviction from which she appeals; and (2) the Supremacy Clause grants her immunity from the underlying criminal convictions.

Both arguments are unavailing.

Pardon

A court generally lacks subject-matter jurisdiction over moot issues. *Fullerton v. Cnty. Ct.*, 124 P.3d 866, 867 (Colo. App. 2005). The People do not dispute that vacating Ms. Peters' judgment of conviction would render this appeal moot. However, the case is not moot because the President's pardon does not apply to state offenses.

The U.S. Constitution grants the President the "Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment." U.S. Const. art. II, § 2, cl. 1. Based on its plain terms, the President's pardon power is expressly limited to granting pardons for "Offences against the United States." In other words, "if

there is no offence against the laws of the United States, there can be no pardon by the President." *Young v. United States*, 97 U.S. 39, 66 (1877).

Ms. Peters is mistaken that courts have not previously addressed the scope of the President's pardon power as applied to state offenses. Mot. at 16. Courts have uniformly concluded that the phrase "Offences against the United States" refers to federal law offenses such that "the President does not have the power acting under the United States Constitution to pardon defendants convicted in state courts." *Hain v. Mullin*, 436 F.3d 1168, 1172 (10th Cir. 2006); *see also Ex parte Grossman*, 267 U.S. 87, 113 (1925) (reviewing historical evidence and concluding that the phrase "Offences against the United States" was inserted during the Convention "presumably to make clear that the pardon of the President was to operate upon offenses against the United States as distinguished from offenses against the states"); *Bjerkan v. United States*, 529 F.2d 125, 129 (7th Cir. 1975) (noting the President's pardon power is "limited" in that "[h]e can only pardon those offenses which are 'against the United States'"); *People v. Hill*, 839 P.2d 984,

1013 (Cal. 1992) ("The President does not have the power to pardon those persons, like defendant, who are convicted only of crimes under state law."), *overruled on other grounds by Price v. Super. Ct.*, 25 P.3d 618 (Cal. 2001).

Courts have therefore specifically rejected the notion that the President's pardon power extends to pardoning individuals for state convictions. *See, e.g.*, *Thomas v. United States*, No. CR 1:21-00196-TFM-N, 2024 WL 6466047, at *10 (S.D. Ala. Dec. 16, 2024), *report and recommendation adopted*, No. 1:21-CR-196-TFM-N, 2025 WL 2202407 (S.D. Ala. Aug. 1, 2025) (rejecting argument that a Presidential pardon would extend to state marijuana possession conviction); *Andrews v. United States*, No. 1:12CR117-1, 2023 WL 3733766, at *7 (M.D.N.C. Feb. 28, 2023), *report and recommendation adopted*, No. 1:12CR117-1, 2023 WL 3727577 (M.D.N.C. May 30, 2023) ("President Biden did not (and could not) pardon Petitioner for his state law/state court marijuana conviction."); *Hatcher v. United States*, No. 5:20-cr-00032-KDB-SCR-1, 2024 WL 666497, at *2 (W.D.N.C. Feb. 16, 2024) (same); *Faulkner v. Warden WCI*, No. CV ELH-19-363, 2019 WL 585709, at *2 (D. Md. Feb.

13, 2019) (same); *Williams v. Ige*, No. CV 17 00222 SOM RLP, 2017 WL 2642967, at *4 (D. Haw. June 19, 2017) (explaining that "a President has no authority to issue a commutation or pardon with respect to a state conviction or sentence, and that no governor may issue a commutation or pardon with respect to a federal conviction or sentence"); *In re Bocchiaro*, 49 F. Supp. 37, 38 (W.D.N.Y. 1943) ("Since the crime charged here was not an offense against the United States, the President has not the power of pardon (Sec. 2, Art. II of the U.S. Constitution), and it lies only in the state.").

The Framers limited the President's pardon power to federal offenses as a component of the "system of 'dual sovereignty'" that they established in the Constitution. *See Printz v. United States*, 521 U.S. 898, 918–19 (1997) (discussing dual sovereignty created by Constitution). "Although the States surrendered many of their powers to the new Federal Government, they retained 'a residuary and inviolable sovereignty.'" *Id.* (quoting The Federalist No. 39, at 245 (James Madison)); *see also* The Federalist No. 9 (Alexander Hamilton) (explaining that States retained "certain exclusive and very important

portions of sovereign power"). "[A]mong the basic sovereign prerogatives States retain" is authority over the administration of their criminal justice systems. *Oregon v. Ice*, 555 U.S. 160, 168 (2009). The States' powers to enact and enforce criminal laws trace their roots to the "authority originally belonging to them before admission to the Union and preserved to them by the Tenth Amendment." *Puerto Rico v. Sanchez Valle*, 579 U.S. 59, 69 (2016) (quoting *Heath v. Alabama*, 474 U.S. 82, 89 (1985)). "State prosecutions therefore have their most ancient roots in an 'inherent sovereignty' unconnected to, and indeed pre-existing, the U.S. Congress." *Id.*

That "Offences against the United States" include only federal offenses reflects the States' inherent sovereignty over their criminal justice systems. This is consistent with the basic understanding of "offences." The Supreme Court has explained: "As originally understood, then, an 'offence' is defined by a law, and each law is defined by a sovereign. So where there are two sovereigns, there are two laws, and two 'offences.'" *Gamble v. United States*, 587 U.S. 678, 683 (2019) (holding no double jeopardy for convictions under state and federal law

for the same conduct because they are two different offenses); *see also Sanchez Valle*, 579 U.S. at 62 ("[U]nder what is known as the dual-sovereignty doctrine, a single act gives rise to distinct offenses—and thus may subject a person to successive prosecutions—if it violates the laws of separate sovereigns.").

At the time of the founding, "offences against the United States" or "crimes against the United States" was the common terminology used to refer to federal offenses. This is confirmed by evidence from the First Congress. *See CFPB v. Cmty. Fin. Servs. Ass'n of Am.*, 601 U.S. 416, 432 (2024) (citing *Bowsher v. Synar*, 478 U.S. 714, 723 (1986)) (explaining the First Congress "provides contemporaneous and weighty evidence of the Constitution's meaning"). Through the Judiciary Act of 1789, the First Congress provided that for any "offence against the United States" the offender was to "be arrested, and imprisoned or bailed, as the case may be, for trial before such court of the United States as by this act has cognizance of the offence." Judiciary Act of 1789, ch. 20, § 33, 1 Stat. 73, 91. When the First Congress passed the first law creating federal crimes, it was called "An Act for the

Punishment of certain Crimes against the United States." Crimes Act of 1790, ch. 9, 1 Stat. 112. The Judiciary Act of 1789 further created the role of the U.S. Attorney to prosecute "crimes and offences, cognizable under the authority of the United States." Judiciary Act of 1789, ch. 20, § 35, 1 Stat. at 92. To this day, U.S. Attorneys continue to have "a statutory duty to 'prosecute for all offenses against the United States.'" *United States v. Baker*, 155 F.4th 1188, 1205 (10th Cir. 2025) (citing 28 U.S.C. § 547(1)). The authority of the U.S. Attorney has always been limited to federal offenses, because "offenses against the United States" have always been limited to federal offenses. This additional evidence reinforces that an "offence against the United States" means a federal offense, not a state offense tried in state courts.

Further, throughout the entire history of this country, no President has purported to pardon state offenses nor claimed the power to do so. *Moore v. Harper*, 600 U.S. 1, 32 (2023) ("We have long looked to 'settled and established practice' to interpret the Constitution."); *Schick v. Reed*, 419 U.S. 256, 266 (1974) (relying on "unbroken practice since 1790" in understanding the pardon power). Ms. Peters is mistaken that

President Washington issued a pardon for state offenses following the Whiskey Rebellion. *See* Mot. at 20–23. To the contrary, his pardon was expressly limited to "indictable offenses against the United States." Mot. Ex. 3.

Ms. Peters ignores that the Governor of Pennsylvania issued a separate pardon for "indictable offences against the said State of Pennsylvania." *See* Pennsylvania Archives, Fourth Series, Volume IV, *Papers of the Governors*, 1785–1817, pp.335–37.[1] These separate pardons were issued after both President Washington and Pennsylvania Governor Thomas Mifflin authorized commissioners to offer pardons for their respective governments, so long as the insurgents agreed to follow the law going forward and thereby restore peace. *See* Mot. Ex. 3 at 1; App. 1 at 335. Once the terms of those agreements were met, President Washington issued a pardon applicable to federal offenses stemming from the Whiskey Rebellion, Mot. Ex. 3 at 2, while Governor Mifflin issued a pardon applicable to Pennsylvania offenses. App. 1 at 336–37.

[1] Attached for convenience as Appendix 1, and cited herein as "App. 1."

Governor Mifflin issued his pardon for, among other reasons, "the sake of preserving uniformity in the proceedings of the General and State Governments." App. 1 at 336. In other words, without Governor Mifflin issuing a pardon, the insurgents could be subject to prosecution under Pennsylvania law regardless of President Washington's pardon. Thus, instead of supporting her argument, the Whiskey Rebellion reflects that while the President has authority to pardon any federal offenses, it is the Governor who has authority to pardon state offenses.

In sum, the case law, the text of the pardon clause, the structure of the Constitution, and the historical evidence all point to the unmistakable conclusion that the President's pardon power is limited to federal offenses.

Ms. Peters' remaining arguments also fail.

First, her argument that "Offences against the United States" broadly extends to state convictions that could be brought under federal law, Mot. at 5–13, ignores a core concept of dual sovereignty—that "offences" are defined by each sovereign's laws, resulting in the possibility of two separate offenses. *See Gamble*, 587 U.S. at 683. In

other words, "the same act might, as to its character and tendencies, and the consequences it involved, constitute an offence against both the State and Federal governments, and might draw to its commission the penalties denounced by either, as appropriate to its character in reference to each." *United States v. Marigold*, 50 U.S. 560, 569 (1850); *see also United States v. Lanza*, 260 U.S. 377, 382 (1922) ("[A]n act denounced as a crime by both national and state sovereignties is an offense against the peace and dignity of both and may be punished by each."). Whether Ms. Peters *could* have been prosecuted under federal law does not change the fact of her Colorado state conviction and that the Presidential pardon power does not extend to it.

Nor does *Ex Parte Grossman*, 267 U.S. 87 (1925), suggest otherwise. At issue in that case was whether the President's pardon power applied to federal court criminal contempt. *Id.* at 107. The Supreme Court concluded that "[n]othing in the ordinary meaning of the words 'offenses against the United States' excludes criminal contempts. That which violates the dignity and authority of federal courts such as an intentional effort to defeat their decrees justifying

punishment violates a law of the United States, and so must be an offense against the United States." *Id.* at 115 (citation omitted). While the Supreme Court recognized that "offenses against the United States" did not require violating a statute, it still required violation of a law of the United States, not a law of the States. Indeed, as noted earlier, *Grossman* understood "Offences of the United States" to specifically limit the pardon power to federal offenses, not state offenses. *Id.* at 113 ("We have given the history of the clause to show that the words 'for offenses against the United States' were inserted by a Committee on Style, presumably to make clear that the pardon of the President was to operate upon offenses against the United States as distinguished from offenses against the states.").

Second, Ms. Peters' grammatical argument that "Offences of the United States" refers to the individual states is misplaced. Mot. at 13–17. In nearly every circumstance, the Constitution references "the United States" in connection with the federal government and utilizes different language (e.g., "the several States," "each State," "that State," "any State") when referring to the States. Indeed, the clause containing

the President's pardon power itself employs this distinction, referencing the military forces "of the United States" as opposed to the "Militia of the several States, when called into the actual Service of the United States." U.S. Const., art. II, § 2, cl. 1. Other clauses apply the same distinction. *Id.*, art. IV, § 3, cl. 2 ("[N]othing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State."); *id.*, art. IV, § 4 ("The United States shall guarantee to every State in this Union . . ."); *id.*, art. VI, cl. 3 ("[A]ll executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution."); *id.* art. III, cl. 1 (extending the judicial power to cases arising under "the Laws of the United States" and to "Controversies to which the United States shall be a Party;—to Controversies between two or more States; between a State and Citizens of another State, between Citizens of different States . . .").

The Constitution commits the same alleged "grammatical error" of treating the Congress, the Senate, and the House as plural throughout its text. Even though there is only "a Congress," U.S. Const., art. I,

sec. 1, the Constitution repeatedly refers to Congress as "they" and uses "their" pronouns. *See, e.g.*, *id.*, art. I, § 7, cl. 2 ("[U]nless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law."); *id.*, art. II, § 2, cl. 2 ("[T]he Congress may by Law vest the Appointment of such inferior Officers, as they think proper."). The same is true with respect to the Senate and the House. That we now view this usage as grammatically incorrect is of no import. In fact, the "United States" was treated as plural well into the late 1800's, but that grammar usage did not signify that the references to the United States were references to the States. *See, e.g.*, *Fong Yue Ting v. United States*, 149 U.S. 698, 711 (1893) ("The United States are a sovereign and independent nation."); *Stanley v. Schwalby*, 147 U.S. 508, 521 (1893) (Field, J., dissenting) (providing examples of how both before and since "the Civil War, the United States have always been designated in the plural"). Over time, grammar practices have changed; but that does not change the basic meaning the Founders intended. *See, e.g.*, William Michael Treanor, *Taking Text Too Seriously: Modern Textualism, Original Meaning, and the Case of Amar's Bill of Rights*, 106 Mich. L.

Rev. 487, 489 (2007) (explaining the reliance on the plural "United States" overlooks "the fact that in the late eighteenth century, nouns ending in the letter s were commonly assigned plural verbs, regardless of whether or not the noun itself was plural").

Third, Ms. Peters offers no historical evidence for her pronouncements that "[t]he Framers understood that the pardon power had to be broad and not restricted if there was a federal interest," Mot. at 11, and that the Constitution "can be readily understood to empower the President to pardon offenses of all of the United States" to provide a check on the States. Mot. at 17. While Ms. Peters cites the Supreme Court's statements that a presidential pardon "afford[s] relief from undue harshness or evident mistake in the operation or enforcement of the criminal law," *Grossman*, 267 U.S. at 120, and is "an act of grace, proceeding from the power intrusted with the execution of the laws." *United States v. Wilson*, 32 U.S. 150, 161 (1833), the President is only entrusted with executing federal laws, not state laws. As a result, the President's power is limited to federal offenses—the set of the laws that they execute. In turn, each State determines for itself the power of its

governor to pardon State offenses. Each sovereign therefore enjoys the pardon power in connection with its own laws. *See Andrews v. Warden*, 958 F.3d 1072, 1077 (11th Cir. 2020) ("In other words, the Executive commutes the sentence that it executes."); *see also* 2 Wharton's Criminal Law § 19:29 (16th ed. Sep. 2025 Update) ("A governor has no authority to pardon or commute federal convictions and sentences, and the President has no authority to pardon state crimes or commute state sentences. Each executive exercises their authority within their criminal jurisdiction, consistent with the principles of federalism.").

Fourth, Ms. Peters argues that the pardon power should be read in context of earlier broad English monarchy power such that "[t]he Framers could easily have confined the President's pardon power to 'federal crimes' as they did elsewhere when limits were intended." Mot. at 19. But the Framers did just that by expressly limiting the pardon power to "Offences against the United States," which was the terminology of that time period to refer to federal offenses. Ms. Peters misunderstands that terms like "federal crime" and "federal offense" are modern parlance. The word "federal" does not even appear in the U.S.

Constitution. And the Supreme Court did not use the "federal crimes" or "federal offenses" terminology until the 1900s. At the time of the founding, federal crimes and federal offenses were referred to as "offences against the United States" or "crimes against the United States." *See, e.g.*, Judiciary Act of 1789, ch. 20, § 33, 1 Stat. 73, 91; Crimes Act of 1790, ch. 9, 1 Stat. 112. Just as the Constitution refers to federal laws as "Laws of the United States," it refers to federal offenses as "Offences against the United States."

In sum, because the President's pardon power does not apply to state offenses, the President's pardon of Ms. Peters does not extend to her state convictions under Colorado law.

Supremacy Clause Immunity

"Jurisdiction . . . is a word of many, too many, meanings." *Wilkins v. United States*, 598 U.S. 152, 156 (2023) (citation omitted). To clarify the term, the Supreme Court has emphasized the distinction between subject matter jurisdiction (the class of cases a court may entertain) and procedural claim-processing rules, which are non-jurisdictional. *Id.* at 157. Our state supreme court has similarly distinguished the general

term "jurisdiction"—meaning "authority or lack thereof"—from "subject matter jurisdiction." *Wood v. People*, 255 P.3d 1136, 1142 (Colo. 2011) (citation omitted). Colorado district courts have subject matter jurisdiction in all criminal cases. *Id.*

To limit subject matter jurisdiction, a law must do so explicitly. *Wilkins*, 598 U.S. at 157; *Wood*, 255 P.3d at 1140. The Supremacy Clause contains no express limitation on state courts' subject matter jurisdiction. The Supreme Court has interpreted the Supremacy Clause to limit a state's authority to impose "liability" on federal officials acting within their federal authority. *Wyoming v. Livingston*, 443 F.3d 1211, 1213 (10th Cir. 2006); *accord In re Neagle*, 135 U.S. 1, 76 (1890). Ms. Peters has not cited any cases, and the People are aware of none, holding that the Supremacy Clause limits the state courts' subject matter jurisdiction. Instead, by limiting a state court's ability to *impose liability* on federal officials, the Supremacy Clause implicates the state court's authority to enter a judgment of conviction, which is distinct from its subject matter jurisdiction. *Cf. Wood*, 255 P.3d at 1140 (holding that an immunity claim does not implicate subject matter jurisdiction);

People v. McMurtry, 122 P.3d 237, 238 (Colo. 2005) (holding that a speedy trial violation does not implicate subject matter jurisdiction); *Peters v. United States*, No. 24-1013, 2024 WL 3086003, *5–6 (10th Cir. June 21, 2024) (holding that a state court has jurisdiction to rule on Supremacy Clause immunity claim).

Accordingly, Ms. Peters' claim of immunity under the Supremacy Clause limits neither this Court's, nor the trial court's, subject matter jurisdiction. And, as explained in the Answer Brief, because her claim is a non-jurisdictional, pretrial immunity claim, it should not be reviewable on direct appeal. *See Wood*, 255 P.3d at 1142 (holding that pretrial immunity claims not reviewable on direct appeal); *Kentucky v. Long*, 837 F.2d 727, 752 (6th Cir. 1988) (comparing Supremacy Clause immunity to qualified immunity, which is "effectively unreviewable on appeal from a final judgment" (citation omitted)); *Peters*, at *3 (citing *Livingston*, 442 F.3d at 1216) ("Supremacy Clause immunity arguments are waivable.").

In any event, the trial court properly denied the claim. The trial court ruled that Ms. Peters' criminal conduct was not necessary to

comply with the duty to preserve election records under 52 U.S.C. § 20701. CF, p.3067. For example, as the trial court observed, Ms. Peters could have merely allowed the election server to be copied before and after the Trusted Build without deceiving state and other county employees. CF, p.3067. Likewise, Ms. Peters' conduct was not consistent with carrying out the federal duty to preserve election records. Even assuming arguendo that the "forensic copies" of the election server constitute the type of election records referenced in § 20701, the appellate record contains no evidence, or even allegation, that she kept the forensic copies or sent them to the federal government. Instead, she sent them to a non-government individual she met through other non-government individuals (Dr. Douglas Frank, Sherronna Bishop, and Maurice Emmer). TR 8/6/24, pp.125–33; TR 8/7/24, pp.118–120; CF, p.16.

Conclusion

Neither the pardon nor Supremacy Clause immunity apply to Ms. Peters' criminal convictions in this case. Accordingly, this Court should

deny Appellant's Motion to Determine Whether This Court Has Jurisdiction.

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CERTIFICATE OF SERVICE

This is to certify that I have duly served the within **RESPONSE** upon **PETER TICKTIN, JOHN CASE, PATRICK MCSWEENEY, ROBERT CYNKAR,** and all parties herein, via Colorado Courts E-filing System on January 5, 2026.

/s/ Alex Miller