

NO.18-1281

IN THE
Supreme Court of the United States

Hayes B. Milliman

Petitioner,

v.

Timothy. L. Randall,

Respondent.

**For A Writ of Certiorari to The United States
Court of Appeals for The Ninth Circuit**

PETITION FOR REHEARING

Hayes Milliman In pro. per
1119 20th Street Apt A
Santa Monica CA 90403

**RULE 35 STATEMENT OF REASONS FOR
REHEARING EN BANC**

Respectfully requests a rehearing en banc because the Panel's Opinion in this appeal conflicts with the precedent of the Supreme Court and this Court.

A. The Opinion conflicts with Supreme Court precedent in qualified immunity cases relating to (1) jurisdiction and (2) the clearly established law analysis.

1. The Opinion conflicts with Supreme Court precedent because it dismisses for interlocutory appeal relating to a denial of qualified immunity based on whether Respondent actions violated clearly established law, which is a legal question for which this Court has jurisdiction.

2. The Opinion conflicts with Supreme Court precedent because it fails to identify a prior case with similar circumstances that put Respondent Timothy Randall on notice his actions would violate clearly established law.

A. The Opinion conflicts with this Court's precedent in qualified immunity cases relating to (1) bystander liability and (2) the heightened pleading standard. Therefore, because the Panel's Opinion conflicts with the precedent of the Supreme Court and this Court, en banc consideration is necessary under Federal

Rule of Appellate Procedure 35(b)(1)(A) to secure and maintain the uniformity among the federal circuits and this Court's decisions.

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PETITION FOR REHEARING

Pursuant to Rule 44 of this Court, Hayes Milliman, hereby respectfully petitions for rehearing of this case before a full nine-Member Court. This Petition for Rehearing is based on the extraordinary circumstances of a substantial or controlling effect that (1) Respondent(Timothy Randall who is a criminal smuggling organization) burned Barbara and Lucille alive then prepared false Barbara Tucker Trust dated December 18, 2001 and 2010 and 2013 amendments called himself the Trustee and beneficiary. Bertha Torres and other children who he used as children smuggled million Mexican and Central Americans across the border each year. (He also used Barbara Tucker and Lucille Lambert house human trafficking- hide undocumented immigrants). And on February 26, 2016, filed Petition to Determine Validity of Trust And Amendments under Probate Code Section 17200.

ARGUMENT

The panel decision conflicts with a decision of the United States Supreme Court or of the court to which the petition is addressed (with citation to the case) the clearly lower court judge involved violation of 18 U.S.C. §371 which egregiously obstructed justice to cover it up, respondent (Timothy Randall) burned Barbara and Lucille alive then prepared false Barbara Tucker Trust dated December 18, 2001 and ordering to respondent to pay an attorney Madrid \$1 Million in

exchange intends on submitting a request for dismissal on pending jury trial petitions on August 9, 2017 which of juries has attended the acquittal of notorious criminals (respondent Timothy Randall and an attorney) where the proof clearly indicated their guilt. Unfortunately, the petitioner didn't know that until after succeeded in hanging the false Trust and both false amendments, prompting a mistrial for petitioner. Only later, thanks to a letter from Baker & Baker, were suspicions from their fellow an attorney confirmed, and the truth emerged. Baker & Baker winked to let him know they would take care of him, and later conspired with trial court judge to either convince Madrid to acquit or hold out for a mistrial. See, Supplemental Appendix to 18-1281 filed with this Court on May 06, 2019 Supplemental brief of petitioner Hayes B. Milliman. He also accused of misrepresenting his involvement in cover-up attempts and misrepresenting the extent of prepared false of the Barbara Tucker Trust dated December 18, 2001 and 2010 and 2013 amendments and order to cover up there apparently is no copy of the 2001 trust that is not destroyed as a valid instrument. The only copies have numerous beneficiaries crossed out and numerous names written into the beneficiary portion of the document. The amendments have two defects and a mystery associated with them. First, there is a mystery associated with authorship. According to attorney Priscilla Madrid, no one has taken credit for authorship of the 2010 and 2013 amendments. (AA I, 95). The first of two defects is that the notarizations are defective, with same misspelled word, "forgoing." (AA I, 96) The second defect in the amendments is the

changes made to the beneficiaries of the original trust. It appears that blood relatives are eliminated in favor of adding a caregiver and her family, at least some of whom are also caregivers. Under Probate Code section 21380(a)(3), gifts to caregivers are presumptively the result of fraud or undue influence. It is also possible that the caregiver was the author of the amendments, leading to a second presumption of fraud or undue influence under Probate Code 21380(a)(1). Since the amendments make large changes from the original trust, all of which are presumptively the result of fraud or undue influence, it is submitted that the trust as amended is invalid. and consideration by the full court is therefore necessary to secure and maintain uniformity of the court's decisions.

This issue was briefed but not addressed in the Opinion. Instead, the Opinion applies one category of cases (cavity burn Barbara and Lucille alive and prepared false of the Barbara Tucker Trust dated December 18,2001 and 2010 and 2013 amendments) are unconstitutional), adds a second category (, and determines the two categories of cases Here, as in Milliman , an heir closer in line to the decedent(Barbara Tucker and Lucille Lambert) has been seemingly foreclosed from claiming the escheated estate because Respondent Randall who is the criminal filed an earlier false Tucker Trust dated December 18,2001 and false 2010 and 2013 amendments and called himself Trustee and petition and obtained judgment. Likewise, as in Milliman, the foreclosed heir did not learn of the fraud in the court proceedings until after the judgment had been

entered. However, this contradicts Supreme Court precedent for qualified immunity cases, which Respondent a prior case must show that Respondent in similar circumstances original Trust and amendments Respondent Trustee the law for it to be clearly established. Prior to 2017 there was no case that showed Respondent Trustee and actions violate clearly established law.

Therefore, the Opinion conflicts with Supreme Court precedent relating to qualified immunity cases because (1) the Court has jurisdiction and (2) Respondent Randall did violate clearly established law. The Opinion also conflicts with this Court's precedent in qualified immunity cases relating to (1) fraud and (2) the heightened pleading standard. A. The Panel's Opinion conflicts with Supreme Court precedent relating to qualified immunity cases because (1) the Court has jurisdiction and (2) Respondent Randall did violate clearly established.

In addition, Respondent is involved with California Courts' extrinsic frauds in fraudulently dismissing the appeals as well all of these proceedings were manipulated by Respondent an attorney Baker & Baker where at least two judges is closely related to. Court of Appeal and law court judge court is actively using the judicial discretionary power in deciding the appeal and Valid false of the Barbara Tucker Trust dated December 18, 2001 and false 2010 and 2013 amendments which respondent prepared after burn Barbara Tucker and Lucille Lambert to cover up judiciary corruptions where all of the orders challenged were procured by Respondent an attorney Baker & Baker

In 2017 that resulted in a Valid false Trust and amendments fraud verdict in favor of the Respondent. In 2016 Respondent made false or misleading statements of material fact about the Tucker Trust dated December 18, 2001 and amendments practices and financial results, but remanded the case trial on the issue of whether the individual respondent “made” certain false statements, whether those false statements caused petitioner losses, and the amount of damages. The parties got \$13.575 billion, is the largest ever following a Estate fraud class action trial, the largest Estate fraud settlement in the fraud case.

REASONS FOR GRANTING RE HEARING EN BANC

In taking a position advanced by no party nor adopted below, the panel, lacking the assistance of any briefing on the question, rendered a decision on a question of exceptional importance in conflict with both Supreme Court authority and decisions of this Circuit. En banc rehearing is justified where it is “necessary to secure or maintain uniformity of the court’s decisions,” because the panel decision “conflicts with a decision of the United States Supreme Court” or this Circuit, or where the “proceeding involves a question of exceptional importance.” Fed. R. App. P. 35(a), (b). Rehearing is required for each of those reasons: to remedy a panel decision in conflict with both Supreme Court and Circuit authority, and to correct a decision that undermines the “free functioning of our national institutions.” Buckley, 424 U.S. at 66.

The petitioner, Hayes Milliman, raised an issue in his petition that was not even raised in the initial appeal, the court observed, "It goes without saying that the panel "manifest injustice," a standard met in this case and misapprehended' an issue that was not presented to it which Rule 35, petitions for rehearing en banc. The petitioner believes the court has overlooked or misapprehended and argue in support of the petition." Fed. R.App. P. 40(a)(2) (emphasis added).

Petitioner doesn't shall entertain arguments raised for the first time in a petition for rehearing. It is well established in this circuit that arguments raised for the first time on a petition for rehearing are manifest injustice otherwise result the panel decision conflicts with a decision of the United States Supreme Court or of the court to which the petition is addressed (with citation to the conflicting case or cases) and consideration by the full court is therefore necessary to secure and maintain uniformity of the court's decisions; the proceeding involves one or more questions of exceptional importance, each of which that involves an issue on which the panel decision conflicts with the authoritative decisions of other United States Courts of Appeals that have addressed the issue. Fed. R.App. P. 35(b)(1) (emphasis added). Again, rehearing en banc are designed to address issues that affect the integrity of the circuit's case law (intra-circuit conflicts) and the development of the law (questions of exceptional importance). Given the "heavy burden" that en banc rehearing impose on an "already overburdened court," such.

Petitioner seeks to raise an issue in his petition for rehearing that was not presented to the district court and was neither briefed nor argued to this court prior to the rehearing petition. The time for presenting new, substantive arguments to this court has passed:

“Having tried and appealed its case on one theory, an unsuccessful and petition use a petition for rehearing as a device to test a new theory.” *United States v. Sutherland*, 428 F.2d 1152, 1158 (5th Cir.1970).

Petitions for rehearing and petitions for rehearing en banc are mechanisms governed by rule and designed to ensure the integrity of individual panel decisions and the consistent and thoughtful development of the law. The criteria for both petitions are explicit, and, in submitting petitions, we expect counsel to ensure that their petitions meet those criteria. Petition does not satisfy the requirements for panel or en banc rehearing. Petitioner requests panel rehearing, and because my statement purports to satisfy the standards for panel rehearing.

This court accordingly should grant en banc review to correct this disarray—a situation fed by this circuit’s prior decisions— rather than leave action to courts in other circuits, as the panel decision does; or simply wait for action by Congress or the Supreme

Court, as the opinion suggests. The dodge of leaving resolution of this issue to the Supreme Court is an especially poor reason to deny the petition when this Court has helped create the need for clarification through its own prior decisions.

By contrast, the granting of this petition and the overruling of anti-coverage precedent efficiently and promptly corrects erroneous precedent at this optimal

post-Baldwin moment. It also promptly creates the circuit split that the Supreme Court prioritizes and could rely on immediately or at whatever juncture it deems appropriate. Moreover, a grant of the petition that results in overruling bad precedent will likely persuade other circuits to follow that path, irrespective of their precedent. Not only would Hayes Milliman and other targets of people by illegal immigrants —will be advanced by a clearer judicial consensus that such conduct is not only reprehensible, by law but also unlawful. This petition compares favorably with other recent instances of the court's granting rehearing en banc to overrule a prior statutory interpretation

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Court grant rehearing en banc. He also respectfully requests that the mandate be recalled and stayed pending final resolution of this appeal pursuant to Federal Rule 20 of Appellate Procedure 4

Respectfully submitted.

Hayes Milliman

1119 20th Street Apt A

Santa Monica CA 90403

310-498-2435