

No. 18-\_\_\_\_\_

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**In the**  
**Supreme Court of the United States**

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KAITLYN P. NGUYEN,

*Petitioner,*

v.

UNITED STATES OF AMERICA,

*Respondent.*

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**On Petition for Writ of Certiorari to the  
United States Court of Appeals for the Ninth Circuit**

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**PETITION FOR WRIT OF CERTIORARI**

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## **QUESTION PRESENTED**

Whether petitioner's right to due process of law under the 5th Amendment, U.S. Constitution was violated by the prosecution's introduction of highly inflammatory in the extreme, irrelevant and stunningly prejudicial evidence of dead clinic patients?

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## **PETITION FOR WRIT OF CERTIORARI**

Petitioner, KAITLYN P. NGUYEN, respectfully asks that a writ of certiorari issue to review the judgment and opinion of the 9th Circuit Court of Appeals, Docket # 18-50052 issued Feb. 7, 2019.



## **OPINION BELOW**

The opinion of the 9th Circuit Court of Appeals, which was unpublished, was issued on Feb. 7, 2019, and is attached as App.1a. The Ninth Circuit denied rehearing on banc on Feb. 21, 2019, and this Petition is therefore timely.



## **JURISDICTION**

The Ninth Circuit denied a timely filed petition for rehearing on February 21, 2019. (App.11a). This Court has jurisdiction under 28 U.S.C. § 1254(1)



## **CONSTITUTIONAL PROVISION INVOLVED**

- **U.S. Const. amend. V**

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in

cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.



### **STATEMENT OF CASE**

Petitioner was indicted on June 8, 2016. The indictment charged Petitioner and two others with conspiracy to distribute controlled substances and aiding and abetting. She was charged in six of the 56 counts in the indictment.

A motion in limine was filed on August 4, 2017, the government responded, to exclude evidence of dead patients from the clinic. It was denied. Counsel renewed the motion mid-trial-again denied. Petitioner was convicted on all counts.

Sentencing was held on Feb. 5, 2018, and the district court imposed a 41 month sentence. Petitioner remains in custody, serving the sentence imposed in this case.



## REASON FOR GRANTING THE PETITION

### I. EVIDENCE OF THE MEDICAL CLINIC'S DEAD PATIENTS WAS INFLAMMATORY IN THE EXTREME, AND ADMITTED IN ERROR

Petitioner objected pre-trial and during trial to the admission of testimony and documents detailing the death of a number of patients at the medical clinic involved in this case. The heart of the objection was that the tragic death of patients who over-dosed while patients of Dr. S.'s (clinic owner) was highly charged emotionally and unnecessary to the government's case. There was zero direct link to Petitioner and any patient death. The evidence was simply a (successful) attempt to tug at the heart strings of the jurors.

Petitioner was a nurse who often saw patients in the absence of a doctor, and prescribed medications. These doctor-less exams were routine in the clinic and approved by Dr. S. The essence of the charges was that Petitioner "distributed controlled prescription drugs outside the course of professional practice and without medical purpose". [Appendix 9th Circuit opinion, p. 2]

The evidence of patient deaths was admitted at trial in the precise manner that the defense had feared—sad, moving, and deeply disturbing, with the grief of the witnesses washing over the jury. For example:

Q: [from prosecutor]—Did you ever try to get Dr. S's office to stop giving Jennifer, your sister, the drugs?

A: [from H.C., sister of dead patient J. S.] I called the office several times and I spoke with someone, and I literally told them they were killing her and she was addicted and she—

Carmona's sister died from an overdose in January of 2013. No direct connection was ever made between the deceased Ms. S. and the Petitioner, but the district court allowed testimony anyway that described the downward spiral and eventual death of J. S.

But it got worse. With devastating effect, Ms. C. blurted out during her testimony that she had brought her dead sister's ashes to court that day, and had them in her purse. With no direct connection<sup>1</sup> to the Petitioner, surely testimony such as this made the trial unfair. No jury could be expected to ignore the horror of the tales of death, told in this trial. J. S.'s father also testified about her decline.

“Q: In the latter half of 2012, are you aware whether she [Ms. S.] was having these substance abuse problems?

A: I was.

Q: Could you tell when she was actually using drugs?

A: I could tell.

Q: How could you tell?

A: Speech was slurred. Eyes were half closed. She couldn't walk very well. It was very evi-

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<sup>1</sup> The government claimed at trial that each of the dead patients received at least one prescription from the Petitioner.

dent. She didn't just do a little. I mean, she did enough that it was very noticeable."

All of this was admitted with no direct connection to Petitioner. As the First Circuit held in *U.S. v. Fulmer*, 108 F.3d 1486, 1493 (1st Cir. 1997), "... improperly admitted evidence was so inflammatory that it may have prompted the jury at the outset to weigh the properly admitted evidence in the government's favor. This sort of taint we cannot condone . . .".

The same type of testimony, describing this time the scene of the death of patient J.N., was detailed by a coroner's employee who examined the death scene. And again, zero direct connection from this decedent was made to the Petitioner. Testimony on the scene of death of J.N. was graphic, detailed, and wholly unnecessary to the prosecution's case. The Ninth Circuit should have reversed, based on the trial court's error in admitting this shocking evidence. *U.S. v. Hands*, 184 F.3d 1322 (11th Cir. 1999).

Fundamental fairness and the Fifth Amendment of the U.S. Constitution guarantee a criminal defendant due process and a fair trial. The fair trial requirement is at the heart of our justice system. *See Irvin v. Dowd*, 366 U.S. 717 (1961); *Thompson v. Parker*, 867 F.3d 641 (6th Cir. 2017); *U.S. v. Spears*, 558 F.2d 1246 (7th Cir. 1977). Petition was denied this right.



## CONCLUSION

The nature of the dead patient evidence weighed sharply in favor of exclusion. As the Ninth Circuit held in *Estate of Diaz v. Anaheim*, 840 F.3d 592 (9th Cir. 2016), “. . . the jury was exposed to a copious amount of inflammatory and prejudicial evidence with little (if any) relevance.”<sup>2</sup>

Here, the evidence was so inflammatory in the extreme and upsetting that Petitioner was denied due process and a fair trial. For the reasons set out above, Petitioner asks this honorable Court to grant her petition and review her fundamental constitutional claim.

Respectfully submitted,

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<sup>2</sup> The same trial judge in the *Estate of Diaz* matter presided over the trial in this case.