

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Markentz Blanc — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

ELEVENTH CIRCUIT COURT OF APPEALS
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

MARKENTZ BLANC reg.04830-104
(Your Name)

Coleman FCI-Medium P.O.Box 1032
(Address)

Coleman, Florida 33521
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

I. Did the Eleventh circuit's panels conclusion that the District court did not err in allowing the flight instructions be brought to the jury as it was prejudicial and failed to satisfy the elements needed to support the flight instructions, and in conflict with the 11th circuits prior decisions on the same results?

II. Did the 11th circuit panel erred in affirming and concluding the District courts finding that the government met the necessity requirement to obtain the wiretap, and did not make any material false statements or misleading omissions, despite contradicting testimony made by the agents where the determination was made in reliance of such testimony and the government possessed no other overwhelming evidence to proceed to trial?

III. Did the 11th circuit erred in conducting a fact-finding review, to solely deny the petitioners appeal on grounds never raised by the government and the record supports, as the government never raised nor expressed concerns of tracking the drug deliveries, and other circuits and this Court has held that Court of Appeals duties are to review for plain and clear error and violation to follow standard law and not to conduct fact-finding in the record?

LIST OF PARTIES

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

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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

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

OPINIONS BELOW

[X] For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

reported at 2018 U.S. App. Lexis 8595(11th cir.); or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

[] For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was April 5th, 2018.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A _____.

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

For cases from **state courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

AMENDMENT 4

Unreasonable searches and seizures.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENT 5

Criminal actions-Provisions concerning-Due process of law and just compensation clauses.

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 offence 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.

AMENDMENT 6

Rights of the accused.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

18 U.S.C. § 2518

(1) Each application for an authorizing or approving the interception of a wire, oral, or electronic communication under this chapter[18 USCS §§2510 et seq.] shall be made in writing upon oath or affirmation to a judge of competent jurisdiction and shall state the applicant's authority to make such application. Each application shall include the following information:

(c) a full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous;

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED
(cont'd)

(3) Upon such application the judge may enter an ex parte order, as requested or as modified, authorizing or approving interception of wire, oral, or electronic communications within the territorial jurisdiction of the court in which the judge is sitting (and outside that jurisdiction but within the United States in the case of a mobile interception device authorized by a Federal court within such jurisdiction), if the judge determines on the basis of the facts submitted by the applicant that--

(c) normal investigative procedures have been tried and failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous;

STATEMENT OF THE CASE

On Jan 15, 2014, a complaint was filed in the United States District court for the Southern district of Florida against the Petitioner along with several co-defendants for crimes related to drug conspiracy, for case no. 14-cr-20104-RLR/Graham (criminal docket entry)(DE# 1)

On Feb 20, 2014, a grand jury returned a 25-count indictment against the petitioner and his co-defendants. The indictment charged the petitioner in 16 of the 25 counts, to include drug conspiracy, firearm, and fraud related offenses (DE#32).

Prior to trial, on 2/25/15, Petitioner moved to suppress evidence from two separate wiretaps that were obtained by the government. The petitioner, through his counsel, argued in his motion that the wiretaps were suppressible that the government failed to exhaust other investigative options and that there were materially false statements and omissions in the affidavit (DE#185).

On 3/4/15, a hearing was held before U.S. Magistrate judge Dave Lee Brannon (DE#225/251), where Special agents Dearl W. Weber and Christopher M. Mayo, both testified as to effects of the investigation and the need for the interceptions. The magistrate recommended in his ROR that the motion be denied (DE#201). The district court electronically adopted the report on 4/13/15 (DE#259).

On 4/13/15, trial commenced with jury selection(DE#262) and lasted 7 days, to include jury deliberations and verdict on 4/21/15(DE#277). Jury found the petitioner guilty on all counts except count 10.

On 7/6/15, the trial court sentenced the petitioner to 300 months imprisonment, 5 years supervised release and a restitution of \$800,059(DE#331).

On 7/15/15, the petitioner filed a timely notice of appeal to the 11th circuit court of appeals, case# 15-13182-GG(DE#338).

On 7/5/16, the petitioner, through counsel, filed his initial brief in the 11th circuit. The government filed their response brief on 7/27/17. On Jan 9th, 2018, an oral argument was held before the 11th circuit panel and the court of appeals ultimately denied the petitioners appeal on 4/5/18.

This petition follows.

REASONS FOR GRANTING THE PETITION

The court erred in allowing the government to bring forth the flight instructions for the jury charge to infer the petitioner's guilt, when it was not established that the petitioner was aware of a active investigation or that he was sought for a committed crime. In a case where the government principally relied on circumstantial inference to suggest the petitioners guilt , the court should not have permitted the flight instructions as there is a danger that a flight instruction will isolate and give undue weight to other evidence.

The court also erred in concluding that government and its agents met the necessity requirement and did not make any intentional and material false statement and omissions, despite the contradicting testimony of the agents that were critical to the findings of the magistrate. The District court should have requested documentary evidence in support of the affidavit before adopting the report and recommendation.

The Court of Appeals erred in searching the record for facts, not raised by the government, to deny the petitioners appeal, where the government possessed no overwhelming evidence, outside the wiretap, to proceed to trial.

The 11th circuit has entered a decision in conflict with precedent 11th circuit rulings and the decisions of other United States Court of Appeals and the Supreme Court on the same important matter. Petitioner moves this Honorable Court to issue the Writ of Certiorari on the questions presented herein and remand

this case with instructions permitting petitioner a new trial in this with the alleged violations, ~~of the~~ Fourth, Fifth, and Sixth Amendments, corrected.

ARGUMENT

I.Whether the District court erred in allowing the jury instruction to include prejudicial flight instructions, violated Due process.

Petitioner argues that the flight instructions to the jury prejudiced the petitioner as it inferred to the jury that guilt existed, whereas when the flight occurred, the petitioner was not under arrest to conclude flight for the purpose of avoiding arrest nor was he aware of the current investigation.

According to the record, on July,9th 2012, the petitioner took flight upon noticing several vehicles approaching the residence. Petitioner did not commit, about to commit, or has committed a crime to flee in an effort to avoid arrest. It has never been established why the petitioner fled, when the vehicles pulled up on the property with no lights on, which relying on the type of neighborhood would cause any person in his situation to flee. The D.C. circuit has held that "flight instructions have received substantial criticism in recent years, chiefly because the risk is great that an innocent man would respond similarly to a guilty one when a brush with the law is threatened." United States v Harris 435 f.2d 74,91 n.48(D.C. cir.1970).

Petitioner was ultimately released as he did not commit any offense which should dismiss the need for the flight instructions, as to the flight on July 9th. Which served no purpose but to help support the governments contentions of flight by guilt.

Again, regarding to the record, on Nov.21st,2013, the petitioner

was observed exiting the residence, forty-five(45) minutes after law enforcement executed and ended their search on apt.B. "Flight instructions are valid only if there is evidence sufficient to support a chain of unbroken inferences from the defendant's behavior to the defendants guilt of the crime charged" United States v Blanco 392 f.3d 382,395(9th cir.2004). The more remote in time the alleged flight is from the commission or accusation of an offense, the greater the likelihood that it resulted from something other than feelings of guilt concerning that offense. id at 395-96.

The petitioner was called by name, and simply sought to retreat back into the residence. Petitioner sought the protection of the residence under the Fourth amendment, which further diminishes any inclusions/inference of guilt as he returned back into the residence and not away to distance himself from any potential crimes evidence that may be in the residence. At that moment, law enforcement can not explain or provide a reasonable explanation to pursue the petitioner, who on private property, chose to re-enter the residence as a casual declination of engaging with law enforcement in a consensual encounter in a dark setting. Because the petitioner was not observed committing a crime, serious enough to pursue and enter warrantlessly, law enforcement violated established 4th amendment law and arrested the petitioner. Upon being arrested, under State jurisdiction, the petitioner was charged with a misdemeanor resisting arrest and offenses resulting from the evidence found in the residence,

thereby nullifying any charges or arrest the petitioner sought to avoid, that may have occurred prior the flight. Because of those facts, petitioner asserts that the flight instructions served no purpose but to infer guilt and assist, and influence the jury into reaching a guilty verdict of the associated offenses and to conceal law enforcements warrantless entry.

If the instructions will "mislead the jury or leave the jury to speculate as to an essential point of law; the error is sufficiently fundamental to warrant a new trial despite a parties failure to state a proper objection". see Montgomery v Noga 168 f.3d 1282,1294(11th cir.1999).

The record clearly reflects, on both accounts, that law enforcement had no probable cause to engage in a pursuit of the petitioner, while on private property, thereby provoking the flight and pursuit. Petitioner claims that the flight instructions was to infer a state of mind, where because law enforcement lacked probable cause of a crime, can not infer a guilty state of mind. Flight may not always reflect feelings of guilt.

The right of a man to retreat into his home, and thereby be free from unreasonable governmental intrusion, stands at the core of the 4th amendment. see Florida v Jardines 133 S.ct 1404,1414, 185 L.Ed.2d.495(2103).

Several circuits have found that the flight instructions are only admissible if there has been a show of sufficient evidence to authorize the jury to draw an inference of guilt from the fact that a suspect fled from authorities to avoid an arrest.

Evidence of the accused flight may be admitted at trial as indicative of a guilty mind, so long as there is an adequate factual predicate creating an inference of guilt of the crime charged. United States v Camilo-Montoya 917 f.2d 680,683(1st cir. 1990); The 7th circuit held "we disfavor flight instructions, which authorize the jury to draw an inference of guilt from the fact that a suspect fled from authorities" United States v Black 2007 U.S.App.Lexis 7790(7th cir.2007), quoting United States v Rodriguez 53 f.3d 1439,1451(7th cir.1995); "Evidence of flight admissible when appellant knew of the charges against him and his scheduled trial date, yet disappeared on day of trial" United States v Crosby 917 f.2d 362,368(8th cir.1990); "The probative value of such evidence...is diminished if the defendant has committed several unrelated crimes or if there has been a significant time delay between the commission of the crime or the point at which the accused has become aware that he is the subject of a criminal investigation to the time of flight" United States v Williams 541 f.3d 1087,1089(11th cir.2008); "Assuming guilt from flight from police who failed to identify themselves 'would mean that a vague suspicion could be transferred into probable cause for arrest by person of ambiguous conduct...'" Wong Sun v United States 371 US 471,484(1963).

Petitioner seeks Supreme Court resolution, as it may clear the governments misleading use of flight instructions on an otherwise lacking mens rea of guilt, as it allows the inference

of guilt from an action that may be influenced by fear and not guilt itself.

The 11th circuit further held "nevertheless, the District court here expressly instructed the jury that it could take into consideration defendants flight from the police as circumstantial evidence of his guilt only if it found, beyond a reasonable doubt, that he fled to avoid the charged crime. Because a reasonable jury could conclude, based on the evidence presented, that defendant fled the police to avoid the charged crime, we discern no abuse of discretion in the district court to give the flight instruction. id at 541 f.3d at 1089

The flight instructions prejudiced the petitioner as it violated the due process right to a fair trial. Because a reasonable jury might have received a significantly different impression of the petitioners state of mind had the flight instruction was excluded, this Court should grant Writ of Certiorari and remand this case for a new trial as its unclear whether the jury reached the verdict through actual evidence or assumption of guilt act by flight.

II.Whether the inclusion/admittance of an otherwise inadmissible evidence at trial violated petitioner's constitutional rights.

Petitioner argues that the inclusion of the wiretap evidence should be inadmissible under § 2518(1)(c) and (3)(c), which together provides the necessity requirement. The government and its agents intentionally failed to fully inform the authorizing

court in a "full and complete statement" as to the retroactive or prospective failure of several techniques, that reasonably suggests themselves, supported by case-specific facts. Specifically, petitioner argues that the affidavit was conclusory and generic in nature, and the hearing testimony to support the affidavit was misleading and material, and violated his 4th and 6th amendment clause rights.

During the motion to suppress hearing (CR-DE#251), the agent testified several troubling responses as to why the authorizing judge was not informed of facts known but not included in the affidavit, to include:

page 61: Lieutenant was not revealed to the judge because information was put that was necessary for the affidavit;

page 65: There's a lot of information that is disclosed during an investigation. Not every aspect of the investigation is put into the affidavit; I'm tell you that because of the information that is necessary for the affidavit, it was not put in that, into into the affidavit itself;

page 66: Well, it's a discussion that goes on during, during the process of putting an affidavit together, we do discuss certain things. It wasn't disclosed and we didn't intentionally not put that information in there to deceive the judge;

page 67: Sir, we don't put everything into a particular portion of the affidavit, everything we know about.

If we did that, I think the affidavit would be 700 pages long; I don't believe it was necessary at the time to put it into the evidence;

page 69: Well, sir, there would be a lot to reveal, I guess, with everything-- what you looking to--I'm a little confused;

And in response to the magistrates inquiry, the agent responded:

page 89-90: Looking in hindsight, your Honor, it probably would be better if we put it in there, yes.

The Fourth amendment guarantees the right against unreasonable search and seizure, and the Sixth amendment guarantees the right to a fair trial. Accordingly, the petitioner asserts that he was denied a fair trial as law enforcement were allowed to be rewarded for the violation of the constitutional right to be free from unreasonable search and seizure, and the wiretap statute, to uphold the contested wiretap and its recordings, which obviously and clearly had the effect of influencing the outcome of the trial with no other overwhelming evidence.

The language is clear and simple, on the matter of law enforcement satisfying the necessity requirement based on conclusory and generic language is prohibited, as well as the omission and misrepresentation of material facts, and the 11th circuit here, made a decision in conflict with other Court of Appeals on this

matter. "While the prior experiences of investigative officers is indeed relevant in determining whether other investigative procedures are unlikely to succeed if tried, a purely conclusory affidavit unrelated to the instant case and not showing a factual relations to thecircumstances at hand would be inadequate with the statute" United States v Rice 478 f.3d 704,710(6th cir.2006); "Though the affiant need not state each and every detail of the suspected crime, mere conclusory statements are insufficient." United States v Tirado 2018 US Dist.Lexis 65321(E.D. Wis 2018), qouting United States v Reddrick 90 f.3d 1276,1280(7th cir.1996); "Generally, the government must overcome the statutory presumption against granting a wiretap application by showing necessity. Such a showing must allege specific circumstances that render normal investigative techniques particularly ineffective or the application must be denied. The reason for requiring specificity is to prevent the government from making general allegations about classes of cases and thereby sidestepping the requirement that there is necessity in the particular investigation in which a wiretap is sought" United States v Ippolito 774 f.2d 1482,1486 (9th cir.1985); "...it does require the government to show why alternative measures are inadequate for 'this particular investigation'"United States v Perez 661 f.3d 568,581(11th cir.2011).

For example, the 6th and 9th circuit held that a wiretap affidavit must be case-specific in nature and supported by ample facts to prevent general allegations, so an authorizing judge can reasonably conclude that difficulty exist to gather evidence

and necessity to obtain a wiretap has been met and shown. see
Rice and Ippolito

"The affidavit contained generalized and uncorroborated information about why [techniques] would not be useful. There was insufficient credible evidence to support or even confirm those assertions. The Court was in the best position to determine these credibility issues concerning unused investigative techniques."

id 478 f.3d at 714 and " The reason for requiring specificity is to prevent the government from making general allegations about classes of cases and thereby sidestepping the requirement that there is necessity in the particular investigation in which a wiretap is sought." id 774 f.2d at 1486.

Circuits also found it significant that the law enforcement establish a reasonable explanation supported by case-specific facts that the investigation can not proceed without the need for a wiretap. see Ippolito 774 f.2d 1482(9th cir.1985) and United States v Giordano 416 US 505,515(1974).

Petitioner argues herein that the District court committed plain error by denying the motion where the agents obviously omitted several material facts that was known but not disclosed to the authorizing judge in a full and complete statement, and the reviewing court relied on those same omitted facts as testimonial evidence.

"Omissions are made with reckless disregard if the information omitted is the kind of information that a reasonable person would expect a judge to want to know..."Wilson v Russo 212 f.3d 781, 788(3rd cir.2000), also "it follows that a police officer cannot

make unilateral decisions about the materiality of information, or, after satisfying him-or herself that probable cause exists, merely inform the magistrate or judge of inculpatory evidence id at 787; "Thus, an officer displays objective good faith only when he has a reasonable belief that the magistrate had a substantial basis for finding of probable cause. Because the reasonableness of the magistrate's probable cause determination is solely a function of the information presented to the magistrate"United States v Bynum 293 f.3d 192,212(4th cir.2002); "The district judge properly refused to consider documents that were not presented to the warrant-issuing judge and were cited by the government for the first time at the suppression hearing in Federal court" United States v Koerth 312 f.3d 862,871(7th cir.2002); "The government can not establish an officer's objective good faith under Leon by producing evidence of facts known to the officer but not disclosed to the magistrate" United States v Baker 894 f.2d 1144,1149-50(10th cir.1990); "Information not presented to the magistrate cannot be relevant to the question "Whether a reasonably well trained officer would have known that the search was illegal despite the magistrate's authorization"United States v Leon 468 US 897,922n.23,104 S.ct 3405,82 L.Ed. 2d.677(1984); "Under the cases of this Court, an otherwise insufficient affidavit cannot be rehabilitated by testimony concerning information possessed by the affiant when he sought the warrant but not disclosed to the issuing magistrate."Whitely v Warden WYO State Penintentiary 401 US 560,565 n.8, 91 S.ct 1031, 28 L.Ed.2d 306(1971); " The record does not reveal

nor is it claimed, that any other information was brought to the attention of the Justice of the Peace. It is elementary that in passing on the validity of a warrant, the reviewing court may consider 'only' information brought to the magistrate's attention." Aguilar v Texas 378 US 108,109 n.1, 84 S.ct 1509, 12 L.Ed.2d 723,725(1964) /

So to conclude, Petitioner asserts that the admission of the wiretap and its recordings violated constitutional and statutory laws which ultimately affected the outcome of the trial. The wiretap evidence was especially important since the government lacked physical evidence of drug activity against the petitioner and the reliance of the agents testimony was essential to the magistrates findings and the United States Government's case. If its reasonably certain the outcome of the petitioner's case would have been different if the wiretap evidence were suppressed, the petitioner's was deprived of his 6th amendment right to a fair trial.

Petitioner seeks this Court to grant Writ of Certiorari, and remand this matter for a Franks hearing as preliminary has been shown that officers omitted material information known to them, either directly or indirectly.

III. Whether the Court of Appeals erred by conducting a fact-finding review of the record, to deny the petitioners appeal based on facts never raised by the government, denied petitioner's due process right.

Petitioner argues that the 11th circuit Court of Appeals erred when they delved into the record to determine that because the government and its agent had not been able to track the drug deliveries (Appx. A-page 23), that the wiretap was necessary to assist law enforcement in gathering such vital information. Petitioner asserts that the government never raised or expressed concerns of seeking the wiretap to track drug deliveries, thereby exposing the Appeals court creating an explanation to support the denial.

Petitioner argues that because the government never raised such argument, the court of appeals had no jurisdiction and/or authority to deny the appeal on that issue of fact. Petitioner furthers that the court of appeals, by making the factual finding, made the argument for the government and made their findings based on their argument and not the government's.

Other circuits and the Supreme court has held that the court of appeals should leave the fact-finding to the district courts, and the court of appeals duties are to review for plain and clear error, and violation to follow standard law.

"...as an appellate court, we cannot conduct such fact-finding proceedings on our own. Congress has not interposed a district court in the chain of review, so we cannot remand for clarifying findings of fact based, perhaps, on testimony by Agency and private experts." South Terminal Corp. v EPA 504 f.2d 646,665(1st cir.1974); "As an appellate court, we do not engage in fact-finding. We take all facts and draw all inferences in the light most

favorable to appellant, as we do at the motion to dismiss stage, although we need not give credence to 'pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth.'" Gross v Rell 585 f.3d 72,75 n.1(2nd cir. 2009); "We must uphold the Boards determination if its factual findings are supported by substantial evidence in the record as a whole and its legal conclusions have a reasonable basis in the law...Substantial evidence in this context means such relevant evidence as a reasonable mind might accept as adequate to support the Boards determination. This standard 'does not allow us to dabble in fact-finding and we may not displace reasonable determinations simply because we would have come to a different conclusion if we reviewed the case de novo.'" NLRB v WFMT 997 f.2d 269,274(7th cir.1993); "Additionally, because district courts should not 'be expected to construct full blown claims from sentence fragments', appellate courts should not 'permit those same fleeting references to preserve questions on appeal.'""A contrary rule would undermine the premise of our adversial system:'that appellate courts do not sit as self-directed boards of legal inquiry and research, but essentially as arbiters of legal questions presented and argued by the parties before them.'" T.P v Bryan Cnty Sch Dist. 792 f,3d 1284,1291(11th cir.2015); "We of course retain full power to correct a court's errors of law, at either stage of the analysis. But the court's findings of fact-most notably, as to whether racial considerations predominated in drawing district lines- are subject to review for clear error." Cooper v Harris 581 US ___,137 S.ct ___, 197 L.

Ed.2d 837,849, 2017 US Lexis 3214(2017); "The court of appeals is without power, on review of proceedings of the Board of Tax Appeals, to make any findings of facts...The function of the court is to decide whether the correct rule of law was applied to the facts found, and whether there was substantial evidence before the Board to support findings made. Unless the finding of the Board involves a mixed question of law and fact, the court may not properly substitute its own judgment for that of the Board."

Helvering v Rankin 295 US 123,131, 55 S.ct 732, 79 L.Ed. 1343, 1349(1935); "Appellate Courts do not sit as self-directed boards of legal inquiry and research, but essentially as arbiters of legal questions presented and argued by the parties before them."

NASA v Nelson 562 US 134,147 n.10, 131 S.ct 746, 178 L.Ed.2d 667, 2011 US Lexis 911(2011).

Because the appellate court sought the evidence to ultimately deny the petitioner's appeal, the petitioner stood no chance to survive appellate review as the Court sought to do the governments job.

The 11th circuit themselves, has held that fact-finding is the duty of the district court, but yet made fact-finding reviews to support their denial. "Under the Chenery doctrine,'when an administrative decision is based on inadequate or improper grounds, a reviewing court may not presume that the agency would have made the same decision on other, valid grounds.'" Animal Legal Def.Fund v USDA 789 f.3d 1206,1224 n.13(11th cir.2015), and "...appellate courts do not sit as self-directed boards of legal inquiry and research..." id 792 f.3d at 1291.

Petitioner argues that his due process was violated as he had no way of prevailing in the sought-after remedy and didn't stand a chance to succeed as the court of appeals took it upon themselves to play the role of the government and the reviewing court.

Petitioner concludes herein that the Appellate court committed a reversible error that affected substantial rights by fact-finding to deny the petitioners appeal, and request this Court to grant Writ of Certiorari, and remand the affected claim back to the appellate court for a plenary review, on whether review of the actual facts raised would render the same conclusion.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Marty Blum

Date: June 26, 2018