

No. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

GARY ALLEN KACHINA, PETITIONER

VS.

UNITED STATES OF AMERICA, RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO  
UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT

Gary Allen Kachina

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## QUESTIONS PRESENTED

### I

Did the Trial Court error in denying petitioner's motions for Discovery violations under BRADY v. MARYLAND and for refusal to enforce petitioner's court ordered subpoena for petitioner's jail recorded phone calls?

Where evidence that was requested and subpoenaed "petitioner's jail recorded phone calls" were withheld from petitioner's court ordered psychologist Tiffany K. Smith.

Where the psychologist requested access to petitioner's jail recorded phone calls and stated that they would be necessary and helpful in determining petitioner's competence and mental health diagnosis.

This evidence was BRADY material because the doctor said she needed it to determine petitioner's competence and mental health diagnosis. Petitioner's competence and mental health condition directly relates to guilt, innocence and punishment. How could the psychologist's diagnosis be deemed reliable when they were denied access to evidence that they said they needed for petitioner's mental health evaluation?

Were petitioner's jail phone calls exculpatory when they would have been used to establish petitioner's self defense and necessity defense claims, and would have been used to impeach petitioner's mother and father's trial testimony,

in which they testified that they were not cooperating for the government and that they were not involved in several attempts to murder petitioner for a major Mexican drug cartel.

And where the government argued that petitioner was making his necessity claims up and that petitioner was a liar and could not be trusted.

Where petitioner made a sworn declaration as to the jail recorded phone conversations and their content and exculpatory value and stated to the court that these jail phone calls show over a year's period worth of conversations where petitioner's mother and father admit that they are cooperating for the government and show over a year's period of conversations that discuss the murder contract that is out on petitioner's life by the Cartel which also involved the Hell's Angels, the Surranoes 13, the Native Mob, the Crips and Vice Lords.

The recording discussed the people involved and show that petitioner's mother and father made prior statements that would have established petitioner's necessity defense.

Where petitioner attempted to prove to the jury that he possessed these guns and bulletproof vests to protect himself from being murdered. And that this was reasonably necessary because of the major organized crime groups involved.

And because petitioner could not go to the police, because these people threatened to murder petitioner's family and because they have police who work for them, making petitioner unable to trust the police.

Answer of the court below was that petitioner failed to establish a violation of BRADY v. MARYLAND, 373 U.S. 83 (1963).

## II

Did the Trial Court abuse it's discretion in determining that petitioner was competent to stand trial.

Where petitioner was diagnosed as having Delusional Disorder and displayed distrust in his own attorney, rendering petitioner unable to assist in his own defense.

Where petitioner believed his own attorneys were involved in a conspiracy against him to assist the government in covering up that petitioner's family is cooperating for the government and that petitioner's family was involved with the Cartel, Hell's Angels, Surranoes 13, The Native Mob, the Crips and Vice Lords in trying to murder petitioner.

Where the attorney stated to the court that he did not have the trust of petitioner, that petitioner left him several voice messages everyday, telling the attorney different directions in which way to go with the case and defense.

Where petitioner actually withdrew his mental health

defense against his attorney's advice, which was a legitimate defense the petitioner had in which petitioner believed was being used to cover up the truth and was apart of a deal petitioner's mother made with the government to allow them to cooperate as confidential informants, and at the same time allow petitioner to escape going to prison without having it known that our family cooperated against the Cartel and the Hell's Angels.

Where petitioner's attorney stated to the court that petitioner gave him directions that were counter productive to a legitimate defense and that the attorney pointed out to the court that "it's obvious", regarding appellant's court room behaviors, stating he was having a difficult time in picking a jury with listening to what happens at counsel table, with petitioner.

The government even conceded petitioner's irrational behavior by stating that petitioner had written a number of "bizarre" letters to the District Court and the prosecutor.

Petitioner's attorney was unable to communicate with petitioner during and throughout the trial was unable to agree with petitioner's questions, motion strategies and such. The record reflects this by outbursts by petitioner's accusing the attorney of not calling witnesses and not asking questions.

Was it an error for the Trial Court prior to the trial to refuse to order a competence examination when petitioner's

prior examination rendered him as delusional but did not specifically address the issue of competence where petitioner's trial behaviors were so bizarre and irrational to the point the Trial Court felt it necessary to order a mental health evaluation after the trial?

Where it is required that petitioner's competence be determined before the trial, not after.

Where District Court judge relied on evaluation after trial to determine petitioner's competence before trial. When a person's competence and mental state can change dramatically over a short period of time, and where petitioner's evaluation was done months after the trial.

Where Trial Court relied on evaluation after trial by Evaluator Tiffany K. Smith, who was denied access to evidence the Evaluator said she needed and said would be helpful in determining petitioner's competence and mental health diagnosis and "petitioner's jail recorded phone calls" which the Trial Court judge refused to give to the Evaluator who requested them and said she needed them for petitioner's evaluation.

## 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**

☒ 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 United States v. Kachina, 715 Fed. Appx 587; or, (8th Cir 2018)  
[ ] 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 March 22nd 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: May 9th 2018, and a copy of the order denying rehearing appears at Appendix B.

☐ 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

BRADY v. MARYLAND, 372 U.S. 83 (1963)

DROPE v. MISSOURI, 420 U.S. 162 (1975)

UNITED STATES v. AGURS 427 U.S. 97

UNITED STATES v. BAGLEY 473 U.S. 667

United States' Constitution's Due Process Clause of the Fifth  
Amendment and Fourteenth Amendment

DUSKY v. UNITED STATES 362 U.S. 402 (1960)

Title 18 U.S.C. §4244

4 LED 2d 2077 Mental Competency of Accused

## STATEMENT OF THE CASE

### Factual & Procedural History:

On March 9th, 2015, a single-count indictment was filed in the District of Minnesota charging petitioner with Felon in Possession of a Firearm- Armed Career Criminal, on or about February 5th, 2015, in violation of 18 U.S.C. §922(g)(1) and 18 U.S.C. §924(e)(i).

The facts of the case are; on February 5th, 2015, Law Enforcement received information from an informant that petitioner was driving a motor vehicle and had possession of guns and bulletproof vests.

Police knew petitioner was a convicted felon prohibited from possessing a firearm. Police came upon petitioner operating a motor vehicle and initiated a traffic stop. Petitioner evaded the stop, and took police on a 10-minute pursuit. Petitioner crashed the vehicle and fled on foot, escaping arrest.

A search of the car yielded two firearms and three bulletproof vests. On February 12th, 2015, police arrested petitioner. At trial the elements of the offence were proven. Petitioner admitted the elements of the crime when he testified. Petitioner advanced a mixture of defenses: self defense, necessity and duress, based on the fact that a major Mexican Drug Cartel, the Hell's Angels, the Surranoes 13, the

Native Mob, the Crips and Vice Lords were all involved in attempts to murder petitioner for this Cartel, and in fact had a contract on petitioner to be murdered. Petitioner asserted he needed guns and bulletproof vests to stay alive.

The Trial Court instructed on necessity in the jury believed petitioner's claims had an objective factual basis. The Court did not instruct on self defense.

Early in the case, the defense placed petitioner's capacity at issue. A defense psychiatric evaluation on September 24th, 2015, provided diagnosis of paranoid personality disorder and delusional disorder. Petitioner declined to submit to a government examination, and withdrew the defense of Mental Illness or Diminished Capacity prior to trial.

Prior to sentencing the District Court ordered a psychological evaluation. On August 11th, 2016, a Bureau of Prisons psychiatrist diagnosed petitioner with several different disorders but ruled out delusional disorder. On appeal the Eighth Circuit Court of Appeals ruled petitioner failed to establish a BRADY v. MARYLAND violation, and ruled that the Trial Court did not abuse it's discretion when it found petitioner competent to stand trial. Dated March 22nd 2018.

With no reasons given for these rulings, a timely petition for re-hearing was filed and the court denied this on

May 9th, 2018.

NATURE OF THE CASE:

Petitioner was found guilty after a jury trial of being a felon in possession of a firearm. 18 U.S.C. §992(g)(1), 924(e)(1).

Before trial, petitioner's mental health was called into question, and Dr. Malmquist diagnosed petitioner as suffering from Delusional Disorder. Petitioner's attorney gave notice of defense pursuant to Rule 12.2 on 4-15-2015.

Petitioner, against his attorney's advice, withdrew his mental health defense because he believed his attorney was involved with the government and petitioner's family in covering up the fact that there is a murder contract out on petitioner's life by a major Mexican Drug Cartel that involved petitioner's family being involved in several attempts to help murder petitioner which also involved the Hell's Angels, the Surranoes 13, the Native Mob, the Crips and the Vice Lords.

Petitioner believed the Mental Health Evaluation was apart of a deal his mother made with the government to allow his family to cooperate confidentially and use the mental health defense to allow petitioner to escape from being sent to prison, so it would not be known they cooperated. Petitioner believed his own attorney was working with the

Government and petitioner's family to cover up the fact that they attempted to murder petitioner and the fact that they are cooperating for the Government.

Prior to trial petitioner's attorney motioned the Court to order a Competence Evaluation of petitioner stating to the Court that he worked very closely with petitioner for the last many months. He advised the Court that increasingly over time over the last week before the trial that the discussions the attorney had with petitioner that he believed petitioner was unable to assist in his own defense, and that the believed this because of petitioner's delusional beliefs. The attorney pointed out of petitioner's correspondence to the court and to A.U.S.A Paulsen as being evidence to this and pointed out that because of petitioner's delusional beliefs, the petitioner had a firm but misunderstood belief as to what the law is.

The attorney pointed out that petitioner had a truthful legitimate defense and that is was difficult to gain the assistance of petitioner not because he doesn't believe the facts that are present, but because his belief in how a case would be presented and could be presented is just irrelevant.

The attorney told the Court that he did not have the trust of petitioner, and that petitioner's directions as to how the case should proceed are counterproductive to what a legitimate defense petitioner had.



The attorney then stated to the Court that he has difficulty even picking a jury with having to listen to petitioner at counsel table, and the attorney stated to the Court that he gets on average a half dozen voicemails a day from petitioner that direct him in incessantly different directions and that he had a difficult time effectively coordinating a defense because he could not get proper assistance from petitioner.

The Supreme Court ruled under *DUSKY v. UNITED STATES* 362 U.S.400 that a defendant is incompetent if he suffers from a mental disease rendering him insufficient in his ability to assist attorney and consult with his lawyer with a reasonable degree of rational understanding.

*UNITED STATES v. GHANE* 490 F.3d 1036 rendered a defendant is incompetent if he suffers from Delusional Disorder and displays distrust in his own attorney. Petitioner's case meets the incompetent requirements under *DUSKY* and the *GHANE* case.

To further illustrate, this petitioner made outburst during and throughout the trial, accusing the attorney of not asking questions petitioner believed were relevant, which the attorney did not, and the Government concedes petitioner's claims of incompetence stating petitioner displayed bizarre and irrational behavior, and the petitioner continuously accused the attorney of working against him.

Before the trial the Trial Court refused to order a Competence Examination. Petitioner's trial behavior was so extreme and bizarre, the Trial Court felt it necessary to order a Mental Health Examination after the trial.

The Trial Court relied on this evaluation to determine petitioner's competence when this evaluation was done. Months after the trial and Evaluator Tiffany K. Smith was denied access by the Trial Court to petitioner's jail recorded phone calls, which the Evaluator said she needed and said would be helpful and necessary in the evaluation of the petitioner.

Petitioner first requested that his jail recorded phone calls be disclosed before trial, stating to the court that they were necessary in proving petitioner's self-defense claims and his claims of necessity, because the jail phone calls contained conversations over a year's period of time with petitioner and his family that discuss that petitioner's family stated they were cooperating for the Government, and conversations that discuss the murder contract that is out on petitioner's life by a major Mexican Drug Cartel that involved petitioner's family, the Hell's Angles, the Surranoes 13, the Native Mob, the Crips and the Vice Lords.

Petitioner stated to the court that he needed these recordings to establish his self defense and necessity defense, and to question and impeach petitioner's mother and father at the trial. Petitioner subpoenaed these jail recorded

phone calls the jails refused to give petitioner the recordings, stating petitioner needed to get them from the prosecutor in his case (A.U.S.A Paulsen).

The Trial Court refused to enforce petitioner's subpoena for these jail recorded phone calls. During and throughout the trial the Government labeled petitioner a liar and argued reasons of why petitioner's story could not be believed. These jail recorded phone calls held exculpatory value to establish petitioner's defense of necessity and were exculpatory because they would have impeached petitioner's mother and father's trial testimony. They also held exculpatory value because petitioner's mental health evaluator stated she needed these recordings to determine petitioner's competence and mental health condition.

It is common sense that any evidence or material a mental health evaluator says they need in a criminal case should be given because a defendant's mental health status relates directly to his guilty, innocence and punishment.

Supreme Court review is necessary because the Circuit Courts have not properly addressed this issue as being a violation of the BRADY rule. Petitioner has appealed the District Court's ruling to the Eighth Circuit and petitioner's conviction was affirmed.

Petitioner filed a timely petition for a re-hearing to the Eighth Circuit and the Eighth Circuit denied this request.

Petitioner now petitions the Supreme Court to pray they will grant petitioner review of these issues.

#### REASONS FOR GRANTING THE PETITION

1.

The first reason of why the court should grant review of this petition is because there is no case law in any of the circuits or the Supreme Court that addresses the issue of a due process violation for withholding exculpatory material that was requested from a court ordered psychiatrist.

When the psychiatrist states the need for this evidence for determining the competence and mental health of a criminal defendant, there can be no doubt that withholding evidence from a psychiatrist in a criminal case could have an effect on the outcome of the psychiatrist diagnoses of a defendant and the outcome of the proceedings.

This evidence meets the requirements of exculpatory evidence under BRADY v. MARYLAND, 373 U.S. 83 because it relates to the mental health status of a criminal defendant, which directly relates to a defendant's guilt, innocence and punishment.

The District Court withheld over a year's worth of petitioner's jail recorded phone calls and conversations from

court ordered psychiatrist Tiffany K. Smith. These recordings were from the time of petitioner's arrest through up to petitioner's diagnosis by Dr. Carl Maimquist, who diagnosed petitioner as suffering from delusional disorder and throughout the time period of when psychiatrist Smith evaluated petitioner.

There can be no doubt that withholding this evidence from the mental health evaluator could have had a dramatic impact and effect on the outcome of petitioner's mental health diagnosis.

To allow this type of a due process violation will send a message to the lower courts that this type of misconduct is acceptable.

The Eighth Circuit Court of Appeals has ruled in a case similar to that of petitioner's, in *HONEYCUTT v. ROPER*, 426 F.3d 957 (8th Cir. 2005). In that case the Court ruled an attorney was not ineffective for failure to provide evidence repeatedly requested by the court ordered psychiatrist. Petitioner here relies on the dissent in that case by:

Circuit Judge BYE

In *HONEYCUTT v. ROPER*, 426

Circuit Judge BYE wrote in a dissent that it is common sense that, when retaining a psychiatrist to render an expert opinion as to a defendant's mental state at the time of the

offense, it is critical to provide the expert with all medical records documenting the defendant's history of mental illness and police investigative reports, (see BROWN v. STERNES, 304 F. 3d 677, 698-97 (7th Cir. 2002)) noting it is common knowledge that an evaluating psychiatrist's expert opinion concerning a defendant's mental status will be based on "past psychiatric history, family history, criminal activity, and medical records" (citing DROPE v. MISSOURI, 420 U.S. 162 (1975); PARKUS v. DELO, 33 F.3d 933 (8th Cir. 1994); AFFINITO v. HENDRICKS, 366 F.3d 252, 260 (3rd Cir. 2004) ("when the key issue in a criminal case is whether the defendant suffered from diminished capacity, we can think of nothing more critical than ensuring that the psychiatric expert has a complete and accurate a description of the facts and circumstances surrounding the crime as possible... a defendant's own statements to the police have to be some of the most, if at times not the most, crucial documents with which an evaluating mental health expert should be familiar").

Here in petitioner's case psychiatrist Tiffany K. Smith agreed in an e-mail sent to petitioner that she needed petitioner's jail recorded phone calls and agreed that they would be helpful and necessary for petitioner's mental health evaluation.

Petitioner sent a copy of psychiatrist Smith's e-mail to the District Court and made a Motion for Disclosure under BRADY v. MARYLAND for the District Court to order petitioner's

jail recorded phone conversations be disclosed for the purposes of petitioner's mental health evaluation. The District Court refused to order them to be disclosed. (6-28-2016 Docket entry 99, sentencing tran. pg 16-22).

These jail recorded phone conversations were requested multiple times before, during and after the trial. Petitioner subpoenaed these recordings and the jail refused to turn over the recordings. The District Court refused to enforce petitioner's subpoena (Trial tran. pg 19-22, 146-47, 421, sentencing tran. pg 16-22).

Petitioner also made a sworn declaration under penalty of perjury as to the content of these recorded conversations, their exculpatory value and what they would be used to prove in petitioner's case. These recordings contained over a year's worth of conversations that discuss the murder contract that is out on petitioner's life by a major Mexican Drug Cartel, that involved petitioner's own mother and father in several attempts to set petitioner up to be murdered, which also involved the Hell's Angels, the Surranoes 13, the Native Mob, the Crips and Vice Lords street gangs. The recordings have discussions of this and all the people involved. They also show petitioner's mother and father agreeing and admitting to cooperating against these organizations and admitting that these people were trying to murder petitioner.

This issue deserves review by this court because of the seriousness of this situation and the fact that the

Government and the lower courts would cover up the fact that these people are trying to murder petitioner. This is placing petitioner's life in danger.

These jail recordings also meets the BRADY material standard because the would have been used to establish petitioner's self defense and necessity defense, and would have been used to impeach petitioner's mother and father's trial testimony because petitioner's mother and father denied that they were cooperating for the Government and denied that they were involved with the Cartel and these other gang members in attempts to murder petitioner when the jail recordings show them making statements that contradict their trial testimony, and showing them admitting that they were cooperating for the Government, as well as showing them admitting that their lives are in danger and that petitioner's life is in danger.

During and throughout the entire trial the Government painted a picture to the jury that petitioner was a liar and a drug addict, and stressed to the jury that petitioner's story could not be believed.

Petitioner's attorney argued to the jury that petitioner acted out of self defense and necessity to survive being murdered by these gangsters and stated petitioner could not go to the police because these gangsters would murder petitioner's family.



Defense counsel explained that petitioner could not trust the police or the Government because these gangsters have police and attorneys who work for them. Defense counsel pointed out as an example of why petitioner did not feel safe with reporting this to the Government because since the time of the indictment, petitioner has attempted to co-operate, and has asked for help and has written letters to both the judge and the prosecutor and both have done nothing to help petitioner or his family and have done nothing to investigate what petitioner has told them, even when petitioner stated that he would take a polygraph.

"So why should petitioner have felt safe with going to the police and the Government when the evidence shows they've done nothing to help petitioner"?

At this point in the trial the Government then lied to the jury in their closing argument to rebut petitioner's attorney's statement during closing arguments about why petitioner acted the way he did and about why he did not feel safe with going to the police (Trial tran. pg 557 line 20-25, 558 lines 1-4).

The Government stated to the jury that petitioner's story could not be believed, that petitioner was a liar and that they, the Government, would never even consider taking information from someone like petitioner even if he had any to give.

"So why would petitioner feel safe with going to the police and the Government for help"?

After the trial petitioner discovered Jenks material and evidence that proves the prosecutor in petitioner's case lied to the jury with this statement. Petitioner discovered e-mails between the Federal Defender's Office, FBI Agent Julia Hunter and the prosecutor in petitioner's case discussing to set up a date that they "The Government" and "the Prosecutor" wanted to allow petitioner to cooperate.

So these e-mails prove that the prosecutor in petitioner's case lied to the jury when they labeled petitioner a liar and said that because of that, that they, the Government, would never consider taking information from petitioner, ultimately taking into the content of the entire case and the Government's presentation of what happened by labeling petitioner a liar and by the Government lying to the jury. Withholding petitioner's jail recorded phone calls severely affected petitioner's case and defense and the outcome of petitioner's mental health evaluation.

These jail recorded phone calls also meet the exculpatory standards under UNITED STATES v. AGURS, 427, U.S. 97 and UNITED STATES v. BAGLEY 473, U.S. 667. This evidence would have been used to impeach petitioner's mother and father at trial and would have cast serious doubt into their testimony that they were not involved in several attempts to set petitioner up to be murdered for this major Mexican drug

cartel.

These recorded conversations were also exculpatory material as being prior statements made by the defendant. The District Court committed harmful error by refusing to order them to be discussed under Federal Rule of Criminal Procedure 16 and by refusing to enforce petitioner's subpoena for them under Federal Rule of Criminal Procedure 17.

These recorded statements would have been used to show consistency in petitioner's statements and claims about there being a murder contract out on his life by a major Mexican drug cartel and that the contract involved petitioner's family, the Hell's Angels, the Surranoes 13, the Native Mob, the Crips and the Vice Lords.

These recordings also contained statements by petitioner's mother that contradict her trial testimony when she stated that she has never co-operated for the Government and her claims of their not being involved in trying to murder petitioner.

These recording have petitioner's mother stating that she was co-operating for the Government and also admitting that there is a serious threat to the lives of petitioner's entire family by these major drug traffickers and the Hell's Angels motorcycle gang.

This evidence was highly probative to establishing

petitioner's defense or self defense and the defense of necessity.

For those reasons the District Court made a structural error in failing to order this evidence to be disclosed and for failing to enforce petitioner's subpoena for this evidence. This amounted to a structural error because withholding exculpatory evidence effects the whole trial mechanism.

There can be no doubt that petitioner's mental health status would have effected the entire trial process and to withhold critical evidence from the mental health evaluator who stated she needed this specific evidence to determine petitioner's competence and mental health diagnosis amounts to a structural error which requires automatic reversal.

For these very compelling reasons, petition request the Supreme Court to grant review of this issue.

#### REASONS FOR GRANTING THE PETITION

#### II

The second issue petitioner presents for Supreme Court Review is the District Court's abuse of discretion in determining petitioner was competent to stand trial and the Eighth Circuit's ruling affirming the District Court's determination of petitioner's competence at trial.

This issue deserves Supreme Court Review because the District Court's actions and the Eighth Circuit's ruling clearly violates rulings by the Supreme Court in DUSKY v. UNITED STATES, 362 U.S. 402, DROPE v. MISSOURI, 420 U.S. 162 (1975). The Eighth Circuit's ruling also is in violation of their own precedent in UNITED STATES v. GHANE, 490, F.3d 1036, which quotes DUSKY.

The Eighth Circuit's opinion was written per curiam and does not properly address the issues presented on this appeal. The Eighth Circuit has denied petitioner proper review of these issues and their ruling states no reasons or answers or explanation as to why these issues were affirmed or why the District Court's actions did not violate clearly established Federal Law that petitioner presented to the Eighth Circuit.

The Eighth Circuit has failed to properly address the issues presented for review and their ruling is in direct conflict with the Supreme Court's ruling and with the rulings in other circuits. The Eighth Circuit did not give petitioner fair consideration in review of the issues presented and they did not give a fair explanation as to why they affirmed petitioner's conviction.

Before petitioner's trial, petitioner's attorney made a motion to the District Court requesting a competence evaluation, because of petitioner's delusional beliefs and because of petitioner's being unable to assist in his own

defense because of these delusional beliefs (Transcript pg 31-45 January 11th 2016).

Petitioner's attorney described to the court how petitioner has been prescribed antipsychotic medication and other mental health medications. (Tran. pg 32)

Petitioner's attorney further described to the District Court how petitioner's delusional beliefs have caused petitioner to not trust his own attorney and how this has effected petitioner's ability to assist in his own defense.

The defense attorney explained to the court of how they have been having difficulty in getting assistance from petitioner, stating the directions from petitioner of how the case should proceed as being counter productive to a legitimate defense petitioner had of diminished capacity (Tran. pg 37).

The facts in the case show that at the time petitioner withdrew his mental health defense, petitioner had written "bizarre" letters to both the prosecutor and the District Court judge. Petitioner believed that the prosecutor had made a deal with petitioner's mother and father to co-operate as confidential informants against the Cartel and the Hell's Angels.

Petitioner believed the Government, his mother and father and petitioner's own attorney were involved in staging

petitioner's mental health defense to allow petitioner's family to co-operate confidentially and to also make it so petitioner would be saved from going to prison, by using the mental health defense.

Petitioner truly believed his own attorney was involved with the Government and petitioner's own mother and father to cover up the fact that they were involved in trying to murder petitioner for the Cartel and the Hell's Angels, and that the Government went along with this because petitioner's mother and father were setting up people connected to the Cartel and the Hell's Angels.

Before the trial the District Court found petitioner competent to stand trial, and refused to order a psychiatrist examination to determine petitioner's competence.

Because of petitioner's letters to the court and prosecutor which they labeled as "bizarre", and because of petitioner's court room behavior as being irrational and bizarre, the District Court felt it necessary to order a psychiatric examination after the trial.

This examination happened 6 months after the trial which rendered petitioner competent and ruled out petitioner's having suffered from delusional disorder.

The District Court relied on this evaluation in sentencing petitioner when it was done after the trial and

also when the District Court refused to "disclose evidence" of "petitioner's jail recorded phone conversations" which the evaluator said she needed for the evaluation.

The District Court erred when it refused to order a competence examination "before trial".

The Law requires petitioner to be declared competent at the time of trial. The District Court failed to do this. The District Court ignored the fact that petitioner was diagnosed as suffering from a delusional disorder and ignored the severe mental health problems petitioner displayed with petitioner's "bizarre letters" petitioner wrote to the prosecutor and to the District Court judge in this case, and with the bizarre behavior petitioner displayed in the court room during and throughout the trial.

The District Court ignored the protest of the defense attorney in this case in regards to petitioner's competence, where the attorney said to the court that petitioner displayed distrust in his own attorney, that petitioner believed his attorney was involved in a conspiracy against him with the Government and petitioner's family, and because of petitioner's delusional beliefs as to what the law is, and how the case should proceed. Petitioner could not rationally assist in his own defense, and that because of these delusional beliefs, petitioner made irrational decisions by withdrawing petitioner's mental health defense. A legitimate defense petitioner clearly had. Petitioner's decisions were



clearly counter productive to his best interest in this case.

Petitioner did this because of his delusional beliefs that his attorney, the Government, and petitioner's family were forcing petitioner to claim he was mentally ill to cover up that petitioner's family were co-operating against the Cartel and that they were all covering up the fact that the Cartel and the Hell's Angels were along with petitioner's family were trying to murder petitioner.

Petitioner's defense attorney informed the District Court of petitioner's delusional beliefs, and that petitioner believed his own attorneys were involved in a conspiracy against petitioner.

Petitioner's attorney told the District Court of how petitioner's delusional beliefs have invaded every aspect of his life "see court document" (Defense position of Defendant Gary Kachina with respect to sentencing dated October 11th 2016, Docket Number 111, dated 10-12-2016).

The District Court also erred in denying petitioner's motion for a psychiatric examination "before trial" to determine petitioner's competence, because petitioner's first examination by Doctor Carl Malmquist did not specifically address the issue of petitioner's competence, and because petitioner's defense attorney pointed out to the court that petitioner's delusional beliefs have effected petitioner's ability to assist in his own defense.

Petitioner's attorney pointed out to the court that petitioner did not trust his attorney and believed his attorney was involved in a conspiracy against him with petitioner's family and the Government.

The defense attorney pointed out petitioner's irrational behavior with the letters he wrote to the District Court judge and A.U.S.A. Paulsen, and that petitioner also irrationally withdrew his mental health defense, which was a legitimate defense petitioner had, and that petitioner was making decisions that were counter productive because of petitioner's delusional beliefs as to what the law is, and also because petitioner believed the mental health defense was a part of a conspiracy to cover up the fact that the Cartel and Hell's Angels were trying to have petitioner murdered.

The Eighth Circuit has ruled prior to petitioner's case in UNITED STATES v GHANE 490 F.3d 1036, 1040-41 (8th Cir. 2007) that this type of diagnosis and this type of behavior renders a criminal defendant incompetent. Petitioner's attorney described to the court of the extreme difficulties in getting proper assistance in this case because of the attorney's not having the trust of the petitioner. (Transcript pg 37, pg 45)

The District Court clearly erred in refusing to order a competence examination "prior to trial". Petitioner's behaviors and diagnosis and the fact that the previous

examination never specifically addressed competence, clearly displayed that the District Court's refusal to do this was clearly in error, and the District Court's decision to find petitioner competent to stand trial was clearly erroneous.

Appellant's behavior and demeanor in court displayed petitioner did not have a rational as well as factual understanding of the proceedings against him. It is clear from the record that the District Court questioned it's competence determination before the trial.

Because of the fact that the District Court refused to order an examination before the trial and declared petitioner competent and then after witnessing petitioner's behaviors during and throughout the trial the District Court felt it necessary to order a mental health examination after the trial.

If the District Court felt petitioner was competent at trial, why did the District Court order a psychiatric examination after the trial? Because the District Court believed she erred in her judgment of petitioner's competence.

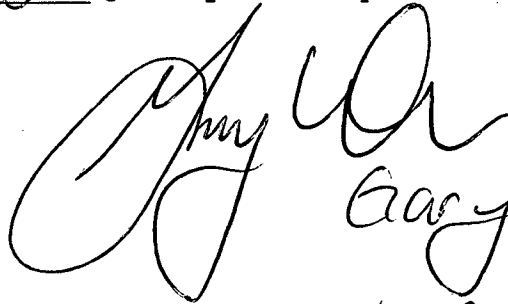
The District Court's determination that petitioner was competent to stand trial was clearly erroneous. Supreme Court review is appropriate for this issue to clarify this issue to the lower courts and to exercise its authority to correct the lower court's decision that contradicts Eighth Circuit and

Supreme Court ruling in GHANE and DUSKY.

CONCLUSION

For the reasons listed in the petition, the petition for a Writ of Certiorari should be granted.

DATE: July 4<sup>th</sup> 2018 Respectfully submitted,

A large, stylized handwritten signature in black ink, appearing to read "Gary A. Kachina".

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