

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

O'Brian Thomas — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Fifth Circuit Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

O'Brian S
(Your Name) O'Brian Thomas

FCI Butner II, PO Box 1500
(Address)

Butner, NC 27509
(City, State, Zip Code)

NA

(Phone Number)

QUESTION(S) PRESENTED

WHETHER THE FIFTH CIRCUIT COURTS VIOLATED BERGER V US
AFTER IT CONCEDED THAT THE VIOLATIONS HAD OCCURED BUT
DECIDING THAT IT WAS "IMPLAUSIBLE THAT IT WOULD HAVE
INFECTED THE JURORS" ?

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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OTHER

NA

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/B to the petition and is

reported at 2018 US App. Lexis 13575; 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 is unpublished.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 is unpublished.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 is unpublished.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 is unpublished.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 May 23, 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: Aug. 23, 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

FIFTH AMENDMENT DUE PROCESS CLAUSE

The Fifth Amendment protects against issues of Indictment, Double Jeopardy, Self Incrimination, Due Process, Equal Protections and Private Property for public use.

SIXTH AMENDMENT JURY TRIAL RIGHTS

The Sixth Amendment protects Speedy Trial and "Public Trial Rights", Trial by Impartial Jury, Right to Trial in State and District in which the crime was committed, Right to be Informed of Nature and Cause of Accusation, Right to Confront Witnesses, Right to Compulsory Process for Obtaining Witnesses, and Right to Assistance of Counsel.

STATEMENT OF THE CASE

The prosecutor repeatedly misstated the facts of the case and then misinformed the jurors during her closing arguments of the trial as to the actual law and evidence.

The trial counsel objected and the court sustained in favor of the petitioner, but the jurors had "already been infected" by the government's strategic actions. The petitioner was later convicted based upon the...misconduct of the government.

The petitioner appealed to the Fifth Circuit of Appeal, in which the Fifth Circuit also acknowledged that the government's actions did prejudice the petitioner, and that the errors were clear and obvious misstatements of key points of the law".(See DOC 4, App. No. 17-40532, App'x C)

Unfortantely, the Fifth after making these findings determined ".that it was implausible to have infected the jurors" and then denied the petitioner a New Trial.

Therefore, the petitioner files this timely petition and request that the Court Grants the Petition for Certiorari and then Vacate the Fifth Circuit's Decision and Remand for futher proceedings or with instructions to Grant a New Trial.

REASONS FOR GRANTING THE PETITION

In US v Vasquez, 677 F.3d 685 (5th Cir. 2012)..the Fifth Circuit Judges (2 of the 3 also in Thomas case), held that.."when a defendant timely objects to prosecutorial statements, as Thomas had done at trial, the appellant court "reviews for abuse of discretion". But where the defendant did not object at trial to the statements at issue the appeal court reviews for plain error.

In this case, the 5th Circuit conceded that the government did violate the petitioner's constitutional rights, but it wrongly decided the amount of prejudice and harm to Thomas and the jurors.

This Court has ruled on several occasions in cases.. such as Berger v US, 295 US 78,88 (1935), Donnelly v DeChristforo 416 US 637,643 (1974), and Smith v Phillips 455 US 209, 219 (1982) that the "prosecutors duty is to seek justice and to prosecute with earnestness and vigor "but must not use improper methods calculated to produce...a conviction". This same principle was re-affirmed in Donnelly and Smith.

But here, when the 5th Circuit found that the government wilfully violated the Sp. Ct precedents, it then moved.. to deny the relief sought by Thomas by mistakenly believing that the errors and misconduct were harmless, althought they were clear and obvious. In fact, the 5th Circuit based its opinion on the "implausible". In this case, "implausible" is defined as..not plausible or readily believable, inconceivable, unbelieveable,

unconvincing". But the problem with the 5th Circuits findings is that it fails to account for the "Human Fallacies" that the government preys upon.

Humans are like sponges, that soak up every word for later use, rather it is good or bad. Therefore, the Fifth Circuit decision has failed to account for those individuals who lack the proper knowledge of the law and its requirements of the laws. Due Process Clause and Sixth Amendment Fair Trial Clause..

For a denial of constitutional Due Process, the prosecutors statements must infect the trial..not dramatically alter it. In this case, the prosecutors actions did infect the trial and the District and Circuit Court both agreed and instead of Granting a New Trial or declaring a Mistrial, the parties affirmed the governments actions and denied the petitioner Equal Protections of the Law. In doing so, allowed the government to openly violate the Berger, Donnelly and Smith decisions and has departed from this Courts rulings to create a common law ruling that violates the Due Process rights...of defendants like Thomas.

The "degree of prejudice" is always substantial and weights heavily in favor of the government while dramatically harming the accused. Once the Courts decided that the actions were improper and were clear and obvious, then that was enough to show that a New Trial was required. But the 5th Circuit thought..differently and has placed too heavy a burden on the defendants, when it was the government who did the unlawful actions. In fact, the govern-

ment has conceded in its brief (App'x C) that the actions had occurred but it also placed the burden on the defendant, although it did it wilfully and depended upon the human fallacies to get the conviction and underminded.. the defenses of the defendant, which is a blatant violation of Berger.

Therefore, the question for this court is..once it is clear and obvious that the government has committed misconduct during trial, what is the proper remedy, seeing that the 5th circuit relied on the implausible instead of the harm and account of the human fallacies.. and then switched its own standards.

The Berger, Donnelly and Smith rulings held that a New Trial is Warranted or the Dismissal of the Charges and release of the defendant. In this, case, the petitioner prays that the Court Grants the Writ of Certiorari, Vacates the Judgments of the 5th Circuit and Orders the New Trial or Immediate release, seeing that the parties all conceded that the actions were improper and did occur. (State v Cornell 170 Arz. 314, 331 (1994)..the prosecutor has a duty to see that "all defendants" receive a fair trial; Oregon v Kennedy 456 US 667, 676 (1982); US v Certified Environment Services, 11-4872 (2nd Cir. 2014) same). In alternative, GVR in light of Berger,Donnelly and Smith.

Respectfully submitted on this 25 day of Oct., 2018

s/Mr. Brian T
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CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Mr. O'Brien T
Mr. O'Brien Thomas, 31569-171

Date: Oct. 25 2018