

No. 18-9378

ORIGINAL

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IN THE SUPREME COURT OF THE UNITED STATES

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In re Tae Hun Chon

or

PAUL THOMPSON - Respondent

v.

TAE H. CHON - Petitioner

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ON PETITION FOR AN EXTRAORDINARY WRIT OF HABEAS CORPUS

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[REDACTED]

TAE H. CHON  
Pro se petitioner

Fed. Reg. No. 08923-081  
Federal Prison Camp-Herlong  
P.O. Box 800  
Herlong, CA 96113

QUESTION PRESENTED FOR REVIEW

Does a District Court's ex post facto construction of  
a substantive criminal statute deprive a petitioner of  
the fair warning to which the Constitution entitles him?

LIST OF PARTIES IN COURT BELOW

1. Tae Hun Chon - Petitioner,
2. Paul Thompson - Respondent, the Warden at the United States  
Federal Prison Camp where the petitioner is  
in his custody.
3. Noel J. Francisco - Counsel for Respondent, the Solicitor  
General of the United States who must  
be served under the Supreme Court Rules  
20.2, 20.4(b) and 29,
4. Pursuant to Supreme Court Rule 29.6, petitioner, Tae H. Chon,  
certifies that he has no parent corporation.

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IN THE SUPREME COURT OF THE UNITED STATES

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PETITION FOR EXTRAORDINARY WRIT OF HABEAS CORPUS

Petitioner TAE HUN CHON seeks an Extraordinary Writ of Habeas Corpus to review the judgment of the Tenth District Court to convict and imprison him beyond its jurisdiction and judicial power.

OPINIONS BELOW

The following cases are pertinent here; all of which directly relate to the District Court's conviction and sentence of the petitioner.

1. United States District Court Case Nos. -

2:09-CV-00654-TS and 2:01-CR-00487-TS-1

2. United States Court of Appeals for the Tenth Circuit Case Nos. -

United States v. Chon, 559 Fed. Appx. 779; 2014,

United States v. Chon, 512 Fed. Appx. 855; 2013,

United States v. Chon, 434 Fed. Appx. 730; 2012,

United States v. Chon, 291 Fed. Appx. 877; 2008 (direct appeal).

STATEMENT OF JURISDICTION

Jurisdiction to issue an extraordinary writ of habeas corpus by this Court is conferred by 28 U.S.C. §§ 1651, 2241 et seq. and the United States Constitution Article I, § 9, Clause 2 and Article III, § 2, Clause 2, through the Supreme Court Rule 20.

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

### Constitutional Provisions

1. Ex Post Facto Clause (United States Constitution, Article I, § 9, Cl. 3)

"No Bill of Attainder or ex post facto Law shall be passed."

2. United States Constitution, Amendment 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 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."

3. Suspension clause (United States Constitution, Article I, § 9, clause 2)

"The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it."

### Statutory Provisions

1. Comprehensive Methamphetamine Control Act of 1996

Oct. 3, 1996, P.L. 104-237, 110. 3099, 21 USCS § 801 nt..

2. Rules Enabling Act

Nov. 19, 1988, P.L. 100-702, Title IV. 102 Stat. 4648,  
28 USCS §§ 2071 et seq..



## STATEMENT OF THE CASE

Petitioner, Tae H. Chon, was indicted on August 22, 2001, on three counts of distribution and possession of pseudoephedrine knowing, or having reasonable cause to believe, it would be used to manufacture methamphetamine in violation of 21 U.S.C. § 841(c)(2), "except as authorized by" the "Comprehensive Methamphetamine Control Act" (Oct. 3, 1996 P.L. 104-237, 110 Stat. 3099, 21 USCS § 801 nt.). (See 28 USCS § 841(c)(2) - "except as authorized by this title.")

Provisions relating to regulation of retail sales of pseudoephedrine existed under the Comprehensive Methamphetamine Control Act ("CMCA"), at the time of petitioner's alleged offensive conduct. Such provisions exempted or proscribed retail distributors like petitioner, from criminal punishment where they violated pseudoephedrine thresholds established under the "Regulation of Retail Sales of Certain Precursor Chemicals; Effect on Thresholds; Combination Ephedrine Products." (See Appendix A).

To reiterate, Chon was indicted in 2001. His jury trial, however, was held in July of 2007. By Act March 9, 2006, P.L. 109-177, Title VII, Subtitle A, § 712(b), 120 Stat. 264, the provisions relating to retail sales of pseudoephedrine were repealed. Petitioner seeks certiorari because he understands the District Court gave retroactive application to a new construction of the CMCA, and insodoing, deprived him of his federal constitutional right to due process.

## ARGUMENT

### 1. Reasons for Issuance of the Writ

Under Peugh v. United States: 569 U.S. 530; 2013, this Court explained; "every law that changes the punishment, and inflicts a greater punishment, than the law annexed to the crime, when committed" is forbidden under the Ex Post Facto Clause of the United States Constitution. (Id. at 532-33). That is precisely what happened here.

Chon was indicted in 2001. (See Appendix B). At that time, regulations authorized by the CMCA exposed Chon only to civil penalties. (See Appendix A). When Chon's jury trial began, those regulations no longer existed under the CMCA, as they were repealed in 2006. (See Appendix C).

Instead of making sure Chon was prosecuted under the law in effect at the time of the alleged "2001" offensive conduct, the District Court did the unforeseeable: It judicially enlarged the "2006" version of the CMCA by allowing it to reach back and cover Chon's "2001" conduct.

Because "an unforeseeable judicial enlargement of a criminal statute, applied retroactively, operates precisely like an ex post facto law," (Bouie v. City of Columbia: 378 U.S. 347, 353; 1964), and therefore violates due process (Marks v. United States: 430 U.S. 188, 191-92; 1977), the District Court's unforeseeable and retroactive CMCA interpretation must be corrected since it deprived Chon of fair notice that the CMCA would be thus applied.

In United States v. Marcus: 560 U.S. 258, 264; 2010, this Court said:

"... if the jury, which was not instructed about the TVPA's enactment date, erroneously convicted Marcus based exclusively on noncriminal, preenactment conduct, Marcus would have a valid due process claim. Cf. *Bouie v. City of Columbia*, 378 U.S. 347, 353-354, 84 S.Ct. 1697, 12 L.Ed. 2d 894 (1964) (applying Due Process Clause to ex post facto judicial decisions)."

In this case, harm from the District Court's ex post facto interpretation of the CMCA was not and could not be prevented by a proper jury instruction; nor, through striking or limiting testimony of a particular witness. Indeed, the error here infected the entire trial and "affect[ed] the framework within which the trial proceeds," (*Arizona v. Fulminante*: 499 U.S. 279, 310; 1991), to "necessarily render a criminal trial fundamentally unfair or an unreliable vehicle for determining guilt or innocence." (*Neder v. United States*: 527 U.S. 1, 9; 1999).

When citation error prejudices a criminal defendant, Federal Rule of Criminal Procedure 7(c)(2) requires federal courts "to reverse a conviction." (Fed. R. Crim. P. 7(c)(2)). Here, neither the jury nor Chon were informed of the date CMCA provisions relating to regulation of retail sales of pseudoephedrine were repealed. Thus informed, it is reasonably probable that Chon would not have been convicted since the conduct alleged in the Indictment is exclusively "pre-repeal" and thereby innocent.

## 2. Extraordinary Circumstances

Disturbingly, Chon can demonstrate where the 10th Judicial Circuit "has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power." (S.Ct. Rule 10(a)).

Petitioner can show a pattern and practice of purposeful discrimination against Asian-American retail distributors of pseudoephedrine within the Tenth Judicial Circuit, through selective enforcement of the CMCA provisions relating to regulation of retail sales of pseudoephedrine.

The following cases are criminal prosecutions of Asian-American retail distributors of pseudoephedrine within the Tenth Judicial Circuit. Notably, all their collective offensive conduct occurred before the repeal of CMCA regulations mandating civil penalties to "[a]ny individual or business that violates the thresholds established" for pseudoephedrine transaction. (See Appendix A).

- i. United States v. Muessig: 427 F.3d 856; 2005 (10th Cir.) - Defendants Huong Muessig, Sonny Lee Tran, and Nga Tran;
- ii. United States v. Nguyen: 413 F.3d 1170; 2005 (10th Cir.) - Defendant Chinh Trong Nguyen;
- iii. USA v. Lam: Case No. 2:01-CR-672-DAK; 2001 (10th Dist.) - Defendant Nick Lam; and
- iv. United States v. Chon: 291 Fed. Appx. 877 (10th Cir. 2008) & D.C. Nos. 2:09-CV-00654-TS and 2:01-CR-00487-TS-1 (Dist. of Utah) - Defendant Tae Chon the petitioner.

It is evident that the administration of the business of the courts within the Tenth Judicial Circuit involves the use of an explicit racial classification to perform what has never before been countenanced by this Supreme Court:

exclusively holding Asian-American defendants criminally responsible for conduct which they could not reasonably understand to be criminal.

"With respect to criminal statutes and ordinances, all persons are entitled to be informed as to what the State commands or forbids."

(Papachristou v. City of Jacksonville: 405 U.S. 156, 162, Headnote #2; 1972).

#### CONCLUSION

The CMCA is being applied and administered "with an evil eye and an uneven hand." (Yick Wo v. Hopkins: 118 U.S. 356, 373-74; 1886). Because of the importance of the issue presented, Chon prays this Supreme Court will consider whether a District Court's ex post facto construction of a substantive criminal statute deprives a petitioner of the fair warning to which the Constitution entitles him.

DATED: May 12, 2019.

Respectfully submitted by,

A handwritten signature in black ink, appearing to read 'TAE H. CHON', written over a horizontal line.

TAE H. CHON  
Pro se petitioner