

No. 19-8373

IN THE  
SUPREME COURT OF THE UNITED STATES

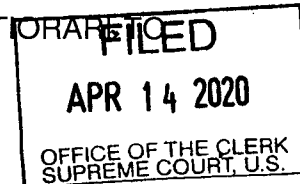
FRANK S. ROQUE — PETITIONER  
(Your Name)

vs.

**ORIGINAL**

DAVID SHINN, ET AL. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI



ARIZONA Superior Court  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

FRANK ROQUE # 180333  
(Your Name)

ASPC-BUCKLEY UNIT- LEWIS COMPLEX  
(Address)

P.O. Box 3400, Buckeye AZ. 85326  
(City, State, Zip Code)

N/A  
(Phone Number)

## 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:

## QUESTION(S) PRESENTED

1. DID ARIZONA COURT VIOLATE THE COURTS DECISION IN JOHNSON V. MISSISSIPPI BY ENTERING EVIDENCE OF A 1983 PRIOR CONVICTION THAT WAS SET-ASIDE, DISMISSED. WAS THE STATE COURT RULING CONTRARY TO OR AN UNREASONABLE APPLICATION OF FEDERAL LAW. WHEN PRESENTED WITH A JOHNSON VIOLATION AND THE STATE COURT FAILED TO MAKE A RULING REGARDING VIOLATION?
2. DID ARIZONA COURT VIOLATE PETITIONERS FAIR TRIAL AND DUE PROCESS RIGHTS BY ENTERING EVIDENCE OF A PRIOR CONVICTION DOCUMENT THAT IS NOT CERTIFIED VIOLATING FEDERAL RULES OF EVIDENCE, 902. WAS THE STATE COURTS DECISION CONTRARY TO OR AN UNREASONABLE APPLICATION OF FEDERAL LAW. WHERE IT FAILED TO MAKE A RULING REGARDING THE FEDERAL RULES OF EVIDENCE AND DUE PROCESS VIOLATION PRESENTED.

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## TABLE OF AUTHORITIES CITED

### CASES

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JOHNSON V. MISSISSIPPI, 486 U.S. 578 (1988)

### STATUTES AND RULES

FEDERAL RULES OF EVIDENCE, RULE 902 (4)

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### OTHER

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 \_\_\_\_\_ 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 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 AB 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 ARIZONA SUPREME COURT court appears at Appendix BA 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 \_\_\_\_\_.

☐ 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 3-27-2020.  
A copy of that decision appears at Appendix B A.

☐ 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

1. SIXTH AMENDMENT CONSTITUTIONAL RIGHT TO A FAIR TRIAL.
2. FOURTEENTH AMENDMENT CONSTITUTIONAL RIGHT OF DUE PROCESS OF LAW.

## STATEMENT OF THE CASE

ON SEPTEMBER 11, 2001 TERRORIST HI-JACKED AIRLINERS AND CRASHED THEM INTO THE PENTAGON AND WORLD TRADE CENTER BUILDINGS KILLING MORE THAN 3000 AMERICANS. NEWS REPORTS SHOWED TERRORIST NATIONS CELEBRATING THE MURDER OF INNOCENT PEOPLE. THESE EVENTS CAUSED ME TO SUFFER A POST-TRAUMATIC STRESS DISORDER BREAKDOWN WHICH RESULTED IN THE SHOOTING OF A MAN WEARING A TURBAN ON SEPTEMBER 15<sup>TH</sup>. I WAS TRIED AND CONVICTED IN 2003. SENTENCED TO DEATH. ON DIRECT APPEAL TO THE ARIZONA SUPREME COURT THE CONVICTIONS WERE AFFIRMED AND THE SENTENCE WAS REDUCED TO NATURAL LIFE DUE TO MITIGATING EVIDENCE OF MENTAL ILLNESS. I WAS 45 YEARS OLD, MARRIED FOR 20 YEARS WITHOUT ANY PRIOR CONVICTIONS. I HAD ONE 1983 CONVICTION THAT WAS SET-ASIDE, DISMISSED IN 1985 BY A CALIFORNIA COURT. THE STATE OF ARIZONA WAS AWARE OF THIS LEGAL FACT IN A HEARING HEARD ON 6/27/2003. THE STATE ADMITTED IT COULD NOT RE-PROVE THE CONVICTION. THIS VIOLATED THE COURT'S PRECEDENCE IN JOHNSON V. MISSISSIPPI BY INTRODUCING THE CONVICTION WITHOUT RE-TRYING AND RE-CONVICTED AS MANDATED BY JOHNSON. ALSO THE PRIOR CONVICTION DOCUMENT ENTERED IN EVIDENCE BY THE STATE AS EXHIBIT 227, ON 10/7/2003 IS ILLEGAL BECAUSE IT IS NOT CERTIFIED AND VIOLATES RULES OF EVIDENCE RULE 902(4), ALSO R. OF CIV. P. RULE 44 (a). SEE APPENDIX H. SEE ALSO LEGAL REQUIREMENT OF PLEADING AND PROVING SET-ASIDE CONVICTION, AT APPENDIX D AND APPENDIX I. THE VIOLATION OF RULES OF EVIDENCE 902(4) VIOLATED PETITIONER'S DUE PROCESS RIGHT AND FAIR TRIAL RIGHT AS THE PRIOR WAS INTRODUCED AT TRIAL BY PROSECUTION EXPERT WITNESS DR. SCHALLI ON 9/22/03 AT 102-103. AND 9/23/03, AT 43-47, ALSO 10/7/03, AT 170-171. ALSO PETITIONER WAS SENTENCED TO AGGRAVATED SENTENCES BASED ON THE ILLEGAL PRIOR CONVICTION DOCUMENT THAT IS NOT CERTIFIED. SEE APPENDIX G, AND RECORD TRANSCRIPT AT 10/14/03, 5-7.

## REASONS FOR GRANTING THE PETITION

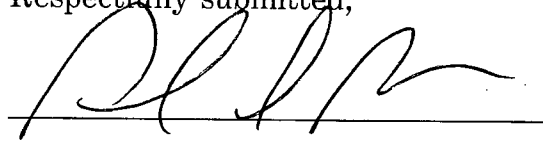
THE STATE OF ARIZONA, CONFRONTED WITH THE SAME SET OF FACTS AS THIS COURT IN JOHNSON, YET CAME TO A DIFFERENT DECISION. SEE RESPONSE, P. 6-7. THE STATE CLAIMS JOHNSON DECISION ONLY APPLYS TO CONVICTIONS THAT WERE REVERSED, NOT TO CONVICTIONS THAT WERE SET-ASIDE, DISMISSED LIKE MINE. SEE APPENDIX E. PETITIONER'S COUNSEL SUBMITTED JOHNSON SPECIFICALLY STATES IT APPLYS TO CONVICTIONS THAT WERE SET-ASIDE. SEE APPENDIX F (Reply at p.5). THIS LEGAL FACT IN CONTENTION WAS NEVER RESOLVED BY THE STATE COURTS AND WOULD RESOLVE THIS CASE REGARDING WHETHER OR NOT ARIZONA VIOLATED JOHNSON V. MISSISSIPPI. THE STATE ADMITTED IT COULD NOT RE-PROVE THE SET-ASIDE CONVICTION AT A PRE-TRIAL EVIDENCE HEARING ON JUNE 27, 2003. THIS COURT IN JOHNSON STATES ONCE A CONVICTION IS SET-ASIDE, REVERSED THE PRESUMPTION OF INNOCENCE IS RESTORED. THE STATES FAILURE TO RE-TRY AND RE-PROVE THE PRIOR CONVICTION CONSTITUTES A VIOLATION OF JOHNSON V. MISSISSIPPI. THE STATE USED THE ILLEGAL CONVICTION TO ENHANCE SENTENCES. AND BOLSTER IT'S EX PART DR. SCHALLI'S OPINION. SEE APPENDIX G.

PETITIONER PRAYS THE COURT WILL TAKE A FIRM STAND ON ARIZONA'S VIOLATION OF THE COURT'S PRECEDENCE IN JOHNSON AND THE STATES REPETTED ATTEMPTS NOT TO CORRECT THE VIOLATION.

### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'R. L. R.', is written over a horizontal line.

Date: 4 - 9 - 2020