No. 21-7267

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

WILLIAM ROY THIETJE - PETITIONER

vs.

UNITED STATES OF AMERICA - RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

WILLIAM ROY THIETJE

480 ALTA RD. RJDCF

SAN DIEGO, CA 92179

QUESTIONS PRESENTED

1. Where petitioner received a conviction based on erroneous jury instructions, were such petitioner was denied his Fourteenth Amendment right to Due Process, where
   (1) the trial court erred in instructing the jury on provocative act murder by failing to instruct the jury that, in the absence of a proven intent, the provocative act had to involve evidence sufficient to not only support the assault with a deadly weapon, but must supply something more, and,
   (2) the trial court erred in refusing to instruct the jury that the act of the shooter who killed the victim might constitute an independent intervening cause that absolved petitioner, and,
   (3) Where the court read in the instructions a charge of implied malice of the provocative act murder which shifted the burden to the defendent of disproving malice presumed?
2. Should the State Appellate court have awarded petitioner relief in regards to the Chapman decision of the harmlessness determination?
3. Did the trial court abuse its discretion in not investigating and excusing a juror who expressed safety concerns and potentially influenced other jurors on the panel?
4. Should petitioner have been allowed to have a continuance to retain counsel, and were such petitioner denied his Sixth Amendment right to counsel?
5. Where the Court of Appeals denied petitioner the right to equitable tolling to accept his appeal due to his disability?

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

[X] 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:

1.) UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

2.) UNITED STATES DISTRICT COURT IN AND FOR THE EASTERN DISTRICT OF CALIFORNIA

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

The opinion of the United States Court of Appeals at Appendix A to the petition and is unpublished.

The opinion of the United States District Court appears at Appendix B to the petition has been deisnated for publication but is not yet reported; or, is unpublished.

JURISDICTION

The date on which the United States Court of Appeals decided my case was **October 14, 2021.**

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: **January 11, 2022,** and a copy of the order denying rehearing consideration appears at Appendix A.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution provides in relevant part; "In all criminal prosecutions Due Process prohibits the states from using the jury instructions given at an accused defendants murder trial that relieves the state of its burden of proving the element of intent under "malice".

The Due Process Clause of the Fourteenth Amendment protects the accused against conviction except upon proof beyond a reasonable doubt of every element necessary to constitute the crime with which he is charged. This constitutional principal prohibits the state from using evidentiary presumptions in a jury charge that has the effect of relieving the state of its burden of persuasion, or omissions in the instructions for the jury to consider relevant to the evidence.

The Fourteenth Amendment also guarantee's (1) federal law rather than state law is applicable in fashioning a rule as to what constitutes harmless error in the instant case; (2) before an error involving the denial of a federal constitutional right can be held harmless in a state criminal case, the reviewing court must be satisfied beyond a reasonable doubt that the error did not contribute to the defendant's conviction. It is also the demand that the accused be afforded an impartial jury panel to determine his guilt or innocence.

The Sixth Amendment to the United States Constitution provides in part; "In all prosecutions, the accused shall...have effective assistance of counsel at all critical stages of the proceedings.

The constitutional right of a defendant to be heard through counsel necessarily includes his right to have his counsel make a proper argument on the evidence, and the applicable law in his favor relevant to his conviction, sentence, right to appeal, however simple, clear, unimpeached, and conclusive the issues in the case may seem unless he has waived his right to such argument.

Defendants have the right to retain counsel of their choice at any stage of the proceedings, and any denial of that right is a violation of the Sixth Amendment. And, in correlation with the Fourteenth Amendment, the denial of an impartial jury panel also is a denial of the Sixth Amendment.

In regards to the Court of Appeals for The Ninth Circuit's decision to not intervene in accepting the appeal of petitioner in favor of equitable tolling due to his learning and mental disabilities also is a denial of Due Process of the Fourteenth Amendment.

STATEMENT OF THE CASE

The federal questions sought to be reviewed were raised on the direct appeal in the California Court of Appeal for the Third Appellate District in the year 2016 in Case No. (Ct. of App. C078175) People v. Thietje, 2018 WL 3031695, at *1-3, June 19, 2018. That appeal was a result of petitioner's murder trial in Case No. 12F7786 in the Superior Court of California For Shasta County. The appeal was denied even though the Court of Appeal address the instructional errors but determined that they were harmless under the Chapman standard. Petitioner then sought a Petition for Review in the California Supreme Court which was summarily denied in October of 2018.

Petitioner then sought a federal habeas petition which was timely pursuant to 28 U.S.C. § 2244(d)(1),(2), which was denied on July 23, 2021. Petitioner then sought help to proceed to the Court of Appeals For The Ninth Circuit and the Notice of Appeal was filed and the case submitted to the Court of Appeals For The Ninth Circuit Case No. 21-16569, which was dismissed on October 14, of 2021. Petitioner then filed a motion and petition for reconsideration which was denied on January 11, 2022.

The United States District Court in this case held that petitioner was not entitled to relief on any ground in his petition challenging the instructional errors in Ground One and Ground two of the federal petition, yet granting a Certificate of Appealability for further review by the Court of Appeals For The Ninth Circuit of the claims of the instructional errors of (1) error not to instruct the jury that petitioner's alleged provocative act had to be something

beyond an assault with a deadly weapon, and (2) the trial court should have instructed the jury that petitioner was not guilty of murder if the conduct of the person who fired the fatal shot was an independent act of criminal behavior.

Further, the district court denied relief on the claim that the trial court abused its discretion in failing to investigate juror misconduct after a juror reported he had concerns of safety which could have been a contributing factor to the verdict, and the court did nothing in its power to even investigate such an important issue. The trial court violated petitioner's right to counsel by not allowing him a continuance to retain counsel of his choice to prepare for sentencing and his motion for a new trial and appeal preparations. It was the courts decision to deny petitioner the right to retain counsel for critical stages of the proceedings because the court felt that the alleged victims deserved justice and that the petitioner was attempting to delay the proceedings.

In regards to the instructional errors in this case, the court of appeal for the state ruled that the errors were harmless however, agreed that the errors existed. The contributing factors regarding the instructional errors were a plethora of violations in the instructions which never were cured by the instructions as a whole, and omitted parts of the instructions which ultimately shifted the burden to the defendant and relieved the state of its burden to prove all elements beyond a reasonable doubt.

By the omission of the court not to charge the jury instruction that the petitioner was not guilty of murder if the conduct of the person who fired the fatal shot as an independent criminal act, shifted the burden to the defendant, and the trial court failed to tell the jury that in the absence of intent to kill, the provocative act here, which was assault with a deadly weapon (the vehicle), must involve evidence sufficient to not only support the assault with a deadly weapon, but supply proof beyond a reasonable doubt of the inference of the malice instruction attached. Given the testimony and evidence and circumstances produced at trial it shows that the amount of petitioner's culpability of murder with malice just simply does not meet the constitutional requirements of supporting a fact finding of guilt beyond a reasonable doubt.

The actions of the shooter that ultimately killed the passenger in the vehicle petitioner was driving constituted an independent act of criminal negligance because the shooter removed himself from any potential threat of harm by the alleged deadly weapon, which was the vehicle petitioner was operating. The shooter went in to his home to arm himself with a shotgun and took time to load it and then emerged from his home to confront the petitioner and the other occupants inside the vehicle. This critical point was testified to by the shooter himself at the petitioner's trial. By the trial court omitting this act of the shooter from the instructions shifted the burden and relieved the prosecution of

By the omission of the court not to construe the jury instruction
that the battalion was not guilty of murder if the conduct of the
operation was done in the best, good use of judgment criminal act,
applied the burden to the defendant, and the trial court failed to
tell the jury that in the absence of malice to kill, the provocative
act part, which was assault with a deadly weapon (the machete),
was manslaughter, but supply proof beyond a reasonable doubt
with a deadly weapon, but supply proof beyond a reasonable doubt
of the intentional act, a misdemeanor-manslaughter instruction attached. Given the
severity and cruelty of the circumstances, it is more
just simply good not meet the conditional requirements
supporting a self-defense doubt.

The motion of the shoot to kill defense was inadequate
in the verdict battalion was entitled consistent in independent
act of criminal negligence because the machete blinded
from the borderline cases of death by the majority decision
which was the verdict battalion was operative. The shoot knew
it had been smuggled from his home to confront the battalion and
was often accompanied the verdict. This critical point
possible, if any, the shoot-out might be the battalion's fit
by the trial court granting the use of the shoot from his
instructions omitted the trial because the prosecution of

its burden of proof. There has been many other cases with circumstances similar to this instant case that conflicted with the structure of the constitution in which this Supreme Court intervened and corrected. The facts were not considered in the charging of the jury instructions which if the jury could have considered those instructions outlining the shooters acts were independently criminal would have perhaps made a significant difference in how the facts were viewed with the evidence and the testimony. New laws have passed in California since petitioner's conviction of the provocative murder act under California Penal Code § 1437, and strongly raises the question of petitioner's guilt as to intent to kill another by proxy.

It was also determined by the Court of Appeal of the State of California that petitioner's right to counsel was not denied by the trial court refusing him a continuance to retain counsel of his choice which was his right to prepare for the penalty phase of the proceedings. Every person accused has a right to have counsel of his choice to represent him at critical stages of the proceedings and to rush an accused to the penalty phase without adequate representation is a denial of his Sixth Amendment right.

The Court of Appeals For The Ninth Circuit denied petitioner his right to appeal the decision to that Court of the decision of the United States District Court's denial of the federal petition due to his inability to understand filing deadlines, and his

[in]ability to read and write prevented him from filing a timely notice of appeal. Petitioner implored the Court for equitable tolling due to his disabilities and the Court denied reconsideration after they denied and dismissed the case.

The Court of Appeals For The Ninth Circuit citing that it lacked jurisdiction to intervene and allow equitable tolling to his Notice of appeal and Appeal process.(Pet. App. A). Petitioner is without remedy except for review and consideration in this Great Court.

REASONS FOR GRANTING THE PETITION

There is a conflict among many circuits in different states as to the harmlessness of such instructions charged to a jury that were in error, and there is even more conflict pertaining to any instructions that omitted important elements to be considered from a charging to the jury.

In **Chapman v. California**, 386 U.S. 18, this Court held that an error is harmless if it appears "beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained.

As to the Question Presented in the first question, the trial court erred in instructing the jury on provocative act murder but failed to tell the jury that in the absence of a proven intent to kill, the provocative act here, must involve evidence sufficient to not only support the assault with a deadly weapon, which was the vehicle, but must supply something more to prove that fact.

An error does not contribute to a verdict only if it is unimportant in relation to everything else the jury considered on the issue in question, as revealed in the record. In applying Chapman, a court must first ask what evidence the jury actually considered in reaching its verdict, and it must then weigh the probative force of that evidence against the probative force of the presumption standing alone. That fact coupled with failing to instruct the jury on the shooter's independent act being his own and absolving the petitioner of any culpability for the murder is an aggravating factor to the erroneous instructions.

The evidence and testimony in the issue clearly highlights the point and relevance of the omitted instructions and the erroneous instructions given. **Yates v. Evatt**, 500 U.S. 391, 111 S. Ct. 1884.

In the case of Yates, the jury was not instructed on a transfered intent theory and, the Court was barred from treating such evidence as underlying the necessary finding of intent to kill the victim in that case. Though the circumstances are different in this case and the Yates case, both are linked under the errors that lead both cases ultimately to this Court. Testimony given at trial by the shooter and others proved that the shooter made the decision to remove himself from the threat in his front yard of being hit by a vehicle considered to be a deadly weapon, which was the presumption conveyed to the jury that the shooter was in danger and justified the shooting. However, the jury was misled by the erroneous instructions and the omissions in those instructions because they could not match the facts of the testimony given to the instructions, and those omitted instructions would have to some degree given the jury more facts to consider in their determination of petitioner's culpability in the murder.

Such constitutional errors are in accordance with the decision made in **Sandstrom v. Montana**, 442 U.S. 510 (1979). The jury was also charged with a malice instruction in this instant case on the provocative act murder charge which clearly indicates that petitioner intended to kill from his actions.

I. THE UNITED STATES DISTRICT COURT REASONING IS FLAWED; THE PRECEDENT ESTABLISHED IN THIS SUPREME COURT CAPTURES THE REQUIREMENTS OF FRANCIS v. FRANKLIN

The U.S. Supreme Court

It is likely that every other court in this country has ruled on a matter similar to the instant case where questions were raised as to the reasoning of such determinations as harmless errors in the jury instructions, and the presumptions of guilt as to "malice" attached to those erroneous instructions in murder trials. The United States Supreme Court has clearly set the correct precedent when such questions arise from uncertain determinations. In **Francis v. Franklin**,471 U.S. 307; 105 S. Ct. 1965; 85 L.Ed.2d 344, (1985), this Court prohibited the state from using jury instructions given at an accused defendent's murder trial which relieved the state of its burden of proving the element of intent.

A malice instruction charged as implied or presumed by the law from the willful, deliberate, intentional doing of an unlawful act without any just cause or excuse presumed from the use of a deadly weapon, which is a "vehicle" in this case is unconstitutional. See, **Sandstrom v. Montana**,442 U.S. 510,61 L.Ed.2d 39,99 S.Ct.2450 (1979).

To explain further why the provocative act murder conviction in this instant case contradicts the precedent set by this Court in reference to, "[Sandstrom,] where it was held that instructions that might reasonably have been understood by the jury as creating a mandatory rebuttable presumption were unconstitutional. 442 U.S. at 524."

It was stated that 'when combined with the preceding mandatory language, the instruction that the presumptions "may be rebutted" could reasonably be read as telling the jury that it was required to infer intent to kill as the natural and probable consequence of the act of firing a firearm unless a defendant persuaded the jury that such an inference was unwarranted. In this instant case the same inference was drawn from the language in the instructions as to intent to kill rising from petitioner's actions driving a vehicle through a fence, which was conveyed to the jury as his unlawful act leading to the natural and probable consequence of a death of a passenger for which petitioner could not foresee.

"[The] question before this Court is whether the challenged instruction had the effect of relieving the state of the burden of proof beyond a reasonable doubt enunciated in **In re Winship**, 397 U.S. 358; 90 S. Ct. 1068; 25 L.Ed 2d 368 (1970), which in that case was the critical question of the petitioner's state of mind.

II. HARMLESS ERROR APPLIED TO SUCH ERRORNEOUS INSTRUCTIONS CANNOT EVER BE CONSIDERED CONSTITUTIONALLY REASONABLE

The state court oddly disregarded the stare decisis in regards to what constitutes harmless error in cases where jury instructions violates the Constitution. In order for an error involving the denial of a federal constitutional right to be held harmless in a state criminal case, the reviewing court

must be satisfied beyond a reasonable doubt that the error did not contribute to the defendant's conviction. This instant case is the [exemplary] model of the language of this constitutional rule. **Chapman v. California**, 386 U.S. 18; 87 S. Ct. 824; 17 L.Ed. 2d 705, (1967), identifies the application of a state harmless error determination by a reviewing state appellate court as appropriate, however, when the harmless rule is applied to issues of federal constitutional violations, the applications of those determinations by a reviewing state court are incorrect.

Harmless error was applied in two unconstitutional instructions or omissions of the instructions which shifted the burden to the defendant.

The U.S. Supreme Court Precedent Of Harmless Error

> (1) the federal law rather than state law is applicable fashioning a rule as to what constituted harmless error in Chapman; (2) before an error involving the denial of a federal constitutional right can be held harmless in a state case, the reviewing court must be satisfied beyond a reasonable doubt that the error did not contribute to the defendant's conviction; and (3) under such a rule, the continuous and repeated references in the case of Chapman to the defendant's failure to testify and the inferences drawn therefrom did not constitute harmless error.

Reversal in this case on the instructional errors that shifted the burden to the petitioner were not harmless and the conviction is unconstitutional as to these harmless error applications.

Considerations of the Chapman Rule

It continues to be a conflicting discussion among the state courts and Courts of Appeals, as well as United States District Courts on the correct applications of harmless-error to erroneous instructions. As the Chapman rule was considered in Yates v. Evatt, 500 U.S. 391; 406, 111 S. Ct. 1884,*- 1894; 114 L. Ed. 2d 432, 'The Court expressed, "Because application of the harmless-error test to an erroneous presumption thus requires an identification and evaluation of the evidence considered by the jury in addition to the presumption itself, and that it must be said about an assumption made in many opinions applying the Chapman rule, which state that the harmlessness of an error is to be judged after review of the entire record.

See, e.g., Delaware v. Van Arsdall, supra at 681, (An otherwise valid conviction should not be set aside if the reviewing court may confidently say, on the whole record, that the constitutional error was harmless beyond a reasonable doubt.)

United States v. Hasting, 461 U.S. 499, 509, n.7, 76 L. Ed. 2d 96, 103 S. Ct. 1974 (1983), ("Chapman mandates consideration of the entire record prior to reversing a conviction for constitutional errors that may be harmless"). When applying a harmless-error analysis in presumption cases, therefore, it is crucial to ascertain from the trial court's instructions that the jurors as reasonable persons, would have considered the entire record, before looking to that record to assess the significance of the erroneous presumption. That was not considered in this case when the Chapman rule was applied.

In most of the cases that have been submitted to This Court and to some of the high courts of the state and different Districts of the Federal Courts it has always put in the review these Courts of how the language was taken in regards to the context of that language. See, **Rose v. Clark**, 478 U.S. 570,92 L.Ed.2d 460,106 S.Ct. 3101 (1986), "The court employed language taken out of context from that case, and sought merely to determine whether it was beyond a reasonable doubt that the jury, "would have found it unnecessary to rely" on the unconstitutional presumptions.

The earlier determinations by the courts that have reviewed this instant case did not undertake any explicit analysis to support their view of record in considering the application of the Chapman standard. The injury caused to the petitioner in this case from burden-shifting instructions that were in error and the omission of instructions that must be considered by the jury under the constitutionality of the evidence cannot be excused as harmless.

In the case **Yates** should be the rule that is considered.

III. YATES V. EVATT IS SOUND WHEREAS CHAPMAN IS UNFAIR AND INVITES FUTURE MISTAKES

It is prejudicial to allow a conviction to stand on Chapman's harmless-error standard when some of the most recognized cases in the history of this Court has set the precedent of the unconstitutional nature of such applications. See, **In re Winship**,397 U.S. 358,25 L.Ed, 2d 368,90 S. Ct. 1068 (1970).

And , **Sandstrom v. Montana**, 442 U.S. at 513, 524, where it states that "A jury instruction stating that 'the law presumes that a person intends the ordinary consequences of his voluntary acts' does violate the requirement of the Due Process Clause if the prosecution does not prove each element of a crime beyond a reasonable doubt and fails to meet that burden. Petitioner is convicted of provocative murder, which presumes he intended to kill with malice from the consequences of his voluntary actions. **Francis v. Franklin**, 471 U.S. 307, 85 L. Ed. 2d 344, 105 S.Ct.1965, (1985), which also states, "To instructions that the acts of a person of sound mind and discretion re presumed to be the product of the person's will and that a person's presumed intention was the natural and probable consequence of his acts is unconstitutional. id., at 316 (emphasis omitted).

The instructional errors in this case were unconstitutional and the precedence set forth in Francis v. Franklin are sound and applicable to this instant case.

IV. THE DENIAL OF COUNSEL IN VIOLATION OF THE SIXTH AMENDMENT

[IN] any case in this nation where a defendant is deprived the right to counsel in any form whether it be by failure to appoint counsel by the courts or denial of his right to retain counsel of his choice is a denial under the Sixth Amendment, and shall not be excused by any reviewing court. To deny that right and justify the denial of that right by using the victims families or any one else as an excuse to rush to punishment without allowing the accused

time to retain adequate assistance of counsel **to** help prepare for sentencing and the preparations of appeal.

The right to counsel attaches in a criminal prosecution after the initiation of adversarial judicial proceedings.

See, **Kirby v. Ill**, 406 U.S. 682,689-90 (1972).

A criminal defendants right to counsel does not terminate after a jury renders a verdict., and in this instant case the trial court stated on the record of the proceedings that the victims and their families needed justice to be administered. This was the courts explanation for depriving the petitioner his right to a continuance to retain counsel, and the court accused petitioner of attempting to circumvent the administering of justice.

The precedence set in **Powell v. Alabama**, 287 U.S. 45,53 (1932), clearly prohibited courts from denying an accused defendant the right to secure counsel of his or her own choice. Most trial courts extend that courtesy to a defendant during any stage of the proceedings because this is a sacred right. The trial court abused that discretion by not granting petitioner a continuance to retain counsel of his choice. Also see, **U.S. v. Gonzalez-Lopez** , 548 U.S. 140, 147-48 (2006), where it was decided in this Court that "A defendant's right to choose counsel violated even if erroneously appointed counsel is effective because the choice and quality of representation are distinct rights."

The Sixth Amendment's Fundamental Right

The Sixth Amendment guarantees rights to an accused to a "speedy

and public trial", to an "impartial jury", to "notice of the nature and cause of the accusation", "to be confronted" with opposing witnesses, to compulsory process' for defense witnesses, and to the "assistance of counsel", and those rights are extended to a defendant in a state criminal prosecution through the Fourteenth Amendment.

The right to counsel demands that there can be no restrictions placed upon the function of counsel in defending a criminal prosecution at all critical stages of the proceedings.

This instant case is no different than the circumstances in Herring v. New York, 422 U.S. 853; 95 S. Ct. 2550; 45 L. Ed. 593, (1975).

In the case of Herring the accused was denied the right o counsel by being stripped of the opportunity to give a summation. Any denial of counsels role in any form that could be considered as prejudicial to the accused is a denial of his Sixth Amendment right.

V. THE COURT'S DECISION TO NOT CONSIDER THE CONTAMINATION OF A JUROR OR JURORS DENIED PETITIONER THE RIGHT TO AN IMPARTIAL JURY AND THE COURT ABUSED IT'S DISCRETION

The trial court in this instant case abused its discretion in not atleast conducting a hearing to determined if the complaining juror and the entire jury had been contaminated once the court was made aware of one of the jurors having concerns of safety. One of the officer's of the court told the juror to submit a note to the judge in which the juror never did, however the judge still was aware of the potential for a contimination within the jury panel

that could easily had been a result of the issue of the concerned juror. In **Remmer v. United States**,347 U.S. 227, 229 (1954), This Court held that any unapproved private communication, contact, or tampering with a juror during a criminal trial is presumptively prejudicial.

The Constitution does not mandate a new trial "every time a juror has been placed in a potentially compromising position, but the Constitution does support trial courts investigate jurors who could have been exposed to extraneous influences to determine whether there has been actually a prejudicial impact.

See, **Remmer**,347 **U.S. at** 229-30. Judges are given broad discretion in their decisions regarding extaneous influences on the jury, yet in this case it could not be more evident that the judge made a mistake that could have possibly made the entire proceeding fundamentally unfair. The Sixth Amendment guarantees criminal defendants the right to a fair trial by a panel of impartial "indifferent jurors". **Irvin v. Dowd**, 366 U.S. 717, 722 (1961).

In the United States District Court's Memorandum Decision (Pet. App. B) the Court's determination that the trial judge's finding that a juror is not biased being a factual finding presumed to be correct because "resolution [of the juror impartiality issue] depends heavily on the trial courts appraisal of witness credibility and demeanor.", This was the citing excerpt which is flawed and misplaced, because the trial court never investigated the issue to determine if the juror or juror's were biased.

See, **Thompson v. Keohan**, 516 U.S. 99, 111 (1995).

The decision to disregard petitioner's juror bias claim is very tricky because the courts refuse to add the federal onstitutional facts of the issue to allow it to be meritorious.

The juror complained of having safety concerns, which was very serious and that to some degree showed that atleast one juror was no longer impartial. There is no possible way that a trial court would refuse to pay close attention to such an issue, and especially in a trial that had allegations of witness intimidation. The trial courts abuse of discretion to conduct an invstigation of potential tain of the jury or to have a hearing prejudiced the petitioner and violated his Sixth Amendment right to an impartial jury panel, and a denial of Due Process by that abuse of discretion. **Remmer is still the correct and applicable remedy in such matters.**

VI. THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT DENIED PETITIONER RECONSIDERATION OF EQUITABLE EXCEPTIONS

It has been long standing that Courts of our land exercise their equity powers on a case-by case basis, and enables those Courts to meet new situations that demand equitable intervention, and to accord all the relief necessary to correct particular injustices. See, **Holland v. Florida**, 560 U.S. 631, 130 S. Ct. 2549, 177 L. Ed. 2d 130 (2010).

The Court Of Appeals For The Ninth Circuit was not bound by any precedent set by this Court to deny petitioner an opportunity

See, Thompson v. Keohane, 516 U.S. 99, 111 (1995).

The hesitation to disregard petitioner's juror bias claim is very trickery because the courts refuse to add the [illegible] constitutional check of the issue to allow it to be meritorious.

The juror [illegible] with [illegible] safety concerns, which was very serious and that to some degree showed that atleast one juror was no longer impartial. There is no possible way that a trial court would refuse to pay close attention to such an issue, and especially in a trial that had allegations of witness intimidation. The trial courts abuse of discretion to conduct an investigation of potential taint of the jury or to have a hearing prejudiced the petitioner and violated his Sixth Amendment right to an impartial jury panel, and a denial of due process by that abuse of discretion. Remmer is still the correct and applicable remedy in such matters.

VI. THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT DENIED PETITIONER RECONSIDERATION OF EQUITABLE EXCEPTIONS

It has been long standing that Courts of our land exercise their equity powers on a case-by-case basis, and enables those Courts to meet new situations that demand equitable intervention, and to accord all the relief necessary to correct particular injustices. See, Holland v. Florida, 560 U.S. 631, 130 S. Ct. 2549, 177 L. Ed. 2d 130 (2010).

The Court Of Appeals For The Ninth Circuit was not bound by any precedent set by this Court to deny petitioner an opportunity

to proceed into the appeal process in that Court. There has been a numerous amount of cases that have been presented to the Ninth Circuit on the issues of dealing with appellants who were mentally impaired that prevented them from being competent enough to understand the obligations of filing deadlines, and who cannot read or write. In this case petitioner's disabilities was a [but for cause] situation where the Court Of Appeals should have extended that courtesy to such an appellant, especially since he was actually granted a Certificate of Appealability.

The Ninth Circuit citing the case of **Bowles v. Russell**, 551 U.S. 205 (2007), denied petitioner reconsideration on the conclusion that the Court lacked authority to create equitable exceptions to jurisdictional requirements of timely notices of appeals. By that denial the petitioner suffered yet another Constitutional deprivation of attempting to correct the injustices he already suffered. Without consideration or review by the Court of Appeals For The Ninth Circuit on all of the issues presented in this petition, petitioner's injustices will not be corrected.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

William Roy Thietje

Date: February 11, 2022

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

William Roy Thietje — PETITIONER
(Your Name)

VS.

United States Of America — RESPONDENT(S)

PROOF OF SERVICE

I, William Roy Thietje, do swear or declare that on this date, February 13, 2022, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

Solicitor General of the United States (see Rule 29.4)
Room 5616
Department of Justice, 950 Pennsylvania Ave., N.W.
Washington, DC 20530-0001

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 13, 2022

/s/William R. Thietje
(Signature)

CERTIFICATE OF COMPLIANCE

DECLARATION

This Writ of Certiorari, to The United States Supreme Court is submitted on behalf of Petitioner, William Roy Thietje, who is currently incarcerated at Donovan Correctional Facility in San Diego, California. Petitioner William Roy Thietje cannot read or write, or understand any obligations of any state, or federal Court, or any Rules of this United States Supreme Court, so in good-faith, I Inmate Joseph Moore CDCR No. BD8941 assisted Mr. Thietje in the preparation of this Document under Rule 33.1. This Certificate and Declaration of Compliance is submitted in accordance with 28 U.S.C. § 1746.

To the best of my knowledge I believe the prepared document does not exceed the set word count limit specified for Certiorari petitions. This document was not prepared via word processing system, which I believe the typwriter format it was prepared with, I believe it to be in accompliance, with the appropriate rule and statutes.All parties have been notified and served with proof of service of this document. Proof of service of this document is attached to The Writ of Certiorari submitted to This Court. My name appears on this document becuase the Declaration is the requirement which is the same as an Affidavit and I must comply to the rules under penalty of perjury in this Declaration of my assistance to William Roy Thietje, Petitioner. This document is prepared and Dated: February 13, 2022 at Donovan Correctional Facility in San Diego, CA.

Respectfully submitted,

/s/ William Roy Thietje, Pro se

/s/ Joseph Moore,Assistant

PROOF OF SERVICE BY MAIL

BY PERSON IN STATE CUSTODY

(Fed. R. Civ. P. 5; 28 U.S.C. § 1746)

I, WIILIAM ROY THIETJE, declare:

I am over 18 years of age and a party to this action. I am a resident of DONOVAN CORRECTIONAL Prison.

in the county of SAN DIEGO.

State of California. My prison address is: 480 ALTA RD.

SAN DIEGO, CA 92179.

On 2/13/2022 (DATE).

I served the attached: PETITION FOR WRIT OF CERTIORARI W/ DECLARATION (DESCRIBE DOCUMENT)

on the parties herein by placing true and correct copies thereof, enclosed in a sealed envelope, with postage thereon fully paid, in the United States Mail in a deposit box so provided at the above-named correctional institution in which I am presently confined. The envelope was addressed as follows:

SOLICITOR GENERAL OF THE UNITED STATES
ROOM 5616
DEPARTMENT OF JUSTICE, 950 PENNSYLVANIA AVE., N.W.
WASHINGTON, D.C. 20530-0001

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on 2/13/2022 (DATE)

/s/William Roy Thietje (DECLARANT'S SIGNATURE)