

OCT 13 2022

OFFICE OF THE CLERK

Nº 21-7872

# In The Supreme Court of the United States

STEVEN GUARDADO,

*Petitioner,*

v.

THE HON. BILLY K. SIPE, JR., COMMISSIONER,  
MOHAVE COUNTY SUPERIOR COURT; AND THE HONORABLE  
JON W. THOMPSON, MAURICE PORTLEY, AND P. K. NORRIS,  
JUDGES OF DIVISION ONE, ARIZONA COURT OF APPEALS;  
STATE OF ARIZONA, REAL PARTY IN INTEREST,

*Respondents.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE  
SUPREME COURT OF ARIZONA  
ON DIRECT COLLATERAL REVIEW

PETITION FOR REHEARING

# ORIGINAL

STEVEN GUARDADO, 125635  
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SAN LUIS, AZ 85349  
PETITIONER PRO SE

## GROUNDS FOR REVIEW

THE PETITIONER HEREBY FULLY INCORPORATES AND REALLEGES THE CLAIMS PRESENTED ON CERTIORARI, WHERE THE DISCRETION OF THE COURT WAS ADDITIONALLY REQUESTED TO CONSIDER APPLICATION OF 28 USC § 1651 IN AID OF ITS JURISDICTION.

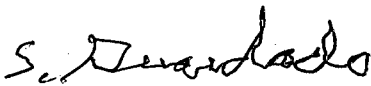
HE HERE RESPECTFULLY REQUESTS THIS COURT, AS IS MORE THOROUGHLY SET FORTH WITHIN, TO SUBMIT A SET OF QUESTIONS CERTIFIED TO THE SUPREME COURT OF ARIZONA, PURSUANT TO ARS § 12-1861 AND UNDER ARIZONA SUPREME COURT RULE 27, NECESSARY FOR THE FULL AND PROPER DETERMINATION OF THE PRESENT PENDING CAUSE.

THE ISSUES PRESENTED ARE PROVIDED IN AN EFFORT TO REMEDY THOSE CONCERNS UPON WHICH THE ORDER OF OCTOBER 3, 2022 MAY HAVE BEEN BASED, AND TO FURTHER ASSIST THE COURT IN ITS DETERMINATION THAT SUBSTANTIAL CONSTITUTIONAL RIGHTS HAVE BEEN VIOLATED, CONTRARY TO ITS PRECEDENT DECISIONS.

### CERTIFICATE OF RESTRICTION OF GROUNDS SUBMITTED

THE UNDERSIGNED PETITIONER HEREBY CERTIFIES THAT THIS PETITION FOR REHEARING IS RESTRICTED TO THE GROUNDS ABOVE STATED, AS ARE MORE FULLY SET FORTH BELOW, IN COMPLIANCE WITH RULE 44.2, AND ARE LIMITED TO INTERVENING CIRCUMSTANCES OF A SUBSTANTIAL OR CONTROLLING EFFECT, OR TO OTHER SUBSTANTIAL GROUNDS NOT PREVIOUSLY PRESENTED, AND PURSUANT TO ALL OTHER RULES, IN GOOD FAITH, NOT DELAY.

RESPECTFULLY SUBMITTED UNDER 28 USC § 1746 THIS 13<sup>th</sup> DAY OF OCTOBER, 2022.

  
13/ STEVEN GUARDADO  
PETITIONER PRO SE

## PETITION FOR REHEARING

STEVEN GUARDADO RESPECTFULLY PETITIONS FOR REHEARING TO REVIEW THE ORDER OF THIS COURT IN GUARDADO V. SIPE, JR., et al., N° 21-7872, OF OCTOBER 3, 2022.

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### JURISDICTION

FOLLOWING RULE 44.2, THIS PETITION IS SUBMITTED UNDER 28 USC § 1257(a) FOR REVIEW OF A PAIR OF DECISIONS OF THE SUPREME COURT OF ARIZONA, IN ITS N° M-21-0076. THE INITIAL ORDER OF DISMISSAL, BY DUTY JUSTICE JAMES P. BESIE OF FEBRUARY 15, 2022, DENIED AN APPLICATION FOR A WRIT OF HABEAS CORPUS, CHALLENGED THE VALIDITY OF THE CONVICTION AND SENTENCE IMPOSED BY THE MOHAVE COUNTY SUPERIOR COURT, AS TO THE CONSTITUTIONAL SUFFICIENCIES OF HAVING BEEN DENIED SOURCE CODE ACCESS FOR THE FORENSIC EQUIPMENT USED TO TEST CHEMICAL CHARACTERISTICS OF EVIDENCE; THE PROPERNESS OF HOLDING THE PROCEEDING BEFORE A NOT-JUDGE JUDICIAL OFFICER; AND ACCESS TO COMPASSIONATE RELEASE UNDER BOTH FEDERAL AND STATE LAW FOR A MEDICALLY VULNERABLE PERSON. THE SECOND ORDER WAS A BOILERPLATE DENIAL OF A MOTION FOR RECONSIDERATION, ENTERED BY DUTY JUSTICE ANN A. SCOTT-TIMMER, ON MARCH 4, 2022.

AS IT APPEARS THAT BOTH JUSTICES ERRED IN THEIR MISAPPLICATION OF CONSTITUTIONALLY PROVIDED ACCESS TO RELIEF FOR CRIMINAL DEFENDANTS, AS THEY INSISTED THAT MATTERS INVOLVED IN THE PRODUCTION OF EVIDENCE AND THE MEANS TO PROPERLY VERIFY ITS ADMISSIBILITY, COULD ONLY BE EXCLUSIVELY SOUGHT THROUGH THE STATUTE-BASED RULE 32 MEANS FOR POST-CONVICTION RELIEF, RATHER THAN THE OTHERWISE AVAILABLE AND ARGUABLY MUCH MORE EFFECTIVE PATHWAY THROUGH HABEAS CORPUS, RELIEF WAS DENIED COMPLETELY. ACCORDINGLY, A REQUEST FOR CERTIFIED QUESTIONS AS TO THOSE ISSUES OF PROCEDURE AND SUBSTANCE, IS MADE IN THE [PROCEEDING FORM] AS APPEARS BELOW, TO THE ARIZONA SUPREME COURT, PURSUANT TO ARS § 12-1861, AS PROVIDED THROUGH AZ.S.Ct.R. 27, COPIES OF BOTH OF WHICH ARE HEREBY INCORPORATED BY REFERENCE, AND ATTACHED FOR THE CONVENIENCE OF THE COURT, THAT QUESTIONS OF LAW OF THE STATE OF ARIZONA MAY BE RESOLVED AND CLARIFIED FOR THE SUBJECT MATTERS PENDING DETERMINATION HERE.

### REASONS FOR GRANTING THE PETITION

#### I. ENUMERATION OF FACTS

THE INSISTENCE UPON RULE 32 AS THE ONLY AVAILABLE ACCESS TO RELIEF. WITH ANY OTHER MEANS, SUCH AS HABEAS CORPUS HERE REQUESTED, WOULD NEVERTHELESS BE TREATED AS RULE 32, PURSUANT TO ITS CITATION TO ARS P 32.3(b), WHICH BECAME EFFECTIVE JANUARY 1, 2020. OVERLOOKED HOWEVER, WAS THE APPLICATION NOTE FOLLOWING THAT RULE SECTION. SEE, ATTACHED. IT PROVIDES THAT SHOULD THE AMENDED VERSION BE "INFEASIBLE" OR WORK "AN INJUSTICE", THAT THE EARLIER VERSION WOULD APPLY. HERE BOTH EXCEPTIONS APPLY, AS SET FORTH BELOW.

## II. ARGUMENTS IN SUPPORT OF THE FACTUAL BASIS

EACH OF THE DUTY JUSTICES KNEW, OR SHOULD HAVE KNOWN, OF THE PROVISION OF THE APPLICABILITY NOTE, AS: (1) THE ARIZONA SUPREME COURT POSSESSES THE EXCLUSIVE AUTHORITY TO PROMULGATE RULES OF COURT; (2) THE APPLICATION FOR MANDAMUS, AND MUCH MORE IMPORTANTLY, EACH OF THE REFERENCED ORDERS, CLEARLY SET FORTH THE MOHAVE COUNTY DOCKET NUMBER, WHICH, AT A MINIMUM SHOWED ITS ORIGIN IN 2014, EIGHT YEARS EARLIER, AND LIKELY EXPRESSLY DIVULGED THE PRIOR PETITION UNDER RULE 32, VOIDING ELIGIBILITY FOR USE OF R. 32; (3) BY ITS TERMS, IF R. 32.3 (b) WAS "INFEASIBLE" DUE TO PRIOR USAGE, OR WORK AN INJUSTICE, I.E. FURTHER DENIAL OF RELIEF, ITS FUTILITY WOULD PERMIT ACCESS TO THE FORMER VERSION, NOT REQUIRING DENIAL OF MANDAMUS.

FURTHER, WHERE ARS § 12-109 DEFINES THE SCOPE OF PROMULGATION OF RULES OF PRACTICE IN ARIZONA COURTS, ITS SUBSECTION (A) PROVIDES THAT:

"THE RULES SHALL NOT ABRIDGE, ENLARGE OR MODIFY  
SUBSTANTIVE RIGHTS OF A LITIGANT." SEE, PETITION FOR CERT., APPX B  
TEXTS OF ARS § 12-109 3 AND OF ARS § 12-111.

ALSO, SEE, ATTACHED, RULE 32.3(b) TEXT, SHOWING SUPREME COURT RULE NO R-19-0012, eff. 1/1/20.

FURTHER, THE RULE 32 PROCEEDING WAS GRANTED AN EVIDENTIARY HEARING, BY, AND PRESIDED OVER, BY THE SAME JUDICIAL OFFICER AS AT TRIAL, COMMISSIONER BILLY K. SIPE, JR. SEE, ATTACHED, MINUTE ENTRY ORDER, HEARING, 8/8/17; MINUTE ENTRY ORDER, R'HRG, 1/3/18.

ALSO, SEE, PET. FOR CERT., APPX. B, STATUTORY AND RULE BASIS OF COURT COMMISSIONERS' POWERS, WHICH, UNDER AZ.S.C.T.R. 96(2)(11), EXCLUDES TRIAL [ARCTP 18-26]; AND PER R. 32. HAD COMMISSIONER SIPE BEEN AN ACTUAL JUDGE, HE MIGHT HAVE KNOWN THAT UPON THE FAILURE OF THE STATE TO RESPOND TO THE RULE 32 PETITION, IT HAD COMMITTED A CONFESSION OF ERROR, AND SHOULD HAVE BEEN PRECLUDED FROM FURTHER INQUIRY, AS WAS THE COURT PRECLUDED FROM SUB SEQUEL INQUIRY ON ITS BEHALF. STATE V. BRITA, 153 Ariz 121, 124, 761 P.2d 1025, 1025 (AZ.S. (4. 1988) (en banc).

THUS, A RULE 32 PROCEEDING WOULD BE BOTH "INFEASIBLE," AS HAVING ALREADY BEEN ATTEMPTED TO NO EFFECT, BY APPOINTED COUNSEL; WAS EX POST FACTO PROSCRIBED; AND WOULD WORK "INJUSTICE" AS JUST ANOTHER FUTILE ROAD DOWN WHICH TIME GOES TO DIE.

INSTEAD, MANDAMUS, IF PROPERLY RECEIVED, WOULD PROVIDE FOR THE SUPREME COURT OF ARIZONA, AS PROVIDED UNDER ARS § 12-2021, 2039, FOR AN ORDER TO THE MOHAVE COUNTY SUPERIOR COURT, TO VACATE THE CONVICTION AND SENTENCE, ON THE GROUNDS THAT THE SUBJECT SUBSTANCE HAD NEVER BEEN TESTED, NOR PERMITTED INDEPENDENT DEFENSE ANALYSIS FOR WHICH THE SOURCE CODE OF ANY ANALYTICAL DEVICE WOULD BE REQUIRED; THAT ALL PROCEEDINGS BE HELD BEFORE AN ACTUAL JUDGE, AND AT AN ABSOLUTE MINIMUM, A HEARING FOR COMPASSIONATE RELEASE BE AFFERED FOR AN ELDERLY, MEDICALLY VULNERABLE MAN.

### III. RESOLUTION

RESPECTFULLY, THEN, THE PETITIONER REQUESTS THE PRESENTATION OF THE FOLLOWING QUESTIONS TO BE CERTIFIED TO THE SUPREME COURT OF ARIZONA AS PROVIDED UNDER ARS § 12-1861, AS REQUIRED BY AZ. S. Ct. R. 27. SEE, STATUTE, & RULE, ATTACHED.

OF COURSE, THE COURT MAY MODIFY THE CONTENT OF THE QUESTIONS AS IT DEEMS NECESSARY AND PROPER, THESE EXEMPLARS BEING OFFERED ONLY AS PROPOSED IN FORM.

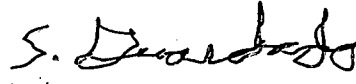
#### QUESTION ONE

WHETHER THE SUPREME COURT OF ARIZONA ERRED OR COMMITTED EXCUSABLE NEGLECT IN ITS ORDER DENYING REVIEW UNDER MANDAMUS PROVIDED PURSUANT TO ARS § 12-2021, AND THROUGH AZ. S. Ct. R. 27, BY INSISTING THAT ACCESS TO ANY RELIEF, HOWEVER DESIGNATED, MUST PROCEED UNDER RULE 32 PROCEDURES, AS SET FORTH IN RULE 32.3(b), AND ARS § 13-4233, WITHOUT APPARENT AWARENESS OF THE APPLICATION NOTE ADVISING OF SUPREME COURT RULE N° R-19-0012, WHICH ALLOWS THAT WHERE INFEASIBLE, OR WOULD WORK IN JUSTICE, THE FORMER RULE WHICH MAKES NO SUCH REQUIREMENT WOULD APPLY.

#### QUESTION TWO

WHETHER THE AMENDMENTS TO ARC-P 32 PRESENT INSTANCES OF EX POST FACTO VIOLATIONS IN CONFLICT WITH CALDER V. BULL, 5 US 386, 390 (1798), IN PARTICULAR, PRONG 3<sup>rd</sup> AND 4<sup>th</sup>, AND AS APPLIES TO RULE MAKING BY STATE SUPREME COURTS UNDER ROGERS V. TENNESSEE, 532 US 451, 459 CITE BOVIE V. CITY OF COLUMBIA, 378 US 347, 353, (ROGERS 2001; BOVIE 1964) IN ORDER N° R-19-0012, AND ITS PREDECESSOR, 171 XLIV (1992); OR VIOLATIONS OF DISTRIBUTION OF POWERS UNDER ARIZ. CONST. ART. III, WHERE THE STATUTES REFLECTED IN EACH OF THEIR RULE TWINS ARE LEFT BEHEFT OF CONSEQUENCE AND EFFECTIVELY REPEALING THE STATUTES, WITHIN THE PROVINCE OF THE LEGISLATIVE BRANCH; WHILE VIOLATING THE JURISDICTIONAL PROVISION FOR PROHIBITION OF RULES UNDER ARS § 12-109(A), WHERE THE SUBSTANTIVE RIGHTS OF DEFENDANTS HAVE BEEN ABRIDGED OR MODIFIED.

THESE QUESTIONS ARE SUGGESTED FOR THE ASSISTANCE OF THIS COURT TO GAIN A MORE THOROUGH UNDERSTANDING OF THE RELEVANT ARIZONA LAW, IN CONTEMPLATION OF RESOLVING THE FEDERAL CONSTITUTIONAL ISSUES PRESENTED IN THE THREE FOUNDATIONAL QUERIES AT THE OUTSET IN THE PETITION FOR CERTIORARI, IN CONTEMPLATION OF ITS GRANT AS RESULT. RESPECTFULLY SUBMITTED THIS 13<sup>th</sup> DAY OF OCTOBER, 2022.

  
S. STEVEN GUARDADO  
PETITIONER PRO SE