ORIGINAL

No. 23-6339

IN THE SUPREME COURT OF THE UNITED STATES

UNITED STATES OF AMERICA

Respondent

v.

JUAN GUZMAN

Petitioner

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Does a District Court prejudicially abuse its discretion in a firearm possession case, as previously found by the Sixth Circuit, when that District Court receives evidence about a prior, unrelated allegation of assault with a firearm.

LIST OF PARTIES, PROCEEDINGS, OFFICIAL REPORTINGS

Court: The United States District Court for the Western District of Missouri,
Case Caption: United States v. Juan Guzman
Case Number 18-00325-01-CR-W-BCW
Parties: United States of America and Juan Guzman
Date of entry of judgment: Mr. Guzman was sentenced on September 9, 2022
Date of Filing of Notice of Appeal by Guzman: September 12, 2022

Court: The United States Court of Appeals, Eighth Circuit
Case Caption: United States v. Juan Guzman
Case Number 22-2966
Parties: United States of America, Juan Guzman
Date of Opinion: September 6, 2023
Date Motion for Rehearing Denied: October 19, 2023
Reporting: ***United States v. De La Cruz Nava***, 80 F.4th 883 (8th Cir. 2023) (Appendix 1)

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[1] "Doc." refers to pleadings and other documents filed with the District Court.

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PETITION FOR A WRIT OF CERTIORARI-INTRODUCTION

Petitioner was sentenced by the District Court to concurrent sentences, of 260 months imprisonment for conspiracy to distribute methamphetamine (Count One), and of 240 months for conspiracy to conduct money laundering (Count Two) and of 120 months for illegal reentry (Count Four), and to a 60 month consecutive sentence for possession of firearms in furtherance of a drug trafficking offense (Count Three), for a total term of 320 months imprisonment (9/9/22 Tr. 20-21; R.Doc. 381). (Appendix 5). Petitioner respectfully requests from this Court a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit, in which that Court found that the District Court did not abuse its discretion in receiving evidence against Petitioner about an unrelated assault with a firearm contrary to prior holdings by the Eighth and Sixth Circuits, which held that evidence of an unrelated assault with a firearm has limited probative value which is far outweighed by unfair prejudice.

CITATION TO REPORTS OF OPINIONS

The District Court's Judgment and Sentence is reported at Doc. 381 of the District Court's file. A copy is provided at Appendix 5.

The Eighth Circuit's opinion is reported at ***United States v. De La Cruz Nava***, 80 F.4th 883 (8th Cir. 2023). A copy is provided at Appendix 1.

STATEMENT OF JURISDICTION

The opinion of a panel of the United States Court of Appeals for the Eighth Circuit affirming Petitioner's conviction and sentence was handed down on September 6, 2023 (Appendix 1). On October 19, 2023, Petitioner's requests for rehearing by the Panel and by the Eighth Circuit *en banc* were overruled (Appendix 2). This Petition for Writ of Certiorari is being filed within 90 days of the denial of the motion for rehearing per the dictates of this Court's Rule 13.1. This Court has jurisdiction pursuant to 28 U.S.C. 1254(1).

CONSTITUTIONAL-STATUTORY-RULE PROVISIONS

Amendment V to the Constitution of the United States is as follows:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless 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.

Federal Rule of Evidence 402 is as follows:

> Relevant evidence is admissible unless any of the following provides otherwise:
> • the United States Constitution;
> • a federal statute;
> • these rules; or
> • other rules prescribed by the Supreme Court.
> Irrelevant evidence is not admissible.

Federal Rule of Evidence 404(b) is as follows:

> **(b) Other Crimes, Wrongs, or Acts.**
> **(1) Prohibited Uses.** Evidence of any other crime, wrong, or act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character.
> **(2) Permitted Uses.** This evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.
> **(3) Notice in a Criminal Case.** In a criminal case, the prosecutor must:
> **(A)** provide reasonable notice of any such evidence that the prosecutor intends to offer at trial, so that the defendant has a fair opportunity to meet it;
> **(B)** articulate in the notice the permitted purpose for which the prosecutor intends to offer the evidence and the reasoning that supports the purpose; and
> **(C)** do so in writing before trial--or in any form during trial if the court, for good cause, excuses lack of pretrial notice.

STATEMENT OF THE CASE

A. The Indictment and Companion Cases

On November 14, 2018, an indictment was returned charging that Juan Guzman, aka Daniel Solorio[2], over a period from 2015 to 2018, across multiple states and Mexico, conspired with seven others to distribute methamphetamine (Count One), conspired to conduct money laundering activities (Count Two) and possessed firearms in furtherance of a drug trafficking crime (Count Three); Mr. Solorio was also charged, individually, with the offense of illegal reentry (Count Four); as well, a forfeiture count was leveled against all codefendants (R.Doc. 16).

There were also five companion cases brought against multiple other persons, many of whom became witnesses at the trial in this case. See WDMO Case # 17-336, Doc. 16; WDMO Case # 18-10, Doc. 12; WDMO Case # 18-34, Doc. 12; WDMO Case # 18-159, Doc. 22; WDMO Case # 18-238, Doc. 10.

B. Trial Proceedings

1. Opening statements

In his opening statement, the government's counsel listed the witnesses he would call who would say that, when arrested themselves for drug trafficking, they

[2] Evidence at trial established that Petitioner's birth name is Daniel Solorio. Consequently, during trial proceedings and upon appeal before the Eighth Circuit, undersigned counsel referred to Petition by that given name. Undersigned counsel will continue to do so in this petition.

identified "Flaco" as their source of supply, and who would further say upon testimony at trial that defendant Solorio is "Flaco" (11/5/21 Tr. 3-5). In response, undersigned counsel highlighted that each of the witnesses would admit case-related benefits he/she was receiving for his/her testimony, and observed that despite the claims by the witnesses that they had paid vast sums of money to Mr. Solorio, the evidence would show that none of these monies were ever found in Mr. Solorio's possession or control (11/5/21 Tr. 5-6).

2. Testimony and evidence regarding the search and ownership of the house at 6217 E. 95th Terrace, Kansas City, Missouri

Independence Missouri Police Detective Logan Waterworth began testimony by describing the search undertaken at 6217 E. 95th Terrace in Kansas City, Missouri on October 18, 2018 (11/8/21 Tr. 16-18). Waterworth explained that Solorio was found hiding in the southeast bedroom of the house, where a gun, small quantities of methamphetamine, and an ID for Mr. Solorio were also found (11/18/21 Tr. 21-22, 44, 46, 47, 54-55). Codefendants Nava and Senthavy were also found in the home, and arrested (11/8/21 Tr. 21-22). In the living room of the house there were found two rifles, a pistol and a high capacity magazine for the pistol (11/8/21 Tr. 28-29). In the kitchen, quantities of methamphetamine were found on the counter and in the oven, as well as digital scales, accounting books described as "drug ledgers" and a little over one thousand dollars in cash (11/8/21

Tr. 30, 33, 36, 55). And, in the garage, there was parked a Hummer H-2 SUV (11/18/21 Tr. 21, 25).

Evidence was also submitted that this house was owned by a party who was not Mr. Solorio (Exhibit 502; 11/9/21 Tr. 89).

3. Cooperators who claimed buying drugs from Solorio in 2016 and 2017

Codefendant Chantahchone Senthavy (nicknamed "Chan" or "Nick), testified that he met Mr. Solorio in November of 2016 (11/8/21 Tr. 70). Senthavy specifically claimed that, from December of 2016 to May of 2017, he was obtaining a pound of methamphetamine each week from Solorio, paying Solorio $6,500 per pound, and selling the pound for $10,000 (11/8/21 Tr. 75-78). Senthavy went on that he stopped dealing with Solorio for a time because he owed Solorio money, but took up again in September of 2017, then selling to buyers in Iowa, dealing in quantities as high as 5 kilos per week, buying kilos for $7,500, and then more than doubling his money by selling at $7,500 per pound (11/8/21 Tr. 81, 85, 90). Senthavy admitted that he was arrested in February of 2018, and at that time did not identify Mr. Solorio as his source, but instead a person termed "the Guatamalan", but claimed at trial time that "the Guatamalan" worked for Solorio (11/8/21 Tr. 94-95). Senthavy admitted as well that he too was arrested at 6217 E. 95th Terrace on October 18, 2018, but claimed that none of the items found

in the house were his (11/8/21 Tr. 101). And, Senthavy admitted that he had prior weapons-related convictions (11/8/21 Tr. 117).

Megan Eubanks testified that she had known and dated Senthavy since 2016, and seconded Senthavy's claims about Solorio being Senthavy's source for drugs in 2016 and 2017 (11/8/21 Tr. 124-125). However, Eubanks made clear that, though she had used drugs with Mr. Solorio, she never bought drugs from Mr. Solorio (11/8/21 Tr. 125, 139).

Jose Badilla testified that he met Mr. Solorio, who he knew as "Flaco", in 2016, and then purchased drugs from Flaco once or twice per week, in 1-2 kilogram quantities thereafter and into early 2017 (11/8/21 Tr. 208, 210-211). Mr. Badilla supported his testimony by reference to a book which made reference to "el Flaco", and the amounts of $24,460 and $4,350 times 5 (11/8/21 Tr. 225-226). However, Badilla also claimed that the book was not his, and that he did not make all of the entries in the book (11/8/21 Tr. 228-229). Badilla admitted to his own, lengthy conviction history for drug trafficking dating back to 2003 (11/8/21 Tr. 212-214). And, after initially denying it, Badilla grudgingly admitted that he had on multiple occasions made false statements to police prior to his ultimate arrest and incarceration (11/8/21 Tr. 214, 219-221, 254-256; 11/9/21 Tr. 87).

James Pardee (nickname "Opie"), identified Mr. Solorio as his source of supply of methamphetamine, who he met through Eleeseea Crail (11/8/21 Tr. 231-

235). Pardee said Mr. Solorio was his source of supply from January to September of 2017, purchasing six kilos per week at $8,000 per kilo (11/8/21 Tr. 238-239). Pardee also admitted 11 felony convictions for tampering, theft and forgery (11/8/21 Tr. 245), and heavy personal use of methamphetamine by both him and Mr. Solorio (11/8/21 Tr. 246).

Roger Miller testified that he was a close associate with James Pardee and Eleeseea Crail, met Flaco around Christmas time of 2016, bought pound quantities from Flaco on three occasions, and was arrested in possession of heroin which he obtained from Flaco under the impression that it was methamphetamine (11/9/21 Tr. 6-7, 10-11, 12). Miller admitted he had been in and out of prison since 2005 because of his ongoing drug trafficking activities (11/9/21 Tr. 14-15).

Eleeseea Crail related that she knew Petitioner by his given name, Daniel Solorio, and his nickname Flaco, first meeting him in 2011 (11/9/21 Tr. 18-21). Crail testified that, over the years, she sold drugs which she obtained variously from Mr. Solorio and from a man named Luis (11/9/21 Tr. 25-31). Crail indicated that she was arrested in April of 2016, and at that time told police about Luis and Solorio being her sources of supply, and provided a picture she had of Mr. Solorio (11/9/21 Tr. 31-32). Crail admitted that, though she was granted a drug court disposition related to the April 2016, she lied to drug court authorities, and continued her drug sales activities thereafter (11/9/21 Tr. 45-47). Crail specifically

detailed that Mr. Solorio was her source of supply from December of 2016 until the time of her arrest on Federal charges in April of 2017 (11/9/21 Tr. 38).

4. Overruled objections to testimony by Eleesea Crail regarding 2012 assault of with a firearm by Mr. Solorio

Government Counsel elicited from Eleeseea Crail testimony that she knew Mr. Solorio possessed guns because "(o)ne time, he put a gun to my head and told me to get out of the car" (11/9/21 Tr. 40). However, in further detailing the incident, Crail explained that the incident happened in 2012 (11/9/21 Tr. 41). At that point, undersigned counsel objected that the testimony was improperly prejudicial in that it concerned conduct outside the date range of the indictment (11/9/21 Tr. 41). The District Court overruled the objection and consequently refused to grant any sort of relief (11/9/21 Tr. 42).

4. Testimony by Nicolas Razo Marmolejo

Nicolas Razo Marmolejo, who identified himself as "Edwardo Razo", testified that he met Appellant, who he identified as "El Flaco", when they were both playing in a band (11/8/21 Tr. 175-176). Razo Marmolejo went on to claim that, on some unspecified date, and for about a week, Appellant paid him $1,000 to store grocery bags full of methamphetamine (11/8/21 Tr. 177-179). However, Razo Marmolejo admitted that Appellant neither delivered nor picked up the bags of methamphetamine (11/8/21 Tr. 178). Razo Marmolejo also admitted that he was charged in connection with an unrelated drug trafficking case, and was hopeful

for sentencing help with that unrelated case in return for cooperation against Appellant (11/8/21 Tr. 179-180).

5. Testimony by Joshua Castle and Ronald Rusk

Joshua Castle testified that he bought methamphetamine at 6217 E. 95th Terrace from Mr. Solorio, one pound on the first occasion, and then one kilo each time for six times, with the last purchase occurring just before Castle's arrest on August 15, 2018 (11/8/21 Tr. 183-187). Mr. Castle admitted that he has six prior felony convictions, received benefit when he pled guilty in his case, and returned to get a further reduction in return for his testimony against Mr. Solorio (11/8/21 Tr. 191-192).

Ronald Rusk, for his part, contended that he sold some of the drugs obtained by Castle, and went with Castle a couple of times when Castle met with Solorio to obtain drugs, though he did not witness the transactions himself (11/8/21 Tr. 198-201, 203). Rusk also explained that he received the benefit of a drug court disposition, and was testifying because of that agreement (11/8/21 Tr. 194-195, 205).

6. Evidence regarding illegal reentry charge

Homeland Security Investigator Joshua Owenby brought with him into Court Mr. Solorio's Immigration Court "A-File" (11/9/21 Tr. 51, 53-54). Mr. Owenby testified that, in Mr. Solorio's A-File,

- there were documents confirming that Mr. Solorio was deported in 2006 (11/9/21 Tr. 56-59; Exhibits 1A, 1B and 1C),
- there were documents confirming that the 2006 deportation order was renewed twice in 2012, and that Mr. Solorio was deported each time (11/9/21 Tr. 61-65; Exhibits 1D, 1E, 1G and 1H),
- there were documents confirming that the 2006 deportation order was renewed again in 2016, and that Mr. Solorio was deported (11/9/21 Tr. 65-66; Exhibits 1J and 1K), and
- there were no documents reflecting any application for reentry or for permission to return (11/9/21 Tr. 66-67).

7. Instructions, closing arguments, jury deliberations and verdict

The District Court instructed the jury (11/9/21 Tr. 93), the parties delivered their closing arguments (11/9/21 Tr. 93-115), and the jury deliberated and returned unanimous verdicts of guilty on all counts (11/9/21 Tr. 116-120).

C. Sentencing and Direct Appeal

1. Sentencing

On September 9, 2022, after hearing arguments from counsel (9/9/22 Tr. 4-10, 12-14), the District Court sentenced Mr. Solorio to concurrent sentences of 260 months imprisonment on Count One, 240 months on Count Two, and 120 months

on Count Four, and to a 60 month consecutive sentence on Count Three, for a total term of 320 months imprisonment (9/9/22 Tr. 20-21; R.Doc. 381).

On that same date, the District Court granted leave of Court allowing for the filing of notice of appeal in forma pauperis (9/9/22 Tr. 22-23). Then, on September 12, 2022, undersigned counsel filed notice of appeal for Mr. Solorio (R.Doc. 392).

2. Appeal to the Eighth Circuit, and that Court's Opinion

One of the claims raised on appeal was that the District Court committed reversible error in admitting the Eleesea Crail testimony about the assault with a firearm against her by Mr. Solorio because the minimal probative value of that evidence was substantially outweighed by the improper prejudice wrought by that evidence (Appellant's Brief, p. 31-35; Appellant's Reply Brief, p. 22-32). ***United States v. De La Cruz Nava***, 80 F.4th 883, 890 (8th Cir. 2023). On September 6, 2023, the Eighth Circuit Panel who considered the matter held that the District Court did not abuse its discretion in receiving the Crail testimony about the assault with a firearm because, though the incident was remote in time, it could be deemed relevant to show that Mr. Guzman previously had knowledge about firearms and had an intent to use them to his personal advantage. ***United States v. De La Cruz Nava***, supra. In addition, the Panel held that admission of the evidence was

harmless since the other evidence of guilt was overwhelming. ***United States v. De La Cruz Nava***, supra.

3. Motion for Rehearing

On September 20, 2023, Mr. Solorio timely filed his Motion for Rehearing (Appendix 7), and then on October 19, 2023, the Eighth Circuit denied the motion (Appendix 2).

REASONS IN SUPPORT OF GRANTING THE WRIT

Certiorari review of this case is warranted since a matter of exceptional importance is in play, in that a critical decision made by the Eighth Circuit in this case conflicts with the manner in which the same subject is treated in the Sixth Circuit, as well as with prior decisions within the Eighth Circuit. The Eighth Circuit Panel who considered the matter held that the District Court did not abuse its discretion in receiving testimony about an unrelated assault with a firearm because, though the incident was remote in time, it could be deemed relevant to show that Mr. Guzman previously had knowledge about firearms and had an intent to use them to his personal advantage; the Panel never addressed the prejudicial impact of the testimony. ***United States v. De La Cruz Nava***, supra. By so ruling, the Panel brought themselves into conflict with the diametrically opposed holdings, by the Sixth Circuit and by another Panel of the Eighth Circuit, that prior assaults with firearms which are unrelated to the currently charged offense have minimal

probative value which is substantially outweighed by the unfair prejudice which is inherent to such evidence. ***United States v. Clay***, 667 F.3d 689, 693, 695-697, 700 (6th Cir. 2012); ***Walker v. United States***, 490 F.2d 683, 684 (8th Cir. 1974).

ARGUMENT

A. Summary of Petitioner's challenge against the assault with a firearm testimony

In his briefing to the Eighth Circuit, Petitioner recounted how the District Court allowed, without even so much as a discouraging word, the government's presentation of claims from cooperating witness Eleesea Crail that Appellant assaulted her with a firearm in 2012 (Appellant's Brief, p. 33). Appellant explained that the District Court's inaction was prejudicially erroneous because of the improperly inflammatory nature of the accusation itself coupled with the minimal probative value, especially in light of the lack of factual or temporal relevance to the conduct charged in the indictment (Appellant's Brief, p. 31-35).

B. Summary of the Panel's holdings

The Eighth Circuit Panel's holdings appear at ***United States v. De La Cruz Nava***, 80 F.4th 883, 890 (8th Cir. 2023). The Panel began by criticizing that the objections that the evidence was irrelevant and prejudicial were somehow "non-specific". The Panel further faulted undersigned counsel for failing to raise in initial briefing the government's first-time-on-appeal reliance upon F.R.E. 404(b)

in arguing in favor of admissibility of the evidence. The Panel went on to hold that, though the assault-with-a-firearm incident was remote in time, it could be deemed relevant to show that Petitioner previously had knowledge about firearms and had an intent to use them to his personal advantage. On that sole basis, the Panel found that there was no abuse of discretion in admitting the evidence, thereby impliedly finding that the probative value of the evidence was not substantially outweighed by its unfair prejudice. In addition, the Panel held that admission of the evidence was harmless since the other evidence of guilt was overwhelming.

C. The Panel's treatment of an unrelated assault with a firearm conflicts with holdings by another Panel of the Eighth Circuit and the Sixth Circuit

Standing diametrically opposed to the Panel's position about the value/prejudice of a prior assault with a firearm incident in a firearm possession case are holdings by another Eighth Circuit Panel and the Sixth Circuit, both unambiguously holding that prior assaults with firearms which are unrelated to the currently charged offense have minimal probative value which is substantially outweighed by the unfair prejudice which is inherent to such evidence. ***United States v. Clay***, 667 F.3d 689, 693, 695-697, 700 (6th Cir. 2012); ***Walker v. United States***, 490 F.2d 683, 684 (8th Cir. 1974).

D. As the Eighth Circuit Panel correctly suggested at argument, it is the government who failed to invoke F.R.E. 404(b), thereby leaving for resolution only the questions under F.R.E. 402, initially cited by undersigned counsel, about relevance and prejudice

In a footnote, the Eighth Circuit Panel observed correctly that undersigned counsel "raised for the first time in his reply brief" the government's failure to properly invoke F.R.E. 404(b). However, the Panel wrongly accused that undersigned counsel never explained why he did not raise objection at time of trial or in his opening brief. That explanation is simple, and was set forth in the Appellant's Reply Brief at pages 24-25. To remind, never during trial did government counsel contend that the Crail testimony was admissible under F.R.E. 404(b)(2). That was likely because the government's trial counsel realized he never gave requisite notice under F.R.E. 404(b)(3). In fact, the first time a claim was made that the Crail testimony was "404(b) evidence" came in the government brief to the Eighth Circuit. At that point, for the first time, it became incumbent upon undersigned counsel to object, as he did, that "the label is at best a *post hoc* rationalization, or at worst flatly wrong" (Appellant's Reply Brief, p. 24).

Interestingly enough, at oral argument, the Eighth Circuit Panel called out government counsel for trying to rely upon 404(b) when the government never invoked the privileges of 404(b) at time of trial. Of course, such chiding was correct in that, per the clear wording of the rule itself, 404(b)(3) is the sine qua non for reliance upon 404(b)(2). The Panel went on that the government has in many, many cases come to that Court asking for evidence to be upheld on 404(b)(2) grounds when 404(b)(3) notice was never given. Undersigned counsel respectfully

suggests that that state of affairs will continue if Courts like this Eighth Circuit Panel insist upon wrongly shifting blame for the government's failures to defense counsel.

At Argument, the Eighth Circuit Panel also correctly observed that, not 404(b), but F.R.E. 402, provides the proper standard for resolution of the questions here. That rule calls for the judging of all evidence based upon questions of relevance and prejudice. Those are precisely the objection grounds which undersigned counsel raised against the Crail testimony in the first place. Thus, no criticism of that objection is justified.

E. Using the proper standard, and comparing relative powers of proper and improper evidence, the error here cannot be deemed harmless

In calling any error in this case harmless based upon the "overwhelming" other evidence of guilt, the Eighth Circuit Panel has defaulted to quantity, and ignored the arguments of undersigned counsel about the lack of quality of that evidence. As detailed in the factual recitation above, the evidence amounted to accusations by a cadre of biased witnesses coupled with Appellant's arrest at a house which did not belong to him, but which house contained drugs, guns and money.

More importantly, the Eighth Circuit Panel has incorrectly concentrated on only one component of the harm/harmless question. If it is assumed that the objected to evidence was improper, the operative question changes to whether

there is a reasonable possibility that the complained-of evidence might have contributed to the finding of guilt made by the jury. ***United States v. Clay***, 700. When a case is like the one here, based primarily on witnesses with the "patent bias" of cooperation deals, a factfinder would naturally have "great pause" in crediting such evidence, and in such circumstances alleged prior bad acts may well take on a central role in the factfinder's consideration of the case. ***United States v. Owens***, 424 F.3d 649, 656 (7th Cir. 2005). Then, the error here was compounded by the District Court overruling a timely objection and refusing to grant any relief. Using this standard in weighing the operative facts, there is no way to say that the error here was harmless beyond a reasonable doubt.

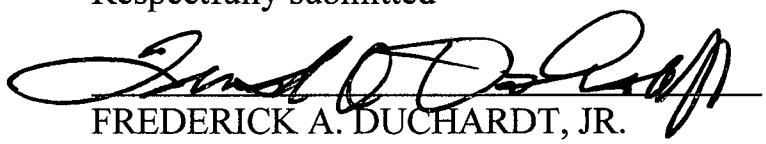
F. Conclusion

Because the Eighth Circuit Panel Opinion has been wrongly decided, and conflicts with decisions by another Eighth Circuit Panel and by the Sixth Circuit, this Court should grant certiorari to resolve the Circuit conflict, and ultimately reverse and remand this matter for new trial.

CONCLUSION

WHEREFORE, Petitioner prays that this Honorable Court enter its Order in this case granting its writ of certiorari to the Eighth Circuit Court of Appeals, and granting any further relief which this Court deems just and proper under the circumstances.

Respectfully submitted



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