

23-6771

No. 24-

In the

Supreme Court of the United States

WILD CHANG, KENNETH LO AND WILD CHANG, JR.
Petitioner,

FILED
FEB 13 2024
OFFICE OF THE CLERK
SUPREME COURT, U.S.

V.

FARMERS INSURANCE COMPANY, INC.,
FIRE INSURANCE EXCHANGE,
WOOLLS PEER DOLLINGER & SCHER, STACY CHERN

Respondent.

**On Petition for a Writ of Certiorari to
the U.S. Court of Appeals for the Ninth Circuit**

PETITION FOR WRIT OF CERTIORARI

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Petitioners Pro Se

February 13, 2024

QUESTIONS PRESENTED

Q1. Whether national insurance companies can continue committing the RICO frauds in concert with other members of the RICO Enterprise *with impunity* by simply repeating the same or similar RICO frauds because of “reaffirmation” of the same frauds, notwithstanding the well-established rules of (a) “separate accrual” for new claims, (b) “discovery” for frauds and (c) Petitioners’ rights to “*equal protection*” and “*due process*” under the circumstances?

A1. Yes, because this situation presents a critical and far-reaching legal principle (existing and/or new) that must be established or clarified, *thus* compelling review by this Court. See “**Reasons for Granting Petition**” below for further discussion.

Q2. Whether a complaint of *legal sufficiency*, alleging sustained and severe permanent injuries and damages from a stroke and related heart surgeries, among others, because of the wrongful denial of temporary accommodation during the alleged investigations of 14 months (beyond the statutory limit), can be arbitrarily and summarily concluded as “frivolous”, without violating Petitioners’ rights to “*equal protection*” and “*due process*” of plenary review under the circumstances?

A2. Yes, because this situation presents a critical and far-reaching legal principle (existing and/or new) that must be established or clarified, *thus* compelling review by this Court. See “**Reasons for Granting Petition**” below for further discussion.

Q3. Whether or not it is judicially sound and wise for a federal district and/or appeals court to create a new principle of law or in equity, i.e., re-writing a contract by and between the original parties, *NOT* to conform to the original intents of the parties, namely, "meeting of minds", *BUT* to allow an insurance company to re-write the contract, switching the "insurance" sold and purchased, with a "self-owned membership interest in an unincorporated association", without the statute-required mutual consent (Cal. Corp. Code, Sec. 18035(a)), for the purpose of escaping all the liabilities under the "insurance" sold and purchased, by simply repeating the same or similar RICO frauds?

A3. Yes, because this situation presents a critical and far-reaching legal principle (existing and/or new) that must be established or clarified, *thus* compelling review by this Court. See "**Reasons for Granting Petition**" below for further discussion.

LIST OF PARTIES

Petitioners

Wild Chang (“Chang, Sr.”)

Kenneth Lo (“Lo”)

Wild Chang, Jr. (“Chang, Jr.”)

Respondents

Farmers Insurance Company, Inc. (“FARMERS INSURANCE”)

Fire Insurance Exchange (“FIRE EXCHANGE”)

Woolls Peer Dollinger & Scher (“WPDS”) – Also counsel for all Respondents

Stacy Chern (“STACY CHERN”)

Chang, et al. v. Farmers, et al., No. 2:22-CV-02548-ODW-MAR, U.S. District Court for the Central District of California. Judgement entered July 12, 2023.

Chang, et al. v. Farmers, et al., No. 23-55705, U.S. Court of Appeals for the Ninth Circuit. Order entered November 17, 2023.

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INTRODUCTION

Petitioners are filing this Petition for a Writ of Certiorari in good faith belief that California and the entire Nation are governed by the rule of law, *NOT* one that can be perverted by, or otherwise subservient to, Respondent RICO Enterprise for the purpose of perpetuating the RICO frauds with impunity through a *Modus Operandi*, i.e.:

- (i). Using Respondent STACY CHERN, as a sales agent for Respondent FARMERS INSURANCE, to advertise, market and sell an “Insurance” to potential “insurance” purchasers, i.e., Petitioners, for and on behalf of its principal, Respondent FARMERS INSURANCE,
- (ii). Acting in concert with each other members, Respondent RICO Enterprise have attempted to defraud Petitioners to believe in having purchased the “Insurance”, as evidenced by the **Evidence of Property Insurance (April 29, 2014)** issued by Respondent STACY CHERN for and on behalf of Respondent FARMERS INSURANCE,
- (iii). Unduly withholding the “insurance” policy from Petitioners to this date,
- (iv). After a fire loss (*e.g., December 16, 2014 to Petitioners’ Property*), attempting to *switch* the “Insurance” sold and purchased by and between Respondent FARMERS INSURANCE and an innocent “Insurance” purchaser, including Petitioners, *with* a “self-owned membership interest in an incorporated and fungible association”, i.e., a fungible “Insurance Exchange”, pursuant to an *alleged, unsigned and never-agreed-to* Subscription

Agreement by and between the "Insurance" purchasers and an alien "Insurance Exchange" controlled by an insurance company, i.e., Respondent FARMERS INSURANCE here, for the purpose of escaping all the liabilities under the California insurance law, among others, however, *without* success, violating the requirement for mutual consent by Cal. Corp. Sec. 18035(a),

Not that Petitioners desire to be David, **but that** the nationwide-rampageous RICO frauds being practiced by the Goliath Respondent RICO Enterprise with impunity must be eliminated.

Furthermore, the wrong and harmful legal consequences and ramifications violate the basic principles of "reasonableness" and principles of law, because:

(i) the misuse of "reaffirmation", overriding the generally accepted principles of law on (a) "accrual" for "separate" acts and related active concealments, and (b) "discovery" for frauds, as alleged in Petitioners' original federal complaint and First Amended Complaint ("FAC"), will encourage the RICO Enterprise to continue repeating the same or similar RICO frauds with impunity, and

(ii) the unconstitutional use of the *one-sided, strictly financial and non-judicial, summary, arbitrary and discretionary* dismissal of an otherwise *perfected appeal* as "frivolous" will deprive any appellant of "equal protection" and "due process" for requesting a fee waiver, due to financial hardship, as opposed to the appellant with financial superiority, *notwithstanding* the fact that

Petitioners have suffered and sustained severe and permanent injuries and damages, among others, as alleged with legal sufficiency in the federal complaint, violating *not only* the reasonableness, *but also* the well-established principles of law that Petitioners' claims are **NOT** "frivolous".

Therefore, Petitioners strongly believe that the rulings by the District Court and the Ninth Circuit have violated Petitioners' rights to "*equal protection*" and "*due process*" of plenary judicial review under the circumstances, as alleged in the original federal complaint, FAC and "Statement that Appeal Should Go Forward".

OPINION AND ORDER BELOW

The decision by the Ninth Circuit Court of Appeals under Case No. 23-55705 dismissing the appeal as frivolous.

JURISDICTION

The Order by the Ninth Circuit Court of Appeal was entered on November 17, 2023. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

STATUTORY PROVISION INVOLVED

Racketeer Influenced and Corrupt Organizations ("RICO") Act 18 U.S.C. §1964 (c).

28 U.S.C. §1915 (e)(2).

STATEMENT OF THE CASE

A. Background

On April 29, 2014, Petitioners Chang Sr. and Lo purchased the “Insurance” by and from Respondent FARMERS INSURANCE through its local agent, Respondent STACY CHERN (Farmer Insurance Agency) for the Property in Rowland Heights, California as evidenced by the Evidence of Property Insurance dated April 29, 2014, setting forth (i) Respondent FARMERS INSURANCE, as insurer, and (ii) Petitioners Chang, Sr. and Lo, as insureds. *[Petitioners may refer to Chang, Sr. and Lo, or Chang, Sr., Lo and Chang, Jr., as the context may require.]*

On May 3, 2014, the “Insurance” sold and purchased pursuant to the Evidence of Property Insurance (an insurance Binder, Cal. Ins. Code, Sec. 382.5) became legal, valid and binding, enforceable according to (i) the terms and conditions set forth in the **Evidence of Property Insurance**, and (ii) the applicable law in the State of California, *when* Respondent FARMERS INSURANCE acknowledged receipt in full of the premium payments by Petitioners, as quoted in the **Evidence of Property Insurance**, in its capacity as a legal entity, **NOT** a mere “Service Mark”, as subsequently alleged fraudulently to perpetuate the RICO frauds.

On December 16, 2014, the Property suffered fire accidentally, so Petitioners immediately reported the fire incident to Respondent FARMERS INSURANCE and Respondent STACY CHERN for recovery and temporary accommodations, pending the investigation by Respondent FARMERS

INSURANCE, pursuant to the "Insurance" coverage purchased under the applicable law.

After the onsite investigation, on January 21, 2015, the Los Angeles Sheriff's Department issued a report, confirming that the fire on the Property occurred on December 16, 2014, was an accident, NOT an arson. In the meantime, Petitioners immediately notified Respondent FARMERS INSURANCE with a copy of the report.

But, as of today, despite repeated requests by Petitioners' investigation counsel, and by Petitioners, Respondent FARMERS INSURANCE had never provided an "Insurance" policy representing the "Insurance" transacted on April 29, 2014.

Nevertheless, Respondent RICO Enterprise

(i) allegedly had conducted a prolonged investigation of 14 months beyond the statutory period of 12 months, while wrongfully denying Petitioners the temporary accommodations during the alleged and fake investigations, resulting in the severe and permanent injuries by Petitioner Chang, Sr. from an involuntary stroke and related heart surgeries, among others, as alleged in the original federal complaint and FAC, and

(ii) Respondent RICO Enterprise, through conspiracy and joint efforts, have attempted to *switch* the "Insurance" initially sold and purchased on April 29, 2014, *with* a mere "self-owned membership interest in an incorporated association, namely Respondent FIRE EXCHANGE (a fungible exchange controlled by Respondent FARMERS INSURANCE)", pursuant to an *alleged, unsigned* and

never-agreed-to Subscription Agreement* by and between Petitioners and Respondent FIRE EXCHANGE, *but without success*, when Petitioners discovered (2021) the RICO frauds and brought (2022) the RICO action against the Respondent RICO Enterprise, *notwithstanding* Respondent members of the RICO Enterprise has each utilized separate and independent communications and active concealments, designed to confuse and mislead Petitioners to their detriments, as alleged.

Furthermore, but for WPDS's participation in the RICO frauds through volitional, willful and affirmative misrepresentations and *active concealments*, separately, but in concert with other members of the Respondent RICO Enterprise, WPDS would not have represented Respondent FIRE EXCHANGE under the pretext of acting as a legal counsel for Respondent FIRE EXCHANGE, excluding, on purpose, Respondent FARMERS INSURANCE for the purpose of perpetuating the RICO frauds with impunity to all members of the Respondent RICO Enterprise, *because*

*According to Cal. Corp. Code, Sec. 18035(a):

“Unincorporated association’ means an unincorporated group of two or more persons joined by mutual consent for a common lawful purpose, whether organized for profit or not.”

(i) WPDS could not have represented FIRE EXCHANGE, being a non-party to the "Insurance" contract sold by Respondent FARMERS INSURANCE to Petitioners, and being illegal for an unincorporated association (namely FIRE EXCHANGE) under California law,

(ii) WPDS could not have been excused from the professional and legal liabilities for failure to conduct the necessary due diligence required by Rule 1.3 of the State Bar of California and by the express ruling in *Cole v. Patricia A. Meyer Associates, APC* (2012) 206 Cal. App. 4th 1095, 1118, and *Sycamore Ridge Apartments LLC v. Naumann* (2007) 157 Cal.App.4th 1385 at pp. 1407, 1410.

B. Procedural History

1. April 12, 2022: Petitioners filed the original federal complaint at the U.S. District Court for the Central District of California (Case No. 2:22-CV-02548-ODW-MAR).

2. May 19, 2022: Respondents filed Motion to Dismiss the original complaint.

3. June 20, 2022: Petitioners filed Opposition to Respondents' Motion to Dismiss.

[Respondents did not file Reply to Petitioners' Opposition.]

4. December 29, 2022: the District Court issued an order granting Respondents' Motion to Dismiss with leave to amend.

5. January 19, 2023: Petitioners filed First Amended Complaint.

6. February 2, 2023: Respondents filed Motion to Dismiss First Amended Complaint.

7. February 13, 2023: Petitioners filed Opposition to Respondents' Motion to Dismiss First Amended Complaint.

8. February 17, 2023: Respondents filed Reply in Support of Motion to Dismiss.

9. July 12, 2023: the District Court issued an order and a judgment granting Respondents' Motion to Dismiss First Amended Complaint without leave to amend.

10. August 8, 2023: Petitioners filed Notice of Appeal to Ninth Circuit Court of Appeals (Case No. 23-55705).

11. August 29, 2023: Petitioners file *In Forma Pauperis* for a fee waiver, due to financial hardships.

12. September 8, 2023: *[Apparently, because of Petitioners' request for fee waiver (In Forma Pauperis),]* the Ninth Circuit Court issued an *[unconstitutional]* order that "[t]his court may dismiss a case at any time, if the court determines the case is frivolous" and Petitioners is required to submit the "Statement That Appeal Should Go Forward" to explain "why the appeal is not frivolous and should go forward", *[based on the unconstitutional powers granted by 28 U.S.C. §1915 (e)(2)]*.

13. October 13, 2023: Petitioners filed the “Statement That Appeal Should Go Forward”, *subject to* Petitioners’ simultaneous challenge against the constitutionality of 28 U.S.C. §1915 (e)(2).

14. *November 6, 2023: 14 days late after the October 23, 2023 deadline, Respondents filed Response to the “Statement That Appeal Should Go Forward”.*

15. November 7, 2023: Petitioners filed Objection to Respondents’ Overdue and Useless Response.

16. November 17, 2023: the Ninth Circuit Court issued an order “dismiss[ing] this appeal as frivolous”.

REASONS FOR GRANTING PETITION

In order to prevent and eliminate such ongoing RICO frauds by insurance companies nationwide, the following *fundamental legal issues* must be resolved:

The legal issues involved are critical, important, far-reaching and wide-affecting, compelling review by this Court.

As set forth above in **Statement of the Case**, Petitioners have discovered the RICO frauds being committed by Respondent FARMERS INSURANCE, a *nationwide* insurance company through in and out-of-state subsidiaries, and/or affiliates, together with other members of the RICO Enterprise, consisting of Respondents FARMERS INSURANCE, FIRE EXCHANGE (a fungible Exchange controlled by FARMERS INSURANCE), WPDS and STACY CHERN, using the *Modus Operandi*, as set forth above in **Introduction**, to defraud an insurance purchaser, Petitioners here, for the purpose of escaping all the liabilities arising from the initial "Insurance" contract, with impunity by simply repeating the same or similar RICO frauds on the public.

I. An Insurance Company Cannot Re-Write at Will a Pre-Existing Legal, Valid and Binding Contract, Enforceable Against the Parties Thereto.

An insurance company, whether of nationwide significance, or any persons, cannot and should not be allowed to continue preying on the innocent public through the RICO frauds by altering or re-writing a

pre-existing legal, valid and binding contract for "Insurance", enforceable against the parties thereto, *switching*:

- (i) the sale and purchase of an "Insurance" *with* a "self-owned membership in an unincorporated association",
- (ii) the *contracting parties* from Petitioners and Respondent FARMERS INSURANCE *with* Petitioners and Respondent FIRE EXCHANGE, and
- (iii) the "Insurance" policy with an *alleged, unsigned* and *never-agreed-to* Subscription Agreement by and between Petitioners and Respondent FIRE EXCHANGE, yet another fungible controlled by Respondent FARMERS INSURANCE, *absent* Petitioners' knowledge and consent, as required by law (Cal. Corp. Code, Sec. 18035(a)), *notwithstanding* the fact that in California by law, Respondent FIRE EXCHANGE "could not own or transfer property and could not be sued in its own name", thus lacking the legal abilities to sell any insurance to Petitioners or any other persons in the public, but only a "*self-owned membership interest*" upon application, pursuant to a Subscription Agreement. See the Recommendations by the State of California Revision Commission on Unincorporated Association, p. 733, September 2003.

Furthermore, the **Exhibits** to Petitioners' original federal complaint and FAC sufficiently and unequivocally support and demonstrate the severe and permanent injuries suffered by Petitioners that the ongoing and separate acts of RICO frauds by Respondent RICO Enterprise, e.g., *self-*

contradicting separate acts and omissions, coupled with separate ***active concealments***, designed to confuse and mislead Petitioners *anew*, resulting in a separate act of RICO fraud.

Under the circumstances, the reformation of the insurance contract by any insurance company, not only changes the fundamental nature of the contract, originally agreed-upon by “meeting of minds”, but also excuses the RICO Enterprise from all the liabilities under the RICO frauds so committed.

Therefore, there is no reasonably or logically judicial or jurisprudential ground to support any insurance company to have such exceptional privilege to commit and to continue committing the RICO frauds with impunity upon the innocent public to their severe and permanent detriment.

II. An Insurance Company Cannot Continue Committing the RICO Frauds With Impunity by Simply Repeating the Same or Similar RICO Frauds, Thus Overriding the Principles of “Separate Accrual” and “Discovery” for Frauds.

For compelling public policy and the well-established rule of law, an insurance company cannot enjoy a privilege of immunity from the RICO frauds, thus escaping all the liabilities under the pre-existing legal, valid, and binding contract of “Insurance”, enforceable against the parties thereto, by simply *repeating* the same or similar RICO frauds, based on “reaffirmation” of the RICO frauds, violating the well-established principles of law on (i) “accrual” for “separate” acts and related active concealments, and (ii) “discovery” for frauds.

Furthermore, the discovery by Petitioners of the RICO frauds by Respondent RICO Enterprise in 2021 (*i.e., the discovery rule for frauds under the California state law and the federal law*) **renders** the so-called “reaffirmation” rule not only irrelevant, but also legally erroneous under the “separate and accrual rule”.

Under the circumstances, the reformation of the insurance contract by any insurance company, not only changes the fundamental nature of the contract, originally agreed-upon by “meeting of minds”, but also excuses the RICO Enterprise from all the liabilities under the RICO frauds so committed.

Therefore, there is no reasonably or logically judicial or jurisprudential ground to support any insurance company to have such exceptional privilege to commit and to continue committing the RICO frauds with impunity upon the innocent public to their severe and permanent detriment.

III. By Any Legal Standards, State or Federal, Petitioners' Claims, as Suffered, Sustained and Alleged in the Complaint Are Legally Sufficient, Not “Frivolous”.

As set forth above, Petitioners suffered and sustained a severe and permanent injuries and damages, among others as alleged with legal sufficiency in the federal complaint, including, Petitioner Chang, Sr.’s involuntary stroke and related heart surgeries, resulting from Respondent FARMERS INSURANCE’s wrongful denial of the temporary accommodations as desperately needed during Respondent FARMERS INSURANCE’s

alleged and prolonged investigation of 14 months beyond statutory limit on the fire incident rendering the Petitioners' property uninhabitable, even though Respondent FIRE EXCHANGE received a copy of the investigation report from the Sheriff's Department, concluding the fire a result of an accident, not an arson, within days of the fire incident.

Under the circumstances, Petitioners' claims, as alleged with legal sufficiency in their federal complaint, are not "frivolous" by any legal standards, state or federal.

Therefore, the arbitrary and summary conclusion by the Ninth Circuit on Petitioners' claims being "frivolous" has deprived Petitioners of their rights to "*equal protection*" and "*due process*".

IV. 28 U.S.C. §1915 (e)(2) is Unconstitutional.

A. An Appeal, Once Perfected by Timely Notice of Appeal Cannot be Dismissed by One-Sided, Strictly Financial and Non-Judicial, Summary, Arbitrary and Discretionary Dismissal Without Full and Plenary Judicial Review Violating "Equal Protection" and "Due Process".

For convenience to this Court, 28 U.S.C. §1915 (e)(2) is cited below:

"Notwithstanding any filing fee, or any portion thereof, that may have been paid, *the court shall dismiss the case at any time if the court determines that —*

- (A) *the allegation of poverty is untrue; or*
- (B) *the action or appeal —*

- (i) *is frivolous or malicious;*
- (ii) *fails to state a claim on which relief may be granted; or*
- (iii) *seeks monetary relief against a defendant who is immune from such relief."*

(Italics added)

As set forth in the record, upon receipt of the ruling by the district court, Petitioners timely filed Notice of Appeal within the statutory period, thus duly perfecting their rights of appeal, and entitling to the review by the Ninth Circuit of (i) Petitioners' Opening Brief, (ii) Respondents' Response Brief, and (iii) Petitioners' Reply Brief.

Furthermore, the Ninth Circuit cannot constitutionally tie Petitioners' rights to appeal to a request for a fee waiver (*In Forma Pauperis*) due to financial hardship. The Ninth Circuit may choose to deny Petitioners' request for the fee waiver, but cannot *constitutionally* and *judicially* deny Petitioners' appeal, duly perfected, without plenary judicial review, because the denial of Petitioners' request for a fee waiver is *strictly a financial and clerical decision*, that can be processed by *administrative clerks* according to a guideline, *NOT* a judicial decision on the merits.

Therefore, under the circumstances, the arbitrary and summary conclusion by the Ninth Circuit is unconstitutional, depriving Petitioners of the rights to "equal protection" and "due process".

B. 28 U.S.C. §1915 (e)(2) Cannot Constitutionally Deprive Appellants of Inferior Financial Abilities of “Equal Protection” and “Due Process” to Full and Plenary Judicial Review on a Perfected Appeal.

As demonstrated throughout the history, no one on this land shall be deprived of the rights to “*equal protection*” and “*due process*”, simply because a person is financially inferior, while only the appellants with financial superiority are entitled to a full and plenary judicial review on a perfected appeal.

Therefore, depriving Petitioners of the right to *judicially plenary review* of their duly perfected appeal, and substituting with a one-sided, financial and non-judicial, summary, arbitrary and discretionary denial, simply because of Petitioners’ request for a fee waiver, renders 28 U.S.C. §1915 (e)(2), unconstitutional, for denying the appellant of financial inferiority, resulting in depriving the rights to “*equal protection*” and “*due process*” to a full *judicial* review.

V. This Court Should Grant Review and Establish a Precedent to Prevent and Foreclose Ongoing RICO Frauds by Insurance Companies with Impunity.

As set forth above, in light of the chaos and injustice created by (i) the one-sided, strictly financial and non-judicial, summary, arbitrary and discretionary denial to and otherwise duly perfected appeal, based on a strictly financial and non-judicial basis, and (ii) the so-called “reaffirmation” of the same or similar RICO frauds will in fact encourage

insurance companies, i.e., the RICO Enterprise, to continue the RICO frauds with perpetuating impunity, conflicting with and overriding the well-established principles of law on (i) "accrual" for "separate" acts and related active concealments, and (ii) "discovery" for frauds, this Court should and must establish a supreme precedent to stop, foreclose and eliminate such chaos and grave injustice for the sake of judicial consistency in applying the well-established principles of law, as identified above, and for the sake of jurisprudence.

For the convenience to this Court, Petitioners heartedly choose to restate related rulings material to this Petition:

(i) All the allegations by Petitioners in FAC are deemed true for the purposes of established a legally sufficient complaint, including Exhibits thereto (*Lee v. City of Los Angeles*, 250 F.3d 668, 679 (9th Cir. 2001), (see *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003)).

(ii) Respondent RICO Enterprise have violated the Federal Racketeer Influenced and Corrupt Organizations Act (18 U.S.C. § 1964(c)) (*United States v. Rastelli*, 870 F. 2d 822, 828 (2d Cir.), cert. denied, 493 U.S. 982, 110 S. Ct. 515, 107 L. Ed. 2d 516 (1989)).

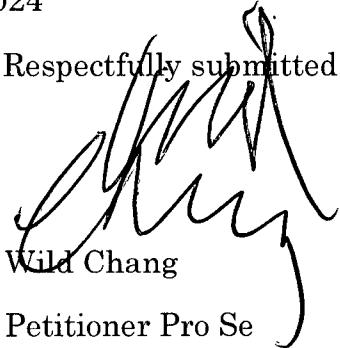
(iii) Under the "separate accrual" rule, the commission of a separable, new predicate act within a four-year limitations period permits a plaintiff to recover for the additional damages caused by that act. (*Klehr v. A.O. Smith Corp.*, 521 U.S. 179, 190, 117 S. Ct. 1984, 1991, 138 L. Ed. 2d 373 (1997)).

CONCLUSION

The petition for writ of certiorari should be granted.

Dated: February 13, 2024

Respectfully submitted,



Wild Chang

Petitioner Pro Se



Kenneth Lo

Petitioner Pro Se



Wild Chang, Jr.

Petitioner Pro Se

P.S.: Petitioners are filing this Petition for a Writ of Certiorari in pro se, together with a request for a fee waiver (*In Forma Pauperis*). If, however, this Court requires Petitioners to pay the filing fee and other papers, Petitioners will pay such fee and file any additional papers in form and substance as required promptly.