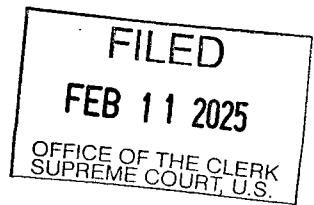


No. 24-6599



IN THE
SUPREME COURT OF THE UNITED STATES

WILLIAM J. TRENGOVE JR PETITIONER
(Your Name)

vs.

U.S. DEPARTMENT OF JUSTICE RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. COURT OF APPEALS 3RD CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

WILLIAM J. TRENGOVE JR, PRO SE
(Your Name)

26 LAFAYETTE ST.
(Address)

WHARTON NJ 07885
(City, State, Zip Code)

973-989-1919
(Phone Number)

ORIGINAL

QUESTIONS PRESENTED

1. Can the Department of Justice, or any government agency, legitimately claim 28 U.S.C. § 2680(a) discretionary function exemption (DFE) after being indisputably totally negligent as in the present case?

In Keller v. United States, 771 F.3d 1021 (7th Circuit 2014), "The discretionary function exception is an affirmative defense to liability under the FTCA that the government must plead and prove." If the DOJ is claiming DFE, and admitting such negligence, how is the required proof possible? Is it enough just to claim DFE for defense in court?

DOJ, and the lower courts, cite Baer (Baer v. United States, 722 F.3d 168, (3d Cir. 2013)), in which the 3rd Circuit accepted the government's DFE claim and the government defense won the case. Unlike the present case, where there is total negligence to perform a duty by the government, in Baer the government conducted a multi year investigation and did interviews. In the present case, the DOJ refused to even speak to Trengove, the petitioner, after they received what is arguably proof evidence of an attempted murder. And, multiple complaints. Unfortunately, those involved in the allegation were eventually successful by

denying necessary life support resulting in the death of his mother, of whom he was legal caregiver. In the present case, defense cites no similar cases where there was anything like total negligence and DFE was accepted as a defense.

2. Can an Appellate Court maintain a ruling which clearly runs counter to that of other Appellate Courts and greatly weakens FTCA, a legal statutue?

For example, in Coulthurst v. United States, 214 F.3d 106, 111 (2d Cir. 2000), the 2nd Circuit ruled against the government's use of the discretionary function exemption (DFE), because laziness or inattentiveness cannot be substituted for discretion or a judgement decision. Likewise, in the present case, the Department of Justice's total negligence should have barred application of DFE. The 2nd Circuit Court also warned in Coulthurst that indiscriminate use of 28 U.S.C. § 2680(a) discretionary function exemption by the government would weaken the FTCA (28 U.S.C. § 1346(b)(1)), which is what the rulings of lower courts in the present case seem to have done.

Similarly, in Keller v. United States, 771 F.3d 1021 (7th Circuit 2014), an appellate court decided differently than the 3rd Circuit in this case.

LIST OF PARTIES

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

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

NONE

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix D to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the United States district court appears at Appendix I to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
 is unpublished.

Federal Courts

The decision of the U.S. Court of Appeals appears at Appendix A to the petition and is unpublished.

The decision of the U.S. District Court appears at Appendix B to the petition and is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 9/17/2024

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: 12/5/2024, and a copy of the order denying rehearing appears at Appendix C.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A _____.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

STATUTES AND RULES	<u>APPENDIX J</u>	PAGE NUMBERS
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STATEMENT OF THE CASE

November 13, 2015 Jean C. Trengove, petitioner's mother of whom he was legally appointed caregiver (Appendix F, pages 29-33), was admitted to the local hospital for medical treatment following an allegedly inappropriate drug prescription. There were alleged attempts to terminate her life without authorization. For further detail on this see Appendix E, page 4, Appendix F, pages 8-10, and 24.

Spring 2016 an attempt was made to get local police action for Mrs. Trengove without success (Appendix F, page 19).

July 17, 2017 petitioner visited the local FBI Garret Mt. office with information on the case like that later mailed to the Department of Justice the following month. The FBI wasn't interested in the case.

Especially relevant here, August 11, 2017 a Citizen's Complaint along with various evidentiary material and accounts was filed with the Department of Justice Newark NJ by certified USPS mail. (Appendix F, pages 8-11, and 24-26). The complaint was ignored by the DOJ.

September 19, 2018 petitioner made an in person visit to DOJ office Newark NJ, no attorney would meet with him which was requested, however a second copy was made for them of the same Citizen's Complaint because the original was

not in their system.

Fall of 2019 various parties were sent certified mail letters or complaints. These include Inspector General for DOJ, House Oversight committee properly received by house agent, Attorney General State of New Jersey, FTC, AbbVie Inc. (Appendix F 15, 19-20).

January 30, 2020 Jean C. Trengove died due to an alleged unauthorized denial of life support by healthcare and hospital.

(Appendix F, 17-18)

January 10, 2022 petitioner exhausted his administrative remedies when the Department of Justice ignored his certified letter requesting settlement (Appendix F pages 27-28, Appendix H) and subsequent e-mails (Appendix F page 15-16). DOJ refused to communicate with Trengove until his federal lawsuit was filed.

Reluctantly, and as a last resort, Trengove filed a federal lawsuit with District Court Newark NJ February 16, 2023 alleging negligence by DOJ (Appendix E).

July 12, 2023, the Department of Justice files their response to the plaintiff's complaint after 2 extensions of time to file were granted. Included were DOJ's Memorandum of Law...and Motion to Dismiss (Plaintiff's) Complaint.

July 24, 2023, plaintiff files response brief (Appendix F) and Motion for Summary Judgement.

July 27, 2023, DOJ files letter to Judge Farbiarz in lieu of formal brief opposing plaintiff's Motion for Summary Judgement.

December 29, 2023, Judge Farbiarz is replaced by Judge Semper for further proceedings.

January 18, 2024, Order Dismissing with Prejudice the plaintiff's complaint signed by Judge Jamel K. Semper (Appendix B). Case was decided solely on the papers and without any oral argument.

February 6, 2024, Trengove appealed to the U. S. Court of Appeals for the 3rd Circuit from the Order dismissing "with Prejudice..." with a timely filed Notice of Appeal.

April 5, 2024, Trengove files an "Informal Brief" answering questions for the Appellate Court.

June 21, 2024, Department of Justice files "Brief For Defendant-Appellee" and "Supplemental Appendix..." after 45 day extension of time to file granted.

July 8, 2024, Trengove files "Reply Brief For Plaintiff/Appellant".

September 17, 2024, the three judge panel of the 3rd Circuit Appellate Court affirms the ruling of the District Court in favor of the Department of Justice (Appendix A). Case was decided solely on the papers and without any oral argument.

October 18, 2024, "Petition For Rehearing" for en banc and before original three judge panel timely filed by Trengove (Appendix G).

December 5, 2024, U.S. Court of Appeals For the Third Circuit denies Trengove's "Petition For Rehearing" (Appendix C).

December 13, 2024, U.S. Court of Appeals For the Third Circuit issues a certified judgement in lieu of, and equivalent to, a formal mandate (Appendix A).

REASONS FOR GRANTING THE PETITION

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- 8 1. DFE is an affirmative defense, which wasn't required of DOJ by courts.
- 11 2. DOJ didn't prove the required Berkovitz/Gaubert tests.
- 14 3. DFE's terminology was used to distort the intentions of DFE and FTCA.
- 15 4. FTCA was weakened by the decisions of the lower courts.
- 16 5. Administrative exhaustion defense contradicts precedent.
- 18 6. Petitioner's claims are substantiated FTCA subject matter.
- 21 7. "Rules of The Supreme Court" Rule 10 are applied in this petition.
- 25 8. General and national reasons for this Court to approve petition.
- 26 9. What is requested of this Court.

1. DFE is an affirmative defense which requires proof, which wasn't required of DOJ in this case.

The U.S. Court of Appeals 3rd Circuit, like District Court, never required the Department of Justice to provide any proof that they exercised discretion, per 28 U.S.C. § 2680(a) discretionary function exemption (DFE), they merely claimed it for court and presented legal arguments. See Appellate Court 3rd Circuit's Opinion

Appendix D.

Petitioner refutes the 3rd Circuit Opinion 9/17/2024 in his "Petition For Rehearing", Appendix G, 10/18/2024 , pages 12-15, "G. Appellate Court Erred In Attempts To Justify 28 U.S.C. § 2680(a) Application To This Case". The "Petition For Rehearing" largely responds to the 9/17/2024 3rd Circuit Opinion.

In petitioner's original "Complaint For a Civil Case Alleging Negligence filed 2/16/2023" 28 U.S.C. § 1332, (Appendix E), the Department of Justice is charged with repeatedly ignoring complaints and "lack of any deterrence whatsoever." That is, total negligence resulting in alleged murder, including (from the stock form) acts that they "failed to perform...that a person of ordinary prudence would have done under similar circumstances."

In a case listed in petitioner's "Petition For Rehearing", Appendix G, page 10, Keller v. United States, 771 F.3d 1021 (2014), the 7th Circuit Court of Appeals describes the discretionary function exemption (DFE) as "an affirmative defense" where "the government must offer evidence that shows beyond reasonable dispute that its conduct is shielded by the exception." In this type of defense, a defendant admits the alleged actions charged by a plaintiff, such as a duty recognized but breached which resulted in harm deserving of damages sought (NJ Section 2A:15-5.1). Also, a defendant must present evidence to prove their

affirmative defense is valid.

A complaint in this case is that the Department of Justice, and the government generally, is totally negligent, which is a fact not challenged. Being totally negligent, it's not possible for the Department of Justice to provide proof that discretion was exercised. No investigation took place, no interviews, the DOJ refused to even speak to Trengove (petitioner). Nothing. Only communicating with Trengove after the February 16, 2023 federal complaint was filed. As has been repeatedly argued, they only claimed to have exercised investigatory discretion as a defense in court, without required proof. Like the District Court in Keller, the lower courts in the present case did not require any proof from the DOJ; but in Keller the lower court was reversed by the appellate court.

The lower courts erred by not requiring any proof from the DOJ for a DFE defense such as mentioned above by the 7th circuit in Keller. But was brought to the attention to the Appellate Court (Appendix G, page 17) here as unsubstantiated.

The cases where the discretionary function exemption applied were able to provide such proof, like Baer ((Baer v. United States, 722 F.3d 168, (3d Cir. 2013)) - the 3rd Circuit's own decision - a case repeatedly cited by DOJ, District Court and 3rd Circuit - which involved multi year investigations and interviews followed by a

proven DFE claim (ie. the government did something), not total negligence followed by an unsubstantiated claim of investigatory discretion.

2. DOJ didn't prove that the required Berkovitz/Gaubert tests were satisfied by its DFE defense.

Coulthurst v. United States, 214 F.3d 106, 111 (2d Cir. 2000) involves a federal prisoner using a weight machine which had a cable snap and caused injuries to Colthurst's neck, shoulders and back. He filed an FTCA complaint alleging negligence to properly maintain safe equipment.

The 2nd Circuit, in its Coulthurst opinion, vacating a dismissal of the complaint by District Court for applying 28 U.S.C. § 2680(a) discretionary function exemption, wrote:

"Over the last two decades, the Supreme Court has handed down a series of decisions clarifying the scope of the DFE. The Court's decisions in Berkovitz v. United States, 486 U.S. 531 (1988), and United States v. Gaubert, 499 U.S. 315 (1991), establish the framework for evaluating whether particular governmental conduct falls under the DFE (discretionary function exemption). According to the Berkovitz-Gaubert test, the DFE bars suit only if two conditions are met: (1) the acts alleged to be negligent must be discretionary, in that they involve an "element of judgment or choice" and are not compelled by statute or regulation and (2) the judgment or choice in question must be grounded in "considerations of public policy" or susceptible to policy analysis. See Gaubert, 499 U.S. at 322-23; Berkovitz, 486 U.S. at 536-37."

Referring to the nature of the allegations by Coulthurst, The Court further wrote:

"Such negligent acts neither involve an element of judgment or choice within the meaning of Gaubert nor are grounded in considerations of governmental policy."

And goes on to say:

"For the reasons further developed below, we believe that if the inspector failed to perform a diligent inspection out of laziness or was carelessly inattentive, the DFE does not shield the United States from liability."

The Court warns that indiscriminate acceptance of DFE as a defense would

devalue FTCA:

"Such a characterization, however, would effectively shield almost all government negligence from suit, because almost every act involves some modicum of discretion regarding the manner in which one carries it out. Such a result is not required by the language of the DFE and would undercut the policy aims at the heart of the FTCA."

The Court comments on the negligence of the federal prison staff:

"Such actions do not reflect the kind of considered judgment 'grounded in social, economic, and political policy' which the DFE is intended to shield from 'judicial 'second-guessing'... If the plaintiff can establish that negligence of this sort occurred, his claims are not barred by the DFE, and he is entitled to recover under the FTCA."

The Department of Justice's negligence here is similar to the

"laziness...inattentiveness" of the prison workers in Coulthurst, which acts the 2nd Circuit said doesn't involve judgement or choice "in the meaning of Gaubert." Nor do they appear to be grounded in department policy, just the opposite (see below). Those with total negligence to perform law enforcement duties can't use discretion as an excuse.

The alleged violation of federal RICO (18 U.S.C. § 1962) organized crime statute brought in the August 2017 Citizen's Complaint to Department of Justice Newark (Appendix F, page 24) seems to supercede any judgement call mentioned above in the first part of Gaubert. As do the serious allegations made in separate accounts within the materials received by the DOJ along with the Citizen's Complaint August 2017 (Appendix F, page 11).

The "Mission Statements" of the Department of Justice like "uphold the rule of law, keep our country safe and protect civil rights", Elder Initiative like "combating abuse...that target our nation's older adults and fighting for justice", and FBI's Mission Statement "Protect the American people"...and FBI Priorities "Organized Crime, Public Corruption, Violent Crime." (Appendix F, page 14) run counter to the second part of Gaubert about department policy and are not subject to analysis. In the Trengove case, a required policy was not enforced allegedly resulting in death.

The lower courts apparently erred in their misapplication of the DFE in the Berkovitz/Gaubert case law to this case in both parts one and two. In order to satisfy Gaubert, the government must satisfy both requirements. For the above reasons, neither requirement appears to be met.

The decisions of District Court Newark and the U.S. Court of Appeals 3rd Circuit, deviate on the application of 28 U.S.C. § 2680(a) (DFE) defense to the Federal Tort Claim Act cases, of both the 2nd Circuit (Coulthurst v. United States) and 7th Circuit (Keller v. United States) explained above; in addition to being at variance with basis by the 3rd Circuit for their own ruling in Baer v. United States.

3. DFE's ambiguous language can lead to absurd applications of the phrase "whether or not the discretion involved be abused", used by defense which distort the intentions of DFE and FTCA.

The 2nd Circuit in the Coulthurst Opinion warns that the DFE's ambiguous language can lead to absurd applications of the phrase "whether or not the discretion involved be abused", used by defense, and 3rd Circuit Opinion (Appendix D, page 4) which distort the intentions of DFE and FTCA. This can lead to

"...effectively shield almost all government negligence from suit, because

almost every act involves some modicum of discretion regarding the manner in which one carries it out. Such a result is not required by the language of the DFE and would undercut the policy aims at the heart of the FTCA."

And "...conceivably could be interpreted to bar damage suits based on any actions or decisions that are not directly controlled by statute."

This case appears to be directly controlled by statute, law, and policy, probable RICO statute and laws effecting the allegations made on page 11 of Appendix F, and Mission Statements, Initiatives and Priorities (Appendix F page 14) so therefore the element of judgement and discretion seems removed and the defense use of the DFE phase "whether or not the discretion involved be abused" shouldn't have been accepted by a court.

4. The Federal Tort Claims Act (FTCA) was weakened by the decisions of the lower courts.

As it stands, the rulings of the lower courts weaken the FTCA statute 28 U.S.C. § 1346, because it creates case law that doesn't require the government to substantiate its defense claim of exercising discretion (28 U.S.C. § 2680(a)) to perform any action, such as investigation. It can merely be claimed as a defense. Paves the way to allow all kinds of negligence to be too easily protected by courts.

And encourages bad behavior in government workers, who have personal immunity.

This is in conflict with that of other Appellate Courts, such as the 2nd Circuit's decision in Coulthurst v. United States, and 7th Circuit in Keller v. United States, and the 3rd Circuits own ruling in Baer v. United States, as previously stated above.

This may have damaging national implications. And may effect cases with similar defenses.

5. DOJ's administrative exhaustion defense is contrary to precedent of the 3rd Circuit.

DOJ's administrative exhaustion defense is contrary to the precedent of the 3rd Circuit and the intention of Congress in writing the law. Although the appellate court 9/17/2024 opinion (Appendix D) only mentions the DOJ's 28 U.S.C. § 2675(a) defense, district court in its opinion fully accepts the defense. The "Disposition By Federal Agency Prerequisite", 28 U.S.C. § 2675(a), requires a plaintiff to present a claim to the federal agency he intends to sue, and that the agency reject the claim in writing. And, DOJ argues that failure to do so bars a plaintiff from the ability to sue the federal government.

It has been brought to the Court's attention elsewhere that on January 10, 2022 petitioner exhausted his administrative remedies when the Department of Justice ignored his certified letter requesting settlement (Appendix F pages 27-28, Appendix H) and subsequent e-mails (Appendix F page 15). DOJ refused to communicate with Trengove until his federal lawsuit was filed.

In Tucker v. United States Postal Service, 676 F.2d 958, 959 (3d Cir. 1982), the 3rd Circuit Appellate Court reversed the District Court's ruling dismissing the plaintiff's complaint for a failure to file a proper administrative claim. Relevantly, under section IV of the Tucker Opinion, the Court wrote about the two intentions of Congress in legislating the administrative requirement:

First, was "to ease court congestion and avoid unnecessary litigation, while making it possible for the Government to expedite the fair settlement of tort claims asserted against the United States." Second, was to provide "for more fair and equitable treatment of private individuals and claimants when they deal with the (federal) Government..." The Court further wrote that "If no settlement obtained, the claimant could still proceed with his or her claim in federal court."

Which is exactly what the plaintiff did in this case (Trengove v. DOJ), as the government had no interest in any movement whatsoever toward a settlement. Also in Tucker opinion under section V: "Agencies were not intended to bar cases involving difficult issues from federal court by turning their difficulty against the claimants." The opinion of the Court in Tucker, and intention of Congress in

writing the law, runs totally counter to the objective of the Department of Justice and District Court, which is an attempt to identify noncompliance of the so-called administrative requirement as a bureaucratic gotcha to get rid of complaints.

Turns out that the Justice Department is the one who was in the wrong regarding 28 U.S.C. § 2675, by thwarting settlement. Instead of settling, they chose to concoct indefensible oppositions to a meritorious complaint.

6. Petitioner's claims are substantiated FTCA subject matter

FTCA, 28 U.S.C. § 1346(b)(1), reads that: "the district courts...shall have exclusive jurisdiction of civil actions on claims against the United States, for money damages...for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable..."

Plaintiff filed a "Complaint For A Civil Case Alleging Negligence", 28 USC § 1332, (Appendix E) against the U.S. Department of Justice, Newark NJ, February 16, 2023, in federal District Court, Newark N.J. for failure to act on complaints about healthcare, which negligence allowed the alleged murder (unauthorized denial of life support) of the plaintiff's mother, of whom he was the legally appointed caregiver (Appendix F, pages 6, 29-33).

From the February 16, 2023 "Complaint...Alleging Negligence" under

III. Statement of Claim; "The acts or omissions caused or contributed to the cause of the plaintiff's injuries..."

"My mother's personal injuries were caused by various actions within the healthcare system including, but not necessarily limited to, illegal drug tests, failure to treat the patient with intent to cause harm or death. This lead to permanent disability, expense to the household, and I was legal caregiver, appointed by her through an attorney. She required 24 hour care. None of the listed agencies did anything to assist, and no legal action was taken against anyone in the medical community responsible. The lack of any deterrence whatsoever lead to her murder within the healthcare system when she needed care in January 2020." (Appendix E)

Jean C. Trengove (plaintiff's mother) didn't have a "Do Not Resuscitate" (DNR) order. Further background in the case is provided in Plaintiff's Brief to District Court, July 24, 2023. (Appendix F) Especially Sections B, pages 8-11, Plaintiff's "Citizen's Complaint..." ; Section D, page14, Mission Statements of the Department of Justice; Section E, pages 15-16, Department of Justice and Federal Bureau of Investigation Failed To Fulfill The Duties of Their Own Mission Statements; Section F, pages 17-18, Unauthorized Euthanasia; and Section J, page 23, Conclusion.

The Plaintiff's Brief to District Court, July 24, 2023, (Appendix F) contains proof that the Department of Justice received the "Citizen's Complaint" via certified mail. Exhibits 1, 2, 3 (pages 24-26) Exhibit 1 contains page 2 of the Citizen's Complaint with a description of the events.

Exhibit 2 is the certified return postcard addressed to "Citizen's Complaint, U.S. Attorney...Newark N.J. and receive stamped "US Attorney's Office - NJ August 11, 2017" (on separate lines upside down in the signature box). Exhibit 3 is the online U.S. Postal Service record of receipt by DOJ Newark. Exhibits 9-13 (pages 35-40) documenting alleged attempted murder were provided in the packet to DOJ August 2017 as were accounts written in May 2016, May 2017, and August 2017 regarding these unfortunate events, and which government lawyers would have seen as proof of malice.

September 19, 2018 petitioner made an in person visit to DOJ office Newark NJ, no attorney would meet with him which was requested, however a second copy was made for them of the same Citizen's Complaint because the original was not in their system.

No action was taken by the Department of Justice after having received the above materials. DOJ was incommunicado with victims until this federal lawsuit.

At the time of the filing of the federal "Complaint...Alleging Negligence", against the DOJ February 2023, Trengove didn't really know what knowledge the present DOJ employees had or what materials to which they had access. He had already given them 2 copies of the Citizen's Complaint along with many other documents and the January 2022 letter

(Appendix H, Appendix F pages 27-28). By 2023 Newark DOJ was not still in possession of the 2017-2018 Citizen's Complaint material, however.

The evidence provided the government August 2017 included clear documentation that healthcare had changed temperature information, deleted ambulance records which contained temperature, with a failure to diagnose or treat alleged hypothermia and esophageal stricture (preventing proper swallowing) in order to kill the patient and do a cover up. Exhibits 9-13 (Appendix F, pages 35-40) These facts the defense can't dispute.

Hypothermia is a serious and potentially fatal disease which healthcare personnel sought to encourage. If the body loses its ability to maintain a normal body temperature, which if left untreated, goes low enough leads to death. Body temperature is one of four primary vital signs that indicate life sustaining functions of the body.

The government did what it is accused of. Rather than issue an appropriate ruling, District Court intentionally chose one that they knew was the wrong one. The District Court should have recognized subject matter jurisdiction regarding the Plaintiff's meritorious claims.

7. Rule 10 of the "Rules of The Supreme Court of The United States" addresses "Considerations Governing Review on Certiorari."

Rule 10(a) gives as a "reason the Court considers" for granting a Writ of Certiorari that "a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter." Several examples have been provided above under #s 1. Keller v. United States and 2. Coulthurst v. United States, Berkovitz v. United States and United States v. Gaubert.

In Keller, the 7th Circuit identifies the government's use of the DFE as an affirmative defense requiring evidence "beyond reasonable dispute" that DFE applies. Petitioner here contends that the degree of negligence by the Department of Justice doesn't allow them the ability to substantiate their defense: that they actually used their discretion.

The case of Baer v. United States is cited as supporting defense by DOJ and both lower courts, actually is in contrast to DOJ behavior here. In Baer, the government substantiated their DFE defense with investigations and interviews over years - their use of discretion was proven with considerable action.

In Coulthurst, the 2nd Circuit uses the Berkovitz-Gaubert test to determine the applicability of the DFE. It's shown above that the DOJ fails both tests. The first test fails because the judgement factor is removed when a statute needs enforcement. Here that's an allegation of RICO violations and a full paragraph of

offenses provided DOJ Newark August 2017 in Appendix F, page 11. They fail the second part of the Berkovitz/Gaubert test because they didn't prove a public policy/policy analysis which they claimed to use. Actually, their negligence goes counter to the Mission Statements, Initiatives and Priorities of the DOJ and FBI per Appendix F, page 14. These include "uphold the rule of law, keep our country safe and protect civil rights", "combating abuse...that target our nation's older adults and fighting for justice", "protect the American people"...and organized crime, public corruption, violent crime."

So, the ruling here by the 3rd Circuit apparently conflicts with that of the 2nd and 7th Circuits, in addition to applying a different standard here for the government's DFE defense than the 3rd Circuit themselves required in Baer.

Also, under Supreme Court Rule 10(a), the District Court's proceedings "departed from the accepted and usual course of judicial proceedings..." and the 3rd Circuit ..."sanctioned such a departure by a lower court, as to call for an exercise of this Court's (Supreme Court's) supervisory power" ("Rules of The Supreme Court" Rule 10 (a)).

This was brought to the 3rd Circuit Court's attention by the petitioner in his "Petition For Rehearing" (Appendix G, page 17-18), and is copied here:

"On the subject of the ruling by District Court Judge Semper,

Appellate Court Opinion is that Judge Semper had no involvement at Newark DOJ with this matter: Trengove filed 2 copies of a Citizen Complaint (2017, 2018) alleging a RICO matter, and 2023 lawsuit, while Judge Semper was Assistant U.S. Attorney at Newark DOJ in the organized crime division(2018- 2023), heading that section. District Court held up judgement in this case for five months, in violation of Federal Civil Court Rule 1 ("...just, speedy... determination of every action and proceeding."), waiting for Semper (a Newark DOJ attorney) to be seated (as a Newark District Court judge), replacing the existing judge. He was not a past employee without any possible connection in this matter, but then current DOJ senior management connected by Department of Justice Division (Organized Crime) and Citizen's Complaint subject matter (RICO). DOJ allegedly selected their employee, had him made a judge in order to dispose of this lawsuit against them in a case with an unsubstantiated defense, and cover up the serious allegations made by Trengove against healthcare and pharmaceutical."

The next questions have to be: why did the District Court go to this extreme by departing from usual course of judicial proceedings driven in order to get a certain ruling despite what was presented and why did the 3rd Circuit sanction this departure by the lower court? And wasn't, as a judge nominee, Semper asked the standard questions asked of all federal judge nominees, like "have you been asked to rule a certain way in a case beforehand in connection with this nomination?" These departures were made by those with legal backgrounds. The decisions of the lower courts were apparently based on reasons other than the presented materials. In violation of their oath of office (28 U.S.C. § 453), it seems the District

Court and 3rd Circuit Appellate Court were only willing to rule one way in this case.

8. Applying the Supreme Court Clerk's "Guide...For Writs of Certiorari" under # 13 "Reasons For Granting the Petition" of Certiorari with general and possibly national importance for the Supreme Court to approve this petition.

To deter violent crime in the healthcare system for the general public, which all law enforcement here refused to do. For those who might commit crimes, they might not be so openly willing to do so in the future. Just because patients and their caregivers don't always know what goes on in the system doesn't mean they aren't being harmed. Those who ruin other people's lives are protected by a corrupt system. Although the District Court and 3rd Circuit refused to see it that way, this is or should be of concern to all citizens, and This Court. Yes, this goes on in America's healthcare system. And, part of the reason that it does is because the government protects the behavior. It was bad enough that the petitioner, his mother's caregiver, is an alleged victim of the pharmaceutical/medical/healthcare industry, but the Department of Justice and the federal courts as well,

The petitioner, caregiver, made certain that the patient's Medicare got paid with the understanding that medical care would be provided. Instead, the federal government failed to act when problems got reported. You pay for Medicare, but

get something else and eventually allegations of murder instead. These types of observations run all through this case. Constitutional issues are raised as well.

Problems from the events of this case didn't begin when federal court first got the plaintiff's complaint in 2023, but around 10 years ago starting in 2015. DOJ complaints in 2017. And, the effects continue. Decision for petitioner would provide legal closure, and hopefully some degree of personal closure for petitioner as well.

9. What is requested of this Court.

This case needs to be ruled for the plaintiff, and sent down for judgement and the awarding of damages without further delay, the amount of which to be decided by a judge.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

William J. Tengrofs

Date: FEBRUARY 11, 2025