No. _____

IN THE SUPREME COURT

OF THE UNITED STATES

CHARLES LEE GILLENWATER, petitioner

Vs.

UNITED STATES, respondent

PETITION FOR WRIT OF CERTIORARI TO

THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Charles Lee Gillenwater, pro se petitioner

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QUESTION PRESENTED

Did not the U.S. Court of Appeals abuse its discretion by refusing to grant a certificate of appealability in a case where the District Court judge was accused in the habeas corpus petition, of having a conflict of interest, based upon his abuse of discretion during the pre, post and trial portions of the proceedings; should not the case be remanded to the Ninth Circuit to review the District Court Order and conduct an inquiry to determine if there has been substantial governmental interference, based upon the Ninth Circuit's own conclusion in Soo Park v. Thompson, 851 F.3d 910, Ninth Circuit (2017)?

LIST OF PARTIES

Charles Lee Gillenwater

The Solicitor General of the United States

The U.S Court of Appeals for the Ninth Circuit

U.S. Senior District Court Judge Suko

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

The petitioner respectfully prays for a writ of certiorari to be issued in order to review the judgment below.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit, a copy of which appears at APPENDIX A of this petition, and is identified as case number 17-35458, filed on 15 December 2017.

JURISDICTION

Cases from the Federal Court:

The date on which the US Court of Appeals for the Ninth Circuit En Banc decided this case was 30 January 2018.

The date on which the US Court of Appeals for the Ninth Circuit panel decided this case was 15 December 2017.

The date on which the US District Court decided this case was 1 June 2017.

Jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The due process clause of the U.S. Constitution.

STATEMENT OF THE CASE

After exhausting all paths to legal remedy, which concluded when the Supreme Court refused to grant certiorari in case number 16 – 935, Charles Lee Gillenwater filed a petition for writ of habeas corpus in the US District Court for the Eastern District of Washington after being incarcerated for 50 months pretrial, for a crime that usually carries a penalty of 18 months-probation, if convicted in a fair proceeding, and where court guidelines determined a maximum sentence to be 36 months under the circumstances of this case, asbestos whistleblower Charles Gillenwater who held evidence of criminal activity by Obama administration OSHA officials, was not permitted to submit that information to a

jury, and after an appeals process where court-appointed counsel distorted the facts and involuntarily waived rights which were eagerly accepted by the Ninth Circuit Court of Appeals, the United State Supreme Court is petitioned to review for writ of certiorari or remand the case back to the Court of Appeals for review.

The petition for writ of habeas corpus and attached memorandum are too lengthy to be attached here, are available in the court record, and are pertinent to this case, and, allege involuntary waiver of speedy trial, jury determination of a liberty interest based on genuine issues of material fact, the detention in excess of the maximum sentence, the absence of judicial jurisdiction based on the principles

established in Johnson v. Zerbst, that when an essential jurisdictional prerequisite is deprived – due process has been violated, that court-appointed counsel demanded that his indigent client pay $10,000 in order to call witnesses, that the involuntary administration of antipsychotic medication violates the Conventions Against Torture treaty, of which the US is a signatory, that the strict liability aspects of the criminal statutes of the crime are overly broad and unconstitutional, that due process rights were deprive in the course of the trial – specifically, summary determination of genuine issues of material fact, that the court did not adhere to rule 702 federal rules of evidence when the defendant was diagnosed by a doctor who never personally

examined him, and that court-appointed counsel did not supply effective assistance of counsel. This petitioner's presumption of innocence and his due process rights require that the Court must accept those allegations as factual until they have been rebutted.

The petition for writ of certiorari, 16 – 935, is too lengthy to be attached here, but is available in the court record, and is pertinent to this case. The question presented in that petition is as follows: Did not the actions of court appointed counsel for the appeal, meet the standards set for ineffective assistance of counsel in Strickland v. Washington, 466 US 668, (1984) when he involuntarily waived his client's right against self-incrimination; and

did not the three Circuit Court Judges abuse their discretion, by accepting an involuntary waiver of a criminal defendant's right against self-incrimination; and were not the pleadings prejudiced when the counsel for the appeal, incorrectly and in direct opposition to a directive from his client, conceded at oral argument that a speedy trial claim had been waived; and is not the presumption of regularity in conflict with foundational tenets of the U.S. Constitution; and should not Strickland be revisited on grounds that the standard it sets is overly broad, allowing the criminal defendant to have his due process rights deprived accidentally; was not counsel's refusal to implement client strategy to challenge the concept of ripeness (related to accusations of

abuse of discretion and criminal activity from the bench, during the case) ineffective assistance of counsel; and did not the court established in Johnson v. Zerbst, 304 US 458, that an essential jurisdictional prerequisite has been denied, when a fundamental right was deprived; and does that not mean that the defendant's guilt is irrelevant, if the State has failed to ensure effective assistance of counsel, due process or any other fundamental right?

The following is a critique of the Ninth Circuit's standard established in Soo Park v. Thompson, 851 F. 3d 910, Ninth Circuit (2017):" the Court established that the government violates due process when its conduct "effectively drives a witness off the stand. Webb v. Texas, 409

US 95 (1972)..." We have further explained that, under Webb, it is well-established that substantial governmental interference with a defense witness's free and unhampered choice to testify amounts to violation of due process".." substantial interference inquiry is extremely fact specific" and requires an evaluation of the totality of the circumstances." US v. Juan, 704 F. 3d 1137, Ninth Circuit (2013).

This petitioner asserts that the Ninth Circuit Court of Appeals has, in denying certificate of appealability, effectively driven a witness, alleging abuse of discretion and deprivation of rights under color of law, from the witness stand, effectively silencing a witness – victim and informant; that the Court of Appeals is bound by

its decision in Soo Park, to conduct an inquiry into substantial governmental interference.

This petition asserts that before denying certificate of appealability, the court has the responsibility to digest the record and apply rule of reason doctrine as developed in Continental TV, 433 US 36, the Turner test as developed in Turner v. Safley, 482 US 89, the sherbet test as developed in Sherbet v. Verner, 374 US 398, the undue burden doctrine as developed in Planned Parenthood v. Casey, 505 US 833, the specific dictates of due process as developed in Matthews v. Eldridge, 424 US 319, the principle of constitutional clause superiority over Congressional statute as developed in Marbury v. Madison, 5 US 137 and US v. Butler, 297 US 1,

the court doctrine related to the forceful seizure of fundamental rights as developed in Graham v. Connor, 490 US 386, the doctrine of jury domain as developed in Anderson v. Liberty Lobby, 477 US 242, and Apprendi v. New Jersey, 530 US 466 and weigh issues related to conflict of interest as developed in Firestone Tire and Rubber v. Bruch, 489 US 101.

This petition asserts that the Ninth Circuit abused its discretion in refusing to issue certificate of appealability for the reasons stated above.

REASONS FOR GRANTING THE PETITION

The issues presented to the court are compelling for the following reasons:

Because the Supreme Court refused to grant certiorari in case number 16 – 935, where this petitioner asserted that court-appointed counsel misrepresented the facts of the case and involuntarily waived fundamental rights; and because the Ninth Circuit Court of Appeals abused its discretion by accepting those involuntarily waived rights, if the Supreme Court does not grant certiorari or redirect the case back to the Ninth Circuit of Appeals to grant certificate of appealability and conduct an inquiry into allegations of substantial governmental interference, the Supreme Court will abuse its

discretion because it is irrational for a habeas corpus case, where the District Court judge is accused of criminal activity from the bench, not to be reviewed by a higher court.

Because the District Court decided on important questions of federal law in a manner which are inconsistent with Supreme Court decisions, and because the Ninth Circuit Court of Appeals refused to grant certificate of appealability to review those decisions, thereby condoning and sanctioning the departure of a lower court from principles established in Supreme Court decisions, it is the Supreme Court's supervisory responsibility to oversee and if necessary discipline the inferior courts.

CONCLUSION

relief sought:

The Supreme Court should issue certificate of appealability and remand the case to the United States Court of Appeals for the Ninth Circuit, for further proceedings. The petition for writ of certiorari should be granted.

Respectfully submitted,

S//Charles Lee Gillenwater



14 February 2018