

17-6837

No.

ORIGINAL

IN THE  
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.  
FILED

NOV 17 2017

OFFICE OF THE CLERK

DAVID PETERSEN — PETITIONER  
(Your Name)

VS.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

ELEVENTH CIRCUIT COURT OF APPEALS

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

DAVID PETERSEN

(Your Name)

FEDERAL PRISON CAMP -DULUTH, P.O. BOX 1000

(Address)

DULUTH, MN 55814

(City, State, Zip Code)

N/A

(Phone Number)

## QUESTIONS PRESENTED

1. Can the Government mislead a defendant as to the completeness of SEC discovery provided to the defendant by them, then represent on the record that all information received by them from the SEC was provided to the defendant, then imply that the said SEC investigation was ongoing and no final determination existed, when in fact they knew and received the final investigation findings and enforcement action documents three month prior to trial, then under the claim of lack of "reasonable diligence" by the defense deny the defendant use of this evidence to grant Petitioner's Rule 33 Motion as it impacted all major points of the Indictment against the defendant?

2. Can the Government, by their concealment of evidence that also conceals the existence of an unknown witness favorable to the accused, violate the compulsory process rights of the accused?

3. Concerning the unanswered constitutional jurisdiction claims made by the Petitioner in his Rule 33 Motion, and subsequent appeal and appeal briefs, that were not answered by the lower courts: Does the SEC's appointment by Congress as the "exclusive" federal agency to determine if when and by whom securities law violations have taken place (primary jurisdiction) extend to all federal criminal securities law offenses tried in Federal Courts? Can the Government proceed in a securities case, without any security on record, no privity to any security and no enforcement action from the SEC, and still have subject-matter jurisdiction if no other "case or controversy" is present?

4. Can lower courts ignore ruling on a constitutional jurisdiction claim, or ignore Federal Criminal Procedures Rule 16 violations, in order to affirm a trial verdict by simply not addressing the claims made by the accused in motions or appeals? Does the intentional avoidance of accused claims create a violation of his due process rights?

## 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:

# TABLE OF AUTHORITIES CITED

| CASES                                                                                           | PAGE NUMBER   |
|-------------------------------------------------------------------------------------------------|---------------|
| Augers v. United States, 427 US 97,112, 96 S CT 2392, 49 L Ed 342 (1976)                        | 18            |
| Block v. S.E.C., 50 F 3d 1078 (D.C. Cir 1995)                                                   | 23            |
| Board of Trade v. S.E.C., 835 F 2d, 525-530 (7th Cir 1989)                                      | 21,22         |
| Brady v. Maryland, 373 US at 87,373 US at 83, 10 LD L Ed 2d 215, 83 S Ct 1194,1196-1197 (1963)  | 11,14,18      |
| CCH Fed. Secur. L. Rep 93312, cert den. (1972), 406 US 937, 92 S Ct 2059, 32 L Ed 2d 344        | 26            |
| Donahoe v. United States, 870 F Supp. 2d 97 (2012)                                              | 22            |
| Far East Conf. v. United States, 342 US 570, 574, [96 L Ed 576 582, 72 S Ct 492]                | 22            |
| Heckler v. Chaney, 470 US 821 84 L Ed 2d 714, 105 S Ct 1549 (1988)                              | 21,22,25      |
| Kyles v. Whitley, 514 US 419 L Ed 490, 115 S Ct 1555, 131 L Ed 2d 490, 435                      | 7,9,16,18,20  |
| Local Am. Meat Cut. v. Jewel Tea, 381 US 676, 684,685, 14 L Ed 2d 640, 646, 85 S Ct 1596 (1965) | 24            |
| Mamani v. Berzain, 21 F Supp., 3d 23 L Ed 194, 395 US 185 (1969)                                | 25            |
| McNabb v. United States, 318 Us 332,333, 63 S Ct 608, 87 L Ed 919 (1943)                        | 12            |
| N.Y.C. Trans. Auth. v. Beezer, 440 US 568,570,99 S Ct 1355, 59 L Ed 2d 587 (1979)               | 12            |
| Olmsted v. United States, 277 US 438,485, 48 S Ct 564, 72 L Ed (1928)                           | 32            |
| Quinn & Co v. S.E.C., 452 F 2d 943 (CA 10 1971)                                                 | 25            |
| S.E.C. v. Citigroup, 752 F 3d 385 (2nd Cir 2013)                                                | 23,25         |
| S.E.C. v. Kirkland, No. 1:13-cv-03150-JEC (ND-GA 2013)                                          | 7,13,15,18,25 |
| Sims v. Apfel, 530 US 147 L Ed 2d 80, 120 S Ct (2000)                                           | 22            |

|                                                                                         |    |
|-----------------------------------------------------------------------------------------|----|
| Skarnick v. NYSE, 72 Civ 1338 (SD-NY 1972)                                              | 23 |
| Sloan v. H.U.D., 236 F 3d at 760                                                        | 21 |
| State of Texas v. United States, No. 15-40238 (5th Cir. 1997)                           | 25 |
| Steel Co. v. CIt. for Better Env., 523 US 83, 140 L Ed 2d 210, 118 S. Ct 1003 (1998)    | 26 |
| United States v. Batchelder, 442 US 114,123-124, 60 L Ed 2d 755, 99 S Ct 2198 (1979)    | 25 |
| United States Dept. of Labor v. Pan Am, No. 75-394 ORL-CIV (11th Cir - 1977)            | 23 |
| United States v. Dresser Ind., 628 F 2d 1365, 202 US App Dc 345 (1980)                  | 24 |
| United States v. Gen Dynamics, 824 F 2d 1356 (1987)                                     | 24 |
| United States v. Microsoft, 56 F 3d 1448,1455 (DC Cir 1995)                             | 23 |
| United States v. Nixon, 418 US 683, 693, 41 L Ed 2d 1039, 94 S Ct 3090 (1974)           | 25 |
| United States v. Phil. Nat'l. Bank, 374 US 321,353 [10 L Ed 2d 915, 938, 83 S Ct 1715]  | 24 |
| United States v. Western Pac. R.R., 352 US 59, 63-64,[1 L Ed 2d 915,939 , 83 S Ct 1715] | 23 |
| United States v. Yellow Freight, 762 F 2d 737 (9th Cir 1985)                            | 27 |
| Vaca v. Sipes, 386 US 171,182, 17 L Ed 842, 87 S Ct.                                    | 25 |
| Zuckerman v. Yount, 362 F Supp, 863 (ND-I11 1973)                                       | 23 |

#### STATUTES AND RULES

|                                              |                              |
|----------------------------------------------|------------------------------|
| 5 U.S.C. §701 (a)(2)                         | 25                           |
| 17 C.F.R. 105 B-5                            | 26                           |
| 17 C.F.R. 202.5 (a)                          | 4,22                         |
| 28 U.S.C. §2680                              | 22                           |
| Federal Rules of Criminal Procedure, Rule 16 | 3,7,11,14,15,18              |
| Federal Rules of Criminal Procedure, Rule 33 | 3,5,6,8,10,15,16<br>20,21,31 |

|                                                              |                 |
|--------------------------------------------------------------|-----------------|
| Securities Act of 1933 [ 15 U.S.C. §77, 1 et.seq.]           | 4,5,24          |
| Securities Exchange Act of 1934 [ 15 U.S.C. §78 u ]          | 4,22            |
| United States Constitution                                   |                 |
| - Article III                                                | 3,4,10,22,27,31 |
| - Sixth Amendment                                            | 3               |
| OTHER - Legal Article                                        |                 |
| Primary Jurisdiction Doctrine (Supreme Court) 38 L Ed 2d 796 | 25              |

TABLE OF CONTENTS

|                                                                                                                                                     | Page No. |
|-----------------------------------------------------------------------------------------------------------------------------------------------------|----------|
| Questions Presented                                                                                                                                 | i.       |
| List of Parties                                                                                                                                     | iii.     |
| Table of Authorities Cited                                                                                                                          | iv.      |
| Table of Contents                                                                                                                                   | vii.     |
| Index of Appendixs                                                                                                                                  | viii.    |
| <br>                                                                                                                                                |          |
| Opinions Below                                                                                                                                      | 1.       |
| Jurisdiction                                                                                                                                        | 2.       |
| Constitutional and Statutory Provisions Involved                                                                                                    | 3.       |
| Statement of the Case                                                                                                                               | 5.       |
| I. Course of Proceedings in Rule 33 Motion for New trial                                                                                            | 5.       |
| II. Questions concerning both subject-matter and primary<br>agency jurisdiction not addressed by either the District<br>Court or the Appeals Court. | 9.       |
| Argument                                                                                                                                            | 13.      |
| Question 1                                                                                                                                          | 13.      |
| Question 2                                                                                                                                          | 18.      |
| Question 3                                                                                                                                          | 20.      |
| Question 4                                                                                                                                          | 31.      |
| Conclusion                                                                                                                                          | 31.      |
| <br>                                                                                                                                                |          |
| Proof of Service                                                                                                                                    |          |
| <br>                                                                                                                                                |          |
| Certificate of Compliance                                                                                                                           |          |

## INDEX OF APPENDIX

### TAB # / DOCKET #

|                                                               |             |
|---------------------------------------------------------------|-------------|
| Judgement from the Eleventh Circuit, Case No. 16-15603        | A           |
| Order from the District Court for So. Alabama                 | B / 224     |
| Rule 33 Motion for New trial, Case No. 1:13-cr-00117          | C / 218     |
| Opening Appeal Brief - Appeal No. 16-15603                    | D           |
| Reply to Government's Response - Appeal No. 16-15603          | E           |
| Order, Granting IFP, from Eleventh Circuit, Appeal 16-15603   | F           |
| Motion for Disclosure of Favorable Evidence                   | G (a) / 202 |
| Order from District Court - Motion for Disclosure             | G (b)       |
| Order from District Court - Motion for Reconsideration        | G (c)       |
| Indictment, Case No. 1:13-cr-00117                            | H           |
| Motion for Permission to Appeal In Forma Pauperis & Affidavit | I           |

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 A 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 B to the petition and is

☒ reported at 2016 U.S. DIST LEXIS 97509 (JULY 26, 2016); or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix \_\_\_\_\_ 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 \_\_\_\_\_ court appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

## JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was ~~SEPTEMBER 13, 2017~~\_\_\_\_\_.

☒ 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: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ 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).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was \_\_\_\_\_.  
A copy of that decision appears at Appendix \_\_\_\_\_.

☐ A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ 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. § 1257(a).

**CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

**( by Question )**

**Question 1:**

**Fifth Amendment to the United States Constitution**

"No person shall be held to answer for a capital or otherwise infamous"...  
"nor be deprived of life, liberty, or property, without the due process  
of law;"

**Rule 16, from the Federal Rules of Criminal Procedure**

**(a) Governmental Disclosure**

**(1) Information Subject to Disclosure**

**(E) Documents and Objects**

"if the item is within the government's possession, custody,  
or control; (i) the item is material to preparing the defense;"

**(2) (c) Continuing Duty to Disclose--**

"A party who discovers additional evidence or material before  
or during trial must promptly disclose its existence to the  
other party or the court if:

(1) the evidence or material is subject to discovery or  
inspection under this rule.

See also Appendix "C", page 5

See also Appendix "D", pages 13,14

**Rule 33, from the Federal Rules of Criminal Procedure:**

See Appendix "C", pages 3,4,5, for the legal standards presented

**Question 2:**

**Sixth Amendment to the United States Constitution**

**(compulsory process clause)**

"In all criminal prosecutions, the accused shall enjoy the right"...  
"to have compulsory process for obtaining witnesses in his favor."

See also Appendix "D", page 12

**Question 3:**

**Article III to the United States Constitution**

**Section 2, Clause 1, - Subjects of Jurisdiction - "Case or Controversy  
Required"**

**See Appendix "C", pages 30 - 34: "Subject - Matter Jurisdiction**

**Related Statutes:**

**Securities Exchange Act of 1934 - [ 15 U.S.C. §78u ]**

**Securities Act of 1933 - [ 15 U.S.C. §771 et. seq. ]**

**17 C.F.R. 202.5 - Enforcement**

**see related cite:**

**"The United States Securities and Exchange Commission retains  
[COMPLETE] discretion over when, whether, and to what extent  
to investigate and bring action against an individual or entity."  
(emphis added) from Molchatsky v. United States.**

**Question 4:**

**Please see Question 1's presented "Constitutional and Statutory Provisions"**

## STATEMENT OF THE CASE

The facts to place in their setting the questions now raised can be briefly stated:

I. Course of Proceedings in the Rule 33 Motion for New Trial now before this Court.

District Court of Southern Alabama actions:

On or about May 2013, Petitioner and three co-defendants were named in a twenty count indictment by a Grand Jury for the Southern District of Alabama (see Appendix H). Petitioner was not named in any overt act, and unknown at the time the Grand Jury was presented only a portion of terms of the Co-Investment Agreement (security in question). If presented with all the terms of said agreement it would have been apparent no security was presented and privity was null and void per terms not presented to the Grand Jury. Violation of 18 USC 371 (Count 1), 15 USC 77q (Count 2), and 18 USC 2 (All Counts, including 3-20). At arraignment, Petitioner entered a plea of not guilty.

Pretrial discovery was voluminous due to the manner in which the Government sought to obtain electronic records. Nevertheless, the Government intentionally developed its theory of the case as a moving target from indictment to trial. In the discovery provided Petitioner in June 2013, over 2,000 pages of discovery pertaining to a SEC investigation of Steve Kirkland, who was a Co-Investment Agreement signer with Westover and Ramco & Assoc., LLC mirroring actions in the present case. In the discovery

provided in June 2013 to Petitioner, was a FBI Case Summary to the AUSDA, for use in Grand Jury presentation, (see Appendix C, Exhibit 15, pg. 15) which states that "the SEC was sharing documents and information" with the FBI on this matter. It was inferred the SEC investigation was ongoing. On September 4, 2014, the SEC presented its "final investigation findings" concerning Kirkland, as well as "enforcement action against only Kirkland." This information and the related documents were presented to the FBI and AUSDA officers in this case. Intentionally, this evidence was not provided to Petitioner as required under the trial discovery order, the related local rule 16.13, Fed. Crim. Proc. Rule 16, nor any other Brady standard. Petitioner's counsel went to trial based on the erroneous assumption the Kirkland SEC investigation was ongoing and not useable at trial. Petitioner was not a signatory, decision-maker, or party to the Co-Investment Agreement in this case and was only a third-party bookkeeper unfamiliar with the terms and related impact prior to trial. This evidence was not discovered until after trial in February 2016, upon denial of a Motion to Disclose Evidence [see Appendix G(a), the denial order G(b), and the denial for reconsideration G(c)]. The Petitioner was requesting SEC documents not provided as described in the disclosure motion, and was told in the Courts Order and by the Government in response, "there was no SEC documents not provided" and "Petersen was asking for a SEC investigation finding that did not exist." Petersen went to trial with two of the three co-defendants (one is still a fugitive) and was found guilty.

On May 24, 2016, Petitioner filed a Rule 33 Motion for New Trial in the District Court of Southern Alabama (see Appendix C). This motion was denied by the District Court on July 26, 2016 (see Appendix B). This District Court cites that "reasonable diligence" could have produced the

SEC v. Kirkland, investigation findings and enforcement action, if Petitioner so desired, the order was made without any consideration for the concealment and violation of the Court's discovery order, local rule 16.13, Fed. Crim. Proc. Rule 16, and Brady standards that required this information be disclosed to Petitioner, which was provided to the Government three months prior to trial, and the conclusion of the discovery record evidence (2,000+ pages) provided. The District Court failed also to apply the Supreme Court's Kyle v. Whitley standards for viewing the evidence as it applied to the "entire record" and under the standard asking if Petitioner had received a fair trial (see Appendix B, pg.3, pg. 5). The District Court misidentifies the "newly discovered evidence" as the Co-Investment Agreements, when the newly discovered evidence claimed the Petitioner, in fact, was the: SEC's final investigation findings and related enforcement action against only Kirkland that the SEC reveals that Kirkland "was not authorized to represent Westover" which directly related to Sencan in the present case who performed identical representations that were not authorized by terms of the Co-Investment Agreement unknowingly deleted from the Trial Exhibit #200 that the Government pointed the jury "as the only Exhibit they needed to review to convict" in the Government's closing argument. Then, in the District's order, rather than apply the impact of the "newly discovered SEC ruling", they mislabeled the "impact" evidence shown by Petitioner as "wrongfully applied new evidence", and based the denial on evidence that was provided and not on any of the Petitioner's motion and impact on evidence he did not have knowledge or access to provide a defense at trial, due to the Government's intentional violation of Rule 16, local rule 16.13, and Brady standards. The Court fails to hold the Government responsible for the Rule 16 violation by simply not addressing the disclosure

violation in its denial order (see Appendix B, pg. 10) as qualifying new evidence, since the Petitioner "could have" discovered it, this ruling gives no comment on how strongly the Government fraudulantly concealed the fact the SEC even concluded its investigation. The same Court admonished Petitioner in an earlier motion for disclosure as saying "Petersen seeks to use Brady as a post-trial discovery device to obtain SEC records pertaining to a different investigation, looking for a final agency determination that likely does not exist." The evidence did exist and the Government had it three months prior to trial.

A notice of appeal of the District Court's denial order (see Appendix B) of Petitioner's Rule 33 Motion (see Appendix C) was filed on July 26, 2016. Related to this filing, Petitioner filed a Motion for Leave to Appeal in Forma Pauperis on August 8, 2016, which the District Court certified as frivolous, for the forgoing reasons stated in the denial order (see Appendix B).

Eleventh Circuit Court of Appeal:

The "frivolous" determination made by the Southern Alabama District was overturned by the Court of Appeals, Judge Adelberto Jordan, on January 23, 2017 as "not frivolous" (see Appendix F).

The Eleventh Circuit Court of Appeals under case #16-15603G, ruled on Petitioner's appeal of the denial by the District Court of Southern Alabama on September 13, 2017 (see Appendix A, pg. 3-4). The Appeals Court, like the District Court, simply ignored the intentional suppression by the Government of the "SEC investigation's final agency determinations and the related enforcement action." Both Courts (Southern District of

Alabama and the Eleventh Circuit Appeals Court) refused to allow the real "new evidence", the SEC final agency findings and enforcement action that the Government withheld, and apply this evidence to the record and discovery evidence to show the impact as per the Kyles v. Whitley standard. The Petitioner did not receive a fair trial and was not allowed to proceed with a defense that included the use and application of the withheld SEC investigation findings and the use of the SEC investigators in the Kirkland matter as "expert" witnesses for Petitioner which denied Petitioner's compulsory process rights

The Appeals Court goes on in Appendix A pages 6 7 to make erroneous false claim that Petitioner was asking for the same fate as Kirkland. The Petitioner was not mentioned by the SEC in Kirkland and numerous times Petitioner asked both courts to take notice that the SEC determined Kirkland "acted alone and unauthorized" as did Sencan in the present case. Petitioner Petersen was a third-party non decision maker without any rights or privity to the named Co Investment Agreement. Petitioner was stating only his claim that he was not part of Sencan's unauthorized representations and was only the bookkeeper acting at the direction of Ramco & Assoc. LLC manager to receive payments unknown to be tainted by Petitioner.

II Questions concerning both subject-matter and primary agency jurisdictions not addressed by either the District Court or the Appeals Court.

On May 24, 2016, Petitioner filed a Motion for New Trial under Rule 33. In this motion, Petitioner raised jurisdictional claims concerning both subject-matter as well as primary agency jurisdiction. The claims made were extensive (see Appendix C, pgs. 23-30; "Section II No case or

controversy under Article III, and pgs. 30-39; Section III Subject-Matter Jurisdiction (Heckler v. Chaney)).

The District Court for the Southern District of Alabama on July 26, 2016 denied Petitioner's Rule 33 motion. The only mention of Petitioner's jurisdictional claim is a misinterpretation that is grossly incomplete in its explanation and brought only as "Background" (see Appendix B, pg. 3, under "Background" ("ii") only). NO RULING OR JUDGEMENT WAS MADE ON the jurisdictional claims made in the Rule 33 Motion by the District Court.

The Eleventh Circuit Court of Appeals on September 13, 2017 made a judgement on Petitioner's appeal under Case No. 16-15603G. Under the affidavit question raised by the Petitioner in the case 16-15603G appeal on September 8, 2016, Petitioner asked the Appeals Court the following: "4. We appeal to this Court to review the jurisdictional challenges made in the Rule 33 Motion as presented in this case" (see Appendix I (d), page 3 of 3). The same jurisdictional review request was also made in the Opening Appeal Brief by Petitioner under "Statement of Issues" Section IV (see Appendix D, page viii, and again on page 30) and again in the Reply Brief by Petitioner to Government's Response (see Appendix E, page 7) where Petitioner references the Opening Brief Section IV. No mention or answer is given by the Appellate panel to the jurisdictional "issues" raised by the Petitioner in the first instance, and no review or determination was made by the Appellate Court for the Eleventh Circuit as it relates to the constitutional jurisdictional claims made in the Rule 33 Motion (see Appendix A).

III. The Court of Appeals has decided a federal question in a way in conflict with the applicable decisions of this Court.

The Appeals Court applied the District Court's misrepresented determination of what the Petitioner presented as "new evidence" and its impact on the record, thus it overlooked without review any Rule 16 of Fed. Crim. Proc., Brady, or local Rule 16.13 violations and failed to apply the impact of the suppressed SEC final agency determinations from use by the defense to show co-defendant Sencan was "acting alone" and "without authorization" in his representations and behavior. Not only did the defense not receive the benefit of evidence to use additional discovery provided for his defense, the Petitioner was denied the possibility of using the SEC investigators of the withheld investigation findings case as an "expert witness" on his behalf, thus having his constitutional rights violated by lack of providing compulsory process and due process by the Government's suppression of the SEC evidence. By the lack of review of any of the "Statement of Issues" due process questions as well as the raised jurisdictional concerns raised in the Rule 33 motion, the Petitioner has been denied the right to appeal. By the denial of review of any of the stated issues, it allowed the panel to give deference to the District Court judgement without addressing the standards of law raised and clear, harmful error presented by the Petitioner in the Rule 33 Motion, Appeal Brief, and Reply Brief (see Appendix C, D, and F).

The District and Appeals Court have applied an unreasonable application of this Court's Brady v. Maryland, 373 U.S. 83 (1963), jurisprudence, and in doing so exasperate a circuit split over the due diligence requirements that constitute "reasonable diligence" for Brady claims.

The Federal Circuit Court decision is so out of line with normal judicial standards, that the Supreme Court should exercise its supervisory power to instruct the lower courts. To illustrate, Petitioner cites from McNabb, "The Supreme Court will be more favorable disposed to grant certiorari to review the decision of a United States Court of Appeals if it "has so departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as has happened in this case, as to call for an exercise of [the Supreme] Court's supervisory powers." [see e.g. McNabb v. United States, 318 U.S. 333, 333, 63 S. Ct. 608, 87 L Ed 819 (1943)], [see also N.Y. City Tran. Auth. v. Beazer, 440 U.S. 568, 570, 99 S. Ct. 1355, 59 L. Ed 2d 587 (1979)], "lower courts appropriately decided constitutional issue before deciding statutory issue". The Supreme Court has used its supervisory power over the federal judiciary to grant certiorari in a wide variety of cases. "Judicial supervision of the administration of criminal justice in the federal courts implies the duty of establishing and maintaining civilized standards of procedure and evidence." [see McNabb v. United States, 318 U.S. 332, 340-341, 63 S. Ct. 608, 87 L ED 819 (1949)]

## ARGUMENT

The following Argument section of this petition is sub-divided into parts, each part supporting the questions raised for review as identified in the sub-section title.

### Question 1 - Related Argument

- The Government provided Petitioner, in June 2013, over 2,000 pages of discovery evidence from a case related to the present case (SEC v. Kirkland) that involved the Security and Exchange Commission (SEC), the same Co-Investment Agreement present in this case that also involved Westover Energy Partners, LLC and Ramco & Assoc., LLC, as parties to this agreement. In the Case Summary from the FBI prepared for the AUSDA's use in the Grand Jury the Government states the FBI is sharing documents from the SEC's investigation of Kirkland, and goes on to state the documents are under review.

- Not provided to the Petitioner, by the Government as required by discovery rules, was the notice that the SEC had completed its investigation of Kirkland in September 2013.

- Not provided to the Petitioner, by the Government as required by discovery rules, was the final agency findings provided to the Government by the SEC of the SEC determinations made from their investigation of Kirkland from the discovery evidence provided to them by the SEC, and purportedly all information related to this investigation was provided to Petitioner prior to trial per Government accounts in disclosure motion. It was later determined by the Petitioner to be an intentional misleading false claim

made by the Government.

- Also, not provided to Petitioner from the Government was the SEC's enforcement action against Kirkland. The Petitioner never received any notice an enforcement action was lodged in the civil court in Georgia by the SEC.

- All of the undisclosed information and documentation evidence from the SEC's case and investigation findings were required to be provided under the District Court's discovery order in this case, Rule 16 of Fed. Crim. Proc., the local Rule 16.13, Discovery, as well as the discovery standards set by Brady v. Maryland.

- The Government claimed in the Case Summary to the AUSDA, that the Kirkland case and the present case mirrored each other.

-- The SEC final agency findings determined that Kirkland was "acting unauthorized" and alone, and did not pursue any action against the Westover and Ramco & Assoc., LLC principals due to the common Co-Investment Agreement (the security in the jury instructions) terms did not allow any third-party assignment or privity unless all parties agreed in writing. This did not take place in either case. Thus, no privity was present to any party, in each case including the present case.

- Petitioner was not a decision-maker principal or party to Westover or Ramco & Assoc., LLC. He was a third-party paid bookkeeper.

- Fed. Crim. Proc. 16 requires "all information and material known to the Government without regard to materiality which may be favorable to the defendant" be provided. This includes all discoverable evidence under Rule 16(a) and as well under Rule 16(c) which calls for the identification and production of all discoverable evidence to the defendant by the AUSDA assigned to the case. The Government knowingly violated all of the above discovery orders and Fed. Crim. Proc. Rule 16 rules.

The fact the SEC, the exclusive federal agency to determine if a securities violation took place and by who, had stated Kirkland acted "unauthorized and alone" which would have impeached all major elements of the Indictment in this case as well as also given the Petitioner use of the SEC investigators in the Kirkland case as an "expert witness" in the present case. The Petitioner would have used this SEC witness to show the jury how it determined the validity of any security or privity to any security, or in fact any violation by the Petitioner of any securities laws, given the common Co-Investment Agreement terms present in the Kirkland case, the SEC case, and the present case.

- In December 2015, a post-trial motion for disclosure of discovery items believed to not have been provided was made by Petitioner [Appendix G(a)(b) and (c)] including a request for all SEC documents not provided. In response, the Government claimed and the District Court's order supported the Government claim that "Petersen's request was fantasy" that "Petersen is seeking an agency determination that does not exist. The Government does not have any SEC documents not provided."

- The Government violated Rule 16 and discovery orders intentionally and when requested in a motion to disclose, knowingly misrepresented to the Court an on the record denial of any SEC (Kirkland) evidence being withheld. This denial and the District Court's position that the SEC had not made any final agency determination was restated in the District Court's denial of reconsideration of the disclosure order. (Appendix G(b)(c))

- In February 2016, a family member of the Petitioner found the SEC v. Kirkland case online from a Google search made after the Government and District Court denied it existed in their court orders denying disclosure.

- In the Rule 33 Motion for New Trial (Appendix C) under review in this

matter, Petitioner, for the first time on record discloses the fact the "SEC" investigation findings and "enforcement action" had not been disclosed to defense and claimed this as "new evidence" to support the Rule 33 motion in question.

- In reply, the Government does not address the previous record statements made concerning that "all" SEC evidence was provided along with the fact they represented that Petitioners request was "fantasy" to the Court.

- The Government in the Rule 33 motion response states, yes, they did have the SEC final agency determinations and enforcement action related to Kirkland. But claimed that it was not required to be disclosed because of a false claim it was not favorable without any support why it was unfavorable, even though the Petitioner was not even mentioned, let alone charged with any wrongdoing, and Kirkland was found to have been acting alone and unauthorized per the terms of the Co-Investment Agreement.

- The District Court, followed by the Eleventh Circuit Appeals Court in their judgements do not address the Brady, Rule 16, and discovery order violations. They claim "reasonable diligence" could have provided this un-provided SEC evidence. In no way did either court address the concealment (possibly fraudulent concealment) of the SEC's final agency findings of the Kirkland investigation and initiation of an enforcement action against only Kirkland.

- In the Rule 33 Motion (Appendix C), Opening Brief of the Appeal under review (Appendix D) and the Reply Brief for the appeal under review (Appendix E) the Petitioner shows the impact of the undisclosed evidence on the "entire" record, as per standards set by this Court on Kyles v. Whitley.

- Neither the District Court or the Eleventh Circuit Appeals Court properly identify the "newly discovered evidence" as the withheld evidence. They

simply state the Government provided volumes of evidence, without any regard to the most important SEC evidence that was suppressed; The Final Agency Determination - that supported Petitioners innocence against every major Indictment claim (Appendix H) given his third-party status and zero overt acts claimed in the Indictment.

Question 1 - Points of National Interest

- Can the Government mislead defendants concerning the existence of evidence? (requested or not)
- Can the Government violate discovery laws, and fraudulently represent on record the non-existence of evidence known by them to exist that they received and withheld intentionally?
- Can District and Circuit Courts intentionally not address known discovery and Brady violations under the claim "reasonable diligence" could have produced evidence?
- Can the Government determine what evidence is "favorable" to the defense, especially when only a portion of the stated evidence was provided prior to defense, leaving the evidence incomplete?
- Can the Government select only the portions of evidence they desire to provide to Defendants?
- If the answer is "yes" to any or all of these questions in any case tried in the United States, can the accused receive a fair trial or the due process guaranteed by the Constitution?

Question 1 - Argument Conclusion

If this Court allows the Government to select portions of evidence

they wish to conceal, no defendant would be able to obtain a fair trial or due process as provided by the Constitution, in any Court?

In this case, the Eleventh Circuit has ruled in direct violation of this Courts holdings in Brady v. Maryland, Kyles v. Whitley, Agurs, and many more. Thus, creating a split to be determined by this Court's review.

If no action or clarifications of Rule 16 of Fed. Crim. Proc., Brady standards or what qualifies as "reasonable diligence" to override the responsibility of the Government in evidentiary disclosure, the Government will be allowed to withhold any distasteful evidence and then fraudulently conceal its existence by oaths and statement that it does not exist.

#### Question 2 - Related Argument

The previous "Question 1" Argument as well as in the "Statement of Facts", Petitioner has shown how the Government violated laws and orders, then in a concise manner described the impact this evidence would have had for the benefit of the Petitioner's defense, if known. Drawing on those described misbehaviors of the Government in the SEC v. Kirkland investigation the Petitioner also adds the suppression of the FBI investigative file of Arthur G. Cohen, a managing member in Westover. That FBI file covered over 25+ years of fraudulent behavior documented by the FBI that in many ways identified behavior that was similar to the fraud described in the Indictment undertaken by Cohen.

In the question under number 2 for review, the Petitioner asks this Court to rule if, as in this case, the Government suppressed evidence that by its concealment denied the opportunity for the defense to call

a witness on his behalf, even unknown "expert witnesses" such as the SEC investigators that could have testified for the Petitioner if the suppressed SEC final agency determinations and enforcement action of Kirkland had been known at the time of trial.

#### Question 2 - Argument Conclusion

- The Petitioner, in his appeal under review in this matter asked the District Court for review and rule on this same question as presented under "Question 2" (Appendix (I), (D), and (E)). Eleventh Circuit Court of Appeals did not review or comment in any fashion on this question concerning when compulsory process rights of the Petitioner have been violated. (Appendix H)

- By the ruling made by the Eleventh Circuit Appeals Court, it effectively denies Petitioner as well as all cases heard in the Eleventh Circuit to allow suppressed evidence related to compulsory rights, protected by the Constitution, to be overridden simply by ignoring any claim that a compulsory process violation has taken place, rather than address the claim on its merits. [see Appendix (A), (B)]

-- This approach if not addressed and clarified by this Court, will leave the Eleventh Circuit in conflict with all other circuits, and the Petitioner believes the United States Constitution.

- The Sixth Amendment to the Constitution provides:

"In all criminal prosecutions, the accused shall enjoy the right to have compulsory process for obtaining witnesses in his favor."

- The Eleventh Circuit, by ignoring ruling on this claim, has allowed the Government by its suppression of favorable evidence, to allow knowledge

by Petitioner that a "favorable" witness existed. In this case an "expert" SEC witness, and an un-indicted principal of Westover.

- The Petitioner asks this Court for clarification of when compulsory process rights are violated when unknown suppressed evidence by the Government, could have allowed defendant a witness in his favor at trial.

- The following cites from Kyles v. Whitley, 514 US 419 L. Ed. 490, 115 S. Ct. 1555 support Petitioners position in his belief that compulsory process includes due process rights to present "witnesses in his favor". When the witness remains unknown by the accused for his defense, due to evidence suppression by the Government, it is a violation of Fed. Crim. Proc. Rule 16, Local Rule for Crim. Proc. 16.13, the case trial discovery order, and all Brady standards applicable.

Question 3 - Constitutional clarification questions related to both subject-matter and primary agency jurisdiction limits and definitions

The multifaceted inquiries made by the Petitioner in Question 3 cover a need for clarification on the "exclusive agency primary jurisdiction" that Congress conveyed on the SEC to determine in the first instance if any securities laws were broken by the accused. It asks for determination of if a non-SEC official such as the Government AUSDA can bring to Trial Jury a case without a security, no privity to said security and hide evidence the SEC made in a mirroring case, and still allow the trial to proceed without any "case or controversy" or primary agency or subject-matter jurisdiction present in an Article III Court.

Jurisdictional Challenges were made in Petitioner's Rule 33 Motion, in relation to Primary Jurisdiction (SEC) and Subject-Matter Jurisdiction.

The Government hid the fact through false Government witness testimony that there was "no security" on record as per the "jury trial instructions" and no privity allowed to the "investment contract" used in the Indictment as concealed by Trial Exhibit 200, the pages of the contract with the exculpatory terms that disallowed any assignments or privity and engagement signatures are removed. Of note, the Government in "closing argument" points the jury to only Trial Exhibit 200 (with the missing pages) needed to review to convict. In fact with the SEC evidence, when known and applied, the defense could have shown how there was no security, privity, or any rights allowed. Thus, to subject-matter jurisdiction on a third-party non-decision-maker bookkeeper.

The following cites to supporting cases that show the Eleventh Circuit rulings in this case are in conflict with this Court by the refusal of the Eleventh Circuit Appeals Court or the District Court for Southern Alabama to consider, or even address the jurisdictional claims made by Petitioner in his Rule 33 Motion. [Appendix C, pages 23-30 under section "No Case or Controversy", and pages 30-39, under section "subject-matter jurisdiction (Heckler v. Chaney)"]

"The decision to initiate a prosecution has long been regarded as a classic discretionary function." (See Sloan v. US Department of Housing and Urban Development, 236 F. 3d at 760), "and this discretion extends beyond criminal prosecutions to encompass the initiation of administrative proceedings, id. And civil actions as well, including those commenced by the Securities and Exchange Commission (SEC)." See Board of Trade of City of Chicago v. SEC, 883 F. 2d 525 (7th Cir. 1989 Explaining that prosecutions under the securities laws is "discretionary not mandatory"). "An agencies decision not to initiate civil proceedings is equally discretionary." id at 530 ("the refusal to prosecute is a classic illustration of a decision committed to an agency's absolute discretion") and such decisions are presumptively non-reviewable." (Heckler v. Chaney (1985) 470 US 821, 84 L Ed 2d 714, 105 S. Ct. 1649.)

In Supreme Court Justice O'Connor's opinion in Sims v. Apfel, 530 US, 147 L Ed 2d 80, 120 S. Ct. (June 2000) it states, "in most cases, an issue not presented to an administrative decision-maker cannot be argued for the first time in federal court. On this underlying principal of administrative law, the Court (Supreme Court) is unanimous." See Ante, 147 L Ed 2d at 86, 147 L Ed 2d at 90.

Under Donahue v. United States, 870 F. Supp. 2d 97 (2012) we quote the following from the headnotes in this case, which the court was deemed to not have jurisdiction due to SEC's agency primary jurisdiction. The Petitioner cites the following:

"Federal Courts are courts of limited jurisdiction, with the ability to hear only cases entrusted to them by a grant of power contained in either the Constitution or in an act of Congress."

"In conferring power on the Securities and Exchange commission (SEC) to investigate securities laws under the Securities Exchange Act of 1934, Congress has explicitly made the agency's use of that power discretionary; the Commission may, in its discretion, make such investigations as it deems necessary to determine whether any person has violated, is violating or is about to violate any provision of this chapter. The Commission is authorized in its discretion to publish information concerning any such violations, and to investigate any facts, conditions, practices, or matters which it may deem necessary or proper to aid in the enforcement of such provisions. 15 U.S.C.S. 78 u(a)(1). The statute repeatedly uses permissive language rather than mandatory language. The SEC has discretion to decide both the timing of when it makes such investigations, and the manner and scope of how to investigate any facts conditions practices, or matters. The 1934 Act defines the SEC's investigative and enforcement powers as permissible and discretionary.

"The Commission may in its discretion, make such formal investigations and authorize the use of process as it deems necessary " 17 C.F.R. 202.5(a).

"The decision to initiate a prosecution has long been regarded as a classic function for the purposes of 28 U.S.C.S. 2680, and this discretion extends beyond criminal prosecutions to encompass the initiation of administrative proceedings, and civil actions as well, including those commenced by the Securities and Exchange Commission. Prosecution under the Securities Exchange Act is discretionary, not mandatory. Refusal to prosecute is a classic illustration of a decision committed to agency discretion [and such decisions are presumptively non-reviewable]."

Board of Trade, is the watershed case on these issues. Its authority is based on the Supreme Court holdings in Heckler v. Chaney, 470 US 821, 84 L Ed 2d 714 (1985). "The prosecutor cannot question its pertinence, perhaps because in large part it is a restatement of the **separation of powers problem**, or whether the prosecutor has standing under Article III."

Heckler v. Chaney holds "an agency decision not to prosecute or enforce, whether through [civil or criminal process] is a **decision committed to an agency's [absolute discretion]**". (emphasis added) See also SEC v. Citigroup Global Marketing, 752 F. 3d 385 (2nd Cir 2013) holding "**the exclusive right to choose which charges to levy against a defendant rests with the SEC**" citing United States v. Microsoft Corp., 56 F. 3d 1448, 1459 (DC Cir 1995).

"The Court lacks jurisdiction of the subject-matter of this action because the matter is within the exclusive primary jurisdiction of the SEC whose orders are reviewable only by the Court of Appeals." See Skurnick v. New York Stock Exchange, Inc., 72 Civ 1338 (C3M) (SDNY 1972).

"Generally, the courts cannot substitute their judgment for the in enforcing its rules, or the self regulatory scheme of Congress will be compromised." Zuckerman v. Yount, 362 F. Supp. 858, 863 (ND Ill 1973).

**That the prosecutor prefers a different means of enforcement is irrelevant,** for the very reasons underlying the decision in (Heckler v. Chaney); the agency alone, and neither the prosecutor or the Court is charged with the allocation of enforcement resources. See Block v. SEC, 50 F. 3d 1078 (DC Cir 1995).

In this case, as if represented by FBI Agent Kennedy that he presented the case to the SEC, at its exclusive discretion, determined that no violations of the securities act had occurred and that no civil or criminal enforcement was warranted. The prosecutors actions in this case were analogous to and constitute an exercise of overzealous prosecutorial discretion. See Block v. SEC, holding that "an agency's refusal to hold hearings for the purpose of establishing a factual basis for subsequent enforcement action is subject to Chaney's presumption against judicial review."

"The doctrine of primary jurisdiction ... applies where a claim is originally cognizable in the courts, and comes into play whenever enforcement of the claim requires the resolution of issues which, under a regulatory scheme, have been placed within the special competence of an administrative body, in such a case the judicial process is suspended pending referral of such issues to the administrative body for its review." United States v. Western Pac. R. Co. 352, US 59, 63-64, [1 L Ed 2d 126, 131, 132, 77 S. Ct. 161].

"The doctrine is based on the principle that in cases raising issues of fact not within the conventional experience of judges or cases requiring the exercise of administrative discretion, agencies created by Congress for regulating the subject-matter should not be passed over," Far East

Conference v. United States, 342 US 570, 574 [96 L Ed 576, 582, 72 S. Ct. 492], and **"requires judicial abstention in cases where protection of the integrity of a regulatory scheme dictates preliminary resort to the agency which administers the scheme"**, United States v. Philadelphia Nat. Bank, 374 US 321, 353, [10 L Ed 2d 915, 939, 83 S. Ct. 1715]."  
Local 189, Amalgamated Meat Cutters v. Jewel Tea Co., 381 US 676, 684-685, 14 L Ed 2d 640, 646, 85, S. Ct. 1596 (1965)

Under administrative law the landmark case of United States v. General Dynamics, 828 F 2d 1356 (Feb. 10, 1987) applies a traditionally used test that looks for four factors defined in General Dynamics. Under this test, "the doctrine applies when there is (1) the need to resolve an issue, (2) that has been placed by Congress within the jurisdiction of an administrative body having regulatory authority (3) pursuant to a statute(s) that subjects an industry or activity to a comprehensive regulatory scheme that (4) requires expertise or uniformity in administration. Under this doctrine all securities related investigations would fall under the SEC. The securities fraud related charges and the wire fraud charges that touch the securities fraud in this case, certainly are deeply instilled under the jurisdiction of the SEC.

Under SEC v. Dresser Industries Inc., 628 F. 2d 1368:202 US. App. D.C. 345 (1980) it states in the headnotes:

Under Securities Law - U.S. Securities and Exchange Commission - ... Investigating active authority.

"The Securities Act of 1933, 15 U.S.C.S. 771 et. seq. EXPLICITLY empowers the Securities and Exchange Commission to investigate possible infractions of the securities laws, with view to both civil and criminal enforcement, and to transmit the fruits of its investigations to the United States Justice Department in the event of criminal proceedings."

Under headnotes: Administrative law ... jurisdiction and venue:

"In numerous cases involving agencies such as the Securities and Exchange Commission, the Interstate Commerce Commission, and the Federal Trade Commission, it has been established that **it is not for a district court to substitute its views for that of the administrative agency involved which is presumed better equipped with greater expertise in the field which is the subject of the dispute.**

In this case, the SEC in a related case, with the same security and alleged behavior, made rulings and enforcement actions that were exculpatory for the defendant in SEC v. Kirkand, (Case 1:13-cv-03150-JEC), in which no actions were taken against the defendant, nor was any action taken by the Alabama Securities Commission against the defendant. Also, it reviewed the Westover/Ramco co-investment agreement which was considered the security in both cases, and found no fraud.

Supporting cites to the primary jurisdiction argument in this case are as follows:

In the case of SEC v. Citigroup Global Markets, Inc., 752 F. 3d 285 (2014), securities law is cited to read: "In an enforcement action, the EXCLUSIVE right to choose which charges to levy against a defendant rests with the Securities and Exchange Commission. Nor can the district court reject a consent on the ground that it fails to provide collateral estoppel assistance to private litigants - that simply is not the job of the courts."

Also, "to the extent that the SEC does not wish to engage with the courts, it is free to eschew the involvement of the courts and employ its own arsenal of remedies instead. (11th Cir 2006) Mamani v. Berzain, 21 F. Supp. 3d 23 L Ed 2d 194, 395 US 185 (1969) The findings in this case conflict with Mamani creating an inter-circuit conflict.

395 US at 193. In McKart, the United States Supreme Court discussed the doctrine as follows:

Perhaps the most common application of the exhaustion doctrine is in cases where the relevant statute provides that certain administrative procedures shall be exclusive. The reasons for making such procedures exclusive, and for the judicial application of the exhaustion doctrine in cases where the statutory requirement of exclusivity is not so explicit, are not difficult to understand. A primary purpose is, of course, the avoidance of premature interruption of the administrative process. The agency, like a trial court, is created for the purpose of applying a statute in the first instance. Accordingly, it is normally desirable to let the agency develop the necessary factual background upon which decisions should be based. And since agency decisions are frequently of a discretionary nature or frequently require expertise, the agency should be given the first chance to exercise that discretion or to apply that expertise. And of course it is generally more efficient for the administrative process to go forward without interruption than it is to permit the parties to see aid from the courts at various intermediate stages. id. at 193-194 (citation omitted).

The Federal Constitution's central mechanism of separation of powers depends largely upon common understanding of what activities are appropriate to legislatures, to executives, and to courts.

From: 38 L Ed 2d 796 (s. Ct.) Primary Jurisdiction Doctrine

Under 701(a)(2) of the Administrative Procedure Act (5 USCS 701(a)(2)), which precludes judicial review of agency action "committed to agency discretion by law", judicial review of administrative agency's decision

is not to be had if the statute in questions is drawn so that a court would have no meaningful standard against which to judge the agency's exercise of discretion; in such a case, the statute ("law") can be taken to have "committed" the decision-making to the agency's judgement absolutely.

Under 17 CFR 10B-5, Case Annotations

Securities and Exchange Commission, not courts, have primary responsibility for protection of investors and securities. Quinn & Co. v. SEC, (1971, CA 10) 452 F. 2d 943, CCH Fed Secur L Rep 93312, cert den (1972) 406 US 957, 92 S. Ct. 2059, 32 L Ed 2d 344

Under the State of Texas, State of Alabama ... v. United States, (5th Cir. Appls) No 15-40238, May 26, 2015 and earlier 106 F 3d 661 (5th Cir. 1997) Heckler v. Chaney, 470 US 821, 831, 105 S Ct, 1649, 84 L Ed 2d 714 (1985).

The Supreme Court has cautioned that "before any review at all may be had under the Administrative Procedure Act, a party must first clear the hurdle of 701(a) of the APA." Heckler v. Chaney 470 US 821, 829, 105 S. Ct., 1649, 1654, 84 L. Ed. 2d 714 (1985) Section 701 withdraws the cause of action in the relevant statute "precludes judicial review or agency action is committed to agency discretion by law." 5 USC 701(a)

Heckler v. Chaney, 84 L Ed 2d 714, 470 US 821. Refusals to take enforcement steps generally involve precisely the opposite situation, and in that situation we think the presumption is that judicial review is not available. This Court has recognized on several occasions over many years that an agency's decision not to prosecute or enforce, whether through civil or criminal process, is a decision generally committed to an agency's absolute discretion. [United States v. Batchelder, 442 US 114, 123 124, 60 L Ed 2d 755, 99 S. Ct. 2198 (1979); United States v. Nixon, 418 US 683, 693, 41 L Ed 2d 1039 94 S. Ct. 3090 (1974); Vaca v. Sipes, 386 US 171, 182, 17 L Ed 2d 842, 87, S. Ct.]

To further illustrate precedence related to the limit of federal court's jurisdiction, Petitioner cites from: 140 L Ed 2d 210, 523 US 83, Steel Co. v. Citizens for Better Env. Steel Company, Petitioner v. Citizens for a Better Environment, 523 US 83, 140 L Ed 2d 210 118 S Ct 1003 (March 1998).

"An Approach denominated as the 'doctrine of hypothetical jurisdiction' - under which a federal court, making the assumption that the court has jurisdiction under the Federal Constitution's Article III for the purpose of deciding the merits question despite jurisdictional objections, at least where (1) the merits question is more readily resolved, and (2) the prevailing party on the merits would be the same as the prevailing party if the jurisdiction were denied - carries the court beyond the bounds of authorized judicial action and thus offends fundamental principles of separation of powers, as (1) the proposition that the Court can reach

a merits question where there is no jurisdiction for purposes of Article III opens the door to all sorts of generalized grievances that the Constitution leaves for resolution through the political process, (2) hypothetical jurisdiction produces nothing more than a hypothetical judgment, which comes to the same thing as an advisory opinion, and (3) the reasons for allowing merits questions to be decided before statutory standing questions do not support allowing merits questions to be decided before Article III questions. (Breyer, J., dissented in part from this holding)."

"Without jurisdiction, a court cannot proceed at all in any case, as jurisdiction is power to declare the law; when jurisdiction ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause."

"The statutory and constitutional elements of jurisdiction are an essential ingredient of separation of powers that restrains the courts from (1) acting at certain times, and even (2) acting permanently regarding some subjects; for a court to pronounce upon the meaning or the constitutionality of a state or federal law when the court has no jurisdiction to do so is, by very definition, for a court to act ultra vires."

"Article III, 2 of Federal Constitution, which extends the judicial power of the United States to only "Cases" and "Controversies" is properly taken to mean cases and controversies of the sort traditionally amendable to and resolved by the judicial process, for although every criminal investigation conducted by the executive branch is a "case" and every policy issue resolved by congressional legislation involves a "controversy," these are not the sort of cases and controversies that Article III, 2 refers to."

Importance: The question being made in this case, as well as all other cases similarly situated, is whether the subject-matter of securities laws are within the conventional experience of judges or even lay juries on whether the question of when, who, and where securities laws are violated, lies exclusively under the agencies discretion as assigned by Congress" whether a decision to pursue criminal charges requires the exercise of the SEC's exclusive agency's expertise; or whether there exists a danger of inconsistent rulings; and whether a prior application to the agency has been made.

The ruling in this case conflicts with the 9th Circuit Court of Appeals in United States v. Yellow Freight System, Inc., 762 F 2d 737 (9th Cir.

1985) that states criminal prosecutors should not be excluded from the doctrine of primary jurisdiction's operation. In Yellow Freight, the Court states that a failure to refer a properly referable case will result in the reversal of conviction. Why should a defendant in a criminal case, and the Court before whom the defendant appear , be deprived of the expertise

and clarifications of law and regulations that would be available in a civil case? Isn't the need for a basic fairness and uniform decision as strong if not stronger than what would be available in a civil case given the liberty concerns? The Court, Judge, and jury should have the best information possible when making rulings in criminal cases. The fact that Congress provided the SEC with "exclusive" agency jurisdiction on who, when and where securities laws are violated, and "exclusive" discretion on whether to pursue any enforcement action, whether it be civil, criminal or no action at all. Congress gave only the SEC this discretion not district courts without refute from the SEC. All cases, such as this case should be reversed if the "exclusive" agency (SEC) appointed by Congress to enforce the securities laws has not made any decision to refer criminal charges against the defendant. If allowed in all federal courts, as in this case's rulings before this court, from the Eleventh Circuit, and the Southern Alabama District Court prejudices the Petitioner by the Court, simply not ruling on any claim made to the contrary of the judge, even though the judge is not an expert in securities law, and specifically has no power in securities violations in the first instance.

- An example that could be used in any securities trial as to the lack of understanding of securities law that is prejudicial to the defendant and grossly denies a fair trial to the accused is the case before this court. In this case, the following is part of the record:

- The Co-Investment Agreement between Westover, Ramco Assoc., LLC and Sencan **is not engaged and signed by all parties**, thus invalid.

- No party of record has any security engaged or privity to said security.

-- The Government claims that a non-disclosure statement, signed only

by one party, is the security that gives privity to the Co-Investment Agreement. The single signer is not a party to Westover or Ramco Assoc., LLC. This is akin to an individual signing a statement saying he owns 10,000 Apple shares simply because he signs a document as a single party. Yet the Eleventh Circuit and District Court ignore this fact.

- The Government was allowed to claim the Government witness had privity to the Grand Jury and Jury when terms of the Co-Investment Agreement prohibited third-parties, or any assignment to any party in this case.

### Question 3 - Issues of National Importance

- If the glaring non-eligible legal points that were used in this case to qualify a security being present, can be used by an AUSDA to make a case, then all securities cases could allow the Government to fabricate any offense at will against defendants in Grand Jury, and trial proceedings.

- If this court allows a non-expert AUSDA, and judges to oversee, or present securities cases as described as fact, to get an Indictment or conviction, then the intent of Congress is being violated that gives the SEC "exclusive" agency determinations when a security law has been violated. This action by the judicial branch is a violation of the separation of powers between the Legislative (Congress) and Judicial (District Courts and Appellate Courts) branches of Government.

- If the judgements by the Eleventh Circuit Appeals Court and the District Court for the Southern Alabama stand by this Court's lack of addressing the jurisdictional questions raised by the Petitioner in this writ - similar harm would result against all others accused parties similiary situated.

Harm to these defendant's are as follows:

Without proper primary jurisdiction being present a trial would be barred from taking place, also no Grand Jury would proceed with an indictment. There would be no conviction, no restitution order, no sentencing, and no wrongful incarceration.

The exhaustion doctrine would, if properly followed require the Government and Court to respect the S.E.C. as the "exclusive expert" appointed by Congress to determine when, if, and how securities laws have been violated. The S.E.C. agency decision would be non-reviewable in a district court. In the present case, as well as others similiary situated, would have to be dismissed.

If the Government and the Courts are allowed to proceed as they have in the present case, the S.E.C. would be put in an intolorable position. It would have to diligently seek to prevent, deter, and punish violations of securities laws as directed by Congress. But, by the enforcement of its rules and laws, the S.E.C. would be exposed to "unrestricted" attacks in federal courts by disgruntled investors. This described situation would disrupt, if not imobilize the S.E.C.'s as established by Congress, in the Securities Act of 1933, and the Securites Exchange Act of 1934.

-The prejudicial harm to the Petitioner in the present case, or in any other similiary situated case brought by the Government against any accused U.S. citizen, if the Government is allowed to proceed to a grand jury and trial, without any subject-matter jurisdiction given the fact:

- there was no security engaged on recrd as required per jury instructions presented to the jury.

- there was no privity allowed to any party on record per the purported security in this case.

- there was no S.E.C. criminal referral, no civil referral either

- there was no S.E.C. investigation related to this case.

- only "hypothetical jurisdiction" was used by the Government and Court in this case.

- the "exhaustion doctrine" was not followed

- there was no observation of primary jurisdiction in this case

the District Court refused to address or ignored the Petitioner's claim concerning both primary jurisdiction and subject-matter jurisdiction that were made in the Rule 33 Motion before this court.

the Eleventh Circuit Appeals Court , also did not address these constitutional jurisdiction claims either by review or as an answer to the Petitioner's issues raised on appeal, and in the related briefs.

- due to the lack of the S.E.C. having made a determination or an investigation regarding the violation of securities laws in this case, as required by the "exclusive" primary agency jurisdiction conveyed upon the S.E.C. by Congress, as the "only" allowed securities law expert, the courts have allowed a case to proceed without a required "case or controversy" existing as it relates to the Petitioner. Without any case or controversy required for the Article III Court to have standing there should not have been any indictment or trial.

As presented, the Petitioner, as well as any party similarly situated have , or would have , their "due process" right violated.

#### Question 4 Argument

This is a supervisory question for this Court to determine regarding both the Appeals Court and District Court, specifically the Eleventh Circuit Court of Appeals and / or the District Court for the Southern District of Alabama. The Petitioner also prays this Court to find that his Fifth Amendment "due process" rights have been violated by the in-action of the

two lower courts.

The national importance of this question is that by applying a supervisory decision in this Court that does not allow and appeals or district court to avoid or ignore jurisdictional or legal standards claims by accused parties, even if by the addressing these claims, error or misconduct may be uncovered.

#### Conclusion

It is fitting to conclude this writ with the following quote from Justice Brandeis in Olmstead v. United States, 277 US 438, 485, 48 S. Ct. 564, 72 L Ed (1928), given the Government's and lower courts distortion and plain ignoring of judicial procedures and standards of law established by this Court, as well as in conflict with sister circuit rulings:

"Decency, security and liberty alike demand that Government officials shall be subjected to rules of conduct that are commands to the citizen. In a Government of laws, existence of the Government will be imperilled if it fails to observe the law scrupulously. Our Government is this potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the Government becomes a lawbreaker, it breeds contempt for the law; it invites every man to become a law unto himself; it invites anarchy. To declare that the Government may commit crimes in order to secure the conviction of a private criminal - would bring terrible retribution. Against that pernicious doctrine this Court should resolutely set its face."

For the reasons stated herein, this petition for a writ of certiorari should be granted.

Respectfully submitted, on November 13, 2017.



David Petersen, Petitioner, Pro se

NO. \_\_\_\_\_

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IN THE  
SUPREME COURT OF THE UNITED STATES

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DAVID PETERSEN , PETITIONER

VS.

UNITED STATES OF AMERICA , RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO  
ELEVENTH CIRCUIT COURT OF APPEALS

APPENDIX

DAVID PETERSEN  
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## INDEX OF APPENDIX

### TAB # / DOCKET #

|                                                               |             |
|---------------------------------------------------------------|-------------|
| Judgement from the Eleventh Circuit, Case No. 16-15603        | A           |
| Order from the District Court for So. Alabama                 | B / 224     |
| Rule 33 Motion for New trial, Case No. 1:13-cr-00117          | C / 218     |
| Opening Appeal Brief - Appeal No. 16-15603                    | D           |
| Reply to Government's Response - Appeal No. 16-15603          | E           |
| Order, Granting IFP, from Eleventh Circuit, Appeal 16-15603   | F           |
| Motion for Disclosure of Favorable Evidence                   | G (a) / 202 |
| Order from District Court - Motion for Disclosure             | G (b)       |
| Order from District Court - Motion for Reconsideration        | G (c)       |
| Indictment, Case No. 1:13-cr-00117                            | H           |
| Motion for Permission to Appeal In Forma Pauperis & Affidavit | I           |

**APPENDIX A**

**JUDGEMENT FROM THE ELEVENTH CIRCUIT COURT OF APPEALS CASE  
NO. : 16-15603 , DISTRICT CASE NO. 1:13 -CR-00117-WS-C-2**

**DECISION DATE: SEPT. 13. 2017**

**COVER**