

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Willie Gene Woodard — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Ninth Circuit Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Willie Gene Woodard #57844-112
(Your Name)

FCI Milan/P.O. Box 1000
(Address)

Milan, Michigan 48160
(City, State, Zip Code)

None (Incarcerated)
(Phone Number)

QUESTION(S) PRESENTED

- 1) Whether Constitutional trial errors and defects that affect the defendant's substantial rights manifested from the erroneous admission of evidence pertaining to the religious beliefs and opinions of victim witnesses and the defendant and consequently had substantial injurious effect or influence in the Jury verdict - thus in light of Constitutional trial errors and defects, was the defendant deprived of fundamental fairness rendering the resulting conviction a denial of due process pursuant to the Fifth Amendment of the U.S. Constitution?
- 2) Whether the erroneous admission of evidence through the Government's intentional injection of religiously oriented questions and elicited testimony during examination of victim witnesses shifted burden of proof to the defense - thus was the defendant's right to the "presumption of innocence" infringed by shifting of burden of proof, depriving defendant of right to "trial by an impartial Jury" pursuant to the Sixth Amendment of the U.S. Constitution?
- 3) Did the Government's misrepresentation and exploitation of the defendant's Christian belief and practice in the Government's attempt to establish a modus operandi of defendant, constitute persecution infringement of the defendant's right to Christian belief and practice that is protected by law pursuant to the First Amendment of the U.S. Constitution?

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:

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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 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 C to the petition and is

☐ reported at _____; 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 June 19, 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: August 18, 2017, and a copy of the order denying rehearing appears at Appendix B.

☐ 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

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STATEMENT OF THE CASE

This case before the Honorable Supreme Court is a criminal case resulting from a Superseding Indictment in the District of Arizona, Phoenix, alleging the Petitioner to have committed Conspiracy (18 U.S.C. § 1349) and Wire Fraud (18 U.S.C. § 1343).

The matter was tried on two occasions before Honorable Judge Douglas L. Rayes, and the Petitioner was Pro Se in both trials. TRIAL ONE was conducted between October 14, 2014 and November 7, 2014, which resulted in a hung Jury, mistrial. TRIAL TWO commenced January 6, 2015 and concluded January 23, 2015, resulting in guilty verdict on Counts 1-19 of Superseding Indictment. On Sentencing day, August 3, 2015, after denying Petitioner's July 22, 2015 Rule 33 Motion for New Trial, without a hearing, the Court sentenced Petitioner to 87 months.

Represented by Counsel, the Petitioner's appeal before the Ninth Circuit included ground of: the Government's (religiously oriented) appeal to the Jury's passion and emotions in its closing argument. The appeal was denied June 19, 2017. Petitioner's Pro Se petition for rehearing was denied August 18, 2017.

Petitioner contends that erroneous admission of evidence making the religious beliefs and opinions of victim witnesses and the Christian character of Petitioner central issues of trial is contrary to the fair trial and due process standards established by the Fifth Amendment of the U.S. Constitution and precedent Supreme Court cases as inferred herein.

Forthwith, the Petitioner requests Certiorari review in light of relevant facts and affecting law inadequately raised or omitted by appointed appeal counsel. It is highly likely that the

government's appeal to the Jury's passions and emotions had a devastating influencing effect on Jury impartiality. The 6th Amendment provides that defendants charged with crimes in federal courts "shall enjoy the right to...trial by an impartial Jury."

The Ninth Circuit Court of Appeals reviewed the improper religiously oriented statement made by the prosecutor in closing argument for plain error, deciding that it was "permissible rhetorical flourish." The Court's review, however, was not in light of the numerous improper religiously oriented comments made by the prosecutor and a number of victim witnesses. These comments, which were not raised by the Petitioner's appeal counsel and misrepresented by the government, were religiously oriented leading questions asked by the prosecutor and the corresponding responses the prosecutor elicited from the witnesses.

The prosecutor, during the examination of victim witnesses, perpetually elicited testimony pertaining to the witnesses' religious beliefs and their religiously oriented interactions with the Petitioner (defendant). The prosecutor's implied intent for this line of questions was to ascertain whether the witnesses' reliance on, and confidence in the defendant's trustworthiness was because of the defendant's indications of his Christian beliefs, i.e. "blessed regards," or "God bless" in email signature; Christian conversation, prayer, etc. The prosecutor's religiously oriented line of questioning and the witnesses' elicited corresponding responses were flagrant, guilt suggesting insinuations corrolatively conveying the impression that the defendant's Christian character was not credible and instead was merely modus operandi to carry out requisite intent

to defraud.

The erroneous, improper prosecutor insinuations and the correlating witness testimonies were not isolated to a particular period of the trial. The prosecutor perpetuated the religious themed insinuation and elicitation narrative throughout the trial. The prosecutor, with strategic intentionality, injected insinulative (intent suggesting) questions to elicit correlating testimony cumulatively through the entire examination of several individual victim witness. See APPENDIX D: (Excerpt #1, lines 11-24) (Excerpt #2, lines 9-15) (Excerpt #3, lines 3-12) (Excerpt #4, lines 5-24) (Excerpt #5, lines 13-21) (Excerpt 6, lines 13-16) (Excerpt #7, lines 1-10) (Excerpt #9, lines 16-23) (Excerpt #10, lines 9-24).

There was an instance during direct examination of the defendant in the first trial, a question was asked relevant to the defendant's religious beliefs. The question was objected to by the prosecutor pursuant to Federal Rules of Evidence 610. The objection was sustained by the Court. See APPENDIX E (Excerpt #8, lines 10-17).

The prosecutor's religious themed insinuations and relevant testimony elicitations during the examination of victim witnesses culminated to the prosecutor's bible based condemnation of the defendant in the Government's closing argument comprising the prosecutor's improper insinuation of "future danger" rebuttal remarks.

"You know, I'm no biblical scholar but there is a verse in the New Testament, Matthew, where they do talk about the wolf in sheep's clothing. 'Beware of the false prophets who come to you in sheeps clothing but inwardly are savage wolves because you will know them by their fruit.' Ladies and gentlemen, Mr. Woodard is a wolf in sheep's clothing and when he stood before you and tried to convince you that he was going to make refunds you become just another victim. Don't become just another victim. Find this defendant guilty.

See (APPENDIX A, page 4).

REASONS FOR GRANTING THE PETITION

First, the prosecutor's religious themed questioning effectively called for the Jurors to infer the credibility of the affected witnesses in context of the witnesses' testimonies as to their own religious beliefs. Likewise, the Jurors were likely compelled to infer the defendant's credibility relying on erroneous testimonies the prosecutor elicited from witnesses as to their opinion of the defendant's religious character. These testimonies, intentionally elicited by the prosecutor on direct examination, might well be construed as multiple attempts by "the prosecutor to improperly introduce evidence to enhance the credibility of the witnesses," while attacking the defendant's character. See United States v. Sloan, 811 F.2d 1359, 1364 (10th Cir. 1987); Fed. R. Evid. 610, provides that "evidence of a witness' religious beliefs or opinions is not admissible to attack or support the witness' credibility. This "evidence is excluded under that provision because it is presumed to threaten unfair prejudice. This prejudice can either be supportive or corrosive of credibility." 28 Charles Alan Wright, Arthur R. Miller and Victor James Gold, Federal Practice and Procedure, Section 6153 (2008).

The improper, insinulative religiously oriented line of questioning by the prosecutor and the correlating responses of the witnesses were in effect highly prejudicial appeals to the Jury's religious predilections or biases likely to inflame the Jury. Accordingly, there is no dispute in that "appeals to racial, ethnic or religious prejudice during the course of a trial violate a defendant's Fifth Amendment right to a fair

trial." United States v. Cabrera, 222 F.3d 590, 594 (9th Cir. 2000); accord United States v. Runyon, 707 F.3d 475, 494 (4th Cir. 2013). United States v. Heller, 785 F.2d 1524, 1527 (11th Cir. 1986) (stating that appeals to a Jury's racial and religious prejudices "prevents the impartial decision-making that both the Sixth Amendment and fundamental fair-play require." Bains v. Cambra, 204 F.3d 964 n.5 (9th Cir. 2000) (stating that, although perhaps to a lesser extent" than racial or ethnic-based arguments, "religion-based arguments also are prohibited under clearly established federal law."). See also Fed. R. Evid. 402 indicating such evidence is inadmissible if prohibited by "the United States Constitution; a federal statute; these rules; or other rules prescribed by the Supreme Court. Irrelevant evidence is not admissible."

"Government's motion to exclude evidence of defendant's strong religious beliefs was granted pursuant to Fed. R. Evid. 610 to the extent such evidence might be offered to enhance or impair defendant's credibility." United States v. Cooper, 286 F. Supp. 2d 1283 (D. Kan. Sept. 25, 2003).

The prosecutor's improper expressions of opinion during the examination of victim witnesses inferring that the defendant used religion as modus operandi with requisite intent of defraud, although was only speculation lacking expert opinion or other probative value evidence, nevertheless, it's speculation that "carries with it the imprimatur of the Government." United States v. Young, 470 U.S. 1 (1985). A prosecutor who makes erroneous and misleading insinuations or suggestions, "may induce the Jury to trust the Government's Judgment rather than its own view of

the evidence. Further, the prosecutor's personal experience in criminal trials may induce the Jury to accord unwarranted weight to (his opinion regarding the defendant's guilt.)" United States v. Young, 470 U.S. 1 (1985). Consequently, "improper suggestions, insinuations and, especially, assertions of personal knowledge are apt to carry much weight against the accused when they should properly carry none." Berger v. United States, 295 U.S. 78 (1935).

Reasonably so, a single series of improper questions ask to only one of the various witnesses, is unlikely to have any meaningful effect on a Jury verdict. But a series of improper and flagrant insinulative questions intentionally injected into the examination of several individual witnesses throughout the trial, is likely to have a substantial influence in the Jury verdict. The prosecutor perpetually making improper and flagrant expressions of opinion throughout the trial, suggesting that the defendant with requisite intent used religion as modus operandi to carry out a crime, could reasonably be viewed as "conduct so pronounced and persistent that it permeates the entire atmosphere of the trial." United States v. Davis, 514 F.3d 596, 614 (6th Cir. 2008); United States v. Woods, 68 F.3d 1045, 1065 (11th Cir. 2012); United States v. Flake, 746 F.2d 535, 542 (9th Cir. 1984). Thus likely, as in Berger v. United States, 295 U.S. at 89, "We have not here a case where the misconduct of the prosecuting attorney was slight or confined to a single instance, but one where such misconduct was pronounced and persistent, with probable cumulative effect upon the Jury which cannot be disregarded as

unconsequential."

The prosecutor's improper religiously themed insinuations and elicitations throughout the trial culminated to the prosecutor's closing argument, comprising an inflammatory bible based condemnation and verdict consequence rebuttal remarks... "Beware of false prophets who come to you in sheep's clothing but inwardly are savage wolves because you will know them by their fruit. Ladies and gentlemen, Mr. Woodard is a wolf in sheep's clothing and when he stood before you and tried to convince you that he was going to make refunds you become just another victim. Don't become another victim. Find this defendant guilty." It is highly likely these closing comments were prejudicial in accord United States v. Young, 470 U.S. 1 (1985); Fed. R. Evid. 403 preludely noted.

In Viereck v. United States, 318 U.S. 236 (1943), the Supreme Court condemned the closing remarks made by the prosecutor as prejudicial to the defendant's rights to a fair trial. Just as in the Petitioner's case, the purpose and effect could have only been "to inflame the passions or prejudices of the Jury." ABA Standards for Criminal Justice 3-5, 8(c) (2d ed. 1979); See Viereck v. United States, 318 U.S. 236 (1943). "The prosecutor should refrain from argument which would divert the Jury from its duty to decide the case on the evidence, by injecting issues broader than the guilt or innocence of the accused...", "Mr. Woodard is a wolf in sheep's clothing...", "...or by making predictions of the consequences of the Jury's verdict," "Don't become another victim." ABA Standards of Criminal Justice 3-5, 8(d). In accord with these standards, references to the future

dangerousness of the defendant in the guilt-innocence phase of a trial are improper. The prosecutor's closing argument comments quoted above are the most fundamental violations of the "ABA" tenents. Furthermore, the Supreme Court has long "counselled prosecutors to refrain from improper methods calculated to produce a wrongful conviction..." United States v. Young, 470 U.S. 1 (1985)(quoting Berger v. United States, 295 U.S. 78 (1935)).

False insinuations in questions such as religion related, even if followed by a definite denial by the witness, would undoubtedly leave a trace of prejudice in the minds of Jurors. Perhaps moreso in the absence of specific curative Court instruction, as in Petitioner's case. It's reasonably assumed this is a case where the reality as to religious beliefs and intent likely stirred emotions of "passion and prejudice," which Supreme Court decisions have sought to avoid. Such a case is Viereck v. United States, 318 U.S. 236 (1943), where the Supreme Court held of such 'passion and prejudice' that the prosecutor's discourse should have been stopped by the Court without waiting for an objection. Likewise, in the Petitioner's case, the District Court would have been justified in excluding such evidence based on concerns about, among other things...prejudice...confusion...misleading...wasting of time. See Delaware v. Van Ardall, 475 U.S. 673 (1986); Crane v. Kentucky, 476 U.S. 683 (1986); and pursuant to Fed. R. Evid. 403, "The Court may exclude relevant evidence if its probative value is outweighed by a danger of one or more of the following: Unfair prejudice, confusing the issues, misleading the Jury, undue delay, wasting time or needlessly presenting cumulative evidence."

It's reasonable to assume that the prosecutor's misrepresentation of the Petitioner's Christian character, was with the intent to establish evidence of defendant having a modus operandi. Beyond such evidence being erroneous, proof of "modus operandi" is only relevant when there is an issue regarding the defendant's identity. See United States v. Oberle, 136 F.3d 1414, 1419 (10th Cir.), cert. denied, 525 U.S. 885 (1998); United States v. Porter, 881 F.2d 878, 885-86 (10th Cir.) 493 U.S. 944 (1989); pursuant to Fed. R. Evid. 404(b) "When extrinsic evidence is introduced to prove identity..." No such issue was raised in the Petitioner's case. The Government's religious based theory of modus operandi being evidence with substantial potential to induce prejudice there is consequently "a strong likelihood that the effect of the evidence was 'devastating' to the defendant." Greer v. Miller, 483 U.S. 756 (1987); Burton v. United States, 391 U.S. 123 (1968).

Moreover, the prosecutor's perpetuated improper expressions of opinion and elicited correlating witness opinions as to the Petitioner using religion as modus operandi to defraud; impermissibly shifted burden of proof to the defense. Criminal defendants have a constitutional right to "the presumption of innocence" and to have the Government prove "guilt beyond a reasonable doubt." See Estelle v. Williams, 425 U.S. 501 (1976). "The right to a fair trial is a fundamental liberty..." "The presumption of innocence, although not articulated in the Constitution, is basic component of a fair trial under our system of criminal justice." Shifting burden of proof affects right to "trial by an impartial Jury." Norris v. Alabama, 294 U.S. 587 (1935); Pierre v. Louisiana, 306 U.S. 354 (1939). In re Winship,

397 U.S. 358 (1970)("It is the duty of Government to establish... guilt beyond a reasonable doubt. This notion -- basic in our law and rightly one of the boasts of a free society is a requirement and a safeguard of due process of law in the historic, procedural content of "due process." (quoting Leland v. Oregon, 343 U.S. 790 (1952)(Frankfurter, J., dissenting))). Shifting the burden of proof has been held as a constitutional error and ground for reversal, "unless error was harmless beyond a reasonable doubt." See Neder v. United States, 527 U.S. 1 (1999).

The courts records speak to the fact that none of the affected witnesses initiated inferences as to the defendant's Christian character, or to him having used religion as modus operandi to deceive them, but instead the witnesses responded correlatingly to the prosecutor's leading, insinuating questions. "Unless and until the accused puts his character at issue by giving evidence of his good character or by taking the stand and raising an issue as to his credibility, the prosecutor is forbidden to introduce evidence of the bad character of the accused simply to prove that he is a bad man likely to engage in criminal conduct." United States v. Wright, 489 F.2d 1181, 1186, 160 U.S. App. D.C. 57 (D.C. Cir. 1973); United States v. Fox, 154 U.S. App. D.C. 1, 473 F.2d 131, 134-135 (1972); Michelson v. United States, 335 U.S. 469 (1948); Greer v. United States, 245 U.S. 560 (1918). The defendant took the stand after all of these witnesses had testified. See also Fed. R. Evid. 611(c), improper leading questions impermissible; Rule 403, "...undue prejudice," other relevant issues; Rule 404(1)(A) "character trait..."

Courts have cited that the principle of not introducing

such evidence cannot be circumvented by allowing the prosecutor to infer regarding the character of the accused based on off-the-stand courtroom conduct, such as what the prosecutor in this case commented on in his closing argument. "Ladies and gentlemen, Mr. Woodard is a wolf in sheep's clothing and when he stood before you and tried to convince you that he was going to make refunds you become just another victim." This statement is not only an infringement of this principle, but also the prosecutor's assertion of opinion that "carries with it the imprimatur of the Government." United States v. Young, 470 U.S. 1 (1985).

Effectively, the prosecutor is making a judgment as to the defendant not being of good character, and just as he has defrauded others, the Jurors would also be defrauded. What the Jury may infer as consequence of prosecutor's opinion when there's no objection and no specific curative instruction, is that the Court in effect is indicating that "the courtroom conduct of the accused constitutes evidence against him." Cf. Griffin v. California, 380 U.S. 609 (1965). "When a District Court fails to apply the correct legal standard, by definition it abuses its discretion." Koon v. United States, 518 U.S. 61 (1996).

The prosecutor's assault on the credibility of the defendant's Christian character, thereby making it a central issue of the case, likely manifest Constitutional error. Arguably, this is not a situation where the case against the defendant was legitimately otherwise "so overwhelming that any Constitutional error did not, beyond reasonable doubt, contribute to the conviction. Cf. Milton v. Wainwright, 407 U.S. 371 (1972);

Harrington v. California, 395 U.S. 250 (1969). In the words of the Supreme Court: "If one cannot say, with assurance...that the Judgment was not substantially swayed by error, it is impossible to conclude that substantial rights were not affected." Kotteakos v. United States, 328 U.S. 750 (1946). Moreover, the Supreme Court has stated that an error of Constitutional dimension is not harmless if "there is a reasonable possibility that it might have contributed to the conviction." Fahy v. Connecticut, 375 U.S. 85 (1963).

Only when evidence 'is so extremely unfair that its admission violates fundamental conceptions of Justice' has the Supreme Court imposed a constraint tied to the Due Process Clause." Perry v. New Hampshire, 565 U.S. 228 (2012)(citation omitted) (quoting Dowling v. United States, 493 U.S. 342 (1990)); see also Ward v. Johnson, 690 F.2d 1098, 1109 (4th Cir. 1982)(en banc) ("Errors in the admission or exclusion of evidence in a ... criminal trial rise to the level of a Constitutional deprivation only if the error is of such magnitude as to deny fundamental fairness.") See also Fed. R. Evid. 103(a), (d) and (e), exclusion of inadmissible evidence, and court notice of plain error affecting substantial right.

Reasonably assumed, it's highly likely that the prosecutor's intentional injection of improper and flagrant expressions and elicitation of opinion as to the defendant using religion as modus operandi, and the inflammatory closing argument remarks, "had a substantial and injurious effect or influence in determining the Jury verdict." Brecht v. Abrahamson, 570 U.S.

619 (1993)(quoting Ketteokos v. United States, 328 U.S. 750 (1946); see also Fry v. Pliler, 551 U.S. 112 (2007). Making this determination involves an "assessment of the likelihood that the error affected the outcome of the case" Jordan v. Medley, 228 U.S. App. D.C. 425, 711 2d 211, 218 (D.C. 1983)(Scalia, J.).

The Petitioner contends that the prosecutor's improper line of questioning and elicitation of victim witness testimonies pertaining to 1) the witnesses' religious beliefs 2) the defendant's Christian character 3) the witnesses' and defendant's alleged religious interactions and 4) the implication defendant used religious modes operandi to defraud witnesses; as well as the government's inflammatory closing argument remarks, cumulatively give rise to erroneous admission of evidence errors, pursuant to Fed. R. Evid. 610, 611(c), 402, 403, 404(b) and 103(a), (d) and (e). Moreover, in accordance to ABA Standards of Criminal Justice tenents 3-5.8(c) and (d), as well as standards established in numerous precedent Supreme Court cases as inferred herein. The "Court of of Appeals has overturned a conviction for a garden-variety trial error such as mistakenly admitting evidence." United State v. Tateo, 377 U.S. 463 (1964). Reasonably assumed, this highly prejudicial, religiously oriented erroneous admission of evidence had a "'substantial influence' on the trial, particularly pertaining to fundamental fairness and due process." Kotteokos v. United States, 328 U.S. 750 (1946).

"The touchtone of due process analysis in cases of alleged prosecutorial misconduct is the fairness of the trial, not the culpability of the prosecutor." Smith v. Phillips, 455 U.S. 209

(1982). The Supreme Court "has recognized that prosecutorial misconduct may 'so infect the trial with unfairness as to make the resulting conviction a denial of due process.'" Greer v. Miller, 483 U.S. 756 (1987)(quoting Donnelly v. De Christoforo, 416 U.S. 637 (1974). "To constitute a due process violation, the prosecutorial misconduct must be sufficient significance to result in the denial of the defendant's right to a fair trial." United States v. Bagley, 473 U.S. 667 (1985).

The Petitioner's failure during trial to object to the prosecutor's improper and flagrant expressions of opinion and elicited testimonies pursuant to Fed. R. Evid. 610, 611(c), 402, 403, 404(b), 103(a), (d) and (e) as well as ABA Standards for Criminal Justice 3-5 .8(c) and (d) was excusable neglect - thus at the likelihood that cumulatively the effect of the prosecutor's improper and flagrant suggestions and elicitations rose to the level of "plain error," the Petitioner forthwith notices the suggestions and elicitations of the prosecutor pursuant to Federal Rules of Criminal Procedure 52(b); Young, 470 U.S. at 14-16, and apply this exception to the contemporaneous objection rule "solely in those circumstances in which miscarriage of Justice would otherwise result." United States v. Frady, 456 U.S. 152 (1982).

Moreover, Fed. R. Crim. P. 30 and 52(b); Siber v. United States, 370 U.S. 717 (1962); Johnson v. United States, 318 U.S. 189 (1943); United States v. Atkinson, 297 U.S. 157 (1936).

These cases make clear the following propositions: the doctrine of plain error encompasses those errors which are obvious, affect the substantial rights of the accused and if uncorrected

would be an affront to the integrity and reputation of judicial proceedings. Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court. (Emphasis added). In United States v. Atkinson, 297 U.S. 157 (1936), the Supreme Court described "plain errors" as follows: "In exceptional circumstances, especially in criminal cases, appellate courts, in the public interest, may, of their own motion, notice errors to which no exception has been taken, if the errors are obvious, or if they otherwise seriously affect the fairness, integrity or public reputation of judicial proceedings". Thus, under the Rule, an appellate court may ground its decision on defect affecting substantial rights -- or plain errors -- even though the defect or error was not raised at all. In fact, the rule is frequently applied when error or defect is not brought to the attention of the trial court. See Siber v. United States, 370 U.S. 717 (1962) (per curiam); Brotherhood of Carpenters v. United States, 330 U.S. 395 (1947); Brasfield v. United States, 272 U.S. 448 (1926); Mahler v. Elby, 264 U.S. 32 (1924); See also Puckett v. United States, 556 U.S. 129 (2009); United States v. Marcus, 560 U.S. 258 (2010).

The Petitioner argues that prosecutorial misconduct manifest trial errors and defects that significantly affected substantial rights, effectuating lack of fairness and denial of due process. The appropriate standard of review for allegations of prosecutorial misconduct is "the narrow one of due process..." Id. (quoting Donnelly v. De Christoforo, 416 U.S. at 642). Denial of due process in a criminal trial "is failure to observe that fundamental fairness essential to the very concept of Justice..."

we must find the absence of that fairness fatally infected the trial; the acts complained of must be of such quality as necessarily prevents a fair trial." Lisenba v. California, 314 U.S. 219 (1941).

The Petitioner contends, on the grounds of trial errors and defects that he was tried, convicted, and sentenced to 87 months imprisonment in a trial substantially affected by erroneous admission of prejudiced religiously oriented character evidence; compounding affect of prejudicial denial of Petitioner's pro se motion for expert accounting assistance, preventing counter of government's erroneous accounting evidence - thus a judicial proceeding significantly permeated with unfairness and contrary to the Fifth and Fourteenth Amendments to the United States Constitution, as well as decisions of precedent Supreme Court cases, which are inferred legal standards of this petition. Reversal for trial error - "incorrect receipt or rejection of evidence, incorrect instructions, ...prosecutorial misconduct" or the like "does not constitute a decision... that the government has failed to prove its case," but only "that a defendant has been convicted through a judicial process which is defective." Burks v. United States, 437 U.S. at 15, 57 L.Ed. 2d 1 98 S.Ct. 2141 (1978)(emphasis added). "While ordinarily the Supreme Court does not take note of errors not called to the attention of Federal Court of Appeals from which the case is brought, nor properly raised before Supreme Court on certiorari, that rule is not without exception, and court has power to 'notice plain error not assigned or specified, and in exceptional circumstances,

especially in criminal cases, it may, in public interest, of its own motion, notice errors to which to exception has been taken, if errors are obvious or if they otherwise affect fairness, integrity, or public reputation of Judicial proceedings." Siber v. United States, 370 U.S. 717 (1962).

Lastly, the Supreme Court has stated, "The principle that government may not enact laws that suppress religious belief or practice is so well understood that few violations are recorded in our opinions." Cf. McDaniel v. Paty, 435 U.S. 618 (1978); Fowler v. Rhode Island, 345 U.S. 67 (1953). The Petitioner is concerned that the fundamental non-persecution principle of the First Amendment is applicable to this case, in light of the criminalized erroneous misrepresentation and exploitation of his Christian belief and practice he was consequently judged by... The Petitioner would greatly appreciate the Honorable Court's review of this Writ of Certiorari, and prays that it would be granted for the greater good - "Justice for all."

Date: 11/15/2017

Respectfully Submitted,

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CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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Date: November 15, 2017