

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

IN RE: RICARDO WATKINS PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF ^{PROHIBITION}~~CERTIORARI~~ TO

U.S. COURT OF APPEALS FOR THE EIGHTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

^{PROHIBITION}
PETITION FOR WRIT OF ~~CERTIORARI~~

RICARDO WATKINS
(Your Name)

FCU LA LUNA

P.O. BOX 3000

(Address)

ANTHONY, NM 87021

(City, State, Zip Code)

(Phone Number)

CONSTITUTIONAL QUESTION

WHETHER PETITIONER'S INVOCATION OF
THE CAUSE AND PREJUDICE DOCTRINE,
ALONG WITH AN ACTUAL INNOCENCE
CLAIM, ENTITLES HIM TO A MERITS
DETERMINATION ON HIS HABEAS
CLAIMS

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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:

IN THE
SUPREME COURT OF THE UNITED STATES
Prohibition
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☒ is unpublished.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 _____; 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☒ is unpublished.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☐ is unpublished.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☐ is unpublished.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 OCTOBER 27, 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).

STATEMENT OF JURISDICTION

The Supreme court of the United States has original jurisdiction over three categories of case. first, the Supreme Court can exercise original jurisdiction over "actions or proceedings to which ambassadors, other public ministers, consuls, or vice consuls or foreign states are parties." See, e.g. Maryland v. Louisiana, 451 U.S. 725, 737 (1981).

Second, the Supreme court also possesses original jurisdiction for "(all) controversies between the United States and a state," 28 U.S.C. Section 1251(b)(2).

Finally, Section 1251 provides for original jurisdiction in the Supreme court, "for (all) actions or proceedings by a state against the citizens of another state or against aliens." See, Oregon v. Mitchess, 400 U.S. 112 (1970), United States v. Louisiana, 339 U.S. 699 (1950), United States v. California, 332 U.S. 19 (1947).

The statutes defining the Supreme Court's jurisdiction between "appeal" and "certiorari" as vehicles for appellate review of the decision of state and lower federal courts. Where he statutes provides for "appeal" to the Supreme court, the Court is obligated to take and decide the case when appellate review s requested. Where the statute provides for review by "writ of certiorari," the court has completer case if there are for votes to grant certiorari. Effective September 25, 1988, the distinction between appeal and certiorari as a vehicle for review was virtually entirely eliminated. Now almost all cases come to the Supreme Court by writ of certiorari, Pub.L.N. 100-352, 102 Stat. 662 (1988).

WRIT OF PROHIBITION PURSUANT TO 28 U.S.C.. ACTION 1651 IN AID OF THE SUPREME COURT'S JURISDICTION.

(a) The Supreme Court and all courts established by Act of Congress, may issue all writs necessary or appropriate inn aid of their respective jurisdictions ad agreeable to the usages and principles of law.

(b) An alternative writ or law may be issued by a justice or judge of a court which has jurisdiction.

Utilizing Rule 22-1 of the Supreme Court Rules, a justice (Associate Justice of the Eight Circuit to whom an application to a Writ of prohibition is submitted may refer to the Court for determination.

CONSTITUTIONAL AND STATUTORY PROVISIONS

LAW RELATED TO STRUCTURAL ERROR

In conducting harmless error analysis of constitutional violations in habeas cases, the Supreme Court repeatedly has reaffirmed that "(s)ome constitutional violations...by their very nature cast so much doubt on the fairness of the trial process that, as a matter of law, they can never be considered harmless. *Satterwhite v. Texas*, 486 U.S. 249, 256 (1988); accord *Neder v. United States*, 527 U.S. 1, 7 (1999) ("We have recognized a limited class of fundamental constitutional errors that 'defy analysis by 'harmless error' standards'...Errors of this type are so intrinsically harmful as to require automatic reversal (i.e., 'affect substantial rights') without regard to their effect on the outcome.").

Sullivan v. Louisiana, 508 U.S. 275, 279 (1993) ("Although most constitutional errors have been held to harmless-error analysis, some will always invalidate the conviction." (citations omitted)); *id.* at 283 (Rehnquist, C.J., concurring); *United States v. Olano*, 507 U.S. 725, 735 (1993); *Rose v. Clark*, 478 U.S. 570, 577-78 (1986) ("some constitutional errors require reversal without regard to the evidence in the particular case... (because they) render a trial fundamentally unfair"); *Vasquez v. Hillery*, 474 U.S. 254, 283-264 (1986); *Chapman v. California*, 386 U.S. 18, 23 (1967) ("there are some constitutional rights so basic to a fair trial that their infraction can never be treated as harmless error").

LAW RELATED TO STRUCTURAL ERROR FOR INEFFECTIVE ASSISTANCE OF COUNSEL

The Right to Effective Assistance of Counsel. See *Kyles v. Whitley*, 514 U.S. at 435-436; *United States v. Cronin*, 466 U.S. 648, 654-57 (1984); *Hill v. Lockhart*, 28 F.2d 832, 839 (8th Cir. 1994) ("it is unnecessary to add a separate layer of harmless-error analysis to an evaluation of whether a petitioner in a habeas case has presented a constitutionally significant claim for ineffective significant claim for ineffective assistance of counsel").

LAW RELATED TO STRUCTURAL ERROR FOR CONCEALMENT OF EVIDENCE

Included in those rights is the protection against prosecutorial suppression of exculpatory evidence and other prosecutorial and judicial failures to make "material" evidence or witnesses available to the defense at trial, when "materiality" is defined as at least a "reasonable probability that had the evidence been disclosed to the defense, the result of the proceedings would have been different. *Kyles v. Whitley*, 514 U.S. at 435 (quoting *United States v. Bagley*, 473 U.S. 667, 682 (1985) (plurality opinion)); *id.* at 685 (White, J., concurring in judgment)). In addition to *Bagley*, which addresses claims of prosecutorial suppression of evidence, the decisions listed below—all arising in "what might loosely be called the area of constitutionality guaranteed access to evidence," *Arizona v. Youngblood*, 488 U.S. 51, 55 (1988) (quoting *United States v. Valenzuela-Bernal*, 458 U.S. 858, 867 (1982)—require proof of "materiality" or prejudice.

The standard of materiality adopted in each case is not always clear, But if that standard requires at least a "reasonable probability" of a different outcome, its satisfaction also automatically satisfies the Brecht harmless error rule. See, e.g. *Arizona v. Youngblood*, *supra* at 55 (recognizing due process violation based on state's loss or destruction before trial of material evidence); *Pennsylvania v. Richie*, 480 U.S. 39, 57-58 (1987) (recognizing due process violation based on state agency's refusal to turn over material social services records; "information is 'material' if it 'probably would have changed the outcome of his trial' citing *United States v. Bagley*, *supra* at 685 (White, J., concurring in judgment)).

Ake v. Oklahoma, 470 U.S. 68, 83 (1985) (denial of access by indigent defendant to expert psychiatrist violates Due process clause when defendant's mental condition is 'significant factor' at guilt-innocence or capital sentencing phase of trial); *California v. Trombetta*, 467 U.S. 479, 489-90 (1984) (destruction of blood samples might violate Due Process Clause, if there were more than slim chance that evidence would affect outcome of trial and if there were no alternative means of demonstrating innocence).

United States v. Valenzuela-Bernal, *supra* at 873-874 ("As in other cases concerning the loss (by state or government) of material evidence, sanctions will be warranted for deportation of alien witness only if there is a reasonable likelihood that the testimony could have affected the judgment of the trier of fact.", *Chambers v. Mississippi*, 40 U.S. 284, 302 (1973) (evidentiary rulings depriving defendant of access to evidence "critical to (his) defense" violates "traditional and fundamental standards of due process"); *Washington v. Texas*, 388 U.S. 14, 16 (1967) (violation of Compulsory Process Clause when court arbitrarily

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deprived defendant of "testimony (that) would have been relevant and material, and...vital to his defense").

LAW RELATED TO STRUCTURAL ERROR FOR JUDICIAL BIAS

Included in the definition of structural errors, is the right to an impartial judge, i.e. the right to a judge who follows the constitution and Supreme Court precedent and upholds the oath of office. See, e.g. *Neder v. United States*, supra., 527 U.S. at 8 ("biased trial judge" is "structural error" and thus is subject to automatic reversal"); *Edwards v. Balisok*, 520 U.S. 461, 469 (1997); *Sullivan v. Louisiana*, 508 U.S. at 279; *Rose v. Clark*, 478 U.S. 570, 577-78 (1986); *Tunney v. Ohio*, 273 U.S. 510, 523 (1927).

STATEMENT OF CASE

According to Government accounts memorialized in the court records, from at least 1996 through the fall of 1999, Watkins regularly purchased crack cocaine from several different people in Illinois and arranged for it to be transported to and sold in Cedar Rapids, Iowa. Watkins purchased distributing quantities of crack cocaine at intervals varying from twice a month to twice a week, depending upon demand. During this time, Watkins used more than ten different people to help him cut, package, transport and sell the drugs. Christopher Winters testified that he sold crack cocaine to Watkins several times in 1996 and regularly between the fall of 1997 and the fall of 1999. He testified that he sold between 2.25 and 4.5 ounces of crack cocaine and one sold him 9 ounces of crack cocaine.

Alvis Davis testified that from the fall of 1997 into 1998 and again in 1999, he and Watkins bought crack cocaine in Chicago and transported it to Cedar Rapids, where he would provide the crack cocaine to others for sale on their (486 F.3d 463) behalf. Davis testified that during the time period Watkins would travel to Chicago usually twice each week to buy 4.6 ounces of crack cocaine on each trip. Willie Herron, Dewayne Shears and Jessica Martley all testified that they have transported crack cocaine from Chicago to Cedar Rapids for Watkins and Davis.

In March 1998, a confidential informant working with the police in the Cedar Rapids area purchased a "rock" directly from Watkins and Davis for \$100...("the controlled purchase"). In August 1998, fearing that he was under investigation, Watkins executed a proffer agreement with the United States Attorney's office for the Northern District of Illinois. ("the 1998 proffer agreement"). Watkins did not have legal counsel at the time. The agreement gave the government the right to use Watkins' proffer statement against him if he "should subsequently testify contrary to the substance of the proffer, otherwise a position at sentencing or a position inconsistent with the proffer. Pursuant to the proffer, Watkins provided incriminating information about his crack cocaine distribution in Cedar Rapids.

An Iowa federal grand jury indicted Watkins in October 1999, on the instant charges, and he was arrested in March 2005 in Illinois. The district court appointed counsel to represent Watkins. In 2005, Watkins entered into a proffer agreement with the United States Attorney's office for the Northern District of Iowa through his attorney. ("the 2005 proffer agreement"), under the terms of which he again provided incriminating information regarding his distribution of crack cocaine in Cedar Rapids. Watkins's counsel believed that the 2005 proffer agreement to impeach Watkins, if he were to testify. However, the agreement actually provided that the information received during the proffer could be used, "to impeach your client's credibility, and to focus on rebuttable claims against your clients to develop leads from information provided, and for all other non-evidentiary purposes."

REASONS FOR GRANTING

^{Watkins}
Petitioner Ricardo ~~Watson~~ seeks a grant of the Writ of Prohibition for two primary reasons, and directs his application utilizing Supreme Court Rule 22-1 to the Associate Justice with Supervisory Control over the Eight Circuit Court of Appeals. The first reason for the application and the reason it should be granted, has to do with the denial of Ricardo Watkins' Bill of Review without findings of fact and conclusions of law, effectively making the denial by the Eight Circuit Court of Appeals unappealable. The main thrust of the Bill of Review, addressed to the Eight Circuit Court of Appeals revolved around two judicial proceedings with Chief judge Linda Reade.

The first involves a fatal constructive amendment of Watkins' indictment. A constructive amendment that is intrinsically prejudicial, because it violates the Fifth Amendment Grand Jury Clause, which guarantees an accused like Watkins, the right to be tried on the indictment returned by the grand jury. *Williamson, supra, United States v. Koen*, 31 F.3d 722 (8th Cir. 1994); *Fisher, supra* at 462; *United States v. Roshko*, 969 F.2d 1, 5 Z(2d Cir. 1992)(prosecutor's trial presentation constructively amended the conspiracy count by expanding its object.

Ricardo Watkins was charged and found guilty of conspiracy to distribute or possess with intent to distribute 50 grams or more of cocaine base. however the proof at trial showed no less than five different conspiracies, constructively amending the indictment. See, *United States v. Keller*, 916 F.2d 628 (11th Cir. 1990), cert denied, 499 U.S. 978 (1991); *United States v. Zingano*, 858 F.2d 94 (2d Cir. 1988); *United States v. Marcello*, 876 F.2d 1147 (5th Cir. 1989)(trial judge re-wrote the indictment to add new facts and theories); *United States v. Leisure*, 844 F.2d 1347 (8th Cir.)(reversed where trial judge instructed the jury on elements of crime different from the crime charged in the indictment), cert. denied, 488 U.S. 932 (1988).

The second reason Ricardo Watkins seeks a Bill of Review is as a consequence of the above referenced constructive amendment, the District court threw Ricardo Watkins' sentencing proceedings into a tail spin, impacting negatively on the viability of Watkins availing himself of the 782 Amendment with respect to 782 sub-section (e)(1). Also he was deprived of taking advantage of the increased quantities under the 2010 Supreme Court case, *Dorsey v. United States* (citations omitted) that effectively trigger the mandatory minimum for cocaine and crack cocaine offenders.

Petitioner Ricardo Watkins avers that the equitable relief he seeks from the Eight Circuit and the Associate Justice in charge of the circuit against the fraudulent judgment(s) of the District Court and the Eight Circuit's endorsement of it, is not of statutory creation, but is a judicially devised remedy fashioned to relieve hardships which from time to time arises from a hard and fast adherence to the court made rule that judgment should not be disturbed after the term of their entry has expired. Watkins invokes *United States v. Throckmorton*, 98 U.S. 61, 25 L.Ed 93, *Marshall v. Holmes*, 141 U.S. 589, 35 L.Ed 870, for the proposition that the Eight Circuit Court of Appeals has both the duty and the power to protect its appellate jurisdiction from fraud practiced on it., See, also *Richmond v. Tayleur*, 1 P. Wms. 734, 24 Eng. Reprint 591; *Brookes v. Mostyn*, 33 Bear, 457, 55 Eng. Reprint 455, 2 De G.J. & 5, 373, 46 Eng. reprint 419.; *The Alfred Nobel*, 14 Asp. Mar. L. Cas (Eng) 366; *Art Metal Works v. Abraham & Strauss*, (CCA 2d) 107 F.2d 940, cert. denied, 308 U.S. 621, 84 L.Ed 518, reh. denied, 309 U.S. 696, 84 L.Ed 1036, 60 S.Ct. 611, 612.

At common law, "the term of court was decisive in determining whether or not the district court had power over its final judgments and decrees. "Note, History and interpretation of Federal Rule 60(b) of the Federal Rules of Civil procedure, 25 Temple L.Q. 77, 78 (1951)(hereinafter "Notre. History). During the term, a court "had full power to vacate or revise its judgment. "Commentary, Effect of Rule 60(b) on Other Methods of Relief from Judgments. 4 Fed. Rules Serv. 942, 942 (1941). After the term, a party could obtain relief from a judgment only through four types of "remedial devices";

" (1) one of the ancient writs, i.e. "audita querela, coram nobis, coram vobis, bill(s) of review, and bill(s) in the nature of bills of review";

(2) an "independent action for relief, based on extrinsic fraud, mistake and accident";

(3) the "inherent power of the court to modify judgments", and;

(4) the "power of the court) to disregard void judgments." Note. Federal Rule 60(b); Relief from civil Judgments, 61 Yale L.J. 14, 76 n.3 (1952).

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Each of the ancient writs permitted relief in different scenarios. Audi Querela, a common law writ, typically "afford(ed) relief to a judgment debtor against a judgment or execution because of some defense or discharge arising subsequently to the rendition of the judgment or the issue of the execution." 11 Charles Alan Wright, Arthur R. Miller & Mary Kay Kane. Federal practice and Procedure Section 2867, at 394 (Civil 2d ed. 1995). Coram nobis and coram vobis, both equitable in nature, sought remedy "mistakes of fact, not appearing in the face of the record, and but for which the judgment would not have been entered." Commentary, supra. at 942-43.

If the judgment under attack issues from the King's bench, the former writ was appropriate, if it issues from any other court, the latter was used. Black Law dictionary 338 (7th ed 1999). A bill of review in equity would lie in any of four grounds; (1) "error of law apparent upon the record;" (2) "newly discovered evidence ." (3) "the occurrence of new matter of new facts after the entry of the decree." James Wm. Moore & Elizabeth B.A. Rogers. Federal Relief from Civil Judgments. 55 Yale L.J. 623, 677-79 (1946).

Despite their formal distinctions however, the ancient writ as a practical matter had confusing and uncertain boundaries." Klapprott v. United States, 335 U.S. 601, 614, 69 S.Ct. 384, 390, 93L.Ed 266 (1940). For example, while the usual rule was that audita querela lay only for matters arising before judgment, thereby blurring the distinction between audita querela and (366 F.3d 1290) coram nobis (or vobis). 12 James Wm. Moore et al. Moore's Federal Practice Section 60 App. 29 (3d ed 2003). The Supreme Court recognized in Klapprott recognized that "few courts ever ...agreed as to what circumstances would justify relief under these old remedies." 335 U.S. at 614, 69 S.Ct. at 390. The enactment of the Federal Rules of Civil Procedure in 1938 was in part an attempt to eliminate the confusion caused by the inconsistent application of these ancient writs.

D

WHETHER PETITIONER'S INVOCATION OF THE CAUSE AND PREJUDICE DOCTRINE, ALLIE WITH AN ACTUAL INNOCENCE CLAIM, ENTITLES HIM TO A MERITS DETERMINATION ON HIS HABEAS CLAIMS.

The Supreme Court has emphasized that both cause and prejudice must be demonstrated to permit a defendant to raise on habeas corpus matters not presented in State Court. See, *Murray v. Carrier*, 477 U.S. at 496. An illustration of the need to prove both cause and prejudice is *Stickler v. Greene*, 527 U.S. 263 (1999). The Court found that the failure of the prosecution to disclose information under *Brady v. Maryland*, 373 U.S. 83 (1963), even inadvertently, was sufficient cause for the federal court to hear a habeas petition.

The principles of res judicata and collateral estoppel generally preclude a party from relitigating a matter already presented to a court and decided upon. *Brown v. Allen*, decided in 1953, created an important exception to collateral estoppel and res judicata for habeas petitions. 344 U.S. 443 (1953).

In fact, the Warren Court so valued the importance of the opportunity to relitigate constitutional issues to ensure correct decisions that it held if a petitioner convicted by a federal court also may raise issues on habeas that had been presented and decided at trial. *Kaufman v. United States*, 394 U.S. 217, (1969). The Court concluded that "the provisions federal collateral remedy rests...fundamentally upon a recognition that adequate protection of constitutional rights...requires the continuing availability of a mechanism for relief. *Id.* at 226.

Petitioner contends, beginning in two decisions decided the same day, *Murray v. Carrier*, 477 U.S. 478 (1988) and *Smith v. Murray*, 477 U.S. 527 (1986), the Supreme Court has held that as an alternative to demonstrating cause, a habeas petitioner, as in the case at bar, may raise matters hitherto not raised by demonstrating he is probably innocent of the charge.

Petitioner can show cause because his counsel neither filed for a direct appeal nor raised issues in the sentencing court. Further, on advice of counsel, his plea was unknowingly made. unintelligently made. Petitioner can show cause for the procedural default by not renewing the claim or for that matter, filing a direct appeal. The issue in *Murray v. Carrier*, 477 U.S. 478 (1986), was whether a habeas petitioner could show cause for a procedural default by demonstrating that the Defense Counsel inadvertently failed to raise an issue. Justice O'Connor emphasized that, "ineffective assistance of counsel, then is cause for a procedural default." *Murray v. Carrier*, 477 U.S. 478, 468 (1986).

PETITIONER'S PROFFER OF ACTUAL INNOCENCE.

In four cases, the court has elaborated the meaning of actual innocence. In *Sawyer v. Whitley*, the issue was what actual innocence meant in the context of challenging a sentence. petitioner further invokes *Herrera v. Collins*, for the proposition that "actual innocence itself is not a constitutional claim, but a gateway through which a habeas petitioner must pass to have his otherwise barred constitutional claims considered on the merits." 506 U.S. 390, 404 (1993).

Following *Herrera v. Collins*, the Court decided *Schlup v. Delo*, that to prove actual innocence, a habeas petitioner must show there was a constitutional violation that "probably resulted" in the conviction of one who is actually innocent. 513 U.S. 298, 327 (1995), as in the case at bar.

In *House v. Bell*, the Supreme Court found that the requirements for showing actual innocence were met to allow a procedurally defaulted claim of ineffective assistance of counsel to be aided, 547 U.S. 518 (2006). Thus, petitioner contends, he was prejudiced pursuant to *United States v. Brady*, where the Supreme Court indicated that "prejudice" could be demonstrated by showing that the results in the case likely would have been different absent the complained of violation of the constitution or federal laws, 455 U.S. 152 (1982).

A demonstration of prejudice likely will require a showing that the alleged constitutional violation affected the outcome of the trial or the appeal - that the results probably would have been different but for the violation of federal law. These errors would to petitioner's actual and substantial disadvantage, infecting the entire judicial proceedings with errors of constitutional dimensions. 456 U.S. at 170. (emphasis in original). The results would have been different but for the violation of federal law. See, also *Murray v. Carrier*, 477 U.S. 478, 496 (1986). *Strickler v. Greene*, 527 U.S. 253 (1993).

CONCLUSION

A Traditionally, efficiency and finality have carried less weight than fairness in the criminal context, because criminal sanctions may result in imprisonment and greater social stigma than civil sanctions. see, Stacy & Dalton, *supra* note 2, at 137 ("As our ...commitment to the availability of habeas corpus, finality and efficiency concerns carry relatively less sway in criminal cases than in civil cases -a product of criminal defendant's countervailing liberty interest." (footnote omitted)).

The category of errors known as trial errors can be harmless if the government can show beyond a reasonable doubt that they did not contribute to the verdict. See *id.* at 24, see also, *Sullivan v. Louisiana*, 508 U.S. 275, 279 (1993) (stressing that the test for harmlessness "is not whether, in a trial that occurred without the error, a guilty verdict would have surely have been rendered, but whether the guilty verdict actually rendered in this trial was surely unattributable to the error.").

The Supreme Court has recognized a narrow set of rights that, if denied are structural errors; the rights to counsel, see *Gideon v. Wainwright*, 372 U.S. 335, 343-45 (1963) and to counsel of choice, see, *United States v. Gonzalez- Lopez*, 548 U.S. 140, 150 (2006) (deeming deprivation of counsel of choice a structural error.); the right of self representation, see, *Mckaskle v. Wiggins*, 465 U.S. 168, 177 n.8 (1984) (finding harmless error analysis inapplicable to deprivations of the right to self-representation, because exercising the right increases the chance of a guilty verdict); the right to an impartial judge, see, *Tunney v. Ohio*, 273 U.S. 510, 534 (1927) (holding that trial before a biased judge "necessarily involves a lack of due process").

Also denominated in the narrow set of rights deemed structural error, is the freedom from racial discrimination, in grand jury selection. This denial of have been found to undermine "the objectivity of those charged with bringing a defendant to judgment"; the right to a public trial, see, *Waller v. Georgia* 467 U.S. 30, 49 (1984) ("the defendant should not be required to prove specific prejudice in order to obtain relief for a violation of the public-trial guarantee"), and the right to accurate reasonable-doubt instruction, see, *Sullivan v. Louisiana*, 508 U.S. 275, 280 (1993) (finding that because of an inadequate reasonable doubt instruction, no actual jury verdict could thus not apply harmless error analysis to determine whether error affected the verdict.).

By contrast, the list of trial errors is extensive. See, *Arizona v. Fulminante*, 499 U.S. 279, 306-07 (1991) (declaring that "almost constitutional errors can be harmless," and naming sixteen examples of trial error. While the list of structural errors have remained consistent, the Supreme Court's ethos of distinguishing between trial and structural errors have fluctuated. The prejudicial impact of these constitutional errors is assessed by asking whether the error had "a substantial and injurious effect or influence in determining the jury's verdict." *Brecht v. Abrahamson*, 507 U.S. 619, 623, 113 S.Ct. 1710, 123 L.Ed.2d 353 (1993), See also, *Fry v. Pliler*, 551 U.S. 112, 119-120, 127 S.Ct. 2321, 168 L.Ed.2d 16 (2007) (holding that the *Brecht* standard applies whether or not the state court recognized the error and reviewed it for harmlessness.).