

No. _____

In The Supreme Court of the United States

GIUSEPPE VIOLA , AKA **JOSEPH J. VIOLA**,
Alleged Debtor-Petitioner,

v.

MORTON D. KIRSCH, *et al.*,
Creditors-Respondents,

v.

UNITED STATES Trustee,
Trustee- Respondent.

GIUSEPPE VIOLA,
Petitioner,

v.

CARLA HACKER-AGNEW, Warden,
ARIZONA STATE PRISON COMPLEX – YUMA,
AND

MARK BRNOVICH, Attorney-General
of the State Of **ARIZONA**,
Respondents.

JOSEPH J. VIOLA,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

**On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit
For the Foregoing Interrelated Appeals**

PETITION FOR WRIT OF CERTIORARI

GIUSEPPE VIOLA, 050936
ASPC YUMA-CIBOLA, 6A47
P. O. BOX 8909
SAN LUIS, AZ 85349
Petitioner *pro se*

QUESTIONS PRESENTED

Eight years ago, beginning in March 2010, a set of three closely interrelated proceedings were used by their adversary parties to deprive this petitioner of a life's work, his assets, and perhaps most importantly, of his constitutional right to due process. During all that time, the petitioner has been held in continuous custody, through a demonstrable co-ordination among those involved, where the purposefully separated proceedings have been utilized to frustrate his efforts to achieve relief.

Those proceedings, in the order of their initiation, as herein enumerated, using their Ninth Circuit docket numbers, include an application to proceed *in forma pauperis* in (1) No. 16-16556, on appeal of an involuntary bankruptcy; and for certificates of appealability in both (2) No. 16-15253, a review on habeas corpus under 28 USC § 2254 from an indictment issued in Arizona twenty years earlier, alleging events occurring between 1987 and 1989 for a distinct and distinguishable individual with the same common Italian surname; and (3) No. 17-15726, a review under § 2255 of a motion to vacate federal charges resulting after having been extradited from his residence and businesses of over two decades in San Francisco.

Since finally managing to docket concurrent appeals for all of the three matters in the United States Court of Appeals for the Ninth Circuit, those efforts have included motions in each to consolidate the three into a single appeal, for the purposes of presenting a more complete understanding of their collective development, only from which a meaningful and proper resolution might result, and for judicial economy.

Most recently, however, these threshold appellate efforts have been subverted by deputy clerks acting in the name of Article III judges under whose authority they were designated to assist, but instead, have usurped such power beyond that delegated to them, which might be mistaken for final dispositions.

These acts included the failure to properly distribute petitions for rehearing *en banc*; to distribute such petitions to a panel different from its original review in one instance; to distributions to senior judges not in regular active service, as specifically proscribed under relevant statute and rule; and instances where their identifying notations remained on the orders, or collaborative efforts were apparent.

Accordingly, as these appeals have not yet been afforded available due process, nor yet properly reached final disposition in the circuit court, the issues are here presented on Petition for Certiorari under 28 USC § 1254(1) and Rule 11, and are consolidated pursuant to Rule 12.4. The referenced situations have also been addressed as complaints to the attention of the circuit Chief Judge, but are yet without response. The requirement that these consolidated cases be of such imperative public importance as to justify review and to require immediate determination is easily met, as there is no greater exercise of this Court's constitutional judicial power, than the oversight of the public trust in the manner in which appellate jurisdiction has been administered, or perhaps, subverted. Significantly, the principal issue at the heart of all the appeals is the lack of subject matter jurisdiction, addressed as to the relevant aspect in each of their respective issues, such that a simple review, not yet afforded by any of the lower courts, although thoroughly presented from first instance in each onward, may well have the effect of disposition with finality. Therefore, the questions presented are:

1. Would a demonstration of lack of subject matter jurisdiction serve to defeat any procedural challenge, and permit the Court to vacate any order which may have been entered?
2. Can a deputy clerk act in the capacity and name authorized solely to an Article III Court, in a manner contrary to published federal statute or rule, or local rule or general order derived therefrom, without violating the due process rights of a party guaranteed under Amendments V and/or XIV of the United States Constitution?

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PARTIES IN No. 16-16556

The parties referred to, number those in the petition for involuntary bankruptcy in No. 10-30904 DM are as originally listed, but have now been resolved. Copies of both the original Claims Register, and of the Trustee's Final Report and Applications for Compensation are included in Appendix for purposes of comparison, as addressed below. Only the United States Trustee remains.

PETITION FOR A WRIT OF CERTIORARI

Giuseppe Viola respectfully petitions for a writ of certiorari to review the orders and their proceedings in the United States Court of Appeals for the Ninth Circuit, as follows: (1) in Viola v. Kirsch, et al., v. United States Trustee, No. 16-16556 (Leavy, Silverman, Bea, JJ)(Landstittel, Deputy Clerk); (2) in Viola v. Hacker-Agnew, et al., No. 16-15253, (Clifton, N.R. Smith, JJ)(Schroeder, Leavy, JJ)(Powells, Deputy Clerk); and (3) Viola v. United States, No. 17-15726, (Silverman, Ikuta, JJ). On 7 April 2017, 1 May 2017, and 1 September 2017, motions seeking to resolve apparent procedural defects, along with motions to consolidate the appeals in each, were submitted and directed to the specific attention of the Hon. Sidney R. Thomas in his supervisory capacity as circuit Chief Judge. On 27 November 2017, a Petition for Rehearing *en banc* was filed in No. 17-15726. All are yet pending. See, Appendix.

OPINIONS BELOW

The Memorandum Opinions of the Court of Appeals, in each of the above are not reported to the knowledge of the petitioner, but may be available at Lexis. He therefore includes in Appendix such copies thereof, along with their relevant respective district court orders, and of the orders on their petitions for rehearing.

JURISDICTION

An Order declining to entertain further filings was entered by deputy clerk Susan L. Landstittel (SLLMOAT) on 24 August 2017, apparently without recognizing that the referenced motions were directed specifically to the Chief Judge under the local rules and general orders to request his supervisory and disciplinary authority as provided, in No. 16-16556. The matters addressed to him in No. 16-15253 and No. 17-15726 for consolidation and for apparent procedural defects have also yet to be entered. This Court's jurisdiction is invoked under 28 USC § 1254(1), 28 USC § 2101(e), and its Rule 11. Hohn v. US, 524 US 236, 241 1998. The appeals are consolidated pursuant to Rule 12.4, as they arise from a common interrelated set of parties, events, and circumstances, and share as their principal ground of appeal the common question of lack of subject matter jurisdiction.

STATUTORY PROVISIONS INVOLVED

As to No. 16-16556:

28 USC § 1915(b)(4)

In no event shall a prisoner be prohibited from bringing a civil action or appealing a civil or criminal judgment for the reason that the prisoner has no assets and no means by which to pay the initial partial filing fee.

11 USC § 303(b)

Requires that the petition for involuntary bankruptcy be regular on its face, and be otherwise correctly completed to invoke the jurisdiction of the court, as held in In re Quality Laser Works, 211 B.R. 936, 941 (9th Cir BAP 1997) following Canute Steamship Co. Ltd. v. Pittsburgh & W. Va. Coal, 263 US 244, 248 (1923).

As to No. 16-15253:

7 USC § 13a-2 Jurisdiction of States

ARS § 13-2301(D)(4)(b)(xviii)-(xx) Definitions for ARS § 13-2310 charges

ARS § 44-1801(3)-(7);(12);(26) Definitions of futures terms contrary to 7 USC § 1 *et seq.*

Are wholly set forth in Appendix.

As to No. 17-15726

18 USC § 1341

Requires that to invoke federal jurisdiction, the instrumentality of the mails must be present in the execution of any subject transaction, and not merely in derivative or subordinate purpose, as held in US v. Kann, 323 US 88, 95 (1944), US v Parr, 363 US 370, 389 (1960), and in US v. Maze, 414 US 375, 400 (1974).

As to all:

28 USC § 46(c)

Requires only judges in regular active service to participate in the review for, or consideration of, petitions for rehearing *en banc*.

28 USC §§ 351, 352

Provides for complaints in any form to be presented to the circuit Chief Judge for review and report. As no such dispositions have been received, judicial review on appeal to this court remains available. Statute based court rules are mandatory and jurisdictional, Bowles v. Russell, 551 US 205, 209 (2007).

STATEMENT OF THE CASES

The comprehensive factual basis is set forth in the Statement of the Case originally presented in this Court in No. 13-6802 on direct appeal in the matter which now appears in No. 16-15253, and has been included in each of the other two since. It is here presented in Appendix, as a reference to case interrelationships.

The procedural history originates with a California state court civil suit brought by Morton Kirsch, a client of the Napolitano Investment Trust under that administered by the petitioner; through his real estate company, Wherco, Inc. encaptioned Wherco v. Napolitano, naming the commercial entities involved, following a dispute over tax liabilities.

The investment trust also funded SV Holdings, Inc. a Delaware holding company, which among its other business entities operated an auto manufacturing unit, which produced coachbuilt exotic sports cars in carbon fiber, sourced from Italian components and design elements, at shops in the NASCAR Tech Center in North Carolina, and at facilities in the greater Detroit area.

At about the same time, a partner within a supplier to the manufacturing operations, finding himself in financial difficulty, demanded immediate cash payment outside the established contractual terms. In response to resisting his attempted extortion, he reported vehicles under construction as "stolen" to a friend of his on the California Highway Patrol, who arrived at the petitioner's offices.

After demonstrating the proper contractual and funding documents for the cars, the petitioner asked the CHP officers to allow him to return to his work in progress. Instead, they demanded his fingerprints for his challenge to their continued jurisdiction once the vehicle inquiry was concluded, and took him into custody for obstruction, but was cleared at the main San Francisco precinct without charges upon fingerprint and photo reviews.

However, one of the officers found an over twenty year old indictment from Arizona which resulted in custody, for a distinct individual with the same common Italian surname, who was also bald and bearded, and has served as the easily defamed foil for all proceedings since. It has now become No. 16-15253.

The original civil suit was superseded about a week after custody by the petition for involuntary bankruptcy filed by Kirsch, now No. 16-16556, using the name from the Arizona indictment. The civil suit was eventually dismissed voluntarily.

It should be noted that contrary to the opinion of the State and of the district court, it was possible to pursue collateral review of the issues presented from the superior court onward, and is now fully briefed and awaiting review in the Court of Appeal of the State of Arizona in No. 1 CA-CR 17-0660 PRPC. Its underlying indictment had

been “artfully plead” without jurisdiction into state court terms. *See, Lambert Run Coal v. Baltimore, Ohio R.R. Co.*, 258 US 377, 382 (1922).

As a result of the extradition from San Francisco to Arizona which ensued, the business obligations which had always been impeccably managed for over the two decades of operations in the Bay Area, involving many diverse entities, were negatively impacted upon the absence of the petitioner, and its adverse publicity. The investigation amid such a hysterical swell resulted in a federal indictment, which has since become No. 17-15726.

All of them are bound together not only by their closely related fact bases, but also by the lack of subject matter jurisdiction in each of the principal issues presented in their respective relative aspects, which provides a welcome opportunity to afford the Court the ability for an expeditious and judicially economical final disposition.

As a derivative, but nevertheless critically important issue for review, is the manner in which the federal judiciary has processed the various proceedings, and the apparent and seeming collaborative efforts of clerks to deny due process.

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ARGUMENT

REASONS FOR GRANTING THE PETITION

I. EACH OF THE NINTH CIRCUIT’S DECISIONS ARE ERRONEOUS

A. On application to proceed *IFP* on appeal, No. 16-16556

In 1892, Congress enacted the *In forma pauperis* statute (*IFP*), now codified 28 USC § 1915, “to ensure that indigent litigants have meaningful access to the federal courts.” *Neitzke v. Williams*, 490 US 319, 322 (1989). Reacting to “a sharp rise in prisoner litigation”, *Woodford v. Ngo*, 548 US 81, 84 (2006), Congress in 1996 enacted the PLRA which installed a variety of measures “designed to filter out the bad claims (filed by prisoners) and facilitate consideration of the good,” *Coleman v. Tollefson*, 575 US __, __ (2015)(slip op. at 3) (quoting *Jones v. Bock*, 549 US 199, 204 (2007); (alteration in original).

So begins a historical background on *IFP* jurisprudence in *Bruce v. Samuels*, 577 US __, __ (2016), perhaps the most recent opinion of this Court on the subject. Of the authorities cited, *Neitzke* and *Jones* speak most clearly to the issue of frivolousness. In *Neitzke*, a legally frivolous suit was held to be one that fails to raise an “arguable question of law”, at 328; one based on an “indisputably meritless legal theory” at 327; one barred by a defense, like “statute of limitations or immunity”, at 327-28; or is one alleging “fantastic or delusional scenarios.”, at 328.

Here, the argument complained of by district judge Edward M. Chen, after granting *IFP* in the same Order, was that of the obligation of the bankruptcy court, as a

threshold matter, to have ascertained its subject matter jurisdiction under 11 USC § 303(b) of a petition submitted in involuntary bankruptcy, citing this Court's seminal opinion in Canute Steamship Co. Ltd. v. Pittsburgh & W. Va. Coal, 263 US 244, 248 (1923), on which decisions in the Ninth Circuit relied, as applied by In re Quality Laser Works, 211 B.R. 936, 941 (9th Cir BAP 1997):

"A petition on Official Form No. 5 is regular on its face if the boxes next to the preprinted essential allegations are checked and if the form is otherwise correctly completed." Quality Laser at 941 citing In re Kidwell, 158 B.R. 203, 209 (Bkr ED CA 1993).

Which was precisely the condition of the petition presented, both as to its failure to check the box at the lower left of Official Form 5, and for its numerous incorrectly entered facts, including the improper identification of the parties, and that both Kirsch and Wherco had been fully reimbursed, as outlined in the motion to proceed on appeal *IFP*, as well as to the personal successful history of this petitioner to so proceed on numerous previous occasions recognized under FRAP 24(a)(3).

There, the instructive references from Neitzke, held that an argument is not frivolous unless its claims "embraces...[an] inarguable legal conclusion" at 325; and from Denton v. Hernandez, 504 US 25, 112 S.Ct. 1728, 1733 (1992), that to be "frivolous" a claim must be "clearly baseless", and is not to be dismissed merely

"Because the court finds the plaintiff's allegations unlikely", and where "improbable is not to be confused with implausible". *Id.*

Additionally, the motion in No. 16-16556 had appended a full copy of In re Caucus Distributors, Inc., 106 B.R. 890 (Bkr ED VA 1989), the definitive historical treatise by Chief Judge Martin V.B. Bostetter, Jr. of the bankruptcy court of the Eastern District of Virginia, in which another proceeding involving the concurrent criminal and involuntary bankruptcy actions occurred, which could raise the additional question of whether the involuntary petition used to seize assets retained its civil aspect under § 1915, or served as a proxy for an action in forfeiture as a matter of prosecutorial strategy. It is also a comprehensive authority for the bar-to-joinder doctrine proscribing subsequent creditors from joining a petition which as filed lacked jurisdictional sufficiency. *See, Id.* at 905-08.

B. On application for a COA under § 2254, in No. 16-15253

In similar manner, the motions panel affirmed the nature of the order by district judge Diane J. Humetewa, to accept the recommendation of magistrate judge John Z. Boyle, who had essentially adapted the State's affirmative defenses of preclusion and failure to exhaust, in the face of both the denial to self-represent on direct appeal, as afforded in Coleman v. Johnsen, 690 Ariz Adv. Rep. 10, 11 ¶ 17 (2014), and substantively recognized as a due process matter when provided by the constitution of a state in Martinez v. Court of Appeal of California Fourth Appellate District, 528 US 152, 163-64 (2000). Petition for Rehearing, p. 3, 9/13/16.

Additionally, the § 2254 proceedings continued in that petition, after being blocked for two months by the prison mail office, as noted therein, and advanced its own attack on the subject matter deficiency of the Arizona trial court, p. 6-7; and a demonstration of actual innocence through mistaken identity, at p. 8-11. Included in its Appendix is a full copy of Coleman.

The Memorandum Decision of the Arizona Court of Appeals, on direct appeal, is notable in that its panel made numerous references to futures terms, and to their contracts as “securities”, at specific variance from federal laws and authorities, apparently unaware that state attempts to intrude, or even to augment federal law was expressly preempted under 7 USC § 1 *et seq.* See, Appendix.

The Arizona appellate court’s references in its Opinion, taken from the trial record and the State’s brief, without the input of the petitioner, as he had been denied the right to self-represent on appeal after having done so at trial, conflict with the intent of Congress to preempt the field of futures transactions, as expressly provided in general, under the Commodity Exchange Act (CEA), 7 USC § 1 *et seq.*, as this court held in Commodity Futures Trading Comm’n (CFTC) v. Schor, 478 US 833, 836-37 (1986) and Merrill Lynch v. Curran, 456 US 353, 368 FN 40 (1982).

The predecessor of the latter, Curran v. Merrill Lynch, 622 F. 2d 216 (6th Cir 1980), decided *in pari materia* with the more explicit Kelly v. Carr, 691 F. 2d 800, 805(6th Cir 1980) under 7 USC § 13a-2, by virtually the same panel, within four days of each other, clearly established the bright line for preemption in the subject areas, as noted in the above authorities, and most recently reemphasized generally in Arizona v. US, __US__, WL2368661, *5 -*8(2012).

Among other matters, this amply exceeded the low bar required to obtain a certificate of appealability (COA) established by Slack v. McDaniel, 529 US 473, 484-85 (2000), and as in the Ninth Circuit, by Lambright v. Stewart, 220 F. 3d 1022, 1025 (9th Cir 2000)(*en banc*), as again, a lack of subject matter jurisdiction existed.

If this Court would be so kind as to access the cited docket references, which free electronic access provides a much more efficient alternative to prohibitively expensive copying and postage, it will additionally see that the Petition for Rehearing / Rehearing en banc fully satisfies the requirements to qualify as a petition under FRAP 35 and 40, and should have been received and distributed by the clerks as such. Instead, it was not handled under provisions of the Local Rules and General Orders, addressed to the circuit Chief Judge. It may not even have been read at all, as its caption yet shows the name of the former warden, Laura Escapule, although both the district and circuit courts were properly advised of the change under FRCP 25(d) and FRAP 43(c)(2), respectively.

C. On application for a COA under § 2255, in No. 17-15726

The application for a COA in the § 2255 review of the federal action also suffers from lack of subject matter jurisdiction, where both the Indictment and the plea agreement derived therefrom acknowledged that the subject loan participation notes were all executed after thorough consultation on a face-to-face basis, and not through the instrumentality of the mails, thus outside of the applicability of the statutory element necessity of 18 USC § 1341, which requires the execution of any transaction under its authority, and not merely any subsequent derivative usage, as held in US v. Kann, 323 US 88, 95 (1944), US v Parr, 363 US 370, 389 (1960), and US v. Maze, 414 US 375, 400 (1974). See, Indictment, 8/3/10, p. 2, ¶ 4; p. 4, ¶ 8; p. 5, ln. 5; Plea agreement, 11/2/11, p. 2, ln 5; p. 3, ln 8, ln 26 (Appendix in No. 14-7262)

Subject matter jurisdiction cannot be waived, forfeited, or stipulated. US v. Cotton, 535 US 625, 630 (2002). If a court is without jurisdiction it cannot hear, much less enter judgment, thus establishing actual innocence, and grounds for vacating the judgments in both of the criminal actions, and the entry of the involuntary bankruptcy, as well as the renewal of the counterclaim dismissed improvidently by the bankruptcy court. Stern v. Marshall, ___ US ___, 131 S. Ct. 2594, 2605 (2011); Granfinanciera, S.A. v. Nordberg, 492 US 33, 50 (1989).

This would have avoided the fire sale disposition of assets, including the four original SV 9 *Competizione* show cars, especially the Blood Red example featured in the last year episodes of “True Blood”. Initial serial number sports exotics often fetch over \$1 Million each,, with the star of a television show commanding an additional premium. Here, the Trustee disposed of all four to a “stalking horse” unidentified buyer, for a total of only \$80,000, or less than their value if crushed to scrap materials and sold by the pound.

Also, note the distribution of the liquidated assets to the close cabal of the Trustee, her counsel, and accountant. Appendix, Bankruptcy: Claims and Final Reports.

The decisions below, at a minimum, were in error for want of jurisdiction. In particular, please see No. CV-16-02006 EMC (ND CA 2016), Motion for Relief, FRCP 60(b), 8/15/16, and its Motion for Rehearing, submitted 8/29/16.

II. THE QUESTIONS PRESENTED ARE RECURRING ISSUES OF NATIONAL IMPORTANCE

The decisions in the trilogy of related cases, by the manner in which they were received, distributed, and decided in the circuit court – contrary to the federal and local rules, its general orders, and in particular, the relevant federal statutes – resulted in critical issues of public importance, calling to question the due process and equal protection provisions of the Constitution, as used under 28 USC § 1915.

Affected are indigent individuals’ interests in access to federal courts, therein distinguishing between those free and imprisoned, but applying its sanctions only to

those in custody, for the putative purpose of “filtering bad claims”, generally arising from complaints of confinement.

Since then, as here, it has been injudiciously applied to a legitimate challenge to the seizure and liquidation of assets through the strategic and coordinated pincer of criminal process, custody, and extradition to a distant and alien environment, with the purported propriety of federal involuntary bankruptcy, taken to him personally, but somehow reaching matters solely held in other commercial entities.

It seems, however, from this vantage as indistinguishable from the definition of tyranny, and a prime example of the type of abuses the venerable document in the care of this Court was to eliminate.

It is even more disturbing when a careful review over the history of the challenges to the deprivation of property from the bankruptcy court onward was quite likely perpetrated in large part by the clerks of the district and circuit courts, and possibly, while under their names, not by the Article III holders themselves.

Not so long ago, this Court truncated the jurisdictional overreach of the bankruptcy courts, established through practice over time, over their invasion of the authority exclusively reserved to Article III courts in 28 USC § 1334, but diluted somewhat by § 157, in its landmark opinion in Northern Pipeline Constr. Co. v. Marathon Pipeline Co., 458 US 50, 79 n. 31 (1982), to revolutionary effect.

Would it not be appropriate to now examine, to similar effect, the improper encroachment of those subordinate individuals with access to the means of generating and transmitting what appears to be genuine orders, but where such Article III authority rarely, if ever, appears under the verifiable signature of its apparent authors?

Would an attentive clerk have failed to recognize and distinguish a proper petition for rehearing *en banc* from a motion? Would such effective deputy clerk have ignored the requirements of 9th Circuit General Order 5.4(a), or of the statute based effect of 28 USC § 46(c) on 9th Circuit Rule 35-3, requiring that only those judges in regular active service, or have distributed to them, an *en banc* call, and that it must be so distributed upon its filing? Or, at a minimum, to assign the rehearing to the only panel that could “rehear” it: its original one? Do not such lapses constitute transgressions of due process where liberty or property interests are at stake?

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RELATED STATUS MATTERS

Recently, this petitioner served notice in the § 2254 review in No. 16-15253 of his filing of a first petition for post-conviction relief under ARS §§ 13-4231 – 13-4239, along with a full courtesy copy of that petition, rebutting the assertion of the State that it was futile or precluded from so doing. [It may, however, been incorrectly docketed in No. 17-15726] That matter is now pending and fully briefed in the Arizona Court of Appeals, Division One, in No. 1 CA-CR 17 – 0660 PRPC, with a

motion for its expeditious disposition, that such may soon also be filed herein to put to rest the assertion that this approach had not been, and could no longer be pursued, and as such, was exhausted by default, without recognizing that the action was alleged to have occurred prior to the 1992 amendments to ARCrP 32 that were limited thereafter.

At the time of charging, and which yet controls, the required service of sentence was not the eighty five percent now observed, but only one half to eligibility for release on supervision, and two thirds to absolute discharge, making the Arizona sentence under its circumstances now almost two years beyond its expiration of 7 July 2016.

The federal sentence is scheduled for release within one year, on 18 November 2018, with pre-release imminently available under 18 USC § 3624(c), even without the relief merited upon review of No. 17-15726.

These appellate efforts have not only been driven in pursuit of freedom and future for this petitioner, but also for the strategic and economic value of a hydro solar energy system developed by the holding company in prototype, and within two years of market presence, capable of providing virtually limitless energy for both transport and stationary applications, cleanly and safely.

It remains, as has been consistently stated since the defense offer of a plea agreement with the Government, to fully disburse full final statement balances from February 2010, onward together with Treasury Bill interest thereupon to all account holders, upon resumption of manufacturing operations, with the principal total of \$ 7,939,794 to be retired within approximately two years, with payments made from lowest balances upward, as had always been conducted. See, Appendix, Privileged Settlement Communication, 9/8/11.



CONCLUSION

For the foregoing reasons, the petitioner requests as follows:

1. That the Petition for Writ of Certiorari for the threshold issues proceeding *in forma pauperis* on appeal in review of Ninth Circuit No. 16-16556; and for Certificates of Appealability in full, in No. 16-15253 and in No. 17-15726 be granted.
2. That the pending motions to consolidate the three closely related appeals into a single appeal be granted, as essential to the understanding and success of these efforts, as well as for the considerable savings in the use of judicial resources.
3. That an expedited briefing schedule be ordered. A consolidated brief on the merits on the principal common issue of lack of subject matter jurisdiction, can be presented under 11 USC § 303(b), 7 USC § 13a-2, and 18 USC § 1341 within thirty days of the order to do so. While it should be possible to fully resolve all matters in this Court due to the completely dispositive nature of a showing of lack of subject matter jurisdiction, should it prove necessary, it is requested that any eventual remand be directed to the specific attention of Chief Judge Sidney R. Thomas.
4. That upon the hoped for grant of certiorari, that an order for an expedited disposition be directed in No. 1 CA-CR 17-0660 PRPC, to the attention of Chief Judge Samuel A. Thumma of Division One of the Arizona Court of Appeals, Phoenix, that its opinion be included in the consideration of that in No. 16-15253.

CERTIFICATE OF COMPLIANCE

This is to certify, pursuant to Rule 33.2(b), that this document has been prepared in Century Schoolbook 12 point font, in total text comprised of 5,543 words, exclusive of only the items in Appendix, and at under 40 pages for the presentation of all three Ninth Circuit appeals above listed, complies with the rule's requirements.

I declare, pursuant to 28 USC § 1746, that the foregoing is true and correct, and is supported by true and correct copies of each item incorporated in Appendix.

Respectfully submitted this 28th day of February, 2018.

/s/ **Giuseppe Viola**
Petitioner pro se

APPENDIX

Memorandum Decisions

No. 16-16556

Memorandum Decision (Leavy, Silverman, Bea CJJ), 1/12/17
Order (US District Court, ND CA, Chen, J), 7/27/16
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