

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Noshir S. Gowadia — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

Noshir S. Gowadia # 95518-022
(Your Name)

U.S. Penitentiary MAX, P.O. BOX 8500
(Address)

Florence, CO 81226-8500
(City, State, Zip Code)

None
(Phone Number)

QUESTIONS PRESENTED

QUESTION ONE: When one year prior to the Petitioner's arrest, the prosecutors had all the evidence in their possession (DISCOVERY) showing that 'no crime had even occurred', can an indictment be brought in and a trial be conducted? Can the prosecutor/AF redefine the Security Classification System [SCS] because the existing one prohibits by anybody the alleged classification of the information? Can people with zero education and zero experience in the subject matter be allowed to provide "expert" assessment to support the false charges?

QUESTION TWO: Should a Judge, who admitted in the Court that she knew very little (actually next to nothing) about SCS and also never learned it - the predominant issue - preside over the trial? She said that she will depend on the prosecutors, who brought in the above false charges, and the Court appointed defense lawyers who were working with the prosecutors and not for the Defendant. Seventh Amendment requires 'facts' to be presented to the jury. Should the Judge allow the prosecutor to use his own version of SCS and unqualified "expert" witnesses to deceive the jury? Under

those circumstances, are the convictions valid?

QUESTION THREE: The §2255 Motion provides sixteen (16) grounds for dismissal of all convictions based on multiple violations of the First, Fourth, Fifth, Sixth, Seventh and Eighth Amendments. In that case, can the Judge allow the prosecutors to write the ORDER denying the Motion and then she sign it, which does not answer the critical grounds and thus is nonresponsive to the Motion? To protect the false convictions, can the ORDER deny 'Certificate of Appealability'?

QUESTION FOUR : Can the Ninth Circuit Judges, without reading either the Motion or the Appeal, and using the exact same false arguments as the District Court ORDER, 'Rule 59(e)', case-laws, etc., refuse to review the Appeal? Constitution, based on at least six grounds, mandates the review of the Appeal by the Circuit Judges, it does not give them any option. Once again 'a neutral court' was absent.

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 A1, A3 to the petition and is

☒ reported at 3, 7, 8, 17, 25-32, 34; 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 A2 to the petition and is

☒ reported at 8, 22-26, 27, 33-34; 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 Feb 21, 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: April 14, 2017, and a copy of the order denying rehearing appears at Appendix ~~A2~~ A3

☐ 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

The prosecution, §2255 Motion and Appeal process involved multiple violations of the First, Fourth, Fifth, Sixth, Seventh and Eighth Amendments, as well as, Constitution's guaranty of 'presumption of innocence' and of 'a neutral court'.

A. AMENDMENT I

1. states, "Congress shall make no law... abridging the freedom of speech,..." Constitution allows the President (and only the President) to intrude upon this right and only in the case of 'national security' concern. It requires the intrusion to be minimal. This careful balance is reflected in the Executive Order defining the Security Classification System [E.O.]. E.O. Part I, sec 1.1 requires that before any information is classified, it must be shown that its revelation to an unauthorized person will cause harm to national security. The alleged classification of information in Counts 6, 8, 9-14 and 15 do not meet this requirement. (QUESTION ONE).

2. it gives the right "...to petition the Government for a redress of grievances." This Mandates the Circuit Court to review an Appeal; it does not give an option. So when the Ninth Circuit Judges refused to review the Appeal, they refused this right.

(QUESTION FOUR).

B. AMENDMENT IV

states, "The right of the people to be secure in their persons, houses, papers, and

effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause,..."

§2255 Motion shows that FBI agent Mohajerin had provided 25 justifications in his 'Affidavit for House Search'. Not a single one was true and he had all the evidence in his possession showing that. (DISCOVERY). (QUESTIONS TWO AND THREE).

C. AMENDMENT V

1. states, 'No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury...'

The initial indictment and the Petitioner's arrest were based on the allegation that he provided 'classified B-2 information' to Israel, Germany and Switzerland.

Prosecutor admitted in the open court that the information never existed in the B-2 program. (QUESTION ONE).

2. it continues, '...nor be deprived of life, liberty or property, without due process of law...'

"Due Process" requires providing a 'hearing' and 'evidence'.

The unqualified, compliant Judge sitting back and letting the prosecutor run the trial, hardly qualifies as "hearing".

Witnesses with no relevant education or experience in the subject matters providing "expert" testimony hardly qualifies as evidence.

(QUESTIONS TWO AND THREE).

D AMENDMENT VI

1. It states, "In all criminal prosecutions, the accused shall enjoy the right to a speedy... trial..."

For no justifiable reason, the trial did not start till 4 1/2 years after the arrest and after several breaks ended 6 months later. It was not a speedy trial.

2. It continues, "... to be confronted with the witnesses against him..."

The unqualified witnesses giving "expert" testimony was discussed previously.

3. It continues, "... to have compulsory process for obtaining witnesses in his favor..."

In 2007, prosecutors made the Information Security Oversight Office - final authority for classification - 's response to the Petitioner's letter disappear. E.O. requires the response to be within 6 months. They would have confirmed that all information, which the prosecutors claimed as classified, is prohibited from classification.

Agents threatened away Petitioner's fellow Purdue professors from testifying. They would have confirmed that the information in Counts 1, 2, 6, 7 and 8 was same as our graduate students' class projects and information in Counts 3, 4 and 5 is from engineering textbooks.

4. It continues, "... to have the assistance of counsel for his defence."

Prosecutors blocked 5M's equity in his house with a false forfeiture case, which they later withdrew. Then Court appointed ^{the} defense lawyers, who were working with the

prosecutors and not for the defendant. Even after the defendant asking twice, the Judge did not replace them because prosecutors objected. They did not use extensive exculpatory evidence in their possession (DISCOVERY), did not get the witnesses which Petitioner had recommended, did not question the credibility of "expert" witnesses with zero education/experience in the subject matter, did not question prosecutors' actions prohibited by the E.O. and even Constitution, etc. There was 'no assistance of counsel for defense'. (QUESTIONS ONE and TWO).

E. AMENDMENT VII

states, "... and no fact tried by a jury..."

The important word here is "fact" and not "jury". If the facts are not presented to the jury then the convictions are not valid, which is the case here. (QUESTIONS ONE, TWO and THREE).

F. AMENDMENT VIII

1. states, "Excessive bail shall not be required..."

Prosecutor had agreed to 2M dollar bail. However, at the bail hearing, when he found out that Petitioner's friends were prepared to post even 10M dollar bail, he changed his mind to 'no bail', not even a house arrest with the Petitioner's wife as a third party custodian. The purpose was to control/delay/destroy bail, damaging to the prosecutors.

2. also states, "nor cruel and unusual punishments inflicted."

After the Petitioner's convictions, BOP had determined his Sec/Cust levels as Med/GP and his stay to be near his children. USA/DHI had agreed to it. Still to protect the false convictions, she got him transferred to Colorado's ADXMAX facility and imposed Special Administrative Measures, more severe than for the terrorists and mass murderers. Five and half years of 24/7 isolation (to prevent his communications with anybody who could help), when added to physical and emotional tortures (yes, US tortures its own citizens), they amount to an inflicting of 'cruel and unusual punishments.'

Since no hearing or evidence was ever provided for the change, the action is another violation of the Fifth Amendment.

G. 'presumption of innocence' (affirmed in *Coffin v. United States*, 1895)

One year prior to the Petitioner's arrest, prosecutors/AF/FBI had all the evidence in their possession (DISCOVERY) showing that 'no crime had even occurred', indicating an 'actual innocence'. So when 21 counts are brought in and a trial is held, does it violate the 'presumption of innocence'? Answer is YES.

Constitution's affirmation of 'presumption of innocence' is one of ^{the} grounds which Mandates the Circuit Judges to review an Appeal; it does not give them an option. Ninth Circuit Judges refusing to review the Appeal fails to meet this requirement. (QUESTIONS ONE AND FOUR).

H. 'A neutral court' (affirmed by Justice Kennedy (2003), Late Justice Scalia (2014))
Constitution guarantees a right of 'a neutral court'.

When the unqualified, compliant Judge sits back and lets the prosecutor run the trial, when the § 2255 Motion shows multiple violations of several Amendments and provides 40 pages of solid evidence and the prosecutor unquestionably writes the ORDER refusing to vacate even a single conviction and then refuses to issue 'a certificate of appealability' to protect this fraudulent ORDER, which the Judge signs — the actions do not reflect 'a neutral court'.

This is another ground upon which the Constitution Mandates the circuit courts to review the Appeal; it does not give them an option. So, when the Ninth Circuit Judges, after talking to the USA/DHI for nearly a year without informing the 'pro se' Appellant and without reading the § 2255 Motion or Appeal and using the same arguments^{as} in the District Court's ORDER discussed above including calling clearly identified 'Constitutional' violations as 'procedural' violations to refuse a 'certificate of appealability' — once again the 'neutral court' was missing. Thus here also the Ninth Circuit Judges failed to meet the Constitution's Mandate.

STATEMENT OF THE CASE

Previously, the Petitioner held DOD Top Secret, DOE Q/SRD (full nuclear weapons information) and INTEL clearances. Also Government had installed a 'secure' facility in his home. His understanding of SCS is excellent.

The WRIT frequently references the Executive Order defining the SCS [E.O.]. It is a careful balancing of the 'national security' against the First Amendment's protection. Adherence to its requirements is mandatory for everyone. It has been issued by the President after President for the last 70+ years, w/o changing its requirements for classification.

A. QUESTION ONE: Why 'No Crime Had Even Occurred'.

1. Counts 1 and 2: They were based on the determination by AF agent Williams [Williams], with zero education and zero experience in the subject matter (he spells 'nozzle' as "nassel" in his notes-DISCOVERY), that the Petitioner had designed a "rectangular heat reducing nozzle for PRC Cruise Missile [CM]. He also provided "expert" testimony. He was supported by AF engineer Amos, with only 1 1/2 days educations in the subject matter, with his "expert" testimony.

This is when the technical papers in open source by experts, e.g., AIAA-82-0371 by Boeing (designers of the CM) and AIAA-81-0902 by DOD's Joint Cruise Missile Project Office (users) inform that CM neither need nor use "a heat reducing nozzle"

(because its heat signature is too low to begin with for an enemy to exploit).

Petitioner, a former member of the DOD's expert committee on missiles would know that.

Also, all CM in the world use round nozzle. The model of a CM, the prosecutor Sorenson [Sorenson] was holding in the Court had a round nozzle.

It was a class project of the Petitioner's Beijing U graduate students, similar to what his Purdue U graduate students had done previously. Copies of three of their projects' reports are in DISCOVERY. (Amendment VII)*

2. Counts 6 and 8: They were based on determination by Sorenson and AF Col. Vincent [Vincent] that the analysis of the above non-existent CM which the Petitioner provided to PRC was classified.

E.O. Part I, sec. 1.1, (a)(2) and (a)(4), each prohibits classification of this information. The (a)(2), because the information is not owned by or produced for the U.S. Government. The (a)(4) because the revelation of this information to an unauthorized person can not cause damage to the national security. How can University students' analysis do that? Also E.O. prohibits classification of information taught in accredited universities.

Additionally, in DISCOVERY, there is an October 8, 2004 memo from the State Dept. regarding the Defense Trade Controls Compliance. It lists Petitioner's several documents and informs (FBI) that DOD had determined that all these documents were

unclassified. They have similar, actually a lot more information, as in counts 6 and 8 claimed as classified, and for the systems where IR suppressors (heat reduction) are used. (Amendments I and VII)*

3. Counts 9-14: They were based on AF Col. Bujold, at Sorenson's asking, alleging that the 'B-2 information' which the Petitioner gave to Israel, Germany and Switzerland (our enemies? and for no money!) was "classified". This was when Sorenson admitted in the open court, that this information never existed in the B-2 program. B-2's Security Classification Guide [SCG] by not listing it, indicates that even if existed, the information was never classified (because E.O. prohibits its classification). Petitioner, the Principal Designer of the B-2's entire propulsion system would know that - if existed in the program, it would have come from him. Also B-2's SCG even declassified all of its design information in 2003. Since B-2 is an existing program with its own SCG, E.O. Part 2 prohibits everybody, including Col. Bujold, from classifying (reclassifying?) this information. (Amendments I and VII)

4. Count 15: Information alleged as classified here is for a '-737 commercial aircraft'. However, E.O. Part 1, sec. 1.4 prohibits classification of any information related to a commercial aircraft. (because its revelation can not harm the national security). (Amendments I and VII)*

* violations.

5. Count 19: Here Soxenson arbitrarily selected four (4) deposits from the Plaintiff's account and brought in money laundering charges. (Counts 16-19). However, he could not find any ties to a criminal act. So he dropped three counts (16-18) and just claimed Count 19, without providing any evidence. (Amendment VII)*

6. Counts 20 and 21: These counts were for 'undeclared income.' However, the undeclared income was same as the business expenses the IRS agents had in their possession (one of the agents even testified to it) but were not used in the calculation. Nobody questioned how can the total expenses of a corporation which operated in Australia, Singapore, Switzerland and U.S. be only 20% of the total income as shown in the account sheet which Soxenson showed in the Court as evidence. When all the information is accounted for in the agents' worksheets (DISCOVERY), there is no undeclared income. (Amendment VII)*

So as shown, 'No Crime Had Even Occurred.'

Constitution mandates the 'Presumption of Innocence.' It is defined in the Bill of Rights, especially in the Amendments V and VII. However, the concept goes back thousands of years.

The earliest mention of this concept the Petitioner is aware of is from

the Egyptian text of the 4th Century B.C. (Rule of Ptolemy). It mentions that in a dispute between two parties, the accuser (prosecutor) must prove the allegations "before three men whom they both accept" (jury?), the accuser was required to provide evidence (5th Amendment?) and if the accused was found innocent then the accuser was required to pay compensation.

The Supreme Court's affirmation of the right to "presumption of innocence" in *Coffin v. United States* from 1895, gives every indication of how fundamental the notion was thought to be "The principle that there is a presumption of innocence in favor of the accused is the undoubted law, axiomatic and elementary, and its enforcement lies at the foundation of the administration of our criminal law."

Here, there is not even a need for the "presumption of innocence". As shown, there is 'actual innocence'. So why bring in false indictments and conduct a false prosecution? What was the motive?

For Air Force, it was to continue the cover up of their purchase in 1990s, of the ineffective protection systems against heat-seeking missiles, in exchange of future lucrative jobs. This has resulted in the loss of lives and limbs of our soldiers in Iraq and Afghanistan. Petitioner was aware of it. It was necessary to silence him.

The FBI agent's racism is indicated in his statement to the Petitioner, "All you Asians and Middle Easterners are crooks and shifty and we Americans are going to fix you."

Sorenson, who always desired a federal judgeship, could not pass up a golden opportunity of a high profile prosecution, even if he had to fabricate it. When the Petitioner declined the offered plea, thus spoiling his opportunity, he brought in 15 more false charges, including one involving a death penalty or a life sentence.

This alone justifies vacating of all (false) convictions.

B. QUESTION TWO: 'How to Obtain the Convictions,' When No Crime Had Even Occurred'—
violation of the Constitution's Mandate of a 'Neutral Court.'

Justice Anthony Kennedy said the Constitution gives Americans the right to be tried in a neutral court. (In the case dating to 2003. Mississippi Band of Choctaw Indians involving a sexual molestation lawsuit against a local businessman.) USA TODAY, Dec 8, 2015.

Late Hon. Justice Antonin Scalia, during an appearance in Mississippi in December 2014, said, "giving the Constitution the meaning it had when it was adopted" and "bringing the Court back to the task of interpreting a text fairly, not injecting policy views into it."

1. Work with an unqualified, compliant Judge.

she admitted in the open Court that she knew very little (actually next to nothing) about the principal issue in the trial—SCS, and she will depend on the (dishonest) prosecutor (who brought in 21 false charges, discussed previously) and on the

Court appointed defense lawyers, who were working with the prosecutor and not for the defendant (discussed later). She just sat back and let the prosecutor run the Court. She approved everything that the prosecutor asked for, regardless of their violating the E.O. and even the Constitution. Constitution's mandate of a 'neutral court' was absent.

a. Approved the prosecutor's Motion saying 'the defense can not challenge the government's classification' (actually prosecution team's false reclassification), even though the E.O. Part I, Sec 1.8, (a) states, "Authorized holders of information who, in good faith, believe that its classification status is improper are encouraged and expected (emphasis added) to challenge the classification status...". This allowed the prosecutor to:

- (i) get Col. Bujold to classify "B-2 information," which never existed in the B-2 program. E.O. prohibits everybody from classifying this information, as discussed previously. (Amendment I and VII)*
- (ii) as previously explained, E.O. Part I, Sec 1.1, (a)(2) and (a)(4), both, prohibit classification of information of Counts 6, and 8; (a)(2) because the information is not owned by or produced for the U.S. Govt. so, Sorenson and Vincent invented a new definition of "owned by." They said, "since Gowadia (defendant) worked on the programs paid for by the U.S. Government, where he obtained his

knowledge (actually he imparted his knowledge) anything he does after that is owned by "the U.S. Government." E.O. does not have any such definition because it is non-sensical.

Their definition of (a)(4) violates the laws of physics. Neither Sorenson nor Vincent have any education in the subject matter. (Amendments I and VII).*

(iii) Since the E.O. Part I, Sec 1.4 prohibits classification of any information related to a commercial aircraft but allows it for 'weapon systems', so Sorenson and Vincent redefined the '-737 commercial aircraft' as '-737 class weapon system'! (Amendments I and VII)*.

If the Judge had permitted challenging of these information as E.O. requires, all these counts would have disappeared.

(Prior to the prosecution, Petitioner had written to the Information Security Oversight Office [ISOO], who would have confirmed that E.O. prohibits classification of all information alleged by the prosecutors as 'classified'. His 'certified' letter to ISOO, did not get there for 10 weeks. Their response required by E.O. to be within 6 months, the Petitioner never received. This act of disappearing mail continues, even for 'certified' and 'certified plus ret. xcpt. req.' mail, when it is damaging to the false prosecution or to the witnesses who provided false testimony and/or false evidence.

After that, USA/DHI Nakakuni ['Nakakuni'], unquestionably responsible

for this disappeared mail, wouldn't even permit the Petitioner to write to ISOO.

Disappeared mail includes to the Ninth Circuit (discussed later), other courts, Congress, SecDef, etc. Currently former USA/DHJ Nakakuni is a defendant in Denver Court for 'theft of U.S. mail'. Denver 1:16-cv-02626-MEH.

Apparently the Ninth Circuit Judges consider these as 'procedural violations' and not violations of the First and Sixth Amendments.

- b. Prosecutor agreed to a 2M dollar bail, thinking that it won't be met. When he found out in the Court, that Petitioner's friends were willing to put up even 10M dollar bail, he changed his mind to 'no bail', not even a house arrest with Petitioner's wife as a third party custodian. The reasons he gave this time were totally non-sensical and which he had never brought up before. This was in violation of the Eighth Amendment but the compliant Judge just ^{sat} there and approved it. Prosecutor's real purpose was to access/control/delay/destroy the Petitioner's mail, as discussed previously.

Ninth Circuit Judges considered this as a 'procedural violation' and not a violation of the Eighth Amendment.

2. Assign co-operating lawyers for the defense

Sorenson blocked nearly 5M dollar equity in the Petitioner's home by using false civil forfeiture case, which he could have used for his defense instead of the Court

appointed defense lawyers. These lawyers were working with the prosecutor and not for the defense. Petitioner had twice asked the Court to replace them, but it was not done because Sorenson objected. They did not use any of the exculpatory evidence they had in their possession. (DISCOVERY). (Amendment VI)* e.g.,

(i) Petitioner had pointed out to them, that the E.O. does not permit the prosecutor's Motion, approved by the Judge that the 'defense can not challenge the government's classification (reclassification?); they did nothing.

(ii) Petitioner had pointed out that every single justification provided by the FBI agent Mohajerin for the 'House Search Affidavit' was false and he had in his possession (DISCOVERY) evidence showing that. (Amendment IV)*; they did nothing.

(iii) Did not question how can Williams with zero education and zero experience in the subject matter, be allowed to provide "expert" testimony. Even after being asked by the Petitioner, they did not use Williams' notes showing him spelling 'nozzle' as "nossel," which would have questioned his testimony and destroyed Counts 1 and 2. (Amendment V)*.

(iv) Did not question IRS's analysis showing the total expenses of only 20% of the total income. When the IRS agent testified that they had additional expenses, the defense lawyers instead of asking, "why did you not use them?," abruptly stopped the cross-examination. Petitioner had provided them with his analysis using all of the expenses from IRS's own worksheets, which shows that when all the expenses are

accounted for, there was no diverted income, (Counts 20 and 21), defense attorneys ignored it.

- (v) Col. Vincent, a pilot, with practically no relevant training or experience in the subject matter provided "expert" technical testimony for Counts 1, 2, 6 and 8. Even after asked by the Petitioner, the defense lawyers did not use the State Dept. memo and the documents referenced in it, which show that information in Counts 6 and 8 were unclassified (because E.O. prohibits its classification) and Vincent willfully gave false testimony. (Amendment I and VII)*

So using the unqualified, compliant Judge, the co-operative defense lawyers and the unqualified, dishonest witnesses, the prosecutor obtained the convictions on 14 of the 21 counts. He withdrew 5 counts and on 2 others, the Petitioner was found 'not guilty.'

The important word in the Seventh Amendment is 'facts' and not jury. If the facts are not presented to the jury then the conviction is not valid. These convictions were obtained without presenting any facts. False testimony by unqualified people is not 'fact.' Petitioner believes that in this case, the District Court failed the Constitution's requirement of 'a neutral court.'

This information also justifies vacating of all convictions.

C. QUESTION THREE: 'How to Maintain the Convictions, 'When No Crime Even Occurred' - Violations of the Constitution's Mandate of a 'Neutral Court', Fifth and Eighth Amendments.

After the Petitioner's (false) convictions, BOP had determined his sec/cust levels as Med/GP (still shown on BOP computer) and his stay to be near his children in California. It was announced during the sentencing and Nakakuni had agreed to it.

Still Nakakuni - who neither had the jurisdiction over the Petitioner - using the same false arguments as in the trial and adding some more false accusations, got the BOP to locate him in Colorado's SuperMax facility and impose Special Administrative Measures [SAMS], more severe than for the terrorists and mass-murderers. Even though only the Attorney General is authorized to impose SAMS, its wording indicates it was Nakakuni who wrote the SAMS and the Wardens signed them (similar to the trial Judge.) There is no indication that the AG is even aware of it.

BOP manual requires a hearing and providing evidence, before the SAMS can be imposed because the Fifth Amendment mandates it. Even after the Petitioner asking every year, no hearing or evidence are provided. When the Petitioner filed a civil complaint, the U.S. Attorney in Denver rewrote the Complaint, called this clearly identified (underlined) Constitutional violation, a 'procedural' violation and the Judge dismissed the Complaint using "Iqbal, 556 U.S." Does it look

like a 'neutral court'?

Locating a Medium security prisoner in SuperMax facility and imposition of SAMs by themselves are violations of the Eighth Amendment. Add to that, the Petitioner's stay in 24/7 isolation for 5 1/2 years, where ^{he} his occasional outside 'rec' was in a 10'x12' cage, locked up alone with ironically the sparrows flying outside, free. It far exceeds UN's definition of "cruel" - a two weeks' stay under these conditions. The 10th Cir. Judges did not find the Petitioner's situation violated the Eighth Amendment. (Nakakuni had visited the 10th Cir. before the decision, without anybody informing the Petitioner - a principal in the case). Was a 'neutral court' present?

The purposes of the ADXMAX/SAMs were,

1. They gave Nakakuni control/delay/destruction of Petitioner's mail, mentioned above. On 14 October 2014, she visited ADX. She was provided with all of the Petitioner's documents, including 'legal mail'. She stole the documents damaging to her, to the false prosecution, etc. One of them was a DOJ envelope containing not only the prosecutor/defendant's Response but also a copy of the ORDER dismissing the Complaint, already written by the prosecutor, requiring only the Judge's signature. (the previous trial Judge.) Does it show a 'neutral court'?
2. Punish the Petitioner for refusing the plea and thus ruin Sorenson's hope of a

Federal judgeship.

On September 26, 2014 Appellant filed the Motion under 28 U.S.C. §2255.

On October 5, 2015 the District Court issued the ORDER-unquestionably written by the prosecutors and signed by the Judge denying the Motion. As shown previously, the Judge lacked the necessary understanding of SC5 - the predominant issue in the case.

While the Motion provides 16 Grounds for dismissal of all counts and points out multiple violations of the First, Fourth, Fifth, Sixth, Seventh and Eighth Amendments, neither the prosecutors' Response nor the ORDER addresses them properly. The Motion points out that the grounds were based on the violations of the Constitution and hence case-laws are irrelevant (D.C. Circuit Judges agreed—14-5154).

Still the Response and the ORDER, both, depend entirely on case-laws, e.g. United States v. Marchese, 341 F.2d 782, 789 (9th Cir 1965), etc.

To protect the false conviction and fraudulent ORDER, it declines to issue a 'Certificate of Appealability'.

The §2255 Motion also provides 40 pages of strong supporting evidence for the Sixteen grounds. ORDER completely ignores them. Petitioner's Answer to the prosecutors' Response discusses in detail all the misrepresentations. The important ones are summarized in the Appeal. Some highlights:

1. Ground One, Illegal House Search: §2255, 'Answer' discusses in detail FBI agent Mohajerin ['Mohajerin']'s Affidavit. It provides 25 justifications; not a single one was true and Mohajerin knew that - evidence informing that these statements were untrue was in his possession. For example,

On page 17 claims that several documents in Petitioner's possession were classified, while having in his possession, the previously mentioned DOS memo which informs that DOD had determined them as unclassified.

On page 19 states that Mr. Mel Zerden of DOS-DDTC-Licensing had told him verbally (determination has to be in writing) that the above documents also require an export license. Mr. Zerden in his memo dated 12 October 2004 (DISCOVERY) informs him that he had never seen those documents. He also testified to the same.

ORDER says that Mohajerin did not have any intention to deceive. Apparently, when every single justification given was false, according to the ORDER, the 'House Search' was still valid. (Amendment IV)*

2. Ground Six: 'Classified information of Counts 6 and 8.'

Motion states that the information in Counts 6 and 8 is prohibited from classification by E.O. because it does not meet its mandatory requirements of Part I, Sec 1.1 (a)(2) and (a)(4).

The ORDER uses deceit to protect the convictions. e.g.,

- a. Uses different parts of 1995 E.O. and of 2003 E.O. to say that even though 1995 E.O. prohibits classification, 2003 E.O. allows it. This was a Willful grand fraud. The classification requirements are exactly the same for both E.O.s and have not changed for the last 70+ years.
- b. Then the ORDER claims that if the jury believes that it is classified, then it is, no matter what the E.O. says.

3. Ground Sixteen: 'Violation of the Seventh Amendment.'

The entire Motion was based on the Seventh Amendment which requires the prosecutors to prove that the trial was based on facts and not fabrications and false testimonies. Since the prosecutors can not meet this requirement, ORDER (written by the prosecutors) commits another major fraud. It calls 'ineffective assistance of the counsel' which is a part of the Ground Fifteen in the Motion as Ground Sixteen here. Then it completely ignores the Ground Sixteen of the Motion - the most important one - which discusses the Seventh Amendment. Since the prosecution was not based on facts and the whole prosecution was fraudulent as shown in Question Two, the ORDER just can not find any argument, even a false one to refute this ground.

On October 28, 2015, Petitioner sent a motion for reconsideration.

On December 28, 2015 the Hon. Judge (prosecutors), denied the reconsideration

without a hearing and pursuant to Local Rule 7.2 (d). Once again the ORDER denies the 'Certificate of Appealability.' states, "... No reasonable jurist would find it debatable that Gowadia has procedurally defaulted on his claims." As shown later, the Ninth Circuit repeats the same argument.

Once again the Constitution's mandate of a 'neutral court' was missing. Can the Constitution's violations be governed by 'procedures' and 'Rules'? District and Ninth Circuit Judges seem to think so. This is how you maintain convictions, 'When No Crime Had Even Occurred.'

D. QUESTION FOUR: Constitution Mandates the Review of an Appeal, It DOES NOT Give An Option. In That Case, Can the Ninth Circuit Judges Deny the Review? Can these Judges Have Extensive Communications With the Prosecutors, Without Informing the Petitioner - a Principal Party? Can these Judges, Without Reading Either the Motion or the Appeal, Deny the Review, While Using the Same Non-Applicable Arguments as in the District Court Order?

1. Constitution requires the review of an Appeal on at least six (6) grounds.

a. Preamble of the Constitution states "...secure the Blessings of Liberty..."

Laws of statistics show that for a normal distribution (represents a non-corrupted system), even when accounted for better capabilities, the conviction rate can not be

much over 70%, which the honest countries like Sweden and Canada obtain.

So the US conviction rate of 95% (with 90% by plea acceptance) shows that at least 25% of the convictions are false - Petitioner's is one of them. The 90% plea acceptance shows how little faith the people have in getting a fair trial. (In the World Index of Least Corrupt Developed Countries, US ranks #32 of 45; this is one of the reasons).

Under these circumstances, an innocent man, by using the Appeal, can "secure the Blessings of Liberty..." - something one of the pillars of the Constitution assures. The other pillar 'establish justice' also requires the review.

So when the Ninth Circuit Judges refused to review the Petitioner's Appeal, they failed to fulfill the Constitution's mandate imposed upon them.

b. Constitution mandates a 'presumption of innocence'.

The subject was discussed previously. As shown, there is not even a need for the "presumption of innocence"; there is 'actual innocence'. 'No crime had even occurred.' If the Ninth Circuit Judges had reviewed the Appeal, they would have seen it. By refusing to review the Appeal, they presumed the Petitioner's "guilt." Thus they failed to meet this Constitutional mandate.

c. Constitution mandates a 'neutral court'.

The subject was discussed previously which showed that the District Judge

had failed to meet this requirement. When 'no crime had even occurred', the unqualified, compliant Judge just sits back and lets the prosecutor run the trial and approves everything he asks for - even when it violates the Constitution - resulting in conviction on 15 counts, it hardly qualifies as a 'neutral court'. The prosecutor writing the ORDER, denying to vacate a single Count and then the Judge signing it, defies the meaning of a 'neutral court'.

So in Feb 2016, the Petitioner sent an Appeal to the Ninth Circuit Judges by a 'guaranteed overnight delivery' which never reached the Court. As mentioned previously, the former USA/DH Nakakuni is currently a defendant in the Denver Court for the 'theft of the US mail' - this is one of them.

After three attempts - 'cert.' + 'ret. rpt. req.' - the Appeal got to the Ninth Circuit, which they promptly declined to review (No. 17-15025). Their ORDER (a copy enclosed) filed on Feb 21, 2017, states, "The request for a certificate of appealability ... is denied because appellant has not shown that 'jurists of reason would find it debatable whether the [section 2255 motion] states a valid claim of the denial of a constitutional (emphasis added) right and that jurists of reason would find it debatable whether the district court was correct in its procedural (emphasis added) ruling.'" Then lists various case-laws.

The problems with this ORDER are:

(i) The wording of the 'reason' given here is identical to what is given in the §2255 ORDER (unquestionably written by the prosecutors). - likely reason discussed later.

(ii) As discussed above, §2255 Motion lists multiple violations of the First, Fourth, Fifth, Sixth, Seventh and Eighth Amendments. The Appeal points them out but somebody needs to read it. The quickness of this ORDER indicates that the Circuit Judges never read them. They would know that violations were Constitutional and not procedural as they claim.

(iii) "Jurists of reason", like any reasonable person, would have read the Motion and the Appeal. Petitioner believes that they would not have agreed with the Judges.

Here the Judges failed to meet the Constitution's Mandate of a 'Neutral Court'. Why did it happen?

(i) As mentioned previously, Petitioner's 2016 submittal of Appeal never got to the Court. It took three attempts and nearly one year to get it there because of Nakakuni's theft of this Consti protected 'U.S. mail' - discussed previously. Petitioner's daughter contacted the court clerk's office, mentioned the long history of stolen mail and asked for help. She was told to contact the Hawaii Court, even though the mail was to their court. In the past, all other courts, e.g., DC District and Circuit

had shown understanding and provided help.

In the meantime, for almost a whole year, Nakakuni had extensive contacts and communications with this Circuit Court. She used it to poison their minds with false and fabricated evidence and fear of 'national security' - a standard fear she had also used to poison the minds of the ADX Wardens previously.

These Judges would hardly know much about the SCS, national security etc, but most importantly, their Constitutional Mandate is to 'establish justice'. Here they failed to meet this Mandate.

Petitioner, who is a 'pro se' Principal in this case, was never informed of these communications. Does it sound like a 'neutral court'?

A strong indication of this mind poisoning is that when the Petitioner received his first letter from the court clerk's office, ~~is that he~~ it spelled the Petitioner's name as 'Nashir' (a muslim name, ADXMAX holds many muslim terrorist) and not 'Noshir' (a zoroastrian name, like the three wise men who came to the christ's birth). No other court has made this error.

Its effect on the Judges is obvious.

- (ii) In his previous Appeal to the D.C. Circuit Court regarding this Court's 'Heck v. Humphrey' decision, the Petitioner had explained that 'Rules' provide smooth operation but do not necessarily provide Justice - 'facts' do. The prosecutors (with the help of

co-operative lawyers) maneuver the rules to prevent overturning of (false) convictions - Justice be damned. Petitioner used the Appeal of his criminal convictions to the Ninth Circuit as an example. Only arguments that his Appeals lawyers could bring up was his confessions. The Judges used only 'if the times were properly filled in' and confirmed the convictions, because the Rule(s) would not permit pointing out the facts, such as 'no crime had even occurred' and even the 'confessions' were falsely obtained (because the court appointed defense lawyers, who were working with the prosecutor had not raised them). e.g.,

- he has marked 'this is classified', the B-2 information which he knew did not exist in the program.
- he has marked 'this is classified', information from engineering textbooks, which he learned more than 40 years ago and taught his students ever since.
- most importantly, Mohajerin, after asking that an audio/video link be hooked up to another room, ordered that it not be recorded. It is against the FBI policy. The installing agent testified that in his 28 year service, he had never seen such practice before. It allowed Mohajerin to threaten Petitioner's wife and children to get confessions.

Petitioner had pointed out to the DC Circuit Judges that the Ninth Circuit Judges' decision in this case was analogous to the Judges accepting the "confession"

of a defendant that he strangled someone with his bare hands' because nobody could point out the 'fact' that 'THE MAN HAS NO ARMS' - Rules would not permit it.

Nakakuni illegally gets access to all of Petitioner's communications. It is very likely that she showed this information to the Ninth Circuit Judges which would have affected their 'neutrality' - a normal human response.

Thus the Court failed to meet the Constitution's Mandate of a 'neutral court.'

d. Constitution Mandates the courts to 'establish justice.' It means that the convictions must be based on facts. (Seventh Amendment).

The important word in the Seventh Amendment is 'facts' and not 'jury.' If the conviction was not based on 'facts,' the conviction is not valid, regardless of what the jury decides. If the Appeal provides 'facts' showing that 'no crime had even occurred' and the convicted^{ions} were obtained and maintained fraudulently and not 'based on 'facts,' then the Constitution Mandates a review so that the justice can be established. (PREAMBLE).

So when the Ninth Circuit refused to review the Appeal, they failed to meet this Mandate.

e. An Appeal made under the First Amendment right Mandates a review.

The First Amendment gives the right 'to petition the Government for a redress

of grievances.' The Petitioner in his cover letter had pointed out that the Appeal was made under his First Amendment right. Appeal was the 'petition', Circuit Court was the 'Government' and the false convictions and their maintenance were the 'grievances'.

So when the Ninth Circuit Judges declined to review the Appeal, they failed to meet this Mandate.

f. Framers intent in defining Article 3 Mandates a review.

When the Framers defined Article 1 and 2 giving them immense powers, they were concerned that some day, these powers will be used to impose 'a tyranny of oppression' on a common man. So they defined Article 3 and gave them responsibility to prevent it. Otherwise there was no need for it.

So when the Ninth Circuit Judges declined to review the Appeal, they failed to meet this Mandate.

In summary, Question One shows that 'no crime had even occurred'. Question Two shows that the convictions were obtained fraudulently. Question Three shows that the convictions were maintained fraudulently. Question Four shows that the Ninth Circuit Judges failed to meet multiple Mandates of the Constitution.

Framers' fear of 'tyranny of oppression on a common man' did come true.

REASONS FOR GRANTING THE PETITION

A LEGAL

1. The most important reason for granting the PETITION is that 'no crime had even occurred', something the prosecutors/FBI/AF knew one year before the Defendant/Petitioner's indictments and arrest, all the evidence showing that was in their possession. (DISCOVERY). Normally, a Court is Mandated by the Constitution to "presume Innocence", here there is "actual innocence." (QUESTION ONE)
2. The false convictions were obtained using an unqualified, compliant Judge, Court appointed defense lawyers, who were working with the prosecutors and not for the Defendant; people with zero education and zero experience in the subject matters provided "expert" testimony, prosecutors destroyed the exculpatory evidence, threatened away witnesses who would have shown that the charges were false, Constitution's Mandates of 'a neutral court' and 'establish justice' were absent. (QUESTION TWO)
3. Petitioner's § 2255 Motion shows multiple violations of the First, Fourth, Fifth, Sixth, Seventh and Eighth Amendments and provides 40 pages of supporting evidence. ORDER, unquestionably written by the prosecutor and signed by the Judge, declines to vacate even a single conviction. It grossly misrepresents the Motion, does not answer its critical grounds, identifies "Constitutional" violations as 'procedural' violations and uses irrelevant case-laws and rule(s). Then to protect the false convictions, ORDER

denies 'a certificate of appealability.' Constitution's Mandates of 'a neutral court' and 'establish justice' were absent. (QUESTION THREE)

4 Constitution, on six different grounds, Mandates the Circuit Court Judges to review the Appeal, it does not give them an option. So when the Ninth Circuit Judges, without even reading the Motion or the Appeal, refused to review it, they failed to fulfill these Mandates. They repeated the same reasons given in the District Court ORDER (written by the prosecutors). Accepted the District Court ORDER's false identification of 'Constitutional' violations as 'procedural' and once again used non-applicable case-laws and rule(s) to deny the 'certificate of appealability.' Their extensive communications with the prosecutors without informing the 'pro se' Appellant/Petitioner are disturbing. Once again Constitution's Mandated 'a neutral court' and 'establish justice' were absent.

Any and all of the above reasons require this Hon. Court to GRANT THE PETITION.

B. NATIONAL IMPORTANCE

For his various technical achievements, in 1991, former SecDef (Pres. Clinton) Dr. William Perry had acknowledged the Petitioner to the Defense Science Board as "if not the best in the world, then amongst the few very best..." Previously V. Adm. Millex - Chief of Naval Operations - and B. Gen. Glenn - B-2's second Prog. Mgr - had

told him, "very few people would ever know all that you have done for the safety and security of our country, but we do and we want to thank you." Petitioner can not discuss most of it because the work was in the defense, nuclear and intelligence fields. However, he can discuss that he was identified as "critical" to the B-2 program; only person thus identified, B-2 would not have happened without him. He designed its entire, unique propulsion system. Starting with President Carter and continuing with President Reagan, he was asked to provide weekly, a hand written (so nobody can change it) status report. When the information was significant, it went to the President. Petitioner was told that President Reagan used it in his discussions with President Gorbachev. He was told by someone very knowledgeable that his work played a very important role in the collapse of the Soviet Union and the end of the Cold War. All these when the Soviets had a multi-million dollar price on his head for his death or capture - and certain torture.

1. In 1991, he solved a very difficult problem in time-dependant chemistry which had alluded the best scientists in the world for over 50 years. It relates to the beginning of the universe. It allows us to change the physical structure of the molecules and it results in the gases moving away from the electro-magnetic region where they normally reside. A small team of world class scientists from Los Alamos, GE and the Petitioner confirmed the theory. They were able to move the water vapor away from

the visible range where it normally resides and made the previously visible contrail invisible.

This gives us an ability to move the newly produced CO_2 away from the electromagnetic range where it currently resides (same region where the earth radiates the heat away to space). The blockage causes the global temperatures to increase. Nearly $\frac{1}{3}$ of the CO_2 (2 billion tons per year) produced in the world is from powerplants. With the Petitioner's very complex flow nozzle sitting on the top, it will move this newly produced CO_2 away from blocking the heat radiated to space.

2. Previously, using a very different flow design (one that a dolphin uses when it travels at over 60 mph and outraces our destroyers), Petitioner reduced flow losses (drag) of two different inlets by 80% and 90% as compared to conventional flow design. (Dolphin reduces drag by 93%). Systems are verified and are on operational aircraft.

For supertankers with their special difficulties (size, partly in air and partly in water, etc.), Petitioner believes its drag can be reduced by 20% or more. When container ships, bulk carriers, etc. are added, the fuel consumption will be reduced significantly, which will greatly reduce the CO_2 production. These ships will have the nozzles with the above concept on their exhausts to further reduce the global warming.

(In 2000, Singapore's Keppel/Hitachi shipyard - one of the largest in the world - verified the feasibility of the modification. In 2002, Petitioner had gone to PRC to talk

to COSCO--the largest owner of supertankers in the world--about the project.

Prosecutor converted the trip to Counts 1 and 2, provided only 2 emails for the entire 2002 and destroyed the other because they showed the real purpose of the trip.)

The combination of the above two concepts by themselves gives a potential for greatly reducing the global warming and even reverse it. There are other concepts with smaller beneficial effects. If it were not for his false prosecution, the Petitioner--acknowledged as the "best in the world"--would have been working on this problem for the last 12+ years. The recent fires, floods and storms would have been less severe.

so, the Petitioner, most respectfully, wishes to ask this Hon. Court, 'who has really caused the harm to the security of our country, i.e., committed TREASON?'

This is another reason why he is most respectfully requesting that his Petition be granted so more harm to the security of our country be avoided.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

 Towadia, Pro Se.

Date: 14 November 2017

