

No. 18-5628

IN THE
SUPREME COURT OF THE UNITED STATES

John Richard Tacquard — PETITIONER
(Your Name)

vs.

State of Arizona — RESPONDENT(S)

ARIZONA STATE SUPREME COURT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)
PETITION FOR REHEARING, EN BANC OR
PETITION FOR WRIT OF CERTIORARI
SUPREME COURT RULE 44

John Richard Tacquard #071238
(Your Name)
ASP - Douglas/Gila Unit
P.O. Drawer 3867
(Address)

Douglas, Az. 85608-3867
(City, State, Zip Code)

(520) 364-7521
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QUESTION(S) PRESENTED

1. Did Arizona State trial court deliberately falsify court ruling to manipulate the facts and outcome of Evidentiary Proceeding for his own prejudices and personal incentives that also precluded State prosecutor's admitted suppression of physical material evidence from trial, knowingly violative of Court's Rule of Law, Due Process of Law, and Equal Protections Under the Law; in excess of his judicial function that inherently obstructed the appropriate administration of justice?

2. Has the imparative public importance and integrity of Arizona State Judiciary now been diminished upon the identified judicial misconduct of Superior Court, Commissioner Richard L. Nothwehr, and State reviewing court's permitting these improprieties alerted to that remain uncorrected, save two separate dissents against the majorities; that "forms no bar for relief sought, even prior to a reversal in opposition to them"; as intervening circumstances of substantial controlling effect incumbent upon United States Supreme Court plenary en banc review to establish precedent for all State Courts to maintain corrective processes consistent with the Rule of Law and essential fundamental rights?

LIST OF PARTIES

[] All parties appear in the caption of the case on the cover page.

☒ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Maricopa County Superior Court;
Hon. Richard L. Mothwehr,
Commissioner of the Superior Court
for the State of Arizona in and
for the County of Maricopa;
Maricopa County Attorney's Office;
DCA Jeffrey R. Duverolack,
Arizona State Court of Appeals;
Arizona State Supreme Court;
Respondents.

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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 _____ 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 _____ 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 A to the petition and is

☒ reported at No. CR-18-0049 PR; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the Arizona Appellate court appears at Appendix A-1 to the petition and is

☒ reported at No. 1-CA-CR 16-0393; 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 _____.

☐ 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 06-12-2018.
A copy of that decision appears at Appendix A.

☐ 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

UNITED STATES CONSTITUTION

ARTICLE III

Section 1. The judicial power of the United States shall be vested in one Supreme Court.

Section 2 ¶1. The judicial power shall extend to all Cases in law and equity, arising under this Constitution and the Laws of the United States... which shall be made under their authority; to all Cases... and controversies... between a State, or the citizens thereof.

ARTICLE VI

[2] This Constitution, and the Laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the Authority of the United States, shall be the Supreme Law of the Land; and the judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the contrary notwithstanding.

ARTICLE I Section 3

[1] Judgment in cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of Honor, Trust, or Profit under the United States; but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment, and Punishment, according to Law.

FIFTH AMENDMENT

No person... shall be deprived of life, liberty or property without due Process of Law.

SIXTH AMENDMENT

In all criminal prosecutions the accused shall enjoy the right... to be confronted with witness against him; to have compulsory process for obtaining witnesses in his favor; and to have the (effective) Assistance of Counsel for his defense.

FOURTEENTH AMENDMENT

Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; Nor shall any State deprive any person of life, liberty, or property without Due Process of Law; Nor deny to any person within its jurisdiction the Equal Protection of the laws.

STATEMENT OF THE CASE

On October 15, 2018 United States Supreme Court in cause *Tacquard v. Arizona* No. 18-5628, Petition for Writ of Certiorari was denied.

Petitioner timely files this Petition for Rehearing, En Banc on Petition for Writ of Certiorari that was filed July 24, 2018 and placed on the docket August 17, 2018 as No. 18-5628 by the Clerk of this Court. Attached are Supreme Court of the United States Notices and All the Submitted Exhibits in the Original Certiorari Petition are directed to this Court in support of this Petition for Rehearing.

Arizona State, Maricopa County Superior Court No. CR 2012-133963-001 is One Count Theft of Means of Transportation, class 3 felony taken to jury trial 09/03/2013 through 09/05/2013, guilty verdict rendered by a jury, no aggravating factors, Petitioner received 11-25 year prison term currently being served with a tentative release date of October 2022.

This case involves the Petitioner simply borrowing a jeep grand Cherokee from David Elmore, friend of 15 years at the time, whom informed the Petitioner that he had purchased the vehicle from some girl (Chanele Pauley) and was awaiting the title - title was in process to remove the lien hold as the vehicle was collateral on another party's bond - Elmore had a bill of sale in the mean time that was stored in the glovebox of the jeep, Petitioner borrowed the vehicle and was given a piece of a broken key to start it.

Petitioner was pulled over in the parking lot of Hrs hotel by Phoenix Police Department.

Petitioner was informed by police that the vehicle was stolen.

Petitioner was not so forthcoming when asked where he got the vehicle from - response was "friend of a friend."

Petitioner's moralistic compass, as stated at trial, He can't just give up his friend until a face to face agreement on his own accord to come forward and explain the situation.

Mr. Elmore did come forward prior to trial in a recorded telephonic interview with trial prosecutor DCA Duwendack and notes were taken (RT 09/04/2013 pg 20 lines 16-25; EXHIBIT C-2 Cert.P.) that was later confirmed destroyed in Pre-Evidentiary Hearing States response to Petitioner's motion to compel disclosure of State's Elmore interview 12/08/2015 "this interview was unable to be

located" (see Exhibit D-3 Cert. P.). DCA Duvendack testifies to no recollection of interviewing Elmore (E.H. 03/25/2016 pg 114 @ 23-25; pg 115 @ 1-19 - EXHIBIT C-1, Cert. P.)

Elmore did not testify at trial as a result of Court's limine state favored decision preventing bill of sale testimony revisited 09/04/2013 id pg. 10, 16 - Trial Court also deems Elmore irrelevant. id pg 23 @ 19-20 (Exhibit C-2 Cert. P.)

Petitioner was asked by officer Lence at the PPD substation after receiving a phone call from on scene officer, and inquired "what did you use to start the vehicle?"

Petitioner's response, "a piece of a broken key should be on the floorboard somewhere."

Officer Lence falsely claims Petitioner said "a screwdriver, or screwdriver type tool"

No screwdriver(s) nor piece of a broken key were collected, therefore no physical evidence was preserved in support.

On 06/27/2012, day after arrest, Detective Winston Brown #4833 came into contact with the vehicle and found the vin-plate on the dashboard was linked to a legal title for a jeep grand cherokee registered to a Chanele Pauley - title in process - no prior plates.

The vin-plate independently investigated by Det. Brown was removed and impounded as evidence & the SOLE piece of evidence preserved incident to Petitioner's arrest. (Det. Brown report attached to prose PCR petition - Rule 32: Exh. B-7 cert. P.)

* Winston Brown #4833 and physical vin-plate evidence was suppressed by trial prosecutor DCA Duvendack from Petitioner's trial and state limine proceedings precluding bill of sale testimony from defense, where vin-plate corroborates alternate ownership and supports bill of sale existence.

See DCA Duvendack 03/25/2016 E.H. Trans. pgs 103; 104; 105; 106; 109 - 112 (Exhibit C-1, Cert. P.) On vin plate issue.

Q: This is the first time you've actually seen one (vin-plate) taken off and brought into court? (id pg 109 @ 24-25)

Duvendack: "Yes, unless a case agent brought one into court that I didn't use as an exhibit, but I don't remember ever using one as a State's exhibit at trial." (id pg 110 @ 1-3)

Duendack admits to "handling many - hundreds of auto-theft cases (id pg 109 @ 12-13)

ALSO SHOULD BE EMPHASIZED DCA Duendack did recall a bill of sale or title bill of sale that was found in the vehicle (id pg 116 @ 16-25; pg 117 @ 1-18 / EXHIBIT C-2, Cert. P.)

DCA Duendack's testimony was aired under oath in the presence of trial court, Commissioner Nothwehr, Extraordinary Hearing in Post-Conviction Proceedings.

On 05/23/2016 Commissioner Nothwehr's Under Adversement Ruling (EXHIBIT C, Cert. P.) precluded DCA Duendack testimony. Court citations:

Pg 2 ¶ 5 "The screwdrivers were impounded"

pg. 2 ¶ 7 "Inventorying officers did not impound a specific screwdriver or other item which was allegedly used to start the vehicle."

Pg. 4 (2nd unnumbered paragraph)

"As noted above, the trial was fair and complete... two screwdrivers appear to have been kept in evidence by the prosecution."

INTENTIONAL JUDICIAL ERROR COMMITTED

Identifiers of Incomplete Trial

1. No bill of sale testimony upon trial court limine decision error;
2. No screwdriver(s) in evidence - no production to date (destroyed);
3. No VIN-plate physical/preserved evidence, linked to legal title;
4. No Det. Winston Brown testimony to date - indepen. VIN-plate invest.;
5. No Defense Witness Elmore presented to jury - result T.C. ruling;
6. No Willias Instruction, to lost/destroyed/suppressed evidence;
7. Chanele Pauley plead 5th Amend. outside jury presence;

ALL KNOWN FACTS COMMISSIONER WAS AWARE OF YET DEEMS "TRIAL WAS FAIR AND COMPLETE" IS PERJURIOUS DETERMINATION VIOLATIVE OF UNITED STATES CONSTITUTION SWORN UPON HIS OATH TO SUPPORT - THEN JUDICIAL MISCONDUCT PROVEN to cover for Brady Prosecutorial misconduct admitted to that intentionally sustains a corrupted conviction allows a continuing miscarriage of justice under color of law.

STATE COURT RECOGNITION OF TRIAL COURT ERROR COMMITTED
RULE 31 ARCP Direct Appeal No. 1-CA-CR13-0916 (Exhibit A-6)

Presiding Judge John C. Gemmill - Arizona Court of Appeals - dissents against majority asserting trial court error, and held majority errs in deeming hearsay limine ruling harmless. (id pg 8-9) quoting

"that the trial court erred in sustaining the state's objection when Tacquard attempted to testify what D.E. had told him that the Jeep was legitimate and there was a bill of sale in the glove box. This evidence was not hearsay because it was offered as evidence of Tacquard's state of mind. Because Tacquard's defense was that he neither knew nor had reason to know that the Jeep was stolen, the evidence was crucial."

"The majority errs, I respectfully submit, by deciding the erroneous exclusion of this evidence was harmless beyond a reasonable doubt."

"This wrongly excluded evidence went to the heart of Tacquard's defense that he did not knowingly control another person's means of transportation." end quote

Judge Gemmill further cites U.S. Supreme Court precedent

Bollenbach v. United States, 326 U.S. 607, 615 (1946) (From presuming too often all errors to be "prejudicial", the judicial pendulum need not swing to presuming all errors to be "harmless" if only the appellate court is left without doubt that one who claims its corrective process is, after all guilty. In view of the place of importance that trial by jury has in our Bill of Rights, it is not to be supposed that Congress intended to substitute the belief of appellate judges in the guilt of an accused, for ascertainment of guilt by a jury under appropriate judicial guidance, however cumbersome that process may be.)

Arizona Supreme Court Cause No. CR-15-0349 (Exhibit A-7)

Vice Chief Justice John Pelander voted to grant review.

FINALITY OF ARIZONA SUPREME COURT

Cause No. CR 18-0049 - PR (Exhibit B Cert. Pet.)

Petitioner in pro se petition for review alerted State Supreme Court to judicial and prosecutorial misconduct intentionally committed that was denied June 12, 2018 (Exhibit A Cert. Pet.)

NOTE: Justice Pelander and Judge Gemmill precluded from second round Rule 32 proceedings review, where May saying Judges did preside that prevented rational judges' determination as total negative impact going into federal courts.

United States Supreme Court denied petition for a writ of Certiorari dated October 15, 2018.

Petitioner herein timely files Petition for Rehearing on Petition for Certiorari,

REASONS FOR GRANTING THE PETITION

Exigent circumstances exist where ACTUAL INNOCENT FACTS AND EVIDENCE was intentionally suppressed by trial prosecutor and permitted under Trial Court discretion, further condoned by all state reviewing courts - save Appellate Judge Gremmell's Dissent and Justice Pelander's vote to grant review against majorities.

The Arizona State Courts Courts treatment in this case is unquestionably repugnant to the rights, privileges and immunities guaranteed in the United States Constitution and to those commissions held to their authority exercised inappropriately under the United States expressed precedence.

This case contains deliberate Due Process violations promoted and conducted by Arizona State Courts, and officers of the court, in disregard to their oaths of office that operate in guidelines set forth in the United States Constitution as the document that encompasses our Nation, that is NOT to be disparaged nor denied under any circumstances that is indeed present in this cause, identifiably unacceptable in any context.

The Supreme Court of the United States holds the standard in Supreme Authority discretion to the extent perjury subverts the judicial process and the rule of law that is the core responsibility of a judge's duty to take care that the laws are faithfully executed, and refrain from even the appearance of conduct that obstructs justice, striking blows at the rule of law itself.

It is an obstruction of justice to stifle, suppress, or destroy evidence knowing that it will be required in a judicial proceeding, that is not to be dealt with lightly.

The central premise of trial court's perjurious determination to circumvent and cover state's suppression of physical and material evidence from trial - IS AN IMPEACHABLE OFFENSE - no matter the forum or the circumstances in which it is committed.

Judges have been convicted and removed from office on the basis that they committed perjury, impeachment must be conducted to protect the integrity and viability of the judiciary.

In this instant case, we have Arizona State Superior Court Judge, Commissioner Richard L. Nothwehr, committing perjurous Court ruling that is a continual obstruction of justice that permits the knowing misconduct of the trial prosecutor deliberately suppressing critical exculpatory VM-plate evidence and actual innocence facts from the jury - that remains uncorrected to date by all state reviewing courts, aside from two separate Judges - IS UNACCEPTABLE and INDEFENSIBLE acts and omissions that violate the core principles of the judiciary.

The impeachment Clause Article I § 3 [7] of the United States Constitution directly concerns what the Framers intent, under perjurous facts, is to subvert Our Government that we can no longer persist in permitting in this case about the conduct of judges operating under the Federal Constitution, being sworn under oath or affirmation to uphold, then blatantly disregard those specific judicial responsibilities that violate and prevent assurances of those fundamental rights.

The maladministration is clear, the intent to prevent appropriate action by any means now places substantive risk to the public reputation and integrity of the Arizona Courts judiciary, corrupting the implicit facts, with record in support, of the claims positively identified, prudent to the United States Supreme Court exercise of discretionary jurisprudence to enforce and protect the rights of the Petitioner in this cause that have been denied and disparaged by Arizona State, is discrimination from State Courts.

In considering the question, it is the United States Constitution that we are expounding as the document that encompasses the guidelines of this nation and the judicial system, mandating specific Rules of Law to fundamental safeguards that are not to be denied nor disparaged.

No judiciary can violate the Constitution of the United States, NOR excuse those improprieties committed under color of law violations executed and permitted by all state trial and reviewing courts this case displays historically, and must be held accountable.

The United States Supreme Court, in *Scheuer v. Rhodes*, 416 U.S. 232, 94 S.Ct. 1683, 1687 (1974) stated that "When a state officer acts under a state law in a manner violative of the Federal Constitution, he comes into conflict with the superior authority of that Constitution, and he is in that case stripped of his official or representative character and is subjected in his person to the consequences of his individual conduct. The state has no power to impart to him any immunity from responsibility to the Supreme Authority of the United States." [Emphasis supplied in original]

The Court in *Yates v. Village of Hoffman Estates, Illinois*, 209 F. Supp. 757 (N.D. Ill. 1962) held that "not every action by a judge is in exercise of his judicial function... it is not a judicial function to commit an intentional tort even though the tort occurs in the courthouse."

Under Federal Law applicable to all states, the U.S. Supreme Court stated that if a court is "without authority, its judgments and orders are regarded as nullities. They are not voidable but simply void; and form no bar to a recovery sought, even prior to a reversal in opposition to them. They constitute no justification; and all persons concerned in executing such judgments or sentences, are considered in law as trespassers." *Elliot v. Peersol*, 1 Pet. 328, 340, 26 U.S. 328, 340 (1828) Provides a premise in this instant case for certiorari being granted where "no bar to recovery sought" is applicable under the circumstances.

PROSECUTORIAL MISCONDUCT

It is fundamental to the discovery rule established in *Brady v. Maryland*, 373 U.S. 83, 87, 83 S.Ct. 1194, 10 L. Ed. 2d. 215 (1963), that the materiality of a failure to disclose favorable evidence "must be evaluated in the context of the entire record."

The vin-plate here is the SOLE piece of evidence preserved incident

to Petitioner's arrest that was independently discovered, investigated and impounded by Detective Winston Brown, that was in the custody and knowledge of the state, DCA Jeffrey Duvendack, and deliberately Precluded/suppressed from jury trial under trial court discretion made fully aware at Post-Conviction Evidentiary proceeding 3-25-2016 Duvendack admitted in testimony to "never listing a vinplate nor submitting one as a state's exhibit in hundreds of auto theft cases" he prosecuted. (id pg 104@23; pg 109; pg 110@1-3 / Exhibit C-1 Cert Pet.)

Establishes alternate ownership facts in support of the bill of sale existence - limited by state favored trial court determination. (RT 09/04/2013 pgs 10; 16; 21-23 Exhibit C-2 Cert Pet.)

Duvendack: "but for anyone else to talk about this knowledge of transaction concerning the car, bill of sale that don't exist or they don't have, the state would submit A, is irrelevant. They go to that witness' mindset, and their knowledge; and B would be largely predicate if not outright hearsay."

-EH 03/25/2016 pg 116 - Exhibit C-1 Cert Pet. -

Q. Was there any bill of sale that you know of found in the car or any other documentation found in the car?

Duvendack: "I seem to recall there was in this case."

"I don't know if it was impounded or not. I don't recall it being introduced into evidence."

"And I can't recall if it was a title or a bill of sale or title/bill of sale both."

Duvendack was aware of a bill of sale that was recovered from the vehicle and wasn't sure if it was impounded or not - and at trial in state limine motion, orally argued on the eve of trial, stated: "the defense does not have nor can introduce bill of sale document" - is further Brady Prosecutorial Misconduct proven to prevent an acquittal.

Therefore Trial Court, Comm. Mathwehr, deeming "trial was fair and complete" is perjury under known facts admitted to trial court, and is unreasonable/contrary determination of U.S. Supreme Court precedent cited and U.S. Constitutional Amendments 5, 6, 14.

Under Brady precedent, the Supreme Court has held that "when a state suppresses evidence favorable to an accused that is material to guilt or punishment, the state violates defendant's right to due process, irrespective of good faith or bad faith of prosecution." *Cone v. Bell*, 556 U.S. 419, 129 S.Ct. 1769, 1782, 173 L.Ed.2d 701, 50 ALR Fed.2d 597 (2009).

Therefore, "the prosecution is obligated to produce certain evidence actually or constructively in its possession or accessible to it."

BRADY provides NO good faith NOR inadvertance as a defense for the state - Brady prosecutorial misconduct violation proven herein to prevent an acquittal upon actual innocence evidence withheld from trial.

CONTRARY TO CLEARLY ESTABLISHED FEDERAL LAW

A state court decision is "contrary to" clearly established precedent of the Supreme Court of the United States, justifying habeas relief, if the State Court either applies a rule that contradicts the governing law set forth in Supreme Court cases, or confronts a set of facts that are materially indistinguishable from a decision of the Supreme Court and nevertheless arrives at a result different from Supreme Court precedent, *Perry v. Johnson*, U.S. Tex. 2001, 121 S. Ct. 1910, 532 U.S. 782, 150 L. Ed. 2d 9, on remand 261 F.3d 541.

Trial Court's inconsistent determinations in 05/23/2016 Under Advisement PCR ruling (Exhibit C - Cert Pet.) commits several errors plainly committed in light of reliable relevant facts presented to the Court, and precluded DCA Duvendack's testimony all together in apparent cover up for not only State's admitted suppression of evidence under Brady - but also trial court's erroneous rulings in state favored lime determinations on bill of sale document being hearsay - when facts developed prove otherwise, bringing the judiciary into disrepute.

QUESTIONS OF FACT OR LAW

Federal Court may grant relief when a state court has misapplied a governing legal principle to a set of facts different from those of the case in which the principle was announced. *Payton v. Woodford*, CA. 9 2003, 346 F.3d 1204, Certiorari granted 124 S. Ct. 2388, 541 U.S. 1002, 158 L. Ed. 2d 962, reversed 125 S. Ct. 1432, 544 U.S. 133, 161 L. Ed. 2d 334

* Under 1996 Amendments to federal habeas statute dealing with appropriate treatment of legal determinations by state courts, phrase authorizing federal court to issue writ when state court's decision is "contrary to clearly established federal law, as determined by the Supreme Court of the United States," preserves rather than undermines federal court's independent interpretive power, and federal courts are free to express independent opinion on ALL LEGAL ISSUES in a case... it is Supreme Court determination that prevails.

Lindh v. Murphy, CA.7 (Wis.) 1996, 96 F.3d 856 certiorari granted in Part 117 S.Ct. 736, 519 U.S. 1074, 136 L.Ed.2d 643 reversed 117 S.Ct. 2059, 521 U.S. 320, 138 L.Ed.2d 481 on remand 124 F.3d 899.

The United States Supreme Court en banc independent review of certiorari facias regarding Arizona State Courts record - supplied in original petition for Writ of Certiorari Exhibiting 280 pages of relating material - combined with the additional arguments and controlling Supreme Court precedent should deem this cause cert-worthy.

Reasonable minded Jurists will easily conclude the facts established in the record that prosecutions blatant and repeated violations of well settled Constitutional obligations, mixed with inappropriate State Court determinations and ignorance to the facts presented and proven issues on all accounts, deprived the Petitioner of mandatory Due Process, Compulsory Process, Equal Protections of the Law resulting in an unfair and incomplete trial under the most basic standards applied.

Any subsequent ruling that precludes the facts of record and circumvented by State reviewing courts, even after being alerted to the intentional prosecutorial misconduct and judicial errors committed, exceedingly satisfies "contrary to and unreasonable application" of the Federal Constitution and United States Supreme Court precedent.

Petitioner establishes an intensely fact-specific case in which the Arizona State Courts have unquestionably applied inadequate rule of law that presently is sustaining a corrupted conviction under the miscarriage of justice standard that should not be allowed any further.

STANDARD OF REVIEW

The possible exception for the "unusual case" in which "a deliberate and especially egregious error of the trial type or one that is combined with a pattern of prosecutorial misconduct... infects the integrity of the proceeding." *Brecht v. Abrahamson*, 507 U.S. 619, 638 n.9, 113 S.Ct. 1710, 123 L.Ed.2d 353 (1993) "When a federal Judge is in grave doubt about whether a trial error of federal law had 'substantial and injurious effect or influence in determining the jury's verdict' that error is NOT harmless. And Petitioner Must win." *O'Neal v. McAninch*, 513 U.S. 432, 436, 115 S.Ct. 992, 130 L.Ed.2d 947 (1995). The Supreme

Court has explained that "[b]y 'grave doubt' we mean that in the judge's mind the matter is so evenly balanced that he feels in virtual equipoise as to the harmlessness of the error." *O'Neal* at 513 U.S. 435; see also *Fry v. Pliler*, 551 U.S. 112, 120, 127 S.Ct. 2321, 168 L.Ed.2d 16 (2007); accord *Wood v. Ercole*, 644 F.3d 83, 94 (2d Cir. 2011); *Meralillo v. Yates*, 663 F.3d 444, 455 (9th Cir. 2011) ("We hold that Brecht substantial and injurious effect standard governs our harmless error review in this case.")

Improper partiality to certain degrees is judicial misconduct from wrongful or inappropriate bias, prejudicial to the administration of justice, whether evidence adduced at trial or from some extraneous source. "A favorable or unfavorable predisposition can... deserve to be characterized as 'bias' or 'prejudice' because even though it springs from the facts adduced or the events occurring at trial, it is so extreme as to display clear inability to render fair judgment. The judge's actions must reveal such a high degree of favoritism or antagonism as to make fair judgment impossible." *Litky v. U.S.*, 510 U.S. 540, 551, 555, 114 S.Ct. 1147, 127 L.Ed.2d 474 (1994).

Judicial Code of Conduct Canon 2A provides:

"[A] judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."

"[A]n appearance of impropriety occurs when reasonable minds with knowledge of all the relevant circumstances disclosed by a reasonable inquiry, would conclude that the judge's honesty, integrity, impartiality, temperament or fitness to serve as a judge is impaired."

In *Re Charges of Judicial Misconduct*, 404 F.3d 688, 698 (2d Cir. Jud. Council (2005))

Arizona State Constitution Art. 6 § 26 Oath of Office

Each justice, judge and justice of the peace shall... take and subscribe an oath that he will support the Constitution of the United States and the Constitution of the State of Arizona, and that he will faithfully and impartially discharge the duties of his office to the best of his ability.

Simply distinguished, Arizona State Commissioner, Richard L. Northwehr, for the County of Maricopa Superior Court, has displayed historically throughout this cause which is dishonest, deceitful and prejudicial to the administration of justice, in the determination of knowing false Court rulings in conflict with state and federal laws in light of the facts

presented in a state court of law operating under United States Authority, and such judicial misconduct qualifies Commissioner's fitness as a candidate for disqualification and/or impeachment as a result of diminished judicial duties.

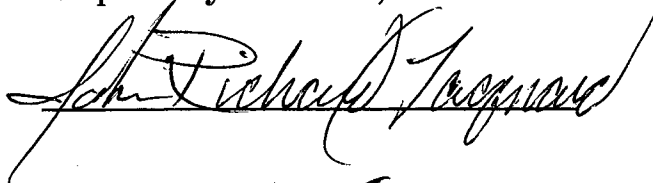
To what extent must this prejudicial miscarriage of justice continue.

Under the a forecited federal precedents in support of the factual circumstances proving the merits of this cause in favor of the Petitioner, the United States Supreme Court, in exercise of discretionary Supreme authority, should institute plenary en banc review on this petition for rehearing in conjunction with petition for Writ of Certiorari and exhibited records that satisfies compulsory requirements to grant the writ and implement corrective precedence of benchmark checks and balances, Under United States Constitution provisions Article III 331 and 2911; Article ~~VI~~ ^{VI} is governing Supremacy Clauses pertaining to these specific Rules of Law inadequately prevented of grave concern to the Court.

CONCLUSION

Petition for Rehearing en banc to the Petition for Writ of Certiorari should be GRANTED with plenary review of Arizona State Court record; and ORDER Vacating Petitioner's conviction and sentence with immediate release from Arizona State Custody; and compel corrective processes to the State Courts. The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: November 5, 2018

No 18-5628

IN THE
SUPREME COURT OF THE UNITED STATES

John Richard Tacquard PETITIONER

VS.

State of Arizona RESPONDENT(S)
PETITION FOR REHEARING, EN BANC
CERTIFICATE
USSC RULE 44

Petitioner, John Richard Tacquard, herein certifies that the grounds the Petition for Rehearing, En Banc, on Petition For Writ of Certiorari pursuant to USSC Rule 44, presents:
Intervening circumstances to the no bar for relief standard cited, and, Substantial controlling effect of the United States Supreme Court authority and jurisprudence to be implemented through this case for all state courts to improve upon and abide by to maintain a consistent system of law under the United States Constitution.

Petition for Rehearing is presented in good faith and not for delay.

RESPECTFULLY SUBMITTED this 6th day of December, 2018.

John Richard Tacquard
Petitioner Pro se

No. 18-5628

IN THE
SUPREME COURT OF THE UNITED STATES

John Richard Tacquard — PETITIONER
(Your Name)

VS.

State of Arizona — RESPONDENT(S)

PROOF OF SERVICE

I, John Richard Tacquard, do swear or declare that on this date, November 5th, 2018, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

Mark Brnovich - Arizona State Attorney General
1275 W. Washington St.
Phoenix, Az. 85007

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 5th, 2018

John Richard Tacquard
(Signature)

**Additional material
from this filing is
available in the
Clerk's Office.**