No. 06-330

In the Supreme Court of the United States

FATIMA WELIVER,

Petitioner,

v.

MERIT SYSTEMS PROTECTION BOARD,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Federal Circuit

PETITION FOR A WRIT OF CERTIORARI

HENRY EIGLES
Attorney At Law
10729 Evening Wind Court
Columbia, MD
(410) 730-1195

ALAN UNTEREINER*
Robbins, Russell, Englert, Orseck & Untereiner LLP
1801 K Street, N.W.
Suite 411
Washington, D.C. 20006
(202) 775-4500

* *Counsel of Record*

Counsel for Petitioner

330

QUESTIONS PRESENTED

The Civil Service Reform Act of 1978, 5 U.S.C. § 7701(a), provides that "[a]n employee * * * may submit an appeal to the Merit Systems Protection Board from any action which is appealable to the Board under any law, rule or regulation" and specifically confers on an "appellant * * * the right – (1) to a hearing * * *." The questions presented in this case are:

1. Does a government employee who withdraws her MSPB appeal challenging the termination of her job on the eve of the hearing engage in a "voluntary" and "knowing" waiver of her statutory right (*Johnson* v. *Zerbst,* 304 U.S. 458, 464 (1938)) if she acts out of a reasonable belief that – because of multiple, unwarranted restrictions placed by the Administrative Judge on her right to discovery and to confront and cross-examine the crucial witness against her – the hearing will be a sham and going forward with it will violate her due process rights and cause her to suffer severe reputational harm without any possible hope of relief?

2. Is the "knowing and voluntary" nature of a waiver of rights under 5 U.S.C. § 7701(a) conclusively established merely by an employee's expression, in a motion or other communication, of a desire to withdraw her appeal – without any need for further inquiry on the Administrative Judge's part into the surrounding circumstances – where the employee also communicates a request to discuss the proposed withdrawal with the judge?

No. 06- 06-331

IN THE

Supreme Court of the United States

LANCE WISE and NANCY WISE,

Petitioners,

v.

WACHOVIA SECURITIES, LLC,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

KENNETH K. DITKOWSKY
LAW OFFICES OF
KENNETH K. DITKOWSKY
5940 West Touhy Avenue
Suite 230
Niles, Illinois 60714
(847) 600-3421

Counsel for Petitioners

203267

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTIONS PRESENTED

The Seventh Circuit affirmed the District Court's dismissal of a lawsuit challenging the involuntary contractual arbitration panel's (NSAD) grant of summary judgment to Wachovia without a scintilla of evidence to support the decision. The questions presented are:

1. Does an National Association of Security Dealers arbitration panel have authority to dispense with the contractually required arbitration hearing and arbitrarily grant Wachovia summary Judgment. 9 U.S.C.A. § 10(a)(4).

2. Does an National Association of Security Dealers Arbitration panel have to apply any recognized standards in the grant of Summary Judgment to a Security Dealer or can they just *willy nilly* grant Wachovia Summary Judgment without any evidence to support the decision. 9 U.S.C.A. § 10(a)(4) (*see* page __ of Seventh Circuit Court of Appeal Decision).

3. Does the fact that an arbitration has only before it the affidavit of the petitioner (Lance Wise) and the findings of the California Office of Corporations and not a scintilla of evidence supporting the contentions of the respondent bar the arbitration panel from granting summary judgment to Wachovia.

4. Is it corrupt or misconduct pursuant to 9 U.S.C.A. § 10 for arbitrators of the National Association of Security Dealers to grant Summary Judgment to a member and against a customer consumer when the only evidence before it is that a Wachovia employed fiduciary investment advisor solicited an investment

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(2)

from a Wachovia customer, misrepresented the investment, and misled the consumer/customer in and during the course of the said investment advisor's employment.

5. Is it corrupt and misconduct pursuant to 9 U.S.C.A. § 10 for an arbitration panel to assume, imply, or otherwise conjure evidence in granting a Motion for Summary Judgment.

6. Is it a denial of *equal protection of the law* for the Federal Courts to abdicate and delegate their Constitutional mandate of protecting the Rights, Privileges and Immunities of Citizens in favor of 'forced' arbitration panels.

7. While an arbitration panel is not held to the strict rules that are mandated for a Court to follow in reaching a decision, is review by the Court pursuant to 9 U.S.C.A. § 10 so benign as to allow an arbitration panel to render Summary Judgment even though the Court admits that:

"the only evidence before the arbitrators was Mr. Wise's affidavit"

and that affidavit gave no comfort to the decision of either the arbitrators, the affirmation of the District Court or the affirmation 7th Circuit Court of appeals[1].

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1. Lance Wise is strongly suggesting that clairvoyance cannot be a basis for an National Association of Security Dealers award of Summary Judgment, or that the suggested fact that one or more of the National Association of Security Dealers might have the qualification of a medium does not obviate the responsibility of the Court pursuant to 9 U.S.C.A. § 10 to vacate a Summary Judgment entered by the National Association of Security dealers against the appellant upon admittedly no evidence whatsoever.

In The

Supreme Court of the United States

PHYLLIS BROWN,

Petitioner,

v.

DEKALB COUNTY, GEORGIA

On Petition For A Writ Of Certiorari To The Court Of Appeals Of Georgia

PETITION FOR WRIT OF CERTIORARI

DAVID J. BEDERMAN
Counsel of Record
1301 Clifton Road
Atlanta, Georgia 30322-2770
(404) 727-6822

STEVEN K. LEIBEL
GEORGE P. SHINGLER
CASEY GILSON LEIBEL, P.C.
Of Counsel
Six Concourse Parkway
Atlanta, Georgia 30328
(770) 512-0300

Attorneys for Petitioner

332

QUESTION PRESENTED FOR REVIEW

Should this Court's ruling in *McMillian v. Monroe County*, 520 U.S. 781 (1997), be construed as raising a presumption that States exercise effective control over such autonomous officials as county sheriffs, in order to categorize them as "arms of the State" for purposes of determining liability under 42 U.S.C. 1983?

No. 06-333 SEP 5 - 2006

In The
Supreme Court of the United States

PHELPS DODGE CORPORATION,

Conditional Cross-Petitioner,

vs.

SAN CARLOS APACHE TRIBE; STATE OF ARIZONA; GILA RIVER INDIAN COMMUNITY; ASARCO LLC; SAN CARLOS IRRIGATION AND DRAINAGE DISTRICT; CITY OF SAFFORD; GILA VALLEY IRRIGATION DISTRICT; FRANKLIN IRRIGATION DISTRICT; SALT RIVER PROJECT; CITY OF GOODYEAR; BHP COPPER INCORPORATED, and UNITED STATES OF AMERICA,

Cross-Respondents.

On Petition For Writ Of Certiorari To The Arizona Supreme Court

PHELPS DODGE CORPORATION'S CONDITIONAL CROSS-PETITION FOR WRIT OF CERTIORARI

RYLEY CARLOCK & APPLEWHITE
JOHN C. LEMASTER
Counsel of Record
MICHAEL J. BROPHY
CYNTHIA M. CHANDLEY
SEAN T. HOOD
One North Central Avenue,
Suite 1200
Phoenix, Arizona 85004-4417
Telephone: (602) 258-7701

Attorneys for the Conditional Cross-Petitioner Phelps Dodge Corporation

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

333

QUESTION PRESENTED

Did the Arizona Supreme Court err when it found that claim preclusion did not bar the San Carlos Apache Tribe from seeking additional rights to waters from the Gila River's tributaries where the tributaries were within the geographic scope of the *Globe Equity* adjudication in which the United States sought determination of all the Tribe's rights to the waters of the tributaries and where the *Globe Equity* parties did not split their claims to the tributaries through an express and clear statement in the consent decree?

No. 06-06-334

IN THE

Supreme Court of the United States

DONALD F. APPOLONI, SR.; RUSSELL C. BERGEMANN; CHARLES BRYCE ENGLE, as personal representative of the estate of Sandra Engle; PHYLLIS F. KLENDER; and ROGER J. PETRI,
Petitioners,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

SUZANNE K. CLARK
LEE & CLARK
24901 Northwestern Hwy.
Suite 113
Southfield, MI 48075
(248) 350-5900

JOHN M. WEST
(*Counsel of Record*)
LAURENCE GOLD
BREDHOFF & KAISER, P.L.L.C.
805 Fifteenth Street, N.W.
Suite 1000
Washington, DC 20005
(202) 842-2600

Counsel for Petitioners

September 5, 2006

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20001

334

QUESTION PRESENTED

Whether early retirement incentive payments, in exchange for which the plaintiff school teachers surrendered their statutory rights to continued employment under the Michigan Teachers' Tenure Act, constitute "wages" taxable under the Federal Insurance Contributions Act, 26 U.S.C. §§ 3101 *et seq.*

No. 06-

IN THE

Supreme Court of the United States

BETTY DOUGIA,

Petitioner,

v.

HOWARD GRAVES, individually and as Chancellor of the Texas A&M University System; JIM HULL, individually and as Director of Texas Forest Service; BOBBY YOUNG; GARY BENNETT; RICHARD DOTTELLIS; RODNEY MONK; DAVID COLTON,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

RICHARD J. CLARKSON, ESQ.
595 Orleans
Suite 500
Beaumont, Texas 77701
(409) 833-7713

Counsel for Petitioner

335

QUESTION PRESENTED

1. Whether there existed legal or factual issues under 42 U.S.C. § 1983, and, the Fifth and Fourteenth Amendments to the United States Constitution against the Texas Forest Service because it, and its employees, made a bad-faith investigation of alleged timber theft due to its custom and practice of turning a blind-eye to timber theft by the Texas timber industry.

2. Whether or not the Texas Forest Service, or any of its employees, were entitled to a qualified immunity under federal law for their bad-faith investigation of timber theft complaints and their willful blind-eye to this custom and practice by the Texas forest industry.

No. 06- 06-336 SEP 5 - 2006

IN THE

Supreme Court of the United States

ROSE'S OIL SERVICE, INC., *et al.*,

Petitioners.

v.

UNCLE SAM OF '76, INC.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE APPEALS COURT OF MASSACHUSETTS

PETITION FOR A WRIT OF CERTIORARI

THOMAS E. CLINTON
ROBERT E. COLLINS
CLINTON & MUZYKA, P.C.
One Washington Mall
Suite 1400
Boston, MA 02108
(617) 723-9165

KIMBLEY A. KEARNEY
Counsel of Record
EDWARD M. KAY
CLAUSEN MILLER P.C.
10 S. LaSalle Street
Suite 1600
Chicago, IL 60603
(312) 855-1010

Attorneys for Petitioners

203153

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

336

QUESTION PRESENTED FOR REVIEW

Whether the doctrine of implied indemnity created in *Ryan Stevedoring Co. v. Pan-Atlantic Steamship Corp.*, 350 U.S. 124 (1956), is obsolete and should be abolished to end the irreconcilable conflicts in its application by the Circuit Courts of Appeal and insure that, in admiralty, damages are apportioned based solely on the principles of comparative fault articulated in *United States v. Reliable Transfer Co.*, 421 U.S. 397 (1975), and *McDermott, Inc. v. AmClyde*, 511 U.S. 202 (1994)?

No.

Supreme Court of the United States

HARRY M. KATZ,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Chris Kokkinakos, Esq.
Counsel for Petitioner
17600 Northland Park Ct.
Southfield, MI 48075
Phone: 248-552-8900

339

QUESTIONS PRESENTED

Petitioner Harry M. Katz, M.D., was convicted by a jury for prescribing Schedule III and IV controlled substances to patients presenting symptoms for which the prescriptions were indicated under § 334.106 R.S.Mo. (2006). The conviction was based in part on expert testimony that a reasonable person would have investigated the patients further to determine whether the prescriptions were within or outside of the scope of medical practice and for a legitimate medical purpose under state law as construed by the federal government. A "willful blindness" instruction was given over specific objection by counsel.

1.) Did the "willful blindness" instruction allow the jury to infer that petitioner deliberately avoided knowledge on the basis of evidence that, at best, only supported the inference that a reasonable person in the situation would have deliberately avoided knowledge thereby allowing petitioner's conviction in the Eighth Circuit, in violation of the laws of the District of Columbia and Second and Seventh Circuits?

2.) Did evidence which established, at best, "recklessness" or "malpractice" by petitioner satisfy the beyond a reasonable doubt standard for proof of "intent" to violate the federal drug laws under the Fifth Amendment?

3.) Was petitioner's conviction in violation of *Gonzales v. Oregon*, 126 S. Ct. 904; 163 L. Ed. 2d 748; 2006 U.S. LEXIS 767 (2006)?

No. 06-340

In The
Supreme Court of the United States

NATIONAL ASSOCIATION OF HOME BUILDERS, *et al.*,

Petitioners,

vs.

DEFENDERS OF WILDLIFE, *et al.*,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

RUSSELL S. FRYE
FRYE LAW PLLC
3050 K Street NW,
Suite 400
Washington, DC 20007-5108
(202) 342-8878

NORMAN D. JAMES
(*Counsel of Record*)
FENNEMORE CRAIG, P.C.
3003 North Central Avenue,
Suite 2600
Phoenix, AZ 85012-2913
(602) 916-5346

DUANE J. DESIDERIO
THOMAS J. WARD
NATIONAL ASSOCIATION
OF HOME BUILDERS
1201 15th Street, NW
Washington, DC 20005-2800
(202) 266-8200

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTIONS PRESENTED FOR REVIEW

On December 5, 2002, the U.S. Environmental Protection Agency ("EPA") approved the State of Arizona's application to administer the National Pollutant Discharge Elimination System ("NPDES") program under Section 402(b) of the Clean Water Act, 33 U.S.C. § 1342(b). Section 402(b) states that EPA "shall approve each submitted program" unless EPA "determines that adequate authority does not exist" for the state to administer the program in compliance with nine specified criteria. There was no dispute that Arizona's program satisfied those criteria. Instead, environmental groups contended that EPA violated Section 7(a)(2) of the Endangered Species Act, 16 U.S.C. § 1536(a)(2), because EPA did not sufficiently analyze the effects of the loss of, nor require a sufficient substitute for, consultation with the U.S. Fish and Wildlife Service. A majority of the Ninth Circuit panel agreed and vacated EPA's approval of Arizona's program. The questions presented for review are:

1. Can a court append additional criteria to Section 402(b) of the Clean Water Act that require state NPDES programs to include protections for endangered species?

2. Does Section 7(a)(2) of the Endangered Species Act constitute an independent source of authority, requiring federal agencies to take affirmative action to benefit endangered species even when an agency's enabling statutes preclude such action?

3. Did the Ninth Circuit incorrectly apply the holding of *Department of Transp. v. Public Citizen*, 541

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(2)

QUESTIONS PRESENTED – Continued

U.S. 752 (2004), in concluding that EPA's approval of Arizona's NPDES permitting program was the legally relevant cause of impacts to endangered species resulting from future private land use activities?

No.

In the Supreme Court of the United States

BCI COCA-COLA BOTTLING COMPANY OF LOS ANGELES,
Petitioner,

v.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

PETITION FOR WRIT OF CERTIORARI

ERIC TODD PRESNELL
Counsel of Record
KARA E. SHEA
MILLER & MARTIN PLLC
1200 ONE NASHVILLE PLACE
150 FOURTH AVENUE NORTH
NASHVILLE, TENNESSEE 37219
(615) 244-9270

Counsel for Petitioner

Becker Gallagher Legal Publishing, Inc. 800.890.5001

Question Presented For Review

Under what circumstances is an employer liable under federal anti-discrimination laws based on a subordinate's discriminatory animus, where the person(s) who actually made the adverse employment decision admittedly harbored no discriminatory motive toward the impacted employee.

IN THE

Supreme Court of the United States

QWEST COMMUNICATIONS INTERNATIONAL INC.,
Petitioner,

v.

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLORADO *et al.*,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

PETITION FOR WRIT OF CERTIORARI

TERENCE C. GILL
SHERMAN & HOWARD, LLC
633 Seventeenth Street
Denver, Colorado 80202
(303) 297-2900

JONATHAN D. SCHILLER
DAVID R. BOYD
Counsel of Record
ALFRED P. LEVITT
KENNETH F. ROSSMAN, IV
TRICIA J. BLOOMER
BOIES, SCHILLER & FLEXNER LLP
5301 Wisconsin Avenue, N.W.
Washington, D.C. 20015
(202) 237-2727

September 6, 2006

Attorneys for Petitioner,
Qwest Communications International Inc.

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20001

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QUESTION PRESENTED

Whether production of privileged documents to federal law enforcement authorities in the course of federal investigations and pursuant to written confidentiality agreements waives the attorney-client privilege and the protections afforded to attorney work product with respect to private litigants in separate proceedings.

IN THE

Supreme Court of the United States

MINERAL COUNTY, TOWN OF SUPERIOR, ST. REGIS SCHOOL DISTRICT, SUPERIOR SCHOOL DISTRICT NO. 3, MONTANA COALITION OF FOREST COUNTIES, and TRICON TIMBER LLC,

Petitioners,

v.

ECOLOGY CENTER, INC.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

M. SHAUN DONOVAN
MINERAL COUNTY ATTORNEY
300 River Street
Superior, Montana 59872
(406) 822-3535

MICHAEL E. HAGLUND*
SCOTT W. HORNGREN
HAGLUND KELLEY HORNGREN
JONES & WILDER LLP
101 SW Main, Suite 1800
Portland, Oregon 97204
(503) 225-0777

Attorneys for Petitioners

* *Counsel of Record*

203174

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTIONS PRESENTED

1. Does the National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.*, or the National Forest Management Act, 16 U.S.C. § 1604(g)(3)(B), impose on the U.S. Forest Service a procedural requirement to conduct long-term, on-the-ground research to definitively conclude there will be beneficial effects to wildlife from thinning trees in old growth stands before deciding to conduct such a project to improve forest health, reduce the risk of wildfire and safely reintroduce prescribed fire?

2. Does the National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.*, impose on the U.S. Forest Service a procedural and substantive requirement to collect on-site soil data for every timber harvest unit before it completes the final environmental impact statement?

3. Does the National Forest Management Act, 16 U.S.C. § 1604(g)(3)(B), impose a "mandate to maintain wildlife viability" on the U.S. Forest Service?

No. 06- 06-345 SEP 7 - 2006

IN THE

Supreme Court of the United States

DOROTHEA DARAIO

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

STANFORD SHMUKLER*
JOEL M. SHMUKLER
105 Cheswold Court
Wayne, PA 19087
(610) 647-2058

BERNARD L. SIEGEL
Counsel of Record
1515 Market Street
Suite 1915
Philadelphia, PA 19102
(215) 751-9830

Counsel for Petitioner

* Stanford Shmukler, Esquire, a member of the Bar of this Court, passed away during the final stages of the preparation of this Petition.

203228

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

345

QUESTIONS PRESENTED

1. Whether the standard for admissibility of evidence of other crimes, wrongs and acts under Federal Rule of Evidence 404(b) to prove "intent" should require a high degree of similarity between the intent involved in the other acts, and the intent involved in the charged crime.

2. Whether the admission of evidence of other crimes, wrongs and acts under Federal Rule of Evidence 404(b) violates the basic principles and notions of fundamental fairness as understood by the Framers, and the modern jurisprudence of the rule has so far departed from its historical groundings, that it violates the Due Process and Double Jeopardy Clauses of the United States Constitution.

3. Whether, in light of nearly two decades of experience illustrating problems with the application of this Court's decision in *Huddleston v. United States*, 485 U.S. 681 (1988), this Court should consider whether that case was wrongly decided, or, in the alternative, whether that precedent requires refinement and clarification in order to comport with the Constitutional requirements of the Due Process Clause of the United States Constitution.

No. 06-346

In The

Supreme Court of the United States

UNIVERSAL COMPUTER SYSTEMS, INC., et al.,

Petitioners,

v.

DEALER SOLUTIONS, L.L.C., et al.,

Respondents.

On Petition For Writ Of Certiorari To The Court Of Appeals For The First District Of Texas

PETITION FOR WRIT OF CERTIORARI

JOHN C. ALLEN
Counsel of Record
JOHN C. ALLEN, P.C.
909 Fannin, Suite 1225
Houston, Texas 77010
Telephone: 713-654-7000
Fax: 713-654-7074

Attorney for Petitioners Universal Computer Systems, Inc., et al.

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

3-16

QUESTIONS PRESENTED FOR REVIEW

1. When the parties have agreed to arbitrate the "entire controversy," does the trial court have the authority to issue discovery orders and sanctions rulings that affect the merits of the arbitration?

2. When the trial court enters improper orders limiting the evidence at arbitration, is "harmless error" the proper standard of review?

3. Is it "harmless error" for a trial court to compel arbitration subject to rulings on the merits of arbitrable issues?

NO. _____

In the Supreme Court of the United States

MICHEL ABBOUD,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

JAMES R. WILLIS, ESQ.
OHIO REG. 0032463
Counsel of Record
THE 113 ST. CLAIR BUILDING, N.E.
SUITE 530
CLEVELAND, OH 44114-1214
(216) 523-1100
(216) 737-7412 FAX

Counsel for Petitioner

Becker Gallagher Legal Publishing, Inc. 800.890.5001

QUESTIONS PRESENTED FOR REVIEW

I

WHETHER A REVIEWING COURT, CAN DESPITE NUMEROUS FLAWS IT DETECTED IN THE SEARCH WARRANT AFFIDAVIT AND THE WARRANT ITSELF, NONETHELESS ON THE BASIS OF SEVERAL *AD HOC* RESULT-ORIENTED REASONING PATTERNS, APPROVE AND VALIDATE THE GENERAL EXPLORATORY SEARCHED THAT WERE ACTUALLY MADE OF CERTAIN HOMES AND PREMISES?

II

WHERE THE "MOTION TO SUPPRESS" RAISES FACTUAL ALLEGATIONS RELATIVE TO CONTENT OF THE SEARCH WARRANT AFFIDAVIT, THE SEARCH WARRANT ITSELF AND THE UNREASONABLE INTENSITY OF THE SEARCH; AS WELL AS, THE WHOLESALE SEIZURES MADE, CAN THE TRIAL COURT DENY AN EVIDENTIARY HEARING--ESPECIALLY WHEN ONE IS EXPRESSLY REQUESTED?

III

WAS DUE PROCESS DENIED THE ACCUSED WHEN THE COURT REFUSED TO EXPRESSLY LIMIT CERTAIN EVIDENCE, WHICH, IF ADMISSIBLE AT ALL, WAS NOT ADMISSIBLE AS SUBSTANTIVE PROOF - - AS IT WAS?

IV

GIVEN THE APPELLATE COURT DETERMINED COUNSEL FOR THE GOVERNMENT WAS GUILTY OF MISCONDUCT IN CONNECTION WITH A VICIOUS, VERY PERSONAL, ARGUMENT DIRECTED AT THE APPELLANT (AN ARAB-AMERICAN IN THE POST 9-11 WORLD), CAN THE COURT IN THE POST 9-11 WORLD MAKE THE ARBITRARY DETERMINATION THAT SUCH CONDUCT WAS NOT FLAGRANT AND REFUSE TO REVERSE THE CONVICTION?

V

GIVEN THE PETITIONER AND HIS CO-DEFENDANT WERE GIVEN UNLIMITED ACCESS TO THE FUNDS CENTRALIZED IN THE BANK FRAUD CHARGES, CAN IT BE SAID UNDER THE PECULIAR FACTS HERE, THE FUNDS WERE ILLEGALLY "KITED," WHICH MADE FOR THE BANK FRAUD CHARGES THE PETITIONER WAS CONVICTED OF?

VI

GIVEN THE ABSENCE OF ANY PROOF THOSE ACCUSED HEREIN SOUGHT TO DEFRAUD OR OTHERWISE CHEAT THE BANKS, FROM WHOM THE GOVERNMENT CHARGED THEY STOLE CREDIT (ACTUALLY REPAID BEFORE THOSE CHARGES WERE BROUGHT), CAN IT NONETHELESS BE SAID THEY WERE GUILTY OF "BANK FRAUD" IN VIOLATION OF 18 U.S.C., §1344?

VII

WHETHER THE EVIDENCE PRODUCED AGAINST THIS PETITIONER WAS SUFFICIENT TO SUPPORT A FINDING OF GUILT BEYOND A REASONABLE DOUBT.

No. 06-

IN THE

Supreme Court of the United States

MORTON BERGER,

Petitioner,

v.

STATE OF ARIZONA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE ARIZONA SUPREME COURT

PETITION FOR A WRIT OF CERTIORARI

NATALEE SEGAL
BALLECER & SEGAL
1095 East Indian School Road
Suite 600
Phoenix, AZ 85014
(602) 277-0044

LAURIE A. HERMAN*
4295 North 75th Street
Scottsdale AZ 85251
(480) 990-1440

* *Counsel of Record*

Counsel for Petitioner

202392

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTION PRESENTED

Petitioner Morton Berger is serving a 200-year prison sentence for possessing twenty images of child pornography, each image charged in a separate count. Arizona law mandates a prison sentence of 10 to 24 years for each image of child pornography possessed, and requires each sentence to run consecutively to every other sentence, with no possible probation, early release, or parole. The trial court did not conduct a proportionality inquiry to determine if this sentence was grossly disproportionate for a 52-year-old professional with no criminal history. A majority of the Arizona Supreme Court refused to consider the whole of Petitioner's 200-year sentence under Arizona's mandatory flat, consecutive sentencing scheme, as a factor in whether Petitioner's punishment violates the Eighth Amendment.

I.

Whether the Eighth Amendment forbids courts from considering the fact of a mandatory flat, consecutive sentencing scheme for multiple counts, rather than merely focusing on the sentence for a single count, when determining whether an entire sentence constitutes an excessive or cruel and unusual punishment under the Eighth and Fourteenth Amendments to the United States Constitution.

No. : _____ 06-352 SEP 8 - 2006

In the

Supreme Court of the United States

ALBERTO ORLANDEZ-GAMBOA,

Petitioner,

-against-

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BARRY M. FALLICK, ESQ.
ROCHMAN PLATZER FALLICK
STERNHEIM LUCA & PEARL, LLP
Attorneys for Petitioner
Alberto Orlandez-Gamboa
666 Third Avenue, 17th Floor
New York, New York 10017
(212) 697-4090

DICK BAILEY SERVICE (212) 608-7666 (718) 522-4363 (516) 222-2470 (914) 682-0848 Fax: (718) 522-4024
1-800-531-2028

352

QUESTIONS PRESENTED

1. Does a District Court comply with the requirements of United States v. Booker, 543 U.S. 220 (2005) by the status it has been given adequate consideration to the factors listed in 18 U.S.C. §3553(a), even though it had already determined what sentence to impose.

No. 06-353

IN THE

Supreme Court of the United States

ARLAINE & GINA ROCKEY, INC.,

Petitioner,

v.

CORDIS CORPORATION,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Federal Circuit

PETITION FOR WRIT OF CERTIORARI

FREDERICK A. TECCE
McSHEA\TECCE, P.C.
1717 Arch Street, 28th Floor
Philadelphia, PA 19103
(215) 599-0800

ERIK S. JAFFE
Counsel of Record
ERIK S. JAFFE, P.C.
5101 34th Street, N.W.
Washington, D.C. 20008
(202) 237-8165

THOMAS J. DUFFY
PATRICK J. KEENAN
DUFFY & KEENAN
The Curtis Center, Suite 1150
Independence Square West
Philadelphia, PA 19106
(215) 238-8700

Counsel for Petitioner

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QUESTION PRESENTED

A patent includes two fundamental elements, the specification and the claims. The specification describes how to practice the invention and includes various embodiments of the invention so that persons skilled in the art are enabled to use the invention. The claims, on the other hand, define the scope of the invention, are the things evaluated against the prior art when determining whether an invention is "novel," and are the measure of whether future devices or methods infringe upon the patent. Claims can and typically do exceed the scope of the particular embodiments in the specification, which are simply examples of the invention. The questions presented by this Petition are:

1. Whether the Federal Circuit erred by importing into a patent claim various limits implied from the specification, thereby improperly limiting the scope of literal infringement and infringement under the doctrine of equivalents?

2. Whether the Federal Circuit improperly restricted the claim scope of a pioneer patent, and the range of equivalents that can fall within that patent's claim, by importing into the claim various limits implied from the specification, thereby undermining the expansive claim construction and broad range of equivalents applicable to pioneer patents?

No. 06-357

In The

Supreme Court of the United States

MICHAEL C. ARMSTRONG,

Petitioner,

v.

STATE OF INDIANA,

Respondent.

On Petition For A Writ Of Certiorari To The Indiana Supreme Court

PETITION FOR A WRIT OF CERTIORARI

JOHN D. CLOUSE
IVAN A. ARNAEZ
(*Counsel of Record*)
123 N.W. 4th Street, Suite 317
Evansville, Indiana 47708
(812) 424-6671 Fax: (812) 434-4818

Attorneys for Petitioner Michael C. Armstrong

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OR CALL COLLECT (402) 342-2831

QUESTION PRESENTED

Is a person (presumed to know the law) chargeable with knowledge that a decision of an appellate court is wrong?