No. _____

IN THE SUPREME COURT OF THE UNITED STATES

IN RE TARYN CHRISTIAN

Petitioner,

On Petition for Writ of Mandamus
To the United States Court of Appeals
For the Ninth Circuit

PETITION FOR A WRIT OF MANDAMUS

TARYN CHRISTIAN
Petitioner *Pro Se*
Saguro Correctional Center
A4004046 LC-05
1252 E. Arica Road
Eloy, AZ. 85131

DOCKET ALARM
Find authenticated court documents without watermarks at docketalarm.com.

QUESTIONS PRESENTED FOR REVIEW

(1) Should a writ of mandamus issue directing the Court of Appeals to decide the merits of a motion to recall its appellate mandate on the grounds of after-discovered fraud on the court, and to avoid a miscarriage of justice, pursuant to this Court's precedents?

(2) Did the Court of Appeals act properly when it subverted the rules of appellate procedure, foreclosing Petitioner's access to the court—which effectively avoided redress and insulated review of the government's fraud directed upon the Ninth Circuit, or did it so clearly abuse its discretion as to justify the drastic and extraordinary remedy of issuance of the writ of mandamus?

(3) Should this Court exercise its inherent authority to address the exceptional circumstances of after-discovered fraud perpetrated upon the United States Supreme Court—where, in 2010, in opposition to a petition for a writ of certiorari, the government's prosecutors intentionally created the false impression to the Court, that Petitioner's case was "materially" distinguishable from Chambers v. Mississippi, 410 U.S. 284 (1973), when in truth, Petitioner's case may arguably exceed the corroboration in Chambers? In these exceptional circumstances, should the Court act to purge the record of fraud to protect the integrity of its own process and that of the federal courts below?

DOCKET ALARM Find authenticated court documents without watermarks at docketalarm.com.

PARTIES TO THE PROCEEDINGS

Pursuant to Rule 14.1, the following list identifies all of the parties appearing here and in the court below.

(1) The Petitioner here and in the United States Court of Appeals for the Ninth Circuit is Taryn Christian.

(2) Clayton Frank, Director, State of Hawaii Department of Public Safety, was the named Respondent in the lower-court proceedings.

(3) For purposes of this mandamus action, the United States Court of Appeals for the Ninth Circuit is the Respondent.

DOCKET ALARM
Find authenticated court documents without watermarks at docketalarm.com.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED FOR REVIEW..... i

INTERESTED PARTIES..... ii

TABLE OF AUTHORITIES.....

JUDICIAL ORDER BELOW..... 1

OPINIONS BELOW..... 2

JURISDICTION..... 2

CONSTITUTIONAL, STATUTORY AND OTHER PROVISIONS INVOLVED..... 2

STATEMENT OF THE CASE..... 3

I. Petitioner's Habeas Corpus Proceedings in the District Court..... 4

II. Appellate Proceeding in the Ninth Circuit Court of Appeals..... 6

III. The District Court Denies Petitioner's Valid Rule 60(b)(3) Motion Raising 'Fraud on the Court' as an "Application" to File a "Second or Successive" § 2254 Petition—Contrary to Gonzalez v. Crosby, 545 U.S.524 (2005)..... 7

IV. After the State's Repeated Requests for Extensions to Respond, Petitioner Filed a Motion to Hold in Abeyance the Transferred Motion and a Motion Recall the Appellate Mandate Due to Evidence of Fraud on the Court..... 8

(a) The Panel Disregarded Petitioner's Timely Petition for Rehearing *En Banc* and Entered the September 15, 2011 Order Disposing of the Case..... 8

(b) A Separate Panel of the Ninth Circuit Disregarded Gonzalez, and Denied the Motion as an "Application" to File Successive Petition..... 8

V. Petitioner's Underlying Rule 60(b)(d)(3) Proceeding in the District Court..... 9

DOCKET ALARM

Find authenticated court documents without watermarks at docketalarm.com.

TABLE OF CONTENTS
(Continued)

Page

(a) The Court Orders the Production of Specific Brady Materials..... 10

VI. The Newly Developed Evidentiary Record of the Rule 60(b)(d)(3) Proceedings Related to Withheld Brady Identification Evidence..... 10

(a) The District Court Issued Third Order for Brady Materials..... 15

(b) The State's Civil Attorneys—in Written Closing Argument—Enter a Judicial Binding Admission that Schmidt Initially Identified Burkhart..... 16

(c) The District Court Denied Rule 60 Relief Without Ruling on the Brady Violations Underlying Fraud—and Without Factual-Findings and Conclusions of Law Required Under Rule 52 Supporting the Judgment..... 17

(d) The Ninth Circuit Denied Mandamus Relief Despite District Court's Failure to Decide Brady and Failure to Make Factual-Findings..... 18

VII. When New Developments Proved Attorneys Worked a Fraud on the Rule 60 Court—the State Reversed its Position While the District Court Stood Silent..... 18

VIII. Petitioner's Underlying Motion to Recall the Mandate..... 19

REASONS FOR GRANTING THE WRIT..... 20

ARGUMENT..... 23

I. THIS COURT'S PRECEDENTS REQUIRED THE COURT OF APPEALS TO ADDRESS A MOTION TO RECALL THE MANDATE UPON A SHOWING OF FRAUD ON THE COURT..... 23

A. Fraud on the Court Standard for Recall of the Appellate Mandate..... 25

DOCKET ALARM
Find authenticated court documents without watermarks at docketalarm.com.

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS
Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS
Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS
Sync your system to PACER to automate legal marketing.