APPEAL NO_____

IN THE

SUPREME COURT OF THE UNITED STATES

IN RE: KEN EJIMOFOR EZEAH
Petitioner

-VS-

UNITED STATES OF AMERICA
Respondent

ON WRIT OF PROHIBITION UNDER 28 U.S.C. SECTION 1651(A) TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT
&
APPLICATION FOR RELEASE PENDING APPEAL ON WRIT OF PROHIBITION UNDER RULE 22-5 SUPREME COURT RULE.

BRIEF(S) SUBMITTED TO ASSOCIATE JUSTICE SONIA SOTOMAYOR BY REASON OF EXTRAORDINARY CIRCUMSTANCES PURSUANT TO RULE 22-1 OF THE SUPREME COURT RULES

TRANSFER OF PETITION TO ASSOCIATE JUSTICE SONIA SOTOMAYOR WITH SUPERVISORY CONTROL OVER THE TENTH CIRCUIT UNDER SUPREME COURT RULE 22-1

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QUESTIONS PRESENTED ON WRIT OF PROHIBITION

(1)WHETHER THIS COURT SHOULD EXPAND THE FRAME-WORK DECIDED IN "UNITED STATES V. HAHN",IN THE TENTH CIRCUIT'S DETERMINATION OF A KNOWING AND VOLUNTARILY MADE APPEAL WAIVER AND GUILTY PLEA,WHERE DESPITE THIS COURT'S INSTRUCTIONS IN "UNITED V. McCARTHY",THERE REMAINS A CIRCUIT SPLIT ON ITS APPLICATION.

(2)WHETHER THE "UNITED STATES V. GALLOWAY" ENBANC DECISION IN THE TENTH CIRCUIT,PREVENTED THE PANEL FROM UTILIZING ITS "INHERENT EQUITABLE AUTHORITY" TO SUPPLEMENT THE RECORD ON APPEAL,TO RESOLVE AN INEFFECTIVE-ASSISTANCE CLAIM ON DIRECT APPEAL,EVEN WHERE THE DEFENDANT HAS MADE A COLORABLE SHOWING OF ACTUAL INNOCENCE.

LIST OF PARTIES

IN RE: KEN EJIMOFOR EZEAH

-VS-

UNITED STATES OF AMERICA

THE NAMES OF ALL PARTIES APPEAR IN THE CAPTION OF THE CASE ON THE COVER PAGE. THERE ARE NO ADDITIONAL PARTIES.

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STATEMENT OF JURISDICTION

The Supreme Court of the United States has original jurisdiction over three categories of cases. First, the Supreme Court can exercise original jurisdiction over "actions proceedings to which ambassadors, other public ministers, consuls, or vice consuls of foreign states are parties." See, Maryland v. Louisiana, 451 U.S. 725, 737 (1981). Second, the Supreme Court also possesses original jurisdiction for "(all)n controversies between the United States and a State." 28 U.S.C. Section 1251 (b)(2). Finally, Section 1251 provides for original jurisdiction in the Supreme Court, for "all) actions or proceedings by a state against the citizens of another state or against aliens." See, e.g. Oregon v. Mitchell, 400 U.S. 112 (1970), United States v. Louisiana, 339 U.S. 699 (1951), United States v. California, 332 U.S. 19 (1947).

The statutes defining the Supreme Court's jurisdiction between "appeal" and "certiorari" as vehicles for appellate r review of the decisions of state and lower federal courts. Where the statute provides for "appeal" to the Supreme Court, the Court is obligated to take and decide the case when appellate review is requested. Where the state provides for review by "writ of certiorari," the Court has complete discretion to hear the matter.

The Court takes the case if there are four votes to grant certiorari. Effective September 25, 1988, the distinction between appeal and certiorari as a vehicle for Supreme Court review was virtually entirely eliminated. Now almost all cases come to the Supreme Court by writ of certiorari. Pub. L. No. 100-352, 102 Stat. 662 (1988). The date on which the United States Court of Appeals decided my case July 2018.

WRIT OF PROHIBITION PURSUANT TO 28 U.S.C. SECTION 1651(a) IN AID OF THE SUPREME COURT'S JURISDICTION.

(A) The Supreme Court and all courts established in aid of their respective jurisdictions and agreeable to the usages and principles of law.

(b) An alternative writ or rule may be issued by a justice (Chief Justice Roberts) to whom an application to a writ of Prohibition is submitted may refer it to the Court for determination.

The date on which the United States court of Appeals decided my case was July 20, 2018.

CONSTITUTIONAL AND STATUTORY PROVISIONS

LAW RELATED TO STRUCTURAL ERRORS

In conducting harmless error analysis of constitutional violations, including direct appeals and especially habeas generally, The Supreme Court repeatedly has reaffirmed that "(s)ome constitutional violations ...by their very nature cast so m much doubt on the fairness of the trial process that, as a matter of law, they can never be considered harmless. Safferwhite v. Texas, 486 U.S. 249, 256 (1988); accord Neder v. United States, 527 U.S. 1, 7 (1999)("W)e have recognized a limited class of fundamental constitutional errors that ';defy analysis by "harmless error:" standards.'...Errors of this type are so intrinsically harmful as to require automatic reversal (i.e. 'affect substantial rights') without regard to their effect on the outcome.").

Sullivan v. Louisiana, 508 U.S. 275, 279 (1993)("Although most constitutional errors have been held to harmless-error analysis, some will always invalidate the conviction "(citations omitted); id at 283 (Rehnquist, C.J., concurring); United states v. Olano, 507 U.S. 725, 735 (1993); Rose v. Clark, 478 U.S. 570. 577-78 (1986)("some constitutional errors require reversal without regard to the evidence in the particular case ...(because they) render a trial fundamentally unfair"), Vasquez v. Hillary, 474 U.S. 254, 283-264 (1986); Chapman v. California, 386 U.S. 18, 23 (1967)("there are some constitutional rights so basic to a fair trial that their infraction can never be treated as harmless error").

A JUDICIAL NOTICE/STATEMENT OF ADJUDICATIVE FACTS PURSUANT TO RULE 201 OF THE FEDERAL RULES OF EVIDENCE ON PLEA AGREEMENT.

The Right to Effective Assistance of Counsel. See, Kyles v.. Whitley, 514 U.S. at 435-436; United States v. Cronic, 466 U.S. 648, 654-57 (1984); Hill v. Lockhart, 28 F.2d 832, 839 (8th Cir. 1994)("It is unnecessary to add a separate layer of harmless-error analysis to bar evaluation of whether a petitioner has presented a constitutionally significant claim for ineffective assistance of counsel").

LAW RELATED TO STRUCTURAL ERROR OR CONCEALMENT AND MANIPULATION OF EVIDENCE ON PLEA AGREEMENT.

Included in t he rights granted by the U.S. Constitution, is the protection against prosecutorial suppression or manipulation of exculpatory evidence and other prosecutorial and judicial failures that amount to fraud upon the court. Failure to make available to defendant's consul, information that could well lead to the assertion of an affirmative defense is material, when 'materiality' is defined as at least a "reasonable probability that had the evidence been disclosed tot he defense, the result of the judicial proceedings would have been different. Kyles v. Whitley, 514 U.S. at 435 (quoting United States v. Bagley, 473 U.S. 667, 682 (1985)(plurality opinion); id at 685 (White, J,. concurring in judgment)).

In addition to Bagley, which addresses claims of prosecutorial suppression of evidence, the decisions listed below-all arising in "what might be loosely be called the area of constitutionally guaranteed access to evidence," Arizona v. Youngblood, 488 U.S. 51, 55 (1988)(quoting United states v. Valenzuela-Bernal, 458 U.S. 856, 867 (1982) or require proof of "materiality" or prejudice.

The standard of materiality adopted in each case is not always clear, but if that standard requires at least a "reasonable probability" of a different outcome, its satisfaction also automatically satisfies the Brecht harmless error rule. See, e.g. Arizona v. Youngblood, supra at 55 (recognizing the due process violation based on state's loss ort destruction before trial go material evidence); Pennsylvania v. Richie, 480 U.S. 39, 57-58 (1987)(recognizing due process violation based on state agency's refusal to turn over material social services records; "information is Material" if it "probably would have changed the outcome of his trial "citing United States v. Bagley, supra at 685 (White, J,. concurring in judgment)).

Ake v. Oklahoma, 470 U.S. 68, 83 (1985) (denial of access by indigent defendant to expert psychiatrist violates Due Process Clause when defendant's mental condition is "significant factor" at guilt-innocence or capital sentencing phase of trial); California v. Trombetta, 467 U.S. 479, 489-90 (1984)(destruction of blood samples might violate Due Process Clause, if there were more than slim chance that evidence would affect outcome of trail and if there were no alternative means of demonstrating innocence).

United States v. Valenzuela-Bernal, supra at 873-874 ("As in other cases concerning the loss (by state or government of material evidence, sanctions will be warranted for deportation of alien witness only if there is a reasonable likelihood that the testimony could have affected the judgment of the Trier of fact." Chambers v. Mississippi, 40 U.S. 284, 302 (1973)(evidentiary rulings depriving defendant of access to evidence "critical to (his) defense 'violates traditional and fundamental standards of due process."); Washington v. Texas, 388 U.S. 14, 16 (1967)(violation of Compulsory process Clause when could arbitrarily deprived defendant of "testimony (that) would have been relevant and material, and ...vital to his defense.").

LAW RELATED TO STRUCTURAL ERROR FOR JUDICIAL BIAS

Included in the definition of structural errors, is the right to an impartial judge, i.e. the right to a judge who follows the constitution and Supreme Court precedent and upholds the oath of office. See, e.g. Neder v. United States, supra., 527 U.S. at 8 ("biased trial judge" is "structural error" and thus is subject to automatic reversal"); Edwards v. Balisok, 520 U.S. 461, 469 (1997); Sullivan v. Louisiana, 508 U.S. at 279; Rose v. Clark, 478 U.S. 570, 577-78 (1986); Tunney v. Ohio, 273 U.S. 510, 523 (1927).

STATEMENT OF THE CASE

Petitioner Ken Ezeah appealed from a judgment of the District Court, sentencing him to a term of imprisonment of 132 months. He argues Counsel Wyatt and Mba coerced him into entering as unintelligent and involuntarily made plea of guilty. Rehearsing the question a and answers that the judge would ask him during the Rule 11 Colloquy, he was told any deviation from the rehearsed answers would lead to the rejection of the plea bargain agreement and the termination of the oral agreement to grant a reduction in sentence for substantial assistance. This agreement included being a material witness for the government in the trial of his co-defendant Ms. Akunna Ejifor.

Ken Ezeah also attacks the Government for information elicited from him during three FBI interviews, during the course of which, the Government inadvertently revealed exculpatory information about the 'Black Axe' organization, whose two most senior principals are Franklin, A.K.A. Edward Peter Duffy and Anthony Benson. Both men were dispatched to he United States to enlist ken Ezèah's participation and logistical help, utilizing both cell phones and computers to facilitate the "Romance ' Scam.

Ken Ezra had obtained $250, 000 in a business loan with a substantial balance, which Black Axe has liquidated and paid off on behalf of Ken Ezeah. In exchange for this so called benevolent act, Ken Ezeah had to literally answer to the beck and call, an do the bidding of 'Black Axe,' Edward Peter Duffy, A.K.A. Franklin, and Anthony Benson in the illegal activities of the 'Romance' scam. Ken Ezeah argues that, despite incontrovertible evidence procured from the three F.B.I. interviews, his counsel(s) failed to petition the court to withdraw his plea of guilty, by reason of a viable defense of duress. Ken Ezeah also contends Counsel(s) offered ineffective assistance of counsel ion failing to assert an affirmative defense of duress and stricticissimi juris, with respect to the insufficiency of the evidence. He further attacks the willfulness and mental state of the criminal acts he was coerced into committing, including the fact that his case being the traditional 18 U.S.C. Section 371 case, there is a requirement of an overt act.

ken Ezeah further argues the constitutionality of the statue allocating he burden of proof to the defendant for an affirmative defense depending on how a legislature defines the elements of the crime. federal courts have upheld laws requiring the defendant to bear the burden of producing sufficient evidence to support the dense of duress. See, United States v. Bailey, 444 U.S. 394, 410-11 (1980).

PROCEDURAL POSTURE

ken Ezeah was charged in the Western district of Oklahoma, along with his co-defendant Akunna Baiyina Ejiofor, with the offense of wire fraud in violation of title 18 U.S.C. Sections 1343 and 846, conspiring to commit wire fraud, in violation of 18 U.S.C. Section 371. His co-defendant Ejiofor, alleged she first met Ken Ezeah on Facebook in approximately 2008. She states that ken Ezeah sent her a ticket or money for a flight ticket to Switzerland. She met him there for the first time. Ken Ezeah asked her to open a bank account in Switzerland, which she declined to do. Ejifor then came back to the United States. Ezeah, according to Ejiofor, did not return to the United States.

Ezeah however came to the United States in 2010, where the offense conduct ('Romance Scam), started. She also alleged that she was recruited by Ken Ezeah to create profiles and made calls in furtherance of the Romance Scam. Ejiofor also mentioned to the FBI that the kingpin or mastermind of the Romance Scam, whom Ejiofor described as Franklin used the pseudonym Edward Peter Duffy, when dealing with victims of scam. Both Franklin (Edward Peter Duffy) and Benson are central to Ken Ezeah's inviolvementg in t he scheme, by reason of their involvement in the fraternity 'Black Axe.' The fraternity was to become a central part of Ken Ezeah's case. The fraternity was a major subject of three critical FBI post guilty plea de-briefings of ken Ezeah.

In sum, the Government was disingenuous throughout the whole process, filing to file a Rule 235 motion or asking for a 5K1 reduction in sentence on behalf of Ken Ezeah for testifying as a material witness against his co-f=defendant Akunna Baiyina Ejiofor, disclosing key information about the criminal activities of Black Axe fraternity.

FRANKLIN A.K.A. NNAMDI OJIMBA AND EDWARD PETER DUFFY

The ring leader of lynchponj of t he Romance scam, who also occupies a leadership position in the Black Axe fraternity is

Franklin,aka Nnnadi Ojimba and Edward peter Duffey. He was instrumental, in ensuring through veiled and overt threats the participation of ken Ezeah in the scheme. Some of the victims Edward peter Duffey include the following;

(1) Pamela Bale - who lost approximately $1,001,000, a victim of Edward Peter Duffey posing as a retired financial advisor.
(2) Beryl Wycliffe - another victim who lost $345,000.
(3) Virginia Phillips - her loss was $215,000, and;
(4) Gladys Boatwright who also had substantial loses in the scheme.

THREE POST PLEA FBI INTERVIEWS

Given the totality of the three post guilty plea proceedings, information about Black Axe surfaced that implicated 'Duress Defense' by Kern Ezeah.

BLACK AXE FRATERNITY A.K.A. NEO BLACK MOVEMENT

Black Axe is a fraternity within a fraternity, an outer organization, concealing an inner fraternity of the elect. One was visible, the other invisible. The visible society which ken Ezeah joined was a splendid camarederie of "free ad accepted," educational, fraternal, patriotic and humanitarian concerns. The invisible society, as ken Ezeah found out to his chagrin, reared its ugly head when ken Ezeah was kidnapped by his cousin in Nigeria, driven to an unknown location, subjected him to initiatory practices that almost cost him his life. Ken Ezeah was forced to flee to Switzerland. Counsel Wyatt informed Ken Ezra that full cooperation and full disclosure about the activities of Black Axe would constitute what he termed 'a golden parachute' to get relief. Wyatt's equivocations turned out to be empty promises.

REASONS FOR GRANTING

It is settled, that a decision of the Supreme Court of the United states, based Solely upon its construction of Rule 11 of the Federal Rules of Criminal Procedure, with regard to the acceptance of a guilty plea,is made pursuant to the Supreme court's supervisory power over the lower courts.See,e.g Arizona V. California,373 U.S 546 (1963), Wisconsin V. Pelican Ins.Co. 127 U.S 265,300 (1888),Kennedy V. Denison,65 U.S.(24 How) 66,98 (1860).

As a logical corollary of this Supreme courts supervisory power ,Petitioner Ken Ezeah is bringing this Petition for a Writ of Prohibition to the Supreme court,and invoking Rule 22-1 of the Supreme Court Rules, which in pertinent part, states the following:

> "1. An application addressed to an individual Justice shall be filed with the Clerk,who will transmit it promptly to the Justice concerned,if an individual Justice has the authority to grant the relief sought."

Associate Justice Sonia Sotomayor possesses supervisory power over the Tenth circuit Court of Appeals , to whom Ken Ezeah respectfully Used Rules 22-1 to direct his petition for resolution, primarily for the following reasons:

(1) Ken Ezeah has no other adequate means to obtain the relief he desires.
(2) He is prepared to show a clear and indisputable right to the Writ.
(3) The court must be satisfied that the writ is appropriate under the circumstances.

Petitioner Ken Ezeah contends that the Appellate waiver in his plea agreement was invalid because the plea agreement was not knowingly and voluntarily entered into.He bases this contention on the following enumerated arguments posited below.

The government asked the appellate court to ignore these questions.Both the government and the appellate court pointed to the appeal waiver in urging the enforcement of the appellate waiver, along with the extraordinary step of dismissing the appeal , both drawing their authority to do so from United states V. Hahn .359 F.3d 1315 (10th cir.2004 enbanc ruling).Both courts abused their discretion and if the abuse of their discretion was as a direct result or design of the "hahn" enbanc ruling and the "Galloway" decision in declining to entertain an ineffective assistance claims,in addition to the cloud of judicial bias hanging over Ezeah's trial proceedings, then only this honorable court can provide adequate relief from the misconstructions embeded in two enbanc decisions and certainly this matter's prompt resolution.

Applying the analytical framework for enforcing appellate waivers set out in the "Hahn inquiry", the government and the Tenth circuit argue that review should be limited to the inquiry of the appellate waiver provision of the plea agreement, in determining whether the agreement itself was entered knowingly and voluntarily.In response, Ken Ezeah argues that the Tenth Circuit cases require a more holistic review of the entire plea agreement, including the guilty plea, to determine if the agreement was entered knowingly and voluntarily.

This case is rightly brought before Associate Justice Sotomayor so that the mischief of misconstruction can be prevented by prohibition and because there is an inadequate remedy of law, for some of these prudential reasons , pre-eminent amont them are the following:First ,the ambiguity inherent in Tenth circuit cases, as to whether an appellate waiver contained in a plea agreement can be knowing and voluntary, if the plea agreement , as in the case at bar, was not also knowing and voluntary.As a consequence, this Honorable court must decide whether , in applying the second step of the Hahn inquiry, the court should consider whether Ken Ezeah's entire plea agreement was knowing and voluntary-not merely whether he understood the particular rights he was giving up when he entered into the plea agreement.Ken Ezeah contends the Court of Appeals for the Tenth Ciruit and the District court, both failed this test.

Another pivotal point Ken Ezeah is compelled to bring to the attention of Justice Sonia Sotomayor is,following the Hahn scope of the Tenth circuit's inquiry in determining whether defendants knowingly and voluntarily waived their appellate rights has been plagued with ambiguity and has not been entirely consistent within the circuit.The Panel of the Tenth Circuit in United States V. Rollings(751 F.3d 1183 (10th cir.2014)) ,articulated this theory best and went further in detailing what it called the "ambiguity in their cases" , by highlighting the different panels that have decided this very issue differently within the tenth ciruit.The case at

bar is no different.

It is noteworthy that, the Tenth Ciruit has routinely thought it appropriate, to consider the knowing and voluntary nature of the entirety of the plea agreement to satisfy this inquiry.The panel in Ken Ezeah's case fell short of that.If the defendant did not Voluntarily enter into the agreement, as Ezeah did,the appellate waiver subsumed in the agreement also cannot stand.Where different panels within the Tenth circuit read "Hahn" differently then appeal is an inadequate remedy for this case.

Another compelling reason why Associate Justice Sotomayor should grant Ezeah's petition, is because failure to do this will lead to a grave 'miscarriage of justice'.In Teeter, the court cautioned that, because appellate waivers "are made before any manifestation of sentencing errors emerges, appellate courts must remain free to grant relief from them in egregious cases".257 F.3d at 25.Appellate waivers are meant to bring finality to proceedings conducted in the ordinary course,"but they are not intended to leave defendants "totally exposed to future vagaries(however harsh,unfair,or unforeseeable)."id.Therefore, we held that "if denying a right of appeal would work a 'miscarriage of justice', appellate courts,in its sound discretion, may refuse to honor the waiver."Id.

As the totality of the errors manifested in Ezeah's case would demonstrate , they are not merely the "garden variety" kind of errors,rather at a bare minimum,there was an increment of error more glaring than routine reversible error."Santiago,769 F.3d at 8(quoting United States V. Chambers,710 F.3d 23,31 (1st Cir.2013).There was a constructive denial of counsel,which is structural error.See kyles V.whitley,514 U.S at 435-436; United States V. Cronic ,466 U.S 648,654,57(1984); Hill V. Lockhart,28 F.2d 832,839(8th Cir.1994) ("it is unnecessary to add a seperate layer of harmless error analysis to an evaluation of whether a petitioner...has presented a constitutionally significant claim of ineffective assistance of counsel).

There was a concealment of exculpatory evidence as well as concealment of transcripts of three post-plea FBI interview from the records which precluded Ezeah from asserting and substantiating an affirmative defense of duress/strictissimi juris ,at the trial stage and on appeal.The concealment was material when "materiality" is defined as at the least a "reasonable probability that had the evidence been disclosed to the defense, the result of Ezeah's judicial proceedings would have been different.United states V. Bagley,473 U.S 667,682 (1885) (plurality opinion).Id at 685 (white,J,concurring in judgment).

In addition to Bagley,which addressed claims of prosecutorial suppression of evidence,the decisions listed below all arising in "what might loosely be called the area of constitutionally guaranteed access to evidence,"Arizona V. Youngblood,488 U.S 51,55 (1988)(quoting United statesV. Valenzuela-Bernal,458 U.S 858,867(1982) requiring proof of materiality or prejudice.

To establish prejudice, a petitioner "must show that there is a reasonable probability sufficient to undermine confidence in the outcome."Strickland,466 U.S at 694.Generally,claims of ineffective assistance or counsel are analyzed pursuant to Strickland V. Washington,466 U.S 668,104 S.Ct 2052,80 L.Ed.2d 674 (1984).In order to prevail on such a claim, movant must show;(1) deficient performance-counsel's representation fell below the professional errors and (2)the result of the proceedings would have been different absent the error.Strickland,466 U.S at 687-88;see also United states V.Thornton,23 F.3d 1532,1533 (9th Cir.1994) (per curiam), and United States V. Solomon,795 F.2d 795 F.2d 747,749 (9th Cir.1986).

WHAT CONSTITUTES A "REASONABLE PROBABILITY IN THE CONTEXT OF KEN EZEAH'S COUNSEL(S) PERFORMANCE.

The circuits have all been very vocal on this issue.In Ward v. Dretke,420 F.3d 479,487(5th Cir.2005),the court held(prejudice inquiry where defendant claims that he would not plead guilty and insisted on going to trial, but for counsel's deficient performance partially depends on a prediction of what that outcome of the trial might have been).See also,Trottie v. Stephens,720 F.3d 231,251(5th Cir.2013)(materiality exsists if there is a "reasonable probability that,had the evidence been disclosed to the defense.the result of the proceeding would have been different)'The following constitute the nucleus of the different courts thinking on this subject.

Stricklandv. Washington,466 U.S 668,694,80 L.Ed.2d 674(1984)(a "reasonable probability" is a probability sufficient to undermine confidence in the outcome),Nix v. Whiteside,475 U.S 157,175 89 L.Ed 123(1986)(reasonable probability standard less demanding than preponderance of evidence standard).Porter v.McCollum,558 U.S 30,175 l.Ed.2d 398,409(2009)("We do not require a defendant to show "that counsel's deficient conduct more likely than not altered the outcome of his penalty proceedings"); Cullen v Pinholdter,563 U.S 170,131 S.ct 170,131 sct 1388,1403,179L.Ed2d 557 (2011)("A reasonable probability' is a probability sufficient to undermine confidence in the outcome."); Kiruvan v.Spencer ,631 F.3d 582,591(1th Cir.2011)("reasonable probability'test does not require showing that proceeding would have actually been different);Gonzalez v. United states,722 F.3d 118,130(2nd Cir.2013)(there is reasonable probability that,but for counsel's unprofessional errors,the result of the proceeding would have been different).Baker v.Barbo("resonable probability"test is not a stringent one).

LEGAL ANALYSIS FOR THE WRIT OF PROHIBITION

Ezeah recognizes that this is an extraordinary remedy but he intends to show that his right to this 'writ of prohibition' is clear and undisputable and that the actions of the lower courts were a clear abuse of discretion.

a) Ezeah will show an obvious Rule 11 violation perpetrated by the district Court and swept under circuit precedent by the Tenth Circuit,because the "Hahn inquiry" was vague about whether a plea agreement can stand, if the waiver was well advised.The panel focused its examination on the waiver and ignored reviewing the validity of the plea agreement, whether harmless or not, disregarding the 'McCarthy' Courts instructions.Ezeah will show a consistent disregard of this federal rule forming an abuse of the district court and appellate courts discretion.This also raises new and important issues of law that only this court can clarify by prohibiting the lower courts from misconstructing the law.

b)Another undisputable fact is that Ezeah raised credible claims of ineffective-assistance in the district court(doc.245) and on appeal (see,direct appeal brief) both courts declined to address the matter.Even where Ezeah asked that the records be supplemented on appeal and he made a colorable claim of actual innocence on direct appeal.
The Elevent Circuit articulated the following test:
"Thus, a petitioner may make a colorable showing that he is actually innocent of the death penalty by presenting evidence that an alleged constitutional error implicates all the aggravating factors found to be present by the sentencing body.That is, but for the alleged constitutional error ,the sentencing body could not have found any aggravating factor and thus, the petitioner was ineligible for the death penalty.In other words, the petitioner must show that absent the alleged constitutional error, the jury would have lacked the discretion to impose the death penalty;that is, that he is ineligible for the death penalty". Johnson v.Singletary,938 F.2d at 1183.

Ezeah states that he presented such evidence in his direct appeal brief to support his claim of constructive denial of counsel as well as bolster proof of the elements of his legally cognizable affirmative defense of duress which was ignored by counsel.

There is no other adequate means of confining the inferior courts to a lawful exercise of their prescribed jurisdiction,which requires this honorable courts intervention.Because the hahn enbanc contract analysis wholly ignored addressing the voluntariness of hahn'splea agreement itself.Some panel's in the Tenth circuit have however chosen to read hahn so narrowly,its review focuses solely on the waiver and nothing else, like in this case.

The required Rule 11 minimum determination by a trial court as outlined by the Supreme Court court and Congress is to assess a defendants understanding of the nature of the charges, penalties he faces and rights he is giving up by entering a guilty plea.The Tenth circuit fails at reviewing 2 or the 3 requirements,attributing this practice to hahn's appeal waiver decisiom.Requiring hahn's expantion.

Bringing this abuse of process to the attention of this court is very important because,if not corrected, the risk to due process is that the courts maybe aiding the government in convicting defendants who do not even know that their actions were not criminal,like in this case,and appellate courts turning a blind eye to such injustice.More so,a defendant who can prove his innocence on direct appeal being mandated to remain incarcerated for months or years while his collateral attack is being adjudicated.Meanwhile the government,by virtue of a final judgement of an unlawful conviction, can divest an innocent man of his legitimate properties causing him irreparable damage both to his life,livelihood and properties before his conviction is reversed on collateral attack .see, (case No. Civ-16-0153-HE,United States v. Real property,3347 Chartreuse way,Houston,Texas)..

WHETHER THIS COURT SHOULD EXPAND THE FRAME-WORK DECIDED IN "UNITED STATES V.HAHN" IN THE TENTH CIRCUIT'S DETERMINATION OF A KNOWING AND VOLUNTARILY MADE APPEAL WAIVER AND GUILTY PLEA,WHERE DESPITE THIS COURT'S INSTRUCTIONS IN UNITED STATES V. McCARTHY THERE IS STILL A CIRCUIT SPLIT ON IT'S APPLICATION.

STANDARD OF REVIEW

Whether a guilty plea was entered knowingly and intelligently is generally a question of law,which is reviewed by this court de novo,See vidal,561 F.3d at 1118.If defense counsel did not object to the validity of the plea,the court reviews solely on the basis of plain error.See.id, at 118-19.Plain error exists if there is "(1) an error;(2) that is plain;(3) which affects substantial rights and (4) seriously affects the fairness,integrity or public reputation of the judicial process."id.at 1119.(citations and internal quotation marks omitted).

Though a defendant may enter a plea agreement that the defendant will waive the right to appeal the sentence the waiver must be explicit,and at the plea colloquy,the court must expressly and clearly discuss with the defendant,to ensure the provisions of the plea agreement is fully understood by him.Fed.R.Crim.P 11(b)(a)(N);United states v. bascomb,451 F.3d 1292(11th Cir.2006)(same);United states v.Buchanan;131 F.3d 1005(11th cir.1997) United states v. Benitez-zapata,131 F.3s 1444(11th cir.1997).Merely stating on the record that defendant was"waiving the right to appeal regarding the charges"was not sufficient.United states V.Burshert,supra.

An appeal waiver or collateral attack waiver that is part of a guilty plea is unenforceable if the plea itself is involuntary or unintelligent.Waivers of appeal must stand or fall with the agreement of which they are a part .If the agreement is voluntary and taken in compliance with Rule 11,then the waiver of appeal must be honored.If the agreement is involuntary or otherwise unenforceable,then the defendant is entitled to appeal.

DISCUSSION

It has been recognized that even under a standard plea agreement a court must carefully scrutinize the plea proceedings and search for a clear demonstration of the extent of the defendant's knowledge and voluntary nature of the plea.(citing United v. Ready,82 F.3d 551,556 (2nd Cir.1996));United states v. Wenger,58 F.3d 280,282(7th Cir.1995)('Waiver of appeal must stand or fall with the agreement of which they are a part.If the agreement is involuntary or otherwise unenforceable,then the defendant is entitled to appeal").

Because of its significance, it bears repeating that the ambiguity in Tenth Circuit cases not only highlights its intra circuit dispute but presents the dichotomy of whether an appellate waiver contained in a plea agreement can be knowing and voluntary if the plea agreement was not knowing and voluntary.As a consequence, in applying the second step of the Hahn inquiry the court should consider whether a defendant's entire plea agreement was knowing and voluntary,not merely whether the defendant understood the particular rights he was giving up when he entered into the plea agreement.

The panel of the Tenth circuit in its ruling stated"The record fails to show the waiver was knowing and voluntary.We next consider whether the waiver was knowing and voluntary.Hahn,359 F 3d at 1325.In Evaluating this factor,we generally examine the language of the plea agreement and the adequacy of the Fed.R.Crim.P.11 Plea colloquy".

The panel abandoned the framework instructed by this court in United states V.McCarthy,394 U.S 459 (1969),that a court shall not accept a plea of guilty without first addressing the defendant personally and determining that the plea is made voluntarily with an understanding of the nature of the charge and consequences of the plea.

The only communication between the court and the defendant at the hearing addressing this issue is as follows:
THE COURT:Mr Wyatt, do you believe the defendant fully understands the nature of the charge,the possible punishment and the constitutional rights he is entitled to?.
MR WYATT:Yes,sir
THE COURT: Sir,do you believe you fully understand the nature of the charges ,the possible punishment and constitutional rights you are entitled to?
THE DEFENDANT:I do,sir.
This court specifically stated in McCarthy" that a court must decline to accept a guilty plea,"where the trial court did not inquire

of the defendant personally whether he understood the nature and essential elements of the charge against him,not withstanding that the defendant's attorny stated that he advised the defendant of the consequences of his plea or that the defendant ,in response to the court's questions,expressed his desire to plead guilty,acknowledged his understanding of the consequences of such plea as explained by the court with regard to the waiver of jury trial and the punishment involved and stated that his plea had not been induced by any threats or promises".

Ezeah argues that there was an obvious deficient examination of the records of his plea colloquy that caused the panel of the tenth circuit to dismiss his appeal as their entire focus was the waiver and not the plea itself.This concern currently plagues the Tenth circuit as the "Rollings" panel expressed in its opinion.The Hahn inquiry must be properly instructed to ensure its proper application to due process and promote uniformity within the circuit and its sister circuits in reviewing the validity of appeal waivers.United states v. Portillo-cano,192 F.3d 1246 (9th cir.1999)("The judge did not,however,discuss the elements of these crimes in order to demonstrate on the record that the defendant understood the nature of the charges.")

No where is the corrossive effect of the confusion in the "Hahn inquiry" more prevalant than in the case at bar.It is very clear that the district court focused its diligence in the rule 11 hearing on the defendants understanding of the rights the defendant was waiving and neglecting his understanding of the plea agreement itself.There is clearly no evidence of the court's determination of the defendants full understanding of the nature of the charges or its elements,despite knowing the defendants circumstances(a complex conspiracy charge),other courts have shared that opinion .see,((United states V. wetterlin 583 F.2d 346 (7th cir.1978)(The judge made no effort to explain the law of conspiracy generally or by reference to the specific charge of this case,nor did he personally inquire and determine that the defendant understood the nature of the charge.Particularly under the circumstances of this case involving a complex conspiracy,we feel the judge should not have assumed that the defendant already knew and understood what the charges were,but rather the court should have assumed he was ignorant of the charges and thus used the hearing to inform the defendant "of some aspects of legal argot and other legal concepts that are esoteric to an accused))).A crime that implicates the defendant being held liable for the actions of his co-conspirators, an essential effect that substantially enhanced his sentence.The court was also aware that the defendant is a citizen of a different country with no previous criminal history to learn the laws or the practices of the American judicial process..United States v.Theron 849 F.2d 477(10th cir.1988)(Theron a South African Citizen was not familiar with the American Criminal procedure and his counsel was in the process of unsuccessfully attempting to withdraw from the case.

Nothing in the plea agreement or indictment informed him that he would be enhanced by other co-conspirators actions and it did .This without doubt affected his decision caluculus to plead guilty.

The appellate court clearly followed the same practice and affirmed his conviction focusing its review on his understanding of the waiver and ignoring any evidence of his understanding of the plea agreement.Both courts abused their discretion in conducting and reviewing Ezeah's guilty plea.These are similar, recently decided Tenth circuit cases where their ruling opinion focused on the waiver with no evidence of a carefully scrutinized plea proceeding.e.g;United States v.Quevedo-valdez,2018 U.S App.LEXIS 9745(No.17-6181)(10th cir.2018)..United States v. Soto,2018 U.S App.LEXIS 15042 (No.17-3277)(10th cir.2018)...United States v.Hernandez,2017 U.S.App.LEXIS 1848 (No.16-2259)(10th cir.2017).

The logic is that since district courts have realised that appellate courts pay only lip service to a defendants understanding of the plea agreement during the conduct of their review,the trial courts will then pay less attention to that aspect of Rule 11 compliance and focus on the waiver,confident that the circuit courts will overlook their errors,as happened in this case.Ezeah argues that he should have been allowed to appeal and given the increased use of waiver provision in plea agreements today,that this court apply its powers of supervisory control in addressing this abuse of process and the confusion in the Tenth Circuit and the hahn inquiry.

The public interest in a fair process is served by this honorable court instructing the appellate courts to articulate their thorough review of the knowing and voluntary nature of a plea and appeal waiver to encourage transparency."Hahn" should be expanded.Furthermore,even if the errors discovered are harmless in nature, at the very least highlighting these errors will put the district court on notice that their errors have been uncovered,so that it may apply more diligence to due process.

To further illuminate the debilitating effect of "Hahn" in the district courts in the Tenth Circuit.There was also a Rule 11(f) violation in Ezeah's proceedings.This rule that states "a district court may not enter a judgement upon an accused's guilty plea without making an inquiry which satisfies the court that there a factual basis for the plea,when the judge determines that the conduct which the accused admits constitutes the offense charged in the indictment or information included therein to which the accused had pleaded guilty".

On the face of the record the factual basis examination conducted by the court and the conduct admited to,by Ezeah didnt support the 'specific intent' to commit any crimes during the alleged period of the crime spree and yet none of the evidence on

the record supports such specific criminal intent at the time.A 'conspiracy to commit wire fraud' charge is a specific intent requirement offense.By this error in itself,this conviction should be dismissed based on the insufficiency of the evidence.Ezeah is prejudiced by these errors because he could have raised a "lack of intent" defense at trial or in seeking a pre-trial motion to dismiss his conviction.Had he understood the nature of the crime and how they needed to apply to his conduct.An insufficient factual basis goes straight to the heart of the courts jurisdiction.These errors reflect a fractured system that requires this courts intervention.

Ezeah reitertates that he was told by his counsel of a verbal promise made by the prosecutor which prompted him to accept the guilty plea and that if the judges questions about whether he was made any promises ,had included the warning that the reason he asks because 'any unwritten or verbal promises by the government was unenforceable',Ezeah's contention is that he would have benefited from that warning and there is a reasonable possibility he would have decided differently by either insisting on a written promise or reserving the right to go to trial.Ezeah contends that had his counsel used such words in rehearsing the questions to be asked by the judge prior to rule 11hearing,he would have raised concerns.Those words would have sounded the necessary warning to the defendant,that he would be risking not getting the benefits of the promise without a written evidence or informing the court.Ezeah has already established prejudice by evidence of his affirmative defense,' actual innocence claim in his direct appeal brief.This honorable court should consider expanding the language of rule 11 colloquy because many criminal defendants have alleged such verbal,unenforceable promises and have accepted guilty plea's to their deteriment.Without the judge or plea agreement expressly explaining to them that any future agreements that are unwritten will be "unenforceable" a criminal defendant becomes a target of manipulation by lawyers and prosecutors as Ezeah was.Ezeah humbly submits that the closer this honorable court pulls the lower courts to reality over ritual, the less appeals based on such errors the courts will have to entertain.

It is incumbent on the honorable court to prevent and prohibit the Tenth circuit from sweeping its errors and that of the district court under its circuit laws.By expanding and clarifying these laws,transparency will be given its due effect.

WHETHER THE TENTH CIRCUITS ENBANC DECISION IN UNITED STATES V. GALLOWAY PREVENTED IT FROM UTILIZING ITS 'INHERENT EQUITABLE AUTHORITY' TO SUPPLEMENT THE RECORD ON APPEAL TO RESOLVE AN INEFFECTIVE-ASSISTANCE CLAIM ON DIRECT APPEAL,EVEN WHEN THE DEFENDANT HAS MADE A COLORABLE SHOWING OF ACTUAL INNOCENCE.

Ezeah submitted an omnibus motion to the Tenth circuit filed on 08/01/2018(Doc.10578905) requesting a recall of mandate and that the court compel the government to supplement the record on appeal with evidentiary transcripts in their custody to aid the prompt resolution of his direct appeal, for which the Court denied the next day without opinion.

Other circuits have recognized their "inherent equitable authority" to supplement the record on appeal to include material not before the district court, see Ross v. Kemp,785 F.2d 1467 (11th cir.1986), Lowry v. Barnhart,329 F.3d 1019(9th cir.2003) ("save in unusual circumstances,we consider only the district court record on appeal").

The "Ross" court set forth the following non-exclusive list of factors it would consider when deciding to supplement the record on appeal:(1) Whether "acceptance of the proffered material into record would establish beyond any doubt the proper resolution of the pending issue",(2) whether remand for the district court to consider the additional material would be contrary to the interest of justice and a waste of judicial resources and (3) whether supplementation is warranted inlight of the "unique power that Federal appellate judges have in the context of habeas corpus actions".

Ezeah contends that in relation to the case at hand (1)The proffered transcripts will without doubt resolve the pending issue because it will reveal counsel's ineffectiveness by entering an unenforceable agreement with the prosecutor that began a day after the plea agreement was accepted and how all of the exculpatory"Brady" evidence, never seen before the plea agreement, was revealed to counsel at the meetings,for which he made no attempt to withdraw Ezeahs plea agreement and proceed to trial ,able to prove his clients innocence see,(opening brief of direct appeal).(2) evidence that all parties were aware of the meetings long before the plea agreement, especially the government who orchestrated the meetings scheduled the very next day after the plea was accepted, yet concealed this information from the court during the plea hearing and from the records.Clearly reflecting the hallmarks of "outrageous government conduct"...."Is an extraordinary defense that will only be applied in the most egregious circumstances.Inorder to prevail,the defendant must show that the challenged conduct violated notions of fundamental fairness and is shocking to the universal sense of justice" United states v. Mckissick,204 F.3d 1281(10th cir.2000).

In this case, the government withheld evidence it reasonably knew to be exculpatory,assumption wouldve been that the defendant would plead guilty in the absence of evidence to support his innocence but after a year of maintaining his innocence and trial fast approaching,the government resorted to trickery and entered an unenforceable agreement with his counsel to induce him into pleading guilty through verbal promises.The evidence of which Ezeah attached to his motion for rehearing enbanc.The transcripts in the governments possession will prove the exsistence of an agreement by prosecutor and defense counsel who scheduled a meeting for (2nd of feb.2017) prior to the plea being accepted.The then,honorable Judge Gorsuch in an opinion in United States v. Dyke 718 F.3d 1282(10th cir.2013)("what's outrageous conduct by the government depends in part on who the government is dealing with:extreme government inducement is more troubling when it targets the nonpredisposed")...Ezeah has no criminal history or experience with criminal justice,making him a prime target for such government manipulation.He was subjected to 3 interrogative interviews at the request of the government in presence of counsel,none of the transcipts were made part of the record neither by the government nor defense attorney,see(letter to court at sentencing Doc.245,govt's reply brief,pg 12,15 and sentencing memorandum Doc.228).Where the government Engineers manipulations to obtain the conviction of a defendant from start to finish,where government sabotaged his ability to defend himself 'and' induced him into a conviction,qualifies as outrageous conduct,shocking the universal sense of justice.Implicating both constructive denial of counsel and prosecutorial misconduct.

(2) Remand for the district court to consider the new material will be contrary to the interest of justice because Ezeah has shown his actual innocence,unrefuted by any evidence on record,see (direct appeal opening brief) and it will certainly be a waste of judicial resources because the transcripted evidence is self-explanatory material developed for conclusive review.(3) Supplementation is warranted inlight of the 'unique powers of appellate judges' to prevent a dire miscarriage of justice,where the defendant has made a colorable claim of actual innocence.

assistance claims generally should be raised in collateral proceedings under 28 U.S.S Section 2255.See, United States v. Galloway,56 F.3d 1237,1240(10th cir.1995)(enbanc).This is because a factual record must be developed in and addressed by the district court in the first instance for effective review.At the very least counsel accused of deficient performance can explain their reasoning and action and the district court can render its opinion on the merits of the claim".

The 'Galloway' enbanc court, in over ruling Beaulieu v. United states 930 F.2d 802(10th cir.1991) argued the procedural-default rule infecting the effective resolution of ineffective-assistance claims,where attempted to be presented on direct appeal.They ruled that all claims of ineffective assistance be brought on a section 2255 motion instead.The Supreme Court agreed in United States v.Massaro,538 U.S 500(2003) advising that it would be judicially economical for ineffective-assistance claims be brought on direct appeal in the first instance.However,Justice Kennedy, delivering the opinion for the court concluded by stating."We do not hold that ineffective-assistance claims must be reserved for collateral review.There maybe cases in which trial counsel's ineffectiveness is apparent from the record that appellate counsel will consider it advisable to raise the issue on direct appeal.There maybe instances,too,when obvious deficiencies in representation will be addressed by an appellate court Sua Sponte".

Infact other courts have observed and followed this practice....United states v.Turner,720 F.3d411,429(2nd cir.2013)(when faced with a claim of ineffective assistance of counsel on direct appeal,the court may(1)decline to hear the claims,permitting the defedant to raise the issue as part of a subsequent petition pursuant to 28 U.S.C section 2255;(2)may remand the claim to the district court for necessary factfinding; or (3) decide the claim on the record before the court.Plamer v.Hendricks,592 F.3d 386,394(3rd cir.2010)(ineffective assistance of counsel exsists if the defendant can establish(1) that the attorney's performace was objectively unreasonable and(2) that there is a reasonable probability that,but for the attorney's error,the result of the case could have been different.United statesv Benton,523 F.3d 424,435(4th cir.2008)(an ineffective assistance of counsel claim not cognizable on direct appeal,unless the record conclusively establishes that counsel provided ineffective assistance).United v. Powell,680 F.3d 424,435(4th cir.2012)(a claim of ineffective assistance of counsel,normally raised in 28 U.S.C Scetion 2255 motion,is not cognizable on direct appeal unless the record conclusively establishes counsel deficient performance and resulting prejudice.United States v. Dovalina,262 F.3d 462,474,474-75(5th 2001)(defendant must show that"the appeal would have had,with reasonable probability ,different outcome if the attorney addressed the issue").In the case at bar ,Ken Ezeah contends counsel(s) ineffectiveness was transparently clear on the record,for example with respect to e.g(a)the three FBI Post plea interviews and the debilitation consequences it brought in its train, with respect to Ken Ezeah being foreclosed from a 'Duress' defence,under strictisimi,i;(b)The failure of counsel(s) to withdraw the otherwise defective plea agreement and waiver of appellant rights;(c)That counsel and prosecutor entered an unenforceable agreement after the plea agreement was accepted by the court in violation of the express term of the integrated clause contained in the plea agreement,where it instructed that "Nor may any additional agreement be entered into unless in writing and signed by all parties",(see ,sentencing memorandum,Doc.228).

Ezeah contends that he did attempt to develop the record in the district court at sentencing by sending a detailed letter to the court(Doc.245) about counsels ineffectiveness in negotiation of the plea agreement and requesting an evidentiary hearing for which the court declined without posing a single question to counsel or making any attempt to investigate any truth to the allegations to prevent manifest injustice,(see sentencing hearing Cont'd).Raised the issue several times in his direct appeal opening brief (see, opening brief pg 13,23,29 and reply brief pg 12).Ezeah also prepared a 'statement of the evidence' accordance with Fed.R.App.P 10(c) in form of an attached and sworn Declaration under 28.U.S.C 1746 under penalty of perjury to his direct appeal brief,pointing the panel to the trial records and events known to the court that took place post-plea but before sentencing,see(sentencing memorandum Doc.228).Which should have trigged the appellate courts order for the government to make any such evidence refered to ,part of the record on appeal.

This court held in 'DOBBS V. ZANT' ,stating "the Court of Appeals had erred in refusing to consider the full sentencing transcript,given that (1) the court of Appeals had offered no justification for its decision to exclude the transcript from consideration,(2) the transcript was relevant in that it called into serious question the factual predicate on which the district Court and Court of Appeals had relied in deciding the Ineffective assistance claim,(3) the Court of Appeals refusal to review the transcript left it unable to apply the manifest injustice exception to the law of the case doctrine and hence unable to determine whether its prior decision should be reconsidered,and (4) the exclusion of the transcript was not justified by the delay in its discovery,which delay resulted substantially from the prosecutions erroneous assertions that closing arguments had not be transcribed."

The DOBB's case being remarkably similar to the case at bar.The absence of the transcripts from the trial records was entirely the fault of the government who had custody of them.Ezeah diligently pointed to those transcripts in his direct appeal brief.Transcripts that would have proved his ineffective-assistance claim beyond doubt.Those revelations constituted all the essential elements of an affirmative defense of duress,yet counsel didnt attempt to withdraw his plea and proceed to trial (see, opening brief)."To establish a claim of ineffective assistance in a guilty plea situation, defendant must show that but for

counsel's error, he would not have pled guilty".Ezeahs contention is that he made such a showing on direct appeal to the Tenth circuit and would have substantiated his claim had the Tenth circuit utilized its "inherent equitable powers" to order the government to supplement the record on appeal.The refusal to consider those transcripts were unjustified and left the panel unable to apply the manifest injustice exception to decide Ezeah's ineffective assistance claims on direct appeal.

The reviewing panel of the Tenth circuit may have felt bound by the enbanc decision in 'Galloway', since the opinion never expressly considered a situation like this one.The panel may have been reading 'Galloway' too narrowly in declining to review that evidence to aid their consideration.This is infact a case of first impression in the Tenth circuit,only this court can provide adequate relief from an enbanc decision.

Ezeah argues that the Tenth circuit may have abused their discretion by declining to consider a unique opportunity to resolve this case with already developed evidence for their consideration and that their actions were unconstitutional both on their face and as applied to him.This is an important Federal question that should be settled by this court.

CONCLUSION

This case is unique, and a case of first impression, which is not likely to open the floodgates for other inmates in this circuit, and as a matter of fact, anywhere else. The chances are zero to none, that now or the foreseeable future, there would be a case that involves Duress and Coercion as a means of involving a criminal defendant, in a 'Romance Scheme' where specific intent is absent. A case where counsel(s) of record were hopelessly deficient, as to implicate constructive denial of counsel. They failed to petition the court to withdraw a defective guilty plea, upon finding out, one day after said guilty plea that the Government concealed exculpatory and Brady evidence.

Congress has bestowed "the courts broad remedial powers to grant relief." Boumediene v. Bush, 553 U.S. 723, 776, 128 S.Ct. 2229, 171 L.Ed.2d 21 (2008). It is uncontroversial ...that this privilege entitles the prisoner to a meaningful opportunity to demonstrate that, he is being held pursuant to "the erroneous application or interpretation of the law."Id at 779 quoting INS v. St. Cyr, 533 U.S. 289, 302, 121 S.Ct 2271, 150 L.Ed.2d 347 (2001))). It is "above all, an adaptable remedy, "and its precise application and scope change, depending upon the circumstances."Id. Thus, Ken Ezeah, contends he is entitled to being given a meaningful opportunity to demonstrate that he deserves relief from his allegedly erroneous guilty plea, sentence and conviction. After all, the Supreme Court has held that any judicial proceeding involving a biased judge is structural error.

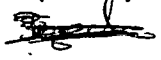
Ken Ezeah's truly extraordinary conundrum is further aggravated by the fact that, Hon. Judge Diguisti's former Law Clerk was involved in Ken Ezeah's judicial proceedings in the District Court, an untenable situation that implicates Conflict of Interest, for which the Judge should have recused himself. The totality of the errors in this case makes it a strong candidate for reversal of his sentence and conviction.

RELIEF SOUGHT

WHEREFORE, Petitioner moves this Honorable Court to grant the requested relief.

Date: October 16 , 2018.

Respectfully Submitted,



Ken Ejimofor Ezeah