

18-9220
No. _____

Supreme Court, U.S.
FILED

MAR 29 2019

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

EARL C. HANDFIELD II - PETITIONER

V.

SUPERINTENDENT ROCKVIEW S.C.I. – RESPONDENT(S)

PETITION FOR WRIT OF CERTIORARI

ORIGINAL

EARL C. HANDFIELD II, *pro se*
BOX A – JC7215
BELLEFONTE, PA 16823
(814) 355 - 4874

QUESTION(S) PRESENTED

* WILL NOT THE GOVERNMENT CONTINUE TO DOUBLE-CROSS GRAND JURY WITNESSES AND RUN AMUCK OF THE FIFTH AMENDMENT'S RIGHT TO REMAIN SILENT IF THIS COURT DOES NOT SETTLE OR ANSWER THE QUESTION: WHO OR WHAT IS A "*LEGITIMATE SOURCE*" UNDER USE IMMUNITY?

LIST OF PARTIES

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

☐ All parties do not appear in the caption of the case on the cover page. A

list of all parties to the proceeding in the court whose judgment is the

subject of this petition is as follows:

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CASES

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STATUTES AND RULES

18 U.S.C.S. § 6002

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OTHER

IN THE SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue review the judgment below.

OPINIONS BELOW

☒ For cases from federal courts:

The opinion of the United States district court appears at Appendix NA to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

☐ For cases from state courts: NA

The opinion of the highest state court to review merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☒ For cases from federal courts:

The date on which the United States Court of Appeals decided my case was 10/15/18.

☐ A timely petition for rehearing is still pending.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: January 10th 2019, and a copy of the order denying rehearing appears at Appendix.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. _____.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

☐ For cases from state courts:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order deny rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. _____.

The jurisdiction of this Court is invoked under 28 U.S.C § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

18 U.S.C. § 6002 is constitutional because the scope of the *“Use and Derivative Use” Immunity* it provides is co-extensive with the scope of the constitutional privilege against self incrimination. quoting this Court’s U.S. v. Hubbell 530 U.S. 27, 31 (2000).

STATEMENT OF THE CASE

Prosecutors across the country are now taking serious advantage of the vague wording of Immunity law announced in this Court's Kastigar v. U.S. which has led to the untold story of Earl C. Handfield II.

On 11-16-06, Mr. Handfield as a witness before the Investigative Grand Jury was compelled to testify with *Derivative Use Immunity* after he pled the Fifth one month earlier.

The pursuit of Handfield's evidence related to the shooting death of Corey Jennings in 2005, on the streets of Coatesville, PA.

The Commonwealth's theory – with evidence to support it, was that Handfield's friend, David Johnson shot Jennings in Handfield's presence, so the authorities wanted Handfield to confirm this.

On that November morning in 2016 Handfield was accompanied into the Courtroom by his attorney where he took the rap for Johnson after the prosecutor asked him what he knew about the shooting. (*The Commonwealth did not proffer Handfield prior to his testimony*).

Immediately after Handfield's response the prosecutor bolted out of the courtroom with trial counsel trailing after him. This concluded the hearing.

Two months later, the Commonwealth began building a case on Handfield for the Jennings case with the assistance of Johnson.

By Feb. 2007 the Commonwealth negotiated with Johnson's attorney that it would reduce his unrelated criminal charges in exchange for testimony against Handfield.

This agreement ultimately resulted in Handfield being arrested and charged on 11-24-07. Following a *Kastigar* hearing for relief in 2008 that was denied; Handfield was convicted of first degree homicide at trial in June 2009.

However, two months before Handfield's Immunized testimony, Johnson told authorities on 9-7-06 that he did not see Handfield on the night Jennings was shot.

Plus, Johnson's plea deal was contingent upon him taking and passing a polygraph test that petitioner actually fired the shots – but Johnson failed the test, yet he still got his deal and petitioner was still indicted and convicted.

REASONS FOR GRANTING THE PETITION

This Court should settle and answer the question: "Who or what is a legitimate source in the *Derivative Use Immunity* (or *Use Immunity*) context" due to the inevitable question arising in important cases, especially coming out of the D.C. Circuit that applies to every adult American Citizen's Right to Remain Silent.

As of today, all grand jury witnesses who have and will testify with *Derivative Use Immunity* are at high risk of having their Fifth Amendment Right against self-incrimination violated. Though most U.S. Citizens have no idea what *Use Immunity* is, it is something that could easily apply to them given the fact that the Fifth Amendment is probably invoked more than any other amendment.

Though people do not fear what they don't know exist; the public has reason to become aware and then concerned about the abuses of *Use Immunity*.

"The federal statute (18 U.S.C. § 6002), which protects a witness against the derivative use of compelled testimony, imposes an affirmative duty on the prosecution not only to show that the evidence that it proposes to use is not tainted by the prior testimony, but also to prove that the evidence is derived from a legitimate source wholly independent of the compelled testimony. This requirement insures that the grant of immunity has left the witness and the prosecution in substantially the same position as if the witness had claimed the privilege in the absence of a grant of immunity." see *Kastigar v. U.S.* 406 U.S. 441 @458-59 (1972).

However, when the commonwealth/ government operate with a license to indict Immunized witnesses without showing that it relied on legitimate sources –

the commonwealth's burden is removed and the fundamental right not to implicate yourself is out the door.

Obviously this duty of legitimacy is vital to the assessment of the commonwealth's evidence because this Court in *Kastigar* and its progeny *Hubbell* continuously reminded the reader of such throughout their text.

"The government bears the heavy burden of proving that all of the evidence it proposes to use was derived from legitimate independent sources" *Hubbell* 530 U.S. 27, 40.

But since no federal or state court has defined or interpreted this kind of source that *Kastigar* intended, the prosecutor in petitioner's case used extremely illegitimate and tainted sources which all other similar situated witnesses are subject to.

The Right to Remain Silent is grounded in the laws of nature; in that a being should not become an enemy unto its own self, hence the right *against self* – incrimination.

Our Forefathers were in harmony with the Universe by understanding that causing deliberate harm to oneself was a perversion of life and liberty as is the act of suicide.

Moreover, defining "legitimate source" is of national public concern on both sides of the coin: (1) The Right to Remain to Silent is the one of the most if not thee most commonly applied constitutional privilege known to man that the average tax payer may invoke on any given day going to and fro, and (2) Derivative Use also

applies to the men and women who control and serve our country, such as politicians, lawyers and the upper echelon of our U.S. Military – as the case of *Lt. Col. Oliver North*.

Even in the present moment, associates and employees of the White House under the *Trump Administration* have been subject to this Immunity – which ultimately affects the lives of all of us, no matter how remote.

This means that it is crucial to our republic that the U.S. Supreme Court steers the ship on this issue. If *Derivative Use Immunity* is a solid fortress against self incrimination, then use of non-legitimate sources is asbestos; slowly rotting the insides of this law.

The absence of this definition invites prosecutorial anarchy at all four corners. To be more specific; *The Organized Crime Control Act of 1970*, 18 U.S.C. § 6001-6005, authorizes prosecutors to apply to a District Court for an order directing a witness to answer questions. *id.* § 6003. The witness may not be able to refuse to comply with the order on the basis of self incrimination. *id.* § 6002. In exchange, “no testimony or other information compelled under the order (or any information directly or indirectly derived from such testimony or other information) may be used against the witness in any criminal case...” *Kastigar* @ 453.

But as the law stands today, prosecutors can easily bypass the gatekeepers by claiming that they relied on “any source” to satisfy their duties. In other words, the commonwealth can make direct or indirect use of the Immunized testimony then, tap one of its jail house informants or willing agents whom are desperate to

ingratiate themselves – and have them testify or provide manipulated evidence to support the commonwealth's agenda.

The government loves to propagate that the “no snitch” campaign is what discourages citizens from cooperating with authorities, but the distrust of the judicial system is what deters witnesses from speaking up.

Furthermore, an Immunized witness, “is not dependent upon the integrity and good faith of the prosecuting authorities” pursuant to §6002.

Therefore, when a witness such as petitioner has been promised that he/she will be safe from prosecution – prior to relinquishing highly sensitive evidence – then that evidence is fashioned into a weapon against him without proper safety measures – we have a national risk brewing.

The synonyms for the word “legitimate” according to *Microsoft® Word 2002* are: lawful, rightful, legal, genuine, justifiable, valid and reasonable.

Petitioner respectfully dares this Most High Court to identify one of the above words that would describe a witness like David Johnson.

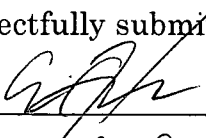
So if the government can pass muster with a witness such as Johnson, then the old law school saying, “the government can indict an egg” starts to seem – kind of possible. This treads the line of conscience shocking.

If you or your love ones were given an Immunity deal to testify as a witness and promised that you could not be prosecuted for your testimony *unless* a *legitimate source* brought sufficient evidence against you – wouldn't the definition to “legitimate source” be the most important element of the deal?

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 3-25-19