Supreme Court, U.S.
FILED
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No. 18-9335

IN THE

Supreme Court of the United States

FRANCISCO ILLARRAMENDI,

Petitioner,

v.

UNITED STATES OF AMERICA

Respondent

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

PETITION FOR A WRIT OF CERTIORARI

Francisco Illarramendi, Pro Se
Inmate No. 20402-014
Federal Correctional Institution Fairton Camp
P.O. Box 420
Fairton, NJ 08320

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QUESTIONS PRESENTED

The following questions are presented for the Court's review:

1. In the context of a Motion for Summary Affirmance of a District Court decision, should lower courts follow the mandate of this Supreme Court – most recently reaffirmed in Tolan v. Cotton, 572 US, 134 S. Ct., 188 L Ed 2d 895, 2014 US LEXIS 3112 - which requires that "***in ruling on a motion for summary judgment, 'the evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor'***" – particularly when the evidence clearly supports the non-movant's position?

2. Did the Second Circuit Court of Appeals overstep its boundaries when it opined on the merits of a 28 U.S.C. 2255 petition prior to the issuance of the District Court's final decision, and within the context of an interlocutory appeal regarding release on bail; a proceeding which calls for using criteria similar to that used to deliberate on the grant a Certificate of Appealability?

3. Should the existence of multiple errors that support a 28 U.S.C. 2255 petition, particularly when several of those errors are structural in nature and merit automatic reversal, be considered sufficient to meet the "extraordinary circumstances" test used by courts to evaluate the applicability of release on bail pending a habeas appeal?

REFERENCED CASES AT THE DISTRICT AND APPELLATE LEVELS AND LIST OF KEY PARTIES

The decision pertaining to this Petition is the Second Circuit Court of Appeal's Grant of the Government's Motion for Summary Affirmance (the "Summary Affirmance") of the District Court for the District of Connecticut's Order (the "Order") denying my motions for supervised release or bail pending resolution of my Motion to Vacate Conviction and Sentence pursuant to 28 U.S.C. 2255 (the "Habeas Petition"). The applicable lower court cases are the following:

U.S. v. Illarramendi – United States Court of Appeals for the Second Circuit, Docket No. 18-35 - (the "Circuit Court Proceeding")

U.S. v. Illarramendi – Case Docket No. 3:16-cv-01853 (SRU) – Proceeding related to the Criminal Matter to Vacate the Judgement of Conviction under 28 U.S.C. 2255 due to the Violation of my Constitutional Rights (the "District Case Below" or the "Habeas Petition").

U.S. v. Illarramendi – Case Docket No. 3:11-cr-00041 (SRU) in the District Court for the District of Connecticut (the "Criminal Matter").

List of Key Parties

Francisco Illarramendi – Pro Se Defendant, Appellant and Petitioner at the various corresponding court levels.

Government of the United States of America – Plaintiff, Appellee and Respondent at the various corresponding court levels.

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TABLE OF AUTHORITIES

The following authorities are cited in full the first time they appear in the text of this Petition and then subsequently listed by the designation given herein in *Italics*. This list is organized alphabetically according to the *Italics* designation. The pages of this Petition in which reference is made to each case are in [brackets].

OPINIONS BELOW AND JURISDICTION

Francisco Illarramendi, acting Pro Se, respectfully submits this Petition for a Writ of Certiorari to review the Second Circuit Court of Appeals Grant of the Government's Motion for Summary Affirmance (the "Summary Affirmance") of the District Court for the District of Connecticut's Order (the "Order") denying my motions for supervised release or bail pending resolution of my Motion to Vacate Conviction and Sentence pursuant to 28 U.S.C. 2255 (the "Habeas Petition").

I am presently incarcerated at the Federal Correctional Institution Fairton Camp "Fairton"). The Summary Affirmance was issued on October 16; 2018. A review of the version of Lexis which comprises the entire legal library available to inmates at Fairton did not show a published copy of the same. A copy of the document received from the Circuit Court is attached herein as Appendix A.

I timely petitioned the Second Circuit Court for a rehearing *en banc* of the Summary Affirmance. The Second Circuit Court denied my petition for rehearing *en banc* on January 3, 2019. A copy of the Order denying my petition for rehearing *en banc* is attached herein as Appendix B.

The Order subject of the appeal was issued by the District Court on December 22, 2017. The Order was not a document but simply a one line statement in the docket which reads: "*Order denying 18 Motion for Supervised*

Release; denying 19 Motion for Supervised Release. The Court has no authority to grant supervised release to a sentenced inmate." The Order is not published. In Appendix C herein I enclose a copy of the docket of the Habeas Petition with the highlighted docket entry for the Order.

As applicable throughout this Petition, both the Circuit Court Summary Affirmance and the District Court Order will be jointly defined as the "Opinions Below."

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

28 U.S.C. 2255 in its pertinent parts establishes that:

(a) A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

(b) Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the United States attorney, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto. If the court finds that the judgment was rendered without jurisdiction, or that the sentence imposed was not authorized by law or otherwise open to collateral attack, or that

there has been such a denial or infringement of the constitutional rights of the prisoner as to render the judgment vulnerable to collateral attack, the court shall vacate and set the judgment aside and shall discharge the prisoner or resentence him or grant a new trial or correct the sentence as may appear appropriate.

(c) A court may entertain and determine such motion without requiring the production of the prisoner at the hearing.

(d) An appeal may be taken to the court of appeals from the order entered on the motion as from the final judgment on application for a writ of habeas corpus.

Federal Rule of Appellate Procedure 23 – Custody or Release of a Prisoner in a Habeas Corpus Proceeding, in its pertinent parts indicates:

(b) **Detention or Release Pending Review of a Decision Not to Release**: While a decision not to release a prisoner is under review, the court or judge rendering the decision, or the court of appeals, or the supreme Court, or a judge or justice of either court, may order that the prisoner be:

(1) Detained in the custody from which release is sought;

(2) Detained in other appropriate custody; or

(3) Released on personal recognizance, with or without surety.

STATEMENT REGARDING RELATED LITIGATION AND KEY PARTIES

Reference may be made throughout the foregoing to the following related litigation, as well as to the various key parties defined below.

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

United States v. Illarramendi – Sentencing Appeal – Docket No. 15-526 (the "*Sentencing Appeal*")

United States v. Illarramendi – Restitution Appeal – Docket No. 15-4160 (the "*Restitution Appeal*")

SEC v. Illarramendi et al. – Appeal of Plan of Distribution by Interested Party R. Illarramendi – Docket No. 14-4471 (the "*R. Illarramendi Appeal*")

SEC v. Illarramendi et al. – Appeal of Third Subsequent Distribution – Docket No. 17-53 (the "*Distribution Appeal*")

SEC v. Illarramendi et al. – Appeal of SEC's Motion for Summary Judgment and Denial of Defendant's Motion for Modification of the Court's Temporary Restraining Order – Docket No. 17-1506(L)/1893(C) & 2551(C) (the "*MSJ Appeal*")

DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

U.S. v. Illarramendi – Case Docket No. 3:16-cv-01853 –Proceeding related to the Criminal Matter to Vacate the Judgement of Conviction under 28 U.S.C. 2255 due to the Violation of my Constitutional Rights pursuant to Luis v. United States, 136 S. Ct. 1083; 194 L. Ed. 2d 256; 2016 U.S. LEXIS 2272; 84 U.S.L.W. 4159; 26 Fla. L. Weekly Fed S 49, and Strickland v. Washington, 466 US 668, 802 L. Ed. 2d 674, 104 S. Ct. 2052 – 1984, – (the "*District Case Below*" or the "*Habeas Petition*")

U.S. v. Illarramendi – Case Docket No. 3:11-cr-00041 – SRU – (the "*Criminal Matter*") – This is the underlying case to the District Case Below

SEC v. Illarramendi et al. – Case No. 3:11-cv-00078-JBA – (the "*SEC Case*")

Carney v. Illarramendi – Case Docket No. 3:12-cv-00165 – SRU – ("*Carney v. Illarramendi*")

Carney v. Beracha – Case Docket No. 3:12-cv-00180 – SRU – ("*Beracha*")

Carney v. Montes – Case Docket No. 3:12-cv-00183 – SRU – ("*Montes*")

Carney v. Horion Investments et al. – Case Docket No. 3:13-cv-00660 – SRU – ("*Horion*")

KEY PARTIES

Judge Stephan R. Underhill ("Judge Underhill") – District Judge in the District Case Below, the Criminal Matter and various other civil cases mentioned above, including Beracha, Montes and Horion.

Judge Janet Bond Arterton ("Judge Arterton") – District Judge in the inextricably intertwined SEC Case.

United States Attorney's Office for the District of Connecticut ("USAO" and, as referred to together or individually with the SEC, the "Government") – Plaintiff in the Criminal Matter and Respondent/Appellant in the District Court Case and the appeal at the Circuit Court level.

Securities and Exchange Commission ("SEC" or the "Commission") – Plaintiff in the SEC Case.

Receiver, (the "Receiver") – Includes Mr. John Carney, Court-appointed Receiver in the SEC Case, as well as members of his team either jointly or individually.

Claimants to the Receivership (the "Claimants") – Refers to Persons and corporate entities who presented claims against the Receivership in the SEC Case.

Petroleos de Venezuela, S.A. ("PDVSA") – Oil Company, owned 100% by the Bolivarian Republic of Venezuela ("Venezuela"). As the entity is fully owned and financially consolidated with Venezuela and its officials act in concert with Venezuela's Government Officials, the term is taken to mean either/or, or both together.

The cases listed above deal with a common set of facts. Some of these facts may be mentioned throughout this Petition as necessary to inform the same. Further explanations or clarifications are available from the record on appeal or the records of the various cases. Additionally, they can be provided upon request or during oral arguments as needed. I would respectfully request that this Supreme Court of the United States take notice of the inextricably intertwined nature of all these related cases when evaluating this Petition.

STATEMENT OF THE CASE AND THE FACTS

The following statements and facts related to the District Case Below and the other inextricably intertwined cases, most importantly the Criminal Matter and the SEC Case, are undisputed in some cases and subject to interpretation in others. To the best of my knowledge, all of the facts and statements contained herein are true and correct. I highlight here mainly the facts that relate specifically to the issue at hand and the District Case Below. Many other facts that may be relevant to the overall group of related cases are available for review for the judicial record and can be provided as requested by the Court.

The District Case Below originates with the Habeas Petition that I filed under 28 U.S.C. 2255 to obtain relief from my unconstitutional conviction and sentence in the Criminal Matter. The basis and premises of the Habeas Petition itself are discussed briefly further below and referenced as needed throughout this Petition for Certiorari.

The Criminal Matter began pursuant to an investigation by the Government into the business activities carried out during the period from October 2005 to January 2011 (the "Relevant Period") at companies which now form part of the so-called Michael Kenwood Receivership (the "Receivership"). During the Relevant

Period I was either an equal or majority partner/owner in most of the companies that form part of the Receivership.

In or around January 2011, the SEC filed an extemporaneous[1] lawsuit against me as Defendant and several of the companies in the Receivership as Relief Defendants. The lawsuit, which gave rise to the inextricably intertwined SEC Case, alleged various violations of securities laws. Contemporaneously with the SEC Case, the USAO had begun a criminal investigation which derived in the Criminal Matter.

As part of the litigation, the Government obtained from the District Court the appointment of the Receiver in the SEC Case, and the imposition of a Temporary Restraining Order ("TRO") freezing one-hundred percent of my assets. The TRO encompassed all of my assets; including a large portion which was unequivocally untainted. As evident from the record, the TRO generated a Structural, Constitutional error as defined by this Supreme Court in Luis v. United States, 136 S. Ct. 1083; 194 L. Ed. 2d 256; 2016 U.S. LEXIS 2272; 84 U.S.L.W. 4159; 26 Fla. L. Weekly Fed S 49, because it denied my Sixth Amendment right to retain counsel of my choice to represent me in the Criminal Matter.

[1] Under the principles espoused by this Supreme Court in Gabelli v. S.E.C., 568 US 442 454 133 S. Ct. 1216, 185 L. Ed. 2d 297and Kokesh v. S.E.C., 137 S. Ct. 1635; 198 L. Ed. 2d 86; 2017 U.S. LEXIS 3557, the SEC complaint was filed outside the statute of limitations period and should have been dismissed at inception. Repeated calls for a legal ruling to this effect have been ignored at all court levels without explanation.

The SEC Case was preceded by several months of work with regulators which culminated with the filing of the SEC's initial complaint in January 2011. During this time and up until the day of the imposition of the TRO I was represented by attorneys from then internationally-renowned law firm Bingham who specialized in White Collar litigation. Bingham was retained by the Michael Kenwood Group on my behalf for an initial fee of $500,000. At the time the TRO was imposed, Bingham indicated, as did other reputed, white collar firms, that fees for defense in the overall proceedings would require an additional retainer of between $400,000 and $1.0 million.

The TRO froze all my assets, including at least $2.0 million which were unequivocally untainted[2]. As described more fully in the Habeas Petition, because I could not use those untainted assets to pay for counsel of my choice I was compelled to seek borrowed money from family and friends to retain counsel to represent me in the Criminal Matter. At that time, in January and early February of 2011, the most I was offered in loans for purposes of paying legal fees was approximately $100,000, and the funds were not provided upfront, but instead could only be obtained over a period of several weeks or months. This amount was a small fraction of the $400,000 to $1.0 million estimated funds required to

[2] Pursuant to an agreement with the SEC reached by order of the District Court, all of my assets, both liquid and non-liquid are to be held in escrow under control of the Court. The assets in escrow total more than $6.0 million; out of which approximately $2.0 million are indisputably untainted as they were earned from professional activities that I carried out well before the Relevant Period of the Criminal Matter and the SEC Case.

pay for the fees of counsel from the firm Bingham or other attorneys with adequate white collar experience. Therefore, as soon as the TRO was imposed it left me effectively indigent and foreclosed my ability to use my untainted funds to pay for the reasonable fees of Bingham, my counsel of choice. In this regard, the TRO directly denied my right to retain counsel of my choice for the Criminal Matter, as I was forced to dismiss the attorneys from Bingham before any further recourse could be pursued at the District Court level. I was then compelled by the circumstances derived from the all-encompassing, asset freeze to use borrowed funds, instead of my untainted funds because they were frozen by the TRO, to hire Mr. John Gleason, who by his own admission – as described in a personal affidavit he provided to the Government in the District Case Below – is a general practice attorney with very limited experience in white collar litigation. Mr. Gleason was the only attorney I could find who was willing to work for cut rate fees[3] to cover his work on both the Criminal Matter and the SEC Case and who did not require the fees upfront, but was instead willing to receive fee installments when and if they were ultimately provided over time by family and friends.

The record unequivocally shows, therefore, that Attorney Gleason was not my counsel of choice and was not paid for with my untainted assets. It is factually unsupported and patently disingenuous to believe, as the Government has

[3] Mr. Gleason indicated he would charge $150,000 for all proceedings.

erroneously proposed in various filings, that any reasonable defendant in my same position, who had access to the specialized white collar litigators from Bingham – attorneys who had been working on case-related matters for several months and were therefore intimately familiar with the issues of the litigation – would voluntarily choose to dismiss said specialized attorneys from Bingham to replace them with a general practice attorney who had limited white collar experience and had not done any work on the matter at the time.

The only reason I dismissed Bingham and retained Mr. Gleason instead, is that, strictly due to the restrictions of the asset freeze on my untainted assets, I did not have access to sufficient funds to continue to retain Bingham.

To be categorically clear, Bingham was my counsel of choice but I could not pay for their services due to the unconstitutional TRO imposed over my untainted assets, so I had to hire Mr. Gleason with borrowed funds instead. A key fact to highlight in this Petition therefore is that, even though I retained Mr. Gleason using the funds I borrowed, Mr. Gleason was not my counsel of choice[4]. The record shows, incontrovertibly, that the District Court unconstitutionally took away my ability to pay for counsel using my own untainted funds at the very moment that

[4] Because of the TRO, I was forced to borrow funds to retain counsel for the Criminal Matter. The Dissent opinion in *Luis* specifically highlighted that the defendant's potential ability to borrow funds was one of the reasons why it did not agree with the Plurality and Concurring opinions. By contrast, the combined Majority in *Luis* clearly determined that a defendant's ability to borrow funds does not cure the structural constitutional defect derived from the freeze over untainted assets.

the totality of my assets were subjected to the TRO freeze starting on January 28, 2011.

As the Habeas Petition and the record of the Criminal Matter clearly prove, Mr. Gleason's performance as my counsel was woefully ineffective. Among his deficient performance, we highlight further below that Mr. Gleason unilaterally negotiated a guilty plea with the USAO and compelled me to enter into said plea by indicating that, in his view, it would "*greatly increase the likelihood the Court would spare [me] incarceration and grant probation*;" (see Habeas Petition Doc. 10 Attachment - "Gleason Affidavit" at P. 16). This advice was issued despite the fact that in the plea agreement's stipulation of conduct, Mr. Gleason was agreeing on my behalf to language denoting a potential loss of approximately $300 million; something which gave the Court the possibility of imposing a loss calculation enhancement that would result in guidelines of life in prison. Said loss calculation was erroneous and should never have been part of the agreement to begin with; but more importantly, Mr. Gleason never explained the concept of loss or its effect on sentencing, nor did he mention the possibility – in this case actually probability – that my sentence would be enhanced more than tenfold due to its effect. As the Justices of this Supreme Court can likely understand, no competent attorney which recommends that his client plead guilty to crimes and relevant conduct that might expose him or her to life in prison, can at the same time indicate to said client that

pleading guilty is the best course of action because it will "*greatly increase the likelihood the Court would spare [me] incarceration and grant probation*;" (see Habeas Petition Doc. 10 Attachment - "Gleason Affidavit" at P. 16). There is no court in this country which could justifiably, under the indicative sentencing guidelines system, reduce a sentence from life to probation no matter how promptly a defendant pleaded guilty and accepted responsibility or how much he cooperated in his own prosecution or even that of others.

The ultimate result of Mr. Gleason's deficient performance at the pre-trial stage of the proceedings was that, in early March 2011, approximately 39 days after the imposition of the TRO, I entered what was, for all intents and purposes, an invalid, unconstitutional plea of guilty in the Criminal Matter. The plea was structurally unconstitutional because it was entered after the courts had denied my right to counsel of choice. The plea was also defective because my not-of-choice counsel failed to advise me regarding the direct consequences of said plea, and thus made the plea devoid of its necessary "knowing and voluntary" elements as defined in several of this Supreme Court's precedents beginning with Boykin v. Alabama, 395 U.S. 238, 242-43, 89 S. Ct. 1709, 23 L. Ed. 2d 274 – 1969.

As a result of my unconstitutional guilty plea, I was convicted and ultimately sentenced, almost four years later, in January 2015, to a period of incarceration of 156 months followed by three years of supervised release. I was also ordered to

pay Restitution in an amount of approximately $370 million, despite the fact that Judge Underhill indicated at sentencing that he could not calculate actual loss and therefore imposed a sentencing loss enhancement based on an arbitrary figure of gains that had been submitted by the Receiver.

As I learned further about the process and applicable law, particularly the loss calculation issue, it became clear to me that I needed to replace Mr. Gleason. Unfortunately at the time, I could not borrow sufficient funds to hire an alternative attorney and I was thus compelled to request court-appointed attorneys under the auspices of the Criminal Justice Act ("CJA"). Later in the process, particularly for the sentencing phase, my parents borrowed money from a friend hired a a non-CJA attorney to represent me. Ultimately therefore, throughout the proceedings, I was represented by various attorneys at the District and Appellate court levels but none of these attorneys were my counsel of choice. Apart from Mr. Gleason's errors, several of the other attorneys made errors which rise to the level of ineffectiveness under the premises of Strickland v. Washington, 466 US 668, 802 L. Ed 2d 674, 104 S. Ct. 2052 – 1984. These are described more fully in the Habeas Petition.

After sentencing, I directly appealed my sentence and restitution but both were affirmed in proceedings in which I was again represented by appointed CJA Counsel because I could not afford to hire counsel of my choice due to the TRO. This generated an additional structural error in the proceedings, as defined by this

Court in Ferreta v. California, 422 U.S. 806, 834 (1975), derived from the outright refusal of said appellate counsel to withdraw from representing me despite my numerous requests that he do so.

Based on the foregoing and as detailed further below, the TRO caused a structural, constitutional error pre-trial, at the beginning of the process, and generated additional errors, some structural in nature, throughout the proceedings. As described in the Habeas Petition, the structural errors found in these proceedings are of the type that this Supreme Court has defined as not being subject to harmless error analysis. Applicable jurisprudence indicates that the only appropriate way to correct this injustice and violation of my constitutional rights is to vacate my conviction and sentence. This eliminates any finding of guilt and restores of the presumption of innocence, and therefore automatically shifts the burden of proof beyond a reasonable doubt onto the Government.

In this regard, because the applicable remedy is reversal *ab initio*, it is also appropriate as described further below to grant my release during pendency of the Habeas Petition pursuant to the principles and jurisprudence of the Second Circuit Court of Appeals and several other circuits. This is the only way to, as the Second Circuit states in applicable precedents, make the habeas remedy effective pending deliberation of the Habeas Petition by the District Court.

The District Court Order subject to my appeal denied me this release under the premise that the Court is not empowered to grant the requested and warranted release. The Court's position is erroneous and, therefore, my appeal to the Second Circuit followed. Via Summary Affirmance, the Second Circuit Court of Appeals perpetuated the error incurred by the Order. The grant of Certiorari, as explained further below, is the only way to correct the manifest injustice derived from the erroneous Opinions Below.

REASONS FOR GRANTING THE PETITION

As stated in the Summary Affirmance and described further below, the Second Circuit agreed with me, against the Government's contention, that a Certificate of Appealability ("COA") was not needed to hear the interlocutory appeal of the denial of release established by the Order. The Circuit Court also agreed with my position, by implying in its ruling that my motion for release should be interpreted liberally and equated my request for "Supervised Release" with a request for "bail pending habeas litigation." The Second Circuit nevertheless granted Summary Affirmance to the Government without any type of detailed explanation of the reasons for its decision. That Summary Affirmance is legally erroneous for several reasons that warrant the Grant of Certiorari to answer the questions presented above. These reasons include:

1. The Summary Affirmance should ultimately be held to the same principles espoused by this Court for Summary Judgments. These principles are most clearly articulated in Tolan v. Cotton, 572 US, 134 S. Ct., 188 L Ed 2d 895 - 2014 US LEXIS 3112. As part of the grant of Certiorari, the Second Circuit should be instructed to apply the proper criteria to its summary decision, particularly in cases such as this one in which the facts are undisputed in favor of the Petitioner-Defendant.
2. The Circuit Court's Summary Affirmance prejudices my rights as a defendant who has been incarcerated in violation of the Constitution and the laws of the United States because it erroneously and extemporaneously states that my Habeas Petition has no merits even though the District Court has not entered a

decision in the matter. This is the wrong stage of the proceedings to opine on the merits of my Habeas Petition. By opining on the merits – and doing so without any type of explanation - the Circuit Court has opened the door for the District Court to improperly rely on erroneous circuit dicta. The Circuit Court was tasked with determining whether the District Court had the power to grant release to a Habeas Petitioner pending deliberations of his petition. In this context, according to its own applicable jurisprudence, the Circuit Court should have limited its merits analysis to one similar to the one it uses to determine if a COA should issue when the District Court decision is final. As described further below, that analysis should not opine on the merits of a Habeas Petition but should focus strictly on whether or not the Habeas Petition raises substantial claims and whether, as described in Buck v. Davis, 580 U.S., 137 S. Ct., 197 L Ed 2d 1, 2017 US LEXIS 1429, jurists of reason could disagree with the District Court's determination of the constitutional claims. By erroneously expanding its opinion to the merits – and more so given that in the instant case the District Court has not yet issued a final opinion regarding the Habeas Petition – the Second Circuit has prejudicially opened the door for the District Court to dismiss the Habeas Petition outright. Ultimately, if Certiorari is not granted, not only will I be prejudiced by the Second Circuit's erroneous analysis, but so will all other defendants who come before the courts to collaterally attack the validity of their conviction.

3. The Summary Affirmance has opined, in passing, that my situation does not present any "Extraordinary Circumstances" that warrant release. This determination is contrary to the Second Circuit's own doctrine on the matter and therefore Certiorari is merited to avoid a manifest injustice. Moreover, given the variety and ambiguity of interpretations given to the concept of "Extraordinary Circumstances" in applicable circuit case law, this Petition presents an optimal vehicle for the Supreme Court to opine on an important issue with Constitutional implications which it does not seem to have previously addressed formally.

Each of these reasons is discussed in more detail below.

1. The Summary Affirmance contravenes Supreme Court doctrine regarding summary decisions which calls for drawing inferences in favor of the non-movant

In the Second Circuit proceeding, I appealed the District Court's erroneous determination with respect to my Motion for Supervised Release, and the Government, in response to my appeal, filed its Motion for Summary Affirmance. In this regard, as the Government was in effect moving for Summary Judgement in its favor, the Second Circuit should adhere to Supreme Court doctrine which unequivocally states that "***in ruling on a motion for summary judgment, 'the evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor'***" – Tolan v. Cotton, 572 US, 134 S. Ct., 188 L Ed 2d 895 - 2014 US LEXIS 3112.

As mentioned above, in addition to detailing that I was right in assuming that a COA was not needed to appeal the District Court's interlocutory appeal, the Second Circuit correctly interpreted my use of the term "Supervised Release" to mean release under bail-like conditions and under supervision of the Court.

Nevertheless, the Second Circuit then effectively mimicked the Government's contentions regarding the merits of the Habeas Petition and the non-existence of extraordinary circumstances and granted summary judgment for the Government without explanation. If the principles of *Cotton* had been adhered to, the Circuit Court should have at least considered my arguments – explained in

more detail below - regarding the fact that the Habeas Petition raises substantial Constitutional issues and is also premised primarily on the structural and broad-based variety of those issues to support the existence of extraordinary circumstances. Failing to view these matters from the position of the non-movant is implicitly a violation of the principles of *Cotton*. Doing so, in addition, without providing an explanation, is a clear indication that my arguments were not even considered. In this context, Certiorari would be appropriate to reaffirm the validity of *Cotton* in the context of circuit summary judgments and to correct the manifest injustice of the Second Circuit's purposeful disregard of the same when issuing the Summary Affirmance.

2. The Summary Affirmance contravenes Supreme Court doctrine and opens the door for an erroneous decision of the Habeas Petition at the District Court level

As indicated above, my appeal relates directly to the Habeas Petition that gave rise to the District Case Below as it emanates from the Criminal Matter and the inextricably intertwined SEC Case. The District Court has not yet issued a final decision in the Habeas Petition. Despite this, the Summary Affirmance explicitly states that the Habeas Petition has not merit or does not present substantial questions. This violation of legal precedent and judicial procedure warrants the grant of Certiorari and reversal to avoid prejudice from the Circuit Court's erroneous and extemporaneous decision.

The specific language used by the Circuit Court in the Summary Affirmance states that: *after reviewing the record of appellant's arguments, we conclude that his motion for supervised release or bail pending review of his 28 U.S.C. 2255 motion lacked merit because the motion does not present substantial questions...*" (See Summary Affirmance. P. 7 @ 19-23).

If Certiorari is not granted, I will be directly prejudiced by the license that the District Court can draw from this erroneous and inappropriate determination at the circuit level, as it may give it grounds to deny the Habeas Petition outright, relying on the belief that its decision will not be reversed. The legal basis for this contention and for the required Certiorari review can be detailed further as follows.

By opining on the merits of the Habeas Petition within the context of an interlocutory appeal and by ignoring the fact that there are multiple structural errors raised as well as several non-structural IAC instances described in the Habeas Petition, the Summary Affirmance has in effect violated the spirit of Supreme Court jurisprudence – most recently detailed in in Buck v. Davis, 580 U.S., 137 S. Ct., 197 L Ed 2d 1, 2017 US LEXIS 1429 and its dicta – with regards to implying bias towards a particular decision by the District Court at an earlier point of the litigation than what is warranted by due process.

In particular, although *Buck* deals with the analysis required for the issuance of a COA, the precedent makes clear that **an appellate panel should not evaluate the merits** of a Habeas petition before a District Court decides the Habeas petition itself. This is implied in *Buck* because circuit courts are in fact instructed not to consider the merits even in a COA analysis, something which takes place after the District Court decision. If the merits cannot be considered at the COA stage, they certainly should not be considered within an interlocutory appeal deliberated before the grant or denial of a 2255 motion by a district court.

Specifically, *Buck* states, quoting in parts Miller-El v. Cockrell, 537 U.S. 322, 336 123 S. Ct. 1029, 145 L. Ed. 2d 921 (2003), the following:

> ***"The COA inquiry, we have emphasized, is not coextensive with a merits analysis. At the COA stage, the only question is whether the applicant has shown that 'jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further'. This threshold question should be decided without 'full considerations of the factual or legal bases adduced in support of the claims. When a court of appeals sidesteps [the COA] process by first deciding the merits of an appeal and then justifying its denial of a COA based on its adjudication of the actual merits, it is in essence deciding an appeal without jurisdiction'."***

To be clear, in the instant case, the appeals court was not making a decision regarding the grant of a COA from the denial of the Habeas Petition. That denial has not yet occurred; and likely would not occur but for the erroneous decision by the circuit court.

The appellate panel was solely tasked with evaluating whether release pending the habeas deliberation by the District Court was appropriate and by opining on the merits of the Habeas Petition it overstepped its boundaries without jurisdiction. The circuit judges first correctly determined that a COA was not required at this stage because the appeal was from an interlocutory decision (see Summary Affirmance, P 7, @ 11-17). The appellate panel also correctly assumed that the use of the term "Supervised Release" in my motion should be interpreted liberally and equated to a request for bail pending habeas litigation (see Summary Affirmance, P. 6 throughout).

Unfortunately, the judges on the panel then erroneously denied the relief requested partly because "*after reviewing the record of appellant's arguments, we conclude that his motion for supervised release of bail pending review of his 28 U.S.C. 2255 motion lacked merit because the motion does not present substantial questions...*" (See Summary Affirmance. P. 7 @ 19-23).

Based on the foregoing, Certiorari is needed because the opinion of the Circuit Court effectively opens the door for the District Court to decide the Habeas Petition without regard for Supreme Court precedent and in violation of the spirit of the underlying statutes.

Due to the unfortunate language of the Summary Affirmance, as quoted above, the District Court could erroneously assume that the appellate panel has in fact evaluated the merits of the Habeas Petition. Although to counteract the Government's erroneous contention to the contrary, it was necessary to mention those merits in my pleadings, those merits were not formally before the panel for deliberation on the appeal except insofar as they point to the fact that **there are substantial constitutional claims being deliberated upon by the District Court** and that these merit release.

In deciding whether to grant a prisoner's release pending deliberation of a motion filed pursuant to 28 U.S.C. 2255, the Second Circuit Court's doctrine in Mapp v. Reno, 241 F. 3d 221, 230 – 2nd Cir. 2001 indicates that, similar to the analysis which is required for a COA under *Buck*, "***a court considering a habeas petitioner fitness for bail must inquire into whether the habeas petition raise[s] substantial claims***." At no point in the *Mapp* doctrine does this Court indicate that the merits of those claims should be deliberated upon in the evaluation of the candidate's fitness for release.

The Habeas Petition was filed approximately two years ago. As the Summary Affirmance acknowledges, the Habeas Petition "*is pending before the district court*" (see Opinion, P. 4 @ 11-12).

Furthermore, as the Summary Affirmance also paraphrases (Idem, @ 5-9) the Habeas Petition in the District Case Below, as alluded earlier, centers on two main Grounds for Relief:

i. Structural[5] Constitutional Error derived from the denial of my Sixth Amendment Right to select counsel of choice in criminal proceedings, due to the fact that my untainted assets were frozen by the TRO in contravention of the Supreme Court's intervening decision in *Luis*; as underpinned by the counsel of choice doctrine in United States v. Gonzalez-Lopez, 548 U.S. 140, 150, 126 S. Ct. 2557,165 L. Ed. 2d 409, 2006.

ii. Constitutional Error derived from the denial of my Sixth Amendment Right to a Fair Trial due to Ineffective Assistance of Counsel ("IAC") under the Performance and Prejudice Prongs of *Strickland.*

In addition, as underscored more recently by this Supreme Court in Weaver v. Massachusetts – 137 S. Ct. 1899; 198 L. Ed. 2d 420; 2017 U.S. LEXIS 4043; the combination of the effects of both grounds for relief underscores additional errors which took place in the Criminal Matter. At least one of these errors is structural in nature and merits automatic reversal. The key additional errors include, but are not limited to:

[5] As defined by this Supreme Court, a so-called structural error is, in most cases, including *Luis*, an error which cannot be subjected to harmless error analysis and thus merits automatic reversal to inception of the proceeding.

i) Counsel's failure to inform me of the direct consequences of my plea as derived from the loss stipulation make the plea invalid due to its lack of the knowing and voluntary element as defined in several Supreme Court precedents beginning with *Boykin*; and,

ii) Counsel's failure to resign from my appellate proceedings as I requested, and allow me to act Pro Se, violated my right to self representation on appeal under long-standing Supreme Court doctrine described best as follows:

> "***First, an error has been deemed structural in some instances if the right at issue is not designed to protect the defendant from erroneous conviction but instead protects some other interest. This is true of the defendant's right to conduct his own defense, which, when exercised, 'usually increases the likelihood of a trial outcome unfavorable to the defendant,' McKaskel v. Wiggins, 465 U.S. 168, 177, n. 8 (1984). That right is based on the fundamental legal principle that a defendant must be allowed to make his own choices about the proper way to protect his own liberty, see Ferreta v. California, 422 U.S. 806, 834 (1975). Because harm is irrelevant to the basis underlying the right, the Court has deemed a violation of that right structural error - see Gonzalez-Lopez.***"

Finally, because of recently discovered evidence which supports my exoneration from any alleged wrongdoing due to the affirmative defenses of duress and necessity, supplemental filings on the record raise the additional issue of the Government's purposeful suppression of evidence in this process, in direct contravention of this Supreme Court's mandate in Brady v. Maryland, 373 US 83, 10 L. Ed. 2d 215, 83 S.Ct. 1194 – 1963, which held "***that the suppression by the***

prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution" when failing to disclose it.

At stated earlier, the Habeas Petition is still pending deliberation by the District Court. After my initial filing (Doc. 1)[6], the District Court ordered the Government to respond and the Government submitted an Opposition to the Habeas Petition (Doc. 10). I subsequently filed an Initial Reply and a Supplemental Reply to said Opposition (Docs. 12 & 15 respectively).

In parallel, on June 20, 2017, the District Court issued an Order (Doc. 14, the "Counsel Order") indicating its interpretation that the Habeas Petition alleges that I "*had been deprived of counsel of [my] choice and had, as a result, received ineffective assistance of counsel in the course of entering [my] guilty plea.*" The Counsel Order also stated that the Habeas Petition "*raises complex legal issues that would likely benefit from the assistance of counsel*;" and offered to appoint counsel to represent me if I filed a motion to that effect within thirty days of the Court's order.[7]

[6] The document numbers listed in this section all refer to docket entries in the District Case Below.

[7] As explained in various filings on the record of the District Case Below and the various related cases, it seems disingenuous for a Court to offer the appointment of counsel in the Habeas context to represent a Petitioner who is contesting his conviction and sentence, precisely in part because he was denied the right to counsel of choice to

To summarize, the Habeas Petition presents several constitutional errors that occurred in the District Court proceedings. At least two of these errors are structural in nature. These structural errors are of the type which this Supreme Court, in *Weaver*, has reaffirmed as defying harmless-error analysis and require automatic reversal of my conviction and sentence. Moreover, by requesting that the Government respond to the Habeas Petition, and by the language of its own Counsel Order, the District Court has admitted that the Habeas Petition raises "*complex issues of law.*"

All of the constitutional errors listed as well as the District Court's own language in the Counsel Order leave no doubt for this Circuit Court that the Habeas Petition "***raises substantial claims***" or questions for purposes of complying with the *Mapp* doctrine.

In addition, the Second Circuit, in Lindstadt v. Keane, 239 F. 3d 191, 2nd Cir., 2000, has reaffirmed the Habeas-context doctrine that "***a court need not decide whether one or another or less than all of [the errors] would suffice because Strickland directs [courts] to look at the 'totality of the evidence before the judge or jury,' keeping in mind that some errors have....a pervasive effect on***

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begin with. In this regard, I requested that the Court instead appoint stand-by counsel to help me in filings and in analysis of the law. The District Court refused to appoint such counsel.

the inferences to be drawn from the evidence, altering the entire evidentiary picture.....therefore, errors are considered in aggregate".

For all of the foregoing, it is judicially inappropriate for the Summary Affirmance to basically mimic the Government's erroneous contention regarding the merits of the Habeas Petition and leave the door open for the District Court to make an erroneous determination of the same. This is a direct violation of the spirit of the Supreme Court's decision in *Buck* and of the Circuit Court's own guidelines in *Mapp* because it implies an opinion about the merits and substantiality of a petition before the stage at which the proceeding would be ripe to adjudicate that issue. For this most important issue, the grant of Certiorari is warranted in the present context. Failure to do so will not only perpetuate prejudice and a manifest injustice, but will implicitly extend to the Second Circuit unwarranted license to use a merits analysis to deny certain Constitutional rights to citizens without the full extent of the protections that apply under due process of law, applicable jurisprudence and the proper functioning of our system of Justice.

3. Certiorari Review is also merited as a way for this Supreme Court to more properly consider and define the concept of Extraordinary Circumstances

Another important reason for granting a Petition for Certiorari is that this Supreme Court can use it to provide lower courts with previously unaddressed guidance on the Justices' views with respect to an open question of law which is

ripe for debate. In this case, the Justices of this Supreme Court have an opportunity, given the questions presented in the case, to address the issue of release of a prisoner in the Habeas context, particularly if the Habeas right derives from errors that are structural in nature. Moreover, the Justices can also clarify and strengthen the definition of the concept of "Extraordinary Circumstances" which applies to certain situations regarding the release of a defendant during appeal and is reflected in the second prong of the Second Circuit's decision in *Mapp* – ***"....and whether extraordinary circumstances exist that make the grant of bail necessary to make the habeas remedy effective."***

In the Summary Affirmance, this issue is unfortunately glossed over by the appellate panel without any justification for its decision when it states simply that "*Appellant has not demonstrated that 'extraordinary circumstances' exist...*" (see P. 7 @ 23 to P. 8 @3).

Differently from several other opinions of the Second Circuit, including *Mapp*, the appellate panel avoids a discussion of what it considers extraordinary circumstances despite the fact that under Circuit doctrine, the existence of said circumstances is clearly present in the instant case.

As described above and the pleadings indicate, the Habeas Petition raises multiple structural errors and several other standard IAC errors which merit reversal of my conviction and sentence.

Opinions by various Circuits have generally avoided giving a clear definition of the term "Extraordinary Circumstances," instead looking to evaluate the issue on a case by case basis. Nevertheless, many circuits have limited their evaluation to cases involving poor health or the impending completion of the prisoners sentence (see In Re Sean A. Souels, 688 Fed. Appx. 134; 2017 U.S. App. LEXIS 7924; Calley v. Callaway, 496 F. 2d 701, 702 – 5th Cir. 1974 or Martin v. Solem, 801 F. 2d 324, 329 – 8th Cir. 1986 among others).

For its part, the Second Circuit Court has stated that "***exceptional circumstances exist when there is a 'unique combination of circumstances giving rise to situations that are out of the ordinary.***'" – U.S. v. Lea, 360 F. 3d 401, 403 – 2nd Cir. 2004, quoting U.S. v. Di Somma, 951 F. 2d 494, 497 *2nd Cir. 1991. As in its sister circuits, the Second Circuit Court has not widely defined examples of extraordinary circumstances per se as these could be varied and could include medical, personal, circumstantial or legal reasons. Nevertheless, the circuit jurisprudence that addresses the subject shows that there are extraordinary circumstances in the instant case which merit release.

As applicable herein, *DiSomma* states that to show extraordinary circumstances, "***an unusual legal or factual question can be sufficient... [or, o]n the other hand, a merely substantial question may be sufficient, in the presence of one or more remarkable and uncommon factors.***"

The pleadings show that both of these scenarios are present in the District Case Below and the Criminal Matter and can serve as this Supreme Court's anchor in setting a stronger definition of the concept of extraordinary circumstances with regards to the specific legal framework of a case.

In addition to the factors mentioned earlier, the Habeas Petition gives faith of the fact that the various errors which occurred in the Criminal Matter have been described in Supreme Court jurisprudence, most recently in McCoy v. Louisiana, McCoy v. Louisiana, 584 US, 138 S. Ct., 200 L Ed 2d 821, 2018 US LEXIS 2802; Lee v. United States, 582 US, 137 S. Ct., 198 L Ed 2d 476, 2017 US LEXIS 4045 and in *Weaver*, as meriting reversal of a defendant's conviction. This is so, even if, in the case of the structural errors described, they may ultimately be traced to counsel ineffectiveness and raised in the habeas context.

An overview of habeas jurisprudence indicates that most 28 U.S.C. 2255 proceedings are based on limited instances of IAC, with some of them being

single-issue appeals. This case is well outside the standard, ordinary context of habeas proceedings.

In the first place, there are several substantial issues that meet the first prong of the *Mapp* release test. The cases above have actually reiterated several of these issues including the fact that the denial of counsel of choice merits automatic reversal. These issues include but are not limited to:

- The TRO generated a structural violation of my right to counsel of choice: In *Weaver* this Supreme Court states that, in the case of an counsel error such as the one contemplated in *Luis*, "***the underlying constitutional violation....has been treated by this court as a structural error, i.e., an error entitling the defendant to automatic reversal, without any inquiry into prejudice.***" Therefore, the attorney's ineffectiveness is sufficient to meet the bar of the performance prong of Strickland v. Washington, 466 US 668, 802 L. Ed. 2d 674, 104 S. Ct. 2052 – 1984, and there is no need to look further into the prejudice prong of *Strickland*. This last point is emphasized in Justice Alito's concurring opinion in *Weaver*, when he states that: "***to sum up, in order to obtain relief under Strickland, Weaver must show that the result of his trial was unreliable. He could do so by demonstrating a reasonable likelihood that his counsel's error affected the verdict. Alternatively, he could establish that the error falls within the very short list of errors for which prejudice is presumed.***" Ultimately, the majority in *Weaver* unquestionably shows that the *Luis* error contemplated here merits the relief sought my Habeas Petition by quoting Neder v. United States, 527 U.S. 1, 7, 1999 ("***thus in the case of a structural error where there is an objection at trial and the issue is raised on direct appeal, the defendant generally is entitled to 'automatic reversal' regardless of the error's actual 'effect on the outcome'.***").
- Counsel's failure to advise of the loss calculation effect on incarceration made the plea invalid: As stated earlier, when counsel failed to properly advise me regarding the loss calculation included in my plea stipulation and

recommended that I plead guilty despite the fact the plea exposed me to life in prison without my knowledge, he was clearly ineffective under *Strickland* because he failed to advise me about the direct consequences of my plea. If I had known that the plea exposed me to life in prison, the same maximum penalty I faced by going to trial, I would have never chosen to plead guilty, even if my chances of winning at trial had been low, which in this case they were not. In effect, as *Lee* states, there is a "***reasonable probability that, but for counsel's error,***" I "***would not have pleaded guilty and would have insisted on going to trial.***" This Supreme Court clarifies in *Lee* that "***common sense (not to mention judicial precedent) recognizes that there is more to consider than simply the likelihood of success at trial. The decision whether to plead guilty also involves assessing the respective consequences of a conviction after trial and by plea. <u>When those consequences are, from the defendant's perspective, similarly dire, even the smallest chance of success at trial my look attractive</u>***."

- <u>Appellate Counsel's failure to withdraw from representing me upon my request violated my right to self-representation</u>: As mentioned earlier and evident from the record of the Sentencing Appeal and the Restitution Appeal, the court-appointed attorney who represented me in those proceedings failed to withdraw from representing me despite my repeated calls for his resignation and my express wishes to proceed Pro Se. In addition to the various precedents cited from *Weaver* above, the recent *McCoy* decision clearly shows this is reversible error. The *McCoy* decision specifically reiterates that "***an accused may insist upon representing herself. The right to defend is personal, and a defendant's choice in exercising that right must be honored out of that respect for the individual which is the lifeblood of the law. The right to appeal pro se exists to affirm the dignity and autonomy of the accused.***"

More importantly, the combined grounds for relief raised in the Habeas Petition themselves meet the extraordinary circumstances prong of *Mapp* because the integrity of the judicial proceeding has been affected by multiple structural

errors that merit automatic reversal. Because these structural errors call for automatic reversal of a conviction and sentence and merit immediate release of a prisoner, they should suffice as extraordinary circumstances which make "***the grant of bail necessary to make the habeas remedy effective.***"

In this context, this case presents an opportunity for the Justices of the Supreme Court to opine on the seldom seen circumstance of a case in which multiple structural errors are committed that merit reversal *ab initio* without harmless error analysis. In those cases, as here, the burden of proof as to guilt or innocence automatically has shifted back to the prosecution and, therefore, keeping a defendant detained is against every principle of the liberty interests protected by the Constitution. This is different from a pure case of Strickland ineffectiveness, in which the Petitioner has the additional burden of showing harm or prejudice to obtain habeas relief.

Ultimately, because the record reflects and the cited jurisprudence supports the Habeas Petition's merit, particularly due to the structural errors and the plea error described, then everything that happened in the Criminal Matter is invalid and unconstitutional; and all material judicial findings related to the Criminal Matter or derived thereof, in the District Court Case and at the appellate level, are also invalid and unconstitutional. To wit, because the Habeas Petition has merit and the key error that guides it is based on *Luis* is reversible, structural error, then:

- The imposition of the TRO over my untainted assets in the SEC Case and its implicit confirmation in the Criminal Matter are invalid and unconstitutional;
- The cooperation agreements I entered into with the Government and the SEC are invalid and unconstitutional;
- The use of any evidence gathered by the Government, the SEC or the Receiver pursuant to my cooperation is invalid and unconstitutional;
- The indictment via information in the Criminal Matter is invalid and unconstitutional;
- The change of plea hearing before Judge Underhill in the Criminal Matter is invalid and unconstitutional;
- The guilty plea in the Criminal Matter, and its stipulation of conduct, are invalid and unconstitutional;
- The statements made before Judge Arterton in open court in the SEC Case as part of the above-mentioned cooperation are invalid and unconstitutional;
- The sentencing proceedings in the Criminal Matter are invalid and unconstitutional;
- My sentence of conviction in the Criminal Matter is invalid and unconstitutional;
- The Restitution Order in the Criminal Matter is invalid and unconstitutional; and,
- All other material orders, findings, judicial conclusions or actions by the courts that are derived from the Criminal Matter or from the SEC Case and are based on my Guilty Plea are invalid and unconstitutional.

In *Ostrer*, as confirmed in *Mapp*, the Second Circuit clarified that "***a habeas petitioner should be granted bail only in unusual cases, or when extraordinary or exceptional circumstances exist which make the grant of bail necessary to make the habeas remedy effective.***"

Ultimately, as the record indicates, apart from the *Luis* error regarding counsel of choice, the constraints of my incarceration have made for a process which is far from a fair and full opportunity to reach the merits of my case. This prejudiced position will ultimately result, or has already resulted, in erroneous, adverse judicial decisions which render the habeas remedy irrelevant. In fact, in the instant case, not only are there structural issues that merit automatic reversal to before the plea of guilt, but there are also a myriad of inextricably intertwined civil proceedings with executed or pending decisions against me at the District and Appellate level which I have not been able to properly defend against while incarcerated. These decisions stem directly from the unconstitutional conviction and sentence in the Criminal Matter. These decisions have also effectively disgorged me of all my assets and livelihood without a fair process rooted on the most basic principles of law

In the present context, the effectiveness of the habeas remedy therefore, also requires release pending the deliberation by the District Court so I can attempt mount a proper defense in the civil arena and have an opportunity to reach decisions that are in the interest of justice. Ultimately, release should be appropriate given all these extraordinary circumstances also to compel the lower courts, based on the interests of fairness and justice, to resolve the threshold

Habeas Petition question before resolving civil matters of lesser importance which depend directly on said Habeas Petition.

This is analogous to the principle recognized by this Supreme Court in various cases and summarized clearly in District Attorney's Office for the Third Judicial District et al. v. Osborne, 557 US 52, 129 S Ct 2308, 174 L Ed 2d 38 (2009) when it cites Medina v. California, 505 U.S. 437, 446, 448, 112 S. Ct. 2572, 120 L. Ed. 2d 353 (1992). The lower courts should await the resolution of the post-conviction relief claim in the Habeas Petition in order to not "***offend***" principles "***of justice so rooted in traditions and conscience of our people as to be ranked fundamental***" or transgress "***any recognized principle of fundamental fairness in operation***."

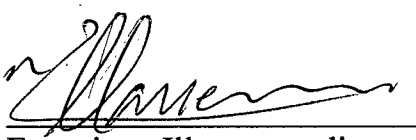
In this case, this principle has been clearly violated. To wit, the right to counsel of choice is among the most fundamental principles of constitutional due process contained in the laws of the United States. The Habeas Petition was filed in November of 2016, more than twenty-eight months ago and contemporaneously to various filings in the different related civil cases. That the District Court has delayed its deliberations on the Habeas Petition and yet granted civil judgments against me, knowing that the legal bases for those decisions could likely be overturned by the outcome of the Habeas Petition is a clear violation of a "***recognized principle of fundamental fairness in operation***" – *Medina*. The first

step towards this fundamental fairness should be to grant release in the Habeas context given the extraordinary nature of the combined set of circumstances evident here.

CONCLUSION

For all of the foregoing, in the interests of Justice and to ensure that the Constitution and the Laws of the United States, as interpreted by applicable jurisprudence, are properly adhered to by all courts, I respectfully request that this Honorable Supreme Court of the United States grant this Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

Respectfully given at Fairton on March 25, 2019.



Francisco Illarramendi
Inmate No. 20402-014
Federal Correctional Institution
Fairton Camp
P.O. Box 420
Fairton, NJ 08320