No. _____

In The

Supreme Court of the United States

Nasseer Ghelichkhani,

Petitioner

V.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI

REHEARING

N. Ghelichkhani,

310 N. Olive Ave.

West Palm Beach, Fl 33401

# QUESTION PRESENTED

1-Whether a conviction obtained on a charge that does not state an offense is valid?

2-Whether facing deportation and additional years of custody and loss of immigration status for ever, is a good reason to vacate the unjust conviction causing it?

3-Whether violations of due process and constitutional rights, such as ineffective assistance of counsel is a fundamental error that can make proceedings itself invalid and irregular?

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## Facts

Petitioner has been tossed around by immigration since amnesty filling in late 80s, due to national origin. Since 2001 Ice has attempted to cause deportation of petitioner for over stay of visa while a C.S.S.,LULAC class member. Ice retaliated by arrest of 2007 and this unlawful conviction due to complaint against ICE contracted security AKAl's savage attack in 2003 petitioner's ICE custody.

## Argument.

This case involves an indictment in 2007 that does not state an offense. All similar charges were dropped in the same district of Florida during pendency of this case. Indictment was returned, Over 30 days passed arrest, with no foreperson's signature. While prior to indictment, during interrogation Miranda rights were not given. A form presented as release form later turned up as Miranda rights waiver. Interrogation did not stop when attorney was requested. Storage unit was searched for 3 days after illegal initial entry without a warrant and illegal fruits of search were not suppressed due to ineffective assistance of counsel. No bond was given, making custody mandatory. Petitioner waited 2 years to take the case to trial, during which not a single motion was filed by defense counsels in his behalf. Finally, last attorney, said was called by prosecutor to take the case and help her finalize it! He agreed to file motions, but instead early next morning petitioner was taken in chain and shackles to sign a plea, advised will result in time serve release. Plea was never seen, it was carefully planned to get results as seen here.

The forced unwilling plea was advised to be signed for release before even court starts. After signing the plea court did not release (4th, 5th, 6th, 8thand 14th amendment violations), court refused to allow its good cause withdrawal.

After another 2 months of wait, court sentenced to probation and forcibly violated it twice to cause additional 15 months custody. While maximum possible sentence was 6 months by sentencing guidelines and PSI. Meaning with already served 18 month over possible maximum sentence of 6 months, another 15 months was imposed to be served not even counting additional ice custodies. (Meaning all times served was disposed of instead of crediting as was promised prior to signing the plea).

This is wrong per Supreme Court discussion in: U.S. V. Granderson 511 U.S. 39

Also Supreme Court has said chance should be given to prove conviction was wrong. See Morgan 346 U.S. 509, also Morgan at 15, says a court is without jurisdiction to accept a guilty plea or convict or sentence on a charge that is not an offense.

The rambling of the district court magistrate's judge, in denying the writ of coram nobis, does not make any sense, he is just filling the blank to impress ones that have no idea what he is talking about, throwing some cases in, is not proof he has the correct idea about correct law to be applied. This misconduct has not yet been reviewed by any competent court. That's why if this court does not have the time, should respectfully remand the case back to 11th circuit to actually review the case.

So far no chance has been given to prove conviction was wrong. Likely due to sneaky false communications, as was done during pendency of the case (found out too late, plea would have never been signed had this information was available

during pre forced plea). Appellate court has allowed opinion of this magistrate to ride as appellate opinion! 11th circuit claims, on legal issues, court reviews "De novo", but has not done so here. In contrast, 11th circuit has dismissed a case similar to this case, when indictment did not charge an offense. See Peter 310 f3rd 709. Magistrate's argument in this case, agreed by appellate court, contradicts reasoning in Peter Such as other relieves were available earlier, what magistrate really saying is; ineffective counsel never filed needed motions, since Pro se filling are not counted. Peter was late in filling writ of Coran nobis and never filled for any available relieves earlier anyways. So why to even appeal a case to an impartial appellate court? why appellate level was created? And if the lower courts are bullying or falsely disposing of cases by injustice or false side accusations, then how can it be taken to Supreme Court where pro se cases are given almost no weight?

Page 13 of Government brief to 11th circuit dated July 23 2018, written by *Emily M. Smachetti* chief Appellate Division ,*Laura Thomas Rivero* Assistant United States Attorney, Government affirmed that the indictment does not charge an offense:

"The government acknowledges that a bare claim of U.S. birth is not equivalent to a claim of citizenship .....".

*So Why case is not dismissed? See Clevland v. Us 531 U.S 12*

This case is exact same case as smiley word by word, with the exact same context. Smiley v. United States, 181 F.2d .505 Here is court opinion in smiley: *As to Count One of indictment No. 20,069 the evidence discloses that appellant was held as a material witness for interrogation by the Beverly Hills Police Department. At the time of detention a*

*Police Officer made out a booking slip recording the answers made by appellant to questions asked by a Police Officer.*

*The recorded answers included appellant's address, phone number, color of hair and eyes, height, weight, age, complexion, build, descent, nationality, that he was born in New York and that he had lived in the United States for life. The above is the substance of all the evidence which is relied on to support Count One. We think it fails to measure up to the requirements necessary to sustain the conviction for the criminal offense charged. The evidence fails to establish beyond a reasonable doubt that appellant falsely represented himself to be a citizen of the United States... While it may be that an officer, upon being informed by one whom he has under arrest that he, the party in custody, was born in the United States and had lived there in all his life, would conclude that the person whom he was interrogating was a citizen of the United States, it would be no more than a conclusion reached without the necessary supporting facts.*

*As to the charge contained in indictment No. 20,604, the evidence establishes that appellant was booked at the Lincoln Heights jail in Los Angeles; that pursuant to custom certain information was obtained from appellant; that answers to questions asked appellant were recorded and that he answered "yes" to the word "citizen", as it appears on the identification report. Again, we think the evidence insufficient to sustain a conviction under this indictment. His answer that he was a "citizen" does not establish that he falsely represented himself to be a* citizen of the United States.

*The Government argues that appellant's answer that he was a* citizen *taken together with a further answer to the word "nativity" appearing on the registration cards as "N.Y." is sufficient. We do not agree. This last above mentioned statement does not sufficiently supply the requirement that in order to sustain the conviction appellant must have falsely represented himself to be a citizen of the United States.*

Even the chief appellate division as well as, United State attorney Confirm the indictment does not state an offense it should point out that case should have been or at least to be dismissed at this stage, it also clearly points out that there was

something wrong at the district level. (Which should have been detected and stopped at district or the the appellate level, but did not happen).

For that reason, since this court cannot take too many cases , instead of denying the petition for rehearing, in the **alternative respectfully remand the case for de novo review by appellate court on legal issues , since they did not look at any issues and accepted the district court magistrate's wrong interpretation of law.**

It becomes more clear from same brief in 2018, that the government was so desperate in its terrorising prolong custody to do all tricks involved such as; staging a plea taken to court by force in chains and shackles with promise of time served, (calling that a knowingly and voluntary made plea), and offered no explanation why prosecutor said this conviction does not affect immigration status since no immigration case is pending (during withdrawal of case request prior to sentencing), this false input in court has created severe immigration negative impact, such as loss of status, never be able to adjust status and have to face deportation once not in fugitive status. Adjustment of status was pending and was lost to this conviction by forced plea; especially that government would not allow the plea to be withdrawn, and take the case to trial? There were no defense from any defense counsel, how can this be considered a valid proceeding?

Tax payer's money is wasted on a racist trader defense counsel, to drive a Porsche, while adversely working in concert with prosecution! While judges like the one in this case, participate and dispose of times served and even impose new ones!

This actions alone should make proceedings irregular and invalid.

It becomes very obvious probation was a pre meditated sentence in violation of statute charged. Because (18 USC 911) does not ask for sentence of probation, and sentence of probation is not proper if already have served over the maximum possible sentence allowed by law (contrary to supreme court instruction).

A hefty over 3 years was served on a possible maximum sentence of 6 months

In U.S. V. Granderson 511 U.S. 39 ( Exact same case as the one here; Facing 6 months Maximum by Guidelines. Similar to this case, Was given 5 years probation after serving 11 months, which was wrong per Supreme Court, and should apply to this case as well).

During 1st revocation of probation, prosecutor said she was injecting unknown matters to defense counsels asking them not to defend, then on 2nd probation revocation, evaluator's testimony in court indicated she thought case was still pending for trail, all these sounded suspicious, but defense counsels never explained.

Government comes out of closet in its brief to 11th circuit, in page 5, confesses prosecution had something up her sleeve. Prosecutor purposely was asking for evaluation, 3 of them! And was advising the evaluators this was a sex offense case! No wonder court did not sentence under charged offense of 18 USC 911, evaluators were ever shown the actual charge, and they never questioned the validity of the government's claim. They just accepted it as true and agreed to do evaluation as asked; as long as paycheck was delivered they could care less! This is a problem with giving too much credit and trust to ones in power while abusing professional ethics. Some corrupted entities in justice system are for sale, like prostitutes with a law degree. Prosecutor in this case helped arresting agency ice, for little extra

money, picked last counsel and had judges to cooperate and even justify these sick actions by false, sick label and slender, lies and due process violation.

Not stopping there the government revoked first probation because the evaluator left one page regarding answers to drug use empty; trying to inject drug use.

In second probation evaluation!.. To stop revocation as happened in first one a copy of questions and answers were requested, to also have proof and stop possible change of questions and answers for additional filthy, evil tricks.

In all court proceedings the prosecutor always started by saying let's not forget that when petitioner went to get training on driving test for chauffeurs license he asked for a petroleum truck! Here she was giving a hint of terrorism.

These desperate acts of government are dirty tricks, they even paid off defense attorneys, and possibly other actors in court to support these activities.

They were so desperate that all the ethics taught to them did not matter.

State attorney at appellate level claimed that they did not receive a copy of the appellants brief to 11th circuit, while record of post office as well as record of 11th circuit clerk of court showed otherwise! Prosecuting by trickery and lies is a crime.

This court should provide guidance to stop them from smearing the justice system.

Otherwise this type of activities makes the system, a non trusting Entity.

Respectful American people get bad reputation through actions of these evils*.

Time and time it is proven, evil is doing the heinous crimes, not what evil point finger at, such as mass shootings, or running over crowds. See august 2017, report: James Fields has been arrested and charged with murder, his car rammed into a

group of people peacefully protesting against a white supremacist rally in Charlottesville, Virginia, killing one person and injuring 19.

While government was doing same evil acts secretly in this case, prosecutor played the innocent game of saying we don't know why petitioner does not trust these Proceedings or why is he acting so paranoid? A two faced actress prosecutor, and muted defense attorneys, played their role knowing what is expected at appellate level, even from US Supreme court. These evils** have done it so many times, they know what to do and what to expect. Done to weak and less fortunate or ones that have been physically or psychologically broken down; instead of helping, they step on them, and proudly add their act of evil as achievement in their long criminally orchestrated files. These acts actually have negative affect and result proven in the system; they turn the other check due to incompetence or blindness by arrogance. At release in 2004 ICE would not return confiscated valid driver's license. A copy had to be asked from department of motor vehicles in 2004, which selectively lead to current charge in 2007, prosecution tried to also take advantage of the damages inflicted in 2003-2004, during its forced illegally imposed evaluations.

*Handful, that have no respect for ones different from their own racist kind, and thrive and enjoy seeing them suffer. The kind that worked so hard to keep petitioner behind bars, while knowingly allowing petitioner's pre teen US Citizen daughter to be abused and sexually taken advantage of, for years.

**Immigration was the arresting agency that took appellants youth, time and money in 2001-2004, and released him after attempt of petitioners life while in their custody during sleep in 2003, through use of detainees and contracted security AKAL under ICE supervision, causing surgery and 8 days hospitalization in Kendal hospital. Then created 2007 selective prosecution on bad faith.

## REASONS FOR GRANTING THIS PETITION.

1- This is the only conviction on record, an irreversible damage that has no immigration inadmissibility waiver; meaning never will be able to adjust status as long as it is on record. This is the final chance. In final court.

2- Conviction has caused fugitive status, facing deportation and additional custody time, plus unbearable damages to come if not reversed.

3- Inability to ever help family and neglected US Citizen daughter.

4- Reversal of this conviction will allow reopening of the immigration case and adjustment of status since it is the only conviction on record and the only conviction that has caused denial of adjustment of immigration status.

5- Conviction was obtained by severe violations of due process and constitutional rights, through an invalid plea and proceeding.

6- Indictment does not charge an offense, Conceded by Government.

7- Opinion of district court magistrate judge, relied on by appellate court, contradicts other appellate courts as well as US Supreme court. Meaning the district court opinion is now above Supreme Court if conviction stands.

8- Sentence was imposed in violation of law, disrespecting instruction given in same exact preceding by Supreme Court .

9- Case should be heard at some point by a competent court, per preceding Supreme Court cases to allow proof that conviction obtained is invalid.

10- In the alternative this court should remand the case back to appellate court for a De Novo review of the case, to enter its own opinion or conclusion

rather than blindly accepting district court magistrate judges' opinion, wrong application of law and conclusion as legally true and correct.

11- Charged indictment does not equate to offense prosecuted on.

## Conclusion

**The petition should be granted, or in alternative this court should remand the case to lower court for De Novo review.**

Certificate of compliance

This filling is typed size 12 century, double spaced, under 3000 words.

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A copy to solicitor general is submitted. On 28th day of October 2019

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## Rehearing Grounds

I hereby certify that the grounds are limited to Intervening Circumstances.

## Good Faith

I hereby certify that the petition for rehearing is filed in Good Faith, and not for Delay.

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This filling is submitted for express delivery on this Nov. 21.2019.

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*DKT # : 18-9783