19-5468

No. _____

In the
Supreme Court of the United States

TARA GLASS

Petitioner

vs.

UNITED STATES OF AMERICA

Respondent

On Petition for a Writ of Certiorari to the Third Circuit U.S. Court of Appeals

PETITION FOR A WRIT OF CERTIORARI BEFORE JUDGMENT

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ORIGINAL

QUESTIONS PRESENTED

This case presents a fascinating issue of first impression at the intersection of constitutional due process and the confidential judicial complaint review process. At issue is a criminal defendant's right to a fair trial when a non-party eyewitness to ex parte communications submits a pre-trial judicial misconduct complaint and neither the ex parte contact nor the judicial complaint is disclosed. The result is a complete breakdown of judicial integrity and an egregious violation of the defendant's rights. Such extraordinary and injurious circumstances warrant this Court's immediate intervention.

The questions presented are:

1. Whether a Chief Circuit Judge should be required to notify a criminal Defendant once a *non-party* submits a *pre-trial* judicial misconduct complaint as an eyewitness to a private chamber meeting with the Prosecution and the Defendant's Probation Officers immediately prior to Defendant's initial appearance resulting in detention?
2. Whether a subsequent Judgment that adds a special condition of supervised release prohibiting contact with the Defendant's non-criminal spouse/life partner is an unconstitutional restriction of the Defendant's liberty interests and the right to marry?
3. Whether the Judgment in question 2 is "on the merits" or is "in retaliation" when the Complainant in question 1 is also the spouse/life partner in question 2 and the Circuit Executive took custody of the complaint 4 days *before* trial but waited until *after* the proceedings concluded to file the complaint with the Circuit Clerk?

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OPINION BELOW

The opinion below is a ***Judgment in a Criminal Case for a Revocation of Supervised Release***, decided March 8, 2019 and entered March 11, 2019. *See* **109a-13a**.

JURISDICTION

This Court has jurisdiction to consider this petition under the All Writs Act, 28 U.S.C. § 1651(a). This Court also has discretionary authority to grant certiorari pursuant to Supreme Court Rule 11 because Petitioner's appeal to the Third Circuit U.S. Court in **Case 19-1815** is still pending. Granting certiorari before judgment is entered in the Third Circuit U.S. Court of Appeals is appropriate here because the questions above present issues of great importance and national interest. Also, question number one above should not be left for the circuit courts to decide and should only be decided by this Court. **Exercising discretion is therefore not only authorized but necessary**.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED
(Emphasis supplied)

18 U.S.C. 3583(d) Conditions of Supervised Release.

. . . The results of a drug test administered in accordance with the preceding sentence shall be subject to confirmation only if the results are positive, the defendant is subject to possible imprisonment for such failure, and either the defendant denies the accuracy of such test or there is some other reason to question the results of the test. A drug test confirmation shall be a urine drug test confirmed using gas chromatography/mass spectrometry techniques or such test as the Director of the Administrative Office of the United States Court after consultation with the Secretary of Health and Human Services may determine to be of equivalent accuracy.

18 U.S.C. 3583 (g) Mandatory revocation for possession of controlled substance or firearm or for refusal to comply with drug testing – if the defendant –

(1)(d) (3) refuses to comply with drug testing imposed as a condition of supervised release; or (4) as a part of drug testing, tests positive for illegal controlled substances more than 3 times over the course of 1 year.

28 U.S.C. § 1651(a)

The Supreme Court ... may issue all writs necessary or appropriate in aid of their respective jurisdiction and agreeable to the usages and principles of law.

U.S. Const., amend I

Congress shall make no law ... prohibiting the ... right of the people peaceably to assemble.

U.S. Const., amend V

No person shall ... be deprived of life, liberty, or property, without due process of law.

U.S. Const., amend VI

In all criminal prosecutions, the accused shall enjoy the right ... to have the Assistance of Counsel.

U.S. Const., amend VIII

Excessive bail shall not be required ... nor cruel and unusual punishment inflicted.

Supreme Court Rule 11

A petition for a writ of certiorari to review a case pending in a United States court of appeals, before judgment is entered in that court, will be granted only upon a showing that the case is of such imperative public importance as to justify deviation from normal appellate practice and to require immediate determination in this Court. See 28 U.S.C. 2101(e).

Judicial Conduct and Disability Proceedings Rule 8(a). Receipt of Complaint

Upon receiving a complaint against a judge filed under Rule 6 ... the circuit clerk must open a file, assign a docket number according to a uniform numbering scheme promulgated by the Committee on Judicial Conduct and Disability, and acknowledge the complaint's receipt.

Judicial Conduct and Disability Proceedings Rule 8(b). Distribution of Copies

The circuit clerk must promptly send copies of a complaint filed under Rule 6 to the chief judge ... and copies of complaints filed under Rule 6 or identified under Rule 5 to each subject judge.

USSG 7B1.2(b)

The probation officer shall promptly report to the court any alleged Grade C violation unless the officer determines: (1) that such violation is minor, and not part of a continuing pattern of violations; and (2) that non-reporting will not present an undue risk to an individual or the public or be inconsistent with any directive of the court relative to the reporting of violations.

USSG 7B1.2(b), Application Note # 1

Under subsection (b), a Grade C violation must be promptly reported to the court unless the probation officer makes an affirmative determination that the alleged violation meets the criteria for non-reporting. For example, an isolated failure to file a monthly report or a minor traffic infraction generally would not require reporting.

SUMMARY OF PETITION

This is my first time in 7 years to challenge a ruling in my case and I believe the facts require this Court's *immediate* intervention. Unlike the *Statement of Facts* and *Appendix*, which are presented in chronological order, this summary prioritizes the many reasons for granting relief. A review of this case will reveal serious errors both procedurally and substantively. This is a textbook case of everything that can go terribly wrong when Probation Officers misrepresent and omit material facts, Federal Defenders withhold exculpatory evidence, District Courts ignore procedural safeguards, and a Judicial Council condones the conduct below. **This is a lesson in what not to do**.

The first important reason to grant certiorari is because **I AM INNOCENT**. As a matter of law, none of the allegations in the *Revocation Petition* constitute a Grade C Violation and the judgment entered should be set aside. Moreover, the allegations in the *Violation of Supervision Report* are either fraudulent, lack merit, or frivolous and thus, subject to dismissal with prejudice. In short, there is no legal basis to revoke my previous term of supervised release or render the current sentence.

The second, equally important reason to grant certiorari deals with a related ***pre-trial*** judicial misconduct complaint filed by a ***non-party without*** my knowledge or consent. On this issue alone, there are at least FIVE seriously prejudicial errors that require not just vacating the judgment but remanding the case *to a different judge* (if allegations are sufficient). Just read the May 20, 2019 *Memorandum Opinion* ("MO")

dismissing the complaint. *See* **122a-30a**. Notably, the Subject Judge was asked to respond to the complaint and admits having ex parte communications where a group decision was made to detain me in the absence of my counsel and prior to my appearance. *See* **128a ¶3 - 129a**. While the Chief Circuit Judge spins the allegations to justify dismissing the complaint, just read what the *non-party* Complainant actually says he witnessed:

> PO Aliperti left to drug test GLASS and upon returning, said there was a problem. **The Judge said, "come, let's talk over here" and the four individuals [2 POs and 2 AUSAs] went inside chambers while GLASS and federal defender Maggie Moy, Esq. ("FD Moy") were outside** of the courtroom talking at a small conference table. **The four met privately with the Judge inside chambers for 10 minutes** following McCoy's appearance and prior to the start of GLASS' hearing.
> ...
> **Worst of all, the decision to detain GLASS was made during the ex parte, private meeting—*before GLASS even had an opportunity to be heard.* I knew it as soon as two Marshals walked into the courtroom *in the midst of FD Moy's argument against detention.* They sat one row behind me on the third bench like members of the public and listened to FD Moy advocate for GLASS to remain free pending her next court date. They arrived long before the Court was even close to rendering a decision—at least publicly. I am certain a private decision was made and the Marshals notified in advance of the hearing.**" **86a ¶5 to 87a ¶1**.

In comparison, the watered-down version spun by the Chief Circuit Judge states the Complainant speculates that a decision to detain me was made before the hearing simply "because U.S. Marshals were present in the courtroom during the hearing." **124a**. Whether that is an accurate representation – regardless of misconduct– the Court never notified me or counsel about the judicial complaint, the ex parte contact, or the private decision to detain me, all of which **render the judgment constitutionally infirm**.

Of course, the District Judge will say she did not learn of the complaint until the

proceedings concluded because the Third Circuit Executive's Office ("3d CEO") waited **SIX DAYS** before finally filing the Complaint with the Circuit Clerk (**107a-8a**), which coincidentally also just happened to be the day after my proceedings concluded (**103a**). Indeed, the *Confirmation Letter* from the 3d CEO is dated **Monday, March 11, 2019**. **107a**. However, Fed Ex delivered the Complaint on **Tuesday, *March 5, 2019 at noon – FOUR DAYS before my Friday March 8, 2019 appearance***. **94-95a**. According to Barbara at the 3d CEO, the individual who signed for the package—*R. Mattos*—is a court employee who "works downstairs." **116a**. No further inquiry is needed to conclude the 3d CEO took custody of the Complaint on **Tuesday, March 5, 2019** and sent it to the District Judge.

Thus, the Court entered a **"judgment in retaliation"** *not a* **"judgment on the merits."** *See* **109a-13a**. Not only did this procedurally improper scheme to delay the filing allow the complaint to be dismissed as "merits-related" but **it also allowed Judge Bumb to render a cruel and malicious retaliation disguised as a "judgment on the merits" without consequence or even an inquiry**! Indeed, proving retaliation is near impossible when on paper the Circuit Clerk's records show the Complaint was filed after proceedings concluded. *See* **116a-7a** (3d CEO ignored request to correct the file date).

Moving on, Complainant's letter is not the only correspondence that was ignored. I terminated my federal defender, Maggie Moy, Esq.'s ("FD Moy") representation in writing prior to my initial appearance. **68a**. FD Moy acknowledged the letter and said, "the judge will address [my] request for new counsel," but I had to appear in court. **69a**.

FD Moy still showed up and represented me the day I was detained, and I have been detained ever since. **70a**. (Minutes of Proceedings, February 26, 2019 lists "Maggie F. Moy, AFPD for Defendant").

Also, the extrajudicial source bias was intolerable, and it was not possible for me to have a fair trial. Just read what my own private counsel retained after my detention had to say about the March 8, 2019 hearing. **105a-6a**. (The Court's egregious and demonstrably hostile attitude towards me and my fiancé comes through crystal-clear in the email my private counsel sent to my fiancé). Moreover, the email raises earnest questions about the effectiveness of my counsel. *See* **105a-106a**.

The merits of the *Violation of Supervision Report* are also suspect. *See* **76a-82a** (Violation Report lists, *inter alia,* allegations from 3 and 4 years ago when I was supervised by a different Probation Officer – *who did not take action*!). The allegations are superfluous and render the *Report* frivolous. To be sure, **the allegations in the original *Revocation Petition* fail as a matter of law to constitute a Grade C Violation**. Not only did my current Probation Officer, Kristen A. Aliperti ("PO Aliperti") raise conduct allegations from 3 years ago before she was even assigned to my case, PO Aliperti falsely and perjuriously claimed that my urine sample from February 4, 2019 "**was confirmed positive for methamphetamine by the laboratory on February 10, 2019**." **64a ¶2**. *See also* **80a ¶1**. **This BOLD FACE LIE is impossible for TWO reasons**.

First, February 10, 2019 happened to fall on a Sunday. But more importantly, even

if the laboratory offered 24/7 analysis, it would never report a positive methamphetamine sample without confirming that the sample was also positive for amphetamine because:

> The Department of Health and Human Services (HHS) instituted the following assay validation and reporting requirements that prevent the possibility of false positive methamphetamine results: Laboratories are required to quantitate at least 100 ng/mL amphetamine in a specimen in order to report a positive methamphetamine result. **138a**.

Either PO Aliperti lied, or a government contract laboratory is in violation to HHS rules and is reporting false positives, potentially affecting hundreds of federal probationers and employees alike. **Either way, they both warrant a formal investigation**.

When PO Aliperti is not resurrecting ancient claims or falsely accusing me of illicit methamphetamine use, she is falsely accusing me of illicit intravenous heroin use! It is another ludicrous claim that defies logic and is refuted by the evidence. Still, PO Aliperti manipulated certain facts and breached her duty of candor to invent a completely non-existent intravenous heroin addiction for me! As a result of her indefensible behavior, I was forced into a 6-month residential in-patient treatment program for my non-existent IV heroin addiction! Her methods are detailed below and warrant further investigation.

Despite successful completion (**60a**), I was sent to a transition house in January 10, 2019. **79a ¶2**. On January 30, 2019, PO Aliperti recommended early termination of my supervision and even contacted FD Moy on my behalf to prepare the court papers. **61a**. However, just two weeks later, she submitted the *Revocation Petition* to the Court. *See* **63a-5a**. **Certiorari should be granted for all of the above reasons**.

STATEMENT OF FACTS

FACTS PRIOR TO START OF 5-YEAR TERM OF SUPERVISION

My original sentence (24 months imprisonment, 5 years of supervised release) was for a low-level, non-violent, victimless, drug offense. I was released from federal prison on January 10, 2014 but returned four months later because I left the district of New Jersey without permission.[1] Prior to my second release, the court made a request *sua sponte* for me to have a psychological evaluation and both parties agreed. **1a-2a**. The *Order for Psychological Evaluation and Report* (*"PER"*) required a licensed psychologist to:

> "conduct a psychological evaluation of the defendant Tara Glass, currently detained at the Federal Detention Center in Philadelphia, and prepare a written psychological report of the examination and conclusions regarding the defendant's] current mental condition and mental health treatment needs." **2a**.

I was evaluated in a controlled prison environment, sober, and clear minded. The court-ordered *PER*, unchallenged by the parties, is an important document with guidelines for my treatment needs during the term of my supervised release. Indeed, **the Court paid $3,000 for it**. **2a**. Ignoring it is a waste of scarce judicial resources and deprives me of proper accommodations for my mental illness which, according to the licensed psychologist, includes Borderline Personality Disorder ("BPD"), anxiety, and depression. According to the National Institute of Mental Health ("NIMH"):

> **Borderline personality disorder is a mental illness marked by an ongoing pattern of varying moods, self-image, and behavior. These symptoms often result in impulsive actions and problems in relationships.** (my emphasis).

The NIMH also says that symptoms of BPD may include:

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[1] I was referred to a homeless shelter in Newark, NJ but went to stay with a friend in Bronx, NY instead.

RAPIDLY INITIATING INTIMATE RELATIONSHIPS or cutting off communication with someone in anticipation of being abandoned.

A PATTERN OF INTENSE AND UNSTABLE RELATIONSHIPS with family, friends, and loved ones.

Difficulty trusting, which is sometimes accompanied by irrational fear of other people's intentions. Impulsive behaviors.[2] (my emphasis).

The psychologist recommended an intensive Outpatient Treatment Program ("OTP") and stressed the importance of a stable living environment that was comfortable and safe.

On July 16, 2014, I asked the court to transfer my supervision to the Eastern District of New York (EDNY) so I can live with a close friend (now fiancé), Ahmed Elnenaey (Ahmed). The Court had an opportunity to assess Ahmed's character because he came to the District Court in Camden, NJ to support me at the hearing and was asked several unexpected questions by the Court. Ahmed said he owned a two-bedroom apartment and lived alone. He said he does not drink or do drugs for religious reasons. He said he had his own business and was willing to support me. The judge approved the transfer request (see **3a-6a**); I was released the same day and started a 5-year term of supervised release which included the following three special conditions:

(1) the Defendant shall refrain from the illegal possession and use of drugs, including prescription medication not prescribed in her name, and the use of alcohol, and shall submit to urinalysis or other forms of testing to ensure compliance, and shall submit to an evaluation and treatment, on an outpatient or inpatient basis, as approved by the U.S. Probation office and shall abide by the rules of any program and shall remain in treatment until satisfactorily discharged by the Court.

(2) the Defendant shall undergo treatment in a mental health program approved by the U.S. Probation office, preferably cognitive and behavioral based treatment, until discharged.

(3) Write monthly letters to the judge and my grandmother. **5a**.

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[2] https://www.nimh.nih.gov/health/topics/borderline-personality-disorder/index.shtml. Last visit 6/9/19.

The events during my 5-year term of supervised release since July 16, 2014 are discussed in detail below and supported by documentary evidence.

FACTS DURING MY 5-YEAR TERM OF SUPERVISED RELEASE

PROCEDURAL DUE PROCESS ISSUE: VIOLATION OF FED. R. CRIM. P. 32.1(b)(2)(B)

The original *Revocation Petition* was signed by the court and uploaded to PACER on February 14, 2019. FD Moy emailed me a copy of the Petition shortly thereafter. Although the more detailed *Violation of Supervision Report* is also dated February 14, 2019, it was not uploaded to PACER. Instead, Probation sent it Certified Mail, Return Receipt to my Brooklyn, NY residence. *See* **83a**. They just waited EIGHT DAYS to mail it and as a result, it arrived after my initial appearance that led to my detention (see **71a**), so I never received notice. There is no excuse for waiting EIGHT DAYS to send important legal documents by certified mail, especially ones not filed in PACER. Notably, the Report contains serious misrepresentations and omissions of material facts that seriously prejudiced me because I had absolutely no knowledge of any of it.

MY VIOLATION WAS NOT DUE TO A NEW CRIME. IT WAS DUE TO A NEW P.O.

Noticeably missing from the Report is any indication that I committed a new crime or had any police contact whatsoever. **73a-82a**. The reason is because they do not exist. Also, conveniently missing from the Report is the fact that I was assigned a new Probation Officer in January 2018. **I believe such an important detail requires disclosure**. In July 2014, I was assigned to Gregory Carter, Senior U.S. Probation Officer, EDNY. Mr. Carter

conducted the initial interview and home visit. He was my Probation Officer for 3.5 years until he retired from service in December 2017. Under his supervision, I never violated the terms of my supervised release although he prepared a March 2, 2015 *Report on Offender Under Supervision,* which recommended no court action. **7a-8a**.

Probation required me to enroll at Bridge Back to Life Center, Inc. ("BBTL") a "contract facility" (**7a ¶3**) for intensive (twice-daily sessions, 6 hours per day) Outpatient Treatment Program ("OTP") (**7a ¶3**) for substance abuse and mental health. Despite submitting to over 300 supervised urine drug tests (**37a**), I never tested positive for drugs (**37a**).[3] No other reports were filed by Mr. Carter and by 2017, I was deemed a low-risk offender and was not required to report to Probation every month. In December 2017 my treatment counselor at BBTL said I made "excellent progress" and recommended my successful completion of mental health and substance abuse treatment.

However, in January 2018, I was assigned to a new Probation Officer, **Kristen A. Aliperti ("PO Aliperti")**. There is a clear difference in outcomes between Mr. Carter and PO Aliperti and the discrepancies raise issues of fundamental fairness. To put the difference in perspective, I compared my first 3.5 years of supervised release under Mr.

[3] I was required to provide a urine sample at each visit starting in 2015 (5 per week) which continued for over one year. My weekly schedule was reduced by one day about every 6 months until I had one weekly session by mid-2017. On exactly TWO occasions, BBTL claimed that "my urine was positive for amphetamines." They never showed me the results and never sent it out for confirmation analysis. Also, Probation commented once or twice about the size of the urine sample I gave them, which was no different than my other 298-plus supervised urine samples I had given since 2015. On average, I gave a urine sample once every 2.6 days for 3.5 years. Nobody has ever shown me positive lab results with GC/MS Analysis.

Carter to the last 1.5 years of supervised release by PO Aliperti. **The differences are so extreme, it looks like they are supervising two different people**! Table 1 below provides a comparative analysis between Mr. Carter's supervision and PO Aliperti's supervision.

TABLE 1: COMPARATIVE ANALYSIS OF SUPERVISION BETWEEN BOTH P.O.'S

	PO CARTER	**PO ALIPERTI**
Period of Supervision (Approx.)	7/16/14 – 12/31/17	1/1/18 – 7/1/19
Total Days Under Supervision	1,265	545
% of 5-Year Term (1,826 Total Days)	70%	29.85%
Number of Days I Lived in the Community	**1,265 (100%)**	**205 (38%)**
Number of Days I was Incarcerated	**0**	**140 (26%)**
Number of Days at In-Patient Treatment Facility	**0**	**200 (37%)**
Number of New Crimes I Committed	**0**	**0**
Number of Probation-Initiated Arrests	0	**2**
Number of Times of Suspected Drug Use	0	**2**
Number of Reports Filed with the Court	1	1
Date of Report	3/5/15	2/14/19
Recommended Action?	No Action Taken	Revocation

While supervising offenders requires *some* discretion, it should never lead to such disparity. These clear differences may be enough to grant relief. I am the same Offender doing the same thing in 2018 that I have been doing since 2014 *without* incident. My freedom and my compliance with supervised release should never depend on who my Probation Officer is. Importantly, I have not lived at home since 7/4/18 – just after PO Aliperti was assigned to my case. **This is no coincidence and it must not be overlooked**.

MY JUNE 29, 2018 HEARING WAS TO REQUEST EARLY TERMINATION

On June 27, 2018, PO Aliperti states in an email:

> Just wanted to clarify a few things. Glass was advised that an appearance was scheduled for Friday, June 29th to address the ongoing issues with her case and provide her an opportunity to speak with Judge Bumb directly in furtherance of requesting early termination from supervision . . .

> Glass was never told that the Probation Department sought early termination as mentioned below. She was advised that Judge Bumb was made aware of her requests to terminate treatment services, in addition to, a desire to terminate supervision address those requests during Friday's appearance. **9a**.

However, in the *Violation Report,* she says she "contacted the Court and requested a status conference in response to my continued noncompliance." **78a ¶5. Clear contradictions.**

YOU DECIDE: A FUGITIVE INTRAVENOUS HEROIN ADDICT OR A CRIME VICTIM WHO WAS DRUGGED, ROBBED, AND ASSAULTED?

According to PO Aliperti as sworn to in the *Violation of Supervision Report*:[4]

> "On June 29, 2018, Glass failed to report* to the scheduled status conference. On that date, **the offender's boyfriend advised the probation officer that Glass was assaulted* and was taken to Coney Island Hospital for treatment and unable to attend the hearing. Subsequent *records obtained from Coney Island Hospital** indicate Glass was at the hospital beginning 12:28 p.m.*** and discharged at 6:32 p.m. The records further note she was brought to the hospital having overdosed on Trazadone*, an antidepressant. Her diagnosis at discharge was sleepiness, urinary tract infection, and physical assault; she was prescribed nitrofurantoin, an antibiotic. **As part of the evaluation at the hospital, a urine sample was obtained and tested positive for opiates. A breakdown of the opiate screening indicated the positive result was not caused by Oxycodone use. 78a ¶ 6.**
>
> As a result of her failure to appear in court*, a bench warrant was issued for the offender. On July 5, 2018, Glass was arrested by the United States Marshal Service for the Eastern District of New York based on the failure to appear* warrant. The Marshals reportedly observed track marks on the offender's arm at the time of arrest*. **Based on this observation* and the offender's positive urinalysis at the hospital*, the probation officer posits the offender used heroin intravenously on or about June 29, 2018*. 78a ¶ 7.**
>
> On July 11, 2018, Glass appeared before the Honorable Renee Marie Bumb for the previously scheduled status hearing. **The Court offered Glass the opportunity to**

[4] The *Report* makes several misrepresentations of material facts and omits other equally vital facts. Each misrepresentation and/or omission is noted with an (*) asterisk for later reference.

> **enter an inpatient program to address her substance abuse and mental health needs at Samaritan Daytop village. The Offender initially indicated she did not want to attend; however, after speaking with counsel*, she agreed** to the required screening for treatment. On July 12, 2018, Glass was accepted to the program. On July 19, 2018, Glass was transported to ED/NY for intake into the program. **79a ¶ 2**.

However, I did not "fail to report." I e-mailed PO Aliperti at 7:27 a.m. on the morning of my court date and said I was robbed and assaulted and may have been drugged **15a**. *I told her I was going to the hospital and gave her the name of the hospital so she can call to confirm which she did*. **15a**. PO Aliperti conveniently left out the part where I said I was drugged. When I returned from the hospital, I notified PO Aliperti that the lab results were positive for opioids (**15a**), which I never tried before and know nothing about. The next day, I **voluntarily** (*see* **16a**) sent PO Aliperti my hospital records with lab results showing my urine was positive for opioids. (**16a**). Notably, the e-mail states, "As promised" ***NOT*** "As requested." (**16a**). So, **PO Aliperti did NOT "obtain the records from Coney Island Hospital"**. **She LIED**. Also, 12:28 p.m. is the time they collected my urine – *not the time I arrived at the hospital*. *Compare* **18a-9a** (lab test results) and **78a ¶6**. **She told serious lies**.

Obtaining incriminating evidence from a third-party (like a hospital) is one thing but I voluntarily gave PO Aliperti my lab results and told her it was positive for opiates. My actions are inconsistent with an Offender hiding a drug habit from Probation. I have no doubt Mr. Carter would have believed me. But, even if he did not, *at least he would have been honest with the Court so it could make an informed decision based on the objective facts*. **Instead, PO Aliperti misrepresented material facts and claimed the lab results were**

"obtained from Coney Island Hospital" which is FALSE!

Additional evidence was also available to PO Aliperti that should have been taken into consideration like the Police Report I filed (**12-14a**) and the NYPD Victim Letter I received that confirms a violent crime was committed against me on the eve of my court date! *See* (**10a-11a**). With ALL the FACTS that were either misrepresented or omitted, accusing me of intravenous heroin use makes no sense. **PO Aliperti filed a false report**.

Assuming *arguendo*, imagine if PO Aliperti is right and I used heroin intravenously on June 29, 2018. It would require me to:

> wake up on the morning of my court date (where I was supposed to ask for early termination) and say, "*Screw it. I don't feel like going to court today. I think I want to use heroin intravenously, instead.*" But first, I'll e-mail PO Aliperti as a courtesy to tell her I'm skipping court. I'll just tell her I was assaulted and have to go to the hospital but I will have to beat myself up first, so it looks like I was assaulted. Then, I'll go file a fake police report accusing an innocent person of a crime to make it look real.

Even if such a ridiculously absurd idea was true, it still would not explain why I would even mention anything about drugs to my PO or voluntarily send her my lab results. It also does not explain why the NYPD would send me a victim letter if I was not a victim.

With respect to a U.S. Marshal reporting "track marks" on my arm at the time of arrest, the U.S. Marshal was seriously mistaken because when I filed the police report of the assault and robbery, I stated that another female:[5]

[5] After talking with a Detective, I was instructed to provide only details of the robbery and assault, not about being drugged because it was not actionable without a witness or a confession.

> "She came out and punched me. Told me F-you. ***Scratched my arm***. I said call 911. They came. I didn't say [the] right stuff to cops. I was scared and wanted my dog and money. I was frazzled when cops came. I was scared.". **14a**.

Even if I never reported being scratched on my arm *prior* to the Marshals arrest, I was hooked up to an IV at the hospital and had blood drawn (see **17a-9a**), so there was no logical reason to be suspicious of any marks on my arm, especially non-existent "track marks" to go along with my non-existent IV heroin addiction.

Importantly, when the (all male) team of U.S. Marshals came to arrest me early in the morning, I had nothing on except a bra and underwear. When I tried to get dressed in the bathroom, one of them asked if there was anything dangerous in the bathroom. I said, "we usually keep our knives in the kitchen." He replied, "I was talking about needles." I said, "No. Why would we have needles in the bathroom?" **Why would a U.S. Marshal ask about needles in my bathroom – *before* he was able to arrest me to observe physical markings on my arm? Clearly, PO Aliperti lied to the U.S. Marshals as well**.

Word of my non-existent, intravenous heroin addiction reached the magistrate judge in Newark, NJ as well because his detention order states:

> **"Defendant remanded to custody until placement into an in-patient drug/mental health program."** **24a**. *See also* **25a**.

That order was BEFORE I even had a chance to appear before Judge Bumb in Camden, NJ. Suddenly, I was no longer appearing before Judge Bumb to seek early termination. As a result of voluntarily providing my hospital lab work, my appearance was for placement at an in-patient treatment facility. The craziest part is that anyone who

knows me knows I am terrified of needles! Finally, nowhere in any pre-trial report or post-trial probation will anyone find any mention of heroin –NEVER! Drug treatment for 3.5 years – NEVER! 300-plus supervised drug tests – NEVER!

The exculpatory evidence withheld by PO Aliperti disproves any credible allegation of illicit drug use. Moreover, nowhere in any pre-trial report or post-trial probation will anyone find any mention of heroin. Never in the 3.5 years of substance abuse treatment has heroin become an issue. And, none of the 300-plus supervised drug tests were positive for opiates. Still, because of PO Aliperti's perjured testimony and misrepresentation of material facts, I was forced to spend SIX months at an in-patient treatment facility for an opioid addiction I do not have. Even worse, **as a victim of a violent robbery and assault, I was denied justice while my violent attacker remains at large and is free to commit more crime**. **It is the exact opposite of Probation's mission to *help keep the community safe***. **These events warrant a proper investigation**.

PROBATION RECOMMENDED EARLY TERMINATION THEN FILED A FRIVOLOUS REVOCATION PETITION TWO WEEKS LATER

On January 29, 2019, I asked PO Aliperti to contact FD Moy to prepare a motion for early termination of my supervised release since I was already 90% finished and spent the last 6 months at an in-patient treatment program followed by voluntary transition housing. PO Aliperti agreed and said she would call FD Moy "tomorrow." *See* **61a**. The next day, PO Aliperti sent me the following message:

"Also, Maggie is leaving for vacation today and will call you next week

regarding the early termination request." **61a**.

So, as of January 30, 2019, PO Aliperti contacted FD Moy to discuss my early termination of my supervised release yet filed the *Violation of Supervision Report* just two weeks later. The 2016 U.S. Sentencing Commission Guidelines Manual states:

> "The probation officer shall promptly report to the court any alleged Grade C violation unless the officer determines: (1) that such violation is minor, and not part of a continuing pattern of violations; and (2) that non-reporting will not present an undue risk to an individual or the public or be inconsistent with any directive of the court relative to the reporting of violations." US SCGM § 7B1.2(b).

PO Aliperti was required to "promptly report" violations, not wait several years to report them. Also, PO Aliperti reported events before she was my Probation Officer – events Mr. Carter already determined were "minor, and not part of a continuing pattern of violations." US SCGM § 7B1.2(b)(1). Otherwise, he would have reported them, but he did not, and it seems highly inappropriate for another Probation Officer to interfere several years later without any understanding or direct knowledge of the circumstances.

MY FIANCÉ WAS IN FLORIDA DURING MY ALLEGED VIOLATION

Probation and the Court knew that my fiancé was in Florida at the time Probation lied and said I tested positive for methamphetamine on Monday, February 4, 2019. However, they just wanted a reason to separate us. A copy of my fiancé's rental car receipt from the Tampa Airport proves he was in Florida between 1/31/19 and 2/9/19 and had nothing to do with the alleged violations from 2/4/19. (**62a**). It is also worth noting that I have not lived with my fiancé since I was arrested in July 2018 so he cannot be a danger to my health and welfare. **The truth is that since July 2018, I spent more time**

with PO Aliperti than with my fiancé. Indeed, these facts show that PO Aliperti is the real danger to my welfare.

FACTS FROM MY INITIAL APPEARANCE ON FEBRUARY 26, 2019

I TERMINATED MY FEDERAL DEFENDER IN WRITING BEFORE MY 2/26/19 APPEARANCE

I prepared a Termination Letter dated Friday, February 22, 2019, emailed it to attorneys for both sides and mailed a hard copy to Judge Bumb was received on Monday, February 25, 2019. My letter states in its entirety with my emphasis added:

> I am writing in advance of next week's appearance on **Tuesday, February 26, 2019** at **11:00 a.m.** to inform the Court that **I am not comfortable having Maggie Moy, Esq. as my lawyer in any future appearances and revoke her right to represent me, effective immediately**. If possible, I would like to request a different Federal Defender to be assigned to my case. I notified Ms. Moy's Supervisor and he said I would need to talk to Your Honor, so I felt it would be better to notify the Court now rather than wait until the hearing next week.
>
> If substitution of counsel is not an option, then I want to postpone the hearing so I can try to retain private counsel. **I also am in the process of requesting my personal records from each of the treatment facilities I attended while on probation. Since the Petition makes ten different accusations against me from as early as 2016, I need to be able to review the records myself, which could take several weeks to obtain because the accusations being made are now several years old. I am not comfortable proceeding without the necessary documents to support my defense and I need a lawyer that I am comfortable with and who I feel is being honest with me and will work hard to protect my interests**.
>
> For the reasons stated, I feel it would be better to reschedule next week's hearing for sometime after March 8, 2019. This will allow time to find replacement counsel and to obtain important documents to support my defense.
>
> I am available at (917) 500-4097 should the Court require additional information. A copy of this letter was emailed to Maggie Moy, Esq. and Norman Gross, Esq.
>
> **I appreciate the Court's patience and understanding during this difficult time for me as I am still struggling to understand exactly what agreement Ms. Moy negotiated on my behalf that placed me at an in-patient facility for six months, apparently without any assurances from Probation that I will start with a clean slate upon successfully completing in-patient treatment at Daytop Village/ Meadowrun, S.A.** *See* **68a**.

This letter, which Judge Bumb received one day before my scheduled appearance, is important for FOUR reasons: **(1)** I terminated any authority FD Moy had to represent me;

(2) I make clear my intention and desire to defend against the revocation petition and proceed to a full hearing; **(3)** I highlighted the fact that the petition claimed violations going back three or more years, implying it was frivolous; and **(4)** I argued that ALL alleged violations prior to January 2019 were disposed, dismissed, or withdrawn with prejudice as part of my agreeing to enroll in a residential treatment facility in July 2018 where I remained until January 10, 2019. However, the letter was never docketed.

MINUTES OF PROCEEDINGS DATED FEBRUARY 26, 2019

The minutes of the February 26, 2019 proceeding states in pertinent part:

> APPEARANCES: Norman Joel Gross, AUSA, for Government, Maggie F. Moy, Esq. AFPD for Defendant, Shavaughn Chapman, Probation Officer, Kristen A. Aliperti, EDNY Probation Officer.
> NATURE OF PROCEEDINGS: STATUS CONFERENCE. Status conference held. Ordered defendant remanded to the custody of the U.S. Marshal's. **Ordered bail hearing set for 2/28/19 at 11:00 a.m.** Ordered to be entered." *See* **70a**.

Both Judge Bumb and FD Moy confirmed on record that they received my letter, yet they both ignored it. FD Moy showed up to represent me and Judge Bumb allowed FD Moy to represent me despite my clear, written objection. As further explained below, it really did not matter who was representing me that day because Judge Bumb, Probation, and the AUSAs made a group decision to detain me before the hearing. This FACT was confirmed in the recent MO. *See* **128a-9a**.

FACTS RE: JUDICIAL COMPLAINT NO. 03-19-90017

THE THIRD CIRCUIT COURT ACCEPTED CUSTODY OF THE COMPLAINT ON TUESDAY, 3/5/19

This fact was NEVER disclosed to me or my attorney. **I believe the Court has a**

duty to notify criminal defendants and their lawyers when credible allegations of judicial misconduct are filed by a non-party against the judge based on events in the defendant's case. Evidence shows that the complaint was delivered to the Third Circuit Court of Appeals on **Tuesday, March 5, 2019 at noon**. **92a-3a**. However, evidence also shows that the Third Circuit Executive waited SIX DAYS to transmit the Complaint to the Circuit Clerk for filing on **Monday, March 11, 2019**. *See* **107a**. **This unaccounted-for-delay raises serious concerns over the propriety of the judgment entered against me on FRIDAY, MARCH 8, 2019**. I refer this Court to the Chief Circuit Judge's MO dismissing the complaint *and* the complaint itself for additional insight. *See* **122a-130a and 84a-91a**.

CHIEF CIRCUIT JUDGE REQUESTED A PRE-TRIAL RESPONSE TO THE JUDICIAL COMPLAINT

Although the Chief Circuit Judge dismissed the Complaint, the statements therein establish a specific timeline of events. That timeline clearly shows that the Complaint NEVER mentioned a single event from the March 8th hearing. Importantly, the MO states with my emphasis added below:

> The Subject Judge was asked to respond to Complainant's allegations and to **provide a transcript of the status conference**. **125a at ¶2.**

This statement SHOWS that the Chief Judge's limited inquiry was fixed on the February 26, 2019 summons and not the March 8, 2019 bail-hearing-turned-revocation-hearing because Judge Bumb was only asked to produce the transcript of the relatively insignificant initial appearance on February 26, 2019—**not the more substantive March 8, 2019 revocation hearing**. The only way that makes any kind of sense is if **the request**

was made before the events on March 8th came to fruition. This is especially true if the Complaint was delivered to the 3d CEO on March 11, 2019, as their records indicate. These facts, misconduct-or-not, are enough to warrant this Court's review.

PHONE CALL RECORDS CONFIRM PRE-TRIAL DELIVERY OF NON-PARTY COMPLAINT

Although on paper it appears the 3d CEO received the non-party complaint on Monday, March 11, 2019, phone call records indicate otherwise. First, the Complainant called the 3d CEO twice on March 6, 2019 (**94a**) which supports a delivery date of March 5, 2019. (Most people would call the same day or the next day to confirm receipt). *See also* **100a**. After March 6, 2019, the Complainant never called the 3d CEO again. Indeed, the call records from his cellular provider confirm that no calls were made to the 3d CEO after March 6th. However, and for no apparent reason, the 3d CEO called the Complainant on Friday, March 8, 2019 at 10:02 a.m. (**95a**) and again on Monday, March 11, 2019 at 10:32 a.m. (**95a**). *See also* **99a-100a**. According to Complainant's affidavit under penalty of perjury, Barbara from the 3d CEO called him on the 8th to say they never received his Complaint but then called the following Monday (the 11th) to let him know the Complaint they never received was docketed under **J.C. No. 03-19-90017**. *See* **PGx-PGy** (Affidavit of Non-Party Complainant in Judicial Complaint No. 03-19-90017 dated June 28, 2019).

This concludes the Statement of Facts. Next, Petitioner offers several obvious reasons to grant certiorari with minimal argument and minimal case law.

REASONS FOR GRANTING CERTIORARI

This Court Should Exercise its Supervisory Powers to Prevent a Miscarriage of Justice, Consider an Issue of First Impression and National Importance, and to Protect the Integrity of the Judiciary

These reasons were raised throughout and need not be repeated except to say that the improper procedures caused serious harm and injury. Immediate relief is warranted to put an end to this ongoing miscarriage of justice. Accordingly, I have prepared an *Emergency Application to Stay the Judgment,* which is respectfully submitted herewith.

Courts Must Follow the Procedural Requirements Expected of Them Because No Person, Judge, Court, Circuit Chief, or Circuit Executive is Above the Law

This Court has an inherent responsibility to ensure that the lower courts are following the laws and procedures required of them. In *Hollingsworth v. Perry,* this Court said, "[c]ourts enforce the requirement of procedural regularity on others, and must follow those requirements themselves." *Hollingsworth v. Perry,* 558 U.S. 183, 184 (2010) (per curiam). In *Hollingsworth,* an application to stay the broadcast of a federal trial was granted by a divided Court. The reason for the divide appears to have been over whether the courts below followed "the appropriate procedures set forth in federal law before changing their rules to allow such broadcasting." *Ibid.*

Here, there is no doubt the 3d CEO failed to properly perform a ministerial duty as required by Judicial Conduct and Disability Proceedings ("JCDP") Rule 8(a). There is no legitimate explanation for waiting six days to file a judicial complaint with the Circuit Clerk. More importantly, regardless of what day the Complaint was filed, the evidence shows it was delivered to the Third U.S. Circuit Court of Appeals on Tuesday, 3/5/19.

Therefore, the earliest possible date Judge Bumb could have received a copy of the Complaint is Tuesday, 3/5/19. There is no reason to think the Circuit Executive was equally negligent in her duty to promptly transmit the complaint to the Subject Judge and Chief Judges pursuant to JCDP Rule 8(b).

Whether Judge Bumb had knowledge of the judicial complaint lodged against her by my fiancé (Ahmed Elnenaey) at the time she deported me to Ohio and sentenced me to another 4.5 years of supervised release during which time I was to have "no contact whatsoever, including by phone, e-mail, or in person, with Ahmed Elnenaey"(*see* 111a) is unknown. However, **it is one question I would like answered and have every right to demand proof**. As a matter of principle, the Judgment that was entered should be stayed indefinitely until it can be proven that the 3d CEO never sent the Complaint to the District Judge at any time before 3/8/19. Without such definitive proof, the Judgment cannot stand. If the District Judge had prior knowledge of the complaint but failed to disclose this fact to the parties, then it would appear the Judge was disqualified, and the judgment should be set aside. **It is worth noting that J.C. No. 03-19-90017 can no longer be treated as a purely administrative matter because it is now directly affecting the merits of my case**. Waiting six days to tender the Complaint to the Circuit Clerk does not change this fact. Nor does dismissing the Complaint. Indeed, my very freedom was taken from me and I believe I have a right to know if a non-party judicial misconduct complaint played any part in the loss of my liberty.

In addition, the idea that any court, and especially a U.S. Circuit Court could be so reckless or malicious as to receive official court filings and "lose them" or "conceal them" or whatever happened during the six days that the Judicial Complaint was in the custody of the 3d CEO between March 5, 2019 and March 11, 2019 that prevented its submission to the Circuit Clerk for filing – is UNACCEPTABLE. Granting Certiorari will provide the Court with an opportunity to understand exactly what happened and why it happened to make sure it NEVER happens again.

Granting Certiorari will aid in this Court's appellate review of related but separate petitions which may have been submitted

A separate but related petition may have been presented to the Court by my fiancé. Of course, I have no way of knowing because there is a no-contact order preventing me from having any contact with him. According to my sister, he plans on petitioning this Court for an extraordinary writ. If he does, then granting Certiorari in this case will aid this Court's review of his separate but related petition.

The facts create an appearance of bias that is not constitutionally tolerable

It is not necessary to prove actual bias or even deliberate retaliation on the part of the judge to prove a judgment is unlawful. Proving a judgment unlawful simply requires an unacceptable risk to the rights of the defendant that exceeds the limits of what is constitutionally tolerable. *See* Rippo v. Baker, 137 S. Ct. 905, 907 (2017).

I have a due process right to be informed of a misconduct allegation against the presiding judge in my case, especially when the allegation is true

This Court needs to understand exactly how it is possible for a non-party eyewitness to ex parte contact to report the event to the Chief Circuit Judge in a supervisory capacity through the judicial complaint review process yet nothing is done about it and the Defendant in the case was not even notified.

The "no contact order" is an unconstitutional restriction on my right to marry

Following the March 8, 2019 hearing, the Court signed a Judgment on March 11, 2019 which is attached hereto. The Court sentenced me to 3 months imprisonment and a *new* 54-month term of supervised release with a "***NO CONTACT WITH AHMED ELNENAEY***" provision. The special condition states in its entirety:

> NO CONTACT WITH AHMED ELNENAEY. You must have no contact whatsoever, including by phone, e-mail, and in person, with Ahmed Elnenaey. The Court may re-consider this restriction upon sufficient evidence that Elnenaey no longer poses a danger to defendant's health and welfare.

Other Circuits have expressly rejected a district court's efforts to effectively divorce a Defendant on supervised release from her husband. Although not legally married, we have lived together since July 2014, are *life partners*, and plan to marry upon completion of supervision. In United States v. Hobbs, 845 F.3d 365, 367 (8th Cir. 2016), the defendant-wife and her husband were charged with identity theft and conspiracy to commit bank fraud. They both pleaded guilty and received long prison sentences followed by 5-year terms of supervised release. The wife was released first and initially did well under supervision for about one year. But then her husband was released, and probation moved

to revoke the wife's supervised release 8 months later. At the hearing, the government noted the wife's cooperation and ***rather than revoke her term, asked to modify her current term to impose a condition of "no contact with her husband***." *Id. at* 367.

At the revocation hearing, the district court accepted the probation officer's representation that the violations were connected to the husband's release:

> [m]y understanding from speaking with the probations officer and reviewing the record is that Ms. Hobbs was doing very well on supervision when she was living independently and Mr. Hobbs was still incarcerated ... And then, this contact occurs with her spouse, and those positive steps forward cease and, in fact, she absconds from supervision. That timeline seems to the court to be instructive. *Id.* at 367.

While the Court noted the constitutional implications of restraining Hobbs' marital liberties, it found the timeline of her co-defendant/husband's reintroduction into her home and life "one factor that appears to have contributed to the violations that occurred here." *Id.* at 367. The Court entered an order modifying the wife's supervised release to include the following no-contact condition with emphasis added below:

> The ***defendant shall have no direct, indirect, or electronic contact with codefendant and husband, Jack Hobbs, during her time of supervised release***. *Id.* at 367.

As relevant here, the Eighth Circuit vacated the no-contact condition, finding "**the timeline-based decision was pure speculation or assumption**." *Id.* at 368. (Quoting United States v. Schaefer, 675 F.3d 1122, 1125 (8th Cir. 2012)) (emphasis added, internal quotations omitted).

In Hobbs, the Eighth Circuit ultimately reached the following conclusion:

> "[T]he state is inserting itself into [Hobbs's] marital relationship in an overly broad way, and the condition thus involves a greater deprivation of liberty than is

> reasonably necessary." United States v. Chong, 217 F. App'x 637, 639 (9th Cir. 2007); *see also* United States v. Napulou, 593 F.3d 1041, 1046–47 (9th Cir. 2010) (vacating a condition barring contact with the defendant's "life partner"). There is no suggestion, either, that the district court considered more narrowly tailored alternatives. It therefore abused its discretion. Because we vacate the condition under § 3583(d)(2), we do not consider whether it violates § 3583(d)(1) or is per se unconstitutional." Hobbs, 845 F.3d at 369.

While the Eighth Circuit did not consider the constitutionality of the no-contact provision, this Court should. All no-contact orders by their very definition place restrictions on certain associations. So, in addition to placing a "sweeping restriction on her important constitutional right of marriage" (*Id.* at 366-7), **the judgment at issue also placed a limitation on the First Amendment Right to freely associate**. Annotation 12 of the first amendment states in pertinent part:

> "It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the 'liberty' assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech." U.S. Const. am. 1, an. 12.

It is worth noting that the standard conditions of supervised release sufficiently place limitations on an offender's ability to associate. For example, the standard conditions of supervised release prohibit offenders from associating with gang members, felons, or drug dealers and abusers. However, my fiancé is NONE OF THE ABOVE.

The only thing my fiancé is guilty of is filing a judicial misconduct complaint. Apparently, non-parties who file judicial misconduct complaints in the Third Circuit are treated the same as known gang members, convicted drug dealers, and other felons.

Innocence as an Absolute Defense

The only thing I am guilty of is nothing. Although I pleaded guilty to a Grade C Violation (while in a state of duress and due to the ineffective assistance of counsel)[6], the allegations do not even constitute a Grade C Violation. My innocence as an absolute defense was recently submitted in my appeal to the Third Circuit Court of Appeals and is incorporated here by reference. (*See* **187a-191a**. *See also* **180a-181a**).

CONCLUSION

For the reasons stated, this Court should issue a writ of certiorari to the Third U.S. Circuit Court of Appeals to resolve issues of first impression which are of national interest and of utmost importance to the judiciary and to maintaining public confidence in the judiciary. The evidence shows that a non-party filed a pre-trial judicial misconduct complaint and delivered it to the Third U.S. Circuit Court of Appeals *four* days before my scheduled Revocation Hearing on Friday, March 8, 2019. This fact was never disclosed to me or my attorney. The evidence also shows that the District Judge made it a condition of my supervised release to have no contact whatsoever with her complainant. **The non-disclosure creates due process issues and are of constitutional dimension while the inexplicably delayed file date is contrary to proper procedure and makes possible the entry of a judgment in retaliation. For these most important reasons, there exists a dire need for this Court's exercise of its Supervisory Powers.**

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[6] During my detention between my initial appearance on February 26, 2019 and March 8, 2019, I was held in Solitary Confinement at Monmouth County Correctional Facility for 23 hours each day. Any subsequent agreement I made should be deemed unenforceable.

I declare under penalty of perjury that the foregoing is true and correct. This declaration was electronically signed in Hamilton County, Ohio on July 20, 2019.

Respectfully submitted,

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