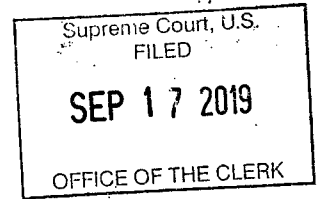


No. **19-6103 ORIGINAL**

IN THE
SUPREME COURT OF THE UNITED STATES



Farid Popal — PETITIONER
(Your Name)

vs.

The People of State of New York — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

New York Court of Appeals

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Farid Popal

(Your Name)

WENDE Correctional Facility

(Address)

3622 Wende Rd., PO. Box 1187, Alden,
New York 14004-1187

(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

WHETHER LAW ENFORCEMENT'S COACHING THE WITNESS AS HOW
TO ANSWER QUESTIONS, WHILE GOVERNMENT WITNESS WAS
TESTIFYING AGAINST THE PETITIONER FROM FLORIDA VIA SKYPE,
BUT WAS SURROUNDED BY THE CASE LEAD DETECTIVE
AND OTHER MEMBERS OF DISTRICT ATTORNEY'S OFFICE
VIOLATED PETITIONER'S DUE PROCESS
RIGHTS UNDER THE U.S. CONSTITUTION.

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4-5-6
REASONS FOR GRANTING THE WRIT	7
CONCLUSION.....	8

INDEX TO APPENDICES

APPENDIX A	Denial of New York Court of Appeals
APPENDIX B	Denial of the Appellate Division
APPENDIX C	Denial of the Trial Court
APPENDIX D	Petitioner's post hearing Memorandum of law
APPENDIX E	Application for leave to appeal to the Appellate Court
APPENDIX F	Pages 155,170,171, from evidentiary hearing held in before Hon. Barry Schwartz in Queens Supreme Court.
APPENDIX G	Petitioner's motion to renew pursuant to New York's CPLR §2221(e) and its attached exhibits

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

DUE PROCESS VIOLATION, U.S. CONSTITUTION AMENDMENTS 5,6,14

STATUTES AND RULES

DUE PROCESS VIOLATION, U.S. CONSTITUTION AMENDMENTS 5,6,14

OTHER

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

☐ For cases from **federal courts**:

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

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

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

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

☒ For cases from **state courts**:

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

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

The opinion of the Appellate Court court appears at Appendix B to the petition and is

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

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☐ No petition for rehearing was timely filed in my case.

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

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

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

☒ For cases from **state courts**:

The date on which the highest state court decided my case was 8-26-2019.
A copy of that decision appears at Appendix A.

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

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

VIOLATION OF DUE PROCESS RIGHTS, U.S. CONSTITUTION
AMENDMENTS 5,6,14

STATEMENT OF THE CASE

After 17 years of incarceration, on or about May 24, 2017, defendant moved to vacate his conviction pursuant to New York's CPL § 440.10, upon ground of newly discovered evidence and proffered an affidavit from the prosecution's chief witness that were fully corroborated by other independent evidence petitioner had received through numerous FOIL requests.

The trial Court held a hearing on October and November of 2017. Following the conclusion of the hearing, petitioner submitted a post hearing memorandum contending that the hearing testimony warranted a new trial, especially when considered cumulatively with the evidence presented in the prior motions and the original case record. See Appendix (**D**).

The People did not respond and about eight months later sought and were granted to reopen the hearing based on an investigation which, they contended, had turned up proof that the recanting witness had been paid by petitioner's family. A renewed hearing was held on July 16, 18, 2018.

In pertinent part, the recanting witness was testifying remotely from Florida while the hearing was being held in Queens County New York. During the stipulation when parties agreed Miata could testify via SKYPE from Florida - the prosecution's office did not advised the Court or the petitioner that Miata surrounded by the lead detective and other members of Queens District Attorney's office. See Appendix (**F**) for pages 155 ,170,171 of the 2018

hearing annexed herein.

During his testimony, Mr. Miata kept turning to someone else in the room. Id. at 170,171 Appendix (f). It was after this turning and looking was brought up, and it was revealed that there were three detectives in the room.

At this point, even the Court inquired as to who was sitting next to him at the direction he was caught looking. Witness responded STEVE BROWN, the lead detective in this case who built his career using this purely circumstantial case.

When counsel objected at the presence of so many detectives especially when the witness was at a police station in Florida. The Court responded that -- Well, again, that's their call and instructed the witness by saying: Miata, just answer the questions. Look at the camera. You don't need any help from the detective to answer questions, all right? See page 171 annexed as Appendix (f).

With that instruction, the Judge allowed the witness testify from the police station in Florida still accompanied by the same law enforcement personnel. Subsequently, the motion court denied the motion relying on the same witness testimony who was being coached by the lead detective to answer questions when no direct evidence linked the petitioner or his brother to sending money to Mr. Miata.

The petitioner then filed his motion to renew and provided the Court with documentary proof establishing that the lead detective Steven Brown was involved with Vahid Mehdizada who sent money to the recanting witness unrelated to petitioner's case subject to his recantation. See Appendix (g) for copies of

document Vahid attesting sending money to Miata, and Steven Brown's association with Vahid Mehdizada.

For a detailed information about the circumstances surrounding this issue, please refer to Appendix (E).

Petitioner respectfully requests that this Court grant certiorari and hold (1) in a criminal case no government witness should be allowed to testify via SKYPE from a police station, but rather, witnesses testifying via SKYPE should only testify from a U.S. Courthouse; (2) when a witness is testifying via SKYPE and surrounded by a team of detectives, any of the two previous conduct should constitute a violation of petitioner's due process rights under the U.S. Constitution.

Furthermore, this Court should rule that petitioner's due process rights under the facts and circumstances of this case has been violated required a reversal of his criminal conviction.

REASONS FOR GRANTING THE PETITION

With wide spread use of modern technology, the use of SKYPE to allow a witness testify without being in the Courtroom is becoming more and more common. However, the downfall and the risk of violation of defendant's due process rights will also increase. Evidenced by the police and prosecutorial misconduct in this case. This Court should step in and conclude that both conducts (1) having witness testify from a police station via SKYPE; and (2) surround and provide answers to witness while detectives station themselves in a blind spot of the camera not viewed by the Court should be held a violation of due process because, as it happened in this case, the witness was being coached by the lead detective as how to answer questions. This was tantamount to the detective answering in witness' place. This is due process violation and bound to happen again and again.

As evidenced by page 171 annexed as Appendix (F). The Court firmly believed that it was the prosecution's call to have the lead detective sit next to the government witness while testifying. This is wrong in every level and this Court should intervene.

Without this Court's intervention and making the integrity of witness testimony part of a petitioner's due process rights. The integrity of any sworn statement is compromised because, as it happened in this case, the recanting witness will be lured into a police station, placed in an intimidating state of mind away from the Court room. In that state, as it happened here, witness would

have a detective or an ADA sit next to him/her to answer questions favorable to the prosecution.

If no detective or an assistant district attorney is allowed to sit and whisper into a witness' ear while he/she is testifying in open court. Why should the SKYPE testimony be any different?

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: Sep, 18, 2019