

20-8326

No. 20-

ORIGINAL

IN THE
Supreme Court of the United States

MICHAEL ADEFEMI ADEYEMO

Petitioner-Appellant,

v.

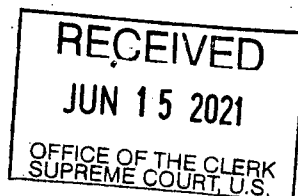
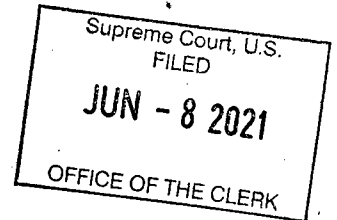
UNITED STATES OF AMERICA,

Plaintiff-Appellee.

*On Petition for a Writ of Certiorari to the United States
Court of Appeals For The Eighth Circuit*

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

- I. Whether the Fifth Amendment "self-incrimination clause" protects a defendant during the change of plea colloquy against compulsory self-disclosure of incriminating testimonial, and uncharged name and identity that lead to evidence and conviction of a separate offense.
- II. Whether the "nexus requirement" engrafted onto 18 U.S.C. § 1503 omnibus clause requires a jury instruction in a criminal prosecution based on false statement.

PARTIES TO THE PROCEEDINGS

Petitioner-Appellant, Michael Adefemi Adeyemo, was a criminal defendant in the United States District Court of North Dakota, Eastern in case numbers 3:08-cr-28 (2012), 3:15-cr-90 (2020), and as Appellant in criminal case titled United States v. Adeyemo, 819 Fed. Appx. (8th cir. May 12, 2020). Respondent, United States of America, was the Plaintiff in the District Court and Appellee in the Eighth Circuit.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
PARTIES TO THE PROCEEDINGS	ii
TABLE OF CONTENTS	iii
APPENDIX TABLE OF CONTENTS	iv
TABLE OF AUTHORITIES	v
OPINION BELOW	1
STATEMENT OF JURISDICTION	1
CONSTITUTIONAL PROVISION INVOLVED	1
STATEMENT OF THE CASE	2
REASONS FOR GRANTING THE PETITION	
(I). The Eighth Circuit Opinion erred and in conflict with "Hibel's precedent and the Fifth Amendment privilege against "compulsory disclosure" of "testimonial" and "incriminating" name and identity.	10-20
(II). The Eighth Circuit Court of Appeals Erred and has emerged a conflict with the Supreme Court's precedent on the application of the nexus requirement to §. 1503 obstruction of justice Statute.	20-29
(III). The Eighth Circuit's opinion is in conflict with the Supreme Court's Arthur Andersen precedent on instructional flaw to a failure to convey the nexus instruction.	29-30
(IV). The Eighth Circuit opinion is in conflict with the Sufficiency of evidence legal standard applicable precedent to § 1503	31 - 33
(V). The Eighth Circuit Appellate opinion has triggered a conflict between Court of Appeals on the application of the nexus requirement to § 1503 prosecution and conviction.	33-36
CONCLUSION	36

APPENDIX TABLE OF CONTENTS

PAGE

The United States District Court Order and Judgment in criminal case number 3:15-cr-90, and jury instructions.....	"APPENDIX A" ADD_1(a)(b)
The Eighth Circuit Court of Appeals' opinion affirming the district court's sentence and denying petitioner's Fifth Amendment, "Nexus requirement" jury instruction, and insufficiency of evidence" claims.	"APPENDIX A"

TABLE OF AUTHORITIES

Cases	Page
<u>Supreme Court Cases</u>	
Allen v. Illinois, 478 U.S. 364, 375 (1986)	18, 20
Arthur Andersen LLP v. United States, 544 U.S. 696 (2005)	20, 23, 26, 28, 29, 30
Boyd v. United States, 116 U.S. 763-64 (1886)	33, 34 17, 18
Boykin v. Alabama, 395 U.S. 238, 242 (1969)	14
Brown v. United States, 356 U.S. 148, 156 (1958)	14, 16
Brown v. Walker, 161 U.S. 591, 598 (1896)	11, 12
Calhoon v. Harvey, 397 U.S. 134, 137 (1964)	33
California v. Byer, 402 U.S. 424, 440 (1971)	12, 13, 18
Cater v. United States, 530 U.S. 255, 259 (2000)	24
Chavez v. Martin, 538 U.S. 760, 770 (2003)	19
Doe v. United States, 487 U.S. 424, 440 (1971)	11
Emspak v. United States, 349 U.S. 190, 200-01 (1955)	10
Garner v. United States, 424 U.S. 648, 654 (1976)	11
Hiibel v. Sixth Judicial Dist. Court, 542 U.S. 177 (2004)	7, 8, 9, 11, 12, 13, 15
Hoffman v. United States, 341 U.S. 479 (1951)	16, 18, 19, 20 11, 12, 13, 16, 18
Houston v. Hill, 482 U.S. 451, 459 (1987)	26
In Re Michael, 326 U.S. 224, 227-28 (1945)	27
Jackson v. Virginia, 443 U.S. 307, 318-19 (1979)	32
Kastigar v. United States, 406 U.S. 441, 445 (1972)	12
Marinello v. United States, 138 S.Ct. 1101, 200 L.ED.2d 356 (2018)	20, 21, 22, 23 24, 25, 29, 30, 34
Minnesota v. Murphy, 465 U.S. 420, 426 (1984)	18
Mitchell v. United States, 526 U.S. 314, 325 (1999)	11, 15, 16
Ohio v. reiner, 542 U.S. 17, 18 (2001)	18 11, 16, 17
Pennsylvania v. MuniZ, 496 U.S. 582, 598 (1990)	19 10, 11, 12
Rahaif v. United States, 588 U.S. ____ (2019)	14, 18, 19 24
Rogers v. United States, 340 U.S. 367, 371 (1951)	17
Schmerber v. California, 384 U.S. 257, 263-64 (1966)	10
United States v. Apfelbaum, 445 U.S. 115, 131 (1980)	21
United States v. Dionisio, 410 U.S. 1, 5 (1973)	33
United States v. Goodwin, 457 U.S. 368, 372 (1980)	19
United States v. Hubbell, 530 U.S. 27, 37 (2000)	11, 12
United States v. Martin Linen Supply Co. 430 U.S. 564, 572-73 (1977)	26
United States v. Patane, 542 U.S. 630, 636-37 (2004)	20
United States v. Washintong, 431 U.S. 181, 188 (1979)	15

Zicarelli v. Newjersey State Comm'n of Invest. 406 U.S. 472 , 478(1972)	15
United States v. X-Citment Video Inc. 513 U.S. 64, 72 (1994).....	24,25

Court of Appeals

	Page
United States v. Adeyemo, 819 Fed. Appx. 469 (*th cir. 2020).....	1,2
United States v. Blair, 661 F.3d 755, 767 (4th cir. 2011).....	35
United States v. Brown, 459 F.3d 509, 530-32, n. 19 (5th cir. 2006).....	34
United States v. Calipari, 368 F.3d 22, 42-43 , n. 10 (1st cir. 2004).....	34
United States v. Littleton, 76 F.3d 614, 619 (4th cir. 1996).....	35
United States v. Qattrone, 441 F.3d 153 (2nd cir. 2006).....	35
United States v. Schwarz, 283 F.3d 76, 107-09 (2nd cir. 2002).....	34,35
United States v. Sharpe, 193 F.3d 852, 864-65 (5th cir. 1999).....	34
United States v. Sun Myung Moon, 718 F.2d 1210, 1236 (2nd. cir. 1983).....	34
United States v. Thomas, 916 F.2d 647, 652 (11 cir. 1990)	34,35
United States v. Triumph Capital Grp. Inc., 544 F.3d 149, 171(2nd cir.2008) ..	34
United States v. Tyler, 732 F.3d 241, 249-50 (3rd cir. 2013).....	35
United States v. Wood, 6 F.3d 692, 696 (10th cir. 1993)	33

District Court

United States v. Adekunle Adetiloye, No. 3:08-cr-28(2012)	ii,2
United States v. Michael Adeyemo, et all, No. SACR01-75	³ 2,3

Statutes, Rules and Regulations

	Page
18 U.S.C. § 1503	i, 4, 5, 7, 20, 21, 22, 23, 24, 25, 26, 27, 28, 31, 33, 34, 35, 36
18 U.S.C § 1512(b)(2).....	
26 U.S.C. § 7212(a).....	29
Federal Rules of Crminal procedure Rule 10.....	16
Federal Rules of Crminal procedure Rule 11.....	2, 13
Federal Rule of Crminal Procedure Rules 28 and 33	4
28 U.S.C. 1254(1)	4
Fifth Amendment of the Constitution.....	i, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 27

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

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eighth Circuit appears at Appendix A to the petition and is reported at United States v. Adeyemo, 819 Fed. Appx. 469 (8th cir. May 12, 2020)

STATEMENT OF JURISDICTION

The date on which the United states Court of Appeals decided my case was September 2, 2020. A timely petition for rehearing was denied by the United States Court of appeals on November 18, 2020, and a copy of the order denying rehearing appears at Appendix A. An extension of time to file the petition for a writ of certiorari was granted by the Supreme Court due to Covid 19 outbreak within the BOP facilities. The jurisdiction of this Court is invoked under 28 U.S.C § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

Fifth Amendment of the United States Constitution

The Fifth Amendment to the United States Constitution provided in pertinent part:

"No person.....shall be compelled in any criminal case to be a witness against himself, or be deprived of life, liberty or property without due process of law"

STATEMENT OF THE CASE

In 2008, the United States government indicted the Petitioner under the name Adekunle Olufemi Adetiloye, and was extradited from Canada into the United States pursuant to the United States and Canada extradition treaty, to face federal bank fraud charges in the district of North Dakota in case number 3:08-cr-28. The 2008 indictment did not charge or list the other name, to wit; Michael Adefemi Adeyemo that the Petitioner had previously used before, or listed any 2001 pending criminal charges in California for fraud.

On February 9th 2011, the Petitioner openly pled guilty to an information in the district court of North Dakota to fraud charges in violation of 18 U.S.C 1342. During the change of plea colloquy pursuant to the Federal Criminal procedure Rule 11. The district court judge asked the Petitioner if he was Adekunle Olufemi Adetiloye and the person charged in the indictment, and appearing before the court. The petitioner truthfully identified himself as such, and provided the name charged in the indictment in relation to the factual evidence in the discovery, the scope, purpose and practical demands of Rule 11. During the change of plea colloquy, the district court did not ask the Petitioner if he had other names previously used and any other pending criminal charges in United States. Hence, the Petitioner did not volunteer additional names previously used, because he was never asked, and also due to a pending federal criminal charges in California for fraud in case styled United States v. Michael Adeyemo, et al. No. SACR01-75.

The district court discharged its duty and found both voluntary, intentional and factual basis to accept the plea. Following the judicial acceptance of the

of plea and pre-sentence investigation report conducted on March 9th, 2011. The Petitioner was convicted in 2012 in case styled United States v. Adekunle Olufemi Adetiloye No.3:08-cr-28, and sentenced to seventeen and half years. Following this conviction, and based on an anonymous tip. On October 19, 2016, a grand jury returned a superseding indictment that charged the Petitioner with four counts of obstruction of justice in violation of 18 U.S.C 1503 and 2, relating to the previously convicted underlying case.

The four counts for obstruction of justice alleged that Adeyemo corruptly influenced, obstructed, impeded, or endeavor to influence, obstruct and impede the due administration of justice in case titled United States v. Adekunle Olufemi Adetiloye, case no. 3:08-cr-28, and United States v. Michael Adefemi Adeyemo, case no. SACR01-75. Even though the California's case was not part of the underlying case, or a relevant conduct, or part of the common scheme of the 2008 case. Count One charged that by providing false information concerning his name, date of birth during the change of plea before the district court on February 9, 2011. Petitioner obstructed justice. Count Two charged that the Petitioner obstructed justice during the interview with the pre-sentence report interview of March 3, 2011, when he provided same information. Count Three stated that by providing false information concerning his name and date of birth during change of plea hearing of February 9, the Petitioner obstructed justice in the California's case. Lastly, Count Four charged that by providing false information regarding the name and date of birth during the interview with pretrial services on March 3, 2011, the Petitioner obstructed justice in the California's case.

Therefore, prior to the commencement of the jury trial. Adeyemo plainly argued for and submitted the theory of defense jury instructions. The Petitioner requested the trial court to convey the "nexus requirement" instruction, and additional instructions

including the Fifth Amendment right against Self-incrimination, and that the government must prove beyond a reasonable doubt, the nexus relationship in time, causation or logic with the judicial proceedings charged under Counts One to Four. The Petitioner's proposed "nexus requirement" and the Fifth amendment instructions, were the correct statement of the law under "Aguilar" and the Constitution. These instructions were not covered by other instructions which were delivered, and dealt with vital issues properly placed before the jury.

However, the trial court failed to convey the Fifth amendment, "nexus requirement" and the prove of "nexus requirement" beyond a reasonable doubt instructions to the jury. The trial court's jury instructions 12 and 14 eviscerated these instructions. Hence, at trial since these instructions were never submitted to the jury. The government did not prove beyond reasonable doubt, the nexus between the alleged false statement and the judicial proceedings. Equally, the jury did not make a factual determination that Adeyemo's alleged false statement had requisite natural and probable effect to interfere with the due administration of justice of the judicial proceedings charged under Counts One to Four. See "Appendix A" addendum 1(a).

At the close of the government's case, Adeyemo timely moved and renewed his motion for judgment of acquittal under the Federal Rule of Criminal Procedure Rule 28, and motion for New trial under Federal Rule of Criminal Procedure Rule 33. Based on the Fifth Amendment Constitutional right violation, error of law in the jury instruction, insufficient evidence at trial and the government's failure to meet its burden of prove on "nexus requirement" beyond a reasonable doubt. The "Self-incrimination clause" argument was based on the claim that Adeyemo had the Constitutional protection not to voluntarily disclosed as part of the North Dakota's proceedings the incriminating and testimonial name; to wit Michael

Adeyemo, not charged in the 2008 indictment and unrelated to the 2008 underlying offense in North Dakota. On January 23, 2019, the district court denied these motions despite overwhelming evidence of a "substantial and real" pending federal charge in California. The district court based its denial on the ground that the "nexus requirement" instruction was inapplicable, and "the defendant was not involved in a "Terry stop" and did not refuse to identify himself to law enforcement for fear that identifying him would lead to conviction of a separate crime." See App.A, 1(a).

The district court sentenced Adeyemo to 120-months concurrent terms, which are to run consecutive to United States v. Adekunle Adetiloye, case number 3:08-cr-28, and consecutive to any future sentence imposed in the Central district of California. See "APENDIX A", addendum 1(b).

On appeal to the Eighth Circuit Court of appeals in the case titled United States v. Adeyemo, 819 Fed. Appx. 469, May 12, 2020. Adeyemo argued that under "Hiibel" the "Self-incrimination clause" protected him from a voluntary disclosure of another incriminating and testimonial name he previously used. Because there was a pending Federal criminal charge in California which the Petitioner was fearful of. Also, that the district court abused its discretion and erred for failing to submit the proposed "nexus requirement" instruction articulated in "Aguilar". Accordingly, the evidence presented at trial was insufficient to sustain a conviction.

On September 2, 2020 the Appellate court overlooked a glaring failure to submit the "nexus requirement" jury instruction and the "Self-incrimination clause" jury instructions. The Eighth Circuit Court of Appeals affirmed the district court's conviction, despite the failure of the government to prove the "nexus requirement" beyond a reasonable doubt. The court denied the Petitioner's Fifth amendment claim on the ground that "the defendant did not assert his right to remain silent in fear of self-incrimination. Instead, Defendant repeatedly provided

false identification and information to the court and its officers during the prosecution of his case". See page 2 "Appendix A ". Same court also denied the Petition for Rehearing and Rehearing en banc on November 18, 2020, and issued its Mandate on November 25, 2020. Hereto, Adeyemo petitions for Certiorari, asking this court to decide whether the "Self-incrimination clause" of the Fifth Amendment protects a defendant from a voluntary disclosure of testimonial and incriminating name and identity that would lead to a conviction of a separate offense. Also, whether the 18 U.S.C 1503 "omnibus clause" criminal prosecution and conviction based on false statement. Requires the "nexus requirement" instruction be submitted to the jury.

REASONS FOR GRANTING THE PETITION

The Petitioner respectfully seeks a writ of Certiorari to review the erroneous decisions of the Eighth Circuit Court of Appeals. Which upheld a conviction in violation of the Fifth amendment right against "Self-incrimination" to disclosure of incriminating name and identity during an "accusatorial" judicial proceeding. Hence, made a highly questionable ruling on the application of the "Self-incrimination clause" defense, to answering a request to disclose a "testimonial" name that provides a link of evidence needed to convict a person for a separate offense.

Same decisions also endorsed and affirmed the district court's obstruction of justice criminal conviction under 18 U.S.C. § 1503. Where the district court seemingly, (1) Failed to convey the requisite "nexus requirement" instruction to the jury. (2) Provided the jury with flawed jury instruction, and (3) Led the jury to believe it did not have to find any "nexus" between Adeyemo's alleged false statement and the obstruction of the judicial proceedings charged under counts One to Four.

Bearing on these erroneous decisions issued by the Eighth Circuit Court of Appeals. There are more than one compelling reason to grant this Certiorari. The fundamental questions here concern the breadth of the Fifth amendment privilege against "Self-incrimination", and the application of the "nexus requirement" instruction to §. 1503. This case raises genuine and substantial questions of gravity and importance, that have matured and need further clarification by this Court, both on the "Self-incrimination clause" and §. 1503 claims.

Certainly, custodial investigative identification questions and answers, and compulsory disclosure of name and identity. Are transcendent issues of law in both civil and criminal cases in post-"Hiibel" era. Because a person's identity contains informational and incriminating worth that explicitly or implicitly relate factual assertion or disclose information. However, Seventeen years after deciding in *Hiibel v. Sixth Judicial Dist. Court*, 542 U.S. 189 (2004), that a person's name and identity are only "testimonial" and "incriminating" in "unusual circumstances". Where such disclosure "would furnish a link in the chain of evidence needed to prosecute the claimant for a federal crime". The Supreme Court has not considered, or decided and resolved the novel question, whether the "unusual circumstances" propounded in "Hiibel's" police-"traffic stop" "Terry claim challenges. Applies to a court room "accusatorial judicial proceeding, and how a court measures a person's fear of prosecution in a separate offense, for the purpose of the "Self-incrimination protection

More so, the court has not clearly-established whether the existence of the "unusual circumstances" that leads to a link in chain of evidence needed to convict individual of a separate offense are covered by the Fifth amendment. The question whether an individual may be required in a judicial proceeding to disclose "testimonial", "incriminating" and "uncharged" name and identity remains unsettled.

Therefore, this case begins where "Hiibel" left off and kept silent. The Fifth amendment "Self-incrimination" question of law that subsumes, turns on the "unusual circumstances" rule propounded by "Hiibel"; and concerns a protected testimonial communication for the Fifth amendment purposes. Infact, this case seeks further authoritative clarification and resolution of the "unusual circumstances". Where a defendant's failure to voluntarily disclose "incriminating" and uncharged name and identity in an "accusatorial" judicial proceeding, is "testimonial" and protected by the "self-incrimination clause" of the Fifth amendment. Also, whether compelled disclosure of testimonial and incriminating name and identity that would lead to a conviction of a separate offense. Violates the "self-incrimination Clause, and if so, "what remedy must follow". Hence,, in post-"Hiibel" era, this case presents this court with an opportunity to fill the precedential void and gap left opened by "Hiibel" under the Fifth amendment.

There is an additional compelling reason to grant this Certiorari. The general importance of the application of law on judicially engrafted "nexus requirement" to obstruction justice statutes with "catch-all" provision and "omnibus clause", is critical to the criminal law jurisprudence. Though the Supreme Court has held in United States v. Aguilar, 515 U.S. 593 (1995) Seventeen year ago, that the government must prove "nexus requirement" beyond a reasonable doubt. The court has not considered, determined or resolved the issue whether the engrafted "nexus requirement" requires a jury instruction. If so, its scope, nature and application in a false statement-based prosecution under §. 1503 are yet to be authoritatively clarified by this Court. Hence, determining the scope and application of the "nexus requirement" instruction to 18 U.S.C. § 1503 obstruction of justice criminal

prosecution based on false statement made in a judicial proceeding, raises a genuine question of federal law. .
 'The question whether the "nexus requirement" is a requisite component of the statutory element of the specific intent, that must be charged in the jury instruction is highly dispositive of an important federal law question in post- "Aguilar's" era.

Equally important and central to this Certiorari. The decision of the Eighth Circuit Court of Appeals purports to resolve an important issue of federal law on the application of the Fifth amendment "self-incrimination clause" and the "nexus requirement", in a way that is utterly in conflict with the Supreme Court's precedents of "Aguilar" and "Hiibel" respectively on these issues. Therefore, has unsettled matters previously decided or left open by the Supreme Court on these issues.

In the same vein, the unusual posture of the Eighth Circuit court of appeals decisions, and notable conflicts with the Supreme Court's precedents. Have emerged a conflict of decisions among the Circuit Courts on these two issues. The asserted conflicts in decision emanates from the differences in the application of the "self-incrimination clause" to answering a request to disclose a name, and the "nexus requirement" jury instruction to § 1503 prosecution based on false statement.

Most tellingly, it is clear that these conflicts are one that can only be resolved by the Supreme Court alone, and the disagreement should be promptly resolved. More to the point, granting this Certiorari to reach the merits of these questions is utterly appropriate and important. It is necessary to reconcile the divided and long-overdue conflicting decisions of the Federal Court of Appeals on these issues, in order to secure uniformity of decisions of federal law, both under §. 1503 and the Fifth amendment. These conflicts are real and substantial, and this case is ideal for settling these conflicts. Here, the reasons to grant this Certiorari are wholly compelling.

(I). THE EIGHTH CIRCUIT OPINION ERRED AND IN CONFLICT WITH "HIBEL'S PRECEDENT AND THE FIFTH AMENDMENT PRIVILEGE AGAINST "COMPULSORY SELF-DISCLOSURE" OF "TESTIMONIAL" AND "INCRIMINATING" NAME AND IDENTITY

This case implicates both the "testimonial", "incriminating" and "compulsion" components application of the Fifth amendment privilege against "Self-incrimination", to "unusual circumstances" where implicit or explicit disclosure and factual assertion of a name and identity could be "incriminating" and "testimonial". If such disclosure provides a link in the chain of evidence that would lead to a conviction of a separate offense. Though the Eighth Circuit Court Of Appeals has failed to articulate any legal, or factual, or evidential and precedential basis to support its conclusion that the petitioner was not in fear of "Self-incrimination".

The Petitioner asserts that the Fifth amendment "Self-incrimination clause", protects him during the "accusatorial" change of plea colloquy and pre-sentence investigation interview. Not to volunteer "testimonial" and "incriminating" name and identity not charged in the indictment. Due to fear of a federal criminal prosecution in a separate case in California. The Petitioner's silence not to disclose this name fits the Fifth amendment's protection. See *Schmerber v. California*, 384 U.S. 257, 263-64 (1966) ["The protection of the privilege reaches an accused communication whatever form they might take."], *Pennsylvania v. Muniz*, 496 U.S. 582, 598 (1990) (The court found the suspect's Fifth amendment violation and vacated the sentence imposed. Because Respondent's answer to the "Sixtieth(60th) birthday question" was protected, where the content of his truthful answer supported an inference that his mental faculties were impaired), *Emspak v. United*, 349 U.S. 190, 200-201 (1955) (Reversing the defendant's conviction on grounds of the Fifth amendment violation. This court noted that "to reveal knowledge about name individual-all of them having been previously charged with Communist affiliations, could have furnished a link in chain of evidence to prosecute the petitioner for a federal offense").

"To qualify for the Fifth amendment a communication must be testimonial, incriminating and compelled". *Hiibel* 542 U.S. at 189 quoting *United States v. Hubblle*, 530 U.S. 27, 34-38 (2000). Communication means information that "would furnish a link in the chain of evidence needed to prosecute claimant for a federal offense". *Hoffman*, 341 U.S. at 486. "Incrimination means disclosure that could be used in a criminal prosecution, or could lead to other evidence that might be so used". *Kastigar v. United States*, 406 U.S. 441, 445 (1972). "To be testimonial, an accsued communication must itself explicitly or implicitly relate a factual assertion, or ~~disclose~~ information". *Hiibel*, 530 U.S. at 189.

Therefore, the privilege applies to both "answers that would in themselves support a conviction", but also to "those that would furnish a link in the chain of evidence needed to prosecute the claimant". *Hoffman*, 542 U.S. at 190. It "protects against any disclosure that the witness reasonably believe could be used in a criminal prosecution, or could lead to other evidence that may be so used". *Hiibel*, 542 U.S. at 190. Hence, "the privilege may be asserted only to resist compelled explicit or implicit disclosure of incriminating information.....and was intended to prevent use of legal compulsion which would incriminate him". "To invoke the privilege, it is necessary to show that the compelled disclosure will themselves confront the claimant with substantial hazard of self incrimination", that is "real and appreciable" as opposed to "imaginary and unsubstantial". *California*, 402 U.S. at 429, *Brown v. Walker* 161 U.S. 591, 599(1891). The appellate court did not provide why "Hiibel" was inapplicable.

There are sound reasons in law to grant this certiorari. In face of the overwhelming weight of these legal authorities. The Eighth Circuit Court of Appeals has cut corners and has attempted to rewrite the eligibilty requirement law for the Fifth amendment. Eventhough "the Constitution provides no formulae with which we(courts) can calculate the areas within this full scope to which the privelege extends", *Cailifornia* 402 U.S. at 449, and the "text does not delineate the ways in which a person may be a witness against himself". *Pennsylvania*, 496 U.S. at

Bearing on these claims, the Eighth Circuit's judgment is in conflict with the Supreme Court's "Self-incrimination clause" eligibility requirement precedents propounded by "Hiibel". The law is well-settled that the Fifth amendment provides that, "No person.....shall be compelled in any criminal case to be a witness against himself". U.S. Constitution Amendment V. "The Fifth amendment protects citizen from being required to provide compelled testimony that is incriminating". Hiibel, 542 U.S. at 189. It "prohibits only compelled testimony", and "protects person only being compelled by his own compelled testimonial communications". Hiibel 542 U.S. at 189, quoting Brown v. Walker, 161 U.S. 591, 598 (1896), Doe v. United 487 U.S. 201, 206 (1988). The primary context from which "the privilege emerges is that of the criminal process both in the investigatory and trial phases". California v. Byer, 402 U.S. 424, 440 (1971). "Its protection encompass compelled statement that leads to discovery of incriminating evidence, even though the statements themselves are not incriminating and are not introduced into evidence". Hiibel 542 U.S. at 195 quoting United States v. Hubbell, 530 U.S. 27, 37 (2000). It maintains the "accusatorial criminal justice system". Hoffman v. United States, 341 U.S. 479 (1951), Mitchell v. United States, 526 U.S. 314, 325 (1999) ("Criminal proceedings rely on accusation provided by the government, not on inquisitions conducted to enhance its own prosecutorial power"). "The privilege prevents a witness from voluntarily testifying on matter which would incriminate him". Garner v. United States, 424 U.S. 648, 654 (1976). "It protects innocent as well as the guilty". Ohio v. Reiner, 542 U.S. 17, 18 (2001). "It is designed to protect the use of the legal process to force from the accused lips evidence needed to convict him". White v. United States, 322 U.S. 694 (1949). "The privilege is founded on our[courts'] unwillingness to subject those suspected of crime to the cruel trilemma of self-accusation, perjury or contempt". Pennsylvania v. Muniz, 496 U.S. 582, 594 n.8 (1990).

589. The Supreme Courts "Fifth amendment precedents have instructed the Fifth amendment be given a construction as broad as the mischief against which it seeks to guard..... and courts are obligated to fashion for itself standard for application of the privilege". California, 402 U.S. at 449. See Hoffman, 341 U.S. at 486 ("The amendment must be accorded liberal construction in favor of the right it was intended to secure"). Here, making this determination is pertinent.

The Eighth Circuit Appeal's conflicting opinion under scrutiny. Ignored that in Hiibel, the Supreme Court authoritatively propounded that " a person's identity bore informational and incriminating worth even if the name itself was not inculpatory", Hiibel 542 U.S at 196 . Hence, a disclosure of a name and identity may be testimonial and incriminating in "unusual circumstances", because "one's name may qualify as an assertion of fact relating to identity". See Hiibel, 542 U.S. at 189 quoting Hubbell, 530 U.S. 35. Therefore, "answering a request to disclose a name likely to be so insignificant as to be incriminating only in unusual circumstanceswhere there is a substantial allegation that furnishing identity.....could give a link in chain of evidence needed to convict the individual of a separate offense", "the court can then consider whether the Fifth amendment applies, whether it has been violated, and what remedy must follow". Hiibel, 542 U.S. at 191.

This case brings to bear the "unusual circumstances" prong and the Federal questions of law left-open by Hiibel. Agreeable to this usage and principle, Adeyemo argues that the § 1503 conviction violates the Fifth amendment against compulsory incrimination and involuntary disclosure of another different and "uncharged", "incriminating" and "testimonial" name during the change of plea colloquy before the district court on February 9, 2011 and the presentence interview of March 9, 2011 respectively. The three qualifications to invoke the Fifth amendment privilege are present in this case, and the Eighth Circuit erred and conflicted with "Hiibel's" authoritative precedent on the application of the "self incrimination clause" protection to the "unusual circumstances" established by "Hiibel".

A perusal of the erroneous and conflicting opinion of the Eighth Circuit Court of Appeals. Implies Adeyemo to be a "witness against himself", and "reveal directly his knowledge of facts relating to his offense, or share his thoughts and believe" with respect to the "uncharged" name. See Doe, 487 U.S. at 213. However, under "Hiibel's" authoritative precedent that avails in claim. The change of plea proceedings and the presentence investigative interview in issue. Were "coercive", "accusatorial", "testimonial", and "compelled" in nature under Federal Rule of Criminal Procedure Rule 11. During which Adeyemo's "free will was overborne" to provide "testimonial" and "incriminating" answers before the trial court accepted his guilty plea. See Boykin v. Alabama, 395 U.S. 238, 242 (1969) ("A plea of guilty is more than a confession which admits the accused did various acts, it is itself conviction, nothing remains but to give judgment and determine punishment"), Brown v. United States, 356 U.S. 148, 156 (1958) ("Sturbborn disobedience of the to answer relevant inquiries in a judicial proceeding bring into force the power of the court to punish for contempt").

Being so, under the "totality of the circumstances" including the "context" and "setting in which" the name questions were asked. The question regarding Petitioner's name and identity confronted him with the "trilemma", "a choice between truthfully or falsitly revealing his thoughts and forsaking his oath". Pennsylvania, 496 U.S. at 596-97. To this end, the disclosure of the "uncharged" name, "the contents of the truthful answer" to the name question, and "the response whether based on truth or false, contains [ed] a testimonial component" that was incriminating". Pennsylvania, 496 U.S. at 596. This qualify as an assertion of facts relating to identity for the purpose of the Fifth amendment protection purposes. Such disclosure "explicitly and implicitly relate factual assertion", and "disclosed information relating to "real and appreciable danger of a pending and unfinalized Federal criminal prosecution in California, which the Petitioner feared. Hubbell, 530 U.S. n.9 ("The prohibition of compelling a man in a criminal court to be a witness against himself is a prohibition of the use of physical or moral compulsion to extort communication from him"),

See Mitchell, 526 U.S. at 324 ("A defendant who invokes the privilege against self-incrimination at the guilty plea colloquy runs the risk the district court will find the factual basis inadequate"), United States v. Washington, 431 U.S. 181, 188 (1979) ("To determine whether a testimony has been compelled the court examine the totality of the circumstances to determine whether the freewill of the witness was overborne"). It is beyond cavil that the voluntary disclosure of this name, "presented reasonable danger of incrimination in the pending federal criminal prosecution in California, and "not a remote speculative possibilities". Zicarelli v. New Jersey State Comm. of Investigation, 406 U.S. 472, 478 (1972) ("It protects against real and not remote and speculative possibilities"), Ohio, 532 U.S. 18-21 (The court held "to fear that answers to possible question tend to incriminate was covered by Fifth amendment"), Mitchell, 526 U.S. at 326 (Reversing the judgment of conviction of the Third Circuit Court of Appeals. The Court noted that "the essence of the basic Constitutional principle is the requirement that the State which proposes to convict and punish an individual produce the evidence against him by independent labor of its officers, not by the simple cruel expedient of forcing it from his own lips").

As a threshold argument under "Hiibel", there is no doubt that "answering a request to a name" during these proceedings. Involved "compelled" questions, responses, communicative and answers which were ostensibly "testimonial", and "incriminating" under oath. As to trigger "Hiibel's" "unusual circumstances" prongs that protect Adeyemo against the "mischief which the Fifth amendment safeguards" on "self-disclosing the name; to wit; Michael Adeyemo. Including "any disclosure of answers that support a conviction", or 'could give a link in chain of evidence needed to convict him of a separate offense" in California. See Hiibel, 542 U.S. at 179, 194 ("It is the extortion of information from the accused, the attempt to force him to disclose contents of his own mind that implicates the self-incrimination clause"), Mitchell, 526 U.S. 322-23 (The Fifth amendment "safeguards against judicial coerced self-disclosure").

Simply put, neither the logic of "Hiibel", nor its prudence established that Adeyemo must "self-disclose" or volunteer "incriminating" and "testimonial name "uncharged" during the change of plea colloquy and post-sentence interview by the probation officer. The Eighth circuit opinion completely ignored that "the purpose of the court's inquiry at a plea colloquy is to ensure that the accused understands the charges, and that there is a factual basis for the government's case, and to protect the accused from an unintelligent and involuntary plea" Mitchell, 526 U.S. at 322. Beign so, Adeyemo had no legal obligation under "Hiibel" to self-disclose, or volunteer incriminating and testimonial name during the course of these proceedings. The issue of Petitioner's identification and initial appearance for the purpose of the 2008 North Dakota's indictment. Was resolved at the preliminary "critical stage" of the arraignment in 2010 pursuant to Federal Rules of Criminal Procedure Rule 10. See Johnson v. Zerbst, 304 U.S. 458, 463 (1938) ("Under Federal Law an arraignment is a sine qua non to the trial itself, the accused plead to it, thereby formulating the issue to be tried"). Where the name and identity question sought for only the specific name in the indictment. Hoffman, 341 U.S. at 486 ("The context in which question is asked imparts additional meaning to the question and clarify what information is sought").

Therefore, it is evident from the "setting" and "context" in which the the name question was asked. That, to disclose an "incriminating" and "testimonial" name, or provide an "explanation why it cannot be answered was dangerous because injurious disclosure could result". Hoffman, 341 U.S. at 486-87. Infact, the Supreme Court has categorically warned that, "a truthful answer of an innocent witness as well as those of a wrong doer may provide the government with the evidence from the suspect's own mouth". Ohio, 532 U.S. at 17-21. Hence, "the vast majority of verbal statement thus will be testimonial, and to that extent at least will fall within the privilege". Hiibel, 542 U.S. at 194. If Adeyemo had disclosed to the court exactly why the answer could incriminate him, he would surrendered the very protection which the privilege is designed to guarantee. Hoffman, 341 U.S. 486-87. On the other hand, if the Petitioner had failed to answer

the question he would have faced a contempt of court. Brown, 356 U.S. at 156, Hoffman, 341 at 486 (A witness can prevail in his assertion of the privilege only when he "has reasonable cause to apprehend danger from a direct answer"), Zicarelli, 406 U.S. at 328 (The privilege "protects the accused from being compelled to incriminate himself in any manner, and does not distinguish degree of incrimination"). The Eighth circuit opinion simply ignored that the Adeyemo was in genuine fear of the Pending federal charge in California when he gave the compelled responses which were communication protected under the Fifth amendment privilege against "self-incrimination". Boyd v. United States, 116 U.S. 616, 763-64 (1886) (The protection of the privilege reaches "an accused communication whatever form they may take and compulsion of responses which are communications").

Additionally, it is of obvious relevance that same opinion erred, and in conflict with the Supreme Court's precedents for another reasons, and in violation of the Petitioner's Fifth amendment protection against "self-incrimination". So far as important here, this opinion is in conflict with the Fifth amendment's eligibility requirement and the privilege's history of purpose precedents established by the Supreme Court.

Contrary to the erroneous and conflicting decisions triggered by this opinion. The law is settled that "historically the privilege was intended to prevent the use of legal compulsion to extract from the accused a sworn communication of facts which would incriminate him". Ohio, 452 U.S. at 18. Hence, a claimant's eligibility is based on the "testimonial", "incriminating", and "compulsion" components of the witness' response, not the "falsity" of the compelled answers provided by the witness. Under this legal scrutiny, the appellate court also misapprehended that "the decisions of this court are explicit in holding that the privilege against self-incrimination is solely for the benefit of the witness". Rogers v. United States, 340 U.S. 367, 371 (1951). The privilege is not designed to encourage sealed lips, but to protect accused freedom to decide whether to assist the state in securing his conviction. Therefore, the privilege

does not accrue to the courts. Nor was "designed to enhance reliability of the fact-finding determination" by the courts. *Allen v. Illinois*, 478 U.S. 364, 375 (1986). Nor to enhance judicially coerced self-disclosure" in the proceedings. Nor focuses on "what information is expected" from Adeyemo during these proceedings. But rather, on the "unwillingness to subject those suspected of a crime to the trilemma of self-accusation, perjury or contempt". *Pennsylvania*, 496 U.S. 594, n.8.

Therefore, rather than focusing on the "falsity" nature of the compelled answer that Adeyemo gave as the basis to deny his eligibility for the Fifth amendment claim. The Eighth circuit court of appeals should have "focused its determination on what truthful answer might disclose rather than on what information is sought by the questioner". *Zicarelli*, 406 U.S. at 480, *Hoffman*, 341 U.S. at 486. As a "cornerstone" argument that avails. The Supreme Court has held time and time again with clarity and candor that, "an accused testimony under oath in a plea colloquy where the accused pleads guilty in a federal charge does not waive his right to invoke privilege against self-incrimination under federal Constitution". *Mitchell*, 526 U.S. at 323. An accused "does not lose this protection by reason of his conviction of a crime" *Minnesota v. Murphy*, 465 U.S. 420, 426 (1984). Hence, "when determining whether a claimant is eligible for the Fifth amendment claim," "it is the effect of the content that is determinative" not the "falsity" characteristic of the witness' compelled answer. *Zicarelli*, 406 U.S. at 480, *California*, 402 U.S. at 437.

Straight forward application of "Hiibel's" precedent leads to but one conclusion. The Eighth Circuit court of appeals has taken an undue advantage of the precedential vacuum in "Hiibel". If the majority in "Hiibel" had wanted to include "falsity" or "truthfulness" component as part of threshold eligibility requirement to deny or grant a Fifth amendment claim, it would have said so. This opinion simply ignored that Adeyemo's "freewill was overborne" during these proceedings, and his "response whether based on truth or falsity contained testimonial component" and communication protected

under the Fifth amendment privilege against self-incrimination. Pennsylvania, 496 at 597.

In same vein, if compulsory "self-disclosure" was not protected under "Hiibel", the Supreme Court would not have warned that "a truthful responses of an innocent witness, as well as those of a wrong doer may provide the government with incriminating evidence from the speaker's own mouth". Ohio, 532 U.S. at 17-21. Here, Adeyemo's Fifth amendment eligibility claim is factually distinctive to "Hiibel's", where the Supreme Court found that Hiibel's "disclosure of his name and identity presented no reasonable danger of incrimination", as to warrant the protection. The prudence of this distinction is apparent in claim to spotlight the conflicting and erroneous decisions of the appellate court. Therefore, there could be no better illustration of a claim of eligibility under the "self-incrimination clause", than this case affords the wisdom of "Hiibel" and the legal authorities articulated. Adeyemo kept silent and did not volunteer these incriminating name and identity for fear of federal criminal prosecution for a "separate offense" in California, as required by the law. "To punish a person because he has done what the law plainly allows him to do is a due violation of the most basic sort". United States v. Goodwin, 457 U.S. 368, 372 (1980).

The existence of a concededly meritorious Fifth amendment violation claim is dispositive, and compelling to grant this Certiorari and bring the appellate court's opinion to berth with the Fifth Amendment Constitutional protection. Most tellingly, the "compelled self-disclosure", or "involuntary confession", or "judicially coerced self-disclosure" of the answers that the Eighth Circuit Court of Appeals expected from Adeyemo during these proceedings. Is strictly prohibited under the Fifth amendment, and in conflict with the Supreme Court's precedents. "Hoffman, 341 U.S. at id 490 ("The immediate and potential evils of compulsory self-disclosure transcend any difficulties that the exercise of the privilege might impose on the society on the detection and prosecution of crime"). Chavez v. Martinez, 538 U.S. 760, 770 (2003) (A violation of the Fifth

amendment right against self-incrimination "occurs only if one has been compelled to be a witness against himself in a criminal case"), *United States v. Patane*, 542 U.S. 630, 636-37 (2004) ("The clause cannot be violated by introduction of non-testimonial evidence obtained as a result of voluntary statement"), *Allen*, 478 U.S. at 375 ("Involuntary confessions excluded not because such..... are likely to be true, but because the method used to extract them offend an underlying principle in the enforcement of our Constitution, that is accusatorial and not inquisitorial"). The most telling features of "*Hiibel*" are in full display.

(II)

THE EIGHTH COURT OF APPEALS ERRED AND HAS EMERGED A CONFLICT WITH THE SUPREME COURT'S PRECEDENT ON THE APPLICATION OF THE NEXUS REQUIREMENT TO § 1503 OBSTRUCTION OF JUSTICE STATUTE

A prerequisite to a violation and conviction under 18 U.S.C. § 1503 "omnibus clause" statute, is the existence of the "nexus" the connects the defendant's obstructive act with the due administration of justice in a judicial or grand jury proceedings. A natural reading of the "nexus requirement" applicable law under § 1503, requires a trial court to provide the "nexus requirement" instruction, and requires its prove beyond a reasonable doubt by the government.

As a compelling argument that sits at the "heartland" of this petition. The Eighth Circuit Court of Appeals has erred and conflicted with the Supreme Court's "controlling precedents" of *Aguilar*, 515 U.S. 593, *Arthur Andersen LLP v. United States*, 544 U.S. 696 (2005) and *Marinello v. United States*, 138 S.Ct 1101 200 L.Ed. 2d 356 (2018) on the application of the "nexus requirement" to obstruction of justice statutes with "catch-all" provision" and "omnibus clause". When at its core, the appellate court failed to find that; (1). The district court was require to give instructions on the "nexus requirement", (2). Convey to the jury that the government was required to prove beyond reasonable doubt the "nexus" between *Adeyemo's* alleged false statement, and the obstruction of the due administration of justice charged in violation of § 1503 under counts One to Four.

It is of obvious relevance that the appellate court's opinion has turned its back on § 1503's history of statutory construction, and conflicted with these Supreme Court's precedents. Pragmatically, the amorphous nature of the "omnibus clause does not insulate the trial court to exclude the "nexus requirement" instruction. §. 1503 "omnibus clause logically serves as a "catch all" provision for obstructive conducts", and embraces the widest variety of conducts ~~that~~ intentionally or corruptly endeavor to impede judicial or grand jury proceedings. *Marinello*, 138 S.Ct 1101 at 1103, *Aguilar*, 515 U.S at 598.

Seemingly, the conduct that § 1503 proscribes consist of the "actus reus" and "mens rea". The "actus reus" is the endeavoring to influence and obstruct, or impede the due administration of justice. The "mens rea" is acting corruptly with specific intent to obstruct a judicial or grand jury proceeding. *United States v. Apfelbaum*, 445 U.S 115, 131 (1980) ("In criminal law both culpable mens rea and criminal actus are generally required for an offense of conviction").

Contrary to the Eighth Circuit opinion, a criminal prosecution based on false statement under § 1503 does not obliterate, eviscerate and obviate the "nexus" requirement propounded by "Aguilar". As "Aguilar" makes clear, it is the "horn-book law" that to secure a conviction under § 1503 more is required. First, there must be a pending judicial proceeding. Second, the defendant must have knowledge or notice of the pending judicial proceeding. Thirdly, the defendant must have acted with "specific intent to obstruct or impede the proceeding in its due administration of justice". *Aguilar*, 515 U.S. at 599 ("The action taken by the accused must be with intent to influence judicial or grand jury proceedings"). In addition, a conviction under this provision requires proof of "nexus" between defendant's acts and an intent to impede judicial proceedings. "The court required the government to show there was[is] nexus between defendant's obstructive conduct and particular judicial proceeding". *Marinello*, 138 S.Ct. 1101 id 1102.

By its present manifestation, the Supreme Court has neither departed from the "nexus requirement" law. Nor excluded its

application from a jury instruction in § 1503 prosecution based on false statement, as to justify the appellate conflict with the full thrust of this precedent. Infact, the "nexus requirement" law is such long-standing to the "omnibus clause" provisions, that the Supreme Court would not have carved out an exception to its lower courts' full compliance without saying so. So far as important here, the Eighth Circuit Court of Appelas cannot therefore systemically and injudiciously proscribed the "nexus requirement" and eviscerate the "beyond reasonable doubt" "standard of proof" required by the government in Adeyemo's case. Or in a § 1503 false-statement based prosecution.

The "cornerstone" argument here is that the "nexus requirement" is a significant substantive construction of 18 U.S.C. § 1503, and a significant constraint on the power of the government. Even so, the breadth of § 1503 is not without limit, and prosecutions and convictions under § 1503 are not untethered. More so that a trial court must not exclude, circumvent, or eschew it from its jury instructions. *Marinello*, 138 S.Ct. 1101 at 1108 ("To rely upon prosecutorial discretion to narrow the otherwise wide-ranging scope of a criminal Statute's highly abstract general statutory language, places great power in the hands of the prosecutors. Doing so risks allowing policeman, and juries to pursue their personal predilections").

Most tellingly, the "nexus requirement" is crucial to the legal function and operative effects of § 1503, and its application is particular strict in obstruction of justice statutes that are broadly-worded. The judicially "nexus requirement" is a primary objective limitations on § 1503 expansive reach. Without which, § 1503 would not provide fair warning to the world "in the language that common world will understand of what the law intends to do if a certain line is passed". *Arthur Andersen*, 544 U.S. at 703, *Aguilar*, 515 U.S. at 600. Hence, a criminal prosecution under § 1503 based on false statement. Is not a foot in the door, or an open sesame, or "strict liability" case to exclude the "nexus requirement" propounded by "Aguilar" from the jury instruction in Adeyemo's case. This court is aware that § 1503 has long been construed and applied in a way that allowed

"nexus requirement" jury instruction. The "nexus requirement" does not exist in vacuum. It is a Federal law that is "binding" on lower courts including the Eighth Circuit Court of Appeals. However, the appellate court's opinion has failed to explain why the district court excluded the "nexus requirement" jury instruction, because it could not explain why Adeyemo's "nexus requirement" claim was barred by "Aguilar's" authoritative precedent. Notable absence of any Supreme Court's case law on the face of this opinion, speaks volume to the error and conflict claims in support of this certiorari. Hence, the criteria relied upon or tacitly implied to deny Adeyemo's argument for "nexus requirement" jury instructions. Have no textual and precedential basis in law, and the conviction therefrom under § 1503 for an obstruction of justice based on false statement is "patently flawed", and in conflict with "Aguilar", "Arthur Andersen" and "Marinello's" "nexus requirement" precedents.

It is axiomatic that violations and convictions under "1503 required something specifically, a nexus between obstructive act and judicial proceeding". Arthur Andersen, 544 U.S. id 708. The "nexus requirement" "is a correct construction of § 1503 very broad language". Aguilar, 515 U.S. 593. Bearing on this claim, there compelling reasons under the law that barred the appellate court from conflicting with these "controlling precedents" on this issue.

In "Aguilar", in construing the elements under the "very broad broad language" of the "catch-all" provision, Twenty Six years ago. Aguilar, 515 U.S. at 599. The Supreme Court made it clear that the endeavor punished under § 1503 must not only be made with wrongful intent, and an explicit intent alone to obstruct justice is therefore not necessary for conviction under § 1503. Under this analysis, in addition to proof of "Knowledge" and "specific intent". The "Aguilar" court charted the "metes and bounds" of § 1503 "omnibus clause", by expressly embossing, and approved a "nexus requirement" limitation on the "specific intent" element, and approved the "nexus requirement" adopted by numbers of court of appeals. Aguilar 515 U.S. at 593.

According to the "nexus requirement" analysis, the Supreme Court has held that the act or charged conduct "must have relationship in time, causation and logic with the grand jury or judicial proceeding". Aguilar, 515 U.S. id 593, 599 ("Some courts have phrased this showing as a "nexus requirement"). Therefore, to satisfy this requirement, Adeyemo's

conduct must have the "natural and probable effect" of interfering with the due administration of justice. "This is not to say a defendant action need be successful, an endeavor suffices". "If the defendant lacks knowledge that his action are likely to affect the judicial proceeding, he lacks the requisite intent to obstruct". Aguilar, 515 U.S. at 599, Marinello, 138 S.Ct. at 1105 ("We noted that some courts had imposed a nexus requirement that the defendant's act must have a relationship in time, causation or logic with judicial proceeding").

Indeed the Supreme Court's history of statutory construction of § 1503 "nexus requirement", is "highly instructive" to show case the appellate court's erroneous conflict with approval. The lower court simply ignored that, putatively the "nexus requirement" limitation is best understood as an articulation of proof of intent that will satisfy the "mens rea" requirement of "corruptly obstructing" and "endeavoring" to obstruct. *Cater v. United States*, 530 U.S. 255, 259 (2000) ("Specific intent requires an intent to achieve the prohibited act"). To this end, the need for the "nexus requirement" instruction to be conveyed and submitted to the jury in Adeyemo's case, rather than withheld. Conforms with both the history of statutory construction and application of the "nexus requirement" to § 1503 "omnibus clause".

This is particularly true in this case, because the "nexus requirement imposed a requirement of "natural and probable" consequences that intertwined with the "specific intent" element, as a formulation of "corruptly" and corruptly endeavoring to obstruct, which the court must required the government to prove beyond a reasonable doubt. A prosecution makes this showing when it establishes beyond reasonable doubt the "relationship in time", "causation" and logic" between Adeyemo's statement and the judicial proceedings charged under Counts One to Four. Under "Aguilar's "nexus requirement" legal standard that avails. The "nexus requirement", authoritatively embossed in the "specific intent" element of § 1503, is a "benchmark" to determine whether Adeyemo acted with the "requisite specific intent" that sufficed a violation of § 1503. *Rehaif v. United States*, 588 U.S. (2019) quoting *United States v. Xcitment Video Inc.*, 513 U.S. 64, 72(1994)

("Congress intended to require a defendant to possess a culpable mental state regarding each statutory element that criminalizes otherwise an innocent conduct") .

Therefore, "Aguilar's" "nexus requirement" required Adeyemo be convicted of an obstruction of justice under § 1503, only if the jury by trier of fact and pursuant to the trial court's "nexus" instruction and its prove by the government beyond a reasonable doubt. Found that the alleged false statement had the "natural and probable" effect on impeding the due administration of justice charged under Count One to Four. At its core, the hemming function of the "nexus requirement" would have been met, and the conflict would have been avoided in this case . If, (1) The trial court had conveyed the "nexus requirement" jury instruction. (2). Instructed the jury that the government must prove the "nexus" "beyond a reasonable doubt. (3). If the jury had found that Adeyemo's statement had the "natural and probable effects" of interfering with the due administration of justice. Aguilar, 515 U.S. at 593 ("The prosecution must prove that the endeavor have the natural and probable effect of interfering with due administration of justice").

Stated differently, the law is settled beyond controversy that, an essential element of the "nexus requirement" analysis is the defendant's intent. Hence, determining Adeyemo's "specific intent" to obstruct justice under § 1503 was a question of a fact and proof that the jury must resolved by trier of fact, following a "nexus requirement" jury instruction. Hence, conveying the "nexus requirement" limitation instruction, was a touchstone function of the "nexus requirement", and prerequisite to the government's proof of the "specific intent" that satisfied the "mens rea" element under § 1503. The "nexus requirement" jury instruction must be conveyed and proved beyond a reasonable doubt to sustain Adeyemo's conviction under § 1503 . Nothing in the history of the statutory construction of § 1503 required the trial court to exclude the "nexus requirement" instruction. Marinello, 1101 at 1106-1108 ("In interpreting that Statute, we

pointed to earlier cases in which courts had held the government must prove an intent to influence judicial or grand jury proceeding"), *Houston v. Hill*, 482 U.S. 451, 459 (1987) ("Criminal Statutes must be scrutinized with particular care"), *X_citment Video*, 513 U.S. at 72-73, n.3 ("Scienter requirement advance this basic principle of Criminal law, by helping to separate those who understand the wrongful nature of their act from those who do not").

Therefore, this court must decline the Eighth Circuit's Appellate Court's invitation and attempt to rewrite the "applicable law" for an obstruction of justice statute with "omnibus clause", in such a fashion that exclude the "nexus requirement". It is argued with precision that the jury's inquiry and determination on whether or not Adeyemo alleged false statement, had "natural and probable effect" of impeding justice as charged under Counts One to Four. Was an appropriate inquiry, and indeed statutorily required in the precincts controlled by § 1503. Hence, the trial court's failure to convey the "nexus requirement" jury instruction, allowed a bare-bone "strict-liability" prosecution under § 1503. Such undesirable legal consequences from a court's failure to submit the "nexus requirement" instruction, was precisely what the Supreme Court sought to avoid by embossing the "nexus requirement" into obstruction of justice statute with "omnibus clause." *United States v. Martin-Linen Supply Co.*, 430 U.S. 564, 572-73 (1977) ("The jury's overriding responsibility is to stand between the accused and a positively and abusive government that is in command of the criminal function").

"Indeed it is striking how little culpability the instruction required" in absence of the "nexus requirement" instruction in this case. As it stands, the laudable purpose and profound impact of the "nexus requirement", as a "metes and bounds" under § 1503, is brought into proper perspective. *Arthur Andersen*, 544 U.S. at 706. Even more striking, the prudence of "Aguilar", "Arthur Andersen" and "Marinello" "nexus" trilogy that the appellate court should have adopted, rather than conflicted with. Provides a sweeping assertion that is readily apparent in the context of a false statement forming the basis of obstruction of justice criminal conviction in Adeyemo's case.

Neither the prudence of "Aguilar" nor its logic requires that a Federal Court does not have to convey the "nexus requirement" jury instruction in a § 1503 prosecution, based on false statement. *United States v. Gaudin*, 515 U.S. 506, 509-11 (1998) (This Court held the trial judge's failure to submit the question of "materiality" to the jury in 18 U.S.C. § 1001 prosecution denied him the Fifth and Sixth amendment rights). More critical to this case, the thrust of these cases indicates that providing the "nexus requirement" jury instruction, in addition to its prove by the government beyond reasonable doubt, and the jury finding. Are critical to sustain a valid conviction, as these give the jury's "nexus requirement" factual-finding a useful function to fulfil in a § 1503 prosecution based on false statement.

The "Aguilar's" "nexus requirement" remains paramount, as it separates wrongful conduct from innocent act and differentiates mere perjury from obstruction of justice under § 1503. Because the Supreme Court has admonished that, "not all false testimony or statement constitutes obstruction of justice". In *RE Michael*, 326 U.S. 224, 227-228 (1945). In other words, perjury alone, or mere proof of false statement, is insufficient to support proof of "specific intent" or "corruptly endeavoring" that suffices a violation of § 1503 under "Aguilar's" "nexus" scrutiny. The "nexus requirement" jury determination is not about finding whether Adeyemo's statement was true or false. Rather, the core criminality determination by the jury pursuant to the "nexus requirement" jury instruction, should have been whether Adeyemo's statement had the "natural and probable effects" of impeding the due administration of justice in the proceedings charged under Counts One to Four. After all, it is well-established that obstruction of justice is not inherent in all false testimony, and neither the language of § 1503, nor its purpose makes rendering false statement alone an obstruction of justice in absence of the "nexus" instruction, and its "prove beyond a reasonable doubt" by the government in Adeyemo's case, and the jury finding therefrom.

A fortiori, that Adeyemo's alleged false statement "had nexus, relationship in time, causation, or logic, or natural and probable effect of impeding justice was relevant in § 1503 jury

determination to the question whether the defendant had specific intent to impeded justice in a federal judicial proceeding. Owing to these considerations, adverted to. It is fathomless and impossible to square the Eighth Circuit Court Of Appeals affirmation of the district court's failure to submit the "nexus requirement" question to the jury, without triggering a salient conflict with the Supreme Court's precedent claim on this issue. To this end, the appellate opinion under scrutiny runs afoul of the Supreme Court's legal rational and cognitive reasoning with regards to the "nexus requirement" engrafted by "Aguilar" Court. By parity of reasoning, the true significance of this Court's precedent. Counsels that the appellate court should have held that the district court was required to convey the "nexus requirement" instruction, required its proof by the government, and required its proof by the government "beyond a reasonable doubt", in order to bring Adeyemo's conduct and conviction within "Aguilar's" "nexus requirement" "legal standard" under 18 U.S.C. § 1503.

Therefore, to analogized this cogent and significant claim of conflict with the Supreme Court's precedent claim. In "Aguilar", in giving meaning to the operative effects of the "nexus requirement" jury instruction in a § 1503 prosecution based on false statement. The Supreme Court upheld the Ninth Circuit Appellate Court's reversal of the criminal conviction under 1503, for making false statement to an FBI investigator during a grandjury investigation, due to lack of "nexus". Particularly, the Court held that the "nexus requirement" demanded that the false statemant had " a relationship in time, causation or logic with the judicial proceeding", and the the government must prove the "nexus" beyond a reasonable doubt. Aguilar 515 U.S. at 599.

Far from overriding "Aguilar's" "nexus requirement". In Arthur Andersen, the Supreme Court applied the "nexus requirement" to criminal prosecution under similarly-worded 18 U.S.C. § 1512(b)(2), and reversed the obstruction of justice criminal conviction affirmed by the Fifth Circuit. This Court held that "the jury instruction failed to convey properly the element of corrupt persuasion conviction under § 1512(b). Arthur Andersen, 544 U.S. id 696. This Court concluded that § 1512, in absence of the of the "nexus requirement" instruction,

"the instruction led also led the jury to believe that it did not have to find any nexus between the persuasion to destroy documents and any particular proceeding". Arthur Andersen, 544 U.S. id 697. The Court then concluded that § 1512(b)(2)(A) required the government to show "nexus" with a particular particular proceeding". Arthur Andersen, 544 U.S. id 707-708.

But this is not all. In "Marinello", relying on "Aguilar" and "Arthur Andersen" "nexus requirement" "legal standard" application to 26 U.S.C. § 7212(a) "omnibus clause". The Supreme Court reversed the Second Circuit Appellate Court's criminal conviction affirmation, and held that "conviction under § 7212(a) was reversed because the jury was not instructed to find that the defendant knew he was under investigation and intended to corruptly interfere therewith, and the government had to show nexus between defendant's conduct and IRS audit, or other targeted administrative action".

As a threshold argument, the logic of this legal trilogy is demonstrated by this case, and yields a clear YES answer to the question presented for Certiorari. This reasoning applies with similar strength "and is highly instructive" as a correct "legal standard" that the Eighth Circuit Court of Appeals should have adopted in Adeyemo's case, rather than conflicting with it. Finding the legal reasonings of these cases to be sound. It should be noted that the appellate court could not spin a cohesive yarn around the failure of the trial court to submit the "nexus requirement" question to the jury. Therefore, joining these together makes sense as to how this court should resolve this conflict.

(III)

THE EIGHTH CIRCUIT OPINION IS IN CONFLICT WITH THE SUPREME COURT'S ARTHUR ANDERSEN'S PRECEDENT ON INSTRUCTIONAL FLAW TO A COURT'S FAILURE TO CONVEY THE NEXUS INSTRUCTION.

The legal impacts inflicted on Adeyemo's fundamental right by the district court's failure to convey and submit the "nexus requirement" instruction, cannot be overstated. Central to this Certiorari is the determination whether the failure to convey the "nexus requirement" instruction rendered the instruction "patently flawed", and in conflict

with the Supreme Court's precedent in "Arthur Andersen".

So far as important here, it should be noted that the Supreme Court has steadfastly rejected any opinion, or judicial practice that failed to convey the "nexus requirement" instruction to the jury. Or leads the jury to believe it does not have to find any "nexus" between the defendant's act or statement and particular judicial proceeding. Therefore, the Supreme Court's decision in "Arthur Andersen" is analogous to Adeyemo's claim in issue.

In "Arthur Andersen", though the Court did not expressly undertake a "harmless error review" of the instruction errors relating to the failure to convey the "nexus requirement" instruction. However, the Court held that " a jury instruction is misleading for failing to adequately convey the intent element of obstruction statutes" under 18 U.S.C. § 1512(b)(2), and "were infirm for another reason". Arthur Andersen, 544 U.S. id 707. When " the instruction also led the jury to believe that it did not have to find any nexus between persuasion, to destroy and any particular proceedings". Arthur Andersen, id 697, and 707. Hence, the jury instruction here were flawed in important respect". Arthur Andersen, id 708.

"This reasoning here applied with similar strength" in buttress of Adeyemo's claim of conflict with the Supreme Court's precedent. Marinello, 138 S.Ct 1101 at 1102. "Joining these meanings together makes sense both linguistically and in the statutory scheme". Arthur Andersen, id 705. The district court's failure to submit the "nexus requirement" instruction, allowed the jury to convict Adeyemo on a "legal standard" that is in conflict with "Arthur Andersen" and "Marinello". This failure rendered the jury instruction "infirm for another reason". "They led the jury to believe it did not have to find any nexus between Adeyemo's alleged false statement," and the obstruction of due administration of justice" charged under Counts One to Four. To this end, the Eighth Circuit Court's opinion is erroneous and in conflict with the Supreme Court's previously-settled precedents. Marinello, at 1105(The Court reversed the obstruction of justice conviction by the Fifth Circuit on the basis that, "the judge however did not instruct the jury that it must find that Marinello knew he was under investigation and intended corruptly to interfere with that investigation").

(IV)

THE EIGHTH CIRCUIT OPINION IS IN CONFLICT WITH THE SUFFICIENCY OF EVIDENCE LEGAL STANDARD APPLICATION PRECEDENT TO § 1503

Critical to the Supreme Court's application of the "nexus requirement to § 1503 criminal prosecution. Is the issue of the "sufficiency of the evidence" rule propounded by "Aguilar" if the "nexus requirement" is absent. In Adeyemo's case the Eighth circuit court erroneously found the "sufficiency of the evidence" in the midst of the absence of the "nexus requirement" jury instruction. Under "Aguilar's" "nexus requirement" framework and scrutiny. It well-established beyond any doubt that, § 1503 obstruction of justice prosecution and conviction cannot solely rest on proof of evicence of perjury. The government must prove the "nexus" "beyond a reasonable doubt", and the jury must find sufficiency of the "nexus" evidence therefrom.

To this end, the district court's failure to convey the "nexus requirement" jury instruction, is ultimately dispositive to bar in its entirety, the "sufficiency of the evidence " concluded by the Eighth Circuit Court of Appeals. See "Appendix Number A" . . . Pragmatically, providing the "nexus requirement" instruction was necessarily connected to the jury finding of the "Sufficiency of evidence" of the "specific intent" and "corruptly endeavoring" elements to support Adeyemo's conviction under § 1503. Here, the absence of the jury "nexus requirement" instruction undermines the credulity of the "sufficiency of the evidence " found by the appellate court.

Such erroneous finding has triggered another conflict with the Supreme Court's precedent that is readily apparent under "Aguilar's" legal standard that avails in claim. The 'sufficiency of the evidence" that supprts Adeyemo's conviction under § 1503. Requires; (1) The "nexus requirement" jury instruction, (2), The prosecution prove of the "nexus" "beyond a reasonable doubt", (3). The jury finding of the "nexus" that intertwined with the "specific intent" to obstruct justice.

Therefore, in absence of the "nexus requirement" instruction and its prove by the government "beyond a reasonable doubt", and the jury

finding in Adeyemo's case. It is impossible to conclude that evidence was sufficient to convict Adeyemo of obstruction of justice under § 1503, without emerging a conflict with the "Aguilar's" "sufficiency of evidence" "legal standard" application to § 1503. The petitioner has found no authority that has so excluded the application of the "nexus requirement" analysis from the 'sufficiency of evidence' inquiry in a § 1503 prosecution. The jury had the ultimate task of determining the facts and evidence based on the jury instructions, and its proof by the government "beyond a reasonable doubt."

Agreeable to this usage and principle, Adeyemo argues that there was insufficient evidence to enable a rational trier of fact conclude that Adeyemo obstructed justice. No rational trier of fact could have found or inferred the "specific intent" element of § 1503 obstruction of justice crime "beyond a reasonable doubt". When the trial court failed to convey the "nexus requirement" jury instruction required to find such evidence. *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979). Adeyemo's legal defense and evidence on the "nexus requirement" were never presented to the jury, and the absence of the "nexus" jury instruction relieved the government of its burden of proof. Without these, it is argued that a reasonable doubt exist as to the "sufficiency of mens rea" that support the requisite "specific intent" evidence to obstruct the due administration of justice under § 1503.

It stands to reason that the thrust and natural reading of "Aguilar's" "sufficiency of evidence" rule. Saliently refute the appellate court's finding of "sufficiency of evidence" in this case. The Supreme Court has always held in negative that without evidence of "relationship in time", "causation", or "logic". Mere perjury or false statement alone cannot "be said to have to have the natural and probable effect on interfering with due administration of justice". *Aguilar*, 515 U.S. 601. Here, "Aguilar's" reasoning applies with similar strength and weighs against the conflict emerging from the Eighth Circuit Court Of Appeals' opinion.

(V)

THE EIGHTH CIRCUIT APPELLATE OPINION HAS TRIGGERED A CONFLICT BETWEEN COURT OF APPEALS ON THE APPLICATION OF THE NEXUS REQUIREMENT TO § 1503 PROSECUTION AND CONVICTION

The decision of the Eighth Circuit Court of Appeals has divided the lower courts, and is in conflict with the First, Second, Third, Fourth, Tenth and Eleventh Circuit Court of Appeals. On the scope and application of the federal "nexus requirement" law to jury instruction, and the "sufficiency of the evidence" rule to § 1503 criminal prosecution based on false statement. Triggering a compelling need to resolve these conflicts, to ensure uniform Federal rule on the points of law. *United States v. Dionisio*, 410, U.S. 1, 5 (1973). (In view of a clear conflict "court granted certiorari"), *Calhoon v. Harvey*, 397 U.S. 134, 137 (1964) ("Because of the importance of the question presented and conflicting view in the court of appeals and the district courts, we granted Certiorari"), *Aguilar*, 515 U.S. at 595, *Arthur Andersen*, 544 U.S. at 702 ("Because of a split of authority regarding the meaning of § 1512(b), we granted certiorari").

These courts have applied the trial courts' failure to convey "Aguilar's" "nexus requirement" jury instruction, to conclude a finding of "insufficiency of the evidence" and reversal of § 1503 criminal prosecution, based on false statement. These circuits have uniformly held that in cases involving § 1503 prosecution based on false statement. The jury must be clearly and explicitly instructed that "false testimony alone will not provide the basis for a § 1503 conviction unless the statement at issue had "natural and probable effects of impeding due administration of justice. These courts reasoned that showing this relationship serves the salutary end of § 1503 "omnibus clause", and necessary to distinguish a § 1503 offense from mere perjury. According to these courts, the "natural and probable effects", or "relationship in time", "causation", or "logic" instruction is necessary however "because particular acts although arguably interfering with some aspects of the administration of justice, may be beyond the scope of 1503 because the nexus to the progress of the judicial proceeding is too attenuated, and the statutory construction therefore too strained". *United States v. Wood*, 6 F. 3d. 692, 696 (10th cir. 1993).

To the contrary, the Fifth Circuit and Eighth Circuit have not required this explicit instruction as long as the jury is properly instructed on the elements. *United States v. Brown*, 459 F.3d 509, 530-32, n.19. (5th cir. 2006) ("We are bound by the precedent of this circuit, and under that precedent no other proof of impediment is required to demonstrate obstruction under 1503.....because perjurious testimony has the effect of closing-off entirely the avenue of inquiry being pursued". See also *United States v. Sharpe*, 193 F.3d 852, 864-65 (5th cir. 1999), "Appendix A".

However, under the "Aguilar", "Arthur Andersen" and "Marinello" "nexus requirement" application to § 1503 prosecution. It is certain that Adeyemo would have been able to obtain a reversal of his criminal conviction in the "First", "Second", "Third", "Fourth" and "Eleventh" Court of Appeals. In these Circuits, the construction, interpretation and application of the "nexus requirement" to § 1503 prosecution based on false statement is not a myth, or a federal law that exists in vacuum. Therefore, the resolution of these conflicts is long-overdue.

Notably, the First Circuit has held in *United States v. Calipari*, 368 F.3d 22, 42-43, n.10 (1st cir. 2004). That, since the government must prove a "nexus" to support a § 1503 conviction. The "nexus" must be clearly-stated and articulated in the jury charge. "It is our believe that the better practice would be to include the natural and probable language in the instruction". To the same effect, the Second Circuit has applied the district court's failure to convey or submit the "nexus" jury instruction as a basis to find insufficiency of the evidence that supported a reversal of § 1503 conviction based on false statement. *United States v. Sun Myung Moon*, 718 F.2d 1210, 1236 (2nd cir. 1983) ("Specific intent to impede administration of justice is an essential element of 18 U.S.C 1503 violation which the government must prove beyond a reasonable doubt"), *United States v. Schwarz*, 283 F.3d 76, 107-109 (2nd cir. 2002) ("We applied Aguilar and held that in order to violate 1503, a defendant's false statement must be made with specific intent to obstruct federal grand jury (or another judicial proceeding)" "We believe the better course in future would be for courts to make explicit that to violate § 1503 omnibus clause, a defendant must know that her or his conduct has the natural and probable effect of obstructing the judicial or grand jury proceeding". *United States v. Triumph Capital, Grp. Inc.*, 544 F.3d 149, 171 (2nd cir. 2008).

"We encourage district courts in the future to make clear that the required mental state is knowledge that the defendants's conduct had the natural and probable effect of obstructing justice". id 171. To this end, in *United States v. Quttrone*, 441 F.3d 153 (2nd cir.2005) the court vacated the defendant's witness tampering conviction and remanded the case to the district court because the jury instruction on this count under 18 U.S.C 1512 violation, were insufficient because they stated no "nexus" element applied to the charge. Likewise, the defendant's grand jury and agency obstruction under 1503 were vacated because the jury instruction on these counts relieved the jury of having to make findings on wrongful intent and nexus requirement in assessing criminal liability. Particularly and importantly, the court noted that "this case is now headed back to the district court for yet another trial.....what will be different will be the court's charge on the nexus requirement". id 182. In *Schwarz*, the Second Circuit applied the "nexus requirement" to find insufficient evidence that supported the reversal of obstruction of justice conviction under § 1503 based on false statement. *Schwarz*, 283 F.3d at 110.

Similarly, in *United States v. Tyler*, 732 F.3d 241, 249-50 (3rd. cir. 2013), The court stated that " a nexus requirement instruction was required to ensure that innocent conduct is not punished". In same respect, The Fourth Circuit in *United States v. Littleton*, 76 F.3d 614, 619 (4th cir. 1995) vacated both perjury and § 1503 convictions on the grounds that, "an obstruction of justice prosecution cannot rest solely the allegation of perjury.....All the government proved was that Littleton had a motive to lie and that by itself is clearly insufficient to establish the requisite mens rea under 1503. The Fourth Circuit in *United v. Blair*, 661 F.3d 755, 767 (4th cir. 2011), also applied the "nexus requirement" to vacate § 1503 conviction on the grounds that, "the government therefore was required to establish a nexus between the false statement and obstruction of justice".

In same vein, the Eleventh Circuit has also applied the "nexus requirement" instruction to find insufficiency of the evidence to reverse a § 1503 conviction based on false statement. In *United States v. Thomas*, 916 F.2d 647, 652 (11th cir. 1990). The court noted that "We hold that the trial court must instruct a jury that the government must prove the alleged statement had natural and probable effect of

of obstruction of justice". id 649. "Because proof that false statement was of the kind having probable effect of obstructing justice is critical in distinguishing a § 1503 offense from mere perjury, the trial court must clearly and explicitly instruct the jury of the necessity of finding this relationship between statement and obstruction"....."Here the trial court's instruction were inadequate to convey to the jury the necessity of finding that the alleged false statement had a natural and probable effect of obstruction". id 652. "In the context of false testimony however, we held the trial court must instruct the jury that false testimony alone will not provide basis for a §. 1503 conviction unless the testimony had the natural and probable effect of impeding due administration of justice". "No evidence was introduced that the statement had natural and probable effect of impeding justice". id 653. "Only a natural and probable effect must be shown, and the government failed to meet even this standard". id 653. "We find insufficient evidence to sustain Thomas' conviction for obstruction of justice, his convictions is reversed". id 655.

The existence of genuine conflict between the Court of Appeals on the construction and application of § 1503 "nexus requirement" to jury instruction, and determination of "sufficiency of the evidence" to "false statement" based prosecution under § 1503. Vehemently support granting this Certiorari to resolve these circuits' conflicts on the application of Federal "nexus requirement" instruction law.

CONCLUSION

The Supreme Court has never established that the "nexus requirement" jury instruction should be excluded from a "false statement" based criminal prosecution under §. 1503, and from the "sufficiency of the evidence" determination and finding by the Courts. For the above and forgoing reasons, Adeyemo's petition for a writ of certiorari should be granted.

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Respectfully submitted,

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APPENDIX