21-5566

Number

IN THE SUPREME COURT OF THE

UNITED STATES OF AMERICA

OCTOBER TERM, 2020

RAZHDEN SHULAYA,

Petitoner,

ORIGINAL

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI

PETITION FOR WRIT OF CERTIORARI TO THE

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Appellate Number 18 - 3852

Razhden Shulaya

Reg. No. 54114-048

United States Penitentiary Hazelton

PO Box 2000

Bruceton Mills, WV 26525

Questions Presented

1) Whether the United States District Court for the Southern District of New York provided a constitutionally flawed trial and committed structural error by giving an unbalanced supplemental instruction to a deadlocked jury?

2) Whether the actions and interference of a biased United States District Court judge for the Southern District of New York and her officers violated Petitioner's constitutional rights by repeatedly tampering with his ability to choose and retain counsel?

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To the Honorable Chief Justice Roberts
and the Associate Justices of the
United States Supreme Court

Comes now, Razhden Shulaya, Petitioner, pro se, a federal prisoner serving a 45-year sentence, who is currently housed at United States Penitentiary Hazelton, to request that a Writ of Certiorari issue to review the judgment and decision of the United States Court of Appeals for the Second Circuit that affirmed the Petitioner's criminal conviction and sentence from the United States District Court for the Southern District of New York (New York City).

I. Parties to the Proceeding

The parties to this proceeding are Petitioner Razhden Shulaya and the United States of America, which is represented by the U.S. Department of Justice. Petitioner is acting pro se in this action and requests liberal construction of his pleadings. Erickson v. Pardus, 551 U.S. 89, 92 (2007)("[a] document filed pro se is to be liberally construed . . ."); Haines v. Kerner, 404 U.S. 519 (1972).

II. Opinions Below

The United States Court of Appeals for the Second Circuit issued an opinion affirming Petitioner's criminal conviction and 45-year sentence on the 13th day of April, 2021, which is reproduced as Appendix A-1.

Petitioner then filed a Petition for Panel Rehearing or Rehearing En Banc, which the Second Circuit Court of Appeals denied in an Order dated July 6, 2021.

III. Jurisdictional Statement

The judgment of the Court of Appeals for the Second Circuit was entered on April 13, 2021 through a Summary Order. Petitioner filed a pro se request for an extension of time in which to file a petition with the Second Circuit for rehearing or rehearing en banc on April 27, 2021. The request was considered by the Second Circuit and granted. A timely pro se petition for rehearing (prior to June 7, 2021 per the order) was filed.

Immediately following the Second Circuit's April 13, 2021 decision, Petitioner's Criminal Justice Act (CJA) Counsel filed a Petition for Writ of Certiorari. Upon receiving a copy of the Summary Order and the filed writ (they were mailed together), Petitioner requested rehearing in the Second Circuit.

While waiting on the Second Circuit's answer to the pro se filed Petition for Panel Rehearing and Suggestion for Rehearing En Banc, this Honorable Court denied the CJA Counsel's erroneously filed Petition for Writ of Certiorari. (Appendix A-2).

Accordingly, as the Court of Appeals for the Second Circuit has entertained Petitioner's request for rehearing, this Honorable Court's jurisdiction was nonexistent in the denial of Petitioner's first attempted petition for writ of certiorari. See United States v. Rodgers, 101 F.3d 247, 251 (2d Cir. 1996); Rules of the Supreme Court Rule 13. This Court's jurisdiction is only invoked after the date of the denial of rehearing or, if rehearing is granted, the subsequent entry of judgment. See 28 U.S.C. Section 1254(1). As rehearing has now failed, this Court now has jurisdiction.

IV. Constitutional and Statutory Provisions

United States Constitution, Amendment V:

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

United States Constitution, Amendment VI:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed . . . and to have the Assistance of Counsel for his defense.

V. Statement of the Case

1. Procedural Course Below

On June 6, 2017, a grand jury in the Southern District of New York returned an indictment against Razhden Shulaya, charging him with participation in a racketeering conspiracy, under 18 U.S.C. Sect. 1962; wire fraud conspiracy, under 18 U.S.C. Sect. 1349; conspiracy to transport and sell stolen goods, in violation of 18 U.S.C. Sect. 371; conspiracy to transport and sell contraband cigarettes, in violation of 18 U.S.C. Setc. 371; and identity fraud conspiracy, in violation of 18 U.S.C. Sect. 1028A.

Shulaya was convicted of a racketeering conspiracy, conspiracy to violate the federal law for stolen property, conspiracy to violate the federal law for contraband cigarettes, conspiracy to commit fraud relating to identity documents, and wire fraud conspiracy. He was thereafter sentenced to 45 years' imprisonment.

2. Alleged Criminal Conduct

The indictment alleged Shulaya directed an organized crime group that it called the "Shulaya Enterprise." It described Shulaya as a "vor v zakone," or "vor," a Russian phrase that meant "Thief-in-Law." Vors, the government alleged, refer to an order of elite criminals from the former Soviet Union who receive tribute from other criminals, offer protection, and use their recognized status as 'vor' to adjudicate disputes among lower-level criminals. The Shulaya Enterprise was alleged to be based in New York City and engaged in criminal activity that, the government claimed, included acts of violence and extortion, operating illegal gambling businesses, defrauding casinos, engaging in identity theft and fraud, and trafficking in stolen goods.

VI. Reasons for Granting Certiorari

1. Certiorari should be granted to address the varying procedure and decisions pertaining to jury coercion and deadlock throughout the the lower courts.

Conflicts between decisions of the Federal Courts of Appeals and the lower federal courts have long been considered a compelling factor in this Court's determination whether to grant a writ of certiorari in a particular case. Altria Group, Inc. v. Good, 555 U.S. 70 (2008)(writ granted to resolve an apparent conflict among federal circuits); Martin v. Franklin Capital Group, 546 U.S. 132 (2005) (certiorari granted because of conflict among the circuits); Whitefield v. United States, 543 U.S. 20, 210-211 (2005)("we grant certiorari to resolve the conflict among the circuits on the question presented:); Marks v. United States, 430 U.S. 188, 190 (1997)(certiorari granted "to resolve conflict among the circuits on the appealability issue"); also see Supreme Court Practice, Seventh Ed. (2002) Stern, Gressman, Shaprio & Geller, pp. 168-174; Rule 10(a), Supreme Court Rules.

The Second Circuit is indecisive in their application of the law in cases of juror coercion and the appropriate use of Allen instructions, contrary to the approach of other circuits. Allen v. United States, 164 U.S. 492 (1896); see also United States v. Haynes, 729 F.3d 178, 192 (2d Cir. 2013); United States v. Thomas, 116 F.3d 606, 622 (2d Cir. 1997)(examining the "any possibility" standard and protecting "holdouts from fellow jurors" after misconduct allegations); Smalls v. Batista, 191 F.3d 272 (2d Cir. 1999)(Allen charge given in evenhanded, non-coercive manner); United States v. Purnell, 541 Fed. Appx. 128 (2d Cir. 2013)(investigating charges of juror misconduct prior to giving an Allen charge). These courts have no bright-line rule concerning the issuance of "modified Allen instructions," but instead leave the decisions concerning deadlocks and supplemental instructions almost entirely to judicial discretion. Haynes, 729 F.3d at 192.

This is not the case in other circuits where deadlock is equated with "[a] state of inaction resulting from opposition, a lack of compromise or resolution, or a failure of election," Black's Law Dictionary (Tenth Edition), and supplemental instructions like "modified Allen charges," which veer away from preapproved pattern instructions, become inherently problematic. See United States v. Zabriskie, 415 F.3d 1139, 1147-1148 (10th Cir. 2005)("the selective delivery of an Allen charge is problematic"); United States v. Yarborough, 400 F.3d 17, 21 (D.C. Cir. 2005)("Any substantial departure" from their preapproved Allen charge language is "'presumptively coercive'")(quoting United States v. Beroa, 46 F.3d 1195, 1198 (D.C. Cir. 1995)).

Petitioner Shulaya contends that the procedure and decision affirming his conviction and sentence varies with other circuit courts' and lower federal courts' opinions relating to similar questions. Specifically, Petitioner will argue the Second Circuit overlooked important facts relating to jury coercion when affirming the District Court's judgment. Accordingly, this supported the misapplication of governing law requiring the court to consider a supplemental instruction in "context and under all circumstances." United States v. McDonald, 759 F.3d 220, 225 (2d Cir. 2014).

This Court has granted certiorari in numerous cases that represented conflicts among lower federal courts of appeals. See Watson v. United States, 128 S. Ct. 589 (2007)(certiorari granted to resolve conflict in lower courts of appeals); Lopez v. Gonzalez, 549 U.S. 47 (2006)(same); McEroy v. United States, 455 U.S. 642, 643 (1982)(same); Shapiro v. United States, 335 U.S. 1, 4 (1948)(same).

Therefore, the vague and unsound opinion of Petitioner's Second Circuit affirmation, coupled with the variance of procedure and decisions regarding similar issues, makes this decision a prime candidate for certiorari review.

2. Certiorari should be granted because of the importance of the questions presented and because the Second Circuit overlooked and misapprehended facts and law ignored by the district court affecting Petitioner's constitutional rights.

Even though it has been stated this Court is not primarily concerned with the correction of errors by lower courts, the erroneousness of a circuit court's opinion remains a factor in deciding whether to grant certiorari. Ross v. Moffitt, 417 U.S. 600 (1974); Williams v. Lee, 358 U.S. 217 (1959); Skidmore v. Swift & Company, 323 U.S. 134 (1944). This Honorable Court does function in a supervisory capacity over lower court decisions. Jenkins v. United States, 380 U.S. 445 (1965)(certiorari granted over supplemental jury instruction); Early v. Packer, 537 U.S. 263 (2002)(certiorari granted to review juror coercion claim); Berra v. United States, 350 U.S. 910 (1955)(certiorari granted due to failure to give jury instruction).

Despite this Court's general reluctance to grant certiorari to correct an erroneous decision by a circuit court of appeals, the Court does often grant review to cure a fundamental miscarriage of justice or correct errors in its lower courts. See Schlup v. Delo, 513 U.S. 298, 301 (1995)(granting certiorari to "protect against a miscarriage of justice"); Montana v. Kennedy, 366 U.S. 308, 309 (1961)(certiorari granted "in view of the apparent harshness of the result entailed [by lower court's decision]"); Florida v. Rodriguez, 469 U.S. 1, 12 (1984)(granting certiorari "to undertake de novo review of the factual findings of a [lower court] that misapprehended controlling principles of [14th Amendment] law").

Finally, in conjunction with Petitioner's aforementioned grounds, the importance of the questions presented serves to further enhance cause for granting a writ of certiorari. See Sanchez-Llames v. Oregon, 548 U.S. 331, 334-335 (2006)("we granted the petition for certiorari in significant part because of the importance of questions presented.") As this Honorable Court will see from the facts in this case, Petitioner's substantial rights were repeatedly violated by a trial judge found to be openly hostile to Georgian nationals in the questioned appeal (see Appendix, pp. 7-8), the questions presented are of substantial importance, and these factors can and did affect the integrity and fairness of this judicial decision. Certiorari should be granted accordingly.

VII. Arguments

1. The United States District Court for the Southern District of New York committed plain errors during jury deliberations, thereby violating Petitioner's constitutional right to conviction by an uncoerced jury.

During jury deliberations, the jury foreperson sent a note to Judge Katherine B. Forrest stating, "Your Honor, the jury is deliberating and one of the jurors is using non-law principles to come to a conclusion in this case. Is this something we have to sort through or is this a case an alternate needs to be called?" Opening Brief for Appellant, p. 25. Judge Forrest then addressed trial counsel about the issue and counsel requested "a re-instruction on [the] role of the jury and inferences." Id. Megan W. Bennet, trial counsel of Shulaya's codefendant Avtandil Khurtsidze also voiced concerns about the "non-law principles" statement contained in the jury note (this amounted to a de facto objection to the court's handling of the alleged juror misconduct and a prompt for the judge to rectify the problems raised by this note). Despite the stated concerns, Judge Forrest ignored relevant procedure and issued a "modified Allen charge" (see United States v. Calderon, 944 F.3d 72 (2d Cir. 2019); United States v. Stewart, 90 F.3d 677 (2d Cir. 2018); McDonald, 759 F. 3d at 223-225) containing no support for the holdout juror.

The proffered jury note caused at least two problems for Judge Forrest to address. First, before the issuance of an Allen charge, a finding of a jury deadlock is required. Obviously, the district court judge considered the jury "deadlocked" and its very definition in Black's Law Dictionary (Tenth Edition) supports this: Deadlock is "[a] state of inaction resulting from opposition, a lack of compromise or resolution, or a failure of election." The foreperson's note also stated the troublesome juror had "come to a conclusion in this case . . . " All words and actions point to a deadlock.

The judge also had the responsibility to sort out whether the holdout juror was truly committing misconduct as alleged by the foreperson. See Thomas, 116 F.3d at 621 (making the distinction between a juror favoring acquittal by disregarding court instructions and one who is unpersuaded by the government's evidence); Zabriskie, 415 F.3d at 1147 (judge's "duty to conduct an adequate inquiry as to whether jury misconduct had occurred:); Haynes, 729 F.3d at 192 (court obliged to investigate). No investigation or finding was made.

Instead, the problematic misconduct finding was ignored and a modified Allen charge was constructed by the district court. Of course, it was not called an Allen charge and no pattern instructions were used, but its form means little when its function is considered. See Yarborough, 400 F.3d at 21 (D.C. Circuit "decline[s] to elevate form over function"). Judge Forrest began her instructions stating, "So let me remind you of a few instructions and then give you some guidance and then send you back into

the jury room."

At this point, Judge Forrest stated, "[T]he facts are for the jury to determine and the law is for the Court." She further insinuated that all participating jurors agreed "they could accept that proposition" and were "sworn as jurors on the faith of [their] answers at that time." This position, although legally sound, is also highly coercive to the holdout juror, because of its implications of juror wrongdoing. The issue is further exacerbated by Judge Forrest in the last half of her voir dire recap where she stated, "And you were asked, 'Do you have any religious, philosophical, or other beliefs that would make you unable to render a guilty verdict if the evidence in this case, in fact, supported it?'" Once again, the insinuation of juror misconduct is broached without evidence supporting it. The judge then recapped other pre-existing instructions, returned the case to the jury, and adjourned the trial until the following morning. The next morning, the jury immediately returned guilty verdicts. Opening Brief for Appellant, pp. 26-28. The questions remain: Was the jury instruction given a modified Allen charge? And, after its delivery, can it be stated that Petitioner was subjected to an "uncoerced verdict"? Lowenfield v. Phelps, 484 U.S. 231, 241 (1988).

As stated above, the jury was found to be in "a state of inaction resulting from opposition." The judge found there to be a "lack of compromise or resolution" and decided to issue a supplemental instruction to "remind [the jury] of a few instructions and then give [the jury] some advice." There is little dispute that, when viewed together and against the backdrop of the particular circumstances of the case, the trial court's comments and conduct amounted to giving the jury a de facto Allen charge. The Second Circuit failed to recognize this.

It is a common practice among multiple circuits to maintain Pattern Criminal Jury Instructions deemed to be uncoercive and specifically for use as anti-deadlock instructions. See United States v. Patel, 485 Fed. Appx. 702, 714 (5th Cir. 2012); United States v. Thomas, 449 F.2d 1177, 1184-1186 (D.C. Cir. 1971(undue coercion to jury prevented by the use of standardized language in anti-deadlock instructions). The delivery of "unbalanced" instructions is considered to be inherently coercive. See Jones v. Norvell, 472 F. 2d 1185, 1186 (6th Cir. 1973); Yarborough 400 F.3d at 22. When delivering an anti-deadlock instruction, "the most extreme care and caution [are] necessary in order that the legal rights of the defendant should be preserved." Burton v. United States, 196 U.S. 283, 307 (1905). Accordingly, cautionary language should have been included by the district court. See United States v. Strothers, 77 F.3d 1389, 1391 (D.C. Cir. 1996); United States v. Mason, 658 F.2d 1263, 1268 (9th Cir. 1981).

According to the very circuit in which this case rests, "whether an Allen charge [is] appropriate in a given case hinges on whether it tends to coerce undecided jurors into reaching a verdict. Coercion may be found when jurors are encouraged to abandon, without any principled reason, doubts that any juror conscientiously holds as to a defendant's guilt." Smalls, 191 F.3d at 278-279 (quoting United States v. Melendez, 60 F.3d 41, 51 (2d Cir. 1995)).

In the given circumstances, a single juror was accused of misconduct and a replacement was suggested by the jury foreperson. This illustrated the degree of animosity which had developed between the majority and the minority jurors. Although it was not exactly stated whether the accused juror was holding out against conviction, the inference was there. Judge Forrest failed to address this issue and instead addressed the "responsibilities" of being a juror. In no way can a reminder of promises made to the court under oath be given in this situation without sounding inherently prejudicial. The reminder was given for one reason only–to compel the holdout juror to change his or her vote and deny the Petitioner due process. See Mills v. Tinsley, 314 F.2d 311, 313 (10th Cir. 1963); Hale v. United States, 435 F.2d 737, 741 (5th Cir. 1970); Tucker v. Catoe, 221 F.3d 600, 610 (4th Cir. 2000)(noting majority and minority juror positions are equally credible and should be addressed in supplemental charge).

On Second Circuit review, the court concluded, "It is far from clear from the record before us that the jury was deadlocked. Moreover, the district court's instruction in no way 'encourage[d] jurors to abandon'" their doubts–or even pressed the jury to reach a decision (quoting McDonald, 759 F.3d at 223). Petitioner asserts the Second Circuit failed to correctly review anything but the language contained in the record and turned a blind eye to the "conduct" and "circumstances" mentioned above. See Appendix A1, pg. 9. Even when "the language of a charge was valid, a conviction can be overturned based exclusively on whether under the circumstances the jury was coerced." Patel, 485 Fed. Appx. at 714.

Each of the identified errors committed by the district court in handling the jury note and in authoring the supplemental instruction was plain. Judge Forrest failed to address the juror misconduct alleged and failed to issue a balanced Allen instruction after her de facto finding of a deadlock. These errors were clear and obvious, and they affected Petitioner's substantial rights by allowing coercion of his jury. Petitioner was prejudiced when, immediately following the delivery of a modified Allen charge, a holdout juror changed their vote. The outcome was likely changed from a hung jury to a guilty verdict. To have allowed this coercion seriously affected the fairness, integrity, or public reputation of the judicial proceeding. See United States v. Olano, 507 U.S. 725, 732 (1993); United States v. Ganim, 510 F.3d 134, 136 (2d Cir. 2007). Here, all plain error tests are met.

Finally, as a coercive Allen charge is akin to improper reasonable doubt instructions, a partial judge, or a deprivation of the right to counsel, it follows that improper instruction is also a structural error impervious to harmless error review. See Smalls v. Batista, 6. F. Supp. 2d 211, 222-223 (S.D.N.Y. 1998); see also United States v. Gonzalez-Lopez, 548 U.S. at 148-149. Since there is no way to know what transpired in the jury room following the charge, the charge given was unbalanced and contained no cautionary language or acknowledgement of the minority position, a holdout juror changed his or her vote directly following the instruction, and the Second Circuit and the district court ignored the precedent set by Lowenfield and all of its progeny, it is highly improbable the district court's actions could be considered anything but structural error impervious to harmless error review.

This Honorable Court should utilize its jurisdiction to clarify Lowenfield's application throughout the circuits or at least use its supervisory powers to vacate the wrongful conviction obtained and supported in the Second Circuit.

2. The actions and interference of the United States District Court for the Southern District of New York and its officers consistently violated Petitioner's constitutional rights and caused structural error.

Following Petitioner's initial hearing, attorney issues dominated this litigation. Petitioner's first two retained attorneys were accused by the district court of improper behavior. Attorney Peter Kapitonov was alleged to have elicited false testimony during a bail hearing (Cr. Dkt. 268-269) and withdrew as counsel approximately one month later (Cr. Dkt. 304). On September 7, 2017, one week after the Kapitonov withdrawal, Attorney Christopher Shella was retained. After a series of confusing letters to the Court and the use of an acquaintance of Petitioner as his personal interpreter (see Cr. Dkts. 309-344), a status conference was held, a Curcio request was filed by the Government (Cr. Dkt. 341), and Shella was also relieved as counsel (Cr. Dkt. 345).

At this status conference on October 18, 2017 (mentioned above), Attorney Elizabeth Macedonio made an appearance stating she was in the process of being retained by Petitioner (see Cr. Dkt. 360). Afterwards, Attorney Macedonio failed to file an appearance until January 2, 2018 (Cr. Dkt. 482) and the district court appointed CJA Counsel Anthony Cecutti in the interim (see Cr. Dkts. 347 and 367, appointing Cecutti as "Counsel of Record" then mysteriously demoting him to "Standby Counsel" prior to the January 2, 2018 filing). No request by Petitioner or designation as a "financially eligible person" is in evidence to satisfy the requirements of 18 U.S.C. Section 3006A.

About one month after Macedonio's January appearance, the Government once again requested a "Curcio Conference" alleging the existence of a website making statements concerning the quality of Petitioner's defense and the availability of his discovery (Cr. Dkt. 565). A hearing was held on February 22, 2018, only nine days after the Government's request, and the allegations concerning yet another Government sponsored "conflict of interest" story was settled by judicial order (see Cr. Dkt. 584 and Transcript 645). After ninety days of seeking an exclusive audience with Attorney Macedonio (with little success), she was terminated by Petitioner.

Twice more, Petitioner retained counsel (Sanford A. Schulman in late April or early May as trial counsel and Igor Niman about a day before sentencing (sentenced on December 19, 2018)), but Schulman was flagrantly ignored and discretely warned by CJA Counsel that his participation in Petitioner's trial was both not welcome and foreclosed by the trial judge (see Exhibit 1). Niman, on the other hand, was simply forced to appear unprepared for sentencing (see Opening Brief for Appellant Razhden Shulaya pgs. 42-47; see also Appendix A-1, pgs. 10-11). Inherent to a defendant's right to control the presentation of his defense is the right to choose the counsel who presents it. Caplan & Drysdale, Chartered v. United States, 491 U.S. 617, 624 (1989); Lainfiesta v. Artuz, 253 F. 3d 151, 154 (2d Cir. 2001)(counsel of choice emerges from the right to control defense).

These events, when evaluated in isolation, may seem nothing more than slight deviations in procedure caused by Petitioner's actions, but the grounds for relief presented in Petitioner's pro se appellate brief, when taken in context with the information provided above (and included in Petitioner's Petition for Rehearing and Rehearing En Banc, Appendix A-3), illustrate a pattern of deliberate interference in procuring and keeping retained defense counsel throughout district court litigation. Although it is entirely possible that the Petitioner failed to denominate his pro se argument correctly by calling it a "denial of counsel of choice," it should be without argument that both he and appellate counsel were following separate branches of the same constitutional tree. As a matter of fact, Petitioner's argument is protected by Federal Rule of Civil Procedure 8(f), which provides that "[a]ll pleadings shall be so construed as to do substantial justice." It would seem to follow that substantial justice and the liberal construction called for by Rule 8 must be protected and applied by all courts of review. See Haines, 404 U.S. 519; Baldwin County Welfare Center v. Brown, 466 U.S. 147, 164-165 (1984)(the pronouncements under Rule 8 must protect pro se litigants who simply do not properly denominate pleadings or motions); Johnson v. Reagan, 524 F.2d 1125 (9th Cir. 1975)(pleadings should be liberally construed for those unlearned in the law); Erickson, 551 U.S. at 94 (a pro se

complaint, however inartfully pleaded, must be held to less stringent standards); Alexander v. Unification Church of America, 634 F.2d 673 (2d Cir. 11980)(it is not material a cause of action is mislabeled by counsel). Instead, on appellate review, the Second Circuit overlooked any connection between counsel's "Denial of Sentencing Adjournment" argument (Appendix A-1, pg. 10) and Petitioner's "counsel of choice" argument.

Petitioner asserts these arguments should have been construed as part of the alleged denial of counsel of choice even if the argument was truly an argument of another denomination (i.e. due process/fair trial, etc.). The ongoing interference with his ability to present the defense he chose by district court officers violated Petitioner's constitutional rights. The fact that he was financially able to retain counsel, but was appointed counsel by a trial judge who would later make derogatory statements illustrating her prejudicial disposition toward Petitioner's nationality (see Appendix A-1, pgs. 7-8), begs the question of the district court's impartiality and violates the constitutional right to be considered innocent until proven guilty.

As the errors alleged here fall in the realm of structural error, Petitioner's pro se appellate brief and appellate counsel's argument concerning the denial of counsel of choice during sentencing should have been liberally construed and reviewed in a way to provide "substantial justice." Instead, the Second Circuit chose to ignore its own suggestion of judicial bias (Appendix A-1, pgs. 7-8)(Turner v. Ohio, 273 U.S. 510(1927)(discussing the lack of an impartial judge); Arizona v. Fulminante, 499 U.S. 279 (1991)(structural error if judge is not impartial); and counsel of choice issues, see, e.g., Gonzalez-Lopez (stating a denial of counsel of choice is a constitutional error of the first magnitude)) on two occasions--on appeal (See Appendix A-1, pg. 11, stating only "we have considered . . . Shulaya's separate pro se submission and find no basis for disturbing the district court's judgments . . .") and upon request for rehearing.

The errors alleged above (i.e., appointment of CJA counsel, the district court and its officers manipulating Petitioner's defense, the constructive denial of retained sentencing counsel, etc.) will pass Federal Rule of Criminal Procedure Rule 52(b) "plain error review" as they are (1) errors; (2) that are plain; (3) that affected the Petitioner's substantial rights by limiting his ability to choose his own defense strategies and counsel; and (4) that seriously affected the fairness, integrity, or public reputation of the judicial proceeding. See Olano, 507 U.S. at 732. A trial cannot possibly be considered fair when Petitioner's choices in counsel were continuously being manipulated by the district court and its officers. Integrity and public reputation cannot be upheld by a district court proceeding being controlled by a judge whom the appellate court has found to be prejudiced toward Russian nationals (see Appendix A0-1, pgs. 7-8). The use of harmless error analysis in this circumstance can only be "a speculative inquiry into what might have happened in an alternate universe" as it is impossible to assess the differences in trial strategy a defense attorney of Petitioner's choice who was uninhibited by the district court and its officers would have made. See Gonzalez-Lopez, 548 U.S. at 150.

Therefore, this is not a single structural error, but a series of structural errors that caused consequences both unquantifiable and indeterminate, violated Petitioner's substantial rights, and can only be solved by vacating this conviction and sentence.

Conclusion

For the reasons listed above, Petitioner requests this Honorable Court to vacate his conviction and sentence.

Respectfully submitted,

/s/ Razhden Shulaya
Petitioner, pro se