

IN THE
SUPREME COURT OF THE UNITED STATES

No. 21-5609

**MATTHEW L. STASZAK,
Petitioner,**

v.

ORIGINAL

**UNITED STATES OF AMERICA; and,
DARLENE GALLARDO,
Respondents.**

FILED
SEP 01 2021
OFFICE OF THE CLERK
SUPREME COURT, U.S.

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

PETITION FOR WRIT OF CERTIORARI

**Matthew L. Staszak, *pro se*,
Reg. No. 24227-171
Federal Correctional Complex (Low)
P.O. Box 9000-Low
Forrest City, Arkansas 72336-9000**

QUESTION PRESENTED FOR REVIEW

I. WHETHER PETITIONER'S FIFTH AND SIXTH AMENDMENT RIGHTS WERE DEPRIVED AND VIOLATED WHEN HIS ATTORNEY-CLIENT CONFIDENTIAL COMMUNICATIONS WERE INTERCEPTED BY THE RESPONDENT(S).

INTERESTED PARTIES

The parties appear in the caption case citing on the cover page of this Writ of Certiorari. Respondent United States of America is an interested party.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Matthew L. Staszak. ("Staszak"), *pro se*, petitions the Supreme Court of the United States for a Writ of Certiorari to review *Staszak v. United States, and Darlene Gallardo*, Case No. 20-3069, (8th Cir.), of the Judgment from the United States Eighth Court of Appeals. The Judgment was decided on May 13, 2021. The Eighth Circuit Court of Appeals denied rehearing and rehearing en banc on July 13, 2021. *See* (A-1 & A-2).

STATEMENT OF JURISDICTION

Jurisdiction of this Court is invoked under Title 28, U.S.C. Section 1254(1) and Part III of the Rules of the Supreme Court of the United States.

STATUTES INVOLVED

This petition revolves around the Eighth Circuit's review and judgment rendered in Staszak's case.

STATEMENT OF THE CASE AND FACTS

Matthew L. Staszak is currently a federal inmate incarcerated at the United States Federal Bureau of Prisons, ("FBOP"), institution located at Forrest City, Arkansas, (FCC Forrest City-Low).

On May 9, 2019, Staszak filed his pro se complaint in the United States District Court, Eastern District of Arkansas, that on November 30, 2018, FBOP Unit Manager Darlene Gallardo, ("Gallardo"), violated Staszak's confidential telephone conversation between Staszak and his attorney, a Terry M. Green, ("Green"). During this time, Staszak had an ongoing Title 28, U.S.C. Section 2255 motion, ("2255"), that was pending in the United States District Court for the Southern District of Illinois.

Gallardo committed Negligence and Gross Negligence by forcing Staszak to use her office to place his attorney-client call to Green where Gallardo refused to allow Staszak any privacy while carefully listening to attorney communications word-for-word. Just mere minutes prior to this illegal incident, Staszak was properly afforded privacy, but Gallardo went out of her way and decided she was

going to force Staszak to move to her office so that she could listen to Staszak's attorney call. Throughout the incident Gallardo was unprofessional as she would purposefully interrupt Staszak in a loud demanding voice and give Staszak angry stares while Staszak attempted to discuss matters with Green. Gallardo finally demanded end to the call before Staszak could properly finish his attorney-client communications. This led to Staszak's suffering of Intentional Infliction of Emotional Distress, ("IIED").

Staszak's amended complaint asserts the violations of the Fifth and Sixth Amendments under the authority of *Bivens v. Six Unknown Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971), ("Bivens"), and tort claims of Negligence and Gross Negligence, along with IIED under the *Federal Tort Claims Act*, 28 U.S.C. Section 2671, et. seq., ("FTCA"), against the United States of America.

REASONS FOR GRANTING WRIT

The United States of America, ("USA"), (liable under FTCA), and Darlene Gallardo, ("Gallardo"), (liable under *Bivens*), infringed and violated Staszak's

Fifth and Sixth Amendment rights of Due Process and his right to effective communications with his court appointed counsel. *Lee v. Washington*, 390 U.S. 333-34 (1968)(*per curiam*)("prisoners retain right to equal protection of laws.").

Staszak was appointed counsel under Title 18, U.S.C. Section 3006A. Gallardo is liable for committing Negligence and Gross Negligence as a result of her previous egregious misconduct of her purposeful violations committed. Staszak was "*irreparably harmed*" and suffered "*actual injury*" that occurred as a result of the USA's and Gallardo's egregious misconduct against him. These are violations of the FTCA and *Bivens*. *Gunner v. Welch*, 749 F.3d 511, 518 (6th Cir. 2014)(right to counsel may extend to post-conviction proceedings if "*an initial review collateral proceeding is the first designated proceeding for a prisoner to raise a claim of ineffective assistance.*"). *Ingraham v. Wright*, 430 U.S. 651, 671 n.40 (1977)(Due Process Clause protections "*are at least as great as the Eighth Amendment protections available to a convicted prisoner.*"). *Weatherford v. Bursey*, 429 U.S. 545, 554 n.4 97 S.Ct. 837, 51 L. Ed. 2d 30 (1977)(*"One threat to the effective assistance of counsel posed by government interception of attorney-client communications lies in the inhibition of free exchanges..."*). See ABA Standard 4.2-2(a)&(b) and Fed.R.Evid. 502.

The Respondent(s) previously misplaced Staszak's lower court proceedings and is plainly inaccurate where the Eighth Circuit ruled in error and issued its unpublished opinion. (A-1). The Respondent(s) stressed that Staszak must have endured a "*physical injury*" in order for him to be afforded relief by violating Staszak's confidential attorney-client communications in the deprivations, infringements, and violations of his Fifth and Sixth Amendment rights. This argument and the previous unpublished opinion of the Eighth Circuit is specious. *Cody v. Weber*, 256 F.3d 764 (8th Cir. 2011), the court found "*actual injury*" based on the advantages the defendants gained by reading plaintiff's confidential legal materials. *Myers v. Hundley*, 103 F.3d 542, 544 (8th Cir. 1996)(which resulted in '*actual injury*'...); *Williams v. Hobbs*, 662 F.3d 994, 1000 (8th Cir. 2011) (same); *Frazier v McDonough*, 264 Fed. Appx. 812 (11th Cir. 2008) ("A lack of '*physical injury*' does not prevent a prisoner from seeking damages.").

Staszak as a result of this has suffered intentional inflictions of emotional distress ("*IIED*"). This is undue harm and further mental anguish and injury inflicted on Staszak due to egregious actions by the Respondent(s) upon him. *Sigger-EL v. Barlow*, (E.D. Mich. 2006) ("[A] prisoners claim for mental and emotional damages may proceed even in absence of a physical injury.").

The Fifth and Sixth Amendment violations occurred inside of Gallardo's office located at the FBOP facility in Forrest City. That FBOP facility is an agent of the USA. The USA is responsible under the FTCA and is completely liable for the actions and violations committed by Gallardo, whom is a sworn federal official and responsible under *Bivens*.

Evidence clearly shows from the submitted Affidavits from Staszak's attorney, Terry M. Green, and Staszak, that Gallardo intentionally listened and procured information concerning Staszak's telephone conversation concerning information involving his criminal case and his Section 2255. *See (A-3 & A-4).* *Caldwell v. United States, 205 F.2d 879, 882 (D.C. 1953)*(where a government agent intercepted phone calls between client and counsel violating Fifth and Sixth Amendments); *U.S. v. Amalani, 11 F.3d 705, 711 (9th Cir. 1997)*("intentional into attorney-client relationship because government intentionally undermined client's confidence...); *United States v. Levy, 577 F.2d 200, 208 (3rd Cir. 1978)*(Sixth Amendment violation arises where government intentionally invades the attorney-client relationship, and confidential attorney-client information is disclosed."); *Upjohn v. United States, 449 U.S. 383, 389 (1981)*("*Its purpose is to encourage full and frank communication between attorneys and their clients and thereby*

promote broader public interest in the observance of law and administration of justice."); Fisher v. United States, 425 U.S. 391, 403 (1976) ("As a practical matter, if the client knows that damaging information could more readily be obtained from the attorney following disclosure than from himself in the absence of disclosure, the client would be reluctant to confide in his lawyer and it would be difficult to obtain fully informed legal advice.").

CONCLUSION

WHEREFORE, it is requested this Supreme Court accept jurisdiction over Petitioner's Writ and for the entry of relief as the Court deems just.

Date: September 1st, 2021.


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