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No. _____

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IN THE

SUPREME COURT OF THE UNITED STATES

Robert Allen Stanford — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Fifth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

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No. _____

IN THE
SUPREME COURT OF THE UNITED STATES
ROBERT ALLEN STANFORD - PETITIONER

vs.

UNITED STATES OF AMERICA -RESPONDENT

On Petition for a Writ of Certiorari to
The United States Court of Appeals for the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

This petition involves a 'Motion To Recall Mandate' of the Fifth Circuit Court's decision relative to the appeal of a criminal conviction for engaging in multiple conspiracies to commit mail fraud, wire fraud, money laundering, and obstruction of an SEC proceeding.

In specific terms, the Motion To Recall Mandate focused solely on the "purely intrastate" wire transmission as indicated in COUNT FOUR of the indictment; which charged a wire transmission sent from one location in "Houston, Texas to another location in Houston, Texas", and that was never alleged to have crossed any state line, or that it had otherwise entered into or affected interstate or foreign commerce...as is always required under the federal wire fraud statute, 18 U.S.C. 1343.

The questions presented are:

(1) Whether the federal wire fraud statute, 18 U.S.C. 1343, as properly interpreted, can be used to charge, prosecute and punish, a wire communication acknowledged by the lower court as "purely intrastate" in nature; a transmission that never crossed any state line or otherwise entered into any channel of 'interstate or foreign commerce'. And further, whether when affirming a conviction for this "purely intrastate" wire transmission, with no federal (jurisdictional) element, the lower court violated the Commerce Clause, judicially infringing on the legislative function, in violation of the Separation of Powers;

(2) And if so, whether the defendant's conviction and continued incarceration for this "purely intrastate" wire transmission, based on an improper interpretation of 18 U.S.C. 1343, is consistent with the Due Process Clause in a manner as articulated in *Fiore v. White*, 532 U.S. 225-226 (2001); and if so, whether this conviction and continued incarceration constitutes a 'miscarriage of justice' as defined in *Davis v. United States*, 417 U.S. 333 (1974), and *Whalen v. United States*, 445 U.S. 684, 689 (1980), remediable under the 'extraordinary circumstances' holding in *Calderon v. Thompson*, 523 U.S. 538, 550 (1998).

LIST OF PARTIES/RELATED CASES

All parties appear in the caption of the case on the cover page. The petitioner is unaware of any cases pending before this Court that may be related.

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PETITION FOR WRIT OF CERTIORARI

The petitioner, Robert Allen Stanford, was charged, convicted by a jury, and sentenced to a 20-year term of imprisonment, under 18 U.S.C. 1343, for allegedly sending a "purely intrastate" (Houston, Texas -to- Houston, Texas) wire communication that the Fifth Circuit Court of Appeals acknowledged on appeal as not punishable under federal law...but side-stepped under their "must shock the conscience" plain error standard of review. In *Rosales-Mireles v. United States*, 585 U.S. ____ (2018), this Court cited a 2014 case decided by then-judge Neil Gorsuch, *United States v. Sabillon-Umana*, 772 F.3d 1328, 1333-1334 (CA10 2014), where he posed the question..."What reasonable citizen wouldn't bear a rightly diminished view of the judicial process and its integrity if courts refused to correct obvious errors of their own devise that threaten to require individuals to linger longer in federal prison than the law demands".

Here, this Court should grant the petition, vacate the judgment below, and remand this case because the Fifth Circuit Court of Appeals has repeatedly refused to

correct this plain and obvious "purely intrastate" jurisdictional error, one that affected petitioner's substantial rights, and is now requiring him to...linger longer in federal prison than the law demands'.

Viewed through any prism, the Fifth Circuit's decision to side-step this issue, this clear and manifest miscarriage of justice, opens the door to widespread abuse of constitutional rights. In *Coonce v. United States*, 142 S.Ct. 25 (2021), this Court held that in cases involving an unpreserved but plain error, as here, a GVR is appropriate... "Where we think there's a reasonable probability that curing the [plain and obvious] error will yield a different outcome.", citing, *Hicks v. United States*, 532 U.S. ____ (2017) (Gorsuch, J. concurring)

Federal Criminal Rule 52(b) (plain error)

In case after case, the United States Supreme Court has admonished and reversed the Fifth Circuit Court for its unjustified plain error standard, referring to it as an "outlier" from all other circuits that was an "unduly burdensome articulation" of *Olano v. United States*, 507 U.S. 725 (1993), a standard that is "inconsistent with the Federal Rules of Criminal Procedure, with no basis in law". See. e.g., *Molina-Martinez v. United States*, 578 U.S. ____ (2016), *Hicks v. United States*, 532 U.S. ____ (2017), *Rosales-Mireles v. United States*, 585 U.S. ____ (2018), *Davis v. United States*, 589 U.S. ____ (2020), and finally see, *Gonzalo Holquin-Hernandez v. United States*, 2020 U.S. LEXIS 1365 (2020)(unanimous reversal).

Here, after acknowledging on direct appeal that, as properly interpreted, the federal wire fraud statute, 18 U.S.C. 1343, "does not apply to purely intrastate" (Houston to Houston) wire communications and refusing to exercise their discretion to correct this error under Rule 52(b), the Fifth Circuit Court of Appeals has once again refused to correct this injustice, via a Motion To Recall Mandate. See,

The judgment of the court of appeals was entered on October 29, 2015, and a subsequent petition for rehearing was denied on January 8, 2016. The 'Motion To Recall Mandate' was filed in the court of appeals on March 7, 2022, and was denied on March 11, 2022. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

The **DUE PROCESS CLAUSE** - is found in the fifth amendment to the U.S. Constitution - "Nor shall any person be deprived of life, liberty, or property, without due process of law."

The **COMMERCE CLAUSE** - is found in Article 1, Section 8, Clause 3 of the U.S. Constitution - "The Congress shall have power to regulate commerce with foreign nations, and among the several states."

STATEMENT OF THE CASE

On March 6, 2012, after a six-week trial, Robert Allen Stanford was convicted by a jury in the Southern District of Texas, at Houston, on 13 of 14 counts of a superseding indictment which charged a 'Conspiracy to Commit Mail and Wire Fraud', and 'Mail and Wire Fraud', in violation of 18 U.S.C. 1349, 1343, and 1341, a 'Conspiracy To Obstruct an SEC Investigation', and 'Obstruction of an SEC Investigation', in violation of 18 U.S.C. 371 and 1505, and 'Conspiracy To Commit Money Laundering' and 'Money Laundering', in violation of 18 U.S.C. 1956(h).

On June 14, 2012, the District Court imposed a total term of 110 years. A pro se appeal was filed, and on October 29, 2015, the Fifth Circuit Court of Appeals

affirmed on all counts. A 'Writ of Certiorari' was filed in the U.S. Supreme Court and was denied on November 28, 2016. A 'Motion To Vacate Or Correct Sentence' was timely filed, and was denied on April 19, 2018. A 'Motion To Recall Mandate' was filed on March 7, 2022, and was denied on March 11, 2022.

REASONS FOR GRANTING THIS WRIT

The issue presented here in this writ of certiorari is singular in nature and does not involve any complex interplay of facts or statutes. It concerns, simply, a clear and indisputable violation of the petitioner's substantive right to due process of law, a constitutional violation flowing from his conviction and continued incarceration, under the federal wire fraud statute, for sending a wire transmission that, as properly interpreted, that statute does not prohibit.

Simply put, in all cases, the federal wire fraud statute, 18 U.S.C. 1343, requires that the wire communication must have crossed state lines and entered into some channel of interstate or foreign commerce. See, *National Federation of Business v. Sebelius*, 132 S.Ct. 2566 (2012) ("The Commerce Clause permits Congress to regulate or prohibit activities that ...ARE...interstate commerce, but not to regulate or prohibit activities that merely...AFFECT...interstate commerce.") (Emphasis in original); *Rehaif v. United States*, 588 U.S. ____ (2019) ("Jurisdictional elements do not describe the evil Congress seeks to prevent, but instead simply ensure that the Federal Government has the constitutional authority to regulate the defendant's conduct. Because jurisdictional elements normally have nothing to do with the wrongfulness of the defendant's conduct, such elements are not subject to the presumption in favor of scienter."), citing, *Torres v. Lynch*, 578 U.S. 986 (2016)

Here, it was never alleged that the "purely intrastate" wire transmission charged in **COUNT FOUR** entered into any channel of interstate or foreign commerce. And to be clear, it did not. And although it is irrelevant in the jurisdictional analysis, neither was it alleged that scienter played any role in this "purely intrastate" (Houston to Houston) wire transmission. And to be clear, it did not.

Superseding Indictment -

In **COUNT FOUR** of the superseding indictment, the petitioner was charged with sending the following wire transmission:

December 24, 2008 - wire transmission of approximately \$700,000 from an SGC account #41833 located in Houston, Texas, to an SIB account located in Houston, Texas, regarding Investor WJ's purchase of SIB CDs.

On appeal when reviewing an 'unpreserved' challenge to this conviction, under its Rule 52(b) plain error standard of review, the Fifth Circuit Court correctly cited the applicable law when it stated:

"The particular predicate for jurisdiction is an essential element of any federal offense. [] The elements of wire fraud under 18 U.S.C. 1343 are (1) a scheme to defraud, and (2) the use of, or causing the use of, wire communications in furtherance of the scheme. [] The predicate for jurisdiction for wire fraud requires a communication in interstate or foreign commerce. 18 U.S.C. 1343 The statute does not apply to purely intrastate communication." 805 F.3d 557

But then following this correct statement of the applicable law, the Fifth Circuit Court held that:

"As we have done in similar cases, here we assume without deciding, that the first three requirements of plain error are met. Thus, we turn directly to the fourth prong and ask whether any error seriously affected the fairness, integrity, or public reputation of judicial proceedings. We conclude that it did not. Hence, we decline to exercise our discretion to correct the alleged error." 805 F.3d 557

In sum, no matter the specific "purely intrastate" (Houston to Houston) conduct as alleged in the superseding indictment, and no matter the properly interpreted text and jurisdictional context of the federal wire fraud statute, 18 U.S.C. 1343, requiring a wire communication that traveled in or was otherwise channeled through "interstate or foreign commerce"...no matter the wrongfulness of this conviction...absent a GVR from this Court, this violation of the petitioner's substantial rights as guaranteed by the Due Process Clause, representing a miscarriage of justice, will remain uncorrected.

CONCLUSION

For these reasons, this Petition for Writ of Certiorari should be granted.

Respectfully submitted,

R. Allen Stanford

Date: May 23, 2022

Robert Allen Stanford, *pro se*