

No. 21-7979

IN THE SUPREME COURT OF THE UNITED STATES

ROBERT ALLEN STANFORD, also known as
Sir Allen Stanford, also known as Allen Stanford,
Petitioner

v.

UNITED STATES OF AMERICA,
Respondent

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

Application to Circuit Justice Samuel A. Alito
Pursuant to Supreme Court Rule 22

PETITION FOR REHEARING

Robert Allen Stanford

Petitioner, *pro se*

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PETITION FOR REHEARING

Pursuant to Rule 44.2, Petitioner Robert Allen Stanford, respectfully petitions for rehearing of this Court's order denying certiorari on June 27, 2022. Pursuant to Rule 22, the Petitioner respectfully asks that this Petition be transmitted to Circuit Justice Samuel A. Alito. For reasons set forth below, which include substantial grounds not previously presented, this Petition is justified.

ARGUMENT

(WITH SUGGESTION FOR SUMMARY REVERSAL)

In this petition, Mr. Stanford has asked the Court for a GVR. However, in light of the Fifth Circuit's undeniable dedication to intransigence in this case, its decade-long disregard for the explicit mandates of textualism and due process - its utterly inexplicable commitment to protect this criminal conviction and keep imprisoned a man for a crime he could not possibly have committed - he respectfully suggests that, in the interest of correcting this fundamentally unjust incarceration, once and for all, the more appropriate resolution here would be a summary reversal.

With the prospect of such an extraordinary remedy raised, this Court may be considering the broader questions that are not presented in the petition:

(1) At 72 years of age, and imprisoned for 110 years, why is the removal of this mere 20 years, for this "purely intrastate" communication - when he would still be left with a 90-year term to serve - so important to Mr. Stanford? And, (2) with the text of the wire fraud statute, 18 U.S.C. 1343, so unambiguously clear and demanding that the wire communication have been sent in or otherwise channeled through "interstate or foreign" commerce, where clearly this one was not, why is the Fifth Circuit so committed to the denial of its every challenge?

The answer to both questions is revealed in the Superseding Indictment (Appx. A), on pages 15 and 30.

First, as to Mr. Stanford's relentless decade-long pursuit of justice -

On page 15, paragraph 38(i), the "purely intrastate" (Houston to Houston) wire transmission in Count Four and at issue here was also identified as an "overt act", under a statute that contains no 'overt act' requirement.

And further, in Count One, in paragraph 38 (a), (b) and (c), the Indictment also identified and alleged other 'overt acts', each of which were beyond the five-year statute of limitation.

Additionally, each of these unconstitutionally-charged 'overt acts' were then "incorporated by reference" - and thus are now inextricably intertwined with - every of the remaining Counts. Therefore, in addition to the absence of any federal nexus, the incorporation of Count Four throughout the Indictment also represents a "structural error". See, *Arizona v. Fulminante*, 499 U.S.279 (1991) ("A structural error is one which affects the framework on which the trial proceeds, and thus requires automatic reversal")

And most importantly here in this calculus, because the "purely intrastate" wire communication identified in Count Four was also charged as an 'overt act' in Count One - and a 'general verdict' was returned that may have rested on that "overt act" (not to mention one of the 'overt acts' that were beyond the five-year statute of limitations) - this "purely intrastate" wire communication and the unconstitutional 20-year term of imprisonment that flowed from it, cannot be viewed and corrected in isolation; not without affecting the 'general verdict'. See *Stromberg v. California*, 283 U.S. 359 (1931) (a conviction must be set aside where a non-specific general verdict may have rested on a constitutional violation); *Addonizio v. United States*, 442 U.S. 178, 179 (1979) ("Where a proceeding is infected with a fundamental error of fact or law, the conviction must be reversed")

Simply put, the Supreme Court's acknowledgement of the unconstitutional nature of this criminal conviction, as a result of the "purely intrastate" wire communication charged in Count Four - which in any event represents a "fundamental defect" in the Superseding Indictment that is forever inextricably intertwined with all other Counts, will then confirm that Indictment as unconstitutionally charged and prosecuted...and fatally defective.

And, at long last, with this important acknowledgement by the Supreme Court, which will prompt the return of this case to the district court for resentencing on the remaining Counts...at that time Mr. Stanford will make clear to the court that, based on his proof that the Indictment was, and forever will remain, fatally defective - in light of the controlling five-year statute of limitation, 18 U.S.C. 3282 - the Constitution protects him from ever being resentenced on the remaining Counts in that fatally defective Indictment...or ever retried with that same fatally defective Indictment.

And now to the Fifth Circuit's commitment to the denial of justice -

The short answer here...a grossly defective indictment such as this one, that results in a grossly unfair prosecution such as this one, is supposed to result in a reversal - not a reward.

On page 30 of the Superseding Indictment, its author and lead prosecutor of this case is identified as "Gregg Jeffrey Costa", Assistant United States Attorney for the Southern District of Texas, Houston Division. Four months prior to the prosecution of this case, on September 9, 2011, when filing his application to become a federal judge, he told the Senate Committee on the Judiciary - with apparent crystal ball confidence, or rather clairvoyance - that the case against Robert Allen Stanford was the "most significant" of his career as an Assistant United States Attorney.

Following Mr. Stanford's March 6, 2012 conviction by a jury, based on this "grossly defective" Superseding Indictment, filed on May 4, 2011, (which included Count Four, and numerous other 'overt acts' well beyond the five-year statute of limitation), thus the successful conviction of his "most significant" case, Mr. Costa was then confirmed by the U.S. Senate and rewarded with a federal judgeship in the Southern District of Texas at Galveston.

Shortly thereafter, he was then confirmed as a circuit court judge in the Fifth Circuit Court of Appeals, and would be serving there in that capacity when Mr. Stanford filed his direct appeal in 2014, and his every challenge thereafter.

Grant, Vacate and Remand (GVR)

In *Hicks v. United States*, 137 S.Ct. 2000, 2001 (2017), Justice Gorsuch filed a

concurring opinion where he defended the Court's grant of a GVR where..."[a] plain legal error infects this judgment, and because the petitioner "enjoys a reasonable probability of success" in getting the judgment reversed on the merits.

Summary Reversal

And in *Kisela v. Hughes*, 138 S. Ct. 1148 (2018), Justice Gorsuch joined in a per curiam opinion where the Court addressed a similar intransigence, which held as appropriate... "A summary disposition, usually reserved by the Court for situations in which the law is settled and stable, and the facts are not in dispute, and the decision below is clearly in error."

This case meets both of these standards.

Simply put, in light of the plain and obvious Constitutional error presented here in this petition, and resulting 20-year term of imprisonment, which the Fifth Circuit Court of Appeals has for the past decade refused to correct, under any standard of review, and which viewed through any legal prism is extraordinary and represents an intentional denial of due process, resulting in a 'miscarriage of justice'...when superimposed over their lengthy history of an unduly burdensome application of Federal Rule 52(b), and the likelihood that absent a clear message from this Court will continue along this path of injustice, Mr. Stanford respectfully suggests that the appropriate way to dispose of this case is the extraordinary remedy of summary reversal. See, *Davis v. United States*, 417 U.S. 333 (1974) ("Conviction and punishment for an act the law does not make criminal results in a complete miscarriage of justice")

CONCLUSION

This Petition for a Writ of Certiorari should be granted, and a GVR should issue. Or, in the alternative, and in the interest of correcting this fundamentally unjust incarceration, a miscarriage of justice that will otherwise remain uncorrected, it should be disposed of through summary reversal.

CERTIFICATE OF GOOD FAITH

The undersigned hereby certifies that this Petition for Rehearing is restricted to the grounds specified in Rule 44.2 of the Rules of the Supreme Court, and is presented in good faith and not for delay.

Respectfully submitted,



Robert Allen Stanford,

Petitioner, *pro se*