

No. 21-987

In the
Supreme Court of the United States

OWOLABI SALIS,
Petitioner,

v.

ALEJANDRO MAYORKAS, Secretary,
United States Department of
Homeland Security,
Respondent.

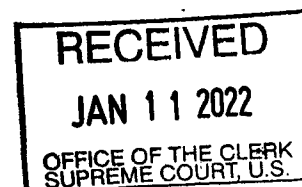
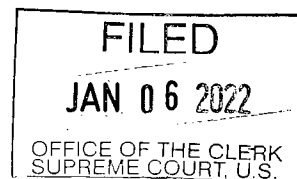
**ON PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

PETITION FOR WRIT OF CERTIORARI

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QUESTION(S) PRESENTED

1. Whether facts brought by a witness before a jury and tried by that jury can be reexamined by the same witness before another body who was also a witness before the jury.
2. Whether the facts that have been tried by the jury in a criminal prosecution can be re-examined by another body who was a witness in the same criminal prosecution.
3. Whether the Federal Court has subject matter jurisdiction over violation of Constitutionally Protected Rights
4. Whether certain officers of the Respondent proceeded without or in excess of jurisdiction
5. Whether certain officers of the Respondent violated lawful procedure, acted arbitrary and abuse discretion
6. Whether the actions of certain officers of the Respondent implicated the Double Jeopardy Clause of the Fifth Amendment to the U.S Constitution.
7. Whether any rule or regulations can override the provisions of the US Constitution. The Appellant believes that the Respondent officers actions and the collaborators are guided by certain internal rules unknown to the Appellant, whether such rules allow the breach of the Constitutional Guarantees or Constitutionally Protected Rights of the Appellant.
8. Whether the actions of certain officers of the Respondent and the collaborators violated the Civil Rights of the Appellant.

9. Whether the actions of certain officers of the Respondent violated Constitutionally Protected Rights of the Appellant to wit the First Amendment.
10. Whether the actions of certain officers of the Respondent violated Constitutionally Protected Rights of the Appellant to wit the Fourth Amendment.
11. Whether the actions of certain officers of the Respondent violated Constitutionally Protected Rights of the Appellant to wit the Eighth Amendment.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

RELATED CASES

There are no related cases

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

OPINIONS BELOW

1. The judgment of the United States court of appeals appears at Appendix 1a-2a to the petition and is unpublished.

2. The judgment, memorandum and order of the United States district court appears at Appendix 3a-15a to the petition and is unpublished.

JURISDICTION

The date on which the United States Court of Appeals decided the petitioner's case was 10/21/2021.

No petition for rehearing was timely filed in my case.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1) which provided that cases in the courts of appeals may be reviewed by the Supreme Court by writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. Double Jeopardy Clause of the Fifth Amendment to the U.S Constitution.
2. Civil Rights Act.
3. The First Amendment.
4. The Fourth Amendment.
5. The Eighth Amendment.

STATEMENT OF THE CASE

The Appellant is a licensed attorney in the State of New York whose principal practice is immigration law. The Appellant was also the publisher of a free defunct Immigrant Guide and News - a monthly newspaper reporting on immigration issues.

Sometimes in 2012, the Immigrant Guide and News published a headline on the trend of deportations titled: "OBAMA DEPORTS MORE THAN BUSH, WHO IS NEXT". In the publication, the deportation statistics from Immigration and Customs Enforcement (ICE) of the Department of Homeland Security (DHS) was published. Upon information and belief, this publication triggered investigation into the activities of the Appellant by the Respondent.

While the investigation of the Appellant was ongoing, the Respondent, DHS, cooperated with the New York City District Attorney and the Grievance Committee of the First Judicial Department. A Grand Jury hearing was held with active participation of the three in New York court bypassing the federal court despite that immigration laws is a federal law.

On or about July 24, 2014, the Appellant was arrested after an indictment by the Grand Jury in New York court. The team of law enforcement agents was led by the Respondent, DHS, and the Appellant was detained for 14 days before securing bail.

Upon information and belief, the Respondent with active participation of the District Attorney of New York city aggressively opposed the Appellant being released on bail by first demanding \$1 million for bail and aggressively opposing and harassing the

guarantors. The bail was later set for \$250, 000 after hearing.

The Appellant used to maintain an office in New York City and moved to Brooklyn around October 2012. The Appellant was arrested in Brooklyn in July 2014. The Respondent seized all the files and computers of the Appellant based on the warrant affidavit of the Respondent which the Respondent later admitted at trial that the content of the affidavit was wrong.

The Respondent also placed a Federal Civil Forfeiture in the United States District Court, Southern District of New York (14 Civ. 5681) against the retirement property of the Appellant seeking to seize the property if the Appellant is convicted.

After about 3 weeks of trial of which the Respondent was a key witness, the Appellant was discharged and acquitted of the charges.

On or about Jan 27, 2017, the Respondent, unsatisfied with the discharge and acquittal of the Appellant, submitted a complaint against the Appellant to the Grievance Committee of the First Judicial Department based on the same facts of the indictment which has been tried by the jury seeking that the Appellant be sanctioned.

At the time the complaint was submitted, the Appellant had left the First Judicial Department to the Second Judicial Department on or about October 2012.

This triggers the Appellant to file a Defensive petition in the US District Court seeking declaration that the actions of the concerned officers of the DHS

violated the constitutional and civil rights of the Appellant.

The Respondent moved for dismissal of the Appellant petition in the District court for lack of subject matter jurisdiction. The prayers of the Respondent were upheld, hence, this appeal.

This case involves violation of civil rights and constitutional issues touching on the 1st, 4th, 5th, 6th and 8th amendments among others. The case started at the court below for declaratory judgment which was dismissed by the Hon. Vitaliano of the Eastern District of New York for lack of subject matter jurisdiction.

As earlier stated, the Respondent was a witness at the grand jury proceedings as well as at the trial and cooperated with the Grievance Committee of the First Judicial Department, New York Courts.

The Grievance Committee of the First Judicial Department was also a witness at the grand jury and at the trial of the Appellant where the issues of professional ethics were tried and credibility was given to the actions of the Respondent.

Both the Respondent and the Grievance Committee of the First Judicial Department participated actively in the prosecution and trial of the Appellant. The transcripts of the grand jury and of the trial on file will reveal the deep cooperation.

The Appellant was accused by the Respondent for filing discretionary petitions and applications including requests for deferred action (using form I-360) on behalf of illegal immigrant parents of US citizens and those immigrants who are experiencing some form of hardship or the other.

The principal accusation against the Appellant was that the Appellant inappropriately used certain form I-360 to make a request for deferred action on behalf of clients.

This I-360 petition and the related discretionary applications were however accepted by the Respondent adjudicators.

The contention of the Appellant was that form I-360 is a general purpose form which has an open section m for users to explain their request.

In the past, the Respondent had directed users to use section m of the same form I-360 to make requests for deferred action which prompted the Appellant to use the same.

The Respondent adjudicators also determined that the said I-360 petition is governed by the privilege and confidentiality laws but these privilege and confidentiality provisions continue to be breached by another team of DHS officers.

The Deferred Action request is controversial. The United States Citizenship and Immigration Service (USCIS) Ombudsman investigated the general request for deferred action and submitted a controversial report that

- a. Stakeholders lack clear and consistent information
- b. No national procedure for handling request
- c. There is confusion on what to expect
- d. USCIS processes two types of deferred action requests: 1) those submitted by individuals who qualify based on a USCIS decision to use deferred action as a pre-adjudication form of

temporary relief for those who have filed certain petitions or applications and 2) those submitted by individuals in exigent circumstances. See Ex. 8 attached to the complaint.

The Respondent pursuant to the Immigration and Nationality Act has discretionary powers in the processing of petitions and applications submitted to it.

At the arrest of the Appellant, the Respondent took about 168 boxes from the office of the Appellant, took all the computers, electronic storage devices and left the office in a damaged condition.

The Respondent carried out the arrest and seizure following a search warrant signed by a judge of the New York State. The truthfulness of the content of the search warrants were later denied by the representative of the Respondent upon cross examination at the trial.

All the information and documents used in making the discretionary petitions and applications are true and correct with full disclosure to the Respondent. At a point, the representative of the Respondent placed a call to the Appellant for further explanation which the Appellant gave and the discretionary petitions and applications were accepted and granted for work permit.

After approving about 500 work permits over 4 years or so, the Appellant was now indicted on the discretionary petitions and applications. The Appellant was not accused of submitting fraudulent documents or information only that certain forms were used on true information.

After about 3 weeks' trial, the Appellant was discharged and acquitted.

After being discharged and acquitted, the Respondent took the following actions that amount to retaliation against the Appellant:

- a. Delay in releasing Appellant passport through security clearance blockage.
- b. The Appellant was the only passenger targeted for search on a British Airways flight from New York to London in 2017.
- c. The Appellant was the only passenger targeted for search on a KLM flight from New York to Amsterdam in 2017.
- d. The Appellant was consistently stopped for secondary search and questioning on arrival from foreign trips. This happened about 10 times in 2017 and 2018 but has now stopped.

The Respondent also documented a report on the Appellant's record putting the Appellant on terrorist watch as an Arab terrorist even though the Appellant is not of Arabian origin and never a terrorist. Upon information and belief, this was done so that the Appellant will be stopped for secondary questioning and searches.

In prosecuting the Appellant by the District Attorney in cooperation with the Respondent, several gross misconduct were committed against the Appellant which led to initiation of a lawsuit in Kings County Supreme Court for prosecutorial misconduct. The case is still pending.

After the initiation of the Notice of Claim against the New York City and 50 H hearing, the Respondent

wrote a complaint to the Grievance Committee on the same facts that were used to prosecute the Appellant in New York City criminal court requesting that the Appellant be sanctioned.

The Grievance Committee disciplined attorneys by imposing civil sanctions that are punitive in nature.

There was a predisposition email dated July 5, 2018, from one Angela Christmas to one Diana Kearse that stated: “.. we extensively cooperated with the Manhattan DA prosecution of him (he was acquitted). Currently we have 2 matters from 2016 and 2017 open against Salis, who will undoubtedly face charges. Would you like to keep the matter nunc pro tunc?”

The Respondent also submitted a complaint that Appellant failed to submit G28, (a notice of attorney representation), for certain clients. This Respondent complaint, (even though, flows from delays to the Appellants work with G28,) is against the form of Paperwork Reduction Act and Federal Court precedent decision which struck down similar complaint on G28.

Paperwork Reduction Act of 1980 - Established within the Office of Management and Budget (OMB), the Office of Information and Regulatory Affairs (OIRA). Requires the Director of OMB to appoint an Administrator as head of OIRA. Makes the Director responsible for any functions delegated to such Administrator. Requires the Director to develop and implement Federal information policies and standards including policies concerning: (1) the reduction of the Government paperwork burden on the public; (2) records management activities; and (3) the privacy of records pertaining to individuals; and

(4) the review of information collection requests. The Act further requires an agency, before collecting any information, to: (1) eliminate reporting requirements which seek information which is available through another Government source; (2) minimize compliance burden on respondents; (3) plan the tabulation of the information in a manner which maximizes its usefulness to other agencies; (4) obtain the Director's approval of such collection; and (5) obtain a control number for each information collective request.

REASONS FOR GRANTING THE PETITION

Among the issues for determination in this Appeal is a matter of first impression. For example, Attorney grievance proceedings are primarily remedial but in this circumstance, the grievance proceeding was brought to the criminal prosecution of the Appellant through the participation of the Grievance Committee in the grand jury and in the trial of the Appellant.

During the criminal prosecution of the Appellant, the Grievance Committee fully participated in the investigation, grand jury and the trial jury. Ethical rules were discussed before the juries. After the trial, the Appellant was discharged and acquitted.

After the Appellant was discharged and acquitted, facts of the criminal trial were later brought to the Grievance Committee to re-examine.

Having discussed the grievance proceedings in the criminal trial which technically gave credit to the prosecution and before two juries, the grand and trial juries, would it be appropriate to bring it again to the Grievance Committee which participated in the criminal trial as a key witness.

Another Constitutional matter for consideration of the Court is whether facts that were tried and examined by two juries, the grand and the trial, during the criminal prosecution of the Appellant of which the Grievance Committee fully participated can be re-presented to the same Grievance Committee to reexamine again after the Appellant has been discharged and acquitted. Is it appropriate to reexamine facts tried by the juries in this circumstance?

The US Supreme Court has always discouraged federal officers acting under color of federal authority to violate constitutionally protected rights of citizens. Double Jeopardy should attach against a remedial body that participates fully in criminal prosecution of a member. The protection of the First Amendment to continue to allow for freedom of speech and of the press, the right of the people to peaceably assemble and the right to petition the Government for a redress of grievances. The Eighth Amendment stated that excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

CONCLUSION

The petition for a writ of certiorari should be granted.

Dated January 7, 2022 Respectfully submitted,

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