No. 22-5880

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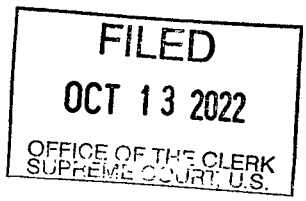

IN THE

SUPREME COURT OF THE UNITED STATES

SIXING LIU,
Pro Se, PETITIONER,

vs.

UNITED STATES OF AMERICA,
RESPONDENT.

PETITION FOR A *WRIT OF CERTIORARI* TO
THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

PETITION FOR A *WRIT OF CERTIORARI*

Respectfully Submitted by
Sixing Liu, *Pro Se*

Dated on October 12, 2022

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QUESTIONS PRESENTED

1. Did the Third Circuit err when, in conflict with this Court, it held that Petitioner failed to "make a substantial showing of the denial of a constitutional right," while applying for a certificate of appealability, necessary to be granted before an appeal, by abusing its discretion in District Court's denying his requests for ALL and ANY case-related legal materials ?

2. Did the Third Circuit err when, in conflict with this Court, it denied Petitioner's request for a certificate of appealability by ignoring the fact that the avenue of his established appellate review, directly or collaterally, is NOT kept from unreasoned distinction?

3. Due to confliction between the Third Circuit and this Court in this case, Should equal protection and due process apply to all individuals, like Petitioner, accused of a crime related to confidential and propriety information from Science and Technology?

No. _____

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RESPONDENT.

PETITION FOR A *WRIT OF CERTIORARI* TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Pro Se Petitioner, **SIXING LIU**, respectfully petitions for *a writ of certiorari* to review the judgment of the United States Court of Appeals for the Third Circuit.

OPINION BELOW

The unreported panel decision of the Court of Appeal is reproduced as Appendix B and A to this Petition.

JURISDICTION STATEMENT

1. The District Court of New Jersey originally had jurisdiction over his grounds for collateral attack under *28 U.S.C. §2255, 28 U.S.C. §1331*. Absent constitutional or jurisdictional error or a sentence exceeding the statutory maximum, a § 2255 motion will be granted for "a fundamental defect which inherently results in a

complete miscarriage of justice." Thereafter, on August 29, 2021, Petitioner timely filed his Notice of Appeal, pursuant to *28 U.S.C. §1291,* to the United States Court of Appeals for the Third Circuit to appeal over the order (entered on August 24, 2021 as ECF No. 43 under Civ. Act. No. 17-7041 in the District Court) by Hon. Stanley R. Chesler, Judge of United States District Court, DISTRICT OF NEW JERSEY, denying his motion to vacate his sentence under *28 U.S.C. §2255*, *In Re* to Criminal Case file 11-cr-208 (SRC).

2. On September 2, 2021, the case was docketed as No. 21-2642 in the Third Circuit through a Clerk's Order. On December 5, 2021, Petitioner filed his PETITION FOR A CERTIFICATE OF APPEALABILITY with the Third Circuit, which denied his petition on January 11, 2022 through an order. A copy of the Judgment is attached as Exhibit A to this Petition. On April 25, 2022, Petitioner filed his PETITION for Rehearing *En Banc*, which was also denied by the Third Circuit through an order, of which he petitions for review in this Court now, issued on May 16, 2022. A copy of this judgment is attached hereby as Exhibit B.
3. Petitioner seeks review in this Court of the Third Circuit's unreported decisions denying his appeal pursuant to *28 U.S.C. §1254(1)*, which gives this Court jurisdiction to review the judgment of a United States Court of Appeals upon *writ of certiorari*.
4. Under Supreme Court *Rule 13.1*, time for filing of a petition for *writ of certiorari* in This matter expires on August 14 2022 (within 90 days after entry of the order denying discretionary review on May 16, 2022, see Exhibit B)
5. On August 12, 2022, Petitioner submitted his application to Hon. JUSTICE Alito, as the third circuit Justice, to extend the time for his filing a petition for a *writ of certiorari* pursuant to *Sup.Ct.R 13.5*. In the Application No. 22A175, which appears in Appendix C to this petition, an extension of time to file his petition for a *writ of certiorari* was granted by Hon. JUSTICE Alito to and including October 13, 2022.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment *§1*, United States Constitution, provides:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The Sixth Amendment, United States Constitution, provides:

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, which district shall have been previously ascertained by law, and to be informed of the nature and caused of accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

The Eighth Amendment, United States Constitution, provides:

Excessive bail shall not be required, no excessive fines imposed, nor cruel and unusual punishments inflicted.

STATEMENT OF THE CASE

1. BACKGROUND OF THE PETITIONER

Petitioner, SIXING LIU, was born in Shanghai, People's Republic of China, in 1986, he graduated from Shanghai Jiao Tong University (Shanghai, China), which granted him a Bachelor's degree of Science in "Precision Instruments", and later, granted him a Master's degree in "Inertial Navigation System" in 1988, and a Doctor of Philosophy (Ph.D.) in "Theory of Automatic Control and its Application" in 1991, when he was retained to enter China's post-doctoral program in Tsinghua University (Beijing, China). In 1993, he was offered by a tenure faculty position in Tsinghua University (Beijing, China), where he worked as professor in "Advanced Measuring and Control since then, and thereafter, he was invited as a research fellow/visiting professor working in the University of Michigan (Ann Arbor, Michigan) until 1998 when he was employed by some notable companies, related to manufacturing industry or others, in their Research and Development ("R&D") Department: Corporate Researcher in Bridgestone/Bandag (Muscatine, IA, 1998-2006); Senior Design Engineer in Primex Family Companies (Lake Geneva, WI, 2006-2007); Principal Electrical Engineer (Oxford Global Resources, 2007-2009 to handle new projects in John Deere Power Center in Iowa/Illinois); and since 2009, a senior Staff Engineer in L-3 Communications, working in the Space & Navigation Division (Budd lake, NJ) from which this case arose around the end of 2010, to force him involuntarily ending his professional career, which he looks upon as a great honor with priceless treasure as his lifelong goal.

Actually, during the pendency of his trial, for the sake of "presumed innocent until proven guilty", Petitioner was still holding positive attitude, optimistically looking for any job opportunity and also trying to compensate for that huge legal fee costed by this case, in October 2011, he finally received an offer of full time employment with General Electric INC. as a principal scientist. Unfortunately, he was not allowed to work anymore due to vigorous objection from the government (ECF Nos. 45-47 under Cr. Act. No. 11-208, NJ District Court) although this job

offer was from GE's Healthcare Division for medication treatment instruments, not related to any defense or sensitive high-tech productions which he was purposely trying to avoid during his job seeking ... So, theoretically speaking, his last job title, on his long proven track record of success in his career path, should be that "Principal Scientist", despite the fact that he was unlawfully deprived of his right to employment.

In addition to one textbook (co-author), he authored over 100 original research papers, half of which were peer-reviewed and published in China. Except this case, Petitioner has no prior criminal history, without any misdemeanor record in both China and United States, of course, including any other places all over the world, even no parking lot ticket was ever issued against him all over the universal...

2. PETITIONER'S EMPLOYMENT WITH L-3 COMMUNICATIONS

A) L-3 Communications is one of major defense contractors with numerous divisions and offices in United States and abroad. Space & Navigation ("S&N") is New Jersey based Division. See the Second Superseding Indictment Paragraph 1(i) and (j). Due to his exceptional expertise on micro-electromechnical system ("MEMS"), wherein he started working in Tsinghua University (in 1991), plus, one of his major degrees earned from Shanghai Jiao Tong University is "Gyroscopes (Navigation System)" (See Petitioner's resumes which are in the possession of the United States Government), Petitioner was offered employment by L-3 in March, 2009 after L-3 recruited him, he had never heard of L-3 prior to being recruited by L-3. Petitioner accepted the offer with his new job title as "Senior Staff Engineer", under his sole job duty as defined/advised by his supervisor and the division leader, with principal focus on the simulation of a mathematical model for the MEMS-based Disk Resonating Gyroscope ("DRG"), this was determined and clarified during the job interview and job offer negotiation.

B) Although Petitioner's main responsibility was only solely involved in the simulink-based simulation analysis of "DRG" mathematical model, however, under the circumstances of "short of hands" or other projects due to his so experienced capabilities on signal processing analysis, and he was willing to help others but he

never "enthusiastically" asked for permission to jump into other projects, during the whole course of this case, it is sufficient to show that he was solicited to help characterize the Dynamic Reference Unit-Hybrid-Replacement Unit ("DRUH-R"), Position Navigation Unit ("PNU"), and others. Well, that "brief assistance" was getting more and more often and deep, finally bringing him to lead the project by developing an efficient method to degrade navigation performance of the Improved Positioning and Azimuth determining System – International ("IPADS-I"). The reduction of navigation performance was necessary to meet the specifications for the Department of Defense's export of defense materials to certain countries. Before his involving, the degradation performance was totally failed although a lot of efforts had been made. Based on his experiences, Petitioner initiated and proposed several potential solutions, combined with sufficient simulation and testing results, then developed and finalized the most available algorithm/method, (see the second superseding indictment at 36 Count I, ECF No. 68 under Cr. Act. No. 11-208), within required time frames (extremely rush) and budget, which successfully went through all kinds of tests, from lab, shop, and on-site testing .. as well, being perfectly integrated into the formal products to fit the specifications at high degree of accuracy, and achieved the goals to successfully export them since middle of 2010.

C) Petitioner was awarded the 2010 CAP Award by the president of L-3's Space and navigation Division for his dedication and exceptional accomplishments at L-3, including successfully leading the project of "IPADS-I" and contribution to "MEMS-DRG" and other projects. He worked tirelessly on behalf of L-3 and consistent with corporate policy worked at home as needed on certain more time intensive tasks, and when his children were out of school/day-care due to their illness or others. At that time, since his wife just started her new job in Chicago-land area, which kept her so busy that Petitioner, by himself, had to take care of two of their three children in New Jersey. One was only 5-year old (from a day-care in Budd Lake, NJ, to Kindergarten in Mount Olive Elementary School, Flanders, NJ). The other one was 9-year old (in Mount Olive Elementary School

too). Well, had Petitioner used his primary job duty as a legitimate reason to refuse the "IPADS-I" assignment at that time, the Count one were not there, quite similar to other charged counts (Like "DRUH-R", "PNU", ...), furthermore, if Petitioner were either lazy, or lousy, or both, to avoid these extra responsibilities to help other projects for contribution to this country's defense industry, those counts were not there either!

D) Petitioner had to undergo a background check, plus a drug screening for employment purpose, he successfully passed all before he officially started working in L-3 on March 30, 2009.

3. PETITIONER'S CASE PROCEDURAL HISTORY

A) On November 12, 2010, Petitioner left for China, using his own vacation time, to visit his elderly and infirm parents there, on his regular basis (he is the only son to his parents). Without going out of his way, among others, he made several academic exchanges through ALL PUBLICLY ANNOUNCED seminars as he had done countless times throughout his whole course of his career both in China and United States, like other professionals all over this world. On November 29, 2010, Petitioner arrived back home from China, and was stopped at the Newark Liberty International Airport, and questioned by a special government's long-well-planned interview with some special agents, who were conducting an investigation long time ago regarding his suspected "violations", which Petitioner had no ideas when/what/how to start. The agents took custody of his laptop computer and other personal belongings.

B) On March 8, 2011, Petitioner was arrested by the FBI by way of a criminal complaint with knowingly and willfully exporting and attempting to export to the People's Republic of China defense article, without a license. The case was issued as 11-208 (SRC) in the United States District Court for the District of New Jersey (ECF No. 1 under Cr. Act. No. 11-208). The federal criminal complaint was based on a nine-page document found in his computer, entitled as "Summary of Simulation for IPADS-I", that Petitioner authored for the project he was leading in L-3, it was only a simulation analysis how to reduce the navigation performance. All analysis,

including results and charts is based on widely accepted published theories (Gaussian Distribution), and taught in school. Petitioner started learning this method when he was in high school around 1981.

C) On September 7, 2011, the superseding indictment (ECF No. 34 under Cr. Act. No. 11-208), and later on April 5, 2012 the second superseding indictment (ECF No. 68 *Id.*) were respectively issued against him. The final version of the indictment (the second superseding) exaggeratedly increased the count number up to eleven, grouped into three categories.

D) The first category is about six counts (count one through six) under International Traffic in Arms Regulations ("ITAR"), which define article and service to be any item on the United States Munitions List ("USML"), setting forth twenty-one categories of defense articles that are subject to export licensing controls by the State Department's Directorate of Defense Trade Control "DDTC"). *22 C.F.R. §121.1*, see the second superseding indictment par.3. This category, based on five more documents that were found on his laptop computer after his return from China on November 29, 2010, charged Petitioner with five more willful violations of exporting and attempting to export to the People's Republic of China defense articles, designated as "Fire Control, Range Finder, Optical and Guidance and Control Equipment" on the USML, *Title 22*, Code of Federal Regulations, section *121.1*, Category *XII*, namely technical data contained in these six said documents, without first having obtained a license from DDTC, in violation of Title of *22 U.S.C. §2778(b)(2) &2778(c), Title 22, C.F.R. §120, et. Seq.* Three of that six documents Petitioner authored himself related to the projects he was asked to involve in L-3, in terms of the IPADS-I, Paladin mobile howitzer, High Mobility Artillery Rocket System Navigation Unit ("HIMARS"), and Multiple Launch Rocket System ("MLRS"). (Second superseding indictment at p.21-22) So, the first one he wrote is "Summary of Simulation for IPADS-I", dated May 12, 2010 (Count One); the second he authored is "DRUH-R Sensor Characteristics: DRUH-R 103 Mounted on Rate Table 103, 700 Hz Data Collection for 2.8hrs Room Temperature (100 Hz Data Summary)", related to Paladin (Count Two); the third he created is "PNU

Randomness: Box 380792 with Bolted ISA(1056) Cover 100 Hz Data Collection for 22 Hours Room Temperature", related to HIMARS and MLRS (Count Three). Petitioner was also charged with three more other documents that were on his laptop computer that were legally given to him to read in connection to projects that he was asked to assist with, in terms of the Inertial Measurement Unit ("IMU") under development, in consultation with Armament Research, Development and Engineering Center ("ARDEC"), Non Line of Sight Launched System (NLOS-LS), Precision Attack Missile ("PAM"), and the Loitering Attack Missile ("LAM") ... these documents are: "DRG-4mm Technical Evaluation", dated June 24, 2008 (Count Four); "Non Line of Sight launched Systems Navigation Performance Specification for PAM, LAM and the Container Units", (related to NLOS-LS") (Count Five); "Cincinnati Electronics MEMS DRG TIM", dated August 18, 2009, related to Sensors in Motion's DRG ("SIM-DRG"). (Count Six).

Actually, this category is the core part of this case, and Count One is the heart of this category since it was the charge of origin rested on the federal criminal complaint underlying the further indictments (first, and second superseding).

E) Count Seven and Eight, within the second category of charges, are called as trade secret counts. Count Seven, which is the core part of this category, charged Petitioner with unlawful possession of trade secrets, contained in a document belonging to Sensor in Motion Inc. ("SIM"), in violation of *18 U.S.C. §1832(a)(3)*. Count Eight charged him with interstate transportation of stolen property (from Count Seven), regarding a three-ring binder containing numerous paper documents bearing proprietary markings belonging to L-3 and SIM, in violation of *18 U.S.C. §2314*.

F) The last, or the third category of the second superseding indictment, is about three false statements counts, in violation of *18 U.S.C. §1001(a)(2)*, as the second superseding indictment alleges: When asked if there was any other reasons for his November 2010 trip to China other than visiting family, defendant stated: "No, I only traveled to visit my family." (Count Nine); When asked about the nature of the ICMAN 2010 conference, defendant stated: " that the ICMAN 2010 conference was

small and was not formal" (Count ten); When asked to explain his recent projects at Space & Navigation, defendant stated :"that he did not know the final application of his work at Space & Navigation on IPADS and MEMS technology" (Count Eleven). No doubt, Count Nine is the core part of this category,

G) In fact, the Count Nine became the heart of this case, throughout the whole of this case proceeding, including the trial, there is No evidence of any his dissemination of these documents, which he never disclosed to anyone, there's no ***quid pro quo***, he never gave any information to anybody ... So, the government claimed that "this entire case is going to come down to *mens rea*" (Trial Tran. Vol. 1 at 8:20); that "this entire trial is going to be Mr. Liu's *mens rea*" (Id. at 4:2); It is obvious and significant that Count Nine directly goes to Petitioner's intent of his actions, which leading to this prosecution. Count Nine was also the false statement charge of origin rested originally on the indictment, underlying the further first superseding and the second superseding indictments.

H) Petitioner's jury trial commenced on September 11, 2012 and continued until September 26, 2012 when jury verdict was rendered, found him guilty on counts One through Eight, and count Eleven, however, jury found him not guilty, or acquitted, on **count Nine and count Ten**.

I) On March 25, 2013, the Court sentenced Petitioner to 70 months of imprisonment on each of counts One through Eight, and 60 months on count Eleven, to be served concurrently. Further, the Court sentenced him to three years of supervised release, plus $900 special assessment, fine of $15,000, consisting of $2,500 on each of counts One through Six, and additional $16,633.80 in restitution. Petitioner had been in continuous custody since the verdict. Further, he has been deprived of his right to access to ALL and ANY his case-related materials after the trial!

J) On April 1, 2013, Petitioner's Notice of Appeal was timely filed with the Court of Appeals for the Third Circuit to appeal his conviction and sentence. Case number was issued in the Third Circuit as No. 13-1940. Petitioner raised the issue,

among others, that he has been deprived of his right to access to all his case-related materials, through his motion filed on August 26, 2013 to the Third Circuit.

K) Instead of his resting idle, Petitioner had kept his best and unyielding efforts to diligently pursue his direct appeal right, he had taken every possible opportunity to press his case by collecting his case-related materials, bit by bit, through the public resources gradually although extremely slow, and he had repeatedly reported all issues to the Appeal Court through his timely numerous Pro Se motions. However, beyond his capability to overcome all kind of obstacles, assiduously and unjustifiably imposed by the government on his direct appeal efforts. Finally, on December 31, 2015, the Third Circuit issued an order dismissing his direct appeal for "failure to timely file Appellant's brief".

L) Petitioner timely filed his Pro Se petition for a writ of certiorari (Sixing Liu v. United States, No. 16-5541, U.S. 2016), which was denied on October 3, 2016 by the Supreme Court (Sixing Liu v. United States, 137 S.Ct. 246, 196 L.Ed.2d 187), and on October 27, 2016, Petitioner timely filed his motion for a rehearing, which was denied on December 12, 2016 (Sixing Liu v. United States, 137 S.Ct. 610, 196 L.Ed.2d 489).

M) In order to prepare for his meaningful petition for a writ of habeas corpus pursuant to 28 U.S.C §2255, as far as early on March 12, 2017, Petitioner, as a then inmate at FCI-Englewood, filed his motion to request for ALL his case-related materials, inter alia, necessary to pursue his collateral attack to his conviction. It was initially docketed as ECF No. 6 under Civ. Act. No.16-3851 in the District Court ("MOTIONETO REQUEST"), later, the District Court directed the Clerk of the Court to docket this submission as a motion ECF 2 under Civ. Act. No.17-7041 ("MOTIONETO REQUEST")

N) While his MOTIONETO REQUEST had been pending for unreasonable long, and without any ruling from the District Court, on August 28, 2017, Petitioner filed a *28 U.S.C. §2255* petition for writ of habeas corpus ("MOTION", ECF No.1 under Civ. Act. No.17-7041 in the District Court), with an accompanying his MEMORANDUM OF LAW IN SUPPORT OF PETITIONER'S

28 U.S.C. §2255 MOTION ("MEMO"), providing his twenty five assertions with the District Court to challenge his invalid conviction and sentence based on alleged constitutional errors, from his criminal case proceedings at all critical stages, which had him convicted of crime he did not even commit, and had him punished under long sentence for an act that the law does NOT make criminal.

O) On February 25, 2020, the District Court issued a MEMORANDUM AND ORDER (ECF No. 26 under Civ. Act. No.17-7041), denying Petitioner's request, made a FINAL decision to reject his petition for seeking his access to his ALL and ANY case-related materials.

P) On June 25, 2020, the Government filed a response to his §2255 MOTION ("ANSWER ",ECF No. 32 under Civ. Act. No.17-7041).

Q) On March 5, 2021, Petitioner replied brief in opposition to Government's answer to his §2255 MOTION ("REPLY", ECF No. 40 under Civ. Act. No.17-7041).

R) On August 24, 2021, the District Court issued an opinion and order denying his §2255 MOTION and a certificate of appealability (ECF No. 43 under Civ. Act. No.17-7041).

S) On August 29, 2021, Petitioner filed a Notice of Appeal to the Third Circuit of his intention to appeal over the above August 24, 2021 order issued by the District Court.

T) On September 2, 2021, the case was docketed as No. 21-2642 in the Third Circuit through a Clerk's Order.

U) On December 5, 2021, Petitioner filed his PETITION FOR A CERTIFICATE OF APPEALABILITY with the Third Circuit, which denied his petition on January 11, 2022 through an order. A copy of the Judgment is attached as Exhibit A.

V) On April 25, 2022, Petitioner filed his PETITION for Rehearing *En Banc*, which was also denied by the Third Circuit through an order, of which he petitions for review in this Court now, issued on May 16, 2022. A copy of this judgment is attached hereby as Exhibit B.

REASONS FOR GRANTING THE WRIT

Petitioner seeks a writ of certiorari from this Court because the Third Circuit unpublished decision in this case conflicts with relevant decisions long and well established by the U.S. Supreme Court. The law has always protected the right to equal protection and due process. It's well established by decision of the Supreme Court that once a state or the federal government establishes avenues of appellate review, directly or collaterally, these avenues must kept free from unreasoned distinctions, as to economic status, faith, race discrimination, disability, etc.

The following explains the reasons for granting this Petition. Section A explores the ineluctable conflict that has arisen on the issue presented in the Petition: Whether equal protection, due process and right to access courts, apply to all individuals, like Petitioner, who has been denied his access to his ALL and ANY case-related legal materials since the Jury Trial.

Section B explains why the Third Circuit erred when it denied Petitioner's request for a certificate of appealability by ignoring the fact that the avenue of his established appellate review, directly or collaterally, is NOT kept from unreasoned distinction?

Section C shows confliction between the Third Circuit and this Court in this case, Should equal protection and due process apply to all individuals, like Petitioner, accused of a crime related to confidential and propriety information from Science and Technology, especially due to their birth place, race and ethnicity.

Section A: This Court should grant the writ of certiorari because the Third Circuit's unpublished decision in this case conflicts with relevant decision from this Court.

"A Petitioner for a writ of certiorari will be granted only for compelling reasons." *Sup. Ct. R. 10*, one such reason is when "...a United States Court of Appeal has decided an important question of federal law that has not been, but should been, settled by this Court, or has decided an important federal question in a way that conflict with a relevant decision of this Court unpublished decision in this Court." *Sup. Ct. R. 10(c)*, such

in this case, the Third Circuit unpublished decision in this case is in conflict with well-established relevant decisions from the United States Supreme Court.

The Supreme Court held that Prisoners, including pretrial detainees and even ICE detainees, have a fundamental constitutional right to "adequate, effective, and meaningful" access to the courts, *Bounds v. Smith*, 430 U.S. 817, 822, 97 S.Ct. 1491, 52 L.Ed.2d 72 (1977); *accord Lewis v. Casey*, 518 U.S. 343, 350, 116 S.Ct. 2174, 135 L.Ed.2d 606 (1996), grounded, as relevant to prisoners, in the constitutional guarantees of equal protection and due process, see, e.g., *Murray v. Giarratano*, 492 U.S. 1, 11 n. 6, 109 S.Ct. 2765, 106 L.Ed.2d 1 (1989) ("The prisoner's right of access [to the courts] has been described as a consequence of the right to due process of law, and as an aspect of equal protection." (internal citations omitted)); see also *Christopher v. Harbury*, 536 U.S. 403, 415 n. 12, 122 S.Ct. 2179, 153 L.Ed.2d 413 (2002) (observing that, in various civil and criminal cases, the Supreme Court has principally grounded the right of access to the courts in the *Privileges and Immunities Clause of Article IV,* the Petition *Clause of the First Amendment*, the Due Process Clauses of the *Fifth and Fourteenth Amendments*, and the Equal Protection Clause of *the Fourteenth Amendment*).

Recognition of the constitutional right of access to the courts, however, long precedes *Bounds*, and has from its inception been applied to civil as well as constitutional claims. *Jackson v. Procunier*, 789 F.2d 307, 311 (5th Cir. 1986) (collecting cases); *accord Straub v. Monge*, 815 F.2d 1467, 1470 (11th Cir.), cert. denied, 484 U.S. 946, 98 L. Ed. 2d 363, 108 S. Ct. 336 (1987). The constitutional right of access to the courts is broad, and is not limited to a prisoner's right to challenge conditions of confinement or an ***underlying conviction***, it even covers a prisoner's right to bring a divorce action, *Corpus v. Estelle*, 551 F.2d 68, 70 (5th Cir. 1977), and a common law nuisance lawsuit, *Harrison v. Springdale Water & Sewer Comm'n*, 780 F.2d 1422, 1427-28 (8th Cir. 1986), it also even encompasses the right of an escaped felon to challenge his extradition.

The Courts have traditionally differentiated between two types of access to court

claims: those involving prisoners' right to affirmative assistance and those involving prisoners' rights to litigate without active interference." *Silva v. Di Vittorio*, 658 F.3d 1090, 1102 (9th Cir. 2011). With respect to the right to litigation, the Supreme Court has held that the fundamental constitutional right of access to the courts is extended to prisoners' right to pursue the legal attacks on "their sentences, [either] directly or ***collaterally***," *Lewis*, at 343, 353-55, (emphasis added). Also, "the tools [that *Bounds*] requires to be provided are those that the prisoners need in order to attack their sentences, directly or collaterally, and in order to challenge the conditions of their confinement. Impairment of any other litigating capacity is simply on of the incidental (and perfectly constitutional) consequences of conviction and incarceration." *Id.* at 343, 355.

In conflict, the Third Circuit held that Petitioner failed to "make a substantial showing of the denial of a constitutional right," while applying for a certificate of appealability, necessary to be granted before an appeal, by abusing its discretion in District Court's denying his requests for ALL and ANY case-related legal materials.

In *Bounds*, at 817-22, the Supreme Court held that prisoners have a fundamental constitutional right to "adequate, effective, and meaningful" access to the courts. See also, *Johnson v. Rodriguez*, 110 F.3d 299, 310 (5th Cir.), cert. denied, 522 U.S. 995, 118 S. Ct. 559, 139 L. Ed. 2d 400 (1997). In other words, Petitioner, even detainees/inmates, should be provided with " a reasonably adequate opportunity to present claimed violations of fundamental constitutional rights to the Courts." *Id.* at 825. "The touchstone . . . is meaningful access to the courts." *Peterkin v. Jeffes*, 855 F.2d 1021, 1037 (3d Cir. 1988) (quoting *Bounds*, 430 U.S. at 823) (internal quotation omitted). As recognized by the Supreme Court in *Bounds*, that right of "adequate, effective, and meaningful" access to the courts has primarily applied to Petitioners' presentation of constitutional, civil rights, and ***habeas corpus claims*** . . . . So, subsequently Petitioner has a constitutional right of access to the court, which including his pursuit for his legal attacks on his conviction and sentence collaterally

under *28 U.S.C. §2255* without any hindrance, especially from the government as he claimed in his previous numerous filings, including his MOTION TO REQUEST FOR HIS CASE-RELATED LEGAL MATERIALS.

The Supreme Court has zealously guarded against any policy that threatens or obstructs Petitioner's ability (even a prisoner) to meaningful and effective access to the courts, this Court has extended this right, at least, to encompass the ability of Petitioner, even as an inmate, to prepare and transmit a ***necessary*** legal document to a court. *Brewer v.Wilkinson*, 3 F.3d 816, 821 (5th Cir. 1993), citing *Wolff v. McDonnell*, 418 U.S. 539, 94 S.Ct. 2963, 2984, 41 L. Ed. 2d 935 (1974). See also, *Johnson v. Rodriguez*, 110 F.3d 299, 310-311 (5th Cir.), cert. denied, 522 U.S. 995, 118 S. Ct. 559, 139 L. Ed. 2d 400 (1997), a Petitioner's (even prisoner's) right of access is not unlimited, but "it encompasses only 'a reasonably adequate opportunity to file non-frivolous legal claims challenging their convictions ... ' " (quoting *Lewis v. Casey*, 518 U.S. 343, 116 S.Ct. 2174, 2182, 135 L. Ed. 2d 606 (1996)). In other words, necessary legal document to a court should include all filings as to his appellate review in courts, directly or collaterally.

Petitioner has kept filing his numerous motions with the District Court and the 3d Circuit to request for ALL and ANY his case-related legal materials, which are in the possession of, or totally under the control of the government. ("MOTION TO REQUEST "), the crux of MOTION TO REQUEST is his desire to adequately, effectively, and meaningfully pursue collateral appellate review under *28 U.S.C. §2255*, these legal materials are pivotal and necessary, without which his right of access to the courts can be violated under the Privileges and Immunities Clause of *Article IV*, and the *First, fifth and Fourteenth* Amendments. So, This Court should assure Petitioner to pursue his every legal avenue to commence legal proceedings for his habeas petition under *§2255*. The Government should be forbidden to hamper petitioners' right to habeas relief includes a continuing right to file a habeas petition even after denial on the

merits or dismissal; includes all his filings, which could be adequate, effective, and meaningful without full access to his case-related materials.

In conflict, the Third Circuit held that Petitioner failed to "make a substantial showing of the denial of a constitutional right," but ignored the fact: that Petitioner has been deprived of his right to access to his case-related legal materials.

Section B: This Court should grant the writ because the Third Circuit's unpublished decision ignored the fact that the avenue of his established appellate review, directly or collaterally, is NOT kept from unreasoned distinction.

Furthermore, §2255(f)(2) is applicable here. An unconstitutional or unlawful government impediment contemplated by this provision is more akin to an inability to access legal materials. See, e.g., *Williams v. United States*, 360 F. App'x 34 (11th Cir. 2010) (discussing impediments caused by prison lockdowns or **inmate's inability to access case-related legal materials**). *Sanchez v. United States*, 170 F. App'x 643, 647 (11th Cir. 2006) (alleged government impediment must be unconstitutional to afford relief under §2255(f)(2)). After so many years through his numerous filings to the District Court, Appeal Court, and even the Supreme Court, Petitioner has successfully shown, with preponderant evidences, that his appellate review right in the Courts has been deprived illegally by the government.

It can be recognized the fact that Petitioner did not procedurally defaulted any *§2255* claims, Petitioner's failure to timely file Appellant's brief with the Appellant Court in his direct appeal was caused by some extraordinary circumstances beyond his ability to control. As early as August 26, 2013, even before he was granted to proceed *Pro Se* (in June 2014), Petitioner started addressing, and kept addressing since then, to the Circuit with some issues, under which he has been deprived of his right to an adequate way for a full and fair appellate review. Of course, none of them was caused by Petitioner. In his August 26 motion, granted by the Appellate Court on September 20, 2013, he claimed, inter alia,

> ... I need all necessary legal materials of my case, however, I have nothing at all right now. In other words, your mail (the Court's order) is the first legal materials of the case here although it was open without my presence.

His prior trial counsel, Mr. James Tunick, Esquire, failed to transfer case materials to Petitioner, instead, shortly after he filed the motion with the Third Circuit to withdraw as counsel on July 22, 2013, Tunick transferred all the case materials to the government, many of them are NOT subject to any confidential or proprietary information. Actually, Petitioner did not even know his action until December 15, 2014 when he read the government filing (ECF No. 168 under 11-208), where he first time realized this hand-over of case materials, for which he had asked repeatedly and vigorously Mr. Tunick while he's in the process of being relieved from representing Petitioner. Petitioner's right, to his full access to his case-related materials has been illegally deprived of after the trial. Finally, on October 6, 2014, the Third Circuit issued an order to direct Petitioner to request the District Court for **ANY** case-related material since not in possession of the Appeal Court. Then, he filed his *Pro Se* motion in the District Court (ECF No. 165 under 11-208) for his legal materials necessary to prosecute his direct appeal.

After Petitioner appeared before Hon. Chesler three times for hearing (December 18, 2014, January 5, and February 19, 2015), the Court granted his request (ECF No. 170 under 11-208), resulted in a non-stipulated Protective Order for Appeal ("Protective Order", ECF No. 177 under 11-208), and appointed a stand-by counsel (CJA Appointment, ECF No. 171 under 11-208) to facilitate his receipt, access and use of his required case materials to assure compliance within the Protective Order. Although he had exhausted all of efforts to reach his stand-by counsel, there has been no contact between them after February 19, 2015 when was their last time to meet in this Court while that disputed Protective Order being issued.

Through his letter written on December 28, 2014 to Hon. Chesler (ECF No. 174 under 11-208), Petitioner never disagreed on any reasonable order to protect real sensitive materials, however, this disputed Protective Order was used by the government as a new tool to create additional obstacles to his appeal efforts by making the order abnormally complexity under the impractical conditions in FCI-Oxford, where he was then being

housed, purposely set forth to choke his direct appeal pursuit death.

Instead of his resting idle, he has kept his best and unyielding efforts to diligently pursue his appeal right, he has taken every possible opportunity to press his case by collecting his case materials, bit by bit, through the public resources gradually although extremely slow, and he has repeatedly reported all issues to the Appeal Court through his timely numerous *Pro Se* motions. However, beyond his capability to overcome all kind of obstacles, assiduously and unjustifiably imposed by the government on his direct appeal efforts, finally, the Third Circuit issued an order dismissing Petitioner's direct appeal for "failure to timely file Appellant's brief".

About that disputed Protective Order as mentioned *supra*, Petitioner is presenting briefly here as to some issues, which prevented Petitioner from pursuing his collateral appellate under a reasonably adequate opportunity to review, since through *Bounds*, at 817-22, the Supreme Court held that prisoners have a fundamental constitutional right to "adequate, effective, and meaningful" access to the courts to apply "to Petitioners' presentation of constitutional, civil rights, and habeas corpus claims . . ." "The touchstone . . . is meaningful access to the courts." *Peterkin v. Jeffes*, 855 F.2d 1021, 1037 (3d Cir. 1988) (*quoting Bounds*, 430 U.S. at 823) (internal quotation omitted).

(a) Unreasoned Scope of the "Protective Order"

Government will provide Petitioner with electronic copies of his case materials, being stored in a stand-alone computer, government-provided computer ("Computer"), secured by that "Protective Order", which set forth a very strict restriction on how he could use case-related proprietary materials which the Chinese government "desperately needs" (the government's view). However, a lot of case materials are not sensitive at all, obviously, it is unreasonable to affect his right to access these non-protected legal materials for his appeal right to access these non-protected legal materials for his appeal pursuit. Actually, those non-sensitive materials NOT a small part, even the government admits it in ¶2 at page 5 of that order:

... The parties and the Court recognize that this disclosure will include both

> items that the Government believes required protective measures and those that do not (for example, trial transcripts, docket sheets, and certain trial exhibits that do not contain trade secrets, technical data, or proprietary info...

So, during the hearing, Petitioner suggested that these non-sensitive materials should not be under any restriction to being used, well, his suggestion went nowhere, and Petitioner has to go through all unreasonable procedure in the prison (like in FCI-Oxford) imposed on his using the government-provided computer ("Computer"), even if he needs to access to those non-protected materials. For example, if he needs to verify the number of his passport, which is listed as government's trial exhibit #010, marked as non-protected material (Chinese government "desperately needs" his passport, issued by Chinese government ?). Well, it sounds so simple under the normal circumstance, only 5 second version to deal with. However, in this case, he has to go through that specially planned way as defined by the "Protective Order" to protect everything against Chinese government, even his passport was issued by the Chinese government! So, that is not five second version, maybe he cannot get this done within five days under FCI-Oxford unreasonable procedure, described infra in (c).

(b) Issue of User of the "Computer"

Based on the "Protective Order", no one, but Petitioner and his Court-appointed stand-by Counsel ONLY can have access to that government-provided computer. However, since the Computer is being controlled by the prison, it should be opened (or used) by other unauthorized persons (prison officers?), the "Protective Order" (issued on February 19, 2015) had been breached (or violated) by the government through its own fault. As he asserted in his motion filed in June 11, 2015 with the Third Circuit, also in his petition for certiorari with the Supreme Court:

> ... In other words, the "Protective Order" has been violated already by the government self, I don't want to take any risk to use the "Computer" which has been touched/accessed by other unauthorized persons, because it is beyond my control if any issue may happen!

Since he could not use the "Computer", Petitioner lost the way to access to his all case

legal materials, no matter sensitive or non-sensitive!

(c) Impractically Working for His Case under the "Protective Order"

By the "Protective Order", Petitioner can ONLY use the "Computer" to review his case materials in a special secured room assigned by the Prison, any notes made during his review cannot be taken with him to go to the law library where inmates can only work on their legal filings. Although very limited, only the law library is still available to provide inmates with legal resources (electronic reference cases, handbooks, typing machine (30 year old though), copy ...), which that special room cannot provide Petitioner with at all. Simply to say, he cannot work on his appeal filing at the one location at the same time while his reviewing the "Computer", he has to go to the other location, like law library, however, when he's leaving that room after his review his case materials (in "Computer"), he cannot take any notes he made in that room with him to the law library. So, this is the way he was told to prepare for his appeal?! Take a very simple example, besides the above passport number, to understand how impractical it is: When Petitioner is working on his case, if he cannot remember the time he was granted his Ph.D degree in China, or his job title, the official title of the research paper he authored twenty years ago., or .. Petitioner knows he can get these answers in his resume, in possession of government, listed as Government's Trial Exhibit #154-160, marked as non-protected material and stored in the "Computer" secured by the "Protective Order" (because the Chinese government "desperately needs" them?!). Quite similarly, it's so simple or his prior counsel had provided him with these non-protected trial exhibits. However, under this special "Protective Order", he has to go through the following steps: (i) to submit the request form (cop-out) to the officer to schedule his time to enter that special room to use "Computer" to find the answer. Although we can assume Petitioner will be granted, well, no one knows when he is available to enter that room because we also have to assume whether or not the officer is sick-leave, vacation, business trip, meeting, unexpected event, or family issue ..., simply to say, no policy in prison to guarantee when to fully satisfy any

detainee's cop-out. As a useful reference from the scenario he went through before in FCI-Oxford regarding his request for a legal storage locker to secure his legal filings/documents, it had spent him two years countless efforts before he was finally granted to use a locker. Well, if he is lucky to be scheduled very soon in this case, (ii) then to go to that room as scheduled to use the "Computer" while that officer is staying there with him. If something happens before he is done, that has nothing to do with him, nor with the officer, like detainee fighting, stabbing, escaping, dying .. to lead to the whole facility shutting down. Then, he has to leave the room back to the unit, of course, he has to start the step (i) in order to resume. (iii) If, instead of detainee, an incident pertaining to officers (like fighting, commits a crime, suicide..) to lead the facility closed, he has to terminate his working and he has to go through (i) and (ii) again if he wants to resume. (iv) If, instead of bad things, something good happens, like officer appreciation week (yearly or biyearly in FCI-Oxford), officer (himself or family member's) wedding ceremony, out of respect to their comrade's friendship, they have to attend and leading to the whole facility lock down, also, officer's retiring and farewell party, promotion .. you name and count .. and again, Petitioner has to go through steps (i) to (iv) if he wants to resume this so simple task. Well, finally if he's getting his answer and writing down as his reference to his legal filing which he has to do in the other location (law library or ..), well, by the "Protective Order", anything he's writing on any paper there, cannot be taken out of that special room. If he forgets a bit part of what he just reviewed in the "Computer" after he left the room. He has to submit the request form and go through the above steps again. Well, this is only an example of extremely simple task (only something from his resume or his passport number) for his legal job. Practically speaking, the government has "created" tons of tons "evidences", throughout the course of this case proceedings, more complicated than the examples as described *supra*. This is one of major reasons why Petitioner STRONGLY objected the current version of "Protective Order" during his *Pro Se* motion (ECF No. 165 under 11-208) hearing before the Court; This is one of major

reasons why he suggested to separate all non-protected materials, like his resume, *inter alia*, out of from the whole protected materials, if doing so, at least, it could let him use by a very simple and effective way to prepare for his appear filing, which is always time sensitive under the filing deadline set forth by courts.

(d) Issue of Stand-By Counsel

As required by the "Protective Order", the Court appointed Mr. Azzarello as Petitioner's stand-by counsel to help him access to case materials and assure compliance within the "Protective Order". As asserted above, Petitioner did not agree to the current version of this order, which was issued as non-stipulated or under disputed status. Even the District Court recognized this. See the hearing transcript, held on February 19, 2015, it states at Page 12 (12:16):

> ... you and the United States Attorney have not reached an agreement about the condition or terms under which materials which you believe is necessary for you to pursue your appeal can be supplied to you...

Also, in 5:6 at page 10 (Id.), it provides

> "... as the Court noted, Dr. Liu has not agreed to this ..."

Since Petitioner had no choice but to follow this disputed order to use the "Computer" to pursue his direct appeal case, in order to understand this disputed order completely before he is 100% for sure that he's able to handle everything, right after the "Protective Order" was issued on February 19, 2015, Petitioner specially asked Mr. Azzarello for an urgent meeting, which Mr. Azzarello agreed and scheduled for on February 23, 2015 in MDC Brooklyn. However, that meeting did not happen, and Petitioner made one more request, through his letter written on March 4, 2015 to Mr. Azzarello:

> ... I need your help to walk through that Order ("Protective Order") with me because I still have a lot of questions on how to practice it, ... Anyway, there are a lot of puzzles there and here I need you to help me out ...

Actually, as "Protective Order" states, he can help Petitioner on all things related to the Order to assist Petitioner's direct appeal. So, after February 19, 2015, his stand-by counsel has no chance to meet Petitioner, who kept requesting for, even through phone

calls ... he has exhausted his all available efforts, and no more communication happened since then. Without fully understanding, *inter alia*, he can't touch that "Computer". Hence, his stand-by counsel rendered ineffective assistance of counsel by completely having forsaken him. Counsel's deficient performance prejudiced his direct appeal pursuit. Had he offered effective assistance for Petitioner how to practice the Order and even possibly to modify the Protective Order to exempt some areas from protective measures, in terms of the practical limitations on Petitioner's ability to review case related materials based on his status under the custody, thus the result of his proceeding would have been so different. At least, this Court recognized, during hearing, that this Protective Order is subject to being modified.

(e) Issue of His filing with the Court with Government's Interference

Under the current version of the "Protective Order", if Petitioner starts using the "Computer", he will lose his right to directly file any legal document with the Court, his any filing is subject to, through his stand-by counsel, initial approval by the government, as defined in ¶ 8 at page 8 of "Protective Order":

> 8. The defendant shall not file or attempt to file any document containing the Protected Materials ...

Well, as discussed above, all his case non-sensitive materials ALL have been included into that Protected Materials, even his resume, and simply to say, he needs government's approval before his filing directly going to the Court. His ability to file Court document with authorities' interference has led to a violation of the equal protection clause of the Fourteenth Amendment. *Cochran v. Kansas*, 316 U.S. 255 (1942). So, this "Protective Order" has constituted an improper abridgment or impairment of his right to access to the Courts, has conflicted with relevant decisions long and well established by the U.S. Supreme Court, which held in *Ex Parte Hull*, 312 U.S. 546 (1941), that inmates' legal documents to initial approved by authorities before they could be directed to the Courts was invalid, it further held that whether a petition addressed to the Court is properly drawn and what allegations must be contained in it are questions for the Court ALONE to

determine. However, Petitioner should feel so "lucky" that he has not yet started using the "Computer" to review all "Protective Materials", otherwise, he is not even allowed to file this constant motion right now and right here because that "Protective Order" requires him to file anything with the Court only after, through his stand-by counsel, reaching an agreement with the government on HOW/WHAT it will be filed. Actually, he has been deprived of the right to use of the "Computer"; deprived of the right to effective assistance of counsel, this is why he could timely filed numerous petitions to the Courts (District, Circuit, and even the Supreme Court) by himself, persistently struggling for his right to fair and full appellate review. In sum, under this kind of interference required by this Order, he can't timely file his appeal brief.

(f) Issue from the Order of Department of Commerce

On September 18, 2013, United States Department of Commerce issued an order, as a result of Petitioner's conviction. Its part I at page 3, says:

> ORDERED
> I. Until March 26, 2023, Sixing Liu, ... may not, directly or indirectly, participate in any way in ..., including but not limited to:
> A...
> B... or in any other activity subject to the regulations; or
> C... or in any other activity subject to the regulations.

Also, this order, in its Part II at page 4, provides:

> II. No person, may, directly or indirectly, do any of the following:
> A...
> B: Take any action ...
> C: Take any action to acquire from ...
> D: Obtain from ...
> E: Engage in any transaction ...

Simply to say, In the USA, this order does not allow anyone to have access to his case-related materials (about commodity, software or technology) up to 10 years. Actually, all these said materials had been stored in the "Computer", which Petitioner needs to pursue his direct appeal or case-related judicial proceedings, which are not allowed by this order either, as defined as "in any way... in any activity, directly or indirectly ...". Accordingly, on February 16, 2014, Petitioner timely submitted his appeal from this order to the Department of Commerce ("Appeal Division"), he asserted in his appeal filing:

> ... what does it mean "in any other activity..."? Does it mean, in USA, neither the United States Court of Appeals, nor can I be allowed to handle my appeal case to my conviction and sentence because of this

"in any other activity ..." from your order?

Of Course, Petitioner claimed, in his appeal, that his direct appeal case was pending in the Third Circuit, lots of people in the Court, government, have already accessed to this case-related materials in their different ways before March 26, 2023 set forth by this order. Nevertheless, the appeal division denied the appeal from Petitioner, who feels very confused why anyone from any department can issue an order, he thought before that only the authorized Court is able to issue an order through an authorized judge, right? Plus, in this case, different order from the different department showed him the different direction. This order says that Petitioner, and other people, cannot involve in his case until 2023 to pursue his appeal proceeding, under which the Third Circuit let him submit his appellant's brief within 60 days. Also, this said order has some errors, one of which is about his conviction date, its assertion was March 26, 2013, which was utilized by this order to determine that 10 years duration (up to March 26, 2023), well, that was totally inaccurate, it should have been September 26, 2012.

(g) Petitioner's Diligent Pursuit of Right to His Appeal

Petitioner has successfully shown some extraordinary circumstance stood in his way and prevented timely filing, now Petitioner is addressing his diligent pursuit of right to his appeal. No matter how toughly he was treated, he did not sleep on his right, Petitioner has acted in a way he thought necessary to preserve his rights based on the information he received, and his brief is reasonable, especially during the whole course of his efforts to seek his case-related materials to secure his appeal right, both direct and collateral. Plus, he was abandoned by his stand-by counsel, and during the hearing for his *Pro Se* motion (ECF No. 165 under 11-208) in December, 2014 and January, February 2015, this Court stated that it had no jurisdiction to deal with his any issue while his case in 3rd Circuit. So, he couldn't get help from any party.

(a) Instead of his lying down idle for "leisure", he has diligently pursued his direct appeal right throughout his entire proceeding *Pro Se*, Petitioner was granted to proceed *Pro Se* in June of 2014, in fact, even before June of 2014, he already actively filed his motions

with the Appeal Court on August 26, 2013, October 2, 2013, December 5, 2013, and May 19, 2014 ... to respond to Court's Orders; to show cause etc. All of them were granted by the Court, and he carefully and timely followed all instructions the Court directed him to act, and timely having the Court updated with his motions, dated August 21, 2014, September 25, 2014, November 5, 2014, January 8, 2015, and every 30 days (monthly) status reports after January of 2015. Meanwhile, he also appealed the order of The Department of Commerce, 2014.

(b) On November 4, 2014, pursuant to the Third Circuit's order, issued on October 6, 2014, Petitioner moved this Court to request all his legal materials under his *Pro Se* motion (Doc. 165 under 11-208), resulted in this Court setting for a hearing. In order to appear in this Court for this hearing, he was transferred from FCI-Oxford, WI. to MDC-Brooklyn, NY. (through FCC-Terre Haute, IN., FTC-Oklahoma City, OK.). As reported to the 3rd Circuit Court and the U.S. Supreme Court, Petitioner incurred horrendous tortures the government schemed frantically. It was the first time for him to experience his directive life-threatening FASCIST Corporal punishment on December 9, 2014 (see details in his filing with the Appeal Court on June 11, 2015). Aftereffects of this torture led to his second time to experience life-threatening perilous situation (could not breathe due to his suddenly acute chest pain) on January 15, 2015 in MDC-Brooklyn, where he got timely rescued by an urgent medical care. Although these happened during his trip to the District Court for hearing, it does not imply that he's being treated humanely while serving his sentence in prisons, actually, there have been too numerous to record all brutal tortures he has endured since this case was issued. Well, it is not his purpose to denounce ALL right now in this filing, the purpose here is just to show this Court that Petitioner never gave up his efforts to secure his appeal right no matter how miserable experience he went through, even two times of his life-threatening perilous situation. He has taken every possible opportunity to press his appeal pursuit without any indication that he was abandoning his right. In his motions, filed with the Appeal Court on June 11, 2015,

August 28, 2015, October 21, 2015 ... he had, again and again, showed that extraordinary circumstances prevented him from timely filing his meaningful Appellant's brief. Even after his direct appeal was dismissed, he still sought to litigate his claims for his appeal right to the U.S. Supreme Court (March 15, 2016, to extend time to file certiorari, May 27, 2016, to file certiorari, October 27, 2016, to petition for rehearing), only because he thinks his brief is reasonable.

(c) As mentioned *supra*, Petitioner has kept his best and unyielding efforts to collect, by himself, case materials, bit by bit, through the public resources. Well, no surprisingly to see, extremely low efficiency, only better than nothing. However, this also can be used, as one more evidence, to support his claim of diligent pursuit of his appeal right. As discussed before, while his MOTIONETO REQUEST has been pending for unreasonable long, and it's still pending before the Court, on August 28, 2017, Petitioner filed his *28 U.S.C. §2255* petition for writ of habeas corpus with an accompanying his MEMORANDUM OF LAW IN SUPPORT OF PETITIONER'S *28 U.S.C. §2255 MOTION*, long before the official deadline with some selected reasons he addressed for the Court in ¶11 above. Of course, both his *§2255* MOTION and MEMO are only his preliminarily drafted versions since he has no FULL access to his case-related materials. So, He has demonstrate due diligence to warrant equitable tolling.

Section C: This Court should grant the writ because the Third Circuit's unpublished decision violated Petitioner's the 6th, 8th ,and 14th Amendments

As mentioned Supra, Petitioner signed, with the 3d Circuit, the form of waiver of counsel to proceed *Pro Se*, however, at that time, he especially pointed out for the 3d. Circuit that the form he signed is a CONDITIONER waiver form! In other words, it could be invalid under the circumstance that if all unconstitutional obstacles, created by the government, to prevent him from filly proceeding Pro Se his case!

The above-listed are not all obstacles, only some selected, due to limitation of space in this Petition here, but it is enough to show his 6th Amendment has been violated.

Furthermore, as described above (see details in his filing with the 3d Circuit on June 11, 2015), his physique has been grossly damnified since this political case was created, and especially his body physical constitution had been ruined by that "Diesel Therapy" trip to the District Court for his request for legal materials in 2014 and 2015, to pursue his appeal, which is only one of his heart-wrench brutal tortures Petitioner had endured. In sum, he had been tortured during this case procedure and his 8th Amendment has been violated.

On the other hand, the arrest and conviction of Petitioner due to his race and ethnicity will raise grave constitutional question concerning the First, Fifth, Sixth, Eighth, and Fourteenth Amendments to the Constitution of the United States which reach far into our changing times. How could he be held accountable for some political agendas that conflict between China and America does regard? It is so immoral to have him sacrificed as a scapegoat? Should he, as an innocent person, be treated in a grossly punitive, disproportionate, and even inhuman way to live in the prison? Because he is NOT provided with his due process rights to have access to Judicial access and he has been given incompetency working condition with countless government-planned visible & invisible obstacles, spoken-able and unspoken-able barriers, should he be denied his direct and collateral appeal opportunity? What if Petitioner were born in the USA, there would have still had this case?

Let's see some other examples, Mr. President Donald Trump was recently found to bring a lot of confidential and propriety information home from the White House, any case has been issued against him yet? Ms. Hillary Clinton, as Secretary of State, was found, even building the serve (workstation) in her house to deal with huge confidential and propriety information home, well, NO CHARGE at all against her?! A lot of similar examples happen every day in the USA. Ms. Hillary Clinton, as Secretary of State, even issued DDCT against Petitioner in this case, how can we see the 14th Amendment working in this country? If NONE of these questions that contort these country culture norms will be answered, nothing will be accomplished, by silencing a dissenting voice from Petitioner, to cultivate new creation sources for new science and technology developing

for this more challenging society, through accommodating all kind of talents with their various backgrounds!

CONCLUSION

For the foregoing reasons, Petitioner, in good faith hereby, respectfully requests that the Court grant his petition for a writ of certiorari; FURTHER respectfully requests that the Court grant Petitioner such other and further relief as the Court may deem just and proper. At last, due to an understandable difference in legal sophistication, a pleading drafted by a *Pro Se* litigant must be held to a less exacting standard than drafted by trained counsel (*Haines v. Kerner*, 404 U.S. 519, 92 S. Ct. 594, 30 L. Ed. 2d 652 (1972)). So, this Court has a special obligation to construe this submission liberally since Petitioner is not professionally trained *Pro Se* litigant.

Executed on: October 12, 2022

Respectfully Submitted
By s/Sixing Liu
SIXING LIU, *Pro Se*