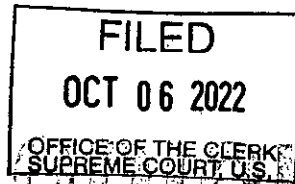


22-6171

No. _____



ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Leihinahina Sullivan — PETITIONER
(Your Name)

vs.

United States for the District — RESPONDENT(S)
Court of Hawaii; United States of America
Interested Party
ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals For The Ninth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

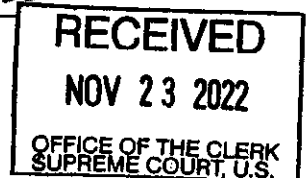
PETITION FOR WRIT OF CERTIORARI

Leihinahina Sullivan
(Your Name)

% FDC Honolulu #09779122
(Address)

PO Box 30080, Honolulu, HI 96820
(City, State, Zip Code)

n/a
(Phone Number)



QUESTION(S) PRESENTED

- (1) Is it an abuse of process and violation of Petitioner's Fifth Amendment Constitutional Due Process Rights, violation of Federal Rules of Criminal Procedure Rule 6(e) and Rule 17 for prosecutors to create fake grand jury subpoenas using district court trial court subpoenas to compel witnesses to attend pretrial conferences and to collect evidence in order to convict Petitioner, which United States District Court for the District Court of Hawaii sanctioned?
- (2) Should Petitioner then be allowed under Federal Rules of Criminal Procedure Rule 11 to withdraw her plea after finding out about prosecutors' action in creating fake grand jury subpoenas as Petitioner was under the mistaken belief that prosecutors had obtained documentary evidence legally, a fair and just reason to withdraw her pleas?
- (3) Should there be suppression of the evidence obtained by Government through fake grand jury subpoenas or dismissal of indictment due to outrageous government conduct that violates "a recognized statutory or constitutional right."?
United States v. Chapman, 524 F.3d 1073, 1085 (9th Cir. 2008).

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

Leihinahina Sullivan v. USDC Hawaii
USAP 9th Circuit Nos. 22-70198

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☐ reported at _____; or,
☒ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was September 22, 2022.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- (1) Fifth Amendment Due Process Clause of the United States Constitution
- (2) Rights to Financial Privacy Act
- (3) 28 U.S.C. § 1291
- (4) 28 U.S.C. § 1651
- (5) Federal Rules of Criminal Procedure Rule 6(e)
- (6) Federal Rules of Criminal Procedure Rule 11
- (7) Federal Rules of Criminal Procedure Rule 17

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Federal Rules of Criminal Procedure 17	i, 5, 6

STATEMENT OF THE CASE

Is it an abuse of process and violation of Petitioner's Fifth Amendment Due Process Constitutional Rights when government created false grand jury subpoenas by attaching government letterheads and production statements professing over 100 trial court subpoenas issued by U.S. District Court Hawaii was grand jury subpoenas. Since February 15, 2017, Government, who is plaintiff in my criminal case, requested and obtained over 100 trial court subpoenas from U.S. District Court for Hawaii Chief Administrative Judge J. Michael Seabright and then attached to those subpoenas government letterheads and production statements stating trial court subpoenas were "Grand Jury" subpoenas (see Appendix B - Green Dot Bank Example) where it states the trial court subpoena is a grand jury subpoena, that individuals and institutions could meet with Assistant United States Attorney Rebecca Ann Perlmutter ("AUSA Perlmutter") and IRS Agent Mark Macpherson ("Agent Macpherson") to provide information and to be interviewed as Government's AUSA Perlmutter and Agent Macpherson was the "grand jury".

"It is abiding truth that 'nothing can destroy a government more quickly than its failure to observe its own laws, or worse disregard the charter of its own existence.'" Oregon v. Haas, 420 U.S. 714, 95 S.Ct. 1215 (1975) What is even more egregious to hide what they were doing, AUSA Perlmutter did not provide in discovery the trial court subpoenas but provided production statements which made it appear that voluminous evidence was obtained by a Grand Jury, when it was not as AUSA Perlmutter and Agent Macpherson was the "Grand Jury". After I plead out on July 20, 2021, but before sentencing I filed two Motions to Withdraw My Pleas, the last one stated: "13. Before I entered into MOPA I believed that government had legally obtained voluminous documentary evidence through valid subpoenas, however after I plead guilty, I discovered that government prosecutors and agents had utilized misleading subpoenas, falsely identified as Grand Jury Subpoenas when in fact they were not issued on behalf of a grand jury. (See my claims in Civ. Nos. 22-00157-JMS and 20-00248-LEK).

14. But for my mistaken belief that the government has legally obtained documentary evidence through lawful means and not through misleading and false subpoenas from a grand jury, I would have never plead guilty to 4 counts." In addition, in government's filing, AUSA Perlmutter declares that the district court supports the practice of government creating false grand jury subpoenas, hence the filing of the 28 U.S.C. § 1651, Improper administration of justice. The practice of using trial court subpoenas to compel witnesses to attend pretrial conferences and to collect evidence is extremely improper under Fed. R. Crim. Procedure Rule 17, and Fifth Amendment Due Process and even more outrageous when prosecutorial misconduct occurred when AUSA Perlmutter and Agent Macpherson misrepresented trial court subpoenas as grand jury subpoenas to hide what they were doing under Fed. R. Crim. Procedure Rule 6(e) Grand Jury secrecy since February 15, 2017, this improper conduct prejudice Petitioner. United States v. Kean, 509 F.2d 1273, 1274-75 (6th Cir. 1975) improper use of trial court subpoenas, United States v. Chapman, 524 F.3d 1073, 1085 (9th Cir. 2008) courts can dismiss indictment due to outrageous government conduct that violates "a recognized constitutional right." Id. at 1085

(h) Direct Concise Argument

I. Legal Standard

The common-law writ of mandamus, codified at 28 U.S.C. § 1651(a), is one of "the most potent weapons in judicial arsenal," see Will v. United States, 389 U.S. 90, 107, 88 S.Ct. 269, 19 L. Ed. 2d 305 (1967), and mandamus against a lower court is a "drastic" remedy reserved for "extraordinary cases," Ex Parte Fahey, 322 U.S. 258, 259-60, 67 S.Ct. 1558, 91 L. Ed. 2041 (1947). Mandamus lies only where the familiar tripartite standard is met: (1) the petitioner has "no other adequate means to attain relief"; (2) the petitioner has demonstrated a "clear and indisputable" right to issuance of the writ; and (3) the Court finds, "in the exercise of its discretion," that issuance of the writ is "appropriate under the circumstances." Cheney v. United States District Court, 542 U.S. 367, 380-81 (2004). Although these hurdles are demanding they are "not insuperable" Id. at 381, and a "clear abuse of discretion" by a lower court can certainly justify mandamus, Bankers Life v. Cas. Co. v. Holland, 346 U.S. 379, 383, 74 S.Ct. 145, 98 L. Ed. 106 (1953).

A. First Prong of Cheney Met. Petitioner Has No Adequate Means to Attain Relief As Over 100 Trial Court Subpoenas Disguised As Grand Jury Subpoenas Was Issued By Chief Administrative Judge J. Michael Seabright From Feb. 1, 2017 And Used By Government To Compel Prospective Witnesses To Attend Pretrial Interviews and Produce Records As The Government Was The "Grand Jury", Constituting A Gross And Wilful Abuse of Process

The practice of using trial court subpoenas, then misrepresenting they are "Grand Jury" subpoenas is improper under the Fifth Amendment Due Process, a gross and wilful abuse of the processes of the District Court that government is employing, and the District Court is authorizing. Government claims that Chief Administrative Judge J. Michael Seabright has authorized Government's gross and wilful abuse of process of creating false grand jury subpoenas only for the purpose of compelling witnesses and/or production of evidence which the first prong of Cheney is met. (See United States v. Thomas, 320 F.Supp. 527 (D.D.C. 1970) constitutes a gross and wilful abuse of processes of this Court in what government is employing, and the District Court is authorizing; see also United States v. Gurney, 293 F.Supp. 683 (11th Cir. 1974); United States v. LaFuenta, 991 F.2d 1406 (8th Cir. 1992); United States v. Keen, 509 F.2d 1273, 1274-75 (6th Cir. 1975); United States v. Hedge, 462 F.2d 220, 222-23 (5th Cir. 1972); United States v. Standard Oil Co., 316 F.2d 884, 887 (7th Cir. 1963) the practice of using trial court subpoenas to compel witnesses to attend pretrial conferences is improper under Fed. Rules Criminal Procedure Rule 17, several courts have interpreted Rule 17 to permit a subpoena to issue only for the purpose of compelling witnesses or the production of evidence in a formal proceeding such as a grand jury proceeding, preliminary hearings and trials; the government may not use trial court subpoenas to compel prospective witnesses to attend pretrial interviews with government attorneys). Therefore, the first prong of Cheney is met as I have "no other adequate means to attain relief".

as government has implicated the District Court in their scheme to create fake grand jury subpoenas. This prong has been met no other remedy.

B. Second Prong of Cheney, Petitioner Has Demonstrated A "Clear and Indisputable Right to the Issuance of the Writ As A Clear Abuse of Discretion Where Government Has Alleged District Court Has Allowed Government Scheme To Create Fake Grand Jury Subpoenas" In Order To Attain Conviction Against Petitioner

By Government implicating District Court in their scheme to create fake grand jury subpoenas, by using District Courts trial court subpoenas, Petitioner has demonstrated a clear abuse of process and discretion as Government has alleged District Court approved of such practice. Cheney, 542 U.S. at 380. This prong has been met, no other remedy.

C. Third Prong of Cheney Is Met When Based On the Aforementioned The Court "In The Exercise of Its Discretion, [Is] Satisfied" That The Issuance of the Writ "Is Appropriate Under The Circumstances" When District Court Is Implicated By Government That They Allowed For Government's Scheme To Create Fake Grand Jury Subpoenas To Attain A Conviction Against Petitioner

The third prong of Cheney is met, which asks if the Court, "in the exercise of its discretion, [is] satisfied" that the issuance of the writ "is appropriate under the circumstances." Cheney, 542 U.S. at 381. Applying this "relatively broad and amorphous" standard, In re Kellogg Brown & Root, Inc., 756 F.3d 754, 762, totality of the circumstances merits granting Writ in Petitioner's case, as there is no other remedy.

II. Establishment of the Fake Grand Jury Subpoenas For The False Grand Jury Who Composed of AUSA Perlmuter and Agent MacPherson Who Requested Over 100 Trial Court Subpoenas From District Court To Accomplish This Abuse of Process Is Extraordinary

Since February 15, 2017, Government requested trial court subpoenas, knowing there would be no trial as they kept continuing trial to bring a total of 5 indictments (ECF No. 1 [February 15, 2017]; ECF No. 27 [November 8, 2017]; ECF No. 95 [March 28, 2018]; ECF No. 188 [July 25, 2019]; ECF No. 495 [December 26, 2019]) and intermittently fraudulently using trial court subpoenas to create fake grand jury subpoenas. By creating fake grand jury subpoenas the Government was able to by pass the Rights to Financial Privacy Act and other laws as the fake grand jury subpoenas was hidden under the Federal Rules of Criminal Procedure Rule 6(e).

Because of this Petitioner did not find out what Government did until after she pled out to 4 counts on July 20, 2021, soon after on July 29, 2021, Petitioner tried to withdraw her plea as information began to come to light what government did.

This conduct is a practice that according to Government, is allowed by the District Court. This is a practice that is an abuse of process and violates Petitioner's Fifth Amendment Due Process Rights, hence the filing of this 28 U.S.C. § 1651 as there is no other remedy.

III. Mandamus "Is A Drastic and Extraordinary Remedy Reserved For Really Extraordinary Causes" and Government Creating Fake Grand Jury Subpoenas In Order To Attain Voluminous Evidence To Get A Conviction Is An Extraordinary Cause That Requires An Extraordinary Remedy (Cheney, 542 at 380, 124 S.Ct. 2576, 156 L.Ed 2d 459 (2004) (quoting Ex parte Fabey, 332 U.S. 258, 259-60, 67 S.Ct. 1558, 91 L.Ed 2041 (1947)) (internal quotation marks omitted).

In Petitioner's case ① she has no other means to obtain the desired relief (suppression of evidence obtained using fake grand jury subpoenas; ② Petitioner has been damaged and prejudiced in a way not correctable on appeal as District Court has been implicated in Government's scheme in creating fake grand jury subpoenas to attain a conviction; ③ District Court allowing this practice is clearly erroneous as a matter of law; ④ District Court allowing Government to create fake grand jury subpoenas is an oft repeated error or manifests a persistent disregard of federal rules; and ⑤ this practice raises new and important problems or issues of first impression.

United States v. Guerrero, 693 F.3d 990, 999 (9th Cir. 2012) (citing Bauman v. U.S. Dist. Court, 557 F.2d 650, 654-55 (9th Cir. 1977)).

Petitioner has no adequate means to attain relief when District Court, according to Government is allowing this practice of Government creating fake grand jury subpoenas in order to secure convictions, an improper administration of justice.

IV. Extraordinary Remedy For Extraordinary Cause

A federal court may exercise its inherent supervisory powers to dismiss an indictment when outrageous government conduct violates "a recognized statutory or constitutional right." United States v. Chapman, 524 F.3d 1073, 1085 (9th Cir. 2008). And under this rubric, a court may dismiss an indictment on the grounds of outrageous government conduct where conduct amounts to a due process violation. United States v. Barrera-Moreno, 951 F.2d 1089, 1091 (9th Cir. 1991). But dismissal based on prosecutorial misconduct may be warranted "only in cases of flagrant prosecutorial misconduct, that results in 'substantial prejudice' to defendant." Chapman, 524 F.3d at 1085, see also United States v. Landeros, 448 F.App'x 135 (9th Cir. 2019) (Mem.) (citing cases). "[A]ccidental or merely negligent governmental conduct is insufficient to establish flagrant misbehavior." Chapman, 524 F.3d at 1085.

It was an elaborate scheme that Government created. For instance, Green Dot Bank on Page 8, was told to sign a production statement in response to the fake grand jury subpoena that was issued by AUSA Perlmuter which stated:

"To United States Attorney, District of Hawaii, Re: Subpoena In A Criminal Case I, _____, hereby elect, on behalf of Green Dot Bank, to respond to the grand jury subpoena duces tecum issued to Green Dot Bank, calling for the production of records and documents to the grand jury on or before March 26, 2018, at 9:00 am by delivering/ mailing records and documents called for by the subpoena to Special Agent Mark MacPherson, Internal Revenue Service, 1099 Alaika Street, Suite 2203, Honolulu, HI 96813, for delivery to the federal grand jury..." Id., page 8.

It was a lie, there was no grand jury meeting on March 26, 2018 at 9:00am and there was no trial, as government asked for another stipulation to continue trial. AUSA Perlmuter and Agent MacPherson was the grand jury. This scheme was done over 100 times with other individuals & institutions (see page 15 for list of individuals and institutions scheme of fake grand jury scheme was used).

V Conclusion

For the aforementioned reasons I am asking for either suppression of the evidence obtained by Government through fake grand jury subpoenas or dismissal of indictment due to outrageous government conduct that violates "a recognized statutory or constitutional right." United States v. Chapman, 524 F.3d 1073, 1085 (9th Cir. 2008).

1st Lehiarahua a Keanu Fullum November 14, 2022

List of Individuals and Institutions That
Were Served With False Grand Jury
Subpoenas

- | | |
|--|---|
| (1) American Savings Bank ** | (37) Tanner Henry |
| (2) Gather Federal Credit Union ** | (38) Craig Kaneshige |
| (3) First Hawaiian Bank ** | (39) Michele Kaneshige |
| (4) Chase Bank ** | (40) Gates Millennium Foundation |
| (5) Bank of Hawaii * | (41) Kauai Teachers Federal Credit Union |
| (6) Kauai Community Federal Credit Union * | (42) Christina Branch |
| (7) Garden Isle Federal Credit Union | |
| (8) Capital One ** | |
| (9) American Express ** | * Denotes more than <u>1</u> trial court subpoena represented as "Grand Jury Subpoena" |
| (10) Citibank ** | |
| (11) Hawaiian Tel Federal Credit Union * | ** Denotes more than <u>5</u> trial court subpoenas represented as "Grand Jury Subpoenas" |
| (12) Barclay Bank ** | |
| (13) Wells Fargo Bank * | |
| (14) Homebridge Bank | |
| (15) Kea Sullivan * | |
| (16) Penni Taketa * | |
| (17) Time Warner Cable ** | |
| (18) Verizon Wireless ** | |
| (19) Teen Mobile * | |
| (20) Hawaiian Airlines * | |
| (21) Abraham Makaanui | |
| (22) Kamehameha Schools * | |
| (23) California State University at Monterey Bay * | |
| (24) San Jose State | |
| (25) Bank of America ** | |
| (26) University of San Diego * | |
| (27) University of Hawaii * | |
| (28) University of California at San Diego (LaJolla) * | |
| (29) Opus Bank | |
| (30) Young Brothers Ltd. | |
| (31) Paypal ** | |
| (32) William "Butch" Keahiolalo | |
| (33) Douglas Tagupa | |
| (34) Darrel Manlapit | |
| (35) Green Dot Bank ** | |
| (36) Turbo Tax ** | |

REASONS FOR GRANTING THE PETITION

A drastic and extraordinary remedy is warranted for extraordinary causes and government creating fake grand jury subpoenas in order to attain voluminous evidence to get a conviction is an extraordinary cause that requires an extraordinary remedy. Cheney, 542 at 380, 124 S.Ct. 2576, 156 L.Ed 2d 459 (2004) (quoting Ex parte Fahcy, 332 U.S. 258, 259-60, 67 S.Ct. 1558, 91 L.Ed 2041 (1947) (internal quotation marks omitted)).

In Petitioner's case ① she has no other means to obtain the desired relief (suppression of evidence obtained using fake grand jury subpoenas; ② Petitioner has been damaged and prejudiced in a way not correctable on appeal as District Court for the District Court of Hawaii has been implicated in Government's scheme in creating fake grand jury subpoenas to attain a conviction; ③ District court allowing this practice is clearly erroneous as a matter of law; ④ District court allowing Government to create fake grand jury subpoenas is an oft repeated error or manifests a persistent disregard of federal rules; and ⑤ this practice raises new and important problems or issues of first impression. United States v. Guerrero, 693 F.3d 990, 999 (9th Cir. 2012) (citing Bauman v. U.S. Dist. Court, 557 F.2d 650, 654-55 (9th Cir. 1977)). Petitioner has no adequate means to attain relief when District Court, according to Government is allowing this practice of Government creating fake grand jury subpoenas in order to secure convictions, an improper administration of justice. Therefore, this petition, should respectfully be granted.

For the aforementioned reasons, I am asking for either suppression of the evidence obtained by Government through fake grand jury subpoenas or dismissal of indictment due to outrageous government conduct that violates "a recognized statutory or constitutional right." United States v. Chapman, 524 F.3d 1073, 1085 (9th Cir. 2008).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Sebastian A. Keene Sullivan

Date: November 14, 2022

Appendix A