22-6691 ORIGINAL

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

HUGUES-DENVER AKASSY — PETITIONER
(Your Name)

vs.

MICHAEL KIRKPATRICK — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Hugues-Denver Akassy
(Your Name)
DIN #: 11 A 5580
SHAWANGUNK CORRECTIONAL FACILITY
(Address)
200 Quick Road; P.O. BOX 700
Wallkill, New York 12589
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1. Can a court with lack of subject matter jurisdiction permit an indigent defendant to stand trial on trumped-up criminal charges not made in indictment?

2. Can a court with lack of subject matter jurisdiction permit an indigent defendant to stand trial without his alleged accuser of rape who disappeared without a trace and refused to testify in court?

3. Can a United States Magistrate Judge with lack of subject matter jurisdiction be allowed to issue a Report and Recommendation on a writ of habeas corpus to a district judge?

LIST OF PARTIES

[x] 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

People v. Akassy, 45 Misc. 3d 1211 (N.Y. Sup. Ct. Oct. 3, 2014)

People v. Akassy, 134 A.D. 3d 459 (2015 N.Y. 1st. Dept. S.Op.08953)

People v. Akassy, 27 N.Y.S. 3d 1065, 60 N.E. 3d 1202 (May 11, 2016)

Akassy v. Kirkpatrick, WL 125947 (S.D.N.Y. Jan. 8, 2019)

Akassy v. Kirkpatrick, WL 11291663 S. Copy (S.D.N.Y. Dec. 7, 2018)

Akassy v. Kirkpatrick, 2020 WL 8678080 (S.D.N.Y. July 16, 2020)

TABLE OF CONTENTS

INDEX TO APPENDICES

(4) Letter-as-Motion Seeking Permission to Amend Court Evidence, including state rap-sheet, prosecutors' forged grand jury true bill of indictment on a 4-count: one count of rape in the first degree, and three counts of aggravated harassment, checkmarked and signed by New York County District Attorney Cyrus R. Vance Jr. as the grand jury Foreperson, not by the grand jury's, and a grand jury numberless, signless and stampless true bill of indictment on a 24-count which was submitted to the jury trial by the prosecutors and court-appointed counsel Glenn F. Hardy in the Court of Claims of Judge Jill H. Konviser Part 96, with no jurisdiction..... 11, 22, 23, 33, 34, 37

(5) Respondent, now Assistant Attorney General of the State of New York Margaret Ann Cieprisz, acknowledged in a letter dated July 21, 2017, to U.S. Magistrate Judge Katharine H. Parker, which was suppressed and sealed into Docket No. 57, that "the indictment and true bill signed by the jury Foreperson (SR 24-36) are the [official] record of the charges for which Petitioner was indicted" with excerpt copies of Respondent's Dkt. No. 38 Opposition brief... 22, 37

(6) Trial court transcript minutes proceedings in the Court of Claims Part Part 96 of Judge Jill H. Konviser, on trumped-up charges, lack of jurisdiction and on an untimely "Missing Witness Argument" of an alleged star witness rape victim, between defense counsel Glenn F. Hardy, Assistant District Attorneys Jessica Troy and Emily Auletta. The transcript minutes also included excerpt of pretrial transcript minutes in the Criminal Court Part 71 of official trial Judge Carol Berkman id., and a copy of an e-mail dated 8/12/2011, from the prosecutors to Judge Berkman, which is proving that the prosecutors had conpired with defense counsel to drag Defendant to trial with a missing witness of alleged rape in the Court of Claims of Judge Konviser at all costs..... 23, 34

TABLE OF AUTHORITIES CITED

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

[X] 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,
[X] is unpublished.

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

[X] reported at S.D.N.Y. 2020 WL 8678080; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[X] For cases from **state courts:**

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

[X] reported at People v. Akassy, 27 N.Y.3d 1065; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the State Criminal Trial court appears at Appendix E to the petition and is

[X] reported at People v. Akassy, 45 Misc. 3d 1211; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[X] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was July 7, 2022.

[ ] No petition for rehearing was timely filed in my case.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: November 9, 2022, and a copy of the order denying rehearing appears at Appendix B.

[ ] 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).

[X] For cases from **state courts:**

The date on which the highest state court decided my case was May 11, 2016. A copy of that decision appears at Appendix J.

[ ] 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

The Fifth Amendment of the Constitution of the United States guarantees the right to indictment by a grand jury on felony charges. Thus, "after an indictment has been returned its charges may not be broadened except by the grand jury itself." Stirone v. United States, 361 U.S. 212, 215-16, 80S. Ct. 270, 4 L. Ed. 2d 252 (1960). "A court cannot permit a defendant to be tried on charges that are not made in the indictment against him."(Id. 361 U.S. at 217, 80 D. Ct. 270). But the 24-count of indictment which was submitted by the prosecutors and defense court-appointed counsel to the jury trial in the Court of Claims of Judge Jill H. Konviser from New York County Criminal Courthouse, Part 96, with lack of subject matter jurisdiction, was blatanly fabricated and constructed as the state grand jury did not return a 24-count of indictment, according to the state's official rap-sheet. And the prosecutors' alleged star witness of rape victim did not make in court accusation that she was raped and disappeared back home to Russia without a trace to be no-show at trial in violation of defendant's Sixth Amendment Confrontation Clause. Crawford v. Washington, 541 U.S. 36, 124 S. Ct. 1354, 158 L. Ed. 2d 177, 63 Fed.R.Evid.Serv. 1077 (2004). In Padilla v. Kentucky, 559 U.S. at 370-71, this Court held that "silence is not sufficient for counsel to comply with his/her duty to provide effective assistance of counsel to a non-citizen facing criminal charges and defense attorney's failure to provide competent advise about deportation satisfies the first prong of the Strickland Test. Strickland v.

Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). "A defendant has a constitutional right to have the grand jury hear the evidence and determine whether the evidence is [sufficient] to charge a felony." U.S. Const. Amend. V; N.Y. Const. Art. 1. & 6. Pursuant to the United States District Court for the Southern District of New York's Local Rules of Civil Procedure under 28 U.S.C.§636(c) and Fed. R.Civ.P.73, Jurisdiction, Powers and Temporary Assignment, United States Magistrate Judge Katharine H. Parker lacked subject matter jurisdiction because Petitioner's pro se writ of habeas corpus under 28 U.S.C.§2254 by a Person in State Custody, Docket No. 16-cv-7201(LAP)(AJP), was officially assigned and referred to United States Magistrate Judge Andrew J. Peck, from the United States District Court for the Southern District of New York, on September 28, 2016.

STATEMENT OF THE CASE

I, Hugues-Denver Akassy, the Petitioner, Pro Se, in this action, state the following to be true under penalties of perjury.

On August 16, 2010, the State of New York grand jury moved to return no indictment in the prosecutors' trumped-up charges of rape in the first degree and sexual abuse. And on October 5, 2011, the official trial Judge Carol Berkman, moved to dismiss the prosecutors' constructive and fake indictment(s) and true bill of indictment on a 4-count: count 1 rape in the first degree, and count 3 aggravated harassment, as the prosecutors, after over a year and up to five court appearances, failed to produce their alleged rape victim to court for trial.

As a result, on October 6, 2010, the prosecutors moved to conspire with my defense court-appointed counsel, Glenn F. Hardy, in order to forge another fake and constructive grand jury indictment and true bill of indictment on a 24-count with no signature of the grand jury Foreman, no court stamp and no signature of New York County District Attorney Cyrus R. Vance, Jr., and illegally moved to remove the dismiss case of rape in the first degree and aggravated harassment from Judge Berkman's Criminal Court Part 71, to the Court of Claims Part 96 of Judge Jill H. Konviser, a former assistant district attorney from the same New York County District Attorney's Office, with lack of jurisdiction, to have me railroaded with a missing star-witness of alleged rape victim who was no-show in court in New York, but flew back home to Russia to disappear without a trace. I was wrongfully convicted and

detained of rape in the first degree, aggravated harassment and stalking, and sentenced to 20 years in prison, and 1 year of jail to be served concurrently, and 5 years of post-release supervision.

The prosecutors' case against me garnered a great deal of bad publicity in local New York media as I was subjected to racial bias as a foreign black man and a freelance journalist to the United States since 1994, covering the United Nations, the White House, the State Department, the U.S. Congress and the Pentagon.

My pro se writ of habeas corpus which was officially assigned and referred to veteran United States Magistrate Judge Andrew J. Peck, from the United States District Court for the Southern District of New York, was illegally hijacked by a newly parachuted United States Magistrate Judge Katharine H. Parker, in order to sabotage, to gut my exculpatory grand jury verdict evidence materials without a hearing, to distort the facts and constitutional laws, to issue a blatant racially bias Report and Recommendation to United States District Judge Loretta A. Preska, from the United States District Court for the Southern District of New York, recommending that my petition for writ of habeas corpus be dismissed in its entirety which was adopted without a Certificate of Appealability, on July 16, 2020.

On July 7, 2022, a three-judge panel of the United States Court of Appeals for the Second Circuit, denied my Certificate of Appealability and Motions for Evidentiary Hearing on state grand jury verdict exculpatory evidence materials, to Strike the lower courts published decisions for lack of jurisdictions. On November

9, 2022, the Clerk of the Court of the United States Court of Appeals for the Second Circuit, issued two Orders (1) to dismiss my pro se Motion for Full Court Members Rehearing en Banc, and (2) Motion for Clarification to separate my motions for full court members rehearing en banc and Complaint for Judicial Misconduct filed against United States Magistrate Judge Katharine H. Parker and United States District Judge Loretta A. Preska. (See Judicial Conduct Complaints, Nos. 02-22-90199-jm, 02-22-90200-jm).

Relevant State Criminal Case Proceedings

In 2007 I was romantically involved with then-50-year-old white Jewish woman named Orly Jeilinek, who happened to be married to a white Jewish New York Police Department Captain. I was not aware of Ms. Jeilinek's marrital life, let alone to a cop as she was not forthcoming. For the next three years my life turned upside down by police stalking, aggravated harassment and life-threatening phone calls and e-mail messages from Ms. Jeilinek's husband, who found out about his wife's affaire with me as a foreign noncitizen black man journalist. In one of the e-mail messages received on December 22, 2007, (Appendix N, Attach. No. 1) Ms. Jeilinek's husband ordered me to return a gift-scarf to me by his wife, as follows:

> "... As a retired Captain with the NYPD [sic], I was looking forward to AVOIDING scum bags like you but you give me no choice.!!!!!!!!! You dont want to make me angry. I have dealt with lots of GARBAGE IN MY 20 YEARS.....it would be ugly, trust me!!!!!! She waited long enough for her stuff & if you dont return it within a week, well I will have my 'people' wrap your balls around your neck & hang you

> naked upside down over the Hudson River wearing cement shoes. I know what you look like & can put an 'APB' on your ASS. Mr. Akassy, do NOT MESS with ME!!!!!!... I will harass you & haunt you & hunt you. I will make your life/business a PERFECT NIGHTMARE. YOU ARE A MOTHER FUCKEN PSYCHO & I WILL HAVE YOU BEG FOR MERCY IF YOU DONT RETURN IT TO MY WIFE ASAP!!!!!!"

(See also Dkt. No. 2 at 19, Affirmation in Support of Habeas Corpus; Dkt. No. 15 at 13, Ex. E, Reply Memorandum of Law in Further Support of Petition for Writ of Habeas Corpus).

The cops and prosecutors had Ms. Jeilinek changed her story about her gift-scarf to me, to now accusing me for alleged "criminal sexual acts and sexual abuses." But the grand jury moved to reject Ms. Jeilinek's frivolous accusations and returned no indictments. The prosecutors, Assistant District Attorneys Jessica Troy and Emily Auletta, moved to have their trumped-up charges of "criminal sexual acts and sexual abuses" submitted to the jury trial, in order to allow Ms. Jeilinek to testify on stand against me in the Court of Claims of Judge Jill H. Konviser's Part 96, with a lack of subject matter jurisdiction as the prosecutors had no alleged rape victim to proceed with trial.

On July 27, 2010, I was set-up by the colleagues of Ms. Jeilinek's cop-husband, NYPD Detectives Carl Roadarmel and Francis Brennan[1] from the New York Police Department 20th Precinct, to be

---

[1] My entire arrests and trumped-up charges dismissed in court were made by the colleagues of Ms. Jeilinek's cop-husband from the NYPD 20th Precinct as revealed by the state rap-sheet.

charged on 2 counts of alleged rape in the first degree and sexual abuses on my then-45-year-old Russian woman, who was my date. Ms. T.A. was a white blonde. We met on July 25, 2010, at the Time Warner Building located at the Columbus Center, in New York City. The court records show that Ms. T.A. took my contact information and reached out to me later on in the day to organize a picnic-tryst by the Hudson River, Riverside Park in Manhattan, on July 27, 2010, over champagne, wine, cheeses, fruits, baguette and a bouquet of red roses. The evening turned into a consensual sex in the park. In the afternoon of July 27, I was stalked by the 20th Precinct's informants and the same detectives to have me arrested again on the charge for having prohibited alcohol in the park, then turned into rape in the first degree and sexual abuse as Ms. T.A. was coerced by police to allegedly say that our sexual acts were "not consensual." I was informed of the charges of rape in the first degree and sexual abuse on July 28, 2010, as I was in the Manhattan Criminal Courthouse's pen to appear before the arraignment judge. But at no time Ms. T.A. did accuse me for rape.

I chose to testify before the grand jury. After two days of testimony, on August 16, 2010, the grand jury moved to return no indictment against me. Ms. T.A. took the plane and flew back home to Russia, and cut-off all communications with police and New York County District Attorney's Office, and disappeared without a trace and was no-show in court in New York for any trial proceedings which was in a flagrant violation of the Confrontation Clause guaranteed by the Sixth Amendment of the Constitution of the United

States of America. (See Appendix N, Attach. No.6) Trial Transcript Minutes of a "Missing Witness Argument" of alleged rape victim, which was maliciously untimely called between defense court-appointed counsel Glenn F. Hardy, Assistant District Attorneys Jessica Troy and Emily Auletta, in the Court of Claims Part 96 of Judge Jill H. Konviser with a lack of subject matter jurisdiction).

In the Matters of Orly Jeilinek, Melissa Oaks, Paola d'Agostino and Bess Greenberg

The day I was arrested, I was carrying a backpack containing my work laptop, an extra hardrive, press credentials from the United States Congress Senate Gallery, my Public Affairs Orbite TV Show identification card, etc. The police and prosecutors moved to illegally download my Orbite TV Show Newsletter Address Book, and identified women who have gone on a casual dates with me and felt "dumped" to come forward with identical frivolous allegations of harassment and stalking because they were receiving my Orbite TV Show weekly Newsletter. The prosecutors downloaded up to 5,000 e-mail Newsletters in the process to call Orly Jeilinek, Melissa Oaks, whose case No. 2009NY034165 was already downgraded to Violation and dismissed by Judge Frank Nervo, on May 21, 2009, Paola d'Agostino and Bess Greenberg, to testify before the grand jury as state grand jury witnesses so the prosecutors can attempt to show my propensity for the crimes I was charged with rape in the first degree and sexual abuse on T.A. The women were not before the grand jury with a criminal complaint(s) against me but to help the prosecutors secure my indictment. But the grand jury moved to

dismiss their testimonies as it was known to the grand jury that the women were coached by the prosecutors, and it was crystal clear to the grand jury that the women were seeking revange because their romantique expectations were terminated by me.

The Prosecutors' Fraudulent Documents of Grand Jury Indictment(s) And Grand Jury True Bill(s) on a 24-Count

As the prosecutors have no alleged rape victim to proceed with trial, and that as a foreigner with no attach to the community, Assistant District Attorneys Jessica Troy and Emily Auletta, under the supervision of their boss New York County District Attorney Cyrus R. Vance Jr., moved to falsify a "Grand Jury True Bill of Indictment No. 03884/2010" on a 4-count: 1-count of rape in the first degree, and a 3-count of aggravated harassment, which was a blatant forgery. Then, the prosecutors contrived to remove my case from a male judge to Judge Carol Berkman, in order to cover-up prosecutorial misconduct.

But at my grand jury arraignment in Superior Court of the State of New York, on September 15, 2010, I was arraigned on a single count alleged rape in the first degree. Not on a 24-count, according to the State of New York's rap-sheet. (See Appendix N, Attach. No. 4, page 2). My first court-appointed counsel Howard David Simmons was fully aware that the purported grand jury documents submitted by the prosecutors to the arraignment judge were fraudulent documents, so my second court-appointed counsel Glenn F. Hardy, who was in the tank with the District Attorney's Office to force me to stand trial despite my motions for re-assignment of

counsel which were denied by trial Judge Berkman, and in the Court of Claims of Judge Konviser with lack of jurisdiction.

Now, as it became crystal clear that the prosecutors have been playing delay-tactics over a year in order to force me to take a 5-year ple-deal because they have a fake indictment with a missing witness of alleged rape victim's whereabouts to start trial, on October 5, 2011, Judge Berkman was compelled to dismiss the prosecutors' trumped-up case of rape in the first degree and the purported true bill of indictment on a 4-count which was indeed signed by New York County District Attorney Cyrus R. Vance Jr. as the grand jury Foreman, and not by the grand jury's.

The Prosecutors and Court-Appointed Counsel Conspired to Remove The Dismiss Case of Rape in the First Degree From Judge Berkman's Court Part 71, to Court of Claims Part 96 of Judge Jill H. Konviser

But on October 6, 2011, once again, the prosecutors and my defense court-appointed counsel, Mr. Hardy, conspired to remove my dismissed case of alleged rape in the first degree, from Judge Berkman's Court Part 71, to the Court of Claims of Judge Konviser's Part 96, a former assistant district attorney from the same New York County District Attorney's Office that was prosecuting me unfairly, in order to help cover-up an unprecedented prosecutorial misconduct, police misconduct and court-appointed counsel's criminal acts designed to secure wrongful convictions of crimes I did not commit. With lack of subject matter jurisdiction, Judge Konviser forced me to stand trial. (Appendix D (4), Dkt. No. 72 & Appendix N, Attach. No. 3, Petitioner's Emergency Motion for Evidentiary Hearing to U.S. District Judge Loretta A. Preska, to no avail).

In so doing, the prosecutors and court-appointed counsel conspired to falsify again a grand jury indictment and true bill on a 24-count with no signature of the grand jury Foreman, no signature of the District Attorney, no stamp of the clerk of court and number, and was known to all to be a fraud, forgery, perjury and criminal acts to be used to have me railroaded with a missing witness of alleged rape victim, in the Court of Claims of Judge Konviser with no jurisdiction as the trial proceedings transcript minutes at pages 1323-1324 at 9, stating "At the end of the day, this case is, as you argued or I should say as you opened, one of rape, criminal sexual act and stalking. That's how you [sic] billed this case," Court of Claims Judge Konviser acknowledged it to the prosecutors and defense appointed counsel, Mr. Hardy, who omitted and failed to file a motion to dismiss the whole case, (See Appendix N, Attach. No. 6,id.). Mr. Hardy, deliberately waited after the defense rested to call for an untimely "Missing Witness Argument, T. 1324-1390; see also Reply Memorandum of Law in Further Support of Petition for Writ of Habeas Corpus, Appendix D(4), Dkt. No. 2 at 41-43; Objection to Report and Recommendation, Dkt. No. 74 at 6, which was designed to have me convicted of an "aggravated felony" and be subjected to immigration removal from the United States.

On Direct Appeal and New York Criminal Procedure Law §§440.10;460.15

My Direct Appeal was assigned to court-appointed counsels from the Office of Appellate Defender of Richard M. Greenberg, who has conflict of interests with New York County District Attorney's

Office. As my court-appointed appellate counsel, Mr. Greenberg and his staff attorneys moved to perfect and file my Direct Appeal brief without my consultation, consent or approval and failed to raise claims of evidence materials of exculpatory grand jury verdict, fraudulent indictment and true bill documents, double jeopardy protection violation, unreasonable searches and seizures, Sixth Amendment Confrontation Clause violation about a missing witness of alleged rape victim, lack of jurisdiction of Court of Claims Judge Jill H. Konviser, police and prosecutorial misconduct, court-appointed trial counsel's criminal acts to secure convictions and ineffective assistance of counsel, due process Fourteenth Amendment violation and equal protection of law under the constitution of the United States of America.

Mr. Greenberg and his staff attorneys refused to file my Motion to Vacate Judgment Pursuant to New York Criminal Procedure Law Sec. 440.10, based upon the issues raised above. So I proceed pro se to perfect and file my C.P.L.§440.10.

With no in court testimony of the prosecutors' alleged rape victim, and with lack of subject matter jurisdiction, Court of Claims Judge Konviser made a slanderous-smut unproven statement(s) as follows:

> "On July 27, 2010, the defendant [sic] lured a 43 year old Russian tourist, whom he had just met, to Riverside Park in Manhattan for a sunset picnic. Once there, he took her to a secluded area of the Park, threw her to the ground on top of a metal subway grate, and raped her.

Court of Claims Judge Konviser went further to make racist

and false statement(s) to cover-up prosecutorial misconduct about the fraudulent grand jury indictment, as follows:

> "The defendant was acquitted of additional counts related to two of those victims - [sic] two counts of Sexual Abuse in the First Degree and one count of Stalking in the Third Degree. Further, the defendant was acquitted of one count involving a fifth victim - Criminal Sexual Act in the First Degree. Additionally, while the indictment charged the defendant with one additional count of Sexual Abuse in the First Degree, two additional count of Stalking in the Third Degree, eight counts of Stalking in the Fourth Degree, one count of Petit Larceny, one count of Criminal Possession of Stolen Property in the Fifth Degree, and one count of Criminal Trespass in the Third Degree, the Court, pursuant to C.P.L.§300.40(6)(b), did not submit those charges to the jury in order to avoid placing an unduly heavy burden on it... The defendant was also sentenced to one year jail on each of the misdemeanor offenses, to be served concurrently."

Annexed hereto as Appendix E, is a true copy of Court of Claims Judge Konviser's decision on my C.P.L.§440.10, submitted herewith.

Certificate Granting Leave C.P.L.§460.15

I moved to perfect and file a Motion for Permission Granting Leave to appeal Court of Claims Judge Konviser's decision on my C.P.L.§440.10 with lack of jurisdiction. On February 2, 2015, Justice David Friedman of the Appellate Division, First Department, moved to grant me a Certificate Granting Leave, to appeal the erroneous decision of Court of Claims Judge Konviser (People v. Akassy, 45 Misc. 3d 1211 (A)3 N.Y.S. 3d 286 (Oct. 3, 2014). Annexed hereto as Appendix F, is a true copy of Justice David Friedman's Order Granting Leave, to be consolidated with my Direct Appeal, but Mr. Greenberg and his staff attorneys refused to file supplemental

brief to raise the new claims from my C.P.L.§460.15, of (1) grand jury verdict exculpatory evidence materials, (2) fraudulent indictment and true bill documents by the prosecutors, (3) double jeopardy protection violation, (4) unreasonable searches and seizures,[2] (5) Sixth Amendment Confrontation Clause violation about a missing star witness of alleged rape victim, (6) lack of subject matter jurisdiction of Court of Claims Judge Jill H. Konviser, (7) police and prosecutorial misconduct, (8) court-appointed trial counsel's criminal acts designed to secure convictions and ineffective assistance of counsel, (9) due process constitutional rights violation under the Fourteenth Amendment, (10) equal protection of law guaranteed by the Constitution of the United States of America.

Having perfected my Supplemental Direct Appeal brief which was consolidated with my C.P.L.§460.15, I moved to file a Motion for Reassignment of the Office of the Appellate Defender of Richard M. Greenberg, by informing the Appellate Division, First Department, about the ongoing serious misconduct by my court-appointed Appellate counsels to supress and sabotage my exculpatory grand jury verdict evidence materials and fraudulent court documents used by the malicious prosecutors and court-appointed counsels to have me wrongfully convicted and detained of rape in the first degree,

---

[2] The prosecutors and police wrote trumped-up search warrant reports with false statements about the grand jury true bill of indictment on a 24-count, in order to search and seize broad items of my journalistic television production gear, production tapes, press ID, home furniture, business attires, laptops, cellphones, bike, personal album photos, cosmetics items, etc., in violation on my 4th Amendment.

aggravated harassment and stalking, and that I am requesting the removal of the Office of the Appellate Defender of Richard M. Greenberg from my case and to strike the trial court records as fraudulent, to no avail. (See Appendix H, Orders M-4745 & M-632 denying my motions). I was denied all motions in the process.

It is important for this Court to know that my Direct Appeal was never decided by the five justices of the Appellate Division, First Department, but by Mr. Eric B. Schmacher and Margaret O. Sowah of the Clerk of the Court, on December 8, 2015, without a hearing, after they were contacted by the Assistant Chief Counsel, Daniel W. Kelly of the Immigration and Customs Enforcement and the Office of the Appellate Defender of Richard M. Greenberg, who then resigned from office when I informed the Federal Bureau of Investigation and the Justice Department for serious misconduct by filing a racial-bias distorted brief on my behalf without my knowledge, consent, consultation nor approval in order to have my Direct Appeal denied and affirmed my wrongful convictions of crimes I did not commit so to allow Mr. Kelly to proceed with my removal from the United States, and burry the whole truth about serious prosecutorial misconduct and judicial interference to deny me justice. (See ICE Appendix G).

And this happened after Associate Justice David Friedman of the Appellate Division, First Department, on February 2, 2015, granted my Certificate Granting Leave Pursuant to C.P.L.§460.15, id. to consolidate it with my Direct Appeal on claims raised in C.P.L. 460.15 id. Mr. Kelly, in violation of the Department's Policies, acknowledged in his November 17, 2015 Motion for Continuance to

the Immigration Judge that he "contacted the Clerk of the Court of the Appellate Division, First Department," and less than a month later, on December 8, 2015, my Direct Appeal was denied by "unanimous decision," according to the almost 2-page Order (see Appendix I) by omitting to address my compelling claims from my C.P.L.§460.15 about (1) grand jury verdict exculpatory evidence materials, (2) fraudulent indictment and true bill documents by the prosecutors, (3) double jeopardy protection violation, (4) unreasonable searches and seizures, (5) Sixth Amendment Confrontation Clause violation about a missing star witness of alleged rape victim, (6) lack of subject matter jurisdiction of Court of Claims Judge Jill H. Konviser, (7) police and prosecutorial misconduct, (8) court-appointed trial counsel's criminal acts designed to secure wrongful convictions and ineffective assistance of counsel, (9) due process constitutional rights violation under the Fourteenth Amendment, (10) equal protection of law guaranteed by the Constitution of the United States of America, id.

On C.P.L.§460.20 Leave Application

My pro se application for Leave Pursuant to New York Criminal procedure Law Section 460.20, before the New York State Court of Appeals, for review of the erroneous decision of the Appellate Division, First Department, dated December 8, 2015, on claims of (1) grand jury verdict exculpatory evidence materials, (2) fraudulent indictment and true bill documents by the prosecutors, (3) double jeopardy protection violation, (4) unreasonable searches and seizures, (5) Sixth Amendment Confrontation Clause violation

about a missing star witness of alleged rape victim, (6) lack of subject matter jurisdiction of Court of Claims Judge Jill H. Konviser, (7) police and prosecutorial misconduct, (8) court-appointed trial counsel's criminal acts designed to secure wrongful convictions and ineffective assistance of counsel, (9) due process constitutional rights violation under the Fourteenth Amendment, (10) equal protection of law guaranteed by the Constitution of the United States of America, was denied Leave and Stay without a hearing, by Associate Judge Eugene F. Pigott, Jr. (see Appendix J)

Federal Writ of Habeas Corpus Lack of Subject Matter Jurisdiction

Having exhausted my remedies in state courts, I moved to federal court, and on September 28, 2016, the United States District Court for the Southern District of New York's Local Rules of Civil Procedure under 28 U.S.C.§636(C) and Fed.R.Civ.73, Jurisdiction, Powers and Temporary Assignment, assigned my pro se Petition for Writ of Habeas Corpus under 28 U.S.C.§2254 by a Person in State Custody, Docket No. 16-CV-7201(LAP)(AJP), to both United States District Judge Loretta A. Preska and United States Magistrate Judge Andrew J. Peck (see Appendix K)

Magistrate Judge Peck moved to send me the "Court's Individual Practice Requirements" with instructions on how to proceed with his court (see Appendix K, id.)

Respondent, the Office of the Attorney General of the State of

New York and its new Volunteer Assistant Attorney General Margaret Ann Cieprisz,[3] acknowledged the assignment of both District Judge Preska and Magistrate Judge Peck, and moved to file a motion for extension of time, dated November 21, 2016 (see Appendix N, Attach. No. 2). So I moved to file a Motion to Seal Certain Exhibits and Court Records. (Habeas Corpus, Dkt. No. 10, 16-cv-7201).

District Judge Preska, having presided upon my previous civil lawsuits for defamation[4] against some of New York news organizations

---

[3] Margaret Ann Cieprisz was parachuted "Volunteer Assistant Attorney General by then-New York State Attorney General Eric T. Schneiderman, in order to help cover-up serious misconduct by police, then-New York County District Attorney Cyrus R. Vance Jr. and his prosecutors Assistant District Attorneys Jessica Troy and Emily Auletta, court-appointed counsels and state judges, and was promoted for her own misconduct now as "Assistant Attorney General," no longer as a "Volunteer Assistant Attorney General" by Mr. Schneiderman, before he was forced to resign for misconduct. See Ms. Cieprisz's signatures on Notice of Appearance and letter, dated November 21, 2016 and July 21, 2017 letter to Magistrate Judge Parker. Appendix N, Nos. 2 & 5.

[4] In my pro se libel actions against some of New York news organizations, then-Chief Judge for the Southern District of New York, District Judge Preska, in her sua sponte summary judgment dismissing my Complaints under the State of New York's 1 year statute of limitations, dated April 28, 2014, held that: "In 2010, [sic] Plaintiff was indicted in New York State Supreme Court, New York County, for crimes against several women. After a jury trial in 2011, Plaintiff was convicted of one count of first-degree rape and sentenced to twenty years in prison. The trial court denied Plaintiff's motion under New York Criminal Procedure Law §440.10 to vacate that conviction. People v. Akassy, 45 Misc. 3d 1211 (N.Y. Sup. Ct. Oct. 3, 2014). Plaintiff's criminal matter garnered a great deal of publicity, and he asserts defamation claims against the New York Daily News ("The News"); The New York Times ("The Times"); News Corp. ("The holding company of the New York Post"); The Associated Press ("A.P."); and WPIX 11 News ("WPIX"), Akassy v. N.Y. Daily News, et. al., No. 14-cv-1725(LAP); Akassy v. N.Y. Times, et. al., No. 14-cv-2499(LAP); Akassy v. News Corp., et. al., No. 14-cv-2589(LAP); Akassy v. PIX 11 News, et. al., No. 14-cv-3186(LAP); Akassy v. The Associated Press, et. al., No. 14-cv-3213(LAP)(See Dkt. No. 15, No. 20-3246, COA, Appx. Ex. D, for true copy of District Judge Preska's Order without depositions and trials.

concerning my alleged criminal case on trial, moved to seize my habeas corpus from Magistrate Judge Peck to give the impression that she will solely handle my case without a need to be referred to Magistrate Judge Peck, and moved to deny my "motion to seal certain exhibits and court record," (see Habeas Corpus, Dkt. No. 10) id., citing Coppedge v. United States, 369 U.S. 438, 444-45 (1962) (holding that an Appellant demonstrates good faith when he seeks of a nonfrivolous issues.")(Dkt. No. 19).

But on January 9, 2017, District Judge Preska, having previous knowledge about my habeas corpus claims of fake indictments used by the malicious prosecutors and court-appointed counsels to have me railroaded in the Court of Claims Part 96 of Judge Jill H. Konviser with a lack of subject matter jurisdiction, had Magistrate Judge Parker, who was just been appointed in 2016 with no judicial experience, the same year I filed my petition for writ of habeas corpus, parachuted on my case, and issued a misleading "order that [sic] case be referred to the Clerk of Court for assignment to Magistrate Judge for habeas corpus. Referred to Andrew J. Peck. (Signed by Judge Loretta A. Preska on 1/6/2017)(mro)(Entered: 01/06/2017." (Dkt. No. 19, id) But the scheme was clearly designed to allow Magistrate Judge Parker to hijack my writ of habeas corpus in order to sabotage, to gut my grand jury verdict exculpatory evidence materials, to distort the compelling and irrefutable facts and constitutional laws, and to move to issue a blatant racial-bias 63-page Report and Recommendation recommending that my petition for writ of habeas corpus be dismissed in its entirety, to be adopted

by District Judge Preska, without a Certificate of Appealability, as requested by then-Volunteer Assistant Attorney General Margaret Ann Cieprisz, in a letter dated January 7, 2019 (see Appendix N, Attach. No. 7)(Dkt. No. 77), and to make things simple for a "three-judge panel" and the Clerk of the Court of the U.S. Court of Appeals for the Second Circuit, to deny my C.O.A., once more.

It is crystal clear from the United States District Court for the Southern District of New York's Local Rules of Civil Procedure, that my petition for writ of habeas corpus, was truly assigned and referred to Magistrate Judge Peck, and not to Magistrate Judge Parker. (See Appendix K, id.)

Habeas Corpus Evidence Materials of Fraudulent Indictment Documents

Following my habeas corpus brief filed and Respondent's answer (Dkt. No. 38), I moved to file a "Letter-as-Motion Seeking Permission to Amend Court Evidence" of state rap-sheet, dated July 7, 2017 (Dkt. No. 55)(see also C.O.A. Ex. E), and Respondent was compelled to finally acknowledge that:

> "... The indictment and the true bill [sic] signed by the jury foreperson (SR 24-36) are the official record of the charges for which petitioner was indicted."

(See Appendix N, Attach. No. 5, id., page 2 letter).

In response to Respondent's letter to Magistrate Judge Parker, dated July 21, 2017, id., I moved to file a second "Letter-as-Motion Seeking Permission to Amend the Complete Rap-Sheet as Court Evidence," dated July 31, 2017 (Dkt. No. 59), which proved that the prosecutors and police and court-appointed counsel Glenn F. Hardy conspired to have me re-arrested and booked and re-booked on the

dismissed grand jury trumped-up counts of "indictments" on October 25, 2010 and December 20, 2010, including other additional trumped-up charges designed to have stigmatized with a lenghty criminal record to affect my life and public image as a foreign journalist.

Now, because Respondent's answer in letter to Magistrate Judge Parker, dated July 21, 2017 id., was exculpatory, Magistrate Judge Parker and District Judge Preska moved to have it supressed and sealed into Dkt. No. 57, and also moved to suppress the prosecutors' forged "true bill of indictment on a 4-count," which was indeed signed by New York County District Attorney Cyrus R. Vance, Jr. himself as the grand jury Foreman, but not by the grand jury's. (See Appendix N, Attach. No. 4, "true bill SR36")(see also, Ethics Violation Complaint, Dkt. No. 82, Appeal Appendix N, Attach. No. 8).

But the trial proceedings transcript minutes at pages 1323-1324 at 9 (see Appendix N, Attach. No. 6), stating "at the end of the day, this case is, as you argued or I should say as you opened, one of rape, criminal sexual act and stalking. That's how you billed [sic] this case," Court of Claims Judge Konviser acknowledged it to the prosecutors, Assistant District Attorneys Jessica Troy and Emily Auletta and court-appointed defense counsel Glenn F. Hardy, who deliberately failed to file a motion to dismiss the case.

Yet Court of Claims Judge Konviser contradicted herself by falsely claiming in the footnote of her Order denying my C.P.L.§ 440.10 id. (see Appendix E), that I was indicted on twenty four criminal counts, as an attempt to cover-up prosecutorial misconduct.

But the Appellate Division, First Department, did not acknowledge that I was indicted at all in its Order dated December 8, 2015, dismissing my consolidated C.P.L.§440.10 and Direct Appeal without evidentiary hearing as Justice David Friedman of the Appellate Division, granted a Certificate Granting Leave pursuant to C.P.L.§460.15 (see Appendix I) id. (See People v. Akassy, 134 A.D.3d 459, 19 N.Y. S. 3d 882 (2015 N.Y. 1st Dept. Slip Op. 08953).

Again, the New York State Court of Appeals did not acknowledge that I was indicted at all in its Order dated May 11, 2016 (see Appendix J) id. (See People v. Akassy, 27 N.YS. 3d 1065, 60 N.E.3d 1202, 38 N.Y.S.3d 836 (May 11, 2016).

Again, in her July 16, 2020 Order dismissing my Petition for Writ of Habeas Corpus and Certificate of Appealability, District Judge Preska abstained to acknowledge that I was indicted for the crimes of rape in the first degree, aggravated harassment and stalking and other related crimes (see Appendix C)(see also, Akassy v. Kirkpatrick, 2020 WL 8678080 (S.D.N.Y. July 16, 2020).

Yet in dismissing my Complaints libel lawsuits against some of New York news organizations, dated April 28, 2014, then-Chief Judge for the Southern District of New York, District Judge Preska made unnecessary false statement that I "was [sic] indicted in New York State Supreme Court, New York County, for crimes against several women," id.

Only Magistrate Judge Parker and state Court of Claims Judge Konviser had falsely published false statements in footnotes without subject matter jurisdictions that I "was indicted on twenty

four criminal counts." (See Magistrate Judge Parker's Report and Recommendation, which was published on or about March 2021, Akassy v. Kirkpatrick, 2018 WL 11291663, Slip Copy (S.D.N.Y. Dec. 7, 2018). (Dkt. No. 79, Report and Recommendation).

Following Magistrate Judge Parker's Report and Recommendation dated December 7, 2018 id., I moved to file my objections to it in their entirety, and simultaneously filed a subpoena to compel New York County District Attorney's Office to produce my official Press credentials and news assignment video tapes, which were illegally seized by police and the prosecutors without probable cause in violation of my Fourth Amendment, in order to misrepresenting me as "a fake journalist" in the court of public opinion. The motions were addressed to District Judge Preska (Dkt. Nos. 74-75).

And in a letter dated January 4, 2019, Respondent moved to oppose my subpoena. (Dkt. No. 77).

In a second letter dated January 7, 2019, Respondent failed to answer my claims raised in my objections to Magistrate Judge Parker's lack of personal jurisdiction and inaccurate Report and Recommendation, but moved to ask District Judge Preska to "reject" my objections and "adopt the Report and Recommendation without a Certificate of Appealability." (Appendix N, Attach. No. 7, id.)

But before I was allowed the opportunity to answer Respondent's opposition to my subpoena, on January 8, 2019, again, without subject matter jurisdiction, Magistrate Judge Parker overreached her position of power to hijack my subpoena and headlong a published Opinion and Order denying my motion as a case law. (See Akassy v.

Kirkpatrick, WL 125947 (S.D.N.Y. January 8, 2019). Magistrate Judge Parker went beyond what I stated in my subpoena to have me smeared with the prosecutors' racist language calling me "a con man," "a con artist," "a fake French journalist," as I only stated in my subpoena the word "fake."

On January 24, 2019, I moved to file my objection to Magistrate Judge Parker's published Opinion and Order without subject matter jurisdiction on my subpoena to compel New York County District Attorney's Office to produce my official press credentials and news assignment video tapes. (Dkt. No. 81).

Ethics Violation Complaints Filed Against Magistrate Judge Parker

On January 31, 2019, I moved to file Ethics Violation Complaint by asking District Judge Preska to remove Magistrate Judge Parker from my habeas corpus, due to lack of jurisdiction and obstruction of justice. (Dkt. No 82).

In an Order dated February 14, 2019, District Judge Preska directed me to address my Complaint and motion for recusal to Magistrate Judge Parker herself. (Dkt. No. 83)(Appendix D(4))

On February 28, 2019, I moved to re-file my Ethics Violation Complaint and motion for recusal to Magistrate Judge Parker, as ordered by District Judge Preska (Dkt. No. 83 id.)(Dkt. No. 86).

On April 25, 2019, I moved to amend my Ethics Violation Complaint and motion for recusal to Magistrate Judge Parker, in a letter to District Judge Preska, by claiming that Magistrate Judge Parker impersonated the signature of United States Court of Appeals Circuit Judge Barrington D. Parker, in order to overrule District

Judge Preska's order to unseal "certain exhibits and court record" and Habeas Corpus 50 Exhibits. (Appendix D(2), Sealed Dkt. No. 11)

By order dated March 1, 2019, Magistrate Judge Parker affirmed that "... the Court [sic] is in receipt of Petitioner's letter submission and will issue a decision regarding the pending application." (Appendix D(4), Dkt. No. 85)

On April 19, 2019, Magistrate Judge Parker failed to answer any of the claims that I stated in my Ethics Violation Complaints against her, but moved to deny my motion for recusal without serving me her decision. (Dkt. No. 87)(see also Appendix N, Attach. No. 8).

On May 6, 2019, having requested and received the court docket sheet, I discovered that Magistrate Judge Parker had denied my Ethics Violation Complaints and motion for recusal, without service, and I moved to file an appeal with District Judge Preska. (Dkt. No. 90).

But in her decision denying my petition for writ of habeas corpus, dated July 16, 2020, without service, District Judge Preska failed to address my Ethics Violation Complaints against Magistrate Judge Parker, as I was instructed in her Order dated February 14, 2019 (see Appendix L, id.), that "... the remedy [sic] for denial of that motion is appeal." (Dkt. No. 83). District Judge Preska, not only distorted my claims raised in my Ethics Violation Complaints, she defended Magistrate Judge Parker's actions with lack of personal jurisdiction on my case. And when I asked District Judge Preska in the conclusion of my Ethics Violation Complaint (Dkt. No. 86, id.) on whether I should address my appeal to the United States Court of

Appeals for the Second Circuit, she failed again to address the issue presented. Id.

The United States Court of Appeals for the Second Circuit's Decision on Certificate of Appealability

On November 3, 2020, Circuit Judge Michael H. Park, United States Court of Appeals for the Second Circuit, granted me a 30-day extension of time to file my Certificate of Appealabilty, as a member of the three-judge panel. (See Appendix A(1))

On December 7, 2020, Circuit Judge Raymond J. Lohier, Jr., United States Court of Appeals for the Second Circuit, granted me leave to file an "oversized motion for certificate of appealability of 25 pages," as member of the three-judge panel. (See Appendix A(2))

But on July 7, 2022, a three-judge panel, including Chief Judge Debra Ann Livingston, Circuit Judges José A. Cabranes and Raymond J. Lohier, Jr., moved to dismiss my pro se Certificate of Appealability by holding that "Appellant has not [sic] made a substantial showing of the denial of a constitutional right," citing 28 U.S.C.§2253(c)(2); see Miller-El v. Cockrell, 537 U.S. 322, 327 (2003), and that "It is further ORDERED [sic] that the remaining motion is DENIED." (Appendix A). Yet the Fifth Amendment of the Constitution of the United States guarantees the right to indictment by a grand jury on felony charges. Thus, "after an indictment has been returned its charges may not be broadened except by the grand jury itself." See Stirone v. United States, 361 U.S. 212, 215-16, 80 S. Ct. 270, 4 L. Ed. 2d 252 (1960), as the prosecutors' indictments and true bill(s) on a 24-count, was known to all to be forgeries and fraudulent court

documents, and with a missing star witness of alleged rape in the first degree. (Crawford v. Washington, 541 U.S. 36, 124 S. Ct. 1354, 158 L. Ed. 2d 177, 63 Fed. R. Evid. Serv. 1077 (2004). And, with an ineffective assistance of court-appointed counsel. (See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984).

I moved to write three letters to the Clerk of the Court, a letter to Chief Judge Debra Ann Livingston, and a letter to Circuit Judge Raymond J. Lohier, Jr., as to know if their decision on my (1) Certificate of Appealability, (2) Motion for Evidentiary Hearing on State Grand Jury Verdict Exculpatory Evidence Materials on my Favor, and (3) Motion to Strike All Published Decisions by the Lower Courts for Lack of Jurisdictions, was unanimous, or which of the three-judge panel abstained, to no avail. The Clerk of the Court never responded to my letters stated above. (See Appendix A(5))

On July 24, 2022, pursuant to Federal Code Annotated 28 U.S.C.A. §§351-352 by Chief Judge(a)(1); 28 U.S.C.A.§353 Special Committee(1)(2)(3)(C); 28 U.S.C.A.§354 Action by Judicial Council (a)(1)(i)(iii)(C)(1)(C), I moved to file Complaints for Judicial Misconduct, asking for (1) Judicial Council Investigation and (2) full court members re-hearing en banc for lack of subject matter jurisdictions of United States Magistrate Judge Katharine H. Parker and United States District Judge Loretta A. Preska on my pro se petition for writ of habeas corpus, And for (3) the re-assignment of United States Magistrate Judge Andrew J. Peck, pursuant to United States District Court for

the Southern District of New York's Local Rules of Civil Procedure under 28 U.S.C.§636(c) and Fed.R.Civ.P.73. (See Appendix D, USCA Dkt. Nos. 66-68)

But in a letter dated August 10, 2022, Deputy Clerk Dina Kurot, of the United States Court of Appeals for the Second Circuit, stated that "... Please note, your appeal documents for Akassy v. Kirkpatrick, Docket No. 20-3246, must be submitted separately, not combined with judicial conduct complaint documents. Judicial conduct matters are confidential and are not available to the public. See Rules for Judicial-Disability Proceedings, Rule 23 [sic]." (See Appendix B(1))

As a result, on August 22, 2022, I moved to file an Amendment to the first three-page of my Complaint as "petitioner's Motion for (1) Full Court Members Rehearing en Banc for Lack of Personal Jurisdictions of United States Magistrate Judge Katharine H. Parker and United States District Judge Loretta A. Preska on my writ of habeas corpus, and for (2) the Reassignment of United States Magistrate Judge Andrew J. Peck, with Notice, Consent, and Reference of a Civil Action to a Magistrate Judge Pursuant to United States District Court for the Southern District of New York's Local Rules Under 28 U.S.C.§636(c) and Fed.R.Civ.P.73. (See Appendix B(2) Motion)

In a "Notice of Defective Filing," dated August 22, 2022, the Clerk of the Court instructed me to "refile your request as a 'Motion for Clarification' consisting of a T1080 Form, supporting statement, and certificate of service. The Forms are enclosed for your convenience." (See Appendix B(3)

Pursuant to the Scope, the Rules govern proceedings under the Judicial Conduct and Disability Act, 28 U.S.C.§§351-364, on October 11, 2022, I moved to file Complaints for Judicial Misconduct, to determine whether covered judges have engaged in conduct prejudicial to my pro se petition for writ of habeas corpus. (See Judicial Misconduct Complaints, Docket Nos. 02-22-90199-jm, 02-22-90200-jm, Appendix B(4), id.

The Clerk of the Court omitted to docket my "Petitioner's Pro Se Appendix in Support of Motion for Full Court Members Rehearing en Banc," (Appendix D, id.) and had failed so far to send me copies of both Appendices in Support of Certificate of Appealability (see Appendix D, Dkt. No. 15) and Full Court Members Rehearing en Banc, as repeatedly requested to no avail.

But on October 9, 2022, the Clerk of the Court of the United States Court of Appeals for the Second Circuit, dismissed both my Motion for Full Court Members Rehearing en Banc and Motion for Clarification, (See Appendices B, id) which do not mention the names of any Circuit Judges, and Appendix B, Dkt. No. 89, shows that "Motion Order, denying motion for reconsideration en banc (only)," not by the full court members rehearing en banc, as my motion asked the court for. (See Appendix B(2)id.)

REASONS FOR GRANTING THE PETITION

My defense counsel, court-appointed counsel, Glenn F. Hardy, deliberately conspired with the malicious prosecutors to force me to stand trial in the Court of Claims Part 96 of Judge Jill H. Konviser with lack of jurisdiction and a missing star witness of alleged rape in the first degree, whose indictment on twenty four criminal counts was truly known to all to be a forgery, fake, fraudulent court documents and a constructive amendment of indictment in violation of my constitutional rights to confront witness (Crawford v. Washington, 541 U.S. 36, 124 S. Ct. 1354, 158 L. 2d 177, 63 Fed.R.Evid.Serv. 1077 (2004), due process and effective assistance of counsel (Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984).

The prosecutors and my defense counsel violated my Civil Rights as a black man, a foreigner with no attach to New York, but to Washington, D.C., to have me railroaded with a fake true bill of indictment on a 24-count. But the state grand jury on August 16, 2010, did not return such indictments, and on October 5, 2011, the official state trial Judge Carol Berkman moved to dismiss the alleged rape case as the prosecutors could not produce such victim.

In People v. Wayne Grega, 72 N.Y. 2d 489, 531 N.E. 2d 279, 534 N.Y.S. 2d 647 (1988), the New York State Court of Appeals' ruling begins with the state constitutional provision that "[n]o person shall be held to answer for a Capital or otherwise infamous crime unless on indictment of a grand jury." (N.Y. Const. Art. 1 & 6; see also, C.P.L.§210.05). The Constitution further provides that an

accused "shall be informed of the nature and cause of the accusation." (Id; see also, C.P.L.§200.50). An indictment serves three important purposes. "First and foremost, an indictment provid[es] the defendant with fair notice of the accusation against him, so that he will be able to prepare a defense." People v. Lannome, 45 N.Y. 2d 589, 594. "Second, the indictment prevents the prosecutors from usurping the powers of the grand jury by ensuring that the crime for which defendant is tried is the same for which he was indicted, 'rather than some alternative seized upon by the prosecution in light of subsequently discovered evidence.'" Id; see also Rusell v. United States, U.S. 749, 770. "Finally, an indictment prevents later retrials for the same offense in contravention of the constitutional prohibition against double jeopardy."(People v. Lannome, Supra, at 595).

The Fifth Amendment of the Constitution of the United States guarantees the right to indictment by a grand jury on felony charges. Thus, "after an indictment has been returned its charges may not be broadened except by the grand jury itself." Stirone v. United States, 361 U.S. 212, 215-16, 80 S. Ct. 270, 4 L. Ed. 2d 252 (1960). A court "cannot permit a defendant to be tried on charges that are not made in the indictment against him." (Id. 361 U.S. at 217, 80 D. Ct. 270).

But here in this case, the twenty four criminal counts of indictment submitted by the prosecutors and my defense court-appointed counsel to the jury trial in the Court of Claims of Judge Konviser, were totally fabricated and fraudulent court documents as revealed in the state rap-sheet. (See Appendix N, Attach. 4, id.).

The prosecutors' indictment and true bill on a 24-count were blatanly constructed in violation of my constitutional rights, as follows: A Constructive Amendment of an indictment "occurs when the charging terms of the indictment are altered, either literally or in effect, by prosecutor or court after the grand jury has last passed upon them." United States v. Zingaro, 858 F. 2d 94, 98 (2nd Cir. 1988)(quoting Gaither v. United States, 413 F. 2d 1061 (D.C. Cir. 1969). "As such, a Constructive Amendment is per se violation of the Fifth Amendment." United States v. Delano, 55 F. 3d 720, 729 (2nd Cir. 1995). "To prevail on a Constructive Amendment claim, a defendant must demonstrate that either the proof at trial or the trial court's jury instructions so altered an essential element of the charge that, upon review, it is uncertain whether the defendant was convicted of conduct that was the subject of the grand jury's indictment." United States v. Frank, 156 F. 3d 332, 337 (2nd Cir. 1988)(per curiam)(citing Zingaro, 858 F. 2d at 98). Here in this case, the trial transcript minutes proceedings indicating that the prosecutors, having rejiggered the court record to show that I was "indicted" for rape in the first degree (Appendix N, Attach. 4, id), moved to ask Court of Claims Judge Konviser to add 23 additional criminal counts not in the indictment. (See Appendix N, Attach. 6, id.) Court of Claims Judge Konviser told the prosecutors and my defense counsel that "... And I am sensitive to your concern about validating each of the [victims], which is why I included all of them." (T. 1323 at 7). "At the end of the day, this case is, as you argued or I should say as you opened, one of rape, criminal sexual

act and stalking. That's how you [billed] this case." (T. 1324 at 9). The contradictions of the prosecutors' counts of indictment against me are crystal clear as Court of Claims Judge Konviser lacked jurisdiction in this case already dismissed by the grand jury on August 16, 2010 and by the official trial Judge Carol Berkman on October 5, 2011. "In determining whether an 'essential element' of the offense has been modified, moreover, we have 'consistently permitted significant flexibility in proof provided that the defendant was given notice of the core of criminality to be [proven] at trial.'" Delano, 55 F. 3d at 729 (quoting United States v. Patino, 962 F. 2d 263, 266 (2nd Cir. 1992)(internal quotations omitted).

Again, here in this state case, the alleged indictment and true bill(s) on a 24-count did not provide me with fair notice of the charges against me, and the prosecutors and my defense counsel's theories at trial were not the same as that charged in the indictment already dismissed by the grand jury back on August 16, 2010. Inasmuch as the indictment did not provide me with a fair notice of the accusations against me and that the prosecutors and my defense counsel's theories at trial in the Court of Claims of Judge Konviser were not the same in all material respect to that charged in the indictment (see state rap-sheet record, id.), corruption, prosecutorial and judicial misconduct, lack of jurisdiction, misfeasance, ineffective assistance of counsel, reversal with dismissal of the indictment and ordering my release from incarceration are required here from this Court.

"An indictment is constructively amended when the proof at

trial broadens the basis of conviction beyond that charged in the indictment." United States v. Miller, 471 U.S. 130, 144-45, 105 S. Ct. 1811, 1819-20, 85 L. Ed. 2d 99 (1985). "Constructive Amendment of an indictment is per se violation of the Grand Jury Clause of the Fifth Amendment. "United States v. Zingaro, 858 F. 2d 94, 98 (2nd Cir. 1988). "However, an impermissible alteration of the charges must affect an essential element of the offense," United States v. Weiss, 752 F. 2d 777, 787 (2nd Cir.)(Cert. denied, 474 U.S. 944, 106 S. Ct. 308, 88 L.F.D. 2d 285 (1985), "and we have consistently permitted significant flexibility in proof, provided that the defendant was given notice of the 'core of criminality' to be [proven] at trial." United States v. Heimann, 705 F. 2d 662, 666 (2n Cir. 1983)(citing United States v. Sindona, 636 F. 2d 792, 797-98 (2nd Cir. 1980)(Cert. denied, 451 U.S. 912, 101 S. Ct. 1984, 68 L. Ed. 2d 302 (1981). But in dismissing my Certificate of Appealability, on July 7, 2022, the three-judge panel of the United States Court of Appeals for the Second Circuit, erred to hold that:

> "Appellant, pro se, moves for a certificate of appealability ("COA") and other relief. Upon due consideration, it is hereby ORDERED that the COA motion is DENIED and the appeal is DISMISSED because [sic] Appellant has not 'made a substantial showing of the denial of a constitutional right.' 28 U.S.C.§2253(c)(2); see Miller-El v. Cockrell, 537 U.S. 322, 327 (2003). It is further ORDERED that the remaining motion is DENIED." (Appendix A, id.)

The three-judge panel's decision above violated the Second Circuit's and this Court's precedents on (1) Constructive Amendment of Indictment, as I "made a [substantial] showing of the denial of a

constitutional right" in my brief for a Certificate of Appealability at pages 19-23; (2) double jeopardy protection violation; (3) confrontation clause violation of an alleged missing star witness of rape victim; (4) unreasonable searches and seizures; (5) prosecutorial and judicial misconduct; (6) court-appointed counsel's criminal acts designed to secure convictions and ineffective assistance of counsel; (7) lack of personal jurisdictions of both state trial Court of Claims Judge Jill H. Konviser and United States Magistrate Judge Katharine H. Parker on my pro se petition for writ of habeas corpus, as I substantially raised in my COA-brief at pages 6-8 and 17-19. (See Appendices A(3) & B(2) Motions attached to court's Orders).

Magistrate Judge Parker impersonated Circuit Judge Barrington D. Parker's signature in order to overrule District Judge Preska's previous orders (habeas corpus Dkt. Nos. 19 & 23) by supressing and sealing my 50 Exhibits evidence materials in support of my brief of habeas corpus. (See Appendix D(2) Sealed Dkt. No. 11, id.) and Respondent's letter dated July 21, 2019 showing that the prosecutors and my court-appointed counsel violated my constitutional rights by forcing me to stand trial on purported state grand jury indictment and true bill of indictment on a 24-count that was known to all to be a forgery and fraudulent court documents. (Appendix N, Attach. 4 & 5). "Due process is violated when a prosecutor permits a defendant to stand trial on an indictment which he knows is based on [perjured] material testimony," U.S. v. Basurto, 497 F. 2d 781 (9th Cir. 1974), "a prosecutor in

such case is under a duty to notify the court and the jury to correct the 'cancer of justice.'" Basurto 497 F. 2d at 785). "When a prosecutor[5] through nondisclosure affirmatively deceives the grand

---

5 The Duke Lacrosse "rape" Case Similarity - The most extraordinary aspect of the Duke Lacrosse "rape" case is the fact that, in terms of prosecutorial misconduct, it was really no different from my own case discussed here. In March 2006, "Crystal Gail Mangum," a black woman stripper and escort and student at another local university, accused three white members of Duke University's men's Lacrosse team of raping her at a party held at the house of two of the team's captain. As a matter of substantive law, the case was a simple Brady case - a malevolent or misguided prosecutor who withheld and tried to suppress what was clearly exculpatory evidence to which the defendants were entitled and which should have been provided to them immediately. Fortunately, Reade Seligmann, Collin Finnerty, and David Evans had families who stood behind them and were willing and able to fund a highly competent, aggressive defense. Mike Nifong, a prosecutor whose name is now synonymous with injustice, dramatically underestimated both his opponents and public sentiment. The racial and class bias overtones, as well as Mr. Nifong's bumbling, made the case a cause célèbre. The prosecutor withdrew from the case in January 2007 after the North Carolina State Bar filed ethics charges against him in connection with the case. On April 11, 2007, North Carolina Attorney General Roy Cooper, who is now the Governor of the State of North Carolina, dropped all charges, declared the three players innocent and stated that the charged players were victims of a "tragic rush to accuse" by a "rogue prosecutor." In June 2007, the prosecutor was disbarred for "dishonesty, fraud, deceit and misrepresentation," making the prosecutor the first prosecutor in North Carolina history and one of the few, ever, to lose his law license based on actions in a criminal prosecution. The prosecutor was found guilty of criminal contempt and served one day in jail. In dismissing the charges, the Attorney General of the State of North Carolina pointed to several inconsistencies. The Durham Police Department also came under fire for violating their own policies by allowing the prosecutor to act as the de facto head of the investigation, pursuing with the case despite vast discrepancies in notes taken by two different investigators and the release of a guilt presuming poster shortly after the allegations became public. As tragic as the case was for the Duke Lacrosse defendants, the charges were dismissed pretrial. They never served a day in prison. Other defendants in other cases, like my own case here, have not been so lucky. The Duke Lacrosse defendants and myself in this trumped-up case of rape, aggravated harassment and stalking, have two things in common. We have each been the target of a criminal investigation or the subject of a criminal prosecution and we have been the victim of pervasive prosecutorial misconduct.

jury, in effect transforming exculpatory evidence into inculpatory evidence, courts have invalidated resulting indictments. Cases of deliberate deception reasonably invite the sanction of dismissal." U.S. v. Demarco, 401 F. Supp. 505 (C.D. Cal. 1975)(judgment aff'd. 550 F. 2d 1224, 77-1 U.S. Tax. Cas. (CCH) P. 9354, 39 A.F.T.R. 2d 77-1361 (9th Cir. 1977). "But even intences of nonwillful deception have impelled courts to examine the effect of the prosecutor's action rather than his motive."

Indictments have been dismissed or convictions reversed "where the prosecutor's misconduct was flagrant and extremely prejudicial," U.S. v. Hogan, 712 F. 2d 757 (2nd Cir. 1983)(same) U.S. v. Samango, 607 F. 2d 977 (9th Cir. 1979)(same)Brown v. U.S., 245 F. 2d 549 (8th Cir. 1957), "has become entrenched and repetitive," U.S. v. Broward, 594 F. 2d 345, 57 A.L.R. Fed. 814 (2nd Cir. 1979), "results in unequal justice to the accused," U.S. v. Estepa, 471 F. 2d 1132 (2nd Cir. 1972), "or is necessary to formulate procedural rules governing prosecutorial misconduct."

The use of perjury as a weapon, whether active or passive, and whether by prosecution or defense, must be severely condemned." Swartz v. State, 506 N.W. 2d 792 (1993). The Second Circuit who denied my Certificate of Appealability, held that "due process violation occurs if state leaves conviction in place after [credible] recantation of material testimony; perjured testimony that will trigger due process violation must leave court with firm belief that, but for perjured testimony defendant would most likely not have been convicted." Sanders v. Sullivan, 863 F. 2d 218 (2nd

Cir. 1988) U.S.C.A. Const. Amend. 14th.

State trial Court of Claims Judge Konviser and United State Magistrate Judge Parker "had acted in the clear [absence] of all jurisdiction." And United States District Judge Preska "had forfeited whatever [jurisdiction] she had 'because of her failure to comply with elementary principles of procedural due process,'" (See Stump, 435 U.S. at 355, 98. Ct. at 1104) by allowing Magistrate Judge Parker to hijack my pro se petition for writ of habeas corpus and to have her orders overruled by Magistrate Judge Parker, and to illegally adopt Magistrate Judge Parker's distorted racially-bias 63-page Report and Recommendation (Dkt. Nos. 73 & 97), and failing to address each of my objections in the process. Pursuant to the United States District Court for the Southern District of New York's Local Rules of Civil Procedure (see Appendix K, id.) "all cases in the Southern District of New York are [assigned] to two judges. A district judge and a Magistrate judge" by a lottery system. A district judge has no judicial authority to assign a case to a Magistrate judge of his/her own choice other than the one already assigned by the court system, in this case, United States Magistrate Judge Andrew J. Peck, and not to Magistrate Judge Parker.

Pursuant to 28 U.S.C. § 1746, for state prisoner, under the Anti-Terrorism Effective Death Penalty Act (A.E.D.P.A.), the court reviewing a habeas corpus petition is required to assume the facts as found by the state court. This means that the habeas corpus court must make its judgment on the habeas corpus petition based

on the version of the facts that the state trial court found to be true. However, after receiving the petition, answer, and traverse, the habeas court may choose to hold evidentiary hearing on facts that were not fully "developed" in state trial court. Facts that are not fully developed are those that are still in dispute. The habeas court's decision to hold a hearing may depend on why the facts were not developed in the trial court. In other words, whether a hearing will be held may be affected by a) whether some error for which petitioner is responsible prevented the development of the facts, or b) whether the state's error prevented the factual development.

Accordingly, because this case was already dismissed by the state grand jury and official trial judge Carol Berkman, on August 16, 2010 and October 5, 2011, and that this case lacked jurisdiction before state Court of Claims Part 96 of Judge Jill H. Konviser and United States Magistrate Judge Katharine H. Parker and United States District Judge Loretta A. Preska, from the United States District Court for the Southern District of New York, I respectfully ask this Honorable Court to (1) vacate my convictions of rape in the first degree, aggravated harassment and stalking, (2) dismiss my fake indictment on a twenty four criminal counts with prejudice, (3) order my immediate release from incarceration, (4) or, in the alternative, to change venue by transferring my pro se petition for writ of habeas corpus to the jurisdiction of the United States District Court for the District of Columbia, in Washington, D.C., in order to conduct a fair evidentiary hearing on facts.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Date: January 23, 2023

SWORN TO BEFORE ME
This 27 of January, 2023

NOTARY PUBLIC

SHEILA L EULL
STATE OF NEW YORK
NOTARY PUBLIC
Qualified in Orange County
01EU6421926
MY COMMISSION EXPIRES 9/13/2025