

22-6870

Supreme Court Case No. _____

ORIGINAL

FILED

FEB 14 2023

OFFICE OF THE CLERK
SUPREME COURT, U.S.

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In the
Supreme Court of the United States

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Victor Rodriguez Kessel,
Petitioner,

v

United States of America,
Respondent,

=====

On Petition for a Writ of Certiorari to
United States Court of Appeals
for the Eighth Circuit
[Appeal No. 21-2285]

=====

Victor Rodriguez Kessel
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=====

Proceeding in Pro-Se

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SUPREME COURT, U.S.

QUESTIONS PRESENTED

1. Did the unethical and arbitrary act/action of the US Attorney of passing out candy in the midst of the petitioner's trial to the empaneled jury completely taint the entire legal process so as to purposely impede the pursuit of justice and providing of a substantial defense and eviscerate the petitioner's Constitutional rights in the first instance?
2. Did the federal agent's documented lack of training in recognizing that an interpreter was needed in the legal case of the petitioner during the questioning in the first instance due to the present language barrier prevent full disclosure and transparency of the matter of legal jeopardy to the petitioner and so taint the judicial process so as to condemn the petitioner of the alleged conduct even before the trial for which he stood accused of?
3. Does the advisement of the petitioner by the federal agent (Atkins) of the rights of Constitutionally protected due process that was explained as "Conscious" rights instead of "Constitutional" rights suffice as fair notice under the law of obtaining consent for a Fourth Amendment search and/or advisement of rights under the "Miranda v Arizona," 86 S Ct 1602 (1966) standard to a person whom has very limited understanding of the legal case and English language spoken when this is not an accepted manner to which a person's Constitutional rights are orated, explained, or dictated to the accused?
4. Did the instruction by the federal agent for the petitioner to open a package that was not addressed to him nor was he expecting delivery of provide a knowing instruction to violate the plain language of Title 39 USC § 3004 that was meant to continue the deprivation of protections accorded under the Fourth Amendment to the US Constitution?
5. Did the appellate court provide for an act of misconduct and malfeasance when it failed to take into account the facts of the petitioner by quickly and promptly affirming judgment when valid facts were presented to refute the government's assertions regarding these issues?

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:

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STATEMENT REGARDING FILING
RULES OF THE SUPREME COURT, RULE 12

The filing of this petition for Writ of Certiorari comports with Rules of the Supreme Court, Rule 12.2 to which states, in part, that:

An inmate confined in an institution, if proceeding in forma pauperis and not represented by counsel, need file only an original petition and motion.

Petitioner Kessel avers that he is currently incarcerated and has, accordingly, supplied an original petition and motion for filing with this High Court.

STATEMENT REGARDING
CONTENT OF A PETITION FOR A WRIT OF CERTIORARI
RULES OF THE SUPREME COURT, RULE 14

The filing of this petition for Writ of Certiorari comports with the Rules of the Supreme Court, Rule 14 and all parts and portions contained herein are presented in Good and Honest Faith to the best of the Petitioner's ability.

STATEMENT REGARDING
DOCUMENT PREPARATION
RULES OF THE SUPREME COURT, RULE 33.2

The filing of this petition for Writ of Certiorari comports with the Rules of the Supreme Court, Rule 33.2 as this document is formatted to the 8½ by 11 inch format, double spaced, inset single space quotes, on white/opaque paper and bound at the upper left-hand corner. Pursuant to Section (b), this document does not exceed 40 pages for the petition to which the exclusions of the questions presented, list of parties, corporate disclosure statement, table of contents, table of cited authorities, and listing of counsel (if applicable) is excluded from this count.

ORDERS AND OPINIONS BELOW

The petitioner requests that a Writ of Certiorari be issued to review the judgment(s) as listed below, TO WIT:

Federal Case(s):

The Opinion of the US Court of Appeals for the Eighth Circuit at 2022 US App Lexis 30016, Appeal No. 21-2285, to which the mandate of the appellate court, dated 18 November 2023, is at Appendix A.

The judgment in a criminal case in the US District Court for the Western District of Missouri (Kansas City), Case No. 4:17-cr-00246-DGK-1, 2019 WL 2298705, 2019 US Dist Lexis 90412 (USDC WDMO, 2019), is not available at time of mailing as the district court failed to provide the requested document(s) of the Judgment and Committal in a Criminal Case.

STATEMENT REGARDING JURISDICTION
AND TIME FOR FILING

The jurisdiction of the Honorable Supreme Court of the United States is properly invoked, pursuant to Title 28 USC § 1254(1), to which states that:

Cases in the courts of appeals may be reviewed by the Supreme Court by the following method[s]:

(1) By Writ of Certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree.

Pursuant to Rules of the Supreme Court of the United States 13.1, to which states that:

Unless otherwise provided by law, a petition for a Writ of Certiorari to review a judgment in any case, civil or criminal, entered by a state court of last resort or a United States court of appeals (including the United States Court of Appeals for the Armed Forces) is timely when it is filed with the Clerk of Court within 90 days after entry of the judgment

Petitioner Kessel avers that the jurisdiction of this Honorable Court is properly invoked and the time for filing comports with the rules of this Honorable Court.

THIS PETITIONER IS CURRENTLY INCARCERATED.

STATEMENT OF THE CASE

Petitioner Kessel avers that this legal case was prosecuted in the United States District Court for the Western District of Missouri (Kansas City) that is memorialized in Legal Case No. 4:17-cr-000246-DGK-1 to which proceeded to trial where guilt was levied and imposed its judgment and sentence on May 26, 2021 to which the court lower entered its judgment on the docket May 27, 2021.

Petitioner Kessel filed his timely notice of appeal on June 9, 2021, pursuant to Fed R App P 4(b)(1)(A), to which upon submissions by the petitioner and the government, the Eighth Circuit Court of Appeals affirmed the judgment by opinion of October 28, 2022 to which mandate was issued mandate November 18, 2022 in Appeal No. 21-2285.

STATEMENT OF THE FACTS

On or about the 18th day of July, 2017, members of the Kansas City [Missouri] Police Drug Enforcement Unit, accompanied by US Postal Inspector Paul Shade, approached Kessel outside of his home with residential address of 6628 Oxford Avenue in Raytown, Missouri 64133.

Tactics were utilized during the officers approach that pinned Kessel between his vehicle and the armed officers thus restricting mobility and movement of Kessel. Once pinned between the vehicle and the armed officers, the package in question was revealed to Kessel that in possession of the officers to which was addressed to an unknown person named "Franklin Smith" whom had been purported to live at the address of Kessel as evidenced by the hand written label on the package that had Kessel's address upon. At this time, while Kessel was cornered by the armed officers against his vehicle, the armed officers then commenced to question Kessel without advising him of his rights guaranteed by "Miranda v Arizona", 384 US 436, 473-474 (1966), and "Escobedo v Illinois" 378 US 478 (1964), US Constitution Amendment IV and VI, to remain silent and

his lawful right that is unalienable for legal representation at any point of the case and/or proceedings for his defense when being questioned at that time as "the right to counsel recognized in the court's landmark decision in 'Gideon v Wainwright', 372 US 335, 344-345, 83 S Ct 792, 9 L Ed 2d 799 (1963)." "Whorton v Bockting", 127 S Ct 1173, 549 US @ 419, 421 (2007).

Kessel is a non-native of the United States, of Cuban descent as this is his native land, to which there is an obvious language barrier between Kessel and the officers present during the questioning. Kessel did state to the armed officers, when inquiry was made regarding the "package", that "...it is not my package, you're the police, you can do whatever you want..." Upon hearing the above statement of Kessel verbalized, the officers that were present on the scene took it upon themselves, while knowing the laws, US Postal regulations and the governmental rules of ethics in regards to this situation and its proper handling of this type of incident, made the knowing and voluntary determination to summarily agree that the response of Kessel was a consent to open the "package" in question thus continuing to violate the Amendment IV clause of the US Constitution.

US Postal Inspector, Paul Shade, was then and still remains today cognizant and knowledgeable of the evidenciary fact that Kessel had no authority to grant the opening of this "package" to any officer present, much less the US Postal Inspector, Paul Shade. For allegedly being properly trained in governmental ethics, US Postal Service by-laws and regulations, along with US Code and Code of Federal Regulations, US Postal Inspector Shade should have known automatically at this point in time that Kessel had no power or authority to directly or indirectly give any type of consent whatsoever to any officer present for the opening of the "package" as: i) Kessel's name appeared nowhere on the "package" in question (to which he was acquitted of at trial) only the name of "Franklin Smith" whom is an unknown individual to Kessel; and ii) Kessel

never exercised dominion nor possession of the "package" in question as Kessel did never possess, control, muchless touch the "package" as it was brought forth by the US Postal Inspector Shade and his armed officers brought along as a show of force as an officer possessed and controlled the "package" the entirety of the episode, thus, bringing into question the validity of the package in the first instance.

Any interpretation, legally or judicially, to the contrary that Kessel consented to the opening of the "package", delivered by US Postal Inspector Shade and his armed officers, can only be interpreted as an act of bad faith to which was, at the time, a concious decision on the part of those officers present, and therefore the entire episode was an act premised on a violation of the Doctrine of Clean Hands.

When the officers and US Postal Inspector Shade made the concious determination , to which was clearly unethical and a violation of Kessel's unalienable rights of due process of law, at this point topen the "package," the contents of the package were revealed at that time to which Kessel had no knowledge of. The unveiling of the "package," to which such opening was violative of Amendment IV of the US Constitution due to Kessel was not the address/receiver nor was the owner of the "package," it was discovered that 274g of cocaine were tucked inside.

As stipulated to in the foregoing dissertation, again this is a second point of interest to which the officers and US Postal Inspector Shade should have advised Kessel of his unalienable rights provided under "Miranda" and "Escobedo" as there is clearly a custodial issue unfolding to which the civil and liberty interests of Kessel were clearly in jeopardy.

In continuing, officers then had Kessel to sign a consent form to enter his home to which Kessel did not have his Constitutional rights accorded him at this point. It is clearly evident that Kessel had no knowledge of his actions

and the officers never sought a warrant to open the "package" to which Kessel had absolutely no authority to consent to. It is imperative to note at this point that NO translator was ever offered.

On July 18, 2017, US Postal Inspector Shade submitted information sworn to in an affidavit to establish the probable cause element to search the residence of Kessel at 6628 Oxford Ave in Raytown, Missouri 64133.

On this affidavit, US Postal Inspector Shade stipulates that "Inspectors had noted previous suspicious mailings to Kessel's address, in Tuscon, Arizona.", to which he goes on to connect the activity in Arizona to Kessel's above address. Page 5 evidences that a canine was then used to which contact with detective Eric Powell was made. In their coordinated effort, an exterior sniff of the package occurred to which the canine allegedly signaled an alert for narcotics.

At the time the affidavit was submitted, the officers and US Postal Inspector Shade had already violated the Amendment IV, Amendment V, and Amendment VI rights enumerated within the US Constitution's Bill of Rights as the officers had already entered the home of Kessel. Clearly, this was a tactic to subvert the protections and guarantees of the US Constitution and Bill of Rights.

Kessel, whom does not speak fluent and only broken English and has very limited understanding of the English language, had already been detained as a custodial event did occur at this incident to which US Postal Inspector Shade and his armed officers as force provided for the eggregious violation of Kessel's protections and guarantees pursuant to Amendment VI; Amendment V, and Amendment VI of th US Constitution. This is magnified by the lower court providing a translator for judicial purposes.

Notwithstanding his limitations in regards to the English language and the legal language used by attorneys and the judiciary, Kessel still elected to proceed to trial regarding this legal matter in spite of the mountain and other barriers that were present due to his limitation on understanding the English

language in its entirety. At this time, the court lower requested a translator and Kessel hired attorney, Sean Pickett. The federal government was represented by Bradley Kavanaugh and Sean Foley. Again, it is now recognized that Kessel was in need of a translator to which points to the fact that Kessel had no idea or understanding of his actions from the start. Also this is a cue for US Postal Inspector Shade that there may have been a language barrier.

During trial, AUSA Kavanaugh handed out candy treats to the members of the jury (an obvious act of misconduct) and Kessel, to which was witness to the event, found this act/action bias and prejudicing in considering that this was an opportunity for the AUSA to garner favor with the jurors thus providing an act of undue influence. Kessel had no knowledge that this violated the rules of the court due to his state of having no knowledge of the US legal system.

Prior to the actual trial proceedings commencing during a hearing held before the Honorable Stephen R Bough, the said judge questioned the validity of the evidence against Kessel to which he stated, "...do you have a CI, a controlled buy, all you have is the package?"

All in all, it is seen that the judicial process failed in this instance as Kessel was convicted and sentenced by the trial court based upon a "package" to which was not his to which was searched in violation of his unalienable rights and protections guaranteed under Amendment IV, Amendment V, and Amendment VI of the US Constitution and its attached amendments as the improper application of the law and US Code has occurred leading to a miscarriage of justice.

PETITIONER'S QUESTIONS WITH
POINT OF LAW AND FACTS

1. Did the unethical and arbitrary act/action of the US Attorney of passing out candy in the midst of petitioner's trial to the empaneled trial jury completely taint the entire legal process so as to purposely impede the pursuit of justice and providing of a substantial defense and eviscerate the petitioner's Constitutional rights in the first instance?

Black's Law Dictionary (11th Edition) defines the prosecutor as "a legal officer who represents the state or federal government in criminal proceedings." This "representation" of the government should be unbiased, absent prejudice, and carried in a manner to which no act of impartiality can be perceived.

In this legal case, the prosecutor for the United States failed in his duty to provide an unbiased, absent prejudice, and an action that could not be perceived as an act of impartiality when he purposely, with intent, passed out candy to the empaneled jury in the midst of the petitioner's trial that which could only be viewed as unethical behaviour and an act of prosecutorial misconduct. Although act was not illegal, this still meets the definition of "prosecutorial misconduct" as provided by Black's Law Dictionary (11th Edition) to which such act is defined as :a prosecutor's improper [emphasis added] or illegal act (or failure to act)..." This action on the part of the US Attorney also verges on the act of Lack of Candor due to this was an insincere act/action by said prosecutor to wrongly influence the empaneled jury to the side of the government in an act so egregious, but stealthily forwarded, that did so damage the judicial process so as to provide for a miscarriage of justice.

It is to be noted that this act/action was carried through directly before the presiding judge, petitioner's attorney (whom failed to object therefore divesting petitioner of opportunity to raise on interlocutory appeal), and the gallery in attendance on that fateful day. The failure of the district court judge to recognize this matter can be demonstrated by the record as an act of actual prejudice meant to wrongfully influence a jury and the failure

of the lower courts to consider the claim in the first instance did result in a fundamental miscarriage of justice that so shocked the conscience so as to negate effective substantive justice for this petitioner. See "Martinez v Ryan", 182 L Ed 2d 272 (2012). This dubious and clever tactic employed by the US Attorney of handing said tasty morsels undermines the judicial integrity of the federal judiciary to which is at the cost of this petitioner's unalienable rights provided via the First, Fifth, and Sixth Amendments to the US Constitution that costed this petitioner his liberty, freedom, and substantive rights enshrined in the US Constitution.

The petitioner, by the language of the US Constitution at Amendment Six(6), is entitled to an impartial jury of his peers absent any outside distractions and/or interference of the prosecutor, in this case, his handing tasty morsels of candy to each individual juror, to which diverted the attention from the fairness of the process to an unduly influenced judicial process weighted greatly in favor of the federal government. This not only adversely effective the substantive rights of Constitutional due process of this petitioner in the first instance, but brought forth a complete bias and prejudice process in a "not so innocent" act/action on the part of the federal attorney by which any reasonable jurist would have viewed as tainting the process and removing any reasonable probability of fairness and/or impartiality on the part of the jury as this empaneled jury was completely compromised and the petitioner's standing and rights were eviscerated at this moment. But for the act/actions of the federal prosecutor handing out his tasty morsels of candy to the empaneled jury, this petitioner would have [at least] stood a fair and honest chance to receive a fair and balanced judicial process in the first instance by an unbiased and impartial jury.

It is important to note that the Sixth Amendment to the US Constitution delicately and deliberately enshrines the rights of the petitioner, and all

whom stand accused of a crime, to the right to an impartial jury of his/her peers in the realm of substantive due process, TO WIT:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury [emphasis added] of the State and district wherein the crime shall have been committed,..."

The optimal operational portion and element to emphasize is "...by an impartial jury..." to which this petitioner was then entitled to in the first instance to which he did not enjoy but for the act/actions of prosecutorial misconduct on the part of the US Attorney and his "candy parade." This clearly eroded the entire judicial process of its fairness, impartiality, and transparency.

This completely inappropriate act/action on the part of the federal prosecutor with his diversion tactics was an act of misconduct that so infected the trial process with elements of unfairness so as to make the resulting conviction a complete denial of substantive due process rights and all resulting proceedings were tainted in the first instance. See "Darden v Wainwright," 477 US 168, 181 (1986).

If these devicive acts transcend the federal judiciary, then it must be explained in plain and concise language to the petitioner how this eggregious act/action of the federal attorney to pass out his "morsels of candy" to the em-paneled jury does not effect the administration of justice and how the "scales of justice" is not wrongly effected and swayed to the side of the federal government.

This is an act that is highly immoral, highly unethical, and is a travesty in the eyes of Lady Justice when the day has come that the court lower turns a "blind eye" to an act/action that so divests the petitioner of a fair and honest impartial jury when their own federal attorney, an officer of the court, flagrantly violates ethical rules in a "not so innocent" act/action to which the petitioner views clearly as an act to assure his guilty verdict even in the face of mounting evidence to the contrary.

In the end it is seen that the devaluation of fairness and equity in justice in the federal court has pervaded even the highest of appellate courts to which the petitioner herenow brings forth to the nation's highest Court of Constitutionality as this Honorable Court should recognize the fact that this act/action of misconduct on the part of the federal prosecutor, in the midst of a jury trial as the devaluing of justice, in total, is a violation of ethical conduct and canons of all attorneys and the "blind eye" of the judge only perpetuates the simple fact that justice has been denied this petitioner.

As to Question One(1), Certiorari should be granted as this petitioner is entitled to justice via the US Constitution.

2. Did the federal agent's documented lack of training in recognizing that an interpreter was needed in the legal case of the petitioner during the questioning in the first instance due to the present language barrier prevent full disclosure and transparency of the matter of legal jeopardy to the petitioner and so taint the judicial process so as to condemn the petitioner of the alleged conduct even before the trial for which he stood accused of.

The petitioner states that a language barrier was then, and remains today, present in a manner so as to divest him of opportunity to provide a valid and meaningful defense due to the lack of knowledge of the definitions and true meanings of words in the ordinary sense, muchless the legal terms used. This language barrier is so pronounced in the first instance as Kessel, a native of Cuba, native language Spanish (Cuban dialect), it is seen that Agent Atkins in the midst recognized his lack of training. It is to be judicially noticed that, although petitioner has been in the United States for some forty(40) years, his knowledge of the English language is scant, at best, as he has learned sporatically over the years by necessity only due to attempting to converse with others whom do not speak his language.

During the suppression hearing, federal agent Atkins made the statement of "no" when asked about his training, official or unofficial, in regards to

his coming into contact with a person for whom the English language is the second language spoken. This is a clear concession/admission on this agent's parts that he was cognizant in the first instance of contact with the petitioner that he had absolutely no knowledge [emphasis added] nor training to decypher if the petitioner, indeed, did understand the English language and, therefore, this only devolves into if the petitioner did understand or made to understand the gravity and complexity of what was occurring to him at this time.

At Cross 26, Agent Atkins continued his oration that, "Just because they speak a different language doesn't mean that they don't know the Constitution." This conclusory statement is not only illogical, but is clear deliberate indifference to the fact that the petitioner, in his difficulty to understand the simplest of terms of the English language, could not be expected to understand the complexities of the US Constitution. This is clearly an act/action in this agent's statement that so shocks the conscience and makes the foundational principals of justice quake that clearly agent Atkins is **not** qualified to carry out his duties as a federal agent as he explicitly fails to understand his Oath to uphold the Constitution in total and is an act of malfeasance and warring against the US Constitution and should be removed from office immediately. How many others similarly situated as this petitioner has been relegated to the same illogical conclusion?

Further evidenciary proof that an interpreter was needed in the first instance is a proven statement on the record during pre-trial hearing by US Magistrate Lajuana that certainly did recognize that, indeed, a language did exist to which would have transcended to the entire legal case from the first act/action of contact all the way through to the end of the legal process to which also includes all contact with the petitioner's attorney and contact with federal agents. This was a direct act/action and carefully worded statement on the part of the US Magistrate that, at this time, cognizantly recognized that a

language barrier did, in fact, exist in regards to this petitioner and recognizes that the petitioner did then and remains today to have a relevant substantive issue with the speaking and understanding of the English language. The question now is if the petitioner had difficulty understanding the basic English language, then how is it cognizable in a perfect situation or circumstance to even infer that the petitioner could even ascertain answers, remarks and terms of legal-ease that are often employed by federal agents in attempt to elicit a confession?

It is obvious that the presence of a language barrier presents a great obstacle to which the federal court did, in the first instance, recognize while the attending federal agent and his entourage remained oblivious and ignorant to such fact at the time of questioning. Clearly it is apparent that an obstacle was present as to the petitioner's understanding of the English language and it was so limited so as to present additional obstacles and hurdles for the federal agents to traverse.

Just because a person fails to orate a statement or say something does not mean that they competently understand what is occurring as this is indicative of a person for whom speaks another language foreign to the English language as such person speaks a native language that which the English language may only be second in line and very limited at best. In this case, this petitioner did not understand what was occurring and the complete and utter failure on the part of the federal agents did provide for a complete divesting of his substantive rights of due process under the First, Fifth, and Sixth Amendments to the US Constitution. "Due to the communication barrier between Guerro and Bardsley, and Bardsley's failure to obtain a spanish-speaking interpreter, Bardsley illegally expanded the scope of the traffic stop." See "United States v Guerrero" 354 F3d 584 (8th Cir, 2004). In "BC v Attorney General for the United States of America", 12 f4th 306 (3rd Cir, 2021) [No[s]. 19-1408, 20-2078], due process was wrongly denied due to the failure to conduct an adequate initial

evaluation of whether an interpreter was needed to which no act/action was properly taken even after a language barrier was apparent during the merits hearing. Even though not explicitly stated in the US Constitution, there is an implicit understanding within the Fifth and Sixth Amendments to the US Constitution that due process requires that an interpreter be provided when it is apparent, on its face, that the accused person, in this case the petitioner, has extremely limited proficiency of the English language. It is accepted that this is an implicit right of substantive due process in the preliminary steps in a legal case to which fully extends throughout the entire legal proceeding to which the petitioner's civil and liberty interest are placed into legal peril and jeopardy.

The appellate court for the Fourth Circuit has expressed their rightly valid concerns about translation errors and has observed and recognized that a petitioner's non-responsive answer or uncomfortable answer is an understanding for someone whom has experienced abuse by federal government authorities during a previous questioning episode, especially when their primary language spoken is not the English language but the accused person's native tongue/language to which may or may not have different dialects. See "Ilunga v Holder," 777 F3d 199, 212-13 (4th Cir, 2015). In "United States v Jiong," 476 F3d 1026 (9th Cir, 2006), in regards to the language barrier: Insufficient evidence supported defendant's conviction under Title 18 USC § 1001(a)(2) for making a false statement to a federal agent. The context of the statement, language barrier, and the ambiguity of the exchange undermined the district court's finding that the statement was material and intentional.

This matter of dispute could have been largely avoided in the first instance with the federal agent's inquiring into the understanding of the petitioner and his primary language spoken to which was not the English language as perceived by federal agents in the first instance. A fully qualified and trained

certified interpreter could have, and should have, been utilized in the first instance during the preliminary questioning, interrogation, and on into the legal case proceedings of the petitioner. Unfortunately, this ultimately did not occur in proper order as the federal agent did, in his known tactics, continuously pressed petitioner, along with other agents present, to speak and state matters to which he obviously had no knowledge or understanding of at that time and, in the interim, failed to employ the services of a certified interpreter at all. In "United States v Garcia-Garcia," 2017 US Dist LEXIS 204049 (USDC NE, 2017) in Case No. 8:17-cr-145, it was stated that of course, the dispute before the court could have largely been avoided (recognition of the matter/dispute at hand) had a properly trained and certified interpreter been employed and utilized during the criminal interdiction operation. This statement clearly shows, with emphasis by petitioner, that if the court did recognize such need for a certified trained interpreter to assure that no "garbling" of terms was used and that the petitioner was fully made aware of each and every word to include, but not limited to, the "legal ease" employed by federal officials as spoken to petitioner there would have been a fully and lawful transparent clarified communication but, instead, the "words of art" and "colorful" words used tactically by federal agents were used to purposely and knowingly deceive.

A miscarriage of justice did occur in this matter due to the lack of the federal agents knowledge to employ the services of a trained and certified language interpreter from the first instance to which the only cure is for this Honorable Court to grant Certiorari by authority of this Honorable Court to allow a complete combing of the record and interview of petitioner and all relevant parties involved. If the agent had been duly careful in the first instance, this issue would have been resolved at that moment in time and would have fully exhibited that the federal agent would be acting in Good and Honest

Faith. Unfortunately, the federal government failed to come to the table with clean and honorable hands in this matter to which has divested this petitioner of his substantive rights accorded under the First, Fifth, Sixth Amendment(s) of the US Constitution with also equal protection under the laws of the United States, pursuant to the Fourteenth Amendment (Section 1) of the US Constitution. This divesting of unalienable and substantive rights provided by the US Constitution procedurally defaults the district court and appellate court/s acts/actions.

3. Does the advisement of the petitioner by the federal agent (Atkins) of the rights of Constitutionally protected due process that was explained as "Conscious" rights instead of "Constitutional" rights suffice as fair notice under the law of obtaining consent for a Fourth Amendment search and/or advisement of rights under the "Miranda v Arizona," 86 S Ct 1602 (1966) standard to a person whom had very limited understanding of the legal ease and English language spoken when this is not an accepted manner to which a person's Constitutional rights are orated, explained, or dictated to the accused?

Merriam-Webster Dictionary defines "conscious" as being aware, done with awareness or purpose, the upper level of mental life of which a person is aware.

The 11th Edition of Black's Law Dictionary defines "constitutional" as of, relating to, or involveing a constitution <constitutional rights>, and/or proper and valid under a constitutoin <constitutional actions>.

The "right," in a "constitutional right," can be only akin to an absolute right to which the 11th Edition of the Black's Law Dictionary defines as a right that belongs to every human being. Pursuant to the US Constitution and the language forwarded by the Founding Fathers, these rights are unalienable and are never waivable in any instance.

On Direct 100, Agent Atkins was asked to explain to the court precisely how it was that he explained the written consent to search form to the petitioner. Within this oration, Atkins began by stating that he would have the consent form before him and standing before the petitioner. During his continued illustrative oration, Atkins then directly stated that it would be "understood"

that the police department had not obtained a search warrant authorizing a legal/lawful search and that the petitioner had a "conscious" [emphasis added] right to refuse permission to conduct the request -- the request of the search. Atkins then orated that the petitioner also would understand that any evidence found as a result on this search may be used against him in the court.

Atkins, during the oration, made the critical error of stating that a search warrant had not been secured from a magistrate or other judicial official to which his incursion onto the property at that time should have ceased. Instead, he deliberately confused and confounded the petitioner with his "legal ease" wording to obtain a consent to which Atkins, at this time, had full knowledge that he was divesting the petitioner of his Fourth Amendment guarantees under the US Constitution. "Where rights secured by the Constitution are involved, there can be no rule making [, determination by a federal agent,] or legislation which would abrogate them." See "Miranda v Arizona," 86 S Ct 1602, 384 US 436 p491 (1966). This un-Constitutional act directed at the petitioner by Atkins to subvert his Fourth Amendment protections did not then, and remains today, to have no force of law as such un-Constitutional act confers no rights; imposes no duties; affords no protections [to the trespassing federal agent]; creates no office; it is in legal contemplation, as inoperative as though the action had never been orated into positive law. See "Norton v Shelby County," 118 US 425 p442 (1886).

The general rule is that an un-Constitutional act/action, though presented as a colorable act/action by the federal agent, has no force of law and is wholly void for any purpose. In this matter, the court should recognize that the petitioner was not bound to obey the un-Constitutional commands of the agent to which no court is bound to enforce the un-Constitutional garnering of the alleged evidence to continue a prosecution premised upon a violation of the petitioner's Fourth Amendmnet right. See 16 Am Jur 2d, Sec 177.

In this legal matter, that deprived this petitioner wrongly of his liberty interest and civil rights, if Agent Atkins was working in Good and Honest Faith, then Atkins could have stated that he was in error in regards to the language used within the encounter with the petitioner. This did not occur. Agent Atkins failed in his duty to insure that the petitioner, a Cuban by Birth with minimal understanding of the English language let alone legal ease employed during the encounter, that is tantamount to the knowing deprivation of rights under the Color of Law, as orated at Title 18 USC § 241, 242 and, with calculated thoughts and actions, Atkins knew his act/actions were to the detriment of the US Constitution to which he has sworn an Oath upon taking office and a willful ACT OF MALFEASANCE and warring against the US Constitution. Where the entire case is premised upon an unlawful search of a premises **absent a lawful search warrant**, the rights of the individual, in this case the petitioner, were eviscerated in the first instance requiring this Honorable Court to look beyond the simplistic arguments that the government forwarded to protect the federal agent in this process.

By the sole testimony of Agent Atkins, he never provided the petitioner with his Constitutional right of his right to refuse the search. In the cross exam @ 128, 129, Agent Atkins refers to the "xerox" as if he failed to be educated on what the document of legal consequence says unless he reads it verbatim.

As to the oration of a "conscious" right versus a "Constitutional" right, the first means **absolutely** nothing as to the rights of this petitioner where the latter means **absolutely everything** within the realm of Constitutional rights. Language and communication is critical within this petitioner's legal case as history shows that, while this petitioner has been within the federal institutional system, he is still not fluent in the English language and has difficulty with communicating on a daily basis. The language barrier fostered a bad faith operation by the federal government which, in turn, eviscerated any protections

accorded this petitioner by the US Constitution and its Amendments. In this matter of legal consequence, the federal agent [Atkins] cannot have things both ways whereas he may orate the rights of the petitioner as a "conscious" right while attempting to "explain away" his statement as a "constitutional" right as the petitioner had no clue as to what was being spoken much less meant at this time.

4. Did the instruction by the federal agent for the petitioner to open a package that was not addressed to him nor was he expecting delivery of provide for a knowing instruction to violate the plain language of Title 39 USC § 3004 that was meant to continue the deprivation of protections accorded under the Fourth Amendment to the US Constitution?

The petitioner, residing at his lawful residence, was ordered to open a package that was **not** addressed to him. First and foremost, the agent and the Postal Inspector had forknown knowledge that said package was **not** addressed to the petitioner and knew that the petitioner had been at this residence for a long period of time.

Title 39 USC § 3004 states:

Whenever the Postal Service determines that letters or parcels sent in the mail are addressed to places not the residence or regular business address of the person for whom they are intended, to enable the person to escape identification, **the Postal Service may deliver ONLY upon identification so addressed.** [emphasis added].

Although the petitioner was expecting a package addressed to him by name, the petitioner was not expecting the package provided. At the moment the Postal Inspector [Shade] became aware that the package in question was not addressed to the petitioner, such agent **must** seek to obtain a search warrant before any further investigation of the package ensues. "Oliver v United States," 239 F2d 818, 823 (8th Cir, 1957) orates that "The question of unreasonable search and seizure in postal inspections is entitled to be resolved; where legislative or administrative regulations exist by such valid limits as have been fixed and held out thereunder as constituting the extent of mail opening in which

Post Office will engage." This matter contains an unreasonable search and seizure by federal agents that is violative of the petitioner's Fourth Amendment guarantees as well as the person to whom the package was addressed and, therefore, the acts/actions of the federal government are void and of no effect thus resulting in a detention not premised on a proper Fourth Amendment search and a violation of all petitioner's substantive rights of due process accorded via the First, Fifth, and Sixth Amendment(s) to the US Constitution along with equal protection under the laws of the United States pursuant to the Fourteenth Amendment (Section 1) to the US Constitution..

In "Olive," the court valided stated that in promulgating a regulation to the effect that First Class® mail may not be opened, the government; had "fleshed out" rights secured by the Constitution of users of the US Postal Service mailing system. As expounded in "Jackson," to be free of searches of mail, it is intended to be closed against inspection. In both "Jackson" and "Van Leeuwen," it was plainly made understandable that the examination of the outside of mail and packages is of no Constitutional significance as, although regulations may set boundaries of previously established rights via the US Constitution, they do not create new ones to be adhered to as the court will turn to "United States v Caceres;" 99 S Ct 1465 (1979) for guidance as to when violation of government regulations requires suppression of evidence obtained as a result of the violation.

The Postal Operations Manual has rules and regulations set in place to which Postal Inspector Shade was aware of at 115.6.

"A postal inspector acting diligently and without avoidable delay, upon reasonable suspicion, for a brief period of time, to assemble evidence sufficient to satisfy the probable cause requirement for a search warrant in accordance with 115.6, and to apply for, obtain, and execute the [search] warrant."

The Postal Inspector, being a sworn officer of the federal government, cannot claim ignorance of the law due to his duty as such officer requires him to

be cognizant and knowledgeable of each regulation that controls his behaviour as the agent must comport to federal law and the regulations promulgated therein. In this legal matter of consequence, the [unlawful] instruction for the petitioner to open the package was the triggering mechanism for the probable cause, a self-evident [on its face] violation of the petitioner's Fourth Amendment guarantees against unlawful and un-Constitutional search and seizures.

The knowing decision on the part of the federal agents to continue investigating the petitioner then turned into the interrogation to which was the sole aim of Agent Atkins from the first instance due to the known fact that the petitioner was a known convicted felon for drugs. This entire matter and premises began at the petitioner's 1700 Cleveland address in Kansas City with its processing but the idea to pierce more into the matter against the petitioner only occurred at the 6628 Oxford Ave address to which Agent Shade and Agent Atkins had forknow knowledge that the package did [allegedly] contain contraband, petitioner lived at 6628 Oxford Ave, and that the petitioner was a known [former] person whom had a felony conviction for drugs.

In the end, it is self-evident that the entire matter was in violation of the terms of Title 39 USC § 3004 as to knowing that the package was not addressed to the primary resident, the petitioner and, therefore, the instruction to the petitioner to open the package not addressed to him has Fourth Amendment implications regarding the rights of the petitioner as a diligent search for the person to whom the package was addressed to was never completed as the federal agents used this incident to purposely target the petitioner due to his past to which is a deliberate act of deliberate indifference of being presumed innocent until proven guilty by a jury of his peers via the Sixth Amendment as there was never a compulsory process in the first instance. It is a shame that the lower court and appellate court failed to recognize the importance of the Fourth Amendment guarantees against the backdrop of "saving

the face" of the federal government and its agents in their quest to subvert the substantive rights of this petitioner.

Certiorari should be granted to ascertain the full and complete reasoning of why the subversion of the Fourth Amendment occurred while the federal agents knowingly employed tactics to violate a valid federal statute that protects US Mail and its opening by someone whom it is not addressed to.

5. Did the appellate court provide for an act of misconduct and malfeasance when it failed to take into account the facts of the petitioner by quickly and promptly affirming judgment when valid facts were presented to refute the government's assertions regarding these issues.

The appellate court is designed to be an arbiter for justice when a miscarriage of justice occurs in the lower court to which did occur in this petitioner's legal case proceedings. As the appellate court is defined as a court with jurisdiction to review decisions of lower courts, pursuant to the 11th Edition of Black's Law Dictionary, the duty of this appellate court is not to foster an act/action to continue to deprive this petitioner of his unalienable rights accorded by the US Constitution.

There is an egregious failure of justice in this case, also termed "miscarriage of justice" that is defined as "a grossly unfair outcome in a judicial proceeding, as when a defendant is convicted despite a lack of evidence on an essential element of the crime. See the 11th Edition of Black's Law Dictionary. In this legal case, this entire legal matter would have not been prosecuted or the petitioner even targeted but for the flagrant acts of misconduct and the ignoring of rules by the federal agents (Atkins and Shade) in the first instance and the willful ignoring of postal policies.

The use of a judicial proceeding to foster an approval for a federal agents knowing act of trespass upon the Fourth Amendment and other unalienable rights accorded via the US Constitution works a miscarriage of justice upon the courts. A review is justified due to the appellate court failed to take into account

valid provable points of law and facts to which they justified by their quick and deliberate act of denying relief absent a full review of the presented brief in opposition to the government. This is not only an error on the part of the appellate court, but is an act of judicial misconduct that is so eggregious so as to work an injustice that is damaging to the integrity, fairness, and public perception of the federal judiciary to which pervades 99.9% of all circuits within the federal judiciary. This petitioner is of great a great hope that this "one Supreme Court," as stated in Article III of the US Constitution, is not within the perception of the public that it will also deny justice. The term "miscarriage of justice" is by no means a term to just "throw around" in order to garner attention, but is deemed synonymous with procedural irregularity, or even reversible error. The greater substance is definitively present in this legal case as the agent's ignorance of law and to procedural rules was a knowing act to foster the subversion of the petitioner's Fourth Amendment protections and infiltrated and treaded upon the Constitution in a manner to which it can only be said that an act of warring against the Constitution did occur to which was wrongly condoned by the appellate court. See "Walker v Penn," 271 Ga 609 (1999); "United States v Olano", (507 US 725, 733 (1993).

Writ of Certiorari should be granted on this issue as the petitioner is entitled to a judicial proceeding free from hinderance of judicial misconduct and acts of malfeasance in the first instance. But for the fact that the appellate court acting knowingly quickly to negate the effects of the points of law and facts presented to counter the government's contentions, this matter would have been settled in the previous appellate proceeding thus conserving the judicial economy of this Honorable Court. As of the result of the act/ actions of the appellate court, this Honorable Court is now tasked with the full unbridled investigation of this matter of legal importance to ascertain the truth behind the appellate court's act/actions of judicial misconduct to

quickly affirm the judgment without holding oral arguments or questioning the judicial courts decision in the district of conviction and, therefore, the judicial economy is properly used and optimized for this purpose.

As a result of the entire handling of this legal matter of consequence by both the court lower and appellate court, the discretionary authority of this Honorable Court ordained by the US Constitution is now invoked to bring forth a Constitutional light to this question and entire matter of legal consequence.

ABSOLUTE REASONS FOR GRANTING
WRIT OF CERTIORARI

As the petitioner's liberty interest and civil rights have been eviscerated at the hands of federal agents ignoring rules, procedures, and petitioner's Constitutional rights, this Honorable Court has the power, authority and the Constitutional duty, pursuant to the language of Article III of the US Constitution, to provide this petitioner his due date for justice as the Honorable Judges of this "One Supreme Court" are duty bound to pierce the veil of injustice, errors, and misconduct to bring forth the truth and light to this matter of legal consequence. The petitioner has full and unwaivering faith that this Honorable Court will, in keeping with the traditions and procedures of this Honorable Court, take a hard long look at this matter and determine that the rights to which this petitioner were entitled to in the first instance never appeared on the record and have never existed.

It is seen throughout the petition that the unethical and arbitrary acts/actions of the US Attorney, federal agents, court lower, and appellate court did facilitate the complete evaporating of unalienable rights provided under the First, Fifth, and Sixth Amendments to the US Constitution as this petitioner, in particular, was never afforded equal protection under the laws of the United States as orated in the Fourteenth Amendment (Section 1) of the US Constitution.

From the US Attorney deliberately handing out morsels of candy to the empaneled jury for trial, to the federal agent's lack of training in recognizing that the petitioner was in need of a certified and trained interpreter due to the clear language barrier that condemned the petitioner before trial, to the petitioner's being advised that he had "conscious" rights and not "Constitutional" rights in regards to his right to refuse access for a search, then the instruction by the federal agent to petitioner to open a package, even though not addressed to him, that was violative of clearly passed language of Title 39 USC § 3004

to wrongly facilitate the probable cause to enable a search, and finally the appellate court quickly, without delay, affirming the judgment of petitioner in light of their ignoring the counter brief to the government's opposition, the entire legal process was a failure from the word go to which the court lower and appellate court simply ignored to perpetuate the injury that has occurred with the deprivation of rights under color of law, pursuant to the language of Title 18 USC § 241, 242.

This continued ignoring of the facts to contravene the need to pierce the veil has brought forth a miscarriage of justice that so affected the fairness, integrity and public perception of the federal judiciary as to be an embarrassment in the eyes of the justice. This country was founded, as I have learned, to be a land and government "of the people, by the people, for the people" to which the federal judiciary has turned justice on its ear by encapsulating the term of "just-us" for those government officials whom feel entitled to use Constitutional provisions and protections in their favor while simply ignoring the Constitutional [unalienable] rights of those whom stand accused of a federal offense such as the petitioner. While the "Olano" standard stands tall for plain error, a much bigger issue is deciding what constitutes a miscarriage of justice and how to provide redress. This petitioner is of the opinion that he has not been accorded any of his [unalienable] Constitutional rights from the first instance due to the intrusion of the federal agents into the life of this petitioner by "tricking" him to open a package that he had no knowledge of but was expecting a package addressed to him personally.

In this legal matter of consequence, the "petitioner" can and will demonstrate actual prejudice due to the failure of the appellate court's duty to consider his claims that did result in a substantive and fundamental miscarriage of justice that led to a complete deprivation of his civil liberties and his rights. See "Martinez v Ryan," 182 L Ed 2d 272 (2012).

Further, the Office of Solicitor General cannot take a stance of non-committal and state that they have no legal opinion regarding this legal matter of existential consequence due to the fact that when a Constitutional right is ignored, negated, deprived, or withheld from an accused, such as the petitioner, the onus is set upon said official to investigate and determine the validity and veracity of this petitioner's claims to the extent that such requires a valid and lawful answer at the direction of this Honorable Court. This petition should not be ignored simply due to it being a pro-se litigant whom is an immigrant from Cuba, but should be given its day before this highest Court in the land with benefit of a fully briefed petitioner and respondent brief with supportive points of law and facts. The "business as usual" aspect of the federal judiciary is the cause of this travesty to the extent that those whom are charged with the protecting of this petitioner's rights have wrongly wagered the liberty and Constitutional rights accorded via the First, Fifth, and Sixth Amendment(s) with the equal protection under the laws of the United States, pursuant to the Fourteenth Amendment (Section 1) Amendment of the US Constitution against the unlimited and "bottomless pit" of resources at the disposal of the federal government in prosecuting this legal matter.

This petitioner is entitled to a trial by jury of his peers, be allowed to confront all witnesses against him in order to impeach their facts, to have compulsory process for obtaining witnesses in his favor, and have the assistance of effective counsel to which would have occurred but for the handing out of "morsels of candy" to the empaneled jury, the ignorance that an interpreter was needed for the requirements of the petitioner's civil and liberty interests, that federal agents were to be versed in law and procedures regarding protecting petitioner's Fourth Amendment right against illegal search and seizure, and having an appellate court process free of hinderances to which fostered an acceptance of federal agents and the lower courts misconduct and

knowing errors on the face of the record with mounting evidence to the contrary of the government's assertions.

As a result, this petitioner humbly requests this Honorable Court to grant Certiorari on all legal matters raised in this petition. Further, petitioner requests that the record be called up by this Honorable Court in an act of prudence and justice so that a full exposure to the entire legal case proceeding may be had in the first instance by each and every Honorable Justice of this Supreme Court. The judicial authority of this Honorable Court, enshrined in Article III of the US Constitution, is hereby invoked to bring forth a judicious end to this matter that results in Certiorari being granted in total.

Upon the granting of this Writ of Certiorari petition, the petitioner request that an upstanding attorney whom is a member of this Honorable Court's Bar be promptly appointed to usher this matter through legal procedures to which may also require the appointing of a Special Master in the interim so as to preclude the ignoring of the facts of this matter.

So as it is said, the petitioner herenow humbly requests that this Petition for Writ of Certiorari be docketed for consideration by the Honorable Justices of this Honorable Court and that the Justices of this Honorable Court see the plight of this petitioner as he, in diligence, has presented [t]his petition in Good and Honest Faith to the best of his ability.

CONCLUSION

For the premises provided within this Petition for Writ of Certiorari to the US Court of Appeals for the Eighth Circuit, the petitioner humbly requests that [t]his petition be forthright granted as this petitioner has been deprived his substantive rights of due process as provided by the US Constitution as the legal maxim "Justice Delayed is Justice Denied" to which has been referred throughout the years by this and other lower courts when the legal matter at hand has been neglected so flagrantly so as to eviscerate justice and liberty interest at all costs. Justice and time has no correlation as time holds no nearing when a legal proceeding is so tainted so as to wrongly effect the integrity, effectiveness and public perception of the federal judiciary.


As a result of the miscarriage of justice that has perpetuated within [t]his legal case from the first instance, Writ of Certiorari should issue as this is the only means to investigate and correct the injustices within the petitioner's legal case proceeding and pierce the veil of misconduct and malfeasance that has pervaded this legal case proceeding.

Affirmation

I, the undersigned, do hereby state that the facts contained within [t]his Petition for Writ of Certiorari is True, Accurate, and Correct to the best of this petitioner's knowledge and belief and is sworn to under the pains and penalties of perjury, pursuant to Title 18 USC § 1745(1).

Date: 14 Feb 23

Respectfully Submitted,


Victor Rodriguez Kessel