

No. 22-7391

IN THE
SUPREME COURT OF THE UNITED STATES

JOSHUA G. STEGEMANN — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — 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

JOSHUA G. STEGEMANN, Reg. No.: 20552-052

(Your Name)

FCI-RAY BROOK, P.O. BOX 900
RAY BROOK, NY 12977

(Address)

RAY BROOK, NY 12977

(City, State, Zip Code)

Imprisoned

(Phone Number)

QUESTION(S) PRESENTED

1. If a lawyer advises her client to reject a favorable plea deal and instead proceed to trial in the face of overwhelming evidence of guilt resulting in conviction and far longer imprisonment than would have been imposed under the plea, was the lawyer's advice objectively unreasonable under the Sixth Amendment's guarantee to effective assistance of counsel?
2. Does a criminal defendant have a right to be represented by counsel of his own choosing where the government is wrongfully withholding his untainted assets and he has not disclosed his prospective choice of counsel in order to trigger release of his seized assets?

LIST OF PARTIES

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

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

RELATED CASES

USA v. Stegemann, 701 F. App'x 35 (2d Cir. 2017)

TABLE OF CONTENTS

| | |
|--|------|
| OPINIONS BELOW | 5 |
| JURISDICTION..... | 6 |
| CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED | 7 |
| STATEMENT OF THE CASE | 8 |
| REASONS FOR GRANTING THE WRIT | 9-12 |
| CONCLUSION..... | 12 |

INDEX TO APPENDICES

APPENDIX A Order of the Second Circuit for which Certiorari is sought.

APPENDIX B Order of the District Court appealed to the Second Circuit.

APPENDIX C Denial of Petition for Rehearing.

APPENDIX D April 5, 2023 Letter from SCOTUS Clerk's Office granting a 60 day extension to comply with filing requirements.

APPENDIX E

APPENDIX F

TABLE OF AUTHORITIES CITED

| CASES | PAGE NUMBER |
|--|-------------|
| <u>Boria v. Keene</u> , 99 F.3d 492 (2d Cir. 1996)..... | 9 |
| <u>USA v. Carmichael</u> , 216 F.3d 224 (2d Cir. 2007)..... | 9 |
| <u>USA v. Fernandez</u> , 2000 WL 534449 (S.D.N.Y. May 3, 2020)..... | 9 |
| <u>Davis v. USA</u> (Pending Certiorari Petition in this Court)..... | 10 |
| <u>USA v. Bonventre</u> , 720 F.3d 126 (2d Cir. 2013)..... | 11 |
| <u>Luis v. USA</u> , 578 U.S. 5 (2016)..... | 11 |

STATUTES AND RULES

| | |
|--|--------|
| Sixth Amendment to the United States Constitution..... | Passim |
|--|--------|

OTHER

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,
 is unpublished.

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

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

[] For cases from state courts:

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

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

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

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

1.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 11/18/22.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: 1/12/23, and a copy of the order denying rehearing appears at Appendix C.

An extension of time to file the petition for a writ of certiorari was granted to and including June 5, 2023 (date) on April 5, 2023 (date) in Application No. A (Letter from Clerk's Office, attached in Appendix D

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

For cases from **state courts**:

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

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

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case turns entirely on the Sixth Amendment to the United States Constitution, specifically on the right to effective assistance of counsel and the right to counsel of choice.

STATEMENT OF THE CASE

My lawyer advised me to reject a favorable plea deal and instead proceed to trial in the face of overwhelming evidence of guilt. I was convicted and sentenced to 30 years imprisonment and LIFETIME supervised release. This is a much more severe sentence than would have been imposed pursuant the plea deal counsel advised me to reject. In the habeas proceedings, my lawyer admitted that she advised me to "reject the government's plea offer." The District Court held that this was reasonable advice. The Second Circuit affirmed that judgment.

Also, the District Court appointed counsel over my objection and despite my assertion that the government was holding my assets without cause. The government later conceded it was holding my assets without cause, after I was sentenced on direct appeal. The Second Circuit, in affirming denial of my habeas petition, holds that in order to trigger the right to counsel of choice and to use one's assets to assert that right, a defendant must first present an attorney he wishes to hire.

I ask this Court clarify, once and for all, whether a lawyer's advice to reject a favorable plea deal in the face of overwhelming evidence of guilt and instead proceed to trial, conviction, and a far more severe sentence is objectively unreasonable as a matter of law. And, likewise, whether a defendant must present a lawyer he wishes to hire in order to trigger release of his wrongfully withheld assets to the end of asserting his right to counsel of choice.

REASONS FOR GRANTING THE PETITION

POINT 1

I AM ENTITLED UNDER THE SIXTH AMENDMENT TO RELY ON MY LAWYER'S ADVICE. THE SECOND CIRCUIT HOLDS THAT BECAUSE I RELIED ON MY LAWYER'S ADVICE TO REJECT A FAVORABLE PLEA DEAL I MAY NOT COMPLAIN ABOUT MY SUBSEQUENT CONVICTION AND LENGTHY IMPRISONMENT. THIS IS CONTRARY TO THE SIXTH AMENDMENT'S GUARANTEE TO EFFECTIVE ASSISTANCE OF COUNSEL.

The Second Circuit faults me for relying on my lawyer's advice to reject a favorable plea deal and instead proceed to trial in spite of overwhelming evidence of guilt. But this is not the law. Rather, I am entitled to rely on counsel's advice and that advice is, in turn, required to rise to contemporary professional norms. Otherwise, the Sixth Amendment right to effective assistance of counsel means nothing. The Second Circuit's blame-the-client ruling in this case is inconsistent with Sixth Amendment law as set forth by this Court and many others nationwide. Plus, the Second Circuit's holding is internally inconsistent with its own precedent where it has previously held in several similar cases that a lawyer is plainly ineffective when she advises her client to reject a plea deal and proceed to trial when "defendant's best interests clearly require that a proffered plea bargain be accepted." Boria v. Keene, 99 F.3d 492, 496 (2d Cir. 1996); USA v. Carmichael, 216 F.3d 224, 227 (2d Cir. 2007) (Same); and see USA v. Fernandez, 2000 WL 534449, at *3 (S.D.N.Y. May 3, 2020) (Same)

Indeed, this Court recently relisted a similar Certiorari question in Davis v. USA, which posits whether failure to pursue a favorable plea deal in the face of overwhelming evidence of guilt is ineffective assistance. Here, a favorable plea deal was offered and I was ready and willing to accept it, and I would have accepted it but for counsel's conceded advice that I reject it. This was not effective assistance.

For these reasons, I ask this Court settle this question once and for all.

POINT 2

THE SIXTH AMENDMENT DOES NOT REQUIRE THAT A DEFENDANT PRODUCE A LAWYER HE INTENDS TO HIRE IN ORDER TO TRIGGER RELEASE OF WRONGFULLY WITHHELD ASSETS TO THE END OF AVAILING HIMSELF OF THE RIGHT TO COUNSEL OF CHOICE.

One question: Does a defendant have to produce a lawyer he wishes to hire in order to trigger his right to counsel of choice?

The Second Circuit holds the answer is: Yes.

Despite the government's concession that it wrongfully withheld my untainted assets prior to, during, and after trial, the Second Circuit places upon me the artificial burden of proving I had a lawyer "lined up" to hire in order to vindicate my right to counsel of choice. (Appendix A, Pgs. 9-10)

This is not the law.

Not according to this Court, nor any other Court Nationwide. Plus, the Second Circuit's newly-created requirement that a defendant must prove he has a lawyer "lined up" in order to trigger his right to counsel of choice is internally inconsistent where it has previously held "all a defendant need do to trigger a Monsanto or Monsanto-like hearing is to demonstrate that he or she does not have sufficient alternative assets to fund counsel of choice." USA v. Bonventre, 720 F.3d 126, 131 (2d Cir. 2013) A principle echoed by this Court in Luis v. USA, 578 U.S. 5 (2016), which imposes no duty to prove successor counsel is lined up to hire in order to trigger return of untainted assets being wrongfully held. Rather, the Sixth Amendment violation is complete upon the government's interference with rightfully owned assets that may be used to fund the

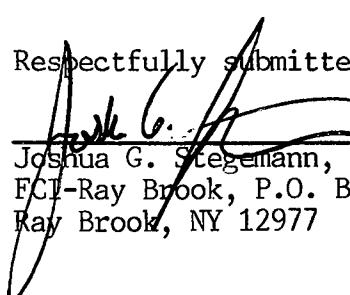
defense, and prejudice is presumed.

For these reasons I ask this Court settle this question once and for all.

Thank you.

April 11, 2023

Respectfully submitted,



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