

No. _____

22-7581

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED

MAY 10 2023

OFFICE OF THE CLERK

Michael David Beiter, Jr. — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

the United States Court of Appeals for the Eleventh Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Michael David Beiter, Jr.
(Your Name)

FCI Bennettsville; P.O. Box 52020
(Address)

Bennettsville, SC 29512
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

1. Whether, under this Court's decision in Borderkircher v. Hayes, 434 U.S. 357, 358-59 (1978); North Carolina v. Pearce, 395 U.S. 711, 738 (1969); Chaffin v. Stynchcombe, 412 U.S. 17 (1973); and United States v. Jackson, 390 U.S. 570 (1969), a person is precluded to do what the law plainly allows him to do, as for the government to pursue a course of action whose objective is to penalize a person's reliance of his legal rights?

2. Whether, under this Court's decisions in Douglas Oil Co. of Cal. v. Petrol Stops NW, 441 U.S. 211 (1979) and United States v. Baggot, 463 U.S. 476 (1983), a person is precluded from having access to grand jury material even after having met every prong in each of the above tests?

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:

The Petitioner herein, who was the Defendant-Appellant below, is Michael David Beiter, Jr., henceforth, Mr. Beiter, Jr. The Respondent herein, which was the Plaintiff-Appellee below, is the United States of America.

Neither party is a corporation.

RELATED CASES

This case arises from the following proceedings in the United States Court of Appeals for the Eleventh Circuit and the United States District Court for the Southern District of Florida:

United States v. Michael David Beiter, Jr.
No. 22-12282 (11th Cir. Feb. 14, 2023);

United States v. Michael David Beiter, Jr.
No. 0:09-CR-60202-JIC (S.D. Fla. May 18, 2022).

There are no other proceedings in state or federal trial or appellate courts, or in this Court that are **DIRECTLY** related to the issues presented in this action.

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

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

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix 1 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 2 to the petition and is

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

☐ For cases from **state courts**:

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

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

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

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

JURISDICTION

☒ For cases from federal courts:

The date on which the United States Court of Appeals decided my case was February 14, AD2023.

☐ 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: April 28, AD2023, and a copy of the order denying rehearing appears at Appendix _____.
The Petitioner does not have a copy of such order ECF No. 28

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

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

☐ For cases from state courts:

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

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

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. Article I, §8 of the United States Constitution provides: "Congress shall have power...To regulate commerce with foreign nations, and among the several States, and with the Indian Tribes...."

2. Article I, §10 of the United States Constitution provides: "No State shall...make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts...."

3. House Joint Resolution 192, ratified into law by the 73rd Congress, 1st Session, on June 5th, AD1933 provides: "Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, that (a) every provision contained in or made with respect to any obligation which purports to give the obligee a right to require payment in gold or a particular kind of coin or currency, or in an amount in money of the United States measured thereby, is declared to be against public policy: and no such provision shall be contained in or made with respect to any obligation hereafter incurred. Every obligation, heretofore or hereafter incurred, whether or not any such provision is contained therein or made with respect thereto, shall be discharged upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private

debts. Any such provision contained in any law authorizing obligations to be issued by or under authority of the United States, is hereby repealed, but the repeal of any such provision shall not violate any other provision or authority contained in such law. (b) As used in this resolution, the term **OBLIGATION** means an obligation (including every obligation of and to the United States, excepting currency) payable in money of the United States; and the term **COIN OR CURRENCY** means coin or currency of the United States, including Federal Reserve notes and circulating notes of the Federal Reserve banks and national banking associations." (emphasis added).

4. Federal Rule of Criminal Procedure 6(e)(3)(E)(i) provides: "The court may authorize disclosure—at a time, in a manner, and subject to any other conditions that it directs—of a grand jury matter: (i) preliminarily to or in connection with a judicial proceeding."

STATEMENT OF THE CASE

In Douglas Oil Co. of Cal. v. Petrol Stops NW, 441 U.S. 211, 222 (1979), this Court established the test for the scope of courts' power to disclose grand jury material, holding that Rule 6(e) exceptions apply **ONLY** when a party seeking the disclosure shows a particularized need. To make the requisite showing, the seeking party must demonstrate (1) "that the material they seek is needed to avoid a possible injustice in another judicial proceeding," (2) "that the need for disclosure is greater than the need for continued secrecy," and (3) "that their request is structured to cover only material so needed," id.

Then, in United States v. Baggot, 463 U.S. 476, 480 (1983), this Court established the test for the purpose of disclosure of grand jury material. The Court held that such request should "contemplate only uses fairly directly to some identifiable litigation, pending **OR ANTICIPATED**. Thus it is not enough to show that some litigation may emerge from the matter in which the material is to be used, or even that litigation is factually likely to emerge. The focus is on the **ACTUAL USE** to be made of the material. If the primary purpose of disclosure is not to assist in preparation or conduct of a judicial proceeding, disclosure is not permitted." id.

Here, the first question reflects an intractable and fractural division in the Eleventh Circuit which goes against this Court's jurisprudence, as well as the Eleventh Circuit's own binding jurisprudence on the issue of punishing

a person because he has done what the law plainly allows him to do. This constitutes a violation to a person's due process rights. Here, the government pursued a course of action whose objective was to penalize a person's reliance on his rights which is patently unconstitutional.

The second question also reflects an intractable and fractural division in the Eleventh Circuit which goes against this Court's jurisprudence, as well as the Eleventh Circuit's own binding jurisprudence on the issue of denying a person to have access to grand jury material even after the person met every prong in the tests referring disclosure of grand jury material as established by this Court's and the Eleventh Circuit's jurisprudence.

A. FACTUAL BACKGROUND:

Mr. Beiter, Jr., after having been forced counsel upon him, was later punished for doing what the law plainly allows him to do. During the entirety of the pre-trial proceedings, Mr. Beiter, Jr. sustained to be innocent of the charges against him, and he still contends to be so.

On March 21st, AD2022, Mr. Beiter, Jr. filed a Motion for Disclosure of Grand Jury Materials Pursuant Fed.R.Crim.P. 6(e)(3)(E)(i) & (ii) (attached hitherto as Appendix 3). Concomitant to said Motion, a joint appendix containing evidence supporting said Motion was filed. However, it was filed separately as ECF No. 208 (See, United States v. Michael David Beiter, Jr., Criminal Docket No. 0:09-CR-60202-JIC, ECF NO. 208).

In his Motion, Mr. Beiter, Jr. raised a claim that AUSA Bertha Mitrani and IRS Special Agent Lavoro acting in concert, committed perjury before the grand jury (Please review Appendix 3; to understand such argument, it is imperative to review ECF No. 208). Thus, having showed that perjury was committed at Grand Jury Hearing No. 09-403, there is a strong presumption that the same is true in every other grand jury hearing. Hence, the need for the requested grand jury material.

B. PROCEEDINGS BELOW:

Mr. Beiter, Jr. was charged with attempting to interfere with the administration of the Internal Revenue Service in violation of 26 U.S.C. §7212; tax evasion, in violation of 26 U.S.C. §7201; and knowingly passing or offering fictitious financial instruments, in violation of 18 U.S.C. §514 (ECF No. 67, Second Superseding Indictment). On November 12, AD2010, Mr. Beiter, Jr. was convicted on all of the counts of the Second Superseding Indictment (ECF No. 155, Verdict) and was subsequently sentenced to 120 months of imprisonment (ECF No. 171, Judgment; ECF No. 197, Amended Judgment). On February 1, AD2011, unbeknown to him, the Federal Public Defender filed a timely Notice of Appeal (ECF No. 173). On November 17, AD2011, the Eleventh Circuit issued its mandate affirming the decision of the district court (ECF No. 201). Mr. Beiter, Jr. did not seek a Writ of Certiorari. Hence, his conviction became final on February 15, AD2012.

REASONS FOR GRANTING THE PETITION

I. DOUGLAS OIL CO. OF CAL. V. PETROL STOPS NW AND UNITED STATES V. BAGGOT:

A. THE DECISION BELOW IS WRONG:

As already stated supra, perjury was employed in order to indict, convict and sentence an innocent person who relied on what the law plainly allowed him to do. Hence, the overwhelming support of circumstantial evidence strongly supports the presumption that perjury was employed in the other grand jury hearings pertaining to the alleged violations to 26 U.S.C. §7212 and 26 U.S.C. §7201. Thus, disclosure of the requested grand jury materials is a "particularized need" in the case at bar.

i. DOUGLAS OIL CO. OF CAL. V. PETROL STOPS NW:

This Court held that "parties seeking grand jury transcripts under Rule 6(e)... **MUST SHOW**, even when the grand jury whose transcripts are sought has **CONCLUDED ITS OPERATIONS**, that the material they seek is needed **TO AVOID A POSSIBLE INJUSTICE** in **ANOTHER** judicial proceeding, that the need for disclosure **IS GREATER THAN** the need for the continued secrecy, and their requests is structured **TO COVER ONLY MATERIALS SO NEEDED**." 441 U.S. 211, 222. (emphasis added).

A thorough review of Appendix 3 and ECF No. 208 will reveal that Mr. Beiter, Jr. has not only **PROVEN** and **SHOWN** that an injustice exists, but also that the injustice committed is in plain sight evidence.

Furthermore, this Court has held that "it has been recognized that in some situations" as here, "justice may

demand that discrete portions be made available for use in **SUBSEQUENT** proceedings...Indeed, recognition of the occasional need for litigants to have access to grand jury transcripts led to the provision in Fed. Rule Crim. Proc. 6(e)(2)(C)(i) that disclosure of grand jury transcripts may be made "when so directed by a court **PRELIMINARILY TO** or in connection with a judicial proceedings." id. 441 U.S. 219-20. (emphasis added). Here, Mr. Beiter, Jr. meets both prongs.

Evenmore, in United States v. Procter & Gamble Co., this Court sought to accommodate the competing needs for secrecy and disclosure by ruling that "a private party seeking to obtain grand jury transcripts must demonstrate that without the transcript a defense would be **GREATLY PREJUDICED** or that without reference to it an **INJUSTICE WOULD BE DONE.**" id. 441 U.S. 221.

Moreover, this Court required that the showing of need for transcripts be made "with **PARTICULARITY** so that the secrecy of the proceedings may be lifted discretely and limitedly." id. Here, Mr. Beiter, Jr. has no need for the names of grand jurors nor grand jury foreman. He requires **ONLY** the transcript portions that pertain to him and him **ALONE** where AUSA Bertha Mitrani and IRS Special Agent Lavoro are the parties addressing the grand jurors.

ii. **UNITED STATES V. BAGGOT:**

Federal Rule of Criminal proceedings 6(e)(3)(E)(i) provides: "(E) The court may authorize disclosure...of grand jury matter:

(i) **PRELIMINARILY TO** or in connection with a judicial proceeding." (emphasis added).

Here, the plain language of Rule 6(e)(3)(E)(i) states that a court "may authorize disclosure...of a grand jury matter...**PRELIMINARILY TO**...a judicial proceeding." id. (emphasis added).

PRELIMINARY, adj[ective] Coming before and usu[ally] leading up to the main part of something happening before something that is more important, often **IN PREPARATION FOR IT** [preliminary negotiations]. (Black's Law Dictionary, 11th ed.) (brackets and emphasis added). See also,

²**PRELIMINARY**, Adjective: Preceding the main discourse or business. Merriam-Webster Dictionary. See also,

'ly, Adjective suffix: 1. like in appearance manner, or nature. id.

The plain English grammar reading of Fed.R.Crim.P. 6(e)(3)(E)(i) dictates that Mr. Beiter, Jr. has met his burden showing that he has a "particularized need" for the material requested. This Court held that Rule 6(e) exceptions "[c]ontemplate only uses fairly directly to some identifiable litigation, pending **OR ANTICIPATED**...The focus is on the **ACTUAL USE TO BE MADE** of the material. If the primary purpose of disclosure is not to **ASSIST IN PREPARATION**...of a judicial proceeding, disclosure is not permitted." Baggot, 463 U.S. 476, 480 (1983). (emphasis and ellipses added).

Plain English grammar suggests that this Court's use of the phrase "actual use to be made" reflects an action to be taken in the future tense. **WHEREFORE**, since Mr. Beiter,

Jr. requests the grand jury material in order to "assist" him "in preparation" of a 28 U.S.C §2255 Motion under actual innocence, he satisfies the Baggot test, which is further supported by the Fed.R.Crim.P. 6(e)(3)(E)(i)'s use of the phrase "preliminarily to."

Appendix 3, at 19 states "this current proceeding precedes the Habeas Corpus relief that will follow," that is, the proceedings at the district court level were part of the same judicial proceeding. Thus, this was an "identifiable litigation...anticipated." Baggot, 463 U.S. 476, 480 (1983). Clearly, Mr. Beiter, Jr.'s request is "preliminarily to...a judicial proceeding." Fed.R.Crim.P. 6(e)(3)(E)(i). (follow, precede, preliminarily, all are synonyms).

The above referred §2255 motion will attack each of the counts of conviction, for as Appendix 3 and ECF No. 208 reflect, AUSA Bertha Mitrani and IRS Special Agent Lavoro, acting in concert, lead the grand jurors to believe that Mr. Beiter, Jr. violated the law, when in fact he was doing what the law plainly allowed him to do. See, House Joint Resolution 192, 73rd Congress, 1st Session, June 5th, AD1933; Article I, §§8 & 10 of the United States Constitution. Thus, at all times, Mr. Beiter, Jr. acted in good faith belief with clean hands. See also, ECF No. 194: 1560 and 1565.

While grand jury proceedings are about probable cause, probable cause is to be demonstrated by facts, not by manipulating the facts to turn them into tainted material elements in order to bring prejudice and to destroy a fellow

human being. This is not only unconstitutional, but draconian and demoniac as well. "A judicial inquiry investigates, declares and enforces liabilities as they stand on present or past and under laws supposed already to exist. That is its purpose and end." Prentis v. Atl. Coast Line Co., 211 U.S. 210, 226, 29 S.Ct. 67, 69, 53 L.Ed. 150 (1908).

II. PUNISHMENT OF AN INNOCENT PERSON:

In United States v. Cole, 755 F.2d 748 (11th Cir. 1985), the Eleventh Circuit, quoting this Court in Bordenkircher v. Hayes, 434 U.S. 257, 258-59 (1978), observed that "[t]o punish a person because **HE HAS DONE** what the law plainly allows him to do is a due process violation of the most basic sort, see North Carolina v. Pearce, 395 U.S. 711, at 738...(1969)...., and for an agent of [the government] to pursue a course of action whose objective is to penalize a person's reliance of his rights is **PATENTLY UNCONSTITUTIONAL**. Chaffin v. Stynchcombe, 412 U.S. 17...(1973). See United States v. Jackson, 390 U.S. 570, 88...(1969)." Cole, 755 F.2d 758 (emphasis, brackets and ellipses added).

This is exactly what took place in the case at bar. A person was unconstitutionally punished because he did what House Joint resolution 192, 73rd Congress, 1st Session, June 5th AD1933 and Article I, §§ 8 & 10 of the United States Constitution "plainly allowed" him to do, and the government's "course of action" had the "objective to penalize" Mr. Beiter, Jr.'s "reliance of his legal rights." Cole, 755 F.2d 758. Thus, the government's actions are "due process violations

of the most basic sort" and are "patently unconstitutional."
id.

It is noteworthy to state that House Joint Resolution 192, 73rd Congress, 1st Session, June 5th, AD1933 is still current law. Hence, Mr. Beiter, Jr. is entitled to a full review of the merits of his case, to be granted the requested grand jury transcripts and be allowed to challenge his conviction and sentence as to prove that he is factually innocent, despite that a petit jury found him guilty at trial. See. McQuiggin v. Perkins, 569 U.S. 383, 386 (2013). To establish actual innocence, a person must show that, in light of new evidence, it is more likely than not that no reasonable juror would have found him guilty beyond a reasonable doubt. id. (citing Schlup v. Delo, 513 U.S. 298, 329 (1995)).

Furthermore, that the "sufficiency of the evidence is a question of law" merit to be "reviewed de novo." United States v. Martinez, 83 F.3d 371, 373 (11th Cir. 1996). For, "evidence is sufficient to support a conviction where 'after viewing all the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" United States v. Timmons, 283 F.3d 1246, 1250 (11th Cir. 2002) (citations omitted).

CONCLUSION

An innocent person has been convicted and sentence for relying of what the law plainly allowed him to do. This incredible serious question should be taken into

consideration.

WHEREFORE, above premises considered, the petition for a Writ of Certiorari should be granted.

Respectfully submitted on this 10 day of May, Year of YAHWEH 2023.

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