

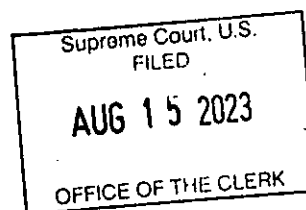
No. 23-5405 ORIGINAL

In The Supreme Court for the United States

David P. Petersen , Petitioner

vs.

United States of America, Respondent



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ON PETITION FOR A WRIT OF CERTIORARI TO THE  
ELEVENTH CIRCUIT COURT OF APPEALS

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PETITION FOR WRIT OF CERTIORARI

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David Petersen, Pro se  
8109 South 194<sup>th</sup> Street  
Gretna, NE 68028  
402-983-6448

Cover

## QUESTIONS PRESENTED

Question 1. Is it a violation of due process when any court, upon becoming formally aware of multiple material abuses of discretion and material errors on the record, makes no effort to address or remedy the errors?

Question 2. How should the Supreme Court respond when it becomes known post-decision that all involved Courts, including the Supreme Court, relied on material errors on the record that were known by "officers of the court"?

Question 3. Should the Supreme Court be compelled to grant review and potentially reverse a case where it is evident post-trial that the jury instruction requirement of a valid security, explicitly outlined in clear and proper jury instructions, was not satisfied in a securities fraud case?

Question 4. Is the Supreme Court compelled to grant certiorari and undertake a comprehensive review of a case when the lower court's reliance on a demonstrably faulty record, amounting to a clear abuse of discretion, not only undermines the integrity of the judicial process but also violates the Petitioner's constitutional rights under the Fourteenth Amendment to have their case and reasoning meticulously considered and fairly decided upon by the appellate court?"

## LIST OF PARTIES

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

## CORPORATE DISCLOSURE STATEMENT

There are no corporations, in this case, as such, there is no corporate disclosure.

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

Petitioner acting pro se, 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 B 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 Appeal was May  
23, 2023. (Appendix "B")

A petition for rehearing was timely filed in this case. June 9, 2023 (Appendix "D")

The date on which the United States 11<sup>th</sup> Circuit Court of Appeals decided the



Petition for Rehearing was July 12, 2023. (Appendix "E")

The date on which the United States 11<sup>th</sup> Circuit Court of Appeals issued a mandate related to the Petition for Rehearing was July 12, 2023. (Appendix "F")

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

## CONSTITUTIONAL ISSUES INVOLVED

*Fourteenth Amendment* of the United States Constitution provides a guarantee that no individual shall be stripped of "life, liberty, or property, without due process of law."

*Fourteenth Amendment* to have their case and reasoning meticulously considered and fairly decided upon by the appellate court.

The *Fifth and Fourteenth Amendments to the U.S. Constitution*, requires that defendants in criminal cases be afforded a fair and impartial trial. When material record errors are discovered, they may raise concerns about the fairness and integrity of the trial process, potentially triggering the need for corrective action.

## STATEMENT OF THE CASE

The facts to place in there setting related to the questions now raised are briefly stated:

### *Course of Proceedings - Statement of Facts:*

1. The original motion by the Petitioner was titled: "MOTION FOR A WRIT OF ERROR CORAM NOBIS, PURSUANT TO 28 U.S.C. 1651. OR AS A CLAIM IN AN INDEPENDENT ACTION, OR AS A MOTION ADDRESSED TO THE INHERENT POWER OF THE COURT TO SET ASIDE A JUDGMENT PROCURED BY" FRAUD ON THE COURT". (See Appendix "I", So. District of Alabama Case #13-0117-WS Doc. 314 )

2. What was under appeal is the So. Dist. of AL District Order (Case 13-0117-WS, Doc 316 – see Appendix exhibit "H") dated 07-18-2022 related to the above motion (Doc. 314 - see Appendix exhibit "I") by the Petitioner

3. The Petitioner initiated an appeal in the Eleventh Circuit Court of Appeals subsequent to the unfavorable judgment issued by the So. Dist. of Al Court in Case No. 1:13-cr-00117-WS-N-2 on 07-20-2022. The following is copied from the 11<sup>th</sup> Circuit case docket indicating when judgements and orders were entered by the court and when the Petition for Rehearing was entered by Petitioner:

05/30/2023 24 Opinion issued by court as to Appellant David Paul Petersen, I. Decision: Affirmed. Opinion type: Non-Published. Opinion method: Per Curiam. Motion for summary affirmance filed by Appellee USA is GRANTED. [21].

05/30/2023 25 Judgment entered as to Appellant David Paul Petersen, I. [Entered: 05/30/2023 03:01 PM]

06/09/2023 26 Petition for panel rehearing only filed by Appellant David Paul Petersen, I. [22-12483] (ECF: David Petersen) [Entered: 06/09/2023 04:31 PM]

07/12/2023 27 ORDER: Petition for panel rehearing only filed by Appellant David Paul Petersen, I is DENIED. [27] [Entered: 07/12/2023 11:42 AM]

07/20/2023 28 Mandate issued as to Appellant David Paul Petersen, I. [Entered: 07/20/2023]

4. On 07-12-2023, the 11<sup>th</sup> Circuit Panel affirmed the decision of the District Court (see Appendix exhibit “E”, and the related mandate was entered 7-20-2023 (see Appendix exhibit “F”). after denial of the Petition for Rehearing by the Petitioner. The Petitioner contends that this affirmation was rendered without thorough analysis of the substantive grounds of contention articulated in the appeal.

5. The focus of the Petitioner's appeal to the 11<sup>th</sup> Circuit Court of Appeals was the order of the District Court. The Petitioner's claim of “Fraud on the court” was not considered in the proceedings, significantly impacting the integrity of the court process. The claimed misconduct involved reliance on a flawed indictment, a compromised trial record, and the inappropriate exercise of discretion premised on an incorrect record. In context to the requirements to qualify for coram nobis relief as outlined in *Alikhani v. United States, 200 F.3d 732, 734 (11th Cir. 2000)*, where the Petitioner submitted that a cardinal error occurred during the trial, undermining its validity and regularity. Furthermore, the error before the Court had not ever been disputed or decided upon. The panel's decision neglected to address the pivotal appeal questions presented in the appeal, nor did it acknowledge the instances of discretionary abuse identified within the proceedings of the 11th Circuit, potentially

introducing a novel form of misuse of discretion.

*Legal Grounds:*

1. The Fourteenth Amendment of the United States Constitution provides a guarantee that no individual shall be stripped of "life, liberty, or property, without due process of law." This constitutional safeguard formed the core of the Petitioner's argument.

2. The Petitioner possesses a constitutional right to table his arguments before the appellate court and anticipates that these points of contention will undergo thorough review and adjudication. This appeal was launched specifically to question the District Court's order concerning the Coram Nobis Motion introduced by the Petitioner.

*Reasoning:*

The panel's decision undermined the purpose of the appeal process as it fails to engage substantively with the issues raised on appeal.

1) The appeal referenced fraudulent evidence concerning co-investment agreements, employed in the trial court, pertaining to the Government's representation of a purported engaged investment contracts to the grand jury, at trial. Indirect conflict with the Government's representation, the juries were never informed of the known

but never presented fact of the total non-existence of any engaged investment contracts at all, as specifically required by the jury instructions. (*See FOOTNOTE 2*) This distinction forms the basis of the claims made in the associated Coram Nobis motion under appeal. The unique aspects of the Coram Nobis claim included:

- a. It is now proven that there are no engaged investment contracts recorded as required by the jury instruction (*See FOOTNOTE 2*). This claim differs from a previously raised contention suggesting misrepresentation of an evidentiary testimony at trial.
- b. Both the Grand Jury and the Trial Jury were obligated to verify the presence of a security in this case, as outlined in the Jury Instructions (*See FOOTNOTE 2*), prior to delivering a "guilty" verdict or initiating an Indictment. Obviously, that did not take place.
- c. The relevance of any court's opinion concerning evidence at trial is rendered moot without the necessary fulfillment of the requirements clearly stated in the "Jury Instructions" (*See FOOTNOTE 2*).

2) Both the 11th Circuit Court of Appeals and the Supreme Court have relied on an "error riddled." case record, which erroneously asserts that all victims had engaged in a Co-investment Agreement. This agreement (investment contract) was supposed to fulfill the "jury instruction requirement" (*See FOOTNOTE 2*), yet there is no record

of a victim on record who had an engaged Co-Investment Agreement. This constitutes a substantial claim that the Appellate panel's opinion fails to accurately represent (*See Appendix "A", page 4, Lines 4-8, 11-15, and 18-20, Doc. 24-1, 11<sup>th</sup> Circuit Court of Appeals Case 22-12483*). Furthermore, the Appellate panel does not adequately address the known "faulty record errors" and associated "abuse of discretion" claims raised in the Petitioner's Appeal Questions in his Opening Brief (see Case 22-12483 (Doc. 24-1), Appendix "A"). In the "interest of justice," it's clear that an "abuse of discretion" occurred when the 11th Circuit Court of Appeals, while considering the Petitioner's appeals, incorrectly asserted in the "Background" section of the Direct Appeal that "all parties signed an agreement" and the contract terms were in force. (*For proof of claim See Appendix "K" (Doc. 314 - see exhibit "A", Exhibit "E), from 11th Circuit Court of Appeals Case 14-12577 p.2-4*). The 11th Circuit Court of Appeals used the error-filled record in its determination in the Petitioner's Direct Appeal "Background" Section to determine that the investment agreement's terms and conditions were "in-force" creating the needed security the statute required. There was no engaged agreements creating a record error creating the belief that all of the investment contracts were engaged as per the erroneous district court record stated. (*See Appendix "K" -11<sup>th</sup> Circuit Court of Appeals Case 14-12577 p.2-4*) also *11<sup>th</sup> Circuit Court of Appeal Case #16-15603G* as well as the U.S. Supreme Court which gave deference to the findings of both the District and Appellate Courts when reviewing *Supreme Court Case #17-6837*.)

3.) The 11<sup>th</sup> Circuit panel's opinion in this (*Case 22-12483 (Doc. 24-1) on 5-30-2023*, *Appendix "B"*) does not make an adequate distinction between past claims and the distinct new claims made in the associated Coram Nobis motion currently under appeal.

4.) The Petitioner argued that the requirements of the jury instructions (See FOOTNOTE 2) cannot be altered by a judge's or panel's opinion deeming other evidence as sufficient, particularly when the specific evidence required by the "jury instruction" (See FOOTNOTE 2) is non-existent and the Petitioner was a 3<sup>rd</sup> party non-decision-maker bookkeeper not aware of contract participants.

The Petitioner petitioned the circuit panel to reconsider the panel's decision delivered on 05-30-2023. Further, it was the Petitioner's request that the panel thoroughly review and respond to all Appeal Questions and Claims outlined in the Opening Brief and Reply to the Appellee Brief; *Case 22-12483 (Doc. 24-1) on 8-26-2022* See attached *Appendix "A"* ) in which the Petitioner sought acknowledgment and addressal of the proven "abuse of discretion" that led to significant material record errors, originating from the Grand Jury, the Trial Jury, the 11th Circuit Court of Appeals, and the U.S. Supreme Court, in the spirit of justice. Additionally, the Petitioner implored the 11<sup>th</sup> Circuit Court to undertake a thorough evaluation of the case, offering a detailed, reasoned analysis that addresses the substantive issues highlighted during the appeal process. Remedies asked for by the Petitioner included vacating the original judgment, retrial, or remand to the lower court with specific instructions. The

Petitioner appealed to the 11<sup>th</sup> Circuit Court's sense of justice and requested the approval of his Petition for Reconsideration, and noted by granting the Request, the Court would afford the Petitioner an opportunity to adequately present his case through a comprehensive review and response to the Petitioners' Appeal questions while addressing the identified errors.

## **Argument**

The following Arguments section of this petition is sub-divided into separate parts , with each part supporting each of the questions raised for review:

### **Question 1.- Argument**

#### *Violation of Due Process:*

It can be argued that when a court becomes formally aware of multiple material abuses of discretion and errors on the record, failing to address or remedy them would violate the fundamental principles of due process. Due process requires that parties be given a fair and impartial hearing, and the court's duty is to ensure that the proceedings are conducted in a just manner. Allowing such errors and abuses to go unaddressed undermines the integrity of the judicial process and deprives the affected party of their right to a fair trial.

This question addresses a significant point of due process, the fundamental right to have legal proceedings conducted fairly and properly. It challenges the actions and



omissions of appellate courts when confronted with serious errors and abuses of discretion. The question implicates the responsibility of courts to ensure justice, the integrity of court decisions, and the procedural rights of parties involved. The Supreme Court's guidance will be essential in demarcating the limits of due process and the obligations of courts when handling discovered errors.

*Justification Argument:*

The question addresses a crucial issue regarding the duties and responsibilities of an appellate court once it is formally made aware of multiple material abuses of discretion and material errors on the record. It brings into focus the fairness and reliability of the appellate process and speaks to a significant federal legal issue - the interpretation and application of due process rights.

Moreover, the question potentially involves a circuit conflict with Supreme Court precedent relating to the duty of appellate courts to ensure a fair and just process. This conflict, coupled with the broad impact that such a practice could have on numerous cases across all federal circuits, underscores its national importance.

In addition, lack of clarity on this issue may result in inconsistent approaches among different federal appellate courts, risking "unequal treatment under the law" for many defendants depending on the jurisdiction in which their case is heard. The Supreme Court's intervention is necessary to provide a uniform, definitive standard on the obligations of an appellate court in such situations, thereby promoting

fairness, enhancing reliability, and safeguarding the due process rights of defendants throughout the federal judicial system regardless of the jurisdiction.

This question tackles a crucial due process issue and could potentially affect a large number of cases. The question presents a significant federal legal issue and could resolve an apparent conflict between Supreme Court precedent and the practice of certain appellate courts in addition to the 11<sup>th</sup> Circuit as found in the present case.

*Case Law and Legal Principals:*

*United States v. Morgan, 307 U.S. 183 (1939)*, often referred to as *Morgan II*, is a significant case involving the duty of courts to address errors discovered post-decision. In this case, the Court granted Morgan's petition for a writ of error coram nobis. The writ of error coram nobis is a very old and rarely used legal order that a court uses to correct its original judgment upon discovery of a fundamental error which did not appear in the records of the original judgment's proceedings and would have prevented the judgment from being pronounced.

The Supreme Court held that under the All-Writs Act, a federal court could issue a writ of error coram nobis to correct its own judgment, even after the sentence had been served. The Court stated that where no remedy exists for enforcement of the constitutional right to a fair hearing, the federal court has the inherent authority to recall its mandate and correct the errors.

The *Morgan* Court noted, "*When, therefore, a judge has sentenced a man to prison, found out that he had no jurisdiction to do so, or that prisoner had had no chance to*

*show that court was without jurisdiction, then the judge can call the case up again and correct his error."*

Therefore, under the guidance of United States v. Morgan, if a court discovers a fundamental error that would have prevented the original judgment from being pronounced, it has a duty to correct that error. This can even include recalling its own mandate and revisiting its previous decisions, as long as it is within the bounds of the All-Writs Act.

For instance, if a crucial piece of evidence was misrepresented during the trial, and this misrepresentation influenced the appearance of fulfilling jury instruction requirements, the verdict could be challenged. In some cases, if the misrepresentation is significant enough, (as it is in the present case) it is a miscarriage of justice.

One historical example of a case where misrepresentation affected the trial outcome is the case of Brady v. Maryland, 373 U.S. 83 (1963). In this case, the prosecution withheld evidence that could have potentially benefited the defense. The Supreme Court ruled that this suppression violated the defendant's due process rights. Although not directly related to jury instructions, this case illustrates how post-trial discoveries of misrepresentation can impact a case.

Devereaux v. Abbey, 263 F.3d 1070, 1076 (9th Cir. 2001) (en banc). The court held that *"there is a clearly established constitutional due process right not to be subjected to criminal charges on the basis of false evidence that was deliberately fabricated by the government."* *Id.* at 1074-75 (emphasis added).

However, other courts have held that such evidence may not be used to prosecute or convict an individual. See, e.g., Devereaux, 263 F.3d. at 1075 (“the knowing use by the prosecution of perjured testimony in order to secure a criminal conviction violates the Constitution”); Cole v. Carson, 802 F.3d 752, 768 (5th Cir.2015) (“a victim of intentional fabrication of evidence by officials is denied due process when he is either convicted or acquitted”). Thus, the instruction should be modified depending on whether the plaintiff was criminally charged, prosecuted, or convicted based on fabricated evidence. This instruction includes prosecution as a means to satisfy the three elements for a trial court to consider.

The deliberate fabrication of evidence implicates “the fundamental due process right to a fair trial.” Richards v. County of San Bernadino, 39 F.4th 562, 572 (9th Cir. 2022). This is true “regardless of the plaintiff’s innocence or guilt . . . the right to a fair trial is impinged either way.” *Id.* Accordingly, rather than a but-for causation standard, the appropriate standard of causation is the “materiality causation standard,” under which causation is established if the plaintiff “can show a reasonable likelihood that the allegedly fabricated [] evidence could have affected the judgment of the jury.” *Id.* at 573-74.

An official’s deliberate fabrication of evidence or use of perjury also violates the rights of a parent or child when introduced in a civil dependency proceeding. “[G]overnment perjury and knowing use of false evidence are absolutely and obviously irreconcilable with the Fourteenth Amendment’s guarantee of Due Process in our courts . . . There are no circumstances in a dependency proceeding that would permit government

*officials to bear false witness against a parent.” Hardwick v. Vreeken, 844 F.3d 1112, 1120 (9th Cir. 2017).*

Imposing a deliberate indifference or reckless disregard for an accused’s rights or for the truth standard is appropriate in the substantive due process context. *See Gantt v. City of Los Angeles, 717 F.3d 702, 708 (9th Cir. 2013); Tennison v. City & County of San Francisco, 570 F.3d 1078, 1089 (9th Cir. 2009).*

Deliberate indifference encompasses recklessness. *Castro v. County of Los Angeles, 833 F.3d 1060, 1071 (9th Cir. 2016) (en banc)*, noted that the “deliberate indifference” standard, at least in the context of a Fourteenth Amendment failure to protect claim, requires the plaintiff “*to prove more than negligence but less than subjective intent—something akin to reckless disregard.*” *See Gantt, 717 F.3d at 708 (concluding no error in portion of instruction stating “deliberate indifference is the conscious or reckless disregard of the consequences of one’s acts or omissions”); see also Tatum v. Moody, 768 F.3d 806, 821 (9th Cir. 2014) (approving alternative instruction that also encompassed recklessness).*

*Question 1 · Points of National Interest:*

- Clarification of the standards for reversing a case based on failure to meet jury instruction requirements in securities fraud cases.
- Establishment of clear guidelines for the application of valid security requirements and its impact on the fairness of the trial process.

- Implications for the integrity of securities fraud prosecutions and the administration of justice in similar cases nationwide.

*Conclusion:*

This question is significant as it pertains to the Court's reaction to post-decision revelations of substantive material inaccuracies in the record, a matter that could affect many cases and speaks to the very heart of the integrity and reliability of judicial proceedings. Addressing this issue would provide guidance for similar situations in the future and may serve to clarify the Court's stance on the preservation of justice and the necessity for accurate and reliable case records. This question presents both a fundamental and critical issue of federal law and court procedures which warrant the Supreme Court's attention.

In the case at hand, the 11th Circuit's decision not to address the "frauds on the court" or the alleged abuse of discretion creates a circuit split with other circuits that have ruled differently in similar cases. A circuit split occurs when different federal circuits reach conflicting conclusions on the same legal issue, which can create confusion, inconsistency, and unequal treatment of litigants across jurisdictions.

In this context, the failure of the 11th Circuit to address the allegations of "fraud on the court" or abuse of discretion creates a divergence from the rulings of other circuits that have taken a different approach. These circuits may have recognized

and addressed similar issues, acknowledging the significance of frauds on the court and the potential for an abuse of discretion to undermine the integrity of the judicial process. By not addressing these concerns, the 11th Circuit creates a disparity in the legal treatment of such cases compared to other circuits.

A circuit split on this matter highlights the need for the Supreme Court's intervention and resolution. When circuits disagree on important legal issues, it is the role of the Supreme Court to provide clarity, consistency, and uniformity in the interpretation and application of federal law. By granting review and addressing the alleged "frauds on the court" or abuse of discretion, the Supreme Court can resolve the circuit split and establish a clear precedent that promotes fairness, integrity, and uniformity across all circuits.

Furthermore, a circuit split on this matter emphasizes the urgency and importance of Supreme Court review. The existence of conflicting rulings among circuits creates uncertainty, which can lead to forum shopping, disparate outcomes, and an erosion of public trust in the legal system. The Supreme Court's involvement is necessary to resolve these inconsistencies, harmonize the application of the law, and ensure equal treatment and consistent standards throughout the federal judiciary.

In conclusion, the 11th Circuit panel's decision not to address the alleged "frauds on the court" or abuse of discretion in the case at hand creates a circuit split with other circuits that have ruled differently on similar issues. This divergence underscores the need for Supreme Court review to establish a uniform standard

and provide clarity on the treatment of such cases. The Supreme Court's intervention will promote consistency, fairness, and the proper administration of justice across all circuits, addressing the potential disparities created by the circuit split.

## **Question 2. - Argument**

### *Reliance on Material Errors:*

If it becomes known post-decision that all involved courts, including the Supreme Court, relied on material errors on the record that were known by "officers of the court," does it raises serious concerns about the integrity of the judicial process. Reliance on known errors undermines public confidence in the legal system. The Supreme Court should be particularly vigilant in upholding the rule of law and ensuring that the decisions reached are based on accurate information and adherence to proper and consistent procedures.

### *Justification Argument*

In a case, as in any situation where it becomes known post-decision that all involved courts, including the Supreme Court, relied upon material errors on the record that were known by "officers of the court," a strong legal justification arises for the



Supreme Court to respond with utmost vigilance and uphold the integrity of the judicial process.

The revelation of such misconduct and reliance on known errors strikes at the core of the rule of law, which depends on accurate information and adherence to proper procedures. The confidence of the public in the legal system is of paramount importance, and any indication of misconduct or reliance on erroneous information undermines that confidence. It is incumbent upon the Supreme Court to address and rectify such situations to restore faith in the administration of justice.

As the highest judicial authority in the land, the Supreme Court carries a unique responsibility to ensure the fairness, reliability, and credibility of the legal system. By actively responding to the knowledge of material errors on the record and the involvement of "officers of the court," the Supreme Court demonstrates its commitment to upholding the rule of law and preserving public trust.

This strong legal justification compels the Supreme Court to respond resolutely by taking all appropriate actions. By doing so, the Court reassures the public that it takes its role as the guardian of justice seriously and is dedicated to maintaining the highest standards of judicial conduct.

In summary, when it became known post-decision that all involved courts, including the Supreme Court, relied upon material errors on the record known by "officers of the court," strong legal justification arises for the Supreme Court to respond with utmost vigilance and take necessary measures to uphold the integrity of the judicial process, restore public confidence, and preserve the rule of law.

Currently, the rules and regulations that guide the court on what actions should be taken in criminal cases when material record errors becomes known to the Court varies depending on the jurisdiction and level of court. This shows an unequal application of the law, and a glaring need for clarity from the Supreme Court. The following are some of the common rules and principles generally followed:

*Federal Rules of Criminal Procedure:* In the United States federal court system, the Federal Rules of Criminal Procedure govern the procedural aspects of criminal cases. Rule 52 specifically deals with harmless error and other errors, outlining the standard of review for non-constitutional errors, harmless error analysis, and the appropriate remedies when errors occur.

*Due Process:* *The principle of due process, as guaranteed by the Fifth and Fourteenth Amendments to the U.S. Constitution,* requires that defendants in criminal cases be afforded a fair and impartial trial. When material record errors are discovered, they may raise concerns about the fairness and integrity of the trial process, potentially triggering the need for corrective action.

*Judicial Discretion:* Courts have discretion in managing their proceedings, and this includes how they handle material record errors. Judges may exercise their discretion to address the errors in various ways, such as granting a new trial, overturning the conviction, or taking other remedial measures.

*Appellate Review:* If material record errors are not addressed adequately at the trial court level, the defendant may appeal the conviction to a higher court. Appellate

courts have the authority to review the lower court's handling of the errors and determine if they warrant reversal, remand, or other corrective actions.

*Court Rules and Local Practices:* Each court may have specific rules and local practices that govern how they handle material record errors. These rules may outline the procedures for raising and addressing errors, the timeline for doing so, and the available remedies.

#### *Case Law:*

Previous decisions by higher courts in similar cases may provide guidance on how material record errors should be addressed. Courts often rely on precedent to determine the appropriate course of action when dealing with specific issues.

Overall, the goal of the court is to ensure a fair and just trial. Currently, the courts handling of material record errors is guided by numerous different principles and varies by jurisdiction that “creates an uneven and unequal application of justice: In order to protect the rights of the accused and maintain the integrity of the criminal justice system, it is imperative that the Supreme Court provide clarity on this issue.

#### *Legal Principles & Cases*

The known constitutional violation in the present case includes the deliberate misrepresenting of evidence that resulted in “fraud on the court”, which significantly altered the judicial machinery. If any of the courts had been aware of these material

errors on the record, known but not disclosed by "officers of the court," it is reasonable to assert that their responses would have, or should have been different from the course they (the courts) actually took. The judicial process, built on the principles of fairness, due process, and adherence to proper procedures, would have necessitated a distinct and appropriate response to rectify the misconduct and safeguard the defendant's rights.

In light of the Supreme Court's authority and responsibility to address instances of misconduct and reliance on material errors, it becomes evident that all of the courts would have or should have responded differently had they had known of the constitutional violations. The Court's role in upholding the rule of law, ensuring fairness, and maintaining public confidence in the legal system necessitates a proactive approach to rectifying misconduct and correcting errors.

The precedent set by Pyle v. Kansas serves as a crucial legal principle, highlighting the prohibition of deliberate use of false evidence under the Fourteenth Amendment's Due Process Clause. The recognition of such conduct as a violation of a defendant's fundamental right to a fair trial and its impact on the integrity of the criminal justice system further emphasizes the gravity of the constitutional violation in the present case.

In Pyle, the Supreme Court, in a unanimous decision, held that the Fourteenth Amendment's Due Process Clause prohibits the deliberate use of false evidence to secure a criminal conviction. The Court recognized that such conduct by the state violates a defendant's fundamental right to a fair trial and undermines the integrity

of the criminal justice system.

In the present case, the prosecutors' misrepresentation regarding the existence of a security creates a serious concern of constitutional magnitude. The record reveals a deceptive presentation that misled the jury, depriving the Petitioner of a fair and impartial trial. *"The prosecutor's duty to truthfully present the case and refrain from misleading the court and jury is paramount to preserving the integrity of the criminal justice system"* (Drake v. Portuondo, 553 F.3d at 240; Hayes v. Brown, 399 F.3d at 978). The suppression of material exculpatory evidence, coupled with the prosecutor's false statements about security, undermines the fundamental fairness of the trial and violates the Petitioner's rights under the Due Process Clause of the Fourteenth Amendment. *"The appellate courts have consistently recognized that convictions based on false evidence known to the prosecution are constitutionally unacceptable and must not stand"* (Hayes v. Brown, 399 F.3d at 978). The impact of such errors on the record is profound and necessitates the intervention of this Honorable Court.

Given the importance of acknowledging the misconduct as a "fraud on the court" and the imperative to rectify the violation, it is paramount for this court to consider the substantial impact of the deliberate withholding the known fact that there were no statutorily or jury instruction required engaged investment contracts ("the security") as the misrepresentations by the Government's prosecution team claimed to exist (to the Grand Jury, Trial Jury, and all other courts that caused the resulting "fraud on the court". By this Court's affirmation of this petition, this court can restore the integrity of the judicial process and ensure that the appropriate course of action is

taken to address the known constitutional violations and their significant influence on all of the court proceedings. *(See additional circuit conflicting case and related case cites in FOOTNOTE 1)*

*Question 2 - Points of National Interest:*

- Addressing the issue of judicial misconduct and reliance on known errors by "officers of the court."
- Determining the appropriate response of the "all federal" courts including the Supreme Court when material errors on the record are revealed post-decision.
- Implications for maintaining public confidence in the legal system and the credibility of court decisions.

*Conclusion:*

In conclusion, the bedrock principles of upholding the rule of law, ensuring due process, and fostering public confidence in the legal system demand the Supreme Court's unwavering attention to the matter at hand. The revelation that all involved courts, including the Supreme Court, relied on material errors on the record known to "officers of the court" post-decision underscores the urgent need for a resolute response.

The current state of affairs, where various jurisdictions adopt divergent approaches in handling material errors discovered after trial, creates a

distressing reality of unequal justice. This glaring inconsistency undermines the very essence of a fair and just trial. To safeguard the rights of individuals and maintain the integrity of the criminal justice system, a decisive and uniform course of action is imperative. Thus, it becomes incumbent upon the Supreme Court to provide resolute clarity on this pressing issue.

The sheer gravity of the misrepresentation made by the prosecutors regarding the existence of security, coupled with the potential catastrophic impact on the appellant's right to a fair trial, forcefully calls for the Supreme Court's immediate intervention. Failure to act would perpetuate a system marred by disparate outcomes, perpetuating injustice.

The Petitioner's plea extends beyond mere vacatur of findings; it encompasses the establishment of unequivocal guidelines to prevent such egregious errors from recurring in future cases. The Supreme Court now stands at a pivotal juncture to reaffirm the cornerstone principles of due process and the prosecutor's unwavering duty to truthfulness in the pursuit of justice. In doing so, the Court can exhibit an unwavering commitment to protect the constitutional rights of all individuals within the criminal justice system and instill renewed faith in the impartiality of our legal process.

Given the compelling arguments and established legal standards brought forth, the appellant urgently and earnestly implores this Honorable Court to grant this petition for a writ of certiorari, unearthing the truth behind this case, and

delivering a seminal judgment that finally establishes a coherent and equitable approach to addressing material errors found post-trial. The time for rectification is now; the time to restore confidence in our legal system is now. The Court's resolute action on this matter will stand as a beacon of hope, ensuring that justice is no longer a fluctuating mirage dependent on the jurisdiction, but a steadfast and constant pillar of our nation's legal fabric.

### **Question 3 - Argument**

#### *Reversal of a Case Based on Failure to Meet Jury Instruction Requirements:*

The pivotal issue at hand revolves around the failure to meet the requirements of the jury instructions (*See FOOTNOTE 2*) in this case. Jury instructions are the only guidance the jury should receive when deliberating and are meant to keep the jury on track regarding the basic procedure of the deliberation and the substance of the law on which their decision is based. Specifically, in the present case, the jury was explicitly given clear instructions that mandated the presence of a valid security as a prerequisite for conviction, in accordance with the statute. However, it can be argued that a reversible error occurred when it was revealed that the necessary criteria outlined in the jury instructions were not met. The instructions provided to the jury are of utmost importance as they guide their understanding of the applicable law and the elements of the offense. If the instructions were not adhered to or if the essential requirement of a valid security was not fulfilled, it undermines the integrity of the trial process and



raises concerns regarding the fairness of the resulting conviction or verdict. In this particular case, despite the Government's representation to the jury that a security was present, it has come to light that there was, in fact, no engaged investment contracts as was required to be present in order to convict per the jury instructions. This critical discrepancy from the evidence presented challenges the validity of the conviction and warrants the Supreme Court's consideration. By granting review in this case, the Court can ensure that the proper legal standards are applied, rectify any potential errors or omissions in the jury instructions, and guarantee that justice is served by addressing the impact of this failure to meet the jury instruction requirements on the outcome of the trial.

This question delves into the substantive role of jury instructions and their compliance in securing a valid court decision. It questions whether failure to adhere to specific jury instructions can invalidate a court's decision. The Supreme Court's determination would provide valuable guidance on the repercussions of neglecting jury instructions, thereby shaping future trial proceedings in securities fraud cases and potentially other areas of law as well.

### *Justification Argument*

This question involves the interpretation of laws in securities fraud cases and specifically the role of jury instructions in ensuring a fair trial. The Supreme Court's resolution of this issue could significantly affect the conduct of securities

fraud trials, potentially setting an important precedent. Given the national significance of securities fraud cases and their impact on the economy, a definitive resolution of this issue is crucial.

The conflict with prior Supreme Court decisions, and the conflicting decisions among federal appellate courts given the interpretive nature of these issues, further underlines the need for Supreme Court review. This is particularly relevant where the questions involve constitutional issues and significant matters of federal law.

This question raises a substantial issue about the requirements for a securities fraud conviction, which is of national importance given the prevalence of such cases. It also involves a conflict in the interpretation of federal law among appellate courts.

Can a court change the requirements of jury instructions post-trial based on evidence presented, even if the required evidence per specific jury instruction is not present?

This question involves the fundamental issue of jury instructions, their requirements, and the court's power to alter these requirements. Its resolution could have national implications, affecting the conduct of trials and the fairness of legal proceedings across federal jurisdictions.

Can a case be overturned on the sole basis that the jury instructions requirement

for the existence of a security in order to convict in a securities fraud case, as per the statute and jury instruction, was not met?

This question raises a substantial issue about the requirements for a securities fraud conviction, which is of national importance given the prevalence of such cases. It also involve a conflict in the interpretation of federal law among appellate courts.

*Legal Principles:*

*Jury Instructions:* Jury instructions play a crucial role in guiding the jury's understanding of the applicable law and the elements of the offense. They must accurately reflect the legal requirements for a conviction.

*Reversible Error:* A reversible error occurs when there has been a mistake or flaw during the trial that was significant enough to impact the fairness of the proceedings or the outcome of the case. Failure to meet the requirements of jury instructions can be a basis for reversible error.

*Due Process and Fairness:* Due process requires that individuals receive a fair and impartial trial. Adhering to the proper legal standards and ensuring that jury instructions are followed is essential for upholding due process and maintaining the integrity of the judicial system.

Thompson v. Konteh, No. 04-3631 (6th Cir. 2006) – the findings in this case addresses the requirements of jury instructions and their importance in the

determination of guilt.

United States v. Park, 421 U.S. 658 (1975). considered whether the jury instructions in the prosecution of a corporate officer who was not involved in the crime were appropriate. As they determined guilt or innocence

Taylor v. United States, 495 U.S. 575 (1990). In this case the court found that the government's theory cannot be squared with the statute's terms. Stated in Jury instructions as requirements. To determine whether a federal felony qualifies as a crime, statutes don't ask whether the crime is sometimes or even usually associated with the statute requirements.

*Question 3 - Points of National Interest:*

- Establishing the significance of adhering to clear and proper jury instructions in securities fraud cases.
- Impact on the validity of a conviction when the jury instruction requirement of a valid security is not met.
- Potential nationwide repercussions for the standard of proof and fairness in securities fraud trials.

*Conclusion:*

Given the importance of jury instructions in ensuring a fair trial and the potential for reversible error if those instructions are not met, the Supreme Court

is justified in considering the reversal of a case where the requirement of a valid security in a securities fraud case, as explicitly outlined in clear and proper jury instructions, was not met. Such a failure undermines the integrity of the trial process and raises concerns regarding the fairness of the resulting conviction or verdict. By granting review in this case, the Supreme Court can provide clarity on the proper legal standards for jury instructions and rectify any potential errors or omissions, ensuring that justice is served and preserving the integrity of the judicial system.

#### **Question 4.- Argument**

"In light of the paramount concerns raised regarding potential abuse of discretion through reliance on a faulty record and the vital importance of upholding appellate rights under the Fourteenth Amendment, the Supreme Court is called upon to exercise its authority and justify the need to grant certiorari for the purpose of reviewing the previously composed question. The alleged abuse of discretion, demonstrated by the lower court's reliance on a faulty record, raises significant concerns about the fairness and reliability of the court's decision-making process. Such an abuse occurs when a court acts arbitrarily or unreasonably, deviating from proper judicial conduct. By hearing this case, the Supreme Court would not only address the specific allegations of misconduct but also provide vital guidance on the proper standards of judicial conduct and decision-making, reaffirming the integrity of the legal system.

Moreover, while the *Fourteenth Amendment* does not explicitly guarantee appellate rights, it is widely acknowledged to encompass principles of due process and fair treatment. The right to have one's case and reasoning considered and decided upon by an appellate court is integral to due process, ensuring that individuals have the opportunity to present their arguments and seek review of lower court decisions. If there are concerns that the Petitioner's rights were not adequately considered or decided upon by the appellate court, the Supreme Court plays a crucial role in providing clarification on the scope of the Fourteenth Amendment and reaffirming the importance of appellate rights in the pursuit of justice.

This question poses a fundamental inquiry into the courts' obligations to rely on accurate records and the consequences of failing to do so. It challenges the validity of court decisions made based on flawed records and opens a dialogue on what constitutes an "abuse of discretion." A ruling from the Supreme Court would establish a significant precedent for lower courts and highlight the need for meticulous examination of court records.

### *Justification Argument*

This question speaks directly to a significant federal legal issue – the application of the Fourteenth Amendment's guarantee of due process. The answer could substantially impact the functioning of appellate courts across the country. It addresses a fundamental constitutional question of fair treatment in the appellate process. The Supreme Court's clarification on this matter will provide crucial

guidance to appellate courts and help ensure the rights of defendants are adequately protected in the appellate process.

Can a court's reliance on a faulty record be considered an "abuse of discretion," thus constituting a valid basis for the Supreme Court to grant a certiorari?

This question tackles the issue of a court's discretion and the potential for its misuse. It could resolve unclear points in the law about what constitutes an "abuse of discretion" and the implications of such an abuse.

This question touches upon the interpretation of the Fourteenth Amendment and its application in guaranteeing a Petitioner's right to thorough consideration of their arguments. The Supreme Court's response would offer an interpretation of constitutional law that could reshape the standards for appellate review, contributing to a more equitable judicial process.

### *Justification Argument*

This question speaks directly to a significant federal legal issue – the application of the Fourteenth Amendment's guarantee of due process. The answer could substantially impact the functioning of appellate courts across the country. It addresses a fundamental constitutional question of fair treatment in the appellate process. The Supreme Court's clarification on this matter will provide crucial

guidance to appellate courts and help ensure the rights of defendants are adequately protected in the appellate process. This question addresses the constitutionally protected right to due process in the context of appeals, which is an important federal issue.

*Legal Principles:*

- *Abuse of Discretion:* Abuse of discretion occurs when a court's decision is arbitrary, capricious, or without a rational basis. It signifies a departure from established legal standards and undermines the integrity of the judicial process.
- *Reliance on a Faulty Record:* Courts are expected to base their decisions on accurate and reliable records. Relying on a demonstrably faulty record can compromise the fairness and reliability of the court's decision-making process.
- *Appellate Rights under the Fourteenth Amendment:* While the Fourteenth Amendment does not explicitly guarantee appellate rights, it encompasses principles of due process and fair treatment. This includes the right to have one's case and reasoning meticulously considered and fairly decided upon by the appellate court.

*Case Law:*



- United States v. U.S. Gypsum Co., 438 U.S. 422 (1978): In this case, the Supreme Court recognized that an abuse of discretion occurs when a court's decision is without reason or based on an erroneous view of the law or the facts. The Court emphasized the importance of maintaining proper legal standards and ensuring a rational basis for court decisions.

- Evitts v. Lucey, 469 U.S. 387 (1985): In this case, the Supreme Court held that an appellant's right to due process under the Fourteenth Amendment includes the right to have their case and arguments thoroughly considered and fairly decided upon by the appellate court. The Court emphasized the importance of providing meaningful appellate review to protect individuals' rights and ensure a fair judicial process. The decision made by the 11<sup>th</sup> Circuit is in direct conflict with the findings in Evitts.

### *Conclusion:*

In light of the paramount concerns raised regarding the potential abuse of discretion through reliance on a demonstrably faulty record and the vital importance of upholding appellate rights under the Fourteenth Amendment, the Supreme Court is compelled to grant certiorari and undertake a comprehensive review of a case in such circumstances. The alleged abuse of discretion, stemming from the lower court's reliance on a faulty record, not only undermines the integrity of the judicial process but also violates the Petitioner's constitutional rights to have their case and reasoning meticulously considered and fairly decided upon by the appellate court.

By hearing this case, the Supreme Court can provide much-needed guidance on the proper standards of judicial conduct and decision-making, reaffirming the integrity of the legal system. It would establish a significant precedent regarding the boundaries of discretion and the consequences of relying on a faulty record. Moreover, clarifying the scope of appellate rights under the Fourteenth Amendment ensures that due process is upheld, and defendants receive fair treatment in the appellate process.

In conclusion, the Supreme Court's response to this question is of great importance as it addresses the potential abuse of discretion, the reliance on a faulty record, and the protection of appellate rights under the *Fourteenth Amendment*. By granting certiorari and undertaking a comprehensive review, the Court can rectify any violations of due process, reaffirm the standards of judicial conduct, and ensure the fair and just resolution of the case.

### **Overall Conclusion**

The issues raised in the four questions presented to the Supreme Court warrant serious consideration due to their significant implications for the integrity of the judicial process, the protection of constitutional rights, and the establishment of legal standards.

The first question underscores the importance of addressing multiple material abuses of discretion and errors on the record. Failure to address and remedy such violations not only undermines the fairness of the trial process but also erodes public trust in

the judiciary. The Supreme Court's intervention is crucial to uphold the rule of law and ensure that justice is served.

The second question highlights the need for the Supreme Court to respond when it becomes known post-decision that all involved courts, including the Supreme Court, relied on material errors known by "officers of the court. "Misconduct and reliance on known errors jeopardize the integrity of the judicial process and infringe upon the Petitioner's rights under the *Fourteenth Amendment*. The Court's review is necessary to rectify any violations and reaffirm the fundamental principles of fairness and due process.

The third question emphasizes the significance of adhering to clear and proper jury instructions, especially in cases involving the requirement of a valid security in securities fraud. Failure to meet such requirements raises concerns about the fairness of the resulting conviction or verdict. The Supreme Court's consideration is essential to establish precedents, guide lower courts, and ensure that legal standards are properly applied, guaranteeing a just and reliable judicial system.

The fourth question addresses the Court's obligation to respond to a clear abuse of discretion when a lower court relies on a demonstrably faulty record. Such reliance not only undermines the integrity of the judicial process but also infringes upon the Petitioner's constitutional rights under the *Fourteenth Amendment*. The Supreme Court's grant of certiorari and comprehensive review is necessary to rectify these abuses, guide judicial conduct, and preserve the principles of due process.

Overall, the Supreme Court's intervention in these matters is imperative to uphold the rule of law, maintain public confidence in the judiciary, protect constitutional rights, establish legal standards, and ensure the fair and just administration of justice. By addressing these issues, the Court can reaffirm its role as the guardian of justice and uphold the principles upon which our legal system is built.

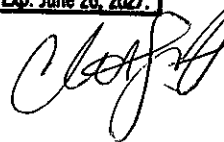
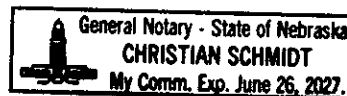
For all the reasons stated herein, this Petition for a Writ of Certiorari should be granted.

Respectfully submitted on this 14<sup>th</sup> day of August, 2023.



David Petersen, Petitioner, Pro se

8109 South 194<sup>th</sup> Street,  
Gretna, NE 68028  
402-983-6448



FOOTNOTE 1: ADDITIONAL LEGAL CASE CITES RELATED TO - Question #2

Drake v. Portuondo, 553 F.3d 230, 240 (2d Cir. 2009) (stating that “a conviction obtained through testimony the prosecutor knows to be false is repugnant to the Constitution . . . because, in order to reduce the danger of false convictions, we rely on the prosecutor not to be simply a party in litigation whose sole object is the conviction of the defendant before him,” and further stating that “[t]he prosecutor is an officer of the court whose duty is to present a forceful and truthful case to the jury, not to win at any cost”); Hayes v. Brown, 399 F.3d 972,