

No. _____

**In the
Supreme Court of the United States**
October Term, 2023

MATTHEW MURPHY,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent

*PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE FIRST CIRCUIT*

**PETITION FOR WRIT OF CERTIORARI
AND APPENDIX**

Karen A. Pickett
Pickett Law Offices, P.C.
Counsel of Record
125 High Street, 26th Floor
Boston, MA 02110
(617) 423-0485
Counsel for Matthew Murphy

QUESTIONS PRESENTED

1. Whether This Court Should Grant This Petition Because The Failure To Exclude The United States District Attorney's Office For the District of Massachusetts For Bias Violated Mr. Murphy's Sixth and Fourteenth Amendment Rights.
2. Whether Mr. Murphy Did Not Waive The Bias Argument By Pleading Guilty Where A Biased Prosecution Is A Structural Error.

TABLE OF CONTENTS

QUESTIONS PRESENTED.....	ii
TABLE OF CONTENTS.....	iii
TABLE OF AUTHORITIES	iv
OPINIONS BELOW.....	1
JURISDICTION	1
RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS.....	2
STATEMENT OF CASE	2
REASONS FOR GRANTING THE PETITION.....	4
A. Mr. Murphy’s Sixth and Fourteenth Amendment Rights Were Violated <u>When the District Court Would Not Recuse the Prosecutors in the District</u>	4
B. <u>The Prosecution’s Bias Was A Structural Error Not Waived By the Guilty Plea</u>	5
CONCLUSION.....	6

INDEX TO APPENDICES

Appendix A: Judgment of the United States Court of Appeals For The First Circuit...	A01
---	-----

TABLE OF AUTHORITIES

Cases

<u>Brucker v. City of Doraville</u> , 2022 U.S. App. LEXIS 17465 (11 th Cir. 2022)	4
<u>Stewart v. United States</u> , 2020 U.S. Dist. LEXIS 236858 (W.D. Wa.) 2020	5
<u>Tollett v. Henderson</u> , 411 U.S. 258 (1973)	5
<u>United States v. Bolden</u> , 353 F.3d 879 (10 th Cir. 2003)	4
<u>United States v. Castro-Vazques</u> , 802 F.3d 28 (1 st Cir. 2005)	5
<u>United States v. Dominguez-Benitez</u> , 542 U.S. 74 (2004)	5
<u>United States v. Mohammed</u> , 865 F.3d 885 (DC Cir. 2017).....	5
<u>Weaver v. United States</u> , 582 U.S. 286 (2017)	6

Constitutional And Statutory Provisions

Sixth Amendment to the United States Constitution.....	4-5
Fourteenth Amendment to the United States Constitution.....	4-5

No. _____

**In the
Supreme Court of the United States**
October Term, 2023

MATTHEW MURPHY,
Petitioner

v.

UNITED STATES OF AMERICA,
Respondent

*PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE FIRST CIRCUIT*

Matthew Murphy (“petitioner” or “Mr. Murphy”) respectfully petitions this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the First Circuit that affirmed the judgment of the United States District Court for the District of Massachusetts.

OPINIONS BELOW

The judgment of the United States Court of Appeals for the First Circuit is Appendix A to this petition.

JURISDICTION

The Judgment of the United States Court of Appeals for the First Circuit was entered on December 11, 2023. This Court has jurisdiction under 28 U.S.C. § 1254(1). The District Court

had jurisdiction pursuant to 18 U.S.C. § 3231, and the Court of Appeals had jurisdiction pursuant to 28 U.S.C. § 1291.

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

Sixth Amendment To The United States Constitution:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Fourteenth Amendment To The United States Constitution

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

A. Procedural History¹

The defendant was indicted on five counts of sexual exploitation of children in violation of 18 U.S.C. §§ 2251(a) and (e). The defendant pled guilty to all five counts. The defendant was sentenced on July 26, 2021. The government recommendation was a 600 month sentence which is 50 years. Tr. of July 26, 2021, at 13; A: 63. The defense asked for a sentence in the 20 to 25 year range. Tr. of July 26, 2021, at 40; A: 90. The court imposed a sentence of 396 months which is 33 years. Id. The sentence was 360 months on each of the first four counts all to run concurrent with each other and 36 months on count five to run consecutive to the sentences on counts one through four. The sentence on counts one through four represented the statutory maximum for those offenses. Tr. of July 26, 2021, at 44- 45; A: 94-95.

¹ Matters contained in the Appendix at the First Circuit will be designated by A-page number.

B. Facts Relevant To Resolution of the Petition

The defendant pled guilty to five counts of sexual exploitation of children. There was no dispute about what the defendant did. He confessed almost immediately to law enforcement and never in the course of this proceeding disputed his responsibility for what took place. As set forth in the indictment, the defendant systematically used the Internet to, "... knowingly employ, use, persuade, induce, entice, and coerce..." minors "... to engage in sexually explicit conduct..." for the purpose of producing child pornography which was then transmitted in commerce."

On August 23, 2019, the defense filed a "Motion for Hearing on Possible Conflict of Interest." A: 20-22; Docket Entry 26. In this motion, defendant asserted that the Chief Judge Saris of the District of Massachusetts had recused the entire District of Massachusetts from this case and the case has been assigned to Judges from the District of New Hampshire. In an Order dated August 16, 2019, Chief Judge Saris attributed this extraordinary recusal to "exigencies." (D.E. 25). Mr. Murphy asserted that based on conversations his counsel had with the prosecutors, he believed the "exigencies" involved a conflict due to a member of the clerk's office having an interest in the case. (D.E. 26). Mr. Murphy averred: "The government has declined to identify that member of the clerk's office, nor identify any communications that person may have had with the prosecutors concerning this matter." (D.E. 26).

The motion was heard on September 20, 2019. A: 26-50; Docket Entry 67. At the hearing, the Government stated: "The minor at issue or that is relevant to the defendant's motion here is minor A, as he's identified in the materials...the employee of the building at issue or in question is the father of minor A....He is employed by the District of Massachusetts Clerk's Office in some capacity." (A. 31-32; 41). Mr. Murphy objected to the prosecutor's

representation that she personally did not have contact with the victim's father because there was no showing that the entire District of Massachusetts prosecution team did not have a conflict.

(A. 43-45). The court found that there was no basis on which to find that there was a conflict.

(A. 45). At no time during the hearing was the victim or the victim's father identified.

REASONS FOR GRANTING THE PETITION

A. Mr. Murphy's Sixth and Fourteenth Amendment Rights Were Violated When the District Court Would Not Recuse the Prosecutors in the District

This Court should grant the petition because the record establishes that there was an unconstitutional risk of prosecutorial bias which should have required the district court to recuse the prosecutors from the United States District of Massachusetts, as the chief district judge did concerning all judges in the district.

"The constitutional standard of impartiality is less stringent for prosecutors than it is for judges. Prosecutors need not be entirely neutral and detached and can be zealous in their enforcement of the law. Yet [a] scheme injecting a personal interest, financial or otherwise, into the enforcement process . . . raise[s] serious constitutional questions." *Brucker v. City of Doraville*, 2022 U.S. App. LEXIS 17465, *19 (11th Cir. 2022) (internal quotations and citations omitted). See *Bordenkircher v. Hayes*, 434 U.S. 357, 365 (1978) (discussing that prosecutors have discretion but it is limited by due process under the Fourteenth Amendment).

Mr. Murphy understands that the disqualification of an entire office is a "drastic measure" not to be taken lightly. See *United States v. Bolden*, 353 F.3d 870, 876 (10th 2003). But there are specific circumstances here that militate in favor of such disqualification. First, the chief judge of the district court disqualified all judges in the district, not just the ones who had a personal relationship with victim A's father in the clerk's office. Second, the prosecutor here had the ability to recommend a sentence in an almost unlimited range, and in fact recommended

fifty years for this young appellant. Third, the fact that the line prosecutor stated she did not “know” the employee is insignificant; as the Court knows, sentence recommendations are reviewed at least by supervisors of the line prosecutor. Finally, at a minimum, at the hearing, the judge should have required the prosecutor to reveal the name and position of the court employee so that the defense could undertake its own investigation of bias. *See United States v. Mohammed*, 865 F.3d 885, 890 (D.C. Cir. 2017) (discussing defense counsel’s Sixth Amendment duty to investigate bias).

B. The Prosecution’s Bias Was A Structural Error Not Waived By the Guilty Plea

The First Circuit affirmed Mr. Murphy’s conviction on the basis that: “[i]t is well-established that an unconditional guilty plea results in the waiver of errors preceding the plea,’ *United States v. Castro-Vazquez*, 802 F.3d 28, 32-33 (1st Cir. 2015), citing *Tollett v. Henderson*, 411 U.S. 258, 267 (1973) (“When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea.”). *See* Appendix to this Petition (Judgment of First Circuit). But this determination ignores that a biased prosecution constitutes a “structural error” which can invalidate a plea.

“A structural error is one ”entitling the defendant to automatic reversal without any inquiry into prejudice. In *United States v. Dominguez Benitez*, [this Court] explained that ‘i]t is only for certain structural errors undermining the fairness of a criminal proceeding as a whole that even preserved error requires reversal without regard to the mistake's effect on the proceedings.’ 542 U.S. 74, 81 (2004).” *Stewart v. United States*, 2020 U.S. Dist. LEXIS 236858, *15 (W.D. Wa. 2020) (internal citations and quotation omitted). .

In determining whether an error is structural:

There appear to be at least three broad rationales for finding an error to be structural. One is when the right at issue does not protect the defendant from erroneous conviction but instead protects some other interest--like the defendant's right to conduct his own defense--where harm is irrelevant to the basis underlying the right. Another is when the error's effects are simply too hard to measure--*e.g.*, when a defendant is denied the right to select his or her own attorney--making it almost impossible for the government to show that the error was harmless beyond a reasonable doubt... Finally, some errors always result in fundamental unfairness, *e.g.*, when an indigent defendant is denied an attorney. For purposes of this case, a critical point is that an error can count as structural even if it does not lead to fundamental unfairness in every case

Weaver v. United States, 582 U.S. 286, 290 (2017) (internal quotations and citations omitted). In this case, Mr. Murphy asserts that a biased prosecution in a case where there is no plea agreement and the government has a wide range of sentencing recommendations meets all three examples. As asserted above, prosecutorial bias is also subjected to a similar analysis to judicial bias, and judicial bias, if found, has been deemed a “structural error.” *See Billingslea v. Jackson*, 83 Fed. Appx. 33 (2003).

CONCLUSION

For the reasons set forth above, Mr. Murphy respectfully requests that this Court grant his petition for a writ of certiorari.

Respectfully submitted,

MATTHEW MURPHY

By his counsel,

/s/Karen A. Pickett

Karen A. Pickett
Pickett Law Offices, P.C.
Counsel of Record
125 High Street, 26th Floor
Boston, MA 02110
(617) 423-0485
kpickettlaw@gmail.com

Dated: March 11, 2024

APPENDIX

Judgment of United States Court of Appeals For The First Circuit

A001