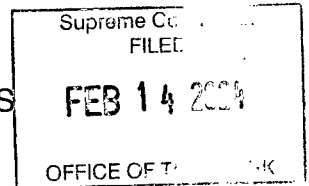


23-6989
No. _____

IN THE
SUPREME COURT OF THE UNITED STATES



Lenroy Mclean — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeal for the Second Circuit of New York
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

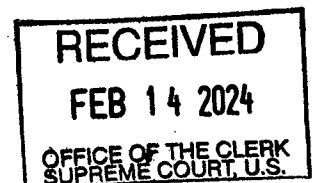
PETITION FOR WRIT OF CERTIORARI

Lenroy Mclean 61524-054
(Your Name)

Seagoville FCI-LOW P.O. Box 9000
(Address)

Seagoville, Tx 57159
(City, State, Zip Code)

(Phone Number)



QUESTION(S) PRESENTED

- I. Whether the lower court properly applied the evaluation of the sect. 3553 factors among differently situated co-defendant to denied Petitioner's compassionate release ?
- II. Whether the lower court corruptly altered, mutilates or concealed information with the intent to impair the object's integrity of availability for usage at the Supreme court level??
- III. Should circuit court judge(s) sitting by designation within the lower court have influences within the official proceeding on appeal ?

LIST OF PARTIES

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

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

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OTHER

PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

JURISDICTION

~~xx~~ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was Nov.29th, 2023.

☐ No petition for rehearing was timely filed in my case.

~~xx~~ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: 12th of Jan. 2024, 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. § 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

Sect. 3535 : Imposition of a sentence (a) factors to be considered in imposing a sentence. The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this section. The court, in determining the particular sentence to be imposed, shall consider-(1) the nature and circumstances of the offense and the history and characteris of the defendant;

Sect. 1512 : Tampering with a witness, victim or an informant (b) whoever knowingly uses intimidation, threaten or corruptly persuades another person, or attempts to do so, or engages in misleading conduct towards another person with intent to-(2) cause or induce any person to-(A) withhold a record, document, or other object, from an official proceeding; (B) alter, destory, mutilate, or conceal an object with intent to impair the object's integrity or avilability for use in an official proceeding;

§ 1512 (c) whoever corruptly-(1) alters, destroys, mutilates or con- ceals a record, document or other object, or attempts to do so, with the intent to impair the object's integrity or availability for use in an official proceeding, or attempts to do so, shall be fined under this title or imprisoned not more than 20 years, or both

STATEMENT OF THE CASE

During the COVID-19 pandemic, Petitioner had attempted to seek relief under the compassionate release (§ 3582(c)(1)) given his health conditions, his living condition amongst other things. The presiding judge (Richard J. Sullivan) of the Second circuit was actually sitting by designation when he denied Petitioner's relief solely on the evaluation of his co-defendant's findings of his (Sanchez) § 3553(a) factors.

Judge Sullivan and his constituents (to include officers of the court) had participated directly and/or indirectly in the obstruction of the valid 18 USC § 1512(c)(1) (2) a criminal contempt proceeding, with the use of tricks, frauds, deceit and other stratagems directed to the due and impartial administration of justice, beginning on or about October 2008 and continued to the present---resulted into complaint of judicial misconduct filed against them. Appx. B

Petitioner hereby incorporated by reference as it set forth with in the second circuit court of appeals (case #22-966), that Petitioner had appealed the lower court denial on the 31st of May 2022, post that date a judicial misconduct complaint was filed against the Honorable Gerard E. Lynch---upon receipt of the circuit court's denial (Id) dated November 29, 2023, judge Lynch was assigned as a panel judge to decide his appeal, at the core of the panel order, a predisposition statement was made of their superior power to influence another proceeding unrelated to the cause at hand, such was without any regards to the constitution they govern.

Judge Lynch judicial misconduct complaint has been ongoing, Petitioner then filed a petition for panel/en banc rehearing which was denied on the 12th of January 2024, within the ORDER they had altered and removed the names of the panel judges that was assigned to the panel/en banc rehearing-such defiles the judicial process and procedures to such an extent this court's judicial functions are impaired and prevented from adjudicating Petitioner's claim(s) on the merit. See Appx. C

The original order that was issued to the Petitioner of the predisposition comment and statement was removed from the records and replaced with the wording of the mandate-what's intriguing Petitioner would not have argued and/or made these argument within his panel/en banc rehearing without such actually been a part of the record. A thorough investigation of the computer generated records will confirmed the assertion of the Petitioner.

REASONS FOR GRANTING THE PETITION

Question I: Whether the lower court properly applied the evaluation of the § 3553 factors among differently situated co-defendant to denied Petitioner's compassionate release?

Upon review of the record, the lower court had concluded that "with respect to Petitioner's co-defendant (Roberto Sanchez) the section 3553(a) factor "strongly disfavor compassionate release"" and that such "all outweigh the facts that 'might' otherwise support [Mclean's]". Nonetheless in upholding the denial imposed, the court of appeal asserted "that the district court directly addressed the particulars of Petitioner's case, referring to Sanchez only to note that the factors bearing on this case were similar to those that had led the court to deny a similar previous application by Sanchez"-such was an plain error. See *United States v Wagner-Dano*, 679 F.3d 83,89 (2d Cir 2012)(holding alleged failure properly to consider § 3553(a) factors subject to plain error review).

The Sentencing Reform Act of 1984, Pub.L.No.98-473, 98 Stat. 1987(codified as amended in scatter sections of 18 and 28 USC) codified the traditional purpose of sentencing and recognized the importance of individually sentencing each defendant. 18 USC § 3553(a)(1)-(2) (1988).

To facilitate this task, the Act preserved a court's ability to conduct a broad inquiry into relevant factors about each defendant. *Id* § 3661(1988)("no limitation shall be placed on the information concerning the background, character and conduct of a person convicted of an offense which a court of the United States may receive and consider for the purpose of imposing an appropriate sentence"). See *United States v Huseh*, case #18-20027-JAR, 2021 US Dist Lexis 203827 @ *42 (10 Cir 2021)

Here, the lower court's knew that the criminal activities of Petitioner's co-defendant was not instructive by way of comparison to Sanchez himself---Sanchez had supervised five or more people, corrupted a custom agent and partake in masterminded a plan to the FBI and assisted others (unknown) individuals unrelated to this cause with the transportation of narcotics across stateline amongst other things inwhich he pleaded guilty. In contrast, Petitioner's 3553(a) factors between him and his co-defendant is worthy within the microcosm of this case and factors bearing.

When the court considered the denial of Petitioner's compassionate release under § 3553(a) factors---such consideration should have been given to the individual

defendant in light of the statutory sentencing factors under 18 USC § (a). See *Nelson v United States*, 555 US 350,351,129 S.ct 890,172 L.ed.2d 719(2009); See also *United States v Panice*, 598 f.3d 426,441 (7th cir 2010).

Question II: Whether the lower court corruptly altered, mutilates or concealed information with the intent to impair the object's integrity or availability for usage at the Supreme court level?

The active members of the lower court that had considered Petitioner's request for panel/en banc rehearing---names were removed from the denial 'ORDER' with the purpose and objective being the defilement and contamination of the judicial machinery's process and procedure, the tempering with the administration of justice by such trickery, deceit, malfeasance and other nefarious act are directed towards this court judicial process. Id @ C.

The manner in which this malfeasance was done, is to make detection of the judge (Gerard E. Lynch) in question and comments virtually impossible and conceal the information from the public scrutiny---evidence tampering obstructs an official proceeding (18 USC § 1512(c)) and demonstrates a judicial function exclusively for fraud on the court. See *Hazel Atlas-Glass Co. v Hartford Empire Co.* 322 US 238,240-50(1944); See also *Universal Oil Products Co. v Root Refining Co.* 328 US 575, 580(1946)

The denial of Petitioner's appeal to the court had statement that showed a predisposition argued within his panel/en banc rehearing that prejudice the Petitioner. A constitutional violation occur only when a judge's rulings or statements shows "a predisposition so extreme as to display clear inability to render fair judgment". See *Johnson v Bagley*, 544 f.3d 592,597 (6th cir 2008)

Here, the lower court's knew Petitioner had questioned the judge's ethics post the filing of his appeal, such to which judge Lynch was aware himself before sitting on that panel to decided Petitioner's appeal--its like a trojan horse working from within. The question of whether judge Lynch was "actually subjectively biased? or whether the average judge in his position is likely to be neutral without any unconstitutional potential bias?" See *Caperton*, 556 US @ 881 (citation and internal quotation marks omitted).

Within the case of *U.S. v Sanchez et al (McLean)*, its a pattern of malicious and pernicious motive to obstruct justice in violation of 18 USC § 1512(c)(1)(2) corrupt obstruction of an official proceeding and the defilement of the machinery's

functioning, when they altered the original ORDER to correct the predisposition comment. The corruption of the "trial judge" is a per se judicial structural error requiring "automatic reversal" of all judgments of conviction and sentence. See *Arizona v Fulminate*, 499 US 278,306-12(1996).

Question III: Should circuit court judge(s) sitting by designation within the lower court have influences within the official proceeding on appeal?

This particular case concern complaints of judicial misconduct filed by the Petitioner against judges within the lower court, that had influence on his appeal proceedings [e.g. personal favors related to judicial office and/or special treatment for friends amongst other things]. Section 1512(c) prohibits corruptly obstructing influencing or impeding "any official proceeding", there are complaints essential accuses judge Richard J. Sullivan of partaken in 1) distorted and suppressed the true facts of the case; 2) assisted the Government by furnishing arguments not raised by the U.S. attorney (that Petitioner carried guns and involved with the drop off of money in a large amount within the charge conspiracy); 3) utilized false facts, records and circumstances and 4) refuses to address issues presented for review. Under the most natural reading of the statute (*Id*), the law "applies to all forms of corrupt obstruction of an official proceeding, other than the conduct that is already covered by the evidence-tampering language of 1512(b). See *Fulminate*, 499 US 306-12.

Here, Sullivan's dual role as a circuit court judge and sitting by designation within the district court with numerous complaint of Judicial misconduct where the Petitioner question his ethic as well, creates an inherent bias and therefore violates his Due Process rights.

In the case of *Williams v Pennsylvania*, 579 US 1,136 S.ct 1899,195 L.ed.2d 132 (2016) this court clarified that "Due Process guarantees an absence of actual bias on the part of judge". (quoting *In re Murchison*, 349 US 133,136,75 S.ct 623,99 L.ed. 942(1955) (internal quotation marks omitted)).

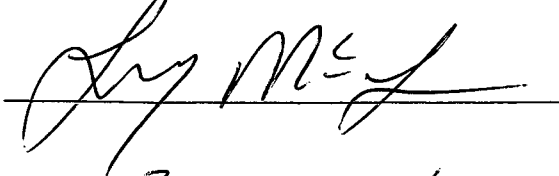
There are precedents within this court that "set forth an objective standard that requires recusal when the likelihood of bias on the part of the judge is too high to be constitutionally tolerable". *Williams*, 136 S.ct. 1899 @ 1903; (quoting *Caperton, v A.T. Massey Coal Co.*, 556 US 868,872,129 S.ct. 1456,43 L.ed. 2d 712(2009)(quoting *Withrow v Larkin*, 421 US 35,47,95 S.ct 1456,43 L.ed.2d 712(1975)

The evidence within this case file, question the psychological tendencies of judge Sullivan given Petitioner's grievances been filed since 2017, which poses a risk of actual bias--when Sullivan's denial of each petition within the lower court in which he constantly put emphasis on 1) Petitioner was not remorseful; 2) His extensive history of supposedly violence and 3) the fact that he did not provide assistance with the Government, demonstrates a high degree of favoritism and antagonism that makes fair judgment impossible. See *Liteky v United States*, 510 US 540, 555, 114 S.Ct 1147, 127 L.ed.2d 474 (1994).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 2-2-2024