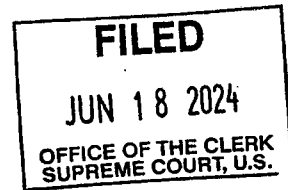


ORIGINAL

No. _____

23-7812



IN THE

SUPREME COURT OF THE UNITED STATES

Akohomen Ighedoise — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The Eleventh Circuit Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Akohomen Ighedoise
(Your Name)

P.O. Box 150160
(Address)

Atlanta, GA 30315
(City, State, Zip Code)

N/A (Federal Prisoner)
(Phone Number)

QUESTION(S) PRESENTED

- 1) Whether a Judge Abuses his/her discretion when there is a determination that post-sentencing rehabilitative efforts are evidence of an attempt to deceive the district court and thereby become a militating factor, rather than a mitigating factor per 18 USC § 3553(a) which is then used to justify an upward departure from the applicable guidelines range; and whether this circumstance violates a defendant's substantive rights.
- 2) Whether a prosecutor commits a Breach of the Plea Agreement by remaining silent when the district court upwardly departs from the sentencing range that the Government has bound itself to recommend in the Plea Agreement; or whether the Government has a duty to object to the upward departure in such a circumstance.
- 3) Whether the US Postal Service delays have now rendered Federal Prisoner's lack of access to Electronic Filing of Court documents and/or the Internet (for such) Unconstitutional for Lack of Access to the Courts.

LIST OF PARTIES

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

RELATED CASES

United States v Farias-Contreras, Case No. 21-30055, 2024 US App LEXIS 13231 (9th Cir June 3, 2024)

United States v Mojica-Ramos, Case No. 22-1204, 2024 US App LEXIS 13794 (1st Cir June 6, 2024)

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TABLE OF AUTHORITIES CITED

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Tapia v United States, 131 S.Ct. 2382, 2393 (2011)	M1
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OTHER

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

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

OPINIONS BELOW

☒ For cases from **federal courts**:

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

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

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

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

☐ For cases from **state courts**:

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

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

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

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

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was January 29, 2024.

☐ 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 5, 2024, and a copy of the order denying rehearing appears at Appendix C.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (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

United States Constitution, Amendment 5, Due Process Clause

United States Constitution, Amendment 1, Redress of Greivance Clause

18 USC § 3553(a)(1)-(7)

STATEMENT OF THE CASE

In the instant case, Akohomen Ighedoise was convicted of Wire Fraud and International Money Laundering Conspiracy (18 USC §1349 & 18 USC §1956(h)).

He was held pre-trial for more than six years in Canada's Toronto South Detention Facility, wherein he was the subject of multiple abuses as outlined before the district court. In the time he was held in Canada, Ighedoise com-

pleted more than 60 rehabilitative programs - which the district court used as part of its rationale to upwardly depart from the guidelines range as calculated by the district court. The Government, despite being bound by the Plea Agreement to "recommend the low end of the applicable guidelines range" - see Doc 1121, at 11 ¶ 6 (included here as Appendix D) - argued before the district court that Ighedoise's co-defendant's trial testimony counseled in favor of an upward departure - see Doc 1167, at 18 (included with Appendix D)

The district court then departed upward from the guidelines range, over defense objection, to 210 months imprisonment.

Subsequently, Ighedoise appealed, as an upward departure appeal is outside of the scope of his appeal waiver.

On appeal, Ighedoise's appellate attorney determined that there are no non-frivolous issues on appeal, to which Ighedoise entered a Pro-Se Brief outlining the abuses described above and requesting Oral argument on the issues outlined above.

The Eleventh Circuit denied Ighedoise's brief, and Granted the Ander's Brief for withdrawal of counsel.

Here, Ighedoise presents that *Pepper v United States*, 562 US 476, 491 (2011) should be applied to the instant case as foreclosing the district court from using post-sentencing rehabilitation as a reason for an upward departure, and that the Government's failure to argue against the upward departure constitutes a Breach of the Plea Agreement.

Ighedoise believes that the issues presented here can be resolved in a Per Curiam ruling, as they clearly breach Supreme Court Precedent.

REASONS FOR GRANTING THE PETITION

To resolve a Circuit split between the 11th Circuit, and the 1st and 9th.

The issues presented here concern matters of National Importance - especially since the landmark First Step Act of 2018's return of federal imprisonment's goal to that of a Rehabilitative Model from the Retributive Model that has been followed for the past 40 or so years.

As rehabilitative efforts of a prisoner become more relevant to even initial sentence (as here), the issues presented herein will become more and more common - and this Court should address the impact of previously determined precedent toward sentencing as it pertains to rehabilitation.

Additionally, as the district court judge clearly supports the Retributive Model of sentencing over the Rehabilitative Model in this instance - addressing whether rehabilitation can be utilized as an aggravating factor will affect whether activist judges can retard the return to a rehabilitative model.

Finally, for the 3rd issue presented, currently prisoners are not allowed access to filing court documents in any federal court. The United States Postal Service is at this time, and for at least the past four years, incapable of delivering mail in a timely manner - if at all in some circumstances.

These issues have been often reported over the last two Presidential Election Cycles.

The lack of timely delivery has caused multiple meritorious cases to be dismissed "for lack of prosecution" - which then led to further use of court resources to re-open said cases/appeals. As many meritorious cases are time sensitive, this has also prejudiced filing prisoners and prevented assertion of rights which the DOJ has deliberately ignored, which has then led to setting of precedent which is erroneous.

Here, the lack of electronic filing has delayed the filing of the instant Petition due to non-delivery. The outdated requirements, therefore, infringe upon Ighedoise's right of access to the courts, and his First Amendment right to Petition for Redress of Greivance. And this same issue affects every Pro Se prisoner's filings - with more than 2 million prisoners at any given time, all of these issues affect the Nation's public reputation and Constitutional rights of the People as a whole. Therefore, this Court should Grant the Instant Petition.

Memorandum In Support

I. The District Court's Upward Departure Runs Afoul of *Pepper v United States*

In its reasons for imposing an upward departure, the district court below explained that part of its decision rested on Ighedoise's participation in more than 60 rehabilitative classes while in pre-trial detention in Canada and testimonial statements made in Ighedoise's Co-defendant's trial which were never placed on the record in Ighedoise's case.

In *Pepper*, the Supreme Court has previously ruled that "[E]vidence of rehabilitation may be highly relevant to several of the §3553(a) factors that Congress has expressly instructed district courts to consider at sentencing." (562 US at 491). To be sure, *Pepper* does state "postsentencing" which has been omitted here. Ighedoise, however, submits to this Court that the fact of pre or post sentence is irrelevant to the relevancy of rehabilitation in relation to the §3553(a) factors. Rehabilitation is relevant regardless of when it occurred - see *Gall v United States*, 552 US 51, 57 (2007) (approving of a district court's emphasis on rehabilitation as a mitigating factor at initial sentencing); see also *Tapia v United States*, 131 S.Ct. 2382, 2393 (2011) ([A] sentencing court "may not impose or lengthen a prison sentence to enable an offender to complete a treatment program or otherwise to promote rehabilitation").

While none of these cases are directly on point with the instant issue, there also does not appear to be any case that is making this technically an issue of first impression; although Ighedoise presents now that the three cases cited above counsel in favor of his position.

As there appears to be a gap in these rulings that has yet to be filled, and as this gap has now been used to enhance a prisoner's sentence, and as this type of enhancement is likely to increase due to judges who support the Retributive Model of imprisonment protest the recent shift back toward a Rehabilitative Model, this Court should Grant Certiorari review on this issue.

II Whether the Government Breached the Plea Agreement

The Appellate Court below has approved, despite clear binding precedent to the contrary, of the Government's breach of Ighedoise's Plea Agreement.

The agreement in question (included as part of Appendix D), requires the Government to have recommended a "low end" sentence within the applicable guidelines range - which in this instance was 135 months. See Appendix D, Doc 1121, at 11.

The Government was represented by the same attorney in the plea agreement and at Ighdoise's sentencing (compare Doc 1121 at 18 with Doc 1167, generally - both included in Appendix D).

As presented to the Eleventh Circuit, Plea Agreements are governed by contract law - *Puckett v United States*, 556 US 129, 137 (2009), and must be construed according to the reasonable expectations and intent of the contracting parties - *United States v Rubbo*, 396 F 3d 1330 1334 (11th Cir 2005); and *Santobello v New York* 404 US 257, 262 (1971) ("[W]hen a plea rests in any significant way on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled"). And fulfillment cannot be based on "lipservice" to the agreement - *United States v Benchmol*, 471 US 453, 456 (1985). And to speak later in a manner that is inconsistent with a party's promise is to breach said promise - *id.*

Here, the Government went well out of its way to support the upward departure (Doc 1167, at 18 - Appendix D) which was used by the district court in it's reasoning as justifying an upward departure (Doc 1167, at 25, line 3 - Appendix D). Ighedoise complained extensively of this Breach before the Eleventh Circuit, including outlining how this Court has repeatedly ruled that such is a Breach of Contract as outlined above. Accordingly, this Court could resolve this particular issue through a Per Curiam ruling in favor of Ighedoise.

III. Whether The US Postal Service's Delivery Troubles Constitutes A Lack Of Access To the Courts

Currently, prisoners are required to utilize the US Postal Service in order to submit legal filings in all federal courts as the federal electronic filing system is internet based and most prisoners (but not all) do not have legal access to the internet. This includes all federal prisoners such as Ighedoise. Some State Prison Systems do however, allow access to the internet for both educational and legal filing purposes. for example, California. In addition, many states' DOC's provide kiosks within their

prison law libraries ... but not the Bureau of Prisons. In point of fact, federal prisoners are barred by law from accessing the internet (though the legal resources available in FCI Atlanta's Law Library do not include the relevant statutes of regulations).

Ighedoise presents now that this barrment has become Unconstitutional under the First Amendment's Right to Redress Greivance Clause (and under the various courts' inherent ability to require free access) due to the US Postal Service's inability to manage its own workload. With the Postal Service being incapable of adequately preserving prisoners' rights of access, this Court should not Grant Certiorari (and/or Habeas Corpus) on whether the federal law preventing prisoners from filing electronically is Unconstitutional.

This issue is not borne from a vaccuum, either; as this Court has previously determined that prisoners cannot be prevented by Government officials from accessing the Courts - see, e.g. *Lewis v Casey*, 518 US 343, 356 (1996); *Bounds v Smith*, 430 US 817, 821-22 (1977); and *Christopher v Harbury*, 536 US 403, 416 (2002). To be sure, the above cited deal only in prison administrators activley preventing prisoners from asserting valid claims - but Ighedoise presents here that the same reasoning can and should be applied to any actor who prevents claims from being presented, including the US Postal Service and Congress itself.

Ighedoise presents this claim in "short-circuit" of the eventuality that the instant filing does not make it to this Court on time. He has witnessed multiple instances wherein lack of delivery by the Postal Service has resulted in cases and appeals being dismissed and wishes to preserve his rights on this issue which has developed since his direct appeal began, and thusly was unavailable on appeal.

This is, to his knowledge an issue of first impression - as he could find no cases directly on point and the aforementioned dismissals are all too new to be applied here (none have been resolved at this time).

CONCLUSION

Ighedoise has meritorious issues which the Appellate Court below refused to address - twice. These issues affect a growing number of criminal defendants and will affect more as time passes and judicial activists who wish to maintain the Retributive Model of incarceration twist the meanings of the rules and laws that have been instituted in order to return to the Rehabilitative

Model which empirical evidence shows creates a safer society for both those convicted of crimes, and for those who have never been. The dangers of using a prisoner's rehabilitative efforts as justification for increased punishment should not be ignored by this Court, lest the overexpansion of Government power be extended to the Judicial Branch as well. Using mitigating factors as though they are aggravating factors will ultimately lead to such. and this Court should put a stop to it here.

Also, as the AUSA presiding over the instant case committed clear Breach of the Plea Agreement, and both the district court and the appellate court did not take action, this Court can resolve the Breach while addressing the above.

And finally, the requirement to use paper filings that is exclusive to Pro Se Prisoners should be addressed as the current method has become Constitutionally inadequate to preserve Access to the Courts. These issues affect literally millions of persons in the Nation, as overincarceration has more than 2.5 million people incarcerated at any given time - and these issues will continue to affect future incarcerated individuals if judicial activists are allowed to continue to push for a failed model of "justice".

Respectfully Submitted this 12 day of JUNE 2024



Akohomen Ighedoise

Currently, there is a circuit split with the Eleventh Circuit on one side, and the First and Ninth Circuits on the other - on the issue of whether and to what extent an attorney for the government can "recommend" one sentence, then present aggravating factors to the sentencing court which clearly do not comport with the government's nominal recommendation for a particular sentence that is agreed to in a plea agreement. (see related cases for the split).

The Eleventh Circuit has stated in the instant case that the government may present any evidence of "related conduct", yet the 1st and 9th have clearly stated that the government is bound to stick to facts that support the recommendation only.

For this reason, the Court should GRANT Certiorari in the instant Petition.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Akchika

Akohomen Ighedoise

Date: JUNE 12, 2024