

ORIGINAL

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No. _____

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SUPREME COURT, U.S.

In The
Supreme Court of the United States

BORIS KOTLYARSKY, AN INDIVIDUAL,
Petitioner,

v.

UNITED STATES DEPARTMENT OF JUSTICE,
PREET BHARARA, IN HIS OFFICIAL CAPACITY,
JAMES COMEY, IN HIS OFFICIAL CAPACITY,
Respondents.

On Petition for a Writ of Certiorari to
United States Court of Appeals
for the Second Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. In the context of habeas corpus, would it constitute a breach of due process to convict a defendant in a criminal proceeding, despite clear evidence demonstrating that the accused never committed the crime?
2. Is a District Court Judge obligated to ensure due process by scrutinizing a plea in a criminal case and the underlying circumstances before accepting the plea?

LIST OF PARTIES

All parties appear in the caption on the cover page.

Petitioner

Boris Kotlyarsky

Respondents

United States Department of Justice

Preet Bharara in his official capacity

James Comey in his office capacity

RELATED PROCEEDINGS

Statement of related proceedings

This case arises from the following proceedings:

- *Boris Kotlyarsky v. United States Department of Justice, Preet Bharara, in his official capacity, and James Comey, in his official capacity*, 20-Civ-9230 (PGG) (SDNY Sep. 28, 2022) (trial court judgment).
- *Boris Kotlyarsky v. United States Department of Justice, Preet Bharara, in his official capacity, James Comey, in his official capacity* (Court of Appeals, Second Circuit Nov. 15, 2023) (appellate court decision).
- *Boris Kotlyarsky v. United States Department of Justice, Preet Bharara, in his official capacity, James Comey, in his official capacity* (Court of Appeals, Second Circuit Jan. 03, 2024) (petition for panel rehearing denied).

There are no other proceedings in state or federal court or this Court directly related to this case within the meaning of this Court's Rule 14.1(b)(iii).

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**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

The opinion of the United States Court of Appeals for the Second Circuit appears at Appendix A to the Petition and is reported: *Kotlyarsky v. United States Dep't of Justice*, No. 22-2750 (2d Cir. Nov. 15, 2023)

The opinion of the United States District Court appears at Appendix C to the petition and is reported *Kotlyarsky v. United States Dep't of Justice*, 20 Civ. 9230 (PGG) (SDA) (S.D.N.Y. Sep. 28, 2022).

JURISDICTION

The date on which the United State Court of Appeals decided my case was **November 15th, 2023**, and a copy of the order affirming the District Court appears at **Appendix A**. A timely petition for rehearing was denied by the United States Court of Appeals on the following date: **January 3rd, 2024**, and a copy of the order denying rehearing appears at **Appendix B**.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

42 U.S.C § 1983- Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

**United States Constitution, 14th Amendment,
Section 2.**

U.S. Const. amend. XIV, § 2: Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. 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

I am Boris Kotlyarsky, I am filing pro se, seeking redress for a grave miscarriage of justice. This petition seeks review of a decision by the United States Court of Appeals for the Second Circuit, which dismissed my Complaint against the United States Department of Justice and Preet Bharara and James Comey in their official capacity, a conviction obtained through egregious prosecutorial misconduct and judicial error. This case presents fundamental questions concerning the integrity of our legal system and the protection of constitutional rights.

On January 15, 2016, the government initiated criminal proceedings against Mr. Kotlyarsky, alleging involvement in a murder-for-hire plot. However, rather than pursuing charges based on evidence, the

government resorted to fabricating a false conspiracy to extort and false extortion charges. These charges were unfounded, lacking any substantive evidence and failing to identify the purported conspirators or the alleged victim.

I filed an action pursuant to 42 U.S.C. Section 1983 in the United States District Court for the Southern District of New York to redress the deprivation under color of law of Plaintiffs' rights as secured by the United States Constitution. The Government engaged in a baseless and malicious prosecution.

My claims arise from the malicious prosecution that was achieved through numerous violations of my Constitutional rights under *Brady v. Maryland*, 373 U.S. 83 (1963). The FBI under the direction of James Comey, provided misleading information that led to the arrest of an innocent man, in order to protect an FBI informant: would be murderer, Anatoly Potik. While Anatoly Potik, who hired a hit man to kill his son-in-law walked out a free man, Boris Kotlyarsky, the hero who blew the whistle on the killer's plot, was arrested on fabricated extortion charges and served forty-one 41 months in prison. The Government, under the direction and supervision of Preet Bharara withheld critical exculpatory testimony of Boris Nayfeld (the "hitman" hired by the victim's father-inlaw, Anatoly Potik, to kill the victim, Oleg Mitnik), in violation of *Brady*.

Meanwhile, the Government dropped the charges against Anatoly Potik, the person who masterminded and paid for the murder of Oleg Mitnik. Even the hitman who accepted employment to kill Mr. Mitnik, was offered a light sentence guideline and below guideline recommendation by the Government and consequently only served 23 months.

The government destroyed my life, reputation and livelihood and used me as a scape-goat to protect their informant, Anatoly Potik, by filing false charges against me and failing to disclose favorable evidence that was material to my criminal matter. *Brady, Id.* 373 U.S. at 87. Accord: *Gantt v. Martuscello*, 2013 U.S. Dist. LEXIS 183258, 35 (N.D.N.Y. 2013).

Despite the absence of credible evidence, Judge Kaplan of the United States District Court for the Southern District of New York presided over the case, displaying flagrant disregard for due process and fairness. Throughout the proceedings, Judge Kaplan failed to disclose crucial evidence, including exculpatory materials that would have significantly impacted the sentencing outcome.

Moreover, Judge Kaplan's conduct raised serious concerns about his impartiality and adherence to the rule of law. Despite possessing evidence of prosecutorial misconduct and constitutional violations, Judge Kaplan proceeded with sentencing on May 31, 2017, demonstrating a disturbing pattern of impunity and disregard for constitutional rights.

After the District Court erroneously dismissed my case, I appealed to the Second Circuit, which was also erroneously dismissed.

LEGAL ISSUES PRESENTED

1. Violation of Due Process: The government's fabrication of charges and failure to disclose exculpatory evidence violated Mr. Kotlyarsky's due process rights under the Fifth and Fourteenth Amendments.
2. Judicial Misconduct: Judge Kaplan's failure to uphold his duty to ensure a fair trial and sentencing process constitutes judicial misconduct, warranting review by this Court.
3. Impartiality and Fairness: Judge Kaplan's actions demonstrate a bias and partiality that undermine the integrity of the judicial system, raising concerns about the fairness of the proceedings.
4. Prosecutorial Misconduct: The government's conduct, including the fabrication of charges and suppression of evidence, constitutes prosecutorial misconduct, warranting intervention by this Court to safeguard the principles of justice.

REASONS FOR GRANTING THE WRIT

On January 15, 2016, the government engaged in misconduct by distorting the facts of a murder-for hire case. Despite evidence supporting the original charge, the government transformed it into baseless accusations of conspiracy to extort and false extortion, lacking any substantiated evidence or even the identification of alleged co-conspirators or victims. Shockingly, this miscarriage of justice was perpetuated not only by the government but also by multiple judges, including Judge Kaplan, Judge Gardephe, Judge Aaron, Judges Raggy, Judge Sullivan and Judge Lee, and others across three courts, who failed to disclose the absence of crucial names crucial to the case.

These missing names, crucial to establishing the truth, were manufactured by the government to shield the true mastermind, Mr. Potik. This manipulation of facts has prompted Mr. Kotlyarsky to seek reinstatement of his case. The quest for justice now hinges upon a crucial step: appealing to the Supreme Court of the United States.

Mr. Kotlyarsky, a patriotic American, acted nobly by saving the life of his fellow citizen, Mr. Mitnik, without any ulterior motives. Both the victim and a government witness testified under oath, affirming Mr. Kotlyarsky's innocence and honorable actions. However, despite this testimony, District Judge Kaplan disregarded justice by allowing the case to proceed under false pretenses.

Judge Kaplan's actions on March 22, 2016, in Case 16-CR-00215, and throughout the sentencing process until May 31, 2017, flagrantly violated US law and Mr. Kotlyarsky's constitutional rights. Despite possessing evidence that could have significantly impacted the outcome, Judge Kaplan chose to ignore it, displaying a disturbing confidence in his immunity from accountability.

Judge Kaplan egregiously concealed all pertinent evidence, including sections 26 through 27 of the Pre-Sentencing Report (PSR), the victim impact statement dated January 27, 2017, entries from October 1, 2016, and May 4, 2017, specifically docket number 58 pages 5 through 6. Furthermore, critical video evidence from the post-arrest interrogation on January 14, 2016, and audio recordings of all meetings between the mastermind, Mr. Potik, and the hitman, Boris Nayfeld, were omitted from the record. Additionally, despite evidence provided by the victim, government witnesses, and the defendant, not a single piece of evidence made it onto the sentencing court record on May 31, 2017.

This deliberate concealment of evidence had devastating repercussions, profoundly impacting the life and well-being of an innocent US citizen, Mr. Kotylarsky, who saved a human life. It is unequivocally unacceptable for any judge, in any court across the United States, to withhold evidence from the record. Yet, this is precisely what Judge Kaplan did in the Southern District of New York, located at 500 Pearl St., New York, NY 10007, in courtroom

number 21B, and subsequently at 40 Foley Square, New York, NY 10007. These actions occurred within the chambers of District Judge Gardephe and Magistrate Judge Aaron, in the case under Docket 20-CV-09230.

The duty of a judge is to ensure a fair and transparent legal proceeding, and Judge Kaplan's actions represent a stark departure from this fundamental principle. The suppression of evidence undermines the very essence of justice and threatens the core values of our legal system.

Despite the absence of any hearings, a report and recommendation was issued by Judge Aaron on August 18, 2021, with full support from Judge Gerdaphe. These judges did not actively conceal evidence within their possession; rather, they failed to review or renew any evidence, including sections 26 through 27 of the Pre-Sentencing Report (PSR) and the victim impact statement. In their report and recommendation, both District Judge Gerdaphe and Magistrate Judge Aaron uncritically endorsed the government's false accusations, which were devoid of any basis in justice or law. They then proceeded to blindly adopt the hearsay from Judge Kaplan's May 31, 2017, proceedings, as presented in a government letter and a summary by AUSA Thomas, without affording Mr. Kotlyarsky any opportunity for a hearing or oral argument.

Mr. Kotlyarsky now seeks nothing more than to be reinstated on the court's calendar, allowing him the

chance to present the evidence that both courts possess but have failed to acknowledge. This evidence, concealed by Judge Kaplan and never disclosed by Judges Aaron and Judge Gerdaphe, includes crucial elements such as the victim impact statement and sections 26 through 27 of the PSR. Moreover, the second district court neglected to review any evidence following the initial district court's concealment, resulting in a complete lack of addressing any evidence on the record in these proceedings.

It is clear that a gross miscarriage of justice has occurred, facilitated by the failure of multiple judges to uphold their duty to review and consider all evidence presented. Mr. Kotlayrsky's request to be placed back on the court's calendar is not merely an appeal for fairness—it is a plea for the opportunity to ensure that justice is served, and that all relevant evidence is properly examined and acknowledged.

This situation starkly contradicts the fundamental principles of judicial integrity and impartiality. Honorable Judge Brett Kavanaugh has long upheld the belief that all cases must be decided solely based only on the evidence presented, without concealment. A judge's duty is to rely on evidence and interpret the law, not to create it. Yet, it raises serious questions as to how all three judges could remain oblivious to the name of the esteemed Judge Kavanaugh and the existence of the highest court in the Southern District of New York, located at 40 Foley Square, New York, NY 10007, where the United States Court of Appeals for the Second Circuit presides.

Under one roof, the court is obligated to uphold the law and rectify any violations of it in New York. However, it is confounding that the Second Circuit Court, entrusted with interpreting the law for the other courts in New York, were in possession of all the evidence that had previously been presented to the district court. This evidence presented a comprehensive and accurate picture of the case, which they were presented with for the third time in six copies.

Despite the firm belief espoused by Judge Brett Kavanaugh in adhering to the principle of considering evidence, none of the six judges mentioned a single piece of evidence, not even the Pre-Sentencing Report (PSR) dated January 27, 2017. While the first judge concealed all evidence, the remaining five judges failed to rectify this clear violation of the law.

This scenario underscores a troubling reality within the United States legal system, where even six honorable judges can overlook evidence and fail to uphold the principles of justice.

Mr. Kotlyarsky extends his sincerest apologies for bringing this case before the Supreme Court of the United States. It is with profound regret that he finds himself in a situation where he feels compelled to seek justice through such extraordinary means. Mr. Kotlyarsky has diligently followed the dictates of US law throughout this ordeal, yet he finds himself confronted with what seems to be an insurmountable barrier: the metaphorical "Berlin Wall" separating the

Southern District of New York from the broader US justice system.

On one side of this metaphorical wall lies the Southern District, where Mr. Kotlyarsky now stands, yearning for nothing more than the opportunity to present all evidence before the court. He seeks to be judged solely on the merits of this evidence, rather than on any perceived violations of the law. Mr. Kotlyarsky harbors no illusions of exoneration or leniency; his only desire is for a fair and impartial assessment based on the facts.

He pledges to accept any decision rendered by the court, whether in his favor or in favor of the government, provided it is grounded in the evidence presented. He adamantly rejects the notion of being judged based solely on a government letter and a summary by AUSA Thomas from the May 2017 sentencing.

The court record bears witness to the heartfelt testimony of Mr. Kotlyarsky, a US citizen who intervened in the situation out of a sense of duty to prevent tragedy and preserve life. His actions were driven solely by a desire to safeguard the well-being of his fellow citizens, with no thought of personal gain. Mr. Kotlyarsky echoes this sentiment, emphasizing his unwavering commitment to the principles of justice and the sanctity of life.

On October 12, 2016, in case number 16-CR-00207, held at the Southern District of New York,

located at 500 Pearl St., New York, NY 10007, District Judge Katherine B. Forrest initiated proceedings concerning the government's obligations.

During these proceedings, Judge Forrest requested the government to articulate, for the record, the legal elements pertaining to the crimes of conspiracy to commit extortion and extortion. This crucial exchange was highlighted by a response from AUSA Thomas, affirming the government's stance.

Regarding count one, which concerns conspiracy, the government outlined two essential elements: Firstly, the existence of a conspiracy involving two or more individuals to commit extortion, and secondly, the defendant's knowing and voluntary agreement to participate in said conspiracy. The objectives of this conspiracy entail wrongfully obtaining another individual's property through the use or threat of force, violence, or fear. Notably, there was no evidence presented of a second person involved in the conspiracy, nor was there evidence of a victim, property obtained, violence, or fear.

Similarly, count two, which pertains to substantive extortion, necessitates proof of the same elements as those in the conspiracy charge. However, once again, there was a notable absence of evidence to support any wrongdoing by the defendant. Even the victim, US citizen Mr. Mitnik, testified under oath on January 27, 2017, and May 4, 2017, declaring innocence and affirming the noble actions of the defendant. Furthermore, government witness US

citizen Mr. Nayfeld, on transcripts from January 11, 2016, and October 12, 2016, also attested to the defendant's innocence and noble character.

In essence, despite the government's assertions and the legal proceedings, there remains a conspicuous lack of evidence to substantiate any wrongdoing by the defendant. The declarations under oath by both the victim and a government witness further underscore the defendant's innocence and virtuous deeds.

In light of these facts, it is evident that the charges brought against Boris Kotlyarsky are unfounded and lack any basis in reality.

During the proceedings, Judge Kaplan made a striking statement, expressing his lack of evidence and skepticism towards both the defendant's and their attorney's statements.

However, crucial evidence was indeed within the court's possession, including statements from US citizen the victim Mr. Mitnik, and the Pre-Sentencing Report (PSR) sections 26 through 27, which detailed the victim impact. Additionally, a declaration under oath was made to Judge Kaplan on December 14, 2017, affirming the innocence and noble character of Mr. Kotlyarsky.

Furthermore, government witnesses declared Mr. Kotlyarsky's innocence and noble deeds, as evidenced by their statements from January 8, 2016, through October 12, 2016. Despite this, Judge Kaplan

relied not on this evidence but on a government letter and a summary provided by the AUSA during sentencing on May 31, 2017.

During the sentencing, Judge Kaplan's conclusions lacked a basis in the evidence presented:

1. The absence of evidence was acknowledged before making any findings.
2. Speculation was rampant, without sufficient grounds.
3. Conclusions were drawn without additional testimony or evidence.
4. Unsubstantiated assumptions were made regarding business discussions.
5. Allegations of obstruction of justice were made without supporting evidence, contrary to events on October 12, 2016, as confirmed by a government witness.
6. Despite the absence of documented evidence, Mr. Kotlyarsky was accused of extortion.
7. The judgment of 41 months was pronounced based solely on hearsay, devoid of any documented evidence.

In light of these discrepancies between the evidence and Judge Kaplan's conclusions, it is evident that the sentencing was unjust and lacked a foundation in truth.

In the New York Post article dated March 18, 2018, titled "Scary Geezer Hitman" by Kathellin Boniello, only two names are mentioned: Anatoly Potik, the father-in-law, and Oleg Mitnik, the intended victim. Anatolyy Potik is identified as the mastermind who allegedly contracted a hitman for \$250,000 to kill his son-in-law, US citizen Mitnik. This information is supported by transcripts dated January 8, 2016, January 11, 2016, January 14, 2016, and October 12, 2016.

Additionally, there are 3.5 hours of recorded meetings where the murder plot was discussed, although these recordings are currently sealed by US Attorney Preet Bharara. Boris Nayfeld, the hitman, reportedly agreed to carry out the murder for \$250,000, as evidenced by his involvement in discussions on January 8, 2016, January 11, 2016, January 14, 2016 and October 12, 2016.

I, Boris Kotylarsky, inadvertently discovered the murder plot and intervened by suggesting to Mitnik that he report the plot to the FBI, which he did. I remained in contact with Mitnik to ensure his safety. It's important to note that I had no financial or personal gain in taking these actions.

The New York Post article highlights the concern that "the feds have sold him [the victim] out by setting free the man accused of plotting his murder." This raises troubling questions about the handling of the case. Despite the hitman being sentenced to 23 months for his involvement in the plot, and an additional case of extortion, both cases against the individual who allegedly ordered the murder were dismissed at the government's request.

This situation has left me feeling terrified. The apparent lack of accountability and justice in this case is deeply unsettling.

In this case, there was no indictment for Anatoly Potik and Boris Nayfeld, casting doubt on the validity of the legal system.

On January 22, 2016, and thereafter, recordings provided by the hitman detail all meetings where the murder-for-hire plot was discussed. These recordings completely discredit any theories regarding conspiracy to extort or commit extortion. The government's conversion of the murder-for-hire plot into charges of conspiracy to extort and extortion, without any evidence to support it, is deeply concerning. To conceal their actions, the government sealed these recordings, committing federal crimes in the process. This includes the use of false evidence to mislead the court, resulting in persecution, misconduct, and a violation of the constitutional rights of US citizen Boris Kotlyarsky.

Comparing this case to another, similar crime committed by US citizen Ira Bloom, where a murder-for-hire plot was orchestrated, reveals a stark discrepancy in sentencing. While Anatoly Potik received zero time, Ira Bloom was sentenced to 240 months. This raises serious questions about the fairness and consistency of the justice system. Moreover, additional evidence supporting the murder-for-hire plot on January 8, 2016, January 11, 2016, January 14, 2016, and October 12, 2016, was provided to the Court.

It's clear that there are glaring inconsistencies and injustices within this case. Anatoly Potik's lack of indictment, combined with the misuse of evidence by the government, undermines the integrity of the legal process. Justice demands a thorough review of the facts and evidence, as well as accountability for any wrongdoing committed by government officials.

The reason for this appeal is to shed light on the case of 76-year-old US citizen, Mr. Kotlyarsky. It's crucial to ensure that he, like every citizen, is judged based on the evidence, as firmly believed by honorable Brett Kavanaugh. Should US law have changed to allow individuals to be judged without a shred of evidence, merely on the basis of a government letter and an assistant United States attorney's summary? If this were true, it would render the courts in the USA redundant, as a person could be sentenced without any concrete evidence. Is this the direction our justice system is headed, or is this an aberration confined to

Judge Kaplan's courtroom in the Southern District of New York, NY 10007.

Presented to the Supreme Court of the United States are 3 Courts and six honorable judges. Within these proceedings, the victim, the government witness, and the defendant have all presented crucial evidence supporting the innocence and noble character of the defendant Mr. Boris Kotlyarsky. This evidence includes the Pre-Sentencing Report (PSR) sections 26 through 27, a video post-arrest interrogation from January 14, 2016, an audio recording of all meetings between the mastermind and the hitman discussing the murder of a US citizen on January 22, 2016, and two Brady disclosures from October 1, 2016, and May 4, 2017. Additionally, declarations under oath were made personally to Judge Kaplan on December 14, 2017, by victim and by the government witness on October 12, 2016.

With all this evidence presented, there remains a single question to be answered: Did Mr. Kotlyarsky commit the crime? And if so, where is the concrete evidence to support this claim, not just hearsay? Unfortunately, Judge Lewis Kaplan overlooked all evidence, including the PSR, and sentenced US citizen Boris Kotlyarsky solely based on a government letter and a AUSA Thomas summary, without a shred of evidence.

Subsequent judges blindly followed Judge Kaplan's lead, and despite the evidence at hand, they denied the appeal without even examining crucial

documents such as the PSR victim impact sections 26 through 27 from January 27, 2017.

The chain of events reveals a disturbing pattern of the courts concealing evidence to shield their colleagues from scrutiny, thereby violating the law and the constitutional rights of US citizen Mr. Kotlyarsky.

The second court, in allegiance to their colleague from the first court, and the third court, protective of their counterparts from the second court, have all contributed to this cover-up. It seems that familial bonds within the Southern District of New York have taken precedence over the fair treatment of individuals like Mr. Kotlyarsky, who is just one among thousands. Mr. Kotlyarsky's simple request is to have the opportunity to present true evidence, as emphasized by honorable Kavanaugh, and to have his innocence or guilt determined solely based on that evidence.

A noble deed of saving a life has been twisted into a federal crime within the Southern District of New York. Is this the kind of justice we can expect in this district? Mr. Kotlyarsky is not asking for special treatment; he is simply asking for his right to present evidence. Nothing more, nothing less.

All Mr. Kotlyarsky seeks is the chance to be reinstated on the calendar, allowing for a fair judgment of his innocence or guilt based on evidence. He is prepared to accept any judgment, whether it be in his favor or in favor of the government, as long as it is grounded in the evidence stipulated by US law. At

any given moment, Mr. Kotlyarsky is willing to testify under oath. However, Judge Kaplan chose to conceal all evidence, while the other five judges, at the very least, failed to examine a single piece of evidence, starting with the Pre-Sentencing Report (PSR) sections 26 through 27. These judges blindly followed Judge Kaplan's lead, relying solely on the government letter and a AUSA summary.

Can this truly be called justice? Let us uphold the principles of fairness and truth upon which our nation stands. God bless America.

We are not seeking for the United States Supreme Court to overturn the verdict for US citizen Mr. Kotlyarsky. Rather, Mr. Kotlyarsky is simply advocating for the protection of constitutional rights. This aligns with the firm belief expressed by honorable Brett Kavanaugh, who emphasized that all cases must be decided solely on the evidence presented. Furthermore, a judge's role is to interpret the law impartially, not to create it. This fundamental principle is exactly what Mr. Kotlyarsky expected to be upheld by District Judge Lewis Kaplan from the Southern District of New York, NY, particularly during the sentencing proceedings on May 31, 2017.

During this crucial moment, Judge Kaplan failed to fulfill his duty to interpret the law objectively. Instead, he acted as the maker of law, disregarding all evidence at hand, including the January 27, 2017 Pre-Sentencing Report (PSR) sections 26 through 27, as well as *Brady* statements from the victim and

government witness under oath, among other evidence within his possession. Despite being fully aware of this evidence, Judge Kaplan chose to conceal it, thus denying Mr. Kotlyarsky the fair trial he deserved.

Judge Kaplan's decision not to interpret the law, but rather to make his own, is evident in his disregard for the evidence presented. He falsely claimed that no specific evidence was before him to make an express finding, despite the existence of crucial evidence in his possession. By basing his judgment solely on a government letter and a summary by AUSA Thomas, Judge Kaplan essentially bypassed the need for evidence, creating a miscarriage of justice.

Had Judge Kaplan adhered to the principles of fairness and impartiality, he would have been compelled to reveal the evidence in his possession. However, by choosing to conceal it, he effectively denied Mr. Kotlyarsky a fair trial. This egregious act highlights the urgent need for accountability and transparency within our judicial system.

In seeking justice for Mr. Kotlyarsky, we are not asking for special treatment or favors. We are simply demanding adherence to the fundamental principles upon which our legal system is built: fairness, impartiality, and the right to a fair trial based on evidence.

We urge you to reconsider and reinstate Mr. Kotlyarsky on the calendar. It is imperative for justice

to prevail, allowing Mr. Kotlyarsky to adjudicate his case based on evidence in accordance with U.S. law.

Mr. Kotlyarsky is fully prepared to adhere to the principles of justice, accepting any verdict rendered, whether in favor of him or the government, as long as it is grounded in the evidence as stipulated by U.S. law. He stands ready to testify truthfully under oath whenever called upon.

However, we must address the concerning actions of Judge Kaplan, who appears to have concealed crucial evidence. While we acknowledge the integrity of the other five judges, their failure to thoroughly examine evidence raises doubts about the fairness of the process. Blindly following the government's narrative without scrutinizing evidence compromises the essence of justice.

Please uphold the principles of fairness and transparency that define the American legal system, by reinstating Mr. Kotlyarsky and ensuring a thorough examination of all evidence. We honor the values upon which our nation was founded. God bless America.

US citizen Mr. Kotlyarsky raises a crucial question: How can the concealment of evidence and the reliance on a government letter and a AUSA summary instead of concrete evidence align with US law? Before appealing to the US Supreme Court, Mr. Kotlyarsky pursued an appeal within the Southern District Case, addressing District Judge Paul Gerdaphe and

Magistrate Judge Stewart Aaron at 40 Foley Square, New York, NY 10007.

On September 20, 2020, all evidence was presented before Judge Kaplan in cases 16-CR-00215; 18-CV-01746; 16-CR-00207; and 16-MJ-00486. However, on September 30, 2022, Judge Gerdaphe dismissed the case 20-CV-09230. Undeterred, on October 18, 2022, Mr. Kotlyarsky filed an appeal with the United States Court of Appeals for the Second Circuit, Docket 22-PR-2750 at 40 Foley Square, New York, NY 10007, presenting the same evidence along with an additional six books, totaling 165 pages each, in March 2023, and another set of six books, totaling 167 pages each, in October 2023.

Mr. Kotlyarsky's appeal mirrors that of the Supreme Court of the United States. He consistently implores all six judges—to allow him to present the evidence now in their possession and to adhere to US law, as affirmed by honorable Brett Kavanaugh.

It is evident that Mr. Kotlyarsky is committed to upholding the principles of justice and fairness. He seeks only the opportunity to present the evidence and to have his case judged according to the laws of the land. This pursuit of justice is not just for himself, but for the integrity of the legal system and the rights of all citizens.

What could the Judge Kaplan happen to prevent to destroy lives of US citizen and their families? On the scale of blind justice: Honorable Brett Kavanaugh,

chose evidence, Honorable Kaplan chose hearsay and the government summary.

Honorable Brett Kavanaugh's words ring with profound significance: all cases must be decided solely based on the evidence presented, and a judge must uphold independence, interpreting the law rather than creating it. Unfortunately, District Judge Lewis Kaplan failed to adhere to these principles in case 16-CR-00215; 18-CV-01746.

Despite having all the evidence in his possession, Judge Kaplan disregarded the fundamental tenet of justice by making decisions solely based on hearsay, without considering a single piece of evidence. The court relied on government-presented hearsay, completely ignoring the defendant's evidence, which unequivocally supported Mr. Kotlyarsky's innocence and noble actions. The fact that Mr. Kotlyarsky's noble deed of saving a fellow US citizen's life, without any financial gain, was fully corroborated by both the victim, US citizen Oleg Mitnik, and the government witness, US citizen Boris Nayfeld, makes the court's dismissal of this evidence even more egregious.

Judge Kaplan's actions directly contradict the principles of law elucidated by Justice Kavanaugh. Instead of deciding based on evidence and upholding independence, Judge Kaplan seemed to fashion his own version of justice, disregarding the rules and violating the constitutional rights of US citizens, including Mr. Kotlyarsky. Moreover, this is not an

isolated incident; Judge Kaplan's conduct has prompted over 200 lawyers to file a judicial complaint against him for abusive targeting of human rights advocate Steven Donziger, as documented by the International Association of Democratic Lawyers.

The complaint, supported by 37 organizations representing 500,000 lawyers worldwide, highlights shocking violations of the code of judicial conduct by Judge Kaplan, who alleged that his actions contravened the canons of the code of conduct for United States judges, particularly canons 2A, 3, and 3B(3). This underscores the urgent need for accountability and adherence to judicial ethics.

Firstly, it's crucial to acknowledge that Judge Kaplan concealed all evidence within his court's possession. However, it's logically untenable for all three courts to be complicit in concealing evidence. The responsibility for concealment falls squarely on the first court, presided over by Judge Kaplan on May 31, 2017. Judges Gerdaphe and Magistrate Judge Aaron cannot be held accountable for concealing evidence already obscured by Judge Kaplan. This includes critical elements such as the PSR sections 26 through 27 on January 27, 2017.

Judge Aaron, in his capacity, never addressed or revealed a single piece of evidence provided by Mr. Kotlyarsky, including the PSR sections 26 through 27 and *Brady* statements from the victim and the government witness, both under oath. The district court and the United States Court of Appeals for the

Second Circuit, represented by Judge Sullivan at the same location as the second district court at 40 Foley Square in New York, 10007 are tasked with ensuring justice is served. These courts possess the authority to rectify the injustice perpetrated by concealing evidence.

It is imperative that these courts, at the very least, reconsider Mr. Kotlyarsky's case. They must either return him to the calendar for further proceedings or overturn Judge Kaplan's judgment based on the evidence present in all three courts' possession. Justice demands that Mr. Kotlyarsky's fate be determined by the evidence at hand, not by the government's unsubstantiated claims or summaries. True justice can only be achieved by adhering to the principles of the United States justice system.

CONCLUSION

The case of Mr. Kotlyarsky represents a grave injustice perpetuated by prosecutorial misconduct and judicial error. Mr. Kotlyarsky's noble deed converted into Federal Crime. The failure to uphold fundamental principles of fairness and due process undermines public confidence in the legal system and warrants intervention by this Honorable Court.

Accordingly, I respectfully request that this Court grant certiorari and review the decision of the Second Circuit, with a view to remedying the injustices suffered by Mr. Kotlyarsky. Justice demands nothing less.

Respectfully submitted,

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