No. 24-105

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 REHEARING

Boris Kotlyarsky
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PETITION FOR REHEARING

Petitioner Boris Kotlyarsky, respectfully petitions for rehearing regarding the Court's decision rendered on October 7th, 2024 denying his petition for a writ of certiorari. The Court denied a writ of certiorari. The issue was whether the U.S. Court of Appeals erred in affirming the dismissal of Boris Kotlyarsky's claims against the United States Department of Justice, Preet Bharara, and James Comey. These claims allege violations of 42 U.S.C. § 1983, including conspiracy, malicious prosecution, and intentional infliction of emotional distress, following Kotlyarsky's sentencing to a 41–51-month prison term, even though that all evidence presented at the sentencing hearing exonerated him and that the presiding judge explicitly stated on the record that there was no direct evidence of a crime having been committed.

LEGAL STANDARD

The issue surrounding a motion for rehearing in the U.S. Supreme Court is whether the petitioner's request meets the stringent standards set forth by precedent and procedural rules. Under Rule 44 of the U.S. Supreme Court Rules, a rehearing is only granted in exceptional circumstances, such as an overlooked material fact or new evidence that could change the outcome of the case. The Court has long emphasized the need for finality and judicial efficiency, reserving rehearings for situations where there is a substantial reason to revisit the decision. In *United States v. Ohio Power Co.*, 353 U.S. 98 (1957), the Court indicated that rehearing requests must demonstrate a "material and substantial" factor

overlooked by the Court, while in *Standard Oil Co. of California v. United States*, 429 U.S. 17 (1976), the Court clarified that rehearings are not a venue for relitigating previously raised issues. Further, *Dewey v. Des Moines*, 173 U.S. 193 (1899), established that mere disagreement with the Court's judgment is insufficient, as rehearings should address genuine errors or serious oversights. Cases like *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56 (1982), underscore the procedural strictness required, demanding that only issues critical enough to potentially alter the decision are reconsidered. Ultimately, the high bar set by the Court reflects its commitment to legal finality, making motions for rehearing an extraordinary remedy granted only under rare and compelling circumstances.

REASONS FOR GRANTING REHEARING

In this motion for reconsideration, the petitioner respectfully submits that the Court should reevaluate its previous ruling concerning the authority of district courts to impose a sentence on a defendant when evidence presented at sentencing exonerates that defendant. The question is not merely procedural; it fundamentally impacts the integrity of the judicial process and the principles of justice.

The evidence surrounding the murder plot that unfolded on January 22, 2016, is not merely pivotal in comprehending the true dynamics of this case; it is absolutely vital in establishing Mr. Kotlyarsky's innocence. Among this evidence are audio recordings capturing conversations between the mastermind, Anatoliy Potik, and the hitman, Boris Nayfeld. These

recordings provide clear and irrefutable documentation of their illicit plans and intentions to murder the victim, Potik's son-in-law. Importantly, there is no indication of any involvement from Mr. Kotlyarsky in these heinous discussions; his only action was to alert the victim about the impending threat to his life.

What is particularly alarming is that, despite this compelling evidence of a conspiracy, the government made the astonishing decision not to prosecute Anatoliy Potik, the very mastermind behind the plot, on June 8, 2016. This choice not only casts a shadow over the integrity of the judicial process but also raises profound questions about the motivations behind the prosecution of Mr. Kotlyarsky. How can justice be served when those truly responsible for such a serious crime are allowed to walk free while an innocent individual faces severe penalties for actions taken in an attempt to save a life? The failure to hold Potik accountable creates an unjust narrative that has unfairly targeted Mr. Kotlyarsky, who, rather than being an accomplice, acted as a good Samaritan in a desperate situation.

The victim himself voiced his frustrations regarding the Government's decision not to prosecute Anatoliy Potik in a March 18, 2018 interview with the *New York Post*, stating, "Feds sold me out by letting free two men accused of plotting his murder." **See Exhibit 1.**

The victim's statement in the March 18, 2018, interview with the *New York Post* is critical in demonstrating that Mr. Kotlyarsky was not involved

in the murder plot. By explicitly accusing Anatoliy Potik, the victim's father-in-law, as the mastermind and identifying Boris Nayfeld as the hitman, the victim clearly delineates the roles of the individuals he believes were responsible for the conspiracy against him. The absence of any allegations against Mr. Kotlyarsky in this article is telling; it underscores that the victim himself does not associate him with the criminal activities in question.

This distinction is crucial for several reasons. First, it reinforces Mr. Kotlyarsky's position as an innocent party who, contrary to the narrative presented by the prosecution, was not part of the plot to murder the victim. Instead, Mr. Kotlyarsky's actions—specifically, his attempts to intervene and prevent the murder—illustrate a commitment to saving a life rather than participating in a criminal conspiracy. The contrast between the victim's clear accusations and the lack of any mention of Mr. Kotlyarsky in this context highlights that he was not involved in the planning or execution of the crime.

Moreover, the victim's frustrations regarding the government's decision to not prosecute Potik shed light on potential corruption or mismanagement within the justice system. If key conspirators like Potik are allowed to evade accountability, it raises questions about the motivations behind prosecuting others, such as Mr. Kotlyarsky, who did not engage in any wrongdoing. This situation exemplifies a troubling scenario where individuals who acted in good faith to protect another's life are subjected to harsh penalties, while those truly responsible for the conspiracy go unpunished.

Furthermore, Mr. Kotlyarsky's Presentence Report (PSR) from January 27, 2017, offers a comprehensive overview of the victim's impact, providing compelling evidence that Mr. Kotlyarsky had no involvement in the murder-for-hire plot, as detailed in sections 26 and 27. This evidence not only exonerates Mr. Kotlyarsky but also highlights the inconsistencies and weaknesses in the prosecution's narrative.

Mr. Kotlyarsky is an innocent individual ensnared in a web of injustice, unfairly labeled a scapegoat to mask the justice department's failure to prosecute Anatoliy Potik for orchestrating the murder-for-hire scheme. This miscarriage of justice cannot be overlooked.

Even the presiding judge at sentencing expressed reservations about the evidence against Mr. Kotlyarsky, stating, "Although I don't have specific evidence before me to make an express finding—and I don't—it seems to me that it would have been entirely reasonable to expect... more likely than not that you did expect that if Nayfeld was paid off, he would have something for you out of that payoff." **See Exhibit 2**, *Excerpt from Sentencing Hearing* 17:20-25. This statement illustrates the precarious basis on which Mr. Kotlyarsky was sentenced: a subjective belief by the judge rather than any concrete evidence.

In reality, both the victim and the hitman, Nayfeld, have confirmed that Mr. Kotlyarsky had no financial incentive or gain from either party. His sole intention was to warn the victim and save his life. The

decision to convict Mr. Kotlyarsky, despite clear exonerating evidence, underscores the profound injustice of this case.

"Innocence or guilt should be determined by the evidence in the record" by Justice Brett Kavanaugh. The precedents established in cases such as *United States v. McGowan,* 668 F.2d 203 (3d Cir. 1981), emphasize that a guilty plea does not preclude a defendant from contesting evidence during the sentencing phase. In this case, the court highlighted that if compelling evidence is presented that exonerates the defendant, it must be considered in determining the appropriate sentence. This principle reinforces the notion that the sentencing process must be grounded in a comprehensive understanding of the defendant's conduct and the facts surrounding the case.

Further, the ruling in *United States v. Smith*, 55 F.3d 1037 (7th Cir. 1995), supports the argument that district courts have an obligation to weigh evidence that could mitigate a sentence, including evidence that may demonstrate a defendant's innocence. The Seventh Circuit recognized the necessity for sentencing to reflect not only the defendant's culpability but also the true nature of the evidence presented.

Additionally, *United States v. Dorman*, 493 F.2d 146 (5th Cir. 1974), asserts that district courts have a duty to consider exonerating evidence, particularly when such evidence suggests that the defendant did not commit the charged offense. The court's ruling emphasizes the importance of accurate information in

the sentencing process and the potential injustice that could result from disregarding evidence that exonerates a defendant.

The implications of this issue are profound. The principles established in *North Carolina v. Alford*, 400 U.S. 25 (1970), allow defendants to plead guilty while asserting their innocence, further complicating the sentencing landscape. The Court's decision in *United States v. McCoy*, 430 F.3d 140 (3d Cir. 2005), reiterates that a defendant's claims of innocence, along with supporting evidence, must be considered during sentencing. Lastly, *United States v. Kress*, 59 F.3d 162 (5th Cir. 1995), underscores that a district court should reevaluate the sentence if evidence significantly undermines the basis for the conviction.

The claims presented by Boris Kotylarsky in his District Court complaint are sufficient under 42 U.S.C. § 1983 to establish violations of his constitutional rights, particularly given the circumstances surrounding his sentencing in the absence of exonerating evidence. The pertinent issues arise from the failure to uphold Kotylarsky's rights during the judicial process, which can be effectively categorized into claims of due process violations, malicious prosecution, and denial of equal protection under the law.

At the core of Kotylarsky's claims is the principle of due process as protected by the Fourteenth Amendment. Due process requires that a defendant be afforded a fair hearing and that all relevant evidence, particularly exculpatory evidence, be

considered during sentencing. In this case, despite the overwhelming evidence presented at the sentencing hearing that exonerated Kotylarsky, the sentencing judge imposed a significant prison term without acknowledging or evaluating this crucial evidence.

The failure to consider exonerating evidence not only undermines the fairness of the sentencing process but also directly contradicts established legal standards. Courts have long held that due process demands a consideration of all evidence that may impact a defendant's culpability. By ignoring the exonerating evidence, the defendant involved in Kotylarsky's case violated his right to due process, thereby establishing a claim under § 1983.

Furthermore, the claims can also be viewed through the lens of malicious prosecution. Malicious prosecution occurs when an individual is subjected to legal proceedings without probable cause and with malice. In this instance, Kotylarsky pled guilty while maintaining his innocence, and the sentencing process was marred by the prosecution's disregard for clear evidence of his exoneration. The subsequent sentencing, therefore, can be interpreted as an abuse of process that reflects malice on the part of the defendants, who failed to fulfill their duty to pursue justice impartially.

Under § 1983, a malicious prosecution claim allows individuals to seek redress for wrongful convictions and sentences imposed based on improper legal processes. The facts presented demonstrate that Kotylarsky was subjected to a sentence despite compelling evidence of his innocence, fulfilling the

elements necessary to establish a malicious prosecution claim.

Lastly, Kotylarsky's claims implicate the Equal Protection Clause of the Fourteenth Amendment. This clause mandates that no individual shall be denied equal protection under the law, which includes the right to a fair sentencing process. The arbitrary nature of sentencing in Kotylarsky's case, particularly in light of exonerating evidence, raises significant concerns regarding his treatment compared to other defendants who may have received more lenient sentences or whose exonerating evidence was properly considered.

If Kotylarsky was denied equal protection due to the capricious application of the law, his claims are firmly rooted in a violation of his constitutional rights under § 1983.

The Supreme Court is asked to decide as follows:

1. Are we still have true justice in our country of United States or we do not?
2. Was this much easy to murder US citizen?
3. Was this much harder to intervene and safe?
4. How this could happen what Four Crimes committed, less punished with less sentence then Noble deed to save life? As Now-Supreme Court of the United States have the last word to decide! This for Supreme court of the United States to declare: Are we

> still law abiding Country, or our Country belong to C I with license to kill?

The victim impact report indicates that there was a contract to kill Mr. Mitnik, with threats to his life first reported in November 2015. The victim stated that his faither-in-law contacted Nayfeld to kill him for financial gain, and he clarified that Mr. Kotlyarsky never expected any financial compensation for the information he provided.

The Supreme Court of the United States must uphold that the innocent must be acquitted and the guilty punished. Furthermore, both the mastermind and the hit man were involved in additional crimes, which were subsequently dismissed (nolle prosequi) by the government.

In conclusion, we see a clear imbalance in sentencing:

- Anatoliy Potik: Two crimes, two nolle prosequi.
- Boris Nayfeld: Two crimes, first sentenced to 23 months.
- Boris Kotlyarsky: One noble deed resulting in a harsher sentence.

It is now to the Supreme Court of the United States to decide whether true justice prevails in our country. Was it easier to commit the murder, or was it harder to intervene and save a life? Why were four crimes punished less severely than one noble act?

In summary, the claims presented by Boris Kotylarsky under 42 U.S.C. § 1983 sufficiently establish violations of his constitutional rights based on due process failures, malicious prosecution, and breaches of equal protection principles. The facts of the case demonstrate a clear pattern of neglect and disregard for Kotylarsky's exonerating evidence during the sentencing process, warranting judicial intervention and corrective action to uphold the integrity of the judicial system and the rights of the accused. The significant implications of these violations underscore the necessity of addressing Kotylarsky's claims within the framework of § 1983 to ensure accountability and the protection of individual rights.

CONCLUSION

Based on the foregoing, Plaintiff-Appellant respectfully requests that this Honorable Court grants this Petition for a Rehearing.

Respectfully submitted,

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CERTIFICATE OF PETITIONER

I hereby certify that this Petition for Rehearing is presented in good faith and not for delay and is restricted to the grounds specified in Rule 44.2.

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APPENDIX A

New York Post Sunday, March 18, 2018 nypost.com

Terrified 'slay plot' mogul goes to court

SCARY GEEZER 'HITMAN'

By KATHIANNE BONIELLO

Upper East Side shipping magnate Oleg Mitnik says the Feds have sold him out by letting free two men accused of plotting his murder.

"The man who was supposed to kill me is out after 16 or 17 months and the guy who ordered my murder, he's walking free. So that's justice," Mitnik told The Post.

"I am terrified."

So Mitnik is turning to a different venue in his search for justice – Manhattan Supreme Court. He is suing his father-in-law Anatoly Potik, and his estranged wife, Ronit Mitnik, for $20 million for emotional distress and defamation.

The alleged murder-for-hire scheme unfolded amid Mitnik's bitter, ongoing divorce from Ronit, a socialite.

Mitnik says the aging Potik is one of the people who plotted his death. He identifies the other as Boris

Nayfeld, 70, whom feds have long linked to the Russian mob.

Potik was arrested in January 2016 and charged with hiring Nayfeld to kill Mitnik. The price was $100,000.

If Potik's alleged plot had succeeded, his daughter would have benefitted from Oleg Mitnik's $7 million life-insurance policy.

She also would have inherited their $9 million worth of real estate, including a Manhattan condo and a vacation home in Quogue, LI, Oleg Mitnik alleges in his suit.

Mitnik says he thwarded the murder plan by calling the cops and offering Nayfeld $125,000 to call off the hit.

The feds picked up both men, but they eventually dropped their case against Potik, citing his deteriorating health.

Potik has a criminal history dating to 1985 and allegedly told Oleg Mitnik that he used murder "to resolve business disputes in the past," according to the lawsuit.

"He's a very dangerous man. Somebody who smiles in your face and stabs you in the back," Oleg Mitnik said.

"Every time I walk out of my building, I have to

look left and right and take different exits and take different roads."

"They think I'm safe now and that he is not capable to do anything because it's in the public eye," said Mitnik, who has started carrying a gun.

Nayfeld – who admitted his role in the case – was freed on probation in October.

Nayfeld told The Associated Press in January that he would like to go back to Russia, and that the two years he spent locked up for plotting to kill Mitnik was punishment enough.

"I lost everything," Nayfeld told the AP. "I lost job, I lost my time for stay in prison, I lost my wife. This is enough punish for me." But Mitnik doesn't buy it. Mitnik believes his father-in-law, who he says has deep ties to the Russian and Italian mobs, was let off easy because he helped authorities investigate other crimes.

"They basically sold me out for cases. I think it sends the wrong message," Oleg Mitnik said of federal prosecutors.

Mitnik contends in court papers that his wife and her father have tarnished his name by spreading rumors that he framed Potik by cooking up false allegations of a murder plot and by paying off federal agents.

"I think it will clear my name," Oleg Mitnik said

of the civil lawsuit. "I think it's important for justice to be served at least at some angle."

Ronit Mitnik's lawyer, Robert Wallack, dismissed the allegations as "total fiction" and "utter garbage."

The murder plot was allegedly hatched after Potik testified in his daughter's divorce case, then flew to Moscow to meet with Nayfeld at the Azimut Olympic hotel, says Mitnik's lawsuit.

Around the time Potik went to Russia, Ronit Mitnik forbade their daughter from riding in Oleg Mitnik's car, claiming a routine trip across Central Park to school was "too dangerous," the husband said in court papers.

Oleg Mitnik says Ronit Mitnik's claim that he had invented the murder plot has driven a rift between him and their two children – a 19-year-old son and 18-year old daughter.

"I want peace for my family...I want to move on," he said.

APPENDIX B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

BORIS KOTLYARSKY

Defendant.

16 CR 215 (LAK)

New York, N.Y.
May 31, 2017
2:35 p.m.

Before:

HON. LEWIS A. KAPLAN,
District Judge

APPEARANCES

JOON H. KIM
Acting United States Attorney for the
Southern District of New York

MARK THOMAS
Assistant United States Attorney

DENNIS JOSEPH RING
Attorney for Defendant

– AND –

ENTIN & DELLA FERA. P.A.
BY: ALVIN E. ENTIN
Attorneys for Defendant
ALSO PRESENT: LUKE HARDISON, FBI

I have received the presentence report, a sentencing submission by the government dated May 4, a letter dated May 9 from Mr. Ring with attachments, a supplemental letter from both counsel with an attachment – – that submission was filed April 28 – – and a sentencing memorandum with attachments on behalf of the defendant filed April 26.

Is there anything else of which I should be aware?

MR. THOMAS: Nothing further from the government, your Honor.

MR. ENTIN: Not to my knowledge, your Honor.

THE COURT: Whoever has prepared it, it is not exactly the Richard Avedon of cat photography. There we are.

Is there any victim present of the offenses of conviction who wishes to be heard on sentence?

MR. THOMAS: No, your Honor.

THE COURT: Mr. Entin, I'll hear you.

MR. ENTIN: Thank you, your Honor.

Thank you, your Honor, for accepting my admission in this case pro hac vice. It's always a pleasure when we provincial lawyers from South Florida get an opportunity to practice in the Southern District of New York, and I appreciate the courtesy, your Honor.

THE COURT: Your comment about provincial lawyers reminds me – – and judging by the gray hairs in your head probably will remind you when I mention it – – of another police – –

THE COURT: Excuse me, Mr. Entin, just help me out in one respect.

MR. ENTIN: Yes, sir.

THE COURT: I gather from some of the submissions that at least one person in this triangle is regarded as being a mobster, a Russian mobster. Is that right?

MR. ENTIN: That's my understanding, your Honor. That's correct.

THE COURT: Who is that?

MR. RING: That's Mr. Nayfeld.

THE COURT: Go ahead.

MR. ENTIN: Mr. Kotlyarsky makes a mistake in judgment as early as October and meets with the victim – – I think everybody is calling him that. I don't think we need to mention his name – – and advised him that he believes, on the basis of the information that he's received up to that point, that his father-in-law was attempting to have him murdered and that he believed, Mr. Kotlyarsky, that it might be a situation that could be adjusted if and when it was necessary.

The government kindly put together a number of transcripts, sections which it provided the Court in its letter, which indicates that from that point in time in late October until early January of 2016, whenever conversing with Mr. Kotlyarsky, because the victim went to the police and

Is there anything you would like to say?

THE DEFENDANT: Yes, your Honor. Thank you.

Your Honor, thank you for the opportunity for me to speak on my own behalf.

First and foremost, I take full responsibility of my action. My sole purpose was to attempt to intervene and to avoid a potential tragedy that I thought was on the verge of happening.

I understand that my intention may have started as honorable, but I am fully sorry for my poor judgment on how they turned out. Furthermore, because of my action and poor judgment, I have

compiled more problems because additionally, I have truly hurt my wife and children.

Me and my wife are 69-year-olds. We're married for almost 42 years. My wife has arthritis and is dependent on my assistance. I would like to get back with my wife as soon as possible as it will be permitted by the law.

At 69, my wife and me – – we don't know how much time God has in store for us. I would like to spend any given time to me with my wife, my children, and my granddaughter.

I started working at 14 in 1961. In 2015, my wife and me at 68 – – we enjoyed our retirement. I mostly enjoyed to take my granddaughter to school, meet her after the school, and to spend time with her on the weekend.

The only reason for me to intervene in this situation was an attempt to prevent a tragedy and save the life of Oleg Mitnik, nothing else, no financial or any gain for me. I was very mad. I couldn't understand how father-in-law can deprive his own grandchildren of having their father.

Once again, I accept responsibility. I only pray that one day soon I can rejoin my family to take care of my wife and to make my family whole again.

Thank you, your Honor, for any consideration you may afford me. Thank you, your Honor.

THE COURT: Thank you. You may be seated.

I'll hear from the government.

MR. THOMAS: Yes, your Honor. I disagree with the idea that the sole purpose of Mr. Kotlyarsky's intervention in these affairs was to protect the victim.

As the presentence report and the sentencing submissions by both sides and the facts themselves layout, Mr. Kotlyarsky attempted to control and take advantage of this situation from both sides, and he did it from the beginning.

Indeed, not only was this intervention not the reason the victim is safe, but in intervening at all, Mr. Kotlyarsky made it worse and, in fact, risked greater harm.

To break that down for the Court in terms of how that may apply here at sentencing, the nature of this conduct is that Mr. Kotlyarsky nurtured and then took advantage of a person's specific fear of death.

the underlying events that lead to the original charge, sort or speak to what it is that Mr. Kotlyarsky believes his role is and what it is that he thinks that the judicial process is.

So, in light of those considerations, the government is of the view that the sentencing range reflected by the guidelines is a serious one and is certainly appropriate on these facts, your Honor. Thank you.

THE COURT: Thank you.

Mr. Kotlyarsky, please rise for the imposition of sentence.

For the reasons that are set out in the government's letter and that Mr. Thomas has just ably summarized, I do not accept that your conduct with respect to the extortion here was quite as selfless as you and your lawyer have portrayed it.

You saw, in my judgment, a situation of which you could take advantage, and you set about endeavoring to structure matters so that at the end of the day, in one way or another, there would be an economic benefit to you no matter how it turned out.

Although I don't have specific evidence before me to make an express finding -- -- and I don't -- -- it seems to me that it would have been entirely reasonable to expect and, notwithstanding what I said already, more likely than not that you did expect that if Nayfeld was paid off, he would have something for you out of the payoff.

I understand there's been no express testimony or evidence that you and Nayfeld ever had a specific discussion or understanding, but I do think the logic of the situation is such that that was your intent and expectation.

Furthermore, you on more than one occasion discussed with the victim the possibility of your doing business, directly or indirectly, with the victim, which

indicates that you expected, in one way or another, that, if the victim survived this whole episode, there would be something in it for you from that side.

So, even assuming for the sake of discussion that you intervened in the first place with the goal of avoiding the murder of the victim at the instance of Potik, I do think – – and I find – – that you did it, in part, out of the view that you would and could benefit economically from that intervention.

Now, that's all aside from your conduct once matters got well down the road after you'd been arrested. It's quite clear that you did in fact obstruct justice in this case.

Indeed, there was no objection to the presentence report's proposed finding on that count. It's not a separate count of the indictment, but it is a count here in a more generic sense. You did obstruct justice.

So the crimes are quite serious ones. You conspired to extort, you in fact committed extortion, you pleaded guilty

The Government Witness information in exchange for money!

AUSA: Andrew Thomas – Lies and Inventions!

05/31/2017:

– Page 13 – Line 13--25 – 100% Lie/Invented
– Page 14 – Line 1–25 – 100% Lie/Invented
– Page 15 – Line 1–25 – 100% Lie/Invented
– Page 16 – Line 1–25 – 100% Lie/Invented
– Page 17 – Line 1–7 – 100% Lie/Invented

There was not one piece of evidence, not one, presented by AUSA Thomas through the entire case!

The Court: Not one piece of evidence!

– Page 17– Line 20-21: Although I don't have specific evidence before me!
– Page 18– Line 1-2: There's been no express testimony or evidence!

The Court's sentence was based on:

Hearsay – 1. A situation of which you could take advantage.

Hearsay – 2. One way of another there would be an economic benefit.

Hearsay – 3. It seems to me.

Hearsay – 4. It would have been entirely reasonable to expect.

Hearsay – 5. More likely than not.

Hearsay – 6. If Nayfeld was paid off he would have something for you.

Hearsay – 7. I do think the logic of the situation.

Hearsay – 8. That was your intent and expectation.

Hearsay – 9. You discussed the possibility of doing business.

Hearsay –10. You expected in one way or another.

Hearsay –11. Assuming for the sake of discussion.

Hearsay –12. You could benefit economically from that intervention.

Honorable Lewis A. Kaplan was proven wrong from 1-12.

– His wrong conclusion was made because AUSA Thomas:

– Sealed – Do Not Docket – 10/12/2016 Allocution where The Hit Man and Cooperating Witness stated under oath:

– "No Financial of Any Gain for Kotlyarsky!"

CERTIFICATE OF PETITIONER

I hereby certify that this Petition for Rehearing is presented in good faith and not for delay and is restricted to the grounds specified in Rule 44.2.

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November 1, 2024

Clerk
Supreme Court of the United States
1 First Street, NE
Washington, D.C. 20002

RE: BORIS KOTLYARSKY V. UNITED STATES DEPARTMENT OF JUSTICE; PREET BHARARA, IN HIS OFFICIAL CAPACITY; JAMES COMEY, IN HIS OFFICIAL CAPACITY

Dear Sir or Madam:

As required by Supreme Court Rule 33.1(h), I certify that the Petition for Rehearing referenced above contains **2,383** words, excluding the parts of the document that are exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury that the foregoing is true and correct.

Sincerely,

Jack Suber, Esq.
Principal

LISA KAY NICHOLSON
Notary Public
State of Maryland
Montgomery County
My commission exp. October 12, 2026

Sworn and subscribed before me this 1st day of November 2024.

Lisa K Nicholson

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5614 Connecticut Avenue, NW #307
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November 1, 2024

Clerk
Supreme Court of the United States
1 First Street, NE
Washington, D.C. 20002

RE: BORIS KOTLYARSKY V. UNITED STATES DEPARTMENT OF JUSTICE; PREET BHARARA, IN HIS OFFICIAL CAPACITY; JAMES COMEY, IN HIS OFFICIAL CAPACITY

Dear Sir or Madam:

I certify that at the request of the Petitioner, on November 1, 2024, I caused service to be made pursuant to Rule 29 on the following counsel for the Respondents:

RESPONDENTS:
Elizabeth B. Prelogar
Solicitor General
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001
202-514-2217
SupremeCtBriefs@USDOJ.gov

Tara Schwartz
DOJ-USAO
86 Chambers St
New York, NY 10007
212-637-2633

This service was effected by depositing three copies of the Petition for Rehearing in an official "first class mail" receptacle of the United States Post Office as well as by transmitting a digital copy via electronic mail, some email addresses were unavailable.

Sincerely,

Jack Suber, Esq.
Principal

RECEIVED
NOV - 5 2024
OFFICE OF THE CLERK
SUPREME COURT, U.S.

LISA KAY NICHOLSON
Notary Public
State of Maryland
Montgomery County
My commission exp. October 12, 2026

Sworn and subscribed before me this 1st day of November 2024.

Lisa K Nicholson