No. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2024

OKWUCHUKWU EMMANUEL JIDOEFOR\,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

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QUESTION PRESENTED FOR REVIEW

1) Whether the Eighth Circuit's holding that the government could cure its breach of a plea agreement in a criminal case can be cured by a partial retraction of its statement that breached the plea agreement conflicts with prior decisions of the United States Supreme Court and other Courts of Appeals?

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Petitioner Okwuchukwu Emmanuel Jidoefor respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Eighth Circuit, April 10, 2024.

OPINION BELOW

The opinion of the Court of Appeals for the Eighth Circuit that is the subject of this petition is reported in *United States v. Jideofor*, 97 F.4th 1144 (8th Cir. 2024), and is reprinted in the appendix hereto, p. 1A-16A, infra. The Eighth Circuit denied a petition for rehearing en banc or panel rehearing in an order filed on June 13, 2024. (Appendix 17A).

The final judgment of the United States District Court for the District of Minnesota and rulings (Senior District Judge Michael J. Davis) that are the subject of this Petition have not been reported. The documents deemed relevant to this Petition are reprinted in the Appendix.

JURISDICTION

Petitioner Okwuchukwu Emmanuel Jidoefor plead guilty and was convicted of aiding and abetting mail fraud in violation of 18 U.S.C. § 1341. Mr. Jidoefor was sentenced to tine served, which by time of sentencing was about 28 months, by Judge Michael J. Davis, Senior United States District Judge for the District of Minnesota. Sentence was imposed on October 13, 2022, and final judgment was entered on October 19, 2022. Mr. Jidoefor timely appealed his conviction and sentence.

The United States Court of Appeals for the Eighth Circuit affirmed Mr. Jidoefor's conviction and sentence April 10, 2023, and denied his petition for rehearing en banc or panel rehearing on June 13, 2023. Mr. Jidoefor now timely files this petition for writ of certiorari.

The jurisdiction of this Court to review the judgments of the Eighth Circuit is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS

U.S. Constitution Amendment V - No person shall . . . be deprived of life, liberty, or property, without due process of law . . .

STATEMENT OF THE CASE

Okwuchukwu Emmanuel Jidoefor was one of six defendants indicted in a large scale fraud scheme centering around a chiropractor who charged auto insurance companies for chiropractic services that were not medically necessary or not rendered at all over the course of about six years. (Indictment at 1). The government alleged that Mr. Jidoefor worked for the chiropractor for a few months as a runner who recruited accident victims as patients. The government also accused Mr. Jidoefor of staging accidents. Mr. Jidoefor and the patients received kickbacks.

Although the superseding indictment against Mr. Jidoefor was returned in August, 2017 and he was summoned to appear in court in the District of Minnesota that September. Mr. Jidoefor had moved from Minnesota to New Jersey and did not know about he indictment. He was arrested in New Jersey in June, 2020 and extradited to Minnesota where he first appeared on August 6, 2020. He was detained throughout the prodeedings.

Mr. Jidoefor reached a plea agreement with the government at a pretrial hearing on June 14, 2022. The agreement consisted of pleading to one substantive fraud charge, with the other charges being dismissed. He would also admit to a supervised release violation arising from a bank fraud conviction in 2012. The government would recommend a prison sentence of time served.

The most critical provision of the plea agreement for Mr. Jidoefor was the

government's commitment to send a letter to immigration authorities informing them of his significant cooperation with the government in connection with his previous fraud case, and Mr. Jidoefor's well-founded fear for his life if he were deported to his home country of Nigeria where many persons he informed on or testified against were located. Throughout the proceedings, Mr. Jidoefor was subject to a removal order. He had retained an immigration attorney who was attempting to stay the removal order and obtain a visa permitting Mr. Jidoefor to remain in the United States. Mr. Jideofor and his immigration lawyer viewed the government's letter as the linchpin of his legal strategy to avoid deportation.

The parties all understood that Mr. Jidoefor's fear of deportation was his biggest concern, which Judge Davis described as "the 800 pound gorilla in this room." (Plea Hearing Tr. R. Doc. 757 at 29:21-22, 30:12-13). The letter was discussed and negotiated extensively in connection with the plea agreement. (See Id. at 25-28, 30-32. 45-49, 70-71). Mr. Jidoefor's immigration attorney stated in a sworn Declaration, "For Mr. Jidoefor, the immigration consequences of his plea in the criminal proceeding were more consequential to him than any punishment he faced for his conviction." (Declaration of Immigration Counsel, R. Doc. 850 at 1).

The government subsequently revised the letter to immigration authorities. (R. Doc. 801-1). At the sentencing hearing, the government agreed to make further additions to the letter. (Transcript of Sentencing Hearing [sealed], R. Doc. 833 at 69-70).

The Court then instructed the government to file the letter and send it to immigration authorities by noon the next day. (Id. at 73:8-11, 79-80).

The final letter sent to immigration authorities was dated October 13, 2022, written on the letterhead of the U.S. Attorney's Office, and issued under the name of Andrew Luger, the U.S. Attorney for this district. (Appendix 18A-19A).

After the district imposed its sentence of time served on October 13, 2022, Mr. Jidoefor was immediately released from the custody of the U.S. Marshal Service and taken into custody by the Department of Homeland Security, Immigrations and Customs Enforcement, pursuant to their hold. Mr. Jidoefor was subsequently detained by ICE. Immediately after the government submitted its letter to immigration authorities, Mr. Jideofor's immigration attorney filed an administrative Application for a Stay of Deportation or Removal with USCIS to prevent immediate deportation. After denial of that application on November 7, 2022, Mr. Jideofor's immigration attorney submitted a Motion to Reopen the Removal Proceedings and Motion for Emergency Stay of Removal with the Board of Immigration Appeals, which was the only entity with the authority to reopen the removal proceedings against Mr. Jidoefor.

Legal counsel for USCIS filed a response to Mr. Jidoefor's motions on November 16, 2022. (Id). Attached to that response was a letter directly from Andrew Luger in his official capacity as U.S. Attorney for the District of Minnesota, disavowing the letter previously sent to DHS officials from that same U.S. Attorney pursuant to the plea

agreement. (Appendix 20A). Luger states in his letter, "I write to clarify that Mr. MacLaughlin's October 13th letter reflects his personal opinion only, and is not the position of this office." (Id.)

On November 28, 2022, after Mr. Jidoefor's counsel was advised of Luger's letter renouncing his office's previous letter, he filed a Motion to Remedy Government Violation of Plea Agreement. (R. Doc. 843). The Motion requested alternate remedies of vacating the conviction and dismissing the charges, or permitting Mr. Jidoefor to withdraw from his plea, and ordering the government to rectify its actions. (Id). The government filed a response the same day after being ordered to do so by the district court. (Order for Government to File Response, R. Doc. 844; Government's Response to Defendant's Motion to Remedy Government Violation, R. Doc. 846). The government's response acknowledged its original letter and retraction, and attached another letter that it sent to an immigration official on November 28, 2022 which retracted the November 14 retraction, and stated that it "was issued due to a miscommunication" and that "This Office confirms its commitment to the plea agreement with Mr. Jidoefor and AUSA MacLaughlin's October 13, 2022 letter." (Appendix 21A). The government did not make any attempt to explain the "miscommunication" in its response. The government asserted that the retraction of its retraction "remedies any potential breach of the plea agreement." (R. Doc. 846 at 3).

On December 4, 2022, Mr. Jidoefor submitted a reply to the government's

response. (R. Doc. 849). He argued that the government's failure to even attempt to explain the "miscommunication" which resulted in a blatant breach of the plea agreement indicated bad faith. (Id. at 1-2). Mr. Jidoefor also argued that the retraction letter was ineffective because it failed to affirm its genuine belief in the accuracy of the October 13 letter, but was merely fulfilling its commitment to its plea agreement with Mr. Jidoefor. (Id. at 2-3). The original October 13 letter had not provided information indicating that is was sent pursuant to a plea agreement. (R. Doc. 843-2). Mr. Jidoefor's immigration attorney explained that the government's statement that it was retracting its retraction because of a plea agreement "does more damage than it attempts to cure. (Declaration of Immigration Counsel, R. Doc. 850 at 3). His immigration attorney based this conclusion in part on a Board of Immigration Appeals decision holding that convictions that are modified because of rehabilitative or immigration purposes will not be recognized for immigration purposes. (Id.).

Mr. Jidoefor's reply further pointed out that the November 28 letter further undermines the October 13 letter's credibility by describing it as "AUSA Maclaughlin's October 13, 2022 letter" rather than stating unequivocally that the letter sent was in fact the formal and official position of the U.S. Attorney. (R. Doc. 849 at 3). Mr. Jidoefor argued that the November letter was inadequate because it was only addressed to one ICE official rather than the numerous officials who received the original letter, there were no copies to the DHS counsel who filed the opposition with the retraction or to the Board of

Immigration Appeals which would decide the motion. (Id.). Mr. Jidoefor's immigration attorney emphasized the ineffectiveness of the November 28 letter where there was no indication that the BIA was even notified of the government's retraction of its retraction. (Declaration of Immigration Counsel, R. Doc. 850 at 3).

Mr. Jidoefor's reply finally pointed out that even a genuine retraction of the retraction would be unlikely to remedy the damage from the government's breach of the plea agreement where the November 14 retraction letter was already part of the administrative record any would be seen by any decision makers. (Reply, R. Doc. 849 at 4; Declaration of Immigration Counsel, R. Doc. 850 at 3).

The government then filed a sur-reply in response to an order from the district court which further elaborated that the November 14 retraction letter was sent out because the First Assistant of the U.S. Attorney's office found the October 13 letter to be unusual and therefore assumed that AUSA MacLaughlin sent it in his personal capacity. (Government's Sur-Reply, R. Doc. 853 at 2). The government stated that AUSA MacLaughlin has since left the office but did not explain why they still could not have given him a call.3 (Id.) The government also claimed that the First Assistant was not aware that there was second chair on the case but did not explain how the office maintained no records of prosecutors assigned to cases, or could not have looked the information up on PACER. (Id.)

According to the government, U.S. Attorney Luger was misinformed that

MacLaughlin had sent the original letter in his personal capacity and was not aware that the letter was referenced in the plea agreement. (Id.) There was no explanation of why Luger would sign a letter renouncing a previous official letter from an experienced AUSA without further investigation or inquiry. The government's sur-reply finally attached a memorandum from USCIS counsel filed with the BIA on November 30, 2022 stating that it was withdrawing the letter withdrawing the original letter, attributing the letter to a miscommunication without any further explanation or validation of the original letter, and then further arguing that Mr. Jidoefor's Motion to Reopen be denied. (Exhibit to Sur-Reply, R. Doc. 853-1).

On December 14, 2022, the district court filed an Order denying Mr. Jidoefor's Motion to Remedy Government Plea Violation. (Appendix 18A-26A). The district court agreed that "the November 14 letter disavowing the immigration letter was a breach of the parties' plea agreement," (Appendix 24A). It held that Mr. Jidoefor could not identify any harm from the breach except that DHS took a position in opposition to his motion to reopen removal, and "All other harms are speculative." (Id. 25A). The district court further stated that it "finds the United States Attorney's response in this case satisfactory. However, the Court cannot unequivocally state that the Government cured any damage to Defendant's immigration proceedings." (Id.)

Mr. Jidoefor was deported to Nigera on or about January 10, 2023.

The Eighth Circuit Court of Appeals affirmed the district court on April 10, 2023,

holding that the government's retraction of its retraction was unequivocal, and therefore cured its undisputed breach of the plea agreement. (Appendix 10A). The appellate opinion further stated that "there was no material breach. (Id).

REASONS FOR ALLOWANCE OF THE WRIT

Review of the lower courts' decisions in the instant case is necessary because they contradict established case law by this Court and other federal circuit courts that the breach of a plea agreement cannot be cured. The determination that the breach was cured by an a partial retraction of the retraction, and that the breach was of a provision critical to securing Mr. Jidoefor's plea was not material, was not only blatantly unfair but also contradicts the law clearly set forth in Santobello v. New York, 404 U.S. 257, 262-63, 92 S.Ct. 495, 498–99, 30 L.Ed.2d 427 (1971) and its progeny.

It is established that “Plea agreements are ‘an essential component of the administration of justice,’ and fairness is presupposed in securing such agreements.” United States v. Beston, 43 F.4th 867, 875 (8th Cir. 2022)(quoting United States v. Mitchell, 136 F.3d 1192, 1194 (8th Cir. 1998)). The prosecution's breach of the plea agreement implicates “the honor of the government, public confidence in the fair administration of justice, and the effective administration of justice in a federal scheme of government." United States v. Thomas, 58 F.4th 964, 976–77 (8th Cir. 2023)(quoting Mitchell at 1194). The breach of public confidence in the instant case is extreme where the government agreed to sent a letter in exchange for Mr. Jidoedor pleading guilty, and

after Mr. Jidoefor performed his obligations under the agreement by pleading guilty, the government explicitly reneged on its obligation by disavowing the letter.

"Allowing the government to breach a promise that induced a guilty plea violates due process." Id. (quoting Margalli–Olvera v. INS, 43 F.3d 345, 351 (8th Cir. 1994), citing Mabry v. Johnson, 467 U.S. 504, 509, 104 S.Ct. 2543, 2547, 81 L.Ed.2d 437 (1984), and Santobello v. New York, 404 U.S. at 262, "[W]ith respect to federal prosecutions, the courts' concerns run even wider than protection of the defendant's individual constitutional rights—to concerns for the 'honor of the government, public confidence in the fair administration of justice, and the effective administration of justice in a federal scheme of government.' " Id. (quoting United States v. Harvey, 791 F.2d 294, 300 (4th Cir. 1986), citing United States v. Carter, 454 F.2d 426, 428 (4th Cir.1972)).

It had previously been established in the Circuit as well as multiple other Circuits that the government cannot cure its breach of the plea agreement. It is well-established that "When the government violates a plea agreement's conditions, however, we cannot excuse the breach under traditional harmless-error review." United States v. Collins, 25 F.4th 1097, 1101 (8th Cir. 2022)(citing United States v. Mosley, 505 F.3d 804, 810 (8th Cir. 2007)). "By holding that it was immaterial whether the prosecution's breach influenced the trial judge's decision, Santobello necessarily rejected the view that the prosecution's breach could have been harmless." Mosley at 810.

There is an overwhelming consensus among the circuits that the harmless error

rule does not apply where the government breaches a plea agreement. United States v. Canada, 960 F.2d 263, 271 (1st Cir.1992); United States v. Vaval, 404 F.3d 144, 154–155 (2d Cir.2005); Dunn v. Colleran, 247 F.3d 450, 461–462 (3rd Cir.2001); United States v. Peglera, 33 F.3d 412, 414 (4th Cir.1994); United States v. Saling, 205 F.3d 764, 766–767 (5th Cir.2000); Cohen v. United States, 593 F.2d 766, 771–772 (6th Cir.1979); United States v. Fields, 766 F.2d 1161, 1170 n. 3 (7th Cir.1985); United States v. Mondragon, 228 F.3d 978, 981 (9th Cir.2000); United States v. Hawley, 93 F.3d 682, 693–694 (10th Cir.1996); United States v. Foster, 889 F.2d 1049, 1055–1056 & n. 6 (11th Cir.1989); United States v. DeWitt, 366 F.3d 667, 671–672 (8th Cir.2004); United States v. Van Horn, 976 F.2d 1180, 1183–84 (8th Cir.1992).

The 8th Circuit's holding that the breach could be cured, and particularly placing the burden on Mr. Jidoefor to demonstrate that he was harmed, contradicts all of this precedent. Significantly in Santobello, the Supreme Court held that trial judge's statement that he was not influenced by the government's argument which violated the plea agreement was insufficient to excuse the breach. 404 U.S. at 262-63. Similarly in the instant case the government cannot successfully have its breach excused by claiming that the immigration courts were not influenced by its letter repudiating its letter sent pursuant to the plea agreement.

The 8th Circuit in the instant case invented an exception to this established

precedent that a breach is not curable by holding:

> At least where the government breaches a collateral obligation not directly related to sentencing, and the government has fully cured its breach through specific performance of its collateral obligation, we conclude the breach has become immaterial and the district court has discretion to deny a further Santobello remedy.

(Appendix 9A). There was no basis for adopting a new rule contradictory to binding precedent in the 8th Circuit and overwhelming precedent in other circuits based on a distinction that did not undermine the importance of the underlying principle of requiring the government to honor its plea agreement, and where the facts failed to even support that there was a "full cure." It is clear that the purpose of the holding in Santabello is to ensure that the government honors its plea agreements period, and not to allow the government to disregard commitments that it deems to be less important. Such an approach defeats the purpose and effectiveness of plea agreements, and vitiates the due process protections that Court have made clear must be maintained.

CONCLUSION

For the foregoing reasons, Petitioner respectfully prays that a writ of certiorari

issue.

Respectfully submitted,

Dated: September 11, 2024

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