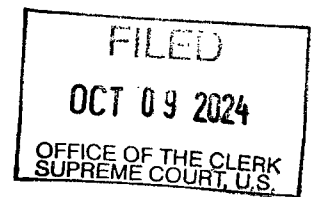


No. 24-5928



IN THE
SUPREME COURT OF THE UNITED STATES

ERICK GACHUHI WANJIKU — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of appeals Tenth Circuit.
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

ERICK GACHUHI WANJIKU #58269-510
(Your Name)

P.O Box 2099
(Address)

Pollock, LA 71467
(City, State, Zip Code)

N/A.
(Phone Number)

QUESTION(S) PRESENTED

1. Whether or not petitioner's 5th, 6th and 14th amendments right to due process was violated when the appeal court declined to remove appointed counsel as requested and declined to rule on the merits of the issues presented in the prose brief filed.
2. Whether or not an immigrant can be tried without vetting potential bias against immigrants in voir dire proceedings, then seal voir dire transcripts.

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Napue V. Illinois, 360 U.S. 264, 269-70 (1959)	6
Mooney V. Holohan, 294 U.S. 103, 112 (1935)	6
Pyle V. Kansas, 317 U.S. 213, 215-216 (1942)	6
Cono V. Bell, 556 U.S. 449, 469-70 (2009)	7
U.S. V. Agurs, 427 U.S. 97, 108 (1976)	7
U.S. V. Moukes, 204 F.3d 1024, 1028 (10 th Cir. 2000)	8

STATUTES AND RULES

18 U.S.C. § 111 (a)(b).	3
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OTHER Constitution.

Fourth amendment	3
Fifth amendment	3
Sixth amendment	3
Fourteenth amendment.	3

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

Appeal Case No. 23-6180 Tenth Circuit.

Appeal Case No. 24-6010 Tenth Circuit.

D.C Case No. 5:23-CR-00227-R-1 (W.D. OKLA.)

Oklahoma State Case No. CF-2019-4181

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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 _____ 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 August 2, 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: August 30, 2024, and a copy of the order denying rehearing appears at Appendix B.

☐ 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

Title 18 U.S.C § 111 (a) and (b). Assault on a federal officer.

Fourth amendment violation.

Fifth amendment violation.

Sixth amendment violation

Fourteenth amendment violation.

STATEMENT OF THE CASE

Petitioner a lawful permanent resident was convicted in a state court for domestic assault by strangulation. While still exercising his right to challenge the conviction, petitioner was illegally arrested, detained, and processed by ICE agents (R3.129). Petitioner was then asked to sign legal documents but he refused and the agent marked "refused to sign" (R3.200). ICE agents informed petitioner they would use force to obtain a thumbprint for his refusal to sign (R3.19-20). From this statements petitioner requested a translator but was denied (R3.138). ICE agents handcuffed and assaulted petitioner while attempting to thumbprint him (R3.20). The court observed ICE agents try to ink petitioner forcefully (R3.30) which led to petitioner defending himself. Petitioner was charged with assault on a federal officer.

The grand jury indicted petitioner after testimony stated ICE agents were using force to obtain a thumbprint from petitioner when the alleged assault happened. (See grand jury transcripts)

At trial however, ICE agents denied using force to obtain a thumbprint from petitioner. (R3.155 and R3.178).

Government's exhibit 1 show something painful happening to the petitioner when he was still asking for an interpreter. (R3.145).

Government's exhibit 1 was edited to last 1 minute 28 seconds (R3.15) however, defendant's exhibit 10 show that ICE agent recorded for over 2 minutes government's exhibit 1. Petitioner notified the court of this misconduct before voir dire. The trial court allowed edited evidence at trial by the government. (See sealed voir dire transcripts).

The trial court conducted voir dire examination of the venire and excused certain jurors for cause. The court then asked the all white jury venire if they would be fair to the black defendant. (See sealed voir dire transcripts).

Petitioner notified the court that the government was withholding video evidence of the incident. Without inquiring of the allegation, the court denied petitioner evidence. (R3.195).

After trial, the government admitted to the court they had withheld a 5 hour video of the incident. The trial court denied petitioner a new trial when he raised a Batson Challenge, Brady/Giglio violation, 4

and false testimony (See documents 53, 56, 64, and 102).

While appealing the case, the trial court sealed voir dire transcripts. This transcript will show that the court was aware the government used edited evidence at trial.

Appointed counsel failed to request the sealed transcripts which led petitioner to request the court to remove her as counsel.

The appeal court failed to remove counsel as requested and allowed her to file an under's brief without the requested transcripts. Counsel misrepresented facts in the under's brief.

The appeal court accepted and adopted the misrepresentations of facts in their order of denial.

The appeal court stated that petitioner pled guilty in Oklahoma state court for domestic assault by strangulation. Records show that petitioner went to trial and has a pending post-conviction in the state court. See OSCN website Case No. CF-2019-4181.

The appeal court stated that ICE officers removed petitioner from a holding cell in order to take fingerprints and complete paperwork. Petitioner's testimony supported by defendant's exhibit 10 show that petitioner had been fingerprinted prior to the incident. (R3.199)

The appeal court declined to rule on the merits of the claims raised by petitioner.

REASONS FOR GRANTING THE PETITION

1. False testimony.

Government's witness testified that ICE agents were using force to obtain a thumbprint. The witness stated ICE agents were putting ink on petitioner's thumb. (R3.19-20). At trial however, government witnesses denied using force to obtain a thumbprint from petitioner (R3.155 and R3.178).

Video evidence show ICE agents try to ink petitioner forcefully (R3.30). In fact, government's exhibit 1 show something painful happen to the petitioner when he was asking for an interpreter. (R3.145).

Government's witness testified that exhibit 1 had not been altered in any way (R3.118). Defendant's exhibit 10 show that the original recording lasted over 2 minutes. However, government exhibit 1 provided lasts approximately 1 minute 28 seconds. (R3.15).

Government's witness testified that petitioner was at the ERO office for 3½ hours the entirety of the time (R3.158). Video presented after trial show that petitioner was at the ERO office for 5 hours.

Government's witness testified that he had been following ICE policies on the day of the incident (R3.151). Defendant's exhibit 2 show that the witness testimony is not true. However, the Court denied to admit the policies into evidence (Defendant's exhibit 2).

Government's witness testified that petitioner had the right not to sign the forms but a fingerprint is required to positively identify the individual (R3.114). Defendant's exhibit 2 show that the testimony was not true.

This false statements were relevant to the case. This Court has ruled that knowingly failing to correct false testimony is improper.

Napue v. Illinois, 360 U.S. 264, 269-70 (1959).

In *Mooney v. Holohan*, 294 U.S. 103, 112 (1935) the Court condemned a "deliberate deception of the Court and jury by the presentation of testimony known to be perjured."

In *Pyle v. Kansas*, 317 U.S. 213, 215-216 (1942) expressed the Court's disapproval of the knowing use of perjured testimony, coupled with a deliberate suppression by state authorities of evidence favorable to the defendant.

Here, the government presented testimony that denied use of force at trial. Contrary to testimony presented at preliminary and to the grand jury. Also, government presented testimony that evidence was not altered in any way. Contrary to evidence presented.

2. Brady / Giglio Violations.

Defendant's exhibit 10 Captured ICE agent record government's exhibit 1 with her cell phone for over 2 minutes. Government's exhibit 1 provided lasts 1 minute 28 seconds (R3.15). The full recording has not been produced. After trial, the government provided a video of the incident lasting 5 hours. This video revealed that defendant's exhibit 10 used at trial had been edited and approximately 1½ hours of video omitted. The full recording has not been provided.

Immigration forms marked "refused to sign" were material to the case in showing whether force was allowed or not in this incident. However, the government has refused to provide the forms to date.

A Brady violation occurs when: (1) Evidence favorable to the accused because it is exculpatory or impeaching; (2) Evidence was undisclosed by the prosecution, either willfully or inadvertently and; (3) prejudice ensued. Evidence is material "when there is a reasonable probability that, had the evidence been disclosed, the result of the proceeding would have been different." quoting *Care v. Bell*, 556 U.S. 449, 469-70 (2009).

In *U.S. v. Agurs*, 427 U.S. 97, 108 (1976) the Court stated that omitted evidence must be favorable to the accused, suppressed by the government, and prejudice must have ensued.

Here, petitioner testified in his own defense. Video evidence to corroborate his testimony was edited. Had the full video been presented, the jury would have believed petitioner's testimony.

Government's exhibit 1 was the only video with audio. Editing of this evidence enabled government's witnesses to falsely testify at trial. Had the full video been provided, the jury would have established the falsehoods and the result of the proceeding would have been different.

3. Abuse of discretion.

The trial court seemed to mislead petitioner and the jury that petitioner was at the ERO office for consideration of deportation but that was later reversed (R3.62). However, at trial the court instructed the jury that the agents were engaged in the performance of their official duties to administratively process deportees (R3.233). The court was notified that government's exhibit 1 had been edited (see sealed voir dire transcripts). The court allowed edited evidence to be used against petitioner at trial.

The court was notified that the government was withholding video evidence of the incident inside the cell (R3.93). The court denied petitioner the evidence and ordered the trial to proceed. After trial, the government provided the evidence, lasting 5 hours. New evidence revealed defendants exhibit 10 was edited and 1 1/2 hours of video omitted.

With these misconducts by the government of withholding evidence, editing evidence, and false testimony the court denied petitioner a new trial. The court denied petitioner to present evidence in support of his self defense argument (R3.184, R3.152).

The court refused to recuse and intended to sentence petitioner to a longer sentence when he questioned why the government had not objected for obstruction of justice for petitioner's testimony at trial (R3.276). The trial court sealed voir dire transcripts when petitioner was on his way to appeal his conviction. (Document 137)

A court of appeals reviews a district court's ruling for denying new trial under abuse of discretion. See U.S.V. Mouwkes, 204 F.3d 1024, 1028 (10th Cir. 2000). Here, petitioner filed and was denied a new trial by the trial court. The appeal court failed to review the denial in its order.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,


A handwritten signature in black ink, appearing to be "E. J. [unclear]", is written over a horizontal line.

Date: October 7, 2024