

No. _____

**In The
Supreme Court of the United States**

AARON GRANTON,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

On the Petition:

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QUESTIONS PRESENTED

The questions presented are:

- 1) Did the district court (and Second Circuit) abuse its discretion in granting the government's request for an anonymous and partially sequestered jury in violation of petitioner's Fifth Amendment Due Process and Sixth Amendment right to a fair trial?
- 2) Did the district court (and Second Circuit) abuse its discretion in admitting numerous alleged prior "bad acts" of the petitioner (along with "bad acts" of other individuals)?
- 3) Did improper comments and questioning by the trial judge deprive petitioner of his Fifth and Sixth Amendment right to due process and a fair trial?
- 4) Did the district court (and Second Circuit) err in denying the motion for judgment of acquittal as to each of the counts against Granton?
- 5) Did the district court (and Second Circuit) err in determining that the co-defendant Damion Hardy was competent to stand trial with the resultant taint to Granton depriving him of his due process right to a fair trial?

LIST OF PARTIES

- 1) AARON GRANTON, Petitioner;
- 2) UNITED STATES OF AMERICA, Respondent.

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The Order of the United States Court of Appeals for the Second Circuit Denying Rehearing and Rehearing En Banc, *United States of America v. Aaron Granton, et al.* (November 9, 2017) is annexed at a10.

JURISDICTION

The Court of Appeals entered its judgment on August 21, 2017, and denied a petition for rehearing, or, in the alternative, for rehearing *en banc* on November 9, 2017. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY
PROVISIONS INVOLVED

The relevant part of the Fifth Amendment is:

No person shall be . . . deprived of life, liberty, or property, without due process of law.

The relevant part of the Sixth Amendment is:

In all criminal prosecutions, the accused shall enjoy the right to . . . an impartial jury.

STATEMENT OF THE CASEI. COURSE OF THE PROCEEDINGS BELOW

Following his Superseding Indictment for RICO and other violations (A110-146), the petitioner Aaron Granton (with co-defendant Damion Hardy) was tried to a jury before the Honorable Frederic Block in the United States District Court for the Eastern District of New York.

The government moved pretrial for an anonymous jury and partially sequestered which Granton opposed. A competency hearing regarding Hardy was held on March 24, 2015. At the end of the competency hearing, Judge Block advised that there would be an anonymous jury. (Tr. 3/24/15; pp. 117-22 to 118-1).

On March 31, 2015, Judge Block issued his formal ruling granting the government's request as to the anonymous and partially sequestered jury. (Tr. 3/31/15; pp. 253-2 to 254-6; A245-247). On April 1, 2015, the district court denied Hardy's motion to be declared incompetent to stand trial. (A188-192).

The jury was sworn on April 1, 2015 (Tr. 344-5).

II. FACTS ADDUCED AT TRIAL

The Cash Money Brothers (CMB) were a group of 20 to 25 individuals formed in 1991 (named after the movie "New Jack City") who operated mostly out of the Lafayette Gardens (LG), a large public housing project in Bedford Stuyvesant, Brooklyn, New York. As in the movie, the CMB "sold crack cocaine" in "crack vials." (Tr. 117-1 to 3; 131-14 to 20; 564-17 to 567-12; 607-16 to 18; 1788-6 to 17; 2293-17 to 23).

Damion "World" Hardy was the leader. (Tr. 89-25 to 91-10; 565-8 to 11; 1037-25 to 1038-4; 1329-15 to 17; 1789-11; 2267-15 to 18). Hardy "was into selling drugs." (Tr. 91-19 to 24). To be a member of the CMB one had to sell drugs, "[c]arry guns . . . shoot people." (Tr. 1788-22 to 1789-1). The drugs would be cooked, bagged, and then distributed hand-to-hand to customers by workers in shifts. After hand-to-hand drug sales were made, the money would go to a lieutenant, who would "give it to World when they finish, when he want it." (Tr. 1793-3 to 1795-11; 1795-12 to 22). Hardy would obtain additional drugs ("the re-up") from Harlem. (Tr. 1792-8 to 18). Members always carried guns obtained from Hardy "[f]or protection" and included ".9's, 4/5s, TECS, Macs, Deserts, .357s, .44s" kept in different apartments. (Tr. 613-1 to 3; 1805-2 to 20). If someone tried to sell drugs at LG without Hardy's permission they would be shot at or shot. (Tr. 1806-22 to 1807-7).

Granton was a CMB member (Tr. 566-1 to 16) and initially was "a worker" or "someone who sold crack cocaine . . . for the organization." (Tr. 570-20 to 24). He eventually became "a lieutenant" who "gave out bombs [bundles of crack cocaine]." (Tr. 570-18 to 571-3). He was also "an enforcer" (Tr. 570-19) who would "protect" the organization with a gun. (Tr. 572-10 to 20). Granton went by the nicknames "E-Bay", "Eric Moore" and "Cyrus the Virus" (Tr. 514-15 to 25; 566-15 to 16). He was a CMB member (Tr. 566-1 to 16; 1281-24 to 25) and initially was "a worker" or "someone who sold crack cocaine . . . for the organization." (Tr.

570-20 to 24). When Granton did not want to deal drugs, Allen "Boo" Bryant and "Deezo" put revolvers to his head ("spinning and click at him") and told him that he had better deal drugs. (Tr. 1980-20 to 1982-3). Granton became "a lieutenant" who "gave out bombs [bundles of crack cocaine]." (Tr. 570-18 to 571-3). He was "an enforcer" (Tr. 570-19) who would "protect" the organization with a gun. (Tr. 572-10 to 20).

The indictment alleged, and the jury found, that CMB operated as a RICO enterprise between 1991 and 2004. The jury found that Hardy ordered murders which were carried out by petitioner Granton, along with instances where CMB members shot at and/or threatened witnesses, or potential witnesses, who might testify against CMB members.

Allen Bryant grew up in LG, was a CMB member and sold drugs with Granton and Hardy. (Tr. 132-9 to 133-4; 1281-16 to 22). Bryant testified that Granton was a member of the CMB and moved from the Coney Island section of Brooklyn to LG. (Tr. 147-3 to 10; 197-8 to 13). Bryant testified that Granton joined the CMB in 1992 and "[h]e sold drugs for us." (Tr. 147-18 to 22; 184-11 to 14). Granton "became a shooter for us." (Tr. 147-23 to 148-1). Bryant testified: "He used to hustle ("sell drugs") and he became an enforcer." (Tr. 340-10 to 15). Granton shot at individuals from a rival gang and "had proven himself to be a shooter after that." (Tr. 184-16 to 185-2).

THE MURDER OF TROY DAVIS

Granton shot and killed an individual named Troy [Crazy

Troy Davis; not Troy Singleton]. (Tr. 1839-15 to 1840-6; 1844-18 6 to 1845-8). Granton told Footman he killed Troy because "World [Hardy] had a problem with him." (Tr. 1821-9 to 1822-17). Granton's reputation changed and "they respected him more and they was afraid." (Tr. 1822-21 to 1823-1). Hardy told Footman to rob a friend named Wayno and he did, giving the Rolex to Hardy. (Tr. 1833-16 to 1834-24). When Footman moved to LG he sold crack for Hardy. (Tr. 1780-3 to 9; 1782-25 to 1783-24).

THE MURDER OF DARRYL BAUM

Daryl "Hommo" ("Homicide") Baum was a feared street gangster with a reputation as a killer. (Tr. 2581-8 to 15). Bryant testified that he and Granton murdered Baum. (Tr. 188-25 to 189-2; 489-7 to 21; 493-23 to 24). Bryant testified that Hardy wanted to kill Baum because Baum was friendly with Davis. Cooke and Meyers called Bryant and advised "they had a line on Hommo meaning that they see him and they asked me do I have a gun on me. I told them yeah." It was decided "we going to get E-Bay." (Tr. 257-1 to 261-17).

Bryant saw Granton approach Baum by "skipping" (Tr. 269-4; 493-13 to 16) to the corner of Marcy and Quincy and saw "E-Bay firing." When asked if he had hit Baum, Granton "said yeah. I asked him where. He said in the head." (Tr. 266-4 to 20).

Meyers testified Granton admitted the Baum murder. Granton "went inside of Puffy's vehicle and was staking out Hommo." (Tr. 2468-12 to 13). As Granton described it, Baum was speaking to some individuals on the corner of Quincy and Marcy, and when he

bent to tie his shoe, Granton shot him in the head. (Tr. 2468-20 to 2469-16).

Zareh "Puff" Sarkissian, Sarkissian, who had a gun on him, approached Baum, and the two "nodded to each other." Sarkissian returned to Cooke without killing Baum, advising that he could not get a good shot at him. (Tr. 940-2 to 6; 946-13 to 949-13). Cooke got on the phone, and Sarkissian "understood that E-Bay would be appearing." (Tr. 868-7 to 870-6). Sarkissian was told to get in his car with Bryant and to drive to a certain location.

Bryant spoke on the phone with Edward Cooke, and said "E-bay is coming." A few minutes later Sarkissian heard a shot and Granton ran into the car. The car drove a few blocks away, and Bryant and Granton left. (Tr. 870-13 to 871-15; 950-25 to 953-15). Sarkissian did not see who shot Baum. (Tr. 954-15 to 21).

Henderson testified that on the night that Darryl Baum was murdered, he saw "E-Bay . . . Taz [and] Zach," all members of CMB and they passed him a gun. One of the three stated to Henderson: "we got busy" with the gun. This meant to Henderson that they "either killed somebody or they robbed somebody." (Tr. 1292-24 to 1295-4). Henderson testified that Cooke: "said that E-Bay had -- was dressed in a hoodie, and that he was acting like a -- like a young boy, he was skipping. And then when he came upon Darryl Baum, Darryl Baum was tieing (sic) his shoelaces and he pumped him in the head twice." (Tr. 1304-20 to 1305-5).

Footman testified that Granton spoke about Hommo: "He said, yo, you got to be careful, Tyson put money on. He said, Tyson

put money on they's heads. I'm like, who Tyson? He said Mike Tyson. So, I was like . . . how the hell we get beef with Mike Tyson? He was like, yo, man, listen, he say we killed his boy Hommo." (Tr. 1912-5 to 19). Granton was warning Footman about possible retaliation. (Tr. 2009-12 to 16). Meyers testified that Abubakr Raheem "found out from the individuals that Mohammed, JR, and Mike Tyson each put up \$50,000 . . . [f]or the murder of Taz and World." (Tr. 2473-18 to 23).

At a meeting of the CMB at Hardy's mother's house, Hardy advised Granton, Bryant, Meyers (Thor), Cooke Taz and Moo that "there was money on his head for killing Hommo [Darryl Baum; a/k/a "Homicide"]. And Mike Tyson put the money up, and he wanted to kill Mike Tyson." (Tr. 361-21 to 363-1). Baum had been Mike Tyson's childhood friend and bodyguard. (Tr. 363-11 to 16). There were objections to killing Tyson and "Moo probably spoke the loudest saying Mike Tyson was Muslim and we shouldn't kill a Muslim." (Tr. 363-23 to 364-1). Hardy did not agree, stating "I'm Muslim and he put that money up." (Tr. 364-3 to 4). Nothing happened to Tyson. (Tr. 364-11 to 12).

THE MURDER OF JAMES "J.R." HAMILTON

J.R. Hamilton "had supposedly transported Neno (sic) outside of the projects when he shot Wise." (Tr. 2447-24 to 2448-1). Hardy decided that J.R. Hamilton had to be murdered. (Tr. 2449-2 to 9). Several attempts were made to kill Hamilton. (Tr. 250-5 to 19; 272-19 to 275-24; 2447-18 to 2449-125). Footman heard Hardy and Granton arguing about Granton not yet killing Hamilton.

(Tr. 1913-20 to 1914-9). Granton told Hardy: "I'm on top of it. I'm handling it." (Tr. 1915-6 to 12).

Shelby "Moo" Henderson testified on the night Hamilton was murdered, Henderson was with Granton and Cooke. Cooke drove past "JR's eatery, which was a fish and chip." (Tr. 1309-20 to 1310-1). They returned to where Cooke's "other family was at" and Granton "change[d] his outfit and put a bulletproof vest and a cap of some sort. And then Taz [Cooke] had passed him a weapon" which was a "TEC-9." (Tr. 1312-15 to 1313-22). They went downstairs; Henderson saw Granton enter a car and Henderson remained behind. (Tr. 1314-10 to 20). A few days after the Hamilton murder, Granton advised Henderson he had shot Hamilton "right through the window. And then he said the gun jammed, and so he went inside, there was some people around JR, and he said he had . . . no beef with them, so he didn't do anything to them, and then he continued and finished him off." (Tr. 1331-14 to 1332-5). Henderson had no personal knowledge that Granton shot Hamilton as he "was not there and . . . did not see what happened." (Tr. 1400-1 to 9). Henderson admitted "people have lied to me." (Tr. 1402-8 to 9).

Bryant testified that Granton and he had "a few conversations about" Hamilton's death; he was with Granton in a bar when they pulled next to a car in which Ulysses Hamilton was seated with "a, like, wide-eyed stare" and Granton told Bryant "that's how he was looking when I ran up on his Brother," meaning "that that's how Ulysses (present when Hamilton killed)

is looking when he killed JR." (Tr. 277-9 to 20).

Bryant testified that "Taz and Thor told me . . . E-Bay killed him." (Tr. 348-2 to 3). They said Granton ran into a restaurant and shot Hamilton, his "gun jammed, so he ran back out and he unjammed it, and he ran back in and shot him again, and he ran back out and unjammed the gun again, and ran back in." (Tr. 348-5 to 15). The "gun jamming" story enhanced Granton's reputation "tremendously" as it "takes a lot of heart to shoot like that." (Tr. 349-7 to 13; 350-5 to 6). Sarkissian overheard Meyers and Cooke talking: "that E-Bay had ambushed somehow JR in a restaurant." (Tr. 880-11 to 25). One day Granton stated to Footman: " . . . be on point. We just knocked J.R. off." (Tr. 1916-3 to 13). Meyers testified Granton again described the J.R. Hamilton murder to Meyers: "how he went inside the establishment with the firearm. He said he fired, and people started running, and JR fell to the floor, and the gun jammed, and he unjammed it by . . . [f]ired again until the gun jammed a second time. Then he unjammed it, and then fired again, and then ran out of the store." (Tr. 2482-7 to 23). The autopsy of Hamilton concluded "[t]he cause of death was gunshot wounds." (Tr. 2153-7 to 17).

THE MURDER OF IVERY DAVIS

On August 10, 2001, Davis was shot in his vehicle at Hudson and Spring Streets, and he proceeded to drive until he crashed, striking and killing pedestrian Johan Camitz. (Tr. 57-22 to 58-21). James "Jimbo" Farrior had told Footman that Davis was

responsible for Myron's murder. (Tr. 1905-14 to 1906-7). In the ensuing months, Meyers had conversations with Bryant and Granton about killing Davis for "[r]evenge" for Myron's death. (Tr. 2434-11 to 23).

Footman testified that Granton said, prior to Davis being killed, "That Nut have to get it." (Tr. 1920-14 to 22). Footman testified that Granton would also say "Son [Hardy] was bugging. You got to get this done." (Tr. 1921-12 to 17). Footman had tried to kill Davis "two or three times" but could not find him. (Tr. 1906-13 to 24). Footman agreed to kill Davis with the CMB not only because Davis tried to kill Footman, but because "he have Wise [Hardy] killed." (Tr. 2049-19 to 2050-19).

On the night Davis was murdered, Meyers received a call from Hardy who advised that he was at Club NV and right behind Davis.

Meyers contacted Granton who came to Meyer's apartment. Meyers gave Granton two guns, and Granton left for Manhattan without Meyers. (Tr. 2485-15 to 23; 2490-20 to 2494-18). Meyers decided to join Granton after about 15 to 20 minutes and took the train to Manhattan. As Meyers approached the club, he called Hardy on his cell phone and Hardy described a black truck. Meyers saw the black truck and saw Granton exit the back passenger door. Meyers heard "the loud report of gunfire, and saw the flash from behind the vehicle" but he could not see Granton. He then went home. (Tr. 2494-19 to 2498-24). Meyers could not see where Granton was firing ("I couldn't see which direction he was pointing;" Tr. 2559-18 to 21). Meyers spoke

with Granton later that night and Granton was angry at Hardy for not letting him get into the vehicle. Granton had to take a train and was concerned since "a young guy by the name of Shay [Black] from the projects, who was working in New Jersey . . . was coming home" and saw Granton. (Tr. 2499-15 to 2500-14).

Bryant received a phone call from Granton who stated: "I caught Tito last night." ("Tito" was a name used for Davis). (Tr. 357-8 to 16). Granton told Bryant how he killed Davis: "Nut was parked, and he was talking to somebody. And he walked up and started shooting him . . . from behind while he was in the driver's side of his truck." (Tr. 359-4 to 14). The shooting occurred near a nightclub. (Tr. 359-20 to 24).

On the day that Davis was murdered (August 10, 2000), Uasia Davis was coming out of the front of LG and a group of men (including Granton and Hardy) were taunting her saying "We won, we got him." (Tr. 798-12 to 25). Uasia testified that a month after Davis's murder, she asked about her cousin Ivery, and Hardy replied: "that's big boy's business, mind your business, yeah, my nigger E-Bay popped that." (Tr. 765-3 to 23). Henderson testified that Granton stated he had killed Davis: "Without mentioning any name, he mentioned it clear (sic) that he shot in a triangle fashion; ahead, right left." (Tr. 1335-25 to 1336-17). Granton shot this way "because he could not see him [Ivery] clearly, because he's in a car." (Tr. 1337-6 to 8).

Footman testified that after Davis was killed, Granton said "we just knocked your boy Tito off." "Tito" was a nickname for

Davis; this meant the CMB had killed Davis. (Tr. 1923-14 to 1924-2). Footman saw Granton with a weapon (a 40-calber gun) after the Ivery killing and Granton stated he had to get rid of the gun. (Tr. 1924-3 to 1925-15; 2010-20 to 2011-14).

Footman testified that Granton described the Ivery murder: "He did it the smooth way. He crept up on the truck. He said he shot Nut and Nut took off. Took off crazy and crashed." (Tr. 1926-4 to 6). Footman also heard Granton arguing with Hardy over money not being paid to Granton: "He [Granton] was yelling. He said I got this niggas (sic) who killed your brother and mentioned something else and that was it." (Tr. 1928-4 to 6).

THE CONSPIRACY TO DISTRIBUTE
COCAINE BASE (50 GRAMS OR MORE)

Lamont Johnson testified that in 1991 petitioner Granton sold drugs working "the graveyard shift" or "12 to 8." (Tr. 603-17 to 22). James "Jimbo" Farrier, "Keith" and Bryant sold drugs in 1998. (Tr. 657-3 to 13). Henderson held drugs for CMB; and on one occasion was given drugs by Hardy and passed them to Granton. (Tr. 1295-23 to 1296-4; 1334-15 to 1335-7).

Uasia "Plum" Davis (Tr. 749-21 to 22) "never seen [Granton] sell drugs. I never seen that." (Tr. 751-21 to 23). Sarkissian never saw Granton sell drugs. (Tr. 938-7 to 8).

THE MURDER OF TROY SINGLETON

Emanuel Mosley, a cooperator who pleaded guilty to two contract murders, recruited Granton to assist in killing Big Nose Troy. Mosley met Granton through "a guy named Kiddo [Crawford]." (Tr. 1533-14 to 1536-2). Kiddo Crawford had told Mosley "that E-

Bay was one of the guys that put a lot of work in this neighborhood." (Tr. 1537-22 to 25). Mosley asked Granton to participate in the murder and Granton accepted, and joined the others in looking for Singleton. (Tr. 1537-24 to 1538-7). Mosley eventually killed Singleton after he received a two-way page from McGriff that the targets were at a certain club. At the time he received this page from McGriff, Mosley was in a car with Granton, Broughton and Smiley, with Mosley driving. (Tr. 1540-3 to 1541-11). They found the club (the Van Wyck Sports Bar on Liberty Avenue in Queens; Tr. 1698-6 to 8; 1700-15 to 18), noticed the truck he had been told about, and waited to see who went to the truck. The truck started without them seeing who got in, and Mosley then saw an individual approaching the truck who resembled Singleton. Mosley "told the shooters that that was him. I was almost positive that was him. I was not sure, but I was almost positive." (Tr. 1542-1 to 1544-7). Mosley told them "to shoot him. E-Bay got out the car first." (Tr. 1544-17). Granton then "shot him in his head." (Tr. 1545-6 to 8).

Alvin Smiley pleaded guilty in December of 2006 to murder for hire (victims Eric Smith and Troy Singleton) (Tr. 1599-14 to 19; 1600-21 to 25). Smiley faced a maximum of life and was seeking a reduction in sentence for his cooperation. (Tr. 1601-1 to 14). Smiley committed the Singleton murder with Granton, Trip, and Mosley, (being hired by Mosley). (Tr. 1600-1 to 7).

THE DEFENSE CASE

New York State Division of Parole (75th Precinct; East New

York, Brooklyn) Senior Parole Officer Hal Wilkerson began supervising Granton in 1999. (Tr. 2690-9 to 17; 2693-6 to 7). Wilkerson testified that Granton's "overall adjustment to parole was fair. He reported to Parole as instructed, he abided by the state mandates and we really didn't have any problems with him during his supervision period." (Tr. 2695-4 to 9). Wilkerson believes that Granton was released "a little bit earlier than his maximum expiration date." (Tr. 2695-10 to 14).

III. THE JUDGMENT OF ACQUITTAL, SENTENCING AND THE APPEAL

On April 22, 2015, the government rested. (Tr. 2687-10 to 11). On April 23, 2015, the district court denied judgment of acquittal motions. (Tr. 2687-20 to 23; 2706-25 to 2707-25; 2758-20 to 2759-2; 2765-10 to 2766-7; 2912-10 to 2914-8).

On April 29, 2015, Granton was found guilty of RICO, contrary to 18 U.S.C. § 1962(c) (Count One); RICO Conspiracy, contrary to 18 U.S.C. § 1962(d) (Count Two); Murder in aid of Racketeering (Daryl Baum), contrary to 18 U.S.C. § 1959(a)(1) (Count Four); Conspiracy to Commit Murder in aid of Racketeering (James Hamilton), contrary to 18 U.S.C. § 1959(a)(5) (Count Five); Murder in aid of Racketeering (Hamilton), contrary to 18 U.S.C. § 1959(a)(1) (Count Six); Conspiracy to Commit Murder in aid of Racketeering (Ivery Davis) (Count Seven); Murder in aid of Racketeering (Davis) (Count Eight); Murder in aid of Racketeering (Johan Camitz) (Count Nine); Unlawful use of a Firearm During a Crime of Violence (Hamilton), contrary 18 U.S.C. § 924(c) (Count Sixteen); Causing Death Through the Use of a Firearm (Hamilton),

contrary to 18 U.S.C. § 924(j)(1)) (Count Seventeen); Unlawful use of a Firearm During a Crime of Violence (Davis), (Count Eighteen); Causing Death through the Use of a Firearm (Davis), contrary to 18 U.S.C. § 924(j)(1) (Count Nineteen); Conspiracy to Distribute and Possess with Intent to Distribute At Least 50 Grams of Cocaine Base, contrary to 21 U.S.C. § 846 (Count Twenty-Three); Distribution and Possession with Intent to Distribute at Least 50 Grams of Cocaine Base, contrary to 21 U.S.C. § 841 (Count Twenty-Four); Conspiracy to Commit Murder for Hire Resulting in Death (Troy Singleton), contrary to 18 U.S.C. § 1958 (Count Twenty-Five); and Murder-For-Hire: (Singleton), contrary to 18 U.S.C. § 1958 (Count Twenty-Six) (A147-153).

On May 11, 2015, Granton was sentenced to life imprisonment on Counts 1, 2, 4, 6, 8, 9, 17, 19, 25 and 26. Granton was sentenced to 40 years on Counts 23 and 24, 25 years on Count 18, and 10 years on Counts 5, 7 and 16. The sentences imposed on Counts 16 and 18 are to run consecutively to each count and the sentence imposed on all other counts are to run concurrently for a total of life plus 35 years. (A156). A renewed Rule 29 motion was denied at sentencing on May 11, 2015. (ST44-21 to 23).

On August 21, 2017, a panel of the United States Court of Appeals for the Second Circuit, in a Summary Order/Opinion, affirmed the convictions and sentences of both Granton and Hardy. (Opinion at a1-a9). On November 9, 2017, the Second Circuit denied a petition for rehearing or, in the alternative, for rehearing *en banc*. (a10).

REASONS WHY CERTIORARI SHOULD BE GRANTED

POINT I

REVIEW IS WARRANTED AS THE SECOND CIRCUIT
ERRED IN FINDING THAT THE ANONYMOUS JURY DID
NOT VIOLATE PETITIONER GRANTON'S FIFTH AMENDMENT
DUE PROCESS RIGHT AND SIXTH AMENDMENT RIGHT
TO A FAIR AND IMPARTIAL JURY

The government moved for an anonymous and partially sequestered jury which defendants opposed. The district court advised that it would empanel an anonymous jury but not sequester the jury. (Tr. 3/24/15; pp. 117-22 to 118-1; Tr. 3/31/15; pp. 253-17 to 254-5).

As explained in *United States v. Mostafa*, 7 F.Supp.3d 334 (S.D.N.Y. 2014), the principle that a shield of innocence surrounds a defendant extends back to ancient times. See *Coffin v. United States*, 156 U.S. 432, 453-54, 15 S.Ct. 394, 39 L.Ed. 481 (1895). Any practice that may impact that shield of innocence requires close scrutiny in light of reason, principle and common sense. See *Estelle v. Williams*, 425 U.S. 501, 504, 96 S.Ct. 1691, 48 L.Ed.2d 126 (1976). The empaneling of an anonymous jury is such a practice and should be taken only in limited circumstances. See *United States v. Vario*, 943 F.2d 236, 239, 241 (2d Cir. 1991) cert. denied, 502 U.S. 1036, 112 S.Ct. 882, 116 L.Ed.2d 786 (1992); *United States v. Thomas*, 757 F.2d 1359, 1365 (2d Cir.), cert. denied, 474 U.S. 819, 106 S.Ct. 67, 88 L.Ed.2d 54 (1985). See *State of New Jersey v. Accetturo*, 261 N.J. Super. 487 (Law Div. 1992) (in prosecution of alleged

Lucchese organized crime family, the facts presented did not support the request for an anonymous jury).

This Circuit has set forth three factors that a district court should examine: (1) whether the charges against the defendant are serious, (2) whether there is a substantial potential threat of corruption to the judicial process, and (3) whether considerable media coverage of the trial is anticipated. See *United States v. Tomero*, 486 F.Supp.2d 320, 322 (S.D.N.Y. 2007); see also *Thomas*, 757 F.2d at 1365. As stated in *Mostafa*:

Among the reasons that courts have found to warrant protection are threats to the judicial process by way of jury tampering or jury safety. See *Vario*, 943 F.2d 236; *United States v. Bellomo*, 954 F.Supp. 630, 654 (S.D.N.Y. 1997). The fact that a case may receive press attention—even a great deal of press attention—is itself insufficient to justify the impact on a defendant's trial that empaneling an anonymous jury may have. See *Vario*, 943 F.2d at 240. Similarly, the mere incantation of words such as "terrorist," "terrorism," "al Qaeda," "Bin Laden," and "9/11" is insufficient to require an anonymous jury. See *Vario*, 943 F.2d at 241; *Tutino*, 883 F.2d at 1132-33. *Mostafa*, *supra*, 7 F.Supp.3d at 337.

As also explained, "The Second Circuit has found that a district court erred in empaneling an anonymous jury based on 21 the fact that the case involved assertions that defendants were members of the Mafia rather than based on 'the question of juror fears or safety in the trial at hand, beyond the innuendo that this connection conjures up.'" *Vario*, 943 F.2d at 241.

In *United States v. Briseno*, No. 2:11-cr-77 PPS (ECF 1077, decided September 30, 2014), the Honorable Philip P.

Simon, Chief Judge of the Northern District of Indiana found that empaneling an anonymous jury in that gang-related (the Imperial Gangsters) case would be an abuse of discretion. (*Briseno*, page 6; A209). Judge Simon suggested that factors that apply to almost every gang prosecution where someone is charged with violence (and facing a lengthy prison sentence if convicted) "would make empaneling an anonymous jury the rule rather than the very narrow exception that it ought to be." (*Id.* at page 3; A206). He denied the motion though *Briseno* faced the death penalty and was charged with 6 murders and 4 attempted murders.

When the trial in *Grant* began in April of 2015, the alleged RICO enterprise in this case (the CMB) had been out of business and defunct since 2004. In spite of the government's protestations, no proof was ever presented that anyone in the organization was in position to tamper with the jury or likely to do so. Hardy had disappeared into the haze of a serious and debilitating mental illness with anti-psychotic medication. Neither *Grant* nor Hardy had the money nor wherewithal to attempt to improperly influence the jury.

Moreover, in two prior trials the government prosecuted three members of the CMB in the Eastern District. Specifically, Kenwayne Jones and James Sessoms, alleged CMB members, stood trial before the late Judge Trager in the Fall of 2006. Mr. Sessoms was sentenced to 35 years. (ECF 729). Mr. Jones, whom the government described in its sentencing memorandum as Hardy's "most trusted confidant" and "right-hand man" (ECF 306 at p. 3)

received 13 years. (ECF 444, 445). In the summer of 2008, the government prosecuted alleged CMB member Abubakr Raheem for murder and related offenses. He was convicted on all counts and sentenced to life imprisonment. (ECF 734). Neither of those juries were anonymous, and neither of the juries was subject to any special protective measures. The trials of both cases yielded guilty verdicts and lengthy sentences.

At both the *Jones/Sessoms* and *Raheem* trials, the government called, and thus exposed, many of its cooperating witnesses and numerous "civilian" witnesses. No harm ever came to any of those witnesses, nor were there any reports of harm to their family members. Important parallels can be seen between *Grantton* and *Briseno*, as the following quote makes clear:

Briseno also persuasively responds that the East Chicago gang has been largely demolished by this prosecution, in which 23 other defendants have already been convicted and are incarcerated. Juan Briseno is, in effect, the last man standing from a group that now includes a number of former associates cooperating against him (rather than interested in plotting juror intimidation on his behalf). The prospect of Chicago or Florida IG's coming to Northwest Indiana to intimidate jurors is of course possible but has not been demonstrated to be at all likely. I note also that I have already conducted the trial of Briseno's co-defendant Richard Reyes, for which an anonymous jury was not requested, and during which there was no attempt at intimidation of the jurors. There is no persuasive demonstration of a likelihood of an attempt to interfere with the judicial process by intimidating jurors in the Briseno's trial. (A203).

Similarly, in *Grantton*, Hardy and Grantton were the last men

standing, and the government failed to make the requisite showing of a strong reason to believe that the jury needed protection. Most telling, there were no instances of actual or even perceived jury tampering or attempted tampering. The district court abused its discretion by granting the motion for an anonymous jury in deprivation of Granton's due process right to a fair trial.

The Second Circuit erred when it rejected this argument:

Here, the District Court did not err or "abuse its discretion" by empaneling an anonymous jury. In granting the Government's motion for an anonymous jury, the District Court based its decision "on the serious nature of the charges, which include a charge of attempted murder of a cooperating witness, and Mr. Hardy's prior conviction for witness tampering" as well as its finding that Defendants "still have the means of juror intimidation at their disposal." Granton Br. 43-44. Furthermore, "[t]o protect against any possible prejudice to the defendants," the District Court told prospective jurors that it would be using a "number" system in order "to protect their privacy because of the media coverage the case might generate." *Id.* at 44. The case had indeed garnered media attention, because Hardy used to date a famous rapper, and because the Government had initially sought the death penalty for Hardy (a position it later abandoned). The media attention, as the District Court noted, was itself a concern. See *United States v. Vario*, 943 F.2d 236, 240 (2d Cir. 1991) ("Pre-trial publicity may militate in favor of an anonymous jury because it can enhance the possibility that jurors' names would become public and thus expose them to intimidation by defendants' friends or enemies, or harassment to the public." (citation and internal quotation marks omitted)). Accordingly, it was not error to empanel an anonymous jury. *Op.* at 5; a5.

Petitioner respectfully submits that review is warranted by this Court.

POINT II

REVIEW IS WARRANTED BECAUSE THE DISTRICT COURT (AND SECOND CIRCUIT) ABUSED ITS DISCRETION IN ADMITTING OVER PETITIONER'S OBJECTION NUMEROUS ALLEGED PRIOR BAD ACTS OF THE PETITIONER (ALONG WITH THE "BAD ACTS" OF OTHER INDIVIDUALS) AND SUCH ERROR WAS NOT "HARMLESS"; THE EVIDENCE WAS IRRELEVANT UNDER FEDERAL RULES OF EVIDENCE 401 AND UNFAIRLY PREJUDICIAL UNDER FEDERAL RULE OF EVIDENCE 403 AND RESULTED IN A DENIAL OF PETITIONER'S DUE PROCESS RIGHT TO A FAIR TRIAL

Generally, Fed. R. Evid. 404(b) is not applicable to bar evidence that is in furtherance of a charged RICO conspiracy. *See, e.g., United States v. Diaz*, 176 F.3d 52, 79 (2d Cir. 1999) (affirming admission of evidence of violence committed on behalf of drug conspiracy because it explained the mutual trust between coconspirators; "Although defendants-appellants conceded that they were associated with the Latin Kings [gang], several issues still remained in dispute, including the existence, nature and operations of the [charged] RICO enterprise, and the related racketeering and drug conspiracies"); *United States v. Thai*, 29 F.3d 785, 812-13 (2d Cir.), *cert. denied*, 513 U.S. 977 (1994); *United States v. Concepcion*, 983 F.2d 369, 392 (2d Cir. 1992) *cert. denied*, 510 U.S. 856, 114 S.Ct. 163, 126 L.Ed.2d 124 (1993).

Granton submits that the admission of the following uncharged inadmissible "bad act" evidence was improperly admitted and constitutes plain error (*United States v. Villafuerte*, 502 F.3d 204 (2d Cir. 2007)):

- 1) Robert Footman testified as to a shoot-out involving Granton. (Tr. 1811-13 to 1812-24).

2) Footman saw Granton shoot an individual named Jeff. (Tr. 1820-23 to 1821-8).

3) Meyers testified Granton told him he had killed someone named Troy for \$200.00. Meyers said "Like, why would you do that?" and Granton replied: "It's not about what I got paid now. It's what I get in the future. They see my work." (Tr. 2538-21 to 2539-16).

4) Lamont Johnson testified he and Granton committed an armed robbery of money and jewelry at a dice game. (Tr. 613-19 to 614-15).

5) Henderson testified Granton's sister was robbed and he, Granton, Azziz, Abubakr Raheem and Cooke "whooped their ass" in retaliation. (Tr. 1295-8 to 22).

6) Footman testified that Granton shot and killed an individual named Troy [not Troy Singleton] (Tr. 1839-15 to 1840-6) "[Hardy] had a problem with him." (Tr. 1821-9 to 1822-17). Bryant testified that Granton admitted to him that he had killed "Crazy Troy" Davis ("an enforcer for the Hamiltons"). (Tr. 203-16 to 20; 208-5 to 7). Johnson testified Myron told him Granton had shot and killed Davis, which "boosted his reputation." (Tr. 638-6 to 639-10). Meyers testified that, in the lobby of LG, he and saw "Troy on the floor and Ebay over him, firing a weapon." (Tr. 2305-11 to 2307-6).

7) In 1992 Granton was involved in a fight with "Dub" and Dub Dub's brother Wilbert stated "you're not the only person that has guns." A CMB member named "Fonzo" then shot and killed

Wilbert. (Tr. 621-18 to 623-20).

8) Theresa Gregory testified that after witnessing Fruitquan Bailey kill her friend Sean in 1992, she was alone in an elevator when Granton asked if she was going to testify at Bailey's trial. Granton "kept saying, he needed to know." and she "told him that I wasn't." (Tr. 104-11 to 105-4). Gregory did testify at Bailey's 1994 murder trial. (Tr. 476-21 to 25). In 1994 Gregory was shot "in [her] butt" after she observed Hardy on a bicycle with another individual. (Tr. 205-22 to 106-19; 107-20 to 108-1; 115-2 to 14). Gregory never saw who shot her. (Tr. 112-4 to 6).

9) Footman attended a party in 1999 with other persons from LG and Granton advised him afterwards that he had shot an individual at the party who was about to pull out a gun. (Tr. 1897-9 to 1901-1). Meyers testified that in 1999 he loaned a .40-caliber gun to Granton and later that night Granton advised Meyers that he had shot someone at a party with Meyer's gun. Granton wanted to give Meyers the gun back but Meyers did not want it. (Tr. 2483-6 to 2484-23).

The Second Circuit erred when it rejected this argument:

Granton summarily challenges the admission of evidence regarding several bad acts that went to establishing the existence and nature of the RICO enterprise. These challenges have no merit. Nearly all the evidence was not objected to before the District Court, and its admission does not constitute error, much less plain error. With respect to certain evidence, Granton did request a limiting instruction. The District Court issued such a limiting instruction to the jury, and Granton did not object or request anything further.

In sum, the District Court did not abuse

its discretion or commit plain error in its
evidentiary rulings. Op. at 7; Pa7.

Petitioner respectfully submits that review is warranted by
this Court since the "plain error" admission of these prior "bad
acts" of Granton deprived him of his due process right to a fair
trial.

POINT III

REVIEW IS WARRANTED SINCE THE DISTRICT COURT MADE IMPROPER COMMENTS AND QUESTIONING OF WITNESSES BY THE TRIAL JUDGE DEPRIVED DEFENDANT OF HIS FIFTH AND SIXTH AMENDMENT RIGHT TO DUE PROCESS

During cooperating witness Allen Bryant's testimony concerning the murder of J.R. Hamilton by Granton, Bryant testified that he had heard that Granton's gun jammed at first, with Granton then unjamming the gun and shooting Hamilton. (Tr. 347-18 to 348-25). Bryant testified that these acts increased Granton's reputation "tremendously" "[b]ecause it takes a lot of heart to shoot like that." The following occurred:

Q When you say it "takes a lot of heart," what did you do (sic) mean?

MR. BEECHER: Objection.

THE COURT: No, overruled. It takes a lot of heart, they're not very sensitive about killing somebody. You don't mean that, do you? That's heart when you care about another human being.

THE WITNESS: No. I'm using in the slang term. Courage.

THE COURT: The slang term means that they don't care about whether they kill somebody or not, right?

THE WITNESS: No.

THE COURT: It took him a lot of courage to kill somebody?

THE WITNESS: No. For the gun.

THE COURT: To unjam it?

THE WITNESS: To unjam it and go back to the scene.

THE COURT: To unjam it and go back and shoot somebody?

THE WITNESS: Yes.

THE COURT: Next question. (Tr. 349-7 to 350-16; emphasis supplied).

Judge Block erred with his comments "they're not very sensitive about killing somebody" and "they don't care whether

they kill somebody" as he telegraphed his belief not only in Granton's guilt but that Granton was a remorseless killer.

Another error by Judge Block occurred when cooperating witness Robert Footman testified that he had committed shootings for Hardy, and the Court began asking questions after Footman stated he did not know how to respond to questions asking whether he was Hardy's "hit-man" or "shooter."

THE COURT: Well, if [Hardy] told you to shoot somebody, you would do it; right?"

THE WITNESS: Yes.

THE COURT: That was all you needed to know; right?

THE WITNESS: Yes.

[DEFENSE COUNSEL]: Objection, Your Honor.

THE COURT: I am just trying to get clarification. Who is objecting? I just want to get clarification that you would just shoot people if somebody told you to shoot people; right? No compunctions about that. You are not going to do that today, are you?

THE WITNESS: No.

THE COURT: That is in the past; right?

THE WITNESS: Yes.

THE COURT: You are out there, we do not have to worry about you; right?

THE WITNESS: No. (Tr. 2051-22 to 2052-6).

The Second Circuit panel acknowledged that:

This type of questioning and commentary by a district court can be a source of prejudice undermining the integrity of a trial. But, as Granton himself acknowledges, "[t]he vital question is not whether the trial judge's conduct left something to be desired but whether his behavior was so prejudicial that it denied appellant a fair, as distinguished from a perfect, trial." *United States v. Bejasa*, 904 F.2d 137, 141 (2d Cir. 1990) (internal quotation marks and alterations omitted). Here, in light of the particulars of the District Court's colloquies, the overwhelming evidence of Defendant's serious and violent crimes, as well as the long curative instruction issued

by the District Court, see Gov't App'x 59, we are confident that Defendants received a fair trial. Op. 8-9; a8-9. (Emphasis supplied).

In *United States v. Antar*, 53 F.3d 568 (3rd Cir. 1995), the Third Circuit Court of Appeals reversed defendants' RICO and other convictions (and 151 months and 51 months sentences, with \$121 million in restitution) due to the trial judge's statement at the sentencing that his goal from the first day had been to get back to the public that which was taken from it as a result of the fraudulent activities of the defendant and others. This statement required recusal even though no motion for recusal was made below and even though the comments had occurred after defendants were found guilty. *Id.*

This Court will reverse when "it appears clear to the jury that the [district] court believes the accused is guilty." *United States v. Bejasa*, 904 F.2d 137, 141 (2d Cir.), *cert. denied*, 498 U.S. 921, 111 S.Ct. 299, 112 L.Ed.2d 252 (1990) (citing *United States v. Nazzaro*, 472 F.2d 302, 303 (2d Cir. 1973)). "The vital question is not whether the trial judge's conduct left something to be desired but 'whether his behavior was so prejudicial that it denied . . . appellant[] a fair, as distinguished from a perfect, trial." *Id.* (citation omitted). The Court "must make an examination of the entire record . . . in order to determine whether the defendant received a fair trial." *Id.*

POINT IV

REVIEW IS WARRANTED AS THE DISTRICT COURT
(AND SECOND CIRCUIT) ERRED IN DENYING THE
MOTION FOR JUDGMENT OF ACQUITTAL AS TO
EACH OF THE COUNTS AGAINST GRANTON

The panel erred when it rejected this argument:

Here, there was sufficient evidence that CMB constituted an associated-in-fact enterprise. Indeed, Defendants do not even dispute that CMB existed as an enterprise through approximately 1999. Instead, relying on *United States v. Morales*, 185 F.3d 74, 81 (2d Cir. 1999), Defendants argue that the enterprise did not continue, as charged in the indictment, through 2004. In particular, Defendants emphasize the following points: (a) Hardy sometimes installed others to run the enterprise while he was imprisoned and CMB's membership changed generally; (b) Hardy also became a member of another gang, the "Bloods," in 1999; and (c) the racketeering acts were committed with personal motives.

None of these points refutes the existence of the associated-in-fact enterprise in this case. Associated-in-fact enterprises need not have a fixed hierarchy as "different members may perform different roles at different times." *Boyle*, 556 U.S. at 948; see, e.g., *Coonan*, 938 F.2d at 1560 (rejecting argument that RICO enterprise ceased to exist upon leader's imprisonment because "even while in jail [he] continued to act as leader of the [enterprise] and the [enterprise's] criminal activities continued without significant disruption"); cf. *Morales*, 185 F.3d at 81 (concluding, upon review of an alleged nine-year enterprise, that the government "did not present sufficient evidence to show that the enterprise continued during the seven-year period . . . [in which all of] the defendants were incarcerated"). As for Hardy's joining the Bloods in 1999, the evidence indicated that Hardy joined the Bloods largely as a ruse to manipulate others; in any event, membership in one group does not disprove the existence of another group or one's membership in, or even one's leadership of,

that other group—here, CMB.

Finally, even assuming it is correct that CMB members sometimes acted out of personal motivation, individuals can act with personal motivation while being a part of—and acting in furtherance of—an enterprise. Op. at 6-7; a6-7.

A criminal conviction cannot be based upon conjecture, speculation, suspicion, prejudice, or unrelated inferences based upon unrelated inferences. An aura of guilt is insufficient to convict. There must be an unbroken chain with no missing links to convict. Maybe's or could be's are insufficient.

Granton points to the unsavory backgrounds and incredibility of the government witnesses. There was no incriminating physical, videotaped, photographic, scientific, DNA, documentary or wiretap evidence (containing Granton's voice), nor any admissions by Granton (except for the alleged statements attested to by the cooperating witnesses). The government's case boiled down to the testimony of cooperating witnesses, career criminals with the greatest motives to falsely implicate Granton; namely, lengthy, if not life sentences in federal prison as opposed to the start of a new life in the Witness Protection Program. All of the government witnesses who implicated Granton were career violent offenders who, to use the vernacular, cut deals seeking the 5K1.1 letters. They all had a motive to testify falsely.

Sarkissian testified that during all the time with Meyers, Granton and Hardy he never heard them referred to as the "Cash

Money Brothers." He testified: "After the indictment I understood it for Cash Money Brothers, but I hadn't heard of that name beforehand." (Tr. 920-18 to 921-4). When Footman was asked if "Jimbo, DJ and other people" were selling drugs for Hardy or someone else, he testified: "No. Everybody was their own work." (Tr. 1930-22 to 1931-1).

POINT V

REVIEW IS WARRANTED AS THE DISTRICT COURT
(AND SECOND CIRCUIT) ERRED IN DETERMINING
THAT THE CO-DEFENDANT HARDY WAS COMPETENT
TO STAND TRIAL AND THE RESULTANT TAINT
DEPRIVED GRANTON OF HIS DUE PROCESS RIGHT
TO A FAIR TRIAL

The district court (and Second Circuit) erred in affirming the district court's finding of competency of the sole co-defendant at trial, Damion Hardy, despite his lengthy and well-documented history or paranoid schizophrenia and his present inability to understand the nature of the charges against him and to assist in his own defense. Op. 3-5; a3-5. The resultant taint deprived Granton of his Fifth Amendment Due Process right to a fair trial.

In rejecting the arguments with respect to Hardy's competence to proceed to trial, the panel stated the following, in pertinent part:

"It has long been accepted that a person whose mental condition is such that he lacks the capacity to understand the nature and object of the proceedings against him, to consult with counsel, and to assist in preparing his defense may not be subjected to a trial." *Drope v. Missouri*, 420 U.S. 162, 171 (1975). To find a defendant competent to stand trial, a district court must find that the government has shown by a preponderance of the evidence that the defendant has "(1) 'sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding' and (2) 'a rational as well as factual understanding of the proceedings against him.'" *United States v. Morrison*, 153 F.3d 34, 46 (2d Cir. 1998) (quoting *United States v. Nichols*, 56 F.3d 403, 410 (2d Cir. 1995)); see 18 U.S.C. § 4241(d); *Brown v. Warden, Great Meadow Corr. Facility*, 682 F.2d 348, 353-54 (2d Cir.

1982). "We [will] uphold a district court's finding that a defendant is competent to stand trial unless that finding is clearly erroneous. Where the record on competency may plausibly be read to indicate the defendant may not have been competent, we still defer to the judgment of the district court, which had the benefit of examining the defendant and hearing from the fact and expert witnesses in person." *Morrison*, 153 F.3d at 46 (internal quotation marks, citation, and brackets omitted). "[D]eference is owed to the district court's determinations based on observation of the defendant during the proceedings." *United States v. Vamos*, 797 F.2d 1146, 1150 (2d Cir. 1986).

Applying those standards here, we find no clear error in the District Court's determination. Hardy does not appear to argue that he lacks the ability "to understand the nature and consequences of the proceedings," and his challenge focuses on his ability "to assist properly in his defense." Hardy Br. 27 (quoting 18 U.S.C. § 4241). As the District Court observed, however, after being medicated, Hardy was able to file pro se motions that "reflect[ed] Hardy's ability to present logical (if incorrect) legal arguments in an articulate manner," Hardy App'x 211, and his demeanor in court significantly improved. Additionally, in certain ways, Hardy exhibited a sophisticated understanding of the dynamics of a criminal case, including the advantages of cooperation with the Government. Finally, Dr. Leanne Preston-Baecht, a psychologist with the United States Bureau of Prisons—who was assigned to be Hardy's primarily clinical psychologist for four months in 2008 and from November 2011 to December 2014—deemed him competent to stand trial in November 2014, after he had been receiving medication for nearly a year (in contrast with Dr. Preston-Baecht's 2008 evaluation, undertaken prior to Hardy's being medicated, in which she had concluded that Hardy was not competent to stand trial).

It is true that the defense expert still found Hardy incompetent to stand trial—due, primarily, to Hardy's still harboring delusions about a supposed Supreme Court case that had ordered his release under Ethou law, and Hardy's insistence that, consequently, prosecutors would

release him if he spoke to them. Such beliefs were clearly unsound and may have been a product of mental illness, but "[i]t is well-established that some degree of mental illness cannot be equated with incompetence to stand trial." *Vamos*, 797 F.2d at 1150. Moreover, as noted, Hardy does not argue that he was unable to understand the nature and consequences of the proceedings, but argues that he was unable to assist in his defense. Although Hardy may have harbored delusional beliefs about a fictional Supreme Court case, Hardy's counsel has not asserted or even suggested that it was not possible to have Hardy consider and assist with other defenses.

Even if the question may have been a close one for the District Court deciding the matter in the first instance, it bears emphasis that, here, we are not deciding the matter in the first instance. Giving the deference due the District Court's decision, and reviewing for clear error, the question presented on appeal is not a close one. See, e.g., *United States v. Gigante*, 166 F.3d 75, 84 (2d Cir. 1999) (describing competency review as "highly deferential," and observing that choosing between "two permissible views of the evidence" does not manifest clear error (internal quotation marks omitted)).

Accordingly, the District Court did not clearly err. (Summary Order at a4-5; emphasis in the original).

As the Panel acknowledged in its Summary Order, the issue regarding Hardy's competency for trial involved a long-term and undisputed serious mental illness that, at the very least, led him to continue to entertain delusional beliefs directly related to the case against him and, necessarily, to his ability to assist in defending against those charges. (Summary Order at 4; a4). Moreover, the panel seemingly recognized that the circumstances here made the ultimate decision on whether to have the trial proceed "a close one" for the district court, particularly in light of the competing expert testimony regarding

the continuing nature of his delusions, even after being medicated. (Summary Order at 4; a4). Ultimately, however, the panel acknowledged that the existing law of this Circuit makes it clear that considerable deference must be afforded to the district court's determination. (Summary Order at 3-4 at a3-a4, citing *United States v. Gigante*, 166 F.3d 75, 84 (2d Cir. 1999); *United States v. Vamos*, 797 F.2d 1146, 1150 (2d Cir. 1986)).

In light of the increased recognition of the role mental illness can play in the sphere of criminal justice, the fundamental question of how to determine whether a criminal defendant is able to assist in his own representation is an issue of great importance under any circumstances. It is particularly so here, where not only was it a close case, and where there was the highly unusual situation of federal Bureau of Prisons examiners having declared the defendant incompetent to go to trial over an extended period of time, unlike the scenarios in such cases as *Gigante* and *Vamos*.

Petitioner Granton respectfully submits that this Court should re-examine whether the existing standard, which affords great deference to district court judges, is appropriate. Significantly, the decision here came only after the judge who had long determined Hardy to be incompetent passed away, and the judge who took over the case took a different view, thus highlighting the degree to which the nearly unreviewable degree of deference will depend principally on the accident of which judge happens to be assigned to the case. Such an important

determination should not be left to random fate, and the Court should make that clear.

Petitioner Granton submits that the taint of being tried with Hardy mandates a reversal of his convictions, as well.

CONCLUSION

Based on the foregoing, Petitioner Aaron Granton respectfully submits that this Petition for Writ of Certiorari should be granted.

Dated: December 29, 2017

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Robert M. Beecher, Esq., hereby certify that on this date, December 29, 2017, as required by Supreme Court Rule 29 I have served the attached Motion for Leave to Proceed *In Forma Pauperis* and Petition for a Writ of Certiorari on each party to the above proceeding by depositing an envelope containing the above documents in the United States mail properly addressed. The name and address of those served is:

Bridget Rohde, Acting United States Attorney
For the Eastern District of New York
271 Cadman Plaza East
Brooklyn, NY 11201

Dated: December 29, 2017

ROBERT M. BEECHER, ESQ.