No. ______________________

____

IN THE

SUPREME COURT OF THE UNITED STATES

____

AHMED KHALFAN GHAILANI — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

____
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

AHMED KHALFAN GHAILANI, 02476-748
(Your Name)

U.S.P. FLORENCE - HIGH
P.O. BOX 7000
(Address)

FLORENCE, CO 81226
(City, State, Zip Code)

____
(Phone Number)

QUESTIONS PRESENTED

1. Where the plain language of 18 U.S.C. §§ 844(f)(3) limits its scope to its own subsection, and the Petitioner was found not guilty of substansive offenses under that subsection, is it an error to give him life sentence under §§ 844(f)(3) for violation of conspiracy offense under §§ 844(n)?

2. Can the Petitioner be guilty of conspiracy to destroy buildings and property of the United States with explosive in violation of 18 U.S.C. §§ 844(n) and 844(f)(1) and (f)(3), when the jury acquited him of conspiracy to attack those buildings and property under §§ 2155(a) and (b), and of conspiracy to use explosive as weapon of mass destruction against those same buildings and property under §§ 2332a(a)(3) and (a)(3)?

3. Where the petitioner is actually innocent and where the Government used Special Administrative

Measures (SAMs) under 28 C.F.R §§ 501.3 to deny him any contact with his attorneys, thereby prevented him to learn the finality of his case, should he have been entitled to statutory and equitable tolling in filling his petition?

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:

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TABLE OF AUTHORITIES CITED

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[✓] is unpublished.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 B 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 July 27, 2017.

[ ] 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: October 25, 2017, and a copy of the order denying rehearing appears at Appendix C.

[ ] 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

The fifth Amendment of the United States Constitution states, in relevant part: "Nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb ... nor be deprived of life, liberty, or property, without due process of law ..."

18 U.S.C. §§ 844(f)(1) : Appendix E

18 U.S.C. §§ 844(f)(3) ; Appendix E

18 U.S.C. §§ 844(n) : Appendix E

18 U.S.C. §§ 921(a)(4)(A) : Appendix H

18 U.S.C. §§ 2155 : Appendix F

18 U.S.C §§ 2332a(a)(1) and (a)(3) : Appendix G

18 U.S.C §§ 2332a(C)(2)(A) : Appendix G

28 U.S.C. §§ 2255 : Appendix I

28 U.S.C. §§ 2255(f)(2) : Appendix I

28 C.F.R §§ 501.3 : Appendix J

STATEMENT OF THE CASE

Before the Court is the sole case in which a Guantanamo Bay detainee was prosecuted in a criminal court. The petitioner's case is often cited as proof that such courts can be "succesful" in these proceedings, but the debate between the liberals and conservatives is really about whether or not the judicial system can successfully convict those in Guantanamo Bay, regardless of what the and the evidence say. The most important question before this Court is really whether or not it is willing to redefine that debate. What is most "successful" and most important, to protect the United States' Constitution, values, and reputation, or to keep an accused terrorist imprisoned even if he is innocent?

Will this Court rely on the handwritten nature of this Petition; the past ineloquence of the arguments by a petitioner for whom English is not

STATEMENT OF THE CASE

Before the Court is the sole case in which a Guantanamo Bay detainee was prosecuted in a criminal court. The petitioner's case is often cited as proof that such courts can be "successful" in these proceedings, but the debate between the liberals and conservatives is really about whether or not the judicial system can successfully convict those in Guantanamo Bay, regardless of what the and the evidence say. The most important question before this Court is really whether or not it is willing to recognize that fact. What is most 'successful' and most important: to promote the United States' Constitution, values, and reputation, or to keep an accused terrorist imprisoned even if he is innocent?

Will this Court rely on the handwritten notice of this Petition; the good intentions of the arguments by a petitioner for whom English is not first, second, or even third language; the public animus toward him; or the devastating nature of the event themselves to stamp the "lettre de cachet" confining him to prison with no legal basis? Denying certiorari in this case would be no less, and would allow the careful observer to conclude that the Petitioner was allowed to endure a life sentence for political expediency rather than it merits, even if the Court had run-of-the-mill reasons for doing so.

I. COURSE OF PROCEEDINGS IN THE SECTION 2255 CASE NOW BEFORE THIS COURT.

In 1998 Petitioner, Ahmed Khalfan Ghailani was indicted in the Southern District of New York in an indictment of more than 300 Counts, charging him with 285 counts arose from 1998 bombings of two United States embassies in Kenya and Tanzania, East Africa. On July 25, 2004, Ghailani was captured in Pakistan and detained in a black site under C.I.A. custody where he was tortured and interrogated repeatedly for two years, then transferred to Guantanamo Bay where he was kept for almost thre years. On June 9, 2009, he was transferred to the Southern District of New York to face the charges against him in the indictment. Following the trial, the jury found Ghailani guilty of one count, Count 5 - Conspiracy to Destroy Buildings and Property of the United States, in violation of Title 18 U.S.C. §§ 844(n) and §§ 844(f)(1), it further found, in response to an interrogatory, that Ghailani's conduct was direct or proximate cause of the deaths resulted in the conspiracy charged in Count 5, in violation of §§ 844(f)(3).

Even though the Government's evidence were insufficient to support the conviction and the statutory language on §§ 844(f)(3) clearly prescribes the sentence enhancement only to subsection "f" of Section 844(f) where by one causes death, Ghailani was sentenced to life imprisonment togather with a payement of $33,816,561 restitution. This judgement was intered by District Court on January 25, 2011. The Conviction and sentence both affirmed by United States Court of Appeals for the Second Circuit, United States v Ghailani, 733 F.3d 29 (2d Cir. 2013). A petition to this Court for a Writ of Certiorari was denied on March 10, 2014, Ghailani v. United States, 134 S. Ct. 1523 (2014).

Since June 9, 2009 up to June 10, 2015, Petitioner was under Special Administrative Measures ("SAMs") restrictions imposed on him by the Government pursuant to 28 C.F.R. § 501.3. Between June 10, 2013 and June 10, 2015, the "SAMs" prohibited Petitioner from Communicating with his attorneys, as a result Petitioner did not learn that his case became final. However, after the Government lifted the SAMs, and Petitioner learned that his case became final, on June 6, 2016, he filed his Section 2255 motion to vacate and set aside the judgement of conviction, within the one year after the impediment to file the motion was removed. On Novembe 28, 2016, Government filed its opposition to the motion. No hearing was held.

On December 2, 2016, the District Court denied the Section 2255 motion. (Appendix B). Petitioner filed a timely Notice of Appeal on December 28, 2016, and on December 30, 2016, he filed a motion for Reconsideration pursuant to Rule 59(e) and Rule 60(b) of Federal Rules for Civil Procedure. The latter was denied on February 7, 2017. (Appendix D)

On March 14, 2017, Petitioner moved the Second Circuit for a Certificate of Appealability (C.O.A), which it denied on July 27, 2017. On

August 29, 2017, Ghailani petitioned the Second Circuit for Panel Rehearing or Rehearing En Banc which was denied on October 25, 2017. (Appenix C).

II. RELEVANT FACTS CONCERNING THE CASE.

Here is a Petitioner who has suffered tremendously at the hands of the United States of America. Petitioner was repeatedly interrogated and tortured for two years, denied the protection of the law, and denied his constitutional right to a speedy trial. Petitioner was found not guilty 284 times but because he was found guilty one time he received a punishment (illegal punishment) of life imprisonment.

After the Government realize that they could not prosecute Petitioner at Guantanamo Bay, they throw him to the angry people of New York to decide his fate. However, the result arose a serious question of Petitioner's innocence due to misapplication of the law and lack of evidence at the Petitioner's criminal trial.

The District Court below failed to realize that the penalty under Section 844(f)(3) cannot be applied to the violation of Section 844(n). In accordance with the statutory language §844(f)(3), the penalty prescribed there is only for the offense prohibited by subsection "f" of that Section. Therefore the imposition of life sentence on the Petitioner was illegal and unauthorized by the Congress. See Title 18 USC §844(f)(3). (Appendix E). It is clear that Petitioner is innocent of this crime and attorney's failure to raise this issue in the District Court and on direct appeal amount to ineffective assistance of counsel.

The Government's case against Petitioner at the trial was so lacking that the jury acquited

Petitioner in all charges against him but one. There was no evidence to support the guilty verdict on Count 5 of the indictment, even if taking account of all evidence in the trial in the light most favorable to the government "no rational trier of fact could have found proof of guilt beyond a reasonable doubt." See Jackson v. Virginia, 443 U.S. 307, 324 (1979). The Government also failed to prove all essential elements of the offense charged in Count 5. See re Winship, 397 U.S. 358 (1970) (Due Process mandates that all elements of an offense be proven beyond a reasonable doubt). Count 4 and Count 6 amount to the two elements required to prove offense of Count 5, and the jury found the Petitioner not guilty on Counts 4 and 6 which means the Government failed to prove those elements.

Futhermore, the Court of Appeals for the Second Circuit erred in denying Petitioner's Motion for Certificate of Appealability (COA) base on untimeliness of Section 2255 motion. Because Petitioner explicity explained that the reason for delay was the SAMs which totally banned Petetioner's communication with his attorneys, as a result Petitioner was unable to learn that his case became final until the SAMs were lifted, the Court should have allow the appeal to proceed further under 28 U.S.C. § 2255(f)(2), or under "extraordinary circumstances" that toll limitations as required in Holland v. Florida, 560 U.S. 631, 651-52 (2010).

III. EXISTENCE OF JURISDICTION BELOW

Petitioner was convicted in the District Court for the Southern District of New York of one count of conspiracy to destroy buildings and property of the United States by means of explosive in violation of Title 18 U.S.C. § 844(n) and § 844(f)(1) and (3). A Section 2255 motion was appropriately made in that Court, and duly appealed to the Second Circuit.

REASONS FOR GRANTING THE PETITION

I. CONGRESS DID NOT INTEND FOR THE SENTENCE ENHANCEMENT UNDER 18 USC § 844(f)(3) TO BE APPLIED TO § 844(n)

The sentence of life imprisonment imposed on the Petitioner in accordance with § 844(f)(3) for violation of § 844(n) conflicts with the statutory application requirement as provided under § 844(f)(3):

> "Whoever engages in conduct prohibited by this subsetion, and as a result of such conduct directly or proximately causes the death of any person, including any public safety officer performing duties, shall be subject to the death penalty, or imprisoned for not less than 20 years or for life, fined under this title, or both."

§ 844 (f)(3). (Appendix E).

The Section 844(f)(3) has two principal elements, (a) a dependant must "engages" in conduct or offence prohibited by subsection "f", and (b) "as a result of such conduct directly or proximately causes the death."

"[W]hen interpreting a statute, [this Court] must give words their ordinary or natural meaning." Leocal v.

Ashcroft, 543 U.S. 1, 9 (2004). Petitioner is simply asking that "this subsection" be interpreted as "[t]his subsection" where there are more than one subsections. This will solve the problem and anyone who reads §844(f)(3) that "whoever engages in conduct prohibited by this subsection," would understand to means the conduct prohibited by subsection "(f)" which is substansive offense under §844(f)(1) and not conspiracy offenses prohibited by subsection "(n)".

Although it is true that §844(n) makes conspiracy to violate §844(f) a crime (Appendix E.), but that violation would be violation of conduct prohibited by subsection "(n)" not "(f)". As this Court stated, "a conspiracy is not the commission of the crime which it contemplates, and neither violates nor 'arises under' the statute whose violation is its object." Braverman v. United States, 317 US 49, 53-54 (1942).

Futhermore, the second element requires that "as a result of such conduct" – conduct prohibited by subsection "(f)" – "directly or proximately causes death." The language Congress enacted requires the "conduct" to be the actual cause of "death", not a contributing cause of death, by which cannot be possibly associated with a conspiracy, because in a conspiracy a defendant is not required to take any action to be found guilty. Had Congress wanted could have written § 844(f)(3) to include subsection "(n)", or to impose the penalty where the "conduct" contributes to the "death". This Court made it very clear that "when a crime requires 'not merely conduct but also a specified result of conduct', a defendant generally may not be convicted unless his conduct is both (1) the actual cause, and (2) the legal cause (often called the proximate cause) of the result." Burrage v. United States, 134 S. Ct. 811, 887–888 (2014). Had the Lower Courts realize that the penalty under § 844(f)(3) does not apply to § 844(n), Petitioner's sentence would have been corrected.

II. PETITIONER'S CONVICTION SHOULD BE OVERTURNED WHERE THE JURY ACQUITED HIM ON COUNTS 4 AND 6 THAT AMOUNT TO ESSENTIAL ELEMENTS OF COUNT OF CONVICTION (COUNT 5)

Petitioner is innocent ~~of~~ on Count 5 in its entirety, not just the aggravated portion. This Court has long settled that the Constitution protects every criminal defendant "against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged." In re Winship, 397 U.S. 358, 364 (1970).

The evidence against the Petitioner at the trial was insufficient to support conviction of any count in the indictment. This Court has warned against sustaining convictions supported only by a "modicum" of evidence, stated that "any evidence that is relevant - that has any tendency to make the existence of an element of a crime slightly more probable than it would be without the evidence, cf. Fed. Rul. Evid. 401 - could be deemed 'a mere modicum'. But it could not seriously be argued that such a 'modicum' of evidence could by itself rationally support a conviction beyond a reasonable doubt." Jackson v. Virginia, 443 U.S. 307, 320 (1979).

The lack of evidence in the Petitioner's case can be easily seen by just analyze the jury's verdicts. At the trial the jury returned a conflict verdict on Count 5 of the indictment. Despite the guilty verdict on Count 5 the jury found Petitioner not guilty on 284 counts including two counts 4 and 6 that amount to the essential elements of Count 5.

In Count 5 Petitioner was charged on Conspiracy to Destroy Buildings and Property of The United States in violation of Title 18 U.S.C. § 844 (n) and § 844(f)(1) and (3). Section 844(f)(1) provide that:

> Whoever maliciously damages or destroys, or attempts to damages or destroy, by means of fire or an explosive, any building, vehicle, or other personal or real property in whole or in part owned or possessed by, or leased to, the United States, or any department or agency thereof, or any institution or organization receiving Federal financial assistance, shall be imprisoned for not less than 5 years and not more than 20 years, fined under this title, or both." 18 U.S.C. §

844(f)(1). (Appendix E).

Conspiracy charged under this section has two essential elements, (1) Petitioner conspired to destroy buildings and property of the United States, and (2) by means of an explosive. These two elements constitute two offenses of the indictment, Count 6 and Count 4 for which Petitioner was found not guilty.

In Count 6 Petitioner was charged with "Conspiracy to Attack National Defense Utilities" in violation of 18 U.S.C. § 2155 (a) and (b). In the indictment while pointing out what are the "National Defense Utilities" that Petitioner conspired to attack, Government refers to the same buildings and property that were mentioned in Count 5 as "Buildings and Property of the United States", and also the same building and property where the "Nationals of the United States" were located by which Petitioner is accused of conspire to "Use Weapon of Mass Destruction" against in Count 4.

Here in Count 6 Petitioner was found not guilty, that means that Government has failed to prove that Petitioner conspired to attack the Government's property and buildings mentioned in Counts 4, 5 and 6.

On Count 4, Petitioner was charged with violation of 18 USC § 2332 (a)(1) and (a)(2), Conspiracy to Use Weapon of Mass Destruction Against Nationals of the United States.

Weapon of Mass Destruction - as that term is defined in Title 18 U.S.C. §§§ 2332(a)(C)(2)(A) and 921(a)(4) to include any explosive. Here in Count 4 Petitioner was found not guilty, thus Government failed to prove second element of Count 5.

Hence, if Petitioner ~~did~~ is not guilty of conspiracy to attack the said buildings and property - as charged in Count 6 -, and not guilty of conspiracy to use explosive - as was found in Count 4, then how is it possible he could be guilty of "conspiracy to destroy" the same "buildings and property" by means of same explosive.

It might be seems like the 3 offenses are different, but here all three conspiracies charged under one agreement, and the acts of the accused are the same in all three counts, the offenses on Counts 4 and 6 are the essential elements of Count 5, and the evidence sufficient to prove Counts 4 and 6 would be sufficient to prove Count 5 and vice versa.

So, if there was no enough evidence to prove Counts 4 and 6, then there was no enough evidence to prove Count 5. Petitioner is innocent of that crime.

If the Court decided that this theory cannot be applied to show the insufficiency of the evidence, it can squarely be applied to double jeopardy test which "bars a subsequent prosecution if, to establish an essential element of an offense charged in that prosecution the government will prove conduct that constitutes an offense for which the defendant has already been prosecuted." Grady v. Corbin, 495 U.S. 508, 510 (1990). This Court has long rejected the idea of punishing twice for one conspiracy, stating that "whether the object of a single agreement is to commit one or many crimes... The one agreement cannot be taken to be several agreements and hence several conspiracies because it envisages the violation of several statutes rather than one." Sanabria v. United States, 437 U.S. 54, 73-74 (1978).

In this situation, overturning the verdict on Count 5 to support the jury's finding on Counts 4 and 6 would not impenges upon jury discretion but protects due process of the law as required by the Constitution.

III. THE COURT SHOULD REVIEW WHETHER ACTUAL INNOCENCE AND THE IMPOSITION OF SAMs CURED THE DELAY IN FILING SECTION 2255 MOTION.

The Second Circuit abused its discretion in denying Petitioner's Certificate of Appealability (COA), stating that "appellant has not shown that 'jurist of reason would find it debatable whether the district court was correct in its procedural ruling' as to the untimeliness of Appellant's motion filed under 28 USC § 2255." quoting Slack v. McDaniel, 529 U.S. 473, 478 (2000). (Appendix A).

At COA stage, the only question is "whether the applicant has shown that jurists of reason could disagree with the district court's resolution", or that "jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." Buck v. Davis, 137 S.Ct. 759 at 773 (2017), quoting Miller-El v. Cockrell, 537 U.S. 322, 336 (2003). See also Slack v. McDaniel, 529 U.S. 473, 484 (2000).

The Court of Appeals failed to consider that Government's imposition of SAMs on Petitioner, under 28 CFR § 501.3, which restricted Petitioner's ability to communicate with his attorneys, qualifys as "extraordinary circumstance" and tolls the limitations period under Antiterrorism and Effective Death Penalty Act (AEDPA) as required by this Court in Holland v. Florida, 560 U.S. 631, 651-52 (2010). Also 28 U.S.C. § 2255(f)(2) states that, the limitation period runs from "the date on which the impediment to making a motion created by tee government action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making a motion by such governmental action."

The Government imposed a total ban on Petitioner's communication with his attorneys from June 10, 2013 up to June 10, 2015 when the SAMs were lifted. For this reason, Petitioner was not able to learn that his case became final on March 10, 2014. However, after the SAMs were lifted and learned about the finality of his case, Petitioner proptly filed Section 2255 motion within the one year required under § 2255(f)(2).

In addition, as explained above Petitioner is innocent of § 844(f)(3), and innocent of § 844(n) as this Court opinion that "it is more likely than not that no reasonable juror would have convicted him." See

Schulp v. Delo, 513 U.S. 298, 327-28 (1995). The Second Circuit failed to consider Petitioner's actual innocence, by which this Court held that actual innocence tolls the time limitation, and also overcomes procedural default. See e.g. Bousley v. United States, 523 U.S. 614, 624 (1998) (where a criminal defendant has procedurally defaulted a claim by failing to raise it on direct review, the claim - may be raised in federal habeas corpus if the defendant can demostrate his actual innocence).

And last the appeals court ignored the questions of ineffective assistance of counsel at trial and at appeal where he fails to raise the issues raised in this Petition, by which if proved could establish cause and prejudice to overcome procedurally defaulted claims. See Murray v. Carrier, 477 U.S. 478, 488 - 489 (1986) (If a defendant succesfully establish ineffective assistance standard, may overcome procedural default bar).

IV. RESOLUTION TO THESE QUESTIONS WILL CONTRIBUTES TO THE DEVELOPMENT OF NATIONAL LAW

In the rare case of one conviction and 284 acquitals, two of which are essential elements of count of conviction, and misapplication of §844(n) to the penalty under §844(f)(3) by which Congress expressly limits its reach to its own subsection, but because of the overbreadth language of §844(n) and if this Court does not resolve this issue, this kind of misapplication of the law will continue not only to §844(f)(3) but also to §844(i) that shares the same language and penalties.

CONCLUSION

For the reasons set forth above, this petition for a writ of certiorari should be granted.

Respectfully Submitted.

A. Ghay.

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January 19, 2018