ORIGINAL

No. 25-6661

IN THE

SUPREME COURT OF THE UNITED STATES

In Re Terrance Sykes — PETITIONER
(Your Name)

ON PETITION FOR A WRIT OF HABEAS CORPUS

PETITION FOR WRIT OF HABEAS CORPUS

Terrance Sykes
(Your Name)

373 Fernwood Avenue
(Address)

Rochester, New York, 14609
(City, State, Zip Code)

(585) 301-7766
(Phone Number)

QUESTION(S) PRESENTED

1. Whether it was irregular and erroneous for the federal Court to entertain indictment No. 05-CR-6057-001-BJS-MWP and pronounce judgment without Petitioner being made a party defendant.

2. Whether the Petitioners commitment to federal custody under indictment No. 05-CR-6057 made under fraudulent process of the court was ex parte.

3. Whether this court have power in equity to correct through this petition for the issuance of a writ of habeas corpus the total injustice from the lower courts and this court entertaining the indictment No. 05-CR-6057.

LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

[X] 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:

U.S. District Judge Charles J. Siragusa
U.S. Magistrate Judge Marian W. Payson
U.S. Atterney (WDNY) Michael DiGiacomo
Cheif U.S. Probation Officer (WDNY Clifford D. Jackson
U.S. Probation Officer Daniel J. Celso
U.S. Court of Appeals for the 2nd Circuit Chief Judge Debra Ann Livingston
U.S. Court of Appeals for the 2nd Circuit Judge Peter W. Hall
U.S. District Judge for the Southern District of New York Colleen McMahon

RELATED CASES

- USA v. Terrance Sykes, No. 05-CR-06057-CJS-MWP-1
- USA v. Terrance Sykes, No. 06-3557-cr
- USA v. Terrance Sykes, No. 07-0505-cr Second Circuit
- USA v. Terrance Sykes, No. 13-CV-06162-CJS
- USA v. Terrance Sykes, No. 10-CV-06172-CJS
- USA v. Terrance Sykes, No. 11-1106 Second Circuit
- USA v. Terrance Sykes, No. 11-1620 Second Circuit

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF HABEAS CORPUS

Petitioner respectfully prays that a writ of habeas corpus issue.

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 304 F. App'x 10 (2d Cir. 2007); 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[ ] is unpublished.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 424 F. Supp. 2d 590 (W.D.N.Y. 2006); 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 December 17, 2008.

[X] 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: _____, 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. § 1254(1), and section 14 of the Judiciary Act of 1789.

[ ] 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

Section 14 of the Judiciary Act of 1789

28 U.S.C. § [redacted] 514

28 U.S.C. § [redacted] 515

28 U.S.C. § 516

28 U.S.C. § 519

Fed. R. Crim. P. 3

Fed. R. Crim. P. 4

Fed. R. Crim. P. 5(b)

U.S. Constitution 5th Amendment

U.S. Constitution 4th Amendment

U.S. Constitution 10th Amendment

STATEMENT OF THE CASE
& RULE 20.4(A) STATEMENT

REASONS FOR NOT FILING WITH THE DISTRICT COURT

The Petitioner is currently restrained in the Western District of New York (Rochester) where his initial commitment to federal custody and trial occurred. Because of conflicts of interest plaguing the district and Circuit Courts this petition is brought before this Court. The record of the district court and of the Court of Appeals are not judicial and show that the commitment proceedings were not regular but was a deliberately planned and carefully executed scheme by district judges and U.S. Magistrate judges and Clerks of the Courts to defraud the public with a created jurisdiction and discretion not given by the law to cover up crimes committed against the petitioner by officers of the Executive department, and deny him access to the Courts to remedy that criminal wrongdoing, presenting a conflict of interest with the lower courts and resulting in the impartial functions of the lower courts being directly corrupt, and caused this court to exercise a jurisdiction and discretion not given by the law when denying the writ of certiorari on the direct appeal from the U.S. Court of Appeals for the Second Circuit under this court case No. 08-9233; continuing to secretly detain the petitioner under the color of federal laws, and presenting exceptional circumstances that warrant the exercise of this Court's discretionary powers to aid this court in correcting its own error in failing to dismiss the direct appeal

and directing the district court to dismiss the action for want of jurisdiction because adequate relief cannot be obtained in any other form or from any other court on this matter. Though the Petitioner is no-longer detained in the Bureau of Prisons on this matter, he is still subjected to restraints in the form of eight (8) years supervision by a U.S. Probation Officer warranting this Court's discretionary power to remove all illegal restraints on petitioner's liberty.

STATEMENT OF FACTS

On October 28, 2004 Rochester Police Department Officers (RO) and a agent of the Federal Drug Enforcement Administration (DEA) forcefully entered unannounced the Petitioner's home 263 Emerson Street (downstairs home) of Rochester, New York and seized his person under the guise of a search warrant execution.

Mr. Sykes was transported to the Public Safety Building (PSB) in downtown Rochester by Uniform RO Laurie Kingsley ID# 508 where she deposited him in a interview room and abandoned him without providing him any explanation why she removed him from his home with handcuffs on his wrist.

RO Dave Simpson ID# 1183, attempted to interview the Petitioner but he refused to waive his Miranda warnings. Mr. Simpson issued Miranda warnings to Mr. Sykes without explaining why Miranda warnings were needed to Mr. Sykes. Mr. Sykes signed the Miranda rights card,

never being told the charges against him.

RO SGT. Brett Sobieraski ID#813 soon after transported Mr. Sykes to the Central Booking Unit of the Monroe County Jail by walking, and he relinquished custody of Mr. Sykes person to a caucasion male waiting at the door entrance, and RO Sobieraski left, never entering the Central Booking Unit with Sykes for processing and to positively identify him.

Mr. Sykes was fingerprinted and had his picture taken, and was given a phone call by Central Booking deputies, and he was held without bail in the jail.

On October 29, 2004 Mr. Sykes appeared in the Rochester City Court (local criminal court) before the Rochester City Judge Teresa Johnson where the Judge pretended to arraign him on a Felony Complaint, and the judge ordered Sykes detained in jail without bail, without providing him a probable cause hearing as required pursuant to New York State Law.

On November 1, 2004 Mr. Sykes appeared in the Rochester City Court before Judge Johnson where the judge waived his right to a preliminary hearing without his consent.

On November 10, 2004 Mr. Sykes appeared with retained counsel Gary Bitetti in the Monroe County Court before the Acting, Monroe County Court Judge John R. Schwartz where the judge pretended to arraign Mr. Sykes on indictment # 2004-0983 and set bail at $100,000 without a bail application being filed by Mr. Bitetti, and without entering a written securing order setting

the terms of bail as all required by New York State laws.

On or about November 20, 2004 Mr. Bitetti provided the Petitioner discovery material that included a search warrant and affidavit fabricated by RO Scott Hill and the Acting, Monroe County Judge Frank P. Geraci to search the down apartment of 263 Emerson Street dated October 20, 2004, (Appendix C), but no search warrant application was attached to the warrant and affidavit or any foundation evidence or return or inventory, or any authentication.

On November 24, 2004 Mr. Sykes posted a fake bond and was released from the Monroe County Jail, while RO Scott Hill ID# 575 Rochester Police Department Crime Investigation Report (CR) # 04-348890 dated October 28, 2004 falsely reflected Terrance Sykes released on an appearance ticket October 28, 2004 and never committed to the Monroe County Jail, and Judge Schwartz never entered a written securing order setting the terms of bail as required by New York State laws.

On April 08, 2005 Mr. Sykes appeared in the Monroe County Court before Judge Schwartz where the judge pretended to hand down a Decision And Order suppressing the phoney search warrant and allege evidence seized pursuant to it, and the judge pretended to exonerate the bond that day, proving the indictment was fake because the judge arraigned Sykes on the indictment and set the bail orally November 10, 2004, and also presided over all other matters that led to his suppression order in violation of New York State laws. (Appendix D) and (Appendix E).

Defense Counsel Mr. Bitetti later wrote a personal check returning the money provided by Sykes family and friends to post the bond, proof that no bond was deposited with the Treasurer of Monroe County to release Sykes November 24, 2004.

On April 18, 2005 ROs seized the Petitioners person during an allege traffic violation stop of a vehicle he was operating that day at 195 Bloss Street in Rochester, and transported him to the Federal Building at 100 State Street in Rochester, where they released him to federal DEA agent Timothy A. Kernan ID# 4956 and RO Hill under the guise of a federal indictment being filed against him stemming from the October 28, 2004 events that was terminated in his favor in the initial Monroe County Court case #2004-0983 a week earlier. No Traffic ticket was issued to Mr. Sykes for the allege traffic stop violation, nor was an arrest warrant provided to him to support his seizure on the federal indictment, nor was an inventory receipt prepared by ROs or federal [redacted] authorities for the $3,425.00 seized off his person or for the four (4) nickel bags of marijuana ROs confiscated from inside the vehicle, nor was the $3,425.00 deposited into Mr. Sykes jail account at the Federal Buffalo Detention Facility in Batavia, New York where he was detained initially on the allege federal indictment, and ROs did not charge the Petitioner with possession of the marijuana, and did not take him to jail for processing to identify him to justify their decision to turn his person over to federal authorities [redacted] on the allege

federal indictment. (Appendix F). The federal authorities did not process the petitioner into the federal criminal system at the federal building, never fingerprinted him or take his mugshot on the federal indictment before committing him to the Detention Facility in Batavia.

On April 18, 2005 Mr. Sykes appeared in the U.S. District Court for the Western District of New York before the U.S. District Judge Charles J. Siragusa, where the judge pretended to arraign him on a federal indictment without reading an indictment to him or providing him a copy of an indictment, and the judge refused to release the petitioner without entering an order of commitment.

On April 20, 2005 the Petitioner appeared before Judge Siragusa for an allege detention hearing, where the judge orally denied the Government's request to detain him but orally set a $100,000 secured surety bail for Mr. Sykes to post before he could be released, resulting in Sykes being secretly continuously detained on the federal case.

On April 14, 2005 the Clerk created the case caption for case No. 05-CR-06057. However, on the face of the Court docket under Complaints the clerk put "none" making it clear no history of a case against the petitioner [redacted] brought by a officer or agency of the Department of Justice exist to support the Clerk creating the case caption on April 14, 2005.

On April 20, 2005 the Clerk entered at docket entry No. 1 a

"SEALED INDICTMENT as to Terrance Sykes (1) count(s) 1, 2, 3," making it clear no indictment exist on April 18, 2005 when Judge Siragusa pretended to arraign the Petitioner on an indictment. The docket entry and the face of the indictment did not give any indication that the indictment was returned by a Grand Jury to a U.S. Magistrate Judge in open court as required for the indictment to be valid under federal law, and no arrest warrant was signed and entered in the record upon the return of the indictment by the Clerk of the Court identifying the defendant as required by federal laws. The Petitioner was never arraigned on the indictment after it was filed in the record April 20, 2005.

On April 20, 2005 the Clerk entered in the record as docket text No. 2 "Minute Entry for proceedings held before Judge Charles J. Siragusa: Arraignment as to Terrance Sykes (1) Count 1, 2, 3, held on 4/18/2005, Indictment Unsealed as to Terrance Sykes. Detention Hearing set for 4/20/2005 04:15PM before Hon. Charles J. Siragusa." This entry was made by the Clerk on the same date that the indictment was entered in the record April 20, 2005, and of the detention hearing.

On April 21, 2005 the Clerk entered in the record docket text No. 3, a second docket entry for the unsealing of the indictment where the Clerk created the appearance that the defendant was continued release on the $100,000 bail posted in the initial state case on the federal indictment April 18, 2005, and that the defendant waived the indictment during the arraignment April 18,

2005. But the State bond was exonerated by the State Court on April 08, 2005 and the petitioner was never released on the federal case after he was seized April 18, 2005, and he did not waive the indictment. The Clerk obviously put the defendant waived the indictment in docket text No. 3 on April 21, 2005 because the Petitioner was never arraigned on the indictment after it was entered unseal on the docket April 20, 2005 at docket text No. 1 and No. 2. (Appendix G).

In response to a motion the petitioner filed with the Court to correct docket entry No. 3 Judge Siragusa and the Clerk modified docket text No. 3 April 14, 2015 to read "the defendant waived only the reading of the indictment," which was also a false entry because Mr. Sykes did not waive the reading of the indictment at the phoney arraignment April 18, 2005, and as the record show there was no indictment for Mr. Sykes to waive the reading of because the indictment was entered in the record on April 20, 2005.

On April 21, 2005 the Clerk entered in the record at docket text No. 4 [redacted] a false result of the April 20, 2005 detention hearing that was conducted by Judge Siragusa on the same day that the indictment was entered in the record. The Clerk [redacted] falsely reported the governments motion to detain the defendant being denied and the defendant [redacted] released on $100,000 bail and other conditions. The government never filed a motion for

detention with the court, nor was the petitioner ever released on the $100,000 bail and other conditions.

Petitioner appeared before Judge Siragusa on April 20, 2005 for an allege detention hearing, where the judge denied the Governments unfiled motion for detention, but orally set bail at a secured surety bail of $100,000, knowing Mr. Sykes could not post the bail through conversations he had with the Federal Public Defender Robert Smith right before the hearing, which Judge Siragusa used the oral bail to deceive Mr. Sykes and his family to ensure he stayed secretly detained while docket text No. 3 and No. 4 falsely reflected the defendant released April 18, 2005 and April 20, 2005 on $100,000 bail and other conditions, knowing said entries were fake because the state bond had been exonerated on April 08, 2005 by the state court and the judge had no legal reason to require Sykes to pay $100,000 to be released on the federal indictment, rendering the bail a ransom.

On April 22, 2005 the Clerk entered a order setting conditions of release signed by Judge Siragusa dated April 20, 2005 (Appendix H), which was inconsistent with the judges oral order setting the $100,000 surety bail, explaining why the Clerk entered the written release order in the record April 22, 2005 two days after the detention hearing, and why defense counsel provided the petitioner only the third page [redacted] of the written release order to sign after Judge Siragusa orally set the $100,000 financial condition and conditions of release set forth in page 2 of the written release order minus the $100,000 forfeiture agreement at entry (7)(b). The first two pages of the written

release order were kept from the petitioner at the April 20, 2005 detention hearing, which the first two pages were obviously fabricated by Judge Siragusa after the detention hearing, explaining why the order was entered in the record April 22, 2005 two days after the detention hearing.

There was no motion seeking the detention of the defendant filed by the Government to support Judge Siragusa conducting the April 20, 2005 detention hearing and setting any conditions of release. Judge Siragusa did not complete section (6) of the written release order to place the defendant in the custody of the U.S. Probation Officer Mark Warth, who appeared in the detention hearing recommending Sykes be released to the custody of the U.S. Probation Office during the trial, to enable him to enforce the conditions of release filled out by judge in section (7) of the order. In page 1 of the order, under "Release on Personal Recognizance or Unsecured Bond," the judge checked bubble No.4 "The defendant promises to appear at all proceedings as required and to surrender for service of any sentence imposed," and in page 3 of the order under "Directions to United States Marshal," the Court X the bubble for "The defendant is ORDERED release after processing," but did not X the bubble for "The United States Marshal is ORDERED to keep the Defendant in custody until notified by the Clerk or judicial officer that the defendant has posted bond and/or complied with all other conditions for release. The defendant shall be [redacted] produced before the appropriate

judicial officer at the time and place specified, if still in custody."

The U.S. Marshals did not process Mr. Sykes into the federal system to prevent his release on personal recognizance after processing in compliance with pages 1 and 3 of the release order. There was no need for the judge to X the second bubble under the "Directions to the United States Marshal" in page 3 of the order because he did not complete section (6) of the order placing the petitioner in the custody of the U.S. Probation Office to enforce the conditions in section (7) of the order. The judge did not set a secured financial condition of release in the written release order like he did in the oral release order. The release order showed the defendant released April 20, 2005 on personal recognizance after processing, while docket text No. 3 and No. 4 falsely reported the defendant released April 18, 2005 and April 20, 2005 on a $100,000 bail and other conditions of release, but the petitioner was never released on either process.

The record reflected the defendant released April 18, 2005 and April 20, 2005 while the petitioner was actually physically detained in jail by the U.S. Marshals without an order of commitment to the U.S. Marshal being made by the Court for the U.S. Marshal to honor and produce Sykes before the appropriate judicial officer at the time and place specified, intentionally losing Mr. Sykes in the system through layered sham processes that covered up his unlawful secret detention.

On May 23, 2005 the Government filed with the Court at docket entry No. 9 a NOTICE of Intent to Use Evidence by USA with a three page Discovery letter addressed to defense counsel Donald M. Thompson attached as "Exhibit A" to the Notice. (Appendix I). In page 1 of the Discovery letter the Government identify discovery materials pages 1-59 pertaining to the Crime Report # 04-348890, which was the Rochester Police Department Crime report prepared by RO Scott Hill to commence the initial state prosecution of this matter, explaining why no criminal complaint was filed to commence the second federal prosecution under Rules 3, 4 and 5(b) of the Federal Rules of Criminal Procedure, and 28 U.S.C. § 514, § 515, § 516 and § 519. The federal government unlawfully relied on the process of the Rochester Police Department to commence the federal case. (Appendix J)

In page 1 of the letter the Government claim "a copy of the defendant's criminal history was also provided pursuant to Rule 16(a)(1)(D) of the Federal Rules of Criminal Procedure," and in page 2 of the discovery letter the Government claim "the defendant was arrested on or about October 28, 2004 by members of the Rochester Police Department in the vicinity of 263 Emerson Street, upstairs apartment following the execution of a search warrant at this location;" and in page 3 of the discovery letter the Government claim "If your

client is interested in discussing a plea offer, I will of course, be happy to discuss the parameters of an agreement, including sentencing considerations, with you." However, in page 2 of the discovery letter [redacted] the Government make clear that the above statements were [redacted] fraudulently made in the discovery letter by claiming "As part of this case, the defendant was not the subject of any "line up" or "show up" procedure, nor a photo array," and "This defendant is not an [redacted] "aggrieved person" as defined by 18 U.S.C. § 2510 (1) of any electronic surveillance." The Government conceded no pretrial identification evidence of a defendant exist in the same discovery letter they claimed to turnover a criminal history, and claimed a defendant was arrested, and requested to discuss a plea offer and sentencing considerations in.

The Petitioner was not made aware of the prosecutors Notice and discovery letter until after he was smuggled into United States Penitentiary Hazelton serving the phoney federal sentence of imprisonment on this matter in the year of 2008.

In the district court docket at entry No. 11 entered on [redacted] May 25, 2005 it state: " Minute Entry for proceedings held before Judge Charles J. Siragusa: Appearances: Melanie Babb appears for the government. Donald Thompson appears for the defendant.

Matter on for defendant motion to reconsider detention.. Defendant not brought over. Matter adjourned to 5-27-05 at 9:30 am." This is a false entry made by the Clerk to cover for the Petitioner's secret detention because Judge Siragusa never made any order for detention, and Mr. Thompson never filed any motion to reconsider detention with the Court to move the court prior to May 24, 2005. Moreover, Mr. Sykes was not brought over to the courthouse by the U.S. Marshal obviously due to Judge Siragusa never x'ing the second bubble on page 3 of the written release order (Appendix H), and that order releasing the defendant on personal recognizance after processing April 20, 2005, while docket text entries No. 3 and No. 4 reflected the defendant released on $100,000 bail and other conditions on April 18, 2005 and on April 20, 2005.

In the district court docket sheet at docket text No. 12 filed and entered May 26, 2005 it states "ARREST Warrant - Returned Executed on 4/18/05. in case as to Terrance Sykes;" This is a fabricated entry by the Clerk because no arrest warrant was entered on the docket before one was returned executed, [redacted] and [redacted] days before the Clerk entered the arrest warrant returned executed, the Clerk entered on the docket the Government's Notice of Intent and discovery

letter (Appendix I) conceding no defendant was identified.

The arrest warrant (Appendix K) wasn't provided to Mr. Sykes upon his arrest and wasn't provided to him until January 5, 2006 by the U.S. Magistrate Judge Marian W. Payson eight months and some days after he was arrested and detained on the federal case.

The arrest warrant did not have a photograph of the person the document pertain to attached to it, and it had a date stamp seal from the U.S. Marshal, WDNY April 16, 2004 as the date they received the Warrant on its face. But the Petitioner's home wasn't forcefully entered by ROs and DEA Kernan until October 28, 2004 and the federal indictment wasn't entered on the docket until April 20, 2005. The Warrant directed Terrance Sykes to be arrested to answer to an indictment but the U.S. Magistrate Judge Marian W. Payson signed the warrant dated 04/14/05, but she wasn't authorized to sign arrest warrants upon indictments, the Clerk of Court is the person authorized to sign arrest warrants upon the return of an indictment pursuant to Rule 9(b)(1) of the Federal Rules of Criminal Procedure. A magistrate judge issues arrest warrants on criminal complaints pursuant to Rules 3 and 4 of the Federal Rules of Criminal Procedure. Furthermore, no indictment was filed April 14, 2005 that could support Judge Payson

issuing an arrest warrant for Terrance Sykes to answer to an indictment that day in Case No. 05-CR-06057, and the arrest warrant identified 18 U.S.C. §922(g)(1) as an offense charged in the indictment, [redacted] but that offense wasn't charged in the indictment entered on the docket April 20, 2005, that offense wasn't charged until the fake superseding indictment was entered on the docket September 22, 2006.

Moreover, in the return section of the arrest warrant no address was provided for where in Rochester the defendant was arrested at on 04/18/05, and the return identify DEA Paul Nielsen as the officer who arrested the defendant in Rochester on 04/18/05, which is false because the Petitioner was seized by Rochester Police Officers during an allege traffic stop violation at 195 Bloss Street in Rochester and transported by them to the Federal Building where they turned him over to RO Hill and DEA Kernan on the allege federal indictment on 04/18/05. (Appendix F).

The arrest warrant was filed May 26, 2005 with the court two days after the U.S. Marshals failed to produce Mr. Sykes at the May 24, 2005 hearing for reconsideration of a non-existing detention order to keep up the appearance that a defendant was released on April 18, 2005 and on April 20, 2005 on the processes

fraudulently reported in docket text entries No. 3 and No. 4, and he had missed the May 24, 2005 hearing on his own doing, warranting the Court to issue an arrest warrant, explaining why Judge Payson signed the arrest warrant but had to rely on the April 18, 2005 seizure in the warrant due to Sykes being secretly detained after he was seized that day, and never released to be rearrested for missing the May 24, 2005 hearing.

In the district court docket at docket text No. 13 filed and entered on May 27, 2005 the Clerk entered "Minute Entry for proceedings held before Judge Charles J. Siragusa: Matter on for defendant request to modify conditins of release. Matter adjourned to 6-1-05 at 10:30 a.m." This proceeding was conducted a day after the phoney arrest warrant was entered on the docket returned executed, [redacted] falsely creating the appearance the defendant was arrested for missing the May 24, 2005 hearing and brought before Judge Siragusa on the arrest warrant May 27, 2005. The Clerk knew that docket text entries No. 7 and No. 11 falsely reported reconsideration of a detention order, and that docket entries No. 3 and No. 4 reflected the defendant released on $100,000 bail and other conditions, and so the clerk entered the "Matter on for defendant request to modify conditins of release" for the May 27, 2005

hearing in docket text No. 13, while the written release order (Appendix H) falsely reported the defendant released April 20, 2005 on personal recognizance, and therefore, there wasn't any conditions of release to be argued modified by the defendant May 27, 2005, explaining why Mr. Thompson did not file a motion to modify the conditions of release, and the Clerk stated the defendant requested to modify conditions in the docket text without stating how the request was made by the defendant. In the May 27, 2005 hearing Mr. Thompson only argued for the petitioner to be released on personal recognizance, allowing the record continue to reflect the defendant released on $100,000 bail and conditions in docket text No. 3 and No. 4, as if [redacted] he (Mr. Thompson) sought to modify those conditions of release with a personal recognizance even though Mr. Sykes was never released on the [redacted] conditions reflected in docket text No. 3 and No. 4 but was being detained in jail. Mr. Thompson never addressed the written release order with Judge Siragusa at the May 27, 2005 hearing, even though the written release order already ordered the [redacted] defendant released on personal recognizance after processing April 20, 2005.

Judge Siragusa denied Mr. Thompson's request to modify the conditions of release with a personal recognizance, and

after it was established the Judge had no legal reason to detain Mr. Sykes on a secure financial condition and the U.S. Probation Officer [redacted] Mark Warth recommended he be released to the supervision of the probation officer, Judge Siragusa still refused to release the petitioner and claim he was adjourning the matter so that he could look further into the matter, continuing to use his April 20, 2005 oral secure $100,000 financial condition to deceive Mr. Sykes and the public, while docket text entries No. 3 and No. 4 reported the defendant released already on the $100,000 secure financial condition and other conditions, while the petitioner was being physically detained in jail without any order of commitment being made by the court, and Judge Siragusa knew there was no basis for him to hear any bail arguments or include the U.S. Probation Office in the matter due to Ms. Babb filing the May 23, 2005 Notice and discovery letter (Appendix I) conceding no defendant was identified and no evidence exist four days before the May 27, 2005 hearing. Judge Siragusa gave illegal consideration to bail matters and an arraignment.

In the June 1st, 2005 hearing Judge Siragusa used a different federal prosecutor Everardo Rodriguez and a different Probation officer Kerry Chartier to make premature claims under the

U.S. Sentecing Guidelines that the defendant had three (3) prior drug felonies that qualified him to receive a mandatory minimum of life in prison, which Judge Siragusa used the false information from the probation to deny Mr. Thompson's unfiled motion to modify conditions of release and adjourned the matter until June 10, 2005 for the defendant to look into the prior convictions, keeping the petitioner detained while the record show the defendant released April 18, 2005 and April 20, 2005. The probation officer Kerry Chartier violated Rule 32(e)(1) of the Federal Rules of Criminal Procedure with the premature disclosure of the prior conviction qualifications, and the probation officer and the prosecutor Everardo Rodriguez knew no [redacted] basis exist for them to make Sentencing recommendations based on prior convictions from the Government's discovery letter (Appendix I) where the Government concede no defendant was identified for this matter weeks before they made the sentencing recommendations to the court.

On July 14, 2005 Mr. Thompson filed a omnibus motion at docket entry No. 18, and in the motion Mr. Thompson sought to preclude identification evidence at page 20 (Appendix L), identification evidence that the prosecution told him did not exist in the May 23rd, 2005 discovery letter addressed to him (Appendix I).

On August 2, 2005 the Government filed its response to the Omnibus motion and at pages 11-12 of the response (Appendix M) the Government respond to Mr. Thompson's motion to preclude identification evidence by stating "The government is not aware of any pretrial identification procedures concerning the defendant," again conceding no defendant was identified in this matter, while the U.S. Marshals and Judges Siragusa, Payson and District Judge Michael A. Telesca continued to [redacted] detain the petitioner on this matter.

On August 15, 2005 secret orders denying as moot Mr. Thompson's motion to preclude identification evidence was entered by Judge Payson without authorization from Judge Telesca under 28 U.S.C. §636(b)(1)(A) and §636(b)(1)(B). See docket text entries No. 24 and No. 25.

On October 4, 2005 Judge Telesca entered in the record at docket entry No. 34 a Order referring the case to Judge Payson under 28 U.S.C. §636(b)(1)(A) and §636(b)(1)(B).

On May 1st, 2006 Judge Payson conducted a hearing on the motion to suppress statements made by a defendant that Mr. Thompson made in his omnibus motion July 14, 2005, where no proof of the defendant's identification was produced by the Government.

On August 28, 2006 Judge Telesca entered in the record at docket ■ entry #97 a text order transferring the case to Judge Siragusa.

On September 22, 2006 the Clerk entered in the record at docket No. 116 a superseding indictment adding Count 4 being a felon in possession of a firearm in violation of 18 U.S.C. §922(g)(1), even though the Clerk entered in the record the May 23, 2005 Notice and discovery letter and the Government's August 2nd, 2005 responses conceding no defendant was identified.

On October 2nd, 2006 to October 5th, 2006 the petitioner had a sham jury trial, where, like the May 1st, 2006 Suppression ■ hearing before Judge Payson, no identification evidence or arrest evidence of a defendant was presented, but some how the jury found a defendant guilty on Counts 1, 2 and 4 and not guilty on Count 3.

On February 12, 2007 Judge Siragusa claimed the petitioner was a career offender and sentence him to ■ a mandatory minimum of life imprisonment and 10 years supervised release.

On December 17, 2008 a panel of judges for the U.S. Court of Appeals for the Second Circuit entered a summary order

somehow finding that a defendant conceded cocaine base was found inside his home by POs and DEA agents October 28, 2004 and denied the petitioners direct appeal under Case No. 07-0505-Cr.

On or about March 12, 2009 retained counsel Robert Brooks of Memphis, Tennessee filed a writ of certiorari with this court appealing the U.S. Court of Appeals for the Second Circuit Summary Order Case No. 07-0505-Cr, and somehow that appeal was assigned a 2008 case number being No. 08-9233; and the writ of certiorari was denied, and the Circuit Court record show Mr. Brooks did not substitute as counsel of record with [redacted] attorney Scott M. Green as required for him to have filed the appeal to this court, explaining why the appeal was assigned a 2008 case number and was denied.

On May 27, 2020 Judge Siragusa entered in the record at docket entry No. 288 a Decision And Order pretending to reduce the life term of imprisonment [redacted] to 30 years imprisonment and eight years supervision under First Step Act retroactive crack cocaine amendments.

On January 22, 2025 executive clemency was entered by the Biden administration commuting the sentence to 280 months, which resulted in petitioner's release back into the district where the trial and sentence occurred October 15, 2025, and placed on eight years supervision.

REASONS FOR GRANTING THE PETITION

ARGUMENT

A. SUMMARY OF ARGUMENT

The right that Mr. Sykes asserts and that the U.S. Supreme Court accepts is the right not to be haled into court at all upon the felony charges. The very initiation of the proceedings against him in both the State court and U.S. District Court thus operated to deny him due process of [redacted] law. Blackledge v. Perry, 417 U.S. 21, 30-31 (1974). No right is held more sacred, or is more carefully guarded by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law. Union Pacific Railway Co. v. Botsford, 141 U.S. 250, 251 (1891). In the ten amendments constituting the "Bill of Rights," additional restrictions were placed upon the Federal Government particularly upon procedure in the federal courts. Bute v. Illinois, 343 U.S. 640, 650 (1948). These are rights which existed long before our constitution, and we have taken just pride in their maintenance, making them a part of the fundamental law of the land Carroll v. United States, 267

U.S. 132, 165 (1925).

In his influential commentary on the provision, Sir Edward Coke interpreted the words "by the law of the land" to mean the same thing as "due process of the common law." Obergefell v. Hodges, 576 U.S. 644, 723 (2015), Due Process in the 5th Amendment refers to that law of the land, which derives its legislative powers conferred upon Congress by the Constitution of the United States, exercised within the limits therein prescribed, and interpreted according to the principles of the common law. Hurtado v. The People of California, 110 U.S. 516, 535 (1884). Criminal statutes must be strictly construed and applied in harmony with the rules of the common law. Carroll v. United States, 267 U.S. 132, 165. By the act constituting the judicial system of the United States, the district courts are courts both of common law and admiralty jurisdiction THE SARAH HAZARD, Claimant, 5 LED 644, 8 WHEAT 391.

Over the centuries a number of writs of habeas corpus evolved at common law to serve a number of different functions. See Ex Parte Bollman, 4 Cranch 75, 97-98 (1807); 3 W. Blackstone, Commentaries on the Laws of England 129-131 (1768). But the most notable among these writs was that of habeas corpus

ad subjiciendum, often called the Great Writ." Id., at 131. When English monarchs jailed their subjects summarily and indefinitely, common-law courts employed the writ as a way to compel the crown to explain its actions - and, if necessary, ensure adequate process, such as a trial, before allowing further detention. See Petition of Right, 3 Car. 1, ch. 1, ¶ 5, 8 (1628). The Great writ was, in this way, no less than "the instrument by which due process could be insisted upon." Hamdi v. Rumsfeld, 542 U.S. 507, 555 (2004) (Scalia, J., dissenting). Its root principle is that in a civilized society, government must always be accountable to the judiciary for a man's imprisonment: if imprisonment cannot be shown to conform with the fundamental requirements of law, the individual is entitled to his immediate release. Thus, there is nothing novel in the fact that today habeas corpus in the federal courts provide a mode for the redress of denials of due process of law. Vindication of due process is precisely its historic office Fay v. Noia, 372 U.S. 391, 401-402 (1963)

B. THE DISTRICT COURT LACKED JURISDICTION TO ENTERTAIN INDICTMENT NO. 05-CR-06057 AND PRONOUNCE JUDGMENT WITHOUT THE PETITIONER BEING MADE A PARTY DEFENDANT

The district court record is proof that the defendant [redacted]

was never identified to support the existence of the federal indictment No. 05-CR-6057, where the Government conceded no defendant was identified through any pretrial identification proceeding as fully explained in the Statement of Facts of this petition. The court was not a court of competent jurisdiction cause it did not have jurisdiction over the parties through 28 U.S.C. §§§§ 514, 515, 516 and 519 and Rules 3, 4, and 5(b) due to no defendant being identified as conceded by the Government in their May 23, 2005 discovery letter (Appendix I) and in their August 2nd, 2005 response (Appendix M). The Petitioner is not a duly convicted prisoner because he was never identified as being the defendant prior to his arrest or any time after his arrest by the federal Government. It has been the historical practice in our jurisprudence to withhold the filing of criminal charges until the state can marshal evidence establishing probable cause that an identifiable defendant has committed a crime. Albright v. Oliver, 510 U.S. 266, 296-297 (1994). An arrest is the initial stage of a criminal prosecution. Terry v. Ohio, 392 U.S. 1, 25-26 (1963)

The prosecutor may not properly engage in procedures that are designed to manufacture an identification where there was

in fact no recognition or to turn a tentative identification into one that is certain. United States v. Maldonado-Rivera, 922 F.2d 934, 975-976 (2d Cir. 1990). While, the requirement of subject matter jurisdiction "functions as a restriction on federal power," the need for personal jurisdiction is fundamental to "the court's power to exercise control over the parties," some basis must be shown, whether arising from the respondent residence, his [redacted] conduct, his consent, the location of his property or otherwise, to justify his being subject to the court's power. Frontera Res. Azer. Corp. v. State Oil co. of the Azer Republic, 592 F.3d 393, 397 (2d Cir. 2008). An arrest warrant requires evidence of participation in crime and interposes the magistrate's determination of probable cause between the zealous officer and the citizens. Peyton v. New York, 445 U.S. 573, 602-603 (1980). The requirement that a court have personal jurisdiction flows not from Art. III, but from the Due Process Clause. The personal jurisdiction requirement recognizes and protects an individual liberty interest. It represents a restriction on judicial power not as a matter of sovereignty, but as a matter of individual liberty. Thus, the test for personal jurisdiction requires that "the maintenance of the suit... not offend traditional notions of fairplay and substantial justice." Insurance Corp. v.

Compagnie Des Bauxities, 456 U.S. 692, 702-703 (1982). A defendant right to due process of law includes the right not to be the object of suggestive police identification procedures that create a "substantial likelihood of irreparable [redacted] misidentification." This protection must encompass not only the right to avoid improper police methods that suggest the initial identification, but as well the right to avoid having suggestive methods transform a selection that was only tentative into one that is positively certain. Solomon v. Smith, 645 F.2d 1179, 1185 (2d Cir. 1980). The scheme for initiating a federal prosecution is plainly defined. The police may not arrest upon mere suspicion but only on "probable cause."; It is not the function of the police to arrest, as it were, at large and to use an interrogating process at police headquarters in order to determine whom they should charge before a committing magistrate on "probable cause. Mallory v. United States, 354 U.S. 449, [redacted]. 454, 456 (1957).

Courts cannot perform executive duties or treat them as performed when they have been neglected. They cannot enforce rights which are dependent for their exercise upon a prior performance by an executive officer of certain duties he has failed to perform. The right asserted by the Claimant rests upon

a condition unfulfilled. United States v. McLean, 95 U.S. 750, 753 (1878). Jurisdiction means that the Court has the legal right to hear a case. If a court holds a trial without jurisdiction, it violates the Due Process Clause of the Fifth Amendment. Lowery v. Estelle, 696 F.2d 333 (5th Cir. 1983), Murphy v. Beto, 416 F.2d 98, 100 (5th Cir. 1969). See also Four Hundred & Forty-Three Cans v. United States, 226 U.S. 172 (1912) (When Court of appeals had no jurisdiction upon appeal, neither action of court nor consent of parties could supply jurisdiction.).

C. THE PETITIONERS COMMITMENT APRIL 18, 2005 AND CONTINUED DETENTION WERE NOT MADE JUDICIALLY BUT WAS MADE EX PARTE IN VIOLATION OF THE DUE PROCESS CLAUSES

The petitioner's commitment was not made apart of the district court record because no criminal complaint was filed to commence the federal action under Rules 3, 4, and 5(b). See Giordenello v. United States, 357 U.S. 480 (1958) and Jaben v. United States, 381 U.S. 214 (1965) requiring a criminal complaint and arrest warrant identifying a defendant to be filed with the court to lawfully commence the federal action and to deem the matter a judicial matter. See also In re Pacific R. Com, 32 F. 241 (N.D. Cal. 1887); Kilbourn v.

Thompson, 103 U.S. 168 (1881); Interstate Commerce Commission v. Brimson, 154 U.S. 447 (1894) (An ex parte inquisitorial investigation, based upon mere suspicion or speculation, without any complaint or charge, and that may and presumably would be, without result, is not a "case" or "controversy" within the meaning of the Constitution; and no court has any power or right to lend its aid or assistance to such a matter); United States v. Abuhamra, 389 F.3d 309, 328 (2d Cir. 2004) (A defendant's due process interest in notice and a fair opportunity to be heard, as well as the public's interest in seeing justice done, particularly with respect to decisions affecting liberty, create a strong presumption against ex parte submissions); Pointer v. United States, 151 U.S. 396, 419 (1894) (While the record of a criminal case must state what will affirmatively show the offense, the steps, without which the sentence cannot be good, and the sentence itself.); Erwin v. United States, 37 F. 470, 488-489 (D. Ga. 1889) (It is very essential, therefore, that the commitment proceedings should be regular, and that the record should show it); Karcher v. May 484 U.S. 72, 77 (1987) (The judicial power to adjudicate a federal controversy derives from Article III of the Constitution and from federal statutes); Preiser v. Newkirk, 422 U.S.

395, 401 (1975) (The exercise of judicial power under Article III of the Constitution of the United States depends on the existence of a case or controversy); and Arizonans for Official English v. Ariz., 520 U.S. 43, 45 (1997) (To qualify as a case fit for federal-court adjudication, an actual controversy must exist at all stages of review).

The district court record does not show the arrest and detention of the petitioner April 18, 2005 or April 20, 2005, but instead the record falsely reflect the defendant released on $100,000 bail and other conditions, and also on personal recognizance on April 18, 2005 and on April 20, 2005, and it also show the indictment being entered in the record April 20, 2005 two days after the petitioner was seized and Judge Siragusa pretended to arraign him on a federal indictment, which the petitioner was never arraigned on the indictment after it was entered in the record April 20, 2005. There was never a case or controversy established through Rules 3, 4, or 5(b) to support the petitioners arrest and the return of an indictment, explaining why the record reflect the defendant released April 18, 2005 and April 20, 2005, and the arrest warrant (Appendix K) being insufficient on its face and lacking a photograph of the person the document pertain to.

There was no judicial record of the petitioner's arrest and commitment that the higher court could acknowledge and [redacted] uphold a conviction and sentence on direct review. See Bernstein v. Bernstein Litowitz Berger & Grossman LLP, 814 F.3d 132 (2d Cir. 2016) (A "judicial document" or "judicial record" is a [redacted] filed item that is relevant to the performance of the judicial function and useful in the judicial process); S.E.C. v. Am. Int'l Grp., 712 F.3d 1, 4, 404 U.S. App. D.C. 286 (D.C. Cir. 2013) (Though filing a document with a court is not sufficient to render the document a judicial record, it is very much a prerequisite); In re Gubbelman, 10 F.2d 926, 929 (2d Cir. 1925) (The word "filed" carries with it the idea of permanent preservation of a thing as a public record. A paper is not filed by presenting it to the judge. He has no office in which papers are filed [redacted] and permanently preserved. A paper in a case is not filed until it is deposited with the clerk of the court, for the purpose of making it a part of the records of the case); Silver v. Kuebeck, 217 Fed. Appx. 18, 20 (2d Cir. 2007) ("[An] appellate court will not consider material that is not part of the record"); Crain v. United States, 162 U.S. 625, 645 (Before a court of last resort affirms a judgment of conviction of at least an infamous crime, it should [redacted] appear affirmatively from the record that every step necessary to the validity of the

sentence has been taken; and the record of his conviction should show distinctly, and not by inference merely that every step involved in due process of law and essential to a valid trial was taken in the trial court; otherwise the judgment will be erroneous).

There can be no conviction or punishment for a crime without a formal and sufficient accusation. A court can acquire no jurisdiction to try a person for a criminal offense unless he has been charged with the commission of the particular offense and charged in the particular form and mode required by law. If that is wanting, his trial and conviction is a nullity, for no person can be deprived of either life, liberty, or property without due process of law. Weeks v. United States, 216 F. 292, 293 (2d. Cir. 1914). United States v. Providence Journal Co., 435 U.S. 693 (1958) establishes the general principle that the court lacks jurisdiction over an action commenced on behalf of the government by a person not authorized to do so. The United States Attorney for the Western District of New York was not authorized by Rules 3, 4, or 5(b) to commence the criminal action.

D. THE UNITED STATES SUPREME COURT DOES HAVE THE POWER TO ENTERTAIN THIS WRIT OF HABEAS CORPUS AND TO GRANT THE WRIT

This court has power to issue the writ of habeas corpus ad subjiciendum to correct a grave injustice as an original

proceeding in equity and because review of the district court's initial determination of probable cause to commit and detain the petitioner could be [redacted] done by this court which is a model for criminal procedure in America. [redacted] See Gerstein v. Pugh, 420 U.S. 103, 114-116 (1974) (The initial determination of probable cause also could be reviewed by higher courts on a writ of habeas corpus. This practice furnished the model for criminal procedure in America immediately following the adoption of the Fourth Amendment.).

Furthermore, the equity rule, which was firmly established in English practice long before the foundation of our Republic, the courts have developed and fashioned to fulfill a universally recognized need for correcting injustices which, in certain instances, are deemed sufficiently gross to demand departure from rigid adherence to the term rule. United States v. Throckmorton, 98 U.S. 61. [redacted] Litigants who have sought to invoke this equity power customarily have done so by bills of review or bills in the nature of bills of review, or by original proceedings to enjoin enforcement of a judgment. See Whiting v. Bank of United States, 13 Pet. (US) 6, 13, 10 Led. 33; Dexter v. Arnold (CC.), 5 Mason 303, 308-315, Fed. Case No. 3,856. See also, generally, 3 Chlinger's Federal Practice pp. 814-818; 3 Freeman, Judgments, 5th ed §1191; note (1880) 20 Am Dec. 160, supra.

Furthermore, in Ex parte Bollman and Ex parte Swartout, 8 U.S. 4 Cranch 75 (1807) the Supreme Court, in an opinion delivered by Chief Justice John Marshall, granted the writ of habeas corpus and ordered the release of both men. The Court found that the Judiciary Act specifically section 14, was a substantive grant of power to issue writs. The question the court answers is whether the statutory grant of power is limited to writ of habeas corpus that are "necessary to enable the Courts of the United States to exercise their respective jurisdictions in some cause which they are capable of finally deciding. Section 14 says justices of the Supreme Court and judges of the district courts "shall have power to grant writs of habeas corpus, for the purpose of an inquiry into the cause of commitment. The Court concluded that the "general grant of power" is not limited to an exercise of jurisdiction in "causes which [the Court] is enabled to decide finally", Marshall explains: "The only power then, which on this limited construction would be granted by the section under consideration, would be that of issuing writs of habeas corpus ad testificandum. The section itself proves that this was not the intention of the legislature.

Moreover, If the point the writ of habes corpus ad subjiciendum was to ensure due process attended an individual's

confinement, a trial was generally considered proof he had received just that. See e.g., Bushell's Case, Vaugh, 135, 142-143, 124 Eng. Rep. 1006, 1009-1010 (C.P. 1670). An important exception existed in both English and American law: A habeas court could grant relief if the Court of conviction lacked jurisdiction over the defendant or his offense. See Ex parte Watkins, 3 Pet. 193, 202-203 (1830). A perceived "error in the judgment or proceedings under and by virtue of which the party is imprisoned, constituted no ground for" relief. Ex parte Siebold, 100 U.S. 371, 375 (1880). Instead, a habeas court could "examine only the power and authority of the Court to act, not the correctness of its conclusions." Harlan v. McGourin, 218 U.S. 442, 448 (1960)

There can be no doubt that the district court's power and authority to act in this matter is what the petitioner seeks review and determination on in this petition for a writ of habeas corpus where the Government concede the court had no jurisdiction over the person of petitioner because no defendant was identified through any pretrial procedures, warranting issuance of the Writ of habeas corpus in this matter by this Court. See Stoll v. Gottlieb, 305 U.S. 165, 171-172 (1938) (A court does not have the power by judicial fiat, to extend its jurisdiction over matters beyond the scope of the authority granted to it by its creators).

CONCLUSION

The petition for a writ of habeas corpus should be granted.

Respectfully submitted,

Tehhaney Sykes

Date: January 06, 2026