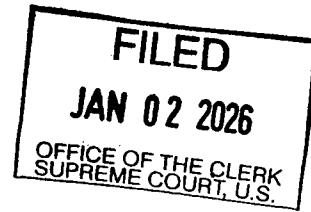


25-7249

No-----

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IN THE

SUPREME COURT OF THE UNITED STATES.

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CURTIS VAN STUYVESANT-----PETITIONER.

VS,

PEOPLE OF THE STATE OF NEW YORK----- RESPONDENT.

---

ON PETITION FOR A WRIT OF CERTIORARI TO

THE NEW YORK STATE COURT OF APPEALS.

---

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## QUESTIONS PRESENTED

[1] While states are not required to allow appeals from convictions to the intermediate appellate courts, must they abide to due process requirements if they do and is it also a violation of United States Constitution Ninth Amendment unenumerated rights by depriving petitioner rights to a criminal appeal under United States Constitution Fourteenth Amendment and New York State Constitution Article VI Section 4[k] ?

[2] Although torture is prohibited by United States Constitution Eight Amendment but where New York State deprived petitioner appellate counsel in an intermediate appellate court direct appeal subjected him to psychological and physical torture evincing depraved indifference by rendering him blind and then ordering him to proceed pro se from administrative segregation special housing unit with no access to legal research materials, prison law library, typewriter, desk top computer, copier, jail house lawyer does United States Constitution Fourteenth Amendment Equal Protection Clause offer and additional layer of protection and under the strict scrutiny is the state required to prove that the discrimination and torture serves a compelling state interest?

[[3] When both the New York County District Attorney Office, New York State Attorney General Office and New York State Unified Court System Judges committed fraud on the court in order to deprive petitioner appellate court remedies in order not to vacate an ultra vires void for voidness judgment of conviction which is a nullity procured on a defective indictment on non-existing United States Constitution Article III federal subject matter immigration fraud which was fabricated from a whole cloth, did the state violate petitioner's First Amendment petition Clause access to the courts or unconstitutionally misused the law for an improper purpose in the criminal context by abusive process or was it a Ninth Amendment constitutional violation?

## II

### LIST OF PARTIES.

- [1] Curtis Van Stuyvesant is the Petitioner.
- [2] New York State is the Respondent

## III

### RELATED CASES

Curtis Van Stuyvesant v. James Conway Superintendent Attica Correctional Facility 506 U.S. 1030 [2011] Federal Rules of Civil Procedure 60[b][1][2][3][4][6] 28 U.S.C 2254 Federal Habeas Corpus to the United States Court of Appeals For The Second Circuit.

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IN THE  
SUPREME COURT OF THE UNITED STATES

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CURTIS VAN STUYVESANT-----PETITIONER

VS.

NEW YORK STATE-----RESPONDENT

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ON PETITION FOR A WRIT OF CERTIORARI TO  
NEW YORK STATE COURT OF APPEALS

-----

CURTIS VAN STUYVESANT PRO SE  
APARTMENT NUMBER 15-H  
97-15 HORACE HARDEN EXPRESSWAY  
CORONA NEW YORK 11368  
917-496-8527

IN THE.

SUPREME COURT OF THE UNITED STATES.

PETITION FOR A WRIT OF CERTIORARI PUUSUANT TO 28 U.S.C 1257.

CURTIS VAN STUYVESAN, respectfully petition for a Writ of Certiorari pursuant to 28 U.S.C. 1257 to review New York State Court of Appeals unarticulated, frivolous, fraudulent, silent, post card boiler plate memorandum decision and order.

OPINIONS OF THE COURTS BELOW.

The opinion of New York State Court of Appeals denying leave to appeal New York State Supreme Court Appellate Division First Judicial Department Common Law Writ of Error Coram Nobis order People v. Van Stuyvesant 43 N.Y 3d 1012 [2025], 2025 NY Slip Op 97577 [U] entered on May 27, 2025 TROUTMAN Associate Justice, appears at Appendix A to the petition and it is unpublished. The opinion of New York State Court of Appeals denying Writ of Error Coram Nobis People v. Van Stuyvesant reargument motion was entered on October 27, [2025 ] 2025 Slip Op 98158 [U] appears as Appendix B to the petition and unpublished. The opinion of the New York Supreme Court Appellate Division First Judicial Department in People v. Van Stuyvesant Case No: 20005-15223 denying Common Law Writ of Error Coram Nobis entered on January 23, 2025 appears at Appendix C to the petition. It is unpublished.

SUPREME COURT OF THE UNITED STATES JURISDICTION.

The jurisdiction of this court which SCOTUS review a state highest court the New York State Court of Appeals final order is governed by 28 U.S.C. 1257 entered on May 27, 2025 and reconsideration on October 27, 2025 where the validity of statutes and treated is drawn into question and where the validity of New York State Constitution Article 1 Section 6 right to an appellate counsel in an intermediate a appellate court direct criminal direct appeal as of right and New York State Constitution Article VI section 4[k] right to direct appeals drawn in question on the ground of its being repugnant to the Constitution, Customary denying International Law Non-Refoulment Treaty, International Human Rights Law Treaty Convention Against Torture and Other Cruel Inhuman or Degrading Treatment and Torture, or laws of the United States , or where any rights, privilege, or immunity is specially set up or claimed under the constitution or the treaties or statutes of the United States.

UNITED STATES CONSTITUTION AND STATUTORY PROVISIONS INVOLVED.

This is a case of national importance and also first impression that would give this Court an opportunity to unlock the mystery of United States Constitution Ninth Amendment which addresses concerns that the enumeration of specific rights in the Bill of Rights might be interpreted to mean that other, unenumerated rights were not protected such as for example in a criminal trial a convicted defendant constitutional right to appeal regardless of whether wrongfully convicted and actual innocence or guilty in cases where due to prosecutorial, judicial or jury fraud on the court the defendant was convicted.

It time SCOTUS overturn McKane v. Durston 153 U.S. 684 [1984] anachronistic decision where the Court held that that there was no federal constitutional right to appeal and that the state courts had the right to grant appellate review at their discretion. This Court recently in Loper Bright Light Enterprise v. Raimondo 603 U.S. 369 [2024] in a landmark decision overruled the doctrine established in Chevron U.S.A., Inc v. Natural Resources Defense Council, Inc 467 U.S. 837 [1984]. Dobbs v. Jackson Women's

Health organization 597 U.S. 215 [2022] abolished the constitutional to abortion held in Roe v. Wade 410 U.S.113 [1973].

United States Constitution First Amendment Speech and Petition Clause, Eight Amendment Excessive Fines, Cruel and Unusual Punishment,, Ninth Amendment Unenumerated Rights, Fourteenth Amendment Due Process and Equal Protection Clause, Article 1, Section 8, Clause 18 Plenary Authority, Necessary and Proper Clause, Article 1, Section 8, Clause 3 Commerce Clause, Article III Section 2 Federal Subject Matter Jurisdiction and Judicial Power of the Federal Courts that guarantees a jury trial in criminal cases, Americans with Disability Act, Religious Freedom Restoration Act 18 U.S.C. 241, 18 U.S.C. 18 U.S.C. 245, 18 U.S.C. 2340A.

#### STATEMENT OF THE CASE.

Plaintiff apologizes to this Court for any typographic error or repeated sentences for his blindness. Although he is using Job Access With Speech [JAWS] which is a paid screen reader for Windows that converts text on the screen to audio or braille he stills makes errors due to other debilitating severe musculoskeletal and gastrointestinal injuries. It is developed by Freedom Scientific for Microsoft Windows. It enables blind users and users who have low vision to interact with the computers by converting texts on the screen into speech or braille. He did not have JAWS while he was incarcerated or appellate counsel and New York State violated The Americans with Disability Act by ordering him to proceed pro se in an intermediate appellate court direct appeal by refusing him reasonable accommodation by assigning appellate counsel.

Petitioner's injury was proximately caused by New York State Department of Corrections & Community Supervision prison guards and medical personnel during the pendency of his direct appeal from December 1999 to September 2002. They were acting on the orders of New York County District Attorney Office to torture him See Appendices D The New York State Commission For The Blind Certification. Appendices E. New York University Langone Health West Side Ambulatory Medical Records summary. Petitioner has succinctly delineated below in his argument the reason why he was subjected to a brutal regime of physical and psychological torture that evinced depraved indifference to his life and deliberate indifference to his health.

Petitioner first encountered the "master mind genius" who in July 24, 1998 framed him by fabricating a United States Constitution Article III Section 2 federal subject matter immigration fraud from a whole cloth in February of 1998 in a scheme to commit extrajudicial murder under the color of Immigration and Nationality Act order of deportation in violation of customary international law non-refoulement doctrine which is a jus cogens.

Petitioner is a stateless citizen who was a young naive international human rights lawyer when on December 27, 1979 he was invited by Cyrus Vance Jr., United States Secretary of State Department of State. He was granted an indefinite multi-entry B2 visa. By the American consular in the United States Embassy in Bridgetown Barbados due to his close friendship with Maurice Bishop who staged the first "revolution" in the Caribbean to topple the tin pot dictator of Grenada Eric Gairy. Petitioner was a confidant of Bishop and as one of his closest advisers was privy and had access to top secret intelligence including Cuba and the former Soviet Union geopolitical ambition to destabilize the Caribbean by exporting Grenada's "revolution" to other Caribbean Island nations.

He decided to share his valuable intelligence on one condition only with the State Department Bureau of Intelligence & Research and not with any other United States Government Intelligence apparatus. He

did not ask for any compensation or assist with his immigration status. Petitioner wanted to migrate to Canada because as a Barrister and solicitor at law educated in England with an LLb in Law, LLM International Law, and a French Advocate also educated with a PhD in law in France he was not required to take the bar in Canada in view of the fact he is admitted to practice law in the United Kingdom, British Commonwealth of Nations, France and its Oversea Departments and the European Union. His alternative was employment with the United Nations High Commission for Human Rights in Geneva Switzerland.

He became a regular at in the United Nations Secretariat in Manhattan New York City in other to established contacts with foreign representatives and delegates who were either friends of his family or knew them very well because stateless citizen and refugee whose father was also a stateless black South African and the Apartheid Republic of South Africa does not use its quota for black South Africans employment, petitioner would need another country to sponsor his employment under their own quota. Due to the extraordinary access to foreign diplomats.

Federal Bureau of Investigation Counter Intelligence Special Agents embedded as United States Mission to the United Nations diplomats accosted petitioner an "invited" him for a chat. He was back mailed and threatened with deportation to the Apartheid Republic of South Africa or Grenada should he reject their offer to work for them by informing on foreign diplomats and delegates inside the United Nations Secretariate. On the other hand, should he give in to the FBI blackmail he would be granted an expedited adjustment of status to a lawfully admitted permanent resident with a pathway to become a naturalized United States citizen and given a monthly stipend including entertainment and rent allowance totaling \$10,000.00 each month.

From both an ethical and moral point of view it was an easy decision to make to reject the FBI insidious offer. In view of the fact plaintiff is legally in the United States with a valid visa, he could not be deported unless convicted of a crime. The FBI decided on the advice of AUSA John Ryan falsely arrested petitioner on fabricated charges of violating 18 U.S.C. 1001 "making a false statement to a federal agent. Unethical AUSA and FBI special agents often abuse Section 1001 to arrest individuals when there isn't clear probable cause for another crime. See cases such as Brogan v. United States 522 U.S. 398 [1998] which eliminated "exculpatory no" doctrine, meaning even a simple denial of wrong doing, if knowingly false, can lead to a Section 1001 violation. SCOTUS expanded the scope of potential false statement charges in United States v. Yermian 488 U.S. 63 [1984]. This Court ruled that individual doesn't need to know their statement falls under federal jurisdiction to be charged under Section 1001. After his arrest petitioner invoked his right counsel.

He was mock that since he is a human rights lawyer he should represent himself pro se. He was interrogated relentlessly for more than 18 hours without water, food or bath room breaks. His response was to quote "the world's a stage where everyone plays their part" which is a well-known quote from William Shakespeare's play "As You Like It," and the quote "When you gaze into the abyss, the abyss gazes also into you" which is a famous saying by Friedrich Nietzsche in his work "Beyond Good and Evil."

The question revolves around his relationship with the United States Department of State Bureau of Intelligence & Research. His answer was that it was above their pay grade and on need to know basis. Or they should contact State Department for answers. He was told he has the bearing of a professional trained hardened soldier who has seen combat. He answered truthfully that he started receiving military training in his first year in university at age 15 as a cadet officer and was trained by the Cuban Black Wasp and Russian Special Forces as a Long Range Reconnaissance Patrol Commando and his experience as a frontline combat officer in Angola. His substantive rank was captain and field rank major by the time he

was demobilized when he was 21 and obtained three masters degrees LLM International Law combined with MA international Relations and MBA International Finance.

It was not usual, because every able black South African secondary and university students whether born in exile as petitioner who was born in Ireland or fled into exile received military training for the eventual liberation from apartheid, racism and bigotry. He agreed to take a polygraph which he passed that he was not a trained terrorist or work for Cuban Direccion de Intelligence [DI, also known as G2 which is responsible for gathering foreign intelligence. He denied being a terrorist or a Cuban intelligence service asset. He was told he has been trained to beat the polygraph and lying that he has no relationship with Cuba intelligence

For quoting Shakespear and Nietzsche and rejecting a pathway to naturalization the FBI diagnosed petitioner with a mental illness. John Ryan made an ex parte application for psychiatric evaluation. Ryan was then a failed unethical Assistant United States Attorney in the Southern District of New York without an iota of moral compass. Petitioner was transported to the United States Medical Center for Federal Prisoners in Springfield Missouri for 180 days psychiatric evaluation. While in Springfield both Ryan and the FBI contacted every foreign diplomat that petitioner had contact with at the United Nations and lied to them, that he volunteered to inform upon them in exchange for money and green card.

The Apartheid Republic of South Africa Bureau of State Security [BOSS] Station Chief in their Mission to the United Nations was also contacted and lied to that plaintiff was a Cuban trained terrorist who was arrested for attempting to bomb Apartheid airline, tourist office and mission in New York. Petitioner was barely five years old when Boss assassinated his parents in Europe. They were both surgeons and together with his family financed wars of national liberations, anti-colonial and independent movements. BOSS had a \$5 million dollars bounty on petitioner's life because although he was an officer, he decided also to train as a sniper which is a military occupational specialty [MOS] for sergeants, corporals, and privates.

His motive was to legally avenge his parent by taking out senior Boss and Apartheid armed forces senior military intelligence officers in Angola. Boss could not track petitioner because he was using his maternal grand mother's maiden name. They suspected who he was but could not identify him from training photos they had on him in Angola. While petitioner was undergoing psychiatric evaluation, the FBI and Ryan contacted and gave petitioner's mug shot to BOSS Station Chief in New York. Ryan et al signed his death warrant and created a state danger.

The African National Congress [ANC] which is Nelson Mandela Party tried petitioner in absentia as a traitor for treason he did not commit and was sentenced to death, because Ryan et al lied to the ANC observers delegates at the United Nations, that he plan to blame the ANC for bombing apartheid assets in New York to discredit the ANC, and that he was working for BOSS. Petitioner in 1980 had no experience in Federal Rules of Criminal Procedure, Federal Criminal Law codified in Title 18 United States Codes Annotated, Federal Rules of Evidence, United States Constitution, Immigration & Nationality Act, Administrative Procedure Act, Code of Federal Regulations. He gave himself a continuing Legal Education [CLE] and drafted a pro se Federal Rules of Criminal Procedure Rule 48 motion to dismiss the false arrest complaint.

It was granted in its entirety with prejudice by Hon. Charles Brieant in May of 1980 and entered an order preventing the FBI transferring plaintiff to Immigration & Naturalization Services for deportation.. Judge Brieant excoriated and humiliated by Ryan and the FBI special agents and also admonished them. He told Ryan a " British educated barrister and solicitor at law with no formal training and experience in federal criminal law took Ryan to school and taught him the ABC of federal laws, and that Ryan was unfit

to serve as an AUSA and an embarrassment to the USAOSDNY. Mr. John Martin United States Attorney subsequently sacked AUSA John Ryan.

Ryan could not leverage the prestige of a Former AUSA in the most prestigious prosecutor office in the nation into vault 100 law firms, investment banking or corporate America. His only option was the toxic sewer New York County District Attorney Office aka the "Liars Factory." Robert Morgenthau had a penchant for collecting some of the rejects who are law schools graduates or refugees who were sacked by their previous employees. Their only qualification is to be related to a member of the eastern establishment, are financiers moguls, titans of industries, taipans, the rich, famous and wealthy regardless of their inability to pass the state bar. John Kennedy Jr., and David Paterson New York's first accidental governor are prime examples. Ryan was assigned to special prosecution bureau which specializes in prosecuting mundane pedestrian municipal corruption cases which is in the lower end of the totem pole. It is smear to New York City Board of Education "rubber room" where teachers that no schools wants are reassigned to do nothing.

Ryan held petitioner responsible for his reversal of fortune. He was like disgraced former FBI agent who could only find work as a constable in a local constabulary because no big city metropolitan police department would hire such as NYC Police Department. He became very bitter, and his psychotic animus against petitioner escalated, as he watch him become very successful and wealthy by striving and thriving to achieve the American dreams of every immigrant the old fashion way which hard honest work. Petitioner became a named equity partner in a foreign own international law firm Fox, Stewart, Van Stuyvesant, Harrison & Tate et cie. He was the partner in charge of foreign courts complex litigations.

He was a litigator and appellate advocate specializing in Britain and the commonwealth and European Union equivalent of RICO, Foreign Corrupt Practices Act, Torture Victim Protection Act, and Anti-Trust and International law. He represented Fortune 500 corporations and Financial Institutions, Sovereign Wealth Funds, Real Estate Investment Trust, Venture Capital, Private Equities, Transnational and Multinationals including government entities. In view of the fact he decided to remain in the United States he was the managing partner of the e western hemisphere and each country senior partner reported too him. His main office was in Greenwich Connecticut with a Park Avenue NYC Office at his disposal.

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#### NEW YORK COUNTY SUPREME COURT CRIMINAL TERM

Petitioner was persecuted by dossier in a pre-determined star chamber inquisitorial kangaroo room court where he was stripped of all federal and state constitutional protection given to those who have never been charged with the most heinous crimes evincing depraved indifference to human life. Ryan decided to abuse the process by using law enforcement agencies in the New York Tri State greater metropolitan New York City- New Jersey- Philadelphia to target petitioner with false arrest. Petitioner was granted political asylum on the advice of Mr. George Shultz United States Secretary of State by Mr. William French Smith United States Attorney general in 1982. Petitioner also became an Immigrant Rights Advocate.

He funded Immigration Reform & Research Advocates which was a Public Interest Law Foundation funded annually with \$5 million dollars of his own money. The foundation provided pro bono legal representation for both Lawfully admitted Permanent Residents and undocumented Illegal aliens deportation who are vulnerable indigent seniors, children, disabled, victims of human trafficking, modern day slavery, domestic violence, gender discrimination, political refugees persecuted for their ethnicity,

nationality, religion, political persuasion who are dissidents and victims of manmade and natural disasters such as war, ethnic cleansing, genocide, famines and earthquakes.

We did not represent migrants who have no colorable claim for asylum but are filing frivolous and fraudulent asylum applications. We also did not represent any alien who committed prior bad acts of immigration fraud. Both petitioner's law firm immigration law practice group and law foundation had 1500 of counsels in 24 states including New York. Those who could afford to pay the freight were charge \$5000 for both EOIR Immigration Courts and Board of Immigration Appeals. To ease financial burden each client is giving payment plan tailored to meet their financial needs which is unheard of.

Each client is also subjected to a comprehensive due diligence and documents to forensic analyses to prevent immigration fraud. See 8 U.S.C. 1324[a][1][A][v][1], 8 U.S.C. 1224 [a][1][A][iv]. See United States v. Hansen 599 U.S. 762 [2023]; United States v. Sineneng-Smith 140 S.Ct 1575 [2020]. From 1983 to 1998 we prevented more than half a million undocumented illegal aliens from defrauding the federal government. Fraudulent concealment of all prior acts of immigration fraud, deportations orders, voluntary departure orders, unauthorized reentry, document fraud, benefit fraud, false representation, perjured supporting affidavits was memorialized as a cause for grounds to terminate representation.

Petitioner was also a private- attorney general anti-public corruption public interest activists who specialized in exposing judicial, prosecutorial, members of the criminal defense bars, immigration judges, trial counsel offices, service representatives, political asylum and Stokes hearing officers corruption which places hem in the crosshair of New York County District Attorney Office, New York State Unified Court System Judges, Immigration & Naturalization Service sub norm EOIR Judges, Immigration & Custom Enforcement trial attorneys and United States Citizenship & Immigration Service employees from 1982-2025. In 1982 Immigration and Naturalization Service fraudulent concealed petitioner's political asylum and refugee status award letter.

In June 1986, INS and EOIR initiated a fraudulent exclusion hearing against him. The Notice To Appear [NTA] lied that petitioner was not inspected at port of entry. But the Service has his Form 1- 94 Arrival [Departure Record that he was inspected on December 28, 1979 at JFK International Airport, Multiple Entry B-2 indefinite, Emergency Refugee travelling document, Social Security Number, Alien Registration Number, Political Asylum application and award letter. Petitioner was represented by Mr. Ramsey Clark, former United States Attorney General, Mr. William Kunstler celebrated prominent civil rights attorney, Mr. Michael Stone Hooper prominent civil rights and immigrant rights attorney who were his personal friends pro bono.

United States Senator Alfonso DeAmato [R]and Daniel Patrick Moynihan [ D] intervene. Mr. George Shultz also intervened. Mr. Edwin Meese III United States Attorney General order INS Commissioner Alan Nelson to release Petitioner certified personal immigration record to the immigration judge, ordered termination of exclusion and to grant plaintiff lawfully admitted permanent resident status retroactive to 1983. Petitioner got married to a United States Citizen on July 5, 1995. She was born in Washington D.C and both her parents were born in the United States. But he decided not to use his marriage as grounds for naturalizations.

He wanted to become a naturalized United States citizen on the merit as a law abiding permanent residents that has good moral character. He became eligible on his own equity in 1990 and from 1990 to 1998 he submitted ten pre-paid Form N-400 applications for naturalization. INS fraudulent concealed them. It took the FBI 15 years to conduct a National Crime Information Center [NCIC] criminal back

ground check for naturalization in 2004, after the New York County District Attorney informed the Immigration & Enforcement that on January 14, 2023 and to issue a NTA that New York Court of Appeals denied leave to appeal *People v. Van Stuyvesant* 99 N.Y. 2d 586 [2003].

EOIR Immigration Judge Joe Miller as it was in 1986 during petitioner bogus exclusion hearing in May 2003 that there was no record that petitioner was granted political asylum denied convention against torture [CAT] and withholding of removal. In violation of Customary International Law non refoulment doctrine which is a jus Cogen. He entered a final order of deportation to the Republic of South Africa because Robert Morgenthau order him to.

The BIA alleged it does not have the jurisdiction to review question of international law, but 85% of the BIA docket involves political asylum, CAT and withholding of removal with international law implication and the United States Court of Appeals for the Second Circuit denied 8 U.S.C 1252 review of the BIA decision. Had it been petitioner was not relentless, and experience litigator United States Constitution Article III Judges in New York state would have succeeded in aiding and abetting Robert Morgenthau et al scheme to extrajudicial murder petitioner with a fraudulently obtain final order of deportation.

Joe Miller ignored the fact that petitioner was sentenced to death in 1980 for treason he did not commit and that both the United States Department of State and United States High Commissioner For Refugee recognizes petitioner status as a stateless citizen. Despite the fact that in a mistaken identity the youngest of his identical triplet brother was taken for him when he made the mistake of visiting South Africa in 1994 when Nelson Mandela became President and made his hallowed promise that his sham Truth and Reconciliation Committee would grant amnesty to those charged with committing crimes against the ANC, PAC and Africans. He was a surgeon. "Arrested" with hands tied behind his back, forced to his knees, a car or lorry tire around his neck, and kerosene poured on his body and set on fire and burn alive.

In 1994 after Ryan discovered he had mistakenly murdered petitioner's identical triplet brother, he became very desperate in his vendetta against petitioner. He induced Mary Lawson who then was a New York City Department of Health Assistant Commissioner and Assistant Vice President NYC Health + Hospital Corporation. She was a "friend with benefits" and a lifelong Bronx County resident. Ryan made arrangements with Bergen County NJ Prosecutor office to fabricate an East Orange Essex County New Jersey address for Lawson to qualify her for an order of protection, because no judge in the Bronx was willing to give her one because both NYPD female detectives Bronx County District Attorney Assistant District Attorneys spoke and visited petitioner in Scarsdale Village accompanied by Scarsdale village Police did not find her credible or was assaulted by petitioner in his alleged Bronx County home.

Lawson is a Registered Nurse with a Hunter's College bachelors nursing degree, and master degree in public health from Columbia University. She deliberately infected petitioner with chlamydia a sexually transmitted disease. She was advised by petitioner to inform her other sexual partners. She refused. Petitioner reported her to the appropriate public health city department. She admitted the truth and was fired from her position as an Assistant Vice President New York City Health + Hospital Corporation.

Everyone in petitioner's social and professional circle was cognizant of Ryan's vendetta, animus, envy, malice, vindictiveness and abuse of process against plaintiff. Lawson approached Ryan and offer to help him take down petitioner. Initially Lawson lied to NYPD that she was assaulted in petitioner's Prospect Avenue Bronx address. The problem was there was no building. It was an empty garbage strewn lot. Petitioner was a Scarsdale Village Westchester County New York, and Greenwich Fairfield County Connecticut resident.

His firm had a corporate condominium in Bergen County NJ due to its proximity to Newark NJ Liberty Airport. The false allegation of domestic violence was transposed from the Bronx NYC to Hackensack New Jersey. Unlike New York in 1994 in New Jersey a violation of an order of protection is an aggravated felony and grounds under the INA for removal. Mary Lawson lied because she was an East Orange NJ resident. She was born in the Bronx and continued to live in the coo-up city section of the Bronx where she resided in 1996.

She upgraded the false assault to kidnapping, terroristic threat, attempted murder, aggravated assault, forcible touching, possession of a combat knife, Gluck handgun. Petitioner did not own any weapon the last time he held a weapon was in Angola when he was a child soldier. He does not like weapons. It took a Bergen County NJ grand jury less than 15 minutes to return a NO BILL regardless of the fact that petitioner did not testify she was allegedly brutally beaten, but for a very light complex woman who bruised easily there was no injury or sign of trauma. She is a registered nurse but did not go to the hospital.

Lawson did not ask the condo doorman for help, no one heard her screams despite the thin walls of modern condo, and there was no prior history of domestic violence and she could not inform the grand jury the reason why petitioner allegedly assaulted and almost choked her to death, but he had both a combat knife and hand guns in his hands while she was being choked. Petitioner's attorney obtained the minutes of the grand jury proceedings after plaintiff was rearrested for an alleged violation of her bogus restraining order which was useless and unenforceable because neither petitioner nor Lawson were domiciled in New Jersey.

Twice after bench trials petitioner was acquitted. And Lawson warned not to come back in New Jersey or she would be arrested and prosecuted for filing false police complaints against petitioner. Armed with her bogus New Jersey order of protection and emboldened by Ryan et al Lawson weaponized New Jersey order of protection to terrorize petitioner. Anywhere his firm had an office or he a home Lawson the same false charges. She was rebuked in Westchester County NY; Bronx County NY twice dismissed her complaint with prejudice. She was rebuffed in Bucks County Pennsylvania, Duke County Massachusetts, and Miami Dade County.

Lawson black mailed and extorted \$250,000 from petitioner to stop her false arrest and New York's state sponsored terror against petitioner's pregnant 28 year old fiancée who had to flee from Greenwich Connecticut into seclusion in her Port Antonio Jamaica Estate. But the phone calls terror continued which triggered a brain aneurysm. It killed her and our unborn son. Her father was the CEO of an offshore banking conglomerate. He was a widower and she was his only child. The death of his only child and unborn grandson triggered depression.

He eventually committed suicide out of despair Ryan is directly responsible for the death of four of the petitioner's loved ones but he did not retaliate against Ryan. But to prejudice petition even United States Constitution Article III judges such as Lewis A. Kaplan Senior United States District Judge SDNY lied that petitioner threatened to kill, simply because he exposed Kaplan's own fraud on the court during the litigation of his Section 2254 habeas corpus petition.

Ryan cased NYPD to issue an arrest warrant because petitioner allegedly violated a New Jersey order of protection for the third time. It did not matter to Ryan that jeopardy has attached. See *Benton v. Maryland* 395 U.S. 784, 794 [1969] cf *Gamble v. United States* 587 U.S. 678 [2018] upheld the dual sovereignty doctrine, reiterating that the Double Jeopardy Clause only bars successive or concurrent prosecution by the same sovereign. But here petitioner did not violate any laws in New York. Ryan simply invoked New York State

CPLR 302 so called long arm statute to assumed a New Jersey felony where petitioner was acquitted but the same changes. If we are to accept this Court convoluted reasoning, it was permissible for the New York County District Attorney Office to orchestrated fabrication of non-existing serious felonies in New Jersey because the Bronx Couty District Attorney twice dismissed her false complaints.

Once Bergen County NJ refused to indicted petitioner, and his was subsequent acquitted of violating Lawson fraudulently obtain NJ oder of protection, Ryan et al can simply play fast and loose willy nilly violates the ultra vires doctrines to resurrected a void New Jersey order of protection converted it in in to New York County order of protection issued by prosecutors and not a judge by fabricated a violation of a New Jersey unenforceable and discredited fraudulent obtain order of protection dual sovereignty abrogated United States Constitution Fifth Amendment Double Jeopardy Clause to give Ryans et al jurisdiction to up graded a two counts misdemeanors into fifteen counts class E felonies without benefit of grand jury indictment.

In New York State, a prosecutor cannot unilaterally upgraded misdemeanors to a Class E felony without the benefit of a grand jury indictment. New York States Constitution mandates that felonies, such as Class E felonies, must be presented to a grand jury or an indictment unless the defendant waives their right in open court and in writing. Justas a prosecutor cannot use a subpoena duce tecum to circumvent the requirements of probable cause for a search warrant to search a bank safe deposit box which is exactly what Ryan et al did on May 5, 1998. To search for a safe petition deposit box.

In New York it was a misdemeanor to violate an order of protection in 1994 which was codified as a Class A misdemeanor. Ryan took a two Counts misdemeanor and without the benefit of a grand jury in Manhattan, upgrade it to a 15 counts Class E felonies to run consecutively if convicted, exposing petitioner to 56 determinate years term of imprisonment.. Plaintiff decided to relocate permanently to Maui Hawaii to be far away from the madden crowd . For more year from the fall of 1995- 1996 petitioner was commuting once a month from Maui to Manhattan only to have Judge Cherly Chambers adjourned the matter.

Judge Chamber disingenuous gave Ryan ample opportunity to shop their fabricated immigration fraud to 24 United Stats Attorneys d State Attorney Generals in 24 states. It was the prosecution back up plan in case they lose the up graded Class E felonies. He had expensive private counsel. On December 5, 1996 counsel inform Chambers that petitioner was hospitalized. Petitioner also faxed a letter of his hospitalization. Prosecution demanded a bench warrant. Chamber gave it to them. Chambers was eventually rewarded to run in a safe democrat district in Brookly for a seat as a New York State Supreme Court Judge in Kings County.

Although not qualified due to her minimal experience presiding over misdemeanors in Manhattan Criminal Court New York County, she was elevated to an Associate Justice of the Appellate Division Second Judiciary Department by the New York Democrat Party machine endorsed by Robert Morgenthau's " I Owe You Political Favor Bank" which is more insidious and corrupt than William "boss" Magear Tweed infamous Tammany Hall. In three separate occasions petition pro se successfully lobby NYS Legislature against Chambers nomination to the NYS Court of Appeals.

In New York State the conduct of a criminal proceeding certain steps are regarded as essential. criminal prosecution begins with a formal complaint from an alleged victim or information from potential witness or investigation. An arrest ad search warrant is required on a must finding of probable cause. If arrested the accused must be brought to court for an arraignment and bail hearing. At this junction United States

Constitution Sixth Amendment right to counsel is attached. An Indigent who could not afford counsel has a choice of Legal Aid or private counsel pursuant to New York County Law Section 18b Assigned Counsel Program. If it is a felony the matter is presented to a grand jury and the District Attorney shall inform the accused of his/her rights to testify before the grand jury by waiving immunity.

Should the grand jury return a True Bill of an indictment the next step is a preliminary hearing and pre-trial omnibus motion practices. It is the norm for 90% of all New York County Supreme Court Criminal Term Judges not to hold evidentiary pre-trial hearing for indigent criminal defendants. Defendants have five days to challenge the grand jury indictment as being defective if the prosecution violated his/her right after waiving immunity to testify or if it is constitutionally defective for lack of subject matter jurisdiction. Prosecution must be resubmitted to the same or another grand jury in 30 days.

Notice must be given to the accused of crime charged. He must be given the opportunity to prepare for trial, procure witnesses, and make the necessary investigation. He should have a speedy trial. He should have a fair trial before an impartial tribunal. Finally, there should be one review of the case as a whole before an intermediate appellate court as a direct appeal which is in New York State as of right. The principle of a right to appeal in criminal cases is well established in the United States. It is not, however, a requirement of due process.

In New York the omnibus pretrial hearing is primarily used in the criminal justice system to address various pretrial motions and issues before the case proceeds to trial. It aims to ensure that the case is ready to move forward by resolving any procedural or evidentiary matter such as : \* Probable Cause Hearing \*Discovery: The defense may request and the prosecution release all evidence the prosecution intends to use at trial, including witness statements, physical evidence, and police reports aka DD5s. \*Rosario Material aka Jencks: Statements made by any witnesses the prosecution intend to use at trial and Brady materials. \*Suppression: [1] Mapp hearing to exclude or suppress physical evidence; [2] Huntly aka Miranda to exclude and suppress a statement made by the defendant.; [3] Wade to exclude identification of the defendant as the perpetrators of the crime; [4] Dunaway motion to challenge the legality of the arrest.

Sandoval/ Molineux Motion : These motions seek to limit the prosecution's ability to use the defendant's prior criminal record or bad acts to impeach the defendant's credibility during trial. \* Payton Hearing Motion to Suppress Evidence : Illegal search and seizure, confirmatory search, warrantless domestic intrusion, exigency circumstances, exclusionary rule. \*Miranda: If the defendant made an inculpatory confession statement, defense may argue they were coerced or obtained in violation of Miranda. Motion to Dismiss: Insufficiency of evidence claim. \*Speed Trial Violation Motion : If the prosecution did not prosecute within the speedy trial limitation, the defense could move for dismissals of all charges.\* Interest of Justice Motion: Defense could argue that it is not in the interest of justice to prosecute for various reasons which might include prosecution and police misconduct and lack of probable cause.

Subject Matter Jurisdictional Defect: if the Courts as in petitioner case lacked United States Constitution Article III Section 2 subject matter over immigration and violated United States Constitution Article I Section 8, Clause 18 Plenary Authority of Congress, the Necessary and Proper Clause, defendant can move to dismiss. \* Change of Venue : If defendant believes it cannot receive a fair trial in the county where the crime allegedly occurred, a change of venue could be requested. \* Bill of Particulars: The prosecution is required to give the defense a more detailed explanation against him.

In New York State Criminal Procedure Law Section 440.10 post-conviction motion served three distinct purposes [1] motion to vacate the judgment of conviction for questions of law outside the trial record such as [a] prosecutorial misconduct; [b] ineffective assistance of counsel; [c] newly discovered evidence, [d] jury misconduct; [2] to expand the trial records for questions of law preserved on the Section 440.10 motion; [3] Section 440.10.[1][h] actual innocence. The motion must be filed in the trial court. If denied an appeal is taken to the intermediated appellate court pursuant to CPL 460.10 for a CPL 460.15 for a certificate of appeal to consolidate CPL 440.10 and CPL 460.10 with direct appeal which was exactly what petitioner did pro se, because trial judges in New York does not extend either the appointment of Legal Aid Society or County Law Section 18b Assigned counsel to post conviction collateral attack motion.

In the petitioner's case it expanded the trial record to more than three dozen constitutional rupturing plain errors preserved for intermediate appellate court review. The plain errors encompass the entire ecosystem of United States Constitution Fourth, Fifth, Sixth, Eighth, Ninth and Fourteenth Amendments. Assistant District Attorney Rhaul Kale who persecuted petitioner by dossier in an inquisitorial New York County Kangaroo Supreme Court Criminal Term preside by Acting Supreme Court Justice John Stackhouse in opposing petitioner's CPL 440.10 affirmed under penalty of perjury that each of the constitutional rupturing errors raised by petitioner was already preserved on the record for appellate review.

Judge Stackhouse entered on December 12, 1999 a single word DENIED. Former ADA Elinor Ostrow affirmed under the penalty of perjury that the issues raised by petitioner of CPL Section 460.10 was also preserved on the record for appeal review. Petitioner file three separate applications for appellate counsel. His third motion was denied on May 18, 2000 on the prosecution order. See *Martinez v. Court of Appeals of California Fourth Appellate District* 538 U.S. 152 [2000]; *Evitts v. Lucy* 469 U.S. 387 [1985].

From February 1998 to July 1998 former New York County Assistant District Attorney John Ryan, Leroy Frazer, Jennier May Parker, Rhaul Kale contacted United States Attorney in 24 states include Mrs. Mary Jo White former United States Attorney SDNY and Federal Bureau of Investigations Special Agents in charge in the same District including James Kallstrom FBI Assistant Director and Special Agent in-charge of FBI New York City Field Office that petitioner was engage in an interstate scheme to defraud immigrants with valid visa. Prosecutors also contacted United States Postal Services Inspection Service and Internal Revenue Service.

An investigation was conducted and petitioner willingly cooperated. Federal prosecutors and the FBI informed New York County District Attorney Robert Morgenthau that neither petitioner. His public interest law foundation Immigration Reform & Research Advocates 1500 of counsel and foreign owned international law firm Fox, Sewart, Van Stuyvesant, Harrison & Tate et cie was engage in interstate immigration fraud, as such petitioner could not be indicted under 18 U.S.C. 1962[a][b][c][d], because there was no probable cause. See *Arizona v. United States* 567 U.S. 387 [2012].

Not satisfied Eliot Spitzer who then was New York State Attorney General and his counterpart where also contacted and were also rebuffed. Spitzer informed prosecutors he could not indict petitioner under New York State Penal Law Section 460 Enterprise corruption Organized Crime Control Act [OCCA] prosecutors even if petitioner was actually engaged in immigration fraud, because New York lacks both subject matter and geographic jurisdiction to prosecute a patently federal crimes that allegedly took place inside the Executive Office Of Immigration Review United States Department of Justice courtrooms and Immigration & Naturalization Service offices manage and operated by the United States General Services Administration in 24 states.

Spitzer also informed prosecutors that he could he invoke New York so called simply because petitioner firm and law foundation had offices in Manhattan, White Plains Westchester County, Buffalo Erie Coutu, and Albany County New York where the NYS Police has concur-ed an investigation and found no criminal acts long arm law statute See N.Y Civil Practice Law and Rules [CPLR] Section 302. See *Yesil v. Reno* 92 N.Y.2d 455 [1988].

Not to be deterred the prosecution decided to invoke CPLR Section 302 to give themselves jurisdiction over a none existing United States Constitution Article III federal subjected matter codified under 18 U.S.C 1541 unlawful issuance of a passport or visa, 18 U.S.C 1546 fraud and misuse of visas, permits and other documents, 8 U.S.C 1324 binging and harboring aliens, 8 U.S.C. 1325 marriage fraud and entrepreneurship fraud. See 8 C.F.R 1292.1 which outlines who is authorized to represent individuals in immigration matters. This includes licensed attorneys students,, law school graduates accredited representatives, lay persons, none government organizations, foreign government representatives.

Throughout the history of the United States SCOTUS has upheld all manners of federal statutes regulating immigration. By contrast, SCOTUS decisions precludes states from passing legislation that directly impinges on this area of federal dominion. SCOTUS basis for action is clearly Article I Section 8, Clause 4 of the United States Constitution specifically grants Congress the power to establishes a " Uniform Rule of Immigration." See *Harisiades v. Shaughnessy* 342 U.S. 580 [1952]; *Arizona v. United States* 567 U.S. 387 [2012]; *INS v. Chada* 462 U.S. 919 [1983]; *Perez v. Brownell* 356 U.S. 44 [1958]; *Trop v. Dulles* 356 U.S.86 [1958]; *Kennedy v. Mendoza- Martinez* 372 U.S. 144 [1963]; *Shneider v. Rusk* 377 U.S.163 [1964]; *Afroyin v. Rusk* 387 U.S.253 [1967]; *United States v. Wong Kim Ark* 169 U.S. 649 [1989]; *Chirac v. Lessee of Chirac* 15 U.S. 259 [1817].

By expressly allocating this power to Congress, this Constitution prevents confusion that would result if individual states could bestowed citizenship. Even before SCOTUS decision in *Arizona n. United States* 567 U.S. 387 [2012] there was a long line of SCOTUS precedents and case law. See *Fong Yue Ting v. United States* 149 U.S. 698, [1893] [ "asserting that the power to deport is "inherent and inalienable right of every sovereign nd independent nation, essential to its safety, its independence and welfare."]. See *Che Chan Ping v. United States* 130 U.S. 581 [1889] [Chinse Exclusionary case ]; *Trump v. Hawaii* 585U.S. 667 [2018]; *Demore v. Kim* 538 U.S.510, 521-22 [2003]; *Kerry v. Din* 576 U.S. 86 [2015]. United States Constitution Article I Section 8, Clause18.

The Necessary and Proper Clause also known as the Elastic Clase of United States Constitution Article I Section 8, Clause 18 grants Congress the power to make laws which shall be necessary and proper for carrying into executions its enumerated powers, and other powers vested in the federal government. In essence it is Congress and not Robert Morgenthau that has the implied powers beyond those explicitly listed in the Constitution enact federal laws, statutes and ratified treaties to be signed into law by Presidents of the United States.

Congress is vested with the Constitutional authority as long as those powers are deemed necessary and proper for carrying outs its other explicitly stated powers to codified the immigration and Nationality Act, Administrative Act, Code of Federal Regulations, Title 8 United States Codes Annotated see *United States v. Comstock* 560 U.S. 126 [2010]; *McCulloch v. Mayland* 17 U .S. 316 [1

819]. See the Necessary and Proper Clause aka the Elastic Clause United States Constitution A See *Gonzales v. Raiche* 545 U.S. 1, [2005]; *Printz v. United States* 521 U.S. 898 [1997]; *Alden v. Maine* 527 U.S. 706 [1999]; *Missouri v. Holland* 252 U.S. 416 [1920].

United States Constitution Article I Section 8, Clause 3 grants United States Congress the power to regulate commerce with foreign nations, with Indian Tribes among several states including petitioner's law firm and public interest law foundation practice of immigration law in 24 states including New York not the New York City Council or the New York States Legislature. *Pork Producers Council v. Ross* 598 U.S. 356 [2023]; *Snyder v. America Beverage Assn* 571 U.S. 817 [2013]; *Tennessee Wine & Spirit Retailers Assn v. Thomas* 588 U.S. 504 [2019]; *Murphy v. NCCA* 584 U.S. 453 [2014]; *Bibbs v. Navajo Freight Lines Inc* 389 U.S.520 [1959]; *Gibbons v. Ogden* 22 U.S 1 [1824]; *United States v. Lopez* 514 US.549 [1995]; *Wickard v. Filburn* 317 U.S. 111 [1942].

In *Kansas v. Garcia* 306 Kan. 113 401 P.3d 588 [2017] [first judgement]; 306 Kan. 1100, 401 P.3d 155 [second judgement]; and 306 Kan.110, 401 P. 3d 1599 [third judgement] Kansas Supreme Court in three cases reversed the convictions of three unlawfully undocumented aliens conviction for state identity theft and false information. The state court held that the provision in the Immigration Reform and Controlling Act of 1986 [IRCA] expressly preempted the state statutes at issue insofar as they related to those prosecutions. The state identity statutes criminalize "the using of 'any' personal identifying information' belonging to another person with to defraud' that person or anyone else" to receive benefits.

The state false information statute criminalized "making generating distributing or drawing' a written' instrument' with knowledge that it false states or represents some material matter' and with intent to defraud, obstruct the detection of a theft or felony offense induce official action. The respondents had used stolen Social Security numbers on their I-9 and W-4 forms when they were applying for jobs and had been convicted of either or both of these states statutes.

IRCA makes it unlawful to hire unauthorized aliens and states that the I-9 form' 'and any information contained in or appended.. may not be used or purposes other than for enforcement of" certain sections of the INA. The respondents argued that the Kansas statute had to defer to federal law when it came to using he information on the I-9 for something other than securing employment [ i.e., their prosecutions]. See United States Constitution Article VI Clause 2 Supremacy clause. See *New York v. Compagine General Transalatique* 107 U.S. 59 [1883].

The case was appealed to SCOTUS see *Kansas v. Garcia* 589 U.S. 191, 211-12 [2020] where the issue before the Court was whether the Kansas statutes were expressly or impliedly preempted by IRCA. In 2020 Justice Alito, writing for the majority reversed the judgements of the Kansas Supreme Court nd held that the statues were not preempted. All nine justices first rejected the arguments that the state statute were expressly preempted by IRCA because the language in 8.U.S.C 1324a[b][5], which generally limits use of the I-9, could not be read so broadly as to prevent any entity or person from using any information on an I-9 including things like a telephone numbers or an email address is outside of the narrow situations listed in the statute.

The Court distinguished its opinion in *Arizona v. United States* where the majority held that Congress made a concerted effort not to prosecute people working in the United States without authorization and held that IRCA made no concerted effort not to criminalize conduct relating to the use of false identity documents on tax forms. Th Court further explained that the Kansas statutes did not frustrate federal interests and the federal government fully supported Kansas's decision to prosecute the respondents. *Gade v. National Solid Waste Management Association* 505 U.S. 88,89 [1992]; *Medtronic, Inc. v. Lohr* 518 U.S. 470, 486 [1996].

Lastly, the Court determined that a disruption in federal priorities by state prosecutions does not signal the existence of preemption, because the Supremacy Clause prioritizes "the Laws of the United States" and 'not criminal law enforcement priorities or preferences of federal officers. 'Hines v. Davidowitz 312 U.S. 52,76 [1941]' De Canas v. Bica 424 U.S. 351,356 [1976] superseding by Statute IRCA, Pub. L. No. 99-603, Section 101, 100 Stat. 3359, 3360-74 1986] as stated in Kansas v. Garcia 589 U.S. 191 [2020]; Arizona v. United States 576 U.S. 399 [2012] Chamber of Commerce v. Whitting 563 U.S.582, 594 [2011] Arizona v. United States.

Petitioner had three retained private defense counsel on retainer immediately former ADA John Ryan return a defective indictment against him on July 28, 1998. On two counts of scheme to defraud in the first degree N.Y Penal Law 190.65[1][a][b][c]; four counts of grand larceny in third degree N.Y Penal Law 155.35; four counts of grand larceny in the third degree N.Y Penal Lw 155.30 [1]; two counts of attempted grand larceny in the third degree. N.Y Penal Law 110.00/155.3 and one count practicing immigration law or appearing as an attorney at law representing aliens without being admitted or registered in violation of N.Y Judiciary Law Section 478.

His retained counsels were intimidated by former ADAs James Kindler, John Ryan, Rhaul Kale, and Jennifer May- Parker intimidated his attorneys with fee forfeiture by lying that their fees was the proceedings of petitioner's alleged non existing international criminal enterprise and be indicted as co-conspirators should they not abandon his defense, which they cravenly did, without refunding the \$100,000.00 retainer paid individually to each counsels. A prosecutor has enormous power over a criminal defendant's fate and a defense lawyer is often the only person standing in his or her way. A diligent defense attorney will speak out when a prosecutor withholds critical information, exculpatory evidence, or engages in other egregious behavior.

Some prosecutors enjoy going toe to toe with opposing counsel or at least recognize that our system of justice is an adversarial system of justices that requires such skirmishes. Other seeks revenge like those in the New York County District Attorney Office and they are enable by trial judges who were mostly former assistance district attorneys. When prosecutors threatens defense counsels for doing their jobs, they chill that representation. Unfortunately, bullying and intimidating behavior by prosecutors is really checked, and when complaints are filed in New York State Supreme Court Appellate Division First Judicial Department Attorney grievance Committee it has been the custom of Chief Counsels such as Jorge Dopico Presiding Justice Dianne Renwick and their predecessors in office to sweep the complaint under the rug.

On May 5, 1998 former ADA Jennifer May Parker currently an AUSA and Chief Appels Bureau in the United States Attorney Office Eastern District of North Carolina, Rhaul Kale also now an AUSA in the District of Connecticut and John Ryan who was fired as an AUSA in the Southern District of New York before becoming a New York County Assistant District Attorney used a subpoena duce tecum to burglarized petitioner safe deposit box located in the Dime Savings Ban of New York FSB Canal Street branch New York City branch.

20.5 million British Pound sterling's in gold coins, bullion certificates of deposits, precious metals certificates, investment grade diamonds which today are worth more than \$261.5 million dollars was looted. \$1.5 million dollars from a trust fund deposited in petitioners' bank account in 1993 was also looted. United States v. Monsanto 491 U.S. 600 [1989]; Chaplin & Drysdale Chartered v. United States 491 U.S. 617 [1989]; Luis v. United States 578 U.S. 5 [2016].

Petitioner could not be afforded to retain new counsel because prosecutors froze his bank accounts. See *United States v. Stein* 440 F.Supp. 2d 315, 463 F. Supp 2d, 459 SDNY 2006], 435 S. Supp 2d 330, 495 F. Supp 2d. 390, and 424 F. Supp 2d 720. Without a court order of the forfeiture petitioner forfeited \$262.5 millions of dollars. See *Timbs v. Indiana* 586 U.S. 146 [2018]; *Bernis v. Michigan* 516 U.S. 44 [1996]. Petitioner incorporated a motion to proceed pro se without standby counsel in his omnibus motion.

It was granted on September 18, 1998 by Judge Hubert Altman. See *Faretta v. California* 424 U.S. 806. [1975]. Prosecutors had already violated *Gideon v. Wainwright* 372 U.S. 335 [1963]; *Johnson v. Zerbst* 304 U.S. 458, 462 [1938]; *Betts v. Brady* 316 U.S. 455 [1942]; *Scott v. Illinois* 440 U.S. 367 [1979]; and violated his right to counsel of choice *Luis v. United States* 578 U.S. 5 [2016], *United States v. Gonzalez-Lopez* 548 U.S. 140 [2006]; *Alabama v. Shelton* 535 U.S. 654, 667 [2002]; *Padilla v. Kentucky* 559 U.S. 356 [2010].

As it was 1980 when Ryan was an Assistant United States Attorney SDNY, petitioner once again took New York County Assistant District Attorney John Ryan to school for the second time in September of 1998 during pre-trial omnibus motion. As expected, Ryan committed perjury by lying that petitioner did not file a CPL 190.50 grand jury immunity waiver motion to testify on his own behalf. Judge Altman denied dismissals of the defective indictment. At trial in view of the fact that petitioner has "receipts which were incontrovertible evidence proving the veracity of his claim First Executive Assistant District Attorney James Kindler he was served and passed on the waiver to Ryan.

In *Bush v. Gore* 531 U.S. 98, 110 [2000] this Court reviewed Florida State Supreme Court determinations of State law in Constitutional cases. Here New York Unified Court system judges made determination on a United States Constitution Article I Section 8, Clause 18 Penary Authority of Congress over immigration, the Necessary and Proper Clause which empowered Congress to make laws, the commerce clause regulating interstate Article Section 8, Clause 3 and Article III Section 2 federal subject matter immigration crime. John Ryans indictment was under New York State law statutory defective and on federal laws constitution jurisdictional defective. New York State indictment allowed prosecutors to enhance petitioner sentence to 23 1/3 to 56 years indeterminate terms imprisonment which reduced to 10-20 years indetermined terms of imprisonment.

It was neither the tainted and rigged petite jury nor Judge Stackhouse who enhance petitioner sentence as a first time offender nonviolent white collar purported crimes for theft of \$45,000 from undocumented illegal aliens fabricated from a whole cloth on a repugnant verdict See *McElrath v. Georgia* 601 U.S. 87 [2024]. In essence, petitioner was conviction on a federal jurisdiction defective indictment for non-existing federal crimes which did not exist and punished on a void judgment of conviction which is nullity. See *Rummel v. Estelle* 455 U.S. 263, 271 [1980]; *Solem v. Helm* 277 U.S. 288-89 [1983]; *Ewing v. California* 538 U.S. 11, 20 [2003]; *Harmelin v. Michigan* 501 U.S. 957, 996 [1991].

ADA Rhaul Kale stipulated on the record that Ryans indictment was defective. Petitioner move pursuant to CPL 210. 25 for dismissals of the defective indictment. Instead of dismissing in furtherance of justice CPL 210. 40 trial judge John Stackhouse ruled that his question of law was preserved for appellate review. On appeal former ADA Hillary Hassler controverted Ryan by lying that petitioner declined Ryan's phantom invitation to testify. They also controverted Judge Stackhouse prestation for appellate review order, ADA James Kindler's concession and ADA Rhaul Kale stipulation See *Apprendi v. New Jersey* 530 U.S. 466 [2000]; *Blakely v. Washington* 542 U.S. 296 [2004]; *United States v. Booker* 543 U.S. 220 [2005] See *United States v. Haymond* 139 S. Ct. 2733 [2019].

Petitioner had no choice but to invoke his Faretta right to proceed pro se, because during his arraignment on August 27, 1998 Judge Marcia Khan hand pick Scott Buel an attorney with New York County Defender Service who just happen by coincident be Ryan's personal friend. It was exactly what AUSA Ryan did in 1980. Ryan once again also demanded An Article 730 of the Criminal Procedure law [CPL] for a psychiatric evaluation. See Illinois' v. Allen 397 U.S. 337, 350-51 [1970]. Pretrial Judge Hubert Altman granted petitioner Sixth Amendment right to proceed pro se without stand by counsel See McKaskle v. Wiggling 465 U.S. 168 171-72 [1984].

The prosecution handpick psychologist to conducted a 30 minutes [ evaluation] in a bull pen at 100 Centre Street New York Couty criminal Courthouse building and found petitioner incompetent to stand trial. Scott Buel presented a not-guilty as a result of temporary insanity plea bargain which was rejected by petitioner. See Indiana v. Edwards 554 U.S. 164 [2008]; Faretta v. California 422 U.S. 806 [1975].

In view of the fact that the prosecution had relied on petitioner's lack of interest in being admitted to the bar in New York, and has never practice in state court, they were very confident he would be a match against Ryan. But he took ADA John Ryan to school once again and humiliated him during pre-trial omnibus motion practice. Judge Altman granted Wade, Brady, Rosario, and Huntly. Petitioner preserve his right under Mapp to controvert the confirmatory illegal search and Seizure with a forged search warrant which was conducted on May 26, 1998 in the Worth Street Manhattan Office of Immigration Reform & Research Advocate his public interest law foundation.

Prosecutors ordered Stackhouse who was an acting appointed county Judge to countermined Judge Atman who was elected by the voters to a ten year term thus he was Stackhouse superior Faretta order. Against petitioner strenuous objection Stackhouse inserted his mistress Fredericka Miller who was an ADA with New York City Special Narcotics Prosecutor Office as lead standby counsel. See United States v. O'Mally 786 F. 2d, 786 [CA7. 1986]; United States v. James 708 F.2d. 40 [CA2.1983]; United Stats v. Provenzano 620 F.2d 985 [CA3. 1980].

There was no legitimacy in the New York County District Attorney office intimidation of petitioner's counsel with fee forfeiture and indictment as co-conspirators to induce the abandonments of petitioners defense See Argersinger v. Hamlin 407 U.S.25 [1972]; Gideon v. Wainwright 372 U.S. 335 [1963]; Powell v. Alabama 287 U.S. 45 [1932]. Kevin Hynes the trouble alcoholic son of Chares Joe Hynes Kings County District Attorney who had already accepted a prosecutor commission as an ADA in Westchester County under Jeneen Piro was made second chair and Howard Meyer personal friend of Robert Morgenthau, James Kindler, and John Stackhouse who was commission in te class with Kindler and Stackhouse as assistant district attorneys was made third chair. See Bordenkircher v. Hayes 434 U.S.357 [1978].

Prosecutors disqualified petitioner's choice of defense counsel Morris v. Slappy 461 U.S.1 [1983]; Lakeside v. Oregon 435 U.S. 333 [1978] many of this balancing tests are unjustified and unexplained and therefore raises the specter of injustice and amies.

The only balancing tests remain or such rights as the speedy trial rights test on substantial, explicit justifications. Indeed, these few remaining balancing tests for the core criminal procedure rights are explained at length by the Court. The right to counsel of choice balancing tests is not explained, however. It therefore raise many concerns for legitimacy expressed by the court. In Ramos the Court did awa with a balancing test it had endorsed for the core of the right to a jury trial. The test asked judges to decide what features of a jury trial [i.e., unanimity], were "important enough" to impose on states and whether there were countervailing interests weighing against the features.

The Court found no persuasive reasons for keeping the test but did find harm *Id* at 1401. For the Court, this test amounted to a "breezy cost benefits analysis" to determine which features were strong enough to overcome other interests *Id* at 1401-02.. Such an analysis was manipulative. *Id*. It also raised legitimacy issues by leaving constitutional rights to judicial whim. *Id* at 1401-02. Because the harms were many and there was no stated reasons for using the test, the Court in *Chapin & Drysdale Chartered v. United States* 491 U.S.617 [1989]; *United States v. Monsanto* 491 U.S. 600 [1998].

As shown in *Ramos*, the Court is skeptical of balancing tests because of guarantees become watered ow by being subject to judicial manipulation. See *Crawford v. Washington* 541 U.S. 36, 67-68 [2004]. And the uncertainty if balancing tests which often reach results that seems confusing and arbitrary violated his right counsel see *Luis v. United States* 578 U.S. 5, 12 [2016], and *Faretta* right to proceed prose without standby counsel was also. Prosecutors and Judge Stackhouse control petitioner's choice of representation of counsel by inserting three perfidious stand by counsels suffering from an actual conflict of interest. See *Wheat v. United States* 407 U.S.153, 158-162[1988]; *Chandler v. Fretag* 348 U.S.3 [1954] thus creating an unconstitutional hybrid. See *McCoy v. Louisiana* 584 U.S. 414 [2018].

Frederica Miller, Kevin Hynes, and Howard Mayer petitioner's unwanted standby counsel did absolutely nothing in support of his defense. Instead, Fredricka Miller assisted ADA Rhaul Kale in packing the jury with New York State Unified Court System and District Attorney offices employees who were mostly women and Caribbean Americans. The Undocumented illegal aliens who perjured themselves in exchange of prosecution hallow promises that they would be granted "green cards" were mostly Caribbean Women. *Baston v. Kentucky* 476 U.S. 79 [1986] and *Duren v. Missouri* 439 U.S. 357[1978] .

In petitioner case Miller and petitioner jointly conducted *voire dire* and she and ADA Rhaul Kale systematically use preemptory challenges to exclude Caucasian male with post graduate education in violation of United States Constitution fourteenth Amendment Equal Protection Clause Th venire violated United States Constitution Sixth Amendment's far cross section requirements for juries by specifically excluding male, Muslims, Africans, and Caucasians, Europeans, Asian, Japanese, Chines, Russians. See United States Constitution Article III Section 2, Clause 3. See *Duncan v. Louisiana* 391 U.S. 145, 149-50 [1968].

The jurors ate lunch with prosecution witness in te same restaurant *Mattox v. United States* 146 U.S. 140, 150 [1892]. The Jurors *voire dire* Craig DeBernardise corrupt unethical EOIR Immigration Judge from Philadelphia who was a prosecution witness and target of petitioner' s private attorney general anti-public corruption activities *Morgan v. Illinois* 504 U.S. 719,729 [1992]; *Irvin v. Dowd* 366 U.S 717, 722 [1961]. DeBernardise was subsequently fired by United States Department of Justice [Main Justic].

A Caucasian male jury whom petitioner selected was a post graduate journalist student who during *voire dire* stated if petitioner prove he is a victim of a malicious, selective vindictive prosecution, and that the state lack United Constitution Article 1 Section 8, Clause 18, United States Constitution Article Section8, Clause 3; Article III Section 2 he would vote for an acquittal., was disingenuously removed. Stackhouse, Miller and Kale lied to the juror that his service as a jury would not be needed because petitioner accepted a plea bargain offer. On the other hand, they lied to petitioner that the juror was excused due to the sudden death of his father out of state. It was a big lie.

Miller, Hynes, Mayer refused to controverted Ryan forged search warrant in the name of Bronx County New York Acting Supreme Court Judge Michael Mugulescue. Ryan cut Mogulescu signature from a previous search warrant when he was a Manhattan criminal court judge and pasted the signature on a

blank criminal court letter head which he typed out the "warrant" and then photo copied. The warrant was supported by a "Cinderella Affidavit," which refers to a situation involving a fraudulent affidavit where there is no probable cause to obtain a legitimate search warrant. Petitioner controverted the warrant before Stackhouse who lied that the warrant was genuine, later controverted by Mogulescue law clerk in response to petitioner's inquiry that Mogulescue could not have signed the search warrant because he does not have jurisdiction in Manhattan.

A pre-trial court cannot resolve the issues raised by a defendant in his omnibus motion without hearing CPL 710.60[4]; see also CPL 710.60 [2] delineating when suppression motion should be granted summary [3] delineating when suppression motion may be denied summarily. Petitioner did not waive his right to controvert Ryan's bogus search warrant. See *People v. Lopez* 6 N.Y.3d 248, 256 [2006]; *People v. Thomas* 34 N.Y.3d 54,557 [2019] cert denied 140 S.Ct 2634 [2020]; *People v. Sandera* 25 N.Y.3d 34 [2015].

The question of prosecutors investigators Chung and Harrington burglary of petitioner's private home in Scarsdale village Westchester County New York with a stolen key has not been addressed by New York State Supreme Court County of New York, Supreme Court Appellate Division First Judicial Department and New York State Court of Appeals since 1998. Dwyane Egill was a trespasser who accompanied investigators to invade and burglarized Petitioner's private home. See *Olmstead v. United States* 277 U.S. 438, 446 [1928]; *Warden v. Hayden* 387 U.S. 294-, 304 [1967]; *United States v. Jones* 565 U.S. 400, 419 [2012].

Egill did not have standing to grant investigators access without a warrant. See *Silverman v. United States* 365 U.S. 505, 511 [1961]; *Katz v. United States* 389 U.S. 347, 357 [1967]; *Kyllo v. United States* 533 U.S. 27, 34-35 [2001]; *Florida v. Jardine* 569 U.S. 1, 6 [2013]. In *Van Stuyvesant v. Conway* 2007 WL 2584775 28 U.S.C. 2254 Debra Freeman former Chief United States Magistrate Judge United States District Court SDNY ruled that Dwayne Egill had standing to grant investigators access to conduct a warrantless search and seizure. See *Stone v. Powell* 428 U.S. 456 [1976]; *Brecht v. Abrahamson* 507 U.S. 619 [1993]. It was not a harmless error. See *Jones v. United States* 362 U.S. 257 [1960]; *Rakas v. Illinois* 439 U.S.128 [1978]; *United States v. Matlock* 415 U.S. 164 [1974]; *Illinois v. Rodriguez* 497 U.S. 177 [1990]; *Fernandez v. California* 571 U.S. 2092 [2014]; *Georgia v. Randolph* 547 U.S. 103 [2006] cf *United States v. Matlock* 415 U.S. 164 [1974].

There was no exigency circumstance which prevented the prosecution from obtaining a search warrant from a Westchester County New York Supreme Court Justice. See *Riley v. California* 573 U.S.373 [2014]; *Michigan v. Fisher* 558 U.S. 45 [2009]; *Kentucky v. King* 563 U.S. 455, 459 [2011]; *California v. Acevedo* 500 U.S. 566, 569, [1991]; *Carroll v. United States* 267 U.S. 143, 158-59 [1925]; *Dunaway v. New York* 422 U.S. 20, 21314 [1979]; *Chambers v. Maroney* 399 U.S. 42 [1970].

Egill was a messenger employed by Eloise Nurse Paterson the Attorney in charge of petitioner's firm Manhattan office immigration law practice group has standing to give investigator permission to search petitioner private home with a stolen key. Petitioner has never met Egill who was not a family member, friend, associate, roommate, and was not an invited house guest. See *Crawford v. Washington* 541 U.S. 36 [2004]; *Smith v. Arizona* 114 S. Ct. 1785 [2024]; *Bullcoming v. New Mexico* 564 U.S. 647 [2011]; *Davies v. Washington* 813 U.S., 323 [2006]; *Melendez-Diaz v. Massachusetts* 557 U.S. 308, 312 [2009]; *White v. Illinois* 502 U.S. 346, 365 [1992].

Egill testified before the defective grand jury as a witness, but vanished at trial, and although listed as a witness for the defense petitioner could not compel him because lead standby counsel Fredericka

Miller rendered a sewer process service subpoena. The prosecution violated both United States Constitution Confrontation and Compulsory Process Clause See *Washington v. Texas* 388 U.S. 14, 25 & n.2 [1967]; See *Pennsylvania v. Ritchie* 480 U.S. 39,56, [1987]; *Chambers v. Mississippi* 410 U.S. 284, 302 [1973]; *United States v. Nixon* 418 U.S. 683 [1974]. 18 undocumented illegal aliens grand jury witness, 6 investigators and two alibi witness also vanished. 32 witness for the defense were prohibited due to prosecutors misconduct See *Taylor v. Illinois* 106 S. Ct. 646 [1988].

There was no exigency circumstances because petitioner was more than 8000 miles in Hong Kong. In view of the fact prosecutor were cognizant that they did not have probable cause they could not apply for a search warrant in the Westchester County Supreme Court in White Plains New York to search petitioners Scarsdale Village Westchester County NY private home. See *United States v. Knight* 534 U.S.112, 118-19 [2000]; *Ohio v. Robinette* 519 U.S. 33, 39 [1996]; *Wyoming v. Houghton* 526 U.S. 295, 300 [1999].

Petitioner controverted Ryans forged order before trial Judge Stackhouse who made a cursory inspection of the warrant, and then on the record lied he recognized Judge Mogulescue signature but cannot explain why a judge in the Bronx County issued a search warrant for a criminal matter in New York County Supreme Court on a Manhattan criminal court letter head. See *United States v. Knight* 534 U.S. 112, 118 [2001]; *Coolidge v. New Hampshire* 403 U.S. 443, 492 [1971] [Harlan, J., concurring]; *Payton v. New York* 455 U.S. 573, 621 [1980]. [Renquist J., dissenting]; *Robins v. California* 453 U.S. 420, 438 [1981] [Rehnquist J., dissenting]; *Capenter v. United States* 138 S. Ct. 2206, 2243-44 [2018] [Thomas J., dissenting].

ADA Rhul Kale was very incompetent and he did not even meet the minimal standard of competency. Fredericka Miller decided to come out of the closet as a shadow prosecutor. She was the custodian of petitioner trial exhibits. She substituted the bait number of exhibits in evidence with those marked only for identification. Whenever petitioner attempted to use what he rightfully presumed was his exhibit in evidence to cross examine the prosecution's own perjured witnesses, Miller objected on behalf of a clueless ADA Rhul Kale. Her lover Judge Steakhouse sustained Miller's objection on the record. *McKaskle v. Wiggins* 465 U.S. 16, 170 [1984].

Miller ordered Stackhouse to redact portion of any inculpatory evidence in exhibits proving the culpability of prosecution in fabricating the crimes against petitioner. Undocumented illegal aliens certified immigration personal records A-Files were *Brady v. Maryland* 373 U.S. 83 [1963] exculpatory evidence

The A-Files contain all prior bad acts of immigration fraud, lack of good moral character designation by immigration fraud as reasons for denials of all prior fraudulent immigration applications filed by the "victims" which contradicted ADA Kale's bald face lies that the aliens were a paragon of virtue with valid immigration visas. Prior orders of deportation, voluntary departure, criminal records, fraudulent mis use of social security numbers to obtain welfare benefits. Ryan disobeyed Judge Altman Brady's orders. See *United States v. Augurs* 42 U.S. 97 [1976]; *Giglio v. United States* 405 U.S. 150 [1972].

Immigration & Naturalization Service investigation and deportation officers were not in support of petitioner's prosecution because they were cognizant of the fact it was the standard policy of both his law firm and public interest law foundation to notify immigration judges they were terminating legal representation for cause. Immigration practitioners do not generally have access to an alien's certified personal records which embolden aliens into fraudulently concealing prior bad acts of immigration fraud. They attempt to use fraudulent documents and perjured affidavits upon retaining petitioner's firm.

Petitioner was deprived his right to counsel Gideon v. Wainwright 372 U.S. 335 [1963]. He did not wived it Godinez v. Moran 508 U.S.389, 395-96 [1993]; Dusky v. United States 362 U.S. 402 [1960]. He had no choice but to involve his Sixth Amendment pro se rights. Judge Altman in accordance with United States Constitution Sixth Amendment granted petitioner Faretta v. California 422 U.S 806, 835 [1969] pro se rights. Judge Stackhouse violated United States Constitution Fourteen Amendment Due Process by c creating hybrid representation. See Evitts v. Lucey 469 U.S 401 [1985]. Petitioner did not waive his right to counsel Woodson v. North Carolina 428 U.S. 280, 305 [1976] ; Indiana v. Edwards 554 U.S, 164, 171[2008]; Boykin v. Alabama 395 U.S. 238, 242-43 [1969]; McKaskle v. Wiggins 465 U.S. 168, 176-77 [1984].

The Unethical conduct of the New York County District Attorney Office in this case shock the conscience. Petitioner was prosecuted for upholding the law and abiding by the vaunted models rules of professional responsibility. United States v. Morisson 449 U.S. 361, 366 [1981]; Morrisett v. United States 342 U.S. 246, 250-51[1952]. The criminal behavior of prosecutors is a primer for prosecutorial misconduct. United States v. Whren 517 U.S. 806, 813 [1966]; Oregon v Kennedy 456 U.S. 667, 675 [1982].

Once a client has been accepted while undergoing due diligence back ground investigation and forensic analysis of documents by petitioner's firm an Order To Show Cause [OSC] is filed with INS. Berger v. United States 295 U.S. 78 [1935] In response INS will issue a Notice To Appear [ NTA ] which is a charging instrument listing any prior contacts the alien might have had with INS and grounds for the aliens inadmissible. Black v. United States 385 U.S. 26 [1966]; Puckett v. Elem 514 U.S. 765,768 [1995].

Once confronted with the NTA aliens bent on committing immigration fraud would simply vanish. In his closing statement Rhaul Kale lied that suspension of deportation repealed by cancellation of removal and the violence against women act was not codified in in the Immigration and Nationality Act or Title 8 United States Codes Annotated. That they were fabricated by petitioner in an elaborated scheme to defraud. He also stated that each of the "victims" had no prior contact with INS and there was no such thing as an alien certified personal records [A-Files] and numbers [A- Number].

According to Kale absurdities petitioner was an INS agent, who placed legal aliens in deportation and got very wealthy, because once deported INS rewarded him with the aliens bank accounts and property. Undocumented aliens from the Caribbean were entitled to political asylum, and once a filing fee is paid their green cards automatically arrived in the mail. It did not because petitioner personally did not file frivolous and fraudulent applications for immigration benefits.

These were the caliber of petitioner's purported "victim." INS investigation department against released directly to petitioner the " victims' 'A- Files which was fraudulent concealed by John Ryan and Rhaul Kale. Petitioner was then not aware of Miller's perfidy, mendacity, sabotage, and complicity with the prosecution as their shadow prosecutor embedded in his defense as a spy and saboteur. He told her about his thrive of Brady materials. She informed prosecutors who ordered Manhattan House of Detention Security to raid his cell and confiscated those Brady. Stackhouse ordered Miller to take possession of exhibits that was not confiscated for "safe keeping," which gave Miller ample opportunity to switch bait numbers of exhibits in evidence with those marked for identification

Whenever Petitioner attempted to use what he presumed was exhibits in evidence Miller would on the record objected on behalf of the prosecution, Stackhouse sustained her objections. She even refused to leave the defense table after her perfidy and mendacity was exposed, her service was terminated in open court by petitioner in front of the rigged, tacked and tainted petit jury which seems not be concerned

with Judge Stackhouse judicial corruption, ADA Rhaul Kale Prosecutorial misconduct, and Frederick Miller unethical misconduct and violations of the vaunted rules of professional responsibility

#### NEW YORK STATE RULES OF APPELLATE PROCEDURE

SCOTUS has repeatedly declined to recognize a due process right to appeal in either a criminal or civil cases. Instead, it has repeated the anachronistic nineteenth century dicta denying the right of appeal and it has declined petitions for certiorari in both civil and criminal cases that seek to persuade the Court to reconsider that position. The right to appeal protects both private litigants and the justice system as a whole. First doctrinal consistency necessitates the explicit recognition of a constitutional right to appeal a right that SCOTUS's criminal and punitive damages doctrines have already implicitly recognized.

The modern procedural system has developed in a way that relies on appellate remedies as part of fundamental due process. Traditional procedural safeguards such as the jury trial may once have sufficiently protected due process right but as eliminated by petitioner the New York County Inquisitorial Kangaroo Star Chamber Supreme Court was stacked and rigged by ADA Rhaul Kale and Frederick Miller with NYS Unified Court System and District Attorney Office employees with the approval of trial judge John Stackhouse. It did not protect petitioner because not only was he prosecuted and persecuted by dossier, he was also stripped off all federal and state constitutional rights. In modern era, however, the Sixth Amendment right to a jury trial by a petit jury of your peer represents a cross section of the community and does not violate either Baston or Duren as today a legal fiction.

The jury trial protection has diminished thus the reliance on appeals has grown. As a result, if appellate remedies are removed from the procedural framework, the system as a whole cannot provide adequate due process as evident in New York State Supreme Court Appellate Division First Judicial Department fraud on the court. Recognizing constitutional protection for appellate rights would also express a normative policy choice, promoting the values of institutional legitimacy, respect for individual dignity, predictability, accuracy. Appellate procedure has earned a place in our contemporary understanding of due process; it is time to recognize its role as a fundamental element of fair judicial practice.

One of the most striking features of appellate courts in the United States in comparison to the United Kingdom, Canada, Australia, New Zealand and the British Commonwealth of Nations is in the United States appellate court rarely reverse lower courts decisions no matter how egregious including fraud on the court, prosecutorial misconduct, jury tampering, unethical judicial misconduct, ineffective assistance of counsel, witness tampering subornation, of perjury, vindictive malicious or selective prosecution including complement of exculpatory favorable evidence. No one could correctly guess that the outcome on appeal about 90% of the time, knowing anything about the issues involved, by predicting that the appellate court will affirm the lower court decision. Every other factor thought to explain appellate court decision making pales in comparison to how a case was decided below.

B[I].

#### Preservation of Questions of Fact and Law for Intermediate Appellate Court Review.

In New York, as with any other jurisdiction a defendant must preserve on the record any question of law or mixed questions of law and fact for appellate review. In Petitioner case Appellate Division First Judicial Department Associate Justice Ernst Rosenberger granted a CPL 460.15 certificate of appeal consolidating CPL 440.10 and CPL 460.10 with direct appeal. To preserve a claim for appellate review, three

general prerequisites must be satisfied First there must actually be a specific ruling made by a trial judge. Next the defendant must object to the judge ruling regardless of whether the objection is sustained or overruled. Finally the judge did not correct its rulings, and thus the issue is preserved for appellate review See *Younger v. Harris* 401 U.S. 37, 45 [1971] See CPL 470.15 [6].

Since 2009 the clash between procedural rules and appellate courts obligations to do justice has become even more profound in New York. A number of decisions from the NYS Court of Appeals in the past years indicate that the court is seeking to loosen the rules of preservation, permitting it to address more cases. Indeed, the judges of the NYS Court of Appeals went so far as to state that preservation is a mere technicality invoked by prosecutors who have a "well established tendency to pounce on every arguable imperfection in a defense lawyer's argument as a barrier to deciding the case on the merits. See *People v. Patterson* 347 N.E. 2d 898, 902 [N.Y. 1975] [emphasis added]; *People v. Beasley* 946 N.E. 2d 166, 169 [N.Y. 2011] [Smith, J. concurring]. See *Dupree v. Younger* 598 U.S. 729 [2023].

ADA Hillary Hassler and Kristen Kirk lied on direct appeal that none of the constitutional rupturing plain errors preserved in pre-trial omnibus motion, trial transcripts, post-conviction CPL 440.10, 460.10, CPLR Article 70 NYS habeas corpus was either waived or unpreserved. But during 28 U.S.C. 2254 litigation in the United States District Court for the Southern District of New York USMJ Debra Freeman cherry picked the plain errors that was "not preserved or waived" and eviscerated them, instead of adjudicating on the merit on facts and law. See *Van Stuyvesant v. Conway* 2007 WL 2584775 cf *People v. Van Stuyvesant* 279 A.D. 2d 559 [1<sup>st</sup> Dept. 2002].

The NYS Court of Appeals has made it clear that the aim of New York preservation rule is to emphasize the parties in a criminal proceeding their responsibilities in "calling attention to the trial courts errors of law which adversely affect the defendant at a time the errors are correctable. Which petitioner did but was admonished on the record by Judge Stackhouse it was not petitioner responsibility that ADA Rhaul Kale and lead standby counsels were committing fraud on the court, presenting forged evidence, suborning perjury and obstructing justice See *People v. Robinson* 326 N.E. 2d 784, 789 [N.Y. 1975].

Stackhouse even admonished petitioner further when he told both Kale and Miller that they were in violation of the vaunted rules of professional responsibility. NYS Court of Appeals has explained that for a lawyer "could sit idle by" as errors were committed and claim that error on appeal, "the states fundamental interest in enforcing criminal law could be frustrated by delays and waste of time and resources invited by defendants. *People v. Patterson* 347 N.E. 2d 898, 902 [N.Y.1976]

Petitioner made timely objections which was overruled by Judge Stackhouse. It came to the point that each time ADA Rhaul Kale open his mouth and lied or using forged evidence and suborning prosecution witnesses on direct and redirect petitioner objected which was overruled. But on the other hand, when Fredricka Miller came out of the shadow and started acting as lead prosecutor and began to object to the introducing of exhibits in evidence, because she had substituted the bate number with those marked for identification Stackhouse sustained her objections.. See *People v. Finch* 15 N.E. 3d 307, 308-09 [N.Y. 2014]; Cf *People v. Grey* 86 N.Y. 2d 10,20 [1995]; *People v. Chesnutt* 973 N.E. 2d 697, 700 [N.Y. 2010]; *People v. Hawkins* 900 N.E. 2d 946, 950 [N.Y. 2008] *People v. Albergotti* 852 N.E. 2d 1010, 1010 [N.Y. 2011].

NYS Court of Appeals has increasingly abandoned procedural restrictions to review the merits of more criminal cases. If a defendant claims his attorney was ineffective at trial, he generally has to file a CPL 440.10 at the trial court to expand the record so that the trial court can make a finding of facts as to whether the

trial defense counsel was ineffective. However, it appear on the record that apparently defense counsel was ineffective such a post-conviction morion is not required for the appellate court to determine whether the attorney was ineffective at trial. *People v. Satterfield* 488 N.E. 2d 834, 836 [N.Y. 1985].

NYS Court of appeals begins to dispensed with CPL 440.10 requirements in 2005 to 2014 four times in reversing convictions. *People v. Clermont* 999 N.E. 2d 1149 [N.Y. 2013]; *People v. Oathout* 989 N.E. 2d 936 [N.Y.2013]; *People v. Nesbit* 988 N.E. 2d 478 [N.Y. 2013]; *People v. Fisher* 967 N.E. 2d 676 [N.Y.2012]. From 1999 until 2008, the Court of Appeals dispensed with the requirement only twice *People v. Lewis* 809 N.E. 2d 1106 [N.Y: 2004]; *People v. Berroa* 782 N.E.2d1148 [ N.Y. 2000].

ADA Hillary Hassler and Kisten Kirk controverted ADA Rhaul Kale Stipulation the ADA John Ryan indictment was defective.. They also controverted by ADA James Kindler testimony that he had passed on petitioner's CPL 190 grand jury immunity waiver and trial judge Stackhouse rule that the defective grand jury question of law was preserve on the record for appellate review. See *People v. Gray* 86 N.Y. 2d 10, 20 [1995] by controverting Ryan's affirmation in opposition of dismissal of the defective indictment by lying that petitioner declined Ryans invitation to testify but Ryan also lied that petitioner did not file a CPL 190.50 grand jury immunity waiver. See NYS Constitution Article XI Section 3[a] citing *People v. Belge* 41 N.Y. 2d 60 [1976].

## B [II]

### DEPRIVATION OF AN INTERMEDIATE APPELLATE COURT DIRECT APPEAL REMEDY

Although there's no federal constitutional right to appeal a criminal conviction, States like New York, like a number of jurisdictions guarantees a first appeal as of rights by state constitution provision such as New York Article VI Section 4[k]. See e.g., *Goeke v. Branch* 514 U.S. 115, 118-119 [1995] [per curiam ] discrediting argument that there should be a constitutional right to appeal]; *Jones v. Barnes* 463 U.S. 745, 751 [1983] ["There is of course no constitutional right to appeal. . . ."]; *Ross v. Moffitt* 417 U.S. 600, 611 [1974] ["It is clear that the state need not to provide any appeal at all " ]; *Griffin v. Illinois* 351 U.S. 12, 18 [1956] [ acknowledging "that a state is not required by the federal constitution to provide appellate courts."

But the Court nothing that all of the states now provides some method of appeal from criminal convictions" *McKane v. Durston* 153 U.S. 686, 687 [1894] [ holding that the right to appeal in a criminal case is not "a necessary element of due process of law " ]. But see *Jones v. Barnes* 463 U.S. 745,756-57 [1983] [Brennan, J., dissenting ] [questioning whether the court would reaffirm prior holding that there's no constitutional right to appeal but noting "a case presenting this question is unlikely to arise. . . . [because] a right of appeal is now universal for all significant criminal convictions"]. *People v. Van Stuyvesant* 97 A.D. 559 [1<sup>st</sup> Dept. 2002] leave to appeal denied 99 N.Y. 2d 586 [2003] is the case SCOTUS has been waiting for since it seminal decision in *McKane v. Durston* 153 U.S. 686, 687 [1884] which is now unrealistic anachronistic relic give the advent of DNA and innocent projects that have actually rescue from the jaws of state sponsors murder [ execution ] of the actual innocence unconstitutionally wrongfully convicted since *Herrera v. Collins* 506 U.S.390 [1993].

Petitioner's branch manager Larry Loo was a prosecution witness. During the petitioner's pro se brutal cross examination in June of 1999 Mr. Loo assured petitioners his financial instruments and cash was available to him on demand, but on August 28 1998 Larry Loo denied the petitioner access to his bank to retain new counsels. Arguendo prosecutors who indicted petitioner for purportedly defrauding

undocument illegal aliens of \$45,000.00 from March 1997 to February 1998. on July 6, 1999, the restitution demanded, which was granted by Judge Stackhouse, did not enforced, the restitution.

Michael Eng Senior Vice President & General Counsel Demie Banc corporation instructed Larry Loo to income petitioner to give his ex-wife his power of attorney in other for to gain access to his bank accounts ad safe deposit box. after his conviction to take control of his \$263 million dollars, but until day, cannot produced even a cancelled check for \$1.5 million dollars with was allegedly given to her when she closed out his bank accounts.

Even the proverbial village idiot would be hard press to believe prosecutors and petitioner's bankers oxymoron outlandish story which strains incredulity to a breaking point that prosecutors who would eventually demanded restitution left untouched petitioner's financial assets and cash. Petitioner could not retain appellate counsels. Members of his firm and friends who offered pro bono representation were intimidated. See *Caplin & Drysdale Chartered v. United States* 491 U.S. 617 [1989]; [1989]; *Monsanto v. United States* ; 491 U.S. 600 [1989]; *Luis v. United States* 578 U.S. 5 [2016].

In New York, the procedure for raising a violation of the right to an intermediate appellate court direct appeal, United States Constitution Article VI Section 4[k]; denial of appellate counsel *People v. Garcia* 93 N.Y. 2d 42, 46 [1999]; *People v. Rhodes* 245 A.D. 2d 844; 845, 666 N.Y.S. 2d 355, 356-5 [3<sup>rd</sup> Dept. 1997]; See N.Y. Ct Rules Section 200.40; N. Y Comp. Codes R.& Regs.. tit. 22 Sections 605.5[b], 671.3[a], 821.2[a], 1022.11[a]; N.Y. Comp. Codes R.& Regs. Tit. 22. Section 671.5; see generally *People v. West* 100 N.Y. 2d 23, 2, 789 N.E. 615, 619, 759 N.Y.S. 2d 437, 441 [2003]; *People v. Arjune* 138 A.D 3d 877 [2<sup>nd</sup> Dept. 2014] or ineffective assistance of appellate counsel Article I Section 6 *People v. Stultz* 2 N.Y. 3d 277, 884 [2004]; *People v. Caban* 5 N.Y. 3d 143, 155-156 [2005]; *People v. Baldi* 54 N.Y.2s 137, 147 [1985] and United States Constitutio Fourteenth Amendment. See *Martiniz v. Court of Appeals of California* 528 U.S. 152, 163 [2000] is the ancient writ of error coram nobis. See *Korematsu v. United States* 323 U.S. 15 [1944]; *Hirabayashi v. United States* 320 U.S. [1943] [granting coram nobis]; *United States v. Morgan* 346 U.S. 502 [1954].

Previously error coram nobis was only used by courts to correct errors for which no other avenue of judicial relief was available. See *People v. Hairston* 10 N.Y. 2d, 93-94 [1961]; *People v. Bachert* 69 N. Y. 2d 593, 598-600 [1987]. The writ reappeared in New York in 1943. See *People v. Goldstein* 290 N.Y 19, 25 [1943] and it encompasses the deprivation of the right to appeal due to ineffective assistance of counsel *People v. Montgomery* 24 N.Y 2d 130, 133-134 [1969] [Montgomery claim]. The Montgomery claim restarted the 30 days' time line to file a notice of appall. Id

With the enactment of CPL 440.10 by the legislature the writ of error coram nobis was abrogated. See *People v. Corso* 40 N.Y. 2d 578, 580 [1976]. The Montgomery Claim was then codified in CPL 460.30 to permit a defendant to file a late notice of appeal by permission of the court permission which must be made with due diligence after the rime period for taking an appeal has expired, and sometimes no more than one year. CPL 460.30 [1]. There's no other extension after one year. See *People v. Corso* 40 N.Y. 2d at 58.

Since the time limits within which appeals must be take are jurisdictional in nature and courts lack inherent power to modify or extend them" *People v. Thomas* 47 N.Y. 2d 37, 43 [1979]. In some instance where the prosecution or trial judge have frustrated the appellant due to misconduct the one year exception rule has been extended if the appellate diligently in good faith attempted to comply with the requirements. *People v. Johnson* 69 N.Y. 2d 339, 341-342 [1987]; *People v. Thomas* 47 N.Y. 2d at 43.

From July 6, 1999 to September 19, 2013 petitioner made three separate applications for the assignment of appellate counsel. In New York criminal defendants have both United States Constitution Fourteenth Amendment and New York States Constitution Article I Section 6 right to appellate counsel an intermediate appellate court direct appeal as of right which is trigger by New Sates Constitution Article VI Section 4[k] right to appeal. If the appellant cannot afford counsel the state would appoint either the Legal Aid Society or a private attorney under Couty Law section 18 Assigned Counsel Program For Indigent Criminal Defendants.

Petitioner was unethically deprived the right to take an appeal to New York State Supreme Court Appellate Division First Judicial Department because his illegible had written pro se brief from Attica Correctional Facility administrative segregation special housing unit solitary confinement could not be deciphered according to New York County Executive Assistant District Attorney & Chief Appeals Bureau James Dwyer in 2001, and was not subjected by Catherine O'Hagan Wolf Clerk of the Court to an appellate panel.

Ironically it was Dwyer et al who ordered NYS Department of Corrections prison guards to torture petitioner and also order O'Hagan Wolf to deny petitioner three motions for appointment of appellate counsel and to order petitioner to proceed pro se regardless of the fact that torture had render him blind, disable with debilitating musculoskeletal and gastrointestinal injuries. O' Hagan Wolf forged the names of first department judges Isreal Rubin, Luis Gonzales, David Friedman, Alfred Lerner and Richard Wallach.

She entered a fraudulent, frivolous, incomprehensible, silent, post card boiler plate memorandum decision and order in September of 2002. She accepted a plethora of bald face lies presented by ADA Hillary Hassler and Kristen Kirk as new alternative facts that dehored more than three dozen constitutional rupturing plain errors preserved in the trial transcripts, CPL 440.10 and CPL 460 .10. which became either "waived" or "unpreserved" despite CPL460.15 order consolidating post-conviction collateral attack motions with direct appeal.

When is a judgement considered "nullity" or "void for voidness" ? See Valley v. Norther Fires & Mutual Marine Insurance Co. 254 U.S. 348 [1920]; Twinging v. New Jersey 211 U.S.78 [1908]; Scott v. McNeal 154 U.S. 34 [1987]. It means it lacks legal Force and effect from the beginning Freytag v. Commissioner 501 U.S. 868 [1991]. This arises when the NYS Unified Court System lacks Plenty Authority and Article III federal subject matter over real or imaginary crimes of United States immigration fraud.

O'Hagan Wolf affirmed an ultra vires void for voidness judgement of conviction which isa nullity procured on a defective indictment and fraud on the court on non-existing United States Constitution Article III federal subject matter immigration fraud fabricated from a whole cloth See United States v. Will 449 U.S 200 [1980]; Pennoyer v. Nef 95 U.S. 714 [1873]; Windsor v. McVeigh 93 U.S. 274 [1876]; MacDonald v. Maybee 243 U.S. 90 [1917].

New York lacks United States Constitution Article I Section 8, Clause 18 Plenary Authority, Necessary and Proper Clause to even bound petitioner for trial. See Fiallo v. Bell 430 U.S. 787 [1977]; Shaughnessy v. Mazel 345 U.S. 206 [1953]; have him convicted in a pre- determined inquisitorial star chamber New York County Kangaroo Supreme Court Yamata v. Fisher 189 U.S. 86 [1903]; where he was persecuted by dossier Chae Chan Ping v. United States 149 U.S. 581 [1889].

Petitioner was stripped of all federal and state constitutional protection Fong Yue Ting v. United States 149 U.S. 698 [1893]; in a modern day lynching above the Mason- Dixon line in Manhattan INS v. Aguire-

Aguire 526 U.S. 415 [1999] the alleged cradle of liberalism and democracy where equal justice is purported to be for all under the law. *Arizona v. United States* 567 U.S.387 [2012]; *Yesil v. Reno* 92 N.Y.2d455 [1988].

New York and every other states intermediate appellate courts have two primary functions to review individual decisions of lower tribunals for errors and to interpret and develop the law for general application in future cases file in all levels of the legal system. The legal system in most states initially contemplated a single appellate court that serviced bot functions. But throughout the twenty century , appellate courts experienced significant increase in workload as a result of various factors, including population growth, expanded post-conviction and appellate rights in criminal cases.

Another factor was increases in legislation and government regulations, expansion of appellate jurisdiction to include review of agencies decisions, and a societal trend toward resolving social and economic controversies through the legal system. The burgeoning workload resulted in a backlog of appellate cases and a growing lack of confidence in the judicial system. However, New York the Court of Appeals was established in 1847 and the Appellate Divisions of the Supreme Court in 1894 by the states Constitution, effective January 1, 1896.

It is debatable whether or not the appellate process in New York is statutory or constitutional. See *People v. Romero* 7 N.Y.3d 633,636-637 [2006]; *People v. West* 100 N.Y. 2d 23n 26 [2003] cert denied 540 U.S. 109 [2003]. The review of a Criminal Appeal is mandated by NYS Criminal Procedure Law [CPL] Article 450. There is a right to an intermediate appellate court direct appeal See CPL 450.10[1], where as there is no right to appeal to the New York State Court of Appeals which is discretionary. Compare CPL 450.90 with CPL 450.70 and CPL 450.80. Appeal is filed with 30 days by notice of appeal after a judgment of conviction pursuant to CPL 460.10 [1][a].

Petitioner did not waive his right to an intermediate appellate court direct appeal See e.g. *People v. Vagas* 88 N.Y. 2d 363, 376 [1966]. See *Johnson v. Zerbst* 304 U.S. 458 [1938] which established the standard for waiving the right to Counsel, requiring a shoeing that the waiver was knowing, intelligent, and voluntary; *Boykin v. Alabama* 395 U.S 238 [1969]; *Frank v. Magnum* 23 U.S.309 [1915]. To satisfy this burden, the record must confirm that defendant knew what he was doing that was made. *Janis v. Bookhart* 384 U.S. 1, 4, [1966]; *Adams v. United States ex rel McKane* 17 U.S.269, 279,[1942]; *People v. Howard* 50 N.Y. 2d.583, 464 [1938].

Thus, in analyzing whether a defendant has waive a particular including the right to appeal with effective assistance of appellate counsel the nature of the constitutional or statutory matters.. In New York, the right to appeal is a state constitutional right. Although the federal Constitution may not guarantee a right to appeal, *McKane v. Durston* 153 U.S. 684 [1884], Article VI Section 4[k] of New York State Constitution does.

Article VI Section 4[k] provides: that the appellate division of the supreme court shall have all jurisdiction possess by them of the effective date of this article September 1, 1982, and such additional jurisdiction as may be prescribed by law provides, however, that the right to appeal to the appellate divisions from a judgement or order which does finally determined an action or special proceeding may be limited or conditioned by law. NYS Constitution [emphasis added.]. *McKane's* is more than 13 years old federal constitutional analysis has been called into doubt. See *Jones v. Barnes* 463 U.S. 74, 756 n.1 [1983].

Under Article VI Section 4[k]'s plain text a defendant has the constitutional right to appeal a final criminal judgement. Consistent with Article VI Section 4[k] plain text the New York State Court of Appeals held in *Pollenz* that Article VI Section 4[k] establishes a constitutional right to appeal to the intermediate

appellate court 76 N.Y. 2d 264, 268-70 [1986]. The court also held Article VI Section 4[k] "render's inapplicable the general rule that the right to an appellate review is purely statutory. The legislature can expand the jurisdiction of the appellate division but cannot contract it., except with regards to appeals from orders." Id [emphasis added].

Having held that Article VI Section 4[k] means what it says Pollenz invalidated a provision in CPL 450. 10 [1] [ L.1984], C 671] that bars the right to appeal, following negotiated plea, on the grounds that the sentence was excessive 67 N.Y. 2d at 68 [holding this statute to be unconstitutional because on Article VI Section 4[k] obliged to entertain all appeals from final judgement in criminal cases, includes those rendered upon guilty pleas imposing negotiating sentencing. Post Pollenz The NYS Cout of Appeals ha in[no few than four cases ] reaffirmed that Article VI Section 4 [k] create a constitutional right that cannot be curtailed by legislative action. See People v. Lopez 6 N.Y. 3d 248, 255 [2006].

The appellate division can only "divest itself" of its jurisdiction by "constitutional amendment" citing Pollenz 67 N.Y. 2d at 269 n. 3 [ Smith, G.B. J., concurring ] with the adoption of Article VI Section 4[k] of the NYS Constitution, the appellate division's power to review and reduce sentence was deem unconstitutional citing Pollenz 67 N.Y.2d at 269; Matter of People v. Juarez 31 N.Y. 3d 1186, 1188 n. 1 [2018] acknowledge that the right to appeal final orders and judgements cannot be curtailed by statute; People v. Farell 85 N.Y. 2d 60, 64-6 [1995] [Article VI Section 4[k] fixed the floor of the jurisdiction of the appellate division as it existed on September 1, 1962]; People v. Callahan 80 N.Y. 2d 273, 284 [1992] [acknowledging that "the duty of the appellate division 'to entertain all appeals from final appeals a criminal cases' is of constitutional dimension" [citation omitted].

Yet in recent years the NYS Court of Appeals has also without mentioning Article VI Section 4 [k] or its prior decisions in Pollen repeated that the right to appeal is statutory only. Peoples v. Grimes 32 N.Y. 3d 302, 310 [2018]. ["There is no state constitutional right to appellate review only statutory in a criminal case.. ." ] [citing McKane 153 U.S. at 678 holding that the federal constitution does not guarantee the right to appeal" ].

Under the NYS Court of Appeals decision in Pollenz and the text of Article VI Section 4[k], this dictum is incorrect. Two of the courts recent decisions in People v. Andrews 2 N.Y. 3d 60 [2014] [ Grimes and Andrews ] cite federal constitution precedents cited McKane v. Duston 153 U.S. 684 [1894] and Herbert v. Michigan 545 U.S. 1 [1967] in support of the suggestion that the right to appeal in New ork State is no longer protected by either New York State Constitution Article VI Section 4 [k] of United States Constitution Fourteenth Amendment but failed to addresses under what authority does the judges of the NYS Court of Appeals has the legislative power to amended the state Constitution or why Article 1 Section 6 of the NYS constitution that guarantees the right to both trial and appellate counsels was not abrogated by either Grimes or Andrews.

But see Evitts v. Lucey 469 U.S 387 [1985]; Douglas v. California 372 U.S,353 [1963]. But of course, federal constitution precedent is irrelevant to the question of whether NYS Constitution Article VI Section 4 [k] guarantee state constitution right to appeal and the NYS Court of Appeal has already answered that state question in Pollenz holding that Article VI Section 4[k] guarantees right to appeal. See People v. Smith 27 N.Y. 3d 310, 31 [2014] ]'

' A defendant rights to appeal within the criminal procedure universe is purely statutory" ] [quoting People v. Stevens1 N.Y 2d 270, 278 [1988]; People v. Andrews 2 N.Y 3d 605 [2014] [Ther is no constitutional rights to appeal. . . . [citing federal constitutional analysis ]; People v. Nives 2 N.Y 3d 310,

314 [2004] " appealability " of determination adverse to defender cannot be presumed because 'defendant's right to appeal within the criminal procedure universe is purely statutory' quoting Stevens 91 N.Y. 2d at 278; People v. West 10 N.Y. 2d 23, 26 [2003] [ the right to appeal is a statutory right that right must be affirmatively exercised and timely asserted].

B [III]

NEW YORK STATE COURT OF APPEALS.

Petitioner was denied leave to appeal See People v. Van Stuyvesant 99 N.Y. 2d 586 [2003]. Hon. Judge Kaye's name was rubber stamped by a pool attorney with a single word Denied. Prior to her death in response to petitioner's correspondence as to why a respected ethical learned jurist and the Chief Judge of the New York State Court of Appeals aided and abetted the lower courts and the New York County District Attorney Office fraud on the court, crimes against humanity, psychological and physical torture evincing depraved indifference to petitioner's life and deliberate indifference to his health. Judge Kaye honestly responded that she did not see, or read petitioners' pro se pleadings, and it is a common practice for pool attorneys not to subject notice of appeal to a justice of the court for determination if directed by district attorneys or intermediate appellate courts clerk of the court.

B [V] [1]

UNITED STATES DISTRICT COURT SDNY. 28 U.S.C. 2254.

Petitioner filed a 28 U.S.C. 2254 petition for federal habeas corpus in the United States District Court for the Southern District of New York in 2003. See Curtis Van Stuyvesant v. Jams Conway Superintendent of Attica Correctional Facility 2007 WL 2584775. The SDNY has a very storied past history that has produced some of the best learned respected non-partisan, ethical, independent and fair jurists of reasons. Its opinions and decisions were often cited in other jurisdictions and majority opinions were published. But alas today it has become a very toxic cesspool. Corruption and partisan legislation from the bench has become the norm.

The only claim adjudicated on the "merit" by New York State Supreme Court Appellate Division First Judicial Department was the question of law regarding the people's July 28, 1998 defective indictment on United States Constitution Article Federal subject matter jurisdiction under New York Criminal Procedure Law. CPL 190.50[5][c] and CPL 210.35[4] mandates that a defendant whose right to testify before a grand jury was violated render the indictment defective. CPL 210.25, CPL 210; CPL 210.35 details a constitutional defective New York defective indictment. As required by law petitioner moved for dismissal of the indictment, but instead of resubmission ADA John Ryan lied that petitioner did not execute a CPL 190.50 waiver. Judge Altman denied motion to dismiss. But testifying as a defense witness

First Executive ADA James Kindler controverted Ryan's perjury. ADA Rhaul Kale stipulated Ryan's indictment is defective. Instead of dismissing trial judge Stackhouse ruled this question of law was preserved for appeal review. On appeal ADA Hillary Hassler & Kristen Kirk controverted Ryan, Kindler, Kale, and Stackhouse by lying that petitioner declined Ryan's invitation to testify. Petitioner raised the defective indictment under both United States Constitution Sixth and Fourteenth Amendments

Prior to 2008 SCOTUS addressed the implication of AEDPA Chevron deference to unreasonable state courts decisions Terry William v. Taylor 529 U.S. 362 [2000] set the framework for understanding AEDPA's deference to unarticulated, silent post cards state court orders. Eary v. Packer 537 U.S. 3 [2002] articulated the "contrary to" or "unreasonable application" when for example "We declined to review them in the

interest of justice. Were we to review these claims, we would reject the," Harrington v. Richter 562 U.S., 86 [2011] is not germane by United States District Court SDNY judges such as Lewis Kaplan and Jeniffer Ruchon applying it retroactively to petitioner's FRCP 60[b][1][2][3][4][6] motions.

Article III United States Judges are depending heavily on law clerks and interns who are arrogant, self-absorb, unethical and incompetent churning incomprehensible frivolous memorandum decisions are orders that has no basis in fact and. Article III Judges and United States Magistrate Judges are formulating their own judge made laws. Adjudication on the merit on fact and law has become a four letter obscene word. SCOTUS landmark cases, precedents, dictum, dicta and the Constitution are ignored by imperious judges.

Fraud upon the court, obstruction of justice, and surbornation of the perjury of New York prosecutors and deference to New ork State Unified Cout System judges oxymoron, silent, frivolous, fraudulent, post cards boiler plates memorandum decision are orders is the norm. Judges are producing unpublished decisions which would embarrass first year law schools students. In a crude cover your ass Hon. Luis Stanton 98 year senior judge who is not even ambulatory has become their "cat paw" or dupe under whose names in petitioner's case fraudulent decisions are published online on Castex, Justina, vLex, Court listener, FindLaw.

Petitioner case was flag by United States District Judge Lewis A. Kaplan who selected United States Magistrate Judge Debra Freeman. Petitioner pleaded cause and prejudice," " deliberate bypass," "miscarriage of justice," and "actual innocence." He raised the same constitutional rupturing plain errors raised in his NYS Unified Court System post-conviction collateral attack CPL 440.10 and CPL 460.10 motion since he did not have a direct appeal.

In view of the fact that there are no New York State Unified Court System decision to defer to USMJ Debra Freeman gave chevron deference to NYS Assistant Attorney General Jennifer Danburg and NYS Assistant Solicitor General Robin Forshaw brief as if the New York State Attorney General Office is a United States Regulatory Agency. Danburg & Forshaw simply plagiarized verbatim New York County District Attorney Office ADA Hillary Hassler and Kristen Kirk NYS Supreme Court Appellate Division First Judicial Department perjured plethora of bold face lies alternative facts memorandum of law that dehorned certified court transcripts, court files, pre-trial omnibus and post-conviction motions.

USMJ Debrra Miller was not only unethical, incompetent without an iota of moral compass who committed fraud on the court and obstructed justice. Which was unfamiliar with the Antiterrorism and Effective Death Penalty Act [AEDPA], Illegal Immigration and Immigrant Responsibility Act [IIRIRA]; United States Constitution Article 1, Section 8, Clause 18 Plenary Authority, Necessary and Proper Clause; United States Constitution Article 1 Section 8, Clause 3 Commerce Clause; United States Constitution Article III, Immigration & Nationality Act. 28 U.S.C 2254 [d]; cause and prejudice, deliberate by pass, miscarriage of justice, or actual innocence and SCOTUS Section 2254 jurisprudence of the interpretation of "unreasonable application," " contrary to," " deference," and the challenges of the applicable standard of review.

USMJ Debra Freeman for example state New York has concurrent Jurisdiction of real or imaginary crimes. A perfect stranger who was a trespasser Dwyne Eghill had standing to give DA investigators permission to conduct warrantless search of petitioner's Scarsdale Village Westchester County NY home. She glossed over Assistant District Attorney Eiza Ruzzow powerful alibi testimony. She ignored the prosecution lead investigator Thomas Chung testimony that prosecutor forged evidence.

USMJ Debra Freeman lied by inferring that petitioner intimidated his own 32 witnesses including two additional alibi witnesses from appearing thus there was no compulsory process clause violation. She ignored the violation of the confrontation process clause, the perfidy of lead standby counsel Frederick Miller. USMJ Debra Freeman simply regurgitated the plethora of bald face lies presented by the state, suborned perjury, ignored the vaunted model rules of professional responsibility 3.3 candor to the tribunal and committed fraud on the court.

Petitioner was recovery from an induced medical coma after a botch surgery at the Erie County Medical Center Intensive Care Unit fighting for his life, because during surgery he was infected with Staphylococcus aureus bacteria when he managed to inform USDJ Lewis Kapan that he was in the hospital. It was not a coincident that Kaplan ordered USMJ Debra Freeman to release her Report and Recommendation R&R denying habeas corpus. Against medical advice petitioner released himself and was transported to Colins Correctional Facility which is a medium for vulnerable prisoner who are elderly, infirm, young adults and sex crimes offenders.

It included prisoners with excellent prison records who have served more than 25 years in maximum security prisons and waiting for their first parole board hearing. Petitioner 28 U.S.C. 636[b][1] FRCP 72[b] motion to controvert Freeman's incomprehensible, unarticulated, frivolous, fraudulent R&R. It was denied by Kaplan as time barred citing IUE AFL-CIO Fund v. Herrman 9 F.3d 1049, 1054 [CA2.1993]. See Van Stuyvesant v. Conway 2007 WL 2584775.

Kaplan went further to praise Freeman's 78 page R&R as meticulously discredited each of petitioner's 18 claims to relief." With all due respect to this Court simply because Kaplan is an inveterate craven, mendacious incorrigible pathological liar and a sociopath does not mean every else is like him. A reasonable jurist would have contacted Collins Correctional Facility to verify the veracity of petitioner's hospitalization.

B[VI] UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

Petitioner filed a 28 U.S.C 2253 Certificate of Appealability [COA] in less than 30 days after his 28 U.S.C. 636[b][1] motion was denied by Kaplan. It was not subjected before a Second Circuit panel. As it was when Catherine O'Hagan Wolf was the Clerk of the Court in the NYS Supreme Court Appellate Division First Judicial Department, once again done her Halloween judicial black robe costume masqueraded, impersonated and forged the names of Second Circuit Judges in a fraudulent, frivolous, unarticulated, silent, post card boiler plate memorandum decision and order denying COA. She cited Kellogg v. Strack 269 F.3d 100 [CA2.2001].

B [VII]

FEDERAL RULE OF CIVIL PROCEDURE 60[b][1][2][3][4]5]6] MOTIONS.

From 2007- 2023 petitioner filed Van Stuyvesant v. Conway FRCP 60[b] motions herein Van Stuyvesant [I]; [II]; [III],[IV][V][VI] motions. Line by line, paragraphs by paragraphs petitioner using SCOTUS constitutional criminal law landmark, precedents, dictum, dicta cases to controverted USMJ Debra Freeman's R& R. He also used the Second Circuit case law and where there was a split among the circuits, he delineated each circuit case law to marshal his arguments. Respondents New York State Attorney General did not file any affirmation in opposition.

USDJ Lewis Kaplan played fast and loose with statutory construction with FRCP 60[b] with the interpretation of the Rule. See U.S v. Cleaveland Indians Baseball Co. 532 U.S.S 200 [2001]. At first he lied that petitioner was attacking the underlined New York State Unified Court System decisions. But there was no decision to attack. When caught in his big lie his new gambit was that petitioner FRCP was a successive "masked habeas corpus petition." 28 U.S.C 2244. See Gonzalez v. Crosby 545 U.S. 524 [2005]; Slack v. McDaniels 529 U.S 473, 484 [2000]. See Habeas Rule 11; Abdur Rahman v. Bell 537 U.S. 88, 95-96, [2002] [Stevens J., dissenting]. See Mattox v. United States 156 U.S. 244 [1895] ["Courts are bound to interpret the Constitution in light of the laws it existed at the time it was adopted" ].

During the litigation of Van Stuyvesant [III in 2017 petitioner used Kaplan own decision in United States 435 F. Supp 2d 330 [SDNY.2006] which was a case where Kaplan dismissed the indictment of KMPG accounts and tax attorney were charged with a \$10 billion dollars tax fraud scheme because the USAOSDNY threatened to indict KMPG should the firm continue to advance legal fees for its employees. The New York County District Attorney office assistant district attorney John Ryan intimidated petitioner three defense retained counsel whom he paid \$100,000 each with fees with which was not refunded forfeiture and indictment as co-conspirators to abandoned his defense. The First Department Attorney Grievance Committee threatened any of his staff and friends will to provided him with pro bono representation with sanctions. The First department refuse to approve pro hac vici for out of state attorney.

Petitioner accused Kaplan of being a corrupt, unethical, bias, xenophobic racist bigot and a pathological liar who has been contaminated by extraneous influence of his fellow Ashkenazi Jews in the NYS Unified Court System and New York County DA office whom he was protecting from criminal jeopardy for violating 18 U.S.C. 241, 242, 245. Kaplan retaliated by filing a false complaint against plaintiff with NYS Department of Corrections & Community Supervision parole officials that petitioner has threaten to kill him in a parole revocation scheme..

Kaplan is aware of the fact that parole revocation was a death sentence because petitioner won't get adequate treatment for blood cancer was he was sent back to Attica for 24 months. He was advice to take his complain to the FBI, which cravenly did not do being mindful of 18 U.S.C. 1001. Next he contacted Immigration & Custom Enforcement to revoke petitioner deferred removal and have him detain indefinitely in one of ICE hellish private prisons. See Zadvydas v. Davis 533 U.S. 678 [2001]. He was rebuffed.

Undeterred he contacted the Post Graduate Center For Mental Health where petitioner was in voluntary therapy for post-traumatic stress disorder, anxiety, insomnia, and debilitating pain from his incarceration and torture. He demanded that petitioner should be involuntary confinement in a state psychiatric facility for the criminally insane. He was told that only an intelligent and courageous individual would seek mental health therapy given the stigma attached to it and advise to seek help himself for his own psychosis because only a psychotic sociopath would lie to prejudice an actually innocent man with the serious charge of threatening to kill him to prejudice petitioner.

Despite three separate 28 U.S.C. 351-364 Judicial Conduct and Disability Act complaint against Kaplan with the United States Court of Appeals for the Second Circuit Judicial Council which was not calendared, 28 U.S.C. 455 and change of venue 28 U.S.C 1404 to the United States District Court Washington D.C. Kaplan refused to recuse himself in Van Stuyvesant [IV]. On three separate occasions the United States District SDNY denied petitioner's section 455 and 1404 motions. Every district court judge within the jurisdiction of the Second Circuit in New ork, Connecticut and Vermont was tainted, compromised and

contaminated by the SDNY extraneous influences. Petitioner is in a class one who has been denied his First Amendment Petition Clause for exercising his Free Speech Clause Right and discriminated because he was a devoted Sunni Muslim turn agonist in violation of the Establishment Clause and the Religious Restoration Act.

B [VII] SUPREME COURT OF THE UNITED STATES..

During the 2011 term of the Court petitioner filed a petition for a writ of certiorari take from the United States Court of Appeals for the Second Circuit in Van Stuyvesant [II] Federal Rules of Civil . Petitioner used Ohio Valley Water Co. v. Ben Avon Borough 253 U.S. 287 [1920] constitutional facts to argue that New York State does not have Concurrent Jurisdiction, Plenary Authority, and Article III federal subject matter jurisdiction over immigration law and policies.

It was calendar for conference. Less than eight weeks Madam Justice Ruth Ginsburg vacated Informa pauperis thus rendering a pro se cert worthy petition moot. Vacating Informa pauperis in a habeas corpus petition where life and liberty is at stake is a very rare occurrence in this Court. Re-argument was denied. Her excuse was petitioner petition was frivolous, malicious and vexation. Which strains incredulity to a breaking point. See Van Stuyvesant v. Conway 393 U.S. 922 [2011]. Not only was Justice Ginsburg decision an extension of the lower courts miscarriage of justice in furtherance of New York State sachem to murder petitioner extrajudicially it was also a violation of U.S. Constitution First Amend. Petition Clause

A final order of deportation at the behest of Robert Morgenthau was already entered by an incompetent, unethical, corrupt xenophobic racist bigot EOIR Immigration Judge Joe Miller who lied that there was no record the petitioner was granted political asylum and refugee status and his recognition by both the United States Department of State, and United Nations High Commissioner as a stateless citizen was irrelevant.

Immigration Judge Joe Miller was cognizant of the fact that in 1980 petitioner was sentence to death for treason in absentia which he did not commit which a state danger cause by both the FBI and John Ryan in 1980 when they lied to Nelson Mandela Party the African National Congress [ANC] that petitioner was an agent for the then Apartheid Republic of South Africa Bureau of State Security [BOSS]. Ryan and the FBI flipped the script and lied to BOSS that petitioner was a terrorist bent on destroying apartheid assets in New York including South African Airline, South Africa Tourist Off and South African Mission to the United Nation. Ryan and the FBI signed petitioner's death warrant.

New York County District Attorney office prosecutors, New York State Unified Court System Judges, Immigration and Naturalization Service sub nom United States Department of Homeland Security, and the Executive Office Of Immigration Review violated both Customary International Law non-refoulement doctrine which is a JUS COGEN and International Human Rights Law Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment [CAT] in a scheme to commit extrajudicial murder with a fraudulent final order of deportation removing petitioner to the Republic of South Africa. The Board of Immigration Appeals [BIA] alleged it does not have jurisdiction over complex immigration matter but 85% of the BIA docket consist of the denial of CAT and political asylum. See INS v. Cardoza- Fonseca 480 U.S. 421 [1987] which indirectly the Court touched on non-refoulement but glossed over it.

This is a very unique opportunity for SCOTUS to decided directly on the non-refoulement doctrine and jus cogens. In the same term SCOTUS grant cert to Hon. Elena Kagan who then was the Obama Administration United States Solicitor General in Arizona v. United States 567 U.S. 387 [2012]. Petitioner alleged "frivolous, vexatious and malicious" pro se cert worthy petition was more persuasive than that

of Madam Justice Hon Elena Kagan SCOTUS Associate Justice. SCOTUS have heard similar identical cert petitions during the same term. Despite Arizona v. United States both the United States Court of Appeals for the Second Circuit, United States District Court Southern District of New York and New York State Unified Court System continue to commit fraud on the court. See Yesil v. 92 N.Y. 2d 455 [1998]

.C.

#### CONSTITUTIONAL RIGHT TO APPELLATE COUNSEL.

The right to counsel is likewise different or an appeal. At trial, or example defendant has the right to represent himself. On appeal, however the court has the power to appoint counsel to argue the case on behalf of a convicted defendant, regardless of the person wishes.. The right to have a public defender or County law Section 18b does exist for purpose of a direct appeal. Upon proof of inability to afford counsel the appellate court will appoint an attorney.

The process of having a lawyer appointed for an appeal is slightly more involved than the process of having a trial lawyer appointed, but each person convicted of a crime has the right to the assistance of counsel on appeal See Martinize v. Court of Appeals of California Fourt Appellate District 528 U.S. 152 [2000] in which the Curt decided an appellant who was a defendant in a criminal case cannot refuse the assistance of counsel on direct appeal. This case is in contrast to Faretta v. California 442 U.S. 806 [1975], which grants criminal defendants the right to refuse counsel for trial purpose.

Petitioner "forfeited" \$262.5 million United States dollars not Mexican pesos to the New York County District Attorney Office without a court order of forfeiture. His three retained trial counsel did not refunded their fees after they cravenly abandoned petitioner any left him in a lurch because they were intimidated by prosecutors. Judge Stackhouse appointed his mistress Fredericka Miller, person friends Howard Mayer and Kenvin Hynes who were paid handsomely to sabotaged petitioner's defense to guaranteed his conviction but deprived him of even Legal Aid appellate counsel which would not have an extra cost a dime, because Legal Aid has already been funded by the Legislature. See Timbs v. Indiana 586 U.S. 146 [2018].

United States Constitution Sixth Amendment affords a criminal defendant the right to effective assistance of counsel Gideon V. Wainwright 372 U.S. 335 , 33 [1963]; Johnson v. Zerbst 304 U.S. 458 [1938] and the right to proceed pro se. Faretta v. California 422 U.S. 806, 819 [1975]. Although it appears that a defendant simultaneously could exercise both rights consistently with the Sixth Amendment, a number of jurisdiction have considered these guarantees mutually exclusive.

Thus, a criminal defendant who elects to proceed pro se often is a precluded from securing the assistance of counsel while conducting his defense. See United States v. wolfish 525 F.2d 457, 463 [CA3. 1975]; United States v. Platter 330 F.2d 271, 276 [CA2.1964]. Aligning New York with these jurisdiction the Court of Appeals in People v. Mirinda 57 N.Y. 261, 442 N.E. 2d 49, 455 N.Y.S. 2d752 [1982] held a criminal defendant who has no constitutional right to stand by counsel while conducting a pro se defense.

In New York State convicted criminal defendants are often left in the lurch by County Law Section 18b assigned counsels who don't file Notice of appeal or Criminal Procedure Law Section440.10 post-conviction motion which is extremely important to expand the record for appellate review in case due to ineffective assistance of counsel trial counsels "neglected" to preserve even constitutional rupturing plain errors in the record for appellate review. Strickland v. Washington 466 U.S. 668 [1984] resulting in a rash of Anders briefs on appeal. Anders v. California 386 U.S. 738 [1967].

Although trial transcripts was settled daily and both Judge Stackhouse and ADA Rhaul Kale had copies, Judge Stackhouse on prosecutors orders refused to give petitioner his own copy which he was entitled to because the court assigned to him standby counsel against the strenuous objections. See Griffin v. Illinois 351 U.S. 12 [1956]. Here ADA Hillary Hassler and Kristen Kirk wore two hats as advocate for the People of the State of New York and petitioner's appellate counsel because by coming perjury that the more than three dozen constitutional rupturing plain errors preserved on the record by petition were either waived or unpreserved their memorandum of law was an actual Anders brief.

Petitioner had no choice but to prosecute his CPL 440.10 motion pro se. He raised[1] lack of United States Constitution Article III federal subject matter to prosecute immigration crimes; [2] warrantless domestic intrusion illegal search and seizure; [3] confirmatory illegal search with a forge search warrant in his office; [4]; Mapp v. Ohio; [5] exclusionary rule; [6] Payton v. New York; [7] Dunaway v. New York; [8] constitutional and statutory defective indictment; [8] Brady v. Maryland; [10] NYS People v. Rosario aka Jencks Act [11] NYS People v. Huntley / Miranda v. Arizona; [12] Wade v. United States; [13] Gideon v. Wainright; [14] Faretta v. California; [15] Hybrid Representation; [16] Standby Counsel Actual Conflict of Interest; [18] Speedy Trial Baker v. Wingo ten years delay; [19] Baston v. Kentucky; [20] Duren v. Missouri; Shappard v. Maxwell Fair Trial; [21] Jury tampering Remmer v. United States [22] Prosecutorial Misconduct; [23] Judicial Misconduct; [24] United States v. Bagley False testimony; [25] Mooney v. Hollohan & Napue v. Illinois forged evidence [26] Sandstrom [27] In re Winship [28]; Griffin v. California comment that because petitioner failed to testify at trial by exercising his Fifth Amendment is evidence of his guilt; [29] Compulsory Process Clause; [30] Confrontation Process Clause [31] Failure to give alibi charge and charging the jury Williams v. Florida. [32] erroneous jury instructions such as Neder v. United States not to take into consideration why witness for the defense did not receive subpoenas and reasonable doubt.

In his affirmation in opposition ADA Rhaul Kale affirmed under the penalty of perjury that the constitutional rupturing plain errors raised by petitioner on CPL 440.10 was preserved for appellate review. Judge Stackhouse entered a one word oder stamped DENIED on December 12, 1999. Pursuant to CPL 460.10 petitioner appealed to New York State Supreme Court Appellate Division First Judicial Department. ADA Elinor Ostrow also affirmed under penalty of perjury that the same questions raised on CPL 440.10 were preserved for appellate review on the record.

In other not to default and forfeit his New York States Constitution Article VI Section 4 [k] right to an intermediate appellate court direct appeal which was both Judge Stackhouse and Robert Morganthau et al intention in denying trial transcripts petitioner decided to file his direct appeal brief without transcripts pro se. As expected prosecutor cried foul and ordered Catherine O'Hagan Wolf Clerk of the Court Appellate Division First Department to reject petitioner's brief which she did not subjected before a panel for review.

In view of the fact that the New York County District Attorney Office could not controverted petitioner's pro se CPL 440 10 post-conviction collateral attack motion and CPL 460.10 and appeal of the motion First Executive Assistant District Attorney gave an order to the Superintendent of Clinton Correctional Facility in Dannemora New York to administrative segregated petitioner in special housing [SHU] solitary confinement so as to deny him access to law library and legal research materials. From December 1999 to January 2003 which during the pendency of his direct appeal petitioner was in administrative segregation special housing unit [SHU] solitary confinement.

He was subjected to a very heinous psychological and physical torture evincing depraved indifference to his life and deliberately indifference to his health by New York State Department of Corrections & Community Supervision prison guards and medical personals. They were acting on the orders of prosecutors. See *Graham v. Connor* 490 U.S. 386 [1989]; *Hudson v. McMillian* 503 U.S.1 [1992]; *Farmer v. Brennan* 511 U.S.825 [1994], *Wilson v. Seiter*501 U.S. 249 [1991].

Due to blunt force head trauma injury from prison guards constantly blow to his head by six wolf pack prison guards petitioner became blind. Since he is left handed his fingers, hand, arm, elbow and shoulder nerves were damaged and shoulder dislocated deliberately to render his hand writing illegible and difficult to decipher. See *Kingsley v. Hendrickson* 576 U.S. 389 [2015]; [first discussing] *Holt v. Hobbs* 574 U.S. 352 [2015]; [then discussing *Davies v. Ayala* 576 U.S. 275 [2015].

Although petitioner was not diagnose by a prison forensic psychiatrist or psychologist of being mentally ill with any form of psychosis, he was also forcibly fed Thorazine and Haldol two very powerful psychotropic medications with severe side effects by prison guards, which was not prescribed by either a psychiatrist or nurse practioner. *Sell v. United States* 539 U.S. 166 [2003]; *Albright v. Oliver* 510 U.S. 266 [1994]; *Washington v. Harper* 494 U.S. 210, 221 [1990]. First he will be tasered to subdue him, then handcuff and shackle, fed with the psychotropic medication, before beaten to a bloody pulp. See *Indiana v. Edwards* 554 U.S. 164 [2008]; *Mckaskle v. Wiggins* 465 U.S. 168 [1984]

Petitioner was not treated for his injuries. *Estelle v. Gamble* 429 U.S. 97, 103 [1976]; *Wilson v. Seiter* 501 U.S. 294, 303-04 [1991]; *Farmer v. Brennan* 511 U.S. 825 [1994]. Without his consent petitioner was enrolled a phase 1 human clinical trial to test the efficacy of chemotherapies, bisphosphonates, androgen deprivation therapies and other caustic chemicals for terminally patients with metastatic cancer although at that time he did not have cancer in violation of his bodily integrity. Severe chronic acute pain was also deliberately induced to see how terminal ill cancer patients in a palliative clinical study to determine if metastatic cancer patients could tolerate pain without opioids. *Rochin v. California* 342 U.S. 165 [1951]; *Harmelin v. Michigan* 501 U.S. 957, 985 [1991].

A New York State Department of Correction & Community Supervision clinical oncologist Zale Bernstein assaulted and battered petitioner for more than seven years which caustic agents. He used synthetic female estrogens to clinically castrated petitioner in induced gynecomastia [male breast] to study a rare form of male breast cancer. Petitioner was also deliberately exposed to cancer causing carcinogens which today has manifested into blood cancer. See *Weems v. United States* 217 U.S. 349 [1910]; *Ewing v. California* 538 U.S. 11, 31 [2003]; *Graham v. Florida* 560 U.S. 48, 59 [2010]. It was under this barbaric condition at the behest of Assistant District Attorneys James Kindler, James Dwyer, Leroy Frazer, Hillary Hassler, Kristen Kirk, Elinor Ostrow et al Catherine O'Hagan Wolf order petitioner to proceed pro se on the prosecutions order. Petitioner had no access to prison law library *Bounds v. Smith* 430 U.S. 817, 828 [1977]; *Lewis v. Casey* 518 U.S. 343 [1996]. In 2001 Judge Stackhouse eventually released incomplete transcripts which was confiscated by prison guards as an alleged fire hazard *Griffin v. Illinois* 351 U.S. 12 [1956], access to even jailhouse lawyers *Johnson v. Avery* 393 U.S. 483 [1969].

Petitioner did not have type writer, desk top computers, and copier NYS Department of Corrections was fundamentally unfair and a denial of due process which also involve discriminatory treatment and a denial of equal protection because other prisoners in administrative segregation Special Housing Unit solitary confinement have law books from the law library delivered to their cells, law library clerks doing their tying and photo copies. They could also request legal research materials by mail from New York State Library Prisoners Project in Albany New York *Bolling v. Sharpe* 347 U.S. 497 [1954][ *Schneider v. Rusk* 377

U.S. 163 [1964]. SCOTUS in *Maine v. Moulton* 474 U.S. 159, 168-69 [1985] held the right to the assistance of counsel. .... is indispensable to the fair administration of our adversarial system of criminal justice. This is consistent with the Equal Protection Clause of the Fourteenth Amendment and guarantee that an indigent defendant has an opportunity to fairly present his claim within the 'adversarial system of criminal justice.' Id.

The New York State constitution provides that "at every stage of the proceedings, every person is entitled to the effective assistance of counsel of his choice or appointed by the court if he is indigent. NYS Constitution Article 1 Section 6. See *Douglas v. California* 372 U.S. 353, 357 [1963]. Subsequently SCOTUS distinguished the rights of indigent defendants seeking discrimination review at the intermediate appellate court level for the first time from a second-tier discretionary review in which the defendant applies for review from the state highest court or from the Supreme Court of the United States. *Ross v. Moffitt* 417 U.S. 600 [1974.]. New York does not guarantee an absolute constitutional right to counsel for criminal defendants appealing to the Court of Appeals in a discretionary second- tier appeal. See *Evitts v. Lucey* 469 U.S. 387[1985].

#### D

#### PROSECUTORIAL AND JUDICIAL FRAUD ON THE COURT ON APPEAL

This case presents an exceptional circumstances standing alone from other cases since the founding of the Republic by the founding fathers and the enactment of United States Constitution the framers.. New in the history of the United States has there been a situation where United States Constitution Article III Judges join force with New York State Unified Court System Judge to deny an appellant access to the court in violation of the Petition Clause.

This nation has long view a persons' ability to gain access to the court as a fundamental element of our democracy. Chief Judge Marshall in *Marbury v. Madison* 5 U.S. 137 [1803] described the ability to obtain civil redress as the "very essence of civil liberty." Id at 163. Certain groups such as prisoners enjoys a constitutional right of court access. A universal right of access has emerged it came from an unlikely source the Petition Clause of the First Amendment the "new" rights of access to the court, because a careful reading of the clause indicated the founding fathers and drafters did not mention the courts. Instead, it is the right to petition the government i.e., Congress is the last guarantee of the First Amendment: "Congress shall make no law. . . . abridging. . . the right of the people. . . to petition the government for redress of grievance.

"One of the only context in which the right to petition regularly appears is in antitrust. SCOTUS holds under its "Noer-Pennington doctrine," that petitioning activity, such as lobbying, cannot be subjected to the antitrust laws even if done for an ant-competitive motive. It was an application of the doctrine in 1972 SCOTUS announced in an antitrust case that the right of access to the courts is indeed one aspect of the right to petition. See *California Motor Trans., Co v. Trucking Unlimited* 404 U.S. 508, 513 [1972]. In *Hazel-Atlas Glass Co. v. Hartford Empire Glass* 322 U.S. 238 [1944] SCOTUS addressed the issue of fraud on the court, holding that federal courts have the inherent equitable power to grant relief in cases after-discovered fraud regardless of the term of the entry. *Hazel-Atlas* at 224.. In *Hazel-Atlas* a company created a fraudulent trade journal article to obtain a paten and subsequently relied upon the fraudulent article in a law suit to obtain damages for infringement of patent.

In finding that there was a fraud on the court SCOTUS noted that this was a simple case of judgement obtained with the aid of a witness who. . . . is believed possibly to have been guilty of perjury but was "

deliberately planned and carefully executed the scheme to defraud not only the Patent Office but the Circuit Court of Appeal." Hazel-Atlas 322 U.S. at 245.. How ever SCOTUS limited the scope of fraud on the court, emphasized that, but also "issues of great moment." Hazel-Atlas 322 U.S. at 245-246. See Liljeberg v. Health Services Acquisition Corp. 486 U.S. 847[1988]; Baba-Ali v. State 19 N.Y. 3d 627,634 [2012]. See CPLR 3126..

In Octane Fitness v. Con Health & Fitness 134 S.Ct 1748 [2014] [defining exceptional circumstance as would be relevant here. SCOTUS define the plain meaning "borrowed" definition from multiple dictionaries: "we hold then that the exceptional case is simply one that stands out from others with respects to the substantive strength of a party's litigation position considering both the governing law, the facts of the case, or the unreasonable manner in which the case was litigated." Id. Octane. See Arts4ALL Ltd v. Hancock 12 N.Y 3d 846 [2009 ]and aff'd. Arts4All, Ltd v. Hancock 13 N.Y.3d 812 [2009].

Here the New York County District Attorney office prosecuted petitioner for instructing both his law firm and public interest law foundation staff attorneys and of counsel not to violated 8 U.S.C. 1182 [a][5][A]; 1255 [i][1][B][iii]; 8 U.S.C. 1255 [1][B][C] by filing frivolous and fraudulent applications for undocumented illegal aliens. See United States v. Hansen 599 U.S.762 [2023]; United States v. Sineneng-Smith 140 S.Ct. 1575 [2020].On appeal order NYS Supreme Court Appellate Division First Judicial Department. From 2007-2025 petition filed five separate Common Law Writ of Error Coram Nobis.

Although the First Department violated New York States Constitution Article 1 Section 6 and Article 6 Section 4 [k] and United States Constitution Fourteen Amendment Due Process Clause First Department Justice Diane Renwick, Troy Webber, Tanya Kennedy, Darcel Clark, Ronald Acosta, David Friedman, Martin Shulman, Manuel Mendez continue their open ended fraud on the court which extend to NYS Court of Appeals Victoria Graffeo, Eugen Fahey, and Shriley Troutman. See United States v. Beggarly 524 U.S. 38, 47 [1998]; Liteky v. United States 510 U.S. 540 [1994] See CDR Creances S.A.S. v. Cohen 104 A.D. 3d 17 [1<sup>st</sup> Dept 2012].

#### REASONS FOR GRANITING CERTIORARI.

This petition presents severe cases of first impressions that are both of national importance and in the public interests. This nation anachronistic immigration law has not only polarized this nation it is also leading it into becoming aa dystopian society. This is a case where judges in the lower federal and courts conspired with, aided and abetted New York State prosecutors to commit fraud on the court, obstructed justice ad suborned perjury in violation of the ABA Model Rules of Professional Responsibility 3.3 and in a scheme to commit extra judicial murder with a fraudulently obtain final order of deportation. The New York State Court of Appeals has the decided important questions of United States Constitution, Law, Statutes and Treaties that is in conflict with SCOTUS, and the United States Court of Appeals For The Second Circuit.

This case is of National importance because it present this Court with a very unique opportunity to address the implications of United States Constitution Ninth Amendment, United States Constitution Fourteenth Amendment Equal Protection Clause in state intermediate appellate court criminal appeal process, the First Amendment Speech and Petition Clause. It also provides an opportunity to decide the juxtaposition of the American with Disability Act with First Amendment Petition Clause access to the court and denial of appointment of appellate counsel to a blind disabled appellant in an intermediate appellate court direct appeal with United States Constitution Eighth Amendment cruel and unusual punishment

and excessive fines. SCOTUS has also never directing confronted the egregious conduct of fraud on the court committed by judges and not by the parties themselves.

Neither has the Court confronted the miscarriage of justice and the implication of scheme to commit extrajudicial murder under color of state erroneous judgement of conviction in violation of Customary International Law Non-Refoulment Doctrine which is a JUS COGENS and International Human Rights Law Convention Against Torture by denying aliens the rights to appeal their criminal conviction particularly when the alien is a refugee granted political asylum and adjusted status to lawfully admitted permanent resident in other to deprived the alien the privileges of naturalization to become a United States citizen, the implications of United States Bills of Rights.

Since the Second Circuit's decision in *Filartiga v. Pena Irala* 630 F.2d 876 [1980], federal courts generally recognized that the of international human rights may be pursued under the Alien Tort Claim Act [ATCA] and Torture Victim Protection Act [TVPA]. In addition, courts have accepted that the expanding list of prohibited conduct may be reversed as the basis for such action. However, there has emerged in a series of cases the suggestions, if not the holding that the remedy provided for by the ATCA is only available for violations of jus cogens norms.

A Jus Cogend norm is a peremptory rule of international law that prevails over any conflicting rule or agreement. Sch a norms permit no derogations and may "be modified only by a subsequent norm of the same character. While it seems clear that an allegations that such a jus cogen norm has been violated would be sufficient to invoke such jurisdiction is far from clear. See *Kadic v. Karadzic* 70 F.3d 232 [CA2 1995]. See Vienna Convention on Law of Treaties Article 53, 1155 U.N.T.S 331, 344

United States District Court for the Westen District of New York, Southern District of New York and the United States Court of Appeals For the Second Circuit in conjunction with United States Presidents Clinton, Bush and Obama Administrations Deptmt of Justice and Homeland Security conspired with, aided and abetted New York County District Attorney Office Assistant District Attorneys, New York State Department of Corrections & Community Supervision Prison Guards, Medical Personals, Executives, New York State Attorney General Office Prosecutors, and New York State Unified Court System Judges to violate Article 14 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment [CAT].See Appendices D and E.

CAT requires states to implements mechanism in their legal system to ensure redress and an "enforceable rights to fair and adequate compensation. The United States claims to have met its obligations under CAT, notwithstanding a reservation that purports to limit the scope of Article 14's obligations to redress of torture committed "in territory within its jurisdiction such as New York State. The central characteristic of the legal concept of torture is that it is intrinsic part of official behavior. The practice of torture is a powerful institutional expression of state craft, power, and social control.

The official use of torture, even if denied in theory but used in practice, functionally means that the state [an organ of human association] uses the powers to intimidate, or sometimes even eliminate its enemies, or indeed non- enemies as in this case where New York State actors and United States Department of Homeland Security attempted in 2010 to violate the non-refoulment doctrine in an extrajudicial murder scheme with a fraudulent obtain final order of deportation against petitioner in 2002. Finally, this Court has not in over a century granted certiorari in a coram nobis petition from state courts usurpation of a United States Constitution Article III federal Subject and used it unconstitutional to silence the voice of a

dissident with a wrongfully conviction and then violated the Petition Clause of the First Amendment. Here is an opportunity.

CONCLUSION.

For the forgoing reason petitioner Curtis Van Stuyvesant Respectfully request that this Court issue a writ of certiorari to review the Judgement of the New York State Court of Appeals.

DATED: February 12, , 2026

Respectfully submit

  
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