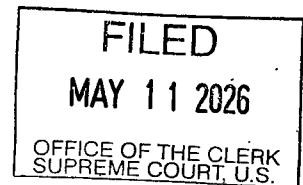


ORIGINAL

No. 25-7578



IN THE
SUPREME COURT OF THE UNITED STATES

JOSHUA KELLIER — PETITIONER
(Your Name)

VS.

WARDEN BRIAN MCAULIFFE — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Joshua Kellier

(Your Name)

36560 State Route 12E, P.O.Box 599

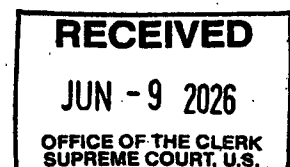
(Address)

Cape Vincent, N.Y. 13618

(City, State, Zip Code)

N/A

(Phone Number)



QUESTION(S) PRESENTED

Whether petitioner using the words "wrong or debatable" after stating Supreme Court holding or holdings that contradict the fact supported by documentary evidence of the writ makes a substantial showing of a denial of a constitutional right?

LIST OF PARTIES

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

☐ All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

- Joshua Kellier, petitioner
- Warden brian McAuliffe, Respondent (No stock ticker symbol exist)

CORPORATE DISCLOSURE STATEMENT

Petitioner is not a corporate entity. There is no parent or publicly held company owning 10% or more of the corporation's stock:

RELATED CASES

• People v. Kellier, 00757-17, Supreme Court of the State of New York, judgment said to be entered on July 01, 2024, but access to it is denied on Westlaw to Mr. Kellier.

• People v. Kellier, SMZ-727726-24, Supreme Court of the State of New York, judgment entered on July 24, 2024. Criminal Contempt Commitment papers.

• Kellier v. Mandelbaum, Complaint No: --N/A-- State Commission on Judicial Conduct Complaint, No judgment entered on the complaint filed on _____, 2026. The same complaint was submitted to Governor Kathy Hochul.

• People v. Kellier, 2024-05177, Supreme Court of the State of New York, Appellate Division 1st Dept. Judgment not entered told the court was not in receipt of the direct appeal brief.

• People v. Kellier, Docket No: N/A??, Supreme Court of the State of New York, Appellate Division 1st Dept., CPL §440.10, 440.20, 440.30 Omnibus motion request for certificate granting leave to appeal. Judgment not entered.

• People v. Kellier, Docket no: _____, Supreme Court of the State of New York, Appellate Division 1st Dept. CPL §440.20 Motion requesting for certificate granting leave to appeal. Granted. Judgment not yet entered brief submitted.

FEDERAL COURTS

• Kellier v. McAuliffe, Docket No: 25-1893, United States Court of Appeals for the Second Circuit, Judgment entered on January 15, 2026, and Mandated on February 19, 2026.

•Kellier v. McAuliffe, Index No;CV-8253(LTS), United States District Court for the Southern District of New York, judgement entered on January 16, 2025.

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APPENDIX B Order denying Certificate Of Appealability (COA)/
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 17958353."

APPENDIX D Order denying Motion for Reconsideration, dated August
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APPENDIX E Order to amend writ of Habeas Corpus/Recharacterization
 , dated January 16, 2025, Not reported in Fed. Supp., 2025 WL 21
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APPENDIX F Order lifting stay dated September 4, 2025.

APPENDIX G Order of commitment papers for criminal contempt
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APPENDIX H Order denying CPL §440.30, 440.20, 440.10 Omnibus Moti
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APPENDIX I Order denying CPL §440.20 motion dated
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 10 Omnibus motion. He acted to hold petitioner in contempt and us
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APPENDIX K Ms. Ann Thompson on August 7, 2023, acted to deny peti
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APPENDIX L Ms. Meserole Martinez acted to appoint and force Mr.
 Gary Lesser's representation as counsel and assist Mr. Mandelbaum
 with surprising petitioner with trial, without discovery.

APPENDIX M Incorporated by reference of the writ of Certiorari to
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APPENDIX N The COA was submitted/date filed September 3, 2025.

APPENDIX O Proof of retaliatory Animus for Freedom Of Speech vio
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APPENDIX P Proof of the Right to Self-Representation violation.

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

☒ reported at Not reported in fed.Rpt. 2026WL49012; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

☒ reported at Slip Copy, 2025 WL 1795353; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was January 15, 2026. Mandated: February 19, 2026.

☒ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- 14th Amendment right to due process; privileges and immunities, Equal protection.
- 6th Amendment right to speedy trial, Self- representation, and to have the Assistance of Counsel for his defense.
- 1st Amendment right to freedom of speech.
- 13th Amendment Abolishon of slavery unless duly convicted.
- 8th Amendment right to cruel and unusual punishment.

STATEMENT OF THE CASE

The Appellant was convicted at trial of Sexual Abuse in the first degree (Forcible Compulsion) 1count, Sexual Abuse in the third degree (Forcible Compulsion) 1count, 1count of Public Lewdness, 2counts of Forcible touching. The Convictions derived from the yellow cab rides in New York City on April 20, 2015, and ,2015, where petitioner drove two female passengers and was accused maliciously of making sexual contact with them via touching Amanda Robinson's buttocks during a hug, and Lieanna Micheals' breast and masturbation significantly defaming his character. This resulted in Petitioner undergoing wide spread discrimination throughout the court systems civil/criminal in New York City and employment, due process, housing, becoming homeless for 6-years, and the charges and Newspaper article and media negatively impacted his social lives/life, stay in prison, especially while he was going back and forth to court while released on his own recognizance (ROR). Petitioner was maliciously prosecuted and brought to trial twice for the same offenses and even after being found not guilty and acquitted and objected to the continuation of the prosecution, the judge allowed the prosecutor's to proceed.

No evidence was produced at neither the first nor the second trials to make a showing that actual sexual contact was made proving that element (actus reus), nor the element of physical injury or threat. Appellant/petitioner was removed from the courtroom on the day of June 30, 2024, the same day of summations was being conducted and appellant objected to the prosecutions false statements and was removed. The verdict was later found in his absence. On July 25, 2024, petitioner was sentenced to seven years in prison, 10-years probation and sex offender registration after spending the previous seven years on ROR in the states constructive custody going back and forth to court, without being credited with the time to diminish the sentence imposed. This was inconsistent with the requirement of CPL §70.30(3). At trial Petitioner was unfairly held in criminal contempt of court and forced to continue trial with his hands cuffed behind his back each day in front of the jury, without having access to any documentation. Petitioner was never given pretrial transcripts, evidence, discovery. The state forced counsel petitioner objected, and on June 24, 2024, petitioner challenged the court's lacking subject matter/statutory jurisdiction under CPL 30.30(1)(A)&(B) and 18 U.S.C. 3282(a), etc. Petitioner also challenged/objected to the second trial in violation of his fifth amendment right to double jeopardy. The judge still continued and refused to give transcripts for June 24, 2024. Petitioner filed over five motions to dismiss alleging the prosecutor failed to bring him to trial within the 6-months for the charged felonies and section 4 of Cpl 30.30 and (A) of 18 U.S.C. 3282 was used to abridge petitioner rights to immunity under the constitutions state/federal and federal law. This was inconsistent with the 14th amendment prohibition against the state. Nor shall any state make or enforce any law which shall abridge the privileges and immunities of citizens of the United States.

REASONS FOR GRANTING THE PETITION

•This petition is after a final judgement and is of public importance as CRIPA 42 U.S.C. §1997a(a) authorizes the United States to seek injunctive relief against any state, political subdivision of a state, of official, or employee, or agent thereof whenever the attorney general has reasonable cause to believe such party is subjecting institutionalized person to "grievous harm" caused by "egregious or flagrant conditions which deprive [them] of any rights, privileges, immunities secured or protected by the constitution or laws of the United States," and that the deprivation is pursuant to a pattern practice of resistance to the full enjoyment of such right, privileges, immunities."

•Mr. Kellier was deprived of the right to double jeopardy when he was tried twice for the same offenses. This is based on the evidence in Appendix Q, and first page of January 14, 2019 trial transcripts and the first page of June 27, 2024, trial transcripts.

•Mr. Kellier was deprived of the right to immunity of a speedy trial conferred by the statute and the sixth amendment and CPL 30.30(1)(a)(b) when his motions to dismiss were repeatedly denied. At trial he was convicted of criminal contempt of court and later Sexual Abuse, etc, in excess of the fixed time period of 6-months (CPL 30.30)/ 5-years (18 U.S.C. §3282(a)) statutes of limitations on timely prosecution. This fact is based on the evidence in Appendix Q&G the court lacked subject matter jurisdiction. The court acted in excess of its authorized power in violation of the 14th Amendment prohibition, abridging his immunities. Out of 8-years prosecution, the prosecutor was only charged with 25-days.

•The court acted without subject matter jurisdiction /authority when it found Mr. Kellier guilty of criminal contempt of court and the charges of Sexual Abuse, etc.

•Mr. Kellier was sent to prison on criminal contempt of court commitment papers.

•Mr. Kellier was deprived of the right to a Speedy trial.

•Mr. Kellier was deprived of the right to Due Process when the prosecutor waited 3-years to give him partial discovery, on the first day of trial. This fact is based on appendix R. The discovery was later stolen from Mr. Kellier and the prosecutor refused to perform the continuing duty to disclose after repeated request during retrial.

•At trial Mr. Kellier was deprived of the right to Due Process when Mr. Mandelbaum, sat as a judge, jury, grand jury, prosecutor, witness, private investigator on criminal contempt charge in violation of 22 NY ADC 604.2 (b)(c)(d) and found Mr. Kellier guilty inconsistent with this court's opinion in In Re Murchison, 349 U.S. 133, 75 S. Ct. 623, 99 L.Ed. 942, and in In Re Oliver, 333 U.S. 257, 68 S.Ct. 499, 92 L.Ed. 682.

•Mr. Kellier was deprived of the 8th Amendment right to be free of Cruel and Unusual punishment when he was subjected to punishment forbidden by the constitution when DOCC employees commanded/

directed inmates to jump Mr. Kellier in his sleep, acting in concert with Mr. Mandelbaum, the prosecutor and failed to act with reasonable care to fix, repair, maintain his broken jaw bone in Riverview and at Cape Vincent, by ignoring rejecting returning his grievances, despite their responsibilities, to resolve and the obvious risk associated with escalating conditions complained of, demonstrates a deliberate indifference to Mr. Kellier's health and safety and violates his rights to due process under the federal/state constitutions. It has been 9 months since Mr. Kellier remained in confinement with his broken jawbone. Till this day Mr. Kellier has not received adequate medical care or treatment after having been seriously physically injured. The State of New York, DOCS, grievance coordinator Ms. C. Baine, Dr. Palou were all aware and knew of Mr. Kellier's serious medical condition on September 8, 2025, and September 9, 2025 visit to the infirmary. Mr. Bailey PA set up the X-ray visit to River Hospital, for Mr. Kellier. He meant to deny Mr. Kellier medical care to cover up his serious medical needs and disregard the treatment to his health. The facility failed to diagnose the condition. Failed to investigate, lied in the report its report after the X-ray. Delayed treatment. Interfered with access to the treatment. Made medical decisions based on non-medical factors i.e. lying about the alignment in the X-ray looks, private vengeance, that fell below the standard of care. They denied Mr. Kellier access to medical outside medical specialist who are qualified to address his current health problem by stating "No further action is needed to be taken."

• The United States Court of Appeals has decided important questions of federal law that has not, but should be settled by this court. See ECF #44 which satisfies section (C) of the U.S. Sup. Ct. Rule 10.

• The State Court Judge Mr. Mandelbaum has decided an important question of law that conflicts with this court's opinion in *Faretta v. California*, 422 U.S. 806, 95 S. Ct. 2525, 45 L.Ed.2d 562, that has not been, but should be, settled by this court. See appendix M. Petitioner presented the exact same arguments in his writ of habeas corpus in his CPL 440 omnibus motion.

• Mr. Mandelbaum works for the Municipal Supreme Court of the State of New York. He acted under the color of law. He and others deprived Mr. Kellier of his constitutional rights. The state provides the office for him to work in and cut his checks and does so for others as well. Deprivation of rights is prohibited by 18 U.S.C. §242.

• Mr. Kellier before trial waived his right to counsel by filing his own revocation of power of attorney and firing Mr. Gary Lesser on the record, objecting to his appointment, who continues to stalk and try to communicate with Mr. Kellier before and after each proceeding.

• On June 24, 2024- July 1, 2024, Mr. Mandelbaum depriving Mr. Kellier of his sixth amendment right to self-representation when he forced Gary Lesser representation. This fact is based on evidence in appendix . Such evidence could also be found in June 24, 2024, and June 25, 2024, trial transcripts which Mr. Kellier never received

•Mr. Kellier suffered adverse action of being held in criminal contempt of court directly linked to his exercise of his constitutional right to freedom of speech and self-representation.

•Mr. Mandelbaum forcing Mr. Lesser's representation is usurp the power of Mr. Kellier to self-represent himself, plead and conduct his own cases and is an Extraordinary Circumstance. Kerr v. U.S. Dist. Court for Northern Dist. of California, 426 U.S. 394, 96 S.Ct. 2119, 48 L.Ed.2d 725 ("The fact still remains that 'only exceptional circumstances amounting to a judicial 'usurpation of power' will justify this invocation of this extraordinary remedy.") i.d. Kerr ., at 402.

•Mr. Kellier was deprived of the right to freedom of speech and expression when the customs, practices and procedures, adopted, followed, implemented and enforced by the State of New York and Mr. Mandelbaum to ignore and otherwise act with reasonable care to mitigate the serious risk imposed to hold Mr. Kellier in Criminal Contempt of court to not object to the court lacking jurisdiction and to forcing counsel or his protest in entering the well to participate in the unlawful trial, silencing Mr. Kellier and convict him and deprive him of his liberty, demonstrates adverse action and a deliberate disregard to his health/safety, immunity, rights to self representation, freedom of speech and violated those rights under the constitutions Federal/State.

JURISDICTIONAL STATEMENT

The court of appeals has jurisdiction to review appeals from all decisions of the district court of the United States under 28 U.S.C. §2191. QUESTION PRESENTED: Does the Supreme Court have power and jurisdiction to grant the writ of Certiorari?

Answer: Yes! The Supreme Court has statutory jurisdiction to review writs of certiorari after rendition of judgments pursuant to 28 U.S.C. §1254(1). See John v. U.S., 524 U.S. 236 ("This court has jurisdiction under 1254(1) to judicial denials to applications to certificates of appealability by circuit judges or circuit Appeals panel") i.d. John ., at 236 ("Decisions regarding applications for certificate of appealability, in contrast, are judicial in nature.") i.d. John., at 245. The date the order sought to be reviewed was entered January 15, 2026, and mandated on February 19, 2026, by the second circuit of New York. This appeal is after final judgment and is of public importance as CRIPA 42 U.S.C.A. §1997a(a) authorizes the United States to seek injunctive relief against any state, political subdivision of the state, or official, employee, or agent thereof. The State action conflicts with the constitution and the Supreme Court case law in this matter and is null and void. The Supreme Court's opinion in Slack v. McDaniel, conflicts with the federal statute 28 U.S.C. §2253(c), the case law applies different rationale to the substantial showing than the expressed language of the statute. Petitioner filed a motion for an extension of time on March 20, 2026, which Justice Sotomayor on April 10, 2026, extended the time to June 15, 2026. No cross petition has been filed for the writ of Certiorari under the U.S. Sup. Ct. Rule 12.5. Neither the United States nor federal department is a party to this action. State law CPL 30.30(4) and the Governor's Executive Law 202.8 was used to toll the protection of the federal statute which conflicted with 18 U.S.C. 3282(a).

The loss of the First Amendment right to freedom of Speech constituted irreparable harm. New York Progress and Protection PAC v. Walsh, 733 F.3d 483 ("However, securing First Amendment rights is in the Public interest.") i.d. New York Progressive and Protection PAC., at 488.

POINTS OF ARGUMENT

THE COURT SHOULD FIND AND UPHOLD THAT PETITIONER MADE THE FOLLOWING CLAIMS IN HIS COA

•Petitioner stated in his COA on page 6 that the Supreme Court in *Farretta v. California*, 422 U.S. 806, 95 S. Ct. 2525, 45 L.Ed.2d 562, held "a defendant in a state criminal trial has a constitutional right to proceed without counsel when he voluntarily and intelligently elects to do so, and that the state may not force a lawyer upon him when he insists that he wants to conduct his own defense." i.d. *Farretta*., at 807... and petitioner applying the facts to the law of this case, issues, and reasoning... that Mr. Mandelbaum and Ms. Martinez forcing Mr. Gary Lesser's representation on petitioner before and at trial against Mr. Kellier's will was illegal and unconstitutional. Thus holding petitioner in criminal contempt for the exercise of his first amendment right to freedom of speech in his self-representation has met the element of showing how justice Stewart would agree that petitioner in this matter having Mr. Lesser forced on him was also unconstitutional, unlawful, wrong, or would disagree with this court if it was to rule that it wasn't or dismiss the writ, when he already ruled that this compulsory representation was in violation of 6th amendment right to self-representation.

•First Amendment Claim

by petitioner in his writ of habeas corpus on page 9 lines 6-20 page 10 lines 1-7 citing the state of New York v. Nicolas Pierri-Louis, 34 Misc 3d 703 where defendant was accused of having committed aggravated harassment moved for dismissal of the charges. Holdings: The District Court Valerie Alexander, J held that: statements made by the defendant to the Assistant District Attorney (ADA) were constitutionally protected speech and that the aggravated harassment statute was unconstitutional as applied to the defendant. Motion granted. And in his COA page 6 "By petitioner demonstrating how Judge Valerie Alexander J reasoned in *People v. Pierri-Louis* that "that first amendment generally prevent the government from proscribing speech, or expressive conduct, because of **3 disapproval of ideas expressed, content based regulations are presumptively invalid applying the fact to the law, issue, and reasoning using syllogism that Mr. Mandelbaum imposing his custom (practice) on petitioner on June 24, 2024, telling petitioner you can't speak to / can't speak to me speak to your attorney... at trial state, "And I'm just going to remind you for the final time not to speak in front of the jury and if you do that even once you will be removed from the courtroom and forfeit your right to be present the rest of the trial. You have been advised of that repeatedly," Exhibit F "Mr. Lesser please make sure that you clearly understand. As I said yesterday he can of course testify as to anything he likes to to the incidents, and as to his background absolutely inadmissible before the jury;" both regulating and proscribing the petitioner's speech in front of the jury. Petitioner has met the element of showing no 3

how the supreme court or judge Valerie at the very least would agree that Mr. Mandel baums threats before removal, removal of petitioner from the court on two seperate occassions at trial and holding petitioner in contempt for the exercise of normal speech regarding objections, forced counsel, jurisdiction and inconsistent statements of the complainant's in the presence of the jury, was overboard , prescribed and regulated speech unconstitutionally and was wrong and that she would disagree with this court's this court dismissal of petitioner's claims when she ruled it was

•Petitioner's Right to Immunity Claim

on page 5 lines 1-6 of petitioner's writ of habeas Corpus he states "By the prosecution failing to bring the petitioner to trial in 6-months it exceeded the statute of limitatitons barring the prosecution which is inconsistent with CPL 30.30(a) based on exception (2) of 18 U.S.C.3282 and sections (b)(4) of CPL 30.30 enforced to abridge the privileges and immunities of 18 U.S.C. 3282(a) and CPL 30.30(1)(a)(b) inconsistent with the 14th Amendment denying petitioner equal protection of the law. In the original writ of habeas corpus filed petitioner alledges that he was brought to trial on January 14, 2019 and arrested on June 16, 2016. This fact is based on the evidence in ECF 44 page___. Then released on his own recognizance. The second trial started the same day he was found not guilty.

In petitioner's COA he stated, on page 5-6 "By petitioner demonstrating using the Supreme Court justice White as stated in *Toussie v United States*, 397 U.S. 112, 90 S. Ct. 858, 25 L.Ed.2d 156, hold that petitioner not only succeeded in his own aim, he was immuned from prosecution from his unlawful conduct at age 23." i.d Toussie., at 136 and applying the facts to the law... that petitioner's prosecution past the five years which he was also immuned has met the element of showing how judge white speaking about Judge Burger, would have agreed that petitioner in this matter waas also immuned and would find it wrong or would disagree with this court if it ruled that it wasn't or dismissed the writ, when they said I was immuned. This fact is based on Appendix N on page 6. For the same reasons justice white would disagree with the Second Circuit he would disagree with the district Court . Petitioner relaizes that he didn't mention the district court here, but the Second Circuit. However in either court justice becuase of his prior holding justice whites contention would have been the same. This mistake shouldn't stop the Supreme Court from considering the constitutional claims as a substantial showing, as the words wrong and debatable were used and a constitutional violation is a constitutional violation regardless of how its written.

•Due process violation claim

In petitioner's amended petitione for writ of Habeas Corpus on page 14-15 line 37 petitioner alledges that the criminal contempt proceeding Mr. Mandel baum sat at the bench... the contempt proceeding was at trial where Mr. Mandel baum having knowledge of the facts and interest in the outcome for petitioner to take the pela deal as a one man jury, and judge, and witness and his own constitutes a violation of petitioner's Due process and as held in *In Re Matter of Leroy Murchison and John White* "No man can be a Judge in his own case, is permitted to try cases where he has an interest in the outcome."

The appellant in his COA page 6 "By petitioner demonstrating that Mr. Mandelbaum violated 22NY ADC 604.2(b)(d)(ECF 44 page 7-8 ¶10) and Supreme Court justice would agree and held that it was ill-

egal for a judge to be the judge and witness in his own criminal contempt proceeding, no notice nor plenary hearing was given nor assignement of a different judge for the criminal contmpt proceeding nor compulsory process for the production of evidence or confrontation of the witnesses no disqualification of Mr. Mandelbaum, petitioner has shown that the Supreme Court Justice would have disagreed or find it wrong that that the Southern District Court had ruled that such did not violate petitioner's due process of law when it did or decided to dismiss the complaint.

•28 U.S.C. §2253(c)(2) provides: "A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of a denial of a constitutional right."

•In *Slack v. McDaniel*, 529 U.S. 437, 120 S.Ct. 1595, 146 L.Ed.2d 542, the Supreme court held ("The petitioner must demonstrate that a reasonable jurist would find that the Distict court's assessment of the constitutional claims ("Debatable or wrong") i.d. *Slack* ., at 484.

•In *Miller-El v. Cockrell*, 537 U.S. 322, 123 S.Ct. 1029, 154 L.Ed.2d 931, "[w]here a District Court has rejected the constitutional claims, the showing required to satisfy §2253(c) is straight forward: The petitioner must demonstrate that a reasonable jurist would find that the District Court's assessment of the constitutional claims debatable or wrong.") i.d. *Miller-El* ., at 339.

•In *Hughes v. Deteke*, 412 F.3d 582, Certiorari denied 1347, as cited in appellant's COA, ("A petitionere satisfy the standard by demonstrating that a jurist of reason could disagree with the District Court's resolution of his constitutional claims or that jurist could conclude that the issues presented are adequate and deserve encouragement to proceed further. *Miller-El*, 537 U.S., at 327. Petitioner cited *Hughes* in his COA, which petitioner alledged facts showing how those facts violated and applied to the rule of law stateed in *Dreteke*.

•In *Miller* petitioner sought federal habeas relief and the District Court denied the petition, and the U.S. Court of Appeals denied the petitioner's COA and the SUPreme Court justice Kennedy granted petitioner's writ of Certiorari finding the Distict Court wrong in its assesment.

•In *Slack* the petitioner's habeas petition was dismissed by the district court and the U.S. Court of Appeal denied petitioner's (CPC) and the Supreme Court justice kenndy reversed and remanded the case to the district Court, finding the District Court wrong in its assessment, of the petitioner's constitutional claims.

•In *In Re Oliver*, 333 U.S. 257, 68 S.Ct. 499, 92 L.Ed. 682, petitioner William Oliver brought a habeas proceeding to review the judgement of the District Court in Michigan which dismissed the petition after convicting him of criminal contempt without any kind of trial, or jury of peers, without notice of the charges or a meaningful opporunity to be heard or a chance to call witnesses on his behalf either by way of defense. The Supreme Court justice black reversed and remanded with directions for the District Court to follow, following its assessment of petitioner's constitutional claims as wrong in violation of petitioner's Due Process.

•In *Coke v. U.S.*, 267 U.S. 517, 45 S.Ct. 390, 67 L.Ed. 767, petitioner Clay Cooke and J.L. Walker were each sentenced to 30- day

2 imprisonment for contempt of court in violation of their right to Due Process by the United States District Court for the northern District of Texas. This case was taken on error of the circuit Court of Appeals for the Fifth Circuit, which affirmed the sentence of Cooke and reversed that of Walker. Chief Justice Taft granted Certiorari, Cooke sentenced was brought to the Supreme Court's Assessment of Cooke constitutional claims. Mr. Kellier was given the criminal contempt papers after conviction.

• In *Hacker v. Herbert*, 825 F. Supp. 1143, petitioner-Hacker was convicted and sought writ of Habeas Corpus with the Northern District Court. The District Court denied his writ of Habeas Corpus. Petitioner appealed to the Second Circuit and Judge Cholakis a reasonable jurist held that denial of petitioner's request to defend pro se at trial violated petitioner's Sixth Amendment right to represent himself finding the Northern District Court's assessment of petitioner's constitutional claims wrong that resulted in dismissal of his claim. Then granted petitioner's habeas corpus and ordered his release unless the state promptly afforded him a new trial to encourage him to inquire into the matter further. The Second Circuit reversed the District Court's denial of the writ of habeas corpus and remanded the proceeding to the district court with further instructions and ordered petitioner's release unless the state promptly afforded him a new trial. The Second Circuit has taken the position that "violation of a defendant's right to proceed pro se requires automatic reversal of the criminal conviction."

• In *Craig v. Harney*, 331 U.S. 367, 67 S.Ct. 1249, 91 L.Ed. 1546, 1 Media L. Rep. 1310, Petitioner's were adjudged guilty of constructive criminal contempt of court of Nassau Texas. To challenge the legality of their detention they filed a writ of habeas corpus with the Court of Criminal Appeals. Mr. Justice Douglas on review on Writ of Certiorari delivered his opinion finding the Court of Criminal Appeals wrong for holding Craig in contempt for calling the judge a layman on the bench on the bench in a news paper and reversed the dismissal and in the instant matter the Supreme Court like in Craig would find the District Court's assessment of Mr. Kellier's constitutional claims wrong if for exercising protected private speech activity in a public forum, dismissing his writ of habeas corpus brought in the district court rather than the intermediate court.

ARGUMENT I

Based on the law the issue of the words wrong or debatable in Miller standard makes a showing regardless of the words showing in *Slack v. McDaniel*. If the Supreme Court in *Miller* would find it wrong that the U.S. Court of Appeals dismissed petitioner's COA in its assessment, because its holding was inconsistent with this court's opinion, then it is safe to say in the instant matter the court would the Supreme Court would in the instant matter also find it wrong that the District Court dismissed petitioner's writ of Habeas Corpus in its assessment as well. In petitioner's COA he cites *Hughes v. Deteke*, which cites/upholds the same standards in *Miller-El*. *Hughes* opinion makes no mention of *Slack*'s holding used in the order. *Miller-El* cites/upholds *Slack v. McDaniel*'s holding. These standards are essentially the same.

ARGUMENT II

The Second Circuit should've granted petitioner's COA. As shown on page 6, appellant used the words wrong or debatable, and agreed and disagreed which proves the law was applied to the facts so, he made a substantial showing that was disregarded, constituting deliberate indifference. Petitioner by accident/typo stated that the Supreme Court would find it wrong or debatable if the Second Circuit dismissed the COA, when he meant to put the District Court. Finding that the Second Circuit is not exactly the same as petitioner saying the Supreme Court would find the District Courts assessment to dismiss petitioner's claim wrong. Here is where the District Court erred in not appointing petitioner counsel which prejudiced petitioner's right to due process after he made his request for counsel in his writ. The skill, the competency, would have been applied here to bring clarity and discernment in applying the appropriate facts to the elements in petitioner's constitutional claims. 18 U.S.C. 3006A (B). Petitioner re-states his constitutional claims under Argument III, to win the favor of the justices. Pro se litigants cannot be held to the same standards as attorneys, and the courts are required to accept their pleading as true.

ARGUMENT III

Issue: Whether the District Court erred in its procedural ruling when it disregarded Mr. Kellier's attached transcripts, constitutional claims, or failed to appoint counsel or conduct discovery?

Answer: Yes!

Rule of Law: In Slack the Supreme Court held, ("When the District Court denies a habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claims, a COA should issue (and an appeal the District Court's order may be taken) if the prisoner shows, at **1599 least, that jurist of reason would find it debatable whether the District Court was correct in its procedural ruling." The fifth amendment states: "Nor shall any person be deprived of life, liberty, or property without due process of law. As the record demonstrates, in Walker v. Johnston, 312 U.S. 275 (1941), the Supreme Court held that the dismissal of the habeas claim based on conflicting allegations without taking into account the testimony was improper. i.d. Walker ., at 578.

Application of the law to the facts: The District Court was incorrect in its procedural ruling. This rule petitioner relies on because it applies. Furthermore this rule applies because it shows that even though Slack failed to make a substantial showing of a denial of a constitutional right the Supreme Court still have the power to grant the applicant's the COA by showing that a District Court assessment was wrong or its procedural ruling debatable, jurist of reason would find it debatable whether petitioner states a valid claim of a denial of a constitutional right, and whether petitioner showed that jurist of reason would find it debatable if a District Court's procedural ruling was correct. The justice Robert's held that such dismissals was improper therefore the District Court disregarding Mr. Kellier's testimony is incorrect. Slack's COA was granted even though he did not make a substantial showing of a denial of his constitutional right. Where as in the instant matter Mr. Kellier did make a substantial showing of a denial of his constitutional rights. But wasn't equally afforded the same opportunity and his COA was denied.

According to Slack Mr. Kellier made a substantial showing using the words "wrong" but denied/deprived of his right to appeal to the Court of Appeals or have his COA granted. If petitioner didn't in his COA then he does now. The Supreme Court granted Slack the COA which is compelling reason to grant this writ, as similar circumstances in prior precedent exist in the instant matter and dictates how the court rules in future cases, such as the instant matter; despite Slack arguing the procedural ruling debatable under the CPC which is no longer the law. Stare decisis

The Supreme Court justice Stevens and Breyer in their concurring opinions would find it "wrong" the District Court's assessment to dismiss petitioner's writ of habeas Corpus. On the other hand justice Scalia in his dissenting opinion joined by justice Thomas disagreed and would find it "debatable" because despite the fair holding they were able to argue circumstances to show why they disagreed with justice Stevens which makes the holding debatable. For example, justice Scalia and Thomas in their dissent stated that they dissent in part with the opinion and holding of Rose v. Lundy, that habeas opinion containing both exhausted and unexhausted claims must be dismissed as counted, find it plausible that the petitioner could return with the same claims after they all have been exhausted. Whereas justice Stevens held that when a District Court denies a habeas petition on procedural grounds without reaching a prisoner's underlying constitutional claims, a COA should issue (and an appeal of the District Court's order may be taken) if prisoner shows, at *1599 least, that jurist of reason would find it debatable whether the District Court was correct in its procedural ruling. The circumstances argued by justices are different, the latter was not followed in this matter, leaving only the supreme court to correct the constitutional violations. But one comes to the understanding thru careful construction of words creating opposing circumstances the holding is debatable or argumentative quite so that the petition should have been heard on the merits. The difference in treatment in Slack, Johnston and Kellier demonstrates how Mr. Kellier's right to equal protection of the law was violated/ deprived. The District Court ignoring not conducting an evidentiary hearing to support his June 24, 2024, claims with evidence from that day to meet his burden of proof, violates his right to due process. "to be heard."

Conclusion: Therefore, the District Court was incorrect in its procedural ruling.

RIGHT TO FREEDOM OF SPEECH VIOLATION

Issue: Whether Mr. Kellier's First Amendment right was violated when he was:

- a. Told he couldn't speak to the judge only the appointed attorney he fired.
- b. Told he could speak in front of the jury regarding prior inconsistent statements of complaints, of complainants or about the outcome of the first trial, can't make his own objections because he has an attorney. See Appendix N.
- c. Held in contempt of court on June 24, 2024, for exercising protected speech activities i.e. objecting to the court waiving the jurisdictional defect, and forcing counsel.
- d. Held in a second contempt charge on July 1, 2024, for objecting to the prosecutor's false statement.

RULE OF LAW: National Rifle Association of America v. Vullo, 602 U.S. 175, 144 S.Ct. 1316, 218 L.Ed.2d 642, 2024 Daily Journal D.A.R. 4604, 30 Fla. L. Weekly Fed. S 202, (government officials can share their views freely and criticize particular beliefs, and she can do so forcefully in hopes to persuading others in following her lead. in doing so, she can rely on the merits and force of her ideas, the strength of her convictions and and her ability to inspire others. What she cannot do, however, is use the power of the state to punish or suppress disfavored expression. See Rosenberger, 515 U.S., at 830, 115 S. Ct. 2510 (explaining that government actions seeking to suppress a speaker's particular views are presumptively unconstitutional). in such cases, it is "the application of the state power which we are asked to scrutinize") i.d. 188. Craig v. Harney, 331 U.S. 367, 67 S.Ct. 1249, 91 L.Ed. 1564 ("The First Amendment serves as a constant reminder that freedom of speech and press shall not be impaired through the exercise of power, unless there is no doubt that the utterance in question are a serious imminent threat to the administration of justice.") i.d. Craig ., 373. (Giving editorial all of the vehemence which the court below found in it we failed to see how it could in any realistic sense create an imminent and serious threat to the ability of the court to give a fair consideration to the motion for rehearing.) i.d. Craig ., at 378. Hartman v. Moore, 547 U.S. 250, 126 S.Ct. 1695, 164 L.Ed.2d 441 ("official reprisal for protected speech "offends the Constitution [because] it threatens to inhibit exercise of the protected right") i.d. Hartman ., at 256. (and the law is settled that as a general matter the First Amendment prohibits government officials from subjecting and individual to retaliatory actions, including criminal prosecutions, for speaking out) ibid. United States v. New York City Department of Education, 407 F.Supp.3d 365, 372 Ed. Law rep. 716 ("To make out a Prima facie case, a "plaintiff asserting a first Amendment retaliation claim must establish that: (1) his speech or conduct was protect by the first Amendment; (2) the defendant took an adverse action against him; and (3) there was a casual connection between this adverse action and the protected speech.") i.d. N.Y. DOE ., at 410.

Application of the law to the facts: (1) Petitioner engaged in speech activity and conduct that was protected by the First Amendment i.e. objecting, making a record, not entering the well under protest; (2) Mr. Mandelbaum ordered bailiffs to arrest Mr. Kellier taking adverse action against him, which he suffered injury in conviction of criminal contempt of court and sexual abuse and other charges, etc; and (3) a casual connection between the adverse action and the protected speech activity that only can be redressed by a favorable decision. Mr. Kellier also suffered the injury of having to sit in front of the jury in brown uniform during the Voir Dire with his hands cuffed behind his back without discovery. The the protected speech was a substantial motivating factor in the action of holding petitioner in contempt of court. The holding of petitioner in criminal contempt. The holding of petitioner in contempt of court would not have taken place absent petitioner exercising protected speech. The transcripts are direct evidence showing directly how judge Mandelbaum threaten prior inconsistent statements of the complainant in front the jury when giving testimony in front of them. This is a pattern behavior depicting Mr. Mandelbaum's character. See federal rules of evidence 405. Circumstantial evidence, for example, shows that the

protected speech was followed by adverse treatment in the exercise of petitioner's right or directly by evidence of retaliatory animus. The transcript reference here are shown in appendix O, which is also shown in exhibit — of the writ of habeas corpus. Direct evidence of retaliatory animus for First Amendment protected speech may take the form of conduct or statements by person involved in the decision making process that may be viewed as directly reflecting the alleged retaliatory attitude. Causation is also established here indirectly by means of circumstantial evidence when the petitioner showed that his exercise of protected activity was followed by adverse treatment in the court room, and directly by transcript evidence of retaliatory animus.

In the National Rifle Association of America, the NRA

In the case National Rifle Association of America the NRA brought action against the superintendent CFS for violating the first Amendment in the U.S. Northern District Court. The District Court judge Thomas J. McAvoy denied the Superintendent motion to dismiss. She appealed. The Second Circuit reversed and remanded. The NRA was granted Certiorari, and Justice Sotomayor a reasonable jurist vacated and remanded finding the Second Circuit "wrong" in its assessment to reverse and remand the denial of the superintendent's motion to dismiss. The Supreme Court justice Gorsuch and Jackson joined in and filed the concurring opinions. Justice Sotomayor held, the NRA plausibly alleged that vullo violated the First Amendment. Similarly, Mr. Kellier alleges that Mr. Mandelbaum violated the First Amendment by coercing him to disassociate with him in front of the jury, holding him in contempt, in order to punish him and suppress his speech. i.d. National Rifle Association ., at 176. Therefore justice Sotomayor and others would disagree that Mr. Kellier failed to make a substantial showing of a denial of a constitutional right and also find that the District Court's Assessment to dismiss Mr. Kellier's writ of habeas corpus in the instant matter also "wrong" and would more than likely encourage the district court to proceed and look further into the matter.

In Craig, the Supreme Court justice Douglass delivered the opinion would find the District Court "wrong" in its assessment to dismiss petitioner's writ of habeas corpus. On the other hand, justice Mr. Jackson, and Mr. Frankfurter and chief justice Vinson dissenting disagreed with justice Douglass would find his ruling "debatable" despite the fair ruling of Mr. Douglass, they were still able to argue circumstances/ views to show why they disagreed. For example, justice Douglass ruled, "The power to punish for contempt depends on a more substantial showing. i.d. Craig ., 378. Where as, justices dissenting stated ("I think this opinion conveys the wrong impression of the responsibilities of the administration of justice and that we should not hesitate to condemn what has been done here.) i.d. Craig ., at 396, which is different than and opposes the standard of "a more substantial showing, or the court making a fair consideration." Another example is justice Frankfurter joined/concurred by chief justice to paraphrase affirmed the Texas state criminal court's decision because they believed (judges may not be men of fortitude when faced with the public press and may be compelled to give their opinion independently) i.d. Craig ., at 392-393, which is different than the public eye watching, and the standard of "making a more substantial showing for contempt or the court giving a fair consideration. Here jurist of reason based on prior holdings/ opinions would find the District Court's assessment of petition-

er's 1st Amendment claim wrong and debatable.

Conclusion: Therefore, Mr. Kellier made a substantial showing of the denial of his 1st Amendment right.

RIGHT TO SELF-REPRESENTATION VIOLATION

Issue: Whether Mr. Kellier's Sixth Amendment right to Self-Representation was violated or District Court's assessment "wrong" or "Debatable", when Mr. Kellier was:

- a. Unwilling to have Mr. Lesser as his Counsel, but the judge called him such, and held Mr. Kellier in contempt of court to force counsel to comply with the attorney he fired and had no confidence in.
- b. Unable to deliver opening and closing statements to the jury, received or enter evidence into his own case in chief, removed removed from summations.
- c. Denied the right to plead and conduct his own defense, told he has to get discovery from Mr. Lesser rather than a separate copy.

Rule of law: the law of the case: Faretta v. California, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562. ("The question is whether a state may constitutionally hale a person into its criminal courts and there force a lawyer upon him, even when he insists that he wants to conduct his own defense. It is not an easy question, but we have concluded that the state may not constitutionally do so.") i.d. Faretta ., 807. ("Forcing Faretta, under these circumstances, to accept against his will state-appointed public defender, California courts deprived him of his constitutional right to conduct his own defense. Accordingly the judgement before us is vacated, and the case is remanded for further proceedings not inconsistent with this opinion.") i.d. Faretta ., 836. The Sixth Amendment does not provide merely that a defense shall be made for the accused; it grants to the accused personally the right to make his own defense.) i.d. Faretta ., at 819. 28 U.S.C. §1654 states: "In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of the court, respectively are permitted to manage and conduct causes therein."

Application of the law to the facts: If it is true that the defendant's right to self representation was violated in Faretta v. California when the state forces counsel on an unwilling defendant, then it is also true that petitioner's/defendant in the instant matter was also violated when Mr. Mandelbaum at trial forced Mr. Gary Lesser as petitioner's counsel, as logic dictates. Prior to trial petitioner requested to represent himself prose orally and in written motions which was denied unreasonably. Petitioner appealed to the Appellate Division which went undecided, and judge Meserole Alonso Martinez tried to re-rule on Ms. Thompson's decision after she already denied the motions which were on already on appeal after she was removed from her office, instead. Re-ruling on denied motions is not a procedure in neither the Appellate Division or the trial court rules, demonstrating how the two court acted in concert/overtly to conspire against petitioner's right to self representation and liberty without affording him due process of law. Similarly, it does the same on petitioner's direct appeal and 440 omnibus motions, constituting pattern prac-

tice. The appellate court did not decide petitioner's constitutional rights continued to be violated, the appellate court assisted the trial court in surprising Mr. Kellier with trial without intervening in the trial court forcing counsel. Mr. Kellier gave Mr. Lesser a revocation of power of attorney. He filed it with the court via first class mail and the attorney registrations office via email. He fired Mr. Lesser, and objected to his appointment, made a record and told the court that he could not represent him thus meeting the element of knowingly and intelligently waiving his right. On June 24, 2024, Mr. Mandelbaum (Forcefully) told Mr. Kellier that Mr. Lesser was his counsel. Mr. Kellier objected to Mr. Mandelbaum's repeatedly referencing Mr. Lesser as his counsel. This is after Mr. Kellier had already informed him Mr. Mandelbaum Mr. Lesser could not represent him and he was representing himself. As Mr. Kellier objected and asked the court to state its basis of jurisdiction, the judge would refuse, change the topic and inquire into deciding to keep Mr. Lesser as Mr. Kellier's counsel when it no longer had authority to decide, demonstrating tactics the used to deflect and waive jurisdictional defects. Mr. Kellier asserted his right to self-representation every step of the way and never waived it, demonstrating how he acquiesced to Mr. Lesser's representation. Mr. Kellier was arrested by bailiffs and had his property seized after exercising his right to self representation and pleading his own defense, demonstrating how force was used to get him to cooperate and to proceed with counsel he had already told the court was fired, was stalking him, and kept fraudulently kept appearing and stating on the record that he was Mr. Kellier's counsel without his consent. Duress. Coercion. Petitioner wasn't allowed to offer his own evidence when the prosecutor and Mr. Lesser withheld evidence. Petitioner wasn't able to deliver his own statements, nor confront the witnesses in the presence of the jury, after Mr. Mandelbaum threaten him not to speak in the presence of the jury. He wasn't allowed to deliver opening statements nor summations to the jury after expressing interest to do so. He was told to talk with Mr. Lesser for discovery a conflict of interest, demonstrating a denial of the right to plead and conduct his own defense. Petitioner was present in the beginning part of the Summations, but as soon as he objected to a false statement made by the prosecutor Michael Yetter using fabricated evidence, he was removed from the courtroom later found guilty in his absence. Petitioner objected pursuant to CPLR §3115 to preserve for appeal the false statement. The court failed to allow petitioner to represent himself after he took and passed the 730 exam and was deemed fit to stand trial. At trial petitioner refused to undergo legal formalisms of pro se allocution, which neither the Sixth Amendment nor the cited opinion of Justice Stewart does not say must take place. Demonstrating how petitioner was denied the right to defend and had counsel forced on him inconsistent with Faretta's opinion.

The Los Angeles County Supreme Court's reversal of Faretta waiving appointed counsel resulting in his conviction, Justice Stewart held it was "unconstitutional" "wrong." Where as, Justice Burger dissenting joined by Justice Blackmun and Rehnquist disagreed with him, and delivered opposing contentions despite the historical background and impartiality of the holding, finding Mr. Stewart's opinion "debatable." For instance, paraphrasing Justice Burger's point of view as: "The proposition of the language of the Sixth Amendment that the right to counsel leads to the conclusion that the right may not be waived based on the whim

of the defendant." i.d. Faretta ., at 838, where as, Mr. Stewart's interpretation is "to true counsel upon the accused, against his considered wish, thus violates the logic of the Amendment." i.d. Faretta ., 820. which is a different contention. Therefore, the holding is debatable.

Faretta was convicted after the L.A. Superior Court reversed his waiver of appointed counsel. Justice Stewart finding L.A. Superior Court "Wrong" in its assessment to dismiss the petition in the instant matter "wrong" after Mr. Kellier argued Mr. Mandelbaum forced Mr. Lesser as his counsel and Faretta's holding in his writ of habeas corpus.

Conclusion: Therefore, the justice of the Supreme Court should find and uphold Mr. Kellier made a substantial showing of a denial of his Sixth Amendment right to self-representation.

RIGHT TO SPEEDY TRIAL VIOLATION

Issue: Whether Mr. Kellier's Sixth Amendment right to speedy trial was violated when:

- a. The prosecutor failed to bring Mr. Kellier to trial within 6-months.
- b. judge extended the prosecution 8-years past the statutes of limitation.

Answer: Yes!

Rule(s) of Law: The Sixth Amendment provides: "In all criminal prosecutions, the accused shall enjoy the right to a speedy... trial." CPL 30.20(1) provides, "After a criminal action is commenced, the defendant is entitled to a speedy trial. This rule applies because when Mr. Kellier filed his motions to dismiss they were all denied, inconsistent with the statute and 6th amendment. CPL 30.30(1)(a)&(b) provides, "Except as otherwise provided in subdivision three of this section, a motion made pursuant to ...paragraph(g) of subdivision one of section 210.20 of this chapter must be granted where the people are not ready for trial within," "six months of the commencement of a criminal action wherein a defendant is accused of one or more offenses, at least one of which is a felony," "ninety days of the commencement of a criminal action where the defendant is accused... of which is a misdemeanor..." The sixth Amendment guaranteed petitioner the right to speedy trial. The Court of appeals applied the four prong balancing test of Barker v. Wingo, 407 U.S. 514, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972)(length of delay, reason for delay, assertion of right and prejudice) to unique facts of the case, and upheld the District Court, finding that respondents had been denied their right to a speedy trial. This rule applies because the reasons for delay did not fall within the exception of section 4 of CPL §30.30, and the length of the delay exceeded the statutes limitations in sections (a)&(b) by 3-years for the first trial and 8-years for retrial. U.S. v. McDonnell, 456 U.S. 1, 102 S.Ct. 1497, 71 L.Ed.2d 696 (Arrest is a public act that may seriously interfere with the defendant's Liberty, whether he is free on bail or not, and that may disrupt his employment drain his financial resources, curtail his associations, subject him to public obloquy,

and create anxiety in him, and his family and friends.") i.d. McDonald ., at 17. This rule applies because similar circumstances exist in this matter. (Similarly, the Speedy Trial Clause has no application after the Government, acting in good faith, formally drops charges. Any undue delay after charges are dismissed, like any delay before charges are filed, must be scrutinized under the Due Process Clause, not speedy trial Clause.) i.d. McDonald ., at 7. This rule applies because like McDonald Mr. Kellier suffered an inordinate delay between arrest, indictment, and trial which impaired his ability to present a defense of his own. i.d. McDonald ., at 8. Prejudice.

MR. KELLIER SUFFERED PREJUDICE

The four month delay stemmed from Mr. Kellier's detention on Rikers Island ordered to promote Mr. Kellier self-representation. The exam was forced. Petitioner's freedom was impaired, as he was released on ROR for another charged crime, not for a 730 exam. Defendant was prejudiced by both the 3 year delay to bring him to trial and 5 year delay for retrial. The total of 8-years delay is a triggering mechanism. Before the 7-year sentence and following 10 years probation and sex-offenders registration. Mr. Kellier suffered disappearance of the witness during the delay. She moved to Florida and disappeared during the inordinate delay. She was an eye witness to the crime charged. The deletion of the 911 call and loss of the video evidence during the delay or not handing it over to Mr. Kellier prejudiced Mr. Kellier's right to defend, so did the prosecution's failure to provide discovery. Defendant's incarceration during the delay prejudiced his liberty rights. Mr. Kellier's loss of potential employment due to delay at several jobs i.e. Amazon, etc, with security pending the charges of rape, attempted rape and sexual abuse. All appointed counsels and prosecutors withholding discovery from petitioner prejudiced the petitioner by further delaying the matter, impairing his ability to build his own defense. Hindered ability to gather or give evidence. The prosecution was extended 8 years as explained by Mr. Mandelbaum "We waited 8-years for you to take the plea deal if you take it now I'll give you 7-years. Mr. Kellier remained in the state constructive Custody on ROR although innocent and was disadvantaged by the restraints on his liberty living under the cloud of anxiety, suspicion, and hostility. The court file contains no motions for continuances, nor did Mr. Kellier file one or consent to one be filed on his behalf. Mr. Kellier's employment as a security guard was interrupted when his licenses expired and he was told he needs a disposition in order to renew his security license regarding the pending charges of rape and attempted rape. Mr. Kellier lost his apartment once he was arrested and remanded on Rikers Island and was unable to pay for his apartment to serve a seven year sentence. He was subjected to public rejection, fights, hired then immediately fired, had his financial resources completely drained. Six out of the 8 year delay he was not able to get an apartment until late October 2023, nor a job. Mr. Kellier became homeless on the street after being evicted by his father by court order to leave the house by Jan. 15, 2019 2-days after his birth day. He had people assault him, spit at him scorn him causing physical injury.

Application of the Law to the facts: Petitioner filed the petition. Petitioner filed an amended petition. In them he alleged facts amounting to a violation of his right to speedy trial under the Sixth Amendment. Petitioner was not brought to trial within 6-months after the charges were filed nor grand jury. Petitioner was not allowed to get a new security license from the state because of the pending charges of Rape and attempted

rape. The department of State said he needed a disposition in order to renew his liscennse. Petitioner was arrested on june 16, 2016, on a warrant of Rape and Attempted rape, then released on his own recognizance for a period of 8-years before conviction. petitioner wasn't given a copy of the felony complaint. This was before he was indicted on sexual abuse charges, demonstrating that the charges of rape and attempted rape were dropped, like in Mac Donald, and lacked probable cause. After months of repeatedly asking attorney John Young Blood for a production of evidence and being told "I don't know what that is," he gave Mr. Kellier a copy of the complaint unsigned. Mr. Kellier was indicted 9-months after he was arrested in excess of the 144 hours requirement of CPL §180.80. Petitioner was arrested again on May 26, 2022, then released again on August 25, 2022, on his own recognizance in exchange for taking the forced 730 examination, which he refuses to take. It was ordered by Judge Ms. Eileen Biben, when Mr. Kellier requested reassignment of counsel. the exam isn't a requirement of the 6th amendment. Ms. Biben threatened to force Mr. Kellier to trial without an attorney on March 13, 2019. Petitioner was tried and found guilty on July 1, 2024. demonstrates the untimely period, delay of 8- years prosecution beyond the scope of the Sixth Amendment, which CPL §30.30 was designed to afford petitioner a fixed time period of 6- months to be tried not 8- years.

Both the the state and federal statutes do impose specific time limits, and it has been held that delay beyond a specific time period imposed violates the right to speedy trial. No delay of trial was attributed to petitioner. The delays had been caused by the prosecution without good cause. None of the reasons given by the prosecution met the exceptions under section 4 of CPL §30.30. Mr. Kellier never waived his right to speedy trial. Nor has he asserted nor signed a written waiver in any way shape or form. No motion for continuance was made by petitioner nor counsels. Nor was a motion for continuance found in the file each time he check it. Nor did Mr. Kellier agree nor would have agreed to a filing of a motion for a continuance, nor did he instruct any attorney or give them permission to do so. Mr. Kellier began representing him self after firing the third counsel Mr. Adam Konta. who upon firing solicited to the Judge Ms. Martinez as a potential representation for Mr. Kellier against his will and without his consent in retaliation for being fired. Mr Kellier objected. This is in violation §482 and §479. A clear conflict of interest, as Mr. Konta's request was not only unlawful but unwanted. Petitioner objected repeatedly in the Konta aiding and abetting Mr. Lesser be retained as counsel. Mr Konta violated the rules of professional conduct 7.3 (a)(iii)(iv) and 4.5 (a) where Mr. Konta knew and reasonably should've known that his request to the court after firing him involved fraud, duress, coercion, harassment and Mr. Kellier mental state made it highly unlikely that he would've had retained Mr. Lesser as his counsel. Mr. Adam Konta advertised Mr. Gary Lesser to Judge Ms. Martinez to represent Mr. Kellier and she appointed him as his new counsel when he said he was going to represent himself.

The case had no proof directly linking Mr. Kellier to any sort of crime, based its decision on illogical fabricated circumstances and false statements and didn't deserve the waste of the court's resources or delay. There was no justice nor was the case swift. The prosecution argued the executive order 202.80 tolled the speedy trial time clock, but it was not good cause for fail-

ure to bring Mr. Kellier to trial 3-years after arrest before Covid-19, in excess of the 6-month rule. The executive orders only applied to cases for which speedy trial period would have expired during the temporary suspension. Since petitioner's speedy trial period expired before the temporary suspension, the memorandum was inapplicable. The governor's memorandum is no excuse for the prosecutor failing to indict Mr. Kellier in a timely manner taking 9-months to indict petitioner after arrest is all contributed to the prosecutor. Most of all, the executive order did not toll the statute no more than 30-days and did not permit the prosecutor to take 5-years to bring Mr. Kellier to retrial nor 3 years to the first trial, as Mr. Mandelbaum stated was for Mr. Kellier to take the plea deal but was not put into the transcript. The executive order 20208 did not toll the federal statute 18 U.S.C. §3282(a) which has a five year statute of limitations. Petitioner adamantly and consistently, and explicitly raised the speedy trial violations and jurisdictional issues at every appearance he made before the court the court in writing and orally from delays to bring him to trial weighed against the government.

Petitioner in his interlocutory and direct appeal wrote and argued that his constitutional right and speedy trial was violated. Petitioner's seven years of pretrial incarceration was egregious and oppressive, and offensive prior to the seven years sentence with added 10-years probation and sex offender registration. Petitioner is prejudiced from the 8-years till his conviction because he didn't get credited with the 8-years time he spent in the states constructive custody on ROR towards his sentence as required by CPL 70.30(3), then set up to serve an additional 7-years sentence after being held in criminal contempt of court. That's 14-years plus the 10-years probation which makes it a total of 24 years of being in the state custody. That's excessive intrusive and ridiculous and undeniably a long time. Mr. Kellier is now confined in a state prison that repeatedly placing him on loss of property, telephone, recreation, package, and commissary (suspending the phone) oppressing and torturing him as he litigates in unlawful imprisonment, even as he write this he on loss of phone and tablet for 90-days and property and every thing else for 60-day for exercising constitutional rights. Mr. Kellier is overly ready to return back to his freedom he experienced long delays and forced counsel on appeal for his CPL §440 Omnibus motion to the appellate division the same way he is on his direct appeal brief. The 8-years delay and 3-years delay before the first and retrial violated the speedy trial rule, the same way the 1-year and 5-month delay on his direct appeal brief 7-month delay on his post conviction appeal violated his right to speedy appeal, under CPLR §4213(c). Petitioner is prejudiced from the 8-years till his conviction because he did not get credited with the 8-years time served as required under CPL §70.30(3) and set up to serve a seven year sentence after being held in the constructive custody of the state. Petitioner was not responsible for the 8-month delay between his indictment and arrest nor the 1-year investigation prior to his arrest. The delay was uncommonly and unreasonably long for each and every procedure. The judge would schedule a two month adjournment between each proceeding and brought petitioner to trial twice without affording him an opportunity to get discovery beforehand unreasonably. 3-years undeniably a long time to wait for trial, so is an additional 5-years for a retrial and warranted dismissal of the indictment.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Joshua Kellier

I reserve all Rights

Date: May 30, 2026