

No. 26-5663

ORIGINAL

FILED

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OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

AUSTIN KOECKERITZ,

Petitioner

v.

UNITED STATES OF AMERICA,

Respondent

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Austin Koeckeritz #41160510

Petitioner, Pro Se

Seagoville Federal Correctional Institution

PO BOX 9000

Seagoville, Texas 75159

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SUPREME COURT, U.S.

QUESTIONS PRESENTED

1. Whether due process under the Fifth Amendment is violated when a federal judge engages in conduct that creates an objective risk of bias throughout the proceedings, including the denial of essential defense motions and ex parte communications that malign the Petitioner's character, thereby compromising the fairness and integrity of the judicial and appellate process?
2. Whether the Fifth Amendment and Sixth Amendment are violated when a federal defendant's guilty plea is obtained under conditions of prolonged solitary confinement, inadequate mental-health treatment, and misleading or constitutionally deficient advice from counsel, rendering the plea involuntary or otherwise constitutionally invalid, and whether a conviction and restitution order may stand when they rest upon such a plea?
3. Whether the Seventh Circuit denied Petitioner constitutionally meaningful appellate review when appointed counsel filed an *Anders* submission and was permitted to withdraw despite Petitioner's pro se presentation of substantial challenges to a \$410,000 restitution judgment and newly presented evidence, and whether the appellate court was required to provide the safeguards required by *Anders v. California* and *Penson v. Ohio* before terminating the appeal?
4. Whether the Fourth Amendment permits federal authorities to rely upon evidence and testimony from a state investigation when newly available evidence indicates that a state investigator allegedly obtained warrants through knowing or reckless falsehoods or omissions and later testified before the federal grand jury that indicted the defendant?

LIST OF PARTIES AND RELATED PROCEEDINGS

Petitioner: Austin Koeckeritz, appearing pro se.

Respondent: United States of America.

Corporate disclosure: Petitioner is a natural person and has no parent corporation or publicly held corporation owning any interest requiring disclosure under Rule 29.6. Directly related proceedings identified from Petitioner's records:

United States Court of Appeals for the Seventh Circuit, No. 24-3039, Austin Koeckeritz v. United States, judgment/order dismissing the appeal entered November 10, 2025; rehearing denied January 15, 2026. See App. A, D.

United States District Court for the Western District of Wisconsin, Case No. 3:23-cv-00005, the underlying federal proceeding identified in Petitioner's materials.

United States Court of Appeals for the Seventh Circuit, No. 25-1958, Petitioner's federal collateral/habeas proceeding identified in the record as related to the conviction and plea.

United States District Court for the Western District of Wisconsin, No. 3:24-cv-00903, and Seventh Circuit No. 25-1977, civil-rights proceedings identified by Petitioner as directly bearing on the alleged judicial misconduct. See App. O.

United States District Court for the Western District of Wisconsin, No. 3:25-cv-318, related civil action concerning Investigator Scott Bangert and the City of River Falls. See App. H, I.

State proceeding, Case No. 2022CF000167, including the January 18, 2023 defense filings and January 24, 2023 dismissal with prejudice. See App. M, V.

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OPINIONS BELOW

Federal Courts

1. United States Court of Appeals for the Seventh Circuit

Case No. 24-3039

Rulings and Orders Covered:

Order Dismissing Appeal of Restitution Order: Entered November 10, 2025. Attached hereto as Appendix D.

Order Recalling Mandate and Addressing Petition for Panel Rehearing: Entered December 19, 2025. The court recalled the mandate and treated Petitioner's emergency filing as a petition for panel rehearing. Attached hereto as Appendix B / Exhibit B.

Order Denying Panel Rehearing: Entered January 15, 2026, after consideration of Petitioner's December 19, 2025 petition and January 13, 2026 amended petition. Attached hereto as Appendix A.

Order Denying Motion for Extraordinary Relief: Entered January 23, 2026, without substantive review. Attached hereto as Appendix C.

Letter Concerning Further Recall of Mandate: Dated April 14, 2026. The Seventh Circuit advised that it had previously recalled the mandate and declined to recall it again or consider the newly presented evidence for that purpose. Attached hereto as Appendix C.

Publication Status: Unpublished.

2. United States District Court for the Western District of Wisconsin

Case No. 3:23-cv-00005

Presiding Judge: Chief Judge James D. Peterson

Rulings and Orders Covered:

Judgment of Conviction, Acceptance of Guilty Plea, and \$410,000.00 Restitution Order: Attached hereto as Appendix J and referenced in the plea-colloquy transcripts at Appendix N.

Publication Status: Unpublished.

State Courts

1. Wisconsin Circuit Court for Pierce County

Case No. 22CF167

Rulings and Orders Covered:

Order of Dismissal With Prejudice: Entered January 24, 2023, following constitutional motions filed January 18, 2023. Attached hereto as Appendix M.

Federal Civil Settlement / Rule 68 Judgment: Case No. 3:25-cv-318. Entered or confirmed January 22, 2026, arising from claims concerning alleged reckless omissions and unlawful search conduct by lead investigator Sergeant Scott Bangert in connection with the underlying state investigation. Attached hereto as Appendices H and I.

Publication Status: Unpublished.

STATEMENT OF BASIS FOR JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1254(1) to review by writ of certiorari a case decided by a United States court of appeals.

The Seventh Circuit entered the judgment sought to be reviewed on November 10, 2025, in Appeal No. 24-3039.

Petitioner timely sought panel rehearing on December 19, 2025, and filed an amended petition for panel rehearing on January 13, 2026. The Seventh Circuit denied panel rehearing by order entered January 15, 2026. See App. A.

Under Supreme Court Rule 13.3, when a timely petition for rehearing is filed in the court of appeals, the time for filing a petition for certiorari runs from the date of the order denying rehearing. Petitioner therefore treats January 15, 2026, as the operative date for calculating the original certiorari period.

The Clerk previously returned Petitioner's submission as noncompliant in form and length. Petitioner submits this corrected petition pursuant to Supreme Court Rule 14.5. The Clerk's return letter is dated August 13, 2026. Under Rule 14.5, a corrected petition submitted no more than 60 days after the date of the Clerk's letter is deemed timely. This corrected petition is therefore submitted within the period permitted by Rule 14.5.

The December 19, 2025 recall of the mandate is relevant to the procedural history but does not alter the operative rehearing date for purposes of Rule 13.3. The January 15, 2026 order denying panel rehearing is the relevant order for calculating the original certiorari period. (See App. A.)

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES INVOLVED

The principal constitutional provisions are the Fourth, Fifth, Sixth, and Eighth Amendments to the Constitution of the United States and, to the extent state action is involved, the Fourteenth Amendment.

Because the criminal prosecution was federal, Petitioner's direct due-process claims concerning federal adjudication arise principally under the Fifth Amendment; the Fourteenth Amendment is invoked principally in relation to the state conduct alleged to have supplied evidence later used federally.

Fourth Amendment: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated...."

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

Sixth Amendment: "In all criminal prosecutions, the accused shall enjoy the right ... to have the Assistance of Counsel for his defense."

Eighth Amendment: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

The statutes and rule principally involved include 28 U.S.C. § 1254(1); 28 U.S.C. § 2255; 18 U.S.C. §§ 3663A and 3664; 42 U.S.C. § 1983; and Federal Rule of Civil Procedure 68.

STATEMENT OF THE CASE

Petitioner, Austin Koeckeritz, appearing pro se, challenges the validity of his federal conviction and guilty plea, the resulting \$410,000 restitution order, and the dismissal of his appeal in Seventh Circuit Case No. 24-3039. The case presents related constitutional questions concerning the voluntariness of Petitioner's plea, ineffective assistance of counsel, judicial impartiality, meaningful appellate review, restitution, and the subsequent use of evidence and investigative testimony originating from a challenged state investigation.

Before entering the plea, Petitioner was confined for approximately seven months under conditions that he contends substantially impaired his ability to make a voluntary and informed decision. He was subjected to prolonged solitary confinement, deprivation of basic necessities including utensils and adequate food, and repeated denial of mental-health care despite suicidal ideation. Petitioner informed the district court at the plea hearing that he had been held in solitary confinement for seven months. See App. N.

Petitioner contends that defense counsel used these conditions of confinement and Petitioner's resulting suffering as leverage to obtain the guilty plea. Counsel represented to Petitioner that mental-health treatment and transfer out of solitary confinement would occur only if Petitioner signed the plea agreement. Counsel also represented that the charges were not considered violent. Petitioner contends that these representations, combined with his prolonged confinement and lack of adequate mental-health care, materially affected his ability to make a voluntary, knowing, and intelligent decision concerning the plea.

Petitioner further contends that counsel failed to adequately investigate and advise him concerning substantial factual and legal issues before the plea. These alleged failures included failing to investigate matters that Petitioner contends would have affected his decision whether to plead guilty and failing to provide effective advice concerning the consequences of the plea. Petitioner contends that counsel therefore rendered ineffective assistance under *Strickland v. Washington*, 466 U.S. 668 (1984), and that the circumstances surrounding the plea require review under *Boykin v. Alabama*, 395 U.S. 238 (1969), and *Machibroda v. United States*, 368 U.S. 487 (1962).

Petitioner also contends that, after using his confinement and circumstances to obtain the plea, defense counsel sought additional compensation from the federal court. Petitioner presented these circumstances to the district court in motions seeking a fair opportunity to litigate the constitutional issues. Petitioner contends that the district judge denied those requests while permitting counsel to seek additional compensation for representation that Petitioner alleges was constitutionally deficient. See Apps. K, G, T.

Following the plea, Petitioner challenged the \$410,000 restitution order and other aspects of the judgment. The Seventh Circuit dismissed his appeal after appointed counsel filed an *Anders* submission. See App. D. Petitioner contends that counsel's *Anders* filing failed to address substantial nonfrivolous issues and that the court did not meaningfully consider Petitioner's timely pro se response raising those issues, including newly discovered evidence concerning judicial bias and misconduct. Petitioner contends that these circumstances implicate his Sixth Amendment right to effective assistance of counsel and the protections recognized in *Anders v. California*, 386 U.S. 738 (1967), *Penson v. Ohio*, 488 U.S. 75 (1988), and *Evitts v. Lucey*, 469 U.S. 387 (1985).

Petitioner subsequently discovered evidence concerning an alleged ex parte communication between Western District Judge James D. Peterson and Seventh Circuit Chief Judge Diane P. Sykes during the pendency of the appellate proceedings. Petitioner contends that the communication included disparaging statements concerning him and extra-record information concerning ongoing proceedings, including pending habeas and civil matters and restitution issues. (See App. G (6 and 7.)) Petitioner also submitted judicial-misconduct complaints and related materials concerning the district judge. (See Apps. J, O, P.) Petitioner contends that these circumstances raise a substantial question concerning whether he received the impartial judicial consideration required by due process under *In re Murchison*, 349 U.S. 133 (1955), and *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009).

The case also involves newly available evidence concerning the state investigation that preceded the federal prosecution. State Investigator Sergeant Scott Bangert allegedly prepared and signed warrant affidavits containing material false statements and reckless omissions. Petitioner challenged the warrants, probable cause, the charging allegations, and related investigative conduct in motions filed in the state proceeding on January 18, 2023. Those filings raised, among other issues, whether the State's own affidavit supported probable cause that Petitioner committed the charged offenses and whether the affidavit instead contained allegations concerning misconduct by the alleged victim toward the minor. (See Apps. M, V.)

The state charges were dismissed with prejudice on January 24, 2023, shortly after those constitutional challenges were filed. Petitioner further alleges that the defense filings were subsequently missing or unavailable from the state-court record when the Office of Lawyer Regulation investigated related allegations of prosecutorial misconduct. (See Apps. M, U, V.)

Petitioner alleges that, immediately following the dismissal of the state prosecution, federal authorities assumed control of the investigation and continued to use information and evidence generated through the challenged state investigation. Petitioner contends that state and federal prosecutors communicated concerning the investigation (see App. L) and that federal authorities continued developing the case, obtained additional warrants, seized financial accounts and investments, and re-interviewed witnesses in a manner that Petitioner alleges omitted or minimized information concerning abuse of the minor. (See App. T). Petitioner further alleges that Sergeant Bangert, whose conduct in obtaining the state warrants was being challenged, subsequently testified before the federal grand jury that indicted Petitioner. (See App. S).

New evidence concerning that investigative conduct became available through a Rule 68 judgment entered January 22, 2026, in related civil litigation. See App. H. Petitioner does not contend that the Rule 68 judgment, standing alone, conclusively establishes a *Franks* violation or determines the admissibility of every item of evidence obtained during the state investigation. Rather, Petitioner contends that the judgment, together with the contemporaneous state-court warrant challenges and investigative records, provides newly available evidence concerning the conduct and credibility of Sergeant Bangert and the constitutional reliability of the investigation underlying the federal prosecution. (See Apps. H, I, M, V).

Thus, the federal prosecution cannot be understood solely as an ordinary guilty-plea and restitution case. Petitioner contends that the circumstances surrounding his confinement and plea, counsel's alleged use of those circumstances to obtain the plea and subsequent request for additional

compensation, the alleged denial of meaningful appellate review, newly discovered evidence concerning judicial impartiality, and newly available evidence concerning the state investigation and Investigator Bangert's subsequent federal grand-jury testimony present interconnected constitutional questions requiring review by this Court.

REASONS FOR GRANTING THE WRIT

This case presents four closely related constitutional questions arising from the same federal prosecution and resulting \$410,000 restitution judgment. Petitioner does not present four unrelated claims. The questions concern whether constitutional protections remain meaningful when alleged investigative misconduct, an involuntary guilty plea and ineffective assistance of counsel, judicial impartiality concerns, and the denial of meaningful appellate review occur within the same proceeding.

First, Petitioner presents a substantial question concerning judicial impartiality and due process. Newly discovered evidence concerning an alleged improper ex parte communication and judicial conduct raises a serious question whether Petitioner received proceedings before a fair and impartial tribunal. (See App. G); *In re Murchison*, 349 U.S. 133 (1955); *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009).

Second, Petitioner presents a substantial question concerning the validity of his guilty plea and ineffective assistance of counsel. Petitioner alleges that his plea was entered while he was subjected to prolonged solitary confinement and inadequate mental-health care and that counsel failed to provide constitutionally adequate representation, investigation, and advice. Petitioner further alleges that counsel used the circumstances of his confinement and suffering as leverage to obtain the plea and refused to file motions Petitioner requested because counsel stated that doing so would make the judge angry.

The circumstances surrounding counsel's representation are further reflected in a private January 8, 2025 communication from Western District Judge James D. Peterson to Seventh Circuit Judge Diane Sykes concerning defense counsel's CJA compensation. Judge Peterson described Petitioner as "one of the most difficult people" he had encountered in his criminal cases and recommended payment of counsel's additional CJA voucher after counsel had already been compensated. (See App. G). Petitioner was at that time being held in prolonged solitary confinement, and Petitioner contends that the court was aware of his confinement and the circumstances surrounding his representation. Petitioner further contends that counsel's refusal to pursue requested motions, together with counsel's characterization of Petitioner as difficult, must be considered in light of counsel's request for additional compensation and Judge Peterson's private advocacy for payment of that request.

Petitioner contends that the private communication is particularly significant because Judge Sykes, who received the communication concerning counsel's compensation and characterization of Petitioner, later reviewed and dismissed Petitioner's judicial-misconduct complaint concerning Judge Peterson. Petitioner contends that the complaint was dismissed on the stated basis of prison-mail delays even though the complaint alleged judicial bias and misconduct, raising an additional

question concerning the appearance of impartiality in the subsequent review of those allegations. (See Apps. G, O, and P).

The record further indicates that counsel described Petitioner as difficult in connection with Petitioner's demands that counsel investigate voluminous discovery, applicable case law, and witness credibility. Petitioner contends that those requests were legitimate demands for investigation and that adequate investigation would have revealed material inconsistencies in the alleged victim's statements and other information relevant to the defense. See Apps. K and N. Petitioner therefore contends that the record raises a substantial question whether counsel's representation was constitutionally adequate and whether the circumstances under which counsel represented Petitioner, including the alleged coercion of the plea, refusal to pursue requested motions, and the subsequent CJA compensation dispute, undermined the voluntariness and validity of the guilty plea. See Apps. G, K, N, and T; *Boykin v. Alabama*, 395 U.S. 238 (1969); *Strickland v. Washington*, 466 U.S. 668 (1984); *Machibroda v. United States*, 368 U.S. 487 (1962).

Third, Petitioner presents a substantial question concerning meaningful appellate review and the \$410,000 restitution judgment. Petitioner presented specific pro se challenges concerning actual loss, prior payments and recoveries, business expenses, seized assets, continued business revenue, evidence allegedly affecting the alleged victim's credibility, and newly discovered evidence concerning judicial conduct. Petitioner contends that appointed counsel's *Anders* filing and the Seventh Circuit's disposition prevented meaningful consideration of those substantial claims. See Apps. D, G, and T; *Anders v. California*, 386 U.S. 738 (1967); *Penson v. Ohio*, 488 U.S. 75 (1988); *Evitts v. Lucey*, 469 U.S. 387 (1985).

Fourth, Petitioner presents a substantial Fourth Amendment question concerning state investigative misconduct and the subsequent federal use of the resulting evidence. Petitioner alleges that state investigator Scott Bangert obtained evidence through materially false or reckless warrant representations and overbroad searches and that evidence and investigative information from that investigation were subsequently used in the federal prosecution. Newly available evidence, including the January 22, 2026 Rule 68 judgment concerning Bangert's alleged conduct, together with the contemporaneous state warrant challenges, state-federal communications, and Bangert's subsequent federal grand-jury testimony, raises a substantial question concerning the constitutional reliability of that investigation and its subsequent federal use. See Apps. H, L, M, S, and V; *Franks v. Delaware*, 438 U.S. 154 (1978); *Elkins v. United States*, 364 U.S. 206 (1960); *United States v. Leon*, 468 U.S. 897 (1984).

These questions are connected by a single alleged chain of constitutional injury. The challenged investigation supplied evidence used in the federal case; the circumstances surrounding counsel and the guilty plea affected the foundation of the conviction; the alleged judicial conduct concerns the fairness and impartiality of the proceedings; and Petitioner contends that the alleged deficiencies in appellate counsel and the Seventh Circuit's disposition prevented meaningful consideration of these issues and the resulting restitution judgment.

The case therefore presents more than an ordinary dispute over the application of settled law. It raises questions concerning the integrity of federal criminal proceedings, the reliability of substantial restitution judgments, the constitutional limits of *Anders* review, judicial impartiality,

effective assistance of counsel, and the use of evidence originating from allegedly unconstitutional state conduct.

Supreme Court Rule 10 provides that certiorari is granted only for compelling reasons. Among the circumstances identified by the Rule are a court of appeals' departure from the accepted and usual course of judicial proceedings and an important question of federal law that has not been, but should be, settled by this Court. See Sup. Ct. R. 10.

Petitioner contends that the record presents those circumstances. The questions arise from a single federal prosecution and concern the reliability of the conviction, the voluntariness and constitutional validity of the guilty plea, the impartiality of the judicial proceedings, the adequacy of appellate review, the validity of the resulting restitution judgment, and the subsequent federal use of evidence and testimony originating from a state investigation whose constitutional validity is challenged by newly available evidence.

The Court's review would also provide guidance to lower courts confronting the recurring reality that most federal criminal cases end in guilty pleas, that many defendants are indigent, and that state and federal investigations increasingly overlap.

For these reasons, and because Petitioner contends that the identified constitutional issues were not meaningfully resolved below despite repeated efforts to present them to the courts, Petitioner respectfully submits that the questions presented warrant this Court's review.

I.

JUDICIAL IMPARTIALITY, EX PARTE COMMUNICATIONS, AND STRUCTURAL DUE PROCESS

ARGUMENT 1. Whether due process under the Fifth Amendment is violated when a federal judge engages in conduct that creates an objective risk of bias throughout the proceedings, including the denial of essential defense motions and ex parte communications that malign the Petitioner's character, thereby compromising the fairness and integrity of the judicial and appellate process?

Ex Parte Judicial Communications Violate Due Process

Petitioner respectfully seeks review of whether the Due Process Clause permits a federal judge to participate in proceedings when the circumstances create an objectively intolerable risk of bias, including where the record contains an undisclosed private communication concerning the defendant and his appointed counsel during the pendency of appellate proceedings.

The challenged circumstances extend from the pretrial and trial proceedings through sentencing and subsequent appellate review. Petitioner does not contend that every adverse ruling establishes judicial bias. Rather, he contends that the challenged rulings, the judge's statements and treatment of Petitioner, and the subsequently discovered private communication must be considered together under the constitutional requirement of an impartial tribunal.

A. Judicial Bias in the Pretrial, Trial, and Sentencing Proceedings

From the outset of the proceedings, Petitioner contends that the trial judge, James D. Peterson, denied critical defense requests while permitting the prosecution greater latitude. The challenged rulings included denial of requests for an expert witness and additional time to prepare the defense. Petitioner also sought a bill of particulars, which he contends was necessary under the circumstances to provide adequate notice of the charges and permit him to prepare his defense.

The court permitted the prosecution to present an expert witness while denying Petitioner a comparable opportunity to present an expert. Petitioner contends that the unequal treatment of the parties impaired his ability to present a meaningful defense.

The court also restricted evidence concerning the alleged victim's conduct before and after meeting Petitioner, including evidence concerning her continued operation and marketing of a business that she had alleged Petitioner coerced her to operate against her will. Petitioner contends that she continued to operate and profit from that business for approximately one year while Petitioner was incarcerated and that the evidence was relevant to the credibility of the allegations against him.

The court further permitted the prosecution to use deleted photographs and an encrypted hard drive as evidence in support of its case, despite Petitioner's challenges to the nature and reliability of that evidence. Petitioner also contends that the alleged victim's testimony contained material inconsistencies that were not adequately considered.

At sentencing, the judge referred to Petitioner as "evil." Petitioner contends that this characterization demonstrated hostility toward him and was inconsistent with the impartiality required of a sentencing judge. (Petitioner has requested the sentencing transcripts to establish the precise context and wording of the court's statements)

The judge also permitted, thought to be disputed information to be included in the Pre-sentence Investigation Report, including statements from former romantic partners and a prior matter that Petitioner contends had been expunged. Petitioner further contends that the prior matter involved government entrapment and that its inclusion prejudiced him at sentencing.

The court imposed the maximum 20-year sentence and a \$410,000 restitution judgment. Petitioner contends that these rulings, considered together with the judge's statements and treatment of disputed information, raise an objective question concerning the impartiality of the sentencing proceeding.

B. Newly Discovered Ex Parte Communication

The concerns arising from the proceedings were further heightened by the discovery of a private January 8, 2025 communication from Judge Peterson to Seventh Circuit Judge Diane Sykes concerning defense counsel's CJA compensation. The communication characterized Petitioner as "one of the most difficult people" Judge Peterson had encountered in his criminal cases and recommended payment of an additional \$8,108.80 in CJA compensation to defense counsel. See App. G.

The communication is significant not merely because it concerned compensation, but because it contained a disparaging characterization of Petitioner while his criminal proceedings were ongoing.

Petitioner was then a federal pretrial detainee who had spent approximately seven months in solitary confinement. Petitioner contends that the characterization must be considered in light of his repeated efforts to obtain investigative and defense assistance from appointed counsel. See App. G.

Petitioner further contends that counsel had refused to file motions he requested, stating that doing so would make the judge angry. Petitioner contends that the private communication concerning additional compensation and the characterization of him as difficult provide important context for evaluating whether the proceedings were conducted with the required neutrality. See Apps. G and K.

The concern is further heightened because Judge Sykes, who received the private communication, later participated in the handling of Petitioner's judicial-misconduct complaint concerning Judge Peterson. Petitioner contends that the complaint was dismissed on the stated basis of prison-mail delays even though it raised allegations concerning Judge Peterson's conduct. See Apps. O and P.

C. Governing Supreme Court Law

The Due Process Clause requires a fair and impartial tribunal. In *In re Murchison v. United States*, 349 U.S. 133, 136 (1955), this Court held that “[a] fair trial in a fair tribunal is a basic requirement of due process.” The Court explained that the constitutional rule seeks to prevent not only actual bias but circumstances creating a probability of unfairness.

In *Tumey v. Ohio*, 273 U.S. 510, 532 (1927), this Court held that due process is violated when circumstances create a possible temptation for a judge not to hold the balance “nice, clear and true” between the State and the accused. The constitutional inquiry therefore is not limited to proof of subjective bias.

In *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 881–86 (2009), the Court explained that objective standards may require recusal even when actual bias cannot be established. The question is whether, under the circumstances, the probability of actual bias is too high to be constitutionally tolerable.

Marshall v. Jerrico, Inc., 446 U.S. 238, 242–43 (1980), likewise recognizes that the Due Process Clause requires an impartial and disinterested tribunal in civil and criminal proceedings and protects both the reality and appearance of fair adjudication.

These authorities establish the governing principle for Petitioner's claim: the constitutional inquiry is not whether Petitioner can prove the judge's subjective state of mind beyond dispute. The question is whether the circumstances, viewed objectively, created a constitutionally intolerable risk that the judge could not remain neutral.

D. Application of the Constitutional Standard

Petitioner does not contend that an adverse ruling, standing alone, establishes unconstitutional bias. The issue arises from the cumulative circumstances presented here.

The challenged circumstances include the denial of critical defense requests; the unequal treatment concerning expert testimony; restrictions on evidence Petitioner contends was material to the defense; the treatment of disputed information at sentencing; the judge's reference to Petitioner as

“evil”; the imposition of the maximum 20-year sentence and \$410,000 restitution judgment; and the subsequently discovered private communication concerning Petitioner and his appointed counsel.

The January 8, 2025 communication is particularly significant because it was not known to Petitioner during the proceedings in which the judge participated. The communication contained a disparaging characterization of Petitioner and was directed to a judge of the court of appeals while Petitioner's appellate proceedings were pending. See App. G.

Petitioner contends that these circumstances create an objective question whether the trial judge's treatment of him was the product of neutral adjudication or whether personal hostility toward him affected the proceedings. Under *Murchison*, *Tumey*, *Caperton*, and *Marshall*, the Court need not first determine that actual subjective bias has been conclusively proved before considering whether the circumstances created a constitutionally intolerable risk of bias.

The subsequent involvement of Judge Sykes in Petitioner's judicial-misconduct proceedings is also relevant to the integrity of the appellate process. Petitioner contends that the same appellate judge who received the private communication concerning him later participated in the disposition of his complaint concerning Judge Peterson. See Apps. G, O, and P.

The question therefore extends beyond the propriety of one trial-court ruling. It concerns whether a defendant is constitutionally entitled to meaningful and impartial adjudication when evidence later emerges of a private communication between the trial judge and an appellate judge concerning the defendant and his appointed counsel.

E. Effect on Appellate Review

The private communication is especially significant because it was directed to an appellate judge while appellate proceedings concerning Petitioner were pending. Petitioner contends that the communication raises a substantial question concerning the independence and impartiality of subsequent appellate review.

Petitioner further contends that the issue extends to Seventh Circuit Case Nos. 24-3039, 25-1958, and 25-1977 because those proceedings concerned Petitioner's appeals and related judicial proceedings. See Apps. G and P.

The constitutional concern is not that the private communication automatically establishes that every subsequent appellate decision was biased. Rather, the concern is whether the circumstances created an objective risk that the appellate process was affected by information or relationships outside the normal adversarial process.

Petitioner contends that the communication was material to his ability to evaluate the fairness of the proceedings because it was undisclosed while the appellate process was occurring. He therefore seeks review of whether due process requires a meaningful opportunity to present and obtain consideration of newly discovered evidence that raises an objective question concerning judicial impartiality.

F. Cumulative Effect of the Judicial Conduct

Viewed individually, an adverse ruling or disputed sentencing determination does not necessarily establish a constitutional violation. Viewed cumulatively, however, Petitioner contends that the circumstances present a different question.

The record reflects a series of challenged defense rulings, alleged unequal treatment of the parties, disputed treatment of defense evidence, prejudicial statements concerning Petitioner, disputed information used at sentencing, and a subsequently discovered private communication concerning Petitioner and his appointed counsel. See App. G.

The private communication provides evidence that was not available to Petitioner during the original proceedings. It therefore permits examination of the earlier judicial conduct in a factual context that was not previously available to him.

Petitioner does not ask the Court to treat every allegation as conclusively established. He asks whether, assuming the facts supported by the record and presented in the appendices, the combination of circumstances creates the constitutionally intolerable probability or risk of bias addressed in *Tumey*, *Murchison*, and *Caperton*.

Appendix G contains the January 8, 2025 private communication and related CJA materials. Appendix J contains Petitioner's documentation concerning the alleged judicial bias. Appendix O contains Petitioner's judicial-misconduct complaints, and Appendix P contains the motion seeking reconsideration of the dismissal of one of those complaints. See Apps. G, J, O, and P.

G. Public Importance and Reasons for Supreme Court Review

This issue presents a question of broader importance concerning the constitutional requirement of an impartial federal judiciary. The question is not limited to whether Petitioner disagrees with particular judicial rulings. It concerns the constitutional standard applicable when a litigant later discovers an undisclosed private communication between the trial judge and an appellate judge concerning the litigant during the pendency of appellate proceedings.

The federal judicial system depends upon both actual impartiality and objective procedures that protect litigants against constitutionally intolerable risks of bias. *Murchison*, 349 U.S. at 136; *Caperton*, 556 U.S. at 881–86; *Marshall*, 446 U.S. at 242–43.

The issue is particularly important when the communication was not known to the affected litigant until after the appellate proceedings in which the communicating judges participated. A litigant cannot meaningfully challenge a circumstance creating a potential constitutional risk of bias if the material circumstance remains undisclosed during the proceeding.

Petitioner therefore presents a question concerning what constitutional protections apply when newly discovered evidence reveals an undisclosed communication between a federal district judge and a federal appellate judge concerning the defendant and matters related to the defendant's representation while the defendant's appellate proceedings were pending.

Supreme Court review would provide guidance concerning the application of the objective judicial-impartiality standard to circumstances involving undisclosed judicial communications and subsequent appellate review. It would also clarify whether and how a litigant must be permitted to

obtain meaningful review when such evidence becomes available only after the appellate proceeding has concluded.

This question is especially important because judicial impartiality is not merely an individual procedural protection. It is a structural safeguard of confidence in the federal judicial system. As this Court has recognized, due process protects both the fairness of adjudication and the assurance that the decision maker is not predisposed against a party. *Marshall*, 446 U.S. at 242–43; *Murchison*, 349 U.S. at 136.

Under Supreme Court Rule 10, certiorari is appropriate only for compelling reasons, including circumstances in which a court of appeals has departed from the accepted and usual course of judicial proceedings or an important federal question has not been, but should be, settled by this Court. Sup. Ct. R. 10.

Petitioner contends that this case presents such a question because the newly discovered communication raises a substantial constitutional issue concerning the impartiality of federal judicial proceedings and the integrity of appellate review. The question is capable of recurring whenever a litigant discovers after appellate proceedings have concluded that judges involved in the proceedings privately communicated about the litigant or matters related to the litigation.

For these reasons, Petitioner respectfully submits that the circumstances presented in this case warrant this Court's review to clarify the constitutional standard governing judicial impartiality when newly discovered evidence reveals an undisclosed judicial communication and to determine what process is required to provide meaningful review of that evidence.

II.

COERCED GUILTY PLEA, INEFFECTIVE ASSISTANCE, AND RESTITUTION

ARGUMENT 2. Whether the Fifth Amendment and Sixth Amendment are violated when a federal defendant's guilty plea is obtained under conditions of prolonged solitary confinement, inadequate mental-health treatment, and misleading or constitutionally deficient advice from counsel, rendering the plea involuntary or otherwise constitutionally invalid, and whether a conviction and restitution order may stand when they rest upon such a plea?

Coerced Plea Under Duress, Due Process Violations Under the Fifth Amendment, and Ineffective Assistance Under the Sixth Amendment

Due process under the Fifth Amendment requires that a guilty plea be entered voluntarily, knowingly, and intelligently. The Sixth Amendment separately guarantees the effective assistance of counsel during the plea process. A guilty plea is constitutionally invalid when it is not the product of a voluntary and informed choice, including when coercive circumstances or constitutionally deficient advice materially affect the defendant's decision to plead guilty.

In this case, Petitioner alleges that his guilty plea was obtained while he was subjected to prolonged solitary confinement for approximately seven months and was deprived of necessary mental-health care despite expressing suicidal ideation. See App. N.

Petitioner contends that these conditions created extreme psychological pressure that materially impaired his ability to make a voluntary and informed decision concerning the plea. Petitioner further alleges that defense counsel represented that signing the plea agreement was the means by which he could obtain relief from prolonged solitary confinement and access to mental-health treatment. See App. N.

Under these circumstances, Petitioner contends that his guilty plea cannot be treated as the product of an uncoerced and informed choice. The alleged coercive conditions must be considered together with the alleged deficiencies in counsel's advice and representation when determining whether the plea was voluntary and constitutionally valid.

This Court has consistently recognized that a guilty plea must be voluntary and intelligent. *Boykin v. Alabama*, 395 U.S. 238, 242–44 (1969); *Machibroda v. United States*, 368 U.S. 487, 493–94 (1962).

The alleged involuntariness of Petitioner's plea also bears directly upon the validity of the resulting conviction and the restitution judgment entered as part of the criminal judgment. If the conviction is vacated because the plea was constitutionally invalid, the restitution order imposed as part of that judgment must likewise be reconsidered under the governing restitution statute.

A. Invalid Guilty Plea Due to Coercion and Psychological Harm

The Court has consistently held that a guilty plea must be voluntary, knowing, and intelligent. *Boykin*, 395 U.S. at 242–44.

In *Boykin*, the Court emphasized that a guilty plea involves the waiver of fundamental constitutional rights and that the record must demonstrate that the defendant voluntarily and intelligently entered the plea. *Id.* at 243–44.

In *Machibroda*, the Court addressed allegations that a guilty plea was induced by promises or threats. The Court recognized that, if such allegations are true, a guilty plea induced by promises or threats that deprive it of the character of a voluntary act is constitutionally invalid. 368 U.S. at 493–94.

Petitioner alleges that his plea was entered while he was experiencing prolonged solitary confinement, serious psychological distress, and inadequate mental-health treatment. Appendix N contains contemporaneous communications concerning Petitioner's confinement, mental-health circumstances, and communications with counsel. See App. N.

The constitutional significance of those circumstances is not that solitary confinement or inadequate medical care automatically invalidates a guilty plea. Rather, Petitioner contends that the conditions he experienced materially affected his ability to make a voluntary and informed decision and must therefore be considered in determining whether his plea was constitutionally valid.

Godinez v. Moran, 509 U.S. 389 (1993), recognizes that a defendant must be competent to plead guilty and that the competency standard for pleading guilty is the same as the constitutional standard for competency to stand trial. *Id.* at 396–98. The Court also distinguished competency from the separate requirement that a waiver of constitutional rights be knowing and voluntary. *Id.* at 400–01.

Thus, the issue presented here is not merely whether Petitioner met a technical competency standard. It is whether, in light of the conditions of confinement, alleged mental-health deterioration, and alleged advice and representations by counsel, Petitioner's decision to plead guilty was actually voluntary and informed.

The underlying conditions are also relevant to Petitioner's contention that his mental-health circumstances were constitutionally serious. *Hutto v. Finney*, 437 U.S. 678, 685–88 (1978), recognizes that confinement in isolation is subject to Eighth Amendment scrutiny and that the severity and duration of isolation are relevant to constitutional conditions-of-confinement analysis. *Estelle v. Gamble*, 429 U.S. 97, 104–05 (1976), recognizes the Eighth Amendment protection against deliberate indifference to serious medical needs.

Petitioner does not contend that *Hutto* or *Estelle* establishes a categorical rule that solitary confinement or inadequate medical care automatically renders a guilty plea involuntary. Rather, those decisions provide constitutional context for evaluating the severity of the conditions Petitioner alleges he experienced and their asserted effect upon his ability to make a voluntary and informed decision.

Petitioner further alleges that his mental-health condition included suicidal ideation and that necessary treatment was repeatedly denied. See App. N. Petitioner contends that these circumstances, when considered together with counsel's alleged representations concerning treatment and release from solitary confinement, created a coercive environment materially affecting the plea decision.

The question therefore is whether a guilty plea may be treated as voluntary and constitutionally valid when the defendant alleges that the plea was made while subjected to severe and prolonged confinement conditions, serious untreated mental-health circumstances, and representations by counsel that pleading guilty was the means of obtaining relief from those conditions.

B. Misleading Advice from Counsel

The Sixth Amendment guarantees the right to effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668, 686–88 (1984).

The Sixth Amendment applies to the plea process. When a defendant pleads guilty based on counsel's advice, the voluntariness of the plea depends in part upon whether counsel's advice was within the range of competence demanded of attorneys in criminal cases. *Hill v. Lockhart*, 474 U.S. 52, 56–57 (1985).

Hill further holds that the *Strickland* standard applies to ineffective-assistance claims arising from guilty pleas. To establish prejudice in that context, a defendant generally must show a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial. *Id.* at 58–59.

Padilla v. Kentucky, 559 U.S. 356, 364–69 (2010), likewise confirms that counsel's constitutional duty extends to providing competent advice concerning significant consequences of a guilty plea. Petitioner does not rely on *Padilla* as establishing a general rule that counsel must advise defendants about every possible consequence of a plea. Rather, *Padilla* reinforces the broader Sixth

Amendment principle that constitutionally adequate advice is required when counsel's advice materially affects the defendant's decision to plead guilty.

In this case, Petitioner alleges that defense counsel, Nathan Otis, gave misleading advice concerning the nature and consequences of the plea. See App. N. Petitioner alleges that counsel represented that sex trafficking was a non-violent crime. See App. N., p. 26/41.

Petitioner further alleges that counsel represented that entering the plea would result in relief from prolonged solitary confinement and access to mental-health treatment. See App. N., p. 12/41. Petitioner contends that these representations were particularly significant because he was already experiencing severe psychological distress and was seeking relief from the conditions of his confinement.

Petitioner alleges that counsel therefore presented the plea as the means by which Petitioner could obtain relief from circumstances that were causing substantial psychological harm. See App. N., p. 35/41. Petitioner contends that this advice must be evaluated together with the conditions under which it was given.

This claim is not based merely on the assertion that counsel made an inaccurate prediction. Petitioner contends that counsel's alleged representations concerning treatment and transfer materially affected his decision to plead guilty and that the circumstances surrounding those representations rendered his decision involuntary.

Petitioner further contends that counsel failed to conduct constitutionally adequate investigation and failed to provide adequate advice concerning substantial factual and legal issues bearing on the case. Appendix K contains former counsel Nathan Otis's letter and related material concerning the complexity of the case and counsel's preparation. See App. K. Appendix T contains Petitioner's challenge to counsel's representation and CJA compensation, and Appendix U contains the Office of Lawyer Regulation grievance and accompanying materials. See Apps. T, U.

Under *Strickland* and *Hill*, the relevant inquiry is whether counsel's performance fell below the constitutional standard and whether there is a reasonable probability that, absent the deficient performance, Petitioner would not have pleaded guilty and would have insisted on going to trial. Petitioner contends that the record supports that inquiry.

C. Restitution Orders Based on an Invalid Plea

1. Coerced Plea and Constitutional Violations

The validity and scope of a federal restitution order are governed by the statute authorizing restitution and by the offense of conviction. The Supreme Court has recognized that restitution authority is tied to the offense of conviction and the losses caused by the conduct underlying that offense. *Hughey v. United States*, 495 U.S. 411, 413, 420 (1990).

Accordingly, if the conviction itself is vacated because the guilty plea was constitutionally invalid, the restitution order imposed as part of that criminal judgment cannot simply remain unaffected without a valid underlying conviction and statutory basis.

Petitioner does not contend that restitution is automatically unconstitutional whenever a defendant later challenges a plea. Rather, Petitioner contends that the \$410,000 restitution order must be reconsidered if this Court determines that the guilty plea was constitutionally invalid and the resulting conviction cannot stand.

The restitution issue therefore follows from the plea-validity issue. If the plea is constitutionally invalid and the conviction is vacated, the restitution judgment imposed as part of that conviction must likewise be vacated or otherwise reconsidered according to the governing restitution statute.

2. The Involuntary Plea and Restitution

Hughey provides the Supreme Court's principal rule concerning the relationship between restitution and the offense of conviction. The Court held that restitution authority is limited to losses caused by the specific conduct underlying the offense of conviction. 495 U.S. at 413, 420.

United States v. Gushlak, 728 F.3d 184 (2d Cir. 2013), likewise illustrates that restitution under the Mandatory Victims Restitution Act is subject to statutory requirements concerning the losses attributable to the offense and the evidentiary basis for the amount awarded. *Gushlak* therefore does not establish the categorical proposition that every invalid plea automatically requires vacatur of restitution; rather, the decision is relevant to the statutory and evidentiary limits governing a restitution judgment.

Here, however, Petitioner's principal contention is antecedent to the amount calculation: the \$410,000 restitution order was entered as part of a judgment based upon a guilty plea that Petitioner contends was constitutionally invalid. If the conviction cannot stand because the plea was involuntary or resulted from constitutionally ineffective assistance, the restitution order must be reconsidered because its underlying criminal judgment would no longer provide a valid basis for the award.

3. Application to the Facts of This Case

In the present case, Petitioner alleges that his guilty plea was secured under conditions that included approximately seven months of solitary confinement, denial of necessary mental-health treatment, and misleading advice from defense counsel. See App. N.

Petitioner alleges that counsel represented that a guilty plea would result in transfer to a safer or mental-health facility and access to treatment. Petitioner further alleges that counsel stated that sex trafficking was a non-violent crime. See App. N.

Petitioner contends that these representations were particularly significant because they were made while he was experiencing severe psychological distress and seeking relief from prolonged solitary confinement and inadequate mental-health care.

Coercion in the Plea: Petitioner contends that the plea was involuntary because the decision was made under extreme psychological pressure created by prolonged solitary confinement and inadequate mental-health care, combined with counsel's alleged representations concerning the consequences of pleading guilty. Petitioner further alleges that counsel used the circumstances of his confinement and suffering as leverage in obtaining the plea. See App. N.

Petitioner contends that, when these circumstances are evaluated under *Boykin*, *Machibroda*, *Godinez*, *Strickland*, and *Hill*, the record raises a substantial constitutional question concerning whether his plea represented a voluntary, knowing, and intelligent choice.

Restitution Based on Invalid Plea: The \$410,000 restitution order was entered as part of the criminal judgment resulting from Petitioner's guilty plea. Petitioner contends that if the plea is determined to have been constitutionally invalid and the conviction is vacated, the restitution order must likewise be vacated or reconsidered under the applicable restitution statute. See *Hughey*, 495 U.S. at 413, 420.

4. Court's Obligation to Ensure Voluntary Plea and Valid Restitution

A court may accept a guilty plea only when the defendant's waiver of constitutional rights is knowing and voluntary. *Boykin*, 395 U.S. at 242–44; *Godinez*, 509 U.S. at 400–01.

The constitutional inquiry is especially important where the defendant alleges circumstances that could materially affect his ability to make a voluntary and informed decision. Petitioner contends that the combination of prolonged solitary confinement, inadequate mental-health care, alleged psychological deterioration, and counsel's alleged representations concerning treatment and transfer required careful consideration of whether the plea was actually voluntary.

The same principle applies to the resulting restitution judgment. Restitution is not an independent substitute for a valid criminal judgment. Its authority depends upon the applicable restitution statute and the offense of conviction. *Hughey*, 495 U.S. at 413, 420.

Petitioner therefore contends that the constitutional validity of the plea must be resolved before the \$410,000 restitution judgment can properly stand.

D. Conclusion

Petitioner's guilty plea was allegedly obtained under coercive conditions that included prolonged solitary confinement, inadequate mental-health care, and misleading or constitutionally deficient advice from counsel. Petitioner contends that these circumstances rendered his plea involuntary or otherwise constitutionally invalid under the Fifth Amendment and violated his right to effective assistance of counsel under the Sixth Amendment.

The question is not whether any one of these circumstances automatically invalidates a guilty plea. The question is whether the totality of the circumstances alleged here—including the conditions of confinement, Petitioner's mental-health circumstances, counsel's alleged representations concerning treatment and transfer, and counsel's alleged deficiencies in investigation and advice—demonstrates that the plea was not the product of a voluntary and informed choice.

Because the conviction and \$410,000 restitution order resulted from that plea, Petitioner respectfully submits that the Court should grant certiorari to determine whether the Constitution permits the conviction and restitution judgment to stand if the plea was obtained under the circumstances alleged.

E. Factual Support

The court of appeals stated that Petitioner's guilty plea was voluntary, but Petitioner contends that this conclusion is inconsistent with evidence concerning the circumstances surrounding the plea. Petitioner's habeas filings, motions, and briefs in *Koeckeritz v. United States*, No. 25-1958 (7th Cir.), identify evidence and arguments concerning alleged coercion, ineffective assistance, and misleading or constitutionally deficient advice by counsel.

Petitioner specifically asked the court of appeals to address his habeas petition before the restitution hearing because the habeas record contained evidence and arguments that Petitioner contended were material to the validity of the plea and resulting judgment.

Those matters included ineffective assistance of counsel, challenges to the credibility of a principal witness, alleged fraud upon the court, alleged prosecutorial misconduct, and evidence that Petitioner contended supported his claim of innocence. Petitioner contends that these matters were relevant to whether he had received constitutionally adequate advice and representation before entering his plea.

According to Petitioner, the court of appeals declined to consider or rule on the habeas petition before the restitution proceedings. Petitioner contends that the failure to address those issues before the restitution judgment prevented meaningful consideration of evidence bearing upon the validity of his plea and the resulting financial judgment.

Petitioner was subjected to prolonged solitary confinement, alleges that he was denied necessary mental-health treatment, and alleges that counsel made representations concerning treatment and relief from solitary confinement if he pleaded guilty. See App. N.

Petitioner further contends that the district court accepted the plea without ordering a mental-health evaluation despite the circumstances Petitioner presented concerning his mental health. Petitioner relies upon those circumstances as part of the factual basis for his contention that the court should have carefully considered whether the plea was voluntary and whether there was reason to question his competency or ability to make a knowing and informed decision.

The \$410,000 restitution order was entered as part of the judgment resulting from the plea. Petitioner therefore contends that the restitution judgment cannot be separated from the constitutional question concerning the validity of the plea and conviction.

F. Application

Petitioner's plea was allegedly entered under extreme conditions, including prolonged solitary confinement, inadequate mental-health treatment, and misleading advice from counsel. Petitioner contends that these circumstances implicated the Eighth Amendment conditions of confinement and, more directly for purposes of the plea, the Fifth Amendment requirement that a guilty plea be voluntary and the Sixth Amendment right to effective assistance of counsel.

These conditions must be evaluated under the principles recognized in *Boykin* and *Machibroda*. *Boykin* establishes the constitutional requirement of a knowing and voluntary guilty plea, while *Machibroda* recognizes that a plea induced by promises or threats that deprive it of the character of a voluntary act is constitutionally invalid.

Godinez further establishes that a defendant must be competent to plead guilty and that competency is distinct from the separate inquiry whether the plea was knowing and voluntary. 509 U.S. at 400–01. Petitioner contends that his allegations concerning prolonged solitary confinement, suicidal ideation, inadequate mental-health treatment, and psychological deterioration raise a substantial question under both inquiries.

The conditions of confinement also provide relevant constitutional context. *Hutto* recognizes that prolonged isolation may be relevant to an Eighth Amendment conditions-of-confinement claim, while *Estelle* recognizes the constitutional significance of deliberate indifference to serious medical needs. Petitioner relies on those cases for the seriousness of the alleged conditions, not as automatic rules that those conditions alone invalidate a guilty plea.

As to counsel, *Strickland* and *Hill* provide the governing framework. Where a guilty plea is challenged based upon ineffective assistance, the petitioner must show deficient performance and prejudice, including a reasonable probability that, absent counsel’s errors, he would not have pleaded guilty and would have insisted on going to trial. *Hill*, 474 U.S. at 58–59.

Petitioner alleges that counsel misled him concerning the nature and consequences of the plea and represented that pleading guilty would provide relief from solitary confinement and access to mental-health treatment. See App. N and T. Petitioner contends that those representations materially affected his decision to plead guilty.

The evidentiary record supporting this contention is unusually concrete.

Appendix N contains 51 pages of contemporaneous communications concerning Petitioner’s confinement and communications with counsel, family members, government officials, and advocacy organizations. See App. N.

The appendix identifies, among other things, a November 25, 2023 communication concerning 23.5-hour confinement, food and medication issues, and repeated reports of mental-health deprivation. It also identifies communications concerning the alleged promise of transfer and treatment if Petitioner pleaded guilty. See App. N.

Appendix K contains former counsel Nathan Otis’s letter and related material concerning the complexity of the case, counsel’s preparation period, and counsel’s representation. See App. K. Appendix T presents Petitioner’s challenge to counsel’s CJA compensation and alleged deficiencies in representation, while Appendix U contains the Office of Lawyer Regulation grievance and exhibits. See Apps. K, T, U.

Petitioner contends that this evidence warrants review of whether his plea was the product of a voluntary and informed decision and whether counsel provided constitutionally adequate representation during the plea process.

G. Public-Interest Importance

The second question presents an issue of substantial public importance because the constitutional validity of a guilty plea depends upon a defendant’s ability to make a voluntary and informed decision with the effective assistance of counsel.

When a defendant enters a plea while subjected to prolonged solitary confinement, inadequate mental-health care, and other conditions alleged to impair his ability to understand and participate in the proceedings, the reliability of the resulting waiver of constitutional rights is directly implicated.

This case also presents a significant question concerning the duty of defense counsel to investigate and advise a defendant before a guilty plea permanently forecloses trial-related rights. Petitioner alleges that counsel failed to conduct constitutionally adequate investigation and failed to provide effective advice concerning substantial factual and legal issues bearing on the case. Petitioner further alleges that counsel's representations concerning relief from solitary confinement and mental-health treatment materially affected his decision to plead guilty.

Under *Hill*, the constitutional inquiry in such circumstances focuses upon whether counsel's deficient performance affected the plea decision. 474 U.S. at 58–59. The question therefore has significance beyond the particular facts of this case because guilty pleas are the predominant means by which federal criminal cases are resolved.

Petitioner respectfully submits that this case presents an opportunity to clarify the constitutional protections applicable when severe confinement conditions, serious mental-health circumstances, and alleged failures or misleading representations by defense counsel may materially affect a defendant's ability to make a knowing, intelligent, and voluntary decision to plead guilty.

III.

MEANINGFUL APPELLATE REVIEW, ANDERS, AND THE RESTITUTION APPEAL

ARGUMENT 3. Whether the Seventh Circuit denied Petitioner constitutionally meaningful appellate review when appointed counsel filed an *Anders* submission and was permitted to withdraw despite Petitioner's pro se presentation of substantial challenges to a \$410,000 restitution judgment and newly presented evidence, and whether the appellate court was required to provide the safeguards required by *Anders v. California* and *Penson v. Ohio* before terminating the appeal?

Petitioner, Austin Koeckeritz, respectfully seeks certiorari to address the constitutional adequacy of the appellate process in his restitution appeal.

Petitioner contends that appointed appellate counsel filed an *Anders* submission without adequately presenting the substantial issues identified by Petitioner and that the Seventh Circuit thereafter permitted counsel to withdraw without providing the meaningful appellate review required when an indigent criminal appellant has identified potentially nonfrivolous issues. See App. D.

The question presented is not whether Petitioner was entitled to have every pro se argument accepted or separately discussed. The question is whether the constitutional safeguards governing an *Anders* withdrawal were satisfied when Petitioner had identified substantial issues concerning the \$410,000 restitution judgment and other constitutional and factual matters that he contended required appellate consideration.

In *Anders v. California*, 386 U.S. 738 (1967), this Court established procedures governing appointed counsel's withdrawal on the ground that an appeal is frivolous. Counsel must conduct a conscientious examination of the case and, when seeking withdrawal, identify anything in the record that might arguably support the appeal. The appellate court must then conduct its own examination before permitting withdrawal.

In *Penson v. Ohio*, 488 U.S. 75 (1988), the Court made clear that these safeguards have constitutional significance. Where appointed counsel failed to comply with *Anders* and the appellate court permitted withdrawal without the required safeguards, the appellant was denied constitutionally adequate representation. *Id.* at 79–85.

Here, Petitioner contends that the *Anders* process did not provide meaningful consideration of substantial issues concerning the \$410,000 restitution judgment. Those issues included the calculation of the alleged victim's loss, prior payments and financial benefits, business expenses, the alleged victim's continued receipt of business revenue, evidence concerning the alleged victim's credibility, and other evidence Petitioner contended materially affected the restitution calculation. See App. T.

Petitioner also presented evidence and arguments concerning newly discovered judicial conduct and the circumstances surrounding counsel's representation. Petitioner contends that these materials were presented to the Seventh Circuit during the appellate proceedings and in subsequent requests for rehearing and extraordinary relief. See Apps. A–F.

The constitutional question is therefore whether the appellate court's *Anders* procedure adequately protected Petitioner's right to counsel and meaningful appellate consideration of substantial issues, or whether the procedure effectively terminated the appeal without the independent review required by *Anders* and *Penson*.

A. Failure to Address Non-Frivolous Claims and Newly Presented Evidence

Petitioner contends that the Seventh Circuit did not meaningfully address substantial issues identified in his pro se filings concerning the restitution judgment in Appeal No. 24-3039. See App. D.

Those issues included challenges to the \$410,000 restitution amount, including the alleged use of gross business revenue rather than an adequately supported measure of compensable loss, failure to account for financial benefits and payments, business expenses, and other evidence that Petitioner contended affected the amount of actual loss.

Petitioner also challenged the reliability of evidence underlying the restitution calculation. Among other matters, he presented evidence concerning the alleged victim's control over business finances, her payment of personal expenditures from business funds, and her continued operation and receipt of revenue from the business after Petitioner's incarceration. See App. T.

Petitioner further raised concerns concerning the alleged deletion of evidence before the federal proceedings. Petitioner contends that this evidence was relevant to the credibility of the alleged victim and to the reliability of the evidence used to establish the restitution amount.

The significance of these matters under *Anders* is not that the appellate court was required to accept Petitioner's factual allegations. Rather, the question is whether the issues were sufficiently substantial and nonfrivolous that they required consideration as part of the court's independent review before appointed counsel was permitted to withdraw.

Anders requires appointed counsel seeking withdrawal to conduct a conscientious examination of the case and to identify anything in the record that might arguably support the appeal. 386 U.S. at 744. The appellate court must then undertake its own examination of the proceedings.

Person demonstrates the constitutional importance of that requirement. There, the Court held that an appellant was denied constitutionally adequate representation where appointed counsel failed to comply with *Anders*, the appellate court permitted withdrawal, and the record contained several arguable claims. 488 U.S. at 79–85.

Petitioner contends that his case presents the same constitutional concern in a materially different factual setting: the appellate record included substantial challenges to a \$410,000 restitution judgment, yet the *Anders* procedure resulted in termination of the appeal without meaningful consideration of those challenges.

Petitioner therefore does not ask this Court to hold that every pro se filing requires a written response. He asks whether an appellate court may terminate an indigent criminal appeal through an *Anders* procedure when the appellant has identified substantial issues that are arguably nonfrivolous without demonstrating that those issues were independently considered.

B. Ineffective Assistance of Appellate Counsel and the Right to a Meaningful Appeal

Petitioner further contends that appointed appellate counsel, Johanna Christenson, did not provide constitutionally adequate representation during the appeal.

Petitioner alleges that counsel submitted an *Anders* brief without adequately consulting him, without adequately addressing the issues identified in his pro se submissions, and without presenting substantial challenges concerning the restitution judgment, the alleged victim's inconsistent statements, prosecutorial misconduct, and other matters Petitioner contended were relevant to the appeal.

The constitutional standard governing effective assistance on appeal is established by *Evitts v. Lucey*, 469 U.S. 387 (1985). The Court held that when a State provides a first appeal as of right, the appellant is entitled to effective assistance of counsel during that appeal. *Id.* at 396–97.

Although *Evitts* arose in a state proceeding, its recognition of effective appellate representation is consistent with the Sixth Amendment right to counsel applicable to federal criminal proceedings. The federal constitutional question here concerns the adequacy of appointed counsel's representation during Petitioner's federal criminal appeal and the operation of the *Anders* procedure used to terminate that representation.

Anders does not permit appointed counsel simply to declare an appeal frivolous. Counsel must conduct a conscientious examination of the record and identify any issue that might arguably support the appeal. 386 U.S. at 744.

Penson further establishes that when the *Anders* safeguards fail and the record contains arguable claims, the appellate court cannot simply treat the defect as harmless by conducting an unsupported review after counsel has withdrawn. 488 U.S. at 79–85.

Petitioner contends that his appeal presented arguable issues concerning the restitution judgment, including the evidentiary basis for the \$410,000 amount, the calculation of actual loss, alleged prior payments and financial benefits, business expenses, continued revenue from the business, and evidence bearing upon the credibility and reliability of the alleged victim's claims. See App. T.

Petitioner further contends that counsel failed to adequately investigate and present these issues and that the *Anders* submission did not provide the appellate court with the adversarial presentation necessary to ensure that substantial issues were not overlooked.

The constitutional injury therefore does not depend solely upon application of the ordinary *Strickland* prejudice framework. Where the *Anders* procedure results in the complete denial of constitutionally adequate appellate representation during the decisional process, *Penson* recognizes that ordinary harmless-error or *Strickland* prejudice analysis may not adequately protect the appellant's rights. 488 U.S. at 88–89.

Petitioner submits that the circumstances of his appeal warrant review under that principle.

C. The Restitution Order and the Constitutional Need for Meaningful Appellate Review

The restitution judgment imposed in this case was \$410,000. Petitioner contends that substantial questions existed concerning the factual and legal basis for that amount.

Under the Mandatory Victim Restitution Act, the Government bears the burden of demonstrating the amount of loss sustained by a victim as a result of the offense. 18 U.S.C. § 3664(e). Restitution must be tied to the losses attributable to the offense of conviction. *Hughey v. United States*, 495 U.S. 411, 418 (1990).

Petitioner contends that his pro se appellate submissions identified substantial disputes concerning the calculation of loss, including the treatment of business revenue, prior payments and financial benefits, business expenses, and evidence concerning the alleged victim's continued receipt of revenue from the business.

Petitioner further contends that the restitution calculation did not adequately account for evidence concerning the actual economic relationship between the parties and the business, including the alleged victim's control over financial matters and the use of business funds for personal expenditures. See App. T.

The issue is therefore not simply whether Petitioner disagrees with the amount of restitution. Petitioner contends that the record presented specific factual and legal grounds for challenging whether the Government established the amount of loss required by § 3664(e) and whether the resulting \$410,000 award was properly tied to losses caused by the offense of conviction.

Hughey establishes that restitution under federal law is tied to the loss caused by the offense of conviction. 495 U.S. at 418. The statutory scheme also requires disputes concerning the proper

amount of restitution to be resolved by the court under the preponderance-of-the-evidence standard. 18 U.S.C. § 3664(e).

Petitioner also relies upon *Paroline v. United States*, 572 U.S. 434 (2014), not as a general rule governing every MVRA restitution calculation, but for the principle that the Government bears the burden of establishing the amount of loss and the required causal relationship under the applicable restitution statute. *Paroline* interpreted § 2259 in the specific context of child-pornography restitution and therefore should not be treated as controlling every aspect of Petitioner's restitution calculation.

The constitutional issue presented here is whether the appellate process provided a meaningful opportunity to challenge those statutory and factual questions when appointed counsel proceeded under *Anders* and the court permitted counsel's withdrawal.

D. The Role of Judicial Bias and Its Impact on the Restitution Appeal

Petitioner further contends that newly presented evidence concerning judicial conduct was relevant to the fairness of the proceedings surrounding the restitution judgment.

In *In re Murchison*, 349 U.S. 133, 136 (1955), this Court emphasized that a fair tribunal is a basic requirement of due process. The Court explained that justice must satisfy the appearance of justice and that circumstances creating a constitutionally intolerable risk of bias can require disqualification.

In *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009), the Court recognized that due process requires recusal where the probability of actual bias on the part of the judge is constitutionally intolerable. *Caperton* did not establish that an appearance of bias alone automatically violates due process in every circumstance.

Here, Petitioner contends that evidence concerning a private communication between the trial judge and an appellate judge, together with the subsequent handling of Petitioner's judicial-misconduct allegations, raised a substantial question concerning the impartiality of the proceedings. See App. G and App. P.

Petitioner further contends that he presented these concerns to the court of appeals and attempted to supplement the record with materials concerning the alleged communication and related extraordinary-relief proceedings. See Apps. B, F, and P.

The January 15, 2026 rehearing order states that the members of the original panel considered Petitioner's December 19 petition and January 13 amended petition before denying panel rehearing. See App. A. Petitioner contends, however, that the court did not meaningfully address the newly presented evidence and that the procedural handling of those materials raises a substantial question concerning whether the appellate process provided the independent review required by *Anders* and *Penson*.

Petitioner does not ask this Court to determine the ultimate merits of the judicial-misconduct allegations in this petition. Rather, he asks whether substantial newly presented evidence concerning judicial impartiality, when raised during an appeal involving a substantial restitution

judgment, could be disregarded without the meaningful appellate consideration required by the Constitution.

E. The Restitution Award Raises Substantial Questions Concerning Loss, Evidence, and Multiple Recoveries

The \$410,000 restitution award is also challenged on the ground that the record allegedly did not establish the amount of compensable loss with sufficient reliability.

Petitioner contends that the award relied substantially upon gross business receipts without adequately accounting for evidence concerning the actual economic operation of the business, including operating expenses, taxes, financial benefits provided to the alleged victim, and the parties' respective financial contributions.

Petitioner does not contend that every business expense or tax payment must automatically be deducted from restitution. Rather, he contends that the district court was required to determine the loss attributable to the offense under the applicable restitution statute and to resolve factual disputes concerning the amount of that loss based upon the evidence.

Petitioner identifies the following evidence as material to that inquiry:

1. **Taxes Paid on Business Income.** Petitioner contends that taxes paid on business income were relevant to determining the amount of economic loss actually attributable to the alleged victim.
2. **Retirement Accounts and Financial Benefits Established for the Alleged Victim.** Petitioner contends that the alleged victim received substantial financial benefits, including a retirement account established in her name, that were relevant to the financial relationship between the parties and the claimed losses.
3. **Personal Use of Business Funds.** Petitioner contends that business funds were used for personal expenditures attributed to the alleged victim, including horseback-riding lessons, cosmetic procedures, licensing expenses, and other personal expenditures. Petitioner contends that these transactions were relevant to the calculation of the actual economic loss.
4. **Operational Business Expenses.** Petitioner contends that business expenses, including accounting fees, platform subscriptions, and other operating costs, were relevant to determining the amount of net economic loss rather than simply gross business receipts.
5. **Continued Business Operation and Revenue.** Petitioner contends that, after his incarceration, the alleged victim continued operating and marketing the business and continued receiving revenue from content that Petitioner contends was included in the restitution calculation. Petitioner contends that this evidence was relevant to whether and to what extent the claimed losses were actually sustained.

Petitioner also contends that substantial business and investment assets were seized during the federal investigation. The legal effect of those seizures is distinct from the calculation of restitution, and Petitioner does not rely upon forfeiture as an automatic statutory offset. Rather, Petitioner contends that the record concerning the seized assets was relevant to determining what losses were

actually sustained, whether any recovered funds were applied toward the same loss, and whether the evidence supporting the restitution amount was complete.

The MVRA does not permit a restitution award to exceed the victim's compensable loss, and § 3664 provides the statutory framework for determining the amount and resolving disputes concerning loss. Petitioner therefore contends that the appellate court should have meaningfully reviewed his specific challenges to the factual and legal basis of the \$410,000 award.

Petitioner further contends that evidence concerning the alleged victim's continued receipt of business revenue and alleged deletion of evidence was relevant to the reliability of the restitution evidence.

The significance of these issues to the present petition is their relationship to the *Anders* procedure. Petitioner presented substantial factual and legal challenges to a \$410,000 judgment. He contends that those challenges were not meaningfully addressed before the appeal was terminated through the *Anders* process.

The procedural record concerning the attempted rehearing further demonstrates that Petitioner continued attempting to place the newly discovered material before the appellate court.

Appendix A is the January 15, 2026 order stating that all members of the original panel voted to deny panel rehearing after considering the December 19 petition and January 13 amended petition. See App. A.

Appendix E documents the December 19, 2025 recall of the mandate and the later April 14, 2026 correspondence concerning another request to recall the mandate. See App. E.

Appendix F is Petitioner's motion seeking supplementation with Exhibits A and C. Petitioner contends that he asked the court of appeals to consider the complete history of the alleged ex parte communication and extraordinary-relief motion and that the court declined to include those materials in the panel's consideration. See App. F.

Appendix B contains the emergency motion itself, and Appendix C contains Petitioner's subsequent requests for extraordinary relief. These materials demonstrate that Petitioner repeatedly attempted to present the issues and newly available evidence to the court of appeals. See Apps. A–F.

F. Additional Concern Regarding the Alleged Victim, the Minor, and the Restitution Award

Petitioner contends that evidence concerning the alleged victim's conduct was relevant to her credibility and to the reliability and amount of the claimed restitution loss. The record includes statements from the minor identifying the alleged victim as the person who abused her, as well as contemporaneous text messages that Petitioner contends concern unlawful videos and conduct involving the minor. Petitioner does not ask this Court to determine whether the alleged victim committed a criminal offense, but contends that this evidence was relevant to the reliability of the evidence supporting the \$410,000 restitution award. (appendix T)

Petitioner further contends that evidence concerning the alleged victim's conduct, the continued operation and revenue of the business, deleted material, and related financial transactions was not meaningfully investigated or considered in determining the claimed loss. Under 18 U.S.C. §§

3663A and 3664, restitution must be tied to losses legally attributable to the offense and determined under the statutory framework.

These issues were presented as part of Petitioner's challenges to the restitution judgment. Petitioner therefore contends that they were potentially nonfrivolous issues requiring consideration under *Anders* and *Penson* before the appeal was terminated.

G. Public Importance

This case presents an important question concerning the constitutional limits of the *Anders* procedure in federal criminal appeals involving substantial restitution judgments.

When appointed appellate counsel seeks withdrawal on the ground that an appeal is frivolous, *Anders* requires a conscientious examination of the record and identification of anything that might arguably support the appeal. The appellate court must then independently examine the proceedings before permitting withdrawal. 386 U.S. at 744.

Penson demonstrates the constitutional consequence when those safeguards are not followed. There, the Court held that an indigent appellant was deprived of constitutionally adequate representation where the *Anders* procedure failed and the record contained several arguable claims. 488 U.S. at 79-85.

The question presented here is particularly significant because the appeal involved a \$410,000 restitution judgment and Petitioner contends that his pro se submissions identified concrete factual and legal disputes concerning the amount of loss, the evidence supporting the award, and newly presented evidence bearing upon the fairness of the proceedings.

Petitioner does not ask this Court to establish a rule requiring appellate courts to accept every pro se allegation or to separately discuss every argument. He asks the Court to clarify what *Anders* and *Penson* require when an indigent federal appellant identifies substantial issues that are arguably nonfrivolous before appointed counsel is permitted to withdraw and the appeal is terminated.

The issue also has significance beyond this case because *Anders* procedures are used throughout the federal and state appellate systems to permit appointed counsel to withdraw from appeals deemed frivolous. The constitutional safeguards surrounding that procedure therefore affect the reliability of appellate review for indigent criminal defendants generally.

Petitioner respectfully submits that certiorari is warranted to determine whether the appellate procedure used in his case satisfied the constitutional requirements of *Anders*, *Penson*, and effective appellate representation, and whether a \$410,000 restitution judgment may be permitted to stand without meaningful appellate consideration of the substantial challenges presented to it.

IV. FOURTH AMENDMENT, FRANKS, ELKINS, LEON, AND STATE- TO-FEDERAL USE OF EVIDENCE

ARGUMENT 4. Whether the Fourth Amendment permits federal authorities to rely upon evidence and testimony from a state investigation when newly available evidence indicates

that a state investigator allegedly obtained warrants through knowing or reckless falsehoods or omissions and later testified before the federal grand jury that indicted the defendant?

Petitioner respectfully requests that this Court grant certiorari to address whether the Fourth Amendment mandate the suppression of evidence obtained through unlawful searches and seizures conducted by state investigators, which was subsequently transferred to federal authorities. This Court's intervention is necessary to determine whether the good-faith exception to the exclusionary rule applies when judicially confirmed misconduct by a state investigator taints the evidence used in federal prosecutions.

A.) Judicially Confirmed Misconduct by State Investigator

On January 22, 2026, a Rule 68 judgment was entered in a civil § 1983 action against Sergeant Scott Bangert, the state investigator responsible for submitting the affidavit that led to the issuance of the search warrants in this case. This judgment confirmed that Sergeant Bangert engaged in misconduct during the investigation, including reckless omissions and misrepresentations in the affidavit used to obtain the search warrants. The Rule 68 judgment establishes that the affidavit was constitutionally flawed, raising substantial questions about the probable cause supporting the search warrants and the integrity of the subsequent searches. (Appendix H and I)

B.) The Impact of the Rule 68 Judgment on Investigator Credibility

The January 22, 2026 Rule 68 judgment provides newly available evidence concerning the conduct and credibility of Sergeant Scott Bangert, one of the principal investigators in Petitioner's case. The judgment is relevant because Bangert allegedly prepared and signed warrant affidavits containing materially false statements and reckless omissions, conduct that potentially implicates *Franks v. Delaware*, 438 U.S. 154 (1978). Petitioner does not rely upon the Rule 68 judgment to establish the admissibility of every item seized during the state searches, which was limited in evidentiary value. Rather, the judgment raises a substantially different constitutional concern: whether an investigator whose own conduct in obtaining search warrants is supported by newly available evidence of a possible *Franks* violation could thereafter be presented by the government as a credible law-enforcement witness in the federal prosecution. This concern is heightened because Bangert subsequently testified before the federal grand jury that indicted Petitioner. The issue is therefore not merely whether particular physical evidence should have been suppressed, but whether the government was constitutionally permitted to rely upon the testimony and credibility of a principal investigator whose alleged knowing or reckless misconduct directly concerned the investigation and evidence underlying the federal prosecution. The Rule 68 judgment, together with the contemporaneous state defense motions and investigative records, provides new evidence warranting review of whether the government was required to address Bangert's alleged constitutional misconduct before relying upon him as a federal grand-jury witness. See Apps. H, M, S, T, V.

C.) The Good-Faith Exception and Investigator Credibility

United States v. Leon, 468 U.S. 897 (1984), recognizes that the good-faith exception does not apply where an officer's reliance on a warrant is undermined by knowing or reckless falsehoods or omissions in the supporting affidavit. Here, the January 22, 2026 Rule 68 judgment provides newly

available evidence concerning Sergeant Scott Bangert's alleged reckless omissions and false statements in obtaining the challenged warrants. Petitioner relies on this judgment not primarily to seek suppression of the limited physical evidence obtained, but because the alleged *Franks* conduct directly bears upon Bangert's credibility and the reliability of the investigation in which he served as a principal investigator. That concern is heightened because Bangert later testified before the federal grand jury that indicted Petitioner. Appendix L contains communications between state and federal prosecutors that Petitioner contends show coordination during the investigation and detention, while Appendix M shows that the state prosecution was dismissed with prejudice shortly after the defense challenged the warrants, complaint, and probable cause. These circumstances raise a substantial question whether the government could reasonably treat Bangert as a reliable investigator and federal witness while allegedly knowing that his own conduct in obtaining the underlying warrants was constitutionally challenged. The issue therefore extends beyond the good-faith treatment of seized evidence to whether the government's subsequent reliance upon an investigator implicated in an alleged *Franks* violation undermined the constitutional reliability and integrity of the federal prosecution. See Apps. H, I, L, M, S, T, V.

D.) The Constitutional Consequences of the Investigator's Reckless Warrant Conduct

The constitutional issue is not limited to whether property seized under the challenged warrants was ultimately useful to the federal prosecution. Petitioner alleges a broader course of conduct by lead investigator Sergeant Scott Bangert, including preparing and executing warrants that damaged Petitioner's homes, coordinating with other counties in executing those warrants, preparing paperwork used to seize Petitioner's business and personal accounts, and participating in overbroad warrants used to seize property from Petitioner's home. Sergeant Bangert also personally prepared and signed an affidavit supporting one challenged warrant. Petitioner contends that the January 22, 2026 Rule 68 judgment provides evidence concerning his reckless representations or omissions in that affidavit. Under *Franks v. Delaware*, 438 U.S. 154, 155–56, 171–72 (1978), a warrant must be voided and its fruits excluded when a material false statement was made knowingly, intentionally, or with reckless disregard for the truth and the remaining affidavit is insufficient to establish probable cause. *United States v. Leon*, 468 U.S. 897, 923 (1984), likewise recognizes that the good-faith exception does not apply when the issuing judge was misled by an affiant's knowing or reckless falsehood. Because the challenged conduct was committed by the state investigator who supplied the information supporting the warrant, *Elkins v. United States*, 364 U.S. 206, 223–24 (1960), further establishes that state investigative conduct does not lose its Fourth Amendment significance merely because the resulting evidence is later used in a federal prosecution.

The Petitioner alleges that the investigator whose affidavit supplied the basis for the challenged warrants did more than participate in the initial search. He allegedly prepared and signed the warrant affidavits, participated in the broader seizure of Petitioner's property and financial interests, and later testified before the federal grand jury that returned the federal indictment. Petitioner therefore contends that the constitutional significance of the investigator's conduct extends beyond the physical items seized during the challenged search and raises a question concerning the subsequent use of information and investigative fruits generated through that conduct.

Petitioner recognizes that *United States v. Calandra*, 414 U.S. 338 (1974), limits application of the exclusionary rule in grand-jury proceedings and holds that a grand-jury witness ordinarily may not refuse to answer questions merely because they are based on evidence obtained through an unlawful search. Petitioner's contention is therefore not simply that the investigator's grand-jury testimony was automatically inadmissible. Rather, the question presented is whether, where the same investigator allegedly supplied materially false or reckless information to obtain a warrant, participated in the resulting investigative seizures, and then became a witness in the federal charging process, the federal courts were required to examine whether the resulting prosecution was sufficiently tainted to require suppression, further evidentiary proceedings, or another constitutional remedy.

E.) The Alleged Use of the State Investigation as a Federal Tool

Petitioner's Fourth Amendment claim is not limited to whether the property seized under the challenged state warrants was ultimately useful to federal prosecutors. Petitioner alleges that the state prosecution was built upon an unconstitutional criminal complaint, overbroad warrants, and investigative misconduct by Sergeant Scott Bangert, and that those matters were being actively challenged when the state case was dismissed with prejudice. The state affidavit, Petitioner contends, did not establish probable cause for the charges ultimately pursued against him; rather, the information available to the state indicated that the alleged victim, not Petitioner, had abused the minor. Petitioner alleges that this exculpatory information was omitted or minimized when federal prosecutors assumed control of the investigation.

Petitioner further alleges that federal prosecutors took over the case immediately after the state dismissal, while Petitioner had already been incarcerated for approximately five months, and used that detention as leverage while developing the federal prosecution. Appendix L contains communications between state and federal prosecutors that Petitioner contends demonstrate coordination in the transfer and development of the case. Petitioner alleges that federal prosecutors knew the state affidavit and Bangert's investigative conduct were being challenged for lack of probable cause, yet proceeded to use the state investigation, re-interviewed the alleged victim without addressing the allegations that the victim had abused the minor, and continued building the federal case from the challenged investigation.

The Fourth Amendment does not permit the federal government to accomplish indirectly through state officers what it could not constitutionally accomplish directly. *Gambino v. United States*, 275 U.S. 310, 314-16 (1927), held that evidence obtained by state officers acting solely on behalf of the United States is inadmissible in a federal prosecution. *Elkins v. United States*, 364 U.S. 206, 223-24 (1960), likewise requires a federal court to independently determine whether a state search violated the Fourth Amendment, regardless of the state court's treatment of the search. *Franks v. Delaware*, 438 U.S. 154, 155-56, 171-72 (1978), further requires scrutiny where a warrant affidavit contains material falsehoods made knowingly or with reckless disregard for the truth, while *United States v. Leon*, 468 U.S. 897, 923 (1984), recognizes that the good-faith exception does not protect a warrant obtained through such conduct.

Accordingly, Petitioner asks whether the courts below were required to examine the alleged state-federal coordination as a whole, including the challenged state affidavit, Bangert's alleged reckless

warrant conduct, the dismissal of the state case with prejudice, the immediate federal takeover, the suppression or omission of exculpatory information during federal questioning, and Bangert's subsequent participation in the federal charging process, rather than treating the federal prosecution as independent of the unconstitutional state investigation.

F.) Facts:

The facts of this case present a troubling sequence of events involving state investigators, federal authorities, and potential violations of the Fourth Amendment. Specifically:

1. **Unlawful Search Warrants:** On August 17, 2022, state law enforcement officers, led by Sergeant Scott Bangert, executed multiple search warrants on two residences owned by Petitioner's family. The warrants were based on an affidavit submitted by Sergeant Bangert, which allegedly lacked sufficient probable cause and contained reckless omissions and misleading representations. These defects raised serious concerns about the constitutionality of the searches.
2. **Inadequate Justification for Search and Seizure:** The affidavit supporting the warrants did not adequately establish a nexus between the alleged criminal activity and the items being sought, including a firearm that was the stated target of the searches. The warrants were also deemed overly broad and lacked particularity, authorizing the search of multiple residences and the seizure of property that was not directly tied to the alleged criminal conduct.
3. **Destruction of Property:** During the execution of these warrants, officers forcibly entered the homes and caused physical damage, including destroying doors and other structural elements. The broad and invasive nature of the searches led to the seizure of items unrelated to the alleged criminal activity, compounding concerns about the unlawful nature of the searches.
4. **Suppression Findings in Federal Proceedings:**
In the federal proceedings, Magistrate Judge Stephen Crocker recommended the suppression of evidence obtained from one of the searched homes, and District Judge James D. Peterson adopted that recommendation. This ruling signaled that some of the evidence obtained from these searches was constitutionally flawed and may not be admissible in the federal prosecution. (Appendix I)
5. **Rule 68 Judgment:** On January 22, 2026, a judicially entered Rule 68 judgment in a civil action under 42 U.S.C. § 1983 against Sergeant Scott Bangert was issued. The judgment, arising from the same investigation, alleged that Sergeant Bangert's affidavit was materially misleading and lacking in probable cause. This judgment constitutes newly discovered evidence and raises substantial questions about the credibility of the affidavit and the constitutionality of the search and seizure process.
6. **Transfer of Evidence to Federal Authorities:** After the state case was dismissed without review or ruling on the defense counsel's motions, the case was dismissed with prejudice, federal authorities assumed prosecution and used evidence obtained from the contested state searches, including property seized and financial assets wrongfully frozen. The transfer of evidence between state and federal authorities, despite potential constitutional violations in the state search, raises concerns about the admissibility of the evidence in the federal prosecution.
7. **Dismissal of State Charges:** The state charges were dismissed with prejudice shortly after Petitioner's defense counsel filed motions challenging the sufficiency of the supporting affidavit and the probable cause for the searches. This dismissal came just six days after the defense raised constitutional concerns regarding the validity of the warrants, suggesting that the state may have

known about the deficiencies in the affidavits but chose to proceed with the prosecution nonetheless. (Appendix M)

G.) Cited Law:

The constitutional questions presented in this case arise under the Fourth and Fourteenth Amendments and concern the admissibility of evidence obtained through constitutionally defective state search warrants and subsequently transferred to federal authorities for use in a federal prosecution. The Supreme Court and the Seventh Circuit have established clear principles governing the validity of warrant affidavits, the exclusion of unlawfully obtained evidence, and the limits of the good-faith exception.

1. Franks v. Delaware, 438 U.S. 154 (1978)

In *Franks v. Delaware*, the Supreme Court held that the Fourth Amendment is violated when a search warrant is issued based on an affidavit containing false statements or material omissions made knowingly, intentionally, or with reckless disregard for the truth. Where such falsehoods or omissions are necessary to the finding of probable cause, the warrant is constitutionally invalid and the evidence obtained pursuant to it must be suppressed.

The Court emphasized that the warrant process depends upon the truthfulness and integrity of the affiant and that judicial review is required where credible evidence indicates that the issuing judge may have been misled by materially incomplete or inaccurate information.

2. Elkins v. United States, 364 U.S. 206 (1960)

In *Elkins v. United States*, the Supreme Court abolished the “silver platter doctrine,” which had previously allowed federal courts to admit evidence obtained by state officers through unconstitutional searches and seizures. The Court held that the Fourth Amendment exclusionary rule applies equally to evidence obtained by both state and federal law enforcement officers. Evidence obtained in violation of the Constitution by state officials cannot be admitted in federal court simply because federal officers were not involved in the initial search. *Elkins* established that the transfer of evidence between sovereigns does not cure constitutional defects in the original search or seizure.

3. United States v. Leon, 468 U.S. 897 (1984)

In *United States v. Leon*, the Supreme Court recognized a limited good-faith exception to the exclusionary rule, permitting the admission of evidence obtained under a warrant later found invalid if law enforcement officers acted in objectively reasonable reliance on the warrant. However, the Court made clear that the good-faith exception does not apply where: the issuing magistrate was misled by information in the affidavit that the affiant knew was false or would have known was false except for reckless disregard for the truth; the affidavit is so lacking in probable cause that reliance upon it would be unreasonable; or the warrant is facially deficient such that no reasonable officer could presume it valid. Thus, when an affiant provides materially misleading information or omits critical facts necessary to the probable cause determination, the good-faith exception cannot validate the resulting search.

4. United States v. McMurtrey, 704 F.3d 502 (7th Cir. 2013)

The Seventh Circuit in *United States v. McMurtrey* reaffirmed that the Fourth Amendment requires careful scrutiny of warrant affidavits where defendants present evidence suggesting that law enforcement officers made material omissions or misrepresentations.

The court emphasized that probable cause determinations depend upon a truthful and complete presentation of facts to the issuing judge and that when this process is compromised, the resulting warrant may be constitutionally invalid.

5. *United States v. Satterfield*, 743 F.3d 827 (7th Cir. 2014)

In *United States v. Satterfield*, the Seventh Circuit reiterated that the Franks doctrine safeguards the integrity of the warrant process. The court recognized that material misrepresentations or omissions by an affiant undermine the reliability of the probable cause determination and raise serious Fourth Amendment concerns.

H.) Application

Petitioner submits that the federal prosecution was built in substantial part upon evidence originating from state searches conducted pursuant to allegedly defective warrant affidavits prepared or signed by Investigator Scott Bangert. The January 22, 2026 Rule 68 judgment in the related civil action provides new evidence concerning alleged misconduct by Bangert, including reckless omissions and false statements in connection with the procurement of warrants. (See App. H.) The state defense motions filed January 18, 2023 challenged the warrants as overbroad and unsupported by probable cause, including warrants that sought a single memory card but allegedly authorized seizure of property, bank accounts, investments, and other physical items. Those motions also challenged the alleged victim's criminal complaint and asserted that the State's own affidavit supported allegations that the alleged victim had abused the minor rather than probable cause that Petitioner committed the charged offenses. The motions further identified allegedly improper paperwork signed by Bangert that was used to seize Petitioner's financial accounts. The state court did not adjudicate those constitutional challenges before dismissing the charges with prejudice on January 24, 2023. Petitioner further alleges that the defense filings were subsequently missing from the court record when the Office of Lawyer Regulation investigated related prosecutorial misconduct. See Apps. M, V.

Immediately following the dismissal, federal authorities allegedly assumed control of the investigation and continued using information and evidence generated through the challenged state investigation. Petitioner alleges that federal prosecutors knew the state warrants and affidavit were being challenged, nevertheless relied upon the state investigation, re-interviewed witnesses using selective questioning that omitted or minimized information concerning alleged abuse of the minor, obtained additional warrants, and seized Petitioner's financial assets. Appendix L contains state-federal prosecutorial communications that Petitioner contends demonstrate coordination in the transition and development of the federal case. Bangert, whose own investigative conduct was being challenged, later testified before the federal grand jury that indicted Petitioner. (See Apps. L, S.) Petitioner therefore contends that the state investigation was used as an instrument to develop the federal prosecution despite the constitutional challenges pending against its foundation.

Under *Franks v. Delaware*, 438 U.S. 154 (1978), materially false statements or reckless omissions in a warrant affidavit require constitutional scrutiny when they are material to probable cause. *Elkins v. United States*, 364 U.S. 206 (1960), further requires federal courts to examine the constitutionality of evidence obtained through state searches, while *United States v. Leon*, 468 U.S. 897 (1984), limits the good-faith exception where an affiant knowingly or recklessly misleads the issuing judge. Petitioner therefore asks whether federal authorities may rely upon evidence originating from allegedly unconstitutional state searches when the federal government allegedly knew of the defects, assumed control immediately after the state case was dismissed with prejudice,

continued developing the investigation, and subsequently used the same investigator as a federal grand-jury witness. Petitioner does not contend that the Rule 68 judgment alone determines admissibility or automatically establishes every alleged violation. Rather, the judgment, the contemporaneous state motions, prosecutorial communications, grand-jury testimony, and related records provide evidence of a connected sequence that raises a substantial Fourth Amendment question concerning whether constitutionally defective state investigative conduct was transferred and repurposed to support the federal prosecution. See Apps. H, I, L, M, Q, R, S, V.

I.) Additional Investigative Conduct and Financial Incentive to Implicate Petitioner

The investigative record raises a substantial concern regarding Investigator Scott Bangert and social worker Kelsey Whitcomb's interview of the minor. The minor initially did not implicate Petitioner, but during the interview stated that her mother had told her to ask for money and expressed a desire to receive \$100,000. Rather than investigating that apparent financial incentive, Whitcomb allegedly explained how the minor could pursue money through a civil action and left the interview to confer with Bangert. At the conclusion of the interview, the minor asked, "I want to know how to get my money." These circumstances, together with the alleged reckless omissions and misrepresentations in Bangert's warrant affidavit, the seizure of Petitioner's financial accounts through allegedly incorrect paperwork, the overbroad searches, and the subsequent federal use of the investigation and Bangert's grand-jury testimony, raise a substantial question concerning the reliability and impartiality of the investigative process. The January 18, 2023 state defense motions challenged the warrants and the sufficiency and credibility of the State's allegations, including whether the State's own affidavit supported allegations concerning misconduct by the alleged victim toward the minor rather than probable cause that Petitioner committed the charged offenses. The State case was dismissed with prejudice on January 24, 2023. Under *Franks v. Delaware*, 438 U.S. 154 (1978), these circumstances warrant scrutiny of whether materially false or misleading information was used to obtain the warrants and whether the resulting investigation was constitutionally defective from its inception. Petitioner does not ask this Court to determine anyone's guilt or innocence based solely on these facts; he asks whether the reliability of the investigation and the subsequent federal use of it required constitutional review. (App. T.)

J.) Investigator Credibility, Tainted Evidence, and Federal Grand Jury Testimony

Petitioner further submits that the constitutional concerns are heightened because Investigator Scott Bangert allegedly prepared or participated in challenged state warrants containing materially false statements or reckless omissions and later testified as a law-enforcement witness before the federal grand jury. If established under *Franks v. Delaware*, 438 U.S. 154 (1978), such conduct bears directly upon the reliability of the warrants, resulting evidence, and Bangert's credibility as a government witness. Petitioner alleges that Bangert also participated in improper or overbroad searches, used incorrect paperwork to seize Petitioner's bank and investment accounts, and that evidence from the state investigation was subsequently transferred or used by federal authorities. See Apps. H, I, L, M, Q, R, S, T, V. Petitioner does not contend that every warrant defect automatically bars an officer from testifying before a grand jury; rather, the question is whether

federal authorities may rely upon an investigator as a principal grand-jury witness when that investigator allegedly knew that his own materially false or reckless conduct had placed the underlying evidence in constitutional doubt. *Elkins v. United States*, 364 U.S. 206 (1960), and *United States v. Leon*, 468 U.S. 897 (1984), reinforce that constitutional defects in state searches cannot simply be disregarded when the resulting investigation is used in federal court. Petitioner therefore asks whether the Fourth Amendment permits federal authorities to rely upon evidence and grand-jury testimony supplied by a state investigator whose own alleged constitutional misconduct materially affected the investigation and evidence underlying the federal prosecution.

K.) Public Importance

This case presents an important question concerning the integrity of federal prosecutions when alleged constitutional violations by a state investigator are followed by federal use of the resulting evidence and testimony. The public has a substantial interest in ensuring that law-enforcement officers who allegedly provide materially false or reckless information to obtain warrants cannot later have their credibility treated as unquestioned merely because they appear before a federal grand jury in their official capacity. Supreme Court review would clarify the protections required when investigative misconduct crosses state and federal jurisdictions and would help preserve public confidence that federal indictments are based upon reliable evidence and constitutionally obtained investigative work.

CONCLUSION AND RELIEF REQUESTED

This case is extraordinary because Petitioner alleges an accumulation of serious civil-rights and constitutional violations occurring at multiple stages of the same federal prosecution. The alleged violations concern the acquisition and use of evidence, the circumstances surrounding Petitioner's guilty plea, ineffective assistance of counsel, prosecutorial misconduct, judicial impartiality and alleged judicial misconduct, and the denial of meaningful appellate review. Petitioner contends that these matters are interconnected and that the failure to address them at one stage prevented meaningful review at subsequent stages.

The extraordinary circumstances are particularly significant because the Government included language in Petitioner's plea agreement that Petitioner contends was intended to restrict his ability to appeal the conviction and resulting judgment. The Supreme Court has now recognized that an appellate waiver is not necessarily enforceable where enforcement would result in a **miscarriage of justice**, particularly where the alleged error is sufficiently egregious to undermine the integrity of the judicial process. *Hunter v. United States*, 608 U.S. ___, 146 S. Ct. 1702 (2026). Petitioner contends that the circumstances presented here, including the alleged coercive circumstances surrounding the plea, ineffective assistance of counsel, prosecutorial misconduct, judicial misconduct, and evidence bearing upon the reliability and legality of the proceedings, warrant consideration under *Hunter*.

The significance of this case therefore does not rest upon any single alleged error. It rests upon the cumulative effect of the alleged constitutional violations and the repeated failure, according to Petitioner, of the mechanisms of review to meaningfully address them. The record includes the

pleadings, motions, briefs, judicial-misconduct complaints, habeas materials, and other documentary evidence supporting Petitioner's contentions. See Apps. A--V.

The consequences are substantial. Petitioner's guilty plea resulted in a 20 year federal conviction and a \$410,000 restitution judgment. Petitioner contends that the constitutional circumstances surrounding the plea, the underlying investigation, the judicial proceedings, and the appellate process were never meaningfully resolved, leaving the conviction and substantial restitution obligation in place without the constitutional review he repeatedly sought.

Petitioner does not ask this Court to treat every allegation as an established judicial finding. He asks the Court to consider whether the extraordinary circumstances documented in the record, viewed as a whole, warrant review notwithstanding the restrictions placed upon his appeal. The petition therefore presents an exceptional case concerning the constitutional validity of the plea, the integrity of the judicial process, and the availability of meaningful appellate review when extraordinary circumstances are alleged and supported by the record.

Petitioner respectfully requests that the Court grant the petition for a writ of certiorari, vacate the judgment under review, and remand for proceedings consistent with the Court's opinion, including meaningful adjudication of the constitutional claims presented. Petitioner further requests such additional relief as the Court determines appropriate, including reassignment to an impartial judge if the circumstances so require.

Respectfully submitted, 
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CERTIFICATE OF SERVICE

I, Austin Koeckeritz, Petitioner, hereby certify that on Sept 16, 2026, I served a true and correct copy of the foregoing Petition for a Writ of Certiorari upon the opposing party by U.S. Mail addressed as follows:

Solicitor General of the United States
Room 5616
Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001

I declare under penalty of perjury that the foregoing is true and correct.

Executed on Sept 16, 2026.

Austin Koeckeritz
Petitioner, Pro Se