

26-5799
IN THE

ORIGINAL

SUPREME COURT OF THE UNITED STATES

MR. DARYL DANE DONOHUE – PETITIONER

VS

UNITED STATES OF AMERICA – RESPONDENT

FILED

SEP 03 2026

OFFICE OF THE CLERK
SUPREME COURT, U.S.

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

MR. DARYL DANE DONOHUE

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QUESTION(S) PRESENTED

Implicit bias via malicious prosecuting threatens the very foundation of the criminal justice system. Wasn't the judicial system built on fairness; the right to a fair trial; the right to a trial of one's peers; the right to be assumed innocent until proven guilty?

It appears the majority decision in the United States Court of Appeals, Sixth Circuit, overlooked the far-reaching impact of this bias, and more importantly the devastating impact it played in the petitioner's trial.

It is for this sound reasoning in isolation the petitioner appears before this court, the one tribunal vested with the judicial power of the United States, noting with certitude adequate relief cannot be obtained in any other form or from any other court on the subject matter heretofore.

It is in the spirit of this understanding that the petitioner profounds these two questions, both with direct constitutional implications.

- (1) WHETHER THE FORM OF EXPRESSION FROM AN APPELLATE COURT IN DENIAL OF A DEFENDANT'S APPEAL ATTEMPT, WHICH OPENLY SATISFIES BOTH PRONGS OF THE "STRICKLAND STANDARD" (PERFORMANCE AND PREJUDICE), PROVING LEGAL COUNSEL OF RECORD PROVIDED SUBSTANDARD ASSISTANCE, AFFIRMS HOW A DEFENDANT'S CONSTITUTIONAL RIGHTS WERE VIOLATED BY WAY OF THE SIXTH AMENDMENT.
- (2) WHETHER A CLAIM FOR MALICIOUS PROSECUTION UNDER THE FOURTH AMENDMENT REQUIRES INDEPENDENT PROOF OF SUBJECTIVE MALICE BY THE PROSECUTION OR WHETHER PROOF THE LEGAL PROCESS WAS INITIATED WITHOUT PROBABLE CAUSE IS ALONE SUFFICIENT TO ESTABLISH A CONSTITUTIONAL TORT.

LIST OF PARTIES

A list of all parties to the proceeding in the court whose judgment was the subject of this petition follows.

(1) Solicitor General of the United States
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(2) Rebecca C. Lutzko
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Cleveland, Ohio 44113

(3) Office of the Clerk
United States Court of Appeals
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TABLE OF AUTHORITIES CITED

CASES	PAGES
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IN THE
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PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays a writ of certiorari issues to review the judgments that follow

OPINIONS BELOW

PETITIONER remains uncertain if either of his cases at the district and appellate courts have been published. Respectfully, he has no way to access this information. In lieu of same, for the convenience of the court, he provides pertinent case information as follows:

United States Court of Appeals

For the Sixth Circuit

Case: 21-3415, 21-3416, 24-3037

United States District Court

Northern District of Ohio

Case: 1:15-cr-00263

JURISDICTION

For cases from federal courts this appeal in argument (Petition for Writ of Coram Vobis) was decided on August 4, 2026.

No petition for rehearing was attempted deductible by petitioner's realization that his constant persistence of innocence, visible by all his previous filings would be further ignored at the lower court level.

The jurisdiction of this court is invoked under 28 USC {} 1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

CONSTITUTION OF THE UNITED STATES

ARTICLE VI

IN ALL criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have proper assistance of counsel for his defense.

STATEMENT OF THE CASE

The conviction and sentence to the petitioner in this case at bar was the result of an alleged Ponzi scheme charging Donohue and three others (Jackson, Schoreck and DeCiancio) with numerous offenses alleging a conspiracy of sorts, including mail fraud, wire fraud, securities fraud and money laundering from a 31-count indictment.

All four co-defendants proceeded to trial by jury in May 2016, resulting in Donohue being convicted and sentenced to 46 months imprisonment.

This case, now closed, is 10 years old, Donohue has served his disciplinary punishment of 46 months and continues to adhere to his release requirements, including payment of restitution in the amount of \$9,825,917.41.

Let this honorable court recognize Donohue has been persistent in appeal. He calls the following activity to the court's attention:

- In compliance with time constraints, Direct Appeal was filed citing innocence as deductible by improper employment of co-defendant Jackson's criminal history since Donohue's attempt at severance was ignored and he suffered the after effects of Jackson's criminal background.
He argued with evidence in support that his restitution imposition was grossly miscalculated, and his award in punishment was unreasonable. The appeal was denied by the appellate court, Sixth Circuit, on March 1, 2018.
- Still insistent he was innocent as charged, on August 20, 2018, petitioner filed a 28 USC {} 2255, again claiming with substantial evidence his actual, factual and legal innocence. Again, it was routinely denied on November 8, 2018. Donohue appealed that denial, with no lower court consideration on November 26, 2018.
- On December 21, 2020, petitioner filed a motion seeking relief from erroneous enforcement of his final restitution order, because to this day, it was never substantiated. Again, a quick court denial on February 8, 2021 followed. He filed again a motion in reconsideration, which was also denied on April 15, 2021

- Still, not to be denied, for what he believed to be a legal system error in prosecution, on April 12, 2021 he filed an initial motion for a writ of coram nobis while still in custody. It was denied on April 15, 2021, three days later.
- On April 29, 2021 petitioner appealed. While it took a year, in violation of his due process rights, that too was denied on April 22, 2022.
- On May 9, 2022, petitioner filed a motion for early termination of his supervised release fully qualified as a matter of law, yet Judge Gaughan saw fit to even deny that justified request on May 12, 2022.
- Then on June 1, 2023 Donohue filed a second motion for a writ of coram nobis with memorandum of law in support, now no longer in custody. It was denied on July 18, 2023.
- In one final attempt to convince the appellate court he was wrongfully convicted of the stated crime, Donohue filed a wit of coram vobis, surprised to find the appellate court was unfamiliar with the filing, and was required to do some research.

This brings us full circle to the present.

REASONS FOR GRANTING THIS PETITION

This case presents an urgent question of national significance that cries out for this court's review, specific to two persistent and ongoing issues by many defendants throughout the federal system in the appeal process.

Both these issues have been legally abused with notable, yet unresolved concern in this judicial contest.

They consist of ineffective legal assistance, an accusation appearing in almost every appeal. Why? Because this claim, oftentimes, is the only means a defendant has to appeal, especially when executing a plea agreement, where government always has the accused waive his rights to appeal, except in the two instances of ineffective assistance of counsel and prosecutor misconduct. Both issues present herein.

Notwithstanding, it affords every defendant opportunity to appeal under any and all stipulated government initiated restraints.

The second question is central to the legal system's multitude of malicious prosecutions, and there are many, some exposed, others mysteriously unnoticed, and avoided.

Let us begin with question number #1 with the irrefutable reasoning to support the granting of this petition.

The question, "Whether the form of expression from an appellate court in denial of a defendant's appeal attempt, which openly satisfies both prongs of the "Strickland Standard" (performance and prejudice), proving legal counsel of record provided substandard assistance, affirms a defendant's constitutional rights were violated by way of the Sixth Amendment." The synthesis follows.

The two prongs of the "Strickland Standard" were clearly satisfied in this judicial contest, which was wrongfully denied, specifically in the U.S. Court of Appeals, Sixth Circuit by way of petitioner's "Petition for Writ of Coram Vobis on August 4, 2026.

Let this statement of fact be supported as follows.

Petitioner's claims clearly show that his attorney of record was constitutionally substandard in his representation, thereby proving Donohue never received a fair trial through the ineffectiveness he experienced, thereby affirming a transgression of his Sixth Amendment constitutional right.

In addition to the stated ineffectiveness of counsel, the petitioner brings to light his second contention that he was maliciously prosecuted and the Sixth Circuit, by its own admission in its final order of judgment affirms error crystallized with tangible proof that his Sixth Amendment constitutional right was violated.

In that final judgment order, dated August 4, 2026, the court makes the statement "a writ of coram vobis is an extraordinary remedy that is limited to extreme cases in which there were fundamental flaws in the proceedings."

The court continues with the profound statement "a petitioner must show good reason for not seeking to correct the issue earlier." Then the appellate court directly contradicts itself by claiming with certitude, "all the claims of error in Donohue's petition reiterate arguments he raised on direct appeal or in his 2255 motion, proving he has been persistent in repetitive argument.

Let this highest court be directed to the simple fact, conclusions such as this, contradictory in explanation by lower courts, saturate the legal system unnecessarily.

Donohue maintains he filed a coram vobis because this is an extreme case that has never been properly adjudged at the lower court level.

Further, he did raise all issues of concern earlier only to have lower courts find procedural infractions. Plus, his insistence that his counsel of record, Michael J. Goldberg, was substandard in his performance, supports any earlier mishaps as Donohue admits he lacks any qualified knowledge in the legalities of this legal system.

The issues as stated by the appellate court (Sixth Circuit) in its denial of Donohue's writ of coram vobis, that they should have been introduced earlier, was an impossible realization.

Certainly, this honorable superior court of law, cannot dispute the element of "cause and prejudice." To excuse this procedural default. attorney Goldberg was ineffective under the "Strickland Standard" for failing to raise these questionable issues, and because of his misplaced course of action, Donohue suffered actual harm.

Further, Donohue's lack of legal knowledge prevented him from acting on his own.

Admittedly, Goldberg missed all these clear, strong legal points. And in so doing, he fell below a normal standard of care. Goldberg's bad legal work counts as "cause" to excuse late filing.

In truth, these missed issues changed the trial result. With their timely presence the outcome would likely have been different. Allowing the appellate court's judgment in this writ of coram vobis to stand, is a clear injustice. Facts in the record, in presentment herewith support this claim.

Donohue was no trained lawyer. He relied completely on Goldberg. He knew nothing about the legal rules or deadlines. It was unreasonable for the appellate court to expect him to spot fundamental errors of law.

The Strickland Standard

The Strickland Standard is well recognized and has been an integral part of the judicial system since 1984 (Strickland v Washington, 466 U.S., 668 – 1984). It has become the single attribute to set the minimum standard of lawyer competence in the representation of a defendant.

Two conditions remain essential for a defendant to show his lawyer's representation was constitutionally substandard. First, the lawyer's performance must have been outside the broad range of professionally acceptable assistance. It's labeled the "performance prong."

Second, there must be a reasonable probability that but for the attorney's unprofessional errors, the result of the proceeding could have been different. It's labeled the "prejudice prong".

Nothing better in evidence herein unmasks that Donohue experienced serious errors by his counsel of record that deprived him of a fair trial.

In specificity, this commanding bar of justice is directed to Mr. Goldberg's lack of performance.

Severance for Donohue from his three co-defendants was never an option, as supported by the record. Mr. Goldberg was admittedly ineffective in not filing for severance against his client's instructions.

It was attorney Goldberg's unprofessional opinion in refusal because he convinced Donohue it would be denied. It matters not what this self-proclaimed "star defense attorney" thought, he was compelled to adhere to his client's insistence that a motion for severance be filed. By not complying, Mr. Goldberg's refusal was not only pretentious, it was unpersuasive, unreasonable and in violation of Donohue's constitutional right.

Second, how could Donohue not be prejudiced when no limiting instruction was given to the jury, who was thereby influenced by evidence that had nothing to do with Donohue. By law itself, this is a "Bruton" error, whereby admitting evidence against one defendant (Jackson in this case) is wrongfully attached to implicate another defendant (Donohue in this case) (*Bruton v United States*, 391 U.S., 123, 88 S.Ct. 1620 - 1968).

Mr. Goldberg never insisted a jury instruction be introduced to protect his client from being directly subjected to the criminal history of co-defendant Jackson, especially after refusing to file a motion for severance

Third, Mr. Goldberg refused to enter into evidence check-stubs which would have proven Donohue was a paid employee of a conspiratorial company. His annual income was \$50,000, paid weekly with company checks.

The aforestated shows Donohue experienced substandard performance from his attorney, Michael J. Goldberg, thereby satisfying the two prongs of the "Strickland Standard." In its final order in judgment against Donohue the court substantiates with absolute assertion that the Sixth Amendment constitutional right of this petitioner was trespassed upon.

The constitutional safeguards of trial by jury, under the U.S. Constitution, Article III {} 2, Clause 3, and the Sixth Amendment have always been held to confer upon every citizen the right to remain free from the stigma and penalties of a criminal conviction until he has been found guilty by a unanimous verdict of a jury of his peers, in full conformance of law.

Notwithstanding, in the case at bar, Donohue was convicted and punished on the matters of fact only attached in truth to his co-defendants, totally because his counsel of record Mr. Goldberg failed to bring forth critical elements of fact as matter of law, as irrefutably expressed herewith. Yes, Donohue satisfies the "Strickland Standard" for relief.

Question Number Two

"Whether a claim for malicious prosecution under the Fourth Amendment, requires independent proof of subjective malice by the prosecutor or whether proof that the legal process was initiated without probable cause is alone sufficient to establish a constitutional tort."

This question, is central to this requisition for a writ of certiorari involving malicious prosecution under Supreme Court Rule 14. This question is concise, neutral and focuses on specific constitutional standards, like whether the absence of probable cause violates a Fourth Amendment. In this instance, the appellate court clearly never distinguished the "charge-specific" rule from the "any-crime" rule, a major error in discretion.

Malicious prosecution is a tort under law, i.e., to establish malicious prosecution a defendant must show legal accusations and related incidents were concluded maliciously without probable cause. So be it.

As it pertains to criminal litigation, a malicious prosecution is supported herein by the factual occurrences in presentment.

Federal law allows actions for malicious prosecution, the tort that has been the focus of courts for nearly 1,000+ years, and has been recognized as In "Albright v Oliver, 510 U.S. 266 – 1994." Here, a plurality of the court stated that the Fourth Amendment, and not substantive due process, was the proper basis for malicious prosecution claims.

In the Supreme Court case, "Thompson v Clark, 596 U.S+ – 2022", before the Thompson ruling, law enforcement could frame people, file bogus charges and conjure evidence out of thin air, yet still be immune from facing any sort of civil accountability.

The Thompson ruling by the Supreme Court created a standard, “that a defendant in a malicious prosecution case must show a favorable termination of the criminal proceeding by showing the legal system through its officials violated certain constitutional rights with improper and illegal determinations.

There is no such thing as being prosecuted without probable cause, and not having one’s constitutional right not trespassed upon when it occurs (Manuel v City of Joliet, Illinois, 903 F.3d 667, 670 – 7th Cir – 2018) (quoting Serino v Hensley, 735 F.3d 588. 593 -7th Cir – 2013).

Let us remain clear, deprivation of liberty proven in a malicious prosecution cause of action must constitute a deprivation of a right secured by the Constitution and laws of the United States (Reed, 77 F.3d at 1051)

The United States Supreme Court granted certiorari in the Sixth Circuit case “Chiaverini v City of Napoleon, on December 13, 2023. The subject matter was central to how federal malicious prosecution claims are to be governed and defended against. Specifically, the approaches for the cause of action under consideration were the “charge-specific” rule versus the “any-crime” rule utilized by the Sixth Circuit.

The 1994 Supreme Court case of “Albright v Oliver” was the progenitor of the malicious prosecution cause of action in federal court pursuant to Section 1983. The Supreme Court held in Albright that the claim to be free from prosecution without probable cause must be judged under the Fourth Amendment rather than substantive due process.

The court reasoned the Fourth Amendment, barring unreasonable legal determinations, was the proper basis for a malicious prosecution claim, but the general tenets of such a federal claim are as follows.

It must be demonstrated the requirements of a cause of action for malicious prosecution was committed by official legal system actors, and a deprivation of liberty occurred. (Reed v City of Chicago, 77 F.3d 1049, 1051 – 7th Cir – 1996)

Donohue will now show this higher court how the legal system in specificity instigated this criminal proceeding with improper purpose and without probable cause, and how termination of this proceeding favors the accused. (Heck v Humphrey, 512 U.S. 477, 484 – 1996).

Let this court visualize the specific determinations that mandate Donohue was maliciously prosecuted and this writ of certiorari must be granted.

- Why would a Sixth Circuit Judge, Martha Daughtrey, question the prosecutor about a severance motion not being filed. It might be presumed this circuit judge could not believe severance for Donohue was never acknowledged.
- The court allowed criminal history of co-defendants to be applied to Donohue. This calls to bear the “spillover theory” in these proceedings where Donohue was clearly prejudiced with criminal history evidence from his co-defendants. One must presume the sentencing lower court is fully aware of the “Bruton Error”, whereby admitting evidence against one defendant (Jackson in this case) is wrongfully attached to implicate another defendant (Donohue). (See Bruton v United States, 391 U.S. 123, 88 S.Ct. 1620 – 1968).
- How is it possible for a district judge to award a 4-level downward departure under USSG 3B1.2 to Donohue for his “minimal role” in this alleged conspiracy, then impose an 18 level upward variance as a principal in the same conspiracy. The only conceivable answer is “malicious prosecuting.” As there can be no other possible conclusion.
- A court of law, at sentencing, is mandated to declare application of restitution. Additionally, a probation office must conduct an isolated investigation of a petitioner’s restitution obligation. This requirement is demanded by Rule 32 of the Federal Rules of Criminal Procedure. Here and foremost, it never happened.
- Indictment Count #5 must be declared “fatally defective” because it doesn’t qualify as a wire fraud charge as stated. The criminality was not an “interstate” breach of law, as the record itself discloses.
- Creative prosecuting can go only so far. How could Donohue be a member of this alleged conspiracy when the record is lucid that he was only hired as an employee and for his services was paid with company checks as a contract employee, his role being a regulatory compliance consultant paid by salary, nothing else.

- There is nothing on the record to even suggest Donohue was ever an officer, director or solicitor of any company stock at any time. How can this profile of fact make him a member of this conspiracy? Only by way of a malicious prosecution.
- Let this highest court in the land never lose sight of the realization that lower courts, subject in most instances to government influence, want all parties ever named in acts of criminality convicted and punished to keep the Bureau of Prisons and its 30,000+ employees active at work. Reduce the prison population and the need for prison employees diminishes, dramatically.
- While Donohue clearly was paid by company check for his work as an employee of the company, Mr. Goldberg's refusal to enter those check-stubs into evidence, allowed government to argue those funds were Donohue's "take" for his involvement in the conspiracy. This in itself substantiates the petitioner was maliciously prosecuted, at the whim of a government obsessed with prosecuting and punishing anyone and everyone it can attach to a crime in any way, It persists as an incurable obsession
- If Donohue was in fact an active member of this conspiracy, why does the record fail to disclose he attended any investment or distributor-related meetings. Logic alone tells us such attendance would certainly be relevant to satisfy the accusation.

Donohue has obediently complied with every demand this legal system has saw fit to impose upon him, as wrongful as he knew it was. Now, he comes before this highest court respectfully seeking expungement of his case and only as a matter of having justice properly served.

He prays this tribunal will recognize what has occurred herein, and resolve the impropriety, as facts must prevail in a court of law.

For starters, let this writ of certiorari be granted in the light of justice to serve as a means of having a misjustice corrected.

CONCLUSION

For the foregoing reasons this petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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