

21-2244; 21-1459(L.)

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UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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UNITED STATES OF AMERICA,  
Appellee,

-v-

BRANDON GREEN, Pro Se,  
Defendant-Appellant.

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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PRINCIPAL PRO SE BRIEF OF DEFENDANT-APPELLANT BRANDON GREEN  
SEEKING REVIEW OF A DISTRICT COURT JUDGE'S DENIAL OF AN  
AFFIDAVIT AND MOTION TO RECUSE,  
AND SIMILAR RELATED ISSUES IN A CRIMINAL CASE

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Brandon Green Reg. No. 56400-054  
Pro Se, Defendant-Appellant

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PRO SE BRIEF AND ADDENDUM FOR BRANDON GREEN

PRELIMINARY STATEMENT

This is not your average case; therefore, there are some things worth mentioning before proceeding further in this brief. Specifically, the Appellant, Brandon Green, would like for this Court to know that he's not a lawyer. However, he did decide to proceed Pro Se for the latter portion of the proceedings in the district court--and he did this because he'd "been misinformed or lied to by every lawyer that [he] had, in some way, shape or form." Nov. 17, 2020 Tel. Conf. Tr. at 15, 11. 15-16 (Quoting Mr. Green) (A 110, 11.15-16).<sup>1</sup> Moreover, he chose to represent himself because it was the "only" way he was going to properly preserve all of his issues for appeal: Because all of his lawyers' failed and or refused to do so.

As you'll discover from review of this brief, Mr. Green was and still is in a fight for his life and liberty. There was a complete breakdown in the adversarial process in this case; and it's taken every ounce of effort on Mr. Green's part to expose and remedy this injustice. For example, Mr. Green has had to enlist the help of anyone he can, to include his family, friends, and loved ones, to assist him in this endeavor. They've helped with preparing and filing court pleadings, making copies, conducting legal research, etc., etc.. It's been no easy task, though.

FOOTNOTES

1. Page numbers preceded by an "A" refer to the pages of the Appendix, followed by the relevant line number(s) when necessary or otherwise helpful.

Moreover, Mr. Green says all this for a few reasons: One, there are several submissions by him in the district court that are duplicate; and some of these documents are formatted differently. This is because, as he previously stated, he had to rely on the help of others to draft and file those documents. Furthermore, Mr. Green experienced difficulties with his court submissions not being uploaded to his docket. In fact, Mr. Green even had to file several complaints with the district court clerk regarding this. See e.g., Docs. 833, 928, 938, and 1035.<sup>2</sup> (Complaints by Mr. Green Regarding Court Submissions Not Being Uploaded to His Docket). Therefore, when seeing that there are several court submissions by Mr. Green that were filed more than once, and or that are formatted differently, please understand that this is why.

Next, Mr. Green would like for this Court to know that although this appeal is primarily concerned with a district court judge's refusal to recuse, it does discuss other issues, like those concerning the violations of his Constitutional rights to due process, the effective assistance of counsel, to represent himself, and moreover to a fair trial. However, please note that a limited understanding of these issues is necessary; that they all are in one way or another directly and or indirectly related. Also, as he'll discuss more herein, being that Mr. Green also has currently pending before this Court his direct appeal from the final judgment of his criminal case, which is the same case that this appeal stems from, this Court should consider any and all issues presented herein in the interests of justice and judicial economy. Moreover, Mr. Green is aware of the considerable backlog of cases in the federal appellate courts. see Fed. App. Practice and Proc. In A Nutshell, 2d ed., at 292, Ch. 13, §13.8 (Out of respect for the overburdened courts, advocates should file a brief just long enough to present issues both "clearly and comprehensively.")(Quotations in Original and Citations Omitted). Therefore, he did his

FOOTNOTES

2. Document numbers preceded by "Doc(s)." correspond to the document number of the filings in the Southern District of NY, in Case No. 16-cr-281.



best to limit this brief to only the most essential of information deemed necessary for an adequate understanding of the issues presented herein. This makes this brief something that this Court can effectively use.

Now, it's no secret that there are serious problems plaguing our Country's criminal justice system. For example, overzealous government officials at times falsely charge individuals, and engage in coercive plea bargaining in an attempt to get them to take plea deals, and cooperate by testifying against others. And it's not uncommon for a person in this position to also be forced to have an attorney who is too afraid - or otherwise unwilling - to stand up against the government misconduct. As a federal judge recently noted:

""[O]ne of the lawyer's most noble responsibilities is to protect the individual against Government excess', in a free society, '[t]he lawyer must stand independently and resolutely when he or she believes the government is wrong. And on occasion it takes great courage.' It is one thing to hope lawyers will be courageous, it is quite another to ask them to fight zealously for the rights of their clients in a system where their own reputations, livelihoods, and freedom would hinge on the discretion of their government adversaries. Who will challenge the government then?"

<https://www.goldsteinhilley.com/attorney-testimonies/hr1678-testimony> (Quoting Matter of Doe, 801 F. Supp. 478, 488 (D.N.M. 1992))(Other Internal Citations Omitted). This was essentially Mr. Green's dilemma.

Furthermore, the only thing worse than having an attorney unwilling to stand up against the government is also having a judge who is unwilling to hold either of them accountable. That's because fulfilling the Constitution's promise of liberty requires judicial engagement. The Constitution was written to limit government power, but those limits are meaningless unless judges restrain public officials when they overstep their bounds. And this is exactly what Mr. Green was up against in this case; ergo, it's why he contends that there was a complete breakdown in the adversarial process here. However, he chose to fight: "It's better to die on your feet than to live on your knees." Dolores Ibarruri

(Speech in Paris, 3 Sept. 1936). Mr. Green truly believes this; and that is what he did. Now, he's come before this Court to seek review of some of these issues. Relevant to this appeal is whether Mr. Green's due process rights were violated, as well as his rights to self-representation, to the effective assistance of counsel, and to a fair trial, due to the district court's failure to provide him with a meaningful opportunity to be heard, and refusal to grant him pro se status, to recuse, to hold an evidentiary hearing, and or to assign the case to another judge. Mr. Green also contends that the district court abused its discretion in failing and or refusing to do these things. And, with all that being said, here's the information forming the basis of this appeal:

#### STATEMENT OF JURISDICTION

##### A. A Brief Statement

Mr. Green would like to briefly note that this statement of jurisdiction is submitted "only" for the purpose of this appeal; which seeks review of a district court's denial of a motion to recuse and for reconsideration submitted in a criminal case. Mr. Green has other appeals pending before this Court which stem from this same case. See Nos. 21-1459(L.), 21-1896(Con.), and 21-1923(Con.). Moreover, Mr. Green would like to preserve his right to argue in his other appeals that the district court did not have jurisdiction, and or was not the proper venue. Therefore, he submitted this brief statement in an attempt to preserve this right, and to prevent the Government from using it against him in the future.

Mr. Green also submits that any and all issues raised herein which may ordinarily be outside the scope of this appeal (No. 21-2244) should nevertheless be considered, in the interests of justice and judicial economy, being that he also has pending before this Court his appeal from the final judgment in his criminal case (No. 21-1459(L.)). Moreover, consideration of these issues is necessary to prevent a miscarriage of justice.



## B. Jurisdictional Statement

This is an appeal following the entry of a final judgment in a criminal case, from an order entered on June 16, 2021, in the Southern District of New York (hereafter the "District Court"), by the Hon. Dist. Ct. Judge, Paul G. Gardephe (hereafter the "Judge"), denying an affidavit and motion to recuse the Judge, and a motion for reconsideration of the District Court's February 10, 2021 Order declining to hear Mr. Green's ineffective assistance of counsel claims prior to sentencing. Doc. 1024 (Order Denying Aff. and Mot. to Recuse, and Mot. for Recons.)(Add.1)<sup>3</sup>, Doc. 955 (Aff. and Mot. to Recuse)(A 1 ), Doc. 956 (Mot. for Recons.), and Doc. 956 (Feb. 10 Order)(A 34). On July 2, 2021, Mr. Green filed a letter requesting a certificate of appealability (COA), and request for an emergency stay and notice of intent to appeal the Judge's denial of his recusal motion. Doc. 1046 (A 39 ). A duplicate of this was filed on July 9, 2021. Doc. 1047. On July 13, 2021 the District Court issued an order denying Mr. Green's request for a COA. Doc. 1050 (A 40 ). The final judgment in that criminal case was entered on July 26, 2021. Doc. 1057. On July 28, 2021 Mr. Green filed a notice of appeal from the final judgment. Doc. 1059 (A 41 ). A duplicate of this was filed August 2, 2021. Doc. 1061. Also, on August 2, 2021, Mr. Green filed a notice of appeal from the Judge's denial of his recusal motion, (A 42 ); and, an affidavit accompanying a motion for permission to appeal in forma pauperis. Doc. 1063. Furthermore, Mr. Green filed another request for a COA, on August 16, 2021, to appeal the Judge's denial of his recusal motion. Doc. 1067 (A 43 ). The Judge denied that request on September 8, 2021, Doc. 1077 (A 44 ); and, on September 15, 2021 Mr. Green filed his notice of appeal to appeal this denial. Doc. 1079 (A 46 ).

### FOOTNOTES

<sup>3</sup>. Page numbers preceded by "Add." refer to the pages of the Addendum.



## ISSUES PRESENTED

- I. Did the District Court abuse its discretion, and or violate Mr. Green's Due Process rights by not recusing, and or assigning Mr. Green's case to a different judge, where the Judge, knowing Mr. Green wasn't satisfied with his attorneys' performance, stated that his attorneys had performed admirably, and that he was the beneficiary of excellent representation, where such statements "reflected [the Judge's] premature judgment about" Mr. Green's ineffective assistance of counsel claims, quoting United States v. Dreyer, 693 F.3d 803 (9th Cir. 2012), created an impermissible appearance of partiality; see generally, 28 U.S.C. §455(a), and displayed a deep-seated favoritism that would make fair judgment impossible, see Liteky v. United States, 510 U.S. 540, 114 S.Ct. 1147, 127 L.Ed. 2d 474 (1994); and, where the aggregate of the Judge's conduct, which included, inter alia, interrupting Mr. Green while he spoke, making sarcastic statements directed towards him, threatening him, and abruptly ending the conference while he was speaking, would have led "a reasonable person to question the [Judge's] impartiality." United States v. Yousef, 327 F.3d 56, 169 (2d Cir. 2003)(citations in original); see also, 28 U.S.C. §455(a), and Hurles v. Ryan, 752 F.3d 768 (9th Cir. 2011)(As a matter of due process, a judge who fails the "appearance of impartiality" test may not sit as the judge in the case.).
- II. Did a plain-error result from the Judge's disconnecting the line - during the January 5, 2021 Teleconference - while Mr. Green, a Pro Se criminal defendant, was speaking, thereby preventing him from presenting his case.
- III. Did the District Court abuse its discretion, and or violate Mr. Green's rights to Due Process, the effective Assistance of Counsel, and to a Fair Trial, by failing to review, and or hold an evidentiary hearing regarding, his ineffective assistance of counsel (IAC) and other post-conviction claims; and or by requiring him to execute and submit an attorney-client privilege waiver form and affidavit of facts setting forth his claims, when neither of those things

were necessary; and or, for not taking into consideration the prejudices suffered by Mr. Green when trying to execute and submit these things.

IV. Did the District Court violate Mr. Green's right to self-representation by failing to address his explicit requests to do so, especially after it assured him he could do so at any time, and in the event he wasn't satisfied with his appointed shadow-counsel's assistance.

V. Did the aforementioned issues taken individually, and or collectively, result in a plain- and or plain structural -error; or otherwise so severely undermine confidence in the out come of the proceedings to the point warranting this Court's intervention.

#### STATEMENT OF CASE AND FACTS

Brandon Green was born February 26, 1983 in Bronx, New York. When Mr. Green was arrested for this case he had some history with the criminal justice system, and a very basic understanding of his rights. Nevertheless, upon his arrest, and as the case proceeded through the courts, although he didn't yet fully understand his rights, he knew deep down inside that something was inherently wrong--that his rights were being violated. It felt to him more like he was being persecuted than prosecuted. Like so many others in the federal criminal justice system, he felt as though he was being harassed because of the people he knew: Not necessarily because of anything he did.

Mr. Green, an African-American entrepreneur from inner-city New York, owns an entertainment company (which includes music production). His primary customers are those in the hip-hop music scene. Ultimately, he became caught up in a federal indictment that sought to prosecute a customer of his, Latique Johnson (who he shot a music video for). And it wasn't long after Mr. Green's arrest that he realized it wasn't him the Government was after: It was Mr. Johnson. Mr. Green's attorneys made this very clear to him.



Mr. Johnson was alleged to be the founder of a bloods gang, called the Blood Hound Brims (BHB). The Government first indicted Mr. Johnson by himself for racketeering and related offenses. That indictment was unsealed May 9, 2016. Doc. 3 (Original Indictment). The Government then indicted Mr. Green and nearly a dozen others in or around January 1, 2017. Doc. 27 (S1 Superseding Indictment). Before they successfully indicted Mr. Green, however, there was at least one failed attempt--an indictment that came back "No Bill." In the S1 Indictment, Mr. Green was only charged with three counts, to-wit: Ct. 1, racketeering conspiracy, 18 U.S.C. §1962(d); Ct. 4, narcotics conspiracy, 21 U.S.C. §§846 and 841(b)(1)(A); and Ct. 5, use, carrying, and possessing firearms during and in relation to, and in furtherance of, the narcotics conspiracy charged in Ct. 4, 18 U.S.C. §924(c)(1)(A)(i). The Government superseded the indictment several more times, all the way up to the fifth superseding indictment, which was returned on or about October 15, 2018. Doc. 418 (S5 Superseding Indictment).

Mr. Green was arrested May 17, 2017, about a year after the Original Indictment was returned, in a two-story townhouse, in Bridgeport, Conn.. He surrendered outside the home immediately, however authorities still went inside and illegally searched the residence where they allegedly found, among other things, a bag with some handguns in it. Later that day Mr. Green was taken before Mag. J. Gabriel W. Gorenstein, in the Southern District of New York, to be arraigned. Doc. 105 (Arraignment). There, he was appointed the attorney, Susan J. Walsh, who entered into a plea of not guilty on his behalf for all three counts he was charged with. See id.

Mr. Green maintained his innocence to Ms. Walsh, and stated he wanted to see the evidence against him. Ms. Walsh's response was that the Government was not after him; that they wanted Mr. Johnson. Moreover, she kept insisting that he take a plea deal, and cooperate with the Government by testifying against Mr. Johnson and the others. She assured him that if he did, the Government would



relocate him and his loved ones. Ms. Walsh later wrote him a letter informing him that his discovery had been sent to the wrong jail; and she continued to insist he take a plea deal and cooperate. This was even after he told her on several occasions that he really didn't know these people (his co-defendants), that he met Mr. Johnson when he shot a music video for him, and that he had nothing to offer, and moreover did not want to cooperate. Mr. Green made clear that this wasn't the direction he wanted to go with this case.

On December 8, 2017, because of disagreements over how his case was being handled, Mr. Green asked Ms. Walsh to relieve herself from his case, which she did. Doc. 191 (Sub. of Couns. Req.). Ms. Walsh was replaced by the attorney Eric R. Breslin, from the Law Firm Duane Morris LLP, who filed his notice of appearance on December 20, 2017. Doc. 201. A few months later, Mr. Breslin was joined by the attorney, Melissa S. Geller, also from Duane Morris LLP. Doc. 245 (Notice of Appearance). These attorneys represented Mr. Green at his trial, and they'll be collectively referred to herein as "Trial Counsel", unless otherwise referenced by their individual names.

Mr. Green informed Trial Counsel of the same things he told Ms. Walsh: i.e., That he was innocent; that he wanted to see the evidence against him; that he really didn't know these people; and, that he had met Mr. Johnson by doing some work for him (shooting a music video). Trial Counsels' response was similar to Ms. Walsh: They informed him that the Government wasn't after him, but that it was Mr. Johnson they wanted; that he was simply collateral damage; and, they insisted he take a plea deal and cooperate by testifying against Mr. Johnson and the others. Moreover, Ms. Geller said he spoke very well, and would make a good witness to help the Government satisfy the elements. However, Mr. Green maintained his innocence, and informed them that this was not how he wanted to handle this case.

Of the nearly dozen other defendants indicted in this case, only Mr.

Green and two others went to trial, to-wit: The head of the indictment, Latique Johnson, and Donnell Murray. Trial Counsel filed numerous pre-trial motions and letters, and entered into certain stipulations with the Government. However, Mr. Green's input regarding these things wasn't always sought; they did not move to suppress and challenge all the evidence as he requested; and they even did some of this despite Mr. Green expressly indicating that he disagreed with such.

For example, at trial the Government alleged, inter alia, that Mr. Green was a primary supplier of drugs for the gang; and to support this they introduced evidence of and from a traffic stop (hereafter the "Traffic Stop") that Mr. Green was involved in, on August 3, 2010, along with another co-defendant. The evidence consisted of testimony from one of the arresting officers, NYPD Ofc. Jeffrey Sisco, and some alleged cocaine Ofc. Sisco "claimed" to have recovered from Mr. Green. However, prior to trial Mr. Green informed Trial Counsel that he wanted to challenge the Government's use of the Traffic Stop, as well as the evidence, because: 1) that evidence was planted on him, 2) he was illegally seized and searched, 3) the arresting officers badly beat him, 4) all of the charges were dismissed, 5) the entire case was dismissed in his favor and sealed, and 6) he received around \$30,000.00 from a civil suit against the NYPD and Ofc. Sisco because of all this. Moreover, Mr. Green told Trial Counsel to locate the Certificate of Disposition (hereafter the "Disposition") from that Traffic Stop, which would support this. Trial Counsel told him prior to trial, however, that they couldn't locate the Disposition, and that Jesus Christ himself could come down from the heavens, and he (Mr. Green) still would not be able to find it. Trial Counsel even told the District Court prior to trial that they couldn't locate the Disposition; however, Mr. Green later found it (A 47), along with an email between Trial Counsel and the Government proving that they lied to him and the District Court--that they had the Disposition



prior to going to trial. (A 48). Furthermore, Trial Counsel never challenged the Government's use of the Traffic Stop or the evidence allegedly obtained from it, but actually stipulated to these things. (A49).

The trial, which was presided over by the Hon. Paul G. Gardephe, began with jury selection February 19, 2019, and ended approximately five weeks later, on March 27, 2019, when the jury reached their verdict. Doc. 570 (Jury Verdict). The jury found Mr. Green guilty as to all three counts of the indictment that he was charged with. However, the jury concluded that the Government had "not" proved beyond a reasonable doubt that the pattern of racketeering activity that Mr. Green allegedly agreed would be committed involved (1) attempted murder or conspiracy to commit murder . . . or (2) robbery, attempted robbery, or conspiracy to commit robbery under either Federal or New York law. See id.

On April 25, 2019 Trial Counsel filed motions for a new trial and judgment of acquittal. Doc. 639. About a month later Mr. Green, after reading these motions for the first time in the mail, submitted his own Pro Se pleading titled, "[A]mended [D]eclaration In Support of Rule 29, [and] 33 Motion", in an effort to raise issues not raised by Trial Counsel, and to bring to the District Court's attention his grievances regarding the violations of his rights that had taken place: i.e., The Government and similar official misconduct, and his Trial Counsels' ineffectiveness. See Doc. 665 (Suppl. Decl.)(A51).

Around two months later, on July 11, 2019, because Mr. Green was still experiencing problems with his Trial Counsels' performance, he submitted another Pro Se submission--a Motion for Stay/Continuance. Doc. 680 (Mot. for Stay) (A59). He also sent a letter requesting the same around this time. Doc. 701. Moreover, in the Mot. for Stay Mr. Green "again" informed the Judge, *inter alia*, that he wasn't satisfied with Trial Counsels' performance; that Trial Counsel failed to go over with him their post-trial submissions prior to filing them, and didn't incorporate the arguments he requested be made; and, that



he was "in the process of . . . researching and presenting all of the meritorious issues and arguments that were not raised by [Trial Counsel] in the [ir] Rule 29 and 33 Pleadings." (id.). However, the District Court didn't address these concerns, nor did Mr. Green's Trial Counsel, so he moved to have them replaced.

Trial Counsel was replaced by the attorney Zoe J. Dolan, out of California. Ms. Dolan filed her notice of appearance on July 22, 2019, Doc. 690; and a proposed substitution of counsel request on July 23, 2019, Doc. 693. On July 25, 2019 the District Court held a Substitution of Counsel Hearing, and thereafter granted Mr. Green's request to replace Trial Counsel with Ms. Dolan. Doc. 705 (Order Granting Subs. of Couns. Req.). The Judge stated, at that conference, however, that he thought that Mr. Green was the recipient of excellent representation from his Trial Counsel:

THE COURT: . . . . I will say that I think that both Mr. Breslin and Ms. Geller have performed admirably throughout their entire representation of Mr. Green, both in terms of their in-court performances as well as in their written materials. So I think that Mr. Green has been the beneficiary of excellent representation up to now.

July 25, 2019 Sub. of Couns. Conf. Tr. at 5-6 (emphasis added). And the Judge continued to allow Trial Counsel to maintain control over certain aspects of Mr. Green's discovery and case files, even after they were relieved from representing him, after Mr. Breslin stated:

MR. BRESLIN: . . . . The existence of the protective order is going to make it sometimes difficult I think for Ms. Dolan to be able to go over certain parts of the 3500 material with Mr. Green because she's in California. My firm will undertake to continue to bring the cooperative 3500 material to Mr. Green so that he can review it for later conversations with Ms. Dolan as a courtesy to the Courts and the CJA so that this thing does not slide further.

id. at 5, ll. 2-9(emphasis added).

Before and after Ms. Dolan was appointed to Mr. Green's case he made

clear to her his concerns regarding the violations of his rights that had occurred, especially regarding the Government and official misconduct, and the ineffectiveness of his Trial Counsel. Mr. Green sent Ms. Dolan several detailed emails and letters stating these things. In response, Ms. Dolan informed him on multiple occasions that those issues, especially those relating to his Trial Counsel's performance, are to be raised in a Section 2255 motion, not a motion for new trial or judgment of acquittal.

On September 17, 2019 the District Court issued a Memorandum Opinion and Order denying the post-trial motions for new trial and a judgment of acquittal submitted by Mr. Green's Trial Counsel. Doc. 743 (Mem. Op. & Order). Therein the Judge also addressed the post-trial motions filed by the attorneys for the other trial defendants', and "some" of Mr. Green's arguments raised in his Pro Se Suppl. Decl.. See Doc. 743, n.3. However, the District Court didn't address Mr. Green's claims against his Trial Counsel, or the other violations of his rights that he argued in his Suppl. Decl. and other Pro Se submissions.

On September 23, 2019 Ms. Dolan submitted a motion asking the Judge to reconsider his decisions regarding Trial Counsels' and Mr. Green's post-trial submissions. Doc. 746 (Mot. for Recons.); and on September 28, 2019, she filed objections to the Pre-sentence Report. Doc. 751 (Obj. to PSR).

On October 30, 2019, a day before Mr. Green's then scheduled sentencing hearing, he sent to the District Court a Pro Se Sentencing Memorandum that he'd written. Doc. 760 (Pro Se Sent. Mem.)(A 63). He did this in an attempt to bring to the District Court's attention his grievances regarding the violations of his rights that had taken place--after Ms. Dolan proved unwilling to raise the issues herself.

On October 31, 2019 there was a hearing held at what was supposed to be Mr. Green's sentencing; however, because of allegations made by him in his Sent. Mem. regarding the violations of his rights that had occurred, the Judge ad-



journing his sentencing to allow the parties to brief the District Court on whether it should hear Mr. Green's ineffective assistance of counsel (IAC) and other claims (e.g., Government misconduct) prior to sentencing. The Judge noted that Mr. Green, in his Sent. Mem., "raised a wide variety of legal and factual complaints about his trial and his lawyer's performance at that trial." (A 82, ll. 12-14). The Judge further claimed that "[t]hese arguments are different than arguments that Ms. Dolan made in a second series of posttrial motions." (*id.*, ll. 15-18). Because of this, the Judge adjourned Mr. Green's sentencing. (*id.*, ll. 18-19). This was done after the Judge unsuccessfully tried to persuade Mr. Green, and or persuade Ms. Dolan to persuade him not to file his Sent. Mem.. Moreover, because of the COVID-19 pandemic, this would be Mr. Green's last in-person court appearance until his sentencing. (*id.*, ll. 18-19).

Ms. Dolan - for the most part - objected to the adjournment, both in person, (A 83-84), and in writing. See Doc. 758 (Ltr. by Ms. Dolan Objecting to District Court's Proposed Sentencing Continuance). She also expressed concerns with her being retained for the purpose of representing Mr. Green at sentencing; and she proposed that a Faretta hearing be held in order for Mr. Green to proceed Pro Se for any issues that extend beyond their retainer agreement. (A 86 ). Moreover, in response to the Sent. Mem. Ms. Dolan stated that from what she observed most the issues raised therein may or may not properly be the subject of a Section 2255 motion, and that "in any event all of the arguments that [she] could possibly think to raise with respect to . . . the posttrial motions and sentencing are already before the Court." (A 83, ll. 13-21).

Furthermore, at the hearing the Judge suggested to Ms. Dolan that she discuss with Mr. Green his desire to proceed forward with addressing his claims raised in his Sent. Mem., and to respond back with a letter on how he wishes to proceed. (A 87, ll. 7-13). The Judge also suggested, and or attempted to persuade Mr. Green, and or attempted several times to persuade Ms. Dolan to

persuade Mr. Green not to file the Sent. Mem.. (See, e.g., A 85, ll. 17-18; A 86 , ll. 1-3; id., ll. 5-6; and A 87, ll. 7-13). Ms. Dolan made clear, however, that Mr. Green was "pretty adamant that he wishes to press [those issues]. [And that] [h]e also has some further exhibit[s] and he's requested some more from the [G]overnment, so . . . [his] position is firm." (A 87, ll. 14-17; also see, A 88, ll. 6-7).

This is what the Judge had to say about Mr. Green's Sent. Mem.:

THE COURT: . . . So, my concern is I now have a Rule 29 and a Rule 33 motion pending before me. A defendant has already raised claims of ineffective assistance of counsel, because there's been a change of counsel. Ms. Dolan has come in to represent Mr. Green in place of Mr. Breslin and Ms. Geller, who represented him at trial. So it is unusual, the situation we find ourselves in. I haven't researched the matter, but my gut instinct is that it would probably behoove me to explore the claims of ineffective assistance of counsel now . . . .

(A 89, ll. 5-14)(emphasis added). The Judge then explains to Mr. Green that - in order to address his IAC claims - he'd be required to waive the attorney-client privilege, (id., ll. 21-23), and that this would have to be in writing. (A 90, l. 2). Afterwards, the Judge adjourns the proceedings for a week so that Ms. Dolan can discuss with Mr. Green his desire to proceed forward with his post-conviction claims; and asks that she reply back in a letter with his decision. (A 91, l. 23, et seq.).

For the next year both Mr. Green and Ms. Dolan wrote the Judge on numerous occasions, reminding the Judge of Mr. Green's affirmative desire to be heard regarding his post-conviction claims raised in his Sent. Mem. and other Pro Se submissions, and informing the Judge of Mr. Green's desire to proceed Pro Se with respect to the same. See, e.g., Docs. 767, 774, 775, 777, 782, 852, and 883 (Ltrs. from Mr. Green and Ms. Dolan stating these things). Mr. Green also - throughout this time period - sent several letters to his previous attorneys, and the Government, requesting his client files and other rel-



evant case information, and asking the District Court to order production of the same, see, e.g., Docs. 854, 893, 895, and 896, so that he could adequately prepare and present his claims.

On November 17, 2020, a year after Mr. Green's original sentencing hearing was adjourned, the District Court held a teleconference to resolve issues surrounding his representation in connection with post-trial matters (hereafter the "Nov. 17 Tel. Conf."). This is when the District Court relieved Ms. Dolan, and granted Mr. Green's request to represent himself. However, because the Judge insisted Mr. Green not try and represent himself completely on his own (see, e.g., A 109, ll. 13-14; A 115 ; A 117, ll. 13-22; and A 133 ), he requested and was granted the appointment of counsel under the Criminal Justice Act (CJA) to assist him, as co-counsel.<sup>4</sup> (A 138 , ll. 1-10). Nevertheless, the Judge assured Mr. Green that if he later decided to proceed solely Pro Se, that that was his right--that he could do so at any time. (A 117, ll. 5-22; A 136, ll. 2-4).

During the Nov. 17 Tel. Conf. Mr. Green also expressed his frustrations with the proceedings: i.e., That he'd been lied to and misinformed by every lawyer he had, (A 115, ll. 15-16; and A 117); that he hadn't received a fair trial, (A 118, ll. 18-25); and that he still hadn't been provided with his client files and other case documents despite numerous requests to his previous attorneys, among others. (See, e.g., A 110 ; A 122 ).

Regarding Mr. Green's contentions that his lawyers' hadn't provided him with his client files and other relevant case information, the Judge stated that, "well, I don't have any reason to believe that you didn't get everything you were entitled to before the trial began", (A 123, ll. 11-13); to which Mr. Green replied: "I didn't. I didn't." (id., l. 14). The Judge then states:

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4. When CJA counsel was later appointed there was some apparent confusion regarding exactly what his role was; and he appeared to take on more of a role of Stand-by Counsel.

THE COURT: Okay. Well, you have an opportunity to prove that, if you wish, but as I sit here today, I have no reason to believe that you didn't get, or your lawyers didn't receive, the discovery material and the 3500 material before the trial began.

(id., ll. 15-19)(emphasis added).

After some discussion by the Judge regarding the Government's discovery obligations, Mr. Green reminds the Judge about Mr. Breslin's promise, at the July 25, 2019 Substitution of Counsel hearing, to undertake to continue to maintain control over certain aspects of his case files, and to continue to bring law enforcement 3500 materials to him at the jail for later discussions with Ms. Dolan, as a courtesy to her, being that she's located out of California. (A 127, ll. 19-23). He then informs the Judge that he's sent numerous requests to both Mr. Breslin, and Ms. Dolan, to be provided with these things, but has yet to be given anything except law enforcement 3500 material for his co-defendant, Donnell Murray. (See id.). He then states that he's also sent the District Court multiple letters and requests, requesting numerous documents, and that until he's provided this information, he doesn't wish to proceed. (A 128, ll. 3-15 ).

After hearing Mr. Green's complaints, the Judge asks Ms. Dolan if Mr. Breslin gave her his file on this case, (id., ll. 16-17 ), to which she replies: "Yes, your Honor. He did." (id., l. 18). However, as you'll discover later, this was a lie. The Judge then asks if "that include[d] the trial materials, the 3500 materials, the rule 16 discovery, et cetera?" (id., ll. 19-20). Ms. Dolan stated that "[i]t did not include all of the 3500 material." (id., ll. 22-23). She then goes on to claim that "Mr. Breslin confirmed with [her] that all materials to which Mr. Green had been entitled to were provided to him if not once, then multiple times, and [she] also provided additional materials in response to numerous requests that Mr. Green made as well." (id., l. 23, to A 129, l. 2). This being untrue upset Mr. Green very much, causing him to speak out in pro-



test regarding this. (A 129 , ll. 10-22; A 130 , ll 12-15; A 132 , ll. 10-21).

Regarding Mr. Green's claims that his attorneys were ineffective, the Judge informed him that he'd be required to first waive the attorney-client privilege before the court could address those claims; and that he'd soon be appointed an attorney who would present him with an affidavit for him to sign in order to do this. (A 141 ). The Judge also informed Mr. Green concerning his client files and other information he'd been seeking, to discuss this with his new lawyer during their first meeting together. (A 122, ll. 18-22). Mr. Green informed the Judge that he had no problem waiving the attorney-client privilege because he professed and maintained his innocence to every attorney he had from day one. (A 120, ll. 20-22; and A 121, ll. 14-16). Moreover, at the end of the conference the Judge stated that once Mr. Green was appointed counsel, that another conference would be scheduled so the Judge could discuss with Mr. Green and his new lawyer how they wish to proceed. (A 138, ll. 17-21). Following that conference, the District Court issued an order directing the Government to appoint "Stand-by" counsel for Mr. Green, pursuant to his request. See Doc. 906 (Nov. 17, 2021 Order Directing Government to Arrange for the Appointment of Stand-by Counsel for Mr. Green).<sup>5</sup>

Two days after the conference; on November 19, 2020, the District Court entered an order stating, inter alia, that it would hear Mr. Green's IAC and other claims prior to sentencing. Doc. 907 (hereafter the "Nov. 19 Order"). The Judge further stated therein that in order to proceed with his IAC claims, Mr. Green would be required to execute and return an attorney-client privilege (informed consent) waiver form (hereafter the "Waiver Form"), along with an affidavit setting forth his allegations concerning the performance of his previous attorneys (hereafter the "Affidavit"); and, that these things were due no

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5. Albeit the Judge stated at the conference that the appointment of counsel per Mr. Green's request would be as Co-Counsel, the order states for the Government to appoint Stand-by Counsel per his request.

later than December 9, 2020. See id.

A few weeks later, on December 4, 2020, after Mr. Green hadn't yet received the Nov. 19 Order and Waiver Form, he sent the District Court a letter titled "Request for Additional Time to Submit Affidavit," to inform the Judge he hadn't yet received the Waiver Form, and that he needed more time to submit his Affidavit. This request was sent "Certified Mail", because Mr. Green had been experiencing problems with his court submissions not being uploaded to his docket. It was received by the District Court on December 9, 2020; however, it wasn't uploaded to his docket. Therefore, Mr. Green filed another complaint with the clerk, along with proof of service, showing that the request was delivered. See Doc. 928 (A 144). This didn't work, though; and over the next couple of weeks Mr. Green sent several more letters and documents to the District Court, which also were not uploaded to his docket. Consequently, Mr. Green sent the clerk another complaint, along with, inter alia, a copy of the Dec. 4 request, and proof of service. See Doc. 938(A 146)(Please note that this complaint is incorrectly dated January 5, 2021; it was actually sent out shortly after January 19).<sup>6</sup>

On December 8, 2020 there was a conference held to follow up on the Nov. 17 Tel. Conf. (hereafter the "Dec. 8 Conf."). On the line during this conference was Mr. Green's newly appointed counsel, the attorney Steven Witzel. Mr.

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6. It's definitely worth noting that there were multiple court submissions sent by Mr. Green that specifically addressed the issue of him not receiving the Waiver Form, and needing more time to submit it and his Affidavit; and that these were some of the things that he experienced difficulties with not being uploaded to his docket. Furthermore, in one of those letters, i.e., one dated Jan. 6, 2021, Doc. 932, Mr. Green also alleged that the Judge was bias. That letter wasn't uploaded to his docket until January 26, 2021, after he filed a complaint with the District Court clerk. (A 146). For some reason, however, Mr. Green's letter dated Dec. 4, 2020, informing the Judge he never received the Waiver Form, and needed more time to submit it and his Affidavit, was never uploaded to his docket. This was even after he sent multiple complaints, and proof it was received by the District Court. (A 144; A 145). Moreover, as you will see later on, although Mr. Green had proof the District Court received these letters, the Judge acted as if he had no idea Mr. Green didn't have it; and made it appear as if he was simply unwilling to submit those things.



Green and Mr. Witzel did not speak for the first time until after the conference, though.

When the Dec. 8 Conf. began the Judge stated that he and Mr. Witzel had worked together in the U.S. Attorney's Office many years ago, and that they've not had any substantive communication in "probably 20 or more years." (A 153, ll. 14-19). The Judge then asks Mr. Witzel if he'd had an opportunity to speak with Mr. Green yet, (id., ll. 20-21); to which Mr. Witzel replies that he had not. (id., l. 22). Then, after bringing Mr. Witzel up-to-speed on what's transpired in the case thus far, (A 153-155), the Judge goes on to inform him that "suffice it to say, Mr. Green has many concerns, and he would be well advised to consult with an attorney about his concerns regarding his prior counsel, his concerns about documents that he wants access to, as well as other matters." (A 155, ll. 14-18). The Judge then says: "I should also tell you, Mr. Witzel, that I have issued an order directing Mr. Green to complete an affidavit and waiver with respect to his prior lawyer." (id., ll. 19-21). The Judge further explains how he previously explained to Mr. Green at the Nov. 17 Tel. Conf. that he'd need to do this in order to proceed forward with his IAC claims, and that there currently is a deadline of December 9, 2020, for this to be done. (A 156, ll. 1-5). Afterwards, the Judge asks Mr. Witzel "what is your plan for consulting with Mr. Green? Do you have a plan yet?" (id., ll. 6-7).

In response, Mr. Witzel informed the Judge that he did not yet have a plan, (id., l. 8), and that he'd been looking through the docket, waiting to get appointed. (id., ll. 9-10). Mr. Witzel said that "after that I would figure out time to speak with Mr. Green and work through these issues and see what assistance I could provide him. Whether he would like me to be in the role as the assistant to him, a shadow counsel, or if he would like us to take a more direct role. But all to be discussed with Mr. Green after I get appointed." (id., ll. 10-15).