The Judge then says that "[i]t does not seem like we can accomplish much until Mr. Witzel has had an opportunity to speak with Mr. Green", (id., ll. 22-24), so that Mr. Witzel can talk to him about the documents and information that he needs, and that hopefully that this will be enough time so that he can complete and return the Affidavit and Waiver Form so that the District Court can proceed forward with his IAC claims. (A 157, ll. 1-5).

Before ending the conference the Judge asks if anyone else has anything to say. (A 158, ll. 15-18). Mr. Green says he does, and begins discussing some of his concerns; mainly echoing statements made at previous confernces, and in previous court submissions, regarding the violations of his rights that had occured, and his not receiving his client files and other case information he'd been requesting from, inter alios, his previous attorneys. (A 158-162). Mr. Green makes clear that all he's asking the District Court for "is a fair opportunity to be heard so that he can seek justice in this matter." (A 162, ll. 15-16). He also informs the Judge that he was troubled to hear at the last conference the AUSA, Jessica Feinstein, state that she'd provided Ms. Dolan with all the 3500 materials in this case, because he'd never seen any of this information, and Ms. Dolan had not provided him with it, nor told him that she was ever given such. (A 160, ll. 14-19). The Judge's response was:

> THE COURT: The point of having a lawyer assigned to represent you, Mr. Green, is to go through in an organized way what your demands are, to have the U.S. Attorney's office respond to them, and try to make progress on your various claims. That's the point. So what we're going to do now is you're going to speak with Mr. Witzel, you'll make your complaints to him.

(A 166 , ll. 16-22). However, the Judge tells Mr. Green that it's important he understands that he doesn't have a right to every document at this stage of the proceedings. (A 167 , ll. 2-9). Mr. Green explains, though, that he needs this information to support his contentions that his rights had been violated.

(A 167, ll. 10-15).[7] Ultimately, the Judge informed Mr. Green that he'd be meeting with Mr. Witzel soon, and to discuss with him what it is in terms of case documents and other information he needs. (A 170, ll. 3-6).

Shortly after the Dec. 8 Conf. Mr. Green spoke to Mr. Witzel for the first time over the phone. Also on the line during the call was some colleagues of Mr. Witzel's, Courtney Morphet, and Jennifer Coyler. In fact, Mr. Green, Mr. Witzel, and his colleagues spoke several times within a few week period following that conference. During these calls Mr. Green voiced his concerns that he'd been raising throughout the entire proceedings to the District Court, and his previous lawyers. He discussed the violations of his rights that had occured, and his frustrations regarding his inability to receive and review his client files and other relevant case information. He also stated that he intended on signing and submitting the Waiver Form, but he'd not received it or the Nov. 19 Order; and that he was going to submit his Affidavit, but needed more time because of difficulties he faced being incarcerated during the COVID-19 pandemic, and because he was still waiting to receive and review his client files and other relevant information. Moreover, it was during one of these initial phone conversations with Mr. Witzel and his colleagues that Mr. Witzel told him: "You know Paul (referring to the Judge) is not too fond of you."

On January 5, 2021, the District Court held another teleconference (hereafter the "Jan. 5 Tel. Conf."). When it began the Judge breifly discussed the relevant case history leading up to the conference. (A 172). Moreover, the Judge stated:

THE COURT: . . . . I issued an order on November 19,

FOOTNOTES

7. Mr. Green had been requesting, inter alia, emails between Trial Counsel and the Government, proving that Trial Counsel had lied to him, and conspired with the Government to violate his rights to a fair trial. Specifically, one of the emails proved that both Trial Counsel and the Government misrepresented to the District Court that they didn't have the Disposition for the Traffic Stop (A 48).

directing Mr. Green to complete an attorney-client privilege waiver form so that we could proceed with his allegations of ineffective assistance of counsel.

Mr. Witzel, what is the status of Mr. Green's waiver form? Has that been completed or not?

(A 173, ll. 3-8). Mr. Witzel's response was:

MR. WITZEL: Judge, the top line, again, just to be clear, we were appointed as shadow counsel, as Mr. Green reiterated in his view of his role as lead counsel. Mr. Green--and he can speak for himself, too, but simply his position is that he does not want to sign that and proceed with his ineffective assistance of counsel claims or claims for prosecutorial misconduct until he has received all the information he has requested.

(id., ll. 9-16)(emphasis added). The Judge then asks Mr. Green if that was true. (id., l. 21). Mr. Green then tried to answer the Judge's question, and moreover clarify the obvious misstatements by Mr. Witzel, however the Judge interrupts him:

THE COURT: We are not going to get into that.

[MR. GREEN]: -- in this case.

THE COURT: I asked you -- sir, sir, don't interrupt me. I. Asked you a yes-or-no-question. Is it true that you are not prepared to sign the waiver form at this point?

(A 174). However, the Judge had not asked a yes-or-no-question, but had instead asked if what Mr. Witzel had said was true--which it was not. Therefore, Mr. Green was attempting simply to clarify that, and he started off by addressing Mr. Witzel's misstatement that he was not willing to submit the Affidavit or Waiver Form until he got the information he'd been requesting. Moreover, Mr. Green didn't interrupt the Judge, it was the Judge who interrupted him. So, Mr. Green tries to explain this, and clarify the record, but is interrupted by the Judge again:

[MR. GREEN]: First and foremost, nobody interrupted you. You interrupted me, your Honor. When I was talking just now, you asked me a question, and when I began to talk, you just cut me off. Nobody interrupted you. And, second, my second concern is, I never received any waiver form at all from no one here. So how could I

fill something out if I don't have it? And --

(A 175, ll. 1-7). The Judge asks Mr. Green to stop; then begins questioning Mr. Witzel about the Waiver Form. (id., ll. 8-10). Mr. Witzel responded by telling the Judge about the three or so conference calls he and his colleagues had with Mr. Green since the Dec. 8 Conf.; and explains that there's been difficulties with getting materials to Mr. Green at the institution. (id., ll. 11-15). Mr. Witzel then tells the Judge he's had some discussions with Mr. Green's previous attorneys, and claims to have received the client files from Ms. Dolan, and Mr. Breslin and Ms. Geller. (A 176, ll. 1-8). That, however, was a lie. Mr. Witzel then goes on to now no longer claim that Mr. Green does not want to sign and return the Waiver Form and submit his Affidavit, stating instead that he doesn't have it. (id., ll. 9-15). However, Mr. Witzel said that he assumed Mr. Green had the Waiver Form. (id.). Mr. Green, rightfully frustrated to hear yet another attorney of his lie, tries to explain what's going on; however, he's again cut off by the Judge, who gets hostile with him, and threatens to end the conference:

> [MR. GREEN]: This is Mr. Green.
>
> THE COURT: Oh, no. No, no. Stop.
>
> [MR. GREEN]: This is Mr. Green. Nothing was ever sent to me. No waiver or nothing.
>
> THE COURT: All right. If you keep doing this, I'm going to end the conference.
>
> A VOICE: (Inaudible).
>
> THE COURT: I'm not going to argue with you. I'll end the conference. So don't do it.

(A 176, ll. 16-24)(emphasis added). After interrupting Mr. Green again, the Judge asks Mr. Witzel what's going on (id.,l.25); and Mr. Witzel again discusses the issues they've been having with trying to get Mr. Green materials at the institution--with him not getting the mail that is sent there. (A 177). Ergo, the Judge asks the Government to speak with legal counsel at the facility Mr. Green was housed at (A 178, ll. 3-4); and then makes somewhat of a sarcastic

statement about Mr. Green's understanding regarding the importance of getting the Waiver Form signed and returned:

> THE COURT: . . . . I'm really speechless about this, because I issued the order on November 19. That was a very long time ago . . . . Because, as I said, we can't make any progress here on Mr. Green's ineffective assistance claims until we get a waiver. And everyone on the phone, other than perhaps Mr. Green, understands that. I think that I have explained it to Mr. Green as well. So until we have a waiver form, we can't make any progress.

(A 178, ll. 3-14)(emphasis added). The Judge then says that if Mr. Green's unwilling to sign the Waiver Form, the District Court will not hear his IAC claims; and, that he accepts that Mr. Green hadn't yet received it. (id., ll. 15-20). Moreover, the Judge tells Mr. Green that "[o]nce you get it, I am directing you to speak with Mr. Witzel about whether you are prepared to sign the form or not, and then we will have another conference call and you will tell me either that you signed the form and completed the affidavit or that you are unwilling to at this point." (id., ll. 21-25; and, A 179, ll.1-3). The Judge does none of this, however, as you'll soon discover.

The Judge then sets a new deadline of February 9, 2021, for Mr. Green to submit the Waiver Form and Affidavit. Specifically, the Judge says:

> THE COURT: . . . . So just to reiterate, by February 9, I want to hear from Mr. Green and his counsel whether a privilege waiver form has been executed, signed, and also the preparation of the affidavit that is discussed in my November 19 order. And as I have said, my intention is that if the waiver form hasn't been completed at that time and the affidavit has not been prepared, my intention is to put the matter down for sentencing because I can't delay sentencing indefinitely.

(A 180-181). Afterwards, the Judge asks if "there is anything else anyone wants to say?" (A 181 , l. 5). Mr. Green says he does, (id., l. 6), and, being that he'd been basically ignored up to this point, and had heard clear misrepresentations by both the Judge and Mr. Witzel, he wanted to clarify the record, and express his frustrations. (A 181-182). However, in the middle of him speaking the Judge again interrupts him:

THE COURT: All right--
(Indiscernible crosstalk)
THE COURT: -- we are not --
[MR. GREEN]: -- 97
THE COURT: We are not going to hear a speech from you.
[MR. GREEN]: The government --
(Indiscernible crosstalk)
[MR. GREEN]: -- reports --
THE COURT: All right.

(A 182, ll. 9-18)(emphasis added). Mr. Green, obviously and rightly frustrated, tells the Judge that he has a right to be heard, among other things:

> [MR. GREEN]: I have a right -- I have a right to be heard, and I feel like you are making -- you are trying to . . . force m[e] [to address] my claims prema- turely, and this is a violation of my constitutional rights, and this is a serious issue here, so I have a right to be heard. You asked if anybody had anything to say, I didn't interrupt anybody, I waited patiently, and now I would like to address the courts. And for some reason, ya'll are denying my access to the courts, and that's a serious violation of my constitutional rights here.

(A 182-183). Mr. Green then discusses some of his grievances regarding, among other things, the issues with his previous lawyers, and his difficulties receiving certain case documents and other information, and as he's speaking, the Judge actually disconnects the line, and ends the conference:

> THE DEPUTY CLERK: Mr. Green. Let me cut in. The Judge disconnected. We are just going to have to go forward in February. Sorry.

(A 186).

Mr. Green was understandably outraged upon discovering that the Judge disconnected the conference while he was voicing his grievances, and attempting to clarify the record. Something else that troubled him was hearing Mr. Witzel lie to the Judge: Prior to the Jan. 5 Tel. Conf. Mr. Green told him he never received the Waiver Form, and that he intended on signing and submitting it and his Affidavit. However, that's not what Mr. Witzel told the Judge. Therefore,

it was evident to Mr. Green he couldn't trust Mr. Witzel, and that the Judge was partial and bias. He knew now that his only chance at justice was to request to only appear in court in person; to represent himself solely Pro Se; and, to get his case before another judge. So, he wrote Mr. Witzel an email after the conference explaining this.

Mr. Green also sent the District Court a letter after the Jan. 5 Tel. Conf., dated January 6, 2021, to voice concerns he was trying to raise when the Judge abruptly ended the conference. Doc. 932 (herafter the "Jan. 6 Ltr.") (A 187). Additionally, he told the Judge that he recently discovered that Ms. Dolan admitted in a letter that she never received Trial Counsels' client file, and therefore pointed out that she had clearly lied to and misled the District Court. (id.). Therein, he also stated he felt the Judge was bias; that he now desired to proceed solely Pro Se; and, that he objected to future telephonic conferences. (id.).

Mr. Witzel also sent the Judge a letter - dated January 6, 2021 - stating Mr. Green desired to represent himself, and to only appear in court in person. Doc. 924 (A 188). Therein, Mr. Witzel further stated, inter alia, that he sent Mr. Green the Waiver Form, and would still appear at the February 9 conference on his behalf, and would continue to send him documents unless directed otherwise by the Judge. (id.).

Around this same time Mr. Green sent several more letters to the District Court complaining about, inter alia: The Judge ruling on Trial Counsels' post-trial motions knowing he wasn't satisfied with such; not receiving his client files and other information he'd been requesting for around two years; not receiving the District Court's Nov. 19 Order and Waiver Form; and, asking for more time to submit the Waiver Form and Affidavit. Mr. Green noticed, however, that none of these things, to inlcude his Jan. 6 Ltr., had been uploaded to his docket--so he filed another complaint with the clerk. Doc. 938 (A 146).

Thereafter, several of those letters, to include the Jan. 6 Ltr., were finally uploaded to his docket. See, e.g., Doc. 932 (Ltr. by Mr. Green dated 01/06/2021, entered 01/26/2021); Doc. 942 (Ltr. by Mr. Green dated 01/22/2021, entered 02/24/2021); Doc. 944 (Ltr. by Mr. Green dated 01/17/2021, entered 02/24/2021); and Doc. 946 (Ltr. by Mr. Green dated 01/31/2021, entered 02/24/2021). However, Mr. Green's letter dated December 4, 2020, requesting additional time to submit the Affidavit, and notifying the District Court that he never received the Waiver Form, still wasn't uploaded to the docket.

In one of those letters, one dated January 17, 2021, Mr. Green wrote to inform the Judge that he'd finally received the Waiver Form. Doc. 944. Therein, Mr. Green also stated that he was still without all the information that he'd been requesting and needed to adequately prepare his Affidavit. See id.. Then, on or about January 26, 2021, Mr. Green sent the District Court a motion for extension of time, seeking an extension of the February 9, 2021 deadline for him to submit the Waiver Form and Affidavit. Doc. 940 (A 190). Therein, he reiterated that even after years of requests, he still was without all the information that he needed to adequately prepare his Affidavit. See id..

In the motion, Mr. Green also informed the Judge of the difficulties he faced due to his being Pro Se, and incarcerated during the - then very active - COVID-19 pandemic, see id.; something he'd apprised the Judge of in previous letters as well. For example, Mr. Green stated that because of the Coronavirus pandemic he was only allowed out of his cell for a limited period of time, making it extremely difficult for him to work on researching and developing his Affidavit. See id.. He also informed the Judge that the institution had ran out of paper, which further prevented him from being able to complete and submit his Affidavit prior to the February 9, 2021 deadline. See id.. Therefore, Mr. Green requested the District Court extend the deadline, and stated that a failure to do so under these circumstances would amount to an abuse of

discretion. See id..

On February 5, 2021, not long after Mr. Green submitted the motion for extension of time, the Government filed a letter opposing such. Doc. 945. Mr. Green did not receive this until on or about February 12, 2021; however, by then it was too late because the District Court had issued an order, on February 10, 2021, stating that it would no longer hear Mr. Green's IAC and other claims prior to sentencing. Doc. 950 (hereafter the "Feb. 10 Order")(A 34). Before that occured, though, on February 8, 2021 the District Court entered an order stating that because Mr. Green refuses to participate in further court proceedings by telephone, the conference previously scheduled for February 9, 2021 is adjourned sine die. Doc. 947 (hereafter the "Feb. 8 Order")(A 198). However, the Judge never said the conference was canceled ("sine die" means "[w]ith no day being assigned." BLACK'S LAW DICTIONARY, Delux 8th ed. at 1418).

Now, Mr. Green didn't agree with the Judge's classification of his objecting to further telephonic court appearances as a "refusal", so he wrote the District Court a letter to respond and object to the Feb. 8 Order. See Doc. 953 (hereafter the "Obj. to Feb. 8 Order")(A 199). He made clear therein that this decision was due to the violations of his rights that occured at the Jan. 5 Tel. Conf., when the Judge cut him off several times, and disconnected the conference while he was speaking. (id.).

Mr. Green also sent with the Obj. to Feb. 8 Order the signed Waiver Form, and a cover letter. (A 200). He wasn't able to get the Waiver Form notarized because Federal Bureau of Prisons (BOP) policy at his institution only allowed notary services for sentenced prisoners. Fortunately, on February 7, 2021, he located a BOP staff member who was able to stamp the Waiver Form under 28 U.S.C. §4004. (A 201). So, the next day he mailed out the Waiver Form using the legal mail services at the institution he was housed at; and he did this one-day before the District Court's February 9, 2021 deadline. How-

ever, he wasn't able to send the Affidavit because he still hadn't received his client file from Trial Counsel, nor some of the other documents he'd requested form Mr. Witzel. Also, there still wasn't any paper for the printer at the institution.

In the Feb. 10 Order the District Court stated that because Mr. Green hadn't submitted the Waiver Form or Affidavit prior to the February 9 deadline, his IAC and other post-conviction claims would no longer be considered prior to sentencing. (A 37). However, under the prison mailbox rule, Mr. Green felt his Waiver Form was timely filed. It was submitted to prison authorities for delivery to the District Court on February 8, 2021, a day before the February 9 deadline. Furthermore, Mr. Green couldn't possibly have submitted it any sooner, because of the delays in getting him it, coupled with the difficulties he faced trying to get it notarized. And concerncing the Affidavit, he wasn't able to print it off because there hadn't been any paper in the printer in his housing unit at the prison, and he also was still waiting on his client files and other case information that Mr. Witzel said he was sending him, and that the Judge assured he'd be able to receive and review before being required to file. Additionally, at the last confernce the Judge had told him that he (the Judge) would, after Mr. Green received the Waiver Form, discuss with him and Mr. Witzel his desire to execute it, and to submit his Affidavit. So, Mr. Green knew that he needed to seek reconsideration of the District Court's Feb. 10 Order, and that he also needed to recuse the Judge if he was going to get a fair unbiased review of this, and moreover the rest of the issues in his case. Therefore, he submitted an Affidavit and Motion to Recuse (hereafter the "Recusal Pleadings"), along with a Motion for Reconsideration. These things were filed on February 26, 2021. Doc. 955 (Recusal Pleadings) (A 1), Doc. 956 (Mot. for Recons.). Therewith, Mr. Green also sent his Affidavit in support of his IAC and other post-conviction claims. He was finally able to do

so after the institution had got more paper for the printer.

The Recusal Pleadings were filed under 28 U.S.C. §§144, 455(a), 455(b)(1), and the U.S. Code of Judicial Conduct, Canons 1, 2(A), and 3 et seq.. Therein, Mr. Green asked the Judge to recuse himself, and to assign the case to a different judge to hear his Mot. for Recons., and to handle the proceedings. Moreover, he argued that the Judge was actually bias and partial, and that there existed an impermissible appearance of bias and partiality due to the Judge's previous comments reflecting he prejudged his ineffective assistance of counsel claims, and due to the Judge's apparent reluctance to address those claims, coupled with the Judge's conduct and behavior at the Jan. 5 Tel. Conf., and later Feb. 10 Order declining to address his IAC and other claims prior to sentencing. However, on June 16, 2021, the District Court denied the Recusal Pleadings, and the Mot. for Recons. Doc. 1024 (Add. 1).

In it's order denying Mr. Green's Mot. for Recons. and Recusal Pleadings, in response to Mr. Green's contentions that the Judge's Feb. 10 Order was completely arbitrary, manifesting the Judge's bias, the Judge stated that Mr. Green failed to submit the Waiver Form on time, and that his reliance on the prison mailbox rule was misplaced. (See Add. 6). Furthermore, the Judge said that Mr. Green was represented by stand-by counsel, "who stood ready to ensure [his] waiver form was timely submitted." (id. n.8). However, the Judge fails to take into consideration 1) Mr. Green's Jan. 6 Ltr. requesting to relieve stand-by counsel, and to represent himself solely Pro Se; 2) the delay in getting him the Waiver Form, coupled with the fact that he had to first get it notarized before he could mail it back; and, even if he mailed it to Mr. Witzel, it still would not have been docketed prior to the February 9 deadline.

Moreover, the Judge didn't even wait twenty-four hours after the February 9 deadline before issuing the Feb. 10 Order; nor did he first check with Mr. Witzel and or Mr. Green "after" Mr. Green finally received the Waiver Form,

to see if Mr. Green intended on signing and submitting it and his Affidavit. Mr. Green maintained all along his desire to be heard regarding his IAC and other post-conviction cliams, and his willingness to submit the Waiver Form and and Affidavit. The Judge, furthermore, knew this, and the difficulties Mr. Green faced with the mail at the institution, and with getting his client files and other relevant case information. However, the Judge reasons that he decided against hearing Mr. Green's IAC and other claims prior to sentencing because he (the Judge) couldn't delay sentencing indefinitely; incorrectly stating that months of delay was the result of Mr. Green's refusal to submit the Waiver Form and Affidavit. (Add. 4; Add. 13-14). This clearly isn't true.

Regarding Mr. Green's arguments in his Recusal Pleadings that the Judge was bias and partial, and or that there existed an impermissible appearance of bias and partiality, the Judge, citing Liteky v. United States, 510 U.S. 540, 114 S.Ct. 1147, 127 L.Ed. 2d 474 (1994), reasoned that "judicial rulings alone almost never constitute a valid basis for a partiality motion," Liteky, 510 U.S. at 555, (Add. 7); and, that "partiality cannot be established through expressions of impatience, dissatisfaction, annoyance, and even anger, that are within the bounds of what imperfect men and women, even after having been confirmed as judges, sometimes display." Liteky, 510 U.S. at 555-56(Add. 11). However, it wasn't only the Judge's prior rulings, but also, among other things, his conduct at the Jan. 5 Tel. Conf. that formed the basis of Mr. Green's reasoning why he felt the Judge should recuse himself, and or assign the case to a different Judge.

Furthermore, in the order denying Mr. Green's Recusal Pleadings, the Judge incorrectly states that "the record does not demonstrate bias or hostility towards Mr. Green." (Add. 8). The Judge states that Mr. Green, four and a half years into the proceedings, and after dismissing four sets of lawyers and proceeding Pro Se, sought to recuse the Judge after he (the Judge) "refused his

request to further delay his sentencing." (id). This is the furthest thing from the truth, though. Moreover, also untrue is the Judge's contentions regarding the Jan. 5 Tel. Conf., that Mr. Green somehow incorrectly answered his question, (id.), and that he (Mr. Green) interrupted him (the Judge). (Add. 9).

The lies of the District Court don't stop there, however. The Judge next falsely claims that Mr. Green just out-of-nowhere begins "a monologue about the ineffectiveness provided by his [T]rial [C]ounsel."(Add. 10). The truth is, however, that Mr. Green didn't start speaking until "after" the Judge asked if "there was anything else anyone want[ed] to say?" (A , 1. 5).

Now, the only thing worse than the Judge's misrepresentations and lies is his reasoning behind why he claims to have disconnected the Jan. 5 Tel. Conf. while Mr. Green - a Pro Se African-American United States Citizen - was speaking: Specifically, in the order denying the Recusal Pleadings, the Judge states:

> Green then turned to the George Floyed case, asserting that "this entire case is equivalent to me being suffocated by a knee to the back of my neck." Green asserted that this Court was turning "a blind eye on the prejudices [he had] suffer[ed]," and that he would be sentenced on the basis of "ficti[cious] crimes." Green then referenced Nelson Mandela, at which point this Court terminated the conference.

(Add. 11)(minor alterations to orginal and emphasis added). The Judge then goes on to state:

> Green interrupted the Court multiple times during the conference, and then insisted on delivering a monologue about matters that were not the subject of the conference, including his grievances against his former lawers, and his views concerning the George Floyed case and the the oratory of Nelson Mandela. The Court terminated the conference because Green's speech served no useful purpose.

(id.)(emphasis added)

Moreover, the Judge goes on to argue that nothing that transpired at the Jan. 5 Tel. Conf. demonstrates that recusal is appropriate. (id.). The Judge - incorrectly - says instead that the conference demonstrated that Mr. Green

"had disobeyed the Court's order to submit an executed [W]aiver [F]orm and [A]ffidavit setting forth his allegations against his former lawyers." (id.). However, none of what the Judge says is true. Instead, it further supports Mr. Green's arguments that the Judge is bias and partial; that there exists an impermissible appearance of bias and partiality; and, that his rights were severely violated.

SUMMARY OF THE ARGUMENT

From the moment the Government decided to try this RICO case against the alleged founder of the Blood Hound Brims gang, Latique Johnson, Mr. Green did not stand a chance. The Government charged and indicted anyone who they felt could be of use to them in their efforts to prosecute and imprison Mr. Johnson. They falsely and illegally charged and indicted individuals, such as Mr. Green; and engaged in coercive plea bargaining in an effort to get them to take plea deals and cooperte by testifying against Mr. Johnson and the others. This is something that Mr. Green's attorneys made clear to him. However, Mr. Green knew he was innocent. Moreover, he knew he was being wrongfully prosecuted, and after realizing that his own lawyers were unwilling to stand up against the Government misconduct, and that they may have even been a part of it, he knew that he had no choice but to represent himself. He thought that if he made the District Court aware of his grievances, that the Judge would intervene. Unfortunately, though, the Judge ignored his written and verbal complaints, and even tried to persuade him not to pursue them. The Judge even went so far as to openly state that he felt Mr. Green's Trial Counsel performed "admirably"; that Mr. Green was the beneficiary of excellent representation, in terms of both Trial Counsels' written submissions, as well as their in-court performances. The Judge also allowed Trial Counsel to maintain control over certain aspects of Mr. Green's case files, even after they were relieved and replaced by the attorney Zoe Dolan. This is when the Judge's bias first began

to manifest; and it got worse as time went on: For instance, the Judge didn't address Mr. Green's complaints that his rights had been violated, even after stating he would; didn't ensure that Mr. Green received his client files and other relevant case information, nor provided him with a meaningful opportunity to review these things once he did receive them, even after he said he would; didn't hold an evidentiary hearing regarding, or otherwise review his IAC and other post-conviction claims, after he said he would; required Mr. Green to execute and submit an attorney-client privilege Waiver Form, and Affidvait of facts, in order to review his IAC and other cliams, although such wasn't necessary; didn't take into consideration the prejudices suffered by Mr. Green preventing him from receiving, completing, and submitting the Waiver Form and Affidavit prior to the deadlines set to do so; didn't take into consideration the prison mailbox rule, and or wait to see if he timely filed the Waiver Form pursuant to such; didn't honor Mr. Green's explicit requests to releive his appointed shadow counsel, Steven Witzel, and to represent himself, even after stating he would; acted hostile towards Mr. Green at the Jan. 5 Tel. Conf., threatening him and to disconnect the conference, making inappropriate sarcastic comments toward him, misstated the record, cut him off while he was speaking, told him he couldn't make a speech, and then after inviting him to speak, abruptly disconnected the line ending the conference while Mr. Green was attempting to apprise the District Court of his concerns, and moreover clarify the record, to include the Judge's and Mr. Witzel's misstatements and misrepresentations. Consequently, Mr. Green immediately thereafter wrote the District Court to inform the Judge that he felt the Judge was bias and partial, and he then moved the Judge to recuse. The Judge, however, denied that request, along with Mr. Green's motion to reconsider the Feb. 10 Order refusing to hear his IAC and other post-conviction claims prior to sentencing; which Mr. Green also argued was the result of and or otherwise manifested the Judge's

bias and partiality. Mr. Green was later sentenced, and this appeal, as well as several other appeals from that criminal case, to include his appeal from the final judgment, followed.

In this appeal (No. 21-2244) Mr. Green argues that the Judge abused his discretion by refusing to recuse, and denying his requests to do so. This is because a reasonable person, knowing all the facts - previously mentioned and discussed herein - would question the Judge's impartiality. The Judge's statements, conduct, and orders complained of displays the type of deep-seated favoritism and antagonism that makes fair judgment impossible. Also, he argues that he was denied his due process right to an impartial and unbias decision-maker due to the Judge's bias and partiality, and or because of the Judge's refusal to recuse despite there being an impermissible appearance of bias and partiality. Consequently, justice wasn't done here; which is reflected in the opinions and orders issued by the District Court in this case, as well as by the abundance of issues discussed herein. Mr. Green also argues several other issues, which one-way-or-another relate to and or otherwise manifest the Judge's bias and partiality, and or otherwise resulted in plain- and or plain-structural errors, and or otherwise are per se prejudicial, and or should nonetheless be considered by this Court in the interests of justice and judicial economy, especially in light of the fact that Mr. Green also has pending before this Court his appeal from the final judgment in this case (No. 21-1459(L.)), which this appeal also stems from. These other issues are that the District Court abused its discretion by not holding an evidentiary hearing to address his IAC and other post-conviction claims, by requiring him to execute and submit an attorney-client privilege Waiver Form and or Affidavit of facts when such wasn't required to review those claims, and or in denying his requests for an extension of time to submit this Affidavit and Waiver Form, and by denying his motion for reconsideration; that the District Court denied him of his right to

self-representation by not addressing his explicit requests to do so; and, that he was denied his right to due process of law, and to a fair trial. Moreover, for this Court's convenience Mr. Green has done his best to tie all of these issues together; and, in a way, they are all somewhat related--be it directly, and or indirectly.

These issues discussed above and throughout this brief are indicative of the problems currently undermining public confidence in our courts: i.e., prosecutorial misconduct, ineffective defense counsel, and a judiciary unwilling to hold either of them accountable. Moreover, the Judge's conduct and behavior here is the antithesis of what's expected and required of our federal judges. Justice must satisfy the appearance of justice. However, that wasn't the case here.[£] Accordingly, to promote and restore public confidence in the integrity of our courts, to satisfy the appearance of justice, and to relieve Mr. Green of the prejudices suffered, this Court should vacate his judgment of conviction, sentence, and the District Court's orders dating back to at least the Jan. 5 Tel. Conf., if not earlier, and remand his case back to the District Court to be reassigned to another judge.

FOOTNOTES

£. Even the media, inter alios, commented about some of the apparent problems Mr. Green tried to address in this case. See, e.g., http://innercity-press.com/sdny7latiquetrial072221.html (discussing Mr. Green's sentencing proceedings, saying, inter alia, that: "Not mentioned by the prosecutors was the las minute letters of protest from Brandon Green, about a Mr. Brash calling him, his right to self-representation, and request for a new trial. These were all denied.).

ARGUMENT

A. THE DISTRICT COURT SHOULD HAVE RECUSED, AND OR ASSIGNED MR. GREEN'S CASE TO ANOTHER JUDGE: THIS DEPRIVED MR. GREEN OF HIS RIGHT TO DUE PROCESS, AND OR WAS AN ABUSE OF DISCRETION

1. Standard of Review

"The appellate court reviews a district court's decision to deny a recusal motion for abuse of discretion. When such a motion was not made below or a new ground for recusal is raised on appeal, [the Court] review[s] a district court's failure to recuse itself for plain error." United States v. Arillotta, 529 Fed. Appx. 81 (2d Cir. 2013). With respect to a claimed due process violation, the appellate court reviews the district court's factual determinations for clear error, while the consitutional significance of those findings, including the ultimate determination of whether due process has been violated, is reviewed de novo. United States v. Bayuo, 809 Fed. Appx. 47 (2d Cir. 2020).

Legal Discussion

2. Due Process and Recusal

Our constitutional framework provides that all individuals are guaranteed to fair treatment and a fair trial. These requirements are rights guaranteed to the accused; the most basic of which can be found in the first ten amendments to the U.S. Constitution, commonly referred to as the "Bill of Rights". These rights are not self-executing, however: It's actually up to the accused and or the accused's counsel to ensure that these things are provided. See, e.g., https://www.stimmel-law.com/en/articles/american-system-criminal-justice("It's and oddity of the American system of political freedom that the one class of persons who are alone capable of enforcing most of the precious Bill of Rights for all American citizens . . . are those accused of crime! . . . [T]hose who are charged with the responsibility for making sure the government adheres to these rights are those actually accused of crime

since only they have the right to go to court to argue the government is violating the Bill of Rights.").

Among those rights, relevant to our discussion here is the due process clause, located in the fifth amendment. It states that: "No person shall be . . . deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V. Due process is a requirement that legal matters be resolved according to established rules and principles, and that individuals be treated fairly. "Due process has been a consistent presence in judicial recusal. The two clearly overlap, as both due process and recusal stress the right of litigants to a fair proceeding by an impartial arbiter." Louis J. Virelli III, Disqualifying the High Court, Supreme Court Recusal and the Constitution at 121 (citing Bracy v. Granley, 520 U.S. 899, 904-905 (1997)). Moreover, "[d]ue process clause of Fifth Amendment entitles persons to impartial and disinterested tribunal in both civil and criminal cases, since requirement of neutrality in adjudicative proceedings safeguards two central concerns of procedural due process: prevention of unjustified or mistaken deprivations and promotion of participation and dialogue by affected individuals in decision making process; since neutrality requirement helps to guarantee that no person will be deprived of interests without proceeding in which he has assurance that arbiter is not predisposed to find against him, stringent rule that justice must satisfy appearance of justice must be applied, although it may sometimes bar trial by judges who have no actual bias." Marshall v. Jerrico, Inc., 446 U.S. 238, 64 L.Ed. 2d 182, 100 S.Ct. 1610, 24 BNA WH Cas 681 (1980). Therefore, sometimes to ensure an impartial tribunal, the due process clause requires a judge to recuse himself from a case even if there is no actual bias. However, in Caperton v. A.T. Massey Coal Co., 556 U.S. 868, 129 S.Ct. 2252, 173 L. Ed. 2d 1208 (2009), the Court noted that "most matters relating to judicial disqualification [do] not rise to a constitutional level." And that's because

"[m]ost questions of recusal are addressed by more stringent and detailed ethical rules[.]" Williams v. Pennsylvania, U.S., 136 S.Ct. 1899, 1908 (2016).

3. Recusal: Statutory and Ethical Requirements

Litigants can move for a federal judge to recuse himself on the grounds of partiality or the appearance of partiality. Applicable statutes or canons of ethics may provide standards for recusal in a given situation. Federal judges must abide by the Code of Conduct for United States Judges, adopted by the Judicial Conference of the United States. Every federal judge receieves a copy of the Code. It prescribes ethical norms for federal judges as a means to preserve the actual and apparent integrity of the federal judiciary. The Code of Conduct contains no enforcement mechanism, though. See Thode, Reporter's Notes to Code of Judicial Conduct 43. The Canons, including the one that requires a judge to disqualify himself in certain circumstances, see Code of Conduct Canon 3C, are not self-enforcing. There are, however, remedies extrinsic in the Code. One is disqualification of the offending judge under either of two sections of Title 28 of the United States Code (the Judicial Code), to-wit: §§144, and or 455. Both sections provide standards for judicial disqualification or recusal.[8]

Section 144, captioned "Bias or prejudice of judge", deals with the actual bias or prejudice of a judge. It provides that under certain circumsances, when a party to a case in a United States District Court files a "timely and sufficient motion that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of the adverse party," the case shall be transferred to another judge. Section 455, captioned "Disqualification of justice, judge, or magistrate judge", provides that a federal

FOOTNOTES

8. "Recusal" is used interchangeably to include both terms "disqualification," which traditionally refers to involuntary removal of a judge from a case, and "recusal," which has historically referred to a judge's voluntary decision to withdraw from a case. Richard E. Flamm, Judicial Disqualification: Recusal and Disqualification of Judges §1.1, at 4 (2d ed. 2007).

judge "shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned". The section also provides that a judge is disqualified "where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceedings", when the judge has previously served as a lawyer or witness concerning the outcome, or when the judge or a member of his or her immediate family has a financial interest in the outcome of the proceedings. Moreover, while section 455 overlaps and subsumes section 144, there are important differences between the two sections. For example, section 144 deals exclusively with actual bias, whereas section 455 deals with actual bias as well as other specific conflicts of interest and the appearance of partiality. Also, section 144 is triggered by a party's affidavit while section 455 may be invoked by motion and requires a judge to recuse sua sponte. Moreover, the general rule is that to warrant recusal, a judge's expression of an opinion about the merits of a case, or his familiarity with the parties, must have originated in a source outside the case itself. This is referred to as the "extrajudicial source rule", and was recognized as a general presumption, although not an invariable one, in the Supreme Court decision in Liteky v. United States, 510 U.S. 540, 114 S. Ct. 1147, 127 L. Ed. 2d 474 (1994). See, e.g., Patterson v. McCarron, 130 Fed. Appx. 490 (2d. Cir. 2004)(Judicial rulings or judicial remarks made during the course of a trial that express impatience, dissatisfaction, or annoyance do not warrant a conclusion that a court is not impartial or that recusal is warranted, unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible.).

Most recusal questions don't get addressed using the actual bias standards of Sections 144 and 455. Instead, the focus often is on the appearance of bias and partiality. 28 U.S.C.S. §455, and its more-or-less identical analogue in the Code of Judicial Conduct, is designed to promote public confidence in

the impartiality of the judicial process by saying, in effect, if there is a reasonable factual basis for doubting a judge's impartiality, he should disqualify himself. It provides that a judge recuse himself not only when he is actually bias or partial, 28 U.S.C.S. §455(b), but also when a reasonable observer might question his neutrality, 28 U.S.C.S. §455(a). Section 455(b) rendered objective and spelled out in detail the "interest" and "relationship" grounds of recusal. Under §455(a), by contrast, what matters is not the reality of bias or prejudice but its appearance. Muchnick v. Thompson Corp (In re Literary Works in Elec. Databases Copyright Litig.), 509 F.3d 136 (2d Cir 2007). See also, United States v. Scaretta, 1997 U.S. App. LEXIS 30255 (2d Cir. 1997) (The test of impartiality under 28 U.S.C.S. §455(a) is an objective one: Whether a reasonable person, knowing and understanding all the facts and circumstances, would believe that the judge should be recused); and, Pashaian v. Eccleston Props., 88 F.3d 77 (2d Cir. 1996)(Canon 3C of the Code of Judicial Conduct requires disqualification where a judge's impartiality might reasonably be questioned). That's because a belief by the citizens that their judges are fair and impartial is necessary for a functional judiciary. See Judicial Misonduct and Public Confidence in the Rule of Law, by David J. Sachar. Judges must, therefore, be accountable to legal and ethical standards. See United States v. Microsoft Corp., 253 F.3d 34, 115 (D.C. Cir. 2001)("[F]ederal judges must maintain the appearance of impartiality" becasuse "[d]eference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of judges."). Accordingly, the U.S. Constitution, federal statutory law, and codes of judicial conduct each prescribe recusal standards under which a judge may or, under limited circumstances, must remove himself from a case to protect the integrity of the proceedings. See Caperton v. A.T. Massey Coal Co., 556 U.S. 868, 876-77, 129 S.Ct. 2252, 173 L.Ed. 2d 1208 (2009), Microsoft Corp., 253 F.3d at 113-15.

Analysis

4. Why the Judge Should Have Recused; and or Assigned the Case to a Different Judge

The July 25, 2019 Sub. of Couns. Conf.

Since as early as May of 2019 Mr. Green brought to the District Court's attention his grievances concerning his case, which primarily dealt with his attorneys' performance at trial, and in their written materials, as well as misconduct by the Government. See Doc. 665 (Suppl. Decl.) (A 51). Mr. Green again, in early July of 2019, wrote the District Court voicing his concerns with the proceedings, and informing the court, inter alia, that he wasn't satisfied with his Trial Counsels' post-trial submissions. See Doc. 680 (Mot. for Stay)(A 59). And a few weeks later he moved the District Court to relieve and replace them due to these and similar concerns. That substitution of counsel hearing was held on July 25, 2019. Moreover, the District Court, knowing that Mr. Green wasn't satisfied with his Trial Counsels' performance at, before, and after trial, and with regard to their written court submissions, stated at that conference that:

> THE COURT: . . . . I will say that I think that both Mr. Breslinnand 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). The Judge also allowed Trial Counsel to maintain control over certain aspects of Mr. Green's case files after replacing them with the attorney, Zoe Dolan. This decision was made after Mr. Breslin suggested that such was necessary "so that this thing does not slide further." id. at 5, ll. 2-9 (quoting Mr. Breslin).

Now, because the District Court knew that Mr. Green wasn't satisfied with his Trial Counsels' overall performance, to include their trial performance, and post-trial submissions, and moreover because Mr. Green moved to have

them replaced, the court knew that Mr. Green was essentially arguing that his Trial Counsel were ineffective. In fact, the District Court's own statements reflect this:

> THE COURT: . . . . So, my concern is that 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.

(A 89 , ll. 5-10)(statements made by Judge regarding Mr. Green's Sent. Mem. at the October 31, 2019 conference).

Mr. Green argues that the statements by the Judge expressing his belief that "both Mr. Breslin and Ms. Geller ha[d] performed admirably throughout their entire representation of [him], both in terms of their in court performances as well as their written materials", and "that [he] ha[d] been the beneficiary of excellent representation", reflect the Judge's premature judgment about his IAC claims against his Trial Counsel, and with regard to his overall complaints about the proceedings. This is an issue. Moreover, such statements "display a deep-seated favoritism . . . that would make fair judgment impossible." Liteky, 510 U.S. at 555; LoCascio v. United States, 473 F.3d 493, 495 (2d Cir. 2007). These statements also would cause a disinterested observer to question the Judge's impartiality. Specifically, such statements, especially in light of the information already known by the Judge prior to making them, would cause a reasonable person to question whether the Judge could fairly review Mr. Green's IAC claims against his Trial Counsel, because the Judge, already knowing that Mr. Green wasn't satisfied with his Trial Counsels' in-court performance, and written materials, stated that he believed they performed admirably in those areas, and moreover, that Mr. Green received excellent representation from them.

Mr. Green submits that "'[a] federal judge must recuse [himself] in any proceeding where [his] impartiality might reasonably be questioned'" or "where

the judge 'has a personal bias or prejudice concerning a party.'" United States v. Morrison, 153 F.3d 34, 48 (2d Cir. 1998)(quoting 28 U.S.C. §455(a), (b)(1)). Additionally, a judge shall not proceed in a matter in which he or she "has a personal bias or prejudice against [the defendant] or in favor of any adverse party. 28 U.S.C. §144. The need for recusal arises when "an objective, disinterested observer fully informed of the underlying facts" would "entertain significant doubt justice would be done absent recusal." United States v. Amico, 486 F.3d 764, 775 (2d Cir. 2007). Accordingly, Mr. Green argues that the Judge should have recused himself; because the aforementioned statements manifest that the Judge had an actual bias concerning a party, in particular, Mr. Green's Trial Counsel, who he was arguing had deprived him of his right to, inter alia, the effective assistance of counsel, see 28 U.S.C. §§ 144, 455(b)(1); and or because those statements created an impermissible appearance of partiality, see 28 U.S.C. §455(a), and U.S. Code Judicial Conduct, Canon 3C. Moreover, recusal was appropriate here because "a reasonable person, knowing all the facts, would question the [J]udge's impartiality." United States v. Yousef, 327 F.3d 56, 169 (2d Cir. 1992)(internal quotations omitted). See also, United States v. Dreyer, 693 F.3d 803 (9th Cir. 2012)(ordering case be reassigned on remand because comments made by the judge reflected premature judgment about the defendant's possible incompetence and his manipulative behavior, when a competency hearing was necessary); and, Franklin v. McCaughtry, 398 F.3d 955 (7th Cir. 2005)(finding judge's impartiality to be in question, and that he should have recused himself from further participation in case, when the judge had already expressed an opinion that the defendant had in fact committed the charged offenses).