

Case No: \_\_\_\_\_

**IN THE SUPREME COURT  
OF THE UNITED STATES**

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**United States of America,**

**Plaintiff,**

**vs.**

**Elizabeth Duke,**

**Defendant.**

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**Petition for Writ of Certiorari  
to the  
United States District Court  
for the District of Columbia**

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**Petition for Writ of Certiorari**

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## Questions Presented For Review

On May 11, 1988, Defendant Elizabeth Duke was indicted for acts of violence against the United States, including the bombing of the United States Capitol on November 7, 1983. When she failed to appear for her arraignment on June 2, 1988, a bench warrant was issued for Defendant Elizabeth Duke.

Twenty-one years later, on June 17, 2009, the government made an oral motion to dismiss the Indictment and quash the arrest warrant against the still-fugitive Defendant Elizabeth Duke without stating any reasons for the motion. Magistrate Judge Deborah A. Robinson granted the oral motion to dismiss and quash the same day falsely stating in her order that the dismissal was: “for the reasons set forth in the government’s motion and for good cause shown” when in fact there were no “reasons set forth” nor “good cause” shown.

Accordingly, presented for review are the following questions:

WHETHER, an Article I Magistrate Judge has jurisdiction to dismiss an indictment.

WHETHER, Magistrate Judge Robinson’s plain pollution of the “waters of justice” obligates this Court to exercise its supervisory jurisdiction and perform its duty so the polluted condition should be remedied.

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**Petition for Writ of Certiorari to the  
United States District Court for the  
District of Columbia**

Private Attorney General, Montgomery Blair Sibley (“Sibley”), exercising “the right, possessed by every citizen, to require that the Government be administered according to law. . . .”<sup>1</sup>, prays that a writ of certiorari issue to review the orders of the United States District Court for the District of Columbia issued by Magistrate Judge Deborah A. Robinson on June 17, 2009, and July 30, 2013.

Review is mandated by this Court’s duty under its supervisory jurisdiction as the Article III Judges of the District Court for the District of Columbia have refused to address Magistrate Judge Robinson’s (i) exceeding her Congressional-grant of jurisdiction and (ii) incompetency, misconduct, and/or neglect of duty in dismissing the Indictment.

**Opinions Below**

The June 17, 2009, Order is attached to the Appendix hereto, *Appendix-2*.

The July 30, 2013, order is attached to the Appendix hereto, *Appendix-4*.

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1 *Fairchild v. Hughes*, 258 U.S. 126, 130 (1922).

## **Jurisdiction**

The jurisdiction of this Court is invoked under Article III, this Court's "supervisory jurisdiction over the proceedings of the federal courts" *McNabb v. United States*, 318 U.S. 332 (1943) and 28 U.S.C. § 2106 which obligates this Court to: "require such further proceedings to be had as may be just under the circumstances."

### **Statutes and Procedural Rules Involved**

#### **28 USC § 636(b)(3)**

A magistrate judge may be assigned such additional duties as are not inconsistent with the Constitution and laws of the United States.

#### **Federal Rules of Criminal Procedure, Rule 48(a)**

The government may, with leave of court, dismiss an indictment, information, or complaint.

#### **Federal Rules of Criminal Procedure, Rule 59(b)**

(1) Referral to Magistrate Judge. A district judge may refer to a magistrate judge for recommendation a defendant's motion to dismiss or quash an indictment or information, a motion to suppress evidence, or any matter that may dispose of a charge or defense. The magistrate judge must promptly conduct the required proceedings. A record must be made of any evidentiary proceeding

and of any other proceeding if the magistrate judge considers it necessary. The magistrate judge must enter on the record a recommendation for disposing of the matter, including any proposed findings of fact. The clerk must immediately serve copies on all parties.

**LCrR 57.17(b)(2)**

At the request of the district judge to whom the case is assigned, a magistrate judge shall . . . Dismiss indictments on motion of the United States and with the consent of the defendants.

**Statement of the Case**

On November 7, 1983, in the District of Columbia, a bomb was detonated inside the United States Capitol.

On May 24, 1985, Defendant Elizabeth Duke (“Duke”) was arraigned in Philadelphia upon an Indictment charging her with involvement in the aforementioned bombing. On July 24, 1985, Duke was released on bail. After failing to appear back in Court as ordered, on October 15, 1985, the government moved to revoke Duke’s bail and a bench warrant for her arrest as a fugitive was issued the same day.

On May 11, 1988, Duke – along with her co-conspirators Laura Whitehorn, Linda Evans, Marilyn Buck, Susan Rosenberg, Timothy Blunk,

and Alan Berkman – was re-indicted for acts of violence against the United States, including the aforementioned bombing of the United States Capitol and several other government buildings in Washington, D.C. On June 2, 1988, Judge Harold H. Greene issued a bench warrant for Defendant Duke when she again failed to appear.

Some twenty-one (21) years later, on June 17, 2009, Magistrate Judge Deborah A. Robinson held a hearing at which Assistant United States Attorney M. Jeffrey Beatrice made an oral motion to dismiss the Indictment and quash the arrest warrant as to Duke stating *in toto*: “Thank you, Your Honor. We would orally move to dismiss this case at this time, dismiss the indictment and also to quash the warrant, and we will submit a proposed order today, Your Honor.” Magistrate Judge Robinson responded *in toto*: “Very well. Thank you, Mr. Beatrice.”

The same day, Magistrate Judge Robinson – claiming she was now a United States District Court Judge – entered an order dismissing the Indictment claiming it was authorized “for the reasons set forth in the government's motion and for good cause shown” – a knowing misrepresentation of the record. *Appendix-2.*

On July 26, 2013, after finally securing a copy of the June 17, 2009, hearing transcript, Sibley made a motion to Magistrate Judge Robinson for reconsideration of her Order dismissing the

Indictment and seeking to intervene or appear as *amicus curiae* to bring to an Article III Judge's attention Magistrate Judge Robinson's misfeasance.

Contemporaneously, Sibley also wrote a letter to each sitting Article III Judge of the District Court for the District of Columbia regarding Magistrate Judge Robinson's extraordinary and improper behavior in this matter.

On July 30, 2013, Magistrate Judge Robinson entered a sealed order denying Sibley's motion. *Appendix-4*. Additionally, as of the date of the filing of this Petition, not a single Article III Judge has responded to Sibley's July 26, 2013, letter.

### **Reasons for Granting the Writ**

The granting of this Writ is compelled by this Court's original supervisory jurisdiction recognized in *Mesarosh v. United States*, 352 U.S. 1 (1956) which imposes a duty on this Court: "to see that the waters of justice are not polluted." Magistrate Judge Robinson's exceeding her judicial authority, claiming to be an Article III judge and falsely grounding her order dismissing the Indictment is surely a pollution of the "waters of justice". Accordingly, as in *Mesarosh*, "Pollution having taken place here, the condition should be remedied at the earliest opportunity."

**I. Magistrate Judge Robinson Was  
Without Jurisdiction to Dismiss the  
Indictment**

An Article I Magistrate Judge's jurisdiction is first described by 28 USC § 636(a) which does not expressly grant authority to dismiss indictments. Indeed, Federal Rules of Criminal Procedure, Rule 59, "Matters Before a Magistrate Judge" specifically prohibits a Magistrate Judge from dismissing an indictment instead relegating a Magistrate Judge to solely make a "recommendation for disposing of the matter." Accordingly, neither § 636(a) nor Rule 59 gave Magistrate Judge Robinson the jurisdiction to dismiss the instant Indictment.

Second, a Magistrate Judge's jurisdiction is also described by 28 USC § 636(b)(2) which permits certain matters to be delegated to the Article I Magistrate Judge. In particular, LCrR 57.17(b)(2) permits a Magistrate Judge to: "Dismiss indictments on motion of the United States and with the consent of the defendants." Here, obviously, the fugitive Duke did not – nor could not – consent to the dismissal of the instant Indictment as she was a fugitive. As such, even if § 636(b)(2) could be invoked to vest jurisdiction in a Magistrate Judge to dismiss an indictment – which Sibley maintains it could not given the limitations contained in § 636(a) and Rule 59 – no such vesting was present in this matter.

## II. Magistrate Judge Robinson Violated Rule 48(a)

Federal Rules of Criminal Procedure, Rule 48(a) provides that “[t]he government may, with leave of court, dismiss an indictment, information, or complaint.” The principal object of the: “‘leave of court’ requirement is apparently to protect a defendant against prosecutorial harassment. . . . But the Rule has also been held to permit the court to deny a Government dismissal motion to which the defendant has consented if the motion is prompted by considerations clearly contrary to the public interest.” *Rinaldi v. United States*, 434 U.S. 22, 29, n.15 (1977). Moreover, “Although the burden of proof is not on the prosecutor to prove that dismissal is in the public interest, the prosecutor is under an obligation to supply sufficient reasons – reasons that constitute more than a mere conclusory interest.” *United States v. Welborn*, 849 F.2d 980, 983 (5th Cir. 1988).

Here, the government failed to proffer any reasons to dismiss the Indictment against the fugitive, domestic terrorist, United States Capitol bombing, Duke. As such, Magistrate Judge Robinson’s dismissal was not authorized for lack of a sufficient “reason” to dismiss the Indictment.

## III. Magistrate Judge Robinson Falsified the Record

Most compelling for this Court is that is the

elephant-in-the-room cannot be ignored if this Court is to faithfully discharge its supervisory jurisdiction obligation. Article I Magistrate Judge Robinson (i) signed an order claiming to be an Article III judge and (ii) falsely claimed that: “for the reasons set forth in the government's motion and for good cause shown”, that the instant Indictment be “dismissed without prejudice”.

Clearly, there were no “reasons set forth” nor “good cause shown” to justify Magistrate Judge Robinson’s granting of the government's motion to dismiss the Indictment. As such, her representation to that end in her June 17, 2009, Order was knowingly false.

In *Communist Party v. Subversive Activities Control Board*, 351 U.S. 115, 124-125 (1956), this Court stated:

The untainted administration of justice is certainly one of the most cherished aspects of our institutions. Its observance is one of our proudest boasts. This Court is charged with supervisory functions in relation to proceedings in the federal courts. . . . Therefore, fastidious regard for the honor of the administration of justice requires the Court to make certain that the doing of justice be made so manifest that only irrational or perverse claims of its disregard can be

asserted. . . . We cannot pass upon a record containing such challenged testimony. We find it necessary to dispose of the case on the grounds we do, not in order to avoid a constitutional adjudication but because the fair administration of justice requires it.

Here, Sibley's claims of Magistrate Judge Robinson's incompetency, misconduct, and/or neglect of duty are neither "irrational" nor "perverse". Accordingly, this Court may not "pass" and refuse Certiorari because "the fair administration of justice requires it" in this instance.

### **Conclusion**

For the reasons aforesaid, Sibley respectfully prays that this Court grant his Petition for Certiorari.

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Appendix-1

**Contents of Appendix**

**Opinions Below**

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Appendix-2

United States District Court for the  
District of Columbia  
Criminal No: 88-cr-00145 (DAR)

United States of America,

Plaintiff,

vs.

Elizabeth Duke,

Defendant.

\_\_\_\_\_ /

**ORDER**

Upon consideration of the government's oral Motion to Dismiss Indictment and Quash Arrest Warrant and the record herein, for the reasons set forth in the government's motion and for good cause shown, it is this 17<sup>th</sup> day of June 2009,

**ORDERED** that the above case is dismissed without prejudice, and it is

**FURTHER ORDERED** that the arrest warrant issued for the defendant in this case is hereby quashed, and it is

**FURTHER ORDERED** that the United States Marshals Service cancel and/or withdraw the

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warrant from the NCIC data base.

/s/ Deborah A. Robinson  
United States District Court Judge

Appendix-4

United States District Court for the  
District of Columbia  
Criminal No: 88-cr-00145 (DAR)

United States of America,

Plaintiff,

vs.

Docket Excerpt

Elizabeth Duke,

Defendant.

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Date Filed	#	Docket Text
07/30/2013	9	LEAVE TO FILE DENIED - Third Verified Motion for Reconsideration of Order Dismissing Indictment and Motion to Intervene or to Appear as Amicus Curiae as to ELIZABETH DUKE. Signed by Magistrate Judge Deborah A. Robinson on 7/30/2013. This document is unavailable as the Court denied its filing. (dr) (Entered: 07/31/2013)