No. _____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

LENA LASHER
(Your Name) — PETITIONER

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

LENA LASHER
(Your Name)

16 PATTON STREET
(Address)

HIGH BRIDGE, NJ 08829
(City, State, Zip Code)

908-638-5443
(Phone Number)

LIST OF PARTIES

[X] All parties appear in the caption of the case on the cover page.

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[X] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[ ] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[X] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was NOVEMBER 6, 2017.

[ ] No petition for rehearing was timely filed in my case.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: FEBRUARY 14, 2018, and a copy of the order denying rehearing appears at Appendix B.

[X] An extension of time to file the petition for a writ of certiorari was granted to and including July 16, 2018 (date) on May 11, 2018 (date) in Application No. 17 A 1254.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[ ] For cases from **state courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

QUESTIONS

1. Once a prisoner requests relief under Motion 2255, must a District Court grant an evidentiary hearing on the prisoner's claims?

2. If the evidentiary hearing is denied, how does a court assess the claims in the collateral attack?

3. on what grounds may a court deny an evidentiary hearing in support of collateral attack?

TABLE OF AUTHORITIES CITED

Brady v. Maryland, 373 United States 83, 10 L Ed 2d 215

Calderon v. Thompson, supra, 523 U.S. at 559

Commonwealth v. Horne 88 Mass. App. Ct. 1109 (2015) Cert granted

Crandon v. United States, 494 U.S. 152,158 (1990)

Crosby v. United States, 119 U.S. App. D.C. 244, 339 F.2d 743 (D.C. Cir. 1964)

Demarco v United States 928 F.2d 1074 (11th cir. 1991).

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Gordon v. United States 97 LED 447, 344 US 414.

Greene SCI, 2017 BL 266640, 3d Cir., No. 15-3427, 8/1/17

Haskell v. Superintendent

Herring v. New York, 422 U.. 853 (1975)

Honeycutt v. United States, U.S., No. 16-142, 6/5/17

Johnson v. United States, 153 S. Ct 2551 (2015)

Lambert Run Coal v. Baltimore & Ohio R. Co. 66 Led 671, 258 US 377 (1922).

Miller v. US 79 Led 977 294 US 435 (1935)

Mooney v. Holohan, 294 U.S. 103 (1935)

Napue, 360 U.S. At 271; Napue v. Illinois, 360 US 264 3 L Ed 2d 1217

Owens v. United States, 236 F. Supp. 2d 122, 144 (D. Mass. 2002)

Pyle v. Kansas, 317 US 213, 87 L Ed 214

Stirone, 361 U.S. at 213; Ex parte Bain, 121 U.S. at 12-13)

Strickler v. Greene, 527 U.S. 263, 281-82, 119 S. Ct. 1936, 144 L.Ed. 2d 286 (1999),

Sullivan v. Louisiana 508 U.S. 275, 277-78 (1993)

U.S. V. Booth, 994 F 2d. 63 (2cd cir 1993)

U.S. v. Hoang Van Tran 234 F.3d 798; 2000 U.S. App. LEXIS 29039, (2nd Cir.) Nov. 2000

U.S. v. Lowery, 135 F.3d. 957 (5th cir 1998)

United States v. Rivas, 377 F.3d 195, 199 (2d Cir. 2004).

US v. Walter, 2017 BL 303067, 7th Cir., 16-1325 Nos. 16-1209, 8/29/17

Youngblood v. West Virginia, 547 U.S. 867, 870, 126 S. Ct. 2188, 165 L.Ed. 2D 269 (2006).

CONSTITUTIONAL & STATUTORY PROVISIONS INVOLVED

The federal conspiracy to misbrand drugs statute, 18 U.S.C. Sec. 371, states in pertinent part that whoever conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more such persons do any act to effect the object of the conspiracy, each shall be fined.

The federal introduction of misbranded drugs into interstate commerce in violation of 21 U.S.C. Sec. 331(a) and 333(a)(2) and 18 U.S.C. Sec 2, states in pertinent part that the delivery for introduction into interstate commerce of any article that is adultered or misbranded and the causing thereof are hereby prohibited, such a violation after a conviction under this section has become final, or commits such a violation with the intent to defraud or mislead, shall be imprisoned for not more than three years or fined, whoever commits an offense against the United States or aids is punishable as a principal, respectively.

The Federal conspiracy to commit mail and wire fraud in violation of 18 U.S.C. Sec. 1349, states in pertinent part that any person who attempts or conspires to commit any offense shall be subject to the same penalties as these prescribed for the offense.

The federal mail fraud statute, 18 U.S.C. Sec. 1341, states in pertinent part that whoever uses the mail "for obtaining money or property by means of false or fraudulent pretenses: is guilty of mail fraud. The wire fraud statute, 18 U.S.C. Sec. 1343, similarly state that whoever use means of interstate communication" for obtaining money or property by means of false or fraudulent "pretenses" is guilty of wire fraud. However, the Petitioner did NOT receive any money from this "alleged" crime.

The federal authority to control; standards and schedules statutes 21 U.S.C. Sec. 811 and 812, state in pertinent

part the rules and regulations of Attorney General, evaluation of drugs and other substances, factors determinative of control or removal from schedules, abuse potential, temporary scheduling to avoid imminent hazards to public safety, scheduling of newly approved drugs, schedules of controlled substances, placement on schedules; finding required, initial schedules of controlled substance.

The federal importation, exportation, transshipment and in-transit shipment of controlled substances 21 U.S.C. Sec 952-954, state in pertinent part the import, export, transshipment and in-transit shipment of controlled substances. The federal exemptions and consideration for certain drugs, devices, and biological products state 21 U.S.C. Sec. 353, state in pertinent part the exemption from labeling and prescription requirements; misbranded drugs.

AMENDMENT 5

Criminal actions-Provisions concerning-Due process of law and just compensation clauses.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT 6

Rights of the accused.

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

STATEMENT OF THE CASE

A. BACKGROUND on the 'Controlled Substances Act' (CSA)

§ 801. Congressional findings and declarations: controlled substances.

The Congress makes the following findings and declarations:

> (1) Many of the drugs included within this sub chapter have a useful and legitimate medical purpose and are necessary to maintain the health and general welfare of the American people.

In determining into which schedule a drug or other substance should be placed, or whether a substance should be decontrolled or rescheduled, certain factors are required to be considered. These factors are listed in Section 201 (c), [21 U.S.C. § 811 (c)] of the CSA as follows:

Its actual or relative potential for abuse.

21 U.S.C. 811 (4)(f) clarifies the *Abuse potential*

If, at the time a new-drug application is submitted to the Secretary for any drug having a stimulant, depressant, or hallucinogenic effect on the central nervous system, it appears that such drug has an abuse potential, such information shall be forwarded by the Secretary to the Attorney General.

Within the CSA there are five schedules (I-V) that are used to classify drugs based upon their abuse potential, medical applications, and safety. Individuals who order, handle, store, and distribute controlled substances must be registered with the DEA to perform these functions. They must maintain accurate inventories, records and security of the controlled substances.

B. The Controlled Substances Act states plainly that only controlled substances required the dispensing of valid (face to face) prescriptions, which is between a doctor and its patient; this relationship does NOT involve a pharmacist, as stated in 21 U.S.C. **§829. Prescriptions:**

(e) Controlled substances dispensed by means of the Internet

> (1) No controlled substance that is a prescription drug as determined under the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.] may be delivered, distributed, or dispensed by means of the Internet without a valid prescription.
>
> (2) As used in this subsection:
>
> (A) The term "valid prescription" means a prescription that is issued for a legitimate medical purpose in

the usual course of professional practice by-

(i) a practitioner who has conducted at least 1 in-person medical evaluation of the patient; or

(ii) a covering practitioner.

(B)(i) The term "in-person medical evaluation" means a medical evaluation that is conducted with the patient in the physical presence of the practitioner, without regard to whether portions of the evaluation are conducted by other health professionals.

C. Federal law 21 USC 353 does not say that a face-to-face is required for NON controlled substances. In fact, the Online Pharmacy Safety Act (S2002) legislation which would have required valid (face to face) prescriptions for NON controlled substances prescription drugs ordered online introduced to US Senate did NOT pass.

D. The governing pharmacy law (PA27.12(b)(2) (See Exhibit Q) and the criminal statute 21 U.S.C. 321 (g)(1), 352 (a), 352(c), 353(b)(1), and 353(b)(4)(A), and 21 USC 331(a) and 333(a)(2) require for the accused to be present at the pharmacy at the time the specific prescriptions in question were filled. Because of potential biases and to avoid any shifting of blame, the pharmacy law eliminates any double standard or shifting of blame; each pharmacist is accountable for his actions and can NOT shift blame to someone else. It is the job of any pharmacist while on duty to ensure they themselves follow all laws, regulations, and policies; any misdeeds or mistakes are the responsibility of whoever made the misdeeds or mistakes. Further, any pharmacist on duty also serves as a "supervisor" of themselves and their technicians and is accountable for his shift. Pharmacists do not supervise each other with regard to the practice of pharmacy. Furthermore, the governing pharmacy law states that pharmacy technicians to "assist" pharmacists; the technicians can only work under the supervision of the pharmacist on duty (PA27.12(d)(1)).

Pharmacists are state licensed and are responsible for their own licenses. A hearing is required in front of the State Board of Pharmacy in an event of a dispute over who is responsible for a misdeed or mistake; the Federal Court neither has jurisdiction nor is there any federal law governing the conduct in a pharmacy or that creates a federal oversight of the way a pharmacist performs his work. This is left to the states Board of Pharmacy. Only the State Board of Pharmacy can penalize the pharmacist on duty and pharmacy owner for non-compliance of regulations; such are not federal issues, whereas in this case the District Court INVENTED its own law to create a jurisdiction.

PROCEDURAL HISTORY

The Indictment

In Petitioner's defense of the charges in the Indictment on November 29, 2012, Petitioner's trial counsel, Mr. Freeman, Esq. raised a motion to dismiss the original indictment, an alleged conspiracy to distribute a narcotic "butalbital", on the grounds that Petitioner never dispensed Butalbital and the pharmacies never stocked Butalbital. The drug she dispensed was Fioricet, which is NOT the same drug and not an analog of Butalbital. Butalbital is a POWDER, a controlled substance which require a valid prescription, and has to be compounded; the pharmacy is not equipped to compound anything into a tablet nor extract anything out of a tablet. However, Fioricet, a tablet is a NON controlled substance and does not require a valid prescription. Fioricet and Butalbital are not interchangeable drugs names per the Controlled Substances List and the DEA Exempt Prescription Products List. Fioricet is a compound drug containing Butalbital 50mg, Acetaminophen 325mg, and caffeine 40mg, and has no potential for abuse. Butalbital is not the same drug as Fioricet because in its raw state, Butalbital has a potential for abuse. Fioricet is indicated for tension headache while butalbital is indicated for insomnia. Long before a patient could be addictive to Fioricet, he would be hospitalized for liver toxicity from the acetaminophen in the same way he would if he abused over the counter Tylenol from its active ingredient is acetaminophen.

To further cement the fact that Butalbital and Fioricet are in no way similar medications nor treated the same way under the law, one only have to look at the exempted prescription product list (See Exh S) to see fioricet is exempted from the Controlled Substances Act. Also, the Controlled Substances List states the accepted "other names" of butalbital, and Fioricet is not on its list. Further Fioricet is not prescribed nor dispensed as a controlled substance. There is no record keeping requirement for the dispensing of Fioricet as there is for Butalbital, Fiorinal or other controlled substances. Furthermore, manufacturers are required to label the bottles of any controlled substances they manufacture with the controlled substance symbol: "C". Fioricet tablets have been around since 1967 and have not to this day had a "C"symbol on its label. Prescriptions for Fioricet are never written on a controlled substance pads.

The exculpatory video evidence the Petitioner seeks to enter into the record is exculpatory in multiple ways. First, it shows that "Butalbital" was never present in the pharmacies. Second, it shows no one was working with

Butalbital in the pharmacy. Third, it shows that the Petitioner was not even present in the pharmacies where the alleged crimes took place. Fourth, it showed the Petitioner was busy working on filling prescriptions, not remotely monitoring, supervising, or communicating with anyone in the other pharmacies. Fifth, the federal agents, the prosecutors' witnesses, lied about receiving Butalbital when the prescription was for Fioricet and they received Fioricet. Thus, the District Court constructively amended the superseding indictment, calling Fioricet, "butalbital".

To reiterate, the District Court ILLEGALLY placed NON – controlled substances into a controlled substances class. She further made up her own rule via a phrase seemingly coined by the prosecutors and the judge, "highly addictive pain medications;" there is no such phrase in pharmacy law. The phrase "addictive pain meds" does Not exist in any drug classification. Their use of this phrase is an attempt to INVENT their own jurisdiction, to prejudice and profile the Petitioner.

According to Black's Law Dictionary:

Amend: to ALTER

INVENT: to make up or fabricate (something fictitious or false), to originate or create as a product of one's own contrivance.

The District Court fraudulently INVENTED laws to induce the Petitioner's conviction.

Legislation creates laws; Administration enforces those laws. The judicial function is "to carry out the purposes of the statute, not to amend it." Miller v. US 79 Led 977 294 US 435 (1935). "It is not within the power of the Court to" amend laws on the ground that the administrative power conferred on another governing body that was already in place. Lambert Run Coal v. Baltimore & Ohio R. Co. 66 Led 671, 258 US 377 (1922). State Board of Pharmacy governs the conduct of pharmacists in pharmacies.

In this case, the District Court overstepped her judicial power and usurped legislative power by allowing the Government to substitute and represent to the jury NON controlling substances as controlled substances or "highly addictive pain meds". For instance:

T. 1768 Richenthal: The petitioner "sold massive amounts of "addictive pain meds" through HER pharmacies for years; however, the video recording affirmed that NO "butalbital" existed in the pharmacies.

Also, the Petitioner did not own any pharmacy. This portrayal of ownership, intentionally misled the jury. The District Court aided the prosecution in their misrepresentation of ownership. In absence of the jury, the District Court stopped the Petitioner from mentioning the actual owner's name during her testimony; she made sure the jury thought the Petitioner owned the pharmacies.

The Government's prosecution is built around the District Court allowing Fioricet to be called "butalbital." As the video recordings depicted, NONE of the drugs the Petitioner dispensed via the "fulfillment" pharmacy were controlled substances at the time of dispensing. The district court acted without subject matter jurisdiction by claiming the Petitioner dispensed butalbital but she dispensed Fioricet. Dispensing Fioricet was not a charge in the indictment, thus making the indictment defective. "The indictment as returned limits the scope of the district court's jurisdiction to the offense charged in the indictment. If the district court acts beyond its jurisdiction by "trying,...convicting, or sentencing a defendant for an offense not charged in the indictment, this Court must notice such error and act accordingly to correct it, regardless of whether the defendant has raised the issue." U.S. v. Hoang Van Tran 234 F.3d 798; 2000 U.S. App. LEXIS 29039, (2nd Cir.) Nov. 2000.

Although, the Petitioner's motion to dismiss the "narcotics conspiracy" Indictment was not granted; it was withdrawn by the Government.

The Government, then dropped the narcotics conspiracy charge, instead falsely charging Petitioner in the Superseding Indictment of misbranding under Count 1 (Overt Acts) paragraph 4a through 4(e), 4(g) through 4(k), of shipping and directing others to ship packages containing Butalbital tablets, a schedule III controlled substance, from Hellertown Pharmacy, Hellertown, Pennsylvania, to New York, New York on June 1, 2012, June 12, 2012, July 17, 2012, August 13, 2012, August 27, 2012, and Tramadol, CLEARLY was a NON controlled substance at the time of dispensing, on August 13, 2012; including, shipping and directing others to ship packages containing Butalbital from Palmer Pharmacy & Much More, in Easton, Pennsylvania to New York, New York on July 16, 2012, and August 16, 2012.

On April 2, 2015, in a six count Superseding Indictment, the Grand Jury accused Lena Lasher ("Lasher") of conspiracy to Introduce Misbranded Prescription Drugs Into Interstate Commerce and to Misbrand Prescription Drugs while held for sale [18 U.S.C. Sec. 371]; Introducing Misbranded Prescription Drugs Into Interstate

Commerce [21 U.S.C. Sec. 331 (a), 333(a)(2)]; Conspiracy to Commit Mail and Wire Fraud [18 U.S.C. Sec. 1349]; Mail Fraud [18 U.S.C. Sec. 1341} and Wire Fraud [18 U.S.C. Sec. 1343].

On April 15, 2015, in Petitioner's motion in limine, the Petitioner again raised the insurmountable fact that Butalbital tablets were never dispensed, and Surplusage regarding the counts concerning Tramadol. The District court denied the motion, but reserved its decision on the motion to strike the surplusage from the Indictment. Petitioner was never informed of the Court's final surplusage nor could Petitioner determine if a final decision was granted. To reiterate, tramadol was a NON controlled substance at the time of dispensing. Tramadol became a controlled substance on August 18, 2014, two years after the Petitioner's indictment; the presence of Tramadol makes the indictment defective and the conviction null and void.

Count 1 must be dismissed as a matter of law; it fails to properly state a cause of action and alleges conduct that does not constitute a crime charging the Petitioner of dispensing Butalbital WITHOUT a "valid prescription". However, Butalbital never existed in the pharmacies. Also, the Superseding Indictment must be dismissed because tramadol is NOT a controlled substance at time of the indictment, and only became a controlled substance in 2014. The District Court usurped administrative jurisdiction by allowing the medicine Tramadol in the Indictment. Also, the District Court lacked the subject matter jurisdiction in that the Indictment charged the petitioner with the drug butalbital, which is a powder and has to be compounded, and is clearly not the same drug, nor have the same strength, indication or even in the same drug category or classification as Fioricet as indicated in the Controlled substances list (See Exh O) and the DEA Exempt Prescription Products List (See Exh S).

ONLY controlled substances required "valid prescriptions" for dispensing of. The government then claimed the prescriptions were not valid and thus they are saying they were misbranded because there were no bonafide relationship between a doctor and his patient which also is only required for Controlled Substances. In fact,The Online pharmacy Safety Act (S2002) legislation which required valid (face to face) prescriptions for NON controlled substances prescription drugs ordered online introduced to US Senate did NOT pass (See Exh R).

Even though there is no face to face doctor to patient relationship required for NON controlled substances, the District Court also ignored the fact that there is no formal assessment for a pharmacist to determine whether or not there is a bonafide relationship between a doctor and his patient. The signatures on the prescriptions are the

doctor's promise to the rest of the health care community and the patients, that the prescriptions are valid and that their job was done properly.

Further, the District Court protects its federal jurisdiction by ignoring all the Best Evidence rules to protect the Doctors from her own words, to protect her creation of jurisdiction over how pharmacists assess Doctors' conduct, which is also her usurping Administrative Power.

The Johnson court held that the statutory language "faile[ed] to give ordinary people fair notice of the conduct it punishes, [and was] so standardless that it invite[d] arbitrary enforcement. Johnson v. United States, 153 S. Ct 2551 (2015). Because this is a criminal statute, the court must apply the rule of lenity in resolving any ambiguity in the ambit of the Controlled Substances Act's coverage; this rule "serves to ensure that there is fair warning of the boundaries of criminal conduct and that legislatures, not courts, define criminal liability." Crandon v. United States, 494 U.S. 152,158 (1990).

Count 2: As a matter of law, the Indictment failed to alleges the Petitioner sold misbranded drugs without valid prescriptions but it failed to state the name of any drugs. Without mentioning the name of any drugs proved bias. The Indictment failed to meet the burden to charge, and the Court failed to meet the burden to try, convict and sentence the offense.

> Count 3: Violation of 18 U.S.C. 1349 – Wire Fraud - the charge fails to state an offense by not mentioning the name of the medications; thus Count 3 must be dismissed due to failing to state the name of any medication, controlled substances or otherwise. By not naming drugs or the charges, the jury hears all the NON charge "related" things brought up at trial as if they were about the charges.
>
> Count 4: Violation of 18 USC 1341 Mail Fraud – the charge fails to state an offense by not mentioning the name of the medications; thus Count 4 must be dismissed due to failing to state the name of any medication, controlled substances or otherwise. By not naming drugs or the charges, the jury hears all the NON charge "related" things brought up at trial as if they were about the charges.
>
> Count 5: Violation of 18 USC 1343 wire fraud – the charge fails to state an offense by not mentioning the name of any medications and thus lacked the "scheme" of dispensing without valid prescription. Therefore, Count 5 must be dismissed.

In this case the District Court did NOT have jurisdiction to try, enter a conviction, and impose a sentence for an offense in the Superseding Indictment, namely shipping:

1. Butalbital, a drug that never existed in the pharmacy.
2. Tramadol, a NON controlled substance at the time of dispensing.

The conviction was slight of hand saying Butalbital when the mediation dispensed was Fioricet, and Tramadol

which was a NON controlled substance. As the Court of Appeals for the District of Columbia held in Crosby v. United States, 119 U.S. App. D.C. 244, 339 F.2d 743 (D.C. Cir. 1964), "the scope of the indictment goes to the existence of the trial court's subject-matter jurisdiction." 339 F. 2d at 744 (citing Stirone, 361 U.S. at 213; Ex parte Bain, 121 U.S. at 12-13). Rather, the District Court's jurisdiction was limited to trying, convicting and sentencing the petitioner, on the offense charged in the Superseding indictment, namely shipping butalbital and Tramadol. Here, the District Court's conduct amounted to a judicial usurpation of power such that it acted without its prescribed jurisdiction and warrants the dismiss of the superseding indictment.

To reiterate, Count 1 is defective because the pharmacies never had "Butalbital; Fioricet is NOT butalbital. The Government substituted a NON controlled substance (Fioricet) for a controlled substance (butalbital). Also, Tramadol in Count 1 is NOT a controlled substances. As for Counts 2, 3, 4, and 5, they are defective as well in that NO name of the medicine was specified.

Most importantly, the exculpatory video recordings evidence proved "butalbital" NEVER existed in the pharmacy.

The Verdict.

On May 15, 2015, the jury found Lena Lasher guilty on Count One (conspiracy to Commit Misbranding), Count Two (Misbranding), Count Three (Conspiracy to Commit Mail Wire Fraud), Count Four (Mail Fraud) and Count Five (Wire Fraud), with NO physical evidence and false testimony, and was sentenced by the district court, inter alia, to 36 month's of incarceration, on September 2, 2015, for a drug, butalbital, that never existed in the pharmacy, and Tramadol which was NOT a controlled substance at the time of dispensing. This was clearly a deception in the conviction in that the drug butalbital, never existed in the pharmacy, as the exculpatory video recording evidence depicted. The constitution guarantees a Defendant's right to be tried upon allegations properly set forth in the indictment and to have the jury determine whether the evidence has proven the legal elements of the offenses charged beyond a reasonable doubt. U.S. Constitution Amendment VI, XIV. See Sullivan v. Louisiana 508 U.S. 275, 277-78 (1993).

On November 30, 2015 the District Court erred in denying the Petitioner' Motion of bail pending appeal, still clinging to its erroneous factual finding that "all the drugs the Petitioner dispensed were controlled substances", in support of its contention that it retained subject matter jurisdiction. To reiterate, the District Court substitute

"butalbital" (a powder) for Fioricet (a tablet). Because the District Court re-classified drugs by making regular prescription drugs as controlled substances via amending the CSA, an administrative and legislative authority it does not have, further affirmed its usurpation of judicial power.

On September 2, 2016, the appellate court erred in affirming the Petitioner's conviction and sentence, without even mentioning one drug name that the pharmacy dispensed, because none of the medicines in the Indictment were Controlled substances, and ("butalbital") did NOT exist in the pharmacy.

PETITION FOR WRIT OF CERTIORARI

INTRODUCTION

This Court has consistently held that deliberate deception of the jurors by the presentation of known false evidence is incompatible with "rudimentary demands of justice." Pyle v. Kansas, 317 US 213, 87 L Ed 214, Napue v. Illinois, 360 US 264, 3 L Ed 2d 1217 and Brady v. Maryland, 373 United States 83, 10 L Ed 2d 215.

During trial, the Petitioner was framed by the Prosecutors and its witnesses via false testimonies and planting, tampering, withholding, and suppression of evidence in order to obtain a conviction. Instead of using pharmacy business records, withheld/suppressed phone/fax/prescription records, emails, unredacted employees' write-ups in accordance with the best evidence rule and the governing pharmacy law (PA 27.12(b)(2), prosecutors used the perjured testimony of their witnesses to contradict the Petitioner's testimony to secure a wrongful conviction, a denial of Petitioner's due process of law (Mooney v. Holohan, 294 U.S. 103 (1935). Giglio v. U.S. 405 U.S. 150, 154 (1992) Napue, 360 U.S. at 271. The conviction must be due to a violation of law, not due to Government and its witnesses' opinions and false testimonies.

During the trial the Prosecution orally referred to video recordings (T.) they claimed would prove the petitioner's guilt but they never presented any video recordings as evidence. When the defense asked for that evidence the prosecution suppressed that evidence and the Court withheld that evidence yet the claims made about the contents of that evidence remained in the record and presented to the jury orally but not materially.

The Petitioner requested and was denied numerous time for the video recordings.

While appeal was pending, the Petitioner discovered via FOIA that the prosecutors suppressed exculpatory video recording evidence, which proved her actual and factual innocence in that she abided by all pharmacy law and regulations, contradicting the Government and its witnesses' testimonies. For instances:

1. Throughout trial, the Prosecution stated the Petitioner committed the alleged crimes on the indictment dates. However, the video shows the Petitioner was at Towne Pharmacy in Dunellen, New Jersey on the indictment dates:

A. The Prosecution says the Petitioner was remotely monitoring the employees in the Pennsylvania pharmacies but the video shows she was working and filling prescriptions

B. The Prosecution says the Petitioner was remotely supervising the employees in the Pennsylvania pharmacies but the the video shows the Petitioner was working.

C. The Prosecution says the Petitioner was directing the employees in the Pennsylvania pharmacies but the video shows she was working and filling prescriptions at Towne Pharmacy in Dunellen, New Jersey.

The Petitioner requested the District Court for the video evidence; it took another nine months before the prosecutors finally turned over ONE of TEN video recordings The suppression and withholding of this evidence violates due process where the evidence is material and showed the Petitioner did not commit the "crime". As this Court held, in Brady v. Maryland 10 LEd 2d 215, 373 US 83, suppression or withholding of evidence by prosecution in criminal case as vitiating conviction; conviction on testimony know to prosecution to be perjured as denial of due process of law. The withholding and suppression of this evidence contradicting the government and its witnesses' credibility violates due process and justifies a new trial.

The issue now before the Court arose on the Petitioner's motion for a new trial based on newly discovered evidence. Whether the Petitioner should be denied due process due to the prosecutors' suppression of the video recording, the best evidence, which depicted her actual innocence, Brady v. Maryland 373 US 87, 10 L Ed 2d at 218

The 5th Amendment provides that no person shall be deprived of life, liberty, or property, without due process of law. The withholding and suppression of exculpatory evidence, in this case including video

evidence described at trial to the jury as if the Petitioner violated pharmacy law but withheld and suppressed because it refutes the prosecution's case, especially when that evidence is clearly the best evidence that materially shows what actually transpired, is an obvious and egregious violation of the constitutional guarantee to due process.

The Petitioner requested for an evidentiary hearing in the aforementioned issue, was denied by the District Court. Its decision conflict with the first circuit. "Once a prisoner requests relief under Motion 2255, a District Court must grant an evidentiary hearing on the prisoner's claims unless "the motions and the files and records of the case conclusively show that the prisoner is entitled to no relief" 28 U.S.C. Sec 2255." Owens v. United States, 236 F. Supp. 2d 122, 144 (D. Mass. 2002). Not only is the decision of the second Appellate Court erroneous, but the National importance of having the Supreme Court decided the question involved to prevent the manifest of justice.

EVIDENTIARY HEARING REQUEST

In this writ of certiorari, in support of the Petitioner's Motion 2255, the Petitioner is asking the Supreme Court to compel the prosecutor to provide the Petitioner with copies of all tangible evidence in the Government's possession including, but not limited to:

1. 3500 materials, sworn and unsworn testimonies of co-conspirators (Dr. Imbernino, Peter J. Riccio, etc...)

A. Peter Riccio told the Petitioner that he took responsibility for everything due to the fact that all the business work flow was instilled and enforced by him, and that his four attorneys approved the dispensing of these "valid prescriptions" which the Government claimed were not valid.

B. Dr. Imbernino told the petitioner that he had telephone consultations with all "internet" patients; this information would match pharmacy business records. His testimony would contradict the prosecutors witnesses, Dr. Burling and Dr. Konakanchi's perjured sworn testimony.

2. Video recording and its tapes/DVDs (nine DVD-R Maxell 4.7GB data REMAINED suppressed) held by Peter J. Riccio/Towne Pharmacy and AUSA SDNY office (AUSA Daniel Richenthal).

3. Petitioner's cell phone, SIM card and all information on them, held by AUSA SDNY Office, whereby exhibits and testimony would exculpate and provide mitigating factors in connection with the Petitioner's alleged commission of the offense charged in the above captioned indictment.

At trial, the Government planted three photos onto the Petitioner's phone; none of these photos were in discovery (Brady) nor anywhere on her phone. The three photos used at trial did NOT come from her phone; they were PLANTED onto her phone as they were nowhere in discovery nor anywhere on her phone. Further, there were NO dates, times, or place stamped on any of these photos. The Government withheld these three photos. Further, the make and model number of the Petitioner's phone nor SIM card used at trial were never verified

4. The Government to provide an origin and chain of custody accounting for all evidence, including but not limited to the above second and third requests:

5. The video recordings and "her" cellular phone to be checked by a neutral professional expert to validate veracity of the tapes/DVDs and cellular phone, due to the tampering of the video recordings and the petitioner's cell phone.

6. The Court to issue subpoenas of Government's witnesses:

A. Anu Konakanchi's phone record from 1/1/2011 to 12/1/2012; phone #: 215-817-1671.

B. John Nichols Burling's phone record from 1/1/2011 to 12/1/2012; phone #: 843-812-0461

The phone records are important because they will prove that Dr. Konakanchi and Dr. Burling falsely testified against the Petitioner in "hoping for no jail time' (T.); Dr. Konakanchi and Dr. Burling perjure themselves by telling the jurors that they never spoke to the Petitioner or any pharmacists. However, their testimonies contradict pharmacy business records; withholding this evidence is a violation of the best evidence rule; Dr. Konakanchi's faxes(Exh CC) informed the pharmacy that she phone consulted each patient; whereby, this would have shown the jury that the Petitioner was truthful. As in US v. Walter, 2017 BL 303067, 7th Cir., 16-1325 Nos. 16-1209, 8/29/17, Government should have revealed that its witness lied. Quoting Chief Judge Diane P. Wood, the witness's "testimony was important because of its detailed, firsthand nature, and because it corroborated what the other witnesses were saying" about the defendants' involvement in the conspiracy. Dr. Konakanchi and Dr. Burling's motivation was to secure lenient treatment in exchange for implicating the Petitioner.

7. The subpoenas of prosecutor's witness Albert Buck's unemployment record which displays he was fired from Hellertown Pharmacy in November 2012 for bad performances, thus contradicting his false

testimony that he resigned; the computer file is important because it will prove Buck falsely testified against the Petitioner in retaliation for being fired.

As evidenced in the writ, the government's case depended almost entirely on the government and its witnesses' testimony as well as the District Court's invention of "laws", and the deliberate and intentional withholding and suppression of actual physical evidence that would easily show that the prosecution's case was a work of bad fiction that they co-wrote with doctors who are convicted criminals and glad for the chance to lie on the stand to avoid jail time; conviction on testimony and fabricated laws known to prosecution and the District Court to be perjured as denial of due process thus warrant an evidentiary hearing. Therefore, the aforementioned items are evidential for the defense of this case.

ARGUMENTS

An evidentiary hearing is a means to prove:

POINT 1. BRADY's violation:

The Petitioner and her attorney, Louis Freeman, have requested, from the Government, the video recordings of the pharmacies during pretrial, trial, and pre-sentencing for the presentation to the jury and judge, to show Petitioner's actual innocence. Mr. Freeman never formally requested the production of the video recordings until the pre-sentencing phase. When the video recordings were, finally, formally requested, the Government advised Petitioner that they never had possession of the video tape recordings of the pharmacies; the trial judge denied the subpoena of the video recordings without a reason (See Exh BB). It must be noted the prosecution referenced these video recordings as if they were evidence during the trial.

Trial counsel Mr. Freeman failed to do due diligence in reviewing the evidence list, since it would have revealed that the government had the dvr recordings listed as evidence #008902 (See Exh U). Also, Mr. Freeman NEVER examined or cross – examined anyone who mentioned the video recordings. Mr. Freeman's malpractice contributed to the Petitioner's wrongful conviction.

While incarcerated, on 7/27/2016 in the 3500 material of the Government's discovery, the Petitioner discovered the Government had accessed the Aver DVD video recordings.

On November 15, 2016 (eighteen months after Petitioner's trial) through the Petitioner's own investigation, she received verification from FOIA that the Government not only had the original video surveillance recording

since 10/9/13 (nineteen months prior to Petitioner's trial), of which they returned, this very crucial piece of evidence, to the Defendant Peter Riccio, without providing a copy to the Petitioner (See Exh U). If it was not for FOIA, the Petitioner would have never discovered that the Government suppressed the video recording, which was a cause for Brady violation.

Upon subsequent request for the video evidence, even with FOIA indicating the prosecutors have the evidence, they:

1. Delayed her request even further so that they could use the time to tamper with the video evidence. For instance:

In the Government's letter of 3/3/2017, the Government continues to deceive the Court by stating "the videos may only be extracted, if at all, clip-by-clip", and that it would be too expensive of a process. However, the video recordings included date and time, as indicated in the Government's letter of 3/3/2017, as to how TiVo was recorded. It takes minutes at the most, to copy the video recordings to a disk. Again, in a letter dated 4/25/17, the Government used every excuse they could to not turn over the suppressed video recording; yet the video recording itself shows the Government tampering of it since 3/29/2017, by deleting/extracting scenes from one camera while leaving the same time frame from other cameras.

2. Referred the Petitioner elsewhere.

It progressed more harmfully, as Ex AG Preet Bharara continued to suppress the video recording via his letter of January 3, 2017 and March 10, 2017 (See Exh V).

The Government committed Brady's violation of the Petitioner's constitutional rights by suppressing exculpatory video recordings evidence, that showed the Petitioner was not present and did not initiate nor cause the criminal offense wrongful asserted in the criminal case established by the government and it's conviction. Brady requires that the government disclose material evidence favorable to a criminal defendant. United States v. Rivas, 377 F.3d 195, 199 (2d Cir. 2004). Evidence is favorable if it is either exculpatory or impeaching, Strickler v. Greene, 527 U.S. 263, 281-82, 119 S. Ct. 1936, 144 L.Ed. 2d 286 (1999), and it is material if "there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." Youngblood v. West Virginia, 547 U.S. 867, 870, 126 S. Ct. 2188, 165 L.Ed. 2d 269 (2006). "A conviction must be reversed" upon a showing that the favorable evidence could reasonably be taken to put the

whole case in such a different light as to undermine confidence in the verdict." id.

The Petitioner subpoenaed the aforementioned items to show that the testimonies of the government and its witnesses were perjured. "Prosecutors who knowingly present perjured witness testimony or fail to correct it violate a defendant's right to a fair trial", the U.S. Court of Appeals for the Third Circuit ruled (Haskell v. Superintendent Greene SCI, 2017 BL 266640, 3d Cir., No. 15-3427, 8/1/17). "A root is how can a defendant possibly enjoy his right to a fair trial when the" government "is willing to present (or fails to correct) lies told by its own witness and then vouches for and relies on that witness' supposed honesty" in its closing argument? Circuit Judge Thomas L. Ambro asked in writing for the court that tossed a murder conviction Aug. 1 (2017). He answered that question by quoting the U.S. Supreme Court in Napue v. Illinois. "A lie is a lie, no matter what its subject, and, if it is in any way relevant to the case, the district attorney has the responsibility and duty to correct what he knows to be false and elicit the truth," he said. (T.1736, 1938, 1941, 1951, 1953, 1861).

To reiterate, instead of using the video recording to exonerate the Defendant, the government suppressed the video recordings; thus a Brady violation has occurred due to the fact the information was SUPPRESSED, TAMPERED with, and is still EXCULPATORY. They also referred to it as if it were in evidence and as if it showed guilt!

Most disturbingly, the District Court deliberately allowed the prosecutors to refer repeatedly to video recordings evidence but denied the Petitioner's subpoena of that video recordings evidence.

To emphasize, trial attorney in his letter dated 2/15/17, again confirmed he never received the video recordings.

Although the exculpatory video recording evidence was finally turned over to Ms. Mitchell, Camp unit Manager, on July 4, 2017; the Petitioner was only first allowed to view it on August 31, 2017 and in total only allowed to view it for a total of three (3) hours. This limiting of access to the evidence was due to ineptitude of the staff and a number of seemingly intentions, mismatching of viewing times made available to the Petitioner during times when no staff were available to enable the Petitioner to view the video. Such ineptitude and ill – conceived scheduling never have any consequence to the staff yet always seems to continue the delay and denial of Justice to the Petitioner.

Upon the first review, the Petitioner noticed that the video recording was TAMPERED with. The Petitioner can affirm this wrongful action due to the fact the Prosecutors failed to delete/extract those recorded times from the backup cameras. **For example**:

Camera 6 showed the pharmacist's station. In camera 6 were many "missing" recorded times, such as: Tuesday 10/9/2012 the Government deleted/extracted the recorded time of 9:21:50 - 9:31:06am, 9:32-9:34:30am; 10:32:15 - 10:34:04, 10:35:26 - 10:38:09; 11:14:32 - 11:20:13am, 11:39:39 – 11:41:24, 11:42:32 - 11:47:13.

However, from 9:21:50 to 9:31:06am, 10:32:15 - 10:34:04, the Petitioner was preparing paperwork and equipment for vaccination. From 9:32 - 9:34:30am, 10:35:26 - 10:38:09, the Petitioner consulted and administer flu vaccinations to patients. Again, from 11:14:32 to 11:20:13am the Petitioner prepared, consulted, and administered the flu shot to another customer. From 11:39:39 - 11:41:24, 11:42:32 - 11:47:13 the Petitioner was in a meeting with the owner Peter J. Riccio in his office; many issues of meetings were noted in emails.

The Petitioner can show that the video recording was tampered with due to the fact the Prosecutors failed to delete/extract those recorded times from the back up cameras, including but not limited to Camera 2, 10 and 11, which confirmed what the Petitioner just stated in the aforementioned. In spite of the tampering, the video recording is still exculpatory.

It is apparent the Government extracted recordings of the petitioner's absence from the pharmacy counter to cover up whatever they accused the Petitioner of doing was false, including but not limited to the Government's claim that Lasher had full access to monitor pharmacies, but she could not have. The Government extracted scenes whenever the Petitioner left the pharmacy for various purposes, such as to administer immunization to patients, consult with patients, to attend store meetings, "to hide their claim that the Petitioner had full access to monitor Hellertown Pharmacy and Palmer Pharmacy & Much More, but she could not have." As seen in the video recording, missing scenes were due to, including but not limited to, the Petitioner leaving the pharmacist's area to immunize, consult, meetings, etc... The Government also extracted scenes which showed the Petitioner double/triple HAND counted pills, did paperwork, read/studied the law to pass Pharmacy State Board exams of which the petitioner was paid to take these exams.

The Government diligently worked to frame the Petitioner but they should not prevail.

As stated earlier, although the BOP allowed the Petitioner a limited amount of time to view the video recording, it was ample time to see that the Government TAMPERED with the video recordings due to many "deleted" recording times.

The Government can NOT claim there was a defect on the recordings because the other camera did not miss recording times. Further, when there is a video loss, it will record as "video loss" and the date and time, as seen in Camera 2 10/9/2012 from 9:45:48 to 9:46:56am, as an example.

The aforementioned evidence proved not only did the Government try to frame the Petitioner by suppressing the video recordings, they also TAMPERED/EXTRACTED scenes from the video recordings when they finally turned it over to the Petitioner; again, they failed to realized there were "back-up cameras".

In this case, the video recordings, the best evidence rule:

A. Proved the Petitioner's ACTUAL innocence; they showed the daily activity of the work flow in the pharmacies and that the Petitioner abided by all pharmacy law and regulations in that she properly counted, labeled and stored, destroyed medications properly, and dispensed medications with valid prescriptions, all verified by doctors; yet, this was contradicted by the prosecutors' witnesses sworn testimony, including those of the Pennsylvania Board of Pharmacy's pharmacy inspector THOMAS BAT. Even though only 2 months were on the video that was turned over to the petitioner, it is sufficient to see the consistency in the petitioner's work; that she did not violate any law. In this case, all prescriptions were hand counted. This act is CONSISTENCY shown throughout all of her places of employment that she abided by all the rules.

B. Affirmed the Petitioner's wrongful conviction which was based on perjured testimony, including those of the Pennsylvania Board of Pharmacy's pharmacy inspector THOMAS BAT, prosecutors' INVENTION of law, District Court's AMENDED statutes and INVENTION of laws, "planted," tampered, suppressed, withheld evidence.

C. The video recordings show:

The Petitioner was not present at the alleged crime scene on the dates (6/1/2012,6/12/2012, 7/16/2012, 7/17/2012, 8/13/2012, 8/16/2012, 8/27/2012, and 10/2/2012 (See Exh) the alleged crimes were supposedly committed, and

(2) The Petitioner was working in a different pharmacy and not engaged in any of the alleged acts the

prosecution describes, such as remotely monitoring or supervising, nor directing employees in other locations to commit the alleged crime.

(3) The Petitioner was working at a different pharmacy on October 2, 2012 when oxycodone was dispensed to "unkempt" individuals,

(4) The Petitioner never dispensed the drug "butalbital" as indicted, charged, and convicted of, and proof of same was withheld from the jury

Further, the Petitioner's lack of presence is also shown on the work schedule and EZY passes. The governing pharmacy law in the petitioner's case requires her to be present at the pharmacy at the time the drug was "shipped" on the dates referenced. The Government has a copy of the work schedule from the Hellertown Pharmacy (HP) and Palmer Pharmacy & Much More (PP) showing petitioner was not at work during the dates and times of the shipments referenced.

However, throughout trial, Petitioner was blamed for the misdeeds of prosecutors' witnesses as well as for "laws" made up by the prosecution; this is against the governing pharmacy law (PA27.12(b)(2)) by penalizing the Petitioner instead of the pharmacist on duty and pharmacy owner for non-compliance of regulations. First, the governing pharmacy law (PA27.12(b)(2) and the criminal statute 21 U.S.C. 321 (g)(1), 352 (a), 352(c), 353(b)(1), and 353(b)(4)(A), and 21 USC 331(a) and 333(a)(2) require for the accused to be present at the pharmacy at the time the specific prescriptions in question were filled. She cannot be guilty of a crime she was not there to commit, and which she did not agree to commit, nor for an act that she did not condone. Because of potential biases and to avoid any shifting of blame, the pharmacy law eliminates any double standard or shifting of blame; each pharmacist is accountable for his actions and can NOT shift blame to someone else. It is the job of any pharmacist while on duty to ensure they themselves follow all laws, regulations, and policies; any misdeeds or mistakes are the responsibility of whoever made the misdeeds or mistakes. Further, any pharmacist on duty also serves as a "supervisor" of themselves and their technicians and is accountable for his shift. Thus it is impossible for her to be in a "conspiracy," or even aid and abet because the governing laws do not hold her accountable for other employees' actions. This demonstrates the Court INVENTION of law, which display a contradiction to the actual governing pharmacy law, by holding the Petitioner accountable for someone else actions when she was not on duty on the Indictment dates. A hearing is required in front of the State Board of

Pharmacy, not in front of the Federal Court; the Federal Court neither has jurisdiction nor can they override the governing pharmacy law without an act of Congress. Pharmacists are state licensed and are responsible for their own licenses. Only the State Board of Pharmacy could penalize the pharmacist on duty and pharmacy for non-compliance of regulations; this is not a criminal issue whereas the Court allowed the misinterpretation of the law.

Furthermore, the governing pharmacy law was in place for pharmacy technicians to "assist" pharmacists; the technicians can only work under the supervision of the pharmacist on duty (PA27.12(d)(1)). Yet, the Government violated the governing pharmacy law by shifting their witnesses' (pharmacists) breaking of law onto the Petitioner and, committed fraud on the court by having their witnesses (technicians) testified as if they were "pharmacy expert witnesses" who know the laws, statutes, regulations and are properly licensed and insured, which is against the governing pharmacy law, affirming trial attorney Mr. Freeman's incompetence.

Thus, numerous Pharmaceutical law and protocol support the Petitioner's testimony and impeach the testimony of the Government witnesses. The lack of ability to present that video recording evidence, while the government suppressed it, further undermined the truth and advanced the perjured testimony. See Demarco v United States 928 F.2d 1074 (11th cir. 1991). The failure for the prosecution to correct perjured testimony is ground for the reversal of conviction.

D. The only video recording which was turned over to the petitioner showed the petitioner supervised the pharmacy she was employed at, including Towne Pharmacy, as per the governing law; every pharmacist on duty also serves as a supervisor. The prosecutors claimed that the Petitioner's charges were from the Hellertown Pharmacy and Palmer Pharmacy & Much More, and that these tapes were invalid because they recorded Towne Pharmacy and for only two months in spite of the fact that they show the Petitioner at Towne Pharmacy and not committing the alleged crime or action the prosecution claimed. However, the conspiracy INCLUDED Towne Pharmacy. Once again, the prosecutors, contradicted themselves because at sentencing, they charged the petitioner for committing the crime at Towne Pharmacy as well, and that her charges were from 2008 to late November 2012 per US Attorneys' Office letter of 5/18/15, and the two months of video recording fall into this realm of timeline of the "conspiracy". Fact: The Hellertown Pharmacy was not opened until November 2010 and Palmer Pharmacy & Much More was not opened until June 2011. Furthermore, the prosecutors' witnesses

falsely testified that the crime of not counting pills and not destroying pills "CONTINUED" throughout after the inspection, which was in September 2012; the video recordings from October 7, 2012 to November 29, 2012 (Towne Pharmacy), which is after the inspection, contradicted the prosecutors' witnesses because it showed the Petitioner did everything according to the law, including counting pills properly and TRIPLE checked all of her work. Again, as the video recordings showed, all pills were hand counted and the Petitioner was CONSISTENT and DILIGENT in her work.

E. Throughout trial, the prosecution accused the Petitioner of supervising via camera or by phone calls, which is against the governing pharmacy law because only the pharmacist on duty is held responsible for their shift. In other words, no pharmacist can be held responsible for another pharmacist's misdeeds. No pharmacist can "supervise via camera or by phone calls" because all pharmacists are equally license professionally. As in the Security of hospitals and retail pharmacies, they might "monitor" the cameras but they do NOT supervise nor be held responsible for what goes on in the pharmacy. Counsel allowed the government to claim the Petitioner supervised by "watching" the camera. This is false because a security person watching the camera is not a "supervisor." As evidenced in this writ of certiorari, the Petitioner's conviction is due to the District Court's INVENTION of law, a contradiction of the governing pharmacy law and the Government's fabrication of law. Emails which were not used in trial would have shown that the Petitioner was the only pharmacist employed who complied with the law; rather than wanting people to be criminal the Petitioner wanted them fired and disciplined. She notified the owner that other pharmacists did not comply to the law; they were upset with her because the owner told those pharmacists to listen to her. She wrote them up; the unredacted write ups in themselves show clearly that the Petitioner reprimanded the testifying witnesses for the very act that the Government presented as being directed by the Petitioner (See Exh W).

As, now evident, the Petitioner was not monitoring nor supervising any criminal behavior, and the redaction of that evidence shows bias. Also, as per the superseding indictment, the criminal act were conducted on June 1, 2012, June 12, 2012, July 16, 2012, July 17, 2012, August 13, 2012, August 16, 2012, August 27, 2012. The Petitioner, now for the first time, has been, personally, provided with proof that establishes her absence during the time in which the criminal acts occurred (See Exh X). To reiterate, the Petitioner cannot be guilty of a crime she was not there to commit, and which she did not agree to commit, nor for an act that she did not condone.

F. LACK of the Petitioner supervising/directing the work of others at Hellertown Pharmacy and Palmer Pharmacy & Much More via phone or cameras which contradicted the government and its witnesses' testimonies.

At trial, the Government misled the jury as if the Petitioner was the ONLY supervisor of the pharmacies. However, as the video depicted, the Petitioner did not direct the Government's witnesses to commit the above-referenced violations, and that she did not direct or ship Butalbital (a powder) and was not present in the video as referenced at trial by the Government's witnesses. To reiterate, the video also demonstrates further lack of the petitioner's knowledge of what the prosecutors' witnesses did on their own. The video demonstrates that the petitioner could not have the requisite intent. The best evidence rule can further be adduced via the media records of Petitioner's cell phone in that it would disprove the petitioner monitored the pharmacy via her cell phone camera. Instead of using Petitioner's cell phone records to prove the petitioner monitored the pharmacies by watching cameras on her phone, the Government used witnesses to (falsely) testify that the Petitioner watched them.

G. The Petitioner's lack of culpability. In light of the recent opinion of the Supreme Court, Honeycutt v. United States, U.S., No. 16-142, 6/5/17, the Court cannot forfeit the Defendant $2.5 million when the Petitioner did not have any interest at stake in the pharmacies nor profit, from the proceed of the pharmacies; the Petitioner should not be held jointly and severally liable for property that her alleged co-conspirator derived from the crime but that the Defendant herself did not acquire. Also, no evidence was presented that showed the Petitioner gained money from the alleged conspiracy.

Therefore, her forfeiture must be overturned and the Appellate Court MUST follow the Supreme Court's decision of Honeycutt.

H. The Petitioner dispensing prescriptions to disheveled addicts was false as the video proved the Petitioner was not present as staff on duty nor on any of the alleged dates clearly indicated on the videos and the work schedule.

Most of the Petitioner's trial was tainted with false evidence of Petitioner's distribution of Oxycontin and Opium Tincture to "alleged addicts" on October 2, 2012. These testimonies intentionally misled the jury and were highly prejudicial and irrelevant since the Petitioner was not on duty at Hellertown Pharmacy on October 2, 2012, as confirmed by the video recording. Herring v. New York, 422 U. 853 (1975). The third Circuit has held

that profiling testimony gave rise of a substantial risk of miscarriage of justice. Commonwealth v. Horne 88 Mass. App. Ct. 1109 (2015) Cert granted.

Also, the work schedule would have and does also prove that the Petitioner was not at the Hellertown Pharmacy on October 2, 2012, when DEA agent Murphy surveyed the Hellertown Pharmacy and testified at Petitioner's trial concerning his observation of "unkempt" people entering Hellertown Pharmacy. Furthermore, AUSA Greenberg, during government summation, misled the jurors by misrepresenting to them that on October 2, 2012, Albert Buck "on two occasions, went to Ms. Lasher and stating something is wrong here; this is unusual. The second time, Buck said they (the oxycodone patients) appear to be high. "stating... Ms. Lasher said, "just fill...we are just filling the prescription. It's fine". James Barnes, Steven Goloff, all said the same thing..."She didn't care." (T.1807-1808). Again, this is another false statement committed by the prosecutors' witnesses and the prosecution; this testimony was highly prejudicial and irrelevant since the Petitioner was not on duty at Hellertown Pharmacy on October 2, 2012. It was Goloff who dispensed all those prescriptions on October 2, 2012. The District's Judge allowing this testimony to be introduced is grounds for reversal of the Petitioner's conviction and sentence.

To emphasize, all the oxycodone and opium prescriptions dispensed by the Petitioner were deemed to be valid; prescriptions were verified by doctors and DEA as being valid. (See Exh DD)

I. Prosecution's witness Steven Goloff framed Dr. Haytmanek by reporting him to the Pennsylvania Board of Medicine for being a "drug addict" who obtains his drugs illegally. However, Dr. Haytmanek was exonerated of any wrong doing and shown to not be a "drug addict" by the Pennsylvania Board of Medicine on October 8th, 2013, 19 months prior to the Petitioner's trial (docket # 0335-49-B file no. 12-49-11424 Pg. 28 See Exh Y) At the Petitioner's trial, the prosecution and 5 of their witnesses, Pharmacy Inspector THOMAS BAT, pharmacists Steven Goloff and Daniel Geiger, technicians Albert Buck and James Barnes, framed the petitioner by falsely accusing her of illegally dispensing to Dr. Haytmanek whom they called "an addict", while knowing Dr. Haytmanek had been exonerated from that false accusation and from false accusation that there was anything improper his prescriptions.

Additionally, in retaliation to the disciplinary write-ups, pharmacists Goloff and Geiger falsely testified against the Petitioner. As seen in the video recordings, the petitioner triple check all of her work whereby

CONSISTENCY is the KEY.

J. At trial, in the presence of no jury, evidence confirmed the Petitioner did not forge any Opium prescriptions for Dr. Haytmanek (Bates document 010085, T. 1939-1942); yet, the trial judge knowingly and further allowed false testimonies of the Petitioner forging those prescriptions (T.832).

Greenberg's summation: T. 1815 falsely telling the jurors the Petitioner forged Doctor Cochran's signatures on prescriptions

Greenberg:...Just take a look at them lined up. They all look the same. They have all got the same handwriting, the same pen, same signature. These prescriptions are clearly forged... You have seen that handwriting before. That's Ms. Lasher's handwriting... You have seen this handwriting before. This is Ms. Lasher's handwriting. Demarco v. U.S.928 F. 2d. 1072 (11th cir. 1991) the failure for prosecution to correct perjured testimony is grounds for reversal of conviction. Due process bars a prosecutor from making, knowingly use of false statements. Also, see Giglio v. US 405 U.S. 150, (1972); Napue, 360 U.S. at 271, U.S. v. Lowery, 135 F.3d. 957 (5th cir 1998), U.S. V. Booth, 994 F 2d. 63 (2cd cir 1993).

However, in the form of a DIRECT testimony from Dr. Cochran in an interview by DEA Agent Murphy, which should be considered best evidence and far superior to testimony from their witnesses, in that Dr. Cochran's DIRECT testimony, which was withheld, stated that he wrote and signed those prescriptions himself (See Exh Z). However,

A. Trial Judge, presuming the role of a handwriting analysis expert witness from the bench, accused the Petitioner of forging Dr. Cochran's prescriptions.

B. Pharmacist Steven Goloff falsely accused the Petitioner of forging Dr. Cochran's prescriptions.

Most notably, the Petitioner was never indicted for any such related charges in the aforementioned.

Most importantly, if the Petitioner violated the law, the Government would have used the video recording against her. Because the government knew that she did not break any law and so they suppressed the video recordings from her. This exculpatory evidence could have exonerated her and is a clear violation of Brady as well as a violation of Petitioner's 5th Amendment Right (Due Process).

The petitioner's need for an evidentiary hearing is to present evidence which contradicted the government's witnesses testimonies. Thus, the "tampered" suppressed video recordings will significantly assist as an

evidentiary matter for the proof of the incorrect assertions within the basis of the action filed with court. Wherefore, without the aforementioned information, the information is therefore not attainable for the evidential support needed to affirm the 18 U.S.C. 2255 Motion.

In fact, the best evidence rule (Evidence SS424-documents contradicting testimony) rests on the fact that a document is a more reliable, complete, and a more accurate source of information as to its contents and meaning than anyone's description; this is no less true as to the extent and circumstances of a contradiction, contained in the document, to a witness' testimony, where the alleged contradiction relates not to collateral matters but to the incrimination of a defendant in a criminal case.

"We hold that the accused is entitled to the application of that rule, not merely because it will emphasize the contradiction to the jury, but because it will best inform them as to the document's impeachment weight and significance...the alleged contradiction to this witness' testimony relate not to collateral matters but to the very incrimination of petitioners. Except the testimony of this witness be believed, (pg.455) this conviction probably could not have been had. Gordon v. United States 97 LED 447, 344 US 414.

"If the petitioner asserts his actual innocence of the underlying crime, he must show "it is more likely than not that no reasonable juror would have convicted him in light of the new evidence presented in his petition." Calderon v. Thompson, supra, 523 U.S. at 559. Here the Petitioner has met this burden.

Clearly this is a Brady Violation. Petitioner's wrongful conviction must be vacated due to the Brady Violation and the tampering of evidence.

POINT 2. The video recordings show that the drug "butalbital" never existed in the pharmacy.

The Petitioner's trial was about a drug that NEVER existed in the pharmacies;

In order to make this case into a federal law violation for Count 1, The District Court prejudiced the Petitioner by allowing a defective indictment; the Indictment charged the petitioner of:

1.Sending butalbital, a POWDER, a controlled substance that NEVER existed in the pharmacies (Exh AA

2. Sending tramadol, which is NOT a controlled substance at time of the indictment, and only became a controlled substance in 2014. The District Court also usurped administrative jurisdiction by allowing the medicine, Tramadol in the Indictment

3. Dispensing without "valid prescription" (face to face).

However, only controlled substances, under the Controlled Substances Act (CSA), required the dispensing of valid prescription.

The suppressed video recordings showed the Petitioner NEVER handled nor dispensed "butalbital tablet"; the suppressed video recording confirmed butalbital tablet was not stocked at the pharmacies, and the conviction of petitioner was ultimately for a "NON - controlled" substance, Fioricet.

To reiterate, the District Court illegally called Butalbital "Fioricet".

The Controlled Substances Act (CSA), the Controlled Substances List, and the Scheduling Actions showed that Fioricet is not a controlled substances and is not on any of their list, because Fioricet has no addictive attributes. Butalbital and Fioricet are two different drugs; they are not analog of each other - one has the potential of being abused (Butalbital) and the other not (Fioricet).

Thus, the Petitioner's motions have arguable basis both in law and in fact due to the Government violating the governing pharmacy law by switching the substances, Fioricet for Butalbital.

To reiterate, the District Court ILLEGALLY placed NON – controlled substances into a controlled substances class. She further made up her own rule via making up her own phrase "highly addictive pain medications" (there is no such phrase in pharmacy law; the phrase "addictive pain meds" does NOT exist in any classification of drugs), to INVENT a federal jurisdiction, to prejudice and profile the Petitioner. For instance:

T. 1768 Richenthal: "The petitioner "sold massive amounts of "addictive pain meds" through HER pharmacies for years"; affirming the District Court's usurpation of power by allowing the Government to substitute and represent to the jury NON controlling substances as controlled substances or "highly addictive pain meds."

Also, the Petitioner did not own any pharmacy; this portrayal of ownership, intentionally misled the jury.

Because Butalbital NEVER existed in the pharmacy, the District Court constructively amended the superseding indictment, calling Fioricet, "butalbital". The Government's prosecution was only possible because the District Court allowed Fioricet to be called "butalbital."

In fact, the "knowing use" of "butalbital" that never existed in the pharmacies were consciously used

by the Court in order to obtain a conviction, and the deliberate suppression of the exculpatory evidence to impeach that testimony constituted a denial of Petitioner's due process of law as well as an usurpation of power. Giglio v. U.S. 150, 154 (1992) Napue, 360.S. At 271. "Such a contrivance...to procure the conviction ... is inconsistent with the rudimentary demands of justice. Brady v. Maryland 373 U.S. 83, 10 L Ed 215, 83 S Ct 1194, 1963. As in this appeal, the Petitioner sets forth the evidence and facts which prove the Court knowingly and deliberately allowed the aforementioned to occur in "her" courtroom, with consciously planned and carefully executed scheme participated in by the Court and the attorneys to defraud, harm, and destroy the Petitioner. The Court and prosecutors, with carefully constructed false evidence and non-official laws, created a jurisdiction where none existed via the Court's usurpation of judicial power as well as her outrageous judicial and discriminatory misconduct.

Due to the fact the pharmacies never carried butalbital, at trial the Government switch butalbital, a powder, for Fioricet, a tablet, therefore causing a defective indictment whereby confirming the judicial Court lacked of subject matter jurisdiction over this case. The Indictment must be dismissed as defective since it charges a crime based on the dispensing of an entirely different substance (Fioricet) that is not a powder, in addition to not constituting "butalbital," is also not controlled.

Most importantly, the exculpatory video recording depicted "butalbital" NEVER existed in the pharmacies.

Thus, if the jury knew the drug NEVER existed in the pharmacies, the Petitioner would NOT be convicted.

REASON FOR GRANTING THE WRIT

This Petition for writ of certiorari, for an evidentiary hearing, must be granted for the following reasons:

I. To resolve multiple conflicts between the decision of which review is sought and decisions of other appellate courts including the Second Circuit Luis Noel Cruz v US 11-cv-787 (JCH) March 29, 2018, the First Circuit in Owens v. United States, 236 F. Supp. 2d 122, 144 (D. Mass. 2002), on the same issue.

II. To correct an erroneous decision of the Second Appellate court denying an Evidentiary Hearing in this petitioner's case that was erroneous in many ways.

III. The national importance of having the Supreme Court address this matter is two-fold: 1) to prevent a

miscarriage of justice which involved the issue of a Brady violation, in the form of suppressed exculpatory video recording evidence, as well as other exculpatory articles of evidence; and 2) this trial is of concern to any health care professional working with medicines that could be treated as controlled substances by Prosecutors and Judges willing to amend the law to create jurisdiction.

I. To resolve the existence of multiple conflicts between the decision of which review is sought and a decision of the first appellate court on the same issue.

An important function of the Supreme Court is to resolve disagreements among lower courts about specific legal questions. The following questions were specifically addressed by the First Circuit in Owens v. United States, 236 F. Supp. 2d 122, 144 (D. Mass. 2002), and a minimum standard observed, all of which were ignored in the denial of this Petitioner's motion. On what grounds may a court deny an evidentiary hearing in support of collateral attack? Once a prisoner requests relief under Motion 2255, must a District Court grant an evidentiary hearing on the prisoner's claims? If the evidentiary hearing is denied, how does a court assess the claims in the collateral attack?

28 U.S. Code § 2255 (b) is clear as to when such a remedy is available to a prisoner, "Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the United States attorney, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto." Unless the files and records show that a Petitioner's guilt is self evident, the hearing should be granted. In support of Owens and citing David v. United States, 134 F.3d 470, 477 (1st Cir.1998), the First Circuit decided that "Owens' allegations were neither 'so evanescent or bereft of detail that they cannot reasonably be investigated,' nor 'threadbare allusions.' David, 134 F.3d at 478. Nor were Owens' allegations unsubstantiated." Owens v. United States, 236 F. Supp. 2d 122, 144 (D. Mass. 2002).

This Petitioner's request exceeds the criteria established by the law and observed by the first circuit in Owens. Here, the motion and the files and records of the case conclusively show that the prisoner is actual innocence with actual physical evidence. The Petitioner is asking for the admission of multiple types of evidence which in each case is better evidence, in accordance with the principles of best evidence, than the evidence the prosecutors used at trial, which is testimonial. In many instances the Prosecution suppressed the better evidence

and the Judge withheld the better evidence in favor of evidence that they could use to obtain a wrongful conviction. For example:

A. The Petitioner is asking for the admission of evidence in the form of previous suppressed and withheld video recordings, and Petitioner's cell phone media records, which include all the dates where she was allegedly committing the supposed crimes. These are superior to testimony about the Petitioner's actions and superior to the Prosecutions own references to these video recordings that they suppressed from evidence while simultaneously referred to them at trial.

1. The matter at hand is the actions taken by the Petitioner on all the dates the alleged crimes took place and on other dates the Petitioner was working.
2. The **video evidence is superior so thoroughly and completely that no jury could convict the Petitioner** because it shows exactly what the Petitioner was doing both on dates where she is accused of committing crimes and her conduct at work in general, whereas the testimony about her actions and how she conducted herself in her profession are subject to individual biases. In this case the video evidence shows none of what Prosecutors or its witnesses claim on the dates cited in the indictment. It directly refutes testimony and the prosecutors description of the video evidence spoken to, but not shown to, the jury.
3. The **video recordings show she was not present on the alleged days of the criminal activity** (6/1/2012, 6/12/2012, 7/16/2012, 7/17/2012, 8/13/2012, 8/16/2012, 8/27/2012, and 10/2/2012 (See Exh X), and the lack of her presence on October 2, 2012 when oxycodone was dispensed to allegedly "unkempt" individuals. The factors present in petitioner's case requires the accused to be present at the pharmacy at the time the drug was shipped on the dates referenced. The Government has a copy of the work schedule from the Hellertown Pharmacy (HP) and Palmer Pharmacy & Much More (PP) showing the Petitioner was not at work during the dates and times of the shipments referenced. First, the governing law (PA 27.12(b)(2) and the criminal statute 21 U.S.C. Sec. 321 (g)(1), 352(a), 352(c), 353(b)(1), 353(b)(4)(A), 21 U.S.C. Sec. 331(a) and 333 (a)(2) REQUIRE the accused to be present at the pharmacy at the time the specific prescriptions in question were filled. Also, the governing pharmacy law protects a pharmacist from being held liable for another's actions. Numerous pharmaceutical law and protocol support the Petitioner's testimony while impeaching the testimony of Prosecution witnesses and one of the main contentions of the prosecution's case. The lack of ability to present that critical video evidence, while the government asserted the knowledge of it's existence further undermined the truth and advanced the perjured testimony. See Demarco v United States 928 F.2d 1074 (11th cir. 1991). The failure for the prosecution to correct perjured testimony is ground for the reversal of conviction.

The Prosecution and their witnesses also claim the Petitioner was in New Jersey: remotely monitoring, supervising, and directing employees in the PA stores to commit the crimes. The Prosecutors specifically stated that the video evidence showed the Petitioner remotely monitoring and remotely directing workers in Pennsylvania pharmacies to commit the alleged acts. But the Prosecution never presented that video evidence. They instead suppressed it and the Judge withheld it. Unsurprisingly, the **video shows the Petitioner busily working in a New Jersey Pharmacy on all of the dates in question, not remotely monitoring or supervising employees in the other stores, as the prosecution claimed.**
4. The prosecution and its witnesses claimed the Petitioner did not count pills, reused medications, improperly labeled and stored medications. However, the **admittance of vastly superior video evidence will show that the Petitioner follows rules and regulations of pharmacy law, properly handling pills and prescriptions, labeling and storing and destroying medications properly, and dispensing medications with valid prescriptions which were verified by doctors, all contradicting the prosecutors' witnesses sworn testimony.**

5. The video recordings will further prove **the drug "butalbital" NEVER existed in the pharmacies**.

B. The Petitioner is asking for the admission of evidence in the form of an inventory and bill of laden of "butalbital" and other controlled substances which were allegedly in possession of the fulfillment pharmacies where she was accused of allegedly committed the supposed crimes. Additionally The Petitioner is asking or an indication of which medicines are considered "addicted pain medications" by the court.

1. The matter at hand is the **District Court's lack of jurisdiction**.
2. There were **no evidence at trial that the pharmacies ever carried "Butalbital."**
3. **Fioricet and Tramadol were both NOT controlled substances at the time of dispensing**, but the misbranding criteria described at trial for them was a standard only for controlled substances.
4. **No controlled substances nor any "addicted pain medications" were dispensed by the petitioner via the "fulfillment pharmacies"**, as the District Court claimed in denying the Petitioner her bail pending appeal.
5. This **lack of evidence shows the District Court had no Jurisdiction** in the Petitioner's case.

C. The Petitioner is asking for the admission of evidence in the form of a withheld interview by DEA Agent Murphy with Dr. Cochran (Bates document 010085, T. 1939-1942) to counter the weaker testimonies of the prosecution's 5 witnesses, Pharmacy Inspector THOMAS BAT, pharmacists Steven Goloff and Daniel Geiger, technicians Albert Buck and James Barnes.

1. The matter at hand is if the prescriptions in question were forged and thereby also misbranded, which could make them the unnamed allegedly misbranded prescriptions in Count Two of the indictment.
2. Dr. Cochran's testimony, that he wrote the prescriptions, is superior because his evidence is direct whereas the evidence presented at trial about the prescriptions was hearsay and conjecture.
3. The prosecution and its witnesses claim the prescriptions were forged by the petitioner but, in Dr. Cochran's interview with Agent Murphy, Dr. Cochran affirms that he himself wrote the prescriptions. Even the judge, presuming the role of a handwriting analysis expert witness from the bench, flatly declared the Petitioner of forging Dr. Cochran's prescriptions while withholding evidence contradicting herself.
4. Forged prescriptions are also misbranded ones. By not naming drugs or specific prescriptions in Counts Two, the Prosecution opened the door for Dr. Cochran's legitimate prescriptions to be construed as the misbranding they are talking about.
5. The **admittance of vastly superior physical evidence will show Dr. Cochran wrote the prescriptions himself** as per his the interview with the agents. The matter of these prescriptions should not been admitted into trial because Prosecutors knew the agents interviewed Dr. Cochran. It was in the discovery materials. **Withholding evidence to perpetrate a lie that they want the jury to believe is crime against the Petitioner and justice itself.**

D. The Petitioner is asking for the **admission of evidence in the form of a newly discovered Pennsylvania Board of Medicine Order of Dr. Haytmanek, to counter the weaker testimonies of the prosecution's case**

and 5 of their witnesses, Pharmacy Inspector THOMAS BAT, pharmacists Steven Goloff and Daniel Geiger, technicians Albert Buck and James Barnes.

1. The matter at hand is if the Petitioner dispensed prescriptions described in C. to an "addict" Dr. Haytmanek.
2. Prosecution's witnesses Steven Goloff actually filled 17 of the 20 opium prescriptions for Dr. Haytmanek.
3. At some point, Steven Goloff decided to frame Dr. Haytmanek by reporting him to the Pennsylvania Board of Medicine for being a "drug addict" and obtaining his drugs illegally.
4. At the Petitioner's trial, the prosecution and its witnesses **framed the Petitioner** by falsely accusing her illegally dispensing to Dr. Haytmanek whom they called "an addict", while knowing Dr. Haytmanek had been exonerated from that false accusation and from false accusation that there was anything improper his prescriptions.
5. The story the prosecution and its witnesses made up about these prescriptions were disproved at a hearing before the Pennsylvania Board of Medicine on October 8th, 2013, 19 months prior to the Petitioner's trial (docket # 0335-49-B file no. 12-49-11424 Pg. 28). It was a matter of record nineteen months prior to the Petitioner's trial that there was nothing wrong with any aspect of Dr. Haytmanek's prescriptions, but the Prosecution and its witnesses insisted on slandering her and the doctor.
6. **Admittance of vastly superior physical evidence contradicting the Prosecution so thoroughly and completely that no jury could convict the petitioner because it shows exactly that the prescriptions were legitimately dispensed** and that Dr. Haytmanek was specifically cleared of the addict accusation by the board of medicine.

E. The Petitioner is asking for the admission of **evidence in the form of withheld faxes, phone records. emails and prescriptions documentation, by Trial Judge Buchwald to counter the weaker testimonies of the prosecution's witnesses**, Dr. Konakanchi and Dr. Burling.

1. The matter at hand is the perjured testimonies of Dr. Konakanchi and Dr. Burling.
2. Konakanchi falsely testified that she never signed any faxes stating she phone-consulted patients. However, at trial, in the presence of no jury, the Petitioner presented fax documents, found in the Government's discovery, from Dr. Konakanchi that prove Dr. Konakanchi perjured herself.
3. Defense attorney requested to impeach Dr. Konakanchi; however, Judge Buchwald denied the impeachment and deliberately withheld the evidence showing that Konakanchi perjured herself. Defense Attorney then requested a mistrial; District Court denied the mistrial.
4. The faxes confirm the Petitioner went above and beyond the law by requiring Dr. Konakanchi to fill out a form indicating that she did at least phone consulted with her patients. The only legal criteria that is established for a pharmacist to access a prescription's validity is the doctor's signature. That the Petitioner asked more from Dr. Konakanchi is indicative of consciousness, not guilt. Even if everything Konakanchi claimed was true, it did not violate the Controlled Substances Act because face to face between her and her patients was not required for any of the medications Dr. Konakanchi prescribed for the patients at Hellertown Pharmacy.
5. Dr Burling's own phone records, which should be considered best evidence and far superior to testimony from a witness who admits to be testifying to avoid jail time for his own confessed crimes, that show the Witness and the Petitioner were in contact numerous times in spite of the witness' claims that they had never spoken.
6. At trial, the Petitioner was accused of changing Doctors' instructions without their permission. However, the
official executives AUSA Richenthal and Greenberg and the District Court withheld evidence of emails and

prescriptions documentation in regard to pharmacists Michael Della-Ventura and William Cantagallo who received the approval for the pharmacies to correct prescription dosages from the doctors.
7. **The evidence described here so thoroughly and completely contradicts the Prosecutions case that no jury could convict the petitioner based on Dr. Konakanchi's or Dr. Burling's testimonies.**

F. The Petitioner is asking for the admission of evidence in the form of an unemployment record, which counter the weaker testimonies of the prosecution's witness, Albert Buck, so thoroughly and completely that no jury could convict the petitioner based on his testimony.

1. The matter at hand is that Albert Buck perjured himself at the Petitioner's trial.
2. **The unemployment record proves Albert Buck was fired from Hellertown Pharmacy** in November 2012 for bad performances, and that he did not resign which is what he said under oath as testimony.
3. This evidence is easily obtained from the Pennsylvania Unemployment Office but requires a subpoena the District Court refused to grant.

G. The Petitioner is asking for the admission of evidence in the form of a suppressed and withheld 3500 material of owner Peter J. Riccio and Dr. Imbernino.

1. The matter at hand is Peter J. Riccio told the agents that he took all the blame for what went on in the pharmacies and that the **petitioner was not involved in any of the "alleged" crimes**.
2. This **evidence contradicts the Prosecution's assertion that the alleged acts were directed by the Petitioner, and contradicts the Prosecutor's deceptive statement to the Jury calling the pharmacies "her pharmacies", with the implication of ownership clearly intended**.

H. The Petitioner is asking for the admission of evidence in the form of a suppressed and withheld 3500 material of Dr. Imbernino.

1. Dr. Imbernino told the agents that he recognized the Petitioner's voice over the phone and that she called him monthly to make sure he **phone consulted patients**.
2. This evidence contradicts the assertion of the Prosecution that the Petitioner did not actively ascertain if the prescriptions dispensed were the result a bona fide doctor patient relationship, which goes above and beyond the legal requirements of a Pharmacist for dispensing. The **Petitioner did not break the law in this regard but went above and beyond it to be assured the prescriptions were legitimate**.

II. To correct an erroneous decision of the Second Appellate court denying an Evidentiary Hearing in the petitioner's case that was erroneous in many ways. In this case, the Evidentiary Hearing is a means to prove not only prosecutorial violations but also to prove actual and factual innocence, to present evidence which contradicts the Government and its witnesses' testimonies. As a result of a Brady violation and violations of due process, and with the profound and compelling facts and exhibits of evidence that clearly prove the conviction

was wrongly achieved, the Petitioner is confident that granting this Writ of Certiorari will lead to a granting of the Evidentiary Hearing and to her conviction being immediately vacated. The extent to which the evidentiary hearing requested here will undo the Prosecution's case, and thus show the Second Circuit's dismissal is erroneous, is detailed and enumerated above.

III. The petitioner affirms not only that the decision of the Second Appellate Court erroneous, but the national importance of having the Supreme Court decided the question involved to prevent a miscarriage of justice, which involved the issue of a Brady violation, an exculpatory evidence, the suppressed video recording evidence. The aforementioned deceptions committed by the prosecution, and the District allowed the known use of perjured testimony, the intentionally misrepresentation of material facts, the ignoring of the rules of best evidence, and usurpation power by the invention of law to create a jurisdiction where none exists, including reference to alleged evidence that was never admitted into evidence, suppression and withholding of multiple pieces of physical exculpatory evidence, which directly contradicting that knowingly used perjured testimony, in order to obtain a conviction warrant an evidentiary hearing.

The importance of this case is not only to the Petitioner but to others similarly situated in that the withholding of exculpatory evidence is a denial of due process of law; thus an evidential hearing is warranted.

Thus, the petition for writ of certiorari must be granted under the due process criteria of Owens v. United States, 236 F. Supp. 2d 122, 144 (D. Mass. 2002), Napue v. Illinois, 360 US 264, 3 L ED 2D 1217 and Brady v. Maryland, 373 US 83, 10 L Ed 2d 215. The request is very reasonable for a fair trial without deception and slide of hand. Other circuits had agree it is only fair for prosecution to prove their case without relying on such deception and slide of hand.

The nature of this case, involving Fioricet and Tramadol, has national importance because it affects health care professionals across the whole country. In this case, the original charges alleged violations of the Controlled Substances Act involving Tramadol nineteen months before it became a federally controlled substance. Prosecutors also have brought charges against many health care professionals alleging violations of the Controlled Substances Act over Fioricet in a wide variety of ways. In this case, The Prosecution the District Judge agreed to alter significant sections of the law in order to manufacture jurisdiction via the Controlled Substances Act over these drugs. When the superseding indictment dropped the charges alleging violations of the

Controlled Substances Act, and replaced them with charges alleging violations of the Food Drug and Cosmetics Act, it appears to be only a ruse. The only alleged misbranding of Tramadol described at trial was that the prescriptions were not the result of a face to face doctor patient relationship, but that is only required for controlled substances which Tramadol was not at the time of dispensing. For Fioricet, the Prosecution and the District Judge use a more deceptive tactic. Two kinds of misbranding were described: re-dispensing returned medicine which meets the law cited in the charges, and the alleged need for a face to face doctor patient relationship which would be a violation of the Controlled Substances Act, if Fioricet were a controlled substance. Both of these kinds of misbranding allegations against the Petitioner are false. The redispensing of returned medicines is addressed in discussions in this document over MURP Reports. But Fioricet also is not a controlled substance, because it does not meet the criteria required under the Controlled Substances Act. The Prosecution and the District Judge agreed to call Fioricet by the name of one of its components: Butalbital, which as a drug on its own is a controlled substance. This is violation of the definition of the word "Drug" as it is defined under the law in the Food Drug and Cosmetics Act, which is also the definition used in the Controlled Substances Act. This made it appear as if face to face doctor patient relationship was required and it also made the MURP Reports intentionally unintelligible to the Jury or any one reading only the Trial transcripts and not the pretrial transcripts where the name-change was decided upon by the judge.

CONCLUSION

The Prosecution's case was meant to deceive the jury in many ways; of two drugs named:

1. Tramadol was not a controlled substance under the Controlled Substances Act nor in the Controlled Substances List, at the time of the alleged crimes, and

2. butalbital in the indictment was NEVER possessed, stocked nor dispensed by the pharmacies. The NON controlled substance (Fioricet) as called "butalbital" and represented to the jury as controlled substances. The prosecution even misled the jury about who owned the pharmacies.

The goal of the best evidence rule, the exculpatory video recordings evidence, faxes, phone records, Dr. Haytmanek's transcripts, unemployment record, pharmacy paper trail, is to place before the jury the best possible evidence of a given transaction, proving the Petitioner's actual innocence in that she did not commit the crime and was wrongly convicted due to the perjured testimonies of the prosecutors' witnesses, Prosecution's

suppression of evidence, District Court's withheld of evidence.

The evidential hearing is a means to prove not only the prosecution's violation but also the proof of Innocence, to present evidence which contradicts the Government and its witnesses' testimonies. As a result of Brady violation and violation of due process, and with the profound and compelling facts and exhibits of evidence that clearly prove the conviction was wrongly achieved, an evidentiary hearing must be conducted, immediately.

The District Court stated that the denial is not a denial of the Petitioner's constitutional rights, but it most certainly is.

The Petitioner has a right to due process and a fair trial. The courts have a responsibility to ensure that fairness and impartiality governed every step of the proceedings. Denial of the Petitioner's request is an indication of unfairness. The Petitioner has a case to make, the evidence involved in this request will help make her case self-evident. If this motion is granted, the petitioner will be able to better and more clearly make her case. If that then starter case has merit, it will prevail. Denial of the motion only serves to ensure the proceedings will be unfair and biased.

It is unreasonable for the District Court to decide the Petitioner should not have access to this evidence because it is not the judge's role to decide how the Petitioner should best defend herself. It clearly shows judicial bias against the Petitioner.

The rules of the best evidence are reasons why this request has legal and factual merit:

1. The Video recordings will contradict ALL the prosecutors and its witnesses' testimonies.
2. Dr. Haytmanek's transcript will contradict the prosecutors and its witnesses' testimonies.
3. The Petitioner's cell phone and its media records will contradict the prosecutors and its witnesses' testimonies.
4. The phone records will contradict Dr. Burling's and Dr. Konakanchi testimonies in her own writing.
5. The fax records will contradict Dr. Konakanchi's testimonies.
6. The unemployment record will contradict Albert Buck's testimonies.

The Petitioner should be allowed to make her case in the way she best sees fit, free of judicial bias. If she is allowed to make her case as she best sees fit and if the case has merit, she will prevail. If she is free to make her case as she best sees fit, and does not prevail, if will be on lack of merit and not due to judicial bias.

The only way to ensure the Petitioner can preserve her best case with the burden of judicial bias against is to

grant the writ. If the evidence does not serve the Petitioner as she hopes it might, the Court, lose nothing, while demonstrating its lack of bias.

Allowing the evidence to speak for itself is the best way to preserve the petitioner the right to fairness and due process; anything less shows a clear judicial bias about the Petitioner's case and about the merits of the evidence.

The only way to assess the evidentiary is to grant this motion and allow it to stand next to the rest of the evidence in the context the Petitioner intends. There it may be attacked or defended fairly. If the evidence has no persuasive power, then it should be admitted to prove that. Denying this motion would indicate to any observer that the evidence was persuasive and denies out of fear of that power.

Admitting bad evidence only exposes it as such. Denying of this Motion shines a spotlight on the potential bias of that evidence.

Thus, in support of this writ certiorari, the Petitioner is requesting that the District and Appellate Courts' decision be reversed; they denied the Petitioner her Constitutional Right. There is no guarantee that the Federal Courts would comply to Fed. R. Crim. P 12(b)(2) (Motions that may be made at any time). A motion that the court lacks jurisdiction may be made at any time while the case is pending) and Fed. R. Civ. P 12(h)(3) (Lack of Subject-Matter Jurisdiction. If the Court determines at any time that it lacks subject-matter jurisdiction, the Court must dismiss the action.

For the foregoing reasons, the Petitioner prays the Honorable Supreme Court will grant this writ of certiorari, or any other remedy that this Court finds necessary, as duly deserved and earned through the submission of this in forma pauperis writ of certiorari. The evidence is pertinent for the correction of the criminal judgment per the legal brief and factual basis within the body of the 18 U.S.C. 2255 Motion.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

lenalasher

Date: 7/16/2018