No. 18-5325

IN THE

SUPREME COURT OF THE UNITED STATES

LENA LASHER — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR REHEARING TO

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

PETITION FOR REHEARING

LENA LASHER
(Your Name)

16 PATTON STREET
(Address)

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

908-638-5443
(Phone Number)

QUESTIONS

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

The court held that once in forma pauperis status is granted the clerk must issue summons under Rule 4(a) and the court shall serve all process under § 1915(c). Dismissal of the complaint under Rule 12(b)(6)is contrary to these rules, and it may create the perception the judge has abandoned the rule of neutral arbitrator" See: Outess v. Sobolvetich, 914 F.2d 428 (3rd Cir. 1990).

Here, the District Court granted the Plaintiff's in forma pauperis status. Yet, the District Court violated the Plaintiff's right to due process similarly to the aforementioned case, for failure to grant an evidentiary hearing. **An evidentiary hearing is a means to prove BRADY's violation. 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).

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.

As evidenced in the aforementioned, the District Court proved bias by abandoning the rule of neutral arbitrator.

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. 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.

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 (a NON controlled substance), "butalbital".

Further, the District Court committed FRAUD by ILLEGALLY placing 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.

As detailed in this rehearing, 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.

> Although, the Petitioner's motion to dismiss the "narcotics conspiracy" Indictment was not granted; it was withdrawn by the Government. The Government, then falsely charged the 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.
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> On April 2, 2015, in a six count Superseding Indictment, the Grand Jury accused Lena 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].
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> 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 ONLY controlled substances, under the Controlled Substances Act (CSA), required the **dispensing of "valid prescription" (face to face)**. 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.

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 (a **NON** controlled substance), and Tramadol which was a NON controlled substance at the time of dispense. 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.

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 committing FRAUD by 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 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 the Rehearing to prevent miscarriage of justice - Fraud on the COURT

"**Society views the conviction of an innocent person as** perhaps the most grievous mistake our judicial system can commit. Reflecting the gravity of such an affront to liberty, the "fundamental miscarriage of justice" exception has evolved to allow habeas corpus petitioners to litigate their constitutional claims despite certain procedural bars if the petitioner can make a credible showing of actual innocence." PAUL SATTERFIELD, v. DISTRICT ATTORNEY PHILADELPHIA, et al, Further, The Supreme Court "has established that considerations of finality and comity must yield to the fundamental right not to be wrongfully convicted." See Housev. Bell, 547 U.S. 518, 536–37 (2006); Schlup, 513 U.S. at 320–21 (citing Murray, 477 U.S. at 496); cf.Calderon v. Thompson, 523 U.S. 538, 557 (1998)

This case concerns the "actual innocence" gateway to federal habeas review applied in *Schlup v. Delo*, 513 U.S. 298, 115 S.Ct. 851, 130 L.Ed.2d 808 (1995), and further explained in *House v. Bell*, 547 U.S. 518, 126 S.Ct. 2064, 165 L.Ed.2d 1 (2006). In those cases, a convincing showing of actual innocence enabled habeas petitioners to overcome a procedural bar to consideration of the merits of their constitutional claims. Likewise, petitioners asserting actual innocence could obtain evidentiary hearings in an Appellate court even if the District Court unconstitutionally denied them of an evidentiary hearing. A hearing mandated if he can show that a fundamental miscarriage of justice would result from failure to hold a evidentiary hearing. "A petitioner seeking an evidentiary hearing must show diligence and, in addition, establish her actual innocence by clear and convincing evidence. §§ 2254(e)(2)(A)(ii), (B)." McQuiggin v. Perkins, 133 S. Ct. 1924 - Supreme Court 2013

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, deliberate and intentional withholding and suppression of actual physical evidence in order to obtain a conviction, as well as .District Court's invention of "laws"; 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. 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 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. It must be noted that trial counsel, Mr. Freeman NEVER examined or cross – examined anyone who mentioned the video recordings. Mr. Freeman's malpractice contributed to the Petitioner's wrongful conviction.

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. This exculpatory evidence exonerates her and is a clear violation of Brady as well as a violation of Petitioner's 5th Amendment Right (Due Process).

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.
>
> 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.

The Petitioner requested for an evidentiary hearing in the aforementioned and below issues, 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. 2255. Owens v. United States, 236 F. Supp. 2d 122, 144 (D. Mass. 2002).

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

REASON FOR GRANTING THE Rehearing, for an evidentiary hearing:

I. To resolve the existence of 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.

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 (It was Prosecutors' witnessess Goloff who dispensed all those prescriptions 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.

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. 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.

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

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

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.**

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.**

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**.

I. The Petitioner is asking for her 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.
1. 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

2. The Petitioner is also asking that 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.

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 Petition for Rehearing will lead to a granting of the Evidentiary Hearing and possibly to her conviction rightfully 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, is due to the **Prosecution's decision to ignore and suppress superior evidence that was exculpatory and to knowingly present false information to the jury.**

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.

1) 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 Rehearing 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.

2)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.

"**This Court has no such power, and not one of the cases cited by the opinion says otherwise. The Constitution vests legislative power only in Congress, which never enacted the exception the Court creates today. That inconvenient truth resolves this case.**"McQuiggin v. Perkins, 133 S. Ct. 1924 SC 2013

CONCLUSION

1)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.

2) 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 when the true facts of the matter and better evidence comes to light. That exculpatory evidence that is superior to the evidence used by the prosecutors has been established. That the physical evidence, suppressed and withheld, not only contradicts witness testimony but showing it to be perjured already shows a grave injustice has been done by this prosecution. This motion shines a spotlight on the biased nature of that perjured testimony and on the power of the exculpatory evidence.

For the foregoing reasons, the Petitioner prays the Honorable Supreme Court will grant this petition for rehearing. The evidence is pertinent for the correction of the criminal judgment.

CERTIFICATE

I certified that this rehearing is restricted to the grounds specified in Rule 44.2 and that it is presented in good faith and not for delay.

Respectfully submitted,
Lena Lasher, Pro – Se lenalasher October 22, 2018