

NO. \_\_\_\_\_

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IN THE  
SUPREME COURT OF THE UNITED STATES

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CLARENCE D. LEWIS  
— PETITIONER

VS.

15<sup>TH</sup> JUDICIAL DISTRICT COURT  
PARISH OF LAFAYETTE  
STATE OF LOUISIANA  
DOCKET NO. 130950  
— RESPONDENT

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ON PETITION FOR A WRIT OF CERTIORARI TO  
THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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CLARENCE LEWIS  
RLCC CAJUN 1 C2  
1630 PRISON ROAD  
COTTONPORT, LA 71327

## **QUESTION(S) PRESENTED**

1. IS A PLEA BARGAIN, VOLUNTARY OR INVOLUNTARY, IF A PETITIONER INVOKES HIS FIFTH AMENDMENT RIGHT AGAINST SELF-INCRIMINATION BEFORE THE PLEA IS INDUCED?
2. AFTER THE PETITIONER INVOKES HIS 5<sup>TH</sup> AMENDMENT RIGHT NOT TO INCRIMINATE HIMSELF BY THE SIGNING OR ACCEPTING THE PLEA, AT THE PLEA HEARING; WAS THE JUDGE AND THE PROSECUTOR SUPPOSED TO FORCE ACCEPTANCE OF THE PLEA, OR BRING THE PETITIONER TO TRIAL? SEE: PLEA TRANSCRIPT. DATED: 9-22-2011?

## **LIST OF PARTIES**

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:

1. Louisiana Circuit Court of Appeal, Third Circuit
2. Louisiana Supreme Court
3. United States District Court, Western District of Louisiana
4. United States Court of Appeals, Fifth Circuit

## TABLE OF CONTENTS

QUESTION(S) PRESENTED .....	2
LIST OF PARTIES .....	3
TABLE OF CONTENTS .....	4
INDEX TO APPENDICES .....	4
TABLE OF AUTHORITIES CITED.....	9
OPINIONS BELOW .....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED .....	3
STATEMENT OF CASE .....	5
REASONS FOR GRANTING THE PETITION .....	9
ASSIGNMENT OF ERROR NO. (1). .....	9
SUMMARY OF ARGUMENT.....	10
CONCLUSION .....	11
PRAYER .....	12
PROOF OF SERVICE .....	13

## INDEX TO APPENDICES

<b>APPENDIX A —</b>	Decision of State Court of Appeals
<b>APPENDIX B —</b>	Decision of State Trial Court
<b>APPENDIX C —</b>	Decision of State Supreme Court denying rehearing. n/a
<b>APPENDIX D —</b>	Order of State Supreme Court denying rehearing. Pg. 2 state court record.
<b>APPENDIX E —</b>	Report and Recommendation of U.S.D.C. W.D.La. Filed: <u>2-11-2016</u> .
	Order from U.S.D.C. W.D.La. denying federal writ of habeas corpus, under § 2254. Denied: <u>4-24-2017</u>
<b>APPENDIX F —</b>	Application for a certificate of appealability (COA) into Court of Appeals, Fifth Circuit  Order denying (COA) in C.A. 5 <sup>th</sup> Cir.

Motion for Reconsideration, Granted

Order of U.S.C.A. Granting reconsideration ,but denying  
COA

## **Appendix A**

1. Judgment of the Supreme Court	02
2. Motion and Order for Writ of Habeas Corpus	3-4
3. Petition for a Writ of Habeas Corpus	84-89
4. Motion and Order for Writ of Habeas Corpus ad Prosequendum	150
5. Motion and Order for Writ of Habeas Corpus Prosequendum	171
6. Motion filed by Clarence Lewis for Trial Court ruling on petition for Writ of Habeas Corpus, ruled on 1-25-12 and a copy of Petitioner's Post Conviction Relief dated February 17, 2012	231-232
7. Motion for petition for a Writ of Habeas Corpus filed by Clarence Lewis	245-250
8. Court of Appeals Third Circuit Notice to Clerk of Court to forward petition for a Writ of Habeas Corpus filed on/around 12-6-2011 and ruling thereon	251

Exhibit (3)(C) Pgs. 802-872

## **Appendix B**

1. Motion to withdraw plea agreement	
2. Court of Appeal Third Circuit Notice to Clerk to forward motion to withdraw plea agreement held on 9-22-2011	252-258
3. Plea Hearing Transcripts	123-132; 133-142
4. Motion to Correct An Illegal Sentence filed by Clarence Leiws	114-122
5. Motion on ruling on the denial of a motion to correct an illegal sentence dated on 11-16-2012 filed by Clarence Lewis	113
6. Notice of Intent to Seek Writs into 3 <sup>rd</sup> Cir. C.A. on denial on Motion to Correct An Illegal Sentence, from 15 <sup>th</sup> Judicial District Court (KH-12-1368)	597-621.

Exhibit 2 (B) Pgs. 597-647

1. Letter to C.A.3 <sup>RD</sup> Circ. In re: to 2 <sup>nd</sup> post-conviction, 3 <sup>rd</sup> cir. No. KH-12-908	
2. Request for PC. Transcripts pg. 60-63	
3. Transcripts on P.C. Hearing pg. 44-58	

## **Appendix C**

1. Record of the Louisiana Supreme Court	736-872
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2. Writ of Certiorari, filed 12-11-14 and 5-22-14, ruled on 5-28-13 and 6-13-2013, Docket No. 12-01368-KH, and Docket No. 2014-KH-1917, AS Exhibit (4).

#### **Appendix D**

Exhibit (4), no pages in the State court record, see: electronic filing into USDC Western District, Docket No. 6:15-CV-02167, Petitioner federal Writ of Habeas Corpus under 28 USC § 2254.

#### **Appendix E**

1. Report and Recommendation under Magistrate Judge Carol B Whitehurst and Judge Richard T. Haik, Sr. See: Memorandum Order Ex. (7)
2. Second Report and Recommendation under Magistrate Judge, Kathleen Kay and Judge Trimble. See: Objections to Second Report and Recommendation filed by Petitioner Clarence Lewis.

Exhibit (5)(E), no pages in State court record, see: Electronic filing into U.S.D.C. WD. Docket No. 6:15-CV-02-67; filed: 4-2-2017: see: objections to Second Report and Recommendation, under Judge Trimble and Magistrate Judge; Kathleen Kay.

3. Judgment of Report and Recommendation, dated: 4-24-17
4. Order transferring case to Magistrate Kay
5. See: letter filed into the record on Kathleen Kay's Position and order to be placed into the record.
6. Memorandum Order, from Carroll B. Whitehurst, before recusal, under judge Trimble
7. Memorandum Order, from Carroll B. Whitehurst, under Judge Richard T. Haik, Sr.
8. USDC W.D. La. Docket Master, showing all Entries.
9. Answer to Petition under 28 USC § 2254
10. Memorandum in Support of Respondent
11. Order Resetting Evidentiary hearing, by Chief Judge, Dee D. Drell
12. Evidence to Support Motion for evidentiary hearing
13. Case Reassigned to Judge Trimble, who suppress Ex-F-1, and F-2, and Denied evidentiary hearing
14. Petitioner filed Motion to Sequester Court minutes of 8-6-15, in where alleged victim was ordered to court to testify, but didn't show up.
15. Clarying the memorandum order 2-11-2016, on who arrested Petitioner violating his Sixth Amendment right
16. State's list of exhibits

## **Appendix F**

1. Order from United States Court of Appeals, 5<sup>th</sup> circuit No. 17-30372, denied COA February 21, 2018
2. Copy of motion for certificate of appealability, filed: 7-20-2017, and brief in support of COA as ex (3).
3. Copy of Letter from United States Court of Appeals. 5<sup>th</sup> Circuit, stating that they docketed Petitioner's appeal, under No. 17-30372.
4. Memorandum to counsel or parties listed below court granted extension to pay fees
5. Copy of deducted payment for court filing fee. See Date.
6. Copy of card from USCA 5<sup>th</sup> Circuit dated: 11-9-17 stating Petitioner's case is still pending, but court has not acted on appeal
7. Memorandum to counsel or parties listed below, No. 17-30372; order entered on motion for reconsideration of motion for COA, after a copy of the Appeal was sent to that court to view. See: Appeal, filed into that court after the filing fee was paid in full, and sent back to Petitioner. Appeal Appendix F, Ex (9)

Electronically certified record on appeal to U.S. Court of Appeals 5<sup>th</sup> circuit No. 17-30372. posted without viewing appeal filed by Petitioner.

## TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
See: <u>Charles R. Babineaux v. 15<sup>th</sup> J.D.C.</u> , no 130761, on Writ of Certiorari into Louisiana Supreme Court No. 2016-OK-0694, writ granted, 4/24/17	
See: <u>U.S. v. Casallas</u> , 59 F. 3d 1173, 1178 (11th Cir. 1995).	
See: <u>Hall v. Quarterman</u> , 534 F. 3d 365-69	
See: <u>Winston v. Pearson</u> , 683 F. 3d 489, 499-500 (4th Cir. 2012)	
See: <u>U.S. v. Harrell</u> , 751 F. 3d 1235, 1239 (11th Cir. 2014)	
See: <u>U.S. v. Ford</u> , 993 F. 2d 249, 251-52 (1st Cir. 1993)	
See: <u>U.S. v. Johnson</u> , 437 F. 3d 665, 678 (7th Cir. 2006)	

## STATUTES AND RULES

U.S. Constitution 5 <sup>th</sup> Amendment.....	
U.S. Constitution 6 <sup>th</sup> Amendment.....	
U.S. Constitution 14 <sup>th</sup> Amendment.....	
La. Constitution Article 1 § 2.....	
La. Constitution Article 1 § 19.....	
La. Codes of Criminal Procedure Article 882.....	
La. Codes of Criminal Procedure Article 862.....	
F.R.Cr.P. Also see; Rule 11.....	
F.R.Cr.P. Rule 11(C)(1) .....	
F.R.Cr.P. Rule 11(C)(5) .....	
F.R.Cr.P. Rule 11(e) and 11(e)4.....	

## OTHER

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**

For cases from **federal courts**:

The opinion of the United States court of appeals appears at **Appendix F** 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 United States district court appears at **Appendix E** 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

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

The date on which the United States Court of Appeals decided my case was **February 21, 2018**.

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

[  ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: **April 18, 2018**, and a copy of the order denying rehearing appears at **Appendix F**

[ ] 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. § 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).

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

- U.S. Constitution, 5<sup>th</sup> Amendment; 14<sup>th</sup> Amendment Federal Rule of Criminal Procedure; Rule 11
- U.S. Constitution. 5<sup>th</sup> Amendment; 14<sup>th</sup> Amendment Federal Rule of Criminal Procedure, Rule 11(c)(1)
- U.S. Constitution. 5<sup>th</sup> Amendment; 14<sup>th</sup> Amendment Federal Rule of Criminal Procedure, Rule 11(c)(5)
- U.S. Constitution. 5<sup>th</sup> Amendment; 14<sup>th</sup> Amendment Federal Rule of Criminal Procedure, Rule 11(e) and (e)4.
- U.S. Constitution. 6<sup>th</sup> Amendment;
- La. Constitution Article 1 § 2
- Louisiana Code of Criminal Procedure Article 882
- Louisiana Code of Criminal Procedure Article 862

## **INTRODUCTION**

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

On application for a Writ of Certiorari from the 15<sup>th</sup> Judicial District Court, for the State of Louisiana.

Now into this Honorable Court comes the defendant, Clarence D. Lewis, moving this Honorable Court to review the trial court's action on a plea agreement that was not voluntary at the end of said case, had into the 15<sup>th</sup> J.D.C. parish of Lafayette, State of Louisiana, Docket No. 130950.

For the following reasons, the 15<sup>th</sup> Judicial District Court judge, caused reversible error, causing also, the Third Circuit Court of Appeal, and the Louisiana Supreme Court to error in its ruling under Docket No. 2014-KH-1917; and the U.S.D.C. WD, under Docket No. 6-15-CV-2167. See: Fed. R. App. P. Rule 4; and Rule 10.

## STATEMENT OF CASE

On 9-22-2011, an illegal plea was forced on the defendant, after he invoked his 5<sup>th</sup> amendment right not to incriminate himself, in statements, or signing of the plea. See: transcript of plea hearing. Pg. 123-132, 133-142. of the court's record. Appendix B.

On 9-26-2011, Petitioner filed a motion to withdraw that plea into the trial court. This motion went un-entertained by the trial court judge. Later, the trial court judge denied that motion without stating a reason for the denial. See: Appendix B, pg. 252-258

On 8-8-2012; defendant had his 1<sup>st</sup> post-conviction hearing, and had no counsel appointed to represent him and at that hearing no issues listed was entertained and that post-conviction application was denied also without a reason to collaterally attack. See Appendix B. Pg. 155-156; 44-58; 92; 174-189; 234-242; of the court's record.

On October 3, 2012, Petitioner filed a Motion to Correct an Illegal Sentence, and that motion was denied on 11-16-2012. Petitioner then filed into the 3<sup>rd</sup> Cir. C.A. on 11-28-2012 for a Writ of Certiorari, DKT. No. 12-KH-01368 and received a ruling on 12-3-2012. This ruling is incorrect and in error; see: Issue's cited by Petitioner. See Appendix A: Pg. 113; 114-122; 145; 94; 597-621; of the court's record.

On 5-22-2013, the 3<sup>rd</sup> Circuit Court of Appeal rendered a ruling stating that Petitioner's Motion to Withdraw Plea; Motion to Dismiss, and Petitioner's Writ of Habeas Corpus, bond revocation and presentation of the charges Petitioner was not arrested for, was not first asserted into the trial court. This ruling is also incorrect and in error. Id. in the record on arraignment, dated 11-30-2010, Petitioner's public defender Travis Moses made a statement to the courts in reference to Petitioner's Motion to Dismiss. This motion was filed on 10-26-2010 by Petitioner in pro se capacity, and when P.D. was appointed he reserved the right to re-file that motion. So the trial court was in attendance of that motion., because it granted re-filing, but public defender was recused by trial court later, and that motion was never re-filed by P.D. See: Appendix B; Pg. 146-149; of the court's records.

Id. in the court minutes dated 9-30-2011, the trial court also ruled on the Motion to Withdraw Plea Agreement, and again the 3<sup>rd</sup> Circuit's ruling "Writ Denied in Part" writ not considered in part" is also incorrect and in error. See: 3<sup>rd</sup> Circuit. DKT. No. KH-11-00101. In this ruling, the court stated that Petitioner's Motion to Dismiss and his Writ of Habeas Corpus was viewed, and the defendant failed to present proof that his claims at arraignment were first presented to the trial court. This ruling was dated 1-26-2011. Now See: 3<sup>rd</sup> Cir. Judgment on 5-22-2013, but filed on 8-27-2012, Docket No. KH-12-00985. Again, the court states that I did not first assert my claims regarding the invalid or defective bill of information; Motion

to Withdraw Plea; Motion to Dismiss; and petition for Writ of Habeas Corpus and the Presentation of Charges I wasn't arrested on for trial, and they were not considered by that court. Id. in the court minutes sent to River Bend Detention Center, dated 10-25-2011, the Motion to Withdraw Plea was presented, so the claims were first asserted into the trial court. See Appendix A; pg. 95; 145; pg. 252; 258.

Id. in the court minutes dated 11-3-2010, public defender, Travis Moses, indicates the Motion to Dismiss, and reserves Petitioner's right to re-file said motion. So again, the 3rd Cir. Ruling under Docket No. KH-12-00985, and Docket No. KH-11-00101, are in error. See Appendix A; pg. 95.

Id. in the 3rd Cir. Docket No. KH-12-00012, judgment rendered on 3-15-2012, dated filed 1-5-12, even the Petitioner's petition for Writ of Habeas Corpus was viewed by the trial court on 1-25-2012, so the 3rd Cir. cannot say the trial court did not view his claims or issues under presentation, and should have considered those motions under 3rd Cir. Docket No. KH-12-00985, making that ruling incorrect and in error. See Appendix A; pg. 95.

Petitioner has shown through proof of documentation how the trial court has caused the 3rd Cir. To commit constitutional errors in viewing his case, and these error's has caused the Louisiana Supreme Court Docket No. KH-2014-1917 App.

C; pg. 2; and the USDC WD Docket No. 6:15-CV-2167, to denied an evidentiary hearing that would have proved through documentation that the Petitioner did assert his claims into the trial court, the appellate court, and the Louisiana Supreme Court, along with the U.S.D.C. WD and should have received the relief sought in his § 2254.

See: Exhibits Attached See Appendix E; Pg. n/a; Exhibit F

1. Plea Hearing Transcript, dated: 9-22-2011, 10 pages, Exhibit (A)
2. Motion to Withdraw Plea, dated: 9-26-2011, 3 pages, Exhibit (B)
3. Motion to Correct An Illegal Sentence, dated: 10-3-12, 8 pages Exhibit (C)
4. Motion to Vacate Conviction and Sentence, 8 pages, Exhibit (D)
5. Copy of Louisiana Supreme Court, entry date: 9-12-14 Appendix C
6. Copy of USDC Wd. Report and Recommendation dated 4-2-17, Exhibits (F); Appendix E
7. Copy of U.S.C.A. 5<sup>th</sup> cir. Order on certificate of appealability; dated: 2-21-2018 Exhibit G
8. Copy of USCA 5<sup>th</sup> Cir. Order on Motion to Reconsider COA; Exhibit G, Dated: 4-18-2018
9. Copy of Defendant's Request for re-hearing. See: USCA record under: 17-30372 Appendix G

Post-conviction Hearing Transcript, 10 pages Exhibit (E)

## **REASONS FOR GRANTING THE PETITION**

### **ASSIGNMENT OF ERROR NO. (1).**

It is respectfully submitted that the trial court, 15<sup>th</sup> Judicial District Court caused reversible error, when it denied the defendant his 5<sup>th</sup>, 6<sup>th</sup>, and 14<sup>th</sup> Amendment protection against self-incrimination and has caused the 3rd Cir. To err in its ruling under Docket No. KH-12-00985; that went into the Louisiana Supreme Court, Docket No. KH-2014-1917 under a Writ of Certiorari.

A complete record was forwarded to the USDC Western District, under Docket No. 6:15-CV-2167 under a petition for federal Writ of Habeas Corpus § 2254, and that court denied his petition without stating a reason for denial so review is warranted under certiorari.

Petitioner then filed into USCA 5<sup>th</sup> Circuit for an appeal. The USCA accepted the filing fee of \$505.00 dollars, then told Petitioner to file a motion for a Court of Appeals, then denied his copy of the appeal, and COA.

The USCA 5<sup>th</sup> circuit, then granted Petitioner's motion for reconsideration on Motion for COA, then later, denied COA, without reason. Delineation is necessary to perfect an appeal going into U.S. Supreme Court. The lower courts has done everything it can to prevent the truth from being brought to light, and a review of this case, along with evidentiary hearings, will prove the truth!

## SUMMARY OF ARGUMENT

Id. in the Federal Rules of Criminal Procedure, Rule 11(e): “A judge is prohibited in participating in a plea negotiation.” In the case at bar, when the Petitioner invoked his 5<sup>th</sup> amendment right not to incriminate himself, the State prosecutor said, “Absolutely not” and the judge said, “You can’t do that sir.” See: Plea Hearing transcript dated 9-22-2011, page 5, and page 137 of the record filings. Also see: Judge stated, “No you’re not,” at that point, the trial court judge impermissibly intervened, and was actually telling the Petitioner that he didn’t have a Fifth Amendment right against self-incrimination.

Now see: Plea transcript in its ending, where the trial court judge states, that the Petitioner has a right against self-incrimination which now contradicts what he did earlier in the transcript. Id. in U.S. v. Casallas, 59 F. 3d 1173, 1178 (11th Cir. 1995), the Judge impermissibly intervened by pointing out to the defendant the difference between potential sentence after trial and plea bargain and advising defendant to confer with his lawyer”: How can the trial court judge tell me “No, you’re not” “going to invoke my Fifth Amendment right against self-incrimination” when the Petitioner actually has that right not to incriminate himself by testifying or by signing a false statement, or by participating in a proceeding that would violate his due process rights that protect him from such injustices, then later, tell me that I have that right not to incriminate myself to justify enforcing the

illegal plea. Rule 11, proscribes any court participation in plea negotiations regardless of whether prejudice is shown or not. Also, according to Fed. R. Crim. P. Rule 11(e)4; Petitioner has a right to withdraw that plea once found illegal, and if the plea is illegal, the sentence is illegal also. Id. In Fed. R. Crim. P. Rule 11(C)(5), the court can reject a plea if: a fair and just reason existed to withdraw plea. Id. in U.S. v. Harrell, 751 F. 3d 1235, 1239 (11th Cir. 2004), judge violated Rule 11(C)(1), by instigating plea agreement, cautioning the defendant, orchestrating negotiation.

## **CONCLUSION**

Id. in the Report and Recommendations that came from U.S.D.C. Western District, under magistrate judge, Carol Whitehurst, starting with the trial court, the 15<sup>th</sup> J.D.C. never gave any reasons for denying; 1<sup>st</sup> the Motion to Dismiss; the Habeas Corpus; the Motion to Withdraw Plea; the Motion to Correct An Illegal Sentence, or movant's 1<sup>st</sup> PCR application or his 2<sup>nd</sup> post-conviction on the issues listed for entertainment by the trial court.

Id. in the record, movant was charged with some very serious charges of forcible rape and home invasion, and the State's record doesn't show where any hospital reports were filed, or no DNA test was conducted on the alleged victim, nor was there any rape kit test performed on the alleged victim by the reporting officers who had taken statements or reports, and the law is firm on DNA testing,

so why wasn't any test conducted to prove innocence or guilt? Petitioner's claim is under the actual innocence doctrine.

The petition for a writ of certiorari should be granted.

### **PRAYER**

Petitioner now prays, that this Honorable Court grant review under his application for Writ of Certiorari; and grant or order the appropriate relief and vacate the plea, the sentence, and the conviction.

Respectfully submitted,

Clarence A. Lewis

Date: 6-28-2018