No. _____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

Albert J. Arrington – PETITIONER

VS.

COMMONWEALTH OF VIRGINIA – RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The Supreme Court of Virginia

PETITION FOR WRIT OF CERTIORARI

Albert J. Arrington #1136703

Augusta Correctional Center

1821 Estaline Valley Road

Craigsville, Virginia 24430

QUESTIONS PRESENTED

I. Did the Supreme Court of Virginia err in finding that the Circuit Court of Henrico did not commit reversible error by continuously granting the Attorney General of Virginia multiple extensions to respond to petitioner's motion adding up to a total of 199 days when this is in direct violation of Rules 55(a), 3:19 - Default Judgment, of the Supreme Court of Virginia which parallels Rules12, 12(a) (1) of the Federal Rules of Civil Procedure, Review Gaglio v. Silverman, 330 BR 40(2005 SD. NY.), Federalist NO.78, and the Attorney General was clearly in violation of the rules prohibiting ex parte communication as cited in *Judicial Inquiry and Review Comm'n v. Shull*, 274 Va. 657, 669-70, 651 S.E.2d 648, 655 (2007) when the Lower Court "made arrangements" with the Attorney General without informing Arrington, see: *U.S. v. McDonnell*, 792 F.3d 478 (C.A.4 (Va.) 2015) citing *United States v. Napue*, 834 F.2d 1311, 1318-19 (7th Cir.1987) which in turn violated petitioner's right to due process of the law under the Fourteenth Amendment of the United States Constitution.

II. Did the Supreme Court of Virginia err in finding that the Circuit Court of Henrico did not commit reversible error by determining that petitioner's Motion to Vacate was untimely under Rule 1:1 of the Supreme Court of Virginia holding that at the expiration of 21 days of the judgment, the court rendering the judgment loses jurisdiction of the case, and that only fraud or a lack of subject-matter jurisdiction can render a judgment void, when the adoption of an unlawful mode of procedure that's allowed by Virginia Code §19.2-221, can also render a judgment void as held *Windsor v. McVeigh*, 93 U.S. 274, 23 L.Ed. 914 (1876) in violation of the petitioner's right to due process of the law under the Fourteenth Amendment of the United States Constitution due to the use of a short form indictment which omitted the element of malice aforethought as described in Virginia Code §18.2-32 for the charge of First Degree Murder.. Federal Rule of Criminal Procedure 7 (c) (1)

III. Did the Supreme Court of Virginia err in finding that the Circuit Court Henrico did not commit reversible error when it determined that Petitioners convictions for murder, carnal knowledge, forgery and uttering, larceny, and credit card fraud and theft which were procured through the "fraudulent pre-trial statements of Jeremy Harrison, and Tanya Vincent" in violation of the Fourteenth Amendment right to due process as held in *Napue v. Illinois*, 360 U.S. 264, 79 S.Ct. 1173, 3 L.Ed.2d 1217 (1959), should not be vacated because they are claims of intrinsic fraud which could have been raised at trial or on appeal.

IV. Did the Supreme Court of Virginia err in finding that the Circuit Court of Henrico did not commit reversible error when it determined that Petitioner's claim that his trial attorney committed various frauds in violation of U.S. V. Throckmorton, 98 U.S. 61 (U.S. Cal. 1878), are merely claims of ineffective assistance, which could have timely been raised in a petition for writ of habeas corpus.

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

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

The opinion of the United States court of appeals 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 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.

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

The opinion of the highest state court to review the merits 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 Henrico County Circuit Court appears at Appendix B to the petition and is
[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

JURISDICTION

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

The date on which the United States Court of Appeals decided my case was_____.

[ ] 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: _____, 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. § 1254(1).

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

The date on which the highest state court decided my case was 2-7-2018. A copy of that decision appears at Appendix **A**.

[X] A timely petition for rehearing was thereafter denied on the following date: 06/28/18, and a copy of the order denying rehearing appears at Appendix **C**.

[ ] 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

Fifth Amendment of the U. S. Constitution – 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.

Sixth Amendment of the U. S. Constitution – 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 been 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.

Fourteenth Amendment of the U. S. Constitution – All persons born or naturalized in the United States, and Subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

On May 3, 2000, a judge of the Circuit Court for Henrico County, Virginia, tried the petitioner, (hereinafter "Arrington"), and convicted him of 1ST degree murder, six counts of forgery, six counts of uttering, two counts of petit larceny, four counts of grand larceny, ten counts of carnal knowledge, credit card theft, three counts of felony credit card fraud, and three counts of misdemeanor credit card fraud. The Court sentenced Arrington to a total of 85 years in prison, with 24 years to be served concurrently, leaving an active sentence of 51 years. The Court entered final judgment on August 30, 2000. (Case Nos. CR0000754 through CR0000789). "Arrington" appealed to the Court of Appeals of Virginia, challenging the sufficiency of the evidence. A judge of that Court refused the petition on April 10, 2001, and a three-judge panel refused the petition on September 27, 2001. (Record No. 2337-00-2).

Arrington then appealed to the Supreme Court of Virginia, which refused the petition on February19, 2002. (Record No. 0121385). The petitioner filed a habeas petition in Henrico County Virginia Circuit Court on February 12, 2003, challenging the legality of his confinement. That Court dismissed the petition on May 7, 2003. (Case No. CL03-239). On July 12, 2016, after the discovery of new evidences, Arrington filed a Motion for Counsel (so he could file a Motion to Vacate) in the Henrico County Virginia Circuit Court seeking to vacate his convictions due to a lack of jurisdiction and fraud. The Circuit Court dismissed his Motion (February 14, 2017) but then also dismissed a Motion to Vacate that Arrington NEVER filed, Arrington then tried to

file his Motion to Vacate Petition with a notice explaining the error of the Circuit Court to no avail. He appealed that dismissal to the Supreme Court of Virginia who also dismissed his appeal on February 7, 2018.

Petitioner was indicted and convicted for the crime of 1st Degree Murder on a short form indictment which read as follows:

"The Grand Jury charges that: Albert J. Arrington Also known as Albert Hughes did on or about July 16, 1999 in the county of Henrico, unlawfully and feloniously kill and murder Selena St. Jules, in violation of Virginia Code §18.2-32, against the peace and dignity of the Commonwealth." This notice is what is known as a short form indictment.

Petitioner was also indicted and convicted for ten counts of alleged carnal knowledge on a notice which read as follows:

"The Grand Jury charges that: Albert J. Arrington Also known as Albert Hughes an adult greater than 25 years of age, did during the period from April of 1999 through July 16, 1999 in the county of Henrico, unlawfully and feloniously carnally know, without the use of force, Tanya Vincent, a child, then fourteen (14) years of age, in violation of Code §18.2-63, against the peace and dignity of the Commonwealth."

Lastly, petitioner was also convicted, *inter alia*, of two counts of petty larceny, four counts of grand larceny, three counts of misdemeanor credit card fraud, four counts of felony credit card fraud. The two principle suspects in this case are Tanya Vincent and Jeremy Harrison. These two suspects killed and robbed Vincent's mother to pay Petitioner for drugs and Vincent admitted to "everything" at Petitioner's trial. (Trial Tr. 196-99 & 217, and Appendix - D Affidavit at ¶ 2).

Arrington was indicted for all crimes on the basis of Jeremy Harrison's pre-trial statements that the checks were stolen and the murder was to cover it up, however, at trial, Harrison admits that "he" cashed the checks to pay Petitioner for drugs.

(Trial Tr. 79, and Appendix - D Affidavit at ¶ 3 & 4). Indeed, the surveillance camera at the grocery store and at the ATM machine shows Jeremy Harrison cashing the checks. (Trial Tr. 79, and Appendix D Affidavit at ¶ 4). All checks were in Jeremy Harrison's name except two that was written to Arrington by the deceased, the Commonwealth "never" proved differently. Petitioner was using the credit card with Ms. St. Jules permission and consent. Ms. St. Jules received and paid off some of the credit card charges before Tanya Vincent and Jeremy Harrison killed her. Arrington never used Ms. St. Jules credit card without her consent or after her death.

Jeffrey Everhart, Arrington's court appointed attorney, knew that Tanya Vincent had admitted to her mother's murder, and did not inform him of it. The alleged indictment for "murder" is dated February 29, 2000, but the (New evidences) final autopsy report determining the death to be a homicide was not issued until April 28, 2000. Dr. Art Shores, the person who conducted the autopsy on Ms. St. Jules, did not agree nor sign the report that "allegedly" determined the death to be murder. (New evidences Appendix-E).

Det. Kuecker charged and arrested Tanya Vincent for her mother's murder and the other crimes because she admitted to them. (Tr. 283-4 & Police Reports). The prosecutor admitted at trial that:

"the original confession of the one who confesses to a crime is to be the confession that is to be true, especially if the same person then tries to change their confession later, because the person would have every reason to lie." (Tr. 386).

Tanya Vincent admitted to killing her mother and then changed her story after the consequences of that behavior became manifest. (Tr. 196-99, 217-18, 221-22). The

prosecutor admitted, after initially denying it, that Tanya Vincent confessed to her mother's murder. (Tr. 376 & 385). Jeffrey Everhart never filed a Motion for Discovery, or acquire expert witnesses in this case, nor did he share with petitioner exculpatory evidence that would have exonerated Arrington at trial.

When it became apparent, at trial, that Jeremy Harrison lied to Det. Kuecker about "stolen checks being the motive for the alleged murder, fraudulent credit card use, etc.," (Tr. 73 & 79), Jeffrey Everhart did not challenge that the indictments had been obtained through fraud. Jeffrey Everhart agreed with the Commonwealth's attorney not to bring up anything that could ruin the Commonwealth's case. (Tr. 384-385).

Jeffrey Everhart did not inspect the indictments for the elements of the crimes, nor for accuracy, nor for compliance with the statutory mandates for service of criminal process. Also, Jeffrey Everhart did not question the Commonwealth about how an indictment(s) was procured for Ms. St. Jules murder on February 29, 2000, while the (New evidences) autopsy report does not even determine that the cause of death, until the Dr. Fierro lied about it being a murder until April 28, 2000.

Dr. Fierro, the Commonwealth's Forensic Pathologist, never determined that the death of Ms. St. Jules was the result of homicide until April 28, 2000; if not for the New evidences, the indictment for murder that was served on Arrington before there was ever a murder declared would not have been known. The Commonwealth's Attorney went in front of a Grand Jury and committed fraud to receive all the Indictments by providing false testimonies, statements, and documents by all its witnesses, not the physical evidences & of an autopsy report.

On July 16, 1999 Michael D. Nicholas of the Henrico Police Dept. responded to the home of Ms. St. Jules, who was found dead.(Tr.21) Dr. Marcella Fierro, the Chief Medical Examiner testifies that she collected the pillow and a piece of the mattress as forensic biological evidence and that she had them sent to the medical examiner's office.(Tr.29-30) The Commonwealth recognized Dr. Fierro as an expert pathologist.(Tr.36) Dr. Fierro states that she only *reviewed* the autopsy report.(Tr.37) she also states that she found the pillow and mattress significant because these two items allowed her to firmly establish that the manner of death was a homicide and the cause of death was asphyxiation and choking at the same time, while her feet, ankles, & hands were being held; and that no one never made these firmly established conclusions until a week prior to trial, which is approximately 9-10 months after the original autopsy of the victim was done by Dr. Shores who never claimed a manner of death.(See Appendix E Autopsy Report, New evidences)

These medical conclusions had not been presented in this case in the 9 months prior to the autopsy and suddenly the Commonwealth managed to fine a medical examiner who would testify and say what they wanted her to say. The Petitioner receives new evidences in the form of a sworn affidavit along with a court copy of the autopsy report, and several other reports that Petitioner never had received because his trial attorney never filed for any types of discoveries & other motions. Petitioner received these new evidences while being incarcerated in the VDOC, this new evidences came well after petitioner has filled past petitions. If not for this new evidences petitioner

would not have known that all of the indictments against Petitioner are frauds. How could the Commonwealth go in front of a grand jury on 2-29-2000 & say to them that Petitioner committed the murder when murder was not declared until April 28, 2000 or that Petitioner was having sex with Ms. Vincent 7 months before they met and while Petitioner was locked-up in Richmond City Jail during those 7 months.

"The Brady Standard is often expressed in three prongs: (1) the evidence at issue is material and favorable to the defendant; (2) the evidence was suppressed by the government, intentionally or not; and (3) the defendant was prejudiced to the point that there is a reasonable probability that the evidence suppressed, had it been disclosed, would have led to a different result for the defendant. The standard can also be split into four prongs, but the substance of the test remains the same. A Brady claim for a new trial is viable only if the prosecution has suppressed, or failed to disclose, the evidence. A failure to disclose evidence due to negligence is as much within the rule as is a deliberate failure to disclose. The prosecutor cannot escape this obligation by saying that he or she overlooked the evidence in question. That the prosecutor may not have personal knowledge of the evidence is not decisive. The government's obligation to disclose evidence under Brady and does not depend on the defendant's due diligence in seeking to discover the evidence but is instead an independent duty; but it is meant to protect the defendant's right to a fair trial.
Brady claims can be a subspecies of newly discovered evidence claims, so that, assuming the Brady materials were in the government's possession, and unknown to defendant at the time of trial, a defendant may assert a Brady claim more than [fourteen] days after the verdict. However, the evaluation of a Brady claim asserted in a motion for a new trial involves an application of the three elements required to prove a Brady violation and not the five-prong test used in typical newly discovered evidence claims". **U.S. v. Quintanilla, 193 F.3d 1139, 1148-1149 (10th Cir. 1999).**

Ms. St. Jules fingernails were tested for DNA. (Tr. 49) and none of Petitioner's DNA was found. Dr. Bryan Shannon, the Commonwealth's Forensic Biologist, as well as a DNA expert, cleared Petitioner as a possible contributor of the DNA that was found under Ms. St. Jules fingernails. (Tr. 230).

Jeremy Harrison and Tanya Vincent, who admitted to the killing, were not cleared as possible contributors of the DNA found on Ms. St. Jules fingernails. (Tr. 230).

There is no physical evidences and or testimonies linking Petitioner to Ms. St. Jules death or any other crimes period.

There are ten judgments entered against Petitioner for alleged carnal knowledge. Every carnal knowledge judgment states that the date of the offense was 4-15-99. Petitioner was in the Richmond City Jail from December, 1998 thru the last week of April, 1999. It is humanly impossible for Petitioner to be at 2 to 3 places at one time. Petitioner proved this to be perjury by the Commonwealth, Ms. Vincent, and Mr. Harrison.

The Commonwealth's Attorney lied by stating that Petitioner was living with Harrison, and having sex with Vincent from April of 1999 thru July of 1999. Petitioner was locked up during most of the time frame they claimed, and he only met both Harrison and Vincent in June of 1999. Ms. Vincent admits this at Petitioner's trial and clearly states that the Commonwealth told her to lie and change her story once Petitioner had the court acknowledge that Mr. Harrison lied about the time frame the Commonwealth told him to say. (Tr.182) Ms. Vincent also admits that petitioner did not know her age. (Tr.182) Petitioner was locked-up in Richmond City Jail from December 1998 the last week of April of 1999. (Tr. 92)

Both Tanya Vincent and Jeremy Harrison admit that Petitioner had no reason to harm Ms. St. Jules and that he had nothing to do with the Murder and other charges, after they first lied because the Commonwealth told them to do so. The credit card usages that Petitioner made with Ms. St. Jules credit cards were authorized by her

and used while she was alive and never reported by her as crimes, as the Commonwealth alleged.

REASONS FOR GRANTING THE PETITION

I. THE SUPREME COURT OF VIRGINIA ERRED IN FINDING THAT THE CIRCUIT COURT OF HENRICO DID NOT COMMIT REVERSIBLE ERROR BY CONTINUOUSLY GRANTING THE ATTORNEY GENERAL OF VIRGINIA MULTIPLE EXTENSIONS TO RESPOND TO PETITIONER'S MOTION ADDING UP TO A TOTAL OF 199 DAYS WHEN THIS IS IN DIRECT VIOLATION OF RULES 55(a), 3:19 - DEFAULT JUDGMENT, OF THE SUPREME COURT OF VIRGINIA WHICH PARALLELS RULES12, 12(a) (1) OF THE FEDERAL RULES OF CIVIL PROCEDURE, Review Gaglio v. Silverman, 330 BR 40(2005 SD. NY.), Federalist NO.78; AND THE ATTORNEY GENERAL WAS CLEARLY IN VIOLATION OF THE RULES PROHIBITING EX PARTE COMMUNICATION AS CITED IN *JUDICIAL INQUIRY AND REVIEW COMM'N V. SHULL*, 274 VA. 657, 669-70, 651 S.E.2D 648, 655 (2007). WHEN THE LOWER COURT "MADE ARRANGEMENTS" WITH THE ATTORNEY GENERAL WITHOUT INFORMING PETITIONER, SEE: *U.S. V. MCDONNELL*, 792 F.3D 478 (C.A.4 (VA.) 2015) CITING *UNITED STATES V. NAPUE*, 834 F.2D 1311, 1318-19 (7TH CIR.1987) WHICH IN TURN VIOLATED PETITIONER'S RIGHT TO DUE PROCESS OF THE LAW UNDER THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION.

The holding of the courts below that petitioner's claim failed to show a reversible error is in square conflict with the decisions of the Virginia Supreme Court found in the case of *Judicial Inquiry and Review Comm'n v. Shull*, 274 VA. 657, 669-70, 651 S.E.2D 648, 655 (2007), and the Fourth Circuit Court of Appeals *U.S. V. Mcdonnell*, 792 F.3d 478 (C.A.4 (Va.) 2015) Citing *United States v. Napue*, 834 F.2D 1311, 1318-19 (7TH CIR.1987), where the court held that:

"Ex parte communications between the government and the court deprive the defendant of notice of the precise content of the communications and an opportunity to respond."

The decision of the lower courts is also in Conflict with fundamental due process as well as the Supreme Court of Virginia's own Rule 3:19 entitled Default Judgment which parallels Rule 12 of the Federal Rules of Civil Procedure which states:

"A defendant shall file pleadings in response within 21 days after service of the summons and complaint upon that defendant..." "Rule 55(a) provides for a default whenever a party has failed to plead or otherwise defend, "as provided by these rules", filing untimely answers does not constitute pleading, as provided by these rules, which set time limits for responding to complaint pursuant to Fed. R. Civ. P. 12(a)(1)." Gaglio v. Silverman, 330 BR 40(2005 SD. NY.). See "Federalist NO.78, Alexander Hamilton said: "To avoid an arbitrary discretion in the courts, it is indispensable that they should be bound down by strict rules in every particular case that comes before them..."

The question presented is of great importance to the public because it affects the fairness of the judicial process in the entire United States. Guidance on the questions is also of great importance to the judiciary in light of those petitioner's that are denied evidentiary hearings in violation of the Fourteenth Amendment. In addition, the question is of great importance to petitioners because it affects their ability to receive fair decisions in proceedings that may result in months or years of continued incarceration.

The Supreme Court of Virginia concluded that there was no reversible error found in petitioner's appeal from the disposition of his Motion to Vacate filed in the lower Circuit Court, but clearly the state court's decision in the case is contrary to the clearly established federal law of *U.S. V. Mcdonnell*, 792 F.3d 478 (C.A.4 (Va.) 2015), and is based on an unreasonable determination of facts in light of the evidence.

In this case, Petitioner filed his Civil Motion to Henrico County Circuit Court and the Office of the Attorney General on July 12, 2016. Petitioner was granted in forma

pauperis status after 81 days on October 3, 2016. He received no notification from the court that they had served the Respondent with a summons and subsequently filed a petition for a writ of Mandamus. On December 29, 2016, Petitioner received a letter from the clerk of the Virginia Supreme Court informing him that the Henrico County Circuit Court had "made arrangements" for the Attorney General to be served on December 5, 2016, which was another 62 days given to the Respondent, for a total of 143 extra days in violation of Virginia Statutes. That's 143 days after the first filing petitioner filed with Henrico County Circuit Court.

Petitioner notes that the Circuit Court never informed him that it had *"made arrangements"* to serve the Attorney General and believes that there must have been some sort of improper ex parte communication between the Henrico County Circuit Court and the Attorney General's office per the letter from the Virginia Supreme court; which states the process that took place with the circuit court and the Respondent. The normal procedure for the court to serve an agent of the state government is by electronic filing, and if that service was *"arranged"* on December 5, 2016, then that is the date of service and not December 8, 2016, as claimed by Respondent. (See Appendix E letter from the Supreme Court of Virginia) The Respondent had been given another 21 days to respond and failed to do so by December 26, 2016; that now brought the total extra days to 164 days.

The Respondent's response date was dated December 27, 2016. Petitioner filed a motion to block said order then but the judge of that court never even read Petitioner's motion because the order was signed before Petitioner's response brief was received

by the court. On December 30, 2016 the same day that Petitioner received Respondent's request for extension of time, Petitioner mailed his response brief to block said request; but the order was signed on January 2, 2017. Because December 30, 2016 fell upon a Friday, the order was signed immediately on that next Monday, not even giving the Petitioner a chance to respond. Respondent was then given to January 30, 2017; bringing his time to respond to 194 days. Respondent then requested another 5 day extension which was granted and then brought his total time of violating statutes, law, and days to respond to a total of 199 days.

Virginia Supreme Court Rule 3:2 states in relevant part:

"Commencement. A civil action shall be commenced by filing a complaint in the clerk's office. When a statute or established practice requires, a proceeding may be commenced by a pleading styled 'Petition.' Upon filing of the pleading, the action is then instituted and pending as to all parties Respondent thereto." (Emphasis added), see also Rule 3:8 (Emphasis added)

Code of Virginia §8.01-694 states in relevant part:

"In any action in which any defendant is the Commonwealth or one of its officers, employees, or agents, upon the grant of in forma pauperis status or receipt of the filing fee and cost, the court shall serve the Office of the Attorney General, they shall have no fewer than thirty days from receipt in which to file responsive pleading." (Emphasis added).

Under Rule 3:2, of the Rules of the Virginia Supreme Court, Petitioner's Motion had been pending against the Respondent since July 12, 2016. Under Code of Virginia §8.01-694, the court had a statutory obligation to serve the Respondent. Because the Respondent has had plenty of time to respond to Petitioner's complaint. Petitioner was then entitled to Default Judgment on his claims pursuant to Supreme Court Rule 3:19 (a) which states:

"A defendant who fails timely to file a responsive pleading as prescribed in Rule 3:8 is in default. A defendant in default is not entitled to notice of any further proceedings in the case, including notice to take depositions, except that written notice of any further proceedings shall be given to counsel of record, if any. The defendant in default is deemed to have waived any right to trial of issues by jury.

In *United States v. McDonnell,* 792 F.3d 520, (4th Cir. 2015) the Fourth Circuit quoted *United States v. Napue,* 834 F.2d 1311, 1318-19 (7th Cir.1987) to elaborate on the problems presented by ex parte communications between a court and the Government:

Ex parte communications between the government and the court deprive the defendant of notice of the precise content of the communications and an opportunity to respond. These communications thereby can create both the appearance of impropriety and the possibility of actual misconduct. Even where the government acts in good faith and diligently attempts to present information fairly during an ex parte proceeding, the government's information is likely to be less reliable and the court's ultimate findings less accurate than if the defendant had been permitted to participate. However impartial a prosecutor may mean to be, he is an advocate, accustomed to stating only one side of the case. An ex parte proceeding places a substantial burden upon the trial judge to perform what is naturally and properly the function of an advocate.

The trial court here was in clear error to allow for the Respondent to repeatedly file for extensions and subsequently grant those extensions to the effect of giving the Respondent 199 days to respond to petitioner's complaint. Therefore, Respondent's Motion to Dismiss should not have been accepted by the lower court, and the action should have been ruled upon its merits free from the Respondent's influence upon the Court's finding.

II. DID THE SUPREME COURT OF VIRGINIA ERR IN FINDING THAT THE CIRCUIT COURT OF HENRICO DID NOT COMMIT REVERSIBLE ERROR BY DETERMINING THAT PETITIONER'S MOTION TO VACATE WAS UNTIMELY UNDER RULE 1:1 OF THE SUPREME COURT OF VIRGINIA, HOLDING THAT AT THE EXPIRATION OF 21 DAYS OF THE JUDGMENT THE COURT RENDERING THE JUDGMENT LOSES JURISDICTION OF THE CASE, AND THAT ONLY FRAUD OR A LACK OF

SUBJECT-MATTER JURISDICTION CAN RENDER A JUDGMENT VOID, WHEN THE ADOPTION OF AN UNLAWFUL MODE OF PROCEDURE THAT'S ALLOWED BY VIRGINIA CODE §19.2-221, CAN ALSO RENDER A JUDGMENT VOID AS HELD IN *WINDSOR V. MCVEIGH*, 93 U.S. 274, 23 L.ED. 914 (1876) WHICH IS IN VIOLATION OF THE PETITIONER'S RIGHT TO DUE PROCESS OF THE LAW UNDER THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION VIA THE USE OF A SHORT FORM INDICTMENT WHICH OMITTED THE ELEMENT OF MALICE AFORETHOUGHT AS DESCRIBED IN VIRGINIA CODE §18.2-32 FOR THE CHARGE OF FIRST DEGREE MURDER. Federal Rule of Criminal Procedure 7 (c) (1)

The holding of the courts below that petitioner's claim failed to show a reversible error is in square conflict with the decisions of this Court found in the case of *Windsor v. McVeigh, 93 U.S. 274, 23 L.ED. 914 (1876)* where the court held that:

"A court may possess jurisdiction of a cause, of the subject-matter, and of the parties, but is still limited in its modes of procedure and in the extent and character of its judgment, in that it must act judicially in all things and cannot then transcend the power conferred by law."

The question presented is of great importance to the public because it affects the fairness of the judicial process in the entire United States. Guidance on the questions is also of great importance to the judiciary in light of those petitioner's that are prosecuted via a mode of procedure that the Court could not lawfully adopt in violation of the Fourteenth Amendment. In addition, the question is of great importance to petitioners because it affects their ability to receive fair decisions in proceedings that may result in months or years of continued incarceration.

The petitioner has raised constitutional challenges to each of the judgments entered against him. The Attorney General avoided the claims by misapplying Rule 1:1 to this civil action. The trial court abused its discretion and committed reversible error

when it for no judicially justifiable reason, ignored the Petitioner's pleading in the submitted *"Brief in Opposition"* that affirmatively refutes the opposing parties stance in their *"Motion to Dismiss"*, and then relied upon that Motion to Dismiss to formulate its Final Order. When analyzed under federal due process mandates, each of the judgments being challenged are void. The Court erred by not analyzing the claims.

This Court has held that:

"Though the court may possess jurisdiction of a cause of the subject-matter, and of the parties, it is still limited in its modes of procedure, and in the extent and character of its judgments. It must act judicially in all things, and cannot then transcend the power conferred by the law." Windsor v. McVeigh, 93 U.S. 274 (1876).
The Commonwealth adopted *Windsor* in *Anthony v. Kasey*, 83 Va. 338 (1887), and applied it as recently as the year 2000 in *Singh v. Mooney*, 261 Va. 48, 52 (2001), where it held:

"An order is void ab initio if entered by a court in the absence of jurisdiction of the subject-matter or over the parties, if the character of the order is such that the court had no power to render it or if the mode of procedure used by the court was one that the court could "not lawfully adopt." Evans v. Smyth-Wythe Airport Comm'n, 255 Va. 69 (1998) (quoting Anthony v. Kasey, 83 Va. 338 (1887). The lack of jurisdiction to enter an order under any of these circumstances renders the order a complete nullity and it may be "impeached directly or collaterally by all persons, anywhere, at any time, or in any manner."803.1, #9 Barnes v. American Fertilizer Co., 144 Va. 692 (1925). Consequently, Rule 1:1 limiting the jurisdiction of the trial court to 21 days after the entry of the final order does not apply to an order which is void ab initio." Furthermore, the Supreme Court of Virginia holds that: "a motion to vacate is an appropriate procedural device to challenge a void conviction. See Williams v. Commonwealth, 263 Va. 189 (2002); Commonwealth v. Southerly, 262 Va. 294 (2001). "Additionally, we stated in Virginia Dept. Corr. v. Crowley, 227 Va. 254 (1984) that "[w]ant of subject-matter jurisdiction may be raised by motion." Accord Nolde Bros. v. Chalkley, 184 Va. 553 (1945), aff'd on other grounds sub nom. Feitig v. Chalkley, 185 Va. 96 (1946); Thacker v. Hubard, 122 Va. 379 (1918). A circuit court may correct a void or unlawful sentence at any time. Powell v. Commonwealth, 182 Va. 327 (1944); See Rawls v. Com., 278 Va. 213 (Va. 2009). All of these cases point to the undeniable conclusion that this Court has jurisdiction to hear this motion because it challenges subject-matter jurisdiction and proves fraud. The subject-matter jurisdiction of all courts in the

Commonwealth is specified in Va. Code Ann § 19.2–239 and §17.1-513 show's an objection to subject matter jurisdiction may be raised in any Court at any time.

A Judgment can be attacked at any time, not the Sentencing. Therefore Jurisdiction is still in the power of the trial court. Jurisdiction embraces several concepts: Jurisdiction over a person and Subject Matter Jurisdiction; the authority granted through the U.S. Constitution and/or Statues adjudicates a class of cases and/or controversies, and only Subject Matter Jurisdiction cannot be wavered. The lack of Subject Matter Jurisdiction can be raised at any time and/or in any manner before any court. *Nelson v. Warden, 262 VA 276, 552 S.E. 2d 73 (2001).*

The above settled law demonstrates that there is more than just *"subject-matter jurisdiction and fraud"* that will make a judgment void. The lower court erred when it stated that:

"An otherwise final judgment is subject to collateral attack only if it was rendered by a court which lacked jurisdiction to do so or was secured by extrinsic fraud."

That statement is an error of law. This court recognizes this principle of law in *"Rawls v. Comm., 278 Va. 213 (Va. 2009).*

"An order is void *ab initio* if entered by a court in the absence of jurisdiction of the subject-matter or over the parties, if the character of the order is such that the court had no power to render it or if the mode of procedure used by the court was one that the court could not lawfully adopt." *Evans v. Smyth-Wythe Airport Comm'n, 255 Va. 69 (1998)* (quoting *Anthony v. Kasey, 83 Va. 338 (1887).*

The lack of jurisdiction to enter an order under any of these circumstances renders the order a complete nullity and it may be

"impeached directly or collaterally by all persons, anywhere, at any time, or in any manner." Barnes v. American Fertilizer Co., 144 Va. 692 (1925). Consequently, Rule 1:1 limiting the jurisdiction of the trial court to 21 days after the entry of the final

order does not apply to an order which is void *ab initio*." *Singh v. Mooney, 261 Va. 48, 52 (2001).* (Emphasis added). Rule 1:1 does not apply to this civil action. The Supreme Court of Virginia was in error to hold otherwise.

In Assignment of Error 2 of his Virginia Supreme Court appeal, petitioner asserted that he was tried by a Judge on May 2-3, 2000. He was convicted, *inter alia*, of first-degree murder and the notice reads as follows:

"The Grand Jury charges that: Albert J. Arrington Also known as Albert Hughes did on or about July 16, 1999 in the county of Henrico, unlawfully and feloniously kill and murder Selena St. Jules, in violation of Virginia Code §18.2-32, against the peace and dignity of the Commonwealth."

This notice is what is known as a short form indictment. This mode of procedure is unconstitutional. The judgment is void because the notice delivered to Petitioner for the alleged violation of Code of Virginia §18.2-32 does not meet the Federal constitution's Fifth Amendment's Due process Clause or the Sixth Amendment's Notice Clause mandates to sustain a judgment for first-degree murder, and because there is no averment of fact in the notice for the grade of the offense that judgment was entered for.

This mode of procedure is "*unconstitutional*" and is "*reversible error*". The Commonwealth entered judgment against petitioner for *1st* degree murder on an indictment that does not allege the *statutory* or *common law elements* of *1st* degree murder. This is so, because the Commonwealth's prosecutors think that they are not required to allege *malicious intent, premeditation, or one of the other statutorily "enumerated" forms of 1st degree murder in order to distinguish it, as such, from 2nd degree which is included in the same statute. Justice SCALIA states:*

"It is well established that an indictment must allege all the elements of the charged crime. Almendarez-Torres v. United States, 523 U.S. 224, 228, 118 S.Ct. 1219, 140

L.Ed.2d 350 (1998); United States v. Cook, 17 Wall. 168, 174, 21 L.Ed. 538 (1872). As the Court acknowledges, it is likewise well established that "attempt" contains two substantive elements: the intent to commit the underlying crime, and the undertaking of some action toward commission of that crime. See ante, at 787 (citing 2 W. LaFave, Substantive Criminal Law § 11.2(a), p. 205 (2d ed.2003) (hereinafter LaFave), E. Coke, Third Institute 5 (6th ed. 1680), and Keedy, Criminal Attempts at Common Law, 102 U. Pa. L.Rev. 464, 468 (1954)). See also Braxton v. United States, 500 U.S. 344, 349, 111 S.Ct. 1854, 114 L.Ed.2d 385 (1991). It should follow, then, that when the Government indicts for attempt to commit a crime, it must allege both that the defendant had the intent to commit the crime, and that he took some action toward its commission. Any rule to the contrary would be an exception to the standard practice." The 5th Amendments Grand Jury Indictment Clause applies to the states as well, so Virginia can no longer argue that the Indictment requirement is "only statutory." In *U.S. v. Resendiz-Ponce*, No. 05-998, (2006), Justice SCALIA states:

"Would we say that, in a prosecution for first-degree murder, the element of "malice aforethought" could be omitted from the indictment simply because it is commonly understood, and the law has always required it? Surely not."

In Virginia, the legislature has adopted an unlawful criminal procedure by implementing COV §19.2-221. This statute provides that one can be charged with statutory first-degree murder without alleging in the indictment the elements of statutory first-degree murder. This issue was exhaustively dealt with in *Commonwealth v. Peas, 43 Va. 629 (1834),* where the Va. Supreme Court held that:

"Every offence for which a party is indicted, is supposed to be prosecuted, as an offence at common law, unless the prosecutor, by reference to a statute, shows, that he means to proceed upon the statute." See also: *Federal Rule of Criminal Procedure 7 (c) (1) clearly directs that: "The indictment(s) or information must be a plain, concise, and definite written statement of the essential facts constituting the offense charged and must be signed by an attorney for the government." An essential element of a crime--one that affects a substantial right--is "one whose specification ... is necessary to establish the very illegality of the behavior and thus the court's jurisdiction," U.S. v. Hooker, 841 F.2d 1225, (C.A.4 (Va.) 1988).*

The prosecutor proceeded against Petitioner, in this case, under §18.2-32. Therefore, Petitioner must necessarily have been charged with one of the "enumerated" forms of first-degree murder set forth in §18.2-32, and he was not. This defect in charging a statutory crime invalidates the indictment and violates the Fifth Amendment's Due Process Clause:

(See: *Hansford v. Angelone,* 244 F.Supp.2d 606 (E.D. Va. 2002) Cert. den. 123 S. Ct. 2223. *"Failure to notify a defendant of the elements of the charges against him violates the Fifth Amendment due process clause").*
The U.S. Supreme Court has defined a Void judgment as:

"the rare instance where a judgment is premised either on a certain type of jurisdictional error or on a violation of due process that deprives a party of notice or the opportunity to be heard." United Student Aid Funds, Inc. v. Espinosa, 559 U.S. 260 (U.S. 2010).

This is a facial challenge to a void judgment invoking the Federal Due Process Clause. Whether the mode of procedure prescribed by this statute, [§19.2-221, in this case] and followed in this case, was due process of law, depends upon the question whether it was in substantial accord with the law and usage in England before the Declaration of Independence, and in this country since it became a nation, in similar cases. See *Murray v. Hoboken Co., 18 How. 272, 277; Dent v. State of West Virginia, 129 U. S. 114, 124; Lowe v. State of Kansas, 163 U.S. 81, (U.S. Kan. 1896).*

Under Virginia law, common law murder is defined as:

"the unlawful killing of another with malice aforethought." Stapleton v. Commonwealth, 123 Va. 825, (1918). Premeditation, or specific intent to kill, distinguishes common law murder in the first degree from common law murder in the second degree; proof of this element is essential to conviction of the former offense, and the burden of proof clearly rests with the prosecution. *Shiflett v. Commonwealth, 143 Va. 609. Jefferson v. Commonwealth, 214 Va. 432. (See: Jackson v. Virginia, 443 U.S. 307 (1979))".*

In *Hurd v. Commonwealth,* 159 Va. 880, (Va. 1932), the Supreme Court of Virginia observed that:

"The forms of indictment for murder and manslaughter set out in Code, section 4865, [now 19.2-221] as amended by the Acts of 1930, chapter 238, were recommended to the legislature by the judicial council and the Virginia State Bar Association. See Judicial Council Report for 1930, page 115, and Minutes of the Virginia State Bar Association, vol. 41, page 116; American Law Institute Code of Criminal Procedure, sections 157, 159. "The object of these forms of indictment was to eliminate the excessive verbiage used in the old common law forms and to substitute therefore a short, simple statement of the offense charged." (Emphasis added).

In the case of *Thompson v. Commonwealth,* 20 Gratt. [61 Va.] 724, 730, (1870) the Va. Supreme Court says:

"'It is not necessary, in consequence of the statute defining the different degrees of murder, and subjecting them to different punishments, to alter the form of indictments for murder in any respect, [which required malice to be pled in the indictment], nor to charge specially such facts as would show the offense to be murder in the first degree. If, therefore, any proposition of law can be considered as settled by decision and no longer open to debate, this is one of them.' See Kibler v. Commonwealth, 94 Va. 807, (1897). *See also, Wicks v. Com.,* 2 Va.Cas. (4 Va.) 387 (1824); *Commonwealth v. Miller,* 1 Va.Cas. (3 Va.) *310; Livingston v. Commonwealth,* 14 Gratt. (55 Va.) 592. (1857)"

The Va. Supreme Court, in holding thus, has failed to acknowledge that when the court spoke to it not being necessary *"to alter the form of indictments for murder in any respect,"* it did so within the backdrop of the clearly established common law pleading standards that existed at that time. At that time, in order to be charged with murder it was absolutely required to allege that the killing was committed with *"malice aforethought."*

In *Commonwealth v. Levi Gibson,* 2 Va. Cas. (4 Va.)70, 74, it was said:

"The Court is further of opinion, that in indictments for murder it is necessary to aver that the person indicted 'of his malice aforethought' killed and murdered the deceased."

This is the form of indictment that the Court was speaking to in Hurd. The definition of murder in Virginia has not changed, and Petitioner concedes that if the indictment charging him stated; *"did unlawfully and feloniously kill and murder Selena St. Jules with malice aforethought,"* that it could have been argued before the Acts of October 1, 1975, that there was a first degree murder charge as long as the Commonwealth did not cite §18.2-32. However, after the Acts of October 1, 1975, there is no more common law *pleading* for first-degree murder if the statute is cited. See: *Com. v. Peas, supra.* The statute (§18.2-32) specifically denotes that:

"All murder other than capital murder and murder in the first degree is murder of the second degree and is punishable by confinement in a state correctional facility for not less than five nor more than forty years."

The indictment given to Petitioner does not contain any averment of fact to bring it within the scope of common-law or statutorily enumerated first-degree murder. This principle is clearly recognized in *Hall v. Commonwealth,* 8 Va. App. 350 (Va. App. 1989), in which the Court held that:

"Where a statute contains more than one grade of an offense and each grade carries a different punishment, the indictment must contain an assertion of the facts essential to the punishment sought to be imposed." See: McKinley v. Commonwealth, 217 Va. 1, 4 (1976).

This rule stems from the basic guarantee that the accused is entitled to prepare adequately for his defense. See: *Wilder v. Commonwealth,* 217 Va. 145, 147 (1976). The §18.2-32 statute contains more than one grade of the statutory murder offense and each grade carries a different punishment. It was previously established in this

Court that, whether an indictment for murder be of one degree or another is to be determined from an inspection of the indictment itself, *Thurman v. Commonwealth,* 107 Va. 912, (Va. 1908). This Court has also held that "Malice," either express or implied, is of the essence of murder. *Briggs v. The Commonwealth,* 82 Va. 554. It is the element that distinguishes it from manslaughter. That one word *"malice"* is the touchstone by which the grade of the offence must be determined. *Moxley v. Commonwealth,* 195 Va. 151 (Va.1953).

Petitioner was not charged with a common law malicious killing, which could have been construed to be first-degree murder, nor was he charged with the statutorily prescribed "enumerated" first-degree murder. In this case, there is no allegation whatsoever of an unlawful killing with malice, nor is there an allegation of an unlawful killing with malice and one of the enumerated forms of statutory first degree murder set forth in the §18.2-32 statute. Upon inspection of the indictment charging Petitioner, the Court should keep firmly in mind that the Va. Supreme Court holds that:

"Every person accused of the commission of a crime and brought into court as a defendant has the right to demand and to be told in plain language the complaint against him, and where intent is an element of the crime charged, it must be set out in the indictment." (Emphasis added), *Spear v. Commonwealth,* 221 Va. 450 (Va. 1980).

With that in mind, this Court should also consider that the Va. Supreme Court also holds that, "Malicious intent is an element of both first and second degree murder. What elevates the lesser crime to the greater grade and invokes the heavier penalty is the element of premeditation." See: *Baker v. Commonwealth,* 218 Va. 193 (Va. 1977).

The U.S. Supreme Court holds that crimes are made up of acts and intent, and that under the Sixth Amendment's notice clause; these must be set forth with reasonable particularity, of time, place, and circumstance. *U.S. v. Cruikshank*, 92 U.S. 542, 558 (1876). Petitioner was neither charged with a malicious intent nor was he charged with premeditation. How then can the trial court determine that Petitioner was charged with first-degree murder? This Court observed above in *Hurd* that:

"The object of these forms of indictment was to eliminate the excessive verbiage used in the old common law forms and to substitute therefore a short, simple statement of the offense charged. (Emphasis added). Again, nowhere is it alleged, nor could it be, that the statute relieved the Commonwealth from its obligation to inform Petitioner of the essential elements of the crime for which they intended to impose punishment, which is what the Sixth Amendment Notice Clause and the Fifth Amendment Due Process Clause demands.

The Va. Supreme Court has observed that, "In Minor's Synopsis of the Law of Crimes and Punishments," the constituents essential to the validity of the indictment are thus set forth:

"All the constituents of the offense, whether common law or statutory, must be set forth with precision. Hence it is safe to set forth a statutory offense in the very words of the statute, and in no case can argument or inference supply the total want of averment of an essential part of the offense, although the use of synonymous words will suffice." 'Citing authorities. Evans v. Com., 183 Va. 775, (Va. 1945).

An indictment charging a crime which has intent as an essential element and does not include the element of intent is so defective as to deprive the court of jurisdiction. The Va. Supreme Court holds that:

"We need not advert to the evidence because the indictment, under our recent cases, is not sufficient." See: Williamson v. Commonwealth, 165 Va. 750; *Lewis Merritt v. Commonwealth*, 164 Va. 653, 180 S.E. 395; *Tompkins v. Com.*, 177 Va. 858 (Va. 1941); *Wilder v. Commonwealth*, 217 Va. 145, 147 (1976).

The U.S. Supreme Court when addressing the essential requisites of an indictment states:

"The general, and with few exceptions, of which the present case is not one, the universal, rule, on this subject, is that all the material facts and circumstances embraced in the definition of the offense must be stated, or the indictment will be defective. No essential element of the crime can be omitted without destroying the whole pleading. The omission cannot be supplied by intendment or implication, and the charge must be made directly, and not inferentially, or by way of recital. U.S. v. Hess, 124 U.S. 483 (U.S.N.Y. 1888)." (Emphasis added). *Justice SCALIA states: This strikes me as certainly irrelevant, and incorrect to boot. It is irrelevant because, as I have just discussed, we have always required the elements of a crime to be explicitly set forth in the indictment, whether or not they are fairly called to mind by the mere name of the crime. Our precedents make clear that the indictment must "fully, directly, and expressly, without any uncertainty or ambiguity, set forth all the elements necessary to constitute the offence intended to be punished."* U.S. v. Resendiz-Ponce, NO. 05-998 (2006)

The only conclusion that can be derived from these settled principles of law is that the Commonwealth has adopted a procedure when charging the crime of murder which cannot lawfully be adopted. This is so because the Commonwealth's prosecutors think that they are not required to allege malicious intent, premeditation, or one of the other statutorily "enumerated" forms of first-degree murder in order to distinguish it, as such, from second degree which is included in the same statute. That practice, in and of itself, changes the nature and character of the charged offense against Petitioner, because there is also an unlawful killing, under Virginia law, that does not have the element of malicious intent, premeditation, or one of the other "enumerated" forms of first-degree murder, namely manslaughter, which is all that the information in the indictment charging Petitioner

puts him on notice for under the U.S. Constitutions' Sixth Amendment's Notice Clause and Fifth Amendment's Due Process Clause.

The trial court entered judgment against Petitioner for first-degree murder on an indictment that does not allege the statutory or common law elements of first-degree murder. This is an unlawful procedure that no court in the United States can lawfully adopt, and in the criminal case against Petitioner, it renders the trial court's judgment for first-degree murder void *ab initio.* Here the Petitioner challenges the constitutionality of Code of Virginia § 19.2-221. This type of challenge requires a *"de novo review"* of the statute in question because the Petitioner has alleged that the statute is a procedure that the courts of Virginia *"cannot"* lawfully adopt because of the Federal right to due process, notice, an indictment, etc. The failure to address the claim is *"reversible error."*

Petitioner also challenges the statutory interpretation of Code of Virginia §19.2-220. That statute requires an indictment to allege that the crime happened on or about a *"certain date."* The Petitioner was charged with ten counts of carnal knowledge, and not one of the ten indictments contains a *"certain date."* Failure to adhere to statutory mandates severs the jurisdiction of the court because it violates the Federal right to due process of law. No state Rule can be utilized to validate a judgment entered in violation of the Federal right to due process. Rule 1:1 does not legitimize these ten void judgments. The court's citing Rule 1:1 as a bar to this civil action is an error. And the new evidences also proves that the Commonwealth Attorneys knew that on April 15, 1999 Petitioner was detained in Richmond City jail, and that they also

admitted that Petitioner did not even meet Ms. Vincent until late June of 1999, as well as Ms. Vincent telling the court at trial that the Commonwealth Attorneys told her to lie about Petitioner knowing her age. (Tr. 182)

The Attorney General relies on outdated and overturned law to avoid challenges to the indictments. He claims that *Frye v. Cunningham,* 205 Va. 671 (1964), holds that *"there is no constitutional right that felonies be tried by indictment."* That holding is contrary to the U.S. Supreme Court's holdings regarding the First Eight Amendments of the U.S. Constitution and their applicability to the states through the Fourteenth Amendment's Due Process Clause. See: *McDonald v. City of Chicago, Ill.,* 561 U.S. 742 (U.S. 2010). *See also, Griffin v. California,* 380 U.S. 609, 611 (1965). Because Virginia has provided a mode of procedure for one to be indicted, if a person does not forfeit his right by waiving the right to be indicted, then the Fifth Amendment attaches through the Fourteenth Amendment. Therefore Petitioner does in fact have a constitutional right to be indicted via due process, and this claim should have been ruled upon its merits by the lower court.

III. DID THE SUPREME COURT OF VIRGINIA ERR IN FINDING THAT THE CIRCUIT COURT HENRICO DID NOT COMMIT REVERSIBLE ERROR WHEN IT DETERMINED THAT PETITIONERS CONVICTIONS FOR MURDER, CARNAL KNOWLEDGE, FORGERY AND UTTERING, LARCENY, AND CREDIT CARD FRAUD AND THEFT WHICH WERE PROCURED THROUGH THE "FRAUDULENT PRE-TRIAL STATEMENTS OF JEREMY HARRISON, AND TANYA VINCENT" IN VIOLATION OF THE FOURTEENTH AMENDMENT RIGHT TO DUE PROCESS AS HELD IN *NAPUE V. ILLINOIS*, 360 U.S. 264, 79 S.CT. 1173, 3 L.ED.2D 1217 (1959), SHOULD NOT BE VACATED BECAUSE THEY ARE CLAIMS OF INTRINSIC FRAUD WHICH COULD HAVE BEEN RAISED AT TRIAL OR ON APPEAL.

The holding of the courts below that petitioner's claim failed to show a reversible error is in square conflict with the decisions of the United States Supreme Court found in the case of *Napue v. Illinois*, 360 U.S. 264, at 269 (1959), where the court held that:

"a conviction obtained through use of false evidence, known to be such by representatives of the State, must fall under the Fourteenth Amendment, (citations). The same result obtains when the State, although not soliciting false evidence, allows it to go uncorrected when it appears." See also State v. Melendez, 291 Conn. 693 (2009)

The question presented is of great importance to the public because it affects the fairness of the judicial process in the entire United States. Guidance on the questions is also of great importance to the judiciary in light of those petitioner's that are indicted with the use of false testimony in violation of the Fourteenth Amendment. In addition, the question is of great importance to petitioners because it affects their ability to receive fair decisions in proceedings that may result in months or years of continued incarceration.

One of the leading cases in support of petitioner's claims is *U.S. v. Basurto,* C.A.9th, 1974, 497 F.2d 781, 785-786, *where the U.S. Supreme Court said:*

"We hold that the Due Process Clause of the Fifth Amendment is violated when a defendant has to stand trial on an indictment which the government knows is based on perjured testimony, when the perjured testimony is material, and when jeopardy has not attached. Whenever the prosecutor learns of any perjury committed before the grand jury, he is under a duty to immediately inform the court and opposing counsel -- and, if the perjury may be material, also the grand jury -- in order that appropriate action may be taken." See also Napue v. Illinois, 360 U.S. 264 (1959)

In *Mooney v. Holohan* Requirement of *"due process"* is not satisfied by mere notice and hearing if state, through prosecuting officers acting on state's behalf, has contrived conviction through pretense of trial which in truth is used as means of

depriving defendant of liberty through deliberate deception of court and jury by presentation of testimony known to be perjured, and in such case state's failure to afford corrective judicial process to remedy the wrong when discovered by reasonable diligence would constitute deprivation of liberty without due process. U.S.C.A. Const. Amend. 5,14; *c.o.v. 8.01-428 (a), (d)* After receipt of new evidences it became clear that at the Grand Jury Hearing the indictments were obtained by the utilization of the perjured pre-trial statements of Jeremy Harrison, Tanya Vincent, all other witnesses, and documents/reports. At that point in the proceeding, it became necessary to *void* the indictments and stop the proceeding against petitioner. The prosecutor did not do that, rather, he continued to prosecute fraudulently obtained indictments in violation of the laws of the Commonwealth and the United States. The resulting judgments procured by such means are *void ab initio.*

New evidences was discovered to show that the prosecution sought an indictment for Ms. St. Jules murder on February 29, 2000, while the autopsy report does not even determine that the cause of death was murder until April 28, 2000. (See Appendix E Autopsy Report, and Appendix D Aff. ¶17). This shows that the Commonwealth wrongly went after a murder indictment when murder was not even pronounced by the expert witness Dr. Shores, who performed the autopsy back in July '1999. But instead got Dr. Ferrio who through new evidences was found out to never have performed an autopsy and tested DNA evidences she is not qualified to test.

This court in reversing a conviction due to prosecutorial misconduct, observed 75 years ago that:

"the prosecutor is the representative of a sovereignty whose interest in a criminal prosecution is not that it shall win a case, but that justice shall be done. Thus, while a prosecutor may strike hard blows, the High Court admonished that he/she is not at liberty to strike foul ones."

In the instant case, the prosecution never places petitioner at the victim's house at the time of the murder. According to the Commonwealth medical examiner, the murder was to have happened somewhere between 11pm on July 15, 1999 and 3am on July 16, 1999. The only factual evidence shown at petitioner's trial were: 1) The Commonwealth's key witnesses Harrison and Vincent who both admit to being at the victim's house during the time of the murder together and that petitioner was not with them, nor had anything to do with anything. (Tr. 219)

Vincent *conceded* that the murder accrued before they (Vincent and Harrison) left the victim's house (Tr. 219), and that they were together from the early evening until 3:30am on July 16, 1999 after the murder happened (Tr. 383-384). Vincent confessed several times to killing the victim (Tr. 196-199, 217-218, 221-222), and that she assaulted the victim the night she killed the victim (Tr. 196, 199) and that she attacked/assaulted petitioner early that day once he found out her age and broke it off with her, which prompted her to *attack petitioner* with a knife cutting petitioner, biting him, and scratch him. While petitioner passively defended himself never even hitting someone who in essence had been trying to kill him. (Tr. 282)

Vincent also stated that she has blackouts at any time, she hears voices in her head talking to her, that she has attacked her mother (the victim) before and has been charged before over those incidents, that she attacked Arrington with a knife early

that day before she killed the victim, and that she has memory loss and she lies when it helps her. (Tr. 198-201, 219) Never had Vincent been tested by my lawyer after this.

The Commonwealth fabricated evidences to make the petitioner appear to be guilty of the murder and all other indictments against him. In fact the Commonwealth even admitted that they knew all along that Vincent did confess to the murder. (Tr. 376, and 385) It is the Commonwealth who said as follows:

"The original confession of the one who confesses to a crime is to be the confession that is to be true, especially if the same person(s) then tries to change their confession later because the person would have every reason to lie." (Tr. 386)

By the Commonwealth's own admission, Vincent and Harrison's confessions of killing the victim are to be accepted as truth. (Tr.376-385) The Commonwealth again states that:

"the Original Confession of the one who Confesses to a crime is to be the Confession that Must be TRUE, esp. if the same person tries to change their Confession later because the person would have every reason to then LIE! (Tr. 386)

This clearly proves that the Commonwealth knowingly used perjured testimony and committed Extrinsic Fraud.

A "...judgment of a court, procured by extrinsic fraud, i.e., by conduct which prevents a fair submission of the controversy to the court, is void and subject to attack, direct or collateral, at any time." (Jones v. Willard, 224 Va. 602, 607, 299 S.E.2d 504, 508 (1983)).

Another example of the Prosecution's malice, lies, frauds, and selective prosecution are the false Carnal Knowledge Indictments. The Commonwealth again went to a Grand Jury and lied about alleged facts that allowed them to once again get known "false indictments." Vincent and Harrison lied by stating that the time frame of the Indictments were the time frame that Petitioner was living with Harrison, and

having sex with Vincent (February 1999 to July 1999. Tr. 92 and Police Report) But Petitioner had to tell his trial attorney (who did not file for any motions to know the evidences, and Never spoke to Petitioner except two days before his trial) to show Petitioner's Criminal Record to refute their statements because Petitioner was incarcerated from the time frame of December 1999 to April 30, 1999 (Tr. 92.)

Soon afterwards Vincent is encouraged to lie by changing her statements and time frame by the Commonwealth, when asked why she changed it, Vincent say's they (Commonwealth) told her to do that (Tr.182). She admits that the Commonwealth told her to lie. This goes on for all the indictments which were at one time charges that belonged to both Vincent and Harrison, and when they gave the Commonwealth what they wanted all charges became Petitioner's, although nothing showed Petitioner's involvement in wrong doing.

The lower court has a duty to correct the violation of due process. It is not consistent with the rudimentary demands of justice to allow the government to obtain an indictment based upon fraudulent testimony of a criminal suspects and then convict another suspect (Appellant) at trial where the fraudulent nature of the procurement of the indictment becomes manifest. The U.S. Supreme Court, when speaking to this issue has stated that, due process:

"is a requirement that cannot be deemed to be satisfied by mere notice and hearing if a state has contrived a conviction through the pretense of a trial which in truth is but used as a means of depriving a defendant of liberty through a deliberate deception of court and jury by the presentation of testimony known to be perjured. Such a contrivance by a state to procure the conviction and imprisonment of a defendant is as inconsistent with the rudimentary demands of justice as is the obtaining of a like result by intimidation. And the action of prosecuting officers on behalf of the state, like that of administrative officers in the execution of its laws, may constitute state

action within the purview of the Fourteenth Amendment. That amendment governs any action of a state, 'whether through its legislature, through its courts, or through its executive or administrative officers."' *Carter v. Texas*, 177 U.S. 442, 447; *Rogers v. Alabama*, 192 U.S. 226, 231; *Chicago, Burlington & Quincy R. Co. v. Chicago*, 166 U.S. 226, 233, 234.

Reasoning from the premise that the Appellant has failed to show a denial of due process in the circumstances set forth in his petition, the Attorney General urges that the state was not required to afford any corrective judicial process to remedy the alleged wrong. The argument falls within the premise *Frank v. Mangum, 237 U.S. 309, 335; Moore v. Dempsey, 261 U.S. 86, 90.* The U.S. Supreme Court also holds that,

"As long ago as *Mooney v. Holohan, 294 U.S. 103, 112 (1935)*, this Court made clear that deliberate deception of a court and jurors by the presentation of known false evidence is incompatible with 'rudimentary demands of justice.' This was reaffirmed in *Pyle v. Kansas, 317 U.S. 213 (1942), and re figueroa 4 Cal. 5th 576(2018).*In *Napue v. Illinois, 360 U.S. 264 (1959)*, we said, '(t)he same result obtains when the State, although not soliciting false evidence, allows it to go uncorrected when it appears.' Id., at 269. See: *Giglio v. U.S., 405 U.S. 150 (U.S. 1972)* which the court held that: *"by deliberately deceiving the court in this manner, the prosecution has committed Constitutional error of the first magnitude and no amount of want or showing will cure it."* See also *Cronic v. U.S.*, 466 U.S. 569 (1984).

Because it became manifest to a Grand Jury and at trial and *new evidences* that the indictments were procured through the fraudulent pre-trial statements of Jeremy Harrison & their 5 witnesses & documents/reports , and the fraudulent nature of those statements/reports was admitted to a Grand Jury and at trial, this court is bound by law to vacate the murder, 10 carnal knowledge, 12 void convictions for forgery and uttering, the 6 void convictions for petty and grand larceny, and the 3 counts of misdemeanor credit card fraud and 4 counts of felony credit card fraud as they were procured through extrinsic fraud, and all manners of frauds.

IV. DID THE SUPREME COURT OF VIRGINIA ERR IN FINDING THAT THE CIRCUIT COURT OF HENRICO DID NOT COMMIT REVERSIBLE ERROR WHEN IT DETERMINED THAT PETITIONER'S CLAIM THAT HIS TRIAL ATTORNEY COMMITTED VARIOUS FRAUDS IN VIOLATION OF U.S. V. THROCKMORTON, 98 U.S. 61 (U. S. Cal. 1878), ARE MERELY CLAIMS OF INEFFECTIVE ASSISTANCE, WHICH COULD HAVE TIMELY BEEN RAISED IN A PETITION FOR WRIT OF HABEAS CORPUS.

The holding of the courts below that petitioner's claim failed to show a reversible error is in square conflict with fundamental due process as well as the decision of the United States Supreme Court found in the case of *U.S. v. Throckmorton*, 98 U.S. 61 (U.S.Cal. 1878), where the court held:

"There are no maxims of the law more firmly established, or of more value in the administration of justice, than the two which are designed to prevent repeated litigation between the same parties in regard to the same subject of controversy; namely, interest rei publicae, ut sit finis litium, and nemo debet bis vexari pro una et eadam causa. If the court has been mistaken in the law, there is a remedy by writ of error. If the jury has been mistaken in the facts, the remedy is by motion for new trial. If there has been evidence discovered since the trial, a motion for a new trial will give appropriate relief. But all these are parts of the same proceeding, relief, is given in the same suit, and the party is not vexed by another suit for the same matter. So in a suit in chancery, on proper showing a rehearing is granted. If the injury complained of is an erroneous decision, an appeal to a higher court gives opportunity to correct the error. If new evidences is discovered after the decree has become final, a bill of review on that ground may be filed within the rules prescribed by law on that subject. Here, again, these proceedings are all part of the same suit, and the rule framed for the repose of society is not violated. But there is an admitted exception to this general rule in cases where, by reason of something done by the successful party to a suit, there was in fact no adversary trial or decision of the issue in the case. Where the unsuccessful party has been prevented from exhibiting fully his case, by fraud or deception practiced on him by his opponent, as by keeping him away from court, a false promise of a compromise; or where the defendant never had knowledge of the suit, being kept in ignorance by the acts of the Appellant; or where an attorney fraudulently or without authority assumes to represent a party and connives at his defeat; or where the attorney regularly employed corruptly sells out his client's interest to the other side,-- these, and similar cases which show that there has never been a real contest in the trial or hearing of the case, are reasons for which a new suit may be sustained to set aside and annul the former judgment or decree, and open the case for a new and a fair hearing. See Wells, Res Adjudicata, sect. 499; Pearce v. Olney, 20 Conn. 544; Wierich

v. De Zoya, 7 Ill. 385; Kent v. Ricards, 3 Md. Ch. 392; Smith v. Lowry, 1 Johns. (N. Y.) Ch. 320; De Louis et al. v. Meek et al., 2 Iowa, 55. In all these cases, and many others which have been examined, relief has been granted, on the ground that, by some fraud practiced directly upon the party seeking relief against the judgment or decree, that party has been prevented from presenting all of his case to the court."

The question presented is of great importance to the public because it affects the fairness of the judicial process in the entire United States. Guidance on the questions is also of great importance to the judiciary in light of those petitioner's who's interest is corruptly sold out to the other side. In addition, the question is of great importance to petitioners because it affects their ability to receive fair decisions in proceedings that may result in months or years of continued incarceration. In Strickland v. Washington, (1984) the court said:

"For counsel to be effective in the constitutional sense, he must subject the state's case to strong adversarial testing, One of the many duties owed to a client by an attorney is the duty to investigate possible avenues of defense, id. One avenue open to an attorney representing a criminal defendant is the motion for discovery, so that he/she may find among other evidence, if any, evidences that may be frauds, and/or exculpatory."

In the case at hand the attorney for petitioner in this case, Jeffery Everhart, sold him out to the other side to the extent that there has never been a "fair hearing" on the allegations upon which every judgment against petitioner was entered. The resulting convictions were obtained through known frauds by the Commonwealth of Virginia.

Petitioner produced his unrebutted affidavit and law that was found to be true by the opposing party but that party wrongly characterized his claims as 'Intrinsic" instead of "Extrinsic." Extrinsic fraud is well-defined through case law.

"It is *"conduct which prevents a fair submission of the controversy to the court." State Farm Mut. Auto. Ins. Co. v. Remley*, 270 Va. 209, 218, 618 S.E.2d 316, 320 (2005) (quoting *Jones v. Willard*, 224 Va. 602, 607, 299 S.E.2d 504, 508 (1983)). Extrinsic fraud has also been defined as "fraud that ... deprives a person of the opportunity to

be heard." *F.E. v. G.F.M.*, 35 Va. App. 648, 660, 547 S.E.2d 531, 537 (2001) (en banc) (alteration in original) (quoting *Hagy v. Pruitt*, 529 S.E.2d 714, 717 (S.C. 2000)). This Court has explained that "[e]xtrinsic fraud is fraud which occurs outside the judicial process." Id. at 659, 547 S.E.2d at 536. "A finding of extrinsic fraud ... must be supported by clear and convincing evidence." *Gulfstream Bldg. Assocs. v. Britt*, 239 Va. 178, 183, 387 S.E.2d 488, 491 (1990). Further, a judgment procured by extrinsic fraud "is void and subject to attack, direct or collateral, at any time." *State Farm*, 270 Va. at 218, 618 S.E.2d at 320 (quoting *Jones*, 224 Va. at 607, 299 S.E.2d at 508); see also *Peet v. Peet*, 16 Va. App. 323, 326, 429 S.E.2d 487, 490 (1993)".Examples of extrinsic fraud include a litigant's:"[k]eeping the unsuccessful party away from the court by a false promise of a compromise, ... purposely keeping him in ignorance of the suit; [and] ... an attorney['s] fraudulently pretend[ing] to represent a party[ ] and conniv[ing] at his defeat." *McClung v. Folks*, 126 Va. 259, 270, 101 S.E. 345, 348 (1919). "In all such instances the unsuccessful party is really prevented, by the fraudulent contrivance of his adversary, from having a trial ...." Id. (quoting *Pico v. Cohn*, 25 P. 970, 971 (Cal. 1891))".

Appellant cites this case for the unremarkable position that since fraud has been committed, then jurisdiction must be exerted and relief must be granted. There is no question that Appellant's attorney was in collusion with the Commonwealth to intentionally sell out Appellant to the prosecution. It is a maxim of law that a person naturally intends the consequences of his acts.

(See: *"United States v. Aguilar", 515 U.S. 593 (1995) (SCALIA, J., concurring in part and dissenting in part) ("[T]he jury is entitled to presume that a person intends the natural and probable consequences of his acts").*

In not asking for discovery and not putting the Commonwealth's case to a strong adversarial testing, Appellant's attorney intended that Appellant be convicted.

"There are no maxims of the law more firmly established, or of more value in the administration of justice, than the two which are designed to prevent repeated litigation between the same parties in regard to the same subject of controversy; namely, interest rei publicae, ut sit finis litium, and nemo debet bis vexari pro una et eadam causa... But there is an admitted exception to this general rule in cases where..., the attorney regularly employed corruptly sells out his client's interest to the other side, [this] show[s] that there has never been a real contest in the trial or hearing of the case, [and] are reasons for which a new suit may be sustained to set aside and annul the former judgment or decree, and open the case for a new and a

fair hearing. See Wells, Res Adjudicata, sect. 499; *Pearce v. Olney*, 20 Conn. 544; *Wierich v. De Zoya*, 7 Ill. 385; *Kent v. Ricards*, 3 Md. Ch. 392; *Smith v. Lowry*, 1 Johns. (N. Y.) Ch. 320; *De Louis et al. v. Meek et al.*, 2 Iowa, 55. See: *U.S. v. Throckmorton*, 98 U.S. 61 (U.S.Cal. 1878)". See also *Strickland Rule & Throckmorton Rule.*

Having stated the established law on this subject, now let's look at Mr. Everhart's actions. Jeffery Everhart, court appointed attorney, knew that Tanya Vincent had admitted to her mother's murder, and did not inform petitioner of it. (See Appendix D, Aff. ¶5). Jeffery Everhart never filed a Motion for Discovery in this case, nor did he share with petitioner exculpatory evidence that would have exonerated him at trial. (See Appendix D, Aff. ¶12). Jeffery Everhart knew that all witnesses statements/documents which were used to obtain 36 separate indictments for murder, forgery, uttering, grand larceny, petty larceny, and credit card fraud, were false. (See Appendix D, E, Aff. ¶13). When it became apparent, at trial, that Jeremy Harrison lied to Det. Kuecker about "stolen checks, credit cards, etc.," (Tr. 73 & 79), Jeffery Everhart did not challenge that the indictments had been obtained through fraud. (See Appendix D, Aff. ¶14). Jeffery Everhart agreed with the Commonwealth's attorney not to bring up anything that could ruin the Commonwealth's case. (Tr. 384-385). (See Appendix D, Aff. ¶15). This is a Conflict of Interest. Throckmorton and Strickland, supra, clearly show that besides the prongs of prejudice, which Arrington have met, the right to effective assistance of counsel is impaired when counsel operates under a conflict of interest because counsel has breached the duty of loyalty, perhaps the most basic of duties.

Jeffery Everhart did not inspect the indictments for the elements of the crimes, or for accuracy, or for compliance with the statutory mandates for service of criminal

process. (See Appendix D, Aff. ¶16). Jeffery Everhart did not question the Commonwealth about how an indictment was procured for Ms. St. Jules murder on February 29, 2000, while the autopsy report does not even determine that the cause of death was murder until April 28, 2000. (See Appendix E, Autopsy Report, and Appendix D, Aff. ¶17). When viewing the possible effects of these actions, or inactions, of Jeffery Everhart the court should remember the words of the Virginia Supreme Court:

"It is permissible for the fact finder to infer that every person intends the natural, probable consequences of his or her actions." See: *Schmitt v. Commonwealth*, 262 Va. 127, 145 (2001), *Ellis v. Com.*, 281 Va. 499 (Va. 2011).

Taken in the light of the above stated actions, sayings, and inactions of Jeffery Everhart, it is clear that he intended that Petitioner be convicted for offenses that he had nothing to do with. Mr. Everhart did not inspect the indictments for the elements of the crimes nor for statutory compliance with 19.2-220, so how can it be said that he "represented" Petitioner in this case? Mr. Everhart "misrepresented" Petitioner in this case. The actions of Everhart show that he was working for the Commonwealth the whole time under the pretense of working for Petitioner. Petitioner was not "represented" at trial and because of this; the resulting judgments are void due to a lack of jurisdiction. This is Extrinsic Fraud- 8.01-428 (a)(d). See: *Johnson v. Zerbst,* 304 U.S. 458 (U.S.Ga. 1938):

"If the accused, however, is not represented by counsel and has not competently and intelligently waived his constitutional right, the Sixth Amendment stands as a jurisdictional bar to a valid conviction and sentence depriving him of his life or his liberty. A court's jurisdiction at the hearing of trial may be lost 'in the course of the proceedings' due to failure to complete the court case as the Sixth Amendment requires--by providing counsel for an accused who is unable to obtain counsel, who has not intelligently waived this constitutional guaranty, and whose life or liberty is at stake. If this requirement of the Sixth Amendment is not complied with, the court no longer has jurisdiction to proceed. The judgment of conviction pronounced by a court without jurisdiction is void, and one imprisoned thereunder may obtain release by habeas corpus. A judge... --to whom a petition... is addressed--should be alert to

examine 'the facts for himself when if true as alleged they make the trial absolutely void; 6th Amendment right to effective assistance of counsel included the right to be represented by an attorney with undivided loyalty, Lockhart v. Terhune, 250 F. 3d 1223 (9th Cir. 2001) Cuyler v. Sullivan, 446 U.S. 692 accord Chronic, 466 U.S. 658." See also Martinez v. Ryan, (2012), Holloway v. Arkansas, 435 U.S. 425 (1975). The 4th circuit holds "that prejudice is presumed and a defendant is entitled to relief if he shows that his counsel labored; (1) Under an Actual Conflict,(2) that adversely affected the representation. James v. Polk, 401 F. 3d 267 (4th Cir. 2005)."

"Arrington's" case demonstrates the right to effective assistance of counsel is impaired when counsel operates under a *conflict of interest* as Mr. Everhart's actions ultimately caused "Arrington's" confrontation clause rights to be violated as well as Virginia's Hearsay Rule! In this "cause of action" these facts were ignored by the Henrico Circuit Court and Virginia Supreme Court! How can there be justice if this Court also ignores these claims when the lower Courts by their acquiescence they admitted to these facts?

CONCLUSION

The petition for writ of certiorari should be granted for the many inmates who through all manners of frauds, attorney selling out their clients', states violating the proper manner to produce proper indictments, for new evidences not being accepted that proves to be true, and for people like me who are INNOCENT – but are still locked up because we are poor. I declare under penalty of perjury pursuant to **28 U.S.C. §1746**, that the foregoing is true and correct to the best of his knowledge.

Respectfully submitted,

By: _____

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