No. 18-9317

IN THE

SUPREME COURT OF THE UNITED STATES

Lena Lasher — PETITIONER
(Your Name)

vs.

Naomi Reice Buchwald, Judge, US SDNY — RESPONDENT(S)

ON PETITION FOR A ~~WRIT OF CERTIORARI~~ Rehearing TO

US Court of Appeals for the Second Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

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Petition for the Rehearing

QUESTIONS

1. Should an Injunctive relief be granted when the judge has a demonstrable personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts (exculpatory evidence) concerning the judicial proceeding, or **violated the EX POST FACTO Clause law,** and where the judge can be clearly shown in her own writings to usurped legislative power, thus require her to disqualify herself under 28 U.S.C. Sec 455(b)(1)?

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

Due to the fact the pharmacies never carried butalbital, the District Court:

(1). Constructively amended the superseding indictment, calling Fioricet, "butalbital". The Government's prosecution was only possible because the District Court allowed Fioricet to be called "butalbital."

At trial the Government switch butalbital, a powder, for Fioricet, a tablet, therefore causing a defective indictment whereby confirming the judicial Court lacked of subject matter jurisdiction over this case. The Indictment must be dismissed as defective since it charges a crime based on the dispensing of an entirely different substance (Fioricet) that is not a powder, in addition to not constituting "butalbital," is also not controlled.

(2). Deliberate suppression of the exculpatory evidence to impeach that testimony constituted a denial of Petitioner's due process of law as well as an usurpation of power. Giglio v. U.S. 150, 154 (1992) Napue, 360.S. At 271. "Such a contrivance...to procure the conviction ... is inconsistent with the rudimentary demands of justice. Brady v. Maryland 373 U.S. 83, 10 **L Ed 215, 83 S Ct 1194, 1963.**

(3). Indicted, convicted, and sentenced the Petitioner for the the dispensing of a "controlled substance" tramadol; however, **Tramadol was NOT a controlled substances at the time of dispensing** but the only misbranding alleged about Tramadol is only applicable to controlled substances (Valid Prescription standard)

In this rehearing, the Petitioner sets forth the evidence and facts which prove the Court knowingly and deliberately allowed the aforementioned to occur in "her" courtroom, with consciously planned and carefully executed scheme participated in by the Court and the attorneys to defraud, harm, and destroy the Petitioner. The Court and prosecutors, with carefully constructed false evidence and non-official laws, created a jurisdiction where none existed via the Court's usurpation of judicial power as well as her outrageous judicial and discriminatory misconduct.

B. The Government committed Brady's violation of the Petitioner's constitutional rights by suppressing exculpatory video recordings evidence, that showed the Petitioner was not present and did not

initiate nor cause the criminal offense wrongful asserted in the criminal case established by the government and it's conviction. Brady requires that the government disclose material evidence favorable to a criminal defendant. United States v. Rivas, 377 F.3d 195, 199 (2d Cir. 2004). Evidence is favorable if it is either exculpatory or impeaching, Strickler v. Greene, 527 U.S. 263, 281-82, 119 S. Ct. 1936, 144 L.Ed. 2d 286 (1999), and it is material if "there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." Youngblood v. West Virginia, 547 U.S. 867, 870, 126 S. Ct. 2188, 165 L.Ed. 2D 269 (2006). "A conviction must be reversed" upon a showing that the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict." id.

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

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

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

As evidenced in the Petition for the Rehearing, the **District Court proved bias by abandoning the rule of neutral arbitrator.**

PETITION FOR the Rehearing to prevent miscarriage of justice - Fraud on the COURT

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

PROCEDURAL HISTORY

1. Because the Plaintiff's trial was rigged by the District Court, On September 2, 2016, the Circuit Court wrongfully affirmed her conviction of May 15, 2015 in violation of:

> 18 U.S.C. 371 (Count I); introducing misbranded drugs into interstate commerce in violation of 21 U.S.C. 331(a) and 333(a)(2) (Count II); conspiracy to commit mail and wire fraud in violation of 18 U.S.C.1349(Count III); and mail and wire fraud in violation of 18 U.S.C.1341 and 1343 (Counts IV and V). She was sentenced to 36 months' imprisonment, for:

a. dispensing "butalbital" which **NEVER** existed in the pharmacies,

b. the dispensing of tramadol which was **NOT a controlled substances at the time of dispensing** but the only misbranding alleged about Tramadol is only applicable to controlled substances (Valid Prescription standard),

c. the dispensing of "highly addictive pain meds" which is a term that **does not exist** in law nor in the health care industries and used only to deceive the jury by creating standards that do not exist under the law, which both the District and Appellate Court failed to mention ONE name of the "highly addictive pain meds" that was dispensed, because there were NONE. In fact, the Plaintiff has filed motion(s) requesting the District AND Circuit Courts for an EVIDENTIARY HEARING to:

> **Name ONE "addictive pain med" that was dispensed by the Plaintiff**; and to date, both the District AND Circuit Courts failed to name one "addictive pain med". Instead, the District Court denied "each of the supplementary motions" (Page 2 of 8/20/18 Memorandum and Order") by NOT answering them, because **the Plaintiff NEVER dispensed One "butalbital tablet" nor an "addictive pain med" NOR a "pain med" via the "internet". If trial and appellate counsels had done their due diligence, they would know that the aforementioned statement was flawed and is NOT found in the law.**

Plaintiff now moves for a PETITION FOR the Rehearing, to affirm her actual innocence. In addition to her actual innocence, the Plaintiff will point out the following:

1. The conviction came about through a deliberate deceit of the jury by presenting a made up legal standards that does not exist under the law and by presenting perjured testimonies to the jury that everyone knew it was perjured testimonies, except for the jury. Without these deceptions, they have no actual physical evidence that would have even associated the Plaintiff with any crime. Morse v. Fusto, No. 13-4074 (2d Cir. 2015)

2. the District Court and the Government violated the Plaintiff's right to due process as well as judicial and prosecutorial misconduct via suppression/withholding of exculpatory evidence, a Brady's violation, including to but not limited to the suppressed video recording, which she viewed for the first time on August 31, 2017.

3. Ineffective assistance from both trial and appellate counsel, which is detailed in other motions.

The District Court created a jurisdiction when none exists by treating drugs that are not Federally controlled as controlled substances, and **applying the food drug cosmetics act onto the Plaintiff as if it were the "controlled substances act"**. This is an **usurpation of administrative power the District Court does not have, and it is proof her recusal is necessary**.

As has been detailed in previous filings over these matters, and as will be detailed below, Fioricet is not a federally controlled substance, **only the Attorney General** has the power to make drugs controlled substances, judges to not have the power nor expertise to assess or schedule drugs, a drug is an entity under the law not an assemblage of components for a judge to dissect and assess as if it were one of its components, and the law itself is clear on all of this both in the way "**drug**" and "**fixed-combination drug**" is **defined under the law** and in how the Controlled Substances Act is written. Further evidence of just how wrong this trial court is on this matter can be found in West Virginia Board of Pharmacy News from September 2014, where they state on page one: "**Fioricet is not federally scheduled**" (W V Vol 34, No. 1). This evidence came into existence prior to the Plaintiff's trial and after her indictment, and it clearly adds to proof of the **incompetence of Plaintiff's trial lawyers**. More importantly it adds to the proof that the Plaintiff's constitutional right was violated by the District Court, as evidenced in this Petition and as in many other previous motions filed against the District Court. The injustice suffered by the Plaintiff at the hands of the trial Court's judge that this complaint must proceed, as indicated below.

Introduction

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

In the District Court's recent 8/20/18 memorandum and order, again deceiving to the entire public via the internet, and to give reasons for her denial of the Plaintiff's 2255 Motion, she now perjured by stating that the Plaintiff dispensed OPIOIDS (and barbiturates) via the internet (8/20/18 Memorandum and Order page 2 and 4). However, the Plaintiff **NEVER dispensed OPIOIDS nor controlled substances barbiturates via the internet** of "her pharmacies" (page 5). The **pharmacies were not "hers" and the District Court knows this**, and the district court knows that there was no allegation nor any evidence that the Plaintiff dispensed OPIOIDS nor

controlled substances via the internet. The **district court judge is lying to slander and smear the Plaintiff, to prejudice anyone reviewing the Plaintiff's filings that expose the misdeeds of the District Court Judge, the Prosecutors, and their witnesses**. The **District Court must be prosecuted for FRAUD**. 18 U.S. Code § 1343

The District Court did this to maintain her usurpation of legislative and administrative powers that she used against the Plaintiff both when **she held the Plaintiff responsible for others self – confessed crimes** in the absence of any actual evidence or laws cited that would hold the Plaintiff responsible for those crimes, and for treating Tramadol and Fioricet as controlled substances and holding the Plaintiff to legal standards that are not applicable, and for making up **fake legal standards such as "highly addictive pain meds**" in order to avoid the actual legal standards and **to deceive the jury**. She is also protecting her place as a judge which she has proven **she is not fit for** because:

1) She can't accept the fact that the law is quite clear in giving the Attorney General and nobody else the ability to make a drug a controlled substance;
2) She can't accept that the law is quite clear in that it requires the Attorney General to make controlled substances on the record;
3) and that she violated the governing pharmacy laws which is not in conflict with any federal law that prevents pharmacists from blaming their own crimes on others.

To reiterate, the Plaintiff's conviction was directly due to misconduct, bias and fraud by Judge Buchwald that: started early in the pretrial phase, persists through today, and is self-evident. Her motivation was to intimidate the Plaintiff into a plea deal or secure a guilty verdict to protect nine guilty pleas to false charges alleging a "narcotics conspiracy" which could become invalid if the Plaintiff had a fair trial. Some glaring examples are:

1. Using dismissable misleading and ambiguous indictments to ensure convictions;
2. Creating a jurisdiction for Tramadol under the Controlled Substance Act 21 (twenty-one) months before it became a federally controlled substance, long after the Plaintiff's indictment;
3. Changing the legal definition of "Drug" and ignoring laws that govern scheduling.
4. Exceeding her power by inventing and ignoring laws, usurping administrative and legislative power.
5 Allowing both the known use of perjured testimony and the suppression and withholding of multiple pieces of physical evidence directly contradicting that knowingly used perjured testimony;
6. Further withholding and allowing suppression of exculpatory evidence contradicting the Prosecutors, their witnesses, and the Judge's own handwriting analysis expert testimony.

Chief Judge McMahon failed to address these issues; the **injunctive relief must proceed**. The arguments made in McMahon's decision are flawed and will be addressed now.

Judge McMahon claims the Judge has absolute immunity. She is wrong.

"Judicial immunity does not apply when a judge takes action outside her judicial capacity, or when a judge takes action that, although judicial in nature, is taken in absence of all jurisdiction." Mireles, 502

> U.S. At 11-12. See Stump, 435 U.S. at 360; Tucker, 118 F.3d at 933. "Administrative decisions, even though they may be essential to the very functioning of the Courts, have not...been regarded as judicial acts." Huminski v. Corsones, 396 F.3d 53 (2d Cir., 2003). "When a judge clearly lacks jurisdiction over the subject matter, any authority exercised is an usurped authority." Maestri v. Jutkofsky 860 F.2d 50 (2d Cir., 1988).

Judge Buchwald's extra-judicial actions, detailed below, by design impeded proper functioning of the court, subjecting the Plaintiff to harassment and intimidation:

1. Used misleading and ambiguous indictments, that should have been dismissed, to ensure convictions;
2. Created a jurisdiction for **Tramadol** under the Controlled Substance Act before it became a federally controlled substance, which was **21 (twenty-one) months after** the **Plaintiff's indictment**;
3. Changed the legal definition of the word "Drug" and ignored laws governing how drugs become controlled substances;
4. Exceeded her authority by inventing and ignoring laws to usurp legislative and administrative power.

As shown below, Judge Buchwald acknowledged Tramadol was **not a controlled substance** pretrial, but chose not to address the matter. Clearly **Judge Buchwald violated the Ex Post Facto Clause Law**. The only acceptable manner would be to dismiss the charge. Instead she claimed it was only there as background information. This was done to intimidate the Plaintiff into accepting a plea deal as the other defendants had done. However, Judge Buchwald showed herself to be duplicitous by claiming at trial that all the drugs dispensed were controlled substances.

Judge Buchwald shows more brazen duplicity with regard to defects in the indictments concerning Fioricet, which she chose to call Butalbital. She ignored significant portions of the law and common sense to deceive the Jury by calling Fioricet, which is not a federally controlled substance, by the name of only one of its components: Butalbital. That a drug is not merely its most salacious component is already decided by the law. **"Drug" is defined under 21 US Code Section 321 (g) (1)**. The relevant portion is:

> (A) articles recognized in the official United States Pharmacopoeia, ... or official National Formulary, or any supplement to any of them; and (B) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease ... (C) articles ... intended to affect the structure or any function of the body...(D) articles intended for use as a component of any article specified in clause (A), (B), or (C).

A component of a drug may be another drug, but in such cases it is just a component and not the drug. Renaming a drug to make it appear to be a controlled substance is no innocent mistake, but an intentional deception meant to confuse anyone reading trial transcripts into thinking Butalbital, not Fioricet, was dispensed. It intentionally rendered the MURP Reports, one of the few exculpatory piece of evidence not suppressed, unintelligible.

Beyond the fact that immunity can not apply to judges usurping extra-judicial authority, Judge

McMahon ignores that Judge Buchwald committed substantive due process violations against the Plaintiff. The Court can not dismiss a motion detailing such egregious violations on immunity grounds.

> "To establish a violation of substantive due process rights by an executive official, a plaintiff must show (1) that the official violated one or more fundamental constitutional rights and (2) that the conduct of the executive official was shocking to the contemporary conscience." Truong v. Hassan, 829 F.3d 627, 631 (8th City 2016) (internal quotations and citations omitted). "To be conscience shocking, the government action must be 'truly irrational, that is, something more than ... arbitrary, capricious, or in violation of state law." Draper v. City of Festus, 782 F.3d 948, 953 (8th Cir. 2015) (quoting Weiler v. Purkett 137 F.3d 1047, 105 (8th Cir. 1998) (en banc)).

Here, the Defendant's actions rise to the "conscience shocking" level as described both above and below.

Judge McMahon also makes an assumption that fails upon scrutiny: Judge Buchwald misconstrued the law, a polite way of calling Judge Buchwald incompetent. If Judge Buchwald misconstrued the law, she would have corrected herself at any number of opportunities afforded her. The original indictment stood for years when it should have been dismissed. She could have corrected any mistakes at sentencing or at the opportunities given to her by the Plaintiff's many motions over her wrongful conviction. Instead Judge Buchwald still clings to the extra-judicial power, standing by all her misdeeds detailed below. Judge McMahon is not acting impartially because the way to find if this is misconstruing the law is to allow the motion to proceed. If Judge McMahon thinks Judge Buchwald acted incompetently, she should address it while allowing this motion to proceed.

To cover up for Judges Buchwald and McMahon's judicial misconduct, Chief Judge Katzmann conducted a kangaroo court in the Second Circuit by putting himself in the panel to rule on the Plaintiff's appeal and involved himself in the same panel to rule on the Plaintiff's motion for reconsideration. According to Black Law Dictionary:

> "Court proceedings that lack the due process protections people associate with courts of law have earned the name "kangaroo court."...
> "As a general rule, a kangaroo court is any proceeding that attempts to imitate a fair trial or hearing without the usual due process safeguards including the right to call witnesses, the right to confront your accuser and a hearing before a fair and impartial judge. Kangaroo court proceedings are usually a sham carried out without legal authority in which the outcome has been predetermined without regard to the evidence or to the guilt or innocence of the accused."

This petition for rehearing shows that Judge Buchwald, along with Judge McMahon, Chief Judge Robert A. Katzmann and his panels, Judges Jose A. Cabranes and Rosemary S. Pooler, all conducted a kangaroo court to ensure the Plaintiff remain convicted.

FRAUD and PERJURIES are NEVER moot!

As for PERJURIES, the trial judge, the Government, and its witnesses committed PERJURIES at the Plaintiff's trial, as well as in opinions the District Court published on the internet to cover up her perjuries

> **Legislation lays down laws or rules. Administration carries those laws into effect**. The **judicial function** is "to carry out the purposes of the statute, not to AMEND it." Miller v. US 79 LEd 977 294 US 435 (1935)."It is not within the power of the Court to "amend the governing pharmacy laws" on the ground that the administrative power conferred on the" State Board of Pharmacy for all pharmacists to abide by. Lambert Run Coal v. Baltimore & Ohio R. Co. 66 LEd 671, 258 US 377 (1922).

Judge Buchwald's rulings are indefensible under both the Controlled Substances Act (CSA) and the Food Drug and Cosmetics Act (FDC Act); there is not even a colorable argument supporting Judge Buchwald's unlawful exercise of jurisdiction. The claims of misbranding were supported by no physical evidence, and were presented to the jury in intentionally confusing ways meant to create a conviction out of nothing. As discussed below, it is only becoming more and more obvious that the judge does not understand what "bonafide" or "valid" means when it comes to prescriptions, nor does the judge understand what those standards obligate pharmacists to do under the law. What is also clear from the trial transcripts that the two standards were conflated into a "bonafide face to face" standard and presented to the jury as such even though no such thing exists in the health care professions nor in the law. The Judge is also proving more conclusively that she has not read nor understood either the Controlled Substances Act nor the Food Drug and Cosmetics Act, nor did she bother to familiarize herself with the matters the criminal proceedings were about. When she says the Plaintiff dispensed "Opioids" via the fulfillment pharmacy she is lying to slander the plaintiff and prejudice anyone reading her words. She has not heard nor seen any evidence of that notion, no one at trial or otherwise made such an accusation, and it never happened. The fact remains that the Judge is applying a standard applicable only to controlled substances, when no controlled substances were dispensed via the fulfillment pharmacy. The fact also remains that this standard was presented to the jury through a number of deceptions: calling Fioricet by the name of one of its components, calling the drugs "highly addictive pain meds" when such a phrase does not exist under the law nor in the health care professions in order to avoid the term "controlled substances", and the above mentioned conflation of bonafide and valid prescriptions. She also ignores the laws that make pharmacists responsible legal for their own actions when she holds the Plaintiff responsible for acts confessed to by prosecution witnesses, which is discussed below. Neither the Judge nor the prosecutors have explained how they are holding the Plaintiff responsible for the prescription standard for controlled substances for prescriptions dispensed for

Tramadol 21 months before it became a controlled substance, a violation of the **EX POST FACTO CLAUSE LAW**. How they got away with it is clear, the trial was all **innuendo, lies**, and **fake** standards not found in the law. "The scope of the indictment goes to the existence of the trial court's subject-matter jurisdiction". Stirone, 361 U.S. at 213;Ex parte Bain, 121 U.S. At 12-13.

The judge and the prosecutors want to have it both ways. They want to pretend they are not using the Controlled Substances Act against the Plaintiff but they also want to use the standards for valid prescriptions only found in the Controlled Substances Act and only applicable to Controlled Substances. What they are doing is holding the Plaintiff to the CSA's valid prescriptions standards for drugs that are not controlled substances; they did this by confusing the jury and conflating the valid prescriptions standards and the bonafide standards. The only applicable standards for any of the drugs dispensed through the fulfillment pharmacies is the bonafide standards, and this standards does not require the pharmacists to access or have any knowledge regarding the doctor-patient relationship. Quite simply: if a face to face relationship between a doctor and a patient is required for a prescription, then that prescription can only be for a controlled substances. But very importantly, if the Plaintiff violated this requirement, it would not be in violation of the FDC Act but the Plaintiff did not violate this requirement because NONE of the drugs dispensed via the fulfillment pharmacies were controlled substances. By hiding behind the weasel-words of saying they did not charge the Plaintiff under the Controlled Substances Act they are continuing their deception because that is the standard they applied, and they presented it in an intentionally confusing way to the Jury. They may have not charged the Plaintiff under the Controlled Substances Act in the superseding indictment, the original charges did cite alleged violations of the Controlled Substances Act, even though the drugs named were not controlled substances, Fioricet nor Tramadol.

The judge would have you believe that the Plaintiff violated the bonafide legal standards, but the judge obviously has not read the law because pharmacist are not required to ascertain anything regarding the doctor-patient relationship when the prescription is not for a controlled substances. It is important to note that no doctor testified at the trial claimed to have written for any controlled substances at all, so whether or not they have a face to face relationship with the patient or deceived the Plaintiff is totally moot; the Plaintiff did nothing wrong.

Because Judge Buchwald USURPED administrative and legislative powers in ruling on the Plaintiff's motions just as she did throughout these entire proceedings, thus denying the Plaintiff her constitutional right, it

warrant that her decisions on all the Plaintiff's motions should be MOOT. The more Judge Buchwald writes, the clearer it is that she does not understand the applicable laws, the governing pharmacy laws, nor the bonafide legal standards for prescriptions, nor the Controlled Substances Act.

Also, the government does not even understand the Controlled Substances Act. Here are 2 examples:

1. the state of West Virginia, stated Fioricet is NOT a federally controlled substance. It also stated that there is confusion about the matter. The confusion seems to be that people just do not bother to read the law. For a Drug to be made a controlled substance, there must be a reason such as potential for abuse, the findings for the potential must be ascertained through a process and it must all be done on the record, and it is all done and only done by the Attorney General. Drugs are not assessed by judges nor prosecutors, whether that assessment is done by looking at the components or anything else, because they do not have the expertise. If anything this trial has proved it is that they do not have the expertise. Drugs, under the law and in the health care community, are entities unto themselves, as further discussed below. No one regulates a drug simply because of its components, but only if the drug itself requires it. This is ascertained through findings made by the Attorney General, and it is all done on the record as required by the Controlled Substances Act itself. The confusion West Virginia speaks of is a polite way of saying that prosecutors and judges are treating a non-controlled substance as if it were a controlled substance, and innocent people are suffering from their obscene lust to fill prisons with the innocent.

2. U.S v TITILAYO AKINTOMIDE AKINYOYENU, Criminal Action No. 15-42 (JEB). While that judge is correct about Fioricet's exempted status, she also misses the more important point that the Attorney General has made no findings that Fioricet has a potential for abuse and thus has not made it a controlled substance. The simple fact of the matter is that if this had happened, Fioricet would be listed on the Controlled Substances List and the announcement scheduling it would be found in the Federal Register.

Fioricet was only available in tablet form, and it was not a controlled substance, that it is on the exempted prescription product list actually does not matter, and this seems to have caused "confusion" if we allow the imprisonment of innocent people to be characterized as confusion as opposed to vindictiveness. But, because one of Fioricet's components is a controlled substance, when a capsule form of Fioricet was introduced by manufactures, that form and only that form was made a controlled substance when it first came on to the market. This was done on the record and is easily found, and it only lasted for a brief period of time. Fioricet capsules were regulated as a schedule III controlled substances from July 29, 2013, and once it was realized to be as safe and free of potential for abuse as the original Fioricet TABLET, it was no longer regulated as a CIII product on September 16, 2013. To date, Fioricet is not listed as a controlled substance on the Controlled substance list of July 12, 2018 nor is it regulated as a controlled substances Schedule III. This new form of Fioricet came on the market around **7 months after the Plaintiff's arrest**, for charges that alleged violations of the Controlled Substances Act for dispensing Fioricet, which was deceptively misnamed butalbital in the indictment, and for dispensing Tramadol but that drug's inclusion in any of this was never explained but it remains true that it was treated as a controlled substance by the judge and the prosecutors not only in these criminal proceedings but also for all the original so-called co-conspirators in the original alleged narcotics conspiracy. The whole thing has been one gigantic usurpation of administrative and legislative power from day one. The Plaintiff dispensed Fioricet **TABLET**, but it was never regulated as a controlled substance Schedule III. If it were, the judge and Prosecutors could cite something similar to the above reference to the brief amount of time when the Fioricet CAPSULE was first introduced on the market on July 29, 2013, where: that new formula of Fioricet was initially a controlled substance CIII product, but on September 16, 2013 received exempted prescription drug status and is no longer regulated as a CIII product. This event shows the flaws in the prosecution's and the judges arguments over the entire course of these criminal proceedings: it is not on the Controlled Substances list because it

is not regulated as one, because it has no potential for abuse. If it did, it would be on the controlled substances list, and when those findings were made BY THE ATTORNEY GENERAL, it would be found in the Federal Register. When Fioricet capsules was first introduced, the precaution was taken; but once it was established that Fioricet capsules had no potential for abuse, just like Fioricet tablets, it was NO LONGER REGULATED AS A CONTROLLED SUBSTANCE SCHEDULE III.

The only thing backing up the prosecutor's and the judge's argument is an authoritarian 'because I said so' type of argument. If they were so confident about their argument, they would not have lied about the name of the drug dispensed both throughout the trial and at sentencing. Instead of calling it Fioricet, they called it by the name of one of its components, "butalbital", because they want the jury to hear the name of a controlled substance, not the name of a fixed-combination drug whose formula is designed to eliminate the potential for abuse: Fioricet. Their lies point to the truth: they wanted to confuse the jury and anyone reading the transcripts.

The judge and the Prosecution do not understand the requirement in the law that a drug has to have and establishes a potential for abuse in order to be a controlled substance; they don't understand the difference between a drug, as defined by law (Fioricet) and a component (butalbital). They're arguments make it seem that they've never read the law. The law is actually very easy to understand. Fioricet is not a controlled substance, and this is spelled out very clearly below where large portions, where nothing relevant is left out, of sections 811 and 812 of the controlled substances act are quoted, along with important definitions that clarify the matter.

The Plaintiff will prove that she was framed by the trial judge, prosecution and its witnesses. There is no dispute that **Butalbital, a drug the Plaintiff was indicted with, NEVER existed in the pharmacies** and that **Tramadol,** the other drug named in the indictment, was **not a controlled substance at the time of dispensing.**

ARGUMENTS Showing EVIDENCE of Judicial BIAS and Statements of the Case

1. The Plaintiff's conviction came about through a **deliberate deceit of the jury** by presenting a made up legal standards that does not exist under the law and by presenting perjured testimonies to the jury that everyone knew was perjured testimonies except for the jury.

If Fioricet is a controlled substance, as the District Court **FALSELY** states (8/20/18 Memorandum and Order page 12) **all the Trial Judge and the Government would have to do and all they should do is point to the Federal Register to show where and when the Attorney General made it a controlled substance. The Judge does not make** an argument as to why Fioricet is, in her view, a controlled substance nor does she make an argument as how or when it became one. She just makes an unsupported and unsubstantiated

statement that it is. As shown below, the prosecutors cherry-picked a few lines from section 812 of the Controlled Substances Act that show criteria for scheduling **IF** a drug is found to require scheduling, but they ignore the **requirements** specified within section 812 itself as well as section 811 that specify what findings are required for a drug to be made a controlled substance and the fact that those **findings must be made on the record**. They also ignored the definition of the "**Drug**" and "**Fixed-Combination Drug**" which prevent the misnaming of Fioricet that was engaged in in the indictments and during the trial and the sentencing, and that also prevent the kind of confusion between Fioricet and any of its components. The deception of the jury over the **drugs name** that the Judge and the prosecutors engaged in is a clear indication that the certainty the judge is expressing about Fioricet now is more about her getting away with the deception than about her confidence in her statements about Fioricet. The Judge's duplicity about Fioricet's name is rather brazen, but a review of these criminal proceedings will reveal more duplicity with regard to **Tramadol** and other deceptions.

2. During trial, the Petitioner was **framed by the Prosecutors and its witnesses** via false testimonies and planting, tampering, deliberate and intentional withholding and suppression of actual physical evidence in order to obtain a conviction, as well as District Court's invention of "laws"; conviction on testimony and fabricated laws known to prosecution and the District Court to be perjured as denial of due process thus warrant an evidentiary hearing. Therefore, the aforementioned items are evidential for the defense of this case. Instead of using pharmacy business records, withheld/suppressed phone/fax/prescription records, emails, unredacted employees' write-ups in accordance with the best evidence rule and the governing pharmacy law(PA 27.12(b)(2), prosecutors used the perjured testimony of their witnesses to contradict the Petitioner's testimony to secure a wrongful conviction, a denial of Petitioner's due process of law (Mooney v. Holohan, 294 U.S. 103 (1935). Giglio v. U.S. 405 U.S. 150, 154 (1992) Napue, 360 U.S. at 271. The conviction must be due to a violation of law, not due to Government and its witnesses' opinions and false testimonies.

During the trial the Prosecution orally referred to video recordings they claimed would prove the petitioner's guilt but they never presented any video recordings as evidence. When the defense asked for that evidence the prosecution suppressed that evidence and the Court withheld that evidence yet the claims made about the contents of that evidence remained in the record and presented to the jury orally but not materially. It must be noted that trial counsel, Mr. Freeman NEVER examined or cross – examined anyone who mentioned the

video recordings. Mr. Freeman's malpractice contributed to the Petitioner's wrongful conviction.

The suppression and withholding of this evidence violates due process where the evidence is material and showed the Petitioner did not commit the "crime". As this Court held, in Brady v. Maryland 10 LEd 2d 215, 373 US 83, suppression or withholding of evidence by prosecution in criminal case as vitiating conviction; conviction on testimony know to prosecution to be perjured as denial of due process of law. The withholding and suppression of this evidence contradicting the government and its witnesses' credibility violates due process and justifies a new trial. This exculpatory evidence exonerates her and is a clear violation of Brady as well as a violation of Petitioner's 5th Amendment Right (Due Process).

> The issue now before the Court arose on the Petitioner's motion for a new trial based on newly discovered evidence. Whether the Petitioner should be denied due process due to the prosecutors' suppression of the video recording, the best evidence, which depicted her actual innocence, Brady v. Maryland 373 US 87, 10 L Ed 2d at 218
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> In fact, the **best evidence rule** (Evidence SS424-documents contradicting testimony) rests on the fact that a document is a more reliable, complete, and a more accurate source of information as to its contents and meaning than anyone's description; this is no less true as to the extent and circumstances of a contradiction, contained in the document, to a witness' testimony, where the alleged contradiction relates not to collateral matters but to the incrimination of a defendant in a criminal case.
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> "We hold that the accused is entitled to the application of that rule, not merely because it will emphasize the contradiction to the jury, but because it will best inform them as to the document's impeachment weight and significance...the alleged contradiction to this witness' testimony relate not to collateral matters but to the very incrimination of petitioners. Except the testimony of this witness be believed, (pg.455) this conviction probably could not have been had. Gordon v. United States 97 LED 447, 344 US 414.
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> "If the petitioner asserts his actual innocence of the underlying crime, he must show "it is more likely than not that no reasonable juror would have convicted him in light of the new evidence presented in his petition." Calderon v. Thompson, supra, 523 U.S. at 559. Here the Petitioner has met this burden.

> The Petitioner requested for an evidentiary hearing in the aforementioned and below issues, was denied by the District Court. Its decision conflict with the first circuit. "Once a prisoner requests relief under Motion 2255, a District Court must grant an evidentiary hearing on the prisoner's claims unless the motions and the files and records of the case conclusively show that the prisoner is entitled to no relief" 28 U.S.C. 2255. Owens v. United States, 236 F. Supp. 2d 122, 144 (D. Mass. 2002).

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

To reiterate, Rather than grant an evidentiary hearing where the Plaintiff can produce withheld/suppressed physical evidence to exonerate her, the trial Court unconstitutional deprived the Plaintiff's Rights under the Due Process and the Equal Protection Clauses to protect her misdeeds from scrutiny where she would be shown to have obviously conducted a rigged trial via FRAUD (perjuries, lying to the jury, known use of perjury) EXTORTION, and the USURPATION of administrative and legislative powers. Owens v. United

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

The Petition for the Rehearing is an essential element to show cause as to the **perjured testimony of the government and the government's witnesses.**

REASON FOR GRANTING THE Rehearing:

This Petition for the rehearing must be granted for the following reasons:

I. To resolve questions regarding the meaning and authority of the Canons of Judicial Conduct, and the **violation of the EX POST FACTO Clause law**

Judges who show they have violated the Canons of Judicial Conduct should be made to recuse, but while these matters were raised both at the district and appellate level, they were not addressed by either court. By not addressing issues of applicability of the Canons of Judicial Conduct that were raised in the motions these courts ruled on, they raise questions over the function and meaning of them. By ignoring issues over violations of the Canons the Southern District of New York and the Second Circuit are treating them like empty platitudes. A higher court must rule on them to give them meaning to the lower courts.

The description of some of Judge Buchwald's misconduct in her dealings with the Plaintiff make it clear that she violates Canons 2 and 3 on a regular basis. Specifically she violated them so that she could misconceive the legal definition of the word "**drug**" to rename Fioricet to something more of her liking. She ignores the vast majority of the Controlled Substance Act to make it look like she's justified in treating Fioricet like a controlled substance, in the absence of the **Attorney General** making it so. Her statements, and her odd conversation with AUSA Richenthal show her disregard for the Attorney General's role and the requirements for findings to be made on the record and the adherence to Title V Section 5. She just takes it upon herself to make it a controlled substance in her court room. She also ignores that **Tramadol was not a controlled substance at the time of dispensing,** clearly a violation of the **EX POST FACTO Clause law.** She holds the Plaintiff to a face-to-face standard, and to the standard applicable to controlled substances when it is the wrong standard to apply.

The aforementioned were just a few issues which shocked the conscience, and if the jury knew of the aforementioned, the Plaintiff would have been exonerated. Unfortunately Judge Buchwald violating the Plaintiff's constitutional rights and ignored official executive's committing fraud. She withheld the exculpatory video recordings, knowingly allowed perjured testimony, and denied the Plaintiff an evidentiary hearing to obtain a conviction. Her actions warrant recusal.

The test for recusal under Sec 455(a) is whether it was clear that a reasonable person, with knowledge of all the facts, might question the Judge's ability to remain impartial in hearing the case. Additionally Judge Buchwald's undisputed "personal knowledge of disputed evidentiary facts concerning the Proceeding" requires Recusal Under the Express Terms of 28 U.S.C. 455(b)(1). Further, as evidenced aforementioned and below, Judge Buchwald displayed a deep-seated antagonism against the Petitioner that made fair judgment impossible (Liteky v. U.S. 510 U.S. 540, 555 (1994). Clearly, to PREJUDICE and PROFILE the Plaintiff, the District Court usurped her judicial power by amending statutes and conjuring non-official laws, thus violating administrative and legislative power, as evidenced in this petition for rehearing.

"The Constitution vests legislative power only in Congress, which never enacted the exception the Court creates today. That inconvenient truth resolves this case."McQuiggin v.

Perkins, 133 S. Ct. 1924 SC 2013

II. To resolve the existence of multiple conflicts between the decision of which review is sought and a decision of the second appellate court on the same issue, including but not limited to, the **EX POST FACTO Clause law.**

An important function of the Supreme Court is to resolve disagreements among lower courts about specific legal questions. In this instance courts have ruled that a judge that shows incompetence in the subject matter of the case should be made to recuse. In this instance the Judge continues to show her lack of understanding of the subject matter. She has demonstrated this incompetence recently with regard to her misconception about what a pharmacist's legal duties are when dispensing Bonafide prescriptions, where the judge clearly thinks it is the same as a valid prescription which requires a pharmacist to confirm the a face-to-face doctor-patient relationship before filling controlled substance prescriptions, but no such requirement is required for bonafide prescriptions for non-controlled substances. The Judge also demonstrated her incompetence in treating Fioricet as a schedule III controlled substance her court room based on the drugs formula, without turning to the record and seeing if the Attorney General has made it a controlled substance or not, and he has not. She also treated **Tramadol** as a controlled substance for **prescriptions dispensed 21 months before the Attorney General made it a controlled substance.** The aforementioned are all examples of **EX POST FACTO CLAUSE law violation.**

The Judge's stated reasoning both in her choosing to call the drug by the name of its components and in her deciding it is a controlled substance without any reference to the Attorney General making it one, shows she has not read the Controlled Substances Act, where in sections 811and 812, as well as the definitions found in the law for drug and fixed combination drug, it is clear that the judge is simply incompetent in these matters. Her rulings and statements go beyond mere incompetence and are usurpations of powers she does not have. This puts the judge in a position where recusal will risk exposing her misconduct, so her refusal to recusal is not out of adherence to guidelines for such, but selfishly motivated. It seems obvious that a judge who refuses to recuse will mostly likely be in most need of being made to recuse, especially when the matters involve usurpation of legislative and administrative powers. Other courts have not let things get this out of hand, and they compelled a judge recuse when it was needed but not forthcoming. It is important for the Courts to protect their own integrity, and injunctive relief is an important part of that to help ensure impartiality.

CONCLUSION The petition for the Rehearing should be granted.

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

Respectfully submitted, Lena Lasher, Pro – Se lenalasher November 22, 2019