NO: 18-9822

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

BRYAN NO-EL',

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI FROM THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

RECORD NO: 18-7044

PETITION FOR WRIT OF CERTIORARI

Bryan No-El'
Registration No: 23585-058
Federal Correctional Institution - Elkton
P.O. Box 10
Lisbon, Ohio 44432

QUESTIONS PRESENTED

Question One: Does the Privilege of Writ of Habeas Corpus entail a penumbra of the Due Process of Law Protections when credible and reliable evidence --- "wrongly excluded at trial" is presented with a claim of actual innocence - contemporaneously demonstrating a massive **Brady** violation?

Question Two: Is the Privilege of the Writ of Habeas Corpus suspended when a reviewing Court fails to perform its duties within the confines of Due Process protections delineated in **McQuiggin, House, Bousley, and Schlup** where a direct **Brady** violation is involved?

LIST OF PARTIES

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

TABLE OF CONTENTS

TABLE OF AUTHORITIES

UNITED STATES CODE

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

[x] For cases from federal courts:

The opinion of the United States Court of Appeals is attached as Appendix "A."

JURISDICTION

[x] For cases from federal courts:

The date on which the United States Court of Appeals decided my case was January 22, 2019.

[x] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: April 17, 2019, and a copy of the order denying rehearing appears at Appendix "B."

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

TABLE OF APPENDICIES

STATEMENT OF THE CASE

On June 3, 2009, Petitioner Bryan No-El', ("Petitioner"), was indicted in the United States District Court for the Western District of North Carolina for multiple counts of mail fraud, money laundering, and making false statements to a bank and in a bankruptcy proceeding.

Petitioner was convicted on multiple counts, while other counts were dismissed or acquitted. Petitioner was thereafter sentenced to 300 months imprisonment on February 24th, 2011. Petitioner filed a timely notice of appeal where his conviction and sentence were affirmed on December 28, 2012. After the panel rehearing was denied, Petitioner filed for a writ of certiorari, which this Court denied on October 13th, 2013.

After recovery of the "work-product," carefully developed for trial, Petitioner filed a petition for habeas corpus (1:16-CV-000406-RLV), which was dismissed as time barred without any consideration of his underlying Constitutional claims in accordance with **Schlup.** During the time of the pending habeas petition, Petitioner discovered critical evidence of Alex Klosek's scheme to obtain a sentence reduction letter from Don Rabon, a Certified Fraud Examiner, retired from the North Carolina Department of Justice.

Don Rabon discloses Alex Klosek's (cooperating co-conspirator) motivation to continue to provide falsity to the Government as recorded in his book: An Endless Stream of Lies - A Young Man's Voyage Into Fraud. During the month of January, 2018, Petitioner discovered Don Rabon's online article "Duplicitous Duality," which discloses his friendship with Alex Klosek as he analyzes Alex' continued deception where he asks:

> "Personally, I wondered, who was the real Alex? Was Alex just a bit of flotsam pulled out to a sea of fraud by a riptide over which he had no control? Or was Alex so diabolical that he planned and carried out a deception within a deception. Why was his 'deal with the devil' more attractive to him than the deal with the prosecutor? What incentive did the continued deception offer that was greater than that offered by the prosecutor?" [Exhibit "HH" - Record 18-7044] (commenting on Alex Klosek's continued deceit after signing a plea).

Other "newly discovered evidence" was presented in record no: 18-7044, by way of a FOIA request to the North Carolina Department of Motor Vehicles, received July 5, 2017. [This evidence and argument will be highlighted in Argument One for purposes of reductio ad absurdum]. To date, the Court's have failed to assess the merits of Petitioner's Constitutional claims regarding the (1) "newly discovered evidence" - recovered from Petitioner's laptop as part of the "work-product;" (2) Don Rabon's evidence of motivation and confession; and (3) the FOIA based evidence received from the North Carolina Department of Motor Vehicles, as part of a Schlup actual innocence claim.

The Court of Appeals denied Petitioner's appeal (Record No: 18-7044) on Jan, 22, 2019. After Petitioner attempted to secure permission to file a second or successive § 2255 motion, Judge Albert Diaz notified the Clerk of Court that he must recuse himself due to knowledge of Petitioner's "newly presented evidence" as he presided over Petitioner's North Carolina civil suits while a State Judge overseeing complex business litigation.

Accordingly, Petitioner attempted to consolidate the record where he could bring into unison all of his wrongly excluded evidence ("newly presented evidence"/"work-product") with his "newly discovered evidence" consisting of Don Rabon's publicized revelations and the North Carolina Department of Motor Vehicles evidence. At no time relevant has the District Court considered all the habeas evidence and ruled upon the credibility, the reliability, or the impact that presentation of the "newly presented evidence would have upon the jury inclusive of the BMW letters from January 4th & February 24th, 2019 which revealed a blatent Brady violation.

Notwithstanding Petitioner's pleaded Constitutional violations contained in the habeas action, Petitioner seeks this Court's review of the severe split within the Circuit's caselaw regarding **Schlup v. Delo's** definition of "newly presented evidence." Additionally, Petitioner asks this Court to determine if the evidence relied upon in the habeas petition qualifies as "newly presented evidence" in accord with **Schlup's** definition while reviewing the **Brady** claim simultaneously.

This Petitioner has suffered prejudice from the loss of his "work-product" and loss of counsel of choice with three (3) years of carefully comprised stratagy. Petitioner's claim of actual innocence is backed by incontrovertible proof that he is actually innocent of all bankruptcy fraud charges. The "newly presented evidence" clearly demonstrates the Government's knowing use of false testimony and the presentation of false information and severe **Brady** violations, ab initio.

This case is complex and requires a more sophisticated approach because the Government's arguments are sine qua non. Put another way, without the Government's use of Alex Klosek's false testimony and the presentation of falsity before the jury, the Government would not achieve a conviction. Had Petitioner's "work-product" been available at trial, a massive and immediate perjury would have been exposed. This Court's intervention is required to resolve a chasm in circuit law regarding the testing of "wrongly excluded evidence" at trial that equates to "newly discovered evidence." Without this Court's review, the meaning of **Schlup** is vitiated, the Sixth Amendment is wholly discretionary, and habeas corpus is forever weakened as justice is denied. In a nutshell, an extremely dangerous precedent will catestrophically erode the Constitution while rubberstampting egregious **Brady** violations.

CONSTITUTIONAL & STATUTORY PROVISIONS INVOLVED

QUESTION ONE: The Due Process of Law Clause of the Fifth Amendment and The Privilege of the Writ of Habeas Corpus, Article 1, § 9.

Fifth Amendment:

> 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 offense 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 the due process of law; nor shall private property be taken for public use, without just compensation.

Article 1 § 9, United States Constitution, ¶ 2:

> The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in cases of Rebellion or Invasion the Public Safety may require it.

QUESTION TWO: The Due Process of Law Clause of the Fifth Amendment and The Privilege of the Writ of Habeas Corpus, Article 1, § 9.

KEY DEFINITION

tax-free exchange (1927) A transfer of property for which the tax law specifically defers (or possibly exempts) income tax consequences. For example, a transfer of property to a controlled corporation under IRC (USCA) § 351(a) and a like-kind exchange under IRC (26 USCA) § 1031(a). Black's Law, 4th Pocket Edition.

REASONS FOR GRANTING THIS PETITION FOR WRIT OF CERTIORARI

This case at bar presents a textbook opportunity to cure a miscarriage of justice while contemporaneously defending the Due Process Clause, the Sixth Amendment right to counsel of choice, and the inherent value of the Privilege of Writ of Habeas Corpus.

Nothing in this case has been fair, ab initio. From the very beginning of this matter, the prosecution stood before the grand jury and presented patently false testimony while later failing to correct such falsity. After discovering that Alex Klosek (the star witness) had purposely misled the investigators and prosecution, the Government then became complicit in placing a known liar on BuSpar just so that he could take the stand after this Petitioner declined the plea. But that is not all . . . the Government racheted up the stakes by interfering with Petitioner's counsel of choice by placing lis pendens on untainted assets pledged for continued retention of counsel of choice, Max Cogburn Jr.

At all times relevant, the Government has been in possession of this Petitioner's carefully prepared "work-product" that comprises the suppressed **Brady** material and the "newly presented evidence - wrongly excluded at trial." Is there anyway that the prosecution can present false information before the grand and trial jury, place a known liar on BuSpar, suppress **Brady** materials, and interfere with counsel of choice and the legal process be considered fair? The Supreme Court has instructed that "proceedings must not only be fair, they must appear fair to all who observe them." **Wheat v. United States,** 486 U.S. 153, 160 (1988). The Public's interest in justice is now clearly implicated.

Simply stated, had the Government provided the **Brady** materials, which stems from this Petitioner's "work-product," a massive fraud on the Court would have been exposed at trial. To date, the Government has still yet to meet the ABA's model ethics rule 3.8 or correct falsity before the grand jury.

REASONS FOR GRANTING THIS PETITION FOR WRIT OF CERTIORARI

This case at bar presents a textbook opportunity to cure a miscarriage of justice while contemporaneously defending the Due Process Clause, the Sixth Amendment right to counsel of choice, and the inherent value of the Privilege of Writ of Habeas Corpus.

Nothing in this case has been fair, ab initio. From the very beginning of this matter, the prosecution stood before the grand jury and presented patently false testimony while later failing to correct such falsity. After discovering that Alex Klosek (the star witness) had purposely misled the investigators and prosecution, the Government then became complicit in placing a known liar on BuSpar just so that he could take the stand after this Petitioner declined the plea. But that is not all . . . the Government racheted up the stakes by interfering with Petitioner's counsel of choice by placing lis pendens on untainted assets pledged for continued retention of counsel of choice, Max Cogburn Jr.

At all times relevant, the Government has been in possession of this Petitioner's carefully prepared "work-product" that comprises the suppressed **Brady** material and the "newly presented evidence - wrongly excluded at trial." Is there anyway that the prosecution can present false information before the grand and trial jury, place a known liar on BuSpar, suppress **Brady** materials, and interfere with counsel of choice and the legal process be considered fair? The Supreme Court has instructed that "proceedings must not only be fair, they must appear fair to all who observe them." **Wheat v. United States,** 486 U.S. 153, 160 (1988). The Public's interest in justice is now clearly implicated.

Simply stated, had the Government provided the **Brady** materials, which stems from this Petitioner's "work-product," a massive fraud on the Court would have been exposed at trial. To date, the Government has still yet to meet the ABA's model ethics rule 3.8 or correct falsity before the grand jury.

A.) THE SUPREME COURT'S INTERVENTION IS NEEDED TO RESOLVE THE SPLIT WITHIN THE CIRCUITS REGARDING THE DEFINITION OF NEW EVIDENCE AND THE APPROPRIATE METHOD FOR ADDRESSING CLAIMS OF ACTUAL INNOCENCE BASED UPON "NEWLY PRESENTED EVIDENCE" THAT DEMONSTRATES FATAL BRADY VIOLATIONS.

Supreme Court opinions addressing the actual innocence gateway do not specifically define "new evidence," nor do those opinions create a uniform method to address "new evidence." In fact, the Circuit's are split on whether the evidence must in fact be "newly discovered" or whether it is sufficient that the evidence was not presented to the finder of fact at trial. As "actual innocence means factual innocence," actual innocence means that a defendant did not do what the indictment alleges which is the focus of the "newly presented evidence" at bar. Recently, the Third Circuit adopted a standard that "ensures that reliable, compelling evidence of innocence will not be rejected on the basis that it should have been discovered or presented by counsel when the very constitutional violation asserted" results in a reviewing Court's failure to provide a "rigorous **Schlup**" and **McQuiggin** analysis. See **Reeves v. Fayette SCI**, 897 F.3d 154 (3rd Cir. 2018). Other Circuit's do not have such assurances as **Reeves** "wrongly excluded at trial" guaranteeing Due Process upon a bona fide claim of actual innocence.

The Circuit's are split on the subject of "newly discovered or newly presented evidence" which reveals distinctive thinking patterns where an inherent cognitive bias permeates precedent that does not "ensure that reliable, compelling evidence of innocence will not be rejected." If reliable and strong probative evidence is not examined in accord with **Schlup, House, Bousley, and McQuiggin,** then Due Process is violated and the Privilege of the Writ of Habeas Corpus is suspended. Stated another way, depending where a petitioner presents his "newly presented evidence" of actual innocence, the results will greatly vary. Is it now time to allow a free standing claim of actual innocence to proceed in accord with the guidelines of equity? The plurality opinion of **Schlup** must be addressed to close a loophole within the current law where the District Court must opine for the record.

The controversy in **Schlup** regarding the way to address "newly presented evidence" arises due to

Justice O'Conner's opinion differing from Justice Stephen's as to the type of new evidence a petitioner must present to qualify for the actual innocence gateway exemption. The plurality of Justices' require "newly presented evidence" while Justice O'Conner understood the Court's holding to extend only to "newly discovered evidence." See **Schlup v. Delo**, 513 U.S. 298 (1995); See also **Marks v. United States**, 430 U.S. 188, 193 (1977); also discussed in **Reeves**, infra.

This evidence issue was most recently decided by the Third Circuit in **Reeves v. Fayette SCI**, where the Third Circuit joined the First, Second, Sixth, Seventh, and Ninth Circuit in deciding that evidence not presented to the jury ("at trial") is sufficient evidence to consider procedurally defaulted claims. The Ninth and Seventh Circuits' have articulated that petitioners can satisfy the actual innocence standard's new evidence requirement by offering "newly presented" exculpatory evidence, meaning evidence not presented to the jury at trial. See **Gomez v. Jaimet**, 350 F.3d 673, 679-80 (7th Cir. 2003); **Griffin v. Johnson**, 350 F.3d 956, 963 (9th Cir. 2003). Exculpatory is the key word here.

The Seventh and Ninth Circuit disagreed with the Eighth and Fourth Circuit who have ruled that "evidence is only new if it was not available at trial and could not have been discovered earlier through the exercise of due diligence." See **Armine v. Bowersox**, 238 F.3d 14 1023, 1028 (8th Cir. 2001). More recently, the First, Second, and Sixth Circuit's have also similarly suggested that actual innocence can be shown by "relying on newly presented, not just newly discovered evidence." See **Riva v. Ficco**, 803 F.3d 77, 84 (1st Cir. 2005); **Cleveland v. Bradshaw**, 693 F.3d 626, 633 (6th Cir. 2012); **Riva v. Fisher**, 687 F.3d 514, 543, 546-47 (2nd Cir. 2012). The Fifth Circuit has yet to form an opinion.

The majority of the Circuits have aligned their definition of "newly presented (discovered) evidence" by relying upon **House v. Bell**, 547 U.S. 518, 538 (2006), and **House's** interpretation of **Schlup v. Delo**, 513 U.S. 298 (1995), in that "[t]he court's function is not to make an independent factual determination about what likely occurred, but rather to assess the likely impact of the evidence on

reasonable jurors; the actual innocence standard "does not require absolute certainty about the petitioner's guilt or innocence." **House**, U.S. at 53.

The Supreme Court further clarified in **McQuiggin** that the actual innocence standard is satisfied only in the rare and extraordinary case where "a petition presents evidence so strong that a court cannot have confidence in the outcome of the trial unless the court is also satisfied that the trial was free of non harmless constitutional error." **McQuiggin**, 569 U.S. at 386 392, 401. As such, the threshold requirement is bound to a determination of a Constitutional violation and "newly presented evidence," where this Petitioner has strong probative evidence of actual innocence and violations of **Napue, Giglio, Donnelly, Honeycutt, Luis, and Brady.**

Unfortunately, this Petitioner has presented his **Schlup** claim of actual innocence in the Fourth Circuit where had he presented his claim in the First, Second, Third, Sixth, Seventh, or Ninth Circuit, his procedurally defaulted claims would be addressed. Simply stated, Fourth Circuit procedure is in direct conflict with the majority of the Circuits and at odds with a plain reading of **Schlup** while also diverging from the underlying precepts of ordered liberty guaranteed by habeas corpus ad subjiciendum. Stated another way, the District Court's lack of ruling on the "newly presented evidence" vitiates the meaning of **Schlup** and creates separate classes of persons while simultaneously breaking with the principles of stare decisis - effectively suspending the privilege of the Great Writ.

Additionally, had this Petitioner been able to present his **Schlup** actual innocence claims in the Ninth, First, Second, Third, Sixth, or Seventh Circuit, they would make a "totality of evidence ruling as to what impact the "newly presented evidence" would have upon the jury. As such, Petitioner would then have a chance to demonstrate his Constitutional deprivations while proving actual innocence. In short, denial of Petitioner's habeas without assessing the evidence has wholly denied him the Constitutionally enshrined protections of the "Great Writ." Due Process automatically guarantees that exculpatory evidence must be tested when actual innocence can be demonstrated.

In fact, the core purpose of the Writ of Habeas Corpus is to provide a platform to invoke the Constitution's guarantees where there is an imperative need to ensure all Americans that they will not be convicted by disingenuous means or methods. When the Government violates any Constitutional guarantee, the Constitution is disrespected and the inherent fiduciary duties imposed by the oath of office become no more than meaningless rhetoric.

The tragedy at hand is born from the fractured definition of new evidence and the verifying standards to test such, where actually innocenct defendants are procedurally blocked from the Due Process of Law. The appellate ruling in this Petitioner's matter not only denies the protection of the "Great Writ" - it creates a dangerous pathway towards unconstitutional paradigms. "Dismissal of a first habeas petition is a particularly serious matter, for that dismissal denies the petitioner the protections of the 'Great Writ' entirely, risking injury to an important interest in human liberty." **Lonchar v. Thomas,** 517 U.S. 314, 324 (1996); cf. **House v. Bell,** 547 U.S. 518 (2006) (applying **Schlup** in the context of a first federal habeas petition involving procedurally defaulted claims and the requirement to test the underlying validity of Constitutional claims).

The Reeves Court has recognized "the injustice that results from the convictions of an innocent person has long been at the core of our criminal justice system." **Schlup,** 513 U.S. at 325. Indeed, "the conviction of an innocent person [is] perhaps the most grievous mistake our judicial system can commit," and thus, the contours of the actual innocence gateway must be determined with consideration for correcting "such an affront to liberty." **Satterfield v. Dist. Att'y Phila,** 872 F.3d 152, 154 (3rd. Cir. 2017). In its decision, the Reeves Court utilized a **Brady** due process claim as a fortiori towards their ultimate conclusion. This Petitioner has an identical Brady violation.

The basic infirmity within the Circuit's differing opinion as to what constitutes "newly discovered evidence" is that the fractured definition that allows judges the latitude to make procedural rulings

without making a "rigorous Schlup analysis." Schlup requires the judiciary to make a factual determination regarding the likely impact that "newly discovered evidence" would have upon the jurors, but the loop-hole in the "newly presented evidence" fractured definition places the onus pro bandi upon the judge - albeit wrongly so - to determine the type of "newly discovered evidence."

Petitioner's case is permeated by the systematic concealment of significant exculpatory evidence that independently corroborates the TRUTH while simultaneously damaging the credibility of the Government's case in chief. If the rampant Brady violations that have occurred here are allowed to stand, then the procedural rules become a convenient weapon to aid in the continued suppression of truth. This Court's intervention is needed to create a clarifying standard that requires judges to make the "likely impact" analysis as required by Schlup regardless of whether the evidence is "newly disovered" or "newly presented."

The facts of this case present the prime opportunity to "do equity" and protect the Due Process of Law by providing clarifying guidance as to what "newly presented (discovered) evidence" means and the proper mechanical analysis to meet justice. Respectfully, Petitioner implores this Court to take these requested actions and grant this petition for a Writ of Certiorari and clearly define actual innocence, "newly presented evidence," and define the parameters of the Great Writ of Liberty when Brady is violated.

QUESTION ONE

DOES THE PRIVILEGE OF THE WRIT OF HABEAS CORPUS ENTAIL A PENUMBRA OF THE DUE PROCESS OF LAW PROTECTIONS WHEN CREDIBLE AND RELIABLE EVIDENCE - "WRONGLY EXCLUDED AT TRIAL" IS PRESENTED WITH A CLAIM OF ACTUAL INNOCENCE - CONTEMPORANEOUSLY DEMONSTRATING A MASSIVE BRADY VIOLATION?

Preliminary Statement

In its purest sense, actual innocence means that the accused did not commit the acts as alleged in the indictment. Once a defendant exercises the right to proceed to trial because he claims actual innocence, then actual innocence and all that such implies is the standard that follows all pleadings. However, when the Government places its lead witness on BuSpar because he has been caught lying and providing false information for years and allows him to continue with a scheme of dishonesty, truth becomes the obscurity. When the Government interferes with the Sixth Amendment right to counsel of choice and makes material omissions, fails to correct materially false testimony and suppresses critical Brady material, the semblance of truth is lost and a very real cognitive bias sets in. In fact, Brady violations are rarely uncovered where strong cognitive dissonance must be overcome to determine the true materiality of suppressed evidence in the face of overt conviction psychology.

It is time to take a fresh look at what actual innocence means within the present judicial system as Due Process protections are enshrined within habeas claims. An actual authentic innocence claim automatically involves a certain sense of cognitive dissonance because more often than not, the system works and becomes part of a documented narrative. But what happens when the system fails?

When the system fails, there is a high human cost incurred, e.g., the loss of liberty, as a minimum price that impacts society in may diverse ways. This case involves an authentic claim of actual innocence that cannot be separated from egregious prosecutorial misconduct due to the Government's complicity in the corruption of the truth seeking function. Hence, the following question:

May actual innocence be raised as a free standing claim where such is fully supported by strong probative evidence when such evidence was dispotive evidence specifically prepared for trial, yet wrongly excluded?

In order to set the edifice of comprehension, Petitioner will address each issue while pointing to the record for more details. As such, "actual innocence, mean[ing] factual innocence" is the major precept of this brief where each sub-issue will be succinctly developed.

DUE PROCESS AS RELATED TO ACTUAL INNOCENCE

"No person shall be . . . deprived of life, liberty, or property without the due process of law." U.S. Const. Art. V. At the trial level, due process entails the right to present a full and fair defense. In a perfect world, the defendant would have every piece of evidence necessary to demonstrate his case. However, this is not always the case when a defendant is locked away and separated from a carefully prepared "work-product" designed specifically for trial as evinced here.

Actual innocence remains a viable defense as long as the ministers of justice honor the Bill of Rights — a 462 elegantly worded social compact — that guarantees its citizens basic fundamental protections. The Bill of Rights not only provides guarantees—it restrains unscrupulous Government actions and when enforced promotes social confidence in the Court's administration. When the Government violates Due Process, it is in an affront to liberty for each individual, for it degrades the protections guaranteed by the founding fathers while setting unconstitutional paradigms. More importantly, unscrupulous actions undermines the public's confidence — especially when the Government violates Brady.

A credible claim of actual innocence rest upon the "factual predicate" whereas in this case the "newly presented evidence wrongly excluded from trial" constitutes facts that "dehors the record and their effect on the judgment was not open to consideration and review upon appeal." Bousley v. United

States, 523 U.S. 621-22 (1988) (quoting **Waley v. Johnston,** 316 U.S. 101 (1942). **Bousley** further details that "actual innocence means factual innocence" where a district court must address such claims in accord with **McQuiggin v. United States,** 586 U.S. 386 (2013). But happens when a court refuses to perform the duties detailed in **Schlup** and its progenies?

Due Process is not served when "the state has contrived a conviction through the pretense of a trial, which in truth is used as a means of depriving a defendant of liberty through the deliberate deception of a court and jury by the presentation of testimony known to be perjured." **Mooney v. Holohan,** 294 U.S. 103 (1935). See also **Brady v. Maryland,** 373 U.S. 83 (1963).

Plainly stated, this Petitioner was denied the Due Process of Law and the ability to prove his actual innocence when the Government suppressed critical Brady materials and utilized materially false testimony. Their actions has controlled the illegal outcome since. Imploringly, this Petitioner request this Court's intervention to determine the meaning of actual innocence when no court has ever made a "rigorous **Schlup** analysis." With the unique facts of this case and this Court's guidance, this case creates a prime opportunity to set a clear and specific approach to addressing genuine actual innocence claims when such claims are buttressed by strong probative evidence of genuine actual innocence.

While trial theories are generally proven to be correct, there still exists a chance that the theory is just a theory. If the latter is not the case, then this country would have executed four hundred men who could not prove their actual innocence without exonerative DNA evidence. The reason that DNA evidence is so reliable is that it works off of a specific sequence. That specific arrangement of constituent parts occurs on a miraculous event horizon that proves to be 99.637% accurate.*

Newly discovered and/or presented evidence can work in the exact same manner as DNA evidence. When the court reviews the digitally time stamped and recorded evidence in this case, there can be no doubt

about the dates and the intentions memorialized as crystalline evidence. In fact, the documentation as chronologically arranged can only demonstrate unadulterated truth. If exonerative DNA evidence is suppressed then a defendant will surely lose his life and every appeal. If the truth (including physical documentation) is suppressed at trial, then a defendant will lose his/her liberty and every appeal that follows. Suppression of the truth is egregious, however, failure to consider actual innocence is far more dangerous because such undermines a bulwark protection — Due Process and Habeas Corpus.

Procedural rules are an important boundary and necessary to protect abuses in the judicial system. Procedural rules become a tool of injustice when they are applied without the full protections of Due Process. This underscores the heightened and imperative need for this Court to explore authentic actual innocence, regardless of the circumstances simply because actual innocence means that a defendant did not take the actions alleged in the indictment. Specifically, Petitioner invokes the right to equity jurisdiction as a trust developed by the Due Process Clause of the Fifth Amendment.

The facts of this case transcends the impact upon one individual in that, if allowed to stand as is, the Government can and will continue to present falsity before the grand jury while making material omissions. Further, they will then violate Brady, Napue, Giglio, and the Sixth Amendment, although the Constitution prohibits unscrupulous and wholly disingenuous behaviors. Simply stated, actual innocence naturally implies a heightened right to the Due Process of Law.

A.) THE PROSECUTION FEATURED MATERIALLY FALSE INFORMATION BEFORE THE GRAND AND TRIAL JURY REGARDING THE 2007 BMW WHILE PRESENTING ALEX KLOSEK'S CHIMERICAL MACHINATIONS, LATER DISCOVERED TO BE UNTRUE.

The Government, after learning of Alex Klosek's years of providing false information, superseded Petitioner's indictment on January 6th, 2010 to include bankruptcy fraud allegations. When Alex Klosek was cornered with his lies, the Government was complicit in placing him on BuSpar so that he could take the stand. (Tr.Tr. 742). It is here that the seeds of cognitive bias were planted that have created a

pincer maneuver where the 2007 BMW saga of materially false information forms one flank. The other flank consists of the Government's suppression of Brady material and knowing use of false testimony in violation of **Napue v. Illinois,** 360 U.S. 264 (1959); **Giglio v. United States,** 450 U.S. 150, 150 (1972); and **Argurs v. United States,** 427 U.S. 97 (1976).

Here, "newly presented — discovered evidence" fully supports and corroborates these claims as BMW North America and the North Carolina Department of Transportation ("NCDMV") have delivered ipso facto evidence that this Petitioner did not commit bankruptcy fraud although the AUSA'S in this case told the jury the following, recorded at Tr.Tr. 1869, while suppressing critical Brady material:

> "I want to talk first about the assets. First the BMW, the $73,000 BMW. First, let's clear up the whole mess about the lease. This car was not leased. As you heard from the Fletcher BMW guy, Mr. Knupp, Mr. Noel bought the car. There was a purchase and sales agreement on December 14, 2006. He didn't lease it. It says BMW Bank of North America on there, which means he bought it. [] That car was bought not leased, and it had to be listed on his bankruptcy petition. It wasn't and that is a crime." [Note that the 2007 BMW was purchased on September 14, 2006, marked as Exhibit "C"].

BMW North America tells a completely different story as memorialized in their January 4, 2019 and February 24, 2019 letters. First BMW states in the January 4th letter (Exhibit "A"):

- "our records reflect you called on January 31, 2008 at 9:12 a.m. ET and spoke to a Bankruptcy Specialist to report your Chapter 7 bankruptcy filing. Notation on your account indicates you advised her that you had not included BMW Financial Services on your bankruptcy petition when you filed in August 2007, but you wanted a Reaffirmation Agreement sent to your attorney." [Cf: Exhibits "I & J," January 31st, 2008 letter to Edward Hay, Bankruptcy Attorney and reaffirmation agreement, record 1:16:CV-00406-RLV].
- "we can confirm that the above account was primarily under the name Excaliber Business Systems, LLC." [Cf: Exhibit "G," February 24th, 2019 BMW letter providing contracts with Excaliber as the "primary account holder:" see also Exhibit " H " - BMW lien release to State Farm, 1:16-CV-00406 & 1:17-CV-00273].
- "your bankruptcy petition does reflect you having listed Excaliber Business Systems, LLC." [Cf: Exhibit "K" - Schedule B. Personal Assets, Case 07-10551, line 13 showing Excaliber].

This strong probative evidence clearly reflects that this Petitioner reported his 2007 BMW to the Bankruptcy Specialists at BMW; to Edward Hay, Attorney at Law; and to the United States Bankruptcy Court. The North Carolina Department of Motor Vehicles clarifies the leaseback agreement as the license plate was registered to Excaliber and Petitioner as "lessees." (See Exhibit "B" - NCDMV License Plate Registration and Exhibit "D" - January 25th, 2007 Title Application reflecting Bryan Keith Noel as the seller and Excaliber as the purchaser in accordance with leaseback terms).

The probative evidence wrongly excluded and suppressed reveals that the actions of the Government in this case has wholly undermined the integrity of the judicial proceedings ab initio. Simply stated, the integrity is undermined due to the corruption of the truth seeking function at the hands of those ministers who are sworn to protect the Constitution. Accordingly, it is well within societie's interest in justice to investigate this matter fully as the "newly presented evidence" deserves encouragement to proceed further because it is the exact kind of evidence envisioned in **Bousley v. United States**, 523 U.S. 614 (1998). Here, actual innocence truly means that Petitioner did not commit bankruptcy fraud and that cognitive bias continues to prevent suppressed truth from being heard.

B.) PETITIONER ATTEMPTED TO RAISE NAPUE, GIGLIO, AND BRADY VIOLATIONS ON DIRECT APPEAL (11-4283) IN HIS PRO SE BRIEFING WHERE SUCH VIOLATIONS SHOULD BE REVIEWED UNDER A PER SE STRUCTURAL ERROR DUE TO THE INHERENT BRADY VIOLATION.

The first unlawful flank in this matter is related to misconduct before the grand jury and the trial jury relating to the 2007 BMW saga. The second flank relates directly to unlawful conduct before the the grand and trial jury relating to the knowing use of false testimony. Once again, the prosecution has suppressed vital Brady documentation and allowed Alex Klosek to continue to spread abhorrent falsity. This statement is proven to be true based upon the "newly presented evidence - wrongly excluded at trial." See **Schlup v. Delo**, 513 U.S. 298 (1995) and **Brady v. Maryland**, 373 U.S. 83 (1963).

This Petitioner attempted to secure critical discovery so that he may attach evidence to his pro

se appellate brief but was denied access to such discovery by the Office of Federal Defender due to a contract with Office of United States Attorney. See Exhibit "FD," - May & November 2011 letters. Petitioner was further prejudiced when the Government continued to violate its Brady duties after trial. Plainly stated, the Government's Brady violations are the direct cause of no examining Court ever reviewing Petitioner's claims or the jury ever being able to determine the truth in this matter. The Brady violations paved the way for Alex Klosek, a drug induced, de facto government agent, to commit a massive and detrimental material perjury at trial.

On direct appeal, Petitioner pointed to three main perjuries at trial where the greatest of the perjuries has resulted in convictions for mail and bank fraud. In a rush to judgment, the Government relied on Alex Klosek's bad information where a blatent perjury has been exposed in the Bankruptcy Court after trial. Alex states under oath at trial that he did not purchase CEP, recorded at Tr.Tr. 773 as:

Q: "Did you pay for CEP?"

A: "No, I did not."

Q: "Well, what was supposed to be the payment for CEP?"

A: "The payment was supposed to be the forgiveness of part of the loan from Pinnacle to Titan."

. . . A: "A complete release of privately held mortgage by Pinnacle Fiduciary & Trust Group, with Alex Klosek acting as the sole trustee, against the real property located at 209 DeSoto Avenue, Morristown, Tennessee, known as the Moll Building, subsequently resulting in a title transfer free and clear of all encumberances to Bryan Noel."

Q: "Okay, do you know what 209 DeSoto Avenue is?"

A: "That would be the factory for IME in Tennessee."

Q: "Did you have a mortgage against that property that was the factory in Tennessee?"

A: There was no mortgage against that property."

Although Alex testifies that he did not purchase CEP at trial in February of 2010 - he filed for bankruptcy in October of 2010 where he claims ownership of CEP under the penalty and pains of perjury. [Ref. Exhibit "T" - Alex Klosek's filing for bankruptcy, Case #:10-3215 W.D.N.C.]. Other "newly presented evidence wrongly excluded at trial" demonstrates both Petitioner's actual innocence and Alex Klosek's perjury. Exhibit "S" is a notarized employment agreement where Alex Klosek signs as the owner of CEP where the contract provides lucid details of Alex' ownership style. Cf. Exhibit "FFF."

Exhibits "U&V" are Alex Klosek's recorded testimony regarding the mortgatge that he held on the Titan Factory that was exchanged via a "1031 exchange." Here, the evidence is probative that Alex did in fact purchase CEP and that he held a mortgage, although he testified to the contrary at trial. Once again, these exculpatory Brady documents demonstrates egregious prosecutorial misconduct.

While the aforementioned evidence is highly probative, when examined with Exhibits "N, M, O, & CCC," the evidence becomes ipso facto. Exhibit "N" is the December 29th, 2004 deed of trust bearing the "1031 exchange" mark filed in Hamblen County, Tennessee. Exhibit "M" is the subsequent hud-one filing statement that precipitated the issuance of a title policy by Chicago Title & Trust marked Exhibit "O." While these documents reflect a crystal clear sequence of events, these documents are corroborated by two Attorneys at law. In fact, Lawrence Winson, preparer of the "1031 exchange," deed of trust, and the hud-one statement memorialized such as recorded in Exhibit "CCC" as:

> "The record is clear that several years ago, Mr. Klosek purchased Certified Estate Planners, Inc., from Mr. Noel. At the time of the transfer, the company was doing well and in good financial condition." Cf. Exhibit "R" - "1031 exchange e-mail.

Alex Klosek's perjury and the Government's knowing use of such relating to the sale/exchange of CEP results in a bank fraud conviction. This is so due to the absolute fact that Petitioner correctly reported that he sold CEP and that the loan balance owing to PFT&G was roughly 2.4 million and not 3.8

million. The prosecution featured their version of events on two separate occasions recorded at Tr.Tr. 1285 (Ragan Ward of Carolina First) as:

> Q: "And according to the balance sheet, what is the amount of the loan which Titan owed to Pinnacle as of the end of 2004?"
>
> A: "$2,466,500."
>
> Q: "Does Carolina First consider assets and liabilities in determining whether to give a loan?"
>
> A: "Absolutely."
>
> Q: "If Carolina First had known the loan amount was actually $3.8 million, would that have mattered to Carolina First?"
>
> THE WITNESS: "Yes, it would have."

Here, Alex Klosek's perjury, and the Government's knowing use of such, not only resulted in a conviction for mail fraud, but also set the stage for a conviction for bank fraud. In a nutshell, the Government's use of perjury regarding the sale of CEP, established a loan balance of $3.8 million rather than the reported $2.4 million, which if true, would constitute bank fraud. However, the loan balance was correctly reported as $2.4 million and this Petitioner is actually innocent of both bank & mail fraud as Klosek purchased CEP and cancelled the debt via a 1099-C. (See Exhibit "EEE").

The prosecution reinforced their errant point in cross examination of Harry Farthing recorded at Tr.Tr. 1604 as:

> Q: "But if the debt was 3.8 million instead of 2.4 million in other words, if the debt was 1.4 million higher, what would that do to the equity in the company?"
>
> A: "It would give it a negative worth."
>
> Q: "Okay. A negative net worth of about $900,000, correct?"
>
> [Cf: Exhibit "X" - Carolina First "1031 exchange" acknowledgment].

Alex Klosek's perjury regarding the sale of CEP was not only material but substantially injurious as reflected in the bank testimony. However, the real damage occurs at the ministers of justice' hands as they were in possession of all of the "1031 exchange" evidence and knowingly participated in Alex Klosek's scheme during trial. This is the precise reason that Petitioner raised the **Napue, Brady, & Giglio** claims during the direct appeal in hopes of securing the evidence to fully support such claims. The Government's suppression of critical **Brady** material facilitated a massive fraud on the Court resulting in an illegal conviction and years of investigation resulting in a time bar ruling.

The Fourth Circuit's failure to consider this Petitioner's pro se claims during direct appeal has only aided the cognitive bias in this case. Petitioner was denied all of the discovery from trial because of an agreement between the Federal Defender's and the AUSA's in this case. The AUSA's had already suppressed the **Brady** materials where the suppressed evidence resulted in a direct appeal without the critical "newly discovered evidence." (See Appendix "E").

The "newly presented evidence" in this case demonstrates actual innocence as each piece of evidence demonstrates that this Petitioner did not take the actions alleged in the indictment. In a nutshell, the suppression of evidence has directly denied this Petitioner the opportunity to prove actual innocence during trial and upon direct appeal only underscoring how important a claim of actual innocence is.

C.) THE INHERENT COGNITIVE BIAS OF A GUILTY VERDICT, FOLLOWED BY AN AFFIRMATION ON DIRECT APPEAL, HAS RESULTED IN THE DISTRICT COURT'S FAILURE TO MAKE CREDIBILITY, RELIABILITY, AND TOTALITY OF EVIDENCE RULINGS DURING THE HABEAS PROCESS.

At no time relevant, has any court made a single credibility, reliability, or totality of the evidence ruling, although **Schlup v. Delo,** 513 U.S. 298 (1995) directs a court to do so. Here, Petitioner's "newly presented evidence wrongly excluded at trial" is of extraordinary quality - not only because it is exonerative in effect, but because it comes from independent and reliable sources. The totality of

the "newly discovered evidence" has never been presented in one record as the evidence is located in habeas record no's: 1:16-CV-00406 & 1:17-CV-00273 and 18-7044 (4th Cir.).

The quality and character of the evidence stems from the fact that it comes from: A.) The United States Bankruptcy Court; B.) The North Carolina Department of Motor Vehicles; C.) The Hamblen County Courthouse; D.) BMW Financial Services; E.) Chicago Title & Trust; F.) Executive Risk and district court case no: 1:06-399, W.D.N.C.; G.) Attorneys' at Law, Lawrence Winson and Kelly Hensley; H.) Carolina First Bank (now TD Bank); I.) Don Rabon, Certified Fraud Investigator, retired from the North Carolina Department of Justice; and J.) recovery from a carefully prepared "work-product" designed for use at trial that was suppressed in violation of **Brady v. Maryland.**

At a minimum, **Schlup** requires a district court to "consider all the evidence, old and new, incriminating and exculpatory, without regard to whether it would necessarily be admitted under the rules of admissibility that would govern at trial." **House v. Bell,** 547 U.S. at 598 (2006). More importantly, **House** commands that "[t]he court's function is not to make an independent factual determination about what likely occurred, but rather to assess the likely impact of the evidence on reasonable jurors; the actual innocence standard does not require absolute certainty about the petitioner's guilt or innocence." No court has ever made a determination regarding the impact that the "newly presented evidence" would have on the jury although **Schlup** clearly directs the Court to do so.

Further, **Schlup** requires the court "to make a probalistic determination" about how reasonable jurors would react. To date, no court has made this assessment. In failing to make the required **Schlup** assessments the actual innocence claim has been totally ignored. In totally failing to assess the "newly presented evidence," it is apparent that cognitive bias and conviction psychology controls this issue.

Simply stated, procedural rules do not foreclose a true claim of actual innocence regardless if

the claim is free standing or backed by Constitutional violations. The high human cost involved in depriving a defendant of the Due Process of Law due to cognitive dissonance related to actual innocence does not square with the rudimentary demands of justice. Due Process requires that actual innocence be adjudicated in the purest meanings of habeas corpus as the founding fathers had the vision and wisdom to enshrine such where The Great Writ of Liberty demands that no one be deprived of life, liberty, or property without the Due Process of Law —— especially when incontrovertible probative evidence is placed before the court.

When the Petitioner lost the services of Max Cogburn Jr. during the inquiry into status of counsel hearing, Max told this Petitioner "you are collateral damage." This case represents a pro se defendant's plight where Due Process of Law should absolutely guarantee that no defendant should ever be considered "collateral damage" and that **Brady** violations will not be tolerated.

Respectfully, this Court should review Petitioner's "newly presented evidence" in accord with the Third Circuit's ruling in **Reeves**. Additionally, this will demonstrate the need to create a majority definition of "newly presented evidence" and the required procedures to test such exculpatory evidence consistent within the penumbra of Due Process.

QUESTION TWO

IS THE PRIVILEGE OF HABEAS CURPUS SUSPENDED WHEN A REVIEWING COURT FAILS TO PERFORM ITS DUTIES IN ACCORD WITH THE CONFINES OF THE DUE PROCESS PROTECTIONS DELINEATED IN MCQUIGGIN, HOUSE, BOUSLEY, AND SCHLUP WHERE A DIRECT BRADY VIOLATION IS INVOLVED?

At a minimum, **Bousley** requires the Court of Appeals to consider both actual innocence and the "facts outside the record." At no time relevant, has the Court of Appeals addressed the "newly presented evidence" as "facts outside the record." It is here that the infirmity in the process is revealed in meeting the strict standard of **Slack v. McDaniel**, 529 U.S. 473, 484 (2000) as the District Court's failure to make the required **Schlup** "impact" analysis or provide a "reliability, credibility, and totality of the evidence" ruling regarding true actual innocence does not give this Petitioner the opportunity to debate the merits ruling. Here, the canons of Slack cannot be applied when the canon interpretation of **Schlup** is not fulfilled.

The District Court has only ruled that Petitioner's § 2255 action was time barred although the procedural default rule does not apply where "a fundamental miscarriage of justice" occurs. See **Murray v. Carrier**, 477 U.S. 495-96 (1986). Clearly, in light of the extraordinary quality, reliability, historical significance, interest of justice, and plain old fashioned truth that the newly discovered evidence presents, it will be a true travesty of justice to allow any procedural mechanism to serve as a method to continue to suppress TRUTH. In fact, continued non-action serves as a defacto "nod and wink" to egregious prosecutorial misconduct.

Procedural hurdles are necessary to prevent abuses—not to maintain abuses. The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the Public Safety may require it. (U.S. Constitution Article 1 § 9). Habeas Corpus exists to free suppressed truth where "dismissal of a first habeas petition is a particularly serious matter, for that dismissal denies the petitioner the protections of the 'Great Writ' entirely, risking injury to an important interest in human liberty." **Lonchar v. Thomas**, 517 U.S. at 324 (1996).

When a reviewing court fails to follow the principles of stare decisis, e.g., provide a "probalistic determination regarding the impact that the "newly presented evidence" would have on a reasonably instructed jurors" -or- provide a reliability, credibility, and totality of evidence ruling "suspends" the Privilege of Habeas Corpus. Actual Innocence is quite often tied to a Constitutional violation, however, being able to prove your actual innocence, ab initio, stops the false allegations dead in their tracks. When Brady is violated, Due Process is violated.

At bar, the record in this case it totally devoid of opinion regarding any of the "newly presented evidence." Consideration of the spillover effect of the 2007 BMW saga and the misconduct before the grand jury highlights the ubiquitous falsity delivered into this matter by Alex Klosek. This point is highlighted in Don Rabon's 2017 publication of an "Endless Stream of Lies" where he not only reveals Alex Klosek's scheme to obtain his letter of recommendation for use at sentencing but he highlights the fact that Alex Klosek and his father could not be telling the truth at trial. In fact he states in Chapter 17 of his book:

> "During the trial of Bryan Noel, a most telling drama arose — Alex and his father, Joseph Klosek, provided testimonies that were incompatible. Alex asserted as to what 'did happen' and his father countered as to what 'did not happen.'" [Ref. Exhibit "LL & 101"].

In light of Don Rabon's revelations, it is important to consider the stipulation entered at trial, marked Exhibit "ST."

> "In early February 2010, his son Alex Klosek arrived at his home around 5:30 p.m. He was jumping up and down, ranting and raving, banging his fists against his legs. He and his wife asked what was wrong. Alex stated that he had just heard from his lawyer that he had been lying for several years. 'They are going to pull my plea bargain,' he said. 'They are going to come for him in the middle of the night, kick down the door and arrest me.' He went completely nuts. Joseph Klosek asked him what did he lie about and Alex replied, 'about everything.' Joseph Klosek asked his son why did he lie and Alex responded, 'I wanted to get less time than Bryan.' Josep Klosek would testify his 32 year old son was acting like a six year old. Alex Klosek then stated, 'What am I

> going to do?' Joseph Klosek replied, 'Just tell the truth.' Alex said, 'it was too late for that. I already lied.' Alex then said, 'Thank for nothing' and stormed out of the house." [Ref. Exhibit "ST" - Joint Stipulation].

As stated in the beginning of this Petition, in light of the "newly presented evidence, Petitioner can now truly, accurately, and completely PRAY for equitable jurisdiction as he can now demonstrate actual innocence. The quotes from the trial transcripts as juxtapositioned to the exculpatory documentation demonstrates a broken government theory as the digital time-line of TRUTH is now established. A failure for a reviewing court to not rigorously review the actual innocence claim denies the Due Process of Law and suspends the Privilege of Habeas Corpus.

Due Process is violated "regardless of whether the prosecutor solicited testimony it knew to be false or simply allowed such testimony to pass uncorrected." **Boyd v. French,** 147 F.3d 319, 329 (4th Cir. 1998) (citing **Giglio v. United States,** 405 U.S. 150 (1972)). Here, the Government's actions are substantially injurious because the decision to suppress TRUTH occurs in the inner sanctuaries of the prosecutor's office and is designed to never see the light of day. The suppression of TRUTH is egregious, however, the fabrication of TRUTH is even a greater violation of Due Process where this court's intervention is required to not only prevent Constitutional violations, but to defend the Constitutional integrity of The Great Writ of Liberty, if but not for posterity's sake.

When a reviewing court violates stare decisis and does not follow either the spirit of the law (equity) or the letter of the law, then the meaning of Schlup, Bousley, House, and McQuiggin is vitiated. Such a vitiated precedent creates a dangerous end-round paradigm that allows a "discretionary" means to suspend the Great Writ. Such discretionary powers invites arbitrary and capricious application of Due Process while totally eroding actual innocence --- endangering all Citizens.

Fairness, equity, and justice are not served because a docket sheet reflects certain judiciary

proceedings. In fact, when crucial facts are not available to be presented during those proceedings, more likely than not, those proceedings do not constitute a platform for which the proceedings that follow should rely upon. This Petitioner is not a willing volunteer to the **Brady, Napue, Giglio, and Donnelly** violations that have occurred in this case and now invokes this Court's equitable remedy in the sense of truth, substance, and good conscience. As a Citizen under the Constitution, Due Process and Habeas Corpus are rights to be inforced by equity, meaning that actual innocence automatically implies that a reviewing Court must follow the Supreme Court's rulings with the eye of equity favoring the possessor of the rights. Chancery is the workshop of justice.

At one point in all of our lives, we have been falsely accused, whether it was by our siblings at age eight, or later by our school-mates at age fourteen. Perhaps, we were falsely accused as an adult that reflected in losses greater than parental corporeal punishment or after school detention. Either way, the emotional pain of being falsely accused is greater than the physical pain because deep down, we all know what it is like to stand in righteousness under false accusation. Respectfully, and humbly, this Court must utilize its plenipotentiary powers to correct what is false and take this opportunity to defend actual innocence while contemporaneously affirming Due Process of Law.

The Government is invited to reply.

CONCLUSION

In a system full of procedural hurdles, a Petitioner has no chance to defend against the United States - the richest, most well represented entity to ever enter a United States Courtroom - when they violate **Brady, Napue, Giglio, Donnelly, Luis, and Honeycutt.** At all times relevant, the TRUTH of this matter has been suppressed, distorted, and fabricated.

The events that surround this case are tragic in that the evidence that was necessary to prove actual innocence was carefully prepared for trial but suppressed. The stakes were racheted up when the Government and Office of Federal Defenders denied access to discovery and **Brady** material during direct appeal. The egregious **Brady** violations have directly resulted in an errant time bar ruling that effectively suspended the Privilege of the Writ of Habeas Corpus. This Court's intervention is needed to avoid a true miscarriage of justice.

Actual innocence is a claim that must survive all procedure - regardless of the varying Circuit interpretations as the Due Process of Law requires a full and fair review of "newly presented evidence." In a nutshell, Due Process does not tolerate suppression of evidence or the fabrication of truth. Respectfully, Petitioner implores this Court to consider the high human cost involved when Due Process is sacrificed and **Brady** obligations are ignored.

Dated this the 18th day of June, 2019.

Requested Respectfully,

Bryan No-El'

Bryan No-El', Petitioner
Registration No: 23585-058
Federal Correctional Institution - Elkton
P.O. Box 10
Lisbon, Ohio 44432

APPENDIX A