No. 19-5463

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

JESSE JEROME DEAN, JR., -- PETITIONER

vs.

UNITED STATES OF AMERICA, -- RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO

THE ELEVENTH U.S. CIRCUIT COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

JESSE JEROME DEAN, JR.
44060-004 H03-307L
MCRAE CORRECTIONAL FACILITY
P. O. DRAWER 55030
MCRAE HELENA, GA 31055

QUESTIONS PRESENTED

- **Whether the District Court had jurisdiction where Petitioner was indicted for acts which do not constitute a criminal offense?**

- **Whether Petitioner's colorable claim of actual innocence survives the restrictions imposed by the Anti-terrorism and Effective Death Penalty Act (AEDPA) on second or successive petitions pursuant to Title 28 U.S.C. § 2255 and is entitled to be adjudicated on its merits?**

- **Whether Petitioner is suffering ongoing Brady v. Maryland and Kyles v. Whitley violations, where "GX7" was never produced in discovery, it was extensively used during trial but never provided to Petitioner and where the DEA has now declared that it is unable to be located?**

- **Whether Petitioner is suffering an ongoing Due Process violation, where "GX7" was never produced in discovery, it was never provided to Petitioner and where the DEA has now declared that it is unable to be located?**

- **Whether a fraud has been perpetrated upon the habeas court by agents of the federal government?**

- **Whether Petitioner's constitutional right to a one-time-only opportunity for federal habeas relief was wrongly denied due to the government having perpetrated a fraud upon the habeas court?**

- **Whether there is a defect in the integrity of Petitioner's habeas proceedings, where "GX7" is now non-existent but the District Court's denial of Petitioner's one-time-only § 2255 erroneously relied upon the perjured testimony of DEA Special Agent David Howard Shelton regarding the purported contents of "GX7"?**

- **Whether there is a defect in the integrity of Petitioner's habeas proceedings, where the District Court's denial of Petitioner's one-time-only § 2255 erroneously relied upon the deliberate perjured testimony of cooperating witness/inmate Luis Miguel Perez?**

- **Whether Petitioner was denied Due Process, where his § 2255 was summarily denied, even though Petitioner's wholly meritorious, affirmative defense of *"entrapment by estoppel/public authority/innocent intent"* was never adjudicated on its merits?**

- **Whether Petitioner's showing of *"Actual Innocence Plus"* overcomes any procedural bar and entitles Petitioner to have all of his habeas claims adjudicated on their merits?**

- **Whether the systematic denial of a Certificate of Appealability over the past *eighteen years*, in spite of Petitioner's demonstration of <u>both</u> actual and legal innocence, is fundamentally unfair?**

- **Whether Petitioner is entitled to habeas relief, where Petitioner has continuously demonstrated that his continued incarceration is clearly "a fundamental miscarriage of justice"?**

LIST OF PARTIES

[X] All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this Petition is as follows:

Dean, Jr., Jesse Jerome, Petitioner, *pro se*

Hoffman, Andrea G., Assistant U.S. Attorney

Hurley, Hon. Daniel T.K., Retired Senior United States District Judge

Kastrenakes, John S., Assistant U.S. Attorney

Lewis, Guy A., Assistant U.S. Attorney

Moore, Hon. K. Michael, Chief United States District Judge

Norkin, Walter M., Esq., Assistant U.S. Attorney

Rivero, Laura Thomas, Esq., Assistant U.S. Attorney

Rose, Debra, Esq., Petitioner's Trial and Appeal Attorney

Rose, Jacob A. Esq., Petitioner's Trial and Appeal Attorney (*disbarred/deceased*)

Schwartz, Barbara, Assistant U.S. Attorney

Sorrentino, Hon. Charlene H., United States Magistrate Judge

Smachetti, Emily M., Assistant U.S. Attorney, Chief, Appellate Division

Ungaro, Hon. Ursula, United States District Judge

White, Hon. Patrick A., United States Magistrate Judge

TABLE OF CONTENTS

INDEX OF APPENDICES

I. The grant of Petitioner's Motion for Court to Take Judicial Notice

J. Judge Hurley's Order granting Petitioner's Rule 60(b)(3) motion

K. "Declaration" of DEA Unit Chief S/A Jeffrey Green

L. Marshall Dore Louis' *pro bono* Motion Requesting Appointment of Counsel

M. Excerpt of DEA Special Agent Kevin Stephens' trial testimony

N. Excerpt of Luis Miguel Perez' trial testimony

O. Luis Miguel Perez's pre-trial debriefing

P. Elio Perez's pre-trial debriefing

Q. The sworn, post-trial Affidavit of Luis Devalle

R. Excerpt of Luis Miguel Perez's trial testimony

S. Excerpt of Petitioner's trial testimony

T. Excerpt of Petitioner's trial testimony

U. Excerpt of DEA Special Agent David Howard Shelton's trial testimony

V. FOIA documents pertaining to one "*Jesse L. Dean*"

W. Example of a bona fide "Cooperating Individual Agreement"

X. The Epidemic of Exonerations

Y. "The Throwaways"

Z. Petitioner's case is "a public embarrassment for the DEA"

TABLE OF AUTHORITIES CITED

CASES **PAGE**

STATUTES AND OTHER AUTHORITIES

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 of the United States Court of Appeals for the Eleventh Circuit.

OPINIONS BELOW

The June 14, 2019 opinion of the Eleventh U.S. Circuit Court of Appeals denying reconsideration is unpublished and attached as Appendix A. The March 7, 2019 opinion of the Eleventh U.S. Circuit Court of Appeals dismissing appeal is unpublished and attached as Appendix B. The October 2, 2018 order of the U.S. District Court for the Southern District of Florida dismissing Petitioner's Motion to Dismiss Indictment, With Prejudice, For Lack of Jurisdiction as Acts Charged do Not Constitute a Crime or, in the Alternative, Motion Requesting Relief From Judgment Pursuant to Fed.R.Civ.P.60(b)(6) and 60(d)(1)(3) and Demand For Immediate Release is unpublished and attached as Appendix C.

JURISDICTION

The Court of Appeals entered its judgment on March 7, 2019 and Petitioner's timely-filed motion for reconsideration was denied on June 14, 2019. This court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves a federal criminal defendant's constitutional rights under the Fifth and Sixth Amendments which provide in relevant part that:

> *"No person shall be held to answer for a capital, or otherwise infamous crime...nor be deprived of life, liberty, or property, without due process of law..."Fifth Amendment;*

and:

> *"In all prosecutions, the accused shall enjoy the right to ... have the Assistance of Counsel for his defence."Sixth Amendment.*

This case also involves the application of:

Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963) and

Kyles v. Whitley, 514 U.S. 419, 115 S.Ct. 1555, 131 L.Ed.2d 490 (1995).

INTRODUCTION

Petitioner is both actually and legally innocent but was wrongfully convicted due to the trial rulings of now-retired Senior U.S. District Judge Daniel T.K. Hurley. Adding insult to injury, agents of the government then perpetrated a fraud upon the habeas court which resulted in the denial of Petitioner's one-time-only petition pursuant to Title 28 U.S.C. § 2255. Thereafter, in spite of Petitioner's colorable showing of both actual and legal innocence, both the District Court and the Eleventh U.S. Circuit Court of Appeals have refused to correct this manifest miscarriage of justice which has now spanned more than twenty-four years.

STATEMENT OF THE CASE

On September 28, 1994, a grand jury in the Southern District of Florida returned an indictment against Petitioner, Jesse Jerome Dean, Jr., and co-defendants Luis Miguel Perez, Antonio Rada, John Jairo Zapata, Pedro Oscar Rodriguez, Jose Ramon Acosta, Erayda Pintado, Sergio Godoy, Rigoberto Pablo Herrara Urbay, Delores Lilia Perez-Godoy, Elio Perez, Jose Perez, Jose Ramon Perez, Raimundo Antonio Perez and Manuel Eduardo Pulido Gonzalez. The indictment charged Petitioner and various alleged co-defendants with conspiracy to import cocaine, in violation of 21 U.S.C. § 952(a) and § 963 (Count I); importation of cocaine, in violation of 21 U.S.C. § 952(a) and 18 U.S.C. § 2 (Count II); conspiracy to possess with intent to distribute cocaine, in violation of 21 U.S.C. § 841(a)(1) and § 846 (Count III); possession with intent to distribute cocaine, in violation of 21 U.S.C. § 841(a)(1) and 18 U.S.C. § 2 (Count IV); and using a telephone to facilitate the commission of a felony: conspiracy to possess with intent to distribute cocaine, in violation of 21 U.S.C. § 843(b) and § 846 (Count X).

Petitioner was arrested on June 10, 1995, and proceeded alone to a jury trial on January 27, 1997 before United States District Judge Daniel T.K. Hurley.

On February 6, 1997, the jury returned a verdict finding Petitioner guilty as charged on Counts I, II, III, IV and X of the indictment. Petitioner's Motion for a Judgment of Acquittal /New Trial was denied on March 24, 1997.

On April 25, 1997, the District Court sentenced Petitioner to concurrent terms of 360 months' imprisonment on Count I, II, III, and IV, a concurrent term of 48 months' imprisonment on Count X and concurrent terms of five years' supervised release. Petitioner's Direct Appeal to the Eleventh U.S. Circuit Court of Appeals was denied on March 3, 1999, in an unpublished Per Curiam opinion. Petitioner's Suggestion of Rehearing en Banc and Petition for Rehearing was denied on April 30, 1999.

Petitioner's *pro se* Motion to Recall the Mandate was denied on October 25, 1999. Petitioner's *pro se* Petition to the United States Supreme Court for a Writ of Certiorari was denied on December 8, 1999 and his *pro se* Petition for Rehearing was denied on February 18, 2000. Petitioner's *pro se* Motion to Vacate, Set-aside, or Correct Sentence pursuant to Title 28 U.S.C. § 2255 was filed on June 9, 2000 and summarily denied on June 19, 2001.

Thereafter, for the ensuing eighteen years, even though Petitioner has provided the courts with irrefutable evidence of both his actual and legal innocence, he has been unable to have his meritorious claims adjudicated because the courts below have repeatedly refused to grant him a Certificate of Appealability, having effectively denied Petitioner access to the courts.

PETITIONER WAS IMPROVIDENTLY INDICTED IN ORDER TO COVER UP THE MISCONDUCT OF FEDERAL AGENTS IN THE BAHAMAS

Within hours of his detention at the Federal Detention Center in Miami, Florida, Petitioner received a surprise "legal visit." His "visitors" were DEA S/A Kevin Stephens and FBI S/A Anibal Gonzalez, co-lead agents in this case, and a very senior Bahamian law enforcement official. An impromptu statement by DEA S/A Stephens makes it very clear that Petitioner should have never been indicted.

Petitioner was very perplexed that he had been arrested because he had been serving as an informant in the Bahamas for the previous three and a half years, without complaint. S/A Stephens was very sympathetic to Petitioner and gave Petitioner the business card of attorney Joaquin Perez who was "a DEA lawyer" who would get Petitioner "a good deal." S/A Stephens eventually told Petitioner that *"if [Petitioner] had called Dave (DEA S/A David Howard Shelton in Nassau, Bahamas), [Petitioner] would not have been indicted."* This sole statement was a very cryptic but foreboding commentary of the very real nightmare that lay ahead for Petitioner.

Sure enough, after Petitioner had rejected all "plea offers," Respondent persisted nonetheless but, on the verge of trial, during trial and even during Petitioner's testimony, Respondents repeatedly offered to dismiss the indictment against Petitioner. (See Appendix D). However, Petitioner simply refused to plead guilty as he held the good-faith belief that, as a Confidential Informant in good standing, he had been authorized to engage in the conversations for which he had been indicted. Enraged, Respondent eventually maliciously foisted *two known false narratives* upon the court and jury and Petitioner was wrongly convicted and sentenced to 360 months in prison.

PETITIONER VOLUNTEERED AND SERVED AS A CONFIDENTIAL INFORMANT BUT WAS SECRETLY TRANSFORMED FROM "FRIEND" TO "FOE"

Petitioner is a former Senior Radar Air Traffic Controller/Supervisor, previously employed by the government of the Commonwealth of the Bahamas at the Sir Lynden Oscar Pindling International Airport in Nassau, Bahamas.

In late 1991, Petitioner, a citizen of the Bahamas, saw an advertisement in a "FLYING" magazine that invited its interested readers to call "1-800-BE-ALERT" to report incidences of illegal drug-trafficking. Petitioner responded and learnt that up to $250,000 could be earned if one became a documented confidential informant. Petitioner agreed and was eventually designated as: "C/I No.: SGV-92-0013." (See Appendix E.) Petitioner served in this capacity, without any complaint whatsoever from his federal Special Agent contacts, until his surprise arrest on June 10, 1995. Petitioner has been continuously detained since then.

In 1997, after a 20-month-long pre-trial detention, Petitioner rejected a final plea-offer of a *maximum* of 48 months and insisted on going to trial, determined to prove that he was not guilty of the crimes for which he had been indicted. Petitioner honestly believed that, as a Confidential Informant in good standing for the previous three and a half years, he had been authorized to commit the otherwise criminal acts for which he had been indicted. Instead of "justice," Petitioner was blindsided by a conspiracy of lies, deceit and judicial tyranny, was wrongfully convicted and sentenced to thirty years in federal prison.

In order to justify Petitioner's indictment and prosecution, all government actors involved conspired to and did commit a series of fraud upon each and every court that has been presented with this case to date as will be detailed below, with supporting, irrefutable government documents.

Petitioner respectfully submits that he "is detained for the doing of certain acts which do not constitute a criminal offense under the law of the particular jurisdiction, [thus] the district court [was] without jurisdiction, and he [is therefore entitled to be] discharged in a habeas corpus proceeding."

MORE THAN TWENTY-FOUR YEARS OF TORTURE!

"Justice delayed is justice denied." Petitioner has not only been denied justice but he has been tortured for more than twenty-four years because evidence of both his actual and legal innocence was known to Respondent well *before* Petitioner had even been arrested. Ergo, this case is the epitome of a flagrant miscarriage of justice. Petitioner will demonstrate that his more than twenty-four-year-long *torture* was instigated by federal agents, determined to cover-up their serial violations of the Department of Justice's mandatory "Guidelines Regarding the Use of Confidential Informants" during their tenure in the Bahamas, maliciously propounded by rogue federal prosecutors determined to "win at all cost" and acquiesced in by intimidated defense attorneys - all with the imprimatur of a pro-government judge locally known as "Hang-'em-High-Hurley," whose reputed desire was to impose *"a million years of imprisonment before he left the bench."*

THE BEGINNING OF PETITIONER'S LEGAL ODYSSEY

More than twenty-two and a half years ago, now-retired Senior U.S. District Judge Daniel T.K. Hurley became noticeably disturbed when Petitioner refused to accept a "plea-offer" of a maximum of 48 months in prison and insisted on his right to a jury trial. Judge Hurley struggled to contain his anger but his latent furor set the overall tone for the *persecution* that would follow when he declared that:

"THE COURT: The court will not accept a plea. We are ready to go to trial." (See Appendix D, Page 2, Lines 12-13.)

The government was determined to not have this case go to trial and therefore continued discussing a possible resolution with defense counsel:

"MR. ROSE [Defense Counsel]: The other matter, I am not sure what was said while we were outside, but we were over the weekend, last night, and this morning, discussing the matter of a superseding information dropping the indictment and arranging a plea not with regard to the indictment but with regard to the superseding information, and that is what we had under discussion." (See Appendix D, Page 4, Lines 4-10.)

In the end, Petitioner refused to plead guilty to a crime that he did not commit. Petitioner has never resided in the United States and knew nothing about federal law or the federal criminal justice system. All Petitioner did know was that, for the three and a half years prior to his arrest, he had been serving as a paid, documented Confidential Informant for the United States Drug Enforcement Administration in his native Bahamas. *Also, Petitioner had no knowledge of or participation in a conspiracy which had imported 908 kilograms of cocaine into South Florida on a vessel by way of Colombia, Belize and Mexico.* Therefore, he could not understand why he had been charged with having committed a crime. Petitioner was confident that he had done nothing wrong and that some kind of mistake had been made. Furthermore, Petitioner did not want to jeopardize his fifteen-year-long career as a Senior Radar Air Traffic Controller/Supervisor with a criminal conviction so he insisted on going to trial, determined to prove his innocence.

To Petitioner's shock and dismay, Respondent's deliberate use of known false testimonies, their illegal, prejudicial use of a fabricated document labelled "GX7" and multiple constitutional violations resulted in his wrongful conviction.

Judge Hurley nonchalantly sentenced Petitioner to thirty years in prison – a sentence more than seven times greater than the "plea offer" – and, over the ensuing two decades, has steadfastly turned a blind eye to a veritable flood of evidence that overwhelmingly invalidates Petitioner's conviction in its entirety.

PETITIONER'S "LEGAL ASSASSINATION": JUDGE HURLEY'S "POINTLESS PROCEDURE" RULING REGARDING THE ILLEGAL AND PREJUDICIAL USE OF "GX7"

Now-retired Senior U.S. District Judge Daniel T. K. Hurley, was fully aware that Petitioner's "trial" was clearly an unmitigated exercise in chicanery, nevertheless, he accepted the government's twin false narratives and, in denying Petitioner's Motion for Judgment of Acquittal, stated that:

> *"This has certainly been a fascinating case, because it is a case where there is one set of facts put forward by the Government, and there is another set of facts that has been advanced by the defendant, and, of course, it turns on the credibility, if you will, of both the Government's witnesses and the defendant as to what was really going on at the time of the involvement with the Perez organization." (R9: 338).*

"What was really going on" was that Respondent was unable to persuade Petitioner into pleading guilty and had no choice but to perpetrate a fraud upon the court in order to cover-up the fact that Petitioner had not been given any instructions when he volunteered to serve as a Confidential Informant. Therefore, this entire case boils down to the illegal use of a single document - "GX7"- which was purportedly the instructions that Petitioner had allegedly been given on November 6, 1991, at the United States Embassy in Nassau, Bahamas.

Federal Rule of Evidence 103(c), Note to Subdivision (c) states that:

> *"This subdivision proceeds on the supposition that a ruling which excludes evidence in a jury case is likely to be a pointless procedure if the excluded evidence nevertheless comes to the attention of the jury."*

"GX7" was never produced in discovery but was belatedly produced during trial and illegally and repeatedly used to Petitioner's prejudice. (See Appendix F). Judge Hurley permitted this line of questioning regarding "GX7," then made the "pointless procedure" of striking "GX7" from the record. Petitioner has never been able to recover from this clearly illegal manoeuver. "GX7" has never been seen again but, in stark contrast, Petitioner's fingerprints, taken on the very same day, November 6, 1991, and his photograph, taken a month later, on December 5, 1991, were easily located and retrieved from Petitioner's Confidential Informant File and have long been a part of the records and files in this case. (See Appendix G). Judge Hurley simply sanctioned Petitioner's "legal assassination."

PETITIONER'S "AFFIRMATIVE DEFENSE" WAS EFFECTIVELY SABOTAGED DUE TO HIS OWN ATTORNEYS' INEFFECTIVE ASSISTANCE

The record and files in this case clearly show that Petitioner received ineffective assistance of counsel at trial because Petitioner's defense attorneys failed to impeach Luis Miguel Perez with Perez's own pre-trial debriefing and that of his brother's, both of which demonstrate that Petitioner was never a member of the Luis Miguel Perez drug-trafficking-organization. Petitioner has suffered prejudice because had his defense attorneys impeached Perez with these debriefings, it is a near certainty that Petitioner would have been acquitted.

PETITIONER'S ORIGINAL MOTION PURSUANT TO TITLE 28 U.S.C. § 2255

On June 10, 2000, Petitioner, *pro se*, filed his original motion pursuant to Title 28 U.S.C. § 2255 and raised the following issues:

"1. INEFFECTIVE ASSISTANCE OF COUNSEL

Petitioner was denied his Sixth Amendment right to effective assistance of counsel on appeal because counsel failed to raise four critical issues for consideration:

(A) DEA S/A David H. Shelton committed repeated acts of perjury when he testified, among other things, that Petitioner was given instructions to guide his activities as a CI;

(B) Respondent Witness Luis Miguel Perez's testimony was riddled with perjury, especially so in regard to his alleged drug-trafficking activities with Petitioner;

(C) Respondent Failed to Provide In Discovery An Alleged "Cooperating Individual Agreement" Purportedly Signed By Petitioner, Causing Petitioner To Be Unfairly Surprised At Trial And Unable To Properly Defend Himself;

(D) The prosecutor breached his promise not to introduce Petitioner's immunized "prior bad acts," violated discovery rules and made highly-prejudicial and improper, unsubstantiated remarks in closing arguments;

2. PETITIONER'S RIGHTS UNDER THE FIFTH AMENDMENT WERE VIOLATED

(A) Information that Petitioner disclosed to DEA S/A David H. Shelton and U.S. Customs S/A Scott Lowen in his debriefing was used against him at trial;

(B) Petitioner was deactivated without being informed; Petitioner relied on the misleading silence/misrepresentations of DEA S/A David H. Shelton which eventually led to Petitioner's conviction, denying Petitioner Due Process."

THE GRANT OF PETITIONER'S MOTION FOR COURT TO TAKE JUDICIAL NOTICE

On February 20, 2001, Magistrate Sorrentino granted Petitioner's Motion for Court to Take Judicial Notice of the Department of Justice's mandatory "Guidelines Regarding the Use of Confidential Informants." (See Appendix H.)

MULTIPLE VIOLATIONS OF THE DEPARTMENT OF JUSTICE'S MANDATORY "GUIDELINES REGARDING THE USE OF CONFIDENTIAL INFORMANTS"

Petitioner, DEA Special Agent David Howard Shelton, U.S. Customs Special Agent Scott Lowen and Respondent had all known the truth, even before Petitioner's arrest and it is now plainly evident for all the world to see: Petitioner had never been given any instructions when he volunteered to serve as a Confidential Informant in October of 1991 in Nassau, Bahamas. This was a grave oversight, actually a major violation of the Department of Justice's mandatory "Guidelines Regarding the Use of Confidential Informants" on the part of the aforementioned Special Agents. This and other gross constitutional violations resulted in Petitioner's indictment, prosecution and wrongful conviction.

These multiple violations include, in pertinent part,

"B. REGISTRATION

7. all information that is required to be documented in the CI's files pursuant to these Guidelines (e.g. the provision of the instructions set forth in the next paragraph)...

C. INSTRUCTIONS

1. In registering a CI, at least one agent of the JLEA, along with one additional agent or other law enforcement official present as a witness, shall read verbatim the following instructions...

V. DEACTIVATION OF CONFIDENTIAL INFORMANTS

3. if the CI can be located, notify the CI that he or she has been deactivated as a CI and obtain documentation that such notification was provided..." (See Appendix I).

Another grave violation of these mandatory "Guidelines" is the fact that DEA S/A Shelton is on record as having admitted that he had "deactivated" Petitioner but had deliberately failed to inform Petitioner of such – a clear violation of section "V.3." above. Therefore, in order to cover-up these and other repeated violations, all Respondent actors have manipulated the entirety of these proceedings to ensure Petitioner's wrongful conviction and his continued imprisonment; the epitome of a complete fraud upon the court.

After more than nineteen years of Petitioner's best *pro se* efforts, neither Senior U.S. District Judge Daniel T.K. Hurley nor the Eleventh U.S. Circuit Court of Appeals have made any effort whatsoever to hold Respondent accountable for this glaring violation of discovery rules, the apparent destruction of critical, exculpatory evidence and multiple other constitutional violations - a very serious indictment of the federal criminal justice system in and of itself.

On June 19, 2001, Judge Hurley summarily denied Petitioner's § 2255 - without even making a written evaluation of Petitioner's meritorious claims. Thereafter, both Judge Hurley and the Eleventh U.S. Circuit Court of Appeals denied Petitioner's Requests for a Certificate of Appealability.

THE GRANT OF PETITIONER'S MOTION REQUESTING RELIEF FROM JUDGMENT PURSUANT TO FED.R.CIV.P.60 (b)(3) DUE TO FRAUD UPON THE COURT

On June 28, 2004, after he had been able to process the now-compounded legal subterfuge that had befallen him, Petitioner filed a Motion Requesting Relief from Judgment Pursuant to Fed.R.Civ.P.60(b)(3) which Judge Hurley

summarily denied on July 8, 2004, based on outdated Eleventh Circuit law. Therefore, on July 21, 2004, Petitioner immediately filed a Motion for Reconsideration, citing Gonzalez v. Crosby, 366 F.3d 1253 (11th Cir. 2004), which Judge Hurley then reluctantly granted on August 4, 2004. (See Appendix J.)

On April 11, 2005, after eight months of considering the irrefutable documents which clearly demonstrate the fraud that agents of the government had perpetrated upon the habeas court, in spite of *his own order* which declared that Petitioner was "*entitled to a judicial determination regarding the merits of* his *Rule 60(b)(3) motion*," Judge Hurley again summarily denied Petitioner relief. Once again, both Judge Hurley and the Eleventh U.S. Circuit Court of Appeals denied Petitioner's Requests for a Certificate of Appealability.

THE DEA'S RECENT "BOMBSHELL REVELATION" REGARDING THE "DISAPPERANCE" OF THE MYSTERIOUS "GX7"

In response to Petitioner's *pro se* FOIA lawsuit to obtain a copy of "GX7," on April 10, 2015, U.S. District Judge Amit Mehta, in a published opinion, Dean v. U.S. Department of Justice, et al., 87 F.Supp.3d 318, 322 (D.D.C. 2015), ordered the Drug Enforcement Administration to "search for the requested DEA Form 473 and, by May 8, 2015, either disclose the DEA Form 473 to [Petitioner] or assert that the record is exempt from disclosure by filing a dispositive motion."

On April 30, 2015, DEA S/A Jeffrey Green, Unit Chief, Confidential Source Unit, responded: *"The archived Headquarters file related to [Petitioner] was obtained from the National Records Center by OMPI. [He] conducted a search of the file by hand; the result was that no copy of a "Cooperating Individual Agreement," DEA Form 473, was located in the file."* (See Appendix K.) This recent revelation is very striking given the meticulous record-keeping protocols of the

United States government. The "disappearance" of "GX7" wholly undermines not only its authenticity but the credibility of S/A Shelton's trial testimony and the integrity of Petitioner's indictment, prosecution and conviction.

Incredulously, in spite of the mysterious "disappearance" of this critical document which was required to be secured, Judge Mehta concluded that "no material factual dispute exists with regard to the adequacy of DEA's search for responsive records and that Defendants, having located no responsive records after a reasonably calculated search, are entitled to judgment as a matter of law." Dean v. U.S. Department of Justice, et al., 141 F.Supp.3d 46, 50 (D.D.C. 2015).

On January 4, 2016, Attorney Marshall Dore Louis, Esq., *pro bono* Motion to Appoint Counsel (See Appendix L.) was summarily denied.

THE NON-DISCLOSURE OF "GX7," ITS ILLEGAL USE AND NOW "DISAPPEARANCE" IS AN ONGOING VIOLATION OF BOTH BRADY V. MARYLAND AND KYLES V. WHITLEY AND A DUE PROCESS VIOLATION THAT REQUIRES RELIEF

This court has held long ago that:

> *"the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution."* Brady v. Maryland, 83 S.Ct. 1194, 1196, 373 U.S. 83 (1963). See also Kyles v. Whitley, 514 U.S. 419, 115 S.Ct. 1555, 131 L.Ed.2d 490 (1995).

"GX7" was alleged to have been the Cooperating Individual Agreement that Petitioner had allegedly signed on November 6, 1991, in Nassau, Bahamas, and is critical to the case against Petitioner. Without it, there simply was no case against Petitioner. As such, the delayed disclosure of "GX7," it's illegal and repeated use at trial and it's now non-existence is both a violation of Brady v. Maryland and

Kyles v. Whitley and an ongoing due process violation. The now absence of "GX7" constitutes one of the pillars of Petitioner's actual and legal innocence claim.

Additionally, DEA S/A Kevin Stephens, DEA S/A David Howard Shelton and the government's "star witness," Luis Miguel Perez, *all testified that Petitioner had nothing to do with the charged conspiracy*. Also, the pre-trial debriefings of Luis Miguel Perez and his brother, Elio Perez, neither of which were introduced in court nor entered into evidence, exonerated Petitioner of any involvement whatsoever with the Luis Miguel Perez drug-trafficking-organization. Further still, in a post-trial affidavit, fellow inmate Luis Devalle swore that Luis Miguel Perez had admitted to Luis Devalle that Luis Miguel Perez had testified falsely against Petitioner in order to secure a sentence reduction.

A MORE-THAN-TWO-DECADE-LONG JUDICIAL COVER-UP!

Over the past twenty years, each and every Judge of the Eleventh U.S. Circuit Court of Appeals who has ever reviewed any of Petitioner's appeals have upheld Judge Hurley's rulings. In so doing, they have ignored both Supreme Court authority and binding Eleventh Circuit precedents which clearly exonerate the otherwise illegal conduct for which Petitioner had been indicted and wrongly convicted. Additionally, they have all ignored the Eleventh Circuit's own "*Actual Innocence Plus*" standard which Petitioner submits that he has surpassed.

This colossal, two-decade-long judicial cover-up became perfected when Petitioner's latest *pro se* Motion to Dismiss Indictment, With Prejudice, For Lack of Jurisdiction as Acts Charged do Not Constitute a Crime or, in the Alternative, Motion Requesting Relief From Judgment Pursuant to Fed.R.Civ.P.60(b)(6) and 60(d)(1)(3) and Demand for Immediate Release was again denied by a different

judge when both he and the Eleventh U.S. Circuit Court of Appeals dismissed Petitioner's Motion and Appeal for a lack of jurisdiction. (See Appendix B&C).

RESPONDENTS' MORE THAN TWENTY-FOUR-YEAR-LONG FALSE NARRATIVES, THEIR PERPETRATION OF FRAUD UPON THE COURTS AND THE RESULTING COLLATERAL EFFECTS ON PETITIONER'S POST-CONVICTION EFFORTS

Petitioner has now endured more than twenty-four years of wrongful imprisonment - all because of Respondent's deliberate use of two critically false narratives. First, Respondent has repeatedly represented that Petitioner had been a member of the Luis Miguel Perez drug-trafficking-organization and second, that Petitioner had been given instructions when he had volunteered to serve as a Confidential Informant in his native Nassau, Bahamas.

Respondent knew these narratives to be false because, prior to Petitioner's arrest, Respondent had in their possession the debriefings of both Luis Miguel Perez and Elio Perez which reflected that Petitioner was not a member of the Luis Miguel Perez drug-trafficking-organization. Also, Respondent knew that Petitioner had never been given any instructions because Respondent never had a DEA Form 473 signed by Petitioner in its possession and had never provided one in discovery to defense counsel, although one did "mysteriously" appear at trial.

Nevertheless, these aforementioned deliberate falsehoods were maliciously presented in open court by AUSA's Barbara Schwartz and Guy Alan Lewis and inmate Luis Miguel Perez at Petitioner's criminal trial, which led to Petitioner's wrongful conviction. These deliberate falsehoods have resulted in the denial of Petitioner's direct appeal, the denial of his one-time-only §2255, the repeated denials of his multiple motions pursuant to Fed.R.Civ.P.60(b) due to fraud upon the habeas court, the repeated denials of his pro se and counseled

Applications for Leave to File a Second or Successive § 2255, the repeated denials of his multiple Petitions for Executive Clemency and the repeated denials of his efforts to obtain a Treaty Transfer to his native Bahamas. These deliberate falsehoods have been maintained by Respondent to this very day and are deliberate falsehoods that are the basis of Petitioner's continued wrongful imprisonment and more than twenty-four-year-long search for justice.

THE ACTUAL INNOCENCE STANDARD

This Court's standard for a claim of actual innocence is very clear:

> **"... [T]o be credible, such a claim requires petitioner to support his allegations of constitutional error with new reliable evidence -- whether it be exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence—*that was not presented at trial* ... The habeas court must make its determination concerning the petitioner's innocence "in light of all the evidence, including that alleged *to have been illegally admitted* (but with due regard to any unreliability of it) and evidence tenably claimed to have been wrongly excluded or *to have become available only after the trial* ... The meaning of actual innocence ... does not merely require a showing that a reasonable doubt exists in the light of the new evidence, but rather that no reasonable juror would have found the defendant guilty. It is not the district court's independent judgment as to whether reasonable doubt exists that the standard addresses; *rather the standard requires the district court to make a probabilistic determination about what reasonable, properly instructed jurors would do.* Thus, a petitioner does not meet the threshold requirement unless he persuades the district court that, in light of the new evidence, no juror, acting reasonably, would have voted to find him guilty beyond a reasonable doubt." Schlup v. Delo, 115 S.Ct. 851, 865-69, 513 U.S. 298, 130 L.Ed.2d 808 (1995).**

This court has further declared that:

"... We have recognized ... that a prisoner "otherwise subject to defenses of abusive or successive use of the writ [of habeas corpus] may have his federal constitutional claim considered on the merits if he makes a proper showing of actual innocence." ... In other words, a credible showing of actual innocence may allow a prisoner to pursue his constitutional claims ... on the merits notwithstanding the existence of a procedural bar to relief. *"This rule, or fundamental miscarriage of justice exception, is grounded in the 'equitable discretion' of habeas courts to see that federal constitutional errors do not result in the incarceration of innocent persons."* ... The miscarriage of justice exception, our decisions bear out, survived AEDPA's passage ... These decisions "see[k] to balance the societal interests in finality, comity, and conservation of scarce judicial resources with the individual interest in justice that arises in the extraordinary case ... *Sensitivity to the injustice of incarcerating an innocent individual should not abate when the impediment is AEDPA's statute of limitations."* McQuiggin v. Perkins, 133 S.Ct. 1924, 1931 (2013).

PETITIONER HAS PRESENTED "EVIDENCE OF INNOCENCE SO STRONG" WHICH CONSTITUTES SUFFICIENT "EXTRAORDINARY CIRCUMSTANCES" THAT WARRANT RELIEF FROM JUDGMENT

The irrefutable evidence of Petitioner's both actual and legal innocence is impossible to deny as they are all primarily irrefutable government documents, sworn trial testimony or an affidavit sworn under penalty of perjury, many of which were not presented at trial. They are as follows:

- DEA Special Agent Kevin Stephens has admitted that Petitioner had no knowledge of or participation in the charged conspiracy; See Appendix M;

- "Cooperating witness" Luis Miguel Perez has admitted that Petitioner had no knowledge or participation in the charged conspiracy; See Appendix N;

- Luis Miguel Perez's pre-trial debriefing, *which was not presented at trial*, demonstrates that Petitioner was never a member of his drug-trafficking-organization. See Appendix O;

- Elio Perez's pre-trial debriefing, *which was not presented at trial*, demonstrates that Petitioner was never a member of the Luis Miguel Perez drug-trafficking-organization; See Appendix P;

- Luis Devalle's sworn, post-trial affidavit, *which become available only after trial*, asserts that Petitioner was never a member of the Luis Miguel Perez drug-trafficking-organization and that Luis Miguel Perez had admitted to Luis Devalle of having testified falsely against Petitioner in order to secure a sentence reduction; See Appendix Q;

- Petitioner has testified that he was never a member of the Luis Miguel Perez drug-trafficking-organization; See Appendix R;

- Petitioner has testified that he had not been given any instructions when he volunteered and that had he known about the charged conspiracy, he would have tried to cause its seizure and earn another reward from the DEA; See Appendix S;

- Petitioner has testified that he was never informed that he had been "deactivated"; See Appendix T;

- DEA Special Agent David Howard Shelton has testified that he "deactivated" Petitioner but deliberately did not inform Petitioner that he had done so, in violation of the Department of Justice's mandatory "Guidelines Regarding the Use of Confidential Informants." However, these "Guidelines," *became available only after trial*. See Appendix U;

- *Petitioner, Mr. Jesse Jerome Dean, Jr., and one Jesse L. Dean have both been erroneously assigned the exact NADDIS number: "2287421," but this become available only after trial. See Appendix V;* and

- *DEA S/A Jeffrey Green, Unit Chief, Confidential Source Unit, has declared in his sworn declaration that, after a thorough search, "GX7," which had been illegally admitted, is now nowhere to be found, but this became available only after trial. See Appendix K.*

"EVIDENCE OF INNOCENCE SO STRONG THAT A COURT CANNOT HAVE CONFIDENCE IN THE OUTCOME OF THE TRIAL"

The illegal introduction of "GX7," its repeated use and now "disappearance," the false trial testimonies of all of the government's critical witnesses, the unintroduced debriefings of the Perez brothers and the post-trial affidavit of inmate Luis Devalle, all combine to satisfy Petitioner's *"actual innocence"* claim. As a result of this showing, Petitioner has overcome any procedural bar and is entitled to have all of his habeas claims adjudicated on their merits. Petitioner has clearly demonstrated "evidence of innocence so strong that a court cannot have confidence in the outcome of the trial" and that Petitioner's trial was not "free of nonharmless constitutional error." McQuiggin v. Perkins, 133 S.Ct. at 1936, (citing Schlup v. Delo at 115 S.Ct. 851).

"A PROBABILISTIC DETERMINATION OF WHAT REASONABLE, PROPERLY INSTRUCTED JURORS WOULD DO" IN REGARDS TO "EVIDENCE WHICH WAS ILLEGALLY USED AT TRIAL, EVIDENCE NOT PRODUCED AT TRIAL OR TRUSTWORTHY EVIDENCE ACQUIRED AFTER TRIAL"

Any court which reaches the merits of Petitioner's habeas claims will very easily conclude the following:

- if the jury had been given Luis Miguel Perez's pre-trial debriefing *which makes no mention whatsoever of either Petitioner or the Bahamas*, there is a reasonable probability that the jury would have concluded that Luis Miguel Perez was testifying falsely that Petitioner had allegedly been his "long-time partner in the Bahamas" *and Petitioner would not have been convicted*;

- if the jury had been given Elio Perez's pre-trial debriefing *which shows that Petitioner was never a member of the Luis Miguel Perez drug-trafficking-organization*, there is a reasonable probability that the jury would have concluded that Luis Miguel Perez was testifying falsely that Petitioner had allegedly been his "long-time partner in the Bahamas" *and Petitioner would not have been convicted;*

- if the jury *had not been illegally shown "GX7,"* which had *never* been produced in discovery, had *never* been authenticated, but nevertheless had *been illegally introduced and wrongly exposed to them*, in violation of F.R.Evid.103(c), and which has since *"disappeared,"* there is a reasonable probability that the jury would have concluded that Petitioner had *never* been given any instructions as falsely testified by DEA S/A David Howard Shelton and therefore Petitioner could *never* have violated any instructions, *and Petitioner would not have been convicted;*

- if the jury had been given the *new evidence* of Luis Devalle's affidavit where he swore that Luis Miguel Perez had admitted to Luis Devalle that Luis Miguel Perez had testified falsely against Petitioner solely in order to obtain a sentence reduction, there is a reasonable probability that the jury would have concluded that, indeed, Luis Miguel Perez had testified falsely that Petitioner had been his "long-time partner in the Bahamas" *and Petitioner would not have been convicted;*

- if the jury had been shown official government documents where the DEA had erroneously misidentified Petitioner, Jesse Jerome Dean, Jr., from Nassau, Bahamas, and Jesse L. Dean of Belleville, Illinois, *as both having been assigned the exact same NADDIS number of "2287421,"* there is a reasonable probability that the jury would have concluded that Petitioner had been erroneously targeted from the very beginning and that Petitioner's "trial," *especially after Petitioner had rejected a "plea bargain" of "a maximum of 48 months,"* was only a charade, deliberately and maliciously designed to cover up both this gross internal DEA mistake and the serial misconduct of federal agents in the Bahamas *and Petitioner would not have been convicted;*

- although the jury had been told that Petitioner had not been informed that he had been "deactivated," if the jury had additionally been told that S/A's Shelton and Lowen had not given Petitioner any instructions and had not properly supervised Petitioner, which were all major violations of *mandatory* Department of Justice "Guidelines Regarding the Use of Confidential Informants," there is a reasonable probability that the jury would have concluded that Petitioner should have never even been indicted, much less forced to stand trial, *and Petitioner would not have been convicted.*

THE "CREDIBILITY ASSESSMENT" HAS COMPLETELY TILTED IN PETITIONER'S FAVOR AND IT IS CLEARLY EVIDENT THAT PETITIONER WAS WRONGLY CONVICTED

Immediately after trial in 1997, Judge Hurley's assessment of the testimony given at Petitioner's trial was that it was essentially "in equipoise" because he, himself, declared that this case *"turn[ed] on the credibility, if you will, of both the Government's witnesses and the defendant as to what was really going on at the time of the involvement with the Perez organization."*

As early as June 10, 2000 in his § 2255, after demonstrating that the government had secured Petitioner's conviction by the use of known perjured testimony, the "credibility assessment" tilted in Petitioner's favor. On August 4, 2004, when the court granted Petitioner's Rule 60(b)(3) motion due to a fraud that government agents had perpetrated upon the habeas court, the " credibility assessment" tilted further in Petitioner's favor. Finally, on April 11, 2015, upon Respondent's declaration that "GX7" was now conveniently unable to be located, the "credibility assessment" in Petitioner's favor became complete. The simple truth is that both of the government's critical witnesses had testified falsely and Petitioner had been wrongly convicted. However, over the ensuing eighteen years, the courts have refused to grant Petitioner any relief whatsoever. The time is past due that this court take the high road and simply render justice.

REASONABLE, PROPERLY-INSTRUCTED JURORS WOULD NOT HAVE CONVICTED PETITIONER

An actual innocence claim "involves evidence the trial jury did not have before it [and] the inquiry requires the federal court to assess how reasonable jurors would react to the overall, newly supplemented record." The inquiry considers "all the evidence, old and new, incriminating and exculpatory, without regard to whether it would necessarily be admitted under rules of admissibility that would govern at trial" and the court must "make a probabilistic determination about what reasonable, properly instructed jurors would do."

Simply put, "a probabilistic determination of what reasonable, properly instructed jurors would do" in regards to "evidence which was illegally used at trial, evidence not produced at trial or trustworthy evidence acquired after trial" would be that Petitioner's trial testimony was absolutely truthful: Petitioner had

never been a member of the Luis Miguel Perez drug-trafficking-organization; Petitioner had *never* been given any instructions and that Petitioner's interactions and conversations with Luis Miguel Perez were consistent with Petitioner's good-faith belief that, as a Confidential Informant in good standing, he had been authorized to do so, and thus, Petitioner's acts and conversations *were not criminal.* To the contrary, they were the very definition of his "affirmative defense" of public authority, innocent intent or entrapment by estoppel. See United States v. Alvarado, 808 F.3d 474, 483-88 (11th Cir. 2015).

THIS COURT'S ANCIENT AUTHORITIES ON PETITIONER'S "AFFIRMATIVE DEFENSE"

This Court has long ago pronounced the law as it relates to the precise circumstances in which Petitioner is now ensnared:

> "He who, by his language or conduct, leads another to do what he would not otherwise have done, shall not subject such person to loss or injury by disappointing the expectations upon which he acted." Dickerson v. Colgrove, 100 U.S. 578, 25 L.Ed. 618 (1879). Further, "one who by his acts or representations or by his silence when he ought to speak, intentionally or through culpable negligence induces another to believe certain facts to exist, and the latter rightfully acts on such a belief, so that he will be prejudiced if the former is permitted to deny the existence of such facts, is thereby conclusively estopped from interposing such denial." Kirk v. Hamilton, 100 U.S. 68, 26 L.Ed. 79 (1880).

More recently, this Court has declared that:

> "Crimes are not to be created by inference. They may not be constructed nunc pro tunc. Ordinarily, citizens may not be punished for actions undertaken in good faith reliance upon authoritative assurance that punishment will not attach. As this court said in Raley [v. Ohio, 360 U.S. 423, 3L.Ed.2d. 1334 (1959)] ... we may not convict

'a citizen for exercising a privilege which the State clearly had told him was available to him.' As Raley emphasized, criminal sanctions are not supportable if they are to be imposed under 'vague and undefined' commands ... or if they are 'inexplicably contradictory'... and certainly not if Respondent's conduct constitutes 'active misleading'..." U.S. v. Laub, 87 S.Ct. 574, 385 U.S. 475, 17 L.Ed.2d. 526 (1967).

These authorities stand for the proposition that:

"...[w]hen a defendant has engaged in criminal conduct at the alleged behest of people who identify themselves as law enforcement officers, three defenses are potentially available in this Circuit: public authority, entrapment-by-estoppel, and innocent intent," Alvarado, supra, at 483-484.

United States v. Abcasis, 45 F.3d 39 (2nd Cir. 1995), is precisely on point:

"...If a drug enforcement agent solicits a defendant to engage in otherwise criminal conduct as a confidential informant, or effectively communicates an assurance that the defendant is acting under authorization, and the defendant, relying thereon, commits forbidden acts in the mistaken but reasonable, good faith belief that he has in fact been authorized to do so as an aid to law enforcement, then estoppel bars conviction ..." Id. at 43.

THE IRREFUTABLE GOVERNMENT EVIDENCE DEMONSTRATES THAT PETITIONER IS LEGALLY INNOCENT UNDER THE DOCTRINES OF "PUBLIC AUTHORITY/ENTRAPMENT-BY-ESTOPPEL/INNOCENT INTENT"

There are three critical and undisputed facts in Petitioner's case. First, Petitioner had *no knowledge of or participation* in the importation of 908 kilograms of cocaine into South Florida. Second, Petitioner was never informed that he had been "deactivated." Third, Petitioner's conversations had never resulted in any actual drug transactions. Petitioner had been indicted for conversations that he had held with Luis Miguel Perez while Petitioner had held

the "good-faith, [honest] belief that he ha[d] in fact been authorized to do so as an aid to law enforcement." Clearly, "estoppel bars [Petitioner's] conviction."

The most critical issue which has arisen since Petitioner's trial is the "disappearance" of "GX7," which was purportedly the "Cooperating Individual Agreement" that Petitioner had allegedly signed upon becoming a Confidential Informant; it purportedly bore instructions which Petitioner had allegedly violated. "GX7" was hotly contested because it had never been disclosed nor authenticated. Nevertheless, it was illegally used against Petitioner during trial, much to Petitioner's prejudice, and is now conveniently unable to be located.

These foregoing premises constitute bedrock elements of Petitioner's "affirmative defense," which Petitioner has completely satisfied, in accordance with this Court's decisions in Dickerson, Kirk, Raley and Laub, supra, yet Petitioner's legitimate claims have never been evaluated on their merits. Further still, all of these aforementioned Supreme Court precedents have been ignored by the lower courts over the past *twenty two and a half years.*

Additionally, Respondent's own documents now confirm that its habeas responses to Petitioner's original *pro se* § 2255 were ***deliberately false*** because they relied on the known perjured testimonies of its critical witnesses, which constituted, at a minimum, a violation of Petitioner's rights under the Due Process Clause, and fraud upon the habeas court, designed to justify Petitioner's malicious prosecution and wrongful conviction. In spite of all of the foregoing irrefutable evidence of Petitioner's actual and legal innocence, the lower courts have refused to arrest this tyranny which has resulted in Petitioner's continued wrongful imprisonment for *more than two hundred and eighty-nine months.*

Petitioner respectfully submits that he has clearly suffered a grave injustice: his wrongful conviction and continued imprisonment, has "undermined the public's confidence in the judicial process" and he therefore deserves relief.

THE FABRICATION OF "GX7" AND THE TWENTY-FOUR-YEAR-LONG "COVER-UP" BY RESPONDENT

The simple truth in this matter, as borne out by the foregoing, irrefutable evidence, is that federal agents in the Bahamas simply did not give Petitioner any instructions when he volunteered. Three years later, when their glaring failure was on the verge of being exposed by their colleagues as a result of Miami-based "OPERATION VESTRAC," DEA S/A David Howard Shelton admitted that he, in violation of mandatory Department of Justice "Guidelines Regarding the Use of Confidential Informants," unilaterally deactivated Petitioner and permitted Petitioner to be indicted. Then, in 1997, in order to justify Petitioner's prosecution, the mysterious "GX7" was belatedly produced during trial and illegally used to ensure Petitioner's wrongful conviction. *There never was a "Cooperating Individual Agreement" that had been signed by this Petitioner!*

Therefore, it came as no real surprise to Petitioner that, according to DEA Confidential Sources Unit Chief S/A Jeffrey Green, "GX7" allegedly cannot be located now. (See Appendix K above.) It is abundantly clear that "GX7" was fabricated and maliciously used, initially to mislead the court and jurors and to ensure Petitioner's wrongful conviction, then to ensure the eventual denial of Petitioner's one-time-opportunity for habeas relief. As in every investigation of official government wrongdoing, "the cover-up is always worse than the crime."

To be sure, if Petitioner had been given instructions, as falsely testified by DEA S/A Shelton, it would have been very similar to the "Informant Agreement"

as submitted herewith. Each instruction would have been initialed by the informant and the agreement would have been signed by the informant and witnessed by two Special Agents. (See Appendix W.) The "disappearance" of "GX7" - the one critical piece of evidence upon which this entire case turns - is the proverbial "smoking gun." In fact, "GX7" has always been the linchpin in this case. *Simply put, there never was a case against Petitioner so "GX7" was fabricated in order to justify Petitioner's prosecution and ensure his wrongful conviction!*

Petitioner has now endured more than twenty-four years of wrongful imprisonment for conversations that he held with the honest, good-faith belief that, as a Confidential Informant in good standing, had been authorized and, as such, they were not illegal. It is undisputed that the instructions that were allegedly given to Petitioner and which had been illegally used against him in trial have now mysteriously "disappeared;" it is undisputed that Petitioner was allegedly "deactivated" on April 26, 1994, but was never informed; and it is undisputed that Petitioner had no knowledge of or participation in the substantive conspiracy for which he was indicted, convicted and sentenced. Yet, Petitioner remains imprisoned, with approximately a year and a half to serve.

THE THRICE-WEEKLY EXONERATION OF INMATES WHO HAD BEEN WRONGFULLY CONVICTED

Petitioner is not alone in his claim of actual innocence. Nationwide, there is an epidemic of innocent persons being exonerated and released from prisons all across the United States - on an average of *three persons each and every week*! Specifically, in 2014, 125 persons were exonerated; in 2015, 149 persons were exonerated; in 2016, 166 persons were exonerated; in 2017, 139 persons were exonerated and in 2018, 151 persons were exonerated. (See Appendix X.)

For the past *twenty-two and a half years*, Respondent government officials have consistently maintained two demonstrably false narratives. First, that Petitioner had been a member of the Luis Miguel Perez drug-trafficking-organization and second, that Petitioner had been given instructions when he had *volunteered* to serve as a Confidential Informant in his native Nassau, Bahamas. Both of these narratives were unequivocally false then and remain unequivocally false now - as fully demonstrated by Respondent's own evidence from its own files and the recent "bombshell revelation" regarding "GX7" as described above.

"RACHEL'S LAW" AND THE NATION-WIDE CAMPAIGN TO REFORM THE UNREGULATED USE OF CONFIDENTIAL INFORMANTS

In spite of it all, Petitioner considers himself to be fortunate. On September 12, 2012, The New Yorker featured an article written by Sarah Scott Stillman entitled "The Throwaways" which exposed the nationwide, unregulated use of confidential informants and the oftentimes fatal results. (See Appendix Y.) In relevant part, it states that

> " ... According to Alexandra Natapoff, a professor at Loyola Law School in Los Angeles and a leading expert on informants, "[t]here are fewer procedures in place and fewer institutional checks on their use." [Additionally,] "[o]ften, deploying informants involves no paperwork and no institutional oversight, let alone lawyers, judges, or public scrutiny; their use is necessarily shrouded in secrecy ... Many have been given false assurances by the police, used without regard for their safety, and treated as disposable pawns of the criminal-justice system ... More often, questions about why informant use remains so unregulated came from parents who have lost a child to the practice... Across the country in Vancouver, Washington, another set of parents, Shelly and Mitchell McLean, have tried to take on the C.I. system."

Rachel Hoffman, Lebron Gaither, Shelly Hilliard and Jeremy McLean were all murdered as a result of their activities as Confidential Informants for law enforcement agencies. Like Petitioner, they had all been "sent out to perform high-risk police operations with few legal protections ... given false assurances by the police, used without regard for their safety and treated as disposable pawns of the [American] criminal justice system."

After their daughter's murder, Rachel's parents, Mr. Irv Hoffman and Ms. Amy Weiss, began a campaign to reform the C.I. system and "[o]n May 7, 2009, Governor Charlie Crist signed Rachel's Law. It became the first comprehensive legislation of its kind in the nation ... Now they hope to take their campaign beyond Florida and broaden their push for regulations of the kind that might have saved their daughter. In the meantime, their public example and the media coverage surrounding it including accounts by Jennifer Portman in the Tallahassee Democrat, segments on ABC News, and a substantive report by Vince Beiser for the Huffington Post have inspired family members of victimized C.I.'s across the country to seek redress ... [They have also established] "the Rachel Morningstar Foundation, an organization ... to advocate for C.I. reform."

PETITIONER'S CASE IS "A PUBLIC EMBARRASSMENT FOR THE DEA"

Petitioner's dilemma is best described by a July 1, 2019 article in Bloomberg.com entitled "King of the Snitches." Baruch Vega was also a Confidential Informant for the DEA. For some reason or other, he had been indicted. However, after only 52 days in jail, his "case was dropped, without explanation." It was later revealed by "one person involved in the case, who spoke on condition of anonymity ... that the U.S. was in an impossible situation ... it would be hard to convict an informant who had a plausible claim that he was

simply doing his job. And the trial would be a public embarrassment for the DEA and the FBI." (See Appendix Z).

Petitioner's case is "a public embarrassment for the DEA." Petitioner has now endured more than 289 months in federal prison "simply [for] doing his job."

THE DISTRICT COURT NEVER HAD JURISDICTION BECAUSE THE ALLEGATIONS CHARGED DO NOT CONSTITUTE A CRIMINAL OFFENSE

> "Where a person is detained for the doing of certain *acts which do not constitute a criminal offense* under the law of the particular jurisdiction, the court is without jurisdiction, and the person may be discharged in a *habeas corpus* proceeding. Hyde v. Shine, 199 U.S. 62, 25 S.Ct. 760, 50 L.Ed. 90 (1905) ... Notwithstanding that an indictment may purport to charge an offense which is criminal under the law, if the facts stated in the indictment are not, and cannot be, set forth so as to charge an offense, the prisoner may be discharged on habeas corpus ... The ultimate question presented upon an application for habeas corpus on the ground that *the act charged in the indictment or information does not constitute a crime* is not the guilt or innocence of the Petitioner, but simply whether the court below had jurisdiction. In re Gregory, 219 U.S. 210, 31 S.Ct. 143, 55 L.Ed. 184 (1911)." Am. Jur. 2d Habeas Corpus § 39. Additionally, "if the acts that are alleged in the indictment do not constitute a criminal offense, then the indictment should be dismissed." United States v. Coia, 719 F.2d 1120, 1123 (11th Cir. 1983).

Petitioner had simply been performing the routine duties for which he had been authorized, paid and repeatedly praised for as a documented Confidential Informant in good standing for at least three and a half years prior to his arrest, all without any complaint whatsoever. As such, "the acts that [were] alleged in the indictment [did] not constitute a criminal offense," therefore, the district "court [never had] jurisdiction" and "the indictment should be dismissed."

Clearly, Petitioner should have never been indicted, forced to undergo the charade of a "trial" which featured the deliberate use of both a fabricated document and known perjured testimony, then maliciously and illegally imprisoned for the past *two hundred and eighty-nine months* in order to cover up the failures of his federal agent handlers to comply with the Department of Justice's mandatory "Guidelines Regarding the Use of Confidential Informants."

"ALL THAT IS REQUIRED FOR EVIL TO PERSIST IS FOR GOOD PEOPLE TO DO NOTHING."

The truth has long been told and demonstrated with the use of irrefutable government documents: Petitioner had never been given any instructions, had never been supervised and had never been informed that he had allegedly been "deactivated." It is therefore abundantly clear that Petitioner was convicted of a nonexistent offense. In retrospect, it is obvious that Petitioner's prosecution was doomed from the very beginning and should have never even proceeded. Adding insult to injury, Petitioner has been subjected to a cover-up of colossal proportions which has extended to include even the federal judiciary.

Petitioner respectfully submits that it is beyond obvious that he "is detained for [conversations that he engaged in as a documented confidential informant] which do not constitute a criminal offense under the law of the particular jurisdiction, the district "court is without jurisdiction, and [he is therefore entitled to be] discharged in a habeas corpus proceeding."

REASONS FOR GRANTING THE PETITION

> **"No tradition is more firmly established in our system of law than assuring to the greatest extent that its inevitable errors are made in favor of the guilty rather than against the innocent. Our legal tradition has always followed Blackstone's principle that *"it is better***

> ***that ten guilty persons escape than that one innocent suffer.***" The moral force of our criminal law requires this allocation of the risk of error, both with respect to standard of proof and to scientific testing of newly discovered evidence critical to guilt. "It is critical that the moral force of the criminal law not be diluted by a standard of proof [or, we suggest, a rejection of scientific testing] that leaves people in doubt whether innocent men are being condemned." Not all share our revulsion at punishment of the innocent, of course. But Americans have always been revolted by the notion that it is better that the innocent suffer than that some of the guilty go free." United States v. Watson, 792, F.3d 1174, 1183 (9th Cir. 2015).

Respondent's deliberate use of known perjured testimony and a fabricated document have deceived every court that has considered this case for ***more than twenty-four years*** in order to cover up their collective wrongdoing. For all of the foregoing reasons, this case is extraordinary. This court's review is warranted in order to restore public confidence in the federal criminal justice system that courts will not permit an actually and legally innocent person, especially a foreign national who volunteered to assist the United States, to languish in prison for ***more than twenty-four years*** without having had an analysis of each of his habeas claims on their merits. The petition for writ of certiorari should be granted.

Respectfully Submitted, **Date: July 16, 2019**

Jesse J. Dean Jr.

Jesse Jerome Dean, Jr.,
44060-004 H03-307L
McRae Correctional Facility
P. O. Drawer 55030
McRae Helena, GA 31055