No. 19-5463

IN THE

SUPREME COURT OF THE UNITED STATES

JESSE JEROME DEAN, JR., -- PETITIONER

vs.

UNITED STATES OF AMERICA, -- RESPONDENT(S)

MOTION FOR LEAVE TO FILE
EMERGENCY APPLICATION FOR BAIL PENDING RESOLUTION OF
PETITION FOR WRIT OF CERTIORARI *IN FORMA PAUPERIS*

PETITIONER, JESSE JEROME DEAN, JR., hereby seeks leave to file the attached EMERGENCY APPLICATION FOR BAIL PENDING RESOLUTION OF PETITION FOR A WRIT OF CERTIORARI WITHOUT PREPAYMENT OF COSTS AND TO PROCEED *IN FORMA PAUPERIS*. Petitioner has been determined indigent by both the United States District Court for the District of Columbia and the United States Court of Appeals for the District of Columbia Circuit. All of Petitioner's previous filings in the United States District Court for the Southern District of Florida and in the Eleventh U.S. Circuit Court of Appeals have been filed as such.

Jesse J. Dean Jr.

No. 19-5463

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

EMERGENCY APPLICATION FOR BAIL PENDING RESOLUTION OF PETITION FOR WRIT OF CERTIORARI

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

EMERGENCY APPLICATION FOR BAIL PENDING RESOLUTION OF PETITION FOR WRIT OF CERTIORARI

COMES NOW, JESSE JEROME DEAN, JR., Petitioner, *pro se*, and, pursuant to Supreme Court Rule 23, hereby files this EMERGENCY APPLICATION FOR BAIL PENDING RESOLUTION OF PETITION FOR WRIT OF CERTIORARI. In support thereof, Petitioner respectfully submits the following:

JURISDICTION

1. This court has jurisdiction pursuant to Title 28 U.S.C. § 2101(f). However, "[r]equests for bail to the Supreme Court are granted only in extraordinary circumstances, especially if previous bail application has been denied, and applicants must demonstrate reasonable probability that four members of the Supreme Court will vote to grant petition for certiorari." McGee v. Alaska, 463 U.S. 1339 (1983); see also Julian v. United States, 463 U.S. 1308 (1983).

DENIAL OF BAIL IN THE LOWER COURTS

2. Petitioner's repeated requests for bail to the District Court and the Court of Appeals and have been denied. Specifically, on October 2, 2018, the United States District Court for the Southern District of Florida denied Petitioner's Motion for Bail. (See Exhibit A.) Thereafter, on March 7, 2019, the Eleventh U.S. Circuit Court of Appeals denied Petitioner's Motion for Bail. (See Exhibit B.)

3. Petitioner respectfully submits that his Emergency Application for Bail Pending Resolution of Petition for Writ of Certiorari satisfies the aforementioned "extraordinary circumstances" due to Petitioner's demonstrations of both actual and legal innocence, fraud upon the habeas court, a fundamental miscarriage of justice and a plethora of substantial violations of his constitutional rights.

A REASONABLE PROBABILTY THAT FOUR MEMBERS OF THE SUPREME COURT WILL VOTE TO GRANT PETITION FOR CERTIORARI

4. On June 24, 2019, this court granted Certiorari in the matter of Banister v. Davis, No. 18-6943, 2019 WL 2570655. In his Petition, Banister argued that "the Fifth Circuit relied on Gonzalez v. Crosby, 545 U.S. 524, 125 S.Ct. 2641, 162 L.Ed.2d 480 (2005), to deny his request for a certificate of appealability (COA) from a district court's denial of his Rule 59(e) motion, which sought to alter or amend the district court's judgment denying his request for federal habeas relief." In doing so, Banister stated that "the Fifth circuit acted contrary to the Third, Sixth, and Seventh Circuits, which have refused to extend Gonzalez to Rule 59(e) motions." Specifically, Banister's question was:

> "whether and under what circumstances a timely motion to alter or amend a judgment under Rule 59(e) of the Federal Rules of Civil Procedure should be recharacterized as a second or successive habeas petition under Gonzalez v. Crosby, 545 U.S. 524, 125 S.Ct. 2641, 162 L.Ed.2d 480 (2005)."

5. On July 16, 2019, Petitioner filed his Petition for Writ of Certiorari which presented the following twelve questions:

- 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 both 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"?

PETITIONER'S "QUESTION 11" IS "CERTWORTHY" DUE TO THIS COURT'S RECENT GRANT OF CERTIORARI IN BANISTER V. DAVIS, 18-6943, 2019 WL 2570655

6. Petitioner's one-time-only Motion pursuant to Title 28 U.S.C. § 2255 was denied on June 10, 2001, and both the United States District Court for the Southern District of Florida and the Eleventh U.S. Circuit Court of Appeals denied Petitioner a Certificate of Appealability.

7. On June 28, 2004, 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 the court then reluctantly granted on August 4, 2004. However, 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,"* the district court again summarily denied

Petitioner relief. Thereafter, both the United States District Court and the Eleventh U.S. Circuit Court of Appeals denied Petitioner's repeated Requests for a Certificate of Appealability.

8. As demonstrated in his Petition, over the ensuing *eighteen years*, both of the lower courts have repeatedly refused to grant Petitioner a Certificate of Appealability, in spite of Petitioner's ample demonstrations of both actual and legal innocence, fraud upon the habeas court, a fundamental miscarriage of justice and multiple substantial violations of his constitutional rights.

9. This Court's aforementioned grant of certiorari in Banister v. Davis is very similar to "Question 11" of Petitioner's Petition – that is,

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

REASONS WHY RELIEF IS NOT AVAILABLE FROM ANY OTHER COURT AND WHY A STAY IS JUSTIFIED

10. Relief is not available from either the United States District Court or the Eleventh U.S. Circuit Court of Appeals because both courts have been engaged in a more than two-decade-long judicial cover-up of the extensive violations of the Department of Justice's mandatory "Guidelines Regarding the Use of Confidential Informants" by federal agents while they were stationed in the Bahamas. As such, a stay is justified in order to arrest this egregious miscarriage of justice.

A SUMMARY OF PETITIONER'S CASE

11. 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.

12. In 1991, Petitioner *volunteered* to become a Confidential Informant for the United States in Nassau, Bahamas, and was eventually designated as: "C/I No.: SGV-92-0013." Petitioner served in this capacity, without any complaint whatsoever from his federal Special Agent supervisors, until his surprise arrest on June 10, 1995. Petitioner has been in continuous custody since then.

13. 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 of 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 overt judicial tyranny and was wrongfully convicted and sentenced to thirty (30) years in prison. Petitioner has already served more than 92 percent of his sentence.

14. Over the past twenty-four 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 now demonstrated by Respondent's own evidence outlined below.

IRREFUTABLE EVIDENCE OF PETITIONER'S ACTUAL AND LEGAL INNOCENCE

15. Petitioner is both actually and legally innocent because:

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

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

- 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 of Petition;

- 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 of Petition;

- Luis Devalle's sworn, post-trial affidavit, which *was not presented at 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 of Petition;

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

- 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 of Petition;

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

- 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," were *not presented at trial*. See Appendix U of Petition;

- *Petitioner, Mr. Jesse Jerome Dean, Jr., and one Jesse L. Dean have both been erroneously assigned the exact NADDIS number: "2287421," but was not presented at trial. See Appendix V of Petition* and

- *DEA S/A Jeffrey Green, Unit Chief, Confidential Source Unit, has affirmed in an affidavit that, after a thorough search, "GX7" is now nowhere to be found, was not presented at trial. See Appendix K above.*

16. In spite of all of the foregoing evidence of Petitioner's both actual and legal innocence, the insidious machinations of Respondent federal government officials have resulted in Petitioner's continued wrongful imprisonment for more than two hundred ninety (290) months. The foregoing twin false narratives have been used to deny each and every pleading for relief that Petitioner has submitted to the courts over the ensuing *nineteen* years, up to and including the underlying *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.

17. The foregoing, inhumane treatment of a naïve, foreign citizen who *voluntarily risked his own life to assist the U.S. government in its "War on Drugs"*, only to be first buried alive himself, then to be further abused by the U.S. criminal justice system, should "shock the conscience" of any judicial officer who has sworn an oath *"to administer justice without respect to persons, and do equal right to the poor and to the rich, and ... faithfully and impartially discharge and*

perform all the duties incumbent upon [him]... under the Constitution and laws of the United States..." See Title 28 U.S.C. § 453, Oaths of justices and judges.

THIS COURT'S CENTURY-OLD PRECEDENTS AND PETITIONER'S "AFFIRMATIVE DEFENSES"

18. Petitioner has completely satisfied the legal requirements of the "affirmative defense" of "entrapment by estoppel/public authority/innocent intent," as rooted in the more than a century-old decisions of this court in Dickerson v. Colgrove, 100 U.S. 578, 25 L.Ed. 618 (1879), Kirk v. Hamilton, 100 U.S. 68, 26 L.Ed. 79 (1880) and more recently in Raley v. Ohio, 360 U.S. 423, 3 L.Ed.1334 (1959) and U.S. v. Laub, 87 S.Ct. 574, 385 U.S. 475, 17 L.Ed.2d. 526 (1967).

19. Additionally, Respondent's own documents now confirm that its habeas responses to Petitioner's § 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, wrongful conviction and draconian sentence.

THE "COVERUP" BY RESPONDENT FEDERAL ACTORS

20. 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 unilaterally deactivated Petitioner and permitted Petitioner to be indicted, in violation of mandatory Department of Justice's "Guidelines Regarding The Use of Confidential Informants." Then, in order to justify Petitioner's

malicious prosecution, the mysterious "GX7" was belatedly produced during trial and illegally used to ensure Petitioner's wrongful conviction. *In truth and in fact, 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, that "GX7" allegedly cannot be located now. It is very clear that "GX7" was fabricated and maliciously used, initially to mislead the court and jurors and to ensure Petitioner's wrongful conviction, then the eventual denial of Petitioner's one-time-opportunity for habeas relief. As always, "the cover up is always worse than the crime."

PETITIONER'S 290-MONTH-LONG KAFKAESQUE-LIKE NIGHTMARE

21. Petitioner has now endured *more than 290 months of imprisonment* for actions that he committed with the honest, good-faith belief that, as a Confidential Informant in good standing, he had been authorized to do so and, as such, they were not illegal. It is undisputed that Petitioner was deactivated on April 26, 1994, but never informed. It is also undisputed that Petitioner had no knowledge of or participation in the substantive conspiracy for which he was indicted, convicted and sentenced, which was the importation of 908 kilograms of cocaine into the United States on a vessel, by way of Colombia, Belize, Mexico and Fort Lauderdale, Florida. Yet, Petitioner remains imprisoned.

22. Petitioner respectfully submits that the overwhelming, irrefutable evidence of his actual and legal innocence, combined with the demonstrated fraud that Respondent has perpetrated upon both the trial and habeas courts, along with the host of other substantial violations of his constitutional rights, comprise "extraordinary circumstances," sufficient for this court to grant emergency bail pending resolution of his Petition for Writ of Certiorari.

THE HARMFUL EFFECTS OF PRISON ON THE WRONGFULLY-CONVICTED

23. "Imprisonment has powerful effects. Prison rules tend to create a dependence on institutional structures. To survive in prison, some inmates embrace aggression to avoid victimization. Others become isolated and withdrawn, exhibiting behavior resembling clinical depression. Some researchers think incarceration causes a form of posttraumatic stress disorder. Wrongful incarceration compounds these typical effects of imprisonment in ways that are only beginning to be understood. Anecdotal evidence suggests that wrongfully incarcerated individuals experience rage and institutional mistrust while imprisoned...Although exonerees suffer different types of mental illness, and to varying degrees, after spending time in prison for crimes they did not commit, one thing is certain – they all suffer. According to a Michigan study, many exonerated individuals grapple with emotional problems after they have been released, many are angry and some resort to crime..." Dixon v. Houk, 737 F.3d 1003, 1016 (6th Cir. 2013).

PETITIONER IS NEITHER A RISK OF FLIGHT
NOR A DANGER TO THIS OR ANY OTHER COMMUNITY

24. Petitioner has no prior criminal record in his native Bahamas or the United States and has been a model inmate throughout his incarceration. Petitioner is currently confined in a privately-run, low-security prison, designated for foreign inmates awaiting deportation to their home countries. Petitioner's Projected Release date via GCT is currently July 28, 2021, but is expected to be updated to January 1, 2021, via The First Step Act of 2018. (See Exhibit C.)

25. Petitioner has absolutely no intention whatsoever of fleeing this jurisdiction and is certainly not a danger to this or any other community. Petitioner is desirous to see the end of this more than twenty-four-year-long Orwellian nightmare and will not do anything to jeopardize his long and hard-

fought fight for justice. Petitioner will therefore welcome whatever conditions this court may impose should it determine that bail is warranted, including, but not limited to, wearing a GPS-monitored ankle-bracelet, regular reporting to any designated law enforcement facility and unannounced breath and urine analyses.

PETITIONER HAS DEMONSTRATED THAT THIS APPEAL IS NOT FOR THE PURPOSE OF DELAY AND RAISES SUBSTANTIAL QUESTIONS OF LAW AND FACT LIKELY TO RESULT IN A REVERSAL OR A NEW TRIAL

26. Petitioner has demonstrated that his Petition for Writ of Certiorari is not for the purpose of delay and raises substantial questions of both law and fact that are very likely to result in a reversal of his conviction or a new trial. Additionally, Petitioner respectfully submits that the foregoing account of his Orwellian-like experience at the hands of both the DEA and the federal criminal justice system demonstrates "extraordinary circumstances" warranting bail pending the resolution of his Petition for Writ of Certiorari.

27. In light of the foregoing, it is respectfully requested that this Court grant Petitioner's Emergency Application For Bail and order any other relief that it deems proper, necessary, just and equitable.

Respectfully submitted,

Date: September 5, 2019

Jesse J. Dean Jr.

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

CERTIFICATE OF SERVICE

I, JESSE JEROME DEAN, JR., HEREBY CERTIFY, that a true and correct copy of the foregoing was placed in the McRae Correctional Facility Legal Mail-box, with proper, first-class postage affixed, addressed to the Solicitor General of the United States, Room 5614, Department of Justice, 950 Pennsylvania Ave., N.W., Washington, DC, 20530-0001, on this 5th day of September, 2019.

Respectfully Submitted,

Jesse J. Dean Jr.

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

EXHIBIT

A

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

Case No. 94-cr-00506-KMM

UNITED STATES OF AMERICA,

v.

JESSIE JEROME DEAN, JR.

_____/

ORDER

THIS CAUSE came before the Court upon Defendant Jesse Jerome Dean, Jr.'s Motion (ECF No. 944). Defendant, proceeding pro se, seeks bail pending resolution of a motion to dismiss the indictment or, in the alternative, relief from judgment pursuant to Rule 60 of the Federal Rules of Civil Procedure and immediate release. The Government filed a Response. Response (ECF No. 945).

In the Response, the Government sets forth Defendant's extensive filing history. Indeed, Defendant has vigorously pursued such relief in a related civil matter. *See (Restricted Filer) v. United States*, 1:0-cv-02145-UU. The relief which Defendant seeks in the instant motion thus constitutes a successive § 2255 motion and must be denied in its entirety.

Accordingly, upon consideration of the instant motion, the pertinent portions of the record, being otherwise fully advised in the premises, and for the reasons set forth in the Government's Response, the Motion (ECF No. 944) is hereby DENIED.

DONE AND ORDERED in Chambers at Miami, Florida, this 2nd day of October, 2018.

K. Michael Moore

Digitally signed by K. Michael Moore
DN: cn=K. Michael Moore, o=Southern District of Florida, ou=United States District Court, email=k_michael_moore@flsd.uscourt.gov, c=US
Date: 2018.10.02 14:18:52 -04'00'

K. MICHAEL MOORE
UNITED STATES CHIEF DISTRICT JUDGE

EXHIBIT

B

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 18-14384-GG

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JESSE DEAN,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Florida

Before: WILSON, JILL PRYOR and NEWSOM, Circuit Judges.

BY THE COURT:

Jesse Jerome Dean, Jr., a federal prisoner proceeding *pro se*, appeals the district court's denial of his self-styled "motion for emergency bail pending resolution of motion to dismiss indictment, with prejudice, for lack of jurisdiction as acts charged do not constitute a crime, or, in the alternative, motion for relief from judgment pursuant to Fed. R. Civ. P. 60(b)(6) and 60(d)(1)(3), and motion for immediate release," which the district court construed as an unauthorized successive 28 U.S.C. § 2255 motion. On appeal, Dean argues that he is being denied his due process rights and is being incarcerated in violation of the Constitution because (1) the district court lacked jurisdiction in his underlying criminal proceedings, as the acts charged in the indictment did not constitute a crime, and (2) his conviction, and subsequently, the denial of his first 28 U.S.C. § 2255 motion, were obtained based on perjury and fabricated

evidence. The government has responded by moving for summary affirmance, arguing that the district court properly construed and dismissed Dean's motion as an unauthorized successive § 2255 motion.

Summary disposition is appropriate either where time is of the essence, such as "situations where important public policy issues are involved or those where rights delayed are rights denied," or where "the position of one of the parties is clearly right as a matter of law so that there can be no substantial question as to the outcome of the case, or where, as is more frequently the case, the appeal is frivolous." *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969).

As a preliminary matter, although a COA is required to appeal a final order in a proceeding under § 2255, *see* 28 U.S.C. § 2253(c)(1)(B), we have held that the dismissal of a successive habeas petition for lack of subject-matter jurisdiction does not constitute a "final order in a habeas corpus proceeding" for purposes of § 2253(c). *Hubbard v. Campbell*, 379 F.3d 1245, 1247 (11th Cir. 2004). Consequently, our jurisdiction to review the dismissal of Dean's Rule 60(b) motion, construed as a successive § 2255 motion, arises under 28 U.S.C. § 1291, and no COA is required. *See Hubbard*, 379 F.3d at 1247.

We review questions concerning jurisdiction *de novo*. *Williams v. Chatman*, 510 F.3d 1290, 1293 (11th Cir. 2007). A district court does not have jurisdiction to entertain an unauthorized second or successive 28 U.S.C. § 2255 motion. *Farris v. United States*, 333 F.3d 1211, 1216 (11th Cir. 2003). A district court's denial of relief under Rule 60(b) is reviewed for an abuse of discretion. *Jackson v. Crosby*, 437 F.3d 1290, 1295 (11th Cir. 2006). "The law is well established that Rule 60(b)(6) affords relief from a final judgment only under extraordinary circumstances. It is also well settled that the matter is within the sound discretion of the district

court, and reviewable on appeal only for abuse of discretion." *High v. Zant*, 916 F.2d 1507, 1509 (11th Cir. 1990) (citation omitted).

A prisoner in federal custody may file a motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255, claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack. 28 U.S.C. § 2255(a). A second or successive motion must be certified as provided in 28 U.S.C. § 2244 by a panel of the appropriate court of appeals. 28 U.S.C. § 2255(h). This certification must be obtained before the second or successive motion is filed in the district court. 28 U.S.C. § 2244(b)(3)(A). The grant or denial of an authorization by a court of appeals to file a second or successive application shall not be appealable and shall not be the subject of a petition for rehearing or for a writ of *certiorari*. 28 U.S.C. § 2244(b)(3)(E).

When a *pro se* plaintiff brings a motion under Rule 60, the district court may appropriately construe it as a § 2255 motion, and, if applicable, treat it as an unauthorized second or successive motion. *Williams v. Chatman*, 510 F.3d 1290, 1293-95 (11th Cir. 2007). Specifically, Rule 60(b) motions are subject to the restrictions of second or successive habeas petitions if the prisoner is attempting to raise a new ground for relief or to attack a federal court's previous resolution of a claim on the merits, even if "couched in the language of a true Rule 60(b) motion." *Gonzalez v. Crosby*, 545 U.S. 524, 531-32 (2005). However, a Rule 60(b) motion is proper if it: (1) asserts that a federal court's previous habeas ruling that precluded a merits determination (*i.e.*, a procedural ruling such as a failure to exhaust, a procedural bar, or a

statute-of-limitations bar) was in error; or (2) attacks a defect in the federal habeas proceeding's integrity, such as a fraud upon the federal habeas court. *Id.* at 532-36 & nn.4-5.

The district court properly construed Dean's self-styled "motion for emergency bail pending resolution of motion to dismiss indictment, with prejudice, for lack of jurisdiction as acts charged do not constitute a crime, or, in the alternative, motion for relief from judgment pursuant to Fed. R. Civ. P. 60(b)(6) and 60(d)(1)(3), and motion for immediate release" as an unauthorized successive § 2255 motion, as Dean is clearly claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, and that the court was without jurisdiction to impose such sentence. 28 U.S.C. § 2255(a); *Williams*, 510 F.3d at 1293-95. While Dean does assert that there was a defect in the federal habeas proceedings, a claim that would be appropriately raised in a Rule 60(b) motion, in essence, Dean's claims are more properly characterized as those that should be raised in a § 2255 motion. *Gonzalez*, 545 U.S. at 531-32, 532-36 & nn.4-5. As Dean has previously filed a § 2255 motion that was adjudicated on the merits, and because Dean has failed to obtain this Court's permission to file a successive § 2255 motion, the district court properly dismissed his motion. 28 U.S.C. §§ 2255(h); 2244(b)(3)(A). To the extent that Dean is using his motion to attack our denial of his previously filed applications for leave to file a successive § 2255 motion, the denial of an authorization by a court of appeals to file a second or successive application shall not be appealable. 28 U.S.C. § 2244(b)(3)(E).

Therefore, the government's position is correct as a matter of law. *See Groendyke Transp., Inc.*, 406 F.2d at 1162. The government's motion for summary affirmance is GRANTED. The government's motion to stay the briefing schedule is DENIED as moot. All

other pending motions are DENIED as moot.

EXHIBIT

C

MGAAC 540*23 * SENTENCE MONITORING * 02-11-2019
PAGE 001 * COMPUTATION DATA * 12:15:47
AS OF 02-11-2019

REGNO..: 44060-004 NAME: DEAN, JESSE

FBI NO.....: 801858EB5
ARS1.....: MCA/A-DES
UNIT.....: H-UNIT
DETAINERS.....: YES

Copy

DATE OF BIRTH: 03-21-1962 AGE: 56

QUARTERS.....: H03-307L
NOTIFICATIONS: NO

HOME DETENTION ELIGIBILITY DATE: 01-28-2021

THE FOLLOWING SENTENCE DATA IS FOR THE INMATE'S CURRENT COMMITMENT.
THE INMATE IS PROJECTED FOR RELEASE: 07-28-2021 VIA GCT REL

----------CURRENT JUDGMENT/WARRANT NO: 010 ----------

COURT OF JURISDICTION.....: FLORIDA, SOUTHERN DISTRICT
DOCKET NUMBER.....: 1:94CR00506-006
JUDGE.....: HURLEY
DATE SENTENCED/PROBATION IMPOSED: 04-25-1997
DATE COMMITTED.....: 06-09-1997
HOW COMMITTED.....: US DISTRICT COURT COMMITMENT
PROBATION IMPOSED.....: NO

	FELONY ASSESS	MISDMNR ASSESS	FINES	COSTS
NON-COMMITTED.:	$250.00	$00.00	$00.00	$00.00

RESTITUTION...: PROPERTY: NO SERVICES: NO AMOUNT: $00.00

----------CURRENT OBLIGATION NO: 010 ----------
OFFENSE CODE....: 399
OFF/CHG: 21USC 963, CONSPIRACY TO IMPORT COCAINE

SENTENCE PROCEDURE.....: 3559 VCCLEA NON-VIOLENT SENTENCE
SENTENCE IMPOSED/TIME TO SERVE.: 360 MONTHS
TERM OF SUPERVISION.....: 5 YEARS
CLASS OF OFFENSE.....: CLASS A FELONY
DATE OF OFFENSE.....: 09-19-1994

G0002 MORE PAGES TO FOLLOW . . .