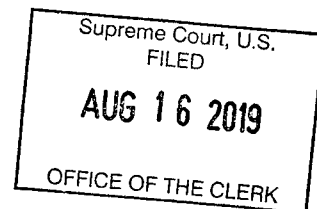


No. 19-5956

IN THE
SUPREME COURT
OF THE UNITED STATES



ADRIAN APODACA--PETITIONER

VS.

ORIGINAL

UNITED STATES OF AMERICA--RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO

THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT.

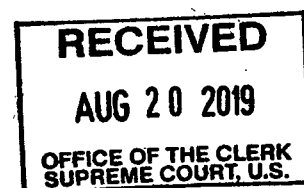
ADRIAN APODACA /PRO SE

NO. 36975-308

UNITED STATES PENITENTIARY--HAZELTON

P.O. BOX 2000

BRUCETON MILLS, WV 26525



QUESTIONS PRESENTED

I. Whether the Defendant, Mr. Apodaca, can prove that his conviction and sentence can not be upheld' under the definition of "crime of violence" for count five of the indictment of 18 U.S.C. § 924 (c) (1) (A), (B) (ii).

II. Whether the Government's actions in this case violated the principles of Federalism under the "Commerce Clause" of the tenth Amendment (U.S. Const. Art. I, § 8, cl. 3), and violated the "Due Process Clause" of the Fifth Amendment (U.S.C.A. Const. Amend. 5) of the United States Constitution. By driving Mr. Apodaca across State Lines to improperly manufacture Federal Jurisdiction so that the Government may Prosecute Mr. Apodaca in counts two through six of the indictment.

LIST OF PARTIES

ALL PARTIES APPEAR IN THE CAPTION OF THE CASE ON THE COVER PAGE.

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

Petitioner Adrian Apodaca respectfully prays that a writ of certiorari issue to review the Judgment below.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eleventh Circuit appears at Appendix A to the petition and is unpublished.

JURISDICTION

The date on which the United States Court of Appeals for the Eleventh Circuit decided my case was April 30th, 2019.

No petition for rehearing was ever filed in my case.

An extension of time to file the petition for a writ of certiorari was granted to and including September 27th, 2019 on July 25th, 2019 in Application No. 19A93.

THE JURISDICTION OF THIS COURT IS INVOKED

UNDER 28 U.S.C. § 1254(1).

IN THE UNITED STATES SUPREME COURT

**Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001**

Scott S. Harris
Clerk of the Court
(202) 479-3011

July 25, 2019

Mr. Adrian Apodaca
Prisoner ID #36975-308
Hazelton-USP
P.O. Box 5000
Bruceton Mills, WV 26525

Re: Adrian Apodaca
v. United States
Application No. 19A93

Dear Mr. Apodaca:

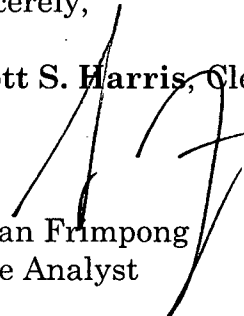
The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice Thomas, who on July 25, 2019, extended the time to and including September 27, 2019.

This letter has been sent to those designated on the attached notification list.

Sincerely,

Scott S. Harris, Clerk

by


Susan Frimpong
Case Analyst

**SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001**

August 22, 2019

Adrian Apodaca
United States Penitentiary-Hazelton
#36975-308-A-2
P.O. Box 2000
Bruceton Mills, WV 26525

RE: Apodaca v. United States
USAP11 No. 18-10338
No: 19A93

Dear Mr. Apodaca:

The above-entitled petition for writ of certiorari was postmarked August 16, 2019 and received August 20, 2019. The papers are returned for the following reason(s):

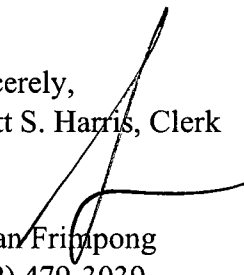
No notarized affidavit or declaration of indigency is attached. Rule 39. You may use the enclosed form.

Please correct and resubmit as soon as possible. Unless the petition is submitted to this Office in corrected form within 60 days of the date of this letter, the petition will not be filed. Rule 14.5.

A copy of the corrected petition must be served on opposing counsel.

When making the required corrections to a petition, no change to the substance of the petition may be made.

Sincerely,
Scott S. Harris, Clerk
By:


Susan Frimpong
(202) 479-3039

Enclosures

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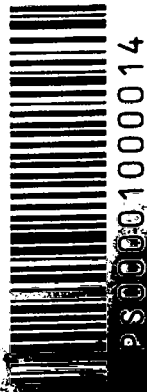
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#36975-308-A-2
P.O. BOX 2000

UNITED STATES PENITENTIARY-HAZELTON

BRUCETON MILLS WV 26525

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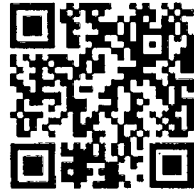


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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitutional provisions :

Tenth Amendment "Commerce Clause".

(U.S. Const. Art. I, § 8 ,cl.3.)

Fifth Amendment "Due Process Clause"

(U.S.C.A. Const. Amend. 5.)

Statutory provisions :

21 U.S.C. §841(a)(1) and §846.

18 U.S.C. §1958.

18 U.S.C. §1951(a).

18 U.S.C. §924(c)(1)(A),(B)(ii).

118 U.S.C. §922(g)(1).

STATEMENT OF THE CASE.

The Petitioner was the Defendant in the District Court and will be referred to as the Defendant or by name. The Respondent The United States of America, will be referred to as the Government. The record will be noted by reference to the document number as set fourth in the docket sheet copies within and among the Appendix with the record documents referenced and numbered within while other references to the record are mentioned only to show that it exists in the Docket Sheet of the District Court record of this case.

The defendant/Petitioner is currently incarcerated In Federal Prison.

The course of proceedings and disposition in the District Court are as follows:

On November the tenth, 2016, Mr. Apodaca was charged in a six count indictment with count one: Attempt to distribute and possess, with intent to distribute five (5) kilograms or more of cocaine on October 17, 2016, in Broward County, Florida in violation of 21 U.S.C. § 841(a)(1) and 846.

In count two: Mr. Apodaca was charged on October 28, 2016 with traveling in interstate commerce from Broward County, Florida to the state of Georgia with the intent to commit murder, for the consideration of an agreement to receive money and fraudulent identity documents in violation of 18 U.S.C. § 1958. In count three: Mr. Apodaca was charged with the attempted possession of at least five kilograms of cocaine on October 28, 2016, in Broward County, Florida and continuing into the state of Georgia in violation of 21 U.S.C. § 841(a)(1) and 846. In count four:

Mr. Apodaca was charged on October 28, 2016, commencing in Broward County, Florida and continuing into the state of Georgia with planning to take a controlled substance against the will of that person using threatened force, violence, or fear of injury to that person in violation of 18 U.S.C. § 1951(a). In count five: on the same date in October, in the same locations in Florida and Georgia, Mr. Apodaca was charged with possession of a firearm in furtherance of a crime of violence or a drug trafficking crime in violation of 18 U.S.C. § 924(c)(1)(A) and § 924(c)(1)(B)(ii). In count six: on October 28, 2016, Mr. Apodaca was charged with possession of Ammunition having been previously convicted of a felony in violation of 18 U.S.C. § 922(g)(1).

(DE:5)

At the Pretrial Detention Hearing, after the Government's Case Agent "Christopher Penn had testified that they drove Mr. Apodaca for seven hours across state lines to create Federal Jurisdiction. Mr. Apodaca moved to dismiss the counts of which occurred in Georgia; counts two through six. (DE:18:38), Appendix C page 30. Mr. Apodaca filed a motion in Limine Federal Rule of Evidence 403 to preclude Federal Rule of Evidence 404(b) of which became in a large part the focus of the trial and the "probative value" of the evidence of uncharged acts and testimony from the Government's C.I. was substantially outweighed by its undue prejudice of which enflamed the jury. To date, Mr. Apodaca has never been charged with any of these uncharged acts and it was never proven that the extrinsic offenses were ever relevant, nor did the Government offer any 'actual proof' demonstrating that Mr. Apodaca committed the offenses (see Appendix B page 15/16 DE71:

95 and DE:74:218). The Defendant also objected to the Government's voir dire questions (DE:22,30). The Defendant then proceeded to trial, and was convicted of all counts of the indictment (DE:43). Both Mr. Apodaca and the Government filed objections to the P.S.R. (DE:54,57). Mr. Apodaca was sentenced to a total of 480 months incarceration (DE:61).

This case arises from a Government reverse sting operation where the F.B.I. inserted into a Motorcycle club known for its White Separatist leanings, a paid informant Steven Vance Watt. Steven Vance Watt was placed there as a non-Government civilian who was reporting to, as well as assisting a Government Agency in law enforcement proceedings (since 2009 in other separate cases). In this case a sting operation of which the Government openly admits that Watt's reports about Mr. Apodaca were never investigated. During trial, when Watt was asked about his payments from the F.B.I., it was made known on cross examination that Steven Vance Watt has been paid \$88,609.40 plus an additional \$20,000.00 for his relocation expense, to create crime for the F.B.I. and to be rewarded for it. (DE:71:185-190), Appendix B page 14.

Watt began talking to Mr. Apodaca who allegedly bragged about doing drug rip offs and murdering the drug dealers, although the F.B.I. was never able to confirm anything that Mr. Apodaca stated. None the less, Watt and several under cover Agents decide to target Mr. Apodaca and gear up for this reverse sting operation representing themselves as a white separatist gang involved in the sale of drugs. It was the Government who originated the idea to have Mr. Apodaca deliver bags with unknown contents and a box containing fake cocaine to under cover vehicles, addition-

ally, the victim of the purported attempted murder was an undercover F.B.I. Agent of who Mr. Apodaca never had any actual direct contact with, and who the Government represented owed the 'organization' a debt and "needed to be taken care of" (DE:74:87) Appendix B Page 2. and DE:72:152).

During the trial proceedings, the Government Mollifies and argues that Mr. Apodaca "offered to kill" Agent Dion (the purported victim) Appendix A Page 8. (DE:49 13:17-18).

Most egregiously, the F.B.I. drove Mr. Apodaca approximately seven hours from Davie, Florida into Valdosta, Georgia so that Mr Apodaca could be charged in Federal Court, by improperly manufacturing Federal Jurisdiction. None of this case would have occurred without the Government's providing Mr. Apodaca with the means as well as leading Mr. Apodaca into committing every aspect, as well as providing every element of every crime of each count. Mr. Apodaca stated that he was living in Davie, Florida behind a motorcycle club's club house in his travel trailer from October of 2015 to October 2016 (DE:74:31-2) Prior to getting involved with the Agents of this case, Mr. Apodaca was not involved in the possession or trafficking in drugs, nor did he possess any guns of any kind, or a silencer, nor did he commit or was ever even involved in any drug rip offs or murder/s for hire (DE:74:32). Mr. Apodaca stated that he would not have gotten involved in any of these things had it not been for the Agents including Watt, who drew him in and enticed him with money, friendship, and fake identification documents. The Agents even offered him legitimate jobs such as working in a tattoo shop. Also prior to the Agents coming into the Defendant's life, Mr. Apodaca was broke and hungry and just barely scraping by. (DE:74: 33).

Mr. Apodaca explained how Watt came to him, befriended him, and one day showed up with a new car (a P.T. Cruiser.) of which had new Tags registration, insurance, and everything was paid for. Watt knew that Mr. Apodaca's tags were expired, that Mr. Apodaca could'nt legally drive and told the Defendent that if he'd like to make some money, that he should go to work for these people Watt knows. Contrary to the Government's arguments, Watt came to the Defendent with all of this and even bragged about it in Court during Trial... Appendix B Page 10

"Yes, I actually brought his name to the F.B.I."

So one day Mr. Apodaca went with Watt upon Watt's invitation to see what it was all about (DE:74:34).

Mr. Apodaca stayed outside speaking to who he now knows as Agent Screech while Watt went inside to speak to Agent Steven.

When Watt came back out, he had an envelope full of cash. The Defendent was told by Watt that he would be working as a lookout and security if he was interested. (DE:74:35)

After the first meeting ended, Watt asked Mr. Apodaca if he would be interested in interacting with the guys (Agents) more and making some money. Watt stated that "The guys were interested in meeting him", but that they were to be careful not to upset these people or they could get seriously hurt. (DE:74:36) Appendix B Page 8.

When the Defendent moved to Florida through some of his former affiliations, he had a friend who introduced him to The Dirty White Boys Motorcycle Club where they let him stay on the property so long as he did upkeep on the property (DE:74:49).

Mr. Apodaca's only goal was to save up enough money to open his own Tattoo Shop. (DE:74:49).

It was at The Dirty White Boys' Club house that Mr. Apodaca met Mr.

Steven Vance Watt. Watt and the Defendant had known some of the same people in the past (DE:74:51). Within a month of meeting Watt, Watt was a Tattoo customer. Mr. Apodaca does not share the same White Supremacist beliefs as Watt as Watt proclaims in trial (DE:71:64) Mr. Apodaca did in the past but had changed his views over the years with the realization that they were becoming more like the people they stood against (DE:74:56). However, Mr. Apodaca believed he and Watt were friends (DE:74:57).

Watt gave a list of names to the F.B.I., of a list the Defendant gave him, of which was never investigated or confirmed of people The Defendant supposedly killed or made disappear. Mr. Apodaca gave Watt this list of names because Watt kept constantly bothering about if Apodaca had any outstanding warrants or wants. Mr. Apodaca thought he was asking on behalf of the Biker Club, So with the Biker Club President's approval, and known to the Biker Club, the Defendant put this fictitious list together as a prank on Watt. Many people on this list either don't exist or are alive and well and some were based on 'stories' Apodaca knew of which could be retrieved from the internet dating back to September 2015 of Missing Persons reports and Facebook Postings. Mr, Apodaca also made up the story that he had been to Bosnia and Serbia, worked on a crab boat, and has never even been to Alaska. (DE:74:60).

In September 2016 Watt introduced Mr. Apodaca to the under cover Agents. Watt told Mr. Apodaca that the guys wanted to meet with him, that a big boss was in town, and it would be an opportunity for him to make some money.

Watt took the Defendent first to a warehouse, then to a trailer park. (DE:74:62). Watt introduced Apodaca to Screech and Steven (DE:74:63). At the first meeting there was no discussion regarding drugs or guns, and Mr. Apodaca had no intention or means to do anything that lead to this case. One of the under cover Agents Mark (the boss in town), asked the Defendent for his phone number but Apodaca did'nt give it to him (DE:74:65) The first job the Defendent did with them was to pick up a bag and drop it off at a Wal-Mart. Watt told him that the guys were very serious, and not to ask questions. The Defendent was not told what was in the bag, and he did not ask (DE:74:65-6).

Mr. Apodaca thought his job was Security but when they got to the Wal-Mart, he was thrown the bag and told to put it in the back of the SUV (DE:74:66-67). When they returned to the warehouse Steven gave the Defendent \$200.00, then told him to get a phone (DE:74:67). Mr. Apodaca went that day and got a phone so the Agents could contact him (DE:74:70-71) if they needed him. On the way back to the warehouse Agent Screech asked the Defendent if he was on the run from anything and the Defendent told him he was not. (DE:74:68).

At some point later Watt told the Defendent that the Mid- Boss named Mark was in town (as mentioned earlier) and wanted to meet the Defendent so he could really start working with them, (DE:74:70) The Defendent felt very intimidated by Mark, and Watt also seemed very strange around Mark as well (DE:74:71). Watt had told Mr. Apodaca before that this was a very serious Organization, and if they were disappointed he could be shot. When Mr. Apodaca told them about robbing a drug house, wearing police uniforms, mowing everyone down, and taking \$3 Million dollars worth of cocaine, it was a fictitious story and Apodaca was making all of that up (DE:74:72).

This was neither investigated or confirmed by the F.B.I. yet this among other 'stories' were used as 'extrinsic evidence' during trial. Watt also told Mr. Apodaca not to tell any of the Biker Club what was going on (DE:74:73). Once Apodaca got involved with the organization he felt he could'nt back out because he was afraid for Watt's life as well as his own and had no real intention of doing any of the things the Agents walked him into, had the Agents just left him alone (DE:74:74).

In October of 2016, Mr. Apodaca was contacted by Agent Screech who picked him up and took him to the warehouse where they found Agents Seven and Mark. Screech grabbed a big box and set it on the ground next to a big blue gym bag, then Screech and Steven left the defendant alone with Mark. Before anything was discussed Mark asked Mr. Apodaca if \$300.00 was alright and Mr. Apodaca agreed thinking it was a simple security job like last time at the Wal-Mart drop off. Then Mark began dumping shoe boxes from the big box, then unzipped the gym bag which contained bricks of something resembling drugs, and told the Defendant to help him pack the bricks in the shoeboxes and gave him gloves. Mark told the Defendant that the bricks were \$300,000.00 worth of cocaine. A sting operation had crossed the Defendant's mind but it also occurred to him that they (the Agents) could very well be organized crime, so at no time did Mr. Apodaca feel he could get out of the situation without a serious problem especially because Watt continuously told him they "could be shot if they upset these people" and that in the real world, common sense tells you that if someone says you are looking at \$300,000.00 worth of cocaine and you attempt to leave, you may be very lucky to make it out the door as a liability (DE:74:78-79).

They then drove to a Wal-Mart where there were two well dressed Italian looking men standing outside of a black Cadillac at the edge of the Wal-Mart parking lot. After Mark spoke to them, Mark tells the Defendant to grab the box and put it in the back seat of the Cadillac (DE:74:75-77). No one told Mr. Apodaca ahead of time that he would be doing a cocaine deal before being taken to the warehouse that day and was lead right into the situation by the Agents. When this job was complete and nothing happened in the way of a sting operation, Mr. Apodaca was convinced that the Agents were in fact "Organized Crime" which was the desired effect. This is where the entire sting operation should have ended. Mr. Apodaca was charged with count one of 21 U.S.C. § 841 and 846 that carries a mandatory minimum of ten (10) years. The Agents locked Apodaca into this legal situation with count one therefore, there was no need to stack on counts two through six of the indictment and it became impossible for Apodaca to "just walk away" as the Government argues. This is where this case truly got out of control and out of order as the conduct of the Agents ensured a lengthy sentence and Mr. Apodaca should have been arrested right then and there for count one.

Shortly after the delivery of the fake cocaine to the Cadillac, Watt told Mr. Apodaca to get some nice clothes, suit and tie, as The main boss, the head of the Organization was coming to town and they wanted him to make a good impression (DE:74:79-80). Mr. Apodaca was not told why they wanted to meet him. The Boss was Agent Mike. (DE:74:80).

The following day Mark picked up the Defendant at a near by bar by the Biker Clubhouse where Apodaca had a few drinks, and they went to a strip club where Mark paid his entrance fee (DE:74:80).

When they got into the strip club there was an entire section of the bar closed off and there were about ten agents happily cheering and telling Apodaca "welcome to the family". There was Jack and co-es (Apodaca's favorite drink), stacks of money ; singles and five dollar bills, and lots of strippers all present (DE:74:81). At some point, Agent Mike arrived and asked Apodaca to go out to his truck so they could talk in private (DE:74:82). While in the truck, Agent Mike mentioned an article he read about, the death of an individual referred to as 'Machete Bob' and he eventually began to have a conversation 'offering to have people eliminated'. AppendixB_page_1 (Transcripts of the conversation) Taken from the Supplemental Appendix for the United States in their response brief on Direct Appeal: DE:49-13:13 of the transcripts of record-case No. 18-10338-JJ.

A.A. is Adrian Apodaca, U.C.E. is under cover employee who is known to be Agent Mike:

DCE: So you do'nt think there is anything in fuckin' Arizona that we need to worry about?

A.A.: No, I don't think so but uh..., again you know what I mean it's like uh...

U.C.E.; 'Cause I got, I got a couple of guys out there that are solid brothers that and again, what happened happened but whoever in that fuckin' story is still out there, "if they need to fuckin' go"...

(Clearly, it was Agent Mike who "offered" to kill, unsolicited.)

A.A.: Oh, no they're already gone, everybody is gone.

U.C.E.: Everybody's done and gone?

A.A.: Everybody's gone.

U.C.E.: Yeah?

A.A.: Trust me on that one but um...

U.C.E.: That was a fucked up story dude.

A.A.: Oh yeah, I know.

Agent Mike was referring to articles on the internet of which can still be retrieved dating back to September 2015 and so on of which were posted on Google.com and Facebook posts around the same dates posted by the very people where there were arrests made, in relation to articles of those individuals who were missing and presumed dead by local police detectives at the time. These people being arrested were who Apodaca referred to as "everybody's gone". Mr. Apodaca never "offered" to travel to wherever Agent Dion was to kill him, unsolicited or otherwise as the Government argues (Appeal Decision on page eight(8) (Appendix A page 8 saying Mr. Apodaca was "a willing participant, having offered to travel to wherever Agent Dion might be to kill him". That is not the case as can be clearly seen as the conversation continued; while still in the truck outside of the strip club, Agent Mike after offering to have people eliminated, pulled out a big stack of I.D. cards with his picture on them, and a stack of Social Security Cards and credit cards and told Mr. Apodaca that he could get him a new Identity 'Unsolicited'. When Mr. Apodaca offered to pay for a new Identity document, Agent Mike began talking about eliminating Agent Dion who was purported to owe the Organization money. Apodaca could see where Agent Mike was leading the conversation to and in a 'let me guess kind of way' Apodaca answered Agent Mike's question with a question.

"He's gotta go"?

Mr. Apodaca thought the entire conversation was odd as it is common knowledge that organized crime types rarely ever take this sort of business outside of their circle. Apodaca was concerned that Mike might try to kill him right there inside the truck (DE:84:87-88). Apodaca was in fear for his life as well as that of Watt, he worried where the situation was heading. (DE:74:88).

The conversation went as follows, from the Supplemental Appendix for the United States Case No. 18-10338-JJ Direct Appeal (Appendix B page 2 herin'.DE:49-13:17-18)as follows:

At this point Agent Mike is showing Mr.Apodaca "unsolicited" the Fake Identification Documents (I.D.s).Here he said: "I can re-start you" U.C.E. (Agent Mike): A.A. (Adrian Apodaca):

A.A.: If you can do that man fuckin' uh, I'll even pay you dude if I have to.

U.C.E.: You don't have to well your gonna pay me in fuckin' work is how your gonna pay me Bro, thatfuckin nigger that owes me money that you went out on and helped last time?

A.A.: he's gotta go?

U.C.E.: "he's gotta go", he's snubbin his nose at me and uh, you know, I'm a nice guy until the end.

Agent Mike lead this conversation with no hesitation and this case was concocted by the Government from the very beginning. Contrary to the Government's arguments throughout the proceedings, Mr. Apodaca did not "unsolicited" offer to kill Agent Dion (the perported victim), and as far as the security job that Agent Mike refers to that Apodaca "helped on last time" that was not an offer either but talk(jokingly)about things of which Apodaca had not the means to do, furthermore, Apodaca stated that day "We May even let him go", a far statement from an offer to kill someone. (DE:72:92). Appendix C page 5.

After that conversation during that security job, the issue of the purported debtor was never mentioned again until Agent Mike initiated the conversation in the truck in the strip club parking lot. Apodaca was never even told Agent Dion's name until it became known during trial.

The following day Watt came to Mr. Apodaca's trailer and told him that he needed to get a list of things that he needed to Watt by that evening in regard to Agent Mike "offering" Apodaca \$5000.00 to kill somebody in which Apodaca only agreed to passify Agent Mike. Again, to say no or to deviate from something such as this, when someone is claiming to be organized crime and brings up a situation like this, it could mean certain death as Apodaca believed he would be considered a liability to say no, especially with Watt constantly saying we could be shot if we upset these people. Watt told Apodaca to write this list, and put it in an envelope then re-package the envelope, and give it to him all the while reminding Apodaca "not to upset these people". (DE:74:85-89). Apodaca got a text on the phone the Agents provided in which he was told he was going to go on a road trip. At no time was Apodaca planning on going to Georgia (DE:74:90). Appendix B pages 3 - 2. Agent Mike picked Mr. Apodaca up and they went to a McDonalds and ordered breakfast. While at the McDonalds, Mike asked Mr. Apodaca to get a bag out of the trunk and look inside it. Agent Mike told him he wasn't able to get some of the items of which were on the list Apodaca gave to Watt, and asked Mr. Apodaca to grab one of the bullets out of a box from the bag to explain. Agent Mike then told Mr. Apodaca to wipe his prints off the bullet (DE:74:93). Agent Mike then handed Mr. Apodaca \$2600.00 in cash (DE:74:94). Mr. Apodaca was planning on taking the money and leaving

at his earliest convenience and not to even go through with the plan but during the road trip Apodaca noticed a guy with a ball cap and a back pack following them everywhere they went of whom was F.B.I.(Appendix B page 5 .) During the ride, Mike asked Mr. Apodaca if he would be willing to rob the Debter (Agent Dion) of his cocaine, that it was really good cocaine, and that he would give Mr. Apodaca a big bonus. Mr. Apodaca played along with the plan, making things up as he went along because he was afraid that Agent Mike might kill him if he showed any sign of trying to get out of the deal (DE:74:95). Apodaca began to believe that Agent Mike may have been planning to kill him at their arrival to their destination as the F.B.I. Agent who was following them didn't seem to be hiding the fact that Mr. Apodaca and Agent Mike were being followed.

When they arrived at the hotel in Valdosta, Georgia, they met an other under cover Agent that Mr. Apodaca knows as Billy. Additionally, Mr. Apodaca noticed the guy who was following them wherever they went was now in the Hotel lobby. He first saw the guy at a gas station where they stopped, and then observed the guy in a black car following them the entire time. Mr. Apodaca was more convinced that the guys were organized crime types and that he was in imminent danger as it was impossible for Agent Mike not to have noticed this guy following them. (DE:74:96-97). When they arrived in the hotel room, Mr. Apodaca was given the gun by Billy, put in the gun's magazine and sat down (DE:74:97). Mr. Apodaca was then taking the magazine out of the gun because Agent Mike handed him another magazine to see if it would fit. As Agents Mike and Billy talked, Agent Billy exited the room seemingly angry, there was a loud knock at the door and

Mr. Apodaca dropped the gun and kicked it under the bed, Agent Mike then reached down and retrieved it saying "I'm going to hide this in the toilet" and ran to the door (DE:74:98). Agent Mike opened the door and the F.B.I. team came in and arrested Mr. Apodaca right then. Mr. Apodaca never intended to go through with this concocted plan by the Government and was relieved in a way that the nightmare was over. (DE:74:99-100).

REASONS FOR GRANTING THIS PETITION FOR A WRIT OF CERTIORARI.

I. Whether the Defendant, Mr. Apodaca, can prove that his conviction and sentence can not be upheld under the definition of "crime of violence" for count five (5) of 18 U.S.C. §924(c)(1)(A),(B)(ii).

Within the language of Hobbs Act Robbery, 18 U.S.C. §1951(a); the Hobbs Act subjects a person to criminal liability if he in any way or degree obstructs, delays, or effects commerce or the movement of any article or commodity in commerce, by "robbery" or extortion or attempts or conspires to do so, ... (18 U.S.C. §1951(a))

The language of "robbery" within the Hobbs Act Robbery §1951(b)(1) is defined as "obtaining of personal property from the person or in the presence of another, against his will". Thus, Robbery signifies the taking of property under circumstances where a victim is present.

Stone v. United States, 361 U.S. 212, 215, 80 S. Ct. 270 4L. Ed 252 (1960).

(The Hobbs Act "speaks in a broad language, manifesting a purpose to use all the Constitutional power Congress has to punish interference with Interstate Commerce by extortion, robbery, or "Physical violence".)

The second part of Hobbs Act Robbery 18 U.S.C. § 1951(a) states:
...or commits or threatens physical violence "to any person" or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined under this title or imprisoned not more than twenty years or both.

"to any person" or property (within the definition of § 1951(a)) also signifies circumstances where a victim (or the victim's property) is present, of which was clearly the intention of congress when this was made law.

When the F.B.I. concluded their reverse sting operation in Valdosta, Georgia, in a hotel room where Mr. Apodaca was arrested, there was no victim of a 'robbery' or drugs present, nor proceeds of drugs present for there to be a nexus for a "drug trafficking crime or a crime of violence". No article or commodity was ever moved in commerce or attempts to do so. No violence was committed or any direct threats of physical violence 'to any person' as Mr. Apodaca never had any direct contact or communication with Agent Dion or was ever even told his name and can also be reviewed within the District Court Trial record. If anything this charge in count four of the indictment would fall under 'conspiring' and does not constitute a crime of violence. 18 U.S.C. § 1951(a) can not serve as a predicate charge for count five of the indictment 18 U.S.C. § 924(c)(1)(A), (B)(ii). The charge in count five would have to rely on the "residual Clause".

According to a recent decision made by the Supreme Court-

(United States V. Davis, No. 18-431) S. Ct. 2019),
Where a conspiracy to Hobbs Act Robbery was not considered a "crime of violence" in the sixth Circuit.

Without a victim of 'robbery present' or a threat made of physical violence 'to any person' there was no "crime of violence" what so ever.

The Supreme Court's decision in Johnson applies to the "residual clause" at 18 U.S.C. § 924(c)(3)(B), rendering it void for vagueness:

In light of THE UNITED STATES SUPREME COURT'S DECISION IN UNITED STATES V. DAVIS, (No. 18-431) (S. Ct. 2019)), the Supreme Court held that the residual clause of 18 U.S.C. § 924(c)(3)(B) is unconstitutional and vague in wake of Johnson v. United States, 135 S. Ct. 2251 (2015), and Sessions v. Dimaya, 138 S.Ct. 2251 (2018). The Court opened it's opinion by stating that "...in our constitutional order, a vague law is no law at all... when Congress passes a vague law, the role of the Court under our Constitution is not to fashion a new, clearer law to take it's place, but to treat the law as nullity and invite Congress to try again". Id.

In 2015, the Supreme Court held in Johnson Supra., that the residual clause of 18 U.S.C. § 924(e) was unconstitutionally vague and a violation of Due Process. Under the Armed Career Criminal Act (ACCA), a violent felony was defined as a crime punishable by imprisonment for a term exceeding one year that (1) has an element the use, or attempted use, or threatened use of physical force against the person of another; or (2) is burglary, arson, extortion, involves the use of explosive, or otherwise involves conduct that presents a serious potential risk of physical force/injury to another. 18 U.S.C. § 924(e) (2)(B)(i)-(ii), the language found to be void for vagueness by the Supreme Court was the "Clause or otherwise involves conduct that presents a serious potential risk of physical injury to an other".

While Johnson was focused primarily on the language of § 924(e), many Courts notice the inescapable similarities between the ACCA and other Criminal Statutes. One such example was the definition of "crime of violence" in 18 U.S.C. § 16. Under that Statute, a crime of violence is defined as (a) an offense that has an element the use, attempted use, or threatened use of physical force against the person or property of another, or (b) any other offense that is a felony, by it's nature, involves a substantial risk of physical force against the person or property of an other that may be used in the course of committing the offense 18 U.S.C. § 16(a)-(b).

Shortly after Johnson, the Ninth Circuit in *Dimaya v. Lynch*, 803 F. 3d. 1110 (9th Cir.2015) held that 18 U.S.C. § 16 was equally unconstitutionally vague. The case went up to the Supreme Court and the Court held that a plain application of Johnson to U.S.C. § 16 was required a finding that § 16(b) is also void for vagueness, *Dimaya v. Sessions*, 138 S. Ct. 1204 (2018).

Following *Dimaya*, other Courts noticed the Similarities between 18 U.S.C. § 16 and 18 U.S.C. § 924 (C)(3). Under the latter Statute, a "crime of violence" is defined as (a) having an element the use, the attempted use, or threatened use of physical force against the person or property of another, or (b) that by it's nature, involved a substantial risk that physical force against the person or property of an other may be used in the course of committing the offense, 18 U.S.C. § 924(c)(3)(A)-(B). Due to it's nearly identical wording, some Courts of Appeals held that 18 U.S.C. § 924 (c)(3)(B) was unconstitutional in light of Johnson and *Dimaya*. However, the first, Second, and Eleventh Circuits disagreed, finding the § 924(c)(3)(B) is distinguishable because it requires a case-

specific approach as opposed to the categorical approach.

In Davis, Supra., the Defendants were convicted of Hobbs Act Robbery and Conspiracy to commit Hobbs Act Robbery and under 18 U.S.C. § 924(C), using, carrying, or possessing a firearm in connection with any federal "crime of Violence" or "Drug trafficking Crime" which authorizes heightened penalties for the latter, "crime of violence" is defined in an elements clause and residual clause, §924(c)(3) the residual clause defines "crime of violence" as a felony that by it's nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense. The Fifth Circuit declared the residual clause unconstitutional but held §924(c) convictions having robbery as the predicate crime of violence could be sustained under the elements clause; the court that charged conspiracy as a predicate crime of violence could not be upheld because it depended on the 'residual clause'

In the Sixth Circuit, the Hobbs Act Robbery (18 U.S.C. § 1951(a)) is not a crime of violence, UNITED STATES V. CAMP, (No. 17-1879) Sixth Circuit September 7, 2018 of which was Vacated and Remanded.

The Supreme Court agreed that §924(c)(3)(B) is unconstitutionally vague, citing it's decisions addressing the residual clause of the Armed Career Criminal Act and of 18 U.S.C. § 16, each required as a violent felony or crime of violence, "disregarding how exactly" the defendant actually committed the offense and imagining the degree of the risk in an "ordinary case".

§ 924(c)(3)(B) required the same categorical approach. The Court declined to abandon that approach and hold that the Statute requires a case-specific approach that would look at the defendant's

actual conduct and declined to adopt a fairly possible reading of a criminal statute "to save it" would risk offending the very same Due Process and separation of powers principle on which the vagueness doctrine rests and would be inconsistent with the rule of lenity. 18 U.S.C. §924(c) (As well as count five in this case §924(c)(1)(A),(B)(ii):) Forbids the use of a firearm in the furtherance of "a crime of violence" as ~~...~~ in section (§924(c)(3)(A) and §924(c)(1)(A), forbids.) define a crime of violence as an offense as an Element the use, attempted use, or threatened use of physical force against a person or property of another.

The second part §924(c)(3)(B), defines the crime of violence as an offense that by it's nature, involves a substantial risk that Physical force against the person or ~~the~~ property of another may be used in the course of committing the offense. This language is too vague to determine what Congress intended as a crime of violence to trigger the Statutory application and sentence enhancement. Most Courts hold that a defendant may be resentenced in light of Johnson (and now Davis) if the sentencing court explicitly/ relied on the invalid portion of the Statute, Notably, Mr. Apodaca's sentencing transcripts (Appendix D.) doesn't explicitly identify what exact particular definition of "crime of Violence it is relying on or what exactly a crime of violence was in the indictment as again, there was no victim or threats made "to a victim" and this was a reverse sting operation of which originated with the Government...

Ambiguities about a criminal law or Statute should be resolved in the Defendant's favor and This Court should grant this Petition. There is no Attempt if there is no victim present.

The real question here is whether the Defendant Mr. Apodaca can

prove that his conviction and sentence can't be upheld under the definition of "crime of violence". In Sum, a defendent convicted under an in-valad criminal Statute is actually innocent, for the purposes of the procedural default exception. The United States Supreame Court confirmed as much in Bousley V. United States, 523 U.S. 614 (1998)" That at the time of the conviction neither the accused, or his counsel, nor the District Court correctly understood the essential Elements of the crime with which he was charged, then the conviction was invalad under the Federal Constitution." Id.

Under Bousley, a petitioner can be accually innocent of his § 924(c) conviction. As Justice Gorsuch noted in the application of Davis, "In our Constitutional order, a vage law is no law at all". So, defendents convicted under an invalad, non-existent vague law were not convicted of a crime at all. They are innocent, as they were not convicted of a Valad Crime.

In this case, the Hobbs Act Robbery 18 U.S.C. §1951(a) count four of the indictment as well as Use of Interstate Commerce Facilities in the comission of Murder-For-Hire 18 U.S.C. §1958, count two of the indictment, can not serve as predicate offenses for count five 18§ 924(c)(1)(A),(B)(ii). enhancements because they do not consitute the definition of "a crime of violence". The language within "Use of Interstate Commerce Facilities" in the comission of Murder-For-Hire does not coincide under subsection (A) of §924(c)(1) (Elements Clause) and therefore does not constitute a crime of violence.

18 U.S.C. §1958 provides:

Use of Interstate Commerce Facilities in the comission of
Murder-For hire

(a) "whoever Travels in or causes another (including the intended

victim.) to travel in Interstate or foreign commerce, or "uses" or causes another (including the intended victim.) to use the mail or any facility of interstate" or foreign commerce, with intent that a murder be committed in violation of the laws of any State or the United States as consideration for the receipt of, or as consideration for a promise or agreement to pay, anything of pecuniary value, or who conspires to do so, shall be fined under this title or imprisoned for not more than twenty years, or both; and if death results, shall be punished by death or life imprisonment, or shall be fined \$250,000.00, or both.

§1958(b)(2): Use of Interstate Commerce Facilities in the Commission of Murder-For-Hire

(b) as used in this section and section §1959

(2) "facility of interstate or foreign commerce" includes "means of transportation" and communication.

In count two of the indictment (§1958) Mr. Apodaca did not Travel or cause another to "use" Interstate Commerce freely or by his own means as it was Agent Mike of the F.B.I. who drove Mr. Apodaca across State lines from the State of Florida into the State of Georgia to create the Federal nexus to permit prosecution.

As to the Elements of this count, §1958(a), there is no showing of the use, attempted use, or even threatened use of physical force against the person or property of another as again, there was no actual victim present. Even if it did, it would still not constitute a "crime of violence", and count five would have to rely on the "residual clause" Thus, 18 U.S.C.A. §1958(a) is not a crime of violence. as required by §924(C)(1)(A),(B)(ii). In the United States, it is to Mr. Apodaca's understanding that United States Citizens are tried

and sentenced for actual crimes comitted, and not for imaginary crimes of which originated with the government as they brought every aspect of this case to Mr. Apodaca.

Both counts two and four of the indictment would have required count five §924(c)(1)(A), to rely on the "residual clause" of sub section (B).

It is clear that there was no crime of violence or a drug trafficking crime in this case, there was no Actual victim, drugs, of profits of drugs presant at the hotel room in Valdosta, Georgia,(or any other time within this case,)in proximity to a firearm for there to be a nexus with the § 924(c) in count five.

Therefore, this Court should Grant this Petition for a Writ of Certiorari.

Whether the Government's conduct violated the Due Process rights of Mr. Apodaca and violated the Principles of Federalism under the Tenth Amendment's Commerce Clause. This is a question of National Importance as the Government (and the F.B.I.) openly admit to creating the crimes in this case, as well as the Jurisdiction with no regard to the U.S. Constitution, so that the Government may prosecute. This is also a question of law for the United States Supreame Court to determine in reviewing the decision of the United States COurt of Appeals in the Eleventh Circuit. Appendix A. The actions of the F.B.I. in this case crossed every line and violated the Due Process Clause of the Fifth Amendment of the United States Constitution and the Tenth Amendment's Commerce Clause.

It was the Government that drove Mr. Apodaca for the seven hour road trip across State lines to create the Federal Jurisdiction

for counts two through six, which added an additional Thirty years mandatory minimum sentence to his already mandatory Ten year sentence for count one. The Government not only provided Mr. Apodaca with every aspect of the offense when the crime/s originated with the Agents, the Government manufactured Federal Jurisdiction, which is against the very precepts of Due Process of Law and the Principles of Federalism under The Tenth Amendment's Commerce Clause. The above sets out that compelling reasons exist for the exercise of this Court's Jurisdiction.

Every once in a while, the Government so oversteps the basic concepts of fairness and engages in conduct so outrageous that it can not be justified. "In their Zeal to enforce the Law... Government Agents May not originate a criminal design, implant in an innocent person's mind the Disposition to commit a criminal Act, and then induce commission of the crime so that the Government may Prosecute".

Jacobson v. United States, 503 U.S. 540, 548, 112 S. Ct. 1534, 1540 (1992).

(Emphasis added).

That is Exactly what happened in this case.

Although in various conversations, Mr. Apodaca stated that he had committed drug rip-offs and murders in the past, including in Bosnia and Serbia, and Mr. Apodaca stated through out this case that he was making all of that up. The Government had no confirming information, other than the fact that the body of 'Machete Bob' was indeed found in the Desert. However, The Government had no evidence that Mr. Apodaca was ever a suspect in that Homocide nor did they present any direct relevant proof that Apodaca committed any of these 'external offenses' during Trial, (Government's Rebuttal DE:74:218 and Watt's Heresay Testimony of which no documentation or recorded audio was ever presented as Watt was allegedly reporting an out-of Court Statement that was inadmissible .(DE:71:95)

Even if/when the admissibility of external evidence is a close question, the trial Court should say more, even without a request the Court should pinpoint the Element or Elements listed in Fed. R. Evid 404(b) that the evidence will prove and explain why the evidence's probative value is not "substantially outweighed by its undue prejudice". The evidence the Government offered was insufficient and the Court denied the Fed. Rule of Evidence 403 when the Court should have excluded the evidence because it was irrelevant. This is a violation of the Due Process Clause of the Fifth Amendment. "Guilt is personal, and when imposition of punishment on status or, or on conduct can only be justified by reference to relationship of that status or conduct to other concededly criminal activity, that relationship must be sufficiently substantial to satisfy concept of personal guilt in order to withstand attack under Due Process Clause of the Fifth Amendment".

Scales v. United States (1961)

367 U.S. 203, 61 ED 2d 782, 81 S. Ct 1469, reh den (1961) 366 U.S. 978, 61 ED 2d 1267, 81 S. Ct. 1912 and (Superseded by Statute as stated in Davis v. United States (1973) 411 U.S. 233, 36 L Ed 2d 216, 93 S. Ct. 1577).

In this case, the Government used Watt, a government paid informant to constantly tell Mr. Apodaca that he had to go along with these (Agents) people because they were serious and could cause them great harm. It was Watt who told and insisted to Mr. Apodaca that they needed a list of items for him to commit the offenses the F.B.I. was concocting, and again continued the veiled threats. All the while promising Mr. Apodaca rewards of money and a new identity and it was patently clear to all the Agents involved that Apodaca

badly needed the money at the time with his financial situation.

The F.B.I.'s creation of the crimes in this case is a clear violation of the very precepts of Due Process. Especially counts two through six involving the trip to Georgia to create Federal Jurisdiction, and then handing a firearm to Mr. Apodaca, outfitted with a silencer, which the Agents knew carried a thirty year mandatory minimum consecutive sentence. None of this would have happened but for the creation of the crimes by the F.B.I. and providing Mr. Apodaca with every aspect to induce and ensure the committed offenses that he is now sentenced to forty years for;

As the Supreme Court stated in *Sherman v. United States*, 356 U.S. 369, 78 S. Ct. 819 (1958):

The function of Law enforcement is the prevention of crime and the apprehension of criminals. Manifestly, that function does not include the manufacturing of crime. Criminal activity is such that stealth and strategy are necessary weapons in the arsenal of the police officer. However, "A different question is presented when the criminal design originates with the officials of the Government, and they implant in the mind of an innocent person the disposition to commit the alleged offense and introduce its commission in order that they may prosecute".

Looking into Supreme Court Precedent, This Court cautioned: "Before a Due Process violation will be found; law Enforcement techniques will be deemed Unconstitutional only if they violate that 'fundamental fairness shocking to the universal sense of justice' mandated by the Due Process Clause of the Fifth Amendment. Citing *United States v. Russell*, 411 U.S. 423, 432, 93 S.Ct. 1637 (1973) (Quoting *Kinsella v. United States ex re. Singleton*, 361 U.S. 235, 246, 80 S. Ct. 297, 304 (1960)).

It was clear that the Government already had Mr. Apodaca locked in with the drug trafficking crime in count one 21 U.S.C. §§ 841(a)(1) and 846 but Apodaca had no pre-disposition nor incination to travel to Georgia to commit an attempted murder, a Hobbs Act Robbery, nor possess the firearm to commit those offenses without the Govrnment's direct involvement and acually driving Mr. Apodaca across State Lines for the specific reason to create Federal Jurisdiction, which then permitted the Government to charge Mr. Apodaca with the most serious offenses; The Hobbs Act Robbery, the possession of a firearm during a 'crime of violence or a drug trafficking crime' and the Murder-For-Hire scheme. Mr. Apodaca argued the fact that the Government created Federal Jurisdiction regarding these counts in his motion to Dismiss at the Detention hearing, and again during the Rule 29 argument (DE:18:38,73:119-123) Appendix D.

In United States v. Archer, Judge Friendly warned of the evils that the Government creates when it manufactures Jurisdiction:

" ...Our holding is rather that when Congress responded to the Attorney General's request to led the aid of Federal Law Enforcement to local officials in the prosecution of certain crimes, primarily of local concern, where the participants were ingaging in Interstate activity ~~it did not mean to include cases where the Federal Officers themselves supplied the Interstate Element and acted to ensure that an Interstate Element would be present.~~" Manufactured Federal Jurisdiction is even more offensive in criminal than in Civil Proceedings, cf. 28 U.S.C. § 1359.

This is exactly what we have here, the Agents could have just as easily provided Mr. Apodaca with a firearm in Davie, Florida. They provided him with the Ammunition for the firearm while he was still in Davie, Florida and he could have been charged with being a Felon in possession of Ammunition then and there. He already had prior

convictions, and had been previously convicted of that offense, but the F.B.I. decided instead, to take a seven hour road trip to Georgia across State lines so they could charge him with counts two through six and the Agents were not satisfied until they stacked these additional charges to bury Apodaca within the Federal Prison system.

Mr. Apodaca raised the Defense of Entrapment and repeatedly moved to Dismiss for lack of Jurisdiction for the charges dealing with the trip to Georgia, which are part and parcel of a Due Process Claim and are therefore preserved.

As conceded by the Government, Mr. Apodaca moved to dismiss for lack of Jurisdiction as early as the Pre-Trial Detention Hearing, again as part of his judgement of Acquittal, argued it at sentencing (from the Government's Brief for Appeals, page 31 see Appendix B page 19.) and finally upon direct Appeal. Although Mr. Apodaca did not use the term "Due Process", it is clear that was what he was challenging, when he challenged the Government's creation of the crimes regarding the trip to Georgia. Additionally, Mr. Apodaca clearly presented an Entrapment case Defense during the Trial, which is also a subset of the outrageous Governmental misconduct defense.

In this case the principles of Federalism enumerated in the Tenth Amendment has been violated here by driving Mr. Apodaca across State lines, by doing so, the Government placed the Defendant within the scope of the limitation imposed by the Tenth Amendment (see U.S. Const. Art. I §8, cl. 3 "Commerce Clause")

Because no Federal crime would have taken place but for the Government's Agent crossing State lines from Florida into Georgia, Federal Jurisdiction did not exist as can be clearly seen and confirmed by Agent Mike of the F.B.I.'s testimony in Trial by his own Candid admission' when he was asked by the Defense on cross examination, why exactly his team picked Georgia to conclude this reverse sting operation

and Agent Mike Testified that the sole reason for the trip to Georgia was to create and invoke Federal Jurisdiction by crossing state lines. (DE:73:75) Appendix B Page 4.

Agent Mike's testimony went as follows in the record transcripts during Trial in the District Court of the Eleventh Circuit:

Q; And can you tell us why, then, your team picked Valdosta?

A: Valdosta's just on the other side of the Florida Line, so it's gonna now limit my drive that was already eight hours to get there. Plus it enables our victim to not be local for public safety issues. If your victim of a Murder-For-Hire is local, you-- you don't--you obviously your not, unless you're living with somebody, you don't have full control over them. So, if they decide to go find this person or do something to this person who is your victim, then you know, something bad might happen, somebody might get hurt. So try not to put the victim and the subject that's doing the hit in the same locality together.

Q; You say picking Valdosta limited your drive?

A; It did.

Q; well, I mean you could have picked say Orlando, Florida Right?

A; No, We had to get out of State.

Q; Why is that?

A: "That's part of the--that's' part of the Jurisdictional issues and part of the Definitions of the crime".

Mr. Marks (Defense Counsel): Alright Agent, I think those are all the questions I have for you this afternoon.

Mr. Apodaca did not "use" or cause another to "use Interstate Commerce freely or voluntarily as it was Agent Mike who Testified that his Team picked Georgia and had to drive Mr. Apodaca across State Lines in a car of which Mr. Apodaca could not escape with people following them the entire way there, This was Entapment, and Apodaca had no means

what so ever to travel into Georgia from Davie, Florida 'from south Florida' and Mr. Apodaca even explained to Agent Mike that he could not fly out of state either because he had no Identification and was on the 'no fly list' (GE:13:20-22) ^(Appendix B, 2) Appendix ^B ~~4~~ the tags and insurance on Mr. Apodaca's vehicle (a G.M.C. Jimmy) were also expired so he could not even legally drive himself out of state and had no plans to drive anywhere as not to risk confiscation of his vehicle and tickets. Mr. Apodaca never 'offered' or asked to go to Georgia, and never planned on going to Georgia. It was the Agents who told the Defendant that they were going to go on a road trip to Georgia and again, by driving Mr. Apodaca across State lines, the Agents manipulated and ensured that counts two through six were induced and complete and the Elements satisfied for the indictment as both Agents Christopher Penn and Agent Mike Testified as being the reason for the road trip to Georgia, contrary to the United States Court of Appeals for the Eleventh Circuit's decision in this case saying that the reason for the road trip to Georgia as being **"only in part to satisfy the Interstate Element of the Federal crimes."** The trip to Georgia from Florida in fact created the Federal Nexus which permitted prosecution and 'originated with the Agents. There was no independent reason in this case to go to Georgia other than to clearly improperly manufacture Federal Jurisdiction.

Similarly in **United States v. Coats**, 949 f. 2nd 104 (4th Cir. 1991), That Circuit Court reversed a Judgment of conviction where the Government did not have an 'independent reason' for using an Interstate Facility, to provide Federal Jurisdiction. The Defendant in that case as in this one, has been convicted of using an Interstate Facility, a telephone, in a Murder-For-Hire scheme in violation of 18 U.S.C. § 1958(a). In reversing the Judgment below, The Court noted that "The Government

Agent drove across State Lines for the sole purpose of making a telephone call in order to induce the Defendant to "use" that Interstate Facility to discuss the scheme." see 949 f 2nd at 105, that is what the Government Agent in fact did in this case, only he did 'nt just make a telephone call, he actually went out of his way and actually drove Mr. Apodaca across State Lines in order to "induce" the use of Interstate Commerce, that it was the Government Agent, and not the Defendant who initiated the Interstate act. The Court Stated:

Focusing as we did in **Brantly** and as the Fifth Circuit did in **Garrett**, upon the Government's reasons for taking action upon which Federal Jurisdiction is asserted, there is no doubt here that, "By the Government's candid admission, it was solely to create a Federal crime out of a State crime".

Consistent with our views in **Brantly** and those in our sister Circuits in **Archer** and in **Garrett**, we therefore hold that count one of the indictment here was not based on cognizable Federal Jurisdiction and should have been dismissed.

...We rely on the fact that the 'only' reason the sole Jurisdictional link occurred here was that it was contrived by the Government for that reason alone.

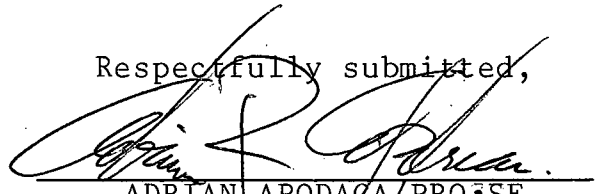
CONCLUSION

In this case, there was no 'crime of violence' what so ever, and as Agent Mike testified in the Trial proceedings, the sole reason for the trip to Georgia was to create Federal Jurisdiction by crossing State lines, as also conceded by the United States Court of Appeals in the Eleventh Circuit's decision Appendix A page 8. **This is exactly what is prohibited.** Mr. Apodaca never would have driven to Georgia on his own without the Government's direct involvement to create Federal Jurisdiction over the last five counts. The Government's job is not to create Federal Jurisdiction, nor to create crime. This is clearly

a case of Entrapment. They already had Mr. Apodaca on count one with the seperate cocaine charge of which made it impossible for Mr. Apodaca to just walk away, or for there to be 'multiple opportunities' for him to back out as the Government argues, there was absolutely no reason to '**stack**' on the additional charges of which is a violation of Mr. Apodaca's Fifth Amendment Due Process Rights and a violation of the Tenth Amendment's Commerce Clause.

In compliance with Rule Ten (10) Of the Rules of The Supreme Court of the United States, The Petition for a writ of Certiorari sh should be granted.

Respectfully submitted,



ADRIAN APODACA/PROSE.

PETITIONER.