19-6608

ORIGINAL

NO. 18-20208

IN THE
SUPREME COURT OF THE UNITED STATES

AMON RWEYEMAMU MTAZA,,
Petitioner,

V.

UNITED STSTES OF AMERICA,
Respondants.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION(S) PRESENTED

1. Whether jurists of reasonable mind would debate that counsel was ineffetive in violation of Sixth amendment for failure to investigate and litigate Fourth Amendment violation and failure to investigate venue defense, Factual defense where there was no probable cause to arrest, litigation of Fourth Amendment would have left Government without any evidence to support the charges, and further investigation would have revealed that petitioner did not commit wire fraud, and since 5-sheets of paper seized from him did not contained any Social Security Numbers (SSNs) which is required to file a federal tax returns, and case Agent lied "perjury testimony' before the grand jury and the court that said 5-sheets contained SSNs, and availability of the venue and factual defense would have enable petitioner or a reasonable person in his position to make decision in favor of trial.

2. In our justice system to what extent an attorney's personal conflict of interest should be tolerated. Whether jurists of reasonable mind would debate that counsel labored under conflict of interest and Certifivate of Appealability (COA) should have been granted where government bribed defense counsel with petitioner's Rnge Rover, and because of bribe, counsel failed to investigate, while having several plausible line of defense, and just coerced and induced guilty plea, despite physical evidences showing innocence of petitioner?

3. In this wire fraud case, petitioner raised several claims of ineffective assistance of counsel and presented evidence, exhibits and affidavits but district court failed to address the merit of claims and failed to review evidences, exhibits and affidavit and denied the 28 U.S.C. § 2255 motion only based on affidavits of the counsel in which counsel had failed to address all claims. Whether court of Appeals should have remanded the case back to district court to address the merits of all claims, or granted COA automatically on those claims.

LIST OF PARTIES

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

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

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PETITION FOR WRIT OF CERTIORARI

Amon Rweyemamu Mtaza respectfully petitions for a Writ of Certiorari to review the judgment of the United States Court of appeals for the Fifth Circuit.

OPINIONS BELOW

The April 4,2019 single judge opinion of the Court of Appelas denying certificate of appealability COA is not publish and attached as Appendex A. The June 19, 2019, Panel judge opinion of the Court Of Appeals denying Motion to Reconsideration of Certificate of Appealability COA is not reported and attached as Appendex B. The October 16, 2017, Memorandum Opinion and Order of the United States District Court for Southern District of Texas denying Mr. Mtaza's petition for writ of Habaes corpus is reported at 2017 U.S. Dist. LEXIS 170534 and attached as Appendex C. The April 08, 2019, denial of the United states District Court of the Southern district of Texas denying Mtaza's motion to Reconsideration unreported and attached as Appendex D.

An extension of time to file the petition for a Writ of Certiorari was granted to and including November 16, 2019 in Application 19-A-233.

JURISDICTION

The Court of Appeals entered it judgment on April 4, 2019. This Court has Jurisdiction Under 28 U.S.C. § 1254(1)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involved a Federal criminal defendant's constitutional rights under the Fourth Amendment nad Sixth Amendment. The Fourth Amendmend provides in relevant part ;

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The Sixth Amendment provides;

> In all criminal prosecutions, the accused shall enjoy the right to ... have the assistance of counsel for his defense.

This case also involves the application of 28 U.S.C. § 2253(c), which states:

> (1) Unless a circuit justice or judge issue a certificate of appealability, an appeal may noy be taked to the court of appeals from-
>
> (A) the final order in habeas corpus proceeding in which the detention complined of arises out process issued by a Federal Court;
>
> (2) A certificate of appealability may ussue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

STATEMENT OF THE CASE.

(1) Start of the Investigation.

Petitioner's co-defendant Ms. Hatch was trying to acquire social security number (SSN) from a confidential Informant (CI). when she arrived to receive SSNs, she was arrested by officers. Then Ms Hatch told officers that she was acquiring SSN's for someone who she knew only by name of "Rasta" and that person is going to meet with her later.

(2) Petitioner's Unlawful Arrest.

One of petitioner's friend was the tax preparer and filer, one of his friend's office was broken into, so he started to keep some paper at petitioner 's apartment. Petitioner's friend was surppose to handover 5 sheets of paper to Ms. Hatch but he had some urgent work to do so he called Ms. Hatch and told her that he has left papers with petitioner. Later friday Ms.Hatch called petitioner and requested to meet so she can retrieve the 5-shhets of paper. But petitoner was busy so he told her to meet the next day, which did not happen until monday.

Petitioner went to meet Ms.hatch on monday around 10:15 am, and when he was getting out from the car, officer's sorrounded him while pointing guns at him and screaming " FEEZE, DO NOT MOVE, IF YOU MOVE I WILL SHOT YOU". Agent Boyden then tackle petitioner down and Houston Police officer (H.P,D) hadcuffed him while he was laying face down on the ground. Since petitioner only handed over 5-sheets of paper which contains names and date birth which are public information, it was not a crime neither contraband. Therefore, petitioner's arrest was unlawful and without probable cause . Agent Boyden quickly patted down petitioner and took 2 phones, a wallet, apartment keys, car keys. Id's, bank cards, over $ 6600.00 and other items.

(3) Unlawful Search and Seizure, and Involuntary Coerced Consent.

Agent Boyden started questioning petitioner and petitioner kept requesting that he needed an attorney but each time agent denied his request for attorney.

While questioning petitioner, agent Boyden was digging into petitioner's wallet even though initial protective search was already over, petitioner was in handcuffed, and agent's had possession of the wallet. [So there was no exigence circumstances to search the wallet without consent and/or without search warrant] Once agent Boyden found address on the receipt in the wallet, officers put petitioner into HPD police car, and agent Boyden and all other officers went to search petitioner's apartment without a warrant or consent.

After about 40 minites later, agent Boyden came back while other officers where still searching petitioner's apartment. Agent Boyden handcuffed and shackled petitioner with his own shackle chain like a slave and put petitioner in his car. Agent Boyden started questioning petitioner and told him that he has found where petitioner lived and found all of his cars, and told him that " you[petitioner] need to tell the truth and if I [Boyden] found out you are lying you will be in big trouble" petitioner again requested " can I speak to my attorney" but agent Boyden told petitioner "Not everything requires an attorney" . Agent Boyden asked petitioner to sign blank consent forms, and again petitioner told him " I need to talk to my attorney". Agent Boyden told petitioner that " he do not care if you [petitioner] gives consent or not". Agent Boyden then started to induce petitioner to sign consent and told him that " let me help you, if I don't find anything at your apartment, I will unshackle you and let you go" petitioner again demanded to speak to his attorney.Agent Boyden told petitioner " If you [petitioner] want to play game, I will go to downtown and will get search warrant and then I will teardown your apartment, drag all your cars from your apartment and impound them, and the day you will go to get them, will pay fortune, and I will make sure you get deported, or if you consent, I will make sure there is no other information and I will leave" Still petitioner did not sign consentforms and told agent Boyden that he will feel comfortable once he speaks to his attorney. This to and fro went on for over four hours. Agent Boy-

den get mad and started to scream to intimidate petitioner.

Agent Boyden started to drive toward downtown and asked petitioner his immigration stutas and called ICE to put detainer on him. Agent Boyden kept coeecing and threatening petitioner for consent and told him " He is going to lock him up [petitoner] in jail until petitioner marinated and ready to sign consent". petitioner again demanded to speak to his attorney but agent Boyden denies his request. Agent Boyden started to emotionally blackmail petitioner, and started to talk about his [Agent] family situation. Since traffic was really slow on the freeway, Agent Boyden existed the freeway and told petitioner " I do not want to play games no more and you have to sign the consent forms". Agent Boyden made a U-turn and came back to petitioners apartment. Agent Boyden[Shoved] consent forms in to petitioner's hand and demanded to sign the forms. But petitioner told him, he will sign the forms inside his apartment. But agent became more aggrasive and angry and told him that he has done going back and forth and forced a pen in petitioner's hand, and point finger on blank consent form, and told petitioner to sign there. Because of agent boyden's coercions and threats, after Four hours, without food or water, under custodial condition petitioner broke down, and unwillingly, involuntaryly, and under duress signed the black consent forms at 2:30 pm [waiver forms and Criminal complaint are the evidence to show the leight of coercions] Agent Boyden in Criminal Complaint stated he arrested Mtaza at 12:30 Doc.1 P.3, § 9. and waiver forms shows 2:30 pm Affidavit in support of criminal complaint Appendex[E] and waiver forms Appendex[F]

Once petitoner entered apartment building, he saw, his apartment door was already open and officers were already searching, and when petitioner enter inside his apartment, he saw several trash bags full of properties were on top of the bag. Petitioner asked Agent Boyden why he needed consent to search when he has already search the aprtment. agent Boyden responded that he did not take anything.

(4) Unlawful search of the cars

When inside the apartment. agent Boyden kept questioning petitioner about the account slip he had found in petitoner's car. Right then petitioner realize that agent Boyden had searched his cars without a warrant or a consent. During search agent Boyden seized jewelries, watches and other items. Petitioner specifically asked agent to provide him with the inventory list which agent said he will but petitioner never received inventory list until this day of writing.

(5) Unlawful Search and Seizure of Magazine and Petitioner's Girlfriend's Apartment.

While inside petitioner's apartment agent Boyden found a magazine which was not in a plain view rather, it was HIDDEN underneath the counter on top of a TV box. Agent Boyden started investigating the magazine and found the address on the top cover page without the name of petitioner or his girlfriend Ms. Joseph i.e magazine was neither mailed in the name of petitioner or his girlfriend. Since the magazine was not evidence of any crime nor it was not in plain view or even it was not a contraband, so the search and seizure of the magazine violated Fourth Amendment. Agent Boyden asked about the address, petitioner told him that he do not know who live over there. Agent suggeted that he is going to investigate that address. Petitioner told agent Boyden that he should not go there and harass people over there, he has no business to go there.

After completion of unlawful search at petitioner's apartment, agent could not find any evidence of the crime but still detained petitioner pending on the results of what the officers will find from the other apartment. Then other officers were ordered to go to that address[at Ms Joseph's Apartment] to investigate and search. Agent Boyden drove downtown and detained petitioner in Dry cell.

When officers went to petitioner's girlfriend apartment, they were looking for some one ["Doe"] not petitioner, and when they were told that Mr. Doe does not live there, officers were supposed to return back rather than question and coerci-

ng the resident Ms. Joseph. Since magazine was not an evidence of the crime and that apartment was neither known to be linked to the petitioner nor officers were awere about any unlawful activity taking place at that address, So there was no probable cause to search the apartment, government have failed to provide a reason of why the magazine standard alone without incriminating character gave a reason to agent Boyden to order the officer's to go and search the address. There were no probable cause cause to search the apartment . Officer's threatened Ms. Joseph to obtained search warrant for her apartment and threatened that if they find anything in the home, they will put her in jail and take her baby away and put her in foster care. After threats and coercion, in the police car with her baby not knowing what else to do, consented to search and handed over duffle bags but without open them.

(1) Summary of the Proceedings

After petitioner's arrest on March 3,2014. Grand Jury returned an Indictment on march 26, 2014 against petitioner charging him for consiparacy, wire fraud, and Identity theft charges.But this Indictment was based on false Testimony of the Agent Boyden that "[Petitioner] brought Ms. Hatch five sheets of Social Security Number and Birthdays of stolen ID's that were used to file fraudulent tax returns" Doc. 19,P.3., but the ACTUAL 5-SHEETS DO NOT CONTAIN ANY SSNs.

petitioner was initial represented by attorney Greig Washington. Petitioner later learned that he attorney has been suspended from Texas Bar and he has HISTORY of inadequate representation. Mr. Washington did not file any pretrial preparation and/or investigation, and promised petitioner probation and also told petitioner's wife that petitioner will receive probation. Because of ineffective assistance of counsel and based on promise by counsel petitioner pleaded guilty to conspiracy (count 1), wire fraud (count 2-7), and identity theft charges (counts 8-9) on september 16,2014.

After Mr. washington got suspended from Texas Bar, petitioner retained Mr. Diaz and Mr. Rodriguez, and specifically requested counsels to withdraw his guilty plea but counsel failed to file any motion to withdraw his guilty plea. During sentencing counsels failed to demand that government present evidence to support enhanced sentenced for number of victims and total intended loss. Due to lack of any meaningful adversarial testing. Court sentenced petitioner to total of 87 months sentence, 3 years of supervised release, and ordered to pay $ 400,409.00 in restitution to IRS. IRS does not provide impact letter to qualify as a victim for Restitution[2]

On direct appeal, petitioner asserted that his guilty plea was not knowingly and voluntary because district court did not advise him that the mandatory minimum of his identity theft conviction was two years in prison. On November 13,2015, the fifth circuit affirmed the judgement of the conviction. Finding no plain error.

While petitioner was researching and preparing his ineffective assistance of counsel's claim, Ms. Joseph went to deliver the letter to Mr. Washington, while there she saw petitioner's Range Rover at Washington's Resident/Office. Since the Range Rover was taken from Ms. Joseph apartment, Ms. Joseph asked Mr. Washington to give her the car, which Mr Washington refused and stated she is not the owner of the car and he can not give to her. Petitoner tried to contact Mr. Washington but with no success. I did confront the government to return my car and responded they do not have it. based to the circumstances sorround the car and and the way the government and the court have handled this issue anybody with his right mind will conclude that the governrment had bribed Mr washington to coerce and induce guilty plea, and thats what transpired counsel not to investigate during criminal case proceedings against him.

28 USC § 2255 Proceedings. On July 06, 2016, Petitioner filed his 28 usc § 2255 motion to vacate, set aside, or correct his sentence (Doc. 121). In his motion petitioner raised several claims of ineffective assistance of all his counsel's appellate counsel. Court ordered counsel's to respond to petitioner's claims in appropriate detail. But counsel failed to respond to all claims and selectively

2. Appendex H : Doc.139, p.31, n.14

responded to the claims to which they could respond. Government filed its response on December 30,2016 and acknowledged that Mr. Washington had failed to provide any details about the "investigation he conducted" (Doc.139, P.19, n.11).

In his affidavit Mr. Washington failed to respond to conflict of interest or explain why and how he received petitioner's Range Rover, and on failure to litigate Fourth Amendment claim, he merely stated petitioner consented to searches so he found no basis to challenge consent. (Doc. G.1). But failure to investigate and challenged the involuntary consent which would have provided adequate and successful legal basis to litigate the Fourth Amendment claims.

In his affidavit Mr. Diaz and Mr. Rodriguez responded to the claim for failure to withdraw guilty pleas and merely stated that "our advice to him was he would not prevail on a [m]otion to withdraw his plea".(Doc. G.2).But counsels failed to investigate facts of the case which showed innocence of the petitioner which would have formed adequate basis to withdraw the gilty plea.i.e, 5-sheets of paper did not contained social security number, unlawful arrest, no probable cause to arrest since the 5-sheets was not contraband.

District court did not rule on the § 2255 motion for over 18 months. So petitioner filed a writ of mandamus on october 9,2017, in the court of appeals for the Fifth Circuit, and within few days of the mandamus, district court hurried and ruled on § 2255 motion before writ of mandamus was decided, and denied §2255 motion on October 16,2017 and denied to provide [mail] memorandum opinion despite petitioner request for it. until this day of writing petitioner never receive the memorandum opinion.

The district court denied relief on Mtaza's ineffective assistance of trial counsel claims in reliance on an affidavit submitted by the alleged ineffective trial counsel but without addressing the affidavits, exhibits,evidence, even ignored to consider the reply to government response that Mtaza submitted in support of his § 2255 motion.Court failed to address the involuntary consent claim, failure to

investigate claim, Defective Indictment and failure to state a claim, jurisdiction claim, venue and many more addressed in §2255 motion. On conflict of interest claim court state that "defendant does not show that he lost any interest in, a title to, a Range Rover motor vehicle as a result of his guilty plea" (Doc.139,P. 28 n.10 or memorandum opinion, P. 12) District court and the government were not in any position to construct what attorney does not offer. But petitioner's claim was not based in interest in the vihecle and court failed to apply correct legal standard to evaluate merit of conflict of interest claim. On failure to investigate claim, court stated "the record, and the law, are conclusory and unsupported in the record" (memo P.18) But that was not the case, additional investigation would have revealed factual innocence of the petitioner, unlawful search and seizure due to involuntary consent, Venue/jurisdiction defense to the charges, and beyond reasonable doubt defense. District court denied § 2255 motion without holding evidentiary hearing, and court did not enter judgement on separate document despite petitioner motion to request enter judgement. Petitioner also filed a motion to reconsider COA which was denied by court on April 8,2019

Petitioner timely filed notice of appeal on march 26, 2018, and an "application for certificate of appealability and incorporated memorandum of law" in court of appeals on June 18,2018. On pril 4,2019, Honorable Kyle Duncan denied Certificate of appealability (COA) on the ground that " Because the District court rejected the on their merits,'Mtaza' must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong". Slack, 529 U.S. at 484; See also Miller-El, 537 U.S at 338. He has not mate the requisite showing.

On ,2019, petitioner filed petition for En Banc hearing but clerk of the court returned the petition and advised petitioner that he should file petition for panel hearing since the order was issued by the single judge on june 19,2019, panel denied En Banc without any opinion. Petitioner again tried to file the petition for En Banc rehearing but court clerk did not permit him to file

the En Banc petition and told petitioner that he had to file En Banc when he filed his petition for panel rehearing. Petitioner was merely acting on the instruction of the court clerk and because of his inadequate instructions petitioner lost an opportunity to file an En Banc petition.

Reason For Granting Certiorari.

In the statement of the case, petitioner has clearly showed that his consent to search was involuntary and coerced, which was obtained after 4-hours of interrogation under custodial condition and coercion. Agent Boyden had failed to provide access to counsel and stop questioning despite many requests to speak to a counsel. 5-sheets of paper seized from petitioner contains only names and birthdate, and did not contained any SSN's. Therefore, possession of these 5-sheets was not unlawful. Agents never observed petitioner, in fact even Ms Hatch filing any fraudulent tax returns and Ms. Hatch has only told agents that an individual whom she only knew by the name of "Rasta" was filing tax returns without more. So identity of petitioner [as Rasta] was not known to the agents. Therefore, petitioner's arrest only based on 5-sheets which contained public information. The arrest was unlawful and violated Fourth Amentmend right and agent had no probable cause to arrest based on the 5-sheets.

Now the legitimate question is that, can anybody in United States file tax returns without social security number? because the government have convicted petitioner of filing tax retuns without SSN's. In order to file the tax return, a preparer is required to have SSN, PTIN and EFIN, there is no evidence in the entire record suggest that petitioner had this information, has can be seen the only information that the record shows is only NAME and BIRTHDAy's.PTIN is a Preparer Tax Identification Number and EFIN is an Electronic Identification Number. PTIN and EFIN are unique number assigned to unique individuals from IRS (Internal Revenue Sevice). A mere search on tax process and investigation into PTIN and EFIN would have revealed that petitioner was not that individual and he

did not have any PTIN or EFIN associated with fraudulent tax returns in counts 2-7 of wire fraud. There was no investigation done to show that tax returns at issue were originated, crossed, or completed in Southern District of Texas, or when and how, under what means tax returns crossed interstate lines.

To hide the inadequate of its investigation and in order to win the case government used perjury testimony, fabrication of evidence and brided the defense counsel Mr. Washington with petitioner's Range Rover to coerce and induce petitioner to plea guilty to charges that were humanly impossible to be committed. Due to the bribe counsel abandon is duty and failed to investigate factual and vanue defense to charges and failed to investigate andlitigate Fourth Amendment violation which would have left government without any evidence. petitioner guilty plea was due to ineffective assistance of counsel.

The Sixth Amendment gurantee a criminal defendant the right to "the assistance of counsel for his defense",US.Const Amend VI, and "the right to counsel is the right to effective assistance of counsel", McMann v. Richardson, 397 US. 759, 771, n.14(1970) This court have held counsel ineffective for failure to provide adequate legal advice. See padilla v. Kentucky, 559 US. 356 (2010)(Counsel failed to provide advice on immigration of guilty plea); Lee v. United States, 137 S. ct. 1958 (2017);(Same),there should be no difference a counsel being ineffective for failure to adise on immigration consequences of guilty plea , or counsel being ineffective for failure to investigate and advise on Fourth Amendment violation and failed to investigate and advise on available defense to the charge. Both information are material and relevant to making a decision either to plea guilty or elect to go to trial.This court have held ineffective assistance of counsel for failure to investigate.

Counsel in criminal cases are charged with the responsibility of conducting " appropriate investigations, both factual and legal, to determine if matters of defense can be develop. see Strickland v. Washington, 446 U.S. 668.691 (counsel has

a duty to make reasonable investigation or to make a reasonable decision that makes particular investigation unnecessary"); Wiggins v. Smith, 539 U.S at 531. This include a duty to investigate the prosecutor's case and to follow up any exculpatory evidence. Kimmelman v. Morrison, 477 U.S. at 384. 85. Counsel Mr. Washington failed to provide any details in his affidavit about the investigation he conducted (Doc.139, P.19, n.11) and to explain why he did not pursue any investigation, and/or why he did not file any motion to challenge the consent, seizure, probable cause or 5-sheets of paper since they did not contain no SSN's, given the background, it is difficult to imagine what tectical advantage, or cost, could justify Washington to let the consent, seizure, probable cause, and the 5-sheets which were the core otf the entire case go without

challenge. Strickland, 466 U.S. at 688, 104 S.Ct, 2052 (1984). Washington performed defeciently with respect to several reasonable and available defense strategy in this case. In light of the facts and circumstances of the case, it is clear that counsel were ineffective, and this court's intervention is necessary to prevent an injustice since petitoner is serving unlawful 87 month sentence.

For all these reasons, and those discussed more fully herein, Certiorari should be granted, because reasonable jurists could unquestionably debate the claims and circumstances identified by petitioner.

Argument.

28 U.S.C § 2253(c) requires a Certificate of Appealability to be granted before a habeas petition may appeal from a final court judgement denying relief. A COA should issue where the petitioner makes a " substantial showing of the denial of a constitutional right". 28 U.S.C § 2253(c)(2). This court precedent is clear A COA involves only a threashold analysis and preserves full appellate review of potentially meritorious claims. Thus, "aprisoner seeking a COA need only demonstrate' a substantial showing' " that the district court erred in denying relief. Miller-El, 537 U.S. at 327(quoting Slack v. Mc Daniel, 527 U.S. at 473, 484 (2000)

and 28 U.S.C § 2253(c)(2). This threashold inquiry "is satisfied so long as reasonable jurists could either disagree with the district court's decision or 'conclude the issue presented are adequate to deserve encouragement to proceed further," id. at 327, 336. A COA is not contigent upon proof "that some jurists would grant the petition habeas corpus. Indeed, a claim can be debatable even though every jurists of reason might agree, after the COA has been granted and the case has received full consideration, that petitioner will notprevail." Id at 338. In sum, the touchstone is " the debatibility of the underlying constitutional claims [or precedural issue], not the resolution of that debate." Id at 342.

The Fifth Circuit's denial of COA was in flagrant Disregard of this court's intructions that a court of Appeal should limit its examination at the COA stage to a threashold inqury into the underlying merit of the claim and aks only if the district court's decision was debatable. A defendant's ineffective assistance claim is evaluate using a two part test: (1) Whether the attorney perfomance was defecient; and (2) if so, whether the deficient performance prejudiced the defendant. Strickland, 446 U.S. at 687. To prevail on the second part of the test in context of guilty plea, a defendant must show " a reasonable probability that for counsel's errors he would not have pleaded guilty and would have insisted on going to trial." Hill v. Lockheat, 474 U.S 52, 59 (1985)

[I] Certiorari Should be Granted Because Reasonable Jurists Could Debate That Counsel Was Ineffective In Violation Of Sixth Amendment For Failure to Investigate And Litigate Fourth Amendment And Failure To Investigate Defense.

Defense counsel's failure to investigate and litigate Fourth Amendment claim may constitite ineffective assistance of counsel. See, Kimmelman v. Morrison, 477 U.S 365 (1966) (defendants may properly base ineffective assistance of counsel claims in a habeas corpus action on the assertion that their attorney failed to litigate a Fourth Amendment claim.

[A] Reasonable Jurists Could Debate That Petitioner's Arrest Violated Fourth Amendment.

Counsel Mr Washington stated in his affidavit that "In my [] Judgement,the

facts surrounding Mr. Mtaza's arrest did not lend themselves to a complaint that the arrest was unlawful" and government responded that " Agent had probale cause to believe that Mtaza had committed in the officer's precence, an Identity theft" (Doc.139, P.21). But petitioner argued that, this is inaccurate because to commit an Identity theft crime under 18 U.S.C § 1028A, an individual must posses or use Identity of another person unlawfully. In this instance case, Agent Boyden in his affidavit in support of criminal complaint stated that

> "Affiant was able to hear a conversation between Hatch and Mtaza where he told her he was to bringing 5 additional sheets..."(Doc.1, P.3, § 9)

Here Agent Boyden admitted in his own affidavit (Doc.1) that he had heard petitioner was bringing 5-sheets, so he knew what petitioner was passing to Hatch was not contraband to begin with but still arrested him for just to further his fishing expedition. In Taylor v. Alabama. 457 U.S 687, 73 L.Ed 2d 314, 104 S.Ct 2664 (1982) Police officer made arrest without a warrant or probable cause, in the hope that some evidence might turn up. Therefore petitioner had not committed any identity theft crime in precence of officers and proves that proves that the arrest of Mtaza was unlawful and agent violated Fourth Amendment right. District court adopted Mr. Washington's affidavit and government's Response entirety. Mr. Washington's conclusion is not supported by this court's case law See. Manuel v. City of Joliet, 137 S.Ct 911 (2016). In Manuel, policeman searched and found a vitamin bottle containing pills. Field test of the pills came negative for control substance, leaving officers with no evidence that Manuel had committed a crime, still, the officers arrested Manuel and took him to the Joliet police station. There, an evidence technician tested the pills once again, and got the same (negative result). But technician lied in his report, claiming that one of the pills was " found to be ... positive for the ...precence of ecstacy". Similar, one of the arresting officer wrote in his report that " [f]rom his training and experience, [he] knew the pills to be ecstacy.", on the basis of these statements, another officer sworn out a criminal complaint. The judge relied exclusively on the crim-

inal complaint, which in turn relied exclusively on the police department fabrications to support a finding of the probable cause. Later grand jury indicted Manuel on Similar false evidence. But later charges were dismissed because of negative results.

Petitioner's case has familiarity with Manuel, Petitioner was arrested when he handed over 5-sheets to Ms.Hatch. These five sheets only contained names and date of birth which were public information, and did not contain any SSN's. So their possession did not constitute any violation of federal law. Just like police officer in Manuel. Agent Boyden fabricated the evidence (the 5-sheets) and lied under oath in Detention hearing[1] and infront of grand jury that 5-sheets contained SSN's. So the government used perjury testimony and fabricated evidence to induce the grand jury to issue the Indictment which without perjury testimony and fabrication of evidence Indictment will have never issue, and court relied on these fabricated and perjury testimony to supoort a finding of probable cause. See Appendex [K]

> "Evidence presented at the probable cause and detention hearing shows that grand jury has made a probable cause determination.."

Fourth amendment prohibits pre-trial detention pursuant to legal process initial without probable cause. Malley v. Briggs, 475 U.S. 335, 344-45 (1986)

Petitioner suffered " unlawful detention " and " Prosecution" arasing from the wrongful institution of legal process; Wallace v. Kato, 549 U.S. 384, 390 (2007). In Gerstein, 420 U.S. 103 (1975). This court explained that the procedures required for a post-arrest demonstration of probable cause are "the same " as those required for the issuance of an arrest warrant. Gestein, 420 U.S. at 120.

Therefore, arrest and detention of the petitioner was unreasonable, unlawful, and violated Fourth Amendment, or at least this issue is debatable among reasonable jurists.

1. "Mtaza brought Ms. Hatch five sheets of social security number and birthdays of stolen ID's." (Doc. 19, P.3. Appendex

[B] Reassonable Jurists Could Debate That Searching The Wallet Violated Fourth Amendment.

After petitioner unlawful arrest, Agent Boyden patted him down and seized his wallet, Car and Apartment Keys, over $ 6600, and other items. Since protective search was already over there was no exigent circumstance to search the wallet without consent or search warrant, Agent never asked for consent to search the wallet nor petitioner gave any consent to search his wallet. Since petitioner was already arrested and handcuffed, and Agent has the control of the wallet under totality of circumstances, search of the wallet without consent or warrant violated Fourth Amendment, and since the five sheets were already been seized by the Agent and that was the only thing he knew at the time, so Agent had no reason whatsoever to continue searching the wallet and even after he had located the receipt with address on it, again Agent had no reason to go and search Mtaza's apartment for the simple reason that Agent had already seized what he was looking [the 5-sheets] which supported by his own statement in his affidavit "... heard Mtaza was to bring additional 5-sheets..." Doc.1, P. 3,§9 .In Chimel, 359 U.S 752 (1969). this court held that a search incident to arrest may not go beyond "the area from within which [the defendant] might have obtained either a weapon or something that could be used as evidence against him" Id at 768. Since wallet was already in officer's custody, there was no risk that evidence would be lost or destroyed. So search of the wallet was unlawful, If probable cause for search of wallet was available , the officer's had ample time to get a warrant. Johnson v. United States, 333 U.S. 10. 15 (1948). Mtaza contends that the District court's assessment of the facts and law in its determination are clearly erroneous in the light of the facts that "[T]he constitution forbids... not all searches and seizures, but unreasonable searches and seizures". Terry v. Ohio, 392 U.S 1, 9, 85 S.Ct. 1868, 20 L.Ed. 2d 889 (1968)

Also inevitable discovery was not applicable to search of the wallet because petitioner's arrest was not based on evidence that was obtained in adherence to the Fourth Amendment. At the time, petitioner was seized, the only available evidence

was the seized 5-sheets with names and birthdays which was public information. These facts do not support a probable cause to arrest petitioner for any crime. Thus, petitioner should had been free to leave with his wallet, rather, than arrested and put in police car in handcuffs. See Hayer v. Florida, 470 U.S. 811, 816 (1986) (" the line is crossed when the police, without probable cause or a warrant, forcebly remove a person from his or other place in which he is entitle to be"). Counsel was deficient for failure to investigate the circumstances surrounding the search and seizure of the wallet, that would have revealed the Fourth Amendment violation, there is no telling why Mr. washington who have over 30 years of experience failed to investigate and abondon to challenge the search of the wallet and use of the receipt to go and search petitioner's Apartment without consent or a search warrant. Any reasonable attorney would have concluded that investigating the search of the wallet was necessary, and the new findings was essential, thus defense counsel failure to investigate further violated duty to make reasonable investigation or to make a reasonable decision that make particular investigations unnecessary. Strickland, 466 U.S. at 691.

[C] Reasonable Jurists Could Debate That Petitioner's Consent To Search His Apartment Was Coerced And Involuntary In Violation Of Fourth Amendment.

Voluntariness of the consent must be judged in the light of the totality of the circumstances. Schneckloth v. Bustamonte, 412 U.S. 218, 227 (1973). A warrantless entry to person's home is presumetively unreasonable. Payton v. New York, 445 U.S. 573, 586 (1980). Totality of circumstances surrounding petitioner's consent as described in statement of the case, would establish involuntariness of the petitioner's consent. In order for the consent to a search to be deemed voluntary, it must be the product of an essential free and unconstrained choice. See Culombe v. Connecticut, 357 U.S. 568, 602 (1061). The supreme court has set forth standard by which the voluntary consent issue must be assessed. See, Schneckloth v. Bustamonte, 412 U.S. at 227. The question whether consent to search was infact "voluntary" or was the product of duress or coercion,

express or implied, is a question of facts to be determined from the totality of the circumstances. There are six factors relevant to " totality of the circumstances" test; (1) custodial status; (2) presence of coercive police procedure; (3) extent and level of coperation; (4) awareness of right to refuse; (5) defendant's education and intelligence; and (6) belief that no incriminating evidence will be found.

Counrt failed to apply above standard to determine voluntariness of the petitioner's consent. All factors favors petitioner because he was in custody, he was coerced and induce for four hours, he did not cooperate, he was not aware of his right to refuse, he is college drop out, and since he was arrested in the street and officers did not know his address keeping them away from his apartment was his mission. Agent stated that " Mtaza denied knowing anything about the address ..." Agent affidavit (Doc.1, P.3, § 11) Appendex

Petitioner's consent was obtained after four hours of coercion, intimidation, threat, inducement after his arrest while agent was driving him around in handcuffs and shackles, petitioner constantly demanded to speak to an attorney during entire four hours of his interrogation and coercion but agent did not stop questioning and never provided access to an attorney. Since petitioner's consent was coerced and involuntary, and search of apartment had been already started before involuntary and coerced consent was obtained, search of his apartment violated Fourth Amendment. In United States v. Tovar-Rice, 61 F.3d 1529, 1534 (11 Cir. 1995), Eleventh Circuit ruled that consent to search involuntary when Tovar had already observed officers explore every room in the apartment.

Based on above discussion, and Fifth Circuit's decision in United States v. Dowling, 458 Fed. Appx. 396 (5th Cir. 2010). district court's failure to address the merits and deny relief is debatable among reasonable jurists. In dowling, Fifth Circuit granted COA on the issue of " whether the district court erred in determine that Dowling was not denied effective assistance by trial counsel's

failure to file a motion to suppress the evidence obtained as a results of a search , where the district court did not address the validity of the handcuffed. Dowling's consent to search" Petitioner presented same claims, and member of Dowling's panel were members of petitioner's panel but panel denied the COA on same issue. Also, See Morris v. Thaler, 425 Fed. Appx. 415 (5th Cir. 2011) (reverse and remanding for a evidentiary hearing) (ineffective assistance counsel did not file motion to suppress, and did not advise that such a motion would be meritorious); Freeman v. United States, 611 Fed. Appx. 886 (8th Cir. 2015) (granting COA on Fourth Amendment claim where petitioner pleaded guilty).

Therefore, based on above facts, arguments, and case laws, court's denial of a COA on Fourth Amendment claim is debatable among reasonable jurists.

[D] Reasonable Jurists Could Dabate That Counsel Was Ineffective For Failure To Investigate And Advise On Defenses To The Charges: Court Failed To Address The Merits Of The Claim:

The Sixth Amendment gurantee a criminal defendant the right to "the assistance of counsel for his defense." U.S Const. Amend VI. "A Counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigation unnecessary". Strickland v. Washington, 446 U.S. 668. 691. The relevant question is not whether counsel's choice were strategy, but whether they were reasonable.Roe v. Flores-ortega, 528 U.S. 470, 481(2000). A purportedly strategy decision is not objectively reasonable "when the attorney has failed to investigate his options and make a reasonable choice between them" See Horton v. Zant, 941 F.2d 1449, 1462 (11th Cir.1991).

(1) Factual Defenses;

There were factual defense to the charges but counsel failed to investigate them. In order to file tax returns, SSN's are mandatory. But Five sheets seized from petitioner did not contain any SSN's, and without SSN's petitioner could not have filed tax returns. As a result of counsel's failure to investigate that 5-sheets did not contained SSN's and SSN's are mandatory to file tax returns,

Agent Boyden falsely testified under oath infront of the grand jury and in the court that 5-sheets contained SSN's. See Appendex [I]. if counsel would have objected to the false testimony of Agent Boyden district court could not have found any probable cause to detain petitioner and charges would had been dismssed.

To File a tax returns, tax preparer is required to have Preparer Tax Identification Number [PTIN] and to electronically transmit prepared tax return to IRS, Electronic Filing Identification Number [EFIN] is required. Without these information no tax return can be prepared and submitted. PTIN and EFIN are Unique numbers assigned by IRS to Unique individuals i.e no two persons can have same PTIN and/or EFIN. Based on PTIN and EFIN, IRS would have known the identity of the person who filed tax returns in counts 2-7 of wire fraud. IRS Agent Mr Jensen was involved in the investigation from the beginning of the case. If cousel would have done a very basic search on internet about filing bulk tax returns, he would have known that PTIN and EFIN are mandatory and required to file bulk tax returns. And counsel then would have requested [or subpoena] IRS to provide PTIN and EFIN related to fraudulent tax returns in counts 2-7 of wire fraud which were basis for the charges against petitioner, and identity of these individuals to whom PTIN and EFIN were assigned to. This would have revealed the true identity of individuals who had filed fraudulant tax returns, and that would not had been petitioner since he is innocent and never filed any fraudulent tax returns, none of the PTIN and EFIN would have linked to petitioner. Thereby, Charges being dismissed against him or he would have been acquitted in trial. Above investigations would have also permitted to raise factual defense, reasonable doubt defense, or a third party culpabality defense. Guilty plea does not relieve counsel from investigating potential defenses; Lee v. Hopper, 499 F.2d 456, 463 (5th Cir.1974).

(2) Jurisdiction Defense

Federal court are vested with limited subject matter Jurisdiction. See Coury v. Prot, 85 F.3d 244, 248 (5th Cir. 1996). A motion that the court lacks

jurisdiction may be made at any time which case is pending, Fed.R.Crim.P.12(b)(2) but court failed to address merits of the claims that court lacked jurisdiction over the case even though 28 USC § 2255 specifically provides for jurisdiction challenge. District court on its denial of Mtaza's § 2255 Motion can point to no specific or explaination of why it think it has jurisdiction over counts 2-7 of wire fraud, when these counts did not cross Interstate line and/or there was no Interstate nexus.

Indictment and/or Criminal complaint [both herein after "Indictment"] failed to establish the court's jurisdiction and counsel failed to investigate and advise about jurisdiction defense. Indictment merely alleged that petitioner filled fraudulent tax returns in Southern District of Texas but government failed to identify any mailing or "writing. signs, signals, pictures. or sounds" transmitted by interstate wire to further "fraud", and thus failed to establish wire fraud. Facts of the case failed to establish the very element of the offense that confers jurisdiction from the inception of the case. Government failed to state any detail about which fraudulent tax returns were filed from locations, where they crossed State Line [InterState], and where alleged fraudulent tax returns were received, " the court does not have jurisdiction over a prosecution where the government fails to establish facts to support the jurisdiction elements of the crime United States v. Scruggs, 714 F.3d 258, 262, n.14 (5th Cir. 2013). Government must allege facts supporting subject matter jurisdiction. See Mc Nutt v. General Motors Acceptance Corp. of Indiana, 298 U.S. 178 (1936)

Counse was ineffective for failure to investigate and advise on jurisdiction defense. Government did not had any evidence to prove the InterState nexus elements of the wire fraud offense. Therefore, Jurisdiction defense would had been successful.

(3) Venue Defense:

First, It is worth for this court to know that there is only two type of evidence in this entire case, the evidence of Conviction which is the 5- sheets that contained only Name s and Bithdays that petitioner passed out to Codefendant on the day of arrest, and evidence of Enhancement which is the information from the Daffle bag that came from Ms. Joseph's apartment that IRS failed to identify. Agent Boyden testified in the court and under oath that

> " Mtaza brought Ms. Hatch 5 pages of Social Security Number and Birthdays of stolen ID's that WERE USED FILING THE FRAUDULENT TAX RETURNS". Order of Detention Pending Trial (Doc.19, P.3) Appendex [I]

Focusing in these 5-sheets which are the core of entire crime, agent stated that they"were used in filing fraudulent tax returns" Appendex [I]. Petitioner now will show this court that the Venue was not proper in Southern District of Houston, Texas. When Venue is challenge, we must determine "whether, viewing the evidence in the light favorable to government ... the Government proved by a proponderance of the evidence that crimes occurred in district in which the defendant was prosecuted. United States v. Breitweiser, 357 F.3d 1249, 1253 (11th Cir. 2001), also see Jackson v. Virginia, 443 U.S. 307, 319,99 S.Ct 2781,61 L.Ed. 2d 560 (1979)

In this instance case, the evidence of the conviction is the 5-sheets that does not contain NO SSN's which required and it is mandatory in filing tax return, to prove that, these 5-sheets does not contained NO SSN's, petitioner again will point out in government OWN document, Agent Boyden Sworn affidavit in support of crimonal complaint, which he states that

> " These Five sheets of paper contain in excess of 210 Names and Birthdays" See (Doc. 1,P.3, § 9) Appendex [E] and please See the Actual 5-Sheets Exhibit M1-M5 Appendex [J]

Based on the 5-sheets as the evidence in this case in counts 2-7 of wire fraud Government could have not been able to establish Venue using the 5-sheets since it is the only evidence they have in the record supported by(Doc.1). And thats

why the Indictment is defective and bogus, for failure to state an offense, for failure to satisfy InterState Nexus and for failure to state paticulars of scheme. Indictment just state the language of the statute without more, and and stated the element of the statute but then failed to link with the DNA of the alleged crime. See the Indictment Appendex [K]. Focusing on the evidedence presented to the grant jury in order for them to issue the Indictment, grand jury had no evidence in which to find wire fraud venue or wire crossed InterState. This salient fact is forensically established by Agent Boyden Sworn Affidavit (Doc.1) Appendex [E]or Exhibit M1-M5 Appendex [J] Since the 5-sheets did not contain SSN's and could not have been used in filing fraudulent tax returns.

Fed.R.Crim.P.18 Provides " Unless a state or these rules permit otherwise the government must presecute an offense in a district where the offense was committed" Also, See U.S. Const. Amend VI. The locality of crime "determined from the nature of the crime alleged and the location of the act or acts constituting it" United States V. Cabrales, 524 U.S 1,607 (1998). As a continuing offense under 18 USC § 3237(a), wire fraud may be prosecuted in "any district in which such offense was begun, Continuing, or Completed." 18 USC § 3237.

The Indectment alleged that the wire fraud offenses took place in Southern District of Houston, Texas but there was no facts in the Indictment which showed which fraudulent tax retuns transactions orginated, Continued, completed, or orchestrated in Southern District of Houston, Texas. But counsel completely failed to investigate and advise about Venue defense to wire fraud charges. See Boruff v. United States, 310 F.2d 918 (5th Cir.1967), (reversed and remanded for judgement of acquittal holding in order to come within the prohibition of 18 USC § 1343, there must be use of the wire in the district where the trial is hold). If counsel would have explained to petitioner that in trial on wire fraud counts, government would have been required to prove that each wiri fraud transaction either begun, continued, completed, or orchestrated in Southern

District of Houston, Texas for Venue to be proper, petitioner would no have pleaded guilty but insisted on going to trial because he was innocent and did not file or orchestrated tax returns in Southern District of Houston, Texas, or received any fraudulent tax refunds in Southern District of Houston, Texas. Government did not had any evidence to establish proper venue in Southern District of Houston, Texas since government has only 5-sheets with names and birthdays which formed the basis for wire fraud counts. So government bribed counsel to induce and coerce petitioner into pleading guilty.

Counsel is not relieved of responsibility to investigate potential defense. A lawyer's performance is deficient if evidence exists that might show a defendant's innocent or raise sufficient doubt to undermine confidance in a guilty verdict, and the lawyer did not investigate the evidence. Riley v. Payne, 352 F.3d 1313, 1318 (9th Cir. 2003), to show the prejudice, the petitioner must demonstrate that further investigation would have revealed favorable evidence. Coja v. Steward, 97 F.3d 1246, 1255 (9th Cir. 1946). "where the record establishes that counsel had reason to know, from an objective stand point that a possible defense, ... [was] available, failure to investigate fully can constitute ineffective assistance of counsel. United States ex rel. Rivera v. Franzen, 749 F2d 314, 317 (7th Cir 1986). Defense counsel's duty include " a duty to investigate the defendant's most important defense; and a duty to adequately to investigate and introduce into evidence records that demonstrate factual innocence, or that raise suffient doubt on the question to undemine confidence in the verdict" (Citation ommitted). While choosing among possible defenses is unquestionably part of trial strategy and therefore is subject to considerable defense, the failure properly to investigate possible defense is part of adequate preparation and receives stricker examination see Strickland v. Washington, 466 U.S. 668, 690-91 (983). In Henderson v. Sargent, 926 F.2d 706 (8th Cir. 1990), Petitioner was convicted on a circumstantial case with only a peice of paper to place him at the

murder scene. The district court found that trial counsel failed to investigate and develop evidence implicating other suspect, which created significant doubt about petitioner's guilty. In petitioner's case investigation in to PTIN and EFIN would have implicated other suspect. Effective counsel includes familiarity of counsel with the case and an opportunity to investigate in order to meaningfully advise the accused of his options. Calloway v. Powell, 393 F.2d 886, 888 (5th Cir. 1970). " it is [the lawyer's] job to provide the accused an uderstanding of law in relation to the facts,. And a lawyer who is not familiar with the fact and law relevent to his client's case cannot meet that required minimum level [of assistance]. Herring v. Estelle. 491 F.2d at 128; See Von Malteke v. Gillies, 332 U.S 708, 729 (1948). Counsel failed to investigate factual defense, Venue defense, and jurisdictiondefense, As described above, these defense where debatably meritorious and would have been successful on trials or motivated a person in petitioner's to opt for a trial. District court had failed to address the actual merit of claim and generally stated " Defendant's generalized assertions of counsel failure to investigate the case, the record, and the law, are conclusory and unsupported in the record." Court's Memorandum and opinion P.18. But that was not true. Petitioner is a layman as recognized by Powell v. Alabama, 287 U.S. 45. (1932) and it was not his burden to both make his allegations and prove these allegations true in his pleadings. It was duty of counsel to adequately respond on the claims but counsel did not provide any detail about what investigation he did. There was no indiction that Mr .Washington conducted either an independent investigation of facts or issues related to the case, or an independent review of how Mr. Washington's investigation and sebsequent preparation compared to such an investigation. Mr. Washington had completely failed to do any investigation about available defenses and had failed to advise about option to defend. Counsel was deficient for failure to investigate the charges, Washington did not file any motion challenging Venue,

jurisdiction, or investigating PTIN and EFIN. Given backgraoud, it is difficult to imagine what tectical advantage, or cost, could justify Washinton's desicion to let factual defense, Venue, Jurisdiction, PTIN and EFIN go without challenge. Strickland, 466 U.S. 688, 104 S.Ct. 2052 (1984). If petitioner would have received adequate legal advise and options to defend, he would not pleaded guilty but elected to go to trial. In order to prove prejudice. In the guilty plea context, a person challenging his conviction is required to establish that, but for the counsel's errors, he would not have pleaded guilty and would have insisted on going to trial. Lockhart, 474 U.S. at 59. Fifth Circuit and other Circuit's have granted COA on issues of failure to investigate options to defend and advise. See United States v. Juarez, 672 F.3d 331 (5th Cir.2012) (Reverse and Remanded) (his attorney failed to recognize, investigate and assert a derivative citizen ship defense. court hold that defendant establish ineffective assistance); United States v. Hernandez, 2014 U.S Appx. Lexis 21325 (5th Cir.2014)(unpublished) (granting COA on whether counsel's failure to investigate or advise about potential successful duress defense, ... his guilty plea was thus entered unknowingly and involutarily); Jiminez v. United States, 284 Fed. Appx. 668 (11 th cir. 2008) (unpublished) (granted COA on whether [jiminez's] counsel was ineffective for failure to investigate and advise him of a possible defense); Unites States v. Mooney, 497 F.3d 397 (4th Cir. 2007) (granted COA on counsel rendered ineffective assistance by not investigating the justification defense); Kratz v. United States, 79 Fed. Appx 932 (7th Cir. 2003) (granting) COA on " whether trial counsel was ineffective in urging Kratz to plead guilty before investigating the merit of Kratz's case). A proper threashold inquiry into petitioner claim would have revealed that reasonable jurists could disagree with the district court's conclusion because the factors presented by petitioner "describe a situation that is at least debatable". Therefore, petitioner had established detabability of his claims for failure to investigate and advise on

defense to the charges against petitioner. The constitution protects against ineffective assistance of counsel, which occurs regardless of the attractiveness of a plea offer if counsel in the best position to have ascertained innocence, fails to " investigate [] the law and circumstance" relating to a defendant's guilty plea. See United States v.Juarez, 672 F3d 381, 390 (5th Cir. 2011); Hill v. Lockhart, 474 U.S. 52, 69) (1985)

[II] Certiorari Should Be Granted Because Reasonable Jurists Could Debate That Counsel Labored Under Conflict Of Interest Which Prejudice Petitioner;

(A) The conflict of Interest Issue

In district court Mtaza was represented by Mr. Washington [attorney]. Mr. Washington owed alot of back taxes to IRS, and IRS was putting presure on him to pay the money or seize his building in the city of Houston, Texas [Resident/ office]. A corrupted agent Boyden used Washington prior financial condictions and knowingly and Intentionally bribed Mtaza's Range Rover to Washington to coerce, trick him and misled him into plea guilty to charge that were humanly impossible to be committed. Agent Boyden Knew that Mr. Washington had been suspended and terminated his service against petitioner, and petitioner had already hired two more attorney to represent him. The government does not deny giving Mr. Wasington the vehicle neither explaining why or under what legal basis did they give the vehicle to him, or make an effort to retrive and give it back. it has been over 4 years now neither government or Washington have showed interest of return Mtaza's Range Rover.

(1) The Conflict of Interest.

Petitioner had right to effective assistance of counsel free from conflict of interest, See Wood v. Georgia, 450 U.S. 261,271 (1981) (noting "a right to represention that is free from conflict of interest"). Standard for ineffective assistance of counsel related to counsel's self interest is governed by Strickland v. Washington.See Beets v. Collins, 65 F.3d 1258, (5th Cir. 1975). While a

defendant is generally required to demonstrate prejudice to prevail on a claim of ineffective assistance of counsel, See Strickland v. Washington, 466 U.S. 688, 687, 80 L.Ed. 2d 674, 104 S.CT. 2052 (1984), this is not so when counsel is burdened by an actual conflict of interest. Id.466 U.S. at 692. Prejudice is presumed under such circumstances.See id.; United States v. Malpiedi. 62 F.3 465, 469 (2d Cir. 1995); United States v. Lorizzo, 786 F.2d 58 (2d Cir. 1986). Thus, a defendant claiming he was denied his right to conflict-free counsel based on a actual conflict need not establish a reasonable probability that, but for the conflict or a deficiency in counsel's performance caused by the conflict, the outcome of the trial would have been different, rather, he need only establish (1) an actual conflict of interest that (2) aversely affected his counsel's performance. See Cuyler v. Sullivan, 446 U.S. 335, 346, 64 L.ED. 2d 333 S.Ct. 1708 (1980); See also Levy, 25 F.3d at 152.

(2) The Actual Conflict

"An attorney has an actual, as opposed to a potential, conflict of interest when during the course of the representation, the attorney and defendant's interest diverge with respect to material factual or legal issue or to a course. "Winkler v. Keane, 7 F.3d 304, 307(2d Cir. 1993) (Internal quotation Mark omitted) Petitioner argues that an actual conflict of interest was created when Mr. Washington was bribed the Ronge Rover by the government, when the government straight forward knew that Washington was no longer representing petitioner but secrectly bribed him the vehicle. Petitioner saw changes from Washington but, at the time he could not figure out that, Washington was in the conflict of interest. Washington never file no pre-trial motions or investigate the case despite several plausible line of defense. i.e, Washungton advised petitoner to hire immigration attorney in order to assist Mr. Washington to gather information that where necessary in bond hearing. Petitioner did hire two immigration attorney's who did their part, but when they were done with gathering the information and prepared the file. Mr.

Washington started running petitioner around and refused to reschedule the bond hearing. See the text massege between petitioner's young brother and Washington Appendex [L].

Ms. Joseph went to deliver a letter to Mr. Washington and saw petitioner's Range Rover parked at Washington's resident/office, and asked Washington about the vehicle, but Washinton responded that "your not the owner of the vehicle and refused to give it back. Petitioner made an effort to reach Mr. Washington but he was no success. The fact that the "Range Rover was listed in supplement to the Notice of Forfeiture (Doc.20), [but] it was not listed as property subject to forfeiture under plea agreement (Doc.75)," Response at P.27-28. Government strategy to show that the vehicle was listed for forfeiture when in reality was not that creates a very strong impression that the government used these criminal proceedings to unlawfully seized the Range Rover to, at the, bribed Washington exchange of petitioner having pled guilty and obtained his signature.

(3) The lapse In Representation.

The finding of an actual, however, is only the first step in determining whether petitioner has establish his claim of ineffective assistance of counsel. He must also show that the actual conflict adversely affected Washington's perfo-rmance by demonstrating that "a 'lapse in representation' resulted from the conflict ." Lorizzo, 786 F.2d at 58 (quoting Cuyler, 446 U.S. at 349).

To prove a lapse in representation, a defendant must "demonstrate that some 'plausible alternative defense strategy or tactic might have pursued', and that the 'alternative defense was inherently in conflict with or not undertaken due to the attorney's other loyalties or interest. Levy, 25 F.3d at 157 (quoting Winkler 7 F3d at 309); A defendant is not required to show that the lapse in representation affected the outcome of the trial or that, but for the conflict, counsel's conduct of the trial would have been different. Malpiedi, 62 F.3d at 469.

(4) The "pausible Alternative Defense Strategy"

Petitioner raised ineffective assistance of counsel based on counsel conflict of interest. District court acknowledged that petitioner had raised at minimum 40 claims (Doc. 125, n.11) and order counsel to respond "in particular detail" to Mtaza's claims of alleged ineffective assistance of counsel (Doc.127-1, P.2). Because these affidavits were critical in evaluating and analysis of Mtaza's claims of unconstitutional.

Since the court had acknowledged that Mtaza had raised 40 minimum claims of ineffective assistance of counsel, that is enough to show this court that Mtaza had legitimate ground for defense. If Washington would have done basic investigation at minimum he would have find several plausible line of defense. Washington is an experience attorney who has been practice law for over 30years, so failure to investigate was knowingly and intentionally because with the massive experience that he have at least Washington knew that Mtaza could not have file fraudulent tax returns witout SSN's and again he knew that the 5-sheets did not contain NO SSN's. Since Mr. Washington received the bribe,he failed to adequately investigate the case against petitioner and failed to adequately advise on defense, which made petitioner guilty plea involuntary and unknowingly. Petitioner would have elected to go to trial if he would have received adequate correct legal advise and options to defense detailed in this petition. Mr. Washington had been suspended at least three times and has history of "screwing over clients led to at least two other public reprimands, according to State Bar records." " Seems even Washington client didn't trust Washington" Appendex [M]

(i) Washington abondoned petitioner for the simple fact that he had been bribed the Range Rover despite several plausible line of defense, if Washington would have investigate the case at minimum he would find out that Mtaza was arrested after he had passed out 5-sheets of paper that contained Names and Birthdays

that was public information and was not contraband, then Washington could have file a motion to challenge probable cause to arrest.

(ii) Had Washington investigated the case, he would have find out that Agent Boyden searched Mtaza's wallet without consent or a search warrant, and located a receipt with address on it, then Agent investigated the address which lead him to [redacted] to Mtaza's Apartment and the Apartment was searched without a consent neither a search warrant.Washington could have file a motion to challenge the search and seizure of the wallet and receipt and suppress the receipt and everything were obtained after the receipt as a fruit of poisonous tree.

(iii) Had Washington investigated he would have find out that the consents were obtained after four (4) hours, by threat, coercion, in custody condition, without food or water.

(iv) Had Washington investigated, he would have find out that the seizure of Magazine was in violation of Fourth Amendment, and the magazine was not contraband and neither in plain view, and agent investigated the address first and obtained third party consent after threat and coercion.

(v) He could have challenge Indictment for being so defective forfailure to state an offense, failed to satisfy the InterState Nexus, Improper Venue on count 2-7 of wire fraud, Jurisdiction since no wire crossed State Line, and filed a motion to dismiss the Indictment for being so defective.

(vi) Had he investigate the case by reading the Criminal Complaint (Doc.1) and Detention Pending Trial (Doc.19) at minimum he would have find out the contradiction between these two documents which involved Agent Boyden, who was under oath at the time both document were issued, and further investigation would have expose the purjury testimony and fabrication of evedence that government had used to procure the Indictment, whereby without these false statement and the fabrication Indictment will have never issue, and the court had exclusively relied on perjury testimony to find probable cause. Based on the 5-sheets

Washington knew that nobody in United States could file tax return without SSN, So this shows that the only reasons that made him to do so, it was because of the bribe. The United States Supreme Court has not hesitated to find constitutionally ineffective assistance when counsel failes to conduct a reanable investigation into one or more aspects of the case and when that failure prejudice his or her client. See, e.g., Wiggins v. Smith, 539 U.S. 510, 524-29, 123 S.Ct. 2527, 156 L.Ed. 2d 471 (2003) (hold that the petitioner was entitled to a writ of habeas corpus because his counsel had failed to conduct a reasonable investigaton into potentially mitigating evidence with respect to sentencing because " counsel chose to abondon their investigation at an reasonable juncture, making a fully informed decision with respect to sentence strategy impossible."). Mtaza's counsel's failure to conduct a reasonable investigation into the facts surrounding the seizure of the Magazine and 5-sheets that the government used to induce the grand jury to issue the Indictment and secure probable cause, similarly violated his Sixth Amendment right to effective assistance of counsel, in fact the Government as conclude that Washington affidavit does not provide any detail about the investigation he conducted.." (Doc.139. P.19, n.11) Appendex [H] This issue is debatable among jurists of reason, and COA should issue.

[B] Reasonable Jurists Could Debate That District Court Committed An Error For Failure To Address The Merit Of A Claim That Counsel " Failed To Suppress The Magazine Based On Plain View Doctrine."

On march 3,2014, agent Boyden with other law enforcement arrested Mtaza after Mtaza had passed out 5-sheets of paper to Hatch that contained names and birthdays that was not contraband in any way, and Agent patted him down and seized many items includind the wallet.Agent searched the wallet without a consent neither a search warrant, while searching he located a receipt with the address on it, immediately Agent went and search the apartment without a consent after a while, he came back a demanded a consent on blank form, he took Mtaza 4 hours to consent, while the search of the apartment was still in process.

In Arizona v. Hicks, 480 U.S. 321, 107 S.Ct. 1149. 94 L.Ed.2d 347 (1987). this court held invalid the seizure of a stolen stereo equipment found while executing a valid search for other evidence. Although the police were lawfully on the premises, they obtained probable cause to believe that the stereo equipment was contraband only after moving the equipment to permit officers to read its serial numbers. The subsequent seizure of the equipment could not be justified by the plain view doctrine, this court explained, because the incriminating character of the stereo equipment was not immediately apparent; rather, probable cause to believe that the equipment was stolen arose only as a result of a further search moving of the equipment- that was not authorized by a search warrant or by any exception to the warrant requirement.

In the case of the Magazine, not only the agents were not lawfully authorized to enter the Mtaza's apartment, where they entered it before they had obtained Mtaza's consent and even if Mtaza gave them the consent, the consent was involuntary made by coercion, as stated in the statement of the case, and they had to conduct further search to pull the magazine out from the 1½ inch space the counter top, which at that point in time, the magazine and the address did not display any incrimininating character, but also, Agent had to further investigate the address before they could discover the duffle bags considered containers, the officers had not authority to open and search the bags but they did it any. Turning to the plain view doctrine, the court explained that " if police are lawfully in a position from which view an object, if its incriminating character is immidiately apparant, and if the officers have a lawful right of access to the object, they may seize it without a warrant.Id. at 375, 113, S.Ct. 2130. However, the court continued, if " the police lack probable cause to believe that an object in plain view is contraband without conducting some further search of the object-i.e., if 'its icriminating character [is not] immediately apparant,' the plain view doctrine can not justify its suizure."

Id.(alteraction in origional) (citation ommitted).

Applying these principles to the Magazine which was not a contraband in nature and the Magazine alone could not lead a reasonable person to believe that the Magazine and the address was part of the crime. So the seizure of the Magazine was in violation of Fourth Amendment and should have been suppressed had washington filed the motion, the court would have granted the motion. Any reasonable attorney would concluded that investigating of the seizure of the Magazine was necessary, and the new findings was essentials, thus defense counsel's failure to investigate further violated duty to make reasonable investigation or make a reasonable decision that makes particular investigation unnecessary. Strickland, 466 U.S. at 691 counsel was deficient and the deficient as prejudice Mtaza by receiving 87 months, had he suppressed the magazine the outcome of the case would have been different.

[C] Where The Five Sheets Of Paper And " Agent Boyden" Perjury Testimony Was Critical To The Prosecutions Case, Defense Counsel's Failure To Investigate The Five Sheets Which Was The Core Of The Entire Case And Agent Boyden Testimony May Constitute Ineffective Assistance Of Counsel.

This entire case was raise from the 5-sheets of paper that contained only Names and Birthdays that was not contraband and was passed to codefendant Ms. Hatch on the day of arrest, Single judge and the Panel judges all have departed from the controlling precedent's and ignored the test set forth in strickland v. Washington, 466U.S. 668 (1984). United States Supreme Court had acknowledge that the "Fifth Circuit 'TROUBLING' pattern of failing to follow this court's COA precedent. Jordan, 135 S.Ct. at 2652 n.2 (sotomayor, J., Joined by Ginsburg and kagan. JJ). Panel opinion does not undertake a fresh analysis, it simply applies prior Single judge decision without adequately address the pricise issue involved as disclosed by the record. For the simple fact that, the only evidence of guilty in this case was the 5-sheets that was not contraband to begin with and Agent Boyden "perjury testimony under oath" and the said "5-sheets" is the only

evidence linking Mtaza to the crime of wire fraud. Single Judge and Panel Judges they improperly denied Mtaza his ineffective assistance of counsel claim when facts, exhibits, affidavit and the record contradicting the district court findings.

Facts and Perjury Testimony in the Government own Documents (Doc.1 and Doc.19)

Agent Boyden stated in his Affidavit in Support of Criminal Complaint that

> "These Five sheets of paper contained in excess of 210 Names and Birthdays" (Doc.1, P.3, ¶ 9) Appendex [E]

which is the facts, but the same Agent changed his statement, when he went infront of the court under oath and grand jury to procure the Indictment by stating that,

> "Mtaza brought Ms. Hatch Five sheets of SOCIAL SECURITY NUMBER and Birthdays of STOLEN ID's that WERE USED FOR FILING THE FRAUDULENT TAX RETURNS" which is PERJURY TESTIMONY (Doc.19, P.3) Appendex [I]

Obviously, the contradiction on these two documents (Doc.1 and Doc. 19) by the same Agent should have triggered the counsel professional because the 5-sheets and perjury testimony, after being investigated would have expose defective Indictment on counts 2-7 of wire fraud, Venue and Jurisdiction. But instead, based on the fabrication on the 5-sheets and perjury testimony under oath and written under penalty of perjury, that prosecutor presented to the grand jury and the court, then, the court stated that

> "Evidence presented at the probable cause and detention hearing shows the grand jury has made probable cause determination that Amon Rweyemamu Mtaza "MTAZA" committed the offense described in the Indictment ..." (Doc. 19,P.3) Appendex [I]

The troubling issue here is that, these fabrication on the 5-sheets and the perjury testimony were relied upon the by district court in both acceptance of Mtaza's guilty plea, as well as in sentencing Mtaza. Agent Boyden and prosecutor Ms. Elmlady their fabrication, perjury testimony and manipulation of the evidence which resulted in Mtaza unconstitutional Indictment, guilty plea and sentenced of 87 months,Mtaza claiming if he had been adequately advised that Agent Boyden

and prosecutor Ms. Elmlady knowingly and intentionally conspired to deceived the grand jury and the court to believe that petitioner committed an offense in counts 1-13 of the said Indictment which was obtained by fabricated evidence and perjury testimony, he would have not pleaded guilty rather he would have gone to the trial whereby no reasonable factfinder would have find petitioner guilty of underlying offense. Any reasonable attorney would have concluded that investigating of these 5-sheets was necessary, and the new findings was essentials, thus defense counsel's failure to investigate further violated duty to make reasonable investigation or make a reasonable decision that makes particular investigation unnecessary. Strickland. 466 U.S at691. In Beavers, trial counsel failed to conduct a sabstantial investigation in any possible line of defense over another, instead, counsel simply abdicated his responsibility to advocate his clients cause, See, Gomez v. Beto, 462 F.2d 596, 597 (5th Cir1972) . In this present case,"Washington affidavit does not provid any detail about the investigation he conducted..." Doc.139,P.19, n.11.

Petitioner now is calling attention in this portion of the record, both lower courts never dispute or address the issue of the 5-sheets, as we both know nobody can file tax returns without social security numbers, the evidence that shows that they were no SSN's and shows petitioner is in fact innocent is government own documents. Doc.1 shows exactly what petitioner was arrest with and Doc. 19 shows perjury testimony and fabrication of evidence that government have used to convict petitioner. When accussing petitioner of filing fraudulent tax returns without SSN's. Now government claiming that all the evidence were destroyed before petitioner was sentenced (Doc.161-1). Now how far can this Court going to tolerate lower court's abuse of power and government pinning false case against its citizen because they can?. Mr. Washington failed to investigate the 5-sheets that would have exposed Agent Boyden "perjury testimony" and " fabrication of the 5-sheets", given the background, it is difficult to imagine what

tactical advantage, or cost, could justify Washington decision to let the investigation and suppression,dismiss the Indictment, Venue issue, Jurisdiction and probable cause to arrest go without challenge. Strickland, 466 U.S 688, 104 S.Ct 2052 (1984).Washington is representation "fell below an objective standard of reasonableness" and he has prejudiced petitioner because of his unprofessional error, the result of the proccedings would have been different. Strickland, 466 U.S at 688, 694, 104, S.ct 2052.

[III] Court Of Appeals Should have Remanded case Back To District Court To Address The Merits Of Remaining Claims To Which District Court Had failed To Address The Merits, Or Court Of Appeals Sholud Have Granted COA Automatically On Those Claims.

It is well established in the Fifth Circuit that ineffective assistance of trial counsel claims genarally are not considered for the first time by an appellate court because the record is not sufficiently developed, See, United States v. Higdon, 832 F.2d 312, 313-14 (5th Cir. 1987). This policy of the Fifth Circuit shifted the burden of the counsel to the Pro Se petitioner to meet the high bar of Strickland standard, and when Fifth Circuit denied application for COA in single paragraph without any meaningful review of the claims, it violated due process rights to be heard. A district court's conclusion concerning a petitioner's claim of ineffective assistance of counsel involves question of law and fact, which should bereviewed de novo. United States v. Bass, 310 F.3d 321, 325-330 (5th Cir.2012) In light of more than 95% federal cases being resolved by way of guilty plea, this court should make automatic appeal and review of ineffective of counsel claims in Appellate courts. This court has twice corrected the Fifth Circuit's unduly restrictive approach to granting COAs. See Tennard, 542 U.S. at 283; Miller-El 537 U.S. at 327. And just last term, three Justices noted that the Fifth Circuit continues it "troubling" pattern of failing to apply the threashold COA standard require by this court's precedent. Jordan, 135 S. Ct. at 2652 ..2 (2015) (Sotomayor, J., Joined by Ginsburg and Kagan, JJ.,

dissenting from denial of Certiorari).

District court failed to address the merits of first issue raised in this petition and on second issue, court applied incorrect legal standard. In Clisby v. Jones, 960 F.2d 925. 936 (11th Cir. 1992) (en banc), Eleventh Circuit held that " when a district court fails to address the claims presented in a § 2254 Habeas petition, [court] vacate without prejudice and remand the case for consideration of all the remaining claims". But Fifth Circuit have not adopted that standard yet. Therefore, guidance from this court is need to establish a uniform standard for the lower court's. Also,[Fed.R.Civ.R.54(b) only permits entry of final judgment after addressing merit of all claims. Petitioner filed motion requiring an entry of Judgment on separate paper (Doc.).But District court denied that motion. Therefore, court knew that it has not addressed the merits of the claims and had not entered a final judgement on separate paper]

in light of above facts and case laws, this court should grant the petition.

Conclusion

For the foregoing reasons, Mtaza Prays that this Court grant a Writ of Certiorari and Certificate of Appealability.

Respectfully Submitted.

Date: 11/12/2019

/s/

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