ORIGINAL

No. 19-6851

IN THE

SUPREME COURT OF THE UNITED STATES

Lena Lashen — PETITIONER
(Your Name)

vs.

Nebraska State Board of Pharmacy, et al — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

US Court of Appeals for the Eight Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Lena Lashen
(Your Name)

16 Patton St
(Address)

High Bridge NJ 08829
(City, State, Zip Code)

908-638-5443
(Phone Number)

QUESTIONS PRESENTED

1. Did the Nebraska Board of Pharmacy (NE BOP) erred by not acting independently in considering the matter at hand concerning the appellant's pharmacist license on its own merits instead of looking at the matter fully to see if the claims of the prosecutors and the court had any actual merit or bearing on this separate matter?

With regard to licensing pharmacists, the NE BOP are expected to have the expertise and independent agency and latitude of discretion to access the facts for themselves. This is why civil actions are granted and the real facts of the matter openly discussed and assessed.

The NE BOP of Pharmacy Cannot be a rubber stamp with those previous courts otherwise there would be no need for a separate procedure for this matter; it is entirely within the jurisdiction of this court to access the claims of the government and by the other courts. In this case the government is taking the self-confessed crimes of their witnesses enabling them to shift the blame away from themselves with not other evidence that the assertion of those who confessed their own guilt, yet those witnesses can still practice pharmacy. There is no law cited that allows this shifting of blame, and the governing law specifically prevents it. PA pharmacy governing law (PA27.12(b)(2))

2. Whether Nebraska Board of Pharmacy violated the Plaintiff equal protection and due process rights by ignoring all of the Plaintiff's evidence of her ACTUAL INNOCENCE because she is **Vietnamese**?

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:

INDEX TO APPENDICES

TABLE OF AUTHORITIES CITED

re: D.K. Acquisition Partners, L.P.; Fernwood Associates, L.P. and Deutsche Bank Trust Company Americas,

Petitioners No. 03-4212, 03-4526, December 18, 2003

Re Murchison and John White, 99 LEd 942, 349, US 133 (5/16/1955)

Stirone, 361 U.S. at 213; Ex parte Bain, 121 U.S. at 12-13)

U.S. v. Titilayo Akintomide Akinyoyenu, 15-42 (JEB)

West v. Atkin, 487 U.S. 42, 48 (1988)
Withrow v. Larkin 43 LEd 2d 712, 421 US 35

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

[√] For cases from **federal courts:**

The opinion of the United States court of appeals appears at Appendix A to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[√] is unpublished.

The opinion of the United States district court appears at Appendix C to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

~~[X] For cases from state courts:~~

The opinion of the highest state court to review the merits appears at Appendix ~~X~~ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[√] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[√] For cases *from* **federal courts**:

The date on which the United States Court of Appeals decided my case was January 31, 2019.

[ ] No petition for rehearing was timely filed in my case.

[√] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: March 15, 2019, and a copy of the order denying rehearing appears at Appendix B.

[√] An extension of time to file the petition for a writ of certiorari was granted to and including November 26, 2019 (date) on September 27, 19 (date) in Application No. 19 A 346. Appendix D

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

[ ] For cases from **state courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL & STATUTORY PROVISIONS INVOLVED

The Plaintiff alleges federal constitutional claims under 42 U.S.C. 1983: violation of her rights protected by the United States Constitution or created by federal statue; and that this deprivation was caused by the conduct of a person acting under color of state law. West v. Atkin, 487 U.S. 42, 48 (1988); Buckley v. Barlow, 997 F.2d 494, 495 (8th Cir. 1993).

The Board's decision to revoke her pharmacy license violated her **equal protection** and **due process rights**.

A. FRCP 15 - US Supreme Court Held Plaintiffs Have A Right To Amend Complaints

> "The US Supreme Court held that it is entirely contrary to the spirit of the Federal Rules of Civil Procedure (FRCP) for decisions on the merits of a case to be avoided on the basis of technicalities. The Federal Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits of the case. The Supreme Court Held that denying a petitioner's motion to vacate the judgment of dismissal in order to allow amendment of the complaint is not proper procedure. The court held that FRCP 15 allows for the amendment of complaints and District Courts should "freely grant" motions to amend. This case involved a Massachusetts woman who filed a complaint concerning her father's will and estate; this was a first circuit case. See: Foman v. Davis, 371 U.S. 178; 83 S.Ct. 227; 9 L.Ed.2d 222 (1962)."

Because the District Court unconstitutionally denied the Plaintiff her right to amend her complaint, she is appealing to the Honorable Supreme Court to allow her to amend her complaint (See Exh A) pursuant to FRCP 15, to add:

> 1. Investigator Jeff Newman onto the complaint for his perjured testimonies at the Plaintiff's NE BOP hearing; because Investigator Jeff Newman is a state executive official, he does not qualify for absolute immunity
> 2. Thomas L. Williams, MD, Chief Medical Officer, "individually and in his official capacity",
>
> Because the Plaintiff failed to state in her pleading in suing the Board and Williams in their "individually and in his official capacity", the Court construed the Plaintiff sued them in their official capacities only, and denied the Plaintiff her right to amend her complaint. As stated in the aforementioned, the Supreme court held that FRCP 15 allows for the amendment of complaints and District Courts should "freely grant" motions to amend.

At the Board of Pharmacy hearing, instead of doing his due diligent, doing a proper investigation, Williams relied on the perjured testimonies of Investigator Jeff Newman to fraudulently strip the Plaintiff out of her pharmacist license. This is further discussed in Discussion IIIA. Sovereign Immunity

B. 28 U.S.C. 1915(d)

> "The Third Circuit Court of Appeals held the dismissal of a complaint pursuant to Fed. R. Civ. P. 12(b)(6) prior to service of process is improper. This action was filed by a Pennsylvania prisoner at a State Correctional Institution. The complaint alleged the defendants, all judges, court clerks, or lawyers,

conspired to have a civil case he filed in the State Court of Common Pleas dismissed. The district court granted the prisoner in forma pauperis status, and it then dismissed the complaint for failure to state a claim under Rule 12(b)(6) before service of process was made. The prisoner appealed.

The Third Circuit held that 28 U.S.C. § 1915(d) only allows dismissal of a complaint if it is frivolous or malicious. Once a plaintiff is granted in forma pauperis and the suit is not considered frivolous or malicious, it must proceed as any other suit under the civil procedures. A complaint may fail to state a claim upon which relief may be granted under Rule 12(b)(6),but it is not frivolous under §1915

The court held that once in forma pauperis status is granted the clerk must issue summons under Rule 4(a) and the court shall serve all process under § 1915(c). Dismissal of the complaint under Rule 12(b)(6)is contrary to these rules, and it may create the perception the judge has abandoned the rule of neutral arbitrator... Accordingly, the district court's dismissal was vacated." See: Outess v. Sobolvetich, 914 F.2d 428 (3rd Cir. 1990).

Here, the District Court granted the Plaintiff's in forma pauperis status. Yet, the District Court violated the Plaintiff's right to due process similarly to the aforementioned case, for failure to issue summons under Rule 4(a). Clearly, the District Court proved bias by abandoning the rule of neutral arbitrator.

Further, the Plaintiff's complaint is not frivolous or malicious, it clearly stated a claim upon which relief can be granted for deprivations of Plaintiff's rights under the Due Process and the Equal Protection Clauses of the Fourteenth Amendment, as stated in her attached Amended Complaint and Jury Demand Request for a Speedy Trial.

3. The Plaintiff has exhaust all state remedies and all available post deprivation remedies, as the District Court was incorrect by asserting in his judgment that she still have post-termination administrative remedies. The statute of limitation prevented her from further pursuing any post-termination administrative remedies.

STATEMENT OF THE CASE

The Plaintiff has established a claim of Deprivation of Rights under the Due Process and the Equal Protection Clauses via FRAUD, NEGLIGENCE, DISCRIMINATION, and a denial of Administrative process against the Nebraska State Board of Pharmacy, as a matter of law.

The Plaintiff seeks a FAIR hearing because it is a way to counter the false information and faulty reasoning used by the Defendants in revoking her license. By denying a hearing, the Defendants are protecting their flawed process and are even protecting perjured testimony given to them that they used to rationalize their revocation of her license. The Plaintiff's pharmacist license was revoked by the Defendants, based on the following three factors each of which can be easily shown to be unreliable and not worthy of consideration by the defendants:

1. Nebraska Board of Pharmacy Investigator Jeff Newman's perjured testimonies at the Plaintiff's Nebraska Board of Pharmacy hearing;
2. A wrongful conviction that relied on testimony that is easily proven to be false, and built on withheld and suppressed evidence, and on misrepresenting both the law and material facts to the jury (See App B)

The United States Supreme Court stressed that a defendant's due process rights are violated both when a prosecutor knowingly presents false testimony and when he knowingly fails to correct such perjury. The Court also held that the same rule applies even when the false testimony concerns only the witness's credibility, since "a lie is a lie, no matter what its subject." Napue v. Illinois, 360 U.S. 264 (1959). Here, the lies that brought about this wrongful conviction even extend to the District Court Judge Naomi Reice Buchwald who deceived the jury to secure a wrongful conviction. Recently, **Judge Buchwald again usurped judicial power by ruling on a "motion to show cause" on June 3, 2019 without the Plaintiff's knowledge and conducted a hearing without her knowledge**. Bivens v. Six Unknown Fed. Narcotics Agents, 403 U.S. 388 (1971)

3. Other state's disciplinary actions, which were based on discrimination, perjured testimony including those committed by Pennsylvania Board of Pharmacy inspector Inspector Bat at the Plaintiff's trial; the "knowing use" of perjured testimony of Inspector Bat alone warrants the Plaintiff this civil action. If not for Board Inspector Bat's perjuries, the Plaintiff would not have been convicted; therefore the Plaintiff's license would not be revoked.

Any person aggrieved by a final decision in a disciplinary proceeding is entitled to judicial review in accordance with the Administrative Procedure Act (APA). The Board of Pharmacy is not meant to be a rubber stamp for the Federal Government. With regard to licensing pharmacists, they are expected to have the expertise and independent agency and latitude of discretion to access the facts for themselves. This independence is its own check and balance, protecting against wrongful actions taken by other government bodies. This is why hearings are granted and the real facts of the matter openly discussed and assessed.

The Plaintiff can show conclusively that the criminal proceedings against her were elaborate deceptions designed to bring about a wrongful conviction against her, and the Plaintiff can show conclusively that the Federal Judge engaged in misconduct that helped ensure a wrongful conviction. The Plaintiff is not alleging some odd technicality or ambiguity, but instead clearly and loudly stating that she can show she is innocent of the charges and all the allegations made about her at the trial, and she can show wrongdoing on the part of the Prosecutors and the Judge. The Plaintiff is just asking for her due process, to show to an independent state body the full set of evidence and facts, and asking them to perform their duty instead of relying on previous errors and deceptions of other government bodies. By revoking the Plaintiff's license , utilizing Investigator Newman's perjured testimonies, and thus avoiding doing the actual work that goes along with being a Board of Pharmacy Chief Medical Officer, Thomas L. Williams, MD, Chief Medical Officer President, did a disservice to all Pharmacists in Nebraska and cheated the Plaintiff out of her right to due process.

The Plaintiff alleges Thomas L. Williams, MD, Chief Medical Officer President, revoked her pharmacist license via perjured testimonies of Investigator Newman and fraud via following the discriminatory actions of other state board of pharmacies. This violates her equal protection and due process rights. A fair hearing would give Dr. Williams a chance to correct any error that may have been made as a result of his being misled by Investigator Newman's false testimonies and any other false notions about the Plaintiff's actions.

A. BACKGROUND on the 'Controlled Substances Act' (CSA)

§ 801. Congressional findings and declarations: **controlled substances**.
The Congress makes the following findings and declarations:

(1) Many of the drugs included within this sub chapter have a useful and legitimate medical purpose and are necessary to maintain the health and general welfare of the American people.

In determining into which schedule a drug or other substance should be placed, or whether a substance should be decontrolled or rescheduled, certain factors are required to be considered. These factors are listed in Section 201 (c), [21 U.S.C. § 811 (c)] of the CSA as follows: **Its actual or relative potential for abuse**.

21 U.S.C. 811 (4)(f) clarifies the *Abuse potential*

If, at the time a new-drug application is submitted to the Secretary for any drug having a stimulant, depressant, or hallucinogenic effect on the central nervous system, it appears that such drug has an abuse potential, such information shall be forwarded by the Secretary to the Attorney General.

Within the CSA there are five schedules (I-V) that are used to classify drugs based upon their abuse potential, medical applications, and safety. Individuals who order, handle, store, and distribute controlled substances must be registered with the DEA to perform these functions. They must maintain accurate inventories, records and security of the controlled substances.

B. The Controlled Substances Act states plainly that only controlled substances required the dispensing of valid (face to face) prescriptions, which is between a doctor and its patient; this relationship does NOT involve a pharmacist, as stated in 21 U.S.C. **§829. Prescriptions:**

(e) Controlled substances dispensed by means of the Internet

(1) No controlled substance that is a prescription drug as determined under the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.] may be delivered, distributed, or dispensed by means of the Internet without a valid prescription.
(2) As used in this subsection:
(A) The term "**valid prescription**" means a prescription that is issued for a legitimate medical purpose in the usual course of professional practice by-
(i) a practitioner who has conducted at least 1 in-person medical evaluation of the patient; or
(ii) a covering practitioner.
(B)(i) The term "in-person medical evaluation" means a medical evaluation that is conducted with the patient in the physical presence of the practitioner, without regard to whether portions of the evaluation are conducted by other health professionals.

C. Federal law 21 USC 353 does not say that a face-to-face is required for NON controlled substances. In fact, the **Online Pharmacy Safety Act (S2002) legislation** which would have required valid(face to face)prescription for NON controlled substances prescription drugs ordered online introduced to US Senate did NOT pass.

D. The governing pharmacy law (PA27.12(b)(2) and the criminal statute 21 U.S.C. 321 (g)(1), 352 (a), 352(c), 353(b)(1), and 353(b)(4)(A), and 21 USC 331(a) and 333(a)(2) require for the accused to be present at the pharmacy at the time the specific prescriptions in question were filled. Because of potential biases and to avoid any shifting of blame, the pharmacy law eliminates any double standard or shifting of blame; each pharmacist is accountable for his actions and can NOT shift blame to someone else.

It is the job of any pharmacist while on duty to ensure they themselves follow all laws, regulations, and policies; any misdeeds or mistakes are the responsibility of whoever made the misdeeds or mistakes. Further, any pharmacist on duty also serves as a "supervisor" of themselves and their technicians and is accountable for his shift. Pharmacists do not supervise each other with regard to the practice of pharmacy. Furthermore, the governing pharmacy law states that pharmacy technicians to "assist" pharmacists; the technicians can only work under the supervision of the pharmacist on duty (PA27.12(d)(1)).

Pharmacists are state licensed and are responsible for their own licenses. A hearing is required in front of the State Board of Pharmacy in an event of a dispute over who is responsible for a misdeed or mistake; the Federal Court neither has jurisdiction nor is there any federal law governing the conduct in a pharmacy or that creates a federal oversight of the way a pharmacist performs his work. This is left to the states Board of Pharmacy. Only the State Board of Pharmacy can penalize the pharmacist on duty and pharmacy owner for non-compliance of regulations; such are not federal issues, whereas in this case the District Court INVENTED its own law to create a jurisdiction.

PROCEDURAL HISTORY

Nebraska State Board of Pharmacy rendered an incorrect decision on September 15, 2017 where Chief Medical Officer Thomas L. Williams, MD revoked the plaintiff's pharmacist license based on incorrect information, due to Government's witnesses perjuries, suppression and tampering of evidence by the prosecutors (a Brady Violation), and withheld evidence by the trial Judge, committed at the Plaintiff's criminal trial.

The reliance or reference by the Nebraska Board of Pharmacy to actions taken by other state boards of pharmacy shows that the Nebraska Board of Pharmacy has incomplete and inaccurate information about what those boards did and the on-going litigation over the wrongfulness of those state board's actions. For example:

1. New Jersey and Florida State Board of Pharmacy did not act on the Plaintiff's license based on the wrongful conviction, but on charges that were dropped. This is easily seen in their own FRAUDULENT consent order based on a 11/29/2012 Indictment that was DROPPED approximately EIGHT months PRIOR to her signing the consent order. She only signed the consent order under the duress of the Board's threat to REVOKE her pharmacist license. By basing their threats and their actions and decisions on an indictment that was dropped eight months prior to the board's demand that she sign the consent order, the board committed fraud against the plaintiff. Thus, fraud was also made through a purposeful omission of material facts: that the 11/29/2012 Indictment forming the basis of the consent order was dropped eight months prior to her signing the consent order. Nondisclosure of this fact makes the other statements in the consent misleading To reiterate, they extort her, a Vietnamese female, to obtain some advantage, profit or benefit, to embarrassing, harm, and shame the Plaintiff to the public in general by posting the coerced consent order on the internet (NJ BOP); it is called "extortion under color of official right" as described by Lectric Law Library Lexicon. Yet, the Board of Pharmacies did not discipline other pharmacists, who happened to be WHITE MALES, working at the same pharmacies the Plaintiff did, and dispensed the same prescriptions which the Government claimed to be "invalid."

New Jersey and Florida illegally extorted the Plaintiff's license. The Plaintiff is litigating against New Jersey for their actions, and rather than defend their actions, New Jersey has so far opted to mischaracterize the nature of the litigation and use cheap tactics like sending to the Plaintiff their motions in response to the litigation far later than they certify to the court that they sent in hopes of receiving a default judgment by eliminating the Plaintiff's time to respond.

Further, the Plaintiff hired prior counsel, Attorney Kevin R. McManaman to report the

aforementioned to NE BOP. The Plaintiff can not be blamed for her Attorney's not reporting as they were hired to.

2. The PA State Board of Pharmacy illegally revoked her pharmacist license without her knowledge. Her pharmacist license was also revoked because of her race, national origin, and sex and therefore further reinforced by the other coordinating agencies, including the Nebraska State Board of Pharmacy, which is a violation of the Constitution (Amendment 5 and 6), by going to trial and exercising her constitutional rights; others (white males) who have testified at Plaintiff's trial that they committed the crime (guilty by admission) were not punished by any state Board of Pharmacy. This is discriminatory, a deprivation of plaintiff's civil rights, and is a violation of substantial due process. Further, because this revocation was done without the Plaintiff's knowledge, she could not have "report" this action to NE BOP within the 30 days of the revocation.

3. During the Nebraska Board of Pharmacy hearing on April 19, 2017, The Board refused to consider pharmacy paper trail evidence to support the Plaintiff's innocence and reasons for reinstating her license. Instead, they accepted Investigator Newman's perjured testimonies, backed up with no physical evidence, to revoke her pharmacist license. Investigator Newman falsely accused the Plaintiff's of dispensing "butalbital", a drug that NEVER existed in the pharmacies. When a public official, investigator Newman, misuses his official position, lying to the Board at the hearing that the Plaintiff dispensed "butalbital", without any facts or evidence of a prescription, a bill of laden, an invoice, this warrant a civil action.

NE BOP used hearsay testimonies, including the false testimonies of its own investigator Jeff Newman, to revoke the Plaintiff's license, the Board's action gave a free pass to the suppression, planting, tampering, and withholding of evidence and cooberation of facts to prove the plaintiff's credibility.

Dr. Thomas L. Williams, a medical professional, knows that it is extremely unlikely that the Plaintiff could have dispensed butalbital. Butalbital is a powder that has to be compounded; pharmacies that do that kind of work rarely if ever dispense to patients and nobody writes prescriptions for the drug "butalbital".

The Plaintiff's attorney stated that Dr. Williams did not want to rule on the revocation of the Plaintiff's license. However, the Government forced him to revoke her pharmacist license on September 15, 2017. One of the reasons this complaint should proceed to show that he was forced to revoke the Plaintiff's pharmacist license by the Government and to give a fair hearing to these matters. Most importantly, the Defendants relied on false, fatal and erroneous evidence that was presented by the Government at trial and at the NE BOP hearing, which will be detailed in "Discussion" Section IV. This warrants a fair hearing for the Plaintiff where she can provide evidence to show physical evidence and facts , including an exculpatory suppressed video recordings, which proves her actual and factual innocence and supports the decision as to why her pharmacist license should not be revoked.

Now with exculpatory evidence that will prove and support why the Plaintiff's license should not have been revoked from her, evidence which she will present to the Court during the hearing on this civil action, evidence that includes suppressed and withheld video recordings and the pharmacy's paper trail, she is **requesting that her pharmacist license be reinstated.**

Plaintiff now moves for a writ of certiorari, *to affirm her actual innocence,* as detailed in her Motion for

Certificate of Appealability (See Exhibit B), and to affirm **why her pharmacist license should be reinstated to active.** *In addition to her actual innocence, the Plaintiff will point out the following:*

> 1. The conviction came about through a deliberate deceit of the jury by presenting a made up legal standards that does not exist under the law and by presenting perjured testimonies to the jury that everyone knew it was perjured testimonies, except for the jury. Without these deceptions, they have no actual physical evidence that would have even associated the Plaintiff with any crime. Morse v. Fusto, No. 13-4074 (2d Cir. 2015)
>
> 2. The District Court and the Government violated the Plaintiff's right to due process as well as judicial and prosecutorial misconduct via suppression/withholding of exculpatory evidence, a Brady's violation, including to but not limited to the suppressed video recording, which she viewed for the first time on August 31, 2017.
>
> If the Plaintiff violated the law, the Prosecution would have used the video recording against her.

Because the government knew that she did not break any law, they suppressed the video recordings from her despite referring to it at trial as if it was damaging evidence. This exculpatory evidence could have exonerated her and is a clear violation of Brady as well as a violation of Plaintiff's 5th Amendment Right (Due Process).

> In fact, the best evidence rule (Evidence SS424-documents contradicting testimony) rests on the fact that a document is a more reliable, complete, and a more accurate source of information as to its contents and meaning than anyone's description; this is no less true as to the extent and circumstances of a contradiction, contained in the document, to a witness' testimony, where the alleged contradiction relates not to collateral matters but to the incrimination of a defendant in a criminal case.
>
> "We hold that the accused is entitled to the application of that rule, not merely because it will emphasize the contradiction to the jury, but because it will best inform them as to the document's impeachment weight and significance...the alleged contradiction to this witness' testimony relate not to collateral matters but to the very incrimination of petitioners. Except the testimony of this witness be believed, (pg.455) this conviction probably could not have been had. Gordon v. United States 97 LED 447, 344 US 414.

3. Ineffective assistance from both trial and appellate counsel.

- The District Court created a jurisdiction when none exists by treating drugs that are not Federally controlled as controlled substances, and **applying the food drug cosmetics act onto the Plaintiff as if it were the "controlled substances act"**. This is an **usurpation of administrative power the District Court does not have, and it is proof her recusal is necessary**.

As has been detailed in previous filings over these matters, and as will be detailed below, Fioricet is not a federally controlled substance, **only the Attorney General** has the power to make drugs controlled substances, judges to not have the power nor expertise to assess or schedule drugs, a drug is an entity under the law not an assemblage of components for a judge to dissect and assess as if it were one of its components, and the law itself

is clear on all of this both in the way "**drug**" and "**fixed-combination drug**" is **defined under the law** and in how the Controlled Substances Act is written. Further evidence of just how wrong this trial court is on this matter can be found in West Virginia Board of Pharmacy News from September 2014, where they state on page one: "**Fioricet is not federally scheduled**" (W V Vol 34, No. 1, see exhibit D). This evidence came into existence prior to the Plaintiff's trial and after her indictment, and it clearly adds to proof of the **incompetence of Plaintiff's trial lawyers**. More importantly it adds to the proof that the Plaintiff's constitutional right was violated by the District Court, as evidenced in this motion and as in many other previous motions filed against the District Court. The injustice suffered by the Plaintiff at the hands of the trial Court's judge that this complaint must proceed, as indicated below.

PETITION FOR WRIT OF CERTIORARI

I. INTRODUCTION

1. The District Court's opinion conflicts with decisions of the United States Supreme Court and of the United States Court of Appeals for the Eight Circuit to which the petition is addressed,

> West v. Atkin, 487 U.S. 42, 48 (1988). Bivens v. Six Unknown Fed. Narcotics Agents, 403 U.S. 388 (1971). Napue v. Illinois, 360 U.S. 264 (1959). Creason v. City of Washington, 435 F.3d 820, 823 (8th Cir. 2006). United States v. Armstrong, 517 U.S. 456, 465 (1996). Buckley v. Barlow, 997 F.2d 494, 495 (8th Cir. 1993). Sedivy v. State ex rel. Stenberg, 567 N.W. 2D 784, 792 (Neb. App. 1997)

2. A material factual or legal matter was overlooked in the decision in that the Petitioner believes the court has overlooked or misapprehended the following:

A. Administrative Procedure Act ("APA") Neb. Rev. Stat. 38-1,102 and Neb. Rev. Stat. 84-917

> "Any person aggrieved by a final decision in a disciplinary proceeding under the UCA is entitled to judicial review in accordance with the Administrative Procedure Act ("APA")"

B. FRCP 15 - US Supreme Court Held Plaintiffs Have A Right To Amend Complaints

3. This Court has consistently held that deliberate deception of the jurors by the presentation of known false evidence is incompatible with "rudimentary demands of justice."

> Pyle v. Kansas, 317 US 213, 87 L Ed 214, Napue v. Illinois, 360 US 264, 3 L Ed 2d 1217 and Brady v. Maryland, 373 United States 83, 10 L Ed 2d 215.
>
> The Plaintiff's pharmacist license was revoked by the Defendants, based on :
>
> 1. NE BOP Investigator Jeff Newman's perjured testimonies at the Plaintiff's Nebraska Board of Pharmacy hearing,

2. A wrongful conviction
3. Other state's disciplinary actions, which were based on discrimination, perjured testimony including those committed by PA BOP inspector Inspector Bat at the Plaintiff's trial,

"Any person aggrieved by a final decision in a disciplinary proceeding under the UCA is entitled to judicial review in accordance with the Administrative Procedure Act ("APA")" Neb. Rev. Stat. 38-1,102 and Neb. Rev. Stat. 84-917

II. DISCUSSIONS

A. Sovereign Immunity

The Plaintiff is requesting to amend her complaint to sue the Defendants in his "individual and official capacity"

"While Defendants are immune from suit for damages in their official capacities, they may be sued on federal constitutional claims for prospective declaratory or injunctive relief under the exception to immunity recognized by the Supreme Court in Ex Parte Young, 209 U.S. 123 (1908). See, e.g., Klingler v. Director, Dept. of Revenue, 281 F.3d 776 (8th Cir. 2002)(allowing claim under Title II of ADA for declaratory and injunctive relief against state official). This exception applies to the extent the Plaintiff seeks reinstatement of her pharmacy license and relief from what she alleges is an unconstitutional denial of her ability to practice pharmacy in Nebraska. Here, as set forth below, the Plaintiff's Complaint's has established a claim of Deprivation of Rights under the Due Process and the Equal Protection Clauses via FRAUD, NEGLIGENCE, DISCRIMINATION, and a denial of Administrative process against the Nebraska State Board of Pharmacy, as a matter of law. See Appendix B – Amended complaint).

B. Substantive Due Process Violations

The Plaintiff's claim, that the Defendants fraudulently revoked the Plaintiff pharmacy license using its own investigator Jeff Newman's perjured testimonies, with no physical evidence, violates her substantive due process right to a FAIR hearing to pursue her occupation.

"To establish a violation of substantive due process rights by an executive official, a plaintiff must show (1) that the official violated one or more fundamental constitutional rights and (2) that the conduct of the executive official was shocking to the contemporary conscience." Truong v. Hassan, 829 F.3d 627, 631 (8th City 2016) (internal quotations and citations omitted). "To be **conscience shocking**, the government action must be 'truly irrational, that is, something more than ... arbitrary, capricious, or in violation of state law." Draper v. City of Festus, 782 F.3d 948, 953 (8th Cir. 2015) (quoting Weiler v. Purkett 137 F.3d 1047, 105 (8th Cir. 1998) (en banc)).

Here, the Defendant's actions rise to the "conscience shocking" level as a result of Investigator Jeff Newman's perjured testimonies to revoke her Pharmacist License rather than investigating the pharmacies paper trail and allowing her a fair hearing over the matter.

Further, the Board of Pharmacy was made fully aware by the Plaintiff's attorneys, Richard Boucher, of the many deceptions committed by the federal prosecutors and District Court in order to indict and convict the Plaintiff. The communications between the Plaintiff's attorneys and the Board of Pharmacy officials should have made it more imperative for the board to allow a hearing over the Plaintiff's license. Instead they revoked it from her, rather than give the matters a fair hearing.

On September 2, 2015, the Plaintiff was wrongfully convicted of five counts and sentenced to three years imprisonment. As detailed in the Plaintiff's Motion for Certificate of Appealability (See Appendix C), this conviction was entirely due to the deception of fraud committed by SEVEN executive officials and the District Court itself via: perjured testimony, planted, suppressed, tampered and withheld evidence, and the usurpation of Legislative power by the invention of laws by executive officials and the District Court to avoid proper application of the governing pharmacy laws as they exist. The executive officials and the District Court created a jurisdiction when none exists by treating drugs that are not Federally controlled as controlled substances, and applying the food drug cosmetics act onto the Plaintiff as if it were the "controlled substances act".

The Second Circuit of Appeal's rulings was based on the District Court's fraudulent activity and thus supported the conviction though it was based entirely on false testimony and no actual physical evidence.

In fact, a close examination of her conviction by qualified individuals will show there was no evidence of any misbranding on her part at the trial. It can be clearly shown that a deception was committed against the jury. Anyone looking over the actual facts of the matter will see this to be true.

Instead of acting independently, the Board allowed itself to be a rubber stamp for misguided federal prosecutors and judges. With regard to licensing pharmacists, they are expected to have the expertise and independent agency and latitude of discretion to access the facts for themselves. This is why civil actions are granted and the real facts of the matter openly discussed and assessed.

It may remain true that the Plaintiff's convictions still stands, but it is also true that there is no actual evidence that she violated any law.

Including but not limited to, the Nebraska Board of Pharmacy knows the following things are true:

1. Tramadol was not a controlled substance at the time of dispensing

2. Fioricet is not butalbital nor can they be treated as the same drug, as the two relevant definitions of "drug" and "fixed combination drug" found within the law are crafted specifically to prevent such a conflation. The law simply does not require a pharmacist to ascertain if the doctor and patient have a face to face relationship, because all that is required for the drugs that were dispensed is a bonafide prescription, and a bonafide prescription does not require face-to-face relationship between a doctor and patients.

3. Pharmacists are responsible for their own actions and cannot blame their conduct on anyone else, be they a pharmacist in charge, a supervising pharmacist, or even the actual pharmacy owner.

Had the Defendants granted the Plaintiff a FAIR hearing, the pharmacy communities in the United States would have been made properly aware that the federal government has start creating their own law to govern the

conduct of pharmacist but instead, they revoked her license from her thereby putting other pharmacists at risk for similar wrongful prosecution.

The Board of pharmacy must make independent assessment and not just rely on the federal courts; they must be a check against abuses of power and their licensing an oversight pharmacists must be protective and not just punitive. By revoking the Plaintiff's license and by steadfastly refusing a real and fair hearing, they are trying to keep their community of licensed professionals ignorant of the abuses of power that lead to the Plaintiff's prosecution and conviction.

> This civil action must proceed because the suppressed exculpatory video recordings showed the Plaintiff did not violate any pharmacy law; the video recordings clearly showed she was not remotely monitoring or supervising, nor directing employees in other locations to commit the alleged crime. This video recording was both suppressed and withheld and only came to the Plaintiff's possession in August 2017. The **video recordings proved the Plaintiff's ACTUAL innocence; they showed the daily activity of the work flow in the pharmacies and that the Plaintiff abided by all pharmacy law and regulations in that she properly counted, labeled and stored, destroyed medications properly, and dispensed medications with valid prescriptions, all verified by doctors; yet, this was contradicted by the prosecutors' witnesses sworn testimony, including those of the Pennsylvania Board of Pharmacy's pharmacy inspector THOMAS BAT, an executive official**.
>
> Furthermore, it is an unconstitutional action and a deprivation of rights to deny a FAIR hearing; it prevents the Plaintiff from showing physical evidence (a suppressed exculpatory video recording evidence), and facts which proves her innocence and supports the decision as to **why her pharmacist license should be reinstated to active.** The hearing the Defendants conducted in which the Defendants revoked the Plaintiff's license was patently unfair because of Investigator Newman's false testimony, and because their investigation ignored all physical evidence.
>
> In fact, even to this day, as recent as in the District Court's recent 8/20/18 memorandum and order, again deceiving to the entire public via the internet, and to give reasons for her denial of the Plaintiff's 2255 Motion, she now perjured by stating that the Plaintiff dispensed OPIOIDS (and barbiturates) via the internet (8/20/18 Memorandum and Order page 2 and 4), thus slandering the Plaintiff because the Plaintiff NEVER dispensed OPIOIDS nor controlled substances barbiturates via the internet of "her pharmacies" (page 5). The pharmacies were not "hers" and the District Court knows this, and the district court knows that there was no allegation nor any evidence that the Plaintiff dispensed OPIOIDS nor controlled substances via the internet. The district court judge is lying to slander and smear the Plaintiff, to prejudice anyone reviewing the Plaintiff's filings that expose the misdeeds of the District Court Judge, the Prosecutors, and their witnesses.

To reiterate, the Plaintiff's conviction was directly due to misconduct, extra-judicial actions, bias and fraud by Judge Buchwald that: started early in the pretrial phase, persists through today, and is self-evident. Her motivation was to intimidate and harass the Plaintiff into a plea deal or secure a guilty verdict to protect nine guilty pleas to false charges alleging a "narcotics conspiracy" which could become invalid if the Plaintiff had a fair trial. Some glaring examples are:

1. Using dismissable misleading and ambiguous indictments to ensure convictions;
2. Creating a jurisdiction for Tramadol under the Controlled Substance Act 21 (twenty-one) months before it became a federally controlled substance, long after the Plaintiff's indictment;
3. Changing the legal definition of "Drug" and ignoring laws that govern scheduling.
4. Exceeding her power by inventing and ignoring laws, usurping administrative and legislative power.
5 Allowing both the known use of perjured testimony and the suppression and withholding of multiple pieces of physical evidence directly contradicting that knowingly used perjured testimony;
6. Further withholding and allowing suppression of exculpatory evidence contradicting the Prosecutors, their witnesses, and the Judge's own handwriting analysis expert testimony.

As shown below, Judge Buchwald acknowledged Tramadol was not a controlled substance pretrial, but chose not to address the matter. The only acceptable manner would be to dismiss the charge. Instead she claimed it was only there as background information. This was done to intimidate the Plaintiff into accepting a plea deal as the other defendants had done. However, Judge Buchwald showed herself to be duplicitous by claiming at trial that all the drugs dispensed were controlled substances.

Judge Buchwald shows more brazen duplicity with regard to defects in the indictments concerning Fioricet, which she chose to call Butalbital. She ignored significant portions of the law and common sense to deceive the Jury by calling Fioricet, which is not a federally controlled substance, by the name of only one of its components: Butalbital. That a drug is not merely its most salacious component is already decided by the law. **"Drug" is defined under 21 US Code Section 321 (g) (1)**. The relevant portion is:

> (A) articles recognized in the official United States Pharmacopoeia, ... or official National Formulary, or any supplement to any of them; and (B) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease ... (C) articles ... intended to affect the structure or any function of the body...(D) articles intended for use as a component of any article specified in clause (A), (B), or (C).

A component of a drug may be another drug, but in such cases it is just a component and not the drug. Renaming a drug to make it appear to be a controlled substance is no innocent mistake, but an intentional deception meant to confuse anyone reading trial transcripts into thinking Butalbital, not Fioricet, was dispensed. It intentionally rendered the MURP Reports, one of the few exculpatory piece of evidence not suppressed, unintelligible.

Beyond the fact that immunity can not apply to judges usurping extra-judicial authority, Judge McMahon ignores that Judge Buchwald committed substantive due process violations against the Plaintiff. The Court can not dismiss a motion detailing such egregious violations on immunity grounds.

> "To establish a violation of substantive due process rights by an executive official, a plaintiff must show (1) that the official violated one or more fundamental constitutional rights and (2) that the conduct of the executive official was shocking to the contemporary conscience." Truong v. Hassan, 829 F.3d 627, 631 (8th City 2016) (internal quotations and citations omitted). "To be conscience shocking, the government

action must be 'truly irrational, that is, something more than ... arbitrary, capricious, or in violation of state law." Draper v. City of Festus, 782 F.3d 948, 953 (8th Cir. 2015) (quoting Weiler v. Purkett 137 F.3d 1047, 105 (8th Cir. 1998) (en banc)).

Here, the Federal Courts' actions rise to the "conscience shocking" level as described both above and below. Therefore, the Board of Pharmacy must do its own investigation instead of being a rubber stamp with those previous courts otherwise there would be no need for a separate procedure for this matter; it is entirely within the jurisdiction of this court to access blames by the government and by the other courts

1. FRAUD and PERJURIES SHOCK the CONSCIENCE!

As for PERJURIES, the trial judge, the Government, and its witnesses committed PERJURIES at the Plaintiff's trial, as well as in opinions the District Court published on the internet to cover up her perjuries

> **Legislation lays down laws or rules. Administration carries those laws into effect**. The **judicial function** is "to carry out the purposes of the statute, not to AMEND it." Miller v. US 79 LEd 977 294 US 435 (1935)."It is not within the power of the Court to "amend the governing pharmacy laws" on the ground that the administrative power conferred on the" State Board of Pharmacy for all pharmacists to abide by. Lambert Run Coal v. Baltimore & Ohio R. Co. 66 LEd 671, 258 US 377 (1922).

Judge Buchwald's rulings are indefensible under both the Controlled Substances Act (CSA) and the Food Drug and Cosmetics Act (FDC Act); there is not even a colorable argument supporting Judge Buchwald's unlawful exercise of jurisdiction. The claims of misbranding were supported by no physical evidence, and were presented to the jury in intentionally confusing ways meant to create a conviction out of nothing. As discussed below, it is only becoming more and more obvious that the judge does not understand what "bonafide" or "valid" means when it comes to prescriptions, nor does the judge understand what those standards obligate pharmacists to do under the law. What is also clear from the trial transcripts that the two standards were conflated into a "bonafide face to face" standard and presented to the jury as such even though no such thing exists in the health care professions nor in the law. The Judge is also proving more conclusively that she has not read nor understood either the Controlled Substances Act nor the Food Drug and Cosmetics Act, nor did she bother to familiarize herself with the matters the criminal proceedings were about. When she says the Plaintiff dispensed "Opioids" via the fulfillment pharmacy she is lying to slander the plaintiff and prejudice anyone reading her words. She has not heard nor seen any evidence of that notion, no one at trial or otherwise made such an accusation, and it never happened. The fact remains that the Judge is applying a standard applicable only to controlled substances, when no controlled substances were dispensed via the fulfillment pharmacy. The fact also remains that this

standard was presented to the jury through a number of deceptions: calling Fioricet by the name of one of its components, calling the drugs "highly addictive pain meds" when such a phrase does not exist under the law nor in the health care professions in order to avoid the term "controlled substances", and the above mentioned conflation of bonafide and valid prescriptions. She also ignores the laws that make pharmacists responsible legal for their own actions when she holds the Plaintiff responsible for acts confessed to by prosecution witnesses, which is discussed below. Neither the Judge nor the prosecutors have explained how they are holding the Plaintiff responsible for the prescription standard for controlled substances for prescriptions dispensed for Tramadol 21 months before it became a controlled substance. How they got away with it is clear, the trial was all innuendo, lies, and fake standards not found in the law. "The scope of the indictment goes to the existence of the trial court's subject-matter jurisdiction". Stirone, 361 U.S. at 213; Ex parte Bain, 121 U.S. At 12-13.

> The judge and the prosecutors want to have it both ways. They want to pretend they are not using the Controlled Substances Act against the Plaintiff but they also want to use the standards for valid prescriptions only found in the Controlled Substances Act and only applicable to Controlled Substances. What they are doing is holding the Plaintiff to the CSA's valid prescriptions standards for drugs that are not controlled substances; they did this by confusing the jury and conflating the valid prescriptions standards and the bonafide standards. The only applicable standards for any of the drugs dispensed through the fulfillment pharmacies is the bonafide standards, and this standards does not require the pharmacists to access or have any knowledge regarding the doctor-patient relationship. Quite simply: if a face to face relationship between a doctor and a patient is required for a prescription, then that prescription can only be for a controlled substances. But very importantly, if the Plaintiff violated this requirement, it would not be in violation of the FDC Act but the Plaintiff did not violate this requirement because NONE of the drugs dispensed via the fulfillment pharmacies were controlled substances. By hiding behind the weasel-words of saying they did not charge the Plaintiff under the Controlled Substances Act they are continuing their deception because that is the standard they applied, and they presented it in an intentionally confusing way to the Jury. They may have not charged the Plaintiff under the Controlled Substances Act in the superseding indictment, the original charges did cite alleged violations of the Controlled Substances Act, even though the drugs named were not controlled substances, Fioricet nor Tramadol.
>
> The judge would have you believe that the Plaintiff violated the bonafide legal standards, but the judge obviously has not read the law because pharmacist are not required to ascertain anything regarding the doctor- patient relationship when the prescription is not for a controlled substances. It is important to note that no doctor testified at the trial claimed to have written for any controlled substances at all, so whether or not they have a face to face relationship with the patient or deceived the Plaintiff is totally moot; the Plaintiff did nothing wrong.

Because Judge Buchwald USURPED administrative and legislative powers in ruling on the Plaintiff's motions just as she did throughout these entire proceedings, thus denying the Plaintiff her constitutional right, it warrant that her decisions on all the Plaintiff's motions should be MOOT. The more Judge Buchwald writes, the

clearer it is that she does not understand the applicable laws, the governing pharmacy laws, nor the bonafide legal standards for prescriptions, nor the Controlled Substances Act.

Also, the government does not even understand the Controlled Substances Act. Here are 2 examples:

1. the state of West Virginia, (See Exhibit D), stated Fioricet is NOT a federally controlled substance. It also stated that there is confusion about the matter. The confusion seems to be that people just do not bother to read the law. For a Drug to be made a controlled substance, there must be a reason such as potential for abuse, the findings for the potential must be ascertained through a process and it must all be done on the record, and it is all done and only done by the Attorney General. Drugs are not assessed by judges nor prosecutors, whether that assessment is done by looking at the components or anything else, because they do not have the expertise. If anything this trial has proved it is that they do not have the expertise. Drugs, under the law and in the health care community, are entities unto themselves, as further discussed below. No one regulates a drug simply because of its components, but only if the drug itself requires it. This is ascertained through findings made by the Attorney General, and it is all done on the record as required by the Controlled Substances Act itself. The confusion West Virginia speaks of is a polite way of saying that prosecutors and judges are treating a non-controlled substance as if it were a controlled substance, and innocent people are suffering from their obscene lust to fill prisons with the innocent.

2. U.S v TITILAYO AKINTOMIDE AKINYOYENU, Criminal Action No. 15-42 (JEB). While that judge is correct about Fioricet's exempted status, she also misses the more important point that the Attorney General has made no findings that Fioricet has a potential for abuse and thus has not made it a controlled substance. The simple fact of the matter is that if this had happened, Fioricet would be listed on the Controlled Substances List (See Exh E) and the announcement scheduling it would be found in the Federal Register.

Fioricet was only available in tablet form, and it was not a controlled substance, that it is on the exempted prescription product list actually does not matter, and this seems to have caused "confusion" if we allow the imprisonment of innocent people to be characterized as confusion as opposed to vindictiveness. But, because one of Fioricet's components is a controlled substance, when a capsule form of Fioricet was introduced by manufactures, that form and only that form was made a controlled substance when it first came on to the market. This was done on the record and is easily found, and it only lasted for a brief period of time. Fioricet capsules were regulated as a schedule III controlled substances from July 29, 2013, and once it was realized to be as safe and free of potential for abuse as the original Fioricet TABLET, it was no longer regulated as a CIII product on September 16, 2013. To date, Fioricet is not listed as a controlled substance on the Controlled substance list of July 12, 2018 nor is it regulated as a controlled substances Schedule III. This new form of Fioricet came on the market around **7 months after the Plaintiff's arrest**, for charges that alleged violations of the Controlled Substances Act for dispensing Fioricet, which was deceptively misnamed butalbital in the indictment, and for dispensing Tramadol but that drug's inclusion in any of this was never explained but it remains true that it was treated as a controlled substance by the judge and the prosecutors not only in these criminal proceedings but also for all the original so-called co-conspirators in the original alleged narcotics conspiracy. The whole thing has been one gigantic usurpation of administrative and legislative power from day one.

The Plaintiff dispensed Fioricet TABLET (See Exh C), but it was never regulated as a controlled substance Schedule III. If it were, the judge and Prosecutors could cite something similar to the above reference to the brief amount of time when the Fioricet CAPSULE was first introduced on the market on July 29, 2013, where: that new formula of Fioricet was initially a controlled substance CIII product, but on September 16, 2013 received exempted prescription drug status and is no longer regulated as a CIII product. This event shows the flaws in the prosecution's and the judges arguments over the entire course of these criminal proceedings: it is not on the Controlled Substances list because it is not regulated as

one, because it has no potential for abuse. If it did, it would be on the controlled substances list, and when those findings were made BY THE ATTORNEY GENERAL, it would be found in the Federal Register. When Fioricet capsules was first introduced, the precaution was taken; but once it was established that Fioricet capsules had no potential for abuse, just like Fioricet tablets, it was NO LONGER REGULATED AS A CONTROLLED SUBSTANCE SCHEDULE III.

The only thing backing up the prosecutor's and the judge's argument is an authoritarian 'because I said so' type of argument. If they were so confident about their argument, they would not have lied about the name of the drug dispensed both throughout the trial and at sentencing. Instead of calling it Fioricet, they called it by the name of one of its components, "butalbital", because they want the jury to hear the name of a controlled substance, not the name of a fixed-combination drug whose formula is designed to eliminate the potential for abuse: Fioricet. Their lies point to the truth: they wanted to confuse the jury and anyone reading the transcripts.

The judge and the Prosecution do not understand the requirement in the law that a drug has to have and establishes a potential for abuse in order to be a controlled substance; they don't understand the difference between a drug, as defined by law (Fioricet) and a component (butalbital). They're arguments make it seem that they've never read the law. The law is actually very easy to understand. Fioricet is not a controlled substance, and this is spelled out very clearly below where large portions, where nothing relevant is left out, of sections 811 and 812 of the controlled substances act are quoted, along with important definitions that clarify the matter.

The Plaintiff will prove that she was framed by the trial judge, prosecution and its witnesses. There is no dispute that Butalbital, a drug the Plaintiff was indicted with, NEVER existed in the pharmacies and that Tramadol (See Exh F), the other drug named in the indictment, was not a controlled substance at the time of dispensing.

Rather than grant an evidentiary hearing where the Plaintiff can produce withheld/suppressed physical evidence to exonerate her, the trial Court unconstitutional deprived the Plaintiff's Rights under the Due Process and the Equal Protection Clauses to protect her misdeeds from scrutiny where she would be shown to have obviously conducted a rigged trial via FRAUD (perjuries, lying to the jury, known use of perjury) EXTORTION, and the USURPATION of administrative and legislative powers. Owens v. United States, 236 F. Supp. 2d 122, 144 (D. Mass. 2002).

The writ is an essential element to show cause as to the **perjured testimony of the government and the government's witnesses.**

"Prosecutors who knowingly present perjured witness testimony or fail to correct it violate a defendant's right to a fair trail, the U.S. Court of Appeals for the Third Circuit ruled (Haskell v. Superintendent Greene SCI, 2017 BL 266640, 3d Cir., No. 15-3427, 8/1/17). "A root is how can a defendant possibly enjoy his right to a fair trial when the" government "is willing to present (or fails to correct) lies told by its own witness and then vouches for and relies on that witness's supposed honesty" in its closing argument? Circuit Judge Thomas L. Ambro asked in writing for the court that tossed a murder conviction Aug. 1 (2017). He answered that question by quoting the U.S. Supreme Court in Napue v. Illinois. "A lie

is a lie, no matter what its subject, and, if it is in any way relevant to the case, the district attorney has the responsibility and duty to correct what he knows to be false and elicit the truth," he said. (T.1736, 1938-1941, 1951, 1953, 1861).

2. **ARGUMENTS Showing EVIDENCE of Judicial BIAS Requiring the Nebraska Board of Pharmacy** to:

A. Rule on all the available and relevant evidence with the full understanding of the circumstances that bring this matter before them

B. Be independent and separate from other Courts that have rule on the criminal matter which cause this matter to be brought before this district court

C. NOT be a rubber stamp with those previous courts otherwise there would be no need for a separate procedure for this matter; it is entirely within the jurisdiction of this court to access blames by the government and by the other courts.

The Plaintiff's conviction came about through a deliberate deceit of the jury by presenting a made up legal standards that does not exist under the law and by presenting perjured testimonies to the jury that everyone knew was perjured testimonies except for the jury.

If Fioricet is a controlled substance, as the District Court **FALSELY** states (8/20/18 Memorandum and Order page 12) **all the Trial Judge and the Government would have to do and all they should do is point to the Federal Register to show where and when the Attorney General made it a controlled substance. The Judge does not make** an argument as to why Fioricet is, in her view, a controlled substance nor does she make an argument as how or when it became one. She just makes an unsupported and unsubstantiated statement that it is. As shown below, the prosecutors cherry-picked a few lines from section 812 of the Controlled Substances Act that show criteria for scheduling **IF** a drug is found to require scheduling, but they ignore the **requirements** specified within section 812 itself as well as section 811 that specify what findings are required for a drug to be made a controlled substance and the fact that those **findings must be made on the record**. They also ignored the definition of the "**Drug**" and "**Fixed-Combination Drug**" which prevent the misnaming of Fioricet that was engaged in in the indictments and during the trial and the sentencing, and that also prevent the kind of confusion between Fioricet and any of its components. The deception of the jury over the **drugs name** that the Judge and the prosecutors engaged in is a clear indication that the certainty the judge is expressing about Fioricet now is more about her getting away with the deception than about her confidence in

her statements about Fioricet. The Judge's duplicity about Fioricet's name is rather brazen, but a review of these criminal proceedings will reveal more duplicity with regard to **Tramadol** and other deceptions.

Let start from the beginning:

> 1.The Plaintiff was arrested on November 29, 2012, indicted under the Controlled Substances Act as part of an alleged "narcotics conspiracy", but the indictment used was defective and intentionally misleading. The most obvious defect is that Tramadol, one of the two drugs named in this alleged conspiracy, was not a controlled substance at the time. The Judge violates Canon 2 (A) cited above by ignoring the law, and she usurps administrative power by treating Tramadol as a controlled substance. The indictment also named the drug Butalbital; but this was a deception committed by the prosecutors against the Grand Jury, the district court, and the Plaintiff because the drug in question that was dispensed was Fioricet, not Butalbital. There was never any Butalbital dispensed by any of the pharmacies in question. During the pretrial phase this fact was well established and all sides acknowledged that the drug in question was indeed Fioricet (08212014 Buchwald Memorandum and Order).
>
> Judge Buchwald shows she either has not read the law or she is willing to rewrite it when she says: "Because Fioricet contains Butalbital, a derivative of barbituric acid, there is no dispute that Fioricet falls within the category of drugs controlled by 21 U.S.C. § 812. See Def. Mem. at 4-5; Def. Reply Mem. At 2." (08212014 Buchwald Memorandum and Order) Her statement is just not true. **The law does not regulate drugs based on their components**. The **definition of Drug and of Fixed Combination Drug in the law, and the itself prevents this**. The law empowers **only the Attorney General to make drugs a controlled substance and requires it to be done on the record**.
>
> The Judge and Prosecutors skipped passed the criteria and procedures required for the Attorney General to make a drug a controlled substance, to the part of the law cite is deep inside the middle of the law that is meant as an initial guideline for scheduling that the Attorney General uses if the Attorney General determines a drug must be made a controlled substance. The part of the law the Judge and Prosecutors used, while ignoring its context and excluding the rest of the law, describes criteria that guides the Attorney General if and only if the decision was made to make a drug a controlled substance. The Judge ignores the fact that only the Attorney General determines if a drug should be a controlled substance. Instead the Judge just jumps right ahead and retroactively schedules Fioricet herself with no findings to indicate such an action is required, no fair warning required under the law, and no authority to act in this manner. When a drug is determined to be a controlled substance, the Attorney General is required by Title V Section 5, referred to directly in the Controlled Substances Act, to give fair warning to the industry over the change. Judge Buchwald also ignores that. The Judge violates Canon 2 (A) cited above by ignoring the law, and she usurps administrative power by treating tramadol and Fioricet as controlled substances.

The distinction between Butalbital and Fioricet is far greater than just the fact that the law recognizes them as the two different drugs that they are by the way Drug and Fixed-Combination Drug are defined under the law, because Fioricet is not a controlled substance under federal law. Fioricet is not to be confused for Butalbital, nor the other way around, as defined by the law itself. Confusion over the two was Judge Buchwald's intention throughout the entire trial, where the wrong name for the drug was intentionally used by her and the Prosecutors and their witnesses.

> Fioricet is not categorized by the law in anyway that Judge Buchwald states. One must ignore the vast majority of the law and read only a very deceptively chosen portion of the law to come away

with the misconception that Judge Buchwald relies on. The controlled substances act requires that a drug be found to have a potential for abuse by the Attorney General before and on the record he may make it a controlled substance and then place it on a schedule. If this had happened, it would be on the Controlled Substances List, and fair notices would have been given as required by the law. This will be explained in more detail below.

Thus, the indictments that placed the Plaintiff and the alleged co-conspirators in front of Judge Buchwald that described a narcotics conspiracy was completely dismissible because the only two drugs involved were not controlled substances, and the indictment incorrectly named one of the drugs. The law does not give the court jurisdiction under the Controlled Substances Act over acts involving Tramadol or Fioricet in 2012. Judge Buchwald violated Canon 2 (A) cited above because rather than respect the law she ignores it in her statement about Fioricet and what category it might fall under.

2. Tramadol became a Controlled Substance under federal law on August 18th, 2014. Simply put, no dispensing or prescribing of Tramadol in 2012 was governed by the Controlled Substances Act cited in the original indictment, 21 months prior to it becoming a Controlled Substance. Prosecutors must have deceived the Grand Jury into indicted anyone for violating the Controlled Substances Act for any act involving Tramadol, because it was not a controlled substance. By claiming any dispensing or shipping of Tramadol violated the Controlled Substances Act, Prosecutors were attempting a fraud on the court and against the Plaintiff. The District Court should have dealt with this defect in the indictments that charged as a crime something that was not a crime, but she did not. Instead she went along with it, as she had already accepted plea deals for these non-crimes from the alleged co-conspirators in this so-called narcotics conspiracy. The lying to the Grand Jury that produced these charges should also be dealt with, because that is illegal.

3. There is no reasonable excuse for a Judge to not dismiss a charge alleging violations of the Controlled Substances Act in 2012 for anything involving the drug Tramadol. The **Judges' unwillingness to dismiss charges that do not allege actual crimes under the law they cite is a shirking of her duties as a judge and a violation of Canon 2(A), where respect for the law would require dismissing the defective indictment if for no other reason the law cited does not give her jurisdiction over Tramadol (nor Fioricet, but in less obvious ways)**. (See Exh K)

4. The Plaintiff's alleged co-conspirators had all accepted plea deals, pleading guilty to allegations that were not crimes. Asking the Judge to confront the matter of Tramadol in the charges, and her shirking that responsibility, must be seen in that light: that for her to admit the simple truth of the matter would call into question her accepting of plea deals over the same charge. Because of this, **any continued involvement of Judge Buchwald in the proceedings of this Plaintiff is a violation** of **28 U.S.C. 455(b)(1).**

5. The court's contention that the charges in the original indictment concerning Tramadol under the Controlled Substance Act is somehow "merely a function of the placement of **background information**" is not just untenable, but inconsistent with her actions. Her contention is untenable because charges are charges, not background information.

In both the original indictment and the superseding indictment, Tramadol and Butalbital are presented in exactly the same way. If Judge Buchwald's claim that Tramadol's inclusion in the charges is as background information, then she must also conclude that Butalbital's inclusion is equally just as background information and thus no drugs are actually named in charges in either indictments. Further,

making Tramadol a controlled substance and lying about it, not dismissing the charge but pretending it is background information, is a **usurpation of Administrative power and dishonest**. It is a violation of Canon 2 cited above (See Exh K – Affidavit of Lena Lasher)

6. It is also a **violation of Canon 3**: "The duties of judicial office take precedence over all other activities." She was at a hearing to dismiss defective charges, and her duty was to deal with them in an unprejudiced way. There was no legal justification to put off the dismissal of the charges at that moment. It was her responsibility and she ignored it in favor of some future "point at which the concerns raised by Defendant regarding prejudice and jury confusion are more immediate." What is that point? Everyone involved and anyone reading this knows that simply means after the prosecutors get her licenses revoked, and they make threats over worse but also false charges as they did often, and the trial date rolls around and her lawyers essentially beg her to take a plea deal and even her lawyer's lawyer friends call begging her to take a plea deal, and with as much fear and intimidation they can possibly muster, the "point" the Judge refers to is the accepting of plea deal. She is shirking her judicial responsibility in violation of Canon 3, in favor of being the Prosecutor's anvil.

7. Judge Buchwald's non-decision over Tramadol was clearly a disingenuous way to hide her true intentions. At trial, and at sentencing, and in denying bail pending appeal, the Plaintiff was held responsible to the standard contained in the Controlled Substances Act for dispensing the fulfillment pharmacy prescriptions, even though none of the prescriptions dispensed were controlled substances. The Controlled Substances Act, violations of which were removed from the superseding indictment, did not apply to any of the drugs dispensed via the fulfillment pharmacy. The jury was falsely told that Tramadol and the drugs dispensed via the fulfillment pharmacy required a pharmacist to confirm a face-to-face relationship between a doctor and patient, where only a bona fide relationship is required and the only confirmation required is the doctor's signature on the prescription. The Judge also created her own legal standard at trial and at sentencing she declared that "all the drugs" the Petitioner dispensed "were highly addictive pain meds". This is a false for a couple of reasons. None were. The Judge heard about three drugs dispensed via the fulfillment pharmacy: Carisoprodol, Tramadol, and Fioricet which was called "Butalbital" by witnesses who must be acknowledged as having perjured themselves because that is not the name of the drug they received nor was it the drug they were prescribed, in her court room. In fact, at trial, due to the fact the pharmacies never carried butalbital, the executive officials (AUSA Richenthal and Greenberg, DEA Agents Popowich, Germano, and Murphy) and the trial Judge, deceived the jury by calling Fioricet, the name of the drug that was dispensed, by the name of one of its components, butalbital. On its own Butalbital is a drug that is a controlled substance which required a valid prescription. But Butalbital is not Fioricet. Fioricet is a fixed-combination drug as described below in item # 12. Fioricet is a NON controlled substance under federal law, has no potential for abuse, and does not require a valid prescription. The combination is formulated such that the patient can not abuse the drug: doing so would hospitalize them for liver damage due to the addition of a demonstrably non-controlled substance that is available over the counter with out any prescription: Acetaminophen. This is no different than if a patient tried to abuse Tylenol, because the active ingredient in Tylenol is Acetaminophen. Because of this lack of a potential for abuse, Fioricet does not meet the criteria for a controlled substance under federal law as set forth under the Controlled Substances Act Subchapters 881 (a), 811 (b), 811 (c), 812 (b) (3) (A), or 812 (b) (3) (C). In particular, it does not meet the criteria that specifies that the findings that cause a drug to be a controlled substance under federal law must "be made on the record after opportunity for a hearing pursuant to the rule making procedures prescribed by subchapter II of Chapter 5 of Title 5."

This bait-and-switch of a drug's name for the name of one of its components causes the indictment to be a defective indictment. The changing of the drugs name was intentional and indicative of judicial bias. The administration officials, both prosecutors and agents, committed perjury and fraud on the Court and usurped legislative authority by trying to make Fioricet a controlled substance by calling it Butalbital, and the District Court invented its own laws to create a jurisdiction for itself over Fioricet by blindly accepting this renaming of the drug. If Fioricet was called by its proper name, it would be obvious to the casual observer that the District Court lacked of subject matter jurisdiction over this case. The Plaintiff's lawyers completely ignored this.

DEA agents Popowich, Germano, and Murphy all lied when they stated: 1) that they ordered and received butalbital, and 2) that they had invoices for butalbital. However no such invoices nor the medicines they ordered were presented to the jury as physical evidence to back up their claims, because if they had presented it everyone would plainly see they received Fioricet which is not a controlled substance. There was no physical evidence of any prescription, receipts, nor invoices of "butalbital" nor controlled substance marking on any of it, because there were none as there are none for Fioricet. A competent attorney would address this matter.

Carisoprodol is not a "pain med". It is for spasms and it became a schedule IV controlled substance on January 11, 2012, and the petitioner made sure the fulfillment pharmacy stopped dispensing it on December 23, 2011. Tramadol became a controlled substance on August 18th, 2014, (See Exh F) 21 months after the original indictment; when it did, it became a Schedule IV Controlled Substance. It is not a pain med, but a "pain reliever" and the distinction is a real one as anyone suffering from severe pain and needs a pain med can attest to. Acetaminophen is a pain reliever. "Pain med" is a category of medicine, and those are Schedule II drugs, none of which were dispensed through the fulfillment pharmacy, as no controlled substances on any schedule were dispensed through the fulfillment pharmacy. A pain reliever is not the same as a pain med, and the typical potentials for abuse differ similarly for the two. Long after the Plaintiff's arrest, and long after the defects in the indictment where the alleged and ill-defined acts were not crimes at all should have lead to the charges being dismissed, it was found Tramadol "has a low potential for abuse relative to the drugs or other substances in schedule III" where "abuse of the drug... may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in schedule III." These quotes concerning schedule IV come from section 812 of the Controlled Substances Act, and they show the judge was more interested in hyperbole than the actual law or public safety. To call Tramadol highly addictive is false hyperbole meant to prejudice anyone hearing or reading the Judge's words against the Plaintiff, and in 2012 no potential for abuse was recognized for the drug and it was not a controlled substance. Even after it became a controlled substance it is still wrong to call it "highly addictive" or a "pain med". The Judge's phrase is not found under the law and purely meant to be prejudicial and thus clearly a violation of Canon 2's demand for impartiality and Canon 3's prohibition against partisanship. The actual drug Butalbital can not be considered "highly addictive" either, not only because the phrase has no meaning under the law nor in any qualified discussion of addiction where the proper term "potential for abuse" is used, but because as a Schedule III controlled substance, its potential for abuse is only classified as falling below Schedule II drugs (which might colloquially be called highly addictive). But, that point is moot because Butalbital is not a drug ever dispensed by the fulfillment pharmacy. The Judge is lying when she calls the drug Butalbital. Her renaming of the drug for her own purposes can only be considered an intentional deception to conceal the fact that she did rename Fioricet by the name of one of its components and then treated Fioricet as if it were a controlled substance. The Judge violates Canon 2 by not respecting the law's definition of Drug that prevents renaming of drugs, and Canon 3 prohibition against partisanship by doing nothing more than parroting the Prosecutors misrepresentation of the law and its requirement for her to be competent in the law.

So, the Judge heard about three drugs dispensed via the fulfillment pharmacies. One became a controlled substance while they were in business, one long after, one never. When the government sent out their fair notice warning, the fulfillment pharmacies contacted their patients who were being treated by doctors with Carisoprodol to inform them that they would no longer dispense the drug for them. The government's fair warning, required under the parts of the Controlled Substances Act the Judge and Prosecutors ignored and under Title V Section 5 specifically refereed to in the Controlled Substances Act, allowed the pharmacy to give their patients enough fair warning, and they stopped dispensing the drug two weeks before the date it became a controlled substance. These are the actions of a responsible pharmacist and a business that is conducting itself legally. Judge Buchwald lie that all the drugs dispensed by the fulfillment pharmacy being "highly addictive pain meds" is clearly false and prejudicial. Regardless of what ever she thinks her made-up category means, it is not in nor of the law. She is using her time and power as a judge to hold the Plaintiff to a standard not found in the law. Also at sentencing Judge Buchwald lied by stating the Plaintiff dispensed Butalbital. She committed a fraud on her own court in service to her bias. The acts described here in point 7 are not a judicial acts and are

violations of Canons 2 and 3.

8. On November 30, 2015 Judge Buchwald's bias remained on display but she sheds the faux-legal phrase she made up and ignores the fact that the Plaintiff was not convicted of any Controlled Substance Act violations, in her denial of the Plaintiff's Motion for bail pending appeal, by lying in stating that "**all the drugs the Petitioner dispensed were controlled substances". The statement itself is a lie, a fraud on the court and a slandering of the Plaintiff**, and it shows her usurpation of Administrative power, because she is the only one making the these drugs controlled substances, not the Attorney General. **None of the drugs the Petitioner dispensed via the "fulfillment pharmacy" were controlled substances** and there was nothing illegal or unethical about dispensing them. Thus in her denial of bail pending appeal, Judge Buchwald's bias is on full display as well as her usurpation of Administrative power. These are additional violations of Canon 2 and 3.

9. Judge Buchwald clearly is treating Tramadol as a controlled substance even though the pharmacies in question were shut down because this wrongful prosecution 21 months before it became a controlled substance, and her ill-advised phrase "highly addictive pain meds" and her ridiculous statements about "background information" were only meant to conceal the fact that she was going to find the Plaintiff guilty of the original indictment even after it was withdrawn. This is not a Judicial act; it is a usurping of Administrative Power. Judges do not decide if a drug is a controlled substance or not. That task is the Attorney General's, and there is no side-stepping the fact that Judge Buchwald usurped that power in these criminal proceedings. These are violations of Canon 2 and 3.

10. To avoid responsibility for their own negligence, the Plaintiff's lawyers realizing they have common cause with Judge Buchwald, deceived **Judge Swain** as to the appropriateness of Judge Buchwald so that they could have their common cause protected. This in itself is a conflict of interest and is in **violation of Canons 2 and 3**.

11. As stated above, the other drug named in the indictment is "Butalbital"; but this was a deception committed by the prosecutors against the Grand Jury, the district court and the Plaintiff because the drug in question was Fioricet, not Butalbital. There was never any Butalbital dispensed by any of the pharmacies in question. During the pretrial phase this fact was well established and all sides acknowledged that the drug in question was indeed Fioricet (08212014 Buchwald Memorandum and Order). "Because Fioricet contains Butalbital, a derivative of barbituric acid, there is no dispute that Fioricet falls within the category of drugs controlled by 21 U.S.C. § 812. See Def. Mem. at 4-5; Def. Reply Mem. At 2." 08212014 Buchwald Memorandum and Order.

Fioricet containing Butalbital has NOTHING to do with how it is treated under the law, it really is as simple as that because the law is exceptionally clear. The law treats drugs as drugs, not as their components, because the properties of each drug are not the same as that of its components, including their potentials for abuse. This is recognized in the real world and under the law as shown below. When Judge Buchwald declares that Fioricet is Butalbital because Butalbital is a component of it, she changes the legal definition of "Drug", as provided in 21 US Code Section 321 (g) (1). The relevant portions are as follows:

> **The term "drug" means (A) articles recognized in the official United States Pharmacopoeia, official Homoeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; and (B) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; and (C) articles (other than food)**

intended to affect the structure or any function of the body of man or other animals; and (D) articles intended for use as a component of any article specified in clause (A), (B), or (C).

A component of a drug may be another drug, but in such cases it is just a component and not the drug. Judge Buchwald's statement requires her to use a different definition. It is a usurpation of Legislative power. It was also her own justification for her usurpation of Administrative power by treating Fioricet like a controlled substance, as evidenced across the entire proceedings through to today. The Controlled Substance Act is clear that it regulates drugs as drugs, not drugs based on components. These are all usurpations of powers not given to Judges, and all violations of Canons 2 and 3. (See Exh K – Affidavit of Lena Lasher)

12. There is yet another definition provided by the Legislature that goes right to the heart of the matter of why Fioricet is formulated as it is, and why it can not be confused with Butalbital. A drug that is made up of multiple components, some of which may be drugs on their own in their raw state, may be considered a "fixed-combination drug" as described under Title 21 Chapter I Subchapter Part 300 Subpart B 300.50. The relevant section is as follows:

"(a) Two or more drugs may be combined in a single dosage form when each component makes a contribution to the claimed effects and the dosage of each component (amount, frequency, duration) is such that the combination is safe and effective for a significant patient population requiring such concurrent therapy as defined in the labeling for the drug. Special cases of this general rule are where a component is added:
(1) To enhance the safety or effectiveness of the principle active components; and
(2) To minimize the potential for abuse of the principal active component."

Fioricet is a fixed-combination drug. The definition for Fixed-Combination Drug also allows for a drug to be made up of other drugs, but it does not make the new drug subordinate in name nor law nor anything else to its components. A drug may be, and just is in the case of a Fixed-Combination Drug, a combination of multiple drugs, but that does not eliminate the distinction under the law, and in reality, between the drug and its components. For Judge Buchwald to declare that Fioricet is Butalbital because it contains Butalbital, she must also amend or repeal this legal definition. This requires legislative acts, not judicial acts. These are also violations of Canons 2 and 3. Judge Buchwald is not respecting this legal definition found within the law, she is not respecting Title 21 Chapter I Subchapter Part 300 Subpart B 300.50, as required by Canon 2. Her judicial duties are not taking precedence because she is usurping legislative power by force-fitting Fioricet into a

category based on its component and usurping administrative power because the task of scheduling drugs is reserved for the Attorney General: so she is also violating Canon 3, again.(See Exh K -Affidavit of Lena Lasher)

> 13. We cited two definitions above occurring in two places in Federal Law, and now we cite another place in the law where the first definition is presented. In renaming Fioricet for her own purposes, Judge Buchwald had to ignore not only the definitions above but also the definitions provided in the Controlled Substances Act in 21 U.S. Code § 802 (12), where "Drug" is defined by sending the reader back to the definition presented above. In a case that involved the controlled substances act, directly in the original charges and covertly by holding the Plaintiff to the face-to-face doctor-patient standard that is only applicable to controlled substances, none of which were dispensed via the fulfillment pharmacy, the judge ignored the definition above that is referred directly to within the Controlled Substances Act. This is a violation of Canon 2. By holding the Plaintiff to an inapplicable standard, requiring a face-to-face requirement where only a bona fide relationship is required, Judge Buchwald violates Canon 3.
>
> 14. How do these definitions impact Judge Buchwald's reliance on Section 812 of the Controlled Substances Act? It pulls the rug right out from under it. These definitions refute her within the law she cites. 21 U.S. Code § 812 - Schedules of controlled substances states:
>
> **(b) Placement on schedules; findings required** ... a drug or other substance may not be placed in any schedule unless the findings required for such schedule are made with respect to such drug or other substance.

Fioricet is a drug, and it "may not be placed in any schedule unless the findings required for such schedule are made with respect to such drug." The findings required have nothing to do with just naming the drug's components, the law is also clear about that. The findings required are set forth the Controlled Substances Act 811(a), (b) and (c):

> **(a) Rules and regulations of Attorney General; hearing ...**The Attorney General may by rule—
> (1) add to such a schedule or transfer between such schedules any drug or other substance if he—
> (A) finds that such drug or other substance has a potential for abuse...
> Rules of the Attorney General under this subsection shall be made on the record after opportunity for a hearing pursuant to the rule making procedures prescribed by subchapter II of chapter 5 of title 5.
> **(b) Evaluation of drugs and other substances...**
> **(c) Factors determinative of control or removal from schedules** In making any finding under subsection (a) of this section or under subsection (b) of section 812 of this title, the Attorney General shall consider the following factors with respect to each drug or other substance proposed to be controlled or removed from the schedules:
> **(1)** Its actual or relative potential for abuse...(See Exh K - Affidavit of Lena Lasher)

The first thing worth noticing is that Federal Judges do not decide if a drug is a controlled substance, the Attorney General does, after a clearly delineated process that begins in writing from Secretary to the Attorney General. The second thing worth noting is that the first factor (1) under (c) is the **potential for abuse**, and these factors are to be considered for drugs proposed to be controlled. These factors are part of the recommendation that will include a recommendation as to which schedule the drug is proposed to be placed under.

The law is clear that this is all done in writing for the drug being proposed for control and scheduling-- the drug, not component-- as per the definitions cited above. Ignoring this and taking the power of scheduling for herself, Judge Buchwald usurps administrative power and violates Canons 2 and 3 (See Exh K).

15. In none of Judge Buchwald's pre-trial writings or transcripts does she even care to bother to ask about the drug's potential for abuse. This is the first listed finding that must be made. She is disrespecting the law by making Fioricet a controlled substance because no finding of a potential for abuse has been made, not by the Attorney General and not even by herself. She is ignoring the law, and violating Canons 2 and 3.(See Exh K)

16. The law is clear that it is no one's job to figure out in a court room if a drug is a controlled substance. A drug is made a controlled substance, or it is not, by the Attorney General. Fioricet has not been made a controlled substance by the Attorney General. It can not remain something it has never been. When Judge Buchwald rename Fioricet by the name of one of its components, "butalbital", she is usurping Legislative power, and performing her own Legislative act. We know this because the matter was already decided by a proper legislative act. But Judge Buchwald does not only rename the drug in order to create jurisdiction over it in her court room, and then usurps Administrative power in placing it in the same category as drugs controlled by 812.She also addresses the drug head-on, using the right name for it, and in so doing she usurps more power to create jurisdiction for herself under the Controlled Substances Act, and violations of Canons 2 and 3(See Exh K)

17. When Judge Buchwald cited a portion of the Controlled Substances Act, § 812 - Schedules of controlled substances, she was only repeating the section the Prosecutors provided her. She did not bother to check their source. She skipped right ahead to the scheduling without any findings, and did the scheduling herself based on bad and simplistic assumptions. Citing deceptively selectively portions of the law is not a judicial act, but it is a kind of usurpation of legislative power that both Judge Katzmann and Judge McMahon give cover to in their rulings supporting Judge Buchwald. It also shows a very clear violation of Canon 3 (A) (1), because she is just not competent in the law (See Exh K)

18. The willful ignorance of the law engaged in by the prosecutors and Judge Buchwald, did not have to lead to this miscarriage of justice, if they wanted to follow the law and properly apply the law, because the Administration provides a resource. The Controlled Substance List created and maintained by the Attorney General of the United States does exactly what its name says it does: IT PROVIDES THE LIST OF CONTROLLED SUBSTANCES. It also indicates alternative names for drugs on it when such names exist. The list is maintained and published in accordance with the Controlled Substances Act and Title V section 5 specifically cited in the Controlled Substances Act, as cited above. To find the list of controlled substances promulgated by the Attorney General, one has to simply look to the Federal Register, and to find the list of controlled substances promulgated by the Attorney General that was in effect at the time of the Plaintiff's arrest or at the time the alleged acts were committed, one simply has to look at the Federal Register from the appropriate dates. That is where the scheduling and descheduling of drugs is announced, and fair warning to health care professionals is given, as required by law both in 811 of the Controlled Substances Act and in "the rule making procedures prescribed by subchapter II of chapter 5 of title 5" which 811 refers directly to. It shows Judge Buchwald and the Prosecutors are deceiving us all by simply pointing to the smallest portion of a statute and pretending that somehow that indicates Fioricet is a controlled substance. Its not just a violation of Canon 3, it is a violation of the trust Judge Buchwald was mistakenly given by her appointment as district judge.

19. Butalbital is on the Controlled Substances list. Fioricet is not on the Controlled Substances list nor on the Controlled Substances Act because the Attorney General has not made it a controlled substance. (See Exh K)

20. At the June 2014 oral arguments for the Motion to Dismiss the original indictment, Judge Buchwald also stated "**in my court room** Fioricet is a controlled substance." But as we have shown above, it is not. Fioricet has no known potential for abuse, nor any of the other criteria set forth under Federal law. Controlled Substances Act 811 (b) and (c). Her statement is a usurpation of administrative power, and a violation of Canon 2. (Exh K).

21. 3 weeks before trial, most likely realizing their indictments lack of merit was too obvious for them to get away with this sham, and realizing that the Plaintiff was not interested in a plea bargain because she is innocent, the Prosecutors withdrew the indictment are replaced it with a superseding indictment.

22. The Superseding Indictment charges are so unspecific that either the Plaintiff is the one committing the crime OR she is directing others to. Which is it? By merging the two very different, and very unspecific, allegations the Prosecutors avoid directly addressing what law is being violated when people claim the Plaintiff directed them to commit crimes, because that was the allegation, but no law cited showed how the Plaintiff could be held responsible for other's alleged actions. And the actions were all only accusations at trial, no evidence of anything was presented.

By not taking a critical eye to the new charges, and just playing the anvil to the Prosecutor's hammer, the Judge is not acting as a Judge. She violates Canon 3 (See Exh K - Affidavit of Lena Lasher).

23. AUSA Richenthal does not say the Attorney General has placed Fioricet on the Controlled Substances list- the only thing that makes a drug a controlled substance. He instead says "this Court is not the only Court to take that view." There is no view to have, by a court or an AUSA, **there is only to look at the law**, look at the list published by the attorney general or to comb though the Federal Register; and the Judge and the Prosecutors ignored it as they were too busy usurping legislative and administrative power and ignoring the law. The conversation reveals the violations of Canons 2 and 3. (See Exh K – Affidavit of Lena Lasher)

24. It is important to note that even though the Prosecutors claim they do not need the "narcotics conspiracy" for the trial, at trial they nor the Judge, refer to the drug by its name, Fioricet. They and their witnesses and the Judge call it Butalbital. So, the alleged narcotics conspiracy nonsense might not have been needed for their trial, but deceiving the Jury was needed. By using the wrong name for the drug dispensed, Judge Buchwald fully intends to prejudice anyone hearing her or reading the transcript against the Plaintiff. She uses the wrong name out of a contempt for the **definitions** of the word Drug and the phrase Fixed-Combination Drug, as discussed above in violation of the law and Canons that should guide her conduct (See Exh K).

Her allowing of Fioricet to be called Butalbital allowed the Prosecutors to deceive the Jury about what the MURP reports said. The MURP report is a record of drugs that are returned and destroyed by the wholesaler. Returned medicines must be destroyed. When medicine is returned to a pharmacy, it is recorded, and it gets returned to the wholesaler who destroys it. The MURP report is made by the wholesaler. The Prosecutors alleged that people who claimed to re-dispense returned drugs instead of destroying them were directed to by the Plaintiff, absent of any proof and absent of any law that holds her responsible for their actions. If those individuals did as they claimed, it would be a kind of misbranding. It probably never happened. The prosecutors presented no evidence of dispensed drugs that were re-dispensed returned medicines, they presented no witness that claimed to have received such medicines. The accusation came from employees who claimed they did this under the Plaintiff's direction. So, a crime is confessed to, no evidence is presented for other than the confession, but the blame is shifted to the Plaintiff with no statute cited that states how the Plaintiff is responsible for others actions in this regard. Regardless, the Plaintiff is certain, in spite of how this was handled at trial, that this crime did not occur because the MURP reports disprove the allegation. The amount of returned drugs matches the amount that the wholesaler destroyed. For each drug returned to the pharmacy, the same amount was destroyed by the wholesaler and the wholesaler's report shows that. After Steven Goloff failed the state's inspection of the pharmacy, the pharmacy recorded all drugs returned and destroyed all drugs by returning to the wholesaler. How the prosecutors pretended the MURP reports did not refute their knowing use of perjured testimony with regard to the destruction of returned medicines? They pointed out that "Butalbital" was not on the MURP report. It wouldn't be, because as stated above

no retail pharmacy carries "Butalbital". The MURP report shows the Fioricet destroyed by the wholesaler, and that matches, as it does for all the other drugs on the MURP report, the amount returned to the pharmacy. The Prosecutor's deception over the MURP report was made possible only Judge Buchwald's name-change of the drug. Without the MURP report it would just be an empty allegation with absolutely no physical evidence and no person claiming to have received re-dispensed medicines. With the MURP report read intelligently, the allegation is completely disproved. But, due to the willful disregard for the law that defines a drug not as a component but as its own entity, Judge Buchwald's allowing of Fioricet to be called Butalbital actually prevented the Jury from understanding the report. She mislead the Jury; a violation of both Canon 2 and 3 as well as a violation of the trust mistakenly placed in her when she became a federal judge (See Exh K - Affidavit of Lena Lasher).

25. To reiterate item # 24, the Prosecution's witness Goloff lied to inspector Bat and on the stand concerning re-dispensing returned medicines. Goloff lied because he was written up for violating pharmacy law PRIOR to the PA BOP's inspection. Goloff resented the Plaintiff for holding him accountable for being a bad pharmacist. Unfortunately, the District Court withheld the unredacted evidence. (See Exh K - Affidavit of Lena Lasher)

26. The only misbranding claimed about Tramadol and Butalbital was that a face-to-face doctor-patient relationship standard was not met. So, it still was presented as if it were a CSA violation even though it could not be. The judge was a party to this deception of the Jury, fraud on the court, because she was not interested in justice, as detailed in #27 below. These violate Canons 2 and 3 (See Exh K – Affidavit of Lena Lasher).

27. In fact, Count 2, 3, 4, and 5 of the Superseding Indictment failed to allege that the Plaintiff sold misbranded drugs without valid prescriptions (face to face) because it failed to name any drugs or specific prescription. Counts 2, 3, 4, and 5 of the Indictment failed to charge any actual specific offense. Again the Trial Court, the prosecution and its witnesses, deceived the jury by not mentioning a drug name because only controlled substances, under the Controlled Substances Act, required valid prescriptions for dispensing. In fact, the Online Pharmacy Safety Act (S2002) (exh G)introduced legislation which would have required valid face to face prescriptions for NON controlled substance prescriptions ordered online did NOT pass.

The Government also claimed these unnamed and unspecified prescriptions were not valid because there was "no bonafide face-to-face" relationship between a doctor and his patient; but there are two glaring problems with this. Firstly, a "bonafide" relationship is the standard for all prescriptions a doctor writes for a patient, and there a wide range of ways a doctor and patient can have a bonafide relationship. But, a "face-to-face" relationship is only required for Controlled Substances. In order to confuse the jury, the government made up this compound phrase. Secondly, to hold a pharmacist responsible for this without any physical evidence or any specific prescriptions named requires a number of leaps in logic. The Government's claim in this regard is an attempt to shift blame away from the doctors, if there is any genuine blame, shifting the supposed blame to the Plaintiff. There is no formal assessment for a pharmacist to determine whether there is a bonafide relationship between a doctor and his patient, that relationship is between them; there is no established criteria under federal law for a pharmacist to know if the doctor consulted their patients. The signatures on the prescriptions are the doctor's promise to the rest of the health care community and the patients, that the prescriptions are valid and that their job was done properly. A relationship could in fact exist and be denied at trial, as the doctors testifying at the criminal trial against the Plaintiff in this civil action were only testifying to avoid their own jail time for other crimes. On top of this, the Plaintiff, before filling these fulfillment pharmacy prescriptions, actually required doctors to fill out and submit forms stating that they did phone consult directly with the patients. Evidence of this requirement that went above and beyond the requirements under the law was withheld by the District Court because it was physical evidence that would directly contradict testimony of one of the prosecution's witnesses.

None of this changes the fact that the Prosecution's and the district court's applying of the face-to-face requirement to non-Controlled Substances is a deception, deceiving the jury that the Controlled Substances Act's requirements for valid prescriptions was meant to be applied to NON – Controlled Substances.

28. The Judge also presented to the Jury another completely made up standard that has no place in law and held the Plaintiff to this made up standard at trial and at sentencing. This is a wholesale usurpation of Legislative power. Judge Buchwald placed regular prescription drugs, drugs that we have shown above were not controlled substances and had no known potential for abuse, into a "made-up" category that NO drug has ever been placed in, a category she called "highly addictive pain meds" sometimes calling it "addictive pain meds". This latter phrase was made up by the executive officials AUSA Richenthal and Greenberg, who were indulged in this by the District Court, without any facts to back up the invention of this phrase nor any references to scientific, medical, pharmaceutical or pharmacological literature (T.1768). This was done to prejudice and profile the Plaintiff; in fact, NONE of the drugs the Plaintiff dispensed via the "fulfillment" pharmacy were classified as "pain meds" (T.1768), or a controlled substance at the time of dispensing. The use of the word "addictive" itself is problematic. As the American Society of Regional Anesthesia and Pain Medicine provides great resources on the topic. No drugs, not even actual opioid pain meds, are called "addictive": they have a potential for abuse. The abuse of such drugs may lead to addiction. Addiction is considered a behavior with a wide range of causes and contributing factors. Abuse of medicines with potentials for abuse may lead to addictive behaviors and even addiction. It is this concept of potentials for abuse, and the range of those potentials that are a guiding force behind the Controlled Substances Act: it was never meant to be a playground for overzealous and immature prosecutors to create ways to lock up and shame conscientious professionals.

> Shockingly, there was no physical evidence, prescription, invoice, inventory and bill of laden of Butalbital or a name of a "highly addictive pain meds" introduced at trial, because there were NONE. There were no controlled substances dispensed by the Plaintiff or anyone in the pharmacies via the "fulfillment pharmacies", as the District Court claimed in denying the Plaintiff's bail pending appeal. A motion requesting her to name ONE controlled substance or "highly addictive pain meds" that the Plaintiff dispensed, Judge Buchwald has not respond to this motion because there were NONE.
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> The Legislature created the Controlled Substances Act to regulate drugs that have the potential for abuse. There is no category called "highly addictive pain meds" and the legislature did not create a law governing them. Judge Buchwald usurped Legislative Power by using that made up term that has no basis in law, and presented it to the Jury as if meant something under the law. By usurping legislative power in this way, Judge Buchwald doesn't have to usurp Administrative power to place drugs in her made up category, because its highly likely that, in the law she wrote in her head, district Judges in the

Southern District of NY are the parties responsible for placing drugs on this made-up list, upon recommendation from Prosecutors more interested in padding their resume than justice.

29. Even though the "narcotics conspiracy" charges were dropped, and the superseding indictment didn't claim violation of the CSA, instead claiming violations of the Food Drug and Cosmetics Act, the standard cited only exists in the Controlled Substances Act and only exists for Controlled Substance prescriptions. These entire criminal proceedings have been an exploration of how many ways misguided prosecutors and judges can misapply the Controlled Substances Act to drugs that are not controlled substances. That much has been consistent throughout these proceedings as she used faulty reason after faulty reason to justify her usurpation of powers and her refusal to dismiss either of the flawed documents. Of course if a jury is told something is a crime, such as eating a salad with a salad fork, they would return a guilty verdict against all who know one fork from another and choose to follow etiquette. But this is not a misconstruing of etiquette, it is abuse of judicial power and fraud on the court and violations of Canons 2 and 3.

30. To complete this deception of the Jury, the Prosecutors did not present as evidence any of the prescriptions or medicines received. If the drugs dispensed or the prescriptions were presented as evidence, they would clearly not be Butalbital, but Fioricet. There are brand names and generic names for the drug, but it would never name just one component because that would create confusion. The confusion it would create is three-fold: 1) Butalbital is a controlled substance, Fioricet isn't; 2) Butalbital ships as a powder and is used in manufacturing or in compounding pharmacies, not retail pharmacies, Fioricet at the time only shipped as tablets; and 3) Butalbital, when it was prescribed, was for insomnia, Fioricet is for tension headaches. Fioricet is an old and reliable medicine, and it is common knowledge in the health care professions that it is not a federally controlled substance. Commonwealth of Pennsylvania v Herman J – 124-2016 Cert Granted In fact, the pharmacies dispensed Fioricet, which ships from the manufacturers as a tablet, is a NON controlled substance which does not require a valid prescription, the pharmacies never dispensed Butalbital, not on the dates that the indictments claim the crimes were committed and not ever. The pharmacies never received Butalbital from any manufacturer, they had no use for it. The Plaintiff was not working nor present at the pharmacies where the alleged crimes supposedly took place on the days of the alleged criminal activity.

Butalbital is clearly not the same drug nor an analog, nor has the same strength, indication, or even in the same drug category or classification as Fioricet. They are 2 different drugs for 2 different treatments and neither are in the pain med category. Fioricet and Butalbital are not interchangeable drug names. Fioricet is indicated for tension headache while butalbital is indicated for insomnia. Fioricet as a fixed combination drug is manufactured such that it has no potential for abuse, containing Butalbital 50mg, Acetaminophen 325mg, and caffeine 40mg. Butalbital is not the same drug as Fioricet because in its raw state, Butalbital has a potential for abuse. When incorporated in Fioricet that potential for abuse is eliminated. Long before a patient could be addictive to Fioricet, he would be hospitalized for liver toxicity from the acetaminophen in the same way he would if he abused over the counter Tylenol because Tylenol's active ingredient is acetaminophen.

In summation, the references to Butalbital in the indictment and at trial is false and misleading. It was NEVER in the possession of the pharmacies, never stocked by the pharmacies, and never distributed to the pharmacies by a distributor or manufacturer. Instead NON controlled substances were intentionally referred to by the wrong drug name and represented to the jury as controlled substances or "highly addictive pain meds". (See Exh K)

Judge Buchwald's personal knowledge of evidentiary facts, such as

Tramadol not being a controlled substances at the time of dispensing and

Fioricet not being a controlled substance and not being "butalbital" (See **Exh K- Affidavit of Lena Lasher)**

31. The Plaintiff was held to a false standard not found within the controlled substances act. The "other acts testimony" was highly prejudicial, but also now provable to be to completely false testimony. Through withheld and suppressed evidence, it can not be shown conclusively that there was no wrong-doing by the Plaintiff with regard to the Oxycodone and Opium prescriptions discussed as 'other acts' testimony at trial, prescriptions that were not dispensed via the fulfillment pharmacy but to local walk-in patients. Dr. Cochran's statements, detailed below, which were withheld from the Jury show how the judge protected perjured testimony and helped to manufacture a wrongful conviction. (See Exh K)

32. Judge Buchwald specifically withheld physical evidence that she should have recognized as superior to the testimony it refutes to protect questionable testimony, that can now be unequivocally be shown to be false, from being impeached. The Judge ignored the Best Evidence Rule in withholding these pieces of evidence. In a trial made up of nothing but accusations and claims without any physical evidence, made by the government and their witnesses, physical evidence that refuted those claims, by way of suppressed, withheld or redacted physical evidence, should have been given priority and not redacted or withheld. The judge made sure the physical evidence was stripped of all power to reveal the truth or just withheld it entirely.

As detailed below, It also must be stressed just how prejudicial Judge Buchwald acts of withholding physical evidence that contradicted witness testimony was: she decided prejudged that the witness testimony should be heard by the Jury and that physical evidence that makes that testimony questionable should not be considered by the Jury. She took the matter out of the hands of the Jury and made their decision for them. She did this with the Bates document, with faxes from the Doctors, with emails that showed the doctor did in fact approve changes to prescription in spite of his testifying otherwise and knowing that the doctors were only testifying to avoid their own jail time for other crimes. Her acts were prejudicial. She went so far as to make sure that the Jury did not hear the pharmacy employees were reprimanded, by "striking" the Plaintiff's testimony on the stand and redacting physical evidence of the reprimands. There is only one reason to do and one result from doing this: **prejudice**.

33. Judge Buchwald helped attain a wrongful conviction, while ignoring the Best Evidence Rule, by withholding Bates Document 010085 that shows the prosecution and its witnesses knowingly made false accusations that the Plaintiff forged the opium tincture prescriptions.

Much of the trial focused on opium tincture prescriptions for Dr. Haytmanek written by Dr. Cochran. Dr. Haytmanek is a patient suffering from chronic diarrhea and the opium tincture is an appropriate medication indicated for that ailment. Prosecution's witnesses Steven Goloff actually filled 17 of the 20 of these prescriptions. At some point, Steven Goloff decided to frame Dr. Haytmanek by reporting him to the Pennsylvania Board of Medicine for being a "drug addict" who obtains his drugs illegally. At the Plaintiff's trial, the prosecution and 5 of their witnesses, Pharmacy Inspector THOMAS BAT (a Pennsylvania State Board executive official), pharmacists Steven Goloff and Daniel Geiger, technicians Albert Buck and James Barnes, framed the Plaintiff by falsely accusing her of forging these prescriptions and illegally dispensing to Dr. Haytmanek whom they called "an addict". Evidence confirming that the Plaintiff did not forge any Opium prescriptions for Dr. Haytmanek was withheld from the jury (Bates document 010085, T. 1939-1942 – See Exh H) . The trial judge knowingly allowed false testimonies of the Plaintiff forging those prescriptions (Goloff T.832). Even worse, AUSA Richenthal and Greenberg in their summation reiterated this false accusation of forgery telling the jury the Plaintiff forged Dr. Cochran's prescriptions(AUSA Greenberg's summation T.1815). These perjuries were made more effective by the District Court's decision to withhold the physical evidence that showed these lies for what they are. Further, the Trial Judge, presuming the role of a handwriting analysis expert witness from the bench, flatly declared the Plaintiff forged Dr. Cochran's prescriptions. More damagingly, the story they made up about these prescriptions were disproved at a hearing before the Pennsylvania Board of Medicine on October 8th, 2013, 19 months prior to the Plaintiff's trial (docket # 0335-49-B file no. 12-49-11424 Pg. 28 – See Exh J). It was a matter of record nineteen months prior to the Plaintiff's trial that there was nothing wrong with with any aspect regarding **Dr. Haytmanek's** and **Dr. Cochran** prescriptions, but the Prosecution and its witnesses insisted on putting on a show slandering her and the doctor.

The aforementioned indicate that everyone on the Prosecution team knew it was all lies meant to slander the Plaintiff and deceive the jury. Instead of correcting testimony she knew to be perjured, Judge

Buchwald protected it from impeachment by withholding Bates document evidence, prevented the Jury from making up their own mind about the matter, and ignored the Canons prohibition against partisanship. (See Exh K- Affidavit of Lasher)

34. Judge Buchwald also withheld faxes showing Dr. Konakanchi perjured herself, to convict the Plaintiff so that Konakanchi can avoid jail time for her own crimes, is perhaps the most obvious example of Judge Buchwald's bias toward the Plaintiff. This evidence directly would sway the jurors to acquit the Plaintiff.(See Exh K- Affidavit of Lasher)

35. Dr Burling's own phone records, which should be considered best evidence and far superior to testimony from a witness who admits to be testifying to avoid jail time for his own confessed crimes, that show the Witness and the Plaintiff were in contact numerous times in spite of the witness' claims that they had never spoken.

At trial, the Plaintiff was accused of changing Doctors Burling's instructions without his permission. However, AUSA Richenthal and Greenberg and the District Court withheld evidence of emails and prescriptions documentation in regard to pharmacists Michael Della-Ventura and William Cantagallo who received the approval for the pharmacies to correct prescription dosages from the doctors.

36. Oxycodone testimony was both unduly prejudicial, and now provable to be completely false.

The Prosecution and their witnesses told the Jury that on October 2, 2012, the Plaintiff rejected concerns over Oxycodone prescriptions allegedly being filled by "disheveled" "addicts". This testimony was "other acts" testimony, **not part of the charges** but meant to show if she was a kind of person to commit the allegations in the charges. The testimony is very prejudicial, playing off stereotypes people have about drug addicts.

But, the entire story about these prescriptions were lies, and the Prosecutors knew it all to be lies because the video evidence shows the Plaintiff working in a different store in New Jersey on October 2, 2012. Witnesses who claimed to tell the Plaintiff about people who looked high lied, because she wasn't there. The pharmacist filling the prescriptions was Steven Goloff. If there was anything wrong with those prescriptions, he would have to deal with it. Instead, they made up a story blaming the Plaintiff, and the prosecutors suppressed the video evidence that showed it all to be lies. The "other acts" Oxycodone and Opium testimony, does show what kind of a person the Plaintiff is: she is the kind of person the prosecutors had to knowingly lied about. (See Exh K- Affidavit of Lasher)

37. The Prosecution and the trial Court deceived the jury that the Controlled Substances Act or any federal law makes one pharmacist responsible for another pharmacist's actions by accusing the Plaintiff of forcing the prosecutors' witnesses to break laws by supervising them remotely via phone and cameras. However, there is a number of problems with this accusation.

First of all, there were no crimes committed at these pharmacies by the Plaintiff. That statement stands in stark contrast to the prosecution's and its witnesses fiction created at trial, but it remains true; no crimes were committed.

Secondly, there is video evidence, work schedule, time cards, and EZY passes evidence of the Plaintiff working at a pharmacy in New Jersey on all the dates that the alleged crimes took place in the Indictment (6/1/2012, 6/12/2012, 7/16/2012, 7/17/2012, 8/13/2012, 8/16/2012, and 8/27/2012), that clearly showed she was not remotely monitoring or supervising, nor directing employees in other locations to commit the alleged crime. This video recording was both suppressed and withheld and only came to the Plaintiff's possession in August 2017. The video recordings proved the Plaintiff's ACTUAL innocence; they showed the daily activity of the work flow in the pharmacies and that the Plaintiff abided by all pharmacy law and regulations in that **she properly hand/machine counted, labeled and stored, destroyed medications properly, and dispensed medications with valid prescriptions, all verified by doctors.**

Thirdly, there is no federal law describing how one pharmacist can be held responsible for another pharmacist's actions. The only applicable law that provide directions or oversights to pharmacists and their actions in pharmacies is the pharmacy law (PA27.12(b)(2)). PA 27.12(b)(2) is the governing pharmacy law for theses matters. The governing pharmacy law (PA27.12(b)(2) and the criminal statute 21 U.S.C. 321 (g)(1), 352 (a), 352(c), 353(b)(1), and 353(b)(4)(A), and 21 USC 331(a) and 333(a)(2) require for the accused to be present at the pharmacy at the time the specific prescriptions in question were filled. The Plaintiff was NOT on duty on the Indictment dates, as evidenced by the

video recordings, work schedule, time cards, and EZY passes. She can not be guilty of a crime she was not there to commit, and which she did not agree to commit, nor for an act that she did not condone. Because of potential biases and to avoid any shifting of blame, the pharmacy law eliminates any double standard or shifting of blame; each pharmacist is accountable for his actions and can NOT shift blame to someone else. It is the job of any pharmacist while on duty to ensure they themselves follow all laws, regulations, and policies; any misdeeds or mistakes are the responsibility of whoever made the misdeeds or mistakes. Further, any pharmacist on duty also serves as a "supervisor" of themselves and their technicians and is accountable for his shift. Thus it is impossible for her to "conspire with" or aid and abet because the governing laws do not hold her accountable for other employees' actions. These facts about the governing pharmacy law are common knowledge among pharmacists. That pharmacists are responsible for their own actions and cannot blame their conduct on anyone else, be they a pharmacist in charge, a supervising pharmacist, or even the actual pharmacy owner.

To summarize, Judge Buchwald usurped legislative power over the parts of the allegations in the charges that the Plaintiff directed others to misbrand drugs; she allowed self-confessed criminals to confess their own misdeeds and blame the Plaintiff for them, and **withheld physical Evidence that contradicted their testimony.** (See Exh K- Affidavit of Lasher)

38. The **Judge withheld the suppressed exculpatory video evidence**. Although the Plaintiff's counsel informally requested the video evidence before the trial, a formal request to the judge to subpoena this evidence was made on August 31, 2015, before sentencing. The Judge refused this request without giving a reason. Had the judge considered this evidence and pharmacy records, and granted the request, she would have known that it shows the ACTUAL innocence of the Plaintiff, and shown how the government misrepresented her actions on the dates of the indictment, and they would have seen the government's tampering of the exculpatory evidence. It specifically refutes three claim made by the government: 1) that she dispensed Oxycontin on October 2, 2012 by proving she wasn't there at that pharmacy on that day but in a New Jersey pharmacy; 2) it shows she performs her duties as a pharmacist conscientiously and not at all as the witnesses claimed; and 3) it completely refutes the idea that the Plaintiff was ever remotely monitoring the pharmacies and calling them to remotely supervise them directing them to commit crimes. This latter claim of holding the Plaintiff responsible for the misdeeds of others while she wasn't present has not basis under law, but the video evidence shows the ridiculous story that attempts to pass blame just isn't remotely true.

This **exculpatory, previously suppressed, evidence** could have exonerated her and is a clear violation of Brady as well as a violation of Plaintiff's 5th Amendment Right (Due Process):

B. The video evidence is superior so thoroughly and completely that **no jury could convict the Plaintiff**

C. The video recordings, work schedule, time cards, and EZY passes show she was not present on the alleged days of the criminal activity (6/1/2012, 6/12/2012, 7/16/2012, 7/17/2012, 8/13/2012, 8/16/2012, 8/27/2012, and 10/2/2012, and the lack of her presence on October 2, 2012 when oxycodone was dispensed to allegedly "unkempt" individuals.

D. **The prosecution and its witnesses claimed the Petitioner did not count pills, reused medications, improperly labeled and stored medications. However, the admittance of vastly superior video evidence will show that the Plaintiff follows rules and regulations of pharmacy law, properly handling pills and prescriptions, labeling and storing and destroying medications properly, and dispensing medications with valid prescriptions which were verified by doctors, all contradicting the prosecutors' witnesses sworn testimony**.

E. **The video recordings will further prove the drug "butalbital" NEVER existed in the pharmacies**.

The best evidence rule (Evidence SS424-documents contradicting testimony) rests on the fact that a document is a more reliable, complete, and a more accurate source of information as to its contents and meaning than anyone's description (See Exh K – Affidavit of Lena Lasher)

39. It is obvious that Judge Buchwald acted improperly over the entire course of these criminal proceedings by looking at the transcripts of all the events in these criminal proceedings and reading the law. We detail these events here to show to anyone reading how Judge Buchwald has shown herself to be too biased and too deeply invested in **her usurpation of power, to preside over this civil case. The Plaintiff's lawyers knew this when they requested her by name.**

40. **Judge Buchwald's betrayal of the law is a betrayal of hard-working conscientious health care professionals who are subject to wrongful prosecutions and convictions** from partial readings of the law by Judges and Prosecutors who choose to "go rogue" and ignore the law.

"The state may not, as a matter of substantive due process, regulate the professions by determining who may practice or continue to practice, a profession". Sedivy v. State ex rel. Stenberg, 567 N.W. 2D 784, 792 (Neb. App. 1997) end of substantive due process

C. Procedural Due Process

"Due process requires that a hearing before an impartial decision maker be provided at a meaningful time, and in a meaningful manner." Booker v. City of Saint Paul, 762 F.3d 730, 734 (8th Cir. 2014) (quoting Coleman v. Watt 40 F.3d 255, 260 (8th Cir. 1994)). "A plaintiff is entitled to due process only when a protected liberty or property interest is at stake." See Hopkins v. Saunders, 199 F.3d 968, 975 (8th Cir. 999).

Here, the Plaintiff has a protected property interest in her Nebraska pharmacy license. See Kloch v. Kohl, 545 F.3d 603, 607 (8th Cir. 2008) (recognizing that a protected property interest "may exist where a state has established a licensing system for regulation of professionals"); VanHorn v. Nebraska State Racing Com'n, 304 F. Supp.2d 1151, 1166 (D. Neb. 2004) ("finding veterinarian had due process-protected property interest in special license from state racing commission to treat racehorses under statute requiring commission to license every eligible applicant and regulations which did not impose special eligibility requirements for issuing license to practicing veterinarian").

The Plaintiff was denied procedural due process because the Defendants denied her a fair hearing, relied on the incomplete and demonstrably flawed investigation by its own investigator, Investigator Newman, and perjured testimonies, as well as uncritically following the steps of other state Board of pharmacies' discriminatory actions, to revoke her pharmacist licenses, instead of conducting its own investigation. Also, due to due process violation via fraud on the Court committed by the eight executive officials as well as the District Court, the Plaintiff is entitled to a civil action to protect her property interest. That property interest is her pharmacist license. All the other pharmacists who worked for the same Riccio's pharmacies but who happened to be white male pharmacists, working for the same Riccio's pharmacies performing all the same duties and all the same tasks that the Plaintiff performed for the same Riccio's pharmacies, were allowed to keep their pharmacist licenses intact as evidence in the Equal Protection Clause as detailed below. The Nebraska board, in

citing other state's actions in their reasoning and motivation, are reinforcing the discriminatory nature of those states actions by revoking the Plaintiff's actions and in denying a fair hearing to correct the perjuries used in their decision.

If Nebraska is going to rely, as their board states they do, on the actions of other states, then the full nature of those state's actions should be considered. For example, the prosecution's witnesses, pharmacists Steven Goloff and Daniel Geiger, who admitted to committing the "crimes" (guilty by admission), were allowed to keep their pharmacists' licenses active, in exchange for implicating the Plaintiff for "directing them to violate pharmacy laws, but this in itself is a violation of pharmacy law in that no pharmacist can be liable for other pharmacists' actions. In fact, the exculpatory suppressed video recordings showed the prosecution's witnesses lied under oath, in that it showed the Plaintiff was too busy working and NOT monitoring nor directing the prosecution's witnesses.

The Plaintiff was denied procedural due process because the Defendants denied her a fair hearing, relied on the incomplete and demonstrably flawed investigation by Pennsylvania Board of Pharmacy's own inspector, Inspector Thomas Bat, and perjured testimonies of, including but not limited to, its own investigator, Investigator Newman, as well as uncritically following the steps of other state Board of pharmacies' discriminatory actions, to revoke her pharmacist licenses, instead of conducting its own investigation. Also, due to due process violation via fraud on the Court committed by the eight executive officials as well as the District Court, the Plaintiff is entitled to a civil action to protect her property interest that is her pharmacist license.

Most importantly, as stated throughout this motion, this lawsuit is not to challenge her criminal conviction as the Defendants claim, but is to a hearing to why her license must be reinstated. Returning to Nebraska's reliance of other state's actions: her alleged "co-conspirator", Peter Riccio, was entitled to one. In fact, Peter Riccio, the OWNER of the pharmacies, the Plaintiff's "co-conspirator" was allowed a hearing which resulted in a five years suspension, while he pled guilty to more severe charges than those the Plaintiff was convicted wrongly of. This is also his second time being disciplined by the board as a result of his pleading guilty years ago to Medicare and Medicaid fraud. The Defendants are holding the Plaintiff to a completely different standard, if they are holding any "standard" at all. The defendants' action is also a violation of the equal protection clause because all the other pharmacists, who happened to be WHITE MALES, were not disciplined nor to the same extent (Peter Riccio) as the Plaintiff in spite of their being guilty by admission of worse crimes.

The license is a statement of credentials and qualifications, granted not by federal judges or prosecutors, but by licensing boards. They are independent from other bodies, even from those they are within with regard to their place within larger hierarchical bodies. This independence is in and of itself a check and balance against abuse by any other body or organization. While this case is not a place to litigate the Plaintiff's conviction, it is fair to ask and expect the board to assess the matters on their own. When Federal Prosecutors seek revocation of individual's professional licenses, which they are required to do in certain circumstances by law, they are not authorized to just revoke the licenses themselves or they most certainly would just do it themselves. It is only a recommendation where they give a very one sided version of their reasons for the recommendation and the licensing body is left to asses the veracity of their claims. That is what a FAIR hearing is for. By revoking the Plaintiff's license via perjured testimonies, including those of their own investigator, Investigator Newman, the defendant's shirk their responsibility and make themselves the pet parrot of individuals whom the Plaintiff can clearly and conclusively show: lied to juries to gain convictions against the Plaintiff, lied to Grand Juries to gain indictments against the Plaintiff, and usurped both Legislative and Administrative power from the day the original indictment was handed down straight through to today. This matter affects every licensed professional in the health care field in Nebraska and every other state.

D. The Plaintiff has stated a plausible Equal Protection Clause in that the Nebraska Board of Pharmacy discriminated against the Plaintiff.

Racial, national origin and sex discrimination:

> "The Equal Protection Clause of the Fourteenth Amendment requires that States treat similarly situated persons alike." Creason v. City of Washington, 435 F.3d 820, 823 (8th Cir. 2006). The Nebraska Board of Pharmacy's actions had both a discriminatory effect and was motivated by a discriminatory purpose. See United States v. Armstrong, 517 U.S. 456, 465 (1996) as stated below.

Because the Defendants followed the discriminatory actions of other pharmacy board to revoke the Plaintiff's licenses, the Defendants indirectly replicating the discrimination against the Plaintiff. As detailed below, the Nebraska Board of Pharmacy's actions had both a discriminatory effect and was motivated by a discriminatory purpose. In fact, two other pharmacists, white males, who testified to committing the "crime" the Plaintiff was accused of, nothing happened to them and further evidenced below:

> 1. in regard to the NJ Board of Pharmacy, the Plaintiff's license was revoked based on her race, national origin, and sex because other white male pharmacists, including but not limited to, Michael Della-Ventura and William Cantagallo, employed at the same Riccio's pharmacies (Towne Pharmacy, Hellertown Pharmacy, and Palmer Pharmacy & Much More) also dispensed the same "fulfillment prescriptions" in nature, which the prosecution alleged were invalid, were not punished by the New Jersey Board of Pharmacy. Further, even though there were evidence of 200 pills of Adderal (a Controlled Substance schedule II) and 2000 tablets of alprazalom (a controlled substance schedule IV) were missing under Mr. Della-Ventura's supervision as pharmacist in charge, clearly a pharmacy violation for failure to report the missing narcotics and controlled substances, was not reprimanded by the New Jersey Board of Pharmacy. This is discriminatory, a deprivation of plaintiff's civil rights, by treating the Plaintiff differently from similarly situated person, Della-Ventura and Cantaglo, who also hold a New Jersey pharmacist licenses and dispensed the same form of prescriptions as the Plaintiff did, were allowed to keep their New Jersey pharmacists' licenses active. (Sec. 1301.92 Illicit activities by Employees)
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> In fact, Peter Riccio, the OWNER of the pharmacies and the Plaintiff's alleged "co-conspirator", was allowed a hearing which resulted in a five years suspension because he plead guilty to worse crimes than those the Plaintiff was convicted of, and he had already been found guilty and disciplined by the board for crimes of medicaid and medicare fraud years earlier. The Plaintiff surrendered her license under duress and without a hearing via the Defendants' extortion and FRAUDULENT consent order. This is at best a double standard, if extortion can be considered to have a standard as the term is used here; but it is clearly a violation of the Equal Protection Clause because all the other pharmacists, who happened to be WHITE MALES, were not disciplined nor to the same extent as the Plaintiff, in spite of their admitted crimes being worse and at least in one case being an admitted repeat offender.
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> As evidenced in this motion, the Plaintiff was treated far more harshly than white males who admitted guilt in some cases to far greater crimes, including Peter Riccio.
>
> 2. In regard to the PA Bop, the prosecution's witnesses, pharmacists Steven Goloff and Daniel Geiger, who testified that they committed the "crime" (guilty by admission) were able to keep their pharmacist license active, in exchange for implicating the Plaintiff for remotely monitoring them and directing them to violate pharmacy laws. But this in itself is a violation of pharmacy law in that no pharmacist can be held liable for other pharmacists' actions. Also, the exculpatory suppressed video recordings showed the prosecution's witnesses lied under oath, in that it showed the Plaintiff was too busy working and NOT

monitoring nor directing the prosecution's witnesses. As mentioned above, Steven Goloff admitted at trial not only to committing the acts that were blamed on the Plaintiff, but he also admitted to stealing Oxycodone.

3. In this case, the Prosecution's actions had both a discriminatory effect and was motivated by a discriminatory purpose. See United States v. Armstrong, 517 U.S. 456, 465 (1996). Equal rights were violated in that the prosecutions, via discrimination, chose to prosecute the Plaintiff, an Asian female of Vietnamese descent, rather than the WHITE MALE pharmacists who admitted, under, oath, of committing the "crime", only to pass blame to the Plaintiff in spite of this being contrary to the laws governing licensed professionals in pharmacies. Steven Goloff also admitted to stealing oxycodone at trial. Peter Riccio pled guilty to worse crimes than the Plaintiff was found guilty of, and the Plaintiff still maintains her innocence is is still pursuing every avenue she can to overturn the conviction.

The Plaintiff, Lena Lasher, sincerely believes that she can justifiability rely on the United States Supreme Court case Haines v. Kerner 404 U.S. 519 (1972), which clearly states that "all Pro-Se litigants must be afforded the opportunity to present their evidence and that the Court should look to the substance of the complaint rather than form."

REASON FOR GRANTING THE WRIT

I. Not only that the decision of the Appellate Court is erroneous, but the national importance of having the Supreme Court decide the issue to prevent a miscarriage of justice.

The national importance of having the Supreme Court decide the question involved because if the Nebraska Board of Pharmacy is just a rubber stamp, this allows the federal court to conceal secret laws that no medical professional can hope to practice safely. The independence of the courts and the importance of matters being dealt with on their own, separate from any shadow cast on them by other courts is a matter of national importance. Without such independence, the courts become echo chambers and lose their real purpose. Without independence, wrongs are never alleviated and only compounded. Without independence the integrity of the courts is lost.

As this matter become public knowledge, it will be impossible for any medical professional to afford malpractice insurance and other such insurances to protect them from such capricious behaviors as the second circuit has engaged in. If a prosecutor and a court can make drugs controlled substances independently of the Attorney General and without doing so on the record and prior to arresting licensed self-confessed professionals, if the prosecutors and the court can protect their witnesses' crimes and allow them to shift blame for those self-confessed to whomever they wish without any evidence of any culpability, how can anyone practice in the medical professions? When one court and one set of prosecutors engages in this abuse of power, it is a tragedy; but when it is rubber stamped by other courts on matters related but fully separate from the initial abuse of power, it turns the justice system into a mob beating an innocent victim over and over. It, perhaps more important, renders the laws as written and passed by legislatures entirely irrelevant. It replaces the Legislature with a mob rule, but the mob is wearing robes. One set of prosecutors and one judge made up their own laws and legal standard, unveiling it to the public only at a trial two and a half years after the initial arrests. Every other court since has enforced not the laws of the land passed by Congress, but what ever their fellow judges created a jurisdiction for on their own. It is of national importance to address this matter, because these new

unchecked, usurped, powers of courts and their unification together behind those usurpation and their eschewing of independence must either be further codified for all to see or rejected.

II. Not only that the decision of the Appellate Court is erroneous, but the national importance of having the Supreme Court decide the issue to prevent a miscarriage of justice, which involve issues of Perjuries, ignoring all of the Plaintiff's evidence of her ACTUAL INNOCENCE because she is Vietnamese, **a Violation of the Fair Notice Act and the Equal Protection Clause**.

The District Court did NOT exclude the WHITE MALE PHARMACISTS AND TECHNICIANS who testified at the Plaintiff's trial that they committed the "crime" (guilty by admission) the Plaintiff was accused of, affirming the District Court's DISCRIMINATORY conduct against the Plaintiff, thus deprived the Plaintiff's of her civil rights. These procedures are compartmentalize to prevent extending a single miscarriage of justice beyond its scope, where the Southern District of New York and Second Circuit are handling criminal aspects of this matter , and this District Court is handling a separate aspect of this matter, because they are meant to be and independent check and balance preventing the abuse of power and the compounding of injustice.

Requiring the Defendant to overturn the conviction is merely a way of avoiding doing the work the court is required to do, and this is especially important when that conviction is based on usurpation of authorities not granted to the Court is in fact legislating from the bench. The usurpation in question are, including but not limited to:

a. Making Tramadol a control substance 21 (twenty-one) months before the attorney general made it a controlled substance.
b. Making Fioricet tablets a control substance which the attorney general never did, and where he only ever made Fioricet capsules a controlled substance from July 29, 2013 to September 16, 2013 when it was a new form of the product.
c. Establishing the idea as precedent that the control substance list is not a complete list and that there is no complete list of a federal control substances which violates both Title V and the Controlled Substances Act's own requirement for the controlling of drugs as controlled substances be done on the record.
d. The deletion of the definition of drug in the law so that prosecutors can treats a drug, renaming it, as if it was any one of its ingredient not as a drug unto itself under the law,
e. The deletion of the definition of "fixed combination drug" which further shows how a drug can not be reduced to any one of its component not scientifically and pharmacological nor even under the law itself,
f. The deletion of the governing pharmacy law as specifically prevent the shifting of blame that the prosecutors used and the federal judge allowed even though there is no federal statute that would allow such shifting of blame for self - confessed actions of one licensed professional somehow passed onto another licensed professional
g. The creation of an otherwise non existing standard for prescription standard called a bonafide face to face which does not exist in the law or anywhere else,
h. The creation of an otherwise non existing phrase "highly addictive pain meds" which does not exist in

the law or anywhere else.

The law requires this court to handle this matter in a different court, creating a check and balance on other courts. If this court is only to be a rubber stamp, then any notary can carry out this court action; it would not require legal power, authority or agent of a separate federal judge and a separate court if this is to be a rubber stamp. In this case, it is worse than just being a rubber stamp because it is further entrenching as legal precedent of usurpation of power that are central to this wrongful conviction in this matter. If the Federal Courts somehow think they:

a. Can call a drug by a different name in an indictment and at trial,

b. Can treat one drug based on an ingredient in spite of two definitions applicable here, of "Drug" and "Fixed Combination Drug, that specifically define the terms so that they both are legally defined specifically as not simply as their components but as their own legal entities with their own properties,

c. Usurping powers reserved only for the attorney general to make a drug is a control substance or

d. Usurping legislative powers by deleting the requirements that a making a controlled substance must be done on the record and instead only telling grand juries of their actions and only telling the arrested after their arrests,

e. Holding one licensed professional responsible for another licensed professional's self - confessed crimes with no evidence other than the assertion to shift blame, which is contrary to the only law governing the matter, (PA27.12(b)(2)), and in the absence of any federal or state law that supersedes or contradicts (PA27.12(b)(2))

f. Including but not limited to, the Defendants ignored all of the Plaintiff's evidence of her ACTUAL INNOCENCE because she is Vietnamese; yet, they did NOT exclude the WHITE MALE PHARMACISTS AND TECHNICIANS who testified at the Plaintiff's trial that they committed the "crime" (guilty by admission) the Plaintiff was accused of, affirming their DISCRIMINATORY conduct against the Plaintiff, thus deprived the Plaintiff's of her civil rights.

The aforementioned violates the Plaintiff her equal protection and due process rights. A fair hearing would give the Defendants, the District Court, and the United States Court of Appeals a chance to correct any error that may have been made as a result of any other false notions about the Plaintiff's actions.

CONCLUSION

As reflected by the entire record of this case, the NE BOP discriminated against the Plaintiff by revoking her license via lack of physical evidence and using fraud and perjured testimonies, including those of their investigator, Investigator Newman, to revoke her license and thus they do not warrant immunity. Because of the Nebraska Board of Pharmacy's outrageous conduct, revoking the Plaintiff's license via Investigator Newman's false testimonies, perjured testimonies, and rigged trial conducted by Judge Naomi Reice Buchwald, as well as uncritically following the steps of other state Board of pharmacies' discriminatory actions, instead of conducting its own investigation, the Plaintiff has no other remedy but to file a civil action. (See Continuation of Exh K - Affidavit of Lena Lasher)

In conclusion, the Plaintiff, a Vietnamese female, is entitled to keep her pharmacist license active, **as other white male pharmacists** who:

1. worked in the same pharmacies as the Plaintiff,
2. dispensed the same prescriptions as the Plaintiff, and
3. were able to keep their pharmacist license active;

The petition for a writ of certiorari should be granted.

Respectfully submitted

Lena Lasher, Pro-se lenalasher November 25, 2019