CASE NO: 19-7015

IN THE SUPREME COURT OF THE UNITED STATES

IN RE: *MICHAEL F. HARRIS (petitioner)*

MOTION FOR LEAVE TO FILE PETITION

FOR WRIT OF MANDAMUS

UNDER 28 U.S.C. § 1651(a)

MR. MICHAEL F. HARRIS
FILING PRO SE
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P.O. BOX 2000
BRUCETON MILLS, WEST VIRGINIA 26525
INMATE REGISTRATION: # *81116-083*

QUESTION(S) PRESENTED

Malicious and vindictive prosecution threatens the very foundation of the criminal justice system. Wasn't the judicial system built on fairness; the right to a fair trial; the right to a trial of one's peers; the right to be assumed innocent until proven guilty? It appears the majority decision in the U.S. Court of Appeals, Fourth Circuit, overlooked the far-reaching impact of this malicious prosecution by state actors, and more importantly the devastating deprivation of liberty it played in this petitioner's trial.

It is for this sound reason in isolation the petitioner appears before this Court, the one tribunal vested with the judicial power of the United States, noting with certitude adequate relief cannot be obtained in any other form or from any other court on the subject matter heretofore.

Since his sentencing on July 12, 2013 to nine(9) years in federal custodial detention, he has filed no less than 21 motions and petitions for reargument of his maliciously prosecuted judicial contest. His six-day jury trial was in part orchestrated by a vindictive and biased federal judge who deplorably basks in the tainted notoriety of being branded with the moniker, "Hang-em High Henry". The question must persist, to what degree does such a "label" on a federal judge add to the integrity of this country's administration of justice? Granting a judge judicial powers, who openly seeks celebrity status with lives at stake only adds insult to the injury this chancellor has unnecessarily produced, in order to keep his self-chosen "bad reputation" intact.

This case admittedly satisfies the legal demand for malicious prosecution under both state and federal law. The petitioner was subjected to judicial proceedings, for which there was no probable cause. His accusers instituted or continued the proceedings maliciously; the proceedings were terminated in the accusors' favor, and there was an injury to the petitioner.

It's in the spirit of this understanding that the petitioner profounds these two questions, both with direct constitutional implications.

(1). Whether, in fairness to judicial proceedings, can an attorney of record brazenly ignore his client's instructions during the Direct Appeal process and not violate his federal constitutional right of effective assistance of counsel?

It appears the U.S. Court of Appeals, Fourth Circuit, has interpreted important facts with federal law that calls for an exercise of this court's supervisory power. With that, the petitioner proceeds in presentment of his second question.

(2). Whether a federal judge can use his position of authoritative legal power to control a malicious prosecution to support his own personal gain as supported by the irrefutable fact that FBI witness tampering was allowed and the "honorable" judge restrained a fatally defective indictment, magnifying fraud upon his own court?

RELIEF SOUGHT WITH COPY OF FINAL JUDGMENT IN APPENDIX B

Petitioner respectfully requests this Court to issue a writ of mandamus directing Clerk of the Supreme Court of the United States to file and docket this petition for writ of mandamus tendered heretofore for filing.

Petitioner further requests this Court to vacate the lower court's original judgment in case 3:12-cr-170-HEH in the United States District Court, Eastern District of Virginia. This remains pursuant to Rule 20.3 pertaining to petitions for writs of prohibition and mandamus.

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APPENDIX B: Case Decision and Section 2255 Decision: U.S. District Court.

APPENDIX C: Rehearing Denials. U.S. Court of Appeals, Fourth Circuit.

APPENDIX D: Patent Issuances. FBI Witness Tampering Affidavits.

LIST OF PARTIES TO THE PROCEEDING IN LOWER COURTS

Office of the Clerk

U.S. Court of Appeals, Fourth Circuit

1100 E. Main Street (#501)

Richmond, VA 23219

Office of the Clerk

U.S. District Court

Eastern District of Virginia

701 E. Broad Street (#3000)

Richmond, VA 23219

Michael R. Gill, Esq.

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Washington, D.C. 20530

JURISDICTION

This court has jurisdiction under 28 U.S.C. 1651(a) to issue an extraordinary writ compelling the clerk of this court to file the mandamus petition being tendered heretofore. As stipulated in Rule 20.3 of the Rules of the supreme court, this petition states the names of every person/entity against whom relief is sought and sets out with particularity why the relief is sought and not available in any other court. Copies of final judgments with respect to the writ are appended herein together with other documentation essential to understanding the petition.

The petitioner seeks this court's order to the U.S. Court of Appeals, Fourth Circuit and the U.S. District Court, Eastern District of Virginia, to correct its previous illegal behavior in order to comply with the law. This mandamus will correct defects of justice. In jurisprudence, case law is created by the actions of bureaucrats, administrators and judges. If a court judgment or action is a mistake as is the case in the instant action, the legitimacy of the entire process is seriously underminded.

In exactness, the type of mandamus to be issued is left to the discretion of this court, so long as it provides the stated relief being sought under this writ of mandate, and so long as in standard practice it remains j

TABLE OF AUTHORITIES CITED

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STATEMENT OF THE CASE

The petitioner was charged in an eight(8) count indictment. Counts 1-4 alleged securities fraud violations and were dismissed instantly for lack of venue. For counts 5-8 he was found guilty by jury, although the validity of Count 8 is irrefutably a fatally defective indictment ignored in the appeal process by the courts.

On March 4, 2013, following a six(6) day jury trial, the petitioner was found guilty of wire and mail fraud, in violation of 18 U.S.C. 1341 and 1343, respectively.

He was sentenced on July 12, 2013 to 108 months in federal prison. As of June 4, 2019, he has completed 75 months of that disciplinary punishment as a model prisoner, serving his custodial detention at a federal prison camp in West Virginia. His projected release date is January 3, 2021.

REASONS FOR GRANTING THE PETITION

THE CASE BEING BROUGHT before this Court of last resort began as an indictment in 2013, alleging the petitioner committed securities, wire and mail fraud. Instantly, the securities charges were dismissed, while the wire and mail fraud charges were decided in trial, noting beyond any possible argument Count 8 was inadmissible because it irrefutably exceeded the statute of limitations. Boldly, against all the evidence in presentment, this body of facts was suppressed by federal judge "Hang-em High Henry" Hudson, a judge far more interested in his celebrity status than serving justice.

Let it be noted with emphasis, the petitioner never yielded to what he still maintains was a malicious prosecution, orchestrated by a judge whose agenda was central to his own personal greed. The petitioner refused to even consider the fabricated plea agreements that were presented to him, offering him a reduced sentence if he pled guilty to something he never did. The intent was clear, expedite the process of injustice.

Question Number One before this Court is, whether in fairness to judicial proceedings, can an attorney of record brazenly ignore his client's instruction during the direct appeal process and not violate his federal constitutional right to effective assistance of counsel?

Clearly, for a case to be branded "malicious" and vindictive, the court in some way must be part and parcel of the illegal proceedings. This highest court would be naïve and blindfolded if it truly believed that all judges are honest and focused on upholding the integrity of the "arm of the law".

For the "umpteeth" time, this petitioner accuses the "HonorableHang-em High Henry Hudson" of being a biased and prejudiced opportunist concealing his ulterior dishonorable motives under his "black robe".

To commence, however, this highest court is first directed to the first question in presentment.

The petitioner has been explicitly denied his constitutional right, holding that his attorney DAVID B. HARGETT, failed to complete his due process of law via the Direct Appeal process, thereby severely prejudicing him.

Hargett's representation was so deficient it constituted denial of his federal constitutional right to effective assistance of counsel. The

due process clause of the Fourteenth Amendment guaranteed MICHAEL F. HARRIS the effective assistance of counsel on a first appeal as of right. Nominal representation on such an appeal does not suffice to render the proceeding constitutionally adequate.

The purpose of a first appeal is to determine whether the defendant has been lawfully convicted. In the spirit of this mode of expression, this was Harris' opportuity to present in toto his claims fairly in the context of the appellate process. But because counsel failed to sequentially and properly file the statement of appeal required by rules of appellate procedure, he contends his appeal was denied with the honorable appellate court not being fully briefed. This act of negligence deprived him of the right to effective assistance of counsel on appeal guaranteed by the Due Process Clause of the Fourteenth Amendment. Harris maintains the court's dismissal, not being fully briefed, constitutes ineffective assistance of counsel and violates the Due Process Clause of the Fourteenth Amendment. (Griffin v Illinois, 351 US 12,20, 100 L.Ed 891, 76 C.St 585, 55 ALR2d 1055 - 1956).

A statement of fact to the aforesaid follows. After four continuances, Hargett, on January 6, 2014, filed the petitioner's "Opening Brief of Appellant", with the U.S. Court of Appeals for the Fourth Circuit.

To be noted, his assault was contraire to the petitioner's advocacy of what he considered to be germane and consequential. A 20+ page document was provided to Hargett manifesting critical issues from the record. Not one word was used by counsel.

On February 20, 2014, the government filed its "Brief of the United States". Again, the petitioner prepared a 20+ page document with his own counterargument to the government's traverse.

Hargett then became unresponsive as Harris waited to receive a copy of his "Reply Brief", as requested by Harris via his due process of law.

In never came. Thus, his right to initial appeal became nothing more than a "meaningless ritual". And, while Hargett need not advance every argument, regardless of merit urged by Harris, he was compelled to assist in preparing and submitting a brief to the appellate court that displayed a role of an active advocate, rather than a mere friend of the court assisting in a detached evaluation of the appellant's claim.

In the instant action, Harris went through the government's narrative in traverse, word by word. With forethought, he compiled 20+ pages of counterargument. (Swenson v Bosler, 386 US 258, 18 L.Ed 2d 33, 87 S.Ct. 996 - 1967) (Anders v California, 386 US 748, 18 L.Ed 501, 87 S.Ct. 1402 - 1967).

Harris' liberty depended on his ability to present his case in toto in the face of "the intricacies of the law and the advocacy of the public prosecutor".Yet, Hargett took it upon himself to decide not to file a "Reply Brief". Optional or not, he was compelled to share this decision with Harris.

On June 27, 2014, the U.S. Court of Appeals for the Fourth Circuit, clearly not fully briefed due to counsel's negligence, decided the case at bar, en banc, in an unpublished opinion stating in summation, "For the reasons stated, we affirm Appellant's convictions and sentence."

With suspicion, the petitioner attempted to reach Hargett for clarification as to why a "Reply Brief" was not filed, and why he never acknowledged receipt of the 20+ pages of essential rebuttal subject matter in answer to the government's porous answer.

It was not until August 4, 2014, that the petitioner received a letter from Hargett in response to his question, as to why he failed to file a "Reply Brief" without notifying Harris. The answer reads, "To answer your other questions, I did not file a Reply Brief because I did not feel it was necessary...I previously sent you the certiorari status form and the mandate from the Fourth Circuit Court of Appeals. This concludes my representation..." This retained attorney took it upon himself not to file a reply, giving the petitioner no advance warning or

discussion on the subject matter.

Justice was not served and the petitioner was prejudiced with transgression of his Sixth Amendment constitutional right, which states in part, "In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial and impartial jury of the state...and to have the assistance of counsel for his defense."

It remains clear that courts recognize with certitude the importance of the direct appeal in the due process of law. And, courts are quick to countercharge when it is determined counsel was negligent or ineffective in not anticipating a defendant's constitutional rights in this area.

In "Weeks", the court held an evidentiary hearing when it determined the defendant's trial counsel was ineffective for not filing a direct appeal. The court "entered an amended judgment of conviction to restore his right to appeal his conviction."(U.S. v Weeks, 653 F.3d CP10 - 2011).

In the instant action, while it took four continuances in delay, Hargett indeed filed a direct appeal but never completed the process to where the appellate court was properly and fully briefed. Further, Hargett attempted to charge Harris an additional $15,000 to file a Writ of Certiorari.

In regard to never filing a "Reply Brief", based on the presumptuous reason, "I did not feel it

was necessary" is unconscionable. Counsel clearly failed to meet and confer with Harris in a meaningful manner.

Harris requests his Direct Appeal be invalidated because this court was not fully briefed when it "affirmed" the petitioner's conviction and sentence without any agitation.

In the case at bar, Harris understood his retained counsel was filing a direct appeal. That effort gave rise to the entire judicial process, not a portion of it because, "I did not feel it was necessary to file a Reply Brief".

This action must be reviewed for "plain error" which occurs "when there is (1) error, (2) that is plain, which (3) affects the defendant's substantial rights, and which (4) seriously affects the fairness, integrity or public reputation of judicial proceedings." (United States v Landeros-Lopez, 1263 - 10th Cir - 2010)

An error is "plain" if it is clear or obvious under current, well-settled law (United States v Olano, 734, 113 S.Ct. 1770, 123 L.Ed 2d 508 - 1993) (United States v Edgar, 871 - 10th Cir - 2003).

Fairly, a higher court must "apply the plain error rule less rigidly when reviewing a potential constitutional error, such as counsel ineffectively depriving a defendant with total disregard of his constitutional right by meeting

only portions of the direct appeal process. (United States v Vidal, 1118 - 10th Cir - 2009) (United States v Vonn, 59, 122 S.Ct. 1043, 152 L.Ed 2d 90 - 2002).

While the "plain error" test poses a high hurdle for the petitioner, it is obvious in the instant action, Harris' counsel clearly did not adhere to the complete procedures of a Direct Appeal filing. It is not enigmatic, even after multiple readings to determine that Hargett did not adhere to the rules, as he failed to confer or advise his client, and therefore violated Sixth Amendment constitutional rights.

A fortiori, knowing this appellate court is not fully briefed, because Hargett did not feel it was necessary to file a "Reply Brief" to the government's traverse, or that even though Harris provided 20+ pages of collateral attack for his perusal in that reply, Hargett insists on an additional $15,000 in fees.

Further, it has strict requirements for cases in consideration. How absurd is it to tell your client he doesn't deem it necessary to file a "Reply Brief", but for $15,000 he will file a Writ of Certiorari to a Supreme Court.

His failure to provide the stated reply must be presumed prejudicial as that void intruded on the affect of this court's deliberations in it's ultimate decision.

Harris presents a genuine allegation against his appellate attorney regarding his Direct Appeal, that single starting point of the appeal process if not done properly violates the continuance of his entire due process of law as everything thereafter proceeds under false pretense and misdeed.

Notably, Hargett never discussed "his decision" not to file a "Reply Brief". It also raised arguments about his demand for $15,000 to proceed with the filing of a Writ of Certiorari. Hargett failed to admonish Harris in any meaningful way about his options.

Direct Appeal is not like trial because it concerns only questions of law and not questions of fact. Therefore, an appeal must be based upon matters which are in the record of the district court proceedings. By Hargett failing to submit a "Reply Brief" he deprived Harris of a lucrative counterargument against the government's traverse, surely an entitlement by constitutional right, that Harris maintained.

Yet, Hargett doesn't allow Harris the opportunity to decide the matter. If Hargett felt there were questions outside the district court's record, surely he knew he could have requested, by way of motion, to expand the record to include new evidence.

It is well settled in criminal cases, the right to appeal is protected by the Fifth Amendment's

Due Process Clause to the U.S. Constitution (Smith v Robbins, 528 US 259, 286, 120 S.Ct. 746, 765 - 2000).

It is important thatthis right not be confiscated by mistakes of mere form. In a number of decided cases, it has been held that so long as the function of notice is met by the filing of a paper, indicating an intention to appeal, the substance of the rules has been completed (Cobb v Lewis, 488 F.2d, 41 - 5th Cir - 1974) (Holley v Capps, 488 F.2d, 1366 - 5th Cir - 1972).

While Rule 3(a)(2) of the Rules of Appellate Procedure in "Appeal as of Right..." states in part, "An appellant's failure to take any step other than the timely filing of a notice of appeal does not affect the validating of the appeal,but is ground only for the court of Appeals to act as it considers appropriate, including dismissing the appeal."

In the instant action, this court in supplement, is reminded Hargett never conferred with Harris in deciding on his own, not to file a "Reply Brief", thereby violating Harris' Sixth Amendment to the Constitution with naked ineffectiveness and prejudice disallowing the court to be fully briefed.

While ineffectiveness of counsel is occasionally veiled with declarations that counsel's action was "tactical strategy", in the instant action, that recognizable issue is of a constitutional deprivation. Hargett was obligated to disclose

his intentions to his client. This, he failed to do and the result is prejudicial in violation of Harris' Sixth Amendement constitutional right.

Harris has the right to effective assistance of counsel on direct appeal guaranteed by the Sixth Amendment. (Coppedge v United States 369 US 438, 441 - 1962). This right is closely related to "the services of a lawyer for every layman is necessary on appeal to present in a form suitable for appellate consideration on the merits". (Evitts v Lucey, 469 US 387, 93 - 1985).

It is settled, the interests of any defendant is to be afforded a full and fair opportunity to litigate. The record is clear, Harris has contested his guilt from the very beginning. He pled not guilty and was convicted by a jury on Counts 5 through 8 of his indictment.

At sentencing, he continued his insistence that he was not guilty. At every stage of these criminal proceedings, Harris has pursued known viable and available defense strategies. During each stage of these proceedings, he sought his release from the restraints that burden his liberty.

The government has countered, first persuading the district court that relief should be denied, then persuading the appellate court to reaffirm the district court's decision.

However, the contention is now clear the appellate court was not properly informed to reach favorable

entitlement in conclusive decision.
Harris presented Hargett with 20+ pages of rebuttal that was simply denied any consideration.

In this case, it was Harris' innate right to seek relief through appeal. Hargett failed to comply with his duties and responsibilities in denial of that right caused by chance, oversight, inadvertence and unexcusable neglect.

In appeal, it is important that the defendant receive justice, but equally important that he believes that he received justice. (Pfitzer v Lord, 456 F.2d 532 - 8th Cir - 1972).

In this same vein, the Supreme Court adheres to the principle that "justice must satisfy the appearance of justice. (Levine v United States 362 US 610 - 1960 - citing Offutt v United States 348 US 11,14 - 1954).

For all of the reasons set forth above and continued in this pleading, Harris prays and moves this court grant him relief mandated by law.

"An elementary and fundamental requirement of due process, in any proceeding which is to be adjudicated in finality must be reasonably calculated under all the circumstances to apprise interested parties of the pendency of the action, and afford them an opportunity to present their objection...the notice must be of such nature as reasonable to convey the required information." (Mullane v Central Hanover Bank & Trust Co., 339 US 306, 314, 70 S.Ct. 652 - 657 - 1950).

Harris was prejudicially damaged by the improprieties of Hargett on his clear-cut violation of his constitutional right.

A first appeal as of right is not adjudicated in accord with due process of law if the appellant does not have the effective assistance of an attorney, and this must entail the "entire" Direct Appeal process.

This statement of fact and law is hardly novel. In short, the promise of "Douglas" that a criminal defendant has a right to counsel on appeal, like the promise of "Gideon" that a criminal defendant has a right to counsel at trial would be a futile gesture unless it comprehended the right to the effective assistance of counsel (Evitts v Lucey, 469 U.S. 392, 83 L.Ed 2d 821, 105 S.Ct. 830 – 1985).

The right to counsel is "required in the hiatus between the termination of trial and the beginning of an appeal in order that a defendant know that he has the right to appeal, how to initiate an appeal, and whether an appeal is indicated.

While attorney Hargett did file the appeal as instructed by the petitioner, he failed to complete the entire process as insisted upon by his client. The U.S. Court of Appeals was consequently never fully briefed when it denied the appeal. (Baker v Kaiser, 929 F.2d 1495, CA10 – 1991).

Subsequently, the petitioner was denied his constitutional right to effective assistance of counsel on appeal because his attorney failed to correctly complete the process at the petitioner's insistence.

The petitioner has established prejudice because he could have been granted relief on his Direct Appeal if "all his points of appeal" had implicitly been reviewed by the U.S. Court of Appeals, Fourth Circuit. (Bell v Lockhardt, 795 F.2d 655 – CA8 – 1986).

The petitioner distinctly asked attorney Hargett to file a "reply brief", providing him with 20+ pages in support of same.

"If the defendant told his lawyer to file a reply brief following initial response in denial, and the lawyer dropped the ball, then the defendant has been deprived, not of effective assistance of counsel, but of any assistance of counsel on appeal." Abandonment is a per se violation of the Sixth Amendment. (Casellanos v United States 26 F.3d at 718, original, id at 720).

The petitioner maintains his Sixth Amendment constitutional right has been trespassed upon, and this case must be remanded to the lower court for further proceedings as may be appropriate under the circumstances and consistent with this opinion.

THE STRICKLAND STANDARD

The Strickland Standard is well recognized and has been an integral part of the judicial system since 1984.

(Strickland v Washington, 466 U.S., 668 - 1984). It has become the single attribute to set the minimum standard of lawyer competence in the representation of a defendant.

Two conditions remain essential for a defendant to show his lawyer's representation was constitutionally sub-standard. First, the lawyer's performance must have been outside the broad range of professionally acceptable assistance. It's labeled the "performance prong".

Second, there must be a reasonable probability that but for the attorney's unprofessional errors, the result of the proceeding would have been different. It's labeled the "prejudice prong".

THE SECOND IMPORTANT QUESTION OF FEDERAL LAW

The petitioner now brings to light his second contention that the U.S. Court of Appeals, Fourth Circuit, by its own admission, in its Order of Judgment, affirming the judgments of the district court in the petitioner's Direct Appeal, has crystallized with tangible proof that he has experienced a "malicious" prosecution and his constitutional rights have been violated. Any other conclusion by the statements of fact and law herein, can only cause grave concern for the integrity of this judiciary. Laws must apply to everyone, not just those accused in breach thereof.

The second question for this highest court to rule upon is even more decisive in importance than the first, because it involves a federal judge, whose self-acclaimed "bad reputation" persists as his "badge of courage". The question is whether a federal judge can use his position of authoritative legal power to control a malicious prosecution to support his own personal gain as supported by the irrefutable fact that FBI witness tampering was allowed and the "Honorable" judge restrained a fatally defective indictment, magnifying fraud upon his own court?

In further support, the law of post-deprivation remedy applies in this instance. The important aspect of due process is having the right to be heard. Otherwise, Harris will be deprived of his liberty interest. In the case at bar, Harris maintains he filed his § 2255. His judge "shelved" it for more than a year, only responding after a writ of mandamus was sent to the appellate court. Quickly thereafter, it was denied with Judge Hudson ignoring key grounds,

With all due respect preserved for the Honorable Henry E. Hudson, Harris insists, as he has done from the start of this miscarriage of justice, Judge Hudson is biased, and prejudicial toward him, based on Harris' allegation that Judge Hudson holds a persistent conflict of interest in this case, seemingly for personal financial gain.

Harris held no motive to attract disputed attention toward Judge Hudson, who was respectfully asked to recuse himself from this case in a motion filed on November 6, 2014, conjoined by an "Affidavit of Fact". No less than five(5) reasons were cited, not the least of which was he allowed FBI witness tampering, a major allegation by anyone's standards. If Judge Hudson was innocent of the allegations, wouldn't he be the first one to call an evidentiary hearing to clear his name. Mysteriously, he didn't do that, nor did he recuse himself from the case.

Clearly, this is supported by his complete avoidance of the subject in his inconsequential denial of Harris' § 2255.

This court is further reminded it took Judge Hudson over one year to adjudicate Harris' § 2255 and his remarks in refusing to recuse himself are self-explanatory, "...the court harbors no bias against Harris nor does he demonstrate any circumstances where the impartiality of the undersigned might be reasonably questioned..." (ECF # 141). One need only to read Harris' motion to once again see Judge Hudson has a tendency to avoid important issues with "smoke shoveling".

Never to forget, the District Court literally repressed this § 2255 for more than a year, with the government never answering in timely fashion, and then admitting on the record that it was in contempt of court, for missing a court deadline through inexcusable neglect.

Taking over a year to adjudicate Harris' § 2255 tells all about the Honorable Henry E. Hudson, a man with a purpose to be sure. While no reasonable juror or fact finder could possibly argue this case is a complete miscarriage of justice, Harris has made the mistake of collaterally attacking a federal district judge to prove justice was never served in his legal proceeding. This attack went no where as the system insulates and protects its own, like with immunity. If a judge is so objective and neutral in his decisions, why does he need it? Harris holds no procedural vehicle to bring his claims to the forefront for proper adjudication. Judge Hudson, in a 12 month delay alone, has not only violated the petitioner's "liberty interest", he has suppressed issues that simply cannot go unheard, since they challenge the integrity of the entire judical process.

The circumstances in the instant action are far more compelling and extraordinary. The petitioner's judge, Henry E. Hudson, not only held this conflict of interest in this case, he superficially denied and/or ignored not only the § 2255 but six other timely filed motions as well. In other words, it took the filing of a writ of mandamus to "motivate" the Honorable Henry E. Hudson to adjudicate seven filings all at once with marginal denials. See ECF # 151.

The one year delay in Judge Hudson's attempt at "unbiased" adjudgmnent of Harris' motions clearly deprived him of any sound reasoning as to how he might continue in his appeal, as part of his due process rights. (Storin v Markley, 345 F.2d 473 - 7th Cir - 1963).

Furthermore, there are only two limited circumstances by which Harris could proceed with a second or successive § 2255 filing. A second or successive § 2255 is not permitted when SCOTUS reinterprets the meaning of a statute under which a defendant had been convicted so as to render him innocent of the facts.

While substantive criminal law rulings by the Supreme Court, such as this, are retroactively applicable on collateral attack, and therefore could support first § 2255 motions, so long as the motions are timely filed, they do not come within the two narrow grounds for receiving permission to file a second motion. Under these circumstances, courts have held that § 2255 is inadequate or ineffective and have permitted defendants to challenge their underlying conviction through habeas petitions. (Triestman v US, 124 F.3d 361 2d Cir - 1997)

Count 8 of the indictment must be removed since it survived, with added deception by the government, beyond the statute of limitations.

The Honorable Henry E. Hudson simply ignored, not denied, the statement of facts heretofore in evidence that prove Count 8 of the petitioner's eight count indictment is inadmissible and must be removed. Count 8 was deceptively constructed by an over-zealous prosecutor to dupe a grand jury into formally charging Harris with the commission of a crime, noting as well that the statute of limitations had expired satisfying 18 U.S.C. § 3282. In either direction, Count 8 is inadmissible and must be removed.

Count 8 averred a single mail fraud violation in November 2010. On three occasions, Harris requested the Bill of Particulars from the District Court to prove Count 8 was misplaced. Each time he was ignored by Judge Hudson void

any explanation in sound reasoning. This court is reminded four of the eight counts of this indictment have already been removed as inadmissible, Count 8 is no different, only the reasoning remains a differential.

Convincingly, the Bill of Particulars would have proven Count 8 of the indictment is fatally defective, as a grand jury had to be duped into believing its false interpretation. This single count, naming one alleged victim attributed to Harris' conviction for mail fraud in violation of 18 U.S.C. § 1343, that being law enforcement officer, NICKI GENTRY. On October 3, 2005, she invested $5,000 in M.F. Harris Research, Inc.

Originally, Harris was indicted on eight counts. Those first four were dismissed, his conviction and sentence of 108 months were then predicated on counts 5-8. With the Bill of Particulars, Harris would have easily proven Count 8 for mail fraud was non-existent. On three occasions he motioned the court for that discovery. First, in preparation of his § 2255, second in the content of the § 2255, and third, as a motion in isolation thereafter.

The court is required to construe pro se pleadings liberally. Such pleadings are held to a less stringent standard than those drafted by attorneys. (Gordon v Leeke, 54 F.2d,1147, 1151 - 4th Cir - 1978).

Judge Hudson ignored, not denied, all three requests.

Harris is fully aware that granting a request for the Bill of Particulars is at the discretion of the District Court. His only concern was showing the intent of Count 8, like Counts 1-4, already dismissed, was no different, inadmissible. Judge Hudson abused his discretion by simply ignoring all three requests. If the Bill of Particulars could provide the necessary information, then why should the court not cooperate? (United States v Colson, 662 F.2d, 1389, 1391, 9 Fed R.Evid. Serv 728 - 11th Cir - 1981). When Judge Hudson was asked to recuse himself from this case, he was adamant in clarification that he held no bias or prejudice toward the petitioner . a statement proven by the record to be light years away from the truth.

It remains settled law that "when an indictment fails to set forth specific facts in support of the requisite elements of the charged offense, and the information is essential to the defense, failure to grant a Bill of Particulars may constitute reversible error". (United States v Cole, 755 F.2d 340, 37 - 5th Cir - 1978).

Absent the Bill of Particulars, the petitioner proceeds in argument to convince this court that Count 8 of the indictment, deductible by the record, statements of fact and matter of law, must be removed.

On October 3, 2005 Niki Gentry invested $5,000 in M.F. Harris, Research Inc. On November 1, 2010, a letter was mailed inviting her to a stockholder annual meeting of M.F. Harris Research, Inc. As a 2005 investor and

shareholder, the letter in 2010 was clearly inviting her to the meeting as stated. This is mandated by corporate law, shareholders are invited to annual meetings. Harris had mailed invitations to all the shareholders in November 2010. The government disagreed and maintained the letter in 2010 was a direct investment solicitation letter, thereby qualifying as mail fraud, in violation of 18 U.S.C. § 1343. It attempted to support its argument with the "Beasley" Court, whereby a letter was sent to a shareholder three months after an initial investment was made. The letter discussed the operation of the venture in general terms and contained representations as to the success of the business. It also contained some items of general information with regard to a reorganization of the corporation. The "Beasley" letter was referred to as a "lulling letter" in furtherance of the general plan or scheme of the criminal offense. The record also discloses it was mailed during the course of the solicitation of raising investment dollars by the defendant. (Beasley v United States, 327 F.2d, 566 - 10th Cir).

In the instant action, however, Nicki Gentry made her investment in M.F.Harris Research, Inc. on October 3, 2005, as in evidence on the record. In admission, Prosecutor MICHAEL GILL stated, "This was a stock sale to Nicki Gentry, who is the victim alleged in Count 8. In repetition, the record discloses her actual investment of $5,000 was made on October 3, 2005. The government errs when it attempts to state she received a direct investment solicitation letter mailed on November 1, 2010. Because she invested in 2005, she clearly was a shareholder, and the letter she received in November of 2010 was sent to all M.F. Harris Research, Inc. stockholders. This was an annual shareholder meeting, nothing else. For the government to attempt to compare

this to an alleged lulling letter from the "Beasley" court is nothing but an attempt at a fabrication of evidence.

To prove Count 8 (mail fraud) integral to the eight count indictment against the petitioner, if fatally defective, Harris directs this forum of justice to its contents.

Before so doing, however, the court is reminded as matter of law, that NICKI GENTRY, the singular alleged victim named in Count 8, became a common-stock holder to share in the growth of M.F. Harris Research, Inc. on October 3, 2005, when she invested $5,000. This gave her the right to exercise her part ownership in the company by participating in and voting at annual meetings. "Every year, before the annual meeting, you will get in the mail a proxy form. If you are not going to the meeting you can sign the form, giving your proxy to an official of the company to vote your stock as you direct at the meeting. ("You and the Law" at #479, p.568).

On November 1, 2010, this letter was mailed to ALL shareholders of the company announcing the annual shareholder annual meeting would be held on November 20, 2010 in McLean, Virginia. It is noted with certitude NICKI GENTRY was not the only stockholder to receive this announcement in the mail, yet she appears as the only one named in Count 8.

Sufficiency of an indictment cannot be challenged if the actual words of the indictment fully, directly and expressly, void uncertainty or ambiguity, set forth all the elements necessary to constitute the offense intended to be punished (United States v Carll, 105 U.S., 611, 612, 26 L.Ed, 1135 - 1882).

"Undoubtedly, the language of the statute may be used in the general description of an offense, but it must be accompanied with such a statement of the facts and circumstances as well inform the accused of the specific offense, coming under the general description with which he is charged." (United States v Hess, 124 U.S. 483, 487, 88 S.Ct., 571, 31 L.Ed 516 - 1888).

"An indictment must be specific in its charges and necessary allegations cannot be left to inference (Williams v United States, 265 F.2d, 214, 218 - 9th Cir - 1959).

Moreover, "...an indictment must do more than simply repeat the language of the criminal statute." (Russell v United States, 369 U.S. 749, 764 - 1962). At the same time, an indictment should be read in its entirety, construed according to common sense and interpreted to include facts which are necessarily implied. (United States v Givens, 265 F.2d, 214, 218 - 9th Cir - 1959).

The aforesaid can be no clearer and with that preamble, the exact wording of Count 8 speaks for itself. "On or about November 1, 2010...Michael F. Harris...did knowingly cause to be placed in an authorized depository for mail matter to be sent and delivered...an invitation to MFH shareholder N.G. (Nicki Gentry) her attendance at an annual shareholder meeting in Mcean, Virginia." Nothing more need be said as being any plainer, as this indeed was the message of the letter that went through the U.S.Postal Service to reach not just Nicki Gentry but all the shareholders. Here is where the indictment should have stopped, if indeed this was a crime, which it surely was not. The creative government, however, persisted to

"interpret" the letter. It improvised with, "Harris held this meeting with the intent to continue the scheme to defraud (pure speculation)...to mislead N.G and other investors (none named in Count 8)...into believing MFH owned the patent on the MFH treatment...all in violation of Title 18, United States Code, Section 1341".

At the time of this annual shareholders meeting, this patent was issued as the shareholders had been constantly told it would be. The event occurred on 3/17/2009, evidenced in Appendix D. Thus, the indictment in Count 8 is not factual. As clarified in "Williams", this indictment is not specific in its charges and is left to inference. As in "Givens" it should be construed according to common sense and interpreted to include the actual facts. As in "Hess" it must inform the accused of the specific offense. And, as in "Carll" it must be void uncertainty and ambiguity. What reasonable juror or fact finder could argue these sound reasons? Count 8 is fatally defective and must be removed as inadmissible. Or this transaction must be declared inadmissible because it occurred in the alleged scheme beyond the statute of limitations in violation of 18 U.S.C. § 3282.

It must join Counts 1-4 expeditiously as being impertinent.

Decisively, Prosecutor Gill contradicts the alleged charge, confessing the five year statute of limitations negates this transaction. Section 3282 of Title 18 reads in relevant part, "...no person shall be prosecuted unless the indictment is instituted within five years after such offense is committed...". Harris was indicted in 12/2012 for

mail fraud. His transaction with alleged victim NICKI GENTRY occurred on October 3, 2005, clearly evident that the statute of limitations had expired, void any possible further argument. As matter of law, Count 8 must be declared inadmissible. It simply does not satisfy § 3282. To be more specific, the statute of limitations begins to run from the date of the wire or mail. October 3, 2005 to November 1, 2010 negates admissibility of Count 8.(United States v Garland, 337 F. Suppl D.C. Ill - 1971).

This issue has been argued since the filing of Harris' Direct Appeal attempt and throughout his post-conviction appeal process for 49 months.

A mail fraud prosecution must have occurred within the applicable statute of limitations regardless of the dates of the scheme.(United States v Gross, 416 F.2d 1205 - 8th Cir - 1961). Noteworthy in Count 8, Harris was indicted not for devising the scheme or artifice to defraud. He was solely charged with using the mails in pursuance of such a scheme. It is plainly immaterial when the scheme may have been devised. The letter to Gentry constitutes a separate and distinct violation of the act. In Prosecutor Gill's own words, "Nicki Gentry is the alleged victim in Count 8", which as this court can see, void any possible argument, is beyond the statute of limitations as to when she was allegedly victimized, on October 3, 2005 when she invested $5,000 in M.F. Harris Research, Inc. Gentry made no other investments in the company and the letter mailed to her on November 1, 2010 was an invitation to the annual shareholder meeting to be held on November 20, 2010 in McLean, Virginia. Count 8 is fatally defective by way of this prima facie evidence and must be removed. With emphasis added, Count 8 alleges one interstate mail communication, not numerous others. The count charges

only one mail piece and this one piece, this entire Count 8, remains inadmissible.

The government has employed visible deception to conjure this charge "current" by illegally linking a letter written in 2010 with an event that took place in 2005. It is generally sufficient for an indictment to set forth an offense in the words of the actual statute, so long as those words fully, directly and expressly, without any uncertainty or ambiguity, set in place all the elements necessary to constitute the offense intended to be punished. The narrative in Count 8 is admittedly in violation thereof.

FBI employed witness tampering to convict Harris, with affidavits in support, precepting demand for a new trial.

The facts associated with the allegation of FBI witness tampering is absolute. It can be suppressed no longer with or without Judge Hudson's regrettable powers to do so. This allegation in isolation must brand this case a complete miscarriage of justice and a mistrial must be declared.

What reasonable juror or finder of fact could possibly dispute what follows, as this information is extracted from the record. The three supporting arguments are:

1. FBI agent BRAD GREGOR threatened and coerced witnesses to testify with false information to convince a jury that the petitioner was guilty of the stated criminal offense.

Witness R. TROY SHIELDS appears as Appendix D herein.

Mr. Shields, Frank Roth and other witnesses, targeted by the FBI, in this "witness tampering" exercise all will appear to so testify at an Evidentiary Hearing which must be held if this case is not vacated.

2. The second incident in the instant action exposes the FBI with additional misconduct involving Special Agents J. Lowe and Tobar. This pair posed as investors when they appeared at an HIV conference in Denver in 2011. Their "slipshod mission" was to incriminate the unsuspecting Harris through "objective entrapment", which can be best described as "...focusing on egregious law-enforcement conduct..." (Black's Dic., 10th Ed at 650).

While the government touts "entrapment" as being misnamed, it plays on words with "it's socially desirable for criminals to be apprehended and brought to justice," (Criminal Law 1161, 3d Ed - 1982). The government seems to have difficulty, however, in distinguishing between actual crime and "targeting" an individual to fabricate a crime.
Case in point, aside from all the "hoopla" of this charade, if Harris is a criminal, where is the "mens rea" in evidence, and why is it necessary to tamper with witnesses to feed a jury "lies" to secure a conviction?

As for FBI agents Lowe and Tobar, this pair focused on pure misconduct, a practice this agency and prosecutors have employed for more than 100 years, all with access to immunity should they need foul play to secure a conviction. Why should they need immunity if they were honestly doing their jobs?

These two "imposters" employed the services of one of Harris' investors (Joseph Newcomb). His assignment at the Denver Show was to abscond with a computer hard drive from Harris' hotel room while the "actors" detained Harris at his conference booth with the pretense of being seriously interested in this possible cure for AIDS.

The stolen data from this drive was later used illegally at Harris' trial as evidence against him. The data was also shared with another investor, JULIE HAGEN, who was instrumental in getting Harris imprisoned so she could acquire the patent and personally profit from the experience, no longer having any need for Harris. Several investors became opportunists forming conspiracies with their first objective being to obtain the patent which appears as Appendix D herewith.

Rule 403 of the Rules of Evidence states, "The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following...unfair prejudice."

Further, the two FBI imposters, while playing the game of "objective entrapment" violated Harris' Fourth Amendment constitutional right when they employed investor Newcomb to engage in their "dirty work". The Fourth Amendment leaves nothing to chance. "The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures...shall not be violated..." With Newcomb, the FBI committed further "entrapment by estoppel", misleading him to believe he was serving justice and his conduct was legal. In truth, Newcomb, with consequence, violated 18 U.S.C. § 2111

which states, "Whoever takes or attempts to take from another anything of value shall be imprisoned not more than fifteen years..."

3. On 4/16/2015 Harris filed his § 2255 detailing all of the above, which candidly should have immediately prompted the Honorable Henry E. Hudson to schedule an Evidentiary Hearing. Not only did Judge Hudson not schedule a hearing, he "shelved" Harris' § 2255 for more than a year, and only adjudicated it with reluctance after Harris filed a writ of mandamus to the appellate court. To this day, Harris alleges Judge Hudson shelters a personal concern in this case and because of that conflict of interest it was impossible for Harris to get a fair trial. It remains clear Judge Hudson refused to recuse himself from this case for fear of being exposed by a replacement tribunal.

Adding further support to this allegation against him, the petitioner directs this court to an email that was sent to all Harris shareholders on April 14, 2013. Purpose of the communique was to urge the investors to band together under the leadership of the senders, JULIE HAGEN and JOSEPH NEWCOMB and three other investors who formed a conspiracy under the company name of The Magnificent Seven. Their mission is supported by the record, to obtain the U.S. patent Harris had worked so hard to finalize. The group was convinced it was in their best interest to get Harris imprisoned for as long as possible, which would give them ample time to continue the venture Harris started without his interference. His invention, in the form of the patent, was all they needed.

Again, the date of the email was April 14, 2013. Harris was indicted in October 2012, he was convicted on March

4, 2013 following a six-day jury trial, he filed a motion for a new trial on May 29, 2013, pursuant to Rule 33 of the Fed-R.Crim.P.

Between Harris' conviction date and his motion for a new trial, The Magnificent Seven, in dual purpose, emailed all the shareholders to pacify them and hold them at bay while it went through civil action against Harris to obtain the patent. Hagen was ambitiously determined to overtake the project and keep Harris imprisoned with direct help from Newcomb who,through the FBI absconded with important data from Harris' computer, while he was at an HIV conference in Denver. This was in violation of § 2111 of Title 18.

April 14, 2013 is 42 days after Harris was convicted and approximately three months before he was sentenced to 108 months in federal prison by Judge Hudson.

Noteworthy in the email to shareholders, the writer, JULIE HAGEN, emphasizes with certitude, "...Mr. Harris assigned the patent to the company on February 14, 2013, just before the trial. We must protect that patent first and foremost, and are working with the federal judge and legal counsel to do so...". That unbiased, unprejudicial federal judge is the Honorable Henry E. Hudson, whose subjectivity looms large in this case, and can be traced from start to finish, exposing Judge Hudson's conflict of interest, proving it was impossible for him to fairly preside over this judicial contest. If Harris was so guilty of this fabricated eight count indictment, where four counts were dismissed early on, then why did the government consider it necessary to tamper with witnesses to assure his guilt?

One would certainly think if a judge was presented with prima facie evidence of FBI misconduct, that clearly affected a trial where a man claiming his innocence was convicted due to witness tampering by the FBI in blatant obstruction of justice, an evidentiary hearing couldn't be scheduled fast enough.While that might happen in some courts, emphasis added, "might", it never happened in the case at bar with the Honorable Henry E. Hudson presiding. Harris claims that he was denied his rights under the Sixth and Fourteenth Amendments when the coerced witnesses lied. He also claims he was denied a fair trial in violation of the Due Process Clause. This perjured testimony impeached the witnessess' credibility. Discrediting the accuracy and reliability of this witness testimony would have shown a tendency to exaggerate or overstate if not outright fabricate. (Davis v Alaska 4I5 U.S. at 315-16 94 S.Ct. 1105 - 1974).

"Few rules are more central to an accurate determination of innocence or guilt than the requirement...that one should not be convicted on false testimony."(Sanders v Sullivan, 900 F.2d 601, 607 2d Cir - 1990).

This court must hold as matter of law that the testimony of witnesses threatened by the FBI places Harris' conviction in violation of his due process rights. Without that testimony, the jury would probably not have found Harris guilty. If his case is not vacated, it must certainly be remanded for resentencing and other adjustment in compliance with this opinion.

Clearly, the tainted testimony of these witnesses' must be classified as being perjured, and that the prosecution knew of the perjury, as it surely instructed

the FBI to commit the act of witness tampering. "If false testimony surfaces during a trial and the government has knowledge of it, the government has a duty to step forward and disclose (Brown v Wainwright, 785 F.2d 1457, 1464 - 11th Cir - 1986).

The "Giglio" error is a species of "Brady" error that occurs when "the undisclosed evidence demonstrates that the prosecutor's case included perjured testimony and that the prosecution knew, or should have known, of the perjury." (United States v Agurs, 427 U.S. 97.)

The origins of the "Giglio" doctrine lies in the Supreme Court's decision in Napue v Illinois, 360 U.S. 264. The "Napue" Court explained that "it is established that a conviction obtained through use of false evidence, known to be such by representatives of the State, must fall under the Fourteenth Amendment (Id at 269, 798 S.Ct. 1173 (citing Mooney v Holohan, 294 U.S. 103, 55 S.Ct. 340, 79 L.Ed. 2d 791 - 1935). "The same result occurs when the State, although not soliciting false evidence, allows it to go uncorrected when it appears." (id)

In "Giglio", the Supreme Court held that the government's failure to correct false testimony that its key witness had received no promise of non-prosecution in exchange for his testimony, as well as the prosecutor's false statement, to this effect in closing argument, required that the defendant be granted a new trial. The Court explained that "deliberate deception of a court and jurors by the presentation of known false evidence is incompatible with rudimentary demands of justice. (id at 153, 92 S.Ct. 763).

In the instant action, the prosecution admittedly had to know of the FBI misconduct, if not by clearly instructing the FBI to tamper with the witnesses, then at least being aware of the misconduct.

The Honorable Henry E. Hudson should have questioned this when Harris filed his § 2255 addressing simple explanation of what occurred to violate his rights.

Instead, Judge Hudson shelves the § 2255 for over a year and then only adjudicates it when he is so ordered by the appellate court via a writ of mandamus.

CONCLUSION

CONCLUSION

While not legally branded as such, the United States v Michael F. Harris must be formulated as "complex litigation", defined in the legal interpretation as, "litigation involving several parties who are separately represented, usually involving multifarious factual and legal issues." (Black's Law Dic, 10th Ed. at 1075).

In this single legal proceeding before this honorable court, that means we are "improperly joining distinct matters and causes of action, and thereby confounding them because they are diverse, many and various." (id at 1174).

The petitioner chose to take his chances at trial,

predictably angering a judge and a prosecutor who held no interest in another trial to contend with, while Harris continued to insist he was innocent as there was no "mens rea" ever established. To his adversaries, justice in the American Judicial System is best handled through discriminatory plea agreements as 97% of all criminal cases reach settlement. Not here and now, as to this very day Harris maintains his innocence, and with the record in support he contends with certitude he never was given a fair trial as clearly evident in the contents heretofore.

What makes this case atypical is the fact we are dealing with medical discovery, a man, Michael F. Harris, with a provincial medical background discovers something while on vacation that sparks the potential solution for the cure of the AIDS and other viruses like shingles and herpes, with studies done at Duke & Basel Univ.

He finds himself in immediate need of capital to patent "his invention" and proceed with the necessary research that must follow to launch and hopefully succeed at concluding his objective, a cure for AIDS.

This ambitious but unschooled inventor in the art of raising capital for such ventures proceeded almost blindly into these uncharted waters.

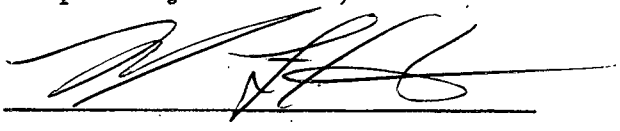
For his ambition, his flair of creativity, he now sits in a federal prison serving a nine(9) year prison sentence, whereby he was indicted on eight counts for securities, wire and mail fraud by a grand jury. Presentation of facts was made by an over-zealous prosecutor with his own definition of ambition and creativity as he continued to construct his record of

convictions in a judicial house of cards.

The first four counts of the indictment were for securities fraud, easily discarded for lack of substance, but not before two of them were improperly introduced to the trial jury for purpose of clouding its judgment if nothing else. Count 8 is deserving of the same fate, inadmissibility as a matter of law.

This petition for a writ of mandamus should be granted.

Respectfully submitted,



Date: 11/21/2019