No. 19-7022

IN THE SUPREME COURT OF THE UNITED STATES

JESUS D. CRUZ, PETITIONER

V.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITIONER'S RESPONSE IN OPPOSITION TO THE SOLICITOR GENERAL'S OPPOSITION MEMORANDUM

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REPLY OPPOSITION RESPONSE FROM THE PETITIONER

Petitioner states in this Response Reply to the Solicitor General's Response that he (Petitioner) filed a Certificate of Appealability (COA) with respect to his motion to vacate or set aside, under 28 U.S.C. section 2255, Petitioner stated in his writ of certiorari that:

1. Counsel was ineffective for not verifying whether the warrant in this case was a legitimate search warrant to search the Petitioner's residence. Petitioner's Appx. "C," is proof that the officers in this case, lacked probable cause to even enter the Petitioner's residence. The document in Appx. "C," states that upon conducting a search in our public warrants category between February and April of 2016, I found no documents filed that are responsive to your request. "Kathryn Len, staff attorney to Tom Orlando Lorain, County Clerk of Court. See Appx. "C".

PETITIONER'S RESPONSE TO THE SOLICITOR GENERAL'S RESPONSE, WITH NO RESPONSE FROM THE SOLICITOR GENERAL TO PETITIONER'S ARGUMENT ONE

ARGUMENT ONE

Whether Counsel was ineffective for not verifying whether there was legitimate search warrant to search the Petitioner's residence

It is a fact, Honorable Justices, that the officers in this case did not have a legitimate search warrant to search Petitioner's residence. See Appx. "C", as proof that the officers lacked probable cause to enter the Petitioner's residence. The document in Appx. "C", states that "upon conducting a search in our public warrants category between February and April of 2016, I find no documents filed that are responsive to your request." Kathryn Lenz, staff attorney to Tom Orlando Lorain, county clerk of court.

A defendant has a Fifth Amendment Right to due process to know who filed a search warrant against him. A defendant has a Fourth Amendment Right not to be violated by not knowing who filed a warrant to search his residence, and to confront the individual on the witness stand. **Crawford v. Washington** 541 U.S. 36-42 (2004). Petitioner's Fourth, Fifth, and Eighth Amendment Rights to cruel and unusual punishment are being violated at this very moment, and will continue to be if the Honorable U.S. Supreme Court does not put a stop to this type of unconstitutional Fourth, Fifth, and Eighth Amendment conduct.

Counsel was ineffective for not challenging the fact that no warrant was presented against the Petitioner in violation of his Fourth Amendment Rights to illegal search and seizure. **Mapp v. Ohio**, 367 U.S. 643, 655, 81 S. Ct. 1684 (1961); **United States v Jones** U.S. Dist. Court LEXIS 87221

(2007); U.S. v. Fisher Dist. 184855 (6th Cir. 2012); United States v. Williams, 475 Fed. Appx. 36, 2012 WL 138999 at 3 (6th Cir. 2012); United States v. Pearce, 531 F. 3d 374, 380 (6th Cir. 2000); United States v. Canipe, 569 F. 3d 597, 602 (6th Cir.), cert. denied 130 S. Ct. 655 (2009); United States v. Mosley, 193 F.3d 380, 385 (6th Cir. 1999); United States v. Cook 915 F. 2d 250, 252 (6th Cir. 1990); Bumper v. NorthnCarolina, 391 U.S. 543, 549 88 S. Ct. 1788 (1968).

No warrant was ever issued on 3/4/16 for this case of the Petitioner's residence. See Appx. "C".

But for counsel's ineffectiveness, and below the standards of representation, the proceedings would have been so much different. Counsel prejudiced the Petitioner by not objecting and challenging the fact through the U.S. District Court and appeal stages that there had never been a warrant issued for Petitioner's residence.

This prejudice caused Petitioner 96 months in a federal prison. Strickland v. Washington, 466 U.S. 668-687 (1984); Cronic v. United States, 466 U.S. 648 (1984); Cuyler v. Sullivan, 446 U.S. at 350 (1980); and Florida v. Nixon , 543 U.S. 175 (2004).

Honorable Justices of the U.S. Supreme Court, Petitioner is definitely without a doubt serving an unconstitutional, unknowing plea, and conviction, and sentence. All in violation of his Fourth, Fifth, and Eighth Amendment Rights under the United States Constitution. As long as Petitioner remains incarcerated for a crime he is not responsible for, that is cruel and unusual punishment. Petitioner has made a substantial showing of a denial of his constitutional rights. Jurists of reason would stipulate that this case did deserve further encouragement. Slack v. McDaniel, 529 U.S. 473-484 (2000): Miller EL. v. Cockrell, 537 U.S. 322-327 (2003).

The Solicitor General's opposition response, never responded to this claim in Petitioner's writ, even though they were ordered too by the United States Supreme Court Justices to do so.

PETITIONER'S RESPONSE, THAT THE SOLICITOR GENERAL DID NOT RESPOND TOO ARGUMENT TWO

ARGUMENT TWO

Whether Counsel was totally ineffective for not challenging the toxicology report which proved and verified that Petitioner had not been the cause of the victim's overdose. And that the toxicology reports proved and verified that Petitioner is actually, factually, lawfully, and legally innocent.

The "toxicology report" in this case did not show the presence of opioids. Petitioner simply was coerced into pleading guilty to it, or he would not have received the plea agreement. Plus Counsel, stated for the Petititioner to just go along with it, knowing it was not true, knowing it was false, and not the truth. But because Counsel misled the Petitioner, coerced him by telling it was the only way for the 96 month plea agreement, or he (Petitioner) would face a life term of imprisonment, even for a crime he was not truly responsible for, Petitioner did what Counsel coerced him verbally into doing which was a forced plea agreement for a crime he was truly not responsible for. Even the toxicology report proves Petitioner's innocence.

Petitioner in this case, only stated what Counsel told him to state which was, "say he was responsible for a crime he did not commit," a crime that even the toxicology report stated Petitioner was innocent of. Yet, because he pled guilty involuntarily and unknowingly and unintelligently to a crime he was verbally coerced into pleading guilty too. The lower courts

makes him guilty, even though the law, the toxicology report, and all the evidence, states he is innocent.

Jurists of reason would stipulate under **Slack v McDaniel**, 529 U.S. 473, 484 (2000); **Miller El v. Cockrell**, 537 U.S. 322-327 (2003); and **Barefoot v. Estelle**, 463 U.S. 880 (1983), that he has made a great substantial showing of a denial of several Fifth, Sixth, and Eighth Amendment violations in Argument One, and in this Argument Two. Jurists of reason would stipulate definitely that this case should proceed further based on violations of the Petitioner's Fifth, Sixth, Fourth, and Eighth Amendement Rights, and Counsel's prejudice that he caused based on his lack of reasoning and lack of pursuit to pursue Petitioner's innocence, rather than forcing Petitioner into an involuntary, unknowing, and unintelligent plea based on the above stated reasons. But for counsel's ineffectiveness and below standards of representation, the proceedings would have been so much different than they turned out to be. **Strickland v. Washington**, 466 U.S. 668-687 (1984); **Cronic v. United States**, 466 U.S. 648 (1984); **Cuyler v. Sullivan**, 466 U.S. at 350 (1980); and **Florida v. Nixon**, 543 U.S. 175 (2004).

Jurists of reason would stipulate that both Arguments One and Two in this Writ deserve further encouragement and should therefore, have proceeded further.

According to **Burrage v. United States**, 571 U.S. 204, 134 S. Ct. 881-884 (2014). Petitioner is serving an unconstitutional, unknowing, and involuntary, and unintelligent plea. Because the overdoses did not transpire from the drug that Petitioner was accused of, nor of the drug that Petitioner involuntarily, unknowingly, and unintelligently pled guilty too.

Petitioner is serving a conviction, a sentence, and an unknowing and involuntary plea, for which the law stated above, states that he is actual-

ly, factually, and legally innocent of. **Bousley v. United States**, 523 U.S. 614-624 (1998); **Class v. United States**, 139 S. Ct. 798 (2019); **Lee v. United States**, 138 S. Ct 1958 (2018); **Hill v. Lockhart**, 474 U.S. 42-48 (1985); **Glover v. United States**, 531 U.S. 198-203 (2005); and **Padilla v Kentucky**, 130 S. Ct. 1473-1476 (2010).

Petitioner is actually innocent of this case.

PETITIONER'S RESPONSE TO SOLICITOR GENERAL'S RESPONSE TO ARGUMENT THREE

ARGUMENT THREE

Petitioner is serving an unconstitutional and unknowing sentence in regards to United States v. Rehaif Supreme Court Cite No 17-9560 (2019).

According to 18 U.S.C. §922(g)(1), it is unlawful for a convicted felon to possess a firearm or ammunition, but that's only subsection 'g'. The 18 U.S.C. §922(g) has no mens rea requirement but derives the mens rea requirement from 18 U.S.C. §924(a)(2) which applies the term "knowingly". In 18 U.S.C. §922(g) and 924(a)(2) there are four (4) prongs which are as follows:

(1) status element,
(2) possession element,
(3) jurisdictional element (Interstate Commerce), and
(4) firearm element

In the past, the government in its jury instructions, has stated that they only had to meet the possession element to convict a defendant of violating 18 U.S.C. §922(g) and 924(a)(2). The Supreme Court held that to convict a defendant of violating §922(g) and 924(a)(2), the government needs to prove all four (4) elements read in the statute. The term "knowingly" is read and must be applied to all subsequent listed elements of the crime therefore violating defendant's Fifth and Sixth Amendment Rights to Due Process. In addition, the government has been setting forth unconstitution-pleas that are unintelligent,

unknowing, and involuntary; informing defendants that the possession element was the only element that needed to be proven, thereby making those defendants' pleas unconstitutional and unknowing.

In Petitioner's case in point, he is serving an unconstitutional and unknowing plea and sentence based on United States v. Rehaif Supreme Court cite No.: 17-9560 (2019). Petitioner is actually, factually, and legally innocent of his Title 18 U.S.C. § 922(g) offense. The government violated Petitioner's due proces rights by stating that they only had to meet one (1) prong of the subsequent elements of the crime. Petitioner stated to his attorney that he wanted to go to trial but was verbally convinced into taking this unconstitutional plea. Petitioner can never be guilty of an unknowing and unconstitutional plea.

Petitioner now pursues his issue of an unconstitutional and unknowing plea, based on Rehaif, and requests remand based on a violation of his Fifth, Sixth, and Eighth Amendment Rights to due process, lack of elements, and prongs that the government did not state nor meet in the involuntary plea agreement.

The Fifth Amendment Due Process Clause requires that a plea of guilty be knowingly and voluntarily entered because it involves a waiver of a number of the defendant's constitutional rights. A plea of guilty cannot support a judgment of guilt unless it was voluntary in a constitutional sense.

Aside from the obvious involuntariness of a coerced plea, the Supreme Court has identified two other ways that a defendant's guilty plea may be involuntary in a constitutional sense. A plea

may be involuntary either because the accused does not understand the nature of the constitutional protections that he is waiving, or because he has such an incomplete understanding of the charge, that his plea cannot stand as intelligent admission of guilt. Without adequate notice of the nature of the charge against him, or proof that he in fact understood the charge, the plea cannot be voluntary in this latter sense. As the Supreme Court has plainly instructed, the voluntariness requirement is not satisfied unless the defendant received real notice of the true nature of the charge against him, the first and most universally recognized requirement of due process.

A defendant does not receive "real notice" of the nature of the charge against him unless he is informed of the elements of the charged offense. The defendant received "real notice" of the charge when he has been informed of both the nature of the charge to which he is pleading guilty to and its elements. This is so because a plea of guilty represents, in essence, an admission as to each and every element of the offense. In addition, the defendant should understand how his conduct satisfies those elements. Also, prior to entering a guilty plea, a defendant must receive information on the nature of the offense and the elements of the crime. At the very least, due process requires that the defendant, prior to tendering a plea of guilty, receive a description of the "critical elements" of the charged offense.

If the defendant has such an incomplete understanding of the charge; his plea cannot stand as an intelligent admission of guilt. Without adequate notice of the nature of the charge against him, or proof that he in fact understood the charge, the plea cannot be voluntary in this latter sense.

Petitioner's indictment is defective, based on the required four (4) prongs in United States v. Rehaif 17-9560 (2019) that the government was not required to meet, which is mandatory in Rehaif. Therefore, Petitioner's plea is not only defective, but also unknowing and unconstitutional. Thereby violating the Petitioner's Fifth Amendment rights to a proper and fair indictment with proper and fair notice.

In light of Rehaif, the indictment is invalid, faulty and / or insufficient under under Federal Rules of Criminal Procedure (F.R.Crim.P.) 7(c). Congress' use of language such as "in and affecting" rather than "was and affected" in § 922(g)(1) is obviously purposeful. Looking at the carjacking statute (§ 2119), child pornography statute (§ 2252), and pharmacy robbery statute (§ 2118), they were all written in the past tense. When compared to § 922(g)(1), it is clear that Congress intended to use this language to define the tense differently.

F.R. Crim.P. 7(c) states that a federal indictment must provide a plain, concise, and definite written statement of the essential facts constituting the offense charged. In the present case, the indictment was not plain or did not charge the defendant

with "knowingly" committing the four (4) subsequent elements, thereby making the indictment invalid, violating the defendant's Fifth, Sixth, and Eighth Amendment rights to the United States Constitution. Furthermore, in the indictment, setting out all of the essential elements of an offense, was both mandatory and jurisdictional, the Court is without jurisdiction to impose a sentence for an offense not validly or sufficiently charged in the indictment.

Petitioner's claim is that his § 922(g) count of the indictment failed to charge an offense against the United States because in the way he was charged and indicted is not a crime of substance under Rehaif v. United States, 17-9560, U.S. Supreme Court cite 2019. Under Petitioner's Rehaif challenges to his conviction (and unknowing plea) his ground is jurisdictional, and therefore, he is actually innocent of his conviction (and unknowing plea) and did not waive his Fifth, Sixth, and Eighth Amendment rights by pleading guilty because his count for § 922(g), in the indictment, did not allege conduct that constituted a crime. Class v. United States 138 S.Ct. at 804; United States v. Ury 106 F.2d 28, 30 (2nd Cir. 1939); Hocking Valley R. Co. v. United States 210 F. 735, 538-39 (6th Cir. 1914); Carper v. Ohio 27 Ohio St. 572, 575-76 (1875); Commonwealth v. Hindu 101 Mass. 209, 210 (1869).

The Honorable Court is without jurisdiction to have accepted an unknowing plea in this case because according to Rehaif, supra,

it never had jurisdiction to accept such an unknowingplea and unvoluntary plea when an indictment "affirmatively alleges a specific course of conduct that is "outside the reach" of the "statute of conviction" or stated another way, "alleges only a non-offense."

The District Court has no jurisdiction to accept the guilty plea. The Court lacks jurisdiction when an indictment alleges, as in Petitioner's case, a non-offense according to Rehaif.

Petitioner believes that Rehaif, supra, announced a new retroactive rule of statutory interpretation.

To begin, it seems clear that Rehaif, supra, announced a new retroactive statutory rule applicable on collateral review. As for retroactivity, a rule applies retroactively on collateral review if it is a "new substantive rule" or if it is of a "small set of watershed rules of criminal procedure implicated the fundamental fairness and accuracy of the criminal proceedings." Schriro v. Summerland 542 U.S. 348, 351-52, 124 S.Ct. 2519, 2522-23. Substantive rules include those that "narrow the scope of a criminal statute by interpreting its items" Id. at 351-52, 124 S.Ct. at 2522.

By these standards Rehaif, supra, is indisputable.

Before Rehaif, all the circuits to address the question held that a person violated the statute by merely knowingly possessing a firearm. Id. at 2201 (Alito, J., dissenting) ("The Court casually overturns...an interpretation that has been adopted by every single

Court of Appeals to address the question."). Rehaif held that in order to violate the statute, a person must also know they were a person prohibited from possessing a firearm. Id. at 2196-97 (majority op.). Clearly the rule announced in Rehaif was not apparent to all reasonable jurists, since every circuit had decided the question the other way. See id. at 2201 (Alito J. dissenting). And the rule announced plainly narrowed the scope of the criminal statute. Before Rehaif, a prosecutor only had to prove a person knowingly possessed a firearm; after Rehaif, the prosecutor must further prove the person knew they weren't supposed to have it. This ruling narrowed the class of people who could be prosecuted under the statute, a quintessential substantive, and thus retroactive, rule.

One would think people prosecuted under this statute in the past should be able to challenge their conviction. After all, before Rehaif, the government did not have to prove what we now know is an essential element of their crime. Petitioner is serving a sentence for crimes that we know (thanks to Rehaif) he did not commit.

The failure to allege a crime is a jurisdictional defect. Izurieta 710 F.3d 1176, 1179 (11th Cir. 2013); Hubert 909 F.3d 336, 342-44 (11th Cir. 2018).

Knowing possession of a firearm by a felon is not a federal offense under Rehaif. McIntosh 704 F.3d 894, 902.03 (11th Cir. 2013). It is "outside the reach" of any criminal statute.

"Proof of that alleged conduct, no matter how overwhelming, would have brought [the government] no closer to showing the crime charged." Peters 310 F.3d 709, 715 (11th Cir. 2002).

In fact, no completed crime was even charged here because the indictment did not cite § 924(a)(2). Because the indictment affirmatively charged a non-offense, Both factually and legally, this case is unlike Cotton 535 U.S. 625 (2002) cited by the government where the government omitted in Petitioner's indictment, drug quantity for sentencing purposes but still charged an underlying drug offense. It is also unlike Brunn 752 F.3d 1344, 1353 (11th Cir. 2014), since the indictment here did not omit an element; it affirmatively alleged non-offense and did not even cite § 924(a)(2), much less "track [its] language in its entirety."

Petitioner's claim was not "reasonably available" before trial due to an impenetrable wall of adverse procedure. Fed. Crim. P. 12(b)(3)(B)(v). In Reed v. Ross 468 U.S. 1 (1984) The Supreme Court held that where a "claim is so newer that its legal basis is not reasonably available to counsel, a defendant has cause for his failure to raise the claim." and thus may overcome procedural default. Id. at 16, and 17.

The Court had long held that knowledge of status was not an element. Jackson 120 F.3d 1226, 1229 (11th Cir. 1997), and every other circuit had agreed, Rehaif 139 S.Ct. at 2210 No. 6 (Alito J. dessenting).

Because Petitioner was excused under Rule 12 from raising his claim, collateral review applies under § 2255(f)(3).

The right to have the grand jury make the charge on its own judgment is a substantial right which cannot be taken away with or without court amendment. Stirone 361 U.S. at 219. The only way to remedy that defect in the indictment would be to rewrite it, which only the grand jury can or may do. Russel v. United States 369 U.S. 749, 770 (1962). Petitioner was convicted without being charged with a crime. Petitioner was therefore convicted of an unindicted crime. It is "fatal error". Stirone 361 U.S. at 219. The indictment does not cite § 924(a)(2) or quote the "knowingly violates" language upon which Rehaif's holding depended. Nor can the missing mens rea in the indictment be inferred from the evidence, as argued by the government. Rehaif has now made clear that a valid prosecution depends on both § 922(g) and § 924(a)(2). Unfortunately by failing to charge § 924(a)(2), the indictment is indeed insufficient. Even under the government's standards.

FINALLY

The Solicitor General's Office did not respond to the Petitioner's Argument One in Petitioner's Writ of Certiorari at all. The only response from the Solicitor General in it's opposition was for Petitioner's **Rehaif v. United States**, 139 2191 (2019) recent United States Supreme Court decision, recently decided by the United States Supreme Court.

The Solicitor General states in it's **Rehaif** response that Petitioner never challenged the elements of a section 922(g) offense in his section 2255 motion in the U.S. District Court. Petitioner did not realize that he was being incarcerated based on an unconstitutional Fifth and Sixth Amendment violation in **Rehaif v. United States**, 139 S. Ct 2191 (2019), and that he was therefore, being unconstitutionally incarcerated based on a non - criminal offense, a defective indictment, that is right now in violation of the Petitioner's Fifth Amendment Right to Due Process, not to be incarcerated based on a non-criminal offense, a defective indictment, and an unconstitutional indictment that violates the Petitioner's Sixth Amendment Rights to the aboved stated four required prongs in **Rehaif supra**. Petitioner is therefore actually, factually, lawfully, and legally innocent of his indictment, conviction, unknowing plea, and unconstitutional sentence. And as long as the Petitioner remain incarcerated, based on these above stated reasons, his Eighth Amendment Rights to cruel and unusual punishment is being violated as well.

Honorable Justices of the Supreme Court. In this case, **United States v. Burrage**, 134 S. Ct. 881-884 (2014), is continually being violated in regards to the Petitioner's Fifth and Sixth Amendment Rights to Due Process, and his Sixth Amendment Rights to effective assistance of counsel. Because of the following reasons:

1. The victim did not decease. There is no death in this case, the bodily

injury is that the victim was rushed to the hospital before they could decease and was saved by the doctors in the hospital. Petitioner involuntarily, and unknowingly pled guilty to bodily injury of case, for which he was actually not guilty of. Because the drugs that the Petitioner unknowingly pled guilty too, involuntarily, were not the drugs that the victim overdosed on, the victim is still alive to this day, Honorable Justices. Petitioner unknowingly pled out to drugs that were not even in the victims system, drugs that Petitioner did not sell nor give to the victim. Petitioner, Honorable Justices pled out to Heroin/Fentanyl. But there was no Heroin nor Fentanyl found in the victim, Ms. Calloway's body at all. The toxicology report, states that there was no Heroin nor Fentanyl found in Ms. Calloway's body nor bloodstream at all. Again, Honorable Justices, she is presently alive and living well.

It was Counsel that verbally coerced Petitioner into pleading guilty unknowingly and involutarily to drugs that were not even in the victims body nor bloodstream. Yet Counsel verbally forced the Petitioner into pleading guilty, constantly telling the Petitioner if he did not plead guilty, he would be given a life term in prison, if he went to trial, because he would be convicted. Counsel constantly told the Petitioner, that he had to plead guilty, that he was not going to take this case to trial. Thereby forcing Petitioner to plead guilty to charges that he was actually innocent of from the very start of the arrest in this case, a case, that did not even have a search warrant to even search the residence. A case, Honorable Justices, that the police made up a bogus search warrant and intentionally and deliberately lied that they had a legitimate search warrant, when in fact they themselves, created a fake one, because Appx. "C", states no search warrant was ever issued in his case. Now if that's not

unconstitutionl enough and a total violation of Petitioner's Fourth Amendment Rights to illegal search and seizure, Petitioner was then verbally intimidated into pleading guilty to a overdose of Ms. Calloway, that the drugs she took, that the Petitioner was accused of were not in her system, cocaine and marijuana, not Heroin/Fentanyl. The toxicology report proves this, it legitimately proves this, and according to **Burrage**, it states from the United States Supreme Court, that where use of a drug distributed by a defendant was not the independently sufficient cause of the victim's death, or serious bodily injury, the defendant cannot be liable for penalty enhancement under Title 21 U.S.C. section 841(b)(1)(c) unless such use was a "but-for" cause of the death or injury. Because the controlled substances act did not define the phrase "results from," the court gave the phrase its ordinary meaning, i.e., that a thing "results" when it arises as an effect, issue, or outcome from some action, process, or design. In the usual course, that required proof that the harm would not have occured in the absence of that is, "but-for" a defendant's conduct.

Petitioner should not have been verbally coerced into an unknowing, involuntary plea, unless his conduct, was the actual cause of Ms. Calloway's bodily injury, for which she was released from the hospital, and is alive and well. There was no legal legitimate cause, nor reason for counsel to have forced Petitioner into a coercive involuntary plea, that was unknowing to Petitioner, that Ms. Calloway overdosed off cocaine and marijuana "only," not Heroin/Fentanyl, none of those two drugs had absolutely nothing to do with her overdose, at all.

Where use of a drug distributed by a defendant is not an independently sufficient cause of death or serious bodily injury, a defendent cannot be liable under the penalty enhancement provision of Title 21 U.S.C. section

841(b)(1)(c) unless such use is a but-for cause of death or serious bodily injury.

Petitioner is therefore serving an unconstitutional conviction, plea, and sentence. Petitioner states that jurists of reason would stipulate that this case deserves further encouragement, based on Petitioner's unknowing plea, unknowing because had Petitioner not been mislead by counsel stating over and over again that he was not going to pursue a trial for Petitioner because he would receive a life term of imprisonment. Jurists of reason would also stipulate that Petitioner's charged offense for the overdose of bodily injury for Ms. Calloway, was not the offense legally applicable for the Petitioner to have been charged with, because the victim, never had any Heroin, nor Fentanyl in her system at. "**NONE WHATSOEVER**." Jurists of reason would state that Petitioner's Fifth Amendment Rights to be legally and properly charged in this case, was an unconstitutional statutorial statute violation, that also violated Petitioner's Fifth Amendment Rights to a **Burrage v. United States**, 134 S. Ct. 881-884 (2014) claim of being over charged and overly enhanced, based on the wrong statute of offense.

Jurists of reason would stipulate that Petitioner's plea was unknowingly based on **United States v. Burraage**, **supra**, and **United States v. Rehaif**, for Petitioner's section 922(g)(1) offense, that had no mens rea to the four required elements required in **Rehaif**, which are:

(1) Status element
(2) Possession element
(3) Jurisdictional element
(4) Firearm element

All four of these prongs are required to a jury and to a plea agreement.

Jurists of reason would stipulate that Petitioner is actually, factually, and legally innocent of his section 922(g)(1) offense.

Jurists of reason would stipulate, that Petitioner did in fact explain to counsel and the court, that he was illiterate, and could not read or write. All of Petitioner's Fifth Amendment Rights to Due Process were violated. All of Petitioner's Sixth Amendment Rights to effective assistance of counsel, and to the element clause were violated. Which prejudiced the Petitioner in all of his proceedings and caused him many years of his life in a federal prison.

Jurists of reason would stipulate that Petitioner was treated very unfairly and unconstitutionally, and that his substantive and constitutional rights were violated and deserves further encouragement. **Miller El v. Cockrell**, 537 U.S. 322-327 (2002); **Barefoot v. Estelle**, 464 U.S. 880-893, Note (1983); **Slack v McDaniels**, 529 U.S. 473-474 (2000); **Buck v. Davis**, 137 S. CT. 759-764 (2017).

CONCLUSION

Petitioner hopes and pray that this Writ will be granted by the Honorable Justices of the U.S. Supreme Court.

Date: 2/29/20

Respectfully Submitted,

X _____

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