No. 17-3585

19-7265

ORIGINAL

Supreme Court, U.S.
FILED
OCT 2 2 2019
OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

Joseph P. Totoro II — PETITIONER
(Your Name)

vs.

United States — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The Third Circuit Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Joseph P. Totoro II Reg No. 65500066
(Your Name)

FCI Fort Dix PO Box 2000
(Address)

Joint Base MDL, NJ 08640
(City, State, Zip Code)

(Phone Number)

QUESTIONS PRESENTED

1. Did the Court, the United States Attorney, and the former attorneys violate DOJ policy and Due Process by allowing him to give up all his rights, except for those of Ineffective Assistance of Counsel as pertains to the Plea only, which violates Rule 11(b)?
2. Did the United States Attorney, the Court, and his former attorney during the Plea Colloquy delete and ignore the scienter requirement of knowingly in the 3rd count of the indictment 18 U.S.C. § 2252, which would make the entire Plea not knowingly, voluntary, and intelligent?
3. Did the Court, the United States Attorney, and his former counsel, misrepresent in the January 21, 2016 Plea Offer made available to him prior to the competency evaluation which was no longer available due to the misleading statement that the main witness was now cooperating, which violated his Due Process by allowing him while incompetent to give up his Speedy Trial rights?
4. Did the United States Appeals Court for the Third Circuit, the Department of Justice, the Bureau of Prisons, and Fort Dix FCI violate Appellant's Sixth Amendment right to access to the Courts by deliberately not delivering legal mail and not allowing him to file for rehearing En Banc because Appellant was never served the denial of the motion in reply to not uphold the Plea Waiver?

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:

JURISDICTION

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

The date on which the United States Court of Appeals decided my case was July 24, 2019, as per my docket sheet.

[X] No petition for rehearing was timely filed in my case.
Because I was denied the right to file because I was never served the denial

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

[X] An extension of time to file the petition for a writ of certiorari was granted to and including 60 days from (date) on October 29, 2019 (date) in Application No. USCA3 17-3589.

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).

Table of Authorities

United States Supreme Court

Joseph P. Totoro, II, Pro se,
Appellant

v.

United States of America,
Respondent.

USCA3 No. 17-3589

Writ of Certiorari

Joseph P. Totoro II (Pro se) (Appellant), being duly sworn and says under 28 U.S.C. § 1746:

That I am Appellant, appearing Pro se in the above-entitled case. On or about November 17, 2017, Appellant was sentenced to 300 months imprisonment by the Honorable Judge Pappertt, and that I am currently incarcerated pursuant to that sentence at FCI Fort Dix, Joint Base MDL, New Jersey.

Statement of Facts

On or about January 5, 2015, Appellant was arrested on an information charging under 18 U.S.C. § 875d threat by wire. Appellant was arrested by the Federal Bureau of Investigation at the King of Prussia Mall parking lot.

Approximately 8 to 10 agents with guns drawn pulled Appellant out of his parked vehicle at the King of Prussia Mall parking lot in King of Prussia, Pennsylvania.

Appellant was transferred to FDC Philadelphia where he displayed anxiety and expressed suicidal thoughts. He was placed on suicide watch.

Appellant was forced to strip naked and placed in a cell with no clothes, toilet or water. The lights are never turned off. Appellant was given a mattress with no blankets or sheets. The conditions are deplorable.

After being evaluated, Appellant had no way to escape the deplorable conditions other than lying and denying suicidal ideations.

Appellant was transferred to Unit 7 South, which was designed for inmates with medical and psychological needs.

The unit now houses informants of all varieties, gang members, etc.

Appellant was never arrested before this incident.

Approximately a day or two later, Appellant saw two inmates in their cell using drugs and having sexual relations.

Later that day, the Appellant was anxious while asking a correctional officer about contacting his family, bail, etc.

Later that same day, the cells of a few inmates were searched, including the inmates observed doing illicit things by Appellant.

During this time, Appellant was barely holding on, and as he was climbing into his top bunk, he was pulled down by the two inmates and the front of his head was smashed into a wall. The inmates also attempted to force a foreign object inside Appellant's rectum.

Appellant did not come out of his cell for the next day and was an emotional wreck.

One inmate who Appellant had talked to after the incident told Appellant that if he reported it, he would be placed back in the Special Housing Unit where he had just come from due to safety issues. He was told not to "rat in prison" if he wanted to survive.

The Appellant did not say a word about the incident but was approached by one of the Correctional Officers due to the giant lump on his forehead and was asked how it got there.

Appellant lied to the Correctional Officer about the lump on his forehead. He told the Correctional Officer he fell out of bed.

Appellant was then taken to medical to rule out a concussion, but no MRI was taken, and was asked repeatedly if he was assaulted. He denied everything.

Appellant was released on bail on the 10th day of incarceration with a provision that he seek Psychology/Counseling and report to Probation.

Appellant saw both a Psychiatrist and Psychologist. He broke down and told them about the arrest and assault.

Appellant was then diagnosed with PTSD (Post Traumatic Stress Disorder) and given different medications to try and alleviate his anxiety and panic attacks.

The final medications were Klonopin, Xanax and Prazosin. The Prazosin was given at bedtime with the Xanax due to insomnia and night terrors and had a calming affect on him.

For approximately 3 months, the Appellant had bi-weekly visits with both a Psychiatrist and Psychologist to treat his suicidal ideations, PTSD, and anxiety.

On or around April 5, 2015, Appellant was re-arrested on new charges of 18 U.S.C. § 2422, 18 U.S.C. § 2252, 18 U.S.C. § 1470, and 18 U.S.C. § 873.

During the arrest and break-in by Federal agents at his mother's home, the Appellant tried to take an overdose of pills of Xanax and Klonopin. The FBI treated Appellant with their own medical staff, but Appellant believes he was not taken to a hospital.

Appellant's memories after this event are somewhat vague and he must refer to transcripts to aid in the Statement of Facts.

Appellant was in a hyperactive emotional state of anxiety, suicidal ideations, self-harm, and panic attacks due to PTSD. Most of the time when he met with his attorneys -- Catherine C. Henry, Esq. and Marranna Meehan, Esq., Federal Community Defender -- he was hysterical and not able to cooperate well.

Appellant was held for the duration of the time at FDC Philadelphia without the medications he was being prescribed while on bail. Appellant could not discuss his suicidal ideations and self-harm with any Psychologist at the FDC for fear of being put back on suicide watch in the SHU (Special Housing Unit). He was told that none of the conversations he might have with any doctor would be privileged.

If at any time the Appellant brought up his suicidal ideations to his Attorneys, they stated that they would have to be reported to the BOP, so he would lie and say he wasn't really going to do anything at the moment. The Appellant began to totally shut down. The attorneys for the Appellant requested a Court-appointed Psychiatrist to consider changes to the Appellant's medications and to formulate his or her own diagnoses.

Appellant on or around June 22, 2015, was evaluated by an outside Psychiatrist, Dr. Voskanian, at the FDC Philadelphia for recommendations for medications.

Appellant was declared competent at the time, but according to Dr. Voskanian M.D., without giving proper medication, his condition would deteriorate and his competency could become a question.

During this time of incarceration, Appellant would self-harm including cutting himself and banging his head against the cell wall or with his fists during anxiety attacks after waking from the night terrors.

Appellant was indicted on or around July 5, 2015, and on or about July 28, Appellant's Attorney Catherine Henry and the Court were informed by the United States Attorney's Office that the main witness (victim) in the case against Appellant was fully cooperating. This was the first instance of misrepresentation by the United

States Attorney. The victim was not cooperating until August of 2016, according to the United States Attorney.

FDC Philadelphia did not follow Dr. Voskanian's advice or medication and Appellant's mental state began to deteriorate, as the Doctor had stated in his first

The Appellant became more withdrawn and was constantly inflicting wounds upon himself as a method of avoiding an attempt at suicide.

After Appellant was told by his attorney, Ms. Henry, that the witness was fully cooperating, Ms. Henry formed the impression that the Appellant was suicidal. Because of the devastating experience Appellant had on suicide watch, Appellant denied having suicidal thoughts to avoid being put back on suicide watch. The isolation and humiliation of suicide watch made Appellant think of more ways to commit suicide.

After months passed with little or no cooperation to aid in his defense, both of his then-attorneys began to worry about Appellant being able to be prepared for trial, which was scheduled for on or about February 7, 2016.

Both attorneys representing Appellant asked for a status hearing due to the fact that the trial date was set. At this time, Appellant, the Court, and his attorneys all thought the main witness was cooperating. This was clearly not true at the time, and this will be shown in the Appellant's argument. See Argument 3.

The date of the hearing was set for January 21, 2016. At the status hearing, a Plea Offer was made to the Appellant for a 10-year 11(c)1(c) Plea, which Appellant never had the opportunity to review with his former counsel. This Plea was acknowledged by the Court and by the United States Attorney.

The attorneys for the Appellant were concerned about his mental state and asked the Court and the United States Attorney for another evaluation due to Appellant being emotionally withdrawn and constantly crying during anxiety/panic attacks.

The Assistant United States Attorney at the time stated that she didn't have a problem with a competency evaluation. She then stated that, "after the Appellant is convicted and it goes up on appeal, competency would not be an issue."

The Assistant U.S. Attorney brought up the Plea Offer and stated, "the offer we made today does have a shelf life, and I didn't want a situation where we had to

prepare for trial and the last minute he wanted to take the offer."

The Appellant never had the opportunity to examine, review with his attorneys, and have the ability to accept or reject this offer. The Appellant had been trying for over three years to actually see the written offer of a 10-year 11(c)1(c) Plea that was told to him at the hearing of January 21, 2016. He has attempted to have this Plea Offer delivered to him from all his former attorneys and the United States Attorney's Office. He has filed numerous letters, motions with this Honorable Court, and the District Court to no avail.

The Court then asked AUSA if she wanted a trial date and she stated, "my recommendation would be to colloquy the Defendant today and have him waive his Speedy Trial rights if that's what he wants to do, and have a status date after we get the competency issue resolved, and then we can set a new trial date, and maybe at that point he would want to enter a guilty Plea or would just prepare for trial."

On February 6, 2016, the Appellant had his competency evaluation. Doctor Voskanian to a reasonable degree is not competent to stand trial. The Doctor also stated that the Appellant is exaggerating symptoms of mental illness.

The Appellant was not exaggerating symptoms of mental illness at the time. He was distraught, suicidal, which he could not report without fear of being dehumanized again and put back on suicide watch. Appellant was constantly self-harming, which again he denied. This was his coping mechanism for not going through with committing suicide.

Dr. Voskanian recommended Appellant to be transferred to a medical facility to receive treatment and further evaluation.

On or about February 16, 2016, another status hearing occurred and under 18 U.S.C. § 4241 and will be committed by the Attorney General to an appropriate medical facility to receive further treatment.

Appellant continued to self-harm and was eventually transferred to Butner Medical Facility in Butner, NC on or about March 16, 2016.

During transit, Appellant had a stopover in Petersburg, Virginia, FCI Petersburg, where spent 20 days in the SHU (Special Housing Unit). The Appellant was by himself for 18 of the 20 days with no outside communication and no books. He continued to self-harm during his time alone in isolation.

Appellant arrived at Butner FMC on or about April 7, 2016, and was evaluated.

The evaluation lasted approximately ten to fifteen minutes on three to four occasions. During the examination, Appellant was doing anything he could to hide the self-harm and suicidal ideations.

Appellant's cellmate told him if they find out about you self-harming, they will civilly commit you. Appellant at the time was just trying to avoid being put back on suicide watch and he had no idea what civil commitment had to do with his criminal charges. He was told once you're civilly committed, they will keep you here forever. Appellant's cellmate had been at Butner for 13 years at this time.

Appellant never said he was not competent to stand trial. He did not cooperate in the test-taking at Butner Medical Facility due to both facts of being put back on suicide watch and could be civilly committed.

On or around July 6, 2016, Appellant was declared competent and sent back to FDC Philadelphia.

After returning to FDC Philadelphia, he had a brief meeting with his attorneys where he asked about the Plea Offer, in which he gave up his Speedy Trial rights, so when he returned from the competency evaluation he could decide whether or not to accept it. The Appellant was informed that the Plea Offer was no longer available or expired by the United States Attorney. He told his attorneys he didn't trust them anymore and said he wanted to replace them.

A hearing was scheduled on September 7, 2016. AUSA Cox had been replaced by AUSA DeSouza. The Court at the hearing stated that Dr. Voskanian questioned the Appellant's competency. This was absolutely false. Dr. Voskonia declared the Appellant not competent at the time to stand trial on February 6, 2016.

The Appellant stated it was about getting the medications, not about faking competency. Again, the Appellant could not say he was self-harming or having suicidal ideations.

The Appellant's attorneys nor the Court or the AUSA even recalled the Plea Offer from the January 21, 2016 hearing. The Government now changed direction by stating that the main witness in the case was now cooperating even though the Appellant, the Court, and his counsel, were told over 1-year prior that the witness was cooperating at that time.

The Appellant's attorneys stated that the Government was not going to proceed if the main witness was not fully cooperating.

for letters and motions, to see the emails from his former attorneys, the United States Attorney's Office, and the Court to determine when the witness was cooperating.

When Appellant was told the witness was cooperating almost 1½ years prior, this representation greatly contributed to the Appellant's anxiety, panic attacks, and suicidal ideations.

The Appellant brought up at the hearing that he was told the witness was fully cooperating during the previous offer, which he never had the chance to accept or reject even though the AUSA at the time stated that after the evaluations were done and a trial date was set, the Appellant would have the opportunity to accept or reject the January 21, 2016 offer.

The Appellant stated at the hearing that he did not know what to believe anymore. At the hearing, the Appellant, after losing trust in the system, the Court, and his attorneys, fired his counsel for not being aware of the Plea Offer that was made at the January 21, 2016 hearing from the misleading statements by the AUSA, the Court, and his attorneys. This was to his detriment because now the Plea Offer was reneged on and he had no faith in his counsel and the system. The Appellant stated he would represent himself but also asked for a CJA (Criminal Justice Act-appointed attorney).

At this hearing, the Court at the time did not know that I was charged on a different count of 18 U.S.C. § 875, threat by wire, and that charge was dropped after 90 days and Petitioner was then charged under 18 U.S.C. § 2252, 18 U.S.C. § 2422, 18 U.S.C. § 1471, and 18 U.S.C. 873, Blackmail, was not charged originally as per the Court's suggestion.

The Court and my former attorneys can't even recall the hearing that occurred on January 21, 2016, where a definite Plea was offered on the record. Again, the Appellant never had the opportunity to go over the offer, or accept or reject the offer.

The Court released attorneys Henry and Meehan from representation of the Appellant. The Court appointed George Newmann, Esq. as Appellant's new counsel.

On or around October 20, 2016, the Appellant had a five-minute meeting with his new counsel, George Newmann. The case was never discussed because Mr. Newmann had not received discovery. The Appellant did bring up a suppression motion in their next meeting, which lasted approximately ten minutes. The Appellant brought up an

exculpatory letter from the main witness and asked Mr. Newmann about the previous January 21, 2016 offer that he never had a chance to accept or reject. Mr. Newmann stated that offer was no longer available and he would look into the suppression issue.

On or around January 6, 2017, the Appellant was brought to the Court unexpectedly. Attorney Newmann informed the Appellant that the Court hearing was for a suppression motion. The Appellant was shocked that there was a hearing at all, because Appellant and his attorney hadn't even discussed the case in private yet.

Appellant asked whether Mr. Newmann had used the exculpatory letter from the main witness in the case? Attorney Newmann responded, "What letter? I am not trying to win the suppression motion. I just want to see how the prosecution represents herself in Court." While sitting, shocked, through this embarrassing hearing, the Appellant read the boilerplate two-page suppression brief. y 22, 2017, Sealed Portion Only.

After the hearing ended, Appellant admonished Mr. Newmann about having a suppression motion without him discussing the case at all.

Appellant stated to Attorney Newmann he would rather represent himself if he was not going to allow the Appellant to aid in his own defense. Attorney Newmann laughed and stated, "I'd like to see you represent yourself and watch you go down in flames."

The next few weeks the Appellant was very distraught at the idea of taking over the case and wrote the Court stating all the facts previously presented. The Appellant knew the Court would not give him another attorney because the judge stated, "You only get one bite at the apple." A hearing date was scheduled on January 31, 2017.

The Appellant was self-harming more every day as the date came closer. The suicidal ideations were actually becoming a plan, and on the morning of January 31, 2017, the Appellant attempted to take his own life.

The Appellant took an overdose of a combination of Elavil and Propranolol of over 100 pills. The morning of the hearing a Correctional Officer found Appellant on the floor of his cell unconscious and barely breathing. He was rushed to the Emergency Room of Hahnemenn Hospital where they saved his life.

The Appellant was admitted to the hospital and stayed for 11 days. He met with staff Physicians and a staff Psychiatrist and specifically asked if his conversations

with them were confidential. The staff stated that they were not. Appellant had major kidney and bladder problems and had a catheter inserted. Appellant had a conversation with a staff Psychiatrist and was asked was this a suicide attempt.

Appellant denied the attempt and said it was due to the combination of the medications that FDC was prescribing to him. The Appellant was given Prazosin to help with sleep and the nightmares for approximately 9 days. This was the first time Appellant had normal sleep since being on the medication while out on bail. During the days to come, he was informed by staff at Hahnemann Hospital that he would need to wear the catheter for approximately three to six months at the FDC of Philadelphia. The Appellant informed staff he would not wear the catheter because of the medical care and unsanitary conditions at the FDC. The staff informed him that this decision could lead to eventual kidney failure. Appellant stated he would think about it.

While recovering in the hospital, the Appellant discussed with staff nurses what he had witnessed at the FDC. He explained the deplorable medical treatment that caused two inmates to pass away. One paraplegic had a catheter and contracted MRSA from the unsanitary conditions. He informed staff when he was released back to the FDC he would not have the catheter put in place. He decided to leave it in God's hands.

Appellant was returned to FDC Phialdelphia and was placed back on suicide watch. He again denied the suicide attempt so he would be put back in the Unit and not back to the inhumane conditions of suicide watch. Staff at Hahnemann Hospital prescribed him Prazosin, but the FDC ignored the prescription. The night terrors and self-harm continued. The suicide attempt which failed actually caused the Appellant to fight his case. He still continued to self-harm to help stop the suicidal ideations.

The hearing for replacement of counsel was rescheduled for February 17, 2017. The Appellant was in a tremendous amount of pain due to the kidney and bladder issues and refusing to wear the recommended catheter.

At the hearing, the Appellant stated he did not want to be represented by Mr. George Newmann. The Appellant reiterated what he stated in his letter to the Court: that his attorney stated he tried thousands of cases and was one of the best trial attorneys out there and if the Appellant represented himself, he would see him go down in flames.

Mr. Newmann interjected that he never said he wanted him to go down in flames,

just that he would go down in flames.
)

Mr. Newmann also stated that no client has a right to tell him how a case should be presented. He stated the client only has three rights:

1) Right to go to trial

2) Right to testify

3) Right to plead guilty or not

Mr. Newmann was replaced and the Appellant was given the right to represent himself.

From the beginning of Appellant's self-representation, the Court denied in the colloquy for self-representation that the Appellant could have a paralegal. According to the CJA 21, any attorney or self-represented person (Pro se) may hire any of the following individuals for up to $800 without the Court's consent.

If the amount is above the $800, then Court's permission is necessary. This misrepresentation by the Court during the colloquy stopped Appellant from requesting a paralegal to aid in his defense.

The Court during the next few months hindered in many ways the Appellant's ability to put on a complete defense.

The Court gave a deadline of one week for the United States Attorney to turn over all discovery except Jenks and Giglio material.

The United States Attorney took an additional 7 days to turn over five DVDs worth of information.

The Appellant asked for five months to prepare for trial. The Court granted only two months in the preparation for trial and then changed to four months.

Almost two months had passed since the date of discovery, when Appellant received three more DVDs of discovery. One of the DVDs had the same information as one of the first DVDs received, but it was in a different format. The information on both DVDs were text conversations between the Appellant and the alleged victim. The conversations were different from the first DVD to the second DVD. The Appellant filed for an IT Computer Expert with the Court almost three months prior to trial. The Court never responded to the Appellant's motion until one week prior to trial. The Appellant had made numerous inquiries with both the Court and standby counsel to no avail. The Court was adversarial at the motion hearing with Appellant for the Computer Expert. This was a major part of the Appellant's case, and without the expert he would be unable to put on a complete defense.

Appellant did do what neither of his former attorneys had done. 1) The Appellant won a motion to dismiss one of the counts. The Government dismissed the count of the 18 U.S.C. § 2252(a)(2) due to the fact that the picture was not sexually explicit, even though they convinced a grand jury it was. The picture in count 4 of the receipt count, 18 U.S.C. § 2252(a)(2), was also the picture being used in the production count, 18 U.S.C. § 2251. When the receipt count was dismissed by the Government, they changed the count for production to attempted production.

The Appellant also motioned the Court to have one of the counts tried separately, which the Court agreed.

One week prior to trial, July 24, 2017, there was a hearing on the scheduled motions hearing.

Again the Court stated that it had denied the IT Expert except the one small issue. The Appellant and his standby counsel stated they had not received the denial.

After the hearing, the Appellant was meeting with standby counsel and he stated that even though the hearing went well, the Government is offering a 10-year 11(c)1(c) again, "and I think you should take it due to the nature of the case, and not knowing how juries react, you not being an attorney, and having no IT Expert." The Appellant agreed because he did not want to put the alleged victim through a trial, and this was the same after which Appellant did not have the chance to accept or reject.

That day the Appellant went back to the FDC and informed his Unit mates that he took a Plea. Two days prior to trial, standby counsel met with the Appellant and informed him that AUSA DeSouza's boss would not agree to the Plea. The Appellant was also informed that the Government's motion in limine was granted in regards to Appellant questioning the alleged victim on who made the first sexual advances. Now without the IT Expert and not being able to question the alleged victim about the truth, the Appellant gave up. The morning of trial he told standby counsel to plead guilty to all charges even though he denied to his counsel before he pled guilty of any of the charges presented except make the possession count.

Argument on Questions Presented

(1) During the Plea colloquy, the United States Attorney's Office, the Court, and his former counsel Michael Drossner, violated DOJ (Department of Justice) Policy (see James M. Cole Memorandum, Ex. 1) and his Due Process by misrepresenting to Appellant that he could give up all his rights, except for those of Ineffective Counsel as it applies to this Plea negotiation and Plea only, which makes the Appellant waiver not knowingly, voluntary, and intelligent.

The written Plea waiver differs from the Change of Plea hearing and are materially different and both the written Plea and the Change of Plea hearing violate Department of Justice Policy in the James M. Cole Memorandum (2014).

James M. Cole Memorandum

> As we all recognize, the right to effective assistance of counsel is a core value of our Constitution. The Department of Justice has a strong interest in ensuring that individuals facing criminal charges receive effective assistance of counsel so that our adversarial system can function fairly, efficiently, and responsibly. Accordingly, in recent years, the Department has made support of indigent defense a priority. We have worked to ensure that all jurisdictions (federal, state, and local) fulfill their obligations under the Constitution to provide effective assistance of counsel, especially to those who cannot afford an attorney.
>
> When negotiating a plea agreement, the majority of United States Attorney's offices do not seek a waiver of claims if ineffective assistance of counsel. This is true even though the federal courts have uniformly held a Defendant may generally waive ineffective assistance claims pertaining to matters other than entry of the plea itself, such as claims related to sentencing. While the Department is confident that a waiver of a claim of ineffective assistance of counsel is both legal and ethical, in order to bring consistency to this practice, and in support of the underlying Sixth Amendment right, we now set forth uniform Department of Justice policies relating to waivers of claims of ineffective assistance of counsel.
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> Federal prosecutors should no longer seek in plea agreements to have a Defendant waive claims of ineffective assistance of counsel whether those claims are made on collateral attack or, when permitted by circuit law, made on direct appeal. For cases in which a Defendant's ineffective assistance claim would be barred by a previously executed waiver, prosecutors should decline to enforce the waiver when defense

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counsel rendered ineffective assistance resulting in prejudice or when the Defendant's ineffective assistance claim raises a serious debatable issue that a court should resolve.
As long as prosecutors exempt ineffective-assistance claims from their waiver provisions, they are free to request waivers of appeal and of post-conviction remedies to the full extent permitted by law as a component of plea discussions and agreements.

The written Plea states (See Exhibit 2 . Appellant may challenge the constitutional ineffectiveness of defense counsel during the Plea negotiation and Change of Plea hearing only. In this statement from the written plea, it is understood that the Appellant can challenge any of his former attorneys during Plea negotiations. However, in the Change of Plea colloquy on July 31, 2017 the Plea Agreement states that the Appellant can challenge only the constitutional ineffectiveness of Mr. Drossner during the Plea negotiation and Change of Plea hearing only. See Exhibit 2 the written Plea agreement states that Appellant may challenge ineffective counsel during the course of this Plea negotiation and Change of Plea hearing.

Both of the statements contradict each other. However, the James Cole Memorandum states that as of 2014, United States Attorney's Offices will not seek a waiver of claims against any Ineffective Assistance of Counsel. There is no caveat in the memorandum which allows prosecutors to narrow the waiver to Ineffective Assistance of Counsel in Plea negotiations and Change of Plea hearing only. This clearly violates Appellant's Due Process under a misrepresentation claim. See Grey v. Netherland, 518 U.S. 152.

The AUSA knew because of materially misrepresentation made the Court, the United States Attorney, and his former attorney in other Plea negotiations, they violated their own policy so they could avoid the errors made previously. This goes against what the Supreme Court has maintained that the Due Process is violated when a prosecutor deliberately misleads a Defendant and his prejudice. See e.g. Mooney v. Hoolohen, 294 U.S. 103. Under the Due Process clause of the Fifth Amendment, criminal prosecutions must comport with prevailing motions of fundamental fairness. In keeping with the Mooney lines of cases, the United States Attorney knew the policy, and, purposefully went against it and misled Appellant.

As this Court is aware, Plea agreements are interpreted under contract law. See Cooper v. United States, 594 F. 2d 12. (4th Circuit), Missouri v. Frye, 132 S. Ct. 1399, and Santobello v. New York, 404 U.S. 257. All contracts relied on by the Appellant in opposition, the Government's improper motion to dismiss the appeal, which is grounded upon the quicksand rule which is otherwise known as the alleged waiver of appeal that was induced by fraud. This Appellant could not have known these things that occurred after the Plea was entered.

The Plea could not have been knowingly, voluntary, and intelligent, even in the absence of Ineffective Assistance of Counsel, is wholly and entirely void and unenforceable under contract law.

False promises that Appellant learned were patently untrue. Additionally, contract claims of fraud in the inducement of the Plea renders the waiver void abinitio.

Question 2

(2) During the Change of Plea hearing and in the written Plea agreement, the Court ignored and misrepresented the scienter requirement of knowingly in the 18 U.S.C. § 2252(a)(2), which would make the entire Plea agreement not knowingly, voluntary and intelligent.

The written Plea states that count 3, receipt of child pornography on April 12, 2013, in violation of 18 U.S.C. § 2252(a)(2) only.

The Change of Plea hearing stated by the Court: Count 3 charges a violation of 18 U.S.C. § 2252(a)(2), which is receipt of child pornography, April 12, 2013, that in order for you to be found guilty of this charge, the Government must prove each of the following elements beyond a reasonable doubt; first, that your received a visual depiction, two, that the image depicts a minor engaged in sexually explicit conduct; and three, that you were aware of the sexual and explicit nature and character of the materials, and that the visual depictions are of a minor engaged in sexually explicit conduct and that the images had been mailed, or shipped, or transported in interstate or foreign commerce. Do you understand there to be the elements of the charge against you for the receipt of child pornography on April 12, 2013.

A) Yes. (See Transcript, Change of Plea Hearing, 7/31/2017, Page 57, Lines 3-18) See Exhibit 11

AUSA (Assistant United States Attorney) stated on Page 61, Lines 10-12, "On April 12, 2013, he received an image from the minor engaged in sexually explicit conduct." See Exhibit 12

The statute establishing the receipt offense reads, "[Any person who] knowingly

receives or distributes, any visual depiction using any means or facility of interstate or foreign commerce or that has been mailed, or has been shipped or transported in or affecting interstate or foreign commerce, by any means including by computer."

The word knowingly may readily appear to modify only "receives" and not the definition of the material it is a crime to receive. See United States v. X-Citement Video Inc., 512 U.S. 64, 80-82, 115 S. Ct. 464, 130 L. Ed. 2d 372 (1994). The statute can be read to require only that the "receiving" be knowingly. In Appellant's case, there is not one mention in either the Plea agreement or in the Change of Plea hearing of the scienter requirement of knowingly in the 18 U.S.C. § 2252(a)(2) count.

The consideration and acceptance of a guilty Plea is governed by Federal Rule of Criminal Procedure 11(b). One provision of that rule is relevant to this case, Rule 11(b)(1)(6), which requires the District Court addressing the Defendant in open Court, to "inform the Defendant of and determine that the Defendant understands ... the nature of each charge to which the Defendant is pleading."

The fact that the Supreme Court read 18 U.S.C. § 2252(a)(2) to contain a scienter requirement as to the sexually explicit as to the actual receipt must be knowingly done was never mentioned during the colloquy surrounding the District Court's acceptance of the guilty Plea to this charge. All the other counts that required the word knowingly were asked but not in the receipt count. Was this because the Government knew that Appellant could not have knowingly received a text message before it came?

In the case of United States v. Szymanski, 631 F. 3d 294, 6th Circuit Court of Appeals, 2014, the AUSA stated:

The information charges that from about July 29, 2006, through on or about July 31, 2007, that the Defendant did knowingly receive in interstate and foreign commerce by means of a computer child pornography and computer image files. Notably in this case, the AUSA's summary merely paraphrases the language of § 2252(a)(2). The summary completely omits the Supreme Court's substantive scienter, which required Szymanski at the time did knowingly receive and knew that he was receiving child pornography.

In this case, the Court, his former attorney, and the AUSA did not know that the word knowingly must be part of the receipt statute. In Szymanski, they put the word knowingly there in his colloquy and the case was dismissed because the District

Court disregarded part of the X-Citement Video's scienter requirement.

The Court, the AUSA, and my former attorney ignored the scienter requirement totally. Not one mention of the word knowingly appears in count 3 of 18 U.S.C. § 2252. Since the District disregarded the scienter requirement along with the AUSA and his former counsel, this makes the entire Plea not knowingly, voluntary, and intelligent. Since the entire Plea agreement is a contract and part of the contract is void, the entire contract is void abinitio.

Question 3) The Court, the United States Attorney, and his former counsel, misrepresented that the January 21, 2016 Plea offer at the status hearing of the same date. The Appellant waived his Speedy Trial rights, and the Plea offer would still be available after a new trial date was set and his competency was no longer in question. This violated Appellant's Due Process, and his Speedy Trial rights. See United States v. Dreyer, 533 F. 2d 112 (3rd Circuit).

Both attorneys representing the Appellant at the time asked for a status hearing due to the fact that the trial date was set for on or about February 16, 2016. At this time, according to counsel for the Appellant and the Court, the main witness in the case was fully cooperating with the United States Attorney's Office. See Transcript Hearing, January 21, 2016. Exhibit 4

See Exhibit 3 Lines 10-12, attorneys for the Appellant were concerned that Appellant was mentally getting worse over the last few weeks, so she reached out to the AUSA and expressed the situation. As the hearing progressed, Catherine Henry, attorney for the Appellant, conveyed to the Court that, "the Government has conveyed a number of offers, most recently one today, so he really needs to be in a position to make these decisions." Page 18, Lines 5-8. 1/21/16 Exhibit 5

At this time Ms. Cox (AUSA) stated that she had no objection to a competency evaluation. Again, because 1) I think it protects the record. So after the Defendant is convicted and it goes up on appeal, it's clear that his state of competency at the time of trial will not be an issue. His statement shows that is ready for trial. It is very disturbing to this Appellant that he was already convicted. See Exhibit 6 January 21, 2016, Page 21, Lines 2-8. The Appellant views they shouldn't as the AUSA his full cooperation of the main witness.

The next statement the AUSA made is related to the Plea offer from that day. AUSA Cox stated, "But the offer we made today does have a shelf life, and I didn't want a situation where we had to prepare for trial and at the last minute he wants to take the offer." See Exhibit 6 1/21/16, Page 21, Lines 17-20.

The Court asked do you want a trial date and AUSA Cox stated, "My recommendation would be to colloquy the Defendant today and waive his Speedy Trial rights if that's what he wants to do, and have a status date after we get the competency report, and then we can set a new trial date. And maybe at that point he would want to enter a guilty plea or would just prepare for trial." See Transcript, January 21, 2016, Page 22, Lines 17-24. See Exhibit 7

The Court had a question if the Appellant could even waive his Speedy Trial rights. AUSA Cox stated, "I don't think so," and Ms. Henry (Attorney for the Appellant) stated, "No." See Transcript, January 21, 2016, Page 23, Lines 3-6. See Exhibit 7

The Appellant was colloquied and gave up is Speedy Trial rights. At this time, Appellant, the Court, and his attorneys believed the main witness in the case was fully cooperating. If this was the case, the January 21, 2016 Plea offer which was stated on the record, this Plea offer would have been unrelated to the witness cooperating.

The Appellant never had the opportunity to examine review with his attorneys and have the opportunity to accept or reject this offer until after his competency was evaluated.

There are only two possibilities that could have occurred: either the witness was cooperating and the Plea offer was made, or the witness was not cooperating and the Plea offer was made. The Appellant's suicidal ideations and anxiety are all related to being told the witness was cooperating.

According to the AUSA, she must have believed she had a very strong case since she stated the Appellant would be convicted and didn't want competency to be a question. This tends to lead the Appellant to believe the main witness was cooperating.

After the hearing, the Appellant had his competency evaluated and was declared not competent to stand trial by a Court-appointed Psychiatrist on February 7, 2016. See Transcript, February 17, 2016. See Exhibit 8

1) Since Appellant was declared incompetent, could he have waived his Speedy Trial rights two weeks prior in the January 21, 2016 hearing? The Court should have had the comptenecy evaluation prior to the hearing and if the Appellant was declared incompetent, the Plea offer would have been held until the competency issue was resolved. This relates back to the January 21, 2016 Plea offer from the same hearing. The Appellant clearly could not accept or reject the Plea if his competency was in question. In the case of United States v. Timmons, 301 F. 3d 974 (9th Cir. Court of App.), Mr. Timmons believed he was competent and rejected a Plea offer, and

it was later determined that he was not competent at the time after he went to trial and was convicted. The trial was overturned. He received almost three times as much time in prison as a result.

In this case, the Appellant could not have accepted or rejected the offer at the time when his competency was in question. The Court in that instance did not do what it was supposed to do. The Court ordered evaluation after he gave up his Speedy Trial rights and later determined that the Appellant was not competent to stand trial. So therefore, he never had the opportunity until after he was declared competent to be able to accept or reject the January 21, 2016 offer. See Transcript, February 17, 2016, 3:30PM, SEE Exhibit 8 In Bordenkircher v. Hayes, 434 U.S. 357, the Supreme Court stated that Plea bargaining is not punishment or retaliation, "so long as the accused is free to accept or reject the prosecution's offer."

After returning from Butner FMC, a hearing was scheduled where the Appellant was declared competent. Appellant was also informed that the Plea offer from the January 21, 2016 hearing was no longer available.

In the previous hearing held on January 21, 2016, AUSA Cox stated that the main witness in the case was cooperating at the time. See January 21, 2016, Page 22, Exhibit 7 Lines 22-25, to refresh the Court's memory where she states she will contact the victims for scheduling trial. In this hearing of September 7, 2016, Ms. Henry, his former attorney on Page 13, Lines 21-25, Exhibit 9 Plea offers with the first United States Attorney Ms. Cox. She states the offers have changed -- right they were worse, then we did -- I believe we got one better offer. This is the January 21, 2016 offer that Petitioner never had the opportunity to review with his attorneys and have the ability to accept or reject it. The offer was on the record. Ms. Henry also stated -- they hadn't had a recent interview with the victim (main witness in the case) and they weren't sure if they were going to proceed -- unless she was fully cooperating or not with the prosecution, which changed sort of the nature, strength of their case. See Transcript Hearing, September 7, 2016, Pages 13-14, Lines 25, 1-7. See Exhibit 9

The Court stated, "Sure." Ms. Henry then stated and changed their -- more time lapsed this offer (referring to the January 21, 2016 offer) and now the new offer is worse. This is consistent with the witness now cooperating even though in the January 21, 2016 hearing, the Court can see that Ms. Cox (AUSA) led the Court, the Appellant, and his former attorneys that she was cooperating at the time.

The Court in the hearing of September 7, 2016, stated that, "there have been

circumstances in this case that affected the continuity of the case. Some of them have been your medical issues, some of them have been a change of personnel at the U.S. Attorney's Office on this case. Some of them have apparently been the victim, perhaps not being part of the case, now being part of the case and assisting the Government in the prosecution. So you know the relative strength and weaknesses of the case might have shifted." See Exhibit 10 September 7, 2016, Page 25, Lines 21-25, Page 26, Lines 1-4. Here the Court is suggesting the victim (main witness was not cooperating in the January 21, 2016 hearing, when according to Ms. Cox (AUSA) they were ready for trial with all witnesses. This is the crux of the Appellant's misreprsentation argument.

1) On January 21, 2016, a definitive Plea Offer was made to Appellant a 10-year 11(c)1(c)

2) The Government stated the Court, Appellant, and the former counsel for Appellant that they were prepared for trial and needed enough time to schedule witneses

3) The offer had a definitive shelf life and didn't want Appellant to take the offer at the last minute

4) Competency was being questioned

5) The Government (AUSA Cox) suggested Appellant waive Speedy Trial rights or the the then-scheduled trial of February 6, 2016

6) If the Appellant waived Speedy Trial rights after the competency issues were resolved, the Appellant could either take the Plea offer or decide to go to trial

7) The Appellant waives his Speedy Trial rights even though his competency was in question

8) Appellant was declared not competent on the record by a Court-appointed Psychiatrist who has done hundreds of evaluations for the Department of Justice and Federal Defenders

9) When Appellant returned from Butner FMC, the Plea offer was no longer available

10) The Government's reason was that the victim (main wtiness) was now cooperating

11) The Court stated Plea offers can change and be taken away at any time

12) Former attorney attempted to get the January 21, 2016 offer back, but the Government stated now that their case was stronger, that Plea offer was unavailable

13) The Appellant after hearing this lost faith in his attorneys, the Court,

and the system, and fired his attorneys, to his detriment

14) After firing his first two attorneys, he fired his second attorney for basically the same reasons

In securing an agreement between an accused, there must be safeguards to ensure that the Defendant receive fair treatment during the Plea bargaining process. The source of the right to a fair bargaining is constitutional. Courts have drawn heavily on the ready analogies of substantive and remedial contract law how to supply the body of doctrine necessary to order plea bargaining practices and to afford relief to Defendants aggrieved in the negotiating process. The Core concept of Plea bargaining is the existence of a constitutional rights in the Defendant to be treated with fairness.

The constitutional right to "fairness" in the Plea bargaining process must be wider in scope than that deferred by the law of contracts. In finding the right to arise even before the formation by the parties of a fully executory "bilateral contract" the Court necessarily implies the enforceability by a Defendant of such a contract before any performance on his part were the Government to attempt "anticipatory repudiation." The constitutional right involved here is not dependent upon the fortuitous timing of acceptance and withdraws.

Under appropriate circumstances, a constitutional right to enforcement of plea proposals may arise before any technical contract is formed. In Missouri v. Frye, 132 S. Ct. 1399 and Lafler v. Cooper cases, the Supreme Court stated, "If a plea bargain is offered, a Defendant has the right to effective assistance of counsel in considering whether to accept it. If that right is denied prejudice can be shown if the loss of the Plea opportunity led to a Defendant taking a less advantageous Plea offer, which results in more serious charges or the imposition of a more severe sentence.

In the Plea bargaining process, two distinct sources of constitutional rights are involved in Plea bargaining:

1) The right to foundational fairness with substantive Due Process guarantees less directly, but still important

2) The U.S. Constitution Amend. VI right to effective assistance of counsel

Since the Government is required in plea discussions to negotiate through defense counsel under Fed. R. Crim. P. 11(e)(1), notably the credit and integrity of the Government is involved but those of his counsel. The Government cannot be permitted

to dishonor its promises. Once plea discussions are underway, it clearly lies with these agencies of the Government to keep the left hand informed of what the right hand is doing. In the Appellant's case, Ms. Cox (AUSA) stated that once you give up your Speedy Trial rights and the competency issues are resolved, the Plea offer on January 21, 2016 would be available. Once the Speedy Trial rights were given up by Appellant, there was no need in the Government worrying about taking the Plea offer right before trial.

There are three main issues for this Honorable Court to resolve. 1) Did the United States Attorney Ms. Cox represent to the Appellant, his counsel, and the Court that the victim (main witness) was fully cooperating. 2) Ms. Cox made a definitive offer on January 21, 2016. The Appellant gave up his speedy trial rights and the shelf life at this point would no longer be necessary until the competency issues were resolved. 3) If the witness was not cooperating, then not only was the Plea bargaining process destroyed by committing fraud ... the Court, which caused the Appellant to fully lose faith in the entire process.

There is a promissory estopel issue in the case because Appellant detrimentally relied on the words of Ms. Cox, AUSA, that the January 21, 2016 offer would be available once competency issues were resolved. The Court also informed Appellant that there was nothing he could do about the old Plea offer. Clearly the Court erred in this advice. At worst, the Appellant had an ineffective assistance of counsel claim because his former counsel did not protect his rights while he was declared incompetent.

Exhibit 7

If the Government knew prior to the January 21, 2016 hearing that the main witness was not cooperating, the Court, the Appellant, and the defense counsel should have been notified because this would have changed the way the entire case was being handled.

For more than 65 years, the Supreme Court has maintained that Due Process is violated when a prosecutor deliberately misleads a Defendant to his prejudice. See e.g. Mooney v. Hoolohan, 294 U.S. 103, 112 L. Ed. 791, 55 S. Ct. 340 (1935) (denial of Due Process occurs when a Defendant is deprived of his liberty through "a deliberate deception of the trial court, defense, and proceedings"). Pyle v. Kansas, 317 U.S. 213, 216, 87 L. Ed. 214, 63 S. Ct. 177 (1942) (Petitioner adequately alleged a constitutional violation with assertions that the state knowingly put on perjured testimony and threaten and intimidated a defense witness to suppress his testimony). People v. Rice, 69 N.Y. 2d 781, 513 N.Y.S. 2d 108, 505 NE. 2d 618 (1987) (prosecutor

deceives Court and defense counsel into believing that the key witness which, the case could not have proceeded without would be called to testify, when in fact the prosecutor knew at the time that the witness was dead). Napue v. Illinois, 360 U.S. 264, 269, 3 L. Ed. 2d 1217, 79 S. Ct. 1173 (1959) (State may not knowingly use false evidence to obtain a conviction). Brady v. Maryland, 373 U.S. 83, 87 (1993) (the suppression by the prosecution of evidence favorable to an accused upon requests violates Due Process, where the evidence is material either to guilt or punishment, and the reliance of good faith)

The Supreme Court and federal appellate courts have continuously read the Mooney line of cases broadly, rejecting narrow construction of Due Process and the duties of prosecutors. Indeed, the Supreme Court has recognized that, "criminal Defendants are entitled to much more than protection against perjury." Under the Due Process Clause of the Fifth Amendment, criminal prosecutions must comport with prevailing notions of fundamental fairness. The Supreme Court interprets fundamental fairness as requiring that criminal Defendants be afforded a meaningful opportunity to present a complete defense. The prosecutor also owes candor to defense counsel. It is in keeping with Mooney that, a prosecutor violates Due Process, if an accused can show that "the prosecutor, the Court, or his attorneys misled him." Grey v. Netherland, 518 U.S. 152 (1996) (finding Petitioner's allegation that prosecutor had misled him as to the evidence the state would present at sentencing. Prosecutors should have known that they could not make a material misrepresentation to defense attorneys for a tactical advanatge, which borders on the absurd).

In this case, there seems to be a deliberate abuse of the Government not only making and taking back a plethora of Plea Proposals to test the will and confidence of this Appellant.

The misrepresentation by the United States Attorney, to the Court, and his former counsel throughout the case that the main witness was cooperating.

When the Appellant was deprived the opportunity to accept or reject the Plea offer putting him in the position he was in prior to his Due Process and Sixth Amendment rights were violated usually the offer would be reinstated.

The Appellant was never colloquied on former Plea offers that he never had the chance to review or accept due to competency issues at the time. In Missouri v. Frye, the Supreme Court recommended the prosecution and the trial Courts may adopt some measures to help ensure against late, frivolous, or fabricated claims after a later date, less advantageous Plea offer has been accepted, or after a trial leading

to a conviction with resulting in harsh consequences.

1) First, the fact that a formal offer that its terms and its processing can be documented so that what took place in the negotiation process.

2) Final offers can be made part of the record at any subsequent Plea proceeding or before a fact on the merits, all to ensure that a Defendant has been fully advised before those proceedings commence.

Also, during the Plea Colloquy, the United States Attorney, the Court, and his former counsel allowed Appellant to sign a waiver that never mentioned that he was pleading guilty, which violated Double Jeopardy in the receipt count, 18 U.S.C. 2252(c)(2) and the possession count, 18 U.S.C. 2252(c)(4). This was clearly a Double Jeopardy violation under United States v. Miller, 594 F.3d 172 (3rd Cir. 2010). Since there was only one picture in this entire case that was deemed sexually explicit, the Appellant was misled that he was pleading to both of the charges which violated Double Jeopardy.

Question 4

On October 4, 2019, Appellant received a response in the regular mail system, not via legal mail, which had been stamped by the Court as 'To be opened in the Presence of Inmate,' and clearly marked 'Legal Mail.' (See Exhibit 13). The letter was dated September 19 and postmarked September 20.

The letter was a reply to Appellant's motion from September 6, 2019, for a status update on his motion filed on July 8, 2019. In Appellant's motion for a status update, he asked this Court if there was a deadline from the U.S. Attorney to answer his reply brief and how long did Appellant have to answer the reply. Appellant also asked for a copy of the exhibits and motion because the deadline for his reply brief was delayed because of staff not following the law.

Appellant has stated to the Court on numerous occasions that the BOP (the state of New Jersey's political subdivision JB MDL, NJ 08640-0902) does not deliver legal mail in accordance with 28 C.F.R. §§ 540.18 and 540.19 and is violating federal law. Appellant states that not one piece of legal mail from the Court has ever been properly delivered to him, opened in his presence, and signed into the legal mail log book, according to 28 C.F.R. § 540.19.

After attempting to have the Court intervene, the Clerk informed Appellant that the Court was sending all mail and following 28 C.F.R. § 540.18 and any remedy should be filed by using the administrative remedy process procedure at the prison.

The Appellant has filed all administrative remedies with the BOP and has been waiting for the BP-11 reply. The Court had fair notice of the violations of Federal Law on numerous occasions showing the legal mail is not being delivered, and is being opened, delayed, and tampered with, which violated 18 U.S.C. §§ 1702 and 1708 and Appellant's Sixth Amendment rights to access of the Courts.

This Appellant filed a motion to reopen the mandate due to the fact that Appellant never was given proper notice of process or actual notice of process or adequate notice and his Due Process was violated under the Fifth and Fourteenth Amendments. Appellant could not file for panel rehearing/rehearing en banc according to this letter. The exhibits requested and the motion were missing from the envelope. Only the letter and the docket sheet were delivered by regular mail. No denial has been received as of 12/23/19.

The Appellant (Joseph Totoro) has not now nor has ever been served by the Court any order, writ, summons or notice in the above-actioned case for the order to uphold the plea waiver.

The actual or adequate notice of any order to uphold the plea waiver, which was never served on Appellant, violates Due Process under the Fifth and Fourteenth Amendments.

An elementary and fundamental requirement of Due Process is notice reasonably calculated under all circumstances to apprise interested parties of the pendency of the action and offered them an opportunity to present their objections. See Central Hanover Bank and Trust Co., 339 U.S. 306, Foehl v. United States, 238 F.3d 474 (3rd Cir. 2000).

The Appellant has notified the Third Circuit Court of Appeals on numerous occasions of the failure of the Government in violation of federal law to properly handle legal mail, which states that the delivery of legal mail is to be opened in their presence and logged and signed for into the legal mail log book.

When mail from any Court is destroyed or opened outside the presence of the inmate and the inmate knows that such mail may be held, delayed, or not delivered to cause inmates to miss deadlines, or read by prison officials, has

a chilling effect and violates his First, Fifth, Sixth, and Fourteenth Amendment rights, and is a violation of 18 U.S.C. §§ 1702 and 1708.

Even though the Appellant has filed his administrative grievances with the BOP, the Court should have intervened because mail fraud is being committed against me pursuant to 18 U.S.C. §§ 1702 and 1708, and under 18 U.S.C. §§ 241 and 242, 42 U.S.C. 1983(c) Civil Rights violation. The Court should have intervened after ongoing crimes are being committed. See Exhibits of tampering with legal mail, Exhibit 14. Tampering with, not delivering, delaying delivery, and reading are ongoing incidents not only to this inmate, but to many others in which are shown in the exhibits.

Exhibit 14 shows ongoing mail fraud by the Government to impede and violate an inmate's Due Process and access to the Courts.

According to Houston v. Lack, 487 US 266, inmates are required to use the Prison Mailbox Rule Legal Mail to gain the benefit of the rule. It states that legal mail is deemed filed when it is delivered to prison authorities and signed into the legal mail log book. The Court is sending inmates mail which it stamps legal mail, and if the BOP deliberately delays, withholds, or tampers with, which causes the inmate to miss deadlines, the inmate's Due Process is violated. When the Supreme Court held in Houston v. Lack that a prisoner's notice of appeal is deemed filed the moment he or she delivers the mail to authorities, Pro Se prisoners therefore have no control over the delays in the processing of legal mail by prison authorities. The Appellant never had the opportunity to see the denial by the Third Circuit Court of Appeals and never had the opportunity to file the En Banc brief.

Conclusion

The totality of these misrepresentations of facts throughout this case by the Court, the United States Attorney's Office, and his former attorneys led to this Appellant taking a Plea that clearly could not have been knowingly, voluntary, and intelligent. No person in their right mind would have signed such a Plea if they were properly informed of the Plea offer of January 21, 2016.

The misrepresentation about the evidence by the Government that the main witness was cooperating from almost the outset of the indictment led the Appellant to make poor choices in the case but also about his life.

The system is supposed to be about Justice, not manipulating Defendants with improper medical treatment and the misleading statements by the Court, the Justice Department and counsel(s) throughout the legal process. This Appellant hopes sincerely that this Honorable Supreme Court rules on these egregious errors and grant the Writ of Certiorari.

The Appellant acting Pro Se also asks the Court to view liberally under Haines v. Kerner, 404 U.S. 519.

I, Joseph P. Totoro, hereby swear under the penalty of perjury that the foregoing Writ of Certiorari is true and correct to the best of my knowledge, recollection, and belief, 28 U.S.C. § 1746 and certify that on 12/27/2019, 2019, I served a copy of this [redacted] Brief by the prison legal mail system on the following parties:

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Respectfully submitted,

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