

19-7277
No.

No

IN THE
SUPREME COURT OF THE UNITED STATES

DORA MOREIRA - PETITIONER,

VS. 3

UNITED STATES OF AMERICA- RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

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SUPREME COURT, U.S.

QUESTION(S) PRESENTED

- 1-) IN A DEPARTURE FROM THE DUE PROCESS REQUIREMENT OF THE FIFTH AMENDMENT AND THE COMPULSORY PROCESS PROTECTION OF THE SIX AMENDMENT, DID THE UNITED STATES COURT OF APPEALS FOR THE ELEVEN CIRCUIT CREATE AN IRRECONCILABLE CONFLICT WITH PRECEDENTIAL DECISIONS OF THIS COURT AND OTHER COURTS OF APPEALS BY DENYING THE CERTIFICATE OF APPEALABILITY IN THE APPEAL OF THE DISTRICT COURT ORDER OF DENIAL MOVANT MOTION UNDER 28 U.S.C §2255 TO VACATE, SET ASIDE, OR CORRECT HER SENTENCE CLAIMING UNFAIR TRIAL DUE TO INEFFECTIVE ASSISTANCE OF COUNSEL, BIAS DISTRICT COURT, BAD FAITH AND PROSECUTORIAL MISCONDUCT?

- 2-) DOES THE COURT OF APPEALS' DECISION CONFLICT WITH DECISIONS OF THIS COURT AND OTHER CIRCUITS COURT ON THE IMPORTANT QUESTION OF WHETHER THE LOWER COURTS APPLIED THE CORRECT LEGAL STANDARD IN THE MONEY LAUNDERING CONVICTION AND SENTENCE IN THIS CASE THAT IT WAS OBTAINED WITH UNCONSTITUTIONAL INDICTMENT AND THE SENTENCE VIOLATED THE EIGHT AMENDMENT'S EXCESSIVE FINE CLAUSE?.

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1-) THIS COURT SHOULD GRANT REVIEW OF THE COURT OF APPEALS' DECISION BECAUSE IT IS INCONSISTENT WITH SUPREME COURT PRECEDENTS AND CONFLICTS WITH THE DECISION OF OTHER CIRCUITS AS TO THE CONSTITUTIONAL IMPERATIVE TO ALLOW A CRIMINAL DEFENDANT TO APPEAL AN ERRONEOUS DECISION OF THE DISTRICT COURT OR DENY A COA TO APPEAL THE DENY OF AMENDMENT MOTION TO VACATE, SET ASIDE OR CORRECT SENTENCE UNDER U.S.C. §2255 WHEN THERE ARE SUBSTANTIAL SHOWING OF THE DENIAL OF DEFENDANT CONSTITUTIONAL RIGHTS TO A FAIR TRIAL AND EFFECTIVE ASSISTANT OF COUNSEL.

2-) THIS COURT SHOULD GRANT REVIEW BECAUSE THE COURT OF APPEALS' DECISION CONFLICTS WITH DECISIONS OF THIS COURT AND OTHER CIRCUITS ON THE IMPORTANT QUESTION OF THE EQUAL PROTECTION CLAUSE OF FOURTEEN AMENDMENT WHICH PROTECTED ALL PERSONS BORN OR NATURALIZED IN THE UNITED STATES FROM DENYING DUE PROCESS OR EQUAL PROTECTION OF LAWS, THE RIGHT UNDER THE PROTECTION OF THE EIGHTH AMENDMENT, NOR EXCESSIVE FINE IMPOSED, NOR CRUEL AND UNUSUAL PUNISHMENTS INFILCTED HAD BEEN VIOLATED AND THIS COURT'S JURISPRUDENCE JUSTIFIES CORRECTION BY THIS COURT.

CONCLUSION

PROOF OF SERVICE

LIST OF PARTIES

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:

RELATED CASES

United States v. Dora Moreira, Case No. 13-CR-20298-Martinez
U.S. District Court for the Southern District of Florida.
Judgment entered 12/19/2013.

Dora Moreira v. United States, Case No. 14-10530-CC
U.S. Court of Appeal for the Eleventh Circuit.
Judgment entered March 30, 2015.

Dora Moreira v. United States, Case No. 15-5613
Supreme Court of the United States
Petition for Writ of Certiorari denied on February 29, 2016.

Dora Moreira v. United States, Case No. 17-12967
U.S. Court of Appeal for the Eleventh Circuit.
Judgment entered April 12, 2018.

Dora Moreira v. United States, Case No. 17-CV-20721-Martinez/White
U.S. District Court for the Southern District of Florida.
Judgment entered October 19, 2018

Dora Moreira v. United States, Case No. 18-15192-K
U.S. Court of Appeal for the Eleventh Circuit.
Judgment entered July 1, 2019

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CONSTITUTIONAL AND STATUTORY PROVISIONS

Fifth Amendment to the United States Constitution

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in the cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law, nor shall private property be taken for public use without just compensation.

Sixth Amendment to the United States

In all criminal prosecutions, the accused shall enjoy the right to speedy and public trial, by impartial Jury of the States and District wherein the crime shall have been committed, which District shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Eighth Amendment to the United States Constitution

Bail-Punishment- Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Fourteenth Amendment to the United States Constitution

All persons born or naturalized in the United States, and subject to the Jurisdiction thereoff, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizen of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its Jurisdiction the equal protection of law.

JURISDICTION

The District Court had Jurisdiction pursuant to 18 U.S.C §3231. The defendant was charged with a Federal criminal offense. The Eleven Circuit Court of Appeals had Jurisdiction over her appeal Pursuant to 28 U.S.C §1291 and 18 U.S.C. §3742, giving Courts of Appeals Jurisdiction over final decision and sentences of United States District Courts, and Rule 4 of the Federal Rules of Appellate Procedure. The Appellate decision was entered on July/1/2019. This petition is filed within 90 days of that date, as provided in Rule 13.1 of the Supreme Court Rules. This Court's jurisdiction rests on 28 U.S.C. § 1254 and Supreme Court Rules 10.1(a) & (c) and 13.

OPINION BELOW

The Opinion of the United States Court of Appeals for the Eleven Circuit is reprinted at Appendix, App.A. The order denying Dora Moreira's timely petition for Certificate of Appealability was entered on July 1, 2019.

RULES

Federal Rules of Criminal Procedure
Rule 32 (a) (1) (A)

Federal Rules of Criminal Procedure
Rule 9 of Specificity

Federal Rules of Civil Procedure
Rule 26 "Duty to Disclose"

Federal Rules of Criminal Procedure
Rule 32 (i)(4)(a)(ii)

Federal Rules of Criminal Procedure
Rule 29

STATEMENT OF THE CASE

The frequency of criminal fraud charges against legitimate medical providers seemingly has become an everyday occurrence throughout America, often with alarming consequences for the communities and those involved in the health care industry. The potential of the unfairly overbroad reach of the criminal laws applied to honest medical professionals is most evident in this case, in which criminal charges of conspiracy, health care fraud, and money laundering were lodged against the principal of a longstanding Miami Home Health Agency certified as Medicare Provider. Petitioner Dora Moreira was the owner and founder of the company, as well as a trainer and licensed Register Nurse. She was tried and convicted of submitting false and fraudulent claims for reimbursement to Medicare amounting to \$ 7 million over the course of two years of her company's operation. As a result of the Jury's verdict, she is now serving 235 month prison sentence.

Petitioner Appeal her conviction and her sentence with the assistant of a public defense lawyer. After an oral argument, the Court of Appeal for the Eleventh Circuit affirmed the conviction and the sentence. It is evident that there is Ineffective Assistance of Counsel, bias District Court and Prosecutorial Misconduct during the whole process.

The defendant submitted a Motion for New Hearing based in newly discovered evidences Pursuant Rule 33 that was denied by the District Court. The decision was affirmed by the U.S. Court of Appeals for the Eleven Circuit who in their decision blamed the trial counsel for what happened.

The defendant proceed to submitted a Motion to Vacate, Set Aside or correct a sentence pursuant 28 U.S.C § 2255. The Motion was denied, but again District Judge states in his final order that the grounds claimed about the Evidences explained in the Objection to the Magistrate Report and Recomendation were appropriated for Direct Appeal that was done by a Public Defense lawyer.

The Motion Under 28 U.S.C §2255 was denied without Certificate of Appealability. The Petitioner submitted a Motion to Request a COA that was sent to the District Court with a COA, that was what the Clerk of Court informed in a letter sent to the Petitioner. The Motion to Request the Certificate of Appealability was denied by the Circuit Judge and the petitioner proceed to submit APPLICATION FOR USSUANCE OF CERTIFICATE OF

APPEALABILITY that was treated as "Motion for Reconsideration of a single Judge order". It was denied because "she has offered no new evidence or arguments of merit to warrant relief". If the Court of Appeal reviewed the Application for Issuance of COA Motion with all the exhibits attached and did not see any new evidence or arguments of merit to warrant relief, is an error that should be corrected by this Court on the name of Justice.

REASON FOR GRANTING THIS PETITION

- 1-) THIS COURT SHOULD GRANT REVIEW OF THE COURT OF APPEALS' DECISION BECAUSE IT IS INCONSISTENT WITH SUPREME COURT PRECEDENTS AND CONFLICTS WITH THE DECISIONS OF OTHER CIRCUITS AS TO THE CONSTITUTIONAL IMPERATIVE TO EFFECTIVE ASSISTANCE OF COUNSEL DURING THE ENTIRE DUE PROCESS OF LAW. THERE ARE ENOUGH EVIDENCE OR ARGUMENTS OF MERIT TO WARRANT RELIEF DUE TO INEFFECTIVE ASSISTANCE OF COUNSEL.

It is reasonable for the petitioner, Dora Moreira, to expect her attorney to be familiar with the law, the rules of Criminal Procedurals and to understand how those laws and Rules apply to the defendant's case. In fact, The American Bar Association instructs that these are Duties of an attorney and that if for some reason an attorney lacks the necessary skill, they must consult with another attorney.

If there is a situation where an attorney overlooks one or two errors or elects not to pursue them because they are not the strongest arguments, that is understandable. In this case however, there are at least TEN errors of law; or errors or fact or omissions of exculpatory evidence. That is too many errors for one to say that the defense attorney was effective.

This Case is a Conspiracy to Indict, convict and give Moreira two decade of prison time with all the Government actors working in collusion to bring about the desire that they wanted. This is the sort of issue that Due Process of the law is supposed to protect Moreira from but so far, The Court has continued to "look the other way".

The petitioner is in her fifties and not had a crime committed before. She has been a hard working, tax-payer citizen, originally from Spain graduated of a Medicine School as Medical Doctor. Moreira owned a company, legal company accredited by Medicare and Joint Commission as the law requires. The company had hundreds of employees and a couple of them were doing unsavory or illegal things. The petitioner is not saying that not

wrong has been done only that Moreira was not the orchestrator of that wrong.

There are checks and balances and laws to ensure that a defendant's rights are not violated but those rules and laws are NOT automatically applied if the defense attorney does not advocate of them. Defendant's attorney not only did not advocate for her rights, she seemed to be working against Moreira and working in tandem with the prosecutor and the Judge who all appeared to be intent on giving Moreira more prison time and a manipulation of the sentence guidelines "to make sure that the sentence APPEARED to be within the proper guidelines". The reason for that is now clear to the defendant Moreira, a sentence within the guideline is "presumed to be fair" and is very difficult to overturn. What happens though when the Government CHEATED to artificially increase the Guidelines? As lay people, we do not understand all that. The Government employees have had YEARS to MASTER (formal training) for this battle while the defendant is teaching her self without resources in prison. That is not a level playing field. We are taught in the school that there is "liberty and Justice for all" but what has happened in this case is the very antithesis of that creed. A defendant is very much at the mercy of the defense counsel who is supposed to represent them. In this case Moreira received only a "sham representation"

My attorney was ineffective at the Investigation Stages:

- Failed to challenge the Indictment which is Constitutionally defective.
- Failed to ask for a Kastigar hearing to see if "protected" information and exculpatory evidence was presented to the Grand Jury.
- Failed to request sworn affidavits of interviewed parties.

There are many other deficiencies during the process that the Petitioner raised in her "Amended Motion Pursuant 28 U.S.C 2255" (DE 8 Civil Case No. 1-17-CV-20721-JEM) and were well explained in the "Objections to Magistrate Judge's Report and Recommendation" (DE-CV- 25); "Application for Issuance of Certificate of Appealability"(Appeal case No. 18-15192). There are many documents submitted by the defendant trying to make the Court look to this case since the start waiting for Justice.

Petitioner prays This Court keep in mind that this Court hold the allegations of a pro-se complaint to less stringent standards than formal pleadings drafted by lawyers per HAINES v. KERNER, 404 US 519, 520

(1970).

Ineffective Assistance of Counsel- Failure to Counsel Challenge the Indictment; and failure to file a Motion to Dismiss the Indictment.

The District Court listed the exact grounds, practically word-by word Moreira listed as Grounds raised in the "Amended 2255 Motion". Even though this mistake may not have been intentional, CLISBY mandates when a District Court does not address all claims presented in habeas petition, this Court, will "vacate the District Court's judgment without prejudice and remand the case for Consideration of all remaining claims" (CLISBY, at 938). Nowhere in the Order Adopting Magistrate Judge's Report and Recommendations does the Judge mention Moreira's claims in regards to her arguments pertaining to the Indictment. If the Petitioner would have had effective assistance of counsel, her passion for this argument alone would have helped the Court to see she had no "criminal intent" or mens rea for any criminal act.

There are numerous mistakes in the PSR's calculation of my applicable Guideline range and the Judge erred in the calculation of the actual loss- The attorney failed to discuss PSR with the petitioner before sentence hearing and the attorney bound me to elements that were NEVER discussed with me. Attorney failed to argue, did not object or say anything to stop the injustice that was happening with regard to Moreira's sentence and restitution. This case appeared to be "already decided" to give an example to the Community as per the District Judge's own words during sentence hearing.

There are so much wrong in this case it makes you wonder what Moreira's attorney was doing? If there is a situation where an attorney overlooks one or two errors but this case is has too many errors for one to say that the defense attorney was effective and that the process had been fair. The petitioner believed her attorney and did whatever she told her to do except to plead guilty of a crime that the defendant did not commit.

The attorney who filed the Direct Appeal, a different attorney from trial counsel, based the appeal in three different grounds without mentioned Ineffective Assistance of Counsel because he choiced 1-) The Constitutional imperative to allow a criminal defendant to present relevant evidence of Good Faith compliance with legal requirements; 2-) Sufficiency of Evidence standard to support Health Care fraud and Money Lau-

dering convictions; 3-) The requirement of allowing the Defendant to personally allocute at the sentencing (United States v. Moreira, Case No. 14-10530, 11th Cir. 2015; Supreme Court Case No. 15-5613). The appeals were unsuccessful because missed errors and violations that leaded to unfair trial, conviction and sentence.

Petitioner, here in after refered to as Moreira submitted a "motion for New Trial based in Newly discovered evidence, Rule 33" that was denied and appealed to the Court of Appeals for the Eleven Cir. but it was affirmed with the statement that "it was the trial counsel's error" (Appeal Case No. 17-12967).

Moreira Filed a Motion To Vacate, Set Aside, or Correct Sentence Under 28 U.S.C § 2255 and I was ordered to filed an Amended Motion, petitioner filed the "Amended Motion" and a "Replay to the Government's Response to the Movant's Amended Motion. Magistratet Judge filed a Report and Recomendations. Moreira filed "Objections to the Magistrate's Report and Recomendations". There is a final Judgment Adopting Magistrate Report and Recomendation were the District Court Failed to resolve all of Moreira's claims of Ineffective Assistance of Counsel, in violation of CLISBY v. JONES, 960 F.2 d 925 (11th Cir. 1992). The District denied certificate of Appealability. Moreira tried to appeal her judgment but after she submittéd the "Motion Requesting Certificate of Appealability" and "Application for Issuance of Certificate of Appealability", both Motion were denied by the Court of Appeals for the Eleven Circuit, Moreira is pleading this Court to correct this fundamental imbalance on an important criminal Justice issue that is likely to result in unfair differences in sentencing outcomes throughout the criminal Justice system. After all Moreira had been stating during her trial, direct appeals, Rule 33 and all other statements, there is not one reason to state that "there is not evidence or arguments of merit to warrant relief", the fact is that Moreira's attorney's performance was deficient, and that the deficient performance prejudiced Moreira's defense.

The process in this case had been unfair since the start when the Government decided to Indict a legal business because there were two employees doing ilegal activities at the "Miami streets" as per the Prosecutor own words.

On May 2013 a Federal Grand Jury in the Southern District of Florida returned an Indictment againts Moreira and two other employees.

The Grand Jury was composed of unqualified witnesses, The Grand Jury was mislead with false and tampered evidences and the Government did not disclose substantial exculpatory evidences. Per trial Counsel ineffectiveness this was never brought or raised by the trial's counsel when Moreira requested. "Arrest pursuant to a Grand Jury Indictment may violate the Fourth Amendment if the Grand Jury was mislead". See MASTROIANNI v. BOWERS, 160 F 3d 671 (11th Cir. 1998).

Moreira was arrested after the Government obtained an Indictment unconstitutionally defective. The Government improperly frozen all Moreira's assets including the assets that had not connection to the crimes and deprived Moreira of the untained assets that she intented to use to pay the counsel of her choice. Moreira was forced to hire a young, inexpert, unprepared attorney who failed to prepare for this trial and failed to ask for continuance. Moreira was unable to pay for the counsel of her choice. This issue violated Moreira's Constitutional right to effective assistance of Counsel. See UNITED STATES v. LUIS , 564 Fed. Appx. 493, 2014 US app. Lexis 8222 (11th Cir. 2014); UNITED STATES v. GONZALEZ-LOPEZ, 548 U.S, at 148, 126 S. Ct. 2557, 165 L. Ed. 2d 409 (2006)- "Derivation of the right to counsel of the defendant choice is complete when the defendant is erroneously prevented from being represented by the lawyer he wants".

There are many errors and omissions in this case by the trial counsel. Trial Counsel cumulative errors and omissions constituted Ineffective assistance of Counsel, which, in the interes of Justice, required the granting of a new trial. See UNITED STATES v. KLADOURIS, 739 F. Supp. 1221 (N.D. 111. 1990); UNITED STATES v. HAMMONDS, 425 F. 2d 597 (D.C. Cir 1990).

The trial attorney her self admitted during the trial that she was unprepared. She had only two months for trial preparation in comparison with the year that the Government had been working and preparing for this case. Trial Counsel failed to file a Motion for Continuance and because she was unprepared trial counsel performance fell bellow an objective standard of reasonableness. There is razonable probability that, but for Counsel's unprofesional errors, the result of the proceding would have been different. Moreira has demostrated that she was prejudice by her counsel's erroneous advise and counsel's errors and omissions. There is a reasonable probability that the outcome of the process would be dif-

ferent. Moreira had showed that her trial counsel and her public defense attorney during the appeals were ineffective and Moreira is entitled to resentencing based on the denial of her Sixth Amendment right to Effective Assistance of Counsel.

It is important to note that the "outcome" that might be negatively affected by attorney ineffectiveness is not limited to the trial outcome. I would like to remember that this Court has specifically said that the "prejudice prong" requires Moreira to show only a "reasonable probability" of a different result. I would like to ask this Court the total effect of all the Counsel's errors, but not limited to the ineffective assistance of counsel, also the District Court errors and abuse of discretion and the Prosecutorial Misconduct that all together mislead the Jury to an unfair verdict. The District Court erred in finding the defendant leader of the scheme. Moreira was the owner of a legal business and she was not the perpetrator of any crime. See UNITED STATES v. BOBO, 344 F 3d 1076, 1083 (11th Cir 2003):

"Due to the inadequacies in the Indictment, we can not discern what scheme the Jury found Dr BOBO had committed...we conclude that the District Court erred failing to dismiss the Indictment because it does not state an offense under the health care fraud statutes, and thus, as a matter of law is deficient."

The sufficiency of evidence was rised in Part during the trial when the trial lawyer requested to the Court to Grand a Rule 29 (CR-DE 232) but it was never raised and preserved during trial. The fact that trial attorney failed to raise this issue during trial is evidence of Ineffective Assistance of Counsel.

It is very clear that counsel failed to properly select a Jury, because Moreira ended with a Jury that was not fair and impartial Jury because the Jury was prejudiced, was leaded by the negative publicity of the case... Many of the members of the Jury, more than 50%, were Government's relatives, which mean that the Jury pool selection was not fair and impartial. The District Court failed to resolve all of Moreira's claims of Ineffective Assistance of Counsel because no where in the Order adopting Magistrate Judge's Report and Recommendations does the Judge mention Moreira's claims in regards to Moreira's arguments pertaining to the Jury and jurors' bias. This is, again, in violation of CLISBY v. JONES, 960 F 2 d 925 (11th Cir. 1992). CLISBY (at 938) mandates when the

the District Court does not address all claims presented in habeas petition, the Court of Appeals, will "vacate the District Court's Judgment without prejudice and remand the case for Reconsideration of all remaining claims".

Trial Counsel failed to properly select the Jury, failed to pursue defenses available to the defendant, counsel failed to use important evidences or testimony at trial, counsel failed to request proper Jury Instructions.

Cumulative of many errors and omission (Multiplicity of errors) constitute Ineffective Assistance of Counsel, which, in the interests of the Justice, required the Granting of this Petition for a writ of Gerci- rari.

Counsel's conduct is unreasonable only if Movant shows "that no competent counsel would have made such a choice". See PROVENZANO v. SINGLETARY, 148 F 3d 1327, 1332 (11th Cir. 1998). No reasonable lawyer will do what petitioner's lawyer did since she was hired by petitioner:

- *Trial counsel failed to file any defense pretrial Motion.
- *Trial counsel requested two days to present her case but then submitted a defense witnesses' list with 74 names to testify.
- *No counsel will accept to present a case that she did not known about it and did not prepare, did not learn how to read Medicare evidences that were presented at the trial, but also failed to request continuance to prepare her self. Counsel failed to request for an expert to assist her with the documents, rules and regulations that were unknown to her. The Jury did not know that the documents presented as Government evidence were the legal way of work in a Home Health Agency. The Government used multiples documents to inflame the mind of the Jury but without objection from the defense.
- *Trial counsel prevented the petitioner from calling key witnesses for the defense of the case. Prevented the petitioner from an effective defense in order for the Jury to understand the defense case.
- *Trial counsel objected about the authenticity of the Government transcripts of the videos but then Counsel failed to present her own transcripts following federal rules. Petitioner was prejudiced because the Jury was able to read only the Government version of what the videos said but the Government

transcripts were not accurate. The verdict was based just in the Government's transcripts of the videos because the videos it self were not provided to the Jury not even after the Jury requested for Jury deliberation. The videos were never provided to the Jury.

*No competent lawyer will do what the petitioner's attorney did when she claimed her own ineffectiveness and lack of preparation stating many time during the trial that she was unprepared. Trial counsel called witness to testify but the witness' testimony were considered irrelevant to the Court and the Jury did not understand the reason of those witnesses testimonies. It was a chaos between the counsel lack of preparation and counsel failure to act when the circumstances suggest an unseemly desire by the Judge to rush resolution of the case. The record shows many reprimand from the Court to the trial attorney because of her wrongdoing. Statements from the Court "you are trying this case like a DUI case in a State Court"; Ms Peckovich I do not know if you know what are you doing".... between other reprimands and fireworks between the Court and the lawyer were done in prejudice of the petitioner because the Court interfered with the defense counsel "strategy". The Court blocked the defense in every way but the trial counsel failed to find a solution to the Court's interference.

*No competent lawyer will go to the sentence hearing without read and discussed the PSR(Presentence report) with the defendant. The Petitioner did not see and did not read the PSR until months after her sentence. This error was not harmless. The Fed. R. Crim P. 32(a)(1)(A) requires that the sentencing Judge determined if the defendant has read the presentence Report. Due to Ineffective Assistant of Counsel the petitioner did not has an opportunity to read or discuss the Presentece Report. If the Petitioner had been given an opportunity to read or discuss the report, the petitioner could have tried to contradict the Report's factual finding about the actual loss and the point that the amount of patients claimed as fraud are incorrect. The guidelines calculation is incorrect. In violation of the Petitioner Fifth Amendment, the sentence included same offense

multiples time. There are not evidence that the actual loss was from \$7 to 20 millions as the PSR reported. The Government only evidence is unsupported claims listed as fact in the PSR. Because the petitioner attorney failed to dispute that unsupported loss amount it became unbeknownst to the petitioner, a stipulation. This bound the petitioner to an unrevealed contract and caused a GROSS MISCALCULATION of the petitioner advisory guidelines range. The only specific offense characteristics that apply are the ones specifically specifically intended or actually occurred. Speculative offence, like the claims the Government claimed to be fraud in the petitioner case, will not apply. The Government presented one patient with medical necessity, who testified that he did not receive the services and that he received kickback for go to the Petitioner business to receive the services. The Government speculated about the rest of the patients. The Government has not JURISDICTION to speak about the rest of the patients qualification, medical necessity and treatment. All the patients mentioned as fraudulent claims are all unsupported charts.

*No competent lawyer will be at the sentence hearing without requesting an interpreter for the defendant as the Moreira's attorney did during her sentence hearing. The trial attorney knew that the petitioner needs the interpreter services because the attorney herself requested for the whole trial. There was a moment where the Court ordered the interpreters to leave the court room and the trial counsel argued with the Court about the petitioner necessity of the interpreters. But the counsel failed to request the service in order for the petitioner understand what was happening at the sentence. The petitioner was at the sentence hearing just crying but nothing else. Petitioner was physically present but absent because never understood what happened at that hearing.

*No competent lawyer will not object to the Court when the Court erred at the sentence in violation of the Federal Rule of Criminal Procedure, Rule 32(i)(4)(a)(ii), that mandates that the sentence Court, prior to imposing sentence, to "address the defendant personally in order to permit the defendant to speak or present any information to mitigate the sentence.."

The District Court failed to ask Moreira if she had anything to say before sentence was imposed. This error was not harmless. The trial attorney did not advise Moreira about her right to allocuate to mitigate her sentence. There were many things to explain in order to reduce the sentence because the guidelines application was wrong. The calculation of the actual loss was wrong and this Court's Jurisprudence justifies correction by this Court. Petitioner defense counsel did not all she could to defend Moreira's claim because of counsel deficient performance and had not reasonable or tactical excuse for not doing so. Petitioner's representation was inadequate and petitioner was prejudiced as a result. This record contained no showing that "the Court, prosecutor, and the defendant must at very least [have] interact[ed] in a manner that shows clearly and convincingly that the defendant knew he had a right to speak on any subject of his choosing prior to the imposition of sentence" See UNITED STATES v. RIVERA-RODRIGUEZ, 617 F 3d 581, 605 (1st Cir. 2010). Any "doubt" that this has taken place "should be resolved in the defendant's favor.

*No competent lawyer will violated the Federal Rule of Civil Procedures 26 "Duty to disclose" and later tried to introduce a file to support the defense argument, without disclosed the file to the Government prior the trial. The Court did not accept the file as defense evidence because was not disclosed to the Government. This error prejudiced the petitioner that was unable to impeach the Government witness testimony that "his patients did not qualify". The patient was at the stand testifying but the file was not allow to be introduced as part of the defense evidences. In the other hand, the Government did not disclose their Medicare evidences introduced during the trial but the trial lawyer failed to object to the introduction of each document under relevance. Those Medicare documents introduced as evidences were not harmless because they were used to inflamed the mind of the Jury.

*No competent lawyer failed to request proper Jury Instruction related to the case trialed. The Petitioner Trial attorney failed to request the proper Jury Instructions for the Petitioner case, and failed to object to improper Jury Instruction requested by the Government and by the Court. Counsel failed to request special

Jury Instruction: 1.1 Instruction of testimony of accomplice, informer or witness with immunity. All of the three Government witnesses were witness with immunity trying to obtain a reduction of sentence Persuant Rule 35.

1.3 Instruction of testimony of accomplice, witness using addictive drugss, or witness with immunity. The patient that was used by the Government is a drug addict in rehabilitation.

Trial counsel failed to request GOOD FAITH Jury Instructions.

Trial Counsel failed to request Specific Intent to defraud.

Trial Counsel failed to Object to the District Court when the Judge proposed to delete and did not give the Expert Witness Jury Instruction, whenthe fact is that Government witness, Lory Peters testified as Medicare's expert even if the Government did not called her "expert witness" she was testifying as a expert.

*No competent lawyer will request to the Court to Grant a Rule 29 without raised and preserved the sufficiency of evidence during the trial. The fact that the trial counsel did not raised and preserved this issue during the trial is evidence of Ineffective Assistance of Counsel.

*No competent lawyer will allow the District Court to give Jury Instruction that prejudiced the petitioner as petitioner's lawyer did whentdidnot object to the Judge when instructing the Jury, to look to the Government's transcripts of the recording without providing the recording. The trial counsel failed to present the defense tanscripts of the videos even though counsel knew that the Government's transcripts that were admited as evidence were not accurate, transcripts were admited over objection from the defense. The Jury filed a request during Jury deliberation. The videos were not provided to the Jury but the Jury requested the videos. There was not answer from the Court to the Jury's petition and the trial counsel was not aware of any of this. The Jury relied on the Government's transcripts of the videos to reach the verdict but those transcripts were not accurate with what the recording said.

The Petitioner's Sixth Amendment right had been violated not only because ineffective assistance of counsel but also because of a bias Court who prevented the Petitioner from calling important witnesses to testify on the defense behalf. The Court allowed only what the Government wanted. There was a witness on the stand, with very important testimony to impeach the Government's witness testimony, but the Government and the Court always found an excuse to eliminate the witness from testifying on the defense behalf, but the defense counsel did not object to any of this. The Government, the Court and the defense Counsel had favoritism and preference with the witnesses called to testify protecting their Fifth Amendment right and Violating Petitioner Sixth Amendment Constitutional right. "Few rights are more fundamental than that of an accused to present witnesses in his own defense" See CHAMBERS v. MISSISSIPPI, 410 U.S 284, 302, 93 S.Ct 1038 1049 (1973)(citing WEBB v. TEXAS, 409 U.S. 95, 93 S. Ct. 351 (1972); WASHINGTON v. TEXAS, 388 U.S. 14, 19, 87 S. Ct. 1920 (1967); In re OLIVER, 333 U.S 257, 68 S.Ct. 499 (1948).

"The exclusion of criminal defense evidence undermines the central truthseeking aim of our criminal justice system, see UNITED STATES v. NIXON 418 U.S 683, 709, 94 S.Ct 3090,3108 (1974), because it deliberately distorts the record at the risk of misleading the Jury into convicting an innocent person. Surely the paramount value our criminal Justice system places on acquitting the innocent, See, e.g., In re WINSHIP, 397 U.S. 358, 90 S. Ct. 1068 (1970), demands close scrutiny of any law preventing the Jury from hearing evidence favorable to the defendant".

See TAYLOR v. ILLINOIS, 484 U.S. at 423, 108 S. Ct. at 660

For reason of purported convenience, scheduling and to help the Government to obtain another conviction at all cost, the District Court excluded in an arbitrary and wholesale fashion nearly every witness listed on the defense witness list offered to prove the petitioner's actual innocence. The District Court only allowed to testify the witnesses he wanted trying to help the Government case and not looking for Justice. The District Court abuse of discretion needs to be corrected by this Court in the name of Justice. It is not what the Court wanted it is what is important for the defendant to demonstrate her lack of criminal intent to defraud and the existence of her honest, good faith effort to act in

conformance with the law. A bias District Court prevented the petitioner from introducing relevant evidence, not limited to witnesses but also relevant evidence of petitioner dutiful compliance with Medicare rules throughout the existence of her home Health Care Agency. This District Court error violated the Petitioner Sixth Amendment Constitutional right to effective assistance of counsel because interfered with the defense "strategy", which clearly prejudiced the petitioner that did not have a fair trial in conformance with the law.

Without the ability to present a "complete defense" at trial, the petitioner fundamental right protected by the Fifth, Sixth, and Fourteenth Amendment to the United States Constitution and an essential component of procedural fairness, had been violated. See CALIFORNIA v. TROMBETTA, 467 U.S. 479, 485, 104 S. Ct 2528, 2531 (1984); CRANE v. KENTUCKY, 476 U.S. 683, 690, 106 S.Ct. 2142, 2147 (1986).

In addition the fundamental right protected by the Fifth Amendment to the United States Constitution was violated when the Counsel advised the petitioner to testify on her behalf without even tell her about her Fifth Amendment right that was read for all other witnesses except for the petitioner. The counsel forced the petitioner to testify telling her that a federal trial will not be win "if the defendant does not testify". Not only forced the petitioner to testify but also the conseil failed to prepare the petitioner prior to seat her on the stand, as counsel stated to the Court "I am not prepare to present her testimony". The record is replete with evidence supporting the petitioner's claim of Ineffective Assistance of Counsel between other facts that clearly prove the deny of Petitioner due process of law and show the unfairness of her completed process. There is a reasonable probability that with a complete defense, with an effective representation, without all the errors and omissions done because the deficiency in representation, the result of the proceeding would have been different.

On the Order and Final Judgment of Petitioner Motion filed Pursuant to 28 U.S.C §2255, the District Court specifically address ONLY ONE of Petitioner's objections. This is not about ONE error, this case is about cumulative of many errors and omissions (multiplicity of errors), between the Ineffective Assistance of Counsel, a bias Court and Prosecutors, working all together without looking or without following the due process of law. The District Court failed to resolve all Moreira's claims

of Ineffective Assistance of Counsel. See CLISBY v. JONES, 960 F 2d 925 (11th Cir 1992). CLISBY (at 938) mandates when the District Court does not address all claims presented in habeas petition, the Court of Appeals, will "vacate the District Court's Judgment without prejudice and remand the case for Reconsideration of all remaining claims". But in this petitioner case the Court of Appeals for the Eleven Circuit stated that did not see any arguments of merit to warrant relief. The Court of Appeals is in conflict with decisions of this Court and other Circuits Court. The law is for everybody but in the petitioner case the due process of law had been denied.

The District Court mentioned a witness that was precluded from testifying but the District Court did not mention anything about the rest of 73 witnesses that were excluded in an arbitrary and wholesale fashion nearly every witness listed on the defense witness list offered to prove the petitioner's actual innocence. The witnesses were precluded from testifying because "most of the remaining witnesses' testimony was not relevant" for the District Court without even know what those witnesses' testimony will be or how those witnesses were related to the case, specially in a contested case in which the entirely of the evidence is circumstantial. The right of a defendant to call witnesses and present evidence is crucial for testing the prosecution's case and defeating the charges. The District Court abuse of discretion and the ineffective assistant of counsel affected the Petitioner process to present evidences of actual innocence to be considered by the Jury. The witness mentioned by the District Court was relevant to the defense because the witness was there to impeach the Government's witness testimony, that way the Jury will know that the Government witness was lying under oath to help the Government and receive his Rule 35 reduction of sentence with higher porcent. The fact is that the witness was mentioned. The Government and the Court, both, found another way to exclude relevant evidence for the defense. The District Court in the final Judgment minimized the deny of a fundamental element of due process of law when stated that "in one line" the Government witness refers to the patient. The patient wanted give his testimony, but was not allowed. The misspelled could not be a reason to reject a relevant evidence. The patient was mentioned and his testimony was not only about the Government's witness' was also about the patient experience during his years receiving medical treatment at the petitioner's Home

Health Care Agency. Also the District Court mentioned that "the Court reporter was unable to locate the reference", the true is that was not the Court reporter who searched for the patient's name, the trial Judge was the one in conspiracy with the Government, who "searched" for the name of the patient and stated "No Match found", this way the Court rejected the witness, at the expense of the petitioner's constitutional right to present all relevant evidence of actual innocence. This is an unacceptable rejection of the fundamental mandate enabling defendants to present supportive evidence.

All of this happened in front of an attorney unable to do anything else about the Court decision. There is a correct plan of action for a situation like this in order to correct the "misspelled" name and be able to call the witness to testify. The trial counsel did not do all she was supposed to do in order to present her case and support the petitioner's claim, that the Government fabricated the case based on false testimonies and circumstantial evidence that were not sufficient evidence to support the Conspiracy. Whatever happened was an independent act from the Government's witness and not a conspiracy. The trial attorney failed to present a complete defense because her performance was deficient and because the Court interfered with the defense strategy.

The District Court erred in the final Judgment Order affirming and adopting the Magistrate Judge Report and Recommendation, when the Judge stated that "counsel's performance fell inside the range of reasonably competent assistance" because the Court evaluated the counsel's performance only for one issue when the counsel attempted to solicit the testimony of one witness to impeach the testimony of the Government's witness. The Court did not remember and did not evaluate the whole counsel performance. The Judge stated at trial that "I have memory problems and I can not remember what I have for breakfast this morning", sufficient reason to think that the Court forgot the completed Counsel's performance. The Court is in conflict with its own prior statements during trial where the Judge in several occasions, criticized and admonished the counsel's performance, to the point where the Court stated that "You [counsel] are trying this case like a DUI case in a State Court". All the Court criticism affected the Counsel self-esteem and affected the complete process because Counsel did not know what to do. The Ineffective Assistant of Counsel is very clear in this case.

Another conflict to correct by this Court is the statement made by the District Court in the Final Judgment and Order adopting the United States Magistrate Report and Recomendation at Footnotes :"Movant's objections total 65 pages...contain a lengthy recitation of the evidence and an attack on the sufficiency of the evidence more appropriate for review on direct appeal." The lawyer appointed by the Court during the Appeals, raised the Sufficiency of evidence to be review by the Appeals Court and this Court. If the sufficiency of evidence ground was not properly handled it is not the petitioner fault. The sufficiency of evidence is very important ground that was not resolve by the District Court. The District Court also stated that "many of Movant's objections address credibility determinations made by the Jury with respect to witness testimony. The Jury was present for all testimony and made credibility determination in favor of the Government and against Movant". The Court erred in this statement because the Movant's objections is not only about "credibility determination". It is about the Government used false evidence (documents and testimonies) to inflame the Jury's mind and to mislead the Jury. The Jury only heard testimonies that the Court (in conspiracy with the Government) allowed to be presented. The Jury never heard the relevant testimonies that the defendant was supposed to present because the District Court excluded witnesses offered by the defense for the purpose of impeachment, and for the purpose of present witnesses in petitioner's own defense. Because the Court excluded the majority of the defense witnesses and the Court selected who was the defense witnesses who will testify or not, because the Court excluded Medicare evidence to demonstrate that the petitioner's business was completely legal and the illegal actions were isolated from the rest of the business and to demonstrate to the Jury the petitioner lack of criminal intent to defraud and the existence of her honest, good faith effort to act in conformance with the law; the petitioner did not have a fair trial, the Jury did not have more options that made credibility determinations in favor of the Government (FBI Agents, Good presentation of whatever the Government wanted, well dressed with "make up" and very well prepared Government's witnesses that did not allow the Jury to know the truth behind all the Government's show and charts), in favor of the Court and againsts Movant (with Ineffective assistance of counsel, bias court helping the Government without being impartial and with prejudiced Jury panel). This case has nothing with the central truthseeking aim of our criminal system and this Courts' Jurisprudence justifies correction by this Court.

2-) THIS COURT SHOULD GRANT REVIEW BECAUSE THE COURT OF APPEALS' DECISION CONFLICTS WITH DECISIONS OF THIS COURT AND OTHER CIRCUITS ON THE IMPORTANT QUESTION OF WHETHER THE LOWER COURTS APPLIED THE CORRECT LEGAL STANDARD IN THE MONEY LAUNDERING CONVICTION AND SENTENCE THAT IT WAS OBTAINED WITH AN UNCONSTITUTIONAL INDICTMENT AND VIOLATED THE PETITIONER'S FOURTEEN AMENDMENT CONSTITUTIONAL RIGHT TO EQUAL PROTECCION OF LAWS AND VIOLATED THE PETITIONER EIGHTH AMENDMENT CONSTITUTIONAL RIGHT THAT MANDATES THAT NOR EXESSIVE FINE IMPOSED, NOR CRUEL AND UNUSUAL PUNISHMENTS INFILCTED AND THIS COURT'S JURISPRUDENCE JUSTIFIES CORRECTION BY THIS COURT.

The District Court failed to resolve the ground raised by the petitioner about the Indictment. The Magistrate Judge Report and Recomen-dation adopted by the District Court in the final Judgment, did not men-tioned the Indictment.

The indictment does not conform to the "Rule 9 specificity". required in a pleading alleging Federal Fraud and Money laundering. There was not defense at all about the petitoner charges of Conspiracy to commit Money laundering and Money laundering. The Indictment, however lack any factors regarding to the defendant knowing and voluntary joined the Con-spiracy and that the defendant knew that the proceeds were from some form of unlawful activity and the Indictment lacks any factors regarding how the alleged proceeds of unlawful activity were used to "conceal and dis-guise the nature, location, source, ownership, and control of the proceeds of specified unlawful activity". There are not specific allegations as to how the alleged proceeds of unlawful activity were used, including how as to how they were used in promotion of further unlawfull activity. The lack of specificity matters because the defendant could not build a proper defen-se and because when proceeds of fraudulent transactions are used to pay the operating expenses of an otherwise legitimate business, there is not promotional money laundering. See UNITED STATES v. MILES, 360 F 3d 472,477 (5th Cir 2004); UNITED STATES v. MARTINELLI, 454 F 3d 1300, 1318 (11th Cir. 2006). Absent any specific factual allegations regarding the use of the funds and how that use was supposedly in promotion of further unlawfull activity, the defendant, Moreira, can not take "undertake and prepare

an adequate defense". As such, the Indictment is constitutionally defective as to Count 7-12.

The Court of Appeals for the Eleven Circuit stated that "an individual cannot be convicted of Money Laundering for paying the essential expenses of operating the underlying crime" See HALSTED, 634 F 3d at 279 (quoting SANTOS, 553 U.S. at 528). "More generally, a criminal who enters into a transaction paying the expenses of his illegal activity cannot possibly violate the money-laundering statute, because by definition profits consist of what remains after expenses are paid. Defrauding an activity's costs with its receipts simply will not be covered" See UNITED STATES v. SANTOS, 553 U.S 507, 128 S. CT 2020 (2008).

The sentence of 235 months for Money laundering is cruel and unusual punishment because the underline crime guideline is wrong, the actual loss presented at trial was not what the sentence reflected. The amount of money that the Government claimed as money laundered was around \$400,000.00 and the loss amount presented during the trial was the testimony of the FBI agent who claimed that \$667,000 plus were fraudulent claims. The Government spoke about the 7 millions that were paid to the business but that was not the actual loss amount. The sentence is excessive and violated the Eight Amendment that protect the petitioner from cruel and unusual punishment and excessive fine clause, because the guidelines calculation is wrong and need to be correct. This Court's Jurisprudence justifies correction by this Court.

There is an error from the District Court when the Judge failed to instruct the Jury on how to evaluate witnesses who testified as to both facts and opinions. See UNITED STATES v. SARKISSIAN, case No.165034 (9th Cir. 2018).

The Indictment Code Under Count 1 (18 USC 1347) is too general. An Indictment that requires speculation on a fundamental part of the charge is insufficient. See UNITED STATES v. BOBO, 344 F 3d 1076,1083 (11th Cir 2003)(quating RUSELL v. UNITED STATES 368 US 749, 763 8 S. CT 1038,1047 8L. Ed. 2d 240 (1962). Not only the evidence presented was insufficient, also there was material variance between the indictment and the evidence presented at trial. The cumulative effect of these errors have denied the defendant a fundamentally fair trial.

Insufficient of evidence existed to convict the petitioner of the charged offenses, material variances existed between the Indictment

and the evidences adduced at trial; the District Court biased against the defendant and denied her a fair trial; and the District Court erred at sentence by miscalculating the loss incurred as result of the fraud. One of the material variance existed between the Indictment and the evidence adduced at trial is the Money laundering charges in the Indictment but no evidences presented at trial of money laundering conspiracy and there is not Money laundering.

The petitioner argues that her two Conspiracy Convictions, in Count one (Conspiracy to commit Health Care fraud) and Count two (Conspiracy to Defraud the United States and receive and pay Health Care Kickbacks) are multiplicitous. The kickback Conspiracy is a lesser-included offense of the Health Care Fraud Conspiracy and thus violates the Double Jeopardy Clause.

Because of Ineffective Assistant of Counsel there was not objection to defects in the Indictment and counsel failed to submit a Motion to dismiss the Indictment. The District Court failed to resolve all Petitioner's claims of Ineffective Assistance of Counsel, specifically this point regards to the Indictment constitutionally defective.

Also as result of Ineffective Assistance of Counsel, supporting petitioner's claim of unfair trial which deny the due process of law and the petitioner Sixth Amendment right; the trial attorney failed to object to errors committed by the Court. The record will clearly shows the Court biased againts the petitioner. The Court abused its discretion by:

1-)Deny the Rule 29 requested by the defense. The Court accepted circumstantial evidence with mere speculation. See UNITED STATES v. POOLE, 878 F 2d 1389 (11th Cir 1989) "when the Government relies on CIRCUMSTANTIAL EVIDENCE, the conviction must be supported by reasonable inferences, NOT MERE SPECULATION".

2-)The Court gave the wrong Jury Instruction and ommitted the proper Jury Instruction. See United States v. Moreira DE # 149 Page 76. The Court erroneously stated: "you can look to the trascritps. They are in evidences.

All of the materials that have gone in evidence will be gathered while you are first going in there and within 10 or 15 minutes of you being there, you will have all of it available to you.

It does not make any sense to give you the recording..."

The recording were never gaven to the Jury for deliberation, the recording are the evidence. The second day of deliberation, the Jury requested the

recording because they were never gave to them. The Court wanted the Jury to rely on the Government's transcripts of the video because the Court knew the transcripts were not accurate and the those transcripts stated what the Government's wanted to say. The transcripts were admitted over the defense's objection and the trial attorney failed to present the defense's transcripts of the recording.

The Court erred in omitting the proper Jury Instruction 1.42.A "transcript of Foreing language-tape recorded conversation".

3-) The Court erred by omitting Jury Instruction-"Summaries and charts received in evidence"; "Money Laundering Instruction".

4-) District Court abused its discretion by omitting -"Specific Intent". Conviction under 18 U.S.C. §371 requires proof of specific intent to deciive. The 18 U.S.C. § 371 also requires that the general definition of "willfully" in Basic Instruction 9.1A should be give. The word "willfully" means that the act was done voluntary and purposely with the specific intent to violate a known legal duty, that is, with the intent to do something the law forbids". There are both, statutory language and the "willfully" requirement as the textual anchor for an intent to deceive requirement.

Count 1-Conspiracy to commit Health Care Fraud also requires proof of specific intent to deceive or mislead. Fraud charges requires that proof. See UNITED STATES v. WHITE, 492 F 3d 380, 393-94(6th Cir 2007) "the Government must prove the defendant's specific intent to deceive or defraud". See also UNITED STATES v. VALLONE, 698 F 3d 416, 483 (7th Cir 2012)(citing UNITED STATES v. HOWARD, 619 F 3d 723,727 (7th Cir 2010). "Proof beyond a reasonable doubt has traditionally been regarded as the decisive difference between criminal culpability and civil liability" See JACKSON v. VIRGINIA, 443 U.S. 307, 315, 99 S. Ct. 2781, 2787 (1979). See DAVIS v. UNITED STATES, 160 U.S. 469, 16 S. Ct. 353 (1895); BINEGAR v. UNITED STATES, 338 U.S. 160, 174, 69 S.Ct. 1302, 1310 (1949); LELAND v. OREGON, 343 U.S. 790, 72 S. Ct. 1002 (1952). As Winship declared, the beyond a reasonable doubt standard "play a vital role in the American scheme of criminal procedure" because it operates to give "concrete substance" to the presumption of innocence, ensuring against unjust convictions and reducing the risk of factual error in criminal proceedings. JACKSON v. VIRGINIA, 443 U.S. at 315, 99 S.Ct. at 2787.

Count 3 to 6 of the Indictment, Payment of Kickback in connection with a Federal Health Care Program (42 U.S.C. §1320a-7b(b)(2)(A) are lesser Included Offense of the Count 1 - Conspiracy to commit health Care fraud.

In SCHMUCK v. UNITED STATES, 109 S. Ct. 1443, 1450 (1989), the Supreme Court concluded that "one offense is not 'necessary included' in another [under Rule 31 (c)] unless the elements of the lesser offense are a subset of the elements of the charged offense".

See UNITED STATES v. ESTRADA-FERNANDEZ, 150 F.3d 491, 494 (5th Cir. 1998) "lesser included offense instruction may be given only if 1-) elements of offense are a subset of the elements of the charged offense, and 2-) The evidence at trial permits a Jury to rationally find the defendant guilty of the lesser offense and acquit of the greater offense"

Under Federal Rule of Criminla Procedure 31(c) provides that a defendant "may be found guilty of...an offense necessarily included in the offense charged" otherwise known as a lesser-included offense. "The Jury has right to convict of lesser-included offense or attempt to commit charged offense...Therefore, The Jury is specifically authorized to find the defendant guilty of any of the following:

*An offense necessarily included in the offense charged

To facilitate Jury's right to convict of lesser-included offense, the Court must give Jury instruction when evidence permits conviction of lesser offense or attempt rather than charged offense.

In support of the defendant's claim of Ineffective Assistant of Counsel, defendant's counsel did not request lesser-included offense instruction to the Jury. However, the Court may give a lesser-included offense instruction on the request of a party or on its own initiative See UNITED STATES v. Mc Gill, 964 F. 2d 222, 240 (3d Cir 1992).

When a defendant has violated two different criminal statutes, the Double Jeopardy Clause protects her from being convicted under both when the statutes prohibit the same act or when one act is a lesser-included offense of the other.

Kickback gave to the patients was the base of the Conspiracy to commit Health Care fraud. Without kickback there was not Conspiracy in the defendant's case. Even though there is not evidence that confirm the defendant crime, the whole case at trial was based in the kickback gave to Frank Hurst. There are sufficiency of evidence to prove that patient's medical neccesity is a fact. There is not reliable evidence that the services was not provided.

Each patient at issue contained the required documentation for billing purposes, without any evidence that Moreira falsified, altered, removed or replaced mandatory documents necessarily considered by Medicare. Witness testimony by Registered Nurse Rensoli that she conducted face-to-face assessments based on an actual physician prescription, and that she made the required individualized determination each patient was home bound and in need of home health services.

6-) The Court abused its discretion by giving "Aiding and abetting" Jury Instruction over defense objection. The Court accepted a mere speculation from the prosecutor. Unfunded and false statement that the defendant acted directing others to do the work for her. There are clear evidences that the petitioner never instructed to do any wrong act.

7-) The District Court abused its discretion by preventing the defense from introduce relevant witnesses and evidences of compliance with Medicare's rules and regulations throughout the conduct of the Home Health Agency's business in order for the petitioner to demonstrate the absence of a specific intent to defraud. The Court limited the defense evidence and erred in arbitrarily striking the defense witnesses' list preventing the defendant from calling important witness to support the defense and the District Court interfered with the Counsel's strategy.

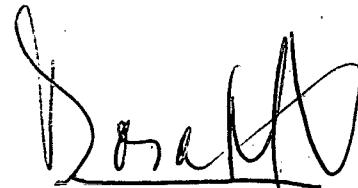
8-) The District Court erred in the interpretation and application of the Guidelines because the District Court finding is not supported by reliable and specific evidence. The Government presented one patient, who was in need of the Home Health Services and qualified for the services as per patient's own physician and Registered Nurse. The patient was making false statement about the few other patients that he knew, about patients' qualification and treatment. There is not evidence that the services were no provided. The District Court failed to resolve all of Petitioner's claims of Ineffective Assistance of Counsel. The District Court in the final Judgment mentioned the "sufficiency of the evidence" but did not resolve the claim because the Court's stated: "the sufficiency of the evidence more appropriate for review on direct appeal", is not resolving the claim.

I am begging this Court to the review this case completed because multiplicity of errors is sufficient to mislead a Jury and convict an innocent person to two decades in prison. In addiction to all mentioned there were many acts of Prosecutorial Misconduct explained in the "Application for Issuance of Certificate of Appealability" (Page 26-28); " Objections to Magistrate Report and Recomendation" (CV-DE # 25).

Petitioner showing is substantial, it is sufficient to merit further review by this Court. This Court must correct this fundamental imbalance on an important criminal justice issue that is likely to result in unfair differences in sentencing outcomes throughout the criminal Justice System.

The unfair process in this case need to be corrected. Lower Courts failed to resolve all Petitioner's claims raised in her Amended Motion. An unconstitutional Indictment; an unconstitutional Jury members; a conviction obtained with false evidences used to mislead the Jury; a bias District Court against the Petitioner; Prosecutorial Misconduct and Ineffective Assistance of Counsel are all issues presented in this that are againts the law and againts the Constitution of the United States of America.

Respectfully Submitted, on today 30 days of October, 2019



DORA MOREIRA- Reg. No 03240-104
PRO-SE REPRESENTATION
Without Prejudice UCC 1-308
Satellite Prison Camp- Aliceville
P.O. Box 487 Aliceville, AL 35442

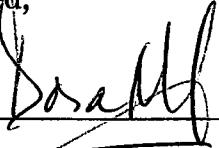
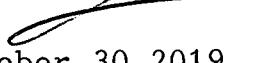
REASONS FOR GRANTING THE PETITION

- 1- THIS COURT SHOULD GRANT REVIEW OF THE COURT OF APPEALS' DECISION BECAUSE IT IS INCONSISTENT WITH SUPREME COURT PRECEDENTS AND CONFLICTS WITH THE DECISIONS OF OTHER CIRCUITS AS TO THE CONSTITUTIONAL IMPERATIVE TO EFFECTIVE ASSISTANCE OF COUNSEL DURING THE ENTIRE DUE PROCESS OF LAW. THERE ARE ENOUGH EVIDENCE AND ARGUMENTS OF MERIT TO WARRANT RELIEF DUE TO INEFFECTIVE ASSISTANCE OF CONSUL AND UNFAIR DUE PROCESS OF LAW.
- 2- THIS COURT SHOULD GRANT REVIEW BECAUSE THE COURT OF APPEALS' DECISION CONFLICTS WITH DECISIONS OF THIS COURT AND OTHER CIRCUITS ON THE IMPORTANT QUESTION OF WHETHER THE LOWER COURTS APPLIED THE LEGAL STANDARD IN THE MONEY LAUNDERING CONVICTION AND SENTENCE OBTAINED WITH AN UNCONSTITUTIONAL INDICTMENT AND VIOLATED THE PETITIONER'S FOURTEEN AMENDMENT CONSTITUTIONAL RIGHT TO EQUAL PROTECCION OF LAWS AND VIOLATED THE PETITIONER EIGHT AMENDMENT CONSTITUTIONAL RIGHT THAT NOR EXESSIVE FINE IMPOSED, NOR CRUEL AND UNUSUAL PUNISHMENTS INFILCTED AND THIS COURT'S JURISPRUDENCE JUSTIFIES CORRECTION BY THIS COURT.
- 3- THIS COURT MUST CORRECT THIS FUNDAMENTAL INBALANCE ON AN IMPORTANT CRIMINAL JUSTICE ISSUES THAT IS LIKELY TO RESULT IN UNFAIR DIFFERENCES IN SENTENCING OUTCOMES THROUGHOUT THE CRIMINAL JUSTICE SYSTEM.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Dora Moreira 


Date: October 30 2019