

No. 19-8133

OFFICIAL

IN THE SUPREME COURT OF THE UNITED STATES.

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MAR 17 2020

OFFICE OF THE CLERK
SUPREME COURT, U.S.

JORGE A. MARTINEZ, Petitioner

vs.

UNITED STATES OF AMERICA, Respondent.

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PETITION FOR A GVR-WRIT OF CERTIORARI
TO THE SIXTH CIRCUIT COURT OF APPEALS.

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By: Jorge A. Martinez,
Petitioner, pro se.

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Date: March 9th, 2020.

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QUESTIONS PRESENTED.

1. WHETHER THE 'BUT-FOR' TEST OF GENERAL CAUSATION IS SYNONYMOUS TO THE STATUTORIAL ELEMENT OF ACTUAL CAUSATION IN THOSE STATUTES LIKE 18 USCS § 1347-HEALTH CARE FRAUD RESULTING IN DEATH, WHICH FOR CONVICTION AND ENHANCEMENT REQUIRE NOT ONLY CONDUCT BUT THE RESULT OF THAT CONDUCT.
2. WHETHER ANY PERSON CONVICTED OF A CRIME HAS A CONSTITUTIONAL RIGHT THAT ENTITLES HIM TO HAVE A JUDICIAL NOTICE THAT INFORMS HIM WHAT IS THE SPECIFIC UNLAWFUL ACT FOR WHICH HE WAS CONVICTED.

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OPINIONS BELOW.

Petitioner, Jorge A. Martinez, respectfully prays that a GVR be granted or a Writ of Certiorari be issued to review the Judgments of the Sixth Circuit Court of Appeals in Case 19-3497 entered on September 27, 2019, denying Petitioner his COA for habeas review of Petitioner's claims of Actual Innocence in the light of Burrage, ruled final with the denial of rehearing and rehearing en banc of December 17, 2019.

JURISDICTION.

This Court's jurisdiction is invoked under 28 USC § 1254.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.

1. The Fifth Amendment Grants Petitioner with the Rights to "indictment by Grand Jury;" and not to be "deprived of liberty without Due Process of Law."
2. The Sixth Amendment Grants Petitioner with the Rights to an "impartial jury," and "to be informed of the nature and cause of the accusation[s]."
3. The Eighth Amendment Protects Petitioner against "cruel and unusual punishment."
4. Article IV, Section 1 obligues this Court to give "Full Faith and Credit" to "public [] records," of the State of Ohio.
5. Statute 18 USC § 1347-Health Care Fraud has a Sentencing enhancement provision "if the violation results in death," the Sentence can be enhanced to life in prison.
6. Statute 18 USC § 3231 gives the U.S. District Courts jurisdiction over offenses against the United States..
7. Statute 18 USC § 3553(a) obligates the District Court to state in the Sentencing Record the Sentencing Factors or "the nature and circumstances of the offense."

STATEMENT OF THE CASE.

Petitioner, Jorge A. Martinez, a medical doctor, an actually innocent federal prisoner for more than 15 years, under Oath via 28 USC § 1746 states as follows:

On January 2006 Martinez was convicted of two homicides by Health Care Fraud Resulting in Death - 18 USC § 1347- for the deaths of two Patients, Messrs Blair Knight and John Lancaster who took their own lives by their own hand and free will with self inflicted illegal drug overdoses with illegal drugs that Martinez did not prescribe to them as a matter of fact, matter of law and matter of the Law of the Case as the Trial Judge, after seein all the evidence at the end of the trial held, quoting TT 3369:

"THE COURT: There is no way that the prescription in the last day to Knight [and Lancaster] caused his death A, because he did not take, first of all, he did not follow the doctor's directions, B he took OxyContin [and a host of other illegal drugs] other than that which was given or prescribed to him by Dr. Martinez."

The government concurred:

"MS. HEAREY [AUSA]: You are correct."

The Trial Judge reiterated this finding of the Law of the Case:

[TT 3373] "THE COURT: ... But we know that Blair Knight [and John Lancaster] whatever medications he took, it was not the medication that was prescribed by Dr. Martinez. [] And I think that Lancaster present the same issues."

For these two false homicides, as clarified by Burrage, Martinez was, nonetheless, wrongly convicted for non-existing crimes and wrongly sentenced to two life terms in prison.

The Sixth Circuit Court of Appeals in its 12-1-09 Affirmation, see United States v Jorge A. Martinez, 588 F.3d 301 (6th Cir 2009) settled the Law of the Case, concurring with the Trial Judge, quote:

"ii. BLAIR KNIGHT. As with Lancaster, there is no evidence that a prescription written by Martinez directly caused Knight's death."

This establishes that Martinez' conduct was not the Actual Cause, or the Proximate Cause, or the 'But-For' Cause of Messrs Knight's or Lancaster's Deaths.

The Actual Causes of Knight's and Lancaster's deaths were self-inflicted overdoses with illegal drugs that Martinez did not prescribe to them; 'But-For' Knight and Lancaster overdosing with illegal drugs that Martinez did not prescribe to them, they would not have died, and without the self inflicted illegal drug overdoses their deaths would not have occurred.

Since then (12-1-09) the lower courts have endeavored to circumvent reality, ignoring the facts and the law, by the bewitchment of the language have tried to blame Martinez for the two false homicides that Martinez did not commit, the 12-1-09-Affirmation Panel gave an improbable explanation, quoting:

"Here, Martinez was not convicted for being the immediate cause of his patients' deaths but of fraudulently performing unnecessary medical procedures [plural] which LED to his patients' deaths."

In 2011, Martinez filed his first § 2255 petition with 135 constitutional claims in 625 pages, which inter alia included claims that:

1. The convictions and affirmation were unconstitutional because there is no a statute with a "LED to death" link of causation;
2. No "fraudulent""unnecessary" medical procedures can LEAD to death by illegal drug overdoses with illegal drugs that the physician did not prescribe.
3. All of Martinez' Patients had Medical Necessity as a Matter of the Law of the Case as the Trial Judge established it, see Appx. 3.
4. There is no evidence of Health Care Fraud in the whole Record.
5. The 12-1-09-Affirmation is Constitutionally Vague and invalid because it does not specify, exactly which procedure caused the deaths

to comply with the enhancement of Statute 18 USC § 1347-Health Care Fraud Resulting in Death, i.e., "if the violation [singular] results [singular] in death ... [the sentence may be up to life.]" And, as Justice Gorsuch held in Davis v United States, 139 S.Ct (6-24-19)

"A vague law is not law at all."

The District Court dismissed Martinez' Petition because had more than 20 pages allowed by a misapplied local rule 7.1; the District Court dismissed Martinez' Second § 2255 because had 23 pages plus an Affidavit of 625 pages.

On 1-27-14, this Court issued the Statutory mandate in Burrage v United States, 571 US 204, US Lexis 797 that for convictions by statutes that require conduct and a result of that conduct to require proof of Actual Causation, this includes 18 USC § 1347-Health Care Fraud Resulting in Death. Martinez preserved the issue.

Burrage explained that:

"'Results from' [or 'Results in' as in 18 USC § 1347-HCF-Resulting in death] ordinarily 'imposes a requirement of actual causality.'"

"A thing results from when it arises as an effect, issue or outcome from some action, process or design." id at 887-88.

In 2018, Burrage became retroactive in Habeas in the Sixth Circuit and Martinez filed his 4th and 5th § 2255 Petitions claiming Actual Innocence of the two false homicides in the light of Burrage which obviously invalidates the Indictment -no actual causation alleged,- that the Jury Instructions are erroneous and invalid and the Record is devoid of any evidence that Martinez conduct was the actual cause of Knight and Lancaster taking overdoses Martinez did not prescribe.

On 4-10-19, the District Court denied Martinez' COA for miscellaneous reasons and Martinez appealed making a substantial showing of Actual Innocence. On 9-27-19, a Sixth Circuit Panel denied Martinez'

based on a multi-flawed analysis of one single line of the Jury Instructions, i.e., "and without which they [the deaths] would not have occurred," which the Panel mistook for the Statutorial Element of Actual Causation, the "Results in Death" element that is missing from the allegations in the Indictment, from the Jury Instructions and from the Record. Quoting from the 9-27-19 Panel's denial:

"According to the jury instructions 'proximate or direct cause exists where the actions [prural] of the defendant in committing Health Care Fraud, in a natural and continuous sequence directly produced the deaths and without which they [the deaths] would not have occurred. [cites Martinez' 12-1-09 Affirmation which does not contain the Jury Instructions] In other words, notwithstanding that the instructions used the term 'proximate,' the jury could not convict Martinez only if it found that 'without' his fraud, i.e., 'but-for' his fraud, the deaths would not have occurred."

Rehearing and En Banc Review were denied on 12-17-19, Martinez now files this Petition for a Writ of Certiorari on March 10, 2020.

REASONS FOR GRANTING THE WRIT.

I. BURRAGE DEMONSTRATES THAT MARTINEZ IS ACTUALLY INNOCENT OF TWO FALSE CHARGES OF HOMICIDE AND IS UNCONSTITUTIONALLY SERVING TWO LIFE SENTENCES.

According to Due Process and Burrage (1) the Indictment is invalid because charged Martinez with two non-crimes of pseudo-homicides where the Indictment is missing the allegations of any conduct by Martinez that was the Actual Cause of Knight's or Lancaster's deaths as the Supreme Court held in United States v Cotton, 535 US 625. 632 (2002):

"the Government concedes that the indictment's failure to allege a fact [] that increases the statutory maximum sentence rendered respondents' enhanced sentences erroneous under the reasoning of Apprendi and Jones."

with Fifth Amendment Right to Grand Jury and Sixth Amendment Right to Notice violations; (2) the Jury Instructions are invalid because did not instruct the Jury what the Statutorial Element of Actual Causation "results in death," means; and (3) the Record is devoid of any eviden-

ce that Martinez' conduct was the Actual Cause of Knight's or Lancaster's deaths, where they took their own lives with overdoses of illegal drugs that Martinez did not prescribe to them as a matter of the Law of the Case. Burrage and Due Process require that some "act" by Martinez be the Actual Cause of the Deaths according to the Statute 18 USCS § 1347-Health Care Fraud Resulting in Death, i.e.; "IF THE VIOLATION RESULTS IN DEATH ... " this required 'act' the violation is non-existent in Martinez' Record. The Record is devoid of any evidence that Martinez' conduct was the Actual Cause of Knight's or Lancaster's deaths because Martinez did nothing wrong or fraudulent to cause Knight's or Lancaster's overdosing with illegal drugs that Martinez did not prescribe to them. The Lack of Evidence of any conduct by Martinez being the Actual Cause of the deaths, makes Martinez inelegible for the enhancement of the Statute 18 USCS § 1347, "IF THE VIOLATION RESULTS IN DEATH, SUCH PERSON SHALL BE ... IMPRISONED FOR LIFE ..."

This evidence that Martinez is actually Innocent is supported by Knight's and Lancaster's Official Ohio Deaths Certificates which deserve the Constitutional Full Faith and Credit of this Court under Article IV, Section 1 and Statute 28 USC § 1738 where Knight's death was "accidental" by "mixed drugs overdose" and Lancaster's death was "natural" due to "ARDS" or pneumonia. None of the decedents died due to "Health Care Fraud" or by "homicide."

A) THE DISTRICT COURT HAD NO STATUTORIAL JURISDICTION UNDER § 3231 TO TRY MARTINEZ FOR TWO FALSE HOMICIDES BY HEALTH FRAUD WHICH ARE MISSING THE ESSENTIAL STATUTORY ELEMENT ACTUAL CAUSATION.

§ 3231 gives Jurisdiction to the District Courts of the United States "of all offenses against the United States," in that the Offenses are formed by elements, and Healthcare Fraud resulting in death requi-

res the essential element of Actual Causation, the District Court had no statutorial jurisdiction to try Martinez for some non-existing Federal offense, non-existing federal crime, as this Court held in United States v Miller, 471 US 130, 140 at 143 (1985):

"a court cannot permit a defendant to be tried [or punished] on charges not made in the indictment against him."

B) THE 9-27-19-COA PANEL'S OPINION IS INVALID BECAUSE IT GOES AGAINST THE LAW OF THE CASE.

a. On 12-1-09, the Affirmation Panel established the Law of the Case:

"Here, Martinez was not convicted of being the immediate cause of his patients' deaths but of fraudulently performing unnecessary medical procedures that LED to his patients' deaths." Page 24.

Therefore, the Law of the Case is that there is no Actual Causation, because no Health Care Fraud by Martinez Actually Caused the Deaths, as the Law of the Case is still most clear in Page 25:

"iii. BLAIR KNIGHT. As with Lancaster there is no evidence that a prescription written by Martinez directly caused Knight's death."

Therefore the Law of the Case established by the Sixth Circuit Court of Appeals in 12-1-09 makes it clear that Martinez' conduct was not the Actual Cause or the Proximate Cause or the 'But for' Cause of Knight's or Lancaster's deaths, and the Record establishes as well that Martinez' acts, had no relation whatsoever with Knight or Lancaster taking their own lifes with illegal drugs that Martinez did not prescribe to them, and most importantly, that 'BUT FOR Knight and Lancaster overdosing with illegal drugs that Martinez did not prescribe to them, they would not have died.'

b. The AUSAs, "the best represented litigants to appear before the court," representing "the richest, most powerful" party, made up their own Jury Instruction about what they thought it best to be "PROXIMATE CAUSE," quoting: -TT 1374-

"MS. HEAREY [AUSA]: The government acknowledges ... the case says

"results in" and "proximate cause" are the same thing. In the proposed Jury Instructions we have addressed all the definitions of Proximate Cause [not of Actual Causation as required by Burrage], and given the testimony that this course of treatment resulted in death [which is then a Civil Malpractice and Negligence Claim in which there is no Federal Subject Matter Jurisdiction.]"

On January 3, 2006, the AUSA reiterated the government's position that the Proximate Cause Standard is sufficient for conviction under the statutorial element of 'if the violation results in death,' quoting TT 3367:

"In addition to that, 'results in' means 'proximate cause.'"

c. Now on 9-27-19, the COA Panel cherry-picking one line of the Jury Instructions of "Proximate Cause," in artificial isolation, -that is violating this Court's admonition in Cupp v Naughten, 414 US 141, 146-147 (1973), quoting "a single instruction to a jury may not be judged in artificial isolation,"- to misread and to misunderstand that the 'but-for' test of General Causation ("and without which they [the deaths] would not have occurred,") switching this line for the Essential Element of Actual Causation required by Due Process and by Burrage, changing the Law of the Case. The 9-27-19 denial states:

"According to the jury instructions 'proximate or direct cause exists where the actions [prural] of the defendant in committing Health Care Fraud, in a natural and continuous sequence directly produced the deaths and WITHOUT WITH THEY [THE DEATHS] WOULD NO HAVE OCCURRED. [] In other words, notwithstanding that the instructions used the term 'proximate,' the jury could not convict Martinez only if it found that 'without' his fraud, i.e., 'but-for' his fraud, the deaths would not have occurred."

Where 'but-for' is a test to eliminate non-causes and non-claims and it is unreliable as a test, like Judge Posner put it in United States v Hatfield, 591 F.3d 945, 2010 US App 880 (7th Cir 2010):

"most of the but-for causes aren't considered causes at all."

And this Court in Burrage at 887-88 defined Actual Causation:

"A thing results from when it arises as an effect, issue or out-

come from some action, process or design.", which is different that the 'But-For' Test of General Causation which is positive with any causes as remote as Adam and Eve, because 'but-for' Adam and Eve having offsprings, nothing else would have happened but that does not mean that Adam and Eve are responsible for everything that happened later on. The 'But-For' Test of General Causality loses all sensitivity, specificity and reliability for remote causes and it is not substitute for the lack of evidence of any conduct by Martinez, in the Record, that was the Actual Cause of Knight's or Lancaster's deaths, where the Law of the Case is settle in this matter:

"ii. BLAIR KNIGHT. As with Lancaster, there is no evidence that a prescription written by Martinez directly cause Knight's death."

C) IN FIVE OCCASIONS MARTINEZ HAS BEEN DENIED HABEAS REVIEW BY THE SIXTH CIRCUIT COURT OF APPEALS.

This is the Fifth Time that the lower Courts have denied to Martinez his Constitutional Right to Habeas Corpus Review under § 2255 due to questionable procedural reasons despite that this Court had admonished that "Dismissal of a first [second, third, fourth and fifth] habeas petition is a particular serious matter, for that dismissal denies the petitioner the protection of the Great Writ entirely risking injury to important interest in human liberty." Lonchar v Thomas, 571 US 473, 483 (1996).

D) THE 9-27-19 OPINION BY THE COA PANEL IS VOID FOR LACK OF SUBJECT MATTER JURISDICTION; IMPERMISSIBLY THE PANEL BECAME AN ADVOCATE FOR THE GOVERNMENT AND CREATED A NEW RECORD.

These are three more reasons to Grant the Writ:

1. The only Question before the COA Panel was: Whether Jurists of Reason would find it debatable that the Standard of Actual Causation of Burrage applies to 18 USCS § 1347-Health Care Fraud Resulting in Death as this Court held in Miller-El v Cockrell, 537 US 322 (2003):

"The court of appeals should limit its examination to a threshold inquiry into the underlying merit of the claim, -Slack v McDaniel- rather than ruling on the merits of the prisoner's claim." "When a court of Appeals sidesteps this process by first deciding the merits of an appeal, and then justifying its denial of a COA based on its adjudication of the actual merits, it is in essence deciding an appeal without jurisdiction."

2. Instead, the COA Panel, without Jurisdiction, raised a new prosecutorial argument based on the wrong analysis of one single line of the Jury Instructions, contrary to circuit precedent, see Brownlee v United States, 716 Fed. App 472 (6th Cir 2017): "It is not the job of an appellate court to make arguments for an appell[ee]". Accord. Greenlaw v United States, 554 US 237 (2003):

"When a court raises a forfeited issue sua sponte it undermines the principle of party representation and risks becoming a third advocate. [] And chips away the foundation of out system." And

"The necessity to maintain public faith in the judiciary as a source of impartial and reasoned judgment." Moragne v States, 398 US 375 (1970).

3. The COA Panel as well created a New Record, which is as well impermissible, quoting Camp v Pitts, 411 US 138, 147 (1973): "the focal point of judicial review should be the record already in existance, not some new record made initially by the reviewing court," and United States v Spector, 343 US 169 (1952) where the COA Panel cannot reach outside the record and decide matters not before it.

E) THE COA PANEL ON 9-27-19 WRONGLY DENIED MARTINEZ' APPEAL BASED ON A MULTI-WRONG ANALYSIS OF THE INVALID JURY INSTRUCTIONS.

1. The COA Panel without Subject Matter Jurisdiction blamed Martinez of two homicides by the multi-wrong analysis of one line of the Jury Instructions, taken totally out of context, to conclude that the Jury arrived to an impossible conclusion not supported by the Record, appearing to misread something else than "proximate or direct cause" as the AUSAs wrote in the Jury Instructions, and taking only the But-For line of the Proximate Cause Instruction to try to convert it in

Statutorial element of Actual Causation, the "results in death" element to invent an inexplicable hypothesis of cause of death like:

'But for Martinez relieving the pains of Knight and Lancaster, they would not have been able to walk to take the bus that took them to purchase the illegal drugs that they ingested and killed them and therefore Martinez' conduct was the Actual Cäuse of their deaths,'

and ignore the obvious reality that Knight and Lancaster took their own lifes; which does not make sense since the whole Sixth Circuit is endeavored to ignore the facts, the reality and the Record.

2. The 'But-For' test of General Causation is not a panacea of scientific sensitivity and specificity to determine causation which is destined to substitute common sense or DNA evidence in the coming future and it is not useful to circumvent the Law of the Case, again:

"ii. BLAIR KNIGHT. As with Lancaster, there is no evidence that a prescription written by Martinez directly cause Knight's death."

or the simple process of Elimination, when Knight and Lancaster took their own lifes, that eliminates Martinez as a suspect on their deaths.

3. The 'But-For' test of General Causation is not an element of any Statute, and it is not a substitute for the Element of Actual Causation "if the violation results in death..." as defined in Burrage: "a thing results from when it arises as an effect, issue or outcome from some action, process or design," id at 210, which are two different concepts, the latter is the law of the land, and the former is just a test to eliminate false causes, false claims and false damages.

4. The 'But-For' test of General Cäusation is vague because it is too general: (a) as Judge Posner put it in Hatfield, "a better term is 'necessary condition,'" since most of the but for causes aren't considered causes at all." (b) "There are multiple but-for causes of a plaintiff's injury," as the Tenth Circuit put it in Wilcox v Homestake, 619 F.3d 1165, 1173 -2010 US App 18758; (c) "but-for cause does not

mean sole cause." McDonald v City of Wichita, 735 F. Appx 529, 531-32 (10th Cir 2018); (d) the SDNY held "as case law notes there can be multiple but for causes" of varying degrees and directions that cause the plaintiff's damages." Amusement v Stern, 786 F.Supp 758, 2001. (e) A Proximate Cause, requires proof of 'but-for' causation as this Court held in Holmes v SIPC, 503 US 258 (1992), quoting:

"Thus we hold that plaintiff's right to sue under § 4 requires a showing that the defendant's violation not only was the 'but-for' cause of his injuries, but was the proximate cause as well." [] "Proximate cause has a demand for some direct relation between the injury asserted and the injurious conduct alleged."

Therefore, when the AUSAs wrote the Jury Instructions for "Proximate or Direct Cause," that is what they meant, notwithstanding that the COA Panel on 9-27-19, gave to the Jury Instructions ONLY the interpretation that it meant 'But-For' cause. And besides, Proximate Cause this Court held in Holmes: "the general tendency of the law in regard to damages is not to go beyond the first step" of Direct Relation.

5. The COA Panel, to blame Martinez of two homicides on 9-27-19, a.) ignored the errors in the 'Proximate or Direct Cause of Death' in the Jury Instructions --the deletion of the clause "unbroken by any new independent causes" and addition of the countless steps in the "natural and continuous sequence that directly causes the death;" b.) ignored that the phrase "and without which they [the deaths] would not have occurred" grammatically is an adjective phrase that qualifies the whole paragraph as this Court held in Paroline v U.S., 2014 US Lexis 2936:

"When several words are followed by a clause which is applicable as much to the first and other words as to the last, the natural construction of the language demands that the clause be read as applicable to all."

6. The 'BUT-FOR' Test of General Causation is not a substitute for the "Results in Death" Statutorial Element of Actual Causation; the But-For Test is not designed to substitute the aristotelian cause and effect,

as this Court held in *Burrage* at 715:

"A thing "results" when it [a]rises as and effect, issue, or outcome from some action, process or design," [] "Results from" imposes, in other words, a requirement of actual causality. In the usual course, this requires proof 'that the harm would not have occurred' in the absence of that is but-for-the defendant's conduct.",

the But-for is as well the rule for Actual Causation, where no effect can occur but for a cause and without which the effect would not have occurred, but that does not mean that because the Jury was instructed that Proximate Cause requires 'but-for' testing, the Jury was, as well, instructed in what Actual Cause means, which was not, the Jury was not instructed that "Results in Death," only means Actual Causation and not Proximate Causation or the version of 'Proximate Of Direct Cause' that the AUSAs invented. (a) The But-For Test of General Causation is not synonymous for Proximate Cause or Actual Cause, but it is a Test which is required to eliminate false causes, that is all. (b) The But-For Test of General Causation is only legally accepted; it is only valid to test the two closest causes to an effect, the Proximate Cause which is not allowed to have "beyond the first step" of direct relation and Actual Cause when the effect arises immediately from the cause.* (c) But-For is not designed to differentiate 'Proximate Cause' from 'Actual Cause,' that is, the but-for test of General Causation is not mutually exclusive of Actual Cause vs. Proximate Cause; if that were the case, Justice Scalia with his historical statutorial interpretative acumen would have pointed it out and Judge Posner would not have criticized the 'but-for' test in *Hatfield* by saying that "most of the but-for causes aren't causes at all."

NOTE: An example; if you are cooking in your backyard and the wind blows a spark and the house next door burns out, that is Proximate Cause and your insurance pays the civil damages; but if you light a match and burn the house next door, that is Actual Cause and the crime is arson; in both cases, the match was the but-for cause of the fires.

7. Therefore the COA Panel mistook the 'but-for' test of General Causation for the Statutorial Element of Actual Causation which is unconstitutionally missing from the whole record, from the Indictment to the 9-27-19-COA Panel's Opinion and the Panel did not review the Record for any evidence, for any facts that Martinez' conduct or acts were the Actual Cause of Knight's or Lancaster's Deaths, because such evidence is nonexistent in the Record and it is belied by the Law of the Case.

Case on Point, United States v [Dr.] Mackay, 610 Fed App 797 (10th Cir 2015) by Justice Gorsuch, when he was Circuit Court Judge;

"A defendant is generally entitled to a conviction supported [1] by a properly instructed jury and [2] by legally sufficient evidence [in the record]."

Martinez has the same Constitutional Rights than Dr. Mackay and must be treated in the same manner, that is by a review of the propriety of the Jury Instructions as a whole, as well, by a review of the Record for proof of any 'ACT' or 'Conduct' by Martinez which in fact was the Actual Causation of Knight's or Lancaster's taking their own lifes with illegal drugs that Martinez did not prescribe to them, which would have been a doubly impossible feat because a.) the Jury Instructions are full of errors, and thus invalid resulting in Martinez being convicted under the wrong standard of the wrong definition of 'Proximate Cause,' and b.) the Record is devoid of any evidence that any Act by Martinez was or could have been the Actual Cause of Knight's or Lancaster taking their own lifes with illegal drug overdoses; that is why the COA Panel on 9-27-19, limited its review to the misinterpretation of a Single Line of the Jury Instructions.

The 9-27-19-COA Panel, did not only took one phrase out of the Jury Instructions "i.e., and without which they [the deaths] would not have

occurred," but took the same phrase out of the definition of Actual Causation to take them both out of context.

II. MARTINEZ HAS BEEN IN PRISON FOR MORE THAN 15 YEARS AND NO COURT HAS IDENTIFIED WHAT WAS THE STATUTORIAL "VIOLATION," WHAT WAS THE "ACT" OR THE "ACTS," WHAT WERE THE "PROCEDURES" OR PROCEDURE OR WHAT THE "FRAUD" WAS OR COULD HAVE BEEN THAT "RESULTED IN" THE DEATHS OF KNIGHT OR LANCASTER TO COMPLY WITH STATUTE 18 USCS § 1347 'HEALTH CARE FRAUD RESULTING IN DEATH AND ITS SENTENCE ENHANCEMENT ELEMENT "IF THE VIOLATION [SINGULAR] RESULTS [SINGULAR] IN DEATH ... [THEN THE SENTENCE MAY BE RAISED UP TO LIFE IN PRISON.]"

1. THE INDICTMENT is invalid, against Due Process, against Hess (1888), Russell (1962) and Hamling (1974) because it does not charge with any allegation that any 'Act' or 'Acts' or 'Procedure' or 'Procedures' was or were or could have been Health Care Fraud, let alone that could have "LED" to Knight's or Lancaster's deaths and much less that could have been the Actual Cause of Knight or Lancaster taking their own lives by overdoses of illegal drugs that Martinez did not prescribe to them, obviously because it is factually, logically, scientifically and legally impossible, when Knight and Lancaster took their own lives.

2. DR. LOWELL DOUGLAS KENNEDY'S FEDERAL PROHIBITION TO RENDER TESTIMONY ABOUT "ACTUAL CAUSE OF DEATH."

a.-At Trial, the Government's Expert Witness about 'Cause of Death,' was Dr. Lowell Douglas Kennedy, who invented a new theory about Causation of Death, by "not using Doctor-Patient Relationship," quoting from Martinez' Trial TT 1189, on December 12, 2005: "I feel no doctor-patient relationship was used in this -- any or these" 50 medical records that Kennedy "believes" he "reviewed."

b.-The Trial Judge based on Kennedy's theory of Cause of Death by 'not using Doctor-Patient Relationship' decided that "everything [that Martinez] did was wrong" -which is not Fraud, but obviously it is Civil Medical Malpractice, medical incompetence and negligence, where the US Government has no Subject Matter Jurisdiction, quoting TT 3368:

"THE COURT: ... Because Kennedy, specially said there is no doctor-patient relationship, and he [Martinez] shouldn't have been treating Knight or Lancaster at all in the fashion that he did [a mere Medical Malpractice Claim and immediately, the US Government lost Subject Matter Jurisdiction over this Civil Claim]. So, [the Trial Court concluded] everything he [Martinez] did was wrong. [absolutely a Medical Malpractice Case]."

That is despite that the same Trial Court had found Kennedy misrepresenting, quoting TT 1336: "THE COURT: You [Dr. Lowell Douglas Kennedy] are trying to say more than what the drug screening shows."

Therefore it is undeniable that Martinez was tried for two false Homicides by criminalizing Civil Medical Malpractice and Negligence where the US Government has no Subject Matter Jurisdiction.

c.-DR. WILLIAM E. HURWITZ' TRIAL. Fast forward to Dr. Hurwitz' Trial on 4-9-07 (US v Hurwitz, No. 03-467, in the Eastern District of Virginia, Alexandria Division, Presided by the Honorable Leonie M. Brinkema) where Kennedy was disclosed and publically exposed to be a psychiatrically disable physician himself, and addict to self-prescribed AMPHETAMINES, unable to maintain 'Doctor-Patient Relationship' with any single person since December 2003 when Kennedy suffered a disabling psychotic-schizophrenic collapse due to overdosing with self-prescribed AMPHETAMINES, as Judge Brinkema commented, Hurwitz' TT 1452:

"THE COURT: I do feel, that the self prescription of medications by a doctor [Kennedy] is an appropriate subject since we're talking about the proprieties of prescriptions in this case. The fact that the doctor [Kennedy] has a condiction [addiction to AMPHETAMINES] for which he self-prescribes is really no relevant, and [] (TT 1453) the fact that an individual [Kennedy] may have a mental health situation for which he treats himself is one thing...[and Judge Brinkema was very close to declaring Kennedy insane] (TT 1457) You [Dr. Lowell Douglas Kennedy] stopped practicing because you had a [psychotic-schizophrenic] meltdown. Isn't that the case?"

Later on, Judge Brinkema issued a Federal Prohibition for Dr. Kennedy to render testimony about 'Actual Cause of Death,' quoting TT 1843:

"THE COURT: This witness [Dr. Lowell Douglas Kennedy] cannot testify upto actual cause of death."

and before that, Judge Brinkema prohibited Kennedy from rendering any

opinion about Kennedy's mantra about 'Doctor-Patient Relationship'
TT 1675: "THE COURT: this is not a malpractice case ... the answer
ought to be more precise and you [Dr. Kennedy] need to get more speci-
fic." *

Because Martinez' case was on Direct Appeal, these are New Rules
that invalidate Martinez' trial.

Kennedy charged to the Government about \$600,000.00 for his theory
of Cause of Death by 'not using doctor-patient relationship;' Kennedy's
fees as 'Consultant' are about \$25,000.00 a month, for the Government.
d.-Therefore, the basis of Martinez' convictions for the two homicides
is only Kennedy's subjective hypothesis that Martinez did not use 'doc-
tor patient relationship; '(TT 1189/ "I feel no doctor-patient relation-
ship was used in this -- any of these [50 medical records that Kennedy
"believes" he reviewed]." This logical atrocity was taken by Martinez'
Trial Judge as if Martinez had never had any 'doctor-patient relation-
ship' with any single of his patients during Martinez' 25-year medical
career.

e.-Kennedy's lack-of-doctor-patient-relationship hypothesis of cause of
death is blatantly contrary to the fabric of reality and logic, totally
preposterous and unbelievable, it is like saying that the Sun does not
exist or that the Earth is flat or that the Moon is made out of cheese
or that an Attorney does not have client-relation with his clients, and

NOTE: KENNEDY IS NOT AN EXPERT IN 'DOCTOR-PATIENT RELATIONSHIP.' On 2005, at Martinez'
Trial, Kennedy was not admitted as an Expert in Doctor-Patient Relationship thus Ken-
nedy's testimony was impermissible because Doctor-Patient Relationship is a Private
Contract, and a Contract is ALWAYS a Question of Law for the Judge and not for Kenne-
dy who could not have Doctor-Patient Relationship with any person since December 2003
when Kennedy suffered his psychotic-schizophrenic collapse and became mentally disa-
ble, unable to practice Medicine due to his AMPHETAMINE addiction. Kennedy's testimo-
ny about 'Doctor-Patient Relationship' besides became outlawed by Judge Brinkema's
Federal Prohibition to Kennedy to testify about 'Doctor-Patient Relationship.' Kenne-
dy, besides, never spoke with any single one of Martinez' patient to evaluate Marti-
nez' Doctor-Patient Relationship with any single of Martinez' patients.

it is so incoherent that demonstrates that Kennedy was actively insane, psychotic and schizophrenic, deranged at Martinez' trial, which is just incomprehensible to understand how any responsible, competent Federal Court could have tolerated such legally-illogically unfounded, palpable false, egregious hypothesis of 'Cause of Death,' which is impossible to be real, because it is contrary to the obvious facts, it is as fictional as the Emperor's Clothes.

3. NOT EVEN EVIDENCE OF MEDICAL MALPRACTICE. The Trial Judge manifested his lack of recognizing any evidence about anything medically Martinez did wrong, or omitted to do, and much less, anything that could have been deceiving or fraudulent on behalf of Martinez, and the Trial Court decided to sent the Deaths of Knight's and Lancaster's to the Jury based not on any evidence presented at Trial, but on pure and undeniable conjectures and speculations by the Trial Court, quoting TT 3373:

"THE COURT: And I think that Lancaster presents the same issues, although factually don't ask me how they [the jury] will get there [from the 'fraud' to the deaths; the Trial Judge saw no element of causation!] but other than the jury has to believe Kennedy, specially Kennedy [], this whole course of treatment [a medical malpractice issue without Federal Subject Matter Jurisdiction], I don't know what they [the government] expected Dr. Martinez to do when these people (TT 3374) presented themselves to him, apparently something other than what he did, ...[sheer speculation about malpractice]."

Undeniably the Trial Judge had seen no facts that would link any Fraud to the deaths and had to speculate that Medical Malpractice was missing the indispensable element of Actual Causation -No Federal Jurisdiction-.

4. THE JURY INSTRUCTIONS ARE INVALID, charging the Jury to find "the actions [prural] of the defendant in committing Health Care Fraud in a natural and continuous sequence directly produced the deaths," when that is not what the Statute 18 USCS § 1347-Health Care Fraud Resulting in Death says; what the Statute says is: "if the violation [singular] results [singular] in death, [the sentence can be enhanced to life in prison]." Burrage clarified that "results in," means Actual Causation

where many acts can be HealthCare Fraud, but only one act, one "violation" can be the Actual Cause of Death. The language of the Statute indicates that Congress for the Sentencing-to-life-enhancement intended that one singular, specific, identifiable, nameable "violation," one specific 'act,' one specific medical service, one specific 'fraud' be the Actual Cause of the death and NOT countless, vague, inespecific, ambiguous, unnameable "ACTS" like in Martinez's Case, where the nameless, "acts" are until this moment totally UNIDENTIFIED, abstract, because they are nonexistent, until this date, these "acts" remain totally mysterious, absolutely mythical, utterly elusive to any United States Court.

5. The Statute does not allow for bundling up an infinite number of speculative, abstract "acts" to blame someone of a homicide or two or to logically conclude that some inespecific medical procedures by a doctor "in a natural and continuous sequence LED" patients to take their own lives with overdoses of illegal drugs that the doctor did not prescribe, worse still with the AUSAs-Invented element of "a natural and continuous sequence," of countless steps of dominoe action to produce the deaths, which is a totally and undeniable continuous sequence of incoherent and illogical reasoning.

In Martinez' Case, no Court, no Judge, no Person in this World knows what the "acts," the "violation" is or could have been that had any relation with Knight or Lancaster taking their own lives.

The Invalid Jury Instructions resulted in Martinez being convicted and punished for two false homicides by a Constructed, false law not enacted by Congress. As Justice Gorsuch held in Davis v US, 139 S.Ct. 6-24-19: "A vague law is not law at all." Martinez was convicted by not law at all. Where even is impossible to identify if any 'Act' or Acts were contrary to the law, as this Court held in Richardson v U.S., 526

US 831 (1999):

"Federal crimes are made up of factual elements as a violation [singular] is not simply an act [singular] or conduct, but is an act or conduct that is [singular] contrary to the law."

6.-THE SENTENCING WAS IN VIOLATION OF MARTINEZ' DUE PROCESS RIGHTS, where the Sentencing Court finding no "act," or "acts" or "procedures" or anything to blame Martinez for Knight's and Lancaster's deaths, went on to Sentence Martinez based on pure Speculation: (TT 3714)

"But the evidence is that you [Martinez] should have done more than what you did. I think."

Where the Sentencing Court could not articulate any "nature and circumstances" or any "offense," thus it was impossible to comply with 18 USC § 3553(a) resulting in Martinez being Sentenced based only on Speculation, without knowing or being informed of anything wrong or illegal that Martinez could have done, except some mythical medical treatment over which the US Government has no subject matter jurisdiction.

7.-THE 12-1-09-AFFIRMATION DOES NOT MENTION ANY UNLAWFUL CONDUCT BY MARTINEZ; obviously that Panel, was unable to find any fraud, any deception by Martinez, and thus issued an ambiguous and vague Affirmation without mentioning any 'act,' 'acts,' 'conduct,' or 'procedure(s)' by any identifiable name, let alone how the "procedures" could have LED Knight or Lancaster to their deaths, quoting from Pg 24:

"Here, Martinez was not convicted of being the immediate cause of his patients' deaths but of fraudulently performing unnecessary medical procedures that LED to his patients' deaths.",

Obviously the Affirmation is invalid because it is speculative, and it is against the Law of the Case where the Trial Judge held that all of Martinez' patients had objectively confirmed, medical necessity to be treated for their pains, see Appendix 3, Pages 3391 to 3393.

8.-THE COA PANEL ON 9-27-19, STILL DOES NOT IDENTIFY ANY ACTION BY MARTINEZ THAT COULD HAVE BEEN "FRAUD" OR DECEPTIVE, nonetheless, the

the COA Panel goes to conclude that: "i.e., 'but-for' his fraud the deaths would not have occurred," without ever identifying what the "fraud" could have been.

9.-TWO DEATHS WITHOUT A CAUSE; if there is not an identifiable "fraud," or "act," or "acts," or "procedures," by Martinez that any of the Lower Courts could possibly have identified that had any relation with the deaths of Knight's or Lancaster, that means that ALL the Lower Courts' rulings are based on the illogical error that the deaths of Knight's and Lancaster's are Effects without a Cause; a logical impossibility, while in the other hand, the Lower Courts by willful blindness, have taken "deliberate action to avoid recognizing the fact" settled by the Law of the Case that Knight and Lancaster took their own lives by their own hand and free will with their own illegal drugs; quoting again from the 12-1-09-Affirmation: (Pg. 25)

"ii. BLAIR KNIGHT. As with Lancaster, there is no evidence that a prescription written by Martinez, directly caused Knight's Death."

this was concurring with the findings of the Trial Judge, quoting:

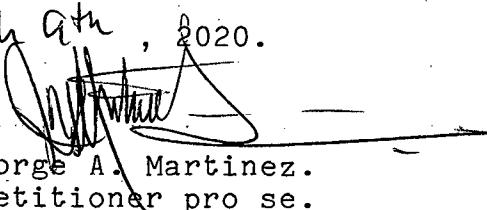
"THE COURT: But we know that Blair Knight [and Lancaster] whatever medications he took, it was not the medication that was prescribed by Dr. Martinez. [] and I think that Lancaster presents the same issue." --TT 3373 at the end of the trial on 1-3-06.--

CONCLUSION.

For all those reasons, in the interest of justice, a GVR should be granted to Martinez to allow him to have a Habeas Review in the light of Burrage.

Respectfully submitted today, *March 9th*, 2020.

All stated under Oath by


Jorge A. Martinez.
Petitioner pro se.