

IN THE UNITED STATES SUPREME COURT

No. 19-8133

PETITION FOR REHARING OF A GVR

GRANT, VACATE AND REMAND.

JORGE A. MARTINEZ

VS

UNITED STATES OF AMERICA

By: Jorge A. Martinez  
Reg. No. 39798-060  
United States Penitentiary Allenwood  
P.O. Box 3000, White Deer, PA 17887

### INTRODUCTION.

Petition for re-hearing under Rule 44.2-Intervening Circumstances of Substantial and Controlling Effect: The Supreme Court's Clerk lacks Article III authority to raise a procedural bar in violation of the Supreme Court's precedent to a Petition based on the Sixth Circuit Court of Appeals' Law of the Case settling that Martinez is Actually Innocent of two Homicides by Health Care Fraud.

### QUESTION PRESENTED.

WHETHER THE SUPREME COURT CLERK HAS ARTICLE III AUTHORITY TO ISSUE AND SIGN AN ORDER UNDER RULE 39.8 AGAINST ALL THE SUPREME COURT'S PRECEDENT TO CIRCUMVENT A PETITION BASED ON FACTUAL, ACTUAL INNOCENCE, FOUNDED IN THE BEDROCK PRINCIPLE OF THE LAW OF THE CASE ESTABLISHED BY THE SIXTH CIRCUIT COURT OF APPEALS ON 12-1-09.

FACTS: Petitioner, JORGE A. MARTINEZ, is a medical doctor, an anesthesiologist, an Actually Innocent Federal Prisoner for almost 16 years, serving two life sentences for 2 false homicides by Health Care Fraud in violation of 18 USC Sec. 1347-Health Care Fraud Resulting in Death, for the deaths of 2 of his Patients, Mr. Blair Knight and Mr. John Lancaster, Counts 59 and 60 of the S-Indictment dated 12-15-04, disable Patients with chronic severe injuries, failed spine surgeries and chronic intractable pain who took their own life by their own hand and free will with illegal drugs that Martinez did not prescribe to them as the Sixth Circuit Court of Appeals established as a matter of fact, as a matter of law and as a Matter of the Law of the Case on Direct Appeal, quoting from United States v Jorge A. Martinez, 588 F3d 301 (6th Cir 2009):

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

BURRAGE. On 1-27-14, this Supreme Court entered the Ruling of Burrage v United States, 571 US 204, which held that for conviction of these type of crimes that require 'conduct and a result of that conduct' requires proof of the element of Actual Causation, quoting from Burrage 887-888:

"'results from' [or 'results in as in 18 USCS Sec. 1347-Health Care Fraud 'resulting in' death] ordinarily 'imposes a requirement of actual causation.'"

The Supreme Court in Burrage defined Actual Causation as:

"A thing [death] results from when it arises as and effect, issue or outcome from some action, [Health Care Fraud] process or design." id at 888.

On 4-47-20, Martinez filed a Petition for a GVR based on Burrage which was denied by a procedural bar issued by the Supreme Court Clerk, Mr. Scott S. Harris, which, Martinez claims it was an error where it did not consider the Supreme Court's precedent when Mr. Harris declared that Martinez's Petition was "frivolous" or "malicious," -Rule 39.2.- The two things can not be true at once, either (1) Mr. Harris' Opinion that Martinez' Petition is "frivolous" or "Malicious" is true or (2) the Sixth Circuit Court of Appeals findings of the Law of the Case are true:

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

This is the Law of the Case that makes Martinez Factually and Actually Innocent of the two false homicides.

Respectfully, Mr. Harris did not review this case's Record because he would have noticed that the crucial element of Actual Causation of the two homicides is absolutely absent from the whole Record because it does not exist in this case, in this reality, therefore Martinez' Petition based on Actual Innocence and Manifest Miscarriage of Justice is based on all the substantive Supreme Court precedent and cannot be "frivolous" or "malicious," which respectfully call into question Mr. Harris analysis of the facts and law in this Case.

The Supreme Court on its 1-27-14-Burrage Ruling came to exonerate Martinez of two false convictions of Homicide by Health Care Fraud; Burrage as well came to demonstrate that Counts 59 and 60 of the S-Indictment dated 12-15-04 for homicides of Messrs Knight and Lancaster were fatally flawed because failure to charge the essential, crucial element of Actual Causation of these offenses, and their allegations cannot reasonably be construed to have charged Martinez any crime under Federal Law. The element of Actual Causation of the two false homicides is non-existent in the whole record. Martinez is

been punished for two false crimes and no Judicial Review has been given by any Court in 16 years. That is not Justice, in this Land of the Free, with Justice for All.

THIS IS A CASE OF ACTUAL INNOCENCE.

The Supreme Court holds that there is procedural bar that would detain a proved claim of actual innocence, see *McQuiggin v Perkins*, 133 S.Ct. 1924 (2013 US Lexis 4068), quoting:

"We hold that [1] Actual Innocence if proved serves as a gateway through which petitioner may pass whether the impediment is a [false] procedural bar [as this imposed by Mr. Harris] as it was in *Schlup* and *House* or in this case [where the procedural bar was raised by the arbitrary, unfounded decision of Mr. Harris.]"

Respectfully, Mr. Harris' dismissal is impermissible according to the Supreme Court law because a procedural bar no impediment when proof of actual innocence is presented for adjudication and the Supreme Court is bound by its own precedent. In *McCleskey v Zant*, 499 US 467 (1991) the Supreme Court held that "a colorable showing of Actual Innocence is not abuse of the writ" "If the petitioner can show that a fundamental miscarriage of justice when a constitutional violation probably has cause the conviction of one innocent of the crime." Martinez's convictions for two false homicides resulted from countless Constitutional violations, the most glaring is that Martinez was not charged with such offenses in the S-Indictment of 12-15-04; Martinez was falsely charged with two made up offenses that are missing the most critical and indispensable element of actual causation of the two false homicides in the allegations in Counts 59 and 60, which charge with 2 totally fantastic fictional false homicides with no physical link between Messrs Knight's and Lancaster's self inflicted deaths to Martinez' conduct, resulting in an undeniable, manifest, fundamental miscarriage of justice, a travesty of justice. With no Judicial Review.

Besides Martinez's 3-27-20-Petition complies with the requirements set out by this Supreme Court in *Sawyer v Whitley*, 505 US 333, 336 (1992) to show "by clear and convincing evidence that, but for a

[series of] constitutional error[s] no reasonable juror would have found Petitioner [Martinez] guilty" based on the Law of the Case.

THE LAW OF THE CASE: "THERE IS NO EVIDENCE."

Martinez has reached the evidentiary threshold of Factual and Actual Innocence supported by the bedrock principle of the Law of the Case established by the Sixth Circuit Court of Appeals on 2009, on Direct Appeal:

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

"The-Law-of-the-Case doctrine, generally provides that '"when a court decides upon a rule of law, that decision should continue to govern the same issue in subsequent states of the same case.'"

Without evidence that a prescription written by Martinez caused Knight's or Lancaster's deaths, it is impossible that any impartial tribunal would try to reopen the issue that was decided more than one decade ago.

TOTAL LACK OF EVIDENCE.

Martinez' Factual-Actual Innocence is not Martinez' hollow opinion but it is founded in the bedrock principle that was established by the Sixth Circuit Court of Appeals, based on the facts and the law and the record as the Sixth Circuit examined them, finding that there is an undeniable total lack of evidence that Martinez had anything to do with Knight's or Lancaster's deaths, forming the Law of the Case which is binding to all the Judiciary including Mr. Harris. The Law of the Case settled by the Sixth Circuit Court of Appeals makes it impossible that Martinez' actions were the 'Actual Cause' or the 'Proximate Cause' or the 'But-For cause' of Knight or Lancaster (white men) taking their lives by their own hand and free will, trying to enjoy a high with illegal drugs that Martinez (a successful Hispanic Doctor) did not prescribe, thus, Martinez is been punished for two false crimes of Homicide, by false, made up crimes to impugn guilt on Martinez' by racial prejudice and envy instilled by the FBI-DOJ into the jury, for things Martinez did not do, in a grab-job prosecution where the S-Indictment charges a loss of \$46,000 and the

District Court confiscated more than 7 Million dollars (all taxes paid) much of which was earned by Martinez before the dates included in the S-Indictment in a show-trial, with one of the most bias district court judges, staged under false laws, false facts where the Prosecution was allowed to introduce a massive amount of falsified evidence, manufactured by the FBI-DOJ, producing a massive Fraud Upon The Court which no lower court has accepted for review. How can Mr. Harris in good conscience say that Martinez' 3-27-20- Petition is "frivolous" or "arbitrary" without opening this file to see if he can find the missing element of the crime, i.e. the fundamental element of actual causation. With culture of corruption that has plagued the FBI-DOJ, any reasonable adjudicator must begin with the undisputable premise that the Federal Law Enforcement agents are prone to commit every type of crime to promote their careers. Martinez should not be blamed for what Messrs Knight and Lancaster did to themselves with illegal drugs that they purchased to get high, unbeknownst to Martinez and against Martinez' expressed directions.

A FUNDAMENTAL MISCARRIAGE OF JUSTICE  
AND EQUAL PROTECTION UNDER THE LAW

The Supreme Court, in *Coleman v Thompson*, 501 US 722, 750 (1991), held that conducts like Mr. Harris' denying review of a claim of Actual Innocence, is a total miscarriage of justice, quoting: "... failure to consider [Martinez'] claims [of factual, actual innocence] will [undoubtedly] result in a fundamental miscarriage of justice." Failure to remand Martinez' case for review on the light of *Burrage* would result in furtherance of this 16-year long pattern of a chain of fundamental miscarriages of justice, the "quintessential miscarriage of justice is [the punishment of] a person who is actually innocent," cf *Schup v Delo*, 513 US 298 (1995), mainly when this Supreme Court remanded the cases of Mr. Marcus Andrew Burrage (*Burrage*) and Mr. Samuel Ford, (*Ford v United States*, 134 S Ct 1274 (2014)) two street drug dealers whose heroin was involved in the deaths of their customers, while in Martinez' case "there is no evidence that a prescription written by Martinez" had anything to do with Knight or Lancaster taking

their own lives. cf 42 USC Sect 1981-Equal Rights under the law- and Griffith v Kentucky, 449 US 314, 323 (1987) which gives this Supreme Court the obligation to treat "similarly situated [individuals] the same."

#### THE MISSING ELEMENT OF ACTUAL CAUSATION.

The only way that Mr. Harris could have, under the Constitution, declared that Martinez' 3-27-20-Petition was "frivolous" or "malicious" is if Mr. Harris would have found in the Record the missing element of Actual Causation of the two false homicides, which is impossible because it does not exist. There is no element of actual causation in this whole case, in this whole record, from the ungranted FBI investigation, to the Grand Jury, to the Indictment, to the lack of proof and evidence at trial; to the jury Instructions; to the wrong convictions, to the 12-1-09 Affirmation by the Sixth Circuit Court of Appeals. No element of Actual Causation of the two false Homicides exist, where Martinez' actions cannot be linked to the deaths of Messrs Knight's or Lancaster's by any rational, physical means as a matter of fact, as a matter of law and as a matter of the Law of the Case. This is undisputable: these two false charges of Homicides without causation are an undeniably uncontrovertibly Fundamental Miscarriage of Justice as it is (a) the prosecution of this Actually Innocent Martinez (b) under a false law made up by the prosecution, not enacted by Congress, of the "narrow class" of "extraordinary cases" McCleskey v Zant, US at 494 which is "constitutionally intolerable" with one or more Constitutional Violations at every step of this 16-year old process.

#### THE S-INDICTMENT IS INVALID IN COUNTS 59 AND 60.

The S-Indictment makes not reference as to how the Government alleges Martinez actually caused Knight's or Lancaster's deaths. Because the S-Indictment is missing the crucial element of actual causation of the two false homicides by Health Care Fraud, -counts 59 and 60- i.e., How Martinez allegedly killed his two patients, this means that Martinez was falsely accused of a false crime that does not exist, a total made up crime, a fantasy, accused of two false homicides that do not exist as a matter of fact, of law and justice, because no such a crime has been enacted by Congress, as the Supreme Court

has put it every different way. In *Davis v United States*, 417 US 333, 345 (1974) the Supreme Court put it this way: "We suggest that the appropriate inquiry was whether the claimed error of law was 'a fundamental defect which inherently results in a complete miscarriage of justice.'" Prosecuting a Actually Innocent Martinez for 2 false homicides under a false crime not enacted by Congress qualifies as a "fundamental defect," Mr. Harris did not consider this Supreme Court's precedent.

On 1-27-2014, this Supreme Court issued the Burrage Ruling, almost a decade had passed by since the S-Indictment of 12-15-04 was handed down by the Grand Jury. The Burrage Ruling came to establish, to demonstrate, to settle that the Counts 59 and 60 are invalid because of its failure to allege any of the two offenses require to prosecute under 18 USCS Sec. 1347-Health Care Fraud Resulting in Death, a fatal failure to charge any crime under Federal Law.

The indictment to be valid had to allege the two elements of this compounded crime: (First) a deceptive material act by Martinez that was Health Care Fraud, (Second) How that specific act of Health Care Fraud actually ("resulted in") the deaths of Messrs Knight and Lancaster, all which are factually impossible to allege because such conduct, acts never happened, that failure to allege the essential elements of the compounded crime of 'Health Care Fraud Resulting in Death' violates Due Process according to this Supreme Court in *Jones v United States*, 526 US 227 at 252 (1999). Because the Indictment does not charge with any crime enacted by Congress, it violates Martinez' Due Process Rights under the Fifth and Sixth Amendments of the U.S. Constitution in more than many different ways, and Mr. Harris did not notice even one, indicative that Mr. Harris, simply issue his 'Order' without reading the Petition that Martinez. It was a boilerplate order with no legal thought behind it. This Supreme Court held in *Frohwerk v United States*, 249 US 206 (1919) "in the absence of an act of Congress there can be no crime against the United States..." and in *Krulewitch*, 336 US 440 (1949) "every federal prosecution must be sustained by statutory authority," and in *Bousley v United States* 523 US 614 (1998) "under the



Nation's federal system it is only Congress, and not the courts [or the AUSA's] which make conduct criminal."

THE S-INDICTMENT DOES NOT CHARGE WITH THE TWO HOMICIDES.

The Grand Jury Clause of the Fifth Amendment generally protects persons from prosecution in a federal court "for capital or otherwise infamous crime, unless on a presentment or indictment by a Grand Jury;" Rule 7(c)(1) requires as part of Due Process "the essential facts constituting the offense charged." "Only the words in the indictment give evidence of whether the Grand Jury considered and included within the offense charged the essential element,"(United States v Gonzalez, 686 F3d 122, 128-9 (2d Cir 20012)). Because the essential element of Actual Causation of the two homicides by Health Care Fraud is not alleged in the Indictment, it is a fact that the Grand Jury did not see, considered, found the crucial element of Actual Causation of the two false homicides Martinez was charged with; therefore it is undisputable and incontrovertible that Martinez was not charged with the valid crimes as enacted by Congress; Martinez was charged with a false crime by the Grand Jury, a false crime that is missing the most crucial and indispensable element of Actual Causation, Martinez was charged with a false crime not enacted by Congress.

The Sixth Amendment provides added protection that a defendant is entitled to adequate Notice "of the Nature and Cause of the accusation[s]." Martinez has never received Notice of how the FBI-DOJ-Grand Jury allege Martinez actually caused the killing of his two patients. According to this Supreme Court in Smith v O'Grady, 312 US 329, 249 (1941): "Real Notice of the true nature of the charges against him [is] the first and most universal recognized requirement of due process." This Supreme Court - Hamling v United States. 418 US 87, 117 (1974) held that an indictment to be sufficient "first contains the element of the offense charged and fairly informs a defendant of the charges against which he must defend." The invalid indictment did not Notify Martinez how the Government alleged that Martinez'

actions were a Health Care Fraud and how the Government alleged that those actions actually killed Knight or Lancaster, which is impossible because they took their own lives.

Burrage on 1-27-14 came to clarify that Martinez in his 12-15-04 S-Indictment for two false charges of Homicide by Health Care Fraud were false charges which are missing the elements of (1) any fraud that was (2) the actual causation of Knight's or Lancaster's deaths. The acts related to Knight's and Lancaster's deaths in the Indictment do not constitute a violation of the law and the indictment does not conform to minimal Constitutional Standards; the indictment is invalid and it is fundamentally flawed in counts 59 and 60. Because the Indictment is invalid when it lack the element of actual causation of two homicides, no Due Process-Constitutional convictions could be had.

IN COUNTS 59 AND 60 OF THE S-INDICTMENT CHARGES WITH CONSTRUCTIVE OFFENSES.

Obviously the DOJ-FBI charged Martinez with 2 false homicides by making up, inventing, constructing offenses that do not exist -because they are missing the crucial element of actual causation of 2 homicides, which is impermissible as this Supreme Court held since 1890 (United States v Lacher, 134 US 624, 628): "there can not be constructive offenses and before a man can be punished his case must be plainly and unmistakable within the statute;" and "constructed offenses are those not enacted by Congress," -United States v Enmos, 410 US 396 (1973).

In Counts 59 and 60 no constitutional convictions could have occurred because Martinez was charged with two a non-existing offenses which are missing the crucial element of actual causation. The Non-Detention Act 18 USCS Sec. 4001(a) provides that "No citizen shall be imprisoned or otherwise detained by the United States except pursuant to an Act of Congress." These principles of constitutional law, were as well totally ignored by Mr. Harris.

THE DISTRICT COURT HAD NO SUBJECT MATTER JURISDICTION TO TRY MARTINEZ  
FOR TWO FALSE HOMICIDES BY HEALTH CARE FRAUD.

The Supreme Court in Stirone, 366 US 212, 215-217 (1960) held that "a court cannot permit defendant to be tried on charges that are not made in the indictment against him." Not in Martinez'

case, where the indictment is fundamentally flawed and the Trial Court sent the 2 false charges of Homicide for Jury Deliberations based on a clear and undisputable State Civil Medical Malpractice and Negligence Claim far outside the normal scope of any Federal Courts' Jurisdiction where the Trial Judge, did not see the element of Actual Causation of the two Homicides none the less, sent the Homicides to the Jury based on "the wrong course of treatment," quoting TT 3372:

"THE COURT: ... the only thing that gets this to the jury are these two doctors [who] said it was the wrong course of treatment."

It is undeniable that Mr. Harris did not consider that "the wrong course of treatment," means that the most the Trial Judge found was that it was a Medical Error, not a Federal Crime of Homicide; it means that the Trial Judge could not see the crucial element of Actual Causation of 2 homicides by Health Care Fraud, it is a generalized and unspecific vague concept that can't even sustain a Medical Malpractice Claim.

The Supreme Court in *United States v Cotton*, 535 US 625 (2002) held that "defects in subject matter jurisdiction require correction, regardless of whether the error was raised in the district court." Respectfully, one prisoner, after 16 years in a Maximum Security Federal Prison would expect that the Supreme Court Clerk has developed a keen legal eye to spot this type of brutal mistakes and fundamental miscarriages of justice, as the Supreme Court held on *FW/PBS Inc v Dallas*, 493 US 216, 230 (1990): "Federal Courts, [including Mr. Harris] are under an independent obligation to examine their jurisdiction and standing is the most important of doctrines."

"A CONVICTION UNDER AN UNCONSTITUTIONAL LAW ... IS ILLEGAL AND VOID."

The Constitutional deprives the Government of authority to impose convictions and sentences under an unconstitutional Statute that lacks the most crucial element of the offense, this has resulted in Martinez' case of a judgment that is "illegal and void," according to the Supreme Court in *Montgomery v Louisiana*, 577 US \_\_\_\_ (2016):

"a conviction under an unconstitutional law is not merely erroneous, but is illegal and void,

and cannot be a legal cause of imprisonment. It is true, if no writ of error lies, the judgment may be final, in the sense that there may be no means of reversing it. But if the laws are unconstitutional and void, the circuit court acquired no jurisdiction of the causes. The same logic governs a challenge to a punishment that the Constitution deprives the [government's] authority to impose. A conviction or sentence that violates a substantive rule, [Burrage,] is void regardless of whether the conviction or sentence became final before the rule was announced."

Five justices signed this opinion, Chief J. Roberts, JJ Ginsburg, Breyer, Sotomayor, and Kagan, Joined by J. Kennedy; it is inconceivable that J. Gorsuch, who wrote that "a vague law is not law at all," cf Davis v United States, 139 St C \_\_\_\_ (6-24-19) or J. Kavanaugh who has suffered false accusations himself would allow Martinez to be imprisoned on false accusations and false law, therefore, it is reasonable to conclude that no Justice of the Supreme Court participated on Mr. Harris' decision of 4-17-20.

**THE JURY INSTRUCTIONS ARE INVALID BECAUSE DID NOT  
INSTRUCT THE JURY WHAT ACTUAL CAUSATION IS.**

The Jury Instructions are as well invalid because did not include an explanation of what Actual Causation is and its requirement to find Martinez guilty of two homicides by Health Care Fraud, at the Supreme Court defined in Burrage, at 887-888, quoting:

"a thing [death] results from when it arises as and effect, issue or outcome from some action [Health Care Fraud], process or design."

The crucial element of actual causation is missing from the Jury Instructions, resulting in Martinez being found guilty of an invalid offense not enacted by Congress, therefore, "defendant [Martinez] stands convicted of an act [two false homicides] that the law does not make criminal." Davis, 471 333 at 346 (1974). The verdicts of the two homicides were not "based upon evidence developed at trial." No evidence of Actual Causation was developed at trial," (Irving v Dowd, 366 US 717, 722 (1962)). In Fiore v White, 531 225, 228,29 (2001) this Supreme Court held that Due Process is violated to "convict a defendant for conduct that a [false] criminal statute properly interpreted does not prohibit," and in Thompson v Louisville, 362 US 99 (1960) held that it is a violation of due process to convict a man without evidence of his guilt. In Blakely v Washington, 124 S.Ct 2531 (2004) this Supreme Court held:

"When a judge inflicts punishment that the jury's verdict alone does not allow, the jury has not found all the facts which the law makes essential to the punishment, the judge exceeds his proper authority;" this Due Process Right of Martinez, was as well violated by the Trial Judge. In Jackson v Virginia, 443 US 307 (1979), this Supreme Court held:

"a criminal conviction based upon a record wholly devoid of any relevant evidence of a crucial element of an offense, is constitutionally infirm, the most elemental of due process rights being freedom from whole arbitrary deprivation of liberty."

Most Respectfully, Mr. Harris order is totally devoid of any factual or legal foundation, and obviously is the unfortunate result of herd denials by the Supreme Court without evaluating every case based on any facts, when, it appears that after any Actual Innocent Prisoner, unrepresented and pro se continues to claim his Actual Innocence, the Judicial Integrity requires that the Clerk of the Supreme Court of the United States be the paragon of Justice, himself, and not to do this type of errors which destroy the life of an innocent and the welfare of his family.

**THE SENTENCING COURT COULD NOT FIND THE CRUCIAL ELEMENT OF ACTUAL CAUSATION  
IN THE RECORD AND SENTENCED MARTINEZ BASED ON A SPECULATIVE MEDICAL CARE.**

At Sentencing, the Sentencing Judge did not find any facts, any evidence, any elements to dictate punishment to Martinez or to comply with Due Process under Sec. 3553(a) and state in the record "the nature and circumstances of the [two false homicides] offenses," and so, at Sentencing it became impossible for the Sentencing Judge to Sentence Martinez for any crime enacted by Congress, therefore, the Sentencing Court had to speculate, to make up something which it really does not make sense, because an error is not a crime, quoting, TT 3714:

"THE COURT: But the evidence is that you should have done more than what you did. I think."

It does not make sense because that is not evidence of anything, that is only a speculation of some imaginary sort treatment that may not have been provided to the decedents, there is always some sort of better treatment that could have been provided to any patient, which is not Federal Crime, therefore,

the Federal Courts have no subject matter jurisdiction where it is, again, a clear and undeniable Medical Malpractice and Negligence issue, as the Supreme Court put it in *Welch v United States*, (4-18-16) 136 S. Ct 1257 (2017): "in either case a court lacks the power to exact penalty that has not been authorized by valid criminal statute."

MARTINEZ WAS NEVER CHARGED WITH THE STATUTE 18 USC SEC. 1347-  
HEALTH CARE FRAUD RESULTING IN DEATH, THEREFORE, MARTINEZ IS  
IS PRESUMED INNOCENT OF THESE CRIMES NOT CHARGED IN THE INDICTMENT

Martinez has never been charged with the real offenses as enacted by Congress in the S-Indictment Counts 59 and 60, 18 USC Sec 1347-Health Care Fraud resulting in the Death of Mr. Blair Knight and John Lancaster, where the crucial and indispensable element of Actual Causation is missing from the Indictment and from the whole Court Record, thus, the Jury never has found Martinez guilty of these offenses as enacted by Congress and clarified in *Burrage* by the Supreme Court, therefore, Martinez is presumed innocent of those false, concocted crimes of two false crimes of Homicides, as the Supreme Court held in *Nelson v Colorado*, 137 S Ct 1249 (4-19-17): "[A]xiomatic and elementary, 'the presumption of innocence' lies at the foundation of our criminal law." To convict Martinez of some crime, first and foremost, Martinez has to be charged with the proper crime, not with a concoction of false incoherencies by AUSA which obviously did not know anything about this Statute and its elements.

JUDICIAL BLINDNESS CONDUCTS TO INJUSTICES  
WHERE SILENCE IS CONSENT.

The Supreme Court can write beautiful opinions about Justice, which have no effect on Justice if the Supreme Court Clerk does not read any pleadings of unrepresented Prisoners claiming to be Actual Innocent by issuing cut-and-paste ambiguous denial orders which don't even specify whether the Clerk, Mr. Harris thought that the Petitions were "frivolous" or "malicious." Quoting from *Schlup v Delo*, 513 US 298 at 319 (1995):

"However if the accuse presents evidence of innocence so strong that the court cannot have confidence in the outcome of the trial unless the court is also satisfied that the trial was free of non-harmless constitutional errors, then the accused should be allow to pass through

the gateway and argue the merits of his underlying claim."

Why would the Supreme Court ask the innocent man to present evidence of his actual innocence if the Supreme Court Clerk would not give a hint that he read any pleadings or any part of the Court record before issuing an Order that upon scrutiny is totally unfounded by any Fact or any Law?

There is no way that Martinez killed any of these men when they took their own lives by their own hand and free will with illegal drugs that Martinez did not prescribe to them, therefore, it appears that the whole process up to the Office of the Clerk of the Supreme Court of the United States could be a little corrupt when the only way to keep and actually Innocent Federal Prisoner in Prison is by denying him review of his petition based on Actual Innocence. Even 1% of corruption is intolerable in any court, and 1% of corruption in the Supreme Court, taints the whole Supreme Court with a destruction of its integrity. As the Supreme Court put it in *In re Windship*, 397 US 358, 372 (1970): the "fundamental value determination of our society that is far worse to convict an innocent man than let a guilty man go free." What about the determination of the Supreme Court's Clerk to read the papers of the "innocent man" before subjecting him to a brutalization of the blindness of the Judiciary?; again, *In re Windship*, "the moral force of the criminal law [is] diluted by a [legal process] that leaves people in doubt whether innocent men are convicted," *Id* at 364. This Actually Innocent Martinez, can continue to scream to his cell walls that he is actually Innocent, and if no Judicial Review is granted by the Supreme Court, then the Judicial Process in the Supreme Court is indistinguishable of Soviet Stalin's type of justice; that has been Martinez' 16-year long process.

All Stated Under Oath under 42 SUS Sect 1746.

Respectfully Submitted today 15 of May, 2020.

Jorge A. Martinez. Pro Se.

CERTIFICATE OF SERVICE.

This will CERTIFY that today 15 of May, 2020, I have sent a copy of this Petition for Rehearing to the Solicitor General of the United States to his Office in Washington DC.

Jorge A . Martinez. Pro se.  
Petitioner.

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