

20-5233

No. 15A720
Dec 20, 2016, Decided
No. 16A611.
April 24, 2017, Decided
No. 17-5498.
October 2, 2017, Decided
No. 17-5498.
February 20, 2018, Decided
No.

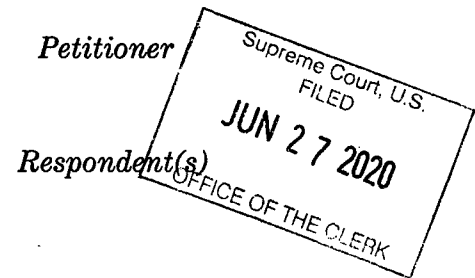
IN THE
Supreme Court of the United States

ORIGINAL

MICHAEL R. BURNS,

v.

UNITED STATES,

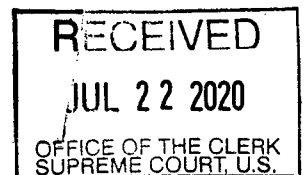


PETITION FOR WRIT OF CERTIORARI

UNITED STATES COURT OF APPEALS FOR FIRST CIRCUIT

Hains v. Kerner 404 us 519 (1972)

pleadings drafted by prose litigants must be liberally construed.



Michael R. Burns
#93576-038
U.S.P. Lee County
P.O. Box 305
Jonesville, VA 24263

QUESTION(S) PRESENTED

1. Does The Appellate Court Have A Sovereign
Obligation To Appoint Counsel And Recall A Mandate
When A Dead Bang Winning Appellate Issue Was
Presented On Direct Appeal, A Critical Stage
Yet Was Never Addressed By Appeals Court?
establishes newly discovered evidence
^{Presented} DNA And Fingerprint Fabrication
^{See} Thompson v. Calderon 120 F.3d 1045 CA9 (1997)

2. Does The Appeals Court Have Jurisdiction To Affirm
Summarily Cases, When A Rule 33 Is Filed Under
US v. Cronin 80 Lcd 2d 657 466 US 648 (1984)? One Who
Aspires To Employ Rule 33 While Case Is Pending
Appeal Is Not Obligated To File Motion Or Seek
Leave From Appeals Court. Such Circumstances,
Proper Procedure Is For One To File Rule 33 In
The District Court ^{See} US v. Braciani 61 F3d 77 (1995)
^{presented} DNA And Fingerprint Fabrication
^{See} U.S. v Phillips 558 F2d 363, 363 (6th Cir 1977)

LIST OF PARTIES

[✓] 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:

UNITED STATES OF AMERICA,

Chief Judge Howard, Judge Torruella,
Judge Lynch, Judge Thompson, Judge Kayatta, Judge Barron,

David Gerard Tobin
Kenneth G. Shine
Donald Campbell Lockhart
Randall Ernest Kromm
Maxim Grinberg

RELATED CASES

District of Massachusetts (Boston)

Michael R. Burns

1. United States Court of Appeals

Case No. 12-2318

Chief Judge Howard, Judge Torruella, Judge Lynch, Judge Thompson, Judge Kayatta, Judge Barron

2. United States District Court

Judge O'Toole

Case 1:10-cr-10390-GAO

3. SUPREME COURT OF THE UNITED STATES

Roberts, Kennedy, Thomas, Ginsburg, Breyer, Alito, Sotomayor, Kagan, Gorsuch.

No. 15A720.

Dec 20, 2016, Decided

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April 24, 2017, Decided

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TABLE OF AUTHORITIES CITED

CASES

Youngblood v. Arizona 488 U.S. 51 (1988) <u>U.S. v. CRONIC</u> 466 U.S. 648 (1984)	17, 27 1, 11, 12, 15
Limone v. United State 372 F.3d, 45 (1 st Cir 2004) <u>U.S. v. BRACIANI</u> 61 F.3d 77 (1995)	13, 27 12
Napue v. Illinois 360 U.S. 264 (1954) <u>U.S. v. Phillips</u> 558 F.2d 363, 363 (6 th Cir 1977)	27 12
Strickler v. Greene 527 U.S. 150 (1998) <u>Haines v. Kerner</u> 404 U.S. 519 (1972)	27 COVER
Giglio v. United states 405 U.S. 150 (1972) <u>Thompson v. Calderon</u> 120 F.3d 1045, CA9 (1997)	27 14
Bagley v. United States 473 U.S. 667 (1972) <u>Wilkins v. U.S.</u> 441 U.S. 468 (1976)	27 7
United States v. Agurs 427 U.S. 97 (1972) <u>Luqwig v. U.S.</u> 162 F.3d 456 (CA6, 1998)	27 7
United States v. Olano 507 U.S. 725 (1993) <u>Evitts v. Luecy</u> 469 U.S. 387 (1985)	28 10
Chapman v. California 386 U.S. 24 (1967)	28

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STATUTES AND RULES

Pg 10

CONSTITUTION OF THE UNITED STATES AMENDMENT 14 Equal Protection.

Section 1: [Citizens of the United States.]

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, 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 citizens 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 the laws.

The equal protection guarantee of the Fourteenth Amendment prohibits the state from "deny[ing] any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1. With reference to a governmental action, this language has been interpreted to mean that "all persons similarly situated should be treated alike.

L Ed Digest: Constitutional Law § 840.3

1. The right to a fair trial, guaranteed to state criminal defendants by the Due Process Clause of the **Fourteenth Amendment**, imposes on states certain duties consistent with their sovereign obligation to ensure that justice shall be done in all criminal prosecutions. When a state suppresses evidence favorable to an accused that is material to guilt or to punishment, the state violates the defendant's right to due process, irrespective of the good faith or bad faith of the prosecution. (Stevens, J., joined by Kennedy, Souter, Ginsburg, and Breyer, JJ.)

Although a state is obliged to prosecute with earnestness and vigor, it is as much its duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one. Accordingly, when the state withholds from a criminal defendant evidence that is material to his guilt or punishment, it violates his right to due process of law in violation of the **CONSTITUTION**.

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IN THE
Supreme Court of the United States

OPINIONS BELOW
PROCEEDING AND RELATED CASES:

District of Massachusetts (Boston)

The opinion of the United States court of appeals appears at Appendix A to
the petition and is

MICHAEL R. BURNS, No. 12-2318
COURT OF APPEALS FOR THE FIRST CIRCUIT

1. United States Court of Appeals

Case No. 12-2318

Chief Judge Howard, Judge Torruella, Judge Lynch, Judge Thompson, Judge Kayatta, Judge Barron

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October 2, 2017, Decided

No. 17-5498.

February 20, 2018, Decided

Roberts, Kennedy, Thomas, Ginsburg, Breyer, Alito, Sotomayor, Kagan, Gorsuch.

1. No. 12-2318

United States Court of Appeals

See

October 21, 2019

Chief Judge Howard, Judge Torruella,

Judge Lynch, Judge Thompson, Judge Kayatta, Judge Barron,

7018 2290 0000 0925 2038

2.

For the First Circuit District Court

Judge O'Toole

November 1, 2019

November 8, 2019

November 14, 2019

7018 1830 0000 5662 2124

7019 0700 0000 8732 6659

7018 2290 0000 0925 2045

No. 1:10-cr-10390-

OFFICE OF THE CIRCUIT EXECUTIVE
October 30, 2019

Complaint Nos. 01-19-90038 - 01-19-90044
complaint of judicial misconduct

7018 1830 0000 5662 1677

JURISDICTION

The date on which the United States Court of Appeals decided my case was dated on March 18, 2020.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

District court 18 U.S.C. 3231

Court of appeals 28 U.S.C. 1291

Supreme Court 28 U.S.C. 1257

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

CONSTITUTION OF THE UNITED STATES

Equal Protection.

AMENDMENT 5

1. Criminal actions-Provisions concerning-Due process of law and just compensation clauses.

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 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 offence to be twice put 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.

AMENDMENT 6

2. Rights of the accused.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State 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.

AMENDMENT 14

3. Section 1. [Citizens of the United States.]

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, 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 citizens 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 the laws.

The equal protection guarantee of the Fourteenth Amendment prohibits the state from "deny[ing] any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1. With reference to a governmental action, this language has been interpreted to mean that "all persons similarly situated should be treated alike."

L Ed Digest: Constitutional Law § 840.3

1. The right to a fair trial, guaranteed to state criminal defendants by the Due Process Clause of the **Fourteenth Amendment**, imposes on states certain duties consistent with their sovereign obligation to ensure that justice shall be done in all criminal prosecutions. When a state suppresses evidence favorable to an accused that is material to guilt or to punishment, the state violates the defendant's right to due process, irrespective of the good faith or bad faith of the prosecution.

(Stevens, J., joined by Kennedy, Souter, Ginsburg, and Breyer, JJ.)

Although a state is obliged to prosecute with earnestness and vigor, it is as much its duty to refrain from improper methods calculated to produce a **wrongful conviction** as it is to use every legitimate means to bring about a just one. Accordingly, when the state withholds from a criminal defendant evidence that is material to his guilt or punishment, it violates his right to due process of law in violation of the **CONSTITUTION**.

STATEMENT OF THE CASE

The Presented Case Here Could Effect Thousands Of Cases State And Federal, Dealing With DNA And Fingerprint Evidence Being Unequivocally Fabricated To Wrongfully Convict Petitioner And Possibly Others Tried Within The Commonwealth Of Massachusetts. Petitioner Has Presented A Question Concerning Jurisdiction Of The Appeals Court When It Is Technically Overstepped With Culpability Before A Disposition Of A Filed Rule 33 In The District Court. That By The Protection Of U.S. v Cronin Footnote 42 Gives The Jurisdiction To The District Court Most Importantly During A Pending Direct Appeal. The Direction Here Is For Rule 33 To Be Dealt With, Then The Appeal Court May Retain Jurisdiction And Render A Judgement. In The Present Case Appeal Court Overstep Jurisdiction And Entered A Judgement, Thus If So, Does That Make The Entered Judgement Technically Void Because It Was Entered Without Proper Jurisdiction. This May Clarify A Pending Direct Appeals Jurisdiction When A Rule 33 Has Been Rightly And Timely Filed.

REASONS FOR GRANTING THE PETITION

In The Constitution All Have Equal Rights
In The Blessings And Protections

CONSTITUTION 14th Amendment

Due Process Clause

Sovereign Obligation - Up Hold The

CONSTITUTION Equal Protections

Should Be A Fair Trial

Not A Guilty Until Proven Innocent

TRIAL BY JURY

is Critical Stage. See Appellate

Should Be A Fair Trial

Not A Guilty Until Proven Innocent

TRIAL BY JURY

is Critical Stage. See Appellate

Should Be A Fair Trial

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TRIAL BY JURY

is Critical Stage. See Appellate

Should Be A Fair Trial

Not A Guilty Until Proven Innocent

TRIAL BY JURY

is Critical Stage. See Appellate

Should Be A Fair Trial

Unequivocal Fact

PETITIONER WAS WRONGFULLY CONVICTED IN VIOLATION
OF THE CONSTITUTION, ON FABRICATED DNA AND
FINGERPRINT EVIDENCE.

APR 7 - 2015

Review, Then Three Weeks Later? The Court Of Appeals Affirmed Conviction Summarily Not Even Addressing The Real Issue At Hand, DNA And Fingerprint Fabrication. Respectfully Put The Lower First Circuit Appellate Court Engaged In A Cover Up And Floated The May 1st 2015 Appellate Judgement, Again Not Addressing Here DNA OR FINGERPRINTS BEING FABRICATED? Appointed Counsel Was Asleep At The Wheel And Grossly Ineffective, Wilkins V. U.S. 441 U.S. 468 (1979) Immediately Filed To Withdraw, Would Not Even Lugwig V. U.S. 162 F.3d 456 (CA6 1998) File An En Banc OR A WRIT OF CERTIORARI. PETITIONER Filed A Timely En Banc Where Now Six Federal Appellate Judges Again On October 19th, 2015 Denied En Banc, Stating En Banc Was Denied For All OF The Reasons Floated In Courts Judgement Not Addressing DNA OR FINGERPRINTS BEING FABRICATED? PETITIONER Here Timely Moved From And Through The Supreme Court Of The United States Dec 20, 2016 April 24, 2017 October 2, 2017 No. 15A720, No. 16A611, No. 17-5498, February 20, 2018 No. 17-5498, Application to file a petition for a writ of certiorari in excess of the page limitation,

April 24, 2017

Petition for rehearing on Application to file a petition for a writ of certiorari in excess of the page limitation,

October 2, 2017

February 20, 2018

Petition for writ of certiorari, Petition for rehearing writ of certiorari, *See Petitioner Moved*

APPEALS COURT 12-2318 *Daylater* 03/05/2018 A Recall [Mandate], *See* 07/31/2018

Filed A summary judgment to grant a Vacate, 11/19/2018 Recall [Mandate], *See* October 21, 2019

7018 2290 0000 0925 2038

Renewed Recall Mandate, Vacate, wrongful conviction With The Suggestion of appointment of an attorney.

The Biggest Point Being Made Here For This Review
Is The Lower Court Errored And Denied All The Means
Filings Concerning recall mandate *Made Impermanently Here*
Are All Connected To The Lower In Six Appellate
Court March 18th, 2020 Order Denying Recall Mandate.
Good, Bad, Or Indifferent Has A Right To File A Writ Of
Certiorari In The Lower Court Order, And Now The
Petitioner Moves The Honorable Supreme Court Of The
United States To Review The 2 Key Questions
That Are Only Now The Lower Court Is Being Asked
To Recall Mandate, But Most Importantly Begs The
Question Whether The Lower Court Had Jurisdiction
To Summarily Affirm Conviction Based In Judgement That
Was Entered May 12, 2015, Now Being Affirmed.

Unequivocal Fact Petitioner Was Wrongfully Convicted,
On Fabricated DNA And Fingerprint Forensic Evidence.
First Question Presented Does The Appellate Court Have
A Sovereign Obligation To Appoint Counsel And Here
Recall Mandate When A Dead Bang Winning Appellate
Issue Was Presented On Direct Appeal Is Critical Stage.
Yet Was Never Addressed By Appeals Court? The Answer
Would Be Yes Under The 14th Amendment Due Process
Clause The Court Administrators Have A Sovereign Sole
Obligation Under The Constitution To Ensure Petitioners.
Enjoy The Liberty And Blessings Of Equal Protections Of
The Laws... At The Very least Effective Counsel And
A Meaningful Direct Appeal. Through And Through
Petitioner Plead To Court For Appointment Of Counsel
And Was Ignored. Lower 1st Cir Courts Of Appeals Refused
To Appoint Counsel Let Alone Recall Mandate. Why
Because The Lower Court Was Concealing And Covering
Up The Fact Petitioners DNA And Fingerprints Were
Fabricated To Wrongfully Convict Him, And Furthermore

Evitts v. Lucey 469 U.S. 387, 83 L.Ed.2d 1055, 67 S.Ct. 830 (1985)
The Lower Court Was Grossly Denying Petitioner
Adequate Counsel And A Meaningful Direct 1st Appeal.
Fundamentally Denying Petitioner His Due Process Under
The 14th Amendment Equal Protections Of The Laws
Under The Constitution. When A Lower Court Suppresses
Evidence Favorable To A Citizen It Violates Due Process,
Irrespective Of Good Faith Or Bad Faith Cited Here
In This Writ In The Constitutional And Statutory
Provisions, Although A State Is Obligated To Prosecute
With Earnestness And Vigor, It Is As Much Its Duty
To "Refrain From Improper Methods Calculated To
Produce A Wrongful Conviction" As It Is To Use Every
Legitimate Means To Bring About A Just One. Accordingly
When State Withholds From Petitioner Evidence That Is
Material To Guilt Or Punishment, It Violates Citizens
Right To Due Process Of Law In Violation Of The U.S.
Constitution. Led Digest: Constitutional Law § 840.3. Here
The Appellate Court Is Aiding The Prosecution In Here
Covering Up DNA And Fingerprint Forensic Fabrication

By Not Recalling Mandate Or Appointing Counsel Denying
Petitioner Equal Protection Under The 14th Amendment
Of The U.S. Constitution.

For Petitioner Prays For The Supreme Court To
Reverse And Remand Judgement With The Direction
Of Appointment Of Counsel, If Not A Complete Vacate.

The Second Question Presented Here Begs The
Question Does The lower Court Of Appeals Have
Jurisdiction To Affirm Cases, When A Rule 33 Is Filed
Under ^{See} U.S. v CRONIC 80 Led 2d 657 466 US 648 (1984)?
The Technical Answer Would Be No... No The Appellate
Court Does Not Have Jurisdiction To Enter A Judgement
Never Mind Summarily Affirm A Case As In Petitioners
Case When Petitioner Filed A Timely Rule 33 In
The District Court...? One Who Aspires To Employ
Rule 33 While Case Is Pending Appeal Is Not Obligated
To File Motion Or Seek leave From Appeals Court.
Such Circumstances, Proper Procedure Is For One To

File Rule 33 In District Court. ^{See} U.S. v Graciani
61 F3d 77 (1995). ^{See} U.S. v Phillips 558 F2d 363, 363 (6th Cir 1977)
Most Importantly In Filing Rule 33 In District
Under ^{See} U.S. v Cronic 80 LEd 2d 657 466 US 648 (1984) Cite⁴²
Within Cronic Footnote⁴² Completely Gives The District
Court Jurisdiction Over Case To Rule On Rule 33
And Appoint Counsel. Cited In Cronic District
Denied For Lack Of Jurisdiction, Because Case Was
Pending Appeal At The Time, But That Ruling Was Ruled
Erroneous. The District Court Had Jurisdiction To
Entertain Rule 33 And Either Deny Rule 33 On Its
[Merits], Or Certify Its Intention To Grant Rule 33 To
The Court Of Appeals Which Then, And Only Then
Entertain A Motion To Remand The Case. The Petitioner
Here December 12/06/2013 Filed His Rule 33 Under U.S.
v Cronic (1984) Merit Was "DNA And Fingerprint
Forensic Fabrication", All At The Same Time Requested
Appointment Of Counsel. Prosecution Filed Objection
Three Days Later. All That Is Stressed Here Is

Rule 33 Was Filed. Petitioner Even gave Notice It
Was Filed Before Rule 33 Was Filed, Not Even A Month

Later Prosecution filed a Motion To Summarily Affirm on January 7th, 2014 and

went on the record on pg 25 addressing the gloves cited; *Petitioner also claims that the differences in the apparent lengths of the gloves as shown in pictures of the gloves that were introduced into evidence shows that that DNA was fabricated*, but a review of the pictures petitioner cites indicted that, in the picture in which the gloves appear shorter, the wrist portion of the gloves was turned inside?

This Was A Blatant Lie And A Premeditated Fraud On
The Court, Carried Out With Deliberate Indifference.
A Small Child Never Mind A Martian Can Unequivocally —
See The Gloves Depicted In Exhibit 78 Are Cut At The
Wrist And Not Turn In On Themselves As Prosecution
Premeditatedly Lie And Committed Fraud On The Court

April 7th, 2014. Counsel raised the issue [forensic evidence fabrication citing]

Limone v. United States, 372 F.3d 39,45 ("[i]f any concept is fundamental to our American system of justice, it is those charged with upholding the law are prohibited from deliberately fabricating evidence and framing individuals for crimes they did not commit").

Furthermore Stated Prosecutions Excuse Was "Absurd"
And Petitioner Deserved To Be Granted [Affirmative Relief].

FINGERPRINT FABRICATION YET THE LOWER 1ST CIRCUIT COURT OF APPEALS HERE REFUSED TO RECALL MANDATE. WHY BECAUSE THE COURT KNEW IT WOULD BE FORCED TO ADDRESS THE DNA AND FINGERPRINT FABRICATION THAT THERE IS NO WAY THIS JUDGEMENT ENTERED WAS INADVERTANTLY FLOATED, THAT FACT IS IT WAS FLOATED TO CONCEAL AND COVER UP THE FABRICATION OF FORENSIC EVIDENCE. THE RECORD IS THE RECORD AND THE ONLY ONE RESPONSIBLE IS THE LOWER 1ST CIRCUIT SIX FEDERAL APPELLATE JUDGES THAT ALLOW THIS TO TRANSPIRE JUDGEMENT/ENBANC/MANDATE. NOW THE PETITIONER IS ASKING THE COURT IN QUESTION 2 DID THE APPEALS COURT HAVE JURISDICTION TO SUMMARILY AFFIRM CASE WHEN A RULE 33 WAS FILED UNDER U.S. V CRONIC (1984) IN THE DISTRICT COURT. AND IF PETITIONER IS TECHNICALLY CORRECT DOES THAT MAKE THEIR APPELLATE JUDGEMENT TECHNICALLY VOID....? RESPECTFULLY PUT THE COURT OF APPEALS DID NOT MAKE AN INADVERTANT MISTAKE HERE THIS WAS

A Clear Fraud ON The COURT To Conceal The Fact That DNA And Fingerprint Evidence Was Fabricated.

Specifically petitioners DNA as well as fingerprint forensic evidence was bottom line fabricated to wrongfully convict petitioner depriving this United States Citizen of his life, liberty, and pursuit of happiness under the bill of the Constitution. Plainly speaking this case has the possibility of having grave implications, effecting Thousands of other state and federal convictions tried in the Commonwealth of Massachusetts. The court here has 3 individual forensic technicians acting in their individual own capacity to fabricate forensic evidence at not one but two different Massachusetts State laboratories...?

Simply Put This Case
Could Effect Thousands Of Other Convictions When
And If Petitioner Is Granted His Constitutional
Right Of Having This Wrongful Conviction Overturned.
Constitution, 14th Amendment, Equal Protection Of
Laws, All Call For Unconditional Release.

Petitioner Prays To Be Granted The Affirmative
Relief Of A Complete Vacate And Remand With The
Direction Of Immediate Release Of Petitioner
From The Court Bond To Prevent Further Irreparable
Harm To Petitioner And Family.

Does this claim rely on "newly discovered evidence"? Yes ☒

The lower court erred summarily affirming this case a wrongful conviction based on fabricated forensic evidence in violation of the Constitution and fundamental due process. Specifically petitioners DNA as well as fingerprint forensic evidence was bottom line fabricated to wrongfully convict petitioner depriving this United States Citizen of his life, liberty, and pursuit of happiness under the bill of the Constitution. Plainly speaking this case has the possibility of having grave implications, effecting Thousands of other state and federal convictions tried in the Commonwealth of Massachusetts. The court here has 3 individual forensic technicians acting in their individual own capacity to fabricate forensic evidence at not one but two different Massachusetts State laboratories...? Those being the Top of the Hub main scientific forensic laboratory that is the location of the DNA Unit in Maynard. The other being the South Shore Headquarters of the State Police Forensic Laboratories located in Lakeville, Where two technicians fabricated fingerprint analysis, Laboratory documents, and where physical forensic evidence was suppressed in violation of 'Youngblood v. Arizona 488 U.S. 51, 51 109 S.Ct 33, 102 led.2d 281 (1988) holding the intentional destruction of potentially exculpatory evidence is a due process violation. The setting creates the case therefore it is explained that this laboratory located in Lakeville is an undersigned laboratory to the Top of the Hub laboratory in Maynard. For Lakeville laboratory here was the 1st to receive the physical evidence in one brown shopping bag like "evidence bag" that contained all the evidence that was submitted to laboratory for testing and analysis at the direction of the prosecution.

Mainly Lakeville laboratory conducts the 1st receipt, separation, and distribution of evidence submitted. Inventory id taken and items are here identified and

placed in locked evidence storage, all at the same time separate departments that conduct various testing are notified items are separated, identified, inventoried, and identified for testing and analysis. [redacted] Lakeville laboratory does [redacted] forensic fingerprint testing. Other than fingerprints this laboratory mainly only identifies, inventories, separates, photographs, all the evidence received with one exception, takes samples for DNA testing. The DNA samples are only taken in Lakeville by a forensic DNA sample technician that photographs and processes the submitted evidence. Those samples are transported to the mother laboratory located in Maynard. Where in this case the State Police DNA Unit is located. So one has fingerprint evidence, laboratory documents, and physical evidence being suppressed and fabricated at the Lakeville Laboratory. Then consequently based on the evidence at the 1st Lakeville laboratory exposes the "fact" that the second Maynard laboratory fabricated petitioners DNA. [redacted] lower 1st Circuit affirmed conviction on May 1st, 2015 and denied En banc on October 19th, 2015. Not even going on the record addressing the DNA and Fingerprint fabrication and petitioners wrongful conviction as a United States Citizen? Not much to be said appointed counsel refused to file on DNA and Fingerprint fabrication played dumb like "O" "I do not see the difference in the gloves". So the issue was not presented in counsels August 6th, 2013 direct appeal, appellate brief? Petitioner plead to Court, counsel and was ignored. Six months later prosecution filed a **Motion To Summarily Affirm** on January 7th, 2014 and went on the record on pg 25 addressing the gloves cited; *Petitioner also claims that the differences in the apparent lengths of the gloves as shown in pictures of the gloves that were introduced into evidence shows that that DNA was fabricated*, but a review of the pictures petitioner cites indicted that, in the picture in which the gloves appear shorter, the wrist portion of the gloves was turned inside?

Know that a 30 year experienced counsel represented this petitioner by C.J.A appointment for defense. In Other words appointed defense Michael C. Andrews from Boston, Massachusetts trial cross-examination of these 3 forensic technicians is flawless as it should be with 30 years experience. Completely secured the chain of custody and above all secured the fact that the Samples that were taken in Lakeville were taken in a cross-contamination free process. Defense even elicited from sample technician when the gloves received were processed. @ 5-79,22 technician used as many precautions as absolutely possible when turning gloves received inside out; wearing fresh gloves: putting gloves on new sterile paper. Elicited by defense counsels question @ 5-79,19 and if someone turned the gloves inside out, you could transfer DNA from the Exterior to Interior? At the time of testimony this 8 year sample technician testified a half dozen times to sterilized work environment and to changing her gloves during processing. @ 5-73,15 I change my gloves frequently. @ 5-79,19 wearing fresh gloves. @ 5-73,15 I change my gloves frequently. @ 5-82,2 Change gloves all the time? That is right. Half a dozen times testified to changing her gloves during her sterile examination. Completely sterile cross-examination free work environment. Sample technicians testimony @ 5-67,13 the items are deposited into locked evidence storage. I then receive notification from the trooper who did the fingerprints that any items he "may" have fingerprinted are ready for me to examine. As in this case the fingerprint analysis was conducted before this second sample technician

picked evidence up out of locked storage. @ 5-66,16 You examined the gloves after they were examined for fingerprints? That is correct. Now once received by this second technician out of locked storage photographs are taken. @5-34,17 Did you personally take a series of photographs? DNA Sample Technician "I Did". When I begin my analysis out of locked storage; I bring it to my work station area, which has been sterilized beforehand, and "all" the tools that I may use are also sterilized. I then photograph the packing that the items actually come in. I take the evidence out and I photograph the evidence as I received it [before] I do any type of testing. @ 5-69,18 sterilized the work environment. @ 5-70,1 to prevent contamination. @ 5-73,2 That is why you clean the table @ 5-79,24 Sterile paper. It has been clearly laid out cross-contamination free sterile examination of the gloves received by technician whom personally takes her own photographs upon receipt of evidence. As does the fingerprint technician in this case personally took his own photographs upon receipt of the evidence @ 4-121,10 he opened up the packages he took items from inside out, continued taking photographs. @ 4-126,6 So these photographs are like peeling back pieces of an onion, at each step you took a photograph? They are, responded fingerprint technician, during prosecutions cross on gloves in question. Defense @ 5-17,13 I took the photographs. Fact both technicians took their own photographs at different times during the technicians separate examinations, specifically on different dates, @ 5-66,20 @ 5-66,24 after they examined for fingerprints DNA sample technician received gloves at this Lakeville laboratory she stresses she is extremely cautious during her examination, sterile work environment cross-contamination free as well as changes her gloves half a dozen times. @ 5-86,2 that is to prevent, cross-contamination she responded.

Defense which is in the world of DNA probably the most important rule? It is very important not to contaminate item with your DNA, and not to contaminate items with other items DNA, yes it is important. Defense counsel really doing a dream team cross-examination on the forensic technicians in this case, especially the DNA sample technician here on specifically the gloves in question. Basely speaking air tight eliciting from technician only One Sample was taken off the outside and only One Sample is taken off the inside of both gloves together as a pair. One sample is taken from both the outside, and one sample is taken from both the insides together. That one sample is put in a single test tube and shipped to be tested. @ 5-76,19 And you took a - I think as you explained it, you took a simple [SINGLE] - what ended up being a [SINGLE] sample from the exterior of both gloves? Correct. So you swabbed the exterior of both gloves and put it in to a tube right? Correct. @ 5-77,17 Once the samples is processed, and assuming that the DNA Material is extracted from the sample that you provided, you can not tell if DNA came from one glove, the right glove, the left glove, or both gloves? Technician responded, there is no way to know. Because you take - you only take one sample, you do not test the right glove and then test the left? Tec, it is combined together as one sample you put it all together? Tec that is correct.

The same procedure was used for the [interior of the gloves]? Tec, that is correct. @ 5-78,8 Interior as received? Tec Correct. So you took another swab sample, [single swab] of the interior of both gloves? Tec Correct. This single sample is put in a tube? Tec yes a plastic tube. Plastic tube, and then you assigned its number? Tec Correct. And that is

shipped off to the laboratory? Tec Correct. @ 5-78,21 Again I ask you the same question: If the interior – if that sample should test positive for DNA, or they locate DNA, we do not know if it came from the right glove or the left glove or both gloves? Tec It would be the right, the left, a combination, we do not know. Prosecution confirmed the samples being taken of outside of the gloves as well as inside by eliciting sample numbers. @ 5-50,8 And the sample number that you assigned the swabs from the outside of the gloves, what item number did you give that? Because the gloves were item 1-4, a sample that is taken from the gloves becomes 1-4.1. @ 5-52,17 And for the interior swabbing, what number do you give that? The original item number, the gloves, is 1-4. The first @ 5-52,20 sample I collected from it was a [1.] because this was the second sample that I collected from it, it is given a [2.], So it becomes item 1-4.2. Now here it has been laid out sterile cross-contamination free process taken singular samples of the purported gloves, and chain of custody samples are numbered 1-4.1. for outside "as received", and 1-4.2. for inside "as received" @ 5-78,19 samples are shipped from location in Lakeville laboratory and sent to the main DNA UNIT that is located in Maynard. Where as in this case the main the State Police DNA UNIT received samples for testing and analysis. Processed by a Level 3 technician with at the time of trial @ 5-93,22 been employed over 16 years with the State Police DNA UNIT. @ 5-94,2 Actually since the inception of the unit. When I first was employed by the State Crime Laboratory, I worked in the Criminalistics units. And at the time we did not have a DNA UNIT, but we were able to bring that on. I was a part of the start up of the DNA unit back in 1998. At trial this technician with 16 years experience a bachelor of science in biology @ 5-96,24 has an Harvard extension

school masters in natural sciences. Highly educated and a top level 3 technician more or less the boss by education. @ 5-99,24 actually just before we get to that how many DNA tests do you perform a month ? @ 5-100,2 I review a lot of work as well @ 5-100,3 currently I'm working on a batch of cases which consists of about 15 case.

@ 5-98,9 Laboratory is accredited by @ 5-98,13 ASCLD/LAB American Society Of Crime Laboratory Directors?

Interestingly enough the laboratories case file is part of the record here and may be used because both Lakeville DNA Sample Tec and Maynard level 3 DNA analysis Tec here at trial both had the case file on the stand during testimony most importantly refers to file during testimony. Court gave consent but file was not admitted as an exhibit during trial? It is not know if jury was subjected to file. @ 5-66,11 I do have my case file, DNA Tec. @ 5-99,13 May I refer to my report. Defense, Does she not remember? Looking at my report would help me remember the accurate facts level 3 Tec. Court: Okay gave permission. At defense objection @ 5-145,7 Excuse me, is she reading another report. Level 3 Tec, This is my DNA file. Laboratories case files both refer to by forensic technicians whom physically had the file on the stand while giving testimony therefore may be refered to now on review. Now the DNA samples are received at the main DNA UNIT in Maynard then tested and analyzed for the trial. Note that there are no photographs taken at this second laboratory to secure the chain of custody as was methodically done in Lakeville, the trial transcript reads the same. Samples are received tested, and on to trial testimony concerning the DNA samples

taken off the gloves: As clearly laid out technician only takes a single sample off the outside of both gloves as one, and the same for the inside of both gloves as a single sample. @ 5-78,2 Interior as received. So you took a swab sample, [single sample] of the interior of both gloves? @ 5-78,19 sample is shipped off to the laboratory. The main concern here will be focused on the results of the single sample taken off the interior of the gloves "as received". @ 5-118,2 swab from interior of both gloves did you form an opinion? @ 5-118,4 Major profile matches that obtained from petitioner. @ 5-137,7 you note that the DNA which is the interior "as received" @ 5-137,11 petitioner had the major profile...? Response Correct. A Major DNA Profile was obtained off the inside of the gloves. Not a minor profile but a major profile was obtained as to the petitioner. To lightly educate the reviewer here the DNA sample technician personally took laboratory photographs during the processing of the physical evidence. @ 5-36,8 defense counsel specifically objected, these are not simple photographs; the actually have writings on the photographs. And if she testifies to what she saw, there is more then photographs; There is partial work notes as well as photographs. The court @ 5-37,16 admitted all her laboratory photographs. The problem is the personal workproduct, note are not scientific fact that violated F.R.E 703 moving from and through the confrontational clause. Never the less the focus here is the admitted evidence and the DNA sample Tec personal workproduct on the laboratory photographs she took and she wrote on during her examination. Now the personal notes are used as evidence here. As laid out here the gloves processed for fingerprints before this technician picked these gloves out of locked evidence storage. This DNA sample technician now writes notes on both photographs that she took of the

gloves @ 5-38,25 has various notes that you put on it? Correct. Now the focus on one of the 2 photographs and her notes as cited off exhibit 126; *yellow {app.fing} res. noted on fingertips (note; swab turned yellow)*. This confirms that these specific gloves are the ones that were processed separately before, for fingerprints before being placed in to evidence storage. For the yellow residue is from the fingerprint fuming process, that again as laid out was conducted before the DNA sample Tec picked up these gloves. @ 5-49,7 I also observed that there was yellow staining on the fingertips of the gloves. In this case item are fingerprinted before. @ 5-49,10 trooper that preformed the fingerprint analysis had used a yellow type of dye on the gloves. So that is the residue I was noting on the tips of the gloves. To the prosecutions cross on fingerprint technician where prosecution physically hands the gloves in question to technician @ 5-16,1 I'm going to hand you some gloves. @ 5-16,6 These would be the gloves that were submitted. @ 5-16,10 What is that color residue on the gloves? Fingerprint technician responded I have actually used a chemical called wet wop. Experienced trial prosecution @ 5-16,21 when you say "color" you are referring to some discoloration on these gloves? Tec Yes. Now the prosecutor @ 5-16,24 Your Honor may I just show the discoloration to the jury? The physical gloves that are in question as well as all the other items tested were used outside of the evidence packages and all evidence was subjected to DNA cross-contamination from trial used, and can not be retested because open air cross-contamination of use, at trial. All items at trial during cross-examination are cross-contaminated. The fingerprint technicians testimony concerning photograph he personally took during his fingerprint analysis of the gloves he processed. @ 5-17,25 but I recall that they were somewhat folded at the wrist.

For the Dead ringer knock out, when photographs that were taken personally by both technicians during their separate examinations are compared of the gloves, reviewer can clearly see that the gloves that are suppose to be one and the same are not.

The fact is the gloves that were originally received were substituted. By the evidence of second technicians own testimony of *yellow residue* noted on her photograph and the fingerprint technicians own testimony @ 5-16,10 of the residue being a chemical he called Wetwop. The reviewer can clearly see that these substituted and not the originally received gloves by fingerprint Tec where processed for fingerprints, before this second technician picks evidence up out of lock evidence storage, and personally takes the first photographs of the substituted gloves in question. For all can see that the gloves in question beyond doubt substituted. Based on this fact the petitioners DNA was fabricated not off the outside "as received", but most importantly fabricated off the inside "as received" substituted gloves in question. In short exhibit 78 is the fingerprint technicians photographs, as the reviewer can see the received gloves @ 4-126,16 @ 5-16,6 @ 5-25,12 are cut at the wrist..... The proceeding DNA sample Tec's Photographs exhibit 126-127 @ 5-34,23 @ 5-35,14 @ 5-46,4 @ 5-46,21 @ 5-73,17 The gloves are complete verse cut as the originals...? Consequently calling in to question any and all testimony and evidence base thereon that was forensically processed at either of the 2 Massachusetts States Police forensic Laboratories in Lakeville or Maynard. Plainly speaking all 3 forensic technicians testimony is void and unreliable ..[.]

Petitioners conviction based on perjured testimony and falsified evidence in violation of the Fifth, Sixth, Fourteenth Amendments Under the Constitution and petitioners fundamental due process rights can not stand, most importantly needs to be vacated in the interest of justice, to maintain the integrity in the citizens confidence under the Constitution to Due process *Limone v. United States*, 372 F.3d 39,45 ("[i]f any concept is fundamental to our American system of justice, it is those charged with upholding the law are prohibited from deliberately fabricating evidence and framing individuals for crimes they did not commit"). Cited in counsels April 7th, 2014 response before judgment. *Napue v. Illinois* 360 U.S. 264 (1954) 269,79 S.Ct 1173, 3 Led.2d 1217 (1959) recognizing that the State may not knowingly use false evidence, including false testimony, to obtain a tainted conviction. *Youngblood v. Arizona* 488 U.S. 51, 51 109 S.Ct 33, 102 led.2d 281(1988) holds the intentional destruction of potentially exculpatory evidence is a Due process violation. *Strickler v. Greene* 527 U.S. 150, 154 31 led.2d S.Ct 763 (1999) Prejudice must have ensued from the suppression of the material evidence. *Giglio v. United States* 405 U.S. 150, 154 31 led.2d 104 92 S.Ct 763 (1972) the accused does not have a duty to request favorable evidence from the prosecution, Only need to show that the withheld evidence, *Bagley v. United States* 473 U.S. 667 87 led.2d 481, 105 S.Ct 33 75 (1972) demonstrates that the suppressed evidence is material [that is] its suppression undermines the confidence in the outcome of the trial and that, *United States v. Agurs* 427 U.S. 97, 107, 49 led.2d 342, 966 S.Ct 2392 (1972) There is a reasonable likelihood the out come of the trial would have been altered. When a defense properly preserves an "objection" to a trial error - @ 5-36,4 I have an objection - , the prosecution bears the burden of proving error

was harmless 'United States v. Olano 507 U.S. 725, 734, 113 S.Ct 1770 123 L.ed.2d 508 (1993) for most Constitutional errors, the prosecution must show that the error was harmless beyond a reasonable doubt. Counsel objected @ 5-36,4 And at @ 5-37,16.

Court overruled and admitted the several photographs with DNA sample technician personal workproduct notes contained on the photographs of the gloves in dispute, and that allows review under harmless error and for that reason 'Chapman v. California 386 U.S. 24 17 led.2d 705 (1967) the prosecution must show that the "error" did not have a substantial and injurious effect or influence determining the juries verdict.

Therefore the lower appellate court with Due respect erred summarily affirming this Citizens wrongful conviction based on fabricated forensic evidence that being DNA and Fingerprint fabrication with the false testimony based thereon. This United States Citizen states his Fifth, Sixth, Fourteenth Amendments was violated, and respectfully request the Court of the United States to please grant seeked (affirmative relief), vacating this wrongful conviction. Michael Russell Burns Prays this conviction be vacated to prevent further irreparable harm to his person.

[REDACTED]

The petitioner a United States Citizen under the Constitution, Bill of Rights, and God is wrongfully convicted based on fabricated forensic evidence that being DNA fabrication and fingerprint fabrication with the false testimony base thereon in the reasons set forth. Based on the evidence this conviction has to be vacated because it opens up the floodgate of this Citizen Constitutional rights being violated whom is entitled to equal protection under the law from and through specifically the Constitution, Bill of Rights, [Fourth, Fifth, Sixth, Fourteenth Amendments], equal protection under the law, fundamental due process, from and through **Limone v. United States, Youngblood v. Arizona, Napue v. Illinois, Strickler v. Greene, Giglio v. United States, Bagley v. United States, Agurs v. United States, United States v. Olano, and Chapman v. California** in clear violation of this citizens **Constitutional** rights. Depriving this Citizen of his life, liberty, and pursuit of happiness in violation of the Eight amendment as well. For the

Court just went against every listed case above, standard, laws, treaties of the United States and the Constitution. Far departed from the rule 10(a) accepted and usual course of judicial proceedings. Allows the Court to vacate this wrongful conviction granting the (affirmative relief) of a vacate to prevent further irreparable harm to petitioners person. Petitioner prays for the Court of theses United States to grant a vacate, God bless and thank reviewer for your time and discretion.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Michael Russell Burns

Date: July 14th, 2020